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# MEMORANDUM

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Date: July 12, 2017

To: The Honorable Chair and Members  
Pima County Board of Supervisors

From: C.H. Huckelberry  
County Administrator

A handwritten signature in black ink, appearing to be "CHH", is written over the printed name "C.H. Huckelberry".

Re: **Triennial Review of State Water-quality Standards and the Rosemont Copper Project**

Yesterday the Board approved a resolution directing staff to protect water quality via various means, including participating in the review of state water-quality standards by the Arizona Department of Environmental Quality (ADEQ). Under the Clean Water Act, states are obligated to review standards at least every three years. Arizona's Triennial Review is intended to provide the public with open access to the deliberative process. After the review, any proposed changes to state standards must be made via formal rule-making.

An important stream protective designation in Arizona is known as the Outstanding Arizona Waters (OAWs). An OAW designation prevents ADEQ from issuing permits which would degrade the water quality of designated water bodies. There are 22 streams segments in Arizona designated as OAWs, including portions of Davidson Canyon and Cienega Creek.

On June 29<sup>th</sup>, the Board was copied on my letter to ADEQ regarding the results of a public records request that showed January 2017 correspondence from HudBay to the ADEQ asking the department to examine all previously protected OAWs in the next Triennial Review. ADEQ's response to my letter is attached. In it, ADEQ asserts that the current Triennial Review has been initiated "solely for the purpose of meeting the [Clean Water Act] requirement and to address changes by [Environmental Protection Agency] and to advance ADEQ's 2016 partial Triennial Review."

ADEQ suggests that the 2017 Triennial Review was not precipitated by HudBay's request, but in fact HudBay's request to weaken water-quality protections specifically for Davidson Canyon is long-standing. ADEQ staff noted in a February 2016 email that HudBay "again asked when we are going to run a rule to "un-O" the OAW."

HudBay's January 2017 letter indicates they had learned ADEQ had "commenced a rulemaking process;" however, a new Triennial Review had not been announced to the public at the time HudBay made its request. ADEQ's response to HudBay, dated January 11, clarified that while rule-making had not begun, internal review was underway. ADEQ went on to promise a "review of current and historical listing processes, as well as the data which has resulted in the listings of the Outstanding Arizona Waters (OAW)."

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Other regulated entities and interested parties in the state had no reason to expect a new Triennial Review would be initiated. Rule-making for the last Triennial Review concluded in September 2016. Because ADEQ is only required to have this review once every three years, there is no requirement under the Clean Water Act to initiate another review. Furthermore, ADEQ's Regulatory Agenda for 2017 did not identify OAW designations as a subject for future review.

Reinitiating the Triennial Review to encompass a "review of current and historical listing processes, as well as the data which has resulted in the listings of the Outstanding Arizona Waters (OAW)" has still not been announced to the public. ADEQ staff who attended the July 2017 public meeting announcing the 2017 Triennial Review did not mention any review of existing OAW designations by ADEQ, nor did HudBay's representative in the room identify such a request. They announced only that there would be an OAW stakeholder group.

Bear in mind, ADEQ was and still is subject to Governor Ducey's moratorium on new rule making, which says that state agencies "shall not conduct any rulemaking except as permitted by this order, whether informal or formal, without the prior written approval of the Office of the Governor." Thus any public input received during the Triennial Review will go forward only with the Governor's permission, including review by the Governor's Regulatory Review Commission.

Based on these facts, it certainly appears that either the Triennial Review, or an effort to undo at least some of the OAWs, is in response to long-standing requests from Hudbay. Regardless, Pima County will participate and will prepare to defend the OAW designation for all three creeks in Pima County. I will also be requesting from ADEQ the water sampling data cited at the Board meeting by Supervisor Miller and Supervisor Christy.

CHH/dd

Attachment

c: Carmine DeBonis, Deputy County Administrator for Public Works  
Linda Mayro, Director, Sustainability and Conservation  
Suzanne Shields, Director, Regional Flood Control District  
Jackson Jenkins, Director, Regional Wastewater Reclamation  
Ursula Nelson, Director, Environmental Quality



Douglas A. Ducey  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera  
Director

July 11, 2017

C.H. Huckelberry, County Administrator  
Pima County Governmental Center  
130 W. Congress, Floor 10  
Tucson, AZ 85701-1317

Re: Triennial Review of State Water Quality Standards

Dear Mr. Huckelberry;

Thank you for your ongoing interest in protecting and enhancing water quality in Arizona and for having your staff attend the recent Arizona Department of Environmental Quality (ADEQ) public meeting for the Triennial Review of Arizona's Surface Water Quality Standards rule.

ADEQ is undertaking the current Triennial Review pursuant to Section 303(c) of the Clean Water Act (CWA), which requires all states to review their water quality standards at least once every three years, and revise where appropriate. The most recent partial Triennial Review was finalized in 2016. As reflected in ADEQ's January 11, 2017 letter you cited, ADEQ's Triennial Review precipitated Hudbay's request for ADEQ to reevaluate the OAW designation. ADEQ has undertaken the Triennial Review effort solely for the purpose of meeting the CWA requirement, and to address changes by EPA and to advance ADEQ's 2016 partial Triennial Review.

When conducting a Triennial Review, the state reviews and adopts (or provides justification for not adopting) federally promulgated water quality standards. In addition, ADEQ considers other standards or portions of the rules identified for review by stakeholders. As you noted in your letter, Hudbay Minerals, Inc. submitted comments to ADEQ in January, 2017 requesting that ADEQ evaluate the Outstanding Arizona Water (OAW) rule and listing process, as well as the data that was considered when establishing each of Arizona's OAWs. This request will be evaluated as part of the Triennial Review and rulemaking process, as will additional stakeholder input that was solicited at the Triennial Review kickoff meeting and additional input that we expect will be provided during the rulemaking process.

ADEQ has proposed the development of stakeholder working groups for several topics raised during the June 21<sup>st</sup> meeting, including the OAW rule. We encourage Pima County to continue participating in the stakeholder process, including any workgroups that are of particular interest to you and your constituents.

ADEQ is currently reviewing all submissions that were provided by the July 7, 2017 deadline for consideration under the rulemaking. A follow-up communication will be sent to stakeholders later this month to solicit further stakeholder participation and to establish working groups.

We look forward to your participation and input.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Bret Parke', with a large, stylized flourish extending to the right.

Bret Parke  
Deputy Director