

Luster, Tom

From: Luster, Tom
Sent: Wednesday, September 27, 2000 2:41 PM
To: White, Gordon
Subject: FW: Dinsmore Draft and draft denial letter

DELIBERATIVE DOCUMENT

Hi Gordon --

Here's my draft denial letter, and the latest draft of the withdrawal letter below...



SeeTap401denial.doc

Tom L.

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

From: Fitzpatrick, Kevin
Sent: Wednesday, September 27, 2000 11:35 AM
To: Luster, Tom; Hellwig, Raymond; Marchioro, Joan (ATG); Stockdale, Erik
Subject: FW: Dinsmore Draft

I have made my edits, deletions and additions to the attached document in red.
Kevin

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

From: Luster, Tom
Sent: Wednesday, September 27, 2000 10:01 AM
To: Hellwig, Raymond; Marchioro, Joan (ATG); Fitzpatrick, Kevin; Stockdale, Erik
Subject: RE: Dinsmore Draft

Hi all --

ATTORNEY CLIENT PRIVILEGED

Thanks for the letter, Ray. I've made my edits in the attachment below.



DinsmoreTL.doc

I have a couple of main concerns:

The draft unnecessarily and inappropriately limits the scope of our review. We've received a number of comments in the past couple of weeks that I have not yet been able to review, and I assume that some of those comments will need to be incorporated into our subsequent 401 review. Additionally, we will be going through another public comment period, and we are likely to have several additional substantive issues raised that must be addressed if we are to

provide a defensible 401 decision.

We cannot promise the Port that this letter contains all the issues that need to be addressed, since we don't know them all yet, and since that would completely ignore the required public process. It's not likely that every issue raised during the public comment period will need to be a part of our 401 review, but there will be some, and we should not mislead the Port on this.

We must be clear on the timing issue. I do not agree with an artificial sixty-day review period -- while I understand the desire to provide the Port some certainty, it does not realistically reflect the complexity and controversy of the project. I think given the pressures associated with this proposal, the history of issues related to timing, etc., we will spend a significant amount of any sixty-day period debating where we are in the sixty-day period.

If we must include a sixty-day review period, here are some keys to making it work:

- 1) we do not present the Port with the full detailed list of issues until after the public comment period;
- 2) the sixty-day period does not start until after the end of the public comment period, after our review of comments and presentation to the Port of issues to be resolved, and after the Port's submittal of complete and approvable documents; and,
- 3) we make it clear as to when the clock starts and stops -- for instance, if the Port submits addenda or supplemental documents after we've accepted what are presented as "final, approvable" documents, the clock starts over (i.e., no more documents dribbling in a page or a chapter at a time).

We should also anticipate public disclosure requests from various groups to allow outside review of some of these documents, and we should anticipate review comments from those groups on those documents. We should decide now how to handle comments received while we are in our sixty-day review mode -- perhaps we could accept review comments for the first thirty days of the sixty-day review period, and then have the last thirty days be a "blackout" period in which we review everything received and make our 401 decision or conditions accordingly.

I hope these comments help us get to a workable and defensible review process. Please let me know if you have questions.

Tom L.

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

From: Helwig, Raymond
Sent: Tuesday, September 26, 2000 9:40 PM
To: Marchioro, Joan (ATG); Fitzpatrick, Kevin; Stockdale, Erik; Luster, Tom
Subject: Dinsmore Draft

"ATTORNEY CLIENT PRIVILEGE"

The attached letter attempts to incorporate messages and tone conveyed to me by Tom F. Don't be shy about offering edits etc. Obviously the meat is the portion describing conditions and stormwater submittal requirements.

I'll see Joan down in Olympia tomorrow. Please don't hesitate to leave me messages or try to get a hold of me in Olympia. Please coordinate with Joan as appropriate.

Thanks.

(Tom/Erik, you are off the hook for the Thursday a.m. meeting at the Port Offices (Pier 69) - per my voice mail.....)

<< File: Dinsmore.doc >>

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