CITIZENS TECHNICAL ENVIRONMENTAL COMMITTEE

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Gentlemen,

CTEC's role as a Superfund TAG is to interpret and communicate site-related documents and help citizens understand technical information about their site. CTEC is currently in a position where we can only react to information and decisions which have already been finalized or speculate on what information is being discussed in confidential consent decree (CD) negotiations. It is not our goal or desire to play a reactionary position in Butte's Superfund process.

We have technical expertise and understanding of community concerns which are valuable if they are understood and shared with EPA and responsible parties while data is being evaluated and technical reports being drafted. However, information and data developed by EPA and responsible parties since the 2006 BPSOU Record of Decision have not been transparently shared with CTEC and the public and in many instances has been withheld for years. This backlog of information puts CTEC at a distinct disadvantage because the backlog of information takes considerable time to evaluate and interpret. And because decisions based on that information are already being made by EPA, State of Montana, and the settling defendants.

We understand the limitations that exist when faced with complex remedy decisions. We have a record of effective collaboration with the Agencies and PRPs — our technical advisors Steve Ackerlund participated in the recent health study (evaluation of blood lead levels in Butte children). Since the 1990s, our technical advisors, Ian Magruder and Scott Payne, have collaborated with EPA and DEQ to discuss technical information and find common ground. Together with our technical advisors the CTEC Board and associates can bring considerable expertise to the issues at hand.

The Agencies will gain a greater level of trust and confidence from the Butte community by including CTEC technical advisors in ongoing technical discussions, including the technical impracticability discussions.

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CTEC believes there is one overarching question that summarizes the majority of public concern with the final remedy that will be defined in the upcoming CD. How well will the remedy protect Blacktail and Silver Bow Creeks from mining related metals, given a waste-in-place remedy, and given that the remedy must be effective long into the future?

The remedy's effectiveness is and will be measured by whether the stream meets standards as specified in ARARs, or standards as modified by a technical impracticability waiver. The remedy will also be measured by whether or not the public feels they have been treated fairly and that Butte has received the same level of attention, transparency, and cleanup effectiveness and permanence as has been provided to other communities in Montana and the Nation.

Thoroughly evaluating the up-to-date surface water dataset is key to understanding the ability of the remaining remedy measures to bring Blacktail and Silver Bow Creeks into compliance. CTEC is concerned that EPA's has a poor record of managing its own iterative process, as described in the 2006 Record of Decision. The process of annually monitoring, validating and analyzing surface water data to assess the progress of the remedy and determine what additional measures should be required — is seriously lacking. Whereas this process was robust on paper in the Record of Decision the actual implementation to date shows that EPA's follow through was a bust.

- To date, only one of the specified annual surface water analysis has been completed. The 2008 *Surface Water Characterization Report* was a fairly thorough evaluation that pointed to additional analysis (data gaps) that should have been included in revisions to the *2007 Interim Monitoring Plan*. Those modifications were never incorporated. Instead, EPA has allowed BP/AR to control revisions to the IMP, where they commonly ignored joint EPA/DEQ input.

- The 2008 through 2013 annual surface water data summary reports weren't submitted until 2015. The first step, and maybe the most important step in EPA's iterative process, is insuring that the data collected in the previous year is valid so there can be confidence in the foundation for assessing remedy's progress and guiding next remedy steps.

- When in 2010, EPA and their contractor CDM met with DEQ to discuss ongoing surface water evaluations and what techniques the Agencies should use to assess compliance and pinpoint locations for effective remedy, DEQ was informed that CDM was not allowed to openly discuss the evaluations with DEQ. One result of this collaborative vacuum is that we still await a second surface water characterization report.

We cannot overemphasize the importance of the remedy decisions that will be finalized in the CD — to this community and to the long-term health of Blacktail and Silver Bow Creeks. The CD will set those decisions in stone and Butte will live with those decisions forever. CTEC believes there is much greater need to be open and honest with the public than to meet arbitrary CD deadlines.

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While CTEC was anxiously awaiting a second surface water characterization — we were aware that EPA and DEQ were exchanging drafts — we learned that a draft of this critical evaluation had been provided to BP/AR. It is CTEC's understanding that EPA and the State can legally collaborate confidentially under their memorandum of agreement, but that technical documents, released to the PRPs, are public drafts that are not covered under the court ordered confidentiality for CD negotiations. Our understanding would seem to be justified by the fact that we receive BP/AR technical documents as they are released to the Agencies.

It is CTEC's opinion that the Agencies are overreaching in their interpretation of what is covered under the court ordered confidentiality. When EPA Montana announced in April of this year that CTEC would have a seat at technical discussions regarding the CD and when EPA Region 8 Administrator Shaun McGrath promised a new level of transparency we believed CTEC would be included in the stream of technical information earlier in its development. We believe that the public and the long-term health of Silver Bow Creek is better served with transparency regarding technical information and conclusions drawn from such.

As such, we here request that Federal and State legal representatives provide CTEC with their legal opinion on whether technical documents and technical discussions are covered under court ordered confidentiality. And whether CTEC's technical representatives have a legal right to participate in technical discussions that will affect final remedy decisions.

Considering that EPA continues to state publically that a CD is imminent, CTEC request a response to this letter within two weeks.

Sincerely,

R. David Williams, CTEC President

Ian Magruder, CTEC Technical Advisor

Joe Griffin, CTEC Technical Advisor