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DISTRICT NO. 40

EXEMPT FROM FILING FEES UNDER GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Coordination Proceeding
Special Title (Rule 1550 (b))

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-254-348

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, consolidated actions, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination
Proceeding No. 4408

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S OPPOSITION TO DIAMOND FARMING COMPANY'S DEMURRER

Hearing:

Date: December 2, 2005
Time: 10:00 a.m.
Dept.: 1

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

The Court should overrule the Demurrer for each of the following reasons:

- The Demurrer contradicts long-standing California law that allows permits a public entity to plead prescriptive water rights;

- The Demurrer has no legal support for its claim a public entity can only obtain water rights by eminent domain proceedings; and

- The Demurrer ignores adequately pleads facts for prescriptive rights based on the Basin's overdraft condition.

II. CALIFORNIA COURTS HAVE LONG RECOGNIZED PRESCRIPTIVE WATER RIGHTS WITHOUT PAYMENT OF JUST COMPENSATION.

Diamond Farming's Demurrer ignores long-standing judicial recognition of a public entity's ability to obtain prescriptive rights without just compensation. (See, e.g., *Los Angeles v. San Fernando* (1975) 14 Cal.3d 199, 281; *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 926-27; *City of Los Angeles v. City of Glendale* (1943) 23 Cal.2d 68,79; *City of San Bernardino v. City of Riverside* (1921) 186 Cal. 7, 22-23; *Orange County Water District v. City of Riverside* (1959) 173 Cal.App.2d 137.) Diamond Farming fails to cite any contrary authority because there is no law that requires public entities to pay for prescriptive rights.

Over 20 years ago, the California Supreme Court rejected Diamond Farming's just compensation argument in *Warsaw v. Chicago Metallic Ceilings, Inc* (1984), 35 Cal.3d 564, 574. In *Warsaw*, plaintiffs acquired a prescriptive easement over a large parcel. (*Id.*) The court stated

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no compensation is paid for prescriptive rights:

> [T]here is no basis in law or equity for requiring them [plaintiffs] to compensate defendant for the fair market value of the easement so acquired. To exact such a charge would entirely defeat the legitimate policies underlying the doctrines of adverse possession and prescription 'to reduce litigation and preserve the peace by protecting a possession that has been maintained for a statutorily deemed sufficient period of time.'[Citations omitted.]."

The Court of Appeal applied this rationale in *Baker v. Burbank – Glendale – Pasadena Airport Authority* (1990) 220 Cal.App.3d 1602, 1609, and found that no just compensation is required for prescriptive rights.

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III. THE DEMURRER HAS NO LEGAL AUTHORITY TO SUPPORT ITS ERRONEOUS CLAIM THAT A PUBLIC ENTITY CAN ONLY ADJUDICATE ITS WATER RIGHTS BY A QUIET TITLE ACTION

There is no legal authority that supports Diamond Farming's argument that a quiet title action is the sole procedure to adjudicate a public entity's groundwater rights. As with its other arguments, Diamond Farming's argument that Section 760.030 is an exclusive remedy contradicts the California law.[1] First, Section 760.030 states that quiet title is *not* an exclusive remedy: "*the [quiet title] remedy . . . is cumulative and not exclusive of any other remedy, form or right of action, or proceeding provided by law for establishing or quieting title to property.*" (Emphasis added.)

Second, Section 1060 allows the County to plead both declaratory and injunctive relief as "any person claiming rights … with respect to property, may bring an action for a declaration of

[1] All section references are to the Code of Civil Procedure unless otherwise indicated.

his or her rights or duties with respect to another...." (See, *Columbia Pictures Corp. v. De Toth* (1945) 26 Cal.2d 753, 760.) Section 1062 provides a declaratory relief action is "cumulative" to any other remedy or provision of the law, such that the existence of some other possible cause of action generally does not prevent a party from nonetheless exclusively seeking declaratory relief. (See e.g., *Ermolieff v. R.K.O. Radio Pictures* (1942) 19 Cal.2d 543 ["Neither the fact that a party has another remedy nor that a breach has occurred prior to the commencement of his action compel the court to deny relief. Ordinarily, the alternative remedy, such as damages, injunctive relief and the like would be more harsh, and if he chooses the milder relief, declaratory relief, the court is not required for that reason to compel him to seek a more stringent one."].)

Third, numerous water rights adjudications are based on declaratory and injunctive reliefs causes of action. (See e.g., *Pleasant Valley Canal Co. v. Borror* (1998) 61 Cal.App.4th 742; *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 382-383; *San Bernardino v. Riverside* (1921) 186 Cal. 7, 15-16; *City of Barstow v Mojave Water Agency* (2000) 23 Cal.4th 1224, 1235.)

Diamond Farming relies upon a depublished decision, *City of Barstow v. Mojave Water Agency* (1998) 64 Cal. App. 4th 737, reversed in part and superceded by the Supreme Court's decision in *City of Barstow v. Mojave Water Agency* (2000) 23 Cal. 4th 1224. Further, although *City of Barstow* is a water rights case, prescription was not at issue. Rather, the trial court relied on the doctrine of "equitable apportionment" to disregard the priority of overlying users, including those who did not stipulate to the judgment. The depublished language relied upon by Diamond Farming refers to the appellate court's conclusion in that the trial court, absent proof of prescription, public agencies rely on their power of eminent domain as a means of acquiring the overlying landowners' water rights. In this case, the Complaint pleads prescriptive rights and thus, Diamond Farming mistakenly interprets the *City of Barstow* decision as there is no authority that requires eminent domain proceedings.

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IV. THE COMPLAINT PLEADS A CAUSE OF ACTION FOR PRESCRIPTIVE RIGHTS.

Prescriptive title vests automatically upon the completion of five years of adverse use, when the use was open and notorious, adverse and hostile, and continuous and uninterrupted, and for a reasonable and beneficial purpose. (*City of Pasadena*, 33 Cal. 2d at 930 -33.)

A. The Complaint Pleads Prescription.

Diamond Farming ignores well-established law that all facts pleaded in the complaint are assumed true on demurrer. (*See, e.g., Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal. 4th 962, 966-67; *Serrano v. Priest* (1971) 5 Cal. 3d 584, 591; *Adelman v. Associated Int'l Ins. Co.* (2001) 90 Cal. App. 4th 352, 359.) The Complaint pleads that County Waterworks District No. 40 "has continuously and for more than five years preceding the date of this action pumped water from the Basin for reasonable and beneficial purposes and has done so under a claim of right in an actual, open, notorious, exclusive, continuous, hostile and adverse manner" and that Diamond Farming "had actual and/or constructive notice of District's pumping either of which is sufficient to establish District's prescriptive right." (Complaint ¶ 30.) Thus, there can no legitimate dispute that the Complaint pleads a cause of action for prescriptive rights.

B. Notice is a Factual Issue that Cannot Be Resolved on Demurrer.

"Notice is a question of fact." (*Lindsay v. King* (1956) 138 Cal.App.2d 333, 343 [involving water rights to a spring].) Numerous courts have held that "[t]he questions whether the use of an easement is adverse and under a claim of right, or permissive and with the owner's consent, and the question whether the nature of the user is sufficient to put the owner on notice, are all questions of fact." (*Gaut v. Farmer* (1963) 215 Cal. App. 2d 278, 283; *see also Guerra v. Packard* (1965) 236 Cal. App. 2d 272, 288 [same]; *Warsaw v. Chicago Metallic Ceilings* (1984) 35 Cal. 3d 564, 570 ["Whether the elements of prescription are established is a question of fact for the trial court."].)

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The determination of Diamond Farming's notice is a question of fact that cannot be resolved on demurrer. (*See, e.g., Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318 [noting that a demurrer can be used only to challenge defects that appear on the face of the pleading under attack; or from matters outside the pleading that are judicially noticeable]; Weil & Brown, *California Practice Guide: Civil Procedure Before Trial* (Rutter Group 2005) ¶ 7:5 ["A demurrer is a pleading used to *test the legal sufficiency* of other pleadings. *i.e.*, it raises issues of law, not fact, regarding the form or content of the opposing party's pleading.].)

C. Constructive Notice Is Sufficient To Establish Prescriptive Rights.

Courts hold that constructive notice of adverse use is sufficient to establish prescriptive rights. In *Bennet v. Lew* (1984) 151 Cal. App. 3d 1177, 1184, the court held that "[t]he requisite elements for a prescriptive easement are designed to insure that the owner of the real property which is being encroached upon has actual or constructive notice of the adverse use." (Emphasis added.) In *Kerr Land & Timber Co. v. Emmerson* (1969) 268 Cal. App. 2d 628, 634 the court stated: "It is settled that to establish rights by adverse use the owner must be notified in some way that the use is hostile and adverse but actual notice is not indispensable. Either the owner must have actual knowledge or the use must be so open, visible and notorious as to constitute reasonable notice."

D. Diamond Farming's Due Process Claims Are Legally Invalid.

Even if a notice issue could be resolved on demurrer, Diamond Farming again fails to provide legal authority for its argument that the Waterworks District must plead and prove it has met "due process standards" by providing actual notice to state a cause of action for prescriptive rights. (Demurrer, p. 10, lns. 17-27, p. 11, lns. 1-5.) As with Diamond Farming's other arguments, case law is to the contrary.

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Prescriptive title vests automatically upon the completion of five years of adverse use when the use was open and notorious, adverse and hostile, and continuous and uninterrupted, and for a reasonable and beneficial purpose. (Code Civ. Proc. § 318; *City of Pasadena v. City of Alhambra* (1949) 33 Cal. 2d 908, 930 -33; *Saxon v. DuBois* (1962) 209 Cal. App. 2d 713, 719.) Diamond Farming's "statutory due process" claims cannot apply to prescriptive rights as they occur by operation of law when the requisite elements are satisfied.

E. Overdraft Conditions Provide Notice.

Courts hold that constructive notice of the overdraft condition is sufficient for prescriptive rights in water cases. For example, in *City of Pasadena v. City of Alhambra* (1949) 33 Cal. 2d 908, 930, the California Supreme Court held that falling groundwater level conditions put groundwater users on notice that overdraft conditions had commenced and therefore, that adversity was present. Twenty-six years later, the Court in *City of Los Angeles v. City of San Fernando* (1975) 14 Cal. 3d 199, 282 cited approvingly to the language in *Pasadena* indicating that declining well levels place parties on notice of adversity. In *Lindsay v. King* (1956) 138 Cal. App. 2d 333, 343, the court held that facts that raise an individual's duty to inquire support a claim of prescriptive rights in a water rights case. (See also *Hudson v. Dailey* (1909) 156 Cal. 617, 630.) In *Jones v. Harmon* (1959) 175 Cal. App. 2d 869, 879, the court held that the requisite notice was present where "defendants had actual notice of facts and circumstances to put them on inquiry."

Similarly, Diamond Farming's misplaced reliance on *Wright v. Goleta* (1985) 174 Cal. App. 3d 74 cannot support its demurrer because that case did not address a prescriptive rights notice standard, but rather whether unexercised overlying rights of absent landowners could be subordinated in a groundwater adjudication. Thus, there is no law that requires the County Waterworks District or any other public water supplier to plead and prove "due process standards" of "actual notice" for prescriptive rights; and the demurrer should be overruled.

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F. California Law Does Not Require Notice to be Alleged or Adjudicated Parcel-By-Parcel.

The California Supreme Court held that constructive notice need not be adjudicated on a parcel-by-parcel basis. (*City of Pasadena v. City of Alhambra* (1949) 33 Cal. 2d 908.) In *City of Pasadena*, the California Supreme Court held that extractions from the Raymond Basin (located at the northwest end of the San Gabriel Valley) constituted an adverse use entitling the owners of basin water rights to injunctive relief upon the commencement of overdraft in the 1913-1914 water year. (*Id.* at pp. 928-929.) The only evidence of notice that supported the prescriptive claims was the lowering of the water levels in wells:

> This evidence is clearly sufficient to justify charging appellant with notice that there was a deficiency rather than a surplus and that the appropriation causing the overdraft were invasions of the rights of overlying owners and prior appropriators. (*Id.* at 930.)

Consistent with *Pasadena*, the County Waterworks District pleads actual and/or constructive notice of overdraft in the Basin for each defendant; and Diamond Farming's demurrer should be overruled.

V. THE STATUTE OF LIMITATIONS FOR INVERSE CONDEMNATION DOES NOT APPLY TO PRESCRIPTIVE RIGHTS.

The statute of limitations for an inverse condemnation claim is five-years. (*Otay Water Dist. v. Beckwith* (1991) 1 Cal.App.4th 1041; C.C.P. 318,319.) Prescriptive title vests automatically, however, upon the completion of five years of adverse use when the use was open and notorious, adverse and hostile, and continuous and uninterrupted, and for a reasonable and beneficial purpose. (*City of Pasadena,* 33 Cal. 2d at 930 -33; *Saxon v. DuBois* (1962) 209 Cal. App. 2d 713, 719; Code Civ. Proc. § 318 Thus, there can be no inverse condemnation claim after the prescriptive right vests. (Code Civ. Proc. sections 318, 319; *Baker*, 220 Cal.App.3d at 1609

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[claim for inverse condemnation time barred due to acquisition of easement by prescription]; *Ocean Shore R.R. Co. v. Santa Cruz* (1962) 198 Cal.App.2d 267, 271-272 [plaintiffs' claim for inverse condemnation time barred as to city's acquisition of land by adverse possession].) Diamond Farming's assertion of inverse condemnation claims are either time barred and cannot be resolved by demurrer.

VI. DIAMOND FARMING FAILS TO ESTABLISH THAT THE COMPLAINT IS UNCERTAIN.

A. The Complaint Pleads a Prescriptive Period.

Upon the completion of any five years of adverse use, prescriptive title automatically vests in the claimant. (*City of Pasadena,* 33 Cal.2d at 930.) Thus, any continuous five year period of adverse use is sufficient to vest title in the adverse user. (*Lee v. Pacific Gas & Electric Co.* (1936) 7 Cal.2d 114,120 ["It is true that to establish adverse possession to water it is necessary that: (1) the possession must be actual occupation, open and notorious, not clandestine. (2) It must be hostile to the defendant's title. (3) It must be held under a claim of title exclusive of any other right, as one's own. and (4) It must be continuous and uninterrupted for a period of five years prior to the commencement of the action, not, however, necessarily next before the commencement of the action." [Emphasis added)].)

The Complaints plead that the County Waterworks District has pumped groundwater during many decades of overdraft conditions. Accordingly, there are multiple five-year periods in which prescriptive rights vested as alleged in the County Waterworks District's complaint. Moreover, the Complaint alleges at least one five-year prescriptive period; and Diamond Farming fails to explain or cite any legal authority as to why the County must plead specific five-year prescriptive periods.

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B. The Doctrine of "Self-Help" is an Affirmative Defense and Does Not Bar Alleged Prescriptive Rights.

Diamond Farming misinterprets the "self-help" doctrine referenced in *Hi-Desert County Water District v. Blue Skies Country Club, Inc.* (1994) 23 Cal.App.4th 1723, 1731. Diamond Farming incorrectly argues that the Complaint's allegation that a defendant was pumping water somehow "waived" the County's prescriptive rights. This argument was rejected in *Hi-Desert* as the Court of Appeal referred to language in *City of Pasadena* that the self-help doctrine does not bar a prescriptive right:

> Neither the overlying owners nor the appropriators took steps to obtain the aid of the courts to protect their rights until the present action was instituted, many years after the commencement of the overdraft, and at first glance it would seem to follow that the parties who wrongfully appropriated water for a period of five years would acquire prior prescriptive rights to the full amount so taken. *The running of the statute, however, can effectively be interrupted by self help on the part of the lawful owner of the property right involved.* Unlike the situation with respect to a surface stream where a wrongful taking by an appropriator has the immediate effect of preventing the riparian owner from receiving water in the amount taken by the wrongdoer, the owners of water rights in the present case were not immediately prevented from taking water, and they in fact continued to pump whatever they needed. As we have seen, the Raymond Basin Area is similar to a large lake or reservoir, and water would be available until exhaustion of the supply. The owners were injured only with respect to their rights to continue to pump at some future date. *The invasion [by the party seeking prescriptive rights] was thus only a partial one, since it did not completely oust the original owners of water rights, and for the entire period both the original owners and the wrongdoers continued to pump all the water they needed.*
>
> *The pumping by each group, however, actually interfered with the other group in that it produced an overdraft which would operate to make it impossible for all to continue at the same rate in the future.* If the original owners of water rights had been ousted completely or had failed to pump for a five-year period, then there would have been no interference whatsoever on the part of the owners with the use by the wrongdoers, and the wrongdoers would have perfected prior prescriptive rights to the full amount which

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> they pumped. As we have seen, however, such was not the case, and, although the pumping of each party to this action continued without interruption, it necessarily interfered with the future possibility of pumping by each of the other parties by lowering the water level. The original owners by their own acts, although not by judicial assistance, thus retained or acquired a right to continue to take some water in the future. *The wrongdoers also acquired prescriptive rights to continue to take water, but their rights were limited to the extent that the original owners retained or acquired rights by their pumping.*

(*City of Pasadena*, 33 Cal.2d at 931 [Emphasis added].)

Any alleged "self-help" by Diamond Farming or any other defendant could only limit the extent of the County's prescriptive right. Thus, there is a factual issue whether Diamond Farming pumped water from the overdrafted Basin would diminish the prescriptive right.

C. The Second Cause of Action for Appropriate Rights Alleges a Justiciable Controversy.

The Second Cause of Action alleges that the County Waterworks District No. 40 has appropriative rights to pump water from the Basin, and that appropriate rights attach to surplus water. (Complaint, ¶ 35) Moreover, the Waterworks District pleads that defendants seek to prevent the County from pumping surplus water. (Complaint, ¶38) Finally, the County pleads that it seeks a judicial determination of the Basin's safe yield and the parties' right to the safe yield; the amount of available surplus water, if any, available; and an *inter se* determination of the rights of overlying, appropriative and prescriptive claimants. (Complaint, ¶39) Based on these allegations, the County Waterworks District pleads a justiciable controversy and Diamond Farming's demurrer should be overruled.

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D. The Third Cause of Action Pleads Facts for Equitable Relief.

The County pleads that the "damage and injury to the Basin cannot be compensated for in money damages." (Complaint, ¶ 41). Thus, Diamond Farming is wrong when it claims that the County Waterworks District seeks equitable relief without alleging that it has no other adequate remedy at law.

E. The Fourth Cause of Action Pleads A Claim for Relief.

In the Fourth Cause of Action, the County Waterworks District pleads that there is an actual controversy between the parties; and that the County seeks a "judicial determination as to the correctness of its contentions and the amount of Basin water to which the parties are entitled to pump from the Basin, and as to the County's right to pump water from the Basin to meet its reasonable present and future needs and the superiority of those rights." Based on these allegations, the County respectfully submits that it adequately pleads a cause of action for relief.

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VII. CONCLUSION.

Based on the foregoing reasons, the County Waterworks District No. 40 respectfully requests that the court overrule Diamond Farming's Demurrer.

Dated: November 17, 2005

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PROOF OF SERVICE

I, Kerry V. Keefe, 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, 5 Park Plaza, Suite 1500, Irvine, California 92614. On November 17, 2005, I served the within document(s):

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S OPPOSITION TO DIAMOND FARMING COMPANY'S DEMURRER

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☒ 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.**

(SEE ATTACHED SERVICE LIST)

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 November 17, 2005 at Irvine, California.

Kerry V. Keefe

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Hon. Jack Komar Judge of the Superior Court of California, County of Santa Clara 191 North First Street San Jose, CA 95113	Coordination Trial Judge ****Via Federal Express Only**

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