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EXEMPT FROM FILING FEES UNDER GOVERNMENT CODE SECTION 6103

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 RICHARD WOOD, on behalf of himself and all other similarly situated v. A.V. Materials, Inc., et al., Superior Court of California, County of Los Angeles, Case No. BC509546	Judicial Council Coordination Proceeding No. 4408 CLASS ACTION Santa Clara Case No. 1-05-CV-049053 Assigned to the Honorable Jack Komar LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S OPPOSITION TO MOTION FOR ORDER SETTING MATTER FOR JURY TRIAL

The Los Angeles County Waterworks District No. 40 ("District No. 40") hereby opposes Tejon Ranchcorp, Granite Construction Company, Diamond Farming Company, Crystal Organic Farms, Grimmway Enterprises, Inc., and Lapis Land Company, LLC's ("Moving Parties") Motion for an Order Setting Matter for Jury Trial as follows:

I. INTRODUCTION

Despite previously submitting briefings on the issue of jury trials, the Moving Parties request a jury trial for Phase 6 without citing, yet again, to a single case that establishes rights to jury trial in a groundwater adjudication. The Moving Parties claim that such right exists for the prescription of water, but cite only to cases concerning real property and ignore fundamental differences between ownership rights in real property and usufructuary rights of water. In short, the Moving Parties are asking the Court to ignore the well-established ***equitable*** power of the Court to adjudicate water rights and to impose a physical solution, and grant them a right to jury trial contrary to the existing law.

II. ARGUMENT

A. There Is No Right to a Jury Trial in an Equitable Proceeding

The right to jury trial does not apply where the *gist* of the action is equitable. (See *C&K Engineering Contractors v. Amber Steel Co., Inc.* (1978) 23 Cal.3d 1, 9; *Hodge v. Superior Court* (2006) 145 Cal. App. 4th 278, 283 ["if the action is essentially one in equity and the relief sought depends upon the application of equitable doctrines, the parties are not entitled to a jury trial."] [citation and quotation marks omitted]; *Jefferson v. County of Kern* (2002) 98 Cal.App.4th 606, 614.)

The "gist of the action" means the nature of the rights involved in the particular case: "If the action has to deal with ordinary common-law rights cognizable in courts of law, it is to that extent an action at law [and jury triable]. . . . On the other hand, if the action is essentially one in equity and the relief sought depends upon the application of equitable doctrines, the parties are not entitled to a jury trial." (*C&K Engineering Contractors, supra,* 23 Cal.App.3d at 9 [internal quotes omitted].)

The critical factor in excluding the right to jury trial is that the relief sought was historically

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available only in courts of equity; "Without the employment of this doctrine, essentially equitable, there was no remedy at all." (*C&K Engineering Contractors, supra*, 23 Ca1.3d at 9; see *DiPirro v. Rondo Corp.*, (2007) 153 Cal. App. 4th 150, 179 ["bifurcation of [an equitable action to abate a public nuisance] and separate initial adjudication of [] defense did not transform the case into an action at law or require a jury trial."].)

Although the pleadings may provide some indication whether the action is of a legal or equitable nature, they are not conclusive. (*C&K Engineering Contractors, supra*, 23 Cal.3d at 9; *DiPirro v. Bondo Corp., supra*, 153 Cal.App.4th at 179.) In *C&K Engineering Contractors*, "the complaint purports to seek recovery of damages for breach of contract, in form an action at law in which a right to jury trial ordinarily would exist." (*C&K Engineering Contractors, supra*, 23 Cal.3d 1 at 9.) However, because the complaint sought relief which was available only in equity (under doctrine of promissory estoppel), a jury trial is not available. (*Id.*) Likewise, the relief sought by the parties in these coordinated proceedings are available only in equity.

B. The "Gist" of These Proceedings Is One of Equity

As causes of action and the relief sought by the parties to these proceedings all stem from equity, the right to a jury trial does not apply. Here, Bolthouse and Richard Wood sued for quiet title. (See Exs. D & H.) The Public Water Suppliers, Antelope Valley-East Kern Water Agency, Antelope Valley Groundwater Association, AV United Mutual Group, Bolthouse, Grimmway, Richard Wood and Tejon Ranch have sued for declaratory and injunctive relief and asked this court to determine all the rights to groundwater in the Antelope Valley Groundwater Basin ("Basin"). (See Exs. A, B, C, E, F, G, I, J, K, L & M.) Because this Court has determined that the Basin is in overdraft, it has a constitutional duty to consider a physical solution in resolving the parties' water rights claims. (*City of Lodi v. East Bay Municipal Utility District* (1936) 7 Cal. 2d 316, 341.)

California courts have long established that a "physical solution" is "an equitable remedy designed to alleviate overdrafts and the consequential depletion of water resources in a particular area, consistent with the constitutional mandate to prevent waste and unreasonable water use and to maximize the beneficial use of this state's limited resource." (*City of Santa Maria v. Adam*

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(2012) 211 Cal. App. 4th 266, 288 ("*Santa Maria*") [quoting *California American Water v. City of Seaside* (2010) 183 Cal.App.4th 471, 480] [emphasis added]; see also, *City of Barstow v. Mojave Water Agency* (2000) 23 Cal. 4th 1224, 1250 ("*Barstow*") ["this court recognized a trial court's power to enforce an equitable solution"]; *City of Los Angeles v. City of San Fernando* (1975) 14 Cal. 3d 199, 291 ("*San Fernando*") ["Whether [the physical] solution is fair and just to all parties and interests concerned can only be determined by the trial court . . . and nothing we say should be deemed restrictive of the trial court's equitable discretion in this regard."]; *Tulare Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal. 2d 489, 574 ("*Tulare*") ["The equity courts[, in water cases concerning appropriative rights,] possess broad powers and should exercise them so as to do substantial justice."].)

The court's equitable power to adjudicate water rights and to impose a physical solution comes from the 1928 constitutional amendment that requires all water uses to be reasonable. (Calif. Constitution, Article X, § 2.) As a result of this constitutional amendment, no party can establish any right to use water in the State of California unless that party first establishes that the water is being put to a reasonable and beneficial use. (See *Gin S. Chow v. City of Santa Barbara* (1933) 217 Cal. 673, 700, 707.) Under this constitutional mandate, a trial court must "determine whether [riparian or overlying] owner . . . are putting the waters to any reasonable beneficial uses, giving consideration to all factors involved, including reasonable methods of use and reasonable methods of diversion. From a consideration of such uses, the trial court must then determine whether there is a surplus in the water field subject to appropriation." (*Tulare, supra*, 3 Cal. 2d at 524-25.) This is a determination that is made by the court, not a jury. (*Josin v. Marin Municipal Water District* (1967) 67 Cal.2d 132, n. 7 [citing *Tulare, supra*, 3 Cal. 2d at 524-25].) Failure to make this showing means there is no water right to dispute. (*Id.*)

Consequently, a cause of action for physical solution is a request that the court use its equitable powers to enforce this constitutional mandate. (*City of Lodi, supra*, 7 Cal.2d at 339-340; *Imperial Irrigation District v. State Water Resources Control Board* (1990) 225 Cal.App.3d 548, 572 ["A 'physical solution' involves the application of general equitable principles to achieve practical allocation of water to competing interests so that a reasonable accommodation

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of demands upon a water source can be achieved."].) The California Supreme Court explained the Court's physical solution remedy as follows:

> the 1928 constitutional amendment . . . compels the trial court, before issuing a decree entailing such waste of water, to ascertain whether there exists a physical solution of the problem presented that will avoid the waste, and that will at the same time not unreasonably and adversely affect the prior appropriator's vested property right. In attempting to work out such a solution the policy which is now part of the fundamental law of the state must be adhered to. It is declared in section 3 of article XIV of the Constitution: [¶] "It is hereby declared that because of the conditions prevailing in this state the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare . . ."

(*Lodi*, *supra*, 7 Cal. 2d at 339-40.)

In their brief, the Moving Parties are asking the Court to ignore the equity nature of water adjudication proceedings. Whether Phase 6 concerns prescriptive rights, or any others water rights, does not alter the "gist" of the dispute pending before the Court. As discussed above, all water rights, including prescriptive rights are subject to the constitutional mandate of "reasonable beneficial use" – a determination that can only be made by the court. (*Tulare*, *supra*, 3 Cal. 2d at 524-25.) Citing *Barstow*, *supra*, 23 Cal. 4th 1224, 1240, the Moving Parties contend that discussions of a physical solution and "reasonable beneficial use" are premature until parties' rights and priority have been determined. (Motion at p. 8.) This contention is without merit. The *Barstow* opinion merely states:

> One with overlying rights has rights superior to that of other persons who lack legal priority, but is nonetheless restricted to a reasonable beneficial use. Thus, after first considering this priority, courts may limit it to present and prospective reasonable beneficial uses, consonant with article X, section 2 of the California Constitution. . . . Proper overlying use, however, is paramount and the rights of an appropriator, being 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 gained prescriptive rights through the [adverse, open and hostile] taking of nonsurplus waters. As between overlying owners, the rights, like those of riparians, are correlative; [i.e.,] each may use only his reasonable share when water is insufficient to meet the needs of all [citation].

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(*Barstow, supra*, 23 Cal. 4th at p. 1240-41.) In other words, the *Barstow* case reinforces the constitutional amendment that all water rights, including overlying rights, are subject to "reasonable beneficial use." (*Id.*) *Barstow* does not require prescriptive rights to be established before and without consideration of "reasonable beneficial use" of the groundwater. At best, *Barstow* suggests that courts should identify the various potential priorities before determining an overlying landowner's water rights, which are limited by their "reasonable beneficial use." (*Id.*)

Moreover, the other causes of action and reliefs sought in these proceedings are also based in equity. Bolthouse and Wood's actions seeking quiet title are equitable. "Generally, there is no right to a jury trial in a quiet title action which is fundamentally equitable in nature." (*Estate of Phelps v. Odekerken* (1990) 223 Cal.App.3d 332, 340.) Likewise, actions for declaratory relief concerning water rights are equitable. (*City of Los Angeles v. City of Glendale* (1941) 23 Cal.2d 68, 81 ["In giving declaratory relief, a court has the powers of a court of equity."].)

Furthermore, California courts have decided many cases adjudicating groundwater rights which sought quiet title, declaratory relief, or injunctive relief.[1] In each case, the action was resolved by the court and not a jury. District No. 40 can find no examples where a jury was called upon to decide these issues. District No. 40 is also unaware of any cases suggesting that the parties are entitled to a jury trial in determining the following water rights that the Court may adjudicate in the Phase 6 trial: overlying rights, appropriative rights, prescriptive rights, domestic rights, and municipal rights. In fact, most of these rights concern purely legal issues, which must be determined by the court, not a jury. (Code Civ. Proc. § 591 ["An issue of law must be tried by the court, unless it is referred upon consent"].)

[1] In *Katz v. Walkinshaw* (1902) 141 Cal. 116, 138, the court determined groundwater rights in the context of a request for injunctive relief. In *Hudson v. Dailey* (1909) 156 Cal. 617, 620 plaintiff sought to quiet title to water and an order enjoining the defendants from pumping. The *Hudson* court also ruled in favor of defendants on the basis of laches, which is an affirmative defense exclusive to equitable actions. (*Id.* at p. 630.) In *Orange County Water District v. City of Riverside* (1959) 173 Cal.App.2d 137, 168, the court described the complaint for a declaration of the groundwater rights as one for quiet title. In *City of San Bernardino v. City Of Riverside* (1921) 186 Cal. 7, 23, the court referenced Civil Code section 1007 as the basis for obtaining prescriptive rights to water. Section 1007 is the statute for the adverse possession cause of action. In *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 207, the city of Los Angeles sued to quiet title and obtain injunctive relief.

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C. Cases Involving Prescriptive Easement of Land and Mining Claims Are Inapposite

In supporting of their argument that they are somehow entitled to a jury trial, the Moving Parties cite to cases from California and Utah concerning prescriptive easements to land and adverse possession of mining claims. (*See Conaway v. Toogood* (1916) 172 Cal. 706; *Big Three Mining & Milling Co. v. Hamilton* (1909) 157 Cal. 130, 133 [adverse possession of mining claim]; *Abbott v. Pond* 398 (1904) 142 Cal. 393; *Humphreys v. Blasingame* (1894) 104 Cal. 40; *Thomas v. England* (1886) 71 Cal. 456; *Connolly v. Trabue* (2012) 204 Cal. App. 4th 1154, 1164; *Arciero Ranches v. Meza* (1993) 17 Cal. App. 4th 114; *Frahm v. Briggs* (1970) 12 Cal. App. 3d 441; *Norback v. Board of Directors* (1934) 84 Utah 506.) Moving Parties contend that an easement is similar to water rights because it is also a right to use. (Motion at p. 9.)

However, any comparisons are misguided for many reasons. First, unlike easements, water rights in California are subject to the constitutionally mandated reasonable beneficial use. (*Barstow, supra,* 23 Cal. 4th at pp. 1240-1241; *Gin S. Chow, supra,* 217 Cal. at pp. 700 & 707; *Tulare, supra,* 3 Cal. 2d at 524-25; *Lodi, supra,* 7 Cal. 2d at 339-40.) Such restriction is absent from easement rights.

Second, this Court's authority to adjudicate water rights and to enforce a physical solution is derived from the power granted to the court by the California Constitution and, as discussed in further details below, California Water Code. Unlike the prescriptive easement cases (*i.e., Arciero, supra,* 17 Cal. App. 4th at p. 125, and *Frahm, supra,* 12 Cal. App. 3d at p. 445), this Court has not been asked to use the ancient legal remedy of "action on the case," or any other similar remedy that existed prior to 1850. As the California Supreme Court explained, the right to a jury trial as guaranteed by the Constitution is "the right as it existed at common law in 1850, when the Constitution was first adopted." (*C&K Engineering Contractors, supra,* 23 Cal.3d at 8 [emphasis added].) As discussed above, the 1928 constitution amendment fundamentally changed how California treats all rights in water. The remedy sought (*e.g.,* physical solution) in these coordinated proceedings simply did not exist in common law in 1850. (*Jogani v. Superior Court* (2008) 165 Cal. App. 4th 901, 905, n. 3 ["A right of action or remedy created by statute

after the adoption of the [1850] Constitution could not, of course, have been recognized at law or in equity before the Constitution was adopted.")

As such, the real property cases are not applicable for the purposes of determining jury trial rights in water adjudication cases. Here, the Court is using authority granted by the Constitution to determine water rights, and not the authority used in the easement-to-land cases. Consequently, there is no right to a jury trial for this action.

D. To the Extent This Action Is Not an Equitable Proceeding, It Is a Special Proceeding, for Which Jury Trial Is Not Required

In addition to legal and equitable actions, there are also "special proceedings." "Special Proceedings" are statutory proceedings (some of which are enumerated in Code of Civil Procedure section 1063 *et seq.*) that generally were unavailable at common law or in equity. (See *People v. Superior Court (Laff)* 2001) 25 Cal.4th 703, 725 ["special proceedings" are confined to statutory proceedings that were neither "an action at law [nor] a suit in equity"].) There is no right to a jury trial in "special proceedings" unless it is expressly made available by statute. (See *Cornette v. Department of Transp.* (2001) 26 Cal.4th 63, 76; *Kinder v. Superior Court (Market Ins. Corp.)* (1978) 78 Cal.App.3d 574, 581.) The quasi-legislative nature of a groundwater adjudication renders it a "special proceeding" for which no jury trial is required.

For example, Water Code section 2000 *et seq*. established a procedure applicable to "any suit brought in any court . . . for determination of rights to water." (Water Code § 2000.) This statute allows the court to refer findings of fact to the State Water Resources Control Board. (*Id.*) (The reference must take place immediately after the complaint was filed and before any issues have been cited by the judge.) This procedure includes all issues relating to rights to water use, and does not exclude prescription or any other kind of claim. This procedure is lawful because water rights claims are, by their very nature, statutory. Consequently, to the extent that the court does not find these proceedings to be based in equity, the court should treat all actions involving the assertion of water rights as a "special proceeding" for which no jury is required.

The Moving Parties contend that since the Public Water Suppliers are claiming prescriptive rights, these proceedings cannot be a special proceeding. (Motion at p. 10.)

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However, Moving Parties do not cite any authority stating that an action concerning prescriptive water rights is an action at law and not a special proceeding. As discussed above, the Court's authority to adjudicate water rights and to enforce a physical solution is derived from power granted by the 1928 constitutional amendment and the water codes, all of which post-date 1850 when the California Constitution was first adopted. "A right of action or remedy created by statute after the adoption of the [1850] Constitution could not, of course, have been recognized at law or in equity before the Constitution was adopted." (*Jogani v. Superior Court* (2008) 165 Cal. App. 4th 901, 905, n. 3). Water Code section 2000 *et seq*. was first adopted in 1943. To say that these special proceedings set forth in the Water Code were somehow recognized in courts of law prior to 1850 is preposterous and without merit.

E. Trying These Proceedings in Phases Does Not Grant Parties Jury Trial Rights, Where None Otherwise Exists

Section 598 of the Code of Civil Procedure allows the court, in the interest of justice or for the efficiency of handling the litigation to bifurcate or otherwise sever the action into separate trial Phases. Here, the Court has ordered these coordinated proceedings to be tried in Phases. In Phase 6, the Court will be determining the prescriptive claim as well as landowners' defenses, such as overlying rights and self help. While the Court may try these proceedings in Phases, the Court cannot grant jury trial rights, where none exists. (*DiPirro, supra*, 153 Cal. App. 4th at 184 [the "bifurcation of [an equitable] proceeding . . . did not transform the case into an action at law or require a jury trial".) As stated above, the issues before the Court are equitable in nature and/or, at the very least, constitute "special proceedings", none of which entitles the parties to a jury trial.

F. To the Extent There Are Causes of Action, Not Based in Equity, the Court Should Try Those Causes of Action at a Later Time in the Interest of Justice

The Phase 6 trial concerns the parties' claims to overlying rights, prescriptive water rights, and other rights as the Court may deem fit. Water right disputes are equitable in nature. To the extent there are causes of action, for which jury trial is applicable, the Court should try those causes of action at a later Phase. (*See* Code Civ. Proc. § 598.) In actions involving both legal and equitable issues, most courts will try the equitable issues first without a jury because this

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promotes judicial economy by potentially obviating the necessity for a jury trial of the legal issues. The court has noted:

> It is well established in California jurisprudence that "[t]he court may decide the equitable issues first, and the decision may result in factual and legal findings that effectively dispose of the legal claims." This District Court of Appeal has observed that the "better practice" is for "the trial court [to] determine the equitable issues before submitting the legal ones to the jury." . . . "[T]he practical reason for this procedure is that the trial of the equitable issues may dispense with the legal issues in the case." In short, "trial of equitable issues first may promote judicial economy."

(*Hoopes v. Dolan* (2008) 168 Cal.App.4th 146, 156-157 [citations omitted].)

The court's rulings on the equitable issues may establish rights or defenses that leave nothing further to be tried. (*Raedeke v. Gibraltar Sav. & Loan Ass'n* (1974) 10 Cal.3d 665, 671; *see DiPirro, supra*, 153 Cal.App.4th at p. 185.) Even if the legal issues remain to be tried by a jury, any finding of fact made by the judge on the equitable issues will be binding on the jury thus significantly curtailing the jury's power as trier of fact on the legal issues. (*Dill v. Delira Corp.* (1956) 145 Cal.App.2d 124, 129-130.)

The *Hoopes* court observed that the effect of this policy has "produced a number of cases in which the bench resolution of equitable issues preceded consideration of legal claims, and curtailed or foreclosed legal issues." (*Hoopes, supra*, 168 Cal.App.4th at p. 157; see *Walton v. Walton* (1995) 31 Cal. App. 4th 277, 292-294 [rejecting argument that the holding in *Arciero Ranches v. Meza* (1993) 17 Cal. App. 4th 114 does not allow equitable issues to be tried before legal issues].)

Consequently, to the extent that the parties have any causes of action, for which a jury trial right may apply (unconstitutional taking/inverse condemnation claims), those causes of action should be resolved at a later time—after the equitable declaratory relief causes of actions are tried.

III. CONCLUSION

For the reasons stated above, District No. 40 respectfully requests the Court deny the Motion for Order Setting Matter for Jury Trial.

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Dated: March 14, 2014

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PROOF OF SERVICE

I, Sandra K. Sandoval, 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,300 South Grand Avenue, 25th Floor, Los Angeles, CA 90071. On March 14, 2014, I served the within document(s):

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S OPPOSITION TO MOTION FOR ORDER SETTING MATTER FOR JURY TRIAL

☒ 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 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 March 14, 2014, at Los Angeles, California.

Sandra K. Sandoval