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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))

ANTELOPE VALLEY GROUNDWATER CASES

Included actions:

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

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]

Judicial Council Coordination No. 4408

Case No.: 1-05-CV-049053

REPLY TO OPPOSITION TO DEMURRER

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

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I.
INTRODUCTION

Waterworks District No. 40's (hereinafter "Waterworks") ignores and refuses to acknowledge that as a political subdivision of the State, it is itself the sovereign. Its powers are limited to those expressly conferred, and its conduct is constrained by both the Federal and State Constitutions. Waterworks places emphasis upon court decisions addressing issues of both pleading and proof in prescription and/or adverse possession cases which evolved out of private disputes between private citizens. By argument and citation, it asserts that its actions and its pleading need not be, and in fact cannot be, scrutinized any differently than if it were itself a private citizen. It is that assumption that renders the Opposition to these Demurrers deficient.

Private rights and private responsibilities devolve from the common law and are concededly inalienable rights, reaffirmed by the Constitution. Those who exercise the powers of the sovereign do so with the consent of the governed. Under our system of checks and balances and as between our three branches of government, our independent judiciary is the guardian of that compact and the shield against the temptations of tyranny. When the government acts against the property rights of a private citizen, there is not a congruence between public and private rights and responsibilities. Waterworks' acts and pleadings must be scrutinized through the prism of the Constitution.[1]

II.
WATERWORKS CONCEDES BY ITS SILENCE THAT IT HAS NOT BEEN GRANTED THE AUTHORITY TO ACQUIRE TITLE TO PRIVATE PROPERTY BY PRESCRIPTION AND THUS THE EFFORT IS ULTRAVIRES – VOID AB INITIO

Waterworks by its silence concedes that it is a creature of statute with limited powers and any reasonable doubt concerning the existence of its power must be resolved by this Court against it. Both the mode and the measure of the power of Waterworks to acquire title to real property is expressed in and limited by California Water Code section 53370. That limited authorization is not at all ambiguous.[2] By silence and its failure to address the issue at all, Waterworks concedes that this Court cannot insert

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1 "In such cases the purposes of the constitutional clause, rather than the limits established by a rule of statutory or common law allocating rights and responsibilities between private parties, must fix the extent of a public entity's responsibility." *Holtz v. Superior Court* (1970) 3 Cal.3d 296; at p. 302.

2 Code of Civil Procedure section 1858.

by implication that which has been omitted from that limited authorization.

In 1998, the California Supreme Court was asked by a public agency and a public agency *amici curiae* to find that a government exercise of power that was beyond its jurisdictional authority could never be a compensable taking. It was asserted that the takings clause only authorized compensation for "a taking of private property for public use," coupled with the argument that when the government's action is *ultra vires*, i.e., the agency exceeds its statutory authority, it cannot be said to have taken property for public use. The court decided that action on other grounds and left the question posed unanswered. [3]

It would be an irreconcilable incongruity to suggest that Waterworks could hold up as a shield against a private landowner's claim to compensation that its actions were *ultra vires*, and therefore not compensable, and yet thrust as a sword those same actions to support a claim of title, not through condemnation with compensation, but by prescription without compensation. Waterworks' effort to acquire title by prescription is unauthorized, thus *ultra vires* and thus *void ab initio*. The Demurrer to the First Cause of Action must be sustained without leave to amend.

III.
"PRIVATE PROPERTY MAY BE TAKEN . . . FOR PUBLIC USE ONLY WHEN JUST COMPENSATION HAS FIRST BEEN PAID"

The Federal Constitution, the 5th Amendment as applied to the states by the 14th Amendment, and the California State Constitution as originally drafted both provided by similar language that private property could not be taken for public use without just compensation. Neither provision then made any provision for when compensation must be paid in relation to the timing of the taking. Nor did either address how or through what procedures the necessity for the taking or the amount to be paid was to be determined. From those omissions, the action for inverse condemnation was borne. Currently the 5th

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3 "Some federal courts appear to accept this rationale, holding that the Tucker Act (28 U.S. C. section 1491), creating a statutory procedure by which those who have had their property taken by the United States government may file a claim for compensation, does not cover 'an executive taking not authorized by Congress, expressly or by implication.' [Citations.] ('[B]efore a compensable taking can be found by the court, there must be some congressional authorization, express or implied, for the particular taking claim.') Thus, claimant must concede the validity of a government action which is the basis of the takings claim to bring suit under the Tucker Act. . . .' *Tab Lakes, Ltd. v. U.S., supra*, 10 F.3d at pp. 802-803.) Because we decide the issue on other grounds, we do not decide the question whether the action of a government agency that exceeds its statutory authority can ever be a compensable taking." *Landgat, Inc., v. California Coastal Commission* (1998) 17 Cal.4th 1006, 1027.

Amendment to the Federal Constitution retains its simplistic prohibition, however our State's taking clause has since been amended, first in 1879, and most recently in 1974. It has, in its various iterations, imposed an express temporal condition. Our current takings clause differs markedly from the simplistically articulated prohibition contained within the 5th Amendment to the Federal Constitution.[4] The 1974 Amendment retained the pre-existing temporal and procedural conditions, but also added the additional express delimiting term "only" in the first sentence.

Query: Are Diamond and all other landowners to be deprived of the procedural and substantive due process safeguards enacted by the legislature in response to that constitutional authorization, the only exception to the mandate that compensation precede the taking (Code Civ. Proc., § 1255.010-1255.480)? Query: Is there any ambiguity or room for an interpretation of Article I, Section 19, which would sanction a taking without payment of compensation? Query: Is the use of the delimiting term "only" a clear limitation foreclosing a taking under a theory of prescription? As pointed out in the Demurrer, this author is aware of no post-1974 case wherein a court has construed or explained the unambiguous limitation resulting from the insertion of "only" in Article I, Section 19, nor the effect of the addition of that term. This author invited Waterworks to enlighten both this author and the Court. It is both notable and noticeable that by silence and omission that challenge has not been met. The rules of construction do not require this Court to go beyond the plain meaning of the language employed.

Waterworks, by string citation to four (4) California Supreme Court opinions and one (1) Appellate Court opinion, asserts the ". . . Demurrer ignores long-standing judicial recognition of a public entity's ability to obtain prescriptive rights without just compensation." First, in none of those opinions was the Court called upon to construe, interpret, or apply the express limits of the then applicable takings clause. None of the authority string cited addressed the issue head-on, and none addressed the effect of the 1974 Amendment. It is conceded that this issue may be one of first

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4 "While the federal Constitution does not expressly state when compensation is to be paid with respect to a taking, California's constitution does: 'Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has *first* been paid to, or into court for, the owner.' (Cal. Const., art. I, § 19, italics added.) To this general rule requiring payment in advance, the Constitution permits one exception: 'The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.' The Legislature has enacted such provisions. (Code Civ. Proc., §1255.010-1255.480.)" *City of Needles, supra*, p. 1892. *City of Needles vs. Griswold* (1992) 6 Cal.App.4th 1881

impression. Secondly, upon review of each of the cases cited and noting therein the identity of counsel and the parties before the Court, we find most all were public entities, with no interest in advancing the constitutional limitation. Waterworks quotes from *Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 34 Cal.3d 564, 574 and asserts that that opinion is dispositive of the constitutional issue. That case involved prescriptive claims asserted as between private citizens. The Court did not therein address the issue raised by this Demurrer. Citation to opinions defining the rights and responsibilities as between private citizens in private suits, is not helpful nor dispositive, when the rights and responsibilities in issue must be measured by the constitutional limitations imposed upon the government.

Waterworks cites the Appellate Court's holding in *Baker v. Burbank-Glendale-Pasadena Airport Authority* (1990) 220 Cal.App.3 1602 and asserts that that court held by citation to *Warsaw, supra*, that the government need not compensate for an avigation easement acquired by prescription. That assertion is a misrepresentation. Therein an airport authority, in a dispute with private landowners, asserted a prescriptive avigation easement defensively. Therein the prescriptive avigation easement had been acquired by "Lockheed Air Terminal (LAT), a private corporation," and the public authority thereafter purchased the airport and:

> "[a]ll of LAT's right, title and interest in and to all easements and other rights . . . over, in and to property owned by others and which benefit the real property or otherwise pertain to the operation of the airport and airport properties . . .."

That court, by citation to *Warsaw, supra,* did not hold that the public entity, which had purchased the easement, need not compensate, but instead held that the private corporation LAT was not required to pay compensation. The court therein did not consider the issue raised by this Demurrer.

Waterworks ignores the California Supreme Court's holding in *Jacobsen vs. Superior Court* (1923) 192 Cal. 319, as quoted and cited on p. 4 of the Demurrer. Therein, a water district attempted to secure by injunction the right to enter upon private property without first commencing a condemnation proceeding. The California Supreme Court cited the temporal and procedural mandates of the then applicable takings clause, Article I, Section 14 (now Article I, Section 19), and concluded that the Superior Court was without jurisdiction to issue an order sanctioning pre-condemnation possession. Here, Waterworks seeks to have this Court confirm by judgment and injunction, its pre-condemnation taking of private property for a public use without the necessity for condemnation proceedings and just

compensation. As the Supreme Court observed:

> "The only legal procedure provided by the constitution and statutes of this state for the taking of private property for a public use is that of condemnation suit which the constitution expressly provides must first be brought before private property can be taken or damaged for a public use." [Emphasis added.] *Jacobsen, supra*, p. 331.

The Appellate Court in *City of Needles, supra,* relied upon the Supreme Court's decision in *Jacobsen, supra*, and made clear that a public entity cannot proceed by way of an action for declaratory and injunctive relief, but must proceed in the constitutionally prescribed manner.

> "The difference between those two types of actions cannot be cavalierly disregarded. 'The proceeding to condemn land for a public use is special and statutory and the prescribed method in such cases must be strictly pursued.' (*Harrington v. Superior Court* (1924) 194 Cal. 185, 191 [228 P. 15]), especially if those methods benefit the owner (*City of Los Angeles v. Glassell* (1928) 203 Cal. 44, 46 [262 P. 1084])."*City of Needles, supra*, p. 1895.

Our current takings clause is by the words used clear and unambiguous. No court has yet to expressly pass upon the impact or effect emanating from the 1974 Amendment and the then addition of the delimiting term "only." This Court need only read the words used in their usual and ordinary meaning.

IV.
WATERWORKS' PRESCRIPTION CLAIM PLEADS ONLY CONTENTIONS AND CONCLUSIONS OF FACT, WHICH ARE INSUFFICIENT TO SURVIVE A DEMURRER FOR UNCERTAINTY

A. Plead contentions and conclusions of fact and law are not sufficient.

Waterworks asserts that ". . . all facts pleaded in the Complaint are assumed true on demurrer." Waterworks' statement of the rule is overbroad. The correct statement of the rule appears in one of Waterworks' cited cases, *Serrano v. Priest* (1971) 5 Cal.3d 584, 591, where the California Supreme Court held:

> "We treat the demurrer as admitting all material facts properly pleaded, *but not contentions*, deductions *or conclusions of fact or law*." (Emphasis added.)

Applying the correct rule to Waterworks' pleading, the complaints allege, in essence, that Waterworks has pumped water from the Basin since 1919, and within the last decade under overdraft conditions. From these simple allegations, and nothing else, Waterworks proceeds to allege that its pumping has been ". . . in an actual, open, notorious, exclusive, continuous, hostile and adverse manner." Although reasonable minds may disagree as to whether this string of adjectives recites contentions,

factual conclusions, or legal conclusions, one or all is certainly true, and Waterworks is therefore required to plead predicate facts to support these conclusions. *Not one fact* is pleaded in these actions to support such conclusions, which alone is a telltale sign that there is literally no history to back the boilerplate. As pointed out in the demurrer, the pled claim of "exclusivity" is contradicted within the same complaint; the pled claim that all defendants had notice of its pumping is not a legally sufficient substitute for the required pleading that it imparted notice of its "claim of right," " claim of hostility," and "claim of adversity." There are no facts pled suggesting any physical invasion or trespass, nor of any interference with any landowner's use and enjoyment of its property. The demurrer should be sustained to require Waterworks to provide some factual basis for these extremely significant factual/legal conclusions.

B. "Constitutionally Sufficient Notice" of the governments adverse claim is required.

Assuming this Court rejects the issues raised in II and III above, then a secondary constitutional issue is framed. Query: What quantum and what quality of notice to the affected landowner is required to commence the prescriptive period in favor of the government in order to permit it to divest the private landowner of his property without compensation? As anticipated, Waterworks has asserted in its Opposition that "overdraft" is the *sine qua non* of its prescriptive claim. That assertion is simply wrong. The *sine qua non* of any prescriptive claim, even those as between private citizens, is "NOTICE." (See Demurrer p.7, line 24 through p. 10, line 15.)

When the actions and/or omissions of the government which affect the property rights of a private citizen are in issue, the governments actions or failure to act must be scrutinized and filtered through the prism of the Federal and California State Constitutions. (See *Holtz, supra*, quoted in footnote 1.) The *sine quo non* of a taking by the government of private property under a claim of prescription must be "CONSTITUTIONALLY SUFFICIENT NOTICE" of its adverse claim, i.e., Waterworks asserts that "constructive notice" is alone sufficient. Not so. Waterworks must plead that each separate landowner received constitutionally sufficient due process notice of its adverse claim consistent with the standard established in Mullane v. Central Hanover Bank & Trust Co. (1950) 339 U.S. 306. The means employed must be such as one desirous of actually informing might reasonably adopt to accomplish it. Waterworks has pled no facts of any act or declaration on its part which would

satisfy that standard. Unless Waterworks pleads that the affected landowner " . . . is not reasonably identifiable, constructive notice alone does not satisfy the mandate of Mullane." *Mennonite Board of Missions vs. Adams* (1983) 462 U.S. 791 at p. 798.

In *Walker v. City of Hutchison* (1956) 352 U.S. 112, the court held that statutory constructive notice by publication failed to meet the requirements of due process. There a city exercised its power of eminent domain over a landowner's property and the Supreme Court held that such notice failed to meet the *Mullane* standard, and ordered that notice "reasonably intended to and calculated to inform" must be given to any landowner whose address is readily known from the public record.

In *Schroeder v. City of New York* (1962) 371 U.S. 208, the court applied the *Mullane* rule, holding that a riparian property owner was not given adequate due process notice of the City's eminent domain proceedings to divert upstream waters, when notice was attempted only by postings and publication. It was held that some good faith effort to give actual notice to property owners was required, if their names were reasonably ascertainable from public records. In both *Walker, supra*, and *Schroeder, supra*, the suits were filed after the statute of limitations had run but the absence of due process notice resulted in a reversal by the Supreme Court.[5]

In *United States vs. James Daniel Good Real Property, et al.,* (1993) 510 U.S. 43, the Supreme Court held that even a convicted felon was entitled to due process notice when the government sought to seize without notice that felon's real property. The Supreme Court there concluded: "**Fair procedures are not confined to the innocent. The question before us is the legality of the seizure not the strength of the government's case**." (P. 62.) It would be an irony in the law to suggest that a convicted felon is entitled to more due process notice than an innocent landowner.

The District's allegation that all landowners had "actual and/or constructive notice of its

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5 "The majority opinion in the New York Court of Appeals seems additionally to have drawn support from an assumption that the effect of the city's diversion of the river must have been apparent to the appellant before the expiration of the three-year period within which the statute required that her claim be filed. 10 N.Y. 2d, at 526-527, 180 N. E. 2d, at 569-570. There was no such allegation in the pleadings, upon which the case was decided by the trial court. But even putting this consideration aside, knowledge of a change in the appearance of the river [here, the gradual lowering of well water levels] is far short of notice that the city had diverted it and that the appellant had a right to be heard on a claim for compensation for damages resulting from the diversion. That was the information which the city was constitutionally obliged to make at least a good faith effort to give personally to the appellant – an obligation which the mailing of a single letter would have discharged. (*Schroeder, supra*, pp. 213-214. [Bracket inserted.])

"pumping" is not pled notice of its "claim of right," "claim of hostility," nor "claim of adversity," and certainly is not well pled facts of "acts or declarations or both" which by their nature and essence constitutes constitutionally sufficient due process notice of its adverse claim. Waterworks further argues that notice is a factual issue and not subject to demurrer. However, when notice is an element of the claim, sufficient factual pleading of that element is required. When notice is constitutionally required of the government, constructive notice is not sufficient. The prescriptive period as against any landowner could only commence after constitutionally sufficient notice of that adverse claim has been imparted to each separate landowner by the government. Finally, Waterworks' assertion that notice need not be alleged nor adjudicated as against each landowner "parcel-by-parcel," is wrong. City's reliance upon *City of Pasadena vs. City of Alhambra* (1949) 33 Cal.2d 908 is misplaced, and the quote relied upon from that opinion is a misrepresentation of the holding of that court.[6] Notice of "adversity in fact" is required. (*City of Los Angeles vs. City of San Fernando* (1975) 14 Cal.3d 199, p. 283). Moreover, cooperation in or knowledge of Districts taking water for a public purpose does not equate with knowledge that individual overlying rights are in jeopardy. (*Wright v. Goleta* (1985) 174 Cal.App.3d 74, p. 90.) "[P]roperty owners may be damaged by a given governmental activity in different ways and at different times." *Smart, infra*.

C. The facts pled fail to disclose when all or any landowner first had an accrued cause of action for inverse condemnation.

As set forth in the demurrer, section I, D., pages 11-12, it is made clear that there must exist congruence between the date upon which the prescriptive period commences and the date upon which a cause of action for inverse condemnation accrues. In its opposition, Waterworks simply misses the point. It argues and concludes, ". . . there can be no inverse condemnation claim after the prescriptive right vest." It is not coincidental that the prescriptive period is five years and the statute of limitations for an inverse condemnation is that same five years. Thus, there must exist a congruence in time of the

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6 In *City of Pasadena, supra*, the court observed that: "Most of the factors are covered by stipulation in which all the parties including appellate, joined, namely, that 'all of the water taken by each of the parties to this stipulation and agreement was at the time it was taken, taken openly, notoriously, and under claim of right, which claim of right was continuously and uninterruptedly asserted by it to be and was adverse to any and all claims of each and all of the other parties joining herein.' Two necessary elements are omitted: . . ." Notice was not one of the two omitted elements.

commencement of the prescriptive period and the simultaneous accrual of a cause of action for inverse condemnation.[7]

The case of *Smart v. City of Los Angeles* (1980) 112 Cal.App.3d 232, is more closely analogous to the issues at bench. In *Smart*, plaintiff, the owner of a vacant parcel of land located near Los Angeles International Airport, brought an action for inverse condemnation based on a reduction in value of the property from jet overflights. In 1972, Mr. Smart discovered his damages when a prospective buyer was refused financing because of the land's exposure to high levels of noise. *Ibid.* at 234-235.

The trial court held that the "date of stabilization" [here overdraft] of the aircraft noise occurred in 1966, and that the lawsuit, filed in July of 1973, was time-barred. The Court of Appeal reversed and rejected the argument that an actionable invasion of property rights necessarily occurred when the aircraft noise had stabilized. *Ibid.*

The City argued that the airport noise would have been "sufficiently appreciable to a reasonable person" by the year 1966. *Ibid.* at p. 238. The Court made clear that it is not a hypothetical interference that determines taking, but rather a substantial interference with the property owner's actual use and enjoyment of the land. Accordingly:

> "In our opinion the aircraft overflight noise did not cause a substantial interference with plaintiff's *actual* use and enjoyment of the land until he attempted to sell it, thus his cause of action did not accrue until his discovery of the "red-lining" in 1972.
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> * * *
>
> It is by focusing on the impact of the governmental activity upon the property owner's *actual* use that the courts have determined a date of "taking" in inverse condemnation actions." (*Ibid.* at 238.) (Original emphasis.)

The Court of Appeal then concluded on the subject:

> "In our rejection of the 'date of stabilization' approach to the fixing of a date of taking in this particular case, we merely recognize that property owners may be damaged by a given governmental activity in different ways and at different times."

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7 "To perfect a claim based upon prescription there must, of course, be conduct which constitutes an actual invasion of the former owner's rights *so as to entitle him to bring an action.*" (Emphasis added.) *City of Pasadena*, supra, p. 927.

"Generally, the limitations period on such inverse condemnation claims begins to run when the governmental entity takes possession of the property. (See *Ocean Shore R.R. Co. v. City of Santa Cruz, supra,* 198 198 Cal.App.3d at p. 272; see also *Williams v. Southern Pacific R.R. Co.* (1907) 150 Cal. 624, 627 [89 P. 599]; *Mosesian v. County of Fresno* (1972) 28 Cal.App.3d 493, 500-502 [104 Cal.Rptr. 655].) *Where, however, there is no direct physical invasion of the landowner's property and the fact of taking is not immediately apparent, the limitations period is tolled until 'the damage is sufficiently appreciable to a reasonable [person] ....'* (*Mehl v. People* ex rel. *Dept. Pub. Wks.* (1975) 13 Cal.3d 710, 717 [119 Cal.Rptr. 625, 532 P.2d 489].) *Otay Water District v. Beckwith* (1991) 1 Cal.App.4th 1041, 1048-1049 (Emphasis added.)

The foregoing authorities, combined, compel rejection of a hypothetical or "rote" concept of invasion of property rights, and accrual of claims. Thus, it is critically important that the specific nature of the alleged invasion, and the date of such invasion, be pleaded by Waterworks.

V.
WATERWORKS HAS IN ITS EIGHTH CAUSE OF ACTION CONCEDED DIAMOND FARMING'S SELF-HELP AND THEREFORE COUNT 1 FAILS TO STATE A CAUSE OF ACTION AS A MATTER OF LAW

Waterworks concedes that Diamond Farming is pumping groundwater for irrigation, but asserts that it is an unreasonable use in the arid Antelope Valley. At trial, Diamond Farming will stand ready to meet that claim, as well as the issue of whether or not Waterworks commitment of the allegedly scarce water resources to the irrigation of golf courses, non-native landscaping flora and fauna, swimming pools and alike are themselves reasonably beneficial uses in the arid Antelope Valley. Nonetheless, the conceded fact of Diamond Farming's pumping for irrigation mandates that the First Cause of Action fail as a matter of law under the doctrine of "self-help." Waterworks quotes at length from *City of Pasadena, supra*, but stops short, and thus misrepresents the holding. Therein, the California Supreme Court did not then determine whether or not the overlying landowner who engaged in self-help retained his priority or whether he obtained new prescriptive rights. (See *City of Pasadena, supra*, p. 932.) The answer to that question was later provided by the Appellate Court in *Hi-Desert County Water District vs. Blue Skies County Club, Inc.* (1994) 23 Cal.App.4th 1723 at pp. 1731-1732, wherein the court concluded that under the principles of self-help, " . . . overlying users retain priority but lose amounts not pumped." The California Supreme Court in *City of Barstow vs. City of Mojave Water Agency* (2000) 23 Cal.4th 1224 at p. 1248, affirmed the doctrine of "self-help," and that overlying landowners retained thereby their priority. Having conceded that Diamond Farming has pumped and continues to pump groundwater for irrigation, Waterworks cannot, as a matter of law, claim a priority by prescription given that conceded "self-help."

VI.
CONCLUSION

Due to page limitations, I leave the conclusion to the surmise of this Court.

Dated: November 23, 2005

LeBEAU • THELEN, LLP

By: _____
BOB H. JOYCE, Attorneys for DIAMOND FARMING

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 November 23, 2005, I served the within

REPLY TO OPPOSITION TO DEMURRER

■ (**BY POSTING**) I am "readily familiar" with the Court's Clarification Order. Electronic service and electronic posting completed through www.scefiling.org ; All papers filed in Los Angeles County Superior Court.

☐ (**OVERNIGHT/EXPRESS MAIL**) By enclosing a true copy thereof in a sealed envelopedesignated 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 November 23, 2005, in Bakersfield, California.

Donna M. Luis

DONNA M. LUIS