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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 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)
v. Diamond Farming Co.) Santa Clara Case No. 1-05-CV-049053
13 Superior Court of California) Assigned to The Honorable Jack Komar
County of Los Angeles, Case No. BC 325 201)
14 Los Angeles County Waterworks District No. 40) **REPLY BRIEF SUPPORTING MOTION BY**
v. Diamond Farming Co.) **TEJON RANCHCORP AND OTHER**
15 Superior Court of California, County of Kern,) **PARTIES FOR PROTECTIVE ORDER RE**
Case No. S-1500-CV-254-348) **DISCLOSURE AND CONFIDENTIALITY OF**
16) **WELL DATA AND OTHER PRIVATE**
Wm. Bolthouse Farms, Inc. v. City of Lancaster) **INFORMATION**
17 Diamond Farming Co. v. City of Lancaster) Hearing Date: December 15, 2006
18 Diamond Farming Co. v. Palmdale Water Dist.) Time: 9:00 a.m.
Superior Court of California, County of Riverside,) Department: 1
19 consolidated actions, Case Nos.)
RIC 353 840, RIC 344 436, RIC 344 668)

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21 **I. INTRODUCTION.**

22 Although most active parties in this case support prompt disclosure of well reports and
23 other important data, two groups of parties have opposed this Motion (the State of California and the
24 landowners represented by Mr. Fife), and two parties request modifications to the Protective Order
25 (Borax and the City of Los Angeles). No one denies the discoverability of such crucial hydrogeological
26 data if it were requested directly from the landowners and public agencies who own the wells. But the
27 State claims that it need not provide the same data that it has collected from the well owners because of
28 the restrictions of Water Code § 13752.

1 **II. THE LANGUAGE, PURPOSE, AND LEGISLATIVE HISTORY OF WATER CODE §**
2 **13752 ARE CONSISTENT WITH THIS PROTECTIVE ORDER.**

3 We agree with California counsel that the primary purpose of these statutes (Water Code
4 §§ 13700, et seq.) is to “protect water quality of groundwater basins.” This purpose is declared in the
5 “legislative findings” in Water Code §§ 13700-13701 – “the people of the state have a primary interest
6 in the location, construction, maintenance . . . of water wells . . . which activities directly affect the
7 quality and purity of underground waters.” We also agree that § 13752 should be interpreted to
8 effectuate that legislative intent. (See CCP § 1859 – “In the construction of a statute, the intention of the
9 legislature . . . is to be pursued.”) This statutory purpose is directly served by disclosure of well data
10 that will enable the Court and the parties to develop a physical solution that will protect the water quality
11 in this groundwater basin. Curing and preventing groundwater contamination will be an essential
12 element of the physical solution in this case as in most groundwater adjudications. For example,
13 paragraph XXII of the Raymond Basin Judgment provides:

14 “The Court further reserves jurisdiction to make any other and/or
15 additional orders of sufficient kind and nature to protect the water in said
16 Raymond Basin Area or any portion thereof from contamination of the
groundwater supply. . . .” (Ex. E to Tejon Ranchcorp Request for Judicial
Notice, filed October 6, 2006 herein.) (Emphasis added.)

17 See also *Allen v. California Water & Tel. Co.* (1946) 29 Cal.2d 466, 485-86, upholding physical solution
18 designed to prevent contamination of groundwater “through mineralization and saltwater intrusion.”
19 Therefore, disclosure of this well data is necessary to effectuate the legislative purpose.

20 Moreover, the parts of the legislative history submitted by the State say that this
21 information “should not be available to private individuals for their personal gain” (California
22 Opposition, Ex. 1, Bill Analysis, page 2) and that such reports “should be made available to government
23 agencies but not to the public at random.” (*Id.*, Ex. 2, pages 4-7.) As discussed below, this Court is a
24 governmental agency within the purpose of § 13752, and this Protective Order prohibits “random
25 inspection by the public” of the reports.

26 We now respond to the State’s 6 opposition arguments. If the Court agrees with any of
27 movants’ 6 grounds for this Motion, it should be granted.

1 **1. The Court is a “Governmental Agency” Studying the Groundwater Basin.**

2 According to counsel for the State, this Superior Court of the State of California is not a
3 “governmental agency” entitled to view well reports under § 13752. However, Article III, Section 3 of
4 the California Constitution identifies the judiciary as one of the three branches of “state government”:
5 “The powers of state government are legislative, executive, and judicial.”

6 More importantly, the legislative purpose to “protect water quality of groundwater
7 basins” will be served by disclosure of this information to the Court through the testimony of experts in
8 this case. Therefore, for the purpose of this statute, this Court is a “governmental agency” conducting a
9 study of this groundwater basin for the purpose of developing a physical solution that will protect
10 groundwater quality.

11 Moreover, disclosure is necessary to serve the broader constitutional mandate of Article
12 X, Section 2 to conserve and protect the water resources of the State. If § 13752 were as rigid as the
13 State argues, it would unconstitutionally interfere with the Court’s duty to promote a physical solution
14 that protects the groundwater basin. Water Code § 13752 should not be interpreted to defeat its own
15 purpose and certainly not to defeat the Constitutional requirements of Article X, Section 2.

16 **2. Disclosure to this Court and its Litigants is Not Disclosure to the Public.**

17 Section 13752 only prohibits inspection to the general “public.” The excerpts of
18 legislative history submitted by California counsel warned that such information “should not be
19 available to private individuals for their personal gain” and “not to the public at random” or the “general
20 public”. Limited disclosure of these well reports to these litigants and the Court hardly constitutes
21 random inspection by the general public. This Protective Order protects confidentiality by forbidding
22 disclosure to non-litigants and limiting use “only for purposes of this litigation.” (Proposed Protective
23 Order, ¶ 3.)

24 **3-4. Section 13752 Was Not Intended to Limit Discovery Obligations, and the**
25 **Reports Would Be Discoverable from the Well Owners.**

26 California counsel claims that § 13752 was designed to limit discovery obligations in
27 lawsuits. However, § 13752 does not mention discovery, litigation, litigation privileges, discovery
28 statutes or rules. The State’s arguments based on Evidence Code § 1040 (“official information”) would

1 be persuasive if this information were not discoverable directly from the well owners – in their hands,
2 these reports could not possibly be deemed “official information”. Since the well owners could be
3 compelled by the Court to produce such highly relevant data, or to “authorize” disclosure under § 13752,
4 the Court clearly has the power to achieve the same result by the only efficient means available –
5 disclosure of the thousands of collected well reports from DWR.

6 The State does not deny that this information is discoverable from parties to this
7 litigation, and practically all well owners should eventually be joined as defendants – some individually,
8 some as part of a proposed defendants’ class. The State argues that non-parties would have to receive
9 subpoenas and could move to quash. Likewise, litigants would receive document requests and would
10 also have the right to object. But it is clear that the types of hydrogeological data covered by this
11 Protective Order are discoverable and need to be produced promptly for this litigation and its settlement
12 negotiations to progress.

13 **5. Fairness and Due Process Require Equal Access to This Evidence, and**
14 **Piecemeal Requests to Well Owners Are Unworkable.**

15 California counsel complains that the moving parties cite no authority for movants’
16 fairness argument. That is because some truths are self-evident.

17 California counsel and Mr. Fife argue that, instead of procuring this collection of
18 thousands of well reports from DWR, the private litigants should spend the next few years trying to
19 obtain them from all individual well owners as they join the litigation, either by requesting individual
20 “release agreements” or by individual document requests. Unfortunately, these “alternatives” would not
21 only be ineffective, they would make the discovery process impossibly lengthy, difficult, and expensive.
22 Most small landowners will simply disregard any discovery requests or requests for authorization to
23 release well reports pertaining to their property. The “Model Answer” the Court has approved appears
24 to exempt small parties from participating in discovery “unless ordered by the Court to do so.” Unless
25 the State provides a list of all of the well owners and the wells they own, the requesting parties cannot
26 know to whom to address the discovery requests and requests for authorization. Moreover, it would take
27 years before all Antelope Valley well owners have been sued, appeared, and are ready, willing, and able
28 to respond to individual discovery requests. Then the parties and the Court could deal with hundreds or

1 thousands of individual discovery responses, non-responses, objections, and discovery motions. Since
2 this data is clearly discoverable, why in the world would we select the most inefficient, time-consuming,
3 expensive, and ineffective method of obtaining this crucial data?

4 **6. These Reports Will Be Discoverable Under Expert Discovery Rules and At**
5 **Trial.**

6 Under CCP § 2034.260(c)(4), an expert designation must represent that the expert will
7 “submit to a meaningful oral deposition concerning the specific testimony, including any opinion and its
8 basis, that the expert is expected to give at trial.” The government experts who have obtained and relied
9 on such well reports are required to produce them and discuss them at their depositions. The State
10 inexplicably cites CCP §§ 2034.210 and 2034.270, which permit discovery of experts’ reports and
11 writings. These statutes hardly diminish the experts’ obligation to disclose the basis for their opinions.

12 In addition, such well reports will be relied upon and already have been relied upon at
13 trial in this case. More than one of the governmental experts who testified in the Phase 1 trial based
14 their geological opinions on well logs, which is why the State asserted § 13752 at the trial, and it was
15 agreed that the well logs would be omitted from the public court files – a practical solution to the
16 confidentiality problem. But when Mr. Joyce and/or Mr. Zimmer complained that they had not been
17 provided the data relied upon by the governmental experts, the Court answered that they should have
18 sought and obtained these documents before trial. That is what we are trying to do now. This Protective
19 Order limits disclosure of confidential information while giving all litigants equal access to evidence
20 needed to prosecute or settle these cases and to develop a physical solution that protects this
21 groundwater basin.

22 **III. PROPOSED AMENDMENTS TO PROTECTIVE ORDER.**


23 A. City of Los Angeles Proposal – Los Angeles proposes to add a paragraph that
24 would protect confidentiality of well reports by limiting their introduction into evidence, without
25 affecting their discoverability. This is a worthy goal, although it can probably be achieved most
26 efficiently by the means used in the Phase 1 trial – excluding the well data from the Court file or sealing
27 it.

28 B. US Borax Proposals – Since there are serious water quality problems in the

1 central Lancaster subbasin, we do not understand why groundwater quality data should not be
2 discoverable. If production would be overly burdensome or violate some privilege, a producing party
3 could still object on those grounds. We also see no need to exempt from the Protective Order
4 documents withheld on the grounds that they are "proprietary or trade secrets"; and the term
5 "proprietary" is so broad that it could include almost any document. However, we agree with Borax'
6 proposed revisions to paragraph 7 of the Protective Order, which expand the parties bound by it.
7

8 Dated: December 8, 2006

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

11 By: 
HENRY S. WEINSTOCK
Attorneys for Tejon Ranchcorp
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1 **PROOF OF SERVICE**

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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 **December 8, 2006**, I served the foregoing **REPLY BRIEF SUPPORTING MOTION BY**
8 **TEJON RANCHCORP AND OTHER PARTIES FOR PROTECTIVE ORDER RE**
9 **DISCLOSURE AND CONFIDENTIALITY OF WELL DATA AND OTHER PRIVATE**
10 **INFORMATION** on all interested parties:

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

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

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

25 () (By Federal Express) I served a true and correct copy by Federal Express or other overnight
26 delivery service, for delivery on the next business day. Each copy was enclosed in an envelope
27 or package designated by the express service carrier; deposited in a facility regularly maintained
28 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.

Executed on **December 8, 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