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ATTORNEY-CLIENT PRIVILEGE

Mr. Enrique Manzanilla
Director, Superfund Division
US EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105-3901

Re: ***EPA Needs to Act, Consistent with Existing CERCLA Authority and Prior EPA Actions, and Concur with a Judicially-Approved NCP Compliant and State-Approved Groundwater Response Action to Expedite Remediation at the WVBA WQARF Site in Phoenix, Arizona***

Dear Mr. Manzanilla:

Thank you for your letter received on September 26, 2018 in response to various correspondence and the one meeting between EPA staff and the Roosevelt Irrigation District (RID) over the last year.[1] It was unfortunate that your letter failed to respond to the specific issues raised in our July 19, 2018 letter and, instead, focused on issues that EPA staff raised during our March 13, 2018 meeting in San Francisco and other issues that are extraneous to addressing the relevant groundwater contamination.[2] In fact, EPA's September 2018 letter runs counter to EPA's broad authority under the CERCLA statute, specific prior findings by a federal court, EPA and the State of Arizona, EPA's specific administrative actions at the adjacent federal Superfund site and the recommendations of EPA's Superfund Task Force. Even more troubling is that the EPA letter inexplicably defers (without the benefit of any rebuttal from RID) to false allegations made by potentially responsible parties (PRPs) under CERCLA for the groundwater contamination in the Motorola 52nd Street federal Superfund (federal M52) Site and the West Van Buren Area (WVBA) Water Quality Assurance Revolving Fund (WQARF) Site in Phoenix, Arizona.

[1] We apologize for the delayed reply. Although we initially drafted this letter in October 2018, we were led to believe that there would be opportunities to address the problems without the need of a formal reply. Unfortunately, no such opportunities materialized and minor tweaks were made to the original draft reply due to the passage of time.

[2] *See* footnote 43. As more fully explained in this letter, the EPA positions advanced in its September 2018 letter and resultant inaction by EPA are contrary to EPA's explicit CERCLA authority to authorize RID to act on EPA's behalf, EPA's prior CERCLA response actions in Arizona and the Superfund Task Force recommendations.

We also do not understand why EPA refuses to grant any of the meetings with EPA's leadership requested by RID[3] which is an innocent victim of the contamination and the only party that has expended substantial funds to address the massive groundwater contamination that has migrated and continues to migrate from the federal M52 Site into the adjacent WVBA WQARF Site. That ongoing contamination has significantly contaminated numerous operating RID water supply wells and is causing uncontrolled releases of toxic volatile organic compounds (VOCs) into the ambient air of a local low income, minority community in west Phoenix, Arizona. Instead of addressing RID's specific requests or proposed options to expedite a prompt interim CERCLA response action, EPA responds with arguments from parties, who have been identified as PRPs by EPA and/or the Arizona Department of Environmental Quality (ADEQ), that further delay addressing a very serious problem.[4] Therefore, as has been the unfortunate routine for the last 10 years, this letter will again provide information and identify relevant documents to correct the inaccuracies and misrepresentations that have been raised in EPA's letter, and again request direct meetings with EPA leadership.

As described in RID's prior correspondence, the purpose of RID's outreach to EPA over the past two years is to accelerate cleanup in order to protect human health and the environment and RID's water supply at the largest groundwater contaminant plume in Arizona and one of the largest in the United States. ADEQ's April 24, 2018 letter to EPA identifies relevant documents and data establishing that a continuous and unbroken TCE/PCE plume above applicable aquifer water quality standards (AWQS)[5] has migrated and continues to migrate from the adjacent, upgradient federal M52 Site into the WVBA WQARF Site, which was placed on Arizona's WQARF Registry of groundwater contamination sites in 1987. In fact, ADEQ has acknowledged that current containment of the plume cannot be confirmed, especially since the ADEQ-approved RID groundwater remedial action, which includes measures to address the potential lack of containment, has not been fully implemented due to lack of funding and continued delay by the State of Arizona, EPA and total failure by any of the identified PRPs to fund the ADEQ-approved remedial action for the WVBA WQARF Site.

As demonstrated in ADEQ's April 24, 2018 letter to EPA, EPA has known for two decades that the groundwater contamination migrating from the federal M52 Site has adversely impacted the WVBA WQARF Site and west Phoenix community. Yet, despite the information presented and readily available to EPA over the past two decades, EPA now claims that the

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[3] RID has requested meetings with former EPA Administrator Scott Pruitt (April 26, 2018), the head of EPA's Superfund Task Force initiative Steven Cook (July 25, 2018) and EPA Region 9 Administrator Michael Stoker (August 26, 2018) because the ADEQ-approved groundwater response action for the WVBA WQARF Site exceeds the $50 Million threshold for administrative oversight by EPA Headquarters.

[4] A federal court in Arizona has noted: "It … astounds me, to be honest with you, as to <u>why the public entities here didn't step up more forcefully on all bases to do something about what is admittedly a very serious problem</u>" <u>and</u> "I don't think anybody disagrees, or if they do, <u>I don't know</u> on <u>what basis they could possibly suggest that there aren't plumes of very deadly carcinogenic chemicals floating around underneath the city of Phoenix, Arizona</u>." RID Action, Dkt. 1397 at 38:17-21 (Reporter's Transcript of 2/28/17 Hearing).

[5] Arizona has adopted by statute the primary drinking water maximum contaminant levels (MCLs) as drinking water aquifer water quality standards, and all aquifers in Arizona are classified for drinking water protected use. *See* ARS §§ 49-233.A and 49-224.B.

groundwater contamination is "complex" and addressing the contamination "will take time to complete," including the delay of another decade before a CERCLA response action occurs.[6] Even more troubling for the impacted local WVBA community is EPA's statement that "EPA does not embark upon a large groundwater cleanup project without first placing the Site on the NPL," which as more fully described below is inconsistent with EPA's prior response actions at the nearby east Phoenix community impacted by the same adjacent, upgradient federal M52 Site[7] and the recommendations of EPA's new Superfund Task Force which are designed to expedite groundwater cleanups to address uncontrolled releases of toxic VOCs into the ambient air of local communities.[8]

The inexcusable lack of any active state or federal governmental response action to address the groundwater contamination and toxic releases and emissions in the WVBA WQARF Site is of particular concern given that data compiled from EPA's own analytical tool, EJSCREEN, indicate that, like the federal M52 Site, the WVBA WQARF Site is overwhelmingly comprised of an impoverished, undereducated, minority population having a disproportionally higher air toxics cancer risk.[9] In fact, the WVBA WQARF Site is the only known site in Arizona where an active response action has not been taken by a regulatory agency (EPA or ADEQ) to prevent direct and ongoing public exposure to contaminated groundwater containing toxic VOCs above the drinking water MCLs and EPA public health guidelines to ensure protection of human health and the environment as required by applicable federal and Arizona laws.

Contrary to EPA's Letter, CERCLA Authorizes Expedited Response Actions to Address Imminent and Substantial Dangers to the Public Health, Welfare or the Environment

Despite EPA's September 2018 letter that claims it will take significant time to address the contaminated groundwater that has migrated and continues to migrate from the federal M52 Site into the WVBA WQARF Site, Section 104 of CERCLA clearly states that

> [w]henever … any hazardous substance is released or there is a substantial threat of such a release into the environment … which may present an imminent and

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[6] Based on EPA's statements in its letter and pace at the adjacent federal M52 Site, it will be another decade for EPA to address the impacts of the contaminated groundwater migrating from the federal M52 Site into the WVBA WQARF Site that is contaminating the WVBA groundwater and being released into the ambient air of the local community. This is based on EPA's statements that "it often takes a year or more from the Governor's concurrence to get a site proposed to the NPL," that "it can take another year or more for EPA to make a final determination on whether to finalize a proposed NPL site" and potentially another decade for a new RI/FS since it has been 11 years since Operable Unit 3 (OU3) was created at the federal M52 Site and an RI/FS still is not finalized.

[7] Also contrary to EPA's statement, EPA administratively extended the boundaries of the existing federal M52 Site to include the former East Washington WQARF Site (which currently constitutes OU2 and OU3 of the federal M52 Site) for the same reasons ADEQ has requested EPA in its April 24, 2018 letter to evaluate a further extension of those boundaries to include the WVBA WQARF Site.

[8] EPA's position conflicts with ADEQ's 2013 determination that remediation measures should be taken to mitigate the uncontrolled releases of toxic VOCs into the air, as required at other EPA groundwater cleanups. *See* ADEQ Approval of RID's Modified ERA, dated February 1, 2013 (Attachment A).

[9] *See* Presentation provided to EPA on March 13, 2018. (Attachment B)

> substantial danger to the public health or welfare, the President [*i.e.*, EPA] is authorized to act, consistent with the national contingency plan, to … provide for remedial action relating to such hazardous substance … at any time … or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment. When the President determines that such action will be done properly and promptly by the owner or operator of the facility …, the President may allow such person to carry out the action,[10] conduct the remedial investigation, or conduct the feasibility study in accordance with section 9622 of this title.[11]

There is no dispute that hazardous substances have been released into the environment that may present an imminent and substantial danger to public health, welfare and the environment in the WVBA WQARF Site. As noted in ADEQ's April 24, 2018 letter to EPA, the 1994 Record of Decision for OU2 at the federal M52 Site noted that the "contamination extends beyond the … [OU2] area and into the West Van Buren WQARF area, to approximately 75th Avenue." The 2015 OU3 Remedial Investigation Report for the adjacent federal M52 Site, prepared by two parties identified by EPA as PRPs, noted that the "presumed distal end of the M52 VOC plume terminates within the WVB WQARF Site" and that "a remedy for the WVB area will mitigate any potential exposure to contaminated groundwater downgradient of OU3."[12] Additionally, ADEQ specifically has determined on multiple occasions, and in defiance of the PRPs' arguments to the contrary, that RID's remedial action costs incurred in implementing the ADEQ-approved RID groundwater remedial action were "reasonable, necessary and cost-effective [and] in response to a release or threat of release of a hazardous substance or pollutant

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[10] Given this clear statutory language, it is unclear why EPA states in its recent letter that "[i]n rare instances, non-liable parties may also play a role in performing a portion of the response action with EPA oversight." In fact, EPA has encouraged RID to "continue working … to ensure that remedial action is taken in a timely manner to protect resources for future use." EPA's letter to RID, 2 (April 4, 2017). Additionally, CERCLA's statutory language is consistent with Arizona's WQARF requirement that the "well owner or water provider whose water use is being addressed may, in its sole discretion, elect to construct, operate, or construct and operate the water treatment … component of the remedy or early response action which is designed to address its use." AAC R18-16-411.G. The Superfund Task Force recommendations also support RID's implementation of the ADEQ-approved RID remedial action to expedite cleanup using private funds. In the recommendations, "EPA recognizes that it should support, where appropriate, innovative approaches to promote third-party investment in cleanup" to "utilize various federal and state authorities to conduct response actions that are consistent with CERCLA and the NCP," including the "use of early response actions at Superfund sites." Superfund Task Force Recommendations (2017) (*See* Background to Goal 3, Strategy 1 and Recommendations 13 and 12). Allowing RID to "properly and promptly … carry out the action" is even more critical to ensure protection of public health and the environment given EPA's statement in its September 2018 letter that even if the WVBA WQARF Site becomes a NPL site in a couple of years, "it has to compete with all of the other NPL sites for staff and funding resources."

[11] 42 U.S.C. § 9604(a). RID certainly qualifies as an "owner or operator" (42 U.S.C. § 9601(20)(A)) of its wells (which qualify as a "facility" as that term is broadly defined in 42 U.S.C. § 9601(9)) that have been contaminated by the groundwater contamination.

[12] Final OU3 RI Report, 3 and 35. EPA's knowledge and inaction for more than 20 years to address the groundwater contamination migrating from the federal M52 Site that has contaminated the WVBA WQARF Site contradicts EPA's current claim in its September 2018 letter that "EPA has not had *any involvement in the investigation and nature and extent of contamination at the West Van Buren WQARF Site*."

that presents an immediate and substantial endangerment to the public health or the environment."[13]

Therefore, EPA has the clear and specific CERCLA statutory authority to "provide for remedial action relating to such hazardous substance … at any time … or take any other response measure consistent with the national contingency plan." In reviewing RID's ongoing remedial actions between 2008 and 2015, a federal court determined that "RID did as a matter of law substantially comply with the applicable requirements set forth in the NCP."[14] Therefore, EPA has the clear CERCLA statutory authority to concur with the ADEQ-approved and NCP-compliant RID groundwater remedial action to expedite the groundwater cleanup and address the impacts of the contaminated groundwater that has migrated and continues to migrate from the federal M52 Site into the WVBA WQARF Site, where the toxic VOCs have contaminated RID's water supply and are being directly released into the ambient air of the local community. Again, such action by EPA would be consistent with EPA's Superfund Task Force recommendations that EPA should "utilize various federal and state authorities to conduct response actions that are consistent with CERCLA and the NCP."[15]

As noted in RID's July 19, 2018 letter to EPA and contrary to the statements in EPA's September 2018 letter, EPA in fact has previously adopted the implementation of a long-term groundwater treatment response action prior to NPL listing with respect to the very same groundwater contamination plume. In September 1988, EPA concurred with an ADEQ-approved interim groundwater pump and treatment remedy at OU1 of the federal M52 Site, which was more than a year before the federal M52 Site was listed on the NPL in October 1989.[16] The 1988 Record of Decision (ROD) "serve[d] as EPA concurrence with the remedial action for the Motorola 52nd Street site, as approved by [ADEQ]," noting that "ADEQ approved this remedial action in conformance with: the Arizona Administrative Code; Arizona Revised Statute; … the National Contingency Plan, to the extent practicable; and relevant state and federal requirements."

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[13] *See* ADEQ's approvals pursuant to ARS § 49-282.E.11. (Attachment C)

[14] *Roosevelt Irrigation Dist. v. Salt River Project Agric. Improvement and Power Dist.*, 210CV00290DAEBGM, 2017 WL 2712879, at *15 (D. Ariz. Mar. 15, 2017), *reconsideration denied,* 210CV00290DAEBGM, 2017 WL 2712881 (D. Ariz. May 12, 2017).

[15] Superfund Task Force Recommendations (2017) (*See* Recommendation 12).

[16] Again, EPA's prior actions at OU1 of the federal M52 Site contradict EPA's statement in its September 2018 letter that "EPA does not select and oversee long-term remedial actions without the assurance that the Superfund will be available in the event the performing party is unable to meet the requirements of the remedy that EPA has selected in its Record of Decision." EPA selected a long-term remedial action at OU1 of the federal M52 Site before the Site was placed on the NPL, which listing is necessary "to determine what CERCLA-financed remedial action(s), if any, may be appropriate." 83 Fed. Reg. 46,408, 46,408 (Sept. 13, 2018) ("Final Rule: National Priorities List"). EPA's current excuse to delay any CERCLA response action without assurance that the Superfund will be available is contradicted by EPA's Superfund Task Force recommendation to consider P3 funding (which is readily available to fully implement the ADEQ-approved, NCP-compliant RID groundwater response action) to expedite needed response actions, which was a specific charge of the former EPA Administrator. Superfund Task Force Recommendations (2017) (*See* Executive Summary).

EPA clearly has the CERCLA statutory authority and precedent to concur with RID's ADEQ-approved and NCP-compliant remedial action to expedite an interim CERCLA response action to address the imminent and substantial endangerment to public health, welfare and the environment at the WVBA WQARF Site caused in substantial part by contamination migrating from the very same federal M52 Site. Given the presentation provided to EPA last year[17] and the availability of substantiating documents on ADEQ's website,[18] it is incredible that EPA would claim that "ADEQ has not selected a remedy," when ADEQ, after years of agency review and public notice and comment, formally approved an Early Response Action (ERA) in 2010, a Modified ERA in 2013 and the selected remedial action proposed in the RID Feasibility Study Report in 2015. ADEQ's approvals were issued under the Arizona WQARF remediation program that was modeled after CERCLA and is "Arizona's version of the federal 'superfund' program."[19] A federal court also has held that, in addition to substantial compliance with the NCP, "RID has demonstrated that it engaged in an extensive vetting process" and that "the record indicates that RID gave substantial thought and attention to compliance with site-specific Arizona law,"[20] which also establishes compliance with the "applicable, relevant and appropriate requirements" [ARARs] of CERCLA.[21]

In June 2010, after having "carefully analyzed technical and legal documents and correspondence contained in the Site file, including submittals by RID and other interested parties since September 2009, and comments received through the public participation process" and having "analyzed the [Early Response Action] Work Plan to determine compliance with applicable State statutes and rules," ADEQ formally approved the RID ERA because "RID has a unique opportunity to increase the removal of contamination from the aquifer via its wells" and "[w]ithout treatment, these contaminants will continue to degrade the quality of the aquifer within the Site."[22] Again in 2013, ADEQ formally approved RID's Modified ERA and "RID's objectives to protect RID's supply of water and addressing current and future risks to public health, welfare, and the environment [[AAC] R18-16-405(A)]."[23] Additionally, ADEQ's formal approval of the Modified ERA required "RID's implementation of … measures" to limit exposures from the "significant volatilization and transfer of contaminants, from water into the air, [that] is occurring and ongoing."[24] Finally, in 2015, ADEQ "determined that the [RID] FS Report [and proposed remedial action] meets the requirements of Arizona Revised Statutes 49-287.03 and Arizona Administrative Code R18-16-407 and therefore ADEQ is approving RID's FS Report."[25]

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[17] *See* RID's presentation to EPA on March 13, 2018. (Attachment B)
[18] *See* ADEQ's online repository at https://legacy.azdeq.gov/environ/waste/sps/wvb.html.
[19] AAR Volume 8 Issue #13 at page 1492.
[20] *Roosevelt Irrigation Dist. v. Salt River Project Agric. Improvement and Power Dist.*, 210CV00290DAEBGM, 2017 WL 2712879, at *13-14 (D. Ariz. Mar. 15, 2017), *reconsideration denied,* 210CV00290DAEBGM, 2017 WL 2712881 (D. Ariz. May 12, 2017).
[21] 42 U.S.C. § 9621.
[22] *See* ADEQ letter to RID (June 24, 2010). (Attachment D)
[23] *See* ADEQ letter to RID (February 1, 2013). (Attachment A)
[24] *Id.*
[25] See ADEQ letter to RID (April 13, 2015). (Attachment E)

In 2014 and 2017, ADEQ also independently selected RID's Modified ERA as the "most prudent course of [remedial] action" for the VOC-contaminated groundwater at the WVBA WQARF Site when it internally evaluated and calculated the estimated total remedial action costs (over the next 30 years) at each groundwater contamination site on the WQARF Registry list.[26]

Given ADEQ's CERCLA-like formal approvals under the WQARF program and a federal court's determination of NCP compliance of RID's remedial actions, EPA has the clear CERCLA statutory authority and precedent at OU1 of the federal M52 Site to concur with the ADEQ-approved and NCP-compliant RID groundwater remedial action as an interim CERCLA response action to expedite addressing the imminent and substantial endangerment to public health, welfare and the environment at the WVBA WQARF Site. As noted in RID's July 19, 2018 letter, and ignored by EPA in its September 2018 response, rarely, if ever, has EPA been presented with a groundwater remedial action already approved and determined by a state and federal court to comply with applicable state law, to substantially comply with the applicable federal NCP, to have been subject to substantial public participation and comment and that meets all applicable state and federal remedial action standards and requirements [*i.e.*, ARARs] at no cost to the federal Superfund.

There is no Justifiable Reason for EPA to Delay an Interim CERCLA Response Action to Address the Imminent and Substantial Danger Caused in Substantial Part by Groundwater Contamination Migrating from the Federal M52 NPL Site Simply so EPA can Repeat the NCP Process

It is remarkable that EPA's September 2018 letter completely ignores and fails to consider expeditiously addressing the WVBA WQARF Site pursuant to its authority under CERCLA Section 104. Such expeditious EPA action could include administratively extending the current boundaries of the existing federal M52 Site to include most, if not all, of the WVBA WQARF Site for all the reasons described in ADEQ's April 24, 2018 letter to EPA, similar to EPA's prior extension of the federal M52 Site boundaries to include the East Washington WQARF Site that currently constitutes OU2 and OU3 of the federal M52 Site. Administratively extending the current boundaries of the federal M52 Site to include the groundwater contamination that has migrated from the federal M52 Site into the WVBA WQARF Site, as ADEQ has requested EPA to evaluate pursuant to applicable CERCLA policies and procedures, would negate the lengthy delay associated with separately listing the WVBA WQARF Site on the NPL as indicated in EPA's letter.

Such expeditious EPA action also could include concurring with the ADEQ-approved and NCP-compliant RID remedial action as an interim CERCLA response action at the WVBA WQARF Site, similar to EPA's prior concurrence with an ADEQ-approved remedial action as an interim CERCLA response action at OU1 of the federal M52 Site. Such prior concurrence by

[26] ADEQ, Evaluation of Potential Future Costs at Arizona Superfund Sites, 2, App. B-14 (January 2014), Update (2017).

EPA with an ADEQ-approved remedial action as an interim CERCLA response action at OU1 of the federal M52 Site was clearly consistent with EPA's CERCLA statutory authority under Section 104.

Instead of exercising the same CERCLA administrative and/or statutory response action authority for the WVBA WQARF Site, EPA now simply claims that it "is not in a position to select and oversee implementation of a remedy at this juncture" and that EPA does not "oversee remedial activities developed under state programs where EPA was not involved in the investigation, evaluation of remedial alternatives, and selection of the response action." There is no justifiable reason why RID and the WVBA community should be subjected to direct and ongoing exposures to toxic VOCs that have migrated and continue to migrate from the federal M52 Site for another decade simply to allow EPA an opportunity to duplicate the WQARF CERCLA-like process, which a federal court held to be substantially compliant with the federal NCP. As clearly stated in CERCLA Section 104, the only requirement is that EPA "act consistent with the [federal NCP]."[27] In fact, EPA's current position conflicts with EPA's own guidance that notes CERCLA's provisions "reflect Congress' judgment that CERCLA response actions should not be delayed by time-consuming and duplicative administrative requirements."[28]

Moreover, EPA's September 2018 letter contradicts not only EPA's prior CERCLA administrative action in extending the boundaries of the federal M52 Site to include contamination migrating into the East Washington WQARF Site, as well as EPA's prior concurrence with an ADEQ-approved remedial action as an interim CERCLA response action at OU1 of the federal M52 Site, but also the Superfund Task Force recommendations and EPA Directives for addressing large and/or complex contamination sites. In fact, EPA "[r]egions are encouraged to consider greater use of early and/or interim actions … to address immediate risks."[29] The Directives reiterate "EPA's stated bias for initiating responses as soon as the information makes it possible to do so and recommends the use of … early actions to quickly address high risk areas" and "the 'phased approach' strategy for addressing contaminated groundwater integration, site characterization, early action, and remedy selection."[30]

As evident by ADEQ's April 24, 2018 letter to EPA, EPA has sufficient information to establish remedial action objectives (RAOs) for an interim CERCLA response action for the WVBA WQARF Site , as EPA already has established RAOs to address the groundwater contamination in OU3 of the adjacent, upgradient federal M52 Site in order to protect public health, welfare and the environment.[31] These RAOs for OU3 include:

- RAO 1 – Prevent exposure to groundwater containing COCs above EPA's Maximum Contaminant Levels to ensure protection of human health and the environment.

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[27] 42 U.S.C. § 9604(a)(1).
[28] EPA, Permits and Permit "Equivalency" Processes for CERCLA On-site Response Actions, 4 (February 1992).
[29] EPA, Superfund Task Force Recommendations, 2 (July 2017).
[30] *Id.*
[31] EPA Comments on 11/30/26 OU3 Final FSTM (February 3, 2017).

- RAO 2 – Capture the migration of groundwater containing COCs above EPA's Maximum Contaminant Levels, past a location west of 7th Avenue [*i.e.*, within the WVBA WQARF Site].[32]
- RAO 3 – Restore groundwater to beneficial use within a reasonable timeframe. Beneficial use is potential future use as potable water.[33]

According to EPA's "Groundwater Remedy Completion Strategy," the "[e]stablishment of RAOs [remedial action objectives] in the Superfund decision document generally provides an important foundation for development of a site-specific strategy."[34] In addition to RAOs, "proposed and final decision documents should include 'cleanup levels for each medium (i.e., contaminant-specific remediation goals), the basis for cleanup levels, and risk at cleanup levels" since "[g]roundwater cleanup levels are established based on promulgated standards (*e.g.*, federal or state MCLs or non-zero MCLGs), or other standards to be found in ARARs.'"

EPA in its September 2018 letter is now claiming it cannot timely address the groundwater contamination that EPA has known for over 20 years has migrated and continues to migrate from OU3 into the WVBA WQARF Site, where it has and continues to be contaminating RID's water supply and is being released into the ambient air and directly exposing the local community to toxic VOCs, in violation of its own RAOs for the very contamination to which the RAOs apply. It is important to note that EPA's RAOs for OU3 of the federal M52 Site are substantially the same as the mandatory WQARF remedial action criteria in ARS § 49-282.06.A.1-2, which are achieved by the ADEQ-approved and NCP-compliant RID remedial action for the WVBA WQARF Site:

- 1. Assure the protection of public health and welfare and the environment.
- 2. 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.

Despite ADEQ's formal CERCLA-like approvals of the RID remedial action and a federal court confirming the RID remedial actions substantially comply with CERCLA ARARs and the NCP, EPA's current position is simply one of unjustified delay.

As discussed in more detail below, EPA's casual dismissal and refusal in its September 2018 letter to discuss or pursue the ADEQ-approved RID remedial action as an interim

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[32] This RAO is another example of EPA confirming that groundwater contamination migrating from the federal M52 Site has contaminated the WVBA WQARF Site given that 7th Avenue is the arbitrary boundary line between the upgradient federal M52 Site and the downgradient WVBA WQARF Site.

[33] EPA Comments on 11/30/16 OU3 Final FSTM (February 3, 2017)

[34] EPA, Groundwater Remedy Completion Strategy (May 2014). The purpose of the 2014 strategy document "is to help focus resources on the information and decisions needed to effectively complete groundwater remedies and to ensure that these remedies protect human health and the environment." The strategy document "presents a recommended 'groundwater remedy completion strategy' for evaluating Superfund groundwater remedy performance and making decisions to help facilitate achievement of RAOs [remedial action objectives] and associated cleanup levels." *Id.* at 3.

CERCLA response action or to administratively extend the boundaries of the federal M52 Site in order to promptly address serious public health and environmental issues, as being a matter that is simply "a disagreement about the appropriate end use of the water," is ludicrous. EPA is fully aware that the PRPs do not want RID to implement a remedial action that complies with EPA's RAOs for OU3 of the federal M52 Site or the mandatory "remedial action criteria" of the Arizona WQARF program[35] or the ADEQ-established "remedial objectives" for the WVBA WQARF Site.[36] For all the aforementioned reasons, EPA should not delay implementation of an ADEQ-approved and NCP-compliant remedial action as an interim CERCLA response action when the remedial action goals and objectives under applicable federal and Arizona laws can be readily achieved to address contamination migrating from the federal M52 Site into the WVBA WQARF Site to protect public health, welfare and the environment. To do otherwise, raises the specter that EPA is not fulfilling its CERCLA responsibilities to protect public health and the environment in part due to the influence of other federal agencies and departments which have been identified as PRPs responsible for the contamination and which are opposing any response action in the WVBA WQARF Site.

CERCLA Does Not Address Water Rights or Mandate the End Use of Water

RID fully agrees with EPA's position stated in its September 2018 letter that "CERCLA does not address water rights or mandate the end use of water," which is why it makes no sense that EPA would raise issues relating to "water rights" and "water end use" as apparent justification for delaying any interim CERCLA response action to expeditiously address the known contamination that has migrated and continues to migrate from the federal M52 Site into the WVBA WQARF Site to adversely impact public health and the environment. It is remarkable that in its letter EPA is repeating arguments of the PRPs, including federal agencies and departments, who are on record in opposing compliance with federal and state remediation and public health laws and the EPA and ADEQ-established remedial action objectives, even though these same PRP arguments have been rejected by ADEQ and a federal court and would expose the local community to releases of toxic VOCs.

Water Rights

EPA is fully aware that the implementation of the OU1 interim groundwater extraction remedy at the federal M52 Site is not subject to an independent water right, because "a Poor Quality Groundwater Withdrawal Permit [PQGWP] was issued by the Arizona Department of Water Resources ("ADWR") for the withdrawal and disposal of OU1 groundwater."[37] In fact, the 1988 ROD, which acted as EPA's concurrence with the ADEQ-approved remedial action as EPA's interim remedy for OU1 prior to NPL listing, includes ADEQ's response that a PQGWP would be necessary to implement the approved remedial action "since Motorola does not have any water rights."[38] As a matter of Arizona law and customary practice, PQGWPs are Arizona

[35] *See* A.R.S. § 49-282.06
[36] ADEQ, Final Remedial Objectives Report (2012).
[37] 2011 Sitewide Five-Year Review Report, Motorola 52nd Street Superfund Site, Phoenix, Arizona, I-21 (2011).
[38] 1988 ROD, Att. 3, Response to Question 54.

permits "usually issued [by ADWR] in conjunction with CERCLA, WQARF, or leaking UST sites for pump and treat operations … to allow the withdrawal of groundwater"[39] to implement government-approved groundwater response actions.

Despite Arizona law specifically requiring that ADWR "shall expedite the processing and issuance of permits [such as a PQGWP] … to facilitate the prompt conduct of [ADEQ] approved remedial actions,"[40] RID has been unlawfully denied a PQGWP that is and has been routinely and consistently issued as a matter of Arizona law and practice by ADWR for the past 30 years due to the apparent political influence and improper interference by prominent PRPs. For example, ADWR has issued a PQGWP more than a year before ADEQ even approved a groundwater pump and treat response action that treats VOC-contaminated groundwater to meet applicable drinking water aquifer water quality standards.[41] If ADWR had issued a PQGWP to implement the ADEQ-approved and NCP-compliant RID groundwater remedial action, as specifically required by Arizona law and consistent with virtually every other groundwater pump and treat remedial action in Arizona over the last 30 years, there would be no need for EPA's involvement in the WVBA WQARF Site since RID has secured private funds through a public-private partnership (P3) structure to expedite full implementation of the ADEQ-approved and NCP-compliant RID remedial action. Contrary to this Arizona statutory obligation to "expedite the processing and issuance" of a PQGWP, ADWR's current Director unlawfully refuses to issue a PQGWP to implement the ADEQ-approved and NCP-compliant RID groundwater remedial action.[42] As discussed at our March 13, 2018 meeting, such actions are not shocking given that

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[39] ADWR, Third Management Plan for Phoenix Active Management Area, 7-10 (1999). Even parties that have independent water rights utilize PQGWPs to implement approved pump and treat remedial actions. In fact, the PRPs' WVBA Working Group, which includes the City of Phoenix and SRP which both have independent water rights, informed ADEQ that "[i]n accordance with A.R.S. §45-516, a Poor Quality Groundwater Withdrawal Permit would be required by ADWR to pump a groundwater extraction well within the Phoenix Active Management Area." In 2002, ADWR issued SRP a PQGWP to remediate groundwater under an ERA to prevent the contaminated groundwater from impacting a production well.

[40] A.R.S. § 49-290.01.A.

[41] ADWR issued a PQGWP effective July 15, 2010 "in anticipation of the early response action (ERA) at the site and the need to pump groundwater from extraction wells and developing the groundwater treatment system." Clear Creek Assoc., Draft Remedial Investigation Report, 56th Street and Earll Drive WQARF Site (2018). The PQGWP was issued nearly a year before Freescale entered into an agreement with ADEQ in 2011 to "design and implement an ERA." https://legacy.azdeq.gov/environ/waste/sps/56th_Street_Earll_Drive.html

[42] Initially, the current ADWR Director, who previously objected to ADEQ's approval of RID's remedial action on behalf of a PRP, and ADWR staff opposed issuing a PQGWP based on conditions that violate Arizona law and were inconsistent with ADWR's 30-year practice of routinely issuing PQGWPs to facilitate government-approved remedial actions. *See* January 6, 2017 letter to ADWR regarding concern over new and unlawful permit conditions. (Attachment F) Next, the current ADWR Director tried to justify not issuing a PQGWP by claiming in a public meeting that a PQGWP was unnecessary because of RID's existing and independent water right that enables RID to implement the ADEQ-approved and NCP-compliant RID groundwater remedial action. At the same public meeting, the current ADWR Director failed to disclose that he had taken unlawful actions to revoke prior ADWR determinations confirming the same RID existing water right. As discussed during our March 13, 2018 meeting, the former ADWR Director unlawfully revoked a prior 2013 ADWR written determination that the duration of certain private contracts did not adversely impact RID's water right to withdraw contaminated groundwater and transport remediated water to the West Valley for assured water supply purposes. *See* 2013 ADWR determination (Attachment G) Although the current ADWR Director unlawfully revoked the prior 2013 determination soon after being appointed, ADWR staff drafted clarification letters that further supported the prior 2013 ADWR written

the current ADWR Director was the former Water Manager for the City of Phoenix, which is a prominent PRP in the WVBA WQARF Site, and the current ADWR Director signed letters of opposition to ADEQ's approval of the RID Early Response Action.[43]

However, the prompt conduct of the ADEQ-approved and NCP-compliant RID groundwater remedial action for the WVBA WQARF Site, as mandated by Arizona law[44] and authorized under CERCLA Section 104, should not be unlawfully delayed by withholding the issuance of a State permit from ADWR due to political influence. In fact, CERCLA specifically provides that "[n]o Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section."[45] The NCP interprets "on-site" as "the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action," and EPA policy further defines "on-site" to "include the soil and the groundwater plume that are to be remediated." [46] Additionally, EPA policy identifies that the "response actions covered by CERCLA section 121(e)(1) include those conducted <u>pursuant to CERCLA sections 104</u>, 106, 120, 121, and 122 … [and] <u>also include response actions implemented by a State or political subdivision operating pursuant to a contract or cooperative agreement executed pursuant to CERCLA</u>."[47]

As a result, RID has simply requested that EPA act in accordance with its existing CERCLA statutory authority, which EPA has used nationally and at the adjacent federal M52 Site, to address the groundwater contamination that has migrated and continues to migrate from the federal M52 Site into the WVBA WQARF Site, where it is contaminating RID's water supply and being directly released into the ambient air and exposing the local community to toxic VOCs. Any of the various CERCLA options presented by RID to EPA over the last year, including EPA's concurrence with the ADEQ-approved and NCP-compliant RID groundwater remedial action consistent with EPA's prior concurrence with an ADEQ-approved remedial action as an interim CERCLA response action at OU1 of the federal M52 Site prior to NPL listing, would trigger CERCLA's exemption from obtaining a PQGWP from the biased and

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determination. *See* draft clarification letter. (Attachment H) However, these clarification letters were never finalized because ADWR's current Director unlawfully gave veto authority to a PRP.

[43] City of Phoenix letters, dated December 23, 2009 and April 21, 2010.

[44] A.R.S. §49-290.01.A

[45] 42 U.S.C § 9621.e.1.

[46] EPA, Permits and Permit "Equivalency" Processes for CERCLA On-site Response Actions, 2 (February 1992).

[47] *Id.* As a political subdivision, RID raised the "cooperative agreement" issue at the March 13, 2018 meeting as a potential method of implementing EPA's authority under CERCLA Section 104. In fact, during that meeting, EPA acknowledged that there were other administrative options to allow interim response actions while EPA implements the NPL process, if NPL listing were necessary. As a result, RID identified the process at the Anaconda site as another potential option to expedite a response action and avoid additional delay. To date, EPA has failed to identify any potential options for expediting an interim CERCLA response action, as promised on March 13, 2018. Instead, EPA simply suggests that the process to evaluate actions at the WVBA Site is complex and will take time to complete, possibly requiring RID and the local WVBA community to wait another decade to address the ongoing contamination of RID's water supply and the direct exposure of the local community to releases of toxic VOCs attributable in substantial part to the groundwater contamination migrating from the federal M52 Site into the WVBA WQARF Site.

conflicted current ADWR Director and the PRP political influence on the State.[48] The federal statutory exemption from the issuance of a PQGWP would provide the certainty to enable the P3 funding to expeditiously implement, operate and maintain the ADEQ-approved and NCP-compliant RID remedial action until the applicable aquifer water quality standards and remedial objectives are achieved. EPA's policy that "[i]n implementing remedial actions, EPA has consistently taken the position that the acquisition of permits is not required for on-site remedial actions" is consistent with CERCLA's provisions, which "reflect Congress' judgment that CERCLA response actions should not be delayed by time-consuming and duplicative administrative requirements."[49] If EPA would utilize its broad existing CERCLA statutory authority and follow its prior practice at OU1 of the federal M52 Site of concurring with ADEQ-approved and NCP-compliant remedial actions (as determined by a federal court in RID's case), the P3 funding would fully implement a NCP-compliant remedial action within a year to address the largest groundwater contaminant plume in Arizona, compared to EPA's position in its September 2018 letter that RID and the WVBA community need to wait a long and indeterminant time, possibly another decade, for remediation and protection of public health and the environment. Additionally, EPA's concurrence with the ADEQ-approved and NCP-compliant RID groundwater remedial action as an interim CERCLA response action[50] pursuant to EPA's CERCLA statutory authority will ensure that "RID will continue to ensure its activities do not exacerbate pathways for contaminant exposure,"[51] as requested by EPA in its September 2018 letter to RID.

However, instead of responding to RID's requests to meet with EPA leadership to expedite a CERCLA response action under several potential regulatory and administrative options consistent with the authority and purposes of CERCLA and the Superfund Task Force recommendations, EPA's September 2018 letter strangely suggests that RID has asked EPA to "have a role in the ongoing water rights dispute."[52] As expressly noted by EPA in its own letter

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[48] Consistent with EPA guidance, the reporting requirements of a PQGWP would still be required for implementing the ADEQ-approved and NCP-compliant RID groundwater remedial action.

[49] EPA, Permits and Permit "Equivalency" Processes for CERCLA On-site Response Actions, 4 (February 1992).

[50] As discussed in San Francisco during the March 13, 2018 meeting, RID acknowledges that after the interim response action is operational, additional efforts to optimize the response action may be necessary.

[51] As previously discussed with EPA, RID is in the process of replacing a water supply well that already has an installed wellhead treatment system to remove toxic VOCs. However, RID would prefer to discuss certain options with EPA that would optimize remediation of the contaminated aquifer consistent with applicable Arizona law and EPA's own remedial action objectives for OU3 of the federal M52 Site.

[52] EPA references a letter received from the City of Phoenix claiming that EPA should not act as authorized by CERCLA to implement a NCP-compliant groundwater remedial action if it "would take water out of the City of Phoenix and SRP service area." It is ridiculous that EPA gives any credence to such a position without at least some discussion with RID, especially given that the City of Phoenix and SRP (both PRPs in the WVBA WQARF Site) obtained approval from ADEQ to install new groundwater remediation extraction wells within the WVBA WQARF Site (but of course failed to follow through), which is within the City of Phoenix and SRP service area, that would have been pumped, treated to aquifer water quality standards prior to discharge to the RID system and transported outside the City of Phoenix and SRP service area, in violation of precisely what the City of Phoenix and SRP have objected to EPA about RID. In fact, the same concept was proposed as the pump and treat alternative in the 2015 RI/FS Report for OU3 of the federal M52 Site, prepared for EPA by two PRPs. Yet despite these facts, EPA inexplicably suggests in its September 2018 letter that the City of Phoenix letter is relevant despite EPA's claim that "CERCLA does not address water rights or mandate the end use of water."

and exemplified by EPA's actions at OU1 of the federal M52 Site, water rights are irrelevant to implementing a response action consistent with the federal NCP to meet applicable water quality standards, achieve RAOs, meet ARARs and otherwise protect public health and the environment. The irrelevance of state water rights or state permits (*e.g.* a PQGWP) to implement a CERCLA interim response action is further exemplified by the groundwater extraction associated with the ongoing interim response action at OU2 of the federal M52 Site, where none of the major documents discuss whether there is a water right or PQGWP or CERCLA exemption as the basis for the CERCLA groundwater pump and treat interim response action. Such state water rights and/or permit requirements are expressly exempt under CERCLA for the express purpose of avoiding delay in implementing needed response actions to protect public health and the environment.[53] EPA's apparent adoption of the PRP arguments, which violate federal and state law and have been rejected by ADEQ and a federal court, would result in little to no remediation of contaminated groundwater supplies ever being conducted unless a party with clear independent water rights[54] would implement the groundwater pump and treat remediation; thus, granting polluters a license to pollute in violation of applicable federal and Arizona laws.

End Use of Treated Water

Despite EPA rightfully claiming that "CERCLA does not … mandate the end use of water," EPA's September 2018 letter claims that a dispute raised by PRPs over the potential end use of the groundwater justifies further delay by EPA on moving forward with implementing RID's NCP-compliant remedial action. This end use dispute already has been argued many times by the PRPs before ADEQ and a federal court, and each time the PRPs' arguments have been rejected. Thus, it is surprising again that without conferring with RID, EPA would even consider the irrelevant end use issue to the detriment of the contaminated aquifer and the public health of the local community.

In response to numerous PRP comments on RID's FS Report years ago raising the groundwater end use issue, RID strongly objected,

> as violative of multiple Arizona laws and WQARF rules …, to the fundamental proposition incorporated within all the [PRP] comments that the commenters are able to indiscriminately and without authority pollute Arizona's drinking water protected use aquifers and water supply wells and have no liability for violating the applicable state water quality standards and no remedial obligation to control, manage or cleanup their contamination, unless and until only certain beneficial uses are made of the contaminated resource.[55]

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[53] 42 U.S.C. §9621e.1.

[54] It is telling that a PRP identified by EPA for the groundwater contamination has raised the concern as to RID's independent water right even though the unbiased former ADWR Director made such a determination in 2013 and the same PRP has made a declaration of RID's independent water right before ADWR and state courts. *See* first few pages of declaration of RID's independent water rights. (Attachment I)

[55] RID Response to PRPs' Comments on RID FS Report, 1 (February 6, 2015).

RID noted that neither CERCLA nor WQARF

> grant an unfettered license to pollute Arizona's aquifers and water supply wells without legal or regulatory consequence if no or only certain beneficial uses were currently being made of the polluted resource. This shameful and unlawful position shared by all of the commenters is epitomized by the false statement in the AZ Chamber Comments that the WGFS Report 'conclusively demonstrates … that treatment is NOT now needed and can be avoided entirely.'[56]

Notwithstanding the PRPs' same end use argument, ADEQ rejected it and approved the proposed remedial action in RID's FS Report.[57] Furthermore, the PRPs speak out of both sides of their mouths on the end use issue. Despite the PRPs' argument that RID's water supply wells do not need to be addressed now to be fit for all reasonably foreseeable end uses over the next 100 years, including as a municipal water supply, as required by applicable WQARF statutes and rules and as established by ADEQ's remedial objectives for the WVBA WQARF Site,[58] the PRPs declared to ADEQ in their own FS Report that "[f]or each end use scenario, extracted groundwater would need to be treated to meet AWQS for WVBA COCs prior to reinjection or discharge to an end user."[59] In fact, the PRPs specifically admit that "extracted groundwater would need to be treated to AWQS for WVBA COCs prior to discharge to the RID system"[60] for its current irrigation use.

This necessity to treat extracted contaminated groundwater to AWQS at the wellhead is required by various Arizona laws and constitutes an ARAR under CERCLA. ADEQ informed EPA in its letter, dated April 24, 2018, that an "important factor is that all aquifers in Arizona are classified as 'drinking water protected use', pursuant to Arizona Revised Statutes §49-224.B."[61] Additionally, Arizona requires that a "remedial action shall … [t]o 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"[62] and "address, at a minimum, any well that at the time of selection of the remedial action … would now or in the reasonably foreseeable

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[56] *Id.* In its response, RID noted a purpose of the PRPs' letter was to try and "avoid civil and criminal violations of applicable water quality standards as proposed by the WGFS Report and in the comments of its supporters." *See* A.R.S. §§ 49-262 and 49-263.

[57] *See* ADEQ's April 13, 2015 approval of RID's FS Report. (Attachment E)

[58] A.R.S. § 49-282.06.B.4.b.; A.A.C. R18-16-406.D; A.A.C. R18-16-407.E.1; ADEQ Final Remedial Objectives Report for WVBA WQARF Site (2012).

[59] Working Group Feasibility Study Report (WGFS Report), 25 (2014).

[60] *Id.* at 28. Similarly, the PRPs at OU3 of the federal M52 Site determined that "[s]tatewide aquifer protection standards … established for drinking water protective usage [is an] ARAR for setting water quality objectives for groundwater as part of the final remedy." OU3 RI/FS Report, Table C-3 (2015).

[61] ADEQ Letter to EPA (April 24, 2018).

[62] ARS § 49-282.06.A.2.; The PRPs recognized that a "critical component of groundwater extraction is finding a beneficial end use for the treated groundwater that allows for the maximum beneficial use of the waters of the state." WGFS Report, 26. Similarly, the PRPs at OU3 of the federal M52 Site determined that an "ARAR for any final remedy must consider maximum beneficial use of the waters of the state." OU3 RI/FS Report, Table C-3 (2015).

future produce water that would not be fit for its current or reasonably foreseeable [over at least the next 100 years] end uses without treatment due to the release of hazardous substances."[63]

Unlike EPA's apparent acceptance of the PRPs' arguments, ADEQ after having "carefully analyzed technical and legal documents and correspondence contained in the Site file, including submittals by RID and other interested parties since September 2009, and comments received through the public participation process" and having "analyzed the [Early Response Action] Work Plan to determine compliance with applicable State statutes and rules," ADEQ approved the RID ERA because "RID has a unique opportunity to increase the removal of contamination from the aquifer via its wells" and "[w]ithout treatment, these contaminants will continue to degrade the quality of the aquifer within the Site." Similarly, the federal court rejected the PRPs' arguments in holding that the "record indicates that RID gave substantial thought and attention to compliance with site-specific Arizona law" and that the PRPs "have not presented evidence of the existence of any other 'significantly more cost effective permanent remedial alternative.'" In fact, as presented to ADEQ and EPA, the vast majority of groundwater cleanups in Arizona treat contaminated groundwater to applicable Arizona AWQSs or federal MCLs even if currently used for an irrigation end use.[64]

Conclusion

As noted in RID's July 19, 2018 letter to EPA, it is unreasonable that EPA continues to request, as EPA did again in its September 2018 letter, that "RID should continue to ensure its activities do not exacerbate pathways for contaminant exposure," while refusing to support RID's efforts to expedite full implementation of the ADEQ-approved and NCP-compliant RID remedial action with private funds. If EPA would take any of the available options authorized under CERCLA or consistent with EPA's response actions at OU1 of the federal M52 Site, RID has secured private funds to expedite full implementation of the ADEQ-approved and NCP-compliant RID remedial action in order to provide prompt and necessary protection of public health, welfare and the environment. These private funds, consistent with the purposes of CERCLA and the Superfund Task Force recommendations, will expedite efforts to address what a federal court declared is "admittedly a very serious problem" due to the "plumes of very deadly carcinogenic chemicals floating around underneath the city of Phoenix, Arizona"[65] that are attributable in significant part to releases of toxic VOCs by PRPs identified by EPA in the federal M52 Site that have contaminated RID's wells and water supply and are being directly released into the ambient air of the local community in the adjacent, downgradient WVBA WQARF Site. The local community within the WVBA should not be exposed to the continued migration and volatilization of toxic VOCs from the federal M52 Site simply because EPA has decided either not to protect the local WVBA community to the same degree as the local communities at the federal M52 Site and the other CERCLA sites in Arizona or is simply

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[63] A.R.S. § 49-282.06.B.4.b.; A.A.C. R18-16-406.D

[64] *See* summary of cleanup sites in Arizona included in ADEQ-approved RID FS Report and presented to EPA at March 13, 2018 meeting. (Attachment J)

[65] *Reporter's Transcript of Proceedings (Motion Hearing)* at page 38, lines 14-21, *RID v. SRP*, No. CV-10-0920 (D. Ariz. Feb. 28, 2017).

unwilling to provide the needed protection to public health and the environment as required by federal law.

Unfortunately, EPA advances in its September 2018 letter the unjustifiable and government-rejected positions of PRPs to continue to delay addressing this admittedly very serious problem. It is unclear why EPA is refusing to act as authorized by statute, rule, policy and its own historical practices under CERCLA especially when EPA funds would not be needed at the WVBA WQARF Site to address the largest groundwater contaminant plume in the State of Arizona. Rarely, if ever, has EPA been presented with a groundwater remedial action already approved and determined by a state and federal court to comply with applicable state law, to substantially comply with the applicable federal NCP, to have been subject to substantial public participation and comment and that meets all applicable state and federal remedial action criteria at no cost to the federal Superfund.

We again ask for meetings with EPA leadership to discuss the contents of EPA's September 2018 letter, EPA's legal authorities under CERCLA and EPA's rationale for not supporting a prompt interim CERCLA response action at the WVBA WQARF Site with the ADEQ-approved and NCP-compliant RID groundwater remedial action to address the direct public health and environmental risks associated with the toxic VOCs that have migrated and continue to migrate from the federal M52 Site into the WVBA WQARF Site in Phoenix, Arizona.

Very truly yours,

GALLAGHER & KENNEDY, P.A.

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