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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES
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11 Coordination Proceeding Special Title)
(Rule 1550 (b)))

Judicial Council Coordination No. 4408
[Assigned to Hon. Jack Komar; Dept 4408]

12 **ANTELOPE VALLEY GROUNDWATER**)
13 **CASES**)

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

14 Included **CONSOLIDATED** Actions:)

CASE MANAGEMENT STATEMENT OF
LANDINV, INC., BRUCE BURROWS,
AND 300 A 40 H, LLC

15 Los Angeles County Waterworks District No.)
16 40 vs. Diamond Farming Company)
17 Los Angeles Superior Court Case No.)
BC325201)

Date: September 6, 2013
Time: 10:00 a.m.
Dept.: 1; Room 222; 2nd Floor

18 Los Angeles County Waterworks District No.)
19 40 vs. Diamond Farming Company)
20 Kern County Superior Court Case No. S-1500-)
CV-254348 NFT)

21 Diamond Farming Company vs. City of)
22 Lancaster)
23 Riverside County Superior Court Lead Case)
24 No. RIC 344436 [Consolidated w/ Case Nos.)
344668 & 353840]

25 Willis v. Los Angeles County Waterworks)
26 District No. 40; Los Angeles Superior Court)
27 Case No. BC 364553)

28 Wood v. Los Angeles County Waterworks)
District No. 40; Los Angeles Superior Court)
Case No. BC 391869)

1 The Court's August 14, 2013 Case Management Order requires that the Public Water
2 Suppliers claiming prescription "identify the legal theory, timeframe, [and] factual and legal
3 basis for each purveyor[s] claim as against each landowner"

4 Neither the Public Water Suppliers' August 8, 2013 letter, which lists the information
5 they propose to provide in discovery, nor their subsequently filed "statements," comply with the
6 Court's Order. The Public Water Suppliers' list and statements do not include information that
7 sets forth the factual basis for each element of each prescriptive right claim by each purveyor
8 against each landowner.

9 The Discovery Order for Phase 5 Trial, proposed on September 3, 2013 by Tejon
10 Ranchcorp and Granite Construction Co., provides a more complete and accurate list of
11 information necessary for the Public Water Suppliers' prescription claims, and is thereby
12 consistent with the Court's August 14, 2013 order.

13 The July 22, 2013 Case Management Statement of the Landowners sets forth a detailed
14 discussion of the elements necessary for prescription. The July 22, 2013 Trial Setting
15 Conference Statement of Tejon Ranchcorp and Granite Construction Co. identified a number of
16 issues relating to the Public Water Suppliers' prescription claims. The Public Water Suppliers'
17 list and statements do not address many of the elements and issues so identified.

18 In particular, the Public Water Suppliers' list and statements do not specify facts that
19 establish the initiation of any prescriptive five-year period as against any specific landowner.¹
20 For example, the Public Water Suppliers list and statements do not address the "open and
21 notorious" use element as it relates to any specific landowner. In order to establish "open and
22 notorious" use the Public Water Suppliers must show that specific landowners had "notice of the
23 activity and knowledge of its adverse character." 1-4 California Water Law and Policy §4.02;
24 see Hutchins, California Law of Water Rights (1956) at p. 302; Rogers & Nichols, Water for
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26 ¹ The elements of a prescriptive right in groundwater are (1) a continuous five years of use, that is (2) actual, open
27 and notorious, and (3) hostile and adverse to the original owner, and (4) under claim of right. *City of Santa Maria v.*
28 *Adam*, 211 Cal.App.4th 266, 291 (2012). The elements are the same as those required to prove a prescriptive right in
any other type of property. *Id.* The initiation of the prescriptive five-year period begins when all elements are and
remain satisfied. 1-4 California Water Law and Policy § 4.07. Interruption in the continuity of adverse use,
however slight, prevents acquisition of title by prescription. *Bree v. Wheeler*, 129 Cal. 145, 147 (1900).

1 California § 238. Thus, each Public Water Supplier must show that each landowner for whom it
2 desires to establish a prescriptive claim had actual or presumptive knowledge² of both the Public
3 Water Supplier's pumping activity and the existence of an overdraft condition affecting the
4 landowner's groundwater supply. *Los Angeles v. San Fernando*, 14 Cal.3d 199, 282-84 (1975);
5 *City of Santa Maria v. Adam*, 211 Cal.App. 4th 266, 293 (2012).³ The Public Water Suppliers'
6 list and statements do not describe what information they intend to produce that relates to
7 individual landowner notice.

8 The Public Water Suppliers' list and statements fail to address the details of their
9 prescription claims that are otherwise addressed in the Discovery Order proposed by Tejon
10 Ranchcorp and Granite Construction Co. It is hereby requested that the Court disapprove the
11 Public Water Suppliers' list and statements, and, instead, adopt the Discovery Order proposed by
12 Tejon Ranchcorp and Granite Construction Co.

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14 Dated: September 5, 2013

SMILAND CHESTER LLP

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16 By: /s/ Theodore A. Chester, Jr.
17 Theodore A. Chester, Jr.,
18 Attorneys for Landinv, Inc.
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22 ² In order to establish presumptive notice of the record owner, the prescriber's "possession must be so open, visible
23 and notorious that it will raise a presumption of notice to him of the adverse claim." *Lindsay v. King*, 138
24 Cal.App.2d 333, 335 (1956). To "acquire the right by prescription in the lands of another, the possession . . . must
25 be open, hostile and continuous – 'he must unfurl his flag on the land, and keep it flying, so that the owner may see,
if he will, that an enemy has invaded his domains, and planted the standard of conquest.'" *Id.* quoting *Myran v.*
Smith, 117 Cal.App. 355, 362 (1931).

26 ³ With respect to proof of notice of overdraft, *Los Angeles* and *Santa Maria* relied on evidence that landowners'
27 wells showed depleted water levels. In the instant case the Public Water Suppliers must provide such evidence as to
28 each landowner that operated a well on his or her property during any alleged prescriptive period. *Los Angeles* and
Santa Maria did not address what proof is necessary if a landowner either did not operate a well, or the well showed
no or negligible depleted levels, during the alleged prescriptive period. Additionally, neither *Los Angeles* nor *Santa*
Maria discussed what proof is needed to show a landowners' notice of a public agency's pumping activities
conducted up to 50 miles distant from the landowner's property.

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PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I, Felicia Herbstreith am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 601 West Fifth Street, Suite 1100, Los Angeles, California 90071.

On **September 5, 2013**, I served the foregoing document described as: **CASE MANAGEMENT STATEMENT OF LANDINV, INC., BRUCE BURROWS AND 300 A 40 H, LLC** on the interested parties in this action by posting the document listed above to the Santa Clara County Superior website in regard to the Antelope Valley Groundwater Adjudication matter, pursuant to the Electronic Filing and Service Standing Order of Judge Komar.

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

Executed on **September 5, 2013**, at Los Angeles, California.

/s/ Felicia Herbstreith
Felicia Herbstreith