

# GALLAGHER & KENNEDY

P.A.

ATTORNEYS AT LAW

DAVID P. KIMBALL, III  
DIRECT DIAL: (602) 530-8221  
E-MAIL: DPK@GKNET.COM

2575 EAST CAMELBACK ROAD  
PHOENIX, ARIZONA 85016-9225  
PHONE: (602) 530-8000  
FAX: (602) 530-8500  
WWW.GKNET.COM

February 24, 2010

VIA U.S. MAIL

Mr. Benjamin H. Grumbles  
Director  
Arizona Department of Environmental Quality  
1110 West Washington Street  
Phoenix, Arizona 85007

Re: **Roosevelt Irrigation District's (RID) Response to Additional Comments from Potentially Responsible Parties on RID's Early Response Action**

Dear Mr. Grumbles:

The Roosevelt Irrigation District (RID) has reviewed the comments submitted by Gammage & Burnham (dated January 21, 2010) and Milum Textile Services (dated February 4, 2010) regarding RID's proposed Early Response Action (ERA). RID voluntarily submitted a proposed ERA Work Plan to the Arizona Department of Environmental Quality (ADEQ) for approval. The proposed ERA is necessary to expeditiously address groundwater contamination that threatens public health, welfare and the environment and adversely impacts RID water supply wells in the West Van Buren Area (WVBA) Water Quality Assurance Revolving Fund (WQARF) Site. Contrary to the information contained in the referenced comments, RID has proposed an ERA that is not only consistent with Arizona law and WQARF program rules and policies, but RID's proposed ERA is extremely reasonable and cost-effective when compared to the ERA that RID could legally pursue under state law or that could be proposed as an alternative remedy by a third party.

However, RID understands why there is so much misinformation contained in these comments submitted to ADEQ regarding the proposed ERA, given that the parties submitting the comments, or their clients, have documented "releases" of hazardous substances at their facilities that have contaminated groundwater that will be addressed by the ERA. Under federal law, these documented "releases" classify the parties submitting the comments as "potentially responsible parties" (PRPs) that are liable for the



response costs incurred by RID to protect public health and to clean up the contamination, including RID's costs relating to the ERA.

### **Scope and Cost of ERA**

As discussed in RID's letter to ADEQ, dated January 20, 2010, and in RID's proposed ERA, there are no other reasonable, cost-effective, technically feasible alternatives that would be consistent with Arizona law and WQARF program rules and policies. RID's proposed ERA is the most cost-effective because RID will be utilizing its existing wells, conveyances, rights of way and permits. Any alternative remedy proposed by PRPs would be unreasonable as it would have to consider the costs for new wells, conveyances, rights of ways, permits, and damages to RID's wells and water supply. Consequently, as a matter of state law, ADEQ is required to approve RID's proposed ERA.<sup>1</sup>

### **End Use of Treated Water**

The state WQARF statute also requires that an ERA and/or final remedy "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<sup>2</sup>." Likewise, the WQARF statute requires that an ERA and/or final remedy "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<sup>3</sup>." WQARF rules define "reasonably foreseeable uses of water" as "those likely to occur within 100 years unless a longer time period is shown to be reasonable based on site-specific circumstances." Consistent with these and other applicable WQARF program requirements, ADEQ, during its remedial investigation of the WVBA, surveyed the "reasonably foreseeable end uses" of the groundwater in the WVBA.<sup>4</sup> In the ADEQ survey, the WBVA water providers consistently identified the WVBA groundwater as a future drinking water supply that is required by law to be protected and/or restored.<sup>5</sup> Accordingly, the contaminated groundwater extracted under RID's proposed ERA is required by state law to be treated to a drinking-water quality end use, which is contrary to what the PRPs advocate in their comments to ADEQ. In fact, contaminated groundwater at all the major groundwater remediation projects in the state is treated to a drinking-water quality end use.<sup>6</sup>

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<sup>1</sup> A.A.C. R18-16-405.H states that "the Department shall approve the ... early response action if it complies with" the requirements of this section.

<sup>2</sup> A.R.S. 49-282.06(A)(2).

<sup>3</sup> A.R.S. 49-282.06(B)(4)(b).

<sup>4</sup> See A.A.C. R18-16-406

<sup>5</sup> A.A.C. R18-16-406.I.4. See also WVBA Land and Water Use Survey results from City of Phoenix, Salt River Project and RID.

<sup>6</sup> See North Indian Bend Wash Superfund Site, Operating Unit 1 – Motorola 52<sup>nd</sup> Street Superfund Site, Operating Unit 2 – Motorola 52<sup>nd</sup> Street Superfund Site, Tucson Airport Superfund Site, Phoenix Goodyear Airport Superfund Site, Payson WQARF Site.

However, until a new pipeline can be constructed to transport the treated groundwater to the West Valley for use as a drinking water supply, RID will discharge the treated water, as described in the proposed ERA, into its canal to be used for irrigation. Such an action is consistent with federal Superfund projects in Arizona, where contaminated groundwater is treated by granulated activated carbon (GAC) treatment systems and discharged into adjacent canals for irrigation use.

### **Risk to Public Health**

Contrary to PRP comments, RID's proposed ERA is expressly authorized and consistent with applicable Arizona laws and WQARF program rules and policies. An ERA is authorized under the Arizona WQARF program if an ERA is necessary to protect public health, welfare, or the environment, to protect or provide a supply of water, or to reduce the scope or cost of the final remedy<sup>7</sup>. RID's proposed ERA is necessary to mitigate current risks to public health from exposures to hazardous substances present in the groundwater and to hazardous substances that may volatilize into the air. The ERA also is necessary to comply with the environmental policies of the Environmental Protection Agency (EPA) and ADEQ prohibiting the "relocation of contaminants from one media (groundwater) to another (air)."<sup>8</sup> In order to mitigate the volatilization of hazardous substances into the air as required by EPA and ADEQ and to address the current risks to public health, welfare, and the environment, RID's proposed ERA will expeditiously capture hazardous volatile organic compounds (VOCs) from the 10 most highly contaminated RID wells and prohibit their release by controlling the contamination within the enclosed Salt Canal pipeline, which will be connected by pipeline to a treatment facility, where the VOCs will be removed by a GAC treatment system.

### **Design Approval**

In addition to requiring treatment to a drinking-water quality end use, WQARF rules require ADEQ to approve the design of a new 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<sup>9</sup>." Given the past treatment system failure in Paradise Valley, ADEQ requires any new groundwater treatment system to provide reliable and fail-safe treatment technology, such as the dual-phase GAC treatment system proposed by RID's ERA. In fact, in order to assure protection of public health against a potential treatment system failure, EPA requires the use of GAC treatment systems at federal Superfund sites that treat contaminated groundwater for use

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<sup>7</sup> A.A.C. R18-16-405.A.

<sup>8</sup> Letter from Amanda Stone to Keith Takata (November 14, 2007).

<sup>9</sup> A.A.C. R18-16-411(C).

as a future drinking water supply<sup>10</sup>. Consistent with WQARF rules and current EPA policy, RID's ERA proposes a GAC treatment system to assure protection of public health from system failure.

### **PRP Review and Approval of ERA**

Contrary to PRP comments, RID's proposed ERA also is consistent with the overall goal of the WQARF program which is to provide for cost-effective solutions to clean up releases of hazardous substances that threaten public health and groundwater quality in Arizona. As discussed in RID's January 20, 2010 letter to ADEQ, in RID's February 3, 2010 proposed ERA, and in this letter, there are no other reasonable, cost-effective, technically feasible alternatives that would be consistent with the applicable Arizona statutes and WQARF rules and policies. As explained in the same referenced RID submittals, the comments and recommendations submitted by the PRPs to ADEQ on the proposed ERA are contrary to the applicable WQARF statute and ADEQ and EPA policies. RID's proposed ERA is the most cost-effective because RID will be utilizing its existing wells, conveyances, rights of way and permits. Any alternative remedy proposed by PRPs would be unreasonable and not comparatively cost effective as it would have to consider the costs for new wells, conveyances, rights of ways, permits, and damages to RID's wells and water supply. Consequently, as a matter of state law, ADEQ is required to approve RID's proposed ERA.<sup>11</sup>

Although these PRPs now claim to support a regional remedy, these PRPs have never volunteered to address the regional groundwater contamination. For the past 20 years, ADEQ has been unable to develop and implement a remedy because of budgetary limitations and lack of collective PRP cooperation. It certainly appears that the state's current budget problems will deny ADEQ sufficient funding in the near future to assume a lead role in remediating the WVBA/West Central Phoenix Area (WCPA) WQARF Sites, which would require the state to assume the liability for any orphan shares. Therefore, not only does RID have the right to protect its water supply under the proposed ERA, but RID's proposed ERA is the only proposal offered to date to expeditiously address current risks to public health, welfare and the environment and provide, at the same time, a significant step toward remediating one of the largest contaminated groundwater plumes in the United States. If the PRPs are truly committed to financially supporting a regional remedy, the PRPs need to comply with state law and enter into an agreement with ADEQ, as RID was required to do, to develop and perform their own ERA that ADEQ can evaluate under the applicable ERA requirements discussed above. However, without the benefit of RID's existing infrastructure, RID is certain that any proposed ERA by the PRPs would not meet the qualifying criteria (as compared to RID's proposed ERA) for ADEQ approval.

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<sup>10</sup> RID Meeting with EPA Region 9 and ADEQ on May 18, 2009

<sup>11</sup> A.A.C. R18-16-405.H states that "the Department shall approve the . . . early response action if it complies with" the requirements of this section.

## **Community Involvement Activities**

Pursuant to A.A.C. R18-16-405(E), RID is not required to conduct the community involvement activities prior to commencement of the ERA. Nevertheless, RID's proposed ERA clearly states that RID will facilitate community involvement activities in accordance with A.A.C. R18-16-404. These community involvement activities will be consistent with the Community Involvement Plan that ADEQ developed for the WVBA. In fact, RID already has held meetings on the proposed ERA with PRPs, the Community Advisory Board for the WVBA, and local government leaders. Furthermore, as discussed in RID's December 23, 2009 letter to ADEQ, RID indicated its willingness to participate in a public meeting to inform interested parties within the "community involvement area" of the current risks to public health and RID's efforts to mitigate those risks.

## **Technical Group**

Contrary to their assertions, the PRPs do not have any statutory or regulatory authority to request a stakeholder process to develop the ERA. As the injured party that has voluntarily entered into a written agreement with ADEQ, RID is the only party entitled under state law and by agreement with ADEQ to "establish", "submit" and "perform" the ERA to protect public health, its wells and water supply and to reduce the costs of the final remedy<sup>12</sup>. The PRPs are confusing the ERA with the final comprehensive regional remedy. The PRPs do have a right to participate in a stakeholder process to select the final comprehensive regional remedy that will address all threatened and impacted RID wells and water supplies and the restoration of the aquifer.<sup>13</sup> RID welcomes and looks forward to working with all stakeholders, including the PRPs, the public, and local officials, to appropriately evaluate and formally select the final regional groundwater remedy for the WVBA/WCPA WQARF Sites. However, the stakeholder process is neither required nor authorized for RID's proposed ERA that is necessary to provide more immediate protection of public health, the environment and certain portions of the RID well field and water supply.<sup>14</sup>

## **Impact of ERA on Small and Large Businesses**

RID has proposed a cost-effective regional solution to one of the largest groundwater contamination plumes in the United States. RID is aware of the economic realities that exist for many Arizona businesses; however, when PRP businesses were thriving, not a single PRP volunteered to address the groundwater contamination.

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<sup>12</sup> See Agreement to Conduct Work, dated October 8, 2009, between ADEQ and RID. See also A.A.C. R18-16-405.A.

<sup>13</sup> A.A.C. R18-16-406 through R18-16-410.

<sup>14</sup> In fact, the rules provide that even the community involvement requirement can be delayed until after implementation of the ERA if immediate action is necessary to address a current risk to public health or the environmental, to protect a source of waters, or to provide a supply of water. A.A.C. R18-46-405.E.

Neither the community nor RID should continue to be at risk because Arizona businesses do not want to fulfill their “legal” responsibilities to clean up the groundwater contamination. RID has proposed an ERA and potential final remedy that would be a fraction of the cost of any alternative remedy proposed by EPA, ADEQ or any PRPs. Likewise, RID is spreading the economic impact among more than 90 PRPs, rather than singling out a few Arizona businesses.

The PRPs have documented “releases” of hazardous substances at their facilities that have impacted or threaten to impact RID’s wells. Under federal law, these documented “releases” subject the PRPs to potential liability for the costs incurred by RID to mitigate the risks to public health and the adverse impacts on RID’s wells, operations and water uses.

It is outrageous for the PRPs to characterize RID’s proposed ERA as “heavy handed” or “abusive.” RID is simply holding accountable those parties who are “legally” responsible to clean up the groundwater contamination. RID continues to be willing to review any documentation that PRPs may possess that would refute the government documents that identify “releases” of hazardous substances at their facilities. When such information has been provided and verified, RID has removed the party as a PRP. Likewise, RID has reached conceptual settlement with PRPs that have demonstrated a reasonable basis for their contribution and/or that can demonstrate a financial hardship, consistent with ADEQ’s regulations.

#### **Current Remediation at Other Sites**

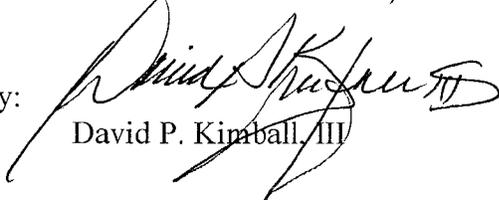
ADEQ’s Draft Remedial Investigation Report for the WVBA clearly states that contaminated groundwater from the WCPA WQARF Site and the 52<sup>nd</sup> Street Motorola Superfund Site (M52) has migrated into the WVBA. Therefore, any remedial activities at those specific sites will not address the risks to public health and impacts to RID’s wells, operations and water uses due to contamination that migrated into the WVBA from these other sites prior to the implementation of the referenced remedial activities. In regards to M52, RID continues to provide EPA with updates on RID’s ERA.

Thank you for your consideration of RID’s response to the PRP comments.

Very truly yours,

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

By:

  
David P. Kimball, III

Mr. Benjamin H. Grumbles

February 24, 2010

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cc: Henry Darwin, ADEQ  
Amanda Stone, ADEQ  
Julie Riemenschneider, ADEQ  
Kevin Snyder, ADEQ ✓  
Keith Takata, EPA  
Dustin Minor, EPA  
Janet Rosati, EPA  
Herb Guenther, ADWR  
Stan Ashby, RID  
Sheryl Sweeney, Ryley Carlock & Applewhite  
Dennis Shirley, Synergy Environmental