MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON GENERAL GOVERNMENT & HIGHWAYS

Call to Order: By **CHAIR JOE QUILICI** on January 14, 1991, at 9:00 a.m.

ROLL CALL

Members Present:
Rep. Joe Quilici, Chairman (D)
Sen. Harry Fritz (D)
Rep. Mary Lou Peterson (R)
Sen. Larry Tveit (R)
Rep. Tom Zook (R)

Members Excused: Sen. Larry Stimatz

Staff Present: Clayton Schenck, Senior Fiscal Analyst (LFA)
Lois Steinbeck, Associate Fiscal Analyst (LFA)
Dan Gengler, Budget Analyst (OBPP)
Bill Mandeville, Budget Analyst (OBPP)
John Patrick, Budget Analyst (OBPP)
Arlene Carlson, Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

GOVERNOR'S OFFICE

Tape No. 1

Clayton Schenck, LFA, gave a general overview of the agency. **EXHIBIT 1** Budget analysis of the Governor's office of approximately $3 million per year shows an increase of approximately 5.5% from 1991 to 1993 biennium primarily due to the termination of the state's centennial office and if that program is excluded, there is actually a 1% increase overall. Specific programs that affect the overall program are a 35% decrease in the air transportation program due to the final payment for the new aircraft beginning in 1992 and not carrying over to the 1993 biennium. Minor increases in mansion maintenance and the Lieutenant Governor's programs, are approximately 10% average. There are three budget modifications for consideration: 1) The ARCO Clark Fork Damage Litigation - that will be a request for $2 million of general fund and then an additional $8 million in federal and private funds. 2) Equipment Replacement - Request for $4,000 for copy machine replacement in OBPP, and 3) a request for $10,000 for OBPP personnel to attend the National Association of state budget officers meeting in Montana. The Executive Budget as you can see for the biennium is approximately $110,000 higher than the LFA current level. In

personal services the LFA current level eliminates the .5 FTE in the Pacific Northwest Electric Power and Conservation Planning Council Act and that is retained in the executive budget. With regard to operating expenses, the executive budget is approximately $88,000 higher primarily due to the network data processing costs and approximately $20,000 in copilot costs in the air transportation program, approximately $13,000 printing costs in the office of the budget and over $50,000 of the difference is due to the bases used between the two budgets. As mentioned earlier, the other differences is the executive budget modification of approximately $10 million dollars.

Questions from the Committee: None

Steve Yeakel, Governor's Chief of Staff, introduced the Governor's staff that was in attendance to answer questions. Randy Link, Governor's pilot; Rod Sundsted, Director, Governor's Budget Office; John Brenden, Member of the Pacific Northwest Electric Power and Conservation Council; John Kinna, Executive Assistant, Lt. Governor's Office; Kelly Moorse, Executive Director, Mental Disabilities Board of Visitors; Wally King, Chairman of the Board of Visitors; Dennis Iverson, Director, Department of Health and Environmental Sciences; and Art Wittich, Governor's Environmental Resources Policy Advisor.

Mr. Yeakel said there are concerns in every part of the budget, but only major concerns with a few. One concern is with executive co-piloting in the transportation program and in the area of engine repair.

Clayton Schenck referred to the main table at the top of page A-36. **EXHIBIT 2** There is an approximate 10% increase in this program which will budget approximate at $1.1 million dollars per year. The increases are primarily due to personal services, the vacancy savings and the other major difference being continued funding for the Flathead Basin Commission at FY91 appropriated levels which is significantly higher than the actual expenditures of FY90. This is not an overall increase in the agency FTE. It is simply a transfer from one program to another. The operating expenses increase is in the Flathead Basin Commission and this is a case where in order to pay current level, the LFA deviated from using 1990 actual and 1991 approximate. Regarding additional operating cost increases, there are minor increases for fixed costs for building rent, audit and other costs charged by the Department of Administration and inflationary adjustments. The requests for equipment are listed on page A-36. The Clark Fork River Basin project was completed in FY90 which is not included in the 1993 biennium budget. Funding for the agency is all general fund with the exception of the Flathead Basin Commission which is private funding placed in the state's special revenue account. The one executive budget modification for this program is the Natural Resources Damage Assessment for legal costs against Atlantic Richfield Corporation (ARCO). He reviewed the modification in detail. **EXHIBIT 3**

Natural Resource Damage Assessment

Clayton Schenck said the agency is requesting $2 million in general fund in the 1993 biennium for legal costs of preparing for litigation against ARCO and an additional $8 million of additional spending authority from federal or private funds during the 1993 biennium for trial preparation costs. The agency has not specified a source for these private or federal funds. In regard to the $8 million in federal funding, the Department of Health and Environmental Sciences (DHES) is currently contracting for a preliminary analysis of the damages that might be recovered from this. The federal government requires that those funds received from the damage assessments be used to restore, replace or acquire the equivalent natural resources that may have been damaged. This particular modification has been presented by the executive and would change the primary funding source for the effort from RIT interest to general fund with regard to the $2 million dollars that is requested. It would transfer the day to day responsibility for management from the DHES to the Governor's office. If approved, the Legislature may want to include language in the appropriations act that prohibits the use or transfer of the general fund for any other purpose other than preparation for this particular case.

Clayton Schenck referred to Comparison Issues for the 1993 biennium. **EXHIBIT 4** There is a difference of approximately $20,000 between the executive and LFA current level. These issues are shown under current level issues. Differences are the network fees which is a global issue of $9,000 per year and fixed cost differences, fees which are charged by the legislative auditor and the Department of Administration of a minor amount and then inflationary differences. There really are no significant issues that will not be resolved other than by the House Appropriations Committee.

REP. QUILICI summarized the Governor's Office budget which has minor issues except for the modifications. The Natural Resource damage assessment is the only real issue.

Dennis Iverson, Director, DHES, stated that there are a couple of issues involved in the damage suit to be discussed so for that reason, this should be postponed for a few days. The $2 million is actual monies to be spent. The other $8 million is authorized to be spent, but not actual cash. In the meantime, they were able to hire an extremely competent coordinator for the project, **Dick Peterson**, who has put together a version of what will be needed. It indicates the need to look again at the $8 million and find a way to get more cash in the general fund. More than $1 million a year will be needed. Perhaps by special revenue sources, ARCO may also give some of the needed funding. The other issue is whether or not the monies should be issued to the Governor's office or to the DHES. Obviously the general fund cannot be pressured much more and this matter should be flagged for the time being until the committee and the office review the issues

and get some concrete figures. This issue is extremely critical. The $8 million is necessary, but the Governor is absolutely opposed to any new tax increases, so this committee can perhaps help find a way to increase the general fund. It is extremely important to the state of Montana and cannot be done on a shoestring. The state's must put its best effort forward and have adequate resources to meet the time table.

Dick Peterson, Natural Resource Damage Program Coordinator for the state of Montana reviewed the handout, "Clark Fork Basin Natural Resource Damage Assessment and Program Strategy and Funding Request Documentation", submitted in support of the Governor's Budget. **EXHIBIT 5** The state of Montana has been given less than two years to complete a very detailed and required Natural Resource Damage Assessment for the largest superfund complex in the country. It can be done in that time period. Damages in this case are expected to be in the tens of millions of dollars and some figures have been hundreds of millions of dollars. What is important is remedy and damage. This is part of the superfund laws. Remedy refers to the investigation and remediation of injury to a natural resource, whereas a damage case concerns damages for injury to, destruction of, or less of natural resources, including the reasonable cost of assessing such injury, destruction, or loss. This is in the past, the current and the future. There are two elements of a damage case and the first element is response cost which is reflected in the budget. The law requires the state of Montana recover those costs. Those costs go back to the general fund and in addition there is not 100% guarantee that those costs are recoverable, but should be within 95 to 100% that the state will recover those costs, based on information from people who are involved in our cases around the country. The second and important part of this case is damages. Again, that refers to the loss of a resource and recovering money for the loss. That money that is collected has to go back to Resources, that is not general fund money. This is the kind of thing these damages are used for, like developing fishing access, or augmenting agricultural losses to the basin. The Natural Resource Damage Assessment is actually the technical part of assessing the damages to resources and follows a very precise method outlined in Department of Interior regulations, which the state of Montana intends to follow. The state is beyond the notification and detection stage, the phase now is doing the detailed assessment plan where how much damage is documented, the magnitude of the damages done and what type of research is needed to support that damage claim. That moves into the actual assessment where that research is actually being employed. There is a post assessment phase which is basically the report summary, what the damages are and what the state will go to court with. One key part of the current phase again is the economics. This is a base for putting a value on that resource. There are two types of values that are looked at. One is a use value, for instance a fisherman who fishes in the Clark Fork river. There is an economic value to that. So a value has to be assigned to that actual direct use of

that resource. The other component is a non-use value which basically refers to what is the value to the state of Montana to have a clean pristine river. This would equate to the oil spill in Alaska. There are many agencies involved, federal, state, private and public. Needed are a coordinator, two technical positions and an administrative support person in order to manage a case of this size. A state litigation team is needed. This is a lawsuit of extreme magnitude involving many different natural resources and many different people. The two attorneys and two paralegals for FY92 and three attorneys and two paralegals for FY93 and beyond are needed as long as the case continues. Very important to the effort is the contracting part of the assessment and litigation process. The science involved in this assessment requires many technical and economic people doing the work. State government does not at this time have the manpower to assume that responsibility. We need to contract with firms who have vast experience in natural resource damage assessment. The second part of the contracting is the litigation. Experienced attorneys are necessary in the areas of natural resources damage assessment and in the environment. The state does not have these resources. Further details are in the handout.

REP. ZOOK asked if this additional money is included in the $8 million, not from the general fund. **Mr. Iverson** said that's what they needed creative help in determining. The $8 million is more than what is needed in total authority, the $1 million is probably less than what they should have asked for in hard dollars. It is possible they could get by with just authority but at this point it's difficult to determine. ARCO will have to pay the bill eventually so maybe there is money available there. They have reached an agreement with ARCO on the technical exchange of information and that will help to help alleviate duplication costs. The law requires they pay for the assessment. Things like that could take pressure off this budget but those are still unknowns.

SEN. FRITZ asked about the returns on the investment of this law suit. For an investment of about $10 million, there could be a possible return of tens or hundreds of millions of dollars. **Mr. Peterson** answered that is possible. **CHAIR QUILICI** said they have met on this periodically the last few years and being at the head waters of the Clark Fork is of special interest. It appears to be a minimum of $50 million return and maybe higher. Congress just raised that minimum under CERCLA. The idea is not how much tax dollars can be obtained but how to use that money for natural resource cleanup. It will not be a boom to the general fund.

REP. PETERSON asked if this money was all for restitution and no punitive damage. **Mr. Peterson** said the actual cleanup is proceeding separately, that's the remedy part. Damages go for the service, fish, agriculture, groundwater, drinking water, etc., for lost use. **Mr. Wittich** said it all has to be tied to a damage resource so when the money is received, it has to be put back into the resource.

Mansion Maintenance Program

Clayton Schenck, LFA, reviewed the budget. **EXHIBIT 6** The current level budget shows a decrease of nearly 5 percent compared to the previous biennium. This was due to a one-time expenditure in FY90 for replacing linens and tableware and for carpet cleaning at approximately $13,000. Operating expenses increase is due to inflationary adjustments. Only adjustments to the LFA current level were for personal services increases and fixed costs.

Steve Yeakel explained the one-time request for equipment replacement and continuing request for ongoing carpet cleaning and routine replacement of linens and household supplies. There is some confusion there. The $1700 in routine items is necessary due to more use of the Mansion, routine art shows, etc. which involve more of the public.

Mr. Schenck explained the $13,000 in the one-time expenditures was in the equipment budget and that is not included but all the requests for ongoing items such as carpet and drapery cleaning are included in LFA current level.

Air Transportation Program

Mr. Schenck reviewed the budget. **EXHIBIT 7** The 1993 biennium current level decreases over 35 percent compared to the previous biennium, due primarily to the payoff of three-year financing of a new aircraft in FY92. Personal services increase is over 22 percent, to be used for acquisition and debt service of the new aircraft which is not reflected in the FY90 column so take those costs out so there is approximately an 8 percent increase that is paid by an increase in the Workers' Compensation insurance relief. The large increase in operating cost is due to cyclical costs of scheduled aircraft maintenance in FY93. He referred to Table 1 on Flight Hours. Difference between LFA and executive of $26,000 is primarily in a copilot expense. Executive is more based on FY90 appropriation. The other adjustment was for gasoline.

Mr. Yeakel stressed the importance of having a copilot onboard at all times is a safety feature and justified. **Mary Jo Murray, Administrator, Governor's Centralized Services**, stated the airplane was purchased in FY90, a 10% downpayment was put down and the remainder was financed which wasn't anticipated in the budget request last session, it was split into three years of payments. They ran out of money in February of last year, requested a supplemental, moving most of the downpayment into the first year of the biennium and instead of adjusting the costs as they should have been. Supplemental appropriation wasn't picked up as current level in both the OBPP and LFA budget analysis. Actual copilot expenditures in FY90 were $7800 and so far in FY91 $6400 on a contract copilot.

Randy Link, Governor's Pilot, explained that the industry standard for flying chief executives is with a copilot. Out of the seven major corporations in Billings, all use a copilot. This is a very safe airplane.

Office of Budget and Program Planning

Mr. Schenck reviewed the budget. **EXHIBIT 8** The OBPP 1993 biennium current level budget increases 5.6 percent over the previous biennium, due primarily to increased personal services costs as discussed before in other budgets, pay plan and vacancy savings. The cost of the budget director's position is not included in FY90 personal services as it was paid on a contract basis paid out of operating costs with the federal government. There are increases in the odd year which reflects higher sessions costs for printing, postage and computer processing. There are two executive modifications; $4000 to replace a copy machine and NASBO 1992 national meeting expenses in Kalispell. He reviewed the differences in LFA current level and executive. **EXHIBIT 4**

Rod Sunsted, OBPP, referred to the printing costs, for example, the appropriations report two years ago cost $2000 for printing which was a much scaled-down version, prior to that it cost $11,000. His concern was in taking that down to the actual level of two years ago, any option to do a better report is taken away. He recommended going with the appropriated level on the printing. Regarding the modifications, they do a tremendous amount of copying, not just for OBPP but for other agencies and during the session for fiscal notes, the copy machine is badly in need of replacement. It's not dependable and the quality is poor. In terms of the NASBO national meeting being in Montana, it brings about 400 people to Montana and many tie a vacation to that. It would be a benefit to the state. Many states have a staff of 50 people where Montana has 16 and all will be needed to handle this meeting. This money is not to subsidize costs of the conference but to pay for staff per diem, etc.

Northwest Power Planning Council

Clayton Schenck, LFA, gave a brief overview. **EXHIBIT 9** There is an approximate 3.9 percent increase for a budget of just under $400,000 per year under LFA current level. Increases are due mostly because of personal services for vacancy savings. This Council is funded by the Bonneville Power Administration, a federal agency.

John Brenden, NPPC, gave background information on the Pacific Northwest Electric Power and Conservation Planning Council which was created in 1981, pursuant to the Pacific Northwest Electric Power Planning and Conservation Act of 1980. This was created in response to nuclear plant disasters. They were to draw up a 20-year power program at least every five years. They were also to protect, enhance and mitigate for all fish and wildlife claims on

the Columbia River Basin. The current budget is $398,000 and they propose under OBPP $413,300. To put that in perspective with other states, Oregon $515,000; Idaho $627,000; Washington $714,000. A federal budget is also drawn up in October. In October 1990 $28,000 back to the central office in Portland. Air fare costs have risen so that's included.

The previous administration had signed a Montana trust agreement for wildlife mitigation with BPA. This would give $12.5 million plus $2.5 million to the state of Montana over a period of time. It was negotiated with FWP and the Governor's office. One clause in the contract was of concern, BPA included that Montana would be held accountable and BPA harmless from all litigation. There is a constitutional clause in state government that we cannot spend more than we generate in revenue. A large lawsuit would put the state in a hole. They hired the Governor's attorney and BPA has now signed an agreement that Montana would not be held accountable for anything beyond the mitigation aspects. That took two years to accomplish.

Mr. Brenden explained the Fish and Wildlife Program. The Council published three Columbia River Basin Fish and Wildlife Programs. The Council is currently developing a systemwide plan for the 31 subbasins. The objective is to produce an integrated approach to doubling the salmon and steelhead runs (Montana has none of these ocean migrating fish). He detailed the costs for travel and mediation involved with this project.

Lieutenant Governor

Clayton Schenck, LFA, reviewed the budget. **EXHIBIT 10** The current level budget decreases nearly 5 percent due to the transfer of 1 FTE for the clearinghouse function to OBPP. Operating expenses are continued at FY90 actuals with minor adjustments for increases in rent, messenger services and other fixed costs.

The following divisions were discussed. The tape did not record and the notes are not available for transcribing. These divisions were discussed again on later dates.

Citizens' Advocate Office
Mental Disabilities Board of Visitors
Statehood Centennial Office

ADJOURNMENT

Adjournment: 11:03 A.M.

Joe Quilici
JOE QUILICI, Chair

JQ/ac

HOUSE OF REPRESENTATIVE

GENERAL GOVERNMENT AND HIGHWAYS SUBCOMMITTEE

ROLL CALL

DATE Jan. 14, 1991

NAME	PRESENT	ABSENT	EXCUSED
REP. JOE QUILICI, CHAIRMAN	✓		
SEN. LARRY STIMATZ, VICE-CHAIRMAN			✓
REP. TOM ZOOK	✓		
SEN. LARRY TVEIT	✓		
REP. MARY LOU PETERSON	✓		
SEN. HARRY FRITZ			

HR:1991
CS10DLRLCALEDSUB

EXHIBIT 1
DATE 1-14-91
SEN 601

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GOVERNOR'S OFFICE

Budget Item	Actual Fiscal 1990	Appropriated Fiscal 1991	- - Current Fiscal 1992	Level - - Fiscal 1993	Change 1991-93 Biennium
FTE	65.20	60.20	58.70	58.70	-1.50
Personal Services	1,915,531	2,156,663	2,146,279	2,144,822	5.38%
Operating Expenses	936,877	852,523	785,554	849,790	-8.61%
Equipment	287,473	257,796	204,559	19,381	-58.93%
Grants	97,868	0	0	0	-100.00%
Total Agency	$3,237,749	$3,266,982	$3,136,392	$3,013,993	-5.45%
Fund Sources					
General Fund	2,450,635	2,695,122	2,627,438	2,505,257	-.25%
State Revenue Fund	397,085	110,994	80,395	80,395	-68.35%
Federal Revenue Fund	390,029	460,866	428,559	428,341	.71%
Total Funds	$3,237,749	$3,266,982	$3,136,392	$3,013,993	-5.45%

Agency Description

The Office of the Governor was created upon acceptance of Montana into the United States in 1889 and exists under authority contained in Article VI of the Montana Constitution. The Governor has constitutional and statutory authority to administer the affairs of the State of Montana; appoint all military and civil officers of the state whose appointments are provided for by statute or the Constitution; approve or disapprove legislation; report to the legislature on the condition of the state; submit a biennial executive budget; grant reprieves and pardons; serve on various boards and commissions as provided by the Constitution and statutes; and represent the state in relations with other governments and the public.

Current Level Budget

The Governor's Office current level budget for the 1993 biennium decreases over 5 percent compared to the previous biennium, due to the termination of the Statehood Centennial Office. If that program is excluded, there is a 1 percent increase in the agency current level. A 35 percent decrease in the Air Transportation program due to final payment for the new aircraft in fiscal 1992, as well as minor decreases in the Mansion Maintenance and Lt. Governor programs, are offset by increases of up to 10 percent in the other programs. The primary reasons for increases are vacancy savings in fiscal 1990 and a significant increase in the Flathead Basin Commission budget over the fiscal 1990 level.

Executive Budget Modifications

1993 Biennium

Budget Modifications	FTE FY92	FTE FY93	General Fund	Other Funds	Total
1) ARCO Clark Fork Litigation			$2,000,000	$8,000,000	$10,000,000
2) Equipment Replacement			4,000		4,000
3) NASBO 1992 National Meeting			10,000		10,000
Total			$2,014,000	$8,000,000	$10,014,000

EXHIBIT 2
DATE 1-14-91

3101 01 00000

EXECUTIVE OFFICE PROGRAM

Budget Item	Actual Fiscal 1990	Appropriated Fiscal 1991	- - Current Fiscal 1992	Level - - Fiscal 1993	Change 1991-93 Biennium
FTE	21.50	20.50	21.50	21.50	1.00
Personal Services	680,892	750,777	793,932	794,008	10.92%
Operating Expenses	270,863	342,717	329,410	330,237	7.51%
Equipment	3,272	1,998	2,175	2,175	-17.46%
Total Program	$955,027	$1,095,492	$1,125,517	$1,126,420	9.82%
Fund Sources					
General Fund	944,954	995,097	1,045,122	1,046,025	7.79%
State Revenue Fund	10,073	80,395	80,395	80,395	77.73%
Federal Revenue Fund	0	20,000	0	0	-100.00%
Total Funds	$955,027	$1,095,492	$1,125,517	$1,126,420	9.82%

Program Description

The Executive Office program provides support to the Governor in overseeing and coordinating the activities of the executive branch of Montana state government. The program provides administrative, legal, press, and centralized services support for the Office of the Governor, as well as executive administration of programs with special impact on the citizens and governmental concerns of Montana. Special programs include coordination of services for senior citizens and preserving clean water in the Flathead Basin.

Current Level Budget

The Executive Office 1993 biennium budget increases nearly 10 percent compared to the previous biennium, due primarily to personal services increases and continued funding for the Flathead Basin Commission at the fiscal 1991 appropriated level, which is higher than fiscal 1990 expenditures.

Personal services increase nearly 11 percent due to vacancy savings in fiscal 1990, the fiscal 1991 pay plan increase which continues into the 1993 biennium, and the transfer of 1.0 FTE from the Office of Budget and Program Planning to this program. Operating expenses increase over fiscal 1990 levels due to: 1) actual expenditures in fiscal 1990 for the Flathead Basin Commission of $10,073, compared to a 1993 biennium budget of $80,395 per year; 2) increases of over $10,000 per year for fixed costs such as audit and building rent; and 3) inflationary adjustments. These increases are partially offset by reductions in other areas in accordance with the agency's budget request. Equipment includes $1,270 per year for replacement file cabinets, chairs, and tables, plus $905 per year for computer software. Since the Clark Fork River Basin Project was completed in fiscal 1990, it is not included in the 1993 biennium budget. The Flathead Basin Commission, which is authorized to raise private and other funds to perform its mission, is funded at the 1991 biennium appropriation level. Prior to the 1991 biennium, the Flathead Basin Commission program operated under a statutory appropriation.

The program is funded by general fund with the exception of the Flathead Basin Commission, which is funded by private funding placed in a state special revenue account. Federal funds of $20,000 were appropriated for fiscal 1991 for the Women in Employment Advisory Council. However, these grant funds, administered by the Department of Labor, were not awarded in the 1991 biennium.

EXHIBIT 5
DATE 1-14-91
HB 4

EXECUTIVE OFFICE PROGRAM

Executive Budget Modification

Natural Resource Damage Assessment

The agency has requested $2,000,000 general fund in the 1993 biennium for legal costs of preparing for litigation against Atlantic Richfield Corporation (ARCO). In 1983, the state filed suit under the federal Comprehensive Environment Response, Compensation and Liability Act (CERCLA) for the maximum allowed under that law ($50 million) for damages to natural resources from the release of hazardous substances in the Clark Fork Basin. These alleged damages resulted primarily from the Anaconda Company's operations during the last century. Because ARCO purchased Anaconda Company properties, it became responsible under federal law for any natural resource damages that might have occurred. Litigation under this federal law requires the state to prepare a natural resource damage assessment, estimating the total economic damages caused by injuries to natural resources from the release of hazardous substances.

In the mid-1980's, Montana sought and received a stay in order to prepare for the case. The directors of the natural resource agencies coordinated a state effort to gather the data necessary for the suit. Staff in the Departments of Health and Environmental Sciences (DHES) and Fish, Wildlife, and Parks began preliminary work on the damage assessment. To assist in these efforts, the 1987 legislature appropriated $200,000 of resource indemnity trust (RIT) interest to DHES for costs incurred in pursuing this suit or others that might be filed under CERCLA. With these funds, a Denver law firm was hired to assist DHES lawyers working on the suit. During the period April 1988 through April 1990, DHES paid this firm $619,350. These costs were funded with the 1989 biennium - RIT appropriation, $370,000 from the environmental quality protection fund, and a portion of the fiscal 1990 appropriation. The 1989 legislature appropriated $400,000 in RIT interest to DHES to continue this effort. In fiscal 1990, DHES spent $132,214 of this appropriation.

In 1989, a federal judge lifted the stay on the case at ARCO's request, ordering the state to prepare for trial by May 1993. The Governor's Office estimates that preparation costs for the trial will be $6 million to $9.6 million during the next two years. A significant portion of the expense will be for scientific and economic research needed to complete the economic assessment of damages. The remainder will be used for legal fees and costs. The office is requesting $2 million in general funds and up to $8 million of additional spending authority from federal or private funds during the 1993 biennium for trial preparation costs. The agency has not specified a source for these private or federal funds.

While the state's original suit sought $50 million as the maximum allowable damages, the federal law was amended in 1986 to allow much higher damages recoveries. DHES is currently contracting for a preliminary analysis of damages that might be recovered. CERCLA requires that funds received from damage assessments be used to "restore, replace, or acquire the equivalent" of the natural resources that were damaged. In addition, states may be reimbursed for a portion or all of the costs incurred in bringing the suit.

This budget modification will: 1) change the primary funding source for this effort from RIT interest to general fund; 2) transfer day-to-day responsibility for management of this case from DHES to the Governor's Office; and 3) create a large "other funds" appropriation in the agency. If this modification is approved, the legislature may want to include language in the appropriations act prohibiting use or transfer of the general fund or the other funds' spending authority for any purpose other than preparation for this case.

EXHIBIT 7
DATE 1-14-91
Gen. Govt. Sub.

GOVERNOR'S OFFICE
COMPARISON/ISSUES
1993 BIENNIUM

Accept LFA budget - passed - pass

12-Jan-91

PROGRAM	-----EXECUTIVE---- FTE	93 BIENNIUM	------LFA C/L----- FTE	93 BIENNIUM	-EXEC OVER(UNDER) LFA- FTE	93 BIENNIUM	ISSUES
Executive Office	21.50	$2,272,064	21.50	$2,251,937	0.00	$20,127	Modified, ARCO Clark Fork Litigation
Mansion Maintenance	1.50	$117,821	1.50	$118,051	0.00	($230)	
Air Transportation	1.00	$485,580	1.00	$459,120	0.00	$26,460	Co-Pilot Expense
Office of Budget/Program Planning	19.00	$1,704,992	19.00	$1,697,363	0.00	$7,629	Printing Costs
Northwest Regional Power Act	6.50	$826,559	6.00	$776,900	0.50	$49,659	Modifieds - Copy Machine/Nat'l Conference Budget Base Differences
LT Governor	4.00	$352,464	4.00	$350,352	0.00	$2,112	
Citizens' Advocate	1.50	$141,731	1.50	$141,731	0.00	$0	
Mental Dis. Board of Visitors	4.20	$359,669	4.20	$354,931	0.00	$4,738	
	59.20	$6,260,880	58.70	$6,150,385	0.50	$110,495	

AGENCY: GOVERNOR'S OFFICE

LEGISLATIVE ACTION

PROGRAM: EXECUTIVE OFFICE

BUDGET ITEM	FY 1990 Actual	Fiscal 1992 Executive	Fiscal 1992 LFA Curr Lvl	Fiscal 1992 Difference	Fiscal 1993 Executive	Fiscal 1993 LFA Curr Lvl	Fiscal 1993 Difference
FTE	21.50	21.50	21.50	0.00	21.50	21.50	0.00
Personal Services	$680,892	$793,932	$793,932	$0	$796,008	$794,008	$2,000
Operating Expenses	$270,863	$337,875	$329,410	$8,465	$339,899	$330,237	$9,662
Equipment	$3,272	$2,175	$2,175	$0	$2,175	$2,175	$0
TOTAL EXPENSES	$955,027	$1,133,982	$1,125,517	$8,465	$1,138,082	$1,126,420	$11,662
FUNDING							
General Fund	$944,954	$1,053,569	$1,045,122	$8,447	$1,057,669	$1,046,025	$11,644
State Special Rev	$10,073	$80,413	$80,395	$18	$80,413	$80,395	$18
TOTAL FUNDING	$955,027	$1,133,982	$1,125,517	$8,465	$1,138,082	$1,126,420	$11,662

CURRENT LEVEL ISSUES:	--EXEC OVER (UNDER) LFA-- FY 92	FY 93	
1. OVERTIME - The Executive includes more for overtime in a session year. LFA current level is at historical levels.	$0	$2,000	
2. DEPT OF ADMINISTRATION NETWORK FEES - The Executive includes new network fees, presented as a statewide issue.	$9,138	$9,234	
3. FIXED COSTS - The Executive is higher due to using a higher rate for audit fees and other fixed costs, to be resolved as a statewide issue.	$755	$755	
4. INFLATION DIFFERENCES	($1,428)	($327)	
TOTAL CURRENT LEVEL ISSUES	$8,465	$11,662	
EXECUTIVE BUDGET MODIFICATIONS:			
1. ARCO CLARK FORK LITIGATION - to prepare for the Clark Fork Basin natural resource damage litigation. Montana is under federal court order to prepare for trial in 1993 (LFA Vol. 1, A-37).	$1,000,000	$1,000,000	Gen Fund
2. LANGUAGE - The Executive recommends the following language appropriation in the general appropriations act to provide additional ARCO Clark Fork Basin litigation funds. No source was specified for these private or federal funds (LFA Vol. 1, A-37).			
"The Governor's Office is appropriated up to $8,000,000 for the biennium from federal special revenue or private state special revenue contingent upon receipt of federal or private funds for the Clark Fork Basin natural resource damage litigation."	$4,000,000	$4,000,000	Fed/SSR
TOTAL EXECUTIVE BUDGET MODIFICATIONS	$5,000,000	$5,000,000	

EXHIBIT
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LEGISLATIVE ACTION

AGENCY: GOVERNOR'S OFFICE

PROGRAM: MANSION MAINTENANCE

BUDGET ITEM	FY 1990 Actual	Fiscal 1992 Executive	Fiscal 1992 LFA Curr Lvl	Fiscal 1992 Difference	Fiscal 1993 Executive	Fiscal 1993 LFA Curr Lvl	Fiscal 1993 Difference
FTE	1.50	1.50	1.50	0.00	1.50	1.50	0.00
Personal Services	$27,053	$31,952	$31,952	$0	$31,946	$31,946	$0
Operating Expenses	$25,136	$26,972	$26,697	$275	$26,951	$27,456	($505)
Equipment	$11,845	$0	$0	$0	$0	$0	$0
TOTAL EXPENSES	$64,034	$58,924	$58,649	$275	$58,897	$59,402	($505)
FUNDING							
General Fund	$64,034	$58,924	$58,649	$275	$58,897	$59,402	($505)
TOTAL FUNDING	$64,034	$58,924	$58,649	$275	$58,897	$59,402	($505)

CURRENT LEVEL ISSUES:

	--EXEC OVER (UNDER) LFA-- FY 92	FY 93
1. BUDGET BASE DIFFERENCES - The Executive is higher due to using the FY 1991 appropriation as a base, whereas LFA current level is based on FY 1990 actual expense.	$1,721	$1,721
2. INFLATION DIFFERENCES - Primarily inflation on food.	($1,446)	($2,226)
TOTAL CURRENT LEVEL ISSUES	$275	($505)

DATE 1-12-91
Gen. Govt Sub.

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ENCY: GOVERNOR'S OFFICE

LEGISLATIVE ACTION

PROGRAM: AIR TRANSPORTATION

DGET ITEM	FY 1990 Actual	Fiscal 1992 Executive	Fiscal 1992 LFA Curr Lvl	Fiscal 1992 Difference	Fiscal 1993 Executive	Fiscal 1993 LFA Curr Lvl	Fiscal 1993 Difference
FTE	1.00	1.00	1.00	0.00	1.00	1.00	0.00
Personal Services	$28,816	$40,003	$40,003	$0	$40,232	$40,232	$0
Operating Expenses	$77,506	$96,498	$84,095	$12,403	$124,202	$110,145	$14,057
Equipment	$247,687	$184,645	$184,645	$0	$0	$0	$0
TOTAL EXPENSES	$354,009	$321,146	$308,743	$12,403	$164,434	$150,377	$14,057
NDING							
General Fund	$354,009	$321,146	$308,743	$12,403	$164,434	$150,377	$14,057
TOTAL FUNDING	$354,009	$321,146	$308,743	$12,403	$164,434	$150,377	$14,057

IRRENT LEVEL ISSUES:

	--EXEC OVER (UNDER) LFA-- FY 92	FY 93
CO-PILOT - The Executive includes more for a contract co-pilot, based on the FY 1991)propriation. LFA current level includes fiscal 1990 actual expenditures plus $1,500 per :ar to restore to historical expenditure levels (base difference).	$10,247	$10,251
GASOLINE - The Executive includes more for gasoline. LFA current level allows fisal 1990 :tual expenditure levels (base difference).	$2,347	$2,347
INFLATION DIFFERENCES	($191)	$1,459
)TAL CURRENT LEVEL ISSUES	$12,403	$14,057

ENCY: GOVERNOR'S OFFICE — LEGISLATIVE ACTION — PROGRAM: OFFICE OF BUDGET AND PROGRAM PLANNING

DGET ITEM	FY 1990 Actual	Fiscal 1992 Executive	Fiscal 1992 LFA Curr Lvl	Fiscal 1992 Difference	Fiscal 1993 Executive	Fiscal 1993 LFA Curr Lvl	Fiscal 1993 Difference
FTE	19.00	19.00	19.00	0.00	19.00	19.00	0.00
Personal Services	$574,226	$692,535	$692,755	($220)	$691,629	$691,852	($223)
Operating Expenses	$155,358	$122,201	$123,317	($1,116)	$167,942	$158,754	$9,188
Equipment	$13,550	$15,609	$15,609	$0	$15,076	$15,076	$0
TOTAL EXPENSES	$743,134	$830,345	$831,681	($1,336)	$874,647	$865,682	$8,965
NDING							
General Fund	$743,134	$830,345	$831,681	($1,336)	$874,647	$865,682	$8,965
TOTAL FUNDING	$743,134	$830,345	$831,681	($1,336)	$874,647	$865,682	$8,965

RRENT LEVEL ISSUES:	--EXEC OVER (UNDER) LFA-- FY 92	FY 93	
PERSONAL SERVICES - Minor differences in longevity and benefits calculations.	($220)	($223)	
DEPT OF ADMINISTRATION NETWORK FEES - The Executive includes new network fees, esented as a statewide issue.	($2,437)	($2,176)	
PRINTING - The Executive includes more for printing costs, based on the fiscal 1991 propriation. LFA current level allows the fiscal 1990 actual cost, plus $10,000 ditional in fiscal 1993 for legislative year print costs (based on fiscal 1991 actual d estimated legislative printing costs). Actual printing costs for this program have en reduced from historical levels due to changes in publication sizes and procedures.	$0	$13,071	
BUDGET BASE DIFFERENCES - The Executive Budget is higher due to using the FY 1991 propriation as a base, whereas LFA current level is based on FY 1990 actual expense.	$3,428	$2,106	
INFLATION DIFFERENCES	($2,107)	($3,813)	
TAL CURRENT LEVEL ISSUES	($1,336)	$8,965	
ECUTIVE BUDGET MODIFICATIONS:			
EQUIPMENT - Requested to replace a copy machine (LFA Vol. 1, A-41).	$4,000	$0	Gen Fund
NASBO National Meeting - To host the annual meeting of the National Association of State dget Officers in Kalispell in July 1992 (LFA Vol. 1, A-41).	$5,000	$5,000	Gen Fund
TAL EXECUTIVE BUDGET MODIFICATIONS	$9,000	$5,000	

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LEGISLATIVE ACTION

NCY: GOVERNOR'S OFFICE

PROGRAM: NORTHWEST REGIONAL POWER ACT

GET ITEM	FY 1990 Actual	Fiscal 1992 Executive	Fiscal 1992 LFA Curr Lvl	Fiscal 1992 Difference	Fiscal 1993 Executive	Fiscal 1993 LFA Curr Lvl	Fiscal 1993 Difference
FTE	6.50	6.50	6.50	0.00	6.50	6.50	0.00
Personal Services	$222,276	$270,282	$259,976	$10,306	$269,870	$259,585	$10,285
Operating Expenses	$123,299	$142,041	$127,583	$14,458	$142,366	$127,756	$14,610
Equipment	$3,631	$1,000	$1,000	$0	$1,000	$1,000	$0
OTAL EXPENSES	$349,206	$413,323	$388,559	$24,764	$413,236	$388,341	$24,895
IDING							
Federal Revenue	$349,206	$413,323	$388,559	$24,764	$413,236	$388,341	$24,895
OTAL FUNDING	$349,206	$413,323	$388,559	$24,764	$413,236	$388,341	$24,895

RRENT LEVEL ISSUES:

	--EXEC OVER (UNDER) LFA-- FY 92	FY 93
FTE REDUCTION - LFA current level eliminated 0.5 FTE that has been vacant over two years.	$10,306	$10,285
BUDGET BASE DIFFERENCES - The Executive Budget is higher due to using the FY 1991 propriation as a base, whereas LFA current level is based on FY 1990 actual expenses.	$15,070	$15,022
INFLATION DIFFERENCES	($612)	($412)
TAL CURRENT LEVEL ISSUES	$24,764	$24,895

EXHIBIT 4
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AGENCY: GOVERNOR'S OFFICE

LEGISLATIVE ACTION

PROGRAM: LT. GOVERNOR

BUDGET ITEM	FY 1990 Actual	Fiscal 1992 Executive	Fiscal 1992 LFA Curr Lvl	Fiscal 1992 Difference	Fiscal 1993 Executive	Fiscal 1993 LFA Curr Lvl	Fiscal 1993 Difference
FTE	5.00	4.00	4.00	0.00	4.00	4.00	0.00
Personal Services	$119,894	$140,068	$140,068	$0	$139,685	$139,685	$0
Operating Expenses	$33,861	$35,376	$34,533	$843	$35,975	$34,706	$1,269
Equipment	$10	$680	$680	$0	$680	$680	$0
TOTAL EXPENSES	$153,765	$176,124	$175,281	$843	$176,340	$175,071	$1,269
FUNDING							
General Fund	$153,765	$176,124	$175,281	$843	$176,340	$175,071	$1,269
TOTAL FUNDING	$153,765	$176,124	$175,281	$843	$176,340	$175,071	$1,269

CURRENT LEVEL ISSUES:

	--EXEC OVER (UNDER) LFA-- FY 92	FY 93
2. DEPT OF ADMINISTRATION NETWORK FEES - The Executive includes new network fees, presented as a statewide issue.	$1,120	$1,120
4. INFLATION DIFFERENCES	($277)	$149
TOTAL CURRENT LEVEL ISSUES	$843	$1,269

NCY: GOVERNOR'S OFFICE — LEGISLATIVE ACTION — PROGRAM: CITIZENS' ADVOCATE OFFICE

GET ITEM	FY 1990 Actual	Fiscal 1992 Executive	Fiscal 1992 LFA Curr Lvl	Fiscal 1992 Difference	Fiscal 1993 Executive	Fiscal 1993 LFA Curr Lvl	Fiscal 1993 Difference
FTE	1.50	1.50	1.50	0.00	1.50	1.50	0.00
Personal Services	$35,554	$51,843	$51,843	$0	$51,724	$51,724	$0
Operating Expenses	$23,525	$18,683	$18,683	$0	$19,481	$19,481	$0
OTAL EXPENSES	$59,079	$70,526	$70,526	$0	$71,205	$71,205	$0
DING							
General Fund	$59,079	$70,526	$70,526	$0	$71,205	$71,205	$0
OTAL FUNDING	$59,079	$70,526	$70,526	$0	$71,205	$71,205	$0

RENT LEVEL ISSUES: NONE

EX. 4
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AGENCY: GOVERNOR'S OFFICE

LEGISLATIVE ACTION

PROGRAM: MENTAL DISABILITIES BOARD OF VISITORS

BUDGET ITEM	FY 1990 Actual	Fiscal 1992 Executive	Fiscal 1992 LFA Curr Lvl	Fiscal 1992 Difference	Fiscal 1993 Executive	Fiscal 1993 LFA Curr Lvl	Fiscal 1993 Difference
FTE	4.20	4.20	4.20	0.00	4.20	4.20	0.00
Personal Services	$128,132	$135,750	$135,750	$0	$135,790	$135,790	$0
Operating Expenses	$40,928	$43,430	$41,236	$2,194	$43,799	$41,255	$2,544
Equipment	$3,423	$450	$450	$0	$450	$450	$0
TOTAL EXPENSES	$172,483	$179,630	$177,436	$2,194	$180,039	$177,495	$2,544
FUNDING							
General Fund	$131,660	$139,630	$137,436	$2,194	$140,039	$137,495	$2,544
Federal Revenue	$40,823	$40,000	$40,000		$40,000	$40,000	
TOTAL FUNDING	$172,483	$179,630	$177,436	$2,194	$180,039	$177,495	$2,544

CURRENT LEVEL ISSUES:

	--EXEC OVER (UNDER) LFA-- FY 92	FY 93
1. DEPT OF ADMINISTRATION NETWORK FEES - The Executive includes new network fees, presented as a statewide issue.	$1,440	$1,440
2. BUDGET BASE DIFFERENCES - The Executive Budget is higher due to using the FY 1991 appropriation as a base, whereas LFA current level is based on FY 1990 actual expenses.	$1,085	$1,187
4. INFLATION DIFFERENCES	($331)	($83)
TOTAL CURRENT LEVEL ISSUES	$2,194	$2,544

EXHIBIT 5
DATE 1-14-91
Gov. Budget Sub.

CLARK FORK BASIN

NATURAL RESOURCE DAMAGE ASSESSMENT AND PROGRAM STRATEGY AND FUNDING REQUEST DOCUMENTATION

Submitted in support of the:

Governor's Budget

January, 1991

Prepared by:

Montana Department of Health and Environmental Sciences

With Assistance of:

Montana Governor's Office

Contact:

Dick Pedersen, MDHES 444-1373

January 11, 1991

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CLARK FORK BASIN

NATURAL RESOURCE DAMAGE ASSESSMENT AND PROGRAM

STRATEGY AND FUNDING REQUEST DOCUMENTATION

EXECUTIVE SUMMARY

The State of Montana filed a natural resource damage claim December 22,1983 against the Atlantic Richfield Company (ARCO) to recover damages for injuries to natural resources in the Clark Fork River Basin. The suit was stayed pending completion of remedial investigation and feasibility studies being conducted as part of the "Superfund" process. ARCO petitioned the court in December of 1989 to lift the stay and proceed with the claim. On August 17, 1990, U.S. District Judge Charles C. Lovell issued a schedule ordering the parties in the lawsuit to complete discovery on all aspects of the case. The final pretrial order must be filed with the court by April 30, 1994.

NATURAL RESOURCE DAMAGE CLAIM
COURT-ORDERED TIME FRAME

ITEM	DATE
1. State files motions	10/01/90
2. Arco files response to motions	11/02/90
3. Arco files motions to joinder parties	06/03/91
4. State identifies expert witnesses	12/16/91
5. Arco identifies expert witnesses	05/13/92
6. Discovery concerning expert witnesses completed	12/16/92
7. Discovery on all aspects completed	05/31/93
8. State Counsel Convene, to complete final pretrial	02/14/94
9. Final pretrial order	04/30/94

This schedule gives the State of Montana fewer than 2 years to complete a required and detailed Natural Resource Damage Assessment (NRDA) on the largest Superfund complex in the country. This report provides information and documentation for $4,956,059.00 for full funding by the 1991 Montana State Legislature for technical, legal, and administrative activities relating to Montana's natural resource damage litigation concerning sites in the Clark Fork River Basin and other potential sites in the State of Montana.

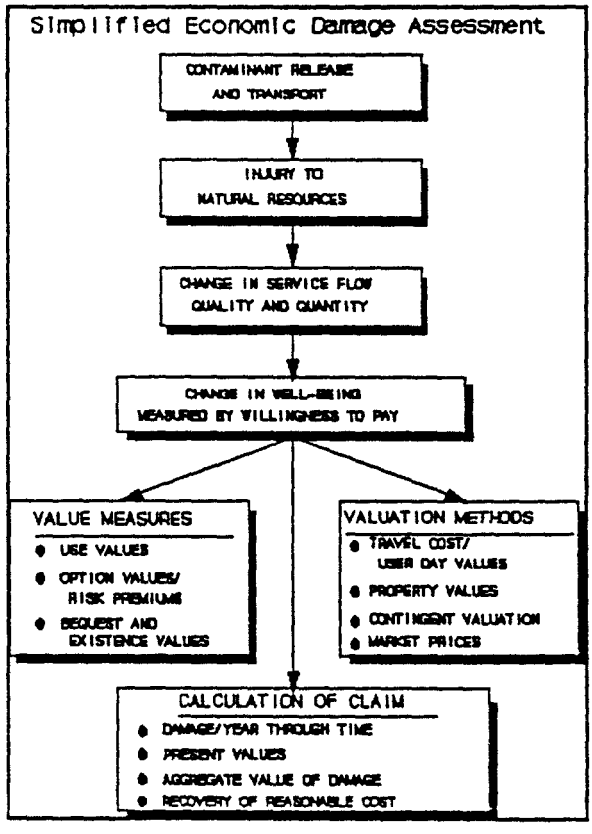
Damages in the Clark Fork case are expected to be in at least the tens of millions of dollars.

REMEDY VS. DAMAGES

The overriding objective of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) is to ensure that parties responsible for hazardous waste releases

temporal, and geographic link between the release of contaminants and the natural resource injury must be determined. This research will be done in a manner useful to economic valuation, and involves surface water, fisheries and aquatic life, wetlands, groundwater, soils, vegetation, and air.

Economic Valuation Studies. Available and new research will be used to assess the level and quality of use to the resource impacted in the past and future, and assign economic values to behavioral responses. A simplified economic damage assessment is shown below:



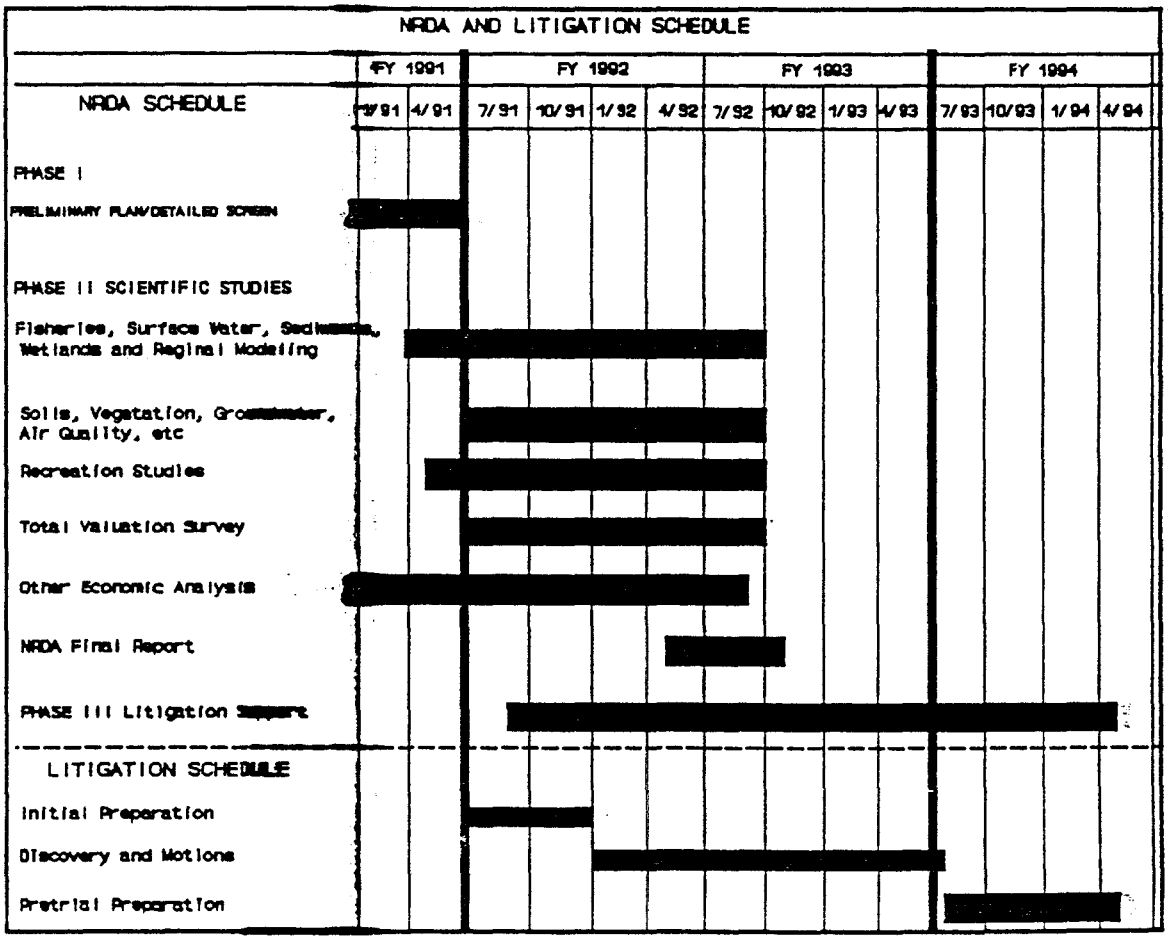
Value measures will include **use values**, which are values related to the impact of ones direct use of a resource, and **non-use values**, which includes motives to bequest the resource for use now and in the future, and to protect the existence of the resource in an uncontaminated state.

Phase III. NRDA Support to Litigation.

The NRDA must be conducted in such a manner as to increase the

level of scientific defensibility and court acceptance and must be able to withstand intense attack in the courtroom. The NRDA will be coordinated with the litigation process (on-going case strategy; selection and preparation of expert witnesses; depositions; and trial preparation and testimony; etc.).

The Clark Fork NRDA and litigation schedule is shown below. As can be seen, the assessment is designed to conform to the requirements of the court ordered schedule.



STATE RESOURCE REQUIREMENTS

The State of Montana is responsible for coordinating and managing assessments including the Clark Fork assessment and lawsuit. When considering the budget, three program elements are established in order to complete assessments and successfully proceed with the

Clark Fork lawsuit:

Management and Coordination: Management and coordination of natural resource damage assessments which includes completion of the assessment on the Clark Fork River Basin requires coordination with many state and federal agencies, contractors, private industry, and the public. In order to have effective management and coordination, the program staff should include a coordinator, two technical positions (environmental specialist and economist), and an administrative assistant. This staff will initially work on the Clark Fork NRDA and lawsuit, but will also be available for NRDA work on other Superfund and contamination sites that potentially have natural resource injury and damages.

State Litigation Team: Litigation for a case of this magnitude requires extensive legal effort by the State of Montana. Identification of expert witnesses through discovery, depositions, case management, and assisting outside counsel in preparation for trial will require a state legal staff of 2 attorneys and 2 para-legals in fiscal year 1992 and 3 attorneys and 2 para-legals in fiscal year 1993 and beyond.

Contracting: Completing the NRDA and pursuing the natural resource damage claim will require contracting with technical and legal professional consultants with expertise in natural resource damage assessments or litigation.

The Clark Fork NRDA will require exhaustive research in the physical science and economic area. The state will not have the manpower or necessary expertise, except in an oversight and management role, to complete these tasks. Outside contracting for this effort is absolutely necessary to ensure the NRDA is completed on-time and is scientifically defensible.

The Clark Fork litigation will also require retained counsel with significant environmental and litigation expertise in this complex litigation process. Particular expertise with reference to CERCLA and the recovery of natural resource damages is needed. The state does not currently have this expertise, and cannot reasonably and expeditiously add such expertise without the guidance of outside contract legal services.

BUDGET REQUEST

The following table summarizes the budget needs for the described effort. The table is broken down into: Contract Scientific and Economic Services, Contract Legal Services, and State Agency Costs. Although broken down by fiscal year, it is important to note identified research categories cannot clearly be defined on a

fiscal year basis. Therefore, it is extremely difficult to budget on a fiscal year basis and necessary to seek a biennial appropriation.

EXHIBIT 5
DATE 1-16-91
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Table 1

Summary of Budget Request

	FY 1991	FY 1992	FY 1993	FY 1994
A. CONTRACTOR SCIENTIFIC AND ECONOMIC SERVICES				
Phase I. Preliminary Screen/Detailed Plan				
General Support/Management	$ 30,000			
Economist	$ 60,000			
Physical Sciences	$ 60,000			
Phase I Total	$ 150,000	$0	$0	$0
Phase II. Quantification of Injury/Damages				
Technical Management/Coordination	$ 20,000	$ 110,000	$ 70,000	
Economics				
- Recreation Studies		$ 200,000	$ 100,000	
- Total Valuation Study		$ 200,000	$ 100,000	
- Air, Ground Water, Soils, etc		$ 75,000	$ 25,000	
- Restoration/Replacement of Services		$ 75,000	$ 25,000	
- NRDA Summary Report		$ 40,000	$ 60,000	
Physical Sciences				
- Fisheries, Surface Water, Stream Sediments, Aquatic Life, and Wetlands Studies (includes regional modeling)	$ 150,000	$ 550,000	$ 300,000	
- Ground Water Studies		$ 150,000	$ 150,000	
- Soils and Vegetation		$ 150,000	$ 100,000	
- Air Quality		$ 100,000	$ 50,000	
Phase II Total	$ 170,000	$1,650,000	$ 980,000	$0
Phase III. Litigation Support				
Management		$ 50,000	$ 50,000	$ 50,000
Economics		$ 50,000	$ 50,000	$ 50,000
Physical Sciences		$ 50,000	$ 75,000	$ 75,000
Phase III Total	$0	$ 150,000	$ 175,000	$ 175,000
TOTAL (Phase I + II + III)	$320,000*	$1,800,000	$1,155,000	$ 175,000

* $50,000 obtainable from the $200,000 existing Fiscal Year 1991 budget

Table 1
(cont.)

Summary of Budget Request

	FY 1991	FY 1992	FY 1993	FY 1994
B. CONTRACT LEGAL SERVICES				
Initial Preparation		$ 135,000		
Discovery and Motions		$ 301,500	$ 603,000	$50,250
Pretrial Preparation				$185,625
TOTAL CONTRACT LEGAL SERVICES	$0	$ 436,500	$ 603,000	$235,875
C. STATE AGENCY COSTS				
Salaries + Benefits + Operating				
Program Staff		$ 211,524	$ 195,167	$195,167
Legal Staff		$ 193,002	$ 211,866	$211,866
Computer Document Management		$ 100,000	$ 50,000	
Interagency Support		$ 15,000	$ 15,000	
TOTAL STATE AGENCY COSTS	$0	$ 519,526	$ 472,033	$407,033
TOTAL COSTS ALL CATEGORIES	**$320,000**	**$2,756,026**	**$2,230,033**	**$817,908**
EXISTING GOVERNOR'S BUDGET		$1,000,000	$1,000,000	
ADDITIONAL BUDGET NEED		$1,756,026	$1,230,033	

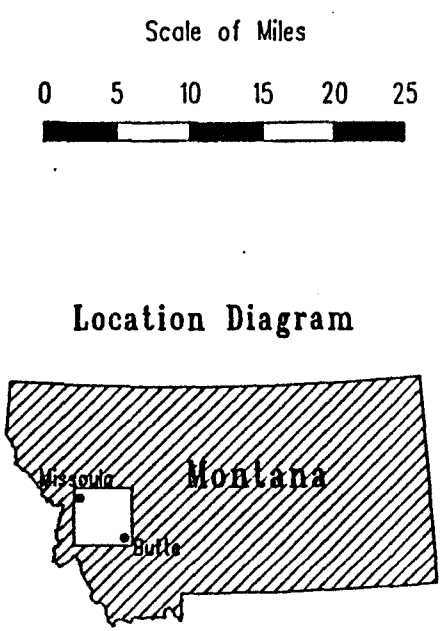
TOTAL COST - FY 91 + FY 92 + FY 93 + FY 94 = $6,123,967

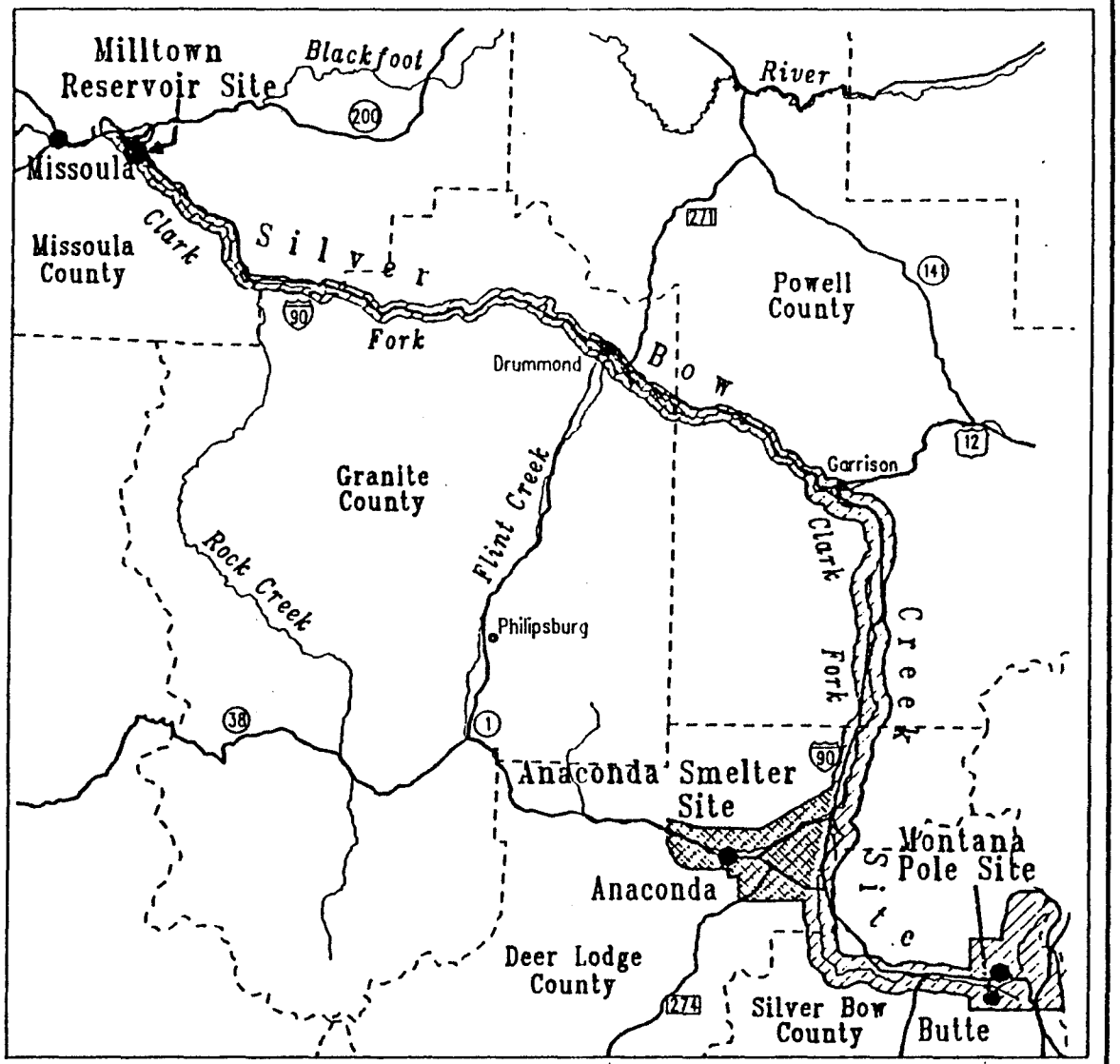
TOTAL NEED FOR FY 92 + FY 93 = $4,986,059

ADDITIONAL NEED FOR NATURAL RESOURCE DAMAGE PROGRAM BUDGET = $2,986,059

Figure 1

Upper Clark Fork Superfund Sites





Prepared by Natural Resource Information System
Montana State Library

January 7, 1991 Map #EPA91-21

1.0 INTRODUCTION

This report provides supporting background information and documentation for funding $4,956,059.00 by the 1991 Montana State Legislature for technical, administrative, and legal support necessary to pursue a Natural Resource Damage Assessment (NRDA) claim against the Atlantic Richfield Company (ARCO) covering four Superfund sites in the Clark Fork Basin and other potential sites in the State of Montana.

Background

The Clark Fork Superfund complex includes four superfund sites: the Silver Bow Creek/Butte Area, Anaconda Smelter, Montana Pole and Milltown Reservoir/Clark Fork. The Clark Fork Basin is the largest Superfund complex in the country, covering an area 150 miles long from east of Butte to just west of Missoula (Figure 1) and includes 27 operable units. As part of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), the State of Montana has been cooperating with the U.S. EPA, local communities and the Atlantic Richfield Company (ARCO), the major potentially responsible party, to undertake investigations of the causes, impacts and remediation alternatives to address environmental contamination at these sites (the Remedial Investigation, Feasibility Study and Record of Decision process).

Under CERCLA and state statues, the state is the trustee for state managed natural resources in the area and is entitled to recover damages from responsible parties for injuries to these natural resources due to the release of hazardous substances. These damages include the economic value of certain past, present and future injuries to the resources. The state may also recovery the reasonable costs the state has incurred to assess the injuries and to pursue the state's natural resource damage claim.

The final amount of the damage claim is determined by the assessment process. Based upon similar cases in the west and throughout the U.S., damages from the Clark Fork claim are expected to be in at least the tens of millions of dollars. The damages received by the State of Montana will be used, by law, to restore, replace or acquire like resources or resource services for the State of Montana.

In 1983 the State of Montana filed a CERCLA natural resource damages claim. An amended and clarifying complaint was later filed on October 1, 1990 (See Appendix A for both complaints). The suit was stayed from August 24, 1984 to December 5, 1989 pending completion of Remedial Investigation and Feasibility Studies (RI/FS). However, on December 1989, the stay was lifted and on August 20, 1990, the U.S. District Court issued a Scheduling Order (Appendix A). The order effectively requires the state to have completed all of its Natural Resource Damage Assessment investigations and discovery of expert witnesses by December 16, 1992. The state now has fewer than two years to design and implement the NRDA for the largest Superfund complex in the country. This is very substantial task, especially considering that the independent RI/FS process, which often provides important technical input to the NRDA, will not have been completed (Clark Fork Master Plan, U.S. EPA, November, 1990).

The Montana NRDA Process

Section 2.0 discusses the overall CERCLA NRDA case, procedures and issues facing Montana. Section 3.0 presents more detail on the procedures and analytic work to be conducted for the Clark Fork River Basin.

Governor Stan Stephens retains the trustee obligation and has instructed state agencies to assist in the effort. These state agencies will participate in all phases of the NRDA, and will closely monitor scientific, economic and legal contractor work. In addition, the NRDA will be coordinated with federal agencies with trustee responsibilities for federally managed resources. The NRDA has three technical components:

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DATE 1-14-91
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1. Establish linkages between emission releases and the timing and geographic location of natural resource injuries. This work will rely heavily upon other research conducted for these Superfund sites.

2. Define and quantify natural resource physical injuries, through time, in a manner amenable to economic valuation. Injuries include impacts to fisheries, ground water, air quality, soils, wetlands and other Montana natural resources.

3. Undertake economic valuation research to assign dollar values (damages) to natural resource injuries. This research includes use of market prices, evaluation of recreation behavior, and public surveys of value.

The NRDA will follow a highly structured procedure that has three major steps:

Phase I: Preliminary Assessment. January through May of 1991. It will include case strategy development, a preliminary quantitative assessment of damages based upon available evidence and literature, set priorities for the Phase II work, and a detailed research plan to undertake only those additional scientific and economic studies required solely for the purpose of pursuing the Natural Resource Damage claim.

Phase II: Detailed Damage Assessment. April, 1991 through October, 1992. This phase implements the detailed scientific and economic research plan.

Phase III: Litigation Support. January, 1991 through June, 1993; with most activity after June of 1992. This includes pretrial legal motions, settlement negotiations, depositions, court testimony and other related activities.

Section 4.0 discusses the existing state program and resources and those additional resources that are needed to complete the Clark Fork NRDA and lawsuit and pursue other potential sites in the State of Montana.

Section 5.0 presents a breakdown of the budget request and project scheduling. Appendices are included covering legal documents and support information about conducting NRDAs.

2.0 THE CERCLA NRDA PROCESS

The legal background for a natural resource damage assessment (NRDA) and claim falls under the federal CERCLA statutes. In addition to CERCLA, the Clark Fork basin cases are also based upon the Montana Comprehensive Environmental Cleanup and Responsibility Act (CECRA), which is not discussed here.

2.1 THE FEDERAL CERCLA PROCESS

The U.S. Congress passed the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) in December 1980. It was amended in 1986 (Superfund Amendment and Reauthorization Act, or SARA). The overriding objective of the act was to ensure that parties responsible for hazardous waste releases bear the cost of cleanup and pay for natural resource damages.

2.1.1 The CERCLA Case

A CERCLA case can generally be considered to have two main components, as illustrated in Figure 2: the remedy case and the damages case. The remedy case addresses the investigation and remediation of injury. It includes the response costs for remedial investigations and feasibility studies (RI/FS), enforcement actions and implementation of the trustee's selected remedy which meets the requirements of the National Contingency Plan and CERCLA. Enforcement of state and federal standards to which the remedy is required to conform under CERCLA is included.

The damages case concerns "damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing such injury, destruction, or loss resulting from" the release. Damages are not limited to sums required to restore or replace such resources. Natural resources are broadly defined to include "land, fish, wildlife, biota, air, water, ground water, drinking water supplies and other such resources." (Section 101). Damages cover past, present and residual future natural resource injury (For more discussion, see Ward, 1990).

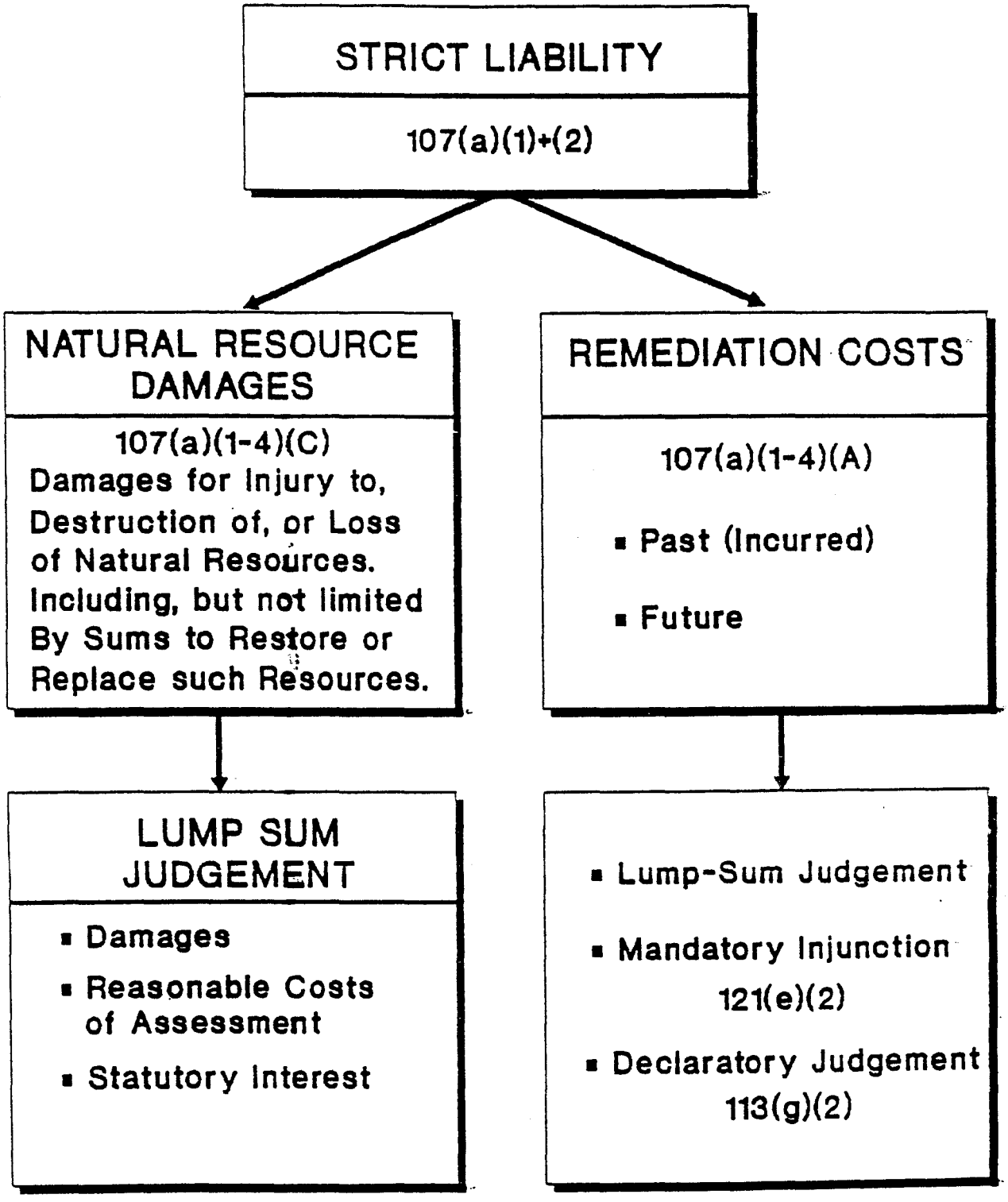
The distinction between injury and damages must be clear: injuries are physical impacts to natural resources while damages refer to the dollar value associated with the injuries. Damages are based upon the changes in "service flows" the resource provides to society. For example, the reduction in the size of fish, or contamination of ground water that precludes its use. Damages are the dollar measure of the loss in well-being of individuals affected by the natural resource injury.

A practical point of difference between the remedy case and the damage case is the spatial units of analysis for the remedy case (operable units, of which there are 27 in the Clark Fork Basin) which are defined to identify and remedy emission sources, regardless of their impacts. However, these units are usually not well related to the design of a NRDA. For example, cleanup may be efficiently focused on a mine tailing pile next to a stream. However, the major focus of the damage assessment may be the injury to a much larger area affected by the tailings, including many miles of the stream, local ground water and other impacted resources. Therefore, the NRDA focuses upon grouping of natural resource injuries, such as fisheries, ground water, vegetation, etc. which may have been impacted from several different operable units.

The connection between the Clark Fork Natural Resource Damage Assessment (NRDA) and the remedy case creates problems for Montana where the court ordered NRDA case schedule will precede much of the remedy case. First, remedy cases are usually well along before damages cases are brought to trial and, as a result, much of the physical assessment research in the remedy case can be used in the damage case. The court ordered schedule for the Clark Fork Basin cases will require greater technical efforts in the damage case than might otherwise have occurred. Next, the exact level of remedy, and therefore future residual damages, will not be know until after the NRDA case is well along. Although a problem, this can be handled by addressing damages as a function of the

FIGURE 2

CERCLA-RELATED LIABILITIES



likely range of remedies to be selected.

Recovery of damages in a CERCLA damages case has three components:

- Past response costs. Reasonable response costs by the trustee is recoverable. This includes the agency costs, contractor costs, legal costs and statutory interest. Interest is set at the Superfund trust fund interest rate set annually (on the federal fiscal year starting October 1). To ensure that response costs will be recovered, the state will maintain its usual detailed costs accounting procedures consistent with CERCLA regulations.

- Expected future response costs. These may include oversight costs related to implementation of remedy or provision of in-kind damages. These funds are typically held in trust for the anticipated uses.

- Damages. These funds are, by law, to be used to restore, replace or acquire like resources or resource services at the affected site. The use of these funds will be decided in settlement negotiations or in a court ordered settlement. Examples of the variety of uses of these funds in past cases include:

    - Buying lands and operating special resource areas such as wildlife sanctuaries and park areas.
    - Buying fishing access in the area and fish hatchery and stocking programs.
    - Habitat enhancement programs for fish, birds and other wildlife.
    - Natural resource public education facilities and programs.
    - Baseline inventories of natural resources and human uses of natural resources, which serve as the basis for future resource management programs.
    - Long term natural resource monitoring programs and pollution detection and response programs.

2.1.2 The Department of Interior NRDA Guidelines

The Department of Interior (DOI) was given the responsibility to promulgate guidelines to implement NRDA cases. Behind the promulgation of guidelines was the desire to assist both trustees and defendants to perceive NRDA cases in a similar light, to establish some guidelines for conducting NRDA's and, if a trustee followed the guidelines, to grant trustees "rebuttable presumption" in their assessment. Rebuttable presumption indicates that the Trustees assessment will be presumed to correct, although it is subject to rebuttal.

NRDA guidelines were issued August 1, 1986 and establish a general process as depicted in Figure 3. This process includes a quick Pre-assessment screen (Figure 4) to rapidly review readily available information and ensure that there is a reasonable high probability of making a successful claim. Clearly, in the Clark Fork Basin, this hurdle is readily passed. Next, the regulations call for determination of whether a simple (Type A) or more complex (Type B) assessment is warranted. Again, it is clear in the Clark Fork Basin that a Type B assessment is merited (Type A procedures have only been issued for certain types of marine resource impacts). Type B assessments confirm exposure and quantify injury in a manner amenable to social valuation. This is generally in terms of "service flows" rather than scientific measures of contamination concentrations. For example, measures of contamination of fish tissue are less directly relevant than measures of number of fish, size of fish, whether fish can be consumed, etc. Next, an economic valuation and NRDA report are completed.

The economic assessment values the physical injuries to natural resources in a manner illustrated in Figure 5. Value measures will include use value, values related to the impact to one's direct use of a resource, and non-use values, which include values related to motives to bequest the resource to

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FIGURE 3

DOI CERCLA NRDA Process - Overview

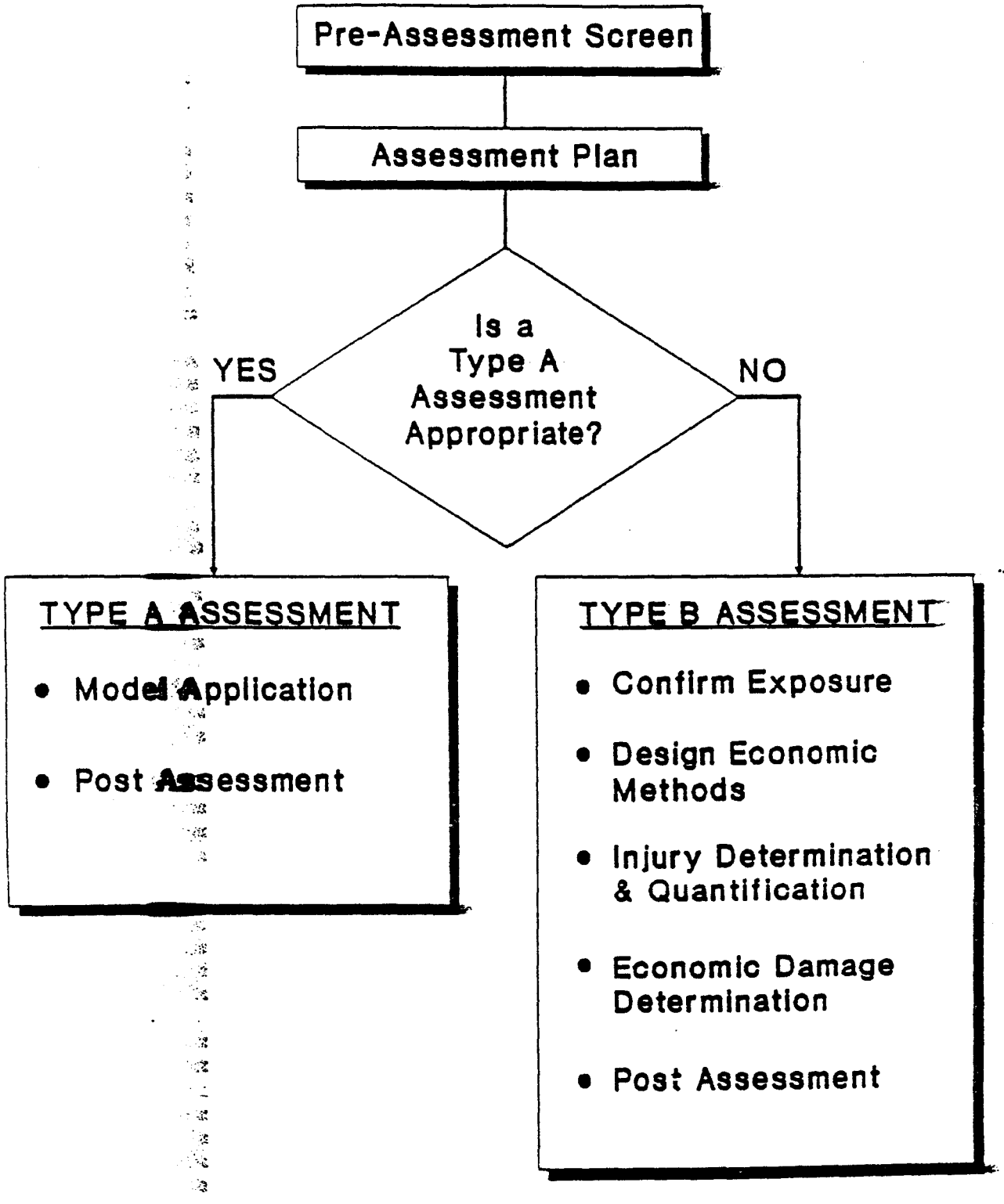
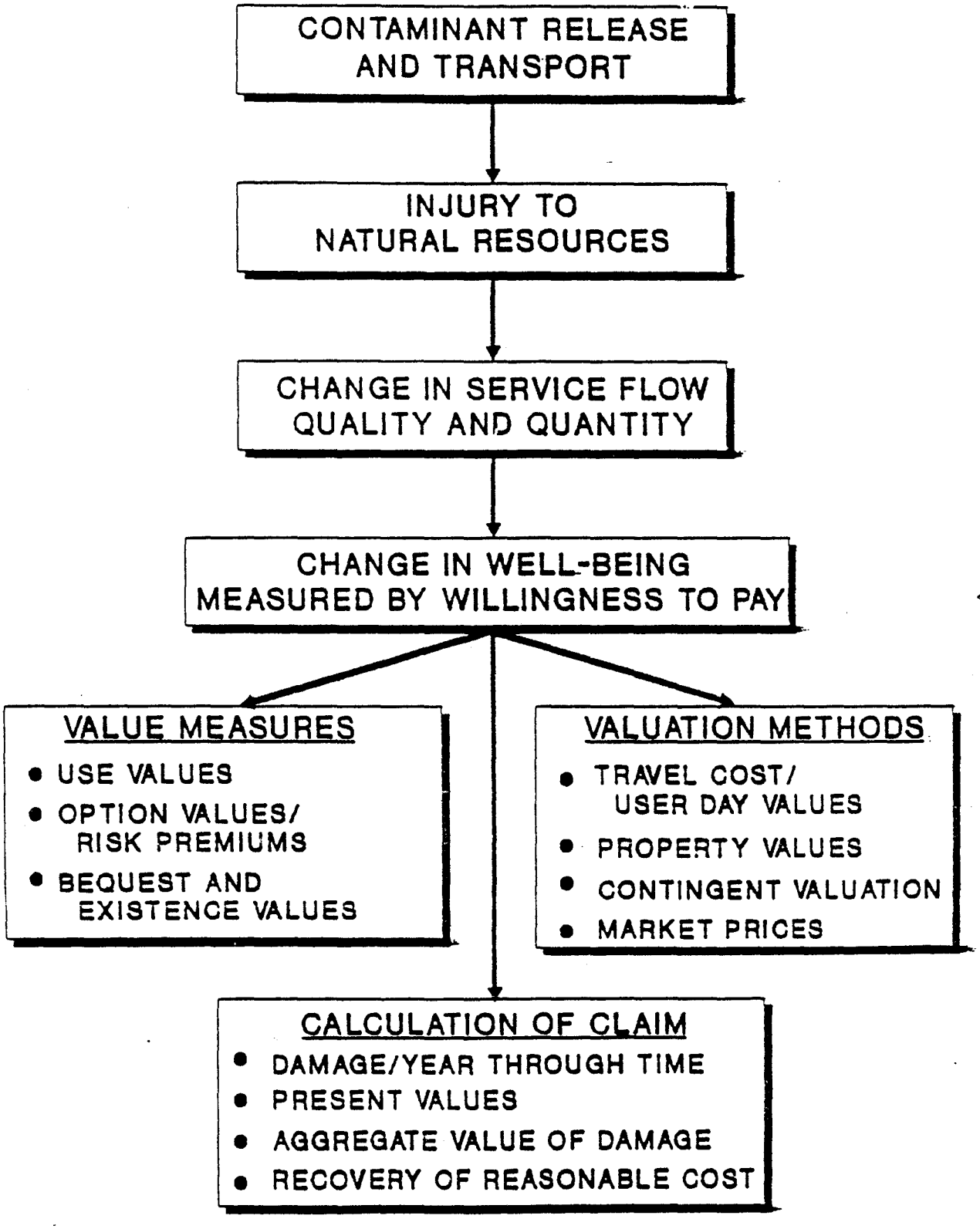


FIGURE 4
PREASSESSMENT SCREEN

- **INTENT**
  - "Rapid review of readily available information ... to ensure that there is a reasonably high probability of making a successful claim." (from § 11.23, Subpart B, 43 CFR Part 11, October 1, 1987).
  - Intended to help determine whether to proceed with Assessment itself
- **CRITERIA TO PROCEED**
  - Discharge or release occurred, and in quantities sufficient to potentially cause injury
  - Natural resources, under trusteeship, may be adversely affected
  - Data sufficient to pursue claim exist, or can be obtained at reasonable cost.
  - On-site (NPL) remedial response actions provide insufficient remedy.
- **CONTENT**
  - Pathways, and exposed areas and waters (to identify resources at risk)
  - Estimates of concentrations (sampling data already exist)
  - Potentially affected resources (trusteeship)
  - Preliminary estimate of resource services potentially affected (preliminary damage estimates to justify further assessment efforts)

FIGURE 5

Simplified Economic Damage Assessment



others now and in the future and to protect the existence of the resource in an uncontaminated state regardless of well identified uses.

A variety of valuation methods are available to measure social values for natural resource injuries. These include market methods that rely upon market prices, and non-market methods such as contingent value surveys, and recreational behavioral travel cost models. Because so few injuries to natural resources have readily available market prices, non-market valuation methods will play a significant role in most CERCLA NRDA assessments.

The final DOI procedural guidelines for Type B regulations were issued March 27, 1987 and included the selection and application of economic methodologies. However, these regulations were seriously flawed (Johnson, 1987) and successfully challenged by Ohio et al., in July of 1989 (See Appendix C for discussion). New regulations are expected to be issues in early 1991. The new regulations are expected to confirm to the Ohio et al. ruling that follow more traditional economic assessments.

2.2 THE NRDA APPROACH AND ISSUES: CLARK FORK BASIN CASES

2.2.1 Three Phased Approach

The NRDA approach to be followed for the Clark Fork Basin will follow a traditional economic assessment plan, which is consistent with the expected revised DOI regulations to be issued shortly. First, the assessment will be designed into three phases, as illustrated in Figure 6. The first phase will fully utilize available information to determine the probable magnitude of damages to be sought, and to carefully design the detailed assessment that will obtain that exact information required for the damage claim and will avoid unnecessary scientific assessments (See Section 3 for further detail of the planned Phase I efforts in Montana).

2.2.2 Multiple Economic Methods

The Montana NRDA plan anticipates using multiple economic valuation methods to estimate natural resource damages at the Clark Fork Sites. Important benefits to the Trustee arise from the use of multiple valuation methods including:

- A More Fully Developed Claim. The use of multiple methods covers more damage categories, which increases the NRDA claim and can have substantial impact upon case negotiations and awards.

- Converging Evidence. By using multiple analyses, the State can buttress its damage claim by referring to converging, and consequently supporting, damage estimates developed using different approaches. There are important limitations to all valuation methods. By developing multiple approaches, the Trustee develops supporting lines of evidence.

- Insurance. Even with careful preparation and implementation of economic analyses, it is possibly that PRP's may successfully dispute the application and finding of any one method. By developing several approaches, the State can ensure that damages can still be obtained even if one valuation study is successfully disputed.

In addition to the traditional market and non-market valuation methods, the NRDA will follow the guidance in the Ohio et al. ruling and also conduct replacement costing analyses. This analysis considers the costs of providing replacement natural resource services. For example, one might value fishing impacts by the cost to replace lost fishing opportunity by purchasing public access to a stretch of the same or substitute river. Conceptually, damages are not the same as replacement costs, but the Ohio et al. ruling clearly put an emphasis in CERCLA cases upon providing replacement services, as long as the costs are "not grossly disproportionate" to the value of lost service flows.

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FIGURE 6
RCG/HAGLER, BAILLY APPROACHES THE DAMAGE ASSESSMENT PROCESS IN THREE PHASES

- **PHASE I: PRELIMINARY ASSESSMENT**
  January 1991 - May 1991

  1. **CASE ORIENTATION:**
     Identifying injuries, damages, and linkages to the release.

  2. **PRELIMINARY QUANTITATIVE ASSESSMENT:**
     Developing order of magnitude damage estimates based on available data, scholarly publications and professional judgement. May do a Preassessment Screen.

  3. **DETAILED ASSESSMENT PLAN:**
     Determining potential for refined, detailed analysis. Providing and evaluating research options based on legal and technical defensibility, timing, and cost. Finalize the research plan with the State (and PRP's if involved) -- selecting analytic options, schedule and cost.

- **PHASE II: DETAILED DAMAGE ASSESSMENT**
  April 1991 - October 1992

  1. **DAMAGE ASSESSMENT IMPLEMENTATION:**
     Conducting agreed-upon research and analysis.

  2. **DAMAGE ASSESSMENT REPORT:**
     Providing written documentation and analysis of research findings.

- **PHASE III: LITIGATION SUPPORT**
  Late 1991 - June 1993

  Case strategy, depositions and testimony, review responses and rebuttal, and other trial-related activities.

2.2.3 Other Issues

Many other issues will impact the design and conduct of the Clark Fork Basin NRDA case. A few of these issues are briefly discussed below.

Use of DOI Regulations. Once issued, Montana agencies will evaluate the regulations and make a determination whether strict compliance is in the best interest of the state's case. Montana may choose to conduct a more comprehensive assessment or to deal with the PRP in a manner different than the regulations may suggest.

High Professional Standards. The NRDA work must be conducted to very high professional standards in other to withstand intense attack in the litigation process. To meet these needs, high levels of peer review and quality control will be implemented at all assessment phases. In addition, expert witnesses must be carefully selected to be effective for the State's case. Litigation assessments therefore necessarily are more expensive than standard policy research.

Level of Research and Funding. Increased funding should increase the level of scientific defensibility and court acceptance of the assessment (Carson and Navarro, 1988). Moreover, these reasonable response costs should be recoverable. However, research and funding will be judiciously allocated. To control costs, research will be carefully targeted and managed to meet just the objectives of the case.

Case funds will be managed to insure that sufficient funds are held for the litigation stages of the work once the assessment is complete (See footnote 2 section 5.0).

Schedules. Due to the tight court ordered scheduled, assessment schedules will be carefully monitored to complete the NRDA on time in an integrated manner. Given tight schedule control, there is sufficient time to conduct the NRDA, as discussed in Section 5.0.

Coordination with Federal Trustees. Various federal agencies have trustee responsibilities for federally managed resources and therefore, have an interest in the NRDA and lawsuit. These agencies include:

- The Department of Interior is responsible for the agencies and resources that fall under their management including:
  - BLM has ownership of BLM land,
  - Fish and Wildlife manages migratory bird, waterfowel, and endangered species.
  - National Park Service manages national parks (Grant Kohrs Ranch).
  - Bureau of Indian Affairs.
- The Department of Agriculture manages National Forest Service land.
- The Department of Justice has the legal responsibility for the federal government.
- Indian Tribes have historical resource rites.

The State of Montana will coordinate the NRDA and lawsuit with these federal agencies.

3.0 THE CLARK FORK BASIN NRDA RESEARCH PLAN

The NRDA research and litigation support will follow the three step procedure and economic concepts and procedures identified in Section 2 above.

3.1 PHASE I: PRELIMINARY ASSESSMENT AND DETAILED RESEARCH PLAN

This phase reviews case statutes and existing research, develops a case strategy, provides a careful preliminary assessment of potential damage magnitudes, sets priorities for scientific and economic work which subject to budget constraints, and develops a detailed research plan to meet the case strategy and objectives. This phase is scheduled for January through June of 1991. Seven steps are identified below. Steps involve overall management, which includes Steps 1 through 3, 5 and 7. Scientific and economic specialists are most heavily involved in Steps 4 through 6.

Step 1: Case Review. Extensive review of all available case documents, research reports, available data, RI/FS reports, etc. Site visit. This will solidify understanding of types of injury, and status of trustee knowledge about the injury and value of injury.

Step 2: Preassessment Screen. Optional to meet DOI requirements if not already done.

Step 3: Case Strategy Development. Develop comprehensive case strategy interactively with technical managers, case attorney, state Policy and Technical Advisory Committees. This occurs concurrent with other tasks in Phase I and helps to focus the research plan and keep all resources focused. For example, this involves issues of:

- What resource injuries will be considered (at any level),
- Past damages, future damages during remediation, future residual damages. What will be included and what will not? Initially, what time frames to consider?
- Relationships with PRP on research and on settlement discussions.
- Structure of trustee team. Who will be leading what efforts.
- Issues of operable units versus sites versus injuries as focal approach.
- Issue of NRDA before RI/FS and RODs are complete.
- Use of DOI regulations.
- Community and Public involvement.
- Joint strategy with other Montana cases.
- Limits on damage claim (dollar, resources, time frames, etc.)

Also included should be a training seminar for key state personnel and technical team members on NRDA case strategies and procedures.

Step 4: Preliminary Quantification of Damage. This effort will use information from Steps 1, 2, and 3 plus available literature on related physical impacts and resource and economic valuation; available information from other similar cases in other states; and professional judgement. This task will provide a first cut, order of magnitude estimates at what expected damages

would be from a complete damage assessment. The work will:

- Organize injury and damages into logical categories for valuation.
- Examine potential damages, by category, separately (where possible) for time periods of: past, present, future during remediation and residual future damages.
- Assess ranges of probably damage estimates. Based upon preliminary assessments of injury and valuation, provide low to high range of damage by category by time period. Where possible a central estimate may be provided. These estimates are preliminary order of magnitude estimates based upon available understanding of the case, literature and professional judgement. They should be based upon as many alternative approaches as are reasonably available given resource allocations to Phase I.
- First level of assessment of issues for each damage category. Detailed assessments will be part of Step 6 after highest priority items are selected. These include:
  - Certainty of estimates.
  - Actual ability to formally quantify physical and economic estimates.
  - Acceptability and defensibility of Phase II injury and damage assessment in NRDA settlement and litigation.
  - Required inputs to assessment for more defensible estimates.
  - Relative costs and schedule to proceed (order of magnitude, detailed estimates in Step 6.)
  - Issues in quantification and valuation.

Step 5: Recommendations Prioritize Phase II research objectives and actions to assess injury and damage based upon the following factors. This can be done formally or informally, but is required before Step 6.

- Probable size of damage.
- Certainty of damage acceptance and validity.
- Costs and timing of research.
- Other issues.

Research should be selected and designed to obtain the required data in a defensible manner, and to be of reasonable cost relative to the likely magnitude of damages to be estimated.

Step 6: Detailed Research Plan. This task will lay out in detail what research is expected to be done in Phase II and the overall critical path of how the tasks fit together. For each physical impact and economic damage assessment task, most of the following aspects should be addressed:

- Exact objective.
- Linkage to other elements in the damage case.
- Exact tasks and their tie to the overall objective.

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- Alternative levels of effort and determination criteria for selecting the appropriate level.

- Costs and schedule and relationship of schedule to other work elements.

The detailed research plan should be reviewed by the trustee TAC and PAC and revisions made to the final plan.

Step 7: PRP Review and Input. Subject to case strategy, the PRP may be presented the results of Steps 2 and 6. Discussions may be held with the PRP regarding funding or participation.

Examples of physical injury assessment work to be completed include:

Fisheries Summary
- Miles of impacted rivers and stream through time.
- Reductions of fish population, size and diversity within these impacted segments.
- Impacts from other sources/events - fish kills and other major releases.
- Access to impacted river miles.

Groundwater Summary
- Location, timing and extent of impacted aquifers
- Past, existing and potential future uses and potential yield.

Soils and Vegetation
- Location and extent of past wetlands destroyed by tailings burial.
- Location and extent of urban area affected by soil contamination.
- Location and extent of agricultural lands impacted by soil contamination and lost production.

Air Quality
- Location and extent of historic smelter emissions and their likely dispersion.

3.2 PHASE II: DETAILED SCIENTIFIC AND ECONOMIC INVESTIGATIONS

The exact definition of additional scientific and economic investigations will occur in Phase I. This section briefly discusses the types of investigations expected to be undertaken, and the expected timing and level of effort. These work elements are generally defined based upon:

- A preliminary assessment of need based upon the existing available research and required additional research required, and expert judgement on the level and cost of the scientific, economic and legal undertaking required for this litigation.

- Experiences from other states where NRDA's have been or are being conducted. The state's experts are involved in cases in over a dozen states, including mining sites in Colorado, Utah and Idaho.

Only those investigations required solely for the purpose of pursuing the Natural Resource Damage claim will be pursued. Specific elements of the work will be defined in Phase I, which must be sufficiently complete by April of 1991 to be ready for in-field studies starting in April of 1991.

3.2.1 Management Support

An important aspect of the NRDA, and the economic valuation of physical injury, will be to insure that the scientific and economic studies are fully integrated and that state agency personnel are fully

aware of the process required for all efforts. Overall management tasks include a technical contractor lead working with the state's program coordinator, and the chief legal counsel to:

- Assist in continuing case strategy development and tracking of related site developments.

- Interview and select scientific and economic contractors and state agency personnel. Define technical scope of work with contractor personnel and track progress of technical work. Remedy problems as they arise.

- Manage integration of project team to achieve the defined NRDA plan. Make sure that the exact definitions of outputs from scientific studies (by contractors and state agencies) are defined and presented in a manner and schedule available to economic analysis. Facilitate interaction between study contractor and state agency team members, and their available data bases and literature.

- Review the technical adequacy of scientific and economic studies.

- Select expert witnesses for litigation support phases of the work.

3.2.2 Physical Injury Assessment Studies

These studies will use available literature and data, and new in-field studies, to establish and defend the NRDA case. This work is somewhat different than that required for a RI/FS. The primary information needed is to:

- Establish the chemical, temporal and geographic link between the release of contaminants and the natural resource injury.

- Establish the type, amount and temporal and geographic extent of injury for resource categories of primary focus.

- Identify the with and without contamination resource conditions, accounting for other influences to the management and use of the resources.

These elements will done in a manner, and with research outputs, useful to the economic valuation requirements rather than on a basis of operable unit or exact source of contaminant.

Surface Water, Fisheries and Aquatic Life, Wetlands and Regional Modeling

This category of injury results in significant damages as the fishery in over 100 miles of river, and habitat in many acres of wetlands have been impacted. Although the state has performed various studies of fisheries impact, a targeted and comprehensive program aimed toward the damage assessment will be required in order to present a case for trial.

Field studies will be aimed at measuring fish populations, size and species diversity. The measured population characteristics will then be compared with predicted population characteristics if contamination did not exist. The most difficult aspect of the population predictions is the influence of non-contamination issues such as irrigation withdrawals and stream habitat on controlling populations, thus field studies will also focus on these aspects. This will be done through use of existing literature and data bases, establishing appropriate control sites along the Clark Fork where water quality and fishery conditions will be measured and through use of comparison sites on other rivers. The program will include detailed field work performed over two years in order to gather representative data. Field work must begin in April 1991 in order to collect fishery population information that is comparable to that presently available. Work will be performed by consultants

with the assistance of state personnel.

The fisheries studies must be assimilated with the other physical science disciplines related to surface water hydrology including stream sediment chemistry and transport, macroinvertibrate aquatic life, and wetlands. An exhaustive volume of water and solids chemistry has been collected during the ongoing RI/FS process. These data will be analyzed and modelled with new primary in-field measurements on a regional basis to establish the temporal and spacial chemical link between the PRP's waste streams to water, sediments and finally fish populations and wetland habitat. Additional detailed discussion of objectives, methods, and required resources is found in Chapman Associates (1990).

Ground Water

An analysis of the injury and potential threat of injury to various aquifers in the region will be performed. This analysis will rely primarily on field chemistry data collected by others under the RI/FS process. The location and extent of currently impacted groundwater supplies will be defined as well as the threat of future contamination. To arrive at aquifer values, the historical use and potential yield of the aquifer will be evaluated. Replacement water supplies will be outlined. The direct chemical link between the PRP's operations and the contamination of groundwater will be established.

Soils and Vegetation

Riparian, urban and agricultural lands have been contaminated by the PRP's operations and have resulted in metals-impacted soils and vegetation. The damages evaluation will rely primarily on earlier field studies that have defined the nature and extent of contamination. Additional field studies will be performed to collect information where data gaps are found to exist.

The direct chemical link between the PRP's operations and soils and vegetation contamination will be demonstrated. The pathways of contamination include river transport of tailings, anthropologic activities, and wind transport of smelter emissions and tailings. The extent of wetlands lost or destroyed by tailings buried will be assessed. The replacement cost to construct new wetlands will be estimated. Urban soils contamination will be evaluated in both nature and extent. Estimates of reduced crop production on contaminated agricultural lands will be made.

Air Quality

Air Quality problems were extensive when the smelters were in full operation. To assess past injuries, historical records of emissions and measured air quality violations will be assimilated and summarized. Analysis of existing wind data will be performed to evaluate the likely past dispersion of airborne contaminants. The dispersion will be correlated against the resources at risk due to air deposition, and the degree of probable physical injury assessed. This work will be performed in concert with soils and vegetation analysis.

3.2.3 Economic Valuation Studies

Recreation Studies

These studies will use available research and conduct new research to:

- Assess recreational behavioral response to changes in resource quality associated with site contamination, i.e., how is the level and quality of use of the resource impacted in the past and future,
- Assign economic values to these behavioral responses.

Recreational fishing is likely to be the most important impacted recreational activity due to contamination of Silver Bow Creek and the Clark Fork River. But, other recreational activities such as consumptive hunting and fishing, and non-consumptive viewing of wildlife, hiking and other activities may be impacted.

The recreational analysis will first rely upon available literature values to estimate current use and to predict potential past and present use under alternative resource conditions. For example, existing literature and data will be gathered on current recreational use types and levels, on population locations, and on resource characteristics of substitute sites. Of particular importance will be defining and collecting data on actual use of comparable sites. There is considerable research on recreational fishing for Montana and the Rocky Mountain west dealing with the impact on use and angler values for changes in the fishing experience such as changes in expected catch rates, species availability, size of catch and the like. This work includes a recent Montana Statewide angler preference study. Unfortunately, little of this recreation use and valuation literature is specifically derived for the Clark Fork River. Even in the Montana Statewide angler preference study, the sample sizes for the Clark Fork are extremely small. Use of existing literature may also be limited as the types of resource changes considered in prior efforts may not adequately match the predicted impacts from the scientific studies conducted for this NRDA. Therefore, additional primary research is likely to be necessary.

New primary research would cover fishing, and potentially other, recreational uses of the Clark Fork Basin under the projected conditions that would have occurred without the contamination.

Traditionally, primary research for NRDA cases includes a recreation use and valuation survey, and may include on-site counting of activity levels and creel surveys. Several alternatives are available for conducting recreational use surveys including 1) on-site intercept surveys, 2) in-person interviews conducted at the participants resident and 3) mail and phone surveys. Of these, the first two are significantly more expensive than the third alternative (10 to 30 times more expensive per observation) which probably can be used in this case with little loss of accuracy.

The budget request assumes significant work to gather, analyze and utilize existing literature and data; the use of mail surveys to gather additional use and value information targeted specifically for the case scenarios; and limited amounts of on-site observation work. It is anticipated that initial collection and evaluation of existing data and literature will be conducted during May through December of 1991. Some in-field work may be conducted in both the summer of 1991 and 1992. Recreational surveys would be developed and pretested from the fall, 1991 through spring 1992, implemented in the spring and summer of 1992 and analyzed and reported upon in the late summer and early fall of 1992.

Total Valuation Study Using the Contingent Valuation Method

Background. Many economic studies are focused upon direct valuation of ground water use losses, fishing use losses and the like. However, society may value many different aspects of the natural resource injuries at the Clark Fork sites that are difficult to individually place values upon. Furthermore, these economic valuation methods focus upon actual use of a site and ignore non-use values associated with protecting the resource for potential use (option value), to bequest it to others to use now and the future (bequest values) and because the resources should be maintained in their natural state (existence value) related to concerns about protection of resources, ecosystem integrity and other reasons. Other methods also may ignore value held by individuals who do not reside near to a site and who currently do not use a site, but these individuals can be included in a total valuation survey.

Values and motives for protecting against natural resource injuries are difficult to directly quantify in any unit of measure, including dollars. Given competing demands upon our wealth, the dollar measure assigned to a change in natural resource protection is the societal willingness to pay (WTP)

FIGURE 7
MAIL SURVEY IMPLEMENTATION STEPS

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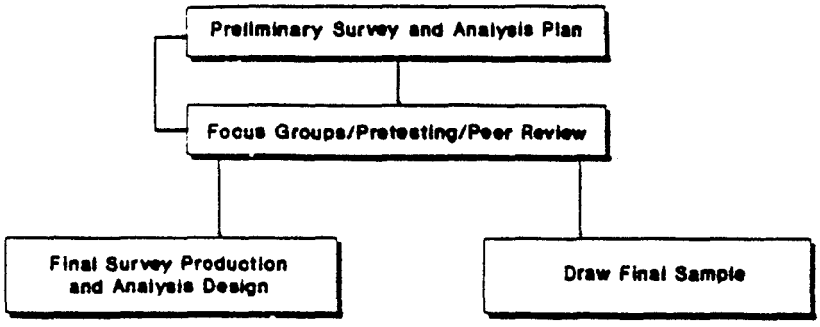
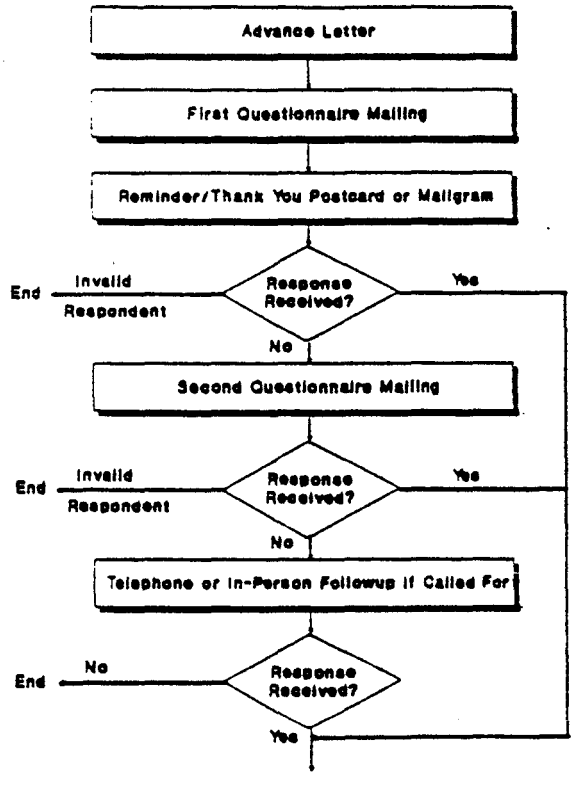
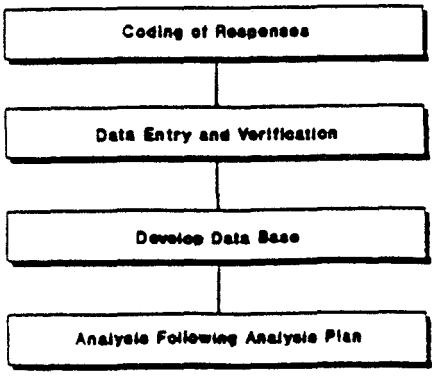
TASK 1 Design and Production



TASK 2 Data Collection Implementation



TASK 3 Data Preparation and Analysis



to prevent a resource degradation, or to obtain an improved resource condition. The contingent valuation method (CVM) is generally the only viable means of obtaining a comprehensive valuation measure. The CVM method essentially establishes a hypothetical market in which survey respondents state a WTP for a specific change in the natural resource of interest, thus directly revealing a total value for the injury of concern.

Because the CVM survey addresses total resource value, it quite naturally generates values substantially larger than are obtained through other resource valuation methods. As a result, the total value CVM study has become a staple of nearly every large NRDA in the country. While the initial Department of Interior (DOI) NRDA rules attempted to downplay the role of non-use values and CVM surveys, a recent court ruling substantiated the validity of the approach and the forthcoming DOI revised rules will recognize the validity of the approach, subject to the individual defensibility of each application.

The application of the CVM method is not so easy as asking a few willingness to pay questions. A substantial literature exists about the difficulties in the method and how variations in the applications may affect the results (See Cummings et al. 1986, and Mitchell and Carson, 1989 for discussion). As yet, CVM research has been increasingly relied upon in federal regulatory proceeding and has been entered into evidence in several CERCLA NRDA cases, but no CERCLA NRDA case has proceeded to the point of a judge ruling on the results of the CVM. Defendants in CERCLA cases can be expected to vigorously attack the method and results (Cicchetti and Peck, 1989). As a result, CVM exercises must be very carefully undertaken and include extensive development, pretesting and peer review, and high quality implementation and analysis.

Approach. The objectives of this research will be to:

- Derive the most comprehensive estimate of total value of all natural resource injuries, from the perspective of good economic and psychological research.

- Provide defensible research and estimates that will withstand attack in court.

The steps in the total value CVM research include:

- Design and production. Alternative study designs are simultaneously developed, pretested and peer reviewed. Multiple study designs allow investigation of the sensitivity of results to study design.

- The study is implemented, usually through mail surveys following a repeat contact procedure that results in response rates of 70 percent (after deleting bad addresses in the sample), as illustrated in Figure 7. Alternatively, in-person interviews may be conducted, but the costs of such interviews are generally 20 times more expensive than the mail survey approach. Because this has become a new issue in CVM research, a small sample may use the in-person approach for comparison purposes.

- Data is prepared and analyzed. Thorough quality control over data handling must be exercised. Analysis follows a detailed analysis plan.

The schedule for this work is for the design and pretesting to be conducted during the period of the summer, 1991 through winter, 1992; implementation in the early spring of 1992, and the analysis and report during the summer of 1992.

Air, Ground Water, Soils, etc.

Values for other categories can be developed directly from literature values and from market prices. In these cases, the economic nature of the resource must be defined, and literature and other data

reviewed and applied. In some cases, new primary research may be undertaken. This work will progress from the summer of 1991 through the summer of 1992.

Restoration/Replacement of Services

On July 14th, 1989, the U.S. Court of Appeals for the District of Columbia circuit ruled on a case, referred to as Ohio et al v. U.S. DOI, No 86-1529 addressing the design of the Department of Interior Type B regulations. In the ruling, the court focused on restoration or replacement of the injured resource services, especially where restoration is not disproportionate to the social value of injury. Damages are to be measured before, during and after restoration. One important aspect, therefore, of a NRDA is to examine restoration costs, both as a means of measuring social value for determining whether restoration is disproportionate to social values.

Work is anticipated to generally examine alternative methods and costs to provide like resource services. This is different from the determination and costing of full site remediation. In the NRDA the focus is upon resource services (fishing, ground water use, etc.) rather than upon the resource itself. This work would be undertaken from July, 1991 through the summer of 1992.

Natural Resource Damage Assessment Summary Report

A large volume of preexisting and new scientific and economic research will be available to the NRDA case. The summary report will pull together in a consistent and structured presentation the damages case strategy, the summary of natural resource injuries in the past, present and future accounting for remediation plans, and the economic valuation of injuries.

3.3 PHASE III: NRDA LITIGATION SUPPORT

This work includes ongoing case strategy; assistance with settlement negotiations, including interim calculations and strategies; selection and preparation of expert witnesses; depositions, including those of the state's expert witnesses and assistance with preparation and attendance at the deposition of the PRP's expert witnesses; review of the PRP's work, response and rebuttal to PRP review's and the State's review of PRP work; trial preparation and testimony, including preparation of graphics, strategy and technical coordination. This work will start in 1991, and be most heavy in mid 1992 through early 1993 during the deposition and discovery stages, then again in mid to late 1993 through mid 1994 as the litigation progresses through trial. Figure 10 shows the relationship between the Clark Fork NRDA schedule and the litigation process.

4.0 STATE AGENCY RESPONSE EFFORTS

The Governor of the State of Montana has retained the trustee obligation for state managed natural resources and has instructed state agencies to assist in this effort. Therefore, the State of Montana is responsible for coordinating and managing the Clark Fork Natural Resource Damage Assessment and lawsuit.

4.1 EXISTING EFFORT

Until January of 1989, the state's effort in the NRDA and lawsuit was minimal pending completion of the RI/FS. When ARCO petitioned the U.S. District Court to lift the stay and the court issued the scheduling order, Montana's efforts increased significantly:

- Responding to court schedules, filing motions, responding to filed motions, and overall case strategy development, required an increased legal effort. This includes outside legal contractor support which was acquired by contracting with a firm with Natural Resource Damage claim expertise.

- Given the complexity of the NRDA and lawsuit, a structure for Montana's Natural Resource Damages Program was needed and developed. Two committees were formed and a coordinator was hired:

  Policy Committee: The Policy Committee consists of a representative from the Governor's Office, and Department Director or Deputy Director from the Departments of Health and Environmental Sciences; Fish, Wildlife, and Parks; and State Lands This committee is responsible for setting the overall direction of the NRDA and lawsuit and making policy decisions regarding the program.

  Technical Committee: A technical committee was formed to develop, evaluate, and work on all the technical and scientific requirements of the NRDA and lawsuit. This committee consists of members from state agencies that are directly responsible for resources covered under the NRDA.

  Program Coordinator: In December 1990, a Natural Resource Damage Program Coordinator was hired to coordinate and manage all aspects of the NRDA and lawsuit. This includes scheduling, managing, and coordinating: Policy and Technical Committee activities; state agency response and legal efforts; outside contractor work; public and community relations; etc.

The NRDA and lawsuit requires extensive technical and scientific expertise to support state efforts. Two outside contractors with NRDA expertise were selected and completed preliminary NRDA work.

4.2 STATE PROGRAM NEEDS

The State of Montana has a little less than two years to complete a very complex Natural Resource Damage Assessment on the largest superfund complex in the country. An increased state and program effort is needed to ensure this work is completed. In addition, funding this portion of the program will allow the state to proceed with preliminary work on NRDA's for other superfund sites and contamination sites that have natural resource injury and damages. Three areas of effort are needed:

- **Coordination and Management:** The NRDA and lawsuit will involve many state and federal agencies, contractors, private industry, and the public. In order to reduce

costs, avoid duplication, and ensure communication the state must have adequate program staff. The existing structure includes a Natural Resource Damage Program Coordinator who was hired on December 3, 1990. Additional management and coordination support would include one full time person for administrative support including clerical, contract management, computer services and public relation and two full time technical positions: one economist and one environmental specialist. This staff would initially work on the Clark Fork NRDA and lawsuit but would also be available for NRDA work on other sites.

- **Technical:** Technical support to the program is needed to collect, analyze and review technical data from state agencies, private industry, and contractors. This support comes in two ways: 1) Interagency support from various agencies within state government. It is anticipated approximately $15,000 will have to be budgeted in each of fiscal years 1992 and 1993 for interagency support to the Clark Fork NRDA. In addition, The Department of Fish, Wildlife, and Parks is requesting $50,000 per year for fiscal years 1992 and 1993 to assist contractors in fishery data collection, 2) Technical program support to assist in contract management and review, and general technical NRDA support comes from the two technical positions described above.

- **Litigation:** Litigation for a case of this magnitude requires extensive legal effort by the State of Montana. Identification of expert witnesses with discovery, deposition, case management, and preparation for trial will require a state legal staff of 2 attorneys and 2 para-legals in fiscal year 1992 and 3 attorneys and 2 para-legals in fiscal year 1993 and beyond. Litigation for the Clark Fork case is broken down in to four phases:

    - **Initial Preparation:** It is assumed that information currently available to the State and that which will be obtained during discovery will amount to hundreds of thousands, if not millions, of pages of documents. Accordingly, it is important that the State implement a computerized document management system.

    - **Discovery Practice:** Discovery Practice will include written discovery including interrogatories, requests for production of documents, and requests for admissions; responding to written discovery requests; taking the depositions of lay and expert witnesses; defending depositions of lay and expert witnesses; preparing and defending discovery motions.

    - **Motions Practice:** This would include the filing of appropriate motions and briefs in the case.

    - **Pretrial Preparation:** Case preparation for presentation in the form of a final pretrial order is necessary. This will require review and synthesis of the results of the initial preparation, discovery practice and motions practice.

Completing the NRDA and pursuing the natural resource damage claim will require contracting with technical and legal professional consultants with expertise in NRDA or litigation.
The Clark Fork NRDA will require exhaustive research in the physical science and economic area. The state will not have the manpower or necessary expertise, except in an oversight and management role, to complete these tasks. Outside contracting for this effort is absolutely necessary to ensure the NRDA is completed on-time and is scientifically defensible.
The Clark Fork litigation will also require retained counsel with significant environmental and litigation expertise in this complex litigation process. Particular expertise with reference to CERCLA and the recovery of natural resource damages is needed. The state does not currently have this expertise, and cannot reasonably and expeditiously add such expertise without the guidance of outside contract legal services.

5.0 BUDGETS

5.1 BUDGET REQUEST

Although the exact budget needs for the Clark Fork NRDA will not be known until Phase I work is completed it is felt this request reflects the need based upon:

- A preliminary assessment of need based upon the existing available research and required additional research required, and expert judgement on the level and cost of the scientific, economic and legal undertaking required for this litigation. Again, only research directly relevant to the funding of the NRDA claim is to be undertaken.

- Evidence on NRDA case budgets from other states including Colorado, Washington, Idaho, Utah, New York, Delaware, Alaska and other states that have been active. Colorado's mining sites have many similar characteristics. On Colorado NRDA cases spending has ranged from $1 million to several million and, as in the Clark Fork case, did not have completed RI/FS documents to rely upon. The Clark Fork basin cases have a complexity similar to several of these cases combined, and must be budgeted for 1990-1993 dollars, rather than mid to late 1980's dollars.

Final research allocations for Phase II, which requires the largest share of contractor funding, will be determined in the Phase I preliminary assessment and detailed research plan. Cost estimates in Table 1 represent the mid-range value of the expected range of costs for each work element to perform a quality, but not excessive, assessment.[1] We expect that some research categories may require more resources, and others less than budgeted here. These budgets are expected guidelines, not commitments. In addition, research items will not clearly fall before or after July 1, 1992, therefore, it is extremely difficult to budget on a Fiscal Year basis and necessary to budget on a biennial basis. It will be the job of the state and contractor management team to design and manage a research plan that funds only the required work and falls within the overall budget.

An important point in funding litigation research and legal support is that funding must be sufficient to complete the case and all litigation stages. PRP's nearly always spend more than trustees. While often not a problem for the research phase, this can be a problem if trustees are unprepared to respond to a high level of litigation activities. In some recent cases, trustees did not have enough resources to fully respond to the Phase III litigation activities. In effect, the trustees ran out of litigation support money and settled for what had been previously seen as much less than the acceptable minimum restoration and damages.[2]

Table 1 summarizes the budget request and as accurately as possible is broken down by fiscal year. The budget covers scientific and economic contractor services, state agency costs, and outside legal services. In total, $4,956,059 are requested for the 92/93 biennium to complete the NRDA and support litigation and administrative needs. Contractor scientific and economic services are broken down by tasks, as discussed in Section 3 above. These requests cover only anticipated future services

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[1] The range varies considerably across work elements. Point Estimates were presented for simplicity of presentation and computations.

[2] In one western oil spill case settled in December of 1990, sufficient funds were allocated for research, but insufficient funds were encumbered for litigation as PRP's filed a continuing stream of motions requiring response. Once the state's budget was exhausted and trial stages beginning, and there was no ability to get a timely special appropriation, the state settled for approximately 25% of their internally established minimum settlement amount. In effect, by saving one-half to one million in cases support budget, the state likely forfeited five to ten million in damages.

as of January 7, 1991, and not past incurred expenses. The table is broken down in to 3 categories:

- A. Contract Scientific and Economic Services.
- B. Contract Legal Services.
- C. State Agency Costs.

While the amounts requested are substantial, they are modest compared to the level of expected damages, which are likely to run in at least the tens of millions of dollars, and compared to the level of spending on remediation actions. For example, the proposed remedial actions for just the Warm Springs Pond, which is one of 27 operable units, ranges from $30 million to over $1 billion dollars. Further, it is important to adequately fund the assessment so that it will be conducted in a manner to withstand intense scrutiny in the legal process (Carson and Navarro, 1989).
In addition, reasonable costs the state incurs to assess the injuries and pursue the state's natural resource damage claim are recoverable.

5.2 SCHEDULING OF BUDGET SPENDING

Due to the court ordered deadlines on the case all technical work must be completed by the summer or early fall of 1992. All work must be completed in time to be integrated into a final comprehensive NRDA report by October 31, 1992 to allow time for deposition of key state witnesses. Key in-field work must be completed in both the summers of 1991 and 1992 to minimize the confounding impacts of variations in results across seasons. This requires initiation of detailed planning in early 1991 and initiation of several of the Phase II studies in the spring of 1991. The bulk of the research will be completed in FY 1992, which covers mid to late summer, 1991 and early summer 1992. Early in FY 1993, all research phases will be completed. Litigation support will begin in FY 1992 and be very active in FY 1993. However, if any court ordered dates are delayed, the research schedule may also be delayed somewhat.

Figure 8 summarizes the court ordered schedule, and Figure 9 summarizes the assessment schedule. In Figure 8 an "*" refers to a specific court ordered deadline. In Figure 9, an "I" refers to an interim, draft or progress report. In Figure 9 a "F" refers to a final report.

Table 1

Summary of Budget Request

	FY 1991	FY 1992	FY 1993	FY 1994
A. CONTRACTOR SCIENTIFIC AND ECONOMIC SERVICES				
Phase I. Preliminary Screen/Detailed Plan				
General Support/Management	$ 30,000			
Economist	$ 60,000			
Physical Sciences	$ 60,000			
Phase I Total	$ 150,000	$0	$0	$0
Phase II. Quantification of Injury/Damages				
Technical Management/Coordination	$ 20,000	$ 110,000	$ 70,000	
Economics				
- Recreation Studies		$ 200,000	$ 100,000	
- Total Valuation Study		$ 200,000	$ 100,000	
- Air, Ground Water, Soils, etc		$ 75,000	$ 25,000	
- Restoration/Replacement of Services		$ 75,000	$ 25,000	
- NRDA Summary Report		$ 40,000	$ 60,000	
Physical Sciences				
- Fisheries, Surface Water, Stream Sediments, Aquatic Life, and Wetlands Studies (includes regional modeling)	$ 150,000	$ 550,000	$ 300,000	
- Ground Water Studies		$ 150,000	$ 150,000	
- Soils and Vegetation		$ 150,000	$ 100,000	
- Air Quality		$ 100,000	$ 50,000	
Phase II Total	$ 170,000	$1,650,000	$ 980,000	$0
Phase III. Litigation Support				
Management		$ 50,000	$ 50,000	$ 50,000
Economics		$ 50,000	$ 50,000	$ 50,000
Physical Sciences		$ 50,000	$ 75,000	$ 75,000
Phase III Total	$0	$ 150,000	$ 175,000	$ 175,000
TOTAL (Phase I + II + III)	$320,000*	$1,800,000	$1,155,000	$ 175,000

* $50,000 obtainable from the $200,000 existing Fiscal Year 1991 budget

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Table 1
(cont.)

Summary of Budget Request

	FY 1991	FY 1992	FY 1993	FY 1994
B. CONTRACT LEGAL SERVICES				
Initial Preparation		$ 135,000		
Discovery and Motions		$ 301,500	$ 603,000	$50,250
Pretrial Preparation				$185,625
TOTAL CONTRACT LEGAL SERVICES	$0	$ 436,500	$ 603,000	$235,875
C. STATE AGENCY COSTS				
Salaries + Benefits + Operating				
Program Staff		$ 211,524	$ 195,167	$195,167
Legal Staff		$ 193,002	$ 211,866	$211,866
Computer Document Management		$ 100,000	$ 50,000	
Interagency Support		$ 15,000	$ 15,000	
TOTAL STATE AGENCY COSTS	$0	$ 519,526	$ 472,033	$407,033
TOTAL COSTS ALL CATEGORIES	$320,000	$2,756,026	$2,230,033	$817,908
EXISTING GOVERNOR'S BUDGET		$1,000,000	$1,000,000	
ADDITIONAL BUDGET NEED		$1,756,026	$1,230,033	

TOTAL COST - FY 91 + FY 92 + FY 93 + FY 94 = $6,123,967

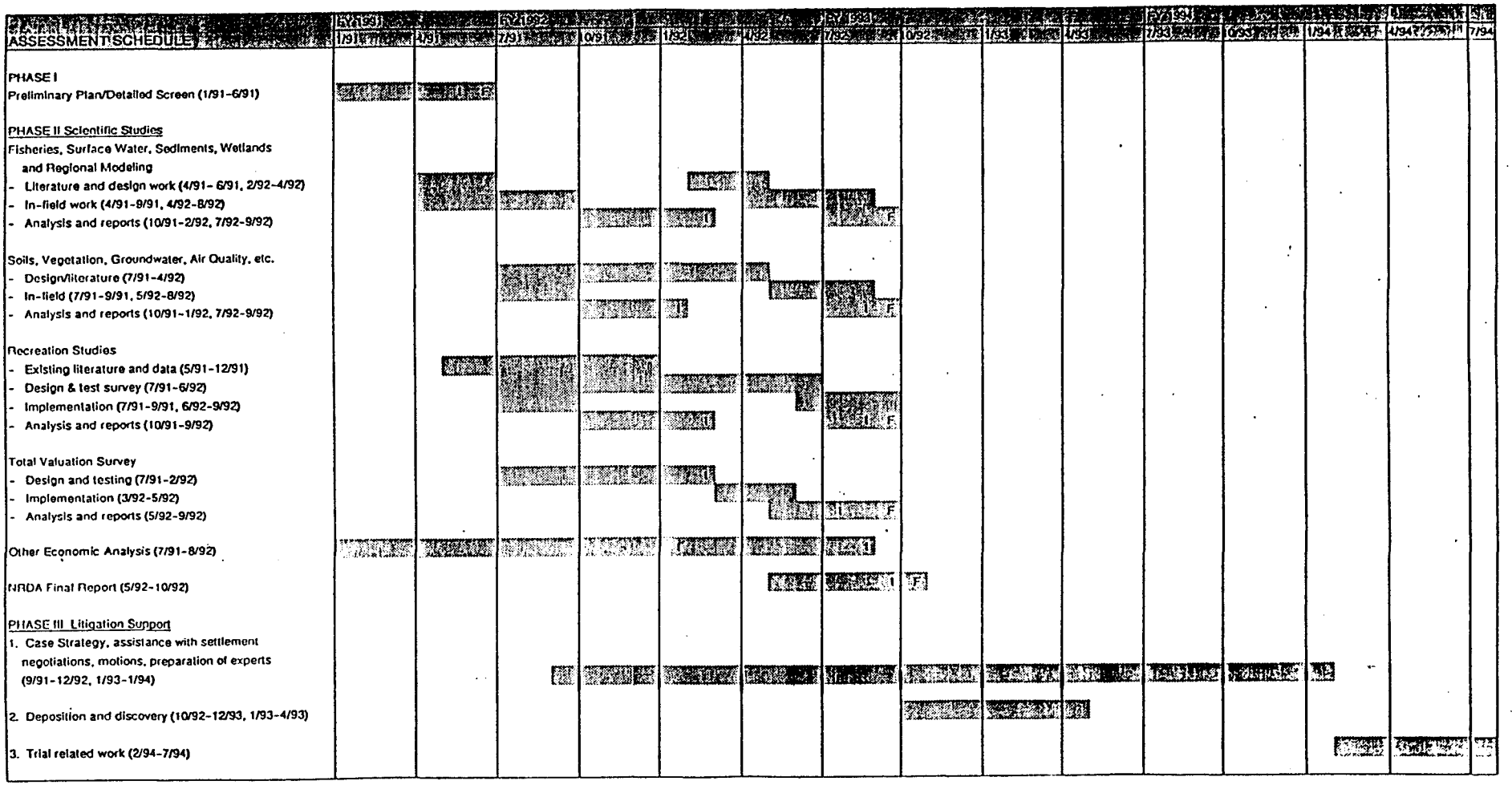
TOTAL NEED FOR FY 92 + FY 93 = $4,986,059

ADDITIONAL NEED FOR NATURAL RESOURCE DAMAGE PROGRAM BUDGET = $2,986,059

FIGURE 8
COURT SCHEDULE

COURT SCHEDULE	FY1991 1/91	4/91	FY1992 7/91	10/91	1/92	4/92	FY1993 7/92	10/92	1/93	4/93	FY1994 7/93	10/93	1/94	4/94	7/94
Rejoinder of parties, if any (6/31/91)		(6/31/91)													
Identification of expert witnesses (12/16/91)				(12/16/91)											
Completion of expert witness discovery (12/16/92)								(12/16/92)							
Completion of all discovery (5/31/93)										(5/31/93)					
All motions filed (7/31/93)											(7/31/93)				
Biannual reports starting 2/1/91	(2/91)		(8/91)		(2/92)		(8/92)		(2/93)		(8/93)		(2/94)		
Final pre-trial orders conference (2/14/94)													(2/14/94)		
Final pre-trial order (4/30/94)														(4/30/94)	

FIGURE 9
ASSESSMENT SCHEDULE



I = Interim or Draft Report
F = Final Report

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Appendix A. Amended Complaints (December 27, 1983 and October 1, 1990).

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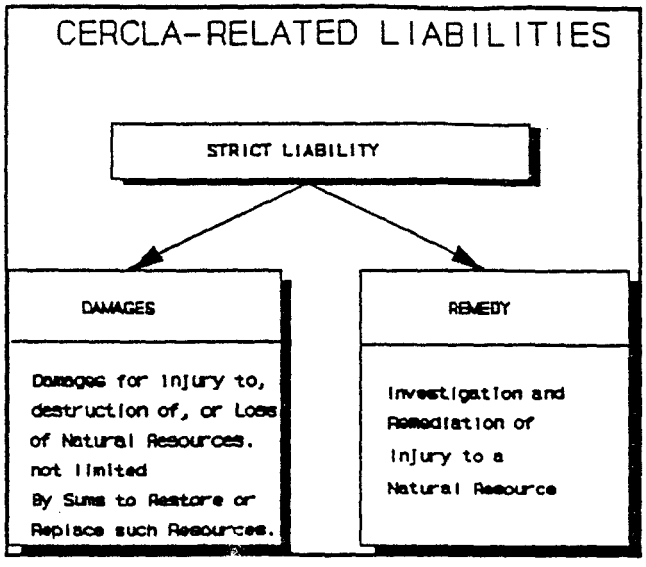
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA

STATE OF MONTANA, ex rel. Department of Health and Environmenta Sciences, and Department of Fish, Wildlife and Parks	)
Plaintiff	)
v.	)
Anaconda Minerals Company Division of Atlantic Richfield Company	)
Defendant	)

AMENDED COMPLAINT AND CLAIM OF LOSS

COMES now the Plaintiff which alleges and complains as follows:

bear the cost of cleanup (remedy) and pay for natural resource damages (damages).



A **remedy** case refers to the investigation and remediation of injury to a natural resource, whereas a **damage** case concerns damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing such injury, destruction, or loss.

The Department of Health and Environmental Sciences has been and will continue to be the lead state agency in an oversight and coordination role for the remedy case. The lawsuit and budget request reflect the damages portion of the CERCLA case.

The recovery of damages has two components:

Response Costs. Agency costs, contractor costs, and legal costs incurred while assessing damages (which are the costs in this request) are recoverable under the damage case. Response costs recovered can be returned to the general fund. The probability of recovery of these costs are extremely high but not absolute.

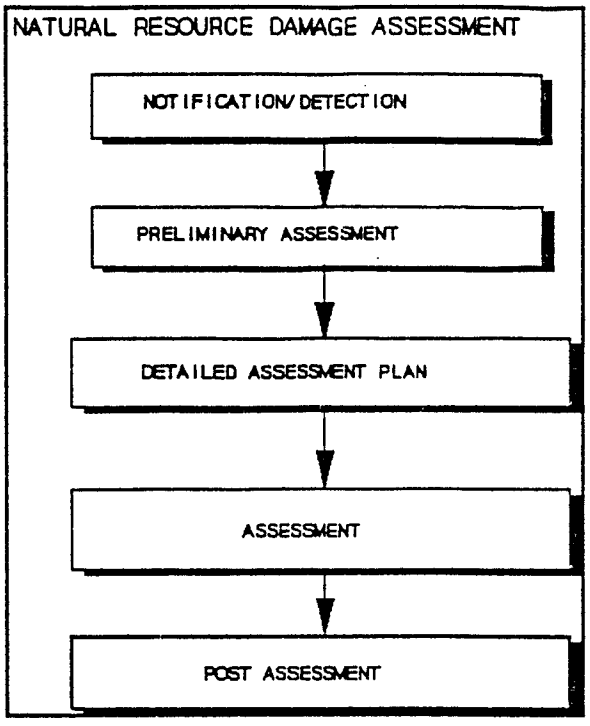
Damages. These funds, by law, are restricted and used only to restore, replace or acquire like resources or resource services. At present, such damages cannot be deposited in the general fund. Examples of uses of these funds in past cases include:

- Buying and operating special resource areas such as wildlife sanctuaries and park areas.
- Buying fishing access in the affected area.
- Developing fish hatchery and stocking programs.
- Habitat enhancement programs.
- Natural resource public education programs.

Because the court ordered damage case will precede the remedy selection process, increased costs for the NRDA will be incurred. Greater technical efforts will be necessary than might otherwise

have occurred and the exact level of remedy will not be known when the NRDA is completed.

NATURAL RESOURCE DAMAGE ASSESSMENT



The United States Department of Interior (DOI) was given the responsibility to promulgate rules to implement NRDA cases and establish guidelines for conducting assessments. The State of Montana intends to follow and be at least as comprehensive as the DOI guidelines for the Clark Fork assessment.

The NRDA for the Clark Fork River Basin will be carefully designed to obtain only that exact information required for the damage claim and will avoid unnecessary scientific assessments. To ensure this, the following three phases are to be implemented:

Phase I. Preliminary Assessment and Detailed Research Plan.

This phase reviews case statutes and existing research, develops a case strategy, provides a careful preliminary assessment of potential damage magnitudes, sets priorities for scientific and economic work, and develops a detailed research plan to meet the case strategy and objectives.

Phase II. Detailed Scientific and Economic Investigations.

This phase completes the NRDA and has three components:

Management Support. The scientific and economic studies must be fully integrated. This requires a technical contractor working with the state's program coordinator and chief legal counsel.

Physical Injury Assessment Studies. The chemical,

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SECTION I: PARTIES

1. The Montana Department of Health and Environmental Sciences is an executive branch agency established pursuant to Section 2-15-2101, MCA and is charged generally with the responsibility of enforcing the state public health laws, including those relating to air and water quality, solid and hazardous waste management Section 50-1-202.

2. The Montana Department of Fish, Wildlife and Parks is an executive branch agency established pursuant to Section 2-15-3401, MCA and carries out activities designed to monitor, protect and enhance the aquatic, wildlife and parkland resources within the State of Montana.

3. Anaconda Mineral Company is a Montana corporation which has operated and owned and which continues to own and to manage extensive mining operations at and in the vicinity of the Berkeley Pit located at Butte, Montana.

SECTION II: JURISDICTION AND VENUE

4. Jurisdiction of the Court is based upon 28 U.S.C. 1331 in that this civil action arises under the laws of the United States. More particularly, this controversy arises under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, "CERCLA," 42 U.S.C. 9601 et seq., and Section 9613(b) of CERCLA gives the United States District Court exclusive original jurisdiction over all such controversies. In accordance with 28 U.S.C. Section 1391, and in accordance with the venue provisions of 42 U.S.C. 9613(b), the venue for this action is the United States District Court for the

District of Montana since the claim has arisen in the United States judicial district for Montana and specifically in Helena, the capital city of Montana, and in connection with the responsibilities of the state government of the state of Montana which is located principally in Helena; furthermore, the release and damages are alleged to have occurred in the district of Montana, and in addition, the defendant corporation is licensed to do business in Montana pursuant to a certificate of authority issued by the Montana Secretary of State and is doing business in Montana, and Montana is a district in which this corporate defendant resides and may be found.

SECTION III: CLAIM FOR RELIEF

5. This claim is made pursuant to Sections 107 and 112 of the Comprehensive Environmental Response, Compensation and Liability Act ("the Act") (42 U.S.C. 9612).

6. Based upon the State's information and belief, you own or operate facility as defined at 42 U.S.C. 9601(9); owned or operated facility at the time hazardous substances were disposed of; contracted, agreed, or otherwise arranged for disposal of hazardous substances owned or possessed by you, or accepted hazardous substances for transport to your facilities, said facilities being the Berkely Pit and associated facilities located at Butte, Montana. Such hazardous substances included but are not limited to, copper, zinc, iron, lead, cadmium, arsenic and mercury.

7. There have been releases of hazardous substances from said facilities into the land, surface water, groundwater, and air, in the immediate

and general vicinities of said facilities within the State of Montana, specifically including but not limited to Silver Bow Creek and the upper reaches of the Clark Fork River. Such releases have caused injury to land, surface and groundwater, drinking water supplies, fish, biota and other such natural resources within the State of Montana.

8. The above mentioned release of hazardous substances causing injury to, destruction of, or loss of said natural resources, has resulted in costs and damages to the State in the maximum amount of damage as allowed under 42 U.S.C. 9607, subject to adjustment based on federal regulations and/or assessment of natural resource damage by federal officials.

9. Based upon the State's information and belief your activities described above took place from at least 1950 through 1981 and are continuing to the date of the filing of the instant complaint.

10. The release and damages referred to above have not occurred wholly before enactment of the Act.

11. Therefore, pursuant to Sections 107 and 112 of the Act (42 U.S.C. 9607 and 9612), you and your agents, servants, and employees are liable for damages for injury to, destruction of, or loss of the natural resources referred to in paragraphs 3 and 4.

12. The state hereby makes its claim pursuant to sections 107 and 112 of the Act (42 U.S.C. 9607 and 9612) and demands that the state be compensated for costs and damages in the amount of the maximum amount allowed by 42 U.S.C. 9607, subject to adjustment based on federal regulations and/or assessment of natural resource damage by federal officials.

DATED this 22nd day of December, 1983.

I, Donald G. Williams, being duly sworn, hereby state that I have read the foregoing document and believe the contents to be true to the best of my knowledge.

DATED this 22nd day of December, 1983.

Donald G. Williams

Subscribed and sworn to before me in the County of Lewis and Clark State of Montana, this 22nd day of December 1983.

Eleanor H. Perkins
NOTARY PUBLIC

My Commission expires:
August 11, 1987

DATED this 22nd day of December, 1983.

By: MIKE GREELY
Attorney General
State of Montana

By: Frank C. Crowley
Frank C. Crowley
Special Assistant Attorney General
Department of Health and
Environmental Sciences

By: Stan Bradshaw
Stan Bradshaw
Special Assistant Attorney General
Department of Fish, Wildlife
and Parks

EXHIBIT 5
DATE 12-22-83
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DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

LEGAL DIVISION

TED SCHWINDEN, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

HELENA, MONTANA 59620

December 22, 1983

RECEIVED

DEC

Clerk U. S. District Court
District of Montana
Billings

Clerk of the United States
District Court
Room 5405
Federal Building
316 North 26th
Billings, Montana 59101

Attn: Ms. Judy Bishop

Re: State of Montana v. Anaconda, U.S. District Court for the District of Montana District No. CV-83-317-HLNA, AMENDED COMPLAINT

Dear Ms. Bishop:

Enclosed for filing please find plaintiff's AMENDED COMPLAINT in this action. The amendment is a revision of the jurisdiction and venue provisions at Sect II, par. 4.

I am serving copies of both the original and the amended Complaints on the defendant with Form 18-A.

Thank you for returning the enclosed extra copy of the Amended Complaint to me conformed with your filing data.

Sincerely yours,

Robert F. Adams, Jr.
Counsel for the Department

RFA:cu
enclosures

Katherine J. Orr
Special Assistant Attorney General
Department of Health and Environmental Sciences
Legal Division
Cogswell Building
Helena, Montana 59620-0902
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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

State of Montana, Plaintiff, vs. Atlantic Richfield Company, Inc., Defendant.	Civil Action No. CV 83-317-HLN-CCL

SECOND AMENDED COMPLAINT

The State of Montana, by and through its attorneys, alleges as its complaint against the Atlantic Richfield Company, Inc., as follows:

INTRODUCTION

1. The State of Montana brings this action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act, 42 U.S.C. §§ 9601-9675 (hereinafter "CERCLA" or "Superfund") and the Montana Comprehensive Environmental Cleanup and Responsibility Act, Mont. Code Ann. §§ 75-10-701 to 75-10-724 (hereinafter "CECRA") for damages for injuries to natural resources and for all costs of assessing and recovering such damages in connection with the release of hazardous and deleterious substances from or at facilities located in the Clark Fork River Basin in western Montana.

JURISDICTION AND VENUE

2. Jurisdiction is proper in this court pursuant to 42 U.S.C. §§ 9607 and 9613(b) and 28 U.S.C. § 1331. This court has pendent jurisdiction over the claims asserted under the laws of the State of Montana.

3. Venue is proper in this court pursuant to 42 U.S.C. §§ 9607 and 9613(b) and 28 U.S.C. § 1391(b) and (c).

PARTIES

4. The plaintiff is the State of Montana, which holds all natural resources, including the land, fish, wildlife, air, and water, located within the political boundaries of the State of Montana in trust on behalf of and for the benefit of the public. As trustee of the natural resources located within its boundaries, the state owes a fiduciary duty to the public to protect and conserve its natural resources for present and future generations of Montana citizens.

5. This action is pursued by Stan Stephens, Governor of the State of Montana, in cooperation with the Montana Departments of Health and Environmental Sciences, Fish, Wildlife and Parks, Natural Resources and Conservation, and State Lands, which are the state agencies that are charged under the laws of the State of Montana with responsibility for protecting and conserving the natural resources of the state.

6. The defendant is the Atlantic Richfield Company, Inc., (hereinafter "ARCO"), which is a corporation currently organized under the laws of the State of Delaware with its corporate headquarters in the State of California.

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7. ARCO and its predecessors-in-interest, including the Anaconda Copper Mining Company and Almagamated Copper Mining Company, for whom ARCO has assumed the liabilities, are responsible parties within the meaning of CERCLA and CECRA.

GENERAL ALLEGATIONS

8. The Clark Fork River Basin has its headwaters near Butte, Montana, and flows to the Idaho border.

9. Portions of the Clark Fork River Basin have seen listed by the United States Environmental Protection Agency ("USEPA") on the National Priorities List ("NPL"), 400 C.F.R. Part 300, Appendix B, established pursuant to CERCLA, and they collectively constitute the largest geographical Superfund area in the United States.

10. The Clark Fork River Basin Superfund area includes four separate but related NPL sites: Silver Bow Creek/Butte Addition, Anaconda Smelter, Milltown Reservoir, and Montana Pole.

11. Each of these four NPL sites include numerous facilities at which there has been continuous disposal of hazardous and deleterious substances and from which there have been and continue to be releases of hazardous and deleterious substances into the environment.

12. The Silver Bow Creek/Butte Addition NPL Site is located in Silver Bow County and Deer Lodge County, and its facilities include numerous mines, smelters, mills, concentrators, waste and tailings impoundments, and waste and tailings piles, including the Berkeley Pit, Colorado Tailings, Warm Spring Ponds, and the Clark Fork River to the Milltown Reservoir. The hazardous and deleterious substances released into the environment from these facilities include arsenic, cadmium, copper, lead, mercury and zinc.

13. The Anaconda Smelter NPL Site is located in Deer Lodge County, and its facilities include numerous smelters, waste and tailings impoundments, and waste and tailings piles, including the Old Works, Arbiter Plant, Slag Pile, Flue Dust Storage Facilities, Beryllium Storage Facilities, Smelter Hill and the Anaconda, Bradley, Iron Creek and Opportunity tailings ponds. The hazardous and deleterious substances released into the environment from these facilities include arsenic, cadmium, copper, lead and zinc.

14. The Milltown Reservoir NPL Site is located adjacent to Milltown, Montana, and it includes a reservoir that has accumulated several million cubic yards of sediments transported by the Clark Fork River and its tributaries. The hazardous and deleterious substances contained in and released from the sediments include arsenic, cadmium, lead and zinc.

15. The Montana Pole NPL Site is located in Silver Bow County and its facilities include various wood treatment buildings, equipment and disposal areas. The hazardous and deleterious substances released from these facilities into the environment include creosote and pentachlorophenol ("PCP").

16. The State of Montana has incurred costs of responding to the releases and threatened releases of hazardous and deleterious substances from these facilities including, but not limited to, the costs of sampling and analytical services, time of state personnel, costs for retaining expert consultants, costs of legal representation, costs of investigation by state personnel and costs of enforcement activities.

17. The State of Montana is the trustee for the "natural resources" in, belonging to, managed by, controlled by, and appertaining to the State of Montana pursuant to the constitution, statutes and common law of the State of Montana, and CERCLA § 107(f), 42 U.S.C. § 9607(f).

18. As a result of the releases of hazardous and deleterious substances from the facilities into the environment, natural resources held in trust by the State of Montana, including land, fish, wildlife, surface water, ground water and drinking water supplies, have been and continue to be injured, destroyed or lost.

19. The State of Montana has begun to conduct and will continue to conduct an assessment of the damages to such natural resources which will include, inter alia, the cost of restoration and replacement of the natural resources.

20. Defendant ARCO has wrongfully withheld from the State of Montana the amounts that the State of Montana is entitled to recover as a judgment in this action and defendant ARCO has realized gains and benefits by withholding these amounts, and the State of Montana has incurred loses by being deprived of these amounts.

FIRST CLAIM FOR RELIEF

(CERCLA)

21. The State of Montana hereby incorporates by reference the allegations set forth in paragraphs 1 to 20 as if fully set forth herein.

22. The above-referenced sites include numerous "facilities" within the meaning of CERCLA § 101(9), 42 U.S.C. § 9601(9).

23. There have been and continue to be "releases" of "hazardous substances" from those facilities, within the meaning of CERCLA § 101(14) and (22), 42 U.S.C. § 9601(14) and (22).

24. The State of Montana has incurred and will continue to incur costs of responding to the releases and threatened releases of hazardous substances from the facilities including "removal" and "remedial actions" as those terms are defined in CERCLA § 101(23) and (24), 42 U.S.C. § 9601(23) and (24).

25. ARCO is a responsible party within the meaning of CERCLA § 107(a), 42 U.S.C. § 9607(a) because it is the owner or operator of the facilities, it or its predecessors-in-interest owned or operated the facilities at the time of disposal of the hazardous substances, it or its predecessors-in-interest contracted, agreed or otherwise arranged for the disposal or treatment or transport for disposal or treatment of hazardous substances at the facilities, and/or it or its predecessors-in-interest accepted hazardous substances for transport to the facilities.

26. The natural resources which have been and continue to be injured, destroyed or lost by the releases of hazardous substances from the facilities include land, fish, wildlife, air, water, ground water, drinking water supplies and other such "natural resources" as that term is defined in CERCLA § 101(16), 42 U.S.C. § 9601(16).

27. ARCO is liable to the State of Montana under CERCLA § 107(a), 42 U.S.C. § 9607(a), for damages for the injury, destruction or loss of natural resources associated with the releases of hazardous substances from the facilities, including, but not limited to, the cost of restoration and replacement of such natural resources and the reasonable cost of assessing such injury, destruction or loss.

SECOND CLAIM FOR RELIEF

(CECRA)

28. The State of Montana hereby incorporates by reference the allegations set forth in paragraphs 1 to 27 as if fully set forth herein.

29. The above-referenced sites include numerous "facilities" within the meaning of CECRA, Mont. Code Ann. § 75-10-701(4).

30. There have been and continue to be "releases" of "hazardous or deleterious substances" from those facilities, within the meaning of CECRA, Mont. Code Ann. § 75-10-701(6) and (11).

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31. The State of Montana has incurred and will continue to incur costs of responding to the releases and threatened releases of hazardous and deleterious substances from the facilities including "remedial action costs" as that term is defined in CECRA, Mont. Code Ann. § 75-10-701(15).

32. ARCO is a responsible party within the meaning of CECRA, Mont. Code Ann. § 75-10-715 because it is the owner or operator of the facilities, it or its predecessors-in-interest owned or operated the facilities at the time of disposal of the hazardous or deleterious substances, it or its predecessors-in-interest generated, possessed, or were otherwise responsible for and contracted, agreed or otherwise arranged for the disposal or treatment or transport for disposal or treatment of hazardous or deleterious substances at the facilities, and/or it or its predecessors-in-interest accepted hazardous or deleterious substances for transport to the facilities.

33. The natural resources which have been and continue to be injured, destroyed or lost by the releases of hazardous or deleterious substances include land, fish, wildlife, air, water, ground water, drinking water supplies and other such "natural resources" as that term is defined in CECRA, Mont. Code Ann. § 75-10-701(7).

34. ARCO is liable to the State of Montana under CECRA, Mont. Code Ann. § 75-10-715 for damages for the injury, destruction or loss of natural resources associated with the releases of hazardous or deleterious substances from the facilities, including, but not limited to, the cost of restoration and replacement of such natural resources and the reasonable cost of assessing and enforcing a claim for such injury, destruction or loss.

WHEREFORE, the State of Montana demands judgments against ARCO as follows:

a. The State of Montana seeks a declaratory judgment pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 9613(g)(2) that ARCO is a liable party pursuant to CERCLA § 107, 42 U.S.C. § 9607 and CECRA, Mont. Code Ann. § 75-10-715.

b. The State of Montana seeks a judgment against ARCO for damages for injuries to the state's natural resources;

c. The State of Montana seeks a judement against ARCO for all reasonable costs of assessing and enforcing its claim for such damages, including attorney's fees, enforcement costs, consultant fees, expert witness fees, and all other damages, costs or expenses recoverable under the law;

d. The State of Montana seeks a judgment against ARCO for interest pursuant to law, including CERCLA § 107(a), 42 U.S.C. § 9607(a); and

e. The State of Montana seeks such other and further relief as the court deems just and proper.

Dated this 1 day of October, 1990.

STATE OF MONTANA

By _____
Katherine J. Orr
Special Assistant Attorney General
Department of Health and
Environmental Sciences
Legal Section
Cogswell Building
Helena, Montana 59620
Telephone: (406) 444-2630

By _____
Kevin M. Ward
Special Assistant Attorney General
Cogswell and Eggleston, P.C.
1700 Lincoln Street, Suite 3500
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Telephone: (303) 861-2150

CERTIFICATE OF MAILING

The undersigned hereby confirms that he has forwarded by United States mail, prepaid, copies of the foregoing document to the following persons at the addresses listed under their names:

URBAN L. ROTH
JOHN P. DAVIS
SHELLEY A. HOPKINS
Poore, Roth & Robinson, P.C.
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Robert J. Thomas

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Appendix B. Case Scheduling Order (August 20, 1990).

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LEGAL DIVISION

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

FILED

AUG 20 1990

LOU ALEKSICH, JR., Clerk

By ....

Deputy Clerk

****

STATE OF MONTANA ex rel.,
Dept. of Health and
Environmental Sciences and
Department of Fish, Wildlife
and Parks,

Plaintiff,

CV 83-317-H-CCL

-v-

ORDER

ANACONDA MINERALS COMPANY,
a Division of Atlantic
Richfield Company,

Defendant.

****

Before the court are the parties' vastly differing proposals for management of this action. Over six years ago, Plaintiff State of Montana (State) filed its claim against Defendant Anaconda Minerals Company, now Atlantic Richfield Company (ARCO), pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) for recovery of damages for injury to, destruction of, or loss of natural resources in the Upper Clark Fork River Basin. The site is listed on the National Priority list for Superfund sites and is one of the largest, if not the single largest, Superfund site in the country. By stipulation of

the parties, the court issued a stay of all proceedings to allow for remedial investigations and preparation of feasibility studies. ARCO moved to lift the stay arguing that sufficient information had been collected through the studies.

The court granted defendant's motion to lift the stay in order to proceed with this litigation and requested proposed case management orders from the parties which have been filed.

Plaintiff proposes a case management schedule that follows the geographic divisions of the Superfund site. After the Clark Fork Study Area had been listed, it was separated into four seemingly logical sites: Milltown Reservoir near East Missoula, Montana; Anaconda Smelter Facility at Anaconda, Montana; Pole Trading Plant on the southwest edge of the city of Butte; and Silver Bow Creek Site which encompasses some 150 square miles and four counties stretching from Butte to Milltown Reservoir.

The State proposes that the scheduling order allow for consideration of each site separately because the operations and source of damages varied from site to site causing liability, and the elements of proof thereon, to be significantly different.

In addition, the State seeks to divide each of the four sites into three stages of discovery on each of the following major issues: (1) analysis of liability, e.g., who owned the

facility or facilities which released the hazardous substance; (2) analysis of recoverable costs incurred for cleanup or "response actions;" and (3) assessment of injury to natural resources caused by hazardous substances.

ARCO proposes discovery on all aspects of the case including liability and damages at all sites to be completed in 2 1/2 years, with motions for joinder of parties, together with amendments to be filed in one year. ARCO also requests that the court require plaintiff to identify its experts by January, 1991, with defendant to identify its experts six months later.

The court having fully considered all the arguments of the parties finds that ARCO's general proposal is a more desirable method to at least begin discovery in this case. Although the State's proposed schedule has some benefits, it assumes a luxury of time that may not be in the best interest of the public which rightfully expects a timely resolution of this litigation. Moreover, the State's division of this case into four separate cases according to geographic boundaries further divided into three subdivisions of issues leaves little room for potentially early agreement or settlement as to a particular issue or site.

Accordingly, the parties shall adhere to the following pretrial schedule:

1. Discovery shall begin immediately on all aspects of the case, including liability and damages at all sites. Discovery shall be completed no later than May 31, 1993. The duty to supplement discovery beyond the preceding date shall be governed by 26(e) Fed. R. Civ. P.

2. Plaintiff shall file its motion, if any, for leave to file an amended complaint, lodging a proposed amended complaint on or before October 1, 1990. Simultaneously therewith, the state shall file motions, if any, for consolidation and/or bifurcation of the case.

3. Defendant shall file any response to Plaintiff's motions identified in paragraph 2 together with any Rule 12 defenses or objections, on or before November 2, 1990.

4. Defendant shall file its motion for joinder of parties, if any, on or before June 3, 1991.

5. Plaintiff shall identify any expert witness it intends to call at trial on or before December 16, 1991. Defendant shall identify its expert witnesses on or before May 13, 1992. Simultaneous with the plaintiff's and defendant's identification of expert witnesses expected to be called at trial, the identifying party shall state the subject matter on which the expert is expected to testify and the substance of the facts and

opinions to which the expert is expected to testify, as well as a summary of the grounds for each opinion. All discovery concerning expert witnesses who may be called at trial shall be completed by December 16, 1992. Failure to comply with this paragraph may result in exclusion of any undisclosed expert's testimony at trial.

6. All motions not identified in paragraphs 2, 3, and 4 above, including motions in limine and motions for summary judgment, shall be filed on or before July 31, 1993. Briefing shall be in accordance with Local Rule 220-1. No new parties may be joined or the pleadings amended after July 31, 1993, except by leave of court and for good cause shown.

7. The parties shall file joint status reports every six months with the first report due February 1, 1991. The written report shall indicate the following:

(a) discovery that has been completed, (b) interrogatories to be answered, (c) depositions to be taken, (d) expert witnesses who will be called, and (e) any problems anticipated in the discovery process, or in the management of the case, together with the current status of settlement negotiations. Such report shall be in pleading form. If the court deems it necessary from a review of the status reports that counsel appear before the

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court, a conference will be set down.

8. Counsel for plaintiff shall convene an attorney's conference during the week of February 14, 1994, for the purpose of completing the final pretrial order in the form prescribed by local rule.

9. The final pretrial order, in prescribed form, signed by all counsel for all parties, shall be lodged with the court by April 30, 1994. This order must be lodged by this date regardless of whether pending motions remain undecided by the court.

The clerk is directed forthwith to notify counsel of entry of this order.

Done and dated this 17 day of August, 1990.

CHARLES C. LOVELL
United States District Judge

APPENDIX C: RECENT COURT RULINGS ON THE DOI NRDA REGULATIONS

On July 14th, 1989, the U.S. Court of Appeals for the District of Columbia circuit ruled on two sets of motions involving the DOI NRDA regulations. The first cases involved challenges to the overall procedures promulgated by DOI and the Type B regulations in specific[1] and is referred to as Ohio v. U.S. DOI, No 86-1529. The second set of motions involved a challenge to the Type A regulations, and is referred to as Colorado v. U.S. DOI, No. 87-1265.

Ohio v. U.S. DOI

The court rulings on these motions address many substantive concerns in the DOI regulations. The Court ruled on the basis of whether Congress had spoken directly on, or had an intent on, the precise question at issue. If Congress had spoken, or had an intent, then that was to be followed. If Congress had not so acted, then the Court assumed that Congress implicitly delegated to the agency the power to make policy choices that "represent a reasonable accommodation of conflicting policies that were committed to the agency's care by the statue." Ten basic issues were raised, but along the way, the Court indicated comments on other related concerns also of interest. We review the ruling (from our lay interpretation) in the order taken by the court, but in a very abbreviated manner. These ruling are of importance to trustees as they affect requirements trustees must meet to obtain rebuttable presumption. Trustees may pursue other procedures, but without obtaining rebuttable presumption in federal hearings.

The "Lesser-Of" Rule. The DOI had developed regulations consistent with a perception of common law and economic efficiency arguments that suggested damages should not exceed the lesser of use values, or of restoration or replacement costs. Petitioners had argued that this was inconsistent with the law, and moreover, would lead to little restoration or damages as use values were often unmeasurable for natural resources. The Court determined that Congress intended for restoration (used here to refer to restoration, replacement or the acquiring of a like resource) to be the primary remedy, (the resource should be made whole again) and therefore indicated restoration costs were to be a primary measure of damage. The Court also indicated that while restoration costs are the basic measure, damage can exceed restorations costs in some cases, and indicated that lost interim or residual use may also be included into the damage calculation; i.e., "These directives are in harmony; restoration is the basic measure of damages, but damages can exceed restoration cost in some cases" (Page 36 Ohio V. U.S. DOI). The Court, however, allowed some latitude to the DOI on this issue indicating "This is not to say that DOI may not establish some class of cases where other consideration -- i.e., infeasibility of restoration or grossly disproportionate costs to use value -- warrant a different standard." (Page 55).

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[1] CFR 43 Section 11.10 - 11.93 (1987).

The Public Ownership Rule. This issue revolves around the definition of public ownership requirements for a trustee to seek damages. This term is used to refer to properties in which the resource is "managed by, held in trust by, appertaining to, or otherwise controlled by" the trustee. The arguments centered around how far this interpretation could extend in terms of a public trustee obtaining natural resource damage (or restoration costs) for damage to natural resources on privately owned land. While the court largely sided with the DOI, the DOI's own commentary about the regulations were not deemed to be clear and therefore, "(the Court remanded) the record to the agency for a clarification of its own interpretation of its own regulations as far as they may extend to lands not owned by the government." (Page 60)

The Committed Use Requirement. The DOI regulations required computation of use values only for documented actual or committed uses of the resource. In combination with the "Lesser-Of Rule," this severely limited potential damage claims in that some resources may not have well documented committed future uses, and therefore use values would often likely be less than restoration costs. As a result, restoration would be unlikely and small damages might be paid. By overturning the "Lesser-Of Rule" approach, the Court also reduced the seriousness of the committed use rule impact on damage assessments. The Court ruled that, given their prior ruling, that the use of committed uses to calculate damage beyond restoration was not addressed by Congress and an acceptable procedure for DOI to adopt.

Hierarchy of Assessment Methods. Petitioners argued that the DOI had developed a hierarchy of economic valuation methods that was unduly restrictive in requiring either the exclusive use, or predominant use, of market methods where they existed. The court concurred. Moreover, the court addressed several related definitional concerns. The following quotes are of importance to an economic assessment:

> ... Congress intended the damage assessment regulations to capture fully all aspects of loss. (page 65)
>
> In this vein, we instruct DOI that its decision to limit the role of non-consumptive values, such as option and existence value, in the calculation of use values rests on an erroneous construction of the statue. (Page 66)
>
> Second, even under its reading of section 301(c), DOI has failed to explain why option and existence values should be excluded from the category of recognized use values. Indeed, the CERCLA 301 Project Team draft referred to option and existence values as "non-consumptive use values". Option and existence values may represent "passive" use. but they nonetheless reflect utility derived by humans from a resource, and thus, prima facie, ought to be included in a damage assessment.

> DOI is entitled to rank methodologies according to its view of their reliability, but it cannot base its complete exclusion of option and existence values on an incorrect reading of the statue.

The Contingent Valuation Method. Industry petitioners raised many concerns with the contingent valuation method and sought to have it removed as an allowable valuation technique on grounds that it is inharmonious with common law damage assessment principles; the method is considerable less than a "best available procedure" because (they claimed) it is imprecise, untested and has built-in biases that produce overestimation; and the method is arbitrary and capricious and violative of the due process rights of a potentially responsible party. The court ruled against each of these challenges. The Court added:

> It cannot be said that DOI's decision to adopt CV was not made intelligently and cautiously. ... It is recognized and acknowledged that CV needs to be "properly structured and professionally applied." ... We find DOI's promulgation of CV methodology reasonable and consistent with congressional intent, and therefore worthy of deference. (page 94)
>
> Similarly, we find wanting industry petitioners' protest that CV does not rise to the status of a "best available procedure" because willingness-to-pay -- a factor prominent in CV methodology -- can lead to overestimation by survey respondents. (page 96)
>
> We find no cause to overturn DOI's considered judgment that CV methodology, when properly applied, can be structured so as to eliminate undue upward biases.

Other Elements of the Ruling. Many other elements were considered, but do not merit as lengthy a comment. Among these, the Court:

- Upheld the DOI's right to use a discount rate and to select an appropriate rate.
- Upheld that damages paid are to be used to restore, replace or acquire like resource or resource services.
- Denied that PRP's were being given preferential treatment in being allowed to comment and, at the trustees discretion, conduct natural resource damage assessments, whereas the public has fewer such rights.
- Upheld DOI's interpretation on trustee compensation for "reasonable assessment costs"
- Upheld DOI's procedures for determining "Acceptance Criteria" for provin injury to biological resources.
- Upheld DOI's interpretation on limitations of trustees to obtain punitive damages.

Summary. The Court clearly directs DOI to reconstruct their regulations taking account the Court's rulings. These ruling put the focus of natural resource damage assessments upon:

- Proving that restoration costs are not disproportionate to the social value of the injury, rather than strictly being no greater than the value of injury.
- Quantifying appropriate restoration costs, and quantifying residual damage before, during and after the restoration.
- Applying the best available methods, including contingent valuation, insofar as the application can be demonstrated to be in a professional manner.
- Estimating all values. This includes use, option, bequest and existence values. The court referred to these values as 'use' and 'passive use.'
- Determining the time sequence of restoration costs and use (active and passive) value impacts to correctly apply discount rates in the assessment.

These points are consistent with how RCG/Hagler, Bailly, Inc. has conducted, and continues to conduct, natural resource damage assessments.

Colorado v. U.S. DOI

In this ruling, the Court reaffirmed the above mentioned limitations in the overall DOI procedures identified in Ohio v. U.S. DOI as also applying to Type A assessments. However, the plaintiffs motions also questioned the authority of the DOI to promulgate Type A procedures, as has initially begun. The Court ruled this was the intent of Congress and supported DOI's position to proceed with developing these procedures.

EXECUTIVE SUMMARY

CLARK FORK BASIN

NATURAL RESOURCE DAMAGE ASSESSMENT AND PROGRAM

STRATEGY AND FUNDING REQUEST DOCUMENTATION

Submitted in support of the:

Governor's Budget

January, 1991

Prepared by:

Montana Department of Health and Environmental Sciences

With Assistance of:

Montana Governor's Office

Contact:

Dick Pedersen, MDHES 444-1373

January 11, 1991

CLARK FORK BASIN

NATURAL RESOURCE DAMAGE ASSESSMENT AND PROGRAM

STRATEGY AND FUNDING REQUEST DOCUMENTATION

EXECUTIVE SUMMARY

The State of Montana filed a natural resource damage claim December 22,1983 against the Atlantic Richfield Company (ARCO) to recover damages for injuries to natural resources in the Clark Fork River Basin. The suit was stayed pending completion of remedial investigation and feasibility studies being conducted as part of the "Superfund" process. ARCO petitioned the court in December of 1989 to lift the stay and proceed with the claim. On August 17, 1990, U.S. District Judge Charles C. Lovell issued a schedule ordering the parties in the lawsuit to complete discovery on all aspects of the case. The final pretrial order must be filed with the court by April 30, 1994.

NATURAL RESOURCE DAMAGE CLAIM
COURT-ORDERED TIME FRAME

ITEM	DATE
1. State files motions	10/01/90
2. Arco files response to motions	11/02/90
3. Arco files motions to joinder parties	06/03/91
4. State identifies expert witnesses	12/16/91
5. Arco identifies expert witnesses	05/13/92
6. Discovery concerning expert witnesses completed	12/16/92
7. Discovery on all aspects completed	05/31/93
8. State Counsel Convene, to complete final pretrial	02/14/94
9. Final pretrial order	04/30/94

This schedule gives the State of Montana fewer than 2 years to complete a required and detailed Natural Resource Damage Assessment (NRDA) on the largest Superfund complex in the country. This report provides information and documentation for $4,956,059.00 for full funding by the 1991 Montana State Legislature for technical, legal, and administrative activities relating to Montana's natural resource damage litigation concerning sites in the Clark Fork River Basin and other potential sites in the State of Montana.

Damages in the Clark Fork case are expected to be in at least the tens of millions of dollars.

REMEDY VS. DAMAGES

The overriding objective of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) is to ensure that parties responsible for hazardous waste releases bear the cost of cleanup (remedy) and pay for natural resource damages (damages).

Ex. 5
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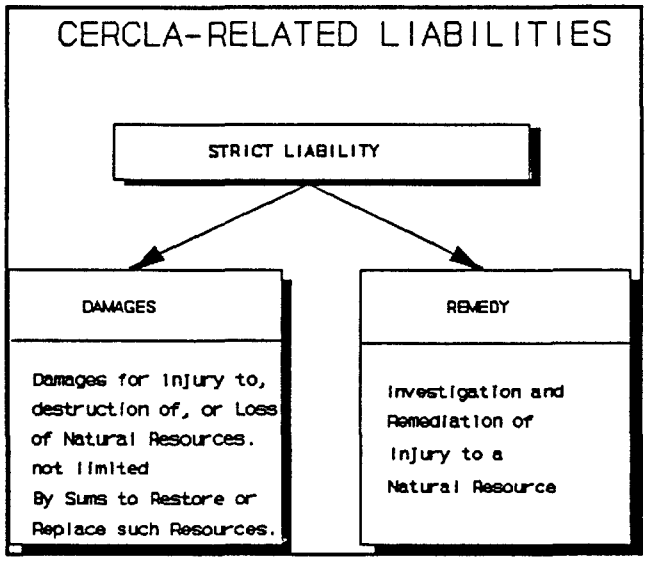


A **remedy** case refers to the investigation and remediation of injury to a natural resource, whereas a **damage** case concerns damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing such injury, destruction, or loss.

The Department of Health and Environmental Sciences has been and will continue to be the lead state agency in an oversight and coordination role for the remedy case. The lawsuit and budget request reflect the damages portion of the CERCLA case.

The recovery of damages has two components:

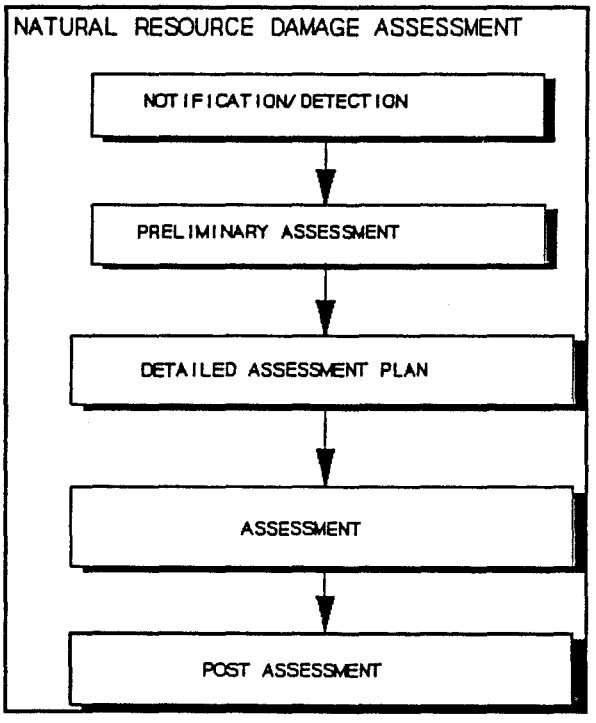
Response Costs. Agency costs, contractor costs, and legal costs incurred while assessing damages (which are the costs in this request) are recoverable under the damage case. Response costs recovered can be returned to the general fund. The probability of recovery of these costs are extremely high but not absolute.

Damages. These funds, by law, are restricted and used only to restore, replace or acquire like resources or resource services. At present, such damages cannot be deposited in the general fund. Examples of uses of these funds in past cases include:

- Buying and operating special resource areas such as wildlife sanctuaries and park areas.
- Buying fishing access in the affected area.
- Developing fish hatchery and stocking programs.
- Habitat enhancement programs.
- Natural resource public education programs.

Because the court ordered damage case will precede the remedy selection process, increased costs for the NRDA will be incurred. Greater technical efforts will be necessary than might otherwise have occurred and the exact level of remedy will not be known when the NRDA is completed.

NATURAL RESOURCE DAMAGE ASSESSMENT



The United States Department of Interior (DOI) was given the responsibility to promulgate rules to implement NRDA cases and establish guidelines for conducting assessments. The State of Montana intends to follow and be at least as comprehensive as the DOI guidelines for the Clark Fork assessment.

The NRDA for the Clark Fork River Basin will be carefully designed to obtain only that exact information required for the damage claim and will avoid unnecessary scientific assessments. To ensure this, the following three phases are to be implemented:

Phase I. Preliminary Assessment and Detailed Research Plan.

This phase reviews case statutes and existing research, develops a case strategy, provides a careful preliminary assessment of potential damage magnitudes, sets priorities for scientific and economic work, and develops a detailed research plan to meet the case strategy and objectives.

Phase II. Detailed Scientific and Economic Investigations.

This phase completes the NRDA and has three components:

Management Support. The scientific and economic studies must be fully integrated. This requires a technical contractor working with the state's program coordinator and chief legal counsel.

Physical Injury Assessment Studies. The chemical, temporal, and geographic link between the release of contaminants and the natural resource injury must be determined. This research will be done in a manner useful to economic valuation, and involves surface water, fisheries and aquatic life, wetlands, groundwater, soils, vegetation, and air.

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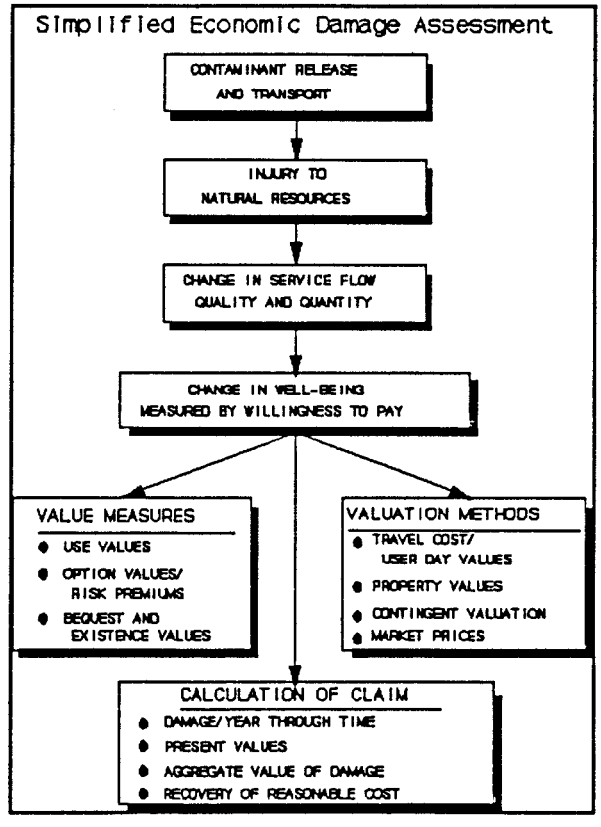
Economic Valuation Studies. Available and new research will be used to assess the level and quality of use to the resource impacted in the past and future, and assign economic values to behavioral responses. A simplified economic damage assessment is shown below:

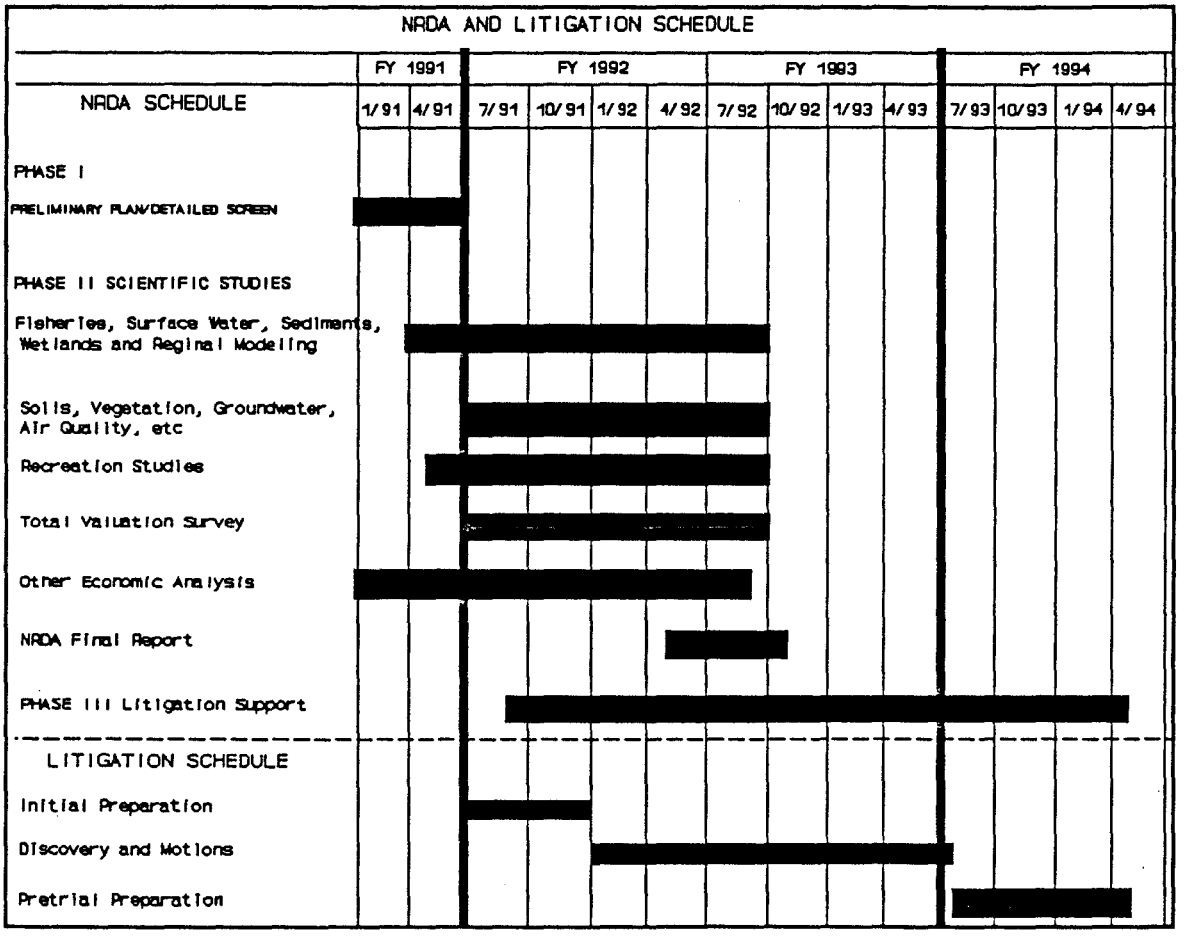


Value measures will include **use values**, which are values related to the impact of ones direct use of a resource, and **non-use values**, which includes motives to bequest the resource for use now and in the future, and to protect the existence of the resource in an uncontaminated state.

Phase III. NRDA Support to Litigation.

The NRDA must be conducted in such a manner as to increase the level of scientific defensibility and court acceptance and must be able to withstand intense attack in the courtroom. The NRDA will be coordinated with the litigation process (on-going case strategy; selection and preparation of expert witnesses; depositions; and trial preparation and testimony; etc.).

The Clark Fork NRDA and litigation schedule is shown below. As can be seen, the assessment is designed to conform to the requirements of the court ordered schedule.



STATE RESOURCE REQUIREMENTS

The State of Montana is responsible for coordinating and managing assessments including the Clark Fork assessment and lawsuit. When considering the budget, three program elements are established in order to complete assessments and successfully proceed with the Clark Fork lawsuit:

Management and Coordination: Management and coordination of natural resource damage assessments which includes completion of the assessment on the Clark Fork River Basin requires coordination with many state and federal agencies, contractors, private industry, and the public. In order to have effective management and coordination, the program staff should include a coordinator, two technical positions (environmental specialist and economist), and an

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administrative assistant. This staff will initially work on the Clark Fork NRDA and lawsuit, but will also be available for NRDA work on other Superfund and contamination sites that potentially have natural resource injury and damages.

State Litigation Team: Litigation for a case of this magnitude requires extensive legal effort by the State of Montana. Identification of expert witnesses through discovery, depositions, case management, and assisting outside counsel in preparation for trial will require a state legal staff of 2 attorneys and 2 para-legals in fiscal year 1992 and 3 attorneys and 2 para-legals in fiscal year 1993 and beyond.

Contracting: Completing the NRDA and pursuing the natural resource damage claim will require contracting with technical and legal professional consultants with expertise in natural resource damage assessments or litigation.

The Clark Fork NRDA will require exhaustive research in the physical science and economic area. The state will not have the manpower or necessary expertise, except in an oversight and management role, to complete these tasks. Outside contracting for this effort is absolutely necessary to ensure the NRDA is completed on-time and is scientifically defensible.

The Clark Fork litigation will also require retained counsel with significant environmental and litigation expertise in this complex litigation process. Particular expertise with reference to CERCLA and the recovery of natural resource damages is needed. The state does not currently have this expertise, and cannot reasonably and expeditiously add such expertise without the guidance of outside contract legal services.

BUDGET REQUEST

The following table summarizes the budget needs for the described effort. The table is broken down into: Contract Scientific and Economic Services, Contract Legal Services, and State Agency Costs. Although broken down by fiscal year, it is important to note identified research categories cannot clearly be defined on a fiscal year basis. Therefore, it is extremely difficult to budget on a fiscal year basis and necessary to seek a biennial appropriation.

Table 1

Summary of Budget Request

	FY 1991	FY 1992	FY 1993	FY 1994
A. CONTRACTOR SCIENTIFIC AND ECONOMIC SERVICES				
Phase I. Preliminary Screen/Detailed Plan				
General Support/Management	$ 30,000			
Economist	$ 60,000			
Physical Sciences	$ 60,000			
Phase I Total	$ 150,000	$0	$0	$0
Phase II. Quantification of Injury/Damages				
Technical Management/Coordination	$ 20,000	$ 110,000	$ 70,000	
Economics				
- Recreation Studies		$ 200,000	$ 100,000	
- Total Valuation Study		$ 200,000	$ 100,000	
- Air, Ground Water, Soils, etc		$ 75,000	$ 25,000	
- Restoration/Replacement of Services		$ 75,000	$ 25,000	
- NRDA Summary Report		$ 40,000	$ 60,000	
Physical Sciences				
- Fisheries, Surface Water, Stream Sediments, Aquatic Life, and Wetlands Studies (includes regional modeling)	$ 150,000	$ 550,000	$ 300,000	
- Ground Water Studies		$ 150,000	$ 150,000	
- Soils and Vegetation		$ 150,000	$ 100,000	
- Air Quality		$ 100,000	$ 50,000	
Phase II Total	$ 170,000	$1,650,000	$ 980,000	$0
Phase III. Litigation Support				
Management		$ 50,000	$ 50,000	$ 50,000
Economics		$ 50,000	$ 50,000	$ 50,000
Physical Sciences		$ 50,000	$ 75,000	$ 75,000
Phase III Total	$0	$ 150,000	$ 175,000	$ 175,000
TOTAL (Phase I + II + III)	$320,000*	$1,800,000	$1,155,000	$ 175,000

* $50,000 obtainable from the $200,000 existing Fiscal Year 1991 budget

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Table 1
(cont.)

Summary of Budget Request

	FY 1991	FY 1992	FY 1993	FY 1994
B. CONTRACT LEGAL SERVICES				
Initial Preparation		$ 135,000		
Discovery and Motions		$ 301,500	$ 603,000	$50,250
Pretrial Preparation				$185,625
TOTAL CONTRACT LEGAL SERVICES	$0	$ 436,500	$ 603,000	$235,875
C. STATE AGENCY COSTS				
Salaries + Benefits + Operating				
Program Staff		$ 211,524	$ 195,167	$195,167
Legal Staff		$ 193,002	$ 211,866	$211,866
Computer Document Management		$ 100,000	$ 50,000	
Interagency Support		$ 15,000	$ 15,000	
TOTAL STATE AGENCY COSTS	$0	$ 519,526	$ 472,033	$407,033
TOTAL COSTS ALL CATEGORIES	$320,000	$2,756,026	$2,230,033	$817,908
EXISTING GOVERNOR'S BUDGET		$1,000,000	$1,000,000	
ADDITIONAL BUDGET NEED		$1,756,026	$1,230,033	

TOTAL COST - FY 91 + FY 92 + FY 93 + FY 94 = $6,123,967

TOTAL NEED FOR FY 92 + FY 93 = $4,986,059

ADDITIONAL NEED FOR NATURAL RESOURCE DAMAGE PROGRAM BUDGET = $2,986,059

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PRELIMINARY NATURAL RESOURCE DAMAGE ASSESSMENT REQUIREMENTS

An appropriation of $270,000 by the 1991 Montana State Legislature is necessary to complete a Preliminary Assessment, prepare a Detailed Assessment Plan, and begin fishery studies necessary for a Natural Resource Damage Assessment (NRDA) in the Clark Fork River Basin. The NRDA is required to support the State of Montana's Natural Resource Damage claim against the Atlantic Richfield Company (ARCO) concerning four "Superfund" sites. The claim is to recover damages for injury to, destruction of, or loss of natural resources due to the release of hazardous substances. Damages can be expected to be in at least the tens of millions of dollars. **Costs for conducting a reasonable assessment, including these costs, are recoverable.**

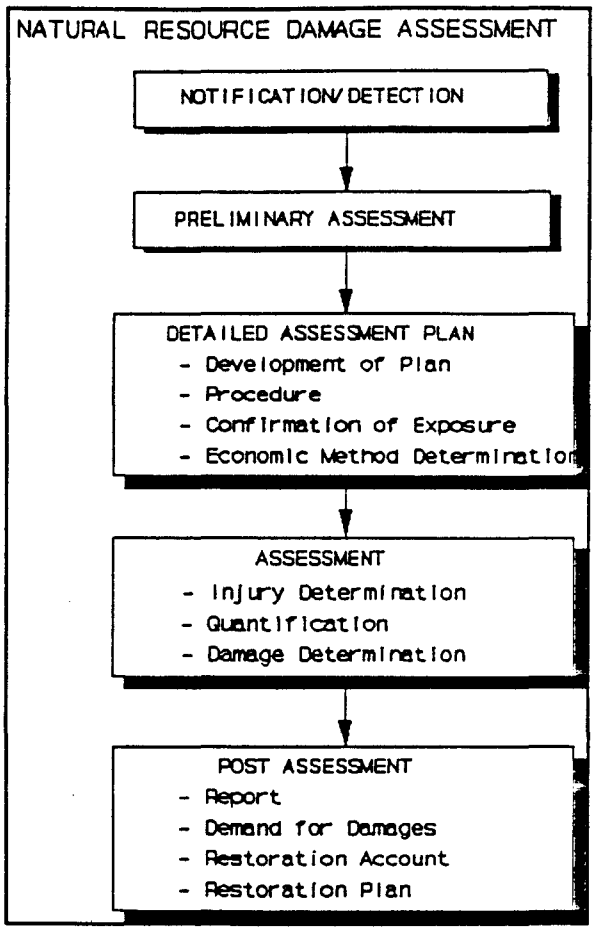
LAWSUIT

The lawsuit, filed on December 22, 1983, was stayed pending completion of technical "Superfund" studies. In December of 1989 ARCO successfully petitioned the court to lift the stay and proceed with the claim prior to completion of the studies. On August 24, 1989 the U.S. District Court issued a schedule which ordered the parties in the lawsuit to proceed with the case. The following schedule gives the State of Montana a little less than 2 years to complete a required and detailed NRDA on the largest "Superfund" complex in the country.

NATURAL RESOURCE DAMAGE CLAIM
COURT-ORDERED TIME FRAME

ITEM	DATE
1. State files motions	10/01/90
2. Arco files response to motions	11/02/90
3. Arco files motions to joinder parties	06/03/91
4. State identifies expert witnesses	12/16/91
5. Arco identifies expert witnesses	05/13/92
6. Discovery concerning expert witnesses completed	12/16/92
7. Discovery on all aspects completed	05/31/93
8. State Counsel Convene, to complete final pretrial	02/14/94
9. Final pretrial order	04/30/94

NRDA



The NRDA follows a very precise and technical procedure outlined in Department of Interior Regulations. The appropriation includes $150,000 to complete a Preliminary Assessment and prepare a Detailed Assessment Plan which are initial components of the NRDA and, given the court ordered time frame, must be completed by June 30, 1991. These initial components consist of the following steps:

1. Case Review
2. Preassessment Screen
3. Determination of Injured Resource
4. Determination of Temporal Scope of Injury
5. Preliminary Quantification of Damages
6. Recommendations for Research Objectives and Actions
7. Detailed Research Plan

FISHERY

Damage to fisheries is a critical component of the NRDA and field work to document this damage must begin in April of 1991 in order to collect fishery population information that is comparable to that presently available. $120,000 of the appropriation is for this effort and will be used to accomplish the following tasks.

- Identification of potential control sites, data base gaps, and additional study requirements.
- Review of scientific literature.
- Development ofsampling program.
- Acquisition of initial field data.

Completing the steps outlined above will require the use of outside contractors with expertise in Natural Resource Damage Assessments and fisheries. These contractors have been selected and are prepared to proceed once funding is available.

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Gen. Litigation

Table 1

Summary of Budget Request

	FY 1991	FY 1992	FY 1993	FY 1994
A. CONTRACTOR SCIENTIFIC AND ECONOMIC SERVICES				
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Economics				
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- Soils and Vegetation		$ 150,000	$ 100,000	
- Air Quality		$ 100,000	$ 50,000	
Phase II Total	$ 170,000	$1,650,000	$ 980,000	$0
Phase III. Litigation Support				
Management		$ 50,000	$ 50,000	$ 50,000
Economics		$ 50,000	$ 50,000	$ 50,000
Physical Sciences		$ 50,000	$ 75,000	$ 75,000
Phase III Total	$0	$ 150,000	$ 175,000	$ 175,000
TOTAL (Phase I + II + III)	$320,000*	$1,800,000	$1,155,000	$ 175,000

* $50,000 obtainable from the $200,000 existing Fiscal Year 1991 budget

Table 1
(cont.)

Summary of Budget Request

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Salaries + Benefits + Operating				
Program Staff		$ 211,524	$ 195,167	$195,167
Legal Staff		$ 193,002	$ 211,866	$211,866
Computer Document Management		$ 100,000	$ 50,000	
Interagency Support		$ 15,000	$ 15,000	
TOTAL STATE AGENCY COSTS	$0	$ 519,526	$ 472,033	$407,033
TOTAL COSTS ALL CATEGORIES	**$320,000**	**$2,756,026**	**$2,230,033**	**$817,908**
EXISTING GOVERNOR'S BUDGET		$1,000,000	$1,000,000	
ADDITIONAL BUDGET NEED		$1,756,026	$1,230,033	

TOTAL COST - FY 91 + FY 92 + FY 93 + FY 94 = $6,123,967

TOTAL NEED FOR FY 92 + FY 93 = $4,986,059

ADDITIONAL NEED FOR NATURAL RESOURCE DAMAGE PROGRAM BUDGET = $2,986,059

EXHIBIT 6
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MANSION MAINTENANCE PROGRAM

Budget Item	Actual Fiscal 1990	Appropriated Fiscal 1991	- - Current Fiscal 1992	Level - - Fiscal 1993	Change 1991-93 Biennium
FTE	1.50	1.50	1.50	1.50	.00
Personal Services	27,053	33,075	31,952	31,946	6.27%
Operating Expenses	25,136	26,356	26,697	27,456	5.17%
Equipment	11,845	500	0	0	-100.00%
Total Program	$64,034	$59,931	$58,649	$59,402	-4.77%
Fund Sources					
General Fund	64,034	59,931	58,649	59,402	-4.77%
Total Funds	$64,034	$59,931	$58,649	$59,402	-4.77%

Program Description

The Mansion Maintenance program is responsible for maintenance of the Governor's official residence.

Current Level Budget

The Mansion Maintenance current level budget decreases nearly 5 percent compared to the previous biennium due primarily to one-time expenditures in fiscal 1990 for replacing linens and tableware and for carpet cleaning. Personal services increase due to the fiscal 1991 pay plan increase which continues into the 1993 biennium. Operating expenses increase due to inflationary adjustments. No equipment was requested for the 1993 biennium.

EXHIBIT 7
DATE 1-16-91

3101 03 00000

AIR TRANSPORTATION PROGRAM

Budget Item	Actual Fiscal 1990	Appropriated Fiscal 1991	- - Current Fiscal 1992	Level - - Fiscal 1993	Change 1991-93 Biennium
FTE	1.00	1.00	1.00	1.00	.00
Personal Services	28,816	36,845	40,003	40,232	22.20%
Operating Expenses	77,506	80,816	84,095	110,145	22.69%
Equipment	247,687	237,432	184,645	0	-61.94%
Total Program	$354,009	$355,093	$308,743	$150,377	-35.25%
Fund Sources					
General Fund	354,009	355,093	308,743	150,377	-35.25%
Total Funds	$354,009	$355,093	$308,743	$150,377	-35.25%

Program Description

The Air Transportation program is responsible for providing the Governor with safe and reliable air transportation.

Current Level Budget

The Air Transportation 1993 biennium current level decreases over 35 percent compared to the previous biennium, due primarily to the payoff of three-year financing of a new aircraft in fiscal 1992. While personal services costs appear to increase over 22 percent, actual fiscal 1990 costs were $8,600 higher than shown. These additional personal services costs were paid from a supplemental appropriation obtained in fiscal 1990 for payment of the acquisition and debt service costs of the new aircraft. The supplemental appropriation is not reflected in fiscal 1990 costs. If total fiscal 1990 costs are included, personal services costs increase 8 percent due to the fiscal 1991 pay plan increase and workers' compensation insurance rate increases. The large increase in operating costs is due to cyclical costs of scheduled aircraft maintenance in fiscal 1993 and inflationary adjustments for higher fuel costs.

The budgeted flight hours for the 1993 biennium and actual flight hours for the Governor's aircraft for fiscal years 1988 through 1990 are shown in Table 1.

Table 1
Flight Hours - Governor's Aircraft

Fiscal Year	Flight Hours	Aircraft
	(Actual)	
1988	246	Duke
1989	220*	Duke
1990	216	King-Air
	(Budgeted)	
1992	220	King-Air
1993	220	King-Air

*Grounded part of year due to cracked engines.

AIR TRANSPORTATION PROGRAM

When the new aircraft was proposed to the 1989 legislature, the Governor's Office indicated that the King-Air could fly 20 percent faster than the Beechcraft Duke, reducing annual flight hours from 240 to 195.

Equipment includes payments for the new Beechcraft King-Air of $247,071 in fiscal 1990 (including some acquisition costs) and $184,600 each year in fiscal years 1991 and 1992. The actual cost of the new aircraft was $661,000 (including debt service and acquisition costs), which was $54,000 less than the maximum $715,000 authorized by the 1989 legislature. Since payments were higher in the first year than anticipated and lower in the remaining two years, a $52,500 supplemental in fiscal 1990 from the fiscal 1991 appropriation was used to offset the difference.

EXHIBIT 2
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3101 04 00000

OFFICE OF BUDGET & PROGRAM PLANNING

Budget Item	Actual Fiscal 1990	Appropriated Fiscal 1991	- - Current Fiscal 1992	Level - - Fiscal 1993	Change 1991-93 Biennium
FTE	19.00	19.00	19.00	19.00	.00
Personal Services	574,226	685,488	692,755	691,852	9.91%
Operating Expenses	155,358	163,200	123,317	158,754	-11.45%
Equipment	13,550	15,736	15,609	15,076	4.78%
Total Program	$743,134	$864,424	$831,681	$865,682	5.59%
Fund Sources					
General Fund	743,134	864,424	831,681	865,682	5.59%
Total Funds	$743,134	$864,424	$831,681	$865,682	5.59%

Program Description

The Office of Budget and Program Planning (OBPP) assists the Governor in the preparation and administration of the state budget. In addition, OBPP prepares and monitors revenue estimates and collections, prepares and publishes fiscal notes on proposed legislation and initiatives, and acts as approving authority for operational plan changes, program transfers, and budget amendments. OBPP acts as the lead executive branch agency for compliance with the federal Single Audit Act.

Current Level Budget

The OBPP 1993 biennium current level budget increases 5.6 percent over the previous biennium, due primarily to increased personal services costs. The nearly 10 percent increase in personal services reflects a high vacancy savings rate in fiscal 1990 and the fiscal 1991 pay plan increase that continues into the 1993 biennium. In addition, the cost of the budget director's position is not included in fiscal 1990 personal services as it was paid on a contract basis with the federal government. The total number of FTE remains the same, although one position was transferred to the Executive Office and one position was transferred from the Lt. Governor's Office to this program to perform the clearinghouse function. Operating expenses decrease over 11 percent due primarily to a one-time cost of $31,050 in fiscal 1990 for personal services done on a contract basis (the director's salary and some clerical assistance). Increases in fiscal 1991 and 1993 reflect higher session year costs for printing, postage, and computer processing. Reduced operating expenses in fiscal 1993 compared to fiscal 1991 are due to lower printing costs.

Equipment includes $26,810 for the biennium for equipment upgrades and $3,785 for computer software. The equipment upgrades include an increase in computer memory levels, a new printer, a back-up system, and replacement of older IBM model XT's. OBPP expended $32,540 in fiscal 1989 and $13,550 in fiscal 1990 for computer equipment and software. The fiscal 1991 appropriation includes $15,736 for computer equipment.

Executive Budget Modifications

Equipment Replacement

The agency has requested $4,000 general fund in fiscal 1992 to replace a copy machine purchased in 1984 that is experiencing excessive mechanical failures.

NASBO 1992 National Meeting

The agency has requested $10,000 general fund in the 1993 biennium for hosting the annual meeting of the National Association of State Budget Officers in Kalispell in July 1992.

see back

EXHIBIT 9
DATE 1-14-91

3101 09 00000

NORTHWEST REGIONAL POWER ACT

Budget Item	Actual Fiscal 1990	Appropriated Fiscal 1991	- - Current Fiscal 1992	Level - - Fiscal 1993	Change 1991-93 Biennium
FTE	6.50	6.50	6.00	6.00	-.50
Personal Services	222,276	264,847	259,976	259,585	6.66%
Operating Expenses	123,299	132,988	127,583	127,756	-.37%
Equipment	3,631	1,000	1,000	1,000	-56.81%
Total Program	$349,206	$398,835	$388,559	$388,341	3.86%
Fund Sources					
Federal Revenue Fund	349,206	398,835	388,559	388,341	3.86%
Total Funds	$349,206	$398,835	$388,559	$388,341	3.86%

Program Description

The Pacific Northwest Electric Power and Conservation Planning Council was created in 1981, pursuant to the Pacific Northwest Electric Power Planning and Conservation Act of 1980. The goals of the council, as outlined in the act, are to develop an electrical energy plan that will provide an efficient and adequate electric power supply for the region at the lowest possible cost, to protect and rehabilitate fish and wildlife resources in the region, and to encourage public involvement in regional decisions. The council is a regional agency made up of eight members, two each from the Pacific Northwest states of Montana, Idaho, Oregon, and Washington. These members are appointed by the Governors of the four states and approved by the respective state legislatures.

Current Level Budget

The council's 1993 biennium current level budget increases nearly 4 percent compared to the previous biennium, due to increases in personal services for vacancy savings in fiscal 1990 and the fiscal 1991 pay plan increase which continues into the 1993 biennium. These increases are partially offset by the elimination of a 0.5 FTE position that has been left vacant for the entire biennium to date. Operating expenses remain at fiscal 1990 actual expenditure levels with minor increases in contract services and adjustments for rent, audit, and other fixed costs. The budget includes $1,000 per year for replacement of office equipment.

The Northwest Power Planning Council is funded by the Bonneville Power Administration, a federal agency.

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3101 12 00000

LIEUTENANT GOVERNOR

Budget Item	Actual Fiscal 1990	Appropriated Fiscal 1991	- - Current Fiscal 1992	Level - - Fiscal 1993	Change 1991-93 Biennium
FTE	5.00	5.00	4.00	4.00	-1.00
Personal Services	119,894	174,092	140,068	139,685	-4.84%
Operating Expenses	33,861	39,556	34,533	34,706	-5.69%
Equipment	10	680	680	680	97.10%
Total Program	$153,765	$214,328	$175,281	$175,071	-4.82%
Fund Sources					
General Fund	153,765	214,328	175,281	175,071	-4.82%
Total Funds	$153,765	$214,328	$175,281	$175,071	-4.82%

Program Description

The Lieutenant Governor's Office is responsible for carrying out duties prescribed in Article VI, Section 4 of the Montana Constitution. The office serves as the liaison between state and local governments and supervises the Intergovernmental Review Clearinghouse operations. The Lieutenant Governor serves as chairperson of the Disaster Advisory Council and the Montana/Western Canadian Boundary Advisory Committee.

Current Level Budget

The Lt. Governor's Office 1993 biennium current level budget decreases nearly 5 percent compared to the 1991 biennium, due to the transfer of 1.0 FTE for the clearinghouse function to the Office of Budget and Program Planning. This decrease is partially offset by vacancy savings in fiscal 1990 and the fiscal 1991 pay plan increase. Operating expenses are continued at fiscal 1990 actual expenditure levels, with minor adjustments for increases in rent, messenger services, and other fixed costs. The reduction from fiscal 1991 levels reflects the transfer of operating costs related to the clearinghouse function. Equipment includes $1,060 for a small copy machine, other minor office equipment, and $300 for networking software.

EXHIBIT 11
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3101 16 00000

CITIZENS' ADVOCATE OFFICE

Budget Item	Actual Fiscal 1990	Appropriated Fiscal 1991	- - Current Fiscal 1992	Level - - Fiscal 1993	Change 1991-93 Biennium
FTE	1.50	1.50	1.50	1.50	.00
Personal Services	35,554	51,851	51,843	51,724	18.49%
Operating Expenses	23,525	17,869	18,683	19,481	-7.80%
Total Program	$59,079	$69,720	$70,526	$71,205	10.04%
Fund Sources					
General Fund	59,079	69,720	70,526	71,205	10.04%
Total Funds	$59,079	$69,720	$70,526	$71,205	10.04%

Program Description

The Citizen's Advocate Office exists to provide accessibility to state government for Montana citizens. The office provides information to citizens and acts as a referral service for public comments, suggestions, and requests for information. A toll-free number is provided to the public for this purpose.

Current Level Budget

The Citizen's Advocate Office current level budget increases 10 percent compared to the 1991 biennium due to vacancy savings in fiscal 1990 and the fiscal 1991 pay plan increase which continues into the 1993 biennium. Operating expenses are included at the level requested by the agency. While the agency is requesting a $12,000 supplemental in fiscal 1991 to pay anticipated increases in telephone costs, it did not include this increase in its 1993 biennium request.

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3101 20 00000

MENTAL DISABILITIES BOARD OF VISITORS

Budget Item	Actual Fiscal 1990	Appropriated Fiscal 1991	- - Current Fiscal 1992	Level - - Fiscal 1993	Change 1991-93 Biennium
FTE	4.20	4.20	4.20	4.20	.00
Personal Services	128,132	134,179	135,750	135,790	3.52%
Operating Expenses	40,928	43,931	41,236	41,255	-2.79%
Equipment	3,423	450	450	450	-76.76%
Total Program	$172,483	$178,560	$177,436	$177,495	1.11%
Fund Sources					
General Fund	131,660	136,529	137,436	137,495	2.51%
Federal Revenue Fund	40,823	42,031	40,000	40,000	-3.45%
Total Funds	$172,483	$178,560	$177,436	$177,495	1.11%

Program Description

The Mental Disabilities Board of Visitors, established by the legislature in 1975, is charged with reviewing patient care at Montana's community mental health centers, as well as the institutions for the mentally ill and the developmentally disabled. The board also provides legal services for the residents at those institutions. The board consists of five members appointed by the Governor. They represent, but are not limited to, consumers, doctors of medicine, and behavioral scientists. The board employs administrative and legal staff and contracts with medical professionals to carry out its responsibilities for patient representation and facility review.

Current Level Budget

The Board of Visitors' current level budget increases slightly in the 1993 biennium primarily due to the fiscal 1991 pay plan increase. Operating expenses reflect fiscal 1990 actual expenditure levels, adjusted for minor increases in rent, insurance, and other fixed costs. Equipment requested in the 1993 biennium include $300 for a chair and bookcase and $600 for computer software updates.

The program is funded with general fund and a federal grant to provide legal protection and advocacy for patients in Montana's institutions for the mentally ill and developmentally disabled.

EXHIBIT 14
DATE 1-14-91

3101 89 00000

STATEHOOD CENTENNIAL OFFICE

Budget Item	Actual Fiscal 1990	Appropriated Fiscal 1991	- - Current Fiscal 1992	Level - - Fiscal 1993	Change 1991-93 Biennium
FTE	5.00	1.00	.00	.00	-1.00
Personal Services	98,688	25,509	0	0	-100.00%
Operating Expenses	186,401	5,090	0	0	-100.00%
Equipment	4,055	0	0	0	-100.00%
Grants	97,868	0	0	0	-100.00%
Total Program	$387,012	$30,599	$0	$0	-100.00%
Fund Sources					
State Revenue Fund	387,012	30,599	0	0	-100.00%
Total Funds	$387,012	$30,599	$0	$0	-100.00%

Program Description

The 1985 legislative session created the Montana Statehood Centennial Office and a Montana Statehood Centennial Commission to encourage the commemoration and celebration of Montana's 100th anniversary of statehood on November 8, 1989. The program will cease to exist at the end of fiscal 1991.

EXHIBIT 13
DATE 1-14-91
Gen Govt Sub

OFFICE OF THE GOVERNOR
MENTAL DISABILITIES BOARD OF VISITORS

STAN STEPHENS, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 444-3955
OR TOLL FREE 1-(800)-332-2272

HELENA, MONTANA 59620

1499 Beaverhead
Helena, MT 59601
January 14, 1991

Representative Joe Quilici, Chairman
Joint Appropriations Subcommittee
General Government and Highways
State Capitol
Helena, MT 59620

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify today on the budget of the Mental Disabilities Board of Visitors. For the record, my name is Wally King and I serve as the current chairman of the Board of Visitors.

In 1975, the Board of Visitors was created to act as a "watchdog" group to insure humane and decent patient care and treatment. Our five member Board, comprised of consumers and professionals, works an average of 2 1/2 to 3 days per month evaluating mental health centers and the state institutions. Currently the Board is represented by Arlene Breum, Missoula; LaNelle Petersen, Brady; Bob Visscher, Livingston, and myself from Helena.

Over the several years the Board of Visitors has made constructive evaluations which we believe have contributed to improvements in patient care and treatment. We have evaluated these facilities and their compliance with Montana laws.

We are conscious of the fiscal constraints the State is facing and feel our budget request is modest. In addition we ask your support for the continuation of our mental health protection and advocacy federal grant.

The Board and our staff have been very conscientious in protecting the rights of this state's disadvantaged. We would appreciate the support of this committee for our budget request. Our staff director, Kelly Moorse, will present a more specific overview of our duties. Thank you.

Sincerely,

Wallace King, Chairman
Mental Disabilities
Board of Visitors

EXHIBIT 14
DATE 1-14-91
Gen Govt Sub

3101 89 00000

STATEHOOD CENTENNIAL OFFICE

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