Cleath-Harris Geologists, Inc.
71 Zaca Lane, Suite 140
San Luis Obispo, CA 93401
(805) 543-1413

December 17, 2015

VIA E-MAIL AND U.S. MAIL

Mr. Brian Pedrotti
County Planning and Building Department
County of San Luis Obispo
976 Osos Street, Room 300
San Luis Obispo, CA 93408-2040
E-mail: bpedrotti@slo.ca.gov

Re: **Laetitia Agricultural Cluster Project - Well 11**

Dear Mr. Pedrotti:

This letter provides additional information following the October 29th, 2015 Planning Commission hearing regarding the Laetitia Agricultural Cluster Project ("Project"). The purpose of this letter is to clarify and confirm information regarding Project Well 11, in response to questions raised and statements made at the October 29th hearing regarding the potential hydraulic relationship between Well 11 and Los Berros Creek. This letter supplements my testimony at the October 29th hearing and further responds to issues raised during the hearing regarding Well 11.

1) Well 11 does not draw from the subterranean stream of Los Berros Creek.

During the October 29th hearing, there may have been some confusion regarding the nature of the hydraulic relationship between Project Well 11 and Los Berros Creek. It is my understanding that this confusion was due, in part, to correspondence submitted to the County by the State Water Resources Control Board's Division of Water Rights ("Division").

In a letter dated July 22, 2015 (Attachment 1), the Division originally stated that the Project appears to include "at least one well that may be drawing from water in the subterranean stream of Los Berros Creek." In a subsequent e-mail, dated August 28, 2015 (Attachment 2), the Division stated that "Information from the EIR indicates that Well 11 may be withdrawing from the subterranean stream of Los Berros Creek, which would require a valid basis of water right." In response, the Project applicant's legal counsel provided a letter to the Division, dated September 4, 2015 (Attachment 3), confirming that Well 11 only withdraws percolating groundwater and that Well 11 does not divert from the subterranean stream of Los Berros Creek. In the most recent correspondence from the Division, dated September 14, 2015 (Attachment 4), the Division staff stated that "I agree that no action is currently necessary regarding Well 11." In summary, although the Division initially stated that Well 11 may be drawing water from the subterranean stream of Los Berros Creek, and therefore may be subject to

the Division's regulatory jurisdiction, the Division is no longer taking the position that Well 11 may be drawing water from the subterranean stream of Los Berros Creek.

In addition, the Final Environmental Impact Report for the Project ("Final EIR") confirms that Well 11 draws water from percolating groundwater, rather than from the subterranean stream of Los Berros Creek. Well 11 is screened in the fractured resistant volcanic tuff of the Obispo Formation and is located a few hundred feet away from Los Berros Creek (Final EIR, at pp. V.P.-5, V.P.-6, V.P.-10, V.P.-24). Therefore, Project Well 11 does not draw water from the subterranean stream (i.e. underflow) of Los Berros Creek.

2) The Final EIR mitigates potential project impacts on Los Berros Creek.

The Final EIR evaluated the potential impacts of the Project wells on Los Berros Creek, and provided mitigation measures to prevent any potential significant impact to Los Berros Creek from pumping the Project wells (see Final EIR, at pp. V.P.-29 – V.P.-43). In particular, the Final EIR concluded that there is a hydraulic connection between the fractured rock aquifer tapped by that Well 11 and Los Berros Creek base flow, based on water level data showing rapid recharge correlated with precipitation events (Final EIR, at pp. V.P.-24, V.P.-26).

In other words, although Well 11 production does not draw water from the subterranean stream of Los Berros Creek, it can still impact base flow. The Final EIR concluded, based on an analysis of Los Berros Creek flow records, that substantial reduction in base flow could result from Well 11 operation during the months of August through November (Final EIR, at pp. V.P.-35 – V.P.-36).

The Final EIR recommends a mitigation measure that prohibits pumping of Well 11 during the dry season, from August through November each year (Final EIR, at pp. V.P.-40 [mitigation measure WAT/mm-1.c.1]). This mitigation measure was recommended by the County's independent expert, Geosyntec (Final EIR, at pp. V.P.-26). This recommended pumping schedule is specifically designed "to protect flows within Los Berros Creek" (Final EIR, at p. V.P.-38). The Final EIR concluded that with implementation of and compliance with the identified mitigation measures, the potential impact to Los Berros Creek would be less than significant (Final EIR, at pp. V.P.-38; V.P.-42).

3) Any remaining concerns regarding Well 11's potential impact on Los Berros Creek are best addressed by modifying the existing mitigation measure.

During the October 29th Planning Commission hearing, the Commission proposed eliminating Well 11 from the Project, based on concerns regarding Well 11's potential impact on Los Berros Creek. As explained above, the Final EIR already mitigates the

potential impacts on Los Berros Creek from pumping Well 11 by prohibiting the use of Well 11 during the dry season from August through November (Final EIR, at p. V.P.-40 [mitigation measure WAT/mm-1.c.1].)

Well 11 is an integral part of the Project's water supply, and should not be eliminated from the Project. To the extent that any of the Planning Commissioners have remaining concerns regarding Well 11's potential impacts on Los Berros Creek, those concerns can be addressed by modifying the existing mitigation measure (Final EIR, at p. V.P.-40 [mitigation measure WAT/mm-1.c.1]). The current mitigation measure prohibits use of Well 11 during the months of August through November. To further minimize potential impacts from Well 11 on Los Berros Creek, while still meeting the Project water supply requirements for the Final EIR, Cleath-Harris Geologists recommends extending the period when use of Well 11 is prohibited to July through December. This modification extends the pumping prohibition time by 50 percent, adding two months (July and December) with the greatest remaining potential for impact to base flow, and avoids any potential impacts to Los Berros Creek from pumping Well 11 during the mid-summer through early winter (see Attachment 5; Final EIR Appendix H, pp. 15 and Figure 19). It is my understanding that during your meeting with the applicant's team on December 8, 2015, the County's Environmental Consultant suggested extending the prohibition from June to November, rather than July to December. I am available to discuss potential modification to the existing mitigation measure with the County's independent expert, Geosyntec.

Respectfully submitted,
CLEATH-HARRIS GEOLOGISTS

Spencer J. Harris, HG 633
Senior Hydrogeologist

attachments

ATTACHMENT 1

CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

JUL 22 2015

In Reply Refer to:
MJM:UN000882

Laetitia Vineyard and Winery, Inc
453 Laetitia Vineyard Dr
Arroyo Grande, CA 93420

To Whom It May Concern:

POTENTIAL UNAUTHORIZED DIVERSION OF WATER RELATED TO THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE LAETITIA AGRICULTURAL CLUSTER TRACT MAP AND CONDITIONAL USE PERMIT (SCH # 2005041094) IN SAN LUIS OBISPO COUNTY

Staff from the State Water Resources Control Board, Division of Water Rights (Division) has determined that you may be diverting water in such a manner that may require a water right approval. The project appears to include the diversion of water in two 25 acre-foot reservoirs and at least one well that may be drawing from water in the subterranean stream of Los Berros Creek.

You should contact the Division to determine whether a water right permit or other water right approval is needed. Information on water rights and the permitting process is available at:

http://www.waterboards.ca.gov/waterrights/

If a water right approval is needed, the State Water Board will act as a Responsible Agency for this project. Accordingly, the State Water Board may need to rely on the Lead Agency's California Environmental Quality Act (CEQA) document to support the Division's evaluation of the requested approval. The Lead Agency should therefore ensure that any CEQA document prepared for the project considers all potential direct and indirect environmental impacts associated with the diversion and use of water.

Unauthorized diversion and use of water is considered a trespass and subject to enforcement action under Water Code sections 1052 and 1831. Pursuant to Water Code section 1052, any diversion of water not covered by a valid basis of right may be subject to Administrative Civil Liability of up to $500 per day without further notice. The State Water Board also may issue a Cease and Desist Order in response to an unauthorized diversion or threatened unauthorized diversion pursuant to Water Code section 1831.

Some diverters claim rights to divert independent of a permit, license, registration or certification issued by the State Water Board, such as diversions under riparian or pre-1914 rights. With limited exceptions, Water Code section 5101 requires that a Statement of Water Diversion and Use be filed for these diversions. Water Code section 5107 (c)(1) provides that the State Water

Board may impose a civil liability of $1,000, plus $500 per day for each additional day on which the violation continues if the person fails to file a statement within 30 days after the board has called the violation to the attention of that person. These penalties are in addition to any penalties that may be imposed if the diverter does not hold a valid right or diverts in excess of what is authorized under that right. This letter serves as your notice of the statement requirement and potential penalty.

Please contact me at (916) 341-5310 or matthew.mccarthy@waterboards.ca.gov if you have any questions or require additional information. Written correspondence or inquiries should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Matt McCarthy, P.O. Box 2000, Sacramento, CA, 95812-2000.

Sincerely,

Matt McCarthy, Senior
Coastal Lahontan Unit
Division of Water Rights

cc: Janneck Limited
c/o John Janneck
116 Cory Ave
Los Angeles, CA 90069

RRM Design Group
c/o Allison Donatello
3765 S Higuera St, Ste 102
San Luis Obispo, CA 93401

County of San Luis Obispo
c/o Brian Pedrotti
Department of Planning and Building
976 Osos St, Rm 200
San Luis Obispo, CA 93408

County of San Luis Obispo
c/o Brian Pedrotti
bpedrotti@co.slo.ca.us

ATTACHMENT 2

Leeper, Elizabeth

From: McCarthy, Matthew@Waterboards <Matthew.McCarthy@waterboards.ca.gov>
Sent: Friday, August 28, 2015 11:14 AM
To: Leeper, Elizabeth
Cc: bpedrotti@co.slo.ca.us; Moody, Mitchell@Waterboards
Subject: RE: Laetitia: Response to July 22, 2015 Letter Re Alleged Potential Unauthorized Diversion of Water (MJM:UN000882)
Attachments: Map.pdf

Ms. Leeper,

Thank you for the quick response to our letter.

Here is the information you requested:

Reservoirs. Information from the EIR indicates that there is at least one onstream reservoir on the property that are being used for irrigation. The reservoir appears to collect (divert) surface water, and a valid basis of water right is required for such a diversion. In addition, while a second reservoir appears to be offstream, it is not clear how water is diverted into the reservoir. If percolating groundwater is the only source of water for the reservoir, then a valid basis of water right is not needed. The following is an excerpt from Page V.P.-5 of the Final EIR (emphasis added): *The agricultural irrigation system included Wells 1, 4, 5, and 9 (F&T 2, F.V. Wells 3, F.V. Wells 1, and F&T 1) and two reservoirs each with storage capacity of 25 acre-feet (af).*

Well. Information from the EIR indicates that Well 11 may be withdrawing from the subterranean stream of Los Berros Creek, which would require a valid basis of water right. Absent evidence to the contrary, groundwater is presumed to be percolating groundwater, not a subterranean stream. If you assert that the source of water for Well 11 is percolating groundwater, then the Division would likely need to review Appendix H of the EIR to determine if sufficient evidence is available to prove there is a subterranean stream. The following is an excerpt from Page V.P.-24 of the Final EIR (emphasis added): *During the well pumping tests, full recovery of water levels occurred only at Well 11, which is within a few hundred feet of Los Berros Creek. The hydrograph for Well 11 shows strong correlation between rainfall and groundwater levels in the vicinity of Well 11, which indicates that groundwater levels in the vicinity of Well 11 are influenced by the base flow of Los Berros Creek (refer to Appendix H to review hydrographs and detailed data). Conversely, pumping from Well 11 likely influences base flow of Los Berros Creek.*

I've included a topographic map from the EIR with notes regarding the location of the reservoirs and the well.

Mitchell and I would be happy to discuss this further with you, however we will both be out of the office next week. Are you available to meet or discuss by phone at 1pm on Thursday, 9/10 or Friday, 9/11?

Thanks,
Matt

Matt McCarthy
Division of Water Rights
State Water Resources Control Board
916-341-5310

From: Leeper, Elizabeth [mailto:ELeeper@kmtg.com]
Sent: Thursday, August 27, 2015 4:19 PM
To: McCarthy, Matthew@Waterboards
Cc: bpedrotti@co.slo.ca.us
Subject: Laetitia: Response to July 22, 2015 Letter Re Alleged Potential Unauthorized Diversion of Water (MJM:UN000882)

Dear Mr. McCarthy,

My firm serves as legal counsel for Janneck Limited with respect to the Laetitia Agricultural Cluster Tract Map and Conditional Use Permit project ("Project") in San Luis Obispo County. The attached letter responds to the July 22, 2015 letter from the Division of Water Rights to the Laetitia Vineyard and Winery, Inc., regarding the alleged unauthorized diversion of water related to the Project. A hard-copy of the attached letter is also being delivered to you by mail.

If you have any questions regarding the attached letter or would like to discuss this matter, please feel free to contact me. Please copy me on any future communications from the Division to the County regarding the Project.

Thank you,

Elizabeth Leeper

Elizabeth Leeper
Attorney at Law

KRONICK
MOSKOVITZ TIEDEMANN & GIRARD

400 Capitol Mall, 27th Floor
Sacramento, CA 95814

T | 916.321.4500
D | 916.321.4517
F | 916.321.4555

eleeper@kmtg.com
www.kmtg.com

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ATTACHMENT 3

KRONICK
MOSKOVITZ TIEDEMANN & GIRARD

400 Capitol Mall, 27th Floor
Sacramento, CA 95814

T 916.321.4500
F 916.321.4555

Elizabeth Leeper
eleeper@kmtg.com

September 4, 2015

VIA E-MAIL AND U.S. MAIL

State Water Resources Control Board,
Division of Water Rights
Attn: Matt McCarthy
P.O. Box 2000
Sacramento, CA 95812-2000
E-Mail:
matthew.mccarthy@waterboards.ca.gov

Re: Response to August 28, 2015 E-Mail Re Potential Unauthorized Diversion of Water (MJM:UN000882)

Dear Mr. McCarthy:

My firm serves as legal counsel for Janneck Limited with respect to the Laetitia Agricultural Cluster Tract Map and Conditional Use Permit project ("Project") in San Luis Obispo County. By letter dated August 27, 2015, I provided a response to the July 22, 2015 letter from the Division of Water Rights ("Division") to the Laetitia Vineyard and Winery, Inc., regarding the alleged unauthorized diversion of water related to the Project. My letter requested additional information from the Division regarding the alleged potential unauthorized diversion of water.

You responded to my letter, by e-mail, on August 28, 2015 ("Response"). Your Response addresses two issues: (1) an alleged onstream reservoir; and (2) a well that allegedly may be withdrawing from the subterranean stream of Los Berros Creek. I appreciate your quick Response and the additional information that you provided. A copy of your Response is attached, for your convenience. Below, i address the reservoir and well issues.

Reservoirs: Your Response states, in relevant part, that "[i]nformation from the EIR indicates that there is at least one onstream reservoir on the property that are being used for irrigation. The reservoir appears to collect (divert) surface water, and a valid basis of water right is required for such a diversion. . . .The following is an excerpt from Page V.P.-5 of the Final EIR (emphasis added): *The agricultural irrigation system included Wells 1, 4, 5, and 9 (F&T 2, F.V. Wells 3, F.V. Wells 1, and F&T 1) and <u>two reservoirs each with storage capacity of 25 acre-feet (af)</u>*." Your Response does not identify the "information" from the EIR that indicates that there is an onstream reservoir on the property, or that indicates that the reservoir is collecting diverted surface water. The sentence that your Response quotes from the EIR simply states that the agricultural irrigation system includes two reservoirs; it says nothing about an onstream reservoir or about diversions of surface water.

This letter clarifies and confirms that the two reservoirs on the Laetitia property are reservoirs used for the existing agriculture on the property, and are not part of the proposed

Project that is before the County for its consideration and approval. Nor are the irrigation reservoirs part of the proposed Project that is being analyzed under the California Environmental Quality Act ("CEQA"). Therefore, potential issues regarding the existing reservoirs are irrelevant to the County's consideration of the proposed Project and the County's analysis of the proposed Project under CEQA. It is the Project applicant's position that the County's CEQA review of the proposed Project is not the appropriate forum for addressing the Division's concerns regarding the existing irrigation reservoirs.

Well 11: Your Response states, in relevant part, that "[i]nformation from the EIR indicates that Well 11 may be withdrawing from the subterranean stream of Los Berros Creek, which would require a valid basis of water right." However, your Response also acknowledges that "[a]bsent evidence to the contrary, groundwater is presumed to be percolating groundwater, not a subterranean stream. If you assert that the source of water for Well 11 is percolating groundwater, then the Division would likely need to review Appendix H of the EIR to determine if sufficient evidence is available to prove there is a subterranean stream."

This letter confirms that it is the position of the Project applicant that Well 11 only withdraws percolating groundwater, and that Well 11 does not divert from a subterranean stream. Well 11 is screened in the fractured resistant volcanic tuff of the Obispo Formation and is located several hundred feet away from Los Berros Creek. (See Final EIR, at pp. V.P.-5, V.P.-6, V.P.-10, V.P.-24.) As you know, the State Water Resources Control Board ("State Water Board") has applied a four-part test for determining whether groundwater should be classified as a subterranean stream. "[F]or groundwater to be classified as a subterranean stream flowing through a known and definite channel, the following physical conditions must exist: [¶] 1. A subsurface channel must be present; [¶] 2. The channel must have a relatively impermeable bed and banks; [¶] 3. The course of the channel must be known or capable of being determined by reasonable inference; and [¶] 4. Groundwater must be flowing in the channel." (*In re Garrapata Water Co.* (June 17, 1999) State Wat. Resources Control Bd. Dec. No. 1639; *see N. Gualala Water Co. v. State Water Res. Control Bd.* (2006), 139 Cal. App. 4th 1577, 1585.) The Division has not identified evidence with respect to this four-part test, nor has the Division identified evidence to support the conclusion that Well 11 diverts from a subterranean stream. I maintain the position that Well 11 diverts from percolating groundwater and therefore, those diversions are not subject to the State Water Board's jurisdiction over surface waters and subterranean streams.

In conclusion, I request that you provide written communication confirming that, based on the available information and the Division's review of that information, the Division rescinds its July 22, 2015 letter regarding alleged unauthorized diversions of water related to the Laetitia project. In the alternative, if the Division concludes that is appropriate to continue its review of the available information, I request that you provide written communication confirming that the Division's review is on-going and that the Division has not made any determination regarding the Project's water diversions at this time.

Thank you for your attention to this matter.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation

MONA G. EBRAHIMI
ELIZABETH LEEPER

EL
Attachment

cc: County of San Luis Obispo
c/o Brian Pedrotti
Department of Planning and Building
976 Osos Street, Room 200
San Luis Obispo, CA 93408

County of San Luis Obispo
c/o Brian Pedrotti
bpedrotti@co.slo.ca.us

ATTACHMENT 4

Leeper, Elizabeth

From: McCarthy, Matthew@Waterboards <Matthew.McCarthy@waterboards.ca.gov>
Sent: Monday, September 14, 2015 4:24 PM
To: Leeper, Elizabeth
Cc: Moody, Mitchell@Waterboards; bpedrotti@co.slo.ca.us
Subject: FW: Laetitia: Response to July 22, 2015 Letter Re Alleged Potential Unauthorized Diversion of Water (MJM:UN000882)
Attachments: Letter.pdf; Map.pdf

Ms. Leeper,

Thank you for your letter dated September 4, 2015 (attached). In your letter responding to my August 28, 2015 email message, you assert that Well 11 draws from percolating groundwater rather than the subterranean stream of Los Berros Creek and you request that I provide confirmation that the Division of Water Rights either (1) rescinds the July 22, 2015 letter or (2) provides communication that the Division has not made any determination regarding the Laetitia Agricultural Cluster Tract Map and Conditional Use Permit project (Project).

I agree that no action is currently necessary regarding Well 11. However, it is still not clear to me how water enters the two reservoirs on the property, therefore I cannot make a determination whether further action is necessary for the two reservoirs. However, information available to me at this time indicates that the unauthorized diversion of water is occurring in the reservoir located at 35.0911, -120.5241 and labeled 'Onstream Reservoir' on the attached map, which was also included in my August 28, 2015 email.

California Environmental Quality Act

In your letter, you note that the reservoirs are not part of the Project that is being analyzed by the County of San Luis Obispo (County) under the California Environmental Quality Act (CEQA). You also indicate that your position is that the County's CEQA review is not the appropriate forum for addressing the Division's concerns regarding the reservoirs.

State Water Resources Control Board (State Water Board) staff first became aware of the presence of the reservoirs through the CEQA noticing process, therefore the County was included in the State Water Board's contact letter indicating that the unauthorized diversion of water may be occurring. Regardless of whether the reservoirs are part of the Project for the purposes of the County's Environmental Impact Report (EIR), the State Water Board has authority over the diversion and use of surface water. Since the reservoirs are not being removed as part of the Project under CEQA, the unauthorized diversion of water that has occurred will likely continue to occur.

State Water Board staff are willing to continue this correspondence without including the County, if that is what you would prefer.

However, if a water right approval by the State Water Board is necessary, additional CEQA analysis may be required. If that analysis is required and it is not contained in the County's EIR, then another CEQA document will need to be prepared.

Information Request

Please provide the following:

1. Information describing the sources of water for the two reservoirs on the property. The 'Onstream Reservoir' is located at 35.0911, -120.5241 and the 'Offstream Reservoir' is located at 35.1016, -120.5202. The locations of the two reservoirs are indicated on the attached map, which was also included in my August 28, 2015 email.

2. Information describing the methods and infrastructure used to divert or store water in, and withdraw water from, the two reservoirs on the property. See above for the locations of the two reservoirs.

Potential for Enforcement Action

As I mentioned in my letter dated July 22, 2015, the unauthorized diversion and use of water is considered a trespass and is subject to enforcement action. That same letter served as your notice of the statement requirement and potential penalty. According to the County's EIR for the Project, Los Berros Creek is designated steelhead critical habitat (page V.E.-15 of the County's Final EIR). Because at least one of the reservoirs appears to divert water in an unauthorized manner that may have an adverse effect on south-central California coast steelhead (*Oncorhynchus mykiss irideus*), the State Water Board may choose to give enforcement priority to this apparent unauthorized diversion and failure to file a statement. Therefore, your prompt attention to this matter is appreciated. I encourage you to provide the information requested above as soon as possible, and if you choose to not file a statement for the reservoir located at 35.0911, -120.5241 and labeled 'Onstream Reservoir' on the attached map in a timely fashion, please contact me immediately by phone so we can discuss the matter.

As I mentioned in my August 28, 2015 email message, we are available to discuss this with you on the phone. Please contact me if you would like to do so.

Sincerely,
Matt McCarthy
Division of Water Rights
State Water Resources Control Board
916-341-5310

From: McCarthy, Matthew@Waterboards
Sent: Friday, August 28, 2015 11:14 AM
To: Leeper, e@KMTG
Cc: bpedrotti@co.slo.ca.us; Moody, Mitchell
Subject: RE: Laetitia: Response to July 22, 2015 Letter Re Alleged Potential Unauthorized Diversion of Water (MJM:UN000882)

Ms. Leeper,

Thank you for the quick response to our letter.

Here is the information you requested:

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Well. Information from the EIR indicates that Well 11 may be withdrawing from the subterranean stream of Los Berros Creek, which would require a valid basis of water right. Absent evidence to the contrary, groundwater is presumed to be percolating groundwater, not a subterranean stream. If you assert that the source of water for Well 11 is percolating groundwater, then the Division would likely need to review Appendix H of the EIR to determine if sufficient evidence is available to prove there is a subterranean stream. The following is an excerpt from Page V.P.-24 of the Final EIR (emphasis added): *During the well pumping tests, full recovery of water levels occurred only at Well 11, which is within a few hundred feet of Los Berros Creek. The hydrograph for Well 11 shows strong correlation between rainfall and groundwater levels in the vicinity of Well 11, which indicates that groundwater levels in the vicinity of Well 11 are influenced by the base flow of Los Berros Creek (refer to Appendix H to review hydrographs and detailed data). Conversely, pumping from Well 11 likely influences base flow of Los Berros Creek.*

I've included a topographic map from the EIR with notes regarding the location of the reservoirs and the well.

Mitchell and I would be happy to discuss this further with you, however we will both be out of the office next week. Are you available to meet or discuss by phone at 1pm on Thursday, 9/10 or Friday, 9/11?

Thanks,
Matt

Matt McCarthy
Division of Water Rights
State Water Resources Control Board
916-341-5310

From: Leeper, Elizabeth [mailto:ELeeper@kmtg.com]
Sent: Thursday, August 27, 2015 4:19 PM
To: McCarthy, Matthew@Waterboards
Cc: bpedrotti@co.slo.ca.us
Subject: Laetitia: Response to July 22, 2015 Letter Re Alleged Potential Unauthorized Diversion of Water (MJM:UN000882)

Dear Mr. McCarthy,

My firm serves as legal counsel for Janneck Limited with respect to the Laetitia Agricultural Cluster Tract Map and Conditional Use Permit project ("Project") in San Luis Obispo County. The attached letter responds to the July 22, 2015 letter from the Division of Water Rights to the Laetitia Vineyard and Winery, Inc., regarding the alleged unauthorized diversion of water related to the Project. A hard-copy of the attached letter is also being delivered to you by mail.

If you have any questions regarding the attached letter or would like to discuss this matter, please feel free to contact me. Please copy me on any future communications from the Division to the County regarding the Project.

Thank you,

Elizabeth Leeper

Elizabeth Leeper
Attorney at Law

KRONICK
MOSKOVITZ TIEDEMANN & GIRARD

400 Capitol Mall, 27th Floor
Sacramento, CA 95814

T 916.321.4500
D 916.321.4517
F 916.321.4555

eleeper@kmtg.com
www.kmtg.com

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IRS CIRCULAR 230 DISCLOSURE: Pursuant to Treasury Regulations, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used or relied upon by you or any other person, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any tax advice addressed herein. Thank you.

ATTACHMENT 5

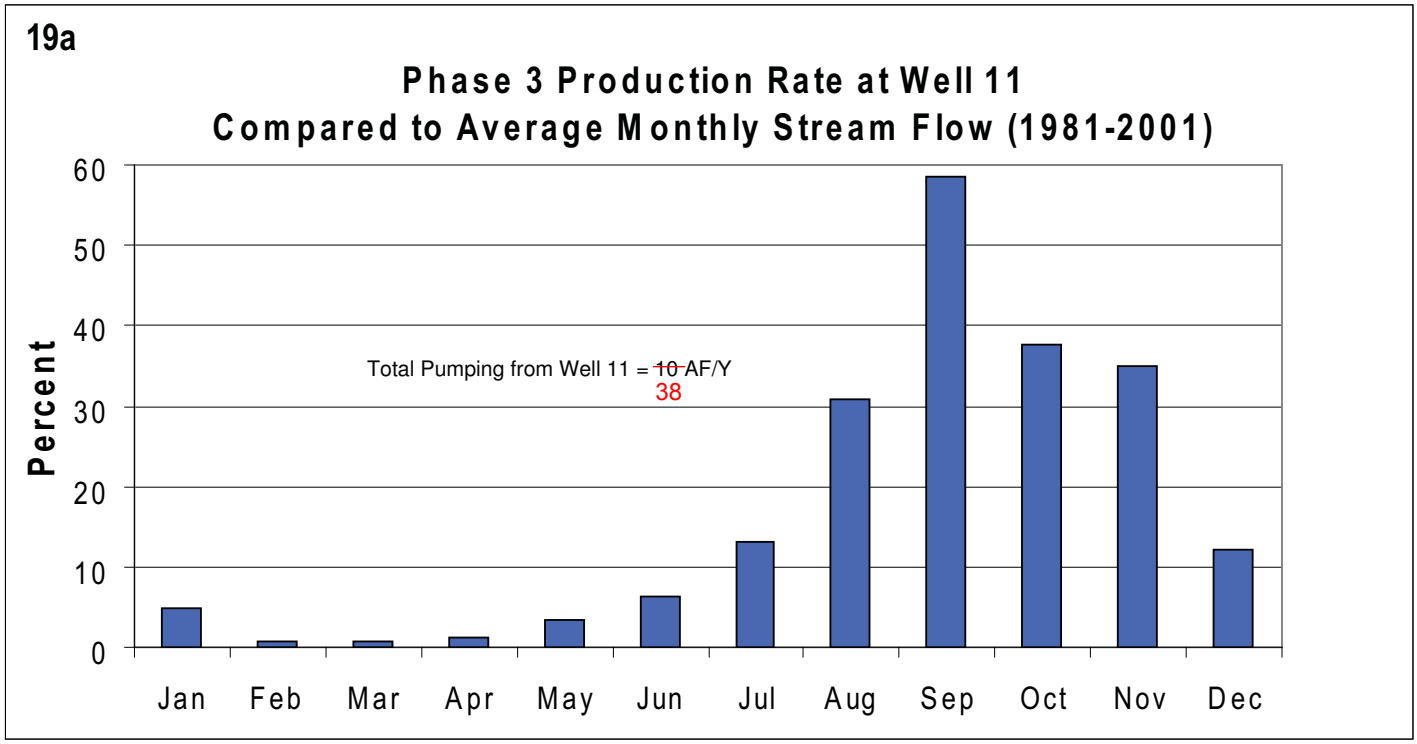
not calculated from the Phase 3 testing data recorded at Well 11 because the prominent recharge influence on water levels at this well occurred that was independent of pumping and complicates interpretation of the aquifer response to pumping.

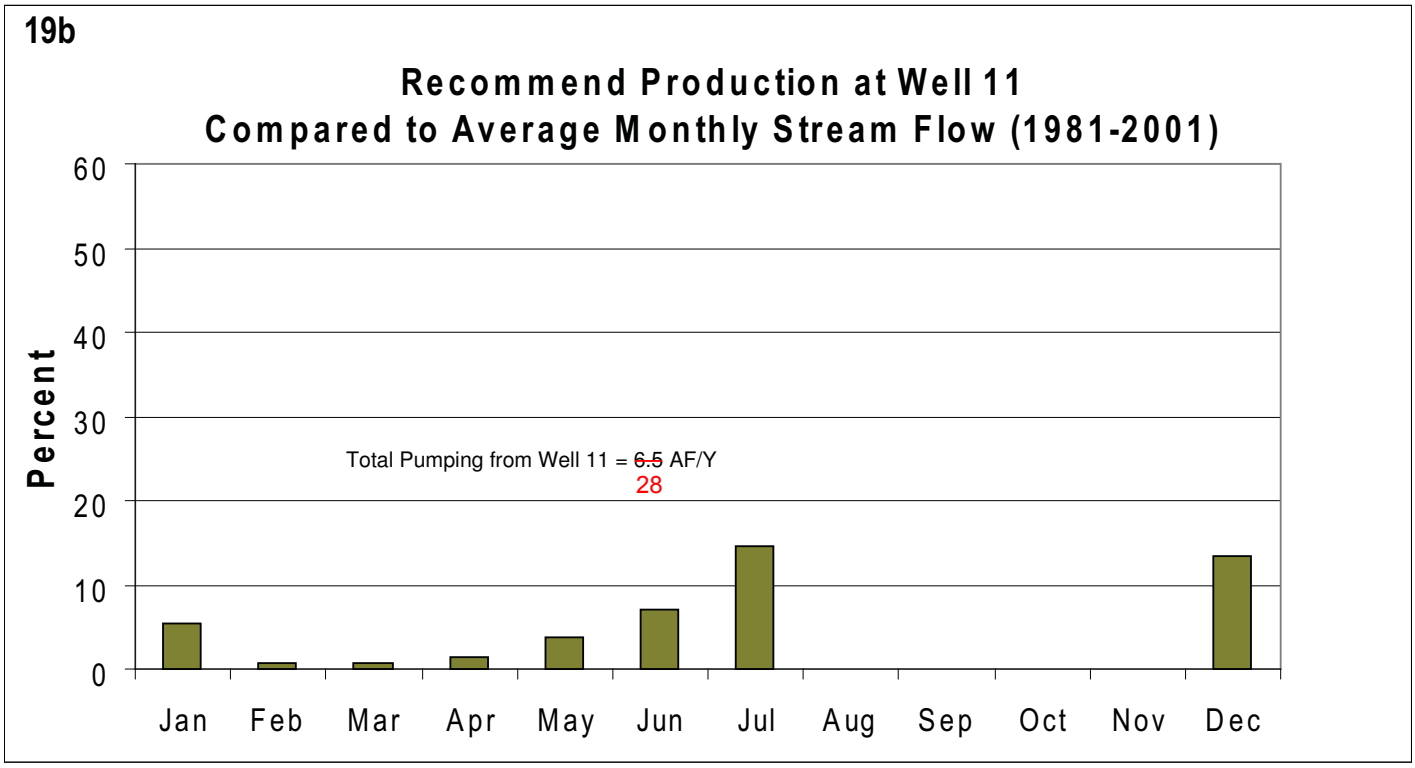
The resulting revised estimate of sustainable yield from the four wells is approximately 65 AF/Y, which equates to an average pumping rate of 42 gpm. Table 4 lists the estimated sustainable pumping rates calculated by CHG using the Phase 1 and 2 data, the actual Phase 3 pumping rates, and the revised estimates of viable long-term pumping rates based on the water levels recorded in the four wells during the Phase 3 pumping and subsequent recovery.

4.4.3 Potential Impact of Well 11 on Los Berros Creek

Although the production capacity of Well 11 was substantially higher than the other wells, the rapid recharge response, close proximity to the creek, and dropping water level beginning in June even without pumping indicates that the production capacity of Well 11 is dependent on base flow in Los Berros Creek and will likely decrease during summer and drought conditions. Moreover, pumping from Well 11 during late summer and autumn would likely substantially reduce base flow in the Los Berros Creek channel. Figure 19a shows the pumping rate proposed by CHG (July 2010) for Well 11 (38.2 AF/Y = 23.7 gpm) compared to average monthly flow rate in Los Berros Creek based on available data for the period from 1981 to 2001. During the months of August through November, the proposed pumping rate from Well 11 exceeds 30 percent of the average flow in Los Berros Creek.

An alternative to help preserve base flows in the creek and decrease impact to the Los Berros Creek riparian corridor would be to not operate Well 11 during the months of August, September, October, and November. However, a higher pumping rate than that used for the Phase 3 testing can likely be sustained at Well 11 the rest of the year (December through July) with insignificant impact to Los Berros Creek. Accordingly, the suggested optimized pumping scheme includes a 10 percent increase to the pumping rate at Well 11 from December through July. Based on average conditions for the period from 1981 to 200, with the proposed 10 percent increase in pumping from Well 11 from December through July, the pumping rate is less than 15 percent of the creek flow. Figure 19b shows the recommended revised pumping schedule for Well 11 compared to average monthly flow rate in Los Berros Creek.





Notes:
Curtailment of pumping from Well 11 from August through November is recommended to help preserve base flow in Los Berros Creek.

Corrections to Total Pumping from Well 11 by CHG (listed values were for Well 10).

Proposed Pumping at Well 11 Compared to Average Monthly Flow in Los Berros Creek

Review of Well Testing and Sustainable Yield Assessment
Proposed Laetitia Agricultural Cluster Subdivision
San Luis Obispo, California

Geosyntec consultants

Oakland | May 2011

Figure 19

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