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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANTELOPE VALLEY GROUNDWATER CASES

Judicial Council Coordination Proceeding
No. 4408

Included Actions:

Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California County of Los Angeles, Case No. BC 325 201 Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California, County of Kern, Case No. S-1500-CV-254-348 Wm. Bolthouse Farms, Inc. v. City of Lancaster Diamond Farming Co. v. City of Lancaster Diamond Farming Co. v. Palmdale Water Dist. Superior Court of California, County of Riverside, consolidated actions, Case No. RIC 353 840, RIC 344 436, RIC 344 668

REPLY TO OPPOSITION TO MOTION FOR PROTECTIVE ORDER

1 **I. INTRODUCTION**

2 The Antelope Valley Groundwater Agreement Association (“AGWA”) submits this Reply
3 to Quartz Hill Water District’s Opposition to Motion for Protective Order, filed September 28,
4 2012 (“Opposition”). The Opposition fails to respond to AGWA’s points about the current lack
5 of an order setting the next phase of trial and the scope of such trial, if indeed a subsequent phase
6 of trial is to occur. Instead, the Opposition improperly raises claims based on alleged periods of
7 prescription that are not currently before the Court. In fact, the Opposition’s premature
8 statements on prescription perfectly illustrate AGWA’s point: that forcing AGWA to produce
9 detailed records of groundwater levels and pumping ahead of the defined limits of any alleged
10 prescriptive period is unduly burdensome and prejudicial at this time, where AGWA cannot even
11 determine what periods of pumping may be relevant to the next phase of trial.

12 AGWA’s efforts are focused on the settlement process under the guidance of Justice
13 Robie. This is where all of the parties’ efforts should be focused. This is why at the July 9, 2012
14 hearing, the Court specifically directed Quartz Hill not to reinitiate its discovery efforts prior to
15 the conclusion of that process (see July 9, 2012 Reporter’s Transcript page 71). The Court should
16 not allow Quartz Hill to ignore the Court’s prior direction and derail the settlement process. The
17 Court’s broad discretion to control the course of discovery is sufficient to support the motion for
18 a protective order.

19 **II. ARGUMENT**

20 **A. The Issues Raised by the Opposition Regarding Prescription Demonstrate the**
21 **Necessity for a Protective Order**

22 The Opposition’s attempts to paint AGWA as trying to “suppress evidence” are meritless
23 and fail to respond to AGWA’s main justification for a protective order; mainly, that ahead of the
24 Court setting the scope of the next phase of trial, a request of all information related to
25 groundwater use for every landowner parcel within AGWA since the 1950s is overly broad.

26 Certainly at some point the Court must receive evidence regarding the properties currently
27 owned by the parties in this case and the amount of groundwater currently used on those
28 properties. The Opposition acknowledges that these issues “...will likely be addressed in the next

1 trial phase of the case, and future phases as well.” (Opposition, at 4:23-25.) But the Opposition
2 fails to recognize that the Court has not set a subsequent phase of trial or entered any order
3 defining the scope of the next phase of trial.

4 Indeed, illustrative of AGWA’s point, the Opposition cites case law related to prescriptive
5 claims and then baldly states, “Prescription started to run in 1945, when the overdraft started.”
6 (Opposition, at 6:8.) Prescriptive issues are not presently before the Court and were not
7 determined in the Phase III trial. The Opposition acts as if trial has already been set. (E.g.,
8 Opposition, at 7:21-23 (“Providing evidence which relates to an intended affirmative defense four
9 months prior to trial is not unreasonable or burdensome.”) Divining AGWA’s “intended”
10 defenses and assuming a trial date further underline the premature nature of Quartz Hill Water
11 District’s requests, and is counter-productive to serious settlement discussions.

12 Indeed, AGWA has recommended that the next phase of trial be a technical determination
13 regarding return flows, which is the primary issue that is making settlement discussions
14 protracted and difficult. If the Court accepts AGWA’s recommendation, then all of Quartz Hill’s
15 discovery will be irrelevant.

16 If and when the Court defines the scope of the next phase of trial and relevant prescriptive
17 periods, AGWA will respond and produce its members’ pumping information for the relevant
18 periods. Ahead of that time, AGWA objects to an overly broad request for the entire universe of
19 all AGWA members’ pumping. Without a protective order, AGWA members will be forced to
20 provide extensive information that may not even be relevant to the next phase of trial, at great
21 expense to AGWA members and counsel.

22 **B. AGWA Would be Overly Burdened by Responding to the Propounded**
23 **Discovery**

24 The Opposition mischaracterizes its requests for production as simple requests to “identify
25 the real property owned, how much groundwater is used on that property, and documents that
26 support that use....” (Opposition, at 7:7-9.) The Opposition presents the argument that it would
27 not be burdensome for AGWA to produce all crop records, water well levels, groundwater
28 pumping records, meter records, parcel documentation, and other records for the approximately

1 136 individual landowners comprising AGWA would be burdensome. (Opposition, at 6:24-25,
2 7:7-13.) The Opposition at the same time glibly suggests that AGWA has no pumping records
3 (Opposition, at 8:11-23)—a completely baseless statement.

4 **C. The Court's Broad Discretion to Control the Course of Discovery is Sufficient**
5 **to Support the Motion**

6 This Court has the broad power and responsibility to determine what discovery measures
7 and procedures are appropriate in varying circumstances. (*Obregon v. Superior Court* (1998) 67
8 Cal. App.4th 424, 431; *see also* Govt. Code, § 68607 (judge's responsibility to manage
9 litigation); Code Civ. Proc., § 128(a)(5) (judge's power to control conduct of judicial proceeding
10 in furtherance of justice).) This Court also has broad discretion to control the course of discovery
11 and to decide the issues raised in the course of discovery. (*Greyhound Corp. v. Superior Court*
12 (1961) 56 Cal.2d 355, 378 ("Undoubtedly the discovery statutes vest a wide discretion in the trial
13 court in granting or denying discovery"); *see also Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168,
14 175 (discussing trial court's wide discretion to decide discovery issues).)

15 The discovery statutes themselves "recognize[] the court's inherent power to balance the
16 benefits and burdens of proposed discovery." (Weil & Brown, *Civil Procedure Before Trial*
17 (1998) § 8.74.) Thus, when faced with a motion for a protective order, this Court is empowered
18 to consider all relevant issues before granting that motion, including the unique burden imposed
19 on AGWA due to its multiple members.

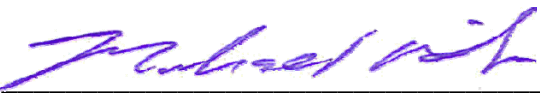
20 **III. CONCLUSION**

21 Based on the arguments herein and AGWA's Memorandum of Points and Authorities and
22 the Declaration of Michael T. Fife submitted in support of AGWA's Motion for Protective Order,
23 AGWA has demonstrated good cause that answering Quartz Hill Water District's overly broad
24 fishing expedition ahead of an order setting trial is untimely and prejudicial. In this case, a
25 protective order will prevent Quartz Hill Water District from overburdening the landowners in
26 this case such as AGWA to provide reams of historical information that may not even be relevant
27 to the next phase of trial, if indeed there is a next phase of trial.
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Dated: October 5, 2012

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By: 
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