

Message

**From:** Foley, Dan [dfoley@bsb.mt.gov]  
**Sent:** 5/7/2018 4:51:25 AM  
**To:** Rick Walsh [Rpwalsh@charter.net]; Fritz Daily [buttedaily@bresnan.net]  
**CC:** Kelly, Albert [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08576e43795149e5a3f9669726dd044c-Kelly, Albe]; Mutter, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7446c126af5d4888a569472e8b53542b-Mutter, And]; <doug.benevento@epa.gov> [doug.benevento@epa.gov]; Bill Macgregor [Ex. 6] <COKrusch@mtech.edu> [COKrusch@mtech.edu]; Perdue-Dolan, Cindy [cpdolan@bsb.mt.gov]; Shaw, Cindi [cshaw@bsb.mt.gov]; Daniel Hogan [hogan@mtcompact.org]; David McCumber [david.mccumber@mtstandard.com]; <bmcDonough@bresnan.net> [bmcDonough@bresnan.net]; <banderson@bsb.mt.gov> [banderson@bsb.mt.gov]; Don Peoples [dpeoples@bresnan.net]; Doug Coe [DCoe@mtech.edu]; Ed Simonich [Ex. 6] Elizabeth Erickson [eerickson@wet-llc.com]; Erik Nylund [erik\_nylund@tester.senate.gov]; <fiskcm@butte.k12.mt.us> [fiskcm@butte.k12.mt.us]; Imagine Butte [Ex. 6] JAMES Madison [mdsnjames@msn.com]; Fisher, James [jfisher@bsb.mt.gov]; Jim Kambich [jim.kambich@merdi.org]; Jim Keane [d.keane@bresnan.net]; Jim Robbins [jimrobbins@mt.net]; <JMetesh@mtech.edu> [JMetesh@mtech.edu]; John Emeigh [jemeigh@kxlf.com]; John Malia [jmalia@mt.gov]; Joselyn Dodge [Ex. 6]; Sullivan, Karen [ksullivan@bsb.mt.gov]; [Ex. 6] [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=589fe5c32f204d4fab99c0f315600b1f-[Ex. 6] Mary Jo McDonald [Ex. 6] Mary Kay Craig [Ex. 6] Michelle Shea [Ex. 6] Mick Ringsak [Ex. 6] <ochenski@mt.net> [ochenski@mt.net]; Pam Haxby-Cote [pam.haxbycote@mt.gov]; Patrick Dudley [Ex. 6] Ray Rogers [rrogers@mtech.edu]; Ray Robins [rayr@seacast.com]; Shelly Davis [Shelly@MicheleKDavisPLLC.com]; Ron Davis [rondavis@kbowkopr.com]; <speechray@in-tch.com> [speechray@in-tch.com]; Sophie (Daines) Miller [Sophie\_Miller@daines.senate.gov]; Malloy, Tom [tmalloy@bsb.mt.gov]; Vince Fischer [vfischer348@bresnan.net]; Palmer, Dave [dpalmer@bsb.mt.gov]; Dr. Dan Harrington [danielharrington\_phd@comhssl.net]  
**Subject:** Re: Judge Hadden Phone Conversation

Rick,

I have never met you, but I will gladly answer your question. Yes, Jon Sesso is the BSB Superfund Coordinator. Sesso retired as the BSB Planning Department Director last year, but stayed on in a part-time position as the Superfund Coordinator. Lori Casey is now the Director of the Planning Dept. Sesso reports to the Chief Executive. He oversees all the Superfund activities for BSB and has done this for many years. However, it was part of his extra duties as Planning Director. Chief Executive Palmer created this part time position in the budget last year and it was supported by the majority of Commissioners. I did not support this or any other new position for financial reasons. Palmer made the pitch that he wanted to retain Sesso's vast knowledge on Superfund issue for a few more years before he fully retired. I'm sure Palmer or Sesso himself would answer any further questions you may have.

I hope this helps.

Thanks,

Dan

Dan Foley, BSB Commissioner –District #9  
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dfoley@bsb.mt.gov

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**From:** Rick Walsh <Rpwalsh@charter.net>  
**Sent:** Wednesday, May 2, 2018 7:34:00 AM  
**To:** Fritz Daily

**Cc:** Albert Kel Kelly; Andrew Mutter; <doug.benevento@epa.gov>; Bill Macgregor; <COkrusch@mtech.edu>; Perdue-Dolan, Cindy; Shaw, Cindi; Daniel Hogan; David McCumber; Foley, Dan; <bmcdonough@bresnan.net>; <banderson@bsb.mt.gov>; Don Peoples; Doug Coe; Ed Simonich; Elizabeth Erickson; Erik Nylund; <fiskcm@butte.k12.mt.us>; Imagine Butte; JAMES Madison; Fisher, James; Jim Kambich; Jim Keane; Jim Robbins; <JMetesh@mtech.edu>; John Emeigh; John Malia; Joselyn Dodge; Sullivan, Karen; Mark Sweeney; Mary Jo McDonald; Mary Kay Craig; Michelle Shea; Mick Ringsak; <ochenski@mt.net>; Pam Haxby-Cote; Patrick Dudley; Ray Rogers; Ray Robins; Shelly Davis; Ron Davis; <speechray@in-tch.com>; Sophie (Daines) Miller; Malloy, Tom; Vince Fischer; Palmer, Dave; Dr. Dan Harrington

**Subject:** Re: Judge Hadden Phone Conversation

Fritz - Thanks for the update. I see the article in today's Montana Standard about Kelly leaving the EPA still lists Jon Sesso as Butte's Superfund Coordinator. Does anyone know if that's true, what exactly are the duties and responsibilities of the Coordinator and who does the Coordinator report to?

Perhaps one of the Commissioners on this email would try to answer that question for me.

Thank you.

Rick Walsh

Sent from my iPhone

On May 1, 2018, at 12:38 PM, "Fritz Daily" <[buttedaily@bresnan.net](mailto:buttedaily@bresnan.net)> wrote:

Hi all,

Shocked to hear that Kel Kelly resigned today. While I know some will disagree with me, I am truly disappointed. I think it is a setback for opening the Consent Decree Talks and I think his resignation is a loss for Butte in moving forward to get the cleanup and restoration we need and are entitled to receive under Superfund and Montana laws and the Montana Constitution. For me personally with Kel Kelly, Doug Benvento and Albert Mutter this was the first time in my 35+ years of involvement that we as a community have had access to EPA Folks at that level. From my conversations and emails with him and the others, I truly believe he and Doug and Andrew cared and were educated on the situation in Butte and were committed to a positive cleanup in Butte! In the past we have not even had access like that on a State Level. Obviously the guy had baggage that he could not overcome. That's too bad!

**Seems like to me that the only two left to serve with no baggage, are me and the Pope---and I am not too sure about the Pope! LOL**

Fritz

On another issue in regards to the email I sent to Kel, Doug and Andrew all of them responded to my email. I was impressed with that. I will copy their comments at the bottom of this email. FYI---I had a long conversation with Andrew Mutter this morning. He was very positive, and indicated that there may even be a Motion before Judge Hadden by early this week or next week. He made no commitment, but was optimistic.

As always, I told him I was concerned that the Montana EPA office was leading the attempt to open the Consent Decree Negotiations. Because they have not been supportive of letting us know anything in the past as were the State and the local government. The one thing I did emphasize is that we are at a crossroads in Butte and there is a tremendous opportunity for us, Butte, EPA, the State, Local Government and even Arco/BP, moving forward if they let folks like us truly become involved. If they don't we are going to go down the same failed path we have been on for the past 35+ years and this community will fail economically, socially and environmentally. He also said, he talked to Kel about as Ed has requested about replacing

Robert Molar as did Doug and they would make that a priority. Ed's comment to Doug on his statement for us to "judge them on their actions" is great and the proof is in the "pudding"! Anyway not sure what is going to happen with the resignation of Kel Kelly, but only time will tell.

Fritz

Responses to my email from Kel, Doug and Albert;

Hello Mr. Daily. I am not aware of the contents of the discussion so I will find out and get back to you---

Albert Kelly

Doug Benevento---Hi Fritz, Andrew can provide more detail when you talk but I wanted to respond.

First, as always I appreciate that you say what's on your mind. It is not wasted effort and it does not go unheard. Second, while I am not speaking for Judge Hadden, I do believe that he is amenable to opening up the process. We are still preparing as if that is the case so that as soon as the order is modified we can brief the community. As I emailed Ed earlier today, I do not believe that it will take months to conclude this process. I am anxious for it to be done so we can start talking about the details of the proposed agreement and take feedback on the proposed agreement. I'm not promising that everyone will be happy with all of the details, I just don't know, but I am confident that the substance will be open so you can evaluate it. Thanks again Fritz

Andrew Mutter---Fritz, May I call you tomorrow or Tuesday to clarify some information about the conference call with the Judge last Friday? Best regards, Andrew

**From:** Fritz Daily

**Sent:** Sunday, April 29, 2018 11:57 AM

**To:** Albert "Kel" Kelly ; Andrew Mutter ; [doug.benevento@epa.gov](mailto:doug.benevento@epa.gov)

**Cc:** Bill Macgregor ; [COkrusch@mttech.edu](mailto:COkrusch@mttech.edu) ; [cpdolan@bsb.mt.gov](mailto:cpdolan@bsb.mt.gov) ; [cshaw@bsb.mt.gov](mailto:cshaw@bsb.mt.gov) ; Daniel Hogan ; David McCumber ; [dfoley@bsb.mt.gov](mailto:dfoley@bsb.mt.gov) ; [bmcdonough@bresnan.net](mailto:bmcdonough@bresnan.net) ; [banderson@bsb.mt.gov](mailto:banderson@bsb.mt.gov) ; Don Peoples ; Doug Coe ; Ed Simonich ; Elizabeth Erickson ; Erik Nylund ; [fiskcm@butte.k12.mt.us](mailto:fiskcm@butte.k12.mt.us) ; Imagine Butte ; JAMES Madison ; [jfisher@bsb.mt.gov](mailto:jfisher@bsb.mt.gov) ; Jim Kambich ; Jim Keane ; Jim Robbins ; [JMetesh@mttech.edu](mailto:JMetesh@mttech.edu) ; John Emeigh ; John Malia ; Joselyn Dodge ; [ksullivan@bsb.mt.gov](mailto:ksullivan@bsb.mt.gov) ; Mark Sweeney ; Mary Jo McDonald ; Mary Kay Craig ; Michelle Shea ; Mick Ringsak ; [ochenski@mt.net](mailto:ochenski@mt.net) ; Pam Haxby-Cote ; Patrick Dudley ; Ray Rogers ; Ray Robins ; Rick Walsh ; Shelly Davis ; Ron Davis ; [speechray@in-tch.com](mailto:speechray@in-tch.com) ; Sophie (Daines) Miller ; [tmalloy@bsb.mt.gov](mailto:tmalloy@bsb.mt.gov) ; Vince Fischer ; [dpalmer@bsb.mt.gov](mailto:dpalmer@bsb.mt.gov) ; Dr. Dan Harrington

**Subject:** Judge Hadden Phone Conversation

<clip\_image002[2].jpg>

**Ex. 6**

April 30, 2018

Kel, Doug and Andrew,

I was disappointed to learn that the Consent Decree Talks were not opened to the public as promised by the EPA in the recent phone conversation with Judge Hadden. With Butte's significant contribution to the creation of this great nation we absolutely deserve better!

In a letter to Silver Bow Creek Headwaters Coalition in an attempt to request we withdraw our lawsuit to open the Consent Decree Negotiations, EPA attorney Henry Elsen wrote the following info. **It was a commitment by the EPA to make the process transparent.**

In summary, EPA has heard the concerns that there is no meaningful public involvement if the only chance for the public to influence the consent decree process is after negotiations are completed. The activities described above are intended to address this concern and will occur well

before a consent decree is completed and lodged with the federal district court, and noticed by the USDOJ for public comment. I attached the complete letter and a letter from our attorney Jim Goetz to Henry Elsen.

In the past, I have always felt the only recourse we as citizens have to truly affect the process is a lawsuit or God forbid a catastrophe. Recently however, I felt a slight bit of optimism on your visit to Butte. I now hope and pray that optimism was not for not! After thinking about the proposal by Arco/BP, the EPA, the State and Local Government to not completely open the Consent Decree talks these are my thoughts.

- First of all, we don't know any more today than we did yesterday or for that matter sixteen years ago when the "secret closed door process" was initiated.
- Folks like me who care and want to offer constructive input are not the enemy!
- **Until we actually know what is eventually contained in the Agreement in Principle and the final Consent it is impossible to know if the remedy for Butte Priority Soils and the cleanup of the Creek is a good decision or if it is not a good decision.**
- It now appears the participants no more want the talks open today than they did sixteen years ago.
- **Sadly, Judge Hadden does not know all that he needs to know. He will only have the info he has received from Arco/BP, the EPA, the State and the Local Government and that is only what they want him to know! He absolutely needs to hear from others if he wants to know the truth!**
- If the EPA is truly serious about finally making the process transparent they should allow folks like me and others to also offer constructive input as I did when I wrote to Judge Hadden following his refusal to open the Consent Decree negotiation. There are definitely two sides to the issue! For Judge Hadden to make a responsible decision he needs to know both sides.
- Not allowing the Standard to participate definitely shows the agencies and Arco/BP are not serious about opening the talks.
- I see this as a game of poker! As always, our cards are all on the table and we have no idea of the EPA's the State's and the Local government's cards.
- While I did have some hope in Doug Benevento, Kel Kelly and Andrew Mutter indication to open the talk, by them not demanding the Talks be opened, and I mean completely opened as promised, let's hope we are not seeing the total denial of input and community involvement as we have seen from the EPA, State, Local Government and Arco/BP in the past. What are they trying to hide? Maybe folks like me overreacted to the positives of Doug's Kel's and Andrew's positive involvement. I sure hope not!
- Obviously if it is the intension to only open a portion of the Talks as it sounds, we are only going to hear what the agencies and Arco/BP want us to hear and not what we need and are entitled to hear, as they have told us in the past
- We need to know;
  1. Are sufficient resources now available to complete the task?
  2. Has a Consent Decree Amendment been prepared to address the necessary corrections to the original 2006 Record of Decision?
  3. Are contingency plans in place to deal with the unknowns that will in all probability develop?
  4. Are all the contaminated tailings going to be removed---Diggings East, Northside, Parrot Tailings and Blacktail Berm?
  5. Is the inadequacy of the Reverse French Drain not collecting all of the contaminants going to be addressed as the State adamantly professes? This needs to happen to assure a quality Creek can once again flow through the center of our town.

6. Are the methods of addressing Storm Sewer run off coming from the Butte Hill going to be addressed other than with mosquito or Zika Ponds? Obviously if the Butte Hill was cleaned properly under a responsible cleanup and not Time Critical Removal as was the case, this problem of storm run-off would have already been addressed.
7. Are they going to use State Natural Resource Damage dollars for remediation or are they going to use restoration dollars that are designed to restore the area to productive use after a responsible cleanup have taken place to clean the Creek?
8. Is the Restore Our Creek Vision Statement going to be used as part of the Settlement? Restoration and remediation should take place at the same time.
9. How much money is now being spent form the Allocation Agreement to address the improper cleanup we as a community have received?

Messages and attachments sent to or from this email account pertaining to the City-County of Butte-Silver Bow business may be considered public or private records depending on the message content (Article II Section 9, Montana Constitution; 2-6 MCA).