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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SANTA CLARA**

10 **ANTELOPE VALLEY GROUNDWATER**
11 **CASES:**

12 **Included Actions:**

13 Los Angeles County Waterworks District No.

40 v. Diamond Farming Co.

Superior Court of California

14 County of Los Angeles, Case No. BC325201

15 Los Angeles County Waterworks District No.

40 v. Diamond Farming Co.

Superior Court of California

16 County of Kern, Case No. S-1500-CV-254-

17 348

18 Wm. Bolthouse Farms, Inc. v. City of
Lancaster

19 Diamond Farming Co. v. City of Lancaster

Diamond Farming Co. v. Palmdale Water Dist.

20 Superior Court of California

County of Riverside, consolidated actions

21 Case Nos. RIC 353840, RIC 344436,

RIC 344668

Judicial Council Coordination

Proceeding No. 4408

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

Assigned to the Honorable Jack Komar

CROSS-DEFENDANT ANAVERDE LLC's
EX PARTE MOTION TO:

(1) COMPEL RESPONSES TO

OUTSTANDING DISCOVERY

REQUESTS AGAINST LACWW;

(2) REQUEST CONTINUANCE OF

DEPOSITION OF JOHN LAMBIE;

(3) REQUEST DATE CERTAIN FOR

ANAVERDE TRIAL BRIEFING AND

PRESENTATION

(4) MEMORANDUM OF POINTS AND

AUTHORITIES IN SUPPORT THEREOF

(5) DECLARATION OF KIMBERLY

HUANGFU IN SUPPORT THEREOF

(6) PROPOSED ORDER

DATE: September 23, 2008

TIME: 8:15 a.m.

DEPT: 17C

Telephonic Hearing

Conference call-in: (866) 844-4955

Passcode: 9554462#

*[Filed concurrently herewith Declaration and
[Proposed] Order]*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Anaverde LLC ("Anaverde") is an overlying landowner and residential developer owning approximately 1,500 acres of property in the City of Palmdale. (See Huangfu Declaration ("Huangfu Decl."), attached hereto, pg. 1, para. 2, lln. 13-14.) Unlike the other parties appearing as part of Phase 2, Anaverde was not served with the pending adjudication action until May 16, 2007, after the completion of Phase 1 in which the adjudication boundary was delineated. (Huangfu Decl., pg. 1, para. 3, lln. 15-16.) For the next eleven months, a discovery stay precluded Anaverde from serving any discovery relating to issues other than class certification. (Huangfu Decl., pg. 1, para. 4, lln. 17-18.) That stay remained until merely four months ago when it was verbally lifted during the Case Management Conference on May 22, 2008. (Huangfu Decl., pg. 1, para. 5, lln. 19-20.) Finally, Anaverde was unable to participate in the Technical Committee because its Managing Agent was in bankruptcy until June 19, 2008.

Anaverde's case is straightforward. The groundwater basin beneath its site is bounded by the San Andreas Fault and the adjoining geologic basement rock formations. The fault and these low-permeability rocks, offset by the fault, serve as a barrier to groundwater mitigation. Groundwater levels from LACWW's wells; water quality comparisons; and other physical evidence concerning on- and off-site hydrology forms the basis for its position that the Anaverde Creek watershed is a sub-basin. The Palmdale Water District ("PWD") and Quartz Hill Water District ("QHWD") have cooperated with Anaverde and provided all relevant data. Los Angeles County Waterworks District No. 40 ("LACWW") has not provided all of the requested data and has opposed doing so based upon meritless objections such as attorney-client privilege (for well data) or that we are within thirty days of trial. As this Court knows, the Case Management Order

1 for Phase 2 Trial, entered on August 9, 2008, clearly contemplates discovery within thirty days of
2 trial given the accelerated pace of this proceeding.

3 Anaverde has made every effort to meet the trial deadlines despite its late involvement in
4 the case. Anaverde does not desire a continuation of the trial date. Rather, Anaverde requests that
5 its case-in-chief be heard after Tejon Ranch, or other Phase 2 defendants, and that its expert
6 deposition be delayed until LACWW fully responds to the outstanding discovery requests with the
7 data vital to a complete analysis by Anaverde's Expert, Mr. Lambie.

9 **II. LACWW FAILED TO PROPERLY RESPOND TO DISCOVERY REQUESTS.**

10 On Aug. 11, 2008, the parties conferred on outstanding discovery issues after the Case
11 Management Conference. Mr. Dunn, counsel for LACWW, represented to the Court and counsel
12 present that his office has been extremely cooperative throughout the discovery process. This is
13 simply untrue given the extensive efforts that Anaverde has made and the level of non-
14 responsiveness that Anaverde received in turn.

15
16 The first set of discovery relating to technical data on the broader adjudication basin at
17 issue was propounded, on Aug. 5, 2008, to all public water purveyors ("the Purveyors"), attached
18 as Exhibit 2 to the Declaration of Kimberly A. Huangfu served currently and in support of this
19 Motion. A second set was served on the Purveyors on Aug. 8, 2008. (Huangfu Decl., pg. 1, para.
20 6, lln. 21-25.) Discovery responses were due on Sept. 8, 2008 and Sept. 9, 2008, respectively.
21 (Huangfu Decl., pg. 1, para. 7, lln. 26.) This Motion relates only to discovery responses received
22 by LACWW.
23

24 **A.) LACWW Failed to Provide Critical Documents Precluding Anaverde's Ability to**
25 **Prepare for Trial.**

26 Although LACWW provided responses to Anaverde's Request for Production of
27 Documents ("RFPs"), Set One, on Sept. 8, 2008, the documents were not produced until Sept. 15,
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2008 – merely fifteen days before Anaverde’s retained expert, Mr. John Lambie, is calendared to provide deposition testimony. (Huangfu Decl., pg. 2, para. 8, lln. 1-4.)

i.) Production Data for June and July 2008 are Missing.

Anaverde promptly reviewed the voluminous documents provided, and was disappointed to discover that LACWW omitted the most critical pieces of data, namely well readings and quantities of water pumped for July and August 2008. (Huangfu Decl., pg. 2, para. 11, lln. 15-18.) This information is critical to Mr. Lambie’s ability to analyze data relevant the sub-basin issue. LACWW finally has agreed to provide this critical data “once it is available”, Anaverde to date, still does not have the data in its possession.¹ (Huangfu Decl., pg. 2, para. 12, lln. 19-23.)

ii.) Well Coordinates are Missing.

Upon reviewing the document produced, it was readily apparent that the well locations and UTM coordinates for twenty-five of the forty-nine LACWW wells were not provided. (Huangfu Decl., pg. 2, para. 13, lln 25-26.) To assist the meet and confer efforts and the production itself, Anaverde created and sent LACWW a chart outlining the total number of wells LACWW previously provided with specification identification of the twenty-five that require coordinates. (Huangfu Decl., pg. 2, para. 13, lln. 25-27; pg. 3, para. 13, lln. 1.) To date, this information has not been provided. (Huangfu Decl., pg. 3, para. 13, lln 2.)

Without the well coordinates, Anaverde’s expert is unable to precisely locate the twenty-five wells for which this information is missing, thus precluding him from formulating opinions bearing on issues in this case. Mr. Lambie further cannot analyze the data accurately, let alone produce his file supporting his opinions, in five days.² Absent the requisite expert preparation,

¹ It should be noted that PWD and QHWD promptly provided production data and groundwater elevation levels through August 2008.

² Per the Case Management Order for Phase 2, production of Mr. Lambie’s file should occur, “to (footnote continued)

Anaverde is unable to properly prepare its case for trial. Anaverde requests this Court compel LACWW to produce the above describe data immediately.

B.) LACWW Did Not Produce Digital Data In Its Native Database Format.

LACWW failed to comply with RFP, Set One, Nos. 1-3, 5-6, 8-9, 13-15, 17-20, 23-25; and RFP, Set Two, Nos. 1-3, and 7. (Huangfu Decl., pg. 3, para. 14, lln. 3-6.) For example, RFP Set One, No. 1 requests:

Any and all DOCUMENTS that refer or RELATE TO GROUNDWATER WELLS within the BASIN, including the GROUNDWATER WELL identification, owner well name, and United States Geological Survey ("USGS") well identification.

The PRELIMINARY STATEMENT to the RFP sought production of all responsive information in electronic files and records in database format. Such format "may include DBF, Microsoft Access, or any other ODBC compatible format." (See generally, Huangfu Decl., pg. 3, para. 14, 3-6.) LACWW failed to properly respond to this request. Instead, LACWW produced printed portions of an Excel spreadsheet, page-by-page. (Huangfu Decl., pg. 3, para. 15, 8-9.) As a result, Anaverde's expert must expend exhaustive amounts of time in simply recreating the data in a usable form. (Huangfu Decl., pg. 3, para. 16, lln. 10-14.) This situation, prejudicially delays Anaverde's ability to properly prepare for the quickly approaching trial date. This Court must compel LACWW to provide its database containing the requested documents.

C.) LACWW Produced Incomplete, Inaccurate and/or Mislabeled Data.

The meter readings, which LACWW did provide, are incorrect. Anaverde's RFP, Set No. One, No. 23 sought the quantity of water extracted for the past fifty years, on an annualized basis. (Huangfu Decl., pg. 3, para. 17, lln. 15-16.) LACWW provided data for years 1990 – 2001. (Huangfu Decl., pg. 3, para. 18, lln. 18.) It appears that data from 2002 to 2008 may be included; however, it is not so labeled. (Huangfu Decl., pg. 3, para. 19, lln. 18-21.) For example, a meter reading dated 2002 is labeled as 2001. As a result, Anaverde is unclear (1) whether data for all the greatest extent possible, on September 27, 2008.

1 years requested was provided, and (2) whether the data for years 2002 through 2008 is accurate
2 and complete. (Huangfu Decl., pg. 3, para. 20, lln. 25-27.) Upon Anaverde's attempt to meet and
3 confer regarding this issue, LACWW responded by providing an Excel spreadsheet of the data;
4 however, that too was only labeled 1990 through 2001. (Huangfu Decl., pg. 4, para. 21, lln. 1-3.)
5 LACWW declined to provide accurately labeled data. (Huangfu Decl., pg. 3, para. 20, lln. 22-27.)
6 Consequently, Anaverde's concern regarding whether this information is complete and responsive
7 to the RFP remains. At a minimum, if the data is comprehensive, to proceed using mislabeled
8 data is likely to confuse the issues and raise evidentiary uncertainty when proffered at trial by any
9 or all of the parties.

10 **D.) LACWW Improperly Withheld Documents Based on Privilege Without**
11 **Producing a Privilege Log.**

12 LACWW also objects to certain RFPs for well elevation levels, production levels, and
13 capacity, on the basis that theses documents are "protected from disclosure under the attorney-
14 client, work-product, or deliberative process privilege." (Huangfu Decl., pg. 5, para. 30, lln. 1-3.)
15 If this were a legitimate objection justifying a failure to produce a document, LACWW's
16 appropriate remedy is to specifically identify any such documents in a privilege log, about which
17 all parties could then meet and confer. LACWW has not provided any privilege log. (Huangfu
18 Decl., pg. 5, para. 31, lln. 4.)

19 Further objections state that "capacity of each groundwater well" or other similar terms are
20 vague and ambiguous. Such objections are unfounded because counsel for both parties have
21 clarified any and all ambiguities in subsequent e-mail correspondence. (See generally, Huangfu
22 Decl., pg. 3, para. 20, lln. 22-27.)

23 **E.) Even Documents LACWW Did Produce Are Unreliable Due to Disclaimers.**

24 Upon request, LACWW provided Anaverde with two maps which outline the general
25 vicinity of some certain wells. Map 1 depicts the Active Wells for Regions, 24, 27, 33, 35, 38 and
26 39. (Huangfu Decl., pg. 5, para. 33, lln. 9-11.) The second map illustrates New and Existing
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1 Wells for Region 4. (Huangfu Decl., pg. 5, para. 33, lln. 10-11.) However, LACWW includes on
2 these maps disclaimers in the lower-left corner stating:

3 this map is intended for use only as a water operations map by the Los Angeles County
4 Waterworks Districts and is based upon information available from public records. *The Los*
5 *Angeles County Waterworks Districts expressly disclaim any liability for any inaccuracies*
which may be present in this map.

6 (Huangfu Decl., pg. 5, para. 33, lln. 11-16.) (emphasis added.) Anaverde brings this to the
7 Court's attention to ensure the admissibility of the maps at trial, as well as Anaverde's reliance on
8 these maps for preparation of expert depositions and trial. Alternatively, this Court must compel
9 LACWW to produce maps without a disclaimer as to inaccuracies.

10 **F.) LACWW Failed to Produce its Person Most Knowledgeable ("PMK") and**
11 **Documents Pursuant to a Properly Noticed Deposition.**

12 In an effort to clarify discrepancies and omitted data files from the Technical Committee's
13 Problem Statement Report ("PSR"), Anaverde properly noticed depositions of the PMK for
14 LACWW, Palmdale Water District ("PWD"), and Quartz Hill Water District ("QHWD") on
15 August 28, 2008. (Huangfu Decl., pg 4, para. 22, lln. 4-6.) The primary objectives of the PMK
16 depositions were to obtain back-up the data (production well data and groundwater elevation
17 levels) used by the Technical Committee to compile the maps and figures contained in the PSR.
18 The LACWW PMK Deposition is crucial to these objectives because LACWW maintains the
19 Technical Committee's PSR underlying database. Despite a barrage of e-mails, letters, phone
20 calls and entreaties by Anaverde, LACWW still failed to provide the back-up data.

21 Anaverde's efforts to obtain the basic July and August 2008 well data, and the PSR
22 underlying data through deposition testimony were also thwarted. In a conference call among all
23 parties, LACWW inferred they may file objections to the properly noticed depositions. (Huangfu
24 Decl., pg. 4, para. 23, lln. 7-9.) Anaverde followed up with LACWW in an effort to meet and
25 confer, and to avoid court intervention. (Huangfu Decl., pg. 4 para. 24, lln. 10-11.) Instead of
26 responding to Anaverde's informal request, LACWW filed objections on Sept. 12, 2008.
27 (Huangfu Decl., pg. 4, para. 26, lln. 14-16.) In light of LACWW's objection, Anaverde continued
28

1 the deposition date until Sept. 19, 2008, in hopes of resolving any and all outstanding issues so
2 that the deposition may go forward. (Huangfu Decl., pg. 4, para. 27, lln. 18-20.) Unfortunately, in
3 response to this brief continuance, LACWW circulated an e-mail stating: "no depo tomorrow" and
4 filed further objections. (Huangfu Decl., pg. 5, para. 28, lln. 21-23.)

5 LACWW's objections are not consistent with the Case Management Order for Phase 2
6 Trial dated Sept. 9, 2008. LACWW objects that the PMK deposition is invalid in violation of a
7 statutory discovery cut-off. However, in this case the CMO controls. That Order states:

8 Any party intending to call a non-expert witness shall post the name(s) of such witness(es)
9 on the Court's website on September 15, 2008, which shall include a statement as to
availability for deposition.

10 (Huangfu Decl., pg. 4, para. 29, lln. 25-28.) Surely, LACWW intends to call its PMK as a
11 witness. Thus, per the CMO, the deposition of such a witness is contemplated to occur after Sept.
12 15, 2008. A deposition within one week of that date is appropriate. This is particularly true
13 because LACWW impeded discovery efforts at every turn prior to the Sept. 15, 2008 date.
14 Anaverde complied with the CMO.

15 In addition, LACWW did not meet and confer, did not file a Motion to Quash, nor did not
16 seek a Protective Order. LACWW's refusal to produce their PMK violates Code of Civil
17 Procedure section 2025.410 *et seq.* That section states in addition to serving a written objection,

18 *a party may also move for an order staying the taking of the deposition and quashing the*
19 *deposition notice. This motion shall be accompanied by a meet and confer declaration*
20 *under Section 2016.040. The taking of the deposition is stayed pending the determination*
of this motion.

21 (emphasis added.)

22 LACWW failed to file a Motion to Quash or to move for a protective order, and could not
23 have done so regardless, because it continually refused to engage in any meaningful "meet and
24 confer" efforts, as required. Consequently, Anaverde's properly noticed PMK deposition is valid,
25 and this Court should compel the deposition despite LACWW's objections.

1 **G) Informal Efforts Preceding Anaverde's Extensive Efforts in Section II, A) -**
2 **F.), Also Were Fruitless.**

3 Aside from the formal discovery process, Anaverde has made countless efforts to obtain
4 technical data through informal avenues. At the Case Management Conference on July 21, 2008,
5 counsel for Palmdale Water District proffered the Technical Committee's Problem Statement
6 Report ("PSR") to parties that did not participate in the Technical Committee. (Huangfu Decl. pg.
7 5, para. 34, lln. 17-23.) Anaverde immediately contacted PWD and executed the protective order.
8 Upon receipt of the pass code for the ftp site for the PSR, counsel for Anaverde was informed that
9 LACWW possessed the underlying data used in support of the PSR. In response to Anaverde's
10 request for the underlying data, LACWW produced 16-gigabytes of data on July 30, 2008 which
11 proved to be incomplete. (Huangfu Decl., pg. 5, para. 35, lln. 26-27; pg. 6, para. 35; lln. 1-2.)
12 This data was immediately reviewed by Anaverde and, beginning on August 6, 2008, Anaverde
13 attempted to obtain the missing and sought clarification on how certain maps were generated given
14 the incomplete data provided. Anaverde received no clarification and still not in possession of
15 critical well data. These extensive efforts also proved futile due to LACWW's unwillingness to
16 cooperate with Anaverde's requests.
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19 **III. ANAVERDE REQUIRES ADDITIONAL TIME FOR KEY EVENTS, BUT NOT A**
20 **TRIAL CONTINUANCE.**

21 Anaverde does not seek that the trial be continued since other unrelated sub-basin cases can
22 proceed before it. Until all of the outstanding discovery described herein is received by Anaverde, it
23 is impossible to prepare for trial. Assuming this Court resolves these outstanding discovery issues in
24 this Ex Parte hearing and compels LACWW to actually produce to Anaverde the discovery no later
25 than Thursday, September 25, 2008, by 5 p.m., Anaverde's expert then requires at least two weeks to
26 complete his evaluation and prepare for deposition. Given that trial commences on October 6, 2008,
27 Anaverde can make Mr. Lambie available on October 11, 2008 or the following week for deposition.
28

Anaverde will be unable to actually present its case prior to the week of October 21, 2008. The Court directed the parties to coordinate with one another to determine the actual date and time of the witnesses' testimony at trial, however, few discussions regarding trial have occurred given that all energy has been expended on securing data to even finalize expert opinions. Apparently, Tejon Ranch, Copa de Oro, and Anaverde raise similar issues contending that a sub-basin exists. Since the Purveyors bear the burden of proof to demonstrate a prescriptive right to the groundwater, and expressed a willingness to lead at the last CMC, it logically follows that the Purveyors present their experts testimony and other evidence first, then followed by Tejon Ranch and Copa de Oro since they are similarly situated in terms of geographic proximity and the alleged sub-area. Anaverde requests that the Court order this "line-up" of trial presentation to allow Anaverde the necessary time to minimize prejudice to it, and to better prepare the sub-basin case.

IV. CONCLUSION.

PWD and QHWD cooperated and collaborated with their respective clients to retrieve data specific to their wells as requested in Anaverde's RFPs. In contrast, all of Anaverde's efforts to obtain this data from LACWW were fruitless. Despite LACWW's promises to provide data, to date, Anaverde still does not have access to this data, critical to Anaverde's ability to prepare for trial. The spreadsheet LACWW provided is wrought with gaps and inconsistencies. This situation renders it difficult for Anaverde and its expert to formulate a coherent analysis from the figures provided.

Anaverde repeatedly requested discovery responses, yet merely two weeks before the trial date, does not yet have crucial data from LACWW. With expert witness depositions scheduled to commence on September 23, 2008 and end on October 2, 2008, (just days before the October 6 start date), the current schedule for trial briefs - due on October 1, 2008 - and other evidentiary matters including *motions in limine* and moving papers due on October 2, 2008, is impossible. This Court must compel LACWW to provide the documentation, database, July and August 2008

1 data reflecting the quantity of water extracted from its wells, and all other discovery responses
2 described throughout this Motion, no later than Thursday, September 25, 2008 by 5 p.m. This
3 Court should order that Anaverde expert John Lambie's deposition will occur on October 11,
4 2008, and that all trial documents currently due on September 29, 2008, now be due on October
5 15, 2008. Finally, this Court should order that whatever the order of witnesses or parties at trial,
6 Anaverde will proceed last, or at a minimum not before October 21, 2008.
7

8 DATED: September 22, 2008

Respectfully submitted,

9 MALISSA HATHAWAY McKEITH
10 KIMBERLY A. HUANGFU
LEWIS BRISBOIS BISGAARD & SMITH LLP

11 By: Kimberly A. Huangfu
12 KIMBERLY A. HUANGFU
13 Attorneys for ANAVERDE, LLC.
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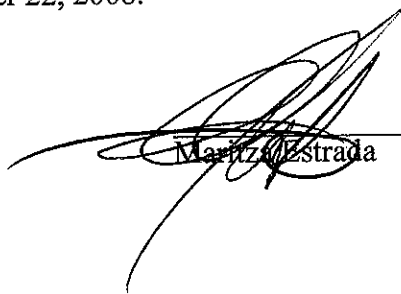
PROOF OF SERVICE

I declare that:

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 221 North Figueroa Street, Suite 1200, Los Angeles, California 90012.

On September 22, 2008, I served **CROSS-DEFENDANT ANAVERDE LLC's EX PARTE MOTION TO: (1) COMPEL RESPONSES TO OUTSTANDING DISCOVERY REQUESTS AGAINST LACWW; (2) REQUEST CONTINUANCE OF DEPOSITION OF JOHN LAMBIE; (3) REQUEST DATE CERTAIN FOR ANAVERDE TRIAL BRIEFING AND PRESENTATION; (4) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; (5) DECLARATION OF KIMBERLY HUANGFU IN SUPPORT THEREOF** by posting the document(s) listed above to the Santa Clara Superior Court website in regard to the Antelope Valley Groundwater matter.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, executed on September 22, 2008.



Maritza Estrada