

September 25, 2017

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Dwayne Chisam, Interim Administrator
Antelope Valley Watermaster
PO Box 3025
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Re: Responses to Written Questions Regarding Antelope Valley Watermaster
Board Counsel

Dear Mr. Chisam:

Presented below are the above-referenced responses.

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?

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

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

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 these negotiations?

Responses to questions on “Conflicts”

a. i. and ii. We did not directly represent any party in the adjudication that has rights stated on Exhibit 4 or Exhibit 3 of the Judgment. However, we did represent the City of Palmdale in the adjudication, and the City of Palmdale’s interest.

Dwayne Chisam, Interim Administrator
September 25, 2017
Page 2

in the adjudication was to support the interests of the retail water suppliers serving water to residents and businesses located in the City of Palmdale, Los Angeles County Waterworks District No. 40 and Palmdale Water District, two public entities listed on Exhibit 3 of the Judgment. Our representation of the City of Palmdale will shape the way we might aid the Watermaster in interpreting the Judgment only in the sense that we may have specific recollections of documents and conversations which might be useful in dealing with any ambiguous provisions of the Judgment. Our representation of the City of Palmdale will not result in any bias whatsoever in the delivery of legal services to the Watermaster concerning the interpretation of the Judgment.

b. This question is not applicable since we did represent the City of Palmdale in the adjudication.

2. Questions on “Logistics”

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

b. How will you address travel requirements?

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

Responses to questions on “Logistics”

a. My backup capability on my staff centers on three attorneys. The first is my partner B. Tilden Kim who has been involved in the litigation and administration of water adjudications for the past 20 years, including the Santa Maria adjudication and the Antelope Valley adjudication. He was involved in all phases of the Santa Maria adjudication and presently is lead counsel dealing with a motion before the Court under continuing jurisdiction in which one subarea of the basin is seeking to impede all new water demand in another subarea. The second person is Whitney McDonald, who is general counsel to a retail water supplier and previously provided legal advice on water rights related matters to the public works department of San Louis Obispo County. Patrick Skahan also will be involved in providing services to the Watermaster. Patrick was the firm liaison with the City of Palmdale during the final phases of the Antelope Valley adjudication and possesses a fund of knowledge of the issues raised during the final stage of generating the Judgment.

Dwayne Chisam, Interim Administrator
September 25, 2017
Page 3

b. Travel requirements consist of accessing the Palmdale area by car from North Orange County (my location) or Los Angeles (Mr. Kim's location). Charges for travel time and costs of that travel are open to negotiation should we be selected as General Counsel.

c. Succession planning is explained by the introduction of other attorneys identified above who would be capable successors at the appropriate time. That time is not projected to be before the expiration of at least 3 to 4 years.

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?

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?

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

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

i. To defend a challenged Watermaster decision?

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

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)?

Dwayne Chisam, Interim Administrator
September 25, 2017
Page 4

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

Responses to questions on “Approach”

a. Information in our possession about negotiations would be utilized to offer explanations of intent to interpret ambiguous provisions of the Judgment as appropriate. Of course, that information could not include any communications subject to the attorney-client privilege. Accordingly, it necessarily would include only interparty communications.

b. I believe consensus building is a crucial function of General Counsel to the Watermaster. Resolution through discussions is more efficient and less costly than Watermaster being compelled to make a decision as a result of an adversary hearing and, possibly, being engaged in a resulting appeal to the Court.

i. The two available forms of consensus building are (1) meetings with all persons advocating positions present for a general discussion and (2) discussions between counsel for a particular party or parties advocating a position and Watermaster Counsel.

c. Watermaster Counsel should make Court appearances as directed by Watermaster and Watermaster staff. Normally, it would be expected that Watermaster would defend its position in a Court proceeding appealing a decision it made. On other appealable matters, Watermaster Counsel would participate only if directed and to the extent acceptable to the Watermaster. Disputes between parties which move directly to the Court not per an appeal of a Watermaster decision would best be left to those parties to avoid any perception of a Watermaster bias toward a party or group of parties.

d. We have been involved in enforcement activities, most recently in our role as Counsel to the Central Basin Water Rights Panel, a recently established Watermaster body administering the Third Amended Judgment in the Central Basin adjudication in Los Angeles County. Those activities have included correcting overproduction of water without the payment of assessments and the injunction of extractions not supported by water rights. Normally, bringing the violation to the attention of the producer results in a resolution through payment of assessments or the purchase or lease of water rights to support production. If such efforts fail, the matter

Dwayne Chisam, Interim Administrator
September 25, 2017
Page 5

would have to be brought to the attention of the Court through the filing of a motion or seeking an Order to Show Cause why a party should not be held in contempt. In our experience, the latter proceeding is more aggressive and more likely to result in correction of the violation. It also is efficient to bring groups of parties with similar violations before the Court in one proceeding.

e. We would be available by phone, text or email at all times to Watermaster staff. We also could arrange periodic meetings at the Watermaster office to deal with outstanding issues while all necessary staff is present. If more efficient, we could call into and thereby participate in regular staff meetings. Our objective always is to help staff navigate all legal impediments to the successful implementation of staff projects.

Very truly yours,


James L. Markman