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7 and LAPIS LAND COMPANY, LLC

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF LOS ANGELES

11 Coordination Proceeding Special Title
12 (Rule 1550 (b))

Judicial Council Coordination No. 4408

13 ANTELOPE VALLEY GROUNDWATER
14 CASES

Case No.: 1-05-CV-049053

14 Included actions:

15 Los Angeles County Waterworks District No.
16 40 vs. Diamond Farming Company
17 Los Angeles Superior Court
18 Case No. BC 325201

18 Los Angeles County Waterworks District No.
19 40 vs. Diamond Farming Company
20 Kern County Superior Court
21 Case No. S-1500-CV 254348 NFT

21 Diamond Farming Company vs. City of
22 Lancaster
23 Riverside County Superior Court
24 Lead Case No. RIC 344436 [Consolidated
25 w/Case Nos. 344668 & 353840]

**CROSS-COMPLAINT OF GRIMMWAY
ENTERPRISES, INC. AND LAPIS
LAND COMPANY, LLC FOR
EQUITABLE AND MONETARY
RELIEF AGAINST
CALIFORNIA WATER SERVICE
COMPANY, CITY OF LANCASTER,
CITY OF PALMDALE, LITTLEROCK
CREEK IRRIGATION DISTRICT,
LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40,
PALMDALE WATER DISTRICT,
ROSAMOND COMMUNITY SERVICES
DISTRICT, PALM RANCH
IRRIGATION DISTRICT, QUARTZ
HILL WATER DISTRICT, AND
PHELAN PIÑON HILLS COMMUNITY
SERVICES DISTRICT**

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28 CROSS-COMPLAINT OF GRIMMWAY ENTERPRISES, INC. AND LAPIS LAND COMPANY, LLC FOR
EQUITABLE AND MONETARY RELIEF AGAINST CALIFORNIA WATER SERVICE COMPANY, CITY OF
LANCASTER, CITY OF PALMDALE, LITTLEROCK CREEK IRRIGATION DISTRICT, LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40, PALMDALE WATER DISTRICT, ROSAMOND COMMUNITY SERVICES
DISTRICT, PALM RANCH IRRIGATION DISTRICT, QUARTZ HILL WATER DISTRICT, AND PHELAN PIÑON
HILLS COMMUNITY SERVICES DISTRICT

000547

1 Grimmway Enterprises, Inc. and LAPIS Land
2 Company, LLC,

3 Cross-Complainants,

4 vs.

5 California Water Service Company; City of
6 Lancaster; City of Palmdale; Littlerock
7 Creek Irrigation District; Los Angeles
8 County Waterworks District No. 40;
9 Palmdale Water District; Rosamond
10 Community Services District; Palm Ranch
11 Irrigation District; Quartz Hill Water
12 District, and Phelan Piñon Community
13 Services District; and ROES 1-200, inclusive,

14 Cross-Defendants.

15 Cross-Complainants, Grimmway Enterprises, Inc. (ROE 605) and LAPIS Land Company, LLC,
16 make the following allegations against Cross-Defendants California Water Service Company, City of
17 Lancaster, City of Palmdale, Littlerock Creek Irrigation District, Los Angeles County Waterworks
18 District No. 40, Palmdale Water District, Rosamond Community Services District, Palm Ranch
19 Irrigation District, Quartz Hill Water District, and Phelan Piñon Hills Community Services District
20 (collectively referred to herein as "Purveyors"), and ROES 1-200, inclusive, as follows:

21 **General Allegations:**

22 1. California Water Service Company is a California corporation which provides water to
23 customers located within the geographic boundaries of the Basin and which extracts water from the
24 Basin.

25 2. City of Lancaster is a municipal corporation located within the County of Los Angeles,
26 and within the geographic boundaries of the Basin.

27 3. City of Palmdale is a municipal corporation located within the County of Los Angeles,
28 and within the geographic boundaries of the Basin.

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1 and operates water wells that draw water from beneath the land for use on the lands for irrigation.
2 Grimmway and its predecessors in interest, are currently, and have historically, pumped water from
3 beneath the land for farming.

4 12. Cross-Complainant LAPIS Land Company, LLC, (hereinafter "LAPIS") is a limited
5 liability company that owns and leases overlying land within the Antelope Valley. LAPIS owns and
6 operates water wells that draw water from beneath the land for use on the lands for irrigation. LAPIS
7 and its predecessors in interest, are currently, and have historically, pumped water from beneath the land
8 for farming.

9 13. Cross-Complainants are ignorant of the true names and capacities of cross-defendants
10 sued herein as ROES 1-200, inclusive, and therefore sue these cross-defendants by such fictitious names.
11 Cross-Complainants will amend this Cross-Complaint to allege their true names and capacities when
12 ascertained. Each reference in this Cross-Complaint to "Purveyors," "the Purveyors," or a specifically
13 named cross-defendant, refers also to all cross-defendants sued under fictitious names.

14 14. Cross-Complainants are informed and believe, and thereon allege, that Rosamond,
15 District 40, Palmdale and Quartz Hill (collectively "the Purveyors") began pumping appropriated surplus
16 water from the Antelope Valley to provide water for their municipal and industrial water customers. At
17 the onset of pumping by the Purveyors, the same was lawful and permissive and did not immediately
18 nor prospectively invade or impair any overlying right.

19 15. Over time, the urban areas within the Antelope Valley continued to expand and grow both
20 in land area and population, and thus, over time the Purveyors increased, and today, continue to increase
21 their demand for water. Cross-Complainants are informed and believe, and thereon allege, that at some
22 as yet unidentified historical point, the aggregate extractions of groundwater from the Antelope Valley
23 began to exceed the safe yield of the Valley. Despite the potential for damage to the water supply and
24 the rights of owners of real property within the Valley, the Purveyors, with knowledge continued to
25 extract groundwater from the common supply, and increased and continue to increase their extractions
26 of groundwater over time. The Purveyors continued the act of pumping with the knowledge that the

1 continued extractions were damaging, long term, the Antelope Valley and in the short term, impairing
2 the rights of the property owners, including the rights in the land owned by Grimmway and LAPIS,
3 which is overlying and within the Antelope Valley.

4 16. Cross-Complainants are informed and believe, and thereon allege, that the Purveyors
5 pumped and continue to pump water in excess of the safe yield with the knowing intent and belief that
6 they could take by claim of prescription, without compensation, the water rights of Grimmway and
7 LAPIS, and all landowners overlying the Antelope Valley. Additionally, all Purveyors continued to
8 pump ever increasing quantities of groundwater, knowing that even if their prescriptive claims failed,
9 they could preserve the right to continue their pumping under a claim of an intervening public use.
10 Despite the knowing intent to take the overlying property landowners' rights, no Purveyor took any steps
11 calculated and intended to inform or otherwise notify any landowner of their adverse and hostile claim
12 or that their pumping of groundwater was an invasion of and a taking of the landowners' property rights.

13 17. During the material time that each Purveyor was pumping, none physically trespassed
14 upon nor invaded any overlying property. No Purveyor stopped, restricted, interfered with or physically
15 or by regulation reduced Grimmway and LAPIS, or any overlying landowner's right and ability to pump
16 groundwater from the Antelope Valley. No Purveyor ever took any affirmative action reasonably
17 calculated to inform or notify any overlying landowner that the Purveyor intended to take or were taking
18 by prescription the overlying water rights.

19 18. Between 1960 and 1980, the Antelope Valley East Kern Water Agency (hereinafter
20 "AVEK") was created to import water from northern California to southern California. As part of its
21 operations, AVEK, in addition to other water importers, have brought and now brings imported water
22 to the Antelope Valley. This imported water was at all material times available for purchase by the
23 Purveyors. Based upon information and belief, it is alleged that the Purveyors consciously chose to not
24 purchase all of the available higher priced imported water to meet their water needs and instead chose
25 to continue to pump and to increase their extractions of groundwater from the Antelope Valley, because,
26 despite the damage to the Valley, groundwater was cheaper than the imported water.

1 and Constitution of the state and the Federal Constitution. There are no administrative remedies available
2 to Grimmway and LAPIS.

3 30. A timely declaration by this court is urgent for the following reasons: by way of this
4 action District 40 is seeking to adjudicate, enjoin and take the property rights of Grimmway and LAPIS
5 and thousands of other parties who own property overlying the Antelope Valley, absent a timely
6 declaration by this court, an injustice will result from the improper awarding of property rights to District
7 40 should this statute be later found to apply to District 40.

8 31. Grimmway and LAPIS and numerous other private parties will suffer irreparable and
9 lasting injury unless declaratory relief is granted.

10 **Second Cause of Action**

11 (Declaratory Relief Against Palmdale Water District to Determine Validity of Statute)

12 32. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs
13 1 through 31, inclusive, of this Cross-Complaint.

14 33. In or about 1943, the Legislature of the State of California enacted Sections 20500 et seq.
15 of the Water Code, known as the Irrigation District Law, hereinafter referred to as the "Irrigation
16 Statutes." In 1943, the legislature added section 22456. This section, since its adoption has been, and
17 now is, in full force and effect. This statute provides as follows:

18 "The district may exercise the right of eminent domain to take any property necessary to
19 carry out its purposes."

20 34. Palmdale contends that section 22456 of the Water Code does not act to limit, in any
21 manner, the mode or method of acquiring an overlying landowner's water rights within the Antelope
22 Valley and that, despite its status as a public entity, Article 1, Section 19 of the California Constitution,
23 and the 5th Amendment to the Federal Constitution, it is nonetheless empowered to acquire private
24 property for public use through the common law doctrine of prescription, without due process and
25 without compensation.

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1 35. Grimmway and LAPIS contend that the statute is constitutional, and when conjoined with
2 the California state and Federal Constitutions, limits the method, manner and mode by which Palmdale
3 may acquire private property for a public use and the rights appurtenant thereto by declaring that the only
4 legal right of the district to take possession of land without consent of the owners is under its power of
5 eminent domain. By virtue of Palmdale's actions as set forth above, an actual controversy has arisen and
6 now exists between Palmdale and Grimmway and LAPIS concerning their respective rights, duties, and
7 responsibilities under that statute and both Constitutions.

8 36. Grimmway and LAPIS desire a declaration of its rights with respect to the
9 constitutionality and application or nonapplication of the statute and asks the court to make a declaration
10 of such rights, duties, and responsibilities, and to make a declaration as to the validity and
11 constitutionality of the statute. Grimmway and LAPIS seek a declaration that the effort of the district
12 to deprioritize Grimmway and LAPIS's overlying right is, without compensation, ultra vires and
13 unconstitutional. Such a declaration is necessary and appropriate at this time in order that Grimmway
14 and LAPIS's property rights be protected and to ensure that Palmdale proceeds according to the law and
15 Constitution of the state and the Federal Constitution. There are no administrative remedies available
16 to Grimmway and LAPIS.

17 37. A timely declaration by this court is urgent for the following reasons: by way of this
18 action Palmdale is seeking to adjudicate, enjoin and take the property rights of Grimmway and LAPIS
19 and thousands of other parties who own property overlying the Antelope Valley, absent a timely
20 declaration by this court, an injustice will result from the improper awarding of property rights to
21 Palmdale should this statute be later found to limit the method by which Palmdale may forcibly acquire
22 property rights.

23 38. Grimmway and LAPIS and numerous other private parties will suffer irreparable and
24 lasting injury unless declaratory relief is granted.

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1 **Third Cause of Action**

2 (Declaratory Relief Against Rosamond and Quartz Hill to Determine Validity of Statute)

3 39. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs
4 1 through 38, inclusive, of this Cross-Complaint.

5 40. In or about 1949, the Legislature of the State of California enacted Sections 30000 et seq.
6 of the Water Code, known as the County Water District Law, hereinafter referred to as the "County
7 Water Statutes." In 1975, the legislature amended section 31040. This amended statute became operative
8 on July 1, 1976 and since then, has been, and now is, in full force and effect. This section provides as
9 follows:

10 "A district may take any property necessary to carry out the business of the district by
11 grant, purchase, gift, devise, condemnation, or lease with or without the privilege of
purchase."

12 41. Rosamond and Quartz Hill contend that section 31040 of the Water Code does not act
13 to limit, in any manner, the mode or method by which they may acquire an overlying landowner's water
14 rights within the Antelope Valley and that, despite their status as public entities, Article 1, Section 19
15 of the California Constitution, and the 5th Amendment to the Federal Constitution, they are nonetheless
16 empowered to take private property for public use through the common law doctrine of prescription,
17 without due process and without compensation.

18 42. Grimmway and LAPIS contend that the statute is constitutional, and when conjoined with
19 the California state and Federal Constitutions, limits the method, manner and mode by which Rosamond
20 and Quartz Hill may acquire private property for a public use and the rights appurtenant thereto by
21 declaring that the only legal right of the districts to take possession of property without consent of the
22 owners is under its power of eminent domain. By virtue of Rosamond's and Quartz Hill's actions as set
23 forth above, an actual controversy has arisen and now exists between Rosamond, Quartz Hill and
24 Grimmway and LAPIS concerning their respective rights, duties, and responsibilities under that statute
25 and both Constitutions.

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1 43. Grimmway and LAPIS desire a declaration of its rights with respect to the
2 constitutionality and application or nonapplication of the statute and asks the court to make a declaration
3 of such rights, duties, and responsibilities, and to make a declaration as to the validity and
4 constitutionality of the statute. Grimmway and LAPIS seek a declaration that the effort of the district
5 to deprioritize Grimmway and LAPIS's overlying right is, without compensation, ultra vires and
6 unconstitutional. Such a declaration is necessary and appropriate at this time in order that Grimmway
7 and LAPIS's property rights be protected and to ensure that Rosamond and Quartz Hill proceed
8 according to the law and Constitution of the state and the Federal Constitution. There are no
9 administrative remedies available to Grimmway and LAPIS.

10 44. A timely declaration by this court is urgent for the following reasons: by way of this
11 action Rosamond and Quartz Hill are seeking to adjudicate, enjoin and take the property rights of
12 Grimmway and LAPIS and thousands of other parties who own property overlying the Antelope Valley,
13 absent a timely declaration by this court, injustice will result from the improper awarding of property
14 rights to Rosamond and/or Quartz Hill should this statute be later found to apply.

15 45. Grimmway and LAPIS and numerous other private parties will suffer irreparable and
16 lasting injury unless declaratory relief is granted.

17 **Fourth Cause of Action**

18 (Declaratory Relief Against All Cross-Defendants to Determine Applicability of California
19 Constitution.)

20 46. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs
21 1 through 45, inclusive, of this Cross-Complaint.

22 47. Article 1 Section 19 of the California Constitution provides as follows:

23 "Private property may be taken or damaged for public use only when just compensation,
24 ascertained by a jury unless waived, has first been paid to, or into court for, the owner.
25 The Legislature may provide for possession by the condemnor following commencement
of eminent domain proceedings upon deposit in court and prompt release to the owner
of money determined by the court to be the probable amount of just compensation."

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1 **Fifth Cause of Action**

2 (Declaratory Relief Against All Cross-Defendants to Determine Applicability of Constitutional
3 Article.)

4 53. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs
5 1 through 52, inclusive, of this Cross-Complaint.

6 54. Article 1 Section 19 of the California Constitution provides as follows:

7 "Private property may be taken or damaged for public use only when just compensation,
8 ascertained by a jury unless waived, has first been paid to, or into court for, the owner.
9 The Legislature may provide for possession by the condemnor following commencement
of eminent domain proceedings upon deposit in court and prompt release to the owner
of money determined by the court to be the probable amount of just compensation."

10 55. The Purveyors contend that, even though they are political subdivisions who are vested
11 with the power of eminent domain, they are nonetheless legally allowed to knowingly take private
12 property for public use through prescription or adverse possession and without compensation.

13 56. Grimmway and LAPIS contend that the use of the word "only" within Article 1 Section
14 19 is a clear limitation on the Purveyor's authority and the manner in which they may take private
15 property for the public benefit. That this limitation forecloses the ability of any governmental entity to
16 knowingly take or acquire private property for a public use under a theory of prescription or adverse
17 possession. By virtue of the Purveyor's actions as set forth above, an actual controversy has arisen and
18 now exists between the Purveyors and Grimmway and LAPIS concerning their respective rights, duties,
19 and responsibilities.

20 57. Grimmway and LAPIS desire a declaration of its rights with respect to the application
21 or nonapplication of Article 1 Section 19 to the Purveyors' prescription claims and asks the court to
22 make a declaration of such rights, duties, and responsibilities. Such a declaration is necessary and
23 appropriate at this time in order that Grimmway and LAPIS's property rights may be protected and to
24 ensure that the municipal Purveyors may proceed according to the California Constitution. There are no
25 administrative remedies available to Grimmway and LAPIS.

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1 governmental entities must provide substantive and procedural due process of law when taking private
2 property for a public use. Grimmway and LAPIS contend that the prescriptive period cannot commence
3 until the governmental entity takes affirmative action designed and intended to give notice and inform
4 the overlying landowners of the governmental entity's adverse and hostile claim. Grimmway and LAPIS
5 further contend that this limitation forecloses the ability of any governmental agency to take or acquire
6 private property for a public use when constitutionally sufficient due process notice has not been
7 provided to the land owner. By virtue of the Purveyor's actions as set forth above, an actual controversy
8 has arisen and now exists between the Purveyors and Grimmway and LAPIS concerning their respective
9 rights, duties, and responsibilities.

10 64. Grimmway and LAPIS desire a declaration of its rights with respect to the application
11 or nonapplication of Article I Section 7 and the 5th Amendment to the U.S. Constitution to the
12 Purveyors' prescription claims and asks the court to make a declaration of such rights, duties, and
13 responsibilities. Such a declaration is necessary and appropriate at this time in order that Grimmway
14 and LAPIS's property rights may be protected and to ensure that the municipal Purveyors may proceed
15 according to the California Constitution. There are no administrative remedies available to Grimmway
16 and LAPIS.

17 65. A timely declaration by this court is urgent for the following reasons: by way of this
18 action the Purveyors are seeking to adjudicate and enjoy the property rights of Grimmway and LAPIS
19 and thousands of other parties by avoiding the due process protections provided to these landowners
20 under Article I Section 7, the 5th and 14th Amendments and Code of Civil Procedure sections 1230.010
21 through 1237.040. Absent a timely declaration by this court, injustice will result from the improper use
22 and adjudication of Grimmway and LAPIS's property rights should the foregoing constraints and
23 statutory mandate be found applicable.

24 66. Grimmway and LAPIS and numerous other private parties will suffer irreparable and
25 lasting injury unless declaratory relief is granted.

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1 **Seventh Cause of Action**

2 (Declaratory Relief Against All Cross-Defendants.)

3 67. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs
4 1 through 66, inclusive, of this Cross-Complaint.

5 68. Grimmway and LAPIS are the owners and/or lessees of real property located within the
6 Antelope Valley. Located on Grimmway and LAPIS's property are water wells which produce water
7 from the groundwater supply. Grimmway and LAPIS and or its predecessors in interest, have
8 continually produced water from these wells without restriction and in quantities as were needed to
9 perform its farming and irrigation operations from year to year.

10 69. Based on information and belief, it is alleged that Purveyors all pump groundwater from
11 the Antelope Valley and then sell it to other individuals and entities who reside within Kern County and
12 Los Angeles Counties.

13 70. An actual controversy has arisen and now exists between Grimmway and LAPIS and the
14 Purveyors concerning their respective rights and duties in that the Purveyors contend that they have been
15 pumping water during a continuous 5 year period during which the common supply has been in a state
16 of overdraft; that this pumping has resulted in a reversal of the common law legal priority granted to
17 overlying land owners pursuant to the common law doctrine of prescription. Whereas, Grimmway and
18 LAPIS dispute this contention and contends that by continuing to pump groundwater from the wells on
19 its land, and by continuing to thus meet all of the water needs to perform its farming operations,
20 Grimmway and LAPIS have preserved and maintained its priority rights to the use of groundwater.

21 71. Grimmway and LAPIS desire a judicial determination of each party's rights and duties,
22 and a declaration as to the status of each party's priority rights to the water in the Valley whether they
23 be overlying, appropriative or prescriptive.

24 72. A judicial declaration is necessary and appropriate at this time under the circumstances
25 in order that Grimmway and LAPIS may ascertain their rights and duties relating to production of water
26 from the Antelope Valley.

1 **Eighth Cause of Action**

2 (Declaratory Relief Against All Cross-Defendants.)

3 73. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs
4 1 through 72, inclusive, of this Cross-Complaint.

5 74. AVEK and others provide the Antelope Valley with water imported from northern
6 California. This imported water was and is available for purchase by the Purveyors.

7 75. Despite having knowledge that the pumping of groundwater in excess of the safe yield
8 caused damage, and despite the knowledge and belief that continued pumping would damage the rights
9 of the landowners whose property overlies the water supply, the Purveyors have failed and refused to
10 slow, stop or reduce their groundwater extractions from the supply and/or to supplement or replace their
11 water needs from the available imported AVEK water.

12 76. The California Constitution, Article X, section 2 provides, in pertinent part, as follows:

13 "It is hereby declared that because of the conditions prevailing in this State the general
14 welfare requires that the water resources of the State be put to beneficial use to the fullest
15 extent of which they are capable, and that the waste or unreasonable use or unreasonable
16 method of use of water be prevented, and that the conservation of such waters is to be
17 exercised with a view to the reasonable and beneficial use thereof in the interest of the
18 people and for the public welfare. The right to water or to the use or flow of water in or
19 from any natural stream or water course in this State is and shall be limited to such water
20 as shall be reasonably required for the beneficial use to be served, and such right does not
21 and shall not extend to the waste or unreasonable use or unreasonable method of use or
22 unreasonable method of diversion of water. . . ."

23 77. An actual controversy has arisen and now exists between Grimmway and LAPIS and each
24 Purveyor concerning their respective rights and duties in that Grimmway and LAPIS contend that the
25 Purveyor's continued dependance on, and use of, the groundwater, their continued and increased
26 extractions of groundwater from the common supply, with knowledge that the extractions exceed the
27 safe yield, and their failure and/or refusal to take all of the available imported water and the method and
28 use of groundwater taken, is unreasonable and constitutes a waste in violation of Article X, Section 2
of the California Constitution. The Purveyors dispute these contentions and contend that their
dependance on groundwater, their continued and increasing extractions of groundwater from the

1 Antelope Valley in excess of the safe yield and their failure and refusal to take all of the available
2 imported water is reasonable and does not constitute waste of groundwater and/or available imported
3 water under Article X, Section 2 of the California Constitution.

4 78. Grimmway and LAPIS desire a declaration of its rights with respect to the
5 constitutionality and application or nonapplication of Article X, Section 2 to the Purveyors' actions and
6 asks the court to make a declaration of such rights, duties, and responsibilities, and to make a declaration
7 as to the validity and constitutionality of the Article X, Section 2. Such a declaration is necessary and
8 appropriate at this time in order that Grimmway and LAPIS's property rights may be protected and to
9 ensure that the Purveyors may proceed under the law and cause no further damage to Grimmway and
10 LAPIS or property overlying the water supply. There are no administrative remedies available to
11 Grimmway and LAPIS.

12 79. A timely declaration by this court is urgent for the following reasons: by way of this
13 action, the Purveyors are seeking to have the court ratify their method and choice of water usage and
14 declare that they have the right to continue to extract groundwater from the Valley in excess of the safe
15 yield and to continue to cause damage to the Valley itself as well as to the land overlying the water
16 supply, absent a timely declaration by this court, an injustice will result from the improper validation of
17 the Purveyors' water usage should this constitutional provision be found to apply to the Purveyors.

18 80. Grimmway and LAPIS and numerous other private parties will suffer irreparable and
19 lasting injury unless declaratory relief is granted.

20 **Ninth Cause of Action**

21 (Declaratory Relief Against All Cross-Defendants.)

22 81. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs
23 1 through 80, inclusive, of this Cross-Complaint.

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1 82. On January 8, 2006, the Purveyors filed a Cross-Complaint in this matter seeking to
2 implement policy objectives which were stated in paragraph 1 as follows:

3 “To promote the general public welfare in the Antelope Valley; protect the public water
4 supplier’s rights to pump groundwater and provide water to the public; protect the
5 Antelope Valley from a loss of the public’s water supply; prevent degradation of the
6 quality of the public groundwater supply; stop land subsidence; and avoid higher water
7 costs to the public.”

8 83. In order to implement these policy objectives, the Purveyors have brought a cause of
9 action against all owners of property overlying the Antelope Valley seeking the imposition of a “physical
10 solution” that would manage the groundwater supply by augmenting the water supply, manage the
11 pumping and storage of water and impose monetary assessments on water extraction from the supply.

12 84. An actual controversy has arisen and now exists between Grimmway and LAPIS and the
13 Purveyors concerning their respective rights and duties in that Grimmway and LAPIS contend that it is
14 a violation of the Constitutional doctrine of the separation of powers for this Court to implement the
15 Purveyors’ policy objectives as they are by nature legislative actions, subject to the provisions of the
16 California Environmental Quality Act (hereinafter “CEQA”; Public Resources Code sections 21000-
17 21177.) That the requirements of CEQA are both procedural (requiring notice, disclosure and a review
18 process) and substantive (by requiring public agencies to take affirmative measures to avoid
19 environmental harm and to also protect the citizens and landowners of the State of California.)

20 85. The Purveyors contend that they may use the judicial system to circumvent CEQA and
21 impose by judicial fiat what should be a legislative policy. In doing so, they seek to avoid providing the
22 public with the required disclosures and evaluations, and thereby deny Grimmway and LAPIS and the
23 public their procedural and substantive protections required by CEQA.

24 86. Grimmway and LAPIS desire a judicial determination of the Purveyors’ rights and duties,
25 and a declaration as to the application of Public Resources Code sections 21000-21177 to any proposed
26 water management plan sought to be implemented by judicial decree by the Purveyors. That the
27 legislative protections afforded to the public under CEQA cannot be ignored or subverted by resorting

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1 to the court to implement the Purveyor's plan, and that such a request of this Court induces a violation
2 of the doctrine of the separation of powers.

3 87. A judicial declaration is necessary and appropriate at this time under the circumstances
4 in order that Grimmway and LAPIS may ascertain their rights and duties relating to production of water
5 from the Antelope Valley.

6 **Tenth Cause of Action**

7 (Declaratory Relief Against All Cross-Defendants.)

8 88. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs
9 1 through 87, inclusive, of this Cross-Complaint.

10 89. On January 8, 2006, the Purveyors filed a Cross-Complaint in this matter seeking to
11 implement policy objectives which were stated in paragraph 1 as follows:

12 "To promote the general public welfare in the Antelope Valley; protect the public water
13 supplier's rights to pump groundwater and provide water to the public; protect the
14 Antelope Valley from a loss of the public's water supply; prevent degradation of the
quality of the public groundwater supply; stop land subsidence; and avoid higher water
costs to the public."

15 90. In order to implement these policy objectives, the Purveyors have brought a cause of
16 action against all owners of property overlying the Antelope Valley seeking the imposition of a "physical
17 solution" that would manage the groundwater supply by augmenting the water supply, manage the
18 pumping and storage of water and impose monetary assessments on water extraction from the supply.

19 91. An actual controversy has arisen and now exists between Grimmway and LAPIS and the
20 Purveyors concerning their respective rights and duties in that Grimmway and LAPIS contend that it is
21 a violation of the Constitutional doctrine of the separation of powers for this Court to implement the
22 Purveyors' policy objectives as they are by nature legislative and executive actions that are within the
23 power of the Purveyors to enact by following the statutory requirements set forth in Water Code sections
24 10700-10795.20. These sections of the Water Code provide the procedural method by which the
25 Purveyors must implement a ground water management plan and also ensures constitutionally required

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1 process through the required public hearings, notice, and publication of the proposed management plan,
2 and the opportunity for public discourse, input and objection.

3 92. The Purveyors contend that they may use the judicial system to impose by judicial fiat
4 what would otherwise be done through legislative action. In doing so, they seek to avoid providing the
5 public with the required notice, hearing and disclosures and deny them their procedural and substantive
6 protections provided by the Constitution and the Water Code sections 10700-10795.20..

7 93. Grimmway and LAPIS desire a judicial determination of the Purveyors' rights and duties,
8 and a declaration as to the application and propriety of Water Code sections 10700-10795.20 to the
9 proposed water management project sought to be implemented by the Purveyors. That the legislative
10 protections afforded to the public under the Water Code may not be ignored or subverted by the filing
11 of a legal action by a public agency, and that such action requests this court to violate the doctrine of
12 separation of powers.

13 94. A judicial declaration is necessary and appropriate at this time under the circumstances
14 in order that Grimmway and LAPIS may ascertain their rights and duties relating to its continued
15 production of water from the Antelope Valley.

16 **Eleventh Cause of Action**

17 (Declaratory Relief Against All Cross-Defendants.)

18 95. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs
19 1 through 94, inclusive, of this Cross-Complaint.

20 96. Commencing in early 2000, each Purveyor has claimed that the Antelope Valley was in
21 a state of "overdraft" for more than five (5) years prior to October 1999.

22 97. Based on information and belief, it is alleged that immediately prior to, during and after
23 the same claimed five year period of "overdraft" claimed by the Purveyors, the Purveyors did approve
24 and have continued to approve the issuance of well permits to Grimmway and LAPIS and others, have
25 approved large scale developments and have authorized others and have thus increased the demand for
26 groundwater pumped by the Purveyors from the Antelope Valley. In performing their ministerial and

1 discretionary functions, each Purveyor has asserted that the additional well permits, hook ups and added
2 residential, industrial and commercial developments, and the concomitant increased pumping of ground
3 water caused thereby, would not, and did not, have under CEQA or otherwise an adverse affect on the
4 water supply available from the Antelope Valley.

5 98. An actual controversy has arisen and now exists between Grimmway and LAPIS and each
6 Purveyor concerning their respective rights and duties in that Grimmway and LAPIS contend that the
7 Purveyors are barred from claiming that the Antelope Valley is in a state of "overdraft" during the time
8 that they have authorized, permitted and approved new and increased pumping from the supply pursuant
9 to Evidence Code section 623. The Purveyors deny Grimmway and LAPIS's contentions and assert that
10 they may assert overdraft as an element of their prescription claims. Section 623 provides as follows:

11 "Whenever a party has, by his own statement or conduct, intentionally and deliberately
12 led another to believe a particular thing true and to act upon such belief, he is not, in any
litigation arising out of such statement or conduct, permitted to contradict it."

13 99. Grimmway and LAPIS desire a judicial determination of its rights and duties, and a
14 declaration as to the application of the doctrine of equitable estoppel to the Purveyors' ability to claim
15 that the Antelope Valley was in a state of overdraft when the same Purveyors were issuing well permits,
16 will serve letters and adding new water customers and authorizing new large scale development projects
17 under the assertion that there was an available, adequate and appropriate water supply in the Antelope
18 Valley to sustain these permits and projects.

19 100. A judicial declaration is necessary and appropriate at this time under the circumstances
20 in order that Grimmway and LAPIS may ascertain their rights and duties relating to their real property
21 that overlies the Antelope Valley.

22 **Twelfth Cause of Action**

23 (Public and Private Nuisance Against All Cross-Defendants.)

24 101. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs
25 1 through 100, inclusive, of this Cross-Complaint.

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1 cause a chronic decline in water levels and the available natural supply will be chronically depleted, that,
2 based on the present trends, demand will continue to exceed supply which will continue to cause a
3 reduction in the long term supply. Additionally, the continued pumping by the Purveyors under these
4 conditions will result in the unlawful obstruction of the overlying landowner's rights to use the water
5 supply in the customary manner.

6 107. The Purveyors, and each of them, have threatened to and will, unless restrained by this
7 court, continue to pump groundwater in increasing amounts, and each and every act has been, and will
8 be, without the consent, against the will, and in violation of the rights of Grimmway and LAPIS.

9 108. As a proximate result of the nuisance created by the Purveyors, and each of them,
10 Grimmway and LAPIS have been, and will be, damaged in a sum to be proven at trial.

11 109. Unless the Purveyors, and each of them, are restrained from increasing their pumping
12 from the supply by order of this court, it will be necessary for plaintiff to commence many successive
13 actions against each Purveyor, and each of them, to secure a project by project injunction and/or
14 compensation for the continuing and repeated damages sustained, thus requiring a multiplicity of suits.

15 110. Should the Purveyors continue to increase their pumping without replenishing the
16 Valley's water supply, Grimmway and LAPIS will suffer irreparable injury in that the usefulness and
17 economic value of Grimmway and LAPIS's overlying property right will be substantially diminished
18 and Grimmway and LAPIS will be deprived of the comfortable, reasonable and beneficial use and
19 enjoyment of their property.

20 111. In maintaining this nuisance, the Purveyors, and each of them, are, and have been, acting
21 with full knowledge of the consequences and damage being caused to Grimmway and LAPIS, and their
22 conduct is willful, oppressive, malicious and designed to interfere with and take the Grimmway and
23 LAPIS's right to freely access the water supply in its customary manner. Accordingly, each Purveyor
24 has intentionally dirtied hands and no right to involve equity in these actions.

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1 **Thirteenth Cause of Action**

2 (42 U.S.C. A 1983 Against All Cross-Defendants.)

3 112. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs
4 1 through 111, inclusive, of this Cross-Complaint.

5 113. This cause of action is brought under 42 U.S.C. § 1983 to recover damages against the
6 Purveyors for violation of Grimmway and LAPIS's rights under the 5th and Fourteenth Amendments
7 of the United States Constitution through the Purveyors' taking of Grimmway and LAPIS's private
8 property for public use without paying just compensation and depriving Grimmway and LAPIS of both
9 substantive or procedural due process of law.

10 114. The Purveyors, and each of them are, and at all times mentioned in this cross-complaint
11 were, governmental entities organized and operating in Los Angeles and/or Kern County and in the State
12 of California. All are organized and existing under the laws of the State of California, with the capacity
13 to sue and be sued.

14 115. The Purveyors, and each of them, were, at all times mentioned in this cross-complaint,
15 acting under color of state law.

16 116. At an as yet unidentified historical point in time, the Purveyors began pumping water
17 from the Antelope Valley as permissive appropriators. Over the course of time, it is believed and
18 therefore alleged, that the aggregate amount of water being extracted from the Valley began to exceed
19 the safe yield resulting in a condition called "overdraft." Grimmway and LAPIS are informed and
20 believe and based thereon allege, that the Purveyors had knowledge of the "overdraft" condition and
21 nonetheless continued pumping and increased their pumping with the specific intent to impair and take
22 all superior overlying property rights to extract groundwater, including that of Grimmway and LAPIS.
23 Each Purveyor continued to pump and increased its pumping of groundwater believing that given the
24 intervention of the committed public use, that no injunction would issue to restrain and/or compel the
25 Purveyor to reduce its dependence upon groundwater. Each Purveyor contends that despite its status as
26 a governmental entity, it can nonetheless take private property for a public use under a theory of

1 prescription and without compensation. Each Purveyor claims that presumed or constructive knowledge
2 of the overdraft condition alone was sufficient to commence the running of the statutory prescriptive
3 period. Each Purveyor did not undertake any affirmative action reasonably calculated and intended to
4 provide notice and inform any affected landowner, including Grimmway and LAPIS, of its adverse and
5 hostile claim. Each Purveyor contends that it has taken the private property rights of Grimmway and
6 LAPIS and others, and have committed them to a public use, without following the Constitutional
7 constraints imposed by Article 1, Section 19, of the California Constitution, and the eminent domain
8 law, Code of Civil Procedure Section 1230.010 et seq., and specifically, the substantive and procedural
9 protections contemplated by Code of Civil Procedure Section 1245.230. The acts of the Purveyors were
10 done under the color of state law with the intent of depriving Grimmway and LAPIS of their property
11 rights without substantive and procedural due process of law and to avoid payment of compensation to
12 Grimmway and LAPIS for the property rights taken, all in violation of the 5th and 14th Amendments
13 to the United States Constitution.

14 117. Grimmway and LAPIS are informed and believe and thereon allege that they were
15 subjected to a violation of their right to due process of law prior to the taking of their property and their
16 right to receive just compensation when their property was taken for the public benefit. This violation
17 was a direct result of the knowing customs, practices, and policies of the Purveyors to continue to pump
18 in excess of the supply, to suppress the assertion of their adverse and hostile claim, and the resulting ever
19 increasing intervening public use and dependance, without acceding to Constitutional limits.

20 118. The customs, practices, and policies of the Purveyors to prescript or adversely possess
21 the property rights of property owners and/or to establish a nonenjoinable intervening use amounted to
22 deliberate indifference to the rights of persons, such as Grimmway and LAPIS, who stand to lose their
23 rights to extract water from the Antelope Valley for use on their property through the actions of each
24 Purveyor and all of them.

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1 119. As a direct and proximate result of the acts of the Purveyors, Grimmway and LAPIS have
2 suffered injury, loss, and damage, including a cloud upon their title to their real property, a reduction in
3 value, and the loss of their right in the future to extract and use groundwater from the Valley.

4 **First Cause of Action**

5 WHEREFORE, cross-complainants pray for a declaratory judgment as follows:

6 1. That the court declare the respective rights, duties, and responsibilities of District 40 and
7 Grimmway and LAPIS under the statute in question and that by its declaration and judgment the court
8 declare that the statute applies to District 40 in this matter, and that the statute is constitutional and
9 valid;

10 2. That District 40 and all others acting in or on its behalf, be enjoined from taking property
11 or the rights attendant thereto in any manner not expressly set forth and authorized in the provisions of
12 Water Code section 55370;

13 3. For costs of suit herein incurred; and

14 4. For such other and further relief as the court deems proper.

15 **Second Cause of Action**

16 WHEREFORE, cross-complainants pray for a declaratory judgment as follows:

17 1. That the court declare the respective rights, duties, and responsibilities of Palmdale and
18 Grimmway and LAPIS under the statute in question and that by its declaration and judgment the court
19 declare that the statute applies to Palmdale in this matter, and that the statute is constitutional and valid;

20 2. That Palmdale and all others acting in or on its behalf, be enjoined from taking property
21 or the rights attendant thereto in any manner not expressly set forth and authorized in the provisions of
22 Water Code section 22456;

23 3. For costs of suit herein incurred; and

24 4. For such other and further relief as the court deems proper.

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Third Cause of Action

WHEREFORE, cross-complainants pray for a declaratory judgment as follows:

- 1. That the court declare the respective rights, duties, and responsibilities of Rosamond and Quartz Hill under the statute in question and that by its declaration and judgment the court declare that Water Code section 31040 applies to Rosamond and Quartz Hill in this matter, and that the statute is constitutional and valid;
- 2. That Rosamond and Quartz Hill and all others acting in or on their behalf, be enjoined from taking property or the rights attendant thereto in any manner not expressly set forth and authorized in the provisions of Water Code section 31040;
- 3. For costs of suit herein incurred; and
- 4. For such other and further relief as the court deems proper.

Fourth Cause of Action

WHEREFORE, cross-complainants pray for a declaratory judgment as follows:

- 1. That the court declare the respective rights, duties, and responsibilities of the Purveyors under Article 1 Section 19 of the California Constitution and that by its declaration and judgment the court declare that Article 1 Section 19 applies to the Purveyors in this matter, and that just compensation is a prerequisite to any taking by each of these governmental entities;
- 2. That the Purveyors and all others acting in or on their behalf, be enjoined from taking property or the rights attendant thereto in any manner not expressly set forth and authorized in the provisions of Article 1 Section 19 of the California Constitution;
- 3. For costs of suit herein incurred; and
- 4. For such other and further relief as the court deems proper.

Fifth Cause of Action

WHEREFORE, cross-complainants pray for a declaratory judgment as follows:

- 1. That the court declare the respective rights, duties, and responsibilities of the Purveyors under Article 1 Section 19 of the California Constitution and that by its declaration and judgment the

1 court declare that Article 1 Section 19 applies to the Purveyors in this matter, and that Section 19
2 prohibits a governmental entity from taking private property for a public use without compensation
3 under the doctrines of prescription or adverse possession;

4 2. That the Purveyors and all others acting in or on their behalf, be enjoined from taking
5 property or the rights attendant thereto in any manner not expressly set forth and authorized in the
6 provisions of Article 1 Section 19 of the California Constitution;

7 3. For costs of suit herein incurred; and

8 4. For such other and further relief as the court deems proper.

9 **Sixth Cause of Action**

10 WHEREFORE, cross-complainants pray for a declaratory judgment as follows:

11 1. That the court declare the respective rights, duties, and responsibilities of the Purveyors
12 under Article 1 Section 7 of the California Constitution and that by its declaration and judgment the
13 court declare that Article 1 Section 7 applies to the municipal Purveyors in this matter, and that Section
14 7 prohibits a governmental entity from taking private property for a public use without providing due
15 process of law to the individual whose property is being taken;

16 2. That the municipal Purveyors and all others acting in or on their behalf, be enjoined from
17 taking property or the rights attendant thereto in any manner not expressly set forth and authorized in
18 the provisions of Article 1 Section 7 of the California Constitution;

19 3. For costs of suit herein incurred; and

20 4. For such other and further relief as the court deems proper.

21 **Seventh Cause of Action**

22 WHEREFORE, cross-complainants pray judgment as follows:

23 1. For a declaration that Grimmway and LAPIS's continued pumping has interrupted any
24 period of adverse pumping by the Municipal Purveyors negating any claim of prescription and thereby
25 preserving Grimmway and LAPIS's overlying priority right to pump water from the Antelope Valley;

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1 Purveyors' objectives requires the Purveyors to act pursuant to the requirements of Water Code section
2 10700-10795.20;

- 3 2. For costs of suit herein incurred; and
- 4 3. For such other and further relief as the court may deem proper.

5 **Eleventh Cause of Action**

6 WHEREFORE, cross-complainants pray judgment as follows:

7 1. For a declaration that each Purveyor is barred from asserting that the Antelope Valley is
8 or was in a state of "overdraft" during the time that the Purveyors were issuing new water well permits,
9 adding new water customers and authorizing new large scale developments and projects, and thus an
10 increased demand on the water supply pursuant to Evidence Code section 623;

- 11 2. For costs of suit herein incurred; and
- 12 3. For such other and further relief as the court may deem proper.

13 **Twelfth Cause of Action**

14 WHEREFORE, cross-complainants pray judgment against cross-defendants, and each of them, as
15 follows:

16 1. For a physical solution enjoining the Purveyors from increasing their extractions from
17 the Antelope Valley and ordering the Purveyors to collectively abate the nuisance by purchasing, from
18 time to time, all available imported water, and to bank and to replenish the groundwater supply and
19 replace, in the aggregate, the extractions made by the Purveyors in excess of the safe yield;

- 20 2. For general damages according to proof;
- 21 3. For punitive damages;
- 22 4. For costs of suit herein incurred; and
- 23 5. For such other and further relief as the court may deem proper.

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Thirteenth Cause of Action

WHEREFORE, Grimmway and LAPIS pray judgment against each Purveyor as follows:

- 1. For compensatory damages, in an amount to be determined according to proof at trial;
- 2. For reasonable attorney's fees, pursuant to 42 U.S.C. § 1988;
- 3. For costs of suit incurred in this action; and
- 4. For such other and further relief as the Court deems proper.

Dated: April 24, 2009

LeBEAU • THELEN, LLP

By: 
BOB H. JOYCE
Attorneys for Grimmway Enterprises, Inc. and
LAPIS Land Company, LLC

PROOF OF SERVICE

1 ANTELOPE VALLEY GROUNDWATER CASES
2 JUDICIAL COUNCIL PROCEEDING NO. 4408
3 CASE NO.: 1-05-CV-049053

4 I am a citizen of the United States and a resident of the county aforesaid; I am over the age
5 of eighteen years and not a party to the within action; my business address is: 5001 E. Commercecenter
6 Drive, Suite 300, Bakersfield, California 93309. On April 24, 2009, I served the within

7 CROSS-COMPLAINT OF GRIMMWAY ENTERPRISES, INC. AND LAPIS LAND
8 COMPANY, LLC FOR EQUITABLE AND MONETARY RELIEF AGAINST CALIFORNIA
9 WATER SERVICE COMPANY, CITY OF LANCASTER, CITY OF PALMDALE,
10 LITTLEROCK CREEK IRRIGATION DISTRICT, LOS ANGELES COUNTY
11 WATERWORKS DISTRICT NO. 40, PALMDALE WATER DISTRICT, ROSAMOND
12 COMMUNITY SERVICES DISTRICT, PALM RANCH IRRIGATION DISTRICT, QUARTZ
13 HILL WATER DISTRICT, AND PHELAN PIÑON HILLS COMMUNITY SERVICES
14 DISTRICT

15 (BY POSTING) I am "readily familiar" with the Court's Clarification Order.
16 Electronic service and electronic posting completed through www.seefiling.org; All papers filed
17 in Los Angeles County Superior Court and copy sent to trial judge and Chair of Judicial Council.

18 Los Angeles County Superior Court
19 111 North Hill Street
20 Los Angeles, CA 90012
21 Attn: Department 1
22 (213) 893-1014

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordinator)
Carlotta Tillman
455 Golden Gate Avenue
San Francisco, CA 94102-3688
Fax (415) 865-4315

23 (BY MAIL) I am "readily familiar" with the firm's practice of collection and
24 processing correspondence for mailing. Under that practice it would be deposited with the U.S.
25 Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California, in
26 the ordinary course of business.

27 (STATE) I declare under penalty of perjury under the laws of the State of
28 California that the above is true and correct, and that the foregoing was executed on April 24,
2009, in Bakersfield, California.

DONNA M. LUIS