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15 **UNITED STATES DISTRICT COURT**
16 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

18 BLACK & VEATCH CORPORATION,
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20 Plaintiff,
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22 vs.
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24 MODESTO IRRIGATION DISTRICT,
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26 Defendant.

Case No. 1:11-cv-00695 LJO SKO

**SUPPLEMENTAL STIPULATION AND
PROTECTIVE ORDER REGARDING
RECOVERY OF ELECTRONIC DATA**

24 AND RELATED ACTIONS.

1 **A. Purpose of the Protective Order**

2 Through its requests for production of documents in this litigation, plaintiff and counter-
3 defendant, Black & Veatch Corporation, has sought the production from defendant and
4 counterclaimant, Modesto Irrigation District (MID) of MID's emails and email attachments
5 relating to the Phase Two Expansion and Optimization of the Modesto Regional Water Treatment
6 Plant (the "Project"). In response to Black & Veatch's earlier Public Records Act request, MID
7 produced its emails and email attachments dating approximately from early 2008 ("2008-Present
8 Emails") in hard copy form only. Black & Veatch has asked, and MID agrees to provide, MID's
9 2008-Present Emails in electronic form using the services of Black & Veatch's electronic
10 discovery consultant, Iris Data Services (IDS).

11 In addition to emails relating to the Project, MID's 2008-Present Emails may contain
12 information relating to its provision of electric services, including data protected by regulations of
13 the North American Electric Reliability Corporation (NERC). MID is willing to allow IDS
14 access to the 2008-Present Emails, in electronic form so that IDS may conduct filtering of the
15 emails, provided MID is assured that the security of the data contained in the 2008-Present Emails
16 is protected, in accordance with NERC regulations. Black & Veatch and MID wish to facilitate
17 production of the 2008-Present Emails relevant to the Project in electronic form, while at the same
18 time protecting data that is subject to NERC regulations.

19 Accordingly, Black & Veatch and MID stipulate as follows:

20 **B. Local Rule 141.1**

21 This stipulated protective order (the "Protective Order") is entered into pursuant to Rule
22 141.1 of the Local Rules of Practice for the U.S. District Court for the Eastern District of
23 California, covering Orders Protecting Confidential Information.

24 **1. Description of the Types of Information Eligible for Protection.**

25 The Order protects MID's electronically stored records, including, but not limited to,
26 emails and email attachments relating to MID's provision of electric services that is subject to
27 NERC regulations as information associated with Critical Cyber Assets.

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1 **2. Showing of Particularized Need for Protection.**

2 Protection of MID’s emails containing information associated with Critical Cyber Assets,
3 as described in paragraph 2, is needed because, without such protection, MID would by law be
4 unable to provide IDS access to the emails that contain data that is relevant to the above-captioned
5 litigation. If MID were to allow such access without a protective order, it would expose itself to
6 the risk of substantial monetary sanctions. Further, the electronic records/data to which IDS may
7 be given access may also contain non-responsive, privileged and/or confidential information.

8 **3. Why the Need for Protection Should Be Addressed by a Court Order.**

9 In order to comply with NERC regulations, MID must strictly protect information
10 associated with Critical Cyber Assets. A court order is necessary in this case to provide MID the
11 greatest possible assurance that information associated with Critical Cyber Assets is protected
12 from disclosure, as required by law, and that privileged and/or confidential information, which is
13 not responsive is not disseminated.

14 **C. Terms of the Protective Order**

15 1. IDS is permitted access to MID’s 2008-Present Emails, solely for the purposes of
16 filtering the emails for review by MID. IDS will then create Summation load files and transmit
17 the load files to MID to download into Summation. MID will then review the emails and produce
18 to Black & Veatch all relevant, non-privileged, emails. Access to the 2008-Present Emails shall
19 be limited to the following individuals, each of whom agrees not to disclose to any other person,
20 other than MID or those to whom MID authorizes disclosure, any of the data contained in the
21 emails or attachments , and by signing Attachment “A” to this Protective Order, agrees to be
22 bound by its terms.

23 Iris Data Services

24 Burke Schroeder

25 Amber White

26 Katrina Classen

27 Bryan Allen

28 Holly Jenks

1 Drew Kartes

2 Scott Berger

3 2. This Protective Order shall survive the final termination of this action, and the Court
4 shall retain jurisdiction to resolve any dispute arising under the Protective Order. IDS will only
5 filter through the mail boxes of the following MID personnel: Allen Short, Greg Dias, Regina
6 Cox, Ken Edwards, Claudia Hidahl, and Pat Ryan. After IDS has transmitted the Summation load
7 files to MID and upon notice from MID, IDS shall destroy or purge all data in anyway related to
8 the 2008-Present Emails received from MID, including any and all copies of such data, and will
9 provide MID and Black & Veatch a certificate of such destruction.

10 **D. Unauthorized Disclosure Of 2008-Present Emails.**

11 If a Party bound by this protective order learns that, by inadvertence or otherwise, it has
12 disclosed 2008-Present Emails to any person or in any circumstance not authorized under this
13 Stipulated Protective Order, that Party must immediately (a) notify in writing the other Parties of
14 the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the 2008-
15 Present Emails, (c) inform the person or persons to whom the unauthorized disclosures were made
16 of all the terms of this Order, and (d) request such person or persons to execute Exhibit "A"
17 hereto.

18 **E. Inadvertent Production of Privileged or Otherwise Protected Material.**

19 If MID gives notice to Black & Veatch that certain inadvertently produced material is
20 subject to a claim of privilege or other protection, the obligations of Black & Veatch are those set
21 forth in Federal Rule of Civil Procedure 26(b)(5)(B). Pursuant to Federal Rule of Evidence 502(d)
22 and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or
23 information covered by the attorney-client privilege or work product protection, the parties may
24 incorporate their agreement in the stipulated protective order submitted to the court.

25 **F. Miscellaneous.**

26 1. Right to Further Relief.

27 Nothing in this Order abridges the right of any person to seek its modification by the court
28 in the future.

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2. Right to Assert Other Objections.

By stipulating to the entry of this Protective Order, neither Black & Veatch nor MID waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party hereto waives any right to object on any ground to use in evidence of any of the material covered by this Stipulated Protective Order.

DATED: August 21, 2012

WULFSBERG REESE COLVIG & FIRSTMAN
PROFESSIONAL CORPORATION

By /s/ Gregory R. Aker
Gregory R. Aker

Attorneys for Plaintiff and Counterdefendant
BLACK & VEATCH CORPORATION

DATED: August 21, 2012

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH, LLP

By /s/ Stephen E. Carroll
Stephen E. Carroll

Attorneys for Defendant and Counterclaimant
MODESTO IRRIGATION DISTRICT

ORDER

Based upon the stipulation of Black & Veatch and MID, as set forth above, and good cause appearing therefor,

IT IS SO ORDERED.

Dated: August 22, 2012

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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Attachment "A"

NONDISCLOSURE AGREEMENT

I, _____, certify that I am fully familiar with the terms of the Stipulated Protective Order ("Protective Order") entered in *Black & Veatch Corporation v. Modesto Irrigation District*, in the United States District Court for the Eastern District of California, Case No. 1:11-cv-00695 LJO SKO. I hereby agree to comply with and be bound by the terms of the Protective Order unless and until modified by further order of this Court. Further, I hereby consent to the jurisdiction of this Court for purposes of enforcing the Protective Order.

Dated: August __, 2012
