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9 BIG ROCK MUTUAL WATER COMPANY

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13
14 **IN AND FOR THE COUNTY OF LOS ANGELES**

15 Coordinated Proceeding	)	Judicial Council Coordination
16 Special Title (Rule 1550(b))	)	Proceeding No. 4408
17 ANTELOPE VALLEY GROUNDWATER	)	Santa Clara Case No. 1-05-CV-049053
18 CASES	)	Assigned to the Honorable Jack Komar – Dept. 17
19 Included Actions:)	
20 <u>Los Angeles County Waterworks District No. 40</u>	)	ANSWER OF CROSS-DEFENDANT BIG
21 <u>v. Diamond Farming Co.</u> Los Angeles County	)	ROCK MUTUAL WATER COMPANY TO
22 Superior Court Case No. BC 325201;	)	FIRST AMENDED CROSS-COMPLAINT OF
23 <u>Los Angeles County Waterworks District No. 40</u>	)	PUBLIC WATER SUPPLIERS FOR
24 <u>v. Diamond Farming Co.,</u> Kern County Superior	)	DECLARATORY AND INJUNCTIVE RELIEF
25 Court, Case No. S-1500-CV-234348;	)	AND ADJUDICATION OF WATER RIGHTS
26 <u>Wm. Bolthouse Farms, Inc. v. City of Lancaster</u>)	
27 <u>Diamond Farming Co. v. City of Lancaster v.</u>)	
28 <u>Palmdale Water District,</u> Riverside County)	
Superior Court, Consolidated Actions, Case Nos.)	
RIC 353840, RIC 344436, RIC 344668)	
AND RELATED CROSS-ACTIONS)	

29
30 BIG ROCK MUTUAL WATER COMPANY hereby answers the First Amended Cross-Complaint
31 of Public Water Suppliers for Declaratory and Injunctive Relief and Adjudication of Water Rights as
32 follows:

1 **GENERAL DENIAL**

2 1. Pursuant to Code of Civil Procedure section 431.30(d), Big Rock Mutual Water Company
3 generally and specifically deny each and every allegation contained in the First Amended Cross-
4 Complaint of Public Water Suppliers for Declaratory and Injunctive Relief and Adjudication of Water
5 Rights, and further denies that Cross-Complainants are entitled to any relief against Cross-Defendant.

6 **AFFIRMATIVE DEFENSES**

7 **FIRST AFFIRMATIVE DEFENSE**

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

9 2. The First Amended Cross-Complaint and every purported cause of action contained therein
10 fail to allege facts sufficient to constitute a cause of action against answering Cross-Defendant.

11 **SECOND AFFIRMATIVE DEFENSE**

12 **(Statute of Limitations)**

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

16 **THIRD AFFIRMATIVE DEFENSE**

17 **(Laches)**

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

20 **FOURTH AFFIRMATIVE DEFENSE**

21 **(Estoppel)**

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

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1 **FIFTH AFFIRMATIVE DEFENSE**

2 **(Waiver)**

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

5 **SIXTH AFFIRMATIVE DEFENSE**

6 **(Self-Help)**

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

10 **SEVENTH AFFIRMATIVE DEFENSE**

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

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

15 **EIGHTH AFFIRMATIVE DEFENSE**

16 **(Additional Defenses)**

17 9. The First Amended Cross-Complaint does not state their allegations with sufficient clarity
18 to enable Cross-Defendant to determine what additional defenses may exist to Cross-Complainants'
19 causes of action. Cross-Defendant therefore reserves the right to assert all other defenses which may
20 pertain to the First Amended Cross-Complaint.

21 **NINTH AFFIRMATIVE DEFENSE**

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

25 **TENTH AFFIRMATIVE DEFENSE**

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

1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 12. The prescriptive claims asserted by governmental entity Cross-Complainants are barred by
3 the provisions of the Fifth Amendment to the United States Constitution as applied to the States under the
4 Fourteenth Amendment of the United States Constitution.

5 **TWELFTH AFFIRMATIVE DEFENSE**

6 13. Cross-Complainants’ prescriptive claims are barred due to their failure to take affirmative
7 steps that were reasonably calculated and intended to inform each overlying landowner of Cross-
8 Complainants’ adverse and hostile claims as required by the due process clause of the Fifth and
9 Fourteenth Amendment of the United States Constitution.

10 **THIRTEENTH AFFIRMATIVE DEFENSE**

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

13 **FOURTEENTH AFFIRMATIVE DEFENSE**

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

16 **FIFTEENTH AFFIRMATIVE DEFENSE**

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

18 **SIXTEENTH AFFIRMATIVE DEFENSE**

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

22 **SEVENTEENTH AFFIRMATIVE DEFENSE**

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

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1 **EIGHTEENTH AFFIRMATIVE DEFENSE**

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

5 **NINETEENTH AFFIRMATIVE DEFENSE**

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

8 **TWENTIETH AFFIRMATIVE DEFENSE**

9 21. The governmental entity Cross-Complainants are barred from taking, possessing or using
10 Cross-Defendant’s property without first paying just compensation.

11 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

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

16 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

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

21 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

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

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

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

DATED: September 26, 2007

LEMIEUX & O'NEILL

/s/

By _____

W. KEITH LEMIEUX

Attorneys for Big Rock Mutual Water Company

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA,)
3) ss.
4 COUNTY OF VENTURA)

5 I am employed in the County of Ventura, State of California. I am over the age of 18 and not a
6 party to the within action. My business address is 2393 Townsgate Road, Suite 201, Westlake Village,
California 91361.

7 On **September 26, 2007**, I posted the following document(s) to the website
8 <http://www.scefilng.org>, a dedicated link to the Antelope Valley Groundwater Cases:

9 **ANSWER OF CROSS-DEFENDANT BIG ROCK MUTUAL WATER COMPANY TO FIRST**
10 **AMENDED CROSS-COMPLAINT OF PUBLIC WATER SUPPLIERS FOR DECLARATORY**
11 **AND INJUNCTIVE RELIEF AND ADJUDICATION OF WATER RIGHTS**

12 I declare under penalty of perjury under the laws of the United State of America that the above is
13 true and correct.

14 Executed on September 26, 2007, in Westlake Village, California.

15 /s/

16 _____
17 KATHI MIERS
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SERVICE LIST

Antelope Valley Groundwater Cases: Case No. 1: 05-CV-049053

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ANSWER OF BRMWC TO FIRST AMENDED CROSS-COMPLAINT OF PUBLIC WATER SUPPLIERS

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