

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 11/27/07

DEPT. 86

HONORABLE DAVID P. YAFFE

JUDGE

C. HUDSON

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

1.

NONE

Deputy Sheriff

NONE

Reporter

12:00 pm

BS111345

Plaintiff

Counsel

ANDALEX RESOURCES INC

NO APPEARANCES

Defendant

Counsel

VS

LOS ANGELES DEPARTMENT OF WATER
AND POWER

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER: ORDER TO SHOW CAUSE
RE: PRELIMINARY INJUNCTION (TRO IN EFFECT)

Andalex, a Delaware subsidiary of a Utah Mining Company, sues the Los Angeles Department of Water & Power (LADWP) to preliminarily and permanently prohibit it from disclosing certain documents to intervenor, The Salt Lake Tribune, in response to a public records request made by the Salt Lake Tribune under the California Public Records Act, Government Code section 6250, et seq.

The documents in question consist of entries in the minutes of monthly meetings between the co-owners of a coal mine in the state of Utah known as the Crandall Canyon Mine. The parent company of Andalex, Utah American Energy Inc., owns a 50 percent interest in the mine. The other 50 percent is owned by the Intermountain Power Agency, a public entity in the state of Utah. The Intermountain Power Agency is a major customer of the coal produced in the Crandall Canyon Mine. The coal is used to generate electrical power in plants operated by the Intermountain Power Agency in the state of Utah. LADWP, a municipally owned public utility in the state of California, is a major customer of the electrical power generated by the Intermountain Power Agency. LADWP owns no interest in the Crandall Canyon Mine, but it has been appointed

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as the agent for the Intermountain Power Agency on a two member management committee that operates the Crandall Canyon Mine. The other member of the committee is Andalex.

Andalex contends that the minutes of the meetings of the two-member committee are not public records held by LADWP. The contention has no merit. Under Government Code section 6252(e) a public record includes any writing that contains information relating to the conduct of the public's business that is retained by a local agency. LADWP, as a municipally owned public utility, is engaged in the public's business, and the minutes of the meetings with Andalex contain information relating to that business because the records pertain to the source of coal for a coal-fired energy plant that produces power that the LADWP distributes to members of the public in the city of Los Angeles.

Andalex next contends that the information contained in the minutes are records, the disclosure of which is prohibited by a state law, namely the California version of the Uniform Trade Secrets Act, Civil Code section 3426, et seq.

Andalex is unlikely to prevail on the merits in proving that the information that LADWP will disclose to The Salt Lake Tribune in response to its public records request constitutes a trade secret of Andalex, or that such material has been misappropriated by

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LADWP.

The court has examined in camera all of the minute entries of the management board that Andalex contends constitute its trade secrets and that LADWP proposes to disclose to the Salt Lake Tribune in response to its CPRA request. Andalex has failed to show that any of said information constitutes a trade secret under the California version of the Uniform Trade Secrets Act. The contentions of Andalex to the contrary consist of mere assertions, unsupported by evidence, that information in the minutes "could be used" to undercut its prices, to predict and counter its marketing, to drive down the price of coal, to give customers an unfair advantage during contract negotiations, et cetera. LADWP has agreed to redact everything from the minutes that discloses a price or a cost or any other quantitative information regarding prices, costs, production, or anything else. What it does propose to produce does not have any economic value from not being known to the public or to competitors of Andalex. Andalex considers any negative information about the operations of the mine to constitute a trade secret if it is not generally known. That contention is squarely rejected in the recent case of YIELD DYNAMICS v. TEA SYSTEMS CORP., 154 Cal.App. 4th 547, 566(2007), in which the court states:

"A company thus mixing original and potentially valuable information with public or otherwise less

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valuable information will have an obvious incentive to err on the side of non-disclosure, since there is generally no risk in that course, and certainly none sufficient to counterbalance the obvious risks of allowing only truly valuable information to be freely disclosed. A decision to review information as confidential thus reflects at most an OPINION that secrecy MAY be advantageous." (Court's emphasis). The court goes on to hold that the real question to be determined by the court is whether the information is in fact valuable by virtue of its secrecy or whether the plaintiff merely treated it as confidential because of a blanket policy of non-disclosure.

In this case, Andalex treats information concerning production problems, problems producing coal that are within specifications of a particular contract, problems of quality control, roof and water control problems in the mine, and similar problems are all potentially usable against Andalex by a competitor or customer and therefore constitute trade secrets. Andalex goes so far as to claim that, "anytime you see the word 'cost' it creates a disadvantage to Andalex at the bargaining table during contract negotiations with customers." (Supplemental Brief in Support of Application for Preliminary Injunction, 10:22-25). Such opinions are speculative in nature and do not constitute sufficient evidence of the existence of a trade secret.

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Andalex also argues that some of the information that LADWP intends to disclose is either outside the scope of the public records request made by the Salt Lake Tribune, or is exempt under some provision of the CPRA. It is LADWP, however, not Andalex, that must justify the withholding of a record by demonstrating that it is exempt. Government Code section 6255. It is LADWP, not Andalex, that is to determine whether a request seeks copies of discloseable public records. Government Code section 6253(c). Nothing in the CPRA prevents an agency from opening its records to public inspection, unless such disclosure is prohibited by law. Government Code section 6254.

Andalex has acknowledged in open court that it does NOT claim that LADWP, or its employee who sits on the management board of the Crandall Canyon Mine, owes Andalex a fiduciary duty to not disclose information that Andalex wants to keep from the public. The absence of such a duty to protect the secrecy of information makes it improbable that Andalex can prevail in proving that any trade secret that might exist was misappropriated by LADWP. If the information was not acquired by LADWP under circumstances giving rise to a duty to maintain its secrecy, Andalex must prove that LADWP used improper means to acquire the information. Civil Code section 3426.1(b)(2)(A) and (B)(ii). The evidence before the court clearly shows that Andalex voluntarily disclosed the information to LADWP, and therefore the information was not wrongfully or improperly acquired.

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Other contentions made by Andalex are also without merit.

The Supplemental Brief submitted by Andalex and the exhibits to the Declaration of Michelle R. Walker in support of that supplemental brief are to be maintained in the file under seal by the clerk. Exhibits 1,2, and pages 4 through 20 of Exhibit 4 to the briefs submitted by LADWP in reply to said supplemental brief are to be maintained by the clerk under seal.

**CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER**

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 11/27/07 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: November 27, 2007

John A. Clarke, Executive Officer/Clerk

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By: _____

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