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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 DEMURRER AND  
DEMURRER TO SECOND AND  
THIRD CAUSES OF ACTION FOR  
INVERSE CONDEMNATION IN  
COMPLAINT OF REBECCA LEE  
WILLIS; 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 Company, successor in interest to Antelope Valley Water Company<sup>1</sup> (collectively “Public Water Suppliers”) will and do hereby demur to the second and third causes of action for inverse condemnation set forth in the complaint of plaintiff Rebecca Lee Willis, pursuant to Code of Civil Procedure (“CCP”) section 430.10.

This demurrer is made on the following grounds:

1. Willis’ claim for inverse condemnation, including her claim for attorney’s fees, under the state and federal constitutions are predicated on the legally erroneous contention that, if the Public Water Suppliers obtained groundwater rights by prescription, they owe monetary compensation to Willis (Complaint, ¶¶ 26-27 and 29-30). As a matter of law, the Public Water Suppliers cannot be required to provide compensation for water rights acquired by prescription. The second and third 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’ inverse condemnation claims are barred by the statute of limitations, and the second and third 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 Water Suppliers’ 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 Water Suppliers obtained prescriptive water rights, Willis’ claim for inverse condemnation became time-barred.

<sup>1</sup> California Water Service Company joins in this demurrer 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.

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

5  
6 DATED: April 11, 2007

LEMIEUX & O'NEILL  
WAYNE LEMIEUX

7  
8 LAGERLOF SENECA GOSNEY & KRUSE  
THOMAS BUNN III

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17 ERIN L. POWERS

18 By: 

19 STEVEN R. ORR  
20 Attorneys for Defendant, Cross-Complainant  
and Defendant  
21 CITY OF PALMDALE  
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1 **DEMURRER TO COMPLAINT**

2  
3 **Second Cause of Action**

4 (Inverse Condemnation – California Constitution)

5 1. The second cause of action does not state facts sufficient to constitute a cause  
6 of action.

7  
8 **Third Cause of Action**

9 (Inverse Condemnation – Federal Constitution)

10 1. The third cause of action does not state facts sufficient to constitute a cause  
11 of action.

12  
13 DATED: April 11, 2007

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Attorneys for Defendant, Cross-Complainant  
and Defendant  
28 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 Company<sup>2</sup> (collectively “Public Water Suppliers”) respectfully submit this memorandum of points and authorities in support of their demurrer to the second and third causes of action for inverse condemnation alleged 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.

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’ inverse condemnation claim, namely that public entities are required to compensate an owner of property for rights for an alleged ‘taking’ by prescription:

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<sup>2</sup> California Water Service Company joins in this demurrer 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.

“...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 SECOND AND THIRD CAUSES OF ACTION FOR INVERSE CONDEMNATION UNDER STATE AND FEDERAL LAW FAIL AS A MATTER OF LAW

### A. The Public Water Suppliers 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 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 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. 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.

**IV. CONCLUSION**

For the foregoing reasons, this demurrer to Willis' second and third causes of action should be sustained without leave to amend.

DATED: April 11, 2007

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By: 

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

1 **PROOF OF SERVICE**

2 I, Kelley Herrington, declare:

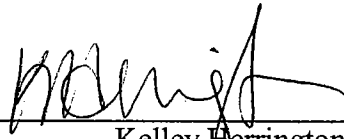
3 I am a resident of the State of California and over the age of eighteen years, and  
4 not a party to the within action; my business address is Richards, Watson & Gershon, 355 South  
5 Grand Avenue, 40<sup>th</sup> Floor, Los Angeles, California 90071. On April 11, 2007, I served the  
6 within documents:

7 **PUBLIC WATER SUPPLIERS' NOTICE OF DEMURRER AND  
8 DEMURRER TO SECOND AND THIRD CAUSES OF ACTION FOR  
9 INVERSE CONDEMNATION IN COMPLAINT OF REBECCA LEE  
10 WILLIS; MEMORANDUM OF POINTS AND AUTHORITIES**

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

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

22 Executed on April 11, 2007.

23   
24 \_\_\_\_\_  
25 Kelley Herrington  
26  
27  
28