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13 WATERWORKS DISTRICT NO. 40

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES – CENTRAL DISTRICT
16

17 **ANTELOPE VALLEY GROUNDWATER**
18 **CASES**

19 **Included Actions:**

20 Los Angeles County Waterworks District No.
40 v. Diamond Farming Co., Superior Court of
21 California, County of Los Angeles, Case No.
BC 325201;

22 Los Angeles County Waterworks District No.
40 v. Diamond Farming Co., Superior Court of
23 California, County of Kern, Case No. S-1500-
CV-254-348;

24 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
25 Lancaster, Diamond Farming Co. v. Palmdale
Water Dist., Superior Court of California,
26 County of Riverside, Case Nos. RIC 353 840,
RIC 344 436, RIC 344 668

RELATED CASE TO JUDICIAL
COUNCIL COORDINATION
PROCEEDING NO. 4408

**LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40's
OPPOSITION TO ANAVERDE'S EX
PARTE MOTION TO: (1) COMPEL
RESPONSES TO OUTSTANDING
DISCOVERY REQUESTS AGAINST
LACWW; (2) REQUEST
CONTINUANCE OF DEPOSITION OF
JOHN LAMBIE; AND (3) REQUEST
DATE CERTAIN FOR ANAVERDE
TRIAL BRIEFING AND
PRESENTATION**

Date: September 23, 2008
Time: 8:15 a.m
Dept. 17C

Phase 2 Trial: October 6, 2008

1 **I. INTRODUCTION**

2 Los Angeles County Waterworks District No. 40 ("District") hereby respectfully opposes
3 Anaverde's "Ex Parte Motion to: (1) Compel Responses to Outstanding Discovery Requests
4 Against LACWW; (2) Request Continuance of Deposition of John Lambie; (3) Request Date
5 Certain for Anaverde Trial Briefing and Presentation," noticed for hearing before this Court on
6 September 23, 2008 at 8:15 a.m. As discussed below, the grounds for this opposition are
7 numerous. The ex parte motion is untimely filed and served under this Court's Complex Civil
8 Guidelines, and Anaverde has not made the mandated attempt to meet and confer and resolve any
9 of the issues raised in this motion. Furthermore, insofar as this is a motion to compel discovery,
10 Anaverde has cited no authority permitting such relief on an ex parte basis, nor has Anaverde
11 provided the required separate statement under California Rule of Court 3.1020.

12 As to the merits of the relief requested on the discovery motion, it is at best uncertain what
13 discovery items are in dispute, but whatever Anaverde seeks on this motion, it makes no attempt
14 to even address, let alone carry, its burden to show good cause for the items requested.
15 Nevertheless, when Anaverde has asked for something that it thinks is missing from the District's
16 production, the District has made every attempt to promptly gather whatever additional
17 information that Anaverde has sought, to the extent that it is available, as soon as possible after
18 Anaverde asked for it. To the extent that there is additional information Anaverde seeks, it is
19 either unavailable or Anaverde has raised the issue for the first time in this ex parte motion,
20 preventing the District from even attempting to provide it. As to the notice of deposition, the
21 District timely objected to numerous inadequacies in that notice, but rather than attempting any
22 discussion toward resolving those issues, Anaverde instead proceeded directly to this motion.
23 There are no grounds shown for any order compelling any discovery on this record.

24 Finally, as to the merits of Anaverde's request to postpone the deposition of its expert and
25 presentation of its case at trial, any inability by Anaverde's expert to be prepared for deposition or
26 trial results primarily from Anaverde's waiting until only 60 days before trial even to serve
27 discovery requests and its counsel's failure to attempt to obtain such information informally prior
28 to bringing this motion. Accordingly, any issues Anaverde is having with its expert's readiness is

1 of Anaverde's own making, and is not cause for any relief from the schedule applicable to all
2 parties in this case.

3 **II. ANAVERDE'S "EX PARTE MOTION" IS PROCEDURALLY DEFICIENT**

4 **A. Anaverde Has Not Shown Any Grounds For Ex Parte Relief**

5 This Court's Complex Civil Guidelines, Part V.2, require "[strict] compliance with Rule
6 3.1200-3.1207 of the California Rules of Court." California Rule of Court 3.1202(c), in turn
7 requires that an ex parte applicant establish irreparable harm, immediate danger, or any other
8 statutory basis for granting relief ex parte. Anaverde has made no attempt to show any grounds
9 for obtaining any of the relief it seeks through this motion on an ex parte basis. This is especially
10 important in this circumstance, where Anaverde does not merely seek an order shortening time
11 for a hearing on the substance of its request, but instead seeks the substantive relief on an ex parte
12 basis. Coupled with the untimely filing and service of Anaverde's papers as discussed in the next
13 section, Anaverde's "ex parte motion" has prejudiced the District's ability to respond.

14 Accordingly, the motion should be denied.

15 **B. Anaverde's "Ex Parte Motion" Was Not Timely Filed And Served And**
16 **Should Be Denied**

17 Not only has Anaverde not shown any legal basis for ex parte relief on this motion, but the
18 motion itself is also untimely. Anaverde served its "ex parte motion" along with the supporting
19 declaration and proposed order by posting it to the Court's website in this case at 3:13 p.m. on
20 September 22, 2008. See Declaration of Daniel S. Roberts filed concurrently herewith ("Roberts
21 Decl.") at ¶ 22. The Court's Complex Civil Guidelines provide at Part V.2 that "[t]he ex parte
22 application and all supporting papers, including any proposed pleading, motion or order, shall be
23 electronically submitted to the Court's website by noon the Court day prior to the scheduled ex
24 parte hearing date" (emphasis added). Anaverde failed to comply with this requirement, filing its
25 papers more than three hours late, effectively eliminating any possibility of the District preparing
26 a response before the close of business. In so doing, Anaverde has substantially prejudiced the
27 District's ability to oppose the "ex parte motion." Accordingly, the motion should be denied.

1 **C. Anaverde Has Failed To Meet and Confer with the District Counsel to**
2 **Eliminate the Necessity of a Hearing on These Matters**

3 Although Anaverde asserts in a conclusory fashion to the contrary in its papers, it has not
4 complied with the meet-and-confer requirements prerequisite to bringing this "ex parte motion."
5 Here again, Anaverde has ignored this Court's Complex Civil Guidelines, as well as the Code of
6 Civil Procedure insofar as this "ex parte motion" seeks an order compelling discovery. The
7 Guidelines at Part VI.3 require that "[p]rior to the hearing of any motion, petition or application . .
8 ., all counsel and parties appearing in propria persona shall meet and confer in a good faith effort
9 to eliminate the necessity of the hearing or as many disputes as possible." Anaverde's papers are
10 completely bereft of any mention of any attempts to meet and confer regarding the relief it seeks
11 delaying the deposition of its expert or in delaying the trial of its portion of Phase 2 of this case.

12 As to the "motion to compel" portion of Anaverde's "ex parte motion," that is subject not
13 only to the general meet-and-confer obligations under the Discovery Act, but also this Court's
14 Guidelines Part VI.4, requiring not only an in-person conference between counsel, but if that is
15 successful, requiring that the parties meet and confer, informally, with the Court prior to the filing
16 of the discovery motion. Anaverde has not attempted either of these steps. Counsel have not
17 conducted, nor has Anaverde even requested, an in-person conference to discuss the issues raised
18 in the motion. Obviously then, no subsequent informal conference with the Court has occurred.

19 Beyond the failure to follow the Court's requirements in this case, Anaverde has not made
20 any attempt at all to discuss many of the discovery issues raised or alluded to in this motion, as
21 required under the Discovery Act. Although Anaverde has not provided the required Separate
22 Statement of items in dispute, as required for a motion to compel discovery under California Rule
23 of Court 3.1020 (as discussed further below), and thus it is not clear exactly what is at issue in
24 this "ex parte motion," Anaverde does mention some eight specific grievances it has with the
25 District's discovery. It complains (1) the District has not yet provided pumping data for July and
26 August 2008; (2) it has not provided UTM coordinates for 25 of the District's 49 wells; (3) the
27 District did not produce digital data in its native format; (4) a spreadsheet produced by the
28 District is mislabeled; (5) the District has not provided a privilege log; (6) the District objected to

1 the vagueness of Anaverde's use of the phrase "capacity of each groundwater well," (7) maps
2 produced by the District contain legends disclaiming reliance on them for purposes other than
3 what they were created for, and (8) the District objected to Anaverde's deposition notice and
4 stated its intention not to appear at the deposition.

5 In only four of these instances has Anaverde's counsel made any attempt to discuss the
6 matter with the District's counsel, and in each instance, the District has provided all of the
7 information that is presently available. The reasons why no order compelling further discovery is
8 appropriate on those points will be discussed further below. As to the rest Anaverde made no
9 effort to discuss them with the District's counsel prior to filing this "ex parte motion."

10 Prior to filing the instant "ex parte motion," Anaverde's counsel made no mention at all
11 that they had any issue with the absence of production of electronic files in native format. See
12 Roberts Decl. at ¶ 21. Nowhere in their moving papers is there any mention of any discussion on
13 this point. Likewise, there is no evidence of any prior mention of native files before this motion
14 was filed. Because they have failed to conduct any meet and confer on this topic (let alone the
15 level of conference required by this Court), no order compelling production of native electronic
16 files is appropriate.¹ Similarly, Anaverde has produced no evidence of having raised the issue of
17 a privilege log with the District's counsel, or of the District's objection to the vagueness of certain
18 terms used in Anaverde's discovery requests. In fact, those topics are raised for the first time in
19 this "ex parte motion." Id. at ¶ 21. Finally, Anaverde made no attempt to discuss any of the
20 objections to Anaverde's deposition notice with the District's counsel. Id. Anaverde's own papers
21 reveal that its counsel made no attempt to discuss the objections with the District after they were
22 served, and instead simply continued the deposition for two days without taking any further
23 action or making any attempt to discuss the matter with the District's counsel. The District
24 asserted numerous objections to the deposition notice, including its untimeliness and the
25 fundamental ambiguity of what topics Anaverde sought the District to produce a person most
26 knowledgeable on. See Decl. of Kimberly Huangfu at Ex. "J." Rather than addressing those

27 ¹ The only evidence regarding any type of native electronic information is in the Roberts Declaration filed
28 concurrently herewith in relation to the District's production of a native excel spreadsheet to Anaverde at their request
on September 16, 2008. See Roberts Decl. at ¶ 8.

1 issues and attempting to clarify what information it sought, Anaverde proceeded directly to this
2 "ex parte motion."

3 On each of these issues, Anaverde has failed to meet and confer with the District's
4 counsel. As detailed in the Roberts Decl. filed concurrently herewith, when Anaverde's counsel
5 has contacted the District's counsel, the issues have been worked out wherever the requested
6 information is available, usually within a matter of hours. Anaverde chose not to try that route
7 with regard to the privilege log, native files, vagueness objections, and deposition objections,
8 electing instead to bring this "ex parte motion" to compel. Such an attempt is improper under the
9 Code of Civil Procedure and this Court's Complex Civil Guidelines. Anaverde's "ex parte
10 motion" should be denied.

11 **D. Anaverde Has Not Provided the Requisite Separate Statement of Items In**
12 **Dispute Necessary for a Motion to Compel Further Responses to Discovery**

13 Finally, insofar as Anaverde seeks to compel further responses to discovery via this "ex
14 parte motion," it must provide a separate statement of the requests and responses in dispute. See
15 Cal. R. Ct. 3.1020. Anaverde has completely failed to do so here, leaving the Court and the
16 District largely to guess at exactly what discovery responses are at issue. This is particularly
17 important where Anaverde complains about the District's objections to the vagueness and
18 ambiguity in phrases such as "'capacity of each groundwater well' or other similar terms." See
19 Anaverde's Mem. P. & A. at 5:19-20. Without knowing the text of the specific request that was
20 objected to, and how that objection was stated, it is not possible to analyze the validity of such
21 objections, and therefore to determine whether to compel any additional response.² For this
22 reason also, Anaverde's "ex parte motion" to compel should be denied.

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27 ² To the extent that Anaverde contends in its memorandum of points and authorities that the ambiguity in
28 terminology is no longer grounds for objection because "counsel for both parties have clarified any and all
ambiguities in subsequent e-mail correspondence," there is no evidentiary support for such an assertion, as the cited
portion of Ms. Huangfu's Declaration has no bearing on this issue.

1 **III. ANAVERDE HAS NOT SHOWN CAUSE FOR THE RELIEF IT SEEKS, EVEN IF**
2 **IT HAD FOLLOWED THE PROPER PROCEDURE**

3 Aside from the myriad procedural defects in Anaverde's "ex parte motion," Anaverde also
4 has not established substantively that it is entitled to the relief it seeks. As to the discovery items
5 that Anaverde has at least minimally discussed with the District, Anaverde has failed to justify the
6 requested order compelling discovery of information that is not available. The District is under
7 no obligation to produce something that does not exist, nor to create an item so that it can be
8 produced. As to the request to delay the deposition of its expert until a week after trial starts, to
9 delay its submission of trial documents until 9 days after trial starts, and to delay its own
10 participation in the trial until the third week of those proceedings, Anaverde has shown no good
11 cause other than its own delay in commencing its discovery until a mere 60 days before trial.

12 **A. No Order Compelling Further Responses to Discovery is Appropriate**

13 As noted above, there are four specific items that Anaverde has addressed in the discovery
14 portion of its motion that are not raised for the first time in this "ex parte motion:" (1) pumping
15 data for July and August 2008; (2) UTM coordinates for some of the District's wells; (3) the
16 mislabeling of a portion of a spreadsheet produced by the District; and (4) maps produced by the
17 District containing legends disclaiming reliance on them for purposes other than what they were
18 created for. No order compelling further discovery on any of these topics is appropriate.

19 **1. July and August 2008 Pumping Data**

20 Counsel for the District has informed Anaverde's attorneys on several occasions now that
21 the pumping data for July and August of 2008 is simply not yet available. See Roberts Decl. at
22 ¶¶ 5, 15. The District provided to Anaverde, both in hardcopy and in native Excel format
23 (contrary to Anaverde's claim that they were not provided native data) a spreadsheet maintained
24 by the District containing the pumping data for all of the District's wells from 1990 through and
25 including June of 2008. This comprises 18 1/2 years (222 months) of data, and represents the
26 most-current data available. The District has collected the raw data from the field for July and
27 August 2008, which will be processed in order to update that spreadsheet. Unfortunately, there is
28 a lag in processing time in updating that spreadsheet, especially in the high-demand summer

1 months (like July and August) and that processing has not yet been completed. The District's best
2 estimate as of September 15, 2008, is that such processing will be done, and the spreadsheet
3 updated, within a month of that date, so roughly three weeks from now. The District passed this
4 information on to Anaverde's counsel on September 15, 2008 (see Roberts Decl. at ¶ 5), yet
5 Anaverde seeks to have this Court compel the District to produce that information. The District
6 cannot produce what does not yet exist.

7 Moreover, Anaverde has made no attempt to show good cause for production of these last
8 two months, which comprises less than 1% of the data already on the spreadsheet. As the party
9 seeking production of the updated spreadsheet, Anaverde bears the burden of showing good cause
10 for such production. See Cal. Civ. Proc. Code § 2031.310(b)(1). Anaverde has not attempted a
11 showing that these last two month's of data will have any significant effect on its expert's opinions
12 in light of the mountain of other data already produced. No order compelling production is
13 appropriate on this point.

14 2. UTM Data for District's Wells

15 Anaverde did not request the UTM well coordinates that it now complains are "missing"
16 until Thursday morning, September 18, 2008. See Roberts Decl. at ¶ 17, Ex. "R." Counsel for
17 the District was out of the office on Friday, September 19, 2008 and unable to respond to this
18 item until September 22, 2008. The District did respond shortly after noon on September 22,
19 2008 (before Anaverde filed its "ex parte motion") that it does not have UTM coordinates for all
20 of its wells, and to the extent it does have such information it is contained on the well driller's
21 reports, which were already produced to Anaverde. Id. at ¶ 18, Ex. "S." The District has
22 produced all it has on this topic, and cannot produce what it does not have.

23 3. The Mislabeled Spreadsheet

24 Counsel for the District and Anaverde have also been in discussions about the mislabeling
25 of the spreadsheet containing the pumping data (the item Anaverde discusses in its memorandum
26 of points and authorities at 4:20-5:9). The District acknowledges, and has done so several times
27 to Anaverde's counsel, that one column on several pages of the spreadsheet (specifically those
28 pages for the years 2002 through 2008) is mislabeled on the spreadsheet as 2001 for each of those

1 years. See Roberts Decl. at ¶¶ 3, 10, 15, Exs. and "H" and "N." There can be no actual
2 confusion, however, regarding what data is on the spreadsheet, as the District has produced the
3 native original file that contains the tabs clearly indicating what year the data on each page is
4 from. Id. at ¶ 7.

5 Nevertheless, Anaverde persists in seeking something that does not exist, specifically a
6 spreadsheet that does not have the mislabeled columns for years 2002-2008. The District has
7 produced the native file of its document. The Document contains a typo on several pages, which
8 the District freely acknowledges, but the document is what it is. The District's obligation was to
9 produce this document as it is kept in the ordinary course of business. See Cal. Civ. Proc. Code
10 § 2031.280(a). Anaverde has provided no authority for any proposition that the District must
11 either alter its document to say what Anaverde wants it to say, or create a new document that says
12 what Anaverde wants it to say. No order compelling any production of an altered or new
13 spreadsheet is appropriate.

14 4. The Well Maps

15 Finally, Anaverde concedes that the District produced the well maps that it requested.
16 Those maps, like all of the District's Maps, contain the legend that specifies, in essence, that the
17 map is created for a stated purpose, that the map was created from the information available, and
18 that the District disclaims any liability for inaccuracies in the maps. Anaverde asked for maps
19 that did not bear such a legend, and the District responded that it has none. See Roberts Decl. at
20 ¶ 10, Ex. "H." Here again, the District can only produce documents it has. While Anaverde may
21 not like what the document says, the District cannot produce a document that does not exist
22 simply because Anaverde wants the document to read differently. No order compelling
23 production of any additional maps (which do not exist) is appropriate.

24 B. Anaverde's Own Delay in Commencing its Discovery Does Not Justify 25 Delaying The Deposition of Its Expert or of Its Participation in the Phase Two 26 Trial

27 In addition to the discovery orders Anaverde seeks on this "ex parte motion," it also seeks
28 an order (1) delaying its expert's deposition to October 11, 2008 (five days after the start of trial

1 on October 6, 2008), (2) delaying Anaverde's obligation to file its trial documents until October
2 15, 2008 (nine days after the start of trial), and (3) permitting Anaverde to go to trial last, and not
3 before October 21, 2008 (in the third week of trial). See Mem. P. & A. at 10: 2-7. The only basis
4 stated for this requested delay is that the discovery delays make it "impossible" for Anaverde to
5 comply with the schedule applicable to the rest of the parties to this case. Id. at 8:23.

6 Any "impossibility" Anaverde is experiencing in preparing its expert for deposition and
7 trial is Anaverde's own making. Anaverde first appeared in this case in November of 2006, and
8 filed its motion to intervene in the matter in March of 2007. See Decl. of Stefanie Hedlund
9 ("Hedlund Decl.") at ¶¶6-7. Anaverde's counsel, Lewis Brisbois Bisgaard & Smith, has been
10 involved in this case since September of 2005 and appeared during Phase One of the trial. Id. at
11 ¶¶ 3-5. In fact, their counsel acknowledged to the Court in May of 2008 that Anaverde by then
12 had already had an expert retained for seven to eight months. See Tr. of Proceedings from May
13 22, 2008 at 27:8-12 (attached to Hedlund Decl. as Ex. 6). Thus, Anaverde's expert has been
14 involved in this case for roughly a year now.

15 Anaverde attempts to excuse its delay in fully preparing its expert by referring to the
16 discovery stay, but by Anaverde's own admission, that stay was lifted at the latest in May of 2008.
17 Nevertheless, Anaverde waited several more months, until roughly 60 days before the October 6,
18 2008 Phase Two trial date, to propound any discovery. Any delay in Anaverde's expert being
19 ready for deposition and trial results from Anaverde's own delay in even propounding discovery.
20 After Anaverde finally did serve discovery, the District provided timely responses without
21 seeking any extension of time to respond. See Hedlund Decl. at ¶¶ 10-13. Thereafter, the District
22 has made every effort to respond as quickly as possible to Anaverde's numerous requests for
23 additional information and follow-up questions with whatever information is available. See
24 generally Roberts Decl. at ¶¶ 2-18; Hedlund Decl. at ¶¶ 20-24.

25 Finally, Anaverde's request will cause undue prejudice not only to the District but to all
26 other parties in this case. Anaverde requests its own set of rules and deadlines, permitting it to
27 file pretrial documents well after all other parties, and to force other parties to depose its expert at
28 the same time they are conducting the Phase Two trial. Anaverde has shown no good cause for

1 any special treatment in presenting its expert for deposition or presenting its case for trial. Its "ex
2 parte motion" should be denied.

3 **IV. CONCLUSION**

4 Anaverde's "ex parte motion" to compel further discovery and to obtain special treatment
5 for the scheduling of its expert's deposition and for the presentation of its case at trial fails for
6 numerous procedural reasons that alone are sufficient to deny its motion. In addition, Anaverde
7 has not shown substantive grounds for any of the ex parte relief it seeks. Its motion should be
8 denied accordingly.

9
10 Dated: September 22, 2008

Respectfully submitted,

11 BEST BEST & KRIEGER LLP

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13 ERIC L. GARNER
14 JEFFREY V. DUNN
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18 ANGELES COUNTY WATERWORKS
19 DISTRICT NO. 40

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PROOF OF SERVICE

I, Stefanie Hedlund, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California 92614. On September 22, 2008, I served the within document(s):

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40's OPPOSITION TO ANAVERDE'S EX PARTE MOTION TO: (1) COMPEL RESPONSES TO OUTSTANDING DISCOVERY REQUESTS AGAINST LACWW; (2) REQUEST CONTINUANCE OF DEPOSITION OF JOHN LAMBIE; AND (3) REQUEST DATE CERTAIN FOR ANAVERDE TRIAL BRIEFING AND PRESENTATION

- ☒ by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- ☐ by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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, at Irvine, California.


Stefanie Hedlund