

## Matthew Knudson

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**From:** Craig A. Parton <Cparton@ppplaw.com>  
**Sent:** Friday, September 22, 2017 2:56 PM  
**To:** Matthew Knudson  
**Cc:** Dwayne Chisam; Patti Rose; pthompson@palmdalewater.org  
**Subject:** Interview - Antelope Valley Watermaster  
**Attachments:** CParton Interview Ltr\_001.pdf; Manion Bio.pdf; Wullbrandt Bio.pdf

Matt: Thanks so much for the opportunity to talk with the Board on Wednesday—I very much look forward to it!

Below are my responses to the questions contained in your attached letter of September 18th, of which acknowledgement of receipt is appreciated:

### Questions on “Conflicts”:

**1(a): N/A** as I did not participate in negotiations relating to the proposed Judgment.

**1(b)(i):** The Judgment was developed based on a negotiated stipulation among most of the parties to the Judgment—how will you evaluate the Judgment absent knowledge about those negotiations?

**Response:** I recently tried a case where the critical documents for interpretation were 100 plus years old and lacked any negotiating history. It is in fact not unusual for a Court to interpret a document that has little or no negotiating history. What *may* be relevant is how the parties actions evidence how they have interpreted the Judgment since it was final. Actions are often admissible to show how a party actually views its duties under a contract (or, in this case, a “negotiated” Judgment).

The starting point in the interpretation of the Judgment should be the text of the Judgment itself and any incorporated exhibits and applicable Statement of Decision. The history of negotiations is only relevant if the Judgment is ambiguous on its face and in need of extrinsic evidence to aid in interpretation. In addition, it will be relevant if there is an integration clause in the applicable Judgment documents that addresses all prior written or oral understandings.

If the history of negotiations becomes relevant and necessary to aid in interpretation of an ambiguous Judgment, that history presumably is in written form. Oral statements of the parties’ positions during negotiations is likely of little value and is evidentially suspect. I would expect to review any relevant written material on the history of negotiations with staff or

others and would likely be cautious and suspect of oral statements by parties or participants as to what happened in negotiations prior to entry of the Judgment.

I say this based on my experience in negotiating the Stipulation and Judgment in the Santa Maria Groundwater Cases over a period of many months. That Stipulation and Judgment has been subject to interpretation by those interested in reading into those documents various positions unsupported by their text. My continuing experience in that case is that the now presiding Judge Peter Kirwan (who replaced Judge Jack Komar, before whom I served as trial counsel on the issue of overdraft and obtained a favorable ruling of no overdraft which led many of the parties to enter into the Stipulation and Judgment) considers the “history of negotiations” to be of limited value especially if that history is not reflected in the actual language of the Stipulation or Judgment.

**Questions on “Logistics”:**

**2(a):** What backup capability do you have on your staff for key roles of the Watermaster counsel?

**Response:** I am a partner in a 25-member full service firm that has substantial experience in general public agency law and in providing day-to-day advice to public agencies and private entities in our role as general counsel. In that regard I intend to call on the experience of two of my partners (Mark Manion and Chip Wullbrandt—CV’s attached) in dealing with any particular public agency-type issues that may arise in the role as general counsel to the Watermaster (whom I consider a quasi-public agency). In addition, I am Chairman of our 10 person Litigation Department and have regular access to distributing work to a wide contingent of experienced litigators and trial lawyers (as well as our firm’s appellate specialist Tim Metzinger, who has participated in over 60 appellate cases over two decades and 10 published opinions).

That said, our firm prides itself on not “over-lawyering” a case and follows the maxim of the Texas Rangers: “One Sheriff per riot.” Our experience is that some firms often obtain entry into positions by touting lower rates only to put 2 and 3 associates on every project. That is not my approach—I intend to use firm resources as appropriate to provide efficient legal advice and work product.

**2(b):** How will you address travel requirements?

**Response:** We regularly represent clients out of our area, state and country. I have personally represented clients dispersed over a wide geographic region within and without California, from San Diego to San Francisco to Las Vegas and have trial experience in all those locations (both federal and state court). My firm prides itself on accessibility and keeping its

clients apprised of all developments. While I would intend on being present for all significant meetings, participation at times by conference call/Go To Meetings is certainly becoming more common. As noted above, my firm has experienced and capable public agency and water attorneys able to cover for me in the role of general counsel should I (for some reason) be unable to attend any particular meeting or hearing.

**2(c):** How will you address succession planning for this position?

**Response:** Though I am gratefully far away from considering retirement, the person replacing me as counsel to the Watermaster must first prove **to you** that they can work with you and accomplish your purposes and goals. In short, I don't intend to select a successor to this position in a vacuum and I have a number of attorneys who could play this role. They must be a good fit first and prove their ability to understand the personalities, issues and challenges that will come with being general counsel to the Antelope Valley Watermaster.

One thing you will not see are numberless associates assigned to the case who disappear from the firm after several years. We are the oldest law firm in the western United States and take pride in our stability and in our ability to attract and maintain highly competent lawyers to our town who make my firm their choice for a life-long practice of the law.

**Questions on "Approach":**

**3(a):** How do you think that information about the negotiations that led to the final Judgment should be used in interpreting the Judgment?

**Response:** I refer back to my response to question 1(b)(i) above. In short, information about negotiations can be helpful in understanding the context of what was ultimately reduced to the Judgment. Negotiations, if dealing with substantive topics, should result in black and white language. Negotiations should not be allowed to trump the unambiguous language of a final Judgment. I find courts very unsympathetic to efforts to use prior negotiations to add to the language (and duties) set forth in a final Judgment.

**3(b):** Do you see trying to build consensus between parties that have disputes on the interpretation of the Judgment as part of the Watermaster counsel role?

**Response:** Yes, and I don't think this contradicts my responses to questions 1(b)(i) or 3(a) above. The cost and uncertainty of going to Court almost always argues for trying to reach a consensus by discussion and negotiation if possible and as long as the fundamental structure of the Judgment is maintained (or an effort, if warranted, to amend the Judgment undertaken). My current experience in representing 17 water agencies and a municipality in litigation with the United States over (in part) the proper construction of water delivery agreements, as well as my current representation of the vast majority of the farming interests

in the Oxnard-Pleasant Valley water basins in the GSP process, has given me broad experience in dealing with the many sides of complex and very heated and emotional water-related issues. I have represented overlying landowners as well as public agencies in these kinds of negotiations and understand how easily one's behavior can become polarizing and counter-productive.

**3(b)(i):** If so, what ideas do you have about how you could help build that consensus?

**Response:** Often what breaks an impasse is the involvement of a new set of eyes on the problem. That may mean involving a third party facilitator or mediator. I've had success using both to break major and significant impasses between overlying agricultural interests and public purveyors within the context of negotiating a GSP or negotiating a Stipulation in a groundwater adjudication case.

In addition, sometimes the assistance of the Court is necessary to obtain some basic interpretative guidance in how a Court ruling or Judgment is going to be viewed.

One of the first things I would do is spend time with the Watermaster Engineer and staff and other knowledgeable and independent observers to gain an understanding of how the Judgment has been administered to date and to get up to speed immediately on what the critical issues are and the players involved.

Finally, I would also be interested in seeing if the Court wants further direct and visual education about the area over which it is exercising continuing jurisdiction. In the Santa Maria case this has meant having Judge Kirwan visit our area and giving him a tour of the key components of the Stipulation and Judgment (e.g., viewing a supplemental water project, a sentry well location to detect seawater intrusion, a reservoir, etc. and meeting with the parties). We basically have a case management conference with Judge Kirwan several times a year just to keep him apprised of developing issues in relation to overdraft and implementing the physical solution.

**3(c):** What role do you think that the Watermaster counsel should play in hearings before the Court:

i: To defend a Watermaster decision?

**Response:** Fundamentally I believe Courts look at Watermasters as a generally neutral party trying to objectively administer a physical solution (Watermaster is often appointed by the Court as an "arm" of the Court). This has been my experience with a Watermaster in the Seaside Basin Adjudication (where I represented a water management district at trial) and with Judge Komar and Judge Kirwan in the Santa Maria Groundwater case (where the Court has functioned essentially like a Watermaster). The worst affect the Watermaster can give is

the impression that it has lost impartiality and is on a crusade to vindicate its own position divorced from the language of the Judgment and the incorporated physical solution.

More directly, I would intend to provide the Court with the Watermaster's view of a disputed decision unless one of the parties (or circumstances warranted otherwise) was advocating our precise position forcefully and we could simply join that position.

**ii.** To argue on a disputed interpretation of the Judgment that is not related to a Watermaster decision?

**Response:** This has less importance to me than defending directly a Watermaster decision. That said, there may well be circumstances where the Watermaster needs to take a position on a fundamental issue of interpretation of the Judgment because it will have a ripple down effect on how the physical solution is implemented and may directly effect a Watermaster decision.

**iii.** On which issues (if any) do you think the Watermaster and Watermaster counsel should make arguments to the Court, and which issues should the Watermaster and Watermaster counsel leave to the parties to argue?

**Response:** The general approach should be that the Watermaster, as an arm of the Court, stands above inter-party disputes and partisan posturing. If we ever lose our impartiality with the Court, we become just another advocate and not a "friend of the Court" in fulfilling the intentions of the Court as evidenced in the final Judgment (and the reason the Court created the position in the first place). In general this means filing separate papers when appropriate and not "joining" in knee-jerk fashion any of the litigants' positions and thus appearing to lose objectivity.

Without knowing the specifics of any issue coming before the Court, my inclination is to stay on the Court's radar as a trusted and neutral implementer of the Court's Judgment (i.e., always giving the Court the impression in oral argument or in papers that we are simply here to "implement what the Court intended").

**3(d):** Can you describe your approach and experience regarding enforcement activities on behalf of the Watermaster (e.g., collection of unpaid assessments, enforcement of injunctions under the Judgment, failure to comply with reporting requirements)?

**Response:** In general, my approach to enforcement activities is to act like a court will eventually be looking at your actions. Does the Court expect reasonable notice to be given and a chance to comply or is a hammer just being dropped? Normally judges (and certainly juries) like to see opportunity given to "debtors" to make good and to voluntarily comply with assessment or reporting requirements. That said, I have no tolerance for willful flaunting of clear injunctive language in the Judgment prohibiting or demanding certain conduct and will

not hesitate to institute contempt and/or enforcement proceedings if games are being played.

**3(e):** How will you approach coordination with the Watermaster Engineer and the Watermaster staff?

**Response:** The Engineer is the technical heart of the Watermaster position and should be carefully collaborated with and consulted on all material, strategic and other decisions. In addition, the Engineer often has a rule and or regulation-making function under the document establishing its function—that authority should be exercised carefully but creatively and forcefully to fashion rules and regulations that address areas of arguable ambiguity in the Judgment. Staff are key to making the Watermaster position one of impartiality, integrity and transparency.

In the Santa Maria case my client is part of a collaborative team made up of geologists, hydro-geologists, farmers, environmental scientists, and city managers. Together we make up the Nipomo Mesa Management Area under the jurisdiction of Judge Kirwan. I have found that collaborative efforts with technical and administrative staff are critical and I would fully expect to continue that approach as general counsel to the Watermaster.

Let me know if anything further is needed.....All the best, Craig



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**From:** Matthew Knudson [<mailto:mknudson@avek.org>]  
**Sent:** Monday, September 18, 2017 4:13 PM  
**To:** Craig A. Parton  
**Cc:** Dwayne Chisam; Patti Rose; Peter K. Thompson Jr  
**Subject:** Interview - Antelope Valley Watermaster

Good afternoon –

The Antelope Valley Watermaster Board (Watermaster) would like to invite you to an interview on September 27, 2017. See attached letter outlining the time and location of the interview. Also, the attached letter has a list of questions the Watermaster has requested written responses to. Please send said written responses to [mknudson@avek.org](mailto:mknudson@avek.org) by the C.O.B. on Monday, September 25, 2017.

We look forward to seeing you on Wednesday, September 27, 2017. Feel free to call me at 66-943-3201 if you should have any questions?

Thank you,

Matthew Knudson,  
Interim Administrative Staff  
Antelope Valley Watermaster



PRICE, POSTEL & PARMA LLP

## Mark S. Manion

Partner



### CONTACTS

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### AREAS OF PRACTICE

Municipal Law

Land Use Law

Environmental Law

### EXPERIENCE

Mr. Manion represents both private and public agency clients with respect to zoning, planning and land use entitlements, including the California Coastal Act, general plans, local zoning, Subdivision Map Act and affordable housing. He also regularly advises both private and public agency clients on environmental compliance matters involving CEQA, NEPA, federal and state endangered species acts and stormwater and development run-off issues.

In addition, Mr. Manion currently serves as general counsel to the following non-profit and public agencies:

- Carpinteria-Summerland Fire Protection District
- Housing Authority of the City of Santa Barbara
- Housing Authority of the County of Santa Barbara
- Montecito Fire Protection District
- Garden Court, Inc. (nonprofit affordable housing provider)
- Las Cortes, Inc. (nonprofit affordable housing provider)
- Surf Development Company (nonprofit affordable housing provider)

Prior to joining Price, Postel & Parma LLP, Mr. Manion served as a deputy city attorney for the City of Oxnard. Mr. Manion is currently the firm's chair of the Environmental, Water and Land Use Group and the Public Agency and Eminent Domain Group.



## **EDUCATION**

- University of California at Los Angeles (B.A., 1991)
- Loyola Law School (J.D., 1995)

## **ADMISSIONS**

- California

## **MEMBERSHIPS**

- The State Bar of California (member, Section on Environmental Law)
- American Bar Association
- Santa Barbara County Bar Association
- Tri-Counties Government Attorneys' Association, Past President

## **COMMUNITY INVOLVEMENT**

- St. Francis Foundation of Santa Barbara



PRICE, POSTEL & PARMA LLP

**C.E. Chip Wullbrandt**  
Partner



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**AREAS OF PRACTICE**

Environmental Law  
Land Use Law  
Public Entity Law

**EXPERIENCE**

Mr. Wullbrandt's practice emphasizes environmental, land use, public agency, administrative and water law. He represents government agencies in matters dealing with other government agencies.

He also represents companies, developers, and individuals in matters before regulatory agencies. Such representation involves advising and counseling clients with regard to project outcomes and strategies with regulatory agencies.

**EDUCATION**

- University of Southern California (B.A., 1984)
- National Merit Scholar; Thematic Option Honor Student Program
- Institute of Politics and Government Outstanding Student Award
- International Business Internship including working trip to Turkey and Northern Cyprus
- President, Phi Delta Theta Fraternity; Pepperdine University (JD., 1988)
- National Merit Scholar
- Moot Court Honor Board
- London Program - Research in EEC Law

**ADMISSIONS**

- California

## MEMBERSHIPS

- The State Bar of California
- Santa Barbara County Bar Association

## COMMUNITY INVOLVEMENT

- Santa Barbara County Republican Central Committee
- California 19th Agricultural District (Past President)
- Old Spanish Days, Inc. (Past El Presidente)
- Old Spanish Days Stock Horse Show & Rodeo (Member, Executive Committee)

## OTHER

- Mr. Wullbrandt has served as a member of the California Biodiversity Council Watershed Working Group, and as a member of the Advisory Council to the Director of the Department of Fish and Game for the California Coastal Salmon Restoration Program.
- He is a Director of the 19th Agricultural District, which manages the Earl Warren Showgrounds.
- He is active in Old Spanish Days, Inc. (The Fiesta Board), Director [1991-present]; Executive Board; Senior Vice President [1995-96; 2000-2004]; El Presidente 2005. He also serves on the Executive Committee for The Old Spanish Days Stock Horse Show & Rodeo.
- He was Chairman of the Carpinteria City Planning Commission, and a member of the Carpinteria City Architectural Review Board.
- He is on the Advisory Council of the Santa Cruz Island Foundation and was a Director of the Montecito YMCA, serving as Chairman in 2006-2007.
- He was president (2012) of the Santa Ynez High School Football Boosters Club, and served (2010-2013) as a board member of the Los Olivos School Foundation.
- He has advised clients with Habitat Consultation Plans and on other ESA issues including for steelhead, red legged frog, California tiger salamander, desert tortoise and other species.
- He currently represents clients in issues related to SGMA compliance in the Santa Maria, Goleta, Santa Ynez and San Antonio Groundwater Basins.