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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF LOS ANGELES**

Coordination Proceeding

ANTELOPE VALLEY GROUNDWATER  
CASES

Included actions:

Los Angeles County Waterworks District No.  
40 vs. Diamond Farming Company

Los Angeles County Waterworks District No.  
40 vs. Diamond Farming Company

Diamond Farming Company vs. City of  
Lancaster

Judicial Council Coordination No. 4408

Case No. 1-05-CV-049053

**NOTICE OF MOTION AND MOTION  
TO STRIKE THE COMPLAINTS OF  
LOS ANGELES WATERWORKS  
NO. 40 IN ACTIONS S-1500-CV254348  
AND BC325201**

Kern County Superior Court  
Case No. S-1500-CV 254348 NFT

Los Angeles Superior Court  
Case No. BC 325201

Riverside County Superior Court  
Lead Case No. RIC 344436 [Consolidated  
w/Case Nos. 344668 & 353840]

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

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1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that the Motion to Strike filed herewith has been set for hearing on  
3 December 2, 2005 at 10:00 a.m., or as soon thereafter as counsel can be heard, in the Department and  
4 location to be determined by the court, Diamond Farming will seek to strike the entirety of both  
5 complaints filed in actions BC 325201 and S-1500-CV254348 NFT.

6 The Motion to Strike is based on this Notice of Hearing, the Memorandum of Points and  
7 Authorities Supporting Demurrer, the Request for Judicial Notice and Declaration of Bob H. Joyce in  
8 Support of Defendant's Demurrer and Motion to Strike, all filed separately and concurrently herewith;  
9 on all pleadings, papers, and records in the Superior Court clerk's file pertaining to the action; and any  
10 reply or supplemental memoranda or Requests for Judicial Notice which may be hereafter filed in support  
11 of the Motion to Strike; and oral argument presented at the time of the hearing.

12 Dated: October 27, 2005

LeBEAU • THELEN, LLP

13  
14 By: 

15 BOB H. JOYCE

16 Attorneys for DIAMOND FARMING COMPANY,  
17 a California corporation  
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## INTRODUCTION

In the original action, Diamond is a plaintiff and Waterworks is a defendant. In fact, the plaintiff and Diamond have commenced trial in the Riverside County Superior Court to litigate the same issues that plaintiff has now attempted to put before this court with its “new” Complaint. Further, plaintiff has attempted to raise the identical issues against Diamond by way of Cross-Complaint in the Riverside County action. The court in Riverside denied plaintiff’s Request for Leave to File the Cross-Complaint.

## II.

On October 29, 1999, Diamond filed its Complaint to Quiet Title in property located in Kern County, overlying and within the Antelope Valley. The matter was in rem and properly venued in Kern County as Case #240090. On February 22, 2000, Diamond filed a second Complaint to Quiet Title in

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1 a separate property located in Los Angeles County overlying and within the Antelope Valley. The matter  
2 was in rem and properly venued in Los Angeles County as Case No. MC011330.

3 On June 5, 2000, Case # 240090, upon a noticed motion, was ordered transferred to the Superior  
4 Court of Riverside County and given the new case number RIC344436. On June 8, 2000, Case  
5 No. MC011330 was transferred by stipulation to the Superior Court of Riverside County and given the  
6 new Case No. RIC344668. On August 2, 2000, both cases, RIC344668 and RIC344436, were  
7 consolidated for trial.

8 Diamond's Complaints allege generally that: (1) Diamond owns a fee interest in real property  
9 overlying a body of percolating groundwater (the Antelope Valley basin), and, by virtue of that  
10 ownership, Diamond holds a priority overlying water right to extract groundwater and to put the water  
11 to reasonable and beneficial use on the property (Diamond's overlying water right); (2) that the  
12 defendants (including Waterworks) claim that they have rights to extract groundwater from the basin for  
13 non-overlying use that are superior to, or coequal with, Diamond's priority overlying water right, based  
14 on a claim of prescription or other claim in law or equity; (3) Diamond's overlying water right is superior  
15 to any rights Waterworks may have to take groundwater from the basin for non-overlying use; and (4)  
16 Diamond seeks to quiet title to the superior priority of Diamond's overlying water right against the  
17 adverse claims of defendants to use groundwater from the basin.

18 On July 3, 2000, Waterworks answered the complaint in case no. 344436. On December 15,  
19 2000, Waterworks answered the Complaint in Case No. 344668. With the filing of these Answers, the  
20 lead Case No. RIC344436, was then at issue.

21 Waterworks' Answers allege, uniformly, as controverted fact pursuant to the quiet title statutes,<sup>2</sup>  
22 as superior rights to Diamond's overlying rights: (1) the priority right acquired by prescription to extract  
23 or pump groundwater from the Antelope Valley Groundwater basin equal to the highest volume of  
24 groundwater extracted by Waterworks in any year preceding entry of judgment, but not less than 18,944  
25 acre feet; (2) the priority right to pump or extract or authorize others to extract from the basin a volume  
26 of water equal in quantity to the volume of water previously purchased by Waterworks which has

27  
28 <sup>2</sup> See Code Civ. Proc., § 761.030

1 augmented the supply of water in the basin; (3) the priority right to pump or extract or authorize others  
2 to extract from the basin a volume of water equal in quantity to the volume of water to be purchased in  
3 the future by Waterworks which will augment the supply of water in the basin; and (4) the priority right  
4 to pump or extract or authorize others to extract from the basin a volume of water equal in quantity to  
5 the volume of water to be injected by Waterworks within the basin.

6 Discovery was commenced. On June 13, 2001, the defendant, Rosamond Community Services  
7 District, made a Motion to Bifurcate the issues for trial. That motion was joined by Los Angeles  
8 Waterworks No. 40. That motion was opposed by Diamond. The motion was granted despite the  
9 Diamond's opposition on August 20, 2001. Thereafter, Phase 1 of the trial commenced on August 5,  
10 2002. The trial consumed four (4) court days and was suspended on August 9, 2002.

11 On August 9, 2002, prior to the conclusion of the trial of Phase 1, defendants made an oral  
12 Motion to Vacate the Joint Stipulation defining the issue to be tried in Phase 1. On September 6, 2002,  
13 the trial court vacated its prior Bifurcation Order. The court trial was continued four times until it was  
14 eventually vacated on May 14, 2004, when the case was reassigned.

15 On November 12, 2004, Waterworks sought leave to file a Cross-Complaint with the Riverside  
16 Court. The proposed Cross-Complaint was virtually identical to the present Complaint. The Riverside  
17 Court denied leave. Waterworks then filed the two present Complaints, one in Kern County and one in  
18 Los Angeles County, both alleging the identical issues in controversy between the parties which are  
19 presently pending in Case No. RIC 344436.

### 20 **III.**

#### 21 **LAW AND ARGUMENT**

##### 22 **A. *The Court has Authority to Strike a Complaint that is Not Drawn or Filed*** 23 ***in Conformity with California Law.***

24 "Any party, within the time allowed to respond to a pleading may serve and file a Notice of  
25 Motion to Strike the whole or any part thereof ...." (Code Civ. Proc., § 435, subd. (b)(1).) This motion  
26 has been filed within the time prescribed for pleading to the Complaint. (Code Civ. Proc., § 586, subd.  
27 (a)(1).)

28 "The court may, ... upon terms it deems proper: [¶] (a) Strike out any irrelevant, false, or

1 improper matter ... [or] [¶] (b) Strike out all or any part of any pleading not drawn or filed in conformity  
2 with the laws of this state ....” (*Id.*, § 436.)

3 A. *The Matters Being Asserted by Waterworks in Both Complaints are Irrelevant*  
4 *and Redundant as Asserted Against Diamond.*

5 In the present Complaints, Waterworks is attempting to litigate two separate periods of overdraft  
6 in order to secure prescriptive rights against 25,000 plus defendants. These claims, as against Diamond,  
7 are irrelevant and redundant and therefore subject to a Motion to Strike. (Code Civ. Proc., § 436;  
8 *Triodyne, Inc. v. Superior Court of Los Angeles County* (1966) 240 Cal. App. 2d 536, 542.)

9 Pursuant to California law, the statutory period for acquiring prescriptive rights can be cut-off  
10 by the overlying owner's engaging in self help activities to retain their rights. One such recognized activity  
11 is engaging in the legal process.

12 "Prescriptive rights are not acquired by the taking of surplus or excess water. [But] [a]n  
13 appropriative taking of water which is not surplus is wrongful and may ripen into a  
14 prescriptive right where the use is actual, open and notorious, hostile and adverse to the  
original owner, continuous and uninterrupted for the statutory period of five years, and  
under claim of right." [Citation]

15 Even these acquired rights, however, may be interrupted without resort to the legal  
16 process if the owners engage in self-help and retain their rights by continuing to pump  
nonsurplus waters." (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal. 4th 1224,  
1241.)

17  
18 "The running of the statute, however, can effectively be interrupted by self-help on the  
19 part of the lawful owner of the property right involved." (*Pasadena v. Alhambra* (1949)  
33 Cal. 2d 908, 931.)

20 In October 1999, Diamond commenced legal proceedings against Waterworks to determine the  
21 priority of each party's right to pump water from the Antelope Valley Basin. This litigation effectively  
22 stopped the accrual of the statutory period for prescription in October 1999 as to Diamond. Irrespective  
23 of the fact that both Complaints acknowledge the filing of this suit, Waterworks still attempts to claim  
24 prescriptive rights for the five-year-period preceding the filing of the new Complaints. (See Complaint  
25 BC325201, Paragraph 15 and Complaint S-1500-CV254348, Paragraph 15.) The status of the basin in  
26 the last five years preceding the filing of Waterworks' Complaints is irrelevant for purposes of determining  
27 the whether or not Diamond's water rights have been taken through prescription, as Diamond effectively  
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1 cut-off the statutory period by filing its action in October 1999. Inasmuch as Diamond stopped the  
2 statutory period in October 1999, Waterworks' allegations concerning the most recent five-year-period  
3 is irrelevant and therefore subject to be stricken. Inasmuch as both Complaints are relying on this five  
4 year period, Diamond is hereby requesting that both complaints be stricken in their entirety as to  
5 Diamond.

6 By way of incorporation, Waterworks has also sought to adjudicate the statutory period  
7 commencing some unspecified period prior to the filing of Diamond's Complaint. As to Diamond, the  
8 assertion of these claims is redundant, improper and not in drawn or filed conformity with the laws of this  
9 state. The redundancy occurs from the fact that Waterworks, by way of the affirmative defenses  
10 contained in its Answers filed in the original action, has previously asserted these claims and put them at  
11 issue as to Diamond. (See Exhibits D and E attached to Diamond's Request for Judicial Notice.) Nothing  
12 in these new Complaints affords Waterworks any greater or different remedy than it would acquire under  
13 the original, and currently pending action, filed by Diamond. Further, Waterworks, by filing these new  
14 Complaints against Diamond, is improperly trying to overcome its failure to file a cross-complaint in the  
15 original action and circumvent the limitations imposed upon it by the Section 426.30 of the Code of Civil  
16 Procedure. Therefore, as applied to Diamond, both Complaints are redundant and duplicative with the  
17 pleadings in the original action and should therefore be stricken.

18 B. *Both Complaints for Declaratory Relief are Improper as Against Diamond*  
19 *Because These Complaints and Each Cause of Action Alleged Therein Were Not*  
20 *Brought as an Original Action Between the Parties or by Way of Cross-*  
*Compliant.*

21 Waterworks has chosen to file its two actions as actions for declaratory relief. The manner in  
22 which Waterworks has plead these actions is improper and not drawn in conformity with the laws of this  
23 state, specifically Code of Civil Procedure section 1060. Code of Civil Procedure 1060 authorizes a  
24 party to file an action for declaratory relief ". . . in cases of actual controversy relating to the legal rights  
25 and duties of the respective parties . . ." A declaratory relief action may be brought as an "original action  
26 or Cross-Complaint" between the parties. Here, Waterworks has failed to bring an original action or to  
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1 timely file a Cross-Complaint against Diamond.<sup>3</sup>

2 The controversy relating to the legal rights and duties between Waterworks and Diamond was  
3 brought to court in the original action filed in October 1999. Thereafter, Waterworks answered  
4 Diamond's Complaints but did not file a Cross-Complaint. Now, Waterworks has attempted to file two  
5 separate actions against Diamond to obtain a declaration of the same rights and duties that are being  
6 adjudicated in the original action filed by Diamond. This is improper and contrary to the purpose and  
7 intent of the declaratory relief statutes.

8 "The declaratory relief statute should not be used for the purpose of anticipating and  
9 determining an issue which can be determined in the main action. The object of the statute  
10 is to afford a new form of relief where needed and not to furnish a litigant with a second  
11 cause of action for the determination of identical issues." (*General of America Ins. Co.*  
12 *v. Lilly* (1968) 258 Cal. App. 2d 465, 470.)

11 "Declaratory relief is unavailable for the determination of issues involved in an already  
12 pending action or to prevent such issues from being presented to a jury." (*Pacific E. R.*  
13 *Co. v. Dewey* (1949) 95 Cal. App. 2d 69, 73.)

13 "No action in declaratory relief will lie where the issue to be determined is the same as in  
14 the pending lawsuit." (*Allstate Ins. Co. v. Fisher* (1973) 31 Cal. App. 3d 391, 397.)

15 Code of Civil Procedure section 436 allows the court to strike all of the pleading when it is  
16 improper or not drawn in conformity with the laws of the state. Due to the fact that Waterworks has  
17 failed to allege these claims in either an original action on these issues as between these parties and has  
18 failed to bring these claims as a Cross-Complaint, Waterworks' Complaint is improper and is not filed  
19 in conformity with the laws of this state and must be stricken. Further, the filing of the two new actions  
20 against Diamond are improperly asserted as a second actions against Diamond seeking to determine the  
21 same issues that are pending in the original action. All of the issues raised in these new Complaints can  
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23 3 All counsel for the public entities, including Petitioner's counsel, are well versed in California Water law. One  
24 must assume that each counseled their respective clients as to their entitlement to file, in response to Diamond Farming  
25 Company's Quiet Title action, a permissive Cross-Complaint as against all other overlying landowners within the Antelope  
26 Valley so as to by Answer and Cross-Complaint litigate their prescriptive claim as against all in one action. Inexplicably  
27 no public entity defendant asserting prescriptive claims as against Diamond Farming filed a permissive Cross-Complaint  
28 concurrently with their Answer as the law permitted them to do. Apparently, at that time, every defendant public entity  
in the Riverside County Superior Court action knowingly elected to keep the dispute limited to their prescriptive claims  
as against those two Plaintiffs in those consolidated Quiet Title actions. No judicially cognizable excuse for that failure  
to do by permissive Cross-Complaint what is now being attempted by this "new" complaint has yet to be proffered. If the  
ends of justice are to be promoted, what is the answer?



1 and will be resolved as between Waterworks and Diamond in the original action. Therefore, a  
2 Declaratory Relief action by Waterworks is improper as against Diamond and the Motion to Strike must  
3 be granted.

4 The court has further discretion to strike or refuse to exercise its power to hear this matter when  
5 it determines that its declaration is not necessary under the circumstances. (Code Civ. Proc., § 1061.)  
6 "The availability of another form of relief that is adequate will usually justify refusal to grant declaratory  
7 relief. The refusal to exercise the power is within the court's legal discretion and will  
8 not be disturbed on appeal except for abuse of discretion. [Citation]" (*Allstate Ins. Co.*, *supra*, 31 Cal.  
9 App. 3d at pp. 394-395.)

10 C. *The matters Waterworks now attempts to plead by its new complaints were*  
11 *required to be pled by compulsory cross-complaint in the Riverside court, and*  
*were waived when not pled by cross-complaint.*

12 Code of Civil Procedure § 426.30 provides as follows:

13 "(a) Except as otherwise provided by statute, if a party against whom a  
14 complaint has been filed and served fails to allege in a cross-complaint any  
15 related cause of action which (at the time of serving his answer to the  
16 complaint) he has against the plaintiff, **such party may not thereafter in**  
**any other action assert against the plaintiff the related cause of**  
**action not pleaded.**

17 (b) This section does not apply if either of the following are established:

18 (1) The court in which the action is pending does not have jurisdiction  
19 to render a personal judgment against the person who failed to plead the  
related cause of action.

20 (2) The person who failed to plead the related cause of action did not  
21 file an answer to the complaint against him." [Emphasis added.]

22 Neither exception noted applies here, and Waterworks' failure to assert by compulsory Cross-  
23 Complaint the claims now pled in these new Complaints renders these new Complaints improper and  
24 these new Complaints should, as to Diamond, be stricken.<sup>4</sup> Each and every claim now pled by plaintiff  
25

26 4 (See Code Civ. Proc., §§ 426.10, 426.30, 426.50; See *AL Holding Co. v. O'Brien & Hicks, Inc.* (1999) 75  
27 Cal.App.4th 1310, 1313- 1314; *Currie Medical Specialties, Inc. v. Bowen* (1982) 136 Cal.App.3d 774, 777; *Sidney v. Sup.*  
28 *Ct. (Kinoshita)* (1988) 198 Cal.App.3d 710, 718; *City of Hanford v. Sup. Ct. (GWF Power Systems, Inc.)* (1989) 208  
Cal.App.3d 580, 587.)

1 in these Complaints should have been pled by Cross-Complaint in the Riverside Superior Court action.  
2 Plaintiff herein answered Diamond Farming's Complaints in the Riverside Superior Court consolidated  
3 action and did not then file a Cross-Complaint. Therefore, the actions not then pleaded by Cross-  
4 Complaint are barred and should be stricken. (Code of Civil Procedure Section 426.30.)

5 V.

6 **CONCLUSION**

7 The plaintiff is attempting to breathe life into claims that are statutorily barred by their failure to  
8 file a Cross-Complaint in the previous and on going action in Riverside. The issues raised by the  
9 Complaints are improperly before this court and not drawn in conformity with the laws of this state. This  
10 court should grant the motion, and strike the Complaint as to Diamond.

11 Dated: October 27, 2005

Respectfully submitted,

12 LeBEAU • THELEN, LLP

13  
14 By: 

Bob H. Joyce  
Attorneys for DIAMOND FARMING COMPANY,  
a California corporation

1 **PROOF OF SERVICE**

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

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

8 **NOTICE OF MOTION AND MOTION TO STRIKE THE COMPLAINTS OF LOS**  
9 **ANGELES WATERWORKS NO. 40 IN ACTIONS S-1500-CV254348 AND BC325201**

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

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

13 ☐ (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing  
14 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day  
15 with postage thereon fully prepaid at Bakersfield, California, in the ordinary course of business.

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

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

28 ☒ (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.

29   
DONNA M. LUIS