

Updated: April 16, 2018

## **Briefing Information from Atlantic Richfield regarding Bottled Water Delivery to YPT**

### Summary:

Atlantic Richfield has not discontinued the bottled water program for the Yerington Paiute Tribe (YPT). However, the YPT has declined to grant Atlantic Richfield access to tribal property to perform bottled water delivery. The YPT disputes that NDEP has the authority to direct Atlantic Richfield to deliver water on tribal property. After consultation with YPT representatives, Atlantic Richfield delivered water to the YPT at an alternative location not on tribal property on April 4, 2018.

Atlantic Richfield intends to continue bottled water delivery to a mutually agreeable off-site location until a valid access agreement can be obtained from the YPT. At that time, Atlantic Richfield will resume the normal delivery practice as well as groundwater sampling on tribal property.

### **Background and Factual Information: Anaconda Copper Mine (Yerington) - Access for Sampling and Bottled Water Delivery to the Yerington Paiute Tribe Reservation**

1. ARC began monitoring domestic well water and delivering bottled drinking water to residents north of the Anaconda Copper Mine, near Yerington, NV site in early 2004. Investigations had not yet been conducted to determine if the uranium was attributable to releases at the mine site.
2. In 2005, EPA issued a CERCLA order requiring ARC to continue its existing domestic well monitoring program and to continue to provide bottled water "on request for those domestic and [YPT] tribal supply wells reasonably within the extent of groundwater contamination from the Site that exceed Maximum Contaminant Levels until interim mitigation measures are approved." The YPT's Campbell Ranch is about 2.5 miles north of the mine.
3. In 2011, the YPT completed construction of a water treatment plant to remove arsenic and uranium from the domestic water supply pumped from the YPT's municipal Well 4 and delivered to tribal members living on the Campbell Ranch and tribal buildings.
4. During the summer of 2016, the City of Yerington extended municipal water service to many of the non-tribal properties north of the mine that were included in the domestic well monitoring program and bottled water program. Connections were completed and domestic wells were taken out of service under a court-approved settlement in the *Roeder* class action lawsuit.
5. On September 1, 2016, ARC informed EPA it was discontinuing domestic well monitoring and bottled water deliveries to non-tribal residents north of the mine that had received City water connections under the *Roeder* settlement. ARC also requested EPA to allow it to discontinue domestic well monitoring and bottled water deliveries for properties receiving treated water from the YPT's municipal system.

6. On October 25, 2016, EPA agreed that provision of bottled water to residents hooked up to the City's public water system "is no longer necessary." However, EPA denied ARC's request to discontinue bottled water deliveries to YPT recipients pending review of an EPA-required groundwater investigation report.

7. On November 11, 2016, ARC submitted its final background groundwater quality assessment report to EPA, confirming (based on thousands of water samples collected at hundreds of monitoring wells) that mine-related impacts to groundwater do not extend as far north as the southern boundary of the Campbell Ranch. EPA approved ARC's report on January 5, 2017. However, EPA did not address ARC's request to discontinue bottled water deliveries to YPT recipients living on the Campbell Ranch and receiving treated water from the Tribe's system.

8. Throughout 2017, NDEP, EPA, and ARC discussed deferring listing of the site on the CERCLA National Priorities List and transition of CERCLA oversight to NDEP while it completes investigations and response actions at and downgradient of the site. During this period, NDEP carried out a community outreach program to gauge community acceptance for deferral, including meetings and other communications with the YPT.

9. EPA and NDEP executed a final Deferral Agreement on February 5, 2018. The Deferral Agreement documents community acceptance and tribal government consultation process that NDEP performed. It also acknowledges that post-deferral response actions on tribal land are not subject to the deferral. It states that NDEP, EPA, and the YPT would continue to work on a Memorandum of Agreement to provide a framework for coordination on response actions after deferral.

10. Also on February 5, 2018: (i) ARC and NDEP executed an Interim Administrative Order on Consent (IAOC) directing all future CERCLA investigation and remediation activities to be performed by ARC at the site under NDEP authority; and (ii) EPA and ARC executed a separate AOC, which terminated all EPA administrative orders that previously required ARC to perform CERCLA response actions at or relating to the site under EPA oversight.

11. On February 28, 2018, NDEP wrote to ARC directing that the domestic well monitoring program and bottled water program continue until NDEP could fully evaluate groundwater conditions at and downgradient of the site and develop long term plans and make appropriate determinations.

12. On March 28, 2018, ARC responded to NDEP stating it would continue the domestic well monitoring program and bottled water program until NDEP could complete the evaluation and make a determination. ARC informed NDEP that ARC already made a request to the YPT's counsel to amend the existing access agreement allowing ARC to enter to perform EPA required work. The amendment language substituted NDEP required work for EPA required work. ARC informed NDEP it would defer sampling any YPT wells until an access agreement amendment was signed. ARC expected the YPT would be receptive to an updated access agreement since the intent of the amendment was simply to allow for continuation of the programs previously required by EPA.

13. That same day, March 28, 2018, ARC received two letters from the YPT rejecting ARC's request to amend the access agreement and disputing NDEP's legal authority to require sampling on YPT property. The Tribe asserted this was a matter of tribal sovereignty, that NDEP has no jurisdiction on YPT tribal property, and that ARC's attempt to amend the access agreement to allow for NDEP-required sampling "violates the U.S. Constitution."

14. ARC immediately began preparing a response to the YPT's letters. Out of caution, ARC informed its contractor that quarterly sampling of any wells on YPT property would be postponed until the concerns raised in the YPT's letters could be addressed.

15. As of April 3, 2018, the directive requiring ARC to deliver bottled water to YPT recipients was NDEP's February 28, 2018 letter—since EPA's 2005 Order requiring bottled water deliveries terminated on February 5, 2018. Because ARC can only perform response actions as directed by NDEP, and because the YPT rejected NDEP's jurisdiction and its authority to require ARC to perform response actions on YPT property, ARC prudently chose to inform Alhambra that the following day's water delivery on YPT property needed to be suspended until the access issue could be resolved.

16. On the afternoon of April 3, 2018, ARC's contractor informed Alhambra of the need to suspend the water delivery. ARC asked Alhambra if, instead of delivering water bottles onto YPT property, the water could instead be made available for pick-up by the YPT at Alhambra's distribution facility. Alhambra said that was not possible.

17. On April 4, 2018, Mathew Moses, Alhambra's water delivery driver spoke with Shelley Cunningham and Mark Lumpkin with the YPT and told them he had been instructed not to deliver bottled water on YPT property. Mr. Moses then arranged to have the normal bottled water delivery allotment brought to a location off YPT property where YPT personnel could pick it up. That pick up occurred on April 4.

18. On April 6, 2018, ARC's counsel sent a detailed letter to counsel for the YPT responding to the YPT's March 28, 2018 letters and explaining that the YPT left ARC with no choice but to suspend monitoring and bottled water deliveries on YPT property until the YPT's concerns with NDEP jurisdiction are resolved. ARC made clear that NDEP did not direct it to suspend any bottled water deliveries. ARC also sent its letter (including six supporting documents) to NDEP and EPA. ARC spoke with NDEP (Jeff Collins and Rick Perdomo) on that afternoon to inform them of what had happened.

19. ARC's April 6 letter proposed to make bottled water available to YPT recipients at a mutually agreeable location off YPT property. The Tribe has not yet responded. Because mine-related groundwater impacts do not extend onto tribal property, and because bottled water recipients receive treated water from the YPT's municipal system, temporary suspension of bottled water deliveries on tribal property should not raise any health concerns.

20. ARC has re-affirmed its intention to comply with NDEP's directives regarding sampling and bottled water delivery. ARC intends to continue bottled water delivery to a mutually agreeable off-site location until a valid access agreement can be obtained from the YPT. At that time, ARC will resume the normal delivery practice as well as groundwater sampling on tribal property.

21. ARC remains committed to working with NDEP to ensure the orderly implementation of all required response actions at the site and timely completion of the selected remedial action in a fully CERCLA-protective manner.

22. On April 13, after conferring with NDEP on possible modifications to the NDEP order to alleviate YPT concerns about sovereignty, ARC sent a second letter suggesting potential mechanisms for

resolution of the matter. In the letter, ARC again reiterated its intention to comply with NDEP's directive regarding sampling and bottled water delivery.

23. Working with its bottled water vendor, ARC is continuing efforts to coordinate delivery of bottled water at a location off the YPT's property. Efforts are being made to arrange water delivery and we anticipate a delivery being made this week, hopefully no later than Wednesday.

24. As of April 16, 2018, ARC has had no formal response from the YPT to ARC's letters of April 6 or April 13.