

Rocky Mountain Peace and Justice Center

P. O. Box 1156, Boulder, CO 80306 USA 303-444-6981 Fax 720-565-9755 <http://rmpjc.org/>

April 1, 2015

Mr. Stephen Croley
Office of the General Counsel
1000 Independent Avenue, SW
Washington, DC 20585

Dear Mr. Croley:

David Abelson, Executive Director of the Rocky Flats Stewardship Council (RFSC) recently announced that the RFSC would play a role in the creation of a visitor center at Rocky Flats, most likely on the site of the Rocky Flats National Wildlife Refuge, which is administered by U.S. Fish & Wildlife Service (FWS). A local citizens' group with substantial technical knowledge of this site wishes urgently to know: Does this contradict what the DOE Office of General Counsel has said in the past about the role of the RFSC?

In 2010 I raised with the DOE General Counsel's office questions about operations of the RFSC. At that time I thought that the RFSC was advising federal agencies as if it was a Federal Advisory Committee Act (FACA) organization, though it did not meet certain FACA requirements. In a May 12, 2010, letter addressed to David Geiser, Director of DOE's Office of Legacy Management, Susan Beard, Assistant General Counsel for General Law, explained that the RFSC was chartered not as a FACA body but as a Local Stakeholder Organization (LSO). "Congress," she wrote, "did not intend the LSO to be utilized by DOE to seek consensus or group advice from its membership, nor was it intended to edit or filter comments received from Stakeholders for DOE."

"Likewise," she wrote, "DOE must not request the RFSC to provide its views to DOE. Accordingly, DOE must make clear in any communications with the RFSC that DOE is not seeking the collective or consensus advice from its membership. All RFSC activities must be exercised in a manner that is consistent with functioning solely as an outreach tool of DOE to provide information to as many stakeholders as possible and to provide an avenue through which all members of the public may communicate with DOE without edit or comment by the RFSC."

Since the exchange with Ms. Beard in 2010 comments from the concerned public have been posted on the RFSC web site, but in a way where they get no attention, much less response from DOE. It would help if your office told RFSC to publish in full all comments made in public RFSC meetings in the minutes of those meetings, while also telling DOE personnel at Rocky Flats that they are expected to respond to comments from the public.

It appears that, despite Ms. Beard's very clear letter DOE Rocky Flats has changed its behavior very little. Apparently DOE intends to treat the RFSC as an advisory body from which it will seek collective advice on the question of constructing a visitor center on the Rocky Flats site – probably not on DOE land but on the Wildlife Refuge, which is owned and managed by another federal agency, the FWS.

Three questions arise from the foregoing:

1) Does DOE LM at Rocky Flats expect the RFSC to act as an advisory body on the visitor center? Or does RFSC expect to act in an advisory capacity? If they do, the RFSC will have overstepped its role as the LSO and must be abolished and reconstituted as a FACA body that meets all FACA requirements, including a “fairly balanced” membership that represents all stakeholders.

2) As Ms. Beard’s letter pointed out, the RFSC exists from a DOE perspective solely to provide a two-way conduit for communication between DOE and the public. Isn’t the DOE land at Rocky Flats closed permanently to the public? Does DOE expect to control a visitor center constructed for the Refuge? How can the RFSC be involved without giving advice? Does FWS expect advice?

3) My third question is about funding. DOE LM funds the RFSC as the LSO for Rocky Flats. At the time of its creation, representatives of local governments who expected to serve on the RFSC thought they would work with both FWS and DOE. But Michael Owen, who was then Director of DOE Legacy Management, in a letter of December 21, 2005, to Shaun Mcgrath, then Chair of the Rocky Flats Coalition of Local Governments, said: “We can not direct an organization to work with another federal agency.” Stated differently, DOE does not allow the RFSC to use DOE funds to work for another federal agency. How then can the RFSC work on the proposed visitor center? RFSC does have non-DOE funds paid by the local government entities that members represent. But these funds total a very small portion of the RFSC annual budget. Moreover, in this budget DOE and non-DOE funds are commingled. How can the RFSC assist FWS on the visitor center without using some DOE funds?

I trust your office can provide clarity to a confused situation by answering the questions raised in this letter. I look forward to your timely answer.

Yours sincerely,

LeRoy Moore, Ph.D.

Cc: Rocky Flats Stewardship Council