Exhibit No. 1
Date 3-14-05
Bill No. HB 201

DEPARTMENT OF JUSTICE

HB 201: To Extend the Existing Appropriation for Montana's Natural Resource Damage Program

The 2003 Legislature provided a $650,000 line of credit from the Coal Severance Tax Trust Fund to pay the Natural Resource Damage (NRD) Program's costs for the 2005 biennium. **Less than $200,000 of this loan has been expended through January 1, 2005.** HB 201 extends this authorization and allows the program to operate on the remaining portion of the 2003 appropriation.

HB 201 does not extend any new credit. It would simply:

- extend the 2003 appropriation to continue the litigation and settlement negotiations through the biennium ending June 30, 2007, and
- ensure that, to the extent allowed by state and federal law, any funds recovered for litigation costs are used to repay, with interest, the loan from the Coal Severance Tax Permanent Fund.

A three-fourths vote of each house of the legislature is required to approve the extension of the prior loan from the Coal Tax Severance Permanent Fund for another two years.

Lawsuit History

In 1983, the State of Montana filed a lawsuit against the Atlantic Richfield Co. (ARCO) for injuries to natural resources in the Clark Fork River Basin. The lawsuit, brought under the federal and state Superfund laws, sought damages from ARCO, contending that decades of mining and smelting in the Butte and Anaconda areas had greatly harmed natural resources in the basin and deprived Montanans of their use.

The Superfund laws require that any natural resource damages recovered be used to restore, replace or acquire the equivalent of the injured resources. The lawsuit sought both restoration costs to return the resources to productive use and damages to compensate the public for lost use of the natural resources. DOJ's Natural Resource Damage (NRD) Program is responsible for pursuing this lawsuit on behalf of the State.

The first phase of the lawsuit went to trial in March 1997. The Court approved a partial settlement covering a substantial portion of the State's claims in April 1999.

Key Terms of the Settlement

The settlement called for ARCO to pay to the State a total of $215 million plus interest from April 1998. Under the settlement terms, ARCO paid:

- $129 million (including $9 million in interest) to the State for the restoration of natural resources in the Clark Fork Basin (this money was deposited in a special revenue fund known as the Upper Clark Fork River Basin Restoration Fund);
- $86 million (including $6 million in interest) to the State to clean up the Silver Bow Creek area west and north of Butte and
- $15 million to reimburse the State for all of its costs in bringing the lawsuit through December 31, 1997.

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The $15 million reimbursement to the State has been used to repay – with accumulated interest – the State's coal tax trust fund and its general fund for appropriations made to fund the lawsuit through 1997.

Remaining Issues
Under the settlement, the State retains its restoration damage claims against ARCO for three sites:

- the Clark Fork River between Warm Springs Ponds and Milltown Dam;
- the alluvial groundwater aquifer and Silver Bow creek in the city of Butte, and
- the upland mountains surrounding the city of Anaconda.

The total value of these claims is estimated at about $180 million. The settlement provides that, once the U.S. EPA issues its Record of Decision (ROD) providing for the remediation of each site, the parties must attempt to settle the State's claim for the site. If a settlement cannot be reached, the State's claim for the site is to go to trial. EPA has issued the ROD for the Anaconda Uplands and the Clark Fork River sites. The parties are now involved in negotiations in an attempt to settle the State's claims for these sites. The ROD for the Butte site is expected in 2005. If settlements cannot be reached, trials of the State's claims for these sites could begin in 2006.

The State also retained its natural resource damages (NRD) claim against the NorthWestern Corporation for the Milltown Dam and Reservoir. The State is now involved in negotiations that it expects will resolve that claim on terms favorable to the State.

Natural Resource Damages Program
Since 1990, the NRD Program has been responsible for performing the necessary natural resource damage assessments and pursuing the lawsuit against ARCO. The Program has eight FTEs. When the State received the settlement money in the summer of 1999, it reorganized the Program into two components:

- **litigation component** responsible for continuing to pursue the lawsuit and settlement. This component continues to need funding from legislatively appropriated sources.
- **restoration component** responsible for overseeing the Restoration Fund and making recommendations to the Governor on how to spend the damages. This is completely funded off-budget from the Restoration Fund.

Over the last five years, the NRD Program has evaluated numerous proposed restoration projects. Based upon these evaluations, the Governor has authorized the expenditure of $29 million from the Restoration Fund for 42 separate projects in the Clark Fork Basin.