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**State of Montana**  
**Office of the Governor**



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**Executive Order No. 8-98**

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EXECUTIVE ORDER CREATING THE UPPER CLARK FORK RIVER BASIN  
REMEDICATION AND RESTORATION EDUCATION ADVISORY COUNCIL

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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; and

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

WHEREAS, the Governor acts as the trustee for the State's natural resources and of any damages recovered to compensate the public for injuries to those resources as permitted under CERCLA; and

WHEREAS, settlement negotiations have been ongoing between representatives of the State of Montana and ARCO for some time, but have heightened in intensity during recent months; and

1           WHEREAS, several local officials and citizens in the Upper  
2 Clark Fork River Basin have requested regular briefings on the  
3 status of the lawsuit and the opportunity for input concerning  
4 how any awards that may be recovered by the State as a result of  
5 this lawsuit will be used; and

6           WHEREAS, CERCLA requires that natural resource damage  
7 awards be used only to restore, replace, or acquire the  
8 equivalent of the injured natural resources that are the subject  
9 of the litigation. 42 U.S.C. 9607(f)(1); and

10           WHEREAS, in addition to the ongoing litigation involving  
11 the Upper Clark Fork River the Montana Department of  
12 Environmental Quality, works with the U.S. Environmental  
13 Protection Agency under cooperative agreements that provide  
14 funding to the State and define state and federal agency roles  
15 for directing the remediation of various operable units within  
16 the Upper Clark Fork River Basin National Priority List site, as  
17 authorized under CERCLA.

18           NOW, THEREFORE, I, MARC RACICOT, Governor of the State of  
19 Montana, pursuant to the authority vested in me by the laws and  
20 Constitution of the State of Montana, do hereby create the Upper  
21 Clark Fork Basin Remediation and Restoration Education Advisory  
22 Council.

23           I. PURPOSE

24           The primary purpose of the Advisory Council is to promote  
25 public understanding of the State's efforts to remediate and  
26 restore sites in the Upper Clark Fork River Basin that have been  
27 injured by hazardous substances for which ARCO is liable. To  
28 that end the Advisory Council shall establish a procedure for

1 the sharing of information with the Advisory Council, State's  
2 Natural Resource Damage and Superfund Programs, and the public.

3 Any advice provided to the Governor with respect to issues  
4 involving remediation and restoration efforts in the Upper Clark  
5 Fork River Basin, including the use to which any funds that may  
6 be recovered from settlement or trial of litigation are put  
7 would have to be consistent with the requirement that such funds  
8 be used for restoration or replacement of the injured natural  
9 resources in accordance with a restoration plan prepared by the  
10 State of Montana as provided by law. Moreover, such advice  
11 would not be considered to the exclusion of input of other  
12 interested individuals or groups.

13 The existence of the Advisory Council does not in any way  
14 diminish the powers of the Governor as trustee pursuant to  
15 CERCLA and CECRA. Nor is it intended to comment on the status  
16 of any pending litigation or related negotiations.

17 II. COMPOSITION

18 The Advisory Council will consist of the following members  
19 as identified below. The members shall serve a two-year term  
20 and be subject to re-appointment.

21 A. Non state-government members, who must reside in the  
22 area affected by the NRD litigation, more specifically  
23 described as the Clark Fork River Basin, from Butte to  
24 Missoula, to be appointed by the Governor:

- 25 1. one businessperson;
- 26 2. one conservation district representative;
- 27 3. two local government representatives;
- 28 4. one engineer;

- 1 5. one member of the public active in conservation
- 2 or recreation;
- 3 6. one local natural resource scientist;
- 4 7. one local planner or local development
- 5 specialist;
- 6 8. one representative of a non-profit organization,
- 7 a purpose of which includes protection of
- 8 environmental values in the Clark Fork Basin; and
- 9 9. one interested member of the public who does not
- 10 represent one of the interests described in 1
- 11 through 8.

12 B. State government members:

- 13 1. Director of the Department of Environmental
- 14 Quality, or the Director's designee;
- 15 2. Director of the Department of Fish, Wildlife and
- 16 Parks, or the Director's designee;
- 17 3. a representative of the Natural Resource Damage
- 18 Litigation Program designated by the Attorney
- 19 General;

20 C. A representative of the Confederated Salish & Kootenai

21 Tribes, designated by the Tribal Chair; and

22 D. A representative of the United States Department of

23 the Interior, designated by the Secretary of the

24 Interior.

25 The Governor will appoint a chair from among the members,

26 and the Department of Environmental Quality will provide

27 technical and administrative support for the Advisory Council.

28 The names of the members of the Advisory Council will be

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submitted by separate letter to the Secretary of State.

III. DURATION

The Advisory Council will exist for a period of two years from the effective date of this Order unless otherwise ordered by subsequent Executive Order. This Order is effective immediately.

GIVEN under my hand and the GREAT SEAL of the State of Montana, this 23<sup>rd</sup> day of April, 1998.

Marc Racicot  
MARC RACICOT, Governor

ATTEST:

Mike Cooney  
MIKE COONEY, Secretary of State