

# LEWIS BRISBOIS BISGAARD & SMITH LLP

ATTORNEYS AT LAW

221 NORTH FIGUEROA STREET, SUITE 1200, LOS ANGELES, CA 90012  
PHONE: 213.250.1800 | FAX: 213.250.7900 | WEBSITE: [www.lbbsslaw.com](http://www.lbbsslaw.com)

**KIMBERLY A. HUANGFU**  
DIRECT DIAL: 213.580.3907  
E-MAIL: [huangfu@lbbsslaw.com](mailto:huangfu@lbbsslaw.com)

October 3, 2008

FILE NO.  
27175-02

## ***POSTED VIA COURT WEBSITE***

Lee Leininger  
U.S. Department of Justice  
Environmental & Natural Resources Division  
1961 Stout Street, 8th Floor  
Denver, CO 80294

Re: *Antelope Valley Groundwater Litigation*  
*Santa Clara County Superior Court Case No. 1-05-CV-049053*  
*Judicial Council Coordination Proceeding 4408*

Dear Mr. Leininger:

On September 30, 2008 at 2:05 p.m., we received an e-mail in which you indicated that you did not have time to review Dr. Lambie's report prior to his scheduled deposition that day. The United States ("U.S.") reserved its right to depose Dr. Lambie beyond that day to fully complete its questioning on his facts and opinions expressed in his report. You also reserved your right for an order barring Dr. Lambie's testimony. Given that the U.S. did not file a Motion *In Limine* moving to exclude Dr. Lambie's testimony, we will only address the issue of his continued deposition.

As you may know, the Case Management Order dated September 9, 2008 provides that "All deponents are directed to produce their file, and any other requested materials for the Phase 2 trial for inspection, to the greatest extent possible, at least three business days before the date set for the deposition . . ." (Court's Case Management Order ("CMO"), Sept. 9, 2008 at pg. 2, ¶7, lln. 18-22.) As a further clarification to the CMO, Mr. Orr, in an e-mail dated September 8, 2008, indicated that the "to the extent possible" relating to production of the expert file was an "option, not a requirement." (See Orr E-mail, Sept. 8, 2008 at 1:38 p.m. attached hereto as Exhibit 1, "[T]hat's why we have 'to the extent possible' – option, not requirement . . ." . . . "an advance production will not always be possible.") Thus, as you can see, there was no obligation to produce any report prior to the deposition if it was not possible to do so.

ATLANTA | CHICAGO | FORT LAUDERDALE | LAFAYETTE | LAS VEGAS | LOS ANGELES | NEW ORLEANS | NEW YORK  
ORANGE COUNTY | PHOENIX | SACRAMENTO | SAN BERNARDINO | SAN DIEGO | SAN FRANCISCO | TAMPA | TUCSON

Lee Leininger  
October 3, 2008  
Page 2

It was not possible to do so. We produced the report as timely as possible under the CMO. As discussed in Anaverde's Ex Parte Application hearing regarding outstanding discovery meet and confer issues, merely one week before Dr. Lambie's scheduled deposition, Anaverde required additional production of documents which several parties, including Los Angeles County Water Works District No. 40, and Quartz Hill had not yet provided. That production of documents has been slowly ongoing up until and through yesterday, October 2, 2008. As a result, the completion of Mr. Lambie's report occurred shortly before the time and date of posting to the Court's website. As a courtesy, although not legally required to do so, Anaverde also emailed the report to all counsel, in addition to this posting.

Having received Dr. Lambie's report at the same time as the U.S., all other parties proceeded with the deposition. The U.S. simply chose not to do so when Dr. Lambie was available.

Very truly yours,

/s/

Kimberly A. Huangfu  
LEWIS BRISBOIS BISGAARD & SMITH LLP

KAH:me