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A Professional Law Corporation

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FACSIMILE

TO: Timothy V. Kassouni, Esq.	COMPANY: The Zumbrun Law Firm	TELEFAX NO: 916-486-5959
FROM: TELEFAX NO:	Brigit S. Barnes (916) 660-9554	
CLIENT/MATTER:	Chevrcaux/Lake Combie, File No. 2364.01	

NUMBER OF PAGES (Including this cover page): 14

DATE: March 20, 2007

TIME: Within 10 minutes of 4:18 p.m.

HARD COPY TO FOLLOW: No

DESCRIPTION OF CONTENTS/COMMENTS:

Ex parte Application for Leave to File Memorandum in Excess of Page Limitation;
Supporting Declaration and Order.

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Chevrcaux.Combie\FAX

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5 Attorneys for CHEVREAU AGGREGATES, INC.

6 SUPERIOR COURT OF CALIFORNIA
 7 COUNTY OF PLACER

9 MEADOW VISTA PROTECTION,

Case No. SCV 19614

10 Petitioners and Plaintiffs,

**EX PARTE APPLICATION FOR LEAVE
 TO FILE MEMORANDUM OF POINTS
 AND AUTHORITIES IN EXCESS OF
 PAGE LIMITATION; MEMORANDUM
 OF POINTS AND AUTHORITIES; AND
 SUPPORTING DECLARATION OF
 BRIGIT S. BARNES AND NOTICE OF EX
 PARTE; AND ORDER**

11 v.

12 CHEVREAU AGGREGATES, INC.;
 13 COUNTY OF PLACER; COUNTY OF
 14 PLACER PLANNING DEPARTMENT; and
 DOES 1- 50, inclusive,

15 Respondents and Defendants.

Date: March 27, 2007
 Time: 7:45 a.m.
 Dept: 4 (Assigned to Judge Wachob)

Complaint Filed: 7/12/06
 MSA Date: 5/8/07
 Trial Date: 6/11/07

16
 17 APPLICATION


18
 19 Respondent/Defendant CHEVREAU AGGREGATES, INC. ("CHEVREAU") hereby
 20 applies for an order, pursuant to *California Rules of Court, Rule 3.1113(e)*, granting leave to file
 21 a memorandum of points and authorities in opposition to MEADOW VISTA PROTECTION'S
 22 ("MVP") Motion for Summary Adjudication that is in excess of the twenty (20) page limit verify.

23
 24 CHEVREAU seeks leave to file a memorandum of points and authorities not exceeding
 25 30 pages in length. This application is made on the grounds that good cause exists to permit a
 26 longer memorandum of points and authorities, because a full explanation of the complex law
 27 surrounding vested mining rights under SMARA, and the nature and history of CHEVREAU'S
 28 operations of the asphalt plant as an approved intermittent use has been ignored by Plaintiffs.

1 (Defendant's Seventh and Eighth Affirmative Defenses.) These essential matters must be set
 2 forth in detail so as to preserve CHEVREAU's ability to have these issued considered in
 3 opposition to Plaintiff's Motion for Summary Adjudication. This application is based on the
 4 Memorandum of Points and Authorities and Declaration of Brigit S. Barnes, Attorney for
 5 Defendant CHEVREAU.

6 Dated: March 20, 2007

BRIGIT S. BARNES & ASSOCIATES, INC.,
 A Law Corporation

7
 8
 9 By: 
 10 BRIGIT S. BARNES, Attorneys for
 CHEVREAU AGGREGATES, INC.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12
 13 I. **AN EX PARTE APPLICATION TO FILE A MEMORANDUM OF POINTS AND**
 14 **AUTHORITIES IN EXCESS OF THE APPLICABLE PAGE LIMITATION IS**
 15 **PROPER AND SHOULD BE GRANTED WHEN SUPPORTED BY REASONS**
 16 **WHY THE ARGUMENT CANNOT BE MADE WITHIN THE STATED LIMIT.**

17 A. **Ex Parte Relief.**

18 A party may apply to the court ex parte for permission to file a memorandum of points
 19 and authorities in excess of the applicable page limits when written notice of the application is
 20 given to other parties at least 24 hours before the memorandum is due. Cal. Rules of Ct., Rule
 21 3.1113(e). Written notice of this ex parte application was given to Angela Thompson and
 Timothy V. Kassouni, on March 12, 2007 via email, seeking their agreement, and partial
 agreement has been reached and this application is presented to the Court on March 27, 2007.

22 B. **Reasons to Exceed Page Limits.**

23 An application to file a memorandum of points and authorities in excess of the applicable
 24 page limits must state the reasons why the argument cannot be made within the stated limit [Cal.
 25 Rules of Ct., Rule 3.1113(e)]. The supporting declaration incorporated in this application
 26 supports our stated reasons to exceed the page limit so that the Court is properly informed of the
 27 issues before it. Plaintiff MVP has asserted that a singular reading of Placer County's zoning
 28 code section dealing with lapse is dispositive of whether Defendant CHEVREAU's proposed

1 asphalt operations are valid. This assertion avoids the much broader issues involved in the
 2 vested rights history of Chevreaux operations at the Combie quarry, including the asphalt
 3 operations for 25 years before CHEVREAUX obtained permits, the fact that Placer County
 4 approved the asphalt use permits on the explicit understanding that such permits were to support
 5 intermittent asphalt manufacture, that CHEVREAUX's vested rights have been confirmed as a
 6 matter of state law under SMARA through the adoption of reclamation plans by Placer and
 7 Nevada Counties; that Placer County has repeatedly confirmed the validity of the asphalt
 8 operations although many years intervene between operations based on CHEVREAUX's
 9 response to market driven determinations, primarily regarding repairs to Interstate 80 and
 10 Highway 49. In fact, MVP's treatment of CHEVREAUX's vested status comprises of a one-
 11 sentence "throw away" in their moving papers.

12 Defendant CHEVREAUX seeks the court's indulgence on the page limit, because should
 13 the court reach the merits, something which we believe will be difficult given the number of
 14 documents which confound Plaintiffs' claim of lapse, it is essential to the continued operations of
 15 Defendant's business, upon which state agencies as well as local agencies in Placer and Nevada
 16 County rely, that CHEVREAUX's rights to operate an asphalt plant at the quarry be adequately
 17 considered. The complex societal benefits which accrue to Californians by protecting surface
 18 mining operations, and their auxiliary uses, and the prejudice to companies like CHEVREAUX
 19 which can occur as a result of an adverse ruling at the summary adjudication stage argue
 20 strenuously that CHEVREAUX be allowed to present these additional arguments in full.

21 Dated: March 20, 2007

BRIGIT S. BARNES & ASSOCIATES, INC.,
 A Law Corporation

22
 23
 24 By:


 BRIGIT S. BARNES, Attorneys for
 CHEVREAUX AGGREGATES, INC.

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SUPPORTING DECLARATION OF BRIGIT S. BARNES, ESO.

I, BRIGIT S. BARNES, declare:

1. I am an attorney at law duly admitted to practice before all the courts of the State of California, and the Northern, Eastern, and Central Federal Districts and am the attorney of record herein for moving parties.

2. My firm has represented Defendant CHEVREAUX since 2002, and is now tasked with defending Plaintiffs' claim that Placer County Use Permit LDA-786 has lapsed and preparing an opposition to the Motion for Summary Adjudication filed by MVP. The opposition is to be filed April 24, 2007 and the motion hearing is scheduled for May 8, 2007.

3. A detailed analysis of CHEVREAUX's rights will be necessary, in connection with the Court's review of its pre- and post-permit quarry operations and its supererogatory vesting under SMARA, to adequately acquaint this Court with the complexity of the issues involving Plaintiffs' claim [which have been almost wholly ignored by Plaintiffs], and which Plaintiffs have not put before this court by their motion.

4. The Seventh and Eighth Affirmative Defenses of CHEVREAUX's Answer to MVP's Complaint state:

SEVENTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND, THIRD, FOURTH, AND FIFTH CAUSES OF ACTION, CHEVREAUX's surface mining, asphalt, and dredging operations are vested pursuant to the provisions of the Surface Mining and Reclamation Act, and the Placer County Zoning Ordinance.

EIGHTH AFFIRMATIVE DEFENSE

AS A SEPARATE AND AFFIRMATIVE DEFENSE TO THE SECOND, THIRD, FOURTH, AND FIFTH CAUSES OF ACTION, LD-1030 and LDA-786 are vested pursuant to the provisions of the Placer County Zoning Ordinance.

5. CHEVREAUX argues that asphalt operations are vested pre-permit in addition to the operations authorized exclusively on only two of the properties covered by CHEVREAUX's reclamation plans. These arguments will support the extensive documentary evidence to be submitted by CHEVREAUX which includes Placer County's explicit approval of LDA-786 as an intermittent use, all of which evidence is disregarded by Plaintiff's motion and proffered

1 "statement of undisputed facts". Plaintiff's motion also completely ignores the history of Placer
2 County's continuous confirmations of CHEVREAUX's rights to operate the asphalt plant over
3 the last thirty years, culminating in determinations supporting operations as recent as 2005, and
4 this court's prior ruling that Placer County is the entity charged with determining the validity and
5 nature of CHEVREAUX's use permits, and thus its prior written determinations establish the
6 validity of operations at the quarry.

7 6. Unless the Court grants leave to file a memorandum of points and authorities in
8 support of this motion that exceeds twenty (20) pages, CHEVREAUX will be denied the
9 opportunity to adequately present to the Court a complete analysis of these issues central to the
10 entire action which implicate important state law and policy determinations. Our research and
11 drafting is continuing. At the present time, CHEVREAUX has determined that the memorandum
12 of at least 30 pages should be permitted by the court.

13 7. On March 12, 2007, at approximately 5:22 p.m., I provided written notice by
14 email correspondence to Angela Thompson and Timothy V. Kassouni, attorneys for MVP,
15 requesting they stipulate to filing the memorandum of points and authorities specified above in
16 excess of the applicable page limit. A copy of my email asking that Ms. Thompson and Mr.
17 Kassouni stipulate to exceeding the page limit is attached hereto as **Exhibit "A"**.

18 8. On March 13, 2007, Mr. Kassouni responded to my email correspondence
19 agreeing to stipulate to exceeding the page limit but limiting that increase to 25 pages, and asking
20 for an additional five pages for MVP's reply. A copy of that responsive email is attached hereto
21 as **Exhibit "B"**. Defendant is willing to stipulate to the additional five pages to MVP but seek
22 30 pages for their opposition because of the complexity of the issues raised above.

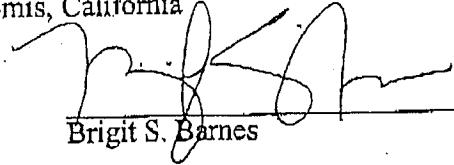
23 9. California Rules of Court, Rule 3.1113(e) provides the basis for granting ex parte
24 relief as requested in this application, rather than setting this matter for hearing on notice motion.

25 10. On March 15, 2007, I provided written notice by email correspondence to Mr.
26 Kassouni informing him that the Ex Parte Hearing was scheduled for March 27, 2007. A copy of
27 that email is attached hereto as **Exhibit "C"**.

28

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

3 Executed this 20th day of March in Loomis, California

4 
 5 Brigit S. Barnes

6
 7 **ORDER**

8 WHEREAS, the Court having considered CHEVREAU's Ex Parte Application for
 9 Leave to File Memorandum of Points and Authorities in Opposition to Motion for Summary
 10 Adjudication in Excess of Page Limitation; Memorandum of Points and Authorities, and
 11 supporting Declaration of Brigit S. Barnes and exhibits attached hereto; and good cause
 12 appearing therefore,

13 IT IS HEREBY ORDERED that CHEVREAU's Ex Parte Application for Leave to File
 14 Memorandum of Points and Authorities in Opposition to Motion for Summary Adjudication in
 15 Excess of Page Limitation is hereby granted. CHEVREAU's Memorandum of Points and
 16 Authorities in Opposition to Motion for Summary Adjudication may be no more than 30 pages in
 17 length; Plaintiff's Reply may be no more than 15 pages in length.

18 **IT IS SO ORDERED.**

19
 20 Dated: _____

By: _____
 JUDGE OF THE SUPERIOR COURT

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1 Matter: MEADOW VISTA PROTECTION v. CHEVREAUX AGGREGATES, INC.
2 Placer County Superior Court Case No. SCV 19614

3 PROOF OF SERVICE

4 I am a citizen of the United States, over the age of eighteen years, and not a party to or
5 interested in the within entitled cause. I am an employee of Brigit S. Barnes & Associates, Inc.,
6 A Law Corporation, located at 3262 Penryn Road, Suite 200, Loomis, California, 95650. On this
7 date, I served the following document(s):

8 **EX PARTE APPLICATION FOR LEAVE TO FILE MEMORANDUM OF
9 POINTS AND AUTHORITIES IN EXCESS OF PAGE LIMITATION;
10 MEMORANDUM OF POINTS AND AUTHORITIES; AND SUPPORTING
11 DECLARATION AND NOTICE OF EX PARTE; AND ORDER**

12 X

13 **BY FACSIMILE [C.C.P. §1013(e)]** by sending a true copy via facsimile
14 transmission (by use of facsimile machine telephone number 916-660-9554) of
15 the above described document(s) to the interested parties, at the facsimile
16 numbers listed below. The facsimile machine I used complied with California
17 Rules of Court, Rule 2004, and no error was reported by the machine. Pursuant of
18 California Rules of Court, Rule 2006(d), I caused the machine to print a
19 transmission record of the transmission, a copy of which is attached to this
20 declaration. A written confirmation between the parties exists authorizing service
21 by facsimile, pursuant to CRC 2008(b).

22 **PARTY(S) SERVED:**

23 Timothy V. Kassouni, Esq.
24 Angela C. Thompson, Esq.
25 The Zumbrun Law Firm
26 3800 Watt Avenue, Suite 101
27 Sacramento, CA 95821
28 Telephone: 916-486-5900
Facsimile: (916) 486-5959

[Attorney for MEADOW VISTA PROTECTION]

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

Executed on March 20, 2007 at Loomis, California.


Jenna Porter

EXHIBIT A

From: Brigit S. Barnes [bsbarnes@landlawbybarnes.com]
Sent: Monday, March 12, 2007 5:22 PM
To: Tim Kassouni; Angela Thompson
Cc: 'Noreen Patrignani'; Jenna Porter; JJ; 'Jaenaln Jarvis'; Susan Vergne
Subject: MVP v. Chevreaux

Dear Mr. Kassouni and Mrs. Thompson:

I intend to apply before the end of the week ex parte for permission to file a memorandum of points and authorities in opposition to your motion for summary judgment in excess of the applicable page limits, asking for 30 pages. Cal. Rules of Ct., Rule 3.1113(c) The basis for our request is that we will be covering the issues of vested rights both pre and post permit, and the implications of the SMARA approvals for Chevreaux's operations, which raise complex areas of law and fact. If you are willing to stipulate to my application please advise.

Brigit S. Barnes, Esq.

Brigit S. Barnes&Associates, Inc.

3262 Penryn Road, Suite 200

Loomis, CA95650

Phone:916-660-9555

Fax:916-660-9554

Email:bsbarnes@landlawbybarnes.com

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3/20/2007

EXHIBIT B

-----Original Message-----

From: Timothy Kassouni [mailto:TKassouni@zumbrunlaw.com]

Sent: Tuesday, March 13, 2007 11:11 AM

To: bsbarnes@landlawbybarnes.com

Cc: Angela Thompson; Concha Leon

Subject: Re: MVP v. Chevreaux

Dear Ms. Barnes:

We would agree to a 5- page extension for the opposition (25 pages total) and a 5-page extension for the reply brief (15 pages total).

TIMOTHY V. KASSOUNI

Senior Attorney

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Thank you.

EXHIBIT C

From: Brigit S. Barnes [bsbarnes@landlawbybarnes.com]
Sent: Thursday, March 15, 2007 9:14 AM
To: 'Timothy Kassouni'
Cc: 'Angela Thompson'; 'Concha Leon'; 'Jenna Porter'; 'Noreen Patrignani'
Subject: RE: MVP v. Chevreaux

Dear Ms. Kassouni:

Thank you for the partial agreement, I believe I need a total of 30 given the complexity of the issues, but have attached the foregoing emails which acknowledge that I am ok with you receiving the extra five pages to our exparte which will be filed today. Jenna informs me that the first available date is March 27, which we have reserved. As soon as the application is finalized we will provide to you.

Brigit S. Barnes, Esq.

Brigit S. Barnes & Associates, Inc.

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Loomis, CA 95650

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* P.01 *
* TRANSACTION REPORT *
* MAR-20-01 TUE 04:32 PM *
* RECEIVE *
* DATE START SENDER RX TIME PAGES TYPE NOTE M# DP *
* MAR-20 04:28 PM 916 660 9554 3' 43" 14 RECEIVE OK MVP 393 *
