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From: Karen Gaylord <KSG@jhc-law.com>
Sent: Wednesday, January 14, 2015 4:20 PM
To: Tina LePage
Cc: Laura L. Malone; Scott R. Green; Danielle R. Taber
Subject: WVBA Working Group comments
Attachments: 2015-01-14 Letter to ADEQ.pdf

Please accept the attached response from the Working Group to Mr. Kimball's comparison of the RID FS and the Working Group FS. A hard copy was delivered to you today.

Thank you.

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January 14, 2015

VIA EMAIL: lepage.tina@azdeq.gov

Ms. Tina LePage, Manager
Remedial Projects Section
Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007

Re: *West Van Buren Area WQARF Site; Submittal to ADEQ by Mr. David Kimball, dated September 30, 2014.*

Dear Ms. LePage:

On September 30, 2014, Mr. David Kimball of the law firm of Gallagher and Kennedy, on behalf of the Roosevelt Irrigation District, submitted to ADEQ a critique of the Feasibility Study (FS) submitted by the West Van Buren Area working group (Working Group). The Gallagher and Kennedy submittal includes three tables that purport to identify the applicable legal requirements that apply to an FS for the West Van Buren Area WQARF Site (WVBA), and to compare both the Working Group FS and the RID FS to those requirements. RID provided these tables to the public and Board members at the December 1, 2014 meeting of the WVBA Community Advisory Board.

The Gallagher and Kennedy submittal helped the Working Group to understand why the RID FS and its proposed remedy are so inconsistent with the provisions of WQARF. Gallagher and Kennedy's submittal states that RID conducted its FS in compliance with CERCLA requirements, not WQARF requirements, and designed its proposed remedy in accordance with CERCLA, not WQARF.

Gallagher and Kennedy falsely asserts that CERCLA requirements are "Applicable or Relevant and Appropriate Requirements" (ARARs) that apply to cleanups under the WQARF Program. Not only is this claim incorrect, it directly contradicts the stated intent of the Legislature when it enacted the current WQARF program in a comprehensive reform of the Old WQARF program in 1997. The Old WQARF program was modeled after the federal program but was viewed by many as an ineffective means of addressing soil and groundwater contamination in the State of Arizona. Subsequent to the enactment of the current WQARF program, ADEQ adopted

a new set of Rules (Title 18, Chapter 16) specifying, among other things, the procedures for identifying WQARF remedial objectives and selecting WQARF remedial actions. CERCLA requirements or guidance documents do not apply to the WQARF program and are not relevant to any evaluation of remedial actions at WQARF sites. The evaluation and selection of remedial actions at WQARF sites is governed by Arizona statutes and rules, which were specifically tailored to enable greater flexibility in the selection of groundwater cleanup methods. In addition to being factually and legally incorrect, Gallagher and Kennedy's assertion that CERCLA requirements must apply to WQARF sites undermines the integrity of Arizona's WQARF program and the authority of ADEQ.

Gallagher and Kennedy alternatively argues that CERCLA requirements must be substituted for WQARF requirements because the WVBA WQARF Site is directly downgradient of the Motorola 52nd Street federal Superfund Site. Gallagher and Kennedy argues that "failure of a WQARF cleanup to substantially comply with the CERCLA requirements could provide EPA the opportunity to overfile, as it did on the East Washington WQARF Site, and take over control of the WVBA WQARF Site, which will delay cleanup of the WVBA WQARF Site and could impose additional cleanup requirements at substantial cost."[1] Gallagher and Kennedy's description of the history of the East Washington WQARF Site and EPA's position on state sites adjacent to federal sites is incorrect.

We set out below a point-by-point response to the individual assumptions and assertions contained in the September 30th Gallagher and Kennedy submittal.

1. WQARF Requirements, Not CERLCA Requirements, Control the Selection of the Final Remedy for the WVBA WQARF Site.

CERCLA requirements and guidance documents governing the selection of remedies do not apply to the West Van Buren Area (WVBA) and are not binding on ADEQ. Gallagher and Kennedy's assertion to the contrary is a desperate attempt to mask RID's unreasonable and unsupportable positions regarding the appropriate remedy at this site.

A. ADEQ Already Has Determined it is Inappropriate to Incorporate CERCLA Remedial Selection Criteria into the WQARF Program.

ADEQ has authority to consider federal standards in promulgating rules to implement WQARF, as Gallagher and Kennedy asserts. But more than a decade ago ADEQ unequivocally rejected the CERCLA remedial selection criteria as being

[1] David Kimball Email to Laura Malone (September 30, 2014).

inconsistent with the intent behind the 1997 reform of WQARF when it enacted the current WQARF rules:

> "While the Department was authorized to adopt CERCLA rules, guidance, or procedures under A.R.S. § 49-282.06(B), the rules, guidance, or procedures were required to be consistent with the new WQARF statutes. . . . The Department evaluated the CERCLA rules, guidance, and procedures and determined that, as a whole, they were not consistent with the goals and intent of the new WQARF statutes or the recommendations of the Joint Select Committee on WQARF. Laws 1997, Chapter 287 [the WQARF Reform statute currently in effect today] was in large part a repudiation of CERCLA. While components of CERCLA rules and guidance might be useful for the WQARF rules, they required extensive modification which precluded the possibility of their incorporation by reference. The Department's determination was supported by the vast majority of stakeholders and by the WQARF Advisory Board."[2]

Thus, Gallagher and Kennedy's attempt to graft new remedy criteria from the CERCLA program onto the WQARF program directly contradicts the Legislature's intent in reforming WQARF and ADEQ's own conclusions regarding the application of CERCLA rules and guidance.

B. WQARF Reform in 1997 Was Not Modeled on CERCLA.

The current WQARF program was not modeled on CERCLA, as Gallagher and Kennedy disingenuously contends[3]. Gallagher and Kennedy relies on language *applicable to the original version of WQARF, not current State law.* Specifically, the language that Gallagher and Kennedy quotes is from a description in ADEQ's preamble to the 2002 WQARF rules that described the *old* (1986) WQARF Statute. Gallagher and Kennedy's reliance on this language is not only misplaced, it also takes the quoted passage out of context. In fact, the language was intended to contrast "Old WQARF" to the reforms that were the embodied in the 1997 WQARF legislation ("New WQARF"):

> Both CERCLA and WQARF originally established a "joint and several" liability scheme for parties that were responsible for contaminating a site. Under joint and several liability, one responsible party could be held liable

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[2] ADEQ, *Notice of Exempt Rulemaking: Water Quality Assurance Revolving Fund Program*, 8 Ariz. Admin. Reg. 1491, 1511 (March 29, 2002) ("*WQARF Remedy Selection Rules Preamble*").

[3] Email from David Kimball re WVBA WQARF Site FS Reports, Attachment Table 2, n. 4 (September 30, 2014) ("*Kimball FS Email*").

> for the entire cost of the cleanup at a site where there are numerous responsible parties.
>
> Over time, many came to believe that the original WQARF statutory scheme provided an ineffective means for addressing contaminated soil and groundwater. . . .
>
> Others claimed that the selection of cleanup goals was flawed and the process for determining methods to cleanup a site were laborious. Specific cleanup criteria were not provided in statute. However, Maximum Contaminant Levels established under the Safe Drinking Water Act for tap water were usually adopted as goals within the aquifer for groundwater sites. Controversy ensued over whether it is feasible or cost-effective to restore every aquifer to drinking water quality. Many argued that the costs of aquifer restoration are often prohibitive and the likelihood of success doubtful at many sites.[4]

These and other shortcomings led to the complete overhaul of the program, which in turn led to ADEQ's rejection of CERCLA rules and guidance. Indeed, Gallagher and Kennedy was then counsel for the Arizona Chamber of Commerce, and argued in 1996 that many then-existing WQARF sites had budgets that included a "pump and treat" remedy that "may not be cost effective or technically feasible." This problem was addressed under the remedy selection and end use proposals that were incorporated into WQARF in the next year.[5]

C. ADEQ Has Adopted a Remedial Selection Process Specifically Tailored for Arizona and Differing Substantially from CERCLA.

Instead of modeling WQARF on CERCLA, WQARF reform was a "broad rejection of the CERCLA approach to remediation of contaminated sites in favor of an approach that was specifically tailored to work in Arizona."[6] There are fundamental differences between CERCLA and WQARF that weigh against incorporation of the CERCLA elements highlighted by Gallagher and Kennedy:

- Proportional liability was substituted for joint and several liability, with identification of responsible parties and allocation of liability assigned to ADEQ.

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[4] *WQARF Remedy Selection Rules Preamble*, at 1493.

[5] Letter from David Wallis, Gallagher and Kennedy, to the Groundwater Cleanup Task Force (October 21, 1996).

[6] *WQARF Remedy Selection Rules Preamble*, at 1511.

- A greater emphasis was placed on human health risks in prioritizing of sites, with a different scoring system according to "actual and potential exposure to hazardous substances."
- "New WQARF also allows increased flexibility in selection of groundwater cleanup methods and levels. ADEQ is authorized to adopt rules for remedy selection that incorporate analysis of a range of cleanup alternatives, from remediation of the contamination to no action."[7]
- While EPA focuses on selecting a remedial goal within an aquifer and requiring aquifer restoration to that goal, WQARF focuses on protecting and providing for future land and water uses.[8]
- While CERCLA provides for public comment only after a proposed remedy is selected, WQARF includes extensive public involvement from beginning to end of the cleanup process.[9]
- Prompt settlements are heavily favored over litigation, with significant incentives to settle early.

The Legislature, stakeholders, and ADEQ expressly designed WQARF to be significantly different from CERCLA on numerous fronts to both depart from the perceived shortcomings of the CERCLA program and to address unique conditions and issues in Arizona. Gallagher and Kennedy purposefully ignores these differences because recognizing them exposes many of the flaws in RID's submissions. But, plainly Gallagher and Kennedy's self-serving effort to revise WQARF regulatory history cannot change the sophisticated remedial action program that ADEQ has operated successfully since the CERCLA model was rejected in Arizona nearly 20 years ago.

D. EPA Has Not Sought To Impose Inapplicable Federal Standards.

ADEQ consulted with EPA both during and after the WQARF reform effort of the 1990s. EPA accepted the numerous significant changes adopted in the reformed WQARF program and agreed that those changes did not undermine the State's ability to remediate contaminated sites. EPA understands that WQARF sites must meet WQARF requirements rather than CERCLA requirements. EPA has not intervened as ADEQ has implemented New WQARF over nearly 20 years, and has never suggested that CERCLA requirements be substituted for WQARF requirements at WQARF sites. ADEQ has implemented dozens of Early Response Actions and is working toward selection of final remedies at many WQARF Sites under the existing WQARF program requirements and criteria, with no incorporation of CERCLA standards. Gallagher and

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[7] *Id.* at 1493.

[8] *Id.* at 1499.

[9] *Id.*

Kennedy has no basis in Arizona law for substitution of CERCLA standards for WQARF standards at the WVBA.

The WQARF criteria provide for selection of a reasonable, necessary, and cost effective remedy in the WVBA, which is protective and provides for the WQARF Remedial Objectives of protecting the end users of groundwater. As documented in the 2014 Human Health Risk Assessment (2014 Site HHRA) conducted for the WVBA site, the groundwater remedies in the Working Group Feasibility Study are protective of human health and the environment. A combination of immediate and future remedial strategies and measures are proposed to address all existing and potential future end uses of water by all water providers in the WVBA.

E. Even if CERCLA Applied, RID's Proposed Remedy Does Not Satisfy CERCLA Requirements.

Ironically, RID's proposed remedy fails to meet CERCLA standards despite RID's and Gallagher and Kennedy's misguided assertions that CERCLA applies to the WVBA. In fact, RID's FS and its proposed remedy do not satisfy CERCLA requirements for a number of reasons. Most important of these is RID's failure to conduct a human health risk assessment for reasons made obvious most recently by the Arizona Department of Health Services (ADHS), which released an updated Health Consultation on January 8, 2015 that reached three conclusions:

- ADHS re-evaluated the potential health risks associated with the exposure to RID #84 as if it were used as potable water. With the available information, ADHS concluded that exposure to trichloroethene (TCE), tetrachloroethene (PCE) and 1,1- dichloroethene (1,1-DCE) in RID #84 would not be expected to harm people's health under typical conditions of household water use (although such uses do not now occur).

- The cancer risk for the highest average concentration of TCE in RID's wells, assuming irrigation and recreational uses, was lower than the EPA acceptable risk range and would not be expected to cause harm to human health.

- The cancer risk for the highest average concentration of TCE in RID's canals, assuming irrigation and recreational uses, was better than the EPA acceptable risk range and would not be expected to cause harm to human health.[10]

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[10] ADHS, *Health Consultation: Evaluation of Water Sampling Results in the Roosevelt Irrigation District (RID)* (January 8, 2015)("*Health Consultation*").

RID's failure to conduct a risk assessment, as required under CERCLA, is clearly an attempt to avoid the admission of the absence of risk that has now been confirmed through proper assessments conducted by ADHS, ADEQ, and the Working Group.

RID's proposal also would be inconsistent with current EPA policy on green remediation. EPA has recognized, through its focus on green remediation, the need to minimize water use and depletion of water resources.[11] This trend has been followed by the regional EPA offices, including EPA Region 9.[12] EPA participated in the standards development process for ASTM's 2013 *Standard Guide for Greener Cleanups*, which has as one of its five core elements "[m]inimizing the use of water and impacts to water resources throughout the cleanup."[13] RID's proposal would create serious impacts to water resources within the City of Phoenix long after RID's contractual right to pump has expired, in contravention of this important federal policy.

2. No Unacceptable Risks to Human Health and No Imminent and Substantial Endangerment Exist in the WVBA.

RID's proposed remedy and Gallagher and Kennedy's criticism of the Working Group's proposal are premised on the false assumption that existing conditions in the WVBA present a level of risk to human health or the environment that must be addressed. Gallagher and Kennedy has always known that no unacceptable risks exist, but has cobbled together bits and pieces of various documents to construct an argument that the remedy should be driven by these non-existent or unknown future risks.

There was never any substance to this argument, and it has been completely eviscerated by the January 8, 2015 ADHS Health Consultation. The report evaluated potential human health risks associated with RID's canal system and well network. The report used data from September 2013 and 2014 in order to update a risk evaluation originally conducted in 1992.[14]

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[11] EPA OSWER, *Principles for Greener Cleanups* (August 27, 2009); Executive Order, *Federal Leadership in Environmental, Energy and Economic Performance* (October 5, 2009) ("the head of each agency shall . . . improve water use efficiency and management").

[12] EPA Region 9, *Greener Cleanups Policy-EPA Region 9* (September 14, 2009) (listing as a practice or strategy "[r]educing water use and employing water efficiency approaches and equipment.").

[13] ASTM E2893-13, § 4.1.3. Though not binding, EPA Regional Administrators have been instructed to consider the ASTM standard "as an available resource for reducing the environmental footprint of cleanups . . . ." Memorandum from Mathy Stanislaus, EPA Assistant Administrator, to Regional Administrators, *Encouraging Greener Cleanup Practices through Use of ASTM International' s Standard Guide for Greener Cleanups* (December 23, 2013).

[14] *Health Consultation, at 7.* Note that, because RID has sporadically treated water in four of its wells, ADHS sampled the untreated water in order to evaluate the potential risk under normal conditions.

Based on current site conditions, ADHS identified no risk, concluding:

> "This health consultation evaluated the potential health risks associated with exposure to groundwater collected from RID wells, and canal water samples collected in the RID area. With the available information, ADHS concluded that exposure to chemicals in groundwater and canal water in RID sampling area is not expected to harm people's health."[15]

ADHS also reevaluated the potential risk associated with RID Well 84, which had been the focus of its 1992 evaluation. Because of the decline in contaminant concentrations, ADHS concluded that even direct use of water from Well 84 for typical household uses would not be expected to harm people's health.[16] That conservative and hypothetical scenario was selected because ADHS had assumed in its 1992 evaluation that concentration levels in Well 84 would approximate those detected in downgradient wells in Tolleson.

ADHS' updated health evaluation should put to rest the always unfounded assertion that the West Van Buren site poses a current health risk. But explaining Gallagher & Kennedy's now-defunct argument provides useful perspective on the cynicism of its efforts.

Gallagher and Kennedy asserts that ADEQ has made a "determination" that an imminent and substantial endangerment exists at WVB.[17] In support of its position, Gallagher and Kennedy cites to the 2009 agreement between ADEQ and RID to conduct an Early Response Action, which was conducted *before completion of the recent risk assessment and Health Consultation* for the Site. ADEQ's later conditional approval of RID's Early Response Action Work Plan rejected RID's claim that a current risk existed, explaining that "specific documentation about the risks . . . has not yet been provided."[18] In July 2014, RID acknowledged that "there does not presently appear to be an acute health risk associated with potential public exposure to the WVBA Site contamination" and that no numerical risk assessment had yet been conducted by ADEQ to determine whether long-term risks existed.[19]

RID has never conducted a risk assessment. Why? Because it is clear that the results of a properly conducted risk assessment would eviscerate its position and contradict its allegations that an imminent and substantial endangerment exists. RID's allegations about risk were based only on a limited investigation of COC levels in water

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[15] *Id.*, at 15.

[16] *Id.*, at 14.

[17] *Kimball FS Email*, Table 1 at 1.

[18] ADEQ Director Grumbles Letter to Stanley Ashby, RID Superintendent, at 3 (June 24, 2010).

[19] RID, *Draft Feasibility Study Report*, at 161 (July 2014).

and air through an incomplete Public Health Exposure Assessment that did not follow USEPA and ADHS methodology. Yet the results of RID's Public Health Exposure Assessment still belie its claim.

As to groundwater, RID concluded that "Data obtained by sampling and analysis of COCs in the RID-92 and RID-114 water supply systems document the occurrence of COCs *at levels safely below numeric limits* established for Arizona SWQSs that are believed to have an adverse health effect from dermal exposure by partial- and full body contact during bathing and swimming in the open RID laterals and canals as well as ingestion of fish caught in these waterways."[20] In other words, the "swimming hole" that RID publicly touted as a risk to public health did not present a significant risk at all—at least not from COCs.

With regard to volatilization of COCs into the air, RID concluded that "the current air emissions from RID water supply well discharges and water supply conveyance do not pose an acute risk to public health."[21]

Although RID asserted that the question of long-term effects had not yet been answered, RID has not bothered to evaluate those risks itself. But the Working Group had that work done by an independent toxicologist. And the resulting 2014 Site HHRA demonstrates that there are no unacceptable risks at the Site and no imminent and substantial endangerment to human health, long-term or otherwise.[22] RID's reckless claims to the contrary are the product of self-interest, not science and fact.

3. The Working Group's Remedy Does Not Violate Any Regulations or Guidance Regarding the Transfer of Contaminants.

Gallagher and Kennedy complains that the Working Group's alternative remedies violate applicable policies and guidance regarding the transfer of contaminants from one medium to another, citing as it has done many times before a November 14, 2007 letter from ADEQ's Amanda Stone to EPA's Keith Takata. The 2007 letter concerned a CERCLA site, not a WQARF site, and does not purport to establish any ADEQ policy with regard to WQARF sites. The letter relies upon EPA CERCLA guidance, not ADEQ WQARF guidance. As discussed previously, CERCLA guidance is

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[20] RID, *Draft Feasibility Study Report*, at 63.

[21] *Id.* at 66.

[22] WVB Working Group Feasibility Study Report, Appendix D, Human Health Risk Assessment, at 37 (July 2014) ("mitigation is not warranted to protect the residents within the WVBA from potential exposure to groundwater from the RID wells."). As noted earlier, the ADHS's Health Consultation (January 8, 2015) reached the same result in its evaluation of both adult and child ingestion risks from exposure to groundwater sampled from RID's irrigation wells.

inapplicable to the WVBA, except to the extent it has been specifically adopted by ADEQ, as discussed previously.

Even if the CERCLA guidance cited by Gallagher and Kennedy were applicable, Gallagher and Kennedy has misquoted the guidance and taken it out of context. Illustratively, Gallagher and Kennedy claims that EPA guidance states that, "A remedy that achieves an acceptable risk level in one medium may not be preferred if it only achieves this level by transferring contaminants to another medium."[23]

But Gallagher and Kennedy omitted a vital qualifying phrase from the quoted document. Gallagher and Kennedy doesn't even indicate that language from the cited sentence is missing. What the sentence actually says is, "A remedy that achieves an acceptable risk level in one medium may not be preferred if it only achieves this level by transferring contaminants to another medium *at an unacceptable risk level.*"[24] Further, Gallagher and Kennedy ignores existing CERCLA guidance that (1) acknowledges the potential for acceptable levels of emissions, and (2) establishes "To Be Considered" criteria for implementing emission controls on air strippers at CERCLA sites only when actual emissions at sites in ozone non-attainment areas are greater than 15 pounds per day of potential emissions (calculated as 24-hours per day and 365 days per year) or are greater than 10 tons per year of total VOCs.[25] The 2014 Site HHRA demonstrates that there are no unacceptable health risks in the WVBA. Therefore, even if this guidance applied to the WVBA, the Working Group's remedies would be consistent with it, contrary to Gallagher and Kennedy's assertions.

Similarly, Gallagher and Kennedy cites CERCLA guidance requiring that cleanup levels "adequately address other routes of exposure . . . including groundwater as a source of contamination to other media."[26] But, again, this guidance only requires a remedy to address transfers of contaminants if the transfer poses a risk to public health or the environment.[27] Thus this CERCLA guidance statement is also inapplicable here.

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[23] *Kimball FS Email*, Table 1, n.9.

[24] EPA, *Guidance on Remedial Actions for Contaminated Ground Water*, OSWER Directive 9283.1-2, at 4-9 (December 1988) (emphasis added).

[25] EPA, *Control of Air Emissions from Superfund Air Strippers at Superfund Ground Water Sites*, OSWER Directive 9355.0-28 at pp. 1-3 (June 1989)

[26] *Kimball FS Email*, Table 1, n.9.

[27] EPA, *Summary of Key Existing EPA CERCLA Policies for Groundwater Restoration*, OSWER Directive 9283.1-33, at 9 (June 26, 2009) ("CERCLA cleanup levels are designed to address all reasonably anticipated routes of exposure *that may pose an actual or potential risk to human health or the environment.*") (emphasis added); *id.* at 3 (groundwater response actions should address "*actual or potential direct contact risk*") (emphasis added); *id.* (groundwater response actions "*should consider the potential* for the contaminated groundwater to serve as a source of contamination into other media.") (emphasis added);

In sum, the Working Group's proposed remedy is consistent with applicable guidance. Gallagher and Kennedy's attempt to show otherwise is in error.

4. The Working Group Has Provided for Contingent Remedies if RID Stops Pumping in 2025.

Gallagher and Kennedy either misunderstands the Working Group's proposed remedy or has intentionally mischaracterized the remedy to further RID's agenda. The Working Group's FS did not state that contaminants would be allowed to migrate uncontrolled toward the Luke Sink after 2025, as Gallagher and Kennedy asserts.[28] Rather, the FS clearly lists contingencies that may be triggered for each remedy if RID stops pumping and conditions at that time warrant additional remedial action. For instance, contingencies listed for the Reference Remedy, should they be necessary, include continued pumping of EW-2 beyond 2025, the installation and operation of an additional extraction well, replacement of SRP wells, an expanded monitoring well network, and other technically feasible measures.[29] Other potential contingencies discussed in the Working Group's FS, should contaminant levels in 2025 threaten beneficial uses at that time, include additional extraction from the residual plume, well modification, wellhead treatment, and replacement water supplies. Evaluating and implementing contingency measures if they are needed based upon conditions that exist at that time, allows for selection of necessary and reasonable remedial action.

5. WQARF Does Not Support Selection of a Remedy that Puts Groundwater to New Drinking Water Uses that could not occur but for WQARF program loopholes.

RID's pump-and-treat remedy is unnecessary today because the untreated water is suitable for its current irrigation use without health risks. RID's plan to treat the groundwater anyway at WQARF expense so that it can then market it for export from the WVBA does not serve the interests of water providers in the WVBA. Those new drinking water uses proposed by RID would not occur but for RID's plan to seek legislation to allow it to market the water as WQARF remediated water that is free of the conservation restrictions that ordinarily apply to groundwater in Arizona. So the WQARF remedy proposed by RID is not required to provide for a reasonably foreseeable drinking water use. Instead the remedy proposed by RID makes the new drinking water use possible.

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id. at 4 (groundwater response action cleanup levels "should generally address all pathways of exposure *that pose an actual or potential risk to human health and the environment.*") (emphasis added).

[28] *Kimball FS Email*, Table 1, at 2.

[29] Working Group FS, at 50.

In addition to protecting public health and welfare and the environment, WQARF remedial actions must "[t]o the extent practicable provide for the control, management, or cleanup of the hazardous substances in order to allow the maximum beneficial use of the waters of the state."[30] "Maximum beneficial use" is not defined in the WQARF statute or regulations. But it is clear from the structure of WQARF that the term is not equivalent to "drinking water use." Nor does it favor drinking water use over irrigation use. WQARF does not focus on setting cleanup standards in an aquifer based upon AWQS, MCLs, or use for drinking water. That approach can result in imposition of restoration remedies that are neither effective nor technically feasible and that waste precious desert groundwater resources in unnecessary pump-and-treat efforts. Imposition of drinking water use as the mandatory remediation goal would substantially reduce the options available for analysis in the FS and render the cost/benefit analysis mandated by the Legislature meaningless.[31]

Additionally, the Legislature directed ADEQ to consider other factors in selecting remedies, including the "extent to which the amount of water available for beneficial use will be preserved by a particular type of remedial action."[32] In the WVBA, the future water needs of the City of Phoenix, other water providers, and other end users served by SRP are best preserved through conservation of WVBA groundwater until it is needed for future water needs.

6. WQARF Does Not Require Restoration of the Aquifers to Arizona Drinking Water Quality Standards.

WQARF requires ADEQ to identify current and reasonably foreseeable uses of water and then design remedial objectives that protect and provide for those uses. This allows "maximum flexibility in selecting remedies" while also ensuring that uses impaired by the contamination are protected.[33] The Legislature recognized that remediation under WQARF would not necessarily result in achievement of AWQS at every site. In addressing the criteria for selecting remedial actions, the Legislature expressly provided that ADEQ "may approve a remedial action that may result in water quality exceeding water quality standards after completion of the remedy if the director finds that the remedial action meets the requirements of this section."[34]

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[30] A.R.S. § 49-282.06(A).

[31] *WQARF Remedy Selection Rules Preamble*, at 1524-25.

[32] A.R.S. § 49-282.06(C)(5).

[33] *Id.*, at 1520.

[34] A.R.S. § 49-282.06(D).

In enacting the current WQARF program, the Legislature made the clear and conscious decision not to make the default cleanup requirement restoration of groundwater to federal or state drinking water standards. This is a significant difference between WQARF and CERCLA that provides flexibility in remedy selection, so long as contingency plans are in place to address changed circumstances, such as new groundwater uses. MCLs and AWQS are not the default cleanup standards. Gallagher and Kennedy's assertions to the contrary demonstrate Gallagher and Kennedy's willingness to misstate Arizona law to advance its interests.[35]

A. WQARF Specifically Rejects Presumptive Aquifer Restoration Remedies.

In enacting the current WQARF program, the Legislature also made a deliberate choice to allow consideration of conservation of groundwater in place for future supply, and to require pumping and treatment only when necessary to protect or provide for uses that require such a remedy. It specifically authorized ADEQ to consider the extent to which the amount of water available for future beneficial use will be preserved by a particular type of remedial action.[36] It also authorized ADEQ to approve a remedial action that may result in aquifer water quality exceeding water quality standards after the completion of a remedy if the remedial action otherwise meets WQARF requirements.[37] Together, these provisions recognize that groundwater management must be considered in remedy selection and that pump and treat remedies are not always necessary.

B. WQARF Allows Flexibility in Cleanup Standards.

As ADEQ stated in the preamble to the WQARF remedy selection rules, "New WQARF also allows increased flexibility in selection of groundwater cleanup methods and levels. ADEQ is authorized to adopt rules for remedy selection that incorporate analysis of a range of cleanup alternatives from remediation of the contamination to no action. Significantly, the statute clarifies that cleanup need not always result in achievement of drinking water standards in the aquifer itself."[38]

Additional flexibility was required because "many people felt that the selection of MCLs as cleanup goals under CERCLA (and old WQARF) resulted in aquifer restoration remedies which were not cost effective or technically feasible."

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[35] *See, e.g., Kimball FS Email*, Table 1, at 2-3.

[36] A.R.S. § 49-482.06(C)(5).

[37] *Id.* § 49-482.06(D).

[38] *Id.*

Water providers are given a voice in the remedy selection process and their plans for future water needs and uses are given significant consideration. But this does not equate to drinking water standards becoming the default remediation standard. Before the remedy selection rules were adopted, some commented that the rules' focus on water providers and their water management plans as a driver in the selection of remedial objectives served only to undermine "the Legislature's intent to relieve the restrictive nature of the past water remediation criteria."[39] ADEQ strongly disagreed with this assessment because:

> [A] cleanup need not always result in the achievement of aquifer water standards in the aquifer itself. Quite to the contrary, the rule requires remedial objectives to be developed based on uses of the water and requires the selected remedy to meet the remedial objectives. This does not mean that the aquifer will always be cleaned up to aquifer water quality standards. Instead, the rules require different uses to be identified and require a remedy to be selected which will protect and provide for the uses. The method to protect or provide for the uses is determined in the feasibility study and may include such measures as replacement wells or well-head treatment.[40]

Therefore, the fact that water providers participate in the remedy selection process and that their interests are a key consideration does not mean that drinking water standards become the default cleanup standard at this or any other WQARF site.

7. RID Wells Are Not Impaired and No Treatment is Currently Needed for RID's Existing Uses.

RID's wells are neither threatened nor impaired. Water pumped from those wells is suitable for current irrigation uses without treatment. A well is only "impaired" if it produces water that is not suitable for use without treatment.[41] As RID itself, the 2014 Site HHRA, and the ADHS have documented, no treatment of any kind is required before RID transports water from its wells to agricultural landowners. RID has never stopped providing irrigation water to its West Valley customers and has even shut down its unnecessary treatment systems for many months without objection from any regulatory authority.

RID's reliance on MCLs as the standard for measuring impairment of RID wells is misplaced. Exceedance of an MCL would only render a well impaired if the well was

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[39] *WQARF Remedy Selection Rules Preamble*, at 1522.

[40] *Id.*

[41] A.R.S. § 49-282.06(B)(4)(b); A.A.C. § R18-16-502(A).

being used for drinking water. None of RID's wells is currently used for drinking water or any other potable use. RID is again confusing drinking water and CERCLA cleanup requirements with WQARF remediation standards. WQARF first determines how water is being used or will be used in the reasonably foreseeable future to determine necessary and contingent remedies; it does not default to drinking water standards as the cleanup standard. In the WVBA, as the ADHS has again confirmed in its January 8, 2015 Health Consultation, RID can use water from all of its wells for irrigation uses without treatment. Therefore, none of RID's wells are impaired.

Although RID has stated that it intends to sell groundwater to potable water suppliers in the future, that intention is not a foreseeable use that currently renders the wells impaired and that requires remedial action of the type proposed by RID. As ADEQ knows, there are numerous contractual, legal, technical, and financial barriers to RID's plans.

But even if RID's plan to sell groundwater could be classified as a reasonably foreseeable use, it would not require cleanup to drinking water standards today. The WVBA plume has been shrinking and concentrations are continuing to decrease. See, for example, Appendix B to the ADHS January 8, 2015 Health Consultation (graphically depicting the decline at RID-84 from 1990 to 2010). Assuming RID is successful in obtaining legal authority to sell WVBA groundwater, by the time it does so, finds willing buyers, and has the infrastructure in place to deliver the water, groundwater quality in the WVBA would improve even more than it already has and the remedial action proposed by RID today would be even less justifiable. Furthermore, the Working Group's FS provides a contingent remedy to implement necessary and appropriate action(s) if RID's water is put to a future potable use and contaminant levels at that time are high enough to render the water unsuitable for the new use without treatment.

8. The CERCLA Statutory Preference for Treatment Does not Apply at this WQARF Site.

Gallagher and Kennedy criticizes the Working Group's FS for lacking treatment remedies to reduce contaminant levels in the WVBA, citing an EPA preference for treatment.[42] The Working Group's FS has a treatment component, but the preference for treatment in CERCLA has no bearing on the selection of an appropriate remedy at a WQARF site. Once again, Gallagher and Kennedy is emphasizing inapplicable federal standards.

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[42] The treatment preference is a statutory requirement under CERCLA Section 121(b), not an EPA preference, as RID seems to indicate through its citation to EPA guidance. *Kimball FS Email*, Table 1, n. 15.

Selection of a remedy for the WVBA is subject to the New WQARF program statute and rules, which were specifically created to provide increased flexibility in selecting remedies. Under Old WQARF and CERCLA, alternative remedies from no action to the most aggressive remedy were evaluated, regardless of the remedial objectives for the site. But site selection under New WQARF is driven by the site's remedial objectives. If a remedial alternative is not necessary to address the remedial objectives, it need not be considered.[43]

9. RID Operation and Maintenance Costs Are Neither Necessary Nor Critical and May Not be Reimbursed Under WQARF.

Twisting the Working Group's proposal beyond recognition, Gallagher and Kennedy mischaracterizes the proposal as including RID wells as "necessary and critical" components of the Working Group remedy.[44] Gallagher and Kennedy then criticizes the Working Group for not including the wells' operations and maintenance costs as a cost component of the remedy.[45] RID's attorneys are certainly creative in their attempts to obtain reimbursement for every conceivable cost so as to maximize profits from the proposed sale of treated irrigation water, but their arguments lack any basis in reality or the law.

A. RID Wells Are Not a Required Part of the Working Group Remedy.

Gallagher and Kennedy misquotes the Working Group. The Working Group did not describe the RID wells as "necessary and critical." Rather, the Working Group stated that factoring current and future regional pumping into the decision on remedial alternatives is "necessary and critical."[46] RID may pump its wells in the future, or not, and the Working Group's FS provides for either scenario. An evaluation of remedial alternatives must consider all reasonable scenarios and provide contingencies that adequately address various potential pumping regimens.

Nothing in the Working Group's proposed remedy depends upon RID pumping. RID is operating its wells for its own purposes, and the water RID pumps is currently suitable for its irrigation use without treatment. RID is free to pump its wells or not. If RID ceases to pump in the future, whether by its own choice or due to contractual obligations, one or more contingent remedies will be triggered under the Working Group's remedy if remaining contaminant levels at the Site at that time require action to provide for beneficial uses and to address any impaired wells.

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[43] *WQARF Remedy Selection Rules Preamble*, at 1504.

[44] *Kimball FS Email*, Table 1, n. 10.

[45] *Kimball FS Email*, Table 1, at 6.

[46] Working Group FS, at 19.

If, on the other hand, RID continues to pump, its future water uses change, and water pumped from RID wells is not suitable for the new uses without treatment at that time (in other words, if the RID wells are impaired in the future), a contingent remedy will provide for the new uses by treating additional water, modifying wells, or taking other necessary and appropriate actions to provide water suitable for the new use.

B. RID Operation and Maintenance Costs Are Not Recoverable Under WQARF.

WQARF will bear the costs of any required future contingent remedies, including any costs of treatment, modification, or replacement of RID wells. But all RID costs that *would have been incurred by RID in the absence of WQARF contamination* must continue to be borne by RID. WQARF does not allow such costs to be recovered because a well owner is not allowed to be placed in a better position than the owner would have enjoyed absent the contamination.

ADEQ explained this "no betterment" concept in the preamble to the WQARF remedy selection rules: "The remedy selection rules address only the impacts of a release or threatened release of a hazardous substance. WQARF will not cover remedial action costs that would have been incurred if the release had not impacted the property or well."[47] This exclusion from the costs recoverable under WQARF is captured in the WQARF regulations, which prohibit coverage of "any costs that . . . a well owner . . . would incur if the release of hazardous substances . . . had not affected the property or water supply . . . ."[48] Gallagher and Kennedy's transparent attempt to circumvent this exclusion by mischaracterizing the Working Group's remedy proposals again is in error.

10. The RID ERA Is Not Reasonable, Necessary, or Cost Effective and Should Not Be Included in the Proposed Remedy.

A. Approval of an ERA Does Not Replace Remedy Selection and an Approved ERA Need Not Be Included in a Final Remedy.

An ERA is selected under WQARF Rule 405. This rule specifically states that "[a]pproval of an early response action under this Section *does not constitute approval of the remedy for the site*. The remedy for a site where an early response action is conducted

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[47] *WQARF Remedy Selection Rules Preamble*, at 1499.

[48] A.A.C. § R18-16-402(B).

shall be selected in accordance with R18-16-406 through R18-16-410."[49] In other words, "[a]n ERA is not intended to replace the process for selecting a remedy."[50]

An ERA cannot replace remedy selection under the WQARF rules because ERAs are often performed before detailed site information is available. As a site investigation progresses and more information is developed, an ERA may be modified, incorporated into a final remedy, discontinued, or replaced by a different remedy.[51]

For this same reason, an approved ERA is not automatically incorporated into a final site remedy. Because ERAs are often approved before an RI/FS is completed, they are not subject to the same requirement for a detailed review and comparison to alternatives through the remedy selection process. Furthermore, ERAs often predate detailed risk assessments, groundwater modeling, and other tools to assess exposure pathways, human health risk, and contaminant fate and transport predictions in groundwater. As more information is gathered and relevant investigations are conducted, it may become apparent that an ERA is no longer necessary or justified. Or changing site conditions may render an ERA ineffectual or unnecessary. Any number of circumstances could lead to the conclusion under the WQARF remedy selection process that an approved ERA is not reasonable, necessary, cost effective, or consistent with the remedial action selected for a site.

B. ADEQ Must Follow the Remedy Selection Process.

Unlike ERAs, final remedies are selected under WQARF Rules 406 through 410,[52] which describe the mandatory remedy selection process. The steps in this process include public participation, the Remedial Investigation, the Remedial Objectives Report, the Feasibility Study, the Proposed Remedial Action Plan, and the Record of Decision. Each step has detailed requirements that must be met, all with the specific objective of ensuring that the selected remedy complies with the requirements of A.R.S. § 49-282.06.[53] Final remedies are selected based on all of the much more detailed information and analysis available as a result of this process, in comparison to the limited information available early in a site's history upon which an ERA is typically based.

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[49] A.A.C. § R18-16-405 (emphasis added).

[50] *WQARF Remedy Selection Rules Preamble*, at 1501.

[51] *Id.* at 1501 and 1507.

[52] A.A.C. § R18-16-405(F) ("The remedy for a site where an early response action is conducted shall be selected in accordance with R18-16-406 through R-18-16-410.").

[53] A.A.C. § R18-16-407(A).

If the FS evaluation of alternatives determines that all or part of an ERA is still reasonable, necessary, and cost effective, that ERA or portions thereof may be incorporated into the remedial action selected as the site remedy. But if the investigation and analysis required by the WQARF remedy selection process indicates that an ERA is not reasonable, necessary, or cost effective, it may not be included in a final remedy. There is no preference for ERAs in the selection process; they stand or fall on their own merits in light of the analysis of an RI/FS. Nor is the remedy selection process optional. It is mandatory and the process cannot be circumvented.

C. ADEQ Must Reject RID's Proposal to Ignore the WQARF Remedy Selection Process and Statutory Remedy Standards to Designate the RID ERA as the Final Remedy.

In arguing that RID's ERA has essentially been pre-approved as the final remedy,[54] Gallagher and Kennedy attempts to shortcut the required remedy selection process to facilitate recovery of the unnecessary costs of its needless ERA. Previous approvals (conditional or not) of the ERA have no bearing on the remedy selection process. The ERA must be evaluated on its own merits in the light of current and updated information to determine if it should be continued as part of the final site remedy.

When an objective analysis is conducted, the ERA falls short. The risk assessment, the January 8, 2015 ADHS Health Consultation, and other available information at WVBA today demonstrates that there is no risk justifying treatment of RID's wells. The ERA is, therefore, not reasonable, necessary, or cost effective. Inclusion of it in the final remedy is not warranted and would be inconsistent with the WQARF remedy selection process and criteria.

ADEQ never pre-approved the ERA as the final remedy, as Gallagher and Kennedy contends. Rather, ADEQ's conditional approval was contingent upon RID conducting a risk analysis that showed there was a legitimate risk to public health, because RID's claims of a current health risk lacked support or documentation.[55] RID's resulting screening-level risk determination concluded:

> Review of these data, and consideration of the reasonable likelihood for potential public exposure, result in the conclusion that *there is not an imminent (acute) risk to the public from the contamination being released from the RID water systems*. While air sampling results show that many points in the RID water systems exceed air inhalation screening-level guidelines for the short term exposure (acute MRLs and one-hour AAAQGs), these

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[54] *Kimball FS Email*, Table 1, n. 19; RID, *Draft Feasibility Study Report*, at 97 (July 2014).

[55] ADEQ Director Benjamin Grumbles Letter to Stanley Ashby, RID (June 24, 2010).

> points *are not likely to provide a reasonable public exposure pathway due to their physical nature and locations*. Similarly, water sampling results show that many points in the RID water systems exceed screening-level guidelines for ingestion (EPA RSL - tap water and SWQSs - drinking water), however, *the contaminated water is not expected to lead to an unacceptable public exposure based on the limited and transient potential use of this water as a source of drinking water*. Water from the RID system in the WVBA Site is not currently used for municipal drinking water supply.[56]

Although RID has never completed a full risk assessment, these conclusions are consistent with the 2014 Site HHRA and the ADHS January 8, 2015 Health Consultation for groundwater sampled in RID's wells. Without a public health risk, RID's ERA is neither reasonable nor necessary. As such, it does not meet the statutory standards in A.R.S. § 49-282.06 and may not be included in a final remedy.

11. EPA Will Not "Overfile" in the WVBA.

There is no merit to the assertion that adoption of the Working Group's remedy could result in EPA "overfiling" in the WVBA.[57] As illustrated by the WVBA and Motorola 52nd Street sites, EPA works with states to develop work-share arrangements that divide site work between the federal and state agencies.[58] EPA looks for concurrence from the state where the site is located before even considering listing of a site on the National Priorities List (NPL). It is not clear who Gallagher and Kennedy is threatening by its unfounded assertion that EPA could take over the WVBA if the Working Group's proposal is accepted, but there is no merit to the position.

Public Law 104-19[59] directed EPA to obtain a letter of concurrence from the governor of the appropriate state before listing a site on the NPL. Although this requirement expired three years later, EPA as a matter of policy has continued to require a governor's letter of concurrence before it lists a site on the NPL. EPA's policy generally requires that EPA send a letter to the governor and head of the state

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[56] Synergy Environmental, *Public Health Exposure Assessment and Mitigation Summary Report*, at 27-28 (September 16, 2011) (emphasis added).

[57] David Kimball Email to Laura Malone (September 30, 2014). As ADEQ well knows, RID's counsel there misused the term "overfiling." CERCLA contains no delegation provision for states to take over CERCLA responsibilities from EPA, so the concept of overfiling is inapplicable.

[58] Round 2-11: Integrated Federal/State/Tribal Site Management Program, http://www.epa.gov/superfund/programs/reforms/reforms/2-11.htm#doc (last visited January 9, 2015).

[59] Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-Terrorism Initiatives, For Assistance In The Recovery From The Tragedy That Occurred At Oklahoma City, and Recissions Act, 1995, § 1006, 109 Stat. 239 (July 27, 1995).

environmental agency early in the site assessment process, "ideally before initiating a Hazard Ranking System (HRS) package for the site."[60]

If a state does not agree with a proposed NPL listing, EPA policy is to first "work closely" with the state to resolve the issue.[61] The local EPA Regional Office takes into account past, ongoing and planned response actions by the state to determine whether NPL listing is required to address the site.[62] If the issue is not resolved at the regional level, it is taken to EPA headquarters for further review. The state has an opportunity at this stage to present its position in writing.[63] The EPA should have a "compelling reason" to list a site over a state's objections, such as the fact that the site meets the ATSDR public health advisory listing criteria; that the State could be a major responsible party under CERCLA; or that the site has "community-identified conditions that warrant listing."[64]

Such conditions do not exist at the WVBA. As the ADHS confirmed in its recent health consultation, the calculated health risk at the WVBA is below the EPA target risk range.[65] The absence of exposure, relatively low contaminant levels, and lack of unacceptable risk posed by COCs at the Site would not make the WVBA a candidate for NPL Listing. Under these circumstances, Gallagher and Kennedy's threat of EPA intervention and takeover of the WVBA is not credible.

Although EPA has authority to list a site on the NPL and require remediation to be conducted under CERLCA over a state's objections, it appears that this has occurred only once since inception of the governor's approval policy.[66] The norm is for EPA and the objecting state to work together on a plan for remediation. For instance, in December 2012, EPA informed the Virginia governor that it was considering listing four new sites on the NPL. The letter stated that if the state did not support listing any of the sites, its response to EPA "should describe the alternative approach to placement on the NPL that will ensure that the identified priority site(s) and associated release(s) will be addressed."[67] In its response, the State of Virginia supported listing two of the sites, but

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[60] Elliott Laws, EPA Assistant Administrator, Memorandum re *Coordinating with the States on National Priorities List Decisions*, at 2 (November 14, 1996).

[61] Timothy Fields, Acting Assistant Administrator, EPA Office of Solid Waste and Emergency Response, Memorandum re *Coordinating with the States on National Priorities List Decisions—Issue Resolution Process*, at 2 (July 25, 1997).

[62] *Id.*

[63] *Id.*

[64] Laws Memorandum, *supra*, at 2.

[66] Round 2-11: Integrated Federal/State/Tribal Site Management Program, http://www.epa.gov/superfund/programs/reforms/reforms/2-11.htm#doc (last visited January 9, 2015).

[67] Letter from EPA Region 3 to Governor of Virginia (December 20, 2012).

requested that EPA defer listing the other two sites for various reasons, including that responsible parties at one site were conducting a voluntary remediation under state law.[68] To date, EPA has cooperated with the state's request and has not listed the two sites on the NPL. This type of communication and cooperation is typical, with unilateral decisions by EPA to meddle in a state-lead site the extremely rare exception. This is the norm in Arizona as well, where ADEQ has noted that it "has successfully negotiated with EPA to clean up sites under the WQARF program rather than EPA adding the sites to the National Priority List, and 33 sites are currently listed on the WQARF Registry."[69]

EPA has deferred federal action at WQARF Sites except where ADEQ and EPA agreed that federal action was appropriate or necessary. Gallagher and Kennedy claims that EPA "overfiled" in the case of the East Washington Site listed under Old WQARF. In fact, it is our understanding that when ADEQ re-listed WQARF Sites on the new WQARF Registry after the 1997 WQARF reform, ADEQ did not list East Washington. ADEQ and EPA reportedly then worked together to settle on an approach to the area that involved designating it as Operable Unit 3 of the Motorola 52nd Street Site.

The WVBA is a registered WQARF Site. If in the future EPA had concerns about ADEQ's implementation of the WQARF program or its application of program requirements at WVBA, EPA would first attempt to work with ADEQ to address the issues of concern. This would be an open and transparent process that would include correspondence between EPA and the state that would be publically available.[70] But there is absolutely no reason to believe that EPA would ever have such concerns given the favorable risk assessment results, ADEQ's continued work towards selection of a final remedy consistent with WQARF statues and rules, and the presence of working parties who are conducting their work under agreements with ADEQ.

12. RID's Offensive Misuse of Environmental Justice Concerns to Further Its Own Interests Lacks Merit.

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[68] Letter from Virginia Department of Environmental Quality to EPA Region 3 (February 26, 2013).

[69] ADEQ, *Groundwater Protection in Arizona: An Assessment of Groundwater Quality and the Effectiveness of Groundwater Programs*, at 23 (2002).

[70] *See, e.g.*, EPA, *National Priorities List, Final Rule*, 79 Fed. Reg. 73478, 73480 (December 11, 2014) ("The EPA is using the Web and where appropriate more structured state and tribal correspondence that (1) explains the concerns at the site and the EPA's rationale for proceeding; (2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and (3) emphasizes the transparent nature of the process by informing states that information on their responses will be publicly available.").

In recent weeks, RID has begun alleging that the Working Group's remedy discriminates against minority and low-income communities in the WVBA, suggesting that residents in the WVBA area are exposed to dangerous levels of hazardous substances that would not be tolerated elsewhere.[71] Needless to say, since the recent ADHS Health Consultation and a host of prior risk evaluations found no risk, these allegations are unsupported. They are, rather, nothing more than an attempt to silence RID's opponents. RID's purported interest in environmental justice misappropriates an important mandate of modern environmental law to further RID's selfish interest in having the taxpayers and others pay for RID's water treatment system.

Gallagher & Kennedy—the architect of RID's strategy—has an engagement agreement with RID that requires RID to pay Gallagher & Kennedy a portion of the profit from future potable water sales for the rest of time. RID and its counsel, both of whom would profit handsomely from RID's proposal at the expense of water users in the City of Phoenix, will clearly stop at nothing to further their interests.[72]

Callous abuse of environmental justice concerns does nothing but harm the very communities RID pretends to care about. As a noted advocate for minority concerns in urban policy and planning has said:

> Mere use of the term "environmental racism" evokes images of conspiratorial abuse. Not surprisingly, elected officials . . . are reluctant to publicly embrace a project tarnished by the charge of racism. More unfortunate, though, is that for the same reasons that communities of color have too often been victimized by environmental racism--lack of resources, organization and political voice--they may be unwittingly manipulated by rhetoric that has the effect of isolating the community from a meaningful role in the give and take that is an essential element of policymaking. . . . The record has taught us that almost no amount of scrutiny is too little with respect to industrial projects or other developments that present a significant impact on communities of color; the threat of public hue and cry is often the only safeguard we have against abusive land uses. However, to raise the banner of racism unfairly and without credible cause undermines efforts to combat inequities at the policy level.[73]

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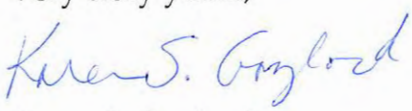
[71] *See, e.g.*, RID Comments on Working Group Draft FS Report, at 3 (January 7, 2015).

[72] As explained elsewhere, the Working Group's remedy fully complies with WQARF. RID's defamatory allegations that the Working Group and ADEQ would be criminally liable if the Working Group's remedy is approved do not merit a response.

[73] J. Eugene Grigsby III, *Don't Cry Wolf on Environmental Racism* (Los Angeles Times April 10, 1996).

The fact is that the 2015 ADHS Health Consultation, the 2014 Site HHRA, and RID's own screening assessment all concluded that there were no unacceptable risks to the public from COCs in WVBA groundwater, RID's pumping of that water, or the transport of the water through RID's canals. Thus, COCs in the groundwater pose no disproportionate risk to communities in the WVBA—in fact, they pose no unacceptable risk to anyone. That a political subdivision of the State of Arizona would resort to misrepresentations and fear-mongering in order to further its interests and the interests of its law firm is a disgrace to the taxpayers of this State and a disservice to minority and low-income communities in Phoenix.

Very truly yours,



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