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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF SANTA CLARA**

**ANTELOPE VALLEY**  
**GROUNDWATER CASES**

Judicial Council Coordination Proceeding  
No. 4408

**Included Actions:**

**Santa Clara Case No. 1-05-CV-049053**  
Assigned to The Honorable Jack Komar

Los Angeles County Waterworks District No.  
40 v. Diamond Farming Co. Superior Court of  
California County of Los Angeles, Case No. BC  
325 201 Los Angeles County Waterworks  
District No. 40 v. Diamond Farming Co.  
Superior Court of California, County of Kern,  
Case No. S-1500-CV-254-348Wm. Bolthouse  
Farms, Inc. v. City of Lancaster Diamond  
Farming Co. v. City of Lancaster Diamond  
Farming Co. v. Palmdale Water Dist. Superior  
Court of California, County of Riverside,  
consolidated actions, Case No. RIC 353 840,  
RIC 344 436, RIC 344 668

**RESPONSE TO PUBLIC WATER  
SUPPLIERS' SUPPLEMENTAL POINTS  
AND AUTHORITIES IN OPPOSITION TO  
THE CLAIM OF RIGHT TO A JURY  
TRIAL AND CONSOLIDATED REPLY TO  
VARIOUS OPPOSITIONS RE: JURY  
TRIAL**

**Date: April 24, 2009**  
**Time: 9:00 AM**  
**Department: LA Superior Court, Dept. 1**

RESPONSE TO WATER PUBLIC WATER SUPPLIERS' SUPPLEMENTAL POINTS AND AUTHORITIES IN  
OPPOSITION TO THE CLAIM OF RIGHT TO A JURY TRIAL AND CONSOLIDATED REPLY TO VARIOUS  
OPPOSITIONS RE: JURY TRIAL

1 The Antelope Valley Groundwater Agreement Association ("AGWA") hereby responds to  
2 the Public Water Suppliers' Supplemental Points and Authorities in Opposition to the Claim of Right  
3 to a Jury Trial and Consolidated Reply to Various Oppositions re: Jury Trial. This brief is necessary  
4 to specifically address certain new arguments put forth in the Purveyors' Reply and Supplemental  
5 Points.

6 The landowner parties requesting a jury trial in Phase 3 have established that the right to the  
7 same is constitutionally guaranteed in cases where the existence of a prescriptive right to real  
8 property is disputed. The Purveyors fail to advance any argument why the constitutional protections  
9 should not apply in this case.

10 **I. THE WATER CODE REFERENCE PROCESS IS IRRELEVANT AND CANNOT**  
11 **PRECLUDE A JURY TRIAL**

12 The Purveyors cite to the Water Code reference process (Water Code §§ 2000, et seq.) as  
13 evidence that the landowner parties to this litigation are not constitutionally guaranteed a right to a  
14 jury trial. Despite the fact that neither Purveyors nor the Court have invoked the reference process,  
15 Purveyors now claim that the mere existence of that procedure should determine the parties' rights in  
16 this case. Furthermore, Purveyors mischaracterize the reference process as displacing the role of the  
17 jury as fact-finder, when the statute clearly provides otherwise.

18 **A. The Court Has Not Invoked the Statutory Reference Process**

19 Water Code Section 2000 establishes a Court's authority to "order a reference to the Board,  
20 as referee, of any or all issues involved in the suit." (Wat. Code, § 2000.) The Court also has the  
21 discretion to "refer the suit to the board for investigation of and report upon any or all of the physical  
22 facts involved." (Wat. Code, § 2001.) Under the reference procedure, the courts have broad  
23 discretion over when and how much of the investigation, or of the conducting of hearings and taking  
24 of testimony, should be referred to the board. (*Fleming v. Bennett* (1941) 18 Cal. 2d 518, 523-24.)  
25 The Purveyors devote nearly four pages of their argument to describing what is in a typical Board  
26 report and explaining why the reference process is constitutional. The landowners do not challenge  
27  
28

1 the constitutionality of the reference process; the process is merely irrelevant to the proceedings at  
2 issue because this Court has not invoked it.

3 The Purveyors' argument boils down to the following:

- 4 (1) there is a statutory procedure under the reference process that is not being used;
- 5 (2) if the court had used the reference process it may or may not have altered the right to  
6 a jury trial; and
- 7 (3) even though the reference process is not being used in this case, the mere existence of  
8 that procedure should nonetheless impact the procedures applicable to this case.  
9

10 Because the fact-finding that will take place in this case is not undertaken pursuant to the statutory  
11 process, the Purveyors' claims as to the rights of parties in such a process are irrelevant.

12 Moreover, the Purveyors' citations to *Fleming v. Bennett* (1941) 18 Cal.2d 518, to support  
13 their position are similarly irrelevant, as *Fleming v. Bennett* did not raise the issue of whether there  
14 was a right to a jury trial when the trial court invoked the reference process. Because the Court has  
15 not used the reference process here, *Fleming v. Bennett* and the other cases to which Purveyors cite  
16 shed no light on the right to a jury trial and merely distract by raising a statute that is not at issue  
17 otherwise.  
18

19 This case would have been ideal for a reference to the State Water Resources Control Board  
20 as a neutral fact-finder. The Purveyors chose not to pursue this avenue and instead preferred to keep  
21 control over the technical information that would be presented to the Court. They cannot now try to  
22 claim the ancillary benefits of the procedure they chose not to use.  
23

24 **B. Purveyors Mischaracterize the Role of the Reference Process**

25 Even if the Court had invoked the reference process and referred the suit to the Board for  
26 investigation and a report upon the physical facts, the Board's findings of fact would not be binding  
27

1 on the Court. Section 2019 of the Water Code states that the report filed by the Board is “prima  
2 facie evidence of the physical facts therein found; but the court shall hear such evidence as may be  
3 offered by any party to rebut the report or the prima facie evidence.” (Wat. Code, § 2019.) Contrary  
4 to Purveyors’ assertion that the “process includes no option for a jury trial on any fact which must be  
5 determined,” (Public Water Suppliers’ Supplemental Points and Authorities in Opposition to The  
6 Claim of Right to a Jury Trial, p. 5, lines 4-5), section 2019 clarifies that the Board’s report is merely  
7 evidence the court enters into the record—not a legislative delegation of the fact-finding function.

8 The Purveyors’ own quotations of *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d.  
9 908, support this interpretation of the statute: “section 24 does not provide for the exercise of judicial  
10 power by the division....[but] that the court may appoint the division to act as an investigator and an  
11 expert witness.” (*City of Pasadena v. City of Alhambra*.) In other words, the Board does not replace  
12 the jury (or a judge) as the fact-finder; the Board’s report merely assists the fact-finder in making an  
13 informed decision. The reference process has no bearing on the fundamental constitutional right to a  
14 jury trial on claims of prescription under the California State Constitution. (See *Arciero Ranches v.*  
15 *Meza* (1993) 17 Cal.App.4th 114, 124-25; *Frahm v. Briggs* (1970) 12 Cal.App.3d 441, 445.)  
16 Nothing in the reference process statute, least of all its mere existence, may preclude the right to a  
17 jury trial on the landowners’ prescriptive claims.

18 **II. THE RIGHT TO A JURY TRIAL IS NOT DEPENDENT UPON A REQUEST FOR**  
19 **DAMAGES**

20 The Purveyors’ claim that there is only a right to a jury trial when the question of damages is  
21 put at issue in the pleadings results from their mischaracterization of two cases cited by the  
22 landowners. (See *Arciero Ranches v. Meza* (1993) 17 Cal.App.4th 114, and *Frahm v. Briggs* (1970)  
23 12 Cal.App.3d 441.) The Purveyors claim that the right to a jury trial in these cases was determined  
24 by whether or not the party asserting a prescriptive right could also state a claim to damages,  
25 “pursuant to an ancient legal remedy called ‘action on the case.’” (Public Water Suppliers’  
26 Supplemental Points and Authorities in Opposition to The Claim of Right to a Jury Trial, p. 5.)  
27 However, the two cases stand for the opposite proposition. The court in *Arciero Ranches* held that

1 because an injunction based on a disputed property right could not be granted until the prescriptive  
2 claim had been established at law, a jury trial was required on the issue of prescription:

3  
4 [u]nder the English common law as it stood in 1850, at the time it was  
5 adopted as the rule of decision in this state, if a plaintiff applies for an  
6 injunction to restrain the violation of a common-law right, if either the  
7 existence of the right or the fact of its violation be disputed, he must  
8 establish that right at law; or, in other words by a jury, if one be  
9 demanded.

10 (*Arciero Ranches*, 17 Cal.App.4th at 124.) Purveyors' reference to this theory as an "ancient legal  
11 remedy" reinforces the landowners' argument; because the available remedy for a disputed  
12 prescriptive claim in 1850 was a remedy at law, parties in cases involving disputed prescriptive  
13 claims have a constitutional entitlement to a jury trial. Purveyors cite to no authority for the  
14 proposition that pleadings must request damages before the jury right attaches, and do not cite to any  
15 portion of the opinions in *Arciero Ranches* or *Frahm* for such a proposition.

16 Purveyors also misquote *Pacific Western Oil Company v. Burn Oil Company* (1939) 13  
17 Cal.2d 60, to which *Arciero* cites. Although Purveyors claim that *Pacific Western Oil* "finds that a  
18 party requesting an injunction has a right to a jury trial, 'when the question of damages is put in issue  
19 by the pleadings,'" the case stands for no such thing.<sup>1</sup> In *Pacific Western Oil*, the court held that the  
20 lower court committed error in denying the demand of the appellants for a jury to try the question of  
21 damages that the respondent sought to recover from the appellants. (*Pacific Western Oil*, 13 Cal.2d  
22 at 70.) In other words, rather than requiring that damages be plead before the right to jury trial  
23 attaches, the *Pacific Western Oil* case says that a jury trial cannot be denied when damages are in  
24 fact put at issue. (*Pacific Western Oil*, 13 Cal.2d at 70.) Thus, the Purveyors have cited no  
25 precedent for their claim that the right to a jury trial is dependent on a request for damages.

26 <sup>1</sup> The portion of *Pacific Western Oil* cited by Purveyors states in full, "Neither has there been any  
27 decision of this court or of the District Court of Appeal to which our attention has been called  
28 holding that a party to an action like the instant one is not entitled as a matter of right to a jury when  
the question of damages is put in issue by the pleadings until the decision of this court in the case of  
[citation omitted]." (*Pacific Western Oil*, 13 Cal.2d at 69.)

1 **III. A PHYSICAL SOLUTION CANNOT BE IMPLEMENTED WITHOUT**  
2 **ADJUDICATION OF THE PARTIES' RIGHTS**

3  
4 The Phase 3 trial's determination of the Basin's historical safe yield and whether overdraft  
5 has historically existed is solely relevant to a determination of the parties' rights to the waters of the  
6 Basin and is an essential element of the Purveyors' claims of prescriptive rights. Purveyors have  
7 attempted to frame Phase 3 as a determination related to their requests that the Court implement a  
8 physical solution in the Basin. But, a physical solution is essentially an adjudication of the parties'  
9 rights and cannot be equitably implemented absent such a prior determination of such rights.

10 A physical solution resolves competing claims to water by cooperatively satisfying the  
11 reasonable needs of each user, and "seeks to satisfy the basic rights or needs of users through  
12 manipulation of the supply through other practical measures." (Arthur L. Littleworth and Eric L.  
13 Garner, California Water II, (2d ed. 2007), p. 173.) It is "a common sense approach to water rights  
14 litigation." (Littleworth and Garner, p. 172-73 (quoting Harold E. Rogers and Alan H. Nichols,  
15 Water for California (1967), section 404, p. 548).) Thus, a physical solution does not stand in a  
16 vacuum apart from ownership rights and priorities, and must take into account the rights of the  
17 parties on whom it is imposed. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224,  
18 1249-50.) In other words, a physical solution is an accommodation, through physical manipulation  
19 of the water supply, of junior rights holders' rights; a physical solution does not exist absent a  
20 determination about who those junior rights holders are.

21 The doctrine of physical solution is a practical way to carry out the mandate of Article X,  
22 Section 2, which requires that the water resources of the State be put to reasonable and beneficial use  
23 to the fullest extent of which they are capable. "Under the doctrine . . . 'solution of water rights  
24 problems by use of all available information and expertise is attempted in order that the best possible  
25 use is made of the waters in their apportionment among contending parties.'" (Littleworth and  
26 Garner, pp. 173-74 (citing to Rogers and Nichols, pp. 547-48).) Contrary to Purveyors' assertions,  
27 the issue of whether or not Purveyors have obtained groundwater rights by prescription forms the  
28

1 foundation of the creation of any physical solution and cannot be left to subsequent phases of  
2 litigation. The Purveyors' claim of prescription forms the heart of this entire lawsuit – it is the core  
3 element of their request for a declaration of rights, and is the predicate to the imposition of a  
4 physical solution. A Phase 3 trial regarding Safe Yield and Overdraft will be about the adversity  
5 element of the claim of prescription—all other uses of those concepts will be secondary and  
6 derivative to this core purpose.

7 **IV. CONCLUSION**

8 On the basis of the prior briefs, and for all of the reasons above, AGWA requests that the  
9 Court order that Phase 3 trial proceed as a trial by jury.  
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16 Dated: February 25, 2008

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA,  
COUNTY OF SANTA BARBARA**

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action; my business address is: 21 E. Carrillo Street, Santa Barbara, California 93101.

On February 25, 2009, I served the foregoing document described as:

**RESPONSE TO WATER PUBLIC WATER SUPPLIERS'  
SUPPLEMENTAL POINTS AND AUTHORITIES IN OPPOSITION TO  
THE CLAIM OF RIGHT TO A JURY TRIAL AND CONSOLIDATED  
REPLY TO VARIOUS OPPOSITIONS RE: JURY TRIAL**

on the interested parties in this action.

By posting it on the website at 11:00 p.m./a.m. on February 25, 2009.  
This posting was reported as complete and without error.

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

Executed in Santa Barbara, California, on February 25, 2009.

*Maria Klachko*

TYPE OR PRINT NAME



SIGNATURE