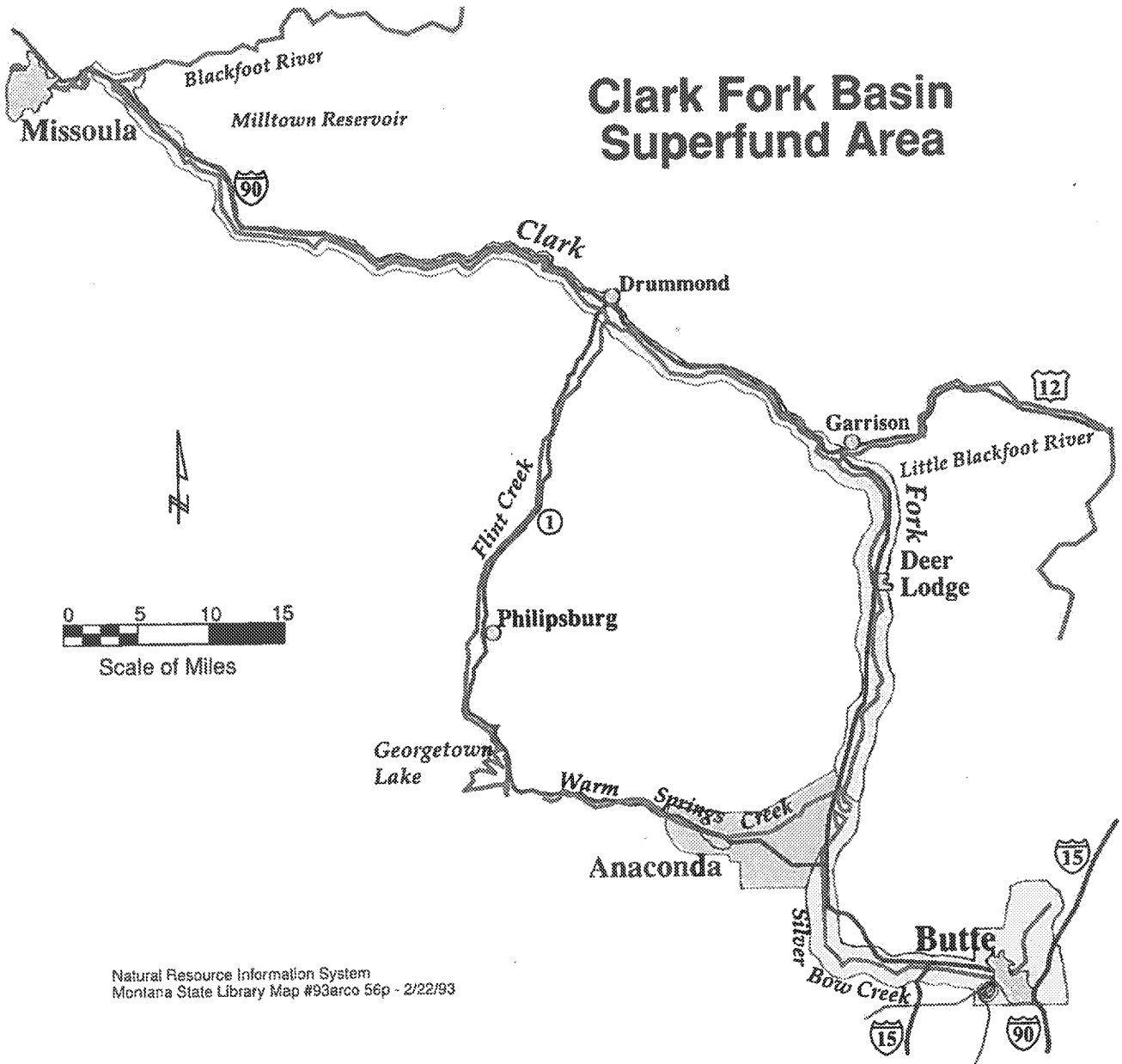
Attachment 1
Clark Fork Basin Site Map

Clark Fork River Basin



Brown = Milltown Reservoir / Clark Fork River Site

Green = Anaconda Smelter Site

Yellow = Silver Bow Creek / Butte Area Site

Montana Pole Site

1

Confidential
Henry Elsen, Site Attorney
July 2, 2013

Maps and Picture Packet
Clark Fork Basin Superfund Sites Briefing

Attachment 2
Silver Bow Creek/Butte Area Operable Unit Map

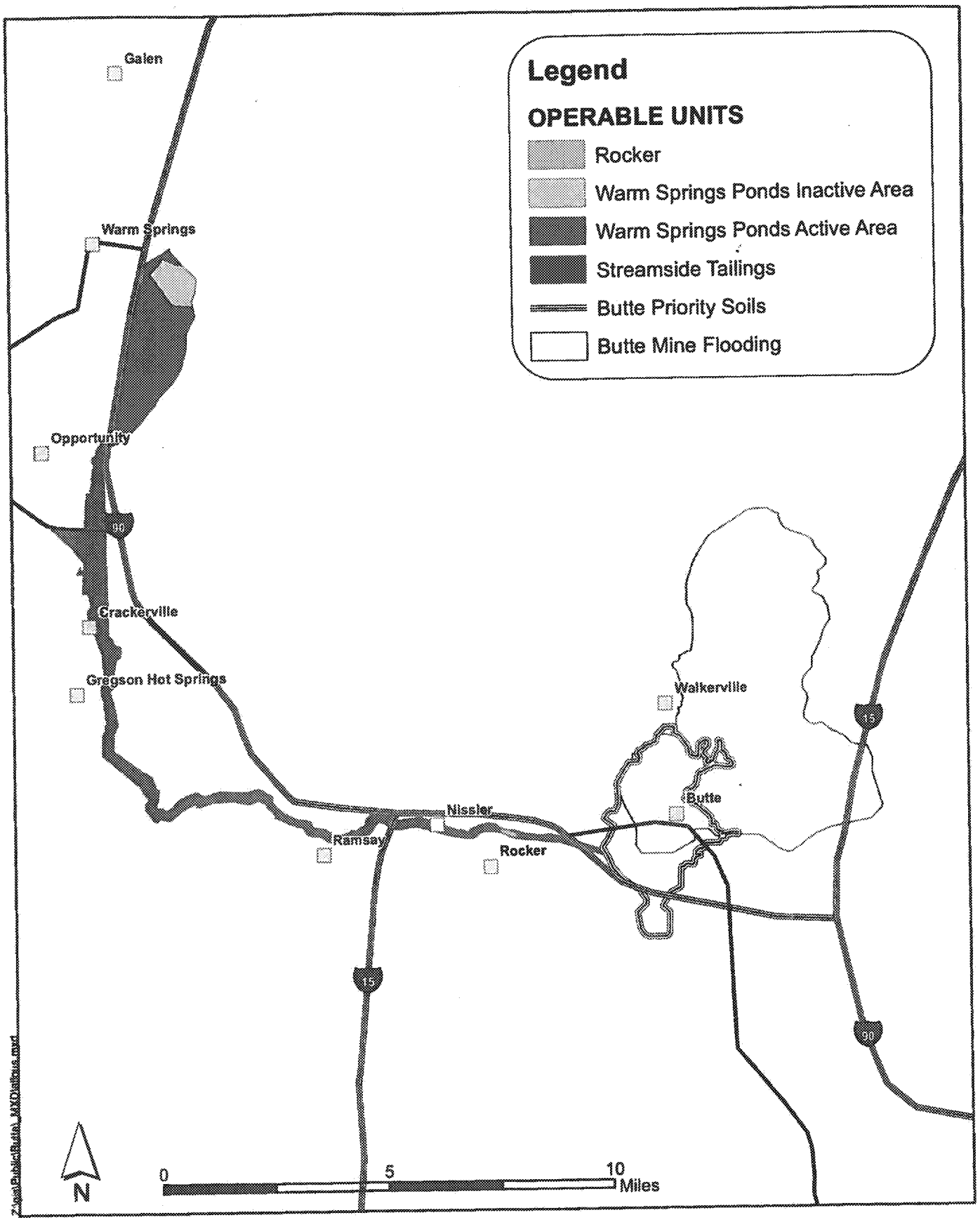


Figure 3-1 Operable Units in the Silver Bow Creek/Butte Area Site

Attachment 3
Section VII Court Order for Conducting
Clark Fork Basin Site Consent Decree Negotiations

VII. FRAMEWORK FOR FUTURE SETTLEMENT NEGOTIATIONS

30. Intention to Settle . The United States and ARCO also wish to settle the remainder of the United States' claims and ARCO's counterclaims relating to the Clark Fork NPL Sites (except for the Montana Pole and Treating Plant Site, which was previously settled) that are not otherwise addressed by the Consent Decree, as provided for in this Section VII (Framework for Future Settlement Negotiations). The sets of claims and counterclaims described below represent logical groupings of such claims and counterclaims, based on EPA's current plans for issuing Records of Decision and other response decisions, but the exact order in which the sets of claims and counterclaims will be addressed may change. EPA shall provide notice of any such change to ARCO 60 days prior to issuing the notice letter, draft consent decree and Cost Documentation for that set of claims and counterclaims. The United States and ARCO will attempt to reach agreement to settle these claims and counterclaims in accordance with the schedule and requirements of this Section. Both the United States and ARCO enter into this process in good faith and with the intention to settle.

31. Negotiation Requirements . Negotiations for settlement of the remaining claims and counterclaims at the Clark Fork NPL Sites shall proceed in accordance with the following requirements. It is the intent of the parties to negotiate these sets of claims and counterclaims in a serial manner. If the United States does not proceed in a serial manner, EPA shall provide notice to ARCO 60 days prior to issuing subsequent notice letters, draft Consent Decrees, and Cost Documentation.

a. The record of decision for the Rocker OU was previously issued by EPA. Within 45 days after EPA transmits a notice letter, draft consent decree, and

Cost Documentation for response costs associated with the Rocker OU and the Clark Fork General account, the United States and ARCO shall commence negotiations to settle the United States' claims and ARCO's counterclaims, with respect to the Rocker OU. ARCO shall provide documentation equivalent to Cost Documentation for Rocker past costs no later than the end of the 45 day period. The negotiations will address, inter alia, interest, past costs (including allocated site wide and allocated Clark Fork general costs) through the most recent calendar year for which EPA has Cost Documentation (which shall be at least through fiscal year 1997), future work, future costs (including allocated site wide and allocated Clark Fork general costs) and documentation for future costs, waivers of claims against the Superfund, Clark Fork General account total costs and allocation methodology, and termination or conversion of all related administrative orders for response actions within this Operable Unit to consent decree requirements. Within 90 days after the negotiation period begins, the United States and ARCO will lodge the consent decree developed as a result of these negotiations, if agreement is reached. If agreement is not reached within the negotiation period, the provisions of Paragraph 33 (Extension or Stay of Negotiation Periods and Termination of Negotiations) apply.

b. After issuance of response decisions for the Butte Active Mining Area Operable Unit, and within 45 days after EPA transmits the notice letters, a draft consent decree, and Cost Documentation for the Operable Units described in this subparagraph, to ARCO and other potentially responsible parties ("PRPs") identified by EPA the United States and ARCO, and the other recipients of notice letters who are willing, shall commence negotiations to settle the United States' claims and ARCO's

counterclaims with respect to the Mine Flooding/Butte Active Mining Area OUs and related removal Operable Units. ARCO shall provide documentation equivalent to Cost Documentation for its relevant past costs no later than the end of the 45 day period. The negotiations will address, inter alia, interest, past costs (including allocated site wide and allocated Clark Fork general costs) incurred through the most recent calendar year for which EPA has Cost Documentation (which shall be at least through fiscal year 1997), future work, future costs (including allocated site wide and allocated Clark Fork general costs) and documentation for future costs, waivers of claims against the Superfund, and termination or conversion of all related administrative orders for response actions within these Operable Units to consent decree requirements. Within 90 days after the negotiation period begins, the United States and ARCO, and any other settling PRPs, will lodge the consent decree developed as a result of these negotiations, if agreement is reached. If agreement is not reached within the negotiation period, the provisions of Paragraph 33 (Extension or Stay of Negotiation Periods and Termination of Negotiations) apply.

c. The record of decision for the ARWWS OU was previously issued by EPA. Within 45 days after EPA transmits a notice letter for ARWWS OU, a draft consent decree, and Cost Documentation for the Anaconda Smelter Site, the United States and ARCO shall commence negotiations to settle the United States' claims and ARCO's counterclaims with respect to the Anaconda Smelter Site. ARCO shall provide documentation equivalent to Cost Documentation for its relevant past costs no later than the end of the 45 day period. The negotiations will address, inter alia, interest, past costs (including allocated site wide and allocated Clark Fork general costs) through

the most recent calendar year for which EPA has Cost Documentation (which shall be at least through fiscal year 1997), future work, future costs (including allocated site wide and allocated Clark Fork general costs) and documentation for future costs, waivers of claims against the Superfund, and termination or conversion of all related administrative orders and consent decrees for response actions within the Anaconda Smelter Site Operable Units to consent decree requirements. Within 90 days after the negotiation period begins, the United States and ARCO shall lodge the consent decree developed as a result of these negotiations, if agreement is reached. If agreement is not reached within the negotiation period, the provisions of Paragraph 33 (Extension or Stay of Negotiation Periods and Termination of Negotiations) apply.

d. After issuance of records of decision for the Milltown Reservoir Sediments Operable Unit and the Clark Fork River Operable Unit, and within 45 days after EPA transmits notice letters, a draft consent decree, and Cost Documentation to ARCO and other PRPs identified by EPA for the Milltown Reservoir Sediments Operable Unit, the Clark Fork River Operable Unit, and the Warm Springs Ponds Operable Units (including the Mill Willow Bypass), the United States and ARCO, and the other recipients of notice letters who are willing, shall commence negotiations to settle the United States' claims and ARCO's counterclaims with respect to the Milltown Reservoir/Clark Fork River/Warm Springs Ponds Operable Units. ARCO shall provide documentation equivalent to Cost Documentation for its relevant past costs no later than the end of the 45 day period. The negotiations will address, inter alia, interest, past costs (including allocated site wide and allocated Clark Fork general costs) incurred through the most recent calendar year for which EPA has Cost Documentation

(which shall be at least through fiscal year 1997), future work and future costs (including allocated site wide and allocated Clark Fork general costs) and documentation for future costs, waivers of claims against the Superfund, federal natural resource damages claims reserved pursuant to Paragraph 78.d. (General Reservation of Rights of the United States), and termination or conversion of all or certain related administrative orders for response actions within the Milltown Reservoir Site and Warm Springs Ponds OUs to consent decree requirements. Within 90 days after the negotiation period begins, the United States and ARCO, and any other settling PRPs, shall lodge the consent decree developed as a result of these negotiations, if agreement is reached. If agreement is not reached within the negotiation period, the provisions of Paragraph 33 (Extension or Stay of Negotiation Periods and Termination of Negotiations) apply.

e. After issuance of the record of decision for the Butte Priority Soils Operable Unit, and within 45 days after EPA transmits a notice letter, a draft consent decree, and Cost Documentation for the Butte Priority Soils Operable Unit and all related Operable Units including Lower Area One to ARCO and other PRPs identified by EPA, the United States and ARCO, and the other recipients of notice letters who are willing, shall commence negotiations to settle the United States' claims and ARCO's counterclaims with respect to the Butte Priority Soils Operable Unit and all related Operable Units. ARCO shall provide documentation equivalent to Cost Documentation for its relevant past costs no later than the end of the 45 day period. The negotiations will address, inter alia, interest, past costs (including allocated site wide and allocated Clark Fork general costs) through the most recent calendar year for

which EPA has Cost Documentation (which shall be at least through fiscal year 1997), future work, future costs (including allocated site wide and allocated Clark Fork general costs) and documentation for future costs, waivers of claims against the Superfund, past and future DOJ costs, and termination or conversion of all or certain related administrative orders for response actions within these Operable Units to consent decree requirements. Within 90 days after the negotiation period begins, the United States and ARCO, and any other settling PRPs, shall lodge the consent decree resulting from these negotiations, if agreement is reached. If agreement is not reached, the provisions of Paragraph 33 (Extension or Stay of Negotiation Periods and Termination of Negotiations) apply.

f. For the Non Priority Soils Operable Unit, EPA will follow notice and negotiation procedures pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622.

32. EPA/DEQ Coordination with ARCO prior to Notice Letter Issuance . Prior to issuance of the notice letters referenced in subparagraphs 31.b.-31.e. (Negotiation Requirements), EPA, DEQ, and ARCO, and if appropriate other identified PRPs, shall meet to discuss the remedial design process and other appropriate response actions, including which such actions should be completed before the issuance of notice letters. Any response actions to be performed by ARCO, and if appropriate other identified PRPs, as a result of these discussions shall be performed under administrative order amendments or administrative orders. In determining its schedule for notice, EPA shall consider, in its discretion, the complexity of the record of decision for an Operable Unit and the desire of ARCO, and if appropriate other identified PRPs, to adequately develop remedial design before the issuance of notice

letters.

33. Extension or Stay of Negotiation Periods and Termination of Negotiations . Without leave of court, the United States and ARCO may agree in writing to extend the 90-day negotiation periods set forth in subparagraphs 31.a.-31.e. (Negotiation Requirements) up to 60 additional days (so that the entire period for negotiation is 150 days), or the United States and ARCO may agree in writing to stay the negotiations until a future date. Any additional extension of the negotiation periods in subparagraphs 31.a. - 31.e. (Negotiation Requirements) shall not be effective without approval by this Court. If agreement is not reached within the 90-day negotiation periods provided in Paragraph 31 (Negotiation Requirements), or as extended or stayed in accordance with this Paragraph 33 (Extension or Stay of Negotiation Periods and Termination of Negotiations), the negotiation for that set of claims and counterclaims shall be terminated. If any negotiation period is terminated in accordance with this Paragraph, either Party may terminate all further negotiations on the remaining claims and counterclaims by serving the other Party with written notice in accordance with Paragraph 8 (Notices and Submissions).

34. Stay of the Federal Action . With respect to all claims by the United States against ARCO in the Federal Action, upon the completion of expert discovery and the filing of discovery and summary judgment motions in accordance with the Case Management Order for the Federal Action, all claims by the United States against ARCO shall be stayed. With respect to all counterclaims by ARCO against the United States in the Federal Action, upon completion of expert discovery and the filing of discovery motions in accordance with the Case Management Order for the Federal

Action all counterclaims by ARCO against the United States shall be stayed. Such stay will remain in effect while the parties are in compliance with the schedule set forth in Paragraph 31 (Negotiation Requirements) or extension or stay of that schedule under Paragraph 33 (Extension or Stay of Negotiation Periods and Termination of Negotiations). This stay shall not prevent the Court from ruling upon any motion filed and fully briefed prior to the stay, and shall not prevent either Party from requesting a ruling from this Court or any court of appeals upon a legal issue that has been fully briefed in this Court prior to the stay. Should the United States and ARCO fail to meet any of the deadlines set forth in Paragraphs 31 (Negotiation Requirements) or 33 (Extension or Stay of Negotiation Periods and Termination of Negotiations), either Party may petition the Court to lift the stay and reinstate the litigation. In no event shall the stay relieve either the United States or ARCO of its obligation to respond to written discovery served on or before the designated close of discovery. In no event shall the stay bar the taking of depositions necessary to preserve testimony under the standards of Federal Rule of Civil Procedure 27.

35. ARCO's Reserve . ARCO has reserved $15,000,000 ("ARCO's Reserve") for purposes of this Section VII (Framework for Future Settlement Negotiations). ARCO shall pay ARCO's Reserve to the United States in one of the following manners:

a. If the United States and ARCO reach a settlement and lodge consent decrees with respect to the Rocker Operable Unit, and the Mine Flooding/Butte Active Mine Area Operable Units, by the deadlines specified in subparagraphs 31.a.-31.b. (Negotiation Requirements), $1,500,000 of ARCO's Reserve, shall be used

to reimburse the United States as required by these consent decrees. If the consent decrees require ARCO to reimburse the United States less than $1,500,000, ARCO may reduce ARCO's Reserve by the difference between $1,500,000 and the amount of past response costs due to the United States under the consent decrees.

b. If the United States and ARCO reach a settlement and lodge a consent decree with respect to the Anaconda Smelter Site by the deadlines specified in subparagraph 31.c. (Negotiation Requirements) $6,000,000 from ARCO's Reserve shall be used to reimburse the United States as required by the consent decree. If the Anaconda Smelter Site consent decree requires ARCO to reimburse the United States less than $6,000,000, ARCO may reduce ARCO's Reserve by the difference between $6,000,000 and the amount of past response costs due to the United States under the Anaconda Smelter Site consent decree.

c. If the United States and ARCO reach a settlement and lodge a consent decree with respect to the Milltown Reservoir/Clark Fork River Site and Warm Springs Ponds Operable Units by the deadline specified in subparagraph 31.e. (Negotiation Requirements), $7,500,000 from ARCO's Reserve shall be used to reimburse the United States as required by the Milltown Reservoir/Clark Fork River Site and Warm Springs Ponds Operable Unit consent decree. If the Milltown Reservoir/Clark Fork River Site and Warm Springs Ponds Operable Unit consent decree requires ARCO to reimburse the United States less than $7,500,000, ARCO may reduce ARCO's Reserve by the difference between $7,500,000 and the amount of past response costs due to the United States under the consent decree.

d. If the United States and ARCO fail to lodge consent decrees with respect to the Rocker Operable Unit and the Mine Flooding/Butte Active Mine Area Operable Units within the deadlines specified in subparagraphs 31.a. and b. (Negotiation Requirements), or if negotiations are terminated pursuant to Paragraph 33 (Extension or Stay of Negotiation Periods and Termination of Negotiations), ARCO shall pay to the United States $1,500,000 of ARCO's Reserve in the manner described in Paragraph 14 (Past Cost Reimbursement of ARCO). If the United States and ARCO fail to lodge a consent decree with respect to the Anaconda Smelter Site within the deadlines specified in subparagraph 31.c. (Negotiation Requirements) or if negotiations are terminated pursuant to Paragraph 33 (Extension or Stay of Negotiation Periods and Termination of Negotiations), ARCO shall pay to the United States $6,000,000 of ARCO's Reserve in the manner described in Paragraph 14 (Past Cost Reimbursement by ARCO). If the United States and ARCO fail to lodge a consent decree with respect to the Milltown Reservoir/Clark Fork River Site and Warm Springs Ponds Operable Units within the deadlines specified in subparagraph 31.d. or if negotiations are terminated pursuant to Paragraph 33 (Extension or Stay of Negotiation Periods and Termination of Negotiations), ARCO shall pay to the United States $7,500,000 of ARCO's Reserve in the manner described in Paragraph 14 (Past Cost Reimbursement of ARCO). Payments required by this Paragraph 35 (ARCO's Reserve) shall be made within 30 days following the expiration of any deadline for lodging of a consent decree under the requirements set forth in subparagraphs 31.b. -31. d. (Negotiation Requirements), within 30 days following the expiration of any deadline, as extended pursuant to Paragraph 33 (Extension or Stay of Negotiation Periods and Termination of

Negotiations), or following termination of negotiations pursuant to Paragraph 33 (Extension or Stay of Negotiation Periods and Termination of Negotiations).

e. The United States will apply any amounts paid pursuant to subparagraph 35.d. (ARCO's Reserve) to EPA past payroll, indirect, and travel costs for the Clark Fork NPL Sites (except the Montana Pole and Treating Plant Site), and the claims for these costs will be removed from the past cost claims of the Federal Action. If any balance remains after the reimbursement of the EPA past payroll, indirect, and travel costs, the remainder shall be initially credited generally against unreimbursed past costs for the Anaconda Smelter Site and later applied to either settled costs or costs determined to be owed to EPA at any of the Clark Fork NPL Sites.

36. Cost Documentation for Negotiations . At the beginning of each 45 day evaluation period described in Paragraph 31 (Negotiation Requirements), the United States shall provide to ARCO Cost Documentation for all past cost claims subject to that negotiation period. The United States shall not be required to provide any additional documentation with respect to past costs beyond that defined as Cost Documentation. The parties may determine during the negotiation period the amount of past costs to be paid, discounted, or withdrawn, considering, inter alia, any incomplete Cost Documentation and EPA's efforts to supplement any incomplete Cost Documentation. The failure of the United States to provide complete Cost Documentation shall not relieve ARCO of its obligation to negotiate in good faith or to make payments as required by Paragraph 35 (ARCO's Reserve).

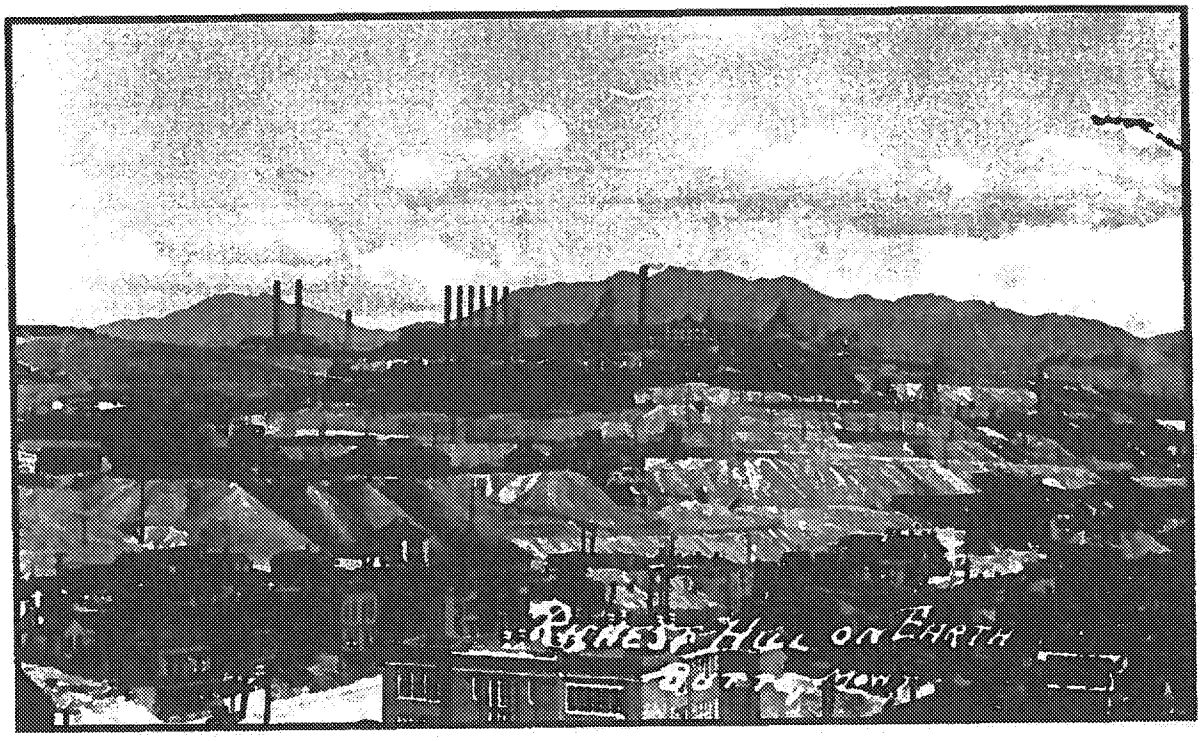
Ex. 7(A)

Ex. 7(A)

Ex. 7(A)

Attachment 5
Historic Photo of Butte, Montana Mining Facility

BUTTE, MONTANA
THE SOURCE



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