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

13 Coordination Proceeding Special Title  
14 (Rule 1550 (b))

Judicial Council Coordination No. 4408

15 ANTELOPE VALLEY GROUNDWATER  
16 CASES

Case No.: 1-05-CV-049053

16 Included actions:

REPLY TO WATERWORKS'  
OPPOSITION TO DIAMOND FARMING  
COMPANY'S MOTION PURSUANT TO  
C.C.P. §760.030

17 Los Angeles County Waterworks District No.  
18 40 vs. Diamond Farming Company  
19 Los Angeles Superior Court  
Case No. BC 325201

20 Los Angeles County Waterworks District No.  
21 40 vs. Diamond Farming Company  
22 Kern County Superior Court  
Case No. S-1500-CV 254348 NFT

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

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

26 DIAMOND FARMING COMPANY, a California corporation ("Diamond Farming") hereby  
27 submits its reply brief to LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S  
28

1 (“Waterworks”) opposition to C.C.P. §760.030 motion:

2 **I.**

3 **INTRODUCTION**

4 In its opposition, Waterworks concedes that the coordinated actions denoted BC 325201 and S-  
5 1500-CV 254348 NFT are actions in which persons--i.e., the litigants--are claiming rights with respect  
6 to property. (Opposition, p.3, ll. 8-11.) Waterworks argues, nevertheless, that Diamond Farming’s  
7 motion for application of the procedures in C.C.P. §760.010 is misplaced because Waterworks’ actions  
8 are not “quiet title actions.” (Opposition, p. 2, ll. 7-9.) For purposes of applying the statute, this is a  
9 distinction without a difference, and the provisions of C.C.P. §760.010 are tailor made for this litigation,  
10 and should be applied.

11 Further, Waterworks’ misstatement of Diamond Farming’s arguments, viz, that the instant  
12 motion is a motion to strike, or that Diamond Farming posited section 760.030 as an exclusive remedy,  
13 are clearly erroneous: Diamond Farming’s motion does not anywhere purport to be a motion to strike;  
14 and Diamond Farming explicitly acknowledges that the remedy is not exclusive, at page 7, lines 6-11  
15 of the Memorandum of Points and Authorities in support of the instant motion.

16 **II.**

17 **C.C.P. §760.030(b) IS EXPRESSLY APPLICABLE TO ANY ACTION OR**  
18 **PROCEEDING IN WHICH *ESTABLISHING* OR QUIETING TITLE TO**  
19 **PROPERTY IS AN ISSUE. LABELS ARE NOT CONTROLLING, AND THE**  
20 **INSTANT ACTIONS CLEARLY QUALIFY.**

21 Contrary to Waterworks’ arguments in opposition, the instant motion is not a motion to strike  
22 pursuant to California Code of Civil Procedure sections 435 and 436, nor does it even purport to be.  
23 Instead, the motion is appropriately brought under C.C.P. §760.030(b) to require that the issues in the  
24 consolidated actions be resolved pursuant to the procedures and provisions of the “quiet title” law. The  
25 subject actions clearly qualify for such treatment, for the reasons next discussed.

26 C.C.P. §760.030(b) does not take its import from labels, i.e., the styling of a complaint as a  
27 “quiet title” action or not. That subsection states, in its entirety:

28 “§ 760.030. Availability of other remedy

\* \* \*

1 (b) In an action or proceeding in which establishing or quieting title to property is in  
2 issue the court in its discretion may, upon motion of any party, require that the issue be  
resolved pursuant to the provisions of this chapter to the extent practicable.”

3 As Waterworks makes clear in its argument for the application of the declaratory relief provisions of  
4 C.C.P. §1060, the subject actions are actions in which persons are claiming opposing rights with respect  
5 to property. (Opposition, p. 3, ll. 8-11.) Obviously, there is no distinction between the types of actions  
6 or proceedings encompassed within section 760.030(b) and the type of adjudication sought by  
7 Waterworks in the subject actions; the fact that the subject actions were not brought as “quiet title”  
8 actions per se is a matter of no substance in determining whether the provisions of C.C.P. §760.010  
9 et seq. *should be* applied. It risks understatement to say that the subject actions carry monumental  
10 implications for the respective property rights of a great number of persons and entities. As such, the  
11 subject actions are tailor made for the procedures and safeguards set forth in C.C.P. §760.010 et seq.

### 12 III.

#### 13 **IN ACTIONS OF THIS MAGNITUDE AND POTENTIAL IMPACT, THE** 14 **“MILDER RELIEF” OF DECLARATORY RELIEF IS A WOLF IN SHEEP’S** **CLOTHING.**

15 In its opposition, Waterworks points out that the remedy of section 760.010 et seq. is cumulative,  
16 a fact pointed out in Diamond Farming’s moving papers at page 7, lines 6-11. Waterworks cites  
17 authority for the proposition that Waterworks should be entitled to select the “milder relief” of  
18 declaratory relief rather than a “more stringent” form of relief. (Opposition, p. 3, ll. 12-19.)  
19 Waterworks’ reliance on such reasoning is entirely misplaced in a case of this magnitude and potential  
20 impact on the property rights of hundreds of persons and entities. The reasoning advanced by  
21 Waterworks is applicable, rather, to cases in which it is practical and beneficial to obtain a judicial  
22 declaration of certain rights, before parties pursue coercive relief in the form of damages. Here, by  
23 contrast, Waterworks by these actions seeks to supplant and reverse settled property rights of inestimable  
24 value, both for persons known, and in some cases, persons unknown, as explained more fully in the  
25 moving papers. Casting such an action in the form of declaratory relief is not “milder” or more practical,  
26 but is better characterized as a stealth device which avoids the vital substantive and procedural  
27 protections of the quiet title law at section 760.010 et seq., for persons both known and unknown.

1 IV.

2 **APPLICATION OF C.C.P. §760.010 et seq. IS MANIFESTLY APPROPRIATE IN**  
3 **WATER LAW ADJUDICATIONS OF THIS MAGNITUDE.**

4 Recently, in an article published at 36 McGeorge L. REV. 413, opposing counsel Mr. Garner and  
5 Ms. Willis lucidly chronicled recent trends in California groundwater law, and offered certain  
6 observations, with which Diamond Farming fully agrees, about the advantages and propriety of utilizing  
7 quiet title procedures in large groundwater adjudications. Specifically, the authors addressed the  
8 recommendation of the Governor's Commission to Review California Water Rights Law  
9 ("Commission") that groundwater adjudications ". . . be comprehensive and final determinations of  
10 water rights in a groundwater basin." *Ibid.* at 420. The authors pointed out that ". . . a major hurdle to  
11 effective management by adjudication is determining the appropriate procedural mechanism to ensure  
12 that an adjudication is a comprehensive and final determination of groundwater rights that is binding on  
13 each party with respect to the other, as well as the parties' successors." *Ibid.* at 421.

14 The authors then explain, citing recent authority, that obtaining *res judicata* is troublesome in  
15 groundwater actions "that are not inter se adjudications." *Ibid.* at 422. Confronted with this problem,  
16 the authors note that "[t]hus, if a groundwater adjudication is to be binding on all parties (and their  
17 successors) as against one another, the adjudication and the judgment should be an inter se determination  
18 of each party's right as against the other." *Ibid.* at 423. They continue:

19 "An alternative means to achieve finality is to record a lis pendens on the properties  
20 involved in the adjudication shortly after the parties are named and served. A lis pendens  
21 may be recorded by a party who asserts a 'real property claim.' [Footnote omitted.]  
22 Actions for adverse possession, among others, are considered "real property claims."  
23 [Footnote omitted.] A recorded lis pendens gives constructive notice of pending  
24 litigation so as to render the judgment binding on any party who subsequently acquires  
25 an interest in the property at any time after the litigation is mitigated. [Footnote omitted.]  
26 A recorded lis pendens 'effectively clouds the title to the property described in the notice  
27 and impedes or prevents a sale or encumbrance of the property until the litigation is  
28 resolved or the lis pendens is expunged.' [Footnote omitted.] While recording a lis  
pendens may be an effective way to ensure that a judgment is binding on a party who  
acquires property after an adjudication has begun, recording a lis pendens can be costly  
and time consuming, especially in a large groundwater adjudication with multiple parties.

Although the authors do not offer the foregoing as a perfect solution to the resolution of  
groundwater claims, what they are saying, in effect, is that a broadly binding form of action, entailing

1 lis pendens, is a viable form of action when finality, maximum binding effect and due process are  
2 driving concerns. Clearly, the quiet title provisions and procedures of C.C.P. §760.010 et seq. best  
3 subserve these ends. Such provisions are uniquely designed to achieve those purposes, by, among other  
4 things, ensuring the joinder and involvement of all affected persons, and requiring the immediate filing  
5 of a lis pendens. (*See*, C.C.P. §761.010(b).)

6 Another and specifically applicable benefit of compelling Waterworks to proceed consistent with  
7 the Quiet Title law is the pleading requirement set forth in Code of Civil Procedure section 761.020(b),  
8 and specifically that in a case asserting prescriptive rights, specific facts must be pled. As is pointed out  
9 in the Demurrer, the current version of both Complaints is uncertain, and do not sufficiently apprise any  
10 Defendant of the predicate facts underlying the claim of prescription. The applicable prescriptive period  
11 also is uncertain, and no beginning or ending date has been pled. It appears that Waterworks relies upon  
12 a five (5) year period preceding the filing of Diamond's original Quiet Title Complaint in 1999, as well  
13 as a subsequent five (5) year period preceding the filing of each of the two new actions filed in the Kern  
14 County and Los Angeles County Superior Courts. As pointed out in the Demurrer, there must exist a  
15 congruence between the date that the prescriptive period is alleged to have commenced and the date  
16 upon which each separate landowner then had an accrued cause of action for inverse condemnation. It  
17 is equally important that Waterworks plead the specific facts of when the alleged prescriptive period  
18 ended. Waterworks' actions implicate Federal Constitutional taking claims by virtually hundreds of  
19 overlying landowners. As was pointed out by the United States District Court for the District of Rhode  
20 Island in *Pascoag Reservoir and Dam, LLC, plaintiff, vs. State of Rhode Island, et al.*, (217 F.Supp.2d  
21 206), under the 5<sup>th</sup> and 14<sup>th</sup> Amendment to the Federal Constitution, a private landowners Federal  
22 Constitutional taking claim as against a state or a political subdivision of the state is not ripe (does not  
23 accrue) in adverse possession or prescription cases until the property interest has been acquired by the  
24 government and that acquisition does not occur until the prescriptive period has run its course. The court  
25 reasoned as follows:

26 "A plaintiff could not bring a takings claim until the possession or prescription  
27 period had been completed because, until that time, the government had not taken a  
28 property interest. In the case of adverse possession, prior to the end of the statutory  
period, the adverse possessor has no rights to the property. *See, e.g., R.I. Gen. Laws*



1 § 34-7-1. A record owner could bring an action of trespass and ejectment. Under the  
2 trespass claim, the record owner could seek damages for the trespass. Under the  
3 ejectment claim, the record owner could stop the adverse possession clock from running  
4 and enjoin the putative adverse possessor from continued possession of the property. As  
the putative adverse possessor had no property rights, however, [\*\*48] the record owner  
could not make out a takings claim.”

5 “Similarly in the case of a prescriptive easement, the record owner could bring  
6 an action for trespass and ejection. There is no property interest, yet, that has been no  
7 taking prior to the completion of the statutory period. In this case, because the public  
8 was using the Reservoir, and not the State, plaintiff had no claim against the State of any  
9 kind prior to the end of the prescriptive period. Plaintiff could only sue private  
individuals for trespass. As there was no state law that mandated that plaintiff allow  
access to these individuals, prior to the end of the prescriptive period, there was no state  
action and no takings claim could have been alleged.”

10 “If the takings clock were to stop at the moment the adverse possession clock has  
11 run, then the record owner as against the government is in a curious Catch-22 situation.  
12 He or she had no takings claim prior to the completion of the adverse possession  
13 prescription period, but would be similarly barred from having a takings claim after the  
period was completed. This Court does not sanction this bonanza for the government  
[\*\*49] at the intersection of property law and constitutional law.” (*Pascoag, supra, at*  
*p. 224.*)

14 Thus, the District’s two new actions put into issue, all landowner rights, including those of the  
15 hundreds of “Doe” defendants, under the 5<sup>th</sup> Amendment Takings Clause to the Federal Constitution,  
16 as applied to the states by the 14<sup>th</sup> Amendment of the Federal Constitution. The validity and existence  
17 of those taking claims should be revealed sooner rather than later. Waterworks should be ordered to  
18 plead specific facts.

19 In summary, the provisions of the quiet title law are uniquely suited to actions such as these, and  
20 the safeguards afforded by such law, explained in detail in the moving papers, should be afforded all  
21 litigants and potential litigants affected by these actions.

## 22 V.

### 23 THE INSTANT MOTION IS APPROPRIATE AND TIMELY.

24 Waterworks inexplicably argues, at page 2 of the opposition, that there is no legal authority for  
25 the instant motion, at the pleading stage. Waterworks is clearly incorrect, and Diamond Farming, by  
26 bringing its motion at the pleading stage simultaneously with its demurrer, raised the issue at the earliest  
27 appropriate time and so as to minimize the procedural impact of its motion on the pending actions.  
28

1 Compared with the potential, real world burdens and uncertainties that might grow out of the instant  
2 actions if not brought in compliance with the provisions of C.C.P. §760.010 et seq., the minor burden  
3 of Waterworks' compliance with the provisions of that law is trifling by comparison. As mentioned  
4 above, Waterworks does not have to style its actions as "quiet title" claims--that is not important, as the  
5 broader language of 760.030(b) makes clear. What is important is that the safeguards of that law,  
6 including but not limited to the pleading requirements of C.C.P. §761.020 discussed in the moving  
7 papers, and other notice requirements of that Chapter discussed in the moving papers, are employed to  
8 the ultimate benefit of all known and prospective litigants, including Waterworks itself, regardless of  
9 what Waterworks calls its claims.

10 **VI.**

11 **CONCLUSION**

12 For the reasons set forth above, Diamond Farming Company respectfully requests that its motion  
13 be granted.

14 Dated: November 23, 2005

Respectfully submitted,

15 LeBEAU • THELEN, LLP

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17  
18 By: 

19 BOB H. JOYCE  
Attorneys for DIAMOND FARMING COMPANY,  
a California corporation

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**PROOF OF SERVICE**

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

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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 WATERWORKS' OPPOSITION TO DIAMOND FARMING COMPANY'S  
MOTION PURSUANT TO C.C.P. §760.030**

☒ **(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**