

March 5, 2015



Laura Malone
Waste Programs Division Director
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, AZ 85007

Re: RID's Response to Mr. Worsham's Comments on RID's ADEQ-Approved Modified Early Response Action ("MERA") and RID's Operation & Maintenance Work Plan

Dear Laura:

The Roosevelt Irrigation District (RID) has reviewed and provides the following response to Mr. Worsham's February 20, 2015 email to ADEQ regarding RID's ADEQ-approved MERA and Mr. Worsham's *Comments on the Roosevelt Irrigation District (RID's) "Operation and Maintenance Plan – RID Wellhead Treatment Systems,"* dated November 6, 2014. Although RID previously has addressed many of the same issues raised in Mr. Worsham's above-referenced communications, RID is compelled to provide this response in order, once again, to correct the administrative record.

February 20, 2015 Email

In his email, Mr. Worsham raises the question regarding what effect, if any, does ADEQ's "conditional approval" of RID's MERA have on the four specific conditions that were listed in ADEQ's June 24, 2010 "conditional approval"¹ of RID's original Early Response Action ("ERA") Work Plan, dated February 3, 2010. RID submits there is no unanswered question, particularly since Mr. Worsham acknowledges in his June 27, 2014 email to Anthony Young of the Arizona Attorney General's Office that ADEQ's subsequent "conditional approval" of RID's MERA, dated February 1, 2013, clearly stated that "[t]his approval **supercedes** ADEQ's approval of the previous ERA Work Plan dated February 3, 2010." In that same email, Mr. Worsham also acknowledges the plain meaning of the term "supercedes" (*i.e.*, to "annul, make void or repeal by taking the place of another"). Under the plain meaning of the term "supercedes," the two conditions listed in the February 1, 2013 "conditional approval" of RID's MERA "made void or repealed by taking the place of" the four previous conditions listed in the earlier June 24, 2010 "conditional approval" of RID's original ERA.

¹ As Mr. Worsham is aware, Henry Darwin, the Director of ADEQ, issued a letter, dated October 13, 2010, that addressed the "Status of RID ERA Conditional Approval." Mr. Darwin note that "ADEQ's June 24, 2010 approval of RID's February 3, 2010 ERA Work Plan is a final decision." If there is any determination by ADEQ that compliance has not been achieved, ADEQ could address those issues "under the appropriate legal procedures."

As Mr. Worsham knows well, the plain meaning of a term is applied unless there is a specific statutory or regulatory definition of the term. There is no specific statutory or regulatory definition of the term “supercedes” under the WQARF Program. Mr. Worsham is well aware of this fact too as he requested the Attorney General’s Office to develop “a regulatory interpretation” of the term “supercedes.” However, in order for any regulatory interpretation of that term under the WQARF Program to be enforceable against RID, the regulatory interpretation would have to be of general application and would, therefore, require substantial compliance with the applicable rulemaking procedures required by state law.² No such rulemaking process has been pursued by ADEQ and no such “regulatory interpretation” has been promulgated to define the term “supercedes” for the WQARF Program. Consequently and consistent with the principles of statutory and regulatory construction and interpretation, the plain meaning of the term “supercedes,” as used by ADEQ in the February 1, 2013 “conditional approval,” annuls and repeals the prior four specific conditions for the original ERA and replaces them with the two specific conditions for the MERA.

November 6, 2014 Letter

Mr. Worsham falsely claims that the “following **two issues** identified by Meritor, Inc.’s original comments still **remain unresolved** based upon the RID’s recent response.” Similar to the question raised in his February 20, 2015 email, Mr. Worsham already has answered these alleged “unresolved issues.”

First Issue

The first issue concerned the “fate of the other four wells which were submitted to ADEQ under the MERA.” Although Mr. Worsham accurately referenced RID’s position that the installation of those wells was “anticipated to begin in late 2013 upon availability of project funds,” Mr. Worsham simply references an unsupported statement that “**ADEQ has indicated in the past that the MERA would not be approved upon the ‘availability of funds.’**” It is false for Mr. Worsham to claim this issue is “unresolved” when Mr. Worsham’s letter specifically includes RID’s subsequent response (in bold) that

RID is unaware of ADEQ statements that might suggest the MERA would not be approved based on the availability of funds. Any such statement would be inconsistent with the express terms of RID’s *Agreement to Conduct Work with ADEQ* dated October 8, 2009, and amended February 27, 2014. This agreement specifies ... that these obligations are legally enforceable when adequate funds are available...

² ARS Title 41, Chapter 6, Article 3.

Similarly, Mr. Worsham without authority falsely claims that “[i]t would seem that RID has **abandoned MERA Phase 2 and the four additional LGAC systems proposed and previously approved by ADEQ. ADEQ should document this fact in a modification of the ADEQ’s conditional approval of the MERA dated February 1, 2013.**” Yet again, it is false for Mr. Worsham to claim this issue is “unresolved” when Mr. Worsham’s letter specifically includes RID’s subsequent response (in bold) that

RID has not “abandoned” the installation of additional treatment systems documented in the MERA Work Plan. ... RID is prepared to implement the more cost-effective recommend groundwater remedy from the RID FS Report as an alternative to the full implementation of the MERA Work Plan. Otherwise, RID is prepared to install and operate the remaining four treatment systems approved by ADEQ in the Modified Work Plan.

Mr. Worsham’s own letter clearly establishes that the first issue was properly addressed and resolved by RID.

Second Issue

The second issue alleged to be “unresolved” in the November 6, 2014 letter is that “RID has not submitted the required Schedule of Implementation for the MERA as required under AAC R18-16-405(D)(3).” However, according to Mr. Worsham’s July 17, 2014 email to Danielle Taber of ADEQ, Mr. Worsham acknowledged that RID already had submitted a schedule pursuant to AAC R18-16-405(D)(3) for RID’s original ERA. Consistent with ADEQ’s “conditional approval” of the MERA, dated February 1, 2013, the “Modified ERA Work Plan incorporates all relevant and applicable information from the original ERA Work Plan,” including the Schedule of Implementation acknowledged by Mr. Worsham in his July 17, 2014 email. Additionally, the MERA Work Plan, dated October 2012, simply summarizes revisions to the incorporated Schedule of Implementation and notes in Tasks 5 and 6 that “design of individual wellhead treatment systems is anticipated to take approximately four months from acquisition of additional property, where required, or from approval of the Modified ERA Work Plan and availability of project funding, where additional property is not required” and that “construction of the wellhead treatment systems is anticipated to take twelve to sixteen months from completion and approval of the associated design documents.” Mr. Worsham’s unjustified and unsubstantiated presumption that “those four Phase 2 MERA wells are not getting the wellhead treatment systems” and that “ADEQ should ... determine that RID has abandoned MERA Phase 2 and the four additional LGAC systems” is contrary to RID’s clear response to the alleged “abandonment” of the four additional wells (discussed in detail above).

Mr. Worsham also falsely claims that “RID’s revised Operation and Maintenance Plan (Synergy, October 2014-**Revision 4**) must address all the wells in the MERA.” However, this conclusion is contrary to the WQARF regulations. Pursuant to AAC R18-16-411.D, “an operation and

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maintenance plan shall be prepared and implemented ... if operation and maintenance of a remedy *following completion of construction* are necessary to ensure the continued achievement of the remedial objectives.” RID is not obligated to prepare and submit a revised operation and maintenance plan that incorporates required information for the four additional wells until construction has been completed. In fact, pursuant to RID’s ADEQ-approved MERA Work Plan, the triggers for the design and construction of the four additional wells have not occurred, and it is anticipated to be more than twelve months before construction is completed where an operation and maintenance plan could be prepared and submitted for ADEQ’s approval.

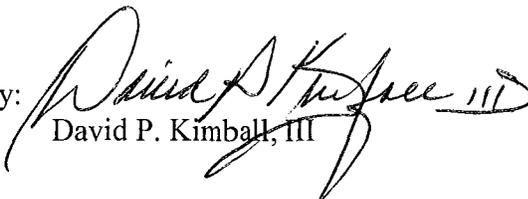
Conclusion

There are no issues or concerns raised by Mr. Worsham that have not already been resolved. Confirmation that these alleged issues have been resolved is actually provided by Mr. Worsham in his various communications referenced herein and by the plain meaning of the law.

Please let me know if you have any questions.

Very truly yours,

GALLAGHER & KENNEDY, P.A.

By: 
David P. Kimball, III

DPK:jkc

cc: Danielle Taber, ADEQ
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