

October 8, 2021

VIA EMAIL - nlmast@azwater.gov

Natalie Mast
AMA Director – Management Plans
Arizona Department of Water Resources
1110 W. Washington Street, Suite 310
Phoenix, AZ 85007

RE: ASARCO LLC Comments Regarding Draft Fifth Management Plant
Industrial Regulatory Language for Metal Mining Facilities

Dear Ms. Mast:

We are writing you on behalf of our client, ASARCO LLC (“ASARCO”), to provide comments on the Arizona Department of Water Resources (“ADWR” or “Department”) Draft Fifth Management Plan (“5MP”) Industrial Regulatory Language circulated by the Department on September 21, 2021. In particular, we are providing comments on Section 6.11 of draft 5MP language relating to “Industrial Conservation Requirements and Monitoring and Reporting Requirements for Metal Mining Facilities.”

It is our understanding that the draft 5MP regulatory language would largely result in a readoption of the requirements applicable to metal mining facilities under the Fourth Management Plan (“4MP”) for the Tucson Active Management Area (“AMA”) with the exception of updating compliance date language, renumbering sections and cross references, and replacing the term “reclaimed water” with “effluent” in a few provisions of Section 6.11. *See* Sections 6-1101(7), 6-1107(A)(1), 6-1107(A)(2), and 6-1107(A)(3).

ASARCO is generally supportive of the Department’s proposal to readopt the regulatory language for metal mining facilities under the 4MP. ASARCO believes that the current regulatory language adequately promotes water conservation at regulated facilities to assist in achieving AMA management goals. However, ASARCO is providing the following suggested edits to the draft 5MP language that ASARCO believes will clarify the applicability of plan requirements and provide greater flexibility to regulated facilities in achieving compliance.

First, ASARCO recommends revising the definition of “large-scale metal mining facilities” to include language clarifying that only facilities that use groundwater are subject to the management plan requirements. Specifically, ASARCO proposes the following changes (in bold and double underline) to draft Section 6-1101(7):

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“Large-scale metal mining and processing facility” means an industrial facility at which mining and processing of metallic ores is conducted **that uses groundwater**, and that uses or has the potential to use more than 500 AF of water per reporting year. For the purposes of this definition, the annual water use or potential annual water use includes all water from any source, including effluent, used or projected to be used within or by the facility, regardless of the nature of the use.

This change is consistent with the Department’s jurisdiction for implementation of the management plans under applicable statutes.

Second, ASARCO proposes the following changes (in bold and double underline) to draft Section 6-1102(F)(2):

Utilize multiple decant towers **or reclaim pumps** in single impoundments to increase decant **or reclaim** rate.

The purpose of this change is to expressly recognize the use of reclaim pumps as an acceptable alternative conservation measure under draft Section 6-1102(F).

Third, ASARCO proposes the following changes (in bold and double underline) to draft Section 6-1102(F)(3):

Convert piping to **materials equal or greater in strength to** high density polyethylene piping to increase density of transported tailings.

The purpose of this change is to provide regulated facilities with greater flexibility in choosing piping materials to increase density of transported tailings.

Fourth, although the Department’s change of the term “reclaimed water” to “effluent” in several provisions of draft Section 6.11 does not appear to impose any additional regulatory burden, ASARCO believes that the term “reclaimed water” is a better term in many contexts for metal mining facilities. The term “effluent” is defined under the draft 5MP language to have the same meaning as under A.R.S. § 45-101. Under A.R.S. § 45-101, “effluent” is defined narrowly to include only water collected in a sanitary sewer. The sources of industrial and mining reclaimed water at a metal mining facility is therefore much broader than the term “effluent” as defined under the draft 5MP language.

ASARCO understands that other entities may also be submitting comments on the draft 5MP regulatory language for metal mining facilities. ASARCO reserves the right to submit

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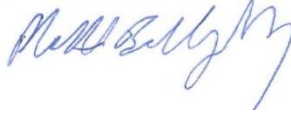
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additional comments on draft 5MP language developed by ADWR or comments submitted by other entities.

ASARCO appreciates this opportunity to provide comments on the draft 5MP language and encourages the Department to continue a dialogue with the regulated community as it develops the 5MP. If you have any questions regarding ASARCO's comments, please contact me at (602) 916-5486.

Sincerely,

FENNEMORE CRAIG, P.C.

A handwritten signature in blue ink, appearing to read "Rhett A. Billingsley".

Rhett A. Billingsley