



FILED

09-27-11
04:59 PM

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of James L. and Marianne S. Orvis to sell, and Aspen Forest Investment Co., LLC, To Buy, Five Thousand (5,000) Shares of the Common Stock of the water system known as Lake Alpine Water Company, Inc. (U148WTD) Located in Alpine County, California.

A.11-04-013

**RESPONSE OF RATEPAYERS OF LAKE ALPINE WATER COMPANY (RLAWC)
IN SUPPORT OF EXPEDITED MOTION OF PAULA AND BRUCE ORVIS
TO DISQUALIFY ATTORNEY DUE TO CONFLICT OF INTEREST**

Anita Taff-Rice
1547 Palos Verdes, #298
Walnut Creek, CA 94597
Phone: (415) 699-7885
Fax: (925) 274-0988
anitataffrice@earthlink.net

Counsel for RLAWC

September 27, 2011

Pursuant to Rule 11.1(e) of the Commission’s Rules of Practice and Procedure, the Ratepayers of Lake Alpine Water Company (RLAWC) hereby files this response in support of the Expedited Motion of Paula and Bruce Orvis to Disqualify Attorney Due to Conflict (“Motion”) in the above-captioned proceeding. RLAWC respectfully submits that the Commission has ample authority to establish qualifications of party representatives, and notes that the Commission has previously used this authority to decide requests for removal of attorneys.

As set forth in detail below, RLAWC believes there is an ethical conflict for the same attorney to simultaneously represent Lake Alpine Water Company (LAWC) when the attorney already represents Aspen Forest Investment Company (“Aspen”), the purchaser¹ of 50 percent of LAWC from a private shareholder. Such simultaneous representation where a conflict exists typically requires automatic disqualification under California law, as discussed below. On that basis, RLAWC submits that it is inappropriate for its members to be required to pay for Mr. MacBride’s legal fees.² RLAWC does not oppose Mr. MacBride’s continued representation of Aspen so long as LAWC, and its ratepayers, are not required to pay for Aspen’s legal fees.

I. Background of the Conflict

In 2003, Aspen’s predecessor, TBH Partners (“TBH”), purchased 50 percent of LAWC from two shareholders in a private transaction that included the related purchase

¹ Aspen is the successor to TBH Partners, the entity that actually purchased 50 percent of LAWC in 2003. TBH Partners transferred its ownership interest to TBH Partners, LLC, which eventually transferred its ownership interest to Aspen. All three entities are comprised of the same owners in the same percentages, so for convenience, RLAWC will refer to Aspen as the purchaser throughout this Response,

² It appears that the head of LAWC, Mr. Charles Toenisoketter, (who is also the managing partner of Aspen) intends to include Mr. MacBride’s legal fees in LAWC’s rate base. Advice Letter 94 requests permission from the Commission to set up a memorandum account to track and potentially pass these legal fees onto LAWC ratepayers.

by TBH of a second piece of real estate from the same two shareholders.³ The shareholders sold their half of LAWC in order to raise money to retire an unrelated mortgage.⁴ TBH did not notify the Commission nor seek approval for the purchase of 50 percent of LAWC.

In response to inquiries from an LAWC ratepayer regarding the 2003 sale, Commission staff directed Aspen to file an application seeking approval of the stock purchase retroactively. The Application was filed jointly by Mrs. Marianne Orvis (the seller) and Aspen (the purchaser). LAWC is not listed as a named party on the Application. LAWC's Secretary, Mrs. Roma Orvis, has informed the Commission that LAWC was not a participant in the stock transaction.⁵ Because Section 854 requires the purchaser (not the seller) of a regulated utility to obtain prior approval for the sale, Paula Orvis (both a director and a shareholder of LAWC) stated in her Motion that two of the five members of the board do not believe LAWC needs *any* counsel in this proceeding because LAWC is not a named party, and it did not participate in the improper stock transaction.⁶ Further, Paula Orvis indicated in her Motion that LAWC should not be forced to accept Mr. MacBride as counsel in particular because 50 percent of the shareholders⁷, two of the five members of the LAWC board of directors and the LAWC Secretary have asserted that Mr. MacBride has a conflict of interest in representing both Aspen and LAWC.⁸ A third board member apparently acknowledged that Mr.

³ Application of James L and Marianne S. Orvis to sell and, Aspen Forest, LLC to Buy 5,000 Shares of the Common Stock of the Water System Known as Lake Alpine Water Company (U148WTD) Located in Alpine County, California, at Exhibit A, page 1.

⁴ Amendment to Reply to Protests of Phil Davis and Paula Orvis, Exhibit B at p. 3.

⁵ See Exhibit A, Letter from Roma Orvis to Ramon Go, CPUC's Water Division, dated March 3, 2004..

⁶ Motion, at ¶4.

⁷ Bruce and Paula Orvis (40 percent shareholders) and Roma Orvis (10 percent shareholder) have asserted a conflict of interest in Mr. MacBride representing both Aspen and RLAWC.

⁸ Motion, at ¶8.

MacBride's simultaneous representation is a "minority conflict."⁹ Further, Mr. MacBride has propounded discovery questions on Paula Orvis, creating an adversarial position between Mr. MacBride in his effort to obtain retroactive approval of Aspen's purchase of 50 percent of LAWC and LAWC itself (as evidenced by the official votes and statements of a significant number of the shareholders, directors and one officer of LAWC. To the best of RLAWC's knowledge, LAWC has not consented in writing to Mr. MacBride's simultaneous representation of LAWC and Aspen, thus, as discussed in detail below, we believe an unwaived conflict has existed since the beginning of this proceeding. If the Commission reaches that conclusion, then RLAWC submits that Mr. MacBride's legal fees must be paid solely by Aspen (which would have been the case if Aspen had sought approval for the purchase of LAWC at the time the transaction occurred).

RLAWC believes that Mr. MacBride's simultaneous representation creates an actual conflict. As part of this proceeding, the Commission will determine whether the sale of LAWC without Commission approval was improper under state law, and if so, who was at fault for the violation. Thus, the Commission might have to decide whether LAWC or Aspen is at fault and who should be penalized for the violation. It would be a clear ethical violation if the same attorney attempts to shift such penalties from one client to the other.

Further, Aspen apparently intends to have LAWC and its ratepayers pay for the costs of Aspen's filing and defending the Application in this proceeding¹⁰ even though LAWC is not named as a party in the Application. Assisting Aspen in seeking payment of legal fees from LAWC constitutes a conflict of interest because the same attorney is

⁹ Motion, at ¶8.

¹⁰ LAWC Advice Letter 94 establishes a memorandum account to track legal expenses incurred in this proceeding for possible reimbursement.

taking steps to benefit Aspen that will disadvantage LAWC. Presumably these costs will be passed on to RLAWC members, thus RLAWC believes it has no choice other than to support the disqualification of Mr. MacBride as counsel for LAWC. If Aspen had sought approval prior to the purchase of 50 percent of LAWC in 2003 as it should have done, Aspen clearly would have had to pay its own legal costs. The same should be true now.

II. The Commission Has Authority to Disqualify Attorneys

After Paul Orvis filed the Motion, Mr. MacBride circulated an email to the service list in this proceeding asserting that he “was not aware” of any Commission authority to disqualify an attorney.¹¹ Clearly Mr. MacBride’s understanding is incorrect. The Commission has considered motions for disqualification of attorneys, including one in which Mr. MacBride himself sought the disqualification of opposing counsel.¹² In *Coachella Valley Communications, Inc. v. AMI Telecommunications Company of Nevada, Inc. and Morris Jacobs*, Mr. MacBride (representing AMI) requested the disqualification of opposing counsel on the basis that opposing counsel was not admitted to practice law in California.¹³ The Commission denied Mr. MacBride’s motion, but this ruling clearly demonstrates that the Commission has authority to disqualify an attorney practicing before it..

Similarly, in D.06-07-005¹⁴ the Commission considered a motion for removal of defendant’s counsel on the grounds that the attorney had engaged in unethical conduct in his representation of a defendant in the proceeding.¹⁵ The Commission denied the motion for the counsel’s removal on the merits and never questioned that it had the authority to

¹¹ See Exhibit B, email from Mr. MacBride to service list in A.11-03-014 on

¹² D.00-09-007, at p.4 (mimeo).

¹³ D.00-09-007, at p. 5 (mimeo).

¹⁴ D.06-07-005, *Westcom Long Distance v. Pacific Bell et al.*, C.92-07-045, July 20, 2006.

¹⁵ D.06-07-005, at pp.44-46 (mimeo).

remove counsel in a proceeding before it.¹⁶ Further, in D.95-08-057,¹⁷ the Commission noted that one of the parties had notified the Commission that "when appropriate, UPS intends to file a motion with this Commission to disqualify Mr. Khourie and to request sanctions for violation of Rule 1 of the Rules of Practice and Procedure of the Commission."¹⁸ The Commission gave no indication that it lacked the authority to consider such motion.

As these examples make clear, the Commission has plenary power to "do all things, whether specifically designated in [the Public Utilities Act] *or in addition thereto*, which are necessary and convenient" in the supervision and regulation of every public utility.¹⁹ The Commission's powers have been liberally construed.²⁰ Further, the Commission is constitutionally authorized to establish its own procedures under the California Constitution.²¹ It has employed these powers to determine, for example, that non-attorneys may appear in Commission proceedings and may represent parties.²² It is absurd to suggest that the Commission may authorize non-attorneys to represent parties and receive attorneys fees, but that it lacks the power to regulate the conduct of actual attorneys who appear in its proceedings.

Ultimately, a tribunal's authority to disqualify an attorney "derives from the power inherent in **every** court 'to control in furtherance of justice, the conduct of its

¹⁶ *Id.*, at p.47.

¹⁷ D.95-08-057, *In the Matter of UNITED PARCEL SERVICE, INC. filing tariff pages that reflect increases in parcel rates without authorization from this Commission and using an out-dated Decision No. 89-09-014 dated September 7, 1989, as the authority to increase rates effective February 24, 1992. And Related Matter*, Aug. 11, 1995 (mimeo).

¹⁸ D.95-08-057, at p.3.

¹⁹ Public Utilities Code Section 701 (emphasis added).

²⁰ *Consumers Lobby Against Monopolies v. Public Utilities Commission* (1979) 25 Cal.3d 891, 905 (cited hereinafter as "CLAM").

²¹ Cal. Const., art. XII, Section 2.

²² CLAM pp. 913-914.

ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto.”²³ Thus, the Commission clearly has the authority to disqualify Mr. MacBride, and RLAWC respectfully submits that it must do so to protect the interests of LAWC ratepayers, as set forth below.

III. Mr. MacBride Has Not Obtained Written Consent Waiving the Conflict of Interest Between LAWC and Aspen.

Paula Orvis’ Motion clearly sets forth a potential conflict of interest between LAWC and Aspen that has ripened into an adversarial and actual conflict with Mr. MacBride’s decision to serve discovery on her regarding her stock ownership of LAWC. The intent of Mr. MacBride’s discovery appears to be calculated to obtain information to challenge Paula Orvis’ position at LAWC in order to assist Aspen in an effort to rebut or defeat her protest of Aspen’s purchase of 50 percent of LAWC. Thus, while asserting that he represents LAWC’s interests, Mr. MacBride is demanding discovery from an LAWC director and shareholder that appears intended to assist Aspen at the expense of LAWC. The California Code of Professional Responsibility (CPRC) unequivocally states in section 3-310 (C) (1) and (2):

A member shall not, without the informed written consent of each client:

- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
- (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict...

Subparagraphs (C)(1)(2) are intended to apply to all types of legal employment, including the concurrent representation of multiple parties in litigation or in a single transaction or in some other common enterprise or legal relationship. At no time in this proceeding has

²³ *In re Charlissee C.* (2008) 45 C4th 145, 159-161, 84CR3d 597, 606 (quoting Calif. Code of Civil Procedure §128(a)(5)). (Emphasis added)

Mr. MacBride indicated that he obtained written consent to represent both LAWC and Aspen. In fact, he has continued his representation despite written opposition of 50 percent of the shareholders and two of the three directors in a closely held corporation challenging the transfer of 50 percent of the corporation's assets while representing the application of the new owners and directors seeking approval of the transfer. Mr. MacBride cannot fulfill his duty of loyalty to both corporate clients. This is particularly evident with respect Mr. MacBride's billing LAWC for his services regarding Aspen's transfer application and the setting up of a Memorandum account tracking the litigation expenses being incurred.

Furthermore, corporate counsel must *refrain* from taking part in controversies or factional differences among shareholders as to control of the corporation so that he or she can advise the corporation without bias or prejudice.²⁴ In closely-held corporations, shares may be equally divided and shareholders may hold all of the officer positions. If the corporate attorney receives conflicting instructions from two (or more) officer-shareholders with equal authority, the attorney may be obligated to withdraw.²⁵ Here, Aspen through its control of the LAWC board retained the same counsel to represent LAWC over the objections of its minority shareholders in a proceeding challenging Aspen's right to purchase half of LAWC even though LAWC is not a party to the transfer application filed by Aspen. More significant is the fact that Aspen's managing partner retained Mr. MacBride to represent LAWC and Aspen prior to requesting approval from

²⁴ *Goldstein v Lees* (1975) 46 CA3d 614, 622, 120 CR253, 258.

²⁵ See Cal. State Bar Form.Opn. 1994-137.

the LAWC Board.²⁶ In effect, Mr. MacBride's retention was a *fait accompli* without notice or consent from the members of the Board or its shareholders.

A conflict involving an attorney's duty of loyalty is the “most egregious kind of conflict and with few exceptions, disqualification in a case of simultaneous representation follows automatically, regardless of whether the simultaneous representations have anything in common or present any risk that the confidences obtained in one matter would be used in the other.”²⁷ This strict rule recognizes that a client who learns that his or her lawyer is also representing a litigation adversary the client likely will lose the confidence and trust in counsel “that is one of the foundations of the professional relationship.”²⁸

Mr. MacBride's failure to comply with the consent requirements of Rule 3-310 outlining the potential conflicts and adverse positions between Aspen and LAWC and his apparent intention to continue this simultaneous representation without the required written client waiver requires disqualification of Mr. MacBride as LAWC's attorney. It is imperative that the Commission resolve this conflict before this proceeding progresses any further, as the conflict affects discovery, negotiations, mediation, settlement as well as representation and advocacy at the evidentiary hearing. To presume that the interests of LAWC are the same as Aspen's interests is to make a mockery of the duty of loyalty where there is a conflict of interest. “An attorney's simultaneous representation of clients with differing interests presents a classic situation of conflict. Each client is entitled to

²⁶ Motion, ¶3.

²⁷ *In re Charlissee C.*, 45 Cal. 4th 145, 161 (citing *People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.*(1999) 20 Cal. 4th 1135, 1147..

²⁸ *Id.*,

unimpaired loyalty of counsel.²⁹ RLAWC's members, as ratepayers, oppose Aspen's legal expenses being transferred to LAWC. RLAWC concurs with Paula Orvis that LAWC does not require counsel to defend the unapproved transfer of ownership from Marianne and James Orvis to Aspen because LAWC was not a participant in the transfer. We also believe the CPUC has the authority and responsibility to ensure LAWC is protected from incurring undue legal expenses arising from Aspen's conduct.³⁰

IV. The Commission Must Resolve the Conflict of Interest Prior to Mediation

On September 9, 2011, Aspen filed a motion with the Commission asking that the parties be directed to have a meeting to discuss the feasibility of mediation of the dispute in this proceeding. On September 14, 2011, (without waiting for a response from protestors) the Assigned Commissioner issued a ruling granting the motion. A date for this meeting has not yet been established, but RLAWC respectfully submits that the conflict of interest must be resolved before that meeting.

In addition to attempting to represent both LAWC and Aspen, Mr. MacBride has indicated that Aspen's managing partner, Mr. Charles Toeniskoetter intends to speak on behalf of Marianne Orvis (the seller) at the meeting and any possible resulting mediation. RLAWC perceives a conflict of interest in Mr. MacBride and his client representing both the buyer (Aspen), the seller (Marianne Orvis) and the entity at issue (LAWC) in the same transaction. If a settlement were to be reached in which Aspen agreed to divest itself of a portion of the LAWC stock it purchased, for example, it appears to RLAWC

²⁹ *Tsakos Shipping and Trading, S.A. v. Junipoer Town Homes, LTD* (1993) 12CalApp.4th 74, 15 Cal.Rptr.2d 585,

³⁰ We do not address here the issue of whether the currently constituted LAWC board of directors, which includes two directors from Aspen, has authority to attempt to retain alternate counsel over the objection of two directors and shareholders. This issue may have to be addressed should Aspen attempt to require LAWC to hire alternate counsel, which ultimately would be at ratepayer expense.

that there could be a direct conflict between buyer and seller with regard to the process and/or price for transferring those shares to a third party. Similarly, the likely desire of the buyer and seller to leave the transaction unchanged may not be in the best interest of LAWC, due to concerns about the management of LAWC since Aspen's unapproved purchase.

Further, RLAWC has grave concerns about proceeding with the meeting while it is unclear whether Mr. MacBride represents both LAWC and Aspen, and therefore, whether the legal fees incurred during the meeting may be passed along to LAWC and its ratepayers. Based on Paula Orvis' Motion, it appears to RLAWC that LAWC believes that it does not need counsel and should not be required to participate in this proceeding as a party. If that is correct, then LAWC would presumably not retain substitute counsel if Mr. MacBride were disqualified, and RLAWC's members would no longer be even potentially liable for paying legal fees for this Application proceeding through their rates.

V. Conclusion

RLAWC has demonstrated above that an actual conflict of interest exists that is sufficient for the Commission to grant the Motion to disqualify Mr. MacBride's simultaneous representation of Aspen and LAWC. On that basis, RLAWC submits that it is inappropriate for its members to be required to pay for Mr. MacBride's legal fees for the litigation or mediation of Aspen's attempts to get retroactive approval of its purchase of 50 percent of LAWC. RLAWC does not oppose Mr. MacBride's continued representation of Aspen so long as LAWC, and its ratepayers, are not required to pay for Aspen's legal fees. Therefore, RLAWC respectfully requests the Commission to grant the Motion to disqualify Mr. MacBride from representing LAWC.

Signed and dated at Walnut Creek, this 27th day of September.

/s/Anita Taff-Rice
1547 Palos Verdes, #298
Walnut Creek, CA 94597
Phone: (415) 699-7885
Fax: (925) 274-0988
anitataffrice@earthlink.net

Counsel for RLAWC

XXXXXXXXXXXXXX
9601 State Route #4

March 3, 2004

Mr. Ramon Go
Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Re: Sale and Transfer of Utility Property

Dear Mr. Go:

Last September I received a sample application to sell or transfer utility assets from Kenneth Louie. It was an application for authorization to sell a water system.

I can't believe we need to fill out a 22-page form like this. Lake Alpine Water Company did not sell anything. Two of our stockholders needed to sell their stock in the Company. Lake Alpine Water Company's only part of this transaction was to transfer the stock from one party to the other.

The sample application sent to us was of no use that I can see. If you have one with a similar transaction to our situation, I will try to make it work.

Yours truly,

Roma P. Orvis
Treasurer

Subject: RE: A.11-04-013 Clarification of Assigned Commissioner's Ruling
From: TMacBride <TMacBride@goodinmacbride.com>
Date: Thu, 15 Sep 2011 09:38:24 -0700
To: 'Anita Taff-Rice' <anitataffrice@earthlink.net>, "Econome, Janet A." <janet.econome@cpuc.ca.gov>, "cjt@toeniskoetter.com" <cjt@toeniskoetter.com>, "bporvis@juno.com" <bporvis@juno.com>, "ggdralla@pacbell.net" <ggdralla@pacbell.net>, "powderbears@gmail.com" <powderbears@gmail.com>, "michael.colvin@cpuc.ca.gov" <michael.colvin@cpuc.ca.gov>, "smw@cpuc.ca.gov" <smw@cpuc.ca.gov>, "fer@cpuc.ca.gov" <fer@cpuc.ca.gov>

ALJ Econome,

I do not believe RLAWC's email of 6:32PM yesterday sets forth any basis for vacating or modifying Commissioner Ferron's Ruling ("ACR") dated September 14, 2010.

1. Ms. Taff-Rice described a proposal in a phone call on July 28. We indicated the following month, as we have throughout the course of the matter, that we would prefer to pursue settlement through an ALJ neutral. On September 9, we filed the motion which was granted yesterday. Part V of that motion (at page 6) sets forth why we believe settlement is best pursued through an ALJ neutral. We need not repeat those points here but only state that we continue to adhere to them. Requiring the parties to meet without a mediator prior to meeting with a mediator makes no sense; we could have done that in the absence of an order. The fastest course to settlement is the one set by the ACR.

2. The Motion to Disqualify me cites no authority for such an action by the Commission and am not aware of any. I will respond to the motion within the time limits set by Rule 11.1(e) unless you, ALJ Wilson or Commissioner Ferron set an earlier date.

3. Mrs. Marianne Orvis sold her shares over 8 years ago. She does not intend to actively participate in the proceeding. She has authorized Mr. Toeniskoetter to speak for her in any settlement discussions. As Ms. Taff-Rice indicates. Mrs. Orvis would like to be given the opportunity to review and comment on a proposed settlement but we know of no reason why her understandable desire to do so should delay matters. (Mr. Toeniskoetter can simply stay in contact with her by telephone.)

A copy of Ms Orvis's authorization of Mr. Toeniskoetter to speak for her is attached. We ask that all parties respect her desire to not be actively involved in this matter unless, and until, her participation is absolutely necessary.

Finally, the ACR indicated that "the schedule for this proceeding is suspended." We only seek clarification as to whether that suspension includes discovery. Applicant and both Protestants have received data requests with respect to which responses are due either today or in the next few business days. (These include the data request to Paula Orvis to which she made reference in her initial email to you.) RLAWC's deposition of Roma Orvis is scheduled for next Tuesday in Modesto. We do not here argue for one outcome or another, only that it be applied across the board.

Thank you for your consideration,

Tom MacBride

Thomas J. MacBride
direct line 415.765.8444
tel 415.392.7900 | fax 415.398.4321
505 Sansome Street, Suite 900 | San Francisco, CA 94111
tmacbride@goodinmacbride.com
vCard | www.goodinmacbride.com

This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 USC 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This communication may contain confidential and privileged material for the sole use of the intended recipient and receipt by anyone other than the intended recipient does not constitute a loss of the confidential or privileged nature of the communication. Any review or distribution by others is strictly prohibited. If you are not the intended recipient please contact the sender by return electronic mail and delete all copies of this communication.

-----Original Message-----

From: Anita Taff-Rice [<mailto:anitataffrice@earthlink.net>]
Sent: Wednesday, September 14, 2011 6:32 PM
To: TMacBride; Econome, Janet A.; cjt@toeniskoetter.com; bporvis@juno.com; ggdralla@pacbell.net; powderbears@gmail.com; michael.colvin@cpuc.ca.gov; smw@cpuc.ca.gov; fer@cpuc.ca.gov; 'Anita Taff-Rice'
Subject: A.11-04-013 Clarification of Assigned Commissioner's Ruling

ALJ Econome,

RLAWC has reviewed the Assigned Commissioner's Ruling granting Aspen Forest Investment Company's motion to require parties to meet to discuss the feasibility of mediation. In the interest of making ADR discussions as efficient and effective as possible, RLAWC is seeking clarification on two issues.

First, RLAWC made a detailed settlement offer to Aspen's counsel on July 28, 2011 and to date, Aspen has not responded other than to state that Aspen would not discuss settlement other than in a mediation. RLAWC, therefore, believed mediation was premature and would be better used to help parties resolve targeted issues on which they could not reach agreement on their own. Since we have been unable to get Aspen to respond to our settlement offer RLAWC fears that a mediation may not be productive. Therefore, we are requesting that the Commission direct Aspen to engage in at least one settlement discussion with RLAWC and Mrs. Paula Orvis prior to requiring all of the parties to expend time and resources to drive several hours to the CPUC to attend a discussion about the feasibility of mediation.

Second, RLAWC is unclear whether consideration of the expedited motion to disqualify filed by Mrs. Paula Orvis on Sept. 12, 2011 is also suspended. While RLAWC is not expressing an opinion on whether Mr. MacBride's representation of LAWAC and Aspen represents a conflict of interest, we are concerned about a different conflict. During our discussion with Mr. MacBride about the possibility of mediating this dispute, Mr. MacBride indicated that Mrs. Marianne Orvis (the seller) would not attend any mediation, but that Mr. MacBride would speak for her. As we understand it, Mr. MacBride does not represent Mrs. Marianne Orvis, so we are unclear what settlement authority he may have on her behalf, and perceive a conflict if Mr. MacBride represents both the seller and the buyer of 50% of Lake Alpine Water Company. Further, Mr. MacBride stated that Mrs. Marianne Orvis wanted to reserve the right to review and potentially reject any settlement reached through mediation between Aspen, RLAWC, and Mrs. Paula Orvis. Clearly, RLAWC is extremely concerned that we not be required to go through a mediation only to have one of the parties be allowed to veto any settlement that might be reached.

RLAWC will be prepared to discuss these issues at the convenience of yourself. I am scheduled for an out of the office meeting tomorrow (9/15) so I would not be able to have a telephonic conference until Friday, September 16.

Thank you for this opportunity to raise these issues that we would have addressed in our response to Mr. MacBride's motion.

Anita Taff-Rice

--

Law Offices of Anita Taff-Rice
1547 Palos Verdes, #298
Walnut Creek, CA 94597
Phone: 415.699.7885

20110915091840832.pdf	Content-Description: 20110915091840832.pdf Content-Type: application/pdf Content-Encoding: base64
------------------------------	--