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SECTION 6103

Attorneys for Cross-Defendants County Sanitation Districts Nos. 14 and 20 of Los Angeles County

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

**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 325 201

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 Dist., Superior Court of
California, County of Riverside,
consolidated actions, Case Nos. RIC 353
840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

CLASS ACTION

Santa Clara Case No.: 1-05-CV-049053

ASSIGNED FOR ALL PURPOSES TO:
The Honorable Jack Komar

**OBJECTIONS TO LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40'S
MOTION FOR LEGAL FINDINGS ON
WATER CODE REQUIREMENTS FOR
GROUNDWATER EXTRACTIONS**

Date: February 14, 2012

Time: 9:00 a.m.

Place: Los Angeles County Superior Court
600 SW Commonwealth Ave, Rm 1515
Los Angeles, California

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that COUNTY SANITATION DISTRICTS NOS. 14 AND 20
OF LOS ANGELES COUNTY ("Cross-Defendants") object to Los Angeles County Waterworks

District No. 40's ("District 40") Notice of Motion and Motion for Legal Findings on Water Code Requirements to Report Extractions of Groundwater in Los Angeles County.

I. INTRODUCTION

District 40 moved for a court determination of three particular issues: (1) whether notices are required for extraction of more than 25 acre feet per year ("afy") in Los Angeles County; (2) if notices are required, whether the failure to file the notice deemed a party to not have used water for a reasonable and beneficial purpose; and (3) if a party files a notice, whether the amount of use stated in the notice shall be deemed to be the amount of use of groundwater for that reporting year. To the extent that District 40 can demonstrate failure to file a groundwater claim, District 40 believes this mandates a loss of water rights. (Motion 2:7-8.) Water Code section 4999, *et seq.* was intended to provide groundwater information in those arid, highly populated counties that are particularly dependent on groundwater for a water supply, and to require additional notice by those entities attempting to claim groundwater rights by prescription. District 40 has misinterpreted the statute and is attempting to use the statute to eliminate water rights, a purpose that was never intended. This motion has also been brought prematurely, since many of the decisions necessary to understand and effectuate this motion have yet to be made. For these reasons, and others, this motion should be denied.

In response to the three specific issues that District 40 moves for determination, the County Sanitation Districts of Los Angeles County Nos. 14 and 20 ("Sanitation Districts") provide this initial response, but more fully addresses issue No. 2, below.

1. The Water Code Requires Notices for Groundwater Extractions of More Than 25 AFY in Los Angeles County

The Sanitation Districts agree with District 40 that the statute requires notices for extraction of more than 25 afy in Los Angeles County. The intent of the statute was to provide information to help manage groundwater basins in areas of light rainfall but dependent on groundwater supplies, and Water Code section 5001 requires that notice.

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1 **2. The Failure to File a Notice of Groundwater Extraction Results in a**
2 **Determination of Nonuse For Prescriptive Purposes Only**

3 District 40 has mischaracterized the purpose of the Water Code Recordation sections
4 5003 and 5004, arguing that they were intended to eliminate rights. These sections were only
5 intended to require additional notice by those parties attempting to claim rights by prescription,
6 and the finding of nonuse for failure to file meets this objective by interrupting the claim and
7 requiring a new five year period of prescription. This issue will be discussed more fully below.

8 **3. A Party's Filing of the Groundwater Recordation Notice Shall Not Be Deemed**
9 **To Be That Party's Use of Groundwater**

10 District 40 has misinterpreted the groundwater recordation statute. District 40 seeks to
11 have the amount stated in the notice be deemed that Party's use of groundwater, but the statute
12 makes clear that "[i]n any action or proceeding hereafter pending in which the facts, or any of
13 them, contained in the notices so filed are material, such notices shall not be evidence of any fact
14 stated therein...." (Water Code section 5007, emphasis added.)

15 **II. THE RECORDATION STATUTE LIMITS PRESCRIPTION AND DOES NOT**
16 **ELIMINATE GROUNDWATER RIGHTS**

17 District 40 has misinterpreted the language and mischaracterized the purpose of Water
18 Code sections 4999 *et seq.*, arguing that the statute was intended to eliminate rights. However,
19 this is not the case. The law abhors elimination of water rights. (*U.S. v. Alpine Land &*
20 *Reservoir Co.*, 291 F.3d 1062, 1077 (9th Cir. 2002).) In furtherance of that directive, the
21 purpose of the statute is to mandate more notice from those attempting to claim prescriptive
22 rights, thereby limiting the forfeiture of water rights through prescription, not to eliminate other
23 rights such as overlying rights. To adopt the interpretation of District 40 would eliminate many
24 of the existing processes that are afforded persons before a water right is extinguished. This
25 purpose can be better understood with a little context of what was happening at the time of the
26 legislation and some context into a prescriptive claim of water rights.

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1 **A. Groundwater Recordation Statute Requires Notice Should a Party Seek to Claim**
2 **Another Person's Water Rights By Prescription**

3 Water Code Statutes 5003 and 5004 were adopted initially in 1955, not long after the
4 California Supreme Court decided *Pasadena v. Alhambra* (33 Cal.2d 908), the first basin-wide
5 groundwater adjudication in California, in 1949. *Pasadena v. Alhambra* was initiated in 1937
6 when the City of Pasadena filed a complaint in Superior Court against the City of Alhambra and
7 29 other pumpers to quiet title to the water rights within the Raymond Basin in Los Angeles
8 County. (*Pasadena v. Alhambra*, 33 Cal.2d 908, 916 (1949).) The case ultimately settled
9 pursuant to a stipulated judgment in which mutual prescription was agreed upon by all parties.
10 (*Id.* at 922.) On appeal, however, one of the issues in the case was the existence of sufficient
11 notice and whether prescriptive rights had been acquired since no party was prevented from
12 taking all of the water it needed. (*Id.* at 928.) The court addressed that issue of notice by noting
13 that while traditional adverse possession cases involve immediate property deprivation and thus
14 eliminate any question about notice, groundwater pumping involves an invasion of rights in a
15 stored supply of water to be used only in future years. (*Id.* at 931.) The statutory requirement to
16 provide written notice pursuant to Water Code section 4999, *et seq.* in the case of prescription
17 addresses some of this notice concern.

18 **B. District 40 Ignores the Plain Reading of the Statute**

19 The plain reading of the statute in its entirety conforms with this understanding that the
20 statute is intended to limit prescription, not eliminate other rights. There are at least three
21 reasons within Water Code section 5003 that makes clear it applies only to prescriptive rights.
22 First, the express language of section 5003 provides that “no prescriptive right ... shall arise or
23 accrue to....” (emphasis added)., nor shall any statute of limitations operate in regard to the
24 ground water in the four counties after the year 1956 in favor of any person required to file a
25 notice....” To make a claim of prescription, the proponent must show: (1) the water was taken
26 openly, notoriously, and under a claim of right; (2) the claim of right was continuously and
27 uninterruptedly asserted by it; (3) the claim was adverse to any and all claims of the other
28 parties; (4) the length of adverse use exceeded the statute of limitations, and; (5) the quantity of

1 the claim. (*Id.* at 928.) A prescriptive right is the only water right obligated to comply,
2 uninterrupted, with the statute of limitations. If an adverse use and enjoyment of water have
3 been interrupted, no prescription can arise. (*American Co. v. Bradford*, 27 Cal. 360, 368 (1865).)
4 Therefore, the language of section 5003 indicating that “nor shall any statute of limitations
5 operate ... in favor of any person required to file a notice” until that notice is filed, further
6 supports that section 5003 only applies to claims of prescriptive rights and that the notion of
7 nonuse was intended only to interrupt the running of the statute of limitation.

8 **C. Water Code Section 5005 Protects Overlying Groundwater Rights**

9 Arguendo, if District 40 is correct that sections 5003 and 5004 apply to all entities and
10 that the failure to file a form results in a determination of nonuse, section 5005 would still
11 preclude the loss of overlying groundwater rights for failure to file, contrary to the claim of
12 District 40. (Motion 2:7-8.) Section 5005, in its entirety, provides that “[e]xcept as specified in
13 Section 5004, failure to file the notice or delay in filing the same shall not cause the loss of right
14 to ground water which existed on January 1, 1956.” The right to use groundwater is part and
15 parcel of the land, and as such is real property. (*Pasadena* at 925.) As a result, groundwater
16 rights exist on property since at least the time of statehood, which is earlier than January 1, 1956.
17 Section 5004 addresses the nonuse of groundwater rights for failure to file but does not address
18 the loss of rights. Since section 5004 does not address the loss of rights and overlying
19 groundwater rights would have predated January 1, 1956, the failure to file a notice cannot cause
20 a loss of groundwater rights.

21 **III. DISTRICT 40’S INTERPRETATION OF THE STATUTE IS INCONSISTENT** 22 **WITH EXISTING STATE LAW**

23 In addition to the plain reading of the statute, there are additional reasons that District
24 40’s requested interpretation of the statute is incorrect, including that it would be in contradiction
25 to at least three other provisions of California water law. First, the State Water Resources
26 Control Board (“SWRCB”) has no authority over allocation of groundwater pumping, yet if
27 District 40’s interpretation was correct, the mere failure to file a form with the SWRCB would
28 cause a forfeiture of groundwater rights, an authority the SWRCB does not otherwise have.

1 Second, overlying groundwater rights are not lost by non-use. (Burr v. Maclay Rancho Water
2 Co., 154 Cal. 428, 436 (1908).) Furthermore, public agencies cannot be prescribed against.
3 (Cal. Civ. Code §1007.) Since prescription has been the primary way a public agency can lose a
4 groundwater right (Hutchins, *The California Law of Water Rights* at 503) it would be
5 contradictory to interpret the groundwater recordation statutes to result in a forfeiture of a
6 groundwater right for a public agency for failure to file a form. Third, the SWRCB has a
7 statutory period of five years of non-use before loss by forfeiture or abandonment. (Water Code
8 §§1240, 1241.) Yet here, under the interpretation of the District 40, forfeiture could occur after
9 only one year and only for failure to file a form, not from actual nonuse. Also, abandonment of a
10 water right may be inferred from nonuse, but it is a rebuttable presumption. (*Utt v. Frey*, 106
11 Cal. 392, 398 (1895).) Loss of rights through the SWRCB's process requires a finding of the
12 SWRCB following notice, and a public hearing if requested. (Water Code §1241.) To interpret
13 the recordation statute in a manner that does not afford this protection would be inconsistent with
14 existing law.

15 Water Code section 5007 allows for an investigation of facts in any groundwater notice
16 by the SWRCB pursuant to an application by any party, with the result being a written
17 determination of facts. This written determination by the SWRCB shall be prima facie evidence
18 of said facts in any action or proceeding. (Water Code §5007.) Absent this investigation by the
19 SWRCB, the material contained in the groundwater notice shall not be evidence of any facts
20 stated therein. (*Id.*) It seems inconsistent that the information contained in the form shall not be
21 used as evidence absent a determination by the SWRCB, and even the determination by the
22 SWRCB is only prima facie evidence, yet the failure to file a form is non-rebuttable and results
23 in loss of rights.

24 District 40 also argues that the SWRCB's required form supports the motion. However,
25 this is not the case. District 40 has argued for loss of rights for failure to file (Motion 2:7-8) but
26 the form makes no mention of loss of rights. If the statute truly intended a loss of rights for
27 failure to file, the notice should have made this clear. Instead, the SWRCB notice form used the
28 following language "persons who do not file notices may have difficulty supporting a claim of

1 water use during a lawsuit to establish ownership of groundwater rights” indicating that the
2 determination of non-use for failure to file is at least a rebuttable presumption.

3 **IV. DISTRICT 40’s INTERPRETATION OF THE STATUTE IS**
4 **UNCONSTITUTIONAL**

5 The right to the use of percolating groundwater on overlying lands is real property. (Burr
6 v. Maclay Rancho Water Co., 154 Cal. 428, 436 (1908).) If the interpretation of these
7 recordation statutes by District 40 is accepted (i.e. failure to file notices results in the loss of
8 rights), the effect of the statute would be the taking of property without just compensation. This
9 would be in conflict with both the 5th and 14th Amendment of the United States Constitution and
10 with Article 1, Section 7(a) of the California Constitution. The statute cannot be interpreted in
11 this way.

12 **V. THE MOTION IS PROCEDURALLY DEFECTIVE BECAUSE IT SEEKS AN**
13 **ADVISORY OPINION**

14 District 40 claims that “court legal findings on the Water Code provisions is needed now
15 to resolve an allocation impasse by settlement and/or for subsequent court factual determinations
16 and findings.” (Motion 2:12-13.) The Motion is not supported by evidence and instead seeks an
17 advisory opinion regarding Water Code section 4999 *et seq.* A prescriptive period has yet to be
18 established by the Court. It is therefore unknown at this point which filing period of Notices is
19 even relevant. Similarly, there is no evidence presented in support of the Motion as to which
20 parties allegedly failed to file Notices in any given year. The Court should not render advisory
21 opinions in a vacuum without supporting evidence presented to the Court.

22 California law does not empower courts to issue advisory opinions. (See *Younger v.*
23 *Superior Court* (1978) 21 Cal.3d 102, 119 [“the rendering of an advisory opinion falls within
24 neither the functions nor the jurisdiction of this court.”]; *Pacific Legal Foundation v. California*
25 *Coastal Com.* (1982) 33 Cal.3d 158, 170 [“The ripeness requirement, a branch of the doctrine of
26 justiciability, prevents courts from issuing purely advisory opinions.”].) Here, District No. 40
27 has not presented the Court with an actual, genuine controversy. For this reason alone, the
28 Motion should be denied.

1 **V. CONCLUSION**

2 District 40 seeks a judicial interpretation of Water Code section 4999 *et seq.* that would
3 result in forfeiture of established overlying rights. This interpretation is not consistent with the
4 plain meaning of the statute and is not in conformance with the forfeiture provisions of the Water
5 Code and existing case law. As such, District 40's motion should be denied.

6 Dated: January 31, 2012

ELLISON, SCHNEIDER & HARRIS L.L.P.

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8
9 By:



10 CHRISTOPHER M. SANDERS
11 Attorneys for Cross-Defendants
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2 **PROOF OF SERVICE**

3 I declare that:

4 I am employed in the County of Sacramento, State of California. I am over the age of
5 eighteen years and am not a party to the within action. My business address is ELLISON,
6 SCHNEIDER & HARRIS, L.L.P.; 2600 Capitol Avenue, Suite 400; Sacramento, California
7 95816; telephone (916) 447-2166.

8 On January 31, 2012, I served the County Sanitation Districts' *OBJECTIONS TO LOS*
9 *ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S MOTION FOR LEGAL FINDINGS*
10 *ON WATER CODE REQUIREMENTS FOR GROUNDWATER EXTRACTIONS* by electronic
11 posting to the Santa Clara Superior Court E-Filing website,
12 <http://www.scefiling.org/cases/casehome.jsp?caseId=19>.

13 I declare under penalty of perjury that the foregoing is true and correct and that this
14 declaration was executed on January 31, 2012, at Sacramento, California.

15 
16 Patty Slomski
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