

TO: UCFRB Advisory Council Members, Public

CC: NRDP Staff

FROM: Doug Martin

DATE: February 12, 2016

SUBJECT: *UCFRB Aquatic and Terrestrial Resources Restoration Plans*, Revision Schedule and Process for SSTOU/SBC Excess Remediation Funds

Purpose and Background

The *Final Upper Clark Fork River Basin Interim Restoration Process Plan, 2012 (Process Plan)* sets forth the process for development of the resource-specific restoration plans that dictate the expenditures of UCFRB Restoration Fund in the future. The *Process Plan* requires a revision to the *UCFRB Aquatic and Terrestrial Resources Restoration Plans (Restoration Plans)* for the allocation of Streamside Tailings Operable Unit (SSTOU) excess funds once the Department of Environmental Quality (DEQ) has completed the major remediation construction activities.¹

In November 2015, DEQ determined that a transfer of \$16.5 million in excess from the SSTOU/SBC Remediation Fund was available for transfer into the UCFRB Restoration Fund. DEQ's determination was approved by EPA in January 2016.²

The *Process Plan*, Section 7.3 states:

SSTOU/SBC Excess Funds Reserve

Consistent with the Long Range Guidance Plan, should there be any unexpended money in the SSTOU/SBC Remediation Fund, that excess will be transferred to the general UCFRB Restoration Fund and allocated to a reserve fund for specific projects to be determined based on the overall status of the restoration of resources and services within the Upper Clark Fork River drainage at and above Deer Lodge, with the Cottonwood Creek drainage being the northern boundary, including the Silver Bow Creek and Warm Springs Creek drainages. Future

¹ SST OU Consent Decree paragraph 15.e states, "Any funds, including Earnings, in the SST OU Account which the United States and the State determine, pursuant to the [Site Specific Memorandum of Agreement], are not required for Future Response Costs and implementation of any modification of the ROD incurred by EPA or the State (including reasonable estimates for O&M) for the SST OU shall be transferred to the State's Upper Clark Fork River Basin Restoration Fund, established pursuant to paragraph 16 of the State CD."

² See attached letters.

distribution from this reserve of restoration funds should be designated for additional unfunded restoration of aquatic and terrestrial resources in these upstream areas, keeping in mind the allocation priorities set forth in the Long Range Guidance Plan and, particularly, the Aquatic and Terrestrial Prioritization Plans, and the recognition that the UCFRB areas at and upstream of Deer Lodge are the most severely injured.

The Montana Department of Environmental Quality (DEQ), which is leading the Silver Bow Creek remediation effort, anticipates that major remediation construction activities will be completed by 2014. Following that, the State will determine what unexpended money would be available for transfer to the UCFRB Restoration Fund, after taking into consideration the funds needed for future remediation operation and maintenance and monitoring needs. Pursuant to the 1999 Consent Decree for the Streamside Tailings Operable Unit, which provides for Silver Bow Creek remediation, the State's determination of what amount can be transferred to the UCFRB Restoration Fund is subject of approval by the U.S. Environmental Protection Agency.

The State will defer developing a restoration plan specific to the expenditure of these excess remediation funds until the amount to be transferred to the UCFRB Restoration Fund is known. This future plan would be subject of the standard restoration planning review and approval process specified in Section 2. The reimbursement provisions in the Long Range Guidance Plan for the Silver Bow Creek Greenway project described in Section 7.1 above would take first priority over any other expenditure of these excess remediation funds. The transfer of the excess amount to the UCFRB Restoration Fund would also trigger an associated update/revision to the Aquatic and Terrestrial Restoration Plans.

Review and Approval Processes and Public Participation

Similar to the *2012 Restoration Plans* and the *2015 Update*, the *SSTOU/SBC Excess Remediation Funds Revision* will be developed pursuant to the *Process Plan*, and be subject to the review and approval steps described in the *Process Plan*. The *SSTOU/SBC Excess Remediation Funds* revision will be subject of a public comment period of at least 30 days and consideration by the Advisory Council and the Trustee Restoration Council (TRC). Following consideration of public input and the recommendations of these two councils, the Governor will make the final decision on the *SSTOU/SBC Excess Remediation Funds Revision*.

This review and approval process provides multiple opportunities for meaningful public participation. The public has the opportunity to provide public comments on the draft revision during the designated comment period, and also at the meetings of the Advisory Council and TRC at which this revision is considered. Input from the Advisory Council also serves as an avenue of public input.

Schedule for Revision to the Restoration Plans to Allocate the SSTOU/SBC Excess Remediation Funds

The *SSTOU/SBC Excess Remediation Funds Revision* is subject to a 30-day public comment period for the *SSTOU/SBC Excess Remediation Funds Revision* scheduled for February 12 through March 14, 2016. The Advisory Council and TRC will consider public comment and make recommendations to the Governor on proposed final revision in April 2016 with a decision by the Governor to follow. [Note: dates subject to change.]

UCFRB Restoration Plans Revision for SSTOU/SBC Excess Remediation Funds – Allocation of \$16.5 million

1. Silver Bow Creek Greenway Project \$8 Million Set-Aside

Consistent with Section 7.1 of the Process Plan (Silver Bow Creek Greenway Project) referenced in Section 7.3 above, the State proposes that \$8.0 million of the \$16.5 million be used to reimburse the Aquatic and Terrestrial Resources funds for the Silver Bow Creek Greenway project \$8.0 million set-aside. The Process Plan states that 60% (or \$4.8 million) of the unexpended money from the SSTOU/SBC Remediation Fund reimburse the Aquatic Fund and 40% (3.2 million) reimburse the Terrestrial Fund. The State proposes that these funds be placed in Aquatic and Terrestrial Resources Reserve Funds to be allocated to aquatic and terrestrial resources during the next Restoration Plans revision scheduled to commence in 2018.

2. Parrot Tailings Waste Removal Reserve - Remaining \$8.5 Million

The State proposes to place the remaining \$8.5 million in a special reserve account to fund a portion of the Butte Area One Restoration Plan Amendment – Parrot Tailings Waste Removal, issued in draft in December 2015, for removal of tailings along Silver Bow Creek associated with the former Parrot Smelter, should the amendment be approved by the Governor³. The \$8.5 million would be expended on a pro rata basis with the first \$8.5 million allocated in the 2012 Butte Area One Final Restoration Plan (BAO Plan) for restoration of Upper Silver Bow Creek.

A major component of the BAO Plan is restoration of the Upper Silver Bow Creek corridor, which is above the confluence with Blacktail Creek and includes the Parrot Tailings waste removal area. The BAO Plan calls for removal of mine wastes left in place along the floodplain of Upper Silver Bow Creek through Butte Area One. The BAO Plan identifies these wastes, which include the Parrot Tailings, Diggings East, Northside Tailings, and other isolated areas of mine wastes in the Blacktail and Upper Silver Bow Creek floodplains, as the primary sources supplying inorganic contaminants to the alluvial groundwater, surface water, and in-stream sediment resources within the Upper Silver Bow Creek corridor. However, an estimated \$26-34 million of the Upper Silver Bow Creek work remains unfunded.⁴

³ <https://dojmt.gov/lands/butte-area-one/>

⁴ The BAO Plan estimated \$30 million for restoration activities in the Upper Silver Bow Creek corridor. The more recent Preliminary Conceptual Restoration Plan for Butte Area One (February 2015) estimated the Upper Silver Bow Creek work at \$36.3 - \$44 million. The BAO Plan allocated \$10 million to those activities, and requested a match from other sources to complete the project. The State believes that a significant portion of the Upper Silver Bow Creek corridor work is a responsibility of remedy, and expects a remedy funding contribution as part of any upcoming Butte Priority Soils Operable Unit consent decree. The State retains and reserves all rights and authorities, including, but not limited to, those related to the BPSOU Record of Decision and BPSOU potentially responsible parties. This includes, but is not limited to, the groundwater and surface water components of the BPSOU Record of Decision remedy.

The Parrot Tailings project meets the criterion set forth in Section 7.3 of the Process Plan for the use of the SSTOU/SBC Remediation Excess fund for, “specific projects to be determined based on the overall status of the restoration of resources and services within the Upper Clark Fork River drainage at and above Deer Lodge, with the Cottonwood Creek drainage being the northern boundary, including the Silver Bow Creek and Warm Springs Creek drainages.” The Parrot Tailings area is located within the Silver Bow Creek drainage, and the resources and services provided remain affected.

The Parrot Tailings project would also meet the criterion established for the SSTOU/SBC Remediation Excess funds that, “Future distribution from this reserve of restoration funds should be designated for additional unfunded restoration of aquatic and terrestrial resources in these upstream areas, keeping in mind the allocation priorities set forth in the Long Range Guidance Plan and, particularly, the Aquatic and Terrestrial Prioritization Plans, and the recognition that the UCFRB areas at and upstream of Deer Lodge are the most severely injured.” The Parrot Tailings project will help the State meet the goals of both the Restoration Plans and the BAO Plan by improving water quality, streambed sediments, and the ultimately the fishery of Silver Bow Creek.



Kristine Edwards
 US EPA
 Region VIII, Montana Office
 10 West 15th St., Suite 3200
 Federal Building
 Helena, Montana 59626

November 30, 2015

Re: Streamside Tailings Operable Unit Remedy Implementation and Costs

Dear Ms. Edwards:

The Montana Department of Environmental Quality (DEQ), in cooperation with the Environmental Protection Agency (EPA), has recently completed most major construction activities for the remedy of the Streamside Tailings Operable Unit. We just opened the bids on the sub-area 1 construction contract, with sub-area 2 construction planned, are now in a good position to estimate the remaining costs for the project. During the next two years, as the final remnant area removals are being completed, we anticipate completing the additional steps to fully transition into Operation and Maintenance (O&M).

DEQ has recently completed development of an O&M plan, the January 2015 Site Inspection Monitoring and Maintenance Plan, as well as the September 2015 Interim Performance Standards Assessment, which have been provided to EPA. Additional items that DEQ is continuing to work on include development and implementation of institutional controls and construction completion reporting documentation, which will require a final walk-through with EPA. We anticipate scheduling that final walk through in the spring of 2016.

With significant heavy construction activities completed, the State undertook a review of anticipated future work scope and estimated the costs associated with those actions. For SFY-2016 planned work is estimated at \$5,602,000. In the near-term, maintenance items, such as remnant tailings removal, road removal, DEQ and EPA management costs, routine monitoring and maintenance, potential revegetation activities and other potential as-yet-unidentified maintenance items, as well as costs for the institutional controls and addressing anticipated five-year review recommendations, have been estimated for DEQ budget development support for State Fiscal Years (SFY) 2017 through 2021. This timeframe represents years one through five of a thirty-year O&M program. Estimated budgets for O&M years 6 through 15 and years 16 through 30 have also been completed.

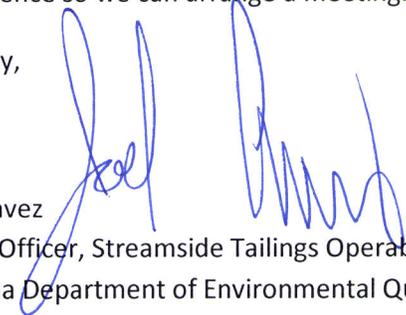
Timing	Gross Estimated Budget (@3% discount rate)
Present Values of Years 1-5 Future Costs	\$ 11,017,735
Present Values of Years 5-15 Future Costs	\$ 7,674,632
Present Values of Years 16-30 Future Costs	\$ 3,884,891
Total Estimated Costs (@ 3% discount rate)	\$ 22,577,258

Costs for management, administration, monitoring, sampling, reporting, and weed control are considered predictable for the budget estimating processes. These costs will span the thirty years of activities anticipated, and include an assumption that costs should decrease over time. Those reductions are reflected in project years 16 to 30. Other, less certain costs have also been included and are based on our overall work history with clean up actions in the basin, experience with repairs and maintenance in the riparian environment and published references. We do assume these less certain costs will also reduce over time and those reductions are also shown in years 16 to 30. Due to the inherent uncertainty of a 30 year budget estimate a contingency amount is embedded in the estimates.

In summary, the projected cost of the final remedial actions and O&M, if fully expended, is presently estimated to not exceed approximately \$22.5 million, based on a 3% discount rate. Accordingly, DEQ has determined that there is an excess of \$16.5 million available in the SSTOU Fund for transfer to the State's Upper Clark Fork River Basin Restoration Fund in accordance with Paragraph 15.e of the Streamside Tailings Operable Unit Consent Decree and the last paragraph of Section 25 of the November 1998 Site-Specific Superfund Memorandum of Agreement (SMOA) between our two agencies for the Streamside Tailings Operable Unit. As provided in the Consent Decree and SMOA, the transfer of such excess funds to the Restoration Fund requires EPA approval.

DEQ would like to meet with EPA by December 10th to present and discuss our estimates and answer any questions regarding the scope and predicted costs of the State's final actions and near and long term O&M obligation to maintain and protect the remedy of the Operable Unit. Our goal is to transfer the funds by end of the calendar year to support other planned work. Please call me (444-6407) at your convenience so we can arrange a meeting.

Sincerely,


Joel Chavez
Project Officer, Streamside Tailings Operable Unit
Montana Department of Environmental Quality

cc: Joe Vranka, EPA
Henry Elsen, EPA
Thomas Stoops, DEQ 
Jenny Chambers, DEQ
Bill Kirley, DEQ
File



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

Ref: 8EPR

JAN 29 2016

Jenny Chambers, Director
State of Montana
Department of Environmental Quality, Remediation Division
1225 Cedar Street
P.O. Box 200901
Helena, MT 59620-0901

Re: Excess Fund Declaration for the Streamside Tailings operable unit remediation fund

Dear Ms. Chambers:

The U.S. Environmental Protection Agency (EPA) has reviewed the November 30, 2015 letter from Mr. Joel Chavez of the Montana Department of Environmental Quality (MDEQ) to Kris Edwards of EPA regarding the Streamside Tailings operable unit remediation fund (SST OU Remediation Fund). EPA agrees that there is a sufficient basis to declare an excess of funds in the SST OU Fund, such that \$16.5 million may be transferred by the State from the SST OU Remediation Fund to the Upper Clark Fork Basin Restoration Fund. This release would be appropriate under subparagraph 15.e. of the Streamside Tailings Operable Unit and Federal and State Natural Resource Damage Consent Decree, and paragraph 25 of the SST OU Site-Specific Memorandum of Agreement.

EPA's understanding is that some of this money may be used by the State natural resource damage program for the removal of the Parrot Tailings within the Butte Priority Soils operable unit, using the State's CERCLA and CECRA natural resource damage authority, if appropriate consultation and approval is obtained. EPA is supportive of this effort, and looks forward to working cooperatively with MDEQ and the Montana Natural Resource Damage Program on the timely implementation of that project.

Sincerely,

A handwritten signature in black ink that reads "Martin Hestmark".

Martin Hestmark, Assistant Region Administrator
Ecosystems Protection and Remediation



Printed on Recycled Paper

cc: Shaun McGrath, EPA
Deb Thomas, EPA
Joe Vranka, EPA
Henry Elsen, EPA
Kris Edwards, EPA
Nikia Greene, EPA
Jim Freeman, US DOJ
Tom Livers, MDEQ
Jenny Chambers, MDEQ
Tom Stoops, MDEQ
Joel Chavez, MDEQ
Daryl Reed, MDEQ
Bill Kirley, MDEQ
Jon Morgan, MDEQ
Harley Harris, NRDP
Mary Capdeville, NRDP
Jim Ford, NRDP
Pat Cunneen, NRDP

