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10 Defendants in Case No. MC021281 only.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF LOS ANGELES**

13
14 Coordination Proceeding Special Title
15 (Rule 1550 (b))

16 ANTELOPE VALLEY GROUNDWATER
CASES

17 Included actions:

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

21 Los Angeles County Waterworks District No.
22 40 vs. Diamond Farming Company
Kern County Superior Court
Case No. S-1500-CV 254348 NFT

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

26
27 **AND RELATED CROSS-ACTIONS.**

Judicial Council Coordination No. 4408

Los Angeles County Superior Court, Lead
Case No. BC 325201

(For E-Posting/E-Service Purposes Only,
Santa Clara County Case No. 1-05-CV-
049053)

Assigned to the Honorable Jack Komar

**REQUEST FOR JUDICIAL NOTICE
AND DECLARATION OF BOB H.
JOYCE IN SUPPORT OF REPLY TO
PLAINTIFFS' OBJECTION TO
NOTICE OF RELATED CASE FILED
BY TEJON RANCHCORP**

Hearing Date: November 18, 2010

Time: 9:00 a.m.

Dept: 1

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Defendants TEJON RANCHCORP, et al. (collectively
3 "Defendants") submit the following request for judicial notice pursuant to California Evidence Code
4 section 450, 452, subsections (d) and (h), and 453. Defendants request this court take judicial notice of
5 the **Ex Parte Application of Plaintiffs Bruce Burrows and 300 A 40 H, LLC, for Temporary**
6 **Restraining Order and Order to Show Cause Re Preliminary Injunction; Memorandum of Points**
7 **and Authorities in Support Thereof.** A true and correct copy of that pleading is attached hereto as
8 Exhibit "A."

9 This Request for Judicial Notice is made on the grounds that Exhibit "A" is relevant to the
10 Court's determination on whether the cases are related and will aid the Court in determining the same.
11 This Request is based on the Request, the accompanying Memorandum of Points and Authorities, the
12 Declaration of Bob H. Joyce, Exhibit "A" attached hereto, and on such other matters as may be presented
13 to the Court.

14
15 Dated: November 2, 2010

LeBEAU • THELEN, LLP

16
17
18 By: 

BOB H. JOYCE
Attorneys for Defendants TEJON RANCHCORP,
a California corporation; TEJON RANCH
COMPANY, a Delaware Corporation;
CENTENNIAL FOUNDERS, LLC, a Delaware
Limited Liability Company

19
20
21
22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **I.**

24 **JUDICIAL NOTICE OF EXHIBIT "A" IS APPROPRIATE**
25 **UNDER THE EVIDENCE CODE**

26 Judicial notice of the attached as Exhibit "A" is appropriate under Evidence Code section 452,
27 subsections (d) and (h). Evidence Code section 452, subsection (d) provides that judicial notice may be
28 taken of "[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any

1 state of the United States." Evidence Code section 452, subsection (h) provides that judicial notice may
2 be taken of "[f]acts and propositions that are not reasonably subject to dispute and are capable of
3 immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Exhibit
4 "A" is a pleading filed by plaintiffs in their action and articulates the factual claims being made in that
5 action. Further, the accuracy of the quotations taken from this document is not reasonably subject to
6 dispute. Accordingly, judicial notice is the proper procedure to bring this Court's attention to Exhibit
7 "A" of the Declaration of Bob H. Joyce, attached hereto. (Evid. Code § 452(d), (h); see *Dillard v.*
8 *McKnight* (1949) 34 Cal.2d 209, 218; *Nichols v. Hast* (1965) 62 Cal.2d 598, 600).

9 Under Evidence Code section 453, this request for judicial notice is conditionally mandatory,
10 and must be granted if sufficient notice is given to the adverse party and if the court is furnished with
11 sufficient information to enable it to take notice of the matter. (*People v. Maxwell* (1978) 78 Cal.App.3d
12 124, 130-131). By this request, Defendants give Plaintiffs sufficient notice and give this Court sufficient
13 information to enable it to take judicial notice of Exhibit "A."

14 II.

15 CONCLUSION

16 For the foregoing reasons, Defendants respectfully request that this Court grant its Request for
17 Judicial Notice of Exhibit "A" to the Declaration of Bob H. Joyce.

18
19 Dated: November 2, 2010

LeBEAU • THELEN, LLP

20
21
22 By: 

BOB H. JOYCE
Attorneys for Defendants TEJON RANCHCORP,
a California corporation; TEJON RANCH
COMPANY, a Delaware Corporation;
CENTENNIAL FOUNDERS, LLC, a Delaware
Limited Liability Company

1 **Susan L. Harrison--State Bar No. 105779**
2 **Karen K. Coffin-Brent – State Bar No. 149866**
3 HARRISON LAW AND MEDIATION
4 500 Silver Spur Road, Suite 205
5 Rancho Palos Verdes, CA 90275
6 Telephone: (310) 541-6400
7 Facsimile: (310) 541-6405

8 Attorneys for Plaintiffs,

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES, NORTH DISTRICT**

12 BRUCE BURROWS, an individual, and
13 300 A 40 H, LLC, a California Limited
14 Liability Company

15 Plaintiff,

16 vs.

17 TEJON RANCHCORP, a California
18 Corporation; TEJON RANCH COMPANY,
19 a Delaware Corporation; CENTENNIAL
20 FOUNDERS, LLC, a Delaware Limited
21 Liability Company; and Does 1 to 50,
22 inclusive,

23 Defendants.

24 CASE NO. *MC021281*

25 Unlimited Civil

26 **EX PARTE APPLICATION OF PLAINTIFFS
27 BRUCE BURROWS AND 300 A 40 H, LLC, FOR
28 TEMPORARY RESTRAINING ORDER AND
ORDER TO SHOW CAUSE RE PRELIMINARY
INJUNCTION;**

**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF;**

DECLARATION OF BRUCE BURROWS;

DECLARATION OF SUSAN L. HARRISON

Date: February 11, 2010

Time: 8:30 a.m.

Dept: *A-11*

29 Plaintiffs Bruce Burrows and 300 A 40 H, LLC (collectively "Plaintiffs" or "Burrows") hereby
30 apply to this Court *ex parte* for a Temporary Restraining Order and Order to Show Cause why a
31 Preliminary Injunction should not issue enjoining defendants Tejon Ranchcorp and Tejon Ranch
32 Company (collectively "Tejon"), and defendant Centennial Founders, LLC ("Centennial") (Tejon
33 and Centennial are sometimes hereafter referred to collectively as "Defendants") and their agents,
34 representatives, employees, co-venturers, aiders and abettors and any entity in which any of them

1 is a principal, officer, director, member or manager, of and from further processing of any interim
2 or "screen check" Environmental Impact Report ("EIR") drafts or versions with the accompanying
3 Water Supply Assessment ("WSA") (collectively sometimes "EIR/WSA") with or through the
4 County of Los Angeles ("County") relating to Defendants' planned Centennial Development, to the
5 extent that such activity is predicated on the representation that Defendants, or any of them, have
6 rights to use water that, *inter alia*, currently is and/or historically has been, put to beneficial use or
7 entitled to be put to use on the 160 Acre Parcel owned by Burrows and upon which crop pivot No.
8 3 is located (as those terms are further defined hereinafter).

9 This Application is warranted by the fact that Defendants have made knowing and
10 intentional – and thus fraudulent – misrepresentations in the EIR/WSA regarding rights to
11 groundwater which were deeded to Burrows by Tejon in 2007, and include water pumped by Tejon
12 but distributed and beneficially used on Burrows' land. The public, in general, and Burrows, in
13 particular, will be irreparably injured if a final Draft EIR/WSA is authorized by the County for
14 release to the public for review based on the documentation currently being processed by
15 Defendants, because:

- 16 a. Defendants' current EIR/WSA contains material misrepresentations;
- 17 b. Burrows' own plans for development of the parcels he owns within and/or
18 contiguous to the Centennial Development are pending before the County and
19 Burrows will be precluded from development if the County adopts as accurate, the
20 WSA Defendants have submitted; and
- 21 c. Tejon agreed in 2006 not to interfere with Burrows' development, but insisted that
22 Burrows agree to refrain from making any negative comments concerning
23 Centennial (most especially during the public review process), such that Plaintiffs
24 may be prevented from pursuing and protecting their water rights once the County
25 has put its imprimatur on the final Draft EIR for Centennial Development by
26 authorizing its release.

27 Specifically, Plaintiffs request that, pending hearing on their application for a preliminary
28 injunction, Defendants and their agents, representatives and others:

1 1. Withdraw any and all interim or "screen-check" EIR drafts or versions relating to the
2 Centennial Development from submission to the County for internal review, discussion and
3 revision and be restrained and enjoined from engaging in any activity designed to further the
4 process of obtaining County authorization for preparation of the final Draft EIR for public
5 circulation, to the extent such activity is predicated on the representation that Defendants, or any
6 of them, have rights to use water that is currently, and historically has been, put to beneficial use
7 on the 160 Acre Parcel owned by Burrows upon which crop pivot No. 3 is located; or, alternatively,

8 2. Be restrained and enjoined from engaging in any other negotiations,
9 communications, exchanges of interim or "screen-check" drafts or versions of the preliminary Draft
10 EIR relating to the Centennial Development and any other activity designed to further the process
11 of obtaining County authorization for preparation of the final Draft EIR for public circulation, to the
12 extent such activity is predicated on the representation that Defendants, or any of them, have
13 rights to use water that is currently, and historically has been, put to beneficial use on the 160
14 Acre Parcel owned by Burrows upon which crop pivot No. 3 is located.

15 Plaintiffs' instant Application is based on the attached Memorandum of Points and
16 Authorities and the Declarations of Bruce Burrows and Susan L. Harrison filed in support hereof,
17 the Verified Complaint and any Amended Verified Complaint filed in this action, all other pleadings
18 and records on file in this action of which this Court is requested to take judicial notice, and such
19 other and further evidence and argument as may properly be presented in connection with, and at,
20 the hearing of this matter.

21 Notice of this ex parte Application was provided to Defendants and their counsel via
22 facsimile communication on February 10, 2010, at approximately 9:58 a.m., as set forth in the
23 Declaration of Susan L. Harrison attached hereto. Tejon's counsel has indicated that it intends to
24 appear at the hearing.

25 Dated: February 11, 2010

HARRISON LAW AND MEDIATION

26 By: 

27 Susan L. Harrison, Esq.
28 Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

1
2 I. INTRODUCTION

3 The goliath Tejon Ranch (along with its equally imposing partner, Centennial Founders,
4 LLC), is once again demonstrating its arrogance and disregard for neighboring landowners owning
5 smaller, yet still significant, parcels of land in and near the giant development project and location
6 of a future master-planned city, known as Centennial (the "Centennial Development"). Specifically
7 defendants Tejon Ranchcorp and Tejon Ranch Company (sometimes hereinafter referred to
8 collectively as "Tejon") and Centennial Founders, LLC ("Centennial"), have blithely proceeded
9 along the path to certification of the mandatory Environmental Impact Report ("EIR") and
10 accompanying Water Supply Assessment ("WSA") (collectively "EIR/WSA") for the Centennial
11 Development, while blatantly ignoring a 2006 transaction wherein Tejon unequivocally transferred
12 substantial water rights to Plaintiffs Bruce Burrows and 300 A 40 H, LLC (collectively "Burrows" or
13 "Plaintiffs") as an inducement to settle prior litigation.

14 Stated simply, Tejon is claiming ownership of water rights which it has contractually given
15 away, and is relying on those non-existent rights to establish its purported ability to supply
16 sufficient water for the Centennial Development. The entitlement process for the Centennial
17 Development is thus presently proceeding based on the demonstrably false premise that Tejon
18 owns certain groundwater rights which it indisputably does not own. The longer this process goes
19 on without correction of the gross inaccuracies regarding entitlement to water rights, the more
20 damage Tejon's misrepresentations will do -- not only to Burrows, but also to the public and the
21 County of Los Angeles ("County") which will be wasting resources on negotiating and discussing
22 reports and analyses that are based, to some degree, on inaccurate information.

23 In addition to the irreparable injury being done to the public and the County, Burrows is
24 being immediately and irremediably damaged by the misrepresentations in the current version of
25 the EIR/WSA because Tejon's claim of ownership of water rights that, in reality, belong to
26 Burrows, will essentially preclude development of his own parcels, and a 2006 agreement with
27 Tejon may operate to restrict Burrows' ability to aggressively protect his water rights at a certain
28 point in the development process. For all of these reasons, it is imperative that this Court

1 immediately step in and require Defendants to withdraw the current, inaccurate version of the
2 EIR/WSA from consideration of any kind by the County, and prohibit them from proceeding with
3 any aspect of the Centennial Development's entitlement process that relies in any way on the
4 inaccurate representations regarding water rights that are contained in the current version of the
5 EIR/WSA.

6 **II. FACTUAL HISTORY**

7 **A. Summary of Factual Background**

8 This action was filed because Defendants are contending, and representing to the County,
9 that they have water rights that have clearly been granted to Burrows by Defendant, Tejon.
10 Specifically, Defendants purport to have the exclusive right to use, in connection with the very
11 ambitious Centennial Development, approximately 2500 acre feet per year ("AFY") of groundwater
12 that they claim is currently being used for their own purposes. In fact, Burrows, not Defendants,
13 has the right to use almost 20% of said groundwater.

14 Significantly, this is not the first time that Burrows has been compelled to pursue litigation in
15 order to prevent Tejon from running roughshod over his rights. In 2006, Burrows was forced to
16 obtain an injunction after Tejon trespassed on his orchard property to drill test wells and lay water
17 pipe from the aqueduct, then built a large reservoir or water bank facility (the "Tejon Water Bank")
18 on a parcel of land that was directly adjacent to, and uphill from, the orchard parcel - without first
19 obtaining a permit.

20 As an inducement to Burrows to settle that dispute by way of a settlement (the "2006
21 Agreement"¹) which would dissolve the injunction against use of the Tejon Water Bank, Tejon
22 agreed to swap the orchard parcel for property contiguous to other property Burrows owns that is
23 inside the Centennial Development boundaries, and grant Burrows water rights and easements so
24 that he could develop his properties, the net effect of which was to reduce the amount of
25 groundwater in which Defendants may now claim rights in an attempt to establish that there is
26 sufficient water for the Centennial Development.

27 _____
28 ¹A copy of the 2006 Agreement is attached as Exhibit A to the concurrently-filed Verified
Complaint.

1 At no time, however, did Defendants modify their reports and submissions prepared as part
2 of the process of obtaining entitlements for the Centennial Project, to reflect this transfer and
3 reduction of water rights. The result is that Defendants are effectively concealing from the County
4 (and will be concealing from the public if the EIR/WSA is authorized to be made public without the
5 necessary corrections) the fact that it no longer has all of the water rights that Tejon had prior to
6 execution of the 2006 Agreement.

7 **B. The 2006 Litigation**

8 **1. The Dispute**

9 For many years prior to 2005, Burrows owned (among others) an approximately 170 acre
10 parcel of real property just outside the northeast boundary of the planned Centennial
11 Development, on which peach orchards were (and still are) maintained (hereafter the "Orchard
12 Parcel" or the "Burrows Parcel"). The orchards have historically been (and still are being) irrigated
13 by Burrows using three wells on the Orchard Parcel that extract groundwater underlying said
14 property. [Verified Complaint ("Complaint"), ¶¶ 11-12.]

15 In late 2005, Burrows discovered that Tejon had trespassed and unlawfully drilled 3 water
16 test wells on the Orchard Parcel and trampled the northwest corner of the property in order to lay a
17 water pipe from the aqueduct to the Tejon Water Bank, which Tejon had proceeded to build
18 without first obtaining a permit, on a parcel of land that was directly adjacent to and uphill from, the
19 Orchard Parcel – putting Burrows' orchard employees in imminent danger because of the unstable
20 soils used in the Tejon Water Bank. The Tejon Water Bank was built as part of a plan to obtain,
21 maintain and/or increase water rights that would accrue to the ultimate benefit of the Centennial
22 Development. [Complaint, ¶13.]

23 On January 25, 2006, Burrows filed a lawsuit against Tejon in this Court under Case No.
24 MC017046 (the "2006 Litigation") and, in connection therewith, Burrows promptly obtained a
25 Temporary Restraining Order enjoining Tejon from continued construction, maintenance and use
26 of the Tejon Water Bank. Faced with the legal bar created by the TRO to use and maintenance of
27 the Tejon Water Bank, Tejon offered to resolve the 2006 Litigation informally in order to obtain
28 (among other things) a stipulated dissolution of the TRO. Burrows ultimately agreed to the

1 settlement, which was memorialized by the 2006 Agreement. [Complaint, ¶¶ 14-16, and Ex. A
2 thereto.]

3 2. The Settlement

4 Burrows was induced to settle the 2006 Litigation, by Tejon's agreement to make a deal
5 that would allow him to develop all of his own parcels, including two parcels he owns that are
6 within the boundaries of the Centennial Development ("Burrows Centennial Parcels"), which are
7 virtually the only parcels that are "Not A Part" ("NAP") of the Centennial Development. [Complaint,
8 ¶ 11; Burrows Declaration, at ¶ 5.] The most important features of said settlement were the
9 "swap" of Burrows' Orchard Parcel and key water rights and water transportation provisions.

10 a. The Parcel "Swap" and Lease-Back

11 Pursuant to the settlement, Burrows' 170 acre Orchard Parcel was "swapped" for a 160
12 acre parcel of land then owned by Tejon (the "160 Acre Parcel"), which was just outside the
13 boundaries of the planned Centennial Development but contiguous to the largest of the Burrows
14 Centennial Parcels. [Complaint, ¶ 15.] It was agreed that, for a term of at least five years, Tejon
15 would lease back the Orchard Parcel to Burrows (the "Burrows Lease"), and Burrows would lease
16 back the 160 Acre Parcel to Tejon (the "Tejon Lease"), such that each could continue their farming
17 activities on the parcels. On or about February 2, 2007, Grant Deeds and Memoranda of Leases
18 were recorded, memorializing and effectuating the "swap" and lease transactions. [Complaint, ¶¶
19 16-19 and Exs. B, C, D and E thereto.]

20 b. Water Rights Involved in the Swap

21 Both the Orchard Parcel and the 160 Acre Parcel overlie groundwater, some of which is
22 extracted by two wells on Tejon Land and distributed to six (6) crop "pivots." One such pivot,
23 designated as pivot number 3 ("Pivot No. 3") is located on Burrows' 160 Acre Parcel and the water
24 it disburses is for the exclusive benefit of that parcel.² Both the 2006 Agreement and the deeds
25 effecting the "swap" make it perfectly clear that: (1) Burrows was obtaining all water rights related

26 _____
27 ²An aerial photograph furnished by Tejon, depicting the 6 numbered crop pivots, as well as the
28 Water Bank and Orchard Parcel, is contained in Exhibit G to the Complaint along with a map
showing the boundaries of the Centennial Development and Burrows' Centennial ("NAP") parcels.

1 to and/or deriving from the 160 Acre Parcel as part of the transfer of that land to him; and, (2)
2 Burrows was retaining all water rights related to and/or deriving from the Orchard Parcel.
3 [Complaint, ¶¶ 21, 22, 23, 24, 25, 26.]

4 **i. Rights Relinquished by Tejon**

5 The language of the deed pursuant to which Tejon transferred the 160 Acre Parcel to
6 Burrows ("Tejon to Burrows Grant Deed") expressly states that Burrows received:

7 "all right, benefit and interest in any water rights associated with the
8 [160 Acre Parcel] whether existing now through past activities of
9 [Tejon], or as subsequently established by [Burrows]." [Complaint, ¶¶
10 18, 22 and Ex. B thereto.]

11 Moreover, Tejon did not reserve for itself, *any* water rights in the 160 Acre Parcel. Burrows
12 "obtain[ed] at Closing the water, mineral, gas, oil and all other rights inherent in fee simple
13 ownership of the [160 Acre] Parcel." [Ex. A to Complaint at pp. 4-5; Complaint, ¶¶ 19, 24 and Ex.
14 D thereto at ¶5.] Nevertheless, Tejon is required, during the term of the Tejon Lease, to continue
15 farming Burrows' 160 Acre Parcel, beneficially using groundwater underlying the 160 Acre Parcel
16 and distributed by Pivot No. 3 for irrigation of the 160 Acre Parcel. [Ex. A to Complaint at pp. 4-5;
17 Complaint, ¶ 25 and Ex. D thereto at ¶3.]

18 Tejon also granted Burrows an easement from the Orchard Parcel, across various parcels
19 of property owned by Tejon (the "Burrows Easement"), connecting all of Burrows' properties, for
20 the transport of Burrows' water.³ [Complaint, ¶¶ 17c, 20, 27 and Ex. A thereto at p. 4 and Ex. F
21 thereto at p. 3.]

22 **ii. Rights Reserved by Burrows**

23 By contrast, the deed pursuant to which Burrows transferred the Orchard Parcel to Tejon
24 ("Burrows to Tejon Grant Deed") states that Burrows:

25 "shall retain from [the Orchard Parcel] all right, benefit and interest in
26 and to the water rights associated with [the Orchard Parcel] either as

27

³A copy of the deed conveying the Burrows Easement is attached as Exhibit F to the
28 concurrently-filed Verified Complaint.

1 they exist now or shall be determined to exist in the future, including
2 the right to transfer said water rights away from [the Orchard Parcel]."
3 [Complaint, ¶¶ 18, 23 and Ex. C thereto.]

4 Further, Burrows is specifically allowed, during the term of the Burrows Lease, to continue
5 to maintain the peach trees on the Orchard Parcel, using the wells on that parcel and "making any
6 and all use of water and utilities necessary or incident to the transport of water, and the
7 preservation, establishment and determination of any water rights owned by Burrows ... which
8 rights shall belong in perpetuity to Burrows ..." [Ex. A to Complaint at p. 4; complaint, ¶¶ 19, 25
9 and Ex. E thereto at ¶ 3.] Burrows also specifically "retain[ed] all right, benefit and interest in and
10 to the water rights on the Burrows [Orchard] Parcel." [Ex. A to Complaint at p. 4; Complaint, ¶¶ 19,
11 26, 27 and Ex. E thereto at ¶ 5.]

12 Tejon, conversely, expressly "agree[d] that Burrows will have full right, title and interest in
13 and to," and "shall continue to possess and retain all right, benefit and interest in and to the water
14 rights and transferrable water rights on the Burrows [Orchard] Parcel (the 'Burrows Water
15 Rights')." Tejon further assumed a contractual obligation to "take any actions necessary to
16 preserve or maintain the Burrows Water Rights, and to refrain from taking any actions which would
17 in any manner materially interfere with the existence or maintenance of the Burrows Water
18 Rights." [i.d.]

19 **c. Non-Interference and Cooperation**

20 The parties further have obligations to refrain from making negative comments about each
21 other and to cooperate with each other. For example, the 2006 Agreement states:

22 "Burrows shall refrain from making or causing others to make negative
23 comments about [the Centennial Development], and when requested during
24 the public review period, shall make positive comments on Centennial as
25 reasonably requested by Tejon, by letter or at a hearing. Likewise, Tejon
26 agrees to refrain from making or causing others to make negative comments
27 and shall not take any action to limit or interfere with any development
28 proposed for the [160 Acre Parcel] or the other parcels Burrows owns in the
vicinity of the Centennial planning area, and when requested during the
public review period, shall make positive comments on such development as
reasonably requested by Burrows, by letter or at a hearing." [Complaint, ¶28
and Ex. A thereto at p. 7.]

//

1 **C. The Current Dispute**

2 **1. Burrows' Planned Development**

3 Since at least 2007, Burrows has been actively pursuing development plans for the
4 Burrows Centennial Parcels and Burrows' 160 Acre Parcel. An integral part of the planned
5 Burrows development, is the water supply available. When Burrows' Conceptual Land Use Plan
6 was ready, Burrows disclosed to Defendants the essential elements of Burrows' planned
7 development, including providing Centennial with a copy of the Plan that he intended to (and
8 thereafter did) submit to the County. [Complaint, ¶29.]

9 **2. The WSA and Discovery of the Misrepresentations Therein**

10 On or about July 2, 2009, Centennial's counsel, for the first time, revealed that, despite the
11 very clear language in the 2006-2007 documentation, it was his position (and presumably that of
12 his client and Tejon), that there was "no indication that Mr. Burrows has any established rights to
13 groundwater drilling." On November 12, 2009, after months of inquiries, Burrows finally obtained
14 from defendants what they understand to be the version of the Water Supply Assessment for the
15 Centennial Development (the "WSA") which defendants are asking the County to authorize to be
16 released to the public with the final Draft EIR . [Complaint, ¶¶ 31-32, and Ex. H at p. 4.]

17 The WSA represents that 2500 AFY of groundwater is "currently [being] pump[ed] for
18 agricultural purposes" by Tejon and this water usage is "sustainable ... without impacting other
19 landowners." [Complaint, ¶ 32 and Ex. I (at pp. ES-2, EX-4, 4-13 and 5-1) thereto.] Burrows then
20 requested copies of the records indicating from where said groundwater had historically been
21 extracted and used in order to determine if Tejon was claiming ownership in water rights that had
22 been granted to, or retained by, Burrows. Copies of those pumping records ("Tejon Pumping
23 Records"), along with a "summary that shows annual extractions from [the two] wells" pumping
24 such water ("Summary"), finally were provided to Burrows on December 2, 2009.

25 Sure enough, those pumping records failed utterly to account for the fact that Burrows was
26 entitled to the water distributed through Pivot No. 3, which is located on the 160 Acre Parcel
27 owned by Burrows. [Complaint ¶¶ 33-35 and Exs. B and J thereto.] Instead, Tejon simply claimed
28 for itself, the rights in all water distributed through all 6 pivots, disregarding entirely the fact that

1 almost 20% of that water (based on Tejon's own records) had been granted to Burrows.

2 Tejon claims in the WSA that 3.2 AFY per acre of water is used for agriculture on Tejon
3 Land. Based thereon, the current "reasonable need" of water for Burrows' 160 Acre Parcel is
4 easily calculated at 512 AFY (160 Acres multiplied by 3.2 AFY). Alternatively, and at a minimum,
5 the current "reasonable need" of the 160 Acre Parcel is measured by the percentage of
6 groundwater out of the total historically pumped by Tejon, that has been used to irrigate Burrows'
7 160 Acre Parcel. Said percentage is at least 19.6%, as reflected in the Tejon Pumping Records.
8 [Complaint, ¶¶ 37, 38 and the WSA, Ex. I thereto, at p. ES-2 and Appx. F to said Exhibit at p. 46;
9 Ex. J Tejon Pumping Records.]

10 Based on the foregoing, it was determined by Plaintiffs that the WSA is inaccurate to the
11 extent that it claims that the Centennial Development has 100% of the water rights in the
12 groundwater that has been pumped by Tejon and put to beneficial agricultural use in the past and
13 up to and including the present. The documentation reflects that at least 19.6% of said rights in
14 fact vest in Burrows, not Tejon or the Centennial Development. [Complaint, ¶ 39.]

15 3. Centennial is Confronted With the WSA Misrepresentations

16 Immediately after delivering the pumping records to Burrows (from which Burrows could
17 ascertain that the WSA's claimed entitlement to 2500 AFY of groundwater included water rights
18 that had in fact been transferred to Burrows by Tejon), Tejon proposed another land swap via a
19 December 3, 2009 letter from Tejon Company's President, Robert Stine. On January 15, 2010, a
20 meeting was scheduled for the purpose of further exploring the proposal set forth in Stine's letter.
21 At said meeting, however, little was accomplished and it was decided that a follow-up conference
22 call should take place between the parties on January 22, 2010. [Complaint, ¶40.]

23 On January 21, 2010, Tejon/Centennial's counsel spoke with Burrows and his counsel and
24 stated, for the first time, that it was their opinion that the grant of water rights in the 2007 Grant
25 Deeds is "ambiguous," and that the documents contain certain water rights language that is
26 "superfluous," and therefore the water rights did not transfer to Burrows with the land, as the 2007
27 Grant Deed language clearly states. At that time it became clear to Plaintiffs that Defendants
28 intend to, and do, claim that various of the water rights transferred to and/or confirmed in Burrows

1 pursuant to the 2007 Grant Deeds, are unenforceable. [Complaint, ¶41.]

2 During the parties' conference call the next day, January 22, 2010, defendants indicated
3 that they were no longer interested in discussing a second parcel swap; thus, there remained no
4 pending informal means of resolving problems caused by the inaccuracies in the Centennial WSA.
5 Rather than attempting to take action to render the WSA accurate, or modifying the WSA to rectify
6 the misrepresentations contained therein, Centennial is proceeding with the administrative
7 entitlement process by, among other things, submitting "screen-check" EIR drafts or versions of
8 the EIR and/or the WSA to the County for internal review and discussion, and otherwise engaging
9 in activity designed to further the process of obtaining County authorization for preparation of the
10 final Draft EIR and/or WSA for public circulation, despite the fact that such activity is apparently
11 predicated on the inaccurate representation that Tejon has rights to use water that is currently,
12 and historically has been, put to beneficial use on Burrows' 160 Acre Parcel. [Complaint, ¶ 42.]

13 **4. Plaintiffs' Immediate Response to Centennial's Termination of Settlement Talks**

14 Within days of January 22, 2010, it became apparent that the only means by which
15 Plaintiffs could prevent Centennial from utilizing the false information set forth in the WSA (and,
16 thus, also the EIR), was to immediately file suit seeking, among other things, an injunction
17 requiring that Defendants:

18 a. Withdraw any and all interim or "screen-check" EIR drafts or versions from
19 submission to the County for internal review, discussion and revision and be restrained and
20 enjoined from engaging in any activity designed to further the process of obtaining County
21 authorization for preparation of the final Draft EIR for public circulation, to the extent such activity
22 is predicated on the representation that Defendants, or any of them, have rights to use water that
23 is currently, and/or historically has been, put to beneficial use or entitled to be put to use on
24 Burrows' 160 Acre Parcel; or, alternatively,

25 b. Be restrained and enjoined from engaging in any other negotiations,
26 communications, exchanges of interim or "screen-check" versions of the preliminary Draft
27 EIR/WSA and other activity designed to further the process of obtaining County authorization for
28

1 preparation of the final Draft EIR (including the WSA) for public circulation, to the extent such
2 activity is predicated on the representation that Defendants, or any of them, have rights to use
3 water that is currently being used, and historically has been put to beneficial use, or is otherwise
4 entitled to be used, on Burrows' 160 Acre Parcel. [Complaint, ¶ 43.]

5 Further processing of the EIR/WSA, or any activity designed to advance the process of
6 obtaining authorization by the County of preparation of a Draft EIR pending resolution of the
7 question of the veracity of the water rights represented therein/in the WSA to exist, not only will
8 put the County at risk of authorizing dissemination of an EIR/WSA containing false information, but
9 also could put the County in the difficult position of having to carry the burden of a potentially
10 lengthy and expensive investigation into the validity and accuracy of the representations in the
11 EIR/WSA. It could also have the ultimate effect of providing, under the auspices of the County, a
12 presumably accurate, yet in fact false, document to the public for their review and comment. Such
13 review and comment about the Centennial Development, will be rendered considerably less
14 meaningful, and in fact potentially irrelevant, to the extent it is based on false information.
15 [Complaint, ¶ 44.]

16 Additionally, if the County authorizes the preparation of the final Draft EIR/WSA for public
17 circulation, such authorization will have a substantial negative impact on Burrows' ability to
18 develop his own Centennial Parcels and the 160 Acre Parcel, as a result of the County's adoption
19 of the matters set forth in the WSA. Tejon's inclusion of language in the 2006 Agreement that
20 precludes Burrows from making negative comments about Centennial (most especially during the
21 public review process), also potentially precludes Burrows from calling the inaccuracies to the
22 attention of the public, and from asserting and protecting his own water rights which are
23 essentially being misappropriated by the misrepresentations in the EIR/WSA. [Complaint, ¶¶ 44-
24 45.]

25 The final Draft EIR/WSA will not contain accurate information if the preliminary drafting
26 process in which the County and Defendants are now engaged is permitted to proceed without
27 verification and correction of the facts set forth in the WSA. The requested Restraining Order and
28 Preliminary Injunction must issue.

1 relief. Plaintiffs have a strong factual and legal basis for the relief they seek and, moreover, would
2 clearly be more damaged by the absence of temporary injunctive relief than Defendants would be
3 by the imposition of same.

4 **A. Plaintiffs are Likely to Prevail Because the Causes of Action Alleged Derive**
5 **from Defendants' Misrepresentation of Ownership in the Right to Pump**
6 **Groundwater for the Benefit of the 160 Acre Parcel**

7 **1. Plaintiffs Undeniably Own the Right to Use the Groundwater Currently**
8 **and Historically Used for the Benefit of Burrows' 160 Acre Parcel**

9 The first element to be considered in ruling on an application for injunctive relief is whether
10 the applicant is likely to prevail on the merits of its claim. (See *Shoemaker, supra.*) There can be
11 no doubt that Plaintiffs will prevail on their claims against Defendants, because they all derive from
12 Defendants' irrefutable misrepresentation of ownership in the right to pump groundwater for the
13 benefit of the 160 Acre Parcel.

14 "Courts typically classify water rights in an underground basin [such as
15 that which underlies the Tejon Land, the Burrows Centennial Parcels,
16 the Orchard Parcel and the 160 Acre Parcel] as overlying,
17 appropriative or prescriptive." (*City of Barstow v. Mojave Water*
18 *Agency* (2000) 23 Cal.4th 1224, 1240, citing *California Water Service*
19 *Co. v. Edward Sidebotham & Son* (1964) 224 Cal.App.2d 715, 725.)

20 Here, there are both overlying and appropriative water rights at issue. Analyses of both of
21 these types of rights leads inexorably to the conclusion that Burrows has the right to 512 AFY or,
22 alternatively, at least 19.6% of the groundwater which Defendants are falsely representing is
23 earmarked for use for the Centennial Development.

24 **a. Overlying Water Rights**

25 Defendants, on one hand, and Burrows, on the other, own property that "overlies"
26 groundwater beneath the surface of the land. As a result, they each have an "overlying water
27 right," which is "the owner's right to take water from the ground underneath for use on his own land
28 ... ; it is based on the ownership of the land and is appurtenant thereto." (*Id.*)

"As between overlying owners, the [water rights] ... are correlative, i.e.,
they are mutual and reciprocal. This means that each has a common
right to take all that he can beneficially use on his land if the quantity is
sufficient; if the quantity is insufficient, each is limited to his
proportionate fair share of the total amount available based upon his
reasonable need." (*Tehachapi-Cummings v. Armstrong* (1975) 49
Cal.App.3d 992, 1001.)

1 Defendants have represented in the Hydrogeologic Report (which is Appendix F to the
2 WSA), that 3.2 AFY of water per acre is used for agriculture on Tejon Land. [HR at p. 46.] The
3 current "reasonable need" for Burrows' 160 Acre Parcel, therefore, is easily calculated at 512 AFY
4 (160 Acres multiplied by 3.2 AFY).

5 Alternatively, and at a minimum, the current "reasonable need" of the 160 Acre Parcel is
6 measured by the percentage of groundwater that is being pumped and historically has been used
7 to irrigate Burrows' 160 Acre Parcel. Defendants have admitted that this amount is at least 19.6%,
8 and they have represented in their EIR/WSA, that there is sufficient groundwater to sustain the
9 pumping of approximately 2500 AFY. Accordingly, Burrows may alternatively claim entitlement to
10 use water in the range of 500 AFY (i.e. 20% of the 2500 AFY Defendants are claiming has been
11 pumped and/or could be pumped without detrimental effect on the underlying water basin(s)).
12 Based on the principle of overlying rights, Burrows has a right to use either 512 AFY or,
13 alternatively, at least 19.6% of the groundwater pumped from the reservoir(s) beneath his real
14 property.

15 Defendants are expected to argue that, Burrows' overlying water rights are somehow
16 diminished because the pumps which extract the water are on Defendants' land. There is no merit
17 in this argument, however. The well-respected treatise *California Water Law and Policy*,
18 unequivocally explains that "[s]o long as the property's owner actually overlies a portion of the
19 water known as the ground-water basin, there is no legal requirement that the method of
20 extraction be located within the four corners of the property." (Slater *California Water Law &*
21 *Policy*, Volume 2 (2008) p. 3-44.) Consistent with this principle are cases such as *In Re Thomas*
22 *Estate* (1905) 147 Cal.236, 242 and *Hildreth v. Montecity Creek Water Company* (1903) 139
23 Cal.22, 29. In *Thomas* the California Supreme Court held that overlying water rights are not lost
24 or diminished by conveyance to a third party for purposes of management and distribution of
25 same. Similarly, in *Hildreth*, it was determined that the respective overlying water rights of
26 landowners remained intact, notwithstanding the cooperation of several such owners in the
27 construction of a common conduit for use in diverting the water.

28 Therefore, it is clear that the fact that the wells used to extract the underground water are

1 not located "within the four corners" of the 160 Acre Parcel, does not change the analysis, nor
2 diminish in any way, Burrows' overlying rights to all the water that he can beneficially use on his
3 land if there is sufficient quantity and, if there is not sufficient quantity, to a *pro rata* share of what
4 is available, based upon his ability to beneficially use at least 19.6% of the groundwater that is
5 pumped on the 160 Acre Parcel.

6 **b. Appropriative Rights⁴**

7 A landowner may have appropriative rights in addition to overlying rights. (*Felsenthal v.*
8 *Warring* (1919) 40 Cal.App. 119 133; *Haight v. Costanich* (1920) 184 Cal. 426, 431.)
9 Appropriative rights vary significantly from overlying rights in that "as between appropriators ... the
10 one first in time is the first in right, and a prior appropriator is entitled to all the water he needs, up
11 to the amount he has taken in the past, before a subsequent appropriator may take any."
12 (*Barstow, supra* at 1241.) Moreover, appropriators may export their appropriated water beyond
13 the basin or watershed from which the water comes. (*Id.*) (Competing holders of overlying rights,
14 on the other hand, are limited to only their "reasonable share" of water, when there is insufficient
15 water to meet the needs of all who have overlying rights and, as a general rule, water derived from
16 overlying rights must be used on the property which overlies the groundwater at issue.) (*Id.*)

17 As stated in *Pleasant Valley Canal Company v. Borror* (1998) 61 Cal.App.4th 742, 776:

18 "An appropriative right '... is not a correlative right in the sense that all
19 rights in a common supply would be considered coequal and that in
20 the event of a water shortage all holders would share alike in the
21 reduced supply. The principle of priority came into acceptance for the
22 express purpose of safeguarding the right of the first appropriator, in
23 just such eventuality, to make full use of the quantity of water that he
24 had appropriated. [¶] The right of priority therefore attaches to the
25 definite quantity of water that the appropriator has put to reasonable
26 beneficial use in consummating his appropriation. As against junior
27 claimants, he is entitled to divert that quantity whenever it is available
28 in excess of the quantities required to satisfy rights prior to his own,
provided that he needs it all. And however great his needs, he is
limited to that quantity." (*Pleasant Valley, supra* at 776, citing

25 ⁴In many cases an analysis of appropriative water rights includes consideration of application
26 for and grants of permits pursuant to the Water Commission Act of 1914 and its successor
27 litigation. Groundwater, however, falls outside the jurisdiction of the State Water Resources
28 Control Board (Water Code §1200) and hence permits for appropriation of groundwater are neither
appropriate nor available. (See, e.g., *North Gualala Water Co. v. State Water Resources Control
Board* (2006) 139 Cal.App.4th 1577.)

Hutchins, *The Cal. Law of Water Rights* (1956).)

1 Accordingly, to the extent Burrows has appropriative water rights, he has rights which are
2 superior to any appropriator whose appropriation post-dated Tejon's (since Burrows obtained
3 Tejon's rights),⁵ and he has the right to as much water as has historically been used, regardless of
4 whether all such water was put to beneficial use on the 160 Acre Parcel.

5
6 In a typical case where there is a conflict between appropriative and overlying rights, the
7 overlying users' rights will be deemed paramount to those who appropriate water for use on
8 distant land, but since the landowner's right extends only to the quantity of water that is necessary
9 for use on his land, the appropriator can take the surplus. (*Id.*, at p. 135, 74 P. 766.) Hence,
10 appropriative rights are valuable in any case, and are particularly so where the holder of the
11 appropriative rights is also the holder of the overlying rights.

12 Here, **Burrows is the rightful owner of both types of rights** and for that reason is
13 unquestionably entitled to the use of that amount of groundwater that has historically been used
14 on the 160 Acre Parcel, and further he has priority over any other appropriative user whose use
15 commenced later in time than that of Burrows' predecessor.

16 2. **The EIR/WSA Inaccurately States the Amount of Groundwater**
17 **Available for the Centennial Project and Further Falsely Represents**
18 **that Defendants Have the Overlying and/or Prescriptive Rights to the**
19 **Water Used on the 160 Acre Parcel**

20 a. **The WSA Falsely Represents the Amount of Groundwater**
21 **Historically Pumped and Used for Tejon Agriculture**

22 According to the WSA, the Centennial Development's demand for local groundwater will be
23 2,482 AFY from 2001 through 2015 and will increase to 2,500 AFY for the 15 years after that.
24 [WSA, p. ES-2.] The WSA relies on a sustainable yield of 2,500 AFY of local groundwater which is
25 presently being used for agriculture, but will become available for use for the Centennial
26 Development as agriculture is phased out and municipal and industrial needs for water increase.

27 ⁵Because Burrows acquired "all right, benefit and interest in any water rights associated with
28 [the 160 Acre Parcel] ... existing now through past activities of grantor," Burrows essentially
"stands in the shoes" of Defendants. Accordingly, the operative date of commencement of
appropriation is the date upon which Defendants began appropriating water, and the operative
amount of the appropriation is the amount which Defendants appropriated.

1 [WSA, p. 1-2.]

2 The first problem with the foregoing representations is that the evidence does not, in fact,
3 support Defendants' contention that 2500 AFY has historically been pumped and used for
4 agriculture on Tejon Land (including the 160 Acre Parcel which was Tejon Land until 2006). In
5 fact, the Pumping Records tell a very different story. On December 2, 2009, Kathy Perkinson, a
6 Senior Senior Vice President of Tejon, provided Burrows with copies of pumping records for the
7 years from 2003 through 2008, along with a summary prepared by her office. Those records show
8 a total of 15,313 AFY pumped for the 2002 through 2008 calendar years, for an average of 2188
9 AFY per year. This is a far cry from the 2,500 AFY relied upon in the WSA. This discrepancy
10 alone creates a significant inaccuracy which must be corrected before any further progress is
11 made toward awarding the Centennial Development the entitlements they need to move forward.

12 b. **Defendants Falsely Represent that The Centennial Project Has**
13 **the Right to Use All of the Groundwater Historically Pumped for**
14 **Irrigating Tejon Land and Burrows' 160 Acre Parcel**

15 In addition to using numbers that just don't "add up," the WSA is also based on the
16 completely false premise that all of the groundwater pumped for agricultural purposes accrues to
17 the benefit of the Centennial Development when calculating the extent of its water rights. In fact,
18 as discussed under heading III.A.1., above, the portion of the groundwater pumped for the benefit
19 of Burrows' 160 Acre Parcel creates water use rights in favor of Burrows, not Defendants.

20 The Hydrogeologic Report prepared in 2006 states that 3.2 AFY per acre of groundwater
21 has historically been used for agriculture on the Tejon Land – which included Burrows' 160 Acre
22 Parcel at that time. (HR, p. 46; Ex. I, Appendix F.) Thus, Defendants have effectively represented
23 that the 160 Acre Parcel used 512 AFY of groundwater (160 acres x 3.2 AFY) for agricultural
24 purposes during the time that it was owned by Tejon, and there is no reason to believe that
25 calculation changed when Burrows took title to the parcel, as Tejon continued the same farming
26 activities thereon. Accordingly, Defendants' own reports establish that Burrows took title to
27 overlying water rights in the amount of 512 AFY along with the 160 Acre Parcel. This fact
28 necessarily reduces the amount of Defendants' overlying water rights by 512 AFY, bringing the
amount of groundwater available for Defendants' use to somewhere between 1676 (assuming

1 historical use of 2188 AFY on average, as supported by the Tejon Pumping Records)⁶ and 1988
2 AFY (assuming the apparently inflated number of 2500 AFY is accurate).⁷

3 Defendants' records also provide information relevant to an appropriative use analysis.
4 Even assuming, *arguendo*, that Burrows does not have (or ceases to have) the full 512 AFY in
5 overlying water rights, he would still have appropriative rights based on the amount of groundwater
6 appropriated for beneficial use on Burrows' 160 Acre Parcel over the years. Based on the Tejon
7 Pumping Records, we know that the amount of that appropriation has been at least an average of
8 19.6% of the total amount pumped by Tejon for the years from 2002 through 2008, because
9 Centennial has represented that 19.6% of the groundwater pumped has been disbursed through
10 Pivot No. 3, which is on Burrows' land. Accordingly, independent of Burrows' overlying rights,
11 Burrows also has appropriative rights to at least 19.6% of the water pumped by Tejon's two wells,
12 based on the historical appropriation of that water for the use and benefit of the 160 Acre Parcel.

13 **B. The Harm To Plaintiffs From A Denial Of The Injunctive Relief Sought Would**
14 **Greatly Outweigh the Harm To Defendants from at Least Temporarily**
15 **Enjoining the Forward Progress of the Centennial Development**

16 **1. There is Substantial Authority for the Proposition that the Balance of**
17 **the Equities Favors the Party Which Has Not Had the Benefit of**
18 **Compliance With Public-Interest Requirements, Rather than the**
19 **Developer Who Stands to Lose Financially By an Injunction**

20 Plaintiffs do not deny that there may, in some cases, be some hardship involved in
21 suspending activity on a high-dollar and very complex project such as the Centennial
22 Development. Plaintiffs submit, however, that the degree of such hardship to the multi-million
23 dollar companies involved in a decades-long development process, pales by comparison to the
24 very real and significant damage that can be done to the "little guy" if the process of development
25 is not halted, when necessary to ensure that undue and often irrevocable harm is not inadvertently
26 or intentionally caused by the complex web of partnerships, LLC's and other impersonal entities
27 that make up a typical large-scale development.

28 For example, in *Transcentury, supra*, a residential community project -- called "Bodega

⁶2188-512=1676.

⁷2500-512=1988.

1 Harbour" - - much smaller than the Centennial Development was planned and generally approved
2 by Sonoma County. Thereafter, however, the State imposed additional restrictions on the project
3 by virtue of the California Coastal Zone Act of 1972. The Court of Appeal concluded, after
4 evaluating the balance of the equities, that issuance of an injunction halting construction of the
5 development was appropriate:

6 Respondents are losing money by reason of the halt in construction
7 but, if construction is resumed, appellants' rights to the amenities of
8 the coastal area will be irretrievably lost. [Citation.] As a practical
9 matter, once a project of the size and scope of Bodega Harbour is
10 completed, the land cannot be restored to its natural state.
11 Consequently, the relative hardships to the parties compel the
12 conclusion that construction must be halted pending final
13 determination of the controversy." (*Id.* at 843.)

14 Also instructive, is *Environmental Defense Fund, Inc. v. Coastside County Water District*
15 (1972) 27 Cal.App.3d 695. That case directly "decided that the courts may review the sufficiency
16 of an EIR. The trial court had dissolved a preliminary injunction and permitted further construction
17 of a water supply and storage system despite the fact that the EIR on file for the project was
18 nowhere near adequate. The Court of Appeal analyzed the question of whether a court had the
19 right or the duty to intervene to halt a project where an "EIR of some substance" had been filed
20 which was, in fact, "wholly inadequate." (*Id.* at 703.) It was pointed out that, in the absence of
21 preliminary intervention by a court:

22 A project could be built while the mandamus were pending or so far
23 constructed during the proceedings that review would be futile. (*Id.*)

24 Based on this concern, the *Environmental Defense Fund* court evaluated the adequacy
25 and the accuracy of the EIR in that case and actually ordered that a supplemental EIR be
26 submitted to the court for further scrutiny. In so doing, the court also strongly suggested that,
27 should the supplemental EIR continue to be inadequate or incorrect, then injunctive relief would be
28 appropriate and swiftly imposed.

29 Finally, *People ex rel. San Francisco Bay Conservation and Development Commission v.*
30 *Town of Emeryville* (1968) 69 Cal.2d 533, is somewhat analogous to the case at bar. There, the
31 California Supreme Court remanded the case with orders to issue an injunction enjoining the Town
32 of Emeryville from proceeding with a "diking and filling" project which, by the time the litigation was

1 filed, was prohibited by the San Francisco Bay Conservation and Development Commission
2 ("BCDC") and (it was ultimately determined) could not be "grandfathered" in as a project in
3 process prior to the prohibition. After recognizing its duty to "weigh the relative hardships of the
4 parties" in such a dispute, the Supreme Court concluded that an injunction was appropriate
5 prohibiting further work on the project until compliance with the BCDC's applicable requirements
6 and regulations was obtained.

7 **2. There is No Question That the Balance of the Equities in This Case**
8 **Favors Burrows**

9 Burrows has established, at the very least, a strong likelihood of a glaring inaccuracy in the
10 EIR/WSA currently being evaluated by the County. No good can come of allowing the
11 administrative entitlement process to continue based on demonstrably false information. The
12 serious errors in the Centennial Development EIR/WSA identified by Burrows need to be
13 corrected, and the County must take such corrections into consideration as the County and
14 Defendants work toward the possibility of obtaining County authorization for preparation of a final
15 Draft EIR for release to the public.

16 If Defendants dispute Burrows' analysis of the overlying and appropriative water rights he
17 obtained (and hence, Tejon lost) by virtue of the 2006 Agreement, then they should of course be
18 given a reasonable amount of time to prepare and present their opposing evidence and argument.
19 During the relatively short period of time between the issuance of a TRO and a hearing on an
20 order to show cause regarding a preliminary injunction,⁸ very little damage would be done to
21 Defendants if a "stand-still" order were issued with regard to the pending EIR/WSA. Moreover,
22 such an order would be economical in that it would preserve County resources which might be
23 better spent working on a project about which no serious questions have been raised, rather than
24 one which might well be premised on significantly inaccurate data.

25 _____
26 ⁸Although somewhat technical, the arguments made by Burrows are not complicated. If
27 defendants claim there is a demonstrable error in Burrows' presentation and argument, then it
28 should not be particularly difficult for them to articulate and demonstrate the nature and effect of
that error. Accordingly, it is not anticipated that a hearing on a preliminary injunction would need to
be scheduled too far in the future. Any temporary restraining order that issues, therefore, is likely
to be of relatively short duration.

1 Finally, enjoining further progress on Defendants' efforts to obtain authorization from the
2 County for preparation of the final Draft EIR until Burrows' allegations of misrepresentation and
3 inaccuracy are decided by the Court, will avoid the very real possibility of the County adopting the
4 false water supply availability information in the WSA and precluding Burrows from proceeding
5 with his own development because of allegedly inadequate water supply. In addition, it will avoid
6 dissemination of the final Draft EIR during the pendency of Burrows' challenge to the EIR/WSA.
7 Once that document is released to the public, the difficulty of undoing the damage that will be
8 caused by public misrepresentations about the nature and amount of Defendants' and Burrows'
9 respective water rights, will increase a hundredfold, especially in light of the language in the 2006
10 Agreement which purports to preclude Burrows from making any negative comment about the
11 Development during the public review stage – and at that point the damage will clearly be
12 irremediable.

13 **IV. CONCLUSION**

14 For all of the reasons set forth herein it is of the utmost importance that this Court
15 immediately halt the process of Defendants' attempting to obtain entitlements for the Centennial
16 Development utilizing the WSA. Burrows has raised very serious questions about the truth and
17 accuracy of statements made by Defendants about their water rights and those of Burrows. Until
18 those questions are answered, it will do no one good, and will only cause harm, to allow
19 Centennial's entitlement process to continue. It is therefore respectfully requested that this Court
20 execute the proposed Temporary Restraining Order submitted concurrently herewith, and set this
21 matter for an Order to Show Cause why an Preliminary Injunction should not issue extending the
22 restrictions set forth in the TRO throughout the pendency of this litigation.

23
24 Dated: February 10, 2010

HARRISON LAW AND MEDIATION

25
26 By: 

Susan L. Harrison, Esq.
Attorneys for Plaintiffs

DECLARATION OF BRUCE BURROWS

1
2 I, BRUCE BURROWS, declare and state:

3 1. I am a plaintiff in the above-referenced action. The facts set forth herein are of my
4 own personal knowledge and I could and would testify competently thereto.

5 2. I am, and for many years have been, the holder of fee title to two parcels of land
6 totaling approximately 416 acres, within the boundaries of the Centennial Development
7 ("Centennial Parcels").

8 3. For many years prior to 2005, I was also the possessor and holder of fee title to an
9 approximately 170 acre parcel of real property located in the County of Los Angeles, just outside
10 the northeast boundary of the planned Centennial Development, on which peach orchards were
11 (and still are) maintained (hereafter the "Orchard Parcel" or the "Burrows Parcel"). The orchards
12 have historically been (and still are being) irrigated using three wells on the Orchard Parcel that
13 extract groundwater underlying said property.

14 4. On January 25, 2006, I filed a lawsuit against Tejon in this Court under Case No.
15 MC017046 (the "2006 Litigation") and, in connection therewith, I promptly obtained a Temporary
16 Restraining Order enjoining Tejon from continued construction, maintenance and use of a large
17 reservoir or water bank facility ("Tejon Water Bank") illegally built adjacent to the Orchard Parcel.

18 5. Faced with the legal bar created by the TRO to use and maintenance of the Tejon
19 Water Bank, Tejon offered to settle the 2006 Litigation in order to obtain (among other things) a
20 stipulated dissolution of the TRO. In order to induce me to agree to dissolving the TRO, Tejon
21 promised me a number of things designed to allow me to develop my property in the area,
22 including my Centennial Parcels, by increasing the quantity and quality of my water rights.

23 Specifically, as part of the settlement that was ultimately agreed to ("2006
24 Settlement"), Tejon promised:

- 25 a. To "swap" the Orchard Parcel for a 160 acre parcel of land ("the "160 Acre
26 Parcel") contiguous to my largest Centennial Parcel;
- 27 b. To convey to me all of the water rights Tejon had in the 160 Acre Parcel;
- 28 c. To allow me to retain the water rights I had (and therefore still have) in the

Orchard Parcel;

- d. To grant me easements across Tejon Land in order to move water to parcels where I needed it in order to further my development plans; and,
- e. Not to interfere with my efforts to develop my various parcels of land in the area using, among other things, the water rights that were specifically granted and/or acknowledged as mine as part of the 2006 Settlement.

6. Since at least 2007, I have been actively pursuing development plans for my Centennial Parcels and my 160 Acre Parcel, in reliance upon the water supply available to me as a result of the 2006 Settlement.

7. When my Conceptual Land Use Plan was ready, I disclosed to Tejon/Centennial the essential elements of my planned development, including providing Centennial with a copy of the Conceptual Land Use Plan I intended to (and thereafter did) submit to the County of Los Angeles.

8. As stated in the concurrently-filed Verified Complaint, it is my understanding and belief that the Tejon/Centennial Environmental Impact Report and accompanying Water Supply Assessment ("EIR/WSA") does not accurately describe the water rights to which Tejon/Centennial is entitled and, specifically, claims that Tejon/Centennial is the owner of water rights which were specifically conveyed to me as part of the 2006 Settlement.

9. As a result of what I understand to be misrepresentations and inaccuracies in the EIR/WSA, I am concerned that any activity designed to advance the process of obtaining authorization by the County of Los Angeles ("County") for preparation of a final Draft EIR for the Centennial Development, pending resolution of the question of the veracity of the water rights representations made therein and in the WSA: will put the County at risk of authorizing dissemination of an EIR/WSA containing false information; also could put the County in the difficult position of having to carry the burden of a potentially lengthy and expensive investigation into the validity and accuracy of the representations in the EIR/WSA; and, will have the ultimate effect of providing, under the auspices of the County, a presumably accurate, yet in fact false, document to the public for their review and comment.

10. I further believe that irreparable harm would come from any further steps taken

1 toward the authorization by the County of preparation of a final Draft EIR for dissemination/release
 2 to the public for review, if said EIR/WSA contains demonstrably false information. I believe the
 3 public is entitled to rely upon the accuracy of information contained in an EIR/WSA and, based
 4 thereon, evaluate the effect of a proposed project and determine whether or not to support or
 5 oppose it. The final Draft EIR/WSA will not contain accurate information if the preliminary drafting
 6 process in which the County and Defendants are now engaged is permitted to proceed without
 7 verification and correction of the facts set forth in the WSA. If the final Draft EIR/WSA does not
 8 contain accurate information, then the public review process is irreparably corrupted and serves
 9 no useful purpose.

10 11. I am most concerned, and will be most damaged by the fact that if the County
 11 authorizes the preparation of the final Draft EIR/WSA for public circulation containing inaccurate
 12 information regarding water rights, such authorization will preclude me from developing my own
 13 parcels and, from asserting and protecting my own water rights as a result of the cooperation
 14 language in the 2006 Settlement.

15 I declare under penalty of perjury under the laws of the State of California that the foregoing
 16 is true and correct.

17 Executed this 10th day of February, 2010, at Santa Clarita, California.

18 
 19 _____
 Bruce Burrows

DECLARATION OF SUSAN L. HARRISON

I, SUSAN L. HARRISON, do declare and state as follows:

1. I am an attorney at law duly licensed to practice before all Courts located in the State of California. I am counsel for Plaintiffs, Bruce Burrows, and 300 A 40 H, LLC, in this action, and make this Declaration in support of Plaintiffs' *Ex Parte* Application for a Temporary Restraining Order and Order to Show Cause re Preliminary Injunction. Except as otherwise indicated, I have personal, first hand knowledge of the facts set forth herein and, if called upon to do so, could and would testify competently thereto.

2. I am informed and believe that Counsel for Defendants Tejon Ranchcorp, Tejon Ranch Company, and Centennial Founders, LLC, is Teri A. Bjorn, Esq. Ms. Bjorn's address is P.O. Box 1000, 4436 Lebec Road, Lebec, CA 93243, which is the same contact address that is listed with the California Secretary of State for Tejon Ranchcorp, Tejon Ranch Company, and Centennial Founders, LLC.

3. On February 10, 2010, at approximately 9:55 a.m., I caused a letter to be faxed to Ms. Bjorn and also to Kathleen J. Perkinson, who is the Senior Vice President of Natural Resources and Stewardship of Tejon Ranch Company, and whose address is also P.O. Box 1000, 4436 Lebec Road, Lebec, CA 93243. Said letter advised of the nature of the instant *ex parte* Application, indicating that it would be made at 8:30 a.m. on February 11, 2010 at 8:30 a.m. in a department yet to be assigned at the Michael D. Antonovich Antelope Valley Courthouse, located at 42011 4th St. West, Lancaster, CA 93534. Attached hereto as Exhibit 1 and correct copy of said letter.

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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

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 November 2, 2010, I served the within
7 **REQUEST FOR JUDICIAL NOTICE AND DECLARATION OF BOB H. JOYCE IN**
8 **SUPPORT OF REPLY TO PLAINTIFFS' OBJECTION TO NOTICE OF RELATED CASE**
9 **FILED BY TEJON RANCHCORP**

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

13 Los Angeles County Superior Court
14 111 North Hill Street
15 Los Angeles, CA 90012
16 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

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

21 (STATE) I declare under penalty of perjury under the laws of the State of
22 California that the above is true and correct, and that the foregoing was executed on November 2,
2010, in Bakersfield, California.

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24 REQUETTA HANSEN
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