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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 325201; 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. Lancaster, Diamond Farming Co. v. Palmdale Water Dist., Superior Court of California, County of Riverside, Case No. RIC 353 840, RIC 344 436, RIC 344 668	Judicial Council Coordination No. 4408 Santa Clara Case No. 1-05-CV-049053 Assigned to Hon. Jack Komar **REPLY TO OPPOSITION OF WD 40 TO MOTION FOR ORDER SETTING MATTER FOR JURY TRIAL** Date: April 7, 2014 Time: 9:00 a.m. Dept.: TBD

I. INTRODUCTION

On October 22, 2013, the Court entered its Case Management Order for Phase 5 and Phase 6 Trials (CMO) setting the Phase 6 Trial for August 4, 2014 for the purpose of determining claims to prescriptive rights and related defenses. (**See Exhibit A**.) The Order states at paragraph 3:

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"The Phase 6 Trial will determine claims to prescriptive rights and defenses thereto."

Since at least 1886 California courts have uniformly held that claims of prescription are legal, not equitable, and it is reversible error to deny a party its constitutional right to jury trial. (See e.g., *Thomas v. England* (1886) Sup. Ct. 456, 460; Frahm *v. Briggs* (1970) 12 Cal.App.3d 441; *Arciero Ranches v. Meza* (1993) 17 Cal.App.4th 114.) Thus, it would be reversible error to deny the Moving Parties a jury trial for the Phase 6 Trial

Notwithstanding the CMO and controlling authority Los Angeles County Waterworks District No. 40 (WD 40) filed its opposition contending that the Moving Parties are not entitled to a jury trial because WD 40 argues (1) a physical solution is an equitable remedy, (2) the unbroken line of prescriptive easement cases upholding the right to jury trial are no longer applicable because of the 1928 Constitutional amendment, (3) this action is a "special proceeding", and (4) even if the Moving Parties are entitled to a jury trial on prescription, prescription should be tried in a later phase. WD 40 made each of these arguments in its August 16, 2013 brief and the Moving Parties refuted each of them in the motion. We will deal with them briefly again.

II. ARGUMENT

A. The Moving Parties are Entitled to a Jury Trial on Legal Claims.

The issues raised in the various pleading by various parties in these coordinated and consolidated proceedings unquestionably present both legal and equitable issues. (See Motion, p. 8, Opp., p. 2) Both the Moving Parties and WD 40 agree that that where legal and equitable issues are joined in the same action, the parties are entitled to a jury trial on the legal issues. (*Robinson v. Puls* (1946) 28 Cal.2d 664, 665-666; Opp., p. 8-9.) We do not quarrel with WD 40's observation that under Code of Civil Procedure section 598, the court can bifurcate a trial

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into separate phases. That much seems obvious since there have been five prior phases of trial. Nor do the Moving Parties disagree that phasing the trial cannot create a right to jury trial where none exists. The converse is also true. The right to a jury trial may not be abrogated by the trial court's severance of equitable claims from legal claims that have been joined in the same action. (*Selby Constructors v. McCarthy* (1979) 91 Cal.App.3d 517, 527.) The parties also agree that where, as here, an action involves both legal and equitable issues the court should try equitable issues first. (See Code Civ. Proc., § 598; Opp., p. 8-9.) This court has already done so in prior phases. The CMO specifically set the PWS' prescriptive claims for trial in Phase 6. Thus, that other parties may have alleged quiet title actions, or claims for declaratory relief is wholly irrelevant. The relevant inquiry is whether the "gist" of the PWS' prescription claim is legal or equitable.

B. The "Gist" Of the Prescription Claims Being Tried in Phase 6 Is Legal.

The parties agree that a jury trial must be granted where the gist of the action is legal, or the action is cognizable at law. (*People v. One 1941 Chevrolet Coupe* (1951) 37 Cal.2d 283, 299.)[1] But the parties disagree over whether a claim of prescription in the groundwater context

[1] Since 2005, when the PWS filed their First Amended Complaint, they have loudly proclaimed their prescriptive rights as the basis for their seat at the table. For more than 8 years the PWS have publicly argued that they have knowingly mined the groundwater resources of the basin since 1946 and have thereby acquired prescriptive rights within the AVAA. The court and the parties have labored through five prior phases of trial. Now, with the Phase 6 Trial upon us, the PWS argue that the "gist" of this proceeding is not prescription, but the equitable remedy of a physical solution. The argument rings hollow. As this court is acutely aware, the PWS' claims of prescription have permeated every aspect of this case. Without claims of prescription, the PWS' have no claim to the native groundwater and no significant interest in a physical solution. Prescription is more than a mere "gist" of the PWS' claims, it is the gravamen of their claims. It cannot be overstated that the PWS' claims of prescription, and the economic havoc such claims would wreak, if established, is far and away the most significant issue in these consolidated proceedings. While it may be for a court to determine a physical solution, it is for a jury to decide the PWS' prescription claims.

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is an action at law or in equity. No California court has directly addressed the issue. The Moving Parties cited numerous cases upholding the right to a jury trial in prescription cases beginning with *Thomas v. England* (1886) Sup. Ct. 456, 460 and ending with *Arciero Ranches v. Meza* (1993) 17 Cal.App.4th (Motion, pp. 5-7.) WD 40 cited no authority, but argues that these cases are not controlling because the 1928 amendment adding article X, section 2 to the California Constitution magically changed the fundamental nature of a prescription claim from legal to equitable. That argument is pure nonsense:

> A prescriptive right in groundwater requires proof of the same elements required to prove a prescriptive right in any other type of property: a continuous five years of use that is actual, open, notorious, hostile and adverse to the original owner, and under claim of right.

(*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 291.) Thus, the legal elements of prescription in the groundwater context are identical to any other type of real property and have not changed since the 1928 amendment. Therefore, the nature of a prescription claim is legal, whether the claim is to land or water. Furthermore, there is nothing in the language or history of article X, section 2 indicating that the amendment overrules or supersedes the Moving Parties constitutional right to jury trial contained in article I, section 16. Accordingly, the cases cited by the Moving Parties are controlling authority on the right to jury trial on prescription claims.

WD 40 next attempts to bootstrap the "reasonable and beneficial" use requirement found article X, section 2 to its equity argument. WD 40 argues that "all water rights, including prescriptive rights are subject to the constitutional mandate of "reasonable beneficial use" - a determination that can only be made by the court. (*Tulare, supra*, 3 Cal.2d 524-525.)" (Opp., p. 4.) WD 40 seriously misreads the case. In *Tulare Dist. v. Lindsay-Strathmore Dist.* (1935) 3 Cal.2d 489 at pages 524 and 525 the Court was discussing implementation of article X, section 2 [former article XIV, section 3] and stated:

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> Section 3 of article XIV of the Constitution became effective in November of 1928. The effect of this amendment has been to modify the long-standing riparian doctrine announced in the above cases, and the cases cited therein, and to apply, by constitutional mandate the doctrine of reasonable use between riparian owners and appropriators, and between overlying owners and appropriators. . .. Under this new doctrine, it is clear that when a riparian or overlying owner brings an action against an appropriator, it is no longer sufficient to find that the plaintiffs in such action are riparian or overlying owners, and, on the basis of such finding, issue the injunction. It is now necessary for the trial court to determine whether such owners, considering all the needs of those in the particular water field, are putting the waters to any reasonable beneficial uses, giving consideration to all factors involved, including reasonable methods of use and reasonable methods of diversion.

No issue of right to jury trial was before the court. The cited language does not even rise to the level of dictum on the issue before this court. Nevertheless, from this fragile thread, WD 40 argues that because determination of the PWS' prescriptive rights requires application of equitable principles, the Moving Parties are not entitled to a jury trial on prescription. This argument was rejected in *Jogani v. Superior Court* (2008) 165 Cal.App.4th 901, the very case relied upon by WD 40.

In *Jogani*, the trial court determined that the plaintiff had no right to jury trial on his claims for quantum meruit and unjust enrichment. The plaintiff petitioned the Court of Appeal for a writ of mandate directing the trial court to vacate its order and the Court of Appeal granted the writ. The defendant argued that the "gist" of an action is equitable if it requires application of equitable doctrines, even if the cause of action is historically legal. (*Id.* at p. 907.) The Court of Appeal rejected defendant's argument that application of equitable doctrines trumps the historical determination, stating:

> In determining whether a common law court before 1850 could have entertained a plaintiff's action and granted the requested relief, a court must look past the form or label attached to the plaintiff's claim and discern its substance ('gist'**). If the claim is,**

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> **in substance, one that was cognizable at law before 1850 and seeks relief that could have been obtained at law before 1850, then the action is legal and the right to jury trial attaches, regardless of the extent to which the claim 'requires the application of equitable doctrines.**'

(*Id.*. at p. 908.) The Court went on to state:

> According to defendants, an action is equitable (or its "gist is equitable" if it requires the application of equitable principles. That is not the law, however, and it has never been. **On the contrary, the courts of this state have repeatedly explained that '[t]he fact that equitable principles are applied on the action does not necessarily identify the resulted relief as equitable. Equitable principles are a guide to courts of law.**

(Citations omitted, *id*. p. 909, emphasis added.)

Here, WD 40, like the defendants in *Jogani*, argues that the 1928 amendment trumps the historical determination that prescription claims were triable to a jury at common law because the 1928 amendment requires application of equitable principles. WD 40's argument likewise fails. Prescription claims were legal claims triable to a jury before 1850 and they remain so, regardless of whether equitable doctrines apply. As the *Jogani* court pointed out, "[e]quitable principles are a guide to courts of law as well as equity." (*Jogani* at p. 509-510.) The California Supreme Court disposed of the PWS' argument long ago, stating:

> The right to a trial by jury cannot be avoided by merely calling an action a special proceeding or equitable in nature. If that could be done, the Legislature, by providing new remedies and new judgments and decrees in form equitable, could in all cases dispense with jury trials, and thus entirely defeat the provision of the Constitution. The Legislature cannot convert a legal right into an equitable one so as to infringe upon the right of trial by jury. The provision of the Constitution does not permit the Legislature to confer on the courts the power of trying according to the course of chancery any question which has always been triable according to the course of the common law by a jury. If the action has to deal with ordinary common-law rights cognizable in courts of law, it is to that extent an action at law.

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(*People v. One 1941 Chevrolet Coupe*, supra, 37 Cal. 2d 283, 299.)

Next, WD 40 argues that the that the Moving Parties are not entitled to a jury trial on prescription since the court has a duty under article X, section 2 to impose the equitable remedy of a physical solution, a remedy which did not exist pre-1950. (Opp. p.6.) WD 40's focus is misplaced. The Phase 6 trial will address prescription, not a physical solution. A physical solution is premature until water rights have been determined. Thus, the question of whether the physical solution is decided by judge or jury is not currently before the court.[2]

Next, WD 40 argues that California courts have decided numerous other groundwater cases without resort to a jury. (Opp., p. 5.) The argument is misplaced and irrelevant. None of the prior groundwater decisions cited by WD 40 raised, let alone decided, whether prescription was triable to a jury. It is fundamental that a "decision is not even authority except upon the point actually passed upon by the Court and directly involved in the case." (*Hart v. Burnett* (1960) 15 Cal.530, 598; 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 509, p. 573.) As stated in the motion, the fact that other parties in other cases may have waived their right to jury trial, stipulated to prescription or simply not spotted the issue is irrelevant and of no support to WD 40.

C. The PWS' First Amended Complaint is Not A Special Proceeding.

WD 40's argument that its First Amended Complaint is a "special proceeding" is disjointed and nonsensical. WD 40 concedes, at the outset, that a "special proceeding" is confined to those proceedings expressly made available by statute. (Opp., p. 7, lines 11-15.)

[2] WD 40 goes so far as to argue that in the Phase 6 prescription trial the court will be using "the authority granted by the Constitution to determine water rights, and not the authority used in the easement-to-land cases. Consequently there is no right to jury trial for this action." (Opp. 7, lines 4-6.) If this statement is true, and WD 40 and the other PWS are willing to stipulate to try Phase 6 solely on the legal authority under article X section 2, without reference to prescription principles, then no jury is required.

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Nevertheless, WD 40 fails to cite to any statute declaring prescriptive claims to groundwater to be special proceedings. Quite simply, no such statute exists. Prescription claims are actions. (Code Civ. Proc., § 22.) Next WD 40 makes the unsupported claim that the "quasi legislative nature of a groundwater adjudication renders it a 'special proceeding' for which no jury trial is required." (Opp., p. 7, lines 16-17.) Again WD 40 offers no authority to support this proposition. Undeterred, WD 40 argues that water right claims are, by their very nature, statutory. Again no authority. WD 40 then sets up Water Code section 2000 as a straw man and proceeds to strike it down, claiming victory. WD 40 argues by way of example that the Court has authority under Water Code section 2000 to refer findings of fact to the State Water Resources Control Board, a special proceeding. From this shaky foundation, WD 40 then argues that the referral authorized by Water Code section 2000 was first adopted in 1943. (Opp., p. 8, lines 5-8.) Thus, WD 40 proclaims it "preposterous and without merit" that a special proceeding under Water Code section 2000 could somehow be recognized in courts of law prior to 1850, adoption of the California Constitution. None of this, of course, has anything to do with the arguments raised by the Moving Parties. Quite simply, the Phase 6 trial is not a proceeding under Water Code section 2000 *et seq*. Rather, it is a trial to determine the prescriptive claims of the PWS'.

D. Conclusion.

California Constitution article I, section 16 guarantees the Moving Parties the right to jury trial as it existed at common law in 1950. A jury trial must be granted if the gist of the action is legal. Wrongful denial is reversible error. (*Jogani v. Superior Court* (2008) 165 Cal.App.4th 901; *Arciero Ranches v. Meza* (1993) 17 Cal.App.4th 114, 125-126; *Frahm v. Briggs* (1970) 12 Cal.App.3d 441.)

The PWS' prescription claims will be tried in Phase 6. The elements of a prescriptive claim to groundwater are the same as other species of real property. California courts have

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uniformly held that prescription claims, whether by quiet title or declaratory relief, are actions at law, not equity. The application of equitable principles such as article X section 2 of the California Constitution does not alter the historical inquiry or the right to jury trial. (*One 1941 Chevrolet Coupe, supra,* at p. 299; *Jogani, supra,* at pp. 908-909.) Thus, the Moving Parties are entitled to a jury trial on the PWS prescription claims.

Dated: March 29, 2014

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