

# **EXHIBIT BB**

## Robert G. Kuhs

---

**From:** Ted Chester <tchester@smilandlaw.com>  
**Sent:** Wednesday, November 19, 2014 6:20 PM  
**To:** Dubois, James (ENRD)  
**Cc:** Robert G. Kuhs  
**Subject:** RE: Antelope Valley Groundwater Adjudication: Draft of Judgment/Physical Solution November 18, 2014

Jim,  
Thanks. I am sharing this with Robert. I will also be discussing it with my client.  
Ted

---

**From:** Dubois, James (ENRD) [mailto:James.Dubois@usdoj.gov]  
**Sent:** Wednesday, November 19, 2014 4:55 PM  
**To:** Ted Chester  
**Cc:** Leininger, Lee (ENRD)  
**Subject:** RE: Antelope Valley Groundwater Adjudication: Draft of Judgment/Physical Solution November 18, 2014

Ted:

I am concerned about what you are proposing here. Perhaps I am getting paranoid, but isn't there some risk that under the Tehachapi-Cummings v. Armstrong case, that this morphs into a determination of the correlative rights in equity – which might require trying the respective rights of all overlying parties? And if Lane and/or Granite do not like the trial court ruling you propose, and take the issue of Exhibit 4 allocations up on appeal, won't that force everyone to come along to protect their interests? That seems to present additional risk to everyone. I am not sure how you sign the stipulation – which includes Exhibit 4 -and then ask for a reopening of Exhibit 4 without creating that risk, and I don't see others being willing to allow Exhibit 4 to be "reopened" for anyone. There is a good deal of paranoia about locking in Exhibit 4 as a fait accompli for the Court, and inviting the camel to stick its nose into the tent may get a great deal of pushback.

It seems to me that the only way that a "non-settlement settlement" possibly works is if the Granite/Little Rock amount is lumped in a single line item with both claimants as the "owner" subject to resolution of the relative share to be determined by a separate action. Maybe you could persuade the Judge to do it in this proceeding, but I have some doubts. Of course I don't know how Robert would look at that sort of proposal. But if the two of you were going to go down that path, you would have to structure this to isolate the dispute to the two parties and create no risk for the others on Exhibit 4.

Jim

---

**From:** Ted Chester [mailto:tchester@smilandlaw.com]  
**Sent:** Tuesday, November 18, 2014 12:58 PM  
**To:** Dubois, James (ENRD)  
**Subject:** RE: Antelope Valley Groundwater Adjudication: Draft of Judgment/Physical Solution November 18, 2014

Jim

Granite Construction Company and Little Rock Sand and Gravel, Inc. (part of the Lane Family) have not reached agreement with respect to division of the 360 acre feet of Overlying Production Rights allocated to them jointly on Exhibit 4 of the proposed Judgment and Physical Solution. If Granite and Lane do not reach

agreement by Friday, November 21, 2014 (the date the settling parties have informally set for finalization of the settlement documents), then I plan to recommend that the Lane Family sign the Stipulation (as finally agreed to by the settling parties' counsel), and also request the Court to determine the division of the 360 acre feet between Granite and Lane. I am preparing to file a Case Management Statement which will make this request and also set forth a proposed schedule for the Court to hear this limited issue. If the matter is handled this way, then I cannot see how the disagreement between Granite and Lane, or the Court's resolution of it, would adversely impact any of the other settling parties.

I welcome any thoughts you might have.

Ted

Theodore A. Chester, Jr.  
Smiland Chester LLP  
601 West 5th Street, Suite 1100  
Los Angeles, CA 90071  
Phone: 213-891-1010  
Cell: 626-676-5718  
Fax: 213-891-1414

CONFIDENTIALITY NOTICE: This e-mail transmission, and any documents, files or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify the sender. Please destroy the original transmission and its attachments without reading or saving in any manner. Thank you.

---

**From:** Dubois, James (ENRD) [<mailto:James.Dubois@usdoj.gov>]

**Sent:** Tuesday, November 18, 2014 10:26 AM

**To:** Scott Kuney; Wendy Wang; 'Tom Bunn'; 'Daphne Borrromeo Hall'; 'Casey, Ed'; 'jtootle@calwater.com'; 'jgoldsmith@kmtg.com'; 'franksatalino@sbcglobal.net'; 'lmcclhaney@bmblawoffice.com'; 'DEvertz@murphyevertz.com'; 'BJoyce@lebeauthelen.com'; 'mike@mclachlanlaw.com'; 'bbrunick@bmblawoffice.com'; 'Brady, Andrew'; 'wsloan@mofo.com'; 'jgreen@grimmway.com'; 'cms@eslawfirm.com'; 'keith@Lemieux-Oneill.com'; 'Brad@charltonweeks.com'; 'erenwick@hanmor.com'; 'wcarlson@herumcrabtree.com'; 'ajr@bkslawfirm.com'; 'RSB@bkslawfirm.com'; 'jlewis@walshdelaney.com'; 'Rusinek, Walter E.'; 'Wwellen@counsel.lacounty.gov'; 'Michael.Davis@greshamsavage.com'; 'rgkuhs@kuhsparkerlaw.com'; 'noah.goldenkrasner@doj.ca.gov'; Ted Chester; Jeffrey Dunn; 'marilyn.levin@doj.ca.gov'; 'rmyers@clifford-brownlaw.com'; Eric Garner; 'mfife@bhfs.com'; 'Jmarkman@rwglaw.com'; 'jim@mcmurtreyhartsock.com'; 'JHughes@KleinLaw.com'; 'Richard Zimmer (RZimmer@clifford-brownlaw.com)'; Arnold K. Graham

**Cc:** Leininger, Lee (ENRD); Oyarzo Edwin ([edwin.oyarzo@us.af.mil](mailto:edwin.oyarzo@us.af.mil)); SEIDEL, WARREN A NH-04 USAF AFMC 412 TW/JA

**Subject:** RE: Antelope Valley Groundwater Adjudication: Draft of Judgment/Physical Solution November 18, 2014

Colleagues:

Attached is a revised draft of the Judgment and Physical Solution in Redline noting all changes since the November 10 CLEAN draft. There is also a CLEAN draft with a November 18 Watermark. Please suggest additional changes IF ANY, on the CLEAN draft. I can send a WORD version if needed.

I have **NOT** added the notice provision at this point, since it still seems to be up for debate. If that is the last issue we need to resolve, I will be quite pleased.

I will try to get out the Stipulation and Exhibits later today.

Jim

James J. DuBois  
U.S. Department of Justice  
Environment & Natural Resources Division  
999 18th Street  
South Terrace - Suite 370  
Denver, CO 80202  
Phone: (303) 844-1375  
FAX: (303) 844-1350  
E-mail: [james.dubois@usdoj.gov](mailto:james.dubois@usdoj.gov)