

1 WAYNE K. LEMIEUX (SBN. 43501)
2 W. KEITH LEMIEUX (SBN. 161850)
3 LEMIEUX & O'NEILL
4 2393 Townsgate Road, Suite 201
5 Westlake Village, California 91361
6 Telephone: (805) 495-4770
7 Facsimile: (805) 495-2787

8 Attorneys for Cross-Defendant
9 LLANO MUTUAL WATER COMPANY

10
11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13
14 **IN AND FOR THE COUNTY OF LOS ANGELES**

15 Coordinated Proceeding)
16 Special Title (Rule 1550(b)))

Judicial Council Coordination
Proceeding No. 4408

17 ANTELOPE VALLEY GROUNDWATER)
18 CASES)

Santa Clara Case No. 1-05-CV-049053
Assigned to the Honorable Jack Komar – Dept. 17

19 Included Actions:)

ANSWER OF CROSS-DEFENDANT LLANO
MUTUAL WATER COMPANY TO FIRST
AMENDED CROSS-COMPLAINT OF
PUBLIC WATER SUPPLIERS FOR
DECLARATORY AND INJUNCTIVE RELIEF
AND ADJUDICATION OF WATER RIGHTS

20 Los Angeles County Waterworks District No. 40)
21 v. Diamond Farming Co. Los Angeles County)
22 Superior Court Case No. BC 325201;)

23 Los Angeles County Waterworks District No. 40)
24 v. Diamond Farming Co., Kern County Superior)
25 Court, Case No. S-1500-CV-234348;)

26 Wm. Bolthouse Farms, Inc. v. City of Lancaster)
27 Diamond Farming Co. v. City of Lancaster v.)
28 Palmdale Water District, Riverside County)
Superior Court, Consolidated Actions, Case Nos.)
RIC 353840, RIC 344436, RIC 344668)

29 AND RELATED CROSS-ACTIONS)
30)

31 LLANO MUTUAL WATER COMPANY hereby answers the First Amended Cross-Complaint of
32 Public Water Suppliers for Declaratory and Injunctive Relief and Adjudication of Water Rights as
33 follows:
34

1 **GENERAL DENIAL**

2 1. Pursuant to Code of Civil Procedure section 431.30(d), Llano 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.

24 //

25 //

26

27

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.

25 //

26 //

27

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.*)

26 //

27 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 Llano 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 LLANO 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
18
19
20
21
22
23
24
25
26
27

SERVICE LIST

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

4	Eduardo Angeles, Esq. MANAGING CITY ATTORNEY 1 World Way Los Angeles, CA 90009	Attorneys for City of Los Angeles – Airport Division Tel: 310/646-3260 Fax: 310/646-9617 Eangeles@lawa.org
7	Richard M. Brown, Esq. Department of Water & Power 111 North Hope St. P. O. Box 111 Los Angeles, CA 90012	Attorneys for Dept. Of Water & Power Tel: 213/367-4598 Fax: 213/367-4588 Richard.Brown@ladwp.com
11	Thomas Bunn, Esq. LAGERLOF, SENEAL, BRADLEY, GOSNEY & KRUSE 301 North Lake Ave., 10 th Floor Pasadena, CA 91101-4108	Attorneys for Palmdale Water District and Quartz Hill Water District Tel: 626/793-9400 Fax: 626/793-6900 TomBunn@lagerlof.com
15	Marvin G. Burns, Esq. Marvin G. Burns, A Law Corporation 9107 Wilshire Blvd., Suite 800 Beverly Hills, CA 90210-5533	Attorneys for George Stevens, Jr., & George C. Stevens, Jr., Trust Tel: 310/278-6500 Fax: 310/203-9608 MBurns@lurie-zepeda.com
18	Edward J. Casey, Esq. WESTON BENSHOOF ROCHEFORT RUBALCAVA MacCUIISH LLP 333 So. Hope St., 16 th Floor Los Angeles, CA 90071	Attorneys for Palmdale Hills Property LLC Tel: 213/576-1005 Fax: 213/576-1100 ECasey@wbcounsel.com
22	Julie A. Conboy, Deputy City Attorney Department of Water and Power 111 North Hope Street P.O. Box 111 Los Angeles, CA 90012	Attorneys for Department of Water & Power Tel: 213/367-4513 Fax: 213/241-1409 Julie.Conboy@ladwp.com
25	Wm. Matthew Ditzhazy, Esq. CITY OF PALMDALE – Legal Dept. 38300 North Sierra Hwy. Palmdale, CA 93550	Attorney for City of Palmdale Tel: 805/267-5108 Fax: 805/267-5178 mditzhazy@cityofpalmdale.com

1	Jeff Dunn, Esq. BEST, BEST & KRIEGER 5 Park Plaza, Suite 1500 Irvine, CA 92614	Attorneys for Los Angeles County Waterworks District No. 40 and Rosamond Community Tel: 949/263-2600 Fax: 949/260-0972 Jeff.dunn@bbklaw.com
4	Douglas J. Evertz, Esq. STRADLING, YOCCA, CARLSON & RAUTH 660 Newport Center Dr., Suite 1600 Newport Beach, CA 92660-6522	Attorney for City of Lancaster Tel: 949/725-4000 Fax: 949/725-4100 Devertz@sycr.com
7	Michael T. Fife, Esq. HATCH & PARENT 21 East Carrillo Street Santa Barbara, CA 93101	Attorney for Eugene B. Nebeker on behalf of Nebeker Ranch, Inc., Bob Jones on behalf of R&M Ranch, Inc., Forrest G. Godde and Steve Godde, Gailen Kyle on behalf of Kyle & Kyle Ranch, Inc., and John Calandri on behalf of Calandri/ Sonrise Farms, collectively known as the Antelope Valley Groundwater Association ("AGWA") Tel: 805/963-7000 Fax: 805/965-4333 Mfife@hatchparent.com
14	Eric L. Garner, Esq. BEST, BEST & KRIEGER 3750 University Ave., Suite 400 P. O. Box 1028 Riverside, CA 92602-1028	Attorneys for Los Angeles County Waterworks District No. 40 and Rosamond Community Services District Tel: 951/686-1450 Fax: 951/686-3083 Eric.garner@bbklaw.com
18	Janet Goldsmith, Esq. KRONICK, MOSKOWITZ, TIEDMANN & GIRARD 400 Capitol Mall, 27 th Floor Sacramento, CA 95814-4417	Attorneys for City of Los Angeles Tel: 916/321-4500 Fax: 916/321-4555 jgoldsmith@KMTG.com
21	Mark J. Hattam, Esq. ALLEN MATKINS LECK GAMBLE & MALLORY LLP 501 West Broadway, 15 th Floor San Diego, CA 921010-3541	Attorneys for SPC Del Sur Ranch LLC Tel: 619/233-1155 Fax: 619/233-1158 Mhattam@allenmatkins.com
24	Tammy L. Jones, Esq. WESTON BENSHOOF ROCHEFORT RUBALCAVA MacCUIISH LLP 333 S. Hope St., 16 th Floor Los Angeles, CA 90071	Attorneys for Palmdale Hills Property LLC Tel: 213/576-1000 Fax: 213/ 576-1100 tjones@wbcounsel.com

1	Bob H. Joyce, Esq. LEBEAU – THELEN	Attorneys for Diamond Farming Co.
2	5001 East Commercenter Dr., #300	Tel: 661/325-8962
3	P. O. Box 12092	Fax: 661/325-1127
	Bakersfield, CA 93389-2092	bjoyce@lebeauthelen.com
4	Steven M. Kennedy, Esq.	Attorneys for Antelope Valley East Kern Water
5	BRUNICK, McELHANEY & BECKETT	Agency
6	1839 Commercenter West	Tel: 909/889-8301
	San Bernardino, CA 92408	Fax: 090/388-1889
		skennedy@bbmblaw.com
7	Scott K. Kuney, Esq.	Attorneys for Gertrude J. Van Dam and Delmar
8	YOUNG WOOLDRIDGE	D. Van Dam
9	1800 30 TH Street, 4 th Floor	Tel: 661/327-9661
10	Bakersfield, CA 93301	Fax: 661/327-0720
		skuney@youngwooldridge.com
11	James L. Markman, Esq.	Attorneys for City of Palmdale
12	RICHARDS, WATSON & GERSHON	Tel: 714/990-0901
13	P. O. Box 1059	Fax: 714/990-6230
	Brea, CA 92822-1059	jmarkman@rwglaw.com
14	Dale Murad, Esq.	Attorneys for U. S. Department of the Air Force
15	AFLSA/JACE	– Edwards Air Force Base
16	1501 Wilson Blvd., Suite 629	Tel: 703/696-9166
	Arlington, VA 22209-2403	Fax: 703/696-9184
		[no email]
17	Steven R. Orr, Esq.	Attorneys for City of Palmdale
18	RICHARDS, WATSON & GERSHON	Tel: 213/626-8484
19	355 S. Grand Ave., 40 th Floor	Fax: 213/626-0078
	Los Angeles, CA 90071-3101	Sorr@rwglaw.com
20	Jeffrey Robbins, Esq.	Attorneys of City of Lancaster
21	STRADLING YOCCA CARLSON & RAUTH	Tel: 949/737-4720
	660 Newport Center Drive, Suite 1600	Fax: 916/823-6720
	Newport Beach, CA 92660	JRobbins@syccr.com
22	Christopher M. Sanders, Esq.	Attorneys for County Sanitation Districts Nos.
23	EILLISON, SCHNEIDER & HARRIS	14 and 20 of Los Angeles County
24	2015 “H” Street	Tel: 916/447-2166
25	Sacramento, CA 95814	Fax: 916/447-3512
		cms@eslawfirm.com
26	Robert B. Schachter, Esq.	Attorneys for Guss A. Barks and Peter G. Barks
27	HITCHCOCK, BOWMAN & SCHACHTER	Tel: 310/540-2202
	21515 Hawthorne Blvd., Suite 1030	Fax: 310/540-8734
	Torrance, CA 90503-6579	HBSattylaw@aol.com

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

1		
2	Loretta Slaton, Esq. Law Office of Loretta Slaton 2294 Via Puerta, Suite O Laguna Hills, CA 92653	Attorneys for Air Trust Singaport Limited Tel: 949/587-2832 Fax: 949/855-1959 Lslaton81@aol.com
3		
4	Jon A. Slezak, Esq. IVERSON, YOAKUM, PAPIANO & HATCH 624 South Grand Ave., 27 th Floor Los Angeles, CA 90017	Attorneys for City of Los Angeles, Dept. of Airports Tel: 213/624-7444 Fax: 213/629-4563 jslesak@lyph.com
5		
6	William Sloan, Esq. MORRISON & FOERSTER LLP 425 Market Street San Francisco, CA 94105	Attorneys for U. S. Borax, Inc. Tel: 415/268-6127 Fax: 415/276-7545 wsloan@mofo.com
7		
8	John Tootle, Esq. CALIFORNIA WATER SERVICE COMPANY 3625 Del Amo Blvd., Suite 350 Torrance, CA 90503	Attorneys for Antelope Valley Water Company Tel: 310/257-1488 x 322 Fax: 310/325-4691 jtootle@calwater.com
9		
10	Henry Weinstock, Esq. Fred Fudacz, Esq. NOSSAMAN, GUTHNER, KNOX, ELLIOTT, LLP 445 South Figueroa St., 31 st Floor Los Angeles, CA 90071	Attorney for Tejon Ranch Tel: 213/612-7839 Fax: 213/612-7801 hweinstock@nossaman.com
11		
12	Richard G. Zimmer, Esq. CLIFFORD & BROWN 1430 Truxtun Ave., Suite 900 Bakersfield, CA 93301-5230	Attorneys for Wm Bolthouse Farms, Inc. Tel: 661/322-6023 Fax: 661/322-3508 rzimmer@clifford-brownlaw.com
13		
14	AG and DOJ:	
15	Michael Crow, Esq. Office of the California Attorney General 1300 "I" Street Sacramento, CA 95814	Parties: State of California; Santa Monica Mountains Conservancy; 50 th District Agricultural Association Tel: 916/327-7856 Fax: 916/327-2319 Michael.Crow@doj.ca.gov
16		
17	Lee Leininger, Esq. U.S. Department of Justice Environmental & Natural Resources Section 999 – 18 th Street, Suite 945, North Tower Denver, CO 80202	Parties: United States of America Tel: 303/312-7322 Fax: 303/312-7379 Lee.leininger@usdoj.gov
18		
19	Debra W. Yang, United States Attorney	
20		

1	United States Attorney's Office, Central District of CA	Tel: 213/894-2474
2	300 North Los Angeles St., Rm 7516, Fed. Bldg.	Fax: 213/894-2380
3	Los Angeles, CA 90012	[no email]
4	Robert J. Spagnoletti, Esq.	
5	Attorney General for the District of Columbia	Tel: 202/727-6248
6	441 Fourth St., NW, 6 th Floor South	Fax: 202/
7	Washington, DC 20001	[no email]
8	Robert S. McDonnell, Esq.	
9	Attorney General of Virginia	Tel: 804/786-2071
10	900 East Main Street	Fax: 804/786-1991
11	Richmond, VA 23219	mail@oag.state.va.us
12	Court Personnel:	
13	Presiding Judge of the Superior Court of California, County of Los Angeles	CRC Rules 1501(17) and 1540:
14	111 N. Hill Street	Coordination Trial Judge
15	Los Angeles, CA 90012-3014	
16	Honorable Jack Komar	By Mail
17	Santa Clara County Superior Court	Tel: 508/882-2286
18	191 North First Street, Dept. 17C	Fax: 408/882-2293
19	San Jose, CA 95113	rwalker@scscourt.org
20	Superior Court of California	Original Document(s) to be filed at this location.
21	County of Los Angeles	
22	Stanley Mosk Courthouse—Dept. 1, Rm 534	
23	111 North Hill Street	
24	Los Angeles, CA 90012	
25	*Chair, Judicial Council of California	CRC Rule 1511: *Serve only when required to be transmitted to Judicial Council.
26	Administrative Office of the Courts	
27	Attn: Appellate & Trial Court Judicial Services	
28	(Civil Case Coordination)	
	455 Golden Gate Avenue	
	San Francisco, CA 94102-3688	