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March 21, 2013

RE: ***Antelope Valley Groundwater Litigation***
Case No. 1-05-CV-049053
Your Letter dated March 20, 2013

Dear Mr. Kuhs:

Quartz Hill has attempted, for decades, to maximize imported water. You incorrectly state that it doubled its groundwater production in 2008 and 2010. The opposite is true. Quartz Hill maximized, within reason, its imported water from the state water project, for 2009, 2011, and 2012. This was done at great expense to the district, and for the health of the basin. The reason Quartz Hill had to pump more in 2008 and 2010 was because those were dry years for the state water project, so there was less imported water available. Mr. Reed testified about this during his deposition in some detail.

The new well Quartz Hill recently drilled was for redundancy. There was no testimony that this was for the purpose of pumping more groundwater. Quartz Hill did not need a new well to dramatically increase its groundwater pumping. Quartz Hill keeps its groundwater pumping low to improve the health of the basin, not because it does not have the ability to pump more.

You did not get the information you desired about imported water return flows from Chad Reed, the general manager of Quartz Hill Water District, at his deposition for the reason Mr. Reed is neither an attorney nor an expert. During this deposition you spent an inordinate amount of time focused on the subject of imported water return flows.

Imported water return flows is a mixed question of law and fact. In the Phase 3 trial, the Court selected a Total Safe Yield that was the result, in part, of a calculation that multiplied imported water used for municipal use against 39.08% and imported water used for agriculture against 33.33%. The sum of these numbers, along with other factors, resulted in the Total Safe Yield determined by the court. This imported water, after the reduction of these percentages is what we commonly refer to as “Imported Water Return Flow.”

The law is quite clear that Quartz Hill Water District, as any other party, has the right to pump the return flows from the water it imports. This is a legal question. Your numerous questions demanding Mr. Reed to provide his opinion as to this legal question were improper. If you wish to pose questions concerning mixed questions of law and fact, a deposition of a non-lawyer is not the proper discovery mechanism to do so. A non-lawyer deponent can answer questions of fact only.

Also improper were all of the many and varied questions regarding the amount of the return flow that were reasonably and beneficially used. “Reasonable and Beneficial Use” is also legal question. Mr. Reed testified that all of the imported water return flows that Quartz Hill pumped were reasonably and beneficially used. Mr. Reed testified that the water was delivered to the residents of Quartz Hill. Quartz Hill Water District use the water it imports and pumps to serve its customers, the people who live in Quartz Hill. Mr. Reed testified, and I agree, that serving water to people is a reasonable and beneficial use.

Your clients are free to disagree and claim that serving water to people is not a reasonable and beneficial use. This is a legal question, and not a proper deposition question.

You also asked Mr. Reed for the quantity of imported water return flows that Quartz Hill Water District pumped. Mr. Reed did testify as to the amount of water Quartz Hill pumped, but you were unsatisfied with this response, you wanted the amount of imported water return flows that Quartz Hill pumped.

As discussed above, the amount of imported water that returns to the aquifer was decided in the Phase 3 trial, 39.08%. Your question thus asks for either the application of the law in applying the Phase 3 judgment or the recalculation of imported water return flows, which is the subject of expert opinion, and therefore an improper subject for percipient witness testimony.

Mr. Reed is neither an attorney nor an expert. All of your questions asking Mr. Reed what rights Quartz Hill had to the return flows from the imported water it purchases, and asking him to quantify or calculate those rights to the water, were improper.

A meet and confer requires the identification of the evidentiary objection, and an explanation of why the objection was improper. The only evidentiary objection identified in your letter was an objection I interposed based upon attorney client privilege.

You state this objection was improper because you believe Mr. Reed should have stated who prepared Exhibit D. The basis of your belief is because Mr. Reed the verified the discovery. A second reason you proffer is because Mr. Reed testified the data (the groundwater pumping and imported water) that is on Exhibit D came from him.

It is virtually a universal practice for the attorney to assist the client in the preparation of discovery responses. The attorney client privilege is not waived in that circumstance. Mr. Reed’s testimony that he was the source of the information on Exhibit D also does not waive any attorney client privilege.

You have the data and you know the data came from Mr. Reed, the general manager of Quartz Hill Water District. You asked Mr. Reed numerous questions regarding this information. In addition to being privileged, inquiries regarding who prepared Exhibit D and how those people prepared it is not relevant. Your question intruded upon the attorney client privilege, and the objection was appropriate. In such places where your questioning called for unprivileged facts, such as the accuracy of the data and the origin of the data set forth in Exhibit D, you obtained answers to your questions.

Your letter demands the response to three other questions. You want to know Mr. Reed's home address. You want to know if he is aware of any records that show how much water Quartz Hill Water District pumped beginning with the year 2000. You want to know what quantity of return flows were put to reasonable and beneficial use.

You do not identify any objections I made to these questions. I use my best recollection of the deposition to respond to each of the three questions.

Your request for Mr. Reed's home address is improper. Mr. Reed is not a party to this action, he is simply the person most knowledgeable at Quartz Hill about a variety of subjects relevant to this trial. You have the ability to make the person most knowledge appear at the Phase 4 trial simply by filing a notice to appear on Quartz Hill for its person most knowledgeable concerning whatever relevant subjects you choose. Your demand of his home address is simply an attempt to harass and intimidate. This effort was highlighted by your use of profanity when I instructed Mr. Reed to not disclose his home address.

This case is of some public controversy in the Antelope Valley, and someone has been sending vile hate mail Los Angeles County Water Works District 40. Mr. Reed and his family should not be subject of this same hate mail – or perhaps worse.

Further, as I said during the deposition, Mr. Reed has a right to privacy under Article 1, Section 1 of the California Constitution. This has been affirmed by the California Supreme Court (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1019) and the United States Supreme Court (*U.S. Dept. of Defense v. Federal Labor Relations Authority* (1994) 510 U.S. 487, 500).

And of course, where Mr. Reed and his family live is totally irrelevant to anything any party legitimately cares about in this litigation. Unless you have a specific reason why Mr. Reed's home address is relevant to any issue to be adjudicated in the Phase 4 trial or likely to lead to the discovery of evidence that will be admissible in that trial, I see no reason why he should be required to divulge such private and potentially harmful information.

With respect to records which would show how much water was pumped after 2000, I recall that Mr. Reed *answered* such questions, which you posed yourself.

As to the specific issue you raise concerning quantity of the return flows put to reasonable and beneficial use, I have already discussed that matter at some length above in this correspondence.

You claim that Mr. Reed was obligated to bring additional documents to the deposition, and that it was improper for him not to look for them, or to bring them.

I filed timely objections to the documents you reference in your letter. You made no attempt to meet and confer regarding those objections prior to the deposition. I also objected to your failure to identify the subject matter of the deposition, which was contrary to the order of Judge Komar. You made no attempted to meet and confer on this issue either.

As of the date of this letter, you still have not made any attempt to meet and confer regarding the objections I made to the document requests. The letter you posted yesterday does not mention a

single evidentiary objection I made, or why you think any such objection was improper. Your letter does not even mention I objected to the documents demanded in the deposition notice.

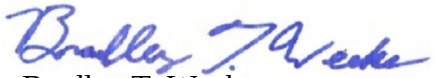
My timely service of written objections to the documents you requested relieved my client of the obligation to produce them, Code of Civil Procedure section 2045.460. If you wanted my client to produce these documents, or perhaps to narrow the scope of the demand so that the documents demanded could be reasonable ascertained, the burden was upon you to meet and confer with me regarding the objections to the documents. Neither you, nor anyone else, did so. Consequently, Mr. Reed was not under any obligation to produce the documents you complain were not produced.

I also note that the documents requested do not reasonably relate to current pumping, in violation of Judge Komar's first and second amended case management order for the phase 4 trial.

Your letter states that if my client does not agree take certain actions, you will arrange a conference call with Judge Komar to discuss a motion in limine. You of course may make a motion in limine at any time, but under the Code of Civil Procedure, a motion in limine is an inappropriate response to a deposition objection that is contended to have been improper.

The only objection you mention in the entire letter is my objection based upon attorney client privilege. Upon review, that objection was proper. I have attempted herein in good faith to understand your other concerns. If there are any other objections you would like to discuss, please identify them to me, and state why you think they were improper. At this time, however, Quartz Hill does not consider your concerns well-taken, does not agree on any extension of time for your client to file motions with respect to those matters, and respectfully declines to withdraw its objections and instructions, for the reasons stated above in this correspondence and on the record in Mr. Reed's deposition.

Sincerely,



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