

Danielle R. Taber

From: Thomas, Christopher D. <chris.thomas@squirepb.com>
Sent: Wednesday, January 14, 2015 4:50 PM
To: Uglietta Ann; Jerry W.; SCOTT; Wink Pearson; Mitchell; Sean; joe.drazek@quarles.com; Amy E.; bpashkowski@gustlaw.com; brian.howie@quarles.com; mtobon@shb.com; cconsoli@lrlaw.com; CHRISTOPHER; hoffmanc@ballardspahr.com; armstrongd@ballardspahr.com; Eric D.; jbarkett@shb.com; John Burnside; jhgray@perkinscoie.com; JOHN; ksg@jhc-law.com; karilee.ramaley@srpnet.com; Mangum Kenneth; ken.miller@pinnaclewest.com; Rojas, Matthew L.; Rojas, Matthew L.; Michael S. (PHX x3279; mberman@perkinscoie.com; molly.cagle@bakerbotts.com; rbhood@gustlaw.com; bschaffer@lrlaw.com; Nishimoto, Ryan M. (Ryan.Nishimoto@aporter.com); Sanford.Harvey@alcoa.com; scott.spear@usdoj.gov; sswindle@perkinscoie.com; stephen.wetherell@phoenix.gov; Thomas.Loquvam@pinnaclewest.com; tstoops@stoopsazlaw.com; ed.sangster@klgates.com; Jason.haycock@klgates.com; david.dunbar@klgates.com; Jennifer.fary@alcoa.com; ASHLEY; roger.strassburg@cox.net; jgspeer@gustlaw.com; ccoleman@perkinscoie.com; TStallcup@cox.net; phillipsla@ballardspahr.com; kevin.vickers@bakerbotts.com; RDongell@dlflawyers.com; JLevine@dlflawyers.com; Matthew G.; James Speer; Chris; Carla A. Consoli (cconsoli@lrlaw.com); Jerry Worsham; 'Van Wolf'; Troy Froderman; William; Spence, Samara (ENRD) (Samara.Spence@usdoj.gov); Tina LePage; Danielle R. Taber; Anthony Young; Laura L. Malone; Henry Darwin; Wendy Flood; peggyeastburn@hotmail.com; Rolf.halden@asu.edu; dciwanski@cox.net; plagas@haleyaldrich.com; Creyes99_0@yahoo.com; jsaccomani@hotmail.com
Cc: Thomas, Christopher D.; Rojas, Matthew L.
Subject: West Van Buren WQARF: Supplemental Comments of City of Phoenix
Attachments: Letter_to_D-_Taber.PDF

Ladies and Gentlemen:

Please see attached comment letter regarding extended public comment period for the West Van Buren WQARF Site, as noted in ADEQ's January 2 notice. Thank you.



Christopher D. Thomas

Partner
Squire Patton Boggs (US) LLP
1 E. Washington St., Suite 2700
Phoenix, Arizona 85004

T +1 602 528 4044

O +1 602 528 4000

F +1 602 253 8129

M +1 602 316 9334

chris.thomas@squirepb.com | squirepattonboggs.com

44 Offices in 21 Countries

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#US

January 14, 2015

Via U.S. Mail and E-Mail (taber.danielle@azdeq.gov)

Danielle Taber
Waste Programs Division
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, AZ 85007

Re: Additional Comments of City of Phoenix Regarding West Van Buren WQARF Site

Dear Ms. Taber:

Should the Arizona Department of Environmental Quality endorse the immediate use of millions of taxpayer dollars for a purported groundwater cleanup that is not necessary to address any public health or environmental risk, and thereby enrich the Roosevelt Irrigation District and its attorneys? Should the agency bless this scheme, even though it would allow an irrigation district to export large volumes of the City of Phoenix's future drinking water supply?

Although they are buried beneath an increasingly more shameless mountain of misdirection, these are the questions ADEQ must ultimately answer. The City of Phoenix believes that the correct answer to both of those questions is an emphatic "no," and asks that the agency reject the unnecessary and costly remedy proposed in RID's feasibility study.

The City has joined comments by the West Van Buren Working Group¹ and also submitted to the docket on January 13, 2014 a letter from City environmental Programs Manager Joe Giudice² explaining the City's position on the key issues of potential risk, water resources,

¹ Letter of January 14, 2015 from Karen S. Gaylord to Tina LePage, Manager, ADEQ Remedial Projects Section.

² Letter of January 13, 2015 from Joe Giudice, Environmental Programs Manager, to members of West Van Buren Community Advisory Board.

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Waste Programs Division
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and cost-effectiveness. I write today to respond to inaccurate and inflammatory comments submitted to ADEQ by RID consultant Synergy Environmental, LLC on January 7, 2015.³

Before briefly responding to RID's most recent theatrical arguments, it is important to review the big picture. Like politics, money makes strange bedfellows. RID's feasibility study, purportedly developed to address a current environmental problem, is instead merely one component of RID's planned business reinvention. Sunlight has begun to shine on that proposed reinvention as a result of documents released in connection with a dispute before the federal court on whether RID's counsel, Gallagher & Kennedy, should be precluded because of conflicts of interest from lobbying ADEQ on RID's behalf, despite the fact that the federal court ruled the firm can no longer participate in the litigation itself.⁴ RID has also been obliged to release similar documents as a result of public records requests. Although they remain partially redacted, the documents reflect that RID and Gallagher & Kennedy agreed at least by October 8, 2008 to work together on a project to compel others to fund conversion of RID from a provider of irrigation water to a provider of drinking water, using a combination of outside investors, federal court litigation, and the Water Quality Assurance Revolving Fund. That agreement has been amended several times in response to litigation over Gallagher & Kennedy's conflicts of interest. The most recent version, dated May 17, 2013, puts into context the basis for the RID feasibility study. RID's proposed remedy is part of "The Project," defined as:

"Proposed Water Project involving pursuing environmental contamination cost recovery claims and exploring the prospects of remediating certain RID water and delivering such water to customers (and development of such a system), with the financial support of PRPs⁵ (and perhaps governmental entities and/or third parties) and of certain RID customers."

Third Amended and Restated agreement, attached as Exhibit A.

³ Letter from Dennis Shirley, Synergy Environmental, LLC to Scott Green, R.G., ADEQ, *Roosevelt Irrigation District Comments on Working Group Draft Feasibility Study Report, West Van Buren WQARF Site*; Letter from Dennis Shirley, Synergy Environmental, LLC to Scott Green, R.G., ADEQ, *Roosevelt Irrigation District's (RID) Responses to comments from West Van Buren Working Group on RID's Feasibility Study Report*. Given the brief time available to respond prior to the existing public comment deadline, by responding herein the City does not waive its right to seek additional time.

⁴ See, e.g., Order granting motion to disqualify in *Roosevelt Irrigation District v. Salt River Project, et al*, No. 10-00290 (D. Ariz.), available at <http://docs.justia.com/cases/federal/district-courts/arizona/azdce/2:2010cv00290/500170/468>.

⁵ "PRPs" is the acronym for "potentially responsible parties."

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Arizona Department of Environmental Quality

The agreement further provides that Gallagher & Kennedy will engage necessary consultants and investors – none of whom will be paid unless RID successfully deliver drinking water to new customers. Agreement, pp. 2, 4. Because of the redactions, it is impossible to say for certain, but it appears that, like Gallagher & Kennedy, Synergy Environmental will not be paid for its work if RID does not succeed in its “Project” to become a drinking water provider. That, perhaps, explains why the RID team continues to insist that the West Van Buren site poses a current risk to the public when nobody else, including the Arizona Department of Health Services, thinks it does.

The Competing Alternative Remedies.

With that background, we turn now to an explanation of the competing remedies proposed by RID and a coalition of public and private parties known as the West Van Buren Working Group (“Working Group”). The Working Group’s members include the City, Salt River Project, Honeywell International, Arizona Public Service Company, and a host of others.⁶ Despite the heated rhetoric, the alternative cleanup plans, known as feasibility studies, differ mainly in how soon they would require expensive treatment of contaminated groundwater that is not currently used for drinking, but might be sometime in the next 100 years. RID’s proposal calls for immediate treatment to drinking water standards of groundwater extracted at six of its wells, although RID supplies only irrigation water and no treatment is required for that purpose. RID asserts that treatment is required immediately because it is “reasonably foreseeable” that the impacted groundwater will be used for drinking within the next 100 years. RID’s proposed approach is set forth in the *Revised Draft Feasibility Study Report* submitted by its consultant, Synergy Environmental, LLC.⁷

RID’s proposed approach, entitled the “Less Aggressive Remedy,” would include treatment to drinking water standards of water extracted from six wells,⁸ installation of a

⁶ The Working group’s other members include Air Liquide America Specialty Gases, LP; Dolphin, Incorporated; Freescale Semiconductor, Inc.; Holsum Baker, Inc.; ITT Corporation; Laundry & Cleaners Supply, Inc.; Schuff Steel Company; and Univar USA, Inc.

⁷ Available at http://www.azdeq.gov/environ/waste/sps/download/wvb/2014-11-26_SYN_revised_FS_Rpt_submittal.pdf

⁸ Those wells are Nos. 89, 92, 95, 114, 106, and 109. In the past, RID sporadically and absurdly treated to drinking water standards water pumped from the first four wells, although the treated water was thereafter dumped back into an irrigation canal that also receives treated sewage effluent and cannot legally be used for drinking. See “Pilot Wellhead Treatment System” progress reports, available at <http://www.wvgroundwater.org/project-documents>.

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measures, as necessary and appropriate based upon evolving site conditions.”¹⁴ For instance, the proposed remedy would require RID Well-114 to be replaced, at a capital costs of \$1.23 million, if use of that well for drinking water rather than irrigation became imminent.¹⁵ While it is unlikely that all eight of the proposed remedies contingent measures would be triggered, the net present value of that happening is estimated to be \$14.58 million.

The Working Group’s remedy, with all contingencies triggered, has a net present value of \$23.25 million. The RID proposed remedy has a net present value of \$63.67 million, \$55 million more than the Working Group remedy if no contingencies are triggered and \$40.42 million more even if all of them are. Most of the difference in cost is due to RID’s proposal to immediately treat to drinking water standards water extracted from six of its irrigation wells. Synergy estimated that the annual cost of carbon treatment at these wells would be \$1.45 million in today’s dollars.¹⁶

Essentially, the RID proposal calls for immediately spending tens of millions of dollars to treat to drinking water standards water today used for irrigation, while the Working Group proposal calls for those treatment costs to be avoided until actual drinking water use is on the horizon. RID’s concept reflects the early and later abandoned U.S. Environmental Protection Agency (“EPA”) view that all groundwater should be actively restored to drinking water standards, regardless of cost.¹⁷ Even EPA has thought better of that approach, endorsing natural attenuation and monitoring at a host of sites, including many in Arizona.¹⁸ The Working Group’s proposal adopts the WQARF approach adopted by Arizona, which seeks to avoid

¹⁴ *Id.* at 41.

¹⁵ *Id.* at p. 43 and at Table 10.

¹⁶ Synergy Draft Feasibility Study, Table 7.

¹⁷ Even EPA has abandoned its original view that it is always necessary to actively restore groundwater to drinking water standards, regardless of use. The agency has released a host of guidance documents approving the use of monitored natural attenuation – that is, letting nature do the work—of groundwater not currently being used for drinking. *See* <http://www.epa.gov/superfund/health/conmedia/gwdocs/monit.htm>.

¹⁸ At the Phoenix-Goodyear Airport North site, for instance, EPA’s remedy requires wellhead treatment or well replacement of drinking water supply wells only as needed for domestic use. Scope of work, Appendix C to U.S. v. Crane/Unidynamics Consent Decree, Phoenix-Goodyear Airport North Superfund Site.

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unnecessary treatment costs by focusing on real-world conditions.¹⁹ Both ADEQ and EPA have long recognized that achievement of ultimate cleanup goals can be deferred if risk does not require otherwise. ADEQ itself selected a no-action groundwater remedy with regard to the Estes Landfill WQARF site, noting that while groundwater beneath the site was contaminated above drinking water standards, there was no need to treat it until the impacted water was to be used for that purpose.²⁰

Since \$40-\$50 million is a lot of money, one might presume that spending it now is urgently required to address a current risk. One would be wrong. As City Environmental Programs Manager Joe Giudice's letter (attached as Exhibit B) points out, a week ago the Arizona Department of Health Services released a health consultation confirming that failing to treat RID's irrigation water to drinking water standards does not create an unacceptable risk. Mr. Giudice's letter also addresses the taxpayer liability²¹ that would come with selecting RID's remedy and the detrimental effect that remedy would have on the City's long-term water planning.

What, then, might be the explanation for the contention of RID's consultants that irrigation water must be treated to drinking water standards now, now, NOW? Perhaps the fact that they won't be paid unless and until RID has drinking water customers may have something to do with it.

Synergy's January 7 Assertions are Baseless.

¹⁹ In 1997, the Arizona Legislature amended WQARF to clarify that the remedy selection criteria of A.R.S. Section 49-282.D do not necessarily compel a restoration remedy – much less an active restoration remedy -- merely because it is technically feasible regardless of cost. Rather, the criteria of practicability, necessity, reasonableness, and cost-effectiveness get equal billing. The statute now expressly provides:

. . . the director may approve a remedial action that may result in water quality exceeding water quality standards after the completion of the remedy if the director finds that the remedial action meets the requirements of this section.

A.R.S. § 49-282.06.D. Among other things, this provision clarifies that A.R.S. § 49-224, which designates all Arizona aquifers as drinking water aquifers, does not trump the remedy selection criteria.

²⁰ http://www.azdeq.gov/environ/waste/sps/Estes_Landfill.html

²¹ ADEQ has already reimbursed RID \$428,635.77 for its alleged past costs pursuant to A.R.S. § 49-282.E (11)

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Arizona Department of Environmental Quality

Synergy's concurrent comments of January 7 essentially make the same broad arguments, all of which are factually or legally baseless. First, Synergy attacks the credibility of the Working Group, suggesting that financial considerations explain the group's failure to agree that treated irrigation water to drinking water standards today is required. As explained above, of course, it is Synergy itself whose financial interests require immediate treatment. The Working Group has merely followed the WQARF mandate that unnecessary treatment costs be avoided. Moreover, although the City is both a drinking water provider and a defendant in RID's federal suit, it is the City's interests as a current drinking water provider that are dominant. The City's investments in future use of the aquifer RID seeks to access dwarf any financial exposure the City faces in the suit. RID's claims against the City are based on the City's lease of property to Honeywell International and ITT Corporation, and both companies are required to indemnify the City against any liability.

RID's comments contains a series of easily dispatched distortions, legal and factual. First, RID preposterously suggests that the Working Group thinks "the level of community public health protection provided to the WVBA WQARF Site minority community should be less and inconsistent with the public health protection provided to other Arizona communities."²² Were that the Working Group's position, it would be lamentable, indeed. What the Working Group has actually said is merely that immediate treatment of irrigation water to drinking water standards is not required by either WQARF or any current risk. That is the conclusion reached by ADHS a week ago, and the conclusion reached by many others previously. Only RID and its consultants, who are attempting to maximize their own financial gain, claim there is a risk.

Time constraints and perhaps decorum prevent a full accounting of Synergy's other distortions, but other notable ones include the following.

Synergy asserts that it is a crime – indeed, a felony – to “violate any applicable water quality standard,”²³ by which RID means failing to immediately restore the aquifer itself to drinking water standards. RID also asserts that, should ADEQ agree with the Working Group that treatment of irrigation water to drinking water standards can wait until the water is actually used for drinking, ADEQ, Working Group members, and their consultants would likewise be felons.²⁴ I, for one, am willing to take the risk of being jailed for proposing cost-effective remediation in lieu of unnecessary immediate treatment that, coincidentally would enrich RID and its consultants. For one thing, if that's a crime, then I'll have plenty of people to talk to who have routinely made similar arguments, including Gallagher and Kennedy, the Arizona Attorney

²² RID Response to comments, p. 4.

²³ RID Comments on Working Group Draft Feasibility Study Report, pp. 5, 6 and n. 18.

²⁴ Id. at n. 18.

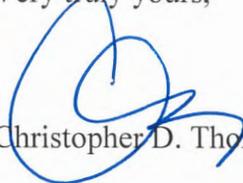
January 14, 2015

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General's Office²⁵, the U.S. Environmental Protection Agency,²⁶ and the National Research Council.²⁷

It is time for ADEQ to quit indulging RID's cynical game. Only RID's financial interests -- and not those of public health, the environment, or the taxpayers -- would be served by ordering immediate treatment to drinking water standards or perfectly good irrigation water.

Very truly yours,



Christopher D. Thomas

cc: Henry Darwin, ADEQ
Laura Malone, ADEQ
Tina LePage, ADEQ
Wendy Flood, ADEQ
West Van Buren WQARF Public Comment Docket
Community Advisory Board Members
Counsel for West Van Buren Working Group

²⁵ See, e.g., Tamara L. Huddleston, et al, Superfund and WQARF Practice, ARIZONA ENVIRONMENTAL LAW MANUAL (State Bar, 1999), p. 4.3-47 (designation of all Arizona aquifers as drinking water aquifers does not render other WQARF remedy selection criteria irrelevant).

²⁶ See *fn.* 17.

²⁷ National Research Council, ALTERNATIVES FOR GROUNDWATER CLEANUP (National Academy of Sciences, 1994).

GALLAGHER & KENNEDY

P.A.

Law Offices

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

ATTORNEY CLIENT PRIVILEGED COMMUNICATION

THIRD AMENDED AND RESTATED

May 17, 2013

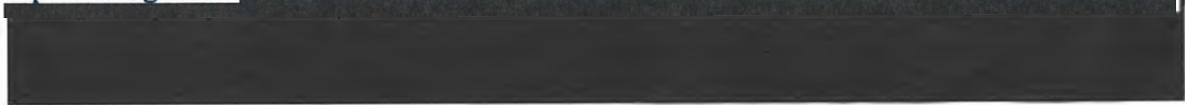
Mr. Donovan Neese, Superintendent
Roosevelt Irrigation District
103 West Baseline
Buckeye, Arizona 85326

Re: Proposed Water Project involving pursuing environmental contamination cost recovery claims and exploring the prospects of remediating certain RID water and delivering such water to customers (and development of such a system), with the financial support of PRPs (and perhaps governmental entities and/or third parties) and of certain RID customers (as more particularly described below, the "Project")

Dear Mr. Neese:

It is our pleasure to continue to represent Roosevelt Irrigation District ("RID") in the above-referenced matter. This letter will describe the terms of our representation and our agreement to ensure your complete understanding. This engagement agreement supersedes and replaces the prior engagement agreements between the parties, including the most recent Second Amended and Restated engagement agreement, dated November 7, 2011.

You are aware that certain parties in the existing litigation, (i.e., *ROOSEVELT IRRIGATION DISTRICT v. SRP, ET AL.*, U.S. District Court, CIV 10-00290-PHX-DAE (SPL), the "Litigation") have sought to disqualify Gallagher & Kennedy, P.A. ("G&K") from representing RID. 



Mr. Donovan Neese, Superintendent
Roosevelt Irrigation District
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Scope of Representation: Project

Certain contaminants, including volatile organic compounds ("VOCs"), have been detected in certain RID wells located in the West Van Buren Area ("WVBA") Water Quality Assurance Revolving Fund ("WQARF") Site. [REDACTED]

[REDACTED]. The Litigation is the proceeding by which RID is pursuing its claims against these potentially responsible parties ("PRPs"). At or around the date of this letter, G&K will withdraw from representing RID in the Litigation, and RID will engage other legal counsel, which we understand to be Bonnett, Fairbourn, Friedman & Balint ("BFFB"). G&K confirms that (1) it has not and will not provide BFFB any confidential information relating to the defendants or third-party defendants; and (2) BFFB has not requested any such information from G&K.

However, as you are aware, the Project requires significant legal effort, in addition to the Litigation. Accordingly, as counsel for RID, G&K is hereby granted the sole and exclusive right and authority, in consultation with RID, to represent RID in all matters related to the Project (expressly excluding in regard to the Litigation), including, without limitation:

- (i) [REDACTED] engaging consultants to perform any services necessary to investigate any contamination or to design any remediation and delivery systems;
- (ii) [REDACTED] obtaining funds from investors or potential customers of the treated water, in order to fund the Project, including our compensation;
- (iii) [REDACTED] creating legal entities to facilitate funding the Project, marketing the treated water and coordinating the construction of any remediation system; and
- (iv) [REDACTED] pursuing such other actions and measures in furtherance of the Project.

G&K will coordinate such representation with RID's water counsel, Ryley Carlock & Applewhite ("RC&A"), and allow RC&A to participate in or monitor all matters related to the Project as requested by RID. (Indeed, we recommend that you confer with RC&A in regard to this agreement.)

The Project, and G&K's representation of RID as proposed in this agreement, have the stated objective and benefit to RID [REDACTED]

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G&K will report to you on matters concerning our representation from time to time as you request, or as additionally deemed appropriate. We will provide to RID such descriptions of the status and prospects for the Project as are reasonably necessary to assure RID that the goals of our representation of RID are being pursued and accomplished. Because various third parties (e.g., settling PRPs, investors, consultants, etc.) will be relying upon Gallagher & Kennedy, P.A.'s binding agreement with RID in making decisions involving the Project, from time to time, upon our request, you will confirm our authority, acknowledge specific provisions herein and ratify our actions, in writing.

Compensation

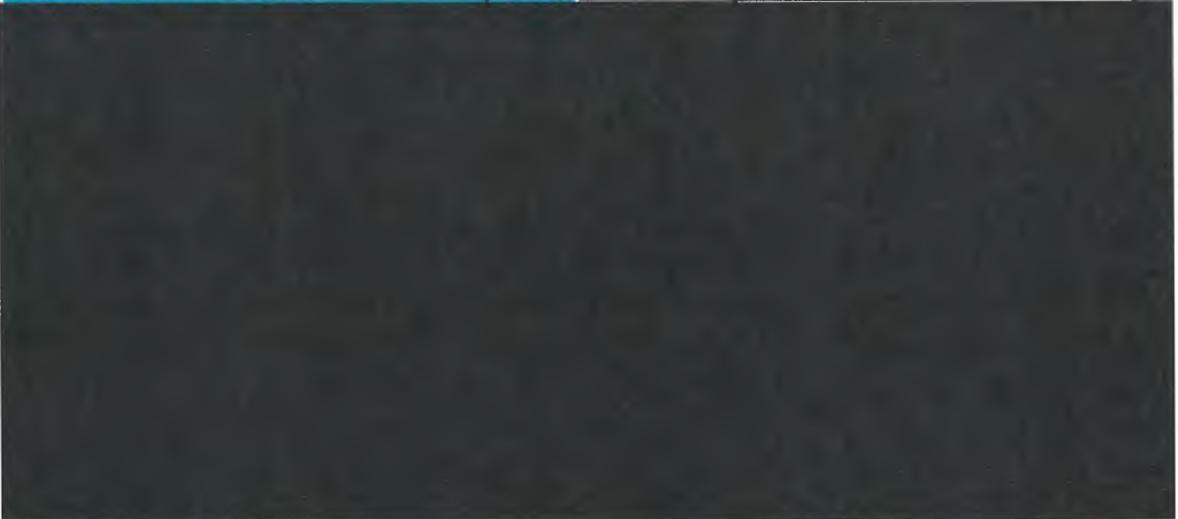
G&K understands that RID lacks the resources presently to pursue the claims against PRPs and to implement a method for remediation of the VOC-contaminated water.

G&K is willing to represent RID in regard to the Project without any direct payment obligation of RID. G&K would require, however, authority to be paid from funds obtained on behalf of RID from various third parties, to the extent lawful and permissible, including without limitation, PRPs, governmental entities or other parties (including existing or prospective RID customers who will benefit from the Project, or third-party investors) by or on behalf of RID in regard to the Project described above and proceeds from the sale of remediated water from RID wells located in the WVBA WQARF Site, that are in excess of the costs of treating and producing such water and any amounts to which RID is entitled from such sales, but excluding funds obtained by RID from the sale of irrigation and Nonpotable Uses to lands and users within RID in the ordinary course of business (collectively, "Project Funds"). There may be other components of revenue identified in the future in regard to the Project, in the course of addressing the legal claims, remediation system improvements and operations, and the engagement of third parties to assist in funding this Project and all such components will also be considered "Project Funds". Our compensation will be the Project Funds resulting from all

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sources related to the Project, after arranging to satisfy all related out of pocket costs and expenses. (Ethically, attorneys are limited in their undertakings to satisfy costs and expenses on behalf of clients, however, we agree that the Project Funds will be the sole source of satisfaction of any costs and expenses, including amounts to be paid to third parties, in regard to our representation and the Project.) Because the Project will evolve and develop over time, our compensation may need to be revised by written agreement of both parties; however, no compensation will be required to be paid to G&K directly by RID. (Further, subject to our review and acceptance, we will consider proposals by RID to modify our compensation arrangement or to include additional costs and expenses to be funded with Project Funds.)

Because RID is not directly liable for G&K's compensation, our compensation will be characterized as a contingency or "success" fee of all net profits and proceeds from Project Funds. However, in recognition of the ongoing development of the Project, and the various prospects for providing treated water to ultimate users, RID and G&K have reached the agreement set forth herein, recognizing the inherent business relationship in accordance with Rule 1.8(a) of the Arizona Rules of Professional Conduct (the "RPC"). G&K agrees that at such time as treated water is delivered through the Project to users (other than existing and future RID irrigation and Nonpotable Uses located within and served by RID in the ordinary course of business, who would continue to be charged by RID pursuant to the then existing RID rate structure as revised from time to time by RID),



G&K will be responsible to compensate any consultants we engage in regard to the Project from Project Funds.



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[REDACTED]

In any event, G&K will be paid only from Project Funds. We may also propose for your approval, from time to time, further modifications to this arrangement to allow for contingency or participatory compensation, which would similarly be paid only from Project Funds.

In order to provide compensation to BFFB, G&K hereby disclaims its interest in and to the amount agreed to be paid to BFFB as set forth in the RID/BFFB Legal Services Agreement dated May 14, 2013, and executed on or about the date of this letter. For purposes of this letter agreement, the portion of Project Funds payable to BFFB is referred to as the "BFFB Share". G&K acknowledges that BFFB is relying on this disclaimer.

As you are aware, there are necessary allocations of such Project Funds and payments which G&K is undertaking at no cost to RID, including the satisfaction of certain reimbursements to ADEQ, the compensation to consultants [REDACTED] and others providing services for the approved remediation Project in regard to the contractual obligations associated with the design, installation, operation, maintenance and financing of certain remediation facilities and improvements for the Project. BFFB will be subject to the satisfaction of these same allocations on a basis proportionate to its share of the Project Funds. In order to facilitate the administration and distribution of the Project Funds, you agree that G&K shall continue to be entitled to receive all Project Funds, but shall pay the BFFB Share to RID on terms and conditions acceptable to RID, G&K and BFFB. RID will then pay any BFFB Share RID receives from G&K to BFFB.

Administration

Even though RID will at no time be responsible to pay our fees, upon written request by RID, we will send or provide statements of our bills and monthly summaries describing our services. G&K understands that if insufficient Project Funds exist, the compensation due to G&K will be deferred. G&K will also bear the risk that if sufficient Project Funds are not obtained ultimately, the amounts due to G&K and consultants and others providing services for the approved remediation Project will not be paid. RID agrees that G&K's claim to be paid from the Project Funds shall not be impaired or limited by any acts of RID, and the parties will cooperate to create a structure as to the receipt and utilization of Project Funds to accomplish the purposes described herein. Because G&K will not be engaged in representing RID in the pending litigation, G&K will not be entering into any settlement agreements. RID agrees further that all Project Funds shall be paid into a G&K trust account. From that portion of the Project Funds which represents amounts collected as settlements or awards of remediation action costs (collected pursuant to applicable state and federal law), G&K shall pay the amounts then due to

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those individuals and entities which have incurred litigation and remediation costs (including without limitation, G&K). Any amounts of other Project Funds after distributions as described herein shall be paid to G&K, RID [REDACTED] and the other approved consultants, entities or others or to other costs of the Project, until all such entities and costs are paid in full. Upon payment of all costs incurred as set forth in the immediately preceding sentence, all additional Project Funds will be distributed to G&K. G&K will provide RID with a monthly accounting, for ratification, of funds deposited in and disbursed from the trust account. Because G&K has committed to this representation in regard to the Project on a pure "contingency" basis, it is imperative that G&K retain control over such Project Funds. G&K agrees that its engagement for services (pursuant to that letter dated October 3, 2008, as subsequently amended) remains subject to both Ethical Rule 1.5 of the RPC (which requires that the fee charged be reasonable and lists eight nonexclusive criteria for judging the reasonableness of the total fee) and Ethical Rule 1.8(a) of the RPC (which requires that any business relationship between G&K and RID be fair and reasonable to RID and fully disclosed in writing).

Miscellaneous

I have attached an explanation of our responsibilities when an entity, not an individual, is our client. We urge you to review carefully the attachments and the terms of this letter. In accordance with the Arizona Supreme Court Rule #44, client funds are deposited in a pooled interest-bearing trust account for the benefit of the Arizona Bar Foundation. Because we expect the interest on these funds to be more than nominal, subject to applicable ethical rules governing the administration of client funds, G&K will deposit the Project Funds in a separate account, which account is held at BMO Harris Bank whereby the interest will accrue for the benefit of the Project and ultimately for our benefit.

You may terminate G&K services at any time by notifying us of your intent to do so. However, such termination shall not affect the obligation to utilize G&K's trust account and to pay our reasonably determined compensation from Project Funds. For these purposes, RID understands and agrees that the compensation to G&K will be the total Project Funds, less any amounts due to RID and any consultants, entities or others and other costs of the Project which are necessary to implement the remediation Project approved by ADEQ, and less all costs and expenses required to assert the claims and to develop the remediation solutions, as described above, as well as the BFFB Share.

G&K may resign from our representation if, after consultation with RID, it is determined that the prospects for success of the Project is low. For example, we may determine that collectively, the PRPs will not be able or willing to fund sufficient Project Funds to result in a remediation solution to address the contamination, or that there is a lack of demand for the remediated water from the Project from non-agricultural users.

Mr. Donovan Neese, Superintendent
Roosevelt Irrigation District
May 17, 2013
Page 7 of 9

Our practice is to destroy each client's legal files ten years after the closing of the files, unless the client directs otherwise.

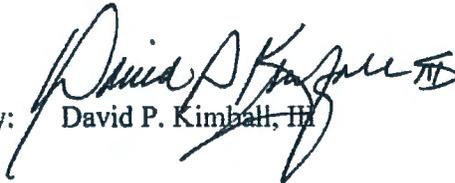
There are no implied third-party beneficiaries to this agreement; however G&K has the right to assign interests in its compensation described herein.

Please excuse the formal tone of this letter. However, we believe that a complete understanding will help to assure a good relationship. If the terms described in this letter and in the enclosed Policy on Professional Fees are acceptable, please sign the acceptance on the counterpart of this letter and return it to me at your earliest convenience. We also acknowledge and support your continued consultation with RC&A in regard to this engagement agreement and our relationship over the course of our representation.

We appreciate this opportunity to be of assistance.

Very truly yours,

GALLAGHER & KENNEDY, P.A.

By: 
David P. Kimball, III

JBC:DPK:plm
Enclosures

c: Sheryl A. Sweeney, Esq.

I have reviewed this letter and its enclosures and understand the terms. It is AGREED TO AND ACCEPTED this 20 day of May, 2013.

ROOSEVELT IRRIGATION DISTRICT

By: 
Bruce Heiden, President

GALLAGHER & KENNEDY

P.A.
Law Offices

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

ENTITY AS THE CLIENT

1. Entity Is the Client. The client is Roosevelt Irrigation District (the "Company").
2. Constituents Are Not Clients. As lawyers for the Company, we do not thereby represent any shareholder, director, officer, partner, member, manager, employee or other constituent of the Company, or a spouse of any of the foregoing.¹ (As used in this attachment, "constituent" means a constituent of the Company.) This enables us to, among other things, avoid actual or potential conflicts of interest that might arise. For example, in situations in which the Company's interests may be or become adverse to a constituent, an actual or potential conflict of interest could arise; we cannot undertake representation of that constituent in connection with that situation; that constituent may wish to obtain independent representation in connection with that situation; and discussions between us and that constituent may not be privileged. Accordingly, if a constituent does not already have independent representation, that constituent may wish to obtain independent representation regarding that constituent's own interests and affairs, including matters pertaining to that constituent's relationship with the Company. The Company represents and warrants to us that it has advised and encouraged, and we advise and encourage, each constituent to obtain (or to continue to have) such independent representation.
3. Disclosure Within the Entity. To the extent explicitly or impliedly permitted or authorized by the Company to carry out the representation (or as otherwise permitted or authorized by Ethical Rule 1.6 of the Rules of Professional Conduct), we may (but are not obligated to) disclose the occurrence or nature of a constituent's communication with us in the constituent's organizational capacity to other constituents. In this regard, the

¹ This non-representation of constituents applies even though (a) the Company is an entity that cannot act except through its constituents, (b) the Company is publicly-held, privately-held, widely-held, closely-held or family-owned or for profit or nonprofit, (c) a constituent may have been instrumental in the Company's retention of us, may have founded the Company, may be the sole or a significant shareholder of the Company, or may otherwise have a prominent role as to the Company, (d) we may communicate directly and exclusively with a particular constituent, whether orally, in writing, electronically and/or otherwise, at the Company's offices, the constituent's residence, our offices, and/or elsewhere, during regular business hours and/or at other times, (e) a constituent's communication with us in the constituent's organizational capacity may be confidential, (f) a constituent's interests may be in common with, or not adverse to, the Company's interests, and (g) as permitted by Ethical Rule 2.1 of the Rules of Professional Conduct, our advice to the Company might refer to various considerations relevant to the Company's situation, such as the potential effect of the Company's actions on personal liability of a constituent.

Company hereby authorizes us to disclose that communication to a higher authority in the Company described in paragraph 4 below.

4. Review Within the Entity. We advise and encourage the Company to formulate a policy regarding review of a constituent's decisions, acts, omissions or other conduct, including defining circumstances and prescribing channels for that review. Pending formulation of such a policy, the Company has informed us that the ranking of authority in the Company is as follows for purposes of such review (with the first being the highest authority): (a) when the review pertains to a constituent who is a director, the highest authority is a majority of the other members of the board of directors; (b) otherwise, a majority of the board of directors; (c) a majority of the executive committee of the board of directors; (d) the chairman of the board of directors; (e) the vice-chairman of the board of directors; (f) the chief executive officer; (g) the president; (h) the executive vice president to whom the constituent directly or indirectly reports; (i) the vice president to whom the constituent directly or indirectly reports; and (j) thereafter, such officers or employees as the Company may indicate to us from time to time or, in the absence of such an indication, as provided by applicable law. The Company has also informed us that (i) the review does not need to commence with or be otherwise considered by the highest authority and (ii) we are not obligated to inform the constituent of the review. "Review" includes any action that the reviewing authority deems necessary or appropriate in connection with the review, including removal from office, termination of employment and other action. With respect to review by a reviewing authority consisting of two or more individuals acting together, the review may be formal or informal, with or without a meeting, by vote, consent, ballot, ratification or otherwise, whether given simultaneously or serially, and whether given orally, in writing, electronically or by other means.
5. Authority Within the Entity. In addition, any of the foregoing authorities (as well as any member of the board of directors) is authorized to communicate with us regarding the Company's business, affairs and governance. In that regard, any of the foregoing authorities is authorized to direct us to prepare documents (including documents that contemplate signature by other constituents or by third parties), to communicate with constituents and with third parties, and to negotiate with subordinate constituents and with third parties.
6. Signatures; Dissemination. Each individual who signs this letter on behalf of the Company represents and warrants to us that he or she is duly authorized to do so. The Company represents and warrants to us that it has provided a copy of this letter to its directors and executive officers, as well as constituents with whom the Company foresees our having contact.

January 13, 2014

Via U.S. Mail and E-Mail

Peggy Eastburn
6314 West Fillmore
Phoenix, AZ 85043
peggyeastburn@hotmail.com

Dr. Rolf Halden
Professor, School of Sustainable Engineering
and the Built Environment
Arizona State University
781 East Terrace Mall
Tempe, AZ 85287
Rolf.halden@asu.edu

David C. Iwanski
11221 West Sieno Place
Avondale, AZ 85392
dciwanski@cox.net

Philip J. Lagas
Senior Vice President
Haley & Aldrich
One Arizona Center
400 E. Van Buren Street, Suite 545
Phoenix, AZ 85004-2285
plagas@haleyaldrich.com

Charlotte Reyes
2133 West Monroe
Phoenix, AZ 85009
Creyes99_0@yahoo.com

John Saccoman
P.O. Box 16013
Phoenix, AZ 85007
jsaccomani@hotmail.com

Re: West Van Buren WQARF Site

Dear Members of the Community Advisory Board:

I am writing on behalf of the City of Phoenix (City) to follow up on the December 1, 2014 Community Advisory Board meeting regarding the West Van Buren Water Quality Assurance Revolving Fund (WQARF) Site. In the course of the technical presentations and discussion you expressed interest in issues that likewise are of great concern to the City. Subsequently, public comments have been submitted regarding the feasibility studies that similarly express interest in issues of concern to the City.

Protection of Public Health:

The City, much like the Community Advisory Board and the Arizona Department of Environmental Quality, is committed to ensuring the selected remedy assures protection of public health and welfare and the environment. To that end, the City supports a remedy that is designed to control the contaminant plume, implements a targeted extraction and treatment approach of contaminant hot spots, and controls exposure to contaminants in a manner deemed safe by public health professionals. The remediation strategy proposed by the West Van Buren Working Group (Working Group) is specifically designed to pump and treat water from the contamination plume hot spots. This strategy will capture and treat the contaminants collected from the new treatment well(s) preventing exposure to the public and the environment.

To ensure protection of public health, the City has evaluated a series of health risk assessments regarding the site, all of which have concluded that groundwater pumped for irrigation use by RID is fit for irrigation use without treatment and does not create any unacceptable ingestion or inhalation risk.

Most recently, on January 8, 2015, the Arizona Department of Health Services (ADHS) released its updated evaluation of the potential risk posed by the presence of low levels of solvents in groundwater within the West Van Buren area. Arizona Department of Health Services, *Evaluation of Water Sampling Results in the Roosevelt Irrigation District (Jan. 8, 2015)*. A copy of the report is enclosed for your reference. 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 1992.¹ 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." Evaluation, p. 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. Evaluation, p. 14. 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.

The City takes additional comfort from the January 2015 ADHS study, since it was prepared using the most current data by the government agency charged with evaluating public health risk. Furthermore, the ADHS study conclusions mirror multiple and similar risk evaluations by others concluding that treating irrigation water to drinking standards is not necessary to eliminate risk to public health.

For instance, in a prior health risk study, RID consultant Synergy Environmental, LLC evaluated in 2011 whether the presence of contaminants in groundwater extracted by RID posed an unacceptable risk to the public.² The RID-commissioned report concluded:

"The results of this assessment suggest that there is not an imminent (acute) risk to the public from the contamination being released from the RID water systems.

¹ Note that because RID has only sporadically treated water in four of its wells, ADHS sampled the untreated water in order to evaluate the potential risk under normal conditions. Evaluation, p. 7.

² *Public Health Exposure Assessment and Mitigation Summary Report*, September 16, 2011, prepared by Synergy Environmental, LLC.

While air sampling results show that many points in the RID water systems exceed air inhalation screening-level guidelines for short-term exposure, these 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 system exceed screening-level guidelines for ingestion, 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.”³

Agreeing with RID’s conclusion regarding the absence of a public health risk, ADEQ has likewise taken the position that “vapor intrusion isn’t an exposure threat” at the site.⁴

The absence of any current risk also was demonstrated by studies commissioned by Salt River Project Agricultural Improvement and Power District (“SRP”) and the City. SRP engaged the AMEC environmental consulting firm to perform a human health risk assessment to evaluate potential risks posed by the presence of low concentrations of volatile organic compounds (“VOCs”) in the RID irrigation canals.⁵ AMEC determined:

“The theoretical health risks associated with VOCs in the RID system are substantially less than levels considered to be unacceptable based on human health risk. In other words, our analysis indicated that there is no public health impact associated with operation of the RID system with a substantial margin of safety.”

Finally, the City also evaluated whether contaminants in the RID canals posed an unacceptable risk to public health. The City compared groundwater and canal sampling data to established numeric surface water standards. The available water quality data were compared to 1) ADEQ’s 2009 Final Surface Water, Partial Body Contact Standards; 2) the 1998 ADHS Draft End Use Standards for open water conveyance; and 3) Final Health Based Guidance Levels established by ADHS for other sites in Arizona (ADHS, October 10, 2000). The comparative analysis showed that “the detected RID canal concentrations are less than the Final Standards and a complete current exposure pathway is not present.”⁶

³ *Public Health Exposure Assessment*, p. 2.

⁴ ADEQ, *Response to Comments-Remedial Investigation Report, WVBA WQARF Site* (Aug. 8, 2012).

⁵ AMEC, *Evaluation of Human Health Risks Associated with Volatile Organic Compounds in the Roosevelt Irrigation District Canal System*, (August 16, 2010), available at <http://www.azdeq.gov/environ/waste/sps/download/wvb/090110f.pdf>.

⁶ See December 12, 2012 letter from Phil McNeely, City of Phoenix, available at http://www.azdeq.gov/environ/waste/sps/download/wvb/120312_phx.pdf.

The multiple and separate evaluations of the risk to public health posed by the presence of low concentrations of VOCs in the RID irrigation canals demonstrate to the City that the remediation strategy proposed by the West Van Buren Working Group (Working Group) can and will effectively capture and treat the contaminants collected from the new treatment well(s) preventing exposure to the public and the environment.

Protection of the Groundwater Supply as a Water Resource

Groundwater is a precious resource in the arid southwest. The City has relied for decades on the future availability of groundwater in the West Van Buren WQARF area. The City is deeply concerned about any long-term remediation strategy that attempts to export groundwater outside the City service area and would serve to further diminish the quantity of water available in this aquifer. RID's water appropriation strategy would disrupt the City's careful, decades-long planning effort, which has required dealing with both legal complexities and drought conditions.

In addition to being a precious resource, groundwater in the Phoenix area is heavily regulated. In order to prevent depletion of groundwater resources, in 1980 Arizona adopted the Groundwater Management Act. The Act restricts and regulates groundwater pumping within four groundwater basins, or active management areas (AMAs), including Phoenix. Within the Phoenix active management area, groundwater pumping is regulated by the Arizona Department of Water Resources (ADWR) with the goal of achieving "safe-yield" by 2025 ("safe-yield" is a condition in which the annual volume of groundwater removed in an AMA does not exceed the volume recharged).

At present, municipalities can accept remediated water from WQARF cleanups without having that water count against their groundwater pumping rights.⁷ Starting on January 1, 2025, however, that temporary statutory exemption expires. This is right around the time that RID's 99-year lease and contract with the Salt River Project allowing RID to pump groundwater in the service area will come to an end. Both of these facts raise significant questions about RID's legal ability to implement its proposed remediation strategy even if selected by ADEQ. What's more, a review of the contracts between RID and its attorneys has revealed the financial interests of RID and its attorneys are directly tied to the volume of groundwater required to be pumped by the selected WQARF remedy. This has created concern in the community that the remediation strategy proposed by RID is an effort to establish the irrigation district as a drinking water broker or provider, rather than a directed effort at reducing risk or implementing an effective and appropriate regional remediation plan. If those concerns are well founded, the arrangements between the irrigation district and its attorneys create an inappropriate financial incentive for RID to engage in excessive groundwater pumping and depletion of the aquifer to the disadvantage of the community within the Phoenix active management area that relies on this

⁷ Arizona Laws 1997, Chapter 287, Section 52 provides favorable accounting of groundwater in an active management area pursuant to an approved remedial action project until January 1, 2025. The provisions of the session law are further codified in the Arizona Department of Water Resources' administrative rules at A.A.C. R12-15-729.

water as a future supply. This would be in direct conflict with the objectives of the Groundwater Management Act.

The City has invested decades in thoughtful water resource planning, maintaining a diverse portfolio of drinking water resources including surface water and groundwater. The City's planning efforts are summarized in its *Water Resource Plan*, most recently updated in 2011.⁸ To preserve groundwater supplies as much as possible, during normal years the vast majority of the City's drinking water supply is drawn from surface water. Salt River and Verde River water is delivered through the Salt River Project and Colorado River water is delivered via the Central Arizona Project. Those surface water supplies are supplemented by groundwater pumped from City wells. Arizona is in the 15th year of an historic drought, and it is possible that surface water supplies will be reduced in the future, thus increasing the need to rely on groundwater supplies.

Mindful of the expiration date in the RID-SRP contract, the City has long counted on its ability to pump additional groundwater in its service area to meet demand in the event of a shortage in surface water resources. Indeed, in its 2011 *Water Resources Plan*, the City identifies that RID's plan to export groundwater would disrupt the City's decades-long planning process:

"With regard to remediation of contaminated groundwater within Phoenix's service area, it has been the City's stated intent to preserve that water for future service area use. As such, the City has encouraged EPA and ADEQ to expedite remediation actions as the supply is expected to be an important component in meeting future service area demand during surface water shortfalls. A proposed groundwater remediation action within the Roosevelt Irrigation District (RID) would utilize RID wells that exist within the City to extract groundwater which would be treated and distributed to entities outside of the Phoenix service area. This activity would ultimately reduce groundwater water availability to the City."⁹

The City's commitment to responsibly utilize groundwater resources – including those that would be affected by RID – is demonstrated in its 10-year Capital Improvement Budget. The City has budgeted \$233 million to more than double its capacity to pump groundwater for drinking water supply. This effort follows heavy investments in surface water delivery infrastructure.¹⁰

The City supports the Working Group remedy because it controls and remediates the contaminant plume, while preserving the groundwater resource for future supply in accordance with the Groundwater Management Act. Furthermore, the Working Group Remedy includes a set

⁸ <https://www.phoenix.gov/waterservicessite/Documents/wsd2011wrp.pdf>.

⁹ *Water Resources Plan*, p. 66.

¹⁰ *Water Resources Plan*, pp. 66-67.

of contingent measures allowing flexibility to treat the appropriate and necessary volumes of water to support the City's future drinking water needs and plans.

Remedial Action Shall be Cost-Effective.

The City intends to utilize this groundwater resource as a future drinking water supply, which will require the water to meet drinking water standards *at that time*. The City supports the Working Group Remedy because it provides targeted treatment of contaminants at the hotspot combined with natural contaminant attenuation to provide for the most cost-effective solution to achieve protection of public health and preservation of groundwater resources. Furthermore, this Remedy provides the necessary flexibility to implement contingent measures to meet future beneficial use requirements as they become necessary. Implementation of a more expensive remedy will require the taxpayers to contribute more financially. WQARF limits the liability of contributing polluters to their proportionate share,¹¹ requiring the State – that is, the taxpayers – to cover the costs allocated to absent or insolvent parties.¹² Additionally, taxpayers are required to pick up the 25-percent discount available to parties who agree to settle based on the share of liability initially assigned to them by ADEQ.¹³ In the West Van Buren site, the orphan share is estimated to be no less than 50 percent. Although RID is pursuing a federal Superfund suit¹⁴ against some of the potentially responsible parties, regardless of the outcome of that suit ADEQ has a statutory obligation to conduct its own WQARF allocation and the taxpayers are required to absorb the orphan shares. With RID's remediation strategy costing three times the remediation strategy of the Working Group, Arizona's taxpayers can expect to be billed millions more if RID's remediation strategy is selected.

Summary

The City supports the Working Group Remedy because it (1) provides for targeted treatment, monitoring and control of the contaminant plume, (2) complies with the Arizona's Groundwater Management Act and preserves the groundwater resource for future beneficial use in the service area that the groundwater is located, (3) provides a cost-effective solution to achieve the groundwater remediation objectives, and (4) includes the flexibility to implement contingent measures to address changing conditions.

The City appreciates your service and would be happy to meet to answer any further questions you may have.

¹¹ A.R.S. Section 49-285.

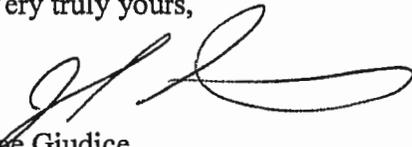
¹² A.R.S. Section 49-281 (10).

¹³ A.R.S. Section 49-287.05 (detailing available 25-percent discount); A.R.S. Section 49-281 (10)(c) (defining uncollected share as orphan share to be paid by state).

¹⁴ *Roosevelt Irrigation District v. Salt River Project, et al*, No. CV-2010-00290-DAE (D. Ariz.). The case was brought by attorneys who have a contingency interest in any recovery or water sales.

January 13, 2014
Page 7

Very truly yours,

A handwritten signature in black ink, appearing to read 'Joe Giudice', with a large, sweeping flourish extending to the right.

Joe Giudice
Environmental Programs Manager (Acting)

cc: Henry Darwin, ADEQ
Laura Malone, ADEQ
Tina LaPage, ADEQ
Danielle Taber, ADEQ
Wendy Flood, ADEQ
West Van Buren WQARF Public Comment Docket