GREAT BASIN RESOURCE WATCH

Working with Communities to Protect Their Land Air and Water

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August 16, 2017

Enrique Manzanilla
Director, Superfund Division
US Environmental Protection Agency, Region 9
75 Hawthorn St.
San Fransisco, CA 94105-3901

Re: Regarding the Potential Deferment of EPA Involvement at the Anaconda Mine Site in Nevada

Dear, Mr. Manzanilla

Great Basin Resource Watch (GBRW) has been supporting the directly affected community (those whose health and immediate environment is affected by the Anaconda Mine) since 2000. Over the years our position has been that the site should be on the National Priorities List, which has been the desire of the directly affected community. We understand that cleanup of a large complex site like the Anaconda Mine generally requires decades of continuous work, and we have seen considerable progress towards cleanup under EPA. Some people consider the cleanup effort under the EPA slow, but in our view Atlantic Richfield Corp. (ARC) has often been uncooperative and currently disagrees with the EPA analysis of the source of groundwater contamination impeding progress towards a groundwater remedy

GBRW participated in all three roundtable meetings organized by the Nevada Division of environmental Protection (NDEP) and EPA this year. We discussed the situation often with the directly affected community, and met with NDEP on August 2, 2017, two days after the deferment request was sent to EPA.

In what follows is a discussion with respect to the six criterion for deferment that EPA set forth in its letter dated April 19, 2017 to the State of Nevada.

1. Assurance that a CERCLA (Superfund) equivalent Remedial Investigation and Feasibility Study will be conducted at the Site.

2. Assurance that the remedy selected for implementation at the site will be a CERCLA-protective cleanup and will be substantially similar to a CERCLA response.

GBRW has been concerned that the remedial investigation and to greater extent the feasibility study for the groundwater will be insufficient under deferment, since aquifer restoration was not expressively present in the "Framework Agreement", the "Interim Administrative Settlement Agreement and Order on Consent for: (i) Remedial Design / Remedial Action, (ii) Site-Wide Remedial Investigation / Feasibility Study, and (iii) Fluid Management" (IAOC), and the Statement of Work.

The Framework Agreement, which was signed by NDEP and ARC, in the section "Assurance of CERCLA Protectiveness" (p. 9), discusses aspects of the feasibility study process and states that a focus "on source control and *limited, if any,* [emphasis added] active groundwater remediation on-site." It's clear from this language that there is little commitment to aquifer restoration. Part b of that same subsection leads to a similar conclusion when it states that the feasibility study "does not require active groundwater remediation off-site unless and until: (a) pre-defined monitoring metrics demonstrate a lack of plume stability/attenuation or exposure to off-site receptors, (b) pre-selected contingency…" GBRW views this as not in the spirit of CERCLA cleanup objectives. Even if the plume is determined to be stable the groundwater associated with the plume will not serve the beneficial use that it had – drinking water and crop irrigation.

The Framework Agreement goes on to state (p 10) that the remedy for groundwater "will sequence" and "implementation response" is as follows. Thus, it seemed to GBRW that the groundwater strategy has already been agreed upon. Nowhere in this section on groundwater is the goal of aquifer restoration or restoration to beneficial uses mentioned. In fact, there are performance objectives mentioned, but are left undefined. At the July 17 roundtable in response to this issue, NDEP stated that the performance criterion and monitoring metrics would be developed and the public would be involved. However, this still leaves the public unable to evaluate cleanup goals under CERCLA versus under deferment.

In our August 2 meeting with NDEP staff made a commitment to include the same language that was in the draft Deferment Agreement (p. 3, last paragraph and top of p. 4) regarding groundwater cleanup goals in the IAOC and other consent documents.

The Statement of Work also needs to be consistent with the aquifer restoration goal. The groundwater feasibility study should begin much sooner than indicated on the draft schedule (p. 19). There also needs to be as much commitment to off-site groundwater cleanup as on-site, since it is the off-site groundwater that directly affects users.

GBRW sees the commitment to the goal of aquifer restoration as a necessary condition for deferment to be CERECLA protective. If the final IOAC, which in our understanding will supersede the Framework Agreement, does not communicate a clear goal for aquifer restoration for both on-site and off-site locations, then GBRW will not support deferment. Based on our discussions with the directly affected community it is highly likely they will concur with this position.

The ARC-proposed cleanup schedule points to another potential area of noncompliance with CERCLA protectiveness. In our view the site completion date of 2029 in the draft deferment agreement is unrealistic. Site of similar complexity have typically taken much longer. The

groundwater remediation alone is likely to require decades of work, and there has yet to been an acid heap leach closed to date. The schedule is likely to assume (based on state regulations) that there will be no reclamation of the mining pit lake to a post mining use. EPA should stress a review for post-mining use for the mining pit lake.

3. Assurance that appropriate enforcement mechanisms will be in place during the response activities at the site.

GBRW has been concerned if the State of Nevada will be able to enforce the complete cleanup of the site to the level that would be the case under CERCLA.

Under EPA, the agency has been working with nationally recognized environmental professionals and assembled a large team to address cleanup. In our view the State of Nevada will need to expand its staff considerably and engage wide range of expertise from cleanup mangers at other complex sites, and not just rely on ARC's opinion or their staff.

We do believe that NDEP has the authority to take remediation on through the existing Nevada statutes and various agreement documents. Some states such as Georgia do have CERCLA-parallel statutes in place. The Georgia law, the Hazardous Site Response Act, demonstrates that Georgia has deliberated considerably about how to implement a Superfund-like cleanup. The State of Nevada has been dealing with mine sites for many years; however, GBRW would have greater confidence in the deferment if similar statutes were in place in Nevada.

4. Preservation of the rights of the federal Natural Resource Trustees

GBRW did not focus on this aspect, but it is our understanding that there are some issues to be worked out on this aspect of cleanup through the MOU process.

5. Assurance of support for Tribal involvement

At the three roundtable meetings and in discussions with the Yerington and Walker River Tribes it is clear that there were many concerns and issues ranging from overlap of reservation land with a portion of the Site to sufficient time for document review that need to be resolved. GBRW will not reiterate what the tribes have surely communicated to EPA on these issues. We support the tribes' position and the need for a parallel process under deferment like that occurring under EPA management.

6. Assurance of support for community involvement

The public learned at the end of June that the State of Nevada and ARC had already signed a "Framework for Agreement" on June 13, 2017. No draft of this agreement was circulated to the public. It was clear to GBRW at the May 23, 2017 roundtable meeting that the directly affected community felt blindsided by the shift from NLP to deferment. There should have been a public meeting by January 2017, much earlier in the deferment consideration, allowing an opportunity for public comment and discussion. As a result, of the rushed schedule, lack of early warming, and non-

public substantive discussions, those directly affected by the mine did not then trust the deferment strategy.

At the most recent roundtable on July 17 the Yerington Paiute Tribe requested 60-day review period as needed for documents released for public review under the state lead cleanup program. With EPA, this was the standard review time and provided additional technical review. The response then by NDEP was that allowing a 60-day review would set the cleanup schedule back. In our view allowing sufficient time for public engagement is more important than the delay in the schedule. Clearly, EPA must on some level agree with this, since it allowed for the 60-day review.

Atlantic Richfield Corp. should be not driving the cleanup schedule. Certainly ARC wants to be able to leave the site as soon as possible as its losing money, and the public also wants to see progress on cleanup. The public also wants the cleanup to be complete and to be involved in the process. GBRW does not support the existing cleanup schedule; there needs to be an adjusted schedule that allows for more inclusive public participation to a level granted by EPA. If document review requires less time, then the schedule is advanced more rapidly. The whole process will be viewed more favorably if deadlines are met sooner while still engaging the public substantively.

The non-tribal community also needs to have access to independent technical review. In our August 2 meeting NDEP staff committed to the same technical support as is provided by EPA. We discussed funding for independent review approaching each Record of Decision (ROD). We also discussed an alternative mechanism that is often referred to as a "Good Neighbor Agreement." GBRW felt that this was a productive discussion, and we feel positive about the availability of funding for independent technical assistance. We need to see to language also included in the IOAC that outlines the process for technical assistance for the non-tribal affected community.
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The directly affected community seems to be skeptical about the deferment strategy. Many in the community recall that the State of Nevada did a poor job early on in dealing with the site. Prior to EPA involvement, NDEP was unable to get ARC to pay for more than token activities. That community sees EPA as better site managers and as able to take a stronger regulatory position with ARC.

Nevertheless, in the intervening 15 years GBRW has seen positive changes in NDEP and is open to a fresh start in site management under NDEP.

Conclusion

Until we see the final documents that surround the formal deferment we cannot be completely sure that the cleanup will proceed in a CERCLA protective manner. If not for the increased uncertainty for funding for Superfund as a result of the new Administration, GBRW would prefer that EPA continue on the NPL track. That being said we do think that the State of Nevada has made a good effort to understand the concerns of the community and has worked with GBRW to find way s to address our concerns.

Should deferment occur we recommend that NDEP/ARC submit updates to EPA on a semiannual rather than an annual basis for the sake of more thorough oversite and public confidence.

In summary, GBRW will only support deferment if the following conditions are met:

- Public engagement must improve and the process must be responsive to public concerns.
- The State of Nevada must demonstrate that it will enforce full cleanup.
- The agreements between the State of Nevada and Atlantic Richfield Corp. must contain a commitment to aquifer restoration.
- The State of Nevada must require that ARC redraft a realistic site cleanup completion schedule.

Sincerely,

John Hadder, Director

Cc: Senator Catherine Cortez Masto, Senator Dean Heller, Representative Mark Amodei, Governor Brian Sandoval, Harold Ball (EPA), David Seter (EPA), Angeles Herrera (EPA), Dante Rodriguez (EPA), Greg Lavato (NDEP), Jeff Collins (NDEP), Jeryl Gardner (NDEP)

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