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9 LITTLEROCK CREEK IRRIGATION DISTRICT, PALM RANCH IRRIGATION DISTRICT  
10 And Cross-Defendants, NORTH EDWARDS WATER DISTRICT and DESERT LAKES COMMUNITY  
11 SERVICES DISTRICT

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

14 Coordinated Proceeding  
15 Special Title (Rule 1550(b))

16 ANTELOPE VALLEY GROUNDWATER  
17 CASES

18 Included Actions:

19 Los Angeles County Waterworks District No. 40  
20 v. Diamond Farming Co. Los Angeles County  
21 Superior Court Case No. BC 325201;

22 Los Angeles County Waterworks District No. 40  
23 v. Diamond Farming Co., Kern County Superior  
24 Court, Case No. S-1500-CV-234348;

25 Wm. Bolthouse Farms, Inc. v. City of Lancaster  
26 Diamond Farming Co. v. City of Lancaster v.  
27 Palmdale Water District, Riverside County  
28 Superior Court, Consolidated Actions, Case Nos.  
RIC 353840, RIC 344436, RIC 344668

AND RELATED CROSS-ACTIONS

**Judicial Council Coordination No. 4408**

Santa Clara Case No. 1-05-CV-049053  
Assigned to the Honorable Jack Komar – Dept. 17

**NOTICE OF MOTION AND MOTION FOR A  
PROTECTIVE ORDER, AND  
MODIFICATION OF THE EXISTING CASE  
MANAGEMENT ORDER**

**DATE: October 12, 2007**

**TIME: 9:00 a.m.**

**DEPT: 1**

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on October 12, 2007, Public Water Suppliers, LITTLE ROCK  
3 CREEK IRRIGATION DISTRICT, PALM RANCH IRRIGATION DISTRICT, CALIFORNIA  
4 SERVICE WATER COMPANY, CITY OF LANCASTER, PALMDALE WATER DISTRICT and  
5 QUARTZ HILL WATER DISTRICT (collectively "Water Purveyors") will seek a protective order  
6 regarding responses to discovery identified as (1) Diamond Farming's First Set of Form Interrogatories;  
7 (2) Diamond Farming's First Set of Special Interrogatories; (3) Diamond Farming's First Set of Requests  
8 for Admissions; (4) Diamond Farming's First Set of Request for Production of Documents; (5) Bolthouse  
9 Properties, LLC's First Set of Form Interrogatories; (6) Bolthouse Properties, LLC's First Set of Special  
10 Interrogatories; (7) Bolthouse Properties, LLC's First Set of Requests for Admissions; and (8) Bolthouse  
11 Properties, LLC's First Set of Request for Production of Documents, and a modification to the Case  
12 Management Order to delay responses until the information which is sought is relevant to matters being  
13 tried by the court in the next court phase.

14 The motion will be made on the grounds that this court has broad authority to manage complex  
15 litigation such as the instant case and such an order will help to expedite the resolution of issues currently  
16 before the court and streamline the remaining phases of trial.

17 This Motion will be based on this Notice of Motion, the attached Memorandum of Points and  
18 Authorities, the Declaration of W. Keith Lemieux and the exhibits attached thereto, and upon such further  
19 oral and documentary evidence as may be presented at the time of the hearing.

20  
21 DATED: September 13, 2007

LEMIEUX & O'NEILL

22  
23 By:  \_\_\_\_\_

24 W. KEITH LEMIEUX

25 Attorneys for LITTLE ROCK CREEK IRRIGATION  
26 DISTRICT, PALM RANCH IRRIGATION DISTRICT  
27 And Cross-Defendants, NORTH EDWARDS WATER  
28 DISTRICT and DESERT LAKES COMMUNITY  
SERVICES DISTRICT

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On May 25, 2007, Diamond Farming served discovery identified as (1) Diamond Farming’s First  
4 Set of Form Interrogatories; (2) Diamond Farming’s First Set of Special Interrogatories; (3) Diamond  
5 Farming’s First Set of Requests for Admissions; and (4) Diamond Farming’s First Set of Request for  
6 Production of Documents. This discovery asked the Water Purveyors to produce all evidence to support  
7 constructive notice claim they might make against any party in the Antelope Valley. Considering the  
8 number of potential parties in this case, and the fact these requests involved more than 40 years of history,  
9 these requests contemplated the identification of production of potentially thousands of pages of  
10 documents. In August, 2007, and again in September, 2007, counsel for Diamond Farming met and  
11 conferred with counsel for the Water Purveyors.

12 However, on August 13, 2007, Bolthouse Farms propounded substantially identical discovery  
13 requests on the Water Purveyors, identified as (1) Bolthouse Properties, LLC’s First Set of Form  
14 Interrogatories; (2) Bolthouse Properties, LLC’s First Set of Special Interrogatories; (3) Bolthouse  
15 Properties, LLC’s First Set of Requests for Admissions; and (4) Bolthouse Properties, LLC’s First Set of  
16 Request for Production of Documents. It now appears likely that other parties may also propound  
17 substantially similar discovery even if an agreement is reached with the current parties. Accordingly,  
18 rather than address this issue on a piecemeal basis, the Water Purveyors seek a protective order asking the  
19 court to manage discovery as part of its ongoing case management of this complex case.

20 Specifically, the Water Purveyors will ask this court to issue an order limiting discovery to what is  
21 relevant for the current phase of trial. This court has already resolved Phase I of trial and identified the  
22 basin boundaries. The court is currently in the process of identifying necessary parties and bring them  
23 into case. Discovery would be limited to issues concerning the identity of parties if this request is  
24 granted. The court will presumably sever and prioritize other issues for trial as the case proceeds.

25 To avoid duplicative effort, and allow necessary parties to have a hand in the discovery process,  
26 the Water Purveyors respectfully ask the court to issue a stay on current discovery except for discovery  
27 directly relevant to the identification of parties. Water Purveyors ask the court to issue a protective order  
28

1 deferring the Water Purveyors' responsibility to respond to the pending discovery for Bolthouse  
2 Properties, LLC and Diamond Farming, LLC, until such time as the notice and prescription issues are  
3 relevant to the phase of litigation.

## 4 II. ARGUMENT

### 5 A. THE COURT HAS DISCRETION TO MANAGE COMPLEX CASES AND 6 DISCOVERY

7 The instant matter has been deemed complex. The California Rules of Court and Code of Civil  
8 Procedure give this court great discretion in devising a procedure to manage the case. [See, e.g., CRC  
9 App. Div. I, § 19(a), (d); Code of Civil Procedure §§ 128, 187; *Rutherford v. Owens-Illinois, Inc.* (1997)  
10 16 C4th 953, 966, 67 CR2d 16, 25.] This is especially true for discovery-related matters. ["Principal  
11 objects of the preliminary pretrial conference are to ... suppress unnecessary and burdensome discovery  
12 procedures in the course of preparing for trial ..."] (Cal.Standards Jud.Admin., § 19(h)).]

13 For example, it is not uncommon in complex case matters such as this one for the court to require  
14 all discovery have the prior approval of the court before it is propounded. [See, e.g., *Hernandez v.*  
15 *Superior Court* (2003) 112 Cal.App.4th 285, 4 Cal.Rptr.3d 883: case-management order scheduling all  
16 discovery was proper exercise of trial court's power to manage complex litigation.] In other complex  
17 cases, courts have required the parties to regularly meet and confer on all discovery matters before  
18 seeking court intervention. [*Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 9 Cal.Rptr.3d  
19 544.] The goal of the court's management of the discovery process is to avoid unnecessary and  
20 burdensome interrogatories and document production, and to aid the parties in focusing on the issues at  
21 trial. [*Cottle v. Superior Court* (1992) 3 Cal.App.4th 1367, 5 Cal.Rptr.2d 882]: " 'Courts handling  
22 complex cases should exercise effective, direct control over the discovery process. They should balance  
23 the burdensomeness of particular discovery activity against its materiality and reduce discovery of  
24 tangential, immaterial matters.' " (*Cottle, supra*, citing Standards. Jud.Admin., § 19(h)  
25 Advis.Comm.Com.).]

26 This court may limit discovery to only that discovery which is relevant for the current phase of  
27 trial.

28 ProtectiveOrder.Ntc.doc

1           **B.     WATER PURVEYORS ARE FACING VOLUMINOUS DISCOVERY THAT IS**  
2                   **NOT DIRECTLY RELEVANT TO THE CURRENT PHASE OF TRIAL**

3           The Water Purveyors have been asked to produce all evidence in their possession, including all  
4 documents which could be used to support a claim of constructive notice for prescription against all  
5 parties in this action. The relevant time period of this request is the total time period that the basin has  
6 been used as a groundwater source. This necessarily involves producing information that could be 40 to  
7 60 years old or more. For example, the Littlerock Creek Irrigation District has been pumping water from  
8 its wells since the 1890s. Therefore, these requests could require Littlerock Creek to delve into the  
9 historical records to produce information that is more than 110 years old.

10           In addition, the questions are directed not only to information relevant to the parties who have  
11 propounded them, but are relevant to all former or current pumpers in the basin. This could include  
12 literally thousands of persons, most of whom are not yet parties. Since we do not currently know the total  
13 range of relevant parties to this litigation, it is impossible to even fully and fairly respond to these  
14 discovery requests at this time.

15           None of the information sought through this discovery is relevant to the issues currently before the  
16 court. At present, the court is still determining a mechanism to include necessary parties in this action.  
17 The court has not even made a final determination yet as to what constitutes a “necessary party.” This  
18 case is not fully at issue.

19           Issues involving constructive notice have nothing directly to do with the identification of  
20 necessary parties. In open court, the propounding landowners represented they needed this information to  
21 oppose the County’s request for a defendant class on the basis there is a lack of common interest.  
22 However, the particularities of notice as to each party is not necessary to make this argument. All that is  
23 necessary is for the County to plead a claim of prescription that includes allegations of actual and  
24 constructive notice. The landowners will have the opportunity to test the legal and factual sufficiency of  
25 these claims during the appropriate phase of trial. Attempting to challenge the sufficiency of these claims  
26 before the necessary parties have even been brought into the case places the cart before the horse.

1           **C.     THE COURT SHOULD ISSUE A PROTECTIVE ORDER STAYING THE WATER**  
2                           **PURVEYORS' RESPONSES UNTIL THE APPROPRIATE PHASE OF TRIAL**

3           For “good cause shown” the court may issue a protective order that extends the time with which to  
4 respond to written interrogatories and production demands. (CCP § 2030(e).) The court may make such  
5 order even if the information sought is “relevant to the subject matter” if the court finds that such orders  
6 are necessary to protect a party from “unwanted annoyance, embarrassment or oppression or undue  
7 burden and expense.” (CCP § 2030(e).)

8           The currently propounded interrogatories are unnecessary at the current time because they are not  
9 directed to issues which are germane to the phase of proceedings currently before the court. The Water  
10 Purveyors do not contest the landowners’ right to this information. Water Purveyors agree that this  
11 information should be provided fully and fairly at the appropriate time. The Water Purveyors contemplate  
12 propounding responses to this discovery as instructed by the court. However, the Water Purveyors  
13 respectfully request that its obligation to respond to this discovery be stayed until such a time as the court  
14 establishes a procedure to try the issues of prescription.

15           **D.     THE COURT SHOULD ISSUE A CASE MANAGEMENT ORDER WHICH STAYS**  
16                           **ALL DISCOVERY EXCEPT FOR DISCOVERY DIRECTLY RELATED TO THE**  
17                           **IDENTIFICATION OF PARTIES**

18           As mentioned above, this court enjoys great latitude to establish procedures to streamline this  
19 litigation. As new parties are rapidly entering into this lawsuit, it is quite possible that all parties now  
20 face the prospect of a flurry of discovery. The factual and legal issues and disputes by and between the  
21 hundreds of identified parties are likely to require significant discovery activities. Without proper  
22 management, these activities could quickly overwhelm the process and prevent the parties from turning  
23 proper focus to significant issues that need to be immediately addressed regarding party identification.

24 //

25 //

26 //

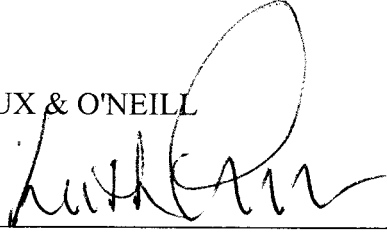
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28

1           Therefore, we ask this court issue an immediate stay as to all discovery except for that discovery  
2 specifically addressed to the identification of parties. The Water Purveyors further respectfully request  
3 that for each subsequent phase of the litigation, this court identify the specific issues to be litigated and  
4 limit the discovery accordingly.

5  
6 DATED: September 12, 2007

LEMIEUX & O'NEILL

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8 By:   
9 W. KEITH LEMIEUX  
10 Attorneys for LITTLE ROCK CREEK IRRIGATION  
DISTRICT and PALM RANCH IRRIGATION DISTRICT

11 DATED: September 12, 2007

STRADLING, YOCCA, CARLSON & RAUTH

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14 DOUGLAS J. EVERTZ  
Attorneys for CITY OF LANCASTER

15 DATED: September 12, 2007

LAGERLOF, SENEAL, GOSNEY & KRUSE

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17 By: \_\_\_\_\_  
18 THOMAS BUNN  
Attorneys for PALMDALE WATER DISTRICT  
19 And QUARTZ HILL WATER DISTRICT

20 DATED: September 12, 2007

CALIFORNIA WATER SERVICE COMPANY

21  
22 By: \_\_\_\_\_  
23 JOHN TOOTLE  
Attorneys for CALIFORNIA WATER SERVICE  
24 COMPANY

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11 DISTRICT and PALM RANCH IRRIGATION DISTRICT

11 DATED: September 12, 2007

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18 THOMAS BUNN  
19 Attorneys for PALMDALE WATER DISTRICT  
20 And QUARTZ HILL WATER DISTRICT

20 DATED: September 12, 2007

CALIFORNIA WATER SERVICE COMPANY

22 By: \_\_\_\_\_  
23 JOHN TOOTLE  
24 Attorneys for CALIFORNIA WATER SERVICE  
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 6 DATED: September 12, 2007

LEMIEUX & O'NEILL

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11 DATED: September 12, 2007

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 14 DOUGLAS J. EVERTZ  
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15 DATED: September 12, 2007

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 17 By: \_\_\_\_\_  
 18 THOMAS BUNN  
 Attorneys for PALMDALE WATER DISTRICT  
 And QUARTZ HILL WATER DISTRICT

19  
 20 DATED: September 12, 2007

CALIFORNIA WATER SERVICE COMPANY

21                            JOHN TOOTLE BY  
 22 By:                   John Tootle                    
 23 JOHN TOOTLE  
 Attorneys for CALIFORNIA WATER SERVICE  
 24 COMPANY  
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, )  
3 ) ss.  
4 COUNTY OF VENTURA )

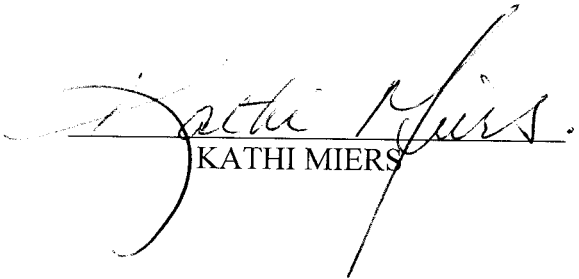
5 I am employed in the County of Ventura, State of California. I am over the age of 18 and not a  
6 party to the within action. My business address is 2393 Townsgate Road, Suite 201, Westlake Village,  
California 91361.

7 On **September 13, 2007**, I posted the following document(s) to the website  
8 <http://www.scefiling.org>, a dedicated link to the Antelope Valley Groundwater Cases:

9 **DECLARATION OF W. KEITH LEMIEUX IN SUPPORT OF**  
10 **MOTION FOR PROTECTIVE ORDER AND MODIFICATION**  
11 **OF THE EXISTING CASE MANAGEMENT ORDER**

12 I declare under penalty of perjury under the laws of the United State of America that the above is  
13 true and correct.

14 Executed on September 13, 2007, in Westlake Village, California.

15   
16  
17 KATHI MIERS  
18  
19  
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26  
27

**SERVICE LIST**

**Antelope Valley Groundwater Cases: Case No. 1: 05-CV-049053**

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17	Lee Leininger, Esq. U.S. Department of Justice Environmental & Natural Resources Section 999 – 18 <sup>th</sup> Street, Suite 945, North Tower Denver, CO 80202	Parties: United States of America Tel: 303/312-7322 Fax: 303/312-7379 <a href="mailto:Lee.leininger@usdoj.gov">Lee.leininger@usdoj.gov</a>
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19	Debra W. Yang, United States Attorney	
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3	Los Angeles, CA 90012	[no email]
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9	<b>Court Personnel:</b>	
10	Presiding Judge of the Superior Court of California, County of Los Angeles	CRC Rules 1501(17) and 1540:
11	111 N. Hill Street	Coordination Trial Judge
12	Los Angeles, CA 90012-3014	
13	Honorable Jack Komar	<b>By Mail</b>
14	Santa Clara County Superior Court	Tel: 508/882-2286
	191 North First Street, Dept. 17C	Fax: 408/882-2293
	San Jose, CA 95113	<a href="mailto:rwalker@scscourt.org">rwalker@scscourt.org</a>
15	Superior Court of California	
16	County of Los Angeles	<b>Original Document(s) to be filed at this</b>
17	Stanley Mosk Courthouse—Dept. 1, Rm 534	<b>location.</b>
18	111 North Hill Street	
	Los Angeles, CA 90012	
19	*Chair, Judicial Council of California	CRC Rule 1511: *Serve only when required to be
20	Administrative Office of the Courts	transmitted to Judicial Council.
21	Attn: Appellate & Trial Court Judicial Services (Civil Case Coordination)	
22	455 Golden Gate Avenue	
23	San Francisco, CA 94102-3688	