

TO: Joceline Nahigian
Director, Intergovernmental & Stakeholder Programs
Office of Environmental Management,
US Department of Energy
Sent via email: joceline.nahigian@hq.doe.gov

From: Jon S. Lipsky, FBI Retired and Master in Advanced Studies - CLS
University of California, Irvine //s//
Michael Ketterer, Ph.D., Professor Emeritus, Chemistry and
Biochemistry, Northern Arizona University (NAU) //s//

Date: October 24, 2022

RE: Rocky Flats Site (RFS), Golden Colorado;
Rocky Flats Stewardship Council and David Abelson funding

Reference authors' letter¹ regarding RFS Fifth Five-Year Review and failed remedy at Rocky Flats Site re: PFAS to Director Joceline Nahigian, USDOE, et al, dated August 31, 2022; Director Nahigian's email response to authors August 31, 2022 letter dated September 1, 2022; Dr. Michael Ketterer's email re lack of reasonable and facile access to RFSC meetings to Director Carmelo Melendez, USDOE/LM, et al, dated September 19, 2022; and, Jon S. Lipsky's email to David Abelson, et al, dated September 19, 2022 regarding RFSC Public comment and RFS Fifth Five-Year Review report to the US Congress.

CC List: Jennifer Granholm, Energy Secretary
DOE Inspector General Teri L. Donaldson
Michael S Regan, USEPA Administrator
William "Ike" White, USDOE
Carmelo Melendez, USDOE/LM
Geraldine Richmond, USDOE
Asmeret Berhe, USDOE
RFSC Board of Directors & Public Comment page via David Abelson
Colorado Congressional Delegation - Media Contacts

The purpose of this communication is to request the US Department of Energy (USDOE) to defund, without replacement, their USDOE Financial Assistance Award for recipients Rocky Flats Stewardship Council (RFSC); David Abelson as RFSC Executive Director, USDOE "Noncompetitive" Recipient Project

¹ Though mischaracterized by David Abelson as a *DOE response to Jon Lipsky*, the letter as of 10/23/2022 is available at **http://www.rockyflatssc.org/public_comment/Joceline%20Nahigian%20USDOE%20letter%2020220831.pdf**.

Director, USDOE “Noncompetitive” Recipient Business Officer (and self-proclaimed ‘RFSC contractor, not a DOE grant recipient, any statement suggesting otherwise is incorrect and misleading’) involving USDOE Financial Assistance Award (P. Laws 95-604, 104-259 and 108-375), USDOE instrument, number DE-FG01-06LM00080, due to waste, fraud and abuse (using USDOE funds for expenses related to another federal agency or customer, mischarging for expenses not incurred or work not performed, seeking reimbursement for substandard or incomplete services, misrepresenting project status and project progress in order to continue receiving funds). (Title 10 CFR § 600.6(c)).

We, the authors, and engaged stakeholders, of this communication are aware that the RFSC was established as a political subdivision under the auspices of the Colorado Constitution regarding post-closure at the Rocky Flats Site (RFS). It should be noted that: “The Secretary of Energy shall establish for each Department of Energy 2006 closure site a local stakeholder organization having the responsibilities set for in subsection (c). (P. Law 108-375 § 3118 (a)).

However, the RFSC is a USDOE taxpayer funded “local stakeholder organizations for 2006 closure sites²” (LSO) for the RFS (P. Law 108-375 for The Rocky Flats Environmental Technology Site). Section 3118 (c) of P. Law 108-375 explicitly states that the responsibility of an LSO, potentially including the RFSC, for a USDOE 2006 closure site, that has been applied to the Rocky Flats Site (RFS), under subsection (c)(1-4) **SHALL** adhere to the four (4) federally defined statutory tenets. (**Emphasis added**). The Intergovernmental Agreement (IGA) that established the RFSC, apart from P. Law 108-375, as a Colorado municipality and separate legal entity contains a “Mission Statement³” that does not adhere to Section 3118 (c)(1-4) tenets.

The Section 3118 of P. Law 108-375 tenets (Section 3118) should be intact, consistent and auditable to justify the USDOE funding for the RFSC. The RFSC was loosely installed by federal statute (The Rocky Flats Environmental Technology Site) and David Abelson has endured via a noncompetitive financial award by USDOE with little or no oversight. The USDOE Financial Assistance Award to the RFSC and David Abelson amounted to a cumulative amount of \$1,650,369.00 in 2018. The total estimated taxpayer cost of the RFSC and David Abelson is \$2,106,159.00 from the period March 1, 2006 through February 28, 2022.

² 108th Congress: 2004: Public Law 108-375, Section 3118 <https://www.cdc.gov/niosh/ocas/pdfs/theact/daa05.pdf> as of 10/23/2022.

³ Number 2. a-d, page 5 at http://www.rockyflatssc.org/stewardship_council%20IGA.pdf as of 10/23/2022.

USDOE financial assistance application eligibility is defined by Title 10, Code of Federal Regulations (CFR), Section 600.6. Noncompetitive financial assistance may award or grant on a noncompetitive basis only if the application satisfies one or more of eight (8) listed criteria. USDOE support of the noncompetitive RFSC applicants does not “enhance the public benefits to be derived” and CDPHE is conducting “such an activity” more efficiently and effectively than the applicants. (Ibid. at (c)(2)). USDOE financial assistance application eligibility requires documentation in writing for USDOE funds greater than and less than \$1 million. (Ibid. at (d)(2)(i)). USDOE has conveniently structured the noncompetitive RFSC and David Abelson financial assistance award in five (5) year blocks less than \$1 million for a project that USDOE has spent over \$2 million in taxpayer funds since 2006. The USDOE responsive documents, Freedom of Information Act (FOIA) request number HQ-2018-01685-F Responsive Documents, at minimum, did not include the required concurrence (local legal counsel) documents casting the appearance of suspicion on referenced process. (Ibid. at (2)(ii)).

David Abelson has benefited from a noncompetitive USDOE funding mechanism, since at least 2006, when local stakeholders’ and engaged local stakeholders’ knowledge of RFS should have advanced. The first Section 3118 federal tenet is for Abelson to “solicit and encourage public involvement” instead of following this mandate, Abelson provides undefined engagement with a trajectory for exclusion of public involvement. Abelson has performed as a furtive USDOE surrogate with “... diminished access to direct participation and the related lost opportunity to become more knowledgeable.”⁴

For example, in December 2013 US Fish and Wildlife Service (USFWS) applied for a Colorado Significant User of Prescribed Fire permit to conduct controlled burn(s) at USFWS Colorado-managed properties to include the Rocky Flats National Wildlife Refuge (RFNWR). In 2014, CDPHE approved the USFWS 2015 prescribed fire permit for controlled burns to include RFNWR. The RFSC voted and approved its “Motion to Oppose USFWS’ Plan to Conduct a Prescribed Fire

⁴ Satterfield, Terre; Levin, Joshua: 2002: Risk Communication, Fugitive Values, and the Problem of Tradeoffs: Diagnosing the Breakdown of Deliberative Processes: USDOE Cooperative Agreement Number DE-FC07-99ER63879, p. 30, available at https://www.researchgate.net/profile/Terre-Satterfield/publication/228825310_Risk_communication_fugitive_values_and_the_problem_of_tradeoffs_diagnosing_the_breakdown_of_deliberative_processes/links/0fcfd513252882abad000000/Risk-communication-fugitive-values-and-the-problem-of-tradeoffs-diagnosing-the-breakdown-of-deliberative-processes.pdf as of 10/23/2022.

in Spring of 2015 on the Southern Portion of the Rocky Flats National Wildlife Refuge.⁵

David Abelson was the RFSC Executive Director who, more likely than not, framed the Motion and its corrosive language: "(1) A burn will cause widespread community concern that will not be sufficiently alleviated through any public education process;" and, "Approving this motion, the Board stressed that at this time it is not speaking of the question of risk," (Ibid.).

Digesting a David Abelson-led public education process first requires verification of facts, facts that were absent in the RFSC Motion that ignored risk. The vocal involved public, or "risk-averse," opposed to the USFWS prescribed fire at the RFNWR are dismissed by the RFSC Executive Director with emphasis on being "risk-indifferent." (Id., footnote 3 at p. 10). It is unknown if David Abelson was aware that the CDPHE-approved prescribed fire permit application for USFWS at RFNWR was justified or not. We believe the latter and the Motion "violates the trust that the public places in government to best serve its collective interests." (President Biden: 2021: Memorandum for the Heads of Executive Departments and Agencies).

In its December 31, 2013 Colorado Significant User of Prescribed Fire Planning Document, USFWS (and yet another USDOE surrogate) noted for prescribed fire justification at the RFNWR: "The habitat at Rocky Flats NWR is managed through the use of mowing, chemical application, and limited grazing by cattle in one section of the refuge. Refuge personnel are currently evaluating the possible future use of prescribed fire at Rocky Flats NWR." (p. 15 at #6). To reiterate, the overlooked prescribed fire fact that was ignored - by CDPHE, a hopeful USFWS, USDOE, RFSC and the RFSC Executive Director - **RFNWR was not yet fully evaluated for a prescribed fire. (Emphasis added).**

On February 19, 2015 three (3) citizens and RFLMA engaged stakeholders petitioned the Colorado Air Quality Control Commission (CAQCC) concerning the deficient 2013 USFWS prescribed fire permit approved by CDPHE at RFNWR. In sum, the CAQCC suspended USFWS' prescribed fire permit at RFNWR for the pendency of that permit. USFWS did not cure the deficiencies of their CDPHE-approved prescribed fire permit. The RFSC Motion incorrectly stated that widespread community concern that will not be sufficiently alleviated through any public education process.

⁵ The undated RFSC Motion is at <http://rockyflatssc.org/USFWS%202015%20burn%20motion%20approved%2010%2027%202014.pdf> as of 10/23/2022.

The credibility gap of RFS public involvement has expanded under the RFSC Executive Directorship of David Abelson. David Abelson, by and through Abelson Partners, LLC, is also a “board member⁶” of the USDOE Environmental Management Advisory Board (EMAB), to include special government employee status, promoting himself and his alter ego, with the promotion and support of USDOE, as an “attorney⁷” though his Colorado attorney license, Bar number 24874, is inactive and USDOE clients (RFSC, Regional Coalition of LANL Communities, etc.). The March 1, 2018 USDOE Financial Assistance Award for RFSC and Abelson was approved by Jeffrey Murl, USDOE Project Officer who is married to Lindsay Murl, nee Masters, Colorado Department of Public Health and Environment (CDPHE) and CDPHE has and continues to receive USDOE grant funds that directly benefits Lindsay Murl’s CDPHE project at RFS. USDOE should not be promoting even the appearance of conflict of interest.

On October 31, 2022 the RFSC Board of Directors are scheduled to conduct applicant interviews, amongst other business, during their in-person meeting, for two (2) new RFSC board members. The membership application includes a conflict of interest statement “to maintain public trust and accountability ...⁸” (RFSC Membership Application, p. 3, paragraph 4). The baseless conflict of interest defined statement intends to disqualify membership if the applicant is currently engaged in a lawsuit against USDOE, US Department of Interior or any of the local municipal RFS stakeholders. The RFSC membership application, conflict of interest provision is contrary to the Rocky Flats Legacy Management Agreement (RFLMA) of 2007 recognizing that RCRA and CHWA requirements of the RFLMA **shall** be enforceable by any person. The RFLMA enforcement provision conversely does not exclude RFSC applications for board of director membership. **(Emphasis added)**.

The RFSC public comment web page includes a disclaimer to dissuade public participation: “The following information has been posted to help facilitate dialogue with the Department of Energy. The Rocky Flats Stewardship Council does not endorse the information nor vouch for its accuracy. For more information about the Stewardship Council’s role as the local stakeholder organization for Rocky Flats, including facilitating dialogue between DOE and

⁶ <https://www.energy.gov/em/contributors/david-abelson> as of 10/23/2022.

⁷ USDOE/EM EMAB web page for David Abelson at <https://www.energy.gov/em/contributors/david-abelson> as of 10/23/2022.

⁸ The RFSC membership application is available at <http://www.rockyflatssc.org/LSO%20membership%20application%20FINAL%209-22.pdf> as of 10/23/2022.

the community, please [click here](#)."⁹ The RFSC disclaimer tends to fling suspicion on any of the posted public comments.

The disclaimer is not an example of “(1) solicit and encourage participation in appropriate activities relating to the closure and post-closure operations of the site [RFS]” that Abelson is expected to promote. (P. Law 108-375, § 3118 (1)). The RFSC Public Comment page is an Abelson schema to falsely portray an ongoing USDOE at RFS and public dialogue that does not exist. The November 1, 2021 RFSC meeting packet states at #5: “DOE has agreed to respond in writing to comments offered on that agency’s report. Those responses will be posted on Stewardship Council website.¹⁰” Abelson is not posting all submitted public comments nor is Andrew Keim, USDOE at RFS, per the RFLMA, responding to all public comments.

Reference Jon Lipsky’s email dated September 19, 2022 to David Abelson, et al, requesting that USDOE at RFS include the public comments received by USDOE by the December 31, 2021 deadline for the RFS Fifth Five-Year Review report. The USEPA intends, by statute, to forward the otherwise incomplete RFS Fifth Five-Year Review report to the US Congress. David Abelson, USDOE and USEPA have ignored instant email.

Abelson and his RFSC protocol to address public comments is not effective or efficient though Abelson has stated, in writing, that he has a side agreement with USDOE at RFS for USDOE to respond to public comments. As a matter of fact, The RFLMA, Section 7, Public Participation states in part: **“Public participation activities are conducted to actively inform the public about Rocky Flats activities and the preparation of documents to provide opportunities for open, ongoing, two-way communication. LM will actively seek, consider, and in a timely manner respond to the views of its stakeholders, ensuring that they have an opportunity to provide input to LM’s decision-making process.”** The above RFLMA statement is not the practice as USDOE at RFS is reticent concerning timely RFS activities with the public.

The RFSC web site managed by David Abelson maintains a “Monthly Updates¹¹” page. The last RFSC update was July 2019 omitting many important USDOE activities including the RFS Fifth Five-Year Review report in May 2022 that

⁹ http://www.rockyflatssc.org/public_comment.html as of 10/23/2022.

¹⁰ http://www.rockyflatssc.org/RFSC_agendas/RFSC_Bd_mtg_packet_11_21.pdf as of 10/23/2022.

¹¹ <http://www.rockyflatssc.org/updates.html> as of 10/23/2022.

determined the RFS remedy is not protective. With USDOE delaying for years or outright ignoring Freedom of Information Act (FOIA) requests, USDOE responses are not timely, nor do USDOE's responses contribute to two-way communications between USDOE at RFS and the public as USDOE agreed by signing the 2007 RFLMA.

Even when David Abelson is included in emerging or ongoing RFS activities Abelson does not "(2) disseminate information on the closure and post-closure operations of the site to the State government of the State in which the site is located, local and tribal governments in the vicinity of the site, and persons and entities having a stake in the closure or post-closure operations of the site." (P. Law 108-375, § 3118 (2)).

For example, one of many, on March 2, 2016 Scott Surovchak, USDOE/LM distributed an email to RFS regulators (USEPA and CDPHE), Fish and Wildlife Service, local municipal stakeholders and David Abelson entitled "DOE notification of a Reportable Condition at the Rocky Flats Site¹²" concerning the exceedance of the total uranium standard at the Walnut Creek Point of Compliance (WALPOC). The email from Scott Surovchak, USDOE/LM was not shared with the public by Surovchak as it should have been per the RFLMA, Public Participation section. The email that David Abelson received was not distributed to the public by him either as required by the LSO tenets in P. Law 108-375 at #1. A copy of the March 2, 2016 RFS Reportable Condition email was submitted as a public comment on September 12, 2016 during the RFSC meeting. The public comment noticeably caught Abelson and Surovchak off-guard, speechless and without action. Abelson and Surovchak left the meeting together for about 5 minutes. When Abelson returned, Abelson said he would be modifying his RFSC email distribution list to include the public on such RFS reports. Abelson has not been true to his words from that day yet Abelson continued to receive USDOE award funding for his purported role with the RFSC and USDOE Financial Award.

The RFSC, by IGA, is capable of accepting and funding grants, ostensibly USDOE financial award and LSO donated fungibles, yet David Abelson does not provide an application or protocol for grant funding. For example, USDOE has scheduled, since at least 2010, to breach the RFS terminal ponds that necessitate air monitoring for the downwind residents. Air monitoring should have been installed in 2017 with the repairs and variances to RFLMA institutional controls, of the Original Landfill (OLF) as fugitive airborne contaminants were

¹² The USDOE email, p. 2, at http://www.rockyflatssc.org/public_comment/20160912%20RFSC%20Public%20Comment%20-%20Jon%20Lipsky.pdf as of 10/23/2022.

most likely released with the soil disturbance below three (3) feet. David Abelson antagonistically questions and denies the application of proven scientific applications when the results may disprove his beliefs.

Reference Dr. Ketterer's email to USDOE/LM Director Carmelo Melendez regarding the lack of reasonable and facile access by the public for remote attendance of RFSC meetings dated September 19, 2022. It appears that David Abelson reconsidered after Dr. Ketterer sent Director Melendez the email concerning remote access¹³ for the October 17, 2022 RFSC Executive Committee special meeting. RFSC Executive Committee meetings are without meeting Minutes that raises compliance doubts with the Colorado Sunshine law. The Compliance by David Abelson, RFSC and Andrew Keim, USDOE/LM should not require USDOE intervention by the public for Abelson and Keim to fulfill their sworn duties. The upcoming Regular Meeting for the RFSC on October 31, 2022 has not been posted to the RFSC web page. On October 21, 2022 David Abelson emailed the Notice for the meeting that is without WebEx remote access instructions. Again, USDOE should intervene and require their RFS LSO noncompetitive recipients (RFSC and David Abelson) to provide remote access to all RFSC meetings beginning with the October 31, 2022 regular meeting.

With respect to the in-person RFSC meetings, we note that the October 31, 2022 meeting, like most previous meetings, is scheduled to be held at the Rocky Mountain Metropolitan Airport, Mt. Evans room (second floor) at Broomfield, CO. The unsecure (unencrypted) RFSC web site and meeting notices are without Americans with Disabilities Act (ADA) notices. The other RFSC participating municipal LSO government web sites include 'Accessibility' statements for inclusive services and publish contact information for anyone who requires an auxiliary aid or service for effective communication or modification to participate in a program, service or activity.

Further, we note that the RFSC meetings are normally held on Monday mornings at 8:30 AM. The selection of this time, during normal business hours when many interested stakeholders are working, appears to be a designed practice on Abelson and DOE's part to deliberately squelch public attendance of RFSC meetings. Abelson's choice of meeting time may also have the intent of deterring potential applicants for RFSC citizen members, for the same reasons. We highly recommend that all RFSC meetings include recorded virtual access with the recordings posted on the RFSC web site for future reference.

¹³ RFSC: 2022: Notice of Special Meeting Rocky Flats Stewardship Council with WebEx access information at http://www.rockyflatssc.org/RFSC_notices/Notice%20for%2010-17-22%20Executive%20Committee%20Mtg.pdf as of 10/23/2022.

A local stakeholder organization “[s]hall — (4) perform such other duties as the Secretary and the local stakeholder organization jointly determine appropriate to assist the Secretary in meeting post-closure obligations of the Department at the site.” (P. Law, § 3118 (c) and (4)). It is impossible to declare that the RFSC and its Executive Director have succeeded assisting the Energy Secretary with the fourth tenet for local stakeholder organizations for the 2006 closure sites. (Ibid at (4)). We invite a USDOE audit to determine if the RFSC is assisting the Secretary. The current RFSC practice is divisive with the aim to exclude certain members of the public of the local stakeholder organization and stifle potential problem-solving ideas deemed to be unsavory by the RFSC Executive Director.

It is respectfully requested that USDOE immediately defund the RFSC and David Abelson. The authors highly recommend Cabinet-level or higher Federal Advisory Committee Act (FACA), Advisory Committee status comprised of citizens with direct USDOE or USEPA involvement that would be more informative and more likely, than not, realize improved solutions regarding RFS activities in “. . . reducing nuclear danger, and remediating the environmental harms caused by legacy defense programs.¹⁴” (P. Law 92-463 § 1).

¹⁴ J. Granholm: 2022: Leadership at <https://www.energy.gov/leadership> as of 10/23/2022.