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OUR FILE NO.

WILLIAM C. KUHS
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September 19, 2008

1291.01

VIA POSTING TO COURT WEBSITE

Douglas J. Evertz
Luce, Forward, Hamilton & Scripps LLP
2050 Main Street, Suite 600
Irvine, CA 92614

Re: Antelope Valley Groundwater Cases

Dear Mr. Evertz:

We are in receipt of your amended expert witness declaration filed on September 18, 2008. The amended declaration jointly submitted by 14 parties (collectively the "Public Water Purveyors") is untimely, inadequate and procedurally defective.

This court ordered disclosure of experts on August 15, 2008. Tejon Ranchcorp ("Tejon") disclosed Richard Rhone and E. John List, both of whom produced comprehensive reports. The City of Los Angeles disclosed Timothy Durbin and the United States disclosed Dr. Orbedorfer, each of whom produced a report. In contrast, the Public Water Purveyors designated three experts, Mr. Scalmanini, Mr. Utley, and Dr. Williams, none of whom produced a report.

Although Code of Civil Procedure section 2034.260 does not require a report, given the collective resources of the Public Water Purveyors and the time of involvement in this adjudication, one would expect at least a good faith description of each designated expert's proposed opinion in this matter. Instead, the Public Water Purveyors have refused to make a good faith and timely disclosure, and allowed their experts to "go to school" on the opinions of others.

The Public Water Purveyors' amended disclosure 33 days after the ordered disclosure date, 14 days after the supplemental disclosure date, and only 18 days before trial is not only untimely, but grossly prejudicial. The excuse that you were on vacation from August 21 through August 26, 2008 is not compelling and does not excuse 33 days of delay. Another lawyer in your firm or counsel for anyone of the 14 parties who joined in the initial disclosure could have taken action to timely supplement the inadequate disclosure in your absence.

Douglas J. Evertz
September 19, 2008
Page 2

The September 3, 2008 meeting of some members of the Technical Committee discussed in paragraph 5 of your declaration is confidential, subject to a protective order, and your reference thereto is entirely inappropriate. Furthermore, neither the September 3, 2008 meeting, nor the numerous other Technical Committee meetings that have transpired over the last several years, obviate the duty of the Public Water Purveyors to make a timely and adequate disclosure of expert witness information.

The "amended" declaration offers very little, if any, additional information. Your August 15, 2008 declaration identified three areas of Mr. Scalmanini's testimony. Areas 1 and 2 remain unchanged. Areas 3 and 4 now read:

"(3) His opinion there are no separate groundwater basins (hydrologically separate subdivisions) within the AVAA and that while it may ultimately be appropriate or necessary to subdivide the AVAA for development and implementation of a physical solution, it is premature to identify subdivisions for that purpose until the objectives of the physical solution are identified."

"(4) Mr. Scalmanini may also be called to offer testimony to rebut the testimony of other experts."

Area 3 offers nothing more than Mr. Scalmanini's conclusion that there are no separate groundwater basins within the AVAA; hardly a good faith disclosure of the anticipated opinions of Mr. Scalmanini. Item 4 is untimely. Paragraph 4 of the Case Management Order required designation of supplemental experts by September 4, 2008.

The "amended" disclosure of Mr. Utley's opinions offers nothing new. The additions are shown in the underlined text.

"The general geology of the area and the occurrence of groundwater in the AVAA, including his opinions regarding the nature of geologic formations and aquifer material, and the effects of geologic features on the occurrence and movement of groundwater, all of which is introductory to and supportive of the ultimate opinion of Mr. Scalmanini."

Again, the declaration states that Mr. Utley will offer an opinion, but fails to give fair notice of what Mr. Utley will say at trial. (See *Bonds v. Roy* (1999) 20 Cal.4th 140, 146.)

The declaration with respect to Dr. Williams is a complete contradiction. Previously, you stated that "Dr. Williams will render opinions concerning the work of

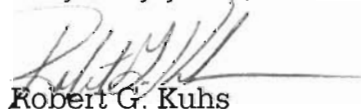
Douglas J. Evertz
September 19, 2008
Page 3

other experts engaged by the public water suppliers on the characteristics, structure, hydrologic conditions of the groundwater underlying the geographic area." (Emphasis added.) Now, you state that: "Dr. Williams may be called to render rebuttal testimony and opinions concerning the work of other experts on the characteristics, structure, hydrologic conditions of the groundwater underlying the geographic area, including rebuttal testimony to refute opinions of other experts on the use of hydrological modeling to establish "subbasins" in the AVAA. (Emphasis added.) As stated above, the time for declaring rebuttal experts has long since passed. Moreover, you previously stated that Dr. Williams would rely on the opinions of other experts engaged by the "public water suppliers." Now, Dr. Williams' testimony is apparently not limited to the opinion of experts engaged by the public water suppliers. Instead, Dr. Williams intends to rely on the work of "other" undisclosed experts. The identity of those experts remains a mystery.

In sum, the amended expert witness declaration is woefully inadequate and fails to provide Tejon, or any other party to this adjudication, with adequate notice of what opinions the experts intend to render at trial. Furthermore, the extreme delay in submitting your amended expert declaration has prejudiced Tejon, and potentially other parties, in preparing for trial. Even assuming that Tejon knew what opinions these experts will render at trial, we cannot, because of your delay, timely declare rebuttal experts and prepare them in time for a October 6, 2008 trial. Given the immense resources of the Public Water Purveyors and the length of time this litigation has been pending, the utter failure to produce a written report, or disclose the experts' opinions cannot under any circumstances be deemed a good faith disclosure.

We stand by our objections.

Very truly yours,



Robert G. Kuhs

RGK/lel

cc: Counsel and Parties