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11 FARMS, a limited liability company, GRIMMWAY
12 ENTERPRISES, INC., and LAPIS LAND COMPANY, LLC

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF LOS ANGELES**

15 Coordination Proceeding Special Title
16 (Rule 1550 (b))

Judicial Council Coordination No. 4408

17 ANTELOPE VALLEY GROUNDWATER
18 CASES

Case No.: 1-05-CV-049053

19 Included actions:

**REPLY TO OPPOSITION TO MOTION
FOR JUDGMENT ON THE
PLEADINGS**

20 Los Angeles County Waterworks District No.
21 40 vs. Diamond Farming Company
22 Los Angeles Superior Court
23 Case No. BC 325201

24 Los Angeles County Waterworks District No.
25 40 vs. Diamond Farming Company
26 Kern County Superior Court
27 Case No. S-1500-CV 254348 NFT

28 Diamond Farming Company vs. City of
Lancaster
Riverside County Superior Court
Lead Case No. RIC 344436 [Consolidated
w/Case Nos. 344668 & 353840]

AND RELATED CROSS-ACTIONS.

DIAMOND FARMING COMPANY, CRYSTAL ORGANIC FARMS, GRIMMWAY
ENTERPRISES, INC., and LAPIS LAND COMPANY, LLC hereby submit their Reply to Opposition
to Motion for Judgment on the Pleadings.

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1 I.

2 **THIS MOTION IS NOT LEGALLY DEFECTIVE.**

3 The present Motion is not legally defective because (1) it is brought by parties who have not
4 previously filed a demurrer and (2) this motion is brought pursuant to the common law and as such it
5 is not constrained by the statutory provision found in Code of Civil Procedure section 438.

6 The Public Water Purveyors are requesting judicial notice be taken of a demurrer filed by
7 Diamond Farming Company *only*. The present Motion is brought by Crystal Organic Farms, Grimmway
8 Enterprises, and Lapis Land Company, in addition to Diamond Farming. Crystal Organic Farms,
9 Grimmway Enterprises, and Lapis Land Company never have not filed a demurrer and as such are not
10 barred by Code of Civil Procedure section 438. Thus, even if the court agrees with the Public Water
11 Purveyors that Diamond Farming cannot bring this motion, there are still three other parties who still
12 have the right to bring this motion.

13 Furthermore, it is well established that a Motion for Judgment on the Pleadings can be either a
14 statutory or a common law motion. As a common law motion, "no specific statute or rule prescribes the
15 grounds or procedure of the motion." (*People v. \$20,000 U.S. Currency* (1991) 235 Cal.App.3d 682,
16 689.) Thus, the statutory limitations found in Code of Civil Procedure section 438 do not apply to a
17 common law motion.

18 II.

19 **A PUBLIC ENTITY MUST PAY JUST COMPENSATION FOR THE PRESCRIPTIVE**
20 **TAKING OF PRIVATE INDIVIDUAL'S WATER RIGHTS.**

21 The Public Water Purveyors misconstrue Diamond's position, at no time has Diamond argued
22 that it owns the water in the basin. Diamond does, and has argued that, it owns the *right* to use the water.
23 Diamond is also not arguing that this right cannot be lost by prescription. However, when it is a
24 governmental entity who is trying to take the right to use the water then the prohibition found in the
25 California Constitution article 1 section 19 applies and just compensation must be paid. This section
26 provides that Private property may be taken or damaged for public use and only when just compensation
27 ascertained by a jury unless waived, has first been paid to, or into court for, the owner." (Cal.
28 Constitution, Article I, § 19.) Even in light of this constitutional provision the Public Water Purveyors

1 argue that “. . . there is no law that requires public entities to pay for prescriptive rights.” (*Opposition*
2 pg 4 ln 14.) That is akin to a suggestion that there is no law that requires payment for a taking by a public
3 entity. The Public Water Purveyors seek to minimize the fact that they are all government entities and
4 however as there is no disputing that they are public entities they urge that they are not held to a different
5 standard than private individuals.

6 The California Supreme Court in *Fall River Valley Irrigation District* held that a riparian right
7 is entitled “to the same respect and protection at the hands of the law as any other vested property right.”
8 (*Fall River Valley Irrigation Dist. v. Mt. Shasta Power Corp.* (1927) 202 Cal. 56, 65.) The Supreme
9 Court went on to hold that “[i]f the higher interests of the public should be thought to require that the
10 water usually flowing in streams of this state should be subject to appropriation in ways that will deprive
11 the riparian proprietor of its benefit, the change sought must be accomplished by the use of the power
12 of eminent domain.” [Emphasis added.] (*Id.* at 65-66, quoting, *Miller & Lux v. Madera Canal &*
13 *Irrigation Co.*(1909) 155 Cal. 59, 65.) California case law has consistently held that “the right of an
14 overlying land owner to the percolating water beneath his lands is analogous to the riparian right.”
15 (*Hillside Water Co. v. Los Angeles* (1938) 10 Cal.2d 677, 686.) Thus, the standards outlined in *Fall*
16 *River Valley Irrigation* should apply to the overlying rights at issue in this case. The Public Water
17 Purveyors provide no authority to support their contention that the water right should be excluded from
18 the protections of the California Constitution.

19 The Public Water Purveyors mistakenly rely on the case of *Warsaw v. Chicago Metal Ceilings,*
20 *Inc.* to support their contention that they do not need to pay compensation for their prescription.
21 However the holding in that case is inapplicable to the facts at issue here because that case involves
22 prescription claims made by a private property owner against another private property owner. (*Warsaw*
23 *v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 569.) Article I, section 19, as it presently reads
24 was not before that court. As private individuals are not subject to the prohibition against the taking of
25 private property without just compensation found in both the U.S. and California constitutions this case
26 does not apply.

27 Not one of the cases cited by the Public Water Purveyors in the Opposition directly address the
28 issue of whether a public entity must pay just compensation before they take a private individual’s water

1 rights for a public purpose. This is because this issue has never been before the court; it is an issue of
2 first impression.

3 Even if the Court has doubt as to whether the Public Water Purveyors have the power, the
4 California Supreme Court held that in determining the extent of a municipalities power "[a]ny
5 reasonable doubt concerning the existence of the power is resolved by the courts against the
6 municipality." (*Von Schmidt v. Wildber* (1894) 105 Cal. 151-157, 159) Article 1 section 19 makes clear
7 that the only way a governmental entity can acquire private property without consent for public use is
8 by paying just compensation. (Cal. Const. Article I, section 19.) Even if the court found that this
9 constitutional provision left doubt as to whether the governmental entities could acquire groundwater
10 rights by prescription, that doubt must be construed against the municipality and not the landowners.

11 III.

12 **DIAMOND'S CLAIM IS NOT BARRED BY THE STATUTE OF LIMITATIONS.**

13 The determination of whether the statute of limitations for inverse condemnation has run cannot
14 be done based on the basin as a whole but would necessitate a determination of the date of each
15 landowner's injury. The Public Water Purveyors rely on the case of *Otay Water District V. Beckwith*,
16 however, the court in this case held that "[w]here, however, there is no direct physical invasion of the
17 landowner's property and the fact of taking is not immediately apparent, the limitations period is tolled
18 until "the damage is sufficiently appreciable to a reasonable [person] . . ." [Citations.] (*Otay Water Dist.*
19 *v. Beckwith* (1991) 1 Cal.App.4th 1041, 1048-1049.) Thus, appreciable damage and the identity and
20 conduct of the governmental entity causing that damage is a fundamental prerequisite to the
21 commencement of the running of the statute of limitations for an inverse condemnation claim and thus
22 the concurrent commencement of the prescriptive period. Therefore, The Public Water Purveyors must
23 prove the facts by which each inverse condemnation claim accrued as to each affected landowner, and
24 thus, start the prescriptive clock.

25 In *Smart v. City of Los Angeles*, the court reasoned that "it is by focusing on the impact of the
26 governmental activity upon the property owner's *actual* use that the courts have determined a date of
27 'taking' in inverse condemnation actions." (*Id.*) [Original emphasis.] The court held as follows:

28 ///

1 "In our rejection of the 'date of stabilization' approach to the fixing of a date of taking
2 in this particular case, we merely recognize that property owners may be damaged by a
3 given governmental activity in different ways and at different times." [Emphasis Added.]
4 (*Smart v. City of Los Angeles* (1980) 112 Cal.App.3d 232, 234.)

5 As the interests of the parties in this adjudication are diverse, ranging from commercial pumpers
6 to those with unexercised overlying rights, the court cannot determine the time to which the Public
7 Water Purveyors' pumping would be sufficiently to appreciable to a reasonable person just by looking
8 at the basin as a whole. Instead, the court must look at when or if ever the actual use of each individual
9 landowner was affected to determine whether the statute of limitations has been tolled.

10 Furthermore, the United States District Court for the District of Rhode Island in *Pascoag*
11 *Reservoir & Dam, LLC v. Rhode Island*, in a well-reasoned decision, concluded that under the 5th and
12 14th Amendments to the Federal Constitution that a private landowner's Federal Constitutional takings
13 claim as against a state or political subdivision of the state is not ripe (does not accrue) in adverse
14 possession or prescription cases until the property interest has been acquired by the government and that
15 acquisition does not occur until the prescriptive period has run its course. (*Pascoag Reservoir & Dam,*
LLC v. Rhode Island (D.R.I. 2002) 217 F.Supp.2d 206, 224.) The court reasoned as follows:

16 "A plaintiff could not bring a takings claim until the possession or prescription period
17 had been completed because, until that time, the government had not taken a property
18 interest. In the case of adverse possession, prior to the end of the statutory period, the
19 adverse possessor has no rights to the property. See, e.g., R.I. Gen. Laws § 34-7-1. A
20 record owner could bring an action of trespass and ejectment. Under the trespass claim,
21 the record owner could seek damages for the trespass. Under the ejectment claim, the
22 record owner could stop the adverse possession clock from running and enjoin the
23 putative adverse possessor from continued possession of the property. As the putative
24 adverse possessor had no property rights, however, the record owner could not make out
25 a takings claim."

26 "Similarly in the case of a prescriptive easement, the record owner could bring an action
27 for trespass and ejection. There is no property interest, yet, that has been no taking prior
28 to the completion of the statutory period. In this case, because the public was using the
Reservoir, and not the State, plaintiff had no claim against the State of any kind prior to
the end of the prescriptive period. Plaintiff could only sue private individuals for
trespass. As there was no state law that mandated that plaintiff allow access to these
individuals, prior to the end of the prescriptive period, there was no state action and no
takings claim could have been alleged."

"If the takings clock were to stop at the moment the adverse possession clock has run,
then the record owner as against the government is in a curious Catch-22 situation. He
or she had no takings claim prior to the completion of the adverse possession prescription
period, but would be similarly barred from having a takings claim after the period was
completed. This Court does not sanction this bonanza for the government at the
intersection of property law and constitutional law." (*Id.*)


1 The Public Water Purveyors' prescription claims place in issue all landowner rights under the
2 5th Amendment Takings Clause to the Federal Constitution, as applied to the states by the 14th
3 Amendment. Given that the statute of limitations on a takings claim is 5 years, it can be argued that each
4 landowner has nine years, three hundred and sixty four days from the date of notice of the adverse claim
5 within which to seek compensation. Thus, Diamond's claims are not barred by the statute of limitations.

6 **IV.**
7 **CONCLUSION**

8 For those reasons, as well as the reasons set forth in the initial moving papers and those to be
9 offered at the hearing of this motion, the Court should grant Diamond's Motion for Judgment on the
10 Pleadings.

11
12 Dated: March 24, 2014

LeBEAU • THELEN, LLP

13
14 By: 
15 **BOB H. JOYCE**
16 Attorneys for DIAMOND FARMING COMPANY,
17 a California corporation, CRYSTAL ORGANIC
18 FARMS, a limited liability company, GRIMMWAY
19 ENTERPRISES, INC., and LAPIS LAND
20 COMPANY, LLC
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PROOF OF SERVICE

1 ANTELOPE VALLEY GROUNDWATER CASES
2 JUDICIAL COUNCIL PROCEEDING NO. 4408
3 CASE NO.: 1-05-CV-049053

4 I am a citizen of the United States and a resident of the county aforesaid; I am over the age
5 of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter
6 Drive, Suite 300, Bakersfield, California 93309. On March 24, 2014, I served the within **REPLY
TO OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS**

7 ■ (BY POSTING) I am "readily familiar" with the Court's Clarification Order.
8 Electronic service and electronic posting completed through www.scefilings.org ; All papers filed
9 in Los Angeles County Superior Court and copy sent to trial judge and Chair of Judicial Council.

10 Los Angeles County Superior Court
11 111 North Hill Street
12 Los Angeles, CA 90012
13 Attn: **Department 1**
14 (213) 893-1014

15 Chair, Judicial Council of California
16 Administrative Office of the Courts
17 Attn: Appellate & Trial Court Judicial Services
18 (Civil Case Coordinator)
19 Carlotta Tillman
20 455 Golden Gate Avenue
21 San Francisco, CA 94102-3688
22 Fax (415) 865-4315

23 □ (BY MAIL) I am "readily familiar" with the firm's practice of collection and
24 processing correspondence for mailing. Under that practice it would be deposited with the U.S.
25 Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California, in
26 the ordinary course of business.

27 □ (OVERNIGHT/EXPRESS MAIL) By enclosing a true copy thereof in a sealed
28 envelope designated by United States Postal Service (Overnight Mail)/Federal Express/United
Parcel Service ("UPS") addressed as shown on the above by placing said envelope(s) for ordinary
business practices from Kern County. I am readily familiar with this business' practice of
collecting and processing correspondence for overnight/express/UPS mailing. On the same day
that the correspondence is placed for collection and mailing, it is deposited in the ordinary course
of business with the United States Postal Service/Federal Express/UPS in a sealed envelope with
delivery fees paid/provided for at the facility regularly maintained by United States Postal Service
(Overnight Mail/Federal Express/United Postal Service [or by delivering the documents to an
authorized courier or driver authorized by United States Postal Service (Overnight Mail)/Federal
Express/United Postal Service to receive documents].

■ (STATE) I declare under penalty of perjury under the laws of the State of
California that the above is true and correct, and that the foregoing was executed on March 24,
2014, in Bakersfield, California.


LEQUETTA HANSEN