

1  
2  
3 MONTANA SECOND JUDICIAL DISTRICT COURT, SILVER BOW COUNTY

4 \* \* \* \* \*

5 SISTER MARY JO McDONALD, REVEREND  
6 JOHN M. KADING, JOSEPHINE E. McDONALD,  
7 HELEN WHERRY, ORABELLE EVANS, B. MADDEN,  
8 DALE and SUE RAWLINGS, VIRGINIA WALKER,  
9 PHILOMENA MICHALSKY, MAURICE H. ROTH,  
10 JAMES McDONALD, JANET R. LINDH, GERALDINE  
11 CHRISTIAENS, JAMES and SHARON WILLIAMS,  
12 JOHN and J.C. McELHENNY, R.A. and IRENE  
13 BOKSICH, JAMES SHEA, BETTY L. BORCHERT,  
14 PRISCILLA BORCHERT, RONALD and RANAE  
15 BORCHERT, FRANCES ALTMAN, BOB MOODRY,  
16 CHARLES E. REED, JUANITA and DAVID MONGER,  
17 SHARON VINGOM, RICHARD ALCORN, DAN DOLAN,  
18 LYNN RECKAS, RANDY and SHIRLEY WINSTEAD,  
19 TOM TRACY, JOE VAN MEEL, and all others  
20 similarly situated,

Cause No. 90-C-90  
Hon. Thomas A. Olson  
Presiding Judge

FILED

DEC 27 1996

LORI MALONEY, CLERK

BY L. Powers  
DEPUTY CLERK

21 Plaintiffs,

22 v.

23 DENNIS R. WASHINGTON; and THE BUTTE WATER  
24 COMPANY, a New Jersey Corporation,

25 Defendants.

26 \* \* \* \* \*

27 FINDINGS OF FACT AND CONCLUSIONS OF LAW  
28 REGARDING FINAL APPROVAL OF SETTLEMENT AGREEMENT

INTRODUCTION

29 This lawsuit has been brought by a class of individuals, as  
30 described in the Final Pre-Trial Order dated September 9, 1996, and  
31 as previously certified by the Court, as follows:

32 All persons or entities who have been billed for water  
33 service in Silver Bow County, Montana, by the Butte Water  
34 Company for at least three consecutive months at any time  
35 between March 5, 1987 and December 31, 1991, and all  
36 persons or entities who received Butte Water Company  
37 services for at least three consecutive months between  
38 March 5, 1987 and December 31, 1991.

1 The Class is suing Defendants Dennis Washington and the Butte  
2 Water Company for failing to deliver adequate drinking and  
3 household water to them. The case has been bifurcated and the  
4 liability phase of the case was scheduled for a two-to-three week  
5 judge trial commencing on October 7, 1996. On the eve of trial,  
6 the Defendants, the spokesperson for the Plaintiff Class steering  
7 committee, and non-party Butte-Silver Bow City-County (hereinafter  
8 "Butte-Silver Bow") signed a Stipulation and Compromise Settlement  
9 Agreement which was presented to the Court on October 7, 1996, for  
10 its consideration.

#### 11 12 FINDINGS OF FACT

##### 13 A. The Settlement As Proposed On October 7, 1996.

14 1. The settlement agreement proposed by the parties on  
15 October 7, 1996, had the following main components:

16 (a) Butte Water Company agreed to establish an interest-  
17 bearing account consisting of 1.5 million dollars from the  
18 remaining assets of the Butte Water Company. These monies would be  
19 available for the payment of the Plaintiff Class's attorneys' fees  
20 and costs in an amount to be determined by this Court, not to  
21 exceed \$1.5 million. Any amount remaining in that account after  
22 payment of those attorneys' fees and costs would be transferred to  
23 another account which is described in paragraph 1(c) of these  
24 findings of fact, to be disbursed according to the conditions  
25 associated with that second account.

26 (b) Butte Water Company affirmatively represented to this  
27 Court that it has liabilities and assets such that the \$1.5 million  
28

1 fund can be established, after payment of all liabilities of Butte  
2 Water Company. Butte Water Company also agreed that its assets  
3 would be dedicated first to fully fund the \$1.5 million account,  
4 after payment due from it as a result of the settlement of a  
5 federal lawsuit<sup>1</sup> in which it is a named defendant, and payment of  
6 any associated interest or attorneys' fees ordered by that court,  
7 before any Butte Water Company assets are used to pay Butte Water  
8 Company payables or outstanding Butte Water Company attorneys' fees  
9 and costs.

10 (c) Butte Water Company, with money supplied by Defendant  
11 Washington, agreed to establish a second account, consisting of 2  
12 million dollars. That account will be further supplemented, over  
13 and above the \$2 million, by all remaining money in the account  
14 described in paragraph 1(a) of these Findings, after payment of the  
15 Plaintiff Class's attorneys' fees and costs, and by all remaining  
16 assets of the Butte Water Company after payment of all other  
17 outstanding liabilities of the Butte Water Company.

18 (d) The account described in paragraph 1(c) of these Findings  
19 is for the benefit of the Plaintiff Class. The Plaintiff Class  
20 steering committee recommended that the monies in that account be  
21 used in its entirety within three years by the municipal water  
22 department of Butte-Silver Bow for replacement of water mains in  
23 the domestic water distribution system for Butte, subject to this  
24 Court's approval of that recommendation.

---

25 <sup>1</sup>United States of America and State of Montana ex rel.  
26 Department of Health and Environmental Sciences vs. Butte Water  
27 Company, CV-91-100-BU-PGH, United States District Court for the  
28 District of Montana (hereinafter "federal lawsuit").

1 (e) The funding of the initial \$2 million for the account  
2 described in paragraph 1(c) of these Findings would be provided by  
3 Defendant Dennis Washington. He agreed to arrange to deposit in  
4 that account an amount of \$2 million over and above any remaining  
5 Butte Water assets. This amount is to be deposited in said account  
6 no later than five (5) days after this Court's final approval of  
7 the settlement.

8 (f) Butte Water Company's attorneys have represented to this  
9 Court that they have filed a petition with the United States  
10 District Court in the federal lawsuit in which Butte Water Company  
11 is a named defendant. That petition requests release of the  
12 necessary Butte Water Company assets to fully fund the \$1.5 million  
13 account described in paragraph 1(a) of these Findings, and that all  
14 residual BWC assets be released for deposit, after payment of the  
15 liabilities outlined in paragraph 1(b) of these Findings, into the  
16 Plaintiff class account described in paragraph 1(c) of these  
17 Findings.

18 2. Within five (5) days of this Court's final approval of  
19 this proposed settlement, Montana Resources, Inc. and Montana  
20 Resources Partnership ("MRI" and "MR," respectively) would, via  
21 quit claim deeds, transfer to the Butte-Silver Bow all of their  
22 rights, title and interest in the Silver Lake water system and  
23 Silver Lake water rights (collectively referred to as the "SLWS").  
24 These quit claim deeds will be subject to the existing rights of  
25 all downstream users and the rights of MR described in paragraph 8  
26 of the Stipulation and Compromise Settlement Agreement.

27 3. The transfer of the Silver Lake Water System and Silver  
28

1 Lake water rights to Butte-Silver Bow will be subject to a  
2 reservation of right and Butte-Silver Bow's contractual obligations  
3 to deliver without interruption and in perpetuity an annual average  
4 use of Silver Lake water delivered to the MR property a first right  
5 of 1 million gallons per day. MR, its successors and assigns,  
6 agree to pay to Butte-Silver Bow in perpetuity for said water the  
7 sum of \$238,000 per year in quarterly installments. MR and its  
8 successors and assigns will be entitled to use of up to 18 million  
9 gallons per day on a first-right basis during "unplanned upset  
10 conditions" and of not more than 7 million gallons per day, during  
11 non-irrigation season if possible, during "planned upset  
12 conditions." The payment of the \$238,000 per year will be  
13 suspended for any period of suspension of the operation of the mine  
14 of 120 consecutive days or more. Upon closure of the mine, MR, at  
15 its discretion, may terminate its rights to the water and its  
16 obligation to pay the fees.

17 4. Butte-Silver Bow agreed to use the \$238,000 per year it  
18 receives from MR or its successors and assigns first for any and  
19 all necessary water main replacement and domestic water  
20 distribution system and then, only if no such water main  
21 replacement is necessary, to repair, upgrade, and maintain the  
22 domestic water distribution system in Butte. Beginning on  
23 January 1, 2010, Butte-Silver Bow would begin deducting the direct  
24 pumping costs to pump the water to MR's mine from the \$238,000 per  
25 year it receives from MR or its successors and assigns. This  
26 amount deducted shall be dedicated by Butte-Silver Bow to operation  
27 and maintenance of the SLWS. All of the \$238,000 per year  
28

1 remaining after that deduction would continue to be dedicated to  
2 replacement of the domestic water distribution system and repair,  
3 upgrade, and maintenance of the water distribution system in Butte.

4 5. Butte-Silver Bow guaranteed that it will maintain the  
5 SLWS in a reasonable fashion to ensure delivery of MR's water.

6 6. With respect to the \$2 million which defendant Washington  
7 agreed to contribute to the fund described in paragraph 1(c) of  
8 these Findings, Butte-Silver Bow agreed that said amount will be  
9 repaid, together with interest which will accrue at the rate of 7%  
10 or a 90-day treasury bill, whichever is greater. Butte-Silver Bow  
11 guaranteed that the interest accrued on the principal amount will  
12 be paid each year until the principal is paid in full.

13 7. Butte-Silver Bow agreed that the repayment described in  
14 paragraph 6 of these Findings will not be funded by increased rates  
15 to the customers of Butte-Silver Bow Municipal Water Utility, nor  
16 will it be funded by increased taxes from the general public of  
17 Butte-Silver Bow. Rather, the repayment would be funded through  
18 mechanisms paid for by the industrial users of Silver Lake water or  
19 other industrial users.

20  
21 **B. Fairness Hearings And Public Comment.**

22 8. On October 7, 1996, this Court held a hearing on the  
23 parties' "Motion for Preliminary Fairness Evaluation and Proposed  
24 Settlement and for Setting of Formal Fairness Hearing and Direction  
25 of Notice Thereof." The following persons testified in favor of  
26 the proposed settlement at that hearing:

27 a. Sister Mary Jo McDonald, spokesperson for the steering  
28

1 committee of the Plaintiff Class;

2 b. Charles Phillips, Ph.D., utility expert;

3 c. Jack Lynch, executive of the Butte-Silver Bow; and

4 d. Dave Schultz, Manager, Butte-Silver Bow Municipal Water  
5 Utility.

6 Attorneys for the Plaintiff Class, Defendant Butte Water  
7 Company, and Defendant Dennis Washington also spoke in support of  
8 the proposed settlement at the hearing.

9 9. All of the testimony presented at the October 7, 1996  
10 preliminary fairness hearing was supportive of the proposed  
11 settlement, as set forth in the parties' Stipulation and Compromise  
12 Settlement Agreement. That stipulation was signed October 7, 1996  
13 by the defendants, as well as by Jack Lynch, executive of the  
14 Butte-Silver Bow, and Sister Mary Jo McDonald, spokesperson for the  
15 Plaintiff Class Steering Committee. A copy of the stipulation was  
16 filed with this Court. After hearing testimony, this Court issued  
17 an order on October 9, 1996 which set forth the following:

18 (a) That the proposed settlement appeared to be fair to the  
19 parties. This finding was merely preliminary and subject to a  
20 further hearing after notice pursuant to Rule 23(e),  
21 M.R.Civ.P.;

22 (b) That a hearing would be held, pursuant to Rule 23(e),  
23 M.R.Civ.P., at the Butte-Silver Bow County Courthouse on  
24 November 8, 1996, at 9:30 a.m. Class members would be free to  
25 appear and provide comments or objections to the proposed  
26 settlement at that time;

27 (c) That notice to the members of the Class was to be  
28

1 published in the Montana Standard by Friday, October 11, 1996, and  
2 again on Friday, November 1, 1996. The order set forth as  
3 Attachment A thereto the form of the public notice for such  
4 hearing;

5 (d) That the trial be postponed pending the further  
6 proceedings outlined in the order.

7 10. The published notice ordered by the October 7, 1996  
8 hearing was accomplished. See Dolan Affidavit dated November 7,  
9 1996 (attached as Exhibit B to Plaintiffs' Memorandum Regarding  
10 Approval Of Proposed Settlement Agreement dated November 7, 1996).  
11 In addition to that notice, the parties mailed the notice to all  
12 current water customers of the Butte-Silver Bow Municipal Water  
13 Department on November 4, 1996. See Affidavit of Dave Schultz,  
14 dated November 6, 1996 (attached as Exhibit C to Plaintiffs'  
15 Memorandum Regarding Approval Of Proposed Settlement Agreement  
16 dated November 7, 1996). This Court adopted that additional method  
17 of notice at the November 8, 1996 hearing.

18 11. At the November 8, 1996 hearing, testimony was taken with  
19 regard to the proposed settlement.

20 (a) Eight persons testified in support of the proposed  
21 settlement including, among others, the following: (1) The  
22 spokesperson for the Plaintiff Class steering committee, Sister  
23 Mary Jo McDonald; (2) Plaintiff steering committee member Jim Shea  
24 (albeit with reservations, particularly about the ARCO side  
25 agreement); (3) Manager of Butte-Silver Bow's water department,  
26 Dave Schultz; (4) Butte-Silver Bow Chief Executive, Jack Lynch;  
27 and (5) Dennis Wright, a Butte physician and member of the Butte-  
28



1 Silver Bow Chamber of Commerce. Those speaking in favor of the  
2 settlement emphasized that the settlement will help the citizens of  
3 Butte resolve some of their remaining problems with their domestic  
4 water distribution system, as well as help alleviate the severe  
5 industrial water supply shortage which the Butte area experiences,  
6 which will benefit the Class because of the economic benefits that  
7 such water will have to the community.

8         b. The testimony from Butte-Silver Bow officials and  
9 attorneys indicated that, in order for Butte-Silver Bow to accept  
10 the ownership and operation of the SLWS, it needed to have in hand  
11 water service and water rights agreements with several entities.  
12 Two entities, the Atlantic Richfield Company ("ARCO") and Advanced  
13 Silicon Materials, Inc. ("ASiMI") offered to provide financing  
14 which Butte-Silver Bow needs to upgrade and maintain the SLWS,  
15 while still delivering MR's water to the mine and using the  
16 \$238,000 per year from MR to replace water mains in the domestic  
17 water distribution system. In return, ARCO and ASiMI will receive  
18 water from the SLWS. Also, Butte-Silver Bow and these entities  
19 needed to enter into an agreement with several downstream  
20 irrigators who have certain water rights claims on the SLWS, in  
21 order to ensure that adequate water can be delivered to all  
22 entities. These "ancillary" agreements were not in place as of the  
23 November 8, 1996 hearing.

24         c. Three persons testified in opposition to the proposed  
25 settlement, including the following: (1) a member of the Rocker  
26 water and sewer district; (2) Mary Kay Craig, a representative  
27 from the non-profit group CTEC, with has been monitoring the  
28

1 superfund cleanup in the Butte area; and (3) Thomas Brobrick, a  
2 local citizen and class member. The member of the Rocker water and  
3 sewer district raised several concerns, including that the Rocker  
4 water and sewer district was loaned money from Butte-Silver Bow  
5 which he felt should not have to be repaid, that wastewater (rather  
6 than SLWS water) could be used for industrial uses, and that there  
7 could be a restrictive use order in the future on water in the  
8 area. Ms. Craig testified that she did not think this settlement  
9 should affect the State's natural resource damage suit against  
10 ARCO. Mr. Brobrick testified that he thought class members were  
11 entitled to at least \$3,500 per person for their past problems with  
12 Butte Water Company water.

13 d. Melvyn Rowling, a former engineer for the Anaconda  
14 Company, did not testify in favor or against the proposed  
15 settlement, but urged an addendum to the agreement which would list  
16 and critique all water rights and property records associated with  
17 the Silver Lake Water System.

18 e. Also introduced as Exhibit 1 at the November 8  
19 hearing was a letter from Dale Rawlings, a member of the Plaintiff  
20 Class steering committee, in opposition to the proposed settlement.  
21 Mr. Rawlings' letter expresses concern that Butte-Silver Bow  
22 officials used the proposed settlement to aid them in the recent  
23 local elections, and that local industrial water users and the  
24 Butte-Silver Bow officials used this case as a vehicle to gain  
25 benefits for them.

26 f. Ed Beaudette, county attorney for Anaconda-Deer Lodge  
27 County ("ADLC"), raised objections on behalf of ADLC, including  
28

1 arguments that ADLC would lose tax revenue derived currently from  
2 the portions of the SLWS in ADLC, that ADLC has a water rights  
3 claim on Silver Lake Water, that ADLC has local permitting  
4 processes that must be complied with in regard to maintenance,  
5 upgrade, or operation of the SLWS in ADLC, and that the settlement  
6 may affect ADLC's concerns with the ongoing superfund cleanup in  
7 the area. ADLC is not a member of the Plaintiff Class, nor is it  
8 a party to the lawsuit. ADLC spoke against the proposed settlement  
9 and moved this Court to be joined in the lawsuit as an  
10 indispensable party or a party needed for just adjudication or,  
11 alternatively, moved to intervene. This Court denied those motions  
12 at the hearing. This Court has no jurisdiction over the ADLC water  
13 rights claims, potential change of use issues regarding the Silver  
14 Lake water, the ongoing superfund lawsuits or cleanup, loss of tax  
15 revenue concerns, or the local regulatory process to which ADLC  
16 referred. This case has been litigated for 6 and 1/2 years, has  
17 reached a critical point, and public comment has been received.

18 Allowing ADLC to enter as a party merely would draw out the process  
19 unnecessarily.

20 g. Class counsel James H. Goetz spoke in favor of the  
21 proposed settlement, contingent upon the execution of the ancillary  
22 agreements between Butte-Silver Bow and non-parties to this lawsuit  
23 which will facilitate the transfer of the SLWS and associated water  
24 rights to Butte-Silver Bow, in a form which protects the Class's  
25 interests.

26 h. Counsel for the Defendants, Ron MacDonald, also spoke  
27 in favor of the agreement.

1 12. As a result of the testimony at the November 8, 1996  
2 hearing, this Court ordered:

3 a. That the documents and ancillary agreements necessary  
4 to implement the proposed settlement be filed with the Clerk of  
5 Court by Friday, November 22, 1996.

6 b. That the written public comment period on the  
7 proposed settlement be extended from November 8, 1996, to December  
8 2, 1996.

9 c. That additional notice of the proposed settlement and  
10 the new deadlines for documents and written public comment be  
11 published in the Montana Standard.

12 d. That this Court would make a decision after December  
13 2, 1996, regarding the fairness, adequacy, and reasonableness of  
14 the proposed settlement. If the proposed settlement were approved,  
15 the Court would hold a hearing on December 6, 1996, in Butte,  
16 Montana, to determine Plaintiff Class's attorneys' fees and costs.

17 13. The notice described in paragraph 12(c) of these Findings  
18 was published in the Montana Standard on November 13, 1996. See  
19 Dolan Affidavit, dated December 2, 1996. In addition, the notice  
20 was mailed out to all current water customers of the Butte-Silver  
21 Bow Municipal Water Department on November 15, 1996. See Affidavit  
22 of Dave Schultz, dated November 25, 1996. This Court hereby adopts  
23 that additional method of notice.

24 14. Since the proposed settlement was first announced on  
25 October 7, 1996, through December 2, 1996, Class counsel was  
26 contacted by eighteen persons whom were presumed to be members of  
27 the Class. Dolan Affidavit dated December 2, 1996. Of those, one  
28

1 anonymous person wrote to oppose the settlement because he or she  
2 felt that the Silver Lake water should be used for drinking water,  
3 not industrial use. Id. Two persons contacted Class counsel and  
4 stated that they did not like the fact that the monetary part of  
5 the settlement was proposed for replacing water mains rather than  
6 going directly to the Class members. Id. The remaining fifteen  
7 persons who contacted Class counsel were merely seeking information  
8 about the proposed settlement and did not indicate to Class counsel  
9 whether they opposed or supported the settlement. Id. All of the  
10 individuals were informed of their right to submit either oral  
11 comments at the November 8, 1996 hearing or written comments  
12 directly to this Court. Id.

13 15. Since the proposed settlement was first announced on  
14 October 7, 1996, through December 2, 1996, the Court received  
15 written comments from approximately fifteen (15) individuals  
16 regarding the proposal. Two of those written comments supported  
17 the proposed settlement, except that one of those commenters felt  
18 that the proposed attorneys' fees award is too high. Three of the  
19 written comments (including Mr. Brobrick who testified at the  
20 November 8 hearing) expressed a belief that the cash portion of the  
21 settlement should be paid to class members as damages. One of  
22 those three also expressed disagreement with repayment of the \$2  
23 million loan from Defendant Washington.

24 One commenter submitted two written documents. The first  
25 opined against two million dollar loan from Washington to Butte-  
26 Silver Bow, and charged that Butte-Silver Bow's Chief Executive is  
27 too "friendly" with Defendant Washington to be unprejudiced in his  
28

1 support of this settlement. The second written comment from that  
2 person merely expresses a belief, evidently based upon a newspaper  
3 article, that ASiMI was promised water from the SLWS before this  
4 settlement was made public, and asks the Court to protect the Class  
5 from such "underhanded government control."

6 One commenter was apparently confused in thinking that the  
7 cash portion of the settlement was not going to be used for water  
8 main replacement until after the year 2010, and urged that the  
9 money be used immediately for that purpose, which is exactly what  
10 the proposed settlement does.

11 Janet Lindh, a member of the Plaintiff Class steering  
12 committee, expresses an opinion that Class counsel should be  
13 awarded the majority of the \$1.5 million for fees and costs. Ms.  
14 Lindh expressed concern about the difficulties and complications  
15 that the proposed settlement has run into since October 7, 1996,  
16 and still supports the settlement if the necessary implementing  
17 agreements are in place.

18 The Clerk/Business Manager of the Ramsay school district  
19 submitted a written request that the district be "included" in the  
20 settlement because it fears a loss of tax revenue to the Ramsay  
21 school district when the SLWS is transferred from private to public  
22 hands.

23 One written comment merely states that he or she "had to get  
24 water during that period."

25 Another commenter expressed several concerns with the proposed  
26 settlement. First, he does not believe that resource damage action  
27 by the State against ARCO should be mentioned in the settlement.

1 Second, he believes that the industrial water users should be  
2 charged a rate that will compensate for lost tax revenue due to the  
3 transfer of the system from private to public hands. Third, he  
4 believes that the industrial water users of SLWS should pay the  
5 total cost of maintenance and repair of the SLWS. Fourth, he  
6 believes the \$238,000 paid by MR to Butte-Silver Bow each year  
7 should have an inflation factor added to it. Fifth, he does not  
8 believe that the \$2 million given by Defendant Washington should be  
9 a loan.

10 Melvin Rowling testified at the November 8, 1996 hearing and  
11 also submitted a written statement. Mr. Rowling does not oppose  
12 the settlement, but feels that a more detailed review of the  
13 documents, water rights, easements, etc. associated with the SLWS  
14 should be appended to the settlement to ensure that future  
15 conflicts regarding the system are minimized.

16 A former President and General Manager of the Butte Water  
17 Company filed a written comment in opposition to the settlement.

18 It is his contention that there are questions regarding the SLWS  
19 water rights and the SLWS water production and pipeline capacity,  
20 that MR's payment of \$238,000 per year is too little, that ARCO's  
21 needs for water could significantly affect the SLWS, and that the  
22 replacement of water mains in Butte will not alleviate the water  
23 quality problems of the water supplied by Basin Creek Reservoir.

24 A letter from the George Grant Chapter of Trout Unlimited  
25 expressed concern that they have not had adequate time to study the  
26 ancillary agreements to the proposed settlement. Trout Unlimited's  
27 concern is that the net effect the proposed settlement will be less

1 water in the Clark Fork River. The Court finds that, first, Trout  
2 Unlimited is not a member of the Class. Second, this Court does  
3 not have jurisdiction over its concerns about water in the Clark  
4 Fork River.

5 With respect to the ancillary agreements, the Court  
6 acknowledges that the documents are complicated, as is to be  
7 expected when a major water system and attendant water rights are  
8 transferred. However, the terms of the proposed settlement, which  
9 spell out the benefits to be received by the Class and the  
10 obligations of the various parties regarding those benefits, are  
11 not overly complicated and have been before the public since  
12 October 7, 1996. The ancillary agreements carry out the terms of  
13 the proposed settlement.

14 Finally, Mary Kay Craig, president of the Citizens' Technical  
15 and Environmental Committee ("CTEC") and who testified at the  
16 November 8 hearing, wrote a letter as a Class member and on behalf  
17 of CTEC. The Court notes that CTEC is not a Class member. She  
18 also objects to the short time frame in which to review the  
19 ancillary documents. As discussed above, the Court notes that the  
20 proposed settlement, not the ancillary documents, is before the  
21 Court for approval. The Court is satisfied that the ancillary  
22 documents carry out the terms of the proposed settlement. Ms.  
23 Craig's letter is largely a reiteration of the testimony she gave  
24 at the November 8, 1996 hearing at which she expressed concern  
25 about the effect that this settlement has on the superfund issues  
26 and the State of Montana's natural resources case in the federal  
27 courts. The Court finds that, while there may be some effect on



1 those issues by the settlement, it has no jurisdiction over those  
2 issues, and that any such speculative effect does not render this  
3 settlement unfair or unreasonable.  
4

5 C. December 19th Enhancements To The Settlement As Proposed On  
6 October 7, 1996.

7 16. On December 10, 1996, this Court entered an order stating  
8 that it had considered the settlement as proposed on October 7,  
9 1996, the ancillary agreements filed subsequent to the November 8,  
10 1996 hearing, the written comments submitted to the court after the  
11 November 8, 1996 hearing, and the testimony presented at that  
12 hearing. The court noted that it was impressed by the monumental  
13 effort and time expended by the people involved in the case to  
14 bring about a mutually satisfactory remedy to the serious water  
15 problem Butte and its citizens have faced for many years. This  
16 Court, however, expressed reservations about whether the settlement  
17 as proposed on October 7 adequately addressed the concerns of the

18 domestic users of water in Butte. Pursuant to a telephonic hearing  
19 with the parties' attorneys on December 10, 1996, at which time  
20 this Court expressed these concerns with counsel, counsel requested  
21 and were granted until December 27, 1996, to speak to their clients  
22 and each other regarding the court's reservations. The December 6  
23 attorney fee hearing was canceled due to the illness of the  
24 undersigned judge, to be reset if necessary. See Order dated  
25 December 10, 1996.

26 17. At the request of Defendants' counsel, the Court then set  
27 a hearing for December 19, 1996, at which time it heard further  
28

1 argument from counsel and testimony from Butte-Silver Bow  
2 government officials regarding the proposed settlement. At that  
3 hearing, the following additional elements to the settlement as  
4 proposed on October 7, 1996, were proposed by Defendants and Butte-  
5 Silver Bow:

6 a. In addition to those funds previously committed for  
7 domestic water distribution system repair, discussed above in  
8 paragraph 1(c), Butte-Silver Bow, through the TIFID, agreed to  
9 provide an additional \$2.5 million for that purpose. Originally on  
10 December 19, Butte-Silver Bow offered to augment the funds for  
11 water distribution system repair by \$2 million. After Defendant  
12 Washington agreed to forgo repayment of \$500,000 of the loan he  
13 previously agreed to make available to Butte-Silver Bow (see  
14 discussion below), Butte-Silver Bow agreed to commit that \$500,000  
15 which it will no longer have to repay to Washington to the fund,  
16 making a total of \$2.5 million in TIFID proceeds available for the  
17 water system repair fund. These monies will be put into that fund  
18 from the proceeds of the next sale of bonds for the TIFID for  
19 Silver Lake Water System acquisition.

20 b. Defendant Washington agreed to forgive repayment of  
21 \$500,000 of the \$2 million dollar loan to Butte-Silver Bow.

22 c. Butte-Silver Bow will establish an advisory committee  
23 regarding use of the monies for repairs on the Butte domestic water  
24 distribution system. The Plaintiff Class Steering Committee shall  
25 be allowed to designate three of its members to serve on that  
26 committee.

27 d. Butte-Silver Bow will earmark all funds received in this  
28

1 settlement for domestic water distribution system repairs, and will  
2 account for them and see to it that they are applied solely for  
3 that purpose. Butte-Silver Bow will provide to the public an  
4 annual report accounting for the monies it has received and  
5 disbursed from this settlement for water distribution system  
6 repairs, and how those monies have been spent. The report shall be  
7 written in plain language, and must show how Butte-Silver Bow has  
8 complied with the agreements contained in the compromise  
9 settlement. A summary of this annual plain language report shall  
10 be mailed to all water customers of Butte-Silver Bow.

11 18. After these enhancements to the settlement were proposed,  
12 Class counsel James H. Goetz represented that he contacted the  
13 Plaintiff Class steering committee and that the committee endorsed  
14 the settlement with its enhancements. Mr. Goetz indicated that, as  
15 with the steering committee's endorsement of the original  
16 settlement proposal, the committee's decision was not unanimous.

---

18 **D. Fairness, Reasonableness, and Adequacy of The Proposed**  
19 **Settlement, as Modified By The Enhancements Proposed By The**  
**Defendants and Butte-Silver Bow on December 19, 1996.**

20 19. The Court has been familiar with this complex case since  
21 it was filed in 1990. The proposed settlement was announced on the  
22 eve of trial. As part of the trial preparation, the Plaintiff  
23 Class and the Defendants filed proposed findings of fact and  
24 conclusions of law and trial briefs. The Plaintiff Class's  
25 proposed findings and conclusions, over 100 pages long, very  
26 thoroughly set forth their case. Likewise, their trial brief was  
27 over 100 pages long and provided the Court with a thorough legal

1 background of the issues to be decided at trial. Similarly, the  
2 Defendants' proposed findings and conclusions and briefs apprised  
3 this Court of the Defendants' factual and legal position in the  
4 case. The Court has reviewed these documents and used them in  
5 weighing the possible outcome of the case if it were to go to  
6 trial.

7 20. It is the opinion of Plaintiffs' counsel that the case  
8 against the Defendants is very strong. See Affidavit of James H.  
9 Goetz, dated December 2, 1996.

10 21. Defendants' counsel likewise have vigorously asserted  
11 throughout the case that their clients are not liable in any  
12 amount.

13 22. This is a complex and unique case that has been and would  
14 continue to be vigorously defended. If successful at the liability  
15 phase, the Class then faces the task of completing the damage phase  
16 of the trial. Appeals are likely. Thus, significant hurdles,  
17 including considerable time and expense, lay between the Class and  
18 recovery if the case were tried.

19 23. The Court finds that the Plaintiff Class appears to have  
20 a strong case, but that the Defendants also have potentially viable  
21 defenses. Because of the complexity of the case, its bifurcation,  
22 and the possibility of appeal, any recovery through trying the case  
23 would be years away.

24 24. There is no evidence or suggestion that this proposed  
25 settlement has been reached by any collusive means. In fact, this  
26 case has been vigorously contested up to the eve of trial and the  
27 settlement negotiations have been quite public. The written public  
28

1 | comments and testimony which implies that this agreement is the  
2 | result of political deals or undue corporate influence are not  
3 | persuasive. The proposed settlement has undergone considerable  
4 | public scrutiny, and the Class has been vigorously represented by  
5 | Class counsel and a very involved steering committee.

6 | 25. There are approximately 28,000 Class members. Only a  
7 | relative handful of members expressed, either at the November 8,  
8 | 1996 hearing or through the written comment procedure, any  
9 | disgruntlement with the settlement. Likewise, there were a number  
10 | of persons who submitted comments or testimony in support of the  
11 | proposal. It is significant that the majority of the Plaintiff  
12 | Class steering committee supports the agreement. According to the  
13 | comments of Class counsel and the testimony of the steering  
14 | committee spokesperson, Sister Mary Jo McDonald, the steering  
15 | committee has been active throughout this long litigation and has  
16 | exercised independent judgment in matters concerning the case.

17 | ~~Most of the disgruntlement that has been expressed has to do~~  
18 | with the fact that some non-parties (ARCO, AsiMI, Butte-Silver Bow)  
19 | are receiving some benefits from this settlement. The Court finds  
20 | that, while that may be the case, those entities were necessary to  
21 | make the settlement possible, because a cornerstone of the  
22 | settlement, the transfer of the Silver Lake Water System and rights  
23 | to Butte-Silver Bow, was not possible without those entities'  
24 | active involvement. Moreover, the fact that part of the money  
25 | being supplied by Defendants is in the form of a loan does not make  
26 | this settlement unfair or unreasonable. A significant amount of  
27 | money, apart from the loan, is being paid outright by the  
28 |

1 Defendants, and, on December 19, 1996, Defendant Washington agreed  
2 to forego repayment of \$500,000 of the loan. Further, the SLWS,  
3 with a conservative estimated value far of \$7-13 million, is being  
4 conveyed outright by entities controlled by Defendant Washington.  
5 The Class benefits greatly from the transfer of that system,  
6 because the area's economy will now have water available for its  
7 expansion, and because the transfer results in a stream of payments  
8 to Butte-Silver Bow which will be used to replace the Class  
9 members' antiquated water distribution system. That antiquated  
10 distribution system is one of the remaining causes of the water  
11 quality problems which were the genesis of this lawsuit.

12 26. Some class members objected to the fact that an agreement  
13 between ARCO and Butte-Silver Bow, incidental to this underlying  
14 settlement agreement, provides that Butte-Silver Bow will recommend  
15 at the appropriate time that ARCO receive, in the natural resource  
16 damage lawsuit which the State of Montana has brought against ARCO,  
17 ~~commensurate credit for its role in facilitating the public~~  
18 ~~benefits which the transfer of the Silver Lake Water System~~  
19 ~~entails. The Court has no jurisdiction over that promise by Butte-~~  
20 ~~Silver Bow, but agrees with Class counsel that it does not diminish~~  
21 ~~the fairness, adequacy, or reasonableness of this settlement. In~~  
22 ~~any event, that agreement is not part of this settlement agreement~~  
23 ~~or binding on the Class members. The Class members remain free to~~  
24 ~~take whatever private or public position they desire on the issues~~  
25 ~~in Montana's natural resource case against ARCO.~~

26 27. Although a few class members raised concerns that  
27 Plaintiff steering committee recommended that the cash portion of  
28

1 the settlement be used to pay attorneys' fees and costs and to  
2 replace the antiquated municipal water distribution system in  
3 Butte, there appears to be widespread agreement among the Class of  
4 that use as the highest and best use of that money for the Class.  
5 This Court agrees that such use makes the most sense in this  
6 situation, given the amount of money available, the fact that a  
7 portion of the money will be paid in installments over a thirteen  
8 year period or more, the administrative costs that a direct class  
9 monetary distribution would entail, and the fact that the Class  
10 size would result in a direct distribution of a relatively small  
11 amount per class member. The Court finds that dedication of the  
12 cash parts of this settlement for Plaintiff Class's attorneys fees  
13 and costs and replacement and repair of the Butte municipal water  
14 distribution system is fair, adequate, and reasonable. The  
15 benefits to the Class of such use of the cash portion of the  
16 settlement are substantial, albeit indirect. Replacement of the  
17 water distribution system will help alleviate one of the remaining  
18 obstacles to providing class members with high quality drinking  
19 water. Financing that water main replacement with this settlement  
20 ensures that future rate increases to the Class to accomplish that  
21 goal are minimized.

22 28. The Court finds that the concerns expressed about the  
23 loss of tax revenue when the SLWS is conveyed from private to  
24 public hands are not sufficient to render this settlement unfair or  
25 unreasonable. There is no "right" to continued tax revenues from  
26 private sources. If a holder of private property wants to donate  
27 his property to a non-taxable entity, he is entitled to do so. If

1 an industry closes down, tax revenues are lost.

2 29. The view expressed that the industrial water users of  
3 SLWS should pay the total cost of maintenance and repair of the  
4 SLWS is satisfied by the terms of the agreement. Also, it is the  
5 opinion of the Butte-Silver Bow officials that the \$238,000 per  
6 year paid by MR for its water is more than a fair price for that  
7 water, and, in any event, ARCO and ASiMI have agreed to pick up the  
8 operation and maintenance costs of the system so that the entire  
9 \$238,000 can be used for water main replacement for at least 13  
10 years.

11 30. The Court also finds that the concerns over the capacity  
12 of the SLWS to meet the needs of the prospective users, and the  
13 concerns that there may be some disputes regarding water rights,  
14 easements, or other matters associates with the SLWS is not a  
15 reason to disapprove this settlement. Such disputes are to be  
16 expected, if they occur, when one is dealing with a major water  
17 system and associated water rights. Butte-Silver Bow officials  
18 have testified that they have diligently investigated the SLWS and  
19 are confident that they will be able to operate the system for the  
20 benefit of the Class and the citizens of Butte.

21 31. Plaintiff Class Counsel, James H. Goetz, has submitted an  
22 affidavit in support of the proposed settlement. The Court finds  
23 Mr. Goetz's opinion persuasive. Mr. Goetz is a experienced trial  
24 lawyer and probably knows the strengths and weaknesses of this case  
25 better than anyone. He also brings substantial experience to bear  
26 on the always difficult decision of weighing the potential value of  
27 trying a case against the value of settling a case. Mr. Goetz



1 estimated that the value of this settlement, as proposed on October  
2 7, 1996, was between \$12.3 million and \$18 million. This variation  
3 occurs because the value of the SLWS is difficult to determine, but  
4 several things are clear. That estimate must be adjusted upward by  
5 because of the enhancements which the Defendants and Butte-Silver  
6 Bow agreed to on December 19, 1996. There is now a monetary  
7 recovery to benefit the Class of \$2 million from Defendant  
8 Washington, approximately \$1.8 million from Butte Water Company  
9 assets, \$2.5 million from the TIFID bonds to be sold in 1997, and  
10 a stream of cash payments to Butte-Silver Bow with a net present  
11 value of an additional \$2 million, as long as MR's mine stays in  
12 operation. Thus, apart from any value placed on the SLWS, the  
13 monetary portion of the settlement has a net present value of  
14 approximately \$8.3 million. Additionally, the SLWS has substantial  
15 value over and above that monetary recovery.

16 32. Defense counsel, Ron MacDonald, also has expressed  
17 support for the settlement throughout these settlement proceedings.

18 Mr. MacDonald is also an experienced trial lawyer, and because of  
19 his long involvement with representation of Dennis Washington and  
20 Washington-related entities, he has an thorough knowledge of the  
21 complexities and value of the SLWS. Mr. MacDonald also agrees that  
22 the value of the SLWS, and this settlement, is substantial.

23 33. The Court finds that no additional notice of the  
24 enhancements to the settlement proposed on December 19, 1996, by  
25 the Defendants and Butte-Silver Bow is required. Those  
26 enhancements do not change the basic nature of the proposed  
27 settlement of which the Class has had ample notice and opportunity  
28

1 to be heard. Those proposals merely provide more benefits to the  
2 Class, in the form of additional monies to be contributed to the  
3 fund for repairs of the water distribution system, and waiver by  
4 Defendant Washington of repayment of a portion of the loan he was  
5 making to Butte-Silver Bow.

6 34. The Court has thoroughly reviewed the merits of the  
7 Plaintiff Class's case, the defenses thereto, the likely recovery  
8 of the Plaintiff Class if the case were tried, the length of time  
9 and expense that a trial and possible appeals would likely entail,  
10 the value of the proposed settlement, the reaction and comments of  
11 the members of the Class, and the opinion of Class counsel and  
12 Defendants' counsel. Based on its review of all of these factors  
13 and the entire record in this case, the Court concludes that there  
14 is no evidence of collusion with respect to this proposed  
15 settlement. The Court concludes that the proposed settlement, as  
16 enhanced by the proposals which Defendants and Butte-Silver Bow  
17 agreed to before the Court on December 19, 1996, and including the  
18 Plaintiff Class steering committee's recommendation that the  
19 monetary portion of the settlement left after payment of attorneys'  
20 fees and costs be used for repair of Butte's water distribution  
21 system, is fair, adequate and reasonable.

22 35. Any finding of fact in the following conclusions of law  
23 is incorporated herein.

24  
25 CONCLUSIONS OF LAW

26 1. Any conclusion of law included in the above findings of  
27 fact is incorporated herein.

1        2. Rule 23(e), M.R.Civ.P. provides that notice of the  
2 proposed compromise and dismissal shall be given to all members of  
3 the Class in such manner as this Court directs. The Court  
4 concludes that public notice of the proposed settlement to class  
5 members has been accomplished in a reasonable, fair manner and has  
6 fairly apprised the prospective members of the class of the terms  
7 of the proposed settlement and of the options that are open to them  
8 in connection with these proceedings. The notice was neutral and  
9 it emphasized that this Court was expressing no opinion on the  
10 merits of the case or the amount of the settlement. The notice  
11 gave the class members a reasonable time in which to respond and  
12 apprised interested parties of the proposed settlement sufficient  
13 to satisfy due process. See, e.g., Grunin v. Int'l House of  
14 Pancakes, 513 F.2d 114, 122 (8th Cir.), cert. denied, 423 U.S. 864  
15 (1983); Weinberger v. Kendrick, 698 F.2d 61, 71 (2nd Cir. 1982),  
16 cert. denied, 104 S.Ct. 77 (1983).

17        3. ~~The matter of settlement of class actions is left to the~~  
18 sound discretion of this Court. Girsh v. Japson, 521 F.2d 153, 156  
19 (3rd Cir. 1975). A district court has considerable discretion in  
20 determining whether a settlement is fair and reasonable. Bryan v.  
21 Pittsburgh Plate Glass Co., 404 F.2d 799, 801 (3rd Cir.), cert.  
22 denied 419 U.S. 900 (1974). The court must act as the guardian of  
23 the rights of absentee class members in approving a settlement.  
24 Weinberger, supra, 698 F.2d at 69, n.10.

25        4. The burden is upon the proponents of the settlement to  
26 persuade the court that it is fair, adequate and reasonable.  
27 Holmes v. Continental Can Co., 706 F.2d 1144, 1147 (11th Cir.  
28

1 1983). Among the most important factors to be considered when  
2 determining whether a settlement is fair, adequate and reasonable  
3 are:

- 4 (1) The strength of the plaintiff's case on the merits  
5 balanced against the amount offered in settlement;
- 6 (2) Presence of collusion in reaching a settlement;
- 7 (3) The reaction of members of the class to the settlement;
- 8 (4) The opinion of competent counsel;
- 9 (5) The stage of the proceedings and the amount of discovery  
completed.

10 3B Moore's Federal Practice, ¶ 23.80[4], p. 23-488 through 23-490.  
11 Merely because the proposed settlement may amount only to a  
12 fraction of the potential recovery will not per se render the  
13 settlement inadequate or unfair. TBK Partners, Ltd. v. Western  
14 Union Corp., 675 F.2d 456, 463-64 (2nd Cir. 1982). The court must  
15 look to the risks of establishing liability and damages and of  
16 maintaining the class action through the trial. Id. at 463. A  
17 probable result at trial must be balanced against the probable  
18 costs, in both time and money, of continued litigation.  
19 Lowenschuss v. Bluhdorn, 613 F.2d 18, 19-20 (2nd Cir.), cert.  
20 denied, 449 U.S. 840 (1980).

21 5. The Court has thoroughly reviewed the merits of the  
22 Plaintiff Class's case, the defense thereto, the likely recovery of  
23 the Plaintiff Class if the case were tried, the length of time and  
24 expense that a trial and possible appeals would likely entail, the  
25 value of the proposed settlement, the reaction and comments of the  
26 members of the Class, and the opinion of Class counsel and  
27 Defendants' counsel. Based on its review of all of these factors  
28

1 and the entire record in this case, the Court concludes that there  
2 is no evidence of collusion with respect to this proposed  
3 settlement and that the proposed settlement is fair, adequate and  
4 reasonable.

5 6. The Court has also considered the "fluid" nature of the  
6 settlement in this case. The benefits to the Class from the  
7 transfer of the Silver Lake Water System and attendant water rights  
8 are indirect, but substantial. The Class consists of persons who  
9 received water from the Butte Water Company during certain years in  
10 the late 1980's and early 1990's. In large part, those persons  
11 make up the population of the City of Butte, and the economic  
12 benefits from the transfer of the SLWS will inure to the Butte  
13 Community. The transfer of the SLWS is a cornerstone of the  
14 settlement, and without it there would be no settlement. There is  
15 no way to have the value of the SLWS distributed directly to the  
16 Class, but the indirect benefit to them is substantial.

17 The Court has also carefully considered the recommendation of  
18 the Plaintiff Class steering committee that the \$2 million from  
19 Defendant Washington, the residual assets from the Butte Water  
20 Company, the Silver Lake Water System acquisition fees of \$2.5  
21 million from the TIFID, and the \$238,000 paid by Washington's  
22 companies annually to Butte-Silver Bow, be dedicated to replacement  
23 of water mains in the Butte municipal water system. While a very  
24 few persons testified or wrote to the Court with the opinion that  
25 individual class members should be directly compensated for their  
26 past damages, the steering committee's recommendation appears to  
27 have the widespread support among the class. The Court has  
28

1 considered the relatively small amount of cash immediately  
2 available via this settlement in relation to the relatively large  
3 number of class members. Butte-Silver Bow has represented to the  
4 court that the \$2.5 million from the TIFID would only be available  
5 for water main replacement, not for cash disbursement to individual  
6 plaintiffs. Given that situation, and the costs that would be  
7 incurred to distribute a pro rata share of that money to the class  
8 members, the Court concludes that the steering committee's  
9 recommendation makes the most sense. The water mains which that  
10 money will be used to replace will help alleviate the remaining  
11 water quality problems of the Class, and will serve to hold down  
12 rate increases in the future because that work will not have to be  
13 financed with rate increases, at least to the extent of the monies  
14 dedicated from this settlement.

15 The same holds true for the annual \$238,000 payments from MR  
16 to Butte-Silver Bow. The same benefits to the Class will be  
17 realized by these funds' dedication to water main replacement.  
18 Moreover, these funds will only be realized over the course of at  
19 least 13 years, making direct distribution of them to the class  
20 impossible.

21 Newberg states in his treatise, Newberg on Class Actions (2nd  
22 ed. 1977), discusses fluid class recoveries:

23 In a settlement context, when an aggregate class recovery  
24 cannot economically be distributed to individual class  
25 members, or when a balance of the recovery fund remains  
26 after individual distribution, the parties, subject to  
27 court approval, may agree that undistributed funds will  
28 be distributed or disposed of for the indirect benefit of  
the class. This distribution of funds that have not been  
individually distributed, by distributing them for the  
next best use which is for indirect class benefit, has

1 been approved under the equitable power of courts in  
2 various cases under the analogous cy pres doctrine. The  
3 cy pres, or next best use, doctrine originated in the  
4 charitable trust field when courts took steps to prevent  
the failure of trusts. In the class action context, cy  
pres applications have also been referred to as fluid  
class recovery distributions.

5 While the use of cy pres distribution remains  
6 controversial and unsettled in an adjudicated class  
7 action context, courts are not in disagreement that cy  
8 pres distributions are proper in connection with a class  
9 settlement, subject to court approval of the particular  
application of the funds. Thus, even in circuits that  
have ruled that cy pres or fluid class recovery  
distributions are not valid in contested adjudications,  
these distributions have received a stamp of approval as  
part of a class settlement.

10 Id. at § 11.20, pp. 414-415 (emphasis added). Newberg continues:

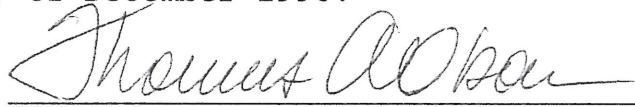
11 Examples of decisions that have upheld cy pres  
12 distribution in class action settlements for the  
13 aggregate indirect benefit of the class include a payment  
14 to state agencies for use in public health programs,  
15 [West Virginia v. Chas. Pfizer & Co., 440 F.2d 1079 (2nd  
16 Cir.), cert. denied, 404 U.S. 871 (1971)], payment to a  
17 newly formed foundation to study biological effects of  
radiation exposures from a nuclear plant accident [In re  
Three Mile Island Litig., 557 F.Supp. 96 (M.D. Pa.  
1982)], payments to area law schools or medical schools  
for general use, [Lindy Bros. Builders v. American  
Radiator & Standard Sanitary Corp., No. 41774SC [E.D. Pa.  
February 27, 1978)], escheat to the state after the  
expiration of a time period for individual distributions  
(citation omitted) and others.

19 See also Bebchick v. Public Utilities Comm'n, 318 F.2d 187, 204  
20 (D.C. Cir.), cert. denied, 373 U.S. 913 (1963) (in a non-class  
21 action setting, approving establishment of a transit fund, or  
22 special account or reserve to be left to the discretion of the  
23 utility commission having regulatory authority with respect to the  
24 transit "provided such discretion is exercised consistently with  
25 the purpose of benefitting transit users in any rate proceedings  
26 pending or hereafter instituted. For example, the fund might be  
27

1 used to cover costs which otherwise might lead to an increase in  
2 fares, or might be used to aid in determining whether fares should  
3 be reduced now or hereafter.").

4 The Court finds that the "fluid" recovery of the class in this  
5 case, as recommended by the Plaintiff Class steering committee,  
6 will garner the maximum benefit from the settlement to class  
7 members, and that use of the cash portion of the settlement to  
8 augment the replacement of water mains in the Butte municipal water  
9 distribution system is fair and adequate to the class.

10  
11 DATED this 24<sup>th</sup> day of December 1996.

12   
13 Judge Thomas A. Olson  
14 District Judge

15 cc: James H. Goetz and Richard J. Dolan  
16 Ronald B. MacDonald  
17 Michael G. Black  
18 Tracy Axelberg  
19 Randy Cox  
20  
21  
22  
23  
24  
25  
26  
27  
28



STATE OF MONTANA  
COUNTY OF SILVER BOW  
I, BETH PARKS, CLERK OF THE DISTRICT  
COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF MONTANA, IN AND FOR THE  
COUNTY OF SILVER BOW, do hereby certify the  
foregoing to be a full, true and correct copy of  
the original on file in my office, and that I have  
carefully compared the same with the original.  
In Witness Whereof, I have hereunto set my  
hand and affixed the seal of the District Court  
this 6<sup>th</sup> day of November, 2023  
Beth Parks, Clerk  
By B Parks  
Deputy