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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

Coordinated Proceeding
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER CASES

Included Actions:

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

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

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

Judicial Council Coordination No. 4408

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

REPLY TO OPPOSITION TO MOTION FOR A PROTECTIVE ORDER, AND MODIFICATION OF THE EXISTING CASE MANAGEMENT ORDER

DATE: October 16, 2007
TIME: 9:00 a.m.
DEPT: 1

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I. INTRODUCTION

In opposing the Motion for Protective Order of the Public Water Suppliers, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, California Service Water Company, City Of Lancaster, Palmdale Water District and Quartz Hill Water District (collectively "Water Purveyors"), Diamond Farming makes three primary arguments. First, it argues the court's authority to modify its Case Management Order ("CMO") is somehow waived or negated as result of the "tardy" filing of the protective order. Second, it argues modification to the CMO would cause unnecessary delay in the handling of this case. Lastly, it argues that such a CMO would exceed the judicial authority of this court.

Diamond Farming is able to make these arguments only because it has chosen to focus exclusively on the effects of only its own discovery. Diamond Farming fails to acknowledge the fact that identical discovery has also now been propounded by another landowner, Bolthouse Farms. Diamond Farming fails to consider the disruptive effect that would be caused on this litigation if all parties engaged in the same behavior as Diamond Farming. The court should act now to place careful controls on discovery before premature and voluminous discovery requests derail this process.

II ARGUMENT

A. REGARDLESS OF THE TIMING OF THE WATER PURVEYORS' MOTION, THIS COURT HAS "GOOD CAUSE" TO ENTER A CASE MANAGEMENT ORDER LIMITING DISCOVERY

There is no question that on the motion of any party, *or even on its own motion*, this court can act to limit discovery through its proper phase. In fact, Diamond Farming concedes "it is clear the court is empowered to establish time limits for the various phases of the litigation including discovery pursuant to a set procedure." (Oppo. p. 8:7-9.) But then Diamond Farming argues the use of the court's authority in this case would be improper because its effect would be to delay the process, rather than to expedite it. In another part of its brief, Diamond Farming recasts the same argument slightly differently by arguing that the water purveyors have not established "good cause" to support the motion.

Diamond Farming is only able to make this argument because it limits its analysis to the effects of the court's ruling on only its own discovery, and does not take into consideration the overall effect on the

lawsuit if Diamond Farming's behavior becomes standardized. As noted in the original motion, Diamond Farming's request is voluminous and will require significant and time-consuming work from the moving parties. However, this burden will become magnified if each of the hundreds of parties in this case begins to file a barrage of discovery requests to the other parties.

This is really no different than the same discovery problems that afflict all complex cases with large numbers of parties. This is precisely why the complex case procedure was established. Unbridled discovery works well in small matters, but can easily disrupt larger proceedings. While Diamond Farming might get its answers sooner with unbridled discovery, there is no question that the overall effect from unbridled discovery on the litigation will be to consume the attention of the parties for many months.

For this reason, Diamond Farming's suggestion that the Water Purveyors have not established "good cause" for the protective order is misplaced. The authority to bring a protective order along with this court's authority to control complex litigation is granted specifically to protect against overly burdensome discovery and to expedite the trial process. In a case as large and potentially complicated as this one, there is a very large array of significant factual evidence that must be developed; not simply regarding prescription but, also, related issues such as safe yield of the basin, the uses of water on properties and whether such use is reasonable, property ownership and title, and historical pumping. Unlike most litigation, the potential chronology of this evidence can literally stretch back decades or centuries. Much of the factual evidence will also depend on some combination of percipient information, historical records, and expert analysis. Of course, this is also why this case is so uniquely well-suited for complex case management.

Accordingly, Diamond Farming's suggestion that this court lacks authority to act to limit discovery because it would "delay" litigation is simply not well-founded. In fact, the court should act to manage discovery as part of its efforts to move this case along.

B. DIAMOND FARMING HAS PRESENTED NO EVIDENCE TO SUGGEST IT WOULD BE PREJUDICED BY DELAYING DISCOVERY

Originally, Diamond Farming argued its discovery was necessary because it intended to use this evidence to dispute the County's attempt to create a defendant class of landowners. The water purveyors did not believe this evidence would be useful or necessary in opposing such a motion. However, this issue appears to have become moot because the County has expressed no intention to move forward on the defendant class and no such motion is pending.

In light of this, Diamond Farming now argues this evidence might be necessary some time in the future to support a hypothetical summary judgment motion. At present, however, this motion is merely hypothetical, and there is no present need for immediate discovery to support it. The moving parties do not dispute that this evidence could be relevant to such a motion. However, we expect, based on the nature of this case, that such a motion would need to be properly accounted for through future case management. At the time that this motion "enters the schedule," the parties could easily agree to a schedule for discovery.

In short, Diamond Farming has failed to provide *any* reason it needs this information *now* as opposed to when the prescription issue is actually litigated. As Diamond Farming has noted, the water purveyors have agreed to provide this discovery once it is needed according to the instructions by the court. Therefore, Diamond Farming will have this information once it is useful for this case.

Diamond Farming also suggests the moving parties are seeking to place a burden on Diamond Farming that is not applicable to all parties in the case. Diamond Farming argues the Water Purveyors have asked the court to "limit the ability of the landowners to conduct discovery while retaining their own discovery rights." (Oppo. p. 2:10-12.) This is incorrect. The Water Purveyors would recommend that this limitation on discovery be placed on all parties, including the Water Purveyors.

C. THIS REQUEST FOR A PROTECTIVE ORDER IS TIMELY

Diamond Farming suggests this request for a protective order untimely. Diamond Farming acknowledges there is no precise definition of "untimeliness" with regard to this kind of motion under these circumstances. Instead, Diamond Farming argues this motion is "untimely" because it was not filed

"promptly" after the moving parties responded to Diamond Farming's discovery. However, this motion was well-timed because it was only filed after the court's instructed meet and confer process appeared unlikely to resolve this dispute.

Diamond Farming seems to imply it is improper to move for a protective order after objections have been filed and after a meet and confer process has been completed. In fact, this is the appropriate time to file such a motion. The courts have even recognized a protective order is permitted even when a party has waived objections and produced documents. (See *Stadish v. Superior Court* (1999) 71 Cal.App.4th 1130, 1144 [84 Cal.Rptr.2d 350, 358].)

Here, the Water Purveyors did not waive their objection but, fact, objected to the discovery requests on precisely the same grounds as this motion:

> "This request is *premature*, burdensome and oppressive. This request seeks information concerning class members and the court has not yet completed its class certification process. No class representative has yet been approved by the court." (Emphasis added.)

This objection was the subject of various meetings that took place between Diamond Farming and representatives of the Water Purveyors. At those meetings, the moving parties consistently voiced the objection that this discovery was premature and should be properly handled at the appropriate phase of trial. During these meetings, all parties agreed to delay the need for further responses as well as discovery motions (such as Diamond Farming's Motion to Compel). Counsel for Diamond Farming never suggested that the Water Purveyors were obligated to file the motion immediately. In fact, the whole purpose for such meetings was an effort to *avoid* the need for filing it.

It should be noted Diamond Farming filed its own Motion to Compel responses to this discovery approximately concurrently with the filing of this Motion for Protective Order. The Motion to Compel was based on the same series of meetings as the protective order. It is hard to imagine why this motion would be timely, and the other would not.

The "delay" which Diamond Farming claims caused it "prejudice" was made necessary by the multiple meet and confer sessions that were arranged between each of the parties pursuant to this court's instructions. All parties made a good faith effort to reach an accord. However, accommodation became

impossible once the Water Purveyors began to receive additional interrogatories from Bolthouse Properties. Therefore, this protective order was as much a response to the Bolthouse Properties' discovery as the Diamond Farming discovery. (Bolthouse does not appear to have filed any opposition to the motion for protective order.) Once the Bolthouse discovery was served, it became clear that the best approach to managing this issue was to "get in front of" the problem by bringing the overall subject of unbridled discovery before the court at the next status conference. The Water Purveyors feel this is the most responsible approach to address this issue.

Finally, regardless of the timing of the Protective Order, there is no question that this court has full authority to modify its Case Management Order at any time to include discovery issues. The moving parties brought this issue to the court very quickly following the meet and confer process. But even if this motion were somehow deemed untimely, there is no question that the court still has proper authority to manage discovery. Therefore, whether this motion is deemed a request for a Protective Order or simply a modification to the Case Management Order, we request that the court limit discovery to the appropriate phase of trial.

III. CONCLUSION

In opposing the motion, Diamond Farming has done an excellent job of providing authority to support its right to obtain the requested information. For purposes of this motion, the moving parties have not questioned this right but, rather, the necessity of providing this information now rather than when it is actually needed. Diamond Farming has provided no meaningful explanation as to why it needs this information now. Diamond Farming has provided no authority to suggest that the court does not have the absolute authority to control the flow of discovery in a complex case. Accordingly, we respectfully request the court enter a CMO that limits discovery to the proper phase of trial.

DATED: October 8, 2007

LEMIEUX & O'NEILL

/s/

By: _____

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PROOF OF SERVICE

STATE OF CALIFORNIA,)
) ss.
COUNTY OF VENTURA)

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

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

REPLY TO OPPOSITION TO MOTION FOR A PROTECTIVE ORDER, AND MODIFICATION OF THE EXISTING CASE MANAGEMENT ORDER

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

Executed on October 8, 2007, in Westlake Village, California.

/s/

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