

MEMO

May 31, 2019

TO: Environmental Protection Agency (EPA), c/o Chris Wardell
US EPA, Region 8, 1595 Wynkoop Street, (8OC-PAI), Denver, CO 80202

CC: Montana Department of Environmental Quality (DEQ), c/o Jenny Chambers
Montana Natural Resource Damage Program (NRDP), c/o Harley Harris
Atlantic Richfield Company (AR), c/o Patricia Gallery

FROM: Dave Palmer, BSB Chief Executive
John Morgan, Chairman, BSB Council of Commissioners

RE: **Butte-Silver Bow Comments on EPA's Proposed Plan for ROD Amendment
Butte Priority Soils Operable Unit**

On June 5, 2019, the Butte-Silver Bow Council of Commissioners voted to concur with the Chief Executive to submit the following comments to EPA regarding the Proposed Plan for the ROD Amendment on the Butte Priority Soils Operable Unit.

General Comments

Butte-Silver Bow appreciates the opportunity to present these comments on the Proposed Plan. Several BSB staff (along with consulting engineers) have been involved with developing and reviewing and refining the designs and drawings of the Remedial Design Remedial Action Work Plans since they were first publicly presented in May 2018. The Proposed Plan represents nearly 30 years of experience designing cleanup projects, implementing work in the field, monitoring performance, and understanding what additional work is needed to enhance the remedy. The Proposed Plan is an extensive set of projects representing a quality, site-specific solution to Butte's water quality protection challenges.

For Butte-Silver Bow, it has been refreshing to participate in eleven-year long collaborative effort to reach consensus. The staff from all parties – the EPA, the State of Montana, Atlantic Richfield, Butte-Silver Bow, and interested citizens through advocacy groups – have worked together to produce a sound, experience- and science-based Proposed Plan for ongoing work and forthcoming projects. The anticipated outcome of this effort is an effective, sustainable cleanup solution mindful of long-term monitoring and management responsibilities.

Regarding the integration of the remedy with restoration work and end land use components, BSB appreciates the cooperation of all parties to design and produce a first-class outcome as well. The remedy work alone calls for improvements to the existing vegetative caps and addressing unreclaimed areas on the Butte Hill. In addition, maximum tailings removals (out of groundwater's way), state-of-the-art storm water retention facilities, total reconstruction of the last section of Blacktail Creek (by the Visitor's Center) to its confluence with Silver Bow Creek, and then past the confluence, reconstruction of a meandering stream (where the BSB asphalt plant sits today) and relocation of Silver Bow Creek from between the slag canyon walls to connect with the

remediated and reconstructed Silver Bow Creek to the west (see conceptual design graphic). Added to all this work is the State's critical project to remove the Parrot Tailings and restore the east end of the corridor for beneficial uses.

Butte-Silver Bow, as a partner in developing the workplans, fully supports those projects outlined in the Proposed Plan, and in addition, how all this work has been designed to blend into 120 acres of attractive, useful, public open spaces and recreation opportunities throughout the Silver Bow Creek corridor. The project plans are designed with an eye to the future, when treated Berkeley Pit water becomes available as a headwater to source a seasonal stream from Texas Avenue/Civic Center to the confluence with Blacktail Creek.

The comprehensive proposal will build on Butte's track record of getting quality end land uses as a result of environmental cleanup and restoration projects, for example, the Silver Bow Creek Greenway, the Visitor Center/Chamber Offices, Granite Mtn. Memorial, Blacktail Creek Trail, Big Butte Open Space, Copper Mtn. Complex, BA&P Trail, MT Con/Foreman's Park, Original Mine, Thompson Park upgrades, Skyline Park, Miners Field, and much more. The Silver Bow Creek corridor will be first-rate and impressive community asset.

Although Butte-Silver Bow supports the Proposed Plan, it offers the following specific comments to ensure the Proposed Plan is responsive to the public's concerns, interests, and desires pertaining to public health, the environment, and Butte-Silver Bow's municipal obligations related to remedial work.

1) Residential Metals Abatement Program (RMAP)

The Proposed Plan calls for the expansion of the RMAP to address residential properties well beyond the current boundary of the Priority Soils Operable Unit (Minor Modifications #2, #8, #9, #10). Butte-Silver Bow fully supports this expansion, as well as the continuation of triple-depth sampling, which will increase the number of yards eligible for abatement. Coupled with the expansion, Butte-Silver Bow supports the proposed modifications to the schedule of yards and attics to be sampled and abated per year, as well as proposed changes to address challenges with property owner participation and addressing commercial buildings under the attic abatement portion of the Program.

As a corollary to the changes outlined in the Proposed Plan, Butte-Silver Bow would ask for verifications from EPA in the final Consent Decree a) to ensure the RMAP will operate in concert with any regulatory changes in the relationship between Elevated Blood Level guidance and removal action levels, both for soils and indoor dust; and b) if bio-monitoring for arsenic is required, that a "level of concern" for urinary arsenic is defined.

2) Health Studies

The Proposed Plan should include clarity and direction for health studies, particularly regarding Minor Modification No. 11, which states:

11. Better describe the mandate for future health studies. The 2006/2011 ROD requires future human health studies on a periodic basis but does not specifically describe their exact nature. The modification specifies:

- *BSB County, in coordination with the Medical Monitoring Working Group, will periodically evaluate medical monitoring (i.e., biomonitoring) data approaches and data compiled under the medical monitoring program every five years for a period of 30 years. The first of these studies was completed and approved by EPA in 2014. Five additional periodic evaluations will be conducted over the next 25 years.*
- *Reports documenting these periodic evaluations will respect the personal privacy of the participants and will be available to the public, EPA, DEQ, and responsible parties for the BPSOU.*
- *All stakeholder parties will continue to facilitate, participate, and contribute with the Medical Monitoring Working Group.*

Butte-Silver Bow very much appreciates the inclusion of Minor Modification #11, and therein, EPA's acknowledgement that the original Record of Decision did not specifically require human health studies. With this modification, EPA can now include the requirement specifically in the Amended Record of Decision. In response, Butte-Silver Bow acknowledges that the RMAP workplan is a fluid document and will continue to be revised as new information emerges.

Butte-Silver Bow further understands that the language about "in coordination with the Medical Monitoring Working Group" is deliberate, due to the diverse expertise of the working group stakeholders. The language provides community health applications that EPA does not always have the authority to require. Butte-Silver Bow understands and appreciates the fact that the stated approach would allow each health study to evaluate health impacts beyond lead, arsenic, and mercury exposure and the medical monitoring associated with the RMAP program.

The language in the Proposed Plan must be revised to provide better clarity and direction. Minor Modification No. 11 says that Butte-Silver Bow, in coordination with the Medical Monitoring Working Group, will periodically *evaluate* medical monitoring (i.e., biomonitoring) approaches and data compiled under the medical monitoring program every five years. This language needs to be clear, defining Butte-Silver Bow's role and the role of the Medical Monitoring Working Group. "All stakeholder parties" also needs to be defined. Butte-Silver Bow believes there is confusion about who the "stakeholders" are in the current Health Study process, and who is responsible for public engagement, participation and process facilitation.

3) In-Stream Water Quality Standards

Butte-Silver Bow understands the data-driven and science-based justifications for the limited use of proposed waivers of Montana water quality standards during storm events (for copper and zinc only) and replacement with the federal standard. It is noteworthy that similar waivers apply to the Clark Fork River below the Warm Springs Ponds for chronic conditions (meaning at all times, not just during storm events) and are deemed protective. Given the substantial work accomplished in the summit valley over the past twenty years and subsequent improvements to water quality in Silver Bow Creek, the application of federal standards during storm events, as outlined in the Proposed Plan, does not

compromise broadly supported objectives to sustain and protect the aquatic conditions in Silver Bow Creek. Precisely, due to the work accomplished over the past 20 years and the additional work described in the Proposed Plan, including further reclamation, improving previously reclaimed sites, expanding stormwater controls, and implementing additional ground water capture, Butte-Silver Bow concurs that the water quality standards to be used to measure effectiveness of the remedial actions are reasonable.

Of equal importance to Butte-Silver Bow is the alignment of the CERCLA-driven provisions under a BPSOU Consent Decree related to water quality on Silver Bow Creek with the Clean Water Act-driven regulations related to water quality on Silver Bow Creek and the Upper Clark Fork Basin. Butte-Silver Bow cannot be obligated (as a Superfund PRP/Settling Defendant) to perform under CERCLA without assurances that it will not create untenable obligations under the Clean Water Act, for example, long-term compliance with our municipal wastewater discharge permit, Total Maximum Daily Limits (TMDLs), and Municipal Separate Storm Sewer Systems (MS4) permit coordination.

In particular, it is clear that Butte-Silver Bow's municipal wastewater treatment plant plays a significant role in the overall collection and treatment of storm water (e.g. inflow and infiltration), and by extension, the metals removal challenges on Silver Bow Creek. The Agencies and settling defendants are all in agreement that a clean creek is the end goal, but beyond its recent \$34 million plant upgrade, Butte ratepayers cannot be expected to absorb any additional costs to address metals removal (e.g. tertiary metals treatment on its WWTP, expedited replacement of sanitary collection system, etc.), or be forced to demand unreasonable pretreatment requirements on potential users of the wastewater system. Thus, the Proposed Plan and CD must consider potential impacts to current and future municipal wastewater collection, treatment operations and discharge permit compliance.

4) Coordination between Operable Units: Priority Soils and Mine Flooding

There needs to be greater recognition that Horseshoe Bend Effluent (via the Mine Flooding Operable Unit) will eventually be part of the mix in terms of water quality and metals compliance on Silver Bow Creek, as well as potential beneficial uses of that water for the community. Another beneficial input to Silver Bow Creek could be flow from the Silver Lake water system. Butte-Silver Bow has already taken steps (through formal change proceedings with DNRC) to allow the use of its existing water rights to augment flow in the area as part of a holistic solution that includes both Silver Bow Creek and WWTP discharge compliance. The Priority Soils Proposed Plan and Consent Decree needs to better address the need for coordination between and among final decisions between with Mine Flooding.

5) Water Quality District

The Proposed Plan does not appear to address final directives on how the Water Quality District, and more precisely, Controlled Ground Water Areas will be regulated in the long term. For example, will directions to sample and monitor private irrigation wells be required in perpetuity? Other considerations requiring resolution under the CD includes a) frequency of testing (e.g., every five years for 30 years?); b) geographic Boundary of Test/Sample area (i.e., Groundwater TI Zone?); and c) abatement requirements (e.g.,

mandated hook-up to municipal water, payment of fees at average customer consumption until property is transferred, etc.).

6) Conceptual Plans Translated into Remedial Designs/Implementation

The conceptual plans presented in the Proposed Plan and supporting documents released in May 2018 constitute significant work projects to be completed in the next 5-6 years. Although these conceptual plans are fairly descriptive and explanatory, questions about specific design details have been deferred to the Remedial Design phase that will follow lodging a Consent Decree. For example, final design decisions will be made on tailings and removal depths and quantities, how and where ground water controls will be installed, sediment basin sizes and depths, among others. Butte-Silver Bow would ask for assurance that the final Proposed Plan and CD will include language to ensure the final design plans and drawings are made available for public review.

7) Amendments to the Allocation Agreement

Although not directly related to the Proposed Plan, Butte-Silver Bow will note for the record in these comments that amendments to the Allocation Agreement with Atlantic Richfield Co. will be necessary. To that end, Atlantic Richfield and Butte-Silver Bow have agreed to negotiate the Allocation Agreement after the Consent Decree is lodged. The additional work and projects outlined in the Proposed Plan are extensive and will have a direct impact on current operation and maintenance obligations, the RMAP program, and institutional control management obligations. Amendments to the Allocation Agreement will ensure that all costs associated with current and future obligations are covered, and no taxpayer/ratepayer funds are used to meet these obligations.

8) Public Input/Attachments

Butte-Silver Bow has received public input from individual citizens and advocacy groups related to the Proposed Plan. Attached are documents related to that input, and should be considered as part of the record in Butte-Silver Bow's comments, as follows:

- a) Greeley Neighborhood Community Development Corporation Inc. – May 20, 2019, Memorandum Requesting Airborne Dust Monitoring and Control Program Amendment be added to the EPA's Proposed Plan.
- b) Habitat for Humanity of Southwest Montana – May 23, 2019, EPA Proposed Plan public comment regarding consistency of action levels between federal agencies such as Environmental Protection Agency and Housing and Urban Development.