

Budget Comments
LASOC- March 12, 2021

1- Bankruptcy Settlement Funds, Account 08230.

- a) The summary provides very basic information, and more detail would be appreciated.

DEQ appreciates the feedback and comments. We will attempt to add more detail, as appropriate, and continue to find the best way to share budget details. It may be beneficial to establish a subcommittee to periodically discuss budget information instead of trying to add the detail in each quarterly budget summary overview report.

- b) What were the details of the Expenditures for FY19 & 20?

Please see the expenditure detail attachment (to be provided in final draft).

- c) What is the justification for the \$300k+ expenditures for FY21? What are these expenses for?

Please see the expenditure detail attachment (to be provided in final draft).

- d) What is "Libby Mediation Costs"?

DEQ provided an update on the Libby OU3 Bankruptcy and Libby Mediation Costs on Dec. 17, 2019 and this discussion is reflected in the meeting minutes. Bankruptcy and mediation costs were an agenda item and updated in the budget. As a reminder, the State of Montana filed a claim in W.R. Grace's Chapter 11 Bankruptcy Case in 2008 for remedy and restoration costs still owed by W.R. Grace at the mine site on Operable Unit 3. The claim has been pending since then, W.R. Grace has not completed its remedial and restoration obligations, and the claim is being litigated through a confidential process that includes mediation. The State's costs are for protecting that claim. The State's goal is to reimburse this account as much as possible.

- e) What governs the expenditures from the overall Account 08230? If it is the Settlement Agreement, please provide applicable language.

Yes, the Settlement Agreement governs the use of these funds. The Settlement Agreement provided \$11 million for "operations and maintenance expenses at the Site" and "for the State's CERCLA cost share requirements, including operation and maintenance expenses, or other costs related to asbestos at the Site."

- f) How are decisions made about expenditures from this fund?

DEQ is the agency that can make decisions using the funds if appropriate and allowed under the settlement agreement. DEQ expenditures are split between organizational units (org units). Org units are established for work on each operable unit under the settlement fund. DEQ will consider recommendations from LASOC as appropriate.

- g) Is there any reason that LASOC cannot have a timely opportunity for input and oversight re proposed expenditures?

LASOC had an opportunity for input and was informed at the December 17, 2019 meeting about such expenditures. DEQ stated that while Lincoln County is not part of the mediation process, they will still have an opportunity for comment when EPA chooses the remedy for OU3. Progress through mediation has continued and the court has ordered that the mediation must remain confidential.

2- Libby Asbestos Cleanup Trust Fund, Account 09033

- a. Please provide detail on Personal Services and Operating Expenses for FY 19, 20 & 21.

There have been no funds expended from this fund. It is a long-term trust fund that is outlined in 75-10-1603 Montana Code Annotated and money is invested. The funds in this account cannot be used until 2029.

- b. How are decisions made about expenditures of these funds? How does DEQ view the LASOC role?

It is anticipated that the advisory role of LASOC will continue and discussions on recommendation on budget and other activities will be the same. Keep in mind that in 2029 when the Trust Fund money is available to use there will no longer be a Libby Asbestos Cleanup and Operations Account (Fund 02130) that is also the time that the transfer of orphan share money will sunset and the basis for development and use of the Trust Fund so that funding will be integral to continued site management.

3- EPA Cooperative Agreements

- a. The three Cooperative Agreements are multi-year and offer no detail. Please provide detail, as requested at our Dec 2020 meeting.

Detail on the report was summarized on grant amount, expenses to date and current balance. Additional information on type of activities for each grant was also summarized. Additional discussion on the level of detail and rationale on what questions the committee is seeking would be helpful to determine any follow-up information that may be needed. It may be beneficial to establish a

subcommittee to periodically review budget information Instead of trying to add the detail in each quarterly budget summary overview report.

- b. Primary interest for the O&M fund (V-96841701) is understanding the details of actual and proposed expenditures and budgets once O&M officially begins in the OUs. (Not asking to go back to 2017.) In particular, if this CA is site inspections and reporting as suggested by your text, then it seems excessive. Please explain. The Montana Department of Environmental Quality is the lead agency for implementation of work associated with operations, maintenance, and monitoring with the U.S. EPA as the support agency at OU 1, 2, 4, 5, 7, and 8. Generally, annual O&M costs may include, but are not limited to, the following: Manage and coordinate all aspects of O&M (project management and oversight); Prepare CA and MOU/MOA; Review and comment on project deliverables; Communicate with management, project team members, and EPA to keep the entire team informed of project progress and other relevant issues; Develop and maintain cooperative working relationships with counterparts from other regulatory agencies (federal, State, and local), in-house staff members, and community involvement; Ensure that the public participation requirements of CERCLA and the National Contingency Plan (NCP) are met so that the community is kept informed of Site activities and appropriately involved in Site decision-making; Implementation of the O&M Plan and ICIAP, excluding 5-year reviews which are performed by US EPA; Operating labor costs; Site visits; Records Management; Maintenance materials and labor costs; Auxiliary materials and energy costs; Purchased services including contractors; Disposal costs; Administrative costs; Insurance; Taxes; Maintenance reserve costs; Contingency costs; Cost of periodic site reviews; Costs of reporting requirements; and Licensing costs. O&M activities are governed by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the regulatory framework of its Trust Fund program (commonly known as Superfund), and the Superfund Amendment and Reauthorization Act (SARA) of 1986. The MDEQ or their contractor conduct routine inspections to ensure the completed remedial action remains intact and is not compromised. ARP's scope of work is outlined in the attached MOU.
- c. Non-O&M Funding, Sitewide V-97841901. This is apparently for DEQ management activities, excluding OU3. Please provide detail that explains what activities are included in the CA, the budgets and expenditures, especially over the last five or so years. DEQ's general activities as a support agency to EPA for Libby OU3 are as follows: Prepare RI/FS work products for EPA review and approval and/or review and prepare written comments and recommendations on EPA, EPA contractor, or potentially responsible party (PRP) work products during the RI/FS phase

including: (1) Preliminary planning documents, including draft scope of work (SOW), draft administrative orders, draft quality assurance project plans, draft sampling/analysis plans, and draft health/safety plans; and (2) Draft/final RI/FS reports, including technical memos, draft public health evaluations, endangerment assessments, interim technical memoranda, work amendments, contractor progress reports, and responses to public comments on the draft RI/FS documents and studies. Maintain Project Files. Meet State Legal Requirements that includes identifying state applicable or relevant and appropriate requirements (ARARs) specifying state environmental statutes and regulations for each response action and reviewing EPA's federal ARARs designations and advise and assist with the integration of state ARARs into remedial decision requirements. Develop and maintain Community Relations to include, but not limited to, community relations plans, fact sheets, press releases, and verbal or written responses to stakeholders. Develop and submit Quarterly Progress Reports. Consult and meet, as necessary, with state officers, employees, contractors, agents and authorized representatives; EPA, and EPA contractors, to discuss State comments on work products, State requirements, and RI/FS progress, including preliminary planning discussions, Proposed Plan and ROD development, technology transfer, interim design, contractor selection, preconstruction activities, and project pre-acceptance issues. Participate with EPA in PRP discussions and meetings. Assist EPA in gaining access to sites to perform RI/FS activities, by helping to negotiate easements and access agreements with site owners/operators. Receive EPA authorized training or required training for site-specific activities (e.g. risk assessment, asbestos in soils/wastes workshops, soils reclamation of mining/smelting sites, etc.). Project Administration to include daily project management, fiscal accounting, cost-recovery documentation, legal research and support, outreach to state, local and federal agencies, general administration and clerical support, and procure and manage agreements with governmental, nonprofit, and private consultants as needed to fulfill state commitments and to enhance progress on project activities.

From the summary provided, it is not clear where the current DEQ/Lincoln County CA for ARP services is included, nor where prior ARP CAs with EPA are included. Please clarify.

The federal funding from EPA in the current cooperative agreement (CA) to help support O&M for ARP services and the DEQ/Lincoln County MOU can be found in O&M V-96841701. It may be appropriate collaborate with ARP to add a budget overview for ARP that provides an update on activities and includes an update on the funding sources and status of funds.

- d. The Lincoln County FOIA request to DEQ for information related to Cooperative Agreements was somewhat scant on detail, especially for the recent revision to DEQ's CA with EPA. It was also hard to follow what constituted the final agreement, including budgets and scopes of work. Please provide the final scope and budget for the recent CA revision, including details of subcontractor/subconsultant services. For example, no scope or detailed budget was provided for the Weston services.

[See response to 3.b. The O&M award \(look at Table A on page 3 for approved budget\) and contractor details are attached.](#)

- e. The Budget Update missed adding a budget/expenditure update for the CA between Lincoln County and DEQ for the ARP. Lincoln County provides monthly invoicing so this should be easy to produce. ARP will be providing monthly updates to the Commissioners and can provide you that short summary or you can extract the same from ARP invoicing.

[It may be appropriate to collaborate with ARP to add a budget overview for ARP that provides an update on activities, funding sources, and status of funds.](#)

4- Unused Grace Remedial Action Funds.

- a) It is understood that accounting is still in progress. However, EPA was aware of the general balance in those funds as remediation progressed. The minutes of last meeting suggested contacting Mike Cirian for a general estimate. Apparently, that was not done, so I contacted him yesterday, and he gave his permission to share with the Committee that the current unofficial estimate is

“around \$20 million.”

[DEQ reached out to EPA to get an official estimate from the financial management and no official estimate was provided. The placeholder description was added to the Budget Overview and DEQ will reach out periodically to try to get an official estimate.](#)

- b) Please add this to the budget report and pursue routine updates of unofficial balances.

[DEQ disagrees with the approach of providing “unofficial balances” quoted from the previous site project manager or any other member. The unofficial number has varied over the last several years from 12 M to 20 M and our budget updates should reflect official financial numbers.](#)

5- General

- a) We understand if some of the values presented are approximate or not based on final accounting. Please indicate where that is the case, and do not let lack of final numbers be a reason to not provide a reasonable estimate.

All numbers for actuals are the final numbers and when it is expenditures to date. If the value presented is projection or estimate, then that is also already labeled. It may be beneficial to establish a subcommittee to periodically review budget information instead of trying to add the detail in each quarterly budget summary overview report.

- b) The purpose of this list is to build a more detailed report that this and future committees can use. It should be considered adequate when it is largely self-explanatory. The progress on this is appreciated, but detail is lacking to be able to provide oversight input.

It may be beneficial to establish a subcommittee to periodically review budget information instead of trying to add the detail in each quarterly budget summary overview report. Additional discussion on the level of detail and rationale on what questions the committee is seeking would be helpful to determine any follow-up information that may be needed.

- c) It would be helpful to get a more detailed update and a response to these questions soon for review, so we are not waiting a quarter to see if it meets our needs. Can we set a target initial response date?
- d) As before, I ask if you need a formal motion and action by the Committee to respond to these requests?