

1 Bob H. Joyce (SBN 84607)
2 Andrew K. Sheffield (SBN220735)
3 LAW OFFICES OF
4 **LEBEAU • THELEN, LLP**
5 5001 East Commercenter Drive, Suite 300
6 Post Office Box 12092
7 Bakersfield, California 93389-2092
8 (661) 325-8962; Fax (661) 325-1127

6 Attorneys for DIAMOND FARMING COMPANY,
7 a California corporation, CRYSTAL ORGANIC
8 FARMS, a limited liability company, GRIMMWAY
9 ENTERPRISES, INC., and LAPIS LAND COMPANY, LLC

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

11 Coordination Proceeding Special Title
12 (Rule 1550 (b))

Judicial Council Coordination No. 4408

13 ANTELOPE VALLEY GROUNDWATER
14 CASES

Case No.: 1-05-CV-049053

14 Included actions:

15 Los Angeles County Waterworks District No.
16 40 vs. Diamond Farming Company
17 Los Angeles Superior Court
Case No. BC 325201

**REPLY TO OPPOSITION TO MOTION
IN LIMINE FOR AN ORDER
ESTABLISHING THE NECESSITY OF
THE PUBLIC WATER PURVEYORS
PROVING THE ELEMENTS OF
PRESCRIPTION AS TO EACH
LANDOWNER**

18 Los Angeles County Waterworks District No.
19 40 vs. Diamond Farming Company
Kern County Superior Court
Case No. S-1500-CV 254348 NFT

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

23 _____
24 **AND RELATED CROSS-ACTIONS.**

25 DIAMOND FARMING COMPANY, CRYSTAL ORGANIC FARMS, GRIMMWAY
26 ENTERPRISES, INC., and LAPIS LAND COMPANY, LLC hereby submit their Reply to Opposition
27 to Motion in Limine for an Order Establishing the Necessity of the Public Water Purveyors Proving the
28 Elements of Prescription as to Each Landowner.

I.

THERE IS AUTHORITY FOR THIS MOTION IN LIMINE.

The purpose of this motion is to establish the burden of proof at trial which is a proper basis for a motion in limine. Numerous cases discuss the use of pretrial motions to assess evidence before presenting it to the jury. (See, e.g., *Cherrigan v. City etc. of San Francisco* (1968) 262 Cal.App.2d 643, 646; *Sacramento, etc. Drainage Dist. ex rel. State Reclamation Bd. v. Reed* (1963) 215 Cal.App.2d 60, 66-68, modified, 217 Cal.App.2d 611.) A court has inherent equity, supervisory and administrative powers, as well as inherent power to control litigation and conserve judicial resources. (*Cottle v. Superior Court* (1992) 3 Cal.App.4th 1367, 1377.) Here, the determination of what evidence is necessary to establish notice as part of the Public Water Purveyors prescription claim is necessary to assess the evidence before presenting it to the jury. Furthermore, courts can conduct hearings and formulate rules of procedure where justice so demands. (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 267-268; *Peat, Marwick, Mitchell & Co. v. Superior Court* (1988) 200 Cal.App.3d 272, 287.) Here, the complexity of the issues necessitated bringing this motion in limine and establishing the burden of proof is part of the court's inherent power to control litigation.

II.

**THE PUBLIC WATER PURVEYORS MUST PROVE THE ELEMENTS OF
PRESCRIPTION AS TO EACH LANDOWNER.**

The purpose of this Motion is to secure an order of this Court confirming that the Public Water Purveyors must prove each individual landowner separately had notice of the Public Water Purveyor's adverse claims. This standard should be applied because the element of "notice of adversity" in fact cannot be established as to all landowners as one group because each individual landowner had different circumstances, access to information, and uses on their property depending on whether they are a farmer, an industrial concern, a lessor, an absentee lessor, or someone who has unexercised overlying water rights.

In *City of Santa Maria v. Adam*, the issue of whether the groundwater basin could be adjudicated as a whole, instead of parcel by parcel, was not before the court because in that case all but two of the landowners signed a stipulation for the allocation of the groundwater; the court then entered judgment

1 based on that stipulation. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 276-277.) The
2 facts in *Santa Maria v. Adam* are further distinguishable because that case involved a high profile
3 Twitchell project which involved acts of Congress and received high notoriety in that area. (*Id. at*
4 293-294.) The issue there was whether or not the non-settling landowners had sufficient notice.

5 In *Pasadena v. Alhambra*, the court found that the lowering of the water levels in the appellant's
6 wells was sufficient to establish adversity because the appellants were groundwater pumpers.
7 (*Pasadena v. Alhambra* (1949) 33 Cal.2d 908, 930.) Furthermore, "all of the nondisclaiming parties,
8 with the exception of the defendant California-Michigan Land and Water Company, a public utility and
9 the sole appellant herein, entered into a stipulation for a judgment allocating the water and restricting
10 total production to the safe annual yield." (*Id. at* 916.) That court did not address the issue of what
11 notice would have been required for all other landowners who did not have wells, who were absentee
12 landlords, and/or who were absentee owners, and no actual notice that the supply of water was
13 diminishing. Thus, in both *City of Santa Maria* and *Pasadena* there was no compulsion for those courts
14 to adjudicate the claims of prescription on a parcel by parcel basis because the majority of interested
15 parties, save for one, had stipulated away the necessity of such proof.

16 Here, each landowner's use and enjoyment of their property is distinct from each other
17 landowner. Many of the landowners, including the Woods class, pump groundwater for a variety of
18 differing uses. Additionally, many landowners do not have wells nor pump groundwater at all but who
19 nonetheless have dormant unexercised overlying rights. Some landowners, i.e. the Grimmway parties,
20 own land and pump water on that land and also own land and do not pump water from that land. Thus,
21 they have both exercised overlying rights, and unexercised overlying rights. Thus, they own some land
22 with evident "self help" and some land without "self help." It is claimed that all pumping is from a
23 common supply, however, there is not and never has been an actual trespass nor any physical invasion
24 by any Public Water Purveyor onto any overlying landowner's property. The overdraft in the area of
25 adjudication may establish the adversity element of the Public Water Purveyors' prescription claim, but
26 only if the actual separate use of each individual landowner was affected. Meaning that the Public Water
27 Purveyors' adversity must have substantially interfered with each separate landowner's use and
28 enjoyment of their property. This can not be proven over the vast geographical, topographical, and

1 varying groundwater conditions evident within the adjudication boundary and the sub-areas therein in
2 this use. The effects, both in time and in how they are manifested, of pumping by Palmdale or Lancaster
3 on landowners proximate to those locations are not and would not be temporally and physically the same
4 as landowners within Willow Springs.

5 **III.**

6 **CONCLUSION**

7 For these reasons, as well as the reasons set forth in the initial moving papers and those to be
8 offered at the hearing of this motion, the Court should grant Diamond's Motion in Limine and require
9 the Public Water Purveyors to prove the elements of prescription as to each individual landowner.

10
11 Dated: March 24, 2014

LeBEAU • THELEN, LLP

12
13 By: 

14 BOB JOYCE

15 Attorneys for DIAMOND FARMING COMPANY,
16 a California corporation, CRYSTAL ORGANIC
17 FARMS, a limited liability company, GRIMMWAY
18 ENTERPRISES, INC., and LAPIS LAND
19 COMPANY, LLC
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 March 24, 2014, I served the within **REPLY TO OPPOSITION TO MOTION IN LIMINE FOR AN ORDER ESTABLISHING THE NECESSITY OF THE PUBLIC WATER PURVEYORS PROVING THE ELEMENTS OF PRESCRIPTION AS TO EACH LANDOWNER**

■ (BY POSTING) I am "readily familiar" with the Court's Clarification Order. Electronic service and electronic posting completed through www.scefilings.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.

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

■ (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 March 24, 2014, in Bakersfield, California.


LEQUETTA HANSEN