

Response to Public Comments on the
May 2011 Butte Area One
Draft Restoration Process Planning
Document

Prepared by the
Butte Natural Resource Damage
Restoration Council, with assistance from the
Montana Natural Resource Damage Program

March 2012 Final

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Section I. Introduction

In May 2011, the Butte Natural Resource Damage Restoration Council (BNRC), in consultation with the Montana Natural Resource Damage Program (NRDP), developed the “*Butte Area One Draft Restoration Process Planning Document*,” indicated hereafter as the “*Draft Process Plan*.” This document describes the procedures, criteria, and schedule the BNRC proposes to follow in advancing their recommendation to the Governor for expenditure of the \$28.1 million natural resource damage settlement, plus interest, for restoration of Butte Area One. It was subject of a 45-day public comment period that ended on July 1, 2011. The BNRC presented the plan to the Butte Silver Bow Council of Commissioners on June 15, 2011.

Three entities and two individuals submitted a total of five comment letters on the *Draft Process Plan* during the public comment period. One entity submitted a late comment letter. This document provides the draft responses to these comments. Appendices 1 and 2 contain copies of these comment letters, each of which are identified with a reference number (i.e., 1 – 6), with further breakdown by topic with a letter (e.g., 1A, 1B, etc.). Attachment A provides a categorical breakdown of these comment letters under broad categories and identifies the entity or individual submitting the comment letter. Our responses below are organized according to this categorical breakdown.

The BNRC, with assistance from the NRDP, prepared these responses for consideration of the Trustee Restoration Council and the Governor. On March 20, 2012, the Governor approved the BNRC’s January 2012 proposed final process plan and this associated response document.

Section II. Comment Summary and Response by Category

Category 1: General Support of the *Draft Process Plan*

Comments: Four letters (2A, 3A, 4A, 5A) indicate general support of the *Draft Process Plan*. These letters also offer suggestions for change for one or more aspects of the *Draft Process Plan* that are separately addressed under other categories in this response document.

Response: We appreciate the indicated support of the *Draft Process Plan*.

Category 2: Remediation and Restoration Coordination

Comment: The Butte Restoration Alliance, Project Green, and Butte-Silver Bow Council of Commissioners comment on the need for more explanation of and emphasis on the coordination between remediation and restoration in the *Draft Process Plan* (4B, 4C, 5D, and 6A).

- The Butte Restoration Alliance expresses a concern about the proposed approach reflected in Section 2.2 and the schedule in Table 3 of delaying most of the restoration spending decisions until completion of the Butte Priority Soils Operable Unit (BPSOU) Consent Decree (4B and 4C). They believe this approach could result in a missed opportunity to coordinate with remediation actions and achieve both cost savings and ecosystem benefits that occurs with such coordination and that such ecosystem benefits are not acknowledged sufficiently. They suggest the planning process note the possibility that there will not be a Consent Decree.
- Project Green requests that the coordination of remedy and restoration be emphasized to a greater extent in the document and that such coordination work should have the highest priority (5D). They also request that the sentence in the BNRC’s Guiding Principles stating: “However, the Council discourages the use of restoration funds to conduct actions that should be conducted to accomplish an effective remedy” be clarified so as not to preclude restoration funds that enhance cleanup. They cite the Silver Bow Creek Greenway’s restoration fund grant to remove additional tailings beyond what was to be removed by remedy as an example of such an opportunity.
- The Butte-Silver Bow Council of Commissioners expresses concern about having the restoration planning schedule dependent upon the BPSOU Consent Decree schedule, particularly given recent issuance of a unilateral administrative order for the BPSOU (6A). They do not believe that “it is practical or realistic to assume (as we interpret the language in your document) that there will be a specific point in time when remedial actions will be complete (e.g., maintenance of those actions will be done in perpetuity) and then the results of those actions will be fully clear, so as to wait for restoration work to commence.” The Council requests revisions to the schedule and related document language to invoke more flexibility in the decision-making process in order to avoid missing opportunities to blend remediation and restoration actions and suggest that the “Exception for Expedited Action” be the model for action instead of an exception.

Response:

A. Connection of restoration decision-making schedule to remediation decision-making schedule:

With the EPA's issuance of its August 2011 Unilateral Administrative Order, the schedule for the BPSOU Remedial Design/Remedial Action Consent Decree has been delayed from the predicted fall 2011 date indicated in the *Draft Process Plan* to what is currently an unspecified date. After substantive consideration of these comments and deliberation about the pros and cons of having the BAO restoration planning process and schedule dependent on an uncertain schedule for the BPSOU, the BNRC proposes a revised restoration planning process and schedule as reflected in the revisions to Section 2.2, including the paragraph on expedited actions, and Table 3 in the *Draft Process Plan*. The text and table now indicate that the timeframe for development of the draft restoration plan (Phase 4) will occur in spring and summer 2012, with a draft plan to be submitted for public comment by September 2012 and Trustee approval to occur by December 2012. The BNRC recognizes, however, that this revised schedule may need to be modified for various reasons. This potential for a schedule change is acknowledged in the revised language. Other portions of the text and schedule have been updated to reflect timeline changes that have occurred since submittal of the *Draft Process Plan* for public comment in May 2011. Given the shorter restoration planning schedule, the language on expedited action now clarifies that such actions must be of time critical, extraordinary importance.

In expediting the restoration planning process and schedule as described above, the BNRC has elected to retain text in its guiding principles and in Section 1.2 of the *Draft Process Plan* that emphasizes the importance of knowing what will and will not be accomplished under remediation in planning restoration activities and of building on what will be accomplished under remediation rather than risk the expenditure of limited restoration funds spent on what might be accomplished under remediation. It should be understood that this approach does not imply "waiting until a specific point in time when remedial action will be complete," as is suggested in the letter from the B-SB Council of Commissioners (6A).

B. Remediation and Restoration Coordination

The BNRC agrees that further clarification is needed in the *Draft Process Plan* on how the restoration planning process will coordinate with the remediation decision-making process, particularly in light of the EPA's issuance of a unilateral administrative order for some remedial actions for the BPSOU. Section 15 of the EPA's 2006 Record of Decision for the BPSOU states that: "the EPA will work with the Trustee (State of Montana) in the design and implementation of the remedial action to coordinate the implementation of the Selected Remedy with these restoration actions to avoid duplication of effort and unnecessary costs and to maximize benefits to the area, where feasible and practical and where coordination will not result in substantial delays to remedy implementation." The NRDP has been and will continue to be actively working with the regulatory agencies and the potentially responsible parties to identify opportunities for coordination of remediation and restoration efforts. The response below

summarizes: 1) how such actions are already addressed favorably in the *Draft Process Plan*; and 2) the changes in the *Draft Process Plan* to further clarify/emphasize such coordination.

1. Existing Provisions

In Section 2.2 (under Phase 7), the *Draft Process Plan* provides for an exception for expedited actions that can be relied upon to advance for consideration any restoration/remediation coordinated opportunity that might require more expedited decision-making than provided for in the revised process and schedule set forth in the proposed final *Draft Process Plan*. This section indicates integrating restoration and remediation as an example of a valid reason for earlier consideration of possible expedited restoration actions ahead of the planned December 2012 deadline for producing a Final Restoration Plan.

There are several evaluation criterion set forth in the *Draft Process Plan* (Sections 3.1 and 3.2) that provide preference to integrated restoration and remediation actions. The extent to which a project coordinates with a response action will be evaluated under the “Results of Response Actions” legal criterion, and preference will be given to those projects that build on a response action over those that undo a response action. The additional benefits and cost savings that such actions can achieve will also be considered under the “Relationship of Expected Costs to Expected Benefits” and “Cost Effectiveness” legal criteria and the “Restoration of Injured Resources,” “Benefits to Butte Area One,” and “Matching Funds and Cost Sharing” policy criteria, plus possibly other legal and policy criteria depending on the specifics of the integrated actions. Even though the criteria are not weighted, or designated with a set priority, such as is suggested by Project Green, sound integrated actions that offer substantial advantages due to the integration will do favorably in the evaluation/analysis of the alternatives process.

2. Changes

- “Ecosystem Benefits” are now recognized explicitly in the example provided under the “Expedited Actions” portion of Section 2.2 for integrated restoration and remediation, as indicated in bold text below.

“For example, an opportunity may exist to integrate BAO restoration actions with a planned remedial action for BPSOU that would allow for significant cost savings and greater benefits, **including ecosystem benefits**, to occur than would otherwise occur if the restoration action were conducted separately from remedial actions.”

- The bolded language indicated below has been added to the “Restoration of Injured Resources” criterion (Section 3.2) to reinforce the preference for integrated remediation and restoration:

Restoration of Injured Resources: This criterion will examine whether and to what extent a project directly restores injured resources. Preference will be given to restoration over replacement of injured resources **and to restoration activities that integrate with remediation activities**.

- The following sentence has been added at the end of the second paragraph in Section 1.2 of the *Draft Process Plan* that discusses the relationship between remediation and restoration:

“This preference that restoration not be considered as a substitute for effective remedy does not preclude the use of restoration funds to enhance remediation in those situations where to do so would restore natural resources, or hasten the restoration of natural resources.”

Category 3: Public Involvement Process

Project Green and Mr. Banderob offer suggested changes specific to the public involvement process proposed in the *Draft Process Plan* (1 and 5E).

Comment: Mr. Banderob suggests that neighborhood alliances and/or task forces organized by Butte-Silver Bow Commission Districts be relied upon as the major mechanism for involving the public as an more efficient and effective alternative than seeking input from a “hodgepodge of community organizations” (1). He provides reference information on neighborhood community alliances and notes formation of such alliances is already underway in the Greeley and Racetrack areas.

Response: The BNRC was specifically created for the purpose of providing a strong local voice in the restoration planning process for the BAO site. These restoration decisions are broader in nature than the types of issues addressed at the neighborhood community level. The public participation process designed by the BNRC and reflected in the *Draft Process Plan* is appropriate for covering a larger area that encompasses many neighborhoods and also appropriate for the expenditure of state funds as ultimately decided by the Governor rather than local funds under the purview of the local commission. The BNRC does not wish to restrict the avenue for public participation only through neighborhood alliances, as is suggested, or any other group. Any neighborhood community or other local entity will have ample opportunity for input through the public participation process outlined in the *Draft Process Plan*.

Comment: Project Green notes some inconsistencies between the text of Section 2.2 and Table 3 about the timing of public comment on the *Pre-Draft Restoration Plan* (Phase 4) and requests clarity on when and what type of public input (e.g., formal vs. informal public comment) is contemplated in the restoration planning process (5E).

Response: Table 3 in Section 2.2 has been corrected to be consistent with the text. This table indicates only the formal public comment periods. The text in Section 2.3, Public Participation, identifies opportunities for informal public comment in addition to these formal comment periods.

Category 4: References to Metro Storm Drain

Comment: Fritz Daily expresses concern about the references to the Metro Storm Drain (MSD) as the historic channel of Silver Bow Creek (2B). He offers several reasons why he believes such references are wrong and negatively influencing the remediation process and requests that references to MSD be removed from the document.¹

Response: Mr. Daily is currently involved in a lawsuit pending before the Montana District Court in Butte in which this issue is raised. The references to the MSD are intended to be neutral in the *Draft Process Plan* in that such references also refer to this area as being the “historic Silver Bow Creek” so as to not influence the outcome of this lawsuit. Four references to the MSD in Section 1.1 have been deleted in the statements where such references were not considered necessary and such deletions did not affect the accuracy of the statements. For consistency purposes, the label on Figure 2, “Upper Silver Bow Creek, also referred to as Metro Storm Drain” has been changed to “Historic Silver Bow Creek, also known as Metro Storm Drain.”

Category 5: Evaluation Criteria

Comment: The Clark Fork Coalition requests two clarifications with respect to the policy criteria, all of which they consider to be good criteria for project evaluation (3B):

- 1) that the Ecosystem Health criterion be clarified due to an incomplete sentence; and
- 2) that the document address how the policy criteria will be applied by the BNRC, such as indicating whether they will be weighted equally and the extent to which the policy criteria will be considered.

Response:

- 1) The bolded language below has been added to the incomplete sentence in the *Draft Process Plan* under the “Silver Bow Creek Ecosystem Health” criterion:

“Silver Bow Creek Ecosystem Health: This criterion examines the relationship between a particular project and overall resource conditions in the Silver Bow Creek Watershed. **Preference will be given to** projects that fit within a broad ecosystem concept in that they improve a resource problem(s) when viewed on a watershed scale, are sequenced properly from a watershed management approach, and are likely to address multiple resource problems in the Silver Bow Creek watershed.”

¹ Mr. Daily’s comment letter includes a reference to and copy of his 6/21/11 letter to EPA regarding his concerns about the EPA’s Superfund public outreach and remediation efforts for the Butte Superfund sites, particularly the Parrot Tailings site and the section of Silver Bow Creek flowing through Butte. The technical information summarized in this letter, which is not specific to the *Draft Process Plan*, was mostly obtained through investigations conducted at the direction of the NRDP with BAO settlement funds, with the concurrence of the BNRC. The outcome of these investigations will be considered in the BAO restoration planning process.

2) The introductory sentence under Section 3.2 (Stage 2 Policy Criteria) of the *Draft Process Plan* states: “The BNRC has selected the following additional criteria that are reflective of the BNRC’s goals and listed in order of importance to the BNRC.” After re-examining this section of the document, the BNRC and NRDP agree that more explanation is needed on how criteria (both Stage 1 and 2) will be applied.

- The introductory paragraph to Section 3.2 on the policy criteria has been expanded. It now states:

“In addition to the legal criteria, the BNRC has selected the following policy criteria that will be applied when considering prospective restoration projects for Butte Area One. Prospective projects need not meet all of these criteria to be recommended for implementation; however, generally (all else being equal), projects that address these criteria will be ranked higher than those that do not. These policy criteria are reflective of the BNRC’s goals and listed in order of importance to the BNRC.”

- In addition, the following paragraph has been added to the beginning for Section 3.0 to explain the non-quantitative process that will be used in evaluating projects for both the Stage 1 and 2 criteria evaluations:

“In applying these criteria to evaluate proposed restoration projects, the criteria will be evaluated qualitatively rather than quantitatively. The importance of each criterion as applied to individual projects will vary in its importance depending upon the nature of the project and the unique issues it raises. Given the widespread injury to Butte Area One natural resources and the wide array of potential restoration projects, the State and BNRC must not be unduly constrained in its ability to evaluate what is best for the injured resources. A non-quantitative process in which the criteria and the proposed projects are balanced and ranked against each other allows greater flexibility to address natural resource injuries and impaired services.”

Comment: The B-SB Council of Commissioners recommend reducing the number of evaluation criteria, some of which they consider to be redundant (6B).

Response: The Stage 1 Legal Criteria are required to be evaluated for restoration projects under the federal Superfund law. The BNRC believes that all of the proposed optional Stage 2 Policy Criteria are important to consider in the restoration decision-making process. Thus all the evaluation criteria were retained.

Comment: The B-SB Council of Commissioners note that the “Normal Government Function” criterion has always been contentious and offer their reasons why they believe a natural resource restoration project should be not rated lower priority just because the project goal happens to match up well with a government function (6C).

Response: The BNRC believes that the existing wording in this criterion narrative (Section 3.2) offers sufficient flexibility for projects that involve a government function to be selected in the

restoration decision-making process and thus does not propose any changes based on this comment.

In addition to these changes indicated above to the criteria section, changes were made in the explanation of the Legal Criteria in Section 3.2.1 to clarify that the BNRC, with assistance from the NRDP, will conduct the criteria evaluation process.

Category 6: References to Forbs

Comment: The Butte Restoration Alliance requests that forbs be added to the definition of restoration given in Section 1.2.2 (4D).

Response: The BNRC agrees that a diverse, healthy riparian habitat should include forbs and this definition has thus been revised accordingly, as indicated in the bolded language below.

- “Restoration refers to actions taken, in addition to remediation, to return the injured resources and services to their baseline condition. For example, planting additional grasses, **forbs**, shrubs, and trees in the Silver Bow Creek floodplain that would not be planted under remediation and would help restore the area to its pre-mining state.”

The expectation that forbs will have role in reclamation activities utilizing restoration funds is reflected in the approved funding for a 3-year grant project that centers on forb establishment in the Butte area through the use of plant materials grown in a state-funded nursery located at the Montana Tech campus.

Category 7: Protection of Downstream Investment

Comment: Project Green expresses concern about the lack of a specific reference to the protection of the downstream remediation and restoration investment in Silver Bow Creek (5B). They request that the final plan reflect a strong policy to protect that investment as decisions are made about how and where to spend the BAO NRD settlement funds.

Response: The goal of the restoration actions to be implemented pursuant to the Butte Area One Restoration Plan is to restore the injured groundwater and surface water resources of Butte Area One. Effective restoration of Butte Area One injured groundwater and surface water resources will help protect the downstream remediation and restoration investment in Silver Bow Creek. Although this specific reference is not in the *Draft Process Plan*, the concept of the BAO decision-making being done in the context of broader Silver Bow Creek watershed is reflected in the BNRC’s 5th Guiding Principle that indicates the goal of restoring Butte Area One so that “...current and future generations of Montanans can enjoy a healthy, restored Silver Bow Creek and also in the “Silver Bow Ecosystem Health” policy criterion that considers broader watershed benefits. The bolded language indicated below has been added to this criterion statement to recognize that protection of downstream investments is part of these broader watershed benefits considered under this criterion.

“Silver Bow Creek Ecosystem Health: This criterion examines the relationship between a particular project and overall resource conditions in the Silver Bow Creek Watershed. Preference will be given to projects that fit within a broad ecosystem concept in that they improve a resource problem(s) when viewed on a watershed scale (**including how it helps protect the downstream areas of Silver Bow Creek from further releases of hazardous substances**), are sequenced properly from a watershed management approach, and are likely to address multiple resource problems in the Silver Bow Creek watershed.”

With the existing provisions and change noted above, the BNRC and NRDP believe the desired connection between the BAO decision-making process and protection of downstream investments requested by Project Green has been adequately addressed. However, it should be understood that a major purpose of the remedial actions for the Butte Priority Soils Operable Unit (BPSOU) is to prevent releases of hazardous substances from contaminated ground, surface, and storm water in the Butte area from affecting the surface water quality of Silver Bow Creek. In addition, provisions of the Streamside Tailings Operable Unit (SSTOU) Record of Decision and associated SSTOU Consent Decree are aimed at protecting the remediation and restoration work conducted downstream along Silver Bow Creek. A monitoring plan is in place to protect the stream and reserve remediation funds will be set aside following conclusion of major construction activities for any additional work that may be required in the future to protect the initial investment.

Category 8: Silver Bow Creek Watershed Restoration Plan

Comment: Project Green expresses concern about the lack of reference to the *2005 Silver Bow Creek Watershed Restoration Plan* and requests that the final process plan discuss this document and include it in the Guiding Principles and Criteria section (5C). The Butte Council of Commissioners also suggests incorporating the recommendations of this 2005 Plan into the BNRC’s efforts and decisions (6D).

Response: The *2005 Silver Bow Creek Watershed Restoration Plan*² (*2005 SBC Plan*) provides guidance for prioritizing restoration activities to improve the overall Silver Bow Creek watershed condition. As shown in Figures 1 and 2 of the *Draft Process Plan*, this watershed covers a much larger area than the Butte Area One site. However, some of the natural resource information summarized and restoration needs identified in the *2005 SBC Plan* would be relevant to the Butte Area One site, particularly the information specific to the Silver Bow Creek corridor, Butte Area, and Blacktail/Basin sub-watersheds. Since the *2005 SBC Plan* is not, however, the only restoration planning document that might have relevant information to the Butte Area One restoration planning effort, the BNRC elected to generally reference such documents and provide a list of them, as indicated in bold text below in Section 2.3 about the scoping and development of restoration alternatives (Phase 3):

“Before developing the broad range of alternatives, the BNRC will solicit ideas from the public on proposed restoration project alternatives to be considered for expenditure of

² *Silver Bow Creek Watershed Restoration Plan* (Final), prepared by the NRDP, Confluence Consulting and DTM Consulting, Inc., December 2005.

BAO settlement funds. The BNRC will specify the time period for submittal of these project ideas and will also hold an educational workshop about the types of restoration projects that could be funded with BAO settlement funds. The BNRC will also conduct public outreach about this solicitation process and workshop. The NRDP, in consultation with the BNRC, will first screen the possible restoration alternatives to determine whether they meet the legal threshold of restoring or replacing the injured natural resources of the Butte Area One site that were the subject of the \$28.1M claim recovered from ARCO, namely groundwater and the aquatic resources of Silver Bow Creek. **As part of this scoping process, the BNRC will consider the applicable restoration needs/projects that would meet this legal threshold and are identified in other relevant documents, including, but not limited to those listed in Attachment D.**

Similarly, the following bolded language has been added to “Silver Bow Creek Ecosystem Health” policy criterion, to reflect how these other relevant documents will be considered in the BAO restoration decision-making:

“Silver Bow Creek Ecosystem Health: This criterion examines the relationship between a particular project and overall resource conditions in the Silver Bow Creek Watershed. Preference will be given to projects that fit within a broad ecosystem concept in that they improve a resource problem(s) when viewed on a watershed scale (including how it helps protect the downstream areas of Silver Bow Creek from further releases of hazardous substances), are sequenced properly from a watershed management approach, and are likely to address multiple resource problems in the Silver Bow Creek watershed. **As part of the evaluation of this criterion, the watershed-scale priorities identified in other relevant documents, including, but not limited to those plans listed in Attachment D, will be considered”**

Even with this recognition of the *2005 SBC Plan* in the BAO restoration-planning process, it should be understood that the restoration needs identified in the *2005 SBC Plan* were identified regardless of funding source considerations and, thus, the suggested restoration activities reflected in that plan may be ineligible or partially eligible for NRD funding. This limitation is explicitly recognized in the *2005 SBC Plan*.³

Category 9: Suggested Restoration Project at High Ore Mine Site

Comment: Fritz Daily suggests the High Ore Reclamation site as a good candidate for expenditure of BAO NRD settlement funds for planting of grass, trees, and flowers similar to those that were at the Columbia Gardens and location of the replica of the Columbia Gardens Carousel (2C).

Response: While such project-specific suggestions are outside the scope of the *Draft Process Plan*, the BNRC will consider this project suggestion and other project suggestions in the next restoration planning phase for the BAO site. This is Phase 3, Scoping and Development of Restoration Alternatives, that is described in Section 2.2 of the *Draft Process Plan*.

³ See Executive Summary, p. 1, and Project Goals, Section 1.2, p. 15 of *2005 SBC Plan*.

Category 10: BNRC Role

Comment: The B-SB Council of Commissioners objects to language in the Section 4 (Budgeting and Administration) of the *Draft Process Plan* that indicates the BNRC's consultative role with regards to administrative expenditure (5E), noting that this language appears to dilute the BNRC's role.

Response: Because this language is specific to administrative costs and offers an option to the BNRC of bringing matters of dispute to the TRC for resolution, it does not diminish the role that the BNRC has to make restoration funding recommendations to the Trustee for the BAO site. The BNRC clarified this by adding "for administrative purposes" prior to the "consultative role" language in this section.

ATTACHMENT A. GUIDE TO PUBLIC COMMENTS AND RESPONSES

List of E-Mails/Letters Received

Letter No.	Organization	Author	Date
Comments Received During the Public Comment Period			
1	Interim Greeley Community Coalition	R. Edward Banderob, Interim Facilitator	June 20, 2011
2		Fritz Daily	June 24, 2011
3	Clark Fork Coalition	Christine Brick, Science Director	July 1, 2011
4	Butte Restoration Alliance	Suzzann Nordwick, Co-Chair	July 1, 2011
5	Project Green of Montana, Inc.	Brian Holland, President	July 1, 2011
Comments Received After the Public Comment Period			
6	Butte-Silver Bow Council of Commissioners	David Palmer, Council Chairman Paul Babb, Chief Executive	Sept.21, 2011

Categorical Breakdown of Comments

Category No.	Category Title	Letter/Comment No.
1	General Support of the <i>Draft Process Plan</i>	2A, 3A, 4A, 5A
2	Remediation and Restoration Coordination	4B, 4C, 5D, 6A
3	Public Involvement Process	1, 5E
4	References to Metro Storm Drain	2B
5	Evaluation Criteria	3B, 6B, 6C
6	References to Forbs	4D
7	Protection of Downstream Investment	5B
8	Silver Bow Creek Watershed Restoration Plan	5C, 6D
9	Suggested Restoration Project at High Ore Mine Site	2C
10	BNRC Role	6E

APPENDIX 1

Public Comments Received During the Public Comment Period

From: R. Edward Banderob [mailto:glenow@alnet.com]

Sent: Monday, June 20, 2011 9:14 PM

To: Cunneen, Padraig; ratesdave@gmail.com; eerickson@wet-llc.com; emmett.riordan@northwestern.com; jmckee@mckeeit.com; lcurran@montanaorthopedics.com; LC home; mark.gollinger@thepeakinc.com; okrusch@gmail.com; rleeeasy@hotmail.com; steve.gallus@gmail.com
Cc: Gerbrandt, Butch; Babb, Paul; CTEC-Janice H.; amakowski@mtech.edu; brianholland; barchibald@pioneer-technical.com; Quinones, Ben; Bartkowlak, Brian; Fox, Carolyn A.; Griffin, Joe; Coleman, Kathleen; Collins, Robert; Golden, Michelle; Mullen, Gregory; Capdeville, Mary; Chavez, Joel; Martin, Douglas (DOJ); Mostad, Tom; Lindstrom, Jason; Selch, Trevor; Vinkey, Ray; Scusa, Larry; McNeil, Roderick; Christine Brick; Crowley, Julie A; Elliott, Colleen; Cindy McIlveen; ctec@montana.com; DeWitt, Lisa; Gary Chatriand; cdeeney@treccorp.com; cgammons@mtech.edu; Olsen, Sandi; coleman.charles@epamail.epa.gov; Town, Christopher - Butte, MT; Douglass, Rick; DeArment, John; ddennehy@bsb.mt.gov; dpowers@bsb.mt.gov; Dave McCarthy; Dan@ltgworld.com; Erik_Nylund@tester.senate.gov; Mick Ringsak; Elsen.Henry@epamail.epa.gov; Deal, Edmond; Fritz Daily; fponikvar@mtech.edu; Gary Icopini; Gles Thelen; Ingman, Gary; groundhogan@msn.com; garyj@rpa-hln.com; georgewaring@bresnan.net; Ganesan, Kumar; Jen Titus; Joe Naughton; Jim Kambich; Metesh, John; Jocelyn Dodge; Sesso, Jon; Josh Yarrington; jvincent@wet-llc.com; Kristin Snyder Douglass; Wellage, Krystal; Kaleena Miller; kathy@blackfootnativeplants.com; Larson, Rick; Jim Shive; Maryann Sletten; Rotar, Michael; Vincent, Matt; Maureen Connor; Mike Borduin; 'Mary Price'; Nicholas Tucci; Robin Jordan; Callaway, Ray; robolson@bresnan.net; statecreekmt-suzzann@yahoo.com; Jones, Shelly; Skrukrud, Dori; Sparks.Sara@epamail.epa.gov; John W. Ray; Ted Duaine; Tom Malloy; ted.dodge516@gmail.com; tdale@montanaresources.com; Harbert, Trey; david williams; Thomi.Wendy@epamail.epa.gov; Vranka.Joe@epamail.epa.gov; Will McDowell; wharden@headwatersrcd.org; wfraszc@bresnan.net; wrocshaw@hotmail.com
Subject: First Priority - Re: BNRC Meeting Thursday June 16th at 6:00 PM

Greetings,

I apologize for hitting the reply all button.

I am not a member of you council, just a John Doe public interested in the Horse Canyon Creek Project.

I was at the BSB Council of Commissioners meeting when Elizabeth Erickson gave her presentation that emphasized your desire to have the Public involved in the decision making process, that Butte Natural Restoration Damage Restoration funds can be used for remediation and restoration projects that hopefully stimulate revitalization projects throughout the Greater Butte Silver Bow area. I was there when one of your members asked one of the Native Plant Diversity Presenters on the bus: "Are you working with organizations in the community?"

In that: Your "Butte Area One Draft Restoration Process Planning Document." states: "It is believed that establishing a sound decision-making process goes a long way toward ensuring reliable decisions."

Therefore: To establish a sound decision-making process for public participation may we raise the following questions for your consideration before the Final Draft is prepared/submitted.

Why seek project proposals public input from a hodgepodge of community organizations?

Why not use this opportunity to stimulate/foster the creation/furtherance of the utilization of an organized systematic public consensus creating decision making system that has already been proposed to the BSB Government?

The "Greeley Area Plan" formulated by the BSB Planning Department Steering Committee and approved by the BSB Planning Board includes as its First Priority: "Initiate and enable neighborhood alliances* and/or task forces."
<http://www.mmipanning.com/butte/gdocs/GFinalDocs/Final%20Draft%20Greeley%20Plan.pdf>

* Modification made by BSB Planning Board. These would be Neighborhood Community Citizen Councils/Alliances (organized by BSB Commissioner District) that would bring together many ideas and work on coalescing a community consensus prior to presentation to your BNR Council for consideration and forwarding for the appropriate approvals. The greatest advantage of forming such do-it-yourself community councils would be that you would be putting into place the system that could move forward from remediation and restoration to revitalization, building on what would have already been done.

Your BNRC could fund community organizers, and spend a lot of money on incentives for these citizen councils to be formed which would be a waste of your limited funds.

Or you could simple include the stipulation that public comment must be made through such a Neighborhood Community Council by Commissioner District, and encourage neighborhoods to apply the do-it-yourself, self-help Manifestry Method of Community Transformation way of forming these Citizen Councils/Alliances, as we are doing in the Greeley & Racetrack areas.

FYI - The Manifestry Method of Community Transformation is as American as Benjamin Franklin's Juntas, as Montanan as the Pioneers Barn Raisings and Threshing Crews, as Butte as Butte America's survivalist and/or the Lady of the Rockies builders.

For more information on Neighborhood community Alliances go to:

<http://www.neighborhoodalliance.org>

<http://ci.bilings.mt.us/index.aspx?NID=512>

and/or

<http://www.manifestry.info>

Respectfully submitted

R. Edward Banderob Interim Facilitator
Interim Greeley Community Coalition

1 cont.

Coleman, Kathleen

From: Cunneen, Padraig
Sent: Thursday, July 14, 2011 11:24 AM
To: Coleman, Kathleen
Subject: FW: Mountain Con Cleanup Site
Attachments: EPA Letter June 21, 2011.docx

Kathy,

Prompted by a question from BNRC member Mark Gollinger, I asked Fritz if he intended for his e-mail to be a comment on the process planning document and this was his response...

PC

From: Fritz Dally [mailto:buttedally@bresnan.net]
Sent: Friday, June 24, 2011 11:33 AM
To: steve.gallus@gmail.com; Cunneen, Padraig; eerickson@wet-llc.com; emmett.rlordan@northwestern.com; lcurran@montanaorthopedics.com; Dave Schultz; jmckee@mckeelt.com; Okrusch, Chad; rleeeasy@hotmail.com
Cc: Erik Nylund; Jim Kamblich; Mick Ringsak; Nick Tucci - MBMG (E-mail); Ron Davis; Sister Mary Jo
Subject: Re: Mountain Con Cleanup Site

Pat,

I apologize for not including Elizabeth, Larry and Emmett on my original email. It was a complete oversight. I have three different email addresses lists that I use and in the process of adding names I inadvertently forgot to put their names on the list. If I forgot any others please include them as well. As a matter of fact, I always include these three individuals in most of my Superfund and related issue emails. I especially apologize for not including Elizabeth. She has always been so kind in responding in a positive manner to my emails.

I would like to preface my remarks by stating that I am currently a member of the Silver Bow Creek Headwaters Coalition who have filed a Declaratory Judgment addressing the name change to Silver Bow Creek flowing through Butte. Jim Goetz and Zack Strong of the Goetz, Gallik & Baldwin law firm from Bozeman, Montana represent us in the lawsuit. We are currently waiting on a response from Judge Newman on a motion by the State to dismiss our case. The hearing on that motion was held on April 11, 2011. 2A

As far as including my email as part of the official record by all means, please do so. I truly believe the Butte Natural Resource Council and yourself are a dedicated group of Butte individuals and will make some excellent decisions on restoring the Butte Hill, Silver Bow Creek flowing through Butte and other Butte Superfund Sites. That is always why I include you and them in my emails. Every email and letter I write I always consider them to be public documents and hope they become part of the official record.

I have read the Butte Area One Draft Restoration Process Planning Document and had planned on providing written comments to the document. Since I am writing this email in response to yours and Mark's request, let me just add my thoughts and comments to the Butte Area One Draft Restoration Process Planning Document and ask that this email along with my original email be added to the official record.

Overall I believe the Document is an excellent well written and thoughtful Document. However, I do have one major concern with the Document and that is the way in which you describe the Historic Silver Bow Creek Channel flowing through Butte. **The Historic Silver Bow Creek Channel flowing through Butte is not Metro Storm Drain as referenced in the Document and any reference to it as such is wrong and a major mistake!** It is my belief, that there is no question that the only reason ARCO, the EPA and the State of Montana Agencies started calling it Metro Storm Drain in the early 1980's, and continue to do so today, is because they would not have to clean the Creek to the quality Standard that the folks in Butte deserve. **By continuing to even reference this section of the Creek as Metro Storm Drain allows the agencies and ARCO to continue this inadequate and inferior cleanup. I would strongly suggest that any reference to Metro Storm Drain be removed from the Document. If his reference remains in the final and the official Butte Area One Draft Restoration Process Planning Document believe me you** 2B

will never have clean Silver Bow Creek flowing through Butte! As a result you will never have a clean and restored Clark Fork River as well.

"Silver Bow Creek flowing through Butte should be a quality meandering creek that will allow for children to play and fish and should provide for other amenities that will allow the adults in the community to enjoy the benefits of the cleanup and restoration as well. Anything less should never be accepted!"

I have written many times and it so important for the local officials in Butte to remember, **"the decisions made on cleanup and restoration on these areas are forever decisions and will have forever consequences!"**

2B

I am attaching a letter I recently wrote to Julie DalSoglio, Director of the U.S. Environmental Protection Agency Montana Office and I also wrote a similar letter to Senator Tester offering my support to the Citizens Technical Environmental Committee's and Senator Tester's efforts to improve the Environmental Protection Agency's outreach for Superfund in the Butte Montana area. The letter also outlines my concerns with the cleanup of the Parrott Tailings and Silver Bow Creek flowing through Butte. Please include this letter as part of the official record as well.

Pat, thanks for your time and effort and most importantly thanks to yours and Nick Tucci's of the Montana Bureau of Mines efforts in discovering the truth on the seriousness of the contamination on Silver Bow Creek flowing through Butte and the Parrott Tailings area. The Environmental Protection Agency and the State of Montana Agencies, for whatever reasons, have failed to recognize or accept the truth of the seriousness of the contamination in these areas!

If it would be better and if you would like me to write this email in the form of a letter, let me know and I will be happy to do so.

Fritz Daily

----- Original Message -

From: ~~Cunneen, Padraig~~
To: Fritz Daily
Sent: Thursday, June 23, 2011 5:43 PM
Subject: FW: Mountain Con Cleanup Site

Hi Fritz,

Per your request, I forwarded your original message to both Trey Harbert and Julie DalSoglio. I also forwarded it to BNRC members Elizabeth Erickson, Emmett Riordan and Larry Curran whose names I did not see on your distribution list. The only member of the Carousel Committee that I know is George Parrott, and I do not have his e-mail address, but I can call him and get it if you like.

As for the question Mark asks below, "Would this be considered official public comment for the record?" As you know, we are seeking public comment on our "Butte Area One Draft Restoration Process Planning Document" until July 1, 2011. We recently received an e-mail that was addressed to the entire BNRC, et al, that contained comments on the plan. So, I think Mark is wondering if your e-mail was intended to be a comment on the document. Please respond and let me know if that was part of your intent. If so, your comment will be logged and officially responded to along with the rest of the comments we receive.

Also know that the BNRC/NRDP will be soliciting ideas from the public on potential restoration projects. We plan to put on a public work shop in the future to let folks know the criteria for spending the restoration funds and then asking for their ideas. As for now, I am keeping an informal list of ideas for projects that we have received, and each idea will officially be acted upon once we get that far into our process. So please let me know if that was your intent.

Regards,
Pat

From: Mark Gollinger [mailto:mark.gollinger@thepeakinc.com]

Sent: Thursday, June 23, 2011 12:34 PM

To: Fritz Daily

Cc: steve.gallus@gmail.com; rleeeasy@hotmail.com; Bill Foley; Cunneen, Padraig; Dave Schultz; jmckee@mckeelt.com; Okrusch, Chad; Babb, Paul; Jim Kambich; derick.mining@comcast.net; R. Edward Banderob; Sister Mary Jo; smcarthur@cccscorp.com; Cindy Shaw; Dan Hollis; david williams; Dennehy, Dan; Don Peoples; Dr. Dan Harrington; Erik Nylund; Gerry.O'Brien@lee.net; Janice Hogan; Joe Shoemaker; John Amtmann; John W. Ray; Judd, Steve; Kristi Hager; Larson, Rick; Lombardi, Bill (Tester); Malloy, Tom; Mary Kay Craig; Michelotti, Jim; Mick Ringsak; mlucich@buttecvb.com; Paddy Lee; Pat Maloney; Paul Panisko; PMunday@mttech.edu; Powers, Dan; Rick Foote and Robin Jordan; Robert McCarthy; Robin Jordon; Ron Davis; Sam Verona; Sesso, Jon; Stacie Barry; statecreekmt-suzzann@yahoo.com; Stella Burke; Tammy Yelenich; thelees@bresnan.net; Tim Rogers; Tucci, Nicholas; Wally Frasz; Barbara Miller; bellecreeke@montana.com; Bill MacGregor; Brian Holland; Holly Peterson; Josh M. Peck; Kim Krueger; Leland Greb; lstaples@kxlf.com; Senator Max Baucus; Ted Duaine - MBMG (E-mail); sara@epamail.epa.gov

Subject: Re: Mountain Con Cleanup Site

Pat,

Would this be considered official public comment for the record?

Thanks Fritz. I am happy to hear that it looks so good and look forward to seeing the work they have done on the site.

Very Respectfully,
Mark Gollinger

On Thu, Jun 23, 2011 at 12:15 PM, Fritz Daily <buttedaily@bresnan.net> wrote:

Members of the Butte Natural Resource Damage Council and others,

I attended a memorial service for Shannon Lynch yesterday at the High Ore Mine Reclamation Site. I was very impressed with the work that has taken place at the Site.

As a person who has been very critical in the past of the Environmental Protection Agency and The Atlantic Richfield Company I want to commend them for what I believe is a impressive job on reclaiming the Site. I know this Site has been reclaimed in the past and I am not sure of the amount of tailings that were removed or the thoroughness of the cleanup, but I believe they definitely got this one right! I sincerely hope this is the start of what many Butte folks like myself have visioned with reclamation and restoration for years.

I am sure numerous others including the State of Montana and the Butte Silver Bow Local Government officials contributed to the work as well. **The view from the Site overlooking Butte and the varlous mountain ranges is an unbelievable site, very impressive.**

I was also impressed with the old mine working that were left in place and they truly add to the mining history of Butte and the beauty of the view.

As we were leaving the Site my wife Gay suggested that "wouldn't this be an excellent place for the Carousel." I agree and that is the purpose of me writing this email. I believe that if a site for the Carousel has not already been chosen, and I don't believe it has, this is tremendous idea.

I also believe this is an excellent opportunity for the Butte Natural Resource Damage Council to take the first steps in using the \$28.1 million for the restoration of the Butte Hill. I could vision planting grass and trees at the Site and incorporating many of the flower decorations that were at the Columbia Gardens. Other amenities that could be used by the children and the adults of Butte could be added as well. I truly believe it could actually be a destination site as many Butte folks have talked about for years.

It would also be an opportunity to combine restoration and reclamation dollars at the same time as many Butte folks have advocated for years.

I believe this an opportunity that needs to be explored with the Carousel Committee. These folks have done an excellent job and have worked for years in reclaiming and restoring one of the most important parts of Butte's past, a replica of the Columbia Gardens Carousel. It could also be an addition to the restoration work done at Naranche Stadium as Bill Foley wrote about in his article in the Standard on Tuesday that I believe is so great as well.

Thanks for your time. I hope I am not way off base, and if I can be of further assistance please let me know?

Fritz Daily

Pat, if you could forward this email to Trey Harbert, Julie DalSoglio, others you think might be of interest, and if you have email addresses for any Carousel Committee members, I would appreciate that as well.

20

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Very Respectfully,

Mark P. Gollinger

The Peak Inc. - Logistics/Operations Manager

111 Airport Road

Butte, Mt 59701

Phone/Fax 406-494-7999

Mobile 406-491-4199

Mark.gollinger@thepeakinc.com

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Fritz Daily
1901 Roosevelt Ave.
Butte, MT 59701

June 21, 2011

Julie DalSoglio, Director
U.S. Environmental Protection Agency
Montana Office
10 W. 15th. Street
Helena, MT 59626

Dear Ms. DalSoglio,

I am writing this letter in strong support of the Citizens Technical Environmental Committee's effort to improve the Environmental Protection Agency's outreach for Superfund in the Butte Montana area. Also, please include my letter as part of the official record concerning this issue.

I would like to preface my remarks by stating that I am currently a member of the Silver Bow Creek Headwaters Coalition who has filed a Declaratory Judgment against the State of Montana addressing the name change to Silver Bow Creek flowing through Butte. Jim Goetz and Zack Strong of the Goetz, Gallik & Baldwin law firm from Bozeman, Montana represent us in the lawsuit.

As a former seven-term Montana Legislator, I have been actively involved in Butte and Montana Superfund issues since the early 1980's. I have written numerous letters and have expressed frustration in open meeting concerning this issue. I strongly believe the only reason the Environmental Protection Agency ever seeks public input is to satisfy the requirement of public participation required in Superfund Law.

I could write in this letter about my involvement and dissatisfaction with the decisions made on the Butte Hill, the Berkeley Pit, Yankee Doodle Tailing Pond, Opportunity Ponds or other issues, but because of space and time I will specifically address the issue of the Parrott Tailings and Silver Bow Creek flowing through Butte. **It is important to point out that the decisions made on these areas are forever decisions and will have forever consequences!**

- On September 26, 2006 the Montana Department of Environmental Quality in a letter to the Environmental Protection Agency writes, "DEQ does not concur with the over reaching decision to leave accessible, major sources of groundwater contamination in place. We refer specifically to the Parrott Tailings, Diggings East tailings and the North Side Tailings. Our concern is that leaving these wastes in place poses a significant and permanent threat to groundwater and to the long-term water quality of Silver Bow Creek." This advice was completely ignored in the Record of Decision.
- In April 2009, we learned that the **groundwater in this area is more toxic than Berkeley Pit water**. The Record of Decision again was made without this critical and valuable information.

2B

- In March 2010, we learned that ARCO and the EPA learned that there was **substantially more water flowing to Silver Bow Creek than originally projected**. An isolation test was conducted to determine the actual amount of flow and from where the water along Silver Bow Creek was flowing. Again, the Record of Decision was made without this critical information.
- In July 2009, we learned that the Montana Bureau of Mines was **drilling wells in the area to determine the depth and scope of the contaminated tailing in the Parrott Tailings area**. The fact that the Record of Decision was made with out knowing the depth and scope of the tailing in the area. Unbelievable!
- In February 2011, a pump test conducted by the Montana Bureau of Mines. We now learn that the groundwater in the Civic Center and Parrott Tailings areas is moving at a rate of 120 to 640 feet per day. **When the decision was made by the EPA to not remove the Parrott Tailings, it was estimated that the groundwater flow above Harrison Avenue was at a rate of 2.5 feet per day**. Below Harrison Avenue, it was estimated that the groundwater was flowing at a rate of 15 feet per day when in fact we now know that it is flowing at a rate of 480 to 1000 feet per day. Quite a substantial difference. Again, the Record of Decision was made with out this critical information.
- We learned this year of a publication from August 2005 called "Cut and Run" that was issued by a reputable group of local Hydrologists and Hydro- Geologists seriously criticizing the preferred alternative chosen by the EPA on the Record of Decision on Butte's portion of Silver Bow Creek and removal of the Parrott Tailings, and ignored by the EPA. This is a quote from that publication; *The U.S. Environmental Protection Agency is prepared to walk away from the nation's largest Superfund site. More precisely, EPA is prepared to allow the responsible party, Atlantic Richfield Company (now British Petroleum/ARCO), to walk away without fully cleaning up the site. As a result, millions of cubic yards of mine tailings, smelting slag and other wastes will drain in perpetuity into the headwaters of the Clark Fork and Columbia Rivers. And the City/County of Butte-Silver Bow will be relegated into an industrial waste heap with dim economic prospects for recovery.* There is no question these toxic tailings are already recontaminating Silver Bow Creek, below Montana Street, that the State of Montana has already spent over \$40 million to clean.
- ARCO and the EPA continue their **band-aid approach to cleaning and restoring the Creek** by now pouring pink concrete to correct the erosion problems caused by the incompetent decisions already made.
- I have been told by folks directly involved in the process, that the "site conceptual model" being developed by Arco detailing the amount of groundwater being captured in the Reverse French Drain System, indicates the system is not collecting the amount of groundwater as Arco and the EPA believed it would. I understand the site conceptual model is not working near as well at they expected it would.
- In an April 12, 2011 in a letter to the Environmental Protection Agency from Senator Jon Tester he states, "Upriver in Butte, it is my understanding that new data shows that far more groundwater is moving through tailings than expected, and it is not clear whether that water is being captured."
- Using a blimp, a site test was conducted in the spring of 2011 to determine the flow of a contaminated groundwater plume contaminating Blacktail Creek in the Oregon Avenue area. The results of this test are not yet published. It is believed that this contamination is coming from the Parrott Tailings area and a further test will be conducted by the Montana Bureau of Mines in the fall of 2011 to determine that information.

2 B

These are just some of the facts and information I have received and have accumulated since the Record of Decision was established on the Parrott Tailings and Silver Bow Creek flowing through Butte. All of these issues have been articulated to the Environmental Protection Agency

and the State of Montana on numerous occasions by many others and me and they have been ignored in the decision making process. This is why I strongly support the efforts of the Citizens Technical Environmental Committee's effort to improve the Environmental Protection Agency's outreach for Superfund in the Butte Montana area.

213

Sincerely,

Fritz Daily

From: Christine Brick [mailto:chris@clarkfork.org]
Sent: Friday, July 01, 2011 10:43 AM
To: Cunneen, Padraig
Subject: BNRC comments

Pat,

Please consider this e-mail as the Clark Fork Coalition's comments on the Butte Area One Draft Restoration Process Planning Document. Our comments are brief, because we consider this document to be an excellent and appropriate approach toward expenditure of the BAO funds. We especially appreciate the BNRC's recognition of the difference between remedy and restoration, and the desire to use the BAO settlement to pick up where remedy leaves off, but not fund projects that should be covered under remedy. We also appreciate the BNRC's emphasis on favoring restoration of natural resources over replacement of them. The policy criteria statements are also good, although we note that the Ecosystem Health criteria (p. 19) is unclear – perhaps because the second sentence in that description is incomplete. We note, however, that there is little discussion of how the policy criteria will be applied by the BNRC. Will they be weighted equally? Must a project meet all of these criteria? It would strengthen the document to have a short discussion in the lead paragraph that describes in more detail the extent to which the policy criteria will be considered. They are good criteria, and we believe they should all be considered in project evaluation.

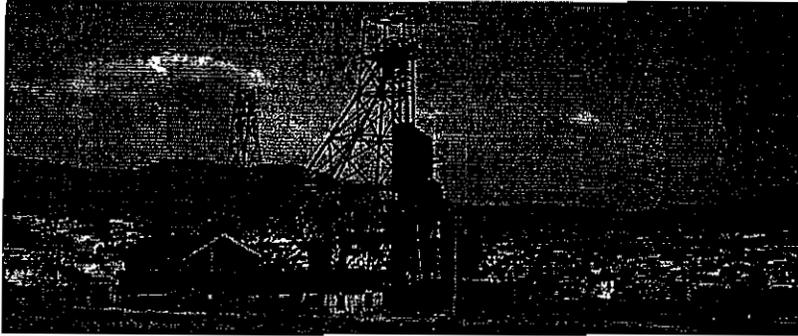
3A

3B

Overall, we applaud the BNRC's hard work on this document. Thanks for considering our comments.

Best regards,
Chris

~~~~~  
Christine Brick  
Science Director  
Clark Fork Coalition  
P.O. Box 7593  
Missoula, MT 59807  
ph. 406-542-0539 ext. 202



# BUTTE RESTORATION ALLIANCE

www.butterestorationalliance.org

July 1, 2011

Mr. Pat Cunneen  
NRDP  
65 East Broadway  
Butte, MT 59701

Dear Mr. Cunneen,

Please accept the comments below on the Butte Area One (BAO) Draft Restoration Process Planning Document. These are submitted by the Butte Restoration Alliance (BRA), which is a citizens' advisory group that was formed to provide input and prioritization for the restoration and redevelopment of Butte. The BRA has been active for the past half-decade and plans to continue providing our community this service in to the future.

The Natural Resource Damage Program (NRDP) is a vital part of the ongoing restoration efforts in Butte, and the BRA would like to thank the Butte Natural Damage Restoration Council Advisory Council (BNRC) for their hard work in drafting a process plan for the spending of Butte Area One NRDP funds. The plan is very well written. The organization is logical and it defines issues quite clearly. In general, we agree with the overall concept of the spending approach as it allows for creative, flexible input and possible solutions. However, we would like to express the following concerns.

- 1) The spending schedule is tied to the signing of a Consent Decree (CD). This is a concern as a CD could be far into the future. The planning document should address the possibility that there will not be a CD. 4A

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- 2) Although BNRC's proposed approach of delaying most spending decisions until after a CD will help assure that restoration funds are not used to address remediation issues, it is not necessarily the most effective use of the funds. In fact other NRDP efforts (i.e. SBC and Mill Town) have proven to be quite successful when remedy implementation was leveraged with restoration funds. So, there is some concern that opportunities to leverage NRDP funds in BAO could be missed under the currently proposed approach. To some extent this cost savings benefit is acknowledged in the BNRC guiding principles; however, the actual ecosystem benefits that would result from leveraging restoration funds with remedy are not given much acknowledgement. 4B

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- 3) In environmental restoration, plant diversity can be significant and this diversity depends on forbs, the small, somewhat ephemeral succulent members of functional, diverse vegetation. There is concern that forbs are not mentioned in the definition of restoration given in section 1.2.2 – Restoration of Butte Area One. So, one specific comment is that the word "forbs" be added to this definition. 4C

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As an independent citizens' advisory group working to prioritize and facilitate restoration and redevelopment efforts in Butte, the BRA is pleased to provide this public comment to the BNRC. More information on the BRA can be found at the above web link. If you have any questions on this letter please contact me at 406-565-1537.

Sincerely,

Suzann Nordwick  
Co-Chair, Butte Restoration Alliance

*The Butte Restoration Alliance is a 30-member citizen committee representing a wide range of community interests. Through consensus, the Alliance aims to establish priorities and make recommendations to the Butte Community, Butte-Silver Bow County, and other agencies regarding restoration-related matters.*

**PROJECT GREEN OF MONTANA, INC.  
65 EAST BROADWAY  
BUTTE, MT 59701**

July 1, 2011

Pat Cunneen  
Natural Resource Damage Program  
65 E. Broadway  
Butte, MT 59701

**RECEIVED**

JUL 01 2011

**NRDP  
BUTTE OFFICE**

Re: **Project Green Comments on the**  
**Butte Area One Draft Restoration Process Planning Document prepared by**  
**the Butte Natural Resource Damage Restoration Council (BNRC) and the**  
**State of Montana Natural Resource Damage Program (NRDP)**

Dear Mr. Cunneen:

The purpose of this letter is to provide, as part of the public comment process, the comments of Project Green of Montana, Inc. ("Project Green") on the above referenced Butte Area One Draft Restoration Process Planning Document ("Draft BNRC Process Plan"), released in May, 2011.

By way of background, Project Green began in the mid-1990's as a Butte citizens' grassroots community organization and evolved to a Montana non-profit 501(c)(3) corporation that promotes innovative remedial and restoration projects. Project Green's Articles of Incorporation state its primary purposes as:

*To encourage innovation in Superfund remediation so that future land use of Superfund cleanup sites becomes a vital component of community development while demanding safe long-term remediation protective of human health and the environment. To create tangible community assets for the area while encouraging sound and cost-effective reclamation. To encourage technology development and deployment in Superfund remediation projects. To encourage long-term, cost-effective remedies that meet the economic development and recreational needs of the affected communities while continuing to meet the human health and environmental protection objectives of Superfund. To promote community education to encourage affected citizens to participate in the decision-making process relating to these sites in order to create economic, social, cultural, and recreational opportunities and support open space and other beneficial uses. And to operate to the ultimate benefit of the citizens of the affected areas, the State of Montana, and the United States...*

Given these purposes, Project Green has had an active interest in the NRDP program since the program's inception, and in Superfund activities before then, and more recently in BNRC activities. For example, Project Green has been involved with the Silver Bow Creek clean-up and the associated Greenway project, since it was proposed as the end land use for Silver Bow Creek post-remediation, through the designation of such end land use in the SSTQU Record of Decision, continuing to the present time and the ongoing remediation and restoration work. Project Green also initiated efforts that ultimately led to the Butte Restoration Alliance, and a Project Green representative has been on the Restoration Alliance since its inception.

With that background, Project Green appreciates the opportunity to offer comments on the Draft BNRC Process Plan, as follows.

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Project Green appreciates the hard work and dedication of the BNRC members in developing the Draft BNRC Process Plan. Project Green supports the concept of careful planning to guide the expenditure of the \$28.1 million (plus interest) natural resource damage settlement for Butte Area One. Project Green is supportive of the Guiding Principles at the start of Draft BNRC Process Plan, and generally supportive of the entire document. However, we would encourage the BNRC to either add or more clearly emphasize the following points as it prepares the final BNRC process plan.

5A

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1. Protection of Downstream Investment.

We were somewhat surprised to not see a specific reference to protection of the massive investment downstream in Silver Bow Creek in either the Guiding Principles or in the policy part of the Criteria section. The "partnership" of DEQ, NRDP, and the Greenway Service District have invested, and will continue to invest, many millions of dollars in the clean-up and restoration of Silver Bow Creek, and because Butte Area One is upstream of all that work, we would respectfully request that the final plan reflect a strong policy to protect that investment as decisions are made how and where to spend the Butte Area One settlement funds.

5B

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2. Silver Bow Creek Watershed Restoration Plan.

We were also surprised not to see a reference to the Silver Bow Creek Watershed Restoration Plan in the Draft BNRC Process Plan, primarily either in the Guiding Principles or in the Criteria section. The NRDP website describes the plan as follows:

- Final Silver Bow Creek Watershed Restoration Plan (PDF, 315 pages, 16MB), December 2005 - a plan to help prospective applicants for natural resource damage funds and other funds determine the best restoration opportunities in the watershed. In applications for proposals for in the Silver Bow Creek Watershed, applicants need to document the consistency of their proposal with the priorities identified in this plan.

5C

Given all the work that went into the Silver Bow Creek Watershed Restoration Plan, and that Butte Area One is at the headwaters of Silver Bow Creek, and all the discussion

of Silver Bow Creek in the Draft BNRC Process Plan, we would respectfully request that the final plan specifically discuss the Silver Bow Creek Watershed Restoration Plan and include it in the Guiding Principles and the Criteria section.

---

3. Even More Emphasis on Coordinating Remedy and Restoration.

While the third Guiding Principle addresses the coordination of remedy and restoration, and it is mentioned in other parts of the Draft BNRC Process Plan, we would like to see it emphasized to a greater degree, as we think such coordinated remedy and restoration work should generally have the highest priority. Because of our long history of involvement with Silver Bow Creek, we have a particular interest in this regard, and the above-mentioned "partnership" of DEQ, NRDP, and the Greenway Service District with respect to the clean-up and restoration of Silver Bow Creek is an excellent example of what can be done when remedy and restoration are coordinated. On the flip side, numerous remedial activity has taken place in Butte which has not been able to be coordinated with NRDP-funded restoration, because of NRDP's policy not to consider funding restoration projects in BPSOU until the BPSOU Consent Decree is finalized. We would respectfully request that the BNRC further emphasize coordinated remedy and restoration, especially if the Consent Decree is finalized this year as indicated in the Draft BNRC Process Plan.

5D

In this regard, we note that the third Guiding Principle includes the following sentence: "However, the Council discourages the use of restoration funds to conduct actions that should be conducted to accomplish an effective remedy." The phrasing "that should be conducted" is ambiguous, and we would request that the BNRC clarify it to so as not to preclude restoration funds that enhance clean-up. For example, on Silver Bow Creek, the official ROD remedy called for STARS technology to address the Ramsay Flats tailings, but through the above-mentioned "partnership" of DEQ, NRDP, and the Greenway Service District, the Greenway Service District applied for and received restoration funding to have the Ramsay Flats tailings removed in coordination with remedial work, and it resulted in a vastly improved outcome for that area. So we believe the BNRC should be open to opportunities like this, and the above-quoted sentence could create complications in that regard. This could be an important consideration with respect to any decisions on the Parrott tailings.

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4. Clarification of Process for Public Involvement.

While the Draft BNRC Process Plan is generally good as far as describing the process to be followed and the "input points" for public comment, in some places there are some inconsistencies or it is not as clear as it could be, and we would encourage the BNRC to be more precise to avoid any confusion. For example, in the Phase 4 part of the chart on page 15, it indicates public comment won't occur until after the Pre-Draft Restoration Plan goes to the Trustee Advisory Council, but on the bottom of page 13 it states that the BNRC will solicit public input on that plan in the initial stages. It may be helpful to clarify in the document when formal public comment is expected vs. other forms of public input. There are various community groups and individuals that have an active interest in

5E

Project Green Comments  
Page 4 of 4

providing public input, including the Butte Restoration Alliance (and our organization), and it will be helpful to better clarify when and what type (e.g., formal public comments) of public input is contemplated as the process moves forward.

5E

In conclusion, Project Green again commends the BNRC for their efforts to develop the Draft BNRC Process Plan. Thank you for the opportunity to comment and we hope our input is helpful.

Sincerely,

*Brian Holland, President*

Project Green of Montana, Inc.

cc: Project Green Board

# **APPENDIX 2**

## **Public Comments Received After the Public Comment Period**





**BUTTE-SILVER BOW**  
Office of Council of Commissioners  
Courthouse  
Butte, Montana 59701

**RECEIVED**

SEP 21 2011

NATURAL RESOURCE  
DAMAGE PROGRAM

September 15, 2011

Elizabeth Erickson, Chair  
Butte NRD Restoration Council  
Natural Resource Damage Program  
65 E. Broadway Street  
Butte, MT 59701

RE: Butte-Silver Bow Comments  
Butte Area One (BAO) Draft Restoration Process Planning Document

Dear Elizabeth:

Thank you for your June 15 presentation on the draft *Butte Area One Process Planning* document. Per your request for feedback, we present the following comments.

To begin, we want to express our appreciation for the effort to prepare the document, which provides thorough descriptions of where things are at in the process to invest the settlement funds from the Butte Area One claim and of the startup activities of your BNRC. Thanks also for the other substantial work done to date, and in advance, for doing the substantial work that lies ahead.

As for the *Planning* document, a major concern is **the schedule for moving forward**, and particularly having a completed Consent Decree for the Butte Priority Soils Operable Unit as a prerequisite or trigger for restoration action. Obviously, the suspension in the CD negotiations and the recent announcement of a Unilateral Administrative Order to direct certain work activities in Butte presents a direct conflict with the proposed schedule to implement restoration work, and we would ask that you revise the document accordingly.

Additionally, from a broader perspective, we think the schedule and language in the document misplaces emphasis on a need to draw a **distinction between remedial action and restoration activities**. We appreciate and support the position that limited restoration funds should not be used to "*conduct... or fix inadequate remedial actions.*" (p. 7) On the other hand, we don't think it is practical or realistic to presume (as we interpret the language in your document) that there will be a specific point in time when remedial actions will be complete (e.g., maintenance of those actions will be done in perpetuity) and then the results of those actions will be fully clear, so as to wait for restoration work to commence. We think that approach will lead to missed opportunities to blend the dual efforts of remedy and restoration. Like the excellent model used on the combined effort on Silver Bow Creek, and what is planned for a combined effort on the Clark Fork River, there needs to be a combined effort for the Priority Soils area in Butte to maximize the impacts of the funds allocated.

GA

Our suggestion is to rework the language to acknowledge that there is already a basic understanding of what will be accomplished under the remedy (based on the Record of Decision and much of the research the BNRC has done and reported in the document), and simply move forward from there. Certain assumptions can be made with a level of certainty that allows for NRD/BAO investments to be initiated in concert with the ongoing efforts to work out design details on remedial actions.

6A cont.

A related suggestion is to invoke more flexibility in the decision-making process, which, as drafted, appears to mirror a more rigid approach that has been used for the basin-wide restoration effort. We would urge you to develop a structure that allows the BNRC to be more nimble in making recommendations and responding to conditions as opportunities arise. The implementation of the Priority Soils work has been ongoing for the past 20 years, and will continue long into the future with efforts to maintain and sustain the remedial actions. It's time to make the complementary restoration decisions. We would suggest that process to make an "Exception for Expedited Action" as described on page 14 should be the model for action (vs. the exception to a rule).

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Another recommendation is to reduce the number and breadth of the "Criteria" (starting on p.17) proposed to evaluate and rate project proposals. Again, the criteria appear quite similar if not identical to the basin-wide program. Butte-Silver Bow staff have mentioned in the past (based on their experience writing many proposals) that a number of the criteria are somewhat redundant and could be pared down without losing any value in terms of the review process and decision-making on projects.

6B

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In addition, regarding the criteria, the 'Normal Government Function' has always been contentious for Butte-Silver Bow. We appreciate the fact that the criteria are presented in priority order, and this one is last (ergo intended as the one that would have the least consideration to determine approval of a project). Thank you for that. However, in our view, a natural resource restoration project should not be rated as a lower priority just because the project goal happens to match up well with a government function. For example, protecting water quality is a local government function that also happens to be a primary objective of many worthy NRD projects. Instead of downgrading a proposed project that has a connection between the two, we should be encouraging such proposals, like nutrient reduction on Silver Bow Creek. We need to remember, Butte citizens pay (increasing) fees to deal with water quality (i.e., normal government functions), and these same ratepayers have been affected by the impacts of mining; why not ease their burden while achieving water quality restoration objectives.

6C

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We have two additional comments. First, there appears to be a lack of any reference in the document to the Silver Bow Creek Watershed Restoration Plan. This Plan should not be overlooked. Many citizen hours of meetings, comments and participation were invested in the development of that Plan. Those who participated, including several BSB Council of Commissioners members, had expectations that this Plan would guide NRD investment in our area. The BNRC needs to re-visit that Plan and incorporate the recommendations into their efforts and decisions.

6D

Finally, we would urge the BNRC so seek and secure the greatest role possible in the decision making process. On the contrary, the language in the document appears to dilute the BNRC's role (i.e., consultative to NRDP staff, Section 4, p. 21) rather than maximize it. The Governor has entrusted the BNRC to represent the community vigorously and convincingly to direct proactive projects that respond to the citizen expectations. Also, we fully understand that the BNRC is advisory to the Trustee. However, please do not let your role, through the language in this document, be diminished. 6E

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Again, thank you for this opportunity to comment. We look forward to seeing a revised, final version of the Planning Document and to recommendations from the BNRC on exciting natural resource restoration and replacement projects.

Sincerely,



Dave Palmer, Chairman  
Butte-Silver Bow Council of Commissioners  
CC: Governor Brian Schweitzer  
NRD Trustee Council



Paul D Babb  
Chief Executive