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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 JUDGMENT ON THE PLEADINGS *[Filed concurrently with Request for Judicial Notice in Support of Opposition to Motion for Judgment on the Pleadings]*

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I. INTRODUCTION

The motion of Cross-Defendants Diamond Farming Company, Crystal Organic Farms, Grimmway Enterprises, and Lapis Land Company, LLC ("Landowners") must be denied because the establishment of Los Angeles County Waterworks District No. 40's ("District No. 40") prescriptive water rights does not constitute a taking requiring compensation. Further, Landowners' motion is procedurally defective because it is duplicative of Diamond Farming Company's previously overruled demurrer. The Landowners are not allowed two bites at the apple. Diamond Farming Company filed a demurrer in 2005 advancing the exact same arguments that the Landowners advance here now. That demurrer prevents the Landowners from filing the instant motion on the same grounds. (Code of Civ. Proc. § 438, subd. (g).)

Substantively, Landowners' motion relies on two faulty premises: 1) that their rights to groundwater are absolute and 2) that the takings clause was intended to abrogate the centuries-old common law rules of adverse possession and prescription. Landowners' water rights are not absolute but rather are subject to the reasonable and beneficial use requirements of the California Constitution and can be lost by prescription. Moreover, prescription water rights acquired by a public entity, as District No. 40 has so acquired here, are gained as a matter of law and are not subject to the takings provisions of the state and federal constitutions. Because the Landowners' motion is procedurally defective, and because the substantive assertions contained therein are not supported by legal authority, the motion must be denied.

II. LEGAL ARGUMENT

A. Landowners' Motion is Procedurally Defective and Should be Stricken or Disregarded.

A party may move for judgment on the pleadings only if: (1) the moving party did not previously demur to the complaint on the same grounds; or (2) the moving party previously demurred on the same grounds and there has been a material change in the applicable case law or statute since the ruling on the demurrer. (Code of Civ. Proc. § 438, subd. (g).) Neither of these conditions are present here.

Code of Civil Procedure section 438 permits a motion for judgment on the pleadings only

on one of the following two grounds: (i) the court has no jurisdiction of the subject of the cause of action alleged in the complaint; or (ii) the complaint does not state facts sufficient to constitute a cause of action against that defendant. Here, Landowners do not argue the Court is without jurisdiction. Accordingly, Landowners must make their motion on the ground that the First Amended Cross-Complaint fails to state facts sufficient to constitute a cause of action.

Diamond Farming Company previously filed a demurrer to District No. 40's two separate prior Complaints on the ground that they failed to allege facts sufficient to constitute a cause of action because District No. 40 was constitutionally barred from obtaining its requested relief because it would constitute a taking without compensation, the same argument it advances here. (Request for Judicial Notice Exh. A.) That demurrer was overruled. (Request for Judicial Notice Exh. B.) Landowners do not allege there has been any material change in the applicable law to affect the prior ruling. All of the case law they cite predates the demurrer. Instead, Landowners are simply rehashing the same arguments they have already advanced and which this Court has already rejected.

Accordingly, this motion is nothing more than an improper motion for reconsideration of the prior demurrer and should be overruled for that reason.

B. The Acquisition of Prescriptive Water Rights Does not Require Payment of Compensation.

The Landowners' claim that District No. 40 is not authorized to obtain water rights via prescription is contrary to California law. Landowners do not have paramount water rights in the Antelope Valley Groundwater Basin ("Basin") simply by virtue of their status as overlying landowners. (See Cal. Const., art. X, § 2; *Tulare Irrigation District v. Lindsay-Strathmore Irrigation District* (1935) 3 Cal.2d 489, 524-25.) The California Supreme Court has rejected the notion that landowners own all waters beneath the surface of their property as incidents of surface ownership. (*Katz v. Walkinshaw* (1903) 141 Cal. 116, 128-34, 150.) According to the *Katz* court, such a rule is incompatible with the natural water-short conditions in California. (*Id.* at 120-21, 125-28, 139, 143.) Instead, the right of an overlying owner is correlative, not absolute. The water rights of the Landowners are subject to the reasonable and beneficial use limitations of

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the California Constitution and can be lost by prescription. (*Los Angeles v. San Fernando* (1975) 14 Cal.3d 199, 293.) The California Supreme Court has declared that overlying groundwater rights are subject to prescription by public entities. (*Id*.) Most recently in 2012, the California Court of Appeal addressed prescription as a contested issue. (*City of Santa Maria v. Adam* (2012) 211 Cal. App. 4th 266.) The court affirmed the trial court's finding that two public water producers had perfected their prescriptive rights against the overlying landowners. (*Id*. at 276-77.)

Landowners' motion also ignores the 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.) Landowners fail to cite any contrary authority because there is no law that requires public entities to pay for prescriptive rights.

Monetary compensation is completely contrary to the concept of a party obtaining a prescriptive right. Thus, thirty years ago, the California Supreme Court rejected the compensation argument that the Landowners now advance 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 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.].

(*Id*. at 574.) The Warsaw court further noted that the rationale behind prescription is related to the adverse possession doctrine[1]:

[1] The United State Supreme Court's takings jurisprudence also rebuts the suggestion that government adverse possession is a taking. In *Lucas v. South Carolina Coastal Council*, the Court held that a state does not commit a taking if its actions are consistent with "background principles of the State's law of property and nuisance." (505 U.S. 1003, 1052 (1992).) Under *Lucas*, the government may abrogate property rights so long as the government's

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> [Its] underlying philosophy is basically that land use has historically been favored over disuse, and that therefore he who uses land is preferred in the law to he who does not, even though the latter is the rightful owner. [Fn. omitted.] Hence our laws of real property have sanctioned certain types of otherwise unlawful taking of land belonging to someone else, while, at the same time, our laws with respect to other types of property have generally taken a contrary course. This is now largely justified on the theory that the intent is not to reward the taker or punish the person dispossessed, but to reduce litigation and preserve the peace by protecting a possession that has been maintained for a statutorily deemed sufficient period of time . . . . [para.] Quite naturally, however, dispossessing a person of his property is not easy under this theory, and it may even be asked whether the concept of adverse possession is as viable as it once was, or whether the concept always squares with modern ideals in a sophisticated, congested, peaceful society . . . . [para.] *Yet this method of obtaining land remains on the books*, and if a party proves all five of the [requisite] elements [citation], he can claim title to another's land [Citations omitted.]
>
> Similarly, *the system of acquiring an interest in land by prescription "remains on the books," and any decision to alter that system by requiring the payment of compensation clearly would be a matter for the Legislature. Defendant cites no authorities indicating that the present system is unconstitutional in any respect*.

(*Id*. at 575 (emphasis added).)

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. There, the court squarely held a public entity, which had acquired a navigation easement from its predecessor (LAT), was not required to compensate the plaintiffs under a theory of inverse condemnation:

> Having acquired the right to interfere with the plaintiffs' use and enjoyment of their properties' by prescription, LAT was not required to compensate them [the plaintiffs] for the easement [Citation omitted], and it could transfer it to Authority, which it did. [Citation omitted].

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limitation "inhere[s] in the title itself." (*Id*. at 1029.) Adverse possession also resists classification as a taking because when adverse possession happens, title does not actually transfer from record owner to the government adverse possessor. A taking cannot occur unless "an interest . . . is literally or effectively transferred and increases government's store of proprietary interests." (William B. Stoebuck, A General Theory of Eminent Domain, 47 Wash. L. Rev. 553, 570 (1972).) But with adverse possession and prescription claims, there is no transfer of an interest from the former owner to the adverse possessor. The possessor acquires a new source of title: his possession. The majority view among courts is that "[i]n the case of adverse possession, property is not taken. Rather . . . the former titleholder has lost his claim of ownership and the adverse possessor is thereafter maintaining its possession, not taking property." (*State ex rel. A.A.A. Investments v. City of Columbus*, 478 N.E.2d 773, 775 (Ohio 1985).)

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The reasoning behind these holdings was set forth in *Warsaw* in which the Supreme Court explained:

> As described by Professor Powell, 'Historically, prescription has had the theoretical basis of a lost grant. Its continuance has been justified because of its functional utility in helping to cause prompt termination of controversies before the possible loss of evidence and in stabilizing long continued property uses.' [Citation omitted]. If the doctrine of prescription is truly aimed at 'protecting' and 'stabilizing' a long and continuous use or possession as against the claims of an alleged 'owner' of the property, then the latter's claim for damages or fair compensation for an alleged 'taking' must be rejected.

(*Warsaw*, 35 Cal.3d at 575.)

In short, once a prescriptive right has been established, to effect the above-stated policy, no compensation need be paid to the property owner whose rights have been so prescribed due to his or her lack of diligence. (*Id*. at 574.) More specifically and as noted above, water rights cases have uniformly recognized a public entity's ability to acquire prescriptive rights to produce groundwater without requiring the prescribing entity to provide compensation.

Accordingly, if District No. 40 demonstrates that it has acquired prescriptive rights to produce groundwater paramount to the Landowners' right to do so, then, by law, District No. 40 cannot be required to compensate the Landowners for having done so.

C. Even If District No. 40's Prescriptive Water Rights Could Constitute an Inverse Condemnation Claim, it is Barred by the Statue of Limitations.

To obtain a prescriptive right to produce groundwater in California, the water production must be for a reasonable and beneficial purpose, open and notorious, adverse and hostile, exclusive and under a claim of right, and continuous and uninterrupted for the statutory period of five years. (*Pasadena*, 33 Cal.2d at 926-927; *San Fernando*, 14 Cal.3d at 164-165; Code Civ. Proc. § 318.) Prescriptive rights, once perfected, operate to divest a property owner of rights so prescribed: "Appropriative and prescriptive rights to groundwater, as well as the rights of an overlying owner, are subject to loss by adverse user." (*Pasadena*, 33 Cal.3d at 927.)

If the statutory five year period has run for the creation of a prescriptive right, then any claim for inverse condemnation is barred by the five year statute of limitations governing such claims.

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> Although it is generally true a governmental entity cannot acquire private property without the payment of just compensation, it is well settled the statute of limitations applies to inverse condemnation claims. [Citations omitted]. Claims based on the government's taking of private property are subject to a five year statute of limitations. [Citations omitted].

(*Otay Water Dist. v. Beckwith* (1991) 1 Cal.App.4th 1041, 1048.) The statute of limitations for an inverse condemnation claim is five-years. (*Id.*; Code Civ. Pro. §§ 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. (*Pasadena*, *supra*, 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. (See Code Civ. Proc. §§ 318, 319; *Baker*, *supra*, 220 Cal.App.3d at 1609 [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].) Thus, even if the Landowners could maintain an inverse condemnation claim, it is time barred.

III. CONCLUSION

Landowners' motion for judgment on the pleadings is procedurally defective and improper. But even upon consideration of the merits, the motion must be denied. California law is clear that government agencies like District No. 40 may acquire prescriptive water rights, and ample authority refutes the Landowners' position that prescription constitutes a taking requiring the payment of compensation. For the reasons stated herein, District No. 40 requests that the Court deny Landowners' motion for judgment on the pleadings.

Dated: March 14, 2014

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By _____

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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 JUDGMENT ON THE PLEADINGS

☒ 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