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September 12, 2023

Via Email jeff.pratt@ventura.org
Mr. Jeff Pratt, Executive Officer
Fox Canyon Groundwater Management Agency
800 South Victoria Avenue
Ventura, California 93009-1610

Re: Grimes Rock, Inc./Saticoy Properties, LLC
Water Rights and Variance Application pending

Dear Mr. Pratt:

Since this matter addresses the water rights of our clients, it must as a matter of necessity be somewhat formal. I am forwarding this correspondence to you, which is also copied to Alberto Boada because this correspondence is appropriately provided to the FCGMA Board.

The current status is that the Variance Application of our client, long pending, is stayed until the end of this month. That stay was accomplished between Mr. Boada and myself in the spirit of open dialogue, and in light of the pending litigation, the rights thereunder, and candid conversations between him and I to try and accomplish a path forward to avoid a formal extensive and time consuming Administrative Hearing before the Board and, if the results are not successful to our clients, further litigation will ensue. That is not what our clients want and I would hope not what FCGMA seeks either, and so Mr. Boada and I have worked to avoid all of that.

Unfortunately, at its most recent meeting involving allocations going forward, unlike how agriculture was treated and has historically been treated, yet again our clients were relegated to a situation of a complete abrogation of their water rights and entitlements. The Board accepted, over objection, a "new" TEA proposal from you that fixed our clients' water rights at 132 acre feet, far below that to which our client is legal entitled, below its needs and one third less than that which is set forth in the Agreements and Judgment in the pending litigation. What Mr. Boada and I were working towards which was avoiding the need for a formal hearing and then legal proceedings on the long outstanding Variance Application has effectively been abrogated by this determination and the path to compromises that he and I were discussing seem now to have been foreclosed.

We refer to the Variance Application and all matters associated therewith which make clear the factual and legal basis of our clients' water rights and entitlements. We respectfully remind

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you that our client and the Board that our client is subject to protection and governance by state agencies as a critical infrastructure provider, and, by statute and regulation, the water rights of our clients that directly affect its operation of our clients cannot be unduly restricted or abrogated without appropriate processes in Sacramento which have never occurred, despite our repeated objections, and which did not occur in the most recent reduction of water rights.

We are all aware of FCGMA's Motion to Stay the Judgment which will be heard shortly. We make no comment on the appropriateness of the motion and this letter is not written in anticipation of any particular ruling by the court. We do note however that with respect to that motion, if it were to be granted, then we understand FCGMA's position is that our clients will not receive the benefit of that which is agreed and set forth in the Judgment, will be at or below 132 acre feet per year of water entitlement under the current determination of the Board, and meanwhile agriculture will, as you testified in your deposition, "be just fine" as long as they follow best practices. The unfairness to our client is both apparent and tragic.

We thus augment our clients' Variance Application with the following hope that your consideration of these comments will lead to further conversation and a path towards resolution that can avoid more conflict for everyone. We respectfully advise as follows:

A. Under the terms of the Phase III settlement and associated documents, signed by the Fox Canyon Groundwater Management Agency, FCGMA cannot act consistent with the terms of that Agreement and shall take all steps necessary to implement that Agreement. The Phase 3 Stipulation includes and affirms the Phase 2 Stipulation which sets forth the minimum water rights of our client in the Exhibit thereto. Likewise, the Judgment as entered.

B. Under the terms of the Stipulation FCGMA agreed that it "shall not make arguments inconsistent with this Agreement" referring to the Phase 3 Agreement which incorporates the Phase 2 water rights allocation and reaffirms them. It is a violation of the Agreements for FCGMA to not provide our client the water rights set forth in the contractual structure to which FCGMA bound itself by Agreement. In this regard, we refer you to, inter alia, *Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, *Ellison v. City of San Buenaventura* (1975) 48 Cal.App.3d 952 and *Nevallier v. Sletten* (2002) 29 Cal.4th 82.

C. FCGMA has chosen to appeal the Judgment but in fact the FCGMA has effectively limited its appeal to the Watermaster Rules. The Watermaster Rules are not at issue to our clients' water rights allocations set forth in the Phase 2 Agreement which is incorporated, approved and adopted by FCGMA in the Phase 3 Stipulation and Agreement. Therefore, whatever complaint the FCMGA may have with the Watermaster Rules, they do not provide a basis for FCGMA

abrogating its contractual obligations to our client through the Stipulations and Agreements referenced above, as well as the Judgment. (*Franklin & Franklin v. 7 Eleven Owners for Fair Franchising* (2000) 85 Cal.App.4th 1168, *Whittier Redevelopment Agency v. Oceanic Arts* (1995) 33 Cal.App.4th 1052.)

D. Given the contractual structure of the obligations of FCGMA as described herein and set forth in the underlying documents, where contractual language is clear and explicit, it governs and it binds FCGMA from taking actions contrary thereto. (*Bank of the West, supra.*) To do so, to tell our clients or issue an order to our clients or threaten our clients to a water rights number different from that set forth in the Phase 2 Stipulation and Agreement, adopted and approved in the Phase 3 Stipulation and Agreement by FCGMA and further set forth in the Judgment, independent of the legal issues around the Judgment, constitutes a breach of contract and a breach of obligation to our client, independently of anything else. That breach is unacceptable and we would respectfully submit in bad faith especially given how agriculture is, by your deposition, described in terms of the rules issued by FCGMA as "being fine and taken care of" contrary to an industrial use such as our clients. Everyone is entitled to be treated fairly and the same, and it is inappropriate for a state agency to treat differently or better one group of constituents from another. That is discrimination.

We refer you and incorporate in this letter, the full briefing before the court including the Stipulations and Agreements referenced, the Judgment and the joint Opposition to Fox Canyon Groundwater Agency's Motion to Confirm Stay Pending Appeal filed before the court.

We very much, on behalf of our clients, would like to meet with you promptly to discuss a path forward that is not conflicted, avoids litigation, yet treats our client fairly and in a non-discriminatory manner. We do not think that is difficult to accomplish nor do we believe it unreasonable. Given the negotiated Variance stay concluding at the end of this month, we invite that conversation to occur promptly and, to the extent necessary to facilitate the conversation, we further advise that we are authorized on behalf of our clients to extend the existing stay to facilitate these conversations. If you are not willing to meet or should the Board direct that not occur, and/or should you or the Board decline to extend the stay to facilitate these conversations, we respectfully advise that our clients will move forward with the Variance Application hearing. This letter augments that Variance Application and presents further legal issues and basis therefore. In this regard, you may consider this letter our advisement that the correspondence issued by you as Executive Officer declining the Variance Application is inaccurate legally and factually and is in disconnect with all of the facts and law presented in the Variance Application. In addition, the delay of the processing of the Variance Application up to the point of the stay being entered into between FCGMA and our clients remain a fundamental issue as violative of our clients' due process and equitable production rights through the delays associated therewith, including the violation of the processing timeframes set forth in FCGMA's own rules and ordinances. All rights are reserved. We further reserve the right to submit further briefing and

presentation of evidence. If this matter goes to a hearing, we should have a meet and confer to discuss timing to accomplish this, estimated time for hearing, and other appropriate procedural aspects of the process.

I emphasize that it is not our clients' desire to engage in conflict with FCGMA – our clients simply want to go about their business without adequate water consistent with their legal water rights, no more and no less. This is a distraction for our client which is interested in just being a businessman and I cannot image that FCGMA wants to use more resources internally and Board time in what we view to be a completely unnecessary tussle. Thus, we hope and look forward to a cooperative process and conversation.

I look forward to hearing from you.

Very truly yours,

PACHOWICZ | GOLDENRING
A Professional Law Corporation

By: PETER A. GOLDENRING

PAG/sah
cc: Alberto Boada (via email)