



July 18, 2013

Ms. Laura L. Malone
Director, Waste Programs Division
ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
1110 West Washington Street
Phoenix, Arizona 85007

Re: **CLARIFICATIONS REGARDING THE WVBA WORKING GROUP'S
FEASIBILITY STUDY WORK PLAN AND REQUEST FOR APPROVAL**

Dear Ms. Malone:

Thank you for the Arizona Department of Environmental Quality (ADEQ) approval letter, dated July 16, 2013, of the Roosevelt Irrigation District ("RID") Feasibility Study (FS) Work Plan for the West Van Buren Area (WVBA) Water Quality Assurance Revolving Fund (WQARF) Site. We will schedule a technical meeting with your staff to discuss the scoping of the FS to ensure compliance with all applicable WQARF statutes and regulations.

Also, thank you for providing us with a copy of the March 19, 2013 letter from the Working Group to ADEQ to address some of the deficiencies outlined in ADEQ's March 7, 2013 letter to the Working Group. It is unfortunate that the March 19, 2013 letter was not readily available for the public to provide comments on the Working Group's "request for approval." This may be problematic as ADEQ's March 7, 2013 letter to the Working Group stated that ADEQ would "allow the public the opportunity to comment on the request for approval and the draft FS Work Plan." The inability to provide comments on the Working Group's "request for approval" was not only identified by RID in its comments on the Working Group's FS Work Plan, but was also raised by the Fennemore Craig comments on behalf of Nucor Corporation and BNSF Railway Company. Upon a brief review of the Working Group's "request for approval," it appears that the Working Group fails to achieve a number of the elements under Ariz. Admin. Code ("AAC") R18-16-413(A) that are required for ADEQ's approval under AAC R18-16-413(E). Therefore, we request that ADEQ seek additional clarifying information as discussed below from the Working Group, pursuant to AAC R18-16-413(F), prior to any decision by the agency on the Working Group's FS Work Plan.



AAC R18-16-413(A)(7)

Pursuant to AAC R18-16-413(A)(7), the Working Group is required to “include a list of the names and addresses of persons whom the applicant believes to be responsible parties under A.R.S. § 49-283 and a summary of the basis for that belief.” There appears to be some conflict between the Working Group’s March 19, 2013 letter to ADEQ and its June 21, 2013 response to comments that requires clarification to determine whether the required element in AAC R18-16-413(A)(7) has been met. In its March 19, 2013 letter, the Working Group states that “the names and addresses of persons who may be responsible parties are described in the RI Report and are further summarized in Section 3 of the FS Work Plan (pages 11-19).” This equivocal language does not meet the requirement that the Working Group is to affirmatively identify the parties whom the “applicant believes to be responsible parties.” However, in the Working Group’s June 21, 2013 response to comments, the Working Group takes a stronger position by stating that it “has not yet formed an opinion regarding any liable parties other than those identified in the Remedial Investigation.” This language expresses the Working Group’s belief that those parties identified in ADEQ’s Remedial Investigation Report (RI Report) are liable parties, which would be consistent with AAC R18-16-413(A)(7). Nevertheless, the rules require the “request for approval” (not some other correspondence) to include a list that affirmatively identifies by name and address the “persons whom the applicant believes to be responsible parties ... and a summary of the basis for that belief.”

Additionally, the March 19, 2013 letter fails to include in its “request for approval” the names and addresses of a number parties identified in ADEQ’s RI Report (specifically, the parties identified on pages 4-7 and 4-13) and the parties involved with Operable Unit 2 (OU2) of the Motorola 52nd Street Superfund Site (M52 site). In its March 19, 2013 letter, the Working Group in an effort to satisfy AAC R18-16-413(A)(7) states that “the names and addresses of persons who may be responsible parties are described in the RI Report and are further summarized in Section 3 of the FS Work Plan (pages 11-19).” On page 18 of its March 19, 2013 letter, the Working Group includes a summary of OU2, as part of the M52 site, and notes that “the groundwater contamination [within the M52 site] has spread westerly for several miles. The portion of the VOC plume that extends west of 7th Avenue is being addressed by [ADEQ].” This is consistent with the United States Environmental Protection Agency’s (EPA’s) position that the contamination from the M52 site is moving into the WVBA WQARF Site. Accordingly, to fully comply with AAC R18-413(A)(7), the Working Group is required to provide a list of the names and addresses of the other persons, whom the Working Group believes are responsible, that are identified in the RI Report and OU2 but are not identified by the Working Group in its March 19, 2013 letter, and a summary of the basis for that belief.

AAC R18-16-407

RID also believes that the Working Group’s FS Work Plan violates AAC R18-16-407(B). The Working Group’s own statements establish uncertainty that the Working



Group's FS Work Plan will comply with AAC Title 18, Chapter 16, Article 4. Pursuant to R18-16-407(B)(1) and (B)(3), the work plan "shall demonstrate that the work performed will meet the requirements of this section" and "a person seeking approval of a work plan by the Department shall proceed under R18-16-413." The requirements of this section include identifying "a reference remedy and alternative remedies that appear to be capable of achieving remedial objectives and to evaluate them based on the comparison criteria to select a remedy that complies with A.R.S. § 49-282.06." See AAC R18-16-407(A). According to ADEQ's Remedial Objectives Report for the WVBA WQARF Site (RO Report), dated August 8, 2012, the "ROs are established for current and reasonably foreseeable uses of land and waters of the state that have been or are threatened to be affected by a release of a hazardous substance." ADEQ's RO report identifies RID, as well as the City of Phoenix other water providers, as substantiating the "future [water] use may be a drinking water supply for residential and commercial development." Based on the public comments, ADEQ established an RO "to protect, restore, replace or otherwise provide a water supply for municipal use by currently and reasonably foreseeable future municipal well owners within the WVBA WQARF site if the current and reasonable foreseeable future uses are impaired or lost due to contamination from the site."

In its March 19, 2013 letter to ADEQ, the Working Group stated that "the nature, degree and extent of the hazardous substance contamination is described in the [RI Report]." The RI Report states that many of RID's wells in the WVBA WQARF Site have been contaminated by a number of hazardous substances that exceed the aquifer water quality and drinking water quality standards. See pages 2-11 to 2-13. The RI Report was the basis for ADEQ's assertion that "ADEQ has determined that releases or threatened releases of hazardous substances have occurred ... resulting in groundwater contamination that has impacted multiple RID water supply wells which may present an imminent and substantial endangerment to the public health, welfare or the environment within the [WVBA] WQARF Site." See Agreement to Conduct Work between ADEQ and RID, dated October 8, 2009. Not only do ADEQ's ROs mandate that RID's impacted wells be protected or restored as part of the FS process, but it is mandated by A.R.S. § 49-282.06. To be compliant with A.R.S. § 49-282.06 for remediation of waters of the state, as required for all "remedial actions," including feasibility studies, pursuant to AAC R18-16-407(B)(1) and (G),

the 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 or is part of a public water system 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. 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).



Although the Working Group claims in its March 19, 2013 letter that “the FS Work Plan describes in detail how it will comply with A.A.C. R18-16, Article 4,” the Working Group’s June 21, 2013 response to comments contradicts that claim, which is required prior to ADEQ’s approval of the FS Work Plan. The Working Group states that “the final remedy may or may not require the cooperation of RID or the use of its wells.” This statement violates R18-16-407(B)(1) and the requirements of AAC R18-16-407(A) “to identify a reference remedy and alternative remedies that appear to be capable of achieving remedial objectives and to evaluate them based on the comparison criteria to select a remedy that complies with A.R.S. § 49-282.06,” because the evaluation and selection of a final remedy without addressing RID’s impacted wells is contrary to ADEQ’s ROs and A.R.S. § 49-282.06(B)(4)(b). The Working group’s refusal to affirmatively address RID’s impacted wells, as required by the WQARF rules, undermines any credibility in the Working Group’s other statements that “the Working Group has repeatedly and properly committed to consider the interest of water providers, including RID, as provided in ARS 49-282.06(B)(4)(b)” and that “the Working Group agrees that the final remedy must comply with ADEQ’s Remedial Objectives.” The Working Group’s unwillingness to cooperate with RID also independently violates R18-16-407(G) and R18-16-411(G).

AAC R18-16-413(A)(6) and (E)

Finally, based on the Working Group’s June 21, 2013 response to comments, RID also believes that other statements made by the Working Group establish uncertainty that the Working Group’s FS Work Plan will comply with AAC Title 18, Chapter 16, Article 4, as required pursuant AAC R18-16-413(A)(6) and (E). Pursuant to A.R.S. § 49-282.06(A), “remedial actions [including feasibility studies] shall ... to the extent practicable, provide for the control, management or cleanup of the hazardous substances in order to allow the maximum beneficial use of the waters of the state.” The maximum beneficial use of the ground waters of the state is for a drinking water end use, as evidenced by A.R.S. § 49-224 that requires “all aquifers in this state ... shall be classified for drinking water protected use unless the classification is changed in the manner provided in subsection C of this section.” The Working Group references A.R.S. § 49-282.06(D) to argue that “all WQARF remedies need not require restoration of all aquifers to drinking water standards” because the ADEQ Director “may approve a remedial action in water quality exceeding water quality standards after the completion of the remedy.” However, A.R.S. § 49-282.06(D) does not apply to the evaluation and development of a remedy as part of a feasibility study; it only applies “after the completion of the remedy”. Also, A.R.S. § 49-282.06(E) states that “the director's approval pursuant to this section does not affect the classification of an aquifer pursuant to section 49-224,” which, as noted above, is that “all aquifers ... shall be classified for drinking water protection use.” As evidenced by RID’s ADEQ-approved Modified Early Response Action and ADEQ-approved FS Work Plan, it is possible that a final remedy can be



selected that meets all applicable statutes and regulations to restore the aquifer to its classification for "drinking water protected use" as required under state law.

We are grateful for the opportunity to provide some comments on the Working Group's "request for approval." We respectfully ask that ADEQ request clarifications from the Working Group on the issues raised above to ensure that all applicable requirements in AAC R18-16-407 and R18-16-413 are met prior to the agency's decision on the Working Group's FS Work Plan. Please feel free to call me at 602-319-2977 if you have any questions.

Best Regards,

SYNERGY Environmental, LLC

A handwritten signature in black ink, appearing to read "Dennis H. Shirley". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Dennis H. Shirley, P.G.

Cc: Henry Darwin, ADEQ
Tina LePage, ADEQ
Danielle Taber, ADEQ
Andre Chiaradia, ADEQ
Anthony Young, AZAG/ADEQ
Donovan Neese, RID
David Kimball, Gallagher & Kennedy
Scott Ames, Fennemore Craig