

**MINUTES**  
**ANACONDA-DEER LODGE COUNTY**  
**COMMISSION PUBLIC MEETING**  
**WEDNESDAY, AUGUST 10, 2016 – 6 P.M.**  
**COURTHOUSE COURTROOM**

Present: Commission Chair Hart, Commissioner Mulvey, Commissioner Lux-Burt, Commission Vice-Chair Vermeire, Commissioner Smith, CEO Ternes Daniels, County Attorney Krakowka

Others Present: Carl Nyman, Superfund Coordinator; Elizabeth Erickson, WET; Dave Erickson, WET; Dan Manson, Attorney; Julie K. Pooley, Clerk of the Commission

Members of the Press: Blake Hempstead, KANA Radio; Susan Dunlap, Montana Standard; Kathie Miller, Anaconda Leader

Members of the Public: See sign-in sheets attached to the minutes.

Commission Chair Hart called the meeting to order at 6:04 p.m. and the Pledge of Allegiance was recited. Commissioner Hart reviewed the Commission Rules and Procedures.

CEO Ternes Daniels thanked everyone for coming to the meeting. She explained that the Institutional Controls Agreement is the culmination of years of work to ensure that the residents of the community are living in an area that is protective of human health and the environment. It puts historical land uses back into production and provides a process and the resources necessary to move the community forward. CEO Ternes Daniels noted that many people have been involved in this process over the years, including former County officials, Atlantic Richfield Staff, and federal and state agencies. Further, she acknowledged the following people for their time and effort: from Anaconda-Deer Lodge County - Commissioner Lux-Burt, Commissioner Vermeire, Carl Nyman – ADLC Superfund Coordinator, Elizabeth Erickson – WET/ADLC Technical Advisor, Dan Manson – Attorney; from Atlantic Richfield - Patricia Gallery, Cord Harris, Jean Martin, and John Davis; from EPA - Charlie Coleman; from DEQ - Joel Chavez; and from Pioneer Technical - Duane Logan.

**Presentation**

**A. Review of the Institutional Controls Agreement between Anaconda-Deer Lodge County and Atlantic Richfield Company**

Carl Nyman thanked everyone for attending the meeting. Mr. Nyman has been employed by Anaconda-Deer Lodge County (ADLC) as its Superfund Coordinator since November 1, 2011. Prior to employment with ADLC, Mr. Nyman worked for Kuipers and Associates for three years. Mr. Nyman thanked Blake Hempstead with KANA radio for broadcasting the meeting live. The meeting will be recorded and available for playback.

He introduced the rest of the team including Dave and Elizabeth Erickson from Water and Environmental Technologies (WET) out of Butte. WET is a firm with 30+ employees, which has been providing technical assistance to the County with regard to Superfund. Dan Manson has provided legal counsel throughout the negotiations. Mr. Manson has both an environmental engineering degree and a law degree. He also grew up here and has a thorough understanding of the community's Superfund issues. In 2008, a Superfund committee was formed which included two commissioners, Neal Warner and Pete Lorello. When their terms expired, current commissioners, Elaine Lux-Burt and Terry Vermeire, took their place on the committee.

This effort has been a three-stage process. Jim Kuipers performed the first and second stages which included analyzing and evaluating community needs and defining and implementing Superfund programs and responsibilities. Mr. Nyman explained that the County is now in the third stage of the process, which is outlining the funding and the responsibilities for the program. The Institutional Controls (IC) Agreement is a supplement to the remedy that is already in place. In the community there is waste in place with an engineered cover, properties that have been treated and properties that have had waste completely removed. Mr. Nyman explained other layers to the remedy exist, such as management of the engineered covers. In addition, thousands of acres exist that have residual waste but no remedy. These areas came about from aerial contamination, waste transported throughout the community, bedding in sidewalks, the old street car line on 3<sup>rd</sup> Street, and other forms of transmission throughout the community. However, it is typically associated with railroad lines. Mr. Nyman explained that the IC program provides our community with resources and assistance other communities our size do not have access to. He stated he does not want Superfund to be unpleasant, but rather productive and worthwhile.

Mr. Nyman provided a detailed introduction to the Institutional Controls (IC) Agreement. The 1994 Conveyance Agreement gave the County Old Works Golf Course and hundreds of acres of other land, including the East Yards, Red Sands and the Mill Creek parcels. Much of this land was intended to be redeveloped; however, the agreement had some issues and was not complete when it was executed. Mr. Nyman explained that the agreement was previously referred to as the Global Settlement Agreement for years. However, over time that term has proved to be inaccurate. When Becky Guay was the CEO and Jim Kuipers was coordinating the Superfund program, Atlantic Richfield offered the County \$5 million if they agreed to sign the agreement. They turned down the offer and what was known as the Global Settlement Agreement evolved into the Institutional Controls (IC) Agreement which provides funding to maintain the golf course Superfund remedy, provides long-term funding for Superfund maintenance of other properties the County received in the 1994 Agreement, and provides funding for Superfund development costs. The Agreement clearly defines maintenance obligations, and Mr. Nyman stressed that **Superfund obligations remain with Atlantic Richfield**. The EPA will continue to do five-year reviews as long as needed into perpetuity to ensure the remedy remains protected. Mr. Nyman explained this already takes place and it will continue. In

addition, Atlantic Richfield will continue its reclamation work for the next 10-15 years in community soils in residential and rural areas. Further, the IC Agreement provides performance bonuses in order to guarantee performance with the program and operations and maintenance responsibilities. Mr. Nyman emphasized the Agreement gives Anaconda the tools and personnel needed to encourage and manage new development in our community – something it has struggled with for the last 30 years. He stated we can make Superfund issues NOT an issue for new businesses as the Agreement evens the playing field between Anaconda and other communities in attracting new businesses.

Mr. Nyman went on to explain the concept of “three Legs of the stool,” which includes the Superfund IC Program, Superfund O&M and Community Enhancement. According to Mr. Nyman, these programs have been discussed at length over the years at Commission meetings. In 2012, the Commission adopted a term sheet, which was executed with Atlantic Richfield that outlined everything being negotiated. It was a public document that went through the public approval process. He estimated eight to ten meetings took place with regard to this document. The document did not include dollar amounts.

An explanation for each of the “legs of the stools” is provided below:

#### ***Superfund IC Program***

The IC Program is required by the EPA. It implements the County’s Development Permit System (DPS) in order to provide guidance for land developers and residential property owners. It ensures proper handling of contaminated soils and protects completed remedies such as soil caps, storm water systems and sediment ponds. The program also provides information to the community on Superfund-related issues and provides education on methods to avoid potential exposure. Mr. Nyman expanded on the education piece and pointed out that although most people are aware of the dangers related to arsenic and lead; many people are not aware that foods such as tuna, rice and apple juice can be high in arsenic as well. In addition, most homes in Anaconda were built prior to 1940 so lead paint is a number one concern. Children are more susceptible to lead exposure if surfaces are not treated properly, and the exposure is more immediate than lead in an attic or yard. The IC program can assist with questions and concerns regarding lead and arsenic exposure in order to create a healthier community for everyone.

#### ***Superfund Operations & Maintenance***

Operations includes funding to provide continual inspection of all the properties conveyed to the County, including the Old Works Golf Course, East Yards, Red Sands, Stuckey Ridge, and the Mill Creek parcels. It includes inspection of Superfund caps, vegetation and storm water controls to identify any issues; and

provides a scope of work to identify and fix any problems. Atlantic Richfield provides the funding for the work. Maintenance fixes the problems. Mr. Nyman explained that the golf course requires a higher level of maintenance than the other sites. It has an engineered soil cover and different kinds of grasses that need cutting and frequent watering.

He reiterated that the golf course is a remedy designed to generate revenue. Studies done prior to it being built were overly optimistic in terms of the revenue it would generate. After it was built, golf courses were being overbuilt across the country and the market was oversaturated. Although the market is leveling out, several courses close every week. He emphasized that Old Works does not want to be one that closes. Old Works is an asset that puts Anaconda on the map in a way that other things do not. One reason the County focuses on the golf course is because it has to – it owns it and must contribute to its success. However, Mr. Nyman recognized that it is not the most important asset for the community, but it is an obligation the County signed onto in 1994, and the County is responsible for it.

### ***Community Enhancement***

The Community Enhancement portion of the agreement provides for compensation to the community for implementation and enforcement of the IC program. The funds are earmarked for economic development within the County. Mr. Nyman noted that one of the hard lessons he had to learn was that Superfund is in place to protect the community, and if a company closes, it is under no obligation to do anything. It is up to the community to work with a company to negotiate to see what it can get. He believes the County is in a unique position to enforce the IC Agreement and oversee the County's ordinances to ensure the success of the Agreement. Year after year, Mr. Nyman hears the need for the community to create jobs. He agrees and noted that communities our size are facing real challenges. Outside of Montana, communities such as Missoula, Bozeman and Billings are considered rural. Those communities are quite different from communities like Anaconda. Mr. Nyman is excited about this portion of the agreement as he feels it provides leverage with other funding sources and programs to move the community further along than it is now. In 1983, Atlantic Richfield gave the County \$3 million to erect another smelter. A couple of companies that were on the verge of collapse came on board and within months they collapsed, and the community had nothing to show for it. The County took that to heart during these negotiations. This agreement will provide for the community 100+ years from now and leave a legacy for future generations to work with.

Mr. Nyman discussed the funding terms of the agreement. It consists of \$500,000 annual baseline funding. The County and Atlantic Richfield will hold annual budget meetings to discuss

budget increases or decreases. All future program funding will be adjusted annually for inflation. He emphasized that Atlantic Richfield is not going away and will still be here after remediation work is complete. For all properties except the Old Works Golf Course, the County will receive an annual \$40,000 baseline to do inspection, weed spraying and minor maintenance. Additional funding may be provided if additional work is identified. The Old Works Golf Course will receive upfront funding for deferred maintenance as follows: \$1.35 million in year one; \$300,000 in years two and three; then \$250,000 annually years 2 through 100 with \$60,000 loan repayment deduction for 20 years. Mr. Nyman explained that the County received three loans from Atlantic Richfield (2012, 2014, and 2016). Atlantic Richfield gave the County the choice of having the loans forgiven or paying them back. If the County chose to have the loans forgiven, it would have received \$190,000 per year. The County negotiated the \$250,000; it will get \$190,000 the first 20 years and \$250,000 thereafter. Mr. Nyman reiterated that the golf course is a Superfund remedy and requires maintenance to maintain the remedy. It does not generate enough to close the gap and break even and therefore needs a subsidy.

Funding for Community Enhancement is as follows, and all future funding will be adjusted for inflation. Mr. Nyman explained that a portion of this funding will be used to hire additional staff to foster economic development.

- \$1 million upon execution of the IC Agreement
- \$1 million upon execution of Final Consent Decree
- \$250,000 annually years 2 through 100
- \$1 million total every 5<sup>th</sup> year (from 2020 until 2060)
- \$4.75 million balloon payment in 2065

Mr. Nyman discussed incentives. He stressed the word performance and explained that if the County does not meet its baseline performance requirements, it does not receive incentives. However, the County has been carrying out its Superfund obligations since 2008 and has set the bar with Atlantic Richfield. Incentives give the County additional funding to use where it wants, such as community development or a special project. Annual and Five-Year Performance Incentives are as follows:

- Annual Performance Incentive – 10% of IC Program Budget and other conveyed parcels O&M budget to the County for successful implementation of required work
- Five-Year Performance Incentive - \$200,000 after each successful 5-Year Evaluation of the IC Program and Anaconda Parcels O&M
- All future payments will be adjusted for inflation

Mr. Nyman indicated that Atlantic Richfield wants to see the County succeed. Roy Thun got the process going and now Patricia Gallery, Cord Harris and Jean Martin have kept it moving. Out in the field, there has been ongoing problem-solving and collaboration between the two entities, Mr. Nyman believes this is how a long-term professional relationship should be. Outreach in

developing a successful IC program has included numerous people and organizations, including the following:

***Local Government***

- Two Commissioners and CEO on the committee
- Input from two Chief Executives
- Commission updates
- County Departments (Planning, Public Health, Environmental Health)

***Community Organizations***

- Arrowhead Foundation
- Chamber of Commerce
- Main Street
- Garden Club

***Public Outreach***

- Twice monthly public Superfund meetings
- Progress updates at Commission Meetings
- Public meetings on elements of the program
- Public Old Works Golf Course Authority Board Meetings

In addition, research in developing the IC program has been ongoing for several years. Most importantly, Mr. Nyman emphasized that developing and implementing an interim program is geared to the unique issues in our community has always been the top priority. Mr. Nyman asserted that Anaconda is the largest Superfund site in the country and noted it is rare to see a site with so many different types of contamination, each with its own remedy. When it was determined that lead was present on the site, the EPA amended the Record of Decision (ROD) to include lead. As negotiations have taken place over the past ten years, the safety and health of the community have been paramount. It was clear that the IC Agreement needed to define all the obligations that were not defined in the 1994 Agreement so that the County did not have unfunded mandates. Mr. Nyman relayed a conversation he had with Mike King, President of the Old Works Golf Course Authority Board in 2013 wherein Mr. King told Mr. Nyman, “just get as much as you can.” Mr. Nyman stated he has never forgotten that conversation and neither has the team.

As a result of the County’s hard work, it has developed the following Work Products:

- Robust lead remedy
- IC program
- CPMP & Soil Swap Programs

- Arrowhead Superfund Library and website
- East Anaconda Reuse Plan
- Growth Policy
- DPS
- Conveyance Agreement Audit
- Lead Abatement Plan
- Redevelopment Plan
- Opportunity Domestic Well Sampling
- Dust Sampling
- Community Storm Water Analysis – this was never done so it enabled the County to do an analysis and identify how it works.
- OWGC Business Plan
- OWGC Contingency Plan
- OWGC Community Economic Benefit Analysis
- Public Health Board – Mr. Nyman explained that health boards are unique from other boards in that they have the ability to adopt and implement institutional controls. He noted that Jim Kuipers revitalized the County’s health board and worked to get it populated with key people in order to dovetail with what Superfund does.
- GIS Development – GIS is used in Superfund and various County departments for mapping.
- Blood Lead & Urinary Arsenic Testing – testing was reassuring because levels came back as “no concern.” However, out of the 150 children sampled, 27 did have detectable levels. Some of these children were from low-income families or lived in low-income properties which helped the Superfund team determine where it needed to focus the implementation of its program.
- OWGC Financials Review – Atlantic Richfield concluded that the golf course did all they could to ensure it maximized its rounds to increase its revenue.

Dan Manson, Attorney, took over this portion of the presentation to explain some key legal issues surrounding the IC Agreement. He thanked Carl Nyman for his presentation. He explained that the 1994 Conveyance Agreement will be terminated and replaced by the Institutional Controls (IC) Agreement with exhibits. Mr. Manson discussed the real property obligations and explained there are many exhibits in the Agreement that contain deeds. The deeds are for the properties conveyed in the 1994 Agreement. Some clean up needed to be done as there were some issues with regard to the deeds. The golf course parcel was created with certain covenants. When Jack Nicklaus did the design of the course, the entirety of the course was not built on the golf course parcel. The golf course parcel and surrounding parcels have different covenants and obligations. Therefore, deeds have to be deeded to Atlantic Richfield and back to the County, parcels resurveyed and boundaries readjusted – all of which will occur simultaneously with approval of the IC Agreement. In addition, the 1994 covenants associated with the conveyed properties contained references to O&M obligations, but those obligations were not clearly defined. During this process, both parties took the time to define

the County's obligations. The 1994 Agreement resulted in some unintended consequences that have resulted in unfunded liabilities, particularly with the golf course. Therefore, updating the County's obligations for O&M and clearly defining what the County is and is not responsible for has been an important part of the process. Remedial items are a big part of the Agreement. In the 1994 Agreement, if anything were to fail, the liability fell to the County which could cost millions of dollars. The IC Agreement reduces that liability as long as the County does not create the problem. Further, the 1994 covenants contain language to the effect that if any additional remedy is required at the time of development, those obligations fall to the landowner – this will now fall to Atlantic Richfield. In addition, if there is a subset of contamination that is encountered in the course of development that cannot be disposed of at the Superfund repository, Atlantic Richfield will be responsible for it.

Mr. Manson went on to explain that terminating the 1994 Agreement is in the County's best interests and it is a wise choice to have everything in a single agreement. When the County entered into the 1994 Agreement, the perception was that the golf course would generate enough revenue to create excess funds to cover liabilities. In addition, provisions existed that required the County to pay for all O&M on the golf course parcel. However, the golf course's remedial structures have some characteristics that if they fail, carry a significant price to fix. When the pond liner failed a few years back, Atlantic Richfield stepped up and paid to fix it; however, language in the 1994 Agreement provides an argument that it was the County's responsibility to do so, which could have potentially bankrupted the County. The 1994 Agreement also dictates that if the golf course fails, the County is responsible for converting it to another use, which would cost tens of millions of dollars. In the IC Agreement, either party can invoke the option to convey the golf course back to Atlantic Richfield. However, Atlantic Richfield assumes all O&M obligations – this provision of the Agreement is critical to avoiding the potential for a big unfunded liability to the County in the future. By terminating the 1994 Agreement and focusing in on the County's responsibilities, it eliminates any potential liabilities by ensuring there are no unfunded mandates in the Agreement.

Mr. Manson discussed the confidential nature of the negotiations that went on and some of the input that was received by the public as criticism of the process. He understands the frustration of the public not being able to participate. The IC Agreement will be incorporated into the Consent Decree which Atlantic Richfield is entering into with other agencies. When negotiations between the County and Atlantic Richfield were taking place, the negotiations ran head into the confidentiality order that was issued by Federal Judge, Sam Haddon, and the County could not continue to participate in negotiations without agreeing to the confidentiality order. While some things were very clear in Judge Haddon's order, others were not, and the County chose to err on the side of caution. The confidentiality order was brought before the Commission, explained and approval sought from the Commission to keep the negotiations confidential. Mr. Manson stated there certainly may have been the ability of the public to challenge it or ask the judge to reconsider; however, the confidentiality agreement was put before the public and nobody really challenged it. He reiterated that the ICs scope of work is a fundamental part of the Consent Decree negotiations.

Carl Nyman elaborated on additional components of the IC Agreement, including water rights for the country club golf course, the Smelter Stack viewing area and the historic Opportunity cow and horse pastures noting that these things are very important to people. He recognized Margie Smith for her extensive work to open up a guided area to the stack.

CEO Ternes Daniels echoed Mr. Nyman's comments and added that we have a viable, livable community with historic land uses that could have been or may be stripped away if not properly dealt with. She believes it is really important for the Opportunity community to have the pastures into perpetuity, and it is just as important for the county club to have access to the water rights in order for its golf course to keep going. Although these may seem like little things, it is what makes ADLC what it is and it is important to hang on to these resources. She thanked Margie Smith for her work on the stack and noted that a lot of people have no idea what happened at the stack. CEO Ternes Daniels acknowledged that many in the community have a long history here and it is important to tell our story and let the rest of the world know what happened here and what we did.

Prior to opening the floor to public comment, Commissioner Hart requested an orderly question and answer session.

Kathie Miller with the Anaconda Leader informed Mr. Manson she did question the confidentiality agreement the night the Commission took action on it. In her opinion, she still believes the public had a right to know and should have been involved in some of those meetings. She reiterated she did go on record so it is incorrect to say that nobody questioned it.

Mike Grayson: Mr. Grayson was the County Attorney from 1997 through 20014. He worked on Superfund issues extensively. He stated the Agreement was posted on the website on Friday as well as some of the exhibits, but claimed none of the exhibits are now on the website. Carl Nyman informed him he has been working with Adam Vauthier and Julie Pooley to get the information on the website. A few of the attachments are still outstanding. Mr. Nyman stated the final Agreement will not be brought forward until all of the attachments are there in an orderly fashion. Mr. Grayson went on to note that no one mentioned the hour and half presentation regarding returning C Hill to Atlantic Richfield and stated the Agreement contains language about putting terms and covenants on the C Hill property. He asked why C Hill is even included in the discussion given that it has nothing to do with the 1994 Agreement. Dan Manson addressed his question and informed him that a portion of C Hill is in what the EPA has identified as a high arsenic area, and the remedy requires restrictions in certain areas. Mr. Manson explained that the County is not giving C Hill to Atlantic Richfield; however, this is a public health issue first and foremost. The County is doing certain O&M obligations activities on all of the parcels conveyed in the 1994 Agreement, and the O&M being done on C Hill is funded by Atlantic Richfield. Mr. Grayson expressed concern over three different places in the Agreement that states the County cannot amend the DPS, weed or golf course ordinance without Atlantic Richfield's approval. He believes this is striking and probably illegal for the Commission not to be able to do so without Atlantic Richfield's approval. With regard to the

golf course, Mr. Grayson reads the Agreement as Atlantic Richfield can opt out in 25 years. Mr. Manson explained the opt-out provision is in the Agreement; however, there are some important things to understand. If Atlantic Richfield elects to terminate the agreement, then no obligations exist and a fundamental portion of the remedy cannot be done and nothing gets cleaned up. Mr. Manson does not think it will be invoked. Mr. Grayson asked why Atlantic Richfield has the ability to opt out of the Agreement but the County does not. Mr. Manson informed him it was a provision the County was not able to negotiate. Mr. Grayson expressed concern about a provision in the agreement that does not allow County officials to speak out about the Agreement. Mr. Manson's understanding of this is that the County is agreeing to take on a specific scope of work for specific payment. Mr. Grayson's concern is that a Commissioner five years down the road may speak out against the Agreement and put the County in default. Mr. Manson does not believe that to be the case, but he will take that under advisement. Mr. Grayson noted three or four places in the Agreement that state if the County does not do well on annual reviews, it can be made to come into compliance with non-Atlantic Richfield money; he believes this is a risk for the County. Mr. Nyman confirmed the County is agreeing to take on that risk and agreed if the County is out of compliance it needs to get back into compliance. However, Mr. Nyman pointed out that in eight years the County has always been in compliance, and he imagines there would be a legal remedy short of having to spend general revenue funds to get into compliance.

Charly Loper: Ms. Loper thanked the team for their hard work and commented that there are some beautiful things in the document; from the proposed viewing platform at the Stack to the funding for economic development. She pointed a few things out regarding the DPS in sections 3.5 and 3.6. Specifically, it requires the County to notify Atlantic Richfield within five (5) days of its receipt of a development permit application. Nothing specifies when Atlantic Richfield has to get back to the County, and Ms. Loper would like to see some sort of timeframe added to this portion of the agreement.

Al Shewey: Mr. Shewey owns property in Anaconda, and his wife grew up here. He recognizes the complexity of the agreement, but would like to make a few comments about what the Superfund site means. He stated that most of us have been to the Berkley Pit, which has also been called the richest hill on earth, but is also a Superfund site. Mr. Shewey stated that Anaconda's Superfund site is a result of 100 years of smelting in the community, which caused major contamination from the byproducts. He remembers being here in 1976, and Atlantic Richfield was flying in helicopters because of the concern with arsenic and lead. Mr. Shewey stated that the air, soil and ground water have been impacted, and the decision of the company was to remediate in place. This means, in the case of the golf course, one million cubic yards of material has been placed on top of nasty things, which has the potential of getting in water that is up gradient of Opportunity. Mr. Shewey believes the remediation in place has had a huge impact on the community. He plans to retire here soon, but the remediate in place has had an economic impact as well. When he looks at what will bring other businesses to this community, but it looks blighted and bleak, he wonders what kind of industry will come here and why. Mr. Shewey thanked Carl and Connie for doing a nice job of putting ordinances together, but expressed concern regarding funding levels, noting that Exxon and BP paid for the clean-up as

well as the impact that the oil spills created. He applauded all of the work that has been done, but does not know what industry will come here to make Anaconda the economic juggernaut that it was in the 70's. He wondered if another team (legal, economic, environmental) who is not embroiled in this would look at everything and come to the same conclusion. He noted that the EPA has recently added restrictive levels on the water supply for arsenic because of extreme concern. Mr. Shewey ended by saying he loves this community and there are a lot of nice people, and he would like to see an economic boon, but he does not believe the agreement provides enough.

David Elias – 507 Caroline Court: Mr. Elias believes that the 1994 Agreement needs to be “put in the toilet” as he feels it is an awful agreement. He stated that once upon a time, some folks knocked on his door who were doing Superfund inventory – they may have been associated with Dave and Elizabeth Erickson, but he is not sure because it was long ago. After the analysis was done, they brought him some topsoil; he blended it with sand to bring the clay down and mixed in some organic material. To this day, Mr. Elias claims it is the worst part of his lawn because it is what Superfund offered him. He bought another lot, tested his own soil and created his own remedy. Mr. Elias would call the effort that Mr. Nyman referred to a dismal effort and would expect to see it fail on a fairly common basis. Mr. Elias stated it took him two years of employ with the County to learn what was in the 1994 Agreement. He was hired specifically for Superfund and although he saw the failures in the Agreement, it took him two years to get up to speed. By then, Atlantic Richfield was withdrawing funds from the County. He noted that with every change of staff and commission there will be a learning curve and failures.

Bill Finnegan: Mr. Finnegan explained that without a comprehensive IC Program and DPS, there is not a financial institution in this area that will provide financing for development projects. He has been a lender for a long time, and in the last 30 years has become familiar with all of the obstacles and challenges. He believes the new agreement is going to give banks a lot more confidence and encouragement to finance Superfund sites and encourage economic development.

Milo Manning: Mr. Manning asked Dan Manson questions regarding the deeds and covenants contained in the 1994 Agreement. Mr. Manson explained that the covenants still exist. He explained that the purpose of the deeds and covenants is to give record of notice of restrictions that go along with the properties. Mr. Manning asked if the rest of the land that belongs to Atlantic Richfield will be open to future negotiations. Mr. Manson informed him the County is not in control of those lands so it would be best to speak with Atlantic Richfield regarding that question. Mr. Manning expressed some concern regarding Atlantic Richfield, noting that a trail which would go down the Galen Highway never happened, and the country club was promised additional land to expand the golf course and it never happened. He feels Atlantic Richfield has promised things that have not come true.

Jim Davison – 118 E. 7<sup>th</sup> St.: Mr. Davison expressed some concern regarding the language in the covenants and deeds and noted it has hampered development and cited a developer who

pulled out as a result. In the original 1994 Agreement, a clause required that every deed recognize it was a Superfund site and require the new owner abide by the requirements of Superfund. Mr. Davison noted that title companies and banks suggested the language be removed and replaced with “this area requires a special development permit.....” Mr. Davison asked Dan Manson if the language has been changed on the deeds. Mr. Manson indicated that Superfund guidance provided that the language was necessary for every deed. The origin was not the 1994 Agreement, and it is not included in the current IC Agreement. Mr. Manson believes the language stems from the IC Control Plan, but it is not required Superfund language. Mr. Davison asked if there is anything in the IC Agreement about cleaning up parcels that have already been conveyed. Mr. Manson indicated that parcels that the County owns contain revised covenants and those will be included on the deeds if the properties get transferred to new owners. Mr. Manson was hard-pressed to believe that a developer looked at the deed language and walked away. To his knowledge, the issue was not raised with Atlantic Richfield. Mr. Davison stated he found it hard to believe as well; however, it did happen. Mr. Davison stated it is an amazing agreement and the team should be congratulated.

Donna Shewey: Ms. Shewey stated she is an example person. She is serving on the committee that wants to build the new recreation complex here in Anaconda. The committee has been looking at two sites – East Yards and Red Sands. She asked how the settlement will help with the construction because a swimming pool is more than 16” deep. She informed the team the committee has received some financial packages and cost estimates, but these did not include costs for the remediation that will need to take place. She asked if the IC Agreement will cover the cost for the developer to clean up the site. Mr. Nyman explained it is not how development is approached. Superfund asks that anyone doing a project outline how the project will impact the soil, how the soil will be removed, and where it will be repositioned. If the soil is contaminated, there is funding to pay to remove the contaminated soil. If the soil is clean, it is the developer’s responsibility to pay to haul it. Ms. Shewey wanted to know what happens if it costs the entire \$250,000 to move the soil. Mr. Nyman assured here it does not cost that much and noted the importance of pre-construction meetings as early on in the process as possible. Hypothetically, Ms. Shewey asked the team to consider that the recreation complex will need \$50,000. She then asked how the \$250,000 will be allocated. She believes it is a small amount and maybe the team should have negotiated a couple of million dollars more to bring in economic development.

CEO Ternes Daniels firmly pointed out that many things have happened in the community. She cited the development of the power plant. The County borrowed \$2 million to get the infrastructure put in and stated that the removal of waste did not substantially change the cost of the project. She thanked NorthWestern Energy for bringing the project in and bringing in taxes. The START facility did not break the budget. She insisted the County will continue to work with folks.

Donna Shewey believes \$250,000 is just a drop in the bucket, and the point is if Anaconda really wants to generate new jobs it is nothing. It is not a big amount to Atlantic Richfield or BP for economic development for a community they destroyed. CEO Ternes Daniels reminded Ms.

Shewey that the County is getting \$1 million up front, \$250,000 each year, and \$1 million every fifth year. Ms. Shewey was insistent that Atlantic Richfield should give the community more money.

Gloria O'Rourke – Anaconda Community Foundations, 118 E. 7<sup>th</sup> St., Suite 3F: Ms. O'Rourke thanked the team for their hard work. She stated she does not begin to know everything the team has learned and studied. However, she does know the difference between \$5 million and \$120 million, and she is grateful for that. She asked a question regarding leverage – if the foundation had \$25,000 for a project and needed help, can some of the economic development funding be used as a match. Mr. Nyman indicated it could; however, details of how it can be utilized in this way have not been discussed. He elaborated and stated the County has learned its lesson not to sink everything it has into one or two big projects.

Jim Liebetrau: Mr. Liebetrau has been in the community for a few years. It seems to him that some people have lost site of the fact that Atlantic Richfield's responsibility is to remediate land, not be the savior of the community and develop business. As a business person, Mr. Liebetrau knows that if you have a good business and make a profit you will grow. He does not understand the mindset that Atlantic Richfield has an obligation to do more.

Bruce Grabowsky – 620 Highpark Drive: Mr. Grabowsky is the President of the Anaconda Country Club. He believes the Agreement is a great deal and the reason 350 members still have a club. He thanked each team member that participated and helped the club with their struggles. He commented that the little business at the end of the street has been productive for he and his wife, and it is Anaconda that created it.

Terry Galle: Mr. Galle asked for clarification regarding the three additional proposals that were added to the Agreement. CEO Ternes Daniels informed him these may seem like small items in the scheme of things, but it ultimately goes back to community and historical land uses. In terms of the stack, it is about having controlled access fairly close to the site in order to interpret our history in terms of what the stack means to the legacy of the community. Many of us have ties to the smelter and the copper industry, and it needs to be preserved. The goal is to get the viewing area done. In Opportunity, the pastures have always been a part of that community. When the clean-up started, those pastures were taken away. Atlantic Richfield has worked with the community to try to continue some sort of grazing since a large part of Opportunity is its agriculture. The Anaconda Company founded the Country Club in Opportunity, and the water right is key to keeping it going. There will be no golf course if there is no water, so the County needs to work with Atlantic Richfield to get in back in place and secure. Although these may seem like little things, CEO Ternes Daniels reiterated the historical significance and noted the role they play in the lifestyle our community enjoys. Mr. Galle agreed and believes these are all positive things and stated that if Atlantic Richfield can help it is even better.

Elizabeth Erickson with WET noted that being a closed basin, the water rights are very expensive. Atlantic Richfield agreeing to assist with the water right is a big help.

Bill Dee – 421 Hemlock: Mr. Dee informed the team his business has been in the community for 70 years and that Anaconda has been very good to them. He thanked the team and Commissioners for their efforts. Mr. Dee believes there is a time for everything, and the time is now for Anaconda. He believes Superfund issues have been holding up businesses, and he does not know if there is a better agreement that can be reached. He believes the team should address some of the concerns raised by Mr. Grayson, but does believe the concerns can be worked out. Mr. Dee believes some things may need to be tweaked in the agreement, but stated a number of good things are happening in Anaconda and encouraged people to look on the positive side.

Mike King – 2001 Washoe: Mr. King spoke as the President of the Old Works Golf Course Authority Board. He has been part of the board since its creation in the early 90s. This year the course will celebrate its 20<sup>th</sup> year. Mr. King acknowledged that the course has experienced struggles over the past 20 years, but he is honored that everyone has stuck with it and rolled up their sleeves to make it successful. From a financial standpoint and in terms of the financial challenges the course has faced over the years, Mr. King noted that if anyone had a business that could only make hay three months out of the year and had to contend with forest fires and torrential rains it would make it difficult to sustain the business. Mr. King stated that the community has scars from 100 years of smelting, but it is something the community is proud of and something we are never going to remove but will only try to make it better. The team is simply trying to turn the community's impediments into opportunities. He reiterated that the golf course is a Superfund remedy, and it is unique in that it can help pay for itself. All of the other remedies in the County must get all of its funding from Atlantic Richfield. He explained that the goal from day one was to maximize revenue, minimize expenses and form a positive relationship with Atlantic Richfield. With the IC Agreement in place, there will be funding in place each year, which Mr. King feels is a tremendous accomplishment. Mr. King golfs recreationally and socially but it is not his passion. His passion is the beautiful asset – the golf course – that everyone in this town should be proud of. The Anaconda Company gave the community the country club 100 years ago and in the 90s, Atlantic Richfield gave the community Old Works. Now, funding is in place for the next 100 years - without the funding a big fence that says "contaminated – stay out" could be around the golf course. He wants to let the public know that the golf course is working hard to maximize revenue, minimize expenses and create pricing so everyone can take advantage of the course. In fact, the course offers specials only for locals. Mr. King offered some statistics from a study that was done which found that 92% of the revenue from the course comes from out of town visitors. He thanked the team for including the golf course in the discussions, and he hopes that 100 years from now the community will have grown from the efforts that are taking place today.

Laura Austin, Community Hospital of Anaconda: Ms. Austin stated that Superfund monies have been instrumental in helping with the hospital's projects, and every time a shovel went into the ground Carl Nyman was there asking how Superfund could help. The hospital was never told "no" and has been very appreciative of the process. Ms. Austin believes it is possible to have a successful business in the community with or without Superfund. Ms. Austin proceeded to

address the Commission and request that they form an advisory board to assist with the disbursement of the community funds, and pointed out that there are a lot of very talented business leaders present in the room. She noted that the hospital board has been successful with economic development and hospital CEO, Steve McNeese, has made an offer to serve on the advisory board in order to make positive changes.

Jamie Roessler: Ms. Roessler works for the Arrowhead Foundation. She thanked everyone who has worked on the Agreement. She is excited to see controlled access to the stack. She asked how the Agreement will impact future recreation use, specifically on C Hill. Carl Nyman explained that there are high arsenic levels on C Hill. The roads are very rocky and when sampling took place, two places had elevated levels. The land management plan will require people to stay on salvaged roads and trails. Restoration on the north facing slope is taking place. Some of the property on C Hill is private and that needs to be respected. The County will continue to work with Atlantic Richfield so C Hill can remain open to the public.

Jay Slocum – 119 Maclund, Lost Creek: Mr. Slocum provided the following comments from a prepared, written statement:

- Thank you for the opportunity to speak today.
- I've been working with ADLC Superfund since 2010, from 2010 – 2012 I mainly worked as a database manager and the Superfund Cartographer
- Since 2012, I was tasked with administering the day to day operation of the Interim Institutional Control Program
- I have roughly 10 years of consulting experience, and before this project I worked as wildlife biologist in Wyoming, Utah and New Mexico helping the oil and gas industry comply with state and federal environmental laws.
- Before that I was a FWP River-ranger, where I regulated state recreational safety laws.
- I have made a career out of developing, promoting, permitting, and implementing projects that maintain compliance with local, state, and federal environmental laws. That is why I am speaking today.
- I thought long and hard about what to say tonight, it's been a long road to get to this point, and I know that residents in our community have many varied opinions on this matter.
- I have decided to outline the facts regarding IC Program achievements, and present the numbers to back up those achievements. I would like to discuss the DPS and local permits, the CPMP and public inquiries, and County O&M obligations for conveyed properties.
- The IC Program has a great staff consisting of: 2 environmental engineers from Tech, a construction engineer from MSU, and a public relations specialist from the U of M.

- Under the current County Leadership, this Interim IC Program has developed from a fledgling interim program into a robust program that others around the country look to for guidance in developing their own ICs Program.
- Public buy-in is crucial to the success of any ICs Program, our staff partners with many local groups and individual professionals to ensure our message is heard and residents understand why our programs are necessary.
- That is why public participation within the County's Development Permit System and General Utilities Street Opening Permit has increase yearly since 2012.
- In 2012, there were 108 ADPs, in 2015, that number increased to 167 and in 2016 the number is projected to be near 232 ADP permits.
- In 2012, there were 32 GUSs, in 2015 that number increased to 68 and in 2016 the number is projected to be near 83 GUS permits.
- Increases in permit compliance have decreased the number of projects that have left residual contamination at the surface post-construction. It has also increased the amount of waste being properly disposed of at the development repository.
- Providing the public with Superfund information and responding to public inquiries regarding superfund issues is a major part of the Community Protective Measures Program, which is one of the programs contained in this IC agreement.
- The CPMP has also increased its outreach and support to residents within the Superfund Overlay. Since 2014 public inquires have increased yearly. In addition, the CPMP started implementing the Soil Swap Program and the Weed Reimbursement Program a 25% cost share program.
- In 2014, the CPMP addressed 35 public inquires, and provided 12 raised garden beds to the public.
- In 2015, the CPMP addressed 72 public inquires, provided 29 raised garden beds, and guided 21 property owners through the Weed Reimbursement Program.
- To date in 2016, CPMP has addressed 45 public inquires, provided 30 raised garden beds, and guided 16 property owners through the Weed Reimbursement Program.
- The program effort at the end of 2016 is projected to be higher than 2014, and 2015 combined.
- The past couple of years the CPMP has started a media campaign to promote its many programs and to help inform the public about superfund issues. This effort has been met with amazing results and increase public buy-in.
- Meeting the County's Operation and Maintenance obligations is going to be very important following this agreement. The IC Program is ready.
- Since 2013, the ICs Program has provided technical support and field oversight for the operation and maintenance requirements of vegetation management areas located on County conveyance properties.

- The ICs Program completes the necessary yearly reporting requirements and incorporates additional scopes of work into manageable tasks for field crews to perform.
- In 2015, the ICs Program implemented several storm water maintenance projects on County land and provided field oversight on many others.
- The O&M obligation contained within this agreement is nothing new to this ICs Program, we are prepared to take on these responsibilities head on.
- The Superfund Program has undergone a great evolution since my first introduction to it, back in 2010.
- Public buy-in to the program has steadily increased over the years which the program numbers reflect.
- I work with a great bunch of people and we're all excited and prepared for this next step.

Adam Vauthier – 106 W. 6<sup>th</sup>, Planning Board Chair: Mr. Vauthier stated the Planning Board relies heavily on the Superfund team to manage these projects because they dot the I's and cross the T's. He asked how the Agreement will impact the Planning Office and the Planning Board. Carl Nyman explained that the County is at a crossroads with regard to the Planning Department. With the recent departures in the department, CEO Ternes Daniels asked Bob Horne, Jay Slocum and Carl Nyman how to move forward and come up with a recommendation for doing so. If the agreements get approved in the next month or so, it puts some money on the table. Mr. Horne recommends reassessing the director position, increasing the salary for the position and hiring someone who will play a more integral part in economic development, which will play a key role moving forward. The County has taken on more and more with the Superfund program since its inception in 2008, so an assistant planner will be needed as well. Mr. Nyman emphasized nothing will be sacrificed in terms of customer service. He explained that Bob Horne was brought in by Jim Kuipers to assist in implementing the DPS, and he has agreed to serve as the DPS administrator. Mr. Nyman looks forward to see how this may evolve this fall and early winter and thinks there are good opportunities ahead.

Mike Grayson: Mr. Grayson asked if there were efforts made to look at the 1994 Agreement and the 1994 Reimbursement Agreement and attempt to enforce it more zealously. He informed the team there is an addendum to the Reimbursement Agreement that called for funding for ICs and O&M. He stated that some of that did occur initially. When he was County Attorney, a couple hundred thousand dollars was paid and then it stopped. He noted that Jay Slocum mentioned all the great things about the IC program, and he asked who pays for it now. Carl Nyman informed him that the program he referred to started in 2005, and the State made \$100,000 available for technical assistance. Jim Kuipers was hired under the money the State made available and was immediately able to iron out the Superfund Cooperative Agreement which would be in effect for ten years. The County needed to decide if they wanted to renew the Agreement since they were close to finalizing the IC Agreement. John Davis and Dan Manson tried to find ways to move forward and one way to do that was with the 2011 MOU to take care of our O&M obligations on the conveyed parcels. Mr. Grayson commented that the EPA has primarily funded the program and stated that the County is not getting \$120 million –

that figure is only accurate if all off the money is added up. He suggested the County set up a trust fund under a third party with a series of rules so Atlantic Richfield does not get to play games like they did in the 90's. He believes the County is making the same mistake again and securing the money with a third party administrator and setting up trust funds with annual payments is the best way to go. Although he cannot speak to what occurred in the past, Mr. Nyman does not think it is fair to point the finger at Atlantic Richfield and stated the team has done the best it can to put something in place. The bottom line is the County can get more by not doing a lump sum payment. Dan Manson explained there is a provision in the agreement for financial assurances, which is in line with what EPA will require of Atlantic Richfield in the Consent Decree. If Atlantic Richfield cannot meet its financial obligations, the County can call on a surety bond to get the payments – this not only protects against differences of opinion but also the possibility of bankruptcy or other failures on the part of Atlantic Richfield. Mr. Grayson asked Mr. Manson why all of the lines are left blank in the draft. Mr. Manson indicated the lines will be filled in in advance of the next hearing, and the blanks were put in as placeholders. They will be filled in and the public will have an opportunity to comment. Mr. Grayson then asked why Atlantic Richfield gets to choose the method for assurances. Mr. Manson informed him that Atlantic Richfield will use the same assurances in the Consent Decree, and it can take a variety of forms.

Donna Shewey: Ms. Shewey thinks Mr. Grayson brings up some really important points tonight. She emphasized that none of this is personal toward anyone and that Montana and Anaconda has really good people. However, she hears Carl Nyman say the team wants the Agreement signed in a month, and she does not think anyone in the room or on the street has not heard the comment "those damn people who signed that agreement in 94." Speaking to the Commissioners, she stated she would not want to be them, as this is one of the major decisions for generations that they will make. She named each Commissioner and asked each of them if they will be "that damn person who sold us down the drain?" She asked if "you had cancer would you get a second opinion?" and "what's another 2-3 months?" She stated Anaconda has waited 100 years and asked why the community cannot have a fresh set of eyes and a second opinion. She is not insinuating that the team did not negotiate something great, but the right thing to do is go to the best people in the country. Ms. Shewey stated "I beg you, for my father who is dead and was a county commissioner and my brother who is running for office, it's not that hard to do."

Frank Fitzpatrick: Mr. Fitzpatrick asked for clarification with regard to the public meeting process and asked if this is the only public meeting. Commissioner Hart informed him this is the first public meeting regarding this particular agreement, and the comments will be taken back. Another meeting may take place, and it will come up at a Work Session before it is taken up at a Commission Meeting. CEO Ternes Daniels informed Mr. Fitzpatrick it will go to a Work Session and then it will be up to the Commission where it goes from there. Mr. Fitzpatrick asked how long he has to submit comments because Donna Shewey said that Carl Nyman stated it was going to get signed in a month. Commissioner Hart informed him the comments received today will be taken into consideration, but meetings will still take place and public input will be

received. CEO Ternes Daniels also noted that some of the attachments are not available yet, and meetings will still take place.

Dan Manson recommended moving forward with another public meeting once all the exhibits are in draft final format. With all of the public comments from tonight's meeting and some uncertainty as to when all of the exhibits will be available, it is difficult to determine when the next public meeting will be. Mr. Manson noted that the team is working diligently to get the final comments received and incorporated into the final exhibits and out to the public as soon as possible.

Mr. Fitzpatrick asked how the public will be notified, and CEO Ternes Daniels informed him the County provides public notice for everything through the website and the newspaper.

Ken Connors – 226 Scalise Rd: Mr. Connors is an attorney in town. He thanked the team for all of their hard work. When he first heard the Agreement was starting to come to fruition, he wondered who was negotiating the agreement. He was comforted to know it was Connie, Carl, Dan and the Erickson's as he has dealt with all of them on various issues. In addition, Mr. Connors has dealt with some Superfund issues and has an idea of how complicated they are. He encouraged everyone to see the bigger picture and noted that with any negotiation you are never going to get everything you want - "You are not going to like some things and you can pick those out and bitch about them." He believes the Agreement needs to be settled in order to give people an idea of where Anaconda is going to be. He implored people to keep in mind that this is far from easy and extremely complicated. He thanked the team for their effort and acknowledged it has been a long haul, technical and complicated.

Kathie Miller with the Anaconda Leader asked if this was a public hearing or a public meeting. Commissioner Hart informed her it is a public meeting – an informational meeting provided by the Commission so people know what is in the agreement. Kathie Miller asked if there will be a public hearing. Commissioner Hart explained the public has a right to know and now the County is trying to make the information available to the public. He understands there is a lot of information to digest, and the Commission will have another public meeting to discuss it again once more information is available.

Ms. Miller asked if the IC Agreement that the Commission will sign off on is part of the Consent Decree for the EPA. Dan Manson informed her that the Agreement itself is not part of the Consent Decree; however, the scope of the IC obligations is included in the Consent Decree, and the IC obligations are part of the IC Agreement.

Commissioner Hart called for public comment three additional times. After no further public comment, he proceeded with the agenda.

### **Miscellaneous**

No miscellaneous.

**Public Comment**

No public comment.

**Adjournment**

Commissioner Lux-Burt moved to adjourn the meeting. The meeting adjourned at 9:29 p.m.

  
\_\_\_\_\_  
Julie K. Pooley  
Clerk of the Commission

  
\_\_\_\_\_  
Kevin A. Hart  
Commission Chair