

April 22, 2010

Jennifer Thies
Remedial Projects Unit; WQARF Unit Manager - 4415B-1
Arizona Department of Environmental Quality

1110 W. Washington, Sixth Floor
Phoenix, Arizona 85044-4429

Re: Notice of Request for Approval of Early Response Action for the West Van Buren WQARF ("WQARF") Site

Dear Ms. Thies:

Thank you for inviting formal comment on the Roosevelt Irrigation District ("RID") proposed Groundwater Response Action ("GRA") and the accompanying Work Plan. We also appreciate ADEQ taking the time to meet with interested and concerned parties on March 22, 2009. On behalf of our clients, we submitted comments in January of this year. Since that time, ADEQ opened a formal comment period and we respond to same with the comments below, some of which will echo comments previously submitted. In addition to meeting with ADEQ, we have had opportunities to speak with other stakeholders, meet with the Arizona Department of Water Resources and attend the Citizens' Advisory Board ("CAB") meetings regarding the GRA. We note the widespread and significant opposition to the proposal, as I am sure you do.

This firm's clients request that ADEQ reject the GRA and formally reinstate the West Van Buren technical working group. The working group would provide a mechanism to allow stakeholder input into the WQARF process designed to ensure appropriate and organized input into the design of a final remedy for the regional groundwater plume, which exists in the western portion of the West Salt River Valley. As the ADEQ is aware, an informal group is working together and has presented to the ADEQ a proposal to fund a Feasibility Study to identify a cost-effective, technically-sound final remedy.

ADEQ should reject the GRA as there is no valid basis for the GRA. As acknowledged by RID's counsel at the March 23rd CAB meeting, there is no water quality restriction on RID's ability to continue to serve its existing customers and continuing its existing uses of its water source. RID has not altered its deliveries of water in the more than two decades during which RID has been aware of the condition of the groundwater it has and continues to serve. The

condition of the groundwater has not declined over these many years and the condition of that groundwater does not hamper RID's ability to serve. The previously stated reason for the GRA was that as a water provider RID had the right to preserve its water resource. There is no detriment to the water source as it is now and ever has been used.

In addition, when asked the direct question regarding the existence of a public health or environmental risk posed by the condition of the groundwater, RID's counsel noted a vague and undocumented "transfer of contaminants" from water to air as the only risk. RID's consultants then responded to follow up questions regarding these so-called risks stating that no data exists which supports the "risk" of a transfer of contaminants in violation of law. RID asks the ADEQ to approve a very expensive GRA for which RID has presented no valid, data-supported basis.

The proposed GRA represents poor water use decisions. As proposed, the GRA, would violate long standing water conservation policies of our state's Department of Water Resources ("DWR"). The GRA may detrimentally affect the ability to reach the water management goals of the Phoenix Active Management Area as set forth in the Third Management Plan authored by the DWR. Further, the exportation of water as outlined in the GRA could reduce the physical availability of water to the City of Phoenix in maintaining its emergency supply under its Assured Water Supply Designation through the DWR. The proposed GRA also appears to violate the DWR substantive policy statement of June 14, 1999 regarding the Arizona legislature's passage of incentives to beneficially use remedial action project groundwater. The DWR policy statement is clear that those seeking to invoke the beneficial use provision of the statute are encouraged to use the least amount of groundwater necessary to facilitate the remedial project goals. The GRA seeks to pump significantly more groundwater than required to meet the remedial goals as detailed in the technical comments previously presented to ADEQ. We strongly encourage ADEQ to fully evaluate and understand these consequences of the GRA. The DWR, its Director and staff are an excellent resource to provide the detail you will inevitably need to fully consider these issues.

RID, in asking ADEQ to review and approve the GRA, seeks to invoke a process whereby, with ADEQ's imprimatur, RID can use ADEQ's approval as a weapon against other entities. Some of those entities have proven no impact to groundwater and others seek to work cooperatively with ADEQ. It appears, as others have noted, that RID's proposal is designed to provide RID a new business opportunity without regard for the requirements of Arizona law or ADEQ's regulations to identify a remedy which actually resolves the groundwater contamination in a technically-feasible, cost-effective and legally competent manner. RID's proposal, under the auspices of an "Early Response Action," seeks to circumvent the public process and proposes a "remedy" which in scope and cost exceeds anything resembling reasonable for the type, source and concentration of contamination identified to date in the West Van Buren WQARF Area.

RID's proposal remains incomplete. There are no details of the "proposed remedy," nor is there a feasibility study. Estimated detailed costs are not provided, preventing the "remedy"

from being compared to alternatives. Pumping and treating large volumes of low VOC concentration groundwater contributes to cost without being effective. RID has not provided scientific data or analysis to demonstrate the short- or long-term effectiveness of the proposed remedy. Alternatives do not appear to have been considered. If they were considered, no information was provided as to which alternatives were considered and why they were rejected. Plume containment is not demonstrated. RID's timeline for implementation fails to consider the delays which will be caused by RID's litigation. These RID-caused delays will circumvent the very raison d'être for an Early Response Action ("ERA").

An ERA is intended to provide a relatively quick, short-term remedial action that addresses current risks to public health, welfare and the environment. RID has operated these last 25 years with knowledge of the groundwater contamination in the vicinity of its wells. As recently as 2008, RID acknowledged that its current and future operations are all non-potable uses. Contaminant concentrations today are lower than in the past. The ADEQ Draft Remedial Investigation identifies no current risk to public health, welfare or the environment and RID demonstrates no risks associated with its current operations. In short, an ERA is not necessary.

One anticipates that RID's response to the above will be that this is an ERA and not a final remedy, so none of the above is necessary. Before such an argument can be considered, RID must demonstrate that an ERA is indeed necessary and that RID's proposal meets the statutory criteria. RID cannot do so on either count and has, by its own actions and responses to ADEQ, demonstrated that an ERA is not necessary. RID mischaracterizes the ERA rule, A.A.C. R18-16-405, when it states that the rule "specifies ... goals for ERAs". Work Plan at 4. The rule actually states that an ERA must be "necessary to" achieving at least one of the listed actions.

What has been proposed will set up multiple decades of service of remediated groundwater to unnamed and unknown customers under a set of unidentified and not yet negotiated terms with little demonstration that the proposal is either cost-effective or technically competent. Given that Arizona has a statute, regulations and a process specifically designed to handle situations like WVB, using it seems not only appropriate, but mandatory.

Best regards,



Carla Consoli

CC/nt

cc: Amanda Stone
Julie Riemenschneider