

1 JOHN S. TOOTLE, ESQ. (SBN 181822)
CALIFORNIA WATER SERVICE COMPANY
2 2632 West 237th Street
Torrance, CA 90505
3 Telephone: (310) 257-1488
Facsimile: (310) 325-5658
4

Attorney for Defendants/Cross-Complaints
5 CALIFORNIA WATER SERVICE COMPANY SUCCESSOR TO
ANTELOPE VALLEY WATER COMPANY
6

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF LOS ANGELES**

9 Coordination Proceeding Special Title) JUDICIAL COUNCIL COORDINATION
(Rule 1550 (b))) PROCEEDING NO. 4408
10 ANTELOPE VALLEY GROUNDWATER CASES)
11 Included Actions:) CALIFORNIA WATER SERVICE COMPANY'S
12 Los Angeles County Waterworks) REPLY TO WILLIS' OPPOSITION TO
District No. 40 vs. Diamond Farming) DEMURRER TO SECOND AMENDED COMPLAINT
13 Company)
Los Angeles Superior Court) DATE: AUGUST 11, 2008
14 Case No. BC 325201) TIME: 9:00a.m.
15 Los Angeles County Waterworks) DEPT: 1
District No. 40 vs. Diamond Farming)
16 Company) PHASE 2 TRIAL: October 6, 2008
Kern County Superior Court)
17 Case No. S-1500-CV 254348 NFT)
Diamond Farming Company vs. City of)
18 Lancaster)
Riverside County Superior Court)
19 Lead Case No. RIC 344436)
[Consolidated w/Case Nos. 344668 &)
20 353840])
21)
22)
23))
24)
25)

1 **I. INTRODUCTION**

2 The Demurring Parties¹ filed their demurrer to challenge the
3 third and fourth causes of action (Condemnation causes of
4 action) in Plaintiff Rebecca Willis' (Plaintiff) Second Amended
5 Class Action Complaint (SAC. California Water Service Company
6 (Cal Water) is a "Private Entity Demurring Party." Plaintiff's
7 opposition asserts that Cal Water has eminent domain powers, and
8 as such "it is also subject to inverse condemnation
9 proceedings."² Plaintiff's argument fails on its own accord as
10 Cal Water, as well as its applicability to any other Demurring
11 Party, because Cal Water does not have eminent domain powers to
12 acquire possession of the Basin's³ groundwater. Plaintiff's
13 Condemnation causes of actions against all the Demurring Parties
14 fail the test of legal sufficiency for this following reason:

15 //

16 //

17 //

18 //

19 ¹ Littlerock Creek Irrigation District, Palm Ranch Irrigation District,
20 Desert Lake Community Services District, Palm Ranch Irrigation District,
21 Desert Lake Community Services District, North Edwards Water District,
22 Rosamond Community Services District, and Los Angeles County Water works
23 District No. 40 (collectively "Public Entity Demurring Parties") and Llam
24 Del-Rio Water Company, Llam Mutual water Company Big Rock Mutual Water
25 Company, Little Blady Water Company and California Water Service Company
26 (collectively "Private entity Demurring Parties") ("Public Entity Demurring
27 parties and Private Entity Demurring Parties are collectively referenced as
28 "Demurring Parties")

29 ² Plaintiff's Memorandum of Points and Authorities in Support of Willis'
30 Opposition to Demurrer to Second Amended Complaint, page 14, "Cal Water is
31 defined as a public utility ... subject to ...the jurisdiction, control and
32 regulation of the commission..."

33 ³ Basin is defined by the groundwater basin boundaries established in this
34 adjudication.

1 **II. THE EPHEMERAL NATURE OF USUFRUCTUARY WATER RIGHTS.**

2
3 As stated in *People v. Murrison* (2002), 101 Cal.App.4th 349, 358

4 We begin with a brief description of
5 water rights under California law.
6 California operates under a dual system
7 of water rights that recognizes both the
8 "appropriation" and "riparian"
9 doctrines. (See *People v. Shirokow*
10 (1980) 26 Cal.3d 301, 307 [162 Cal.Rptr.
11 30, 605 P.2d 859] (*Shirokow*.) "The
12 riparian doctrine confers upon the owner
13 of land contiguous to a watercourse the
14 right to the reasonable and beneficial
15 use of water on his land. The
16 appropriation doctrine contemplates the
17 diversion of water and applies to 'any
18 taking of water for other than riparian
19 or overlying uses.' [Citation.] **Both**
20 **riparian and appropriative rights are**
21 **usufructuary only and confer no right of**
22 **private ownership in the watercourse."**
23 (*Ibid.*, fn. omitted.)

24
25 Simply, the Plaintiff does not own the Basin groundwater as a
26 "property right," and thus Plaintiff has no right to
27 compensation for its use by another. *Murrison* at 359 further
28 states:

29 Unlike real property rights,
30 usufructuary water rights are limited
31 and uncertain. The available supply of
32 water is largely determined by natural
33 forces." (*United States v. State Water*
34 *Resources Control Bd.* (1986) 182
35 Cal.App.3d 82, 104, 227 Cal.Rptr. 161.)
36 "[I]n times of water shortage, all
37 riparians must curtail their usage in
38 order that they share the available
39 water." (*Ibid.*) Further, "appropriators
40 are limited by priorities in time; their

1 rights are subordinate to the rights of
2 preexisting holders, i.e., riparians and
3 senior appropriators." (Id. at p. 105,
227 Cal.Rptr. 161.)

4 Furthermore, "all water rights are also limited by the
5 provisions of Article X, Section 2 of the California
6 Constitution which proscribes the waste or unreasonable use or
7 unreasonable method of use or *unreasonable method of diversion*
8 of water. (City of Barstow v. Mojave Water Agency (2000) 23
9 Cal.4th 1224, 1241-1242, 99 Cal.Rptr.2d 294, 5 P.3d 853.)"
10 *Murrison* 359-360.

11
12 Specifically, concerning overlying rights, *Allegretti & Co. v.*
13 *County of Imperial* (2006), 138 Cal.App.4th 1261, 1171 states

14 Allegretti's right to extract
15 groundwater is as an "overlying" owner.
16 As the California Supreme Court has
17 explained, **"overlying water rights are**
18 **usufructuary only, and while conferring**
19 **the legal right to use the water that is**
20 **superior to all other users, confer no**
21 **right of private ownership in public**
22 **waters."** (*City of Barstow v. Mojave*
23 *Water Agency* (2000) 23 Cal.4th 1224,
24 1237, 99 Cal.Rptr.2d 294, 5 P.3d 853;
25 *Central and West Basin Water*
Replenishment Dist. v. Southern Cal.
Water Co. (2003) 109 Cal.App.4th 891,
905, 135 Cal.Rptr.2d 486 ["there is no
private ownership of groundwater"].)
Water rights carry no specific property
right in the corpus of the water itself.
(*Big Rock M.W. Co. v. Valyermo Ranch*
Co. (1926) 78 Cal.App. 266, 275, 248 P.
264.)

1 Finally, the Court has limited inverse condemnation action as
2 set forth in *Gilbert v. State of California* (1990), 218
3 Cal.App.3d 234, 249

4 Article I, section 19 of the California
5 Constitution provides in part: "Private
property may be taken or damaged for

6 public use only when just compensation,
7 ascertained by a jury unless waived,
8 has first been paid to, or into court
9 for, the owner." Our Supreme Court has
10 laid down the basic requirements for
11 pleading inverse condemnation: "In
12 order to state a cause of action for
13 inverse condemnation, there **must be an**
invasion or appropriation of some
valuable property right which the
landowner possesses and the invasion or
appropriation must directly and
specially affect the landowner to his
injury.

14 As further stated by *Gilbert* at 249, "protected property
15 interests are created and defined by state law. (*Board of*
16 *Regents v. Roth* (1972) 408 U.S. 564, 577 [33 L.Ed.2d 548, 561,
17 92 S.Ct. 2701].)"

18
19 Finally, the Court in *Gilbert* recognized, **California law does**
20 **not recognize potential water use as a compensable property**
21 **right.** In *Swanson v. Marin Mun. Water Dist.* (1976) 56 Cal.App.3d
22 512 [128 Cal.Rptr. 485], plaintiff landowner instituted a
23 mandamus action to compel the water district to grant him a
24 pipeline extension and provide water service to his property.
25 The water district previously had enacted an ordinance which

1 allowed new water service to persons with an existing water main
2 fronting their property, but prohibited new service if there was
3 no pipeline extension. As to plaintiff's contentions that the
4 district took his property without just compensation and that he
5 had an absolute right to be treated in the same manner as
6 existing consumers, this appellate district held: "[I]t is
7 evident that a potential water user does not possess any
8 absolute right to be afforded water service and that the
9 Constitution does not require that he be treated in the same
10 manner as established users of the water system." (At p. 522;
11 see also *Hollister Park Inv. Co. v. Goleta County Water Dist.*
12 (1978) 82 Cal.App.3d 290 [147 Cal.Rptr. 91], quoting *Swanson.*)"
13 *Gilbert* at 249-250

14 III. CONCLUSION

15 The Court should grant the demurrer to the Condemnation
16 causes of action with prejudice without leave to amend because
17 Plaintiff has no compensable property right to the groundwater
18 in the Basin.

19 DATED: August 4, 2008

CALIFORNIA WATER SERVICE COMPANY

20
21 By:  _____

22 JOHN S. TOOTLE, ESQ.
23
24
25

1 **PROOF OF SERVICE (C.C.P. §1013a, 2015.5)**

2 **Antelope Valley Groundwater Cases**

3 Judicial Counsel Proceeding No. 4408

4 Santa Clara County Superior Court Case No. 1-05-CV-049053

5 I am employed in the County of Los Angeles, State of California. I am
6 over the age of 18 and not a party to the within action; my business address
7 is 2632 West 237th Street, Torrance, CA 90505.

8 On August 4, 2008, I served the foregoing document(s) entitled:

9 **CALIFORNIA WATER SERVICE COMPANY'S REPLY TO WILLIS' OPPOSITION TO DEMURRER TO
10 SECOND AMENDED COMPLAINT**

11 — by placing the true copies thereof enclosed in sealed
12 envelopes addressed as stated on the attached mailing
13 list.

14 — by placing _ the original, _ a true copy thereof,
15 enclosed in a sealed enveloped addressed as follows:

16 X **BY SANTA CLARA SUPERIOR COURT E-FILING IN COMPLEX LITIGATION
17 PURSUANT TO CLARIFICATION ORDER DATED OCTOBER 27, 2005.**

18 Executed on August 4, 2008, at Torrance, California

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

22 — (Federal) I declare that I am employed in the office of a
23 member of the Bar of this Court at whose direction
24 the service was made.

25 
 Michael Duque