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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

CITY OF POMONA,

Plaintiff,

vs.

SOCIEDAD QUIMICA Y MINERA
DE CHILE S.A.; SQM NORTH
AMERICA CORPORATION; AND
DOES 1 through 200, INCLUSIVE,

Defendants.

Case No. 11-CV-00167-RGK-VBK
**PROTECTIVE ORDER
REGARDING CONFIDENTIAL
INFORMATION**

1. PURPOSE AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the Court issues the following Protective Order Regarding Confidential Information. This Protective Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends

1 only to the limited information that is entitled to confidential treatment under the
2 applicable legal principles. This Protective Order does not entitle the parties to file
3 confidential information under seal.

4 2. DESIGNATING CONFIDENTIAL INFORMATION

5 2.1 For purposes of this Protective Order, “CONFIDENTIAL
6 INFORMATION” is information, designated as such in accordance with the
7 provisions herein, that the designating party in good faith believes contains
8 personal, commercial, financial, proprietary, or other confidential information.
9 Such CONFIDENTIAL INFORMATION includes information that:

- 10 a. Concerns or relates to the processes, operations, work, or
11 apparatus, or to the production, sales, shipments, purchases,
12 transfers, identification of customers, inventories, amount or
13 sources of any income, profits, losses, or expenditure, of any
14 persons, firm, partnership, corporation, or other organization,
15 the disclosure of which information may have the effect of
16 causing harm to the competitive position of the person, firm,
17 partnership, corporation, or to the organization from which the
18 information was obtained.
- 19 b. Is produced or disclosed by a municipality or any federal, state
20 or local agency and which discloses or constitutes:
- 21 (i) the physical address or geographic location of public
22 drinking water wells, storage facilities, pumping stations
23 and water treatment facilities;
- 24 (ii) water system schematics and facility maps;
- 25 (iii) pipeline maps;
- 26 (iv) facility plans and specifications;
- 27 (v) water system vulnerabilities which have not been
28 publicly disclosed;

- (vi) water system hydraulics or operational practices;
- (vii) emergency operations and response plans; or
- (viii) water system security plans, practices and/or precautions, including planned security enhancements.

2.2 CONFIDENTIAL INFORMATION protected by this Protective Order shall not include information that is:

- a. Lawfully received by a party from a source other than the party asserting the claim of confidentiality; or
- b. Public knowledge or information, or information that becomes public after disclosure other than through an act or omission of a person or entity receiving or maintaining the information designated as confidential.

2.3 Information may only be designated “CONFIDENTIAL INFORMATION” if it has been reviewed by an attorney and if that attorney entertains a good faith belief that the information is entitled to confidentiality as defined in section 2.1.

2.4 Produced Documents. A party producing a document in formal or informal discovery that it, in good faith, believes constitutes or contains CONFIDENTIAL INFORMATION shall produce a copy of such document with a label that states “CONFIDENTIAL INFORMATION” on the face of each page of the document. As used herein, the term “document” includes all writings, electronically stored information and tangible things subject to production under Federal Rule of Civil Procedure 34(a)(1). Any party receiving a document labeled as CONFIDENTIAL INFORMATION is responsible for maintaining the document as CONFIDENTIAL INFORMATION pursuant to this Protective Order.

2.5 Written Discovery. If a party responding to an interrogatory or other written discovery believes that its response contains CONFIDENTIAL INFORMATION, it shall set forth its response in a separate document that is

1 produced and designated as CONFIDENTIAL INFORMATION in the same
2 manner as a produced document under section 2.4. The non-designated responses
3 should make reference to the separately produced document containing the
4 responses with CONFIDENTIAL INFORMATION, but such document should not
5 be attached to the non-designated responses.

6 2.6 Deposition Transcripts. Unless otherwise agreed to by the
7 parties or ordered by the Court, within 30 days after the receipt of a deposition
8 transcript (or if the transcript is received within 30 days of the date set for the
9 beginning of trial, within half of the number of days remaining before the date set
10 for the beginning of trial), a party may inform the other parties to the action of the
11 portions of the transcript that it wishes to designate as CONFIDENTIAL
12 INFORMATION. Until such time has elapsed, deposition transcripts in their
13 entirety are to be considered as CONFIDENTIAL INFORMATION. All parties in
14 possession of a copy of a designated deposition transcript shall appropriately mark
15 the transcript cover and the designated pages as containing CONFIDENTIAL
16 INFORMATION.

17 2.7 Information Designated “Confidential” in Other Litigation. A
18 party responding to discovery shall not withhold or object to the production of
19 information in its possession, custody or control on the grounds that such
20 information is or may be subject to a confidentiality or protective order entered in
21 another proceeding, unless the information in question (a) was designated
22 “confidential” in such other proceeding by an entity other than the responding
23 party and (b) remains subject to the confidentiality or protective order in the other
24 proceeding, in which case the responding party may withhold the information, but
25 shall provide the requesting party with the identity of the entity that designated the
26 information “confidential,” along with a description of the information sufficiently
27 detailed to enable the requesting party to obtain such information directly from the
28 designating entity.

1 3. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 3.1 Timing of Challenges. Any party or non-party may challenge a
3 designation of confidentiality at any time. Unless a prompt challenge to a
4 designating party's confidentiality designation is necessary to avoid foreseeable,
5 substantial unfairness, unnecessary economic burdens, or a significant disruption
6 or delay of the litigation, a party does not waive its right to challenge a
7 confidentiality designation by electing not to mount a challenge promptly after the
8 original designation is disclosed.

9 3.2 Meet and Confer. The party challenging a designation of
10 CONFIDENTIAL INFORMATION shall notify the designating party in writing.
11 The challenging and the designating parties shall promptly confer in an attempt to
12 resolve their differences. If the designating and challenging parties are unable to
13 resolve their differences, the designating party shall have twenty-one (21) calendar
14 days from the receipt of the written objection to file with the court a motion to
15 retain confidentiality. The designating party shall have the burden of proof on any
16 such motion to justify the CONFIDENTIAL INFORMATION designation. All
17 documents initially designated as CONFIDENTIAL INFORMATION shall
18 continue to be subject to this order unless and until the Court rules otherwise or the
19 parties so agree in writing. If a designating party elects not to make a motion to
20 retain confidentiality with respect to documents to which a challenge has been
21 made, it shall be deemed to have withdrawn its designation and shall send a copy
22 of the previously designated documents without the CONFIDENTIAL
23 INFORMATION designation to each party to whom the previously designated
24 documents were originally produced.

25 4. ACCESS TO AND USE OF CONFIDENTIAL INFORMATION

26 4.1 Authorized Disclosures. Unless otherwise agreed by the parties
27 or ordered by the Court, CONFIDENTIAL INFORMATION shall be disclosed by
28 the receiving party only to the following persons:

- 1 a. Attorneys of record in this proceeding, including their
2 necessary associates, paralegals, clerks, and secretarial and
3 clerical personnel;
- 4 b. In-house counsel and their staff and those employees of a party
5 designated by in-house counsel to assist with the prosecution or
6 defense of the included actions.
- 7 c. Qualified persons taking testimony involving such information,
8 and necessary stenographic, videotape and clerical personnel;
- 9 d. Trial experts, expert consultants and their staffs who are
10 consulted by counsel for a receiving party;
- 11 e. Deponents and witnesses who already know the
12 CONFIDENTIAL INFORMATION being disclosed (as
13 confirmed through counsel in advance of any disclosure to the
14 deponent or witness and/or as demonstrated by the deponent or
15 witness being clearly shown as an author or prior recipient of
16 the CONFIDENTIAL INFORMATION on the face of the
17 document to be disclosed);
- 18 f. Discovery masters or settlement judges appointed by the Court
19 or agreed to between the parties, who are engaged in
20 proceedings connected with this action, and personnel regularly
21 employed by them;
- 22 g. The Court, Court staff and other personnel before which this
23 proceeding and/or any related action is pending.

24 A party may provide CONFIDENTIAL INFORMATION to authorized
25 persons designated in sections 4.1(d) and 4.1(f) above only if such persons
26 acknowledge in writing that they have read this Protective Order and agree to be
27 bound by its terms. (A form of such acknowledgment is attached hereto as Exhibit
28 A.) Such written acknowledgment shall not be discoverable in this proceeding or

1 any action included therein. Each party takes responsibility for ensuring that all
2 authorized recipients of CONFIDENTIAL INFORMATION are informed of and
3 agree to this Protective Order. Any disclosures under this section are authorized
4 only to the extent necessary to prosecute or defend this litigation.

5 4.2 Unauthorized Disclosures. If CONFIDENTIAL
6 INFORMATION is disclosed to any person other than in the manner authorized by
7 this Protective Order, the party or person responsible for the disclosure, and any
8 other party or person who is subject to this order and learns of such disclosure
9 (including without limitation all employees, officers, directors, agents and
10 attorneys of each party to this lawsuit), shall immediately bring such disclosure to
11 the attention of the designating party. Without prejudice to other rights and
12 remedies of the designating party, the responsible party or person shall make every
13 reasonable effort to obtain the return of the CONFIDENTIAL INFORMATION
14 and to prevent further disclosure on its own part or on the part of the person who
15 was the unauthorized recipient of such information.

16 4.3 Court Filings. If a party wishes to file a document that it has
17 designated as containing CONFIDENTIAL INFORMATION, that party shall file a
18 motion to seal and follow all applicable local rules. If a party wishes to file a
19 document containing CONFIDENTIAL INFORMATION designated by another
20 party, the submitting party must: (a) lodge the document, memorandum or other
21 document in sealed envelopes or containers on which shall be recorded the title of
22 this action, the general nature of the contents, and the notation “DOCUMENT
23 SUBMITTED UNDER SEAL”; (b) lodge with the Clerk for delivery to the
24 Judge’s chambers a second copy of the entire document, in an identical labeled
25 envelope or container, with the sealable portions identified; and (c) file and serve a
26 Notice of Request to Seal Documents. Within five (5) court days thereafter, the
27 designating party must file and serve a Request to Seal Documents setting forth the
28 statutory or other authority for sealing, the requested duration, the identity, by

1 name or category, of the persons to be permitted access to the documents, and all
2 other relevant information. If the designating party does not file a Request to Seal
3 Documents within this time period, the document or proposed filing will be made
4 part of the public record absent a showing of good cause.

5 5. USE OF CONFIDENTIAL INFORMATION AT TRIAL

6 CONFIDENTIAL INFORMATION which is subject to this Order, and
7 deemed admissible as trial evidence by the court, may be marked and used as trial
8 exhibits by a party according to the terms imposed by the trial court upon the
9 request of a designating party at time of trial. It is the intent of the parties hereto
10 that CONFIDENTIAL INFORMATION will not be disclosed or available to any
11 other parties or third persons, other than authorized disclosures as stated in section
12 4.1 above, without the consent of the designating party and/or the Court.

13 6. RETURN OF CONFIDENTIAL INFORMATION AFTER FINAL
14 DISPOSITION

15 Each receiving party must return all CONFIDENTIAL INFORMATION or
16 destroy such material within forty-five (45) days after final disposition of the
17 lawsuit, as defined in section 9 below, although CONFIDENTIAL
18 INFORMATION disclosed in this action may be used in the action entitled *City of*
19 *Lindsay v. Sociedad Quimica y Minera de Chile S.A., et al.*, U.S.D.C., Eastern
20 District of California, Case No. 1:11-CV-00046-LGO-SMS, subject to the
21 Protective Order in place in that action, including the obligation to return or
22 destroy all CONFIDENTIAL INFORMATION within forty-five (45) days after
23 final disposition of that action. Notwithstanding this provision, counsel are entitled
24 to retain an archival copy of all pleadings, motion papers, legal memoranda,
25 correspondence, expert reports, attorney work product, and consultant and expert
26 work product, even if such material contain CONFIDENTIAL INFORMATION.
27 Any such archival copies that contain or constitute CONFIDENTIAL
28 INFORMATION remain subject to this Protective Order.

1 7. CONFIDENTIAL INFORMATION SUBPOENAED OR ORDERED
2 PRODUCED IN OTHER LITIGATION

3 If a receiving party is served with a subpoena, request, or court order issued
4 in other litigation that compels disclosure of any information or items designated in
5 this action as CONFIDENTIAL INFORMATION, that party must:

- 6 a. Promptly notify in writing the designating party, including a
7 copy of the subpoena, request or court order;
- 8 b. Promptly notify in writing the party seeking the
9 CONFIDENTIAL INFORMATION that some of the requested
10 information is subject to this Protective Order, and provide a
11 copy of this Protective Order; and
- 12 c. Cooperate with respect to all reasonable procedures sought to
13 be pursued by the designating party whose CONFIDENTIAL
14 INFORMATION may be affected.

15 If the designating party timely seeks a protective order, the party served with
16 the subpoena, request or court order shall not produce any information designated
17 in this action as CONFIDENTIAL INFORMATION before a determination by the
18 court from which the subpoena, request, or order issued, unless the party has
19 obtained the designating party's permission. The designating party shall bear the
20 burden and expense of seeking protection in that court of its confidential material,
21 and nothing in these provisions should be construed as authorizing or encouraging
22 a receiving party in this action to disobey a lawful directive from another court.

23 8. INADVERTENT DISCLOSURE OR PRODUCTION

24 The inadvertent production of any privileged or otherwise protected or
25 exempted information, as well as the inadvertent production of information without
26 an appropriate designation of confidentiality, shall not be deemed a waiver or
27 impairment of any claim of privilege, protection or confidentiality, including but
28 not limited to the attorney-client privilege, the protection afforded to work product

1 materials or the subject matter thereof, or the confidential nature of any such
2 information, provided that the producing party shall immediately notify the
3 receiving party in writing when inadvertent production is discovered. Upon
4 receiving written notice from the producing party that privileged information, work
5 product material or CONFIDENTIAL INFORMATION has been inadvertently
6 produced, all such information, and all copies thereto shall be kept by counsel for
7 the receiving party and counsel shall not use such information for any purpose until
8 further order of the Court, or until the producing and receiving parties have agreed
9 upon a satisfactory resolution of the inadvertently produced information. The
10 producing party may then, if necessary, move the court for an order compelling
11 return of the material. Any analyses, memoranda or notes which were internally
12 generated based upon such inadvertently produced information shall immediately
13 be treated in conformance with the protected nature of the information.

14 9. DURATION

15 Even after final disposition of this lawsuit, the confidentiality obligations
16 imposed by this Protective Order shall remain in effect until a designating party
17 agrees otherwise in writing or a court order otherwise directs. Final disposition
18 shall be deemed to be the later of (1) dismissal of all claims and defenses in this
19 action, with or without prejudice; and (2) final judgment herein after the
20 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of
21 this action, including the time limits for filing any motions or applications for
22 extension of time pursuant to applicable law. The Court shall retain jurisdiction to
23 resolve any dispute concerning this agreement or the CONFIDENTIAL
24 INFORMATION even after final disposition of this lawsuit.

25 IT IS SO ORDERED.

26
27 DATED: June 2, 2011

/s/

28 _____
Honorable Victor B. Kenton
UNITED STATES MAGISTRATE JUDGE

1 **EXHIBIT A**

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____[print or type full name], of _____[print or
4 type full address], declare under penalty of perjury that I have read in its entirety
5 and understand the Protective Order Regarding Confidential Information that was
6 issued by the United States District Court for the Central District of California on
7 _____[date] in the case of *City of Pomona v. Sociedad Quimica y Minera*
8 *de Chile S.A., et al*, Case No. 1:11-CV-00167-RGK-VBK. I agree to comply with
9 and to be bound by all the terms of this Stipulated Protective Order, and I
10 understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will
12 not disclose in any manner any information or item that is subject to this Protective
13 Order to any person or entity except in strict compliance with the provisions of this
14 Order. I further agree to submit to the jurisdiction of the United States District
15 Court for the Central District of California for the purpose of enforcing the terms
16 of this Protective Order, even if such enforcement proceedings occur after
17 termination of this action.

18
19 Date: _____

20 City and State where sworn and signed: _____

21 Printed name: _____

22 Signature: _____

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