

Danielle R. Taber

From: Laura L. Malone
Sent: Thursday, January 15, 2015 8:44 AM
To: Tina LePage; Scott R. Green; Danielle R. Taber
Subject: FW: Arizona Chamber comments
Attachments: AZ Chamber_RID.pdf

FYI

Laura

From: Helen Heiden [<mailto:hheiden@azchamber.com>]
Sent: Wednesday, January 14, 2015 4:43 PM
To: Henry Darwin
Cc: ghamer@azchamber.com; Jim Norton
Subject: Arizona Chamber comments

Director Darwin:

Attached please find the Arizona Chamber's comments regarding the feasibility studies and remedy selection for the Water Quality Assurance Revolving Fund West Van Buren Site.

Please let Glenn or me know if you have any questions.

Helen Heiden

Director of Government Relations

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January 14, 2015

Henry Darwin
Director, Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007

Re: Feasibility Studies and Remedy selection for the Water Quality Assurance Revolving Fund West Van Buren Site

Dear Director Darwin:

I write to you as the President of the Arizona Chamber of Commerce and Industry (the "Arizona Chamber") to submit our comments regarding the Feasibility Studies submitted and recommended remedies proposed for the above referenced Water Quality Assurance Fund ("WQARF") West Van Buren Site ("WVB Site"). As the leading statewide advocate for business since 1974, the Arizona Chamber has worked tirelessly with state government to improve Arizona's economy and industry. When the Roosevelt Irrigation District ("RID") first proposed its Early Response Action ("ERA") for the WVB Site in March of 2010, the Arizona Chamber opposed the approval by Arizona Department of Environmental Quality ("ADEQ"). Despite open and unanimous opposition from the business community, ADEQ's Director at the time, Ben Grumbles, conditionally approved it.

The Arizona Chamber opposed RID's ERA on several points, including that it was unnecessary, technically flawed, costly, and importantly, subverted the WQARF process. RID used a provision of the WQARF process that was intended and designed to deal with emergencies and instead turned it into the first step to compel members of the Arizona business community and taxpayers to pay for RID to become a profitable potable water provider.

RID has since used that approval to launch a litigation claim under the federal "Superfund" law. Many of the defendants that RID has sued are Arizona Chamber members. These members are significant employers and business taxpayers in Maricopa County. In its lawsuit, RID alleges that any of our members who ever owned or operated on property overlying contamination at the WVB Site are jointly liable for the entire cost of its scheme.

When WQARF was created and passed into law, the business community supported the creation and funding of WQARF in order to provide Arizona with an alternative to the federal law. As is supported by the legislative intent and purpose behind the law, WQARF was designed so that the State through ADEQ could provide a process for the development of reasonable and appropriate remedies at sites with contaminated groundwater. This was deemed necessary for many reasons, including to avoid the immense amount of litigation that was occurring at the time under the old law and in order to combat

the excessive and unjustified remedies developed and imposed by the EPA or under the Federal Superfund law. Additionally, rather than having joint and several liability, WQARF required that companies only had to pay their fair share of the costs. These points were and are extremely important to minimize the severe negative impacts of the federal law on those large companies that are able continue to be in business and to minimize the significant impact the historic actions by other companies could have on these companies through joint and several liability under Federal Superfund law.

RID is continuing to use the WQARF process in a manner contrary to the legislative intent behind the law and the Arizona business community's expectations of the WQARF program.

Some basic factual background is that RID is an irrigation water provider that pumps groundwater pursuant to a contract with the Salt River Project (“SRP”). The water pumped by RID has always been used solely for irrigation, and the condition of the water pumped by RID is perfectly fit for irrigation use without any treatment. RID has been aware of the water condition and situation for several decades essentially without complaint. There is no health risk or related reason to treat the water. This point was just recently confirmed by ADHS in a finding in this regard. Notwithstanding that point, RID is attempting to misinterpret WQARF and use the federal Superfund law to force Arizona Chamber members and the taxpayers of Arizona to pay for a treatment plan unsupported by law, risk and science.

As a result of the conditional approval provided by Director Grumbles, RID has now submitted a Feasibility Study to the State that seeks to have its ERA become the remedy for the WVB Site. If this approval occurs, the impact will be that the general taxpayers of Arizona will have to pay 50 percent or more of the costs to be incurred in this legally and scientifically erroneously driven plan. WQARF requires the State to pay for any share of contamination caused by companies that cannot afford it or no longer exist. In the WVB Site, there are many sources of alleged contamination and many of the known sources are not in business or no longer financially viable.

Another significant negative legal, environmental and policy implication should ADEQ approve the RID plan is that State water law will require change. Should the RID plan be approved, changes in provisions of the critical and valuable Arizona Groundwater Code will be required. These legislative changes that will be prompted by RID would undermine fundamental protections of groundwater supplies that support our State’s economy.

In attempt to present clarity to the situation in the WVB Site that may need remedial attention, Arizona Chamber members that are also RID litigation defendants, retained highly qualified and respected environmental remediation engineers and consultants to study data from the WVB Site and prepare a Feasibility Study. This Feasibility Study conclusively demonstrates that there is no health risk presented by the current uses of the water for its allowed and intended purposes, that treatment is NOT now needed and can perhaps even avoided entirely, at a savings of approximately \$50 million, with no risk to the public. Among those supporting the deferral of expensive groundwater treatment is the City of Phoenix, the state’s largest drinking water provider. The City plans to use the impaired portions of the aquifer for future supply, but not for many years. Those intervening years will eliminate or dramatically reduce the need for treatment, as nature breaks down the contaminants on its own.

The remedy recommended in the Feasibility Study provided by Arizona Chamber members requires that the contaminant plume be reasonably monitored and controlled through the development, placement and implementation of scientifically state of the art extraction/treatment wells. Most importantly, it requires that any well used for drinking water by anybody (including RID, should it

ever obtain the right to sell or broker drinking water) be immediately addressed so as to prevent any risk of harm to the public. To the contrary, RID's remedy only protects RID's wells.

The contrast between the two plans is clear. There is no need to begin expensive treatment where none is necessary, but that is what RID is seeking. When and if something is needed to address a drinking water well (or any other risk to the public), the remedy proposed by the Arizona Chamber members fully addresses that contingency. The remedy proposed by the Arizona Chamber business community members involved in the RID litigation is in line with state law, legislative intent and the goals of our WQARF program.

For all the above reasons, the Arizona Chamber strongly supports the remedy proposed in the Feasibility Study submitted by the Arizona Chamber members. It is an approach supported by law, science, good policy, legislative intent and promotes health, safety, protects the environment and is in line with the WQARF program. The plan proposed by RID is to the contrary in all respects and will also be a significant deviation from the State's Groundwater Code.

Thank you for your time and consideration of our position on these issues.

Very truly yours,

A handwritten signature in black ink, appearing to read "Glenn Hamer", written in a cursive style.

Glenn Hamer
President and CEO