Danielle R. Taber

Subject: FW: WVB FS Review Process

From: Laura L. Malone
Sent: Wednesday, July 16, 2014 6:02 PM
To: Danielle R. Taber; Tina LePage
Subject: Fwd: WVB FS Review Process

-------- Original message --------
From: "Kimball III, David P."
Date:07/16/2014 4:53 PM (GMT-07:00)
To: "Laura L. Malone"
Cc: "Ana I. Vargas" , Henry Darwin
Subject: RE: WVB FS Review Process

Laura:

Thank you for the email yesterday that contained the final process ADEQ has developed to review the Feasibility Study (FS) reports for the West Van Buren Area (WVBA) WQARF Site.

In strict compliance with ADEQ's FS review process, RID submits the following written communication. This confirms RID's earlier verbal communication that it generally sees no issues with the adopted process. However, it appears that Danielle Taber informed Dennis Shirley of Synergy that RID would need to make a records request to ADEQ to receive the FS report submitted by the Working Group. I assume, based on the final ADEQ review process, that such a request would only be necessary if RID sought to review the hard copies placed in the public file, but that such a request is unnecessary to obtain the copies placed on ADEQ's website. Your clarification would be appreciated.

Also, I wanted to follow up on whether ADEQ has determined the length of the administrative completeness timeframe for reviewing the FS reports' compliance with Ariz. Admin. Code (A.A.C.) R18-16-413? The components required in R18-16-413 are pretty clear cut and should not require too much ADEQ time or resources to make an administrative completeness determination.

Additionally, Fennemore Craig and RID previously raised concerns about the compliance of the Working Group's Feasibility Study Work Plan (FSWP) with certain specific requirements in R18-16-413. As stated in Fennemore Craig's May 6, 2013 letter to ADEQ, "the Working Group failed to include in its Work Plan the identities 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.' A.A.C. R18-16-413.A.7." The Working Group never corrected its March 19, 2013 FSWP submittal which simply stated 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)." As noted in RID's July 18, 2013 letter to ADEQ, the Working Group's equivocal language in its March 19, 2013 FSWP submittal does not meet the legal requirements that the Working Group affirmatively identify the persons whom the "applicant believes to be responsible parties" and provide "a summary of the basis for that belief." RID's July 18, 2013 letter also noted that the Working Group failed to include the names and addresses of a number of parties identified in ADEQ's RI Report and identified by the Working Group in its own submittal and FSWP. It should be noted that the Working Group in its June 21, 2013 response to these comments appeared to state its "opinion" that at least the parties identified in ADEQ's RI Report are responsible

parties. Significantly, many members of the Working Group have identified to a federal court the names of responsible parties, and those names and addresses should be included given that such a declaration to a federal court should be sufficient to establish the Working Group's "belief." We simply ask that ADEQ ensure that the Working Group meets the legal obligations set forth in A.A.C. R18-16-413.A.7 before ADEQ makes any administrative completeness determination.

Similarly, consistent with RID's July 18, 2013 letter to ADEQ, we ask that ADEQ also ensure that the Working Group meets the legal obligations of A.A.C. R18-16-413.A.6 to provide a "demonstration of how the remedial action complied, or will comply, with this Article." Pursuant to A.A.C. R18-16-407.I, the remedial action shall "achieve the remedial objectives" and "meet[] the requirements of A.R.S. § 49-282.06." If the Working Group's remedial action(s) in its FS Report is (are) consistent with the Working Group's June 21, 2013 position that "the final remedy may or may not require the cooperation of RID or the use of its wells," then the Working Group's submittal cannot pass an administrative completeness determination. ADEQ's Remedial Objectives for the WVBA WQARF Site mandate that all existing wells within or adjacent to the WVBA WQARF Site, which includes RID's water supply wells, be protected or restored for the reasonably foreseeable water end use as a municipal water supply, as established by RID's, City of Phoenix's and Salt River Project's responses to ADEQ's WVBA Land and Water Use Survey. Furthermore, A.R.S. § 49-282.06 mandates that "remedial actions shall … to the extent practicable, provide for the control, management or cleanup of the hazardous substances in order <u>to allow the maximum beneficial use of the waters of the state</u>." 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." A.R.S. § 49-282.06 also mandates for the remediation of waters of the state that "<u>the selected remedial action shall address, at a minimum, any well</u> 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 <u>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 [over at least the next 100 years] without treatment due to the release of hazardous substances</u>. The specific measures to address any such well shall not reduce the supply of water available to the owner of the well." Failure by the Working Group to remediate the contaminated groundwater and/or to address, <u>at a minimum</u>, RID's impacted water supply wells to meet both the applicable aquifer water quality standards and maximum contaminant levels clearly demonstrates that the Working Group's FS submittal does not comply with A.A.C. R18-16-413.A.6 and should not be deemed administratively complete.

If the Working Group fails to meet these administrative requirements, we respectfully ask that ADEQ request clarification and compliance from the Working Group on the issues raised above to ensure that all applicable requirements in A.A.C. R18-16-413 are met. Please contact me if you have any questions.

Dave

Gallagher&Kennedy
2575 E. Camelback Road, Suite 1100
Phoenix, Arizona 85016-9225
602-530-8000 | www.gknet.com

David P. Kimball III
Attorney Profile
dpk@gknet.com
602-530-8221

NOTICE: This e-mail (and any attachments) may contain PRIVILEGED OR CONFIDENTIAL information and is intended only for the use of the specific individual(s) to whom it is addressed. It may contain information that is privileged and confidential under state and federal law. This information may be used or disclosed only in accordance with law, and you may be subject to penalties under law for improper use or further disclosure of the information in this e-mail and its attachments. If you have received this e-mail in error, please immediately notify the person named above by reply e-mail, and then delete the original e-mail. Thank you.

This message and any of the attached documents contain information from the law firm of Gallagher & Kennedy, P.A. that may be confidential and/or privileged. If you are not the intended recipient, you may not read, copy, distribute, or use this information, and no privilege has been waived by your inadvertent receipt. If you have received this transmission in error, please notify the sender by reply e-mail and then delete this message. Thank you.