Message

From: DeLaquil, Mark [mdelaquil@bakerlaw.com]
Sent: 8/20/2018 3:12:00 PM
To: Fotouhi, David [Fotouhi.David@epa.gov]
Subject: RE: Florence Copper's Memorandum of Position on the Petition for Judicial Review of the 1997 Aquifer Exemption
Attachments: ATT00001.txt

Dear David,

I don't believe that a conference line is necessary. I will plan on calling you at 202/564-1976 then.

Best regards,

Mark

Mark DeLaquil
Partner

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From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Monday, August 20, 2018 10:58 AM
To: DeLaquil, Mark <mdelaquil@bakerlaw.com>
Subject: RE: Florence Copper's Memorandum of Position on the Petition for Judicial Review of the 1997 Aquifer Exemption

Mark:

Yes, 10:00 a.m. on Friday will work. Please give me a call then; if using a conference line would be more convenient, please let me know and I will send you the dial-in information.

Best,

David

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: DeLaquil, Mark [mailto:mdelaquil@bakerlaw.com]
Sent: Monday, August 20, 2018 10:11 AM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: RE: Florence Copper's Memorandum of Position on the Petition for Judicial Review of the 1997 Aquifer Exemption

Dear David,

Good to hear from you. Friday before noon works well for me. Do we want to plan on 10:00 am Eastern?

Best regards,

Mark

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From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Sunday, August 19, 2018 5:54 PM
To: DeLaquil, Mark <mdelaquil@bakerlaw.com>
Subject: RE: Florence Copper's Memorandum of Position on the Petition for Judicial Review of the 1997 Aquifer Exemption

Mark:

I would be glad to discuss further. I am away from the office on work travel for the next couple of days, but I could talk by phone this Thursday after 4:00 p.m. or this Friday before noon. Let me know if one of those times works for your schedule.

Best,

David

David Fotouhi

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From: DeLaquil, Mark [mailto:mdelaquil@bakerlaw.com]
Sent: Tuesday, August 14, 2018 6:08 PM

To: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: FW: Florence Copper's Memorandum of Position on the Petition for Judicial Review of the 1997 Aquifer Exemption

Dear David,

I hope all is well. I do not know if you have heard, but the Ninth Circuit petitioners dismissed their cases with prejudice a few weeks ago. A just outcome, but we remain interested in the broader issue of when it is and is not appropriate to revisit minerals-based aquifer exemptions that are currently the subject of development. Please let me know when you have a few minutes to discuss. Also, I understand that Byron has left the Agency, so if there is anyone else who should be brought into the loop on this please do so (or let me know and I will).

Best regards,

Mark

Mark DeLaquil
Partner

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From: gtsiolis@nj.rr.com <gtsiolis@nj.rr.com>
Sent: Wednesday, July 18, 2018 8:22 AM
To: brown.byron@epa.gov; fotouhi.david@epa.gov; 'Baynes, Sheila (ENRD)' <Sheila.Baynes@usdoj.gov>
Cc: DeLaquil, Mark <mdelaquil@bakerlaw.com>; 'Rita Maguire' <rmaguire@mpwaterlaw.com>
Subject: Florence Copper's Memorandum of Position on the Petition for Judicial Review of the 1997 Aquifer Exemption

Folks,

As a follow-up to our June 20 meeting regarding the petition for judicial review of the 1997 aquifer exemption which is currently before the Ninth Circuit Court of Appeals (Attachment 1), attached please find Florence Copper's memorandum of its position on the regulatory merits of the petition (Attachment 2).

The memorandum explains the legal basis of Florence Copper's position that EPA's rules necessitate that an aquifer exemption established under 40 C.F.R. §§ 146.4(a)-(b)(1) and 144.7(b)-(c)—i.e., a minerals-based aquifer exemption—cannot be diminished or revoked while (i) there are activities ongoing that a UIC permit issued based on the exemption authorizes within the boundaries of the exemption or (ii) activities in material reliance on the exemption are reasonably expected to occur within the boundaries of the exemption.

Florence Copper respectfully requests that EPA apprise Florence Copper of EPA's position on the regulatory merits of the petition, and whether EPA will take a position that is

substantially similar to Florence Copper's position. We request that EPA do so within the next 2-3 weeks, as merits briefing concerning the other petition for judicial review that is before the Ninth Circuit (Attachment 3) has been scheduled (the petitioners' opening brief is due August 13) and it is conceivable that the court will consolidate its review of the two petitions.

We look forward to your response.

If you have any questions, please do not hesitate to let us know.

Thank you and best regards,

George A. Tsiolis
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Counsel for Florence Copper, Inc.

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