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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER CASES

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

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

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

AND RELATED CROSS-ACTIONS.

Judicial Council Coordination Proceeding No. 4408

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

ANSWER OF TIERRA BONITA MUTUAL WATER COMPANY, AS A MEMBER OF A.V. UNITED MUTUAL GROUP, TO FIRST-AMENDED CROSS-COMPLAINT OF PUBLIC WATER SUPPLIERS

Tierra Bonita Mutual Water Company, as a member of A.V. United Mutual Group, ("AVUMG") hereby answers 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 Works District No. 40, Palmdale Water District, Rosamond Community Services District, Palm Ranch Irrigation District, and Quartz Hill Water District.

GENERAL DENIAL

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

AFFIRMATIVE DEFENSES

First Affirmative Defense

(Failure to State a Cause of Action)

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

Second Affirmative Defense

(Statute of Limitations)

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

Third Affirmative Defense

(Laches)

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

Fourth Affirmative Defense

(Estoppel)

5. The Cross-Complaint, and each and every cause of action contained therein, is

barred by the doctrine of estoppel.

Fifth Affirmative Defense

(Waiver)

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

Sixth Affirmative Defense

(Self-Help)

7. Cross-Defendants have, by virtue of the doctrine of self-help, preserved their 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 their properties.

Seventh Affirmative Defense

(California Constitution Article X, Section 2)

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

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 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.

Sixteenth Affirmative Defense

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

Seventeenth Affirmative Defense

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

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Eighteenth Affirmative Defense

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

Nineteenth Affirmative Defense

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

Twentieth Affirmative Defense

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

Twenty-First Affirmative Defense

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

Twenty-Second Affirmative Defense

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

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.*).

Twenty-Fourth Affirmative Defense

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

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: June 5, 2007

COVINGTON & CROWE, LLP

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

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

I am employed in the County of San Bernardino, State of California. I am over the 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.

On **June 5, 2007**, I served the foregoing document described as **ANSWER OF TIERRA BONITA MUTUAL WATER COMPANY, AS A MEMBER OF A.V. UNITED MUTUAL GROUP, TO FIRST AMENDED CROSS-COMPLAINT OF PUBLIC WATER SUPPLIERS** on the interested parties in this action:

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

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

☐ **BY MAIL**

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

☐ As follows: I am "readily familiar" with the firm's practice of collection and 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 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 date of deposit for mailing in affidavit.

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

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

Executed on **June 5, 2007**, at Ontario, California.

VERONICA ARGANDA

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