

1 **BEST BEST & KRIEGER LLP**
ERIC L. GARNER, Bar No. 130665
2 JEFFREY V. DUNN, Bar No. 131926
WENDY Y. WANG, Bar No. 228923
3 18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612
4 TELEPHONE: (949) 263-2600
TELECOPIER: (949) 260-0972
5 Attorneys for Cross-Complainant
LOS ANGELES COUNTY WATERWORKS
6 DISTRICT NO. 40

**EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103**

7 **OFFICE OF COUNTY COUNSEL**
COUNTY OF LOS ANGELES
8 JOHN F. KRATTLI, Bar No. 82149
COUNTY COUNSEL
9 WARREN WELLEN, Bar No. 139152
PRINCIPAL DEPUTY COUNTY COUNSEL
10 500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012
11 TELEPHONE: (213) 974-8407
TELECOPIER: (213) 687-7337
12 Attorneys for Cross-Complainant LOS ANGELES
COUNTY WATERWORKS DISTRICT NO. 40

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

15 ANTELOPE VALLEY GROUNDWATER
16 CASES

Judicial Council Coordination Proceeding
No. 4408

17 Included Actions:
18 Los Angeles County Waterworks District No.
40 v. Diamond Farming Co., Superior Court of
19 California, County of Los Angeles, Case No.
BC 325201;

CLASS ACTION

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

20 Los Angeles County Waterworks District No.
21 40 v. Diamond Farming Co., Superior Court of
California, County of Kern, Case No. S-1500-
22 CV-254-348;

OPPOSITION TO MOTION IN LIMINE
FOR AN ORDER ESTABLISHING THE
NECESSITY OF THE PUBLIC WATER
PURVEYORS PROVING THE
ELEMENTS OF PRESCRIPTION AS TO
EACH LANDOWNER

23 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
24 Lancaster, Diamond Farming Co. v. Palmdale
Water Dist., Superior Court of California,
25 County of Riverside, Case Nos. RIC 353 840,
RIC 344 436, RIC 344 668

26 RICHARD WOOD, on behalf of himself and
27 all other similarly situated v. A.V. Materials,
Inc., et al., Superior Court of California,
28 County of Los Angeles, Case No. BC509546

1 The Los Angeles County Waterworks District No. 40 (“District No. 40”) hereby opposes
2 Diamond Farming Company, Crystal Organic Farms, Grimmway Enterprises, Inc., and Lapis
3 Land Company, LLC’s (“Moving Parties”) Motion *in Limine* for an Order Establishing the
4 Necessity of the Public Water Purveyors Proving the Elements of Prescription as to Each
5 Landowner (“Motion”) as follows:

6 **I. INTRODUCTION**

7 This Motion is Diamond Farming’s second bite at the apple. Diamond Farming
8 previously filled an unsuccessful demurrer to dismiss District No. 40’s claim of prescriptive right
9 and made substantially similar, if not identical, arguments that prescription cannot be proved
10 basin-wide, but must be established as to each landowner. This contention is as meritless now as
11 it was then. The law does not require a party claiming prescriptive water rights to prove its claim
12 as to each landowner, and the Moving Parties do not cite any applicable authority in support of
13 their contention. This Motion is nothing more than an improper attempt to create an
14 unprecedented and heightened legal standard for the prescription claim,¹ and should be denied.

15 **II. LEGAL ARGUMENT**

16 **A. The Moving Parties’ Motion is Not a Proper Motion *In Limine*.**

17 Motions *in limine* are typically used to seek exclusion or admission of *particular* items of
18 evidence on the grounds that the evidence is legally inadmissible or admissible. A motion *in*
19 *limine* “which would merely be declaratory of existing law or would not provide any meaningful
20 guidance for the parties or witnesses” is not proper. (*Kelly v. New West Federal Savings* (1996)
21 49 Cal. App. 4th 659, 670.) The *Kelly* court determined that the “misuse and abuse of motions *in*
22 *limine*” can (and did) result in the denial of due process, requiring reversal. (*Id.* at 664.)

23 Much of the Motion is merely “declaratory of existing law” to the extent that it discusses
24 the common law elements of prescription. (See Motion at section II.) But Moving Parties also

25
26 _____
27 ¹ In addition to seeking an order requiring Public Water Suppliers to prove elements of prescription as to each
28 landowner, the Moving Parties wrongly states, without citing to any authority, that the elements must be proven “by clear and convincing evidence.” (Motion at 2:26-3:1.) This contention, however, is not supported by case law. (*See Skelly v. Cowell* (1918) 37 Cal. App. 215, 217 [the obligation upon the claimant proving prescription is discharged by a preponderance of the evidence].)

1 argue that: (1) Public Water Suppliers improperly pled their prescriptive claim in their First
2 Amended Cross-Complaint (Motion at 5:2-14); (2) overdraft condition of the groundwater basin
3 is insufficient notice for the purposes of establishing prescriptive rights (Motion at section IV);
4 and (3) Public Water Suppliers must show “notice of hostility and adversity” as to each
5 landowner (Motion at section IV). Whether Public Water Suppliers’ First Amended Cross-
6 Complaint is properly pled is not an appropriate subject matter for a motion *in limine* and the
7 Moving Parties are not requesting any remedy to cure the alleged improper pleading. Moreover,
8 Moving Parties’ contentions regarding the notice required to prove prescription is contrary to
9 existing law, and cannot provide “any meaningful guidance for the parties or witnesses” or for the
10 Court. (*Kelly, supra*, 49 Cal. App. 4th at p. 670.) The Motion is thus improper and must be
11 denied.

12 **B. Overdraft Conditions Provide Notice.**

13 An appropriative taking of non-surplus water may ripen into a prescriptive right where the
14 use is actual, open and notorious, hostile and adverse to the original owner, continuous and
15 uninterrupted for the statutory period of five years, and under a claim of right. (*Los Angeles v.*
16 *San Fernando* (1975) 14 Cal. 3d 199, 282 (“*San Fernando*”) [citing *Pasadena v. Alhambra*
17 (1948) 33 Cal. 2d 908, 926-27].) Once the property has been adversely used for five years,
18 prescriptive title vests in the claimant. (*Pasadena*, at pp. 930-33.)

19 The party against whom a prescriptive right is sought must have either actual or
20 constructive notice of the adverse taking. (*Bennet v. Lew* (1984) 151 Cal.App.3d 1177, 1184 [“the
21 requisite elements for a prescriptive easement are designed to insure that the owner of the real
22 property which is being encroached upon has actual or constructive notice of the adverse use”]
23 [emphasis added]; *Kerr Land & Timber Co. v. Emmerson* (1969) 268 Cal.App.2d 628, 634 [“it is
24 settled that to establish rights by adverse use the owner must be notified in some way that the use
25 is hostile and adverse but actual notice is not indispensable. Either the owner must have actual
26 knowledge or the use must be so open, visible and notorious as to constitute reasonable notice”].)

27 The standard for notice in groundwater basins is falling water levels or other relevant
28 evidence such that pumpers can reasonably be charged with notice that there is a deficiency of

1 water supply. (*Pasadena, supra*, 33 Cal.2d at p. 930.) This standard was subsequently confirmed
2 by the California Supreme Court in *San Fernando* and recently affirmed, yet again, by the
3 California appellate court in *City of Santa Maria v. Adam* (2012) 211 Cal. App. 4th 266 (“*Santa*
4 *Maria*”), which provides:

5 To perfect a prescriptive right the adverse use must be “open and
6 notorious” and “under claim of right,” which means that both the
7 prior owner and the claimant must know that the adverse use is
8 occurring. In the groundwater context that requires evidence from
9 which the court may fix the time at which the parties “should
10 reasonably be deemed to have received notice of the
11 commencement of overdraft.” (*Id.* at p. 293 [quoting (*San*
12 *Fernando, supra*, 14 Cal.3d at p. 283) [emphasis added].)

13 **C. California Does Not Require Notice of Hostility and Adversity to be Alleged**
14 **or Adjudicated Parcel-By-Parcel.**

15 Moving Parties erroneously claim that prescription cannot be asserted as a valid claim on
16 a basin-wide basis because prescription should be proven on a parcel-by-parcel basis. (*See*
17 Motion at section IV.) Moving Parties cite no relevant authority for this assertion, because none
18 exists. To the contrary, relevant California water cases hold that a finding of prescription
19 operates against the basin as a whole. (*See generally e.g., Pasadena, supra*, 33 Cal. 2d 908; *San*
20 *Fernando, supra*, 14 Cal. 3d 199; *Santa Maria, supra*, 211 Cal. App. 4th 266.)

21 For prescription to occur there must be overdraft, and overdraft is not determined parcel
22 by parcel but is based on basin conditions. “Safe yield” is defined as “the maximum quantity of
23 water which can be withdrawn annually from a groundwater supply under a given set of
24 conditions without causing an undesirable result.” An “undesirable result” is the “gradual
25 lowering of the ground water levels resulting eventually in depletion of the supply.” (*San*
26 *Fernando, supra*, 14 Cal. 3d at p. 278.) A groundwater basin is in a state of surplus when the
27 amount of water being extracted is less than the maximum that could be withdrawn without
28 adverse effects on the basin’s long term supply. (*Id.* at p. 277.) “Overdraft commences whenever
extractions increase, or the withdrawable maximum decreases, or both, to the point where the
surplus ends.” (*Id.* at p. 278.)

All of these determinations - which have developed out of more than sixty years of

1 California case law - are determined on basin-wide conditions and not on a parcel-by-parcel basis.
2 The reason for this basin-wide determination is simple: The primary means by which the “notice
3 of adversity” element is shown is through falling basin water levels or other indicia of overdraft.
4 (*Pasadena, supra*, 33 Cal. 2d at p. 930.) By their nature, overdraft conditions typically occur in
5 the basin as a whole, therefore providing actual or constructive notice to all basin landowners.
6 Not one of the relevant California groundwater cases mandates a “parcel by parcel” showing of
7 notice.

8 On the contrary, the California Supreme Court held that notice need not be adjudicated on
9 a parcel-by-parcel basis. (*See Pasadena, supra*, 33 Cal. 2d 908.) In *Pasadena*, the California
10 Supreme Court held that extractions from the Raymond Basin (located at the northwest end of the
11 San Gabriel Valley) constituted an adverse use entitling the owners of basin water rights to
12 injunctive relief upon the commencement of overdraft in the 1913-1914 water year. (*Id.* at pp.
13 928-929.) The only evidence of notice that supported the prescriptive claims was the lowering of
14 the water levels in wells:

15 This evidence is clearly sufficient to justify charging appellant with
16 notice that there was a deficiency rather than a surplus and that the
17 appropriation causing the overdraft were invasions of the rights of
18 overlying owners and prior appropriators. (*Id.* at 930.)

18 In fact, mere public statements and actions by local, state, federal officials expressing
19 concerns of depletion of groundwater supply constitute sufficient notice of a purported overdraft.
20 (*Santa Maria, supra*, 211 Cal. App. 4th at p. 294.)

21 **D. Inverse Condemnation Cases Are Inapposite**

22 Despite numerous groundwater cases on point, the Moving Parties rely on inverse
23 condemnation actions concerning noise caused by overflights and easement of air space. (See
24 Motion at section IV; *Smart v. Los Angeles* (1980) 112 Cal. App. 3d 232; *Drennen v. County of*
25 *Ventura* (1974) 38 Cal. App. 3d 84.) In doing so, the Moving Parties are asking this Court to
26 ignore the sixty-plus years of case law determining notice on a basin-wide basis and to adopt a
27 completely different standard developed for a different type of property rights under different
28 legal theory. Moreover, the Moving Parties do not even attempt to distinguish the groundwater

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

cases on point or explain how the relevant groundwater cases are inapplicable. The Court should deny the Moving Parties' request to adopt a new standard for prescriptive groundwater rights.

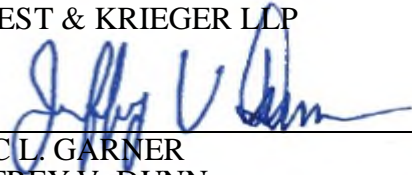
III. CONCLUSION

For the foregoing reasons, District No. 40 respectfully requests that the Court deny the improper Motion in *Limine* for an Order Establishing the Necessity of the Public Water Purveyors Proving the Elements of Prescription as to Each Landowner.

Dated: March 14, 2014

BEST BEST & KRIEGER LLP

By



ERIC L. GARNER
JEFFREY V. DUNN
WENDY Y. WANG
Attorneys for Cross-Complainant
LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40

26345.00000\8320792.2

LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I, Sandra K. Sandoval, declare:

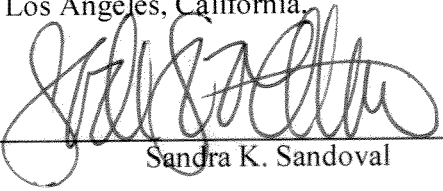
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 300 South Grand Avenue, 25th Floor, Los Angeles, CA 90071. On March 14, 2014, I served the within document(s):

OPPOSITION TO MOTION IN LIMINE FOR AN ORDER ESTABLISHING THE NECESSITY OF THE PUBLIC WATER PURVEYORS PROVING THE ELEMENTS OF PRESCRIPTION AS TO EACH LANDOWNER

- by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 14, 2014, at Los Angeles, California.



Sandra K. Sandoval