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11 Defendant Tejon Ranchcorp

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

14 **ANTELOPE VALLEY GROUNDWATER**
15 **CASES**

16 Included Consolidated Actions:

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

21 Los Angeles County Waterworks District No. 40 v.
22 Diamond Farming Co.
23 Superior Court of California, County of Kern,
24 Case No. S-1500-CV-254-348;

25 Wm. Bolthouse Farms, Inc. v. City of Lancaster
26 Diamond Farming Co. v. City of Lancaster
27 Diamond Farming Co. v. Palmdale Water Dist.,
28 Superior Court of California, County of Riverside,
consolidated actions, Case Nos. RIC 353 840, RIC 344
436, RIC 344 668

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los Angeles,
Case No. BC 364 553

Richard A. Wood v. Los Angeles County Waterworks)

Judicial Council Coordination No. 4408

Santa Clara Case No. 1-05-CV-049053

Lead Case No. BC 325 201

**OPPOSITION OF TEJON
RANCHCORP TO THE REQUEST
OF THE UNITED STATES TO
AMEND CASE MANAGEMENT
ORDER OF MARCH 22, 2010**

Judge: Honorable Jack Komar

1 District No. 40)
2 Superior Court of California, County of Los Angeles)
3 Case No. BC 391 869)
4 _____)

5 I.

6 INTRODUCTION

7 On March 22, 2010 the court entered an order (Docket No. 3493) which provides, in part,
8 as follows:

9 The parties shall comply with the provisions of Code of
10 Civil Procedure Section 2034.210 and engage in a simultaneous
11 disclosure and exchange of expert information, including any
12 reports prepared by such experts, on July 1, 2010. Any
13 supplemental disclosures and exchange of information shall occur
14 on July 15, 2010. Expert depositions shall be taken between
15 July 15 and August 30, 2010.

16 Code of Civil Procedure section 2034.210 is, of course, part of the Civil Discovery Act (Title 4
17 (commencing with section 2016.010) of Part 4 of the Code of Civil Procedure).¹ Chapter 18
18 (commencing with section 2034.010) of the Civil Discovery Act ("Chapter 18") deals with the
19 simultaneous exchange of expert witness information and contains detailed provisions regarding
20 the exchange of expert witness information, the deposition of expert witnesses, the augmentation
21 or amendment of expert witness lists, and the procedure for submittal of tardy expert witness
22 information.

23 The United States and seven public agencies² have now asked this court to disregard state

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25 All further statutory citations are to the Code of Civil Procedure unless otherwise indicated.

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27 Palmdale Water District, Los Angeles County Waterworks District No. 40, Rosamond
28 Community Services District, City of Palmdale, City of Los Angeles, Quartz Hill Water District, and
Phelan Pinon Hills Community Services District.

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1 law and embrace part of Rule 26 of the Federal Rules of Civil Procedure. (Docket Nos. 3522 and
2 3554.) TEJON RANHCORP (“Tejon”) opposes such request for two principal reasons, namely
3 (1) the court has no authority to modify the provisions of Chapter 18 and (2) any requirement that
4 an expert witness report include all the data and other information “considered” by the expert
5 would impose an unreasonable burden in light of the Phase 3 trial issues and the areal extent of
6 the Basin.
7

8 **II.**

9 **THE COURT LACKS AUTHORITY TO MODIFY CHAPTER 18**

10 The California Discovery Act, as originally enacted in 1957, was modeled after the
11 discovery provisions of the Federal Rules of Civil Procedure then in effect. (See, e.g., Weil and
12 Brown, *Civil Procedure Before Trial*, ¶ 8:4.) Over the years, both the California and the federal
13 discovery rules have been substantially amended and there is no longer much similarity between
14 the discovery practice in California and the federal courts. (*Ibid.*)

15 Section 2016.030 authorizes the *parties*, unless the court orders otherwise, to enter into a
16 written stipulation modifying the procedures under the Civil Discovery Act for any method of
17 discovery permitted under section 2019.010 which includes, in subdivision (f) thereof, the
18 simultaneous exchange of expert trial witness information. By contrast, there is no provision in
19 the Civil Discovery Act which authorizes a court to modify the substantive provisions of Chapter
20 18. Likewise, there is nothing in Chapter 3 (commencing with section 404) of Part 2 of the Code
21 of Civil Procedure or Chapter 7 (commencing with Rule 3.501) of Division 4 of Title 3 of the
22 California Rules of Court which authorizes a court to modify the substantive provisions of
23 Chapter 18.
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1 The United States, and others, invite this court to exercise its discretion and establish
2 “special procedures” at odds with the substantive provisions of Chapter 18 but this court has no
3 such discretion to exercise. Justice Peters, writing for a unanimous court in *Greyhound*
4 *Corporation v. Superior Court (Clay)* (1961) 56 Cal.2d 355, a case concerned with the
5 interpretation of the California discovery statutes enacted in 1957, noted at page 383 that:

6 The Legislative purposes above set forth [regarding the discovery
7 statutes] are not to be subverted under the guise of the exercise of
8 discretion.

9 Interestingly, in *Greyhound*, the high court refused to recognize the federally created “work
10 product rule” of *Hickman v. Taylor* (1947) 329 U.S. 495 since the “Legislature expressly refused
11 to extend the concepts of privilege when adopting the discovery procedures,” noting that “[s]ince
12 privilege is created by statute it should not be extended by judicial fiat.” (56 Cal.2d at 401.)³

13
14 In short, the relief sought can only be achieved by a stipulation of the parties, an
15 amendment of California law, or perhaps removal of these cases to a federal court.

16 **III.**

17 **ANY REQUIREMENT THAT A REPORT INCLUDE**
18 **ALL DATA “CONSIDERED” BY AN EXPERT**
19 **WOULD IMPOSE AN UNREASONABLE BURDEN**

20 The Phase 3 trial issues include native safe yield, current groundwater production, and the
21 importation of water “on an annual basis.” The Basin contains nearly 1,400 square miles of land,
22 penetrated by thousands of wells. The Antelope Valley-East Kern Water Agency has more than
23 1,000 water delivery records. The number of rainfall and runoff records that may need to be
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26 The Legislature subsequently amended former section 2016 to create a somewhat qualified
27 work product privilege in California. (See section 2018.030.)

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1 “considered” by experts will surely be in the thousands. Much of the “data” is in the public
2 domain, but much of the data may well be imbedded in other writings in the expert’s library. To
3 require an expert to accumulate all such “data” into some media for inclusion in his or her report
4 would be expensive, burdensome, and oppressive. There is simply no reason why the trial
5 lawyers can’t obtain the “data” they believe they need by deposing the experts and having the
6 experts produce their discoverable reports and writings.
7

8 **IV.**

9 **CONCLUSION**

10 The United States correctly notes that Phase 2 pre-trial discovery was not problem-free.⁴
11 The problems, however, were caused by some parties “gaming” the system, not because the
12 substantive provisions of section 2034.210 are deficient. Stated differently, the substantive law
13 is not the problem. We can anticipate that Phase 3 pre-trial discovery will not be problem-free
14 unless all parties proceed in good faith and make adequate disclosures under section 2034.210.
15

16 Dated: April 30, 2010

Respectfully submitted,

KUHS & PARKER

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18
19 By William C. Kuhs
20 William C. Kuhs, Attorney for Tejon

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The hands of the United States were not entirely clean on the subject. (See Docket Nos. 2025 and 2076.)

PROOF OF SERVICE

I, Lidia E. Luna, declare:

I am employed in the County of Kern, State of California. I am over the age of 18 and am not a party to the within action; my business address is Kuhs & Parker, 1200 Truxtun Avenue, Suite 200, Bakersfield, California 93301.

On April 30, 2010, I caused the foregoing document(s) described as: **OPPOSITION OF TEJON RANCHCORP TO THE REQUEST OF THE UNITED STATES TO AMEND CASE MANAGEMENT ORDER OF MARCH 22, 2010** to be served on the parties in this action, as follows:

(X) (BY ELECTRONIC SERVICE) by posting the document(s) listed above to the Santa Clara County Superior Court website: www.scefilings.org regarding the Antelope Valley Groundwater matter.

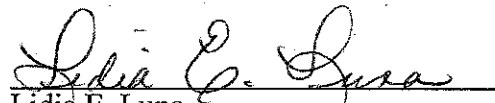
() (BY U.S. MAIL) I am readily familiar with the firm's practice of collection and processing of documents for mailing. Under that practice, the above-referenced document(s) were placed in seal envelope(s) addressed to the parties as noted above, with postage thereon fully prepaid and deposited such envelope(s) with the United States Postal Service on the same date at Bakersfield, California, addressed to:

() (BY FEDERAL EXPRESS) I served a true and correct copy by Federal Express or other overnight delivery service, for delivery on the next business day. Each copy was enclosed in an envelope or package designated by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying service list.

() (BY FACSIMILE TRANSMISSION) I am "readily familiar" with the firm's practice of facsimile transmission of documents. It is transmitted to the recipient on the same day in the ordinary course of business.

(X) (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

() (FEDERAL) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Lidia E. Luna

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