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

**ANTELOPE VALLEY  
GROUNDWATER CASES**

JUDICIAL COUNCIL COORDINATION  
PROCEEDING NO. 4408

Included Actions: Los Angeles County  
Waterworks District No. 40 v. Diamond  
Farming Co., Superior Court of California,  
County of Los Angeles, No. BC 32520;

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

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;

**PLAINTIFF WILLIS' MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
OPPOSITION TO THE PUBLIC WATER  
SUPPLIERS' MOTION TO STRIKE**

Date: May 21, 2007  
Time: 9:00 a.m.  
Dept.: 1

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;

Judge: Honorable Jack Komar  
Coordination Trial Judge

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

1     **I.     INTRODUCTION**

2             The Public Water Suppliers (“Suppliers”) have moved to strike Willis’ prayer for an award  
3 of attorneys fees, arguing, as they do on their demurrer, that they cannot be held liable for inverse  
4 condemnation under the California and United States Constitutions by virtue of their having obtained  
5 groundwater rights by prescription. For two reasons, their argument is meritless and, at a minimum,  
6 premature.

7             First, Willis’ Complaint does not allege or concede that the Suppliers have *properly* obtained  
8 prescriptive rights to take groundwater in the Antelope Valley, but merely that they claim such rights  
9 and are taking water based on those erroneous claims of right. In other words, the Suppliers’  
10 argument “puts the rabbit in the hat;” it is based on a fundamentally erroneous factual premise,  
11 which is contrary to the allegations of the Complaint. The Suppliers’ statute of limitations argument  
12 suffers from the same basic flaw. Starting from the erroneous premise that they have properly  
13 obtained property rights by prescription (which necessarily requires five years of open, adverse, and  
14 hostile possession), they argue that Willis has failed to bring her inverse condemnation claim within  
15 the five year statutory period for such claims. Again, their argument is based on facts that are not  
16 alleged in the Complaint – in fact, are contrary to Willis’ allegations, which plainly state that the  
17 Suppliers have *not* properly obtained prescriptive rights. Hence, the Suppliers’ argument that she  
18 was on notice of their adverse claims for more than five years has no basis in fact or law.

19             Second, the Suppliers’ motion to strike is predicated on their erroneous assumption that  
20 Willis cannot obtain an award of attorneys fees if she merely prevails on her first cause of action for  
21 declaratory relief. Even if Willis’ inverse condemnation claims were found wanting, however, she  
22 could be entitled to an award of fees under Section 1021.5 of the California Code of Civil Procedure,  
23 which authorizes a court to award fees to prevailing plaintiffs in actions brought as “private attorneys  
24 general.” Suppliers simply ignore that.

25     ///

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1   **II.     SUMMARY OF FACTS AND RELEVANT TO THE MOTION**

2       The Complaint alleges the following facts:

3       Plaintiff Willis resides in Palmdale, California. Willis owns approximately 10 acres of  
4 property at 200th Street West and Avenue "B" in Lancaster, California, within the Basin, on which  
5 she intends to build a home and landscape nursery. Plaintiff's property overlies percolating  
6 groundwater, the precise extent of which is unknown.

7       Defendants are persons and entities who claim rights to use groundwater from the Basin,  
8 whose interests are in conflict with Plaintiff's interests. They include the Suppliers, who are public  
9 entities that drill and pump water in the Basin and sell such water to the public in portions of the  
10 Antelope Valley.

11       The Antelope Valley Groundwater Basin is part of the South Lahontan Hydrologic Region.  
12 The Basin underlies an extensive alluvial valley in the western Mojave Desert. The Basin is  
13 bounded on the northwest by the Garlock fault zone at the base of the Tehachapi Mountains and on  
14 the southwest by the San Andreas fault at the base of the San Gabriel Mountains. The Basin is  
15 bounded on the east by ridges and low hills that form a groundwater divide and on the north by  
16 various geographic features that separate it from the Fremont Valley Basin.

17       Average annual rainfall in the Basin ranges from 5 to 10 inches. Most of the Basin's  
18 recharge comes from runoff from the surrounding mountains and hills – in particular, from the San  
19 Gabriel and Tehachapi Mountains and from hills and ridges surrounding other portions of the Valley.  
20 The Basin's natural recharge averages approximately 48,000 acre feet per year.

21       The Basin has two main aquifers – an upper aquifer, which is the primary source of  
22 groundwater for the Valley, and a lower aquifer. Generally, in the past, wells in the Basin have been  
23 productive and have met the needs of users in conjunction with other sources of water, including the  
24 State Water Project.

25       In recent years, however, population growth and agricultural demands have led to  
26 increased pumping and declining groundwater levels, particularly along Highway 14. That has  
27 caused subsidence of the ground surface in certain parts of the Valley. Although the Basin is in an  
28 overdraft condition, rights to the Basin's groundwater have not been adjudicated and there are no

1 present legal restrictions on pumping. Each of the Defendants is pumping water from the Basin  
2 and/or claims an interest in the Basin's groundwater.

3 Various water users have instituted suit to assert rights to pump water from the Basin. In  
4 particular, Defendant L.A. Waterworks District 40 and other municipal purveyors have brought suit  
5 asserting that they have prescriptive rights to pump water from the Basin, which they claim are  
6 paramount and superior to the overlying rights of Plaintiff and the putative Class. Those claims  
7 threaten Plaintiff's right to pump water on her property.

8 Based on the above facts, Willis' Complaint alleges three causes of action (on behalf of  
9 herself as well as all others similarly situated). In her First Cause of Action, she seeks a declaratory  
10 judgment that her rights and those of the proposed Class as overlying users are superior to the rights  
11 of all non-overlying users, including the Suppliers. She further seeks a judicial determination as to  
12 the priority and amount of water that all parties in interest are entitled to pump from the Basin. The  
13 Suppliers' Demurrer does not address that claim.

14 In her Second and Third Causes of Action, Willis seeks damages against the Suppliers  
15 pursuant to the Takings Clause of the California and Federal Constitutions. In that regard, she  
16 alleges as follows:

17 *"The public entity Defendants claim priority rights to take and use the Basin's*  
18 *groundwater by "prescription" and as a matter of public interest and need.*  
19 *If and to the extent the public entities are granted rights to use the Basin's*  
20 *groundwater with priority to the rights held by Plaintiff and other overlying*  
21 *landowners, Plaintiff and the Class are entitled to just and fair compensation*  
22 *pursuant to Article 1, Section 19 of the California Constitution."*

23 Complaint at ¶¶ 26-27 (emphasis added). Id. at ¶¶ 29-30. Willis' Complaint does not concede that  
24 the Suppliers have in fact obtained prescriptive rights to use the Basin's groundwater, but merely  
25 alleges that they assert such claims and are taking that water in reliance on that claim of right.

### 26 **III. ARGUMENT**

#### 27 **A. A Strict Standard Governs Motions to Strike**

28 The grounds for a motion to strike are quite limited. Section 436 of the Code of Civil  
Procedure provides as follows:

The Court may, upon a motion made pursuant to Section 435, or at any time  
in its discretion, and upon terms it deems proper:

1 (a) Strike out any irrelevant, false, or improper matter inserted  
2 in any pleading.

3 (b) Strike out all or any part of any pleading not drawn or filed in  
4 conformity with the laws of this state, a court rule, or an order  
5 of the court.

6 As the Code provision makes clear, only those aspects of a pleading that are “irrelevant, false,  
7 or improper” are subject to a motion to strike. In deciding a motion to strike, Plaintiff’s “allegations  
8 must be liberally construed, with a view to substantial justice between the parties.” CCP, Section  
9 452. Moreover, motions to strike particular allegations of a complaint are especially disfavored.  
10 Such use of the motion to strike must be “cautious and sparing.” “We have no intention of creating  
11 a procedural ‘line item veto’ for the civil defendant.” *PH II, Inc. v. Superior Court* (1995) 33  
12 Cal.App.4th 1680, 1683.

13 Although a motion to strike may be used to attack bare legal conclusions in a pleading,  
14 “conclusory allegations will not be stricken where they are supported by other, factual allegations  
15 in the complaint.” 3 Witkin, *California Practice and Procedure* Section 7:181, citing *Perkins v.*  
16 *Superior Court* (1981) 117 Cal.App.3d 1, 6 (“The distinction between conclusions of law and  
17 ultimate facts is not at all clear and involves at most a matter of degree.”) Moreover, as with a  
18 demurrer, plaintiff’s allegations must be accepted as true. Only allegations that are false or irrelevant  
19 on the face of the Complaint may be stricken. CCP, Section 437.

20 **B. Because Plaintiff Has Alleged Valid Causes of Action for  
21 Inverse Condemnation under State and Federal Law, Her  
22 Prayer for Fees Should Not Be Stricken**

23 **1. The Suppliers Misconstrue Willis’ Complaint**

24 Willis does not take issue with the general proposition that, at some point after a party has  
25 properly acquired a prescriptive easement, the owner of the property cannot later bring suit for  
26 compensation. See *Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal. 3d 564, 575; *Baker*  
27 *v. Burbank-Glendale-Pasadena Airport Authority* (1990) 220 Cal.App. 3d 1602, 1609. But Willis  
28 does take issue with the Suppliers’ erroneous factual contention that they have properly acquired a  
prescriptive easement with respect to Willis’ property – a contention that is the cornerstone of their  
argument.

1 Clearly, Plaintiff has not alleged any such matter in her Complaint, which must be accepted  
2 as true for present purposes. To the contrary, Willis' Complaint seeks a judicial determination that  
3 the Suppliers have *not properly obtained prescriptive rights* to use the Valley's groundwater and that  
4 her rights as an overlying landowner are superior to their rights. Her Takings Claims are predicated  
5 on the fact that the Suppliers have been depleting the Basin's groundwater without a legal ownership  
6 right to that water, i.e., based on a false claim of right. The Suppliers' arguments are all based on  
7 their fundamental distortion of Willis' allegations.

8 The very cases that the Suppliers rely on – which were decided on a factual record, not on  
9 demurrer – demonstrate this critical distinction. For example, in *Warsaw v. Chicago Metallic*  
10 *Ceilings, Inc.* (1984) 35 Cal. 3d 564, the Court upheld the trial court's factual finding, after a trial  
11 on the merits, that the Plaintiff's open, continuous, and adverse use of a portion of its neighbor's  
12 property over the course of seven years gave Plaintiff a prescriptive easement over a 25-foot wide  
13 section of that property. *Id.* at 570. That was the predicate on which the Court found that Plaintiff  
14 need not compensate the Defendant. *Id.* at 574-75.

15 Similarly, in *Baker v. Burbank-Glendale-Pasadena Airport Auth.* (1990) 220 Cal. App. 2d  
16 1602, and *Otay Water Dist. v. Beckwith* (1991) 1 Cal App. 4<sup>th</sup> 1041, the Courts' conclusions that  
17 compensation was not necessary were predicated on factual findings that  
18 the parties had properly obtained prescriptive rights. In *Otay Water Dist.*, for example, the trial court  
19 had found that the Otay Water District, which had built a reservoir that encroached on Beckwith's  
20 property, had made ““open, notorious use [of Beckwith's property], continuous, uninterrupted,  
21 hostile and exclusive for twenty years or so”” and therefore was entitled to a prescriptive easement.  
22 *Id.* at 1045. On that basis, the Court of Appeal found that Beckwith's inverse condemnation claim  
23 was barred by the statute of limitations. *Id.* at 1048-49.

24 There has been no factual finding here that the Suppliers have valid prescriptive rights to use  
25 the Basin's groundwater, and Plaintiff's Complaint clearly and unequivocally contests their claim  
26 to such a right. The Suppliers' argument that Willis has conceded they have such a right is based  
27 on a misreading of the Complaint. It does not say what the Suppliers read into it, and their Motion  
28 to Strike should therefore be denied.

1           **C.     Plaintiff's Inverse Condemnation Claims Are Not Barred By the**  
2           **Statute of Limitations**

3           For much the same reason, the Suppliers' statute of limitations argument is without  
4           merit. The Suppliers concede that a party can only acquire prescriptive rights with respect to water  
5           rights, where the use was "open and notorious, adverse and hostile, and [that] the person prescribed  
6           against must be on notice of the condition of overdraft for at least a five-year period." Suppliers'  
7           mem. at 9, *citing City of Los Angeles v. City of San Fernando* (1975), 13 Cal. 3d 199, at 282-83.  
8           Moreover, it is settled that where "there is no direct physical invasion of the landowner's property  
9           and the fact of taking is not immediately apparent, the limitations period is tolled until the damage  
10          is sufficiently appreciable to a reasonable [person] . . ." *Otay Water Dist., supra*, 1 Cal App. at  
11          1049.

12          Here, there are inherently factual issues as to whether the Suppliers' use was "open  
13          and notorious, adverse and hostile" to Willis' rights, and whether Willis was on notice of the  
14          condition of overdraft for at least five years. Certainly, nothing in the Complaint supports these  
15          contentions; indeed, Willis did not even purchase her property until October 2003, less than five  
16          years before filing suit. As the facts will establish, she was not aware of these issues until relatively  
17          shortly before filing suit.

18          The Suppliers attempt to circumvent these clear factual issues by again arguing that Willis  
19          concedes that they have established prescriptive rights. But, as discussed above, not only does  
20          Willis not concede that position, her Complaint alleges directly to the contrary. Hence, at a  
21          minimum, there are factual issues that require the denial of the Suppliers' statute of limitations  
22          arguments.

23           **D.     Plaintiff's First Cause of Action Could Entitle Her to an**  
24           **Award of Attorneys' Fees**

25          The Suppliers' Motion to Strike is based on their erroneous assumption that Willis could only  
26          be entitled to an award of attorneys fees if she prevails on her inverse condemnation claims. As  
27          discussed above, the Suppliers' arguments against Willis' inverse condemnation claims are based  
28          on a misreading of Willis' allegations; their arguments are meritless and should be denied. Hence,  
29          Willis' attorneys fee claims stand. In addition, even if Willis' inverse condemnation claims were

1 found wanting, she could well be entitled to an award of fees under Section 1021.5 of the California  
2 Code of Civil Procedure, which authorizes a court to award fees to prevailing plaintiffs in actions  
3 brought as "private attorneys general," if she obtains classwide relief on her first cause of action.  
4 Because the Suppliers do not address that issue, Willis briefly outlines the potential for such an  
5 award below.

6 CCP Section 1021.5, provides as follows:

7 Upon motion, a court may award attorneys' fees to a successful party against one  
8 or more opposing parties in any action which has resulted in the enforcement of  
9 an important right affecting the public interest if: (a) a significant benefit, whether  
10 pecuniary or nonpecuniary, has been conferred on the general public or a large  
11 class of persons, (b) the necessity and financial burden of private enforcement,  
or of enforcement by one public entity against another public entity, are such as to  
make the award appropriate, and ©) such fees should not in the interest of justice  
be paid out of the recovery, if any.

12 The California Courts have consistently concluded that cases comparable to this one justified  
13 an award of fees under Section 1021.5. *See, e.g., Graham v. DaimlerChrysler* (2005) 34 Cal. 4<sup>th</sup> 553,  
14 556 ("It is well settled that attorney fees under section 1021.5 may be awarded for consumer class  
15 actions benefitting a large number of people'); *Friends of the Trails v. Blasius* (2000) 78 Cal. App.  
16 4<sup>th</sup> 810 (fees awarded in case enforcing common law right to easement for public trail).

17 The Suppliers advance no argument as to why Willis could not be entitled to an award of fees  
18 under Section 1021.5 if she prevails on her first cause of action and obtains meaningful relief for  
19 the putative Class. It is at a minimum premature to address that issue.

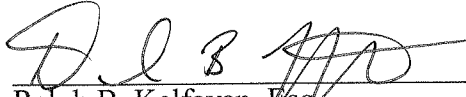
20 Hence, for this reason also, the Suppliers' Motion to Strike should be denied.

#### 21 **IV. CONCLUSION**

22 For the reasons stated above, the Suppliers' Motion to Strike should be denied.

23 Dated: May 8, 2007

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24   
25 Ralph B. Kalfayan, Esq.  
26 David B. Zlotnick, Esq.

27 Attorneys for Plaintiff and the Class  
28



1 **PROOF OF SERVICE**

2 I, Aimee Vignocchi, declare:

3 I am a resident of the State of California and over the age of eighteen years, and not a  
4 party to the within action; my business address is 625 Broadway, Suite 635, San Diego,  
Californai, 92101. On **May 8, 2007**, I served the within document(s):

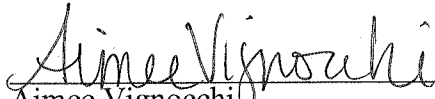
5 **PLAINTIFF WILLIS' MEMORANDUM OF POINTS AND AUTHORITIES IN**  
6 **OPPOSITION TO THE PUBLIC WATER SUPPLIERS' MOTION TO STRIKE**

- 7 ☒ by posting the document(s) listed above to the Santa Clara County Superior Court  
website in regard to the Antelope Valley Groundwater matter.
- 8 ☐ by placing the document(s) listed above in a sealed envelope with postage thereon  
9 fully prepaid, in the United States mail at San Diego, California addressed as set  
forth below:
- 10 ☐ by causing personal delivery by Cal Express of the document(s) listed above to the  
11 person(s) at the address(es) set forth below.
- 12 ☐ by personally delivering the document(s) listed above to the person(s) at the  
address(es) set forth below.
- 13 ☐ I caused such envelope to be delivered via overnight delivery addressed as  
14 indicated on the attached service list. Such envelope was deposited for delivery  
by UPS following the firm's ordinary business practices.

15 I am readily familiar with the firm's practice of collection and processing correspondence  
16 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
day with the postage thereon fully prepaid in the ordinary course of business. I am aware that on  
17 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.

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

20 Executed on May 8, 2007, at San Diego, California.

21   
22 Aimee Vignocchi