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12 DISTRICT NO. 40

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF LOS ANGELES

15
16 Coordination Proceeding
17 Special Title (Rule 1550 (b))

Judicial Council Coordination
Proceeding No. 4408

18 ANTELOPE VALLEY GROUNDWATER
19 CASES

20 Included Actions:

21 Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
22 County of Los Angeles, Case No. BC 325 201

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

25 Wm. Bolthouse Farms, Inc. v. City of Lancaster
26 Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
27 Superior Court of California, County of
Riverside, consolidated actions, Case Nos.
28 RIC 353 840, RIC 344 436, RIC 344 668

LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40'S
OPPOSITION TO BOLTHOUSE
PROPERTIES, LLC'S DEMURRER (RE
CASE NO. BC325201)

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 by Bolthouse Properties because it lacks factual or legal basis. First, the Demurrer seeks to have the Bolthous action “take precedence” over the County’s adjudication action. Bolthouse also seeks to demand that the County proceed by its Answer. However, Bolthouse cites no legal authority for these propositions. Bolthouse’s argument ignores the greater scope of the adjudication action than Bolthouse’s action which seeks only limited redress. Second, the Demurrer ignores the County’s ability to plead facts in the alternative. Third, Bolthouse ignores the County’s ability to seek declaratory and injunctive relief by way of its Complaint. For these reasons, the Court should overrule the Demurrer.

A. THERE IS NO AUTHORITY FOR THE BOLTHOUSE ACTION TO TAKE PRECEDENCE OVER THE COUNTY’S ACTION, NOR IS THERE ANY AUTHORITY TO LIMIT THE COUNTY TO PROCEED BY ITS ANSWER IN THE BOLTHOUSE ACTION.

The Demurrer seeks to have the Bolthous action “take precedence” over the County’s adjudication action. Bolthouse also seeks to demand that the County proceed by its Answer, and not as to the groundwater adjudication complaint. However, Bolthouse cites no legal authority for these propositions. Bolthouse’s argument ignores the greater scope of the adjudication action than the limited relief Bolthouse seeks in its action. Bolthouse by way of its Complaint seeks to quiet title only as to its water rights *vis-à-vis* the County and a few public water suppliers. A judgment in the Bolthouse action would not be *res judicata* here because the judgment would not dispose of the County’s cause of action for municipal water service priority, declaration of the County’s right to store water in the Basin, request for a physical solution to Basin water shortages

1 and overdraft conditions, and a declaration of the County's right to capture return flows from
2 imported water.

3
4 Based on a lack of authority for Bolthouse's positions, the Court should deny the Motion.

5
6 **B. THE COUNTY HAS ADEQUATELY PLED ITS SECOND**
7 **CAUSE OF ACTION.**
8

9 The Demurrer claims the Second Cause of Action for Appropriative Rights, is confusing
10 and contradictory because of facts found throughout the Complaint. (Demurrer, p.3, lns. 26-27.)
11 It is well settled that a party can plead facts in the alternative. (*Rader Co. v. Stone* (1986) 178
12 Cal.App.3d 10, 29; see *Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 181(citing
13 text).) Bolthouse supports its argument by referring to selective phrases from the general
14 allegations in the Complaint (Complaint 6:27; 7:14-15), from the party allegation (Complaint
15 7:27), and from the seventh cause of action (Complaint 16:7-8). By referring to these facts,
16 Bolthouse argues that the second cause of action is ambiguous and unintelligible as to whether
17 Bolthouse is an overlying pumper or an appropriator. However, the factual allegations in the
18 Complaint are clear: Bolthouse is a private property owner who pumps groundwater for its use
19 on its property. Moreover, Bolthouse's own complaint admits that Bolthouse is an overlying
20 property owner. Given these unambiguous admissions and allegations, the Court should overrule
21 the demurrer.
22

23 **C. IT IS ENTIRELY PROPER FOR THE COUNTY TO ASSERT**
24 **CAUSES OF ACTION FOR DECLARATORY RELIEF.**
25

26 Bolthouse argues that the County has failed to adequately plead a cause of action for
27 declaratory relief. However, the County can proceed by seeking declaratory and injunctive relief.
28 Section 1060 broadly allows, "any person claiming rights ... with respect to property, may bring
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1 an action for a declaration of his or her rights or duties with respect to another....” (See,
2 *Columbia Pictures Corp. v. De Toth* (1945) 26 Cal.2d 753, 760.) Code of Civil Procedure
3 Section 1062 establishes that a declaratory relief cause of action is “cumulative” to any other
4 remedy or provision of the law, such that the existence of some other possible cause of action
5 generally does *not* prevent a party from nonetheless exclusively seeking declaratory relief. (See
6 e.g., *Ermolieff v. R.K.O. Radio Pictures* (1942) 19 Cal.2d 543 [“Neither the fact that a party has
7 another remedy nor that a breach has occurred prior to the commencement of his action compel
8 the court to deny relief. Ordinarily, the alternative remedy, such as damages, injunctive relief and
9 the like would be more harsh, and if he chooses the milder relief, declaratory relief, the court is
10 not required for that reason to compel him to seek a more stringent one.].)

11
12 As for the third cause of action for a physical solution, it adequately pleads a claim for
13 declaratory relief by stating the following controversy: “the [County] alleges that defendants
14 claim an interest or rights to Basin water and further claim they can increase their pumping
15 without regard to the rights of the [County]. Unless restrained by order of the court, defendants
16 will continue to take increasing amounts of Basin water to the great and irreparable damage and
17 injury to the [County] and to the Basin.” (Complaint, ¶41) “Unless defendants and each of them
18 are enjoined and restrained, the aforementioned conditions will continue and will become more
19 severe . . .” (Complaint ¶42.) On this basis, the County requests “[p]ursuant to California law it
20 is the duty of the trial court to consider a ‘physical solution’ to water rights disputes. (Complaint,
21 ¶43.) Based on these facts pled in the Complaint, the County submits that the declaratory relief
22 causes of action and the request for a physical solution are adequately pled.
23

24 **D. THE COMPLAINT ADEQUATELY PLEADS FACTS FOR**
25 **INJUNCTIVE RELIEF.**
26

27 The demurrer argues without specificity that the Complaint fails to adequately plead facts
28 for injunctive relief. On this basis alone the Court must overrule the demurrer.

1 Nonetheless, the Complaint alleges specific facts for injunctive relief, including, that “the
2 [County] alleges that defendants claim an interest or rights to Basin water and further claim they
3 can increase their pumping with regard to the rights of the District. Unless restrained by order of
4 the court, defendants will continue to take increasing amounts of Basin water to the great and
5 irreparable damage and injury to the [County] and to the Basin.” (Complaint, ¶41.) “Unless
6 defendants and each of them are enjoined and restrained, the aforementioned conditions will
7 continue and will become more severe . . .” (Complaint ¶42.) Additionally, the Complaint
8 generally alleges declining water levels, an overdraft condition, and that “[u]nless limited by
9 order and judgment of the court, potable Basin water will be exhausted and land subsidence will
10 continue.” (Complaint, ¶15.)

11
12 Moreover, numerous water rights adjudications support the County’s approach of
13 proceeding by declaratory and injunctive relief. (See e.g., *Pleasant Valley Canal Co. v. Borror*
14 (1998) 61 Cal.App.4th 742; *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 382, 383-383; *San*
15 *Bernardino v. Riverside* (1921) 186 Cal. 7, 15-16.)

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1 **III. CONCLUSION.**

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3 Based on the foregoing reasons, the County respectfully requests that the Court overrule

4 the demurrer.

5

6 Dated: November 17 2005

BESTBEST & KRIEGER LLP

8

9 By: 

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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 BOLTHOUSE PROPERTIES, LLC'S
DEMURRER (RE CASE NO. BC325201)

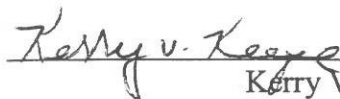
- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth 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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