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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

Coordination Proceeding
Special Title (Rule 1550(b)),

**ANTELOPE VALLEY
GROUNDWATER CASES**

Judicial Council Coordination Proceeding
No. 4408

Santa Clara Case No. 1-05-CV-049053
Assigned to the Hon. Jack Komar
Dept: D17

**PUBLIC WATER SUPPLIERS'
NOTICE OF MOTION AND MOTION
TO STRIKE; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: May 21, 2007
Time: 9:00 a.m.
Dept: 1

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on May 21, 2007 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 North Hill Street, Los Angeles, California, defendants City of Palmdale, City of
Lancaster, Los Angeles County Waterworks District No. 40, Palmdale Water District,
Quartz Hill Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation
District, Rosamond Community Services District, and California Water Service

1 Company, successor in interest to Antelope Valley Water Company¹ (collectively “Public
2 Water Suppliers”) will and do hereby move to strike the prayer for attorney’s fees set
3 forth at page 8, lines 1-3 of the complaint of plaintiff Rebecca Lee Willis, pursuant to
4 Code of Civil Procedure (“CCP”) section 435.

5 This motion to strike is made on the following grounds:

6 1. Willis seeks to recover attorney’s fees in connection with her claim for
7 inverse condemnation under the state and federal constitutions. Those causes of action,
8 and the related attorney’s fees claim, are predicated on the legally erroneous contention
9 that, if the Public Water Suppliers obtained groundwater rights by prescription, they owe
10 monetary compensation to Willis (Complaint, ¶¶ 26-27 and 29-30). As demonstrated in
11 the concurrently filed demurrer, the Public Water Suppliers cannot be required to provide
12 compensation for water rights acquired by prescription. The second and third causes of
13 action thus fail to state facts sufficient to constitute a cause of action (CCP §430.10(e)).

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

17 (a) her inverse condemnation theory is predicated on the Public Water
18 Suppliers’ having acquired a paramount right to produce groundwater through
19 prescription;

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

21 (c) Willis was required to seek relief from the adverse possession within five
22 years of the alleged first act constituting inverse condemnation. Thus, the very
23 moment that the Public Water Suppliers obtained prescriptive water rights, Willis’
24 claim for inverse condemnation became time-barred.

25
26 ¹ California Water Service Company joins in this motion to strike to the extent
27 plaintiff alleges California Water Service Company is a public entity. However,
28 California Water Service Company is an investor-owned public utility regulated by the
California Public Utilities Commission.

3. As a result, the Court should exercise its discretion under CCP § 436 to strike the allegations set forth at page 8, lines 1-3 of the complaint.

This motion to strike 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 motion.

DATED: April 11, 2007

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By: 

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

MEMORANDUM OF POINTS AND AUTHORITIES

Defendants City of Palmdale, City of Lancaster, Los Angeles County Waterworks District No. 40, Palmdale Water District, Quartz Hill Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Rosamond Community Services District, and California Water Service Company, successor in interest to Antelope Valley Water Company² (collectively “Public Water Suppliers”) respectfully submit this memorandum of points and authorities in support of their motion to strike the prayer for attorney’s fees set forth in the Complaint of Rebecca Lee Willis.

I. LEGAL AND FACTUAL OVERVIEW

This action concerns rights to produce groundwater from the Antelope Valley Groundwater Basin (“Basin”). Various parties, including the Public Water Suppliers, have asserted claims that they have acquired prescriptive rights as against other (generally overlying) groundwater producers. One of those overlying groundwater producers, Willis, alleges through her second and third causes of action that, if the Public Water Suppliers, or any of them, have acquired water rights through prescription, then they should pay money damages to her under an inverse condemnation theory. She seeks to recover attorney’s fees from the Public Water Suppliers should she prevail on either cause of action (Complaint, page 8, lines 1-3).

Through the concurrently filed demurrer, the Public Water Suppliers seek an order sustaining their demurrer without leave to amend. The prayer for attorney’s fees is subject to a motion to strike for the same reasons, namely:

² California Water Service Company joins in this motion to strike to the extent plaintiff alleges California Water Service Company is a public entity. However, California Water Service Company is an investor-owned public utility regulated by the California Public Utilities Commission.

The California Supreme Court has authoritatively rejected the predicate to Willis' inverse condemnation claim, namely that public entities are 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, in the context of the Public Water Suppliers' acquiring prescriptive groundwater production rights, Willis' inverse condemnation claim is time-barred because the right to assert the existence of inverse condemnation damages expired at the very moment the Public Water Suppliers' prescriptive right vested after five years of adverse water production.

II. THE PRAYER FOR ATTORNEY'S FEES SHOULD BE ORDERED STRICKEN

Code of Civil Procedure ("CCP") § 435(b)(1) authorizes the Public Water Suppliers to seek an order striking Willis' prayer for attorney's fees:

"Any party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof ..."

In this regard, CCP § 436 grants broad discretion to the Court to strike portions of pleadings:

"The court may, upon motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper:

(a) Strike out any irrelevant, false, or improper matter asserted in any pleading.

(b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court."

1 As the California Supreme Court explained, “[t]he motion to strike has
2 traditionally been, and should continue to be, invoked to attack defects not apparent upon
3 the face of the pleading.” *White Lighting Co. v. Wolfson* (1968) 68 Cal.2d 336, 355.

4 Here, the claim for attorney’s fees is fatally defective inasmuch as Willis cannot
5 state facts sufficient to constitute a cause of action for the reasons set forth below. As
6 such, there is no statutory, legal or contractual basis for her claim for attorney’s fees, and
7 the prayer therefor should be struck.

8
9 **III. THE SECOND AND THIRD CAUSES OF ACTION FOR INVERSE**
10 **CONDEMNATION UNDER STATE AND FEDERAL LAW FAIL AS A MATTER**
11 **OF LAW**

12 **A. The Public Water Suppliers Are Not Required to Pay Compensation for**
13 **Acquiring Prescriptive Water Rights**

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

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

26 Cal.3d at 574.

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

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

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

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

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

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

20 In short, once a prescriptive right has been established, to effect the above-stated
21 policy, no compensation need be paid to the property owner whose rights have been so
22 prescribed due to his or her lack of diligence. *Id.* at 574. More specifically, water rights
23 cases uniformly have recognized a public entity's ability to acquire prescriptive rights to
24 produce groundwater without requiring the prescribing entity to provide compensation
25 therefor. *See, e.g., City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199,
26 281; *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 926-927; *City of Los*
27 *Angeles v. City of Glendale* (1943) 23 Cal.2d 68, 79; *City of San Bernardino v. City of*
28

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 Water Suppliers demonstrate that they have acquired prescriptive rights to produce groundwater paramount to Willis' right to do so, then, by law, the Public Water Suppliers cannot be required to compensate Willis for having done so. The second and third 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 Claim of Inverse Condemnation 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. *Mojave*, 23 Cal.4th at 1241; *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 inverse condemnation 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 an inverse condemnation 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 Water Suppliers 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 begun 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.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court should strike the prayer for attorney's fees
3 alleged at page 8, lines 1-3 from the complaint of Rebecca Lee Willis.

4
5 DATED: April 11, 2007

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18 By: 

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PROOF OF SERVICE

I, Kelley Herrington, declare:

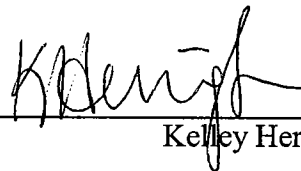
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Richards, Watson & Gershon, 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071. On April 11, 2007, I served the within documents:

PUBLIC WATER SUPPLIERS' NOTICE OF MOTION AND MOTION TO STRIKE; MEMORANDUM OF POINTS AND AUTHORITIES

- ☐ by causing facsimile transmission of the document(s) listed above from (213) 626-0078 to the person(s) and facsimile number(s) set forth below on this date before 5:00 P.M. This transmission was reported as complete and without error. A copy of the transmission report(s), which was properly issued by the transmitting facsimile machine, is attached. Service by facsimile has been made pursuant to a prior written agreement between the parties.
- ☒ by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- ☐ by placing the document(s) listed above in a sealed envelope and affixing a pre-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.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by causing personal delivery by First Legal Support Services, 1511 West Beverly Boulevard, Los Angeles, California 90026 of the document(s) listed above to the person(s) at the address(es) set forth below.

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

Executed on April 11, 2007.



Kelley Herrington