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EXEMPT FROM FILING FEES UNDER GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER CASES Included Actions: Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., Superior Court of California, County of Los Angeles, Case No. BC 325201; Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., Superior Court of California, County of Kern, Case No. S-1500-CV-254-348; Wm. Bolthouse Farms, Inc. v. City of Lancaster, Diamond Farming Co. v. City of Lancaster, Diamond Farming Co. v. Palmdale Water Dist., Superior Court of California, County of Riverside, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668 RICHARD WOOD, on behalf of himself and all other similarly situated v. A.V. Materials, Inc., et al., Superior Court of California, County of Los Angeles, Case No. BC509546	Judicial Council Coordination Proceeding No. 4408 CLASS ACTION Santa Clara Case No. 1-05-CV-049053 Assigned to the Honorable Jack Komar LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S OPPOSITION TO MOTION *IN LIMINE* FOR AN ORDER ESTABLISHING THE EVIDENTIARY STANDARD FOR NOTICE FOR PROOF OF PRESCRIPTION BY THE WATER PURVEYORS

The Los Angeles County Waterworks District No. 40 ("District No. 40") hereby opposes Diamond Farming Company, Crystal Organic Farms, Grimmway Enterprises, Inc., and Lapis Land Company, LLC's ("Landowners") Motion *in Limine* for an Order Establishing the Evidentiary Standard for Notice for Proof of Prescription by the Public Water Purveyors as follows:

I. INTRODUCTION

Landowners' motion *in limine* must be denied because it is an improper attempt to force District No. 40 to meet a heightened standard of proof (defined as "constitutionally sufficient due process notice") that has no legal basis. Landowners' motion is not a proper motion *in limine*. Much of it is a mere recitation of the elements of prescription, but its ultimate goal is to place an unjustified notice burden on District No. 40 in establishing its prescription claim. Landowners' motion confuses and attempts to conflate a public entity's eminent domain powers and duties with its separate and legally distinct ability to obtain prescriptive rights. Furthermore, Diamond Farming Company already advanced and lost this argument in its 2005 demurrer that included substantially identical arguments to here. A motion *is limine* is not an opportunity to reargue an unsuccessful demurrer. Because Landowners' motion is merely a legal brief that fails to accurately articulate applicable laws, it is not a proper or legally sound motion *in limine* and must be denied.

II. LEGAL ARGUMENT

A. Landowners' Motion is Not a Proper Motion *In Limine*.

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

Much of Landowners' brief is merely "declaratory of existing law" to the extent that it discusses the common law elements of prescription. (See Landowners' motion *in limine* at

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sections III and IV.) But Landowners also suggest that constructive notice is not sufficient for the Public Water Suppliers to prove prescription and instead, because they are government entities, they have a heightened "constitutional" notice burden to prove their prescriptive claims. (See Landowners' motion *in limine* at section V.) Landowners' motion asserts that the Public Water Suppliers "need not prove that actual notice was provided, but must prove that they attempted to provide actual notice." (See Landowners' motion *in limine* p. 1:24-25.) They subsequently argue that "constructive notice alone" is not sufficient. (See *id*. at p. 9:16-18.) This assertion is contrary to existing law, as further discussed *infra*, and certainly does not provide "any meaningful guidance for the parties or witnesses" or for the Court. Landowners' motion is thus improper and must be denied.

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B. Landowners' Requested Standard of Proof Regarding Notice is Contrary to California Water Law Principles.

Landowners cite no authority to support their proposition that the Public Water Suppliers have a heightened notice standard for prescription (namely that constructive notice is insufficient) because California water imposes no such burden. In the absence of case law supporting such a claim, Landowners rely on a series of eminent domain cases that are wholly inapposite and ignore well-established case law that is directly on point.

1. Constructive Notice Establishes Notice Of Adversity.

Numerous courts have held that constructive notice of adverse use is sufficient to establish prescriptive rights. In *Bennet v. Lew* (1984) 151 Cal. App. 3d 1177, 1184, the court held that "[t]he requisite elements for a prescriptive easement are designed to insure that the owner of the real property which is being encroached upon has actual *or constructive* notice of the adverse use." (Emphasis added.) In *Kerr Land & Timber Co. v. Emmerson* (1969) 268 Cal. App. 2d 628, 634 the court stated: "It is settled that to establish rights by adverse use the owner must be notified in some way that the use is hostile and adverse but actual notice is not indispensable. Either the owner must have actual knowledge or the use must be so open, visible and notorious as to constitute reasonable notice."

In water cases the California Supreme Court has held that constructive notice of an

overdraft condition is sufficient to establish prescriptive rights. For example, in *City of Pasadena v. City of Alhambra* (1949) 33 Cal. 2d 908, 930, the California Supreme Court held that falling groundwater level conditions were sufficient to put groundwater users on notice that overdraft had commenced and therefore, that adversity was present. Twenty-six years later, the Court in *City of Los Angeles v. City of San Fernando* (1975) 14 Cal. 3d 199, 282 cited approvingly to the language in *Pasadena* indicating that declining well levels are sufficient to place the parties on notice of adversity. In that case the court held that evidence of overdraft must be produced so that the court my fix a time when overlying owners "should reasonably be deemed to have received notice of the commencement of overdraft in the basin." (*Id*. at 283.) There is no special notice requirement for public entities, and actual notice is not required. Indeed, there is a lengthy discussion of the limitations on prescription by one public agency against another. (*Id*. at 271-277). The court concludes that, pursuant to Civil Code section 1007, one public agency cannot prescript against another and that private persons cannot prescript against public agencies but does not limit a public entity's prescription against private persons (See *id*. at 277.)

Most recently in 2012, the California Court of Appeal addressed prescription as a contested issue. (*City of Santa Maria v. Adam* (2012) 211 Cal. App. 4th 266.) The court affirmed the trial court's finding that two public water producers had perfected their prescriptive rights against the overlying landowners. (*Id*. at 276-77.) The court concluded that constructive notice of the commencement of overdraft was sufficient to satisfy the notice element of prescription and that actual notice was not required. (*Id*. at 293-94.) The court further determined that the long-term, severe water shortage was sufficient to satisfy the element of notice because the depleted water levels within the basin were well-known or should have been known to all those who used water within the basin. (*Id*. at 293.) The trial court had considered numerous reports, congressional testimony, and other documents providing evidence of widespread knowledge that the basin was in overdraft. (*Id*. at 293-94.) The Court of Appeal affirmed the trial court's conclusion that the landowners had constructive notice, and this constructive notice satisfied the notice requirement and allowed the public water producers to perfect their prescription claim. (*Id*.)

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2. The Constructive Notice Standard Applies To Public Agencies.

Prescriptive title vests automatically upon the completion of five years of adverse use when the use was open and notorious, adverse and hostile, and continuous and uninterrupted, and for a reasonable and beneficial purpose. (Code Civ. Proc. § 318; *City of Pasadena v. City of Alhambra* (1949) 33 Cal. 2d 908, 930-33; *Saxon v. DuBois* (1962) 209 Cal. App. 2d 713, 719.) Landowners' "statutory due process" claims cannot apply to prescriptive rights as they occur by operation of law when the requisite elements are satisfied.

There is no authority requiring public agencies asserting prescriptive rights to satisfy Landowners' fictional heightened notice standard. In the absence of legal authority to support their arguments, Landowners mistakenly rely on *Walker v. City of Hutchinson* (1956) 352 U.S. 112, *Schroeder v. City of New York* (1962) 371 U.S. 208, and *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306. These cases have nothing to do with prescriptive rights. *Walker* and *Schroeder* involve the sufficiency of a public agency's notice to interested parties of the agency's condemnation proceedings. *Mullane* concerns the constitutional sufficiency of notice to beneficiaries on judicial settlement of accounts by the trustee of a common trust fund established under the New York Banking Law. Moreover, even if these cases were on point, which they are not, they do not stand for the proposition that *actual* notice is required in order to meet due process standards. Rather, the standard in these cases is that notice must be "reasonably calculated, under all the circumstances, to apprise interested parties" of the pendency of an action affecting an interested party's rights. (*Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314.)

Similarly, Landowners' reliance on *Wright v. Goleta* (1985) 174 Cal. App. 3d 74, is misplaced because that case did not address a prescription rights notice standard, but rather whether the unexercised overlying rights of absent landowners could be subordinated in the context of a groundwater adjudication.

As in their demurrer, Landowners have again ignored the distinctions between a public agency's right to acquire title through eminent domain and a public agency's right to acquire title through the acquisition of prescriptive rights. Eminent domain and prescription are entirely

different legal theories with entirely different legal standards. The Court should reject Landowners' attempt to create some sort of "hybrid" legal theory of prescription using notice standards that apply only in eminent domain proceedings. Landowners' motion *in limine* is improper, legally incorrect, and should be denied.

III. CONCLUSION

For the foregoing reasons, District No. 40 respectfully requests that the Court deny Landowners' improper Motion *in Limine* for an Order Establishing the Evidentiary Standard for Notice for Proof of Prescription by the Public Water Purveyors.

Dated: March 14, 2014

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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):

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S OPPOSITION TO MOTION *IN LIMINE* FOR AN ORDER ESTABLISHING THE EVIDENTIARY STANDARD FOR NOTICE FOR PROOF OF PRESCRIPTION BY THE WATER PURVEYORS

☒ 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