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**FILED & ENTERED**  
**DEC 14 2015**  
CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY zick DEPUTY CLERK

**NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
NORTHERN DIVISION**

In re: )  
CHARLES L. WILLETT, )  
 )  
 )  
Debtor. )

Case No. 9:14-bk-11123-PC  
Adversary No. 9:15-ap-01001-PC  
Chapter 13

WALTER W. MOSHER, JR., AS )  
TRUSTEE OF THE WALTER W. )  
MOSHER, JR. LIVING TRUST DATED )  
MARCH 22, 2002, )  
 )  
Plaintiff, )  
v. )  
CHARLES L. WILLETT, et al., )  
 )  
Defendants. )

**MEMORANDUM DECISION**  
  
Date: November 5, 2015  
Time: 10:00 a.m.  
Place: United States Bankruptcy Court  
Courtroom # 201  
1415 State Street  
Santa Barbara, CA 93101

Plaintiff, Walter W. Mosher, Jr., as trustee of the Walter W. Mosher, Jr. Living Trust Dated March 22, 2002 (“Mosher”) seeks a preliminary injunction against Defendants, Charles L. Willett (“Willett”) and Judith Lee Mouderrres, individually and as trustee of the Judith Lee

1 Mouderrres Revocable Trust Dated August 25, 1997 (“Mouderrres”) pursuant to F.R.Civ.P. 65(a),<sup>1</sup>  
2 to (1) compel the installation of meters to record the usage of water by Mosher, Willet and  
3 Mouderrres on their respective properties from a water distribution system operated and  
4 maintained by the parties pursuant an Agreement Regarding Water Well and Utility Easements;<sup>2</sup>  
5 (2) prohibit Willet and Mouderrres from interfering with the acquisition, installation, and  
6 monitoring of the water meters; and (3) direct Willet and Mouderrres “to pay their equal share of  
7 the purchase price, installation and monitoring costs for the meters.”<sup>3</sup> Having considered  
8 Mosher’s Application, Mouderrres’ opposition thereto, the reply and argument of counsel, the  
9 court will deny the application based on the following findings of fact and conclusions of law  
10 made pursuant to F.R.Civ.P. 52(a), as incorporated into FRBP 7052 and applied to contested  
11 matters by FRBP 9014(c).<sup>4</sup>

#### 12 I. STATEMENT OF FACTS

13 Mosher, Willett, and Mouderrres own neighboring properties on Sulphur Mountain Road  
14 in Ojai, California. Mosher owns real property at 8183 Sulphur Mountain Road (“Mosher’s  
15 Property”), and 7850 Sulphur Mountain Road (“Mosher’s Adjacent Property”). Mosher’s  
16

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17 <sup>1</sup> Unless otherwise indicated, all “Code,” “chapter” and “section” references are to the  
18 Bankruptcy Code, 11 U.S.C. §§ 101-1330, et seq. “Rule” references are to the Federal Rules of  
19 Bankruptcy Procedure (“FRBP”), which make applicable certain Federal Rules of Civil  
20 Procedure (“F.R.Civ.P.”). “LBR” references are to the Local Bankruptcy Rules of the United  
21 States Bankruptcy Court for the Central District of California (“LBR”).

22 <sup>2</sup> Instrument No. 88-102047 recorded in the Official Records of Ventura County, California, on  
23 July 20, 1988 (“Water Well Agreement”), attached as Exhibit A to Plaintiff Walter W. Mosher,  
24 Jr.’s Application for a Preliminary Injunction for Order: (1) Preventing Defendants Charles Larry  
25 Willett and Judith Lee Mouderrres from Interfering With the Installation of Water Meters to  
26 Monitor and Record Water Use By All Parties for the Water Well at Issue; and (2) Directing All  
27 Parties to Pay for Their Equal Share of the Cost of Acquisition, Installation and Monitoring of  
28 the Water Meters (“Mosher’s Application”) [Dkt. # 19] filed on October 13, 2015.

<sup>3</sup> Mosher’s Application, at 8:19-9:10.

<sup>4</sup> The evidentiary objections filed by Mosher and Mouderrres are overruled. See Am. Hotel &  
Lodging Ass’n v. City of Los Angeles, 2015 WL 4576463, at \*6 (C.D. Cal. 2015) (“It is well  
established that trial courts can consider otherwise inadmissible evidence in deciding whether to  
issue a preliminary injunction.”).

1 residence is located on Mosher’s Adjacent Property. Willett owns and resides on real property  
2 located at 8228 Sulphur Mountain Road (“Willett’s Property). Mouderrres owns and resides on  
3 real property located at 8600 Sulphur Mountain Road (“Mouderrres Property”). Mosher, Willett  
4 and Mouderrres each receive water from a well located on Mosher’s Property (the “Well”)  
5 pursuant to the Well Agreement executed by Mosher’s predecessor in interest, the John Taft  
6 Corporation, Willett, and Mouderrres’ predecessor in interest, Mary Ann Fuller. Water is  
7 pumped from the Well to a 21,000 gallon water tank located on Willett’s Property (the “Water  
8 Tank”). According to the Well Agreement, Mosher, Willett, and Mouderrres each own a one-  
9 third interest in the Well, the Water Tank and the associated water delivery system. The Well  
10 Agreement grants an easement to Willett and Mouderrres over Mosher’s property for  
11 maintenance of the Well.<sup>5</sup> The Well Agreement also provides, in pertinent part:

12           The parties agree that regardless of the amount of water used, or if none is used,  
13 from “The Well” that all maintenance and repair costs of “The Well” and access  
14 easement or easements are to be divided among the three parties on a pro rata  
15 basis measured by meter use. Taft, Willett and Fuller agree to share, on an equal  
16 basis, the obligation and responsibility for the repair and maintenance of the  
17 utility line or lines from the well. The utility costs will be paid by the parties on a  
18 pro-rata basis of use, and pump overhauls will be paid on a percentage of use; all  
19 other costs to be shared equally by the three parties. The parties agree that all the  
20 costs of repair and maintenance of the various items mentioned in this agreement,  
21 excluding electricity and pump costs, which are being used on a mutual basis, are  
22 to be shared mutually and equally by the PARTIES USING THAT  
23 PARTICULAR ITEM, be it utility lines, easements, or other items not herein  
24 mentioned, but related to the well, utility lines and easements. Specifically, if any  
25 item is ever used by any one of the parties, they are then forever liable for their  
26 respective percentage of the cost of all repair and maintenance, unless two of the  
27 parties agree IN WRITING to relieve the third party from that said obligation.  
28 Failure by any of the parties to pay within thirty (30) days their due share of  
maintenance costs and operating costs, including monthly electric service costs  
gives the parties who have paid their share the right to cut off use of the utilities to  
the party in default. The parties agree to set up a mutually advantageous system  
for determining the need for repairs and appointing one or more of the parties to  
be in charge, keep the books, and collect monthly service costs, etc.<sup>6</sup>

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<sup>5</sup> Mosher’s Application, Exh. A at ¶ 2.

<sup>6</sup> Id. at ¶ 5 (emphasis added).

1 The rights and responsibilities of the parties under the Well Agreement, including the  
2 issue of whether water meters can be installed pursuant to the Well Agreement absent consent,  
3 has been the subject of prior litigation between Mosher, Willett and Mouderrres. Evidently,  
4 Willett, who according to Mosher “has been the party in charge of maintaining the Well for  
5 decades,”<sup>7</sup> and Jonathan and Beckaa Bradford,<sup>8</sup> who at the time were residing as caretakers on  
6 Mosher’s property, caused three meters to be installed on property serviced by the Well  
7 sometime before January 4, 2010, apparently to assist in recording water usage under the Well  
8 Agreement. On January 4, 2010, Mouderrres filed a complaint against Willett in Case No. 56-  
9 2010-00365001-CU-BC-VTA, Mouderrres v. Willett, in the Superior Court of California, County  
10 of Ventura, seeking an accounting, damages for alleged breach of contract, nuisance, conversion,  
11 intentional and negligent infliction of emotional distress, and declaratory relief. Two related  
12 small claims cases followed: (1) Case No. 56-2010-00381361-SC-SC-VTA, Willett v.  
13 Mouderrres, in the Superior Court of California, County of Ventura; and (2) Case No. 56-2010-  
14 00381358-SC-SC-VTA, Bradford v. Mouderrres, in the Superior Court of California, County of  
15 Ventura. The three cases were consolidated for trial which was commenced on January 19, 2011  
16 and completed on January 21, 2011. On February 11, 2011, a Judgment was entered in the  
17 consolidated action which provided, among other things, that “[a] permanent injunction shall  
18 issue and is hereby issued:

19 (i) that Willett and the Bradfords, and each of them, and their agents, servants,  
20 employees, and all those acting by and through them, are enjoined from  
21 interfering, by act, threat or intimidation, with Mouderrres’ exercise of her  
22 easement rights as to those easements set forth in the “Agreement Regarding  
23 Water Well and Utility Easements” which was recorded in Ventura County on  
24 July 20, 1988, as Document Number 88-102047;

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25 <sup>7</sup> Mosher’s Application, 3:4.  
26

27 <sup>8</sup> Beckaa Mosher, formerly Beckaa Bradford, is currently Mosher’s spouse. They have been  
28 married since December 30, 2014. See Answer of Counter-Defendants Walter W. Mosher, Jr.,  
Individually and as Trustee of the Walter W. Mosher, Jr. Living Trust Dated March 25, 2002  
[Dkt. # 8], 3:16-18.

1 (ii) that Willett and the Bradfords shall, at their own expense, cause the meters  
2 which they installed, or had installed, in the water delivery system to be removed  
3 by a licensed plumbing contractor within thirty (30) days from the date of this  
4 judgment and that no meter(s) shall be installed except with the written consent of  
5 all property owners, including Mouderrres;

6 (iii) that Willett shall, at his own expense, cause the water line connecting the  
7 water delivery system to the water trough on the Willett Property to be  
8 disconnected by a licensed plumbing contractor within thirty (30) days from the  
9 date of this judgment, but this shall not preclude Willett from drawing water from  
10 plumbing at his house to fill the trough;

11 (iv) that the Bradfords, and their agents, servants, employees, and all those acting  
12 by and through them, shall not sever, work on, alter, repair, modify, service or  
13 replace any part of the well, the pump, or any part of the water delivery system  
14 without the written consent of all property owners, including Mouderrres, provided  
15 however that the Bradfords may service those portions of the water delivery  
16 system which service only the Mosher Property without such consent; and

17 (v) Willett shall not, without the written consent of Mouderrres, install any device  
18 within or connected to the water line servicing only the Mouderrres Property  
19 which would reduce the flow or pressure of water to the Mouderrres Property or  
20 otherwise sever the line to the Mouderrres Property.<sup>9</sup>

21 Inexplicably, Mosher was dismissed as a party to the Mouderrres action on May 24, 2010, and  
22 was not a party to the Judgment. The Judgment was not appealed and is a final judgment.

23 According to Mosher's Application, the issue of water meters has been "[o]ne of the long  
24 standing disputes" between the parties.<sup>10</sup> Mosher and Willett want water meters. Mouderrres  
25 does not. Notwithstanding the fact that Mosher's spouse, Willett and Mouderrres were parties to  
26 the Judgment entered on February 11, 2011, prohibiting water meters absent consent, there is no  
27 evidence that any of the parties ever sought relief from the Judgment in state court, including a  
28 modification of the permanent injunction set forth in the Judgment, prior to Willett's bankruptcy.

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<sup>9</sup> Declaration of Charles L. Willett in Support of Plaintiff Walter W. Mosher, Jr.'s Application for a Preliminary Injunction for Orders: (1) Preventing Defendants Charles Larry Willett and Judith Lee Mouderrres from Interfering With the Installation of Water Meters to Monitor and Record Water Use By All Parties for the Water Well at Issue; and (2) Directing All Parties to Pay for Their Equal Share of the Cost of Acquisition, Installation and Monitoring of the Water Meters ("Willett Decl.") [Dkt. # 23] filed October 13, 2015, Exh. B, at 3:21-4:16 (emphasis added).

<sup>10</sup> Mosher's Application, 6:21.

1 On May 28, 2014, Willett filed a voluntary petition under chapter 13 of the Bankruptcy  
2 Code. On September 15, 2014, an order was entered confirming Willett’s Chapter 13 Plan  
3 (“Plan”). Willett’s confirmed plan contemplates a sale of Willett’s Property to pay all allowed  
4 claims in full. Willett has employed a real estate broker to market the property, but a sale motion  
5 has not been filed.

6 On January 8, 2015, Mosher filed a Complaint for: (1) Declaratory Relief; (2)  
7 Declaratory Relief; (3) Declaratory Relief to Determine the Validity, Priority and Extent of the  
8 Debtor’s and Others Interests in Real Property and Easement Rights; (4) Quiet Title; [and] (5)  
9 Permanent Injunctive Relief to Prevent Unreasonable Use of Easement (“Complaint”). Mosher  
10 seeks injunctive relief only in the Complaint’s Fifth Claim for Relief. There, Mosher seeks a  
11 permanent injunction “to prevent Mouderrès from interfering with [Mosher’s] use and enjoyment  
12 of [Mosher’s] Property, [Mosher’s] Adjacent Property and [Mosher’s] Home and using any  
13 portion of [Mosher’s] Property to access the well with a vehicle and using any portion of  
14 [Mosher’s] Property at all.”<sup>11</sup> Mosher “also seeks a determination as to whether Mouderrès is  
15 using the well and water delivery system for purposes other than those stated in the Water Well  
16 agreement,” and claims that “Mouderrès is wrongfully interfering with [Mosher’s] use and  
17 enjoyment of [Mosher’s] Property by among other things, taking photographs of [Mosher],  
18 [Mosher’s] employees, [Mosher’s] Property and [Mosher’s] Adjacent Property while she is on  
19 [Mosher’s] Property.”<sup>12</sup> Mosher claims that Mouderrès has refused Mosher’s demands to use an  
20 alternative route to maintain the Water Tank and water delivery system; that Mouderrès’ conduct  
21 is causing him “grave and irreparable injury;” that he “has no adequate remedy at law for  
22 Mouderrès’ wrongful and unreasonable use of [Mosher’s] Property[;] and any failure to  
23 permanently enjoin Mouderrès from wrongfully and unreasonably using [Mosher’s] Property  
24 will lead to damage to [Mosher’s] Property and unnecessary conflict.”<sup>13</sup> Finally, Mosher asks  
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26 <sup>11</sup> Complaint, at 20:16-19.

27 <sup>12</sup> Id. at 21:1-5.

28 <sup>13</sup> Id. at 21:9-19.

1 that Mouderrès be permanently enjoined “from using [Mosher’s] Property” and ordered “to use  
2 alternate routes to maintain the tank and water delivery system.”<sup>14</sup> Mosher’s Complaint does not  
3 seek any injunctive relief against Willett.

4 On February 9, 2015, Willett and Mouderrès each filed an answer to Mosher’s  
5 Complaint. Mouderrès also filed a counterclaim in which she seeks, among other things, to quiet  
6 title to the easement over Mosher’s Property and to obtain a judicial determination of the  
7 respective rights of the parties under the Water Well Agreement. On April 7, 2015, at the  
8 request of the parties, the court assigned the matter to mediation. On July 9, 2015, Henry J.  
9 Bongiovi, the assigned mediator, filed a Mediator’s Certificate Regarding Conclusion of  
10 Mediation stating that mediation was unsuccessful.

11 Mosher’s Application was filed on October 13, 2015. That same day, Willett filed a  
12 Notice of Non-Opposition dated October 1, 2015. Mouderrès filed written opposition to  
13 Mosher’s Application on October 22, 2015, to which Mosher replied on October 29, 2015. After  
14 a hearing on November 5, 2015, the matter was taken under submission.

## 15 II. DISCUSSION

16 This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§  
17 157(b) and 1334(b). Venue is appropriate in this court. 28 U.S.C. § 1409(a). This proceeding  
18 raises claims that are core under 28 U.S.C. § 157(b)(2)(A) and (O) and claims that are non-core.  
19 To the extent that the claims that form the basis of Mosher’s Complaint and Mouderrès’  
20 counterclaim are either non-core or constitute “Stern claims,”<sup>15</sup> Mosher, Willett and Mouderrès  
21 expressly consent to the entry of a final judgment by the bankruptcy court.<sup>16</sup> Wellness Int’l  
22

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23  
24 <sup>14</sup> Id. at 21:20-22.

25 <sup>15</sup> “These claims are called ‘Stern claims,’ so named after the Supreme Court’s decision in Stern  
26 v. Marshall, \_\_\_ U.S., \_\_\_, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011). Stern claims are claims  
27 ‘designated for final adjudication in the bankruptcy court as a statutory matter, but prohibited  
28 from proceeding in that way as a constitutional matter.’” Mastro v. Rigby, 764 F.3d 1090, 1093  
(9th Cir. 2014) (citation omitted).

<sup>16</sup> See Joint Status Report [Dkt. # 9] filed March 5, 2015, at 4 ¶ F6.

1 Network, Ltd. v. Sharif, 135 S. Ct. 1932, 1949 (2015) (holding that “Article III permits  
2 bankruptcy courts to decide Stern claims submitted to them by consent”).

3 A. Standard for Issuance of a Preliminary Injunction

4 “A preliminary injunction is an extraordinary remedy never awarded as of right.” Winter  
5 v. Natural Res. Def. Council, Inc., 555 U.S. 7, 24 (2008). To obtain a preliminary injunction, the  
6 moving party must “establish that he is likely to succeed on the merits, that he is likely to suffer  
7 irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor,  
8 and that an injunction is in the public interest.” Winter, 555 U.S. at 20. The Ninth Circuit’s  
9 “sliding scale test for preliminary injunctions remains viable after the Supreme Court’s decision  
10 in Winter.” Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1134 (9th Cir. 2011). It  
11 must, however, be “applied as part of the four-element Winter test. That is, ‘serious questions  
12 going to the merits’ and a balance of hardships that tips sharply toward the plaintiff can support  
13 issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood  
14 of irreparable injury and that the injunction is in the public interest.” Id. at 1135.

15 “The purpose of a preliminary injunction is merely to preserve the relative positions of  
16 the parties until a trial on the merits can be held.” University of Texas v. Camenisch, 451 U.S.  
17 390, 395 (1981) (emphasis added). “[C]ourts should be hesitant to grant the extraordinary  
18 interim relief of a preliminary injunction in any particular case, but especially so when such an  
19 injunction would alter the status quo prior to a trial on the merits.” O Centro Espirita  
20 Beneficiente Uniao Do Vegetal v. Ashcroft, 389 F.3d 973, 977 (10th Cir. 2004).

21 “Mandatory preliminary relief, which goes well beyond simply maintaining the status  
22 quo pendent lite is particularly disfavored, and should not be issued unless the facts and law  
23 clearly favor the moving party.” Anderson v. United States, 612 F.2d 1112, 1114 (9th Cir. 1979)  
24 (quoting Martinez v. Mathews, 544 F.2d 1233, 1243 (5th Cir. 1976)). “Mandatory injunctions  
25 are more burdensome than prohibitory injunctions because they affirmatively require the  
26 nonmovant to act in a particular way, and as a result they place the issuing court in a position  
27 where it may have to provide ongoing supervision to assure that the nonmovant is abiding by the  
28 injunction.” SCFC ILC, Inc. v. VISA USA, Inc., 936 F.3d 1096, 1099 (10th Cir. 1991). If “a



1 party seeks mandatory preliminary relief that goes well beyond maintaining the status quo  
2 pendent lite, courts should be extremely cautious about issuing a preliminary injunction.” Martin  
3 v. Int’l Olympic Comm., 740 F.2d 670, 675 (9th Cir. 1984). “Thus, an award of mandatory  
4 preliminary relief is not to be granted unless both the facts and the law clearly favor the moving  
5 party and extreme or very serious damage will result.” Rouser v. White, 707 F. Supp.2d 1055,  
6 1061 (E.D. Cal. 2010).

7 1. Likelihood of Success on the Merits

8 Mosher’s Application seeks mandatory injunctive relief. Mosher seeks a preliminary  
9 injunction to change the status quo, not to maintain it pending a trial on the merits. Mosher’s  
10 Application, which is aimed squarely at Mouderrres,<sup>17</sup> demands “(1) an order directing that water  
11 meters be installed . . . [on] the Willett property, and the Mouderrres property, and . . . Mouderrres  
12 [be enjoined] from interfering with the acquisition, installation, and monitoring of water meters  
13 from the Water Tank to the respective parties’ property; and (2) . . . that each party [be ordered  
14 to] . . . pay their respective equal share of the costs of the total costs of the meters and their  
15 installation, by a licensed contractor . . . .”<sup>18</sup>

16 In the application, Mosher does not examine whether he possesses a likelihood of success  
17 on the merits of the claims made the basis of his Complaint. Mosher and Willett may outnumber  
18 Mouderrres on this issue of water meters two to one, but his application fails to establish a  
19 likelihood of success on the merits for two reasons.

20 First, paragraph 11 of Mosher’s Complaint seeks a permanent injunction preventing  
21 Mouderrres from interfering with the use and enjoyment of his property, and to compel  
22 Mouderrres to use an alternate route to maintain the Water Tank and water delivery system.  
23 Mosher’s second claim in the Complaint seeks declaratory relief regarding the installation and  
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25  
26 <sup>17</sup> Willett does not oppose Mosher’s Application. Indeed, Willett filed a Notice of Non-  
27 Opposition apparently prepared by Mosher’s counsel. The proof of service accompanying the  
28 document was signed by David Brotman, who also signed the proofs of service on Mosher’s  
Application supporting papers, including Willett’s declaration in support of the application.

<sup>18</sup> Mosher’s Application, 14:8-13.

1 cost of meters,<sup>19</sup> but nowhere in the Complaint does Mosher ask for a permanent mandatory  
2 injunction directing the installation of water meters on the respective properties owned by the  
3 parties to monitor water usage under the Well Agreement. See Rivera v. BAC Home Loans  
4 Servicing, L.P., 2010 WL 2757041, at \*4 (N.D. Cal. 2010) (“A party may not obtain preliminary  
5 injunctive relief where he or she could not obtain permanent injunctive relief.”).

6 Second, the installation of water meters on the properties served by the Well Agreement  
7 was prohibited by the state court in the Judgment entered on February 11, 2011. The water  
8 meters that were installed prior to entry of the Judgment were ordered removed, and no water  
9 meters have been installed on any of the properties served by the Well Agreement since entry of  
10 the Judgment. Consequently, the status quo upon the filing of Mosher’s Complaint in this  
11 adversary proceeding was no water meters. The court disagrees with Mosher’s assertion in the  
12 reply that status quo is “the shared use of the water system,” “not ‘no meters’.”<sup>20</sup> Mosher’s  
13 contention is dead wrong. “[T]he status quo is not simply any situation before the filing of the  
14 lawsuit, but rather the last uncontested status that preceded the parties’ controversy.” Dep’t of  
15 Parks & Recreation for State of Ca. v. Bazaar Del Mundo, Inc., 448 F.3d 1118, 1124 (9th Cir.  
16 2006). Water meters do not exist on the properties served by the Water Agreement, and have not  
17 existed on such properties since they were ordered removed by the state court on February 11,  
18 2011. This period reflects the “last uncontested status” which determines the status quo for  
19 purposes of this adversary proceeding, and a preliminary injunction mandating the installation of  
20 water meters to record water use pending a trial on the merits clearly alters the status quo.  
21 Because the preliminary injunction sought in Mosher’s Application was not sought as a

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23 <sup>19</sup> “A declaratory judgment simply declares the ‘rights of the parties or expresses the opinion of  
24 the court on a question of law, without ordering anything to be done.’ A declaratory judgment is  
25 distinguished from other actions in that it does not seek execution or performance from the  
26 opposing parties. ‘The declaratory judgment procedure may be resorted to only in the sound  
27 discretion of the Court and where the interests of justice will be advanced and an adequate and  
effective judgment may be rendered.” Rendon v. Fresno Police Dept., 2005 WL 1925859, \*7  
(E.D. Cal. 2005) (citations omitted).

28 <sup>20</sup> Plaintiff Walter W. Mosher, Jr.’s Reply Memorandum of Points and Authorities in Support of  
His Application for a Preliminary Injunction (“Mosher’s Reply”), 5:23-24.

1 permanent injunction in his Complaint and, more importantly, would impermissibly alter the  
2 status quo pendent lite pending a trial on the merits, the court finds that Mosher has failed to  
3 establish a reasonable likelihood of success on the merits.

4 2. Likelihood of Irreparable Injury

5 Mosher does not state that he will suffer irreparable injury in the absence of a preliminary  
6 injunction nor does Mosher’s Application discuss the issue of irreparable injury. Mosher points  
7 to “the extreme drought and fire danger posed by the drought,”<sup>21</sup> and claims that the deadlock  
8 between the parties over the installation of water meters is a “problem . . . of an urgent nature  
9 and needs to be resolved immediately.”<sup>22</sup> Randy Whitcomb, a licensed well drilling contractor,  
10 testified that, in his opinion, “the water system has been maintained very well” and that “the  
11 water delivery system and distribution lines are not leaking other than some minor seepage from  
12 the tank.”<sup>23</sup> Mosher and Willett each testified that there have been instances of a “sudden and  
13 sporadic draining” of the 21,000 gallon Water Tank since the commencement of the adversary  
14 proceeding; and based thereon, Mosher and Willett believe that Mouderrres is using more than  
15 her proportionate share of water from the Well.<sup>24</sup> Mosher and Willett each further testified that  
16 “[i]f a fire were to occur, Ventura County Firefighters would have no water to extinguish the fire,  
17 leading to potentially deadly consequences.”<sup>25</sup>

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20 <sup>21</sup> Mosher Decl., 7:24.

21 <sup>22</sup> Id. at 9:9-10.

22 <sup>23</sup> Declaration of Randy Whitcomb in Support of Plaintiff Walter W. Mosher, Jr.’s Application  
23 for a Preliminary Injunction (“Whitcomb Decl.”), 3:13-15.

24 <sup>24</sup> Declaration of Walter W. Mosher, Jr. in Support of Plaintiff Walter W. Mosher, Jr.’s  
25 Application for a Preliminary Injunction for Order: (1) Preventing Defendants Charles Larry  
26 Willett and Judith Lee Mouderrres from Interfering With the Installation of Water Meters to  
27 Monitor and Record Water Use By All Parties for the Water Well at Issue; and (2) Directing All  
28 Parties to Pay for Their Equal Share of the Cost of Acquisition, Installation and Monitoring of  
the Water Meters (“Mosher Decl.”), ¶ 20-21; Willett Decl., ¶ 23-24.

<sup>25</sup> Mosher Decl., 4:19-20; Willett Decl., 5:19-20.

1 Mouderrres, on the other hand, testified that the water lines servicing her property are in  
2 excellent condition.<sup>26</sup> She submitted evidence showing leaks in the Water Tank and line from  
3 the Well to the Water Tank.<sup>27</sup> Mouderrres also submitted copies of electric bills for the pump  
4 between the Well and the Water Tank which appear to show that the average daily electric usage  
5 to replenish the Water Tank is lower for 2015 than in either 2013 or 2014, contradicting the  
6 claims of Mosher and Willett that the pump has had to work extra hard to keep the Water Tank  
7 full.<sup>28</sup> She also claims her use of water from the Well is limited to fire protection and the  
8 irrigation of drought tolerant landscaping, while “Mosher and Willett have multiple users and  
9 multiple water connections” on their properties.<sup>29</sup>

10 Having examined the conflicting evidence, the court finds that Mosher has failed to  
11 establish that extreme or very serious damage is likely to result to him in the absence of the  
12 requested mandatory preliminary injunction pending a trial on the merits. “The standard is  
13 ‘likely irreparable harm,’ not possible irreparable harm.” In re Rinard, 451 B.R. 12, 23 (Bankr.  
14 C.D. Cal. 2011) (citation omitted). Mosher’s evidence that Mouderrres is periodically draining  
15 the Well circumstantial. Furthermore, the possibility that the Well will be empty if and when a  
16 fire may occur during a drought is not sufficient, by itself, to satisfy the threshold of “likely  
17 irreparable harm.”

### 18 3. Balance of Hardships & the Public Interest

19 Mosher’s Application does not attempt to balance the hardship faced by him against the  
20 hardship the requested mandatory preliminary injunction would cause Mouderrres during the  
21 pendency of this adversary proceeding. Having failed to establish both a likelihood of success  
22 on the merits and the likelihood of irreparable injury, the court finds that the balance of hardship  
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24 <sup>26</sup> Declaration of Defendant Judith Lee Mouderrres in Opposition to Plaintiff Walter W. Mosher,  
25 Jr.’s Application for a Preliminary Injunction (“Mouderrres Decl.”), 9:11-12.

26 <sup>27</sup> Id. at 13:7-20; 14:17-26.

27 <sup>28</sup> Id. at 16:9-10.

28 <sup>29</sup> Defendant Judith Lee Mouderrres’ Opposition to Plaintiff’s Application for Preliminary  
Injunction (“Opposition”), at 4:28-5:9.

1 tips in favor of Mouderrres. Finally, Mosher has not articulated a cognizable public interest that  
2 would be served by the issuance of the requested mandatory preliminary injunction pending a  
3 trial on the merits of his claims in this adversary proceeding.

4 III. CONCLUSION

5 For the foregoing reasons, Mosher's Application seeking the issuance of a mandatory  
6 preliminary injunction will be denied.

7 A separate order will be entered consistent with this memorandum.

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24 Date: December 14, 2015



25 Peter H. Carroll  
26 United States Bankruptcy Judge  
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