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Defendant in *Pro Per*

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

SEP 26 2008

John A. Clarke, Executive Officer/Clerk

By A. Rendrickson Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DIVISION

**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. BC325201;

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co. Superior Court
of California, County of Kern, Case No. S-
1500-CV254-348;

Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
Lancaster, Diamond Farming v. Palmdale
Water District, Superior Court of California,
County of Riverside, consolidated actions
Case Nos. RIC 353840, RIC 344436, RIC
344668

FRED KIA and ALAN KIA, doing business
as Gateway Triangle Properties

Cross-Complainants,

vs.

LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40; CITY
OF LANCASTER; CITY OF PALMDALE;
PALMDALE WATER DISTRICT;
LITTLEROCK CREEK IRRIGATION

Judicial Council Coordination
Proceeding No. 4408

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

Assigned to the Honorable Jack Komar

**CROSS-COMPLAINT OF GATEWAY
TRIANGLE PROPERTIES**

CROSS-COMPLAINT OF
GATEWAY TRIANGLE PROPERTIES

1 DISTRICT; PALM RANCH IRRIGATION)
DISTRICT; ROSAMOND COMMUNITY)
2 SERVICE DISTRICT; CALIFORNIA)
WATER SERVICE COMPANY; QUARTZ)
3 HILL WATER DISTRICT; AND AS)
AGAINST EACH AND EVERY PARTY)
4 WHICH SUBSEQUENTLY FILES A)
CROSS-COMPLAINT AGAINST)
5 GATEWAY TRIANGLE PROPERTIES; and)
DOES 2 through 1,000;)

6 **Cross-Defendants.**)
7 _____)
8
9

10 Cross-Complainants, Fred Kia and Alan Kia, doing business as Gateway Triangle
11 Properties (collectively referred to as "Gateway" or "Cross-Complainants") makes the
12 following allegations against Cross-Defendants California Water Service Company, City of
13 Lancaster, City of Palmdale, Littlerock Creek Irrigation District, Los Angeles County
14 Waterworks District No. 40, Palmdale Water District, Rosamond Community Services District,
15 Palm Ranch Irrigation District and Quartz Hill Water District (collectively referred to herein as
16 "Districts" or "Cross-Defendants"), and DOES 1-1,000, inclusive, as follows:

17 **THE PARTIES**

18 1. City of Lancaster is a municipal corporation located within the County of Los
19 Angeles, and within the geographic boundaries of the Basin.

20 2. Rosamond Community Services District (hereinafter "Rosamond") is a County
21 Water District voted into being in 1966 , and operating under Division 12 of the California
22 Water Code to provide water for domestic, irrigation, and fire flow, collection and treatment of
23 waste and storm water, maintenance of street lights, graffiti abatement and parks and
24 recreation.

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1 3. Littlerock Creek Irrigation District is a public agency which provides water to
2 customers located within the geographic boundaries of the Basin and which extracts water
3 from the Basin.

4 4. Los Angeles County Waterworks District 40 is a public agency governed by the
5 Los Angeles County board of Supervisors operating under Division 16 of the California Water
6 Code. District 40 was established on November 4, 1993 to provide water service to the public
7 within the Antelope Valley.

8 5. Palmdale Water District was formed as a public irrigation district in 1918 and
9 operates under Division 11 of the California Water Code and is producing water from the
10 Antelope Valley Water Supply and selling it to its customers.

11 6. California Water Service Company is a California corporation which provides
12 water to customers located within the geographic boundaries of the Basin and which extracts
13 water from the Basin.

14 7. City of Palmdale is a municipal corporation located within the County of Los
15 Angeles, and within the geographic boundaries of the Basin.

16 8. Palm Ranch Irrigation District is a public agency which provides water to
17 customers located within the geographic boundaries of the Basin and which extracts water
18 from the Basin.

19 9. Quartz Hill Water District (hereinafter "Quartz Hill") is a county water district
20 organized and operating under Division 12 of the California Water Code and is producing
21 water from the Antelope Valley Water Supply and selling it to its customers.

22 10. Cross-Complainants, Fred Kia and Alan Kia, individually, doing business under
23 the name Gateway Triangle Properties that owns certain real property in Kern County, State of
24 California.

25 11. Cross-Complainants is ignorant of the true names and capacities of cross-
26 defendants sued herein as DOES 1-1,000, inclusive, and therefore sue these cross-defendants
27 by such fictitious names. Cross-Complainants will amend this Cross-Complaint to allege their
28 true names and capacities when ascertained. Each reference in this Cross-Complaint to

1 "Districts," "the Districts," or a specifically named cross-defendant, refers also to all cross-
2 defendants sued under fictitious names. Cross-Complainants will reserve the right to amend
3 this Cross-Complaint to allege the Doe Defendants' legal names and capacities when that
4 information is ascertained.

5 6 **JURISDICTION AND VENUE**

7 12. This Court has jurisdiction over this action pursuant to the California
8 Constitution, Article XI, § 10 and under California Code of Civil Procedure ("CCP") § 410.10.

9 13. Venue is proper in this jurisdiction pursuant to CCP § 395 in that Cross-
10 Complainants resides in Los Angeles County, a number of defendants reside in this County,
11 and a substantial part of the unlawful conduct at issue herein has taken place in this County. In
12 addition, this case is related to Judicial Council Coordination Proceeding No. 4408, which is
13 pending in this Court.

14 14. Cross-Complainants have suffered actual damages as a result of District's
15 unlawful conduct in a presently undetermined amount.

16 17 **ALLEGATIONS**

18 15. Cross-Complainants bring this action on behalf of himself seeking a judicial
19 determination of its rights and interest to use the groundwater within the Antelope Valley
20 Groundwater Basin (the "Basin"). In addition, Cross-Complainants seek damages and just
21 compensation for himself from the government entity Cross-Defendants taking and interfering
22 with Cross-Complainants property rights. This action is necessary in that Cross-Defendants
23 assert a common law prescriptive right to the groundwater in the Basin which right they claim
24 is superior to that of Cross-Complainants. To the extent Cross-Defendants fail to prove any
25 element of prescription or the evidence shows that Cross-Defendants have indeed taken non-
26 surplus water in derogation of the rights of overlying landowners, Cross-Complainants
27 property rights and interests have been damaged and/or infringed.

1 16. The Cross-Complainants have a property right in the water within the Basin. The
2 Cross-Complainants also have a priority to the use of the Basin's groundwater. To the extent
3 the Cross-Defendants assert rights to that ground water or have taken non-surplus groundwater
4 in derogation of the rights of the overlying landowners, Cross-Complainants are entitled to
5 damages and just compensation under the Fifth and Fourteenth Amendments of the United
6 States Constitution and Article 1, Section 19 of the California Constitution.

7 17. Cross-Complainants are informed and believe that at some yet unidentified point
8 in the past, the Districts began to extract groundwater from the Basin to a point above and
9 beyond an average annual safe yield. Cross-Complainants are further informed and believe that
10 future population growth and demands will place increased burdens on the Basin. If the trend
11 continues, demand will significantly exceed supply which will cause damage to private rights
12 and ownership in real property. Presently, the rights to the Basin's groundwater have not been
13 adjudicated and there are no legal restrictions on pumping. Cross-Complainants are informed
14 and believe that the Cross-Defendants are pumping water from the Basin and/or claims an
15 interest in the Basin's groundwater, without payment of just compensation and without due
16 process notice. Despite the actual and potential future damage to the water supply and the
17 rights of owners of real property within the Valley, the Districts have knowingly continued to
18 extract groundwater from the Basin, and increased and continue to increase their extractions of
19 groundwater over time. The Districts continued the act of pumping with the knowledge that the
20 continued extractions impairing the rights and interests of the Cross-Complainants.

21 18. Cross-Complainants is informed and believes, and thereon alleges, that without
22 any notification to Cross-Complainants, the Districts pumped and continue to pump water in
23 excess of the safe yield with the knowing intent and belief that they could take by claim of
24 prescription, without just compensation and without due process notice, the water rights of
25 Cross-Complainants.

26 19. Cross-Complainants right to use water below the surface of the land is a valuable
27 property rights; regardless of whether it is presently exercised or will be exercised in the future.
28

1 None of the Cross-Defendants have invoked the power of eminent domain nor paid any
2 compensation to Cross-Complainants for the property rights they have knowingly taken.

3 20. Based upon information and belief, no landowner had actual knowledge that any
4 District's pumping of groundwater was adverse to or hostile to its present and/or future priority
5 rights.

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7 **FIRST CAUSE OF ACTION**

8 **(For Declaratory Relief Against All Cross-Defendants)**

9 21. Cross-Complainants realleges and incorporates herein by reference each of the
10 allegations contained in the preceding paragraphs of this Cross-Complaint, and further alleges
11 against Cross-Defendants as follows:

12 22. By virtue of their property ownership, Cross-Complainants hold overlying rights
13 to the Basin's groundwater, which entitle them to extract that water and put it to reasonable and
14 beneficial uses on their respective properties.

15 23. Cross-Complainants is informed and believes, and on the basis of that
16 information and belief, alleges that each of the Cross-Defendants presently extracts and/or
17 purveys groundwater from the Basin and/or asserts rights to that groundwater which conflict
18 with the overlying rights of Cross-Complainants.

19 24. Cross-Complainants is informed and believes and, on the basis of that
20 information and belief, alleges that the Cross-Defendants extracts groundwater primarily for
21 non-overlying use - i.e., for use on properties other than the property on which the water is
22 extracted. In addition, certain of those Cross-Defendants have asserted that they hold
23 prescriptive rights to such water which they claim are superior to the rights of Cross-
24 Complainants.

25 25. Cross-Complainants present and planned overlying uses of the Basin's
26 groundwater are superior in right to any non-overlying rights held by the Cross-Defendants.

27 26. Cross-Complainants overlying rights need to be apportioned in a fair and
28 equitable manner among all persons holding rights to the Basin's water.

1 27. Cross-Complainant seek a judicial determination that its rights as overlying users
2 are superior to the rights of all non-overlying users and that they have correlative rights vis-à-
3 vis other overlying landowners.

4 28. Cross-Complainants further seek a judicial determination as to the priority and
5 amount of water that all parties in interest are entitled to pump from the Basin.

6 29. Cross-Complainants hold rights to utilize or derive benefit from the storage
7 capacity of the Basin. Cross-Complainants seek a judicial determination as to priority and
8 ownership of those rights. In addition, Cross-Complainants contend that California Water Code
9 Sections 55370, 22456, and 31040 limits the method, manner and mode by which Districts
10 may acquire private property and requires payment of just compensation through eminent
11 domain proceedings. Cross-Complainants seek a declaration of rights with respect to the
12 constitutionality and applications of these Statutes.

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14 **SECOND CAUSE OF ACTION**

15 **(Against All Cross-Defendants to Quiet Title)**

16 30. Cross-Complainants realleges and incorporates herein by reference each of the
17 allegations contained in the preceding paragraphs of this Cross-Complaint, and further alleges
18 against Cross-Defendants as follows:

19 31. Cross-Complainants own land overlying the Antelope Valley alluvial
20 groundwater basin. Accordingly, Cross-Complainants have appurtenant rights to pump and
21 reasonably use groundwater on their land.

22 32. Cross-Complainants herein request a declaration from the Court quieting title to
23 their appurtenant rights to pump and reasonably use groundwater on their land in the future.

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1 **THIRD CAUSE OF ACTION**

2 **(Against All Cross-Defendants For Damages Pursuant to**
3 **The California Constitution Takings Clause)**

4 33. Cross-Complainants realleges and incorporates herein by reference each of the
5 allegations contained in the preceding paragraphs of this Cross-Complaint, and further alleges
6 against Cross-Defendants as follows:

7 34. Article 1 Section 19 of the California Constitution provides as follows:

8 *Private Property may be taken or damaged for public use only when just compensation,*
9 *ascertained by a jury unless waived, has first been paid to, or into court for, the owner.*

10 On information and belief, Cross-Defendants have extracted and will continue to extract
11 non-surplus groundwater from the Basin in excess of a safe yield. On information and belief,
12 Cross-Complainants property have been injured in the form of degradation of the water level
13 and degradation of the quality of the water, in addition to the actual taking of non-surplus
14 water.

15 35. The Cross-Defendants claim priority rights to take and use the Basin's
16 groundwater by "prescription" and as a matter of public interest and need.

17 36. If and to the extent the Cross-Defendants are granted rights to use the Basin's
18 groundwater with priority to the rights held by Cross-Complainants and other overlying
19 landowners, Cross-Complainants are entitled to just compensation pursuant to Article 1,
20 Section 19 of the California Constitution for the diminutions in fair market value of the real
21 property. If and to the extent the public entities are not granted rights to use the Basin's
22 groundwater with priority to the rights held by Cross-Complainants, Cross-Complainants and
23 are entitled to just compensation pursuant Article 1, Section 19 of the California Constitution
24 for wrongful taking of water rights.

25 37. Cross-Complainants seek just compensation for such taking and/or damaging
26 according to proof at trial.

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1 **FOURTH CAUSE OF ACTION**

2 **(Against All Cross-Defendants For Damages Pursuant to**
3 **The United States Constitution Takings Clause)**

4 38. Cross-Complainant realleges and incorporates herein by reference each of the
5 allegations contained in the preceding paragraphs of this Cross-Complaint, and further alleges
6 against Cross-Defendants as follows:

7 39. This cause of action is brought to recover damages against the Districts for
8 violation of Cross-Complainants right under the 5th and 14th Amendments of the U.S.
9 Constitution through the District's taking of private property for public use without paying just
10 compensation and depriving them of both substantive and procedural due process of law.

11 40. The Districts and each of them are, and at all times mentioned in this Cross-
12 Complaint were governmental entities with the capacity to sue and be sued. The Districts and
13 each of them, were, at all times mentioned in this Cross-Complaint, acting under color of state
14 law.

15 41. At a yet unidentified historical point in time, the Districts began pumping water
16 from the Antelope Valley as permissive appropriators. Over the course of time, it is believed
17 that the aggregate amount of water being extracted from the Valley began to exceed the safe
18 yield. The Districts continued to pump and increased its pumping of groundwater believing
19 that given the intervention of the committed public use, no injunction would issue to restrain
20 and/or compel the Districts to reduce its dependence upon such groundwater. The Districts
21 contends that despite its status as a governmental entity, it can nonetheless take private
22 property for a public use under a theory of prescription and without payment of just
23 compensation. The Districts did not undertake any affirmative action reasonably calculated and
24 intended to provide notice and inform any affected landowner of its adverse and hostile claim.

25 42. Cross-Complainants are informed and believe and thereon allege that he was
26 denied due process of law prior to the taking of his property. This violation was a direct result
27 of the knowing customs, practices, and policies of the Districts to continue to pump in excess
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1 of the supply, to suppress the assertion of their adverse and hostile claim, and the resulting ever
2 increasing intervening public use and dependence, without acceding to Constitutional limits.

3 43. The customs, practices, and policies of the Districts to prescript or adversely
4 possess the property rights of property owners and/or to establish a nonenjoinable intervening
5 use amounted to deliberate indifference to the rights of persons who stand to lose their rights to
6 extract water from the Antelope Valley for use on their property through the actions of The
7 Districts.

8 44. As a direct and proximate result of the acts of the Districts, Cross-Complainants
9 have suffered injury, loss, and damage, including a cloud upon the title to their real property, a
10 reduction in value, and the loss of rights in the future to extract and use groundwater from the
11 Valley.

12 45. Cross-Complainants seek just compensation for such taking and/or damaging
13 according to proof at trial.

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15 **FIFTH CAUSE OF ACTION**

16 **(Public and Private Nuisance Against All Cross-Defendants)**

17 46. Cross-Complainant realleges and incorporates herein by reference each of the
18 allegations contained in the preceding paragraphs of this Cross-Complaint, and further alleges
19 against Cross-Defendants as follows:

20 47. The Districts' extractions of groundwater from the supply constitute a continuing
21 progressive nuisance within the meaning of Section 3479 of the Civil Code, in that the Districts
22 have interfered with the future supply of available water that is injurious to Cross-
23 Complainant's rights to freely use and exercise their overlying property rights to extract
24 groundwater from the Basin. The Districts are attempting, through the combined efforts of
25 their pumping groundwater to take, and or alter, overlying property rights to use and access the
26 Antelope Valley supply.

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48. The Districts, and each of them, have continued to and have increased their pumping, despite the knowledge of the damage caused by pumping. The Districts have refused, and continue to refuse, to stop or reduce their pumping despite the damage to the supply of water. This nuisance affects a substantial number of persons in that the Appropriators claim that the continued pumping in excess of the supply's safe yield is, and will, eventually cause a chronic decline in water levels and the available natural water supply will be chronically depleted. If the present trend continues, demand will continue to exceed supply which will continue to cause a reduction in the long term supply. Additionally, the continued pumping by the Districts under these conditions will result in the unlawful obstruction of the overlying landowner's rights to use the water supply in the customary manner.

49. The Districts have threatened to and will, unless restrained by this court, continue to pump groundwater in increasing amounts, and each and every act has been, and will be, without the consent, against the will, and in violation of the rights of Cross-Complainants.

50. As a proximate result of the nuisance created by the Districts, Cross-Complainants have been, and will be, damaged in a sum to be proven at trial.

51. In maintaining this nuisance, the Districts, and each of them are, and have been, acting with full knowledge of the consequences and damage being caused and their conduct is willful, oppressive, malicious and designed to interfere with and take Cross-Complainant's right to freely access the water supply in its customary manner.

SIXTH CAUSE OF ACTION

**(Declaratory Relief Against All Cross-Defendants to Determine
Applicability of Constitution.)**

52. Cross-Complainant realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Cross-Complaint, and further alleges against Cross-Defendants as follows:

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1 53. Article I Section 7 of the California Constitution provides in pertinent part as
2 follows:

3 *"A person may not be deprived of life, liberty, or property without due process of law or*
4 *denied equal protection of the laws; . . . "*

5 The 5th Amendment to the Constitution as applied by the 14th Amendment in relevant
6 part provides:

7 *"No person shall . . . be deprived of life, liberty, or property, without due process of*
8 *law; nor shall private property be taken for public use, without just compensation. "*

9 54. The Districts contend that, even though they are political subdivisions who are
10 uniquely invested with the power of eminent domain, they are allowed to surreptitiously take
11 private property for public use by prescription or adverse possession without providing
12 substantive or procedural due process of law to each overlying landowner.

13 55. Gateway contends that the Article I, Section 7, of the State Constitution, and the
14 5th Amendment as applied by the 14th Amendment of the Federal Constitution, mandates that
15 governmental entities must provide substantive and procedural due process of law when taking
16 private property for a public use. Gateway contends that the prescriptive period cannot
17 commence until the governmental entity takes affirmative action designed and intended to give
18 notice and inform the overlying landowners of the governmental entity's adverse and hostile
19 claim. Gateway further contends that this limitation forecloses the ability of any governmental
20 agency to take or acquire private property for a public use when constitutionally sufficient due
21 process notice has not been provided to the land owner. By virtue of the District's actions as
22 set forth above, an actual controversy has arisen and now exists between the Districts and
23 Gateway concerning their respective rights, duties, and responsibilities.

24 56. Gateway desires a declaration of its rights with respect to the application or
25 nonapplication of Article I Section 7 and the 5th Amendment to the U.S. Constitution to the
26 Districts' prescription claims and asks the court to make a declaration of such rights, duties,
27 and responsibilities. Such a declaration is necessary and appropriate at this time in order that
28 Gateway's property rights may be protected and to ensure that the municipal Districts may

1 proceed according to the California Constitution. There are no administrative remedies
2 available to Gateway.

3 57. A timely declaration by this court is urgent for the following reasons: by way of
4 this action the Districts are seeking to adjudicate and enjoin the property rights of Gateway and
5 thousands of other parties by avoiding the due process protections provided to these
6 landowners under Article I Section 7, the 5th and 14 h Amendments and Code of Civil
7 Procedure sections 1230.010 through 1237.040. Absent a timely declaration by this court,
8 injustice will result from the improper use and adjudication of Gateway's property rights
9 should the foregoing constraints and statutory mandate be found applicable.

10 58. Gateway will suffer irreparable and lasting injury unless declaratory relief is
11 granted.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE,** Cross-Complainants prays that this Court enter judgment on his behalf
14 against all Cross-Defendants, jointly and severally, as follows:

15 1. Declaring that Cross-Complainant's overlying rights to use water from the Basin
16 are superior and have priority vis-a-vis all non-overlying users and the Districts;

17 2. Apportioning water rights from the Basin in a fair and equitable manner and
18 enjoining any and all uses inconsistent with such apportionment;

19 3. That the court declare the respective rights, duties, and responsibilities of the
20 Districts under Article 1 Section 7 of the California Constitution and that by its declaration and
21 judgment the court declare that Article 1 Section 7 applies to the Districts in this matter, and
22 that Section 7 prohibits a governmental entity from taking private property for a public use
23 without providing due process of law to the individual whose property is being taken;

24 4. Awarding Cross-Complainants just compensation and damages for the subject
25 property taken and damages, in amounts to be proven at trial together with interest thereon at
26 the legal rate from the date of the damages as provided by law;;

27 5. Awarding economic and compensatory damages;
28

6. Awarding Cross-Complainants reasonable attorneys' and experts' fees and other disbursements;

7. And for such other and further relief as may be just and proper.

Dated: September 26, 2008

~~By:~~

Fred Kia
doing business as Gateway Triangle
Properties
Defendant in *Pro Per*

By:

Alan Kia
doing business as Gateway
Triangle Properties

Defendant in *Pro Per*

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3 **PROOF OF SERVICE**
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5 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES
6

7 I declare that:

8 I am employed in the County of Los Angeles, State of California. I am over the age of
9 eighteen years and not a party to the within action. My business address is 5225 Wilshire
10 Boulevard, Suite 1000, Los Angeles, California 90036.

11 On September 26, 2008, I served **CROSS-COMPLAINT OF GATEWAY**
12 **TRIANGLE PROPERTIES** by posting the document(s) listed above to the Santa Clara
13 Superior website (<http://www.scefiling.org>) under the Antelope Valley Groundwater matter.

14 I declare under penalty of perjury under the laws of the State of California that the
15 above is true and correct, executed on September 26, 2008.
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19 JOSEPHINE VILLAMENA
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