

1 NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
2 FRED A. FUDACZ (SBN 050546)
3 HENRY S. WEINSTOCK (SBN 089765)
4 445 S. Figueroa Street, 31st Floor
5 Los Angeles, California 90071-1602
6 Telephone: (213) 612-7800
7 Facsimile: (213) 612-7801

8 Attorneys for Defendant and Cross-Complainant Tejon Ranchcorp

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

10 ANTELOPE VALLEY) Judicial Council Coordination Proceeding No.
11 GROUNDWATER CASES:) 4408
12 Los Angeles County Waterworks District No. 40)
13 v. Diamond Farming Co.) Santa Clara Case No. 1-05-CV-049053
14 Superior Court of California) Assigned to The Honorable Jack Komar
15 County of Los Angeles, Case No. BC 325 201)
16) TEJON RANCHCORP'S
17 Los Angeles County Waterworks District No. 40) (1) CASE MANAGEMENT STATEMENT;
18 v. Diamond Farming Co.) (2) PROPOSED PROTECTIVE ORDER RE
19 Superior Court of California, County of Kern,) CONFIDENTIAL DATA
20 Case No. S-1500-CV-254-348)
21) Date: November 13, 2006
22 Wm. Bolthouse Farms, Inc. v. City of Lancaster) Time: 1:30 p.m.
23 Diamond Farming Co. v. City of Lancaster) Department: 1
24 Diamond Farming Co. v. Palmdale Water Dist.)
25 Superior Court of California, County of Riverside,)
26 consolidated actions, Case Nos.)
27 RIC 353 840, RIC 344 436, RIC 344 668)
28

21 **I. INTRODUCTION.**

22 In the Court's Order Re Jurisdictional Boundaries dated November 3, 2006, the Court
23 invited the parties to discuss joinder of parties and innovative methods to expedite this case. Tejon
24 Ranchcorp proposes two methods to streamline this litigation and facilitate settlement negotiations: (1)
25 omitting "de minimis" water users; and (2) entering the attached Proposed Protective Order to allow
26 limited disclosure of well data and other confidential information for settlement and litigation purposes.

27 **II. THE COURT SHOULD NOT REQUIRE JOINER OF "DE MINIMIS" PARTIES.**

28 California law, the McCarran Amendment, and efficient case management principles do

1 not require joinder of “de minimis” parties, i.e., parties whose water usage is too small to materially
2 affect groundwater supplies in this basin. In this Court’s November 3 Order, the Court excluded areas
3 adjacent to the basin that may slightly impact the basin aquifers because: “*De minimus non curat lex.*”
4 (Order, page 4.) Both the California and Arizona Supreme Courts have authorized trial courts to omit
5 from groundwater adjudications those parties who pump only small amounts of groundwater. In
6 *Pasadena v. Alhambra*, (1949) 33 Cal. 2d 908, 919-920, the court stated:

7 "The objection is also made that the court erred in allocating water without
8 the joinder of a number of private users who pumped comparatively small
9 amounts. The referee filed a preliminary report which stated that it would
10 be impracticable to attempt to include all such parties. It recommended,
11 however, that certain named parties who used fairly substantial amounts
12 be joined in the action, and the court ordered them brought in over the
13 objections of appellant. No request was made by appellant for the
14 inclusion of any party who had not been joined, and there is no showing
15 that its interest was injuriously affected by the failure to require the joinder
16 of all possible claimants. (See *Smith v. Cucamonga Water Co.*, 160 Cal.
17 611, 617). **The line must be drawn somewhere in order to bring the
proceeding within practical bounds, and it would have been
impossible to reach a solution of the problems involved and to render
a valid judgment if jurisdiction to make an allocation depended upon
the joinder of every person having some actual or potential right to
the water in the basin and its sources of supply. The persons not
made parties are, of course, not bound by the judgment, nor are they
injured by the injunction.** (*Id.*; emphasis added).

18 Likewise, the Arizona Supreme Court held that the McCarran Amendment and common
19 sense allow courts to exclude parties who have a de minimis effect on the water supply: *In Re General*
20 *Adjudication of All Rights to Use Water in the Gila River System and Source* (1993) 175 Ariz. 382, 394.
21 There, the United States argued that the McCarran Amendment required joinder of all owners of wells,
22 including de minimis pumpers. The Arizona Supreme Court disagreed:

23 “We believe that the trial court may adopt a rationally based exclusion for
24 wells having a de minimis effect on the river system. Such a de minimis
25 exclusion effectively allocated to those well owners whatever amount of
26 water is determined to be de minimis. It is, in effect, a summary
27 adjudication of their rights. A properly crafted de minimis exclusion will
28 not cause piecemeal adjudication of water rights or in any other way run
afoul of the McCarran Amendment. Rather, it could simplify and
accelerate the adjudication by reducing the work involved in preparing the
hydrographic survey reports and by reducing the number of contested cases
before the special master. Presumably, Congress expected that water
rights adjudications would eventually end. **It is sensible to interpret the
McCarran Amendment as permitting the trial court to adopt**

1 **reasonable simplifying assumptions to allow us to finish these**
2 **proceedings within the lifetime of some of those presently working on**
3 **the case.”** (175 Ariz. at 384.) (Emphasis added.)

4 Without a de minimis exception, this adjudication would drag into court every landowner
5 in the basin, including hundreds of thousands of homeowners in Palmdale, Lancaster, and other cities –
6 even if they have no wells, even if they are served by water purveyors, even if they own only a paltry
7 parcel of this parched paradise. Requiring inclusion of every landowner in the basin would bog this
8 litigation down in an endless morass of procedural and substantive battles of no practical significance.

9 The question is where to draw the “de minimis” line – how much water and how much
10 land is de minimis? As to the quantity of water that is de minimis, California statutes are instructive. In
11 statutory adjudications of stream systems and actions to protect groundwater quality, the Legislature has
12 defined as “Minor quantities of water” diversions or extractions that do not “exceed 10 acre-feet of
13 water annually.” (Water Code §§ 2102, 2503.) Given that current pumping in the Antelope Valley
14 Groundwater Basin is estimated to exceed 100,000 acre feet, annual extractions of less than 10 acre feet
15 are negligible and not worth the costs of litigation.

16 **III. THE PARTIES NEED A PROTECTIVE ORDER TO PROVIDE FOR DISCLOSURE**
17 **AND CONFIDENTIALITY OF WELL DATA AND OTHER PRIVATE INFORMATION.**

18 As in any groundwater adjudication, the resolution of basic hydrological and geological
19 issues requires disclosure of a great deal of data, some of which is private and confidential, e.g.:
20 pumping records, well level data, well drilling logs, land use information, groundwater chemistry data,
21 etc. Neither the litigation nor settlement negotiations can progress without disclosure of such
22 information, but the need for such disclosure should be balanced against the reasonable expectations of
23 privacy of the disclosing parties. The well-established solution to such problems is the entry of a
24 protective order that provides for disclosure of such information but restricts its use and further
25 disclosure to the needs of the litigation. (See, e.g., CCP § 2031.060(b).)

26 An additional problem in this case is that approximately six thousand Antelope Valley
27 well reports have been collected by the California Department of Water Resources. Water Code §
28 13752 bars public inspection of such DWR reports but allows their disclosure to “governmental agencies
for use in making studies.” However, § 13752 says nothing about disclosure in litigation and creates no

1 privilege or exemption from ordinary discovery requirements. Section 13752 provides:

2 “Reports made in accordance with paragraph (1) of subdivision (b)
3 of Section 13751 shall not be made available for inspection by the public,
4 but shall be made available to governmental agencies for use in making
5 studies, or to any person who obtains a written authorization from the
6 owner of the well. However, a report associated with a well located
7 within two miles of an area affected or potentially affected by a known
8 unauthorized release of a contaminant shall be made available to any
9 person performing an environmental cleanup study associated with the
10 unauthorized release, if the study is conducted under the order of a
11 regulatory agency. A report released to a person conducting an
12 environmental cleanup study shall not be used for any purpose other than
13 for the purpose of conducting the study.”

14 This statute was raised at trial by counsel for the State of California, and the Court responded that the
15 disclosures would be permitted by § 13752 because they would be deemed disclosures to the Court, a
16 government agency. However, a simpler answer may be that § 13752 does not affect discovery
17 obligations in litigation. Also, this Court certainly has the power to order all litigants and non-parties
18 (by subpoena) to disclose and produce their well records and data. Since the Court can order such
19 discovery directly from the owners, the Court must also have the authority to order the discovery from a
20 party such as the State of California, to whom the owners have disclosed the data.

21 Moreover, fairness and due process require such disclosure. The DWR announced that it
22 has already provided these well reports to the County, to the United States, and to the Palmdale
23 Irrigation District, who may use them for studies in this litigation and/or for other purposes. A fair trial
24 is impossible if only the “governmental agencies” and their experts have access to crucial evidence.
25 Moreover, when the government experts base their expert opinions on such reports and data, the other
26 private parties will certainly be entitled to obtain them in discovery and at trial. (See, e.g., CCP §
27 2034.260(b)(4) – expert must submit to deposition concerning “basis” for expert opinions.)

28 The attached proposed Protective Order solves these problems by giving all parties equal
access to the information, but limiting its use and disclosure. The Order was proposed and drafted by a
group of parties in this case, and it was circulated to all of the known active counsel on October 25,
2006. Thus far, the only parties who have expressed doubts about the Protective Order are the State of
California and Mr. Fife’s landowner clients. We request that it be discussed at this Case Management
Conference and, if the Court finds it acceptable, that it be approved and so ordered.

1 Dated: November 7, 2006

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
FREDRIC A. FUDACZ
HENRY S. WEINSTOCK

2
3
4 By:



HENRY S. WEINSTOCK

Attorneys for Tejon Ranchcorp

1 NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
FRED A. FUDACZ (SBN 050546)
2 HENRY S. WEINSTOCK (SBN 089765)
445 S. Figueroa Street, 31st Floor
3 Los Angeles, California 90071-1602
4 Telephone: (213) 612-7800
Facsimile: (213) 612-7801

5 Attorneys for Defendant and Cross-Complainant Tejon Ranchcorp
6
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 ANTELOPE VALLEY
GROUNDWATER CASES

11 Included Actions:

12 Los Angeles County Waterworks District No. 40
v. Diamond Farming Co., Superior Court of
13 California, County of Los Angeles, Case No. BC
325 201; Los Angeles County Waterworks
14 District No. 40 v. Diamond Farming Co., Superior
Court of California, County of Kern, Case No. S-
15 1500-CV-254-348; Wm. Bolthouse Farms, Inc.
v. City of Lancaster, Diamond Farming Co. v.
16 City of Lancaster, Diamond Farming Co. v.
Palmdale Water Dist., Superior Court of
17 California, County of Riverside, Case Nos. RIC
353840, RIC 344436, RIC 344668

) Judicial Council Coordination Proceeding No.
4408

) Assigned to The Honorable Jack Komar

) [PROPOSED]
PROTECTIVE ORDER RE DISCLOSURE
AND CONFIDENTIALITY OF WELL DATA
AND OTHER PRIVATE INFORMATION

) Hearing Date: November 13, 2006

) Time: 1:30 p.m.

) Department: 1

19 RECITALS

20 A. In order to fairly conduct trials, discovery, and settlement negotiations in this
21 groundwater adjudication, it is necessary for the parties to disclose and exchange many types of private
22 and confidential information, including without limitation, well level data, pumping records, well logs,
23 land use information, groundwater chemistry data, etc. The above information is necessary to resolve
24 hydrological, geological, and other issues central to these cases.

25 B. Some of the above information may be confidential, private, a trade secret,
26 subject to Water Code §13752 or other limitations on disclosure.

27 C. Such information must be disclosed to advance the litigation and settlement
28 negotiations, but its use and disclosure should be limited as set forth herein.

1 NOW, THEREFORE, the Court orders, as follows:

2 1. All documents and data that are relevant to proving the hydrology, geology, water
3 use, and water quality of the Antelope Valley Groundwater Basin shall be discoverable in these
4 consolidated cases, notwithstanding any objections based on privacy, confidentiality, Water Code
5 §13752, or other similar limitations. If Water Code § 13752 applies at all to litigation proceedings, any
6 "Reports" governed by Water Code §13752 that are disclosed pursuant to this Order shall be deemed
7 disclosed to this Court, a government agency, for use in making studies, findings, and conclusions
8 regarding the Antelope Valley Groundwater Basin.

9 2. Any party may mark any documents or data that it produces as
10 "CONFIDENTIAL" prominently on the front page of each such document.

11 3. Any document or data marked "CONFIDENTIAL" shall be treated as follows:
12 (a) the document or data may be used only for purposes of this litigation;
13 (b) it may not be disclosed to anyone who is not a party to this litigation, an expert or a consultant
14 retained by a party to this litigation, an attorney for a party, or an employee of one of the above;
15 (c) at the end of the litigation, the producing party may require that all copies of the confidential
16 documents or data be returned to the producing party or destroyed.

17 4. Upon motion of any party, the Court will determine whether documents or data
18 marked "CONFIDENTIAL" should be deemed confidential and restricted in the manner set forth above.

19 5. In accordance with the "Protective Order Re Confidentiality Of Settlement
20 Discussions" dated March 24, 2006, the parties and their experts/consultants may freely exchange and
21 discuss the confidential documents and data described above in their settlement discussions and
22 communications; and such discussions and communications shall continue to be non-discoverable,
23 inadmissible, and subject to all protections and privileges accorded settlement discussions by California
24 law.

25 6. This Order has no effect on the discoverability of any document withheld based
26 on the attorney-client privilege or work-product protection.

7. This Protective Order shall be binding on all current and future parties to these cases.

Date: November____, 2006

The Honorable Jack Komar
Judge of the Superior Court

1 **PROOF OF SERVICE**

2
3 The undersigned declares:

4 I am employed in the County of , State of California. I am over the age of 18 and am not a party
5 to the within action; my business address is c/o Nossaman, Guthner, Knox & Elliott, LLP, 445 S.
6 Figueroa Street, 31st Floor Los Angeles, California 90071-1602.

7 On **November 7, 2006**, I served the foregoing **TEJON RANCHCORP'S (1) CASE**
8 **MANAGEMENT STATEMENT; AND (2) PROPOSED PROTECTIVE ORDER RE**
9 **CONFIDENTIAL DATA** on all interested parties:

10 (X) (By U.S. Mail) On the same date, at my said place of business, said correspondence was sealed
11 and placed for collection and mailing following the usual business practice of my said employer.
12 I am readily familiar with my said employer's business practice for collection and processing of
13 correspondence for mailing with the United States Postal Service, and, pursuant to that practice,
14 the correspondence would be deposited with the United States Postal Service, with postage
15 thereon fully prepaid, on the same date at Los Angeles, California, addressed to:

16 Honorable Jack Komar
17 Judge of the Superior Court of California
18 County of Santa Clara
19 191 North First Street, Department 17C
20 San Jose, CA 95113

21 (X) (By E-Filing) I posted the document(s) listed above to the Santa Clara County Superior Court
22 website in regard to the Antelope Valley Groundwater matter in compliance with the Court's
23 electronic posting instructions and the Court's Clarification Order dated October 27, 2005.

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

Executed on **November 7, 2006** at Los Angeles, California.

(X) (STATE) I declare under penalty of perjury under the laws of the State of California that the
foregoing 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.

Mitchi Shibata