

1 Robert G. Kuhs, SBN 160291
2 Bernard C. Barmann, Jr., SBN 149890
3 Kuhs & Parker
4 P. O. Box 2205
5 1200 Truxtun Avenue, Suite 200
6 Bakersfield, CA 93303
7 Tel: (661) 322-4004
8 Fax: (661) 322-2906
9 E-Mail: rgkuhs@kuhsparkerlaw.com

10 Attorneys for Tejon Ranchcorp, and Granite Construction Company
11 -and-

12 Bob H. Joyce
13 Andrew K. Sheffield
14 LEBEAU • THELEN, LLP
15 5001 East Commercenter Drive, Suite 300
16 Post Office Box 12092
17 Bakersfield, California 93389-2092
18 Tel: (661) 325-8962
19 Fax: (661) 325-1127

20 Attorneys for Diamond Farming Company, Crystal Organic Farms,
21 Grimmway Enterprises, Inc., and Lapis Land Company, LLC

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

24 ANTELOPE VALLEY GROUNDWATER
25 CASES

26 Included Actions:

27 Los Angeles County Waterworks District No. 40
28 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. Lancaster, Diamond
Farming Co. v. Palmdale Water Dist., Superior
Court of California, County of Riverside, Case
No. RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

Santa Clara Case No. 1-05-CV-049053
Assigned to Hon. Jack Komar

**NOTICE OF MOTION AND
MOTION FOR ORDER SETTING
MATTER FOR JURY TRIAL**

Date: October __, 2013
Time: 9:00 a.m.
Dept.: TBD

Phase 5 Trial Date: February 10, 2014
Phase 6 Trial Date: August 4, 2014

To all parties and their attorneys of record:

I. NOTICE OF MOTION AND MOTION

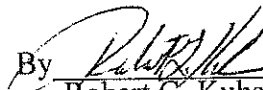
PLEASE TAKE NOTICE that on October __, 2013, or as soon thereafter as the matter may be heard, in Department TBD of the above-entitled court located at 111 North Hill Street, Los Angeles, California, TEJON RANCHCORP, GRANITE CONSTRUCTION COMPANY, DIAMOND FARMING COMPANY, CRYSTAL ORGANIC FARMS, GRIMMWAY ENTERPRISES, and LAPIS LAND COMPANY, LLC (collectively the Moving Party) will move this court for an order setting the Phase 6 trial on prescription claims and related defenses for jury trial.

The motion is made under Article I, section 16 of the California Constitution and Code of Civil Procedure sections 590 and 592 on the grounds that the moving parties are entitled to a jury trial on the prescription claims and certain defenses thereto as a matter of right.

The motion will be based on this Notice of Motion and Motion, the points and authorities in Part II hereof, the papers and records on file herein, and on such oral and documentary evidence as may be presented at the hearing on the motion.

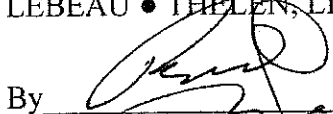
Dated: September 20, 2013

KUHS & PARKER

By 
Robert G. Kuhs, Attorneys for Tejon Ranchcorp
and Granite Construction Co.

Dated: September 20, 2013

LEBEAU • THELEN, LLP

By 
Bob H. Joyce, Attorneys for Diamond Farming
Company, Crystal Organic Farms, Grimmway
Enterprises, Inc., and Lapis Land Company, LLC

II. POINTS AND AUTHORITIES

A. Introduction.

The Court previously asked the parties to submit briefs on the right to jury trial. Thereafter, the Court entered an Order dated September 13, 2013 setting the “issue of prescription and remaining issues” for a Phase 6 Trial on August 4, 2014, but made no order regarding whether the Phase 6 Trial issues would be tried to a jury. The purpose of this motion is to obtain a ruling on whether the Phase 6 Trial will be tried to a jury so that the Moving Parties have sufficient time to prepare for a jury trial.

The self-proclaimed Public Water Suppliers’¹ (“PWS”) prescription claims are set forth in the PWS’s First Cause of Action for “Declaratory Relief – Prescriptive Rights – Against All Cross-Defendants Except the United States and Other Public Entity Cross-Defendants.” (See Exhibit A, PWS’s First Amended Complaint, ¶¶ 41 through 45.) Phelan Pinion Hills Community Services District likewise alleged as its first cause of action “Declaratory Relief - Prescriptive Rights.” (See Ex. B, ¶¶ 75 through 79.) Additionally, Boron Community Services District alleges that it owns prescriptive rights in the Antelope Valley Area of Adjudication (AVAA). (See, Ex. C, p. 2, line 4.) In essence, the PWS alleged that they have mined the precious water resources of the AVAA for more than five years, thereby acquiring a prescriptive right to continue pumping groundwater from the AVAA.

The issue presented is whether the Moving Parties and others subject to these various prescriptive claims are entitled to a jury trial. The short answer is yes. It is well-settled that the Moving Parties are entitled to a jury trial as a matter of right under the California Constitution,

¹ The original Public Water Suppliers consist of California Water Service Company, City of Lancaster, City of Palmdale, Littlerock Creek Irrigation District, Los Angeles County Waterworks District No. 40, Palmdale Water District, Rosamond Community Services District, Palm Ranch Irrigation District and Quartz Hill Water District. Phelan Pinion Hills Community Services District and Boron Community Services District are sometimes included.

by statute and by controlling case authority.

On August 16, 2013, the PWS filed their brief concerning the right to jury trial contending that the Moving Parties were not entitled to a jury trial on the PWS's prescriptive claims since (1) the "gist" of these proceedings is one of equity, (2) the Moving Parties' cited cases involving prescriptive easements to land are inapposite, (3) determination of groundwater prescriptive rights is within the equitable power of the court, and (4) a groundwater adjudication is a quasi legislative special proceeding. As explained below, each of the PWS's arguments is meritless and not supported by any controlling authority. More fundamentally, the PWS failed to distinguish controlling legal authority including *Arciero Ranches v. Meza* (1993) 17 Cal.App.4th 114, *Frahm v. Briggs* (1970) 12 Cal.App.3d 441, and other California cases, upholding the constitutional right to trial by jury on prescriptive claims.

B. Moving Parties Have A Constitutional Right To Jury Trial.

Article I, section 16 of the California Constitution guarantees that the right to a jury trial shall be secured "inviolable" to all litigants. The constitutional right to a jury trial "is the right as it existed at common law in 1850, when the Constitution was first adopted." (*C&K Engineering Contractors v. Amber Steel CA* (1978) 23 Cal.3d 1, 8.) The inquiry is purely historical. (*Ibid.*) As a general proposition a jury trial is a matter of right in a civil action at law, but not in equity: "A jury trial must be granted where the gist of the action is legal, or the action is in reality cognizable at law." (*People v. One 1941 Chevrolet Coupe* (1951) 37 Cal.2d 283, 299.) **"Where legal and equitable issues are joined in the same action the parties are entitled to a jury trial on the legal issues."** (*Robinson v. Puls* (1946) 28 Cal.2d 664, 665-666, emphasis added.)

"The constitutional right of trial by jury is not to be narrowly construed. It is not limited strictly to those cases in which it existed before the adoption of the Constitution but is extended to cases of like nature as may afterwards arise. It embraces cases of the same class thereafter

1 arising." (*People v. One 1941 Chevrolet Coupe* (1951) 37 Cal.2d 283, 300.)

2 "In determining whether the action was one triable by a jury at common law, the court is
3 not bound by the form of the action, but rather the nature of the rights involved and the facts of
4 the particular case." (*Id.* at p. 299.) Wrongful denial of the "trial by jury to one constitutionally
5 entitled thereto constitutes a miscarriage of justice and requires a reversal of the judgment."
6 (*People v. One 1941 Chevrolet Coupe, supra*, 37 Cal.2d at p. 300.)

7 Since at least 1886 the California Supreme Court has recognized that the question of
8 whether a party has acquired a prescriptive right is a question of fact for a jury. (*Thomas v.*
9 *England* (1886) 456, 460.) In *Thomas v. England*, the plaintiff brought an action to establish a
10 right of way over the defendants' land. The trial court adopted the findings of the jury that the
11 use was permissive, not adverse, and rendered judgment for the defendants. The plaintiff
12 appealed and the Supreme Court affirmed. Addressing the question of whether the use was
13 adverse or permissive, the court held:
14

15 The question is one for the jury, or for a court sitting as
16 such, to determine as a fact in the light of the relations between the
17 parties and all the surrounding circumstances. (*Putnam v. Bowker*,
18 11 Cush. 542.)

19 (*Id.* at p. 460.)

20 The Supreme Court's holding in *Thomas v. England* has been cited with approval
21 repeatedly throughout the years. (See e.g., *Humphreys v. Blasingame* (1894) 104 Cal. 40, 42;
22 *Abbott v. Pond* (1904) 142 Cal. 393, 398; *Big Three Mining & Milling Co. v. Hamilton* (1909)
23 157 Cal. 130, [jury trial on prescription]; *Conaway v. Toogood* (1916) 172 Cal.706, 709.) The
24 holding has also been cited favorably by other state supreme courts. For example, in *Norback v.*
25 *Board of Director of Church Extension SOC.* (1934) 84 Utah 506, 37 P.2d 339 (Ex. D), the
26 Utah Supreme Court, citing *Thomas v. England* and *Humphreys v. Blasingame, supra*, and
27 quoting extensively from California law, held that where the primary purpose of the action is to
28

1 establish a prescriptive easement, the action is one at law and denial of plaintiff's request for a
2 jury trial is reversible error. (*Id.* at p. 521.)

3 More recently, California appellate courts have uniformly held that a claim for
4 prescription, whether by quiet title or declaratory relief, is an action at law, not equity.
5 (*Connolly v. Traube* (2012) 204 Cal.App.4th 1154, 1164; *Arciero Ranches v. Meza* (1993) 17
6 Cal.App.4th 114, 125-126 (*Arciero Ranches*); *Frahm v. Briggs* (1970) 12 Cal.App.3d 441
7 (*Frahm*).)

8 In *Frahm*, the plaintiffs sued to establish a prescriptive easement over a concrete road on
9 defendants' property. Defendants' demand for a jury trial was rejected and the case was tried to
10 the court. (*Id.* at p. 443.) The court of appeal found reversible error. The *Frahm* court reasoned:

12 An easement is an incorporeal right which entitles its
13 owner to use or enjoy another's land. [Citation.] With
14 respect to the establishment of an easement as a condition
15 precedent to the granting of equitable relief, the law has
16 been expressed as follows: 'If a complainant's right to an
17 easement is clear, it is not necessary that it be first
18 established before equity will grant relief. If, however, his
19 right to an easement is involved in substantial dispute, no
20 injunction will be granted until the claim has been
21 established at law.' [Citations.] At common law the proper
22 remedy in a court of law for interference with or the
23 obstruction of a right of way was an action on the case.
24 [Citation.] The right of trial by jury existed with respect to
25 the common law remedy of action on the case and,
26 consequently, such right exists in a civil action under
27 modern practice which formerly would have fallen within
28 that common law form of action. [Citation.] ___ [] 'It is
settled in this state that where legal and equitable issues are
joined in the same action the parties are entitled to a jury
trial on the legal issues.' [Citation.] Therefore, in the
present case there was prejudicial error in the denial to the
defendants Briggs of the right to have a trial by jury on the
issue of whether the plaintiffs had an easement by
prescription of the nature alleged in their complaint.

(*Frahm v. Briggs, supra*, 12 Cal. App. 3d at p. 445, fn. omitted.)

In *Arciero Ranches*, a landowner brought an action for damages for trespass on his land and for injunctive relief. (*Id.* at p. 116.) The defendants cross-complained for monetary and injunctive relief and to quiet title to a prescriptive easement in the disputed farm road. (*Ibid.*) On the date of trial, the trial court ruled that the defendants had no right to a jury trial on the equitable issues and ordered that the equitable issues be heard by the court prior to resolution of the legal issues. (*Id.* at p. 117.) The trial court ruled that the defendants had not acquired a prescriptive easement, and the defendants appealed. (*Ibid.*) The appellate court reversed. In reaching its decision, the court noted that the case presented both legal and equitable issues. With respect to the prescriptive easement, the court, citing *Frahm*, stated that when a prescriptive right is disputed, no injunction will be granted until the claim has been established by law. (*Id.* at p. 125.) “This differentiation rests upon the rule that ‘under the English Common Law as it stood in 1850, at the time it was adopted as the rule of decision in this State, “if a plaintiff applies for an injunction to restrain the violation of a common-law right, if either the existence of the right or the fact of its violation be disputed, he must establish that right at law:”’ or, in other words by a jury, if one be demanded.” (*Ibid.*, citations omitted.) The court held that an action to establish a prescriptive right is an action at law and the defendant is entitled to a jury trial on remand. (*Id.* at p. 126.)

C. The “Gist” of the PWS's Prescription Claim Is Legal, Not Equitable.

The PWS argue that the causes of action and relief sought all stem from equity and thus there is no right to a jury trial. (PWS Brief, p. 2.) In support of this argument, the PWS point out that various parties have sued for declaratory and injunctive relief and that since the court has already determined that the Basin is in overdraft, the court must consider a physical solution which is an equitable remedy arising from the “reasonable and beneficial use” limitation found in Article X, section 2 of the California Constitution. (*Id.* at pp. 2-3.) The PWS's arguments are

misplaced for several reasons.

These coordinated proceedings unquestionably present both equitable and legal issues. Although the pleadings may provide some indication of whether the action is legal or equitable, the California Supreme Court has cautioned that pleadings alone are not conclusive. (*C & K Engineering Contractors v. Amber Steel Co.* (1978) 23 Cal.3d 1, 9.) Second, the PWS completely ignore that their prescription claims are the claims specifically set for the Phase 6 Trial. Any discussion of a physical solution and "reasonable beneficial use" is premature until the rights and priorities of the parties have been determined. (See, e.g., *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1240.) Further, "[w]here legal and equitable issues are joined in the same action the parties are entitled to a jury trial on the legal issues." (*Robinson v. Puls* (1946) 28 Cal.2d 664, 665-666.) Thus, the proper inquiry is not whether the parties prayed for equitable relief, as the PWS suggest. The proper inquiry is whether the "gist" of the action being tried (the PWS's claims of prescription) is legal or equitable. As more fully discussed above, there is a long and uninterrupted history of California cases holding that claims of prescription are legal and the parties are constitutionally entitled to a jury trial. (*Connolly v. Traube* (2012) 204 Cal.App.4th 1154, 1164; *Arciero Ranches v. Meza* (1993) 17 Cal.App.4th 114, 125-126; *Frahm v. Briggs* (1970) 12 Cal.App.3d 441.)

Finally, the PWS attempt to bolster their argument by pointing out that many of the prior groundwater cases in this state have been tried without a jury. (See, PWS Brief, p. 4 fn 1.) While this point may be of interest to a historian, the fact that other parties in other cases may have waived their right to jury trial, or stipulated to prescription, is wholly irrelevant to whether the Moving Parties before this court are entitled to a trial by jury. (See e.g., *Trope v. Katz* (1995) 11 Cal.4th 274 ["a decision is not authority for what is said in the opinion but only for the points actually involved and actually decided."].)

1 Here, the PWS seek to establish prescriptive groundwater rights in the AVAA. Since that
2 claimed right is disputed, the PWS must first establish the right at law before they are entitled to
3 any equitable relief. In other words, the establishment of the PWS's prescriptive rights to
4 groundwater is a condition precedent to the equitable relief prayed for. Thus, the Moving Parties
5 are entitled to a jury trial on the existence or non-existence of that right, before the court
6 addresses the equitable remedies. (See *Frahm, supra*, 12 Cal.App.3d at p. 445.)

7
8 **D. Prescriptive Claims to Overlying Water Rights,
9 Like Other Prescriptive Claims to Real Property
Are Analogous Legal Claims And Triable to A Jury.**

10 The PWS argue, without citation to authority, that the numerous decisions finding a right
11 to jury trial in cases dealing with prescriptive rights to land are not applicable to cases dealing
12 with prescriptive right to groundwater since groundwater rights are usufructory rights subject to
13 the constitutional limitation of reasonable and beneficial use. (PWS Brief, p. 5.) The argument
14 is meritless and case law.

15 A person generally obtains a right to extract groundwater by owning specific land. (*City*
16 *of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 925.) Ownership of land appurtenant to
17 groundwater engenders an "overlying right." (*Ibid.*) Stated differently, overlying water rights are
18 considered real property because they are part and parcel of the land. Indeed, "[a] prescriptive
19 right in groundwater requires proof of the same elements required to prove a prescriptive right in
20 any other property. . . ." (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 291.)
21 Finally, an easement, like a water right, is a right to use, but not to possess. (See e.g., *Frahm v.*
22 *Briggs* (1970) 12 Cal.App.3d 441, 445 ["An easement is an incorporeal right which entitled its
23 owner to use or enjoy another's land."].) Thus, the PWS's argument that prescriptive easement
24 cases dealing with land are not controlling, is baseless. Prescriptive easement cases are the
25 foundation of the prescription concept in groundwater.
26
27
28

1 **E. The PWS's First Amended Complaint is Not a Special Proceeding.**

2 Finally, the PWS argue that" the quasi-legislative nature of a groundwater adjudication
3 renders it a 'special proceeding' for which no jury trial is required." (PWS's Brief, p. 7.) Again,
4 the PWS fail to cite any controlling authority for this meritless argument.

5 Judicial remedies are either "actions" or "special proceedings." (Code Civ. Proc. § 21.)
6 "An action is an ordinary proceeding in a court of justice by which one party prosecutes another
7 for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or
8 the punishment of a public offence." (Code Civ. Proc. § 22.) "Every other remedy is a special
9 proceeding." (Code Civ. Proc. § 23.) As a general rule, a special proceeding is of statutory
10 origin and is confined to cases that are neither actions at law nor suit in chancery under the
11 common law. (1A Cal.Jur.3d (2006) Action, § 4, pp. 37-38.) The Code of Civil Procedure lists
12 special proceedings of a civil nature, such as proceedings for writs of review, mandate and
13 prohibition (Code Civ. Proc. §§ 1067 et seq.), proceedings to enforce certain liens (Code Civ.
14 Proc. §§ 1180 et seq.), and proceedings in eminent domain (Code Civ. Proc. §§ 1230.010 et
15 seq.). Notably, the PWS's claims of prescription are not listed.
16

17 The PWS acknowledge that "special proceedings" are statutory, but fail to cite to any
18 statute declaring their prescriptions claims to be "special proceedings." The PWS do cite to
19 Water Code section 2000 et seq., as establishing a procedure for determination of water rights
20 before the State Water Resources Control Board, however this SWRCB action is not such a
21 proceeding. In this case, the PWS are prosecuting their cause of action for prescription to
22 enforce a claimed right to groundwater within the AVAA. The claim is, by definition, an action,
23 not a special proceeding. (Code Civ. Proc. § 22; *City of Los Angeles v. City of San Fernando*
24 (1975) 14 Cal.3d 199, 207 [describing city's suit as "action."].) The California Supreme Court
25 disposed of the PWS's specious argument long ago, stating:
26
27
28

1 The right to a trial by jury cannot be avoided by merely
2 calling an action a special proceeding or equitable in
3 nature. If that could be done, the Legislature, by providing
4 new remedies and new judgments and decrees in form
5 equitable, could in all cases dispense with jury trials, and
6 thus entirely defeat the provision of the Constitution. The
7 Legislature cannot convert a legal right into an equitable
8 one so as to infringe upon the right of trial by jury. The
9 provision of the Constitution does not permit the
10 Legislature to confer on the courts the power of trying
11 according to the course of chancery any question which has
12 always been triable according to the course of the common
13 law by a jury. If the action has to deal with ordinary
14 common-law rights cognizable in courts of law, it is to that
15 extent an action at law.

16 (*People v. One 1941 Chevrolet Coupe*, supra, 37 Cal. 2d 283, 299.)

17 Since the PWS's action to establish prescriptive groundwater rights in the AVAA is an
18 action at law, not equity, any argument that this is a special proceeding must yield to the Moving
19 Parties' constitutional right to trial by jury.

20 III. CONCLUSION

21 Based on the foregoing, the Moving Parties respectfully request that the Phase 6 Trial be
22 set before a jury.

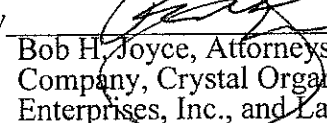
23 Dated: September 20, 2013

24 KUHS & PARKER

25 By 
26 Robert G. Kuhs, Attorneys for Tejon Ranchcorp
27 and Granite Construction Co.

28 Dated: September 20, 2013

LEBEAU • THELEN, LLP

By 
Bob H. Joyce, Attorneys for Diamond Farming
Company, Crystal Organic Farms, Grimmway
Enterprises, Inc., and Lapis Land Company, LLC

PROOF OF SERVICE

ANTELOPE VALLEY GROUNDWATER CASES
JUDICIAL COUNCIL 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 September 20, 2013, I served the within
NOTICE OF MOTION AND MOTION FOR ORDER SETTING MATTER FOR JURY TRIAL

☒ (BY POSTING) I am "readily familiar" with the Court's Clarification Order. Electronic service and electronic posting completed through www.sceffiling.org ; All papers filed in Los Angeles County Superior Court and copy sent to trial judge and Chair of Judicial Council.

Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012
Attn: **Department 1**
(213) 893-1014

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordinator)
Carlotta Tillman
455 Golden Gate Avenue
San Francisco, CA 94102-3688
Fax (415) 865-4315

☐ (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.

☒ (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 September 20, 2013, in Bakersfield, California.


LEQUETTA HANSEN