Chapter 67

Crossing the t's and dotting the i's

Letters to the editor petered out and vocal opposition at public meetings quieted throughout 2025, as the reality of the Environmental Protection Agency's final cleanup decision for the Columbia Falls Aluminum Co.'s Superfund site seemed to be sinking in with locals. The Confederated Salish and Kootenai Tribes' sharp criticism of the EPA's final decision, in an October 2024 letter to the agency, and subsequent support of the tribes by seven environmental organizations a month later, appeared to barely move the needle. A draft Natural Resource Damage Assessment Plan, issued in May 2025 by CSKT, the state of Montana, the Forest Service, the National Park Service and the Fish and Wildlife Service, seemed like just another bureaucratic step in the CERCLA Superfund process – damages from decades of air and water pollution were estimated to exceed $100,000, while the cost of the slurry wall expected to contain leaking landfills at the CFAC site was estimated to cost around $57 million. Meanwhile, Columbia Falls developer Mick Ruis forged ahead with his plans for residential development on the CFAC site, a giant project he called Teakettle Heights.

But when a unilateral administrative order was announced by the EPA in August 2025, ordering CFAC to prepare a biological assessment, which seemed to repeat so much earlier work, the official argument was that a consent order between the EPA and Glencore for future cleanup work had not yet been finalized, so a UAO was needed. Deeper digging revealed the UAO might have also been influenced by a notice-of-intent-to-sue filed in June by CSKT and a local watchdog group, Citizens for a Better Flathead. The groups contended that the EPA's January 2025 record of decision did not correctly follow federal Endangered Species Act regulations, in particular when it came to potential impacts caused by contaminated groundwater entering the Flathead River and impacting critical bull trout habitat. The grassroots fight to force Glencore, the Superfund site's owner, to dig up and haul away the toxic chemicals in the CFAC site's leaking landfills, however, was likely over. Work on the plan to leave hazardous contaminants in leaking landfills, partially hemmed in by a deep slurry wall and cap, continued.

One can chase breaking news stories about the CFAC Superfund site seemingly forever. But one can also view the aluminum plant's story from 30,000 feet, as pundits put it. This account is a history after all – the story of an aluminum smelter built in an unlikely place, far from any seaport, just miles from the Continental Divide; its rapid climb to success, establishing a new vertically-integrated metals division within an historic colossus of the mining industry, a company symbolized by a coiled constrictor; the clever workers and engineers who managed to turn a Model T aluminum smelter into a world-class competitor, at least for a while; the plantwide denial of a major air pollution problem, by hourly and salaried workers, despite nearly a century of evidence seen around the world, ending with a costly technical solution that required swapping out owners; the strong support of locals, who filled

gymnasiums and successfully pushed back at mounting electrical costs, only delaying the inevitable shuttering of the region's 10 aluminum smelters, now replaced by energy-gobbling internet server farms; the greed of two men who bought the plant for a dollar, promising to share profits 50-50 with the workers, then blatantly pocketing the promised funds, only to lose face and cash in a renowned lawsuit; the plant's acquisition by a Swiss commodities giant, which ended up holding the Superfund bag but still made more money shutting down the plant and selling its contracted electrical power than smelting alumina into metal; and the withering away of the plant itself, room by room, pot by pot, until it ended up just another toxic Montana dump site. Simply put, from superstar to Superfund.

The reality of the aluminum industry

In January 2024, Magnitude 7 Metals announced it was closing its aluminum smelter in New Madrid County, Missouri. The plant, which the company acquired from Noranda in 2018, was one of only five aluminum smelters left in the U.S. [1] For a century, the U.S. had been the world's leading producer of primary aluminum, from 1901 to 2001. Following a significant build-up during World War II, U.S. primary aluminum production accounted for 40 percent of the world total. Primary aluminum production in the U.S. peaked in 1980, with 33 smelters producing 5.1 million tons per year. Much of that production was powered by 31 Bonneville Power Administration hydroelectric dams in the Pacific Northwest and nine Tennessee Valley Authority dams – clean energy in today's parlance. U.S. primary aluminum production numbers began to fall after 1980, with 15 smelters shutting down between 2000 and 2020, and the U.S. dropping to ninth in the world with less than 2 percent of global market share. [2]

The problem facing Magnitude 7 Metals wasn't finding inexpensive electrical power – the smelter had its own coal-fired power plant nearby. But emissions from the power plant exceeded sulfur dioxide limits for New Madrid County by a factor of three. The company made plans to build a $7 million, 213-foot stack to dissipate the emissions, and Missouri lawmakers included an $8.5 million loan for Magnitude 7 Metals in its 2023 budget. The loan, however, raised constitutional questions, and Republican Gov. Mike Parson vetoed the loan. [3] On Feb. 16, 2024, Missouri Attorney General Andrew Bailey wrote to Magnitude 7 Metal's owner, Matt Lucke, at his Zug, Switzerland address. Bailey warned Lucke about laws governing treatment of laid-off workers, future remedial environmental obligations and refusing to accept reasonable offers by companies interested in keeping the smelter running. "In short, Magnitude 7 Metals cannot merely close its doors and walk away," Bailey wrote. "I will use the full authority of this office to hold your company accountable and ensure the people of this state are not further harmed by your decision." [4]

Matt Lucke, who began working for Glencore as a senior trader for U.S. aluminum in 1996, was intimately involved with operations at the Columbia Falls Aluminum Co. smelter in Montana. In January 2009, as the CFAC smelter moved toward permanent closure, Rep. Denny Rehberg and Sen. Jon Tester received an anonymous letter claiming workers at CFAC would lose vested benefits from 20 to 40 years of work at the plant. The letter, which was also faxed to local newspapers, claimed CFAC's parent company, Glencore, "is unreachable." The letter went on to say that Glencore's U.S. representative, Matt Lucke, "dodges all employee questions by providing only one, unsubstantial answer," which was,

"We don't know yet, we're leaving those questions in the hands of local management." [5] Sens. Jon Tester and Max Baucus during this time went to great lengths trying to secure low-cost electrical power for CFAC from the Bonneville Power Administration, and complained about a lack of positive response by Glencore. In 2013, Lucke traveled to Flathead County with two other Glencore representatives, where they met with the public, the Columbia Falls City Council and the Flathead County Commission. Lucke said the goodwill blitz was prompted by negative press reports about how Glencore was stringing the community along with no intention of restarting, but by that time, talks with the EPA about a future cleanup had already begun. [6]

Throughout most of the 20th century, aluminum production was limited by available natural resources, including bauxite and electrical power, and by market demand. By the end of the century and moving into the 21st century, air pollution became a major limiting factor – first fluoride and polycyclic aromatic hydrocarbon emissions, but later carbon dioxide as a greenhouse gas. Aluminum demand by the packaging, building and transportation sectors surged after World War II and steadily increased, with production generally keeping up with that growing demand, despite occasional market setbacks. Global primary aluminum production increased from 1.6 million tons in 1950 to 75.5 million tons in 2022. Much of that increase took place after the U.S. share had significantly fallen by 2000, when global production was 27.2 million tons, a third what it is today. The International Aluminium Institute projected that global primary aluminum production would reach 90.3 million tons by 2048, but a sharp rise in recycling would bring primary production numbers back to 2022 levels by 2070. [7]

The number one primary aluminum producing country in the world by 2022 was China, with 44 million tons per year, or more than half the world total. Most of that metal went into China's strong manufacturing industry, for use in vehicles, construction, electronics and consumer goods, with some aluminum exported in semi-fabricated forms. The largest domestic producers included China Hongqiao, Chalco, Yunnan Aluminum, Xinfa and East Group. China's aluminum production was for the most part coal-powered, but the transition to green aluminum was accelerating. Since 2018, China's communist government sought to control the country's rapid increase in aluminum-production capacity to address environmental and overproduction concerns. But replacing China's dependence on coal with renewable energy was not going to be easy. [8]

India was the number two primary aluminum producer by 2022, with 4.5 million tons. India's power, consumer goods, transportation and construction sectors created a high demand for aluminum. Local companies dominating production were Vedanta, Hindalco and Nalco. Most of the country's primary aluminum production was powered by coal plants. The number three primary producer was Russia, with 4.4 million tons, mostly relying on hydroelectric power. RUSAL, based in Moscow, was the largest primary aluminum-producing company outside China. Canada was the number four producer in the world, with 10 smelters in Quebec and British Columbia producing 3.3 million tons. Extensive use of hydroelectricity gave Canada a significantly lower carbon footprint compared with other nations. [9]

The United Arab Emirates was the number five primary aluminum producer with 2.9 million tons, accounting for 1.4 percent of the UAE's gross domestic product. While local construction and other industries made use of the metal, most of the virgin aluminum was exported to 70 countries around the world. Abundant natural gas resources powered the electrolytic smelting industry. The Kingdom of Bahrain, an island nation in the Persian Gulf with abundant natural gas resources to power aluminum smelting, was the number six aluminum producer in the world. The country was well-positioned geographically to easily export large volumes of the metal to nearby markets in the Middle East, Europe and even North America. [10]

The Persian Gulf aluminum industry and global aluminum markets experienced major impacts during the 2026 Iran War, which began on Feb. 28, 2026, when U.S. and Israeli aircraft attacked Iran. Much of Iran's defensive and offensive equipment were quickly eliminated, along with numerous high-ranking Iranian officials and military leaders, including Iran's Supreme Leader, Ali Khamenei. Iran struck back by firing missiles and drones at Israel and Persian Gulf states that were allied with the U.S. The Emirates Global Aluminium and the Aluminium Bahrain smelter plants came under fire from Iranian drones and missiles on March 28, 2026. EGA reported that its Al Taweelah smelter sustained "significant" damage in the strikes, which injured several people. Iran also blocked the Strait of Hormuz with sea mines and missile and drone attacks, making it difficult to import raw materials like alumina and export ingot or fabricated aluminum. "The attacks have sent shockwaves through the global aluminum market, raising the risk of a supply crisis that could reshape the industry," said April Kaye Soriano, an aluminum research analyst at S&P Global Energy. She added that, if the damage proved lasting, the market could begin to see tighter supply and higher prices. China could restart idled smelters to address the market disruption, but Soriano believed China's ability to ramp-up supply was "limited." [11] Stock prices for aluminum producers Alcoa, Century, Constellium, Kaiser, Rio Tinto and BHP were higher on April 1, 2026, after EGA announced operations were halted at the Al Taweelah plant. The smelter reportedly lost power during the Iranian attacks, forcing the potlines into an uncontrolled shutdown, leading to metal solidifying inside the reduction pots, which caused significant damage to smelter equipment. Aluminum futures on the London Metal Exchange surged following the Iranian attacks. [12]

Australia, with abundant bauxite and coal reserves, was the number seven producer by 2022 with 1.6 million tons. More than 15,000 people were employed at Bell Bay in Tasmania, Boyne Island in Queensland, Portland in Victoria, and Tomago in New South Wales. Norway was the number eight producer in the world with 1.5 million tons. Norway had one of the most energy-efficient aluminum-production sectors in the world and one of the lowest carbon footprints. Norsk Hydro ASA and Alcoa Norway ANS were the two producers, both with multiple facilities. Malaysia recently jumped to the number nine position, with recent capacity expansions by Press Metal bringing the nation's total to 1.2 million tons. Using mostly hydroelectricity, Malaysia was scaling up its aluminum smelting industry in three phases, turning Sarawak into one of the world's largest primary aluminum production regions outside China. The U.S. was ranked tenth in global aluminum production by 2022, with production falling below 1 million tons for the first time in three years, leaving U.S. manufacturers heavily dependent on imports. Between 1991 and 2020, America's aluminum production industry saw a carbon

footprint drop of 49 percent, as numerous smelters exited the market. Only two aluminum-smelting companies remained operating in the U.S. – Alcoa and Century. [13]

A green smelter on the horizon?

Curious news, celebrated by many business leaders, along with politicians in Washington, D.C. who believed America's manufacturing sector could be restored, was announced by Century Aluminum in a March 25, 2024, press release. Century had been selected by the U.S. Department of Energy's Office of Clean Energy Demonstrations to begin award negotiations for up to $500 million in Bipartisan Infrastructure Law and Inflation Reduction Act funding to build a new aluminum smelter. This would be the first new aluminum smelter in the U.S. in 45 years, and would double the country's primary aluminum production. "This historic investment represents a major capital injection for the U.S. primary aluminum industry," Century's press release said. "The project will strengthen domestic supply chains for materials critical for the green energy transition, including electric vehicles, renewable-energy production and storage, building and construction, and sustainable packaging." [14]

Century's so-called Green Aluminum Smelter Project was one of 33 projects across more than 20 states to receive U.S. Department of Energy funding "designed to demonstrate commercial-scale decarbonization solutions needed to move energy-intensive industries toward net-zero while strengthening local economies, creating and maintaining high-quality jobs, and slashing greenhouse gas emissions," Century's press release stated. [15] To many familiar with the industry, this might seem an impossible task. Like other metal-smelting industries, aluminum production depended on fossil fuels to power mining and processing equipment, ships and trains. The intermediary step between mined ore and usable feedstock for a smelter, called alumina refining, relied on fossil fuels to heat giant batch reactors. But the smelting stage, using electrolysis to reduce alumina into aluminum, accounted for about three-quarters of the greenhouse gases emitted from cradle to gate in the production of primary aluminum. This wasn't just carbon dioxide emitted by electrical generating plants – the 10 aluminum smelters that once operated in the Pacific Northwest relied on hydro dams and a nuclear plant, but the smelters themselves emitted vast amounts of carbon dioxide. There was no way around it – carbon dioxide was produced in the Hall-Heroult reduction process every time an oxygen atom broke away from an alumina molecule and combined with the carbon anode. The constant burning of the carbon anodes meant carbon dioxide was always being emitted. According to the International Aluminium Institute, based on 2023 figures from plants operating around the world, 14.4 tonnes of carbon dioxide equivalent was produced on average for every tonne of primary aluminum produced, from cradle to gate. [16]

The Environmental Integrity Project described the conundrum as the "aluminum paradox" in a Sept. 27, 2023 report. "As climate change accelerates, aluminum has taken a lead position in the race for a lower-carbon, less polluting industrial future. Lightweight and durable, the metal is a key component in solar panels and wind turbines, more efficient cars and planes, and long-lasting construction materials. Given this, global aluminum demand is projected to be 40 percent higher in 2030 than in 2020. Yet the aluminum industry accounted for 1.2 billion tons of global greenhouse gases in 2021, the same amount

as the energy used by over 150 million U.S. homes – and its contribution to climate change is only set to grow alongside demand." [17] The U.S.'s role in this paradox, however, had diminished over the past four decades. According to the BlueGreen Alliance, annual production of primary aluminum in the U.S. had fallen 80 percent from a high of 4.65 million tons in 1980. Meanwhile, a 2023 report from Dartmouth and Princeton universities estimated 8.8 million tons of aluminum would be needed annually by 2035 for new U.S. wind and solar projects – nearly double what the U.S. produced through smelting and recycling in 2022. [18]

It's worth noting that some industry experts likened primary aluminum to a battery that stored energy – creating primary aluminum, from bauxite mining to alumina refining to aluminum smelting, required enormous energy, but recycling of industrial scrap and consumer goods required on average only 5 percent of that initial energy. [19] Recycling also reduced the carbon footprint of aluminum production by 95 percent on average. Estimated emissions savings were 92.4 percent for Europe, 93.8 percent for North America, 90.4 percent for Canada, 97.4 percent for China, 95.4 percent for Gulf Cooperation Council nations and 96.6 percent globally, based on the latest published cradle-to-gate emission figures for primary aluminum versus gate-to-gate emissions for recycling. [20] According to the International Aluminium Institute, "Aluminum can be recycled over and over again without any loss of quality. Aluminum is one of the most recycled materials on earth. Almost 75 percent of the 1.5 billion tonnes of aluminum ever produced is still in use today. And every year, more than 30 million tonnes of aluminum scrap is recycled globally, ensuring its status as one of the most recycled materials on the planet." [21]

Century's project was not the first proposal for a green aluminum plant in the U.S. In 2022, New York-based Blue Wolf Capital Partners announced plans to reopen Alcoa's shuttered Intalco aluminum smelter and power the 240,000-tonne-per-year plant with green energy. Blue Wolf, which expected to spend $50 million up front and $175 million modernizing the plant, claimed it could reduce carbon dioxide emissions by more than 800,000 tons a year, or 45 percent. Alcoa idled the Intalco plant, located on Puget Sound near the Canada border, in 2020 and announced its permanent closure in March 2023. It was the second newest aluminum smelter in the Pacific Northwest, after Goldendale, the last one still standing of 10 at one time, after operating for 55 years. Alcoa cited high, non-competitive electricity costs, declining market conditions, and the need for significant capital to restart the potlines as reasons for its closure. Blue Wolf's announcement was met with widespread support, from a machinists union, the electric vehicle industry, environmental groups, local pro-jobs Republicans and Washington's pro-environment, climate-change-conscious governor, Democrat Jay Inslee. The main obstacle facing Blue Wolf's proposal was finding firm, low-cost, green electricity, but the Bonneville Power Administration, which provided 400 megawatts to Intalco in the past, didn't have the requested power available, BPA senior spokesman Doug Johnson said. If it did, the BPA was required by law to offer it first to existing utilities, Public Power Council executive director Scott Simms said. [22]

In March 2026, Alcoa announced demolition and asbestos abatement at the Intalco plant had begun in 2025 with no formal public announcement and was about 45 percent complete. The Washington State Department of Ecology published a long-awaited draft cleanup roadmap for the closed smelter in February 2026. In 2023, about the time Alcoa announced Intalco's permanent closure, Alcoa also

announced it had signed a contract to sell the 1,600-acre smelter site to a Calgary-based energy company, AltaGas. Most of the property remained in Alcoa's hands pending completion of the demolition and cleanup process. Shingo Yamazaki, the refinery and smelter unit supervisor for the state Department of Ecology, said investigations were underway to figure out the extent of contamination at the Intalco site. He said he expected to find soil contamination from historic PCB spills and petroleum leaks, as well as fluoride in groundwater. AltaGas said it planned to produce green hydrogen at the site by using renewable electricity to split water molecules, but that plan depended on the viability of hydrolysis technology and future customer demand for the fuel. [23] Meanwhile, Alcoa announced plans to sell 10 of its closed or curtailed industrial sites around the U.S. to the data center industry. The first sale was set to be completed by the end of June 2026. This followed Century Aluminum's February 2026 announcement that it sold its idled Hawesville smelter site to a data center firm, while retaining a 6.8 percent stake. [24]

Century expected to build its green smelter within the Ohio/Mississippi river basins, where alumina refineries and aluminum smelters historically took advantage of bulk transport on river barges. The new plant was expected to create more than 1,000 full-time jobs, represented by the United Steelworkers, and more than 5,500 construction jobs. Century announced plans to collaborate with job-training organizations and local technical colleges to recruit and train employees from the local community where the smelter was located. [25] Century operated aluminum smelters in Hawesville and Sebree, Kentucky; Mt. Holly, South Carolina; and Grundartangi, Iceland, as well as the Jamalco bauxite-mining and alumina-refining facility in Jamaica and the Vlissingen carbon-anode plant in the Netherlands. This made Century a vertically-integrated company, unlike Glencore, which typically bought alumina on the commodities market, then purchased swing smelters like CFAC or contracted with smelting companies, to turn the raw material into metal. [26] Sparked by growing demand and new tariffs imposed by the Trump administration, Century announced in August 2025 that it planned to spend $50 million to restart more than 55,000 tons of idled production at its Mt. Holly smelter, which was operating at 75 percent capacity. The increased production at Mt. Holly, a drop in the bucket by global standards, would boost total U.S. production by nearly 10 percent. Century hoped to have Mt. Holly up to full production by June 2026, something the plant hadn't seen since 2015. [27]

Century planned to reduce carbon dioxide emissions at its proposed green smelter by 75 percent, compared to older plants, by improving plant efficiency and utilizing renewable energy. The company already operated a low-carbon smelter in Iceland, producing 300,000 tons of primary aluminum per year, powered by hydro and geothermal generating plants. While the company hadn't released figures for its green aluminum smelter project, one analyst suggested a million-ton-per-year plant might be in the works, surpassing the 750,000 tons produced by all U.S. smelters in 2023. Century and the U.S. Department of Energy also didn't provide the new plant's start-up date, but according to energy consultant Wood Mackenzie, a million-ton smelter could cost $4 billion to build and need a gigawatt of electrical power to run. [28] According to Mackenzie, the U.S. had a total of 239 gigawatts of installed solar power by the end of 2024. [29] The U.S. Energy Information Administration reported that the U.S. had a total of 147 gigawatts of installed wind power by the end of 2023. [30]

But all that solar and wind power was already spoken for, and experts projected U.S. electrical demand increasing 25 percent by 2030 and 78 percent by 2050, thanks to a boom in data centers and manufacturing centers. [31] The only way Century would get a gigawatt of renewable power for its new plant, according to Annie Sartor at Industrious Labs, "is if gargantuan amounts of clean energy get built in Kentucky. There's no other way around this." [32] To put a number on the question, 1 gigawatt of electricity was the power demand of the city of Philadelphia. Plans by Constellation Energy to restart a portion of the Three Mile Island nuclear facility were underway, but that power was contracted to Microsoft for new data centers, not new aluminum smelters. In the meantime, China was constructing 26 new nuclear reactors. [33] Without new hydropower construction possible, it would take 10,000 acres of solar panels to generate 1 gigawatt of electrical power for Century's new aluminum smelter – if the sun was shining. [34] It would take 294 utility-scale wind turbines to generate 1 gigawatt of power – if the wind was blowing. [35] One thing aluminum smelters and data centers had in common was that they consumed electrical power constantly – 24/7, 365 days a year.

The story of Century Aluminum's plans for a green smelter took a turn in January 2026 when the company announced a major partner had joined the project, with a larger smelting capacity and a new location. In May 2025, Emirates Global Aluminium announced plans to invest about $4 billion to build a new aluminum smelter in Inola, Okla., the first primary aluminum plant to be built in the U.S. in almost 50 years. On Jan. 26, 2026, Chicago-based Century said it was poised to take a 40 percent stake in the new smelter, with EGA keeping a 60 percent stake in the joint venture. With Century as a partner, the smelter's planned capacity was increased from 600,000 metric tons of aluminum per year to 750,000, which would more than double U.S. output of virgin aluminum. Construction was expected to start by the end of 2026, with production to begin by the end of the decade. The project was expected to support 4,000 construction jobs and create 1,000 permanent jobs at the site. Driving the project forward was the Trump administration's interest in boosting aluminum production, considered a critical mineral, as well as a tariff on imported aluminum, which doubled in June 2025 to 50 percent. "About 85 percent of the aluminum needs of American industries are currently met by imports," EGA and Century said in a press release. "The new smelter will expand the domestic supply of this critical mineral and grow the American aluminum workforce, revitalizing U.S. aluminum expertise and know-how." [36]

Up until the January announcement, Century and EGA seemed to be in a race to build a new smelter in the U.S. "The fact that the companies teamed up reflects how difficult it is for manufacturers to secure power at the volumes and prices they need, not only in the United States but globally — a challenge that's getting even harder with the competition from AI data centers," Maria Gallucci said in a Canary Media report. "There was a scenario where both could have failed," said Joe Quinn, who leads the Center for Strategic Industrial Materials for SAFE, which advocates for policies to enhance U.S. energy security. "But now they're getting together, and I think that strengthens the likelihood of a new smelter being built in the United States." According to an Aluminum Association report, the new smelter would require more than 11 terawatt-hours of power, or enough electricity annually to power the city of Boston. Negotiations were underway with the Public Service Company of Oklahoma, a subsidiary of American Electric Power, and the state of Oklahoma to secure a competitive, long-term power contract

for the new smelter. In 2025, EGA signed a nonbinding agreement with the office of Republican Gov. J. Kevin Stitt, a deal that included more than $275 million in incentives for the planned smelter, including discounts for power. According to Simon Buerk, EGA's senior vice president for corporate affairs, Oklahoma's "energy abundance" was a key factor in selecting the state for the project. More than 40 percent of Oklahoma's annual electricity generation came from wind turbines, while about half came from fossil-gas power plants. In 2025, the Public Service Company of Oklahoma acquired an existing 795-megawatt gas plant south of Tulsa to meet the rising energy needs of its customers, potentially including EGA. Buerk said at the time that the new smelter's annual power mix "will be based on EGA's decarbonization objectives, market dynamics, and market demand for low-carbon aluminum." Oklahoma's job gain would be Kentucky's loss, where Century already operated two aging smelters in the western side of the state. [37]

Natural resource damages investigation

The release of a draft Natural Resource Damage Assessment Plan for the CFAC site was announced in May 2025. Provided under federal CERCLA Superfund law, the plan was not the work product of the responsible parties, Atlantic Richfield and Glencore, nor the two government agencies overseeing the cleanup, the U.S. Environmental Protection Agency and the Montana Department of Environmental Quality. The Montana Natural Resource Damage Program provided a means for state, tribal and federal trustees, through the Montana Department of Justice, to seek baseline restoration of a contaminated site and to sue corporate polluters for damages. The Flathead Beacon reported that according to Kathleen Hausrath, lead counsel for the Montana Natural Resource Damage Program, the settlement process wouldn't interfere with or affect CFAC/Glencore's requirements to continue performing remediation work under Superfund regulations, subject to EPA oversight and with consultation from the Montana DEQ. "This natural resource damage assessment process is separate from the EPA's proposed remediation plan to clean up the CFAC Superfund site," she said. "The natural resource damages are the residual of the impact from the hazardous substances that will not be addressed by a final cleanup remedy." The Montana Natural Resource Damage Program worked on behalf of the governor to recover natural resource damages for Montana. Since its inception in 1990, the program had recovered more than $275 million in natural resources damages for sites across the state. [38]

According to the Hungry Horse News, the draft Natural Resource Damage Assessment Plan for the CFAC site, which "looks to recoup damage caused by the plant in its more than 50 years of operation and pollution of the natural environment," was put together by the Montana governor's office through its Natural Resources Damage Program, along with the program's trustees, the Confederated Salish and Kootenai Tribes, the U.S. Department of the Interior's Fish and Wildlife Service and Bureau of Indian Affairs, and the U.S. Forest Service. "While the draft doesn't contemplate an exact figure, the damages are expected to exceed $100,000," the Hungry Horse News reported. "Pollution from the plant was greatly evident in the 1970s, when fluoride emissions were killing trees on Forest Service lands and in Glacier National Park, for example, the draft assessment notes. Still, it could prove costly for the company." [39]

The Hungry Horse News reported that the Anaconda Aluminum Co. “didn’t pay much for the fluoride damage in the 1970s” and referred to an “apparent settlement to the state of Montana by CFAC in 1982 for $75,000.” [40] That wasn’t the entire story, as laid out in a letter to the editor by Richard Hanners, the author of this history. “After about nine years of local lawsuits and investigations by government and academic scientists, the U.S. Department of Agriculture and the U.S. Department of the Interior filed a joint lawsuit against the Anaconda Aluminum Co. in U.S. District Court in Missoula on Nov. 3, 1978, claiming damages to land, trees and animals in the Flathead National Forest and Glacier National Park. During this time, AAC was completing the smelter plant's $45 million (1980 money) multi-year conversion to the Japanese Sumitomo pot design and Alcoa's Method 398 dry scrubber system, which successfully reduced fluoride emissions from as high as 10,000 pounds per day in 1969 to about 200 pounds per day in the early 1980s.” [41]

Hanners continued in his letter, “Important damage investigations for the plaintiffs were carried out by plant pathologists Clancy Gordon, at the University of Montana, and Clint Carlson, at the Forest Service in Missoula, and by personnel at Glacier National Park. AAC received professional assistance from the Boyce Thompson Institute, an entomologist and a plant pathologist from the University of Utah, and a veterinarian from Washington State University, among others. AAC also hired some very tough and very sophisticated attorneys – Carlson's deposition ran to nearly 900 pages and in places required advanced knowledge of statistical mathematics, and Gordon's extremist and expletive-strewn testimony in other aluminum plant lawsuits was used to discredit his work. [42]

What happened next was unexpected, given the creative imagination of local writers and pundits who dominated the public narrative over successive decades. “The federal lawsuit brought against the Anaconda Aluminum Co. came to a sudden end in 1980, but the circumstances behind the settlement were never reported in the media,” Hanners continued. “Conventional wisdom was that the government had overwhelming evidence proving that fluoride emissions from the aluminum plant in Columbia Falls had damaged Forest Service trees, and that AAC had managed to comply with state fluoride emission standards by spending millions on new reduction cells and primary pollution control equipment. This version assumed that the Anaconda Company had given up defending its case, which didn’t align with the giant mining company’s historical legacy.” Research at the National Archives in Denver, Colorado, and the Glacier National Park Archives uncovered more of the story. “Much of the back story of the federal settlement was revealed in a ‘nonsecurity confidential’ contemporaneous report that Glacier Park Superintendent Phillip Iversen wrote about a Feb. 5, 1980 meeting in Kalispell with 10 Forest Service officials and U.S. Attorney Ezra Rosenberg.” [43]

“‘Discussion around the table indicated that the U.S. Attorney’s Office feels the government case is a loser,’ Iversen stated in his report,” Hanners continued in his letter to the editor. “Rosenberg was concerned about upcoming testimony by plant pathologist John M. Skelly, at Virginia Polytechnical Institute’s Department of Plant Pathology and Physiology, which could discredit Carlson’s work. ‘Anaconda is also aware that Dr. Clancy Gordon, who did some of the research for the Environmental Protection Agency in Glacier National Park, was recently caught in an outright lie in court testimony,’ Iversen reported. ‘The U.S. Attorney said he has never encountered a case where the judge gave such a

serious reprimand to an expert witness. Dr. Gordon would probably be a government witness and his credibility has been seriously damaged. His bias has overcome logical arguments.'" [44]

"The federal lawsuit was settled around August 1980, when terms were reached for a land exchange," Hanners concluded his letter to the editor. "The land exchange was based on the estimated value of the lands and not on an acre-for-acre basis. Lands acquired from the Anaconda Company were required to have wildlife, recreation and timber production values. Forest Service lands on Teakettle Mountain that were allegedly damaged by fluoride emissions from the aluminum plant were swapped for 3,300 to 4,000 acres of Anaconda Company-owned timberland located up the North Fork of the Flathead River, in the Coal Creek drainage. The Anaconda Company already owned much of the western side of Teakettle Mountain, but the land exchange consolidated nearby holdings on the west, southwest and southern slopes of the mountain. The federal lawsuit was dismissed with prejudice on Aug. 1, 1980." [45]

The point of this digression is that natural resource damage claims can be difficult to prove and the settlements rarely satisfy the public. In the case of the Natural Resources Damage Assessment Plan for the CFAC site, provided under CERCLA Superfund law, the EPA "is not a natural resource trustee, nor is it authorized to act on behalf of natural resource trustees," the EPA explained in a Dec. 17, 2023, newsletter. "Because the choices made in cleanup decisions can affect the amount of natural resource damages, the EPA coordinates with trustee agencies on cleanup decisions." The EPA and Montana DEQ were authorized to oversee the Superfund's remedial process, which required cleanup of contaminants that were released and posed a threat to human health and the environment. The natural resource damages process, overseen by a select group of trustees, required that natural resources be restored to the conditions they were at or before injury by environmental contaminants. If natural resources were not restored, then compensation for the injury could be sought from the party responsible for the release of the contaminants. [46]

A public meeting to discuss the draft plan took place at The Hub in Columbia Falls on June 10, 2025. Two weeks later, a letter to the editor by Shirley Folkwein, representing the Coalition for a Clean CFAC, reported on problems she and her allies experienced at the meeting. Representatives from the state's Natural Resources Damage Program provided an informative public presentation, explaining the purpose and process used to move forward with determining damages and recouping the cost of restoration, Folkwein said. "However, those of us in attendance at the June 10th meeting had many questions that the NRDP representatives were unable to answer and indicated they would refer to the EPA and then post the responses on the NRDP website. In light of the need for additional time for seeking and posting the responses, and the public needing more time to review the draft assessment and the responses to our questions, we are requesting an additional 60-day extension of time to allow for public comment." She added, "We are also requesting an additional public meeting be held in Columbia Falls to allow community members more opportunity to engage with the Natural Resource Damage Program. In light of the tremendous turnout of community members for Superfund public meetings, we believe the Columbia Falls and Flathead communities will seize this opportunity for protection and restoration of our natural resources that define us as a community." [47]

The Hungry Horse News also attended the June 10, 2025, meeting. “Forever chemicals. Concerns about future residents and development, and plenty of ‘what ifs?’ Those were just some of the topics residents brought up,” the newspaper reported. According to Katherine Hausrath, an attorney with the Montana Department of Justice’s Natural Resource Damage Assessment Program, settlements often ranged in the millions, but it could take years to finalize a settlement. In Libby, where an asbestos mine led to a Superfund cleanup, the program successfully claimed about $18.5 million in restitution. The NRDP also took action in the Upper Clark Fork River Basin Superfund site, where copper mining in Butte and copper smelting in Anaconda left a huge swath of natural resource damages. “Not all settlements are simply cash payments,” the newspaper reported. “Sometimes they result in land swaps. For example, in Helena, a settlement with ASARCO resulted in 322 acres of company land being converted into trails and parkland for the city in 2020.” [48]

Nino Berube, a resident and former CFAC engineer, asked about the possible presence of “forever chemicals,” such as perfluoroalkyl and polyfluoroalkyl substances, at the CFAC site. He suggested that “with the amount of fluoride at the plant along with the extreme heat of the aluminum-making process, there should be thousands of pounds of the substances on the site,” the newspaper reported. “Are you willing to look at PFAS in detail?” Berube asked. “That’s an excellent question,” Hausrath replied. In its January 2025 record of decision for the cleanup of the CFAC site, the EPA said it had not surveyed for PFAS chemicals. “Regarding per- and polyfluoroalkyl substances (PFAS) substances, these are emerging contaminants that were not required for analysis by the EPA when the (remedial investigation) work plan was finalized in 2015,” the EPA stated in its record of decision. “The EPA is currently formulating a national policy to address PFAS contamination at sites characterized before EPA proposed listing the two PFAS compounds as hazardous substances in 2022.” [49]

People attending the June 10, 2025, public meeting also expressed concerns about plans by developer Mick Ruis to build a large residential project on former CFAC lands. “Most of that land is assumed to be uncontaminated, and tests to date have shown as much,” the Hungry Horse News reported. “But what if something was found in the future? Was it simply buyer beware?” Neither Hausrath nor project manager Sydney Stewart knew the answers. But once a settlement was reached under the program, an action against Glencore or ARCO probably couldn’t be reopened, as settlements typically held a company harmless for future claims, the newspaper reported. Hausrath and Stewart noted that concerns brought up by residents would be forwarded to the EPA and the Montana Department of Environmental Quality. In addition, further environmental analysis of the site could be conducted if further data was needed. [50]

How future data would be collected was addressed in a July 14, 2025, letter that trustees for the Natural Resources Damage Program sent to the EPA office in Helena, Montana. The trustees requested additional information about the CFAC site, along with coordination for additional sampling. Their request included new data collected after the trustees received spreadsheets from CFAC containing sampling data on May 9, 2024; draft copies of all future sampling work plans prior to finalizing them; prior notice for future field visits for sampling, particularly those related to surface water, seep or post-removal action sampling, so the trustees’ representatives could be present for the sampling; and a copy

of the scope of work for additional pre-design investigations, including work plans submitted through unilateral administrative orders. “The trustees have many interests in the above items,” the letter stated. “A particular focus is ensuring that any sampling that is intended to document the extent of the contamination or the ‘worst case’ contamination is sampled in a location where one would expect to find contamination from the facility.” [51]

The draft Natural Resource Damage Assessment Plan, prepared with assistance from Industrial Economics Inc., was released in May 2025. (The document referred several times to this history, written by Richard Hanners.) The 55-page document described natural resources that could be affected by CFAC contaminants, how injuries were determined and quantified, how damages could be determined or restored, and a list of proposed assessment activities. An appendix provided a detailed quality management plan to ensure sampling data was valid and usable, and six tables covering CFAC history; threatened, endangered and candidate species, as well as species of concern, found in the area; and a summary of proposed assessment activities. Operations at the aluminum smelter since it opened in 1955 had “resulted in releases of hazardous substances including metals, organic contaminants, and other compounds into the environment,” the plan stated. “During operations (which ceased in 2009) and since operational closure, these contaminants have continued to be re-released and re-mobilized in the environment through a variety of physical, chemical and biological processes. Natural resources such as surface waters, sediments, soils and biota have been exposed to these hazardous substances, causing potential natural resource injuries and losses to the services these resources provide.” [52]

The goal of the assessment and restoration process, authorized by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and other applicable authorities, was “to restore, rehabilitate, replace, and/or acquire the equivalent of injured natural resources and associated services lost because of the release of hazardous substances, on behalf of the public. Such compensation may take the form of environmental restoration projects or monetary payments to be used by the trustees to conduct environmental restoration.” Operations at the aluminum smelter resulted in releases of hazardous substances, including metals and other inorganic ions and compounds, such as barium, fluoride and cyanide, as well as organic contaminants, including phthalates, polychlorinated biphenyls (PCBs) and polycyclic aromatic hydrocarbons (PAHs). The assessment plan interchangeably used “hazardous substances” to refer to “hazardous or deleterious substances” under the state’s Comprehensive Environmental Cleanup and Responsibility Act (CECRA). “During operations and since operational closure, these contaminants have continued to be re-released and re-mobilized in the environment through a variety of physical, chemical, and biological processes resulting in the exposure of natural resources such as surface waters, groundwater, sediments, soils, and biota,” the plan stated. “This exposure to hazardous substances has resulted in short- and long-term natural resource injuries and potential losses to the services these resources provide, including services to other natural resources in the ecosystem and services to humans who rely on, use and value these resources.” [53]

The draft Natural Resource Damage Assessment Plan began its history of the CFAC Superfund site from earliest records, noting that prior to the Anaconda Aluminum Co. plant’s construction in the 1950s, “a lack of written documentation makes it difficult to determine the level of agricultural or residential

activities that occurred in the area." Before white settlers came to the Flathead Valley, the land that the smelter occupied was part of aboriginal territory occupied by the Selis (Bitterroot Salish), Qlispe (Pend d'Oreilles) and Ksanka Band of the Ktunaxa Nation (Kootenai) tribes. The land was ceded by the tribes to the United States under the Hellgate Treaty of 1855, but the tribes reserved the right to continue hunting, fishing and gathering on the rivers and on open and unclaimed lands within their aboriginal territory. Impacts by fluoride emissions from aluminum smelters were well-known by scientists and industry experts worldwide, and concerns were raised by locals in the Flathead Valley before construction began on the AAC smelter. "According to the U.S. Forest Service, AAC officials insisted minimal environmental harm would be caused by the emission of fluorides, but in 1957, the Supervisor of the Flathead National Forest wrote a letter describing an area of dying ponderosa pines in proximity to the reduction plant," the draft plan stated. No further research into potential forest damages was initiated by the Forest Service until an additional three potlines were added to the smelter before 1968, increasing total aluminum production at the plant to 180,000 tons per year and fluoride emissions by a commensurate amount, possibly reaching 10,000 pounds per day. Numerous individual lawsuits were filed by locals against AAC for damages caused by fluoride, along with an unsuccessful class action, and AAC eventually found a technical solution to controlling emissions and invested vast sums of money to upgrade the smelter plant. [54]

In May 1977, following studies by the EPA and others of fluoride impacts to Flathead National Forest and Glacier National Park, the U.S. Department of Agriculture requested that the U.S. Department of Justice initiate litigation against AAC for impacts by fluoride emissions on the Flathead National Forest, NRDP recounted in its draft plan. The USDA's letter requesting litigation estimated potential recovery at $2 million to $80 million (1977 money). The next year, the Atlantic Richfield Co. acquired the Anaconda Co. and became the aluminum smelter's owner. The U.S. filed suit against ARCO to halt harmful fluoride emissions in November 1978. The suit was dismissed in August 1980, with a preliminary agreement to settle the dispute via an acre-for-acre land swap. By 1982, the details of the settlement were still being negotiated, with the terms evolving to either a land exchange or a payment of $75,000. While the exact terms of the settlement are not known, the U.S. Attorney's Office for the District of Montana received a check for $75,000 from ARCO on July 26, 1982, which was labeled "payment in full of the compromise settlement agreement." The draft natural resource damage plan noted that, "Though certain environmental liabilities due to fluoride emissions may have been resolved through this settlement, aerial deposition of other hazardous substances and resuspension or migration of these hazardous substances may have occurred during operations and may have injured natural resources in the surrounding area." [55]

The Montana Aluminum Investor's Corporation, which was owned by two men, Brack Duker and Jerome Broussard, acquired the aluminum smelter in 1985 and renamed it the Columbia Falls Aluminum Co., NRDP continued its plant history. Glencore, a Swiss-based commodities giant, bought the plant in 1999 and continued to operate the plant under the same name – CFAC. In addition to fluoride emissions, the smelter "generated several waste products including spent potliner (SPL), described as a layer of 'thick carbon bonded to an insulating layer containing fluoride, sodium, aluminum and small amounts of

cyanide,'" the plan stated. "The site also generated emissions of particulate fluoride, hydrogen fluoride and PAHs, mainly from the Paste Plant and potlines within the aluminum reduction facility." Sludge from the wet scrubbers used to control fluoride emissions since the plant began smelting in 1955 was disposed of on-site at the West Scrubber Sludge Pond. The wet scrubbers were completely replaced with dry scrubbers by 1980. Other types of solid waste were disposed of in eight on-site landfills. Seven of the landfills were closed, and one was still open but not used for industrial purposes since 2009, with the exception of disposal of sediment from the South Percolation Pond during remediation in 2021. In addition, potential sources of contamination at the site include two closed leachate ponds and several percolation ponds. [56]

Remedial investigations of the site requested by AAC and ARCO began as early as the 1970s, and preliminary cleanup efforts began in the 1990s, NRDP recounted in its draft plan. In 1984, the Montana Department of Health and Environmental Sciences issued a permit allowing specific monitored discharges of groundwater, but not groundwater degradation beyond the site. In 1994, MDHES issued a Montana Pollutant Discharge Elimination System permit that allowed processed wastewater discharges to specific ponds and groundwater, and required tracking of cyanide concentrations in groundwater. Montana DEQ subsequently identified groundwater contamination and elevated cyanide levels in seeps discharging to the Flathead River from the site, which Montana DEQ classified as unauthorized discharges. In 1996, the EPA issued a notice of violation under the Clean Water Act, followed in 1997 by Montana DEQ's notice of violation under the Montana Water Quality Act. In response, Montana DEQ allowed CFAC to modify its discharge permit to create a mixing zone, allowing higher cyanide levels in the Flathead River, and reissued the permit in 1999. The mixing zone was effectively eliminated in 2014 with another revised discharge permit. Although CFAC appealed, the permit was terminated in 2019 due to the smelter's closure. Industrial facilities were completely decommissioned in 2019, but seepage from the site into the Flathead River continued. [57]

In 2013, NRDP recounted in its draft plan, Weston Solutions, Inc., contracted by the EPA, determined the nature and extent of contamination at the smelter site, with 68 groundwater, surface water, sediment and soil samples used to establish potential source areas for contamination. These sources included landfills, the Wet Scrubber Sludge Pond, leachate ponds, the former drum storage area, percolation ponds, waste and raw materials storage and handling areas, the plant's drainage system, drywells and associated discharge points, and underground and aboveground fuel or chemical storage tanks. Primary constituents of potential concern were identified as cyanide, fluoride and PAHs. Since 2015, under the oversight of the EPA and in consultation with Montana DEQ, Glencore continued to assess conditions at the site and plan for remedial or cleanup efforts. In November 2015, Glencore signed an administrative order on consent with the EPA. Demolition efforts at the site were completed in September 2019. The EPA approved a remedial investigation report in 2020 and approved a feasibility study report in 2021. The EPA issued its preferred cleanup plan for the CFAC Superfund site in June 2023, and after the public comment period closed in August 2023, issued its record of decision in January 2025. [58]

Assessing natural resource damages

CERCLA regulations broadly divide processes that the NRDP trustees in the CFAC Superfund case could use to assess natural resource damages. Type A assessments utilized a standardized methodology based on inputs such as the mass or volume of the substance released, the duration of the release, the location of the release, and environmental conditions, but Type A assessments were generally limited evaluation of relatively minor hazardous releases in coastal and marine environments. Type B assessments were typically selected when a hazardous substance release occurred over a long period of time, involved multiple contaminants, or occurred in a complex system that could not be simplified. Type B assessments allowed for a wider range of scientific and economic methodologies to address data gaps. The trustees chose to conduct a Type B assessment of the CFAC site because damages were likely to exceed $100,000 and were not encompassed within the geographic scope of Natural Resource Damage Assessment and Restoration models. The process involved three steps – pre-assessment, assessment and post-assessment – with public engagement throughout the process. [59]

The pre-assessment phase, which included reviewing readily available information and existing data related to releases of hazardous substances and the potential impacts of those substances on natural resource, was completed in October 2023. The trustees determined sufficient evidence existed to support claims for natural resource damages against the parties responsible for releasing the hazardous substances to the environment. A review of readily available information and existing data continued in the assessment phase to identify the activities necessary to determine and quantify natural resource injuries and to determine associated damages. The development of an assessment plan was to ensure that the assessment was performed in a planned and systematic manner, and that the proposed assessment activities could be conducted at a reasonable cost. Three opportunities for public engagement would be provided in the assessment phase, beginning with the release of the draft plan. In addition to soliciting restoration ideas from the public, the trustees could identify early restoration opportunities, projects that could begin before the assessment had proceeded completely through all the Natural Resource Damage Assessment and Restoration phases. Early restoration undertaken or funded by a potentially responsible party could result in settlement of some or all of the PRP's natural resource damage liability, without fully resolving all liability, or it could generate a credit towards future settlement of natural resource damage liability. Finally, the post-assessment phase would involve implementing restoration decisions and reporting on the process. A Restoration and Compensation Determination Plan, which was not included in the May 2025 draft, could be completed during the post-assessment phase, if not sooner. [60]

The trustees noted in their May 2025 draft plan that the Natural Resource Damage Assessment and Restoration process would occur in addition to remediation – the actual hazardous waste cleanup at the Superfund site, which was overseen by the EPA and Montana DEQ. "These two processes have different goals," the trustees stated. "Remedial action objectives are risk-based and developed to protect human health and the environment from unacceptable risk. Remedies are selected based on evaluation criteria that are used to compare remedial alternatives and may result in contamination remaining in the environment above levels that existed prior to its release." In contrast, the goal of the Natural Resource Damage Assessment and Restoration process was to restore injured resources to their baseline

condition. “Losses resulting from natural resource exposure to hazardous substances are estimated over time, including past losses and, if post-remedy contaminant concentrations remain at levels sufficient to cause injury to natural resources, future losses,” the trustees stated. However, components of the Natural Resource Damage Assessment and Restoration process could overlap with remediation work. Restoration plans needed to account for ongoing or planned remedial actions. “For example, work to remedy a site may partially or completely restore injured natural resources,” the trustees stated. “In addition, remedial actions may injure natural resources.” CERCLA regulations directed the trustees to “use reasonable efforts to proceed against most known potentially responsible parties,” and to send a notice-of-intent to perform a natural resource damage assessment. [61] The potentially responsible parties were CFAC, a division within Glencore, and ARCO, currently owned by British Petroleum.

Under CERCLA regulations, natural resources included the “land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States… any state or local governments, any foreign government, any Indian tribes… or any member of an Indian tribe.” Surface water provided habitat for aquatic animals and plants as well as drinking water for biological resources. Surface water resources in the CFAC Superfund case included waters flowing through the site, perennially wetted habitats, the Flathead River and riparian area, Cedar Creek, and the intermittent Cedar Creek Reservoir overflow ditch. Not included in past remedial investigation reports, the U.S. Fish and Wildlife Service’s National Wetlands Inventory identified two palustrine wetlands to the northwest of the smelter plant and the landfills. The National Wetlands Inventory also distinguished two types of vegetation habitats for the riparian sampling area identified in remedial investigations. [62]

According to the May 2025 draft plan, the Flathead River was the sole migration corridor and critical habitat for trout to move from Flathead Lake to tributaries in the North and Middle Forks of the Flathead River. The Flathead River also held particular cultural value for the Confederated Salish and Kootenai Tribes. The state of Montana classified the part of the Flathead River that bordered the site, as well as all water bodies in the drainage, as class B-1, meaning that the water should be maintained suitable for “drinking, culinary and food processing purposes after conventional treatment; bathing, swimming, and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply.” The draft 2025 plan also noted that, according to the U.S. Geological Survey’s National Hydrography Dataset, a tributary to Cedar Creek bisected the northern area of the site along the eastern side of the Industrial Landfill. This feature was mapped by Roux Environmental Engineering, under contract with Glencore to investigate the site for remediation, as the “Northern Surface Water Feature” because of its wetland vegetation. Water ponding had been observed in the area as a result of runoff from a nearby cliff.” [63]

Groundwater resources were defined in CERCLA as “water in a saturated zone or stratum beneath the surface of land or water and the rocks or sediments through which ground water moves. It includes groundwater resources that meet the definition of drinking water supplies.” Montana’s groundwater management regulations simply defined it as “any water that is beneath the ground surface.” Remedial investigators at the CFAC Superfund site delineated groundwater in two water-bearing zones – an upper

hydrogeologic unit and a deeper zone, with limited hydraulic connectivity between the two. The elevation of groundwater flow in the upper hydrogeologic unit varied from 14 feet to 126 feet below ground surface, generally moving in a south-southwest direction towards the Flathead River. While the southerly flow was consistent, the hydraulic gradient varied from steep near Teakettle Mountain and the landfills, to relatively flat in the center of the site near the North Percolation Ponds and the northern half of the Main Plant Area, to steep again in the southern area between the Main Plant Area and the Flathead River. "Overall, these gradients, along with the elevations measured in the Flathead River, suggest that groundwater in the upper hydrogeologic unit discharges into the river," the draft plan stated. [64]

Groundwater in the vicinity of the site was identified as Class I, "suitable for public and private water supplies, food processing, irrigation, drinking water for livestock and wildlife, and commercial and industrial purposes, with little or no treatment required." The draft plan cited the National Research Council and the EPA for methodology used to determine the economic value of groundwater, both in terms of direct use and nonuse, the former including drinking wells for the nearby community of Aluminum City, the latter having a vague definition, perhaps as "existence values." At the CFAC Superfund site, the draft plan stated, groundwater recharged surface water and aided in nutrient recycling, purification of water and water storage, helping to mitigate drought. "It also provides assimilative capacity and can promote degradation of anthropogenic contaminants," the draft plan stated – such as cyanide and other hazardous contaminants entering the groundwater from leaking landfills. [65]

According to the May 2025 draft plan, CERCLA defined biological resources as "fish and wildlife and other biota. Fish and wildlife include marine and freshwater aquatic and terrestrial species; game, nongame and commercial species; and threatened, endangered and State sensitive species. Other biota encompassed shellfish, terrestrial and aquatic plants, and other living organisms not otherwise listed in this definition." The CFAC Superfund site had four primary terrestrial habitats – mixed conifer forest, riparian forest, deciduous shrubland and open grassland. Vegetation in the assessment area provided not only habitat, but breeding, loafing and denning services for migratory birds, mammals and other wildlife. Transitional habitats experienced intermittent or seasonal water inundation and could support aquatic species during certain life stages. Aquatic habitats were characterized by perennial or near-perennial water inundation that supported aquatic species. Most of the riverside seep areas that received cyanide groundwater, such as the backwater-seep mixing zone, were wet all year. [66]

The Flathead River provided critical year-round subadult residential/juvenile rearing and cold water refugia fish habitat and served as the only migration corridor to spawning tributaries for bull trout. The river, however, received numerous pollutants from impaired upstream tributaries, caused by sewage, domestic development of groundwater wells, septic fields and leach fields. Past studies suggested seven threatened, endangered or candidate species may exist within the CFAC Superfund site, and according to the U.S. Fish and Wildlife Service and the Montana Department of Fish, Wildlife and Parks, thirty-seven animal species of concern could be found in Flathead County, while 19 migratory bird species of concern were present within the CFAC Superfund site area. Furthermore, pursuant to the Hellgate

Treaty of 1855, members of the Confederated Salish and Kootenai Tribes held reserved rights to hunting, gathering and fishing within their usual and accustomed places, which included lands and resources within the assessment area. “The CSKT hold particular values for the fishing rights they hold within the Flathead River, which flows to and through their reservation, as well as cultural values for the native trout inhabiting that system and the surface water that supports them,” the draft plan stated. [67]

According to the May 2025 draft plan, determination of injury to natural resources under the CERCLA regulations was based on documentation that 1) identified a pathway for the released hazardous substance, from the point of release to a point at which natural resources were exposed to the released substance, and 2) that injury of a natural resource of interest had occurred, as defined by law. Injury was defined by law as a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource, resulting either directly or indirectly from exposure to the release of a hazardous substance. In some cases, this was determined by exceedance of federal or state water-quality standards. Furthermore, if contaminant concentrations from an industrial site were sufficiently elevated in one natural resource to cause injury in another, then the second resource could be considered injured. “The CFAC trustees anticipate applying a variety of approaches to determine if an injury to a natural resource has occurred, including comparing observed hazardous contaminant concentrations to promulgated thresholds and identifying measurable adverse changes in resources attributable to hazardous substance exposure,” the May 2025 draft plan stated. [68]

Pathways that contaminants might take from a known release of a hazardous substance to exposure of a trust natural resource included: 1) aerial transport from stack emissions, or subsequent transport of the same materials by wind; 2) fluvial pathways through which hazardous substances leached through unlined landfills, storage areas and ponds into groundwater; 3) fluvial pathways through which hazardous substances were discharged directly to terrestrial and transition habitats via stormwater runoff at the site; 4) fluvial pathways through which hazardous substances were discharged via groundwater to surface water; and 5) biological uptake pathways through which biota came into direct contact with natural resources contaminated by hazardous substances, including ingestion and dermal contact. Injury to surface water and groundwater resources could be determined to have occurred from a release of hazardous substances if the concentrations and duration of the measured substances exceeded water-quality criteria established by the Safe Drinking Water Act or Clean Water Act, or if concentrations were sufficiently elevated to cause injury to other natural resources. [69]

Sediment was considered a component of surface water, so if concentrations of hazardous substances in sediment exhibited characteristics found in the Solid Waste Disposal Act, then surface water could also be considered injured. “Injury to surface water and groundwater can also be demonstrated generally through documentation of measurable, adverse, change in the resource,” the May 2025 draft plan stated. “Although there are no promulgated sediment quality thresholds, thresholds indicative of measurable adverse changes to freshwater sediments, including thresholds indicative of likely harm to resident aquatic biota, are readily available in the peer-reviewed literature, and may be used to establish injury.” The trustees also noted that direct and indirect collateral injuries to natural resources

that occurred as a result of remedial actions were also compensable under the Natural Resource Damage Assessment and Restoration regulations. [70]

Once natural resources were determined to be injured, the trustees "must undertake a quantification of losses to determine how much restoration, replacement or acquisition is required to make the public whole," the May 2025 draft plan stated. CERCLA regulations defined damages as the restoration costs required to return injured natural resources to baseline conditions plus, at the trustees' discretion, the compensable value of services lost to the public during the time period from release of hazardous materials until the attainment of the restoration, replacement or acquisition of the equivalent of baseline conditions. Compensable value for interim losses included past losses and losses that might occur until the injured resources and services were returned to baseline conditions. The trustees planned to use restoration cost-based approaches to quantify injuries, scale restoration and determine damages for interim losses and to estimate public use and nonuse values. "Any injuries or service losses the trustees are unable to quantify may be addressed qualitatively by targeting restoration activities that compensate for those losses in a general way," the May 2025 draft plan stated. The trustees planned to quantify ecological injury by focusing on representative species using habitat equivalency analysis, but also to use resource equivalency analysis to quantify injury to specific resources, such as threatened or endangered species, or individual species found to be disproportionately harmed. [71]

Resource equivalency analysis would also be used to quantify groundwater losses, the May 2025 draft plan stated. This method was based on balancing the injury to natural resources that occurred over time with an equivalent amount of restoration, taking into account the nature and duration of the injury, including remediation, and the nature and timing of the restoration. Cultural losses to the Confederated Salish and Kootenai Tribes would be described and quantified separately from losses to the general public. In addition to compiling and reviewing existing information on natural resources utilized by tribal members, tribal values and services related to those natural resources, potential impacts from CFAC Superfund site-related releases of hazardous substances, and sampling data related to resources of concern for the tribes, the trustees anticipated conducting interviews, focus groups or similar approaches to collect information from tribal community members pertaining to tribal uses of natural resources and potential service losses experienced by the members. [72]

As provided under CERCLA law, the trustees planned to determine monetary damages using restoration cost-based approaches, and the total amount of natural resource damages would include both the cost of restoration to baseline and the compensable values for interim losses. This would not be an easy determination, compromises were inevitable, and some natural resources might be considered restored by a replacement or offset resource. One of the trustees, the U.S. Department of Interior, addressed this matter in 1993, stating that the "Department does not believe that Congress intended to allow trustee agencies to simply restore the abstract services provided by a resource, which could conceivably be done through an artificial mechanism. For example, nothing in the language or legislative history of CERCLA suggests that replacement of a spring with a water pipeline would constitute 'restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.' CERCLA requires that natural

resource damages be based on the cost of restoring, rehabilitating, replacing and/or acquiring the equivalent of an actual natural resource." [73]

Ultimately, the trustees in the CFAC case anticipated identifying a range of potential restoration alternatives, as provided under CERCLA law. According to the May 2025 draft plan, the trustees planned to consider regional or community restoration plans and priorities, and priority could be given to projects that provided additional benefits to the public, above and beyond restoration of natural resources and resource services. In determining ecological damages, the trustees "may choose to engage in environmental restoration that is deemed worthwhile (but is not in-kind in nature) if it restores similar resources or resource services as those that were injured, or restores resources or services deemed highly important ecologically, when restoration of the same type and quality is unavailable or not possible." [74]

A contentious reaction

In February 2026, the final draft of the Natural Resource Damage Assessment Plan was completed. The Montana Department of Justice's Natural Resource Damage Program announced the final version on March 11, 2026. Related documents were made public on a Montana Department of Justice website. [75] Chris Peterson of the Hungry Horse News reported on the final plan and the public documents on March 18, 2026. Katherine Hausrath, chief legal counsel for the NRDP trustees, told Peterson that once data was collected by Glencore's environmental consultant, it must be shared with the trustees under Superfund law. But according to NRDP staff and the final assessment plan, accessing existing data had been challenging and slow to receive, and NRDP staff were not allowed to accompany field crews that collected data in fall 2025. NRDP staff were interested in any possible connection between groundwater and surface water, Peterson reported, and they wanted to accompany Glencore's environmental consultants when they collected samples at seeps from the plant site that flowed into the Flathead River. [76]

Glencore declined to participate in the damage risk assessment process, Peterson reported, citing a letter sent to the trustees on March 8, 2024. "CFAC is not being given the opportunity to participate in the (assessment) process... but rather is only being asked to foot the bill," Glencore said in the letter. The company also claimed the damage risk assessment process, at the time of the letter, was "premature." Peterson noted that, "In letters since, the company has been less than willing to work with staff from the damage assessment program, claiming in one letter last year that the actual cleanup was outside the scope of the damage assessment program." Hausrath told Peterson that the damage assessment would continue despite any lack of cooperation by Glencore. "Our goal is to move as quickly as we can and still have good science," she said. The damage assessment was not authorized to look directly at human health impacts, if any were found, but instead referred them back to the EPA. The next step in the damage assessment would be to look at the data and any data gaps, project manager Sydney Stewart told Peterson. Stewart said NRDP staff would then quantify the injuries and translate that into a dollar amount. "Settlements often range in the millions," Peterson said. "In Libby, for example, the program saw about $18.5 million in restitution." [77]

The history of the Superfund site in Libby, Mont., dated back to the 1920s, when asbestos mining began there. The W.R. Grace company closed the mine in 1990. At its height, the Libby mine produced about 80 percent of the world's vermiculite, which was contaminated with a toxic and highly friable form of asbestos. [78] Another Montana Superfund site was the Smurfit-Stone pulp mill, which operated on the banks of the Clark Fork River in Frenchtown, Mont., from 1957 to 2010, discharging large amounts of wastewater into the river. More than a decade after the mill closed, the 3,200-acre industrial site was still leaching harmful chemicals into the river and the aquifer. [79] A memorandum of understanding between NRDP trustees relating to the restoration of natural resources injured by the release of hazardous substances at the Smurfit-Stone pulp mill and the W.R. Grace asbestos mine was initially signed on May 20, 2022, by Harley Harris, supervising assistant attorney general for the Montana Department of Justice's Natural Resources Damage Program. The trustees for the Frenchtown site included the Governor of Montana represented by the NRDP, the Confederated Salish and Kootenai Tribes, the U.S. Forest Service and the U.S. Fish and Wildlife Service. The trustees for the Libby site included the NRDP, the Confederated Salish and Kootenai Tribes and the U.S. Fish and Wildlife Service. [80] This memorandum of understanding was amended on Dec. 16, 2024, with an initial signature by Douglas Martin, NRDP program administrator, to include the Bureau of Indian Affairs as a trustee for the Frenchtown site, and to include the NRDP, the Confederated Salish and Kootenai Tribes, the U.S. Forest Service, the U.S. Fish and Wildlife Service and the Bureau of Indian Affairs for the Anaconda Aluminum Co. Columbia Falls Reduction Site. [81]

The Flathead Beacon reported on the final draft of the Natural Resource Damage Assessment Plan on March 20, 2026. "We are laying out a roadmap to quantify and determine the extent of the injured natural resources and then quantify the damages for restoring those injured resources to baseline," Katherine Hausrath, chief legal counsel for the Montana NRDP, told reporter Tristan Scott. "We recognize that is sometimes not possible, such as when you have a situation where you have natural resources that are so injured you can't restore them – for example, the groundwater at the CFAC site probably cannot be restored. So, you're looking for replacement projects to offset those damages." A range of conservation projects could be considered to offset the damages, Hausrath said, including restoring an equivalent amount of groundwater in a different location, improving headwater storage upstream from the CFAC Superfund site, or even repairing leaky water mains. "The end result of this process is hopefully to arrive at a dollar value," Hausrath told the Beacon. "You basically end up with a volume of contaminated groundwater that is supposed to make the public whole, and then a unit cost of implementing projects that should restore or replace that groundwater." The Montana Department of Justice's Natural Resource Damage Program had recovered more than $275 million in natural resource damages for sites and trustees across the state since 1990, Scott reported. [82]

Damages to natural resources could be tangible, such as restoring a contaminated waterway, or intangible, such as the loss of cultural and natural resources considered sacred by CSKT members. "As a result of these differences, the services that natural resources provide to tribal members may be considered unique," the NRDP assessment plan stated. "To ensure that the full range of natural resource services, and potential service losses, are investigated as part of this … the specific suite of services that

natural resources provide to these tribal communities are being specifically considered and evaluated." But once construction begins on the final remedy for the CFAC Superfund site, the NRDP trustees had only three years to complete its damages claim. "Once EPA releases its record of decision and CFAC starts implementing the plan, then a clock starts ticking," Hausrath said. "These claims typically result in a settlement and aren't typically litigated. The statute is designed to encourage settlement." This means coordination and cooperation between the trustees and Glencore, ARCO and the EPA was essential in order to meet that deadline, but accessing the necessary site data had proven problematic, Hausrath said, The trustees encountered resistance from Glencore, she said. "It has taken an extraordinary amount of effort to get that data from CFAC and EPA, and whether or not we get it in a usable format has been a problem in the past," Hausrath said. [83]

Among the documents that became available to the public on the Montana Department of Justice website was a Feb. 12, 2024, letter from Nathan Block, managing counsel for ARCO, responding to the NRDP trustees' notice of intent to perform a damage assessment at the CFAC Superfund site. Block said ARCO appreciated the trustees' offer to participate under a cooperative agreement but declined the offer, saying ARCO believed the assessment was "premature, given where the site is in the CERCLA remedy selection and implementation process" and that proceeding with assessment now "could result in data unsuitable for assessing residual injury to natural resources and unnecessary assessment costs." Block added, "This is not a minor or academic concern, since there is good reason to expect the mitigating effects of the EPA-selected remedy for the CFAC site will be substantial." [84]

Furthermore, Block suggested that the trustees "have not sufficiently explained why they believe planned response actions will not sufficiently remedy the alleged injuries to natural resources without further action." Block also noted that the trustees' preassessment screen's "preliminary conclusions about potential adverse effects to natural resources at the CFAC site, particularly for fish and wildlife using the Flathead River and Cedar Creek, also contradict the detailed findings in the remedial investigation/feasibility study. Whereas the preassessment screen contends fish and migratory birds within the Flathead River and surrounding habitats have been adversely affected by releases of hazardous substances, and contaminant concentrations exceed water quality standards in Cedar Creek, the feasibility study concludes otherwise." Furthermore, the NRDP's preassessment screen "does not appear to account for readily available information concerning the time, quantity, duration and frequency of the alleged release." Block suggested that the NRDP's preassessment screen relied on the court findings in the Columbia Falls Aluminum Co. v. Atlantic Richfield Co. case when other sources could provide better information, particularly the remedial investigation/feasibility study. [85]

In addition, Block noted that the NRDP trustees "have not made the determinations required by the Natural Resources Damage Assessment rule about damages excluded from liability under CERCLA." Block noted that relying on the CFAC v. ARCO court ruling was not enough, and "the trustees need to complete a more thorough determination of which damages are legitimately subject to exclusion." Block also suggested that NRDP did not have trusteeship over natural resources within the 960-acre plant boundary, which was private property. He cited two court cases, Satsky v. Paramount Communications, Inc. in 1993 and National Association of Manufacturers v. U.S. Department of Interior in 1998, to

support his argument. “Without a clear and well-defined exclusion of private lands from the assessment process, ARCO is concerned the scope and costs of the natural resource damage assessment will go beyond what CERCLA and the regulations allow,” Block said. [86]

Finally, Block noted that “the trustees have not performed an adequate estimate of the services of the natural resources identified as potentially affected” as required by CERCLA rules. “Natural resources and natural resource services are not the same things,” Block said. “’Services’ refers to the physical and biological functions performed by the resource, including the human uses of those functions… Human use services include such things as fishing, hunting, recreational use of habitat, and drinking water use of surface water and groundwater.” Block added, “Even a preliminary analysis likely would find there has been no loss of drinking water services within or downgradient of the site boundary – since there has been no historic use of surface water or groundwater at the site for drinking water, and offsite drinking water supplies have not been affected; no loss of fishing and hunting services in and along the Flathead River – since, again, the remedial investigation/feasibility study’s ecological risk assessment found no adverse effects to fish and wildlife utilizing the mainstem of the Flathead River; and little or no loss of recreational use of habitat – since site operations and their effects were confined primarily to private property.” [87]

Jared Ragozine, Glencore’s in-house counsel responsible for the Columbia Falls Aluminum Company, responded to the NRDP’s notice of intent to perform a damage assessment at the CFAC Superfund site on March 8, 2024. Ragozine noted that ever since remediation efforts began at the site, “CFAC has been nothing but cooperative with the EPA and the remediation process, spending millions of dollars and collecting thousands of samples to carefully document the nature and extent of impacts at the site and to evaluate cleanup options to ensure any impacts are mitigated or eliminated.” He went on to say, “With this history of cooperation and given where the site is in the CERCLA process, CFAC was surprised to receive the notice triggering the NRDA process. Despite that surprise, CFAC approached the notice in the same way it has addressed all requests that have been made of it – in the spirit of cooperation. CFAC moved quickly to obtain expert advice to analyze the preassessment screen and meet with the trustees to discuss CFAC’s likely desire to participate in the NRDA process. CFAC is interested in collaborating with the trustees so long as such collaboration can be performed in good faith by both sides.” [88]

With that said, Ragozine noted, “Unfortunately, the trustee meeting revealed that CFAC is not being given the opportunity to participate in the NRDA process as offered in the notice, but rather is only being asked to foot the bill. In addition, CFAC has significant concerns that the preassessment screen does not adequately address the criteria required by the NRDA rules. For the reasons described below, CFAC must decline to participate in the NRDA process as it was presented at the trustee meeting. However, CFAC is willing to ‘participate in the development of the type and scope of assessment plans’ and to ‘enter into a cooperative assessment agreement with the trustees’ as the trustees offered in the notice.” Many of the comments included in Glencore’s March 8, 2024, response paralleled ARCO’s. [89]

According to Ragozine:

- "The trustees do not explain why the preferred remedial action will not remedy injury and return the site resources and services to baseline conditions."
- "The trustees do not adequately evaluate the damages exclusion criteria in the NRDA rule."
- "The trustees fail to carefully consider the readily available data when concluding certain resources and services warrant injury assessment."
- "The NRDP's preassessment screen is unreasonably general when identifying potentially affected resources and services."
- "Identification of potentially affected services is inadequate for meeting the intended purpose in the NRDA rule."
- "The NRDP's preassessment screen's identification of 'water use and recreation' as potentially affected human use services is entirely unsupported."
- "The trustees do not demonstrate that an assessment of Teakettle Mountain is warranted based on the NRDP's preassessment screen's criteria and fail to consider whether its assessment is excluded under the NRDA rules." [90]

Ragozine also argued that "meaningful participation in the NRDA process has been foreclosed." He pointed out that, "During the trustee meeting, CFAC was shocked to learn that the Montana NRD Program had already executed a contract with an outside consulting firm, Industrial Economics, Inc., to conduct the NRDA. Further, you advised CFAC that its role in this process would be to pay for the already-contracted-for work and that CFAC would have an 'opportunity to confer' on the development of a work plan. Following the meeting, CFAC requested a copy of the contract you referenced in the meeting, which you provided in a redacted form. On Feb. 22, 2024, CFAC requested an unredacted version of the rates schedule to assist it in evaluating the scope of the work and the reasonableness of costs. Despite numerous requests, the Montana NRD Program has yet to provide the fully unredacted contract and has not identified any legal basis for withholding it." [91]

Ragozine cited Task Order No. 4, for data gaps analysis by Industrial Economics, Inc., which had a budget that exceeded $400,000, with more work to be done. "CFAC can only conclude that the trustees are embarking on an expansive fishing expedition based on an insufficient preassessment screen that is inconsistent with the existing data, the remedial investigation/feasibility study, and the EPA's anticipated remedy," Ragozine said. "To find that this contract was executed by the Montana NRD Program prior to the trustee meeting, but after that meeting was already scheduled with a specific agenda item directed to CFAC's desire for clarity on performing the assessment, renders the notice's offer hollow and effectively negates CFAC's ability to meaningfully participate in the NRDA process. An offer to confer when the process is already underway is no 'opportunity' – it makes the trustees' offer nothing but a box-checking exercise and is inconsistent with the NRD rules that suggest a cooperative approach." [92]

Ragozine noted that Glencore was still willing to engage in a cooperative process with the trustees, especially if the agreement was modeled on the 2014 funding and participation agreement for the Duke Energy Dan River Steam Station Coal Ash Pond Site in Rockingham County, N.C., which the NRDP

trustees sent to Glencore on Feb. 26, 2024. “Using that as a model, CFAC revised it to be site-specific and to address the offers made in the notice,” Ragozine said, and a draft agreement for the CFAC Superfund site was attached for the trustees’ consideration. [93] Ragozine wrote to Hausrath again on May 8, 2024. He recapped events since Jan. 10, 2024, when Glencore received the NRDP’s preassessment screen and notice of intent, including the Feb. 21, 2024, meeting with the trustees, where Glencore learned that the NRDP trustees had signed a contract with Industrial Economics Inc. eight days earlier and Glencore’s March 8, 2024, response to the NRDP trustees. On April 12, 2024, Ragozine said, the trustees responded to Glencore’s offer by “disregarding CFAC’s comments on the preassessment screen and offering a heavily edited version of the agreement, with CFAC’s role limited to paying for the NRDA and having some opportunity to ‘confer’ in the process.” Glencore met with the trustees again on April 24, 2024, Ragozine said, “in the hopes of finding a cooperative path forward. During that meeting, it was clear that the trustees would not allow CFAC to conduct the assessment, although the NRDA regulations do not prohibit a potentially responsible party from conducting the work, and there is one site in Montana where that is occurring.” [94]

Ragozine concluded his May 8, 2024, letter by saying, “For these reasons, as well as those identified in CFAC’s March 8, 2024, letter, CFAC is not willing to enter into the agreement as proposed by the trustees.” In a good faith effort, he attached to his May 8, 2024, letter seven data tables that provided sampling locations missing from the remedial investigation and which the trustees said they might need to recreate for their digital maps. “Finding it incredible that the EPA would issue a proposed plan without tying sample data to locations, CFAC conducted some additional research,” Ragozine said, so the tables could be sent to the trustees. “During the NRDA process, if other issues like this one arise that would lead the trustees to consider expending time or resources recreating work that has already been done, CFAC requests that you reach out prior to doing so and provide CFAC with the opportunity to assist.” [95]

The trustees react and respond

Among the documents the Montana Department of Justice’s Natural Resource Damage Program made available online when the final assessment plan was made public were emails sent by the NRDP trustees to ARCO, Glencore and the EPA requesting cooperation, specifically sharing data and alerting the trustees ahead of time when site visits were being conducted to collect samples. ARCO’s response was simple. “Following up on CFAC’s response this morning to the Montana NRDP’s September 19, 2025, letter, Atlantic Richfield Company is not directly involved in the development or implementation of sampling work plans at the CFAC site, so it is not in a position to accommodate the trustees’ request for coordination on sampling, work plans, and site visits,” Adam Cohen, a legal partner at Davis Graham, working on behalf of Glencore, emailed the trustees on Oct. 1, 2025. [96]

In the EPA’s Aug. 6, 2025, response, Carolina Balliew, Superfund and Emergency Management Division supervisor at EPA Region 8, agreed to provide the NRDP trustees validated data from a June 17, 2025, sampling event, the only data collected since the EPA began cooperating with the trustees, once the data had been made available to the agency. As for providing the trustees with a copy of the scope of

work for any additional pre-design investigations, including any work plans submitted through unilateral administrative orders, Balliew referred the trustees to the recently issued Unilateral Administrative Order for Remedial Design, available online. As for the other two requests by the trustees – providing "draft copies of all sampling work plans prior to finalizing them, so that we have time to provide feedback to EPA and DEQ," and informing the trustees of "field visits for sampling, particularly as it relates to any surface water, seep, or post-removal action sampling with sufficient advance notice that we may arrange to be present for the sampling" – Balliew suggested the EPA meet with the trustees "to better understand the trustees' next steps" and "to discuss opportunities for coordination." [97]

The NRDP trustees wrote to Glencore on Sept. 19, 2025, noting that the EPA might be willing to "revise" its response with regard to whether or not it would provide the trustees with draft work orders and inform the trustees regarding site visits, and requested Glencore do the same. "Receiving draft work plans is important for being able to provide the EPA, DEQ and CFAC feedback as to whether the data being collected will also be usable for the natural resource damage assessment purposes," Katherine Hausrath, Montana NRDP chief legal counsel wrote. "Similarly, being able to be present during certain sampling (e.g., sampling of the seeps/Flathead River) is important for understanding whether the sampling is being done where one would expect to find contamination impacting/causing injury to Trustee resources, amongst other things." [98]

In his Oct. 1, 2025, response, Jared Ragozine, Glencore's in-house counsel, noted that 1) Glencore had recently signed a consent decree with the EPA and Montana Department of Environmental Quality to implement the record of decision at the site, 2) Glencore was moving forward with implementing remedial actions at the site, and 3) the EPA had already approved the remedial action work plan. "While the trustees will have access to all of the data that will be developed pursuant to the remedial action work plan, this remedy implementation process is separate from the natural resource damage assessment," Ragozine said. "Thus, CFAC does not see a reason to provide the trustees special access or comment privileges during the implementation of the remedial action work plan." [99]

Also included among the documents the trustees made public online was a 19-page internal memo sent by Katherine Hausrath on May 24, 2024, to Doug Martin, the Montana NRDP administrator, describing the trustees' efforts to collect data at the CFAC Superfund site. Attached to the memo were 20 emails related to this effort. Hausrath noted that the trustees "spent significant effort trying to obtain the Superfund data collected for the CFAC site in a usable electronic format" and "received the analytical data on February 21, 2024, and the location data on May 8, 2024." She added that, "Concerningly, CFAC claimed the trustees were duplicating effort. In order to ensure the record is clear, NRDP has been keeping track of the significant level of effort expended requesting the data, which was necessitated by CFAC's refusal to provide the full data set to NRDP and failure to comply with its administrative order on consent with the Environmental Protection Agency and Department of Environmental Quality." Hausrath noted that Montana NRDP obtained some data from the Montana Department of Health and Human Services, and other data came from EPA attorneys. "However, metadata was not included (e.g., definitions of field names and codes used in the data set) and the location information (e.g., latitude and

longitude) was missing for the majority of the sampling locations. It does not appear that CFAC ever submitted these data to EPA." [100]

Hausrath explained in detail how extracting location data from Glencore's seven-volume remedial investigation report or transcribing handwritten coordinates from its contractor's field forms in order to create a digitized map for use by the trustees "would result in the needless expenditure of trustee funds and resources." Hausrath noted that, pursuant to the administrative order on consent, Glencore was required to submit the requested information to the EPA, and to maintain all sampling data and records for ten years after beginning construction on the final remedy. Furthermore, she noted, the EPA had broad authority to obtain this information from Glencore. "NRDP contacted CFAC, EPA and DEQ in attempts to obtain the data," Hausrath explained. "CFAC initially refused to provide any data without a cooperative agreement in place between CFAC and the trustees (which ultimately was not reached). DEQ provided the analytical data but were not able to provide the associated location data. Both EPA and DEQ repeatedly provided a PDF of the remedial investigation, despite attempts by NRDP to explain that the location data were not easily obtainable from the document." [101]

According to Hausrath's timeline, Sydney Stewart at NRDP emailed Matt Dorrington at the EPA on Jan. 18, 2024, asking for the site database but received no response. On Jan. 30, 2024, Hausrath emailed Cindy Brooks, Glencore's outside counsel, asking Glencore to provide the trustees with access to the site database. On Feb. 6, 2024, Brooks responded that Glencore would consider the request but lacked the present capabilities to export the data, specifically that it no longer maintained a license for third-party access to the database. That same day, Stewart emailed Dorrington at the EPA and Dick Sloan at the DEQ asking for the database. Sloan provided a PDF copy of the remedial investigation, while the Montana Department of Health and Human Services provided the trustees with Excel spreadsheets containing chemical data and groundwater well locations. On March 20, 2024, Hausrath contacted Ragozine at Glencore requesting the data. Ragozine said Glencore did not maintain a license for third-party access to the database and would need to hire a specialized consulting firm to export the data. After several emails back and forth, the trustees "stated concern that CFAC does not have the ability to export site data, because it has been NRDP's experience that this is a simple and standard practice." NRDP requested a meeting with the Glencore employee or contractor in charge of managing the data, but Glencore did not respond. "CFAC only stated that they are in compliance with the administrative order on consent and will not provide data to NRDP until entering into a cooperative agreement," Hausrath's timeline stated. [102]

On March 25, 2024, Stewart at NRDP emailed Dorrington at the EPA requesting a copy of the database, and Dorrington responded the next day with a link to a PDF version of the remedial investigation, which was not usable by the trustees. Two days later, Stewart was able to get the database from Sloan at DEQ and then forward the database to the trustees' contractor, Industrial Economics. On April 9, 2024, Hausrath communicated with EPA attorneys Kayleen Castelli and Paige Wright, who sent the trustees the same database as the one provided by the Montana Department of Health and Human Services, which lacked location and other metadata. The EPA attorneys "also said they had no concern with NRDP reaching out directly to EPA's contractor for the CFAC site, CDM Smith," Hausrath's timeline stated. On

May 1, 2024, Gunnar Emilsson at CDM Smith emailed the trustees that CDM Smith did not have the location data in an electronic format. Finally on May 8, 2024, Ragozine agreed to provide the missing location data in an Excel format. Hausrath's timeline noted that Ragozine, in the same letter, stated that Glencore did not want to pursue a cooperative agreement with the trustees. [103]

NRDP trustees accepted public comments for the final draft of the Natural Resource Damage Assessment Plan from May 21, 2025, through July 23, 2025, and received 10 comments during that period. The final plan dissected the comments and sorted the responses into 21 topical categories. With regard to the U.S. lawsuit against the Anaconda Aluminum Co., which was settled in 1980, the federal trustees noted that they retained authority under CERCLA, which was enacted in December 1980, to recover damages not covered by the AAC settlement. Furthermore, "The co-trustees, State of Montana and the CSKT, were not parties to that lawsuit and retain all authorities to recover for damages to resources and the services they provide within their trusteeship, which include, but are not limited to, groundwater, surface water, sediments, biological, and/or interim lost Tribal uses of natural resources." With regard to public criticism of the proposed CERCLA cleanup action, the trustees "noted these comments but reiterate that they have no authority over the cleanup (response actions) at the site." With regard to public criticism of the trustees making use of information from the EPA's record of decision, which might be incorrect, the trustees noted that the record of decision "is one of many remedial documents that the trustees are relying upon to understand the history of contamination at the site." [104]

Regarding whether impacts by fluoride emissions from the aluminum smelter on the teeth of cattle had been studied in the past, the NDRP trustees responded by saying, "the trustees are not aware of any tissue samples of any aquatic or terrestrial wildlife." It should be noted that tissue samples from terrestrial wildlife were collected by Glacier National Park to study the impacts of fluoride emissions by the aluminum smelter, including on bones and teeth. In response to a comment about per- and polyfluoroalkyl substances, the trustees noted that PFAS chemicals were included "as a potential contaminant of concern in the final assessment plan." The trustees also addressed concerns that their plan for additional sampling might duplicate efforts in the EPA's plan, as described in the EPA's record of decision, thereby resulting in unreasonable and unnecessary costs. The trustees said they "do not intend to collect data that is duplicative of data already collected or to be collected for the response actions," but pointed out that the EPA did not agree to provide them with "draft copies of all sampling work plans prior to finalizing them" or to notify the trustees ahead of time of planned EPA field visits for sampling. The trustees noted that the two potentially responsible parties, Glencore and ARCO, "have similarly refused to coordinate on these aspects of the response data collection." The trustees "requested that EPA reconsider its refusal, as coordination of these types of actions is required under CERCLA and the National Contingency Plan." In the case of Glencore and ARCO, the trustees noted that lack of cooperation will drive up the reasonable costs for the Natural Resource Damage Assessment and Restoration claim, which Glencore and ARCO were liable for. [105]

In response to concerns about using 1981 as the date for baseline conditions, the trustees noted that baseline "refers to the condition that would have existed had the operations as an aluminum reduction

facility not resulted in the release of any hazardous substances to the environment. CERCLA prohibits calculating damages for injuries prior to 1981 but does not limit baseline." The same commenter asked how the injured natural resources could be restored to baseline if the EPA's proposed cleanup might take 35-60 years to return groundwater to protective levels. The trustees noted that the EPA's goal for remediation was to address unacceptable risk to human health and the environment, and the trustees had no authority over the EPA's cleanup plan. However, "the trustees' natural resource damage claim will encompass the entire time the groundwater is contaminated, and the public has experienced losses associated with that contamination. If it takes the remedy 35-60 years to achieve groundwater standards, the natural resource damage claim should include compensation for 35-60 years from implementation of the remedy (in addition to past losses back to 1981, in accordance with the promulgation of CERCLA in December 1980)." As for how Glencore and ARCO would be held responsible for restoring the injured natural resources to baseline conditions, the trustees explained that "natural resource damage claims are often settled through a consent decree, although litigation can be a path to resolve a claim if settlement is unsuccessful." [106]

Regarding how the NRDAR claim could be expanded beyond the CFAC site boundary if the trustees needed to rely on EPA data, the trustees said they "intend to rely on all available data collected in and around the site. In other words, additional historical data sources exist (e.g., historical site documents, Forest Service reports) that may have potentially relevant data, which the trustees intend to review further and would use in supplementing the existing data compilation." In response to concerns about how the public could be compensated for a permanent injury, the trustees said the NRDAR claim would include losses to a natural resource "in perpetuity as part of the quantification of interim losses," and to the extent that a natural resource was permanently injured prior to the passage of CERCLA, "it is also possible that such injuries may not be severable/divisible in time (before and after the implementation of CERCLA) so may be included in the NRDAR claim despite occurring wholly before the enactment of CERCLA." As for how future development on 2,000 acres of CFAC site land could affect the site's contaminated groundwater plume, the trustees said that, while they had no authority over the cleanup plan or any influence over local development decisions, "any resulting documented changes to the extent of groundwater contamination caused by the development (e.g., caused by new groundwater wells, sumps, changes in impervious surfaces) may be considered in the injury quantification and damages determination process." [107]

One concern in the comments was whether the NRDAR claim would include the Cedar Creek Reservoir and Teakettle Mountain. The trustees noted that the EPA and Glencore, the potentially responsible party that was paying for and overseeing the remediation work, had drawn the site boundary to exclude those two places. "However, consistent with CERCLA and CECRA, and as noted in the assessment plan, the assessment area will include anywhere that the contamination from site operations has come to be located," the trustees said. Regarding comments about remediation work performed in 2021 to restore the Flathead River channel adjacent to the aluminum smelter's former percolation ponds, the trustees agreed with comments that the entire river channel was not restored, adding that the final assessment plan would include this area. The trustees also responded to ARCO's comment that the EPA's record of

decision “states that the groundwater has not been used as drinking water and loss of the service of drinking water related to injured groundwater should not be assessed because if impacted groundwater has not historically been used as a drinking water source, there cannot have been a loss of drinking water services.” The trustees noted that the assessment plan “will include determining baseline conditions and services, although as noted in the comment, residents do drink the groundwater at the adjacent Aluminum City.” [108]

As for ARCO’s comment on whether injuries that occurred on private property owned by Glencore could be assessed, the trustees noted that “injuries to biological resources using these habitats (e.g., nesting, feeding on prey items) and transiting the area, such as fish, wildlife, and migratory birds, are within the trustees’ jurisdiction regardless of land ownership. Additionally, the State of Montana retains trusteeship over groundwater regardless of land ownership. To the extent contamination on private lands adversely affects public resources, the trustees maintain the right to pursue injuries and damages.” One comment suggested that Glencore “should pay for connecting the Aluminum City residents to city water if the city annexes these residents.” While saying they recognized this impact, the trustees noted that “this is not an injury to a natural resource or service that can be assessed.” Both ARCO and Glencore noted that conducting the natural resource damage assessment was premature and should be deferred until the mitigating effects of the EPA’s cleanup could be determined. The trustees disagreed, noting that it was “well-established practice to begin assessing the injuries concurrently (or even before) issuance of a record of decision.” The trustees planned to “carefully consider the impacts of the selected final remedy in quantifying the injuries,” and noted that “conducting the assessment in parallel with the remedial process ensures that the trustees can coordinate with EPA, incorporate remedial actions into the damage determination, and avoid duplicative or inconsistent efforts.” [109]

Regarding whether costs for assessment work performed by the trustees were reasonable, the trustees asserted that they were reasonable, pointing out that additional costs were incurred as a result of “difficulties involved in completing what should have been a simple task of obtaining the response data at this site” from Glencore. As for the trustees not consulting with Glencore before hiring a company to assist with the NRDAR claim, the trustees responded that they were following the normal procedure, and that hiring a company without consulting Glencore “does not indicate an intent to not work with” Glencore. The trustees also responded to how it planned to address releases of a hazardous substance at the site before federal CERCLA law was created in 1981. Noting that new language was added to the final assessment plan, the trustees stated that,

> “some releases act as ongoing sources, continuing to release contamination to the environment over time, despite the original release occurring prior to 1981. To be excluded under this section, a release and the associated injuries would need to have occurred wholly prior to 1981. To determine whether any releases and injuries occurred wholly before 1981, the trustees will look at available information on historical operations and releases. The trustees will also consider any other appropriate information, such as data or modeling regarding the migration of hazardous substances from the Site into the environment. This information will be considered during all

> appropriate portions of the assessment, such as the evaluation of the pathways of the contamination. Finally, damages are often calculated on an annual basis, and where damages are divisible pre- and post-1981, damages will be calculated for the years post the enactment of CERCLA (i.e., 1981 onward)." [110]

Both Glencore and ARCO noted in their comments that "the assessment plan needs to identify how it will exclude damages resulting 'from any other federally permitted release, as defined in section 101(10) of CERCLA,'" and they cited CFAC's Montana Groundwater Pollution Control System permit issued in 1984, and its Montana Pollutant Discharge Elimination System permit issued in 1993. The trustees responded by noting that the Ninth Circuit Court of Appeals' ruling in Columbia Falls Aluminum Co., LLC v. Atlantic Richfield Co., which decided how the costs of the Superfund cleanup would be allocated, "did not find that any of the groundwater contamination was subject to this liability exclusion for 'federally permitted releases.'" Furthermore, the findings of fact in the District Court "acknowledged the existence of groundwater contamination prior to the issuance of the first MPDES permit in 1984, as well as the continued release and migration of the contamination following the termination of the MPDES permit in 2019…. In this discussion, the District Court did not distinguish or otherwise carve out any groundwater contamination that was excluded from CERCLA liability." Based on the two courts' rulings, the trustees "have not removed any portion of the groundwater contamination from the plan because the groundwater contamination is co-mingled and currently not distinguishable." [111]

A novel lawsuit argument

Locals still following the cleanup saga at the CFAC Superfund site in summer 2025 learned about another huge bureaucratic step in the CERCLA process that was underway – bureaucratic in the sense that much of the same lengthy, detailed and repetitive information would be spelled out in giant reports. One was a 305-page report prepared by Roux Environmental Engineering and Geology, Glencore's contractor for investigation and remediation of the CFAC Superfund site, dated July 11, 2025, and titled "Roux Quality Assurance Project Plan." A second was a 356-page legal filing by the EPA, dated July 31, 2025, with Glencore's subsidiary Columbia Falls Aluminum Co. LLC as the respondent, titled "Unilateral Order for Remedial Design." The public learned about the EPA's unilateral administrative order on Aug. 20, 2025, when the Hungry Horse News reported on an upcoming community meeting scheduled for Aug. 27, 2025, at The Hub in downtown Columbia Falls. The public would not only hear an update on the cleanup by representatives from the EPA, Glencore and Montana DEQ, the newspaper said, but also discuss the recently released unilateral administrative order. "Under the UAO, CFAC is required to prepare a biological assessment and perform consultation under the Endangered Species Act, as well as complete certain limited remedial design work," the newspaper reported. "These activities will be carried out under EPA and DEQ oversight. Information gathered during field events under the UAO will help inform final remedial designs." [112]

In the EPA's earlier press release about the unilateral administrative order, the EPA noted that, "a UAO is an enforcement instrument that EPA can use to require parties to take a response action," and that consent decree negotiations to implement the remedy selected by the January 2025 record of decision,

including remedial design and remedial action, were still underway between Glencore, the EPA and Montana DEQ. [113] On Aug. 5, 2025, CFAC Corporate Secretary Cheryl Driscoll wrote to EPA project manager Allie Archer and EPA attorneys Paige Wright and Kayleen Castelli acknowledging that CFAC, as the respondent to the unilateral administrative order, "hereby communicates its irrevocable intent to comply with the requirements of such UAORD." Driscoll informed the EPA in the letter that John Stroiazzo was project coordinator at the CFAC Superfund site, and noted his 40 years of experience in the natural resource industry in Idaho, Iowa, Montana, Texas and Maine, including overseeing the assessment, remediation, demolition and redevelopment of the CFAC Superfund site since 2014. Driscoll also said Roux Environmental Engineering and Geology was Glencore's supervising contractor, and cited the company's experience in remediation at numerous Superfund sites. [114] Carolina Balliew, Section C supervisor of the Superfund Remedial Branch at the EPA Region 8 office in Denver, wrote to Douglas Martin, the program administrator for the Montana Natural Resource Damage Program in Helena, on Aug. 6, 2025, informing him that the trustees' request for a copy of the EPA's pre-design investigation work plan for the CFAC Superfund site could be found as Appendix A to the statement of work in the unilateral administrative order. [115]

According to the EPA's website, a unilateral administrative order was an enforcement instrument that the EPA could use to require parties to take a response action. This included requiring a party to investigate the threat of a release of hazardous substances; investigate the type or extent of the contamination from the actual release of a hazardous substance; identify and assess the possible ways to clean up the contamination; perform the cleanup work as short-term removal or long-term remedial action; and engage the impacted community to help them understand the conditions at the site and the plans for, and implementation of, cleanup work. The EPA could issue a unilateral administrative order if it determined that an imminent and substantial endangerment to public health or welfare or to the environment existed because of the threat or actual release of hazardous substances. Unilateral administrative orders were frequently used when there was a desire to get action started quickly at a site, or when the EPA's efforts to negotiate a Superfund settlement with a party was unsuccessful. If a party did not comply with the order they received, a federal district court could assess daily penalties, require the party to pay up to three times what it cost the EPA to do the cleanup work, or issue a judicial order requiring the party to do the cleanup work. [116] But Glencore appeared to be cooperating in every way with the CFAC Superfund site process, ever since the EPA took over management of the process from the Montana DEQ in 2014, and Glencore had issued a letter of intent to comply on Aug. 5, 2025, so the draconian language in the EPA website seemed unusual in this application.

In March 1990, the EPA's Office of Solid Waste and Emergency Response issued a memorandum with guidance for use of unilateral administrative orders for remedial design and remedial action, as authorized by CERCLA's Section 106(a), as amended by the Superfund Amendments and Reauthorization Act of 1986. "An objective of Superfund enforcement is to place ultimate responsibility for the costs of cleaning up Superfund sites on those who contributed to the problem," the memo said. The EPA preferred to obtain private-party response action through negotiation of settlement agreements with parties willing to do the work, but when viable private parties were not willing to reach a timely

settlement to undertake the work under a consent order, “the Agency typically will compel private-party response through unilateral orders,” the memo said. “Unilateral orders should be considered as one of the primary enforcement tools to obtain remedial design/remedial action response by potentially responsible parties,” the memo said. [117]

But apart from liability, the development of the factual basis for a response action required in a unilateral order needed to begin during the remedial investigation/feasibility study process, the 1990 memo advised. “The Region should ensure that documents developed during the remedial investigation/feasibility study contain enough information to support all the findings necessary to support issuance of a unilateral order, i.e. that because of an actual release or threat of a release of one or more hazardous substances from a facility, there may be an imminent and substantial endangerment to the public health or welfare or the environment,” the memo said, adding, “It is important to pay particular attention to the baseline risk assessment. Baseline risk assessments provide an evaluation of the potential threat to human health and the environment in the absence of any remedial action. They provide a basis for determining whether or not remedial action is necessary and a justification for performing remedial action.” [118]

The 1990 memo noted that under CERCLA Section 106(a), the EPA was authorized to issue unilateral orders as necessary after giving notice to the affected state. And a footnote pointed out that “it is EPA policy to give Indian tribes equivalent notification” to states. The 1990 memo noted that CERCLA Section 106(a) “does not specify the parties to whom an order may be issued.” Parties liable under CERCLA Section 107(a) included owners and operators of a facility, contractors who arranged for disposal or treatment of hazardous substances, and any person who accepted hazardous substances for transport to disposal or treatment facilities. However, Section 106 did not limit issuance of administrative orders to only those potential responsible parties, the memo said, adding, “A unilateral order also may be issued to prevent a non-PRP from interfering with a response action.” A footnote to the 1990 memo pointed out that “much of this guidance pertains to PRPs and may be inapplicable to orders issued to non-PRPs.” [119]

Guidance contained in the 1990 memo may help to explain why the EPA chose to issue a unilateral administrative order for the CFAC Superfund site even if Glencore, the responsible party, had been cooperating all along with the EPA. But additional information was required to make the logic click. On Aug. 14, 2025, Samantha Hess, at Inside Washington Publishers, reported that “EPA is ordering a liable party at a Montana Superfund site to prepare a biological assessment on the effects of a planned cleanup on listed species and consult with federal wildlife agencies under the Endangered Species Act (ESA), a move that appears to respond to novel threats from local tribes and environmentalists to sue over the issue.” According to Hess, the EPA’s action appeared to be in response to a June notice-of-intent to sue sent by the Confederated Salish and Kootenai Tribes and a local watchdog group, Citizens for a Better Flathead, who charged that the EPA violated the Endangered Species Act when making its record of decision for the CFAC Superfund site by failing to engage in formal consultation with the U.S. Fish and Wildlife Service under ESA Section 7. In their June notice, the groups also alleged violations of the ESA’s Section 9, by “allowing/causing ongoing unpermitted CFAC offsite discharges to the Flathead

River to take threatened bull trout and harass and harm the species as a result of said discharges, without an incidental take statement." The groups claimed, "Accordingly, the agency has ignored its duty under the ESA to ensure its actions do not jeopardize threatened or endangered species, that its actions do not result in unauthorized take of these species of wildlife, and that its actions promote recovery of the species." The groups added, "The agency's actions in this matter represent an unlawful departure from its legally binding mandate to protect and recover imperiled species and their habitats." [120]

In their June 2025 notice-of-intent-to-sue, CSKT and CBF argued that the EPA's record of decision for the CFAC Superfund site failed to provide any evaluation of toxic pollutants discharging at levels exceeding applicable water quality standards into near-shore reaches of the Flathead River, or how those discharges could potentially impact bull trout or its critical habitat. Furthermore, the EPA's record of decision failed to reference or discuss bull trout and its critical habitat, or provide any evaluation of the species. As such, CSKT and CBF said, if the ESA violations alleged in the notice-of-intent-to-sue were not cured within 60 days, they would file suit for declaratory and injunctive relief. Hess noted in her Aug. 14, 2025, article that disputes over ESA violations rarely surfaced at Superfund sites, but they were not unheard of. She cited a case where officials at the National Oceanic and Atmospheric Administration warned in 2005 that the EPA's interim plans to remediate polychlorinated biphenyls in Hudson River sediment was weaker than the 2002 record of decision and could likely result in General Electric, the liable party, not having to achieve stringent cleanup measures. EPA critics cited NOAA's concerns in an attempt to revise the EPA's interim cleanup plan. [121]

The notice-of-intent-to-sue by CSKT and CBF was sent June 5, 2025, by the Bechtold Law Firm in Missoula and the Alsentzer Law Office in Bozeman to Interior Secretary Doug Burgum, Acting Director Paul Souza at the U.S. Fish and Wildlife Service and Administrator Lee Zeldin at the EPA. "CSKT and CBF will file suit after the 60 day period has run unless the violations described in this notice are remedied," the letter said. CSKT and CBF cited the U.S. Fish and Wildlife Service ruling that determined the threatened status of bull trout in the statement of facts, pointing out that bull trout were threatened by "the combined effects of habitat degradation, fragmentation and alterations associated with dewatering, road construction and maintenance, mining, and grazing; the blockage of migratory corridors by dams or other diversion structures; poor water quality; incidental angler harvest; entrainment… into diversion channels; and introduced non-native species." CSKT and CBF noted that "of native salmonids in the Pacific Northwest of the United States, bull trout have the most specific habitat requirements, which are often referred to as 'the four Cs': cold, clean, complex and connected habitat." [122]

After recounting a brief history of the AAC/ARCO/CFAC aluminum smelter and the remedial investigation and feasibility study leading up to the EPA's record of decision, CSKT and CBF noted that, "The existing and remedial investigation data indicate that the West Landfill and Wet Scrubber Sludge Pond are the primary sources of cyanide and fluoride in groundwater at the site." Quoting from the record of decision in Section 5.4.2, CSKT and CBF said that "migration of site contaminants into surface water has been documented where seeps discharge to a backwater area of the Flathead River.

Concentrations of cyanide and fluoride in this area exceed EPA maximum contaminant levels and Montana DEQ-7 water quality standards. They also have been high enough to pose unacceptable ecological risk in surface water and porewater." The record of decision also stated in Section 5.4.3 that "six rounds of remedial-investigation groundwater sampling documented a consistent pattern of migration… from the primary sources (West Landfill and Wet Scrubber Sludge Pond). Cyanide migrates in a south/southwesterly direction from the primary sources toward the Flathead River," and that "fluoride migration is also in a south/southwesterly direction toward the Flathead River." CSKT and CBF noted that the record of decision in Section 7.2.2, which described aquatic exposure areas, "lists six federally threatened or proposed threatened species as present in the project area" and "further admits that critical habitat for the bull trout exists at the site." [123]

CSKT and CBF pointed out that in Section 5.4.4, the record of decision concluded that site-related contaminants did not contribute an unacceptable risk to fish in the Flathead River. The EPA's conclusion was based on an assessment of ambient, instream pollutant-of-concern sampling from the Flathead River's deepest channel, and on separate whole-effluent toxicity-testing studies of the Flathead minnow and the daphnid crustacean, which were performed under the state of Montana's surface water discharge permit for CFAC. The record of decision concluded that "greater dilution of discharging groundwater with surface water from the Flathead River would mitigate any short-term effects on the survival of representative fish and invertebrates." CSKT and CBF pointed out that, "No section of the record of decision examines groundwater-based pollutant discharges into near-shore reaches of the Flathead River to determine impacts on the threatened bull trout, despite admitting the Flathead River adjacent to and downgradient from the CFAC site is in fact critical habitat for the bull trout, and despite bull trout having been documented in reaches of the Flathead River proximate to the CFAC site." [124]

CSKT and CBF went on to point out that in the record of decision, Section 7.2.4.3 presented "overall results and conclusions relevant to bull trout, despite never examining pollutants of concern or any proposed CERCLA remedy to determine impacts to bull trout or its critical habitat." They also pointed out that in a later subsection, which discussed the backwater-seep sampling area along the Flathead River, the record of decision stated that "the greatest potential for ecological exposure to site-related constituents is associated with direct contact exposure within the backwater-seep sampling area, and areas where groundwater containing cyanide and fluoride discharges to surface water. Surface water exposure was greatest to cyanide (total and free), barium and aluminum, with greater concentrations observed in the backwater-seep sampling area and adjacent stations immediately downstream of the backwater-seep sampling area. Attenuation of surface water concentrations occurs rapidly with increasing distance from the backwater-seep sampling area, particularly during periods of elevated discharge within the Flathead River." The subsection concluded that "potential risks associated with direct and incidental wildlife ingestion pathways are considered to be minimal in the backwater-seep sampling area." [125]

In another subsection within Section 7.2.4.3, which discussed the riparian area channel along the Flathead River, the record of decision stated that evaluation of sediment and surface water data "indicate the potential for adverse effects associated with direct contact exposure of aquatic receptors

to cyanide (total and free), fluoride and metals (i.e., aluminum, barium, copper and iron) in surface water. Surface water data indicate potential exposure to contaminants of concern may be influenced by groundwater discharge associated with the backwater-seep sampling area and surface discharge from the South Percolation Ponds. A temporal analysis of contaminants of concern concentrations in surface water indicates that the greatest chronic exposure to cyanide in the Flathead River riparian area channel likely occurs during periods of elevated discharge within the Flathead River." CSKT and CBF concluded that the record of decision "fails to provide any evaluation of admitted toxic pollutants, at levels exceeding applicable water quality standards, discharging into near-shore reaches of the Flathead River vis-a-vis examination of impacts on bull trout or its critical habitat." CSKT and CBF pointed out that in Section 12, where the record of decision selected the preferred remedy and described preferred containment techniques for the leaking landfills, "Section 12 does not reference or discuss bull trout, its critical habitat, or provide any evaluation of impacts on the species." [126]

Section 7 of the Endangered Species Act, titled "Interagency Cooperation," requires all federal agencies to carry out programs for the conservation of listed species, and requires the agencies to ensure their activities are not likely to jeopardize the continued existence of federally listed species or destroy or adversely modify designated critical habitat. The U.S. Fish and Wildlife Service "encourages agencies to contact the local Ecological Services field office for information or pre-consultation technical assistance early in the project development process." If a proposed action may affect any listed species or critical habitat, then the agency was required to begin formal consultation with USFWS, unless the federal agency determined, with written concurrence of USFWS, that the action was not likely to adversely affect listed species or critical habitat. Formal consultation could last up to 90 days, after which USFWS would prepare a biological opinion. According to the USFWS website, "The biological opinion will state whether the federal agency has ensured that its action is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. A biological opinion may include reasonable and prudent measures necessary or appropriate to minimize the impact of the incidental take on the species." [127] On April 7, 2025, CSKT and CBF submitted a Freedom of Information Act request to USFWS seeking any and all records of Section 7 consultations, from March 26, 2015, to the present, regarding the EPA's CERCLA decision making for the CFAC Superfund site cleanup. In their May 5, 2025, response, USFWS said "we have no records responsive to this." CSKT and CBF concluded, "Thus, no informal or formal consultation was performed by EPA with USFWS regarding its CERCLA record of decision for the CFAC site for bull trout or bull trout critical habitat." [128]

CSKT and CBF noted in their June 5, 2025, notice that the Ninth Circuit Court of Appeals held in 1985 in Thomas v. Peterson that "once an agency is aware that an endangered species may be present in the area of its proposed action, the ESA requires it to prepare a biological assessment." Under federal statute, if a biological assessment concluded and the expert agency agreed that a proposed action may affect but will not adversely affect a threatened or endangered species, the action agency must consult informally with the appropriate expert agency. But if the action was likely to adversely affect a listed species, the action agency was required to formally consult with the expert agency, and the expert agency was required to provide the action agency with a biological opinion explaining how the proposed

action would affect the species or its habitat. If the biological opinion concluded that the proposed action would jeopardize the continued existence of a listed species, the biological opinion was required to outline reasonable and prudent alternatives, if any were available, which would allow an action agency to carry out the purpose of its proposed activity without jeopardizing the existence of listed species. If the biological opinion concluded that the action would not result in jeopardy but may incidentally take or harm a protected species, the expert agency had the authority to provide the action agency with an incidental take statement. The statement was required to specify the impact of such incidental taking on the species, set forth reasonable and prudent measures that the expert agency considered necessary to minimize such impact, and include the terms and conditions that the action agency was required to comply with to implement those measures. During this assessment process, the agencies were required to use the best available science. [129]

CSKT and CBF also noted that the Ninth Circuit Court of Appeals held in 2001 in Arizona Cattle Growers Association v. USFWS that a take occurs when habitat degradation "prevents, or possibly, retards, recovery of the species," so long as the plaintiff could show significant impairment of essential behavioral patterns, including spawning. Furthermore, the Ninth Circuit Court of Appeals held in 1995 in Loggerhead Turtle v. County Council of Volusia County that the ESA's prohibition on taking did not distinguish between taking of whole species and the taking of only one individual of a species. CSKT and CBF concluded, "As such, any taking and every taking, even of a single individual of protected species, is prohibited by the Endangered Species Act; even the future threat of even single taking is sufficient to invoke authority of ESA. The ESA prohibits any person from 'taking' endangered species without an incidental take statement that permits the take. The take prohibition encompasses activities that harass or otherwise harm listed species." CSKT and CBF summed up their case by saying that 1) the EPA failed to conduct a Section 7 consultation with USFWS about bull trout for its record of decision in the CFAC case, and 2) the EPA failed to comply with Section 9 of the ESA "by allowing/causing ongoing unpermitted CFAC offsite discharges to the Flathead River to take threatened bull trout and harass and harm the species as a result of said discharges, without an incidental take statement." [130]

In a Jan. 21, 2026, article about the CSKT and CBF's notice of intent to sue, editor Chris Peterson pointed out that the EPA never mentioned "the threat of a lawsuit" for prompting the decision to issue a UAO for the CFAC Superfund site. Mayre Flowers, co-chair of Citizens for a Better Flathead, told the newspaper that "she believed the notice of intent to sue likely had an impact on the decision to do more tests at the site." When asked for a response, the EPA did not directly address the threat of a lawsuit. "The goal of the Unilateral Administrative Order was to conduct pre-design field work that will be used to inform remedy designs, while also allowing for the site to continue critical work this year during the consent decree negotiations," EPA project manager Allie Archer told the Hungry Horse News. "Field work conducted under the UAO wrapped up last month. EPA and DEQ check in regularly with CFAC and will have a clearer timeline of data availability in the coming weeks as data gets through the lab analyses and validation processes. The agencies are expecting to receive final data somewhere in the March or April timeframe." [131]

Cleanup plans outlined

Several concerns cited in the EPA's 1990 guidance memo on the use of unilateral administrative orders stood out on reading the notice-of-intent-to-sue by CSKT and CBF, including 1) the incompleteness of the remedial investigation/feasibility study prior to issuing the record of decision, particularly the baseline risk assessment, or in this case complying with the Endangered Species Act; 2) recognition of Native American tribes as equivalent to states for notification purposes; and 3) that unilateral administrative orders could be issued to prevent a non-PRP from interfering with a response action, in this case perhaps a non-PRP filing a lawsuit against the EPA.

Resistance to the EPA's use of unilateral administrative orders was not uncommon, but it typically involved a responsible party filing a legal objection, not a non-PRP. General Electric, for example, filed suit against the EPA on Nov. 28, 2000, to challenge the agency's issuance of unilateral administrative orders to potentially responsible parties under CERCLA Section 106. According to a case review by the Riker Danzig law firm, General Electric sought a declaratory judgment on whether the UAO process was invalid, arguing that Section 106 violated a potentially responsible party's constitutional right to due process by failing to provide a hearing prior to the issuance of the EPA's order or timely and meaningful judicial review after issuance. "Although the constitutionality of CERCLA has been challenged on similar grounds in the past, the timing of GE's suit may be in response to the view that the current justices of the Supreme Court may be more amenable to constitutional challenges to environmental statutes than justices on prior Supreme Courts," the Riker Danzig law firm said. "The timing of GE's suit also coincides with the issuance of the EPA's proposed plan for cleanup of Hudson River sediments that contain polychlorinated biphenyls resulting from GE discharges to the Hudson River." [132]

Stepped-up enforcement of known pollution sites began under the Biden Administration. On July 1, 2021, the EPA's Office of Enforcement and Compliance Assurance issued a memorandum urging all EPA regional offices to increase cleanup program enforcement under CERCLA and the Resource Conservation and Recovery Act, particularly at sites that "most impact overburdened communities." The memo was the third in a series of memoranda on the topic of strengthening enforcement in communities with environmental justice concerns. The EPA encouraged each regional office to be more aggressive with its available enforcement tools in order to expedite cleanup work at sites in or near overburdened communities. "While these tools have been available for some time, this administration is taking steps to prioritize enforcement in a way that distinguishes it from the previous administration and to do so in a way that explicitly carries forward the Biden Administration's stated commitment to environmental justice," the Beveridge and Diamond law firm reported at the time. Many of the recommended enforcement tools were not new and had been discussed at length in EPA memoranda issued in 1999 and 2009, but new mapping and screening technology had become available, along with new kinds of settlement terms. The 2021 enforcement memo also encouraged increased use of CERCLA Section 106 orders, such as unilateral administrative orders. "To do the latter would require the concurrence of the Department of Justice, which has rarely provided such concurrence in the past," Beveridge and Diamond noted. [133]

The EPA Region 8's Unilateral Administrative Order for Remedial Design for the CFAC Superfund site, filed July 31, 2025, included in its 356-page electronic form numerous separate but related documents.

The order itself, signed by Region 8 Counsel Kenneth Shefski and Region 8 Superfund and Emergency Division Director Aaron Urdiales, ran to only 18 pages. It directed Glencore to "develop certain remedial design components and prepare a supplemental biological assessment and perform consultation under the Endangered Species Act, requirements described in the record of decision." The order's findings of fact concluded that, "The selected remedy uses a remedial strategy that emphasizes sitewide consolidation and encapsulation of contaminant sources to eliminate exposure pathways, reduce the transfer of contaminants of concern to groundwater underlying the site, and bring concentrations in seeps near the Flathead River into compliance with standards for ecological receptors." The statement of work for the CFAC Superfund site cleanup that accompanied the administrative order ran 18 pages long. The statement of work set forth procedures and requirements for implementing Glencore's work obligations, including finalizing Endangered Species Act consultation on behalf of the EPA; implementing a workplan to generate data needed for remedial design of the slurry wall and other measures described in Section 12 of the record of decision; completing the remedial design for lining the Cedar Creek Reservoir overflow ditch, where it ran near the West Landfill, Wet Scrubber Sludge Pond and Center Landfill, to minimize surface water infiltration into groundwater in that area; and engage in any other drilling, sampling or other work approved by the EPA and needed to implement any other portion of the remedy specified in the record of decision. [134]

The first action in that work list may have been in response to the CSKT and CBF June 2025 notice-of-intent-to-sue. The statement of work noted that Morrison Maierle prepared a biological assessment for Glencoe for a specific removal action at the site in January 2021, which was attached as Appendix A. Glencore now was required to prepare a supplement to the biological assessment that reflected the remedy selected in the EPA's record of decision. A draft of this supplemental assessment was to be provided to the EPA for comment and approval before it could be presented for consultation to the U.S. Fish and Wildlife Service, and Glencore would seek guidance from the EPA throughout the consultation process. The purpose of the pre-design investigations for the slurry wall and other elements of the record of decision's Section 12 remedy was to address data gaps and included generating a summary of previous investigations; a summary of all subsurface exploration data, including a subsurface soil profile, exploration logs, laboratory or in situ test results, and groundwater information; a summary of validated data; data validation reports and laboratory data reports; any deviations from the Quality Assurance Project Plan; results of any statistical and modeling analyses; photographs documenting previous work; and conclusions and recommendations for the remedial design, including parameters and criteria. The EPA could order Glencore to perform additional pre-design studies. [135]

The Morrison Maierle report included in Appendix A was a January 2021 biological assessment for the South Ponds Remediation Project, Phase 2. The ponds were constructed in the 1960s by damming a side channel on the north bank of the Flathead River. The ponds were used to hold stormwater and wastewater from the aluminum smelter facility during its operation. With the facility shut down and the plant demolished, the ponds were no longer needed. With the Flathead River migrating northward, sheet-metal piling and riprap was installed after 2016 to protect the ponds. But later, CFAC/Glencore and EPA staff determined the best long-term strategy was to remove contaminated sediments in the

side channel and return the riverbank to its natural condition. In Phase 1 of the remediation project, completed by January 2021, the contaminated sediments were removed. Phase 2 called for removing the sheet-metal piling and some of the rock riprap, and a biological assessment for the project was required. “The purpose of this biological assessment report is to assess the effects of the proposed action on federally listed threatened, endangered, candidate and proposed species that have the potential to occur within the action area,” the report stated. Morrison Maierle noted that the remediation project would be performed under EPA supervision, and pursuant to CERCLA Section 121(e), the project could be undertaken “without the need to obtain permits from federal, state or local agencies.” However, Morrison Maierle added, “EPA guidance on implementing projects at CERCLA sites 1) requires parties implementing such projects to follow the substantive requirements of applicable statutes and rules, and 2) strongly encourages parties to consult with federal, state and local agencies that would otherwise have permitting authority over a project.” [136]

Morrison Maierle also noted that the Flathead River was designated as critical habitat and an important spawning migration corridor for bull trout, and included a bulleted list of eight conservation measures recommended by the U.S. Fish and Wildlife Service. Morrison Maierle’s report contained 18 pages devoted to bull trout, including regulatory history, habitat requirements and reasons for decline. Morrison Maierle noted that bull trout migrated upstream from Flathead Lake past river mile points 145.8 and 147.2, where the South Ponds remediation would take place. [137] It appears that Morrison Maierle’s recommendations included the need for Glencore to consult with the USFWS under Section 7 of the Endangered Species Act, as CSKT and CBF claimed was necessary in their notice-of-intent-to-sue. Furthermore, the South Ponds remediation site was the same area where the CSKT and CBF argued contaminants from leaking landfills entered the Flathead River, but the Morrison Maierle report focused only on impacts to bull trout by the immediate actions of South Ponds remediation project – that is, sediment inadvertently entering the river during construction activities, not contaminated groundwater seeping into the Flathead River.

Included in Appendix B of the EPA’s Unilateral Administrative Order, titled Agency Correspondence and Data Files, was an April 30, 2020, letter from Jodi L. Bush, a supervisor at the U.S. Fish and Wildlife Service’s Montana Ecological Services Field Office in Helena, sent to Christine Pearcy at Morrison Maierle in Bozeman, regarding threatened and endangered species present at the CFAC/Glencore Superfund site. “You indicated that (pursuant to CERCLA) the project does not require federal permits,” Bush wrote. “However, you also indicated that the EPA has required CFAC to consult with relevant federal agencies and comply with appropriate standards. On April 29, 2020, Jacob Martin, of my staff, discussed the project with you and separately with Mike Cirian of the EPA. It is our understanding from those conversations that you will be leading consultation with us on behalf of the EPA and CFAC.” Cirian was the former EPA project manager for the CFAC Superfund site. Bush went on to say, “Under the ESA, a federal agency that authorizes, funds or carries out a proposed action is required to evaluate the action with respect to effects to threatened or endangered species and critical habitat. If the federal agency, or its delegated agent, determines that the action ‘may affect’ listed species and/or designated critical habitat, the federal agency is required to enter into Section 7 consultation with the Service. It is

the responsibility of the federal agency to ensure that its actions are in compliance with the ESA. Further technical assistance can be provided if you have additional questions regarding project impacts to listed species, or future ESA responsibilities." [138]

In her April 30, 2020, letter describing threatened and endangered species in the CFAC Superfund site area, Bush noted that "the Flathead River is designated critical habitat and an important spawning migration corridor for bull trout," and provided seven bulleted recommended conservation measures: 1) in-channel disturbance of foraging, migrating and overwintering habitat should be limited to the period between May 1 and August 31; 2) all work should be performed "in the dry when possible," including isolating work areas from flowing water by using cofferdams, silt curtains, sandbags and other measures to prevent suspended sediment from entering open water; 3) site clearing, staging areas, access routes and stockpile area should be located to minimize disturbance to riparian vegetation or cause erosion into stream channels; 4) barriers should be placed around potentially disturbed sites to prevent sediment from entering a stream; 5) a supply of erosion control materials should be kept on hand for emergencies; 6) all equipment fueling, maintenance and staging areas should be located in non-wetland areas in the landward direction away from a stream's ordinary high-water mark; 7) all equipment used for in-channel work should be cleaned of external oil, grease, dirt, mud, plant material or other debris which may harbor invasive plants or animals, and all leaks should be repaired prior to arrival at the work site. [139] Bush's letter to Morrison Maierle clearly indicates that the USFWS informed the EPA that the Flathead River was listed as critical bull trout habitat, and that the EPA was obligated to comply with the ESA and to enter into Section 7 consultations. But Bush's recommendations applied to sediment inadvertently entering the Flathead River during construction activities, not contaminated groundwater seeping into the Flathead River.

The EPA's Unilateral Administrative Order also included Roux Environmental and Engineering's 49-page "Pre-Design Investigation Work Plan," dated June 27, 2025. The work plan called for 1) a geotechnical pre-design study for the slurry wall that would be constructed around the West Landfill and Wet Scrubber Sludge Pond, which would be performed by subcontractor Mueser Rutledge Consulting Engineers; 2) a landfill settlement study of the 10.8-acre Wet Scrubber Sludge Pond, needed for design of a cap to prevent rainwater from entering the pond, to be performed by Mueser Rutledge Consulting Engineers; 3) short- and long-term groundwater sampling to further characterize flow directions and to track expected declines in cyanide, fluoride and arsenic concentrations; 4) slurry wall area modeling based on the groundwater sampling data from No. 3, to be used for development of a groundwater monitoring program for the site after the slurry wall was constructed; 5) an evaluation of the cover design for the asbestos landfill; 6) additional sampling to delineate impacted soils across the entire plant site that might need to be excavated; 7) evaluation of sediments in the Northeast and Northwest Percolation Ponds, and associated influent and effluent ditches, for eventual excavation; 8) gathering more information for future lining of the Cedar Creek Reservoir overflow ditch; and 9) geotechnical investigation of the Industrial Landfill. [140]

Also included in the EPA's Unilateral Administrative Order was a 21-page pre-design work plan for construction of the slurry wall intended to surround the leaking landfills, drafted by Roux's

subcontractor, Mueser Rutledge Consulting Engineers, and dated June 27, 2025. As described in the feasibility study report, and then adding a conservative 10 percent for planning purposes, the slurry wall was expected to be 24 to 36 inches wide and extend downward close to the glacial till, at depths up to 135 feet. The slurry wall, made of bentonite mixed with local soil, was "the best performing and lowest cost hydraulic barrier technology available," Mueser Rutledge said, but one goal of the pre-design work plan was to determine if constructing the trench was even possible, using long-stick excavators and clamshell equipment. This determination required a detailed soil profile of the slurry wall site. Large boulders that lay in the trenching path would present a serious problem. The work plan also called for defining the slurry wall alignment around the landfills, studying groundwater elevations along the slurry wall alignment, and collecting data to confirm the slurry wall's performance during an earthquake. To collect the necessary data, Mueser Rutledge planned to use wash-rotary and sonic boring for sampling groundwater and subsurface soil and to perform hydraulic conductivity tests. Electric vibrating wire piezometers would be installed in three borings to measure pore water pressure in soil, and three test pits would be dug by excavators to a depth of 20 to 30 feet to study the soil stability of the sidewalls. [141]

The EPA's Unilateral Administrative Order also included a 17-page pre-design work plan for a settlement study of the Wet Scrubber Sludge Pond, drafted by Mueser Rutledge and dated June 27, 2025. Dumping of waste material from the smelter's air pollution control equipment, for the most part calcium fluoride in a hydraulic form, into the 10.8-acre landfill ceased by 1980, when the plant switched over to a dry scrubber system for air pollution control. The Wet Scrubber Sludge Pond was covered with a soil cap in 1981. Aerial photographs showed how the perimeter embankment grew taller over time and how the waste material consolidated as it settled. The EPA's preferred cleanup remedy in its record of decision called for covering the Wet Scrubber Sludge Pond with a low-permeability synthetic cap to prevent future percolation of water through the waste. Construction of a crowned-cap shape to support this new liner was expected to require 43,000 cubic yards of fill. In addition to reviewing existing data collected from prior borings and other means, Mueser Rutledge anticipated using cone-penetration tests across a 125-foot grid to study compressibility and thickness, along with other sampling methods. Mueser Rutledge noted that no data was available on the groundwater table within the Wet Scrubber Sludge Pond area. The company planned to install a series of vibrating wire piezometers in one boring to define the groundwater table and its seasonal fluctuations. Mueser Rutledge planned to define the cross-sectional geometry and strength of the perimeter dike, as well as confirm the cap performance in the event of an earthquake. [142]

Roux Environmental Engineering, Glencore's environmental contractor, issued its "Quality Assurance Project Plan" for the CFAC Superfund site on July 11, 2025. EPA remedial project manager Allie Archer and Montana DEQ project officer Richard Sloan signed off on the 305-page plan. Contract staff cited in the cleanup included Glencore project coordinator John Stroiazzo, Roux pre-design investigation principal-in-charge Andrew Baris, Roux project manager Martiin Hamper, Roux remedial design engineer Charles McGuckin, Roux quality assurance officer Kathryn Sommo, Roux project health and safety officer Nevin Pahlad, Mueser Rutledge geotechnical project manager Tony Canale, Eurofins Environmental Testing Northeast laboratory project manager Elizabeth Flannery and Laboratory Data Consultants data

validation manager Pei Geng. The purpose of the quality assurance plan was to support the remedial design selected by the EPA in its record of decision. “The remedy will be implemented in accordance with consent decree between EPA and CFAC that has yet to be finalized,” Roux said in its introduction, but because “the EPA and CFAC agree the pre-design investigation component of the remedy should be implemented as soon as possible… the EPA has issued a unilateral administrative order to authorize the pre-design investigation to proceed in advance of the consent decree.” According to Roux, the goals of the pre-design investigation included 1) further geotechnical study for construction of the slurry wall, 2) completion of a settlement study for capping the Wet Scrubber Sludge Pond, 3) completion of a groundwater plume vertical profile study, 4) evaluation of a soil cover for the asbestos landfill, 5) further defining the limits of contamination in soils across the plant site, 6) further study of soils that would be excavated from the North Percolation Ponds, 7) a study to determine the dimensions and materials needed for lining portions of the Cedar Creek Reservoir overflow ditch, 8) evaluating the potential for waste consolidation with additional fill in the Industrial Landfill, and 9) evaluating data for a new cap over the Industrial Landfill. [143]

The EPA and Montana DEQ held a public in-person meeting on Aug. 27, 2025, at The Hub in Columbia Falls to discuss the CFAC Superfund site cleanup. About 25 people attended the meeting. Further testing and environmental investigation would take place in the fall, through December, the public was told. “The idea is to get some of the preliminary work for the cleanup done this year as the company negotiates a consent decree with the Environmental Protection Agency and the state Department of Environmental Quality,” the Hungry Horse News reported. The decree will lay out the legal parameters for the cleanup, as well as future monitoring and other specifics for the cleanup. To be finalized, the decree needed to go through the U.S. Department of Justice and be approved by a U.S. District Court judge. Glencore project manager John Stroiazzo said the $3.5 million cost of work required by the EPA’s unilateral administrative order would be paid by Glencore, including additional soil sampling, drilling new monitoring wells, along with other borings and water sampling. “We are seriously starting the remedial process,” Montana DEQ project officer Richard Sloan said. Stroiazzo said the new monitoring wells were a “reconfirmation of where the (cyanide and fluoride) plume is.” Stroiazzo also addressed concerns about per- and polyfluoroalkyl substances, so-called “forever chemicals,” which were brought up at earlier CFAC Superfund cleanup meetings. Stroiazzo said investigations by industry had looked into whether fluoride and other chemicals that were exposed to high temperatures for long periods of time in an aluminum smelter could generate per- and polyfluoroalkyl substances. “There is no indication the smelting process produces those constituents,” he said. [144]

Some of the long-term monitoring wells that would be installed under the unilateral administrative order would be located on land acquired by Mick Ruis for his large-scale residential housing project. Glencore had agreements in place with Ruis for the wells. Concerns also were raised about cyanide in groundwater entering the Flathead River. While cyanide concentrations in groundwater near the leaking landfills reached 4,000 parts per billion, concentrations in the underground plume were 400 parts per billion by the time the plume reached the north bank of the Flathead River. The safe water drinking standard for cyanide was 200 parts per billion, but no cyanide had been detected in the surface water of

the river or in nearby residential wells. When asked about the possibility of independent monitoring during the testing phase, EPA project manager Allie Archer said that kind of work could be paid for through the EPA's Technical Assistance Grant program. The Coalition for a Clean CFAC had applied for assistance that way. Archer also noted that under Superfund law, the Glencore site would be monitored every five years. "The EPA and DEQ will be around forever," she said. [145]

Stroiazzo clarified the Glencore position about the Superfund site at the public meeting. "CFAC didn't generate this issue, we came after it," he said. Hazardous materials were placed in the leaking landfills long before Glencore bought the plant, including tons of spent potliner – the source of the cyanide. When Glencore operated the plant, potliner was hauled away to a certified landfill off-site. [146] What Stroiazzo didn't mention was that Glencore must have known about the aluminum plant's existing environmental liabilities before it paid about $100 million to acquire the plant in 1999, or that Glencore made from $350 million to $450 million in 2001 alone by selling CFAC's contracted Bonneville Power Administration electrical power during the West Coast Energy Crisis – without running the smelter plant at all. [147] The Hungry Horse News reported in January 2026 that, according to Stroiazzo, the new round of environmental testing at the CFAC site was completed Dec. 19. 2025. [148]

On March 19, 2026, the EPA issued a press release announcing that the agency had issued a statement of work modification to the Unilateral Administrative Order at the CFAC Superfund site. Glencore was required to complete limited remedial design and remedial action activities as described in the record of decision. Work would expand on the pre-design investigation activities completed under the 2025 UAO, including continued work on the landfill and soil decision units, the completion of a low permeability cap study, and continued work on the Cedar Creek Reservoir Overflow Ditch. The 2025 UAO also included the EPA's submission of an updated biological assessment to the U.S. Fish and Wildlife Service. In March 2026, USFWS concurred with the EPA's findings that the selected remedy "may affect, but is unlikely to adversely affect, federally listed species or critical habitat at the site." The press release also noted that "the bulk of the remedial action – the design and construction of the slurry wall to encompass spent potliner waste belowground – is forthcoming." [149]

The 128-page supplemental biological assessment for the CFAC Superfund site was prepared by Morrison-Maierle on behalf of Roux Environmental Engineering and Geology and completed on Dec. 5, 2025. "The Unilateral Administrative Order for Remedial Design requires Endangered Species Act consultation that expands upon the biological assessment performed for the South Percolation Ponds Removal Action to address all selected remedy actions," the supplemental biological assessment said. "This biological assessment evaluates the potential effects of the proposed action on federally listed threatened, endangered, proposed and candidate species that may occur within the CFAC site." Species and habitat specifically evaluated in the assessment included bull trout and their critical habitat, Canada lynx, grizzly bears, Monarch butterflies, North American wolverines, Spalding's catchflies and Suckley's cuckoo bumble bees. [150]

Impacts to bull trout in the Flathead River were a notable concern to the Montana Department of Justice's Natural Resource Damage Program trustees. Morrison-Maierle's supplemental assessment

noted that Glencore and the EPA "restored the natural route of migration of the Flathead River through the action area in 2021 by completing the South Percolation Ponds removal project. This project removed contaminated soils and man-made structures within the floodplain, as well as a steel sheet pile wall and rock riprap revetments near/on the bank of the Flathead River. This action removed potential contamination sources and restored the former South Ponds area to its historical natural condition." [151]

Furthermore, the assessment stated, "The remedial investigation and baseline ecological risk assessment, developed for the site under EPA direction, concludes that contaminants at the CFAC site do not contribute unacceptable risk to fish in the Flathead River." The Backwater Seep Area represented the zone with the highest potential for exposure to contaminants of concern, as groundwater containing cyanide entered the river. However, the assessment noted, "Given that bull trout in the project area primarily use the Flathead River as a migration corridor and for seasonal holding rather than summer rearing, potential exposure to site-related constituents is spatially limited and unlikely to pose significant risk to bull trout or other aquatic receptors using the river for transit." [152]

The assessment concluded that "implementation of the proposed project may affect, but is not likely to adversely affect bull trout," and it provided four reasons:

1) "The proposed action does not plan any work directly within the bed, bank, or floodplain of the Flathead River."
2) "Effects due to altered stormwater runoff are expected to be primarily mitigated by the existing and upgraded stormwater management system and compliance with the appropriate rules and regulations."
3) "A goal of the proposed action is to eliminate the influx of contaminants of concern to stormwater, thereby improving the overall quality of stormwater runoff from the CFAC site to the Flathead River."
4) "Contaminant containment and isolation may improve groundwater quality and thereby help achieve surface water standards at the seeps along the Flathead River backwater area." [153]

The Hungry Horse News published an article on the results of Morrison-Maierle's supplemental biological assessment on April 1, 2026. The study "found the effort is not expected to have any long-term impacts on several endangered species," editor Chris Peterson said. "The report noted that it may affect some of those species, but wasn't likely to adversely affect any of them. In the case of the catchfly, which is a plant, it would have no effect, as none are on the site and there is no suitable habitat." Morrison-Maierle concluded that "while there was grizzly habitat, they would only be displaced in the time it took to do the remediation," Peterson said. [154]

Furthermore, the report stated:

> "To address concerns that the landfills may contain wastes unknown at this time, the EPA will require a full suite of contaminants parameter analysis from the down-gradient monitoring every five years, prior to the EPA's five-year review. Direct effects to adult

and sub-adult bull trout are possible as bull trout use the action area reach as a migratory corridor.

"While the potential for soil contamination migration to surface water via stormwater runoff exists, the contribution, if present, appears to be minimal. The proposed action takes steps to reduce stormwater runoff mixing with contaminants, such as lining of Cedar Creek ditch. Furthermore, because the area is likely not used for spawning, the proposed project will have no direct effect on incubation, fry emergence, or juvenile rearing of bull trout in the Flathead River watershed. Following the completion of project construction activities, impacts to bull trout are not anticipated to occur." [155]

New EPA policies

Soon after Donald Trump was inaugurated as the 47th U.S. President, a thousand probationary employees at the EPA were told they might be dismissed at any time. Thousands more received the Trump administration's early retirement buyout offer, but a federal judge temporarily halted the program ahead of its Feb. 6, 2025, deadline. Budget cuts and layoffs were expected to affect the agency's Office of Enforcement and Compliance Assurance, despite EPA Administrator Lee Zeldin's promise during his confirmation hearing that the agency would not follow Project 2025's plans to eliminate the enforcement office and distribute its functions to other media-specific offices. [156] The 2025 Presidential Transition Project was a political initiative published by the Heritage Foundation in April 2023 with the goal of reshaping executive power in favor of right-wing policies. The right-wing America First Policy Institute also significantly influenced policies for the new Trump administration. [157]

Many industry attorneys, however, expected large reductions in federal enforcement would drive an increase in citizen-suits brought by large and well-funded environmental non-governmental organizations. The Trump administration began to take steps to change EPA policies to help industry preempt lawsuits filed by citizens, which meshed with the administration's overall effort to reduce environmental enforcement. "It is all but guaranteed that environmental groups will soon step into the enforcement void and file citizen-suits," attorneys for the Beveridge and Diamond law firm wrote in a Feb. 3, 2025, news alert. "We saw this during the first Trump administration, when EPA inspections, penalties and enforcement actions waned. Agency staff cuts are a strong predictor of decreased enforcement action." The attorneys at Beveridge and Diamond noted that they expected Zeldin "to quickly follow through on President Trump's promises to draw down federal enforcement efforts, particularly in the arena of air emissions." [158]

By June 2025, the EPA and the Department of Justice had brought only three environmental enforcement cases in federal court since the Trump administration took office. By contrast, during fiscal year 2024, under the Biden Administration, the Department of Justice filed 60 civil cases on behalf of the EPA. According to the EPA's Dec. 5, 2023, report "Enforcement & Compliance Annual Results for Fiscal Year 2024," the EPA claimed the strongest enforcement results since 2017, concluding more than 1,850 civil cases, charging more than 120 criminal defendants and reducing more than 225 million pounds of

pollution in overburdened neighborhoods. In response to a media article reporting these facts in 2025, the EPA noted that its enforcement and compliance program "continues to perform its core function, which is to monitor compliance with federal environmental laws and compel companies that are not complying with them to return to compliance." But according to the EPA's FY26 budget request, the administration sought to cut criminal enforcement by 49 percent, civil enforcement by 30 percent and compliance monitoring by 35 percent. These sharp reductions reflected a May 9, 2025, executive order restricting enforcement actions and a March 12, 2025, enforcement memo that deemphasized enforcement generally. "The Agency will take steps to ensure that the efficient carrying out of environmental law, not ideologies, drives our work," the EPA budget document said. [159]

By July 2025, however, industry attorneys were warning that a recent U.S. Supreme Court decision to not consider overturning two lower court rulings regarding citizen-suits might open the door for many more such lawsuits seeking to enforce the Clean Air Act and Clean Water Act. The Supreme Court's lack of action left in place "lower court rulings that allow for broad private citizen enforcement," attorneys with the Crowell & Moring law firm said in a July 11, 2025, client alert. "Because of the Court's denials, citizen plaintiffs remain free to pursue enforcement cases in the absence of governmental enforcement, thus companies remain at risk of being sued by watchdog citizen groups." Attorneys with the Holland & Hart law firm noted in a July 10, 2025, post that, had the court granted review and then overturned the two appellate court rulings, one from the 5th Circuit and one from the 9th Circuit, "that could have significantly restricted the ability of citizens to sue over environmental violations." But leaving the decisions in place meant "citizen-suits will continue to play an important role in enforcing compliance with environmental laws," Holland & Hart said. "The denials have added significance because environmental groups have indicated that they intend to more aggressively bring citizen-suit claims as the EPA shifts its enforcement priorities." They noted that citizen-suit plaintiffs "have access to multiple remedies, including injunctive relief and monetary penalties, paid to the U.S. Treasury." Maximum civil penalties per day were $122,426 under the Clean Air Act and $68,445 under the Clean Water Act. [160]

On Dec. 5, 2025, the EPA's Office of Enforcement & Compliance Assurance issued a memo that formally reinforced the Trump administration's "compliance first" approach to environmental enforcement. "This policy reinforces prioritizing environmental compliance across all OECA civil, judicial and administrative enforcement activities in the most efficient, most economical, and swiftest means possible, while ensuring that our actions align with the clearest, most defensible interpretations of our statutory and regulatory mandates," the memo said. The memo claimed that OECA "has always emphasized compliance, but at times there may have existed a posture of pursuing enforcement that included findings of violation or orders that exceeded statutory or regulatory requirements. Such a posture prolongs negotiations and delays actual compliance." Gary Jonesi, who retired from OECA early in 2025 after 40 years at the EPA, called the memo a "further bastardization by this Administration as to what the rule of law means," while also disrespecting career staff. "Under my entire 40-year career at EPA… the rule of law always meant that enforcement actions were a critical way to ensure a level playing field. Some of the strongest supporters of tough enforcement were members of the regulated community,

who did not want to be placed at a competitive disadvantage by violators who did not spend money on environmental compliance." [161]

The EPA's new compliance-first policy "opens a pathway for industry to work with the agency to quickly preempt citizen-suits, an action that appears aimed at blunting any efforts by plaintiffs' stepped-up use of such litigation in the face of Trump administration actions to curb enforcement," Dawn Reeves reported in a Dec. 16, 2025, InsideEPA article. Julius Redd, an attorney with Beveridge & Diamond, told Reeves the EPA's Office of Enforcement & Compliance Assurance's new policy included language to "moot out citizen-suits." Contained within the Dec. 5, 2025, memo was a section on "reasoned decision making," which stated that EPA decisions "must be such that regulated entities and other stakeholders, through our open communication and reasoned processes, can easily understand and follow how we made our enforcement decisions." Decisions should consider stakeholder impacts, including states and Tribal entities, the memo said, adding that "we must act swiftly to limit actions from third parties who, through citizen-suit litigation, unfairly impact policy through abusive litigation tactics." [162]

According to Redd, the language in the memo suggested that when companies received notice-of-intent-to-sue letters from the EPA, they could now go to the agency and ask to negotiate a deal, preventing the filing of legal action based on the notice-of-intent. Redd noted that citizen-suit provisions in environmental laws often contained "diligent prosecution language," which stated that if a regulator had commenced and is diligently prosecuting an enforcement action for the same conduct alleged in a notice-of-intent, that action precluded a citizen-suit. Redd further noted that "case law typically requires some sort of filing in court for the diligent prosecution bar to apply" before the company could approach OECA for a negotiated settlement ahead of a citizen-suit, such as a consent decree and complaint filed on the same day. Redd said he was still "connecting the dots" after reading the Dec. 5, 2025, memo, but, "In my view, the language is pretty clear… I'm familiar with the diligent prosecution bar as a defense strategy when defending citizen-suits. I'm very aware of the potential of effectively using that strategy to moot litigation."

These changes in EPA policy were underway 2,000 miles away in Washington, D.C. on July 17, 2025, when Cyrus Western, President Trump's selection to head up the EPA Region 8 office in Denver, toured the CFAC Superfund site outside Columbia Falls. He was joined by local media and John Stroiazzo, Glencore's project manager for the cleanup. Western earlier on his trip toured two other Montana Superfund sites – the Smurfit-Stone Mill in Frenchtown, a paper mill on the Clark Fork River west of Missoula that closed in 2010, and the W.R. Grace vermiculite mine in Libby, 60 miles west of Columbia Falls, which closed in 1990. A three-term state legislator and majority whip in the Wyoming House of Representatives, Western had served on the Minerals, Business and Economic Development Committee, as well as chair of the Oil and Gas Bonding Working Group and vice chair of the Tourism, Recreation and Wildlife Committee. His move to the EPA coincided with agency plans to eliminate its research and development arm and cut thousands of jobs. Just a week before Western came to Columbia Falls, the U.S. Supreme Court ruled in favor of President Trump's plans to downsize the federal workforce, despite warnings that the layoffs might impact critical government services. The day after Western toured the CFAC/Glencore site, EPA Administrator Lee Zeldin announced that the agency's downsizing was part of

its “core mission of protecting human health and the environment, while Powering the Great American Comeback.” Zeldin said his appointment by Trump on Jan. 29, 2025, signaled “the greatest and most consequential day of deregulation in U.S. history,” by “driving a dagger straight into the heart of the climate change religion to drive down cost of living for American families, unleash American energy, bring auto jobs back to the U.S. and more.” [163]

Western, 35, grew up hunting and fishing in Wyoming’s Big Horn County and, according to the Flathead Beacon report on his CFAC site tour, was “more subtle in his reimagining of the EPA, including to make it more efficient without sacrificing safeguards.” Ultimately, the EPA’s job was to protect human health and the environment by making sure contaminants of concern were being eliminated or reduced to levels that were scientifically acceptable, he said. When asked what assurances he could offer communities near industrial sites with hazardous contaminants, Western noted that CERCLA “remains the law, and we fully intend to follow it to the letter and ensure we are making progress on Superfund sites… But the reality is some of these sites, they were spinning their tires and not going anywhere. And as the face of the Trump Administration and Administrator Zeldin, I will continue to listen to community input, accommodate those concerns and ultimately make progress, and ultimately delist them.” During the CFAC site tour, Western expressed interest in the amount of bentonite needed to construct a deep slurry wall to contain leaking landfills that were contaminating groundwater beneath the Superfund site. “All of our experts are quite confident that this will work quite well,” Stroiazzo told Western about the proposed containment plan. In turn, Western noted that he had full faith in Glencore’s cleanup plan. “We want to be sure that we are cleaning up and remediating to levels that are deemed scientifically acceptable, while also thinking about future progress,” Western said. “Those are our main guideposts. We believe there are excellent opportunities, and that’s where local communities have to step up.” [164]

Western was not the only new government face in the CFAC cleanup story. Allie Archer was the new EPA project manager for the Superfund site, replacing Matt Dorrington. Archer received her master’s in environmental engineering from Michigan Technological University and a bachelor’s in biological systems engineering and a master’s in biological and agricultural engineering from Kansas State University. She had extensive EPA experience dealing with Superfund cleanup sites across Montana. Archer served as a remedial project manager at the Smurfit-Stone Mill in Frenchtown, project manager at the Montana Pole and Treating plant in Butte, project manager for the Iron Mountain Mine and Mill site in Superior, and remedial project manager for the giant Butte-Anaconda Superfund site. In 2020, Archer presented a restoration seminar at Montana Technological University in Butte titled “Warm Springs Ponds: Past, Present & Future,” which reported on progress being made in cleaning up the historic settling ponds used to treat wastewater flowing down Silver Bow Creek from historic mines and mineral processing plants in Butte. [165]

Big plans for CFAC site

Cyrus Western began his July 17, 2025, tour of the CFAC Superfund site with a stop at developer Mick Ruis’ office in downtown Columbia Falls. Earlier in 2025, Ruis purchased about 2,000 acres of CFAC property from Glencore, leaving Glencore with ownership of a 211-acre parcel containing the highest

concentration of contaminants, immediately north of where the giant smelter building once sat, where the leaking landfills were located. The EPA had determined that land outside of that 211-acre parcel didn't require remediation, making it available for purchase by Ruis, who was making plans to develop 920 acres of the land into a residential community called Teakettle Heights. This would be "a neighborhood designed for working families and future generations of Columbia Falls residents," he told Western, media representatives and stakeholders on the tour. According to Ruis' planning documents, "This new development reflects a unique opportunity to transform a legacy site into a hub for growth, recreation and family life." [166]

Ruis' announced plans for the two-phase Teakettle Heights project included 787 new housing units. The first phase of residential development called for constructing 424 housing units on 75 acres of Glencore property south of the Aluminum City neighborhood, including 126 single-family homes, 58 townhomes and 240 apartment units. The second phase called for building 363 units on 77 acres just north of the Aluminum City neighborhood, including 106 single-family homes, 65 townhomes and 192 apartment units. Ruis planned to sell the new homes for less than $550,000 and to offer owner-financing with 2 percent down payments. For those unable to afford a single-family home, Ruis would offer townhomes for sale and apartments to rent. Teakettle Heights also included plans for commercial and industrial development on 440 acres of land, including the 20-acre footprint where the giant smelter building once sat and several industrial buildings remained standing. Ruis also set aside hundreds of acres in his plan for recreational amenities, including baseball and football fields, and basketball and pickleball courts. Ruis noted that his project came at a time when demand for housing in the Flathead Valley continued to outpace availability. "We know we can do the housing, but we need the jobs, too," Ruis told Western. He noted that he'd talked to commercial and industrial investors, but hadn't firmed up any plans. "I really need to get this industrial stuff going so we can bring the jobs," he told Western. "Otherwise, I'm going to be like John Dutton out here on the Yellowstone Ranch." [167]

Stroiazzo pointed out to Western and Ruis that attracting industrial investors to the CFAC site wouldn't be a problem because the site was already served by "some fantastic infrastructure," including 100 megawatts of electricity from Hungry Horse Dam, supplied by the Bonneville Power Administration, in addition to power from the Flathead Electric Co-op, Columbia Falls city water and sewer, natural gas, roads, and parking lots and buildings that survived the plant demolition and "are amenable to conversion for whatever type of commercial or industrial business that wants to come up here." This description caught Western's ear. "Has there been any talk in potentially opening up a data center here?" Western asked. In 2024, Western chaired the Wyoming Legislature's select committee on blockchain, financial technology and digital innovation technology. [168]

Now that the EPA had issued its record of decision for how the CFAC Superfund site would be remediated, talk could turn to developing the site. Western commended Ruis for his investment plans. "These private developers are taking a risk by contributing something that the community can be proud of," Western said. In the past, segments of the community expressed concerns about Glencore's land deal with Ruis. Others opposed the EPA listing the former smelter plant as a Superfund site, saying the designation would stigmatize the local community and stifle future economic development. While

acknowledging those concerns were valid, Western committed himself to advocating for environmental and human health and safety protections, while also promoting economic development. “We want to be sure that we are cleaning up and remediating to levels that are deemed scientifically acceptable, while also thinking about future progress,” Western said. “Those are our main guideposts. We believe there are excellent opportunities, and that’s where local communities have to step up.” [169]

The Hungry Horse News also reported on Ruis preliminary plans in July, noting that Ruis’ crews had begun clearing some of the 2,200 acres he purchased from Glencore in March. Ruis said he hoped to present his plans to the Columbia Falls Planning Commission in early October. The property needed to be annexed into the city to access city sewer and water services, which were needed for the large number of housing units. A city water main was located close to the planned development, but a city sewer main needed to be extended north to the site. Ruis said he would pay for the sewer main extension. A permit to run the sewer main under the BNSF Railway tracks was obtained by the city several years earlier when there was talk of developing an industrial park north of Railroad Street. Ruis told the Hungry Horse News that he was in talks with Glencore officials about possible tenants for the site’s commercial space, which would sit on the former smelter plant’s 20-acre footprint. Ruis said he considered a data center, but noted that such a facility wouldn’t provide many jobs, and he wanted businesses that would employ people. [170]

Ruis’ reputation as a fast-moving developer began in 2015 when several prominent vacant buildings on Nucleus Avenue in Columbia Falls and the large empty lot next to Pinewood Park on U.S. Highway 2 were suddenly acquired by Ruis. “This sudden collection of storefronts and properties caught the community’s attention this past summer, leading to questions and rumors about the plans for these sites,” the Flathead Beacon reported in November 2015. The empty lot near Pinewood Park was soon home to a 25,000-square-foot, three-story hotel with 64 rooms and a 3,000-square-foot convention center. The Cedar Creek Lodge was Columbia Falls’ first prominent hotel. On Nucleus Avenue in downtown Columbia Falls, Ruis’ plans to develop the former First Citizens Bank, the Davall Building, the Park Merc Building and two vacant lots behind the Merc were considered overly ambitious and unusual. But Ruis fit the bill. He grew up in a poor family in El Cajon, California, his father a construction worker while his mother stayed home to raise their four kids before becoming a teacher. “When you grow up with nothing, there are things you appreciate more,” Ruis explained. “You don’t take things for granted.” Ruis didn’t excel in the classroom, but he loved wrestling and earned a trip to the Junior Pan Am Games in Mexico City in high school. “I love wrestling because the harder you work, the better you can be. There’s no excuses,” he said. “If you really want to get good, you just have to work hard. And I put that into business. Be honest. Be fair. Work hard and you can get somewhere.” [171]

Ruis dropped out of high school after his senior year of wrestling ended and found work at a local scaffolding company. In the 1990s, a 27-year-old divorced father with three children and $6,000 to his name, Ruis moved to Columbia Falls. Don Bennett, a local banker, approved a loan for Ruis so he could purchase the Nord Building on Nucleus Avenue. “Don believed in me 20 years ago. He’s that kind of guy,” Ruis recalled in 2015. Ruis and his kids lived in one of the Nord apartments, with only a mattress and a fax machine, as he founded his first construction company. “He’s like a serial entrepreneur,”

Bennett explained. “He’s always been just moving fast and has always been just a super-hard worker. He’s got all kinds of ideas.” By the late 1990s, Ruis was a successful contractor with a reputation for hard work and integrity. One of his projects involved renovating the former Glacier Mountain Shadows Hotel in Columbia Heights. After he met his future wife Wendy, who lived in Whitefish, the family packed up and moved to San Diego in 1999, where he built up a large shoring and scaffolding business, traveling across the U.S. and specializing in construction of major concrete reservoirs. In 2003, Ruis took another turn, selling his company for $2.5 million and getting into horse racing. He bought 50 horses that were bred and trained on his farm, while his son became a successful jockey. In 2008, Ruis returned to the scaffolding business, working at American Scaffold, a San Diego company with just six employees. Within a few years, Ruis became the sole owner and built the company into one the largest scaffolding businesses in the U.S., with 250 employees based in five states. [172]

In 2013, Ruis purchased a 148-acre piece of property outside Columbia Falls and moved back to Montana, but he wasn’t ready to kick back and eat the scenery. “I like being busy,” he explained in 2015. “I said, ‘If I’m going to stay here and enjoy it, I’m going to stay busy.’” Columbia Falls at the time was suffering from an economic recession and had been struggling with high unemployment for years. But the city seemed ready for development and growth as the economy strengthened and more people found jobs. “This city has so much potential,” Ruis said. He took on construction of Cedar Creek Lodge first. “We always needed a hotel here. And I have the resources to be able to do it and we want to live here,” he said. For Columbia Falls’ downtown area, Ruis hoped to create a welcoming hub for a wide range of people, young and old, which included a pie factory, along with a steakhouse and a sports pub to promote a nightlife. He also made plans to build an apartment or condominium complex downtown for older residents. “Nucleus Avenue is something that everybody here has been trying to get invigorated for decades. I think with some of the ideas that Mick has, it will really help do that,” Bennett said in 2015. “There’s no doubt in my mind that Mick can do it. I don’t know of a guy who works harder and moves faster than Mick. He’s not just blowing smoke. He’s the real deal.” Ruis, in his fifties by 2015, said he hoped to inspire others. “This town struggled for a long time, but there are some bright things going on,” he said. “It’s a lot of weight on your shoulders. But I’m going to do it.” [173]

Three years after the Flathead Beacon published its Mick Ruis biography, the New York Times ran a story about a horse named after Olympic gold medalist Usain Bolt that had made its way through the 2018 Road to the Kentucky Derby competition to compete for a $2 million purse at Churchill Downs on May 5, 2018. The Times felt the tale of Bolt d’Oro and its working-class owner, Mick Ruis, qualified as a personal-interest story for its readers. “Mick Ruis is an accidentally-on-purpose millionaire, a high school dropout who aimed to be successful but never quite envisioned the sort of success he might one day achieve,” the Times reported. “He lacks pedigree, pretense and privilege, and though he believes a horse must have much of the first, he wants it raised with as little of the last as can be allowed. ‘I don’t think they get to grow up and work hard like I was raised,’ he says. ‘They’re too precious. I figured a horse needed to be out there, to develop and grow and breathe in that clean air, to learn how to work like I did.’” Bolt d’Oro had pedigree, but Ruis and his staff seemed out of their league. Seventeen of the trainers in 2018 had Kentucky Derby experience, and three had won the race. Ruis’ best horse prior to

Bolt d'Oro was a filly by the name of One Fast Broad, with $293,000 in career earnings. Bolt d'Oro's trainer, Ike Green, was as much a Wyoming-born cowboy as a horse trainer, the Times reported, and he believed the best way to break and exercise a thoroughbred was on wide-open fields with grand views of the mountains – like Mick Ruis' ranch in Flathead County. In the end, with 8-1 odds at post-time, Bolt d'Oro drove hard in the final turn, in sloppy track conditions, but puckered out and finished in 12th place, more than 24 lengths behind the favorite and winner, Justify. [174]

Ruis' plans for the Teakettle Heights subdivision were scheduled to make their first appearance before the Columbia Falls Planning Commission on April 13, 2026, according to an April 1, 2026 article in the Hungry Horse News by Chris Peterson. The planned unit development called for a total of 421 units on 78.05 acres located south of Aluminum Drive, which would be annexed into the city. The project called for building 125 single-family residences on detached lots, 56 single-family townhouse sublots and 240 multi-family apartment units. In an interview with the newspaper, Ruis said he hoped to sell the single-family homes for about $550,000, with owner financing, but the final price would depend on the cost of bringing utilities to the site. Ruis also addressed criticism about crews removing trees on the property. Ruis said that of the roughly 2,400 acres of land he bought from Glencore, he intended to use 1,850 acres for his personal ranch. "Ruis said the ranch will have stock like horses, and they need open pastures, not woods," Peterson reported. "He also has a ranch in Kentucky," Peterson added. [175]

In a response to an email from Richard Hanners, the author of this history, about the land being used by Ruis for a personal ranch, Peterson said, "He's an interesting guy. Oh well, it was a farm to start, after all." [176] That is approximately the story reported in this history. Anaconda chairman Con Kelley announced on Aug. 30, 1952, that the company had chosen the Teakettle Mountain site for its new smelter. On Sept. 3, 1952, it was reported that the company officially exercised its options on 750 acres of bench land at the base of Teakettle Mountain as a site for the new plant. The land purchased for the plant included 280 acres owned by Henry Larkin and Mrs. Marion Hellen, 160 acres owned by Bernard Tracey, 238 acres owned by Pat Kelly, and 70 acres owned by Edwin Johnson. Prices ranged from $10 to $25 per acre with remuneration for buildings. The properties consisted primarily of second-growth timber and a few small fields. According the Hungry Horse News, the land was not supporting a single family. [177]

That last comment was made by Hungry Horse News founder, owner and editor Mel Ruder, a booster in the classical sense of the word, who promoted heavy industry while promising Columbia Falls would not be harmed. On Sept. 15, 1950, Ruder supported the bench land below Teakettle Mountain as the best site for a new aluminum smelter. "No spot in the Flathead has been spat on more than the peaceful section at the foot of Teakettle mountain on the banks of the Flathead River, next to the Great Northern mainline," he said in an editorial. Ruder was angered that lobbyists from Kalispell had earlier persuaded the Harvey Machine Co. to locate the proposed smelter in the center of the Flathead Valley, at Rose Crossing. In describing the many advantages of the Teakettle site, Ruder added, "Furthermore, the spot while still in the valley would not create a Pittsburgh-like section in the midst of valuable farming acres." [178] Pittsburgh was where Alcoa, the dominating player in the global aluminum industry, got its start. One can only speculate what Ruder was concerned about, since he bragged up the Anaconda Company's

plans to utilize wet scrubbers in the new smelter to prevent air pollution. By 1953, the Columbia Falls Chamber of Commerce and the Columbia Falls Real Estate Association were promoting Columbia Falls, with its recreational resources, lumber mills, Great Northern Railroad and Hungry Horse Dam, as the "Industrial Hub of Montana's Scenic Flathead." [179]

But by the time Mick Ruis' crews began removing trees at the former smelter site, to make room for his horse ranch, more than 30 lumber mills had closed in western Montana since 1990, driven by timber supply issues and high costs. Some small-scale manufacturers appeared in the Flathead in the 2000s, especially in the firearms industry, but the days of heavy industry seemed over. A possible use of the former smelter site, with its high-voltage switchyard and transmission lines running to the Hungry Horse and Libby dams, could be a server farm or data center for the burgeoning artificial-intelligence sector. That would mean clean industry, but few jobs. Meanwhile, the median price of a home in Montana had increased from roughly $99,500 in 2000 to as high as $538,000 by 2026. While 54 percent of new single-family homes in Flathead County were built outside the city limits, new high-density, multi-family projects were the common inside the city limits. The demographics were quickly changing. People came to Montana for the lifestyle – the outdoor recreation and country-western culture. Real estate promotions typically dangled the idea of people coming to Montana and owning a small plot of land with horses. The story of the smelter plant outside Columbia Falls, from the Anaconda Company's superstar to Glencore's handling of the Superfund site left behind, had many twists and turns – some predictable, such as severe metal-market fluctuations and evolving environmental regulations, others unpredictable, such as the criminal behavior of the two men who bought the plant from ARCO for a dollar and reneged on their profit-sharing promise with the workers. In the end, the smelter shut down for the same reasons as the lumber mills – supply issues and high costs.

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