

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

4 Attorney for Defendants/Cross-Complaints
5 ANTELOPE VALLEY WATER COMPANY

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

8 Coordinated Proceeding)	Judicial Council Coordination
9 Special Title (Rule 1550 (b)))	Proceeding No. 4408
10 ANTELOPE VALLEY GROUNDWATER CASES)	
Included Actions:)	Santa Clara Case No. 1-05-CV-049053
)	[Assigned to the Honorable Jack Komar]
<u>Los Angeles County Waterworks</u>)	
12 <u>District No. 40 v. Diamond Farming</u>)	CALIFORNIA WATER SERVICE COMPANY'S
<u>Co. Los Angeles County Superior Court</u>)	NOTICE OF Motion For Limited Relief
13 <u>Case No. BC 325201;</u>)	From Notice Requirements
<u>Los Angeles County Waterworks</u>)	
14 <u>District No. 40 v. Diamond Farming</u>)	Hearing set on July 10, 2009 at 9:00
<u>Co., Kern County Superior Court, Case</u>)	a.m.
15 <u>No. S-1500-CV-234348;</u>)	
<u>Wm. Bolthouse Farms, Inc. v. City of</u>)	
16 <u>Lancaster Diamond Farming Co. v. City</u>)	
17 <u>of Lancaster v. Palmdale Water</u>)	
<u>District, Riverside County Superior</u>)	
18 <u>Court, Consolidated Actions, Case</u>)	
<u>Nos. RIC 353840, RIC 344436, RIC</u>)	
19 <u>344668</u>)	

1 NOTICE OF MOTION

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3
4 PLEASE TAKE NOTICE that this Motion For Limited Relief From Notice
5 Requirements has been set for hearing on July 10, 2009 at 9:00 a.m. or as
6 soon thereafter as counsel can be heard in Department 17C of the Santa Clara
County Superior Court.

7 This Motion will be based on this Notice of Motion, the Memorandum of Points
8 and Authorities in support thereof, the Declaration of John S. Tootle, and on
9 such oral arguments of counsel and further evidence as may be presented at
the hearing on the Motion.

10 Dated: July 1, 2009

11 JOHN S. TOOTLE
CALIFORNIA WATER SERVICE COMPANY

12
13
14 By: 
15 John S. Tootle
16
17
18
19
20
21
22
23
24
25

MEMORANDUM OF POINTS AND AUTHORITIES

This proceeding is to obtain a "comprehensive adjudication" of the groundwater rights within the Antelope Valley Groundwater Basin (Basin). Accordingly, all potential holders of groundwater rights within the Basin shall be noticed of the proceeding. Relevant to this motion, the Court is considering notice to be sent to all Public Water Supplier (PWS) customers, who are currently receiving utility service or future PWS customers, vacant property lot owners within the PWS service territory. Specifically, this Motion for Limited Relief from Notice Requirement (Motion) is brought by California Water Service Company (Cal Water) for relief from any notice requirements to its customers, who have had their legal right or any claim to pump groundwater from the Basin transferred to Cal Water.

I. INTRODUCTION

California Water Service Company is an investor-owned water utility, regulated by the California Public Water Utilities Commission (Commission). Cal Water provides water utility service to approximately 700 active customers in its Antelope Valley Lancaster District service area. Pursuant to Article XII of the California constitution, the Commission regulates the rates, operations, and terms and conditions of service of Cal Water.

Cal Water's predecessors acquired two mutual water companies. In connection with these acquisitions, Cal Water has acquired all related real property rights of the mutual water companies and their shareholders used in the business, including but not limited to their rights to pump groundwater.

II. STATEMENT OF FACTS

In July 1956, William N. Taylor entered into two separate agreements to acquire two independent mutual water companies - the Antelope Mutual Water Company and the Taylor Mutual Water Company. The agreements were conditioned

1 upon Mr. Taylor forming a public utility company to provide a unified public
2 utility water service to the consumers of each mutual in exchange for the
3 respective water systems.¹ Pursuant to Commission Decision No. 54854,² the
4 Antelope Valley Water Company was granted a certificate of public convenience
5 and necessity. In accordance to two paragraphs of the mutual water companies
6 purchase agreements immediately upon Commission authorization all real and
7 personal property, with the exception of cash on hand, was to be transferred
8 the public utility, the Antelope Valley Water Company. Specifically,
9 Paragraph 8 states:

10 8. The undersigned officers of the Antelope Mutual
11 Water Company hereby warrant to William N. Taylor by
12 their signatures to this Agreement that they have been
13 duly authored by the Board of Directors of Antelope
14 Mutual Water Company, and by the shareholders therein,
15 to enter into this Agreement in behalf of said
16 company, and that the Board of Directors of said
17 company have been duly authorized to transfer the real
18 and personal property of the company and its
19 shareholders and consumers to the public utility
20 company immediately upon the obtaining of appropriate
21 authorization from said Commission and any other
22 required authorizations.

23 In 2000, the Antelope Valley Water Company was merged into Dominguez Water
24 Company, and then Dominguez Water Company was merged into Cal Water as shown
25 on the attached Corporate Record, Exhibits "C" and "D," respectively.

26 III. ARGUMENT

27 ¹ Attached as Exhibit "A" is a copy of the purchase Agreement between William
28 N Taylor and the Antelope Mutual Water Company, a California mutual water
29 company. Cal Water is obtaining a copy of the purchase Agreement between
30 William N. Taylor and the Taylor Mutual Water Company, and reserves its right
31 to amend the motion if obtained prior to July 10, 2009.

32 ² Attached Commission Decision No. 54854, Exhibit "B."

1 In California the right to appropriate water has long been considered a
2 possessory real property interest. Wright v. Best, 19 Cal.2d 368, 382
3 (1942); Fullerton v. State Water Resources Control Bd., Cal.App.3d 590, 598-
4 99 (1990) ("Although there is no private property right in the corpus of the
5 water... the right to its use is classified as real property... The
6 authorities in this state have uniformly defined the right to appropriate
7 water as a possessory property right.") Thus, the legal interest giving the
8 holder the right to use the water is characterized as "usufructuary." Selma
9 Pressure Treating Co., Inc. v. Osmose Wood Preserving Co. of America, Inc.,
10 221 Cal.App.3d 1601, 1616 (1990) (state holds title to groundwater "as
11 trustee for the benefit of the people of the state, all of whom in the last
12 analysis, are the water users of the state"). In addition, the right to use
13 the water represents a possessory interest in realty. Fullerton, supra;
14 National Audubon Soc. v. Superior Court, 33 Cal.3d 419, 441 (1983) ("the
15 right of property in water is usufructuary, and consists not so much of the
16 fluid itself as the advantage of its use").
17 Upon the acquisition of the mutual water companies, Commission approval and
18 pursuant to the terms and conditions of the purchase agreements (See Exhibit
19 "A"), the real property interest to use and to pump groundwater from the
20 Basin of all overlying landowners that are successors-in-interest to either
21 shareholders in the Antelope Mutual Water Company or the Taylor Mutual Water
22 Company was legally transferred to the Antelope Valley Water Company.
23 Therefore, notice to these customers is unnecessary, and any such notice
24 would be misleading and confusing to the customers.
25 If notice is sent to other PWS customers, Cal Water agrees that similar

1 notice should be sent to Cal Water's Antelope Valley Lancaster District
2 customers within its service area, which are not successors-in-interest to
3 shareholders of the two mutual water companies. The overlying landowners,
4 who are successors-in-interest to shareholders in the two mutual water
5 companies and are customers of Cal Water are shown in Exhibit "E." Cal Water
6 is working on identifying Assessor Parcel Numbers (APN).

7 IV. Conclusion

8 Cal Water should be ordered to send notices only to customers, who are not
9 within the boundaries of the acquired two mutual water companies.

10 DATED: July 1, 2009

CALIFORNIA WATER SERVICE COMPANY

11
12 By: 

13 JOHN S. TOOTLE, ESQ.
14
15
16
17
18
19
20
21
22
23
24
25

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

Antelope Valley Groundwater Cases

Judicial Counsel Proceeding No. 4408

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

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

On July 1, 2009, I served the foregoing document(s) entitled:

**CALIFORNIA WATER SERVICE COMPANY'S NOTICE OF Motion FOR
LIMITED RELIEF FROM NOTICE REQUIREMENTS**

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

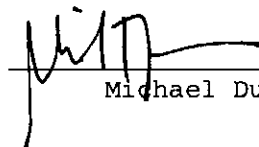
by placing _ the original, _ a true copy thereof, enclosed in a sealed enveloped addressed as follows:

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

Executed on July 1, 2009 at Torrance, California

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

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


Michael Duque