

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

GreenHat Energy, LLC, John Bartholomew,
Kevin Ziegenhorn, and Luan Troxel, in her
capacity as Executor of the Estate of
Andrew Kittell

Docket No. IN18-9-000

NOTICE RE COMMUNICATION WITH DECISIONAL STAFF

On Friday evening, September 17, 2021, and Saturday morning, September 18, 2021, an attorney with the Division of Investigations of the Office of Enforcement (DOI), who serves as decisional staff in the *GreenHat* proceeding, sent three emails to a DOI attorney who is part of the litigation staff in the proceeding. After receiving the third email from the decisional staff attorney, which referred to his work as part of the decisional team, the litigation staff member realized that these emails constituted a violation of the Commission's separation of functions regulation, 18 C.F.R. § 385.2202. The litigation staff member did not respond further, and he reported the email exchange to management of the Office of Enforcement. The emails are disclosed with partial redaction of personal email addresses and are attached hereto as Exhibit 1.

Respectfully submitted,

JANEL BURDICK
Director
Office of Enforcement

GEO. F. HOBDAY, JR.
Director
Division of Investigations

JEREMY MEDOVOY
Deputy Director
Division of Investigations

KATHERINE WALSH
Branch Chief
Division of Investigations

/s/ Thomas P. Olson
THOMAS P. OLSON
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Attorneys
Division of Investigations
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DATED: October 1, 2021



Are you familiar with this

5 messages

Steven Tabackman <[REDACTED]@gmail.com>
To: Thomas Olson <[REDACTED]@gmail.com>

Fri, Sep 17, 2021 at 6:17 PM

2 attachments **US v Summerlin.doc**
252K **Marshall v Marshall.rtf**
3674K

Thomas Olson <[REDACTED]@gmail.com>
To: Steven Tabackman <[REDACTED]@gmail.com>

Fri, Sep 17, 2021 at 6:37 PM

no...thanks for the cases. Are you thinking about GreenHat, or something else?also,
how are you?!

On Fri, Sep 17, 2021 at 6:17 PM Steven Tabackman <[REDACTED]@gmail.com> wrote:

Steven Tabackman <[REDACTED]@gmail.com>
To: Thomas Olson <[REDACTED]@gmail.com>

Fri, Sep 17, 2021 at 10:39 PM

I am fine. Feeling swamped. Wishing I were smarter/quicker. Hope you are well
I had thought you didn't know about Sumerlin because the SOL analysis I have seen (in the Staff Report and in what Janel filed the other day did not reflect awareness of Sumerlin.
And then I thought maybe you were thinking that the "probate exception" to federal jurisdiction might get in the way of giving time to file. But Marshall takes care of that.

Yes- you should be familiar with them -- though you should not mention how you came upon them. Sumerlin says that ewhere federal rights are involved, the federal statute of limitations controls, not the state. Full stop.

And Marshall simply says that the "probate exception" to federal court jurisdiction doesn't mean that the federal court can't decide a dispute between a federal entity's claim to money in probate -- all it means is that you have the federal claim litigated in federal court and then you take your judgment (if you win, of course) and the probate court has to honor the federal judgment.

The more important point is the Sumerlin one -- and its significance is that it means that so long as you have an OAP by 60 days before January 6, they have nothing to argue about on timing because you will have met the 1 year CA statute and the 60 days they get under the FPA. But actually you actually have longer than that -- because when the amount of the claim is undetermined when you first file it, because it is a federal claim, the clock doesn't start until the amount being claimed is determined , i.e., when the OAP is issued -- at which time, you have 5 years to file.

But in any event, so long as you have an OAP by 60 days before the "1-yr from death" CA SOL, you've met the CA statute as well.

But you never heard that here

[Quoted text hidden]

Thomas Olson <[REDACTED]@gmail.com>
To: Steven Tabackman <[REDACTED]@gmail.com>

Fri, Sep 17, 2021 at 10:44 PM

got it....very helpful.

it's actually pretty easy for us to satisfy the CA SOL so we will probably not need to litigate this....but glad to know we have this backstop

[Quoted text hidden]

Steven Tabackman <[REDACTED]@gmail.com>
To: Thomas Olson <[REDACTED]@gmail.com>

Sat, Sep 18, 2021 at 10:11 AM

Yes. I learned all this when there was greater concern about the fire drill on getting the OAP

[Quoted text hidden]

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Steve Tabackman

Document Content(s)

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Sept. 17 and 18 emails (Redacted)_Redacted - Copy.pdf3