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ARIZONA CORPORATION COMMISSION

December 17, 1993

Martin R. Miller, Esq.  
Orrick, Herrington & Sutcliffe  
599 Lexington Avenue, 29th Floor  
New York, New York 10022-6030

RE: The Industrial Development Authority of the County of Greenlee, Arizona Pollution Control Revenue Refunding Bonds (Phelps Dodge Corporation Project) Series A  
A.R.S. § 44-1843(A)(1) and A.R.S. § 44-1843.01(A)(1)

Dear Mr. Miller:

On the basis of the facts set forth in your letters of December 3, 1993 & December 10, 1993, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letters.

As this position is premised upon the facts set forth in your letters, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We also draw your attention to R14-4-104(5) which requires that securities exempt from registration under A.R.S. § 44-1843(A)(1) be sold by Arizona registered dealer and salesmen.

We have attached photocopies of your letters. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

DEE RIDDELL HARRIS  
Director of Securities

DRH:ph  
Enclosures

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**O**RRICK, HERRINGTON  
& SUTCLIFFE

December 3, 1993

VIA FEDERAL EXPRESS

Ms. Lynn Naefach  
Assistant Director for Corporation Finance  
Corporation Commission,  
Securities Division  
1300 West Washington Street, Third Floor  
Phoenix, Arizona 85007

Re: The Industrial Development Authority  
of the County of Greenlee, Arizona  
Pollution Control Revenue Refunding Bonds  
(Phelps Dodge Corporation Project) Series A

Dear Ms. Naefach:

After a review of the Arizona Securities Act (the "Act"), and the published no action letters and policy statements we request that you issue a no action letter that the offering would be exempt from registration in Arizona because the above referenced Bonds would be exempt pursuant to Section 44-1843.A.1 of the Act as those of a political subdivision of Arizona.

We are writing to you regarding the Pollution Control Revenue Refunding Bonds (Phelps Dodge Corporation Project) Series A (the "Bonds") of The Industrial Development Authority of the County of Greenlee, Arizona (the "Authority").

Last week I spoke to you with regard to this offering. The question presented is whether the Arizona Corporation Commission interprets Section 44-1843.01 A.1 of the Act to provide an exemption for municipal bonds which are issued to refund previously issued bonds issued for a purpose listed in Section 44-1843.01 A.1. Specifically the Bonds are being issued to refund bonds originally issued for certain pollution control facilities. And thus, were within the language of 44-1843.01 A.1. "securities which are industrial development bonds as defined in Section 103 of the Internal Revenue Code of 1954, except the provisions of this paragraph shall not apply to any

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& SUTcliffe

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issue where substantially all the proceeds are to be used to provide ... air or water pollution control facilities."

The Authority is a political subdivision of the State of Arizona and is authorized under the provisions of the Industrial Development Financing Act, Title 35, Chapter 5, as amended, Arizona Revised Statutes, to issue the Bonds and to enter into and perform its obligations under the Loan Agreement and the Indenture. The Bonds to be issued by the Authority in the aggregate principal amount of \$81,100,000. The Bonds will be issued pursuant to an Indenture of Trust (the "Indenture") dated as of December 1, 1993 between the Authority and The Chase Manhattan Bank, N.A. (the "Trustee").

Pursuant to an Indenture of Trust dated September 1, 1973 (the "Original Indenture") and a First Supplemental Indenture of Trust dated March 1, 1974 (the "Supplemental Indenture" and collectively with the Original Indenture, the "Prior Indenture"), the Authority issued \$60,000,000 aggregate principal amount of the Authority's Pollution Control Revenue Bonds (Phelps Dodge Corporation Project), Series A, dated September 1, 1973 (the "1973 Series A Bonds") and \$38,700,000 aggregate principal amount of its Pollution Control Revenue Bonds (Phelps Dodge Corporation Project), Series B, dated March 1, 1974 (the "1974 Series B Bonds") and loaned the proceeds of the sale of the 1973 Series A Bonds and the 1974 Series B Bonds to Phelps Dodge Corporation (the "Corporation") to finance the cost of acquiring, constructing and installing certain pollution control facilities at the Corporation's Morenci copper mine, mill and smelter located at Morenci, Arizona, pursuant to a Loan Agreement dated September 1, 1973 between the Authority and the Corporation (the "1973 Loan Agreement"). In accordance with the 1973 Loan Agreement, the Corporation executed its Series A Pollution Control Note and its Series B Pollution Control Note to evidence its obligation to repay such loans by paying the principal, premium, if any, and the interest on the 1973 Series A Bonds and the 1974 Series B Bonds.

The Authority proposes to enter into a Loan Agreement with the Corporation to be dated as of December 1, 1993 (the "Loan Agreement") pursuant to which the Corporation is obligated to execute and deliver to the Trustee, concurrently with the sale and delivery by the Authority of the Bonds issued for the purpose of funding a loan to the Corporation to redeem certain

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& SUTcliffe

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outstanding bonds of the Authority described above, a promissory note (the "Refunding Pollution Control Note"). The proceeds of the sale of the Bonds and certain funds provided by the Corporation, together with investment earnings thereon, will be used to redeem the entire outstanding principal amount of the 1973 Series A Bonds (which are subject to optional redemption in whole at any time on or after September 1, 1983) and the entire outstanding principal amount of the 1974 Series B Bonds (which are subject to optional redemption in whole at any time on or after March 1, 1984) in accordance with their terms. The 1973 Series A Bonds and the 1974 Series B Bonds (collectively, the "Refunded Bonds") will be paid in part at maturity and redeemed on March 1, 1994. Until the Refunded Bonds are redeemed, the Refunded Bonds will be outstanding under and within the meaning of the Prior Indenture and will be on a parity with, and secured in the same manner as, the Bonds (except that the Refunded Bonds will also be secured by the proceeds of the sale of the Bonds and certain other funds provided by the Corporation).

The Bonds are limited obligations of the Authority, payable solely from the revenues and receipts derived by the Authority pursuant to the Loan Agreement and the Refunding Pollution Control Note. The Loan Agreement provides that the Corporation is unconditionally obligated to make payments with interest, in the amounts and at the times required to pay the principal or redemption price of, and interest on, the Bonds and any other outstanding bonds issued under the Indenture.

It is my understanding based on conversation with you and other persons on the staff of the Arizona Corporation Commission that the Securities Division "looks through" in a refunding to the purpose or use of proceeds of the original bonds which are being refunded. This also appears to be the position demonstrated in a number of published no action letters where the securities being offered were refunding previously issued bonds with an exempt purpose. See CCH Blue Sky Law Reporter ¶9654 and ¶9646. In addition, in a published no action letter request that I submitted last year, see CCH Blue Sky Law Reporter ¶9657, one of my arguments which was rejected by your office was that proceeds of Certificates of Participation in that transaction were only being used to refund other securities which were previously offered to fund certain work for a nonexempt nursing home and not to pay for any new work at the nursing home. Thus, since your office looked through to reject my argument on that

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transaction, I feel it should look through to the purpose of the refunded bonds on this offering to see the basis for the exemption.

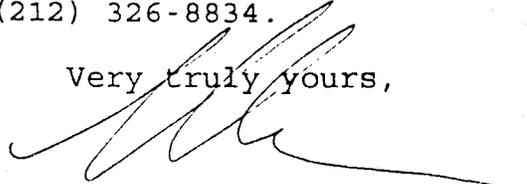
Further, it would seem to be in keeping with the idea behind the list of purposes for which "IDB" offerings can be exempt from securities registration in Arizona to include as also exempt bonds issued to refund or refinance bonds issued for such favored purposes, including pollution control facilities. To find otherwise would penalize issuers by adding the cost of registration or the timing problems of 44-1842.01 B. to the offering done only to refund old bonds issued for these purposes. Issuers that would otherwise benefit from the reduced interest expense of refunding old bonds may decide not to do so.

This office requests that you take a no-action position in writing with regard to the offering of the Bonds.

Enclosed is a check in the amount of \$200 for the fee for our request. Enclosed also is a draft of the preliminary official statement.

Please feel free to contact me with any comments or questions you may have at (212) 326-8834.

Very truly yours,



Martin R. Miller

Enclosure

**O**RRICK, HERRINGTON  
& SUTCLIFFE

December 10, 1993

VIA TELECOPIER

Ms. Pamela Hesse  
Assistant Director for Corporation Finance  
Corporation Commission,  
Securities Division  
1300 West Washington Street, Third Floor  
Phoenix, Arizona 85007

Re: The Industrial Development Authority  
of the County of Greenlee, Arizona  
Pollution Control Revenue Refunding Bonds  
(Phelps Dodge Corporation Project) Series A

Dear Ms. Hesse:

After a review of the Arizona Securities Act (the "Act"), and the published no action letters and policy statements we requested that you issue a no action letter that the offering would be exempt from registration in Arizona because the above referenced Bonds would be exempt pursuant to Section 44-1843.A.1 of the Act as those of a political subdivision of Arizona.

We wrote to you regarding the Pollution Control Revenue Refunding Bonds (Phelps Dodge Corporation Project) Series A (the "Bonds") of The Industrial Development Authority of the County of Greenlee, Arizona (the "Authority").

The question presented in our request was whether the Arizona Corporation Commission interprets Section 44-1843.01 A.1 of the Act to provide an exemption for municipal bonds which are issued to refund previously issued bonds issued for a purpose listed in Section 44-1843.01 A.1. Please see my letter of December 3, 1993 for a discussion of our arguments in favor of a "no-action" position.

When we spoke this week, you asked me to elaborate on the Authority being political subdivision of Arizona. The Authority is a political subdivision of the State of Arizona and is authorized under the provisions of the Industrial Development

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December 10, 1993  
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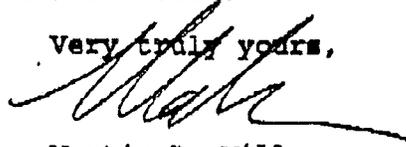
Financing Act, Title 35, Chapter 5, as amended, Arizona Revised Statutes, to issue the Bonds and to enter into and perform its obligations under the Loan Agreement and the Indenture. Section 35-702 A. provides that corporations formed pursuant to the Industrial Development Financing Act, are political subdivisions of the state of Arizona. A copy of this section is attached.

In addition there is an Opinion of the Attorney General, No. I89-098 which is also mentioned in "Notes of Decisions" on the attached page.

This office requests that you take a no-action position in writing with regard to the offering of the Bonds.

Please feel free to contact me with any comments or questions you may have at (212) 326-8834.

Very truly yours,



Martin R. Miller

Enclosure