



1 **INTRODUCTION**

2 Los Angeles County Water District No. 40's ("The District") Complaint is flawed in that  
3 it seeks to set a priority to its action over the pre-existing claims of Bolthouse Properties, LLC  
4 ("Bolthouse"). The District also includes Bolthouse in a cause of action directed at water  
5 appropriators even though all facts pled in the Complaint state that Bolthouse is an overlying  
6 landowner that uses water on its own property, and no facts are pled to support the legal  
7 conclusion that Bolthouse is an appropriator. Finally, The District cannot obtain declaratory  
8 relief on causes of action where The District has failed to state its own position in the alleged  
9 controversy. This Court has no way of determining the respective rights of the parties in the face  
10 of the vague and amorphous claims for "physical solution" and "municipal priority."  
11 Accordingly, Bolthouse's demurrers must be sustained.

12 **ARGUMENT**

13 **I. THE DISTRICT'S PRESCRIPTIVE CLAIM MUST BE ABATED BECAUSE**  
14 **THERE IS ANOTHER ACTION PENDING.**

15 The pendency of another earlier action growing out of the same nexus of facts and  
16 between the same parties is a ground for abatement of the second action. *Leadford v. Leadford*  
17 (1992) 6 Cal.App.4<sup>th</sup> 571, 574; *Cal. Code of Civ. Proc.* § 410.30(c). If the Court determines that  
18 there is another action pending raising substantially the same issues between the same parties, it  
19 is to enter an interlocutory judgment specified in *Cal. Code of Civ. Proc.* § 597. "Abatement of  
20 the second action is a matter of right. A trial court has no discretion to allow the second action to  
21 proceed if it finds the first involves substantially the same controversy between the same  
22 parties." *Leadford*, 6 Cal.App.4<sup>th</sup> at 574.

23 Bolthouse's quiet title action seeks to adjudicate the identical claims as The District's  
24 first cause of action for prescriptive rights. Essentially, The District's claim for prescription is a  
25 defense to the quiet title relief that must be adjudicated in response to Bolthouse's claim.

26 The District's argument that determination of Bolthouse's rights as an overlying  
27 landowner (and The District's competing claim for prescriptive rights) would not be *res judicata*  
28 on The District's larger claim for physical solution is self-defeating. Naturally, any physical

1 solution (if such a claim actually exists) must encompass a determination of Bolthouse’s rights as  
2 an overlying landowner.<sup>1</sup> In fact, the determination of the rights of overlying landowners  
3 remains the fundamental first step to any litigation involving the competing rights of water  
4 producers in the Antelope Valley.

5 **II. THE DISTRICT FAILED TO PLEAD FACTS ALLEGING THAT BOLTHOUSE**  
6 **IS AN APPROPRIATIVE PUMPER.**

7 Appropriation is the use of water for nonoverlying purposes such as exportation to lands  
8 outside the basin or for municipal use within the basin. (*Hi-Desert County Water District v. Blue*  
9 *Skies Country Club, Inc.* (1994) 23 Cal.App.4<sup>th</sup> 1723, 1731, citing *Tehachapi-Cummings County*  
10 *Water Dist. v. Armstrong* (1975) 49 Cal.App.3d 992, 1001.) Proper overlying use is paramount,  
11 and the right of an appropriator, being limited to the amount of the surplus, must yield to that of  
12 the overlying owner in the event of a shortage unless the appropriator has gained prescriptive  
13 rights through the taking of non-surplus water. (*Ibid.*)

14 *City of Barstow v. Mojave Water Agency et al.* (2000) 23 Cal.4<sup>th</sup> 1224, 1240 discussed the  
15 principles and policies behind appropriative water rights and stated:

16 “Any person having a legal right to surface or ground water may  
17 take only such amount as he reasonably needs for beneficial  
18 purposes . . . . Any water not needed for the reasonable beneficial  
19 use of those having prior rights is excess or surplus water and may  
20 rightly be appropriated on privately owned land for non-overlying  
21 use, such as devotion to public use or exportation beyond the basin  
22 or watershed [citation]. When there is a surplus, the holder of prior  
23 rights may not enjoin its appropriation [citation]. Proper overlying  
24 use, however, is paramount and the rights of an appropriator, being  
25 limited to the amount of the surplus [citation], must yield to that of  
the overlying owner in the event of a shortage, unless the  
appropriator has gain prescriptive rights through [adverse, open  
and hostile] taking of nonsurplus waters . . . . As between  
appropriators, however, the one first in time is the first in right, and

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26 <sup>1</sup> The Court’s equitable powers to order a physical solution are limited. Certainly, any physical solution  
27 must recognize the existing priority of water rights. “The [physical] solution’s general purpose cannot  
28 simply ignore the priority rights of the parties asserting them. In ordering a physical solution, therefore, a  
court may neither change priorities among the water rights holders nor eliminate vested rights in applying  
the solution without first considering them in relation to the reasonable use doctrine.” *City of Barstow v.*  
*Mojave Water Agency* (2000) 23 Cal. 4<sup>th</sup> 1224, 1250

1 a prior appropriator is entitled to all the water he needs, up to the  
2 amount he has taken in the past, before a subsequent appropriator  
3 may take any [citation].” (*Id.* at p. 1241.)

4 All of the facts pled in The District’s complaint claim that Bolthouse is an overlying  
5 landowner, not an appropriator. Naming Bolthouse in The District’s second cause of action is  
6 unsupported and flies in the face of the factual allegations of the complaint.

7 **III. THE COMPLAINT FAILS TO STATE FACTS SUFFICIENT TO SUPPORT THE**  
8 **INJUNCTIVE RELIEF REQUESTED.**

9 If injunction is the main remedy sought in the complaint, the pleader must set forth that  
10 other remedies at law prove inadequate. (5 Witkin (4<sup>th</sup> ed. 1997) Cal. Proc., Pleadings, §778, p.  
11 235.) The plaintiff in an action for injunctive relief must plead: 1) the tort or other wrongful act  
12 constituting the cause of action; and 2) the grounds for equitable relief of the kind, i.e. a showing  
13 of inadequacy of the remedy at law. (*Id.* at p. 236.) Before a court may consider granting  
14 injunctive relief, the plaintiff must prove his own case and adduce the requisite proof of the  
15 conditions and circumstances upon which he bases his request for such relief. (*Walters v. Reno*,  
16 (9th Cir. 1998) 145 F.3d 1032, 1048; *Orantes-Hernandez v. Thornbrugh*, (9th Cir. 1990) 919 F.2d  
17 549, 558.)

18 The tort or other wrongful act must be pled in the manner required for the statement of a  
19 cause of action for any kind of relief based on that wrongful act. (*Ibid.*) The most emphatic and  
20 specific averments of irreparable injury to a property right will not support a decree if the  
21 pleading fails to state a cause of action for the particular tort. (*Ibid.*) Demonstrating inadequacy  
22 of the legal remedy is usually established by a showing that the defendant’s wrongful act  
23 constitutes an actual or threatened injury to property or personal rights that cannot be  
24 compensated by an ordinary damage award. (5 Witkin (4<sup>th</sup> ed. 1997) Cal. Proc., Pleadings, §782,  
25 p. 239.) Bare averments that the act will cause “great and irreparable injury,” or that “plaintiff  
26 has no other adequate remedy” are useless and by themselves will not sustain the demand for an  
27 injunction. (*Ibid.*)

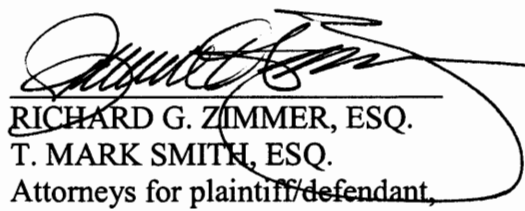
28 The District’s complaint simply fails to properly allege what is sought through the  
purported injunctions. The District merely alleges that it seeks to enjoin Bolthouse from taking “

1 increasing amounts of Basin water” and pleads the dire prediction (unsupported by any facts)  
2 that “potable Basin water will be exhausted.” These bare allegations are simply inadequate to  
3 sustain claims for preliminary or permanent injunctions. The absence of factual allegations to  
4 support the injunctive claims of physical solution, municipal priority, and unreasonable use of  
5 water renders the complaint defective. Accordingly, Bolthouse’s demurrers must be sustained.  
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7 DATED: November 23, 2005

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9  
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