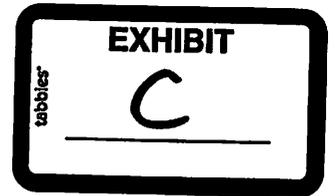


November 9, 2018



VIA E-MAIL

Aaron Oleen  
Division of Water Resources  
Oleen, Aaron [KDA] <Aaron.Oleen@ks.gov>  
<Lane.Letourneau@ks.gov>

Re: Golden Rule Letter  
Discovery Requests to the Division of Water  
Resources, State of Kansas  
Case No. 18 WATER 14014  
Our File No. 1116.036

Dear Aaron:

Although perhaps not necessary in an administrative matter, let this serve as a Golden Rule letter regarding your responses to our discovery requests. Please respond to this letter by the end of the day Monday, November 12, 2018, or further action will be taken. With that said, our comments are as follows:

1. Many of the items that have been excluded as subject to attorney/client privilege do not appear to be communications involving legal discussions. As you know, merely including an attorney in an e-mail does not necessarily make it subject to attorney/client privilege. All discussions cannot simply be "protected" in this manner.
2. The work product doctrine ("documents prepared in anticipation of litigation") is also frequently cited. It is hard to ascertain how communications and documents from a year or two ago (or longer) could be created in anticipation of possible future litigation. Please exclude those old communications from the privilege log, at the very least and provide them to us.
3. Most importantly, please produce all documents with David Barfield as a recipient or sender. Certainly, these documents cannot be subject to DWR's attorney/client privilege since he is also the independent hearing officer. Similarly, they cannot be

subject to work product doctrine as the Chief Engineer could not be involved in preparing for a hearing in which he is to serve as an impartial decision maker. No doubt these documents must be produced.

4. Please remove all the redaction from the documents. This is done without any explanation.
5. With regard to the documents included in the privilege log, please either provide us the documents or furnish a little more detail with regard to why the documents are subject to each privilege so we can make a better determination as to the applicability of the privilege cited.
6. In general, evasive answers to most of our questions were provided because perhaps we didn't fully clarify that we were asking about the use of the AMC Proposal when aquifer recharge capacity is limited and an AMC is accumulated. We will send clarifying discovery requests even though we believe the intent of the questions was clear.
7. Interrogatories 2 and 3 are standard questions. Please furnish a proper answer.
8. Many of your answers to many of the interrogatories just make veiled, blanket references. Please provide at least a sufficient answer to each of those interrogatories. Although we would like you to clarify all of your answers and this constitutes your replies to most of our interrogatories, please in particular furnish a detailed response to interrogatories 14, 15, 16, 19 and 20.
9. The answer to interrogatory number 22 is completely evasive. Please provide a complete answer.
10. With regard to the documents produced, please date stamp the documents and provide more clarity as to which production request each document is responsive to. For instance, we received literally over one thousand e-mails or other documents—many of them wholly irrelevant—with no structure as to the relevance. Not to mention the difficulty in opening the documents in the link you provided.

We appreciate your attention to these matters. We expect a prompt response to avoid the necessity of a motion to compel or other actions with the hearing officer.

Aaron Oleen  
November 9, 2018  
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Sincerely,  
  
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