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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

REBECCA LEE WILLIS, on behalf of herself)
and all others similarly situated,)
Plaintiff,)

vs.)

LOS ANGELES COUNTY)
WATERWORKS DISTRICT NO. 40; CITY)
OF LANCASTER; CITY OF LOS)
ANGELES; CITY OF PALMDALE;)
PALMDALE WATER DISTRICT;)
LITTLEROCK CREEK IRRIGATION)
DISTRICT; PALM RANCH IRRIGATION)
DISTRICT; QUARTZ HILL WATER)
DISTRICT; ANTELOPE VALLEY WATER)
CO.; ROSAMOND COMMUNITY)
SERVICE DISTRICT; MOJAVE PUBLIC)
UTILITY DISTRICT; CALIFORNIA)
WATER SERVICE COMPANY; DESERT)
LAKE COMMUNITY SERVICES)
DISTRICT; NORTH EDWARDS WATER)
DISTRICT; and DOES 4 through 1,000,)

Defendants.)

JUDICIAL COUNCIL COORDINATION
PROCEEDING No. 4408
Santa Clara Case No. 1-05-CDV-049053
Assigned to The Honorable Jack Komar

**WILLIS' OPPOSITION TO DEMURRER
TO SECOND AMENDED COMPLAINT**

DATE: August 11, 2008
TIME: 9:00 a.m.
DEPT: 1

Phase 2 Trial: October 6, 2008

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Plaintiff Rebecca Willis hereby opposes the demurrer of Defendant Municipal Water
Purveyors (hereinafter "MWP") to the Second Amended Complaint (SAC)¹ on the grounds that:

¹ Some demurring Defendants have no standing. Inverse condemnation claims are already at issue with respect to
Quartz Hill Water District and Palmdale Water District as they answered the SAC. Similarly, LA County
Waterworks District No. 40 and Rosamond Community Services District, designated a previously filed answer as

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1 *Company* (1909) 155 Cal. 59, 65.) If Defendants have taken non-surplus groundwater from
2 beneath Plaintiff's property, Defendants caused damage, harm, and injury to Plaintiff's real
3 property. Compensation is owed not only for wrongful taking of non-surplus groundwater but also
4 for harm and diminution in real property value caused by Defendants' taking. The constitution
5 forbids the "taking" or "damaging" of Plaintiff's rights without just compensation. Moreover,
6 Plaintiff is not alleging prescription, Defendants allege prescription. Of note, the elements of
7 prescription are in dispute and the California Supreme Court recently found that dormant
8 unexercised landowners cannot lose their groundwater rights by prescription. *City of Barstow v.*
9 *Mojave Water District* (2000) 23 Cal 4th 1224.

10 2. With regard to Defendants' second contention that Plaintiff's taking claims are barred by
11 the statute of limitations, for purpose of this demurrer, the factual contentions upon which
12 Defendants base their demurrer, do not appear on the face of the complaint. As to the statute of
13 limitations, the SAC is impervious to a demurrer, as Plaintiff has not pled specific accrual dates on
14 the face of the complaint. *Union Carbide Corp. v. Sup. Ct. (Villmar Dental Labs, Inc.)* (1984) 36
15 Cal.3d 15, 25. The running of the statute of limitations must appear "clearly and affirmatively"
16 from the dates alleged. It is not enough that the complaint *might* be barred. *Marshall v. Gibson,*
17 *Dunn and Crutcher* (1995) 37 Cal.4th 1397, 1403 (emphasis added). Plaintiff's Complaint alleges
18 no specific date. Specifically, it alleges "at a yet unidentified point in the past, the [Defendants]
19 began to extract groundwater from the Antelope Valley to a point above and beyond an average
20 annual safe yield." [Willis' Second Amended Complaint ¶ 11] Thus, Defendants' demurrer for
21 failure to state a cause of action based on statute of limitations must be denied.

22 Further, the statute of limitations is no defense at the demurrer stage when the date of
23 accrual is in dispute and the taking is not immediately apparent to the landowner. Tolling
24 provisions apply where the government's wrongful conduct is not obvious to the landowner.

25 3. Defendant California Water Service Company (hereafter "Cal Water") contends it is not a
26 state actor and thus may not be subject to liability for takings. However, as presented in the Points
27 and Authorities, Cal-Water possesses the power of eminent domain and, thus, it is subject to an
28 inverse condemnation claim.

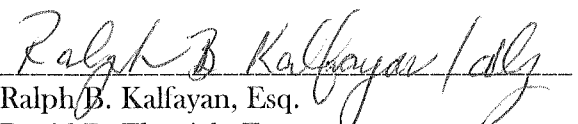
1 DEMURRER TO FOURTH CAUSE OF ACTION

2 4. Concerning Defendants' contentions that they are not subject to inverse condemnation
3 under the 5th and 14th Amendments of the United States Constitution, Defendants reiterate the
4 points made above. Again, Plaintiff is not alleging that Defendants have obtained prescriptive water
5 rights. Defendants plead prescription by way of cross-complaint. Plaintiff alleges Defendants have
6 taken property in violation of the United States Constitution. The common law principle of
7 prescription should not abrogate a fundamental constitutional limitation on the government's
8 ability to take private property. If the government wants a prescriptive right, it has to pay for it.
9 *Pascoag Reservoir & Dam, LLC v. The State of Rhode Island, et al.*, (2002) 217 F. Supp. 2d 206.

10 Plaintiff's opposition will be based on this Opposition, the attached Memorandum of
11 Points and Authorities, all papers, pleadings and records on file in this action and on such other
12 and further argument and evidence as may be presented.

13 Dated: July 29, 2008

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15 
16 Ralph B. Kalfayan, Esq.
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