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9 Attorneys for Plaintiff and Cross-Defendant
Aqua Capital Management LP

10
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN BERNARDINO

13 Chino Basin Municipal Water District,

14 Plaintiff,

15 vs.

16 City of Chino, et al.,

17 Defendants.
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Case No. RCVRS 51010

**AQUA CAPITAL MANAGEMENT LP'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
CALIFORNIA STEEL INDUSTRIES, INC.'S
MOTION TO CONFIRM POST-JUDGMENT
ORDERS AND ENFORCE AND CARRY OUT
THE CHINO BASIN JUDGMENT**

*[Request for Judicial Notice filed concurrently
herewith]*

Date: July 20, 2012
Time: 10:30 a.m.
Dept.: C-1

Case No. RCVRS 51010

AQUA CAPITAL MGMT. LP'S OPP. TO CALIF. STEEL INDUSTRIES, INC.'S MOTION TO CONFIRM POST-
JMT. ORDERS AND ENFORCE AND CARRY OUT THE CHINO BASIN JMT.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION AND SUMMARY OF ARGUMENT**

4 The motion brought by California Steel Industries, Inc. ("CSI") mischaracterizes the action
5 brought by Aqua Capital Management LP ("ACM"). The complaint filed by ACM (Case No.
6 CIVRS1108911, the "quiet title action") has been assigned for all purposes to Judge Ochoa in
7 Department R8 of the San Bernardino County Superior Court and is a straightforward action to quiet title
8 as a bona fide purchaser – ACM's action does not involve the interpretation of any judgments or orders
9 in Case No. RCVRS 51010 (the "Chino Basin Action"). There is no part of the Chino Basin Judgment
10 which can be construed to bar an action by ACM against CSI to quiet title with respect to the water rights
11 at issue.

12 ACM's quiet title action is fact-based and deserving of a full trial on the merits. By its motion,
13 CSI is improperly attempting to deny ACM the full trial on the merits that it deserves. Furthermore, CSI
14 cites no authority – and ACM could find none – for bringing a motion of this nature under these
15 circumstances. In so doing, CSI has ignored two key facts: 1) that the quiet title action brought by ACM
16 is assigned to Judge Ochoa for all purposes; and 2) that, in overruling CSI's demurrer (which asserted
17 virtually identical arguments to those in the present motion), the Superior Court has already determined
18 as a matter of law that ACM has stated a claim to quiet title as a bona fide purchaser. CSI's motion is no
19 more than a reincarnation of its demurrer to ACM's verified complaint. CSI merely couches its demurrer
20 as a motion to "confirm post-judgment orders and enforce and carry out the Chino Basin Judgment" so
21 that it can make the same arguments before a different judge, apparently in hopes of getting a different
22 outcome. In any event, CSI's motion is not properly before this Court. Rather, ACM's quiet title action
23 requires a fact-based determination in Judge Ochoa's Court of whether or not ACM was a bona fide
24 purchaser.

25 **II.**

26 **SUMMARY OF FACTS**

27 On October 7, 2011, ACM filed its verified complaint to quiet title in the San Bernardino County
28 Superior Court. A copy of the verified complaint is attached as Exhibit A to ACM's Request for Judicial

1 Notice ("RJN"). In the quiet title action, ACM alleges that it acquired full ownership of 630.274 acre
2 feet of overlying water rights in the Chino Basin as a bona fide purchaser from CCG Ontario LLC
3 ("CCG"). CCG conveyed the water rights to ACM on December 24, 2008; the Water Rights Grant Deed
4 was recorded in the official real property records of San Bernardino County, California, on February 18,
5 2009. A copy of the Water Rights Grant Deed is attached to ACM's verified complaint as Exhibit A (see
6 Exhibit A to ACM's RJN). ACM filed its quiet title action because, in 2011 – more than two years after
7 ACM acquired the water rights from CCG and recorded the Water Rights Grant Deed – CSI produced
8 what purports to be a 1995 Water Rights Acknowledgment between CSI and Kaiser Steel Corporation
9 ("Kaiser," from whom CCG acquired the water rights conveyed to ACM), pursuant to which CSI and
10 Kaiser agreed to hold the 630.274 acre feet of water rights as joint tenants. Prior to 2011, ACM had no
11 knowledge of the Water Rights Acknowledgment, which was never recorded.

12 CSI demurred to ACM's quiet title action on the basis of res judicata and collateral estoppel,
13 making virtually identical arguments to those in the present motion. A copy of CSI's demurrer, ACM's
14 opposition thereto, and CSI's reply are attached to ACM's RJN as Exhibits B, C and D, respectively.¹
15 The Superior Court overruled CSI's demurrer on December 19, 2011, and transferred the matter to
16 Department C1, to be heard with related Case No. RCV51010. A copy of the Court's Minute Order is
17 attached to ACM's RJN as Exhibit E. ACM filed a peremptory challenge to Judge Reichert in
18 Department C1 pursuant to Code of Civil Procedure ("CCP") 170.6; on January 6, 2011, the Court found
19 ACM's affidavit of prejudice to be timely, and granted the peremptory challenge. A copy of the Court's
20 January 10, 2012, Notice of Reassignment is attached to ACM's RJN as Exhibit F. The Notice states:
21 "Case reassigned to Judge GILBERT OCHOA for all purposes." (Emphasis added.) Thereafter, CSI
22 filed its answer and unverified cross-complaint in Department R8.

23 Thus far, ACM and CSI have each propounded and responded to extensive written discovery and
24 produced documents. The parties have also participated in Court ordered mediation. Trial on the merits
25 is set for November 13, 2012.

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28 ¹ CSI's moving papers clearly reflect the fact that the 1995 Water Rights Acknowledgment was never
recorded in the official real property records of San Bernardino County.

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III.

LAW AND ARGUMENT

A. ACM's Quiet Title Action Against CSI Is Not Properly Before This Court Because It Was Assigned For All Purposes To Judge Gilbert Ochoa In Department R8.

ACM's challenge pursuant to CCP §170.6 was ruled timely and granted by the Court. The order granting the assignment expressly states that the case was assigned "for all purposes" to Judge Ochoa in Department R8. There is no authority, and certainly no precedent, for CSI's premise that only Judge Reichert in Department C1 can decide the merits of ACM's action. ACM's verified complaint presents very substantial factual issues that require a full trial on the merits in Judge Ochoa's Court, not the summary disposition requested in this motion.

B. There Is No Authority For CSI's Motion.

CSI has cited no statutory authority – and ACM could find none – in support of CSI's motion to confirm post-judgment orders. CSI relies on Paragraph 15 of the Chino Basin Judgment, which confers jurisdiction generally on the San Bernardino County Superior Court for the purpose of enabling the Court "to make such further or supplemental orders or directions as may be necessary or appropriate for interpretation, enforcement or carrying out of [the Chino Basin] Judgment, and to modify, amend or amplify any of the provisions of this Judgment." The quiet title action brought by ACM does not involve the Court's "interpretation, enforcement or carrying out of the Judgment." Rather, ACM's action seeks a factual determination as to whether or not ACM was a bona fide purchaser and therefore became the sole owner of the 630.274 acre feet of water rights purchased from CCG. Because there is no authority for CSI's motion, it should be denied.

C. No Part Of The Chino Basin Judgment Precludes The Quiet Title Action Brought By ACM.

There is nothing in the Chino Basin Judgment that can be construed to exclude the action brought by ACM. As stated above, the complaint filed by ACM is a straightforward action to quiet title as a bona fide purchaser – ACM's action does not involve the interpretation of any judgments or orders in the Chino Basin Action; therefore, the issues raised in ACM's quiet title action (e.g., whether or not ACM is

1 a bona fide purchaser) are outside the continuing jurisdiction conferred by Paragraph 15 of the Chino
2 Basin Judgment.

3 Additionally, it appears that ACM's quiet title action is expressly excepted from the Court's
4 continuing jurisdiction as set forth in Paragraph 15. Subparagraph (c) of Paragraph 15 expressly
5 excludes from the Court's continuing jurisdiction "[t]he determination of specific quantitative rights and
6 shares in the declared Safe Yield . . . declared in Exhibit[] 'D'." Exhibit "D" to the Chino Basin
7 Judgment concerns Overlying Non-Agricultural Rights, and sets forth, *inter alia*, the Share of Safe Yield
8 granted to Kaiser Steel Corporation. Since ACM's action against CSI is precisely concerned with the
9 quantitative rights acquired from CCG, Kaiser's successor-in-interest, said action is arguably excepted
10 from the Court's continuing jurisdiction by the express language of the Chino Basin Judgment.

11 **D. The Superior Court Ruled That ACM Stated A Claim To Quiet Title As A Matter**
12 **Of Law When It Overruled CSI's Demurrer.**

13 CSI made the same arguments previously in its demurrer to ACM's verified complaint. The
14 Superior Court granted CSI's request for judicial notice in support of its demurrer as to three of CSI's
15 four exhibits (acknowledging the existence of the fourth), considered CSI's arguments concerning res
16 judicata and collateral estoppel (which CSI restates in the present motion), and heard oral argument by
17 counsel. The Superior Court has already considered the arguments asserted in CSI's motion, and
18 nonetheless ruled that ACM has stated a claim to quiet title as a matter of law. ACM should be allowed
19 to litigate its quiet title action against CSI at a full trial on the merits. At trial CSI will have ample
20 opportunity to pursue the affirmative defenses and cross-claims it has asserted against ACM. CSI's
21 attempt to get a contrary ruling on what is effectively a reboot of its demurrer should not be allowed; this
22 Court should deny CSI's motion. CSI should be precluded from bringing any further iterations of its
23 demurrer.

24 **E. Allowing ACM To Proceed With Its Quiet Title Action Will Not Result In**
25 **Inconsistent Rulings.**

26 Contrary to CSI's assertion that its motion should be granted to avoid inconsistent rulings,
27 granting CSI's motion would actually create an inconsistency with the Superior Court's ruling on CSI's
28 demurrer. Moreover, as stated previously, Case No. CIVRS1108911 is a straightforward action to quiet

1 title as a bona fide purchaser; ACM's action does not involve the interpretation of any judgments or
2 orders in the Chino Basin Action. Rather, ACM's action seeks a factual determination as to whether or
3 not ACM was a bona fide purchaser, and therefore acquired sole ownership of the water rights at issue
4 from CCG.

5 Ironically, CSI admits in its motion that the Court's 2009 ruling did not explicitly define ACM's
6 legal rights. So, at the same time CSI moves to "enforce" the Court's prior orders in the Chino Basin
7 Action, CSI admits that one of the key orders it seeks to "enforce" – and the only order pertaining to
8 ACM – does not explicitly define the rights acquired by ACM from CCG. See Motion to Confirm, page
9 9, lines 15-16. Therefore, CSI is not so much moving to enforce an existing order as it is asking this
10 Court to rule on the very matters encompassed in ACM's quiet title action: whether or not, as a bona fide
11 purchaser, ACM is the sole owner of the 630.274 acre feet of water rights at issue. Effectively, CSI is
12 attempting to get this Court to rule summarily on ACM's action without affording the full evidentiary
13 trial on the merits that ACM's fact-based quiet title action deserves. This is yet another reason that this
14 Court should deny CSI's motion.

15 IV.

16 CONCLUSION

17 For all of the foregoing reasons, ACM respectfully requests this Court to deny CSI's Motion to
18 Confirm Post-Judgment Orders and Enforce and Carry Out the Chino Basin Judgment.

19
20 Dated: July 9, 2012

McLEOD, MOSCARINO, WITHAM & FLYNN LLP

21
22 By: 

23 David S. McLeod (SBN 66808)

24 Attorneys for Plaintiff and Cross-defendant
25 Aqua Capital Management LP
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA }
3 COUNTY OF LOS ANGELES } ss

4 I am employed in the County of Los Angeles, State of California. I am
5 over the age of 18 and not a party to the within action. My business address is 707
Wilshire Boulevard, Suite 5000, Los Angeles, California 90017.

6 On July 9, 2012, I served the foregoing document(s) described as:

7 **AQUA CAPITAL MANAGEMENT LP'S MEMORANDUM OF POINTS AND**
8 **AUTHORITIES IN OPPOSITION TO CALIFORNIA STEEL INDUSTRIES, INC.'S**
9 **MOTION TO CONFIRM POST-JUDGMENT ORDERS AND ENFORCE AND CARRY**
OUT THE CHINO BASIN JUDGMENT

10 by placing true copies thereof enclosed in sealed envelopes addressed as stated on the
11 attached mailing list.

12 ☐ **BY MAIL** I placed such envelopes with postage thereon prepaid in the
United States Mail at 707 Wilshire Blvd, Los Angeles, California 90017.

13 ☒ **BY PERSONAL SERVICE** I caused such envelope to be given to the
addressee.

14 ☐ **BY FACSIMILE** The above-referenced document (together with all exhibits
15 and attachments thereto) was transmitted via facsimile transmission to the
addressee(s) as indicated on the attached mailing list on the date thereof. The
16 transmission was reported as completed and without error.

17 ☐ **BY ELECTRONIC TRANSMISSION** The above referenced document was
sent via electronic transmission to the addressee(s)' email address as indicated
18 on the attached service list.

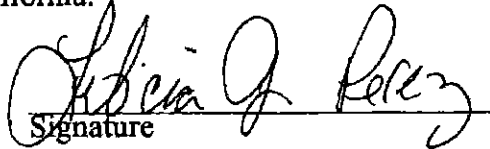
19 ☒ **BY FEDERAL EXPRESS** I am readily familiar with McLEOD,
MOSCARINO, WITHAM & FLYNN LLP's business practices of collecting
20 and processing items for pickup and next business day delivery by Federal
Express. I placed such sealed envelope(s) for delivery by Federal Express to
21 the offices of the addressee(s) as indicated on the attached mailing list on the
date hereof following ordinary business practices.

22 ☒ **STATE** I declare under penalty of perjury under the laws of the State of
California that the foregoing is true and correct.

23 ☐ **FEDERAL** I declare that I am employed in the office of a member of the bar
24 of this court at whose direction the service was made.

25
26 Executed on July 9, 2012, at Los Angeles, California.

27 Leticia G. Perez
28 Type or Print Name


Signature

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SERVICE LIST

Aqua Capital Management LP v. California Steel Industries, Inc., et al.

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9 Attorneys for Plaintiff and Cross-Defendant
Aqua Capital Management LP

10
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN BERNARDINO

13 Chino Basin Municipal Water District,
14 Plaintiff,
15 vs.
16 City of Chino, et al.,
17 Defendants.

Case No. RCVRS 51010

**AQUA CAPITAL MANAGEMENT LP'S
REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF OPPOSITION TO
CALIFORNIA STEEL INDUSTRIES, INC.'S
MOTION TO CONFIRM POST-JUDGMENT
ORDERS AND ENFORCE AND CARRY OUT
THE CHINO BASIN JUDGMENT**

*[Memorandum of Points and Authorities filed
concurrently herewith]*

Date: July 20, 2012
Time: 10:30 a.m.
Dept.: C-1

28 **Case No. RCVRS 51010**

**AQUA CAPITAL MGMT. LP'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO CALIF.
STEEL INDUSTRIES, INC.'S MOTION TO CONFIRM POST-JMT. ORDERS, ETC.**

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 Pursuant to Evidence Code §§ 452 and 453, Plaintiff and Cross-defendant Aqua Capital
3 Management LP ("ACM") requests that the Court take judicial notice of the following:

- 4 1. The docket for San Bernardino County Superior Court Case No. RCVRS 51010, *Chino*
5 *Basin Municipal Water District v. City of Chino* (the "Chino Basin Action").
- 6 2. ACM's verified complaint in San Bernardino County Superior Court Case No.
7 CIVRS1108911, *Aqua Capital Management LP v. California Steel Industries, Inc.* (the "quiet
8 title action"), a true and correct copy of which is attached hereto as Exhibit A.
- 9 3. The demurrer of California Steel Industries, Inc. ("CSI") to ACM's verified complaint in
10 the quiet title action, a true and correct copy of which is attached hereto as Exhibit B.
- 11 4. ACM's opposition to CSI's demurrer, a true and correct copy of which is attached hereto
12 as Exhibit C.
- 13 5. CSI's reply to ACM's opposition to demurrer, a true and correct copy of which is attached
14 hereto as Exhibit D.
- 15 6. San Bernardino County Superior Court's December 19, 2011, Minute Order in Case No.
16 CIVRS1108911 re CSI's demurrer, a true and correct copy of which is attached hereto as
17 Exhibit E.
- 18 7. San Bernardino County Superior Court's January 10, 2012, Notice of Reassignment of
19 Case No. CIVRS1108911 from Judge Stanford E. Reichert to Judge Gilbert Ochoa for all
20 purposes, a true and correct copy of which is attached hereto as Exhibit F.

21
22 Dated: July 9, 2012

McLEOD, MOSCARINO, WITHAM & FLYNN LLP

23
24 By: 

25 David S. McLeod (SBN 66808)

26 Attorneys for Plaintiff and Cross-defendant
27 Aqua Capital Management LP
28

EXHIBIT A

FILED
 OCT 07 2011

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9 Attorneys for Plaintiff
 Aqua Capital Management LP

FILED
 SUPERIOR COURT
 COUNTY OF SAN BERNARDINO
 RANCHO CUCAMONIA DISTRICT
 OCT 07 2011

Cesar R. Lopez

12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 13 COUNTY OF SAN BERNARDINO

CIVRS1108911

15 Aqua Capital Management LP
 16 Plaintiff

Case No.

VERIFIED COMPLAINT TO QUIET TITLE

17 vs.

18 California Steel Industries, Inc. and DOES 1
 through 50, inclusive,
 19 Defendants

21 Pursuant to California Code of Civil Procedure section 760.010 et seq., Plaintiff Aqua
 22 Capital Management LP ("Plaintiff") brings this verified complaint to quiet title against defendants
 23 California Steel Industries Inc. ("CSI") and DOES 1 through 50, inclusive, and alleges as follows:

24 **FIRST CAUSE OF ACTION**

25 (Quiet Title; Cal. C.C.P. section 760.010 et seq.)

26 (Against All Defendants)

27 1. Plaintiff is a Delaware limited partnership with its principal place of business in
 28 Omaha, Nebraska. Plaintiff is qualified to transact business in California.

Case No.

VERIFIED COMPLAINT TO QUIET TITLE

1 2. Plaintiff is informed and believes that Defendant CSI is a Delaware corporation
2 with its principal place of business in Fontana, California.

3 3. Pursuant to California Code of Civil Procedure section 762.060, the defendants
4 sued herein as DOES 1-50, inclusive, consist of all persons unknown, claiming any legal or equitable
5 right, title, estate, lien, or interest in the property described herein adverse to Plaintiff's title, or any cloud
6 on Plaintiff's title thereto. Plaintiff will amend this Verified Complaint to allege their true names and
7 capacities if and when Plaintiff becomes aware of such claims and the identities of such persons becomes
8 known.

9 4. Plaintiff is the owner of 630.274 acre feet of adjudicated overlying water rights in
10 the Chino Basin. The legal description of the water rights, (the "water rights") is as follows: "The right
11 to extract 630.27 acre-feet of Grantor's Assigned Share of Operating Safe Yield together with all
12 Carryover and Storage Account rights ("Water Rights") allocated to Grantor (or Grantor's predecessor(s)
13 in interest) under and pursuant to the Judgment dated January 27, 1978 and entered in San Bernardino
14 Superior Court Case No. 51010 entitled "Chino Basin Municipal Water District v. City of Chino, et al."
15 (the "Judgment"). The water rights are separately assessed as Assessor Parcel Number 229-291-47 by
16 the San Bernardino County Assessor.

17 5. CCG Ontario LLC (the "seller") conveyed the water rights to plaintiff at a closing
18 on December 24, 2008. The parties recorded a Water Rights Grant Deed in the official real property
19 records of San Bernardino County, California on February 18, 2009 following the court's approval of
20 Plaintiff's intervention in the Judgment. A true and correct copy of the recorded deed is attached as
21 Exhibit A and incorporated here by reference.

22 6. Plaintiff is informed and believes that defendant CSI claims to be a joint owner of
23 the water rights pursuant to a Water Rights Agreement and a Water Rights Acknowledgement, each
24 dated as of June 1, 1995. Pursuant to Section 3 of the Water Rights Agreement, CSI had the right and
25 ability to record the Water Rights Acknowledgment in the official real property records of San
26 Bernardino County, California. Plaintiff is informed and believes that CSI failed to record the Water
27 Rights Acknowledgment, or any instrument relating thereto, in the official real property records.

28 7. Plaintiff acquired title to the water rights in good faith and for valuable

1 consideration, and recorded its interest without knowledge or notice of any prior interest claimed by
2 defendant CSI or any other person or entity. Accordingly, Plaintiff is a bona fide purchaser for value of
3 the water rights, and solely owns the water rights free and clear of any unrecorded interest in the water
4 rights asserted by CSI.

5 8. Prior to purchasing the water rights, Plaintiff conducted its own search of the
6 official real property records to determine whether any adverse claims to the seller's title to the water
7 rights were recorded in the real property records.

8 9. Prior to purchasing the water rights, Plaintiff engaged a reputable title insurance
9 company to conduct a search of the official real property records to determine whether any adverse
10 claims to the seller's title to the water rights were recorded in the real property records. The title
11 company completed its search and presented its results to Plaintiff in the form of a report.

12 10. Prior to purchasing the water rights, Plaintiff obtained customary representations
13 and warranties from an authorized officer of the seller, and such representation and warranties confirmed
14 the seller's sole ownership of the water rights.

15 11. Prior to purchasing the water rights, Plaintiff requested that the seller provide to
16 Plaintiff documents and information then in the seller's possession, custody or control relating to the
17 seller's ownership of the water rights, and the documents and information confirmed the seller's sole
18 ownership of the water rights.

19 12. Prior to purchasing the water rights, Plaintiff discussed with representatives of the
20 seller on more than one occasion, over several months, the ownership history of the water rights, and
21 such discussions confirmed the seller's sole ownership of the water rights.

22 13. Prior to purchasing the water rights, Plaintiff examined the most recent annual
23 report of the Chino Basin Watermaster, which confirmed the seller's sole ownership of the water rights.

24 14. Prior to purchasing the water rights, Plaintiff discussed the purchase by Plaintiff of
25 the water rights with Watermaster staff. CGC Ontario discussed with Watermaster staff any known or
26 suspected claims that might be made by other persons. No claims by CSI or any other party were
27 disclosed by Watermaster staff.

28 15. Prior to purchasing the water rights, Plaintiff submitted a formal written

1 application to the Non-Agricultural Pool Committee of the Chino Basin Watermaster regarding transfer
2 of the water rights. Defendant CSI is and was a member of the Non-Agricultural Pool Committee. The
3 application was considered at a public meeting of the Non-Agricultural Pool Committee. Neither
4 Defendant CSI nor any other person claimed or otherwise disclosed any interest in the water rights at or
5 in connection with such public hearing.

6 16. Prior to purchasing the water rights, Plaintiff submitted a formal written
7 application to the Advisory Committee of the Chino Basin Watermaster regarding transfer of the water
8 rights. The application was considered at a public meeting of the Advisory Committee. Neither
9 Defendant CSI nor any other person claimed or otherwise disclosed any interest in the water rights at or
10 in connection with such public hearing.

11 17. Prior to purchasing the water rights, Plaintiff submitted a formal written
12 application to transfer the water rights to the Board of the Chino Basin Watermaster. The application
13 was considered at a public meeting of the Board. Defendant CSI did not make or otherwise disclose any
14 claims on the water rights at or in connection with such public hearing.

15 18. Prior to purchasing the water rights, Plaintiff examined the records of the San
16 Bernardino County Tax Assessor, which confirmed that the seller was the sole owner and assessee of
17 such water rights.

18 19. Plaintiff is a bona fide purchaser of the water rights, having acquired title for
19 valuable consideration, in good faith and without knowledge or notice of any claimed prior interest by
20 Defendant CSI and having first recorded the instrument creating its interest in the water rights. CSI's
21 alleged prior unrecorded and unknown interest is not enforceable against Plaintiff as a bona fide
22 purchaser for value.

23 20. Plaintiff therefore seeks a declaration that title to the water rights is vested in
24 Plaintiff alone as of the date Plaintiff recorded its title, February 18, 2009, and that Defendants CSI, and
25 DOES 1 through 50, inclusive, be declared to have no estate, right, title or interest in the water rights, and
26 that Defendants CSI and DOES 1-50, inclusive, be forever enjoined from asserting any estate, right, title
27 or interest in the water rights adverse to Plaintiff.

1 WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as
2 follows:

3 For an order compelling Defendants, and each of them, to transfer legal title and
4 possession of the water rights to Plaintiff;

5 For a declaration and determination that Plaintiff is the rightful holder of title to the water
6 rights and that Defendants herein, and each of them be declared to have no estate, right, title or interest in
7 the water rights;

8 For a judgment forever enjoining Defendants, and each of them, from claiming any estate,
9 right, title or interest in the water rights;

10 For costs of suit herein; and

11 For any and all further legal and equitable relief the court deems just and proper.

12
13 Date: October __, 2011

McLEOD, MOSCARINO, WITHAM & FLYNN LLP

14
15 By: 

16 John P. Flynn (State Bar No. 141094)

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18 Attorneys for Plaintiff
19 Aqua Capital Management LP
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Executed on October 6, 2011 at Omaha, Nebraska.

[Handwritten signature]

Chief Executive Officer
Aqua Capital Management LP

EXHIBIT A

PLEASE COMPLETE THIS INFORMATION

RECORDING REQUESTED BY:

ROBERT BOYTOR

MAIL TAX STATEMENTS

AND WHEN RECORDED MAIL TO:

Aqua Capital Management LP

444 Regency Parkway Drive, STE 300

Omaha, NE 68114

Recorded in Official Records, County of San Bernardino



LARRY WALKER

Auditor/Controller - Recorder

867 SPL Title Services

2/18/2009

8:00 AM

U

Doc#: 2009 - 0068320

Titles: 1 Pages: 4



Fees 18.00

Taxes 0.00

Other 0.00

PAID \$18.00

SPACE ABOVE FOR RECORDER'S USE ONLY

Water Rights Grant Deed

Title of Document

MAIL TAX STATEMENTS AS DIRECTED ABOVE

Aqua Capital Management LP
444 Regency Parkway Dr, Suite 300
Omaha, Nebraska 68114
Attn: Chief Financial Officer

APN: 229-291-47

Space above this line for Recorder

WATER RIGHTS GRANT DEED

The undersigned grantor(s) declare(s)

DOCUMENTARY TRANSFER TAX \$ 0.00 (Zero)

- () computed on full value of property conveyed, or
() computed on full value less liens and encumbrances remaining at time of sale.
() Unincorporated Area

As of Feb. 9, 2009, CCG ONTARIO LLC, as Grantor herein, for valuable consideration, the receipt of which is hereby acknowledged, does hereby grant to:

AQUA CAPITAL MANAGEMENT LP, its successors or assigns, as Grantee herein, all that certain real property in the County of San Bernardino, State of California, described as:

The right to extract 630.27 acre-feet of Grantor's Assigned Share of Operating Safe Yield together with all Carryover and Storage Account rights ("Water Rights") allocated to Grantor (or Grantor's predecessors(s) in interest) under and pursuant to the Judgment dated January 27, 1978 and entered in San Bernardino Superior Court Case No. 51010 entitled "Chino Basin Municipal Water District v. City of Chino, et al."

See Schedule A

The Water Rights originally developed from the historical extraction of groundwater from numerous parcels of real property formerly owned by Kaiser Steel Corporation, and its successors and affiliates including that certain real property described with particularity in the attached Schedule "A," which real property is presently referred to as Assessor Parcel Number 229-291-47 by the San Bernardino County Assessor. Grantor is a successor to Kaiser Venture, Inc., who in turn, is a successor in interest to Kaiser Resources, who in turn, is a successor in interest to Kaiser Steel Corporation who was an original party to the adjudication that culminated in the Judgment.

Grantor:

CCG ONTARIO LLC, a Delaware limited liability company

By: 
Name: Tim D. Peters
Its: Vice President

STATE OF COLORADO §
COUNTY OF DENVER §

The foregoing instrument was acknowledged before me this 22 day of December, 2008, by Tim Peters, VP of CCG ONTARIO, LLC, a Delaware limited liability company, on behalf of the company.



Notary Public in and for the
State of Colorado

Name: [Signature]
My Commission Expires:

8-19-09

SCHEDULE A

LEGAL DESCRIPTION OF THE CCG PARCEL

Parcel 5 of Parcel Map 14723, in the County of San Bernardino, State of California, as per map recorded in Book 179, Pages 9 through 13, inclusive of Parcel Maps, in the Office of the County Recorder of San Bernardino County, California.

Together with that portion of Parcel 2 of Parcel Map 14757, as recorded in Book 183, Pages 24 and 25 of Parcel Maps, Records of San Bernardino County, California, described as follows:

Beginning at the Northeasterly corner of said Parcel 2, said corner also being on the Westerly line of said Parcel 5; thence South $00^{\circ} 22' 49''$ East 33.38 feet along the Easterly line of said Parcel 2 and said Westerly line of said Parcel 2 and said Westerly line of said Parcel 5 to the Northeast corner of Parcel 3 of said Parcel Map 14757, said point also being the beginning of a non-tangent curve concave to the Northwest and having a radius of 324.86 feet, a radial line to said point bears North $24^{\circ} 24' 15''$ West; thence Westerly, 132.44 feet along said curve and the Northerly line of said Parcel 3, through a central angle of $23^{\circ} 21' 32''$; thence South $88^{\circ} 57' 17''$ West, 821.59 feet continuing along said Northerly line; thence South $81^{\circ} 48' 02''$ West, 211.26 feet continuing along said Northerly line; thence South $88^{\circ} 57' 17''$ West, 543.98 feet parallel with the Northerly line of said Parcel 2 to a point on the Westerly line of said Parcel 2; thence North $01^{\circ} 02' 43''$ West, 86.31 feet along said Westerly line to the Northwest corner of said Parcel 2; thence North $88^{\circ} 57' 17''$ East, 1704.38 feet to the point of beginning.

Said land is described pursuant to Certificate of Compliance No. W004-99 recorded November 5, 1999, Instrument No. 99-461699, Official Records.

EXHIBIT B

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6 Attorneys for Defendant
CALIFORNIA STEEL INDUSTRIES, INC.
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN BERNARDINO
10

11 AQUA CAPITAL MANAGEMENT LP,

12 Plaintiff,

13 v.

14 CALIFORNIA STEEL INDUSTRIES,
15 INC., and DOES 1 through 50, inclusive,

16 Defendants.
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Case No. CIVRS1108911
Judge: Hon. David Williams

DEFENDANT CALIFORNIA STEEL
INDUSTRIES, INC.'S NOTICE OF
DEMURRER AND DEMURRER TO
COMPLAINT; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF

*[File concurrently with Notice of Demurrer and
Demurrer to Complaint]*

Date: December 19, 2011
Time: 8:30 a.m.
Dept.: R8

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3750 UNIVERSITY AVENUE, SUITE 400
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on December 19, 2011, at 8:30 a.m., in Department R8 of
3 the above-entitled court, Defendant CALIFORNIA STEEL INDUSTRIES, INC. ("CSI") will
4 demur to the complaint of Plaintiff, AQUA CAPITAL MANAGEMENT LP ("Plaintiff").

5 CSI brings this demurrer pursuant to Code of Civil Procedure section 430.10. CSI's
6 demurrer is based on the grounds that Plaintiff's complaint fails to state facts sufficient to
7 constitute a cause of action against CSI for quiet title, that the complaint is barred by the doctrines
8 of res judicata and collateral estoppel, and, in the alternative, that there is another action pending
9 between the same parties on the same cause of action.

10 The demurrer is based on this notice, the pleadings, papers, and records on file in this
11 action, the attached demurrer, the attached memorandum of points and authorities, the request for
12 judicial notice filed concurrently herewith, and on such additional argument as may be presented
13 at the hearing on the demurrer.

14
15 Dated: November 10, 2011

BEST BEST & KRIEGER LLP

16
17 By: 

18 CHRISTOPHER M. PISANO
19 PAETER E. GARCIA
20 Attorneys for Defendant
21 CALIFORNIA STEEL INDUSTRIES, INC.
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DEMURRER

Defendant CSI hereby demurs to the complaint of Plaintiff as follows:

Demurrer to First Cause of Action:

1. The first cause of action fails to state facts sufficient to constitute a cause of action for quiet title. (Code Civ. Proc., § 430.10(e).)
2. The first cause of action fails to state facts sufficient to constitute a cause of action because it is barred by res judicata. (Code Civ. Proc., § 430.10(e).)
3. The first cause of action fails to state facts sufficient to constitute a cause of action because it is barred by collateral estoppel. (Code Civ. Proc., § 430.10(e).)
4. The first cause of action fails because there is another action pending between the same parties on the same cause of action. (Code Civ. Proc. § 430.10(c).)
5. The first cause of action fails for uncertainty. (Code Civ. Proc., § 430.10(f)).

Dated: November 10, 2011

BEST BEST & KRIEGER LLP

By: 

CHRISTOPHER M. PISANO
PAETER E. GARCIA
Attorneys for Defendant
CALIFORNIA STEEL INDUSTRIES, INC.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Defendant California Steel Industries, Inc. ("CSI") respectfully requests that the Court
4 sustain this demurrer without leave to amend because Plaintiff has not, nor can it plead a quiet
5 title cause of action. Indeed, Plaintiff seeks to quiet title to a right that has already been finally
6 adjudicated. Plaintiff's complaint is long on allegations that Plaintiff is a bona fide purchaser of
7 the entire water right at issue, and that it purchased this water right from the seller, CCG Ontario
8 LLC ("CCG"), without knowledge of the Chino Basin Judgment and post-Judgment Orders,
9 wherein the Superior Court of the County of San Bernardino has already deemed CSI to be the
10 joint owner of the water right. Apparently, based on the allegations in the complaint, CCG sold
11 Plaintiff a "sole ownership" interest in the adjudicated right to 630.274 acre-feet of groundwater
12 per year in the Chino Basin, but did not inform Plaintiff that there is an existing Court decree that
13 has awarded CSI a joint-ownership interest in that same water right. While Plaintiff's
14 predicament is unfortunate and may otherwise be actionable against CCG, this Court cannot now
15 take away CSI's joint-ownership interest in the water right, and thereby nullify prior rulings of
16 the Court pursuant to the Chino Basin Judgment and post-Judgment Orders in that action.

17 The Court should sustain this demurrer without leave to amend for four key reasons, each
18 of which will be discussed herein. First, the complaint necessarily fails to state a cause of action
19 for quiet title because Plaintiff all but concedes to CSI's joint-ownership interest in the
20 adjudicated right to 630.274 acre-feet per year pursuant to the Chino Basin Judgment and post-
21 Judgment Orders, and Plaintiff does not, and cannot allege that its predecessor, CCG, was the sole
22 and exclusive legal owner of that water right. Prior Orders of the Court show on their face that
23 Plaintiff's predecessor only held a joint-ownership interest in the water right at issue, and
24 therefore Plaintiff has not, and cannot meet the elements to quiet title as the sole owner of the
25 right. Second, and in a similar vein, the complaint must fail because the same water right claimed
26 by Plaintiff has already been finally adjudicated and resolved pursuant to the prior Chino Basin
27 Judgment and post-Judgment Orders, and Plaintiff is therefore barred by the doctrine of res
28 judicata. Third, Plaintiff's claim is barred by the doctrine of collateral estoppel, as the issue of

1 joint-ownership in the right to 630.274 acre-feet per year has already been fully and finally
2 resolved pursuant to the Chino Basin Judgment and post-Judgment Orders. Fourth, and in the
3 alternative, the Court should sustain the demurrer because there is another action pending
4 between the same parties on the same cause of action.

5 In short, Plaintiff's complaint, to the extent any of the allegations are true, does not lend
6 itself to a quiet title action. Instead, the complaint tells the story of an unwary and
7 unsophisticated transaction, wherein – according to Plaintiff's allegations – it was sold something
8 that the seller, CCG, did not own. Namely, Plaintiff alleges it was sold a “sole ownership”
9 interest in the adjudicated right to 630.274 acre-feet per year pursuant to the Chino Basin
10 Judgment, yet Court Orders entered pursuant to the Judgment show on their face that the water
11 right claimed by Plaintiff is held in joint ownership. If the story in the complaint was true, it
12 would be akin to that of the tourist who claimed to have bought the Brooklyn Bridge. While the
13 tourist almost certainly had a claim against the seller, he had absolutely no claim to quiet title to
14 the Brooklyn Bridge, as the legal rights to the Bridge had already been established. To the extent
15 that Plaintiff may have any claim at all, it is suing the wrong party and for the wrong cause of
16 action. This is not a proper quiet title action. Plaintiff's complaint is barred for multiple reasons,
17 and the Court should sustain the demurrer without leave to amend.

18 19 **II. STATEMENT OF FACTS**

20 CSI denies the allegations in the complaint, denies wrongdoing and/or liability, and denies
21 that Plaintiff may quiet title to CSI's joint ownership interest to the water right at issue. However,
22 for purposes of its demurrer only, CSI accepts the factual allegations in the complaint as true.

23 **A. Plaintiff Alleges It Is a Bona Fide Purchaser of the Entire Water Right at** 24 **Issue, And that CCG Failed to Disclose CSI's Joint Ownership Interest at the** 25 **Time of Sale**

26 According to the complaint, on December 24, 2008 Plaintiff purchased 630.274 acre-feet
27 of adjudicated overlying water rights in the Chino Basin from its predecessor CCG, which water
28 rights exist pursuant to the Chino Basin Judgment. (Complaint, ¶¶ 4-5.) Prior to the sale,
Plaintiff alleges to have searched official real property records to determine whether there were

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1 any adverse claims to the water right, wherein Plaintiff engaged a title insurance company to
2 conduct a search of real property records. (Complaint, ¶¶ 8-9.) According to Plaintiff, it
3 discussed the ownership of the water right with CCG and reviewed CCG's documents prior to the
4 sale, and CCG gave Plaintiff "customary representations and warranties" that it was the sole
5 owner of the water right. (Complaint, ¶¶ 10-12.)

6 Plaintiff further alleges that, prior to the purchase of the water right, it examined the most
7 recent annual report of the Chino Basin Watermaster, and discussed the proposed purchase with
8 Watermaster staff, which did not disclose CSI's joint-ownership interest in the water right.
9 (Complaint, ¶¶ 13-14.) Plaintiff also alleges to have submitted written applications to two
10 Committees and the Board of the Chino Basin Watermaster regarding the transfer of the water
11 right from CCG to Plaintiff, which applications were considered at public hearings, and nobody
12 disclosed CSI's joint-ownership interest in the water right. (Complaint, ¶¶ 15-17.)

13 Based on the forgoing, Plaintiff alleges that it is a bona fide purchaser of – and now
14 "solely owns" – the entire right to 630.274 acre-feet per year under the Chino Basin Judgment,
15 and that it acquired such right from CCG for "valuable consideration," and without knowledge or
16 notice of CSI's joint-ownership interest in the water right. (Complaint, ¶ 7.) Plaintiff asserts a
17 single cause of action against CSI to quiet title to CSI's adjudicated joint-ownership interest in the
18 water right at issue.

19 **B. The Court has Already Determined the Ownership Interests for Chino Basin**
20 **Groundwater Rights, Including the Joint-Ownership of the Water Right at**
21 **Issue, Pursuant to Its Continuing Jurisdiction over the Chino Basin Judgment**

22 As alleged in the complaint, the right to extract groundwater in the Chino Basin was
23 previously determined through a complex adjudication process in a case entitled *Chino Basin*
24 *Municipal Water District v. City of Chino*, San Bernardino County Superior Court Case No.
25 51010 (the "Chino Basin Adjudication"). The Chino Basin Adjudication resulted in a final
26 Judgment dated January 27, 1978 (the "Judgment").¹ (Complaint ¶ 4.)

27 ¹ A true and correct copy of the 1978 Judgment is attached as Exhibit "1" to the Request for
28 Judicial Notice in Support of Defendant California Steel Industries' Demurrer ("RJN") filed
concurrently herewith. Plaintiff is aware of the 1978 Judgment, as alleged in the complaint, and
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1 The purpose and objective of the Judgment is "to establish a legal and practical means for
2 making the maximum reasonable beneficial use of the waters of Chino Basin by providing the
3 optimum economic, long-term, conjunctive utilization of surface waters, ground waters and
4 supplemental water, to meet the requirements of water users having rights in or dependent upon
5 the Chino Basin." (RJN, Exh. 1, ¶ 39.) The terms of the Judgment are applicable to and binding
6 upon the parties to the Chino Basin Adjudication, and their respective heirs, successors and
7 assigns. (RJN, Exh. 1, ¶ 63.) The San Bernardino County Superior Court that presided over the
8 Chino Basin Adjudication retains "full jurisdiction, power and authority" as to "all matters
9 contained in the Judgment" except as otherwise specified therein. (RJN, Exh. 1, ¶ 15.) As is
10 common with groundwater basin adjudications, the Court appointed a Watermaster "to administer
11 and enforce the provisions of [the] Judgment and any subsequent instructions or orders of the
12 Court," and the Judgment sets for the specific powers and duties of the Watermaster, "subject to
13 the continuing supervision and control of the Court." (RJN, Exh. 1, ¶¶ 16-17.)

14 Under the Judgment, the adjudicated groundwater extraction rights in the Chino Basin are
15 categorized among three different pools, which are referred to as the "Overlying Agricultural
16 Pool," the "Overlying Non-Agricultural Pool," and the "Appropriative Pool." These pools reflect
17 all of the groundwater extraction rights for the entire Chino Basin. (RJN, Exh. 1, ¶ 13.) The
18 Judgment authorizes the assignment, transfer and lease of the different types of adjudicated rights
19 according to specified terms and conditions. (See RJN, Exh. 1, at Exhibits G and H thereto.) The
20 Judgment further specifies as follows: "Loss, whether by abandonment, forfeiture or otherwise,
21 of any right herein adjudicated shall be accomplished only (1) by a written election by the owner
22 of the right filed with the Watermaster, or (2) by order of the Court upon noticed motion and after
23 hearing." (RJN, Exh. 1, ¶ 61.)

24 C. **The Court has Already Determined that CSI is the Joint Owner of the**
25 **630.274 Acre-Foot Per Year Water Right at Issue, And that this Jointly-Held**
26 **Right was Awarded to CSI and Plaintiff's Predecessors in Interest**

27 As stated above, under the 1978 Judgment, the Court maintains continuing jurisdiction
28 Plaintiff further concedes that the 1978 Judgment and the Chino Basin Adjudication are related to
this case, as Plaintiff has filed a notice of related cases in this action.

1 over the adjudicated water rights in the Chino Basin. This specifically includes the 630.274 acre-
2 foot right at issue in this action. In 1995, the Court entered an Order pursuant to its continuing
3 jurisdiction over Chino Basin groundwater extraction rights, and the Order provides, among other
4 things, that "Kaiser and CSI have mutual rights to the beneficial use of the Joint Water Rights as
5 defined and provided in the Water Rights Acknowledgment." (RJN Exh. 2, p. 10.)² Reference
6 to "Kaiser" in the 1995 Order pertains to Kaiser Ventures, Inc., successor to Kaiser Steel
7 Corporation, an original party to the Chino Basin Adjudication and the 1978 Judgment. (RJN
8 Exh. 2, pp. 5, 12, 26; Complaint, Exh. A, p. 2.)

9 The 1995 Order states that the Water Rights Acknowledgment and the Water Rights
10 Agreement between Kaiser and CSI are part of, and attached to, the Stipulation between those
11 two parties which was approved by the Court as part of the 1995 Order. (RJN Exh. 2, p. 10.) The
12 Water Rights Acknowledgment expressly provides, among other things, that Kaiser and CSI hold
13 a joint ownership interest in the "Joint Water Rights" defined as "630.274 acre feet annually of
14 the decreed water rights" that were established under the Judgment. (RJN Exh. 2, pp. 26-27, 31.)
15 The 1995 Water Rights Acknowledgment explains that Kaiser Steel Corporation was a land
16 owner and business in Fontana, and was awarded certain groundwater rights as an original party
17 to the Chino Basin Adjudication and resulting 1978 Judgment. (RJN Exh. 2, pp. 26-27.) It also
18 shows that in the late 1980s, CSI acquired a portion of the Kaiser land, and additional land from a
19 third party, and Kaiser agreed to deliver water to CSI for its business operation. (RJN Exh. 2, pp.
20 26-27.) In the early 1990s, a dispute arose between Kaiser and CSI over the groundwater rights
21 subject to the Judgment, and CSI filed motions to interpret and modify the Judgment in the Chino
22 Basin Adjudication. (RJN Exh. 2, pp. 27-28.) Kaiser and CSI resolved the dispute by executing
23 a 1995 Stipulation, the Water Rights Agreement, and Water Rights Acknowledgment which,
24 among other things, established their joint-ownership interest in the 630.274 acre-feet of
25 adjudicated water rights under the Judgment. (RJN Exh. 2, pp. 5, 28-29, 31-33.) Pursuant to its
26

27 ² A true and correct copy of the Notice of Order, including the Court's 1995 Stipulation and
28 Order and related attachments, is attached as Exhibit "2" to CSI's RJN filed concurrently
herewith.

1 continuing jurisdiction over the 1978 Judgment and the water rights adjudicated therein, the Court
2 approved the Stipulation, the Water Rights Agreement, and the Water Rights Acknowledgment,
3 and incorporated those documents as part of its 1995 Order. (RJN Exh. 2, p. 10.) Accordingly,
4 the Court made a final determination regarding the joint-ownership interest held by Kaiser and
5 CSI to the 630.274 acre-feet of annual groundwater production rights under the Judgment.

6 **D. Plaintiff is the Successor to CCG, Which was the Successor to Kaiser, And**
7 **Therefore Plaintiff is Bound by the Judgment and Post-Judgment Orders**
8 **Establishing the Joint-Ownership Interests in the Water Right at Issue**

9 In 2001, CCG became Kaiser's successor-in-interest under the Judgment by acquiring,
10 among other things, Kaiser's joint-ownership interest in the right to 630.274 acre-feet per year
11 pursuant to the Judgment and the post-Judgment 1995 Order (above). As part of acquiring
12 Kaiser's water right interests, CCG filed a petition with the Court to intervene as a party to the
13 Chino Basin Adjudication and the Judgment. (RJN Exh. 3, pp. 3-5.)³ In its petition, CCG stated
14 that it was the successor-in-interest to Kaiser, and CCG requested that the Court "recognize its
15 Overlying Non-Agricultural Rights" as including "630.274 acre-feet as tenants in common with
16 California Steel Industries, Inc." (RJN Exh. 3, pp. 3-5.)

17 On July 19, 2001, the Court issued an Order in the Chino Basin Adjudication approving of
18 CCG's intervention and expressly determining its joint-ownership interest in the right to 630.274
19 acre-feet per year under the Judgment, a right that was jointly held with CSI. (RJN Exh. 4, pp. 1-
20 4.)⁴ The Court's 2001 Order provides in relevant part:

- 21 1. CCG Ontario, LLC is granted leave to intervene and
22 become a Party to the Judgment herein;
- 23 2. CCG Ontario, LLC shall hereafter be a Party bound by the
24 Judgment herein entitled to all the rights and privileges
25 accorded under the Physical Solution in the Judgment

26 ³ A true and correct copy of CCG's Petition in Intervention, along with Watermaster's Joinder to
27 Petition in Intervention by CCG, is attached as Exhibit "3" to CSI's RJN filed concurrently
28 herewith.

⁴ A true and correct copy of the Court's July 19, 2001 Order is attached as Exhibit "4" to CSI's
RJN filed concurrently herewith.

1 through the Overlying Non-Agricultural Rights Pool shown
2 on Exhibit D to the Judgment in place of Kaiser Steel
3 Corporation;

4 3. CCG Ontario, LLC's Overlying Agricultural Rights are:

5 (a) 525 annual acre-feet;

6 (b) 475 annual acre-feet as tenants in common with the
7 California Speedway Corporation ("TCS") with TCS having
8 the right of first use;

9 (c) 630.274 acre-feet as tenants in common with
10 California Steel Industries, Inc. ("CSI"), with CSI having
11 the right of use, with payment to CCG Ontario, LLC,
12 through June 30, 2004, and CCG Ontario, LLC having the
13 right of first use thereafter

14 (RJN Exh. 4, p. 3, emphasis added.)

15 As alleged in the complaint, in December 2008 Plaintiff purchased from CCG "630.274
16 acre feet of adjudicated overlying water rights in the Chino Basin" that were awarded "under and
17 pursuant to the Judgment" in the Chino Basin Adjudication. (Complaint, ¶¶ 4-5.) In other words,
18 Plaintiff purchased CCG's legal interest in the right to 630.274 acre-feet per year, which under
19 the Chino Basin Adjudication and the Judgment is a right held in joint-ownership with CSI, as the
20 Court has determined in both the 1995 Order and the 2001 Order.

21
22 **III. LEGAL ARGUMENT**

23 **A. Basis for a Demurrer**

24 Code of Civil Procedure section 430.30(a) provides: "When any ground for objection to a
25 complaint, cross-complaint, or answer appears on the face thereof, or from any matter of which
26 the court is required to or may take judicial notice, the objection on that ground may be taken by
27 demurrer to the pleading." (Code Civ. Proc. § 430.30, subd. (a).)

28 A demurrer is proper when the allegations in the complaint do not state facts sufficient to

1 constitute a cause of action or when the pleading is uncertain. (Code Civ. Proc. § 430.10, subd.
2 (e) and (f); *see Johnson v. State Bar of California* (1968) 268 Cal.App.2d 437 (no facts and
3 circumstances were set forth in the complaint); *Legg v. Ford* (1960) 185 Cal.App.2d 534
4 (complaint failed to state facts sufficient to constitute cause of action and demurrers were
5 properly sustained).) In ruling on a demurrer, the Court may consider both the facts appearing on
6 the face of the complaint, and any matter of which judicial notice is properly taken. (*Blank v.*
7 *Kirwan* (1985) 39 Cal.3d 311, 318.)

8 **B. The Court Should Sustain CSI's Demurrer Because Plaintiff Cannot Allege a**
9 **Cause of Action to Quiet Title**

10 An owner of property may bring an action to quiet title against persons who claim to be an
11 owner of an interest in the same property. (Code Civ. Proc. § 760.010 *et. seq.*) A quiet title
12 action is basically a foreclosure action because the effect of a judgment is to foreclose adverse
13 claims against the rightful owner's title. (*See Jones v. Sacramento Sav. & L. Ass'n* (1967) 248
14 Cal.App.2d 522, 530.) To prevail on a quiet title claim, the plaintiff must prove that he/she is the
15 rightful owner of the interest claimed. (*Gerhard v. Stephens* (1968) 68 Cal.2d 864, 918.)

16 Plaintiff has not alleged a valid quiet title cause of action, nor can it. Plaintiff alleges that
17 its right to 630.274 acre-feet of water per year in the Chino Basin is an adjudicated right that it
18 purchased from CCG and that was established and resolved "under and pursuant to" the Judgment
19 in the Chino Basin Adjudication. (Complaint, ¶¶ 4-5.) Indeed, the very grant deed by which
20 Plaintiff acquired the water rights specifically refers to the Judgment, and therefore the
21 applicability of the Judgment and Chino Basin Adjudication to the water right at issue is not in
22 dispute. (Complaint, Exh. "A.") Plaintiff alleges that it purchased CCG's interest in the
23 adjudicated water right, however Plaintiff does not allege that CCG was the *sole owner* of the
24 right to 630.247 acre-feet per year under the Judgment when CCG conveyed its right to Plaintiff
25 in 2008 or at any other time. Plaintiff cannot make such a claim because the Judgment and the
26 1995 and 2001 Orders subsequently entered pursuant to the Judgment expressly provide that CCG
27 was only a *joint owner* of the water right, and that CSI is the other joint owner. The complaint
28 does not allege, nor can it, that any post-Judgment Order has been entered to show that CSI has

1 abandoned or otherwise lost its joint-ownership right to the 630.274 acre-feet per year.

2 Plaintiff concedes in its complaint that CSI claims to hold a joint-ownership interest in the
3 630.274 acre-feet of water rights pursuant to the Water Rights Agreement and Water Rights
4 Acknowledgment that are part of the Chino Basin Adjudication. (Complaint, ¶ 6.) Plaintiff
5 cannot ask this Court to foreclose on CSI's interest in water rights that have already been finally
6 adjudicated by another Court. If the allegations in the complaint are true, then CCG sold Plaintiff
7 something that it never owned. Yet much like the sale of the Brooklyn Bridge, the unwary buyer
8 might have recourse against the seller, but cannot bring an action to quiet title against the rightful
9 owner of the Bridge. Plaintiff has not and cannot state a cause of action to quiet title to the joint-
10 ownership right to 630.274 acre-feet per year that already has been awarded to CSI, and the Court
11 should sustain the demurrer without leave to amend.

12 **C. The Court Should Sustain CSI's Demurrer Because the Quiet Title Cause of**
13 **Action is Barred by the Doctrine of Res Judicata**

14 The doctrine of res judicata, or claim preclusion, prevents the re-litigation of issues that
15 were either decided in a former action or could have been litigated in a former action. (*Duffy v.*
16 *City of Long Beach* (1988) 201 Cal.App.3d 1352, 1357-58; *see also, Pollock v. Univ. of S. Cal.*
17 (2003) 112 Cal.App.4th 1416, 1427.) Under principles of res judicata, an action is barred if (1)
18 the prior action relied on was a final judgment on the merits; (2) the present action involves the
19 same cause of action as the prior action; and (3) there is privity between the parties to the prior
20 action and the present action. (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896;
21 *Busick v. Workmen's Comp. Appeals Bd.* (1972) 7 Cal.3d 967, 974.) Here, each of these elements
22 is satisfied as against Plaintiff, and the demurrer should be sustained without leave to amend.

23 **1. A Final Judgment On The Merits Has Been Entered in the Chino**
24 **Basin Adjudication Regarding the Award of Overlying Non-**
25 **Agricultural Rights in the Chino Basin.**

26 For purposes of res judicata, final judgment on the merits exists if the substance of the
27 claim has been tried and determined. (*Johnson v. City of Loma Linda* (2000) 24 Cal. 4th 61, 77;
28 *quoting, Witkin* (4th ed. 1997), *California Procedure*, Vol. 7 Judgment, § 313.) In this matter,
Plaintiff brings this action to quiet title to its "sole ownership" interest in "630.274 acre-feet of

1 adjudicated overlying water rights in the Chino Basin” that were awarded “under and pursuant to
2 the Judgment dated January 27, 1978” in the Chino Basin Adjudication. (Complaint, ¶¶ 1, 4.) In
3 connection with those allegations, Plaintiff “seeks a declaration that title to the water rights is
4 vested in Plaintiff alone ... and that [CSI] be declared to have no estate, right, title or interest in
5 the water rights, and that [CSI] be forever enjoined from asserting any estate, right, title or
6 interest in the water rights adverse to Plaintiff.” (Complaint, ¶ 20.) As indicated above, and as
7 expressly alleged in the complaint, the right to 630.274 acre-feet of groundwater per year to
8 which Plaintiff seeks to quiet title already has been adjudicated and established under and
9 pursuant to the final Judgment and post-Judgment Orders entered in the Chino Basin
10 Adjudication. (Complaint, ¶ 4, Exh. “A” thereto) There is no dispute that a final judgment has
11 been entered as to the right to 630.274 acre-feet per year in the Chino Basin.

12 **2. Plaintiff’s Complaint Involves the Same Cause of Action as Presented**
13 **in the Chino Basin Adjudication, the Judgment, and Post-Judgment**
14 **Orders of the Court.**

15 In determining whether a cause of action is identical for purposes of claim preclusion,
16 California courts apply the “primary rights” theory under which the invasion of one primary right
17 gives rise to a single cause of action. (*Slater v. Blackwood* (1975) 15 Cal.3d 791, 795; *Gamble v.*
18 *General Foods Corp.* (1991) 229 Cal.App.3d 893, 898.) The “cause of action” is based on the
19 substantive right violated or the harm suffered, rather than on the particular legal theory asserted
20 or relief sought by the plaintiff. (*Gamble, supra*, 229 Cal.App.3d at p. 899; *see also Peiser v.*
21 *Mettler* (1958) 50 Cal.2d 594, 605.) Thus, two actions constitute a single cause of action if they
22 both affect the same primary right. (*Weikel v. TCW Realty Fund II Holding Co.* (1997) 55
Cal.App.4th 1234, 1246.)

23 The primary right alleged here is that Plaintiff has a “sole ownership” right to 630.274
24 acre-feet of Overlying Non-Agricultural Rights that were established under and pursuant to the
25 final Judgment in the Chino Basin Adjudication. (See, e.g., Complaint ¶¶ 1, 4, 10-12, 20.)
26 Regardless of what theories Plaintiff may seek to assert as the basis of its purported right to the
27 630.274 acre-feet of water rights, it is clear – indeed it is expressly alleged – that the same
28 primary right was presented in the Chino Basin Adjudication and was determined under and

1 pursuant to the final Judgment in that case. (See Complaint, ¶ 4.)

2 Furthermore, and as fully explained in Section II above, pursuant to its continuing
3 jurisdiction the Court has issued two post-Judgment Orders (1995 and 2001), which confirm that
4 the right to the 630.274 acre-feet of Overlying Non-Agricultural Rights is jointly held, and that no
5 single party has a "sole ownership" interest in the right as alleged by Plaintiff. Both the 1995
6 Order and the 2001 Order show on their face that CSI is a joint holder of the water right. (RJN
7 Exhs. 2, 4.) Notwithstanding, Plaintiff now alleges it is the sole owner, and thus is trying to re-
8 litigate the same primary right that already has been litigated and decided on multiple occasions
9 in the Chino Basin Adjudication – i.e., that the right to the 630.247 acre-feet of Overlying Non-
10 Agricultural Rights under the Judgment is jointly owned, and that CSI is one of the joint owners
11 of that right.

12 **3. Plaintiff is the Successor in Interest to Parties to the Judgment, And**
13 **Its Ownership Interest in the Water Right at Issue has Already Been**
14 **Finally Determined.**

15 For claim preclusion to bar an action, the same parties or their privies must be involved in
16 both the prior and present actions. (*Rice v. Crow* (2000) 81 Cal. App. 4th 725, 734; *Busick v.*
17 *Workmen's Comp. Appeals Bd.* (1972) 7 Cal. 3d 967, 974; *see also*, Code Civ. Proc. §§ 1908 and
18 1910.) As indicated above, Plaintiff alleges that it has a "sole ownership" right to the 630.274
19 acre-feet of Overlying Non-Agricultural Rights that were established under and pursuant to the
20 final Judgment in the Chino Basin Adjudication (see, e.g., Complaint, ¶¶ 1, 4, 10-12, 20), and that
21 its right is based on a conveyance of said right from CCG. (Complaint, ¶¶ 4, 5.) CCG acquired
22 the same right from Kaiser, and both Kaiser and CCG were parties to the Judgment and post-
23 Judgment Orders in the Chino Basin Adjudication. (RJN, Exhs. 2-4.) Without question, and as
24 alleged by the complaint, Plaintiff is the successor-in-interest to the right held by Kaiser, and then
25 by CCG, to the 630.274 acre-feet of Overlying Non-Agricultural Rights at issue in this case. The
26 doctrine of res judicata applies, and it completely bars Plaintiff's action. The demurrer should be
27 sustained without leave to amend.
28

1 **D. The Court Should Sustain CSI's Demurrer Because the Quiet Title Cause of**
2 **Action is Barred by the Doctrine of Collateral Estoppel**

3 The doctrine of collateral estoppel, or issue preclusion, precludes re-litigation of an issue
4 previously adjudicated when the following requirements are satisfied: (1) the issue sought to be
5 precluded must be identical to that decided in a prior proceeding; (2) the issue must have been
6 actually litigated and necessarily decided in the prior proceeding; (3) the decision in the former
7 proceeding must be final and on the merits; and (4) the party against whom issue preclusion is
8 asserted must be the same as or in privity with the party to the prior proceeding. (*Silver v. Los*
9 *Angeles County Met. Trans. Auth.* (2000) 79 Cal. App. 4th 338, 357; *Kelly v. Vons Companies,*
10 *Inc.* (1998) 67 Cal. App. 4th 1329, 1339.) All such requirements are satisfied in this case.

11 **1. The Water Right Issue Raised by Plaintiff has been Decided in the**
12 **Chino Basin Adjudication, Judgment and Post-Judgment Orders.**

13 For purposes of collateral estoppel, identity of issues is not determined by the nature of
14 the proceeding or the relief requested, but by whether a particular issue in the present action was
15 adjudicated in the prior action. (*Producers Dairy Delivery Co. v. Sentry Ins. Co.* (1986) 41 Cal.
16 3d 903, 910; *Plumley v. Mockett* (2008) 164 Cal. App. 4th 1031; *Lumpkin v. Jordan* (1996) 49
17 Cal.App.4th 1223, 1231.) As set forth above, Plaintiff alleges that it has a "sole ownership" right
18 to the 630.274 acre-feet of Overlying Non-Agricultural Rights that were established under and
19 pursuant to the final Judgment in the Chino Basin Adjudication. (See, e.g., Complaint, ¶¶ 1, 4,
20 10-12, 20.) Also discussed above, the Court has already issued at least two post-Judgment Orders
21 (1995 and 2001), pursuant to its continuing jurisdiction over the Judgment, which expressly
22 determine that the right to the 630.247 acre-feet of Overlying Non-Agricultural Rights under the
23 Judgment are jointly owned, and that CSI is one of the joint owners of that right. The focus of the
24 Chino Basin Adjudication, the Judgment, and the 1995 and 2001 post-Judgment Orders was the
25 issue of what persons have the right, title or interest to adjudicated groundwater rights in the
26 Chino Basin. The water right and ownership issues raised by Plaintiff with regard to the 630.274
27 acre-feet of adjudicated rights under the Chino Basin Judgment have already been decided.

1 2. **The Water Rights Issue Raised by Plaintiff has been Actually Litigated**
2 **and Necessarily Decided in the Chino Basin Adjudication**

3 An issue is actually litigated and necessarily decided when it is properly raised by the
4 pleadings or otherwise, is submitted for determination, and a judgment is rendered. (*Younan v.*
5 *Caruso* (1996) 51 Cal. App. 4th 401, 407; *citing, People v. Sims* (1982) 32 Cal. 3d 468, 484.)
6 Whatever issue was actually and necessarily included in a former judgment will be deemed to
7 have been adjudged thereby. (*Ball v. Rodgers* (1960) 187 Cal. App. 2d 442, 448.) While it
8 hardly warrants repeating at this point, the issues of what persons have the right, title or interest to
9 adjudicated groundwater rights in the Chino Basin – and whether the right to 630.274 acre-feet of
10 Overlying Non-Agricultural Rights is held under joint ownership – have been properly raised,
11 actually litigated, submitted for determination, and decided pursuant to the Judgment and the
12 1995 and 2001 post-Judgment Orders in the Chino Basin Adjudication.

13 3. **The Chino Basin Adjudication and Subsequent Orders of the Court**
14 **have Resulted in a Final Decision on the Merits Regarding.**

15 For issue preclusion to apply, the final decision on the merits can be a judgment, a motion,
16 or an order that determines a substantial matter of right on issues of fact or law. (*People v. Howie*
17 (1995) 41 Cal. App. 4th 729, 736-737; *see also*, Code Civ. Proc. § 577 [judgment is final
18 determination of rights of parties in action or proceeding].) In this case, the final Judgment in the
19 Chino Basin Adjudication constitutes a final decision as to the awarding and ownership of
20 Overlying Non-Agricultural Rights in the Chino Basin. In addition, pursuant to its continuing
21 jurisdiction over the Judgment, the Court has entered at least two subsequent Orders (1995 and
22 2001) to establish and confirm that the right to 630.274 acre-feet of Overlying Non-Agricultural
23 Rights is held in joint ownership, and that CSI is one of the joint owners of that right.

24 4. **There is Privity Between Plaintiff and Parties to the Chino Basin**
25 **Adjudication.**

26 Whether privity exists is determined by analyzing the circumstances that are involved in
27 each case, where courts apply a practical approach that addresses the question of whether the
28 nonparty is sufficiently close to the original case so that issue preclusion may be applied. (*Martin*

1 v. *County of Los Angeles* (1996) 51 Cal. App. 4th 688, 700.) As fully set forth above, privity
2 exists between Plaintiff, CCG and Kaiser, and Plaintiff is the alleged successor-in-interest to the
3 right to 630.247 acre-feet of Overlying Non-Agricultural Rights under the Judgment. (Complaint,
4 ¶¶ 4-6.) This privity, together with the discussion above regarding the 1995 Order and 2001
5 Order establishing that the right to 630.274 acre-feet of Overlying Non-Agricultural Rights is
6 held in joint-ownership, fully demonstrate that this action is barred by collateral estoppel.

7 E. **In the Alternative, the Court Should Sustain CSI's Demurrer Because There**
8 **Is Another Action Pending between Plaintiff and CSI on the Same Cause of**
9 **Action**

10 A plea in abatement may be made by demurrer or answer when there is another action
11 pending between the same parties on the same cause of action. (Code Civ. Proc. § 430.10, subd.
12 (c); *Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal. App. 3d 781, 787-788.) If a court
13 determines that there is another action pending that raises substantially the same issues between
14 the same parties, it shall enter an interlocutory judgment in defendant's favor. (Code Civ. Proc. §
15 597; *Leadford v. Leadford* (1992) 6 Cal.App.4th 571, 574.)

16 As demonstrated above, the final Judgment and post-Judgment Orders in the Chino Basin
17 Adjudication preclude this action based on res judicata and/or collateral estoppel. However, as an
18 alternate grounds for sustaining this demurrer, at the very least there is another action pending,
19 i.e. the Chino Basin Adjudication, and as a successor-in-interest and as a party to that action,
20 Plaintiff must bring any challenge to CSI's adjudicated water right in that other action. Pursuant
21 to the Judgment, the Court has continuing jurisdiction over CSI's joint-ownership interest in the
22 right to 630.274 acre-feet of Overlying Non-Agricultural Rights, and CSI can only lose its
23 adjudicated water rights by a written election filed with the Watermaster, or by Order of the Court
24 upon noticed motion and after hearing to change CSI's right as set forth in the prior 1995 and
25 2001 Orders. (RJN, Exh. 1, ¶ 61; Exhs. 2, 4.) The complaint has not alleged that CSI has lost its
26 adjudicated, joint-ownership right to 630.274 acre-feet per year in accordance with the Judgment.
27 Any attempt by Plaintiff to quiet title to CSI's adjudicated water right under the Judgment must
28 be brought as part of the Chino Basin Adjudication. Accordingly, the Court should not move
forward with this action, and should sustain the demurrer without leave to amend.

1 **IV. CONCLUSION**

2 For the reasons stated herein, CSI respectfully requests that the Court sustain the demurrer
3 without leave to amend.
4

5 Dated: November 10, 2011

BEST BEST & KRIEGER LLP

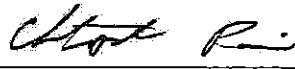
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EXHIBIT C

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11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN BERNARDINO

14 Aqua Capital Management LP,
15 Plaintiff

16 vs.

17 California Steel Industries, Inc. and DOES 1
18 through 50, inclusive.

19 Defendants

Case No. CIVRS1108911
[Assigned to Hon. David Williams]

**PLAINTIFF'S OPPOSITION TO
DEMURRER TO COMPLAINT**

Date: December 19, 2011
Time: 8:30 a.m.
Dept.: R8

ACTION FILED: October 7, 2011
TRIAL DATE: None set

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I. INTRODUCTION

Plaintiff's Verified Complaint To Quiet Title (the "Complaint") is more than sufficient to state a cause of action against Defendant California Steel Industries, Inc. ("Defendant" or "CSI"). The water rights at issue in the Complaint are real property. The Complaint alleges that Plaintiff acquired title to the water rights in good faith and for valuable consideration, and recorded its interest without knowledge or notice of any prior interest claimed by CSI or any other person or entity; Plaintiff is therefore a bona fide purchaser for value of the water rights, and solely owns the water rights free and clear of any unrecorded interest asserted by CSI. (Complaint, ¶ 7)

California law provides that a bona fide purchaser for value who acquires its interest in real property without notice of another's asserted rights in the property takes the property free of such unknown rights. *See, e.g., Hochstein v. Romero* (1990) 219 Cal.App.3d 447, 451. This rule applies regardless of whether the unknown rights were created by legal action, court order or judgment. *Stout v. Gill* (1930) 110 Cal. App. 445, 448-49; *Strutt v. Ontario Savings and Loan Association* (1970) 11 Cal.App.3d 547, 555. CSI's argument that its unrecorded rights are not subject to this rule because they were created by virtue of a judgment and court orders, cast generally in terms of *res judicata* and collateral estoppel, is simply wrong.

On the contrary, California courts have repeatedly held that judgments or court orders affecting the title to real property have no effect on the rights of a bona fide purchaser for value who acquires its interest without actual or constructive knowledge of them and in reliance on the record title. *See, e.g., Stout, supra*, 110 Cal. App. at 448-49. As the Court of Appeal explained in *Stout*, constructive notice of such a property interest is easily provided by recording the judgment or order in the county in which the property is situated. *Id.* at 448 ("Ample provision is made in our codes to enable a person securing such a judgment to give constructive notice thereof in any county where real property covered thereby may be situated.") The policy of California law in this respect is to encourage the prompt and accurate recording of interests in real property, to protect bona fide purchasers from unrecorded interests and to place the risk of loss on the party who through inadvertence or neglect fails to promptly and accurately record its interests. *See, e.g., Dyer v. Martinez* (2007) 147 Cal.App.4th 1240, 1244, 1247.

Accordingly, even with respect to lawsuits filed in the county in which the subject real property is

1 situated, actions, court orders and judgments directly affecting the title to real property do not constitute
2 constructive notice to a bona fide purchaser for value unless they are properly recorded in the office of
3 the county recorder. *Id. at 1246; Strutt, supra*, 11 Cal.App.3d at 555. Indeed, California law provides
4 that even *recorded* judgments, court orders and notices of litigation do not constitute constructive notice
5 to a prospective purchaser of real property unless and until they are indexed or filed in the office of the
6 county recorder in a manner that permits them to be located by a diligent title search. *See, Hochstein,*
7 *supra*, 219 Cal.App.3d at 452 (upholding the rights of bona fide purchasers for value despite an abstract
8 of judgment that was recorded but improperly indexed); *Dyer, supra*, 147 Cal.App.4th at 1243
9 (upholding the rights of a bona fide purchaser despite a *lis pendens* that was recorded before, but not
10 indexed until after, a bona fide purchaser took title). As the Court of Appeal explained in *Dyer*, “[f]or
11 over a century, the law in California has been that a bona fide purchaser of real property has constructive
12 notice of only those matters that could be located by a diligent title search.” *Id.*

13 As these authorities demonstrate, the issue properly presented by CSI’s demurrer is whether
14 anything in the Complaint or the material of which CSI has requested judicial notice establish that
15 Plaintiff had actual or constructive knowledge of CSI’s claimed prior interest at the time Plaintiff
16 acquired and recorded its title to the water rights. The answer is clearly and unequivocally no. There is
17 no indication that CSI ever recorded any judgment or court order reflecting any interest of CSI in the
18 water rights in the San Bernardino County real property records. Absent recording, the judgment and
19 orders of which CSI requests judicial notice have no effect upon the rights of Plaintiff, who had no actual
20 knowledge of them. CSI’s demurrer is contrary to controlling California law and should be overruled.

21 II. LAW AND ARGUMENT

22 A. The Complaint States A Cause Of Action To Quiet Title Against CSI.

23 Code of Civil Procedure section 760.020 authorizes an action “to establish title against adverse
24 claims to real or personal property or any interest therein.” Cal. Code of Civ. Proc. § 760.020. The water
25 rights at issue in the Complaint are real property. *Nunes v. MTGLQ Investors, L.P.* (1997) 1997 Bankr.
26 LEXIS 1303, 12. “In an ordinary action to quiet title it is sufficient to allege in simple language that the
27 plaintiff is the owner and in possession of the [real property] and that the defendant claims an interest
28 therein adverse to him.” *South Shore Land Company v. Petersen* (1964) 226 Cal. App.2d 725, 740. The

1 Complaint easily satisfies this standard.¹

2 The Complaint alleges that Plaintiff acquired title to the water rights in good faith and for
3 valuable consideration, and recorded its interest without knowledge or notice of any prior interest
4 claimed by CSI or any other person or entity. (Complaint, ¶ 7) Plaintiff is therefore a bona fide
5 purchaser for value of the water rights, and solely owns the water rights free and clear of any unrecorded
6 interest asserted by CSI. (*Id.*)

7 “It is well established that a bona fide purchaser for value who acquires his interest in real
8 property without notice of another's asserted rights in the property takes the property free of such
9 unknown rights.” *Hochstein, supra*, 219 Cal.App.3d at 451, citing *Stout, supra*, 110 Cal.App. at 449,
10 and 4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, § 206, p. 411. This rule applies
11 regardless of whether the unknown rights were created by legal action, court order or judgment. *Stout*,
12 *supra*, 110 Cal. App. at 448-49; *Strutt, supra*, 11 Cal. App.3d at 555. Judgments or court orders
13 affecting the title to real property have no effect on the rights of a bona fide purchaser for value who
14 acquires its interest without actual or constructive knowledge of them and in reliance on the record title.
15 *Id.*

16 In *Stout*, for example, the appellant made the same argument CSI makes in this case – that
17 because a prior superior court judgment had determined that the person from whom the bona fide
18 purchaser had bought the property had no title, the judgment was conclusive and binding to the effect
19 that the person could convey none to the bona fide purchaser. The *Stout* court rejected this argument,
20 holding that the judgment, “not having been recorded in the county of San Bernardino, had no effect on
21 the rights of respondents, who had no actual notice thereof.” *Supra*, 110 Cal. App. at 449. *See also*
22 *Strutt, supra*, 11 Cal. App. 3d at 555 (reiterating that “[u]nless . . . a judgment is recorded in the county
23 where the property is situated, no constructive notice is imputed to the purchaser”).

24 In reaching its conclusion, the *Stout* court noted that the appellant had neglected to record the
25

26 ¹ CSI contends that the Complaint fails to state a quiet title cause of action because it does not allege sole
27 ownership on the part of Plaintiff's seller; this contention is incorrect. The Complaint contains several
28 allegations confirming the sole ownership of Plaintiff's seller. (Complaint, ¶¶ 10-13 and 18) In any
event, alleging sole ownership on the part of Plaintiff's seller is not an essential element of a quiet title
cause of action.

1 judgment in interlocutory form for two years, and in its final form for a year, before the respondents
2 purchased the real property in reliance on the real property records. The *Stout* court held that under these
3 circumstances, the fact the respondents had bought the real property in reliance on the record title was
4 due to the laches of the appellant, and that by allowing the real property records to reflect the person
5 from whom the bona fide purchaser had bought the property as the owner, appellant was estopped from
6 disputing the validity of the title conveyed to the bona fide purchaser. *Id.* at 449.

7 The same conclusion is warranted in this case, for even stronger reasons. CSI is attempting to
8 rely on a judgment and orders from *Chino Basin Municipal Water District v. City of Chino*, Case No.
9 RCV 51010 (the “Chino Basin action”) that it has neglected to record in the San Bernardino real property
10 records for more than 16 years. Plaintiff purchased the water rights in reliance on its own and its title
11 company’s search of the real property records (Complaint ¶¶ 8 and 9), which confirmed the seller’s sole
12 ownership of the water rights. As *Stout* demonstrates, under these circumstances, Plaintiff’s purchase of
13 the water rights on the basis of title reflected in the San Bernardino County real property records was due
14 to the laches of CSI and CSI is estopped from disputing the validity of the title conveyed to Plaintiff.

15 As *Stout* demonstrates, absent recording, the judicial material from the Chino Basin Action of
16 which CSI requests judicial notice has no effect on Plaintiff’s title to the water rights because Plaintiff
17 had no *actual notice* of CSI’s putative joint interest in them.² Furthermore, as a matter of California law,
18 Plaintiff may not be charged with *constructive notice* of this judicial material absent proof that it was
19 properly recorded in the office of the San Bernardino County recorder. *Stout, supra*, 110 Cal. App. at
20 448-49; *Strutt, supra*, 11 Cal.App.3d at 555.

21 It has been the law in California for over a century that “a bona fide purchaser of real property has
22 constructive notice of only those matters that could be located by a diligent title search.” *Dyer, supra*,
23 147 Cal. App.4th at 1243. Accordingly, even *recorded* judgments, orders and notices of litigation do not
24 constitute constructive notice to a prospective purchaser of real property unless and until they are indexed
25

26 ² Whether Plaintiff is a bona fide purchaser for value is a question of fact. *Melendrez v. D & I*
27 *Investment* (2005) 127 Cal. App. 4th 1238, 1254. The allegation that Plaintiff acquired title to the water
28 rights in good faith and for valuable consideration, and recorded its interest without knowledge or notice
of any prior interest claimed by CSI, is deemed admitted on demurrer. *Quelimane Co., Inc. v. Stewart*
Title Guar. Co. (1998) 19 Cal. 4th 26, 38.

1 or filed in the office of the county recorder in a manner that permits them to be located by a diligent title
2 search. Applying this rule, California courts have upheld the rights of bona fide purchasers even where
3 an abstract of judgment was recorded but improperly indexed (see *Hochstein, supra*, 219 Cal.App.3d
4 447, 452), and where a *lis pendens* was recorded before, but not indexed until after, the purchaser took
5 title. *Dyer, supra*, 147 Cal. App. 4th at 1243.

6 In this case, CSI's complete failure to record any indicia of its putative joint interest in the water
7 rights in the San Bernardino County real property records precludes it from establishing constructive
8 notice of those rights on the part of Plaintiff as a matter of law. There is no indication that CSI ever
9 recorded any of the contractual or judicial documents reflecting its interest in the water rights in the San
10 Bernardino County real property records. CSI claims to be a joint owner of the water rights pursuant to a
11 Water Rights Agreement and a Water Rights Acknowledgement, each dated as of June 1, 1995.
12 (Complaint, ¶ 6) Although section 3 of the Water Rights Agreement provides that CSI had the right and
13 ability to record the Water Rights Acknowledgment in the official real property records of San
14 Bernardino County, California, CSI failed to record the Water Rights Acknowledgment, or any
15 instrument relating to it. Likewise, there is no indication that any of the judicial material of which CSI
16 requests judicial notice was recorded in the office of the county recorder, despite the fact that CSI was
17 authorized to record the material by statute and by the 1995 court order purportedly giving rise to CSI's
18 joint rights.

19 Plaintiff was entitled to rely on the San Bernardino County real property records. See *Caito v.*
20 *United California Bank* (1978) 20 Cal.3d 694, 702 (UCB had a right to rely on the record, as a purchaser
21 in good faith for value and without actual or constructive notice is entitled to protection against
22 undisclosed liens and equities existing against unrecorded instruments); see also *Stout, supra*, 110 Cal.
23 App. at 449-450 (a bona fide purchaser of real estate for value and without notice is entitled to protection
24 against undisclosed rights and titles; the fact that respondents bought the land in reliance upon the record
25 title was due to the laches of appellant herself, rather than to any negligence upon the part of
26 respondents). In the absence of a properly recorded judgment or order, no constructive notice may be
27 imputed to Plaintiff as a matter of law. CSI's demurrer is meritless and should be overruled.

1 **B. CSI's Plea In Abatement Must Fail Because the Parties and Causes of Action in the**
2 **Pending Related Case Are Not the Same.**

3 Code of Civil Procedure section 430.10, subdivision (c), authorizes a plea in abatement by
4 demurrer "[w]hen there is another action pending between the same parties on the same cause of action."
5 (Emphasis added.) CSI contends that the Chino Basin action constitutes an action between the same
6 parties on the same cause of action. This is patently incorrect. Nothing in the Chino Basin action can be
7 remotely construed as an action by Plaintiff to quiet title against CSI with respect to the water rights at
8 issue here.

9 At the time the Chino Basin action was filed in 1975, and resolved by the 1978 Judgment, neither
10 Plaintiff nor CSI were parties; only Plaintiff's predecessor in interest (three times removed) was a
11 defendant. The purpose of the Chino Basin action was to resolve competing interests in water rights in
12 the Chino Basin existing at that time, and to formulate a plan for the most economic use of the water in
13 the Chino Basin; the 1978 Judgment carried out those goals. The only reason that the court retained
14 jurisdiction was to enforce the 1978 Judgment, including "making such further or supplemental orders or
15 directions as may be necessary or appropriate for interpretation, enforcement or carrying out" the
16 Judgment, and "to modify, amend or amplify any of the provisions" of the Judgment.

17 The cases relied upon by CSI in support of its special demurrer pleading abatement are easily
18 distinguished from this case. In *Plant Insulation Co v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781,
19 appellant, a defendant in multiple personal injury and wrongful death cases arising out of exposure to
20 asbestos installed and distributed by appellant, brought a separate action against respondent, its
21 codefendant in those actions (the manufacturer of the asbestos), and respondent's insurer for breach of
22 contract and indemnity, *inter alia*, while numerous personal injury actions were still pending. Following
23 a hearing on respondent's demurrer, the trial court dismissed the complaint without prejudice with respect
24 to asbestos suits pending in other California courts, based on its determination that the doctrine of
25 exclusive concurrent jurisdiction applied because the subject matter arose out of the same transaction,
26 there were no issues presented that could not be determined in the pending asbestos suits, and all parties
27 were already before the court in those suits. *Id.* at 786. Similarly, *Leadford v. Leadford* (1992) 6
28 Cal.App.4th 571 involved two separate actions for breach of a marital settlement agreement brought by

1 the appellant against her respondent ex-husband – the same cause of action between the same parties.³

2 Factually, the present case is more similar to *Kuykendall v. State Bd. of Equalization* (1994) 22
3 Cal.App.4th 1194. In *Kuykendall*, the respondent contended, among other things, that the rule of
4 exclusive concurrent jurisdiction precluded the San Diego Superior Court, wherein appellant had brought
5 a class action suit for refunds of an allegedly unconstitutional tax, from assuming jurisdiction over said
6 refunds because the Riverside Court had retained jurisdiction to enforce its order in an earlier case
7 involving the tax funds. Although the issue of exclusive concurrent jurisdiction was not properly before
8 the Court (having been raised for the first time on appeal), the Court pointed out that, “even if the
9 Riverside court retained jurisdiction to enforce its order against the Agency, such continuing jurisdiction
10 did not preclude the San Diego court from asserting jurisdiction over appellant’s consumer class action
11 lawsuit seeking refunds.” The Court made the further point that appellant had not been a party to the
12 Riverside action. *Id.* at 1202. Similarly, the court in the Chino Basin action retained jurisdiction to
13 enforce the 1978 Judgment. Also, like *Kuykendall*, Plaintiff was not a party to the Chino Basin action.

14 The Chino Basin action is simply not one “between the *same parties* and on the *same cause of*
15 *action*” as the quiet title action brought by Plaintiff against CSI. CSI’s special demurrer based on its plea
16 in abatement is utterly devoid of merit.

17 **C. Plaintiff Requests Leave to Amend.**

18 Assuming, for the sake of argument only, that the Court were to sustain CSI’s demurrer, Plaintiff
19 requests leave to amend. It is axiomatic that even if a complaint does not state a cause of action, but
20 there is a reasonable possibility that the defect can be cured by amendment, leave to amend must be
21 granted. *Blank v. Kirwan*, 39 Cal. 3d 311, 318 (1985).

22
23 **III. CONCLUSION**

24 For the foregoing reasons, Plaintiff respectfully requests the Court to overrule Defendant

25
26 ³ The Appellate Court actually ruled in favor of the appellant and overruled the lower court’s demurrer
27 on procedural grounds, holding that exclusive concurrent jurisdiction could only be raised by demurrer
28 where both actions were pending in California (in that case, the earlier action was in Pennsylvania);
where the actions are pending in courts of different states, the determination whether to stay the later-
filed action is discretionary, and should be raised by motion rather than demurrer. *Leadford, supra*, 6
Cal.App.4th at 574.

1 California Steel Industries' demurrer to the Complaint.

2
3 Dated: December 6, 2011

McLEOD, MOSCARINO, WITHAM & FLYNN LLP

4
5
6 By: 

John P. Flynn (SBN 141094)
Attorneys for Plaintiff
Aqua Capital Management LP

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA }
3 COUNTY OF LOS ANGELES } ss

4 I am employed in the County of Los Angeles, State of California. I am
5 over the age of 18 and not a party to the within action. My business address is 707
6 Wilshire Boulevard, Suite 5000, Los Angeles, California 90017.

7 On December 6, 2011, I served the foregoing document(s) described as:

8 **PLAINTIFF'S OPPOSITION TO DEMURRER TO COMPLAINT**

9 by placing true copies thereof enclosed in sealed envelopes addressed as stated on the
10 attached mailing list.

11 ☐ **BY MAIL – CERTIFIED RETURN/RECEIPT** I placed such envelopes
12 with postage thereon prepaid in the United States Mail at 707 Wilshire Blvd,
13 Los Angeles, California 90017.

14 ☐ **BY PERSONAL SERVICE** I caused such envelope to be given to the
15 addressee.

16 ☐ **BY FACSIMILE** The above-referenced document (together with all exhibits
17 and attachments thereto) was transmitted via facsimile transmission to the
18 addressee(s) as indicated on the attached mailing list on the date thereof. The
19 transmission was reported as completed and without error.

20 ☐ **BY ELECTRONIC TRANSMISSION** The above referenced document was
21 sent via electronic transmission to the addressee(s)' email address as indicated
22 on the attached service list.

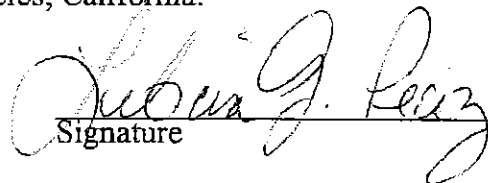
23 ☒ **BY FEDERAL EXPRESS** I am readily familiar with McLEOD,
24 MOSCARINO, WITHAM & FLYNN LLP's business practices of collecting
25 and processing items for pickup and next business day delivery by Federal
26 Express. I placed such sealed envelope(s) for delivery by Federal Express to
27 the offices of the addressee(s) as indicated on the attached mailing list on the
28 date hereof following ordinary business practices.

☒ **STATE** I declare under penalty of perjury under the laws of the State of
California that the foregoing is true and correct.

☐ **FEDERAL** I declare that I am employed in the office of a member of the bar
of this court at whose direction the service was made.

Executed on December 6, 2011, at Los Angeles, California.

26 Leticia G. Perez
27 Type or Print Name


Signature

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SERVICE LIST

Aqua Capital Management LP v. California Steel Industries, Inc., et al.
San Bernardino Superior Court - Case No. CIVRS 1108911

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EXHIBIT D

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CALIFORNIA STEEL INDUSTRIES, INC.
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN BERNARDINO
10

11 AQUA CAPITAL MANAGEMENT LP,
12 Plaintiff,
13 v.
14 CALIFORNIA STEEL INDUSTRIES,
15 INC., and DOES 1 through 50, inclusive,
16 Defendants.
17

Case No. CIVRS1108911
Judge: Hon. David Williams

DEFENDANT CALIFORNIA STEEL
INDUSTRIES, INC.'S REPLY IN SUPPORT
OF DEMURRER TO COMPLAINT

Date: December 19, 2011
Time: 8:30 a.m.
Dept.: R8
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DEFENDANT CALIFORNIA STEEL INDUSTRIES, INC.'S REPLY IN SUPPORT OF DEMURRER TO COMPLAINT

REPLY IN SUPPORT OF DEMURRER TO COMPLAINT

I. INTRODUCTION

California Steel Industries, Inc. ("CSI") respectfully submits that the Court should sustain the demurrer without leave to amend because the complaint fails to state facts sufficient to constitute a cause of action to quiet title, and Plaintiff offers no credible opposition argument to support or otherwise salvage its pleading. By the complaint, Plaintiff asks this Court to decide the ownership of groundwater rights in the Chino Basin that have already been adjudicated, and are subject to the Court's continuing jurisdiction in *Chino Basin Municipal Water District v. City of Chino*, San Bernardino Superior Court Case No. 51010 (the "Chino Basin Adjudication"). This Court should not unwind decades of litigation, nor should it infringe on the continuing jurisdiction of the Court in the Chino Basin Adjudication to consider a matter that has already been decided. Plaintiff is a successor in interest to Kaiser Steel and CCG Ontario ("CCG"), and the joint tenancy rights to the 630.274 acre feet of water at issue have already been established. As set forth in CSI's demurrer, Plaintiff's complaint is barred by the doctrines of res judicata and collateral estoppel and, in the alternative, the complaint is barred because there is another action pending between the parties that addresses the same issues raised by this action.

In opposition – rather than address CSI's res judicata and collateral estoppel arguments in any meaningful way – Plaintiff simply claims to be a bona fide purchaser of a real property interest, namely 630.274 acre feet of groundwater in the Chino Basin. Plaintiff argues that its alleged status as a bona fide purchaser is sufficient to quiet title to CSI's joint tenancy interest in the water rights, even though CSI's interest was established by the Court. Plaintiff is flat out wrong in its analysis for four reasons. First, Plaintiff grossly mischaracterizes and oversimplifies California water rights law by contending that the traditional rules of recordation and bona fide purchasers apply to real property interests in water rights in the same way that they apply to traditional real estate litigation matters – which they do not. Second, by its own complaint, Plaintiff is not a bona fide purchaser, as it knew full well of the Judgment in the Chino Basin Adjudication when it purchased CCG's joint tenancy interest, and Plaintiff even pleads that the water right at issue was born out of the Judgment. Plaintiff cannot on the one hand allege that it

1 knew of the Judgment and that its water rights were created through the Chino Basin
2 Adjudication, and then on the other hand allege that it is a bona fide purchaser that did not know
3 of the Judgment and CSI's interest. Plaintiff's contention simply makes no sense.

4 Third, even if Plaintiff is a bona fide purchaser, which it is not, Plaintiff is barred from
5 bringing this action by res judicata and collateral estoppel. The very issues that Plaintiff raises in
6 this action have already been resolved in the Chino Basin Adjudication, and Plaintiff stepped into
7 CCG's shoes when it purchased the joint tenancy water right, and must now live by the Judgment
8 and post-Judgment Orders of the Court in the Adjudication. Fourth, because the Chino Basin
9 Adjudication is ongoing, and all disputes are subject to the Court's continuing jurisdiction, this
10 action is barred by plea in abatement. Regardless of Plaintiff's knowledge of the Chino Basin
11 Adjudication when it purchased the water rights, or its knowledge of the post-Judgment Orders,
12 there is no doubt that there is ongoing litigation between these parties in another Court, and
13 Plaintiff is a party to the Chino Basin Adjudication, the Judgment, and the Court's post-Judgment
14 orders as the successor in interest to Kaiser and CCG.

15 The deficiencies in Plaintiff's complaint cannot be cured. The Court should sustain the
16 demurrer without leave to amend.

17 **II. THE COURT SHOULD SUSTAIN THE DEMURRER WITHOUT LEAVE TO**
18 **AMEND BECAUSE THE ACTION IS BARRED BY RES JUDICATA AND**
19 **COLLATERAL ESTOPPEL**

20 The most remarkable feature of Plaintiff's opposition brief is its complete failure to
21 address CSI's legal arguments that the complaint is barred by res judicata and collateral estoppel.
22 Indeed, Plaintiff has elected to leave those legal arguments unopposed and undisputed.
23 Unfortunately for Plaintiff, however, CSI's demurrer demonstrates that res judicata and collateral
24 estoppel serve as legal bars to the complaint.

24 **A. The Water Rights at Issue in Plaintiff's Action Have Already Been Resolved**

25 Plaintiff expressly alleges that its water rights were established under and pursuant to the
26 Chino Basin Adjudication and Judgment. (Complaint, ¶¶ 3-4, Exh. "A.") By way of background,
27 and as set forth in CSI's Demurrer, the Court maintains continuing jurisdiction over the
28 groundwater rights established pursuant to the Chino Basin Adjudication and resulting 1978

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1 Judgment. In 1995, the Court entered an Order pursuant to its continuing jurisdiction which
2 provides, among other things, that "Kaiser and CSI have mutual rights to the beneficial use of the
3 Joint Water Rights as defined and provided in the Water Rights Acknowledgement." (See CSI's
4 Request for Judicial Notice in Support of Demurrer ("RJN") Exh. 2, p. 10.)¹ The Water Rights
5 Acknowledgment expressly provides, among other things, that Kaiser and CSI hold a joint-
6 ownership interest in the "Joint Water Rights" defined as "630.274 acre feet annually of the
7 decreed water rights" that were established under the Judgment. (RJN Exh. 2, pp. 26-27, 31.) In
8 2001, CCG became Kaiser's successor in interest under the Judgment by acquiring, among other
9 things, Kaiser's joint-ownership interest in the right to 630.274 acre-feet per year pursuant to the
10 Judgment and the post-Judgment 1995 Order (above). As part of acquiring Kaiser's water right
11 interests, CCG filed a petition with the Court to intervene as a party to the Chino Basin
12 Adjudication and the Judgment. (RJN Exh. 3, pp. 3-5.) In its petition, CCG stated that it was the
13 successor in interest to Kaiser, and CCG requested that the Court "recognize its Overlying Non-
14 Agricultural Rights" as including "630.274 acre-feet as tenants in common with California Steel
15 Industries, Inc." (RJN Exh. 3, pp. 3-5.) On July 19, 2001, the Court issued an Order in the Chino
16 Basin Adjudication approving CCG's intervention and expressly determining its joint-ownership
17 interest in the right to 630.274 acre-feet per year under the Judgment, a right that was jointly held
18 with CSI. (RJN Exh. 4, pp. 1-4.) As alleged by Plaintiff, in December 2008 it purchased from
19 CCG "630.274 acre feet of adjudicated overlying water rights in the Chino Basin" that were
20 awarded to CCG "under and pursuant to the Judgment" in the Chino Basin Adjudication.
21 (Complaint, ¶¶ 4-5.) In other words, Plaintiff purchased the legal interest in the right to 630.274
22 acre-feet per year that was held by CCG, which under the Chino Basin Adjudication, the
23 Judgment, and applicable 1995 and 2001 post-Judgment Orders of the Court, is a joint-ownership
24 right held with CSI.

25
26
27 ¹ Reference to "Kaiser" in the 1995 Order pertains to Kaiser Ventures, Inc., successor to Kaiser
28 Steel Corporation, an original party to the Chino Basin Adjudication and the 1978 Judgment.
(RJN Exh. 2, pp. 5, 12, 26; Complaint, Exh. "A," p. 2.)

1 **B. Plaintiff Has Entirely Failed to Address CSI's Legal Arguments that the**
2 **Complaint is Barred by Res Judicata and Collateral Estoppel**

3 Under principles of res judicata, an action is barred if (1) the prior action relied on was a
4 final judgment on the merits; (2) the present action involves the same cause of action as the prior
5 action; and (3) there is privity between the parties to the prior action and the present action.
6 (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896; *Busick v. Workmen's Comp.*
7 *Appeals Bd.* (1972) 7 Cal.3d 967, 974.) CSI's demurrer shows that each of these elements is
8 satisfied as against Plaintiff. Yet Plaintiff's opposition fails to address a single element of CSI's
9 res judicata argument, and instead leaves those legal issues unopposed and undisputed.

10 The same is true for collateral estoppel, which precludes re-litigation of an issue
11 previously adjudicated when the following requirements are satisfied: (1) the issue sought to be
12 precluded must be identical to that decided in a prior proceeding; (2) the issue must have been
13 actually litigated and necessarily decided in the prior proceeding; (3) the decision in the former
14 proceeding must be final and on the merits; and (4) the party against whom issue preclusion is
15 asserted must be the same as or in privity with the party to the prior proceeding. (*Silver v. Los*
16 *Angeles County Met. Trans. Auth.* (2000) 79 Cal. App. 4th 338, 357; *Kelly v. Vons Companies,*
17 *Inc.* (1998) 67 Cal. App. 4th 1329, 1339.) CSI's demurrer shows that all such requirements are
18 satisfied in this case and bar Plaintiff's complaint. Plaintiff, however, has entirely failed to
19 address any of the collateral estoppel elements raised by CSI's demurrer, and instead has left
20 those legal issues unopposed and undisputed.

21 For these reasons, the Court should sustain the demurrer without leave to amend.

22 **III. THE COURT SHOULD SUSTAIN THE DEMURRER WITHOUT LEAVE TO**
23 **AMEND BECAUSE THERE IS ANOTHER ACTION PENDING**

24 When there is another action pending between the same parties on the same cause of
25 action, the Court may enter an interlocutory judgment pursuant to a plea in abatement. (Code
26 Civ. Proc. § 430.10, subd. (c); *Plant Insulation Co. v. Fireboard Corp.* (1990) 224 Cal.App.3d
27 781, 787-88.) As demonstrated above, the final Judgment and post-Judgment Orders in the Chino
28 Basin Adjudication preclude this action based on res judicata and/or collateral estoppel.

1 However, as an alternate grounds for sustaining CSI's demurrer, at the very least there is another
2 action pending, i.e. the Chino Basin Adjudication. Plaintiff alleges to hold its water right as a
3 successor in interest to parties to the Adjudication and Judgment (Kaiser and CCG) and,
4 moreover, Plaintiff admits it is a party to the Adjudication and Judgment. (Complaint, ¶¶ 3-4,
5 Exh. "A.") As set forth by CSI's demurrer, the Court has continuing jurisdiction over the CSI's
6 joint-ownership interest in the right to 630.274 acre-feet of Overlying Non-Agricultural Rights.
7 (See, e.g., CSI Open. Br. at 3-7.) Therefore, Plaintiff must bring any challenge to CSI's
8 adjudicated water right as part of the Chino Basin Adjudication.

9 Indeed, by filing a Notice of Related Case, Plaintiff has expressly recognized that its
10 complaint (1) involves the same parties and the same claims at issue in the Chino Basin
11 Adjudication, and (2) involves the same property right that has been and continues to be at issue
12 in the Chino Basin Adjudication. (See Cal. Rule of Court 3.300(a).) Plaintiff is judicially
13 estopped from claiming there is not another action pending and that the Chino Basin Adjudication
14 is not the proper forum for its present water right claims. (*Jackson v. City of Los Angeles* (1997)
15 60 Cal.App.4th 171, 181; *Prilliman v. United Air Lines* (1997) 53 Cal.App.4th 935, 960.)

16 In opposition, Plaintiff only argues against plea in abatement by asserting that it is not a
17 party to the Chino Basin Adjudication, and Plaintiff cites *Kuykendall v. State Bd. of Equalization*
18 (1994) 22 Cal.App.4th 1194 as authority against the plea. Plaintiff's argument is incorrect and
19 the *Kuykendall* case is not applicable. As stated above, Plaintiff admits it is a party to the Chino
20 Basin Adjudication. (Complaint, ¶ 5.) Plaintiff has purchased a water right from CCG that is
21 subject to the Court's continuing jurisdiction in the Chino Basin Adjudication, and Plaintiff
22 necessarily has stepped in CCG's shoes for purposes of determining any issues of ownership. To
23 that end, the Court has already ruled that CCG's legal interest in the 630.274 acre-foot right is one
24 that is held in joint tenancy with CSI. (CSI Open. Br. at 6-7; RJN Exh. 3, pp. 3-5; Exh. 4, pp. 1-
25 4.) In *Kuykendall*, Plaintiff brought a class action for a tax refund, and the Board argued for a
26 plea in abatement on appeal because there was a similar action pending in Riverside. The court
27 denied the plea because Ms. Kuykendall was not a party to the Riverside action. (*Id.* at 1202.) Of
28 course, in this case, Plaintiff admits it is a party to the Chino Basin Adjudication and Judgment,

1 and is the successor in interest to CCG. (Complaint, ¶¶ 4-5, Exh. "A.") As set forth above, the
2 water right Plaintiff acquired from CCG is subject to the Court's continuing jurisdiction in the
3 Chino Basin Adjudication and has already been ruled upon. Accordingly, this Court should
4 sustain the demurrer without leave to amend.

5 **IV. PLAINTIFF'S BONA FIDE PURCHASER WITHOUT KNOWLEDGE**
6 **ARGUMENT IS A RED HERRING AND IS FATALY INCONSISTENT**

7 **A. Water Rights are not Subject to Recordation or Traditional Real Estate Rules**

8 As indicated above, Plaintiff's opposition entirely avoids CSI's res judicata and collateral
9 estoppel arguments, and instead advances the faulty premise that Plaintiff purchased the
10 groundwater right at issue as a "bona fide purchaser for value without knowledge" of CSI's
11 interest. Plaintiff's argument is a red herring, and it is riddled with holes. First, as if firing a
12 silver bullet, Plaintiff's opposition cites to a *non-California case* for the proposition that water
13 rights in California are "real property." (Opp. at 2:24-26.) But that general notion has existed
14 under California law for decades if not more. (*See, e.g., Schimmel v. Martin* (1923) 190 Cal. 429,
15 432; *Witherill v. Brehm* (1925) 74 Cal.App. 286, 295.) What Plaintiff fails to recognize,
16 however, is the long line of California authority which explains that, while water rights are
17 deemed a species of real property, ownership interests in California water rights are unique and
18 specialized, and are resolved by a different set of rules. (*See, e.g., City of Barstow v. Mojave*
19 *Water Agency* (2000) 23 Cal.4th 1224; *State of California v. Superior Court of Riverside County*
20 (2000) 78 Cal.App.4th 1019.) In *State of California v. Superior Court of Riverside County*, the
21 Court of Appeal addressed the concept of "real property" interests in water rights, and found that
22 water is not "owned" and administered in California in the same way as other real property
23 interests. (*State of California v. Sup. Ct., supra*, 78 Cal.App.4th at 1024-1032.) Instead, the
24 California courts have repeatedly held that all water rights in California, including adjudicated
25 groundwater rights such as those established in the Chino Basin, are usufructuary only, such that
26 legal interests in water apply to the reasonable and beneficial use thereof, and do not attach to the
27 corpus of the water itself. (*City of Barstow, supra*, 23 Cal.4th 1224 at 1237; *Turlock Irrigation*
28 *Dist. v. Zanker* (2006) 140 Cal.App.4th 1047, 1051.) As in the Chino Basin Adjudication, rights

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1 to use limited groundwater supplies have been subject to specialized litigation proceedings
2 throughout California, where "ownership" interests and rights to use such supplies have been
3 established according to specific Judgments that are subject to the continuing jurisdiction and
4 post-Judgment orders of particular courts. (See, e.g., *City of Barstow*, *supra*, 23 Cal.4th at 1242-
5 1254.) Contrary to Plaintiff's oversimplified suggestion, water right interests in California are not
6 the same, and are not treated the same, as real estate interests.

7 Nevertheless, Plaintiff devotes pages of its opposition brief and all of its legal citation to
8 laws governing real estate transactions and the effect of recording those transactions on
9 subsequent purchasers. (See, e.g., Pltf. Opp. Br. at 2-5.) Those cases are distinguishable because
10 they involved transactions for parcels of real estate, and none involved water rights as an
11 unrecorded property interest that supported the claim of a bona fide purchaser without
12 knowledge. For example, Plaintiff cites *Dyer v. Martinez* (2007) 147 Cal.App.4th 1240, 1247 as
13 establishing a policy in favor of recordation. In *Dyer*, Plaintiff filed suit for specific performance
14 of a sale of a parcel of real estate, but delayed in recording a Notice of *Lis Pendens*. The property
15 was subsequently sold to a bona fide purchaser, and Plaintiff amended the complaint and asserted
16 a quiet title claim against the new buyer. The Court granted summary adjudication because
17 Plaintiff did not timely record the Notice of *Lis Pendens*, as is required by Government Code
18 section 27250. (*Id.*)

19 The *Dyer* case, and all of Plaintiff's cases involving real estate sales, are distinguishable,
20 as there is no legal requirement that water rights be recorded. In fact, water rights are typically
21 not recorded, and it is well-established under California water law that the conveyance of a
22 riparian or overlying parcel of land automatically includes the conveyance of the appurtenant
23 water right, even where the grant deed is silent. (See, e.g., *Holmes v. Nay* (1921) 186 Cal. 231,
24 236; *Forest Lakes Mutual Water Co. v. Santa Cruz Land Title Co.* (1929) 98 Cal.App. 489, 495-
25 496; *Murphy Slough Assoc. v. Avila* (1972) 27 Cal.App.3d 649.) In short, the Court in the Chino
26 Basin Adjudication has ruled that CSI holds a joint-ownership interest in 630.274 acre-foot water
27 right under the Judgment, CSI was not legally required to record that right, nor was there any
28 expectation that it do so. All matters affecting that right remain subject to the Court's continuing

1 jurisdiction under the Chino Basin Adjudication. No legal requirement exists for the Judgment or
2 any post-Judgment orders to be recorded against any of the parcels affected by the Chino Basin
3 Adjudication and Judgment. Regardless, as set forth below, Plaintiff admits knowledge of the
4 Adjudication and Judgment at the time it acquired its right.

5 **B. The Complaint Fails on its Face Because Plaintiff Admits Knowledge of the**
6 **Judgment and Chino Basin Adjudication**

7 Setting aside the point above that CSI had no legal requirement or expectation to record its
8 ownership interest in the water right at issue, Plaintiff's bona fide purchaser argument entirely
9 lacks credibility based on the face of the complaint alone. Plaintiff argues that it is a bona fide
10 purchaser, but this is nothing more than a legal conclusion, and while the Court is required to
11 accept pleaded facts as true on demurrer, the Court is not required to accept legal conclusions as
12 being true. (*Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 966-67; *Adelman v. Associated*
13 *Int'l Ins. Co.* (2001) 90 Cal.App.4th 352, 259.)

14 Plaintiff's argument that it is a bona fide purchaser is preposterous, and it is contradicted
15 by Plaintiff's own complaint and the exhibit attached to the complaint. Indeed, Plaintiff expressly
16 alleges that the 630.274 acre-foot water right was established pursuant to the Chino Basin
17 Adjudication and Judgment. (Complaint, ¶¶ 4-5.) Moreover, the very "Water Rights Grant
18 Deed" pursuant to which Plaintiff alleges to have acquired the water right expressly refers to the
19 Judgment and the Chino Basin Adjudication, and states that the 630.274 acre-foot water right was
20 established under and pursuant to that legal regime. (Complaint, Exh. "A.") Facts appearing in
21 exhibits attached to the complaint are given precedence over inconsistent allegations in the
22 complaint. (*Holland v. Morse Diesel Int'l, Inc.* (2001) 86 Cal.App.4th 1443, 1447.) Accordingly,
23 this Court can and should determine that Plaintiff is not a bona fide purchaser without notice,
24 regardless of the legal conclusions Plaintiff pleads in the complaint. For this reason as well, the
25 Court should sustain the demurrer without leave to amend.

26 Plaintiff's knowledge of the Judgment and Chino Basin Adjudication also exists as a
27 matter of law. As conceded by its complaint, Plaintiff is a party to the Chino Basin Adjudication
28 and is a party to the Judgment. (Complaint, ¶ 5.) Plaintiff's knowledge of the Judgment and the

1 legal proceedings in the Chino Basin Adjudication – as the alleged successor-in-interest to the
2 water rights formerly held by Kaiser and CCG – is a matter of legal record. (Complaint, ¶¶ 4-5;
3 RJN Exhs. 3 and 4.) Contrary to Plaintiff's argument, the Judgment, the Chino Basin
4 Adjudication, and the Court's post-Judgment Orders in that matter have an absolute and direct
5 effect upon Plaintiff's water right claims at issue in this matter. Simply put, Plaintiff cannot deny
6 its knowledge or the effect of the very Adjudication and Judgment that it admits to have created
7 the water rights in the first place.

8 Plaintiff cites various cases for the proposition that judgments or court orders affecting
9 title to real property have no effect on the rights of a bona fide purchaser for value who acquires
10 its interest without actual or constructive knowledge of such judgment or orders and in reliance
11 on the record title. (See, e.g., Pltf. Opp. Br. at 3:7-15.) This argument contains at least two fatal
12 flaws. First, none of the cases cited by Plaintiff deal in facts where the alleged bona fide
13 purchaser without knowledge is a party to the case in which the judgments or orders affecting the
14 title to real property have been rendered. As fully set forth above, Plaintiff concedes that its water
15 rights were established pursuant to the Chino Basin Adjudication and Judgment, Plaintiff admits
16 it is a party to the Adjudication and Judgment, and Plaintiff's "Water Rights Grant Deed"
17 expressly demonstrates that Plaintiff had knowledge of the Adjudication and Judgment when it
18 acquired the water right at issue. (Complaint, ¶¶ 4-5, Exh. "A.")

19 Moreover, notwithstanding Plaintiff's allegation that its predecessor in interest under the
20 Chino Basin Adjudication and Judgment (CCG) was the "sole owner" of the 630.247 acre-feet of
21 water rights at issue, Court records in the Adjudication – where Plaintiff is a party – show on their
22 face that CCG was only a joint-owner of the water rights, and that CSI is the other joint owner.
23 (See, e.g., CSI Open. Br. at 5-7; RJN Exh. 2, pp. 5, 31-33; Exh. 3, pp. 1-8; Exh. 4, pp. 1-4.) In
24 sum, Plaintiff alleges on the one hand that it had knowledge of the Chino Basin Adjudication and
25 Judgment when it acquired its water right (Complaint, ¶¶ 3-4, Exh. "A"), yet asserts on the other
26 hand that it has no actual or constructive knowledge of the Judgment. (Pltf. Opp. Br. at 2:16-20;
27 3:12-14.) Plaintiff's argument is internally and fatally inconstant. As a matter of law, Plaintiff
28 had knowledge of the Chino Basin Adjudication and Judgment when it acquired its right from

1 CCG, and Plaintiff is judicially estopped from claiming otherwise. (*Jackson, supra*, 60
2 Cal.App.4th at 181; *Prilliman, supra*, 53 Cal.App.4th at 960.)

3 **V. THE COURT SHOULD NOT GRANT LEAVE TO AMEND**

4 In its opposition, Plaintiff requests leave to amend in the event the demurrer is sustained.
5 However, the Court should sustain the demurrer in this case without leave to amend because the
6 issues are entirely legal, and Plaintiff cannot otherwise amend its complaint and state a valid
7 cause of action under any legal theory. (*See Lawrence v. Bank of America* (1985) 163
8 Cal.App.3d 431, 436.)

9 **VI. CONCLUSION**

10 For the reasons stated in its demurrer and herein, CSI respectfully requests that the Court
11 sustain the demurrer without leave to amend.

12
13 Dated: December 12, 2011

BEST BEST & KRIEGER LLP

14
15 By: 

16 CHRISTOPHER M. PISANO
17 PAETER E. GARCIA
18 Attorneys for Defendant
19 CALIFORNIA STEEL INDUSTRIES, INC.
20
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28

PROOF OF SERVICE BY OVERNIGHT DELIVERY

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 300 South Grand Avenue, 25th Floor, Los Angeles, California 90071. On December 12, 2011, I deposited with UPS, a true and correct copy of the within documents:

**DEFENDANT CALIFORNIA STEEL INDUSTRIES, INC.'S
REPLY IN SUPPORT OF DEMURRER TO COMPLAINT**

in a sealed envelope, addressed as follows:

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*Attorneys for Plaintiff
Aqua Capital Management LP*

*Attorneys for Plaintiff
Aqua Capital Management LP*

Following ordinary business practices, the envelope was sealed and placed for collection by UPS on this date, and would, in the ordinary course of business, be retrieved by UPS for overnight delivery on this date.

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

Executed on December 12, 2011, at Los Angeles, California.



Sandra K. Sandoval

EXHIBIT E

Minute Orders

[Home](#) [Complaints/Parties](#) [Actions](#) [Minutes](#) [Pending Hearings](#) [Case Report](#) [Images](#)

Case Type:

Case Number:

Case CIVRS1108911 - AQUA CAPITAL -V- CALIFORNIA STEEL

Action:

**MOTION RE: (11/10/11) DEMURRER TO COMPLAINT FILED BY DEFENDANT CALIFORNIA STEEL INDUSTRIES INC.
12/19/2011 - 8:30 AM DEPT. R8**

DAVID A WILLIAMS, JUDGE
CLERK: TAWNY HAMADA
COURT REPORTER FRED BERZAK 5815
COURT ATTENDANT DANIEL ZWIERLEIN

APPEARANCES:

ATTORNEY JOHN FLYNN PRESENT FOR PLAINTIFF/PETITIONER.
ATTORNEY CHRISTOPHER PISANO PRESENT FOR DEFENDANT/RESPONDENT.
ATTORNEY MICHAEL FIFE PRESENT FOR CHINO BASIN WATERMASTER.

PROCEEDINGS:

PREDISPOSITION HEARING HELD

MOTION

CALIFORNIA STEEL INDUSTRIES INC.'S MOTION RE: DEMURRER TO COMPLAINT IS HEARD.
THE COURT GRANTS REQUEST FOR JUDICIAL NOTICE AS TO EXHIBIT NUMBERS 1, 3, AND 4; THE COURT ACKNOWLEDGES THE EXISTENCE OF EXHIBIT NUMBER 2.
THE COURT GIVES TENTATIVE RULING.
ARGUED BY COUNSEL AND SUBMITTED.

COURT FINDS:

DEMURRER IS OVERRULED.

PURSUANT TO STIPULATION:

THE DEFENDANT IS ALLOWED 45 DAYS TO FILE ANSWER.

MATTER TRANSFERRED TO DEPARTMENT C1

TO BE HEARD WITH RELATED CASE RCV51010.

CLERKS OFFICE TO SEND FILE TO CHINO DISTRICT.

ACTION - COMPLETE

=== MINUTE ORDER END ===

EXHIBIT F

COUNTY OF SAN BERNARDINO SUPERIOR COURT
RANCHO CUCAMONGA DISTRICT
8303 NORTH HAVEN AVENUE
RANCHO CUCAMONGA, CA 91730

NOTICE OF REASSIGNMENT
CASE NO: CIVRS1108911

Title of Case: AQUA CAPITAL -V- CALIFORNIA STEEL

Party Noticed:

MCLEOD MOSCARINO WITHAM & FLYNN LLP
505 MONTGOMERY STREET

11TH FLOOR
SAN FRANCISCO CA 94111
(415) 874-3410

PLEASE TAKE NOTICE:

The Court finds the Affidavit of Prejudice pursuant to CCP170.6
filed by AQUA CAPITAL MANAGEMENT LP as to Judge STANFORD E.
REICHERT timely. Case reassigned to Judge GILBERT OCHOA for
all purposes.

CASE ASSIGNED TO JUDGE GILBERT G. OCHOA FOR ALL PURPOSES.

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I am a citizen of the United States of America,
over the age of 18, a resident of the above named County and State, &
not a party to, nor interested in, the proceedings named in the title
of the above Notice of Reassignment.

I am a Deputy Clerk in the above named County. On the date of mailing
shown below, I deposited in the U. S. Mail, at the location shown, a
sealed envelope (postage prepaid) which contained a true copy of this
notice and was addressed as shown above.

Date of Mailing: 01/10/12

Place of Mailing: Rnch Cucamonga, California

Executed on 01/10/12, at Rnch Cucamonga, CA.

By: ELAINE CARLOS

CHINO BASIN WATERMASTER
Case No. RCV 51010
Chino Basin Municipal Water District v. The City of Chino

PROOF OF SERVICE

I declare that:

I am employed in the County of San Bernardino, California. I am over the age of 18 years and not a party to the within action. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On July 10, 2012 I served the following:

1. **AQUA CAPITAL MANAGEMENT LP'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO CALIFORNIA STEEL INDUSTRIES, INC.'S MOTION TO CONFIRM POST-JUDGMENT ORDERS AND ENFORCE AND CARRY OUT THE CHINO BASIN JUDGEMENT**
2. **AQUA CAPITAL MANAGEMENT LP'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO CALIFORNIA STEEL INDUSTRIES, INC.'S MOTION TO CONFIRM POST-JUDGMENT ORDERS AND ENFORCE AND CARRY OUT THE CHINO BASIN JUDGEMENT**

/ X / BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:

See attached service list: Mailing List 1

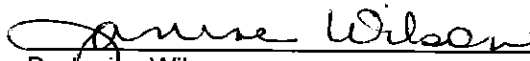
/ ___ / BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

/ ___ / BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

/ X / BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

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

Executed on July 10, 2012 in Rancho Cucamonga, California.


By: Janine Wilson
Chino Basin Watermaster

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