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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 REPLY IN SUPPORT OF ITS  
MOTION FOR LEGAL FINDINGS  
DEFINING POTENTIAL PRESCRIPTIVE  
PERIOD TO PRIOR TO 1999**

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

REPLY IN SUPPORT OF MOTION TO DEFINE PRESCRIPTIVE PERIOD

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

2           The Antelope Valley Groundwater Agreement Association (“AGWA”) submits this reply  
3 brief in further support of its Motion for Legal Findings Defining Potential Prescriptive Period to  
4 Prior to 1999 (the “Motion”), and in response to the oppositions of the Public Water Suppliers and  
5 Phelan Piñon Hills Community Services District (“PPHCSD”).

6           As stated in the Motion, AGWA agrees with PPHCSD that engaging in pre-trial motion  
7 practice at this time is inappropriate, and also that such practice is counter-productive to the  
8 settlement efforts underway. (AGWA Motion, at 2.) Nonetheless, AGWA brings its Motion  
9 pursuant to the Court’s direction at the December 13, 2011 hearing in this matter. Should the Court  
10 determine to rule on Los Angeles County Waterworks District No. 40’s motion for legal findings re  
11 Water Code section 4999 *et seq.*, based on the County’s claim that such a ruling is necessary for the  
12 presently ongoing settlement negotiations,<sup>1</sup> then the Court should rule on AGWA’s Motion as well.

13   **I. THE OPPOSITIONS IGNORE THE CORRELATIVE NATURE OF**  
14   **GROUNDWATER RIGHTS AND ITS EFFECT ON THE TOLLING OF THE**  
15   **PRESCRIPTIVE PERIOD**

16           An action contesting another party’s right to property has the effect of interrupting the  
17 continuous-possession element of adverse possession. (*Chew v. Leach* (1955) 134 Cal.App.2d 91,  
18 92; *Knoke v. Swan* (1935) 2 Cal.2d 630, 632.) Because of the correlative nature of overlying  
19 groundwater rights, any action that alleges prescriptive rights to or seeks to quiet title to groundwater  
20 rights in the Basin necessarily involves other overlying landowners in the Basin. Accordingly,  
21 where the carrot growers’ 1999 suit to quiet title was filed against all parties who claim a legal  
22 interest in the groundwater of the Antelope Valley Basin, the filing of this action was sufficient to  
23 interrupt the continuous element of the prescription and thus the running of the prescriptive period in  
24 1999.

25           Due to the correlative nature of overlying rights in the Basin, any determination of rights

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27 <sup>1</sup> As stated in AGWA’s January 31, 2012 Case Management Statement, the most critical issue that, if  
28 decided, would result in a removal of any barrier to settlement is the factual issue of return flows  
from the use of imported water. (January 31, 2012 Case Management Statement of Antelope Valley  
Groundwater Agreement Association, at 2-3.)

1 claimed by Diamond Farming Co. in its 1999 quiet title action necessarily involved overlying  
2 landowners such as the members of AGWA, and interrupted any prescription of groundwater in the  
3 Basin by the Public Water Suppliers. Actions to quiet title and for prescriptive rights as against  
4 overlying groundwater rights are unique because overlying groundwater rights are correlative and  
5 therefore of equal priority with one another. (*City of Barstow v. Mojave Water Agency* (2000) 23  
6 Cal.4th 1224, 1241; *Katz v. Walkinshaw* (1903) 141 Cal. 116.) Thus, an action affecting the rights  
7 of one party overlying the Basin affects the rights of all parties overlying the Basin.

8 In the consolidation proceedings in this action, the Public Water Suppliers themselves  
9 acknowledged that each suit in this action seeks a declaration of rights to produce water from the  
10 Basin, “which requires the *inter se* adjudication of the rights of all parties to these coordinated  
11 proceedings appropriately stated in a single judgment. As a result, it is irrelevant, for purposes of  
12 determining these correlative rights, that certain parties may have named only certain other parties in  
13 their operative pleadings.” (Public Water Suppliers’ Reply Memorandum of Points and Authorities  
14 in Support of Public Water Suppliers’ Proposed Order for Consolidation (Feb. 3, 2010), at 1:12-19.)

15 The case law the Public Water Suppliers and PPHCSD cite does not apply to groundwater  
16 rights, and is not relevant in the context of an *inter se* adjudication. *Montecito Valley Water Co. v.*  
17 *City of Santa Barbara* (1904) 144 Cal. 578, cited by the Public Water suppliers, is a decision arising  
18 from an action to enjoin diversion of surface water from a stream. While the court in that case held  
19 that an action brought by a third party will not interrupt the continuous use as to a nonlitigating legal  
20 user (*id.*, at 597), applying this reasoning to a groundwater adjudication ignores the correlative  
21 nature of overlying rights. Three other cases cited by the Public Water Suppliers, *Hamilton v.*  
22 *Asbestos Corp.* (2000) 22 Cal.4th 1127; *General Motors Corp. v. Superior Court of Los Angeles*  
23 *County* (1966) 65 Cal.2d 88, 91-93; and *California Maryland Funding, Inc. v. Lowe* (1995) 37  
24 Cal.App.4th 1798, also did not involve correlative rights to a common groundwater supply and are  
25 thus distinguishable here. (See *Hamilton*, 22 Cal.4th at 1132 [whether a special statute of limitations  
26 for exposure to asbestos bars an action brought by a worker who retired before suffering a  
27 disability]; *General Motors Corp.*, 65 Cal.2d at 93-94 [recognizing an implied exception to dismissal  
28 of an action for wrongful death not brought to trial within five years]; *California Maryland Funding*,

1 *Inc.*, 37 Cal.App.4th at 1802-04 [earlier lawsuit over the right to property did not operate to toll the  
2 statute of limitations as to adverse possession, since it had been dismissed without any change of  
3 possession].)

4 **II. PPHCSD’S ARGUMENTS ARE IRRELEVANT TO THE PERIOD IN WHICH**  
5 **PRESCRIPTIVE ELEMENTS CAN BE SHOWN**

6 While PPHCSD’s Opposition includes many arguments as to why a prescriptive period may  
7 extend beyond 1999, none of these arguments are relevant to the period in which appropriators  
8 within the Basin may be able to establish the elements of prescription. PPHCSD’s request that the  
9 Court set an equitable “base period” (PPHCSD Opposition, at pp. 6-7) appears to result from a  
10 misunderstanding of what AGWA’s Motion requests. AGWA’s request is not that the Court set a  
11 period for evaluation of water use, but that the Court confirm that the years in which appropriators  
12 within the Basin may have established prescriptive rights include only the period prior to the  
13 initiation of the initial complaints to quiet title to groundwater in the Basin (1999).

14 As described above, in the case of a quiet title action regarding overlying rights to  
15 groundwater, the initiation of a suit by any holder of rights to the common supply would interrupt  
16 the continuous element of any party’s otherwise prescriptive groundwater use. Accordingly, the  
17 Court’s consolidation of later-filed actions has no effect on the interruption of the continuous  
18 element of any party’s otherwise prescriptive groundwater use. Finally, the McCarran Amendment  
19 is also irrelevant to whether the prescriptive period was tolled or not. The McCarran Amendment’s  
20 “comprehensive adjudication” requirement does not toll a prescriptive period, and PPHCSD does not  
21 and cannot point to any authority so stating.

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1 **III. CONCLUSION**

2 Based on the points and authorities above, as well as the Memorandum of Points and  
3 Authorities accompanying the AGWA Motion, AGWA requests that the Court confirm that any  
4 potential prescriptive period is limited by the commencement of the first action in this consolidated  
5 proceeding, filed in 1999.

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7 Dated: February 6, 2012

BROWNSTEIN HYATT FARBER SCHRECK, LLP



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9 By: \_\_\_\_\_  
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