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HEATHER C. BEATTY, SBN 161907
2 CATHERINE M. STITES, SBN 188534
THE METROPOLITAN WATER DISTRICT OF
3 SOUTHERN CALIFORNIA
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4 Los Angeles, California 90012-2944
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*Exempt from filing
fees under
Government Code
Section 6103*

7 Attorneys for Non-Party Witness
THE METROPOLITAN WATER DISTRICT OF
8 SOUTHERN CALIFORNIA

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

11 ANTELOPE VALLEY GROUNDWATER
LITIGATION

Judicial Council Coordination Proceeding
No. 4408

Santa Clara Case No. 1-050CV-049053
The Honorable Jack Komar, Dept. 1

**NOTICE AND EX PARTE APPLICATION
FOR AN ORDER SHORTENING TIME ON
THE HEARING OF NOTICE OF MOTION
AND MOTION TO QUASH SUBPOENA OR
ALTERNATIVELY MOTION FOR
PROTECTIVE ORDER; DECLARATION
OF CATHERINE M. STITES**

[Concurrently filed with [Proposed] Order;
Motion to Quash or for Protective Order]

Date: January 30, 2014
Time: 8:30 am
Dept.: Telephonic Hearing via CourtCall

Trial Date: February 10, 2014
Time: 9:00 am

23 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

24 PLEASE TAKE NOTICE THAT on January 30, 2014 at 8:30 a.m. or as soon thereafter as
25 the matter may be heard via CourtCall, Non-Party Witness The Metropolitan Water District of
26 Southern California (“Metropolitan”) will and hereby does move this Court by way of an *ex parte*
27 application, for an Order shortening time on the hearing of Metropolitan’s Motion to Quash or
28 Alternatively Impose a Protective Order (“Motion to Quash”) Antelope Valley-East Kern Water

1 Agency ("AVEK") Civil Subpoena (Duces Tecum), dated January 17, 2014 ("Subpoena"). Stites
2 Decl. at ¶ 4, Exhibit A. A true and correct copy of Metropolitan's Motion to Quash or Alternatively
3 Impose a Protective Order is concurrently filed herewith.

4 This application is made pursuant to California Rules of Court, Rules 3.1200, et seq., and
5 Code of Civil Procedure Section 128. Good cause exists for the relief sought because Metropolitan
6 only received the Subpoena on January 21, 2014—a week ago—and the AVEK Subpoena demands
7 that documents and a witness be produced on the first day of trial, February 10, 2014—now only 13
8 days away, and thus, there is no time to bring this motion on regular notice. The Subpoena seeks
9 documents or information which is irrelevant to the matters in dispute. It would be prejudicial to
10 Metropolitan to require it to produce a witness to testify as to irrelevant and inadmissible
11 information. Thus, the Subpoena should be quashed or alternatively limited by protective order as
12 requested in the Motion to Quash. For these reasons, the requested *ex parte* relief is necessary to
13 protect Metropolitan from having to comply with an improper Subpoena.

14 On January 28, 2014, counsel for Metropolitan provided notice to all parties of this *ex parte*
15 application in compliance with the California Rules of Court, Rule 3.1203 by posting the Court's
16 website signed copies of these *ex parte* and the Motion to Quash papers. Stites Decl. at ¶ 3.

17
18 Dated: January 28, 2014

THE METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA

19
20
21 By: 

Catherine M. Stites

22
23 Attorneys for Non-Party THE METROPOLITAN
WATER DISTRICT OF SOUTHERN CALIFORNIA

24
25 **MEMORANDUM OF POINTS AND AUTHORITIES**

26 **I. INTRODUCTION**

27 Metropolitan seeks leave of the court for a hearing on its Motion to Quash the Subpoena on
28 shortened time. Metropolitan requests a hearing on its Motion be set for January 30, 2014 or as soon

1 thereafter and prior to the appearance date of February 10, 2014 as possible. Good cause exists
2 because the Subpoena demands compliance starting on February 10, 2014. If Metropolitan complied
3 with the notice requirements of Code of Civil Procedure Section 1005(b), which governs the
4 required notice for a motion to quash, a hearing on regular notice would be after the compliance
5 date. Further, as fully set forth in the Motion to Quash, filed concurrently with this *ex parte*
6 application, the Subpoena seeks documents or information which is irrelevant to the matters in
7 dispute, and it would be prejudicial to Metropolitan to require it to produce a witness to testify as to
8 irrelevant and inadmissible information.

9 Therefore, Metropolitan seeks an order from the Court to shorten time on the hearing of its
10 Motion to Quash to January 30, 2014 or as soon thereafter and prior to the appearance date of
11 February 10, 2014 as possible.

12 **II. ARGUMENT**

13 California Rules of Court, Rules 3.1200, *et seq.* set forth the requirements for an *ex parte*
14 application. Metropolitan will suffer immediate and irreparable harm if its Motion to Quash is not
15 heard prior to February 10, 2014 because the Subpoena should be quashed or limited for the
16 following reasons:

17 1. Metropolitan cannot provide any documents or any witnesses with personal
18 knowledge of the facts from 64 years ago that AVEK seeks to offer in evidence and because AVEK
19 seeks to introduce this evidence to improperly support a legal conclusion, the subpoena and
20 supporting affidavit seek documents or information which is irrelevant to the matters in dispute.

21 2. Forcing Metropolitan, a non-party witness to this proceeding, to produce a witness
22 under these circumstances is unreasonably burdensome.

23 3. Alternatively, to the extent, Metropolitan is required to testify, it requests a protective
24 order from the Court limiting questioning of the witness to her knowledge of the document search
25 undertaken by Metropolitan in response to this subpoena and nothing more, since it would be
26
27
28

1 inappropriate and potentially prejudicial to allow questioning beyond the scope of the subpoena and
2 the witness' personal knowledge.

3 See Stites Decl. ¶ 5; *see also* Motion to Quash.

4
5 Not granting Metropolitan's request for an order shortening time would force Metropolitan to
6 file a Motion to Quash on regular notice, the hearing of which would take place after the appearance
7 date.

8
9 **III. CONCLUSION**

10 For the reasons stated herein, Metropolitan respectfully requests that the Court issues an
11 Order shortening time on a hearing on the subject matter set forth in this application, thereby
12 allowing Metropolitan to appear and present oral argument in a timely fashion.

13 Dated: January 28, 2014

14 THE METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA

15
16 By: 

17 Catherine M. Stites

18 Attorneys for Non-Party THE METROPOLITAN
19 WATER DISTRICT OF SOUTHERN CALIFORNIA

20
21 **DECLARATION OF CATHERINE M. STITES**

22 I, Catherine M. Stites declare:

23 1. I am an attorney at law duly authorized to practice law in the State of California. I
24 am a Senior Deputy General Counsel for Non-Party Witness The Metropolitan Water District of
25 Southern California ("Metropolitan"). Unless otherwise indicated, the following facts are true of my
26 own personal knowledge and if called upon to testify, I could and would testify competently thereto.

27 2. On January 28, 2014, at approximately 10:00 am, I called and informed Lee
28 McElhaney, counsel for Antelope Valley-East Kern Water Agency ("AVEK"), that I planned to file

1 this *ex parte* application and the Motion to Quash.

2 3. On January 28, 2014, *ex parte* notice was provided to Antelope Valley-East Kern
3 Water Agency ("AVEK"), and all parties on the Court's electronic service list of this action. I
4 caused to be posted on the Court's website signed copies of these *ex parte* and the Motion to Quash
5 papers. The papers set forth the date, time, and location (telephonic hearing via CourtCall) of the *ex*
6 *parte* hearing, and the relief sought. The papers provide notice beyond what is required per
7 California Rules of Court, Rule 3.1203(a).

8 4. Attached hereto as Exhibit A is a true and correct copy of AVEK's Civil Subpoena
9 (Duces Tecum) for Personal Appearance and Production of Documents at Trial that Metropolitan
10 received on January 21, 2014.

11 5. As set forth in the Motion to Quash, Metropolitan believes the Subpoena should be
12 quashed or limited for the following reasons:

13 a. Metropolitan cannot provide any documents or any witnesses with personal
14 knowledge of the facts from 64 years ago that AVEK seeks to offer in evidence and because AVEK
15 seeks to introduce this evidence to improperly support a legal conclusion, the subpoena and
16 supporting affidavit seek documents or information which is irrelevant to the matters in dispute.

17 b. Forcing Metropolitan, a non-party witness to this proceeding, to produce a
18 witness under these circumstances is unreasonably burdensome.

19 c. Alternatively, to the extent, Metropolitan is required to testify, it requests a
20 protective order from the Court limiting questioning of the witness to her knowledge of the
21 document search undertaken by Metropolitan in response to this subpoena and nothing more, since it
22 would be inappropriate and potentially prejudicial to allow questioning beyond the scope of the
23 subpoena and the witness' personal knowledge.

24 //

25 //

26 //

27 //

1 6. Unless the Court grants the requested *ex parte* relief to hear the Motion to Quash on
2 shortened time, Metropolitan will face irreparable harm as it must produce a witness to testify as to
3 irrelevant and inadmissible evidence.

4 I declare under penalty of perjury under the laws of the State of California that the foregoing
5 is true and correct. Executed this 28th day of January, 2014 in Los Angeles, California.

6
7
8 By: _____

Catherine M. Sites

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is 700 North Alameda Street, Los Angeles, California 90012.

On **January 28, 2014**, I served the foregoing document(s) described as: **NOTICE AND EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME ON THE HEARING OF MOTION TO QUASH NOTICES TO APPEAR AND PRODUCE DOCUMENTS; DECLARATION OF CATHERINE M. STITES** on the interested parties in this action in the following manner:

☒ (BY ELECTRONIC SERVICE AS FOLLOWS by POSTING) the document(s) listed above to the Santa Clara website in the action of the Antelope Valley Groundwater Litigation, Judicial Council Coordination Proceeding No. 4408, Santa Clara Case No. 1-05-CV-049053

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **January 28, 2014**, at Los Angeles, California.

Maureen Boucher
Print Name


Signature

EXHIBIT A

1. **YOU ARE ORDERED TO APPEAR AS A WITNESS** in this action at the date, time, and place shown in the box below **UNLESS** your appearance is excused as indicated in box 3b below or you make an agreement with the person named in item 4 below.

2. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

a. ☒ Ordered to appear in person and to produce the records described in the declaration on page two or the attached declaration or affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.

b. ☐ Not required to appear in person if you produce (i) the records described in the declaration on page two or the attached declaration or affidavit and (ii) a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose the original declaration of the custodian with the records. Seal the envelope. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number; your name; and the date, time, and place from item 1 in the box above. (3) Place this first envelope in an outer envelope, seal it, and mail it to the clerk of the court at the address in item 1. (4) Mail a copy of your declaration to the attorney or party listed at the top of this

5. **Witness Fees:** You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 4.

(TYPE OR PRINT NAME)

(SIGNATURE OF PERSON ISSUING SUBPOENA)
Leland P. McElhaney

(Declaration in support of subpoena on reverse)

(TITLE)

Page 1 of 3

PLAINTIFF/PETITIONER: ANTELOPE VALLEY GROUNDWATER LITIGATION	CASE NUMBER:
DEFENDANT/RESPONDENT:	JCCP 4408

The production of the documents, electronically stored information, or other things sought by the subpoena on page one is supported by (check one):

☐ the attached affidavit or ☒ the following declaration:

DECLARATION IN SUPPORT OF CIVIL SUBPOENA (DUCES TECUM) FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND THINGS AT TRIAL OR HEARING
(Code Civ. Proc., §§ 1985, 1987.5)

1. I, the undersigned, declare I am the ☐ plaintiff ☐ defendant ☐ petitioner ☐ respondent
☒ attorney for (specify): AVEK ☒ other (specify): Cross-Complainant
 in the above-entitled action.
2. The witness has possession or control of the documents, electronically stored information, or other things listed below, and shall produce them at the time and place specified in the Civil Subpoena for Personal Appearance and Production of Records at Trial or Hearing on page one of this form (specify the exact documents or other things to be produce; if electronically stored information is demanded, the form or forms in which each type of information is to be produced may be specified):

☒ Continued on Attachment 2.

3. Good cause exists for the production of the documents, electronically stored information, or other things described in paragraph 2 for the following reasons:
 The requested documents and files exist, if at all, only in the file of the Metropolitan Water District of Southern California, and are not otherwise available to the undersigned.

☐ Continued on Attachment 3.

4. The documents, electronically stored information, or other things described in paragraph 2 are material to the issues involved in this case for the following reasons:
 To demonstrate that, during relevant time period, MWD did not own or operate any water wells within the ULARA; did not spread or bank imported water in the ULARA; and did not take any position regarding ownership of return flows from its imported water.

☐ Continued on Attachment 4.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: January 17, 2014

William J. Brunick, Esq./Leland P. McElhaney
 (TYPE OR PRINT NAME)

(SIGNATURE OF ☒ SUBPOENAING PARTY ☒ ATTORNEY FOR SUBPOENAING PARTY)

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the date on which you are to appear. Contact the clerk's office or go to www.courts.ca.gov/forms for Request for Accommodations by Persons With Disabilities and Response (form MC-410). (Civil Code, § 54.8.)



(Proof of service on page 3)

ATTACHMENT 2

ALL NON-PRIVILEGED DOCUMENTS WHICH CONTAIN INFORMATION RELATING TO THE FOLLOWING MATTERS:

1. Whether MWD owned or operated water production wells anywhere within the Upper Los Angeles River Area during the period from 1950 through 1968?
2. Whether MWD spread or banked water anywhere within the Upper Los Angeles River Area during the period from 1950 through 1968?
3. During the period from 1950 through 1968, did MWD manifest an intention to recapture or use return flows from imported water it delivered to MWD's member agencies within the Upper Los Angeles River Area?
4. During the period from 1950 through 1968, did MWD understand and believe that all rights to the return flows from imported water it delivered to its member agencies belonged to its member agencies?
5. During the period from 1950 through 1968, did MWD understand or believe that it retained any right to recapture or use return flows resulting from water it delivered to its member agencies in the Upper Los Angeles River Area?

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA }
3 COUNTY OF SAN BERNARDINO }**

4 I am employed in the County of the San Bernardino, State of California. I am over
5 the age of 18 and not a party to the within action; my business address is 1839 Commercenter
6 West, San Bernardino, California.

7 On January 17, 2014, I served the foregoing document(s) described as: **CIVIL
8 SUBPOENA (DUCES TECUM) FOR PERSONAL APPEARANCE AND
9 PRODUCTION OF DOCUMENTS AT TRIAL OR HEARING AND
10 DECLARATION; ON-CALL AGREEMENT** on the interested parties in this action in the
11 manner described below, addressed as follows:

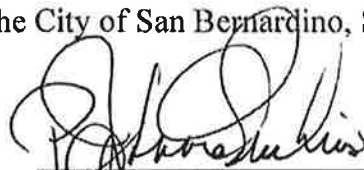
12 Dawn Chin, Executive Secretary to the Board
13 The Metropolitan Water District of Southern California
14 700 North Alameda Street
15 Los Angeles, California 90012

16 BY MAIL AS FOLLOWS: I am "readily familiar" with the firm's practice of
17 collection and processing correspondence for mailing. Under that practice it would be
18 deposited with the U.S. Postal Service on that same day with postage thereon fully
19 prepaid at San Bernardino, California in the ordinary course of business. I am aware that
20 on motion of the party served, service is presumed invalid if postal cancellation date or
21 postage meter date is more than one day after date of deposit for mailing in affidavit.

22 XX **(BY OVERNIGHT COURIER SERVICE)**: I caused such envelopes to be
23 delivered via overnight courier service to the addressee(s) described above.

24 X **(STATE)** I declare under penalty of perjury under the laws of the State of California
25 that the above is true and correct

26 Executed January 17, 2014, in the City of San Bernardino, State of California.

27 
28 P. Jo Anne Quihuis