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**EXEMPT FROM FILING FEES UNDER  
GOVERNMENT CODE § 6103**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**  
10

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

Judicial Council Coordination  
Proceeding No. 4408

13 **ANTELOPE VALLEY GROUNDWATER**  
14 **CASES**

[Assigned to The Honorable Jack Komar, Judge  
Santa Clara County Superior Court, Dept. 17]

Santa Clara Court Case No. 1-05-CV-049053

15 **OPPOSITION OF PALMDALE WATER**  
16 **DISTRICT AND QUARTZ HILL WATER**  
17 **DISTRICT TO WILLIS’S MOTION TO**  
18 **STRIKE**

19 Date: August 11, 2008  
20 Time: 9:00 a.m.  
Dept.: 1

21  
22 Palmdale Water District and Quartz Hill Water District (“Districts”) submit this opposition to  
23 Rebecca Willis’s motion to strike or for judgment on the pleadings.  
24

25 **ISSUE PRESENTED**

26 The Districts have alleged that they acquired prescriptive rights against Rebecca Willis and the  
27 Willis class of dormant overlying owners. The class did not pump any groundwater during the alleged  
28 prescriptive period. As a matter of law, does the class’s failure to exercise their rights render them

1 immune from prescription?  
2

3 **ARGUMENT**

4 1. The Overdraft Of The Groundwater Basin Supplies The Element Of Adversity Necessary  
5 To The Districts' Prescriptive Rights Claim.

6 “An appropriative taking of water which is not surplus is wrongful and may ripen into a  
7 prescriptive right where the use is actual, open and notorious, hostile and adverse to the original owner,  
8 continuous and uninterrupted for the statutory period of five years, and under claim of right.”  
9 (*California Water Service Co. v. Edward Sidebotham & Son, Inc.*(1964) 224 Cal.App.2d 715, 726.) The  
10 Districts have alleged all these elements in their answer. Nevertheless, Willis argues that as a matter of  
11 law, the Districts cannot acquire prescriptive rights against non-pumping or “dormant” overlyers.

12 Willis’s argument is based on the premise that the element of adversity is missing. Willis quotes  
13 from *Pabst v. Finmand* (1922) 190 Cal. 124, 130, to the effect that an upper riparian owner could use all  
14 the water of the stream, but if the lower riparian owner were not using any water, it would not be  
15 adverse, and therefore would not give rise to a prescriptive right. To the same effect is *Stepp v. Williams*  
16 (1921) 52 Cal.App. 237, 258 (“An adverse right cannot be acquired against the owner by a person using  
17 the waters at times when the owner does not require them for his own purposes.”)

18 This principle, however, was developed in controversies dealing with the claimed invasion of  
19 rights in the direct flow of surface streams, and does not apply to overdrafted groundwater basins, where  
20 the element of adversity is supplied by the overdraft itself. (*See Pasadena v. Alhambra* (1949) 33 Cal.2d  
21 908 (*Pasadena*)). In *Pasadena*, the parties stipulated to all elements of prescription except the length of  
22 the prescriptive period and the nature and extent of actual adverse user, if any. (*Id.* at 928.) The court  
23 explained that there was legal injury to the owner, even if the owner was able to pump all the water he  
24 needed:

25 Each taking of water in excess of the safe yield, whether by subsequent  
26 appropriators or by increased use by prior appropriators, was wrongful and  
27 was an injury to the then existing owners of water rights, because the  
28 overdraft, from its very beginning, operated progressively to reduce the  
total available supply. Although no owner was immediately prevented  
from taking the water he needed, the report demonstrates that a depletion of

1 the supply stored in the underground basin that it would become  
2 inadequate. (*Id.* at 929.)

3 In *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 278 (*San Fernando*), the court  
4 expressly stated that appropriations during overdraft create the adversity element of prescription:  
5 “[A]ppropriations of water in excess of surplus then invade senior basin rights, creating the element of  
6 adversity against those rights prerequisite to their owners’ becoming entitled to an injunction and thus to  
7 the running of any prescriptive period against them.” This rationale applies whether or not the overlying  
8 rights are being exercised.

9 In the years since *Pasadena*, numerous groundwater basin adjudications have been based on  
10 prescriptive rights, at least two of which resulted in reported decisions. (*California Water Service Co. v.*  
11 *Edward Sidebotham & Son, Inc.* (1964) 224 Cal.App.2d 715; *City of Los Angeles v. City of San*  
12 *Fernando* (1975) 14 Cal.3d 199.) In none of those adjudications, however, were dormant overlying  
13 rights found to be immune from prescription. Indeed, to our knowledge, no reported case has so held.

14 Willis relies on dicta in a footnote in *San Fernando, supra*, that “prescriptive rights would not  
15 necessarily impair the private defendants’ rights to ground water for new overlying uses for which the  
16 need had not yet come into existence during the prescriptive period.” (14 Cal.3d at 293 n. 100.) The case  
17 cited for that proposition, *Tulare Dist. v. Lindsay-Strathmore Dist.* (1935) 3 Cal.2d 489, 525-526, holds  
18 only that *prior to the acquisition of prescriptive rights*, the holder of a riparian or overlying right could  
19 obtain a declaratory judgment establishing the priority against an appropriator, not only of the amount of  
20 its existing reasonable and beneficial use, but of future or prospective reasonable and beneficial uses. In  
21 this case, Willis or any class member could indeed have obtained such a declaratory judgment, but failed  
22 to do so until after the statute of limitations had expired.

23 *Wright v. Goleta Water Dist.* (1985) 174 Cal.App.3d 74, does not support Willis’s argument.  
24 That case held that unexercised overlying rights may not be limited and subordinated to exercised  
25 overlying and appropriative rights. The case, however, did not involve prescriptive rights, and the basin  
26 was not overdrafted. (*Id.* at 81 (safe yield was exceeded for the first time after the action was filed).)  
27 Contrary to Willis’s assertion, the court did not base its decision on—or even cite—footnote 100 of *San*  
28 *Fernando*. Instead, the court based its decision on the fact that the case was not a comprehensive

1 groundwater adjudication. (*Id.* at 88.) This case, by contrast, is a comprehensive groundwater  
2 adjudication. This raises the possibility that even if prescriptive rights are not proven in this case,  
3 Willis’s rights may be subordinated to exercised overlying and appropriative rights.

4 The other cases cited by Willis did not involve prescriptive rights either. *City of Barstow v.*  
5 *Mojave Water Agency* (2000) 23 Cal.4th 1224, held that *in the absence of prescription*, overlying rights  
6 must be given priority over appropriative rights. And *Tehachapi-Cummings County Water Dist. v.*  
7 *Armstrong* (1975) 49 Cal.App.3d 992, held that the doctrine of mutual prescription was inapplicable  
8 when all the users had overlying rights.

9  
10 2. Case Law Has Recognized That Prescriptive Rights May Be Acquired Against Dormant  
11 Overlyers.

12 In *Pasadena v. Alhambra* (1949) 33 Cal.2d 908, the court originated the doctrine of self-help. In  
13 holding that those water right holders who continued to pump did not lose all their rights to prescription,  
14 the court recognized that if they had not pumped, they would have lost all their rights:

15 If the original owners of water rights had been ousted completely or had  
16 failed to pump for a five-year period, then there would have been no  
17 interference whatsoever on the part of the owners with the use by the  
wrongdoers, and the wrongdoers would have perfected prior prescriptive  
rights to the full amount which they pumped. (*Id.* at 931-932.)

18 What was a hypothetical situation in *Pasadena* became real in the case of *Hi-Desert County*  
19 *Water Dist. v. Blue Skies Country Club, Inc.* (1994) 23 Cal.App.4th 1723. In that case, which came after  
20 *San Fernando*, the court was faced with interpreting a stipulated judgment, which explicitly provided  
21 that unexercised overlying rights had been lost to prescription:

22 “*Prescription Against Unused Overlying Rights.* By reason of said  
23 prescriptive circumstances, all unexercised overlying rights have been lost  
24 and extinguished and no new overlying production may be commenced, so  
long as [the] Basin remains in a state of overdraft.” (*Id.* at 1727.)

25 In interpreting this provision, the court found it applied not only to owners who had never pumped, but  
26 also to the future needs of those who had pumped. (*Id.* at 1773, n.8.)

27 This result only makes sense. If overlying owners are allowed to preserve their rights by  
28 pumping during the prescriptive period, it follows that those who do not pump during the prescriptive

1 period do not preserve their rights. Put another way, it makes no sense to give a water rights priority to  
2 those who do not pump over those who do. “The law helps the vigilant, before those who sleep on their  
3 rights.” (Civ. Code §3527.) The very word “dormant” comes from the Latin word for sleep. (Webster’s  
4 New Collegiate Dictionary, 1973.)

5  
6 3. The Districts Have Statutory Authorization To Acquire Water Rights By Prescription.

7 Willis argues that the Districts do not have statutory authorization to acquire water rights by  
8 prescription. It is difficult to understand how Willis came to this conclusion. Quartz Hill Water District  
9 is a county water district, governed by Division 12 of the Water Code. (First Amended Cross Complaint  
10 of the Public Water Suppliers filed March 13, 2007, paragraph 10.) Water Code section 31042 gives it  
11 the power to “purchase, lease, *or otherwise acquire* ... water rights ....” (Emphasis added.) Palmdale  
12 Water District is a irrigation district, governed by Division 11 of the Water Code. (Cross Complaint,  
13 *supra*, paragraph 7.) Water Code section 22425 gives it the power to “acquire *by any means* any  
14 property or interest in property to carry out its purposes ....” (Emphasis added; *see also* Water Code §§  
15 22075, 22078, 31047.)

16 In addition to these specific authorizations is the general authorization contained in Civil Code  
17 section 1007, which provides that occupancy for the prescriptive period confers title by prescription.

18 *Montecito Valley Water Co. v. City of Santa Barbara* (1904) 144 Cal. 578, 594-595, is directly  
19 on point. The same argument made by Willis was made against a corporation in that case. The Supreme  
20 Court held that the statutory authorization was sufficient to allow the acquisition of rights by  
21 prescription.

22 Finally, numerous cases have shown that public entities can acquire water rights by prescription.  
23 (See, e.g., *San Fernando*, *supra*, 14 Cal. 3d at 293.)

24  
25 **CONCLUSION**

26 The Districts have properly alleged all the elements of prescription. In particular, they have  
27 alleged the element of adversity, which is supplied in an overdrafted basin by the overdraft itself. This is  
28 true both for water rights owners who pump, and those who do not. There is no basis for elevating the

1 priority of owners who do not pump over owners who do. The court should therefore deny the motion to  
2 strike.

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4 Dated: July 29, 2008

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