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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER CASES

Included Actions:

Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.
Superior Court of California, County of Los Angeles, Case No. BC325201;

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 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 Dept. I

OPPOSITION TO MOTION FOR PROTECTIVE ORDER BY ANTELOPE VALLEY GROUNDWATER ASSOCIATION

Date: October 12, 2012
Time: 9:00 a.m.
Department: 1

Quartz Hill Water District opposes the motion for protective order by the Antelope Valley Groundwater Association as follows:

TABLE OF CONTENTS

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TABLE OF AUTHORITIES

CASES

STATUTES

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Justice requires that trials be fair and not conducted by ambush (*Greyhound Corp. v. Superior Court In and For Merced County* (1961) 56 Cal.2d 355, 376.). The purpose of discovery is to assist the parties in ascertaining the truth; preventing perjury; exposing false, fraudulent and sham claims and defenses; educate the parties in advance of trial as to the real value of their claims and defenses; and safeguard against surprise. *Id.*

AGWA's motion for protective order seeks to defeat all of these, and other, laudable goals. AGWA's motion seeks to suppress evidence. Justice and fairness are not obtained by the suppression of evidence. Fairness dictates that all parties, the classes, and the public have access to all other parties' evidence of groundwater production. Anything less is unjust. The discovery in this case is calculated to elicit this information – and, hopefully, facilitate resolution through the pretrial exchange of evidence.

II. CALULATION OF CURRENT GROUNDWATER RIGHTS REQUIRES EVIDENCE OF CURRENT PRODUCTION

This Court must receive evidence regarding the properties currently owned by the parties to this case and the amount groundwater currently used on those properties. Property that was leased, property that has been sold, property that does not have any current groundwater use will not support the award of groundwater production rights in this overdrafted basin.

All parties ought to know well before trial what property the other parties own, and if that property uses groundwater. These are critical issues fundamental to the dispute before the Court and which will likely be addressed in the next trial phase of the case, and future phases as well.

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This Court must receive sufficient evidence of current groundwater pumping and use. This Court must decide what proportion of the pumping by each particular party should be restricted. *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 924. The requested information is critically important to the issues of pumping and use because it relates to the ability to pump groundwater.

Justice and fairness require that each party to this case see this evidence before trial and have the opportunity to have that evidence examined by experts and have knowledgeable witnesses deposed.

III. PARTIES WHO WISH TO ASSERT THE SELF HELP DEFENSE TO PRESCRIPTION MUST PROVIDE EVIDENCE RELATING TO THAT DEFENSE

The landowner parties assert the affirmative defense of "self help." Self help is a means for an overlying owner to partially mitigate against the elimination of their rights due to prescription (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 293). "[A]n overlying user may maintain rights to water by continuing to extract it in the face of an adverse appropriative use. Such is the doctrine of "self help." (*Hi-Desert County Water Dist. v. Blue Skies Country Club, Inc.* (1994) 23 Cal.App.4th 1723, 1731).

Prescription attaches for the amount of groundwater taken over a five year period for any five year period (Civ. Code, § 1007; *Pasadena v. Alhambra*, *supra*, 33 Cal.2d at 922 and 933). Since the prescriptive period is any five year period during the time of overdraft, self help would also be a defense to prescription during any five year period (*Los Angeles v. San Fernando, supra*, 14 Cal.3d at 293, fn. 101). "'Private defendants should be awarded the full amount of their overlying rights, less any amounts of such rights lost by prescription, from the ... native groundwater.' That is, overlying users retain priority but lose amounts not pumped." *Hi-Desert County Water Dist.*, *supra,* 23 Cal.App.4th at 1732, *citing Los Angeles v. San Fernando.*

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"Ever since the inception of water law in California, the Courts have held that because water is a species of property, title by prescription could be acquired by adverse use for the five-year period prescribed by the California Code for acquiring title by adverse possession. There has been no deviation from this principle. . . . all that is required is that the ordinary elements of adverse possession be present . . . continuous and uninterrupted use for a statutory period" (*U.S. v. Fallbrook Public Utility Dist.* (S.D. Cal. 1952) 108 F.Supp. 72, 82)

Prescription started to run in 1945, when the overdraft started. The Court and the Public Water Suppliers have the statutory and equitable right to know if the landowner parties wish to assert the self help defense, for what years they intend to assert it, and what evidence (if any) supports that defense. Again, these matters are clearly relevant to the case because they establish the existence, or non-existence, of an affirmative defense that is disputed and pending before the Court. There is no reason for the Overlying Parties to be coy about their contentions or the evidence supporting them; they should comply with the discovery and "lay their cards on the table," so that everyone can intelligently prepare for trial and resolution of the issues.

Equally important, those parties who do not intend to present the self help defense for any year since 1945 should so admit. No evidence of historical groundwater production would need to be provided by those parties who do not wish to assert this defense. All of the parties deserve to know who makes contentions of self help and who does not.

IV. MOVING PARTY HAS PROVIDED NO EVIDENCE REGARDING THE ALLEGED BURDEN OF RESPONDING TO THIS DISCOVERY

AGWA states in the motion that responding to the written discovery would be burdensome. No evidence has been provided to this court regarding how it would be burdensome. A party asserting that discovery is burdensome and oppressive must demonstrate that the amount of work required to respond to the discovery at issue is so great, and the utility of the information sought is

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so small, as to defeat the ends of justice to require the discovery to be answered. *Columbia Broadcasting System, Inc. v. Superior Court* (1968) 263 Cal.App.2d 12, 19. The objecting party must demonstrate the amount of work necessary to prepare the answer, and a mere conclusionary statement that substantial work would be involved is insufficient to carry this burden. *West Pico Furniture Co. of Los Angeles. Superior Court* (1961) 56 Cal.2d 407, 418.

Respectfully, it is simply not burdensome in any substantial way for any party to this case to identify the real property owned, how much groundwater is used on that property, and documents that support that use (if any exist, and if not, to so state). Certainly, no showing has been made indicating how much work would be needed for any particular party to provide that information or those documents. Even if they could, the utility of the information sought is very high – this information goes to the very *heart* of contested issues before the Court, which is the ultimate question of which landowners get to pump groundwater.

There is no order of this Court, or agreement, between the Parties, regarding what period of time will be used to determine current pumping. However, whether this case is settled or tried, each Party must know what the current groundwater use is on each of many parcels of real property at issue. Each Party must provide to the court, and every other party, their evidence which support their current groundwater claims.

For those parties who wish to assert the self help defense, it is not burdensome to provide the evidence which relates to that defense. Providing evidence which relates to an intended affirmative defense four months prior to trial is not unreasonable or burdensome. This Court has been provided no evidence that this historical research will be burdensome. If a Party intends to prove their historical water use through water meter, electrical, or diesel records they presumably have that documentary evidence in their possession now. Making a copy of those records is not burdensome if the records exist at all; by this point in the case, those records should have been

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found anyway by the parties themselves. On the other hand, if the records do not exist, the time has come to say so.

The prescription claim has been present for many years. Presumably, the landowners have evaluated their claims, and have presumably evaluated their self-help defense to this claim. The other parties are entitled by statute to learn what evidence backs these claims up. Slightly more than two months from when the Court will hear this motion, the landowners must designate their experts. Precipitant witness depositions will also be taken. This discovery is needed to help prepare for these depositions.

It is the burden of all parties who wish to assert the self help defense to provide evidence of their historical pumping. Perhaps some parties would like to avoid responding to this discovery because they will be required to admit they have no evidence of historical groundwater use. Any party with adequate evidence of their historical groundwater use, ought to be eager to provide it. That some landowner parties attempt to suppress this evidence, and not respond to discovery, indicates they have no such evidence, and do not wish to admit it.

This Court could and should have been provided with a time estimate of the number of documents that will need to be reviewed or a document page court. However, this Court has been provided with no evidence whatever regarding the effort it will take to respond to this discovery.

No Party will ever wish to admit that they do not have adequate evidence to support an affirmative defense. But ascertaining the existence, or non-existence, of evidence is what trials and litigation are all about: litigation is a search for the truth, not a competition of bald contentions. Discovery is how the parties test, and if possible prove up, their contentions against actual evidence.

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Therefore, there is no reason to deny the Parties this discovery or to grant the protective order. The evidence sought by this discovery is at the core of what this litigation is all about. The motion should be denied, and the Parties should provide responses to the discovery. Trial is in February and the parties must provide this court with evidence of their respective rights to groundwater, including the self help defense. No stay should be imposed because it will hinder trial preparation.

V. IT IN UNFAIR TO STAY DISCOVERY NOW AFTER MOVING PARTY SUCCESSFULLY ARGUED FOR NO DISCOVERY STAY, AND THEREAFTER SERVED DISCOVERY

Discovery by all parties was partially stayed until after the Phase 2 trial. This stay was lifted in in the first few months of 2009 at the request of the landowners. On April 21, 2009, many landowners jointly served extensive written discovery upon the Public Water Suppliers. The Public Water Suppliers responded to this discovery on June 9, 2009.

The discovery for which AGWA seeks a protective order was served November 10, and 11, 2011. Open extensions were then given to the parties who requested them, including AGWA. At the hearing on July 9, 2012, this court stated regarding this discovery "The time to respond starts to run on September the 12th" (Page 91, lines 3-4). On September 12th, all extensions to respond to the discovery were withdrawn and parties were requested to respond on October 12, 2012, a mere four months prior to trial.

It is unjust for the landowning parties to serve discovery, and receive evidence in response. Then, seek to deny the Public Water Suppliers effort to obtain similar and crucial evidence using the very same method.

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VI. CONCLUSION

This court ought to deny the motion for protective order.

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Dated: September 28, 2012

Bradley T. Weeks
Attorney for Quartz Hill Water District

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PROOF OF SERVICE

I am employed in the aforesaid county, State of California; I am over eighteen years of age and not a party to the within action; my business address is 1031 West Avenue M-14, Suite A, Palmdale, California, 93551.

On September 28, 2012, at my place of business at Palmdale, California, a copy of the following DOCUMENT(s):

OPPOSITION TO MOTION FOR PROTECTIVE ORDER BY ANTELOPE VALLEY GROUNDWATER ASSOCIATION

By posting the DOCUMENT 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 foregoing is true and correct.

Executed on September 28, 2012

Gayle P. J. Fenald

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