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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]

AND RELATED CROSS-ACTIONS.

Judicial Council Coordination No. 4408

Case No.: 1-05-CV-049053

DIAMOND FARMING'S OPPOSITION TO MOTION FOR PROTECTIVE ORDER FILED BY LITTLEROCK CREEK IRRIGATION DISTRICT, PALM RANCH IRRIGATION DISTRICT, CALIFORNIA SERVICE WATER COMPANY, CITY OF LANCASTER, PALMDALE WATER DISTRICT AND QUARTZ HILL WATER DISTRICT

DATE: October 16, 2007
TIME: 9:00 a.m.
DEPT: 1

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I. INTRODUCTION

In this litigation, each Water Purveyor has alleged a claim of prescriptive rights in Diamond's property and that of all named parties as well as all overlying property owners within the established jurisdictional boundary. On December 2, 2005, at the scheduled Case Management Conference, counsel for Diamond Farming specifically asked this court if there was any prohibition against initiating discovery. This court affirmed that there was no prohibition. (See Declaration of Bob H. Joyce in Support of this Opposition and Exhibit "A" thereto.) On December 2, 2005, none of the Water Purveyors objected and none sought to then limit discovery. Thereafter, on May 22, 2007, the public water suppliers (including all of the moving parties herein) collectively served a First Set of Special Interrogatories. That discovery was responded to. On May 26, 2007, Diamond Farming served its Request for Admissions [Set One], Form Interrogatories [Set One], Special Interrogatories [Set One] and Request for Production of Documents [Set One]. On June 26, 2007, the moving parties herein separately served identical boilerplate objections to each separate Request for Admission, Special Interrogatory, and Request for Documents, with the exception of a handful of responses. The same repeated objection consisted of the following 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."

The moving parties now concede that the discovery is both material and relevant. **"The Water Purveyors do not contest the landowner's right to this information."** (See Motion, p. 6, lines 9-10.)

Despite having the right to seek this protective order at the time they were served with the discovery, the moving parties opted instead to respond with objections. That decision forced Diamond to engage in a time consuming, expensive and lengthy meet and confer process.[1] During this process, it was conceded that Diamond's discovery was material and relevant to the action but the purveyors

[1] From June 26, 2007 through September 10, 2007, counsel for Diamond had to bring an ex parte application to obtain a court order for the parties to meet and confer, counsel for Diamond met and conferred with counsel for the moving parties about the impropriety of their objections through telephone calls and correspondence, and on two occasions made trips of over 100 miles to meet and confer with them face to face as ordered by this court.

would not agree to set a date certain within which they would provide the responses. Faced with the moving parties' admission that Diamond was entitled to the responses coupled with their refusal to provide the responses or commit to a date certain, Diamond was forced to and did file Motions to Compel responses to each set of discovery on September 12, 2007.

On September 13, 2007, the present motion seeking a protective order was filed by LITTLEROCK CREEK IRRIGATION DISTRICT, PALM RANCH IRRIGATION DISTRICT, CALIFORNIA SERVICE WATER COMPANY, CITY OF LANCASTER, PALMDALE WATER DISTRICT AND QUARTZ HILL WATER DISTRICT (collectively "Water Purveyors"). The focus of this motion is admittedly not on the content of the discovery sought as the Water Purveyors admit that the information is relevant to the action and that Diamond is entitled to the information.[2] Nonetheless, they have filed this belated motion unjustly seeking a court order to limit the ability of the landowners to conduct discovery while retaining their own discovery rights. (See Motion, p. 7, lines 1-4.)

As set forth below, this motion filed by the Water Purveyors must be denied as it is untimely and does not comport with the Code of Civil Procedure. The delay has prejudiced Diamond Farming. The motion is based on objections that have been waived and is not supported by a showing of "good cause." Further, granting any part of this motion would be unjust and prejudicial to the overlying landowner's rights in this case.

The order sought would not advance the objectives of complex litigation procedures and this court's management of this case, but would retard and delay pretrial resolution of issues.

> "The complex litigation procedure is intended to facilitate pretrial resolution of evidentiary and other issues, and to minimize the time and expense of lengthy or multiple trials. [Citations.]" (*Rutherford v. Owens-Illinois* (1997)16 Cal. 4th 953, 967.)

> "The purposes of California's discovery statutes are well known. They are intended, among other things, to 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." (*Beverly Hosp. v. Superior Court* (1993) 19 Cal. App. 4th 1289, 1294.)

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[2] **"The Water Purveyors do not contest the landowner' right to this information. The Water Purveyors agree that this information should be provided fully and fairly at the appropriate time**." (See Motion , p. 6, lines 9-10.)

If, and to the extent, this court grants any part of this motion, Diamond Farming requests that it only be granted as to the moving parties herein and that any party who is not a moving party remain subject to the discovery pursuant to the Code of Civil Procedure.

II. ARGUMENT

A. The Water Purveyors' Motion Seeking a Protective Order is Untimely

The timing limitations for the filing of a Motion for a Protective Order is governed by multiple statutes[3] all of which reiterate the same basic rule:

> "When [discovery has been served], the responding party may promptly move for a protective order. This motion shall be accompanied by a meet and confer declaration under Section 2016.040. . . . The court, for good cause shown, may make any order that justice requires to protect any party from unwarranted annoyance, embarrassment, oppression, or undue burden and expense."

The word "promptly" is not specially defined in the statute but, has a well-established meaning in common parlance. The dictionary defines it as "1. Being ready and quick to act as occasion demands; 2: performed readily or immediately." (Merriam -Websters Collegiate Dictionary 10th Edition (1993).) The evidence that is before the court shows that the moving parties were anything but prompt. They did not raise the issue or object at the Case Management Conference on December 2, 2005. They did not move for a protective order when served with the discovery. They did not move for a protective order before the responses were due. They delayed almost four months before bringing the present motion, and waited until after Diamond incurred time and expense to meet and confer, and after Diamond incurred time and expense to prepare and file the Motions to Compel.

The prompt requirement set forth in the statute is designed to balance the statutory burdens placed on the parties. When a party is commanded to promptly move for a protective order, the burden is on that party to show good cause as to why the propounding parties discovery should be denied. (*Southern California Edison Co. v. Superior Court of Los Angeles County* (1972) 7 Cal. 3d 832, 843.) Under this statutory scheme, the responding party can shift that burden by foregoing the protections afforded by the motion for protective order and assert objections to the discovery. When, as in this case,

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[3] Code of Civil Procedure sections 2017.020, 2019.030, 2030.090, 2031.060, 2033.080

the party seeking to deny another's rights to discovery, elects to wait the statutory time frame for the response and then respond by objection in lieu of seeking a protective order, it has thereafter waived its rights to bring that motion. This is borne out by the fact that once a party's deadline to act has expired, they cannot thereafter seek court intervention to have the expired date extended. (*People v. Am. Sur. Ins. Co.* (1999) 75 Cal. App. 4th 719, 727)

> "Common sense compels the conclusion that a trial court cannot extend a time period that has already expired. We must use common sense when construing a statute." (*Id.*)

Under the statutory scheme, this motion should have been made after the discovery was served and before the responses were due. To now file this motion in response to the Motions to Compel responses is not moving promptly and is not in compliance with the statutory scheme. (This is especially true when the discovery is conceded to be both material and relevant.)

B. The Motion Fails to State the Elements Required to Grant a Protective Order

In order for this court to exercise its discretion and make a protective order, this court must first find that the Water Purveyors have shown good cause for the order and that the discovery propounded constitutes an "unwarranted annoyance, embarrassment, or oppression, or undue burden and expense." Neither of these elements have been shown in the moving papers.

1) *Good Cause*

The element of "good cause" is required by each and every discovery statute governing the issuance of protective orders. (See Code of Civil Procedure sections 2030.090, 2031.060, 2033.080.) The burden of showing "good cause" for a protective order rests on the party seeking to deny the other's discovery right. (*Southern California Edison Co. v. Superior Court of Los Angeles County*, *supra*, 7 Cal. 3d at 843.)

> "[G]ood cause which must be shown should be such that will satisfy an impartial tribunal that the request may be granted without abuse of the inherent rights of the adversary. (*Greyhound Corp. v. Superior Court of Merced County* (1961) 56 Cal. 2d 355, 388.)

Despite being a required element, the Water Purveyors do not address "good cause" in their moving papers. To the extent it can be argued that the Water Purveyors have inferentially made a case for "good cause" they have intermingled their arguments with the second required element, that the

discovery constitutes an "unwarranted annoyance, embarrassment, or oppression, or undue burden and expense." These arguments however fall short of the pleading and proof required to grant the relief sought by their motion.

2) *The Water Purveyors Have Failed to Show that Diamond's Discovery Constitutes an "unwarranted annoyance, embarrassment, or oppression, or undue burden and expense."*

By waiting the statutory time and then responding to Diamond's discovery, the Water Purveyors have created a situation where they have limited the basis upon which they can contest the discovery. It has been a long understood interpretation of the discovery statutes that a party's failure to assert an objection to discovery within the time provided by the statutes ordinarily results in a waiver of his right to assert that objection. (*Willis v. Superior Court* (1980) 112 Cal. App. 3d 277, 289 fn. 3.) As quoted above, the Water Purveyors raised only two objections that may be considered, those are burden and oppression. All other objections are waived including the now asserted relevance claim asserted in Part B of the motion.

> "There is no provision for the subsequent filing of objections. . . . it could not, in the absence of a showing of good cause for relief from default, file further objections. It follows that the only grounds that existed at the time the trial court made its order, and on which it could then predicate the same, were the grounds stated in Pacific's objections as originally filed." (*Coy v. Superior Court of Contra Costa County* (1962) 58 Cal. 2d 210, 217.)

While this case discusses the statutory language of the Discovery Statutes prior to the most recent amendments, its rule still holds true today. The Water Purveyors waived any objection to this discovery not asserted in their original responses, therefore only the objections of burden and oppression will be addressed.

a) Burden

The Water Purveyors inferentially argue that the discovery creates an undue burden on them because the information sought is voluminous and not "directly" relevant to what they perceive to be the current phase of the trial. This is an improper standard to evaluate burden.

> "[S]ome burden is inherent in all demands for discovery. The objection of burden is valid only when that burden is demonstrated to result in injustice. Hence, the trial court is not empowered to sustain an objection in toto, when the same is predicated upon burden,

> unless such is the only method of rendering substantial justice." (*West Pico Furniture Co. v. Superior Court of Los Angeles County* (1961) 56 Cal. 2d 407, 418.)
>
> "The fact alone that the response to an interrogatory may be expensive and 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.)

The Water Purveyors cannot show that the discovery would result in injustice. They have conceded its relevancy. The Water Purveyors have delayed bringing this motion. Diamond has engaged in a lengthy and costly yet unsuccessful meet and confer process, forcing Diamond to bring the now pending Motions to Compel. The Water Purveyors concede that Diamond is entitled to the information sought. Diamond does not object to a reasonable time within which to provide the discovery responses, and a reasonable time should be provided so long as a date certain is set.

The Water Purveyors' relevance argument was waived, contradicts the concession of relevancy, and is a misstatement of the discovery statutes and should therefore be ignored. Code of Civil Procedure section 2017.010 provides as follows:

> "Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action. . ."

Diamond's discovery is conceded to be relevant to the subject matter. Depending on the responses provided by the Water Purveyors, Diamond may seek to de-certify the now certified class. Diamond intends to seek a summary adjudication of the prescription claims asserted. Staying this discovery until the prescription issue is set for trial will delay and prejudice Diamond's rights to bring these motions.

> "Good cause for disclosure might be a party's inability to prepare its claim or defense because he cannot obtain the information elsewhere." (*Hernandez v. Superior Court* (2003) 112 Cal. App. 4th 285, 298.)

b) Oppression

The Water Purveyors have failed to provide the court with any evidence upon which a finding of oppression can be made.

> "[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 Water Purveyors have made no showing of an ill intent by Diamond. On the contrary, the Water Purveyors acknowledge that the discovery seeks information to which Diamond is entitled. Diamond's offer to reasonably extend the time to respond confirms there was no ill intent.

> "While it is true that the trial court has a broad discretion in passing on an objection that there has been harassment and oppression (*Cembrook v. Superior Court*, 56 Cal.2d 423, 427), 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.)

C. While the Court has the Discretion to Manage Discovery in Complex Cases, That Discretion is not Unlimited

The Public Water Purveyors focus the premise of their motion on the discretion granted a court in complex litigation to manage the case. From this assertion the Public Water Purveyors then make the illogical inference that this discretion allows the court to ignore a statutory scheme and make any order requested. This claim is contrary to the intent and objective of the complex litigation rules.

> "The complex litigation procedure is intended to facilitate pretrial resolution of evidentiary and other issues, and to minimize the time and expense of lengthy or multiple trials. [Citations.]" (*Rutherford v. Owens-Illinois* (1997)16 Cal. 4th 953, 967.)

To delay the time for responses to the discovery will hinder not further these objectives. The Public Water Purveyors cite to several cases that cite, the now repealed, subsection (f) of Standards of Judicial Administration §19. The Public Water Purveyors loose interpretation of these cases attempts to mislead the court and overstate the court's discretionary decision making powers.

The current version of Standard 3.10 provides, in pertinent part:

> "(a) **Judicial management**. In complex litigation, judicial management should begin early and be applied continuously and actively, based on knowledge of the circumstances of each case. . . .
>
> (d) **Establishing time limits**. Time limits should be regularly used to expedite major phases of complex litigation. Time limits should be established early, tailored to the

> circumstances of each case, firmly and fairly maintained, and accompanied by other methods of sound judicial management.
>
> (e) **Preparation for trial**. Litigants in complex litigation cases should be required to minimize evidentiary disputes and to organize efficiently their exhibits and other evidence before trial.
>
> (f) **Dilatory tactics**. Judges involved in complex litigation should be sensitive to dilatory or abusive litigation tactics and should be prepared to invoke disciplinary procedures for violations."

When these standards are read with Rule of Court 3.541[4], it is clear the court is empowered to establish time limits for the various phases of the litigation including discovery pursuant to a set procedure. However, the court's discretion for setting timetables for discovery should fulfill the objective to "expedite" not delay the litigation.

This court has held multiple case management conferences in which the Public Water Purveyors have participated and submitted proposed orders. They have not previously requested that this court set a discovery schedule. When the issue of discovery was specifically raised by counsel for Diamond during the December 2005 Case Management Conference they did not then, or any time thereafter, request that the court limit or establish a discovery schedule. The discovery process to date has been governed by the procedures specified in the Code of Civil Procedure.

The court's discretion is further limited when there is a procedure set forth in a statute or rule of court. The Supreme Court has stated:

> "Courts have inherent power, as well as power under section 187 of the Code of Civil Procedure, to adopt any suitable method of practice, both in ordinary actions and special proceedings, if the procedure is not specified by statute or by rules adopted by the Judicial Council." (*Citizens Utilities Co. v. Superior Court of Santa Cruz County* (1963) 59 Cal. 2d 805, 813; See also *Rutherford v. Owens-Illinois, supra,* 16 Cal. 4th at 967.)

The discovery act is generally viewed as comprehensive and exclusive. (*Zellerino v. Brown* (1991) 235 Cal. App. 3d 1097, 1104.) The time limits for the filing of this Motion for a Protective Order are set forth in the discovery act. None of the authority cited by the Public Water Purveyors suggest that

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[4] Prior to January 1, 2007, the pronouncement in Rule 3.541(a) was apart of the judicial standard section 19 lettered as subdivision (e).

this court should, through discretion, ignore the "promptly" time limit set for in the Code. The exercise of the court's discretion to grant the relief sought is not unlimited and must be exercised with reason.

In *Greyhound Corp. v. Superior Court* (1961) 56 Cal. 2d 355, the Supreme Court set forth the correct test to be employed in properly allocating the burden of discovery between the parties. The *Greyhound* court stated:

> "To constitute a proper exercise of discretion, the factual determination of the trial court should clearly and unequivocally be based upon the following legal concepts:
>
> 1. The legislative purposes above set forth are not to be subverted under the guise of the exercise of discretion;
>
> 2. Those purposes are to be given effect rather than thwarted, to the end that discovery is encouraged;
>
> 3. When disputed facts provide a basis for the exercise of discretion, those facts should be liberally construed in favor of discovery, rather than in the most limited and restrictive manner possible;
>
> 4. Although the statutory limitations on discovery must be applied when the facts so warrant, exercise of discretion does not authorize extension thereof beyond the limits expressed by the Legislature;
>
> 5. There is no room for judicial discretion in those situations not included in the statutes but asserted as general limitations on the privileges conferred. Such situations, however, may be subject to judicial discretion under the statutory power to prevent abuse and advance the ends of justice;
>
> 6. The power to prevent abuse which is bestowed on the trial court by the provisions of section 2019, subdivision (b)(1), is the power to exercise discretion based upon the factual showing made. When the record indicates facts on which the court exercised its discretion, that exercise will not be disturbed on appeal; when the facts are undisputed, or there is but one reasonable interpretation thereof, the question ceases to be fact, and is one of law;
>
> 7. The trial courts in exercising their discretion should keep in mind that the Legislature has suggested that, where possible, the courts should impose partial limitations rather than outright denial of discovery;
>
> 8. In the exercise of its discretion the court should weigh the relative importance of the information sought against the hardship which its production might entail, and it must weigh the relative ability of the parties to obtain the information before requiring the adversary to bear the burden or cost of production, keeping in mind the statutory admonition of entering an order consistent with justice." (*Id.* at 383-384.)

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A fair evaluation of each of these concepts leads to the conclusion that the discovery should be allowed. The outright delay of Diamond's discovery as proposed by the Public Water Purveyors would result in subverting and thwarting the legislative purpose of the discovery act.

> "The purposes of California's discovery statutes are well known. They are intended, among other things, to 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." (*Beverly Hosp. v. Superior Court* (1993) 19 Cal. App. 4th 1289, 1294.)

It would also be counterproductive to the stated goal of expediting complex litigation to allow the Public Water Purveyors' delay and thus evade responding to the discovery.

III. CONCLUSION

> "The complex litigation procedure is intended to facilitate pretrial resolution of evidentiary and other issues, and to minimize the time and expense of lengthy or multiple trials. [Citations.]" (*Rutherford v. Owens-Illinois* (1997)16 Cal. 4th 953, 967.)

The exercise of discretion must strive to "expedite" not delay complex litigation. As conceded, "**The Water Purveyors do not contest the landowners' right to this information. The Water Purveyors agree that this information should be provided fully and fairly at the appropriate time. The Water Purveyors contemplate propounding responses to this discovery as instructed by the court.**" (Motion, p. 6, lines 9-12.) The only issue raised by the Motion is: When must the responses to the discovery be served?

This court should set a date certain within which the Water Purveyors must "fully and fairly" provide responses.

Dated: October 2, 2007

LeBEAU • THELEN, LLP

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

PROOF OF SERVICE

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

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter Drive, Suite 300, Bakersfield, California 93309. On October 3, 2007, I served the within **DIAMOND FARMING'S OPPOSITION TO MOTION FOR PROTECTIVE ORDER FILED BY LITTLEROCK CREEK IRRIGATION DISTRICT, PALM RANCH IRRIGATION DISTRICT, CALIFORNIA SERVICE WATER COMPANY, CITY OF LANCASTER, PALMDALE WATER DISTRICT AND QUARTZ HILL WATER DISTRICT**

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

Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012
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
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☐ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California, in the ordinary course of business.

■ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that the foregoing was executed on October 3, 2007, in Bakersfield, California.

Donna M. Luis

DONNA M. LUIS