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January 7, 2020

Via E-filing and hand deliveredThe Honorable John H. Guthmann
Ramsey County District Court
1470 Ramsey County Courthouse
15 Kellogg Boulevard West
St. Paul, MN 55102**Re: Ramsey County Court File No. 62-cv-19-4626**

Dear Judge Guthmann:

Relators were surprised by the letter from Minnesota Pollution Control Agency (“MPCA”) counsel on January 6, 2020 protesting WaterLegacy’s subpoena of Michael Schmidt for a deposition to preserve Mr. Schmidt’s testimony for trial and by MPCA’s request that the Court direct its withdrawal. Relators respectfully ask the Court to formally and expeditiously deny MPCA’s request so as to reduce the likelihood that MPCA counsel will further burden Relators with a spurious motion in Polk County, Iowa.

As acknowledged in the letter itself, Mr. Schmidt lives in Iowa, and Relators cannot compel his testimony at the administrative hearing in St. Paul, Minnesota by subpoena. In fact, MPCA’s witness list contemplated that MPCA might itself subpoena Mr. Schmidt’s testimony in Iowa. (*See* MPCA Witness List at 1 n.1 (Minn. Dist. Ct. Dec. 9, 2019).

There is no authority for MPCA’s assertion that a deposition cannot be used to preserve testimony for trial of an out-of-state fact witness and, indeed, MPCA cites none. The Court’s Amended Order Setting Evidentiary Hearing (“Am. Order”) provided that, “[i]n the event that counsel has questions regarding the availability of witnesses at the hearing, preservation depositions shall be taken for use at the hearing.” (Am. Order ¶ 16 (Minn. Dist. Ct. Nov. 19, 2019)). The Amended Order is consistent with trial practice in civil actions. *See* Minn. R. Civ. P. 32.01(c)(2).

MPCA’s counsel have not asked Relators to confer on an alternative date or time for Mr. Schmidt’s deposition to preserve testimony for trial. They have, instead, suggested that Relators should rely on MPCA’s representation that Mr. Schmidt is “willing” to testify for MPCA at trial and waive Relators’ rights to secure testimony of an important fact witness with personal knowledge regarding their claims of procedural irregularities. It is unreasonable to ask Relators to waive their rights.

Relators respectfully ask that the Court deny the request of MPCA counsel for an order precluding a deposition in Iowa to preserve Mr. Schmidt’s testimony for trial.

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Respectfully submitted,

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Enclosure

cc: Counsel of Record (via Odyssey)