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July 23, 1993

VIA HAND DELIVERY

Honorable Lawrence R. Leavitt
Magistrate Judge of the United States District Court
District of Nevada
300 Las Vegas Boulevard South
Las Vegas, Nevada 89101

Re: Nevada Power Company v. Monsanto Company, et al.
USDC, District of Nevada Case CV-S-89-555-LDG (LRL)

Dear Judge Leavitt:

Enclosed please find a courtesy copy of "Plaintiff Nevada Power Company's Motion for Order for Counsel to Meet and Confer or, in the Alternative, Motion to Compel Interrogatory Responses and Motion for Protective Order." Exhibits to this Motion are still assembled and will be delivered to you shortly.

Sincerely,

BRADLEY & MERRELL


PAUL E. MERRELL
Coordinating Attorney

PEM:lsg
Enclosure

cc: Steven R. Kuney (via fax - w/enclosure)
Arvin Maskin (via fax - w/enclosure)
J. Bruce Alverson (via fax - w/enclosure)
John L. Thorndal (via fax - w/enclosure)
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11 Attorneys for Plaintiff
NEVADA POWER COMPANY
12 a Nevada corporation

13
14 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
15

16	NEVADA POWER COMPANY, etc.,	)	CASE CV-S-89-555-LDG (LRL)
		)	
17	Plaintiff,	)	PLAINTIFF NEVADA POWER
		)	COMPANY'S MOTION FOR ORDER
18	vs.	)	FOR COUNSEL TO MEET AND
		)	CONFER OR, IN THE
19	MONSANTO COMPANY, etc., et al.,	)	ALTERNATIVE, MOTION TO
		)	COMPEL INTERROGATORY
20	Defendants.	)	RESPONSES AND MOTION FOR
		)	PROTECTIVE ORDER

21
22 Plaintiff Nevada Power Company moves for an order requiring
23 counsel for Monsanto Company further to meet and confer regarding two
24 Rule 30(b)(6) deposition notices to Nevada Power and two sets of
25 Monsanto interrogatory responses to Nevada Power, all discussed
26 further below. These four discovery pleadings are all interrelated
27 and are attached hereto as EXHIBITS 1-4. In the alternative, Nevada
28 . . .

1 Power moves for a protective order regarding the deposition notices
2 and moves to compel adequate responses to the interrogatories.

3 MOTION FOR ORDER TO MEET AND CONFER

4 As will be explained at hearing today, Nevada Power has been
5 engaged in a good faith effort to negotiate a resolution to these
6 interrelated discovery issues and had been led to believe that the
7 depositions at issue would be postponed by stipulation so that the
8 negotiations would be completed. These discussions were being
9 fruitful, and Nevada Power reasonably relied upon Monsanto counsel's
10 statements that these deposition notices would probably be reset to
11 be taken following the July 23, 1993 cut-off date to allow time for
12 further negotiation. Nevada Power was not advised that Monsanto
13 intended to go ahead with these depositions as scheduled until the
14 morning of Thursday, July 22. Upon being advised that Monsanto would
15 force the issue to hearing, Nevada Power advised Monsanto that, as it
16 had repeatedly stated, it would file this alternative motion to
17 compel and for a protective order.

18 Nevada Power negotiated in good faith and did not realize that
19 Monsanto had a secret agenda. While negotiations regarding these
20 discovery requests were going forward, Monsanto was persuading
21 counsel for Nevada Power to rush Nevada Power's previously scheduled
22 depositions of Monsanto officials, as a courtesy, so that senior
23 counsel for Monsanto could visit with his daughter on Friday, July
24 23. Nevada Power extended this courtesy, not realizing that
25 Monsanto's real agenda was to free up its senior counsel to conduct
26 the 30(b)(6) depositions at issue. It appears that senior counsel
27 for Monsanto misled Nevada Power and would not have been available to
28 conduct these depositions but for a subterfuge.

1 **ALTERNATIVE MOTION FOR PROTECTIVE ORDER**

2 Monsanto should not be allowed to proceed with its Rule 30(b)(6)
3 notice regarding "reliance" issues because the issues are such that
4 they can only be answered by Nevada Power's attorneys if they were
5 treated as interrogatories. The Court has previously granted a
6 defense motion for a protective order requiring Nevada Power to seek
7 similar information through interrogatories only. Monsanto's Rule
8 30(b)(6) notices are a straightforward end run around the discovery
9 cut-off date for written discovery.

10 **ALTERNATIVE MOTION TO COMPEL ADEQUATE INTERROGATORY RESPONSES**

11 Monsanto is attempting to take further discovery on Nevada
12 Power's damages calculation despite the fact that Monsanto has never
13 provided its contentions on what it believes to be wrong with
14 plaintiffs' damages report, which defendants have had since January
15 and upon which they have taken extensive discovery. It would be
16 grossly unfair for Nevada Power to continue providing unfettered
17 discovery on the damages issue if their is to be no quid pro quo.
18 Therefore, Nevada Power seeks an order requiring Monsanto to provide
19 contentions regarding the flaws it sees in Nevada Power's damages
20 report.

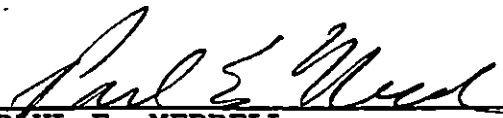
21 Nevada Power also asks the Court to compel Monsanto to
22 adequately respond to its statute of limitations defense
23 interrogatories. The Court has previously prevented Nevada Power,
24 upon defendants' motion, from acquiring this information through Rule
25 30(b)(6) depositions and confined Nevada Power to interrogatories.
26 Monsanto's claims are spurious that its answers to most of these
27 interrogatories are privileged or otherwise objectionable. Without

28 . . .

1 this information, Nevada Power has no way of preparing for trial on
2 the sole issue left remaining by the Ninth Circuit.

3 DATED: July 23, 1993

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28 P:\USERS\LSG\PLD\MEETCONF.MOT

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of July, 1993, the foregoing PLAINTIFF NEVADA POWER COMPANY'S MOTION FOR ORDER FOR COUNSEL TO MEET AND CONFER OR, IN THE ALTERNATIVE, MOTION TO COMPEL INTERROGATORY RESPONSES AND MOTION FOR PROTECTIVE ORDER was served on the following parties:

KEY:

F - Via fax

FE - Via Federal Express

H - Via hand delivery

F

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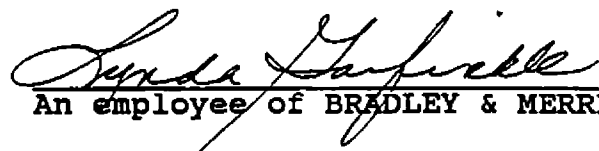
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FROM: Bradley & Merrell

MATTER/MATTER NO.: Nevada Power v. Monsanto, et al., #11927.2

DOCUMENT(S) DESCRIPTION: Copy of letter to Honorable Lawrence R. Leavitt and copy of "Plaintiff Nevada Power Company's Motion for Order for Counsel to Meet and Confer or, in the Alternative, Motion to Compel Interrogatory Responses and Motion for Protective Order"

NUMBER OF PAGES (including cover page): Seven (7)

STORE & FORWARD REPORT

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