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7 NORTH EDWARDS WATER DISTRICT, DESERT LAKES COMMUNITY SERVICES DISTRICT,  
LLANO DEL-RIO WATER CO., LLANO MUTUAL WATER CO., BIG ROCK MUTUAL WATER  
8 CO., and LITTLE BALDY WATER CO.

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

11  
12 Coordinated Proceeding )  
Special Title (Rule 1550(b)) )

13 ANTELOPE VALLEY GROUNDWATER )  
14 CASES )

15 Included Actions: )

16 Los Angeles County Waterworks District No. 40 )  
17 v. Diamond Farming Co. Los Angeles County )  
Superior Court Case No. BC 325201; )

18 Los Angeles County Waterworks District No. 40 )  
19 v. Diamond Farming Co., Kern County Superior )  
Court, Case No. S-1500-CV-234348; )

20 )  
21 Wm. Bolthouse Farms, Inc. v. City of Lancaster )  
Diamond Farming Co. v. City of Lancaster v. )  
22 Palmdale Water District, Riverside County )  
Superior Court, Consolidated Actions, Case Nos. )  
23 RIC 353840, RIC 344436, RIC 344668 )

24 \_\_\_\_\_ )  
AND RELATED CROSS-ACTIONS )  
25 \_\_\_\_\_ )

**Judicial Council Coordination No. 4408**

)  
) Santa Clara Case No. 1-05-CV-049053  
) Assigned to the Honorable Jack Komar – Dept. 17

)  
) **PUBLIC WATER SUPPLIERS’**  
) **CONSOLIDATED REPLY TO VARIOUS**  
) **OPPOSITIONS RE: JURY TRIAL**

) **DATE: April 24, 2009**  
) **TIME: 9:00 a.m.**  
) **DEPT: 1 (Los Angeles)**

1 **I. INTRODUCTION**

2 On January 9, 2009, this court permitted the landowner parties to submit an opposition brief to the  
3 Public Water Suppliers’ brief regarding the trial jury issue. On January 26, 2009, we received five  
4 separate opposition briefs from various landowners.<sup>1</sup> The following reply brief addresses the arguments  
5 raised in each of these briefs.

6 None of these briefs cite to case law that is germane to the groundwater adjudication. Instead,  
7 these briefs reference case law involving prescriptive easement claims on real property. This case law is  
8 inapposite because: (1) water rights, although a property right, are fundamentally different from the right  
9 to ownership in land because they are defined and limited by the California Constitution; and (2) *all* of the  
10 causes of action pled in this case are equitable or statutory.

11 The overlying owners have also argued historical safe yield and overdraft are relevant only in the  
12 context of the prescriptive claims. On the contrary, a finding by the court of an overdraft condition will  
13 establish the need for the physical solution requested by the Public Water Purveyors. Ownership issues  
14 can be decided separately at a later date.

15 **II. ARGUMENT**

16 **A. CASES INVOLVING PRESCRIPTIVE EASEMENTS TO LAND BETWEEN**  
17 **PRIVATE PARTIES ARE NOT APPLICABLE TO THIS CASE**

18 **1. Introduction**

19 Following the oppositions, all parties agree the California Constitution provides a right to a jury  
20 for claims seeking legal remedies. All parties also agree there is no such requirement for claims seeking  
21 equitable remedies on statutory claims. Public Water Suppliers are only seeking equitable remedies of  
22 declaratory relief and physical solution in the instant case. However, the overlying owners argue the  
23 Public Water Suppliers’ claims are really “legal in nature” because they include an allegation of  
24

25 \_\_\_\_\_  
26 <sup>1</sup> Diamond Farming Company and Crystal Organic Farms; Bolthouse Properties, LLC and William  
27 Bolthouse Farms, Inc; B.J. Calandri, et al.; Richard Wood; Tejon Ranch; and U.S. Borax, Inc.

1 prescription. Diamond Farming and Bolthouse argue the prescription claim invokes the Court’s ancient  
2 power of “action on the case,” and therefore requires a jury trial.

3         The case law cited by overlying owners is not on point. First, the court’s power to enact a  
4 physical solution is not founded on any ancient power of the court, but, instead, is founded upon the 1926  
5 amendment to the State Constitution. Therefore, there can be no right to a jury trial because this cause of  
6 action is statutory in nature and did not exist before 1850.

7         Second, the public entities have made no claim for damages in connection with the allegation of  
8 prescription. Therefore, the Public Water Suppliers have not invoked the remedy of “action on the case.”  
9 Instead, the Public Water Suppliers have confined their request to the equitable remedies of declaratory  
10 relief and physical solution. Finally, there is no basis for the overlying owners to assert a legal claim for  
11 damages. Because the Public Water Suppliers are public entities, the overlying owners’ ability to pursue  
12 a damages claim is limited to inverse condemnation. The procedure for inverse condemnation is set by  
13 statute and does not require a jury trial at this stage.

14                 **2. Each Cause of Action Asserted by the Public Water Suppliers is Seeking a**  
15                 **Remedy Provided By the State Constitution**

16         The overlying owners argue the instant case is a common law legal proceeding comparable to a  
17 prescription case that might have been pled prior to 1850. Instead, Diamond Farming and Bolthouse  
18 argue that by requesting a ruling on prescription, the Public Water Suppliers have invoked the court’s  
19 ancient powers of “law of the case,” which they argue is a legal, and not equitable, remedy. The  
20 overlying owners ignore the fact that when it comes to deciding the priority of water rights, this court’s  
21 authority comes from the State Constitution, and not ancient judicial doctrines.

22         Bolthouse makes the argument “the water purveyors do not cite to a single case where a water law  
23 adjudication was determined to be a ‘special proceeding.’” This is incorrect. This case is defined by the  
24 State’s Constitution as a special proceeding. Each of the Public Water Suppliers’ causes of action seeks  
25 declaratory relief and physical solution. The court’s equitable power of physical solution comes from a  
26 constitutional mandate that public water be put to reasonable and beneficial uses. (Calif. Constitution,,  
27 Article X, § 2.) A cause of action for physical solution is a request that the court use its equitable powers  
28

1 to enforce this constitutional mandate. (*City of Lodi v. East Bay Municipal Utility District* (1936) 7  
2 Cal.2d 316, 339-340; *Imperial Irrigation District v. State Water Resources Control Board* (1990) 225  
3 Cal.App.3d 548, 572 [275 Cal.Rptr. 250, 266-267].) The California Supreme Court explained the Court’s  
4 physical solution remedy as follows:

5 “[T]he 1928 Constitutional amendment, . . . compels the trial court, before issuing a  
6 decree entailing . . . [a] waste of water, to ascertain whether there exist a physical solution  
7 of the problem presented that will avoid the waste, and that will at the same time not  
8 unreasonably and adversely affect the prior appropriators vested property right. In  
9 attempting to work out such a solution, the policy which is now part of the fundamental  
10 law of the State must be adhered to. It is declared in section 3 of Article IVX of the  
11 Constitution: [¶] It is hereby declared that . . . the general welfare requires that the water  
12 resources of the state be put to beneficial use to the fullest extent which they are capable,  
13 and that the waste or unreasonable use or unreasonable method of use of water be  
14 prevented, and that the conservation of such waters is to be exercised with a view to the  
15 reasonable and beneficial use thereof in the interest of the people and for the public  
16 welfare . . .” (*City of Lodi, supra*, 7 Cal.2d 339-340.)

17 Therefore, the court’s authority to enforce a physical solution is derived from the power granted to  
18 the court by the State Constitution and statute. Unlike the prescription cases cited by the overlying  
19 owners, this court has not been asked to use the ancient legal remedy of “action on the case,” or any other  
20 similar remedy that existed prior to 1850. The court is using authority granted by the Constitution, and  
21 not the authority used in the private prescription cases. There is no right to a jury trial for this statutory  
22 cause of action.

23 Diamond Farming even goes so far as to suggest “this action is not a ‘special proceeding’ and  
24 there exists no statute defining it as such.” (Oppo. p. 5:5-6.) This is incorrect. Water Code section 2000  
25 *et seq.* established a procedure applicable to “any suit brought in any court . . . for determination of rights  
26 to water.” (Water Code § 2000.) This statute allows the court to refer findings of fact to the State Water  
27 Resources Control Board. (*Id.*) (The reference must take place immediately after the complaint was filed  
28 and before any issues have been cited by the judge.) This procedure includes all issues relating to rights  
to water use, and does not exclude prescription or any other kind of claim. This procedure is lawful  
because water rights claims are, by their very nature, statutory and are not covered by the constitutional  
right to a jury trial.

1                   **3.       There Is No Right To A Jury Trial Because Public Water Suppliers Have Not**  
2                   **Requested The Remedy Of Damages**

3                   Several parties again make the argument that the Constitution requires a jury trial for any cause of  
4 action that includes allegations of prescription regardless of whether the cause of action asks for an  
5 equitable or legal remedy. The landowners cite to cases such as *Arciero Ranches v. Meza* (1993) 17  
6 Cal.App.4<sup>th</sup> 114, which involved disputes concerning easements over real property. Even though the  
7 landowners recognize each of the public water suppliers’ cause of action requests an equitable remedy,  
8 the landowners argue the existence of a prescription claim as an element of these causes of action  
9 transmutes them into legal claims. The landowners appear to misunderstand the reasoning behind *Arciero*  
10 *Ranches* and similar decisions.

11                   Actions at law and actions in equity are primarily distinguished by the remedy sought. Actions at  
12 law usually seek a money judgment for damages. (See Witkin, *California Procedure*, 5<sup>th</sup> Ed. Chpt. IV, §  
13 119.) Equitable actions typically seek some form of specific relief. (*Id.*)

14                   The two cases are cited by the landowners, *Arciero Ranches v. Meza* (1993) 17 Cal.App.4<sup>th</sup> 114,  
15 [21 Cal.Rptr.2d 127], and *Frahm v. Briggs* (1970) 12 Cal.App.3d 441 [90 Cal.Rptr. 725]. Neither of  
16 these cases apply to the instant case because no party in this case has pled a legal action for damages.  
17 Both *Arciero* and *Frahm* involved a real property dispute between adjacent private parties. The plaintiff  
18 claimed the defendant was trespassing upon his land. A defendant claimed a right to access the land  
19 based on a prescriptive easement, and was also claiming damages for being prevented from using the  
20 land. The court determined the party asserting the prescriptive easement had a right to a jury trial because  
21 that party could state a claim to damages for being denied access to the land, pursuant to an ancient legal  
22 remedy called, “action on the case.” *Arciero* cites to *Pacific Western Oil Company v. Burn Oil Company*  
23 (1939) 13 Cal.2d 60, which finds that a party requesting an injunction has a right to a jury trial, “when the  
24 question of damages is put in issue by the pleadings.” (*Pacific Western Oil, supra* at 69.)

25                   These cases are not applicable because none of the public water suppliers have requested damages  
26 based on “action of the case,” or any other legal doctrine. The Public Water Suppliers have not requested  
27 a damages remedy based on the overlying owners’ use of water. Instead, they have asked this court to use  
28

1 its equitable power to fashion a remedy that would mandate the use of water in a way that did not threaten  
2 a basin's water resources. Even if these causes of action were not founded upon the State Constitution,  
3 there would still be no right to a jury trial because this court has not been asked to use its power of "action  
4 on the case."

5 **4. The Overlying Owners Are Limited To Statutory Causes Of Action Or**  
6 **Prescription Will Be Asserted As A Defense**

7 The overlying owners have not, and cannot, assert a cause of action for a legal remedy, such as  
8 trespass. This is because the Public Water Suppliers have committed the water for public use. They have  
9 done so pursuant to their police power. (*Polary Irrigation District v. Lindsey-Strathmore Irrigation*  
10 *District* (1935) 3 Cal.2d 489 [45 P.2d 672].) If this action resulted in any taking of overlying owners'  
11 property, the sole remedy of landowners is inverse condemnation. (*Hillside Water Co. v. City of Los*  
12 *Angeles* (1938) 10 Cal.2d 677, 688 [76 P.2d 681].)

13 The Public Water Suppliers do not believe an inverse condemnation claim can be lawfully stated  
14 in this case. However, should the court allow such a claim to proceed, the trial process is defined by the  
15 Constitution. (*Coachella Valley Water District v. Western Allied Properties* 91987) 190 Cal.App.3d 969,  
16 974 [235 Cal.Rptr. 725].) Pursuant to statute, there is no right to a jury trial, except on valuation.  
17 ((*Marshall v. Department of Water & Power* (1990) 219 Cal.App.3d 1124, 1138 [268 Cal.Rptr. 559];  
18 *Healing v. California Coastal Comm.* (1994) 22 Cal.App.4<sup>th</sup> 1158, 1170 [27 Cal.Rptr.2d 758].) If the  
19 overlying owners requested a jury for their own damages claims, the trial would be conducted pursuant to  
20 the procedure established by statute, and no jury would be required for Phase III. The overlying owners  
21 will have a right to a jury if, and only if, this court first determines there has been a taking.

22 **B. CASE LAW WHICH REFERS TO WATER OWNERSHIP AS "LEGAL RIGHTS"**  
23 **IS NOT MEANT TO DRAW DISTINCTION BETWEEN LEGAL AND**  
24 **EQUITABLE CLAIMS**

25 Both the *Wood* class (Oppo. pp. 2-4) and the *Bolthouse Farms* (Oppo. pp. 5-6) assert case law  
26 defines water prescription cases as "legal" claims. (The *Wood* class describes their ownership of water  
27

1 rights as “legal rights.”) These arguments misunderstand the distinction between legal and equitable  
2 claims. As a result, the overlying owners have garbled the *Mojave* decision.

3 The overlying owners’ reference to the *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4<sup>th</sup>  
4 1224, is misplaced. *Mojave* does not stand for the proposition that any portion of a groundwater  
5 adjudication is a legal claim as opposed to an equitable claim. *Mojave*’s reference to “legal rights” was  
6 not meant to distinguish water use rights from equitable claims. Rather, it was simply invoking the broad  
7 meaning of the term “legal” to refer to rights that have been granted by law. The *Mojave* case was  
8 adjudicated by a judge, not a jury.

9 A determination of whether a cause of action is equitable or legal is not simply a labeling issue.  
10 That description refers to the remedy that is being sought by the claimant. The Public Water Suppliers  
11 have only requested equitable remedies. The only damages remedy available to the overlying owners is  
12 founded upon a specific statutory procedure. No party to this case has asserted a legal claim.  
13 Accordingly, there is no right to a jury trial.

14 **C. THE NEED FOR A PHYSICAL SOLUTION CAN BE ESTABLISHED WITHOUT**  
15 **REFERENCE TO OWNERSHIP**

16 The AGWA Group makes the argument that the issues of safe yield and overdraft have no  
17 application to the request for declaratory relief, except inasmuch as those claims reference prescription.<sup>2</sup>  
18 Tejon Ranch makes the point that “historical safe yield and overdraft are relevant only in the context of  
19 prescriptive claims.” (Tejon Joinder, p. 2.) On the contrary, the establishment of a native safe yield and  
20 the existence of overdraft bear directly upon the request for declaratory relief, and do not require the court  
21 to examine any ownership issues at all.

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22  
23  
24 <sup>2</sup> AGWA’s assertion is not germane because the prescription claim is simply one element of the various  
25 declaratory relief causes of action which seek only equitable remedies. (It is also one defense to the  
26 overlyers’ statutory claim for inverse condemnation.) Even if these issues “only related” to the  
27 prescription element, this does nothing to show whether the claims sound in law or equity. It begs the  
28 question.

1 The action for physical solution is a request by the Public Water Suppliers that the court fashion  
2 an order that restores equilibrium to the basin. Equilibrium is inflow minus outflow, plus change in  
3 storage. Inflow, outflow, and change of storage are physical measurements. The data must be selected  
4 with expert advice on the state of nature. Conditions during any single year, or any five years  
5 (prescriptive period), do not establish safe yield or overdraft. The finder of fact must examine the  
6 historical data of the basin. The court will examine expert opinion regarding the aggregate inflow of  
7 water into the basin, as well as the aggregate extraction of water from the basin.

8 Safe yield depends on the physical state of the basin, not on who owns the water. When the court  
9 receives evidence of groundwater extraction, the court need not determine each party's ownership in the  
10 extraction. The court will be making a determination based on the physical properties of the basin  
11 without regard to how these characteristics affect each individual party's rights. Many parties may be  
12 extracting groundwater in excess of their right. That fact has nothing to do with the quantity they are  
13 extracting.

14 When it comes to adjudicate ownership issues, the court will examine a different suite of facts  
15 such as the historical pumping of each party, geographical location within the basin, the physical effects  
16 caused by particular wells, each party's access to publicly available information, and an array of other  
17 related information. The court will also examine the use of the water and determine whether such use was  
18 both reasonable under the circumstances and beneficial. The court may consider the statutory preference  
19 for water use and other legal factors to determine whether a party has a water use right. None of this  
20 information is useful or necessary in determining a safe yield. They should be left to subsequent phases  
21 of litigation.

22 DATED: February 10, 2009

LEMIEUX & O'NEILL

23 /s/

24 By: \_\_\_\_\_

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27 And Cross-Defendants, NORTH EDWARDS WATER DISTRICT  
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**PROOF OF SERVICE**

STATE OF CALIFORNIA, )  
 ) ss.  
COUNTY OF VENTURA )

I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the within action. My business address is 2393 Townsgate Road, Suite 201, Westlake Village, California 91361.

On **February 10, 2009**, I posted the following document(s) to the website <http://www.scefiling.org>, a dedicated link to the Antelope Valley Groundwater Cases:

**PUBLIC WATER SUPPLIERS’ CONSOLIDATED REPLY TO  
VARIOUS OPPOSITIONS RE: JURY TRIAL**

I declare under penalty of perjury under the laws of the United State of America that the above is true and correct.

Executed on February 10, 2009, in Westlake Village, California.

/s/

\_\_\_\_\_  
KATHI MIERS

**SERVICE LIST**

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13	Alan Kia, Esq. 5225 Wilshire Boulevard, Suite 1000 Los Angeles, CA 90036	Attorneys for Gateway Triangle Properties Tel: (323) 934-5000
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15	<b>Court Personnel:</b>	
16	Presiding Judge of the Superior Court of California, County of Los Angeles 111 N. Hill Street Los Angeles, CA 90012-3014	CRC Rules 1501(17) and 1540: Coordination Trial Judge
17		
18	Honorable Jack Komar Santa Clara County Superior Court 191 North First Street, Dept. 17C San Jose, CA 95113	<b>By Mail</b> Tel: 508/882-2286; Fax: 408/882-2293 <a href="mailto:rwalker@scscourt.org">rwalker@scscourt.org</a>
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21	Superior Court of California County of Los Angeles Stanley Mosk Courthouse—Dept. 1, Rm 534 111 North Hill Street Los Angeles, CA 90012	<b>Original Document(s) to be filed at this location.</b>
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24	*Chair, Judicial Council of California Administrative Office of the Courts Attn: Appellate & Trial Court Judicial Services (Civil Case Coordination) 455 Golden Gate Avenue San Francisco, CA 94102-3688	CRC Rule 1511: *Serve only when required to be transmitted to Judicial Council.
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