

Frank Melbourn - Fwd: Re: In the Matter of Tentative Cleanup and Abatement Order No. R9-2011-0001

From: Catherine Hagan (George)
To: Frank Melbourn
Date: 11/2/2010 3:12 PM
Subject: Fwd: Re: In the Matter of Tentative Cleanup and Abatement Order No. R9-2011-0001
Attachments: Cris Carrigan1.vcf

>>> Cris Carrigan 10/21/2010 8:01 AM >>>

Ms. Hagan; On October 8, 2010, the Cleanup Team made the following proposal to counsel for the Designated Parties:

Counsel; The Cleanup Team responds to Ms. Nichols' proposed Stipulation on behalf of the SDUPD as follows:

Observations:

First, the Cleanup Team observes that some of the recitals in the Stipulation are inaccurate, and some important information that should be included is omitted. However, in the event the Cleanup Team's counter-proposal for discovery is accepted, these deficiencies should be fairly straightforward or even unnecessary to correct.

Second, while the Cleanup Team agrees that all parties, including SDUPD and Star & Crescent, should have the opportunity to engage in discovery regarding "new" topics in the DTR and CAO that could not, with reasonable diligence, have been previously inquired about, continuing the discovery period through May 2011 is unwarranted. While we may disagree about what topics are truly "new" and could not, with reasonable diligence, have been enquired about previously, the Cleanup Team, for its part, intends to construe the issue in a way that favors the exchange of relevant, non-privileged information, rather than curtails it. We observe that, according to its discovery responses, SDUPD has two large law firms and at least six experienced attorneys at its disposal to engage in its discovery endeavors.

Third, the Cleanup Team's proposal, set forth below, is based on its need to achieve various interim milestones associated with presenting the CAO and DTR to the Board for its consideration at the earliest practicable time, and on the corresponding workload projections we have made to achieve that objective. Accordingly, the Cleanup Team's proposal is not intended to foreclose the other Designated Parties from agreeing to different discovery parameters, so long as those agreements do not impact the Cleanup Team or its stated goal.

Fourth, the Cleanup Team believes it is unduly burdensome, oppressive and essentially harassing for its members to be subjected to depositions at this time under the broad reservations of rights being made by SDUPD (and others), and with the likely outcome that they will all be required to provide further deposition testimony again, three or more months from now.

Proposal:

November 1, 2010: The Cleanup Team will make available a complete update to the

Administrative Record, and will provide the Designated Parties with a "redline" version of the DTR. Also, the Cleanup Team will produce to SDUPD for inspection and copying, all non-privileged documents that relate to the allegations in paragraph 12 of the CAO/DTR. The Cleanup Team will do the same with respect to paragraph 5 if Star & Crescent so requests.

November 19, 2010: Last day for all parties serve written discovery on "new" topics on the Cleanup Team, which may include, but is not limited to, requests relating to paragraph 12 (or 5).

December 23, 2010: Last day for the Cleanup Team to respond to "new" discovery served on November 19.

January 14, 2011: Last day to designate expert and non-expert witnesses on "new" topics.

January 28, 2011: Last day to make expert witness counter-designations on "new" topics.

March 4, 2011: Last Day to submit expert reports. Discovery closes.

Under this proposal, the Cleanup Team seeks the agreement of all Designated Parties, particularly those who have already noticed the depositions of Cleanup Team members, to continue all further Cleanup Team depositions until January and/or February, 2011. We believe that will allow SDUPD, Star & Crescent, and other Designated Parties who wish inquire about the "new" topics," the opportunity to have reviewed all relevant documents and discovery responses and to take the depositions of Cleanup Team members without reservations.

We are not unmindful of the potential need for motion(s) to compel further discovery responses in this proceeding, but believe that by providing for complete written discovery responses by December 23, and allowing well over two months until the close of discovery after that, this proposal accommodates this potential need.

The Cleanup Team remains committed to presenting the CAO to the Board for its consideration as soon as possible, consistent with regulatory and statutory requirements and the Parties' due process rights. Today is a furlough day and I will not be working after I hit the "send" button on this message, but I look forward to reviewing your respective responses and discussing these matters in more detail Monday. I am available Monday from 10 until 11:15 and from 12 until the end of the day. Thanks! Cris

In an effort to compromise with counsel for the Port, Ms. Nichols, and to obviate the need for a motion, the Cleanup Team reluctantly agreed to stipulate to a brief further extension to the close of discovery through late March, conditioned upon the Cleanup Team depositions beginning no later than early February and concluding by the first week of March. **In light of the Designated Parties' failure to reach a compromise and the comments submitted by San Diego Coastkeeper, EHC, and SDG&E, the Cleanup Team strongly urges the Presiding Officer to adopt the discovery schedule set forth above, originally proposed by the Cleanup Team.** The Cleanup Team does not have a position on the scope of discovery between the other parties. Nor does it expect to submit expert reports.

Thanks! Cris

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>>> Catherine Hagan (George) 10/20/2010 4:12 PM >>>
To the Designated Parties:

On behalf of Acting Chair Destache, I request that the designated parties, including Star and Crescent Boat Company, provide responses to the San Diego Unified Port District's Motion to re-open and extend discovery deadlines (Motion) for the Acting Chair's consideration not later than noon on Friday, October 22, 2010. It is not necessary for any party to respond to the Motion. However, if any party objects to all or a portion of the Motion, that party should explain the basis for its objection. The Port's Motion also purports to represent the positions of some of the other designated parties as to the Port's requests for relief. Therefore, if any party believes the Port has mischaracterized that party's position, it should clarify its position in a response to the Motion. Responses may be submitted via e-mail and must be copied to all designated parties.

Thank you.

Sincerely,

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>>> "Newsome, Kathryn" <KNewsome@allenmatkins.com> 10/19/2010 6:01 PM >>>

Dear Ms. Hagan and Designated Party Counsel:

Please find attached above the San Diego Unified Port District's Motion to Re-Open and Extend Discovery Deadlines, together with supporting Declarations and a proof of service.

It is our understanding that Mr. David King is no longer the Presiding Officer in these proceedings. Consequently, on behalf of Ms. Sandi Nichols, Esq., and the San Diego Unified Port District, we ask that you please deliver the above documents to the new Presiding Officer for this matter so a ruling can be obtained on the motion as expeditiously as possible given that the current discovery deadline expires on October 26, 2010.

Please do not hesitate to contact Ms. Nichols at 415-273-7454 if you have any questions.

Thank you very much.

Very truly yours,

Kathryn Newsome
Legal Secretary to Sandi L. Nichols

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