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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' DEMURRER TO HER  
COMPLAINT**

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;

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

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 demurred to Willis’ Complaint on the  
3 grounds that they cannot be held liable for inverse condemnation under the California and United  
4 States’ Constitutions by virtue of their having obtained groundwater rights by prescription. For two  
5 fundamental reasons, their argument is without merit. First, Willis’ Complaint does not allege that  
6 the Suppliers have *properly* obtained prescriptive rights to take groundwater in the Antelope Valley,  
7 but merely that they claim such rights and are taking water based on those erroneous claims of right.  
8 In other words, the Suppliers’ argument “puts the rabbit in the hat;” it is based on a fundamentally  
9 erroneous factual premise, which is contrary to the allegations of the Complaint.

10            Second, the Suppliers’ statute of limitations argument suffers from the same basic flaw.  
11 Starting from the erroneous premise that they have properly obtained property rights by prescription  
12 (which necessarily requires five years of open, adverse, and hostile possession), they argue that  
13 Willis has failed to bring her inverse condemnation claim within the five year statutory period for  
14 such claims. Again, their argument is based on facts that are not alleged in the Complaint – in fact,  
15 are contrary to Willis’ allegations, which plainly state that the Suppliers have *not* properly obtained  
16 prescriptive rights. Indeed, Willis has owned her property and been on notice of these issues for less  
17 than five years – a matter of which this Court could take judicial notice from relevant public records.  
18 Hence, the Suppliers’ argument that she was on notice of their adverse claims for more than five  
19 years makes no sense. For these reasons, the Suppliers’ Demurrer should be overruled.

20     **II.      SUMMARY OF FACTS AND RELEVANT TO THE DEMURRER**

21             The Complaint alleges the following facts:

22             Plaintiff Willis resides in Palmdale, California. Willis owns approximately 10 acres of  
23 property at 200th Street West and Avenue “B” in Lancaster, California, within the Basin, on which  
24 she intends to build a home and landscape nursery. Plaintiff’s property overlies percolating  
25 groundwater, the precise extent of which is unknown.

26             Defendants are persons and entities who claim rights to use groundwater from the Basin,  
27 whose interests are in conflict with Plaintiff’s interests. They include the Suppliers, who are public  
28 entities that drill and pump water in the Basin and sell such water to the public in portions of the

1 Antelope Valley.

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

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

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

16 In recent years, however, population growth and agricultural demands have led to  
17 increased pumping and declining groundwater levels, particularly along Highway 14. That has  
18 caused subsidence of the ground surface in certain parts of the Valley. Although the Basin is in an  
19 overdraft condition, rights to the Basin's groundwater have not been adjudicated and there are no  
20 present legal restrictions on pumping. Each of the Defendants is pumping water from the Basin  
21 and/or claims an interest in the Basin's groundwater.

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

27 Based on the above facts, Willis' Complaint alleges three causes of action (on behalf of  
28 herself as well as all others similarly situated). In her First Cause of Action, she seeks a declaratory

1 judgment that her rights and those of the proposed Class as overlying users are superior to the rights  
2 of all non-overlying users, including the Suppliers. She further seeks a judicial determination as to  
3 the priority and amount of water that all parties in interest are entitled to pump from the Basin. The  
4 Suppliers' Demurrer does not address that claim.

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

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

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

### 17 **III. ARGUMENT**

#### 18 **A. A Demurrer May Not Be Sustained If the Complaint, Viewed in the Light** 19 **Most Favorable to Plaintiff, States Facts Constituting a Cause of Action**

20 In ruling on a demurrer, the court must accept the truth of all material facts, including  
21 ultimate facts, alleged in the complaint. *Blank v. Kirwan*, (1985) 39 Cal.3d 311, 318; *Serrano v.*  
22 *Priest*, (1971) 5 Cal.3d 584, 591, *cert. denied*, 432 U.S. 907; *Maheu v. CBS, Inc.*, (1988) 201  
23 Cal.App.3d 662, 670. Further, all reasonable inferences which can be drawn from the complaint  
24 should be construed in favor of the plaintiff. *Blank, supra*, 39 Cal.3d at 318; *Serrano, supra*, 5  
25 Cal.3d at 591; *Maheu, supra*, 201 Cal.App.3d at 670.

26 It is not the function of a demurrer to test the truth of the plaintiff's factual allegations, but  
27 merely their sufficiency to state a cause of action. *Dryden v. Tri-Valley Growers*, (1977) 65  
28 Cal.App.3d 990, 998; *Whitcombe v. County of Yolo*, (1977) 73 Cal.App.3d 698, 702. A general  
demurrer should not be sustained if the pleading, liberally construed, states a cause of action on any  
theory. *Saunders v. Cariss*, (1990) 224 Cal.App.3d 905, 908. Moreover, should the Court find merit  
to the demurrer, plaintiffs should be given leave to amend. An order sustaining a demurrer without

1 leave to amend is unwarranted and constitutes an abuse of discretion if there is any reasonable  
2 possibility that the defect can be cured by amendment. 5 Witkin, *California Procedure, Fourth*  
3 *Edition*, § 670 (1997) (numerous citations); and *Chamberlain (M.G.) & Co. v. Simpson*, (1959) 173  
4 Cal.App.2d 263, 267 (reversing a judgment on demurrer to a third amended complaint).

5  
6 **B. PLAINTIFF HAS ALLEGED VALID CAUSES OF ACTION FOR  
INVERSE CONDEMNATION UNDER STATE AND FEDERAL LAW**

7 1. The Suppliers Misconstrue Willis' Complaint

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

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

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

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

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

15 **C. Plaintiff's Claims Are Not Barred By the Statute of Limitations**

16 For much the same reason, the Suppliers' statute of limitations argument is without  
17 merit. The Suppliers concede that a party can only acquire prescriptive rights with respect to water  
18 rights, where the use was "open and notorious, adverse and hostile, and [that] the person prescribed  
19 against must be on notice of the condition of overdraft for at least a five-year period." Suppliers'  
20 mem. at 9, citing *City of Los Angeles v. City of San Fernando* (1975), 13 Cal. 3d 199, at 282-83.  
21 Moreover, it is settled that where "there is no direct physical invasion of the landowner's property  
22 and the fact of taking is not immediately apparent, the limitations period is tolled until the damage  
23 is sufficiently appreciable to a reasonable [person] . . . ." *Otay Water Dist., supra*, 1 Cal App. at  
24 1049.

25 Here, there are inherently factual issues as to whether the Suppliers' use was "open  
26 and notorious, adverse and hostile" to Willis' rights, and whether Willis was on notice of the  
27 condition of overdraft for at least five years. Certainly, nothing in the Complaint supports these  
28 contentions; indeed, Willis did not even purchase her property until October 2003, less than five

1 years before filing suit. As the facts will establish, she was not aware of these issues until relatively  
2 shortly before filing suit.

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

8 **D. Plaintiff's Claims Could Entitle Her to an Award of Attorneys' Fees**

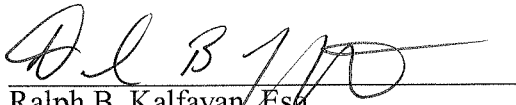
9 The Suppliers' Demurrer to Willis' prayer for an award of attorneys' fees is based on their  
10 prior arguments, from which they conclude that Willis cannot be entitled to a fee award as a matter  
11 of law. Because those arguments are based on a misreading of Willis' allegations, they are meritless  
12 and should be denied. Hence, Willis' attorneys fee claims stand. In addition, even if Willis' inverse  
13 condemnation claims were found wanting, she could be entitled to an award of attorneys fees under  
14 the Section 1021.5 of the California Code of Civil Procedure, which authorizes a court to award fees  
15 to prevailing plaintiffs in actions brought as "private attorneys general." Because the Suppliers do  
16 not address that issue, Willis merely notes the potential for such an award.

17 **IV. CONCLUSION**

18 For the reasons stated above, the Suppliers' demurrer should be overruled in its entirety.

19 Dated: May 8, 2007

KRAUSE KALFAYAN BENINK  
& SLAVENS LLP

20  
21   
22 Ralph B. Kalfayan, Esq.  
David B. Zlotnick, Esq.

23 Attorneys for Plaintiff and the Class  
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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,  
California, 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' DEMURRER TO HER**  
**COMPLAINT**

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

19 I am readily familiar with the firm's practice of collection and processing correspondence  
20 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
21 day with the postage thereon fully prepaid in the ordinary course of business. I am aware that on  
22 motion of the party served, service is presumed invalid if postal cancellation date or postage  
23 meter date is more than one day after date of deposit for mailing in affidavit.

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

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

27   
28 Aimee Vignocchi