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January 13, 2014

2455-2

Via Discovery E-Service

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

Dear Counsel:

The depositions of Peter Leffler, Mark Wildermuth and Joseph Scalmanini were set for January 17, 2014, since it was not clear what work Mr. Leffler, Mr. Wildermuth and Mr. Scalmanini did regarding return flows, if any, or the extent to which your designated experts, Dennis Williams and Robert Beebe, may attempt to rely on any work done by Leffler, Wildermuth and or Scalmanini or the extent to which you would attempt to use work or previous testimony of these witnesses for the Phase 5 trial.

Mr. Sanders advised that he does not believe Mr. Leffler did work on return flows. However, I advised Mr. Sanders that my memory was that Mr. Leffler may have done work on septic tank return flows related to imported water which clearly would be at issue for the Phase 5 trial as to the amount of claimed return flows to which the purveyors may be entitled. Mr. Bunn recently advised that Mr. Wildermuth did no work on return flows.

We are unclear what work Mr. Scalmanini may have done related to return flows. We recognize that Joe has health problems and do not wish to unnecessarily take his deposition. If Joe did no work on return flows or did no work on return flows that you intend to rely on for the Phase 5 trial, we will not need to take his deposition. Likewise, if you do not intend to rely upon any work done by Mr. Leffler or Mr. Wildermuth, we do not need to take their depositions.

You objected to taking the depositions of Leffler, Wildermuth and Scalmanini based upon the fact that these witnesses were deposed for a prior phase of trial. Given the complexity of this case, the court has exercised its power to "provide for the orderly conduct of the proceedings" and to "amend and control its process and orders" pursuant to CCP section 128 as well as its implied powers pursuant to CCP section 187, to conduct the litigation in phases set to decide discrete issues. Taking depositions of expert witnesses on all matters related to the litigation in one deposition would have been confusing and would not have been possible since all issues were not known nor fully discovered at the time previous depositions were taken. In fact, depositions were not taken on all issues, but rather, taken related to the then upcoming phase of trial. Accordingly, it is clear that in this this multi-phased complex litigation ordered by the court, that to the extent experts conduct work which may be relied upon in a subsequent phase of trial, that such experts must be available for deposition for the subsequent phase of trial.

The Phase 5 trial was set specifically to litigate purveyor claims to return flows and the Federal Reserved Right. LA County and the San District both objected to the deposition of Peter Leffler related to return flows leading up to the Phase 3 trial on the safe yield, based upon the argument that return flows were not at issue in the phase 3 trial. Return flows also were not at issue in the Phase 4 trial. Since the Phase 5 trial is specifically set to litigate the purveyor return flow claims, depositions of experts related to return flows are now appropriate.

If you continue to assert that leave of court is necessary to conduct these depositions, we will proceed with a conference with Judge Komar to allow these depositions. We would like to avoid bothering Judge Komar with this issue. If you simply confirm that you will not be relying on any work conducted by the experts for the Phase 5 trial, the depositions will not be necessary. Please confirm your position today given the fact that the depositions were timely set for Friday January 17, 2014.

We appreciate your courtesy and attention to this matter. We look forward to your reply.

Very truly yours,

RICHARD G. ZIMMER

RGZ/ash

cc: All Parties

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