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Agricultural Association

12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF LOS ANGELES

14 Coordination Proceeding Special title (Rule 1550(b))

Judicial Council Coordination  
Proceeding No.: 4408

15 **ANTELOPE VALLEY GROUNDWATER CASES:**

Case No.: 1-05-CV-049053

16 Included Actions:

17 Los Angeles County Waterworks District No. 40 v.  
Diamond Farming Co.  
18 Superior Court of California, County of Los Angeles,  
Case No.: BC 325 201

19 Los Angeles County Waterworks District No. 40 v.  
20 Diamond Farming Co.  
Superior Court of California, County of Kern, Case No.:  
21 S-1500-CV-254-348

22 Wm. Bolthouse Farms, Inc. v. City of Lancaster  
Diamond Farming Co. v. City of Lancaster  
23 Diamond Farming Co. v. Palmdale Water District  
Superior Court of California, County of Riverside,  
24 consolidated actions, Case Nos. RIC 353 840, RIC 344  
436, RIC 344 668

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Judicial Council Coordination  
Proceeding No.: 4408  
  
Los Angeles Superior Court Case  
No.: 1-05-CV-049053  
  
**CASE MANAGEMENT  
STATEMENT OF STATE OF  
CALIFORNIA, SANTA  
MONICA MOUNTAINS  
CONSERVANCY, 50<sup>TH</sup>  
DISTRICT AGRICULTURAL  
ASSOCIATION**  
  
Case Management Conference  
Date: November 13, 2006  
Time: 1:30 P.M.  
Dept: 1  
  
Location: Los Angeles Superior  
Court, 111 North Hill Street  
Los Angeles, CA 90012

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1 The State of California, the Santa Monica Mountains Conservancy, and the State of  
2 California 50<sup>th</sup> District Agricultural Association (collectively, State Parties) submit the following  
3 Case Management Statement.

4 1. **Proposed Protective Order Re Disclosure and**  
5 **Confidentiality of Well Data and Other Private Information.**

6 Counsel for Tejon Ranchcorp has submitted a proposed protective order that if signed  
7 by this court will allow for disclosure of confidential well completion reports that are filed with  
8 the Department of Water Resources (DWR) pursuant to Water Code section 13751, and which  
9 are confidential pursuant to Water Code section 13752. Section 13752 provides in relevant part:

10 [Well log] [r]eports made in accordance with paragraph (1) of subdivision  
11 (b) of Section 13751 shall not be made available for inspection by the public,  
12 but shall be made available to governmental agencies for use in making  
13 studies, or to any person who obtains a written authorization from the owner  
14 of the well.

15 It is DWR's view that section 13752 imposes on it a duty to keep well completion  
16 reports confidential, and to disclose such reports only to those who fall within the categories for  
17 disclosure listed in the statute. The proposed order would allow the reports to be used for any  
18 purpose within the scope of this litigation, including settlement, or trial and other contested  
19 proceedings, without the consent of the affected well owners. In our view, section 13752 will not  
20 permit this type of disclosure.<sup>1/</sup>

21 \_\_\_\_\_  
22 1. The State's position described herein is consistent with the statement in our April 28, 2006 Case  
23 Management Conference Statement: "Attorneys for the state parties have recently become aware of a possible issue  
24 that has not been raised previously. The California Department of Water Resources has received a request from a  
25 public agency party for well log data for use in a study in connection with this litigation. . . . It is the Department's  
26 interpretation of the statute that the well logs may be provided to public agency parties solely for purposes of making  
27 studies, but cannot be provided to private entities without the authorization of the owner of each well for which a log  
28 is produced. Further, it is the Department's position that information released to a public agency pursuant to section  
13752 must remain confidential, and may not be disseminated outside of the agency making the study. If other parties  
disagree that this is the correct interpretation of the statute, the Court may wish to entertain motions and early briefing  
on this issue."

1 Well completion reports have been confidential, with limited exceptions, since  
2 1951, when Section 7076.1 (predecessor to Section 13752) was added to the Water Code. Unless  
3 one of the statutory exceptions applies, the confidentiality is held by the landowner. In 1994, a  
4 bill, AB 2530, was enrolled that would have made reports for wells located in urbanized areas  
5 (but not rural ones) available to geologists, geophysicists and civil engineers (not just public  
6 agencies) for use in making studies, unless the landowner specifically requested that they not be  
7 released. The bill was vetoed by Governor Wilson, leaving in place the long-standing  
8 confidentiality of such reports, except for release to public agencies making studies. A 1999  
9 amendment to section 13752 created a new exception permitting reports of wells located within  
10 two miles of an area affected or potentially affected by a known unauthorized release of a  
11 contaminant to be released to any person performing an environmental cleanup study if the study  
12 is conducted under the order of a regulatory agency. That exception is not at issue here.

13 The assertion that section 13752 does not bar disclosure in litigation and creates  
14 no privilege or exemption from ordinary discovery requirements is without merit. A privilege  
15 allows its holder to refrain from providing evidence. Privileged information is not discoverable.  
16 (Code Civ. Proc., sec. 2017.010.) What constitutes a privilege is governed by the Evidence  
17 Code, notwithstanding civil discovery statutes. (See *Blue Ridge Ins. Co. v. Superior Court*  
18 (1988) 202 Cal.App.3d 339, 345.)

19 Well completion reports filed with DWR by well drillers or owners are subject to  
20 the official information privilege found in Evidence Code section 1040. That section authorizes  
21 a public entity to refuse to disclose official information and to prevent another from disclosing  
22 official information. It defines "official information" as "information acquired in confidence by a  
23 public employee in the course of his or her duty and not open, or officially disclosed, to the  
24 public prior to the time the claim of privilege is made." Disclosure of official information is  
25 forbidden if an act of Congress or a California statute forbids it. (Evid. Code, sec. 1040(b)(1), or,  
26 if disclosure is against the public interest because there is a necessity for preserving the  
27 confidentiality of the information that outweighs the necessity for disclosure. (*Id.*, sec 1040(b)(2).  
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1 Here, disclosure of well completion reports is prohibited by a California state  
2 statute, Water Code section 13752. Therefore, the privilege (and duty) not to disclose those  
3 reports to persons not expressly authorized by the statute is absolute. The discretionary  
4 deliberative process under Evidence Code section 1040(b)(2) is not applicable to the situation  
5 presented in this case.

6 In DWR's view, section 13752 cannot reasonably be read to include this court  
7 within the meaning of the term "governmental agency." Statutes are to be construed to give  
8 effect to the usual, ordinary import of the language employed in them. (*Phelps v. Stostad* (1997)  
9 16 Cal.4th 23, 32.) Applying this rule of statutory construction to section 13752, we believe that  
10 the Legislature used the term "governmental agency" to refer to executive agencies of federal,  
11 state or local governments who are engaged in the process of making ground water studies, not to  
12 a public entity engaged in a purely judicial function, such as the court in this case.

13 There is an alternate approach that would be permitted by section 13752, and  
14 would address the issues of fairness and due process raised by Tejon Ranch. Parties to the  
15 litigation who are also well owners have the option of granting permission to release their well  
16 completion reports to other parties. It may be that this dispute can be resolved, in large part, by  
17 developing a joint release agreement between parties who are also well owners. This would not  
18 result in the release of all well logs, but if the major well owners are parties, as they should be if  
19 the adjudication is comprehensive, this should be a useful amount of information. In addition,  
20 the court could order that well owners who are not now parties should be named as parties.

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1 Dated: November 8, 2006

Respectfully submitted,

2 BILL LOCKYER  
3 Attorney General of the State of California

4 TOM GREENE  
5 Chief Assistant Attorney General

6 J. MATTHEW RODRIQUEZ  
7 Senior Assistant Deputy Attorney General

8 VIRGINIA CAHILL  
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10 MICHAEL L. CROW  
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12 Attorneys for Attorneys for Defendant State of  
13 California; Santa Monica Mountains  
14 Conservancy; 50<sup>th</sup> District Agricultural  
15 Association

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DECLARATION OF SERVICE

CASE:           **ANTELOPE VALLEY GROUNDWATER CASES,  
LOS ANGELES COUNTY SUPERIOR COURT  
JUDICIAL COUNCIL COORDINATED PROCEEDINGS NO. 4408**

I, declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, P.O. Box 944255, Sacramento, California 94244-2550.

On November 8, 2006, I served the **CASE MANAGEMENT STATEMENT OF STATE OF CALIFORNIA, SANTA MONICA MOUNTAINS CONSERVANCY, 50<sup>TH</sup> DISTRICT AGRICULTURAL ASSOCIATION**

  X   Posting the document(s) listed above to the Santa Clara County Superior Court web site in regard to the Antelope Valley Groundwater matter on November 8, 2006

  X   by placing a true copy of the document(s) listed above in a sealed envelope with postage thereon fully prepaid using the overnight courier, Golden State Overnight Courier Service, addressed as follows:

**(served original via over night courier to Presiding Judge on November 8, 2006)**

Presiding Judge of the Superior Court of California, County of Los Angeles  
County Courthouse  
111 North Hill Street  
Los Angeles, CA 90012-3014

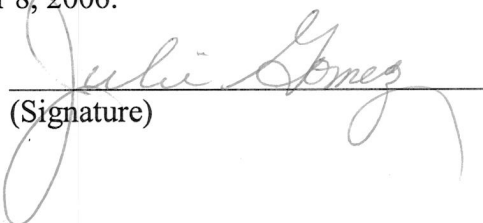
Chair, Judicial Council of California  
Administrative office of the Courts  
Attn: Appellate and Trial Court Judicial Services (Civil Case Coordination)  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688

Honorable Jack Komar  
Santa Clara County Superior Court  
191 North First Street, Department 17C  
San Jose, Ca 95113

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 8, 2006.

Declarant

\_\_\_\_\_  
Julie Gomez

  
\_\_\_\_\_  
(Signature)