

1 GEORGE MCGILL (SB #031973)
1328 Sun Valley Road
2 Solana Beach, CA 92075-1647
3 Telephone: (858) 481-8446
4 Facsimile: (858) 481-1246
5 Attorney for Plaintiff

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 MARVIN DONIUS,)
12)
13 Plaintiff,)
14 vs.)
15)
16 BO MAZZETTI; STEPHANIE)
17 SPENCER; CHARLIE KOLB;)
18 DICK WATENPAUGH; STEVE)
19 STALLINGS; KENNY KOLB;)
20 DOE I AND DOE II,)
21 Defendants.)

Case Number: 10 CV 0591 WQH POR
DECLARATION OF JOHN PETERSON
IN OPPOSITION TO MOTION OF
SPECIALLY APPEARING DEFENDANTS
TO DISMISS COMPLAINT FOR LACK
OF JURISDICTION AND FAILURE
TO EXHAUST TRIBAL REMEDIES
Judge: William Q. Hayes
Date: June 21, 2010
Time: 11:00 a.m.
Courtroom: 4, Fourth Floor
ORAL ARGUMENT REQUESTED

22
23 I, JOHN PETERSON, declare:
24

25 A. Background.

26 1. I am a hydrogeologist and environmental consultant. I have
27 personal knowledge of the facts set forth in this declaration, and if
28 called as a witness I could and would testify competently thereto.

1 2. From 1981 to 2003, I was employed by the County of San Diego
2 ("County") as the County Hydrogeologist with the Department of Planning
3 and Land Use. I also served as the CEQA Regulatory Manager in the later
4 years of my employment with the County.

5 3. As the County's hydrogeologist, I was responsible for the re-
6 view of, and approval or denial of, all development projects that relied
7 upon or involved groundwater within the unincorporated area of the Coun-
8 ty. I was also responsible for ensuring that any project in the unin-
9 corporated area of the County that relied upon or used groundwater fully
10 met and satisfied all requirements imposed by the County Groundwater
11 Ordinance.

12 4. In addition to my duty as the County's hydrogeologist, I also
13 acted as the CEQA Regulatory Manager with responsibility for reviewing
14 projects for environmental compliance. In this position I managed a
15 section of environmental specialists who were assigned the task of pre-
16 paring and completing CEQA review for all private projects within the
17 County.

18 **B. Education and Qualifications.**

19 5. I have a Bachelor of Science from San Diego State University
20 (1976) and a Master's of Science in Geology with a specialty in hydro-
21 geology (1978), also from San Diego State University. I am a Cali-
22 fornia Certified Hydrogeologist (#90) and a California Professional
23 Geologist (#3713).

24 6. As the owner and principal of Peterson Environmental Services
25 (established in the spring of 2003), I have directed many groundwater
26 investigations and studies. I have also provided expert witness (fo-
27 rensic groundwater) investigations and testimony in numerous litigated
28 cases both in San Diego County and elsewhere in California. I am qual-

1 ified to provide expert witness testimony in all state and federal
2 courts in California

3 **C. Review of Facts of This Case.**

4 7. For my review of the facts of this case, I have completed the
5 following:

6 (1) On Monday, May 31, 2010, I completed an extensive site
7 inspection at 33777 Valley Center Road, Valley Center, San Diego County.

8 (2) I have carefully reviewed each of the following docu-
9 ments: (a) Letter dated July 27, 2005 from US EPA to Marvin Donius; (b)
10 Letter dated January 18, 2008 from Department of Health and Human Serv-
11 ices to Kristie Oronsco; (c) Letter dated September 4, 2008 from US EPA
12 to Craig Benson (83-Page Letter Report, Mushroom Express Assessment);
13 (d) March 31, 2010 Supplemental Declaration of Marvin Donius filed in
14 related case (Rincon Mushroom Corp. v. Mazzetti, et al.); (e) Letter
15 dated October 19, 2008 from US EPA to Marvin Donius; and (f) May 13,
16 2010 Declaration of Rick Minjares filed in this case.

17 **D. Review of Minjares Declaration.**

18 8. The Minjares declaration sets forth opinions and conclusions
19 (pages 6-12) that this property represents "the likely threat that his-
20 toric and present land use activities on the Subject Property to soil,
21 water and other natural resources on the Reservation" (lines 18 and 19,
22 page 6). Mr. Minjares also asserts that "contamination spilled on the
23 Subject property would ... 2) drain into underground injection wells on
24 the property that are likely discharging to surrounding soils ..." (lines
25 4-7, page 7). Mr. Minjares appears to be attempting to "make the case"
26 that this property "is" contaminating the local groundwater system and
27 allegedly detrimentally impacting the Rincon Tribe drinking water supply
28 system. There does not appear to be any separation in the Minjares'

1 declaration between what "could be" and what "is" occurring on the
2 property. Indeed, no evidence is offered in the Minjares declaration
3 supportive of the existence of any actual or threatened water
4 contamination emanating from this property. It is true, as the Minjares
5 declaration points out, contaminated material was created as a result of
6 the October 2007 Poomacha wildfire, but all of this material was fully
7 removed from the site by August 2008.

8 **E. Technical Facts Regarding the Potential**
9 **of Groundwater Contamination on the**
 Subject Property.

10 9. It is clear that most of the structures on this property were
11 completely destroyed during the October 2007 wildfire event; significant
12 and substantial damage occurred with respect to all on-site facilities.
13 Following this wildfire event, the US EPA Emergency Response Section was
14 activated, and the EPA's Team 9 Superfund Technical Assessment and
15 Response Team prepared, conducted and completed an assessment and
16 cleanup plan for the property. This work included an exhaustive site
17 assessment, with extensive water quality sampling, sampling of fly ash,
18 and clean up of the site. The EPA report documented that "all water
19 samples results were found to be negative or below US EPA maximum
20 contaminant levels for all investigated analytes" (page 5). The
21 assessment did identify fly ash with levels of certain elements above
22 recommended standards, but as a result of and following this work, the
23 site was completely cleaned up, and some 47 tons of contaminated ash,
24 soil, and debris were eventually removed from the site (page 10). The
25 EPA report concludes on page 12 that the "TPH and metals contaminated
26 ash and soil were successfully removed from the site on August 22,
27 2008". No clean up as to groundwater was required, since no samples
28 collected by registered professionals under EPA supervision showed any

1 groundwater contamination at all.

2 F. Findings.

3 10. None of the documents that I have reviewed showed any evidence
4 of actual or threatened groundwater contamination. As noted above, the
5 US EPA did not document any elements above maximum contaminant levels as
6 to any and all investigated analytes. The Minjares declaration does not
7 provide any evidence to support a claim that any condition on the site
8 is causing groundwater contamination, by reason of infiltration into the
9 underlying aquifer or otherwise. It is true that two underground septic
10 systems exist on this property. However, both of these systems were
11 opened up on August 18, 2008 (see Donius declaration, page 7). This
12 work was directly supervised by the EPA. Underground septic systems do
13 discharge "treated" waste water to the groundwater system, but this is
14 the standard level of care for wastewater flows, and this type of system
15 is utilized with respect to discharge of all domestic waste water within
16 the County and regions outside municipal waste water systems. Under-
17 ground disposal systems such as those in place on this property consti-
18 tute the accepted standard of care in San Diego County.

19 11. The Minjares declaration refers to "underground injection
20 wells on the property" (see line 4, page 7). In my document review and
21 personal on-site inspection and investigation, I could not identify any
22 such facilities on this property. Yesterday I questioned the property
23 owner, Marvin Donius, as to whether any injection wells had been present
24 on the property, and he confirmed my impression from my previous in-
25 vestigation that no injection wells had been in place or currently exist
26 on the property. The only facility that could be identified as being
27 related to an injection well is the onsite sump, but this is a closed
28 sump without an outlet (see page 4, September 4, 2008 US EPA letter).

1 Mr. Donius confirmed to me that this closed sump had been used to store
2 surface storm water that was later used for landscape irrigation. No
3 injection wells have been or are now on this property.

4 12. The Minjares declaration also refers a number of times to "the
5 unconfined nature of the aquifer" (pages 6 and 7). I would agree that
6 the aquifer underlying the project is "unconfined" as defined by profes-
7 sional hydrogeological standards (see Groundwater, Freeze and Charry,
8 1979, page 48). However, it is important to note that basically all
9 alluvial aquifers within the central sections of San Diego County are
10 unconfined. This is the norm for the County. Specifically, the entire
11 San Luis Rey alluvial aquifer system is unconfined. As such, there is
12 nothing unusual or unique in the fact that the aquifer underlying this
13 property is "unconfined".

14 G. Conclusion.

15 13. The examined record is devoid of any evidence evincing or in-
16 dicating any groundwater contamination, actual or threatened, that could
17 have any deleterious effect upon the Rincon Tribe's drinking water sup-
18 ply or otherwise injure any tribal member on the Rincon Reservation.

19 I declare under penalty of perjury that the foregoing is true and
20 correct.

21 Executed at La Jolla, California, this 7th day of June, 2010.

22 
23 JOHN PETERSON
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