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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

**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 325201;

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
Court of California, County of Kern, Case
No. S-1500-CV-254-348;

Wm. 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, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

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

**PUBLIC WATER SUPPLIERS' OPPOSITION
TO PLAINTIFF WILLIS' MOTION TO
STRIKE OR FOR JUDGMENT ON THE
PLEADINGS AS TO DEFENDANTS'
AFFIRMATIVE DEFENSES ASSERTING
PRESCRIPTION CLAIMS**

Hearing:

Date: August 11, 2008
Time: 9:00 a.m.
Dept.: 1

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I. MOTIONS TO STRIKE ARE DISFAVORED

Motions to strike are disfavored, and pleadings must be liberally construed with a view towards substantial justice. (Code Civ. Proc., § 452; Weil & Brown, Cal.Prac.Guide: Civ.Proc.BeforeTrial [The Rutter Group 2007] § 7:197.) For purposes of ruling on the Motion, the Court reads allegations of the Public Water Suppliers' pleading as a whole, all parts in their context, and assumes their truth. (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.)

II. A CLAIM FOR PRESCRIPTIVE RIGHTS IS PROPER AGAINST NON-PUMPING OVERLYING OWNERS

Under *Los Angeles v. San Fernando* (1975) 14 Cal.3d 199, a claim for prescription is proper against a dormant overlying landowner. Indeed, the *San Fernando* language relied upon by Plaintiffs is inconsistent with their arguments. Contrary to Plaintiff's contentions, the California Supreme Court in *San Fernando* did *not* hold that a prescriptive rights claim could never be made against dormant overlying landowners. Instead, the *San Fernando* Court stated that "prescriptive rights would *not necessarily impair* the private defendants' rights to ground water for new overlying uses for which the need had not yet come into existence during the

prescriptive period.” (*Los Angeles v. San Fernando*, *supra*, 14 Cal.3d at 293, fn. 100 [emphasis added] citing *Tulare Dist. v. Lindsay-Strathmore Dist.* (1935) 3 Cal.2d 489, 525-526.)”

Far from foreclosing any prescriptive rights claim against a dormant overlying landowner, the California Supreme Court’s *San Fernando* language implies that prescriptive rights may impair dormant overlying rights. In *Pasadena v. Alhambra* (1949) 33 Cal. 2d 908, 929-932, the Supreme Court held that prescriptive rights can impair exercised overlying rights and that to maintain their rights overlying pumpers must have engaged in “self-help” pumping. *San Fernando*, relying on *Pasadena*, held that overlying rights can be enjoined “insofar as they would constitute an overdraft on the basin supply.” (*San Fernando* at 291.) Reading these cases together supports the argument that a dormant overlying right can be limited by a prescriptive right.

Case law subsequent to *San Fernando* supports the claim that a prescriptive right can impair an unexercised overlying right, and that impairment is a question of fact. In *In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339, there was a full-stream adjudication of surface water rights including riparian rights.¹ A riparian argued that its prospective riparian right could not be limited by adverse claims. The California Supreme Court rejected this argument and concluded that an unexercised riparian’s right could be limited and subordinated to exercised water rights:

Thus, the [State Water Resources Control] Board is authorized to decide that an unexercised riparian claim loses its priority with respect to all rights currently being exercised. Moreover, to the extent that an unexercised riparian right may also create uncertainty with respect to permits of appropriation that the Board may grant after the statutory adjudication procedure is final, and may thereby continue to conflict with the public interest in reasonable and beneficial use of state waters, the Board may also determine that the future riparian right shall have a lower priority than any uses of water it authorizes before the riparian in fact attempts to exercise his right. (*Long Valley*, *supra*, 25 Cal.3d at pp. 358-359.)

¹ Plaintiffs admit, riparian right are analogous to overlying rights. (*Pasadena v. Alhambra* (1949) 33 Cal. 2d 908. Moreover, a statutory adjudication is analogous to the judicial adjudication in this case because both are comprehensive in nature and involve a “complex balancing of both public and private interests, with the final decree assuring certainty to the existing economy and reasonable predictability to the uses of water in a stream system.” (*Long Valley*, *supra*, at p. 358.))

1 The California Supreme Court also made clear that the extent of the riparian right
2 limitation is a factual question. In *Long Valley*, the riparian right could not be completely
3 extinguished because a factual showing was not made that “the imposition of other less drastic
4 limitations on the claim would be less effective in promoting the most reasonable and beneficial
5 use of the stream system.” (*Long Valley, supra*, 25 Cal.3d at p. 358.)

6 **III. THE COURT HAS AUTHORITY TO MAKE FACT-BASED DETERMINATIONS**
7 **WHETHER PRESCRIPTIVE RIGHTS HAVE LIMITED UNEXERCISED**
8 **OVERLYING RIGHTS**

9 In the groundwater context, courts have not directly addressed the question of a
10 prescriptive right limiting an unexercised overlying right. There are two cases, however, that
11 indicate it is nonetheless a factual issue.

12 First, *Wright v. Goleta Water District* (1985) 174 Cal.App.3d 74, does not support
13 Plaintiffs’ argument that a public agency cannot gain a prescriptive right against a non-pumping
14 overlyer. The *Wright* court refused to limit an unexercised overlying right because the case did
15 not involve a comprehensive groundwater adjudication. Wright compared an overlying right to
16 the subordinated riparian rights in *Long Valley*:

17 *Long Valley*, in a riparian setting, recognized the pernicious effects
18 of uncertainty concerning the rights of water users, including the
19 inhibition it causes on long-range planning and investment for
20 development and use of water, and the fostering of costly and
21 piecemeal litigation. Those same factors *should* apply with equal
22 vigor to ground water rights since the Legislature “has totally failed
23 to enact a program that would fulfill the state’s own policy
24 declarations.” Like the unexercised riparian right, the unexercised
25 ground water right of an overlying landowner is unrecorded, of
26 unknown quantity, with little opportunity for control in the public
27 interest, and wasteful to the extent it deters others from using water
28 for fear of its ultimate exercise. (*Wright, supra*, 174 Cal.App.3d at
pp. 86-87[citations omitted].)

24 The *Wright* court continued: “Although it is theoretically possible that judicial
25 determination may provide complete resolution of water rights in an underground basin this
26 action did not purport to do so.” (*Wright, supra*, 174 Cal.App.3d at p. 88.) Unlike *Wright*, these
27 consolidated proceedings constitute a comprehensive basin-wide adjudication. For that reason,
28

1 the due process concerns raised in *Wright* are inapplicable.

2 Finally, the California Supreme Court's decision in *City of Barstow v. Mojave Water*
3 *Agency* (2000) 23 Cal.4th 1224 supports this court making a factual determination on the extent of
4 limiting unexercised overlying rights. In *dicta*, the *Mojave* court wrote:

5 The *Wright* court refused to apply *Long Valley, supra*, 25 Cal. 3d at
6 page 350, to limit the scope of an overlying owner's future
7 unexercised groundwater right to a present appropriative use,
8 because the comprehensive legislative scheme applicable to the
9 adjudication of surface water rights and riparian rights is not
10 applicable to groundwater. (*Wright, supra*, 174 Cal. App. 3d at pp.
11 87-89.) Although we do not address the question here, *Wright* does
12 suggest that, in theory at least, a trial court could apply the *Long*
13 *Valley* riparian right principles to reduce a landowner's future
14 overlying water right use below a current but unreasonable or
15 wasteful usage, as long as the trial court provided the owners with
16 the same notice or due process protections afforded the riparian
17 owners under the Water Code. (See Wat. Code, § 1200 et seq.;
18 *Wright, supra*, 174 Cal. App. 3d at pp. 87-89.) If Californians
19 expect to harmonize water shortages with a fair allocation of future
20 use, courts should have some discretion to limit the future
21 groundwater use of an overlying owner who has exercised the water
22 right and to reduce to a reasonable level the amount the overlying
23 user takes from an overdrafted basin." (*Mojave, supra*, at pp. 1248-
24 1249).

25 The *Mojave* court's language is the California Supreme Court's latest groundwater case,
26 and supports this court making a factual determination as to the extent which prescriptive rights
27 have limited or extinguished unexercised overlying rights in the Antelope Valley Basin.

28 **IV. THERE IS NO BASIS TO GIVE AN UNEXERCISED RIGHT A HIGHER**
PRIORITY THAN AN EXERCISED RIGHT

Plaintiffs erroneously contend that an unexercised overlying right cannot be reduced by
prescription. An exercised overlying right can be reduced by prescription and is preserved to a
certain extent by self-help. (*Pasadena v. Alhambra* (1949) 33 Cal. 2d 908, *Smith v. Hampshire*
(1906) 4 Cal.App. 8.) Plaintiffs' arguments would elevate unexercised rights to a higher priority
than unexercised rights lead to an illogical result. In an overdrafted basin prescriptive pumping
and self-help pumping could exceed safe yield. In that situation additional pumping would not be
feasible and it does not seem reasonable to elevate an unexercised right to a higher priority than
exercised rights. Based on this analysis California law supports the position that a prescriptive

1 right can impair a dormant overlying right.

2 **V. CONCLUSION**

3 For all the above reasons, the Public Water Suppliers respectfully request the Court deny
4 the Motion to Strike.

5
6 Dated: July 29, 2008

BEST BEST & KRIEGER LLP

7
8 By 

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PROOF OF SERVICE

I, Lynda Kocis, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 3750 University Avenue, 3rd Floor, Riverside, California 92502. On July 29, 2008, I served the within document(s):


PUBLIC WATER SUPPLIERS' OPPOSITION TO PLAINTIFF WILLIS' MOTION TO STRIKE OR FOR JUDGMENT ON THE PLEADINGS AS TO DEFENDANTS' AFFIRMATIVE DEFENSES ASSERTING PRESCRIPTION CLAIMS

- ☒ by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- ☐ by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 29, 2008, at Riverside, California.


Lynda Kocis