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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**ANTELOPE VALLEY GROUNDWATER  
CASES**

Included Actions:

Los Angeles County Waterworks District  
No. 40 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. City of Lancaster

Diamond Farming Co. v. Palmdale Water  
District

Superior Court of California, County of  
Riverside, consolidated actions, Case Nos.  
RIC 353840, RIC 344436, RIC 344668

Judicial Council Coordination  
Proceeding No. 4408

**NOTICE OF DEMURRER AND  
DEMURRER TO REBECCA LEE  
WILLIS' SECOND AMENDED  
CROSS-COMPLAINT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

DATE: August 11, 2008  
TIME: 9:00 a.m.  
DEPT: 1

Phase 2 Trial: October 6, 2008  
(Hon. Jack Komar)

[Exempt from Filing Fees Pursuant to Govt. Code  
§6103]

**TO ALL PARTIES HERETO AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on August 11, 2008, at 9:00 a.m., or as soon

thereafter as the matter may be heard in Department 1 of the above-entitled court located at 111 N. Hill Street, Los Angeles, California, the City of Palmdale, City of Lancaster, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District, North Edwards Water District, Rosamond Community Services District, and Los Angeles County Waterworks District No. 40 (collectively “Public Entity Demurring Parties”) and Llano Del-Rio Water Company, Llano Mutual Water Company, Big Rock Mutual Water Company, Little Baldy Water Company, and California Water Service Company (collectively “Private Entity Demurring Parties”) (Public Entity Demurring parties and Private Entity Demurring Parties are collectively referenced as “Demurring Parties”) will and do hereby demur to the third and fourth causes of action of the Second Amended Complaint (“SAC”) pursuant to Code of Civil Procedure (“CCP”) section 431.10. This demurrer is made on the following grounds:

1. Willis’ claims for takings in violation of the state and federal constitutions, including her claim for attorney’s fees, are predicated on the legally erroneous contention that, if the Public Entity Demurring parties obtained groundwater rights by prescription, they somehow owe monetary compensation to Willis (SAC, ¶¶ 34-37 and 38-44). As a matter of law, the Public Entity Demurring Parties cannot be required to provide compensation for water rights acquired by prescription. The third and fourth causes of action thus fail to state facts sufficient to constitute a cause of action (CCP §430.10(e)).

2. As a matter of law, Willis’ takings claims are barred by the statute of limitations, and the third and fourth causes of action accordingly fail to state facts sufficient to constitute a cause of action, inasmuch as:

(a) Her inverse condemnation theory is predicated on the Public Entity Demurring parties’ having acquired a paramount right to produce groundwater through prescription;

(b) The period of prescription is five years of open adverse possession; and,

(c) Willis was required to seek relief from the adverse possession within five years of the alleged first act constituting inverse condemnation. Thus, the very moment that the Public Entity Demurring Parties obtained prescriptive water rights, Willis' state and federal claims for takings became time-barred.

3. The Private Entity Demurring Parties are not state actors, and thus may not be subject to liability for takings.

This demurrer is based upon this notice, the accompanying memorandum of points and authorities, the pleadings and other documents on file in this action, and upon such other oral and written evidence as the Court may accept at the time of hearing this demurrer.

Dated: June 6, 2008

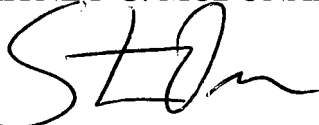
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By:   
STEVEN R. ORR  
Attorneys for Defendant, Cross-  
Complainant, and Cross-Defendant  
CITY OF PALMDALE

## DEMURRER TO COMPLAINT

### Demurrer to Third Cause of Action

1. The third cause of action does not state facts upon which relief may be granted.

2. Willis' claims for a takings in violation of the state constitution, including her claim for attorney's fees, are predicated on the legally erroneous contention that, if the Public Entity Demurring parties obtained groundwater rights by prescription, they somehow owe monetary compensation to Willis (SAC, ¶¶ 34-37). As a matter of law, the Public Entity Demurring Parties cannot be required to provide compensation for water rights acquired by prescription.

3. As a matter of law, Willis' takings claims are barred by the statute of limitations inasmuch as:

- (a) Her inverse condemnation theory is predicated on the Public Entity Demurring parties' having acquired a paramount right to produce groundwater through prescription;
- (b) The period of prescription is five years of open adverse possession; and,
- (c) Willis was required to seek relief from the adverse possession within five years of the alleged first act constituting inverse condemnation. Thus, the very moment that the Public Entity Demurring Parties obtained prescriptive water rights, Willis' state and federal claims for takings became time-barred.

4. The Private Entity Demurring Parties are not state actors, and thus may not be subject to liability for takings under the state constitution.

### Demurrer to Fourth Cause of Action

1. The fourth cause of action does not state facts upon which relief may be granted.

2. Willis' claims for a takings in violation of the federal constitution, including her claim for attorney's fees, are predicated on the legally erroneous contention that, if the Public Entity Demurring parties obtained groundwater rights by prescription, they somehow owe monetary compensation to Willis (SAC, ¶¶ 38-44). As a matter of law, the Public Entity Demurring Parties cannot be required to provide compensation for water rights acquired by prescription.

3. As a matter of law, Willis' takings claims are barred by the statute of limitations inasmuch as:

- a) Her inverse condemnation theory is predicated on the Public Entity Demurring parties' having acquired a paramount right to produce groundwater through prescription;
- b) The period of prescription is five years of open adverse possession; and,
- c) Willis was required to seek relief from the adverse possession within five years of the alleged first act constituting inverse condemnation. Thus, the very moment that the Public Entity Demurring Parties obtained prescriptive water rights, Willis' state and federal claims for takings became time-barred.

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1           4.       The Private Entity Demurring Parties are not government state, and thus  
2 may not be subject to liability for a takings under the federal constitution.

3  
4 Dated: June 6, 2008

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By: 

STEVEN R. ORR

Attorneys for Defendant, Cross-  
Complainant, and Cross-Defendant  
CITY OF PALMDALE

## MEMORANDUM OF POINTS AND AUTHORITIES

The City of Palmdale, City of Lancaster, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District, North Edwards Water District, Rosamond Community Services District, and Los Angeles County Waterworks District No. 40 (collectively “Public Entity Demurring Parties”) and Llano Del-Rio Water Company, Llano Mutual Water Company, Big Rock Mutual Water Company, Little Baldy Water Company, and California Water Service Company (collectively “Private Entity Demurring Parties”) (Public Entity Demurring parties and Private Entity Demurring Parties are collectively referenced as “Demurring Parties”) respectfully submit the following memorandum of points and authorities in support of their demurrer to the third and fourth causes of action of Rebecca Lee Willis’ second amended complaint (“2AC”).

### I. OVERVIEW

This action concerns rights to produce groundwater from the Antelope Valley Groundwater Basin (“Basin”). Various parties, including the Demurring Parties, have asserted claims that they have acquired prescriptive rights as against other (generally overlying) groundwater producers. One of those overlying groundwater producers, class representative Rebecca Lee Willis, alleges through the third and fourth causes of action of the Second Amended Complaint that, if the Demurring Parties, or any of them, have acquired water rights through prescription, then they should pay money damages to her under a state or federal taking theory.

The Court should sustain this demurrer without leave to amend for the following reasons:

First, the California Supreme Court has authoritatively rejected the predicate to Willis’ takings claims, namely that public and private entities are somehow required to compensate an owner of property for rights for an alleged taking by prescription:

“...If the doctrine of prescription is truly aimed at ‘protecting’ and ‘stabilizing’ a long and continuous use or possession as against the claims of an alleged ‘owner’ of the property, then the latter’s claim for damages or fair compensation for an alleged ‘taking’ must be rejected.”

*Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 575.

Second, the Private Entity Demurring Parties are not “state actors” and thus may not be held liability for alleged violations of the state or federal constitutions.

Third, in the context of the Public Entity Demurring Parties’ acquiring prescriptive groundwater production rights, Willis’ takings claims are time-barred because the right to assert the existence of a takings damages claim expired at the *very* moment the Public Entity Demurring Parties prescriptive right vested after five years of adverse water production.

## II. THE THIRD AND FOURTH CAUSES OF ACTION FOR TAKINGS UNDER STATE AND FEDERAL LAW FAIL AS A MATTER OF LAW

### A. The Public Entity Demurring Parties Are Not Required to Pay Compensation for Acquiring Prescriptive Water Rights

Monetary compensation is utterly and completely inimical to the concept of a party obtaining a prescriptive right. The California Supreme Court made this point abundantly clear in *Warsaw*. There, the Court held that the plaintiffs, having acquired a prescriptive easement over a 16,250-square-foot parcel of the defendant’s property, were not required to compensate the defendant, stating:

“That being so, there is no basis in law or equity for requiring them [plaintiffs] to compensate defendant for the fair market value of the easement so acquired. To exact such a charge would entirely defeat the legitimate policies underlying the doctrines of adverse possession and prescription ‘to reduce litigation and preserve the peace by protecting a possession that has been maintained for a statutorily deemed sufficient period of time.’ [Citations omitted].”



Cal.3d at 574.

The Court of Appeal applied this basic and controlling legal doctrine in *Baker v. Burbank-Glendale-Pasadena Airport Authority* (1990) 220 Cal.App.3d 1602, 1609.

There, the court squarely held a public entity that had acquired an avigation easement from its predecessor (LAT) was not required to compensate the plaintiffs under a theory of inverse condemnation:

“Having acquired the right to interfere with the plaintiffs’ use and enjoyment of their properties’ by prescription, LAT was not required to compensate them [the plaintiffs] for the easement [Citation omitted], and it could transfer it to Authority, which it did. [Citation omitted].”

The reasoning behind these holdings was set forth in *Warsaw* in which the California Supreme Court explained:

“As described by Professor Powell, ‘Historically, prescription has had the theoretical basis of a lost grant. Its continuance has been justified because of its functional utility in helping to cause prompt termination of controversies before the possible loss of evidence and in stabilizing long continued property uses.’ [Citation omitted]. If the doctrine of prescription is truly aimed at ‘protecting’ and ‘stabilizing’ a long and continuous use or possession as against the claims of an alleged ‘owner’ of the property, then the latter’s claim for damages or fair compensation for an alleged ‘taking’ must be rejected.”

*Warsaw*, 35 Cal.3d at 575.

In short, once a prescriptive right has been established, to effect the above-stated policy, no compensation need be paid to the property owner whose rights have been so prescribed due to his or her lack of diligence. *Id.* at 574. More specifically, water rights cases uniformly have recognized a public entity’s ability to acquire prescriptive rights to produce groundwater without requiring the prescribing entity to provide compensation therefor. *See, e.g., City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 281; *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 926-927; *City of Los*

*Angeles v. City of Glendale* (1943) 23 Cal.2d 68, 79; *City of San Bernardino v. City of Riverside* (1921) 186 Cal.7, 22-23; *Orange County Water District v. City of Riverside* (1959) 173 Cal.App.2d 137.

Accordingly, if the Public Entity Demurring Parties demonstrate that they have acquired prescriptive rights to produce groundwater paramount to Willis’ right to do so, then, by law, the Public Entity Demurring Parties cannot be required to compensate Willis for having done so. The third and fourth causes of action are, accordingly, legally barred and thus the demurrer to those causes of action should be sustained without leave to amend.

**B. If Prescription Is Established, a Taking Claim Is Barred by the Statute of Limitations**

To obtain a prescriptive right to produce groundwater in California, the water production must be for a reasonable and beneficial purpose, open and notorious, adverse and hostile, exclusive and under a claim of right, and continuous and uninterrupted for the statutory period of five years. *City of Barstow v. Mojave Water Agency* (2000) 23 Cal. 4th 1224, 1141; *Pasadena*, 33 Cal.2d at 926-927; *San Fernando*, 14 Cal.3d at 164-165; CCP § 318. Prescriptive rights, once perfected, operate to divest a property owner of rights so prescribed:

“Appropriative and prescriptive rights to groundwater, as well as the rights of an overlying owner, are subject to loss by adverse user.”

*Pasadena*, 33 Cal.3d at 927.

If the statutory five-year period has run for the creation of a prescriptive right, then any claim for a taking is barred by the five-year statute of limitations governing such claims:

“Although it is generally true a governmental entity cannot acquire private property without the payment of just compensation, it is well settled the statute of limitations applies to inverse condemnation claims. [Citations omitted]. Claims

based on the government’s taking of private property are subject to a five year statute of limitations. [Citations omitted].”

*Otay Water Dist. v. Beckwith* (1991) 1 Cal.App.4th 1041, 1048; CCP §§ 318, 319; *see also Institoris v. Los Angeles* (1989) 210 Cal.App.3d 10, 16-18. Further, the statute of limitations governing the assertion of such a taking claim begins to run when the government first takes possession of the property in dispute:

“Generally, the limitations period on such an inverse condemnation begins to run when the governmental entity takes possession of the property. [Citations omitted].”

*Otay Water Dist.*, 1 Cal.App.4th at 1048-1049. The Public Entity Demurring Parties recognize that:

“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] . . . .’ [Citation omitted].”

*Id.* at 1049. However, in the case of water production, for a party to acquire a prescriptive right, the period of prescription must be open and notorious, adverse and hostile, and the person prescribed against must be on notice of the condition of overdraft for at least a five-year period. *San Fernando*, 13 Cal.3d at 282-283.

Thus, if an entity has acquired a prescriptive water right, the statute of limitations for an inverse condemnation claim necessarily must have began to run from the onset of the prescriptive period and, a fortiori, such a claim must be time barred. CCP §§ 318, 319; *Baker*, 220 Cal.App.3d at 1609 (acquisition of avigation easement after five year prescriptive period barred plaintiffs’ claims for inverse condemnation); *Ocean Shore R.R. Co. v. Santa Cruz* (1962) 198 Cal.App.2d 267, 271-272 (city acquired land for a road through adverse possession; plaintiffs’ inverse condemnation claims barred by five-year statute of limitations); *Otay Water Dist.*, 1 Cal.App.4th at 1048.

### III. PRIVATE ENTITIES MAY NOT BE HELD LIABLE UNDER STATE OR FEDERAL TAKINGS CLAIM

An action claiming a taking of private property for a public purpose may not be maintained against a private party under either the California or U.S. Constitutions. *Oliver v. AT&T Wireless Services* (1999) 76 Cal.App.4th 521, 530 (inverse condemnation action does not lie against private party that does not hold power of eminent domain); *Fidelity Financial Corp. v. Federal Home Loan Bank of San Francisco* (1986) 792 F.2d 1432, 1435 (government action required to assert a taking claim under the 5<sup>th</sup> Amendment).

Willis’ third and fourth causes of action for takings under the California and federal Constitutions are asserted against “All Defendant Appropriators,” including Llano Del-Rio Water Company, Llano Mutual Water Company, Big Rock Mutual Water Company, Little Baldy Water Company, and California Water Service Company. These Private Entity Demurring Parties are not government actors against whom takings claims may be maintained.

### IV. AS A MATTER OF LAW PLAINTIFF IS NOT ENTITLED TO AN AWARD OF ATTORNEY’S FEES

Willis fails to state facts sufficient to warrant an award of attorney’s fees as a matter of law, inasmuch as she cannot make out a claim pursuant to 42 USC § 1983, as stated above. As a result, she is not entitled to an award of attorney’s fees pursuant to state or federal law.

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1     **V.     CONCLUSION**

2             For the foregoing reasons, this demurrer to Willis’ third and fourth causes of  
3     action should be sustained without leave to amend.

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5     Dated: June 6, 2008

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16  
17    By: 

17    STEVEN R. ORR

18    Attorneys for Defendant, Cross-  
19    Complainant, and Cross-Defendant  
20    CITY OF PALMDALE

1 **PROOF OF SERVICE**

2 I, Kelley Herrington, declare:

3 I am a resident of the State of California and over the age of eighteen years, and  
4 not a party to the within action; my business address is Richards, Watson & Gershon, 355 South  
Grand Avenue, 40<sup>th</sup> Floor, Los Angeles, California 90071. On June 6, 2008, I served the within  
5 documents:

6 **NOTICE OF DEMURRER AND DEMURRER TO REBECCA LEE  
7 WILLIS' SECOND AMENDED CROSS-COMPLAINT; MEMORANDUM  
8 OF POINTS AND AUTHORITIES**

- 9 ☐ by causing facsimile transmission of the document(s) listed above from (213) 626-  
10 0078 to the person(s) and facsimile number(s) set forth below on this date before  
11 5:00 P.M. This transmission was reported as complete and without error. A copy  
12 of the transmission report(s), which was properly issued by the transmitting  
13 facsimile machine, is attached. Service by facsimile has been made pursuant to a  
14 prior written agreement between the parties.
- 15 ☒ by posting the document(s) listed above to the Santa Clara County Superior Court  
16 website in regard to the Antelope Valley Groundwater matter.
- 17 ☐ by placing the document(s) listed above in a sealed envelope and affixing a pre-  
18 paid air bill, and causing the envelope to be delivered to an agent for delivery, or  
deposited in a box or other facility regularly maintained by , in an envelope or  
package designated by the express service carrier, with delivery fees paid or  
provided for, addressed to the person(s) at the address(es) set forth below.
- 19 ☐ by personally delivering the document(s) listed above to the person(s) at the  
20 address(es) set forth below.
- 21 ☐ by causing personal delivery by First Legal Support Services, 1511 West Beverly  
22 Boulevard, Los Angeles, California 90026 of the document(s) listed above to the  
23 person(s) at the address(es) set forth below.

24 I declare under penalty of perjury under the laws of the State of California that the  
25 above is true and correct.

26 Executed on June 6, 2008.

27   
28 \_\_\_\_\_  
Kelley Herrington