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7	FOR THE COUNTY OF LOS ANGELES	
8		
9	REBECCA LEE WILLIS, on behalf of herself ?	
10	and all others similarly situated, Plaintiff,	JUDICIAL COUNCIL COORDINATION PROCEEDING No. 4408
7	vs. LOS ANGELES COUNTY	Santa Clara Case No. 1-05-CDV-049053 Assigned to The Honorable Jack Komar
12	WATERWORKS DISTRICT NO. 40; CITY OF LANCASTER; CITY OF LOS	WILLIS' OPPOSITION TO DEMURRER TO SECOND AMENDED COMPLAINT
13	ANGELES; CITY OF PALMDALE;	10 SECOND INVIENDED COMITEMINI
14	PALMDALE WATER DISTRICT; CITTLEROCK CREEK IRRIGATION	DATE: August 11, 2008 TIME: 9:00 a.m.
15	DISTRICT; PALM RANCH IRRIGATION (DISTRICT; QUARTZ HILL WATER)	DEPT: 1
16	DISTRICT; ANTELOPE VALLEY WATER CO.; ROSAMOND COMMUNITY	Phase 2 Trial: October 6, 2008
17	SERVICE DISTRICT; MOJAVE PUBLIC UTILITY DISTRICT; CALIFORNIA	
18	WATER SERVICE COMPANY; DESERT	
19	LAKE COMMUNITY SERVICES DISTRICT; NORTH EDWARDS WATER	
20	DISTRICT; and DOES 4 through 1,000,	
21	Defendants.	
22		
23	THO AND DESIGNED AND TOURISH ATTECHNISHED OF BEACADO	
24	TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:	
25	Plaintiff Rebecca Willis hereby opposes the demurrer of Defendant Municipal Water	
26	Purveyors (hereinafter "MWPs") to the Second Amended Complaint (SAC) ¹ on the grounds that:	
27 28	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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Willis' Opposition to Demurrer to Second Amended Complaint		

DEMURRER TO THIRD CAUSE OF ACTION

1. Pursuant to California Constitution, Art. 1, § 19, Plaintiff has factually alleged the necessary elements in her SAC to establish a "taking" and "damages" to real property. Plaintiff alleges that if the Defendants have taken or damaged Plaintiff's property, as public entities, under the Constitutional protection afforded by inverse condemnation, the Defendants must pay just compensation for the taking or damaging of the property. Defendants do not take issue with the elements of a constitutional "taking" and the occurrence of "injury." Instead, Defendants base their demurrer to the Third Cause of Action on two primary contentions: (1) that they are not required to provide compensation for groundwater water rights acquired by prescription; and (2) Plaintiff's taking claims are barred by the statute of limitations.

These contentions completely lack merit. With regard to the first contention that Defendants are not required to provide compensation if they have taken water rights by prescription, the cases cited by Defendants stand for the proposition that a *private* party plaintiff need not compensate a *private* party defendant for plaintiff's acquisition of a prescriptive easement on defendant's property. Here, however, a *public entity* is trying to seize *private* property. As presented in the accompanying Memorandum of Points and Authorities in Opposition to the Demurrer, the California Supreme Court (as well as lower California courts) has clearly held that when a public agency, through its groundwater extractions, has taken or damaged private property, an appropriate remedy is compensation through inverse condemnation. *Hillside Water Co. v. City of Los Angeles, et al.* (1938) 10 Cal.2d 677, 688. En banc. See also: *City of Los Angeles v. Glendale* (1943) 23 Cal.2d 68,80; *Wright v. Goleta Water District* (1985) 174 Cal.App.3d 74, 91; *Jacobsen v. Superior Court* (1923) 192 Cal. 319, 331; *Miller & Lux v. Madera Canal and Irrigation*

the operative pleading to all subsequently filed complaints without reserving the right to demur. The Cities of Lancaster and Palmdale demurred, but Plaintiff did not allege takings claims against them. Finally, certain demurring parties – Llano el-Rio Water Company, Llano Mutual Water Company, Big Rock Mutual Water Company, and Little Baldy Water Company – were not even named as Defendants. The only demurring parties with standing are Little Rock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District, North Edwards Water District and California Water Service Group. The Willis Class affirmatively objects to the Court's consideration of this demurrer on behalf of parties that do not have standing.

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

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

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

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

DEMURRER TO FOURTH CAUSE OF ACTION

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

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

Dated: July <u>29</u>, 2008

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