

# STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

John J. Duffy  
202.429.8020  
jduffy@steptoe.com

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1330 Connecticut Avenue, NW  
Washington, DC 20036-1795  
Tel 202.429.3000  
Fax 202.429.3902  
steptoe.com

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Via FACSIMILE and ELECTRONIC MAIL

Bruce Ellis, Chief  
Environmental Resource Management Division  
U.S. Department of Interior  
Bureau of Reclamation  
Phoenix Area Office  
6150 West Thunderbird Road  
Glendale, AZ 85306-4001

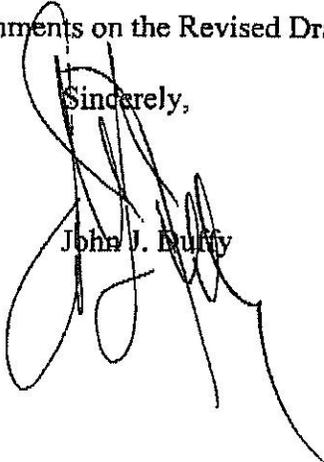
**Re: Pensus Group, LLP**

Dear Mr. Ellis:

I enclose my client's Supplemental Comments on the Revised Draft Environmental Assessment.

Sincerely,

John J. Duffy



Enc.

H-191

**Supplemental Comments of David Maule-Finch and the Pensus Group on  
the October 2006 Revised Draft Environmental Assessment for the Proposed  
Construction and Operation of the Scorpion Bay Marina and Yacht Club**

Dated: February 12, 2007

## SUPPLEMENTAL COMMENTS

The Pensus Group, LLP ("Pensus") submits this supplement to its comments on the Revised Draft Environmental Assessment ("RDEA"), which it filed November 17, 2006. In its comments, Pensus noted that: "[I]t is inappropriate for BOR to rely on 2002 PM10 emission assumptions given the large amount of PM10 data developed by Maricopa County, the Maricopa Association of Governments, ADEQ, and EPA since 2002 as part of the Salt River State Implementation Plan development and other analyses conducted since that time." Comments at 15.

Pensus is filing these Supplemental Comments in order to bring to the Bureau of Reclamation's attention the Draft 2005 Periodic Emissions Inventory for PM10 ("2005 Emissions Inventory"), which was released for public review on January 23, 2007 by the Maricopa County Air Quality Department (MCAQD). BOR should be aware of these new estimates since it is working with Maricopa County in the preparation of BOR's Environmental Assessment, and, in particular, with MCAQD in connection with the evaluation of boat motors as a source of air pollution. Nevertheless, because of the importance of this issue in light of Maricopa County's failure to meet federal clean air standards (see attachment), in an abundance of caution Pensus is filing these supplemental comments.

Pensus's supplement is timely filed. The 2005 Emissions Inventory was issued approximately two weeks ago, and Pensus was unaware of it until recently. BOR has not concluded its examination of the air pollution impacts of the proposed new marina, as demonstrated by its request for access to Pensus's Pleasant Harbor Marina to gather additional information.

Several of the new assumptions made by MCAQD in the 2005 Emissions Inventory directly contradict the assumptions made in the Revised Draft EA, which was based in part on Maricopa County's now outdated 2002 Emissions Inventory. BOR has an obligation under NEPA to use the best available data in its environmental analysis, which Pensus believes requires the use of these new estimates. Accordingly, Pensus believes that BOR should review the new 2005 Emissions Inventory, and update its emissions estimates for the proposed marina, prior to determining whether the proposed marina would have a "significant impact" on the environment.

Our analysis -- set forth below -- shows that the new estimates for release of particulate matter (PM10) from the construction of the new marina alone would place the proposed marina above the threshold of 70 tons, requiring a conformity determination. Construction emissions are relevant because a conformity determination is required if PM10 emissions exceed 70 tons in any one year. In other words, regardless of the contribution of boat motors to the total PM10 emissions, a conformity determination is necessary in any event based on construction estimates alone.

There are numerous differences between the assumptions in the 2005 Emissions Inventory and the assumptions in the Revised Draft EA. First, the 2005 Emissions Inventory

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SC1-2

estimates that the "effectiveness" of Rule 310 is 44% (Rule 310 applies to dust generating activities in Maricopa County, and would apply to construction activities and haul traffic associated with the proposed marina). The Revised Draft EA, however, estimates that control measures would be 70% effective at controlling emissions.

Second, the 2005 Emissions Inventory provides an emissions factor of 0.19 tons PM10/acre-month for commercial construction. The Revised Draft EA used an emissions factor of 0.11 tons PM10/acre-month for construction activities.

Third, the 2005 Emissions Inventory assumes an eleven-month duration for commercial construction activities. The Revised Draft EA estimated only six months.

The following tables show the significant impact these factors have on PM10 estimates:

**Construction Activities**

	Acreage	Project Duration (months)	Emission Factor (tons PM10/acre-month)	Control Efficiency factor (1 - control efficiency)	Emissions
<b>Revised Draft EA Estimate</b>	42	6	.11	.3	8.316
<b>Estimate based on 2005 Emissions Inventory</b>	42	11	.19	.56	49.1568

SC1-2

**Fugitive Dust from Haul Trucks**

	Uncontrolled Emissions	Control Efficiency Factor (1-control efficiency)	Emissions
<b>Revised Draft EA Estimate</b>	32 tons	.3	9.6
<b>Estimate based on 2005 Emissions Inventory</b>	32 tons	.56	17.92

As the tables show, the Revised Draft EA, when compared to MCAQD's 2005 Emission Inventory, seriously underestimates emissions from haul-truck traffic and construction activities. Whereas the Revised Draft EA concluded that emissions from these two sources were only 17.916 tons, an estimate based on the 2005 Emissions Inventory yields 67.0768 tons. Combine these two categories with other emissions associated with the proposed project (such as quarrying operations, 8.334 tons), and the total project emissions clearly exceed the conformity threshold of 70 tons.



## Critics soften clean-air bill

Mary Jo Pitzl, Matthew Benson and Jessica Coomes  
The Arizona Republic  
Feb. 8, 2007 12:00 AM

Gov. Janet Napolitano joined with two Republican state senators Wednesday to propose an attack on the Valley's air pollution, but their strategy encountered immediate opposition in the Legislature.

The Democratic governor stood alongside Sens. Carolyn Allen and John Huppenthal in the Capitol courtyard as they announced a plan that would get tough on leaf blowers, ban outdoor burning on high-pollution days and expand areas in Arizona that require vehicle-emissions tests.

But by the end of the day, the bill designed to achieve those and other goals had been changed in the Senate Natural Resources and Rural Affairs Committee, where provisions such as a ban on agricultural tilling on high-pollution days were removed.

Sen. Jake Flake, R-Snowflake, the committee's chairman, said it was "premature to put that heavy of a bill through" and called his amendment an effort to "tone that down a bit."

The effort by Napolitano, Allen and Huppenthal is driven at least in part by a federal mandate. The Valley missed its end-of-year deadline to reduce the level of dust and other particulates in the air. Now, officials have until the end of 2007 to present a plan to reduce emissions from the air by 5 percent annually until the federal standard is met.

"Every Arizona resident deserves to have healthy air. It is a basic," Napolitano said Wednesday. "We need a partnership with the community, and we need a partnership with the Legislature to get this done."

The risk of failure goes beyond the hazards of breathing foul air. Maricopa County, just the second in the country to go on the federal Five Percent Plan, faces federal sanctions that include the loss of up to \$1.1 billion in highway funds.

But air pollution has long been a Valley problem. Just hours after Napolitano and the Republican senators announced their intentions, it became evident that a battle looms.

The gist of Flake's concerns: some information has yet to come in from pollution computer models and from a committee looking at best practices in other states for cutting pollution. Also, Flake said more of the industries affected by air-quality regulations need a say in creating them.

Some of those same groups, from agricultural interests to the home builders, are raising concerns about new rules.

The development industry and the dust it kicks up are often cited as a leading pollution culprit.

Spencer Kamps, vice president of the Home Builders Association of Central Arizona, said his group already faces the nation's

toughest regulations on earthmoving and will resist an additional crackdown.

He pointed the finger at less-regulated polluters: Vacant lots. Four-wheelers. Dirt roads. Agriculture.

"Everybody who's not regulated and emits dust needs to be regulated," Kamps said. "The strategy to date, for the last 20 years, has failed."

Allen, who represents Scottsdale, was frustrated by the wholesale changes to her bill but remained supportive in order to keep the measure alive.

"We have to stay in this together," she said. "We cannot afford to lose our transportation money."

"We pushed this thing together, so (the Environmental Protection Agency) knows we in Arizona are serious about this."

Pieces of the bill that survived Wednesday included a provision that bans leaf-blower use during high-pollution days, as well as a prohibition on outdoor, open fires in metropolitan Phoenix between May 1 and Sept. 30. Similar efforts to rein in leaf-blower use have failed in past years, in no small part because of complaints from the landscaping industry.

Time remains to shape the bill, however. What shape it ultimately takes will depend on political will and maneuvering.

"It is man-made activities that are causing the air pollution problems in the Valley," Huppenthal said. "This is a challenge we have to confront. We have no choice."

**RESPONSE TO COMMENT LETTER NO. SC1**  
**STEPTOE & JOHNSON LLP for DAVID MAULE-FFINCH & PENSUS GROUP**

- SC1-1. Reclamation has updated its calculations of temporary emissions anticipated to be generated by construction-related activities, as well as long-term emissions from operation of boat motors stored at the proposed marina. These calculations, and the emission factors used are provided in Appendix D of the final EA. Our calculations of both temporary and long-term emissions indicate the *de minimis* thresholds of PM<sub>10</sub> would not be exceeded. Please see response to Comment I-7.
- SC1-2. We believe the commenter either misunderstood or misinterpreted information presented in the public review draft of Maricopa County's 2005 PM<sub>10</sub> Emissions Inventory. The comments reference County-wide estimates compiled for 2005 that were generated from a combination of input prepared by both MCAQD and the Maricopa Association of Governments (MCAQD 2007). For the EA, potential emissions resulting from the proposed project were calculated using emission factors identified in Maricopa County Air Quality Department's Emission Inventory Help Sheet for Vehicle Travel on Unpaved Roads and Emission Inventory Help Sheet for Sand and Gravel Plants, emission factors identified in MCAQD's most recent emissions inventory for a given pollutant, and EPA's "Compilation of Air Pollutant Emission Factors: Volume 1: Stationary Point and Area Sources," also commonly referred to as AP 42 (EPA 1995). For PM<sub>10</sub> specifically, the most recent emissions inventory would be the 2005 PM<sub>10</sub> Emissions Inventory public review draft dated January 23, 2007. Appendix D has been revised to more clearly identify the sources of each emission factor that were used.

The 70 percent effectiveness, used to calculate construction-related PM<sub>10</sub> emissions, was taken from Maricopa County Air Quality Department's Emission Inventory Help Sheet for Vehicle Travel on Unpaved Roads which states "A control efficiency (column 23) of 70% is allowed for regular watering." (Maricopa County 2005). Regular watering of the construction site would be implemented using CAP water from Lake Pleasant. The 0.11 ton/acre-month emission factor was identified in the 2005 PM<sub>10</sub> Emissions Inventory for site preparation/land development. We utilized a 6-month duration for construction because that is the actual construction schedule for the proposed project's first phase. In reviewing our emission calculations, we discovered we had inadvertently omitted other potential PM<sub>10</sub> emissions such as fugitive dust related to loading and unloading rockfill material. Our total revised estimated temporary PM<sub>10</sub> emissions related to Phase I construction activities would be about 19 tons during the year in which construction occurs. This is well below the 70 tons per year *de minimis* threshold for PM<sub>10</sub>. There would be only an incidental amount of fugitive dust generated related to implementation of the remaining phases of construction. These minimal emissions would not be generated in the same year as those occurring during Phase I. They also would not result in PM<sub>10</sub> emissions greater than 70 tons per year when combined with recurring annual emissions related to watercraft operations.