



Libby Asbestos Superfund Oversight Committee Meeting

February 10, 2020

1:00 PM

Location of Meeting:

Metcalf Building
1520 East 6th Avenue
Helena, MT

*Remote access was also available.

1. Call to Order

The Libby Asbestos Superfund Oversight Committee conference call was called to order at 1:00 PM on February 10, 2020.

This was the 11th 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.

2. Roll Call

Commissioner Mark Peck 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	Shaun McGrath	Present in Helena
Lincoln County Commissioner designated by the Commission	Commissioner Mark Peck	Present in Helena
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 by Phone
Citizen of Lincoln County nominated by the Lincoln County Commission and selected by the governor	George Jamison *Confirmed October 2017 by Governor	Present in Helena
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>	
Bret Romney	Ascend Strategies	Present in Helena
Tom Stoops	DEQ	Present in Helena
Jessica Wilkerson	DEQ	Present in Helena
Virginia Kocieda	Lincoln County ARP	Present in Helena
Mandy Harcourt	Lincoln County ARP	Present by Phone
Robin Benson	Lincoln County	Present in Helena

3. Agenda Item	Discussion
Review and approve minutes. December 17 th , 2019	<p>Chairman Mark Peck: December 17, 2019</p> <p>Senator Mike Cuffe: My friend and colleague George Jamison was respectfully honored by the Libby Chamber of Commerce about two weeks ago, I think well deserved. His work that this committee has heard is a part of the reason that he was honored and shown respect at the annual chamber event. Congratulations George.</p> <p>Chairman Mark Peck: It was a good event; George received a standing ovation. We will now move into review and approval of the December 17 minutes.</p> <p>Director Shaun McGrath: I just now received them.</p> <p>Virginia Kocieda: After Jenny Chambers approved them, I sent them by email only to the committee members.</p> <p>Director Shaun McGrath: If other committee members have read them and are fine with them, that's fine, I just wanted you to know that I haven't had the chance to review them.</p> <p>Chairman Mark Peck: We can table approval of the minutes until later in the meeting, we will come back to them.</p> <p>Director Shaun McGrath: That's fine.</p> <p>Chairman Mark Peck: Robin Benson is our county clerk and recorder and she's agreed to do the minutes, she's very thorough. She has done the commissioner minutes since we both got elected at the same time. She does a really good job with minutes, so we are happy that she was willing to step up and do that.</p> <p>(After Agenda #5) Chairman Mark Peck: Director McGrath has had time to look at what he needed on the minutes, if we can go back to that and get it cleared up now.</p> <p>Director Shaun McGrath: There was an issue with the bylaws, I wanted to go back and track what we discussed at that meeting. I'm comfortable adopting or approving the minutes, but I would like to revisit the discussion around the bylaws. Amending the bylaws was a pretty short discussion in the minutes, I think that's probably right.</p> <p>Chairman Mark Peck: The bylaws are on the agenda, so we could probably do the minutes.</p> <p>Motion By: Director Shaun McGrath Second By: George Jamison</p> <p>Motion Carried Unanimously</p>

4. Agenda Item	Discussion	Document Link
Response to Letter from LASOC to Region 8 Administrator Chairman Mark Peck	<p>Chairman Mark Peck: Response to the August 9th letter sent to Administrator Sopkin. We discussed in the last meeting that we thought a non-response was possibly a good thing, and I thought so until there was no mention, if you look at the draft O&M Plan, where it talked about funding, it did very well talking about the state funding, but absolutely no mention of this whatsoever. I did talk to Stan Christensen; he is trying to find a copy of it. I emailed it to him, and they are going to look at it. I don't think it was left out for any sinister reason, but it concerns me, not so much now, because we all have all</p>	http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/February%202020%20Meeting/0812019_Outsanding%20Settlement%20Dollars%20Request

	<p>read this and we are all knee-deep int it, but ten years down the road and none of us are here, there's really nowhere that this is documented in the stronger format, so he agreed that he will do that. Are there any questions on the committee?</p> <p>None</p>	signed.pdf?ver=2020-02-06-133250-440
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5. Agenda Item	Discussion	Document Link
Budget Report- Tom Stoops	<p>Tom Stoops: I don't think a lot of it is surprising. We have done some cleanup on books on our end because of how we have to go through some of the work just to cover cost and the cost to the appropriate place where those budget categories were open. What it reflects is that we have generated interest and we are not spending a lot. Any specific questions?</p> <p>Director Shaun McGrath: It's probably worthwhile for the public to understand that is a good thing that at this point, we would not anticipate having those kinds of costs coming in, but we will at some point.</p> <p>Tom Stoops: Right now, all the cost that we are incurring are just related to the administration of the committee. We have looked at how we transfer that over to Lincoln County so those costs would show up in a different sort of category. Don't anticipate until we actually get into some of our gray areas and working through actions that we will have any large expenditures, haven't reached that point yet.</p>	http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/February%202020%20Meeting/Libby%20Budget%20Overview%20January%202020%20draft%20final.pdf?ver=2020-02-05-162314-843

6. Agenda Item	Discussion
Update on O&M Planning Efforts- Virginia Kocieda	<p>Virginia Kocieda: I'll begin by saying that we have had two public comment periods on the O&M document. The institutional control implementation and insurance plan document was opened for public comment between October and December 2019 and the O&M Plan operations and maintenance plan document was open for comment between January and February 2020. Comments were gathered collectively for each document and they were collected from the City/County Board of Health of Lincoln County, the Institutional Control Steering Committee and ARP. Within the workgroup we had a couple of documents go through for review. We have the operations and maintenance manual that has been reviewed by the workgroup and it's being edited and the next document that's being worked on is the sampling guidance document. This document contains the field of protocols and requirements needed for future sampling actions. Another topic that's coming up is the property evaluation notification regulation. It's now in its draft final version. It is going to be shared with the public and Board of Health this week and we will also be providing the draft final version with comment to the O&M workgroup. And finally, ARP has sent draft scope of work to DEQ and right now we're working on the budget for that scope of work and looking forward to talk with the DEQ staff to make sure that we have a frame of work that's agreed upon.</p> <p>Senator Mike Cuffe: Thank you for your work Virginia and for the report.</p>

7. Agenda Item	Discussion	Document Link
Federal O&M Funding Shortfalls: Considerations for State Funding- George Jamison	<p>George Jamison: I'm going to read some remarks here because I think it will make things hopefully more quickly. As a preface to asking for the committee's consideration of this agenda item, I've prepared remarks that I hope will be helpful to provide background and context and to frame the considerations. Given the urgency and importance of the issues that remain unresolved on behalf of the county, it seemed reasonable to restate context, especially with staff and leadership changes that have occurred since the creation of LASOC. Even for those that have been involved throughout all or most of the planning,</p>	http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/February%202020%20Meeting/EPA%20Use%20of%20Settlement%20Funds%20on%20OM%20Specific%20Items%20Li

	<p>there's a need to revisit and evaluate our objective and positions. It is easy to be worn down after months of work on details and lose sight of our objectives. I apologize in advance for the length of what follows, but I hope that it will be the complete picture and reduce the level of discussion that we need to have in the future. I have, by the way, crossed out a lot of things that are in the complete set of remarks and I will, with the permission of the committee, provide you the complete remarks after I'm done, they can be a part of the record.</p> <p>Fundamental to meaningful discussion and issue resolution is an understanding of the breadth and seriousness of the issues and concerns of the community. What guides and motivates the Commissioners is the Board of Health, Institutional Control Steering Committee, LASOC county representatives, and other community interests and overall citizenry. What are those things?</p> <p>Much of the discussion that follows was embodied in the guiding principle documents that the county provided to LASOC in September, however bowing to the desire to use a different approach and to give bylaws priority, those discussions did not occur. To a large degree, the county's overall concerns for the future of the site are embodied in the County Commissioners' and BOH Position Statement from January 2018. Copy provided in your packet of materials. The three core elements of that position statement are first, indiscriminate protection of human health and the environment will serve as the universal criterion for all O&M related actions and activities. Second and further, property owners will not bear the cost of any future issues related to the Libby Asbestos Superfund Site. The third element is a support of or participation in O&M elements will be based off these other previous elements.</p> <p>This statement was widely circulated publicly and to the O&M workgroup stakeholders over two years ago. And again, at the risk of digression for some, it is important to quickly review our position statement as a reminder and to provide background to the Director and others.</p> <p><u>First</u>, Indiscriminate protection of human health means that human health should drive all decisions not filtered by property user history or other filtering constructs. So, what norms have been established to provide protection of human health. The EPA ROD is accepted and assumed by default to define protectiveness of human health and thereby the remedy it outlines should itself be protected, thus protecting health. So, the nutshell summary of the ROD is evaluating cleanups as needed by applying these criteria and do it throughout the site or the OU. That remedy maintained in O&M is the essence of protection. Excluding properties from O&M activities such as those that have previously refused services or developers does not uniformly apply the protective elements of the ROD. Changes in land use or property use are normal expectations that were acknowledged in the ROD but were not routinely addressed during the many years of remedial action with IC's or other tools. IN O&M, these changes are the new normal. After all, a community is a dynamic environment. Conditions change. Failing to address these scenarios is not consistent with comprehensively evaluating health risks, and whether cleanup is needed based on actual conditions on a property. Discriminating by facts such as these examples doesn't retain the primary focus on public health. While there may be regulatory rationales supporting such an approach, they just simply don't seem to square up with the cardinal goal which is protection of health.</p> <p>The <u>second</u> element of the position statement is the property owner should not bear cost related to LA. This element became a very early focus in the O&M planning, proposing the various categories would not be eligible for federal O&M funds. To our constituency, this is heresy. The community was repeatedly promised by EPA and government officials that no cost burdens would be borne by owners.</p>	<p>bby%20Asbestos%20Superfund%20Site.pdf?ver=2020-02-06-133306-737</p> <p>http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/February%202020%20Meeting/DEQ%20Response%20to%20EPA%20Use%20of%20Settlement%20Funds%20Letter.pdf?ver=2020-02-06-133300-237</p> <p>http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/February%202020%20Meeting/Estimate%20Off%20Cost-%20Unfunded%20Categories.pdf?ver=2020-02-06-133309-737</p> <p>http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/February%202020%20Meeting/OM Position Statement Jan 2018 Signed.pdf?ver=2020-02-06-133330-237</p>
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	<p>Commissioner Peck specifically addressed this issue of promises and rightful expectations at the last LASOC meeting and quoted Christine Todd Whitman, and others. Those assurances warrant review but for brevity for those, will not be repeated. It's incumbent on decision makers today to honor the commitments of their predecessors. While many in our community do not focus on O&M planning details, you may be assured that the promises to the community are remembered. It might be well to observe also that the county and the public were not the source of these promises, but the recipients. Other factors that contribute to the concern about this cost element include language in the ROD, specifically section 12.3.3 in operations and maintenance that infers that owners may bear future cost. However, alongside this, there is also seemingly contrary language and letters for property owners after cleanups that points to ongoing commitment by EPA for future LA costs. So, what are we and the public to believe? There is a cause though for optimism. After all of the O&M collaboration, we believe there is a favorable resolution, pending simply appropriate documentation and clarifications. An early mantra in the O&M planning of quote "need to decide what things are subject to funding so that the money lasts, or what can you afford" end quote is not a protection-based approach and is inconsistent with the RA and ROD. The RA wasn't conducted in that fashion nor should the O&M phase. Fortunately, the ability to fund all LA related costs is clearly and easily achieved. Yes, that's another note for optimism. As we work our way through this, the universe of what EPA would likely not fund shrank enormously or at least in my perception. As a final topic related to the cost burden, its important to recognize that not supporting property owners for LA related financial burden is especially burdensome to the population that is severely economically depressed.</p> <p>For example, consider a few of the following brief demographics:</p> <ul style="list-style-type: none"> • The median age of Libby and Troy residents is 50 to 60 years respectively, which is significantly higher that Montana and the US overall which is about 40 and 37 respectively. • The median household income in Libby and Troy is about \$26,000 compared to Montana and the US at about twice that amount. • The unemployment rate in 2019 for Libby and Troy is 7.7% compared to 3.4 and 3.9% for Montana and the US, nearly twice. • SNAP or food stamp recipients for 2018 for Libby which is the only place I could find the data was 22.9% for all households compared to about 11 to 12% for Montana and the US, that's nearly double. • That same parameter food stamp support for households with children under 18 was 72% in 2017 compared to 52% in Montana. <p>So, cost burdens on property owners in any LA related issues in these severely economically depressed areas is unfair, its unrealistic and its inconsistent with fundamental fairness issues. It is in brevity an injustice. Further, the LA related issues are not of their making and shouldering cost is starkly inconsistent with the assurances provided to the community.</p> <p>Now, to the <u>third</u> and final element of the position being the conditional support of/or participation in O&M activities by the county which includes the Board of Health, ARP, and so forth, contingent upon satisfying the two earlier elements we've touched on. The contingent involvement element is actually in the best interest of success in O&M. You would probably ask how so? First, there is no substitute for the delivery of government services at the level closest to the recipient, local government, ARP, and the Board of Health under the watchful eye in Lincoln County Commissioners. Some may recall that at an early LASOC meeting, then called advisory team, Director Livers observed</p>	
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	<p>that all superfund sites are ultimately local. Thus, the impetus for partially changing state legislation to include a new duty of quote “increasing the role in Lincoln County in expending funds and managing and implementing operation and maintenance activities” end quote. There can be no substitute for institutional knowledge, efficiency and the responsiveness that offered locally by the ARP. It should also be recognized that instituting a program, not adhering to the first two elements of the policy, the non-discrimination and no-cost burdens will quickly discourage community involvement and participation. The fine points of details are lost on the public and denials of support for services, and a program based on a carrot instead of a stick which is our program, that approach will quickly fail. From the community’s support perspective, we get one chance at this. Also, be aware that the commissioners and Board of Health do not believe that a partial O&M program is consistent with local responsibilities to the community. Given that the county has no statutory responsibility to participate in the O&M activities, we are free to base judgments solely on our view of the best interests of the community. However, and I underline however, addressing and clarifying this contingency element here should not be interpreted as wanting to see it invoked. We want to take the roles envisioned and we simply need appropriate assurances and support elements to be formally in place so we can move forward as planned. Give us the tools we need and allow us to do our job.</p> <p>So, on to a new subject. Often as we work on a long, drawn-out project that’s not yet come to fruition such as the O&M program, its easy to lapse into kind of a sheltered insulated view of the real objective, and that is what best serves the public. Parochial and bureaucratic interests from all of us can supplant the real mission and that is the community. At the local level especially, we were reminded on a daily basis of their faces to the Libby Asbestos Site; there are real victims. Hundreds have died or suffered debilitating illness from exposure to LA. Even for a newbie to Libby, that’s me, and no I didn’t go to grade school, the effects on the community are highly visible and profound today and they will outlive all of us. That alone is to me and for us I think should be very sobering. Hundreds more victims have been or will be diagnosed as latency periods lead to manifestation of LA related disease. As time goes on, caregivers and researchers are learning more about LA induced diseases such as likely impacts on the autoimmune system that may have striking ramifications for the population that’s been subjected to LA exposure. In short, the health needs and the basis for this country’s only public health emergency were real and they continue. If you lack a vision of this human element of this site, then spend more time in Libby and Troy and look into the faces. Go to the CARD clinic and get firsthand account of the patients they see day in and day out. Talk with Dr. Black about his journey and understanding the site and the LA related health challenges that he perceives. Read the accounts of the earlier responses to the Libby site, including for example, the efforts of Dr. Aubrey Miller. This is personal even to this committee where members themselves have LA related diseases. If we were meeting in Libby today, we could fill the room with those who can put a real face on the impacts of this site. Please think about it. The faces on these sites and the survivors are the constituents we advocate for. There is a long legacy of abuses to the community related to LA, some knowing, some perhaps innocent, but there’s also a legacy of courageous advocacy by individual citizens, the press, community leaders, local government entities, and the early EPA and other federal entities response staff, congressional representatives, state officials and others who led and implement the effort to address the site issues. There is a legacy of hard work and diligent effort by EPA especially the long tenured Mike Cirian, and their contractors and consultants, to implement the studies and remedial efforts throughout</p>	
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	<p>the completion of RA. All of these efforts focused on the community and individual well-being. Our mission and obligations are to be faithful stewards of these legacies. We are seeking collaboration with DEQ to enable us to jointly honor the face and legacy of the population irreversibly effected by LA contamination. So, I hope this gives you a vision of what makes us tick, our focus, and our guiding principles. I appreciate your hearing that part of my presentation.</p> <p>Now for more of a fast forward to today and moving soon to this agenda item. Through a collaborative process, enormous progress has been made on most of the details of the O&M program. However, several critical issues remain including liability and responsibilities, funding sources, etc. The following comments focus on the agenda item which is filling in the current gap on funding sources, consistent with full funding. From early in the O&M planning process, the county has sought clarity on what sort of O&M LA related costs will be supported, the funding sources, etc. This resulted in progress on several important milestones, though the details remain elusive. Examples include the EPA assurance that the unused WR Grace remediation funds will be available for O&M if needed, the emergence of state funds through the so called "Vincent Bills" and subsequent revisions, the recognition by EPA of a delta concept for applicable LA related costs, and various recognitions of the ongoing, dynamic needs of the community and use of property. In the course of the planning, it has become more apparent the EPA's intent is to provide funding for most all of the LA related costs. Thankfully the short falls are less than first envisioned.</p> <p>The efforts to achieve clarity on what EPA was willing to fund and the basis for the decisions was somewhat addressed in a long-awaited and undated letter that went to Carolina Balliew of DEQ from Stan Christensen of EPA. The county was not copied on the letter, but was provided a copy informally, as well as a response from Carolina to Stan dated October 11, 2019. And you have copies of both letters in your packet. As a matter of record, during this several month period while awaiting the EPA letter, we were assured that once we saw the letter, our persistent questions related to funding sources would be addressed. We anticipated a delineated listing of supported funding scenarios, but instead the EPA letter was couched in recommendations. So, the outcome was disappointing after expecting a well-defined "what will you fund list". Parenthetically, I want to say that it should be noted that the EPA letter after further discussion is useful and we now understand that the recommendation approach is a well-reasoned mechanism to provide DEQ the flexibility to make well-reasoned judgments for the unique site circumstances that do and will arise. However, the letters do not themselves provide a clear vision of what sorts of situations not likely to be funded by EPA to thereby enable us to formulate a well-defined request for state funding. Similarly, well intended flowcharts in O&M planning documents were an inadequate basis to define funding gaps, after all, if the funded and unfunded scenarios are not clearly defined and documented, distilling them into flowcharts is not possible. However, with an alternative approach to framing the shortfalls, we are now able to move to a request for definable state funding. Note again, another moment for optimism. So, with the above remarks as background, I would ask you to please direct your attention now to the document that you've been provided entitled Estimate of Cost Unfunded Categories. This document has been proved for public and committee review prior to today's meeting. So the background as you sort of heard is early attempts to get delineation of what will be funded and then we finally have to acknowledge that the efforts of our facilitator Bret Romney who's here today to really help us look at this and finally realize that maybe that was the wrong question and what instead we should have been asking was since we seem to have trouble getting certainty and full</p>	
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	<p>delineation on that, let's ask instead what are you not going to fund. That resulted in the table which you see on page two. In this list of course a number of situations or scenarios and has a very simple matrix that cover both sampling expenses and cleanup expenses and touches on a number of things that I talked about in my remarks as far as types of problems, developers, refusals, and so forth. What we are focusing on here are the shaded cells in this table that say no. To us, this table is very much a needed breakthrough and being able to define the requests that come to this committee and the DEQ and I think this is very encouraging by identifying that they're relative few situations where we actually have funding shortages. So the next step after we got this table through Bret Romney's efforts that he developed with Mike Cirian and after Mike had checked it again with his folks in Denver to be sure that everybody was on board, the next step then became now we got this table and if we are ready to take a request for this committee how do we put numbers on them. I suppose feeling very inadequate to do that is a little somewhat lazy, I decided that the best approach which probably go simply to Mike and his consultants or CDM Smith who based on almost two decades of work on this site probably have the most informed and educated idea about what we should appropriately estimate. And then what follows on these other pages are the outcome of those discussions with Mike and I've talked to him several times about these. He has seen the numbers, and I think continues to support it. I won't go through these in great detail, I'll just touch on them briefly. First of all, for developers it's been a contentious topic in the community. We've had several things come up and note that the only thing at stake here is sampling crunch, not cleanup. But when you really look at this, you find that the number of subdivisions of properties is rather meager in Libby and Troy, particularly knowing that this isn't Lincoln County overall its within those operable units. So, you can see the basis for this, the number of subdivisions, I'm not going to go through the numbers, I'm using sampling cost, I'm using here that were provided by EPA and their consultants as being a reasonable estimate. If anything, I've tried the biases to the high side. You can see at the bottom of the page, the total estimated cost for that category is about a \$10,000 figure. The next one is people haven't maintained their property and therefore they're most likely not eligible for federal funding. When you really get down to this and talk to them, you find that this was thankfully a very uncommon problem and as a result we've got a very low estimate is what they would expect to encounter based on their experience and that number I use the higher end of it and didn't use a range, but it's about 7 or 8 thousand dollars a year. Refusals have been hot topics.</p> <p>Senator Mike Cuffe: What is not being maintained?</p> <p>Chairman Mark Peck: That means that the property owner, they've come in, done the work, they've put the remedy in place, and they are not holding up their end of the deal. They're not maintaining the remedy.</p> <p>Senator Mike Cuffe: Would that be a situation where vermiculite was let's say retained in the ceiling or the walls or someplace?</p> <p>Chairman Mark Peck: Yes, or even outside, they're out digging and doing stuff causing exposures outside of not following the basic guidelines to protect the remedy.</p> <p>George Jamison: The refusal topic as I said been sort of a hot topic, interesting though, there are about 220 properties in these two units that were refusals for various reasons during for remediation. They were not responsive, or they refused sampling and/or cleanup. The</p>	
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	<p>way we approach this was to look at the rate at which properties required cleanups and what we were given to understand is that rate overall was about three and a half percent. So, what we did is assume that holds and which find is that all worries you have if that were to continue to be true is that this would only be about another eight properties. So, we carry that forward and you will load in the cost estimate. I did use all 220 properties in my estimate for sampling with the hope that eventually at some point in time, over the next thirty years all 220 of those properties would no longer be a refusal and sampling could be conducted. But totally, sampling and cleanup is about \$9,000 to \$15,000 per year. Next one is refusals, the property owners to provide insurance coverage information and the idea is you don't know what funds to be used for LA related cost if in fact those are covered by property owner's insurance. As we talked, the number of instances in almost 20 years has only been heard of three times, so I carry this forward, I upped at the refusals to provide that information in 30 years and came up with a cost of about \$1,000 to \$5,000. Outside the National Priority List (NPL), over the past 30 years there have been three occurrences were needed to address a property outside the NPL. These occurrences are very rare and justifying cleanup would require very unique circumstances, but nonetheless, since they listed it as not to be funded area although noting that it had been funded in the past in rare cases, I did include it in this estimate. And again, I use their suggestive numbers, I ended up putting 10 sites in which I was leaning more toward the high side, since they only had three. I went through the sampling and the cleanups; I got a number of about \$2,000 to \$10,000 a year. The real point of this, details are important, but on page 8, there's a summary table and you can see there is the estimated annual range is about \$30,000 to \$50,000, then I ran these out without any present value or money, I just multiplied it by these numbers times thirty and you end up with about \$800,000 to 1.5 million collectively over thirty years. In an abbreviated comparison which I've provided here, some of the state O&M funds, you'll notice of the upper end of the estimated annual cost is less than half of a 120,000 allocated to the cleanup trust annually. And additionally, this doesn't include other funds that comprise the balance of the annual \$600,000 annual allocation. Second bullet is additionally that by +5 million in the state bankruptcy settlement is available for O&M purposes. Finally, EPA's reserving of the excess funds from the Grace settlement is not factored in here, but it would be additional financial assurance. In the end, seems that the risk of starting O&M with a commitment to fund these areas is very low and is especially minimized by the responsibility and the duty this committee with DEQ has to regularly, carefully monitor the O&M program including cost. Such monitoring would also be part of annual reporting to the legislature. That completes a run-through of this document. I am ready to quit, but only one other thing so you can get this tidied up, so you can have a full discussion, I would like to propose the following motion and it is set in front of you so you can see it in writing. George read Motion for State O&M Funding in its entirety (attached by link).</p> <p>Senator Mike Cuffe: This is really the nuts and guts of what we've been talking about since I've been here. It is the best summary. There may be some place a person might find fault with it, but I haven't. I greatly appreciate the work that you and Bret and whoever else put it into a way that I can understand. The motion as well, thank you.</p> <p>Chairman Mark Peck: As I understand, the motion is a recommendation.</p>	
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	<p>George Jamison: The motion doesn't use the work recommend or recommendation, but that is absolutely it. It is to provide the committee a written recommendation for the money.</p> <p>Senator Mike Cuffe: If I am following you right, where you said I hereby move as follows, what you really meant to say is I hereby move that this committee recommends...is that right?</p> <p>George Jamison: Yes, I could insert that; that would be correct.</p> <p>Chairman Mark Peck: So, did you make this motion or just read it for everyone?</p> <p>George Jamison: Yes, I did make the motion.</p> <p>Chairman Mark Peck: It is a motion. Do we have a second?</p> <p>Representative Steve Gunderson: I would second that.</p> <p>Chairman Mark Peck: Second by Representative Gunderson. We will open it up for discussion.</p> <p>Representative Steve Gunderson: I am included as one of those faces of Libby. I am an asbestos affected person. And looking back, one of the main reasons I became a legislator was just for this reason; to ensure that our citizens aren't saddled with any costs of finishing this cleanup, nor to maintain the remedy. And if we don't maintain the remedy correctly, I'll paraphrase something you said before; we are going to find Rosauer's bags full of LA out in the brush. It's our responsibility from the state side to ensure the funding is taken care of and maintained and those gaps are filled. There should be no cost or burden to the citizens affected and when I say citizens, even a developer has property rights. They are part of our community. They're bringing in badly needed dollars. I guess, I would challenge DEQ or can DEQ follow this way to fill the gaps. I look at the cost of filling the gaps compared to what we have allocated that \$120,000 dollars annually and if this is only just a scratch in the sand of how many we are going to end up with every year, let's say the low end, even if we look at the middle of the pack rather than the high end, we are still going to be able to cover it. So, I guess I would make the comment and ask can DEQ follow us on this motion and fill those gaps for our citizens.</p> <p>Director Shaun McGrath: George, thank you for your work and the amount of effort that you've put into this and I think it is extremely helpful. Particularly the estimated costs that you just walked us through. I don't know that this is actually what's going to happen, I don't think you do, but it's helpful and starts to frame the conversation and provides context and I think that is very helpful. You just presented a whole lot to us. I'm reacting to not just the motion on the floor, but to some of the other information and comments that you made. What I think frankly is less helpful and I understand why folks in Libby particularly are going back to the commitment, the promise that Christine Todd Whitman made. Where I find it less helpful is what she didn't do when she made that commitment was outline how all of this was going to get funded. She didn't say to the citizens we got this covered and here's how, she said I want to make sure nobody has to pay for this stuff. That's not realistic and it's not realistic from the standpoint of one administration, three administrations ago, probably six or seven or more administrators ago, making a commitment that defines future administrator without identifying, setting aside the funds to actually make it happen. From the standpoint of DEQ its problematic in pointing to a commitment that a prior administrator made, EPA</p>	
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	<p>administrator made. She can't obligate the State of Montana unless she puts those dollars on the table. I understand why you go back to it. It's an important thing that you keep putting in front of EPA. They need to either live up to that commitment or tell you why they won't. I'm having to tell you that from the state's perspective, I only do what we have the resources to do. We have limited resources. That's where I think the work that you've provided here, this is helpful. This starts to say here's what we anticipate, and we can start to craft a budget around that. We know how much money we have roughly. Let's make sure we have the funds that we can stretch to cover as much as we can. But I have the responsibility if they ask as manager of this fund, to make sure we are using it wisely and conservatively. I think I will vote against the motion. I appreciate the spirit which it is offered. I think it's premature. We were just really walking through this with you today. I'd like to have more time with my team here to dig into it further and see if these numbers are pretty accurate or if they're not accurate. Again, I think you are setting out a good framework though, that at least be considering how we're going to spend these funds, but I'd like more time with it. The second concern I have about timing is a couple of months ago after one of these meetings and one of these similar conversations, it was real clear to me the importance of this conversation and the asking that you all have been making consistently; what are you going to fund, what aren't you going to fund? And I came back with a team here and ask that we start working on that. I mean, those are fair questions to be asking and ultimately, we need to be able to answer them. And to various conversations and work, we have been drafting a guidance document that would provide our thinking around these questions. We have gotten it to the point where we're ready to share something. We didn't have time to get it drafted to provide to you today, but it is fairly close. We'll share this document in the coming weeks with the expectation that we could tee it up for conversation at our next LASOC meeting. Its not a guidance document saying here is what we are doing, it's a draft to invite the input and reaction from the LASOC members which I think your motion and the background research you provided, all of that really plays into this. This draft guidance that I'm talking about starts to focus that conversation. We can really start diving into at work where do we have agreement, where we don't have agreement. I request or suggest that it might make more sense to have that conversation first then having a vote out of the committee here.</p> <p>Chairman Mark Peck: I think the way I understand the motion is to recommend. We're not asking you to vote on it today, or to approve it today, it's a recommendation that you take it under advisement and compare it. I guess this is our take of it, you guys are working at your take, but I don't think we are asking for a vote to approve or disapprove, it's a recommendation to the department that you take it under consideration. As far as timing goes, I want you to understand that as a county commissioner that has been asking for this, we are within 60 days of going into O&M. If we don't have clarity on these issues and clarity on liability, I think that's more on the EPA side of things, its pretty tough for us to lively step into O&M for the very reason that you talked about. I get where you are coming from, she made that promise several administrations ago and there's been several promises made along the way and that's why we've fought so hard to have things cemented in writing because we've been, I'm going to say bureaucratically lied to. I mean, I hadn't read this book before, The Air That Kills, if you haven't I suggest you do because what went on not just with WR Grace, but with ATSDR, OSHA, the entire asbestos industry, government, lack of support...not only Libby, but several other communities that are going through the exact same thing, there is a strong mistrust of government. I understand the dilemma we are in</p>	
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	<p>here and that we're having to deal now with what we have available vs. a promise that she made I guess 16 years ago maybe. We have gone through several renditions but now we are coming to the end of this thing and the decisions we make now even though O&M can be changed. But I would just ask that if you analyze this against what you're doing, because we are just as focused. I can tell you being the county commissioner of a town like Libby, we are fiscally as tight as you can get. We understand the pressure that you are under, but to just strongly consider this because you're going to get, I think, strong community buy-in. I think it's affordable from what we've looked at. We've asked for these cost estimates for probably four years and to my knowledge nobody else has sat down and analyzed this in any way shape or form. And to me that's one of the first things that should have happened. We are slamming up against a deadline, one way or another, we have to get some answers because what we've gotten so far is just nothing. I don't know how to put it any plainer than that. I think this is doable, we'll be watching it on a bi-meeting basis, looking at trends and we can reverse it. I know some people mention precedents, well we deal with precedent every day with people, we are used to that. If it's not working and we need to move a different direction, that's where I come in or Senator Cuffe or Representative Gunderson to tell the community this isn't going to work, we need to take a different approach. But I think if we gave it a try and mold it and I don't know if you call it a pilot or whatever, but I think that we'll learn as we go into this thing, where we can cut corners and where we can become more efficient. You're right, we don't know if this is what's going to happen, nobody knows, but we have to give it our best shot and I got to tell you, I'm really disappointed that nobody other than a volunteer at the county level went through this exercise. It's not like we didn't ask for it or even volunteered to help pay for it. To me it's seminal, it's foundational to being able to make some predictable decisions. The positive thing is it's not this big scary animal, so I just ask you to take this and look at it.</p> <p>George Jamison: The context that I absolutely understand about the promises made. The point in making them is just simply the fact that sets up a very real personal expectation. that's the point of my making that and people in the community almost universally are not going to care about the details, are not going to care about most of these plans, what they remember is that promise, so that's the purpose in bringing that out. I understand it's a real bummer for people down the road to say well, how are these promises being paid and what are we supposed to do. I understand, and that's why I brought this up, because of the expectation that has built in the community and what that does to us locally in terms of carrying that message. The second thing I would like to comment about is the motion. I would be very surprised if you would vote in favor of this motion because it's a recommendation to you and the way I look at our drafted bylaws is I would think that this would be the way most of these things work, that if three of us agree that we want to make a recommendation to the department that this would be processed with a motion. I'm not trying to tell you how to vote by any means, but I wouldn't expect it on a lot of these things to vote at all, but maybe abstain because what I'm trying to do here is to get something on paper to give to you as a recommendation.</p> <p>Representative Steve Gunderson: Listening to Director McGrath gives me a better feeling, but I would suggest that DEQ take our recommendations and meld them together with their recommendations as soon as possible. If they are two weeks out they should have time to be able to integrate our ideas in with theirs so we have a pretty good understanding of where each of us sits and what our mutual do's and mutual don'ts are. I would suggest that we have a</p>	
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	<p>meeting soon after that document is made available to us to sit down and do this same thing. I highly agree with the Chair that we're between a rock and a hard spot where our backs are up against the wall. Things need to happen or not, one of the two. I would request that DEQ take our information back integrate into theirs and get us a document shipped out that we can read and soon after have an interim meeting.</p> <p>Director Shaun McGrath: I think this is a really good conversation that's starting to finally get to some meat in the matter and George, again I commend you for kind of forcing this conversation. The response on the commitments that were made and the expectations that that creates in the community, I totally understand. The other side of that and I know you know this is true, is its an expectation that's not only relevant to this generation but we have to look 30-50 years out. But what the state, what DEQ is wanting to do with managing these funds is not get to 20 years out and we're out of money and people say wait a minute there was a commitment made. As a consequence, we believe that at a minimum, there needs to be some level of prioritization as a part of this, we can't fund everything. And what are the priorities that we really do need and that's a bit of the conversation that we're having. the guidance document draft that will circulate, it doesn't fund everything; I'll give you fair warning right now. And Mr. Gunderson, we will certainly endeavor to look at the materials that George has presented to us and can have that conversation. Probably not a surprise, there are things that you have asked to be included in this motion for funding that at this point we don't agree with as part of this guiding document. We can have that conversation; I want that conversation. I want to kind of lay out where we're at and force the conversation from that side, but it's a conversation we're not putting it in front of you as a done deal. But again, to the motion, I think it would be helpful if at least I can dig in more to these numbers and like you said, its not as scary when you look at it in this context and that's right if it's accurate. Let's give it some more time to see if it is and if it is, well yeah, that's a game-changer for this conversation.</p> <p>Tom Stoops: The values presented by George are not dramatically different values that Mike Cirian, EPA Remedial Project Manager has presented in the past. I think George already said that's where he got most of them.</p> <p>Director Shaun McGrath: I'll make one last shot at an argument to table this until the next meeting, a couple thoughts to consider. One, we haven't even adopted our bylaws which governs making recommendations. Secondly, I look at the language and the motion and it is even adding the council recommends that the state funds be used for these categories. The categories there now are not ones that would necessarily fund as a ???92:09 funding. I would suggest that if you gave us until the next meeting, you could read our proposal and you'd have the benefit of allowing the staff here to make the arguments for DEQ why we don't think some things are appropriate necessarily as an automatic funding item and we'd be in a better place to weigh in on a motion like this and you can even tailor it more if there are specific things about our guidance that you as a committee want to speak to. So, for those reasons, I'd suggest we table this until the next meeting.</p> <p>Senator Mike Cuffe: I'm thinking we have four sets of funds. We have the federal funds, and this says what the feds would not cover. Number two, there's some state bankruptcy funds, and I think there are two separate funding sources. And then there is the share funding that came through from Senator Vincent's legislation earlier. And then</p>	
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	<p>they're not going to cover. I'd like to know what DEQ would plan to do with the other money if not this kind of stuff. Maybe we are missing a category. Let's get those included if there is something else that needs to be funded with this money. Otherwise, why does it sit there? If we are going to put it off any longer, I'd like to get all the cards on the table and all of them face up. There is a motion on the floor and I'm willing to call for a question. I'm willing to back away from calling for a question and move to reconsider, but we got to get someplace so we don't come back with this same dog gone the county comes up with a proposal with some facts and numbers. I want to know where something else goes.</p> <p>Representative Steve Gunderson: I'm torn, I still would like to see what DEQ has as counter information to what George has proposed, but I think the Chair made the point. We are up against the wall, time's a-wastin, let's get this done. Should we give DEQ that two weeks to integrate this all in. Let's make this a priority and get that integrated. Find out where our problems lie so we can specifically address those problems and again, I think we need to have another meeting after that document gets released to where we can discuss it. We don't have any time left. We need to get it done and move on.</p> <p>Senator Mike Cuffe: February 24th gives you two weeks to get it ready and polish it up and send it out. That we would all have an opportunity and set up a special meeting on particular date.</p> <p>Chairman Mark Peck: I think what you are talking about is give them a deadline to get the paper done for their recommendations and then set a date, early March for the meeting.</p> <p>Director Shaun McGrath: I want to make sure that staff were able to do this. I think we're pretty close and should be able to turn that around.</p> <p>Tom Stoops: I'd be more confident to the Friday of that week than I would the Monday due to just everything that's going on at the moment. We've got considerable movement on four of our largest sites all happening in the next three weeks. I believe our memo is pretty close, but I'd like to get a document out that we can use for that basis of debate so that we can find our compromise point. I don't have two of the authors here today, I would like to be able to check their shock and awe and bring that date up, but I think it's a fairly doable date, our documents are fairly close and the changes we have left to make to it are need to be considered, but not substantial.</p> <p>Director Shaun McGrath: I want to make sure we are communicating that this is not some effort to push this out further. We want to get this conversation done as well.</p> <p>Senator Mike Cuffe: We got a date that we can't push out further and we are coming up against it. We sat right in this room, my first meeting that I was down here and said we've got these very realistic things. I remember Commissioner Peck saying we've got to have...lets don't get caught at the end. I'll repeat that, let's don't get caught at the end and pick a date and I'll do my best to make sure I'm here.</p> <p>Chairman Mark Peck: It's not just this we are dealing with the O&M plan changes or finalizing ICIAP. I understand you've got more than us for a site. Am I hearing a desire beyond the Director to table this? I just want your absolute assurance that you are going to take this and look at the cost estimates.</p>	
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	<p>George Jamison: With all due respect, I am very puzzled about how this is... I didn't put in the word recommendation and we could modify it to that extent, but this is a recommendation and that's all it is. I think it's a very important recommendation, but if we can't go through this and make a recommendation, knowing it may get shot down and blown out of the water, nonetheless, I think this really just babbles my vision of how we are to make recommendations in the future. I'm just really puzzled about why we can't let this go forward as a recommendation certainly allow you the time to consider it and act on it and I think that what this committee is about, we're supposed to make recommendations. If we are going to get up to the point of making a recommendation then we don't feel comfortable with it, so we kick the can down the road further. I don't think that serves any purpose. We wanted in the bylaws that we wanted motions in writing so that you've got something where you can say this what has been recommended by the committee and here it is and then you can pass judgment on it. I'm all about further discussion but I just really feel like as a matter of principle, they're going to be able to make a recommendation.</p> <p>Representative Steve Gunderson: I totally agree with George, I don't feel this is kicking the can down the road, I have to agree with the Director, I think and Senator Cuffe, we've accomplished a lot. I think we've identified some common ground and its probably closer than what we think. I'd actually make a substitute motion that we table this at this time and allow the DEQ to February 24 to get it done in that timeframe and then to have another discussion at a meeting that we can call after we've disseminated that information. I think that'll get us moving along but yet accomplish what we need to accomplish and find that common ground.</p> <p>Director Shaun McGrath: I second that motion.</p> <p>Chairman Mark Peck: We have a substitute motion and a second, any further discussion? The substitute motion is to table until February 24.</p> <p>Senator Mike Cuffe: We should pick the most reliable date.</p> <p>Representative Steve Gunderson: The date I was using was the date that Tom Stoops said that they needed, I believe it was the 28th. It's hard for us to set a date now, but I think we need is just set a special meeting specifically to discuss that document.</p> <p>Chairman Mark Peck: We have a motion on the floor and a second. Any further discussion?</p> <p>Senator Mike Cuffe: Call for the question.</p> <p>All board members voted in favor except George Jamison and Chairman Peck voted Nay. Motion carries 3 for – 2 against.</p> <p>Chairman Mark Peck: As soon as we get back, Virginia will conduct a doodle poll.</p> <p>Director Shaun McGrath: For clarity, the 28th is when we provide the guidance document and then we would discuss this motion and that guidance document would be in a special meeting to be scheduled in early March.</p> <p>Chairman Mark Peck: Yes</p>	
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8. Agenda Item	Discussion	Document Link
Request for expanded review period and public information meeting on O&M Documents- Senator Mike Cuffe Representative Steve Gunderson George Jamison	<p>Senator Mike Cuffe: Everybody has a letter dated December, draft final institutional controls plan covering residential commercial properties. Basically, I'm saying we need to have public meetings. That's a 90-page piece, it's been advertised, comments were taken, but I do think we need to have public meetings. It's one of three documents and I was asking that the comment period deadline should accommodate for all of them. More than one meeting may be necessary, the reason is there's no financials that have been included so we need to know how's it going to impact the homeowner financially, current property owner or potential owner. As time marches forward, questions/issues arise. As a State Senator, I'm a possible owner in the future. I think we need to have these questions settled and in a proactively, timely manner. So that was the basis of my request. As we are nearing the end of this transition time, it's more important than ever to make sure everybody has that last chance. It's probably repetitive almost but I do think it's important for folks to be able to walk down, look somebody in the face, ask questions and voice their concerns.</p> <p>Representative Steve Gunderson: I fully concur with what Senator Cuffe said and I can add one other thing, is that if you look at these three documents, you can find one document referring to the other documents and if that's the case, how can we look at each singular document by itself. They are basically chapters of a total story and if we are lonely looking at a certain chapter and each one ties into another; we're not getting the full picture. We need to re-evaluate this and put all three documents in the same meeting.</p> <p>Chairman Mark Peck: We shared as commissioners some of the same concerns. I understand the need that the O&M manual is more of an operational day-to-day living document more so that the O&M plan. When we heard that a lot of the what I would consider key issues were not going to be in the O&M plan, but were going to be in the O&M manual-in fact, the O&M plan references the details to issues in the O&M manual, but the O&M manual is not going to go through a public process. I understand why, it's not going in there. I don't mind having that information in the O&M manual, it also needs to be in the O&M plan. We need all three documents in order to truly evaluate the O&M manual because when it just refers to the O&M manual, the public isn't going to see the O&M manual until it's a done product.</p> <p>Tom Stoops: As is typically the case in virtually every superfund site I've ever worked on, our documents are always kind of a living document. When we talk about the institutional control implementation and assurance plan, the ICIAP, that's the kind of document that is updated more seldom. It would be updated because of something we find in a 5-year review. I believe that the O&M manual as the document</p>	<p>http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/February%202020%20Meeting/BOH%20Motion%20re%20Public%20Comment%20Periods%2011.13.19.pdf?ver=2020-02-06-133254-080</p> <p>http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/February%202020%20Meeting/DEQ%20reply%20to%20BOH%20motion.pdf?ver=2020-02-06-133257-377</p> <p>http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/February%202020%20Meeting/DEQ%20reply%20to%20BOH%20motion.pdf?ver=2020-02-06-133257-377</p> <p>http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/February%202020%20Meeting/ICIAP%20Comments_Rep%20Steve%20Gunderson_09Dec2019.pdf?ver=2020-02-06-133318-253</p> <p>http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/February%202020%20</p>

	<p>is a document that's updated periodically. Its not maybe on the 5-year cycle. When we go to the manual, I do agree with Mike Cirian that it's the gritty details, but it is probably the most living of the documents because as George and I were talking about before the meeting, we are in a different place because we are in people's yards, in people's homes, we are going to learn things as we go forward and that's where the manual is, is that living document that Virginia and company, DEQ, and EPA. We understand how we are doing the specifics, so I guess I say all that to say, it won't be precluded from the public looking at it, but in another type of document that we would say here's a 30-day review. It's more the kind of document we'd say here's the manual.</p> <p>Chairman Mark Peck: I agree with you 100% and that's why I'm saying having those more foundational funding issues and the things that we've been discussing for the last hour moved into that manual without public scrutiny is I think inappropriate. I don't care if it's in there, but the driving document for those key issues like that need to be in more of the public review document, not the operational document. It can be in both, but how is the public supposed to have any say so or recommendations to the most key issues to them personally if it's in the manual vs. the plan. Because you ask them to comment on something they are not going to see until it's-here it is. I guess that's our big concern to us as commissioners, I just think it's in the wrong place for the very reason you brought up.</p> <p>Virginia Kocieda: I wish this was understood earlier in the work group before this was decided because I'm not sure that everyone had that same impression that such important details would be in a document that wouldn't be available until O&M starts and those details are needed for the public in order for them to plan on saving money to do certain activities as well. I think also what needs to be considered is that in this superfund site, EPA has had a contractor do all of the cleanup work, all the responses and that frame is now being completely demolished and becoming a completely new system that many people don't know the details to because we don't have the details to it. And the most critical part for this community and understanding is how much money do I have to save in order to go to ARP to say I need this done. And with those details in the manual, they have to wait until now April to understand what this reimbursement system is. Right now, the public for the first time is hearing about a reimbursement from the O&M plan, that's from January to February of this year. That's the first time they are hearing about it, so I wanted to add that to just keep in your mind while you are discussing this topic.</p> <p>George Jamison: All these things are true, and I would like to focus on a dilemma we've got here. A part of the question and this was suggested by Mike Cirian, and I think it's a good suggestion was that this requested informational meeting which EPA is more willing to do and is planning on that they suggested that the Board of Health might serve to sponsor or host the meeting so we are trying to answer the question back to them about are we willing to do that, but at the same time you can see the Board of Health's motion that basically says the same things, we want to see all three documents and finalize until we've had a chance to see them all. At what point in time does the O&M manual, which is a DEQ document, its not an EPA document. EPA uses their scripted formal review process but at what point in time does the O&M manual become a public document that we on the Board of Health if for no other source can share this with the public. Frankly, we've had a lot of pushback to any release of it at all in the past and the email that we attached to a former member of your staff, does not really speak to the certainty at what point and time can we take this over and share it with the public. Not for a formal comment period but still essentially the</p>	<p>Meeting/ICIAP%20Comments_Senator%20Mike%20Cuffe_09Dec2019.pdf?ver=2020-02-06-133321-893</p>
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	<p>same thing, to allow them to see it. I'd like an answer to that because until we understand that, we can't really suggest back to the two agencies about when we would be willing to host some sort of information meeting.</p> <p>Tom Stoops: A question for you Mr. Jamison. Is the objective of that statement to say prior to going into O&M, you'd like to have a presentation of the three documents to the public, three documents available for the public?</p> <p>George Jamison: I think that's what the Board of Health motion says. That to provide public comment periods and list all three documents and it does say it not finalize them until public information meetings have been conducted and input is related to all the documents can be considered. I would hope the public would have an opportunity to at least see it make some comments on the manual too. What I am hung up on right now, is I don't even know when the O&M manual is going to be such that we can share it with the public.</p> <p>Tom Stoops: I cannot answer that today.</p> <p>George Jamison: OK. Without specific dates, isn't it reasonable though that at some point that becomes a public document?</p> <p>Tom Stoops: That's what I was trying to convey is that the O&M manual, that the term final is maybe should have been set when the published O&M manual will become publicly available as we get comments on it as we go through because who knows which kind of property we'll address, what we will be addressing. There will be processes and procedures that will say we need to fix that, you need to adjust that. Initially I believe there will be more changes then later in the program because after a while you get things figured out.</p> <p>Chairman Mark Peck: Is there a possibility that could be ready when we have the public meeting so that it's available along with the other three documents so when we give the presentation, we can show the whole process to the public.</p> <p>Tom Stoops: To answer your question, I would like to take it up with the O&M workgroup if I may.</p>	
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9. Agenda Item	Discussion
Liability and Responsibilities of Property Owners- Chairman Mark Peck	<p>Chairman Mark Peck: I want to reiterate how important these questions surrounding liability. I did have this discussion with Stan Christensen. I think it's primarily an EPA discussion, but it does crossover to all of us. He went back and this goes to your seven administrators since Jack Roth, he made it very clear that it was the expectation of the EPA to not hold homeowners responsible for any legal...but obviously falling short, we understand you can't give complete indemnification because there's liable to be a homeowner that's just grossly negligently, goes and does whatever in which case they might become a PRP, but there is concerns out there. I think the light bulb came on what we've been trying to ask for and he brought up this verbiage from Jack McGraw and I said can we just put that in the O&M plan, and he got it. This is not for us, its for the guy ten years down the road. For a citizen to be able to look at it and understand in context in one document that yes, these things are at least addressed and if they want more detail, they can go on a letter search, an email search between all the different...and he said they are going to do that. But this issue of liability and responsibilities of the property owner because like George highlighted earlier, there's confusion between the ROD and the ICIAP, we need that clarification. We realize we are not signatories to this document, but we want to be able to support it. But if we don't have these things clarified, to me they are foundational. I can't look at any citizens in the eye and say trust us, its going to get taken care of because they are not going to buy it even if it's true. We owe it to all the work that's been done to the people that have done the work to get us to this point to be able to answer these questions. I told Stan, we don't need a deep legalese, you can just quote what you just read to me from Jack McGraw</p>

	works just fine for us. I don't know how much of that falls on DEQ other than the funding piece, we are already moving forward on. I'm speaking strictly for the county commissioners, we want to be able to jump in behind this thing, go to the public meeting, stand there next to you and the EPA and say this is the right thing, we support it. But if we don't have those basic things answered it's going to be pretty tough for us to do that. Any question of me on that issue?
	None

10. Agenda Item	Discussion	Document Link
LASOC Bylaws- Bret Romney	<p>Bret Romney: The copies that you have, has changes that as understood that were requested and discussed in the last meeting in yellow. There's an addition of a mission statement and then changes throughout the document I highlighted in yellow were suggested changes as understood.</p> <p>Director Shaun McGrath: On page six item #D at the top of the page, regarding policy positions second sentence. We discussed if as an individual, if you disagreed with LASOC, you could still write a letter and say that you just couldn't do it. Two suggestions that I would make as revisions, first is to delete <i>if unanimous vote is not met</i>, it's possible that you could vote for something, but you want to go beyond what the committee voted for. I would just leave that <i>individual members are not prohibited from providing their individual opinion and position outside of LASOC</i>. But I would add at the end of that sentence, <i>but should be careful to provide disclaimer that they are not speaking on behalf of LASOC</i>.</p> <p>Chairman Mark Peck: We are stating that we each have the right to state our own individual position at any time and that we can do so representing ourselves. No different than when I do an op-ed in the paper, I state in there that I'm speaking on behalf of Mark Peck and not the county commission.</p> <p>Director Shaun McGrath: Just language that says you should be careful to provide a disclaimer that they are not speaking on behalf of LASOC.</p> <p>Senator Mike Cuffe: We are eliminating the first part of that sentence correct?</p> <p>Director Shaun McGrath: Correct, <i>If unanimous vote is not met</i>-that's stricken so that the sentence begins with <i>Individual...</i> The first sentence stays. That was a unanimous vote because its position most of the work of this committee is recommendations to DEQ on the funding issues, but if we are going to take a position to EPA or some other outward position of preventing an advocacy position of the legislature for example, we wanted to make sure that was an unanimous position.</p>	http://deq.mt.gov/Portals/112/Land/FedSuperFund/Documents/Libby/February%202020%20Meeting/LASOC%20Draft%20Bylaws%20Jan%202020.pdf?ver=2020-02-06-133324-737

	<p>Chairman Mark Peck: I think what you were saying also is that even if there's a unanimous vote, we still may want to comment where we thought is should have gone further or it didn't. I supported it, but we have to do that as individuals, not as representing the committee. But in order for it to be an official position of the committee, it needs to be a unanimous vote.</p> <p>Director Shaun McGrath: That was my understanding. What I think is appropriate so that the requirements for taking a position as a recommendation to the DEQ Directors is a majority vote. I took the lower threshold for recommendations director. But for an outward policy position, it was the high threshold.</p> <p>Senator Mike Cuffe: On page 5, item C, I can see recommendations before DEQ approved by a minimum of three, strive to reach a consensus.</p> <p>Chairman Mark Peck: That's the difference in the thresholds. C is the lesser threshold.</p> <p>Director Shaun McGrath: Maybe we could clarify that.</p> <p>Chairman Mark Peck: I'm good with it, it makes sense to me. The main thing it is saying, is if we don't...if you wanted something but it doesn't happen because we don't get a full unanimous vote, that you can still go out as an individual and voice your opinion.</p> <p>Director Shaun McGrath: Maybe we could divide this up and say D.- <i>Official LASOC position of correspondence</i> and then under that subsection 1. <i>requires unanimous vote</i> and 2. could make the second point of representation outside LASOC or language making sure you are not representing LASOC. Another issue is page 6, #F Removal of Officers. I apologize, I did not go back and review Representative Gunderson's bill last year, but I thought that laid out the appointments.</p> <p>Chairman Mark Peck: It does.</p> <p>Senator Mike Cuffe: It does.</p> <p>Director Shaun McGrath: So, removal does not seem like something we can do.</p> <p>Tom Stoops: That clause is if the committee thinks someone should be removed, they would go back to the appointing individual and say you need to remove a pre-appointee.</p> <p>The members agreed to remove item #F on page 6 of the bylaws.</p>	
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	<p>Director Shaun McGrath: Page 7 under amending the bylaws-The minutes don't show that I spoke about this, so I apologize. I do think that the adoption of the bylaws should require that heavier threshold of consensus of unanimous vote. I think we are all going to group these with unanimous vote and to change them ought to be a big deal and not that we can't, but it needs to be a unanimous vote is my suggestion.</p> <p>George Jamison: You mean an unanimous vote for adoption or amending?</p> <p>Director Shaun McGrath: For amending, but I assume it's for adoption as well. I'm referring to the language on B1. <i>The bylaws may be amended at any regular meeting of LASOC by a majority vote...</i></p> <p>George Jamison: Sometimes its also dangerous to put in unanimous because honestly, you can have a troublemaker vote no on everything, and you can never get any place.</p> <p>Representative Gunderson: I have to agree with George, with a minimum of three, it gives us more latitude, I think. Rather than being held up at gunpoint, I think the minimum of three votes should stay.</p> <p>Chairman Mark Peck: As I look at that, I see both sides of this. I think the one unique part of it is in all fairness, we can hold the department hostage because of the makeup of the committee on this. I also see George's point that all it takes is on cowboy to block everything, so I'm not really sure how I feel about it.</p> <p>Director Shaun McGrath: Mr. Chair, let me respond to that, it's a valid point, but here's where I would push back on that. We have constructed these bylaws in a manner that we think provides fair policy for how we are going to operate. It's not a matter of one person gets advantage or one group gets advantage, but how this body is going to operate. Our legitimacy will happen because all the members of this committee feel like they get a fair hearing, the rules were agreed to upfront and also allows for changes and if we see that we need to operate a little bit differently in this way, we hadn't contemplated certain issues, that are called out in our bylaws, it allows for those changes. What it doesn't do is for a group of one or two people that come in and try to change things. Now to George, to your comment, I think these bylaws as constructed, really allow us to manage our behavior in a way that if there's</p>	
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	<p>one person, they're not going to get away with too much because the bylaws as currently written are not going to allow that. So, this I think really protects us from the future. And again, you still have that majority vote about recommendations to the director and I am supportive of that.</p> <p>Chairman Mark Peck: I don't have a problem with leaving it as it is or going with unanimous. I'll probably just go with unanimous in order to get these moving, I would say unanimous.</p> <p>Representative Steve Gunderson: I still feel differently, I still feel that it should be three votes and for the reason that I think just what Director McGrath said is that nobody needs to be holding a hammer and I think that still gives us equal representation with equal authority all the way around the table.</p> <p>Chairman Mark Peck: We probably need to vote on this particular issue before we move on.</p> <p>151:47 Director Shaun McGrath: Motion that we amend the bylaws page 7, Roman Numeral VI to meet the language from a majority vote to a unanimous vote.</p> <p>Chairman Mark Peck: We have a motion, is there a second? (pause, no second)</p> <p>Chairman Mark Peck: For the purpose of further discussion, I will go ahead, I guess as Chair, I can second. Is there further discussion? (pause) There is no further discussion, I will call for the vote.</p> <p>Chairman Mark Peck: Yay Director Shaun McGrath: Yay Senator Mike Cuffe: Nay George Jamison: Nay Representative Steve Gunderson: Nay</p> <p>Motion failed.</p> <p>Representative Steve Gunderson: I got one minor change to propose. On page 6E, under Proxy Voting, at the end of the second line, striking <i>of</i> and inserting after a <i>by digital or written</i>. So, the line would read-<i>notified in advance by a digital or written proxy authorization</i>. That way its written and there is no question about it. If there's a question on the proxy, we do it in the legislature and there's been a time or two when somebody questions a vote, and this is the best way to document it and make absolutely sure something isn't just getting winged. It's actually a proper proxy</p>	
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	<p>authorization.</p> <p>Senator Mike Cuffe: That would not allow a verbal?</p> <p>Representative Steve Gunderson: Correct. It needs to be either an email or a handwritten authorization or txt. Some sort of digital communication, so there is a record of it.</p> <p>Senator Mike Cuffe: That proxy vote, you can either direct the person to vote for them, tell them how to vote, or you can tell them after the discussion, you'll vote the same way they do. Is that correct?</p> <p>Representative Steve Gunderson: Yes, affirmative. That's the way we do it in committees and usually the record is going to be the message itself telling the individual that you're authorizing them to either do a separate indistinct vote, or to vote the way that they vote. By going to the presiding officer of acting officer, its on the record of that proxy authorization.</p> <p>Chairman Mark Peck: I don't think we need to vote, everybody agrees, by acclamation.</p> <p>George Jamison: Provided editorial and grammatical changes.</p> <p>Representative Steve Gunderson: A proxy does not count as a quorum, but we need to check on Robert's Rules.</p> <p>Chairman Mark Peck: I agree with that.</p> <p>Director Shaun McGrath: Questioned page 8, number 5, that's very broad. Seems that needs to be qualified.</p> <p>Chairman Mark Peck: Isn't that governed by state ethics. So maybe a statement that we are bound by Montana state ethics.</p> <p>Tom Stoops: Sub paragraph E does relate to the State of Montana Codes for ethic behavior.</p> <p>The committee chose to eliminate Page 9, #5 in its entirety.</p> <p>Tom Stoops: Can we verify in the minutes that the committee determined that voting by proxy does not count towards a quorum.</p> <p>Chairman Mark Peck: Yes</p> <p>Virginia Kocieda: I looked it up real quick, not necessarily proxy, but according to Robert's Rules, a quorum is the minimum number of voting members who must be present a properly called meeting in order to conduct business in the name of the group.</p> <p>Senator Mike Cuffe: But we are allowing folks to be present by phone.</p> <p>Chairman Mark Peck: Yes</p> <p>Representative Steve Gunderson: I think we need to clarify if you're connected electronically, you're actually present and accounted for. If you are not present at the</p>	
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	<p>time that we check in and take roll call, then you're not part of the quorum.</p> <p>Chairman Mark Peck: Agreed.</p> <p>Senator Mike Cuffe: Motion to accept the Libby Asbestos Superfund Oversight Committee bylaws as amended at this meeting.</p> <p>Representative Steve Gunderson: Second</p> <p>Director Shaun McGrath: As I indicated earlier, I will vote no and that is based solely on my concern about unanimous vote to amend the bylaws.</p> <p>Chairman Mark Peck: Any further discussion?</p> <p>Senator Mike Cuffe: Call for the question.</p> <p>Motion carried. Director Shaun McGrath voted Nay.</p> <p>Bret Romney will update the draft bylaws per today's discussion.</p> <p>George Jamison: Mr. Romney has helped us through some thorny issues and things like that and I would certainly feel like your help is very beneficial. I know the committee has asked for your help before and I would hope that we would be in some agreement or have a consensus here to continue to ask Bret to help us in particular with things wrapped up in items 7, 8 and 9 on the agenda. I'm not sure that's highly defined but I think he could be beneficial in that regard and wondered if that's agreeable to this committee. Should ask if you are willing to do it.</p> <p>Bret Romney: Yes, would like to be sure that any requested help is clearly articulated and identified with what the end result should be.</p> <p>Senator Mike Cuffe: Do we have some kind of agreement or contract?</p> <p>Chairman Mark Peck: The county does.</p> <p>Director Shaun McGrath: If the county wants to continue 174:44 service, there is no concern on my part there. If the suggestion is that LASOC would employ, then I think that needs to be brought forward in a more formal way with a workplan or a contract. I'm just not willing to make that decision on the fly here.</p> <p>George Jamison: My suggestion was although you've given me an idea about maybe we should request that and maybe we will in the future, my suggestion was that he continue under contract with the county. I'm not suggesting in this that we are funding it.</p> <p>Chairman Mark Peck: I think you bring a lot of balance, perspective and even though we've been paying, you've never hesitated to tell us when we are off base. I think you've represented both sides of this very well, but I agree with the Director, coming up with an absolute today would be...it needs to be more defined and formal. Maybe by</p>	
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	<p>the next meeting.</p> <p>George Jamison: In the meantime, is it ok with this group that he continue on the county's dime to work on our behalf.</p> <p>Chairman Mark Peck: I'll have to go back to the other commissioners. I don't think that's a problem, but I don't want to speak on their behalf. I'm assuming that's the case, but it would inappropriate for me to obligate the county at this point.</p>	
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11. Agenda Item	Discussion
Public Comment	<p>Chairman Mark Peck: Is there any public comment?</p> <p>Ray Stout Kootenai Valley Record: Mr. Chair, just to make sure on your vote, it was a 3 to 2 earlier. I'm looking back at my notes here. I think it was Director McGrath who, I haven't found it in this mess that voted no and did you accompany him on that, was that you?</p> <p>Chairman Mark Peck: I did, yes.</p> <p>Ray Stout Kootenai Valley Record: Was that the state operations and maintenance money.</p> <p>Chairman Mark Peck: No, the 3 to 2 vote was on the bylaws.</p> <p>Ray Stout Kootenai Valley Record: Ok, but this was earlier in the session. It was...</p> <p>Chairman Mark Peck: That motion was tabled. It was a tabling motion that George and I voted against.</p> <p>Ray Stout Kootenai Valley Record: Ok, this was, you referring to under agenda item number 7, the federal O&M?</p>

	<p>Chairman Mark Peck: Yes. That was tabled pending completion to give DEQ the opportunity to complete their recommendations for...</p> <p>Senator Mike Cuffe: It was a substitute motion.</p> <p>Chairman Mark Peck: It was a substitute motion and not tabled, yes, but we will take it up at our next meeting in March.</p> <p>Ray Stout Kootenai Valley Record: Ok, thanks very much.</p> <p>Chairman Mark Peck: Any other comments? Hearing none, our next meeting is in early March.</p>
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12. Agenda Item	Discussion	Action Items
<p>Discussion and Next Steps</p> <p>a. Date and location of next meeting</p> <p>b. Summary of action items.</p>	<p>Chairman Mark Peck: The next meeting is in Libby and we will get it scheduled ASAP because I know schedules fill up pretty quick. Let's get the doodle poll out. Anything else for the good of the order?</p> <p>Senator Mike Cuffe: Motion to adjourn.</p> <p>Representative Steve Gunderson: Second</p> <p>Motion Carried.</p>	