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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

REPLY TO PUBLIC WATER SUPPLIERS' OPPOSITION TO DIAMOND FARMING'S MOTIONS TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORIES; REQUEST FOR ADMISSIONS; SPECIAL INTERROGATORIES; REQUEST FOR PRODUCTION OF DOCUMENTS; AND FOR MONETARY SANCTIONS

Date: October 16, 2007
Time: 9:00 a.m.
Dept.: 1

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1 I.

2 INTRODUCTION

3 The Purveyors have collectively filed a single Joint Opposition to the separate Motions to Compel
4 Responses to Discovery. However, there are within the Purveyor group two distinct subgroups. First,
5 those Purveyors who in good faith and a meaningful manner, participated in the meet and confer process
6 as ordered by the Court, and two, those Purveyors who did not. The first group of Purveyors are
7 Littlerock Creek Irrigation District, Palm Ranch Irrigation District, California Water Service Company,
8 City of Lancaster, Palmdale Water District, Quartz Hill Water District and City of Palmdale, all of whom
9 are the moving parties on the concurrently pending Motion for a Protective Order. The second group are
10 Los Angeles Waterworks District No. 40 and Rosamond Community Services District, who did not
11 participate in good faith in any meaningful meet and confer, and are not seeking the Protective Order
12 which is the subject of the concurrently pending Motion. Therefore, they presumably stand alone on the
13 objections asserted in lieu of a full and fair response to the discovery.

14 Because of the factual and legal differences which exist between the two subgroups, each will be
15 treated separately herein. As to the first group, the discovery sought has been conceded to be both
16 material and relevant. It has been conceded that responses should be fully and fairly provided. The
17 dispositive issue as between the first group of Purveyors and Diamond Farming, the propounding party,
18 is: When should those full and complete responses be provided? As to the second group, the only issue
19 pending before the Court is whether or not there is any merit to the objections raised in the discovery
20 responses or the argument in support thereof as asserted in the Opposition to the Motions to Compel.

21 II.

22 REPLY TO OPPOSITION TO MOTIONS TO COMPEL OF THE FIRST SUBGROUP,
LITTLEROCK CREEK IRRIGATION DISTRICT, PALM RANCH IRRIGATION
23 DISTRICT, CALIIFORNIA WATER SERVICE COMPANY, CITY OF LANCASTER,
PALMDALE WATER DISTRICT, QUARTE HILL WATER DISTRICT AND CITY OF
24 PALMDALE

25 As set forth in the Opposition to the concurrently pending Motion for a Protective Order:

26 "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
27 trials. [Citations.]" (*Rutherford v. Owens-Illinois* (1997)16 Cal. 4th 953, 967.)

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Diamond Farming and each of the Purveyors which later brought the now pending Motion for a Protective Order engaged in good faith and meaningful meet and confer efforts, both in person and by telephone, as directed by this Court, but were unable to reach a mutually acceptable solution. Each of those Purveyors collectively seek to secure an Order deferring their obligation to fully and fairly respond to the pending discovery to some uncertain and ill-defined point in the future. Diamond Farming seeks an Order setting a date certain within which each must fully and fairly respond to the discovery propounded. As to those Purveyors, Diamond Farming withdraws its request for sanctions, given their good faith and meaningful cooperation and efforts to resolve the impasse.

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 for a Protective Order is: When must the responses to the discovery be served?

This Court should set a date certain within which Littlerock Creek Irrigation District, Palm Ranch Irrigation District, California Water Service Company, City of Lancaster, Palmdale Water District, Quartz Hill Water District and City of Palmdale must "fully and fairly" provide responses.

III.

REPLY TO OPPOSITION OF SECOND SUBGROUP, LOS ANGELES WATERWORKS DISTRICT NO. 40 AND ROSAMOND COMMUNITY SERVICES DISTRICT

As pointed out by the moving papers and the Declaration of Bob H. Joyce filed concurrently with this reply, District No. 40 and Rosamond never participated in a meaningful meet and confer about their objections to Diamond's discovery. Contrary to the claim made, Diamond did not withdraw the discovery on July 20, 2007. The claim to the contrary is not true.

Prior to being served with this discovery, District No. 40 and Rosamond had the ability to seek the court's power to limit discovery by requesting that the court establish a discovery schedule under the rules governing the management of complex litigation. On December 2, 2005, pursuant to Diamond's

inquiry, this Court affirmed that there was no prohibition on discovery. (See Declaration of Bob H. Joyce in Support of the Opposition to the Motion for a Protective Order and Exhibit "A" thereto.) Despite being present at this Case Management Conference, neither District No. 40 or Rosamond requested or suggested that this Court establish a discovery schedule or otherwise limit discovery.

Upon being served with Diamond's discovery, District No. 40 and Rosamond had two statutorily sanction options. They could have "promptly" moved this court for a protective order through a noticed motion, if they believed the facts warranted the issuance of such an order, or they could have waited the prescribed statutory time period and objected or responded to the discovery. In this case, District No. 40 and Rosamond elected to wait the statutory time period and responded by objection to the discovery.

By electing this latter approach, District No. 40 and Rosamond waived any objections not asserted and placed the burden on Diamond to meet and confer to bring these Motions to Compel at great expense and time incurred by Diamond. They also elected to assume the burden of proving the validity of their objections. (*Columbia Broadcasting System, Inc. v. Superior Court of Los Angeles County* (1968) 263 Cal. App. 2d 12, 18.)

Despite having elected to stand on their objections, District No. 40 and Rosamond now seek to have this court establish a limitation on Diamond's discovery rights in an effort to eliminate their obligation to respond to the discovery under the guise of discretion asserted through the management of this complex litigation by claiming that the discovery is premature. This objection is without merit.

> "the bulk of the objections that[appellant] attempts to make here for the first time are without merit. Illustrative is the objection that answers to the interrogatories are not "essential" to the preparation of petitioner's claims, and that petitioner will not be "irreparably harmed" if it does not obtain the answers. Such objections misconceive the purpose of the discovery act as announced by this court in *Greyhound, supra*, and the other cases on this subject, this day filed. They also overlook the proposition that the code allows interrogatories as a matter of right unless the opponent can state valid objection thereto." (*W. Pico Furniture Co. v. Superior Court* (1961) 56 Cal. 2d 407, 414 fn. 2)

By omission and silence, it is conceded that the discovery sought is both material and relevant. The District No. 40's and Rosamond's objection has no merit and is contrary to the parallel rules governing both discovery and the intent and purpose of the complex litigation rules and procedure.

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"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* (1997) 19 Cal.App.4th 1289, 1294.)

"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.)

While it is not contested that this court has discretion, the discretion is not unlimited and may not contravene a statutory procedure. The discovery statutes authorize a Motion for Protective Order, if "promptly" made. No such motion has been made by Waterworks District No. 40 or Rosamond, "promptly" or otherwise.

"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.)

"In exercising that discretion, however, the trial courts must keep in mind that the code sections specifically authorize multiple interrogatories and requests for admission, subject only to the trial court's power to control the abuse thereof. As pointed out in the *Greyhound and West Pico cases, supra*, that discretion does not include the power to deny discovery in toto merely because the litigant asks too much, but it does embrace the power to sustain objections to the unnecessary or repetitive question." (*Cembrook v. Superior Court of San Francisco* (1961) 56 Cal. 2d 423, 428.)

It is with these issues and this framework in mind that we must examine the merits of the District No. 40's and Rosamond's objections and Opposition to the Motions to Compel Responses to Diamond's Form Interrogatories [Set One], Special Interrogatories [Set One], Requests for Admission [Set One] and Request for Production [Set One].

A. The Motions to Compel Were Timely Filed

Pursuant to this Court's Order on July 20, 2005, Diamond Farming and the Public Water Purveyors to whom discovery was served were ordered to participate in a further meet and confer at some agreed date in the future. Any Motion to Compel was due to be filed 30 days after that meeting had concluded and did not require court permission before filing. (See Declaration of Bob H. Joyce in Support of this Reply and Exhibit "B" thereto.) Pursuant to this order, the 30-day period could only be commenced upon the conclusion of that good faith ane meaningful meet and confer meeting. As is set

forth more fully in the concurrently filed Declaration of Bob H. Joyce in support of this reply, no meaningful meet and confer meeting was ever held as between counsel for Diamond Farming and counsel for Los Angeles County Works District No. 40 and Rosamond Community Services District. Following this Court's order directing the parties to engage in a further meet and confer effort, counsel for Diamond Farming did, commencing shortly thereafter, by letter on August 3, 2007, and repetitively thereafter, seek to secure dates and times within which counsel could meet in person with opposing counsel as directed by this Court. With respect to Waterworks District No. 40 and Rosamond Community Services District, those efforts were met with either no response, a delayed response, and ultimately the belated claim on August 28, 2007 that Diamond had withdrawn the discovery on July 20, 2007. If the discovery had been withdrawn on July 20, 2007, why the efforts to meet and confer thereafter? If withdrawn, where is the written confirmation? If withdrawn, why was that claim not made in response to Diamond's request for a meet and confer on August 3, 2007? The objective evidence is the correspondence between all counsel including counsel for Waterworks District No. 40 and Rosamond Community Services District, as attached to the Declaration of Bob H. Joyce in support of this reply. A review of that correspondence compels the conclusion that no meaningful meet and confer meeting was ever held. Since there was no meet and confer with counsel for District No. 40 and Rosamond, the deadline to file a Motion to Compel never commenced to run and therefore could not have expired.

B. District No. 40's and Rosamond's "Premature" Objection Lacks Merit

District No 40 and Rosamond make two arguments in support of their "premature" objection, however, neither of these arguments justify or support this unmeritorious objection. First, District No. 40 and Rosamond claim that the discovery is unnecessary because there is no pending Motion for Class Certification made by the public water purveyors. This argument does not address the propriety or timing of the discovery served by Diamond nor is it a prerequisite to the filing of a Motion to Compel.

Second, District No. 40 and Rosamond argue that the discovery does not pertain to the issue of class certification. That argument is in part conceded to be true. The discovery is directed to the merits of the plead prescription claim. This argument presupposes that there has been some limitation on the discovery that may be propounded that restricted it to only the issue of class certification. This alleged

limitation simply does not exist as no party to this action has requested a discovery schedule nor have they timely and "promptly" sought a protective order to limit discovery. Through this argument they seek to excuse their failure to timely and "promptly" move for a protective order prior to responding. Neither Waterworks District No. 40 nor Rosamond Community Services District contend that any single inquiry and/or all of the discovery is not material or relevant, and by omission and silence concedes what the other Purveyors have conceded. That is that the discovery is both material and relevant and that full and fair responses must be provided at some point in time. By not following the statutory prerogative and promptly moving for a protective order, they have forced Diamond Farming, at great expense and consumption of time, to comply with the statutory guidelines, attempt to meet and confer, and ultimately upon failure, to prepare and file these motions to compel.

Despite having the burden of proof to support the validity of the objection, District No. 40 and Rosamond have failed to cite a single legal authority supporting this objection.

> "At the hearing of such a motion [to compel] 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.' (*Coy v. Superior Court*, 58 Cal.2d 210, 220.) 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.)

Through its Separate Statements filed in support of the Motions to Compel, Diamond provided this court with the exclusive statutory authority governing the timing in which a party may propound discovery. This authority provided:

> "(a) A defendant may propound interrogatories to a party to the action without leave of court at any time."
>
> "(b) A plaintiff may propound interrogatories to a party 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, that party, whichever occurs first." (Code of Civil Procedure section 2030.020.) See also Code of Civil Procedure sections 2031.020 and 2033.020 which similarly establish the timing for Requests for Admissions and Request for Production of Documents.

This statutory authority has not been contradicted. Further, the absence of any court ordered discovery schedule or limitation compels the conclusion that no party's discovery rights were limited to

any single subject. Based on the lack of evidence and the complete absence of any legal authority, District No. 40 and Rosamond have failed to meet the burden of showing that their "premature" objection warrants the refusal to provide proper verified responses to Diamond's discovery.

C. The District No. 40 and Rosamond have Failed to Show Burden and Oppression

As set forth in the Separate Statements filed by Diamond, to support an objection of oppression, they objecting party must show some ill intent or that the burden is incommensurate with the result sought.

> "[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 District No. 40 and Rosamond have failed to allege or prove that Diamond had an ill motive when it served this discovery. Nor have they shown that the effect of the burden of providing a response is incommensurate with the information that will be gained thereby. Even though they try and advance this claim, it is not sustainable as the other Public Water Purveyors have collectively agreed that the information sought is relevant and should be provided fully and fairly at the appropriate time. That time should be sooner rather than later. That time should be now.

In attempting to argue an incommensurate burden, District No. 40 and Rosamond fall short of proving that the burden of providing a response results in injustice. (*W. Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 418.) The only support for this claim is that the discovery seeks information going back approximately 40 years. There is no evidence proffered to support this claim. This is only true if the facts of notice occurred 40 years ago and there have been no intervening periods wherein prescription is being asserted neither of which have been alleged or proven to the court.

District No. 40 and Rosamond also claim that they are unable to respond to the discovery until they are told who are the relevant parties to the litigation. This argument is baseless in that District No. 40 and Rosamond are parties who claim by cross-complaint and by affirmative defense to have prescripted the rights of landowners whose property is overlying the Adjudication Area as established by this court. Those boundaries have been established which includes the properties contained within this

area. Therefore, the relevant parties are identified by both of these governmental entities through the available county records.

> "A party furnishing answers to interrogatories "cannot plead ignorance to information which can be obtained from sources under his control." (*Gordon v. Superior Court* (1984) 161 Cal. App. 3d 157, 167)

Further, the Code of Civil Procedure does not contemplate nor require a responding party to have all of the information before it is compelled to respond to a particular discovery requests.

> "(a) Each answer in a response to interrogatories shall be as complete and straightforward as the information reasonably available to the responding party permits.
>
> (b) If an interrogatory cannot be answered completely, it shall be answered to the extent possible.
>
> (c) If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party." (Code of Civil Procedure § 2030.220; See also Code of Civil Procedure §§ 2031.220. 2031.230 and 2033.220.)

Therefore, the unproven burden coupled with the self imposed ignorance of the parties in this matter to not provide a proper basis to deny Diamond's lawfully served discovery.

IV.

CONCLUSION

The express objective of both the discovery statutes as well as the rules governing complex litigation are intended to achieve parallel and complimentary goals.

> "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* (1997) 19 Cal.App.4th 1289, 1294.)
>
> "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.)

Standards of Judicial Administration section 3.10 expresses the intent that judicial management of complex litigation should "expedite" not delay that litigation.

The failure of Waterworks District No. 40 and Rosamond Community Services District to timely respond to Diamond Farming's request for a meet and confer, the failure to promptly move for a protective order, if that is what they now seek, all resulted in Diamond Farming having to expend substantial time and money in the effort to comply with this Court's order, meet and confer, and ultimately compelled Diamond Farming to prepare and file these motions to compel.

To further the intent of both the discovery statutes and the rules for complex litigation, this court must order District No. 40 and Rosamond to properly and fully and fairly respond to Diamond's discovery without objection. This court must set a date certain for the service of those responses. This court must also award the sanctions sought by Diamond Farming.

Dated: October 9, 2007

LeBEAU • THELEN, LLP

By: ______________________

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

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PROOF OF SERVICE

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 9, 2007, I served the within **REPLY TO PUBLIC WATER SUPPLIERS' OPPOSITION TO DIAMOND FARMING'S MOTIONS TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORIES; REQUEST FOR ADMISSIONS; SPECIAL INTERROGATORIES; REQUEST FOR PRODUCTION OF DOCUMENTS; AND FOR MONETARY SANCTIONS**

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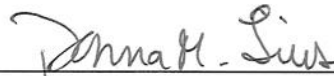
☐ (**BY MAIL**) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California, in the ordinary course of business.

■ (**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 9, 2007, in Bakersfield, California.



DONNA M. LUIS