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7 a California corporation, and CRYSTAL ORGANIC  
8 FARMS, a limited liability company

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

11  
12 Coordination Proceeding Special Title  
(Rule 1550 (b))

Judicial Council Coordination No. 4408

13 ANTELOPE VALLEY GROUNDWATER  
14 CASES

Case No.: 1-05-CV-049053

15 Included actions:

16 **OBJECTION TO CLASS CERTIFICATION**  
17 **HEARING CURRENTLY SCHEDULED**  
18 **FOR AUGUST 11, 2008, AND**  
19 **DECLARATION OF BOB H. JOYCE IN**  
20 **SUPPORT THEREOF**

16 Los Angeles County Waterworks District No.  
17 40 vs. Diamond Farming Company  
18 Los Angeles Superior Court  
19 Case No. BC 325201

18 Los Angeles County Waterworks District No.  
19 40 vs. Diamond Farming Company  
20 Kern County Superior Court  
21 Case No. S-1500-CV 254348 NFT

21 Diamond Farming Company vs. City of  
22 Lancaster  
23 Riverside County Superior Court  
24 Lead Case No. RIC 344436 [Consolidated  
25 w/Case Nos. 344668 & 353840]

DATE: August 11, 2008  
TIME: 9:00 a.m.  
DEPT: 1

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27 **AND RELATED CROSS-ACTIONS.**  
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1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 DIAMOND FARMING COMPANY AND CRYSTAL ORGANIC FARMS LLC, hereby  
3 interpose this Objection to the presently scheduled evidentiary hearing for Class Certification currently  
4 set for August 11, 2008. Said Objection is based upon the Public Water Suppliers' collective and  
5 virtually universal refusal to properly respond to duly served written discovery propounded on July 2,  
6 2008, to which virtually identical Objections were made on or about August 4, 2008, asserting:

7 "The District objects to this Request because it does not seek information for the Phase  
8 2 trial nor is it reasonably calculated to lead to the discovery of admissible evidence for  
9 the Phase 2 trial. The Court has directed the parties to focus their discovery requests  
upon the subject matter of the Phase 2 trial."

10 As is set forth in the accompanying Declaration of Bob H. Joyce, there is insufficient time  
11 between the assertion of the above objections, and the currently scheduled hearing date for Class  
12 Certification, to meet and confer and employ the statutory process to compel responses and thus the  
13 evidence and documents sought. Proceeding with the Class Certification hearing under the current  
14 circumstances will deprive Diamond Farming Company and Crystal Organic Farms LLC of their right  
15 to secure discovery on factual and evidentiary issues necessary to a fair hearing on the pending request  
16 for Class Certification.

17 As was made clear by the Appellate Court in *Louis E. Carabini, et al. vs. The Superior Court*  
18 *of Orange County* (1994) 26 Cal.App.4th 239, discovery directed at Class Certification is both  
19 appropriate and permitted in order to ensure a fair hearing.

20 "Appellate courts have recognized the importance of such orders by creating an  
21 exception to the rule denying appellate review. 'Whether the order is directly appealable  
22 or we treat this as a petition for writ of mandate, the issue of the class certification order  
23 is and should be before us.' (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 871, fn. 9  
24 [196 Cal.Rptr. 69]; see also 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 85, p. 106.)  
25 Due process requires an order with such significant impact on the viability of a case not  
be made without a full opportunity to brief the issues and present evidence. This is true  
whether the issue is presented in a motion or by way of an order to show case issued by  
the court. In addition, each party should have an opportunity to conduct discovery on  
class action issues before its documents in support of or in opposition to the motion must  
be filed." *Carabini, supra*, pp. 243-244.

26 As these parties have previously asserted, briefed *ad nauseam*, and in full, litigating the claim  
27 of prescription by the Purveyors and/or the inverse condemnation claims of the Class are not suitable  
28

1 to Class treatment. The inherent *in rem* nature of the claims necessitates a parcel by parcel evidentiary  
2 assessment. A similar factual scenario was considered by the California Supreme Court in *City of San*  
3 *Jose vs. Superior Court of Santa Clara County (1974) 12 Cal. 3d 447*. Therein the California Supreme  
4 Court issued a writ of mandate which ordered the respondent court to vacate a prior Order certifying the  
5 Class and to dismiss the Class action portion of the lawsuit because there was an insufficient community  
6 of interest to sustain a Class suit. The Court observed:

7 “However, the present action for nuisance and inverse condemnation is predicated on  
8 facts peculiar to each prospective plaintiff. An approaching or departing aircraft may or  
9 may not give rise to actionable nuisance or inverse condemnation depending on a myriad  
10 of individualized evidentiary factors. While landing or departure may be a fact common  
11 to all, liability can be established only after extensive examination of the circumstances  
12 surrounding each party. Development, use, topography, zoning, physical condition, and  
13 relative location are among the many important criteria to be considered. No one factor,  
14 not even noise level, will be determinative as to all parcels.” [Emphasis added.] *City of*  
15 *San Jose, supra*, at pp. 460-461.

16 In the present proceeding and as noted above, on July 2, 2008, these parties propounded Request  
17 for Production of Documents directed at the issue of Notice to landowners of the adverse claims of  
18 prescription asserted by the Purveyors. Likewise as noted above, in response to that Request for  
19 Production of Documents, objections were interposed and no documents were produced. Thus, at the  
20 time of the scheduled hearing for Class Certification, there exist no evidence before this Court which  
21 would permit this Court to conclude that the Notice element of prescription can be satisfied and applied  
22 on a Class-wide basis as opposed to the inherent necessary *in rem* parcel by parcel assessment required  
23 under substantive law.

24 As the Supreme Court made clear in *City of San Jose, supra*:

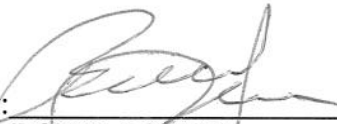
25 “Second, the scheme is incompatible with the fundamental maxim that each  
26 parcel of land is unique. (Civ. Code, § 3387; see also *Porporato v. Devincenzi* (1968)  
27 261 Cal.App.2d 670, 677 [68 Cal.Rptr. 210].) Although this rule was created at  
28 common law, the very factors giving it vitality in the simple days of its genesis take an  
added significance in this modern era of development. Simply stated, there are now  
more characteristics and criteria by which each piece of land differs from every other.

We decline to alter this rule of substantive law to make class actions more  
available. Class actions are provided only as a means to enforce substantive law.  
Altering the substantive law to accommodate procedure would be to confuse the means  
with the ends – to sacrifice the goal for the going.” *City of San Jose, supra*, at pp.  
461-462.

1           Thus, it is respectfully requested that this Court continue the hearing date on the pending Motion  
2 for Class Certification until after sufficient discovery has been completed and thereby adduce evidence  
3 which would support a conclusion by this Court that the Notice element of the Purveyors' claim of  
4 prescription can be satisfied by admissible evidence applicable on a Class-wide basis.

5 Dated: August 6, 2008

LeBEAU • THELEN, LLP

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8 By: 

BOB H. JOYCE  
Attorneys for DIAMOND FARMING COMPANY,  
a California corporation, and CRYSTAL ORGANIC  
FARMS, a limited liability company

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**PROOF OF SERVICE**

1 ANTELOPE VALLEY GROUNDWATER CASES  
2 JUDICIAL COUNCIL PROCEEDING NO. 4408  
3 CASE NO.: 1-05-CV-049053

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4 I am a citizen of the United States and a resident of the county aforesaid; I am over the age  
5 of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter  
6 Drive, Suite 300, Bakersfield, California 93309. On August 6, 2008, I served the within  
7 OBJECTION TO CLASS CERTIFICATION HEARING CURRENTLY SCHEDULED FOR  
8 AUGUST 11, 2008, AND DECLARATION OF BOB H. JOYCE IN SUPPORT THEREOF

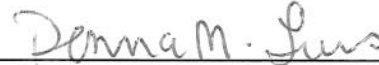
9  **(BY POSTING)** I am "readily familiar" with the Court's Clarification Order.  
10 Electronic service and electronic posting completed through [www.scefilng.org](http://www.scefilng.org) ; All papers filed  
11 in Los Angeles County Superior Court and copy sent to trial judge and Chair of Judicial Council.

12 Los Angeles County Superior Court  
13 111 North Hill Street  
14 Los Angeles, CA 90012  
15 Attn: **Department 1**  
(213) 893-1014

Chair, Judicial Council of California  
Administrative Office of the Courts  
Attn: Appellate & Trial Court Judicial Services  
(Civil Case Coordinator)  
Carlotta Tillman  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688  
Fax (415) 865-4315

16  **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and  
17 processing correspondence for mailing. Under that practice it would be deposited with the U.S.  
18 Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California, in  
19 the ordinary course of business.

20  **(STATE)** I declare under penalty of perjury under the laws of the State of  
21 California that the above is true and correct, and that the foregoing was executed on August 6,  
22 2008, in Bakersfield, California.



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**DONNA M. LUIS**

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