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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 Included Actions:)
 13 Los Angeles County Waterworks District No. 40) Santa Clara Case No. 1-05-CV-049053
 14 v. Diamond Farming Co.) Assigned to The Honorable Jack Komar
 15 Superior Court of California)
 16 County of Los Angeles, Case No. BC 325 201) **BRIEF OF TEJON RANCHCORP RE**
 17 Los Angeles County Waterworks District No. 40) **JURISDICTION OVER TRANSFEREES OF**
 18 v. Diamond Farming Co.) **LAND**
 19 Superior Court of California, County of Kern,)
 20 Case No. S-1500-CV-254-348) Date: May 21, 2007
 21 Wm. Bolthouse Farms, Inc. v. City of Lancaster) Time: 9:00 a.m.
 22 Diamond Farming Co. v. City of Lancaster) Department: 1
 23 Diamond Farming Co. v. Palmdale Water Dist.)
 24 Superior Court of California, County of Riverside,)
 25 consolidated actions, Case Nos.)
 26 RIC 353 840, RIC 344 436, RIC 344 668)

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1 **I. INTRODUCTION AND CONCLUSION.**

2 The parties desire that the Court's final judgment bind all Antelope Valley landowners,
3 excluding those served by a purveyor, so that the judgment will be as effective and "comprehensive" as
4 possible. However, even if all landowners are properly joined in this action, many will sell or otherwise
5 transfer their properties during and after entry of judgment. The Court asked us to brief the question of
6 how best to obtain jurisdiction over these transferees so that the Court's judgment will be binding on
7 them, and the Court asked about the advisability of recording a lis pendens.

8 We conclude that although it may be legally permissible to record a lis pendens giving
9 notice of these actions in Los Angeles and Kern Counties, it is not mandatory; it may not be practical or
10 advisable; and there are less problematic alternatives that could achieve the same goal. For example, the
11 Court could order that all landowner parties post notice of any transfer of their property, that they notify
12 the transferees of this litigation, and that the purveyors promptly serve their Cross-Complaint on the
13 transferees. If the final judgment limits the water rights of any landowners, their transferees will be
14 bound under traditional res judicata principles.

15 **II. ADVISABILITY OF RECORDING LIS PENDENS IN THESE CASES.**

16 A lis pendens or "notice of pendency of action" gives constructive notice to the world of
17 the pendency of litigation affecting the described real property, if the notice has been properly drafted,
18 served, recorded, and filed. If all of these requirements have been met, and if the lis pendens is not
19 expunged, title to the property is effectively clouded, and transferees of the property cannot be bona fide
20 purchasers, preserving the priority of the noticed claims against the property. (See CCP § 405.24;
21 *Malcolm v. Superior Court* (1981) 29 Cal.3rd 518, 523.)

22 The law does not mandate the filing of a lis pendens by the public water suppliers herein.
23 CCP § 761.010(b) requires that the plaintiff in a quiet title action file a lis pendens. In these cases, the
24 public water suppliers have asserted claims for declaratory relief, physical solution, and other relief –
25 but not quiet title relief.

26 However, recording of a lis pendens is permissible whenever a claimant asserts a "real
27 property claim," which is defined as a cause of action which would, if meritorious, affect "title to, or
28 the right to possession of, specific real property." (CCP § 405.4.) Although we have found no case

1 applying this statutory language to such water rights claims, it is likely that the purveyor's water rights
2 claims would, if upheld, affect the landowners' title to or right to possession of Antelope Valley
3 groundwater and their overlying rights to use it.

4 "An overlying right, 'analogous to that of the riparian
5 owner in a surface stream, is the owner's right to take water
6 from the ground underneath for use on his land within the
7 basin or watershed; it is based on the ownership of the land
8 and is appurtenant thereto.' (*California Water Service Co.*,
9 *supra*, 224 Cal. App. 2d at p. 725.)"
10 (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.
11 4th 1224, at 1240.)

12 On the other hand:

13 "Both riparian and *overlying* water rights are usufructuary
14 only, and while conferring the legal right to use the water
15 that is superior to all other users, confer no right of private
16 ownership in public waters. (See *People v. Shirokow* (1980)
17 26 Cal. 3d 301, 307.)"
18 (*City of Barstow, supra* at 1237 note 7.)

19 However, assuming recordation of a lis pendens is permissible here, it appears to be
20 inadvisable for several reasons:

21 1. **Cloud On Landowners' Title.** If the lis pendens is effective, it will cloud title to
22 practically all of the real estate in the Antelope Valley, outside of the purveyors' service areas, hindering
23 or preventing transfer of the properties, harming property values, and obstructing financing of thousands
24 of parcels, even though there has been no adjudication that the purveyors' claims are meritorious.

25 2. **Burden On Purveyors.** In a case of this magnitude, with so many parcels and
26 parties, the technical requirements for drafting, serving, recording, indexing, and filing a lis pendens in
27 Los Angeles County and Kern County could be extremely burdensome, and failure to satisfy any such
28 mandates may invalidate the lis pendens. For example, CCP § 405.20 requires that the lis pendens must
correctly identify all of the thousands of landowner parties and provide an adequate "description of the
property affected by the action" – the current Jurisdictional Boundary Order may not suffice. Where, as
here, there are numerous separate parcels and unrelated landholdings, it is unclear whether the statute
requires the filing of a separate lis pendens for each parcel. In addition, before recordation, copies of the
lis pendens must be mailed, by Registered or Certified mail, to all of the adverse landowner parties at

1 “all known addresses” (CCP § 405.22), or else the lis pendens is void (§ 405.23). In addition, a proof of
2 service must be recorded with the lis pendens. (§ 405.23.) Moreover, a copy of each lis pendens must
3 be filed with the court. (§ 405.22.) Lastly, the lis pendens is not effective unless the document has been
4 properly indexed. (Government Code §§ 27250; *Lewis v. Superior Court* (1994) 30 Cal.App.4th 1850,
5 1866.)

6 **3. County Recorders And Others May Not Cooperate.** We are informed that in
7 the Mojave groundwater adjudication, the water purveyors unsuccessfully tried to record a lis pendens,
8 but the county recorder, title companies, or other parties did not cooperate, so the effort failed. Mr.
9 William Brunick, counsel for AVEK herein, was involved in the unsuccessful effort to record a lis
10 pendens in the Mojave case, and he can explain further.

11 **4. Ancillary Litigation re Lis Pendens.** Because of the harm caused by a lis
12 pendens, the affected landowners may move to expunge the lis pendens as to their properties, and such
13 motions could be made on different grounds by different landowners. For example, the lis pendens must
14 be expunged if the pleading on which it is based does not contain a “real property claim” (§ 405.31).
15 More importantly, the lis pendens must be expunged if the purveyors cannot establish the “probable
16 validity” of their real property claims by a preponderance of the evidence (§ 405.32). The purveyors
17 would have the burden to establish the probable validity of each element of their prescriptive rights and
18 other claims. This would require the Court to conduct a “mini-trial on the merits” of the purveyor
19 claims as to each landowner who moves for expungement of the lis pendens. (*Howard S. Wright*
20 *Construction Co. v. Superior Court* (2003) 106 Cal.App.4th 314, 319-320.) The party prevailing on the
21 motion to expunge may recover and will request its reasonable attorney’s fees. (§ 405.38.) Moreover,
22 even if the lis pendens survives the above challenges, the Court must order it expunged as to any
23 landowners who give an adequate undertaking. (§ 405.33.) Whether or not landowners move to
24 expunge, they may also move to require the purveyors to provide an undertaking as a condition to
25 maintaining the lis pendens. (§ 405.34.) Consequently, there may be a great deal of ancillary litigation
26 challenging the propriety of a lis pendens, the strengths and weaknesses of the purveyors’ claims, and
27 the adequacy of proposed undertakings.

1 **III. THERE ARE ALTERNATIVES PREFERABLE TO A LIS PENDENS.**

2 There are less problematic alternatives to a lis pendens that would achieve the same goal.

3 In particular the Court could order:

4 1. That landowners parties (individuals and class members) do the following:

5 (a) post notice of transfer on the Court website within 10 days after any
6 transfer of their property, stating the name, address, and other contact information of the transferee; and

7 (b) notify their transferees of this litigation and provide them a copy of the
8 public water suppliers' Cross-Complaint; and

9 2. That the public water suppliers promptly serve their Cross-Complaint on
10 transferees, substituting the transferees as cross-defendants per CCP § 368.5.

11 Such an order would be superior to a lis pendens for another important reason – it would
12 provide actual notice to transferees, not merely constructive notice, of the purveyors' claims against
13 their water rights. Of course, such an order will “cloud” title to the landowners' water rights in a
14 manner similar to a lis pendens, but it will give notice in a more reliable, understandable, and
15 straightforward fashion; and it does not depend on technical compliance with all of the lis pendens
16 requirements and cooperation of the county recorders, title companies, et al.

17 Compared to the risks and problems of the lis pendens process, we think the above order
18 would better insure that all landowners are bound by the judgment. To maximize notice of this proposed
19 order, the purveyors should serve it with their Cross-Complaint on all new cross-defendants; and it
20 should be served with the notice that the Court approves to be given to the landowner classes.

21 **IV. POST-JUDGMENT TRANSFEREES WOULD BE BOUND BY RES JUDICATA.**

22 If a final judgment is entered in this case that affects the water rights of the current
23 landowners, post-judgment transferees of the property would be bound by the judgment under traditional
24 res judicata principles:

25 **“Code of Civil Procedure § 1908--Conclusive effect of a
26 judgment in various cases.**

27 (a) The effect of a judgment or final order in an action or
28 special proceeding before a court or judge of this state, or of the
United States, having jurisdiction to pronounce the judgment or
order, is as follows:

(1) In case of a judgment or order against a specific thing, or

1 in respect to the probate of a will, or the administration of the
2 estate of a decedent, or in respect to the personal, political, or
3 legal condition or relation of a particular person, the judgment or
4 order is conclusive upon the title to the thing, the will, or
5 administration, or the condition or relation of the person.

6 (2) In other cases, the judgment or order is, in respect to the
7 matter directly adjudged, **conclusive between the parties and
8 their successors in interest by title** subsequent to the
9 commencement of the action or special proceeding, litigating for
10 the same thing under the same title and in the same capacity,
11 provided they have notice, actual or constructive, of the
12 pendency of the action or proceeding.” (Emphasis added.)

13 California res judicata cases treat transferees as privies:

14 “Under the requirement of privity, only parties to the
15 former judgment or their privies may take advantage of or be
16 bound by it. (Ibid.) A party in this connection is one who is
17 “directly interested in the subject matter, and had a right to make
18 defense, or to control the proceeding, and to appeal from the
19 judgment. [Citations omitted.] A privy is one who, after
20 rendition of the judgment, has acquired an interest in the subject
21 matter affected by the judgment through or under one of the
22 parties, as by inheritance, succession, or purchase. [Citation
23 omitted.]
24 (*Bernhard v. Bank of America* (1942) 19 Cal. 2d 807, 811.)

25 In *Gale v. Tuolumne County Water Co.* (1914) 169 Cal. 46. 50-51, the Court applied these res judicata
26 principles to bind a transferee power company to a water rights judgment against its transferor and held
27 the transferee guilty of contempt of court.

28 “The Power Company, successor in interest of the
original defendant Water Company, was bound by the judgment
rendered in 1870, and to the same extent as was the Water
Company before the latter transferred its property. (Code Civ.
Proc., sec. 1908.) The Power Company being bound by
the judgment and injunction, as the successor of the Water
Company, its violation of the injunction, with notice thereof,
constituted contempt of court. [Citations omitted.]”

Likewise, in *Adams v. Barber*, the Court enforced an injunction against the successors in interest:

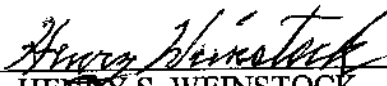
“By that judgment the superior rights of the original
grantors of the plaintiffs to all the water of said creek, with the
exception of that appropriated to the Woodruff tract above
noted, were conclusively established, and by that judgment
Freeman, the defendant in the action in which it was entered,
and his privies or successors in interest by title subsequent to the
commencement of said action are bound and estopped in this

1 action from asserting any right to any of the water flowing in
2 said creek based upon any claim alleged to have existed anterior
3 to the entry of said judgment. (Code Civ. Proc., sec. 1908, subd.
4 2; Freeman on Judgments, secs. 300-309; Riverside Land Co. v.
5 Jensen, 108 Cal. 146; Green v. Thornton, 130 Cal. 482; Estate of
6 Bell, 153 Cal. 331, 345.).” *Adams v. Barber*, 1913 21 Cal.App.
7 503, 513-14.

8 Accordingly, a properly recorded judgment against any current landowners should be
9 binding on their successors.

10 Dated: May 11, 2007

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

14 By: 
15 HENRY S. WEINSTOCK
16 Attorneys for Tejon Ranchcorp
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1 **PROOF OF SERVICE**

2 The undersigned declares:

3 I am employed in the County of , State of California. I am over the age of 18 and am not a party
4 to the within action; my business address is c/o Nossaman, Guthner, Knox & Elliott, LLP, 445 S.
5 Figueroa Street, 31st Floor Los Angeles, California 90071-1602.

6 On **May 11, 2007**, I served the foregoing **BRIEF OF TEJON RANCHCORP RE**
7 **JURISDICTION OF TRANSFEREES OF LAND** on all interested parties:

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

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

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

22 () (By Federal Express) I served a true and correct copy by Federal Express or other overnight
23 delivery service, for delivery on the next business day. Each copy was enclosed in an envelope
24 or package designated by the express service carrier; deposited in a facility regularly maintained
25 by the express service carrier or delivered to a courier or driver authorized to receive documents
26 on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying
27 service list.

28 Executed on **May 11, 2007** 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