

EXHIBIT D

Mike McLachlan

From: Mike McLachlan
Sent: Saturday, January 25, 2014 7:48 AM
To: 'Jeffrey Dunn'; Robert Kuhs (rgkuhs@kuhsparkerlaw.com); Michael T Fife (mfife@bhfs.com) (mfife@bhfs.com); Wes Miliband (wmiliband@awattorneys.com) (wmiliband@awattorneys.com); Imcelhaney@bmblawoffic.com
Cc: Wellen, Warren; Richard Zimmer; Sloan, William M.; Dan Oleary
Subject: RE: AV Adjudication Proceedings - USGS MODFLOW files

Jeff,

I am in receipt your letter of late yesterday afternoon, which I find to be quite disingenuous and unproductive.

Dr. Williams in fact produced a single notebook that any of us could take with us, and claims to have put most but not all of the remaining printed materials in the two boxes onto a disc -- a disc which he admitted did not contain the core of his work-product on this case. All I said on Thursday is that I would look at the disc to find out if the small packet of L&S materials Lee had copied were found on the disc. The witness was unclear as to what all he received from L & S, and it is quite clear this document cannot be all that consisted of the work that firm did with regard to the revised pumping. The larger problem is that Dr. Williams could not give a clear answer to that question -- one that you have now had over a week to answer but have not.

The statement that "the digital model input and output files are available and have been available since Wednesday" is both wrong, and not terribly helpful. All of us on the opposite side of the table made it clear that we wanted the witness' complete file, including all of the model files and the rest. It is not opposing counsels job to come get it; it is your job to produce them (in this case at some point prior to the deposition per the CMO, and then again at the deposition). Further, you did not offer to make the output files available until Thursday, and have yet to produce those materials in any forum. Finally, in the deposition you indicated that we would have to sign some sort of agreement whereby we would agree not to 'modify the input files.' Are you now waiving that agreement? If not, then were you planning on producing the files prior to giving us the agreement?

As to the rough transcript for Dr. Williams, I have been trying to get a copy of it from Veritext since Thursday, and they have to this point not provided it.

If you are going to insist on presenting the model at trial, we are going insist on full and fair opportunity at discovery and cross-examination. The suggestion that Dr. Williams submitted to a meaningful deposition is simply wrong, for numerous reasons generally discussed before. I think this is a case where it may be helpful to produce his lead modeler for deposition after we have had time to assess the materials.

At the Court's next convenience, I am going to make an ex parte application to continue the trial, at least as to return flows, and to seek advice from the Judge on the underlying discovery issues here. Meanwhile, if you want to produce the balance of Dr. Williams' files, you may send them to my office.

Mike McLachlan

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From: Jeffrey Dunn [<mailto:jeffrey.dunn@BBKLAW.COM>]

Sent: Wednesday, January 22, 2014 3:58 PM

To: Robert Kuhs (rgkuhs@kuhsparkerlaw.com); Mike McLachlan; Michael T Fife (mfife@bhfs.com) (mfife@bhfs.com); Wes Miliband (wmiliband@awattorneys.com) (wmiliband@awattorneys.com); lmcelhaney@bmblawoffic.com

Cc: Wellen, Warren

Subject: AV Adjudication Proceedings - USGS MODFLOW files

Counsel,

As we discussed during the deposition last Thursday, District No. 40 has been working on making computer USGS MODFLOW files available.

You can contact me via email to make arrangements to obtain a copy of all of the USGS Modflow model files inputted by Dr. Williams. You will need to make an agreement that the produced files cannot be modified, changed or altered.

Jeff.

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