



September 25, 2017

Via Email and U.S. Mail

Matthew Knudson
Antelope Valley Watermaster, Interim Administrative Staff
East Kern Water Agency
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Email: mknudson@avek.org

Re: Interview with Antelope Valley Watermaster Board
Date of Interview: September 27, 2017, 11:30 a.m.

Dear Mr. Knudson:

In response to the September 18, 2017 correspondence from Dwayne Chisam, Interim Administrator, below are responses to the questions proposed:

1) Questions on "Conflicts"

a. Question for those who participated in negotiating the stipulation that led to the Judgment (as appropriate):

- i. You were associated with a party in the adjudication that has rights on Exhibit 4 of the Judgment – has that shaped the way you may interpret the Judgment?

Not applicable.

- ii. You were associated with a party in the adjudication that has rights on Exhibits 3 or the Judgment – has that shaped the way you may interpret the Judgment?

Not applicable.

b. Question for those who have not been involved in the Adjudication Litigation:

- i. The Judgment was developed based on a negotiation stipulation among most of the parties to the Judgment – how will you evaluate the Judgment absent knowledge about those negotiations?

O'Laughlin & Paris LLP (Firm) did not represent any party in the adjudicated litigation. In evaluating the Judgment, our Firm would use several resources to best

understand both the language of the Judgment and the intent behind the language. These resources include, (a) the Judgment, (b) the record in support of the Judgment, (c) transcripts, pleadings and technical information that the Court relied upon in issuing the Judgment, (d) the expertise of the Watermaster Board, (e) expertise and judgment of the Advisory Committee, and (f) the expertise and judgment of the Watermaster engineer.

2) Questions on “Logistics”

- a. What backup capability do you have on your staff for key roles of the Watermaster counsel?

Our Firm usually staffs matters in teams, with one lead attorney, one to three supporting attorneys, and a secretary/paralegal. This allows the supporting attorneys to understand the client and general matters so they may provide counsel to the client when the lead attorney is not able.

- b. How will you address travel requirements?

The attorneys in our Firm are used to traveling and working remotely. Although our firm is based in Sacramento, several of our attorneys travel to Bakersfield and other locations several hundred miles away from the office on a regular basis. Depending on the time commitment, frequency, number of people attending, and cost, the Firm’s attorneys either drive or fly to these meetings.

- c. How will you address succession planning for this position?

Our Firm addresses succession planning by staffing projects in teams. Specifically, this means that on any matter there is more than one attorney in the Firm that is able to step into a leadership role and provide counsel to the client. To the extent something unexpected were to happen to the lead attorney, the supporting attorneys on the team would continue to provide counsel. In addition, as the need of clients and attorneys change, the Firm promotes supporting attorneys to take leadership roles, to ensure that as attorneys retire, each client is comfortable with the supporting team members becoming lead attorneys.

3) Questions on “Approach”

- a. How do you think that information about the negotiations that led to the final Judgment should be used in interpreting the Judgment?

The negotiations leading to the final Judgment should be used for reference and guidance when the language of the Judgment is unclear or could be subject to various interpretations.

- 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?

Yes, building consensus should be one of the main roles of the Watermaster. To the extent counsel is able to support the Watermaster in developing this consensus, it should be central to the Watermaster counsel role. Enforcement of an adjudicated Judgment is only successful to the extent the adjudicated parties understand and accept the Judgment and enforcement thereof. Therefore, creating consensus and buy-in among the adjudicated parties is a foundational part of the Watermaster role. Watermaster counsel should support the consensus building by communicating with the Parties counsel and creating an atmosphere of collaboration on resolving legal issues.

- i. If so, what ideas do you have about how you could help build that consensus?

Our Firm has found success in building consensus among disparate stakeholders by focusing on communication and transparency. For the communication, the Firm's attorneys work to ensure they understand the position and concerns of each of the varied positions. Specifically, the Firm discusses the perceived and potential outcomes or results that are driving the position of each party. For transparency, the Firm sets out a process that includes stakeholder input. Often the Firm will circulate a draft opinion or memorandum and request that stakeholders comment on the document. Our attorneys attempt to incorporate all recommendations and input into a final draft. To the extent that input is mutually exclusive or directly contradictory, we schedule meetings to attempt resolution or compromise on the final draft. This process promotes consensus and reduces potential opposition that may result from the perception of not being a part of the decision-making process or a top-down regulatory action.

- c. What role do you think that the Watermaster counsel should play in hearings before the Court:

- i. To defend a challenged Watermaster decision?

To the extent a decision, rule, regulation, or procedure of the Watermaster is reviewed by the Court, the Watermaster counsel role would be that of lead counsel in defending the decision rule, regulation, or procedure.

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

The role of Watermaster counsel would depend on the issue and direction from the Watermaster. To the extent the issue is minor or procedural; the role of the Watermaster counsel may be to monitor and report on the disputed interpretation. However, to the extent the Watermaster provides direction it would like to take a specific position on the dispute, the Watermaster counsel would actively represent the position of the Watermaster as an intervening party.

- 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 counsel leave to the Parties to argue?

I would recommend the Watermaster take an active role in issues that affect its ability to uphold and enforce the Judgment. On issues that do not compromise the role of the Watermaster or its ability to enforce the Judgment, I would recommend the Watermaster monitor the issue, but allow the Parties to take a lead role in advocating their respective positions.

- 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)?

In representing irrigation districts, water districts and joint powers authorities, our Firm often provides counsel to existing clients regarding enforcement of rules, procedures, and assessments. Our counsel promotes the exhaustion of informal outreach and direct communication to ensure end-users understand the requirements and responsibilities. After such communication is performed and well-documented, we provide counsel regarding more formal outreach regarding the existing requirements, expectations and clearly communicate the next steps if compliance is not achieved. This increases understanding and also documents good faith efforts in achieving compliance without formal action. If it becomes clear that compliance will not occur, we provide counsel regarding formal enforcement procedures.

- e. How will you approach coordination with the Watermaster Engineer and the Watermaster staff?

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Our Firm would work closely with the Watermaster Engineer and staff, performing everyday coordination with staff and consultants, while taking direction from the Watermaster Board.

I am hopeful the foregoing responses are sufficient for purposes of this initial interview. Please feel free to contact me with questions or to request further information. I look forward to meeting with the Board on September 27, 2017.

Very truly yours,



Valerie C. Kincaid

VCK/llw

cc: Dwayne Chisam, Interim Administrator