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1984
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES**

11 **ANTELOPE VALLEY**
12 **GROUNDWATER CASES**

13 Included Actions:

14 Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.
Los Angeles County Superior Court
15 Case No. BC 325201

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

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

Judicial Council Coordination No. 4408

For filing purposes only:
Santa Clara County Case No. 1-05-CV-
049053

Assigned to The Honorable Jack Komar

**ANSWER OF JUNG N. TOM,
TRUSTEE OF THE SHENG
IRREVOCABLE TRUST OF
DECEMBER 27, 1984, TO
COMPLAINT AND ALL CROSS-
COMPLAINTS**

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24 I hereby answer the Complaint and all Cross-Complaints which have been filed as of this
25 date, specifically those of Antelope Valley East-Kern Water Agency, Palmdale Water District &
26 Quartz Hill Water District, Rosamond Community Services District and Waterworks District No. 40
27 of Los Angeles County. I do not intend to participate at trial or other proceedings unless ordered by
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1 the Court to do so, but I reserve the right to do so upon giving written notice to that effect to the
2 Court and all parties. I own the following property located in the Antelope Valley: about 160 acres
3 of land at 150th Street and Avenue Q, Palmdale, California (Los Angeles County, APN 3029 013 045
4 06).

5 **GENERAL DENIAL**

6 1. Pursuant to Code of Civil Procedure section 431.30(d), Defendant and Cross-
7 Defendant hereby generally denies each and every allegation set forth in the Complaint and Cross-
8 Complaint, and the whole thereof, and further denies that Plaintiff and Cross-Complainant are
9 entitled to any relief against Defendant and Cross-Defendant.

10 **AFFIRMATIVE DEFENSES**

11 **First Affirmative Defense**

12 (Failure to State a Cause of Action)

13 2. The Complaint and Cross-Complaint and every purported cause of action contained
14 therein fail to allege facts sufficient to constitute a cause of action against Defendant and Cross-
15 Defendant.

16 **Second Affirmative Defense**

17 (Statute of Limitation)

18 3. Each and every cause of action contained in the Complaint and Cross-Complaint is
19 barred, in whole or in part, by the applicable statutes of limitation, including, but not limited to,
20 sections 318, 319, 321, 338, and 343 of the California Code of Civil Procedure.

21 **Third Affirmative Defense**

22 (Laches)

23 4. The Complaint and Cross-Complaint, and each and every cause of action contained
24 therein, is barred by the doctrine of laches.

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Fourth Affirmative Defense

(Estoppel)

5. The Complaint and Cross-Complaint, and each and every cause of action contained therein, is barred by the doctrine of estoppel.

Fifth Affirmative Defense

(Waiver)

6. The Complaint and Cross-Complaint, and each and every cause of action contained therein, is barred by the doctrine of waiver.

Sixth Affirmative Defense

(Self-Help)

7. Defendant and Cross-Defendant has, by virtue of the doctrine of self-help, preserved its paramount overlying right to extract groundwater by continuing, during all times relevant hereto, to extract groundwater and put it to reasonable and beneficial use on its property.

Seventh Affirmative Defense

(California Constitution Article X, Section 2)

8. Plaintiff and Cross-Complainant's methods of water use and storage are unreasonable and wasteful in the arid conditions of the Antelope Valley and thereby violate Article X, Section 2 of the California Constitution.

Eighth Affirmative Defense

(Additional Defenses)

9. The Complaint and Cross-Complaint do not state their allegations with sufficient clarity to enable Defendant and Cross-Defendant to determine what additional defenses may exist to Plaintiff and Cross-Complainant's causes of action. Defendant and Cross-Defendant therefore reserve the right to assert all other defenses which may pertain to the Complaint and Cross-Complaint.

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Ninth Affirmative Defense

10. The prescriptive claims asserted by governmental entity Cross-Complainants are *ultra vires* and exceed the statutory authority by which each entity may acquire property as set forth in California Water Code sections 22456, 31040 and 55370.

Tenth Affirmative Defense

11. The prescriptive claims asserted by governmental entity Cross-Complainants are barred by the provisions of Article 1 Section 19 of the California Constitution.

Eleventh Affirmative Defense

12. The prescriptive claims asserted by governmental entity Cross-Complainants are barred by the provisions of the 5th Amendment to the United States Constitution as applied to the states under the 14th Amendment of the United States Constitution.

Twelfth Affirmative Defense

13. Cross-Complainants' prescriptive claims are barred due to their failure to take affirmative steps that were reasonably calculated and intended to inform each overlying landowner of Cross-Complainants' adverse and hostile claim as required by the due process clause of the 5th and 14th Amendments of the United States Constitution.

Thirteenth Affirmative Defense

14. The prescriptive claims asserted by governmental entity Cross-Complainants are barred by the provisions of Article 1 Section 7 of the California Constitution.

Fourteenth Affirmative Defense

15. The prescriptive claims asserted by governmental entity Cross-Complainants are barred by the provisions of the 14th Amendment to the United States Constitution.

Fifteenth Affirmative Defense

16. The governmental entity Cross-Complainants were permissively pumping at all times.

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1 **Sixteenth Affirmative Defense**

2 17. The request for the court to use its injunctive powers to impose a physical solution
3 seeks a remedy that is in violation of the doctrine of separation of powers set forth in Article 3
4 Section 3 of the California Constitution.

5 **Seventeenth Affirmative Defense**

6 18. Cross-Complainants are barred from asserting their prescriptive claims by operation
7 of law as set forth in California Civil Code sections 2007 and 1214.

8 **Eighteenth Affirmative Defense**

9 19. Each Cross-Complainant is barred from recovery under each and every cause of
10 action contained in the Cross-Complaint by the doctrine of unclean hands and/or unjust enrichment.

11 **Nineteenth Affirmative Defense**

12 20. The Cross-Complaint is defective because it fails to name indispensable parties in
13 violation of California Code of Civil Procedure section 389(a).

14 **Twentieth Affirmative Defense**

15 21. The governmental entity Cross-Complainants are barred from taking, possessing or
16 using Cross-Defendants' property without first paying just compensation.

17 **Twenty-First Affirmative Defense**

18 22. The governmental entity Cross-Complainants are seeking to transfer water right
19 priorities and water usage which will have significant effects on the Antelope Valley Groundwater
20 basin and the Antelope Valley. Said actions are being done without complying with and contrary to
21 the provisions of California's Environmental Quality Act (CEQA) (Pub.Res.C. 2100 *et seq.*).

22 **Twenty-Second Affirmative Defense**

23 23. The governmental entity Cross-Complainants seek judicial ratification of a project
24 that has had and will have a significant effect on the Antelope valley Groundwater Basin and the
25 Antelope Valley that was implemented without providing notice in contravention of the provisions of
26 California's Environmental Quality Act (CEQA) (Pub.Res.C. 2100 *et seq.*).

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Twenty-Third Affirmative Defense

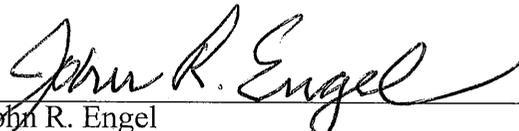
24. Any imposition by this court of a proposed physical solution that reallocates the water right priorities and water usage within the Antelope Valley will be *ultra vires* as it will be subverting the pre-project legislative requirements and protections of California's Environmental Quality Act (CEQA) (Pub.Res.C 2100 *et seq.*).

WHEREFORE, Defendant and Cross-Defendant prays that judgment be entered as follows:

- 1. That Plaintiff and Cross-Complainant take nothing by reason of its Complaint or Cross-Complaint;
- 2. That the Complaint and Cross-Complaints be dismissed with prejudice;
- 3. For Defendant and Cross-Defendant's costs incurred herein; and
- 4. For such other and further relief as the Court deems just and proper.

Dated: January 2, 2007

SULLIVAN, HILL, LEWIN, REZ & ENGEL
A Professional Law Corporation

By: 

John R. Engel
Robert P. Allenby
Attorneys for JUNG N. TOM, Trustee of the
Sheng Irrevocable Trust of December 27, 1984