

1 DOUGLAS J. EVERTZ, SBN 123066
MURPHY & EVERTZ, LLP
2 650 Town Center Drive, Suite 550
Costa Mesa, California 92626
3 Telephone: (714) 277-1700
Fax: (714) 277-1777

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4 Attorneys for Defendant
5 City of Lancaster

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF LOS ANGELES
9

10 COORDINATION PROCEEDING SPECIAL
11 TITLE (Rule 1550(b))

LASC Case No. BC 325201

12 ANTELOPE VALLEY GROUNDWATER
13 CASES

Judicial Council Coordination
Proceeding No. 4408

14 Included Actions:

CLASS ACTION

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

Santa Clara Case No. 1-05-CV 049053
Assigned to The Honorable Jack Komar

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

**OPPOSITION OF DEFENDANT CITY
OF LANCASTER TO LOS ANGELES
COUNTY WATERWORKS DISTRICT
NO. 40'S MOTION FOR LEGAL
FINDINGS ON WATER CODE
REQUIREMENTS TO REPORT
EXTRACTIONS OF GROUNDWATER
IN LOS ANGELES**

19 Wm. Bolthouse Farms, Inc. v. City of
20 Lancaster, Diamond Farming Co. v. City of
Lancaster, Diamond Farming Co. v. Palmdale
21 Water Dist., Superior Court of California
County of Riverside, consolidated actions; Case
22 Nos. RIC 353 840, RIC 344 436, RIC 344 668.

Date: February 14, 2012
Time: 9:00 a.m.
Room: 1515

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28 {00020335.2 }

1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT.**

2 The City of Lancaster (the "City") operates the Lancaster National Soccer Center (the
3 "Center"). The Center has 35 soccer fields and hosts many statewide and national events. The City
4 exercises overlying rights and produces approximately 500 acre-feet a year to irrigate the soccer
5 fields. Los Angeles County Waterworks District No. 40 ("District No. 40") has filed a "Motion for
6 Legal Findings on Water Code Requirements to Report Extractions of Groundwater in Los Angeles
7 County" ("Motion") requesting (1) an advisory ruling on the applicability of Water Code section 4999
8 *et seq.*, and (2) a legal finding that the failure of a party to file a "Notice of Extraction and Diversion
9 of Water" ("Notice") is deemed a non-use of groundwater, and results in "a loss of groundwater rights
10 each year in which the Notice was required." The Motion requests that all forms of water rights be
11 deemed forfeited based upon the mere failure to file a form with the State. The Motion should be
12 denied for at least three distinct reasons:

13 1. The Motion is procedurally defective. First, it seeks an advisory opinion to resolve an
14 alleged "allocation" impasse in the pending settlement discussions before Justice Robie. Second, the
15 Motion is a disguised motion for summary adjudication which fails to comply with Code of Civil
16 Procedure section 437c(s) or include evidence necessary to summarily adjudicate water rights.

17 2. The legislation referenced in the Motion is designed to preclude the acquisition of a
18 prescriptive right until appropriate written notice is filed with the State. The legislation was never
19 designed or intended to eviscerate an established and active overlying use.

20 3. Statutory construction disfavors any interpretation of a law that provides an absurd
21 result and/or may result in a forfeiture of a right. A judicial interpretation of Water Code section 4999
22 *et seq.* that would result in the forfeiture of an established overlying water right would be
23 unprecedented and was not intended by the Legislature.

24 **II. THE MOTION IS PROCEDURALLY DEFECTIVE BECAUSE IT (1) SEEKS AN**
25 **IMPROPER ADVISORY OPINION, AND (2) IS A DISGUISED MOTION FOR**
26 **SUMMARY ADJUDICATION.**

27 District No. 40 claims that "court legal findings on the Water Code provisions is needed now
28 to resolve an allocation impasse by settlement and/or for subsequent court factual determinations and

1 findings.” (Motion 2:12-13.) The Motion is not supported by evidence, but instead seeks an advisory
2 opinion as to the nature and effect of Water Code section 4999 *et seq.* A prescriptive period has yet to
3 be established by the Court. It is therefore unknown at this point which filing period of Notices is
4 even relevant. Similarly, there is no evidence presented in support of the Motion as to which parties
5 allegedly failed to file Notices in any given year – including public water suppliers. The Court should
6 not render advisory opinions in a vacuum without supporting evidence presented to the Court.

7 California law does not empower courts to issue advisory opinions. (See *Younger v. Superior*
8 *Court* (1978) 21 Cal.3d 102, 119 [“the rendering of an advisory opinion falls within neither the
9 functions nor the jurisdiction of this court.”]; *Pacific Legal Foundation v. California Coastal Com.*
10 (1982) 33 Cal.3d 158, 170 [“The ripeness requirement, a branch of the doctrine of justiciability,
11 prevents courts from issuing purely advisory opinions.”].) Here, other than a vague reference to an
12 alleged “impasse” on allocation discussions before Justice Robie, District No. 40 has not presented the
13 Court with an actual, genuine controversy. For this reason alone, the Motion should be denied.

14 The Motion is further procedurally flawed because it seeks to summarily adjudicate both
15 overlying and appropriative water rights without compliance with statutory requirements. Code of
16 Civil Procedure section 437(c) was amended effective January 1, 2012. The new section, codified at
17 Code of Civil Procedure section 437c(s), includes special procedures that must be followed when a
18 party seeks to summarily adjudicate a legal issue – including obtaining a stipulation by the parties
19 whose claims are put at issue by the motion. District No. 40 failed to comply with this statutory
20 requirement. In addition, District No. 40’s Motion is lacking any evidentiary support. A motion to
21 summarily adjudicate a party’s water right, however, must be supported by evidence, establishing the
22 moving party’s right to the relief sought. (See Code Civ. Proc., §437(b)(1); *Regents of University of*
23 *California v. Superior Court* (1996) 41 Cal.4th 1040, 144.) District No. 40’s Motion is devoid of any
24 evidence, but instead seeks a judicial ruling in a vacuum. District No. 40’s procedurally defective
25 request that unspecified water rights be forfeited should be denied.

1 **III. DISTRICT NO. 40'S MOTION IGNORES STATUTORY INTENT -- THE PURPOSE**
2 **OF THE STATUTORY SCHEME IS TO REQUIRE APPROPRIATORS TO**
3 **PROVIDE NOTICE IN SUPPORT OF A CLAIM FOR PRESCRIPTION.**

4 Water Code section 4999 *et seq.* was enacted to preclude acquisition of a prescriptive right in
5 specified counties absent the filing of the required Notice with the State Board. The statutory scheme
6 requires appropriators to file Notices of pumping history. If an appropriator failed to file a Notice in
7 any given year, such failure is deemed a waiver of the right to claim prescription for the year(s) in
8 question.

9 On pages 3 and 4 of its Motion, District No. 40 quotes the second half of Water Code section
10 5003 for the general proposition that the failure to file a Notice is "deemed nonuse of ground water."
11 In discussing Section 5003, District No. 40 conveniently failed to quote the entirety of the statute --
12 language that unambiguously demonstrates legislative intent. The introductory language of Water
13 Code section 5003, which is remarkably missing from District No. 40's Motion, provides:

14 "No prescriptive right that might otherwise accrue to extract ground
15 water shall arise or accrue to, nor shall any statute of limitations
16 operate in regard to the ground water in the four counties after the
17 year 1956 in favor of any person required to file a notice of extraction
18 and diversion of water, until that person files with the board the first
19 "Notice of Extraction and Diversion of Water" substantially in the
20 form mentioned in Section 5002" (Emphasis added.)

21 While there is no case law discussing the applicability and/or the interpretation of Water Code
22 section 4999 *et seq.*, the limited scope and reach of those provisions is discussed in *California Water*
23 (Solano Press 1995, Littleworth & Garner), wherein the statutory scheme is discussed in the context of
24 perfecting a prescriptive water right. Under the discussion and heading of "Prescriptive Water
25 Rights," the *California Water* treatise provides on page 59:

26 **"Waters Subject to Prescription.** An adverse user may acquire a
27 prescriptive right to any water that can be put to reasonable and
28 beneficial use and in which some other private owner has a valid

1 prior right. This includes riparian and underlying water rights.
2 Certain counties including Riverside, San Bernardino, Ventura, and
3 Los Angeles require that all groundwater users who extract in excess
4 of 25 acre-feet a year must file records of groundwater extraction
5 each year. Water Code §§ 4999 – 5108. After 1956, *no prescriptive*
6 *rights shall accrue to any user required to file until the appropriate*
7 *notice has been filed with the state.* Water Code § 5003. Moreover,
8 after 1959, the statute provides that failure to file shall be deemed
9 equivalent “for all purposes of nonuse.” Water Code § 5004. No
10 case has determined the validity or impact of late, but retroactive
11 filings.” (Italics added.)

12 The above quoted language confirms the widely understood interpretation of Water Code
13 sections 4999 – 5108 -- before an appropriator can acquire prescriptive water rights in an overdrafted
14 basin, the appropriator must establish, at a minimum, written notice was provided pursuant to the
15 statute. The legislation was adopted shortly after the concept of mutual prescription was articulated
16 by the California Supreme Court in *Pasadena v. Alhambra* (1949) 33 Cal. 3d 908. As an outgrowth of
17 that decision, the legislation at issue in the Motion was adopted whereby appropriators must provide
18 written notice to preserve claims of prescription. The reach of the legislation is limited in scope and
19 should not be grossly expanded as requested by District No. 40.

20 **IV. WATER CODE SECTION 4999 ET SEQ. SHOULD NOT BE INTERPRETED IN A**
21 **MANNER THAT RESULTS IN THE FORFEITURE OF AN EXISTING OVERLYING**
22 **WATER RIGHT.**

23 District No. 40 requests legal findings that the failure to file a Notice results in “a loss of
24 ground water right for each year in which the Notice was required.” (Motion 5:7-9.) District No. 40
25 further requests that the Water Code sections be interpreted in a manner that results in a forfeiture of a
26 water right – including overlying rights. When interpreting a statute, the “primary goal is to
27 implement the Legislative purpose, and, to do so, [the court] may refuse to enforce a literal
28 interpretation of the enactments if that interpretation produces an absurd result at odds with the

1 legislative goal.” (*Honig v. San Francisco Planning Department* (2005) 127 Cal.App.4th 520, 527.)
2 Moreover, statutory construction disfavors any interpretation which may result in a forfeiture of a
3 water right. (See *County of Los Angeles v. Surety Insurance of California* (1984) 162 Cal.App.3d 58,
4 62; *Barnes v. Hussa* (2006) 136 Cal.App.4th 1358.)

5 Only appropriative rights may be forfeited/lost if water is not put to reasonable and beneficial
6 use for five years. (See Water Code §§ 1240, 1241.) District No. 40 requests the Court to extend the
7 concept of forfeiture to any water producer in Los Angeles County who failed to file a Notice during
8 unspecified years – including those who claim overlying, pre-1914 and federal reserve rights. Such an
9 interpretation is contrary to cannons of statutory interpretation. Moreover, such an interpretation also
10 cannot be reconciled with case law, as the interpretation advanced by District No. 40 would eviscerate
11 the concept of “self-help” to preserve an overlying right. The California Supreme Court has
12 consistently held that overlyers retain their rights against prescription by virtue of their own pumping.
13 (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 293, fn.1; *City of Barstow v.*
14 *Mojave Water Agency* (2000) 23 Cal.4th 1224, 1241.)

15 Lastly, and as applied to public agency overlyers, the interpretation of the recording statutes
16 advanced by District No. 40 cannot be harmonized with Civil Code section 1007, which provides:

17 “Occupancy for the period prescribed by the Code of Civil Procedure
18 as sufficient to bar any action for the recovery of the property confers a
19 title thereto, denominated a title by prescription, which is sufficient
20 against all, but no possession by any person, firm or corporation no
21 matter how long continued of any land, water, *water right*, easement, or
22 other property whatsoever dedicated to a public use by a public utility,
23 or dedicated to or owned by the state or any public entity, shall ever
24 ripen into any title, interest or right against the owner thereof.”

25 (Emphasis added.)

26 In *City of Los Angeles, supra*, 14 Cal.3d at 277, the California Supreme Court found that Civil
27 Code section 1007 precludes prescription of groundwater rights owned by public entities. The Court
28 found that public entities are “thus protected against prescription invasion of their property rights from

1 public as well as private sources.” Here, the interpretation of Water Code section 4999 *et seq.* as
2 advanced by District No. 40 would, as applied to overlying public entities, result in the forfeiture of
3 existing overlying rights in contravention of existing case law and Civil Code section 1007. District
4 No. 40’s Motion should be denied.

5 **V. CONCLUSION.**

6 District No. 40 seeks a judicial interpretation of Water Code section 4999 *et seq.* that would
7 result in the forfeiture of established overlying water rights due to the mere failure to file a form with
8 the State. Such a result could not have been envisioned or intended by the Legislature. Instead, the
9 statutory scheme was developed to allow appropriators to provide notice of production in an
10 overdrafted basin -- which would assist in providing the requisite notice of an appropriative use. The
11 statute has no further reach or scope, and should be interpreted accordingly.

12
13 DATED: January 31, 2012

MURPHY & EVERTZ LLP

14
15 By: 

Douglas J. Evertz, Attorneys for Defendant
City of Lancaster

1 **PROOF OF SERVICE**

2 **ANTELOPE VALLEY GROUNDWATER CASES**
3 Judicial Council Coordination, Proceeding No. 4408

4 Santa Clara Case No. 1-05-CV 049053
5 Assigned to the Honorable Jack Komar
6 Los Angeles County Superior Court, Central, Dept. 1

7 I am a resident of the State of California, over 18 years of age and not a party to this action. I
8 am employed in the County of Orange, State of California. My business address is 650 Town Center
9 Drive, Suite 550, Costa Mesa, California 92626.

10 On January 31, 2012, I served the within document(s):

11 **OPPOSITION OF DEFENDANT CITY OF LANCASTER TO LOS ANGELES COUNTY**
12 **WATERWORKS DISTRICT NO. 40'S MOTION FOR LEGAL FINDINGS ON WATER**
13 **CODE REQUIREMENTS TO REPORT EXTRACTIONS OF GROUNDWATER IN LOS**
14 **ANGELES**

15 by posting the document(s) listed above to the website <http://www.scefiling.org>, a
16 dedicated link to the Antelope Valley Groundwater Cases; Santa Clara Case
17 No. 1-05-CV 049053, Assigned to the Honorable Jack Komar, said document(s) is
18 electronically served/distributed therewith.

19 By transmitting via e-mail the document(s) listed above to the e-mail address(es) and/or
20 fax number(s) set forth below on this date.

21 by placing the document(s) listed above in a sealed Overnite Express envelope/package for
22 overnight delivery at Costa Mesa, California addressed as set forth below.

23 by causing personal delivery by Nationwide Legal of the document(s) listed above, to the
24 person(s) at the address(es) set forth below.

25 I am readily familiar with Murphy & Evertz, LLP's practice for collecting and processing
26 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service
27 on the same day that the correspondence is placed for collection and mailing, it is deposited in the
28 ordinary course of business with the United States Postal Service, in a sealed envelope with postage
fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct.

Executed on January 31, 2012, at Costa Mesa, California.


Stephanie Pattis