

**STATE OF MONTANA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER No. 14-2021**

**EXECUTIVE ORDER CONTINUING THE UPPER CLARK FORK RIVER BASIN
REMEDICATION AND RESTORATION ADVISORY COUNCIL**

WHEREAS, the federal Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), and the Montana Comprehensive Environmental Cleanup and Responsibility Act ("CECRA") allow states as trustees for natural resources to recover monetary damages for injuries to natural resources caused by releases of hazardous substances;

WHEREAS, in 1983 the State of Montana ("State"), pursuant to its role as trustee, filed suit in federal court against the Atlantic Richfield Company ("ARCO") alleging that the company is liable for injury to the natural resources of the Upper Clark Fork River Basin;

WHEREAS, in 1999 the United States District Court for the District of Montana approved a partial settlement of *Montana v. ARCO* that resulted in the State obtaining, among other awards, an approximate additional \$72.5 million in natural resource damages as a complete and final settlement of the State's natural resource damages claims against ARCO;

WHEREAS, local officials and citizens in the Upper Clark Fork River Basin desire the opportunity for input concerning how the monetary damages recovered by the State as a result of this lawsuit will be used;

WHEREAS, CERCLA requires that natural resource damages be used only to restore, replace, or acquire the equivalent of the injured natural resources that are the subject of the litigation;

WHEREAS, in addition to the natural resource damages litigation involving the Upper Clark Fork River, the Montana Department of Environmental Quality has worked with the United States Environmental Protection Agency under cooperative agreements that provide funding to the State and define state and federal agency roles for directing the remediation of various operable units (management/administrative units) within the Upper Clark Fork River Basin National Priority List sites, as authorized under CERCLA; and

WHEREAS, as a result of these interests of the public and State in natural resource damage and remediation issues, the initial Upper Clark Fork River Basin Remediation and Restoration Education Advisory Council was created by Executive Order No. 08-1998 on April 23, 1998, and extended by subsequent Executive Orders No. 10-2000 on April 25, 2000, No. 08-2008 on April 1, 2002, No. 06-2004 on March 31, 2004, No. 6-2005 on June 1, 2005, No. 28-2006 on January 19, 2006, No. 26-2007 on December 17, 2007, No. 1-2009 on January 5, 2009, No. 07-2009 on July 31, 2009, No. 11-2011 on July 28, 2011, No. 9-2013 on August 1, 2013, No. 13-2015 on September 9, 2015, No. 8-2018 on March 28, 2018, and No. 21-2019 on November 17, 2019.

NOW, THEREFORE, I, GREG GIANFORTE, Governor of the State of Montana, pursuant to the authority vested in me under the Constitution and the laws of the State of Montana, § 2-15-122, MCA, and under other applicable statutes, do hereby extend the existence of the Upper Clark Fork River Basin Remediation and Restoration Advisory Council (hereinafter, "Council") as follows:

PURPOSE

The purpose of the Council is to advise the Governor as trustee of the State's natural resources pursuant to CERCLA and CECRA with respect to issues involving restoration, replacement, or acquisition of the equivalent of the injured natural resources that were the subject of the litigation in the Upper Clark Fork River Basin, including the use of the funds that were recovered from settlement of the litigation. The Council shall:

- Work with and advise the Natural Resource Damage Program as the Program implements or revises the Upper Clark Fork River Basin Aquatic and Terrestrial Resources Restoration Plans, and the Groundwater Resources Restoration Plans prepared by Butte-Silver Bow and Anaconda Deer Lodge counties, and implements any drafts of previous annual restoration work plans and any modification of the Restoration Plan Procedures and Criteria;
- Advise the Governor as trustee as to the use of the funds that were recovered through the settlement in accordance with the Governor's restoration plans and as otherwise provided by law;
- Establish a procedure for receiving input from and sharing information with the public and the various interested agencies; and
- Advise the Upper Clark Fork River Basin Trustee Restoration Council (consisting of the Governor's Chief of Staff, the Directors of the Departments of Environmental Quality, Fish, Wildlife and Parks, and Natural Resources and Conservation, the Chair of the Upper Clark Fork River Basin Remediation and Restoration Advisory Council, and the Attorney General, serving as a non-voting advisor to the Upper Clark Fork River Basin Trustee Restoration Council). The advice of the Council will not be considered to the exclusion of input of other interested individuals or groups. The existence of and advice given by the Council does not in any way diminish the powers of the Governor as trustee of the State's natural resources pursuant to CERCLA and CECRA, nor is any advice of the Council intended to bind the State in any litigation or related negotiations.

The Council may adopt procedures related to its interface with the Natural Resource Damage Program and other matters that fall within its purpose, as set forth above. The Council's procedures may not conflict with law or any court order, and any procedures adopted by the Council must be approved by the Governor.

COMPOSITION

The Council will consist of up to 10 voting members and up to 3 non-voting members representing the interests of the natural resource damage area in the Upper Clark Fork River Basin, as follows:

1. Citizen Voting Members: The Council will consist of eight citizen members, appointed by the Governor, who are residents of Deer Lodge, Granite, Missoula, Powell and Silver Bow Counties that comprise the Upper Clark Fork River Basin.
2. Federal and Tribal Government Voting Members: The Council will also include a representative of the Confederated Salish and Kootenai Tribes, designated by the Tribal Chair, and a representative of the United States Department of the Interior, designated by the Secretary of the Interior.
3. State Government Non-Voting Members: The Council's non-voting members will include the:
 - Director of the Department of Environmental Quality, or the Director's designee;
 - Director of the Department of Fish, Wildlife and Parks, or the Director's designee;
 - and
 - Director of the Department of Natural Resources and Conservation, or the Director's designee.

The Governor shall appoint a chair from among the Council's citizen voting members, and the Natural Resource Damage Program will provide technical and administrative support for the Council. The appointees shall serve at the pleasure of the Governor.

DURATION

This Order is effective September 1, 2021. The Council shall expire or be extended by September 1, 2023.



GIVEN under my hand and the GREAT SEAL of the State of Montana this 28th day of September, 2021.



GREG GIANFORTE, Governor

ATTEST:



CHRISTI JACOBSEN, Secretary of State