

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION



GREG GIANFORTE, GOVERNOR

1539 ELEVENTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE: (406) 444-2074  
FAX: (406) 444-2684

PO BOX 201601  
HELENA, MONTANA 59620-1601

SENT VIA EMAIL

March 7, 2024

Chairman Steve Gunderson  
Environmental Quality Council  
PO Box 201704  
Helena, MT 59620-1704

RE: Removal of Historical Outfall Pipes, Berms, and Riprap in the Clark Fork River

Dear Chairman Gunderson and Members of the Environmental Quality Council:

Thank you for your letter dated February 14, 2024, regarding the state's role in ensuring the Smurfit-Stone mill site clean-up best serves the people of Montana. In your letter, you requested that the Department of Natural Resources and Conservation (DNRC, or Department) assist the Environmental Quality Council (EQC, or Council) with collecting information necessary to advocate for cleanup that upholds the state's interest and rectifies trespass of outfall-related infrastructure on the riverbed of the Clark Fork River, a navigable waterway that the state claims ownership of through administrative law. Department staff are working on a comprehensive response to the Council's request; however, in the interim, this letter serves as acknowledgement of your request. DNRC will provide a concise status update regarding ongoing efforts that will be reported back to the EQC in a formal written response at a later date.

DNRC staff are coordinating with local, state, and federal agencies, the Smurfit-Stone mill site landowners, and potential responsible parties (PRPs) to determine the extent to which outfall infrastructure, such as outfall pipes, berms, and riprap, may occur on the riverbed of the Clark Fork River. Department staff have met with and participated in several stakeholder meetings in efforts to further delineate the role of the DNRC regarding this matter. Through meetings and correspondence with the U.S. Environmental Protection Agency (EPA) Superfund staff, Montana Department of Environmental Quality (DEQ) Waste Management and Remediation Division staff, Montana Natural Resources Damage Program (NRDP) staff, Missoula County Commissioners, Missoula County Public Health staff, landowners of the Smurfit-Stone mill site, potentially responsible parties (PRP) of the Smurfit-Stone mill site, and consultants working on behalf of the landowners and PRPs, in addition to the Frenchtown Smurfit Stone Community Advisory Group (CAG), DNRC have shared what we currently know about the Department's involvement, and requested further background information on the emplacement of the outfall infrastructure to determine the nature and extent to which trespassing on state trust lands is occurring.

The Department is working cooperatively with the above-mentioned stakeholders to request and review any as-built drawings, site surveys, historic aerial photography, maps, or other information that may be available in agency reports or historic documents, such as permits or inspections, that could help DNRC staff in determining the extent that the outfall infrastructure is trespassing on state trust lands within the Clark Fork River.

Furthermore, DNRC staff are coordinating with stakeholders, including landowners and PRPs, to perform a site-visit to capture aerial photography and Light Detection and Ranging (lidar) remote sensing data to complete a quantitative assessment of the outfall infrastructure footprint in order to calculate the areal extent of pipes, berms or riprap that is on or beneath the riverbed of the Clark Fork River between or below the low water marks on state trust lands. This analysis will be completed by DNRC specialists and shared with the Council upon completion. The Department expects this field work to occur during favorable weather conditions, such as discharge in the Clark Fork River at this location occurring at low water flows, or baseflow, and surface water being free of ice. Results from these first steps will help guide the Department in mitigating trespass occurrences during the Superfund process as we work together with our partners at DEQ and other partnering agencies for this location, as well as others.

Program staff at DNRC are also working with Department attorneys to provide a legal and historical context for which the Department claims ownership of navigable waterways, and further elaborate on the challenges and opportunities the DNRC faces with administering such claims in this location, including those of trespass, on riverbeds that the state claims ownership of, as well as other state trust lands.

The DNRC looks forward to assisting the Council in this endeavor and will be in contact to provide a more thorough written response to the specific items in your letter.

Sincerely,

A handwritten signature in black ink that reads "Amanda Kaster". The signature is written in a cursive, flowing style.

Amanda Kaster, Director  
Department of Natural Resources and Conservation