April 18, 2019

To the CD Parties:

Restore Our Creek Coalition (ROCC) thanks the responsible Consent Decree (CD) parties for responding to our letter of "Asks" submitted to you on November 19, 2018. While we are comfortable with some of your responses to our "Asks," we are also discouraged by some of the positions taken in your letter. We have attached a chart that responds in detail, point by point, to your responses to our "Asks." That chart should be the basis of our continuing and timely discussions.

We would also like to address a few over-riding concerns here in this cover letter, which should also be part of our discussions.

First and foremost, we are quite surprised and dismayed by your continued reference to a restored, lined Silver Bow Creek running from Texas Avenue to its confluence with Blacktail Creek near Montana Street, flowing at the level of Blacktail Creek, as a "lined water feature." There are several small recirculating 1cfs "water features" within your suggested designs of Buffalo Gulch and Diggings East, but it is inappropriate to refer to the aforementioned restored, lined Silver Bow Creek from Texas Avenue to the confluence as a "lined water feature."

Second, throughout the letter you use the term "if" when it comes to the availability of water for a lined Silver Bow Creek designed to flow at a rate similar to Blactail Creek. Our water volume analysis, technically assisted by the Montana Bureau of Mines and Geology, demonstrates that adequate water is available. It is not a question of "if," but, assuming the parties agree, only a question of "when." We would appreciate it if future references to water availability use the term "when" rather than "if," as that better reflects the reality of the situation since we believe all CD parties are dedicated to the creation of a lined creek. We'd be glad to provide a copy of that water analysis.

Third, the essence of our "Asks" is that the CD parties provide "proof" for statements the CD parties repeatedly made in 2018 and live up to the contention that remedy and restoration under the Agreement in Principle (and subsequent CD) "**do not preclude**" a flowing, lined creek through the corridor. Starting with the EPA's Doug Benevento, the CD parties have repeatedly asserted throughout 2018 that the Agreement in Principle "...**did not preclude"** a flowing creek through the corridor. Given the history of Butte, our community cannot accept a rhetorical "trust us" when it comes to this restoration. We need and deserve "proof," for our request. However, the response in your letter of April 10, 2019 does not takes us on a path that provides "proof" to the people of Butte, and the response actually suggests just the opposite. As you rejected our request for "engineering and design to demonstrate the feasibility of a lined channel [creek] from Texas Avenue to ... Blacktail Creek," the best you could assert was that you believed "that PORTIONS of such a channel [creek] ARE TECHNICALLY FEASIBLE AND PRACTICABLE to pursue." Inherent in your language is that you must believe that OTHER PORTIONS of the channel [creek] ARE NOT FEASIBLE (capitalization emphasis added). You are effectively saying that a continuous creek cannot be done, in direct contradiction of the "does not preclude" statement the CD parties have repeatedly made. And yet you reject the engineering and design request – the opportunity for "proof" if you will -- and ask us to believe that in the long run things will work out. That "trust us" approach is not acceptable. Again, our request is simply that you back up your previous statements to the community with proof that the agreement "will not preclude" a meandering creek and that your statements are real and not just rhetoric.

The "good faith" effort you refer to requires that from this point forward we are all much more expeditious in coming to agreement. Time is of the essence and we must approach our continuing discussions with that in mind. Note that we have responded to your communication in 8 days, not 142. We are sensitive to the fact that any delays will constrain our ability to come together and we recognize that inordinate delay will limit our collective ability to resolve differences and could effectively negate the "good faith" that we, and the people of Butte for whom we toil, have invested in this process. We hope, as your letter states, that you are equally dealing with us in good faith and not just slow-walking us until the time runs out.

We would like to meet with you immediately to discuss and resolve our differences so the community of Butte in the future is not confronted with a "sorry, it can't be done" announcement after accepting at face value the assertions that the CD would "not preclude" the creek. Please let us know a good time for you as soon as possible.

Again, all we're asking for is a relatively low-cost feasibility design to establish proof for statements repeatedly made last year. The old adage, "trust but verify" is critical at this stage to validate the credibility of statements made and critical to Butte's future.

Thank you for your willingness to continue this process with ROCC that considers the input from thousands of Butte folks who have joined in the ROCC effort. You have responded to their voices in the past and we urge you to continue to do so.

Sincerely,

Northey Tretheway

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Spokesperson,
Restore Our Creek Coalition (ROCC)

ROCC "ASKS" Letter of 11/19/2018	ROCC Comments to 4/11/2019 Reply Letter from the CD Parties
Ask # One-A All parties commit to "facilitate" the future restoration of Silver Bow Creek, similar in flow to Blacktail Creek, in a **continuous corridor from Texas Avenue to its confluence with Blacktail Creek west of Kaw Avenue**. We understand that AR maintains that "facilitation" does not include a responsibility to fund and further understand that AR will insist on language for the CD that makes their point clear.	The letter does not show a commitment to a future creek in a "continuous corridor." A collective review of the language and the schematics shows a lack of creek continuity in that nothing is shown or addressed in your language or drawings relative to: • going from the west edge of the ARCO-designated Eastside Diggings creek area under Kaw Street and the walking path to a confluence with Blacktail Creek; • the stretch from George Street to Casey Street, including portions of the Northside Tailings; • the area from the east edge of Northside Tailings to Harrison Avenue; and • the area from west end of the Parrot Tailings boundary alongside the Civic Center west to Harrison Avenue. This fragmented approach by the separate CD parties is totally inconsistent with our collective pledge to approach this creek challenge in a comprehensive and unified manner all the way from Texas Avenue to the confluence.
Ask # One-B All parties commit to "facilitate" the future restoration of Silver Bow Creek, **similar in flow to Blacktail Creek**, in a continuous corridor from Texas Avenue to its confluence with Blacktail Creek west of Kaw Avenue. We understand that AR maintains that "facilitation" does not include a responsibility to fund and further understand that AR will insist on language for the CD that makes their point clear.	The letter shows no commitment to a future creek with a flow similar to Blacktail Creek. In fact there is no reference to flow levels anywhere in the response document. Further, the response hedges on the availability of any water at all by constantly referring to "if" water is available, rather than "when" water is available (Water is available in the amounts indicated - see discussion in body of cover letter).

ROCC "ASKS" Letter of 11/19/2018	ROCC Comments to 4/11/2019 Reply Letter from the CD Parties
Ask # Two-A The **commissioning of a formal conceptual design and necessary engineering (essentially producing a positive feasibility analysis of the creek project)** will be done as a way to demonstrate to the community that the restored creek within that corridor can actually be accomplished in a manner that does not conflict with AR's remedy plans as outlined in the CD. The design and engineering needs to be undertaken as soon as possible so that the product can be embodied in the CD as described in #4 below. ROCC commits to immediately provide a draft creek alignment … and agrees to cooperate with the engineering analysis.	The letter completely dismisses the commissioning of design & engineering/feasibility even as CD parties arbitrarily and without evidence effectively say that "portions" of the creek are not "technically feasible." If that undocumented assertion is accepted *carte blanche* then it effectively renders such a request moot forever as you have already been determined, without evidence, that portions of a creek route are not feasible. We assume the CD parties' reference to "practicability" may relate partially to cost. Comments on that are included in "Additional Items" comments in text below.
Ask # Two-B The commissioning of a formal conceptual design and necessary engineering (essentially producing a positive feasibility analysis of the creek project) will be done as a way to demonstrate to the community that the restored creek within that corridor can actually be accomplished in a manner that does not conflict with AR's remedy plans as outlined in the CD. **The design and engineering needs to be undertaken as soon as possible** so that the product can be embodied in the CD as described in #4 below. ROCC commits to immediately provide a draft creek alignment along with the Headwaters Park Plan, agrees to participate in the further design effort and agrees to cooperate with the engineering analysis.	The letter says "further schematic design or engineering" is not "timely and practicable." However, CD parties make that assertion after failing to advance such efforts for the full 142 days it took for the CD parties to respond to our November 19, 2018 "Ask" document. Such design & engineering/feasibility could have been done by now if CD parties had not been resisted the effort. Since we specifically asked that the design and engineering-feasibility "be undertaken as soon as possible," we cannot allow the passage of inordinate time without you acting upon our request to diminish the possibility of proceeding in this important step. We need to proceed forthwith.
Ask # Two-C The commissioning of a formal conceptual design and necessary engineering (essentially producing a positive feasibility analysis … can be embodied in the CD as described in #4 below. **ROCC commits to immediately provide a draft creek alignment along with the Headwaters Park Plan, agrees to participate in the further design effort and agrees to cooperate** with the engineering analysis.	We regret that by arbitrarily rejecting the request for a design and engineering/feasibility effort the CD parties have shown no interest in even seeing the draft creek alignment that we have prepared. We remain willing to provide such draft creek alignment to a process that is real and likewise remain available to cooperate in a legitimate effort.

ROCC "ASKS" Letter of 11/19/2018	ROCC Comments to 4/11/2019 Reply Letter from the CD Parties
Ask # Three That as the design and engineering of the creek proceeds, AR **consider ways to realign the storm water basins in the Diggings East to provide better "meandering" opportunities** for the restored creek as long as any such realignment does not impede the remedy itself.	We are appreciative of the area in the Diggings East that AR has identified for future creek flow. That area is roughly congruent with the area we have been discussing with AR since last year. However (see Ask # One-A above) that designated area does not go far enough to the north on the east edge of Diggings East nor does it go far enough to the southwest to enable a confluence with Blacktail Creek. Further, we have seen no indication that AR made any effort "to realign the storm water basins in the Diggings East to provide better "meandering" opportunities" as requested in this "ask." We look forward to discussion of this with AR. Interestingly, AR acquisition of the private land peninsula near the southeast edge of Diggings East would, in and of itself, guarantee better opportunities of meandering in the future.
Ask # Four The resulting conceptual and engineered **design along the Silver Bow Creek corridor be included as language in the CD, and mapped out graphically as an attachment to the CD** as presented for public comment. While the design will be for the full length of the creek from Texas avenue westward, the design and engineering would be done with the acknowledgement that under the CD storm water remedy AR maintains that the portions of the creek corridor above Casey Street are not AR's responsibility. The portions of the creek corridor above Casey Street are included as a way to fully demonstrate the viability of the design for the full length of the restored Silver Bow Creek.	A comprehensive and coordinated design from Texas Avenue to a confluence with Blacktail Creek is the outcome we are seeking and also to have that done in a timely enough way to become part of the language and attachments to the CD itself as a way to better insure its accomplishment in the future. Regretfully, the apparent effort to split the area among CD parties makes it harder to be comprehensive and coordinated. There should be a way acceptable to all parties to provide a continuous design while protecting the legal interests of each CD party. Finally, the outright arbitrary rejection of the request for engineering/design and the fact that the CD parties took 142 days to respond to our "asks" makes it difficult for us to accomplish this "ask." We need to put all of our shoulders to the wheel immediately so that this "ask" can be met (See "ASK # 2B" above.)

Additional Items not with Our "Asks"

Interest Bearing Account and Other Money Issues
We appreciate the effort of the CD parties to "set aside a certain amount of funding in an interest-bearing account that could be used as a match" for future construction. This effort represents the kind of positive and creative approaches that should hallmark all of our efforts. Regretfully, that positivity and creativeness has not been applied to other major issues as you can see from the above chart.

In addition, proceeding with such an account while at the same time refusing to do an engineering and design effort to determine feasibility creates a situation where funds may be set-aside into an account for future construction of a lined creek which, based upon the CD parties' belief that portions of it are not "technically feasible" makes the existence of such an account a hollow shell. In this case, the cart is clearly before the horse, and will remain so.

If we want to place the horse before the cart, where it belongs, we need to immediately take some of the funds anticipated to go to the interest-bearing account and apply them to the timely development of engineering and design that would provide proof that the remediation and restoration actions going into the CD "do not preclude" the future location of the lined creek through the corridor. That also happens to be the core of our "asks."

Cost of Engineering and Design Effort
The cost of the proposed engineering and design effort is minimal when compared to the cost of all the planning and work that is being done and anticipated for the future. We have researched that cost as have some of the CD parties. Investment of that small amount at this time is prudent, given the import of having a "proof" of future creek location. Trying to save a dollar today appears to insure that a creek will never be done as the people of Butte are left with only the option of trusting for the future instead of proving the possibility of a future creek. Let's do this right.

ROCC Obligation to Pay for Items
There is a suggestion in the letter that a "project proposal [might be] … funded by ROCC …" The Restore Our Creek Coalition does not have any capacity to fund any of these projects. That has never been our purpose. Our purpose is community mobilization, planning and representation. While we might be involved a helping delineate some possible future funding sources, let us be perfectly clear that ROCC is not a funding entity.