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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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, No. BC 32520;

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;

We. Bolthouse Farms, Inc. V. City of Lancaster; Diamond Farming Co. V. City of Lancaster; Diamond Framing Co. V. Palmdale Water District; Superior Court of California, County of Riverside, Cases No. RBC 353 840, RBC 344 436, RBC 344 668;

This Document Relates To:

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

vs.

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40, et al; Defendants.

Case No. BC 364 553

JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408

Santa Clara Case No. 1-05-CV-049053
Honorable Jack Komar, Presiding

PLAINTIFF WILLIS' REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF HER MOTION TO STRIKE OR FOR JUDGMENT ON THE PLEADINGS AS TO DEFENDANTS' AFFIRMATIVE DEFENSES ASSERTING PRESCRIPTION CLAIMS

Date: August 11, 2008
Time: 9:00 a.m.
Dept.: 1
Judge: Honorable Jack Komar
Coordination Trial Judge

I. INTRODUCTION

The arguments advanced by defendants Los Angeles County Waterworks District No. 40 ("District 40"), Rosamond Community Service District ("Rosamond"), Palmdale Water District ("Palmdale"), and Quartz Hill Water District ("Quartz Hill") (collectively, the "Suppliers") in opposition to Plaintiff Willis' Motion to Strike are without merit, and, for two reasons, Plaintiff's motion should be granted. First, *as a matter of law,* no party, including defendant Suppliers, can obtain water rights by prescription against overlying *non-pumping* landowners, such as Willis and the Class she represents. The Supreme Court has held that any prescriptive rights obtained by appropriators (which there, as here, were municipal water suppliers and public utility water companies) "would not necessarily impair the private defendants' rights to groundwater for *new* overlying uses for which the need has not yet come into existence during the prescriptive period." *Los Angeles v. San Fernando* (1975) 14 Cal.3d 199, 293, fn. 100 *citing Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.* (1935) 3 Cal.2d 489 (emphasis in original). Indeed, in a more objective context, Mr. Garner, counsel for District 40 and co-author of the treatise California Water II, correctly recognizes that *Wright v. Goleta* "held that unexercised overlying rights may not be subordinated to the present appropriative rights of a water district." A. Littleworth & E. Garner, *CALIFORNIA WATER II* (2007) at p. 78.

Second, the defendant Suppliers do not have the statutory authority to take water rights from private persons by prescription. Indeed, any finding giving the Suppliers the statutory authority to take water rights by prescription (without paying compensation) would create a conflict with the California Constitution. The Suppliers' response – that they have the statutory right to "acquire" water rights simply proves Willis' point. Moreover, the mere fact that prior cases (that did not consider this issue) may have assumed the existence of such a right is of no import. For each of these reasons, the Court should either strike the Suppliers' affirmative defenses asserting prescriptive rights as to Willis and the Class or grant judgment on the pleadings as to those defenses.

II. ARGUMENT

Although Motions to Strike are disfavored to the extent they raise factual issues, the present Motion raises two pure questions of law – (1) whether any public entity can obtain prescriptive rights against non-pumping private overlying landowners such as Willis and (2) whether the Suppliers have the statutory authority to take Willis' water rights by prescription. These issues can and should be decided by the Court at this time.

A. As a Matter of Law, No One Can Obtain Prescriptive Rights Against the Willis (Non Pumping Landowner) Class.

Under California law, the Suppliers cannot obtain prescriptive rights against Willis and the Class of non-pumping landowners. The Supreme Court held that any prescriptive rights obtained by appropriators (which there, as here, were municipal water suppliers and public utility water companies) "would not necessarily impair the private defendants' rights to groundwater for *new* overlying uses for which the need has not yet come into existence during the prescriptive period." *Los Angeles v. San Fernando* (1975) 14 Cal.3d 199, 293, fn. 100 *citing Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.* (1935) 3 Cal.2d 489 (emphasis in original).

Subsequently, in *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, the Supreme Court expanded on these concepts, stating as follows: "Because the court cannot fix or absolutely ascertain the quantity of water required for future use at any given time, *a trial court should declare prospective uses paramount to the appropriator's rights, so the appropriator cannot gain prescriptive rights in the use.*" *Id.* at 1243 (emphasis added). The *Mojave* Court expressly approved both the Supreme Court's previous statement in footnote 100 in *San Fernando* and the Court of Appeal's holding in *Wright v. Goleta Water District* (1985) 174 Cal.App.3d 74, that "the trial court could not define or otherwise limit an overlying owner's future unexercised groundwater rights . . .." Id. at 1248-49.

Contrary to the Suppliers' contention, the fundamental rationale against limiting unexercised groundwater rights is not simply the lack of adversity, but, more fundamentally, the fact that future needs and uses cannot be known or, therefore, adjudicated; as well, Plaintiff should not be compelled to wastefully "race to the pumphouse"to protect overlying rights. It would be contrary to prudent public policy and create improper incentives to award prescriptive rights against Plaintiff and the

Class, whose rights to make reasonable and beneficial uses of the Basin's water cannot now be defined. That concept is inherent in the Constitution's mandate that "the water resources of the State be put to beneficial use to the fullest extent of which they are capable . . .." *Cal. Const.* Art. 10, § 2. Because it is impossible to know how unexercised rights may be used in the future, it is improper to "limit an overlying owner's future unexercised groundwater rights . . .." *Barstow, supra*, at 1248-49.

As the Supreme Court explained in *Tulare Irrig. Dist. v. Lindsay-Strathmore Irrig. Dist.* (1935) 3 Cal.2d 489:

> "The new doctrine [requiring that water be put to reasonable and beneficial use] not only protects the actual reasonable beneficial uses of the riparian but also the prospective reasonable beneficial uses of the riparian. As to such future or prospective reasonable beneficial uses, it is quite obvious that the quantity of water so required for such uses cannot be fixed in amount until the need for such use arises. Therefore, as to such uses, the trial court, in its findings and judgment, should declare such prospective uses paramount to any right of the appropriator. . . . It is to be noted that the new doctrine embodied in the constitutional amendment, as interpreted in the *Peabody* case, not only applies the doctrine of reasonable use as between riparian and appropriator, but also as between an overlying owner and an appropriator."

Id. at 525.

After noting that the "present action involves an appeal from an injunction decree, which, by its very nature, acts on the rights of these parties in the future; *id.* at 527; the *Tulare* court directed that "the trial court, in accordance with the mandate in the constitutional provision, should incorporate in its decree a declaration protecting such respondents in the prospective reasonable beneficial uses of the waters here involved, unless such prospective right be condemned . . .." *Id.* at 530. [See *Tehachapi-Cummings County Water Dist. v. Armstrong* (1975) 49 Cal.App.3d 992, 998 ("The right of overlying owners to a judgment declaring their water rights and protecting them in the *prospective* beneficial use is clear even though substantial present damage is not shown")].

The primary authorities that the Suppliers rely upon are inapposite. The *Hi-Desert* case simply enforced the parties' prior stipulation of settlement. *Hi-Desert County Water Dist. V. Blue Skies Country Club, Inc.* (1994) 23 Cal.App.4th 1723. In *Hi-Desert,* the subject before the Court was a prior stipulation *that had been agreed to by all overlying landowners in the basin*, which

expressly provided that "all unexercised overlying rights have been lost and extinguished." *Id.* At 1727. Indeed, not only had all overlying landowners agreed to the stipulation, but, further, *all the overlying landowners were ground water pumpers, thus, the rights of non-pumping, dormant overlying landowners were not at issue in the case.* For these two fundamental reasons, *Hi-Desert* is entirely irrelevant to the issues before this Court.

Defendants' reliance on *Waters of Long Valley Creek Stream System v. Ramelli* (1979) 25 Cal.3d 339, is equally misplaced. *Long Valley* involved a statutory adjudication of surface water rights by the State Water Resources Control Board ("SWRCB") pursuant to procedures authorized in the Water Code. It did not involve a common law adjudication of groundwater rights. In *Long Valley,* the Supreme Court found that the Legislature had granted the SWRCB broad authority to ascertain and restrict future riparian rights.[1] Neither the Legislature nor the Supreme Court has conferred such authority on courts adjudicating common law groundwater rights. Indeed, the Supreme Court expressly contrasted the Board's powers in the context of a statutory adjudication to the powers of the courts in common law proceedings. *Id.* at 347-49.

Long Valley was expressly distinguished on this basis in *Wright v. Goleta Water District* (1985) 174 Cal.App.3d 74, the one case that is directly relevant to the issue before the Court (and later cited favorably in *Mojave*). The *Wright* court held that **a trial court, in deciding "a groundwater dispute among private parties and public entities," *may not* "define or otherwise limit future groundwater rights of an overlying owner who has not yet exercised those rights."** *Id.* at 78 (emphasis added). The Court of Appeal commented that overlying groundwater rights, like riparian rights "are not destroyed or impaired by non-use, that the water right exists whether exercised or not, [and] *that a dormant riparian [or overlying] right is paramount to active appropriative rights...*" *Id.* at 87 (emphasis added).

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[1] Notably, the Court also found that the SWRCB could not extinguish such future rights absent a showing that less drastic limitations were insufficient to promote the most reasonable and beneficial uses of the water. 25 Cal.3d at 349-52, 358-59. At a minimum, any effort to limit the Willis Class' rights should require such a showing.

Mr. Garner, co-author of *California Water II* and counsel for District 40, correctly recognizes that *Wright v. Goleta* "held that unexercised overlying rights may not be subordinated to the present appropriative rights of a water district." A. Littleworth & E. Garner, *CALIFORNIA WATER II* (2007) at p. 78. As noted above, in the *Mojave* case, the Supreme Court has favorably cited the *Wright* decision; further, it has endorsed *Wright's* holding that unexercised overlying rights may not be subordinated. In short, the only directly relevant authority stands for the proposition that, as a matter of law, the Suppliers cannot obtain prescriptive rights against unexercised overlying rights, such as those asserted by Willis and the Class. Hence, this Court should grant Willis' motion to strike the Suppliers' affirmative defenses of prescription.

B. The Suppliers Do Not Have the Statutory Authority to Take Plaintiff's Water Rights By Prescription.

Second, the Suppliers do not have the statutory authority to take Plaintiff's or the Class' water rights by prescription. Further, if the Court were to interpret the Suppliers' statutory authority to allow them to take water rights by prescription, it would conflict with the California Constitution's explicit requirement that "[p]rivate property may be taken or damaged for public use *only* when just compensation . . . has first been paid to, or into court for, the owner." Art. I, Sec. 19 (emphasis added).

Defendants advance three arguments as to why they purportedly have the statutory authority to take water rights by prescription. None of those arguments has merit. Defendants' first argument – that they have the statutory authority to "acquire" water rights (and that "acquire" is a broad term that encompasses prescription) – is based on statutory sleight of hand. The relevant statutes do *not* generally authorize Defendants to acquire water rights, but rather define and limit the manner in which Defendants may acquire such rights. For example, section 55370 of the Water Code states as follows: "A district may acquire property by purchase, gift, devise, exchange, descent, and eminent domain." The statute neither expressly nor impliedly authorizes such districts to acquire property rights by prescription. See also *Water Code* sections 71690 - 71691. Moreover, the Water Code itself defines "acquire" more narrowly, stating: "'Acquire' includes contract, purchase, lease, exchange, condemn, jointly acquire when joint acquisition is permitted, and contract to acquire."

Water C. §§ 20532, 39024. In short, no reasonable reading of the Water Code authorizes Defendants to acquire private property by prescription.

Second, Defendants argue that prior cases have recognized the right of municipal corporations to take water rights by prescription. They can point to no cases, however, in which their statutory authority to do so was questioned and upheld. Moreover, as Plaintiff pointed out in her July 29, 2008 Opposition to Defendants' Demurrer to the Second Amended Complaint, defendants cite no cases (and we know of none) which have held that public entities have the right to acquire water rights by prescription from private persons.

Third, Defendants argue that corporations have the legal right to take by prescription and that municipal corporations should have similar rights. But as a matter of statute, "a [private] corporation shall have all of the powers of a natural person in carrying out its business activities . . . ." Corps. Code § 207. By contrast, municipal corporations do not have that broad grant of authority. As the Court of Appeal stated in *Water Quality Assn. v. County of Santa Barbara* (1996) 44 Cal.App.4th 732: "'[T]he rule is well established that language purporting to define the powers of a municipal corporation is to be strictly construed, and . . . the power is denied where there is any fair, reasonable doubt concerning the existence of the power.'" *Id.* at 746 [(quoting *Trimont Land Co. v. Truckee Sanitary Dist.* (1983) 145 Cal.App.3d 330, 350)].

As noted above, the relevant statutes neither expressly nor impliedly authorize Defendants to acquire property rights by prescription. It is well established that where, as here, statutory language is clear, the Court must respect that language. *Kraus v. Trinity Management Servs., Inc.* (2000) 23 Cal.4th 116, 129; *County of Santa Barbara v. Connell* (1999) 72 Cal.App.4th 175, 178 (the role of the judiciary is to simply ascertain and declare what is in "terms or substance contained in the statute, *not to insert what has been omitted* or omit what has been included") (emphasis added).

The language of the relevant Code sections is clear and unambiguous. They authorize Suppliers to acquire property in a variety of means, but not by prescription. This Court should not grant the Suppliers more rights than the Legislature saw fit to give them.

C. **It Would Violate the California Constitution for the Court to Grant the Suppliers the Right to Take Plaintiff's Water Rights By Prescription.**

Article I, Section 19 of the California Constitution provides as follows: "Private property may be taken or damaged for public use *only* when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner." (emphasis added). It cannot be denied that prescription is a form of taking of private property rights or that, in the instant case, the Suppliers seek to take Plaintiff's and the Class' rights for public use. Hence, if the Court were to find that the Suppliers have the statutory authority to acquire property by prescription without paying compensation, that would run directly afoul of the Constitution's mandate. It is hornbook law that a Court should not interpret a statute in a manner that raises constitutional issues such as this. For this reason also, the Court should restrict the Suppliers to their statutorily enumerated powers and not grant them the right to take private property by prescription.

III. CONCLUSION

For the reasons stated above, Plaintiff's Motion to Strike Defendants' prescription claims or, in the alternative for Judgment on the Pleadings, should be granted.

Dated: August 4, 2008

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PROOF OF SERVICE

I, Aimee Vignocchi, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 625 Broadway, Suite 635, San Diego, California, 92101. On **August 4, 2008**, I served the within document(s):

PLAINTIFF WILLIS' REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF HER MOTION TO STRIKE OR FOR JUDGMENT ON THE PLEADINGS AS TO DEFENDANTS' AFFIRMATIVE DEFENSES ASSERTING PRESCRIPTION CLAIMS

[X] by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.

[ ] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below:

[ ] by causing personal delivery by Cal Express of the document(s) listed above to the person(s) at the address(es) set forth below.

[ ] by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

[ ] I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by UPS following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with the postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on **August 3, 2008**, at San Diego, California.

Aimee Vignocchi