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9 Co., Averydale Mutual Water Co., Sundale Mutual Water Co., Evergreen Mutual Water Co.,
10 Aqua J Mutual Water Co., Bleigh Flat Mutual Water Co., Colorado Mutual Water Co.,
11 Sunnyside Farms Mutual Water Co., **collectively known as A.V. United Mutual Group**

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

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

13 Included Actions:
14 Los Angeles County Waterworks District
15 No. 40 v. Diamond Farming Co., Superior
16 Court of California, County of Los Angeles,
17 Case No.: BC 325201;

18 Los Angeles County Waterworks District
19 No. 40 v. Diamond Farming Co., Superior
20 Court of California, County of Kern, Case
21 No.: S-1500-CV-254-348;

22 Wm. Bolthouse Farms, Inc. v. City of
23 Lancaster, Diamond Farming Co. v. City of
24 Lancaster, Diamond Farming Co. v.
25 Palmdale Water Dist., Superior Court of
26 California, County of Riverside, Case Nos.:
27 RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination Proceeding
No. 4408

Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

**ANSWER OF A.V. UNITED MUTUAL
GROUP TO FIRST-AMENDED CROSS-
COMPLAINT OF PUBLIC WATER
SUPPLIERS**

28 The parties listed in the caption to this Answer, collectively known as the A.V. United
Mutual Group, ("AVUMG") hereby answer the First-Amended Cross-Complaint of the Public
Water Suppliers for Declaratory and Injunctive Relief and Adjudication of Water Rights, which
has been filed as of this date, specifically those of California Water Service Company, City of
Lancaster, City of Palmdale, Littlerock Creek Irrigation District, Los Angeles County Water

1 Works District No. 40, Palmdale Water District, Rosamond Community Services District, Palm
2 Ranch Irrigation District, and Quartz Hill Water District.

3 **GENERAL DENIAL**

4 1. Pursuant to Code of Civil Procedure section 431.30(d), Cross-Defendants hereby
5 generally deny each and every allegation set forth in the Cross-Complaint, and the whole thereof,
6 and further deny that Cross-Complainants are entitled to any relief against Cross-Defendants.

7 **AFFIRMATIVE DEFENSES**

8 **First Affirmative Defense**

9 **(Failure to State a Cause of Action)**

10 2. The Cross-Complaint and every purported cause of action contained therein fail to
11 allege facts sufficient to constitute a cause of action against these answering Cross-Defendants.

12 **Second Affirmative Defense**

13 **(Statute of Limitations)**

14 3. Each and every cause of action contained in the Cross-Complaint is barred, in
15 whole or in part, by the applicable statutes of limitation, including, but not limited to, sections
16 318, 319, 321, 338, and 343 of the California Code of Civil Procedure.

17 **Third Affirmative Defense**

18 **(Laches)**

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

21 **Fourth Affirmative Defense**

22 **(Estoppel)**

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

25 **Fifth Affirmative Defense**

26 **(Waiver)**

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

2 **Sixth Affirmative Defense**

3 **(Self-Help)**

4 7. Cross-Defendants have, by virtue of the doctrine of self-help, preserved their
5 paramount overlying right to extract groundwater by continuing, during all times relevant hereto,
6 to extract groundwater and put it to reasonable and beneficial use on their properties.

7 **Seventh Affirmative Defense**

8 **(California Constitution Article X, Section 2)**

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

12 **Eighth Affirmative Defense**

13 **(Additional Defenses)**

14 9. The Cross-Complainants do not state their allegations with sufficient clarity to
15 enable these answering Cross-Defendants to determine what additional defenses may exist to
16 Cross-Complainants' causes of action. Cross-Defendants therefore reserve the right to assert all
17 other defenses which may pertain to the Cross-Complaint.

18 **Ninth Affirmative Defense**

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

22 **Tenth Affirmative Defense**

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

25 **Eleventh Affirmative Defense**

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

1 states under the 14th Amendment of the United States Constitution.

2 **Twelfth Affirmative Defense**

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

7 **Thirteenth Affirmative Defense**

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

10 **Fourteenth Affirmative Defense**

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

13 **Fifteenth Affirmative Defense**

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

16 **Sixteenth Affirmative Defense**

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

20 **Seventeenth Affirmative Defense**

21 18. Cross-Complainants are barred from asserting their prescriptive claims by
22 operation of law as set forth in Civil Code sections 1007 and 1214.

23 **Eighteenth Affirmative Defense**

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

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1 **Nineteenth Affirmative Defense**

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

4 **Twentieth Affirmative Defense**

5 21. The governmental entity Cross-Complainants are barred from taking, possessing
6 or using Cross-Defendants' property without first paying just compensation. (United States
7 Constitution, Amendment 5; Article I Section 19 of the California Constitution; California Code
8 of Civil Procedure Section 1263.010(a)).

9 **Twenty-First Affirmative Defense**

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

15 **Twenty-Second Affirmative Defense**

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

20 **Twenty-Third Affirmative Defense**

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

25 **Twenty-Fourth Affirmative Defense**

26 25. No well-defined community of interests exists among Defendants and Cross-
27 Defendants sufficient for this case to warrant class action status.

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Twenty-Fifth Affirmative Defense


26. Each putative class member will not have common defenses against competing water rights sufficient to certify either a Plaintiff or Defendant class.

WHEREFORE, these answering Cross-Defendants pray that judgment be entered as follows:

1. That Cross-Complainants take nothing by reason of their Cross-Complaint;
2. That the Cross-Complaint be dismissed with prejudice;
3. For Cross-Defendants' costs incurred herein; and
4. For such other and further relief as the Court deems just and proper.

Dated: May 3, 2007

COVINGTON & CROWE, LLP

By: 

ROBERT E. DOUGHERTY
WILLIAM A. HAUCK
Attorneys for Cross-Defendants and Cross-Complainants A.V. United Mutual Group

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing ANSWER OF A.V. UNITED MUTUAL GROUP TO FIRST-AMENDED CROSS-COMPLAINT OF PUBLIC WATER SUPPLIERS and know its contents.

CHECK APPLICABLE PARAGRAPHS

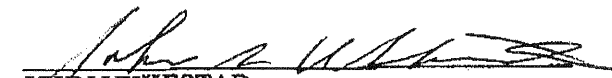
I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an officer a general partner General Manager of White Fence Farms Mutual Water Co., Inc. a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on May 3, 2007, at Palmdale, California.

I disclose under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


JOHN UKKESTAD

COVINGTON & CROWE LLP
ATTORNEYS AT LAW
103 WEST ALTH STREET, SUITE 300
ONTARIO, CA 91763

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2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

4 I am employed in the County of San Bernardino, State of California. I am over the
5 age of 18 and not a party to the within action; my business address is Covington & Crowe,
LLP, 1131 West Sixth Street, Suite 300, Ontario, California 91762.

6 On **May 3, 2007**, I served the foregoing document described as **ANSWER OF A.V.**
7 **UNITED MUTUAL GROUP TO FIRST-AMENDED CROSS-COMPLAINT OF PUBLIC**
WATER SUPPLIERS on the interested parties in this action:

8 by posting the document listed above to the Santa Clara County Superior Court e-
9 filing website under the Antelope Valley Groundwater matter pursuant to the Court's
Order dated October 27, 2005.

10 by placing the original a true copy thereof enclosed in a sealed envelope
11 addressed as follows:

12 **BY MAIL**

13 * I deposited such envelope in the mail at Ontario, California. The envelope was
14 mailed with postage thereon fully prepaid.

15 As follows: I am "readily familiar" with the firm's practice of collection and
16 processing correspondence for mailing. Under that practice it would be deposited with U.S.
Postal Service on that same day with postage thereon fully prepaid at Ontario, California, in
17 the ordinary course of business. I am aware that on motion of the party served, service is
presumed invalid if postal cancellation date or postage meter date is more than one day after
18 date of deposit for mailing in affidavit.

19 **BY PERSONAL SERVICE** I delivered such envelope by hand to the offices of the
addressee.

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

22 Executed on **May 3, 2007**, at Ontario, California.

23 
24 **CAROL SANCHEZ**