



Since RID's submittal of ADEQ's requested information in February 2010, ADEQ has yet to approve RID's ERA Work Plan. Instead, ADEQ has engaged in discussions with the PRPs and accepted comments and alternatives to the ERA Work Plan, causing RID to spend additional resources to correct and address the misrepresentations and unlawful recommendations and alternative proposals from the PRPs. RID's patience with this ERA-approval process has been exhausted. For over eight months now and at significant expense, RID entered into a written agreement with ADEQ to prepare and implement remedial action in the WVBA WQARF Site and has complied with all ADEQ requests under that agreement, and yet the PRPs have been able to meet, negotiate and propose alternative remedial actions for the WVBA WQARF Site at virtually no remedial action expense and without entering into any enforceable working agreement with ADEQ binding the PRPs to perform comparable remedial actions for the WVBA WQARF Site (as ADEQ required of RID). This inequitable treatment between RID and the PRPs is inexcusable, particularly since the PRPs are legally responsible for the contamination that continues to damage RID and poses a current risk to public health, welfare and the environment. Every day ADEQ delays in approving RID's ERA is another day that the PRPs' contamination damages RID, the groundwater contamination spreads and current risks to public health, welfare and the environment go unabated.

After more than 4 months of ADEQ discussions with the PRPs, twelve of the PRPs submitted the June 3, 2010 letter to you that apparently confirms two prior commitments made to ADEQ. The first is a commitment by these twelve PRPs to execute an agreement with ADEQ to conduct a formal FS for the WVBA WQARF Site. RID presumes this first commitment involves the PRPs' prior \$300,000 offer to only fund a FS and only on the unlawful condition that ADEQ refuses to approve RID's ERA. For the reasons summarized below, the PRPs' conditional first commitment is not authorized, lawful or adequate.

The second commitment by these twelve PRPs is to "develop and implement an appropriate ERA only if new sampling data and other relevant information demonstrates that such an ERA is necessary to protect public health and welfare during the time required to develop the FS and implement the remedy." For the reasons more fully discussed below, RID strongly objects to the PRPs' second commitment to perform only a conditional and limited ERA. The conditional "commitment" is woefully inadequate in scope and contrary to Arizona law and existing data. The PRPs' second commitment also ignores current sampling data and other readily available physical evidence that demonstrates there is a current risk to public health, welfare and the environment as a result of the documented PRP releases and threatened releases to groundwater.

#### **PRPs' First Commitment: Conduct a Formal FS**

- The PRPs' \$300,000 offer to fund a FS is unlawfully conditioned on ADEQ's refusal to approve RID's legally authorized ERA.
- ADEQ already has entered into a written agreement with RID authorizing RID to conduct a FS for the WVBA WQARF Site consistent with the WQARF process.

- Most importantly, the PRPs' commitment does not include a commitment to implement any final remedy selected under the FS. As a result of ADEQ's budget and funding limitations, it is unclear when ADEQ will have sufficient funding to implement the remedy selected by the PRPs' FS, to establish sufficient evidence to prove individual PRP allocations or to fund the millions of dollars associated with "orphan" shares. Under this scenario, it is highly unlikely that any remedy will actually be implemented to address the groundwater contamination in the aquifer, the impacts and threatened impacts to RID's wells and water supply, or the current risks to public health, welfare and the environment.

### **PRPs' Second Commitment: Develop and Implement an ERA**

- Contrary to the PRPs' continued misrepresentation of Arizona law, ERAs are not limited to protecting "public health and welfare". Arizona law also authorizes an ERA if necessary to address any one of the following:
  - Protection or provision of a supply of water,
  - Risks to the environment, or
  - Reduction of the scope or cost of the final remedy. A.A.C. R18-16-405.A.
- The PRPs' second commitment to perform an ERA is conditional upon future sampling results and then only to address risks to public health and welfare. The PRPs' commitment ignores all the existing sampling data compiled by ADEQ and EPA over the last 20 years, unnecessarily delays an authorized ERA, and totally fails to include the legally "authorized" and "necessary" ERA to protect RID's wells and water supply.
- The PRPs' claim that the existing data does not support an ERA is contrary to Arizona law and existing data. The law and existing data establish the legal authorization and necessity of an ERA to protect RID's wells and water supply in the WVBA WQARF Site for the following reasons:
  - An ERA is authorized by law to protect RID's wells and water supply. A.A.C. R18-16-405.A; A.R.S. 49-282.06(B)(4)(b).
  - The October 2009 working agreement between RID and ADEQ acknowledges the need for an ERA to address "groundwater contamination that has impacted multiple RID water supply wells which may present an imminent and substantial endangerment to the public health, welfare or the environment" within the WVBA WQARF Site.
  - An ERA is "necessary", as a matter of law, if wells are impacted and/or threatened by contamination. A.A.C. R18-16-405.I; A.R.S. 49-282.06(B)(4)(b)..
  - Existing data concludes that 31 RID wells in the WVBA are impacted and/or threatened by contamination. *See* ADEQ's Draft WVBA Remedial Investigation Report.
  - PRPs should not object to ADEQ's approval of RID's ERA or RID's litigation to recover RID's ERA costs since the PRPs have now committed to ADEQ that if

“sampling data and other relevant information demonstrate that an appropriate ERA is necessary, we will implement it.” Letter from Karen Gaylord to Director Grumbles, dated June 3, 2010. As documented above, existing ADEQ and EPA sampling data and Arizona law demonstrate that RID’s ERA is “necessary” as a matter of law.

- Contrary to the PRPs’ claim, Arizona law and existing sampling data support the current need for an ERA to protect the public health, welfare and the environment in the WVBA WQARF Site for the following reasons:
  - Sampling data in ADEQ’s Draft WVBA Remedial Investigation Report, including sampling data compiled by EPA in the Motorola 52<sup>nd</sup> Street Federal Superfund Site and by ADEQ in the West Central Phoenix WQARF Site, document the existence of widespread groundwater contamination above legally applicable public health and environmental standards.
  - An ERA is authorized in order to protect public health, welfare or the environment. A.A.C. R18-16-405.A.
  - The October 2009 working agreement between RID and ADEQ acknowledges the need for an ERA because “groundwater contamination . . . may present an imminent and substantial endangerment to the public health, welfare or the environment” within the WVBA WQARF Site.
  - PRPs have acknowledged that a current risk to public health, welfare and the environment exists in the WVBA. *Honeywell Comments to ADEQ on RID ERA* (April 22, 2010). (RID’s recent actions are acknowledged as having begun to mitigate current risks to public health).
  - According to 2009 data, ~ 3,400 pounds of uncontrolled volatile organic compounds in the WVBA groundwater are currently being released into the air.
  - ADEQ requires that such groundwater contamination “should be removed from the environment and treated . . . appropriately.” Letter from Amanda Stone of ADEQ to Keith Takata of EPA, dated November 14, 2007.
  - Consistent with ADEQ’s requirement and contrary to the PRPs’ proposal, RID’s ERA will eliminate the uncontrolled release of thousands of pounds of VOCs “threatening public health, welfare and the environment” every year.
  - PRPs’ should not object to ADEQ’s approval of RID’s ERA or RID’s litigation to recover RID’s ERA costs since the PRPs have now committed to ADEQ that if “sampling data and other relevant information demonstrate that an appropriate ERA is necessary, we will implement it.” Letter from Karen Gaylord to Director Grumbles, dated June 3, 2010.
  
- Contrary to the PRPs’ ERA, which is conditioned upon future sampling and only for risks to public health and welfare, Arizona law and existing data support the current need for an ERA to reduce the scope or cost of the final remedy in the WVBA for the following reasons:
  - An ERA is authorized if it can reduce the scope or cost of the final remedy. A.A.C. R18-16-405.A.

- While RID's ERA is not a final remedy, RID's ERA will address about 95 percent of the contamination impacting the RID well field and, therefore, greatly reduce the cost of subsequent actions to address all of the other impacted or threatened RID and non-RID wells in the WVBA.
- Under RID's prioritized ERA pumping regimen, the ERA will limit the potential lateral spread of the groundwater contamination and will seal off clean intervals at depths to prevent cross contamination of deeper aquifers.
- PRPs should not object to ADEQ's approval of RID's ERA or RID's litigation to recover RID's ERA costs since the PRPs have now committed to ADEQ that if "sampling data and other relevant information demonstrate that an appropriate ERA is necessary, we will implement it." Letter from Karen Gaylord to Director Grumbles, dated June 3, 2010.
- An authorized ERA must be consistent with all legally applicable requirements and standards of the WQARF program. The PRPs' conditional and limited "commitments" to ADEQ in their June 3 letter fail to meet the following applicable WQARF requirements:
  - Arizona law requires that a "selected remedial action [including an ERA] shall address, at a minimum, any well ... if the well would now or in the reasonably foreseeable future produce water that would not be fit for its current or reasonably foreseeable end uses without treatment due to the release of hazardous substances. A.R.S. 49-282.06(B)(4)(b) (emphasis added). The PRPs' commitments fail to address this statutory requirement.
  - Arizona law requires remedial action under the ERA "...to allow the maximum beneficial use of the waters of the state." A.R.S. 49-282.06(A); A.A.C. R18-16-405.C. The PRPs' commitments fail to address this statutory requirement.
  - Arizona law requires that a "selected remedial action [including an ERA] shall address, at a minimum, any well that at the time of selection of the remedial action either supplies water for municipal, domestic, industrial, irrigation or agricultural uses [and that] the specific measures to address any such well shall not reduce the supply of water available to the owner of the well." A.R.S. 49-282.06(B)(4)(b)(emphasis added). The PRPs' commitments fail to address this statutory requirement.
  - ADEQ and EPA prohibit the "relocation of contaminants from one media (groundwater) to another (air)" and require that "contaminants should be removed from the environment and treated . . . appropriately." Letter from Amanda Stone of ADEQ to Keith Takata of EPA, dated November 14, 2007, and Letter from Keith Takata to Michael Loch and Brian Israel, dated November 14, 2007. The PRPs' commitments fail to address this regulatory requirement.
  - Arizona law requires ADEQ approval of the design of a treatment system "based on an evaluation of potential treatment system failure that could affect public health and ... safeguards including any site-specific engineering and operation controls necessary to assure protection of public health against such failure."

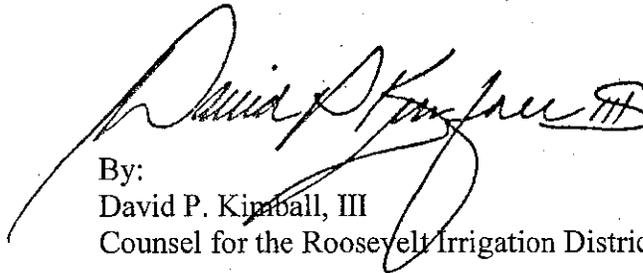
A.A.C. R18-16-411(C). The PRPs' commitments fail to address this regulatory requirement.

- Finally, the PRPs do not have the legal authority to implement an ERA that would not be consistent with the applicable legal requirements discussed above or the other applicable legal requirements requiring an ERA to be reasonable, necessary, cost-effective and technically feasible. A.R.S. 49-282.06.A.3.
  - The PRPs do not have the legal authority to implement an ERA that would utilize RID's existing infrastructure, without RID's consent. RID will not support any ERA that does not address the groundwater contamination impacts and threatened impacts to its wells and water supply and/or does not meet all applicable legal requirements regarding water quality standards, water quantity protection, pollution prevention, and water treatment system approval.
  - Without RID's existing infrastructure, any PRP-proposed ERA would not be reasonable or cost-effective compared to RID's ERA. The costs to implement an authorized ERA would significantly increase, if not be prohibitive, without RID's existing infrastructure.

For the reasons summarized above, the PRP's "commitments" in their June 3, 2010 letter to ADEQ are totally unacceptable to RID, and RID respectfully requests that ADEQ stop its double standard and preferential treatment of the PRPs. After four long months of apparent negotiations with ADEQ, the PRPs continue to refuse to address the impacts and threatened impacts to RID's wells and water supply as authorized under Arizona law. The PRPs disregard the fact that they are legally responsible for the groundwater contamination in the WVBA WQARF Site that has significantly damaged RID's wells and water supply. The June 3, 2010 letter demonstrates that the PRPs are not serious in addressing RID's issues identified in RID's ERA Work Plan. Accordingly, we respectfully request that ADEQ immediately approve RID's ERA. Of course, RID will continue to work with the ADEQ and the PRPs to address any legitimate concerns about the implementation and long-term costs of the ADEQ-approved ERA.

Very truly yours,

**GALLAGHER & KENNEDY, P.A.**



By:  
David P. Kimball, III  
Counsel for the Roosevelt Irrigation District

Mr. Benjamin H. Grumbles  
June 10, 2010  
Page 7 of 7

Henry Darwin, ADEQ  
Amanda Stone, ADEQ  
Julie Riemenschneider, ADEQ  
Sheryl Sweeney, Ryley Carlock & Applewhite  
Stan Ashby, Roosevelt Irrigation District  
Dennis Shirley, Synergy Environmental