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November 26, 2008

Justices of the Colorado Supreme Court
c/o Susan J. Festag, Clerk of the Supreme Court
2 E. 14th Ave.
Denver, CO 80203

RE: Comments on the recommendations of the Supreme Court Water Committee

Dear Justices of the Colorado Supreme Court:

Thank you for the opportunity to provide comments on the recommendations of the Water Court Committee. We appreciate the time and effort that has gone into this process. On behalf of Leonard Rice Engineers, Inc., I would like to respectfully offer the following comments.

Regarding the Declaration of Expert, we agree with the concepts presented in the proposed Declaration. It is our opinion that the wording of the second sentence of item (3) could be problematic, causing the experts to get bogged down in attempting to disclose all typographical edits, such as those made by support staff. We support the attached edits to this language, which we feel adequately addresses the issue of concern.

Regarding the proposed deadlines, we offer the following comments:

Joint written statements after the two meetings of experts would be required five days after each of the meetings, setting forth the disputed issues. It is not clear if this means five business days. We recommend changing the time period to 10 days, since producing one joint statement among numerous parties logistically may take more than five days.

Requiring the applicant's supplemental expert disclosures to be submitted 180 days before trial would be 15 days after the meeting of the experts. We would recommend this deadline be set at least 30 to 45 days after the meeting of the experts. Issues may be identified at this meeting for which the experts for the applicant may be required to re-do an analysis. Time spent at this phase may allow the parties to come to agreement, at least on some issues, sooner and more efficiently. We then recommend the opposers' expert disclosures be required 30 days after these applicant's supplemental expert disclosures.

We believe that these adjustments can be made without lengthening the total time frame. Essentially the applicant's time frame would be lengthened and the opposers' time frame shortened during this period. This is appropriate because the applicant has the burden of proof, and often has numerous opposers to which to respond.

Very truly yours,

LEONARD RICE ENGINEERS, INC.

Janet P. Williams, P.E.
Principal

JPW

Water Court Committee Expert Subcommittee changes marked
(bold face) suggestion Nov. 21, 2008

Appendix 1 to Chapter 36. Colorado Water Court Forms

Declaration of Expert

Form 2. Declaration of Expert.

I, _____, (name of expert) state the
following:

(1) I understand that my role as an expert, both in preparing this report and in giving evidence, is to assist the court to understand the evidence or to determine facts in issue. The opinions expressed in my disclosures and in my report are my own professional opinions.

(2) I have endeavored in my report and disclosures to be accurate and complete, and have addressed matters that I regard as being material to the opinions expressed, including the assumptions that I have made, the bases for my opinions, and the methods that I have employed in reaching those opinions.

(3) I have been advised by the attorney for my client of the disclosure requirements of the rules of the court, and I have provided in my report the information required by those rules. **I have not included anything in my report(s) which has been suggested to me by anyone (including particularly my instructing lawyers) without forming my own independent view on the matter.**

I have also disclosed whether, and to what extent, the content of my written report was drafted or changed by any other person.

(4) I will immediately notify, in writing, the attorney for the party for whom I am giving evidence if, for any reason, I consider that my existing report requires any correction or qualification; and, if the correction or qualification is significant, will prepare a supplementary report to the extent permitted by the applicable rules of the court.

(5) I have used my best efforts in my report, and will use my best efforts in any evidence that I am called to give, to express opinions within those areas in which I have been

(6) I have made the inquiries that I believe are appropriate and, to the best my knowledge, no matters of significance that I regard as relevant have been withheld from the court.

(7) I have disclosed any financial or pecuniary interest that I have in the results of this lawsuit or in any property or rights that are the subject of the lawsuit for which my report and disclosures are being submitted.

Dated this _____ day of _____, _____.

Declarant