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10 Attorneys for DIAMOND FARMING COMPANY,
11 a California corporation

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

Coordination Proceeding Special Title
(Rule 1550 (b))

Judicial Council Coordination No. 4408

ANTELOPE VALLEY GROUNDWATER
CASES

Case No.: 1-05-CV-049053

Included actions:

NOTICE OF MOTION AND MOTION
PURSUANT TO CODE OF CIVIL
PROCEDURE SECTION 760.030;
MEMORANDUM OF POINTS AND
AUTHORITIES

Los Angeles County Waterworks District No.
40 vs. Diamond Farming Company
Los Angeles Superior Court
Case No. BC 325201

Date: December 2, 2005
Time: 10:00 a.m.
Dept: 1, Rm 534

Los Angeles County Waterworks District No.
40 vs. Diamond Farming Company
Kern County Superior Court
Case No. S-1500-CV 254348 NFT

Diamond Farming Company vs. City of
Lancaster
Riverside County Superior Court
Lead Case No. RIC 344436 [Consolidated
w/Case Nos. 344668 & 353840]

1 **TO ALL PARTIES AND TO THEIR RESPECTIVE ATTORNEY OF RECORD:**

2 **NOTICE IS HEREBY GIVEN** that on December 2, 2005, at 10:00 a.m., or as soon thereafter
3 as the matter may be heard, in the department and location to be determined by the Court, Diamond
4 Farming Company will move, pursuant to Code of Civil Procedure section 760.030(b), for an order of
5 this Court directing the Plaintiff, Los Angeles County Waterworks District No. 40 ("Waterworks") in
6 the coordinated actions denoted BC 325201 & S-1500-CV 254348 NFT to amend each Complaint, so
7 as to conform to and follow the provisions of Chapter 4 of the California Code of Civil Procedure
8 sections 760.010 et seq.

9 The motion will be based on this notice of motion, on the memorandum of points and authorities
10 set forth below, on the records and file herein, and on such evidence as may be presented at the hearing
11 of the motion.

12 Dated: October 26, 2005

LeBEAU • THELEN, LLP

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14 By: 

15 **BOB H. JOYCE**

16 Attorneys for DIAMOND FARMING COMPANY,
17 a California corporation
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1 The proceeding authorized by Code of Civil Procedure sections 760.010 et seq., is the
2 legislatively declared preferred proceeding and clearly “. . . another form of relief that is adequate.”

3 This Court should defer to the Legislature’s recognition of the sanctity of record title to real
4 property, and given the status of Waterworks as a governmental entity, attempting to take private
5 property for public use without compensation, order Waterworks to amend each Complaint so as to
6 conform to the legislative directive set forth in California Code of Civil Procedure section 761.020(b),
7 and specifically direct that in the Amended Complaints that it allege the specific facts constituting and
8 supporting its claim of prescription.

9 In these cases, Waterworks pleads that it has prescriptive rights to pump water from the Antelope
10 Valley basin, based upon the claim that Waterworks has “continuously and for more than five years and
11 before the date of this action pumped water from the basin for reasonable and beneficial purposes and
12 has done so under a claim of right in an actual, open, notorious, exclusive, continuous, hostile and
13 adverse manner.” As noted above, Waterworks alleges that Diamond, and all other “Doe” landowner
14 defendants have had “actual and/or constructive notice” of the District’s “pumping,” and therefore
15 Waterworks’ prescriptive rights are superior to Diamond’s overlying interest.

16 As is more fully set forth in the concurrently filed Demurrer, Waterworks’ claim is uncertain and
17 that uncertainty is derivative of the method in which it has chosen to characterize the singular operative
18 fact, its “pumping.” Waterworks has chosen to characterize its pumping by a string recital of those
19 adjectives which as ultimate conclusions have been recognized as constituting the description by
20 conclusion of the elements for a claim of acquisition of title under a theory of prescription. There are
21 no facts pled to support the pled conclusion of hostility, nor adversity. The pled claim of exclusivity is
22 expressly contradicted within the pleading itself. The operative five year period is alleged to have
23 preceded the filing of the Complaints but is otherwise uncertain, not fixed by date and otherwise
24 undefined. Although Waterworks has pled that Diamond and all Doe defendant landowners have had
25 “actual and/or constructive notice” of its “pumping,” Waterworks has not pled that it gave notice or that
26 any landowner, including Diamond, had actual and/or constructive notice of its claim of right or claim
27 of adversity. Waterworks has not pled that it has trespassed upon or invaded the property of any
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landowner. Waterworks has pled no facts that it has interfered with or otherwise prevented any landowner from exercising its priority usufructuary right of use. This Court, upon considering the concurrently filed Demurrer, will consider all issuable facts properly pleaded, but must disregard argument, contentions, deductions or conclusions of fact or law unsupported by the necessary predicate facts. (See *Darr v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 713.)

Diamond's right to its overlying interest to take groundwater for its own reasonable and beneficial use is an appurtenant incident of its fee title.¹ Because Waterworks seeks to establish a prescriptive interest superior to Diamond's overlying right, as well as that of all other overlying "Doe" landowners, Waterworks should plead its case in accord with the principles of a quiet title action pursuant to Code of Civil Procedure sections 760.010 et. seq., which governs any action "to establish title against adverse claims to real or personal property, *or any interest therein.*" [Emphasis added.]

Waterworks' failure to plead in accord with the quiet title law has important consequences. A quiet title complaint must include all of the following averments: (1) *a legal description of the property* that is the subject of the action; (2) the title of the plaintiff, and the basis of the title, and, if title is based upon adverse possession, *the specific facts constituting the adverse possession*; (3) the adverse claims to plaintiff's alleged title; (4) the date as of which the determination is sought, and, if the date is different than the date of the complaint, a specific explanation of the reasons for a different date; (5) a prayer for determination of title.² Furthermore, a quiet title pleading requires that the plaintiff file a *lis pendens* in each county where the described real property is located, and that plaintiff name all defendants "that are of record or known to the plaintiff or *reasonably apparent* from an inspection of the property."³ Pleading the case in quiet title will have important consequences in that the required pleading of the

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1 (See *Pasadena v. Alhambra* (1949) 33 Cal.2d 908, 925 [the right of an owner of land to take groundwater is "based on ownership of the land and is appurtenant thereto"]; See also, e.g., *Schimmel v. Martin* (1923) 190 Cal. 429, 432; *Lux v. Haggin* (1886) 69 Cal. 255; *California v. Superior Court (Riverside)* (2000) 78 Cal.App.4th 1019.)

2 (Code Civ. Proc., § 760.020.)

3 (Code Civ. Proc., § 760.06(b).)

1 specific facts of the prescriptive claim will focus the pretrial efforts of the hundreds of parties to these
2 coordinated proceedings.

3 Obviously, the requirements for pleading a quiet title action are much more strict than plaintiff's
4 current effort to state as conclusions its case merely in declaratory relief. Plaintiff has failed to plead
5 "the specific fact constituting the adverse possession" as required. The quiet title pleading requirements
6 have important consequences and benefits in this case. Pleading the description of the property involved
7 and the precise adverse claims is necessary to ensure that all parties are properly joined, particularly
8 since Waterworks requests determination of its rights *inter se* as against all overlying landowners. This
9 court should ensure that all affected parties are brought before it, to meet the requirements of due process
10 to affected parties as envisioned by the quiet title law, including potential service by publication.
11 Specific property descriptions and identification of all known affected defendants could also have
12 important consequences to these coordinated proceedings, since this court can take judicial notice that
13 the property overlying the Antelope Valley basin is located in both Kern and Los Angeles counties, and
14 may involve hundreds of ascertainable defendants.

15 The legislatively declared quiet title pleading requirements would mandate that plaintiff state its
16 claim of prescription by specific facts, and not rely upon general conclusions and averments, and would
17 potentially allow the court to consider the legal sufficiency of plaintiff's claim before substantial
18 litigation ensues by discovery to determine evidentiary facts in this obviously complex litigation.

19 These actions are *in rem*. The quiet title requirement of a *lis pendens* also ensures that the court
20 retains appropriate jurisdiction. The main purpose of a *lis pendens* is to preserve the court's jurisdiction
21 over property: if a party to litigation were able to transfer clear title during the litigation, the court would
22 be unable to render an effective judgment. The *lis pendens* prevents "the defendant property owner from
23 frustrating any judgment that might eventually be entered by transferring his or her interest in the

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1 property while the action was still pending."⁴ The same is necessary to preclude the intervention before
2 judgment of potential bona fide purchasers for value.⁵

3 Also, a pleading in quiet title makes it manifest that the plaintiffs standard of proof will be "clear
4 and convincing" evidence. The owner of legal title to property is presumed to be the owner of full
5 beneficial title, and this presumption may be overcome only upon "clear and convincing proof."⁶

6 Code of Civil Procedure section 760.030 provides that the action to quiet title "is cumulative and
7 not exclusive of any other remedy or right of action...." However, that same section provides that in
8 other actions or proceedings "in which establishing or quieting title to real property is in issue" the court
9 in its discretion may, upon motion of a party, require that the issue be resolved pursuant to the quiet title
10 statutes "to the extent practicable." This Court should order Waterworks to amend these Complaints
11 and proceed as required under Code of Civil Procedure sections 760.010 et seq.

12 Dated: October 26, 2005

LeBEAU • THELEN, LLP

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14 By: 

15 BOB H. JOYCE
16 Attorneys for DIAMOND FARMING COMPANY,
17 a California corporation
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25 4 (*Lewis v. Superior Court* (1994) 30 Cal. App. 4th 1850, 1860.)

26 5 (Civil Code §§ 1107 and 1214.)

27 6 (Evid. Code, § 662.)
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PROOF OF SERVICE

ANTELOPE VALLEY GROUNDWATER CASES
JUDICIAL COUNSEL PROCEEDING NO. 4408
CASE NO.: 1-05-CV-049053

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter Drive, Suite 300, Bakersfield, California 93309. On October 27, 2005, I served the within

NOTICE OF MOTION AND MOTION PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 760.030; MEMORANDUM OF POINTS AND AUTHORITIES

☒ by placing ☐ the original ☐ a true copy thereof enclosed in a sealed envelope(s) addressed as follows:

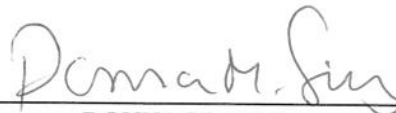
☒ PURSUANT TO THE SANTA CLARA SUPERIOR COURT E-FILING IN COMPLEX LITIGATION DEPARTMENT 17, A PROOF OF SERVICE IS GENERATED BY THE E-FILING SYSTEM

☐ **(BY MAIL)** 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 at Bakersfield, California, in the ordinary course of business.

☐ **(OVERNIGHT/EXPRESS MAIL)** By enclosing a true copy thereof in a sealed envelope designated by United States Postal Service (Overnight Mail)/Federal Express/United Parcel Service ("UPS") addressed as shown on the above by placing said envelope(s) for ordinary business practices from Kern County. I am readily familiar with this business' practice of collecting and processing correspondence for overnight/express/UPS mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service/Federal Express/UPS in a sealed envelope with delivery fees paid/provided for at the facility regularly maintained by United States Postal Service (Overnight Mail/Federal Express/United Postal Service [or by delivering the documents to an authorized courier or driver authorized by United States Postal Service (Overnight Mail)/Federal Express/United Postal Service to receive documents].

☐ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the offices of the addressee(s). Executed on _____, 2005, at Bakersfield, California.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that the foregoing was executed on October 27, 2005, in Bakersfield, California.



DONNA M. LUIS