

# LEWIS BRISBOIS BISGAARD & SMITH LLP

ATTORNEYS AT LAW

221 NORTH FIGUEROA STREET, SUITE 1200, LOS ANGELES, CA 90012  
PHONE: 213.250.1800 | FAX: 213.250.7900 | WEBSITE: [www.lbbslaw.com](http://www.lbbslaw.com)

KIMBERLY A. HUANGFU  
DIRECT DIAL: 213.580.3907  
E-MAIL: [huangfu@lbbslaw.com](mailto:huangfu@lbbslaw.com)

October 31, 2008

FILE NO.  
27175-02

## ***VIA POSTING TO COURT WEBSITE AND E-MAIL***

Mr. Richard Zimmer, Esq.  
Clifford & Brown  
1430 Truxtun Avenue, Suite 900  
Bakersfield, CA 93301  
Email: [rzimmer@clifford-brownlaw.com](mailto:rzimmer@clifford-brownlaw.com)

Re: ***Antelope Valley Groundwater Litigation***  
***Santa Clara County Superior Court Case No. 1-05-CV-049053***  
***Judicial Council Coordination Proceeding 4408***

Dear Mr. Zimmer:

As you know, in order to utilize video deposition testimony at trial, whether in lieu of live testimony or not, the party desiring its use must first provide written notice both of its intent to use that testimony and the portions desired for use. Code of Civil Procedure section 2025.340, subd. (m) provides that, “[a] party intending to offer an audio or video recording of a deposition in evidence under Section 2025.620 shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered. That notice shall be given within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the recording. Objections to all or part of the deposition shall be made in writing . . .”

When a video deposition is noticed that it will preserve testimony for trial of an expert, another party may wish to first conduct a discovery deposition when the circumstances warrant, to ensure effective cross-examination at the videotaping. (Code of Civ. Proc. §§ 2025.220(a)(6), 2025.620(d), 2025.420(b)). Where a party intends to offer video deposition into evidence, the party must not only notify the court in writing of that party’s intent to do so, but also must

ATLANTA | CHICAGO | FORT LAUDERDALE | LAFAYETTE | LAS VEGAS | LOS ANGELES | NEW ORLEANS | NEW YORK  
ORANGE COUNTY | PHOENIX | SACRAMENTO | SAN BERNARDINO | SAN DIEGO | SAN FRANCISCO | TAMPA | TUCSON

Mr. Zimmer  
October 31, 2008  
Page 2

designate the proposed portions to be offered at trial. (Code of Civ. Proc. §§ 2025.620, 2025.340(m) emphasis added.) The written notice and designation must be made in sufficient time to allow for both objections to be made and ruled on by the trial judge, and for editing of the recording. (*Id.*) Further, although a video deposition of an expert may be used in lieu of live testimony of that expert at trial, this may be done only after the party offering the testimony notifies the court and all parties in writing of the intent, but also of the “parts of the recording to be offered.” (Civ. Proc. §§ 2025.620(d)). Similarly, the notice to the court and to the parties must be made in sufficient time for objections to be made and ruled on by the judge, and for any editing of the recording. (*Id.*)

We look forward to receipt of your written provisions including video clips and the corresponding transcripts of those portions of the video for review. Upon receipt we will be happy to review and advise whether the portions are acceptable to us. In addition, during the Court call this morning, the parties were directed to meet and confer regarding the objections raised throughout the deposition. We are willing to meet and confer with you at your earliest convenience. Prior to doing so, please let us know when you will be able to identify the portions of the videotaped deposition, in writing, that you intend to present at trial.

After we have had a reasonable opportunity to review the portions you intend to admit into evidence at trial, we will meet and confer in accordance with the Court’s instruction provided during this morning’s hearing.

Very truly yours,

/s/

Kimberly A. Huangfu

LEWIS BRISBOIS BISGAARD & SMITH LLP

KAH