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Government Code
Section 6103*

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER
LITIGATION

Judicial Council Coordination Proceeding
No. 4408

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

**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA'S NOTICE
OF MOTION AND MOTION TO QUASH
SUBPOENA OR ALTERNATIVELY
MOTION FOR PROTECTIVE ORDER**

Date: February 10, 2014
Time: 9:00 am
Dept.: Telephonic Hearing via CourtCall

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

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on February 10, 2014 at 9:00 am, Non-Party Witness The Metropolitan Water District of Southern California ("Metropolitan") will and hereby does move this Court to quash or alternatively impose a protective order regarding the Civil Subpoena (Duces Tecum) dated January 17, 2014 ("subpoena"), served on it by Antelope Valley-East Kern Water Agency ("AVEK") on the following grounds:

1) Because Metropolitan cannot provide any documents or any witnesses with personal knowledge of the facts from 64 years ago that AVEK seeks to offer in evidence and because AVEK

1 seeks to introduce this evidence to improperly support a legal conclusion, the subpoena and
2 supporting affidavit seek documents or information which is irrelevant to the matters in dispute.

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

5 3) Alternatively, to the extent, Metropolitan is required to testify, it requests a protective
6 order from the Court limiting questioning of the witness to her knowledge of the document search
7 undertaken by Metropolitan in response to this subpoena and nothing more, since it would be
8 inappropriate and potentially prejudicial to allow questioning beyond the scope of the subpoena and
9 the witness's personal knowledge.

10 This motion is made pursuant to California Code of Civil Procedure section 1987.1. It is
11 based on this notice, the attached memorandum of points and authorities, the Declaration of
12 Catherine M. Stites, the [Proposed] Order, and the pleadings and papers on file herein, and on such
13 further argument and material as the Court may consider at the hearing on this matter. 2014. (See
14 Stites Decl., ¶ A.) A true and correct copy of Metropolitan's Motion to Quash is concurrently filed
15 herewith.

16 Dated: January 28, 2014

17 THE METROPOLITAN WATER DISTRICT OF
18 SOUTHERN CALIFORNIA

19 By: 

20 Catherine M. Stites

21 Attorneys for Non-Party THE METROPOLITAN
22 WATER DISTRICT OF SOUTHERN CALIFORNIA
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Court should quash AVEK's defective subpoena because the subpoena and supporting
4 affidavit seek documents or testimony which are irrelevant to the matters in dispute and are not
5 likely to lead to the discovery of admissible evidence. With this subpoena, AVEK seeks information
6 regarding facts from over 64 years ago: "To demonstrate that during the relevant time period [1950
7 to 1968], MWD did not own or operate any water wells within the [Upper Los Angeles River Area
8 ("ULARA")]; did not spread or bank imported water in the ULARA; and did not take an position
9 regarding ownership of return flows from its imported water." Exhibit A to Stites Decl. at 2.
10 (affidavit of alleged materiality).

11 Metropolitan has told AVEK repeatedly it has no responsive documents or witnesses with
12 personal knowledge of the facts it seeks to prove, even providing it with a confirming declaration,
13 and yet AVEK continues to improperly request a witness to testify on these issues or the absence of
14 such evidence. Moreover, Metropolitan's legal right to return flows in the ULARA in the 1950s and
15 1960s has no bearing on AVEK's right to return flows in the current litigation in the Antelope
16 Valley. The existence and scope of Metropolitan's historic rights to return flows from its imported
17 water are irrelevant to this pending litigation, and, therefore, introduction of evidence pursuant to the
18 subpoena should not be admissible. Forcing Metropolitan, a non-party witness, to appear under
19 these circumstances is unreasonably burdensome. Alternatively, if Metropolitan is required to
20 provide a witness to testify, a protective order limiting it to a discussion of the record search is
21 appropriate as anything more would be outside the scope of the subpoena and the witness's personal
22 knowledge.

23 **II. BACKGROUND**

24 AVEK originally contacted Metropolitan in 2013, pursuant to the Public Records Act, asking
25 for documents similar to those in the subpoena, i.e., whether Metropolitan owned or operated any
26 water wells within the ULARA; whether Metropolitan spread or banked imported water in the
27 ULARA; and whether Metropolitan took any position regarding ownership of return flows from its
28 imported water. Stites Decl. at ¶¶ 3-4, Exhibit C. Metropolitan worked cooperatively with AVEK to

1 search for any responsive documents, explaining that such a search was extremely burdensome on
2 Metropolitan given the passage of time and the fact that the requests would require extensive
3 searches of Metropolitan's record, located at various locations and in numerous databases. *Id.* at ¶ 4.
4 After a reasonable and diligent search, Metropolitan could not locate any records responsive to the
5 requests or any witnesses with personal knowledge of the facts AVEK seeks to prove with its
6 requests, in part, because the information dates back 64 years. *Id.* at ¶ 4, Exhibit C.

7 AVEK provided Metropolitan with a courtesy copy of the Notice of Depositions, Set One
8 and Deposition Subpoena served in this case on November 22, 2013 that listed Metropolitan as a
9 requested deponent; but AVEK never served Metropolitan with the notice or deposition subpoena.
10 Stites Decl. at ¶ 6. Instead, AVEK agreed to accept a declaration by Metropolitan employee,
11 Kathleen Kunysz, explaining that Metropolitan could not locate any records responsive to the
12 requests or any witnesses with personal knowledge of the facts sought in its requests. *Id.* at ¶ 7,
13 Exhibit B.

14 On January 21, 2014, Metropolitan was served with the trial subpoena. Stites Decl. at ¶ 9.
15 On January 24, 2014, Metropolitan informed AVEK of its objections to the subpoena and its
16 intention to bring this motion. *Id.* at ¶ 10.

17 **III. ARGUMENT**

18 Code of Civil Procedure section 1987.1 section provides any witness may make a motion to
19 quash a trial subpoena and request a protective order upon reasonable notice. Cal. Code Civ. Proc. §
20 1987.1; see *Lee v. Swansboro County Property Owners Assn.*, 151 Cal. App. 4th 575, 583 (2007).
21 The court has broad authority to quash or modify a subpoena, direct compliance with the subpoena
22 on other terms, or issue a protective order, or make any other order as may be appropriate to protect
23 against unreasonable or oppressive demands. *Id.* In the context of non-party discovery subpoenas,
24 the courts have determined that requests that are not likely to lead to relevant or admissible evidence,
25 not specified with reasonable particularity, and require overly burdensome searches by non-parties
26 are not reasonable. See Cal. Code Civ. Proc. § 2020; *Calcor Space Facility, Inc. v. Superior Court*
27 (*Thiem Industries, Inc.*), 53 Cal. App. 4th 216, 221 (1997). It is even more important in the context
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1 of a trial subpoena, as compared to a subpoena for discovery, that the requests be reasonably tailored
2 and relevant so as not to waste the witnesses' time or that of the court and other parties. *Terry v.*
3 *SLICO*, 175 Cal. App. 4th 352 (2009).

4 This motion is timely because Section 1987.1 requires only that a motion to quash by a non-
5 party be "reasonably made" without providing any specific filing deadline. In assessing what
6 constitutes reasonable notice of a motion to quash, courts have held that even seven days notice,
7 prior to the date of appearance, is sufficient in the context of a trial subpoena. *See Lee*, 151 Cal.
8 App. 4th at 583. In this case, Metropolitan received the subpoena on January 21, 2014, for
9 appearance on February 10, 2014 – only 20 calendar days notice. Stites Decl. at ¶ 9. Under these
10 circumstances, Metropolitan's filing of this motion, within one week of receipt of the subpoena is
11 reasonable.

12 A. **AVEK's Subpoena is Not Likely to Lead to Relevant or Admissible Evidence,**
13 **and Requiring an Appearance by a Non-Party Witness Under Such**
14 **Circumstances is Unduly Burdensome**

15 The information AVEK's subpoena seeks is not likely to lead to relevant or admissible
16 evidence and thus, the subpoena should be quashed. *See Calcor Space Facility, Inc. v. Superior*
17 *Court (Thiem Industries, Inc.)*, 53 Cal. App. 4th 216, 221-224 (1997) (finding a non-party deposition
18 subpoena unreasonable because it failed to offer any proof that the request was reasonably calculated
19 to lead to the discovery of admissible evidence); *see also People ex rel. Dept. of Pub. Wks. v.*
20 *Younger*, 5 Cal. App. 3d 575, 579-580 (1970) (rejecting party's legal conclusion that testimony of
21 non-party witness would be relevant and material to issues in case). Apparently, AVEK seeks to
22 offer the subpoenaed evidence to distinguish its legal position in this case from the issue of rights to
23 imported water that were addressed in *City of Los Angeles v. City of San Fernando, et al. (1975)*.
24 *See AVEK's Motion for Summary Adjudication*, filed November 11, 2013, at 10-13.

25 The problem with this approach is that Metropolitan does not have any documents or
26 witnesses with personal knowledge of the facts that AVEK seeks to prove with this subpoena, which
27 date back to 1950, 64 years ago. Stites Decl. at ¶ 4. AVEK has been told repeatedly that
28 Metropolitan has no documents or persons with firsthand knowledge of the facts it seeks to prove
with this subpoena given the passage of time. *Id.* at ¶¶ 4, 7, Exhibit B. Nonetheless, AVEK

continues to pursue testimony from Metropolitan. *Id.* at ¶ 9.

AVEK is apparently trying to prove, by submitting evidence that Metropolitan could not locate records responsive to its subpoena, that this somehow implies that Metropolitan made a conscious decision not to make any legal claim to return flows from its imported water in the ULARA back in the 1950s and 1960s. But the issue of Metropolitan's or any party's right to return flows on imported water is a legal one. AVEK is asking the court to call a Metropolitan witness to testify that Metropolitan did not make a claim to return flows to infer that those rights may exist. But Metropolitan was not a party to the *City of Los Angeles* case, and its rights were not adjudicated. Stites Decl. at ¶ 5. Metropolitan's legal position, in the past or present, is not binding on the Court; and so any evidence of Metropolitan's legal position is irrelevant. Only this Court can decide the legal merits of AVEK's claim to return flows in the Antelope Valley, and what positions Metropolitan took or did not take on this issue 64 years ago are irrelevant to the legal issues in this litigation. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1179 (testimony of assistant city manager regarding interpretation of ordinance was properly excluded because that involved "legal questions for the court to decide.")

Because Metropolitan cannot provide any documents or any witnesses with personal knowledge of the facts that AVEK seeks to prove, the subpoena and supporting affidavit seek documents or information which are irrelevant to the matters in dispute and are not likely to lead to the discovery of admissible evidence. *See Calcor*, 53 Cal. App. 4th 216, 223-24. Forcing Metropolitan, a non-party witness, to appear under these circumstances is unreasonably burdensome. *See id.* at 223.

B. Alternatively, If Metropolitan Must Testify, A Protective Order Is Warranted

Finally, to the extent Metropolitan is required to testify, it requests a protective order from the Court limiting questioning of the witness to her knowledge of the document search undertaken by Metropolitan in response to this subpoena, and nothing more since it would be inappropriate and potentially prejudicial to allow questioning beyond the scope of the subpoena and the witness's personal knowledge. Cal. Code Civ. Proc. § 1987.1 (a).

1 Here, Metropolitan has already confirmed it has no records or personal knowledge of any of
2 the requests in the subpoena. Stites Decl. at ¶¶ 4, 7, Exhibit B. To allow any questioning beyond
3 what search was conducted would be inappropriate and could potential prejudice Metropolitan, who
4 is not a party to this action, not familiar with the other parties' position, and unprepared to address
5 any other issues.

6 **IV. CONCLUSION**

7 For the foregoing reasons, Metropolitan respectfully requests that this motion be granted and
8 the subpoena be quashed in its entirety or alternatively, a protective order be granted limiting any
9 elicited testimony to the scope of the record search.

10
11 Dated: January 28, 2014

THE METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA

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14 By: _____

Catherine M. Stites

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16 Attorneys for Non-Party THE METROPOLITAN
WATER DISTRICT OF SOUTHERN CALIFORNIA
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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.

☒ (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

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

Signature