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VIA U.S. MAIL and ELECTRONIC MAIL

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

Re: Roosevelt Irrigation District's Final Response to 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 Lewis and Roca, Honeywell, Air Liquide, APS, Dolphin, Milum Textiles, SRP, Univar, City of Avondale, City of Phoenix, ArvinMeritor, Cooper Industries, Lindon Park Neighborhood Association, Schuff Steel, Laundry & Cleaners Supply, Jay and Jeri Willmore, Arizona Chamber of Commerce and Industry, Greater Phoenix Chamber of Commerce, and Head/Penn Racquet Sports regarding the RID Early Response Action (ERA).

RID submitted the ERA Work Plan to ADEQ for approval in order to mitigate the impacts and threatened impacts on RID's production wells from the widespread groundwater contamination in and from the West Van Buren Area (WVBA) and West Central Phoenix Area (WCPA) Water Quality Assurance Revolving Fund (WQARF) sites and the Motorola 52nd Street (M52) federal Superfund Site and the public health and environmental risks and issues associated with that contamination. Contrary to the erroneous information contained in these comments, RID has proposed an ERA that is not only consistent with the requirements of state law, but RID's ERA is extremely reasonable and cost-effective when compared to the ERA that RID could legally pursue under state law.

However, RID understands why the potential scope and cost of the proposed ERA are such major issues in the comments submitted to ADEQ, given that most of the parties submitting the comments have had documented "releases" at their facilities of the hazardous substances that will be addressed by the ERA. Under federal law, these documented "releases" classify those parties as potentially responsible parties (PRPs), subject to joint and several liability for the response costs incurred by RID, including the costs relating to the ERA. Given the potential for

joint and several liability, the PRPs have a significant pecuniary interest in having the ERA not approved by ADEQ, which explains the number of false statements and inaccuracies contained in the PRP comments and the PRPs' alternative offer to contribute \$300,000 for a feasibility study (FS) for the WVBA WQARF Site in exchange for ADEQ not approving RID's ERA.

In prior submittals to ADEQ, RID set forth the statutory and regulatory justification for its ERA in response to earlier PRP comments. Despite the clear statutory and regulatory authority supporting the ERA, the PRPs continue to argue that RID's ERA is unnecessary, too large, too costly, too complex, and too long-term to be approved without substantial stakeholder involvement. Based on these false arguments and the significant amount of erroneous information contained in the PRPs' comments, RID is compelled to provide this final response in order to correct the record and inform all interested parties of the applicable laws, which have been completely disregarded in the PRP comments submitted to ADEQ.

After reviewing all of the comments that have been submitted and posted on ADEQ's website, RID has attempted to identify and address all of the issues raised in the PRP comments, including the comments that are irrelevant to the legal and technical requirements necessary for ADEQ's approval of RID's ERA. RID has attempted to organize the lengthy, and often contradictory, comments under various headers and provide RID's response.

I. RID's ERA Complies with All Legal Requirements for ADEQ's Approval.

A. RID's ERA is an Authorized ERA Under the WQARF Regulations.

According to the ADEQ rule authorizing ERAs, "early response actions are certain remedial actions initiated by the Department or any person prior to selecting a remedy at a site." 8 A.A.R. 13, 1496 (March 29, 2002).

1. RID's proposed activities are "authorized" to be performed as an ERA.¹

- a) PRP Comment:** The ERA process was set up to ... address contaminated source areas and to address current risk to public health, welfare and the environment (Univar, 2)
- b) PRP Comment:** The ERA process is intended to encourage localized source removal and/or containment remedies (City of Phoenix, 1-2)

RID Response: The PRP comments falsely describe the scope of activities that authorize an ERA. An ERA is "authorized" under the Arizona WQARF program if an ERA is necessary (1) to protect or provide a supply of water, (2) to protect public health, welfare or the environment, (3) to reduce the scope or cost of the final remedy, or (4) to address sources of contamination. A.A.C. R18-16-405.A. Only one of the four referenced activities needs to be addressed in order to be an "authorized" ERA.

¹ See RID's December 23, 2009 letter to ADEQ; RID's January 20, 2010 letter to ADEQ

2. RID's ERA is "necessary" and is an "authorized" activity.²

- a) **PRP Comment:** An ERA is not necessary and should not be approved by ADEQ based on unsubstantiated risks (ArvinMeritor/Cooper, 2)(Lewis & Roca, 3)
- b) **PRP Comment:** The Work Plan does not demonstrate that the proposed ERA is necessary to achieve any of the goals stated in A.A.C. R18-16-405.A (Dolphin, 2)
- c) **PRP Comment:** The ERA claims threats and risks exist for RID wells that are not impacted. No specific at risk wells are noted, and there is no analysis section which demonstrates even potential threats to such wells (Univar, 3)

RID Response: The PRP comments misrepresent applicable state law. RID's ERA is deemed "necessary", as a matter of law, because RID's wells are impacted and/or threatened by contamination. A.A.C. R18-16-405.I.

RID Response: In fact, 20 RID wells are impacted and 11 RID wells are threatened by hazardous volatile organic compound (VOCs) contamination in the groundwater in the WVBA/WCPA/M52 sites.

3. ERAs are not limited only to short-term remedial actions.³

- a) **PRP Comment:** An ERA is intended to provide a relatively quick, short-term remedial action (Lewis & Roca, 3) (ArvinMeritor/Cooper, 1) (Schuff, 2)
- b) **PRP Comment:** RID's characterization of its proposed course of action as a WQARF ERA is inappropriate for a proposed remedy of this magnitude (City of Phoenix, 1-2)
- c) **PRP Comment:** The ERA process was never intended to support very long-term regional remedies of this size and nature. The ERA process was set up to allow relatively quick, short-term remedial actions (Univar, 2)

RID Response: The PRP comments misrepresent the scope of an authorized ERA. ADEQ clearly states that "ERAs ... may involve expensive large-scale groundwater treatment systems." 8 A.A.R. 13, 1496 (March 29, 2002).

CONCLUSION: Consistent with the WQARF program requirements, RID's ERA is "authorized" because it is "necessary", pursuant to A.A.C. R18-16-405(I), to address at least one of the authorizing activities, and potentially three of the four authorizing activities.

B. RID's Authorized ERA Must Meet Applicable Water Quality End Use Standards of the WQARF Program – not Standards for the Current End Use of the Impacted/Threatened RID Wells.

² See RID's January 20, 2010 letter to ADEQ

³ See RID's January 20, 2010 letter to ADEQ

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. Arizona law also requires that remedial action under the 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). WQARF program 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." A.A.C. R18-16-406.D.

1. RID has the legal right to use the groundwater pumped by its wells for maximum beneficial use.⁴

- a) **PRP Comment:** The withdrawal and use of that water by RID for purposes other than its historical obligation as irrigators of agricultural lands raises questions of RID's rights (City of Phoenix, 2)
- b) **PRP Comment:** It is likely that RID cannot use the water outside their current irrigation use (ArvinMeritor/Cooper, 2)

RID Response: The PRP comments misrepresent RID's right to the unrestricted maximum beneficial use of WVBA groundwater. The RID wells and lands in the WVBA were deeded prior to the 1980 Groundwater Code to RID in fee simple without any encumbrances; therefore, as a matter of state water law, RID has the "right" to pump groundwater into the future for all beneficial uses.

RID Response: Under the 1980 Groundwater Code, RID has a recognized water right that is not limited to any particular beneficial use.

2. Drinking water is a "reasonably foreseeable water use" for WVBA groundwater extracted by RID's wells.⁵

- a) **PRP Comment:** If the project to sell water for drinking water use is actually made feasible only by the WQARF remedy, then the use is not reasonably foreseeable (Honeywell, 13)

RID Response: The PRP comments fail to recognize the reasonably foreseeable use of WVBA groundwater as a drinking water supply as documented and legally protected under the WQARF program. In ADEQ's WVBA Land and Water Use Survey, the WVBA water providers consistently identified the WVBA groundwater as a future drinking water supply that is required by law to be protected and/or restored. A.A.C.

⁴ See RID's December 23, 2009 letter to ADEQ; RID's January 20, 2010 letter to ADEQ; RID's February 24, 2010 letter to ADEQ; RID's March 18, 2010 letter to ADEQ

⁵ See RID's January 20, 2010 letter to ADEQ; RID's February 24, 2010 letter to ADEQ; RID's March 18, 2010 letter to ADEQ

R18-16-406.I.4. See also ADEQ's WVBA Land and Water Use Survey results from City of Phoenix, Salt River Project and RID.

RID Response: In 2001, ADEQ interviewed RID for input into the WVBA Land and Water Use Survey. RID was quoted as asserting that "RID believed that for at least the next 10 years water delivery (would) be very similar to what (was then)." In the subsequent Land and Water Use Survey (November 11, 2007), RID stated that "limitations on the uses of the water withdrawn..." was a future concern. RID has long shared similar views with the City of Phoenix in preserving their right to "... install new wells (in the impacted area) to service future (municipal) water demand" as well as SRP when they asserted "... that the wells (in the impacted area) will transition to drinking water supply as the area develops."

RID Response: In fact, RID has existing agreements with the Town of Buckeye to provide a drinking water supply. Within the next 100 years, the groundwater extracted by RID's wells will provide a potable water supply for the municipal growth within the RID service area. This transition is similar to the conversion that occurred with the Salt River Project in Phoenix and the Flowing Wells Irrigation District near Tucson.

3. Groundwater pumped by RID's wells cannot be used for its maximum beneficial use without treatment due to hazardous VOC contamination.⁶

- a) **PRP Comment:** Although groundwater quality data for certain RID wells indicate contaminants are present at concentrations that exceed drinking water standards, this portion of the aquifer is not used as a public drinking water supply (Dolphin, 2)
- b) **PRP Comment:** There is no detriment to the water source as it is now and ever has been used (Lewis & Roca, 2)(Honeywell, 10)(Dolphin, 2)(Univar, 2)
- c) **PRP Comment:** There does not appear to be compelling evidence to show that current groundwater conditions constitute an imminent impact on RID's ability to deliver non-potable irrigation water to its customers (Air Liquide, 2)
- d) **PRP Comment:** The fact is RID has sufficient irrigation demand to support a remedy based on existing uses (SRP, 2)

RID Response: The PRP comments misrepresent and fail to acknowledge the legally applicable water quality end use standards of the WQARF program. RID's wells have been impacted and/or are threatened by groundwater contamination and, as a matter of law, "need" to be addressed under the ERA or any remedial action pursued in the WVBA (A.A.C. R18-16-405.I). This is required under the WQARF program because RID's impacted wells could not currently be used for a drinking water supply, which is the maximum beneficial use and the reasonably foreseeable use of WVBA groundwater. A.R.S. 49-282.06(A); A.R.S. 49-282.06(B)(4)(b); A.A.C. R18-16-406.D.

⁶ See RID's January 20, 2010 letter to ADEQ; RID's February 24, 2010 letter to ADEQ; RID's March 18, 2010 letter to ADEQ

CONCLUSION: Without treatment, RID will not be able to put its water to maximum beneficial use or meet the reasonably foreseeable drinking water use as legally required under Arizona law and the WQARF program regulations.

C. RID's Authorized ERA Meets Applicable Water Quantity Protection Standards of the WQARF Program.

Arizona law expressly requires that a "selected remedial action 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).

1. It is "reasonable" for RID's ERA to restore a portion of RID's water supply since applicable WQARF statutory provisions provide protection for RID's entire water supply.⁷

- a) **PRP Comment:** RID's plan extracts the maximum possible volume of water and provides for treatment of all this water (Honeywell, 3)
- b) **PRP Comment:** RID is pumping unnecessarily huge volumes of groundwater (Air Liquide, 2)
- c) **PRP Comment:** RID's proposed pumping volumes are substantially greater than those needed to facilitate plume capture (SRP, 5)

RID Response: The PRP comments misrepresent RID's ERA and fail to acknowledge the water quantity protection standards applicable to ERAs and all remedial actions under the WQARF program. RID's ERA will expeditiously capture hazardous VOCs from the 10 most highly-contaminated RID wells. Consequently, RID's ERA is not oversized, excessive or unreasonable, as falsely claimed by the PRPs, because the ERA will only be treating ¼ (20,000 gpm) of RID's impacted/threatened water supply (80,000 gpm). However, quick implementation of the ERA will not only protect the supply of water available to RID in the 10 most highly-contaminated RID wells, as required by state law, but it will protect the water supply of the other 11 threatened RID wells. A.R.S. 49-282.06.B.4(b). Consistent with its effort to be "reasonable" and "cost-effective," RID will wait until the final remedy to address the remaining impacted RID wells.

CONCLUSION: Consistent with the state law and WQARF program regulations, RID's ERA restores the impacted water supply of the 10 most highly-contaminated wells, preserves the water supply of 11 threatened wells, and "reasonably" delays addressing the remaining impacted wells until the final remedy.

⁷ See RID's January 20, 2010 letter to ADEQ; RID's March 18, 2010 letter to ADEQ

D. RID's Authorized ERA Meets Applicable Legal Treatment System Requirements.

WQARF rules require ADEQ to approve 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).

1. The liquid phase granular activated carbon treatment technology in RID's ERA is "reasonable" and "technically feasible" to address the groundwater contamination impacting RID's wells.⁸

- a) **PRP Comment:** RID does not provide an adequate evaluation of the proposed technology to determine if the ERA will increase the scope or cost of the remedy for the site (APS, 2)

RID Response: The PRP comments misrepresent the facts. Consistent with WQARF rules and current EPA policy, RID's ERA expressly describes (with significant system design details) a dual-stage liquid phase granular activated carbon (GAC) treatment system to assure protection of public health from system failure.

RID Response: Discussions with ADEQ and EPA confirm that VOC removal by GAC is considered the best available technology to safeguard and prevent system failures that could affect public health.

RID Response: In fact, EPA has required the use of GAC treatment systems at federal Superfund sites that treat contaminated groundwater for irrigation use as well as for drinking water use. *See* Operating Unit 2 – Motorola 52nd Street Superfund Site and the Phoenix Goodyear Airport North Superfund Site.

CONCLUSION: Consistent with EPA policies and WQARF program requirements, RID's ERA utilizes a proven treatment system technology that will safeguard and prevent system failures that could affect public health.

E. RID's Authorized ERA Meets the Applicable Pollutant Transfer Prohibition Requirement of the WQARF Program.

ADEQ and EPA policies prohibiting the "relocation of contaminants from one media (groundwater) to another (air)" are to be considered as "relevant and appropriate requirements" for WQARF program remedial actions. Pursuant to a letter from Amanda Stone of ADEQ to Keith Takata of EPA dated November 14, 2007, ADEQ requires that groundwater "contaminants should be removed from the environment and treated . . . appropriately."

⁸ See RID's January 20, 2010 letter to ADEQ; RID's February 24, 2010 letter to ADEQ

1. It is “reasonable” for RID’s ERA to prevent the transfer of pollutants from groundwater to air, as required by applicable ADEQ and EPA environmental requirements.⁹

- a) PRP Comment:** It is unreasonable for RID to attempt to justify its proposal by claiming credit for removing trace amounts of contaminants (Honeywell, 16)

RID Response: The PRP comments fail to acknowledge the applicability of the pollutant transfer prohibition and the significant widespread groundwater contamination. The PRP comments also misrepresent the effectiveness and significance of contaminant removal and treatment under RID’s ERA. According to 2009 data, ~ 3,400 pounds of VOCs in the WVBA groundwater were released into the air. This large mass of hazardous VOCs, currently being released into the environment, is substantial and is expressly prohibited elsewhere in local groundwater clean-up actions.

RID Response: In comparison, 2009 data indicates that contaminated groundwater in Scottsdale, which is extracted as part of the regional North Indian Bend Wash (NIBW) Federal Superfund Site remedy, contained ~ 2,400 pounds of VOCs. The only difference between the WVBA and Scottsdale is that all of the VOCs currently being extracted in Scottsdale are captured and properly managed because there is a remedy in place to remove VOCs from groundwater as well as the air.

CONCLUSION: Consistent with the applicable ADEQ and EPA pollutant transfer prohibition, RID’s ERA will prevent the continued release of hazardous pollutants to the environment and surrounding community.

II. RID’s ERA Complies with All Applicable Technical Requirements for ADEQ’s Approval.

1. RID’s wells are sufficient to begin addressing the groundwater contamination.

- a) PRP Comment:** A fundamental challenge of the proposed ERA is the age and construction of the RID wells and the technical well integrity and annular seal problems that may exist (ArvinMeritor/Cooper, 4)
- b) Public Comment:** A comprehensive evaluation of each well should be performed to insure the condition of the wells and the likelihood of their continued operability for the length of the clean up (Lindon, 4)

RID Response: The PRP comments confuse the ERA with the final remedy that will thoroughly evaluate and address all aspects of the final remedy. The RID wells in the WVBA have been in operation for decades and have served reliably to extract

⁹ See RID’s December 23, 2009 letter to ADEQ; RID’s March 18, 2010 letter to ADEQ

groundwater for RID's use. This long history of operation demonstrates the capability of these wells to implement the ERA.

RID Response: Furthermore, an evaluation of each well will be conducted as described in the ERA Work Plan. It is anticipated that well liners will be installed to provide for extended well service life and issues regarding well maintenance will be addressed as part of the normal RID operation and maintenance program.

2. RID's ERA will not exacerbate the contamination.

- a) **PRP Comment:** This approach would exacerbate conditions increasing vertical and horizontal gradients in the vicinity of the plume, expanding the current size of the plume (Honeywell, 3) (Air Liquide, 2)
- b) **PRP Comment:** Must evaluate the potential for RID wells to act as conduits that would facilitate cross-contamination of deeper aquifer units (Dolphin, 3)

RID Response: The PRP comments misrepresent the facts. The ERA will not exacerbate vertical or horizontal gradients in the vicinity of the plume since these gradients already exist in response to historical and ongoing pumping of RID wells. It has been acknowledged by ADEQ that the extent of the plume has been limited by this ongoing pumping, and it is reasonable to conclude that this incidental containment will be continued and improved by more directed pumping, as proposed in the ERA Work Plan.

RID Response: Again, the ERA is not likely to significantly change regional hydraulic gradients since there will be no net increase in pumping volumes. The ERA Work Plan also includes provisions to address concerns regarding conduit wells and contamination of deeper aquifers, a task that would otherwise be neglected as it has been over the past 20 years. RID will evaluate the vertical extent of contamination and well yield in the ERA wells completed in the MAU and LAU and modify those wells to seal off the "clean" screened interval to prevent cross contamination to deeper aquifers, where feasible.

RID Response: Additionally, RID's ERA will prioritize pumping of the most highly-contaminated wells in the center of the plume and characterize and seal off those wells to pump from only the contaminated aquifer, where feasible. The ERA also will reduce pumping of those RID wells on the periphery of the plume. The net effect of the ERA will be to limit spreading of the plume that would otherwise occur with continued uncontrolled RID pumping and well operations.

3. RID's ERA is "cost effective."¹⁰

- a) **PRP Comment:** Excessive, cost ineffective (APS, 1) ... numerous significant questions remain unanswered regarding RID's cost (Honeywell, 19).
- b) **PRP Comment:** RID's plan calls for installing several miles of new pipeline at a cost of \$30 to \$35 million to transport the groundwater to new west side municipal customers. (SRP, 3)
- c) **PRP Comment:** RID's proposal is neither cost-effective nor is it consistent with a long-term remedial strategy, should such a strategy ever become necessary. (Air Liquide, 2)
- d) **PRP Comment:** RID's proposal is prohibitively expensive from an O&M cost standpoint ... RID's overinflated estimates of mass removal undercut any claim that the ERA is cost effective. (Honeywell, 16 and 19)

RID Response: The PRP comments misrepresent and mischaracterize the scope, cost, and effectiveness of RID's ERA. The ERA costs specifically relate to integrating RID wells and infrastructure into the ERA. The ERA Work Plan does not propose a new pipeline to convey treated water from the GAC treatment plant to the West Valley.

RID Response: The liquid phase GAC treatment technology planned for RID's ERA is the same as used at the OU-2 plant at the Motorola 52nd Street Superfund Site. Costs are expected to be substantially similar. In fact, on a unit cost basis the RID treatment system may be somewhat less costly due to a greater economy of scale (e.g. operator oversight will be more efficient, GAC procurement pricing).

RID Response: Based on actual pumpage that occurred in 2009 and the most recent water quality data available, the ERA would remove over 5,000 pounds of VOC mass per year. Based on the estimated annual treatment plant O&M cost ranging from \$4 to \$5 million (conservatively estimated), the treatment system unit cost would range from \$800 to 1,000 per pound of mass removed which is less costly than the actual OU-2 Remedy costs cited in PRP comments.

CONCLUSION: RID's proposed ERA is "technically feasible" and "cost-effective" and is essential to mitigate the further spreading of the groundwater contamination in the WVBA.

III. ADEQ's Action on the ERA will not Stop RID's Litigation Against the PRPs.

RID's lawsuit against PRPs to recover response costs, incurred as a result of the PRPs' documented releases of hazardous substances at their facilities, is irrelevant to ADEQ's

¹⁰ See RID's December 23, 2009 letter to ADEQ; RID's January 20, 2010 letter to ADEQ; RID's April 22, 2010 letter to ADEQ

action on the ERA. Contrary to PRP comments, the litigation cannot and should not be taken into account by ADEQ in its consideration of the ERA.

1. ADEQ's Action on the ERA will not stop the ongoing cost recovery action against the PRPs.

- a) **PRP Comment:** If ADEQ does not approve the ERA, it will surely make the litigation less attractive to all parties (ArvinMeritor/Cooper, 3)
- b) **PRP Comment:** It is well known that RID is seeking ADEQ approval of its ERA so that it can argue in court that ADEQ approved its plan and that the court should provide deference to the Agency's decision (SRP, 8) (Lewis & Roca, 2) (Honeywell, 3)
- c) **PRP Comment:** ADEQ's approval of the Work Plan primarily furthers RID's pecuniary interest because it will facilitate RID's unusual litigation against many Arizona businesses. (Schuff, 2)(Arizona Chamber, 3)
- d) **PRP Comment:** In 1999, SRP and ADEQ signed an agreement to use CAP water in lieu of groundwater pumping from wells within or near WQARF sites (SRP, 2)

RID Response: The PRP comments misunderstand RID's intentions and improperly raise the litigation as a factor for ADEQ's consideration of the ERA. Litigation is not a legal criterion for ERA approval (See ERA factors in A.A.C. R18-16-405.H). Regardless, RID intends to move forward with the litigation. If the ERA is not approved, significant costs will likely be expended by all parties to determine if the ERA is consistent with all "applicable or relevant and appropriate requirements" (ARARs) under CERCLA. Similarly, if the ERA is not approved, RID may have to look at other alternatives, such as the one proposed by SRP, that would significantly increase the potential liability that each PRP faces under CERCLA's joint and several liability.

RID Response: RID is not required by law to have ADEQ approve its ERA (except with respect to the water treatment system technology). However, RID desires to establish a working partnership with ADEQ to facilitate funding and the clean up of one of the largest groundwater contamination plumes in the United States that impacts RID's wells and water supply and poses current risks to public health and the environment.

RID Response: RID also requested ADEQ's approval of the ERA to protect RID, and all PRPs responsible for the groundwater contamination, from additional legal liabilities.

2. RID's litigation will not hamper implementation of the ERA.

- a) **PRP Comment:** RID's only option to obtain third-party funding is through litigation, it would delay implementation of RID's proposal for at least five or six years (Honeywell, 23)

RID Response: The PRP comments misrepresent the facts. RID has held funding discussions to implement the ERA with third-parties that are not PRPs legally responsible for the costs incurred by RID.

RID Response: Given that the RID litigation is only establishing PRP liability and that government records have documented “releases” of hazardous substances at PRP facilities, the litigation will not be lengthy.

RID Response: RID plans on moving forward with implementation of the ERA while the litigation against the PRPs is pursued.

3. Arizona companies will not go bankrupt because of the litigation.¹¹

- a) **Public Comment:** ADEQ’s approval of the ERA will fuel existing litigation and result in the potential failure of business entities during these difficult economic times (Phoenix Chamber, 1)
- b) **PRP Comment:** The protracted litigation expense and supporting environmental/consulting fees will bankrupt many of the small defendants (ArvinMerito/Cooper, 3) (Milum, 2) (Jay Willmore, 2) (Jeri Willmore, 3)

RID Response: The PRP comments misrepresent RID’s intentions as expressly referenced in written communications with the PRPs. RID is aware of the economic realities that exist for many Arizona businesses; however, when businesses were thriving, not a single PRP volunteered to address the groundwater contamination that has, for decades, impacted or threatens to impact RID’s wells and presents a current risk to public health, welfare and the environment.

RID Response: RID consistently has maintained a willingness to negotiate a reasonable settlement with any PRP based on all available information, including a PRP’s ability to pay.

RID Response: As expressed multiple times in writing to the PRPs, RID would consider a settlement that applies a PRP’s potential insurance assets or a settlement permitted under the financial hardship settlement provisions in A.R.S. 49-292.02, if the PRP qualifies.

RID Response: Based on RID’s willingness to negotiate reasonable settlements and the availability of the WQARF financial hardship settlement provisions, RID does not believe that small PRP businesses will be forced into bankruptcy as a result of their “legal” obligation to clean up the groundwater contamination.

4. RID is not seeking CERCLA funding for a new pipeline to transport treated water to the West Valley.

¹¹ See RID’s February 24, 2010 letter to ADEQ; RID’s April 22, 2010 letter to ADEQ

- a) **PRP Comment:** RID's plan calls for installing several miles of new pipeline at a cost of \$20 to \$35 million to transport the groundwater to new west side municipal drinking water customers...thus, all of the pipeline components are not a necessary or appropriate component of an ERA (SRP, 3)

RID Response: The PRP comments misrepresent the ERA Work Plan. The ERA calls for the discharge of the VOC-treated groundwater into the RID Main Canal to be used for irrigation purposes, an option that has been applied at other WQARF and Superfund sites in Arizona, at least until the treated water can be delivered to the West Valley as a municipal water supply.

RID Response: During discussions with PRPs in September 2009, RID proposed a "creative option" that would have actually lowered the total liability costs for the PRPs. RID believed that this "creative option" was a win-win for all interested parties: the WVBA contamination would be remediated, PRPs would limit their long-term liability under federal law, and the West Valley cities would receive a cheaper drinking water supply. Unfortunately, the "creative option" has been dismissed by the PRPs.

RID Response: Consistent with CERCLA, RID will only seek recovery of costs incurred by RID to implement the ERA and other actions that address the groundwater contamination impacting or threatening to impact RID's wells in the WVBA.

CONCLUSION: Consistent with federal law, RID's litigation is only requiring the PRPs responsible for the groundwater contamination to reimburse RID for the costs incurred to address the groundwater contamination, including the costs to implement the ERA. RID can quickly establish PRP liability, given RID's reliance on ADEQ and EPA's public records that document "releases" of hazardous substances at PRP facilities.

IV. PRPs' Additional Requirements for ADEQ's Approval of RID's ERA are Unlawful.

In their comments, the PRPs inappropriately request ADEQ's disapproval of RID's ERA based on the ERA's failure to meet requirements that are not required by state law or the WQARF program.

1. RID's ERA meets the requirements for ADEQ's approval.¹²

- a) **PRP Comment:** The ERA does not provide a substantive comparison of remedial technologies and remedial alternatives (Univar, 3)
- b) **PRP Comment:** What is missing from the RID ERA is a detailed evaluation of the wells; fails to provide a monitoring program; a value engineering study would be appropriate (APS, 2-3)

¹² See RID's December 23, 2009 letter to ADEQ; RID's January 20, 2010 letter to ADEQ

- c) **PRP Comment:** The Work Plan does not provide a sufficiently detailed technical basis to explain how the proposed ERA will achieve any of these goals; a regional groundwater model is necessary (Dolphin, 2) (SRP, 7)
- d) **PRP Comment:** The Work Plan presents no specific details as to how RID would use or manage the treated water (Dolphin, 3) (SRP, 6) (ArvinMeritor/Cooper, 2)

RID Response: The PRP comments misrepresent the legal and technical requirements for ERA approval by ADEQ. (See factors in A.A.C. R18-16-405.H). RID's ERA is not a feasibility study; it is an immediate response action that will be implemented to protect and restore a large portion of RID's threatened and impacted water supply to a quality that will support its maximum beneficial end use. It is not a final regional groundwater remedy as misrepresented by the PRPs. Consequently, RID's ERA does not require the detailed level of analysis that a final regional groundwater remedy will require, as part of the final WVBA groundwater remedy selection process.

RID Response: The ERA Work Plan does specify how RID will manage the treated water. The treated groundwater will be returned to the Main Canal for transportation to the West Valley for agricultural irrigation use. The demand for the 20,000 gpm of treated water has been well established by historical pumping records and, as demands change, part or all of this treated groundwater may be used as a drinking water supply.

CONCLUSION: Contrary to PRP comments, RID's ERA has met all of the legally applicable statutory and regulatory requirements for ADEQ's approval.

V. PRP Alternatives to RID's ERA Fail to Timely Prevent Current Risks to Public Health and the Environment, to Timely Protect and Restore RID's Wells and Water Supply, and to Comply with Legally Applicable WQARF Remedial Action Requirements.

RID is the only party in the last 20 years to have entered into a written agreement with ADEQ to begin addressing the WVBA groundwater contamination. PRPs had not volunteered to address the WVBA groundwater contamination until after RID submitted its ERA for ADEQ approval and held discussions with PRPs about its impending CERCLA cost recovery action.

1. ADEQ cannot and should not disapprove RID's ERA in exchange for \$300,000 from PRPs to fund a Feasibility Study.¹³

- a) **PRP Comment:** PRPs are prepared to commission a FS for the Site, at an expected cost of approximately \$300,000 (Stakeholder Letter, 1)
- b) **PRP Comment:** PRPs provided a proposal to complete a group-funded FS and to commit to continued participation in the WQARF process (APS, 5) (Lewis & Roca, 1)

¹³ See RID's January 20, 2010 letter to ADEQ; RID's April 22, 2010 letter to ADEQ

- c) **PRP Comment:** Were ADEQ to disapprove RID's ERA proposal in favor of a privately-funded FS approach, ADEQ would give the PRPs legal standing to participate in the evaluation of site conditions and potential long-term remedies (Air Liquide, 3)

RID Response: The PRPs' \$300,000 alternative offer is severely limited in scope and unlawfully conditioned upon ADEQ's disapproval of RID's ERA. The PRPs' alternative offer to RID's ERA fails to meet any of the authorizing criteria for an ERA. A.A.C. R18-16-405.H. Consequently, the PRPs' alternative does not qualify as a lawful alternative to RID's ERA.

RID Response: The PRPs' conditional offer at the March 22, 2010 meeting with ADEQ to provide \$300,000 to fund a feasibility study only if ADEQ denies RID's ERA is wholly inadequate given the scope of work necessary for a "final" remedial action plan for the WVBA.

RID Response: The PRPs' \$300,000 conditional offer does not include implementation of any remedy selected under the feasibility study. 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' feasibility study, 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.

2. **There have been no "reasonable" alternatives offered by the PRPs to address the impacted RID water supply as required by the ARARs of the WQARF program.**¹⁴

- a) **PRP Comment:** A prudent and responsible groundwater clean up measure includes using Central Arizona Project (CAP) water in lieu of groundwater pumping from wells within or near WQARF sites. (SRP, 2)
- b) **PRP Comment:** Wait for implementation of final remedy, to which RID will lose nothing requested under ERA, because final remedy must address 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 use without treatment (Honeywell, 10, 4)
- c) **PRP Comment:** Continue identification of facilities that have contributed to groundwater contamination, and implementation of aggressive source control at those facilities. Also, extract and treat groundwater from the most concentrated portions of the plume (Dolphin, 4)
- d) **PRP Comment:** New extraction wells would be designed and constructed to target the most highly-contaminated areas of the plume. (Honeywell, 21)

¹⁴ See RID's February 24, 2010 letter to ADEQ; RID's April 22, 2010 letter to ADEQ

RID Response: The PRPs offer nothing but speculative and unfunded recommendations that neither meet the ARARs for WQARF program remedial actions, including ERAs, nor address the current risks to public health and the environment. The main purposes of the ERA are to address the groundwater contamination that has impacted and threatens to impact RID's wells and to mitigate current risks to public health and the environment. None of the PRPs' proposed alternatives address RID's impacted or threatened wells or the current risks to public health and the environment, which are ARARs of ADEQ's WQARF program for any authorized ERA and final remedial action. A.R.S. 49-282.06. If a final remedy will meet the ARARs, as noted by Honeywell, then there is no reason why RID's authorized ERA should not be approved by ADEQ to prevent continuing harm to RID and risk to public health and the environment.

RID Response: If RID's ERA were not approved, RID would consider the alleged "prudent and responsible" measure of accepting CAP water in lieu of pumping its wells within WVBA. However, RID does not believe that this is "reasonable" or "cost-effective" given the threat to municipal wells downgradient if RID were to shutoff its wells and the significant costs related to CAP water allocation.

RID Response: The PRP-recommended source control activities are ineffective to address contamination that has already impacted the groundwater.

RID Response: Targeted groundwater extraction may fail to contain the plume. For example, the OU2 targeted extraction and source control activities were unable to contain the plume, which has established an OU3 and a discussion of an OU4 into the WVBA Area.

CONCLUSION: ADEQ cannot accept the PRPs' \$300,000 alternative in lieu of RID's authorized ERA because the PRPs' alternative fails to meet the ERA authorizing criteria, nor does it or any of the other speculative and unfunded alternatives comply with the ARARs for WQARF remedial actions or address the current risks to public health and the environment.

VI. PRP Comments Raise Irrelevant Issues Regarding ADEQ's Approval of RID's ERA.

- 1. RID's ERA was submitted to restore the water quality in its contaminated wells and to provide protection of its threatened wells as expressly authorized under the state WQARF program.**
 - a) PRP Comment:** Data regarding VOCs in some RID wells has been publicly available since at least 1984 and RID has operated these wells for at least 25 years under these conditions with the same end use (Univar, 2-3)
 - b) PR Comment:** RID has operated these last 25 years with knowledge of the limited groundwater contamination in the vicinity of its wells (ArvinMeritor/Cooper, 1)

RID Response: The PRP comments misrepresent the law and mischaracterize the facts. RID's awareness of groundwater contamination is no defense to the PRPs' liability under CERCLA for that contamination.

RID Response: RID had been operating its wells for nearly 50 years prior to the groundwater contamination and, unlike the PRPs, RID does not have the legal responsibility to clean up the groundwater contamination created by the PRPs.

RID Response: RID had hoped that ADEQ would require the PRPs to address the groundwater contamination. However, as a result of ADEQ budget constraints, RID does not believe that ADEQ has the financial or personnel resources to implement a remedy to address the groundwater contamination that has impacted and threatens to impact RID's wells and water supply.

RID Response: RID is an irrigation district with modest means. Prior to ADEQ's October 2008 draft Remedial Investigation Report, RID did not know the parties that were legally responsible to reimburse the costs incurred by RID to clean up the groundwater contamination affecting its wells and water supply.

RID Response: Similar to SRP and consistent with the ARARs of the WQARF program, RID has adopted a resolution that prohibits contaminated water from being discharged into its canals.

2. One of the purposes of the ERA is to protect RID wells and to restore a significant portion of RID's water supply, not to remediate the plume or to protect RID's long-term water rights.¹⁵

- a) **PRP Comment:** No scientific data to demonstrate the short- or long-term effectiveness of the proposed remedy...plume containment is not demonstrated (Lewis & Roca, 3)
- b) **PRP Comment:** RID's ERA addresses relatively minor amounts of VOCs solely in groundwater produced by RID wells located within the WVBA WQARF Site (Univar, 2)
- c) **Public Comment:** Questions how an ERA would be approved and deemed appropriate when the condition under A.A.C. R18-16-405.A(1) may not exist to a level requiring an ERA and A.A.C. R18-16-405.A(3) is not part of the proposed ERA (Lindon, 2)
- d) **Public Comment:** ERA proposed by RID goes beyond any rational remedial goals and is a thinly-veiled attempt by RID to compel others to pay for a new water infrastructure project (Arizona Chamber, 2-3) (SRP, 2)

¹⁵ See RID's December 23, 2009 letter to ADEQ; RID's April 22, 2010 letter to ADEQ

RID Response: The PRP comments misrepresent the facts and the law. One of the main purposes of RID's ERA is to protect the 11 RID wells that have not yet been impacted by the PRPs' "releases" by beginning to address the 10 most highly-contaminated wells.

RID Response: RID's ERA is authorized as a matter of law and consistent with the ARARs of Arizona law and WQARF program regulations, as discussed above.

RID Response: If it were not for the PRPs' contamination, RID could and would exercise its legal rights to use its water for its maximum beneficial use. Under federal law, those responsible for the contamination are obligated to bear the costs of cleaning up the contamination.

3. There is evidence supporting plume containment under RID's ERA.

- a) **PRP Comment:** It is difficult for ADEQ to determine that the ERA prescribed by the RID will be effective in plume capture and mass removal (ArvinMeritor/Cooper, 4) (APS, 4)
- b) **PRP Comment:** Serious questions about the reasonableness and effectiveness of the proposed ERA (Honeywell, 15, 3)

RID Response: The PRP comments misrepresent the facts and the law. Containment of the plume is only one of four separate reasons for an authorized ERA. Although containment is not the main purpose of the ERA, the ERA will effectively contain the vertical and horizontal migration of the plume; thus, minimizing the costs of any final remedy.

RID Response: ADEQ has acknowledged to EPA that RID's seasonal pumping has effectively contained the plume from moving further downgradient.

RID Response: In fact, there is an RID well downgradient from the plume that has been clean for the past 20 years.

RID Response: RID's ERA will prioritize pumping of the most highly-contaminated wells in the center of the plume and characterize and seal off those wells to pump from only the contaminated aquifer, where feasible. Additionally, the ERA will reduce pumping of those RID wells on the periphery of the plume. The net effect of the ERA will be to limit spreading of the plume that would otherwise occur with continued uncontrolled RID pumping and well operations.

4. RID has demonstrated a current risk to human health, welfare and the environment as a result of the groundwater contamination and that this risk can be mitigated by the ERA.¹⁶

- a) **PRP Comment:** While the open segments potentially represent an exposure pathway, the Work Plan fails to show that the RID wells or canals themselves present a risk to human health (Dolphin, 2)
- b) **PRP Comment:** RID's counsel noted a vague and undocumented "transfer of contaminants" from water to air as the only risk (Lewis & Roca, 2)
- c) **PRP Comment:** No evidence exists in the record to indicate that these historical activities endangered anyone. (Honeywell, 6) (Milum, 3) (City of Phoenix, 1)
- d) **PRP Comment:** There does not appear to be compelling evidence to show that current groundwater conditions constitute an imminent and substantial endangerment to human health or to the environment (Air Liquide, 2)
- e) **PRP Comment:** The Revised Work Plan does not address any specific exposures or concerns...there is no discussion as to whether current conditions and emissions represent a significant or unacceptable health risk (SRP, 4)
- f) **Public Comment:** ERA is not needed to protect public health, especially given the fact that there is no contact or ingestion risks (Arizona Chamber, 2)

RID Response: The PRP comments misrepresent and mischaracterize the current risk to public health, welfare and the environment. Addressing a risk to public health, welfare or the environment is only one of four separate reasons for an authorized ERA. Although addressing the current public health risk is not the main purpose of the ERA, the ERA will begin to address the risk to public health by treating groundwater from the 10 most highly-contaminated wells to prevent the uncontrolled release of hazardous substances to the environment, consistent with the ARARs of the state WQARF program.

RID Response: Arizona law and the WQARF regulations do not require that there be a significant, imminent risk prior to authorizing an ERA. In fact, ADEQ has stated that the term "address" is intentionally broad, such that an ERA may be performed in response to a broad range of site-specific occurrences. 8 A.A.R. 13, 1496 (March 29, 2002).

RID Response: As stated before, ADEQ and EPA ARARs prohibit the transfer of pollutants from groundwater to air. According to recent data, there was more than 3,400 pounds of hazardous pollutants that were released into the WVBA environment in 2009. This is a significant and ongoing risk to public health and the environment.

RID Response: The PRPs have been presented with evidence that there is a current risk to public health. Although RID has taken some actions to limit the risk, the ERA is necessary to further mitigate the risk and protect public health. RID believes the PRPs' continued denial of the current public health risk could constitute gross negligence.

¹⁶ See RID's December 23, 2009 letter to ADEQ; RID's February 24, 2010 letter to ADEQ; RID's March 18, 2010 letter to ADEQ; and RID's April 22, 2010 letter to ADEQ

5. Arizona residents living within the WVBA should not be subjected to risks that are unacceptable in Scottsdale, Paradise Valley, East Phoenix or Goodyear.¹⁷

- a) **PRP Comment:** Volatilization cannot be assumed to present a risk sufficient to justify RID's proposed ERA. (Honeywell, 6)

RID Response: The PRPs comments misrepresent and fail to acknowledge the ARARs of the state WQARF program. At the NIBW Federal Superfund Site, the transfer of pollutants was prohibited even though the risk assessment determined there was no unacceptable risk.

RID Response: At a separate WQARF Site, ADEQ has approved the early steps of a pump and treat ERA even though a Public Health Consultation by the ADHS determined that there was no public health threat associated with the use of the contaminated water for irrigation purposes.

6. RID's ERA cannot, does not and will not address sources of contamination.¹⁸

- a) **PRP Comment:** Plume can be remediated with a far more efficient and less costly approach by focusing on contaminant source areas. The aquifer will be remediated more quickly and effectively. (City of Phoenix, 2)
- b) **PRP Comment:** The RID ERA does not address the sources of contamination as required under the WQARF regulations (APS, 3)

RID Response: The PRP comments misrepresent the scope of RID's ERA and the ARARs of the state WQARF program. Addressing source control is only one of four separate reasons for an authorized ERA. RID has never asserted that the ERA would address the sources of contamination.

RID Response: Unlike the PRPs, RID does not claim authority to dictate what other parties should do on their property.

RID Response: RID supports any efforts by ADEQ or individual PRPs to address the sources of contamination that have impacted or threaten to impact RID's wells and water supply in the WVBA. However, the effectiveness of groundwater source control, which may pump only 50-150 gpm, is very limited in a regional context. For example, the ALSCO ERA pumped 118 million gallons and removed only 24 pounds of VOCs while it operated. In 2009, RID wells pumped around 25 billion gallons of groundwater and released an estimated 3,400 pounds of VOCs.

¹⁷ See RID's April 22, 2010 letter to ADEQ

¹⁸ See RID's April 22, 2010 letter to ADEQ

7. RID's ERA does not excuse compliance with the WQARF program obligations to conduct a feasibility study and implement a final remedy.¹⁹

- a) **PRP Comment:** RID proposes to jump ahead of the normal remedy selection process, while PRPs respect the WQARF remedy selection process (Honeywell, 3-4)
- b) **PRP Comment:** RID has no intention of employing any long-term strategy that would effectively address regional groundwater conditions (Air Liquide, 2)
- c) **Public Comment:** Under the ERA Work Plan, the RID Main Canal will remain open and volatilization will continue to occur from it. (Lindon, 2)

RID Response: The PRP comments misrepresent the nature and objectives of ERAs authorized under the WQARF program and RID's legal right to implement the authorized RID ERA.

RID Response: As expressly authorized by the WQARF program regulations, RID's ERA is necessary to address the contamination that has impacted RID's unrestricted use of its water in the 10 most highly-contaminated wells and to mitigate impacts at the other 10 contaminated wells and 11 threatened wells.

RID Response: Notwithstanding RID's implementation of the ERA and consistent with RID's written agreement with ADEQ, RID will conduct a feasibility study to assure containment of the plume, to address the remaining impacted RID wells in accordance with state law, and to address any remaining risks to public health, welfare and the environment as part of the final remedy selection process under the WQARF program.

8. RID supports the PRPs' suggestion to convene a technical working group for the WVBA.²⁰

- a) **PRP Comment:** ADEQ should consider working with the greater community and stakeholders to organize and convene a technical working group comprised of qualified professionals who can also represent the views of a broad spectrum of affected or potentially affected stakeholders (Air Liquide, 3)

RID Response: The PRP comments misrepresent RID's position. As part of a feasibility study and the final remedy selection process, RID supports ADEQ convening a technical working group. This type of community involvement is not only beneficial, but it also is required by state law and the WQARF program regulations. However, a technical working group (particularly one including private parties who are responsible for the groundwater contamination) is not necessary nor authorized under the WQARF program to implement an authorized ERA by a well owner or operator whose well(s) have been impacted or threatened by groundwater contamination. Of course, RID intends to work

¹⁹ See RID's April 22, 2010 letter to ADEQ

²⁰ See RID's January 20, 2010 letter to ADEQ; RID's February 24, 2010 letter to ADEQ; RID's April 22, 2010 letter to ADEQ

closely with ADEQ and its technical team throughout the implementation of the authorized ERA.

9. RID has long-term rights to pump water from its wells.²¹

- a) **PRP Comment:** RID's contractual right to pump water ends in or about 2026 (Honeywell, 15) (Dolphin, 3)
- b) **PRP Comment:** The proposed ERA violates SRP water rights and existing contracts between SRP and RID which expire in 2020 (SRP, 3)

RID Response: The PRP comments grossly misrepresent the facts and the law. RID's water rights are irrelevant to the approval and implementation of an authorized ERA and an approved final remedy. Water rights are not a legal requisite to implement an approved remedial action. Other authorizations and waivers are available to implement an authorized ERA and an approved final remedy.

RID Response: Although irrelevant to the approval or implementation of an authorized ERA and an approved final remedy, RID has long-standing water rights to implement the ERA and the final remedy, if necessary. RID's water rights are based on deeded land acquired in 1927, without encumbrances. As a matter of state water law, land ownership conveys the right to withdraw groundwater for beneficial use. RID has continuously exercised its water rights and has withdrawn groundwater from the WVBA for beneficial use since its land acquisitions in 1927. RID's pre-1980 water rights were and are recognized as a service area water right under the 1980 Groundwater Code.

RID Response: With respect to the referenced SRP/RID agreements, RID did agree in 1950 to contractually cap the amount of groundwater withdrawn annually from the WVBA under RID's state law water rights. The contractual agreements did not affect the ownership of RID's water rights. Nevertheless, RID's ERA will not exceed the contractual cap on the amount of water that RID could extract from the WVBA under the 1950 agreement.

10. RID has the right to transport water from its wells in the WVBA to its service area in the West Valley.²²

- a) **PRP Comment:** The exportation of water could reduce the physical availability of water to the City of Phoenix (Lewis & Roca, 2)
- b) **PRP Comment:** Any groundwater within the Salt River Reservoir District is reserved for use within the Reservoir District's boundaries (SRP, 3)

RID Response: The PRP comments grossly misrepresent the facts and the law. RID has been exercising its state law water rights and has transported groundwater from the

²¹ See RID's January 20, 2010 letter to ADEQ; RID's March 18, 2010 letter to ADEQ; and RID's April 22, 2010 letter to ADEQ

²² See RID's January 20, 2010 letter to ADEQ; RID's April 22, 2010 letter to ADEQ

WVBA to its service area in the West Valley since 1927, which was codified as an authorized service area water right under the 1980 Groundwater Code.

RID Response: As discussed in RID's January 20, 2010 letter to ADEQ, SRP's bylaws were adopted in 1935, more than 7 years after RID acquired lands and the accompanying water rights in the WVBA. As mentioned above, RID agreed in 1950 with SRP to contractually cap RID's transportation of groundwater out of SRP's service area to no more than 155,000 acre feet per year, an amount well in excess of what would be necessary to implement an authorized ERA or an approved final remedy for the WVBA, if RID's water rights were ever necessary to implement such actions.

11. There is a market for treated WVBA groundwater regardless of the incentive to avoid CAGRDR replenishment costs.²³

- a) **PRP Comment:** The policy states that ADWR will seek to prevent new permanent uses that would not have occurred without the incentive to use remediated groundwater (SRP, 5)

RID Response: The PRP comments misrepresent the application of ADWR policies to RID's ERA. The WVBA groundwater is a valuable drinking water supply regardless of the CAGRDR replenishment costs. The West Valley communities have severe water supply challenges. The use of WVBA groundwater as a drinking water supply, regardless of the incentive to use remediated water, is proven by ADEQ's WVBA Land and Water Use Survey in which every water provider confirmed future use of the groundwater as a drinking water supply.

RID Response: Prior to the ERA, West Valley cities had approached RID to provide a drinking water supply. In fact, RID has existing agreements with the Town of Buckeye to provide a drinking water supply.

RID Response: RID's wells in the WVBA contain substantially lower dissolved solids, hardness, and other inorganic solutes such as nitrate and fluoride than groundwater wells located in RID's service area. For example, RID wells have total dissolved solids (TDS) concentrations ranging from around 1,000 to 1,200 milligrams per liter (mg/l) in WVBA compared to TDS levels ranging from 2,000 to 4,000 mg/l in the Goodyear and Buckeye areas. Except for the widespread VOC contamination, RID wells in the WVBA are the best source of water to develop a municipal supply. As a result, WVBA groundwater supply development will provide large cost savings associated with inorganic water quality treatment costs and brine management.

²³ See RID's January 20, 2010 letter to ADEQ

12. RID will comply with ADEQ requirements for use of treated groundwater.

- a) **PRP Comment:** Wells with higher concentrations of contaminants in the center of its system are connected to the Main Canal, which cannot be used to transport drinking water because it carries effluent (Honeywell, 12)
- b) **PRP Comment:** RID's current conveyance system cannot be used to transport drinking water because it contains wastewater effluent (SRP, 3)

RID Response: The PRP comments misrepresent the relevance of their statements to an authorized ERA that is subject to water quality end use, water quantity protection and pollutant transfer prohibition ARARs of the WQARF program. RID's ERA calls for the discharge of the VOC-treated groundwater into the RID Main Canal to be used for irrigation purposes, at least until the treated water can be delivered to the West Valley as a municipal water supply. However, such current end-use water management does not negate required compliance with the water quality end use, water quantity protection and pollutant transfer prohibition ARARs of the WQARF program, as discussed above. Furthermore, delivery and municipal use of any remediated water will need to comply with all ADEQ requirements.

13. PRPs' should bear the costs to implement the ERA.²⁴

- a) **PRP Comment:** RID is unwilling to undertake the work unless third parties, including Honeywell and others, pay the bill (Honeywell, 2)
- b) **PRP Comment:** Proposal is to arrange for other parties to fund RID's operation of a long-term and expensive pump and treat system (Air Liquide, 2)

RID Response: The PRPs forget they are polluters whose actions have created risks to public health and the environment and damaged RID's wells and water supply. Federal law expressly obligates the PRPs to bear the costs for implementing the ERA. Those who are legally responsible for the contamination are obligated under federal law to reimburse the costs incurred to clean up the contamination and remove the hazardous substances from RID's wells and water supply.

14. RID's ERA is only necessary due to the groundwater contamination caused by the PRPs.

- a) **PRP Comment:** ADEQ must ask whether RID's project would be feasible if the aquifer were not impacted. (Honeywell, 13)

RID Response: The PRPs forget they have polluted the WVBA groundwater. If there were no groundwater contamination, there would be no need for an ERA or final remedy

²⁴ See RID's January 20, 2010 letter to ADEQ; RID's February 24, 2010 letter to ADEQ; RID's March 18, 2010 letter to ADEQ; RID's April 22, 2010 letter to ADEQ

Mr. Benjamin H. Grumbles
May 26, 2010
Page 25

to protect RID's wells, to restore RID's water supply, or to address current risks to public health and the environment.

RID Response: If the PRPs had not contributed to the groundwater contamination, which has impacted or threatens to impact RID's wells, RID would currently be allowed to use its water for its unrestricted maximum beneficial use.

CONCLUSION: In their comments, PRPs raised many issues that are factually inaccurate and legally irrelevant to ADEQ's approval of RID's authorized ERA. Nonetheless, RID has demonstrated that the inaccurate and irrelevant PRP issues are inconsistent with federal law, state law, and the ARARs of the WQARF program.

We appreciate the opportunity to address the comments submitted to ADEQ regarding the RID ERA. We hope this summary will allow ADEQ to make an expeditious and informed decision regarding the RID ERA. We would be happy to meet with you to further discuss any of the issues addressed in this letter or any prior RID submittals.

Very truly yours,

GALLAGHER & KENNEDY, P.A.

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