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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

**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, No. BC 32520;

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;

We. Bolthouse Farms, Inc. V. City of  
Lancaster; Diamond Farming Co. V. City of  
Lancaster; Diamond Framing Co. V. Palmdale  
Water District; Superior Court of California,  
County of Riverside, Cases No. RBC 353 840,  
RBC 344 436, RBC 344 668;

This Document Relates To:

REBECCA LEE WILLIS, on behalf of herself  
and all others similarly situated, Plaintiff,

vs.

LOS ANGELES COUNTY WATERWORKS  
DISTRICT NO. 40, et al; Defendants.

Case No. BC 364 553

JUDICIAL COUNCIL COORDINATION  
PROCEEDING NO. 4408

Santa Clara Case No. 1-05-CV-049053  
Honorable Jack Komar, Presiding

**PLAINTIFF WILLIS' MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT OF HER MOTION TO STRIKE  
OR FOR JUDGMENT ON THE  
PLEADINGS AS TO DEFENDANTS'  
AFFIRMATIVE DEFENSES ASSERTING  
PRESCRIPTION CLAIMS**

Date: August 11, 2008

Time: 9:00 a.m.

Dept.: 1

Judge: Honorable Jack Komar  
Coordination Trial Judge

## I. INTRODUCTION

Plaintiff Rebecca Lee Willis ("Plaintiff" or "Willis") submits the following points and authorities in support of her motion to strike or, in the alternative, for judgment on the pleadings, as to the affirmative defenses of prescription asserted by defendants Los Angeles County Waterworks District No. 40 ("District 40"), Rosamond Community Service District ("Rosamond"), Palmdale Water District ("Palmdale"), and Quartz Hill Water District ("Quartz Hill") (collectively, the "Suppliers").<sup>1</sup> For two reasons, Plaintiff's motion should be granted. First, *as a matter of law*, no party, including defendant Suppliers, can obtain water rights by prescription against overlying *non-pumping* landowners, such as Willis and the Class she represents. As discussed below, California law is clear that *no one* can obtain prescriptive rights against overlying landowners who are not presently exercising their rights to use the water under their properties. Second, the defendant public water suppliers do not have the statutory authority to acquire water rights from private persons by prescription. Further, interpreting their grant of authority to allow them to obtain such rights by prescription would conflict with the California Constitution. For each of these reasons, the Court should either strike the Suppliers' affirmative defenses asserting prescriptive rights as to Willis and the Class she represents or grant judgment on the pleadings as to those defenses.

## II. STATEMENT OF FACTS

Plaintiff Willis brings this action on behalf of herself and a class of certain other private landowners in the Antelope Valley seeking a judicial determination of their rights to use the groundwater in the Antelope Valley Groundwater Basin ("the Basin"). Plaintiff Willis has not pumped and does not pump or otherwise use the groundwater underlying her property, and the Class she represents consists entirely of such "dormant" overlying landowners, who have not pumped water on their properties. Nonetheless, as overlying landowners, Willis and the Class have the right to make reasonable and beneficial use of the groundwater underlying their properties. Indeed, under California law, as a general rule, overlying landowners such as Willis have priority rights to make

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<sup>1</sup> Although, for procedural reasons, Plaintiff's Motion focuses on only those four Suppliers, the rationale underlying the Motion applies with equal force to all of the public water supplier defendants.

1 reasonable and beneficial use of the groundwater under their properties. Willis brought this action  
2 to protect her rights in that respect as well as those of others similarly situated.

3 This action was necessary because the Suppliers have asserted in their pleadings that they  
4 have obtained appropriative or prescriptive rights to use the Basin's groundwater, which they claim  
5 are equal or superior in priority to Plaintiff's and the Class' rights. Thus, Rosamond's and District  
6 40's February 23, 2007 Answer to Complaints (which was expressly directed to any Complaints "that  
7 now or hereafter assert claims" against those parties) states as follows:

8 11. For many years, Cross-Defendants have produced groundwater from  
9 the Basin and distributed the water through its water system to its customers  
10 for reasonable and beneficial uses. Cross-Defendants' production of ground-  
11 water from the Basin has been open, notorious and under claim of right,  
12 hostile to any rights of Plaintiffs and Cross-Complainants, and has continued  
13 for a period of more than five consecutive years during which the Basin was  
14 in a state of overdraft. By reason of Cross-Defendants' historical production of  
15 groundwater, Cross-Defendants have acquired an appropriative or prescriptive  
16 right to groundwater that is equal or superior in priority to that of the Cross-  
17 Complainants.

18 Similarly, in their Answer to Plaintiff's Second Amended Complaint<sup>2</sup> Defendants Palmdale  
19 and Quartz Hill allege as an affirmative defense as follows:

20 12. For many years, Districts have produced groundwater from the Basin  
21 and distributed the water through its waterworks system to its customers for  
22 reasonable and beneficial uses. Districts' production of groundwater from the  
23 Basin has been open, notorious and under claim of right, hostile to any rights of  
24 Cross Complainants and has continued for a period of more than five consecutive  
25 years, during which time, Districts are informed and believe, there existed a period  
26 of five consecutive years during which the Basin was in a state of overdraft.

27 13. By reason of their historical production of groundwater, Districts have  
28 acquired an appropriative or prescriptive right to groundwater that is equal or  
superior in priority to that of the Cross Complainants.

### 29 **III. ARGUMENT**

30 Plaintiff maintains that the Suppliers can never establish several elements of their claims for  
31 prescriptive rights – most notably, that Willis and other dormant landowners had notice of the  
32 Suppliers' adverse claims. The present Motion, however, simply questions the legal validity of the  
33 Suppliers' prescription claims, at least as those claims pertain to dormant landowners. Willis and

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34 <sup>2</sup> By agreement of the parties, the February 3, 2007 Answer to All Cross  
35 Complaints by Palmdale Water District and Quartz Hill Water District serves as those  
36 defendants' answer to Plaintiff's Second Amended Complaint.

1 the Class should not be put to the burden and expense of litigating the notice issue or the  
2 hydrological issues that are at issue in the next phase of the trial.

3 **A. This Motion Is Ripe**

4 Code of Civil Procedure Section 435(b)(1) provides that “[a]ny party, within the time allowed  
5 to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof  
6 . . .” Similarly, Section 438 allows a plaintiff to move for judgment on the pleadings as to “[t]he  
7 entire answer or one or more of the affirmative defenses set forth in the answer.” CCP § 438(b)(1),  
8 (c)(2)(B).

9 Because the Suppliers have asserted as an affirmative defense that they have obtained  
10 prescriptive rights as to Plaintiff and the Class, and because that defense has no merit as a matter of  
11 law, Plaintiff has properly brought this motion to strike or, in the alternative, for judgment on the  
12 pleadings as to that affirmative defense. For purposes of this Motion, Plaintiff accepts the Suppliers’  
13 factual allegations as to notice as well as all other relevant factual allegations in the Suppliers’  
14 Answers. Even accepting those factual allegations, however, the Suppliers’ contentions that they  
15 have obtained appropriative or prescriptive rights to the Basin’s groundwater that are superior or  
16 equal to Plaintiff’s rights are unfounded as a matter of law.

17 **B. As a Matter of Law, No One Can Obtain Prescriptive Rights Against the Willis**  
18 **(Dormant Landowner) Class.**

19 Under California law, the Suppliers cannot obtain prescriptive rights against Willis and the  
20 Class of non-pumping landowners. As the Supreme Court stated in *Los Angeles v. San Fernando*  
21 (1975) 14 Cal. 3d 199, any prescriptive rights obtained by appropriators (which there, as here, were  
22 municipal water suppliers and public utility water companies) “would not necessarily impair the  
23 private defendants’ rights to groundwater for *new* overlying uses for which the need has not yet come  
24 into existence during the prescriptive period.” *Id.* at 293, fn. 100 (emphasis in original).

25 That comment followed a long line of California cases protecting the future rights of  
26 landowners who are not presently using water on their properties. Over 80 years ago, in *Pabst v.*  
27 *Finmand* (1922) 190 Cal. 124, the Supreme Court held that a riparian owner could not gain  
28 prescriptive rights against a lower riparian owner who was not using water, stating as follows:

1 Even if the upper riparian owner is using all the water of the stream, still if the  
2 lower riparian owner is not then using any and has no desire to do so, such use  
3 by the upper riparian owner would not be adverse, and, if continued five years,  
4 would *not gain him a prescriptive right*.

5 Id. at 130 (emphasis added).

6 The Supreme Court's comment in footnote 100 of *San Fernando* was the basis for the Court  
7 of Appeal's later holding in *Wright v. Goleta Water District* (1985) 174 Cal. App. 3d 74. The  
8 *Wright* court held that a trial court, in deciding "a groundwater dispute among private parties and  
9 public entities," may not "define or otherwise limit future groundwater rights of an overlying owner  
10 who has not yet exercised those rights." Id. at 78. The Court of Appeal commented that  
11 groundwater rights, like riparian rights "are not destroyed or impaired by non-use, that the water right  
12 exists whether exercised or not, [and] *that a dormant riparian right is paramount to active  
13 appropriative rights . . .*" Id. at 87 (emphasis added).

14 Subsequently, in *City of Barstow v. Mojave Water Agency* (2000) 23 Cal. 4<sup>th</sup> 1224, the  
15 Supreme Court expanded on these concepts, stating as follows: "Because the court cannot fix or  
16 absolutely ascertain the quantity of water required for future use at any given time, *a trial court  
17 should declare prospective uses paramount to the appropriator's rights, so the appropriator cannot  
18 gain prescriptive rights in the use.*" Id. at 1243 (emphasis added). The *Barstow* Court expressly  
19 approved of both footnote 100 from *San Fernando* and the *Wright* court 's holding that "the trial  
20 court could not define or otherwise limit an overlying owner's future unexercised groundwater rights  
21 . . . ." Id. at 1248-49.<sup>3</sup>

22 The impropriety of limiting an overlying owner's unexercised groundwater rights is inherent  
23 in the Constitution's mandate that "the water resources of the State be put to beneficial use to the  
24 fullest extent of which they are capable . . ." Cal. Const. Art. 10, § 2. Because it is impossible to  
25 know how such future uses should be properly allocated, it is improper to "limit an overlying  
26 owner's future unexercised groundwater rights . . ." *Barstow, supra*, at 1248-49. In addition, as

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27 <sup>3</sup> It would be contrary to prudent public policy and create improper incentives to award  
28 prescriptive rights against Plaintiff and the Class, who have safeguarded the Basin's water  
resources by deferring any pumping, and whose rights to make reasonable and beneficial uses of  
the Basin's water cannot now be defined.

1 the *Pabst* court commented, Suppliers' uses are not sufficiently adverse with respect to Willis and  
2 other dormant landowners to create prescriptive rights.

3 As the Supreme Court explained in *Tulare Irrig. Dist. v. Lindsay-Strathmore Irrig. Dist.*  
4 (1935) 3 Cal. 2d 489:

5 "The new doctrine [requiring that water be put to reasonable and beneficial use]  
6 not only protects the actual reasonable beneficial uses of the riparian but also  
7 the prospective reasonable beneficial uses of the riparian. As to such future  
8 or prospective reasonable beneficial uses, it is quite obvious that the quantity  
9 of water so required for such uses cannot be fixed in amount until the need for  
10 such use arises. Therefore, as to such uses, the trial court, in its findings  
11 and judgment, should declare such prospective uses paramount to any right of  
the appropriator. . . . It is to be noted that the new doctrine embodied in  
the constitutional amendment, as interpreted in the Peabody case, not only  
applies the doctrine of reasonable use as between riparian and appropriator,  
but also as between an overlying owner and an appropriator. The overlying  
owner in this state has long been held to have analogous rights to those  
of a riparian."

12 After noting that the "present action involves an appeal from an injunction decree, which,  
13 by its very nature, acts on the rights of these parties in the future;" id. at 527; the *Tulare* court  
14 directed that "the trial court, in accordance with the mandate in the constitutional provision, should  
15 incorporate in its decree a declaration protecting such respondents in the prospective reasonable  
16 beneficial uses of the waters here involved, unless such prospective right be condemned . . . ." Id.  
17 at 530. As the court explained: "What is a beneficial use, of course, depends upon the facts and  
18 circumstances of each case. . . . What is a beneficial use at one time may, because of changed  
19 conditions, become a waste of water at a later time." Id. at 567.

20 Thus, as the Court of Appeal held in *Tehachapi-Cummings County Water Dist. v. Armstrong*  
21 (1975) 49 Cal. App. 3d 992: "The right of overlying owners to a judgment declaring their water  
22 rights and protecting them in the *prospective* beneficial use is clear even though substantial present  
23 damage is not shown." Id. at 998. As the court then commented:

24 "As between overlying owners, the rights, like those of riparians, are correlative,  
25 i.e., they are mutual and reciprocal. This means that each has a common right  
26 to take all that he can beneficially use on his land if the quantity is sufficient;  
27 if the quantity is insufficient, each is limited to his proportionate fair share of the  
28 total amount available based upon his reasonable need. *The proportionate  
share of each owner is predicated not on his past use over a specified period  
of time, nor on the time he commenced pumping, but solely on his current  
reasonable and beneficial need for water.*"

1 Id. at 1001 (citations omitted and emphasis added).

2 In short, as a matter of law, the Suppliers cannot obtain prescriptive rights against future,  
3 presently unexercised, overlying rights. Because those are the very rights being asserted by Willis  
4 and the Class, the Court should grant their motion for judgment as to the Suppliers' affirmative  
5 defenses of prescription.

6 **C. The Suppliers Do Not Have the Statutory Authority to Take Plaintiff's**  
7 **Water Rights By Prescription.**

8 Second, the Suppliers do not have the statutory authority to take Plaintiff's or the Class'  
9 water rights by prescription. Further, if the Court were to interpret the Suppliers' statutory authority  
10 to allow them to take water rights by prescription, it would conflict with the California Constitution's  
11 explicit requirement that "[p]rivate property may be taken or damaged for public use *only* when just  
12 compensation . . . has first been paid to, or into court for, the owner." Art. I, Sec. 19 (emphasis  
13 added).

14 1. The Suppliers Do Not Have the Statutory Authority to Acquire Plaintiff's  
15 Water Rights By Prescription.

16 The Suppliers are all public entities and, as such, are creatures of statute. Their powers are  
17 defined and limited by their statutory authorization. *See, e.g., Turlock Irrig. Dist. v. Hetrick* (1999)  
18 71 Cal. App. 4<sup>th</sup> 948, 951- 54. As the court stated in *Water Quality Assn. v. County of Santa Barbara*  
19 (1996) 44 Cal. App. 4<sup>th</sup> 732: "[T]he rule is well established that language purporting to define the  
20 powers of a municipal corporation is to be strictly construed, and . . . the power is denied where there  
21 is any fair, reasonable doubt concerning the existence of the power." Id. at 746 (quoting *Trimont*  
22 *Land Co. v. Truckee Sanitary Dist.* (1983) 145 Cal. App. 3d 330, 350.

23 The governing statutes grant the Suppliers the right to acquire property rights in a variety of  
24 enumerated means, but none of the relevant statutes authorize the Suppliers to acquire property rights  
25 by prescription. Accordingly, the Suppliers simply lack authority to take Plaintiff's property by  
26 prescription. For example, section 55370 of the Water Code, which gives waterworks districts the  
27 right to acquire property, states as follows: "A district may acquire property by purchase, gift, devise,  
28 exchange, descent, and eminent domain." The statute neither expressly nor impliedly authorizes  
such districts to acquire property rights by prescription. Similarly, sections 71690 - 71691 of the

1 Water Code grant Municipal Water Districts, such as Palmdale and Quartz Hill, the right to acquire  
2 property in a variety of means, but do not authorize them to acquire property by prescription.

3 It is well established that where, as here, statutory language is clear and unambiguous the  
4 Court must respect that language. The governing principles were summarized by the California  
5 Supreme Court as follows:

6 If the language of a statute is clear and unambiguous, judicial  
7 construction is not necessary and a court should not indulge in it. . . .

8 A first principle of statutory construction is that the intent of the  
9 Legislature is paramount. The court's role in construing a statute is to  
10 ascertain the intent of the Legislature so as to effectuate the purpose of  
11 the law and, in doing so, the court looks first to the words of the  
12 statute.

13 *Kraus v. Trinity Management Servs., Inc.*, 23 Cal. 4<sup>th</sup> 116, 129 (2000)(citations omitted). *See Bivens*  
14 *v. Gallery Corp.*, 36 Cal. Rptr. 3d 541, 550-51 (Cal. App. 2005). Moreover, even where statutory  
15 language is uncertain, the court's task is "to construe, not to amend, the statute." *County of Santa*  
16 *Barbara v. Connell*, 72 Cal. App. 4<sup>th</sup> 175, 178 (1999), *quoting California Fed. Savings & Loan Ass'n*  
17 *v. City of Los Angeles*, 11 Cal. 4<sup>th</sup> 342, 349 (1995). In construing a statute, it is the

18 role of the judiciary to simply ascertain and declare what is in terms  
19 or substance contained in the statute, not to insert what has been omitted  
20 or omit what has been included. In other words, the courts "may not,  
21 under the guise of construction, rewrite the law or give the words an  
22 effect different from the plain and direct import of the terms used."

23 *Id.* at 178.

24 The language of the above two statutes is clear and unambiguous. They authorize Suppliers  
25 to acquire property in a variety of means, but not by prescription. This Court should not grant the  
26 Suppliers more rights than the Legislature saw fit to give them.

27 2. It Would Violate the California Constitution for the Court to Grant the  
28 Suppliers the Right to Take Plaintiff's Water Rights By Prescription.

Article I, Section 19 of the California Constitution provides as follows: "Private property  
may be taken or damaged for public use *only* when just compensation, ascertained by a jury unless  
waived, has first been paid to, or into court for, the owner." [Emphasis added] It cannot be denied  
that prescription is a form of taking of private property rights or that, in the instant case, the  
Suppliers seek to take Plaintiff's and the Class' rights for public use. Hence, if the Court found that



1 the Suppliers have the statutory authority to acquire property by prescription without first paying just  
2 compensation, that would run directly afoul of the Constitution's clear mandate.


3 It is hornbook law that a Court should not interpret a statute in a manner that raises  
4 constitutional issues, such as this. Hence, for this reason also, the Court should restrict the Suppliers  
5 to their statutorily enumerated powers and not grant them the right to take private property by  
6 prescription.

7 **IV. CONCLUSION**

8 For the reasons stated above, Plaintiff's Motion to Strike Defendants' prescription claims or,  
9 in the alternative for Judgment on the Pleadings, should be granted.

10  
11 Dated: June 16, 2008

KRAUSE KALFAYAN BENINK  
& SLAVENS LLP

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15 Ralph B. Kalfayan, Esq.  
16 David B. Zlotnick, Esq.

17 Attorneys for Plaintiff and the Class  
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1 **PROOF OF SERVICE**

2 I, Aimee Vignocchi, declare:

3 I am employed in the County of San Diego, State of California. I am over the age of 18  
4 and not a party to the within action. My business address is Krause, Kalfayan, Benink &  
Slavens, LLP, 625 Broadway, Suite 635, San Diego, California 92101.

5 On **June 16, 2008**, I served the within document(s):

6 **PLAINTIFF WILLIS' MEMORANDUM OF POINTS AND AUTHORITIES IN**  
7 **SUPPORT OF HER MOTION TO STRIKE OR FOR JUDGMENT ON THE**  
8 **PLEADINGS AS TO DEFENDANTS' AFFIRMATIVE DEFENSES ASSERTING**  
9 **PRESCRIPTION CLAIMS**

on the interested parties in this action as follows:

10 ☒ **E-SERVICE.** I posted the document listed above to the Santa Clara County  
Superior Court e-filing website under the Antelope Valley Groundwater matter  
pursuant to the Court's order dated October 27, 2005.

11 ☐ **MAIL.** I am readily familiar with the firm's practice of collecting and processing  
12 correspondence for mailing. Under that practice it would be deposited on the  
same day with the postage thereon fully prepaid in the ordinary course of  
13 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  
14 date of deposit for mailing in affidavit.

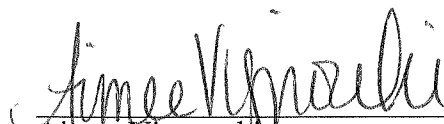
15 ☐ **FIRST CLASS MAIL.** I placed the document listed above in a sealed  
envelope with postage thereon fully prepaid addressed as indicated on the  
16 attached service list. Such envelope was deposited for delivery with the  
United States Postal Service at San Diego, California following the firm's  
17 ordinary business practices.

18 ☐ **OVERNIGHT MAIL.** I placed the document listed above in a sealed  
envelope to be delivered via overnight delivery addressed as indicated on  
19 the attached service list. Such envelope was deposited for delivery by  
UPS at San Diego, California following the firm's ordinary business  
20 practices.

21 ☐ **PERSONAL SERVICE.** I caused personal delivery the document listed above  
by Cal Express of the document(s) listed above to the person(s) at the address(es)  
22 set forth below.

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

24 Executed on **June 16, 2008**, at San Diego, California.

25   
26 Aimee Vignocchi  
27  
28