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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, 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

) Judicial Council Coordination Proceeding
) No. 4408
)

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

) **AGWA’S NOTICE OF MOTION AND**
) **MOTION FOR LEGAL FINDINGS**
) **DEFINING POTENTIAL PRESCRIPTIVE**
) **PERIOD TO PRIOR TO 1999;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT THEREOF**

) **Date: February 14, 2012**
) **Time: 9:00 am**
) **Room: 1515**
)

MOTION TO DEFINE PRESCRIPTIVE PERIOD


1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 The Antelope Valley Groundwater Agreement Association (“AGWA”) moves this Court to
3 request that the Court define the potential prescriptive period that the Court will apply in the Phase 4
4 trial of this matter. This motion is based upon the accompanying Memorandum of Points and
5 Authorities and all supplemental papers and oral argument presented at the time of the hearing on
6 this motion, and is made on the grounds that in order that the parties may present evidence relevant
7 to the issues the Court designates to be heard in the fourth phase of trial, the parties must know the
8 Court’s definition of the potential prescriptive period.

9 While AGWA believes that engaging in pre-trial motion practice at this time is inappropriate
10 and counter-productive to the settlement efforts underway, this motion is brought at this time at the
11 Court’s direction given at the December 13, 2011 hearing.

12 Dated: January 18, 2012

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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15 By: _____
16 MICHAEL T. FIFE
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18 ATTORNEYS FOR AGWA
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Antelope Valley Groundwater Agreement Association (“AGWA”) submits this Motion to request that the Court define the potential prescriptive period that may be used in the fourth phase of trial. Based on information gathered during the course of discovery, AGWA believes there is uncertainty as to the applicable prescriptive period such that the Court’s instruction to the parties is necessary. To allow the parties’ preparation for the fourth phase of trial in this matter to proceed as efficiently as possible and not to result in the waste of the time and resources of the Court and the parties, the parties must know the Court’s definition of the potential prescriptive period.

II. AGWA REQUESTS THAT THE COURT CLARIFY THAT THE PRESCRIPTIVE PERIOD IS LIMITED BY THE INITIATION OF THIS ADJUDICATION

The Court has set a trial setting conference for the fourth phase of trial, and the Public Water Suppliers have requested that this phase of trial include the determination of the groundwater rights within the Antelope Valley Groundwater Basin (“Basin”). (*Public Water Suppliers’ Case Management Statement*, filed December 12, 2011, at 1:17-20.) At present, many of the parties are actively engaged in settlement discussions regarding the allocation of such groundwater rights, but trial may be necessary if the parties cannot reach a reasonable settlement. Many of the Public Water Suppliers claim to have perfected prescriptive rights, (*Public Water Suppliers’ First Amended Cross Complaint*, filed January 10, 2007, at ¶¶ 41-45), and they will attempt to prove the same during the Phase 4 Trial. AGWA wishes to ensure that, if a trial is necessary on this issue, the evidence presented will squarely address the applicable potential prescriptive period.

Under California law, a prescriptive right may be perfected through use that is actual, open and notorious, hostile and adverse to the original owner, continuous and uninterrupted for the statutory period of five years, and under a claim of right. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 282 (*San Fernando*) [citing *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 926-927 (*Pasadena*)].) While the prescriptive period need not be the continuous five-year period immediately preceding the filing of a complaint to enjoin the adverse

1 use, (*Pasadena*, 33 Cal.2d at 930-33; *Lee v. Pacific Gas & Elec. Co.* (1936) 7 Cal.2d 114, 120 [“It
2 must be continuous and uninterrupted for a period of five years prior to the commencement of the
3 action, not, however, necessarily next before the commencement of the action.”]), once such an
4 action is commenced, the filing of complaint tolls the claim as to perfection and further use will no
5 longer meet the prescription requirements. (*Yorba v. Anaheim Union Water Co.* (1953) 41 Cal.2d
6 265, 270 [“...the filing of an action, either by the person asserting a prescriptive right, or by the
7 person against whom the statute of limitations is running, will interrupt the running of the
8 prescriptive period, and the statute will be tolled while the action is actively pending.”]; *see also*,
9 *California Maryland Funding, Inc. v. Lowe* (1995) 37 Cal.App.4th 1798, 1803-04 [“...the statute of
10 limitations can be tolled by filing, within the five-year period, an action contesting the right to the
11 property..... Such an action has the effect of interrupting the continuous-possession element of
12 adverse possession.”] (citations omitted).)

13 In this case, the first of the lawsuits to adjudicate the Basin’s groundwater rights was filed by
14 carrot growers in 1999. On October 29, 1999, Diamond Farming Co. filed its *Complaint to Quiet*
15 *Title* to Diamond Farming’s alleged superior priority of overlying rights against the Public Water
16 Suppliers in Kern County Superior Court Case No. 240090 AEW. (*Diamond Farming Company’s*
17 *Complaint to Quiet Title*, filed October 29, 1999, at ¶¶ 13-14.) Four months later, Diamond Farming
18 Co. filed a similar action in Los Angeles County Superior Court Case No. MCO11330. On August
19 2, 2000, these actions were transferred by motion and stipulation to the Riverside County Superior
20 Court and consolidated for trial. On January 25, 2001, Wm. Bolthouse Farms, Inc. filed a complaint
21 alleging a cause of action for quiet title against the Public Water Suppliers based on its alleged
22 superior priority of overlying rights. The Diamond Farming Co. and Bolthouse actions were
23 consolidated and are part of the action now before the Court. Accordingly, the present action
24 commenced upon the filing of Diamond Farming Co.’s original complaint in 1999, thus tolling the
25 prescriptive period.

26 It is AGWA’s position that the Public Water Suppliers will not be able to establish that they
27 have perfected prescriptive rights. However, in order to conserve the time and the resources of the
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1 parties in their preparation for Phase 4 trial, the Court should make clear that the parties need to or
2 may present evidence related to any claim of an appropriative taking of non-surplus water for any
3 five-year period prior to filing of the complaint to quiet title and commencement of this action.
4 Where the first quiet title complaint was filed by Diamond Farming Co. in 1999, the Court should
5 limit the prescriptive period to periods up to 1999.

6 **III. CONCLUSION**

7 Based on the foregoing, the AGWA respectfully requests that this Court grant its Motion to
8 Define Potential Prescriptive Period as described above.

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10 Dated: January 18, 2012

BROWNSTEIN HYATT FARBER SCHRECK, LLP



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