

ARIZONA MINING ASSOCIATION

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November 5, 2012

Mr. Scott Miller, Statewide AMA Director
Arizona Department of Water Resources
3550 North Central Avenue
Phoenix, Arizona 85012

Re: Arizona Municipal Water Users' Association Comments Regarding Fourth
Management Plan

Dear Scott:

On behalf of the Arizona Mining Association ("Association"), we are writing to express our members' concerns regarding certain comments and recommendations made to the Department regarding the Fourth Management Plan for the Phoenix Active Management Area ("AMA") in a letter from the Arizona Municipal Water Users' Association ("AMWUA") to the Department dated September 12, 2012, which was discussed at the September 13, 2012 meeting of the Groundwater Users Advisory Council for the Phoenix AMA.

The Association is a non-profit business league comprised of entities engaged in mining and mineral processing throughout Arizona. The Association's members include (but are not limited to): ASARCO LLC, BHP Copper Inc., Carlota Copper Company, Freeport-McMoRan Copper & Gold Inc., Resolution Copper Company and Rosemont Copper Company. The Association acquires and disseminates scientific and business information essential to sound public policies affecting the mining industry in Arizona. In addition, where appropriate, the Association also advocates on behalf of its members and participates in the development of statutes, regulations and policies affecting mining in Arizona.

The Association appreciates AMWUA's efforts to contribute to development of the Fourth Management Plan and help move the Phoenix AMA toward the goal of safe yield. However, the Association believes that several of AMWUA's recommendations are (1) inappropriate for inclusion in the Fourth Management Plan because they would impact users in each AMA and require statutory changes to implement; (2) unnecessary due to existing statutory and regulatory provisions providing similar protections; and/or (3) likely to have negative impact on the Arizona mining industry. The recommendations of most concern to the Association are discussed below.

Because many of AMWUA's recommendations cannot be implemented without legislation, it appears that AMWUA desires the Department to adopt legislative positions or recommendations in the Fourth Management Plan on significant water issues. The Association believes it would be unwise for the Department to adopt legislative positions on water management issues in long-range planning documents, particularly without first engaging in a comprehensive stakeholder process to vet those positions.

1. Type 2 Grandfathered Rights

AMWUA Recommendation: "ADWR should consider whether a proposed change in the point of withdrawal of a Type 2 Right that is transferred for a new use should be subject to notice and an opportunity to protest the change of location, or whether limitations on the change of the point of withdrawal are needed."

Association's Comments: This would require a statutory change, which would not be supported by the AMA. Type 2 rights are vested rights to withdraw and use groundwater based on historical groundwater uses recognized at the time of the Groundwater Code. Many of the Association's members own Type 2 rights and rely upon them to supply water to their operations. As AMWUA noted in its letter, the right to exercise Type 2 rights to obtain groundwater for a new use at a new location cannot be conditioned on whether a municipal provider is "ready and able to provide water service for the use being contemplated." Type 2 rights are independent rights to groundwater and cannot be limited based upon the availability of water from other sources.

With respect to changes in points of withdrawal under Type 2 right, Type 2 right holders are already required to demonstrate to the ADWR Director that new or additional points of withdrawal on a post-Groundwater Code well will not cause "unreasonably increasing damaged to surrounding land or other water users." A.R.S. § 45-471(C). In addition, as noted in AMWUA's letter, the Groundwater Code generally requires that holders of grandfathered groundwater rights (including Type 2 rights) and service area rights under Articles 5 and 6 of the Groundwater Code, respectively obtain a well permit and comply with ADWR well spacing rules to construct new wells. A.R.S. § 45-598(B). In this manner, the Groundwater Code already provides a process and protections for surrounding landowners and water users when there is a change in points of withdrawal under Type 2 rights, and imposing new requirements would require statutory changes, which the AMA would not support. Restricting or imposing additional conditions on changes in points of withdrawal would significantly impair the use and value of Type 2 rights and would be viewed by right holders as a regulatory taking.

Furthermore, mining operations are dynamic and require flexibility to efficiently change the location of infrastructure as they develop. Placing additional limitations on the ability to alter points of withdrawal under Type 2 rights and allowing third parties delay progress of a mine through protests to changes in points of withdrawal would reduce the flexibility necessary to allow Association members to relocate wells and

groundwater supplies efficiently in support of their operations. Such limitations could have a significant and negative impact on Arizona's mining industry. Given that Arizona's mining industry is a leader in the states' economic recovery, any such restriction, even if imposed by the State Legislature, would be unwise public policy.

Lastly, AMWUA only requests additional limitations on Type 2 rights, despite the fact that holders of municipal service area rights may also withdraw water from new wells in new locations, so long as the new well is within their service area and complies with ADWR's well spacing rules. While the Association does not believe any additional restrictions on changes in points of withdrawal are necessary for any grandfathered right or service area right holders, it would certainly be inequitable to impose such limitations only on Type 2 rights while allowing other grandfathered right and service area right holders to construct new wells under current standards.

2. Recharge and Recovery

AMWUA Recommendation: "ADWR should consider whether incentives should be provided for recharge and replenishment in areas where groundwater levels are declining and recovery of stored water in areas where groundwater levels are rising."

Association's Comments: The Association does not have a particular position on this recommendation due to the lack of specificity about what AMWUA is proposing. It is unclear what types of incentives AMWUA believes the Department could provide under the Fourth Management Plan based upon the location of recharge, replenishment and recovery of groundwater. Groundwater recharge, replenishment and recovery are important water management tools utilized by a wide array of stakeholders. Changes limiting the ability to store and recover water within an AMA could affect numerous water users besides AMWUA members and beneficiaries, and to the extent such incentives would impact volumes of recoverable water, statutory changes would likely be necessary. Needless to say, the recharge statutes are complex and decisions related to them should not be rushed.

The Association suggests that the Department defer making any changes to the Fourth Management Plan on "incentives" relating to the location of recharge, replenishment and recovery and instead promote a future comprehensive stakeholder discussion to evaluate issues relating to the recharge statutes. Among the issues that should be evaluated is the ability of long-term storage credit holders to recover and transport stored water supplies consistent with management goals, including transport between AMAs. This stakeholder process could also be used to vet proposals as being appropriate for the Fourth Management Plan or other Departmental regulatory action versus requiring state legislation.

3. *Use of Remediated Groundwater*

AMWUA Recommendation: “ADWR should evaluate methods to reconcile the importance of limiting groundwater withdrawals in order to achieve the management goal of the AMA and the need to withdraw and treat polluted groundwater, pursuant to federal and state law, in order to achieve the equally important goal of protecting the quality of remaining groundwater.”

Association’s Comments: The Association supports incentives to promote the withdrawal, treatment and use of polluted groundwater supplies to protect the quality of remaining groundwater, including the extension of the remediated groundwater incentives provided under the 1997 WQARF statutes beyond 2025. However, any such changes will again require legislation and therefore cannot be implemented by the Department through the Fourth Management Plan. This is simply too big of an issue again to tackle within the limited scope and timeframe of the Fourth Management Plan exercise. As with the other AMWUA recommendations discussed above, however, the Association believes there could be benefit to the Department promoting a comprehensive stakeholder discussion on this issue and soliciting input on means to optimize use of remediated groundwater supplies.

We hope the Department will take the Association’s comments into consideration and provide additional opportunities for the Association and other interested parties to provide comments during the development of the Fourth Management Plans for each of the AMAs.

Sincerely,



Francis McAllister
Chairman
Arizona Mining Association

Founded in 1965, the Arizona Mining Association is a non-profit business league comprised of entities engaged in mine exploration, development, and production in Arizona. The AMA represents 24 mining related companies and 11 consulting and legal firms that have operations or offices in the State of Arizona. In 2010, AMA copper member companies produced approximately 63% of the nation’s newly-mined copper, employed approximately 10,400 workers and had an estimated direct and indirect impact of \$12.1 billion on the Arizona economy. In addition, AMA members are also engaged in the mining of molybdenum, coal, uranium, gold, and other valuable minerals, as well as providing legal and consulting work that significantly contributes to the Arizona economy.