

SMITH TRAGER LLP
A Partnership of Professional Corporations
19712 MacArthur Blvd., Suite 120
Irvine, CA 92612

1 SmithTrager LLP
Susan M. Trager, Esq. (SBN 58497)
2 Francis D. Logan, Jr., Esq. (SBN 163049)
Summer L. Nastich, Esq. (SBN 229985)
3 Laurel E. Adcock, Esq. (SBN 234201)
19712 MacArthur Blvd., Suite 120
4 Irvine, CA 92612
Telephone: (949) 752-8971
5 Facsimile: (949) 863-9804
smt@smithtrager.com
6

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7 Attorneys for Cross-Defendant
Phelan Piñon Hills Community Services District
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT
11

12 ANTELOPE VALLEY GROUNDWATER)
CASES)

Judicial Council Coordination Proceeding
No. 4408

13 Included Actions:)
14 *Los Angeles County Waterworks District No.*)
40 v. Diamond Farming Co., et al.,)
15 *Los Angeles County Superior Court, Case No.*)
BC 325 201)

For Filing Purposes Only: Santa Clara
County Case No.: 1-05-CV-049053

16 *Los Angeles County Waterworks District No.*)
17 *40 v. Diamond Farming Co., et al.,*)
18 *Kern County Superior Court, Case No.*)
S-1500-CV-254-348)

Assigned to the Honorable Jack Komar,
Department 17

19 *Wm. Bolthouse Farms, Inc. v. City of*)
20 *Lancaster Diamond Farming Co. v. City of*)
Lancaster Diamond Farming Co. v. Palmdale)
21 *Water Dist., Riverside County Superior Court,*)
Consolidated Action, Case Nos. RIC 353 840,)
22 RIC 344 436, RIC 344 668)

ANSWER OF PHELAN PIÑON HILLS
COMMUNITY SERVICES DISTRICT
TO CROSS-COMPLAINT OF
GRIMMWAY ENTERPRISES, INC.
AND LAPIS LAND COMPANY, LLC
FOR EQUITABLE AND MONETARY
RELIEF

23 AND RELATED CROSS-ACTIONS)
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1 Cross-Defendant Phelan Piñon Hills Community Services District ("Defendant"), for
2 itself alone, hereby answers the Cross-Complaint of Grimmway Enterprises, Inc. and Lapis Land
3 Company, LLC ("Plaintiffs"), as follows:

4 **ANSWER**

5 Pursuant to Code of Civil Procedure section 431.30(d), Defendant hereby generally
6 denies each and every allegation contained in the Cross-Complaint and further denies that
7 Plaintiffs have been damaged in any sum, or at all, by reason of any act or omission on the part
8 of Defendant, or on the part of any agent or employee of Defendant, or is entitled to any relief
9 against Defendant.

10 **FIRST AFFIRMATIVE DEFENSE**

11 (Failure to State a Cause of Action)

12 The Cross-Complaint fails to state facts sufficient to constitute a cause of action.

13 **SECOND AFFIRMATIVE DEFENSE**

14 (Governmental Immunity Against Prescription)

15 Plaintiffs are barred by Civil Code section 1007 from perfecting prescriptive rights
16 against Defendant.

17 **THIRD AFFIRMATIVE DEFENSE**

18 (Waiver)

19 Plaintiffs by their silence and inaction have acquiesced to Defendant's extraction of
20 groundwater from the Basin.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 (Waste and Unreasonable Use of Water)

23 The relief requested in the Cross-Complaint is barred by Article X, section 2 of the
24 California Constitution in that the requested relief would be wasteful and result in unreasonable
25 use, unreasonable method of use, or unreasonable method of diversion of water.

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FIFTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiffs have knowingly and intentionally waived any right to assert some or all of the claims set forth in each and every cause of action contained in the Cross-Complaint. Acts constituting waiver include but are not limited to the following: (a) failing to challenge the use of water by overlayers once groundwater levels began dropping; (b) failing to challenge the use of water by the municipal water suppliers once groundwater levels began dropping; (c) failing to challenge any Urban Water Management Plan issued by a municipal water supplier that relied on pumping from the area to be adjudicated; and (d) failing to challenge water supply assessments and California Environmental Quality Act compliance documents issued by an public agency that relied on pumping from the area to be adjudicated to meet demand.

Discovery is continuing on this issue and Defendant reserves the right to amend its answer as appropriate.

SIXTH AFFIRMATIVE DEFENSE

(Physical Solution)

In the event of the imposition of a physical solution or some form of declaratory relief, due regard must be given to the prior and paramount nature of Defendant's prescriptive water rights.

SEVENTH AFFIRMATIVE DEFENSE

(Waste)

Plaintiffs are guilty of waste.

EIGHTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiffs are guilty of unclean hands because they seek to restrict the pumping of other users but not its own pumping.

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NINTH AFFIRMATIVE DEFENSE

(California Constitution, article X, Section 2)

Claims by Plaintiffs of an absolute priority for overlying rights are barred because they are unreasonable pursuant to Article X, section 2 of the California Constitution in that they do not properly balance overlying uses with other reasonable and beneficial uses.

TENTH AFFIRMATIVE DEFENSE

(Public Agency Discretion)

Each and every cause of action in the Cross-Complaint is barred because it improperly seeks to control the exercise of discretion of various public agencies and it improperly seeks to complete the exercise of discretion in a particular manner.

ELEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiffs by their acts and omissions are estopped from asserting any of the claims upon which they seek relief.

TWELFTH AFFIRMATIVE DEFENSE

(Doctrine of Unjust Enrichment)

Plaintiffs are barred from the relief it seeks by the doctrine of unjust enrichment.

THIRTEENTH AFFIRMATIVE DEFENSE

(Failure to Name and Join Indispensable and Necessary Parties)

Each and every cause of action contained in the Cross-Complaint is barred in whole or in part in accordance with Code of Civil Procedure section 389 inasmuch as Plaintiffs have failed to name and join indispensable parties, including but not limited to producers of water from the Basin.

FOURTEENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

Each and every cause of action is barred, in whole or in part, by applicable statutes of limitation including, but not limited to, sections 318, 319, 321, 337, 338, 339, 342, and 343 of the California Code of Civil Procedure.

1 The claim of Plaintiffs for inverse condemnation is barred by the five year statute of
2 limitations. To obtain a prescriptive right to produce groundwater in California, the water
3 production must be for a reasonable and beneficial purpose, open and notorious, adverse and
4 hostile, exclusive and under a claim of right, and continuous and uninterrupted for the statutory
5 period of five years. Appropriative and prescriptive rights to groundwater, as well as the rights
6 of an overlying owner, can be lost to an adverse user. When the statutory five-year period runs
7 for a prescriptive right, then any claim for inverse condemnation is barred by the five year statute
8 of limitations for such claims.

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

10 (Right to produce Groundwater is Usufructuary)

11 The rights of Plaintiffs to produce groundwater are usufructuary, and confer no right of
12 private ownership in public waters.

13 **SIXTEENTH AFFIRMATIVE DEFENSE**

14 (No Damages or Losses)

15 Plaintiffs are not entitled to recover monetary damages for any groundwater pumped by
16 Defendant.

17 **SEVENTEENTH AFFIRMATIVE DEFENSE**

18 (Failure to Mitigate Any Damages)

19 Plaintiffs have failed and continue to fail to mitigate their damages, if any, and Plaintiffs
20 are barred from recovery against Defendant to the extent of such failure to mitigate.

21 **EIGHTEENTH AFFIRMATIVE DEFENSE**

22 (Actions of the Plaintiffs Are the Proximate and Actual Cause of Any Damages)

23 The damages alleged, if there were any, were proximately and actually caused by the
24 voluntary actions of Plaintiffs and not by any actions and/or omissions of Defendant.

25 **NINETEENTH AFFIRMATIVE DEFENSE**

26 (Tort Claims Act)

27 To the extent the Cross-Complaint could be construed to allege damages based upon
28 anything other than a constitutional theory for just compensation, the claim of Plaintiffs are

1 barred due to the failure of Plaintiffs to present a timely claim to Defendant under the Tort
2 Claims Act, Government Code section 905 et seq.

3 **TWENTIETH AFFIRMATIVE DEFENSE**

4 (Failure to Exercise Administrative Remedies)

5 The cause of action for inverse condemnation is barred by the failure of Plaintiffs to
6 exhaust their available administrative remedies.

7 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

8 (Failure to Exercise Reasonable Diligence)

9 The injuries and damages of Plaintiffs, if any, have been aggravated as a result of their
10 failure to exercise reasonable diligence to minimize those damages, and Defendant's liability, if
11 any, is limited to the amount of damage which would have been suffered had Plaintiffs exercised
12 the diligence required of them.

13 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

14 (Doctrine of Laches)

15 Some or all of the claims of Plaintiffs for relief are barred by the doctrine of laches. For
16 at least five years prior to the commencement of the instant action, the Basin was in a continuous
17 state of overdraft. That overdraft continued and was exacerbated by increased domestic and
18 agricultural production. Defendant has relied upon the inaction of Plaintiffs and their failure to
19 make a formal assertion of any prior and paramount right to that of Defendant.

20 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

21 (Description of Land)

22 The Cross-Complaint does not describe the property at issue with sufficient certainty as
23 required by Code of Civil Procedure section 455.

24 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

25 (Failure to Comply With Code of Civil Procedure Section 425.10)

26 Plaintiffs have failed to comply with the requirements of Code of Civil Procedure section
27 425.10 in that its Prayer for Relief directly contradicts the causes of action pled elsewhere in the
28 Cross-Complaint.

1 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

2 (Uncertainty and Ambiguity)

3 The Cross-Complaint and each and every purported cause of action contained therein are
4 uncertain, ambiguous and unintelligible.

5 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

6 (Right to Assert Additional Affirmative Defenses)

7 Defendant does not presently have sufficient knowledge or information on which to form
8 a belief as to whether it may have additional, as yet unstated, affirmative defense. Defendant
9 reserves the right to assert additional affirmative defenses in the event discovery indicates that
10 they would be appropriate.

11 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

12 (Incorporation By Reference)

13 As permitted by the Court's Appearance Form, Defendant incorporates by reference, as if
14 fully set forth herein, each and every affirmative defense raised by any other defendant to the
15 complaints and cross-complaints on file in this coordinated proceeding whether their answers are
16 filed before or after the filing of this answer.

17 WHEREFORE, Defendant prays for relief as follows:

- 18 1. That Plaintiffs take nothing by way of the Cross-Complaint;
- 19 2. That Defendant be awarded attorneys' fees and costs as may be allowed by statute
20 or law; and
- 21 3. For such other and further relief as the court may deem just and proper.

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23 Dated: May 26, 2009

SmithTrager, LLP

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25 By Francis D. Logan, Jr.
26 Francis D. Logan, Jr.
27 Attorneys for Defendant Phelan Piñon
28 Hills Community Services District

