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8 Attorneys for Defendant and Cross-Complainant Tejon Ranchcorp

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

11 ANTELOPE VALLEY) Judicial Council Coordination Proceeding No.
12 GROUNDWATER CASES:) 4408
13 Los Angeles County Waterworks District No. 40)
14 v. Diamond Farming Co.) Santa Clara Case No. 1-05-CV-049053
15 Superior Court of California) Assigned to The Honorable Jack Komar
16 County of Los Angeles, Case No. BC 325 201)
17) MOTION BY TEJON RANCHCORP AND
18 Los Angeles County Waterworks District No. 40) OTHER PARTIES* FOR PROTECTIVE
19 v. Diamond Farming Co.) ORDER RE DISCLOSURE AND
20 Superior Court of California, County of Kern,) CONFIDENTIALITY OF WELL DATA AND
21 Case No. S-1500-CV-254-348) OTHER PRIVATE INFORMATION
22)
23 Wm. Bolthouse Farms, Inc. v. City of Lancaster) Hearing Date: December 15, 2006
24 Diamond Farming Co. v. City of Lancaster) Time: 9:00 a.m.
25 Diamond Farming Co. v. Palmdale Water Dist.) Department: 1
26 Superior Court of California, County of Riverside,)
27 consolidated actions, Case Nos.)
28 RIC 353 840, RIC 344 436, RIC 344 668)

29 **NOTICE OF MOTION**

30 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

31 PLEASE TAKE NOTICE THAT on December 15, 2006 at 9:00 a.m. or soon thereafter
32 as the matter may be heard in Department 1 of this Court, Tejon Ranchcorp and the other joining parties
33 listed below will move for entry of the Protective Order attached hereto as Exhibit 1 in order to provide
34

35 _____
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37 * Counsel for the following parties have stated in writing that they join in this Motion: City of Palmdale, Antelope
38 Valley-East Kern Water Agency, Diamond Farming Co., Palmdale Water District, Quartz Hill Water District, Gertrude J.
Van Dam, Delmar D. Van Dam, Little Rock Creek Irrigation District, Palm Ranch Irrigation District, City of Lancaster,
California Water Service Co., Rosamond Community Services District.

1 for limited disclosure and confidentiality of well data and other private information in these coordinated
2 cases. This Motion will be based on the following points and authorities, the files and records of these
3 coordinated actions, and the oral argument of counsel.

4 **THE PARTIES NEED THIS PROTECTIVE ORDER FOR THE PROGRESS OF THIS**
5 **LITIGATION AND FOR SETTLEMENT NEGOTIATIONS.**

6 As in any groundwater adjudication, the resolution of basic hydrological and geological
7 issues requires disclosure of a great deal of data, some of which is private and confidential, e.g.:
8 pumping records, well level measurements, well drilling logs, land use information, groundwater
9 chemistry data, etc. In these cases, such information is needed for many purposes and resolution of
10 many hydrological and geological questions, for example:

11 1. Identification and Location of Necessary Parties – for example, parties owning
12 wells and pumping substantial quantities of water.

13 2. Phase 2 and Subsequent Trials – Most factual issues in this case and virtually all
14 expert testimony will rely heavily on well level data, well drilling logs, pumping records, etc. Such
15 evidence is necessary, for example, to quantify changes in groundwater supplies, analyze groundwater
16 movement, determine whether any subbasins of the Antelope Valley should be separately managed,
17 adjudicate claims of prescription and self help, decide the existence and extent of any overdraft, develop
18 physical solutions, etc. The Court previously stated that the Phase 2 trial will address the
19 “characteristics” of the Basin, and the experts need to analyze such private well data in order to
20 formulate and present their opinions on these issues.

21 3. Settlement Negotiations – Without revealing the content of ongoing settlement
22 negotiations, we can state that several experts have expressed the need to obtain and analyze such data in
23 order to define the Basin’s problems and attempt to develop agreed physical solutions.

24 Neither the litigation nor settlement negotiations can progress without disclosure of such
25 information, but the need for such disclosure should be balanced against the reasonable expectations of
26 privacy of the disclosing parties. The well-established solution to such problems is the entry of a
27 protective order that provides for disclosure of such information but restricts its use and further
28 disclosure to the needs of the litigation. (See, e.g., CCP § 2031.060(b).)

1 "A protective order is typically used to allow a litigant to gain
2 access to otherwise private information and a discovery target to limit
3 dissemination of sensitive information. A protective order may prohibit
4 access to or limit the use of information sought through discovery.
5 [Citations omitted.] To avoid costly motion proceedings, protective orders
6 are routinely drafted by counsel and approved by the court on stipulation
7 of the parties. They generally limit disclosure of discovery information to
8 counsel, litigants, and expert witnesses. In reliance on the sanctity of such
9 protective orders, quantities of sensitive documents are exchanged, and
10 discovery proceeds expeditiously without the need of a court ruling on
11 each document." (California Civil Litigation Reporter (1985) page 233.)

12 In this case, approximately six thousand Antelope Valley well reports have been
13 collected by the California Department of Water Resources. Water Code § 13752 bars "public"
14 inspection of such DWR reports but allows their disclosure to "governmental agencies for use in making
15 studies." However, § 13752 says nothing about disclosure in litigation. Section 13752 provides:

16 "Reports made in accordance with paragraph (1) of subdivision (b)
17 of Section 13751 shall not be made available for inspection by the public,
18 but shall be made available to governmental agencies for use in making
19 studies, or to any person who obtains a written authorization from the
20 owner of the well. However, a report associated with a well located
21 within two miles of an area affected or potentially affected by a known
22 unauthorized release of a contaminant shall be made available to any
23 person performing an environmental cleanup study associated with the
24 unauthorized release, if the study is conducted under the order of a
25 regulatory agency. A report released to a person conducting an
26 environmental cleanup study shall not be used for any purpose other than
27 for the purpose of conducting the study."

28 The State of California has expressed the concern that disclosure of these well reports,
well logs, etc. by the DWR in this case would violate the above statute. There are several reasons why
the requested limited disclosure would not offend this statute:

1. When counsel raised this statutory objection at trial, the Court responded that the
disclosures are permitted by § 13752 because they would be deemed disclosures to the Court, a
government agency. In addition, the purpose of the disclosures is to allow the Court and parties to
conduct studies and make findings regarding the Antelope Valley Groundwater Basin. Pursuant to
Article X, Section 2 of the California Constitution, this Court has an affirmative duty to promote a
physical solution. (*City of Lodi v. East Bay Municipal Utility District* (1936) 7 Cal.2d 316, 341.)

2. Section 13752 only prohibits disclosure to the general "public" – this Protective
Order prohibits disclosure to the public and limits its use by the parties to the purposes of this litigation.

1 (See Protective Order, ¶ 3.)

2 3. Section 13752 was clearly not designed to govern or affect discovery obligations
3 in litigation.

4 4. This Court certainly has the power to order all litigants and non-parties (by
5 subpoena) to disclose and produce their well records and data. (See, e.g., *Greyhound Corp. v. Superior*
6 *Court* (1961) 56 Cal.2d 355, 382 (discovery statutes to be liberally construed to require full disclosure of
7 all information relevant to the subject matter of the litigation); CCP 2017.010 (scope of discovery
8 includes any matter that is admissible or reasonably calculated to lead to the discovery of admissible
9 evidence relating to any claim or defense).) Since the Court can order such discovery directly from the
10 owners, the Court must also have the authority to order the discovery from a party such as the State of
11 California, to whom the owners have disclosed the data.

12 5. Fairness and due process require such disclosure to all parties, not only to
13 government agencies. The DWR announced that it has already provided these well reports to the United
14 States, to the County, and to the Palmdale Irrigation District, who may use them for studies in this
15 litigation and/or for other purposes. (See November 2, 2006 letter from California counsel, page 3, Ex.
16 2 hereto.)

17 6. When the government experts base their expert opinions on such reports and data,
18 the private parties will certainly be entitled to obtain them in discovery and at trial. (See, e.g., CCP §
19 2034.260(b)(4) – expert must submit to deposition concerning “basis” for expert opinions.)

20 The attached proposed Protective Order solves these problems by giving all parties equal
21 access to the information, but limiting its use and disclosure. Accordingly, the moving parties request
22 that the Court issue this Protective Order.

23 Dated: November 17, 2006

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
FREDRIC A. FUDACZ
HENRY S. WEINSTOCK

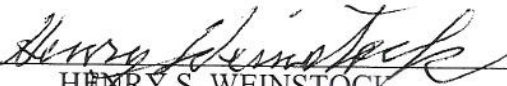
24
25
26 By: 
27 HENRY S. WEINSTOCK
28 Attorneys for Tejon Ranchcorp

EXHIBIT 1

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8 Attorneys for Defendant and Cross-Complainant Tejon Ranchcorp

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11 ANTELOPE VALLEY) Judicial Council Coordination Proceeding No.
12 GROUNDWATER CASES) 4408
13 Included Actions:) Assigned to The Honorable Jack Komar
14 Los Angeles County Waterworks District No. 40)
15 v. Diamond Farming Co., Superior Court of) [PROPOSED]
16 California, County of Los Angeles, Case No. BC) PROTECTIVE ORDER RE DISCLOSURE
17 325 201; Los Angeles County Waterworks) AND CONFIDENTIALITY OF WELL DATA
18 District No. 40 v. Diamond Farming Co., Superior) AND OTHER PRIVATE INFORMATION
19 Court of California, County of Kern, Case No. S-)
20 1500-CV-254-348; Wm. Bolthouse Farms, Inc.) Hearing Date: November 13, 2006
21 v. City of Lancaster, Diamond Farming Co. v.) Time: 1:30 p.m.
22 City of Lancaster, Diamond Farming Co. v.) Department: 1
23 Palmdale Water Dist., Superior Court of)
24 California, County of Riverside, Case Nos. RIC)
25 353840, RIC 344436, RIC 344668)

26 RECITALS

27 A. In order to fairly conduct trials, discovery, and settlement negotiations in this
28 groundwater adjudication, it is necessary for the parties to disclose and exchange many types of private
29 and confidential information, including without limitation, well level data, pumping records, well logs,
30 land use information, groundwater chemistry data, etc. The above information is necessary to resolve
31 hydrological, geological, and other issues central to these cases.

32 B. Some of the above information may be confidential, private, a trade secret,
33 subject to Water Code §13752 or other limitations on disclosure.

34 C. Such information must be disclosed to advance the litigation and settlement
35 negotiations, but its use and disclosure should be limited as set forth herein.

1 NOW, THEREFORE, the Court orders, as follows:

2 1. All documents and data that are relevant to proving the hydrology, geology, water
3 use, and water quality of the Antelope Valley Groundwater Basin shall be discoverable in these
4 consolidated cases, notwithstanding any objections based on privacy, confidentiality, Water Code
5 §13752, or other similar limitations. If Water Code § 13752 applies at all to litigation proceedings, any
6 “Reports” governed by Water Code §13752 that are disclosed pursuant to this Order shall be deemed
7 disclosed to this Court, a government agency, for use in making studies, findings, and conclusions
8 regarding the Antelope Valley Groundwater Basin.

9 2. Any party may mark any documents or data that it produces as
10 “CONFIDENTIAL” prominently on the front page of each such document.

11 3. Any document or data marked “CONFIDENTIAL” shall be treated as follows:
12 (a) the document or data may be used only for purposes of this litigation;
13 (b) it may not be disclosed to anyone who is not a party to this litigation, an expert or a consultant
14 retained by a party to this litigation, an attorney for a party, or an employee of one of the above;
15 (c) at the end of the litigation, the producing party may require that all copies of the confidential
16 documents or data be returned to the producing party or destroyed.

17 4. Upon motion of any party, the Court will determine whether documents or data
18 marked “CONFIDENTIAL” should be deemed confidential and restricted in the manner set forth above.

19 5. In accordance with the “Protective Order Re Confidentiality Of Settlement
20 Discussions” dated March 24, 2006, the parties and their experts/consultants may freely exchange and
21 discuss the confidential documents and data described above in their settlement discussions and
22 communications; and such discussions and communications shall continue to be non-discoverable,
23 inadmissible, and subject to all protections and privileges accorded settlement discussions by California
24 law.

25 6. This Order has no effect on the discoverability of any document withheld based
26 on the attorney-client privilege or work-product protection.

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7. This Protective Order shall be binding on all current and future parties to these cases.

Date: November ____, 2006

The Honorable Jack Komar
Judge of the Superior Court

EXHIBIT 2

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



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November 2, 2006

Henry Weinstock
Nossaman, Gunther, Knox & Elliott, LLP
445 South Figueroa Street, 31st Floor
Los Angeles, California 90071-1602

RE: Antelope Valley Groundwater Cases
Judicial Council Coordination Proceeding No. 4408

Dear Henry:

This letter is in response to your email to me dated October 25, 2006 on the subject of DWR's interpretation of Water Code section 13752, which provides that well completion reports are confidential, and may only be disclosed to a government agency making a study, or to persons who obtain the well owner's permission for disclosure, or to persons involved in a pollution cleanup project pursuant to a regulatory order. You ask for the State's response to the following questions related to my letter to you, also dated October 25, 2006:

Question No. 1. Expense -- Why would disclosure of well completion reports be so expensive for the DWR? Would the expense be significantly reduced if the reports were only disclosed for subset of "important" wells? Section 13751 (b) requires that the report contain at least 7 categories of information -- would it significantly reduce DWR's expense if the experts here required only some of those categories to be disclosed?

Response to Question No. 1: Costs would result from DWR staff time and copying costs related to the disclosure of the well completion reports. DWR staff estimates that there are approximately 6,000 such multi-page reports. DWR would expect the requesting parties to pay such costs.

Producing fewer reports could perhaps reduce expenses, but identifying particular "important" wells could be difficult, as the wells are not plotted on a master map and the reports vary in how well they identify the location of the well. The reports maintained by DWR are paper copies only--they are not in digital form. Producing only selected categories of information would not significantly reduce staff time or expense. In fact, total costs might be increased.

Question No. 2. Individual Authorizations -- your alternate idea of obtaining individual "written authorization" from each owner of a well seems impractical, more time consuming, and much more expensive than wholesale disclosure by DWR. The expert trial testimony included exhibits showing at least hundreds of wells in the Antelope Valley. Realistically, how would you obtain written authorization from each well owner? -- they are not identified; most of them are not current parties to this litigation; and many of them may never be parties. If they can be identified, located, and contacted, what about those who decline to sign the authorization? It would require an enormous investment of labor (and therefore expense), probably stretching over years, to obtain some of the basic hydrogeological data that the parties and their experts need now to conduct productive settlement negotiations and prepare for the next trial phase.

Response to Question No. 2: My October 25 letter did not propose that permission from well owners who are not parties to the litigation should be sought and obtained. Obviously, as you recognize, such would be an enormous, costly, and time-consuming undertaking. This highlights the fact, however, that releasing all the well reports for the entire Antelope Valley would involve the disclosure of proprietary information of many persons who are not parties to the litigation and who have not given their consent. Under the statute, those parties have the right to consent, or not to consent, to the disclosure of their information to entities other than those specified in the statute.

My letter suggested a joint release agreement between well owners who are also parties to the litigation. It stated as follows: "There is an alternate approach that would be permitted by the statute. Parties to the litigation who are also well owners have the option of granting permission to release their well completion reports to other parties. It may be that this matter can be resolved, in large part, by developing a joint release agreement between parties who are also well owners." This would not result in the release of all well logs, but if the major well owners are parties, as they should be if the adjudication is comprehensive, this should be a useful amount of information. Locating the specific well reports of particular parties may be difficult in some cases, however.

Question No. 3. Judicial Power -- Judge Komar has the power in this litigation to order all litigants and non-parties (by subpoena) to disclose and produce such relevant reports and data. Since the Court can order such disclosure directly from the owners, doesn't the Court have the authority to order its disclosure from a party such as the DWR?

Response to Question No. 3: Contrary to the unequivocal assumption in your question, it is not absolutely certain that the court has the power to order disclosure of well completion reports filed by well owners who are not parties to the litigation. A number of statutory provisions suggest otherwise. See, e.g., California Public Records Act, Government Code section 6254(k) [exception for records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege]; Evidence Code section 1060 [owner of a trade secret has a privilege to

refuse to disclose a trade secret, and to prevent another from disclosing it, incorporated into the Public Records Act through Government Code section 6254(k)]; Evidence Code section 1040 [privilege for official information; court to analyze and balance competing interests in withholding versus disclosure]. Even if it can be argued that these statutes give the court in this case the power to authorize disclosure if it finds that disclosure is necessary in the interests of justice and outweighs the public interest in preserving confidentiality, it is clear that none of these provisions authorize DWR to make that decision on its own.

Question No. 4. Fairness & Expert Disclosures -- To what extent has the DWR provided such reports to "governmental agency" parties in this case? How could a fair trial proceed when only the "governmental agency" parties and their experts have access to crucial evidence? Didn't Mr. Joyce or Mr. Zimmer raise this concern during the trial, and didn't Judge Komar invite them to obtain such data from the government parties via discovery? When the governmental experts base their expert opinions on such reports, won't the other parties be entitled to obtain them in discovery and at trial?

Response to Question No. 4: We agree that a significant issue of fairness is raised if some parties have access to and use of well completion reports for purposes of this litigation and others do not. That is why we brought up this issue in our Case Management Conference Statement filed on April 26, 2006. Our proposal that the parties mutually release well information would not result in unfairness.

DWR has received requests for well completion reports from the following public agencies:

(1) DWR is in the process of preparing well completion reports for the USGS. We are informed that the USGS is working in conjunction with Los Angeles County Department of Public Works to update a groundwater flow model. It is possible that the model will be made available, without disclosing the contents of individual well reports.


(2) The City of Los Angeles has filed a request for well completion reports, but it is our understanding that that application is not active, and no reports have been released to the City.

(3) In July 2006, DWR received a request from Palmdale Irrigation District for well completion reports to be used, we have been told, in connection with a recycled water recharge project. The request was for approximately 200 specific wells, mostly in Los Angeles County. That request has been fulfilled.

Henry Weinstock
November 2, 2006
Page 4

(4) On October 28, 2006, DWR received a request from Boron Community Services District for well completion reports in four sections of land near Boron. That request has been fulfilled.

Sincerely,



MICHAEL L. CROW
Deputy Attorney General

For BILL LOCKYER
Attorney General

cc: Counsel for All Parties

Virginia Cahill
Andrew Pollak
Bob Pierotti

1 **PROOF OF SERVICE**

2
3 The undersigned declares:

4 I am employed in the County of , State of California. I am over the age of 18 and am not a party
5 to the within action; my business address is c/o Nossaman, Guthner, Knox & Elliott, LLP, 445 S.
6 Figueroa Street, 31st Floor Los Angeles, California 90071-1602.

7 On November 17, 2006, I served the foregoing **MOTION BY TEJON RANCHCORP AND
8 OTHER PARTIES FOR PROTECTIVE ORDER RE DISCLOSURE AND CONFIDENTIALITY
9 OF WELL DATA AND OTHER PRIVATE INFORMATION** on all interested parties:

10 (X) (By U.S. Mail) On the same date, at my said place of business, said correspondence was sealed
11 and placed for collection and mailing following the usual business practice of my said employer.
12 I am readily familiar with my said employer's business practice for collection and processing of
13 correspondence for mailing with the United States Postal Service, and, pursuant to that practice,
14 the correspondence would be deposited with the United States Postal Service, with postage
15 thereon fully prepaid, on the same date at Los Angeles, California, addressed to:

16
17 Honorable Jack Komar
18 Judge of the Superior Court of California
19 County of Santa Clara
20 191 North First Street, Department 17C
21 San Jose, CA 95113

22 (X) (By E-Filing) I posted the document(s) listed above to the Santa Clara County Superior Court
23 website in regard to the Antelope Valley Groundwater matter in compliance with the Court's
24 electronic posting instructions and the Court's Clarification Order dated October 27, 2005.

25 () (By Federal Express) I served a true and correct copy by Federal Express or other overnight
26 delivery service, for delivery on the next business day. Each copy was enclosed in an envelope
27 or package designated by the express service carrier; deposited in a facility regularly maintained
28 by the express service carrier or delivered to a courier or driver authorized to receive documents
on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying
service list.

Executed on November 17, 2006 at Los Angeles, California.

(X) (STATE) I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

() (FEDERAL) I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

25 _____
26 Mitchi Shibata