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10 a California corporation

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12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14
15 IN AND FOR THE COUNTY OF LOS ANGELES

16 Coordination Proceeding Special Title
17 (Rule 1550 (b))

Judicial Council Coordination No. 4408

18 ANTELOPE VALLEY GROUNDWATER
19 CASES

Case No.: 1-05-CV-049053

20 Included actions:

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

21 Los Angeles County Waterworks District No.
22 40 vs. Diamond Farming Company
23 Los Angeles Superior Court
24 Case No. BC 325201

25 Los Angeles County Waterworks District No.
26 40 vs. Diamond Farming Company
27 Kern County Superior Court
28 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]

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 Form Interrogatories [Set One] and Request for Admissions [Set One] for which plaintiff
3 seeks a further response. The following are the Interrogatories and Requests, verbatim, the response
4 received, verbatim, and the reasons why further responses should be compelled.

5 **FORM INTERROGATORIES**

6 **Form Interrogatory 1.1:**

7 State the name, ADDRESS, telephone number, and relationship to you of each PERSON who
8 prepared or assisted in the preparation of the responses to these interrogatories. (*Do not identify anyone*
9 *who simply typed or reproduced these responses.*)

10 **Defendants' Response**

11 All responses to Requests for Admissions are objections by legal counsel.

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

13 Code of Civil Procedure section 2030.220 requires each response to an interrogatory to be as
14 complete and straightforward as the information reasonably available permits. The asserted response
15 is evasive and nonsensical as the interrogatory posed is not contingent upon mutual responses to
16 plaintiff's Request for Admission. Further, the information as to who prepared or assisted in the
17 preparation of these responses is within the knowledge of these two defendants. Therefore, they must
18 be ordered to provide a further response to this interrogatory.

19 **Form Interrogatory 17.1:**

20 Is your response to each Request for Admission served with these Interrogatories an unqualified
21 admission? If not, for each response that is not an unqualified admission:

22 (a) state the number of the request;

23 (b) state all the facts upon which you base your response;

24 (c) state the name, ADDRESS, and telephone numbers of all PERSONS who have knowledge
25 of those facts; and

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1 (d) identify all **DOCUMENTS** and other tangible things that support your response and state the
2 name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

3 **Defendants' Response**

4 All responses to Requests for Admissions are objections by legal counsel.

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

6 Defendants have a duty to answer the Form Interrogatories as completely and straightforwardly
7 as possible given the information available to them. Section 2030, subdivision (f)(1) [now 2030.220]
8 requires interrogatory answers to meet the following standard of responsiveness: "Each answer in the
9 response shall be as complete and straightforward as the information reasonably available to the
10 responding party permits. If an interrogatory cannot be answered completely, it shall be answered to the
11 extent possible." The duty to truthfully and fully respond has been described as follows, "Parties must
12 'state the truth, the whole truth, and nothing but the truth in answering written interrogatories' [citation]
13" (*Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 580.)

14 A proper response required defendants to respond to subsections (a), (b), (c) and (d) for each
15 Response to a Request for Admission that was not an admission. Since defendant did not admit any of
16 the Requests for Admission, defendant was obligated to respond for each Request for Admission
17 propounded. Defendants' response admits that they did not provide an unqualified admission to each
18 Request for Admission, therefore they must provide a proper response to this interrogatory.

19 **REQUESTS FOR ADMISSIONS**

20 **DEFINITIONS**

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

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

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

4 **REQUEST NO. 1:**

5 Admit that YOU are a PERSON as defined in the definitions above.

6 **Defendant's Response:**

7 Objection. This request is not reasonably calculated to lead to the discovery of admissible
8 evidence. The request is manifestly irrelevant and calculated to harass.

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

10 "For discovery purposes, information is relevant if it might reasonably assist a party in
11 evaluating the case, preparing for trial, or facilitating settlement. Admissibility is not the
12 test, and information, unless privileged, is discoverable if it might reasonably lead to
13 admissible evidence. These rules are applied liberally in favor of discovery, and
(contrary to popular belief) fishing expeditions are permissible in some cases." (*Stewart*
v. Colonial Western Agency, Inc.(2001) 87 Cal. App. 4th 1006, 1013.)

14 Here, Diamond has requested that each entity admit that it is a Person as defined under Section
15 175 of the Evidence Code. This information will assist Diamond's preparation for trial by eliminating
16 the necessity to present evidence and testimony establishing this fact at trial. There is no conceivable
17 reason why the Public Water Suppliers should not be compelled to respond to this request, especially
18 if they do not plan to contest this issue at trial.

19 "when a party is served with a request for admission concerning a legal question properly
20 raised in the pleadings he cannot object simply by asserting that the request calls for a
21 conclusion of law. He should make the admission if he is able to do so and does not in
22 good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.'
[Citation] Otherwise he should set forth in detail the reasons why he cannot truthfully
admit or deny the request." (*Burke v. Superior Court of Sacramento County* (1969) 71
Cal. 2d 276, 282.)

23 **REQUEST NO. 2:**

24 Admit that YOU are a public entity.

25 **Defendant's Response:**

26 Rosamond Community Services District admits that it is a public entity.
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28

1 **Defendants' Response**

2 Los Angeles County Waterworks District No. 40 admits that it is a public entity.

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

4 Despite admitting this request, both Los Angeles County Waterworks District No. 40 and
5 Rosamond Community Services District failed to verify their response as required by Code of Civil
6 Procedure section 2033.240.

7 "The responses were provided in this case but they were not verified. Unsworn responses
8 are tantamount to no responses at all." [Citation] (*Appleton v. Superior Court* (1988) 206
Cal.App.3d 632, 635-636.)

9 Therefore both defendants must be ordered to provide a proper verification to this lone
10 admission.

11 **REQUEST NO. 3:**

12 Admit that YOU did not provide notice in writing to any landowner that your use of groundwater
13 from within the BASIN was adverse to their right to use groundwater before October 29, 1999.

14 **Defendants' Response**

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

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

19 Defendants have the burden of justifying their objections or their failure to fully answer the
20 interrogatories. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255; *Coy v. Superior Court*
21 (1962) 58 Cal.2d 210, 220-221.)

22 "At the hearing of such a motion the burden is on the party interrogated, in this case the
23 defendants, 'of showing facts from which the trial court might find that the
24 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.)

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

1 about their claim of prescription. This is information that they will have to provide in any event, prior
2 to any resolution of their claim of prescription.

3 **2. Burdensome**

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

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

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

19 The fact alone that the response to an interrogatory may be expensive and burdensome
20 does not justify a refusal to answer. (*Alpine Mut. Water Co. v. Superior Court of Ventura*
21 *County* (1968) 259 Cal.App.2d 45, 55 citing *West Pico Furniture Co. v. Superior Court*
22 (1961) 56 Cal.2d 407, 417-418.)

23 **3. Oppression**

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

28 The propounding of Request for Admissions [Set One] was not served with any ill intent.
29 Contrary to Los Angeles County Waterworks District No. 40's and Rosamond Community Services
30 District's assertions, the requests are not unreasonable as each of the nine questions posed relate directly

1 to the allegations raised by Los Angeles County Waterworks District No. 40 and Rosamond Community
2 Services District through their various complaints, cross-complaints and answers as required by Code
3 of Civil Procedure section 2033.010.

4 The burden of providing a response through discovery is no greater than the burden that must be
5 born by these two entities at trial. If they are able to meet this burden, they should be compelled to do
6 so now when such disclosure will help foster settlement and resolution of this matter without the
7 necessity and expense of a trial. As stated above, these reasons are the very purpose of pre-trial
8 discovery. The information sought must be produced before trial and the court is not empowered to deny
9 Diamond's discovery rights under this 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 to the requests on the grounds that class certification has not
17 yet been completed. This objection holds no merit as the right to discovery prior to class certification
18 has been recognized by the Appellate Court in *Louis E. Carabini, et al. vs. The Superior Court of*
19 *Orange County* (1994) 26 Cal.App.4th 239, discovery directed at Class Certification is both appropriate
20 and permitted 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
be made without a full opportunity to brief the issues and present evidence. This is true
27 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
28 class action issues before its documents in support of or in opposition to the motion must
be filed." *Carabini, supra*, pp. 243-244.

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 supplier concerning that specific public entity's actions with regard
4 to its specific claim of prescription. If, and to the extent, the request can be characterized as seeking
5 information about some, yet undefined class, a response is still warranted.

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

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 admission for the sole purpose of avoiding the disclosure of information that is fatal to their claim of
21 prescription. In order to facilitate settlement and a timely resolution of this matter, Los Angeles County
22 Waterworks District No. 40 and Rosamond Community Services District must be ordered to respond
23 to Diamond Farming's Request for Admissions [Set One].

24 **REQUEST NO. 4:**

25 Admit that YOU did not provide notice in writing to any landowner that your use of groundwater
26 from within the BASIN was adverse to their title to their real property at any time before October 29,
27 1999.

28 **Defendants' Response**

 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.

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 interrogatories. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255; *Coy v. Superior Court*
4 (1962) 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
8 is on defendants to show that their objections are valid.” (*Columbia Broadcasting*
9 *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 2033.020 governs the time in which request for admissions may
12 be propounded.

13 “(a) A defendant may make requests for admission by a party without
14 leave of court at any time.

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

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

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

1 to 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 Cal.
4 App. 4th 1112, 1128.) A party responding to discovery requests may be required to state whether or not
5 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 Admissions
14 [Set One] because these two entities cannot show that the burden of providing a response will result in
15 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,
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23 whose property overlies the Antelope Valley Groundwater Basin. Notice is a key element of
24 prescription that must be proven by the Water Purveyors if they are to succeed in their claim. Diamond's
25 request is directed at this element. The attempt to hide behind the enormity of their own allegation under
26 a claim of burden is improper and cannot be sustained.

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28 does not justify a refusal to answer. (*Alpine Mut. Water Co. v. Superior Court of Ventura*
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13 born by these two entities at trial. If they are able to meet this burden, they should be compelled to do
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24 prescription. In order to facilitate settlement and a timely resolution of this matter, Los Angeles County
25 Waterworks District No. 40 and Rosamond Community Services District must be ordered to respond
26 to Diamond Farming’s Request for Admissions [Set One].

1 **REQUEST NO. 5:**

2 Admit that YOU did not provide notice in writing to any landowner that you claimed a
3 prescriptive right to use groundwater from within the BASIN before October 29, 1999.

4 **Defendants' Response**

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

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

9 Defendants have the burden of justifying their objections or their failure to fully answer the
10 interrogatories. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255; *Coy v. Superior Court*
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25 discovery. In general, fairness demands adherence to the statutory procedures, since they were designed
26 to place the parties “‘on roughly equal footing.’” (*Kalaba v. Gray* (2002) 95 Cal.App.4th 1416, 1422.)
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9 the parties as to the strengths of their claims and defenses; to expedite and facilitate preparation and trial;
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15 County Waterworks District No. 40 and Rosamond Community Services District to provide information
16 about their claim of prescription. This is information that they will have to provide in any event, prior
17 to any resolution of their claim of prescription.

18 2. Burdensome

19 The assertion of this objection is insufficient to justify Los Angeles County Waterworks District
20 No. 40's and Rosamond Community Services District's refusal to respond to Request for Admissions
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