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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**
) **REGARDING SCOPE OF IMMUNITY**
) **UNDER CIVIL CODE SECTION 1007;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT THEREOF**

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

MOTION REGARDING SCOPE OF IMMUNITY UNDER CIVIL CODE § 1007

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

2 The Antelope Valley Groundwater Agreement Association (“AGWA”) moves this Court to
3 confirm that the scope of immunity under Civil Code section 1007 for claims of prescription during
4 periods prior to its 1968 amendment is limited to governmental entities’ water rights used in a
5 governmental capacity, and not in a proprietary capacity.

6 This motion is based upon the accompanying Memorandum of Points and Authorities and all
7 supplemental papers and oral argument presented at the time of the hearing on this motion, and is
8 made on the grounds that in order that the parties may present evidence relevant to the issues the
9 Court designates to be heard in the Phase 4 trial, the parties must know the Court’s understanding of
10 the scope of the immunity under Civil Code section 1007. While AGWA believes that engaging in
11 pre-trial motion practice at this time is inappropriate and counter-productive to the settlement efforts
12 underway, this motion is brought at this time at the Court’s direction given at the December 13, 2011
13 hearing.

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15 Dated: January 18, 2012

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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18 By: _____
19 MICHAEL T. FIFE
20 BRADLEY J. HERREMA
21 ATTORNEYS FOR AGWA
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Antelope Valley Groundwater Agreement Association (“AGWA”) files this Motion seeking to confirm that the scope of immunity under Civil Code section 1007 is limited to governmental entities’ water rights that are used in the governmental capacity, and not in the proprietary capacity, for any claims of prescriptive rights alleged to have been perfected during periods prior to 1968, the date of Civil Code section 1007’s amendment. Specifically, AGWA seeks to confirm that section 1007 immunity does not apply to any water rights held by a governmental entity based on its ownership of property overlying a groundwater basin, which property is used in the governmental entity’s proprietary capacity, such as in the leasing of property for farming, during periods prior to 1968. To allow the 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 understanding of the scope of the immunity under Civil Code section 1007.

II. THE CIVIL CODE IMMUNITY DOES NOT EXTEND TO PROPERTY THAT IS USED IN A GOVERNMENT ENTITY’S PROPRIETARY CAPACITY BEFORE 1968

Civil Code section 1007 currently provides in full:

Occupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar any action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all, but no possession by any person, firm or corporation no matter how long continued of any land, water, water right, easement, or other property whatsoever dedicated to a public use by a public utility, or dedicated to or owned by the state or any public entity, shall ever ripen into any title, interest or right against the owner thereof.

As currently constituted, section 1007 immunity against prescription extends to all property of the specified governmental entities, regardless of whether the property is used in a governmental or proprietary capacity, and whether or not the property is devoted to public uses. (*See Wright v. Goleta* (1985) 174 Cal.App.3d 74, 90-91.) Prior to 1968, it was formerly the rule that property owned by the state or municipalities in a proprietary capacity, and that was not devoted to public

1 use, was subject to adverse possession. (See *Los Angeles v. Coffey* (1966) 243 Cal.App.2d 121, 124;
2 *City of Los Angeles v. San Fernando* (1975) 14 Cal.3d 199, 270; *California Water Service Co. v.*
3 *Edward Sidebotham & Son* (1964) 224 Cal.App.2d 715, 726.) This rule was changed by amendment
4 of the Civil Code in 1968 to prohibit acquisition of title by adverse possession of property dedicated
5 to or owned by the state or any public entity, regardless of whether such property is owned in a
6 governmental or proprietary capacity. (See *Los Angeles v. San Fernando* (1975) 14 Cal.3d 199, 270;
7 *Wright v. Goleta Water Dist.* (1985) 174 Cal.App.3d 74, 90-91.)

8 The provisions of section 1007 effective prior to its amendment should apply to any
9 prescriptive claims based on a prescriptive period prior to 1968 because upon completion of five
10 years of adverse use, prescriptive title vests in the claimant. (*City of Pasadena v. City of Alhambra*
11 (1949) 33 Cal.2d 908, 930-33.) By running of the statute of limitations, the title to the property is
12 regarded as vested in the possessor, and the subsequent change of the limitation law cannot be given
13 a retroactive effect so as to disturb the title. (*Peiser v. Griffin* (1899) 125 Cal. 9.) The California
14 Supreme Court has repeatedly stated the fundamental principle that “legislative enactments are
15 generally presumed to operate prospectively and not retroactively unless the Legislature expresses a
16 different intention.” (See, e.g., *Fox v. Alexis* (1985) 38 Cal.3d 621, 637.) Civil Code section 3
17 expressly states “No part of [the Civil Code] is retroactive, unless expressly so declared.” There is
18 nothing in the language of Civil Code section 1007 that expressly indicates that the statute is to
19 apply retroactively. Accordingly, for prescriptive claims prior to 1968 amendment of the Civil
20 Code, the Court must apply the law existing prior to 1968.

21 In 1975, in *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 274-75, the
22 Supreme Court of California applied Civil Code section 1007, as it existed after its 1935
23 amendment, to claims of prescriptive rights claimed to have been perfected after 1935 and prior to
24 1968, explaining:

25 The immunity from prescription under the prior case law preserved by
26 the last sentence of the amendment (see fn. 74) extended to property
27 owned by the state or any other public entity as long as such property
28 was devoted to a public use. (*City of Oakland v. Burns* (1956) 46
 Cal.2d 401, 407, 296 P.2d 333; *People v. Chambers* (1951) 37 Cal.2d

552, 556—557, 233 P.2d 557; *Reclamation Dist. No. 833 v. American Farms Co.* (1930) 209 Cal. 74, 81, 285 P. 688.)

On the other hand the prior case law permitted the rights of the state or a local governmental entity in property not devoted to a public use and owned in a proprietary capacity to be lost through adverse possession culminating in prescription. (*Henry Cowell Lime & Cement Co. v. State* (1941) 18 Cal.2d 169, 172, 114 P.2d 331.) If the property was owned by the governmental entity in its proprietary capacity but was nevertheless devoted to a public use, it remained immune from prescription. (*City of Oakland v. Burns, supra*, 46 Cal.2d at p. 407, 296 P.2d 333.)

(*San Fernando*, 14 Cal.3d at 274-75.)

In this case, the Public Water Suppliers have alleged that they have perfected prescriptive rights in the waters of the Basin. For claims alleged to arise out of a prescriptive period prior to the Legislature's 1968 amendment of section 1007, creating immunity against prescription for all property owned by any governmental entity, the Court should apply the law in effect when those prescriptive rights are claimed to have vested. For prescriptive periods prior to 1968, the law at the time such rights would have vested held that if the property was only held in a proprietary capacity and not devoted to a public use, governmental immunity against prescription could not apply under prior authority. (*Id.* (see also cases cited therein).)

Through the course of discovery, AGWA has become aware that there are governmental entities within the Basin owning real property overlying the Basin, and that such real property may not have historically been placed to governmental use, but was held the governmental entity and used in its proprietary capacity. To the extent any governmental entities allege prescription during prescriptive periods prior to 1968, the Court should apply the law in effect at the time of alleged prescription that does not allow for governmental entities' immunity against prescription when property owned is not dedicated to public use.

III. CONCLUSION

AGWA requests that the Court make a determination that the scope of immunity under Civil Code section 1007 is limited to governmental entities' water rights that are used in the governmental capacity, and not in the proprietary capacity, for any claims of prescriptive rights alleged to have

1 been perfected during periods prior to 1968, the date of Civil Code section 1007's amendment.

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3 Dated: January 18, 2012

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