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2 **INTRODUCTION**

3 Plaintiff Los Angeles County Waterworks District No. 40's ("The District") Complaint
4 for Declaratory and Injunctive Relief and Adjudication of Water Rights is an amalgamation of
5 loose arguments that fail to coalesce into articulable claims for relief. The District's inartful
6 attempt to "seek a judicial determination of all rights to groundwater with the Antelope Valley
7 Groundwater Basin" is flawed in numerous respects. The primary method used to attempt to
8 adjudicate the rights claimed by The District and all other landowners in the Antelope Valley is
9 through a variety of declaratory relief actions. These causes of action are not properly pled, the
10 claims are incomprehensibly vague, and The District seeks to disguise its true goal. Essentially,
11 The District seeks to enjoin all parties including Bolthouse Properties, LLC ("Bolthouse") from
12 pumping groundwater in the Antelope Valley Groundwater Basin. However, The District seeks
13 this injunction without ever pleading any Cause of Action for preliminary or permanent
14 injunction.

15 Each of The District's claims fail to state facts sufficient to constitute a Cause of Action.
16 Moreover, each of The District's claims is vague and uncertain.

17 Bolthouse joins in the Demurrer filed and served by Diamond Farming in this action.
18 Additionally, Bolthouse submits the following additional points and authorities.

19 **ARGUMENT**

20 **I. Bolthouse's Previously Filed Action for Quiet Title Filed in Riverside County Takes**
21 **Precedence Over The District's Complaint.**

22 The District's late filed (November 29, 2004) Complaint seeks to take precedence on the
23 issue of water rights adjudication in the Antelope Valley over Bolthouse's previously filed
24 Complaint for Quiet Title. Bolthouse filed its Complaint for Quiet Title in Riverside County on
25 January 25, 2001. Bolthouse offered proof of its ownership of water rights based on its interests
26 in overlying land in Antelope Valley and requested that Court issue a declaration that
27 Bolthouse's overlying right is undisturbed. Bolthouse's action has now been coordinated with
28 the District's Complaint. The District's first, second, fourth, fifth and sixth causes of action

1 challenge the priority of overlying landowners and, by implication, seek to adjudicate their
2 claims prior to Bolthouse's claims.

3 In fact, on the first-in-time principle, Bolthouse has an absolute right to adjudication of
4 issues regarding prescription based on the filing date of the Riverside County complaint. These
5 issues are critical in adverse possession proceedings. Certainly, The District had the obligation
6 to state any new matter constituting a defense as part of its Answer to Bolthouse's Complaint.
7 *Cal. Code of Civ. Proc. §761.03.* Any rival claims to the supremacy of Bolthouse's and
8 Diamond Farms' rights of overlying landowners were brought by answer. Certainly, in an action
9 involving rights to property, adverse possession issues should be decided according to quiet title
10 provisions. *Cal. Code of Civ. Proc. §760.30(b).* Rather than proceed by The District's
11 overbroad Complaint, this Court should require The District to proceed by its Answer to
12 Bolthouse's Complaint for Quiet Title. Indeed, if all The District truly seeks by way of its
13 Complaint is a declaration as to its rights to water in the Antelope Valley Groundwater Basin, the
14 quiet title statutes provide the appropriate vehicle for such adjudication.

15 **II. The District's Second Cause of Action for Appropriative Rights is Ambiguous and**
16 **Unintelligible.**

17 Bolthouse demurs to The District's Second Cause of Action on the grounds that the
18 complaint fails to state facts that would allow the Court to grant the requested relief.
19 Additionally, the Complaint is unintelligible. *Cal. Civ. Proc. §430.10 (e) (f).*

20 It is settled that water can be pumped based upon an overlying right or based upon an
21 appropriative right. Pumping for use on overlying land is based on the overlying right. Pumping
22 for sale to others or for export outside the area overlying the supply is appropriative. As
23 plaintiffs claim, appropriative pumpers hold rights to water that is surplus to the needs of
24 overlying owners. Complaint 10:18-19. As among appropriators, priority is based on the first-
25 in-time principle.

26 The Second Cause of Action asks the Court to declare the first-in-time priority among
27 appropriators. The infirmity in the Complaint is that it is confusing and contradictory in its
28 factual allegations of the nature of Bolthouse's pumping.

1 The complaint alleges that “each defendant” has and is “appropriating.” Complaint 6:27
2 Elsewhere in the Complaint Plaintiff alleges that Bolthouse is a property owner (Complaint
3 7:27), irrigates land within the Antelope Valley (Complaint 16:7-8), and that owners of land
4 claim overlying rights (Complaint 7:14-15). These factual allegations, if proved, would make
5 Bolthouse an overlying pumper rather than an appropriator.

6 If Bolthouse is an overlying pumper as the Complaint alleges, the Second Cause of action
7 is not properly directed at Bolthouse because, as a matter of settled law, Bolthouse would have
8 no claim to any appropriative rights and no position in the first-in-time appropriator rights
9 hierarchy. As to Bolthouse, there would be nothing in the Second Cause of Action for the Court
10 to determine.

11 On the other hand, if Plaintiff believes Bolthouse to be an appropriative pumper, Plaintiff
12 must support this legal conclusion with allegations of facts of exportation or sale that would
13 make Bolthouse an appropriator.

14 As the complaint stands, the second cause of action fails to state facts sufficient to
15 constitute a Cause of Action against Bolthouse and is ambiguous and unintelligible. It should be
16 dismissed. *Cal. Civ. Proc. §430.10 (e) (f)*. Leave to amend should be granted to allow Plaintiffs
17 to plead facts sufficient to establish Bolthouse’s status as an appropriative pumper if that is
18 Plaintiff’s claim. On the other hand, if Plaintiff believes Bolthouse’s pumping is overlying, the
19 Cause of Action to determine appropriative rights cannot be directed at Bolthouse.

20 **III. The District’s Claims for Declaratory Relief in Causes of Actions Three Through**
21 **Eight are Improper.**

22 The District’s claims for declaratory relief fail to state causes of action and are uncertain.

23 **A. The District’s claims for declaratory relief are wholly improper.**

24 *California Code of Civil Procedure §1060* sets forth the narrow circumstances under
25 which a declaratory relief action will lie. *Cal. Code of Civ. Proc. §1061* provides the Court with
26 discretion to refuse to exercise its power of declaratory relief “where its declaration or
27 determination is not necessary or proper at the time under all the circumstances.” An action for
28 declaratory relief is authorized only when an actual controversy relating to the legal rights and

1 duties of the respective parties exists. The controversy must be of a character that admits of
2 specific and conclusive relief by a judgment within the field of judicial determination, as
3 distinguished from an advisory opinion on a particular or hypothetical set of facts. *Zetterberg v.*
4 *State Department of Public Health* (1974) 43 Cal. App. 3d 657, 661. A justiciable controversy
5 must be definite, concrete, and touching the legal relations of the parties having adverse legal
6 interest. *LePage v. Oakland* (1970) 13 Cal. App. 3d 689, 692.

7 The District fails to establish that an actual controversy exists because it is impossible to
8 determine The District's position in the alleged controversies. For example, The District's third
9 Cause of Action for "physical solution" apparently seeks to compel the Court to adopt "a
10 common sense approach to resolving water rights litigation." The District seeks to have this
11 Court disregard the parties' existing rights to groundwater, such as an overlying landowner's
12 priority right to the use of water, in an effort to "satisfy the reasonable and beneficial needs of all
13 parties." Precisely, what is The District's position in connection with this "physical solution"?
14 What are the positions of each of the parties involved in this litigation? Indeed, how would the
15 rights of the parties be adjudicated under this purported rubric? In essence, The District seeks to
16 create a Cause of Action for a Physical Solution where none exists as a matter of law simply by
17 attaching the moniker "Declaratory Relief." Claims for declaratory relief should not be used to
18 drag the Court into advisory matters which do not present a justiciable claim.

19 **B. Each of The District's Causes of Action are Disguised Claims for Permanent**
20 **Injunction.**

21 Essentially, each of The District's causes of action seeks to curtail Bolthouse's pumping
22 by way of injunction. Causes of actions three through eight request far more than a simple
23 declaration of The District's pumping rights. Indeed, The District's prayer for relief articulates a
24 request "for preliminary and permanent injunctions which prohibits defendants, and each of
25 them, from taking, wasting or failing to conserve water from Antelope Valley Groundwater
26 Basin in any manner which interferes with the rights of the [District]..." Nevertheless, the
27 causes of action themselves merely plead for a declaration of rights. The level of specificity and
28 detail contained within the Complaint does not sufficiently plead the factual predicates required


1 for injunctions. The allegations of the Complaint must be factual. Conclusory averments are
2 insufficient to support issuing an injunction. *Leavy v. City of Santa Monica* (2004) 114 Cal.
3 App. 4th 1252, 1262 (declarations relying on conclusory statements, hearsay and speculation are
4 insufficient).

5 The amalgamation of facts alleged in causes of action three through eight do not properly
6 frame legal causes of action and are simply insufficient to support the injunctive relief requested.
7 Accordingly, Bolthouse's Demurrers should be sustained.

8 DATED: October 27, 2005

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10 CLIFFORD & BROWN

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