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Bob H. Joyce, (SBN 84607)
Andrew Sheffield (SBN 220735)
LAW OFFICES OF
LEBEAU • THELEN, LLP
5001 East Commercenter Drive, Suite 300
Post Office Box 12092
Bakersfield, California 93389-2092
(661) 325-8962; Fax (661) 325-1127

Attorneys for DIAMOND FARMING COMPANY,
a California corporation

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

Coordination Proceeding Special Title
(Rule 1550 (b))

ANTELOPE VALLEY GROUNDWATER
CASES

Included actions:

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

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

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

Judicial Council Coordination No. 4408

Case No.: 1-05-CV-049053

**SEPARATE STATEMENT IN
SUPPORT OF MOTION TO COMPEL
LOS ANGELES WATERWORKS
DISTRICT NO. 40 AND ROSAMOND
COMMUNITY SERVICES DISTRICT
TO PROVIDE FURTHER RESPONSES
TO REQUEST FOR PRODUCTION OF
DOCUMENTS [SET ONE]; AND FOR
MONETARY SANCTIONS**

Date: October 12, 2007
Time: 9:00 a.m.
Dept.: 1

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1 Pursuant to Rule 3.1020 of the California Rules of Court, plaintiff submits the following Separate
2 Statement to Request for Production of Documents [Set One] for which plaintiff seeks a further
3 response. The following are the requests, verbatim, the response received, verbatim, and the reasons
4 why further response should be compelled.

5 **DEFINITIONS**

6 Words in **BOLDFACE CAPITALS** in this production request are defined as follows:

7 (a) **YOU** includes you, the responding party, your agents, your employees, your consultants,
8 their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting
9 on your behalf.

10 (b) **PERSON** includes a natural person, firm, association, organization, partnership, business
11 trust, limited liability company, corporation, or public entity.

12 (c) **BASIN** means the area located within the jurisdictional boundary of the Antelope
13 Valley Groundwater Cases as defined by the Revised Order After Hearing on Jurisdictional Boundary
14 dated March 12, 2007.

15 (d) **WRITING** includes the original or a copy of handwriting, typewriting, printing,
16 photostating, photographing, and every other means of recording upon any tangible thing, any form of
17 communication or representation, including letters, words, pictures, sounds, and symbols, or
18 combinations thereof. (Evid. Code, § 250.)

19 **ITEMS TO BE PRODUCED**

20 **REQUEST NO. 1:**

21 Produce each **WRITING** which **YOU** contend supports your contention that all landowners had
22 actual notice of your adverse claim of right.

23 **Defendants' Response**

24 Objection. This request is premature, burdensome and oppressive. This request seeks
25 information concerning class members and the court has not yet completed its class certification process.

26 No class representative has yet been approved by the court.

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1 **Legal Authority in Support of Further Response:**

2 Defendants have the burden of justifying their objections or their failure to fully answer the
3 request. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255; *Coy v. Superior Court* (1962)
4 58 Cal.2d 210, 220-221.)

5 “At the hearing of such a motion the burden is on the party interrogated, in this case the
6 defendants, ‘of showing facts from which the trial court might find that the
7 interrogatories were interposed for improper purposes.’ [Citation]. In short, the burden
is on defendants to show that their objections are valid.” (*Columbia Broadcasting
System, Inc. v. Superior Court of Los Angeles County* (1968) 263 Cal.App.2d 12, 18.)

8 Defendants will be unable to satisfy this burden because the objections asserted to this request have no
9 merit and are otherwise too general to preclude disclosure of the requested information.

10 **1. Premature**

11 Code of Civil Procedure section 2031.020 governs the time in which a Demand for Inspection
12 may be propounded.

13 “(a) A defendant may make a demand for inspection without leave of
14 court at any time.”

15 “(b) A plaintiff may make a demand for inspection without leave of court
16 at any time that is 10 days after the service of the summons on, or in
17 unlawful detainer actions five days after service of the summons on or
appearance by, the party to whom the demand is directed, whichever
occurs first.”

18 Code of Civil Procedure section 2019.020 provides that there is no required sequence of
19 discovery. In general, fairness demands adherence to the statutory procedures, since they were designed
20 to place the parties ““on roughly equal footing.”” (*Kalaba v. Gray* (2002) 95 Cal.App.4th 1416, 1422.)
21 Whether as a plaintiff or a defendant, the discovery propounded by Diamond Farming complied with
22 the time requirements set forth in Code of Civil Procedure. Los Angeles County Waterworks District
23 No. 40 and Rosamond Community Services District have no legal basis or authority to assert this
24 objection which is designed simply to avoid providing a response, thereby keeping the landowners in
25 the dark as to their vaguely pled claims of prescription.

26 The premature claim also seeks to compromise the purpose of pretrial discovery which is to
27 obtain all of the facts relative to a claim or defense. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 782)

1 “[T]o assist the parties and the trier of fact in ascertaining the truth; to encourage settlement by educating
2 the parties as to the strengths of their claims and defenses; to expedite and facilitate preparation and trial;
3 to prevent delay; and to safeguard against surprise. [Citations.]” (*Britts v. Superior Court* (2006) 145
4 Cal.App.4th 1112, 1128.) A party responding to discovery requests may be required to state whether
5 or not he or she makes a particular contention, and to disclose the evidentiary facts underlying each such
6 contention, as well as each allegation of his Complaint or affirmative defense. (*Burke v. Superior Court*
7 (1969) 71 Cal.2d 276, 281.) The information sought by way of this request will force Los Angeles
8 County Waterworks District No. 40 and Rosamond Community Services District to provide information
9 about their claim of prescription. This is information that they will have to provide in any event, prior
10 to any resolution of their claim of prescription.

11 **2. Burdensome**

12 The assertion of this objection is insufficient to justify Los Angeles County Waterworks District
13 No. 40's and Rosamond Community Services District's refusal to respond to Request for Production of
14 Documents [Set One] because these two entities cannot show that the burden of providing a response
15 will result in injustice.

16 “[S]ome burden is inherent in all demands for discovery. The objection of burden is valid
17 only when that burden is demonstrated to result in injustice. Hence, the trial court is not
18 empowered to sustain an objection in toto, when the same is predicated upon burden,
unless such is the only method of rendering substantial justice.” (*W. Pico Furniture Co.
v. Superior Court* (1961) 56 Cal.2d 407, 418.)

19 In the present action, Los Angeles County Waterworks District No. 40 and Rosamond
20 Community Services District have alleged prescriptive claims against more than 100,000 landowners
21 whose property overlies the Antelope Valley Groundwater Basin. Notice is a key element of prescription
22 that must be proven by the Water Purveyors if they are to succeed in their claim. Diamond's requests
23 are directed at this element. The attempt to hide behind the enormity of their own allegation under a
24 claim of burden is improper and cannot be sustained.

25 The fact alone that a response to an interrogatory may be expensive and burdensome does
26 not justify a refusal to answer. (*Alpine Mut. Water Co. v. Superior Court of Ventura
County* (1968) 259 Cal.App.2d 45, 55 citing *West Pico Furniture Co. v. Superior Court*
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3. Oppression

“[T]o support an objection of oppression there must be some showing either of an intent to create an unreasonable burden or that the ultimate effect of the burden is incommensurate with the result sought.” (*West Pico Furniture Co. v. Superior Court of Los Angeles County* (1961) 56 Cal.2d 407, 417.)

The propounding of Production of Documents [Set One] was not served with any ill intent. Contrary to Los Angeles County Waterworks District No. 40's and Rosamond Community Services District's assertions, the requests are not unreasonable as each of the nine questions posed relate directly to the allegations raised by Los Angeles County Waterworks District No. 40 and Rosamond Community Services District through their various Complaints, Cross-Complaints and Answers. The burden on providing a response through discovery is not greater than the burden that must be born by these two entities at trial. If they are able to meet this burden, they should be compelled to do so now when such disclosure will help foster settlement and resolution of this matter without the necessity of a trial. As stated above, these reasons are the very purpose of pre-trial discovery. The information sought must be produced before trial and the court is not empowered to deny Diamond's discovery rights under this unsubstantiated claim of oppression.

“While it is true that the trial court has a broad discretion in passing on an objection that there has been harassment and oppression [Citation], such discretion is not absolute. As was said in *Cembrook*, such discretion does not authorize the trial court "to make blanket orders barring disclosure in toto when the factual situation indicates that a just and equitable order could be made that would authorize disclosure with limitations.” (*Coy v. Superior Court of Contra Costa County* (1962) 58 Cal.2d 210, 221-222.)

4. Objections Based on Class Certification

Los Angeles County Waterworks District No. 40 and Rosamond Community Services District attempt to limit their obligation to respond on the grounds that class certification has not yet been completed. This objection holds no merit as the right to discovery prior to class certification has been recognized by the Appellate Court in *Louis E. Carabini, et al. vs. The Superior Court of Orange County* (1994) 26 Cal.App.4th 239, discovery directed at class certification is both appropriate and permitted in order to ensure a fair hearing.

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1 “Appellate courts have recognized the importance of such orders by creating an
2 exception to the rule denying appellate review. ‘Whether the order is directly appealable
3 or we treat this as a petition for writ of mandate, the issue of the class certification order
4 is and should be before us.’ (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 871, fn. 9
5 [196 Cal.Rptr. 69]; see also 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 85, p. 106.)
6 Due process requires an order with such significant impact on the viability of a case not
7 be made without a full opportunity to brief the issues and present evidence. This is true
8 whether the issue is presented in a motion or by way of an order to show case issued by
9 the court. In addition, each party should have an opportunity to conduct discovery on
10 class action issues before its documents in support of or in opposition to the motion must
11 be filed.” *Carabini, supra*, pp. 243-244.

12 Additionally, the request in question is not posed to a class of water purveyors, nor does it seek
13 information about water purveyor class members. A plain reading of the request evidences that it was
14 directed to the specific public water suppliers concerning the specific elements of each entity’s specific
15 claim. If, and to the extent, the request can be characterized as seeking information about some future
16 undefined class, a response is still warranted.

17 “Absent some specific showing by the objecting party to justify a contrary ruling, such
18 as privilege, a representative plaintiff can be compelled to supply his adversary with the
19 information about his class which is in his possession or readily available to him and
20 which is not equally available to an adversary. A representative plaintiff cannot be
21 compelled to supply information concerning members of his class or their interests in the
22 action which is neither in his possession nor control, unless the interrogatory is directly
23 related to his own standing to maintain the action, to the existence of an ascertainable
24 class, or to the existence of that community of interest which is required to sustain a class
25 action. [Citation] A representative cannot be compelled to respond to interrogatories
26 about any class member's separate claim as distinguished from the common claim of the
27 class which may be tried with or as a part of the class action.” [Emphasis Added] (*Alpine
28 Mut. Water Co. v. Superior Court of Ventura County* (1968) 259 Cal.App.2d 45, 54-55.)

19 Based on the foregoing, Los Angeles County Waterworks District No. 40's and Rosamond
20 Community Services District’s objections have no merit and have been interposed to these requests for
21 the sole purpose of avoiding the disclosure of information that is fatal to their claim of prescription. In
22 order to facilitate settlement and a timely resolution of this matter, Los Angeles County Waterworks
23 District No. 40 and Rosamond Community Services District must be ordered to respond to Diamond
24 Farming’s Production of Documents [Set One].

25 **REQUEST NO. 2:**

26 Produce each WRITING which YOU contend supports your contention that any landowner had
27 actual notice of your adverse claim of right.

1 **Defendants' Response**

2 Objection. This request is premature, burdensome and oppressive. This request seeks
3 information concerning class members and the court has not yet completed its class certification process.
4 No class representative has yet been approved by the court.

5 **Legal Authority in Support of Further Response:**

6 Defendants have the burden of justifying their objections or their failure to fully respond to the
7 requests. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255; *Coy v. Superior Court*
8 (1962) 58 Cal.2d 210, 220-221.)

9 “At the hearing of such a motion the burden is on the party interrogated, in this case the
10 defendants, ‘of showing facts from which the trial court might find that the
11 interrogatories were interposed for improper purposes.’ [Citation]. In short, the burden
is on defendants to show that their objections are valid.” (*Columbia Broadcasting
System, Inc. v. Superior Court of Los Angeles County* (1968) 263 Cal.App.2d 12, 18.)

12 Defendants will be unable to satisfy this burden because the objections asserted to this request have no
13 merit and are otherwise too general to preclude disclosure of the requested information.

14 **1. Premature**

15 Code of Civil Procedure section 2031.020 governs the time in which a Demand for Inspection
16 may be propounded.

17 “(a) A defendant may make a demand for inspection without leave of
18 court at any time.”

19 “(b) A plaintiff may make a demand for inspection without leave of court
20 at any time that is 10 days after the service of the summons on, or in
21 unlawful detainer actions five days after service of the summons on or
appearance by, the party to whom the demand is directed, whichever
occurs first.”

22 Code of Civil Procedure section 2019.020 provides that there is no required sequence of
23 discovery. In general, fairness demands adherence to the statutory procedures, since they were designed
24 to place the parties ““on roughly equal footing.”” (*Kalaba v. Gray* (2002) 95 Cal.App.4th 1416, 1422.)

25 Whether as a plaintiff or a defendant, the discovery propounded by Diamond Farming complied with
26 the time requirements set forth in Code of Civil Procedure. Los Angeles County Waterworks District
27 No. 40 and Rosamond Community Services District have no legal basis or authority to assert this
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1 objection which is designed simply to avoid providing a response, thereby keeping the landowners in
2 the dark as to their vaguely pled claims of prescription.

3 The premature claim also seeks to compromise the purpose of pretrial discovery which is to
4 obtain all of the facts relative to a claim or defense. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 782)
5 “[T]o assist the parties and the trier of fact in ascertaining the truth; to encourage settlement by educating
6 the parties as to the strengths of their claims and defenses; to expedite and facilitate preparation and trial;
7 to prevent delay; and to safeguard against surprise. [Citations.]” (*Britts v. Superior Court* (2006) 145
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9 or not he or she makes a particular contention, and to disclose the evidentiary facts underlying each such
10 contention, as well as each allegation of his Complaint or affirmative defense. (*Burke v. Superior Court*
11 (1969) 71 Cal.2d 276, 281.) The information sought by way of this request will force Los Angeles
12 County Waterworks District No. 40 and Rosamond Community Services District to provide information
13 about their claim of prescription. This is information that they will have to provide in any event, prior
14 to any resolution of their claim of prescription.

15 **2. Burdensome**

16 The assertion of this objection is insufficient to justify Los Angeles County Waterworks District
17 No. 40's and Rosamond Community Services District's refusal to respond to Request for Production of
18 Documents [Set One] because these two entities cannot show that the burden of providing a response
19 will result in injustice.

20 “[S]ome burden is inherent in all demands for discovery. The objection of burden is valid
21 only when that burden is demonstrated to result in injustice. Hence, the trial court is not
22 empowered to sustain an objection in toto, when the same is predicated upon burden,
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v. Superior Court (1961) 56 Cal.2d 407, 418.)

23 In the present action, Los Angeles County Waterworks District No. 40 and Rosamond
24 Community Services District have alleged prescriptive claims against more than 100,000 landowners
25 whose property overlies the Antelope Valley Groundwater Basin. Notice is a key element of prescription
26 that must be proven by the Water Purveyors if they are to succeed in their claim. Diamond's requests

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1 are directed at this element. The attempt to hide behind the enormity of their own allegation under a
2 claim of burden is improper and cannot be sustained.

3 The fact alone that the response to an Inspection Demand may be expensive and
4 burdensome does not justify a refusal to answer. (*Alpine Mut. Water Co. v. Superior
Court of Ventura County* (1968) 259 Cal.App.2d 45, 55 citing *West Pico Furniture Co.
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8 to create an unreasonable burden or that the ultimate effect of the burden is
9 incommensurate with the result sought.” (*West Pico Furniture Co. v. Superior Court of
Los Angeles County* (1961) 56 Cal.2d 407, 417.)

10 The propounding of Production of Documents [Set One] was not served with any ill intent.
11 Contrary to Los Angeles County Waterworks District No. 40's and Rosamond Community Services
12 District's assertions, the requests are not unreasonable as each of the nine questions posed relate directly
13 to the allegations raised by Los Angeles County Waterworks District No. 40 and Rosamond Community
14 Services District through their various Complaints, Cross-Complaints and Answers. The burden on
15 providing a response through discovery is not greater than the burden that must be born by these two
16 entities at trial. If they are able to meet this burden, they should be compelled to do so now when such
17 disclosure will help foster settlement and resolution of this matter without the necessity of a trial. As
18 stated above, these reasons are the very purpose of pre-trial discovery. The information sought must be
19 produced before trial and the court is not empowered to deny Diamond's discovery rights under this
20 unsubstantiated claim of oppression.

21 “While it is true that the trial court has a broad discretion in passing on an objection that
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v. Superior Court of Contra Costa County* (1962) 58 Cal.2d 210, 221-222.)

25 **4. Objections Based on Class Certification**

26 Los Angeles County Waterworks District No. 40 and Rosamond Community Services District
27 attempt to limit their obligation to respond on the grounds that class certification has not yet been
28

1 completed. This objection holds no merit as the right to discovery prior to class certification has been
2 recognized by the Appellate Court in *Louis E. Carabini, et al. vs. The Superior Court of Orange County*
3 (1994) 26 Cal.App.4th 239, discovery directed at class certification is both appropriate and permitted
4 in order to ensure a fair hearing.

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10 Due process requires an order with such significant impact on the viability of a case not
11 be made without a full opportunity to brief the issues and present evidence. This is true
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13 the court. In addition, each party should have an opportunity to conduct discovery on
14 class action issues before its documents in support of or in opposition to the motion must
15 be filed.” *Carabini, supra*, pp. 243-244.

11 Additionally, the request in question is not posed to a class of water purveyors, nor does it seek
12 information about water purveyor class members. A plain reading of the request evidences that it was
13 directed to the specific public water suppliers concerning the specific elements of each entity’s specific
14 claim. If, and to the extent, the request can be characterized as seeking information about some future
15 undefined class, a response is still warranted.

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17 as privilege, a representative plaintiff can be compelled to supply his adversary with the
18 information about his class which is in his possession or readily available to him and
19 which is not equally available to an adversary. A representative plaintiff cannot be
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27 *Mut. Water Co. v. Superior Court of Ventura County* (1968) 259 Cal.App.2d 45, 54-55.)

23 Based on the foregoing, Los Angeles County Waterworks District No. 40's and Rosamond
24 Community Services District’s objections have no merit and have been interposed to these requests for
25 the sole purpose of avoiding the disclosure of information that is fatal to their claim of prescription. In
26 order to facilitate settlement and a timely resolution of this matter, Los Angeles County Waterworks

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1 District No. 40 and Rosamond Community Services District must be ordered to respond to Diamond
2 Farming's Production of Documents [Set One].

3 **REQUEST NO. 3:**

4 Produce each WRITING which YOU contend supports your contention that all landowners had
5 constructive notice of your adverse claim of right.

6 **Defendants' Response**

7 Objection. This request is premature, burdensome and oppressive. This request seeks
8 information concerning class members and the court has not yet completed its class certification process.
9 No class representative has yet been approved by the court.

10 **Legal Authority in Support of Further Response:**

11 Defendants have the burden of justifying their objections or their failure to fully respond to the
12 Request for Production. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255; *Coy v.*
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22 entities at trial. If they are able to meet this burden, they should be compelled to do so now when such
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24 stated above, these reasons are the very purpose of pre-trial discovery. The information sought must be
25 produced before trial and the court is not empowered to deny Diamond’s discovery rights under this
26 unsubstantiated claim of oppression.

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5 Los Angeles County Waterworks District No. 40 and Rosamond Community Services District
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11 "Appellate courts have recognized the importance of such orders by creating an
12 exception to the rule denying appellate review. 'Whether the order is directly appealable
13 or we treat this as a petition for writ of mandate, the issue of the class certification order
14 is and should be before us.' (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 871, fn. 9
15 [196 Cal.Rptr. 69]; see also 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 85, p. 106.)
16 Due process requires an order with such significant impact on the viability of a case not
17 be made without a full opportunity to brief the issues and present evidence. This is true
18 whether the issue is presented in a motion or by way of an order to show case issued by
19 the court. In addition, each party should have an opportunity to conduct discovery on
20 class action issues before its documents in support of or in opposition to the motion must
21 be filed." *Carabini, supra*, pp. 243-244.

22 Additionally, the request in question is not posed to a class of water purveyors, nor does it seek
23 information about water purveyor class members. A plain reading of the request evidences that it was
24 directed to the specific public water suppliers concerning the specific elements of each entity's specific
25 claim. If, and to the extent, the request can be characterized as seeking information about some future
26 undefined class, a response is still warranted.

27 "Absent some specific showing by the objecting party to justify a contrary ruling, such
28 as privilege, a representative plaintiff can be compelled to supply his adversary with the
29 information about his class which is in his possession or readily available to him and
30 which is not equally available to an adversary. A representative plaintiff cannot be
31 compelled to supply information concerning members of his class or their interests in the
32 action which is neither in his possession nor control, unless the interrogatory is directly
33 related to his own standing to maintain the action, to the existence of an ascertainable
34 class, or to the existence of that community of interest which is required to sustain a class
35 action. [Citation] A representative cannot be compelled to respond to interrogatories
36 about any class member's separate claim as distinguished from the common claim of the

1 class which may be tried with or as a part of the class action.” [Emphasis Added] (*Alpine*
2 *Mut. Water Co. v. Superior Court of Ventura County* (1968) 259 Cal.App.2d 45, 54-55.)

3 Based on the foregoing, Los Angeles County Waterworks District No. 40's and Rosamond
4 Community Services District's objections have no merit and have been interposed to these requests for
5 the sole purpose of avoiding the disclosure of information that is fatal to their claim of prescription. In
6 order to facilitate settlement and a timely resolution of this matter, Los Angeles County Waterworks
7 District No. 40 and Rosamond Community Services District must be ordered to respond to Diamond
8 Farming's Production of Documents [Set One].

9 **REQUEST NO. 4:**

10 Produce each WRITING which YOU contend supports your contention that any landowner had
11 constructive notice of your adverse claim of right.

12 **Defendants' Response**

13 Objection. This request is premature, burdensome and oppressive. This request seeks
14 information concerning class members and the court has not yet completed its class certification process.
15 No class representative has yet been approved by the court.

16 **Legal Authority in Support of Further Response:**

17 Defendants have the burden of justifying their objections or their failure to fully respond to the
18 Request for Production. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255; *Coy v.*
19 *Superior Court* (1962) 58 Cal.2d 210, 220-221.)

20 “At the hearing of such a motion the burden is on the party interrogated, in this case the
21 defendants, ‘of showing facts from which the trial court might find that the
22 interrogatories were interposed for improper purposes.’ [Citation]. In short, the burden
is on defendants to show that their objections are valid.” (*Columbia Broadcasting*
System, Inc. v. Superior Court of Los Angeles County (1968) 263 Cal.App.2d 12, 18.)

23 Defendants will be unable to satisfy this burden because the objections asserted to this request have no
24 merit and are otherwise too general to preclude disclosure of the requested information.

25 **1. Premature**

26 Code of Civil Procedure section 2031.020 governs the time in which a Demand for Inspection
27 may be propounded.

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“(a) A defendant may make a demand for inspection without leave of court at any time.”

“(b) A plaintiff may make a demand for inspection without leave of court at any time that is 10 days after the service of the summons on, or in unlawful detainer actions five days after service of the summons on or appearance by, the party to whom the demand is directed, whichever occurs first.”

Code of Civil Procedure section 2019.020 provides that there is no required sequence of discovery. In general, fairness demands adherence to the statutory procedures, since they were designed to place the parties ““on roughly equal footing.”” (*Kalaba v. Gray* (2002) 95 Cal.App.4th 1416, 1422.) Whether as a plaintiff or a defendant, the discovery propounded by Diamond Farming complied with the time requirements set forth in Code of Civil Procedure. Los Angeles County Waterworks District No. 40 and Rosamond Community Services District have no legal basis or authority to assert this objection which is designed simply to avoid providing a response, thereby keeping the landowners in the dark as to their vaguely pled claims of prescription.

The premature claim also seeks to compromise the purpose of pretrial discovery which is to obtain all of the facts relative to a claim or defense. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 782) “[T]o assist the parties and the trier of fact in ascertaining the truth; to encourage settlement by educating the parties as to the strengths of their claims and defenses; to expedite and facilitate preparation and trial; to prevent delay; and to safeguard against surprise. [Citations.]” (*Britts v. Superior Court* (2006) 145 Cal.App.4th 1112, 1128.) A party responding to discovery requests may be required to state whether or not he or she makes a particular contention, and to disclose the evidentiary facts underlying each such contention, as well as each allegation of his Complaint or affirmative defense. (*Burke v. Superior Court* (1969) 71 Cal.2d 276, 281.) The information sought by way of this request will force Los Angeles County Waterworks District No. 40 and Rosamond Community Services District to provide information about their claim of prescription. This is information that they will have to provide in any event, prior to any resolution of their claim of prescription.

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1 **2. Burdensome**

2 The assertion of this objection is insufficient to justify Los Angeles County Waterworks District
3 No. 40's and Rosamond Community Services District's refusal to respond to Request for Production of
4 Documents [Set One] because these two entities cannot show that the burden of providing a response
5 will result in injustice.

6 “[S]ome burden is inherent in all demands for discovery. The objection of burden is valid
7 only when that burden is demonstrated to result in injustice. Hence, the trial court is not
8 empowered to sustain an objection in toto, when the same is predicated upon burden,
9 unless such is the only method of rendering substantial justice.” (*W. Pico Furniture Co.*
10 *v. Superior Court* (1961) 56 Cal.2d 407, 418.)

11 In the present action, Los Angeles County Waterworks District No. 40 and Rosamond
12 Community Services District have alleged prescriptive claims against more than 100,000 landowners
13 whose property overlies the Antelope Valley Groundwater Basin. Notice is a key element of prescription
14 that must be proven by the Water Purveyors if they are to succeed in their claim. Diamond's requests
15 are directed at this element. The attempt to hide behind the enormity of their own allegation under a
16 claim of burden is improper and cannot be sustained.

17 The fact alone that a response to an interrogatory may be expensive and burdensome does
18 not justify a refusal to answer. (*Alpine Mut. Water Co. v. Superior Court of Ventura*
19 *County* (1968) 259 Cal.App.2d 45, 55 citing *West Pico Furniture Co. v. Superior Court*
20 (1961) 56 Cal.2d 407, 417-418.)

21 **3. Oppression**

22 “[T]o support an objection of oppression there must be some showing either of an intent
23 to create an unreasonable burden or that the ultimate effect of the burden is
24 incommensurate with the result sought.” (*West Pico Furniture Co. v. Superior Court of*
25 *Los Angeles County* (1961) 56 Cal.2d 407, 417.)

26 The propounding of Production of Documents [Set One] was not served with any ill intent.
27 Contrary to Los Angeles County Waterworks District No. 40's and Rosamond Community Services
28 District's assertions, the requests are not unreasonable as each of the nine questions posed relate directly
to the allegations raised by Los Angeles County Waterworks District No. 40 and Rosamond Community
Services District through their various Complaints, Cross-Complaints and Answers. The burden on
providing a response through discovery is not greater than the burden that must be born by these two

1 entities at trial. If they are able to meet this burden, they should be compelled to do so now when such
2 disclosure will help foster settlement and resolution of this matter without the necessity of a trial. As
3 stated above, these reasons are the very purpose of pre-trial discovery. The information sought must be
4 produced before trial and the court is not empowered to deny Diamond’s discovery rights under this
5 unsubstantiated claim of oppression.

6 “While it is true that the trial court has a broad discretion in passing on an objection that
7 there has been harassment and oppression [Citation], such discretion is not absolute. As
8 was said in *Cembrook*, such discretion does not authorize the trial court "to make blanket
9 orders barring disclosure in toto when the factual situation indicates that a just and
equitable order could be made that would authorize disclosure with limitations.” (*Coy*
v. Superior Court of Contra Costa County (1962) 58 Cal.2d 210, 221-222.)

10 **4. Objections Based on Class Certification**

11 Los Angeles County Waterworks District No. 40 and Rosamond Community Services District
12 attempt to limit their obligation to respond on the grounds that class certification has not yet been
13 completed. This objection holds no merit as the right to discovery prior to class certification has been
14 recognized by the Appellate Court in *Louis E. Carabini, et al. vs. The Superior Court of Orange County*
15 (1994) 26 Cal.App.4th 239, discovery directed at class certification is both appropriate and permitted
16 in order to ensure a fair hearing.

17 “Appellate courts have recognized the importance of such orders by creating an
18 exception to the rule denying appellate review. ‘Whether the order is directly appealable
19 or we treat this as a petition for writ of mandate, the issue of the class certification order
20 is and should be before us.’ (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 871, fn. 9
21 [196 Cal.Rptr. 69]; see also 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 85, p. 106.)
22 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.

23 Additionally, the request in question is not posed to a class of water purveyors, nor does it seek
24 information about water purveyor class members. A plain reading of the request evidences that it was
25 directed to the specific public water suppliers concerning the specific elements of each entity’s specific
26 claim. If, and to the extent, the request can be characterized as seeking information about some future
27 undefined class, a response is still warranted.

1 “Absent some specific showing by the objecting party to justify a contrary ruling, such
2 as privilege, a representative plaintiff can be compelled to supply his adversary with the
3 information about his class which is in his possession or readily available to him and
4 which is not equally available to an adversary. A representative plaintiff cannot be
5 compelled to supply information concerning members of his class or their interests in the
6 action which is neither in his possession nor control, unless the interrogatory is directly
7 related to his own standing to maintain the action, to the existence of an ascertainable
8 class, or to the existence of that community of interest which is required to sustain a class
9 action. [Citation] A representative cannot be compelled to respond to interrogatories
10 about any class member's separate claim as distinguished from the common claim of the
11 class which may be tried with or as a part of the class action.” [Emphasis Added] (*Alpine
12 Mut. Water Co. v. Superior Court of Ventura County* (1968) 259 Cal.App.2d 45, 54-55.)

13 Based on the foregoing, Los Angeles County Waterworks District No. 40's and Rosamond
14 Community Services District's objections have no merit and have been interposed to these requests for
15 the sole purpose of avoiding the disclosure of information that is fatal to their claim of prescription. In
16 order to facilitate settlement and a timely resolution of this matter, Los Angeles County Waterworks
17 District No. 40 and Rosamond Community Services District must be ordered to respond to Diamond
18 Farming's Production of Documents [Set One].

19 **REQUEST NO. 5:**

20 Produce each WRITING which YOU contend supports your contention that the right of any
21 property owner to pump water from the BASIN is subordinate to your prescriptive right.

22 **Defendants' Response**

23 Objection. This request is premature, burdensome and oppressive. This request seeks
24 information concerning class members and the court has not yet completed its class certification process.
25 No class representative has yet been approved by the court.

26 **Legal Authority in Support of Further Response:**

27 Defendants have the burden of justifying their objections or their failure to fully respond to the
28 Request for Production. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255; *Coy v.
Superior Court* (1962) 58 Cal.2d 210, 220-221.)

“At the hearing of such a motion the burden is on the party interrogated, in this case the
defendants, ‘of showing facts from which the trial court might find that the
interrogatories were interposed for improper purposes.’ [Citation]. In short, the burden
is on defendants to show that their objections are valid.” (*Columbia Broadcasting
System, Inc. v. Superior Court of Los Angeles County* (1968) 263 Cal.App.2d 12, 18.)

1 Defendants will be unable to satisfy this burden because the objections asserted in response to this
2 Request for Production have no merit and are otherwise too general to preclude disclosure of the
3 requested information.

4 **1. Premature**

5 Code of Civil Procedure section 2031.020 governs the time in which a Demand for Inspection
6 may be propounded.

7 “(a) A defendant may make a demand for inspection without leave of
8 court at any time.”

9 “(b) A plaintiff may make a demand for inspection without leave of court
10 at any time that is 10 days after the service of the summons on, or in
11 unlawful detainer actions five days after service of the summons on or
appearance by, the party to whom the demand is directed, whichever
occurs first.”

12 Code of Civil Procedure section 2019.020 provides that there is no required sequence of
13 discovery. In general, fairness demands adherence to the statutory procedures, since they were designed
14 to place the parties ““on roughly equal footing.”” (*Kalaba v. Gray* (2002) 95 Cal.App.4th 1416, 1422.)
15 Whether as a plaintiff or a defendant, the discovery propounded by Diamond Farming complied with
16 the time requirements set forth in Code of Civil Procedure. Los Angeles County Waterworks District
17 No. 40 and Rosamond Community Services District have no legal basis or authority to assert this
18 objection which is designed simply to avoid providing a response, thereby keeping the landowners in
19 the dark as to their vaguely pled claims of prescription.

20 The premature claim also seeks to compromise the purpose of pretrial discovery which is to
21 obtain all of the facts relative to a claim or defense. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 782)
22 “[T]o assist the parties and the trier of fact in ascertaining the truth; to encourage settlement by educating
23 the parties as to the strengths of their claims and defenses; to expedite and facilitate preparation and trial;
24 to prevent delay; and to safeguard against surprise. [Citations.]” (*Britts v. Superior Court* (2006) 145
25 Cal.App.4th 1112, 1128.) A party responding to discovery requests may be required to state whether
26 or not he or she makes a particular contention, and to disclose the evidentiary facts underlying each such
27 contention, as well as each allegation of his Complaint or affirmative defense. (*Burke v. Superior Court*

1 (1969) 71 Cal.2d 276, 281.) The information sought by way of this request will force Los Angeles
2 County Waterworks District No. 40 and Rosamond Community Services District to provide information
3 about their claim of prescription. This is information that they will have to provide in any event, prior
4 to any resolution of their claim of prescription.

5 **2. Burdensome**

6 The assertion of this objection is insufficient to justify Los Angeles County Waterworks District
7 No. 40's and Rosamond Community Services District's refusal to respond to Request for Production of
8 Documents [Set One] because these two entities cannot show that the burden of providing a response
9 will result in injustice.

10 “[S]ome burden is inherent in all demands for discovery. The objection of burden is valid
11 only when that burden is demonstrated to result in injustice. Hence, the trial court is not
12 empowered to sustain an objection in toto, when the same is predicated upon burden,
13 unless such is the only method of rendering substantial justice.” (*W. Pico Furniture Co.*
14 *v. Superior Court* (1961) 56 Cal.2d 407, 418.)

15 In the present action, Los Angeles County Waterworks District No. 40 and Rosamond
16 Community Services District have alleged prescriptive claims against more than 100,000 landowners
17 whose property overlies the Antelope Valley Groundwater Basin. Notice is a key element of prescription
18 that must be proven by the Water Purveyors if they are to succeed in their claim. Diamond's requests
19 are directed at this element. The attempt to hide behind the enormity of their own allegation under a
20 claim of burden is improper and cannot be sustained.

21 The fact alone that a response to an interrogatory may be expensive and burdensome does
22 not justify a refusal to answer. (*Alpine Mut. Water Co. v. Superior Court of Ventura*
23 *County* (1968) 259 Cal.App.2d 45, 55 citing *West Pico Furniture Co. v. Superior Court*
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25 **3. Oppression**

26 “[T]o support an objection of oppression there must be some showing either of an intent
27 to create an unreasonable burden or that the ultimate effect of the burden is
28 incommensurate with the result sought.” (*West Pico Furniture Co. v. Superior Court of*
Los Angeles County (1961) 56 Cal.2d 407, 417.)

The propounding of Production of Documents [Set One] was not served with any ill intent.
Contrary to Los Angeles County Waterworks District No. 40's and Rosamond Community Services

1 District's assertions, the requests are not unreasonable as each of the nine questions posed relate directly
2 to the allegations raised by Los Angeles County Waterworks District No. 40 and Rosamond Community
3 Services District through their various Complaints, Cross-Complaints and Answers. The burden on
4 providing a response through discovery is not greater than the burden that must be born by these two
5 entities at trial. If they are able to meet this burden, they should be compelled to do so now when such
6 disclosure will help foster settlement and resolution of this matter without the necessity of a trial. As
7 stated above, these reasons are the very purpose of pre-trial discovery. The information sought must be
8 produced before trial and the court is not empowered to deny Diamond's discovery rights under this
9 unsubstantiated claim of oppression.

10 "While it is true that the trial court has a broad discretion in passing on an objection that
11 there has been harassment and oppression [Citation], such discretion is not absolute. As
12 was said in *Cembrook*, such discretion does not authorize the trial court "to make blanket
13 orders barring disclosure in toto when the factual situation indicates that a just and
equitable order could be made that would authorize disclosure with limitations." (*Coy*
v. Superior Court of Contra Costa County (1962) 58 Cal.2d 210, 221-222.)

14 **4. Objections Based on Class Certification**

15 Los Angeles County Waterworks District No. 40 and Rosamond Community Services District
16 attempt to limit their obligation to respond on the grounds that class certification has not yet been
17 completed. This objection holds no merit as the right to discovery prior to class certification has been
18 recognized by the Appellate Court in *Louis E. Carabini, et al. vs. The Superior Court of Orange County*
19 (1994) 26 Cal.App.4th 239, discovery directed at class certification is both appropriate and permitted
20 in order to ensure a fair hearing.

21 "Appellate courts have recognized the importance of such orders by creating an
22 exception to the rule denying appellate review. 'Whether the order is directly appealable
23 or we treat this as a petition for writ of mandate, the issue of the class certification order
24 is and should be before us.' (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 871, fn. 9
25 [196 Cal.Rptr. 69]; see also 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 85, p. 106.)
26 Due process requires an order with such significant impact on the viability of a case not
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be filed." *Carabini, supra*, pp. 243-244.

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1 Additionally, the request in question is not posed to a class of water purveyors, nor does it seek
2 information about water purveyor class members. A plain reading of the request evidences that it was
3 directed to the specific public water suppliers concerning the specific elements of each entity’s specific
4 claim. If, and to the extent, the request can be characterized as seeking information about some future
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18 Based on the foregoing, Los Angeles County Waterworks District No. 40's and Rosamond
19 Community Services District’s objections have no merit and have been interposed to these requests for
20 the sole purpose of avoiding the disclosure of information that is fatal to their claim of prescription. In
21 order to facilitate settlement and a timely resolution of this matter, Los Angeles County Waterworks
22 District No. 40 and Rosamond Community Services District must be ordered to respond to Diamond
23 Farming’s Production of Documents [Set One].

24 **REQUEST NO. 6:**

25 Produce each WRITING identified or described in any response to any of the requests which
26 were served concurrently with this request.

27 **Defendants’ Response**

28 Objection. This request is premature, burdensome and oppressive. This request seeks
information concerning class members and the court has not yet completed its class certification process.
No class representative has yet been approved by the court.

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1 **Legal Authority in Support of Further Response:**

2 Defendants have the burden of justifying their objections or their failure to fully respond to the
3 Request for Production. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255; *Coy v.*
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10 Defendants will be unable to satisfy this burden because the objections asserted to this request have no
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12 **1. Premature**

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28 objection which is designed simply to avoid providing a response, thereby keeping the landowners in
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11 about their claim of prescription. This is information that they will have to provide in any event, prior
12 to any resolution of their claim of prescription.

13 **2. Burdensome**

14 The assertion of this objection is insufficient to justify Los Angeles County Waterworks District
15 No. 40's and Rosamond Community Services District's refusal to respond to Request for Production of
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22 Community Services District have alleged prescriptive claims against more than 100,000 landowners
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3 *County* (1968) 259 Cal.App.2d 45, 55 citing *West Pico Furniture Co. v. Superior Court*
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10 whether the issue is presented in a motion or by way of an order to show case issued by
11 the court. In addition, each party should have an opportunity to conduct discovery on
12 class action issues before its documents in support of or in opposition to the motion must
13 be filed.” *Carabini, supra*, pp. 243-244.

9 Additionally, the request in question is not posed to a class of water purveyors, nor does it seek
10 information about water purveyor class members. A plain reading of the request evidences that it was
11 directed to the specific public water suppliers concerning the specific elements of each entity’s specific
12 claim. If, and to the extent, the request can be characterized as seeking information about some future
13 undefined class, a response is still warranted.

14 “Absent some specific showing by the objecting party to justify a contrary ruling, such
15 as privilege, a representative plaintiff can be compelled to supply his adversary with the
16 information about his class which is in his possession or readily available to him and
17 which is not equally available to an adversary. A representative plaintiff cannot be
18 compelled to supply information concerning members of his class or their interests in the
19 action which is neither in his possession nor control, unless the interrogatory is directly
20 related to his own standing to maintain the action, to the existence of an ascertainable
21 class, or to the existence of that community of interest which is required to sustain a class
22 action. [Citation] A representative cannot be compelled to respond to interrogatories
23 about any class member's separate claim as distinguished from the common claim of the
24 class which may be tried with or as a part of the class action.” [Emphasis Added] (*Alpine
25 Mut. Water Co. v. Superior Court of Ventura County* (1968) 259 Cal.App.2d 45, 54-55.)

21 Based on the foregoing, Los Angeles County Waterworks District No. 40's and Rosamond
22 Community Services District’s objections have no merit and have been interposed to these requests for
23 the sole purpose of avoiding the disclosure of information that is fatal to their claim of prescription. In
24 order to facilitate settlement and a timely resolution of this matter, Los Angeles County Waterworks

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1 District No. 40 and Rosamond Community Services District must be ordered to respond to Diamond
2 Farming's Production of Documents [Set One].

3 Dated: September 12, 2007

LeBEAU • THELEN, LLP

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By: _____

BOB H. JOYCE

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Attorneys for DIAMOND FARMING COMPANY,
a California corporation

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