



Libby Asbestos Superfund Oversight Committee Meeting
March 9, 2023
9:00 AM

Location of Meeting:

Virtual attendance with in-person in Libby, MT and Helena, MT.

*Remote access was also available.

Call to Order

The Libby Asbestos Superfund Oversight Committee conference call was called to order at 9:00 AM on March 9, 2023 with the Pledge of Allegiance.

This was the 23rd meeting in accordance with the Montana Code Annotated 75-10-1601. Public notice of this meeting was provided via newspaper ads, press release, social media, and the DEQ website.

1. Roll Call

Chairman Gunderson conducted a roll call of attendees and confirmed that a quorum of Advisory Team members was present. The following persons were present or attended by phone:

Oversight Committee Members:		
Director of DEQ or designated representative	Christopher Dorrington	Present in Helena
Lincoln County Commissioner designated by the Commission	Commissioner Brent Teske	Present in Libby
Member of the House of Representatives whose district includes at least a portion of Lincoln County appointed by the speaker of the House	Representative Steve Gunderson	Present in Helena
Citizen of Lincoln County nominated by the Lincoln County Commission and selected by the governor	George Jamison *Confirmed by Governor	Present in Libby (Minnesota)
Member of the Senate whose district includes at least a portion of Lincoln County appointed by the Senate president	Senator Mike Cuffe	Present in Helena

<u>Other Interested Attendees</u>	<u>Affiliation</u>	
Jason Rappe	DEQ	Present in Helena
Jessica Wilkerson	DEQ	Present in Helena
Katherine Hausrath	Attorney for WR Grace Settlement	Present in Helena
Nick Raines	WR Grace	Present via Zoom
Mandy Harcourt	ARP	Present in Libby
Robin Benson	Lincoln County	Present in Libby
Ray Stout	KVR	Present in Libby

2. Agenda Item	Discussion	Document Link
Review and approve minutes. December 15, 2022	<p>NOTE: RECORDING DID NOT BEGIN UNTIL APPROXIMATELY 9:30 AM. THERE IS NO AUDIO OF THIS AGENDA ITEM.</p> <p>Motion by Director Dorrington to approve December 15, 2022 minutes as submitted. Second by Commissioner Teske, motion carried.</p> <p>It was noted that George Jamison may not be able to attend the meeting in its entirety and submitted an email to allow Commissioner Teske to Proxy Vote for him if necessary.</p>	https://deq.mt.gov/Files/Land/FedSuperFund/Documents/Libby/Marc%202023/LASOC%20Dec%20Minutes%202022.pdf

3. Agenda Item	Discussion	
O&M Update Jason Rappe and Mandy Harcourt Activities: OU1, 2, 4, 5, 7, & 8.	<p>NOTE: RECORDING DID NOT BEGIN UNTIL APPROXIMATELY 9:30 AM. THERE IS NO AUDIO OF THIS AGENDA ITEM. Amanda Harcourt read from the following report:</p> <p>03-09-2023 ARP Update for LASOC meeting Today's ARP Update will cover activities completed and ongoing since we last met December 15th 2022. (1) ARP responded to 36 hotline calls, 76 utility locate tickets and conducted 28 site visits between December and March.</p> <p>a. Libby/Troy Properties (Upcoming Apartments or Sampling) The following properties have approved SOWs and construction activities are scheduled for this spring.</p> <ul style="list-style-type: none"> i. 713 Michigan Ave- (INT Removal) Subfloor. ii. 154 Pauline's Way -NOEC- (EXT Removal) Yard areas iii. GID 5730 (159 Port Blvd) (EXT Removal) Trench and fence removal. iv. 386 Riverside Ave (EXT Removal) Yard area v. 164 White Ave (EXT Removal) Garden area vi. 100 Minor Dr -NOEC- (EXT Sampling) <p>b. Libby/Troy Active Properties (SOW Development) ARP is currently drafting SOWs for the following properties.</p> <ul style="list-style-type: none"> i. 1218 Dakota Ave (INT removal) Eaves ii. 36573 US Hwy 2 -NOPEC- (EXT Sampling) iii. GID 8060 -NOPEC- Former NUA (EXT Sampling) iv. 3274 Farm to Market Rd -NOPEC- (Multiple INT inspections needed and EXT Sampling) v. Port Blvd-Central Maintenance Building (Phase 1 of INT Removal) <p><u>NOEC/NOPEC</u> Three out of the five properties ARP is currently developing SOW for, are NOPEC properties. Once the SOWs have been drafted and approved. They will be sent out to bid. Once ARP has received bids, the property will be added to the next LASOC Agenda to discussion eligibility for reimbursement.</p>	

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DEQ/EPA Site Update Jason Rappe Activities: OU3 & OU6	<p>NOTE: THERE WAS NO RECORDING FOR THIS AGENDA ITEM</p>	

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WR Grace Updates: Nick Raines KDID Spillway Construction	<p>NOTE: RECORDING BEGINS PARTWAY THROUGH THIS AGENDA ITEM</p> <p>Nick Raines: What you see in the middle of the picture here is the fine tailings themselves, the actual impoundments. What you see in the upper middle of the picture where my cursor is running across there is the upstream and or edge of the Kootenai development impoundment dam. The construction of the dam started in 1971 with a starter dam and finished with closure of the tailings impoundments, and the box culvert spillway construction in 1992. The dam itself, from the crest to the toe at the downstream end is approximately 130 to 135 feet tall at its highest point. The dam itself, when it was constructed and included an under drain system and toe drain the daylight at the downstream toe. And then, as I already mentioned, a box culvert spillway that goes through the dam and then on the downstream end it's an open spillway, and then there is also an open channel auxiliary spill way on the west side. I do want to highlight, one thing to point out here is that people immediately think of a dam that is holding back water. In most cases, most scenarios, the KDID does not hold back water. There's not a larger reservoir there. This picture was taken about 4 or 5 years ago. It is an extremely rare occurrence to have water in the impoundment, I should say it's a rare occurrence. Typically we see a little bit of water build-up and ponding in the spring during spring runoff. And then the tailings themselves are dry except for the furthest upstream end where Rainy Creek, Upper Rainy Creek and Fleetwood Creek flow into the tailings impoundment. Other than that, it's usually dry. As I mentioned, during seasonal conditions, we do see some ponding and during very high snowpack years and wet years, we do see occasionally that enough water does build up in the impoundment to reach the principal spillway and we see a small amount of water that flows down the spillway. You will see some pictures of that here later. I mentioned the dam itself was constructed in a downstream manner. What that means is that it started with a starter dam. Started in 1971, and then as the dam itself was increased in size, lifts or raises were added to it in a downstream fashion which meant the lifts were added downstream of the original starter dam and keyed into foundation material at the downstream or toe end of the impoundment. On the left-hand side, you can see the actual box culvert that goes through the box culvert spillway that goes through the impoundment through the KDID itself. That box culvert is approximately or was approximately eight feet wide by about four feet tall. You can see the limited amount of water in there. That was during April, we would in wet years see a little more flow than that during spring runoff. Couple more quick pictures, this is on top of the KDID on the crest looking downstream, toward lower Rainy Creek. Then here is the opposite view downstream or at the toe end of the KDID looking upstream at the impoundment itself. As I mentioned, this at its peak is about 130 to 135 feet tall. KDID is owned and operated by Kootenai Development Company, which is a wholly owned subsidiary of WR Grace. That operation is regulated by Montana DNRC Dam Safety under the Montana Dam Safety Act. That does require that we maintain an operating permit, which requires a five-year renewal, the permit itself is good for five years, and there are multiple permit conditions, including regular routine inspection, both annual, monthly inspections as well as instrumentation and monitoring. One thing I want to highlight here, I didn't mention before is that the operation of the KDID and all of the work that's ongoing with that right now is separate from the superfund or CERCLA site. However, everything that we are doing under the Dam Safety Program is being considered and evaluated as part of the feasibility study under CERCLA. So, they are separate, but there is an interaction between the two. Potential Failure Mode Analysis (PFMA): So, when the original KDID was built, constructed, closed and the principal spillway was built and installed in 1992, it was done to industry standards and regulations at that time. As part of our permits moving forward, in 2011, Montana DNRC required a potential failure mode analysis. And that was also re-evaluated, then again in 2016. A PFMA is a tool that helps identify priorities for mitigation of potential issues, as well as improvement to operations, maintenance, and data collection. To sum that all up, it looks at all of the potential ways a dam could fail and identify solutions to prevent that from happening. During that PFMA that was done, initially in 2011 and re-evaluated in 2016, the highest priority potential failure mode that was identified was the principal and auxiliary spillway. The box culvert spillway was designed to the standards at that time. Additionally, there had been some movement of that spillway that created some cracking and was identified as the highest priority. That was in 2016. In 2017, WR Grace in coordination with a number of stakeholders held a Multiple Account Analysis (MAA). This is a procedure that is used in Montana throughout the world for getting stakeholders involved, and it is a collaborative method to assess complex issues for mines and dams and ultimately narrow down or narrow in on a solution. This was focused, this MAA or Multiple Accounts Analysis was focused on the highest priority potential failure mode that was identified that principal and auxiliary spillway. In July 2017, the MAA workshop was held that the stakeholders that were included in that event were EPA, including project manager and technical resources, geotechnical engineers, other CERCLA representatives, Montana DNRC Dam Safety, the dam engineer of record who is till the engineer of record for the KDID, representatives from Lincoln County and WR Grace and our technical consultants or representatives as well. The evaluation criteria, I guess I'm going to skip down one step. During that MAA, we looked at a range of alternatives to address that highest priority potential failure mode, and those range from flood routing, so things like spillway redevelopment, or routing floodwaters around the dam, all the way to breach and removal of the KDID and removal of the tailings material and placement, another storage facility. All of those alternatives were evaluated against a set of criteria, and that was public safety, engineering, technical feasibility, short term and long-term effectiveness, impacts to the environment and economic</p>

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	<p>development impacts. While cost was considered, it was completely isolated and pulled out from the analysis so that cost did not play a significant role in ranking the alternatives. This process used input from all of the stakeholders that were involved. And the highest ranked alternative that came out of that MAA was the side channel service spillway, so redevelopment or construction of a new spillway adjacent to the Kootenai Development impoundment dam. As I mentioned, the selected alternative for us was to design and construct a side channel spillway for flood routing around the KDID. We have been working on that design, and now construction of that new spillway for multiple years. A couple key things to point out, in the design of our existing construction project, or this new spillway that we are building is that the design process included and still includes very active engagement from an external technical review board. This is a process being implemented now in Montana. We have worked with Montana DNRC for the selection of an External Technical Review board and these folks are I'll say world renowned experts in tailings dams, tailings impoundments. Their folks have literally written books on best practices for tailings impoundments. The board itself we did have a say in it but was not selected by us. It was selected by Montana DNRC and other regulatory agencies with input from WR Grace. A couple of key facts about the design: the flow capacity to route, so the design itself was or the spillway itself, was designed to handle a probable maximum flood probable PMF flood conditions. What that means is roughly this new spillway, once constructed and complete, is capable of handling roughly about a one in ten thousand year flood event. That was done or based on hydrology analysis just for the basin that the KDID and the impoundment fit in. So, if we were to see a roughly one in ten thousand year storm event, this spillway itself would be capable of routing those waters around the dam and protecting the stability or integrity of the dam itself. Other key things to note about the design, it was designed to be anchored in bedrock adjacent to the impoundment. And it also included the construction of a coffer dam and temporary bypass pipeline to protect the spillway during construction. So with that, the development process, it's been split into three phases. The coffer dam and bypass pipe, I just mentioned, that was complete in 2019 and 2020, I believe. The upper spillway, so the spillway itself has been split into two distinct pieces. There's an upper half and a lower half. The upper half is under construction right now. We are scheduled to be complete, if all goes well by the end of this construction season, so sometime late November, December timeframe. We will then begin construction on the lower spillway. In 2024, the lower half, that design is just now being completed and being reviewed by agencies. Couple of key differences between the two structures, the old or original spillway, as I mentioned, it was a box culvert that ran through the KDID through the impoundment dam. After it got through the dam it became an open box, open channel, culvert. You can see here in this picture on the left that is where at the downstream end of the KDID, where it comes out where the old spillway came out approximately eight feet wide by about four feet tall. And at the time, it was designed to the standards of when it was constructed. And it was roughly somewhere between 100 year and 500 year storm conditions as what it was designed to handle. The new spillway is an open top channel, concrete spillway approximately 34 feet wide by at its tallest, 28 feet wide, the walls themselves range from 14 to 28 feet, depending on location in the spillway. As I mentioned already, it's designed to convey the full PMF flood conditions so approximately or roughly a 10 thousand year storm event. Anchored in bedrock, it includes the under-drain system to drain any water that would get underneath of the spillway itself and prevent any uplift. It includes a reinforced shotcrete wall adjacent to the spillway to prevent any erosion into the spillway itself. The final segments and the lower spillway of it as it reaches lower Rainy Creek includes an energy dissipation features to slow down the flow before it would enter Rainy Creek. And it includes an array of instrumentation for monitoring and access features for future maintenance.</p> <p>Senator Cuffe: What would be the energy dissipation features?</p> <p>Nick Raines: Yeah, we have and I apologize, I don't have it in this presentation, but what we have at the bottom right now in our design is a stilling basin, so there is a large concrete stilling basin. I should back up, towards the end of the spillway chute itself, there are baffle block. So, blocks in the spillway, concrete design blocks to slow down the flow. The flow then goes into a stilling basin which is a large concrete basin for the flow to come into, to settle out and then as it comes over the top of that stilling basin, it goes into a rip rap lined plunge pool, which further dissipates that energy.</p> <p>Senator Cuffe: Thank you.</p> <p>Nick Raines: Spillway progress as of February 2023, some of the photos and videos that I will show are over the last few months. The coffer dam was completed in 2019 and 2020. We began construction on the upper spillway in 2021. We've completed all overburden, excavation, drilling and blasting of rock, bedrock adjacent to the spillway and through the chute the main alignment of the spillway that was completed in 21 and 22, we have completed the reinforced shotcrete wall which I will show you some pictures and video up here in a minute that was done in 2021 and 2022. Some of the slabs foundations, slabs and walls have been poured. The initial segment, which you can see here in this picture, this is considered the control structure. This is the start of the spillway itself. That is all complete. We've installed all of our slab anchors so that the chute itself is anchored into bedrock, and then we've also installed portions of the under drain system. We have poured chute slabs and walls that will continue through this year 2023. And then we will also complete backfilling, grading and site restoration for the upper portion of the spillway by the end of the season. Here is where I will need to switch over to my other login. I have some videos to share here. This first one, is just an overview of the spillway and construction. What you can see here, we are right over top of the</p>

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	<p>KDID where you see an excavator and a haul truck or a dump truck there at the bottom of the picture. That is the crest of the KDID. In the middle of the picture, you can see the reinforced shotcrete wall. What that is, that wall, that area was excavated, soil nails, and or rock anchors were then drilled and anchored into the hillside itself. Some of those go back 40 to 50 feet into the hillside and then shotcrete over top of that. All of that is to protect the spillway so that there's no erosion down into the spillway itself. What you can see on the left hand side is the coffer dam that I had mentioned, that was designed to protect against a 500 year storm. All of the water from the impoundment should impoundment build up with water, it would reach the bypass pipeline and be routed at the 48 inch HDPE bypass pipeline that goes completely around the construction down to lower Rainy Creek actually feeds into the or the spillway itself. So that's just to give you a little more view of the site itself. This is looking upstream, right in the middle of the picture or video now is the mine tailings impoundment itself. I'm going to switch videos now, so you can see as I mentioned, portions of the initial segment have all been completed, the foundations, the slabs, the walls themselves, the walls that you are seeing there are about 28 feet tall. Then you can see the downstream work, ongoing, this video's about a month old. We poured additional slabs and chute walls since this video was taken. Where you see the shotcrete reinforced wall end, that's roughly the end of the upper construction or the upper segment of the spillway. Starting in 2024, we will take off from that point, the spillway will continue downstream or the same direction and then a right hand turn towards Rainy Creek. I'm going to switch over to a different video here. This is from our contractor that's actually doing the construction. It's a joint venture between Dick Anderson Construction and Enviracon. What you can see here in the middle of the picture, you can just barely see it is the old spillway that was in place I mentioned it was about eight feet wide, four feet tall except for where it takes a bend. The walls were a little bit taller there to deal with water, as it came into that bend. And then what you see at the top of the picture is just the start of the shotcrete reinforced wall. All of those dark spots that you see on it are the actual soil nails and rock anchors that are drilled back into that hillside. The whole purpose here is just to provide a little bit of scale of the work that's going on up there. On the left hand side of the picture, you can see that black pipeline. That's the bypass pipeline that routes any potential floodwaters around the spillway during construction. What you see here is the base of the foundation that essentially is being tarped and covered to protect the under drain system that's been partially installed. This was a slab section that was being prepped for pouring. This was a little over a month ago, this video was taken. That slab section and the walls on either side have been poured as well as the next slab section that you see has, obviously, the slab had been poured, but the walls have been poured in that location as well as the next one upstream. One thing to mention is that the crew that is working onsite is working in PPE, or obviously general construction PPE, but also for protection against any potential exposure to asbestos during the work. They have collected an extensive amount of data, worker safety data and evaluated all sorts of different activities. Basically, all of the range of activities that they conduct onsite and have adjusted their health and safety plan to match that data. In some cases, as you saw the crew there, they are wearing half face respirators and coveralls and Tyvek, other circumstances, other work that is less intrusive, less ground disturbing, they are wearing just regular general construction PPE. Real quick right here, what you see in the middle of the picture is the coffer dam, and there is the last look of the spillway itself. The shotcrete reinforced wall in that left hand side, you see there at its peak at its highest point is about roughly 80 to 90 feet tall. Just a couple more things here. I went ahead and pulled out some pictures just in case that video didn't work, this is going to be the same stuff that you already saw in the video, an overview, the shotcrete reinforced wall behind the spillway itself. The coffer dam and bypass pipeline over on the left hand side there. Wanted to give a little sense of scale of what's going on out there. This was the foundation that was poured at the head end of the spillway itself, at the control structure or the approach. And then, what we call the right wing wall for the approach here, you can see how thick these foundations are, multiple lifts, poured foundations on top of each other, very, very robust structure here. In addition to that, on the right hand side, you can see the rebar work that was ongoing in prep for pouring slab and walls. We've taken a number of what we consider very conservative design approaches to protect this dam for the long term. One of those would be all of the rebar that you see here, all the green colored mesh is all epoxy coated rebar that is all inspected. And if there's any damage to the epoxy, it is retouched before install, and the purpose is that if there were ever any moisture to enter into the slab itself, if there was a crack or any way that moisture got in, this would prevent erosion of that rebar and maintain the integrity of the concrete structure itself. Again, a few pictures for scale here that, what you see on the left hand side is the tallest wall that we have about 28 feet tall at the inside, from the slab up to the top of the wall. That's the control structure or where the water would enter the spillway first. So, it is the tallest peak. And just some backfilling around that control structure, the dam itself, as we did this work, we had to open up the section of the dam on the far east edge and that has all be backfilled or replaced at the time, so the dam is back up to its crest height there. That's all the work that's been done so far. The last little bit I have here is about other work that will be ongoing work and will continue with the dam. Thinking back to that potential failure mode analysis I mentioned earlier, we focused it on the highest priority, potential failure modes that were identified during that PFMA. In addition to the spillway, there were other potential failure modes identified that we are continuing to evaluate, analyze, and address. That included things like seasonal pressure spikes, or pressurization of the dam and foundation that could lead to internal erosion or voids during normal or flood conditions. As I mentioned, there are toe drains at the base of the dam itself. One of the</p>

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	<p>potential failure modes that was identified was if a drain 6 in particular, which is the largest drain, if that grate were to fail, under normal conditions that could present a significant problem. If the drains themselves were blocked for any reason, for example, an earthquake or collapse of a pressurized void in the dam, also, an earthquake situation. These are the other potential failure modes, and it doesn't mean that these are issues that are imminent or were identified as something that needed to be addressed immediately. They are things that could happen in the future based on a series of all sorts of conditions, like I said, earthquake, flood conditions, different things that was ways that a dam could fail, in this dam in particular, if given the right circumstances. What we have been doing in the meantime is going through a focused appraisal study to analyze each one of these potential failure modes, investigate those and design a remedy to be implemented for each of those pieces. That appraisal study process is also going through or with direct engagement from the ETR be that External Technical Review Board and the agency representatives. We are in the process of drafting that appraisal study, identifying the next steps for investigation and proposed remedies. And then would begin remedy design and implementation in future years. And I think that's all I have on presentation. I can open it up to questions. Actually, I want to end with one thing, and that is that there were some questions that were raised early on. I think Representative Gunderson when he reached out to me, had some questions. Folks also did at a recent public meeting about the interaction between the work that's going on in on the KDID and the proposed settlement that's out for public review right now. I think one of the key things to highlight is that the proposed settlement that's for public review, public comment, does not impact WR Grace's obligations to operate and maintain the KDID or our obligations to maintain our operating permit and continue this construction of the spillway and addressing the other potential failure modes. It does not change that obligation. Just as that proposed settlement does not change WR Grace or impact WR Grace's obligations under CERCLA / Superfund. They are a little bit separate, and I know there was potentially some confusion there.</p> <p>Chairman Gunderson: Thank you Nick, excellent presentation. Let's change up because I know you are going to be needing to get out of here, so I'll open it up for questions for you and then we will have another round of questions, after other briefings, so I'll open it up.</p> <p>Senator Cuffe: I have two questions. Number one, is Kurt Hafferman working with you on that or he's an engineer with somebody there?</p> <p>Nick Raines: Yes, Kurt Hafferman is the engineer of record for the Kootenai Development Impoundment Dam. He is involved in the basically everything that goes on with the Kootenai Development Impoundment Dam. He is not the engineer that's physically designing the construction of the spillway itself, but he reviews and provides input on that. He is responsible for overseeing all of the regular monthly and annual inspections, all of the reporting requirement to Montana DNRC. Overall, he inspects and evaluates the condition of the dam monthly and annually.</p> <p>Senator Cuffe: Excellent. And then the other question, as you were talking about what I'll call catastrophic failures, when you listed some of the things such as an earthquake or something major, so what would happen. That's primarily what almost kind of semi liquid mud that would come down.</p> <p>Nick Raines: It could, yes and I'm not going to stray too far from my expertise and what I can answer. But I will say that as part of this whole process we have also done where we are in the middle of doing what's called an updated dam breach analysis to show what could or would happen in a catastrophic failure event where that material would flow. It is a fine tailing material, its sandy material, but it is in some cases saturated as you get down lower into it. So, that dam breach analysis looks at what would happen with all of that material, under these extreme circumstances. If, like I said, if there was a catastrophic failure. As part of that, we have also developed and continue to refine an Emergency Intervention Plan and Emergency Action Plan to address that exact circumstance. One to prevent it, what we can do if we see things like weather conditions coming with historic storms, how we can buttress things, how we can have equipment on site to react, and then what that flood condition would look like downstream if material made it downstream to the Kootenai River and beyond.</p> <p>Senator Cuffe: Is the volume up there enough that it would roll over the top of the highway towards the river?</p> <p>Nick Raines: It depends on the circumstances. In a catastrophic failure, if there was a catastrophic failure and the dam breached itself, that could be a possibility.</p> <p>Senator Cuffe: Ok, I guess, for myself, an interesting side note. I was there when the first one, you, you said it started in 1971?</p> <p>Nick Raines: Yes</p> <p>Senator Cuffe: I was working for the Western News in 72 and took pictures of a lot of things up there, so I expect we can go back and find records on the original construction that I covered for them in the paper.</p> <p>Nick Raines: Excellent, we really do have some really good historic photos. I didn't want to dive too deep into the background, but we have some really good old aerial photos that show before and after the impoundment dam was built and then obviously through current conditions.</p> <p>Senator Cuffe: Thank you and that was a good presentation.</p> <p>Director Dorrington: That 71 event was recorded as what, like how potent was that flood in the X 100 year event, than a 500 year event or a 100 year event, or do you know?</p> <p>Nick Raines: I don't recall an event 71. In 71 is when the actual starter dam was constructed for building the tailings</p>

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	<p>impoundment itself. As the dam was lifted or raised up to its final elevation in 1992 to the impoundment was closed. The dam itself, final grading and restoration was complete and a box culvert spillway was put through the dam itself and downstream end. And that box culvert, like I said, was designed, I think it was about the 500 year storm as what that was designed to handle. But I don't recall any specific storm events of note.</p> <p>Senator Cuffe: I think Nick, if I remember right, that's about the time that the concerns for a variety of things, but that's about the time they begin running it down to the track's through a slurry pipeline?</p> <p>Nick Raines: Yeah, so that's the reason for that starter dam and the impoundment altogether was transition to the wet milling process and tailings that were being piped downstream. That was what precipitated building the starter dam and an impoundment as a whole.</p> <p>Senator Cuffe: That also reduced backup all the way from the mill site to the loading area.</p> <p>Director Dorrington: I misunderstood; I thought you were saying there was a flood event, so my question is irrelevant. My second question is, and the 10,000 year event, as a design, I mean I've seen thousand year structures, but a 10,000 year structure, that is unbelievably robust.</p> <p>Nick Raines: Yes, I would agree. And I think, just to give a little background, and the reason for that is, we are following, you know with guidance from the ETRB, the External Technical Review Board, and the agencies involved, we are, I'll say reacting to and following guidance that is being produced internationally as a result of a number of tailings, impoundment and tailing dam failures across the world. So we are trying to again, probably overly robust but trying to design this so that it is capable of handling a massive, we refer to it on site, as the Noah's Ark event. We see this as a very significant and unique flood event. And the thing would be capable of handling or at least capable of routing floodwaters around the dam.</p> <p>Director Dorrington: Yeah, animals 2 by 2 will be collected as this stands firm.</p> <p>Senator Cuffe: Likely, should you get to that point, you'd probably worry more about Libby Dam.</p> <p>Director Dorrington: My last question Nick, could you characterize some of the activities that will take place just on an annual basis to both monitor and maintain the structure and surrounding area.</p> <p>Nick Raines: Yes, absolutely. So, it dovetails both the spillway itself and the rest of the KDID, undergo as I mentioned, a pretty wide range of both monthly and annual inspections and monitoring. We have a number of monitoring pedometers, throughout the dam itself that monitor water levels and pressure within the dam. We also have instrumentation to monitor movement of the dam itself, and this would all apply to the spillway as well. We have instrumentation that will monitor water levels if there was any water below the dam. We have inspections of the under drainage system. We have monitors that are instrumentation identify any movement as well as just the physical visual inspection. Our inspector, engineer of record, Kurt Hafferman, as I mentioned, Kurt goes through one of those videos that you had seen was from, Kurt, he goes through and does monthly and annual videos, not just overview videos, but flies over the entire site, the entire width of the dam, the spillway itself looking for cracks, movement, any sign of changed conditions that would require ongoing maintenance.</p> <p>Director Dorrington: Follow up; Can you speak to what that costs you annually? Do you have any idea?</p> <p>Nick Raines: I don't have that in front of me, but we can respond to you separately on what the annual operation maintenance cost is.</p> <p>Director Dorrington: That'd be great, thanks. That's it for me.</p> <p>Chairman Gunderson: Any questions from Lincoln County?</p> <p>Commissioner Teske: Not so much a question as a statement. Nick and I were at the meeting Monday night, public hearing for the NRDP, and you were online, as well. And there was some concern from the public about dam safety and what's going on up there. I think a lot of it was public misconception and understanding about, really, what the dam is. So there is some talk about putting on, I mean, this is an excellent presentation. I'd like to see something like this for the public, along with someone from Dam Safety and DNRC to put a little reassurance out to the public that the process is being scrutinized, thoroughly monitored and engineering designed for extreme events. Hopefully, as far as dam safety goes there, they're safe. So I'd like to see, at some point in time the future, either the county, DNRC and WR Grace or some kind of collaboration to present something to the public.</p> <p>Nick Raines: Absolutely, would be more than willing to do that. We're glad to share information on what's going on up there and make sure the public's informed and understands what we're doing and the goal or purpose of what we're doing.</p> <p>Chairman Gunderson: And that conversation has actually been started with Director Castor of DNRC. So I think we have all the parties pretty much in agreement that we need to put on something like this for the public. And I agree, there's too much misinformation and skepticism of what we're doing. So there needs to be more information put out. Mister Stout, did you have any questions?</p> <p>Ray Stout: I will, but I think they can wait until after the meeting. You know, I'll e-mail or call Nick, and ask him to fill us in on a few details.</p> <p>Chairman Gunderson: That'd be great because, like I say, we've got a time constraint to try to get Nick out. Are there any questions in the house? Here at the Metcalf building. Seeing none. Nick, if you want to close it up.</p> <p>Nick Raines: Yeah, again, thank you for the opportunity to share some information with the group here. I'm glad to, as</p>

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	<p>Commissioner Teske mention, to help with a broader public meeting and get this information out to the community and folks that might be interested, and or have concerns. I'm also always glad to provide updates to LASOC at any point that you all would like. I'll leave that to you all to reach out, and let me know if and when you'd like updates. Glad to do that and glad to keep you apprised of what's going on up there and our continued progress up there. An interesting and exciting and big project.</p> <p>Chairman Gunderson: Just to ask if there's anyone else from the public online that would like to ask questions. Seeing none, thank you, Nick. Yeah, I think this conversation is something that we need to be having on a continual basis until we're complete up there.</p> <p>Nick Raines: Absolutely.</p> <p>Chairman Gunderson: Thank you, sir. Moving on to our agenda.</p>

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<p>Briefing-NRDP Asbestos Settlement Agreement Discussion Kevin Stone</p>	<p>Chairman Gunderson: Next item is the NRDP asbestosis settlement agreement discussion, and Kevin Stone. Welcome, Kevin.</p> <p>Kevin Stone: Hello, I'm really just going to be handling introductions this morning. Thanks to the committee for having us. With me today are Jessica Wilkerson an attorney at DEQ and Katherine Hausrath from NRD, and Harley Harris, the program manager from the Natural Resource Damage Program. Mandy, were you going to share the presentation from there, or would you want to give us access to share it here?</p> <p>Mandy Harcourt: Ya, I can give you guys' access to Share.</p> <p>Commissioner Teske: Which site are you, because we've got a number of different sites, are you DEQ Metcalf?</p> <p>Jessica: Yes.</p> <p>Commissioner Teske: OK, Thank you. You should have access to share now.</p> <p>Jessica: Chairman Gunderson and the rest of the Committee, if you're ready, I'll go ahead and get started.</p> <p>Chairman Gunderson: Please.</p> <p>Jessica: As Kevin said, my name is Jessica Wilkerson. I'm an attorney with DEQ and I've been working on the settlement agreement for the last 2.5 years, so I'm excited to be here to give you some more information about it. We have taken the slides from Monday night's meeting, which I know a couple of you are able to attend and just paired them down, because we're aware that this committee is more often engaged in this conversation. So, please let me know if there's any clarification or further information I can provide as we go through this. So, I will get started. Sorry, was there a question? No, I'll get started and then I'll pass it over to Katherine Hausrath from NRDP to take us home. So, just a brief roadmap for today's meeting. Again, it's just an abbreviated version of Monday night's meeting. We'll do a brief history of the bankruptcy, which is really what brought us to this room today. For this conversation, we'll do an overview of DEQ and its role in ongoing CERCLA remediation, very limited overview, a general outline of the settlement agreement, just so that you're familiar with the broad strokes. And then we'll get a little bit closer, look at the remedy focused portion of the settlement agreement, and then I'll pass it over to Katherine to discuss NRDC and their role and mission, and then she'll talk about the restoration focused portion, and then we'll be open to questions. Of course, if you have questions in the, in the middle, I'm happy to entertain those. So really quickly, DEQ is engaged in a consultative role, under CERCLA the Federal Superfund Law and is working closely with EPA and WR Grace to design a protective remedy. As Jason updated you earlier on, currently, WR Grace is writing the feasibility study with EPA and DEQ oversight. It's being done in a four step approach, and the feasibility study is approximately halfway done. We are, right now, expecting sometime around 2026 or 2027, which is that final decision document that gets us closer to designing remedy. That is always in flux and we update that schedule regularly. As you heard from Nick, there are two main features at Libby OU3 that are significant and large and those are the Kootenai development impoundment dam and the related spillway that is currently being constructed by WR Grace with oversight by the ETRB through the Dam Safety Program and we decided at DEQ to focus in particular on those two features when we were addressing the management of risk at the site, in relation to the bankruptcy claim, which I'll discuss in just a minute. So, that's what we're going to be talking about today, in regards to the remedies focused portion of the settlement. And I just want to tell you affirmatively that DEQ will remain fully engaged in its consultative role of OU3, as the process continues to unfold. So a brief history of the bankruptcy there's a lot that happened and I think just as community members, many of you are familiar with the history so I'll just start kind of at the point that brings us into the settlement agreement negotiation. So the timing of the settlement agreement is solely a result of WR Grace Filing an objection to DEQ's pending proof of claim in the bankruptcy. We were not expecting that a DEQ, and we needed to respond quickly to that filing. So, just to go back a little bit. For some more context, in 2007, DEQ filed a second, or amended proof of claim during negotiations for the 2008 settlement agreement, which was negotiating remedial costs for the entire site, except for OU3. DEQ filed that claim in order to protect itself from any potential future financial liability related to</p>

OU3. In 2019, Grace filed the objection and that objection sought to resolve DEQ's pending 2007 proof of claim, by partially disallowing the remaining claims and allowing only a very small portion of it to remain. In 2019 through 2022, Grace and DEQ, and NRDP entered into court ordered confidential mediation to try to resolve these outstanding bankruptcy claims and we were able to emerge from that mediation process with a settlement agreement that I'm here to talk to you about today. So, the purpose of the 2007 amended proof of claim, which we were mediating in order to protect the benefits of, there were several purposes, but, primarily, it was to preserve the state's ability to pursue additional claims against Grace for remedy and restoration costs, if those were not fully taken care of through the CERCLA process. It was also to protect the state from potential future liabilities, still present at Libby OU3, related to costs that CERCLA requires the state to pay when the PRP is unable to pay. So, because there was so much uncertainty remaining in 2007, around the remedies, specifically at OU3 and who would pay for it, and how it would be paid for, the State chose to file the amended proof of claim. One of the big things that the State was trying to protect against at that time, and we're still working to protect against, is if something were to happen to W R Grace, and they were no longer solvent, are able to pay for the remedy. The cleanup would turn to a Superfund funded cleanup, which would require the state to pay 10% of the remaining remedy costs, and 100% of O&M. So we wanted to make sure there was some funding out there that would protect the state from having to pay those costs. We wanted to hold WR Grace accountable no matter what happened with their business operations in the future. And, generally, it's a placeholder for remedial costs and for Natural Resource Damage claims at OU3 until the CERCLA remedial process had progressed far enough to at least get to remedy selection at OU3 to provide us a little bit more certainty about what the financial realities were at the site. Unfortunately, we did not get to that point before we needed to start discussing it more affirmatively and more aggressively with WR Grace and that's what led us to the settlement negotiation. I just want to point out at the very end that the 2007 amended proof of claim, which we were negotiating around was solely a function of the existing bankruptcy, so the entire conversation was only happening as a result of WR Grace filing that bankruptcy in 2001. And that was the way that the State was responsibly engaged in managing its risk around that bankruptcy. So, there are a couple of major components and focuses of the settlement agreement that I think are important to keep in mind as you're reading through that long document. As I've kind of alluded to and discussed overtly in the in the last couple of sites, we at DEQ are really focused on addressing financial risk and potential future liability by focusing on those two large and expensive features at the site. They're expensive as far as operations and maintenance and potential replacement as far as the spillway goes. We addressed that financial risk by negotiating a financial assurance package with WR Grace. That consists of three components, which I'll discuss in just a minute. And then we also were very focused on ensuring that there would be funding for restoration work that would need to begin after the remedy is designed and completed or, you know, in some sort of order around that in the future. And really importantly, we worked hard to make sure that we would be reimbursed for at least most of the costs that the state incurred in engaging in that mediation. And we were able to get 1.5 million dollars in reimbursement for that.

Director Dorrington: May I ask you a question?

Jessica: ya

Director Dorrington: Did you say Spillway replacement?

Jessica: Yes. So I think Nick talked about this a minute ago but WR Grace is definitely operating under the assumption that this major construction will be the last major construction needed up there. We felt that, it's a really expensive and huge project, as you've heard. And so we, we looked at 100 years in the future, and thought it's possible that there's going to be some sort of replacement or some sort of major repair needed in that time. And that's what we were negotiating the financial assurance around.

Director Dorrington: Ok, thanks.

Jessica: I think that we all agreed that it would be pretty unbelievable for any sort of major repair or replacement to happen in the next 50 years, and so I'll talk about that a little bit more. But we looked a lot further into the future when we were discussing that risk. Some of the impacts that I want to talk about that kind of get to the scope of the settlement agreement, and hopefully that helps clarify what this does and doesn't do. As we discussed most multiple times, it really just provides protection for the state. This is kind of a backstop against any hard to predict, unforeseen or unideal risks that remain as WR Grace works its way through finalizing the bankruptcy and then also as we work our way through the remedy CERCLA process and get towards restoration that is provided for under CERCLA. So, this is really protection for the state, hopefully, we never have to use the majority of the contents of the settlement agreement, as it relates to the remedy focused portion. It preserves the ability to pursue certain additional claims through the creation of an allowed contingent OU3 claim. So basically if there are certain things that happen with WR Grace, particularly around their solvency as a business in the future, we will be able to return to the bankruptcy court in order to finalize our claim through that process. It's very limited and there are very specific ways that will be triggered. But the important part of that is we're not completely foreclosed from returning to the bankruptcy court in this particular bankruptcy action. I want to be really clear and I really appreciate Nick's statement at the end of his presentation that this settlement does not in any way replace or limit the state's authority to regulate the dam through the Dam Safety Act, under the authority of the Department of Natural Resources and Conservation. Nothing about this agreement impedes on their authority or responsibilities in any way. Another thing that it also doesn't do that I think is really big and important point about the settlement agreement, is it does not provide funding for

response in the case of catastrophic or other failure of the KDID or Spillway. Sure?

Senator Cuffe: OK, so it does not provide funding, however, it does provide an avenue, should there be that kind of an event to go back, to seek the funding.

Jessica: So, it specifically carves out catastrophic and other failure of the KDID in order to not in any way take on the responsibility and the obligations of WR Grace. Take those responsibilities onto the state. So we're very clear to say nothing about this gives WR Grace any sort of funding through this process that would allow them to not be fully obligated to prevent and address any sort of catastrophic failure. So it sounds kind of funny in the way that we phase this, and I wonder if I maybe should play with that a little bit. But the good thing about it not providing funding is that means that all of this funding is going to those very specific issues that we're addressing and doesn't in any way de-obligate WR Grace, they will be responsible for fully responding in the horrible case of a catastrophic failure.

Senator Cuffe: Very good.

Chairman Gunderson: And one question, Jessica, we're talking about three separate pots of money, the settlement, KDID, and then the other one.

Jessica: the surety bond

Chairman Gunderson: I guess a question at this point, OU3 technically is private property.

Jessica: half of it.

Chairman Gunderson: I mean, the portion that is the private property won't have anything to do with this, because it's owned by Grace, correct?

Jessica: Yes. So, I want to make sure that I understand you, Representative Gunderson.

Commissioner Teske: The actual mine site itself.

Jessica: Yes, the mine site itself is on private property, and then there's the surrounding forest then, which is Forest Service property. So I'm not clear on what you're asking and how does that relate.

Chairman Gunderson: The inner circle, is actually private property owned by Grace, the mine site, anything outside that area is what we're working with if there's a catastrophic failure with the dam or the spillway, or something like that.

Jessica: Yeah, and we can clarify a little bit with DNRC in a future conversation, hopefully, around what exactly would happen in the event of a catastrophic failure. But my understanding is that W R Grace is responsible for any of the impacts downstream, not just on their private property.

Chairman Gunderson: Correct, that's where I was getting. Whatever happens up at the mine site is WR Grace's problem.

Jessica: Absolutely.

Chairman Gunderson: A catastrophic failure in the future would be compensated and we could go back to the courts, and say hey, they created this problem.

Jessica: Yeah, I don't even think in that instance, we would go back to the bankruptcy court. I think that would be a completely new cause of action, and a new process.

Chairman Gunderson: That's kinda what I was looking for.

Jessica: Yeah, thanks for asking for that clarification. That's really helpful. Yeah. So I think just to kind of wrap up that conversation, we just wanted to make sure that there was continued protection related directly to the bankruptcy claim and no other sort of incursion into other authority that the state is responsible for engaging with. Or we didn't want in any way to de-obligate Grace from their general responsibilities of continuing to operate a business up there. And continuing to own that land with those large structures. And, again, I just want to remind you that we are, this is purely a function of the bankruptcy. So this is a conversation we're having, just because that bankruptcy existed. And one of the things that we kept in mind throughout this conversation was that W R Grace did have to enter into bankruptcy. So we wanted to make sure that there was to whatever certainties remained with a company that is emerging from bankruptcy. We would not be paying for those uncertainties. We wanted to make sure that the responsibility stayed with the company as much as we possibly could. So I'm going to talk to you about the three mechanisms of the financial assurance. And I realized that this is a bit difficult to read on the screen. So hopefully you've got handouts if they're available to you there. This is also linked on the NRDP website. And it's just kind of a rough attempt that I made in order to make the financial assurance mechanisms, a little bit more digestible. So essentially, there's the three mechanisms. There's two trust funds and then there's a surety bond that is ensuring that one of the trust funds is funded. So I'm gonna start with the post 2042 KDID Operation and Maintenance Performance Trust that will be funded through 10 annual installments reaching a total of 1.66 million at the end of that 10 years. We are anticipating based on kind of an average interest rate, just because it's such a long term that we're looking at that it will earn about 53 million dollars at the end. The funding will not be will not be available for 20 years and then it's meant to last about 80 years beyond that first 20 years. And when funding will be withdrawn will be solely for the use of operation maintenance by WR Grace or the State of Montana if WR Grace is no longer in operation. Um, at the end of that 100 year life of the trust, if there are still funds left in it, we can either agree to a distribution plan or the State and WR Grace will each get 50% of the remaining amount. And we anticipate that those remaining funds will be used for continued operations and maintenance of the dam if it's still up there. The 2042 KDID Operation and Maintenance Surety Bond, which is in that first column is there to ensure that those payments are made through the

life of the 10 years of the payments. It will be an initial amount of 3.5 million and will be renewed each year by WR Grace until the payments have been fully made. And because there will be payments made each year, the amount of payout will gradually be decreased. Which means that the cost of that bond will gradually get lower as we get closer to those 10 years. If for some reason WR Grace is now is no longer making the payments and isn't able to continue, then the payout will be triggered to the state, and we'll be able to continue funding that trust. And then as of December 31st, 2042, all funds present in the O&M account shall be transferred to KDID O&M performance Trust. If they're still funds within that surety bond account W R Grace will cash it out and probably transfer it over into the O&M performance trust account. Then the final mechanism is focused on the KDID spillway replacement as we discussed a little bit earlier. Again that will be funded by 10 annual installments totaling 1.06 million dollars. We anticipate that it will grow too about 230 million by 2124. So it's a little bit longer life and more time to grow and WR Grace has reserved the right to perform the work unless they're unable or unwilling to perform the work as it's required on the spillway. In this case, the funds will not be available until 2072, if they're needed at all. And after 2072, WR Grace will have the first right to take out funds in order to do the work, and then again, if they're not able to then the State will be able to do that. Any funds remaining at the end of the life of the trust in 2132 will be distributed. Either, if there's some sort of written agreement at that time then it will be distributed according to that or just to WR Grace and they have agreed to use that solely for continued maintenance and potential replacement of the spillway. So, that is the end of my portion of the presentation. I'm gonna hand it over to Katherine, unless you have any quick questions for clarification, before I do so.

Chairman Gunderson: Thank you, Jessica. If you could send a link to your presentation documents to Amanda, I'd appreciate it, too.

Jessica: Mandy, I think you have it, right?

Commissioner Teske: Yeah. We have it.

Jessica: We'll make sure we'll get it sent out to you.

Chairman Gunderson: Thank you. Katherine?

Katherine: Thank you, Chair Gunderson and members of the LASOC, as Jessica mentioned, my name is Katherine Housath. I'm an attorney for the Montana Natural Resource Damage Program, and so I'm going to speak today a bit about our program, but mostly about the 18.5 million and the allowable uses of it. And so the important part for this slide, I don't think we need to get into the detail of the history of our program, but we are administratively attached to Department of Justice, but act on behalf of the Governor as Trustee. The Governor under Federal and State Superfund is the trustee for the state of Montana, and has the sole authority to bring these claims and settle them. So, under this settlement, if it's entered by the Court, the State of Montana and NRDP on behalf of the Governor, would receive \$18.5 million over 10 years, plus interest. So, that first \$5 million would be received within six months of entry of the settlement, which there is a hearing on it in May. And I think we all are hopeful and anticipate that bankruptcy court will enter the settlement, which will mean that we would get that first \$5 million by the end of the year, hopefully. And then after that, it'd be \$1.5 million plus interest every year, for the next nine years. And in exchange, Grace receives an agreement from the State of Montana, that we will bring no more natural resource damages claims against Grace, related to the Libby asbestos site unless there is that catastrophic failure of the KDID that we were talking about earlier. So again, just like Jessica answered your question about costs of response being carved out at any, in the horrible, unlikely event that that occurred, the state could bring in additional natural resource damage claim for catastrophic failure. The uses of the \$18.5 million are restricted in the settlement, as we do for all of our settlements. And so they can only be used to restore the injured natural resources that related to the Libby asbestos site and specifically Operable Unit three, which includes, as we noted, the mine site, as well as the forested areas around it, and the watershed of Rainy Creek and the entire watershed. And it includes the ability to use all related costs to achieve and implement the settlement. It cannot be transferred to the general fund and cannot be transferred to an account outside of the state until there's actually a need to pay costs out of that settlement, such as paying a construction contractor or an engineering firm, etcetera. But the fund itself remains with the state of Montana, until spent.

Senator Cuffe: You say it cannot be transferred to an account outside the state. Does that mean outside the boundaries of the state of Montana or does it mean outside of a state account?

Katherine: Oh, yes, thank you. Senator, that's a good question, It refers to the fact that all of our settlement accounts are held as State Special Revenue accounts. And so, it's actually with the Department of Administration managed by the Board of Investments, and it cannot be transferred from that under the terms of the settlement, as all of our both DEQ and NRDP settlements are structured.

Senator Cuffe: Thank you.

Katherine: You're welcome. Yes, it is. And I can see now the confusion, and that was actually a question that came up on Monday, where there was some confusion about the financial assurance mechanisms being held by one bank. The \$18.5 million stays managed by the state of Montana. So past costs to implement the settlement that would include repaying the Orphan Share fund, which is required by law, or paying DEQ settlement account for the previous 2008 settlement, as you are all aware, and the outside counsel cost to support the State both DEQ at NRDP. And then potential restoration actions, this is where our presentation differs from what we presented on Monday. I don't think

you all need the background as much as the folks did. And Commissioner Teske had requested more information on what the funds could be spent on so that they could start thinking about potential restoration actions. And so most importantly, the Governor has the sole final authority to select the restoration actions after public comment. And as long as he is within the bounds of settlement and CERCLA and CECRA, he has a full discussion to do that. So, we will help prepare it, and he has to consider public comment, but he is the decision maker on that one. And so, I have pulled out an exhibit attached to the settlement exhibit E that includes a description of the State's alleged injuries and the basis for our claim, as well as example restoration actions. So that members of the public, if they so chose, could dig into it and get a sense of it as well as the bankruptcy court judge. And so, I have pulled these out. And actually, I just want to mention Sydney Stewart from our offices here and she's a scientist who helped us put that together. So she will be working on the restoration planning as we move forward with this if the settlement is entered. And so for the riparian restoration actions. Here's some examples of the types of actions that we would be looking to solicit input from the community on ideas for this. And they are all different types of actions. To make the creek channels in riparian areas healthier and better able to filter any runoff that comes into the creeks and better able to handle, just to be a more functioning system. And so, we have things like revegetation and planting, reconstructing wetlands in the floodplain, and floodplain restoration. Yes?

Director Dorrington: I have a question for you then. One of the things is near and dear to my heart is moving work forward on a fairly expedient path. So then when would we start or continue doing this work?

Katherine: So that's a really good question, and I have a slide later on this that probably can answer your question. So, removing and enhancing roads that might be old and running off into the creeks. Stream Bank stabilization. These are all related to improving the health of the riparian area in the Operable Unit Three. Some other examples for in stream habitat improvements would include adding meanders. So, if you have a straightened out channel of a creek maybe on some landowners land who wanted to work with us, making it more sinuous and more natural, or returning it to its more natural state. Creating variable pool-riffle-run habitat, but it is essentially for those of you who like to fish. It refers to where you might actually find fish and restoring the conditions that allow for good habitat for fish. And then installing boulders, woody debris and other large structures just to provide that variation and health to a creek. So, then another type of category that is listed in this exhibit E that's attached to the settlement, is Fish Passage Projects. And that refers to removing something that might be in the creek that actually prevents fish from being able to access spawning areas. And related to that is passage structures, such as culverts, and fish ladders, or installation of fish screens working with a landowner to put fish streams to keep fish from getting caught in irrigation systems. And these are all related to the idea of improving the fisheries population. Some example terrestrial restoration actions that were included in the exhibit were selective removal of non-native plant species combined with either replacing them with Native. Or if you have a bare area, just going in and planting native plant species using wildlife friendly fencing to help improve the populations of wildlife and their use of the land. Again, this will be working on private and public property, depending on the situation. And then some example recreational actions. So this is for the lost recreational use, which is one of the services provided by a natural resource. In the Exhibit E, it specifically discusses the idea of a fishing access site or other recreational access site in Lincoln County. And I wanted to make sure it's clear, this is not specifically limited to that. That's a decision that would be evaluated by the trustee to look at what was the most important loss of a recreational use that should be replaced in Lincoln County, working with local government and stakeholders. And then, to get to Director Dorrington's Question, What's the process if the settlement is implemented? How do we get from here to there? After the settlement is implemented, there would likely be an early restoration process, which is a term of art that refers to the idea of doing some projects 1 or 2 or a handful or projects out ahead of the rest of the projects. That would likely occur in the next few years. And then the full restoration planning, which evaluates the full suite of alternatives and full number of restoration actions that could be implemented wouldn't occur until after the state receives the entire settlement, as well as, we know what the remedy is and the final remedy for Operable Unit Three. And the important part for knowing the remedy is so that restoration funds aren't spent on what should actually be funded by Grace under cleanup. They still have that whole obligation that everyone in the community is at least as concerned about as our settlement that they are going to continue working under EPA oversight and consultation with DEQ to implement a remedy. And so we want to make sure that we don't get in their way of whatever the final cleanup is, that we don't work to implement some project that then has to be undone as part of the final remedy. And so, knowing what the final remedy is, is important for the full plan. But there are projects that will be able to be identified, that we know wouldn't interfere with remedy and would be completely outside of something that would presumably be impacted. And likely one of those recreational projects fits well into that box for early restoration. So something that could be done in the next few years if the trustee so chooses. And then regardless, all of them involve lots of public meetings and outreach. Meeting with local elected officials, members of the community, local landowners, other stakeholders. And there will be public comment on the scoping documents and the restoration plans. Both, if there's an early restoration plan as well as the full restoration plan. And finally I want to make sure I know I keep harping on this but we aren't a regulatory program. We have no ability to require anyone to do anything. All restoration actions are voluntary and so meeting with the local community and establishing those projects and relationships is really important to the success of restoration actions. And so, with that, if you have any questions for me or anyone, Harley.

7. Agenda Item	Discussion	Document Link
Panel Questions and Discussion	<p>Chairman Gunderson: I do have a question Katherine. The money can be used for direct impacts to natural resource damage?</p> <p>Katherine: Yes. The money can be used for restoration actions, is that your question? What sort of restoration actions could be implemented?</p> <p>Chairman Gunderson: What I'm saying; is it something that needs to be directly tied to impacts from the WR Grace issue with asbestos and things like that.</p> <p>Katherine: That's a great question. If I'm understanding your question correctly you're wondering does it have to be spent directly on the mine site or directly on asbestos to be restoration.</p> <p>Chairman Gunderson: Right, it's impacted directly by that.</p> <p>Director Dorrington: Can I clarify what I want? I can maybe get a double whammy. Whatever restoration activity is, must it directly link to what WR Grace is held accountable for?</p> <p>Katherine: It needs to be linked to the resources that were injured by Operable Unit Three.</p> <p>Director Dorrington: OK</p> <p>Katherine: So fisheries, riparian areas, wildlife loss, recreational use. There doesn't have to be asbestos on a Landowner's land to perform like a Fish Passage Project for example. If we identify one of the impacts from OU3 is a reduced fisheries population then a project that improves the fisheries in the area that's impacted within OU3 or Lincoln County. It doesn't have to be directly tied to asbestos, for example to improve the fisheries, but it does have to be linked to the resource, if that makes sense.</p> <p>Chairman Gunderson: Yeah, and the other question is Lincoln County is 80% federally managed lands two point two million acres of Lincoln County is U.S. Forest Service managed lands. How do we work with the federal government to be able to do let's say, watershed restoration on federal lands?</p> <p>Katherine: If that's something that the governor believes is worth pursuing that, there are opportunities to work with the Forest Service. We've worked with them sort of in the reverse where it's our state land owned and we work with the federal government, Like Spotted Dog for example here outside of Helena. That's our land and we're working with the Federal Government, there are opportunities and it's certainly not the only site where there's restoration actions that need to occur where there's a lot of Forest Service land.</p> <p>Chairman Gunderson: I can see there's a lot of questions that will come up in the future because it's something pretty new that we're not used to working with. Did you have a question, Senator?</p> <p>Senator Cuffe: This is semantics, but my understanding of an injury relates to a human or an animal and damages would be the word for non-animal sort of life. Yeah, that maybe a little picky but I know the word injury was is used that way. That was just one thing and I don't know if you need to comment on that. That's just a choice or legal term or what, but as a reporter, I would have always said injury for humans or animals. The other question, Steve's kind of added what I was thinking. It's back about the second slide you showed, talking about the use of money and the question I had over the specific of State, your explanation of. I don't have an example, but I was thinking what if something happened that either it might somehow come under the purview of this LASOC group and or it's something that the county felt they needed to respond to right away. I'm assuming there's probably a way that there would be some kind of a reimbursement program, if it was probably an emergency situation, where the county, people needed to address it right away, in some fashion. Or if it was something that somehow, we felt tied in with us, if there is a way for connection there. It's kind of a stretch. But, nevertheless, that's what we're talking about, a 10,000 year event.</p> <p>Katherine: Thank you, Senator, and on your question of injury. I think that's sort of an example of where it's kind of wonky legal terminology. Injury is actually a term of art under CERCLA and it refers to a measurable adverse impact to the natural resource. It is things like exceeding your water quality standards or reduce population of fish. The damage is actually referring to the money that we get, the governor, as Trustee for all of</p>	

	<p>us, can receive for those injuries.</p> <p>Senator Cuffe: Ok, one last one, you are under DNRC but you're connected to AG ultimately.</p> <p>Katherine: We are administratively attached to the Department of Justice, but we act on behalf of the Governor. We aren't part of the DNRC.</p> <p>Senator Cuffe: You are not part of DNRC.</p> <p>Katherine: On your other question as far as emergency response. In our line of work restoration actions, generally emergency response would be something that actually would be handled by DEQ or EPA, potentially, depending on this situation. We wouldn't have any involvement in that other than coordinating with them to make sure that if we did have to bring additional natural resource damage claim for a catastrophic release. We'd be collecting the data we needed but that would be definitely under Director Dorrington or potentially EPA depending on the situation.</p> <p>Senator Cuffe: OK, Thank you.</p> <p>Chairman Gunderson: Are there any other questions? Lincoln County, do you have any?</p> <p>Commissioner Teske: No</p> <p>Chairman Gunderson: Were there any other presentations?</p>	
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8. Agenda Item	Discussion	Action Items
Discussion of Future Oversight NRDP Settlement Funds	<p>Chairman Gunderson: Ok, let's move on to discussion of future oversight NRDP settlement funds. Sounds like we kinda covered that pretty well.</p> <p>Director Dorrington: I would say.</p>	
9. Agenda Item	Discussion	
Public Comment (Public comment needs to be word for word)	<p>Chairman Gunderson: Do we have any public comment? Anyone online? Seeing none. Do we have anyone here in house? Seeing none.</p>	

10. Agenda Item	Discussion	Action Items
<p>Discussion and Next Steps</p> <ul style="list-style-type: none"> Date and location of next meeting Summary of action items 	<p>Chairman Gunderson: Discussion and next steps. Date and location of next meeting. That should probably be located back in Libby,</p> <p>Director Dorrington: That's what I would say.</p> <p>Chairman Gunderson: Yeah, so, we should be OK there. Date, I guess we can leave up to Mandy. Yeah, we'll do a doodle poll. Does that sound OK, Mandy?</p> <p>Amanda Harcourt: Yeah. Just shoot me a couple of dates for the time of month that you want to do it and I will put together a doodle poll and send it out.</p> <p>Chairman Gunderson: Ok, we'll discuss that a little bit and come up with some potential dates then.</p> <p>Amanda Harcourt: Sounds great.</p> <p>Chairman Gunderson: Do we have any action items that we created today, other than more conversation? Seeing none? I guess we're at a point. Does anybody have anything for the greater good of the cause?</p> <p>Director Dorrington: Just a comment, Mister Chair, thanks for the robust agenda it was really content rich. Appreciate it.</p> <p>Chairman Gunderson: I think we need to do this a little more often. I think this subject is probably going to be an ongoing part of our lives, especially up in Libby. I look forward to having Director Caster work with us. Probably getting a very large group together as a 1 stop center for information so we don't have misinformation and get off into the weeds like we did in Libby. That is something we need to work on. Having said that, I guess if there's no further information.</p> <p>Commissioner Teske: Mandy has something.</p> <p>Chairman Gunderson: Ok, just a second, Senator Cuffe, did you have something?</p>	<ul style="list-style-type: none"> publication materials

Senator Cuffe: Well, essentially following up on the presentations today, the presentations Monday, and the concern of misinformation or lack of information. You know I'm an old print, a newspaper guy. I think what's been presented here, as well as probably some other information. What I was thinking as it was going on, I'd like to see is a good newspaper tabloid put together. It could also be in the form of an online presentation. I think most of it could be covered in some kind of a four page, six page tabloid with photographs, charts of the information presented. That some of the folks who are at the meeting. It's a good little study book, but it's also of great interest. Over my career I've done a lot of those. We have folks on site and Libby and folks at the newspaper, should they choose to. Whether it could be done perhaps by and through LASOC as is not totally our bailiwick and yet maybe it is somewhat. Or it could be done in combination by all the folks, agencies that have been mentioned. It could be perhaps paid for out of some of the funds that have been discussed or perhaps a newspaper would put together enough contractors and interested folks around the community if it was my newspaper, I think, I could sell ads enough to cover costs. If you want the most accurate information I think needing to be presented out of the same people who presented today, I think then you avoid turning it completely over to one newspaper. There are three newspapers in Libby and I'd like to see it circulated in Eureka as well. You're right a lot of us have spent part of our lives in Libby. That was my suggestion on trying to help dampen the spreading of misinformation and provide full understanding of everything from this presentation. I was really impressed with the engineering work that's gone into this KDID and of just as much interest, is how the money is handled, where it comes from, the story of how it got there, the ways it's dispersed. I think something like that whether we do it or the agencies do it. I think it's important to people. People are going to be emotional, it has been a long time. There are some good stories coming out of this at this point also. That's my suggestion.

Chairman Gunderson: Thank you, Senator. I totally agree, I think what we need to do is work with DNRC, DEQ, especially Mister Raines, by putting something together that we could actually have prior to maybe our next meeting with the public. Maybe even put it out prior to the meetings so it is out and available. I think we can work with Mister Stout on making sure we get the proper story out now. I look forward to working with him on LASOC's fingerprints on this. Yeah this will be an ongoing work item from here.

Director Dorrington: Chairman to make a comment on that, this is Chris. Since the bulk of today's presentation was Grace, I think they should start and create the strong foundation of the effort they put into the design and construction and a lot of the materials, including the pictures that are digital format. I think we'd start with them. Senator and Mister Chair, who do believe the audience would be, the general public or a special group of people who have an increased interest? When I think of publication materials, I try to think of who wants to read that first, and then we develop the appropriate material for that audience.

Senator Cuffe: I do think the general public. There, no doubt, would be some folks with a tighter interests in a given area. I don't know if the meeting Monday night was recorded or not, but those kind of meetings. We have done them on other subjects where sometimes people get wound up in something and they miss the real points that are being presented. If you put it together, here's the actual facts. Whether it's video, yet video is here and gone. I think a newspaper or tabloid is a snapshot at any given point of time. I would see it being enough that there could be booths at say Logger Days, Nordic Fests, County Fairs. Where some people are gonna sit down and read it thoroughly and are going to pick out a certain point, chase that point and call appropriate folks as it would have contact information. Others are going to skim a little bit now and a little bit later but I think the general audience, all the folks in Lincoln County need as much as they're willing to absorb.

Director Dorrington: Yeah, fair enough. Thank you.

Chairman Gunderson: I concur with Senator Cuffe but maybe putting it into a little different context. I think we need a 30,000 foot view. Then we need a 10,000, and then we need the little drone over the dam type. I think if we keep refining that, as Nick said, this is ongoing, there are changing things up there on a regular basis. I do have a planned field trip for LASOC and we can have DEQ. They try to keep it to about 10 people, but we can have multiple tours, and we need to keep that in mind as well. That is something that will come off this summer.

	<p>Director Dorrington: Yeah, that'd be great.</p> <p>Chairman Gunderson: Ok, Any other input? Amanda, you had something?</p> <p>Amanda Harcourt: Yeah, I just had a quick question for the committee. I have a situation here in Libby that I am trying to work with a property owner, who needs to do some sampling at some lots that she's planning on developing. She has contractors and everything lined up to start work and I was wondering if the committee feels comfortable approving or reviewing a possible reimbursement for her via e-mail versus waiting till the next LASOC meeting to discuss it.</p> <p>Chairman Gunderson: I would think that would be an excellent way to make the next step is to try an e-mail consensus. We've talked about it.</p> <p>Director Dorrington: I'm good with that approach as much detail as can be included in which properties and what level of sampling and cost estimates that'd be helpful, Who will do the sampling.</p> <p>Chairman Gunderson: You know, any background You can give us, Amanda, That'd be great, Senator?</p> <p>Senator Cuffe: No, I think that we have grown into a stage where we're comfortable with our relationships and the programs we've developed. If there's questions on e-mail, we can even have a joint teleconference.</p> <p>Chairman Gunderson: Yeah, I can put a zoom call together pretty easily. Is George still online?</p> <p>George Jamison: Yes.</p> <p>Chairman Gunderson: George, do you concur?</p> <p>George Jamison: I do, yes.</p> <p>Chairman Gunderson: Ok, so we've got a consensus on that. Yes, ma'am?</p> <p>Jessica: I think that's great. I think Chairman Gunderson, I think if we are going to meet the public meeting requirements, it might be helpful if, Mandy, when you put together that proposal for consideration, if you can arrange to get it posted on the website at the beginning of the conversation. And then, in case there's any public input, people would have the opportunity to e-mail you all. And then, once the final decision is made, just a summary of that decision placed on the website to would ensure that we're communicating properly outwardly.</p> <p>Chairman Gunderson: Yeah and I agree. That's, kind of what we talked about. I think initially we can work as a workgroup just to view it and then any decisions we do have to make on the record, we can do that via a quick conference call or Zoom call, something like that. Does that sound good, Amanda?</p> <p>Amanda Harcourt: Yeah, that sounds great, Thank you.</p> <p>Chairman Gunderson: Ok, looking forward to receiving that, so any further input?</p> <p>Chairman Gunderson: I guess I will bring this meeting, or adjourn it and we'll meet next time.</p>	
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Meeting Adjourned 10:40 am