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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

16 ANTELOPE VALLEY GROUNDWATER
CASES

Judicial Council Coordination Proceeding
No. 4408

17 Included Actions:

CLASS ACTION

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;

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;

PUBLIC WATER SUPPLIERS'
OPPOSITION TO THE BLUM TRUST
MOTION FOR SUMMARY JUDGMENT

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

Date: December 22, 2014
Time: 10:00 a.m.
Dept.: TBD
Judge: Hon. Jack Komar

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

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1 Los Angeles County Waterworks District No. 40 (“District No. 40”), City of Palmdale,
2 City of Lancaster, Rosamond Community Services District, Littlerock Creek Irrigation District,
3 Palm Ranch Irrigation District, Desert Lake Community Services District, North Edwards Water
4 District, Llano Del Rio Water Company, Llano Mutual Water Company, Big Rock Mutual Water
5 Company, Palmdale Water District, Quartz Hill Water District, and California Water Service
6 Company (collectively, “Public Water Suppliers”) respectfully submit the following Opposition
7 to Blum Trust’s Motion for Summary Judgment/Summary Adjudication (“Motion”):

8 **I. INTRODUCTION**

9 The Motion should be denied for each of the following reasons:

- 10 • Blum Trust has presented insufficient evidence of its self-help or reasonable use as
11 against the Public Water Suppliers’ prescriptive rights claims.
- 12 • The Motion is procedurally defective and is based on inadmissible evidence in
13 support of its claims. (See Public Water Suppliers’ Separate Statement,
14 Evidentiary Objections to Declaration of Sheldon Blum; Evidentiary Objections to
15 Ali Shahroody; Evidentiary Objections to Blum Trust’s Exhibits; Opposition to
16 Blum Trust’s Request for Judicial Notice.)
- 17 • The Motion challenges a proposed settlement agreement and reveals confidential
18 settlement communication.
- 19 • The Motion inappropriately and prematurely challenges a “replenishment
20 assessment.”

21 **II. BLUM TRUST HAS NOT ESTABLISHED SELF-HELP OR REASONABLE AND**
22 **BENEFICIAL USE AGAINST THE PUBLIC WATER SUPPLIERS’**
23 **PRESCRIPTIVE RIGHTS**

24 Blum Trust asks the court to determine its overlying water rights without providing
25 evidence of self-help or reasonable and beneficial use during the time the Antelope Valley
26 Adjudication Area was in a condition of overdraft, from 1951 to the present. By failing to do so,
27 Blum Trust is asking the court to ignore its overdraft finding in the Phase 3 trial and the Public
28 Water Suppliers’ prescriptive rights claims.

The Court has determined the Adjudication Area to have been in a state of overdraft since

1 1951. Thus, the Public Water Suppliers have been in a position to establish a prescriptive right as
2 against overlying landowners for approximately sixty years. (See Public Water Suppliers’
3 Request for Judicial Notice (“PWS RJN”), Ex. “A” at pp. 5-6.)

4 In *City of Santa Maria v. Adam* (2012) 211 Cal.App 4th 266 (“*Santa Maria*”), the Court of
5 Appeal summarized the interplay between overlying users’ water rights and appropriators’ rights
6 when the basin is in overdraft:

7 “Courts typically classify water rights in an underground basin as
8 overlying, appropriative, or prescriptive.” The overlying right, like
9 the riparian right, is associated with the ownership of land.
10 “Overlying rights are special rights to use groundwater under the
11 owner’s property.” Appropriative rights, on the other hand, are not
12 derived from land ownership but depend upon the actual taking of
13 water. . . .

14 Although an appropriator is entitled to take groundwater that the
15 overlying landowner does not need, the appropriator is limited to
16 the remainder of the “safe yield.”

17 When the safe yield is insufficient to satisfy the reasonable and
18 beneficial needs of all users, those with overlying rights take
19 precedence. As among overlying owners, the rights are correlative.
20 “[E]ach may use only his reasonable share when water is
21 insufficient to meet the needs of all.” As among appropriators,
22 those first in time are first in right. **Prescriptive rights arise when
23 an appropriator continues to pump water during times of
24 overdraft.** “An appropriative taking of water which is not surplus is
25 wrongful and may ripen into a prescriptive right where the use is
26 actual, open and notorious, hostile and adverse to the original
27 owner, continuous and uninterrupted for the statutory period of five
28 years, and under claim of right.”

**Overlying landowners who fail to seek an injunction preventing
an adverse use may nevertheless protect their interests by
means of self-help. Self-help in this context requires the
landowner to continue to pump nonsurplus water concurrently
with the adverse users.** When they do, the landowners retain their
overlying rights, losing only the amount of the prescriptive taking.

23 (*Id.* at pp. 278-279 [citations omitted and emphasis added].) Courts have found that constructive
24 notice or general knowledge of the commencement of the overdraft is deemed to satisfy the “open
25 and notorious: and “under claim of right” elements of a prescriptive right. (*Santa Maria*, 211
26 Cal. App. 4th at pp. 293-294 [citing *Los Angeles v. San Fernando* (1975) 14 Cal. 3d 199, 283 [“In
27 the groundwater context that requires evidence from which the court may fix the time at which
28 the parties ‘should reasonably be deemed to have received notice of the commencement of

1 overdraft.’ . . . the long-term, severe water shortage itself was enough to satisfy the element of
2 notice.”].)

3 In response to discovery orders and the court’s request to each Public Water Supplier to
4 list its asserted water rights and the basis for such rights, the Public Water Suppliers have posted
5 to the Court’s website their respective Statements of Claims. For example, District No. 40 posted
6 its Statement of Claims indicating that it has continuously pumped from the Adjudication Area
7 since 1946. (PWS RJN, Exs. “B” and “C”.) This couples with the Court’s determination that the
8 Adjudication Area has been in overdraft for over sixty years is sufficient to satisfy the elements of
9 the Public Water Suppliers’ prescription claim and establish their prescriptive right. (See *Los*
10 *Angeles v. San Fernando* (1975) 14 Cal. 3d 199, 293 [“The effect of the prescriptive right would
11 be to give to the party acquiring it and take away from the private defendant against whom it was
12 acquired”].)

13 As a defense against the Public Water Suppliers’ prescriptive claim and to assert overlying
14 rights in an overdraft basin, Blum Trust must prove that it had continuously “pump[ed]
15 nonsurplus water” since 1951. (*Santa Maria*, 211 Cal.App.4th at p. 279.) While Blum Trust
16 allegedly measures its groundwater right by “‘Place of Use’ methodology with BOLTHOUSE
17 FARMS . . . [for] the crop season Years 2004-2005”, it provided no evidence of continuous
18 pumping by either it or its predecessor from 1951 until present or the continuous farming of its
19 parcel from that period until present. (Motion at 2:23-25.) Consequently, as Blum Trust cannot
20 establish self-help, it has failed to prove that the Public Water Suppliers do not have a prescriptive
21 groundwater right. (*Santa Maria*, 211 Cal.App.4th at pp. 278-279.)

22 Moreover, even assuming that Blum Trust can establish that it has pumped groundwater
23 continuously since 1951, it has not established that all such water use was reasonable and
24 beneficial. The only evidence Blum Trust provided was an untimely, inadmissible opinion from
25 its expert, Mr. Ali Shahroody, which is filled with inadmissible conclusory statements and legal
26 conclusions. Blum Trust has failed to establish self-help and has failed to establish the Public
27 Water Suppliers do not have prescriptive rights.

28

1 **III. BLUM TRUST’S MOTION IS PROCEDURALLY DEFECTIVE**

2 **A. The Motion Fails To Dispose Any Causes of Action**

3 A plaintiff is entitled to summary judgment only if it is able to prove that the action has no
4 merit. (Code Civ. Proc., § 437c, subd. (a).) A defendant is entitled to summary adjudication only
5 if it proved that the cause of action has no merit and that there is no triable issue of fact. (Code
6 Civ. Proc., § 437c, subds.,(f)(1), (p)(1), (o).) The Motion is devoid of analysis of the elements of
7 the Public Water Suppliers’ causes of action and only claims that Blum Trust has an overlying
8 right superior to Public Water Suppliers’ rights. As discussed above, Blum Trust’s Motion, fails
9 to completely dispose of any of the Public Water Suppliers’ cause of action by failing to establish
10 self-help and reasonable and beneficial use.

11 **B. The Motion’s Declarations and Exhibits Are Largely Inadmissible Statements**

12 The moving party has the burden of making a sufficient showing that a plaintiff’s claim is
13 without merit; failure to do so results in denial of the motion. (*City of Oceanside v. Superior*
14 *Court* (2000) 81 Cal.App.4th 269, 273; Code Civ. Proc., § 437c, subd. (p).) To meet this burden,
15 the moving party must support its motion “by affidavits, declarations, admissions, answers to
16 interrogatories, depositions, and matters of which judicial notice shall or may be taken.” (Code
17 Civ. Proc., § 437c, subd. (b)(1).)

18 Supporting affidavits or declarations “shall be made by any person on personal
19 knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is
20 competent to testify to the matters stated in the affidavits or declarations.” (*Id.* at subd. (d).)
21 Affidavits or declarations not based on personal knowledge, that contain hearsay or impermissible
22 opinions, lack foundation, or are argumentative, speculative or conclusory, are insufficient.
23 (*Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 26; *Tuchscher Development Enterprises, Inc. v. San*
24 *Diego Unified Port District* (2003) 106 Cal.App.4th 1219, 1236, 1238.)

25 As shown in the evidentiary objections concurrently filed, the Motion should be denied
26 because most, if not all, of the declarant testimony is inadmissible or does not support the
27 statements in the statement of facts. The Motion’s accompanying declarations contain hearsay or
28 impermissible opinions, lack foundation, or are argumentative, speculative or conclusory. (See

1 Code Civ. Proc., § 437c, subd. (d); *Gilbert*, supra, 147 Cal.App.4th at 26; *Tuchscher Development*
2 *Enterprises, Inc.*, supra, 106 Cal.App.4th at 1236, 1238.)

3 Similarly, the exhibits used to support the Motion contain inadmissible hearsay and
4 inadmissible settlement communication. (Evid. Code §§ 1152 & 1200.)

5 **C. The Motion Should Be Denied Because It Includes Untimely And**
6 **Unauthorized Filing**

7 The court set hearing for the Motion on December 22, 2014. Section 437c, subdivision
8 (a), of the Code of Civil Procedure requires the Motion and all supporting papers to be personally
9 served on all parties at least 75 days before the hearing date. (Code Civ. Proc. § 437c, subd. (a).)
10 With the December 22, 2014 hearing date, this means that all evidence supporting the Motion
11 should have been filed on October 8, 2014. Mr. Al Shahroody did not sign his declaration until
12 October 14, 2014—days after the deadline and after the date Blum Trust filed its Motion. By this
13 opposition, the Public Water Suppliers object to Blum Trust’s procedurally improper and
14 untimely Motion, and, specifically, to the declaration by Mr. Shahroody.

15 **IV. THE MOTION INAPPROPRIATELY CHALLENGES A POTENTIAL**
16 **SETTLEMENT AGREEMENT**

17 This Motion challenges a potential stipulated judgment, which has not yet been executed
18 by the settling parties or presented to the court. (See Motion at 5:13-6:1, 21:2-15.) Specifically,
19 Blum Trust alleges that the proposed stipulated judgment “as currently drafted, contravenes due
20 process and equal protection under the law in regards to BLUM TRUST’s ‘present and
21 prospective’ co-equal overlying/correlative share of the Federally adjusted native safe yield for
22 reasonable beneficial use of its 150 acre parcels, free of replacement assessment, and quantified
23 annual Ac. Ft., production right regarding its 120 acres of farmland in times of overdraft and
24 cutback under the CA water priority allocation system.” (See Motion at 21:2-8.) In support of its
25 claim, Blum Trust submitted inadmissible settlement communications that this court should not
26 consider. (Evid. Code § 1152.)

27 Moreover, as Blum Trust admits, the proposed stipulated judgment remains in draft form,
28 from which Blum Trust is drawing its conclusion. Until that time when the court has the final
stipulated judgment, it cannot evaluate the merit of Blum Trust’s claims as the draft stipulated

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judgment is protected by settlement privilege.

V. THE MOTION INAPPROPRIATELY CHALLENGES A “REPLENISHMENT ASSESSMENT”

Blum Trust alleges that it is entitled to pump groundwater free of replenishment assessment. (Motion at 6:16, 21:6.) The Motion does not define or explain what it meant by a “replenishment assessment,” or how it would be applied.

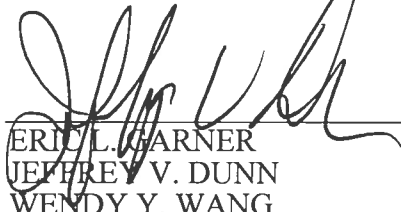
Although a replenishment assessment is a common element of a physical solution, no physical solution has been presented to the court. To the extent a “replenishment assessment” is another challenge to the proposed stipulated judgment, it is barred for the same reasons stated above.

VI. CONCLUSION

For each of the reasons stated above, Blum Trust’s Motion should be denied.

Dated: December 8, 2014

BEST BEST & KRIEGER LLP

By 

ERIC L. GARNER
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Attorneys for
LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

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PROOF OF SERVICE

I, Kerry V. Keefe, 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, 18101 Von Karman Avenue, Suite 1000, Irvine, California 92612. On December 8, 2014, I served the within document(s):

PUBLIC WATER SUPPLIERS' OPPOSITION TO THE BLUM TRUST MOTION FOR SUMMARY JUDGMENT



by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 8, 2014, at Irvine, California.

Kerry V. Keefe

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