

STEPHEN T. CLIFFORD
JAMES E. BROWN
ROBERT D. HARDING
ARNOLD ANCHORDOQUY
PATRICK J. OSBORN
MICHAEL L. O'DELL
GROVER H. WALDON
JOHN R. SZEWCZYK
STEPHEN H. BOYLE†
JAMES B. WIENS
RICHARD G. ZIMMER
CHARLES D. MELTON
T. MARK SMITH

OF COUNSEL
ANTHONY L. LEGGIO

† LLM TAXATION

CLIFFORD & BROWN

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

BANK OF AMERICA BUILDING

1430 TRUXTUN AVENUE, SUITE 900

BAKERSFIELD, CALIFORNIA 93301-5230

TELEPHONE NO. (661) 322-6023 • FACSIMILE NO. (661) 322-3508

JEREMY J. SCHROEDER
WINIFRED THOMSON HOSS
SHELLY S. MAURER
DANIEL T. CLIFFORD
CHRISTOPHER J. HAGAN
BRENDA A. ENDERLE
VICTORIA M. TRICHELL
RYAN A. LEGGIO
NICHOLAS J. STREET
TIMOTHY M. OSBORN
MARC E. DENISON

KATHY R. SMITH
OFFICE ADMINISTRATOR

www.clifford-brownlaw.com

August 6, 2008

2455-2

Via E-filing Only

To All Counsel

Re: Antelope Valley Groundwater Litigation
Santa Clara County Superior Court Case No. 1-05-CV-049053
Judicial Council Coordination Proceeding No. 4408

Dear Counsel:

We previously forwarded a proposed Amended Answer to Cross-Complaint and Amended Cross-Complaint. As previously indicated, we simply added affirmative defenses and/or cross-complaint allegations which new parties had included in their Answers and Cross-Complaints, which we deemed to be well taken. The additional affirmative defenses and cross-complaint allegations do not change the overall complexion of the case nor the various claims or cross-claims between the parties.

We received a response from only a couple of party attorneys indicating they did not feel comfortable agreeing to the amendments and requesting that a motion to amend be prepared. Judge Komar recently has reaffirmed his request that the parties meet and confer in a meaningful manner, and that we have a meet and confer conference with the Court before any motion is filed.

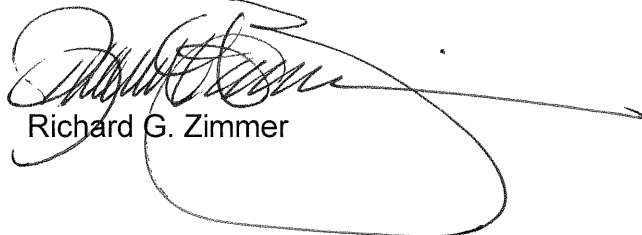
This correspondence is to request identification by any objecting party regarding what particular affirmative defenses and/or cross-complaint allegations which such party is objecting to in order that we may meet and confer regarding the proposed amendments. If we cannot agree, we will then set a telephonic conference with Judge Komar prior to the filing of a motion as he has requested.

To any party who is objecting to our proposed Amended Answer to Cross-Complaint and Amended Cross-Complaint, copies of which are hereby attached for convenient reference, please identify the affirmative defenses and/or cross-complaint allegations to which you object and state the reason for your objection. We then can meet and confer regarding your objections.

To All Counsel
Re: Antelope Valley Groundwater Litigation
August 5, 2008
Page 2

Thank you for your courtesy and attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Richard G. Zimmer', with a large, sweeping flourish extending to the right.

Richard G. Zimmer

RGZ/nm
Enclosures

BL/ANTELOPE VALLEY/SANTA MARIA/ALL COUNSEL-11

1 RICHARD G. ZIMMER - SBN 107263
T. MARK SMITH - SBN 162370
2 CLIFFORD & BROWN
A Professional Corporation
3 Attorneys at Law
Bank of America Building
4 1430 Truxtun Avenue, Suite 900
Bakersfield, CA 93301-5230
5 (661) 322-6023

6 Attorneys for Cross-Defendant, Bolthouse Properties, LLC and Wm.
Bolthouse Farms, Inc.,
7

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

10 * * *

11 COORDINATION PROCEEDING) Judicial Council Coordination
SPECIAL TITLE (Rule 1550(b))) Proceeding No. 4408
12)
13 ANTELOPE VALLEY GROUNDWATER) Santa Clara Case No. 01-05-CV-049053
CASES) Assigned to the Honorable Jack Komar
14)
14 INCLUDED ACTIONS:)
15)
15 LOS ANGELES COUNTY WATERWORKS) [PROPOSED] BOLTHOUSE
DISTRICT NO. 40 v. DIAMOND) PROPERTIES, LLC and WM.
16 FARMING COMPANY, et al.,) BOLTHOUSE FARMS, INC.'S AMENDED
Los Angeles Superior Court) ANSWER TO THE FIRST AMENDED
17 Case No. BC325201) CROSS-COMPLAINT OF PUBLIC WATER
SUPPLIERS FOR DECLARATORY AND
18 LOS ANGELES COUNTY WATERWORKS) INJUNCTIVE RELIEF AND
DISTRICT NO. 40 v. DIAMOND) ADJUDICATION OF WATER RIGHTS
19 FARMING COMPANY, et al.,)
Kern County Superior Court)
20 Case No. S-1500-CV-254348)
21 DIAMOND FARMING COMPANY, and)
W.M. BOLTHOUSE FARMS, INC., v.)
22 CITY OF LANCASTER, et al.,)
Riverside Superior Court)
23 Case No. RIC 344436 [c/w case)
no. RIC 344668 and 353840])
24)
25)
26)

1 COMES NOW Cross-Defendants, BOLTHOUSE PROPERTIES, LLC and
2 WM. BOLTHOUSE FARMS, INC., appearing for themselves and no
3 others, and in answer to the First Amended Cross-Complaint of
4 Cross-Complainants California Water Service Company, City of
5 Lancaster, City of Palmdale, Littlerock Creek Irrigation
6 District, Los Angeles County Water Works District No. 40,
7 Palmdale Water District, Rosamond Community Services District,
8 Palm Ranch Irrigation District and Quartz Hill Water District
9 (collectively, the "Public Water Suppliers"), on file herein,
10 admit, deny and allege as follows:

11 **FIRST AFFIRMATIVE DEFENSE**

12 **(General Denial)**

13 Answering each and every allegation contained in Cross-
14 Complainants' First Amended Cross-Complaint, these answering
15 Cross-Defendants deny each and every, all and singular, generally
16 and specifically, the allegations therein contained and further
17 deny that Cross-Complainants were damaged in the sums therein
18 alleged or in any sum or are entitled to any relief whatsoever or
19 at all.

20 **SECOND AFFIRMATIVE DEFENSE**

21 **(Fails to State Facts)**

22 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
23 every alleged cause of action, these answering Cross-Defendants
24 allege Cross-Complainants' First Amended Cross-Complaint and each
25 alleged cause of action therein fails to state facts sufficient
26 to constitute a cause of action against these answering Cross-

1 Defendants so as to bar the claims herein.

2 **THIRD AFFIRMATIVE DEFENSE**

3 **(Willful Misconduct by Public Agency)**

4 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
5 every alleged cause of action, these answering Cross-Defendants
6 allege the allegations referred to in Cross-Complainant's First
7 Amended Cross-Complaint constitute willful misconduct by a public
8 agency in violation of public trust and public policy so as to
9 bar the claims herein.

10 **FOURTH AFFIRMATIVE DEFENSE**

11 **(Consent by Cross-Complainants)**

12 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
13 every alleged cause of action, these answering Cross-Defendants
14 allege Cross-Complainants consented to the matters and things
15 alleged in the First Amended Cross-Complaint so as to bar the
16 claims herein.

17 **FIFTH AFFIRMATIVE DEFENSE**

18 **(Estoppel)**

19 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
20 every alleged cause of action, these answering Cross-Defendants
21 allege Cross-Complainants have, by Cross-Complainants' own
22 conduct, statements or acts, negligently, wrongfully,
23 intentionally or deliberately acted in such a way as to cause
24 these answering Cross-Defendants to do the acts which said Cross-
25 Complainants now allege are a basis for relief and Cross-
26 Defendants allege by reason of the conduct on the part of Cross-

1 Complainants, that Cross-Complainants should now be estopped or
2 barred from seeking the relief which is requested in the First
3 Amended Cross-Complaint on file herein.

4 **SIXTH AFFIRMATIVE DEFENSE**

5 **(Statute of Limitations)**

6 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
7 every alleged cause of action, these answering Cross-Defendants
8 allege that Cross-Complainant' First Amended Cross-Complaint, and
9 each alleged cause of action therein, are barred by the statute
10 of limitations.

11 **SEVENTH AFFIRMATIVE DEFENSE**

12 **(Unclean Hands)**

13 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
14 every alleged cause of action, these answering Cross-Defendants
15 allege that with reference to the matters set forth in the First
16 Amended Cross-Complaint herein, the hands of the Cross-
17 Complainants themselves are unclean so as to bar the claims
18 herein.

19 **EIGHTH AFFIRMATIVE DEFENSE**

20 **(Laches)**

21 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
22 every alleged cause of action, these answering Cross-Defendants
23 allege that Cross-Complainants have delayed an unreasonable
24 period of time in bringing this action, which delay has been
25 prejudicial to Cross-Defendants, and Cross-Complainants are thus
26 guilty of laches so as to bar the claims herein.

1 **NINTH AFFIRMATIVE DEFENSE**

2 (Notice)

3 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
4 every alleged cause of action, these answering Cross-Defendants
5 allege that Cross-Complainants failed to give notice of the
6 alleged prescription or other taking, either express or implied,
7 so as to bar the claims herein.

8 **TENTH AFFIRMATIVE DEFENSE**

9 (Waiver)

10 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
11 every alleged cause of action, these answering Cross-Defendants
12 allege that Cross-Complainants have waived the things alleged in
13 the First Amended Cross-Complaint, and that the claims herein are
14 barred by the doctrine of waiver.

15 **ELEVENTH AFFIRMATIVE DEFENSE**

16 (Actions As A Matter Of Right)

17 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
18 every alleged cause of action, these answering Cross-Defendants
19 allege that the Cross-Complainants and each of the alleged causes
20 of action therein fail due to Cross-Defendants having duly acted
21 within their rights as to the matters stated in the First Amended
22 Cross-Complaint so as to bar the claims herein.

23 **TWELFTH AFFIRMATIVE DEFENSE**

24 (CEQA Non-Compliance)

25 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
26 every alleged cause of action, these answering Cross-Defendants

1 allege that Cross-Complainants did not comply with CEQA prior to
2 engaging in the activities at issue in the First Amended Cross-
3 Complaint so as to bar the claims herein.

4 **THIRTEENTH AFFIRMATIVE DEFENSE**

5 **(Insufficient Or Non-Existent Groundwater Management**
6 **Plan/Water Assessment)**

7 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
8 every alleged cause of action, these answering Cross-Defendants
9 allege Cross-Complainants did not comply with California
10 requirements as to groundwater management plans and water
11 assessments so as to bar the claims herein.

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

13 **(California's Environmental Quality Act (CEQA))**

14 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
15 every alleged cause of action, these answering Cross-Defendants
16 allege that any imposition by this Court for a proposed physical
17 solution that reallocates the water right priorities and water
18 usage within the Antelope Valley will be *ultra vires* as it will
19 be subverting the pre-project legislative requirements and
20 protections of California's Environmental Quality Act (CEQA).
21 (Pub.Res.C. 21000, et seq.)

22 **FIFTEENTH AFFIRMATIVE DEFENSE**

23 **(Negligent Filing Of Water Supply Documents)**

24 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
25 every alleged cause of action, these answering Cross-Defendants
26 allege that Cross-Complainants negligently filed water supply

1 documents, including, but not limited to, Water Supply
2 Assessments, Environmental Impact Reports, Will Serve Letters,
3 etc., resulting in justifiable reliance by Cross-Defendants that
4 the water supply was sufficient and that no taking could occur
5 which would give rise to a claim of adverse possession or
6 prescription and that Cross-Complainants should be estopped from
7 asserting a claim inconsistent with such entities
8 representations.

9 **SIXTEENTH AFFIRMATIVE DEFENSE**

10 **(Deceitful/Fraudulent Filing Of Water Supply Documents)**

11 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
12 every alleged cause of action, these answering Cross-Defendants
13 allege that Cross-Complainants deceitfully and/or fraudulently
14 failed water supply documents, including, but not limited to,
15 Water Supply Assessments, Environmental Impact Reports, Will
16 Serve Letters, etc., resulting in justifiable reliance by Cross-
17 Defendants that the water supply was sufficient and that no
18 taking could occur which would give rise to a claim of adverse
19 possession or prescription and that Cross-Complainants should be
20 estopped from asserting a claim inconsistent with such entities
21 representations.

22 **SEVENTEENTH AFFIRMATIVE DEFENSE**

23 **(Negligent Misrepresentation)**

24 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
25 every alleged cause of action, these answering Cross-Defendants
26 allege that Cross-Complainants negligently misrepresented the

1 water supply in order to induce Cross-Defendants to justifiably
2 rely on such representations causing Cross-Defendants to take no
3 action to stop actions on the part of Cross-Complainants and that
4 Cross-Complainants should be estopped from asserting a claim
5 inconsistent with such entities representations.

6 **EIGHTEENTH AFFIRMATIVE DEFENSE**

7 **(Intentional Misrepresentation)**

8 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
9 every alleged cause of action, these answering Cross-Defendants
10 allege that Cross-Complainants intentionally misrepresented the
11 water supply in order to induce Cross-Defendants to justifiably
12 rely on such representations to cause Cross-Defendants to take no
13 action to stop actions on the part of Cross-Complainants knowing
14 that such representations were untrue and that Cross-Complainants
15 should be estopped from asserting a claim inconsistent with such
16 entities representations.

17 **NINETEENTH AFFIRMATIVE DEFENSE**

18 **(Indispensable Parties)**

19 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
20 every alleged cause of action, these answering Cross-Defendants
21 allege that Cross-Complainants have not named all parties to this
22 action who are necessary and indispensable, in violation of
23 California *Code of Civil Procedure*, Section 389(a), to the action
24 based upon the pleadings and relief requested so as to bar the
25 claims, allegations and relief requested by Cross-Complainants.

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TWENTIETH AFFIRMATIVE DEFENSE

(Indispensable Parties: McCarran Act)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that Cross-Complainants have not named all parties to this action who are necessary and indispensable to the action for compliance with the McCarran Act so as to bar the claims, allegations and relief requested by Cross-Complainants.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Superior Water Right)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that Cross-Defendants' water rights are superior and senior to, and take precedence over, any rights asserted in the First Amended Cross-Complaint so as to bar the claims herein.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Failure To Prove Priority Rights)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that Cross-Complainants have failed to prove priorities under California water law as between appropriators, as between appropriators and overlying landowners and as between all others necessary for the Court to cut back water production in time of shortage based upon the California priority water allocation system so as to bar the claims herein.

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TWENTY-THIRD AFFIRMATIVE DEFENSE

(Failure To Prove Prevention Of Pumping)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that Cross-Complainants have failed to prove that Cross-Complainants' actions prevented Cross-Defendant from pumping what Cross-Defendants desired to pump during any alleged period of adverse possession or prescription so as to bar the claims herein.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Unlawful Taking)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that Cross-Complainants are barred by State and Federal Constitutions which prevent taking without just compensation and without appropriate legal procedures to assure no taking without due process of law.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Denial Of Equal Protection)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that Cross-Complainants are barred by State and Federal Constitutions which require equal protection of law to Cross-Defendants.

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1 TWENTY-SIXTH AFFIRMATIVE DEFENSE

2 (Appurtenant Rights)

3 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
4 every alleged cause of action, these answering Cross-Defendants
5 allege that it has an appurtenant right to pump and reasonably
6 use groundwater on its properties which is superior to the rights
7 of Cross-Complainants so as to bar the claims therein.

8 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

9 (Right To Return Flows)

10 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
11 every alleged cause of action, these answering Cross-Defendants
12 allege that it has pumped water from a lower aquifer which is not
13 significantly hydraulically connected to the upper aquifer at
14 issue in this case, and used the water so developed to irrigate
15 crops and that a portion of this water has reached the upper
16 aquifer by percolation and Cross-Defendants have a right to store
17 this water in the upper aquifer and Cross-Defendants have a
18 paramount right against all other parties to this water, and a
19 paramount right against all other parties to recapture this water
20 or an equivalent amount so as to bar the claims herein.

21 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

22 (Self Help)

23 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
24 every alleged cause of action, these answering Cross-Defendants
25 allege that the doctrine of self help bars the claims,
26 allegations and remedies requested by Cross-Complainants.

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TWENTY-NINETH AFFIRMATIVE DEFENSE

(Storage Rights)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that it holds a right to storage space in the alluvial and fractured bedrock water basin and that Cross-Defendants have a right to water stored in the basin, based upon the California water allocation priority system, so as to bar the claims herein.

THIRTIETH AFFIRMATIVE DEFENSE

(Storage Space)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that it has storage rights in the fractured bedrock and alluvial groundwater basin for which compensation is due by persons or entities storing water in the water basin so as to bar the claims herein.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(No Net Augmentation)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that Cross-Complainants have not imported, developed, salvaged or otherwise acted with reference to water entering the fractured bedrock or alluvial groundwater basin in a way which has provided a net augmentation to the water basin so as to bar the claims herein.

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THIRTY-SECOND AFFIRMATIVE DEFENSE

(No Net Augmentation For Replenishment)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that Cross-Complainants have not imported water or otherwise provided a net augmentation to the water basin to the extent they simply have replenished water wrongfully taken by them in the past so as to bar the claims herein.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(No Intent To Store/Bank Water)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that any water imported, developed, salvaged or otherwise being claimed as a priority right, credit or other water right, was not imported, developed, salvaged or otherwise introduced into the fractured bedrock or alluvial basin with the intent of storing or banking such water so as to bar the claims herein.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(No Basis For Physical Solution)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that Cross-Complainants have failed to join all necessary and indispensable parties, have failed to prove a basis for injunctive relief against all parties, have failed to prove *inter se* appropriative rights, have failed to prove the nature and extent of appropriative pumping and the nature and extent of

1 overlying pumping and have failed to prove all facts necessary to
2 provide an appropriate basis for the Court to impose a physical
3 solution which allocates water production rights based upon the
4 California water allocation priority system so as to bar the
5 claims herein.

6 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

7 **(Additional Defenses)**

8 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
9 every alleged cause of action, these answering Cross-Defendants
10 allege that it presently has insufficient knowledge or
11 information on which to form a belief as to whether additional,
12 as yet unstated, affirmative defenses may be appropriate. These
13 answering Cross-Defendants reserve herein the right to assert
14 additional affirmative defenses as necessary based upon
15 investigation and discovery.

16 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

17 **(Civil Code, Sections 1007, 1009 and 1214)**

18 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
19 every alleged cause of action, these answering Cross-Defendants
20 allege that Cross-Complainants' claims are barred, in whole or in
21 part, by the provisions of Sections 1007, 1009 and 1214 of the
22 California Civil Code.

23 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

24 **(Unjust Enrichment)**

25 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
26 every alleged cause of action, these answering Cross-Defendants

1 allege that the relief sought in each and every cause of action
2 contained in the Cross-Complaints would constitute an unjust
3 enrichment of Cross-Complainants to the detriment of Bolthouse
4 Properties, LLC and Wm. Bolthouse Farms, Inc.

5 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

6 (Water Code, Sections 22456, 31040 and 55370)

7 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
8 every alleged cause of action, these answering Cross-Defendants
9 allege that the prescriptive claims asserted by governmental
10 entity Cross-Complainants are *ultra vires* and exceed the
11 statutory authority by which each entity may acquire property as
12 set forth in Water Code, Sections 22456, 31040 and 55370.

13 **THIRTY-NINETH AFFIRMATIVE DEFENSE**

14 (California Constitution, Article 1, Section 19)

15 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
16 every alleged cause of action, these answering Cross-Defendants
17 allege that the prescriptive claims asserted by governmental
18 entity Cross-Complainants are barred by the provisions of Article
19 1, Section 19 of the California Constitution.

20 **FOURTIETH AFFIRMATIVE DEFENSE**

21 (California Constitution, Article 1, Section 7)

22 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
23 every alleged cause of action, these answering Cross-Defendants
24 allege that the prescriptive claims asserted by government entity
25 Cross-Complainants are barred by the provisions of Article 1,
26 Section 17 of the California Constitution.

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FORTY-FIRST AFFIRMATIVE DEFENSE

(Doctrine of Separation of Powers)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that 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.

FORTY-SECOND AFFIRMATIVE DEFENSE

(Declaration of Rights)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that Cross-Complainants' claims are barred, in whole or in part, by the provisions set forth in Article 1, Section 7 of the California Constitution.

FORTY-THIRD AFFIRMATIVE DEFENSE

(Civil Code, Section 1214)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that the prescriptive claims asserted by governmental entity Cross-Complainants are barred by operation of law as set forth in Civil Code, Section 1214.

FORTY-FOURTH AFFIRMATIVE DEFENSE

(U.S. Constitution, 5th and 14th Amendments)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants

1 allege that the prescriptive claims asserted by governmental
2 entity Cross-Complainants are barred by the provisions of the
3 Fifth Amendment to the United States Constitution as applied to
4 the states under the Fifth and Fourteenth Amendments of the
5 United States Constitution.

6 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

7 **(Notice of Hostile and Adverse Claim)**

8 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
9 every alleged cause of action, these answering Cross-Defendants
10 allege that the Cross-Complainants' prescriptive claims are
11 barred due to their failure to take affirmative steps that were
12 reasonably calculated and intended to inform each overlying
13 landowner of Cross-Complainants' adverse and hostile claim as
14 required by the due process clause of the Fifth and Fourteenth
15 Amendments of the United States Constitution.

16 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

17 **(Offset)**

18 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
19 every alleged cause of action, these answering Cross-Defendants
20 seek a judicial determination that any imported water purchased
21 by Cross-Complainants for recharge into the Basin for any
22 purpose, either through direct recharge or through return flows,
23 must first be used to offset Cross-Complainants' wrongful pumping
24 from the Basin. Cross-Defendants seek a further judicial
25 declaration that any imported water that has heretofore been
26 purchased by Cross-Complainants and recharged into the Basin

1 either through direct recharge or through return flows, must be
2 considered as an offset against any past wrongful pumping by
3 Cross-Complainants from the Basin.

4 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

5 (California Constitution, Article 10, Section 2)

6 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
7 every alleged cause of action, these answering Cross-Defendants
8 seek a judicial determination that Cross-Complainants' use of
9 water results in an unavoidable degradation of the Basin, which,
10 if allowed to continue, will one day render the Basin unusable
11 and that therefore this use constitutes a continuing nuisance and
12 waste in violation of Article 10, Section 2 of the California
13 Constitution.

14 **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

15 (Permissive Pumping)

16 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
17 every alleged cause of action, these answering Cross-Defendants
18 were permissively pumping at all times.

19 **FORTY-NINETH AFFIRMATIVE DEFENSE**

20 (Civil Code, Section 811)

21 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
22 every alleged cause of action, these answering Cross-Defendants
23 allege that the prescriptive right claimed has been extinguished
24 through disuse thereof as set forth in Civil Code, Section 811.

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1 **FORTY-NINETH AFFIRMATIVE DEFENSE**

2 **(Incorporation of Other Affirmative Defenses)**

3 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
4 every alleged cause of action, these answering Cross-Defendants
5 incorporate herein by reference, as if set forth at length
6 verbatim, each and every affirmative defense set forth by each
7 and every other Defendant and/or Cross-Defendant.

8 **FIFTIETH AFFIRMATIVE DEFENSE**

9 **(Irreparable Harm to Cross-Defendants Outweighs
10 Irreparable Harm to Cross-Complainants)**

11 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
12 every alleged cause of action, these answering Cross-Defendants
13 allege that the Cross-Complaint, and each purported cause of
14 action, are barred, in whole or in part, because any irreparable
15 harm Cross-Complainants have allegedly suffered are outweighed by
16 the irreparable harm to Cross-Defendants.

17 **FIFTY-FIRST AFFIRMATIVE DEFENSE**

18 **(Lack of Damage)**

19 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
20 every alleged cause of action, these answering Cross-Defendants
21 allege that the Cross-Complaint, and each purported cause of
22 action, are barred, in whole or in part, because Cross-
23 Complainants have not suffered any actual or legally cognizable
24 damages.

25 **PRAYER**

26 WHEREFORE, Cross-Defendants pray judgment that Cross-

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Complainants take nothing by reason of the First Amended Cross-Complaint on file herein, for costs of suit, and for such other and further relief as the Court deems just and proper.

DATED: August 5, 2008 CLIFFORD & BROWN

By: _____
RICHARD G. ZIMMER, ESQ.
T. MARK SMITH, ESQ.
Attorneys for cross-defendant,
WM. BOLTHOUSE FARMS, INC.

1 RICHARD G. ZIMMER - SBN 107263
 2 T. MARK SMITH - SBN 162370
 3 CLIFFORD & BROWN
 4 A Professional Corporation
 5 Attorneys at Law
 6 Bank of America Building
 7 1430 Truxtun Avenue, Suite 900
 8 Bakersfield, CA 93301-5230
 9 (661) 322-6023
 10 (661) 322-3508 (fax)

11 Attorneys for Bolthouse Properties, LLC

12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF SANTA CLARA

14 * * *

| | | | |
|----|------------------------------------|---|--------------------------------------|
| 15 | COORDINATION PROCEEDING |) | Judicial Council Coordination |
| 16 | SPECIAL TITLE (Rule 1550(b)) |) | Proceeding No. 4408 |
| 17 | |) | |
| 18 | ANTELOPE VALLEY GROUNDWATER |) | CASE NO. 1-05-CV-049053 |
| 19 | CASES |) | |
| 20 | |) | |
| 21 | INCLUDED ACTIONS: |) | |
| 22 | |) | |
| 23 | LOS ANGELES COUNTY WATERWORKS |) | |
| 24 | DISTRICT NO. 40 v. DIAMOND |) | AMENDED CROSS-COMPLAINT OF |
| 25 | FARMING COMPANY, et al., |) | BOLTHOUSE PROPERTIES, LLC AND |
| 26 | Los Angeles Superior Court |) | CROSS-COMPLAINT OF WM. |
| | Case No. BC325201 |) | BOLTHOUSE FARMS, INC. |
| | |) | |
| | LOS ANGELES COUNTY WATERWORKS |) | |
| | DISTRICT NO. 40 v. DIAMOND |) | |
| | FARMING COMPANY, et al., |) | |
| | Kern County Superior Court |) | |
| | Case No. S-1500-CV-254348 |) | |
| | |) | |
| | DIAMOND FARMING COMPANY, and |) | |
| | W.M. BOLTHOUSE FARMS, INC., v. |) | |
| | CITY OF LANCASTER, et al., |) | |
| | Riverside Superior Court |) | |
| | Case No. RIC 344436 [c/w case no. |) | |
| | RIC 344668 and 353840] |) | |
| | |) | |
| | ROSAMOND COMMUNITY SERVICES |) | |
| | DISTRICT, |) | |
| | CROSS-COMPLAINANT, |) | |

1 BOLTHOUSE PROPERTIES, LLC, WM.)
BOLTHOUSE FARMS, INC.,)
2)
Cross-Complainant,)
3)
v.)
4)
ROSAMOND COMMUNITY SERVICES)
5 DISTRICT; LOS ANGELES COUNTY)
WATERWORKS DISTRICT NO. 40;)
6 PALMDALE WATER DISTRICT; CITY)
OF LANCASTER; CITY OF)
7 PALMDALE; LITTLE ROCK CREEK)
IRRIGATION DISTRICT; PALM)
8 RANCH IRRIGATION DISTRICT;)
CALIFORNIA WATER SERVICE)
9 COMPANY; ANTELOPE VALLEY-EAST)
KERN WATER AGENCY; COUNTY OF)
10 SANITATION DISTRICTS NOS. 14;)
and MOES 1 through 10,000,)
11)
Cross-Defendants.)
12)
13)
14)
15)

16 Cross-Defendants/Cross-Complainants, BOLTHOUSE PROPERTIES,
17 LLC., and WM. BOLTHOUSE FARMS, INC., complain against all parties
18 which have filed Cross-Complaints against Bolthouse Properties,
19 LLC and Wm. Bolthouse Farms, Inc. and additional parties,
20 including but not limited to SHELDON R. BLUM, Trustee for the
21 SHELDON R. BLUM TRUST, and against parties which may in the
22 future file Cross-Complaints against Bolthouse Properties, LLC
23 and Wm. Bolthouse Farms, Inc., on such grounds as are appropriate
24 given the allegations in such Cross-Complaints, as follows:

25 \\
26 \\
27

GENERAL ALLEGATION

1
2 1. Cross-Complainant, BOLTHOUSE PROPERTIES, LLC, is and at
3 all times herein mentioned was, a Limited Liability Company
4 authorized to do business in the State of California.

5 2. Cross-Complainant, WM. BOLTHOUSE FARMS, INC., is a
6 California Corporation authorized to do business in the State of
7 California.

8 3. Cross-Complainant BOLTHOUSE PROPERTIES, LLC, own in fee
9 certain parcels of real property, and/or own/lease water rights
10 for certain properties, (hereinafter individually referred to as a
11 "PARCEL") in the Antelope Valley area of Los Angeles County,
12 California. Each PARCEL has previously been identified in
13 previous Complaints filed by WM. BOLTHOUSE FARMS, INC. in the
14 Riverside action which was later coordinated with the Los Angeles
15 County and Kern County actions filed by Los Angeles County
16 Waterworks District No. 40.

17 4. Cross-Complainant WM. BOLTHOUSE FARMS, INC., own in fee
18 certain parcels of real property, and/or own/lease water rights
19 for certain properties, (hereinafter individually referred to as a
20 "PARCEL") in the Antelope Valley area of Los Angeles County,
21 California. Each PARCEL has previously been identified in
22 previous Complaints filed by WM. BOLTHOUSE FARMS, INC. in the
23 Riverside action which was later coordinated with the Los Angeles
24 County and Kern County actions filed by Los Angeles County
25 Waterworks District No. 40.

26

1 5. Each PARCEL overlies percolating groundwater, the
2 extent of which is unknown to Cross-Complainants. Cross-
3 Complainants hereby incorporate by reference, as if set forth at
4 length verbatim, all Complaints and Cross-Complaints filed by any
5 party to this action, and/or filed in the future by any party, not
6 for the truth thereof, but as and for a basis for bringing this
7 Cross-Complaint.

8 6. Cross-Complainants are ignorant of the true names and
9 capacities, whether individual, corporate, governmental, or
10 otherwise, of the Cross-Defendants named in this Cross-Complaint
11 as Moes 1 through 10,000, inclusive, and therefore sues these
12 Cross-Defendants by these fictitious names. Cross-Complainants
13 will amend this Cross-Complaint to allege the fictitiously-named
14 Cross-Defendants' names and capacities when ascertained.

15 7. By virtue of the location of each PARCEL overlying
16 groundwater, Cross-Complainants hold an overlying water right or
17 other right to groundwater, entitling Cross-Complainants to
18 extract groundwater and to put the water to reasonable and
19 beneficial use on the property ("Cross-Complainants' overlying
20 water rights").

21 8. Cross-Complainants are informed and believe, and on the
22 basis of such information and belief allege, that each of the
23 Cross-Defendants currently extracts, and/or claims a right to
24 extract, groundwater for use on property not held by the
25 extracting Cross-Defendants or for some other non-overlying use.

26 9. Cross-Complainants have an appurtenant right and/or

1 other water right to pump and reasonably use groundwater on the
2 parcels at issue in this lawsuit. These rights to pump
3 groundwater are/may be superior to rights of the Cross-Defendants
4 and/or other Cross-Defendants depending upon the priority rights
5 of such Cross-Defendants based upon the California priority water
6 allocation system.

7 10. Cross-Complainants are informed and believe, and on the
8 basis of such information and belief, allege that each Cross-
9 Defendants' claim that it has water rights to extract groundwater
10 for uses that are superior to, or coequal with, Cross-
11 Complainants' overlying water rights, based upon an alleged
12 superior water right, claim of prescription or otherwise, whether
13 in law or in equity.

14 11. Cross-Complainants are informed and believe, and on the
15 basis of such information and belief, allege that Rosamond, Los
16 Angeles County Waterworks District 40, Palmdale and Quartz Hill
17 (collectively "the Purveyors") began pumping appropriated surplus
18 water from the Antelope Valley to provide water for their
19 municipal and industrial water customers. At the onset of pumping
20 by the Purveyors, the same was lawful and permissive and did not
21 immediately nor prospectively invade or impair any overlying
22 right.

23 12. Over time, the urban areas within the Antelope Valley
24 continued to expand and grow both in land area and population, and
25 thus, over time the Purveyors increased, and today, continue to
26 increase their demand of water. Cross-Complainants are informed

1 and believe, and on the basis of such information and belief,
2 allege that at some as yet unidentified historical point, the
3 aggregate extractions of groundwater from the Antelope Valley
4 began to exceed the safe yield of the Valley. Despite the
5 potential for damage to the water supply and the rights of owners
6 of real property within the Valley, the Purveyors, with knowledge,
7 continued to extract groundwater from the common supply, and
8 increased and continue to increase their extractions of
9 groundwater over time. The Purveyors continued the act of pumping
10 with the knowledge that the continued extractions were damaging,
11 long term, the Antelope Valley and in the short term, impairing
12 the rights of property owners, including the rights in the land
13 owned by Cross-Complainants, which is overlying and within the
14 Antelope Valley.

15 13. Cross-Complainants are informed and believe, and on the
16 basis of such information and belief, allege that the Purveyors
17 pumped and continue to pump water in excess of the safe yield with
18 the knowing intent and belief that they could take by claim of
19 prescription, without compensation, the water rights of Cross-
20 Complainants and all landowners overlying the Antelope Valley.
21 Additionally, all Purveyors continued to pump ever increasing
22 quantities of groundwater, knowing that even if their prescriptive
23 claims failed, they could preserve the right to continue their
24 pumping under a claim of an intervening public use. Despite the
25 knowing intent to take the overlying property landowners' rights,
26 no Purveyor took any steps calculated and intended to inform or

1 otherwise notify any landowner of their adverse and hostile claim
2 or that their pumping of groundwater was an invasion of and a
3 taking of the landowners' property rights.

4 14. During the material time that each Purveyor was
5 pumping, none physically trespassed upon nor invaded any overlying
6 property. No Purveyor stopped, restricted, interfered with or
7 physically or by regulation reduced Cross-Complainants' or any
8 overlying landowners' right and ability to pump groundwater from
9 the Antelope Valley. No Purveyor ever took any affirmative action
10 reasonably calculated to inform or notify any overlying landowner
11 that the Purveyor intended to take or were taking by prescription
12 the overlying water rights.

13 15. Between 1960 and 1980, the Antelope Valley East Kern
14 Water Agency (hereinafter "AVEK") was created to import water from
15 northern California to southern California. As part of its
16 operations, AVEK, in addition to other water importers, have
17 brought and now brings imported water to the Antelope Valley.
18 This imported water was at all material times available for
19 purchase by the Purveyors. Based upon information and belief, it
20 is alleged that the Purveyors consciously chose to not purchase
21 all of the available higher priced imported water to meet their
22 water needs and instead chose to continue to pump and to increase
23 their extractions of groundwater from the Antelope Valley,
24 because, despite the damage to the Valley, groundwater was cheaper
25 than the imported water.

26 16. In late 2004, the Los Angeles County Board of

1 Supervisors unanimously voted to authorize Los Angeles County
2 Waterworks District 40 to file and prosecute the present legal
3 actions which seeks a judicial declaration that Los Angeles County
4 Waterworks District 40 has obtained, without compensation and
5 without due process notice, the overlying landowners' appurtenant
6 water rights through the common law doctrine of prescription.
7 Based on this authorization, Los Angeles County Waterworks
8 District 40 filed these actions.

9 17. Cross-Complainants did not have actual knowledge that
10 any Purveyor's pumping of groundwater was adverse to or hostile to
11 its present and/or future priority rights.

12 18. Based upon information and belief, no landowner had
13 actual knowledge that any Purveyor's pumping of groundwater was
14 adverse to or hostile to its present and/or future priority
15 rights.

16 19. In January 2006, the Purveyors identified herein
17 jointly filed a Cross-Complaint in place of the original Complaint
18 seeking to obtain a judicial declaration that they had obtained
19 the overlying landowners' water rights, without compensation,
20 within the Antelope Valley through the common law doctrine of
21 prescription.

22 20. In January 2007, the Purveyors identified herein
23 jointly filed the present First Amended Cross-Complaint in place
24 of the Cross-Complaint and in place of the original Complaint
25 seeking to obtain a judicial declaration that they had obtained
26 the overlying landowners' water rights, without compensation,

1 within the Antelope Valley through the common law doctrine of
2 prescription.

3 21. None of the purveyors have invoked the power of eminent
4 domain nor paid any compensation to Cross-Complainants or any
5 other overlying owner of land located within Antelope Valley for
6 the property rights they have allegedly and knowingly claimed to
7 have taken.

8 22. The quantity of alleged superior and/or coequal rights
9 claimed by Cross-Defendants, each of them, currently is not known.

10 **FIRST CAUSE OF ACTION**

11 **(Quiet Title/Appurtenant Rights)**

12 23. Cross-Complainants set forth herein at length verbatim
13 the general allegations contained in paragraphs 1 through 22 of
14 this Cross-Complaint.

15 24. Cross-Complainants own PARCELS overlying the Antelope
16 Valley alluvial groundwater basin. Accordingly, Cross-
17 Complainants have appurtenant rights to pump and reasonably use
18 groundwater on such PARCELS.

19 25. Cross-Complainants herein request a declaration from
20 the Court quieting title to Cross-Complainants' appurtenant rights
21 to pump and reasonably use groundwater on their PARCELS.

22 **SECOND CAUSE OF ACTION**

23 **(Declaratory Relief)**

24 26. Cross-Complainants set forth herein at length verbatim
25 the general allegations contained in paragraphs 1 through 22 of
26 this Cross-Complaint.

1 27. Cross-complainants contend that by virtue of the filing
2 of the Complaints filed by Los Angeles County Waterworks District
3 No. 40 in Kern County and Los Angeles County, herein coordinated
4 with the Riverside action, that a current controversy exists as
5 between Cross-Complainants and Cross-Defendants and as to all
6 other Defendants in that Los Angeles County has requested a
7 complete basin-wide adjudication of all rights of all parties to
8 water in the Antelope Valley basin. Cross-Complainants request
9 quiet title and/or other appropriate declaration of the right to
10 pump and reasonably use groundwater on its PARCELS and/or to pump
11 and use other groundwater based upon its rights as declared by the
12 Court herein.

13 **THIRD CAUSE OF ACTION**

14 **(Unlawful Taking/42 USC § 1983)**

15 28. Cross-Complainants set forth herein at length verbatim
16 the general allegations contained in paragraphs 1 through 22 of
17 this Cross-Complaint.

18 29. This cause of action is brought under 42 U.S.C. § 1983
19 to recover damages against the Purveyors for violation of Cross-
20 Complainants' rights under the 5th and 14th Amendments of the
21 United States Constitution through the Purveyors' taking of Cross-
22 Complainants' private property for public use without paying just
23 compensation and depriving Cross-Complainants' of both substantive
24 or procedural due process of law.

25 30. The Purveyors, and each of them, and at all times
26 mentioned in this Cross-Complaint, were governmental entities

1 organized and operating in Los Angeles and/or Kern County and in
2 the State of California. All are organized and existing under the
3 laws of the State of California, with the capacity to sue and be
4 sued.

5 31. The Purveyors, and each of them, were, at all times
6 mentioned in this Cross-Complaint, acting under color of state
7 law.

8 32. At an as yet unidentified historical point in time, the
9 Purveyors began pumping water from the Antelope Valley as
10 permissive appropriators. Over the course of time, it is believed
11 and therefore alleged, that the aggregate amount of water being
12 extracted from the Valley began to exceed the safe yield resulting
13 in a condition called "overdraft." Cross-Complainant is informed
14 and believes and based thereon alleges that the Purveyors had
15 knowledge of the "overdraft" condition and nonetheless continued
16 pumping and increased their pumping with the specific intent to
17 impair and take all superior overlying property rights to extract
18 groundwater, including that of Cross-Complainants. Each Purveyor
19 continued to pump and increased its pumping of groundwater
20 believing that given the intervention of the committed public use
21 that no injunction would issue to restrain and/or compel the
22 Purveyor to reduce its dependence upon groundwater. Each Purveyor
23 contends that despite its status as a governmental entity, it can
24 nonetheless take private property for a public use under a theory
25 of prescription and without compensation. Each Purveyor claims
26 that presumed or constructive knowledge of the overdraft condition

1 alone was sufficient to commence the running of the statutory
2 prescriptive period. Each Purveyor did not undertake any
3 affirmative action reasonably calculated and intended to provide
4 notice and inform any affected landowner, including Cross-
5 Complainants, of its adverse and hostile claim. Each Purveyor
6 contends that it has taken the private property rights of Cross-
7 Complainants and others, and has committed them to a public use,
8 without following the Constitutional constraints imposed by
9 Article 1, Section 19 of the California Constitution, and the
10 eminent domain law, *Code of Civil Procedure*, Section 1245.230.
11 The acts of the Purveyors were done under the color of state law
12 with the intent of depriving Cross-Complainants of its property
13 rights without substantive and procedural due process of law and
14 to avoid payment of compensation to Cross-Complainants for the
15 property rights taken, all in violation of the 5th and 14th
16 Amendments to the United States Constitution.

17 33. Cross-Complainants are informed and believe and thereon
18 allege that they were subjected to a violation of their right to
19 due process of law prior to the taking of their property and their
20 right to receive just compensation when their property was taken
21 for the public benefit. This violation was a direct result of the
22 knowing customs, practices and policies of the Purveyors to
23 continue to pump in excess of the supply, to suppress the
24 assertion of their adverse and hostile claim, and the resulting
25 ever increasing intervening public use and dependence, without
26 acceding to Constitutional limits.

1 separate management areas should exist. Separate management areas
2 as between correlative overlying rights holders and treating these
3 areas differently, denies equal protection to overlying landowners
4 in violation of State and Federal Constitutions and violates 42
5 USC § 1983.

6 **FIFTH CAUSE OF ACTION**

7 **(Declaratory Relief of *Inter Se* Appropriative Rights)**

8 39. Cross-Complainants set forth herein at length verbatim
9 the general allegations contained in paragraphs 1 through 22 of
10 this Cross-Complaint.

11 40. Cross-Complainants have failed to name all
12 appropriators as defendants. In the event that Cross-Defendants
13 prove the Antelope Valley Groundwater basin is, or has been, in a
14 state of common law overdraft, cutbacks may be required to balance
15 the demand with the supply available. The California priority
16 water allocation system requires that appropriative user's cutback
17 water usage before overlying landowners are required to cutback
18 usage. Cutbacks among the appropriators are based upon priority
19 as between appropriators. Appropriators with first in time
20 appropriative rights have priority over later in time
21 appropriators. Accordingly, in order to apply the California
22 priority water allocation system, all appropriators must be
23 included in the action so that the priority of appropriative
24 rights can be litigated which will allow the Court by injunction
25 or physical solution to cutback appropriators based upon such
26 priorities in the event that Cross-Defendants prove the Antelope

1 Valley Groundwater basin is in common law overdraft and that an
2 injunction and/or physical solution is necessary to balance the
3 water demand with water supply.

4 **SIXTH CAUSE OF ACTION**

5 **(Return Flows)**

6 41. Cross-Complainants set forth herein at length verbatim
7 the general allegations contained in paragraphs 1 through 22 of
8 this Cross-Complaint.

9 42. Cross-complainants have pumped and used groundwater on
10 its PARCELS to irrigate crops. This water was pumped from a lower
11 aquifer not significantly hydraulically connected to the upper
12 aquifer and which water would not otherwise be supplied to the
13 upper aquifer. A portion of this water has reached the upper
14 aquifer by percolation. Cross-Complainants have a priority right
15 to these return flows as well as a right to store water in the
16 upper aquifer from the return flows and have a paramount right
17 against all other parties to this water and a paramount right
18 against all other parties to recapture this water or an equivalent
19 amount of such water.

20 **SEVENTH CAUSE OF ACTION**

21 **(Self Help)**

22 43. Cross-Complainants set forth herein at length verbatim
23 the general allegations contained in paragraphs 1 through 22 of
24 this Cross-Complaint.

25 44. Cross-complainants contend that Cross-Defendants must
26 prove any claim for prescription or adverse possession and prove

1 that they prevented Cross-Complainants from pumping amounts which
2 Cross-Complaints desired to pump during any alleged period of
3 adverse possession or prescription. However, to the extent the
4 Court rules that self help constitutes an affirmative request for
5 relief by Cross-Complainants, Cross-Complainants claim water
6 rights based upon self help.

7 **EIGHTH CAUSE OF ACTION**

8 **(Storage Rights)**

9 45. Cross-Complainants set forth herein at length verbatim
10 the general allegations contained in paragraphs 1 through 22 of
11 this Cross-Complaint.

12 46. Cross-Complainants possess overlying rights to produce
13 water on its PARCELS in the Antelope Valley. Cross-Complainants
14 possess an appurtenant right to storage space in the fractured
15 bedrock and alluvial water basin and the right to water stored
16 therein based upon the California water allocation priority
17 system.

18 **NINTH CAUSE OF ACTION**

19 **(Storage Space)**

20 47. Cross-Complainants set forth herein at length verbatim
21 the general allegations contained in paragraphs 1 through 22 of
22 this Cross-Complaint.

23 48. Cross-Complainants possess a right to produce
24 groundwater in the Antelope Valley and storage rights related
25 thereto. Accordingly, assuming there is storage space available
26 for all overlying needs, Cross-Complainants possess a right to

1 compensation from parties storing water in the basin.

2 **TENTH CAUSE OF ACTION**

3 **(Injunction/Physical Solution)**

4 49. Cross-Complainants set forth herein at length verbatim
5 the general allegations contained in paragraphs 1 through 22 of
6 this Cross-Complaint.

7 50. Cross-Complainants contend that Cross-Defendants, which
8 are seeking an injunction/physical solution, must prove common law
9 overdraft, the nature and extent of all pumping occurring in the
10 Antelope Valley, appropriative *inter se* priority rights, the
11 rights of all groundwater producers in the Antelope Valley and a
12 legal basis for an injunction against parties holding inferior
13 rights based upon the California groundwater allocation priority
14 system. Cross-Complainants further contend that if water cutbacks
15 are necessary, appropriative users must be cutback first to
16 prevent continuing common law overdraft. To the extent Cross-
17 Defendants prove that common law overdraft exists, Cross-
18 Complainants request the Court enjoin parties holding inferior
19 appropriative rights from pumping and/or that the Court impose a
20 physical solution on appropriators to prevent continuing common
21 law overdraft.

22 **ELEVENTH CAUSE OF ACTION**

23 **(Declaratory Relief to Determine Applicability**
24 **of California Constitution)**

25 51. Cross-Complainants set forth herein at length verbatim
26 the general allegations contained in paragraphs 1 through 22 of

1 this Cross-Complaint.

2 52. Article 1, Section 19 of the California Constitution
3 provides as follows:

4 "Private property may be taken or damaged for
5 public use only when just compensation,
6 ascertained by a jury unless waived, has
7 first been paid to, or into court for, the
8 owner. The Legislature may provide for
9 possession by the condemner following
10 commencement of eminent domain proceedings
11 upon deposit in court and prompt release to
12 the owner of money determined by the court to
13 be the probable amount of just compensation."

14 53. The Purveyors contend that, even though they are
15 political subdivisions who are vested with the power of eminent
16 domain, they are nonetheless legally permitted to knowingly take
17 private property for public use without first paying just
18 compensation.

19 54. Cross-Complainants contend that the use of the word
20 "only" within Article 1, Section 19 is a clear temporal limitation
21 on the Purveyor's lawful ability to knowingly take private
22 property for the public benefit to only those instances where just
23 compensation has first been paid. By virtue of the Purveyor's
24 actions as set forth above, an actual controversy has arisen and
25 now exists between the Purveyors and Cross-Complainants concerning
26 their respective rights, duties and responsibilities.

55. Cross-Complainants desire a declaration of its rights
with respect to the application or non-application of Article 1,
Section 19 to the Purveyors and ask the court to make a
declaration of such rights, duties and responsibilities. Such a

1 declaration is necessary and appropriate at this time in order
2 that Cross-Complainants' property rights may be protected and to
3 ensure that the municipal Purveyors proceed according to the
4 California Constitution. There are no administrative remedies
5 available to Cross-Complainants.

6 56. A timely declaration by this court is urgent for the
7 following reasons: by way of this action, the Purveyors are
8 seeking to adjudicate, enjoin and take the property rights of
9 Cross-Complainants and thousands of other parties who own property
10 overlying the water supply without first paying just compensation
11 therefore, absent a timely declaration by this court, injustice
12 will result from the improper taking of the Cross-Complainants'
13 property rights should Article 1, Section 19 of the California
14 Constitution be found to apply.

15 57. Cross-Complainants and numerous other private parties
16 will suffer irreparable and lasting injury unless declaratory
17 relief is granted.

18 **TWELFTH CAUSE OF ACTION**

19 **(Declaratory Relief to Determine Applicability**
20 **of Constitutional Article)**

21 58. Cross-Complainants set forth herein at length verbatim
22 the general allegations contained in paragraphs 1 through 22 of
23 this Cross-Complaint.

24 59. Article 1, Section 19 of the California Constitution
25 provides as follows:

26 "Private property may be taken or damaged for

1 public use only when just compensation,
2 ascertained by a jury unless waived, has
3 first been paid to, or into court for, the
4 owner. The Legislature may provide for
5 possession by the condemner following
6 commencement of eminent domain proceedings
7 upon deposit in court and prompt release to
8 the owner of money determined by the court to
9 be the probable amount of just compensation."

6 60. The Purveyors contend that, even though they are
7 political subdivisions who are vested with the power of eminent
8 domain, they are nonetheless legally allowed to knowingly take
9 private property for public use through prescription or adverse
10 possession and without compensation.

11 61. Cross-Complainants contend that the use of the word
12 "only" within Article 1, Section 19 is a clear temporal limitation
13 on the Purveyor's authority and the manner in which they may take
14 private property for the public benefit. That this limitation
15 forecloses the ability of any governmental entity to knowingly
16 take or acquire private property for a public use under a theory
17 of prescription or adverse possession. By virtue of the
18 Purveyor's actions as set forth above, an actual controversy has
19 arisen and now exists between the Purveyors and Cross-Complainants
20 concerning their respective rights, duties and responsibilities.

21 62. Cross-Complainants desire a declaration of its rights
22 with respect to the application or non-application of Article 1,
23 Section 19 to the Purveyors' prescription claims and ask the court
24 to make a declaration of such rights, duties and responsibilities.
25 Such a declaration is necessary and appropriate at this time in
26 order that Cross-Complainants' property rights may be protected

1 and to ensure that the municipal Purveyors proceed according to
2 the California Constitution. There are no administrative remedies
3 available to Cross-Complainants.

4 63. A timely declaration by this court is urgent for the
5 following reasons: by way of this action, the Purveyors are
6 seeking to adjudicate, enjoin and take the property rights of
7 Cross-Complainants and thousands of other parties by avoiding the
8 due process protections provided to these landowners under *Code of*
9 *Civil Procedure*, Sections 1230.010 through 1237.040. Absent a
10 timely declaration by this court, injustice will result from the
11 improper taking of the Cross-Complainants' property rights should
12 Article 1, Section 19 of the California Constitution be found to
13 apply.

14 64. Cross-Complainants and numerous other private parties
15 will suffer irreparable and lasting injury unless declaratory
16 relief is granted.

17 **THIRTEENTH CAUSE OF ACTION**

18 **(Declaratory Relief to Determine Validity and**
19 **Applicability of Statute)**

20 65. Cross-Complainants set forth herein at length verbatim
21 the general allegations contained in paragraphs 1 through 22 of
22 this Cross-Complaint.

23 66. In or about 1951, the Legislature of the State of
24 California enacted Section 55000, et seq., of the *Water Code*,
25 known as the County Waterworks District Law, hereinafter referred
26 to as the "Waterworks Statutes." In 1953, the Legislature added

1 Section 55370. This Section, since its adoption has been, and now
2 is, in full force and effect. This statute provides as follows:

3 "A district may acquire property by purchase,
4 gift, devise, exchange, descent, and eminent
5 domain. The title to all property which may
6 have been acquired for a district shall be
7 vested in the district."

8 67. The Purveyors contend that Section 55370 of the *Water*
9 *Code* does not apply to, or limit in any manner, its acquisition of
10 any overlying landowners' water rights within the Antelope Valley
11 and that, despite its status as public entities, Article 1,
12 Section 19 of the California Constitution, and the 5th Amendment
13 to the Federal Constitution, it is nonetheless empowered to
14 acquire private property for public use through the common law
15 doctrine of prescription, without due process and without
16 compensation.

17 68. In or about 1943, the Legislature of the State of
18 California enacted Sections 20500, et seq., of the *Water Code*,
19 known as the Irrigation District Law, hereinafter referred to as
20 the "Irrigation Statutes." In 1943, the Legislature added Section
21 22456. This Section, since its adoption has been, and now is, in
22 full force and effect. This statute provides as follows:

23 "The district may exercise the right of
24 eminent domain to take nay property necessary
25 to carry out its purposes."

26 69. The Purveyors contend that Section 22456 of the *Water*
Code does not act to limit, in any manner, the mode or method of
acquiring an overlying landowners' water rights within the
Antelope Valley and that, despite its status as public entities,

1 Article 1, Section 19 of the California Constitution, and the 5th
2 Amendment to the Federal Constitution, it is nonetheless empowered
3 to acquire private property for public use through the common law
4 doctrine of prescription, without due process and without
5 compensation.

6 70. In or about 1949, the Legislature of the State of
7 California enacted Sections 30000, et seq., of the *Water Code*,
8 known as the County Water District Law, hereinafter referred to as
9 the "County Water Statutes." In 1975, the Legislature amended
10 Section 31040. This amended statute became operative on July 1,
11 1976, and since then, has been, and now is, in full force and
12 effect. This Section provides as follows:

13 "A district may take any property necessary
14 to carry out the business of the district by
15 grant, purchase, gift, devise, condemnation,
or lease with or without the privilege of
purchase."

16 71. The Purveyors contend that Section 31040 of the *Water*
17 *Code* does not act to limit, in any manner, the mode or method by
18 which they may acquire an overlying landowners' water rights
19 within the Antelope Valley and that, despite their status as
20 public entities, Article 1, Section 19 of the California
21 Constitution, and the 5th Amendment to the Federal Constitution,
22 they are nonetheless empowered to take private property for public
23 use through the common law doctrine of prescription, without due
24 process and without compensation.

25 72. Cross-Complainants contend that the statute is
26 constitutional, and when conjoined with the California state and

1 Federal Constitutions, limits the method, manner and mode by which
2 the Purveyors may acquire private property for a public use and
3 the rights appurtenant thereto by declaring that the only legal
4 right of the Purveyors to take possession of property without
5 consent of the owners is under its power of eminent domain. By
6 virtue of the Purveyors' actions as set forth above, an actual
7 controversy has arisen and now exists between the Purveyors and
8 Cross-Complainants concerning their respective rights, duties and
9 responsibilities under these statutes and both Constitutions.

10 73. Cross-Complainants desire a declaration of their rights
11 with respect to the constitutionality and application or non-
12 application of the statute and ask the court to make a declaration
13 of such rights, duties and responsibilities, and to make a
14 declaration as to the validity and constitutionality of the
15 statutes. Cross-Complainants seek a declaration that the effort
16 of the Purveyors to deprioritize Cross-Complainants' overlying
17 right is, without compensation, *ultra vires* and unconstitutional.
18 Such a declaration is necessary and appropriate at this time in
19 order that Cross-Complainants' property rights be protected and to
20 ensure that the Purveyors proceed according to the law and
21 Constitution of the state and Federal Constitution. There are no
22 administrative remedies available to Cross-Complainants.

23 74. A timely declaration by this court is urgent for the
24 following reasons: By way of this action, the Purveyors are
25 seeking to adjudicate, enjoin and take the property rights of
26 Cross-Complainants and thousands of other parties who own property

1 overlying the Antelope Valley, absent a timely declaration of this
2 court, injustice will result from its improper awarding of
3 property rights to the Purveyors should these statutes be later
4 found to apply.

5 75. Cross-Complainants and numerous other private parties
6 will suffer irreparable and lasting injury unless declaratory
7 relief is granted.

8 **FOURTEENTH CAUSE OF ACTION**

9 **(Declaratory Relief to Determine Applicability of Constitution)**

10 76. Cross-Complainants set forth herein at length verbatim
11 the general allegations contained in paragraphs 1 through 22 of
12 this Cross-Complaint.

13 77. Article I, Section 7 of the California Constitution
14 provides in pertinent part as follows:

15 "A person may not be deprived of life,
16 liberty, or property without due process of
17 law or denied equal protection of the laws; .
18"

19 The 5th Amendment to the Constitution as applied by the
20 14th Amendment in relevant part provides:

21 "No person shall . . . be deprived of life,
22 liberty, or property, without due process of
23 law; nor shall private property be taken for
24 public use, without just compensation."

25 78. The Purveyors contend that, even though they are
26 political subdivisions who are uniquely invested with the power of
27 eminent domain, they are allowed to surreptitiously take private
28 property for public use by prescription or adverse possession

1 without providing substantive or procedural due process of law to
2 each overlying landowner. The Purveyors contend that prescription
3 commences with "overdraft," and that presumed or constructive
4 notice is sufficient.

5 79. Cross-Complainants contend that the Article I, Section
6 7 of the California Constitution, and the 5th Amendment as applied
7 by the 14th Amendment of the Federal Constitution, mandates that
8 governmental entities must provide substantive and procedural due
9 process of law when taking private property for a public use.
10 Cross-Complainants contend that the prescriptive period cannot
11 commence until the governmental entity takes affirmative action
12 designed and intended to give notice and inform the overlying
13 landowners of the governmental entity's adverse and hostile claim.
14 Cross-Complainants further contend that this limitation forecloses
15 the ability of any governmental agency to take or acquire private
16 property for a public use when constitutionally sufficient due
17 process notice has not been provided to the landowner. By virtue
18 of the Purveyors' actions, as set forth above, an actual
19 controversy has arisen and now exists between the Purveyors and
20 Cross-Complainants concerning their respective rights, duties and
21 responsibilities.

22 80. Cross-Complainants desire a declaration of their rights
23 with respect to the application or non-application of Article I,
24 Section 7 of the California Constitution and the 5th Amendment to
25 the U.S. Constitution to the Purveyors' prescription claims and
26 ask the court to make a declaration of such rights, duties and

1 responsibilities. Such a declaration is necessary and appropriate
2 at this time in order that Cross-Complainants' property rights may
3 be protected and to ensure that the municipal Purveyors may
4 proceed according to the California Constitution. There are no
5 administrative remedies available to Cross-Complainants.

6 81. A timely declaration by this court is urgent for the
7 following reasons: By way of this action, the Purveyors are
8 seeking to adjudicate and enjoin the property rights of Cross-
9 Complainants and thousands of other parties by avoiding the due
10 process protections provided to these landowners under Article I,
11 Section 7, the 5th and 14th Amendments and *Code of Civil Procedure*,
12 Sections 1230.010 through 1237.040. Absent a timely declaration
13 by this court, injustice will result from the improper use and
14 adjudication of Cross-Complainants' property rights should the
15 foregoing constraints and statutory mandate be found applicable.

16 82. Cross-Complainants and numerous other private parties
17 will suffer irreparable and lasting injury unless declaratory
18 relief is granted.

19 **FOURTEENTH CAUSE OF ACTION**

20 **(Declaratory Relief)**

21 83. Cross-Complainants set forth herein at length verbatim
22 the general allegations contained in paragraphs 1 through 22 of
23 this Cross-Complaint.

24 84. Cross-Complainants are the owners and/or lessees of
25 real property located within the Antelope Valley. Located on
26 Cross-Complainants' property are water wells which produce water

1 from the groundwater supply. Cross-Complainants and or its
2 predecessors in interest, have continually produced water from
3 these wells without restriction and in quantities as were needed
4 to perform its farming and irrigation operations from year to
5 year.

6 85. Based on information and belief, it is alleged that
7 Purveyors all pump groundwater from the Antelope Valley and then
8 sell it to other individuals and entities who reside within Kern
9 County and Los Angeles Counties.

10 86. An actual controversy has arisen and now exists between
11 Cross-Complainants and the Purveyors concerning their respective
12 rights and duties in that the Purveyors contend that they have
13 been pumping water during a continuous 5 year period during which
14 the common supply has been in a state of overdraft; that this
15 pumping has resulted in a reversal of the common law legal
16 priority granted to overlying landowners pursuant to the common
17 law doctrine of prescription. Whereas Cross-Complainants dispute
18 this contention and contend that by continuing to pump groundwater
19 from the wells on their land, and by continuing to thus meet all
20 of the water needs to perform their farming operations, Cross-
21 Complainants have preserved and maintained their priority rights
22 to the use of groundwater.

23 87. Cross-Complainants desire a judicial determination of
24 each party's rights and duties, and a declaration as to the status
25 of each party's priority rights to the water in the Valley whether
26 they be overlying, appropriative or prescriptive.

1 88. A judicial declaration is necessary and appropriate at
2 this time under the circumstances in order that Cross-Complainants
3 may ascertain their rights and duties relating to production of
4 water from the Antelope Valley.

5 **FIFTEENTH CAUSE OF ACTION**

6 **(Declaratory Relief)**

7 89. Cross-Complainants set forth herein at length verbatim
8 the general allegations contained in paragraphs 1 through 22 of
9 this Cross-Complaint.

10 90. AVEK and others provide the Antelope Valley with water
11 imported from northern California. This imported water was and is
12 available for purchase by the Purveyors.

13 91. Despite having knowledge that the pumping of
14 groundwater in excess of the safe yield caused damage, and despite
15 the knowledge and belief that continued pumping would damage the
16 rights of the landowners whose property overlies the water supply,
17 the Purveyors have failed and refused to slow, stop or reduce
18 their groundwater extractions from the supply and/or to supplement
19 or replace their water needs from the available imported AVEK
20 water.

21 92. The California Constitution, Article X, Section 2,
22 provides, in pertinent part, as follows:

23 "It is hereby declared that because of the
24 conditions prevailing in this State the
25 general welfare requires that the water
26 resources of the State be put to beneficial
use to the fullest extent of which they are
capable, and that the waste or unreasonable
use or unreasonable method of use of water be

1 prevented, and that the conservation of such
2 waters it to be exercised with a view to the
3 reasonable and beneficial use thereof in the
4 interest of the people and for the public
5 welfare. The right to water or to the use or
6 flow of water in or from any natural stream
7 or water course in this State is and shall be
8 limited to such water as shall be reasonably
9 required for the beneficial use to be served,
10 and such right does not and shall not extend
11 to the waste or unreasonable use or
12 unreasonable method of use or unreasonable
13 method of diversion of water"

8
9 93. An actual controversy has arisen and now exists between
10 Cross-Complainants and each Purveyor concerning their respective
11 rights and duties in that Cross-Complainants contend that the
12 Purveyors' continued dependence on, and use of, the groundwater,
13 their continued and increased extractions of groundwater from the
14 common supply, with knowledge that the extractions exceed the safe
15 yield, and their failure and/or refusal to take all of the
16 available imported water and the method and use of groundwater
17 taken, is unreasonable and constitutes a waste in violation of
18 Article X, Section 2 of the California Constitution. The
19 Purveyors dispute these contentions and contend that their
20 dependence on groundwater, their continued and increasing
21 extractions of groundwater from the Antelope Valley in excess of
22 the safe yield and their failure and refusal to take all of the
23 available imported water is reasonable and does not constitute
24 waste of groundwater and/or available imported water under Article
25 X, Section 2 of the California Constitution.

26 94. Cross-Complainants desire a declaration of their rights

1 with respect to the constitutionality and application or non-
2 application of Article X, Section 2 to the Purveyors' actions and
3 ask the court to make a declaration of such rights, duties and
4 responsibilities, and to make a declaration as to the validity and
5 constitutionality of the Article X, Section 2. Such a declaration
6 is necessary and appropriate at this time in order that Cross-
7 Complainants' property rights may be protected and to ensure that
8 the Purveyors may proceed under the law and cause no further
9 damage to Cross-Complainants' or property overlying the water
10 supply. There are no administrative remedies available to Cross-
11 Complainants.

12 95. A timely declaration by this court is urgent for the
13 following reasons: By way of this action, the Purveyors are
14 seeking to have the court ratify their method and choice of water
15 usage and declare that they have the right to continue to extract
16 groundwater from the Valley in excess of the safe yield and to
17 continue to cause damage to the Valley itself as well as to the
18 land overlying the water supply, absent a timely declaration by
19 this court, an injustice will result from the improper validation
20 of the Purveyors' water usage should this constitutional provision
21 be found to apply to the Purveyors.

22 96. Cross-Complainants and numerous other private parties
23 will suffer irreparable and lasting injury unless declaratory
24 relief is granted.

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1 **SIXTEENTH CAUSE OF ACTION**

2 **(Declaratory Relief)**

3 97. Cross-Complainants set forth herein at length verbatim
4 the general allegations contained in paragraphs 1 through 22 of
5 this Cross-Complaint.

6 98. On January 8, 2006, the Purveyors filed a Cross-
7 Complaint in this matter seeking to implement policy objectives
8 which were stated in Paragraph 1 as follows:

9 "To promote the general public welfare in the
10 Antelope Valley; protect the public water
11 supplier's rights to pump groundwater and
12 provide water to the public; protect the
13 Antelope Valley from a loss of the public's
14 water supply; prevent degradation of the
15 quality of the public groundwater supply;
16 stop land subsidence; and avoid higher water
17 costs to the public."

18 99. In order to implement these policy objectives, the
19 Purveyors have brought a cause of action against all owners of
20 property overlying the Antelope Valley seeking the imposition of a
21 "physical solution" that would manage the groundwater supply by
22 augmenting the water supply, manage the pumping and storage of
23 water and impose monetary assessments on water extraction from the
24 supply.

25 100. An actual controversy has arisen and now exists between
26 Cross-Complainants and the Purveyors concerning their respective
rights and duties in that Cross-Complainants contend that it is a
violation of the constitutional doctrine of the separation of
powers for this Court to implement the Purveyors' policy
objectives as they are by nature legislative actions, subject to

1 the provisions of the California Environmental Quality Act
2 (hereinafter "CEAQ;" *Public Resources Code*, Sections 21000-21177).
3 That the requirements of CEQA are both procedural (requiring
4 notice, disclosure and a review process) and substantive (by
5 requiring public agencies to take affirmative measures to avoid
6 environmental harm and to also protect the citizens and landowners
7 of the State of California).

8 101. The Purveyors contend that they may use the judicial
9 system to circumvent CEQA and impose by judicial fiat what should
10 be a legislative policy. In doing so, they seek to avoid
11 providing the public with the required disclosures and
12 evaluations, and thereby deny Cross-Complainants and the public
13 their procedural and substantive protections required by CEQA.

14 102. Cross-Complainants desire a judicial determination of
15 the Purveyors' rights and duties, and a declaration as to the
16 application of *Public Resources Code*, sections 21000-21177 to any
17 proposed water management plan sought to be implemented by
18 judicial decree by the Purveyors. That the legislative
19 protections afforded to the public under CEQA cannot be ignored or
20 subverted by resorting to the court to implement the Purveyor's
21 plan, and that such a request of this Court induces a violation of
22 the doctrine of the separation of powers.

23 103. A judicial declaration is necessary and appropriate at
24 this time under the circumstances in order that Cross-Complainants
25 may ascertain their rights and duties relating to production of
26 water from the Antelope Valley.

SEVENTEENTH CAUSE OF ACTION

(Declaratory Relief)

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104. Cross-Complainants set forth herein at length verbatim the general allegations contained in paragraphs 1 through 22 of this Cross-Complaint.

105. On January 8, 2006, the Purveyors filed a Cross-Complaint in this matter seeking to implement policy objectives which were stated in Paragraph 1 as follows:

"To promote the general public welfare in the Antelope Valley; protect the public water supplier's rights to pump groundwater and provide water to the public; protect the Antelope Valley from a loss of the public's water supply; prevent degradation of the quality of the public groundwater supply; stop land subsidence; and avoid higher water costs to the public."

106. In order to implement these policy objectives, the Purveyors have brought a cause of action against all owners of property overlying the Antelope Valley seeking the imposition of a "physical solution" that would manage the groundwater supply by augmenting the water supply, manage the pumping and storage of water and impose monetary assessments on water extraction from the supply.

107. An actual controversy has arisen and now exists between Cross-Complainants and the Purveyors concerning their respective rights and duties in that Cross-Complainants contend that it is a violation of the constitutional doctrine of the separation of powers for this Court to implement the Purveyors' policy objectives as they are by nature legislative and executive actions

1 that are within the power of the Purveyors to enact by following
2 the statutory requirements set forth in *Water Code*, sections
3 10700-10795.20. These sections of the *Water Code* provide the
4 procedural method by which the Purveyors must implement a
5 groundwater management plan and also ensure constitutionality
6 required process through the required public hearings, notice and
7 publication of the proposed management plan, and the opportunity
8 for public discourse, input and objection.

9 108. The Purveyors contend that they may use the judicial
10 system to impose by judicial fiat what would otherwise be done
11 through legislative action. In doing so, they seek to avoid
12 providing the public with the required notice, hearing and
13 disclosures and deny them their procedural and substantive
14 protections provided by the Constitution and the *Water Code*,
15 Sections 10700-10795.20.

16 109. Cross-Complainants desire a judicial determination of
17 the Purveyors' rights and duties, and a declaration as to the
18 application and propriety of *Water Code*, Sections 10700-10795.20
19 to the proposed water management project sought to be implemented
20 by the Purveyors. That the legislative protections afforded to
21 the public under the *Water Code* may not be ignored or subverted by
22 the filing of a legal action by a public agency, and that such
23 action requests this court to violate the doctrine of separation
24 of power.

25 110. A judicial declaration is necessary and appropriate at
26 this time under the circumstances in order that Cross-Complainants

1 may ascertain their rights and duties relating to production of
2 water from the Antelope Valley.

3 **EIGHTEENTH CAUSE OF ACTION**

4 **(Declaratory Relief)**

5 111. Cross-Complainants set forth herein at length verbatim
6 the general allegations contained in paragraphs 1 through 22 of
7 this Cross-Complaint.

8 112. Commencing in early 2000, each Purveyor has claimed
9 that the Antelope Valley was in a state of "overdraft" for more
10 than five years prior to October 1999.

11 113. based on information and belief, it is alleged that
12 immediately prior to, during and after the same claimed five year
13 period of "overdraft" claimed by the Purveyors, the Purveyors did
14 approve and have continued to approve the issuance of well permits
15 to Cross-Complainants and others, have approved large scale
16 developments and have authorized others and have thus increased
17 the demand for groundwater pumped by the Purveyors from the
18 Antelope Valley. In performing their ministerial and
19 discretionary functions, each Purveyor has asserted that the
20 additional well permits, hook ups and added residential,
21 industrial and commercial developments, and the concomitant
22 increased pumping of groundwater caused thereby, would not, and
23 did not, have under CEQA or otherwise an adverse affect on the
24 water supply available from the Antelope Valley.

25 114. An actual controversy has arisen and now exists between
26 Cross-Complainants and each Purveyor concerning their respective

1 rights and duties in that Cross-Complainants contend that the
2 Purveyors are barred from claiming that the Antelope Valley is in
3 a state of "overdraft" during the time that they have authorized,
4 permitted and approved new and increased pumping from the supply
5 pursuant to *Evidence Code*, Section 623. The Purveyors deny Cross-
6 Complainants' contentions and assert that they may assert
7 overdraft as an element of their prescription claims. Section 623
8 provides as follows:

9 "Whenever a party has, by his own statement
10 or conduct, intentionally and deliberately
11 led another to believe a particular thing
12 true and to act upon such belief, he is not,
in any litigation arising out of such
statement or conduct, permitted to contradict
it."

13 115. Cross-Complainants desire a judicial determination of
14 its rights and duties, and a declaration as to the application of
15 the doctrine of equitable estoppel to the Purveyors' ability to
16 claim that the Antelope Valley was in a state of overdraft when
17 the same Purveyors were issuing well permits, will serve letters
18 and adding new water customers and authorizing new large scale
19 development projects under the assertion that there was an
20 available, adequate and appropriate water supply in the Antelope
21 Valley to sustain these permits and projects.

22 116. A judicial declaration is necessary and appropriate at
23 this time under the circumstances in order that Cross-Complainants
24 may ascertain their rights and duties relating to its real
25 property that overlies the Antelope Valley.

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1 NINETEENTH CAUSE OF ACTION

2 (Declaratory Relief)

3 117. Cross-Complainants set forth herein at length verbatim
4 the general allegations contained in paragraphs 1 through 22 of
5 this Cross-Complaint.

6 118. Cross-Complainants are the owners of land overlying the
7 Antelope Valley. Each of the Purveyors are users of water pumped
8 from the Antelope Valley which underlies Cross-Complainants' land.

9 119. Initially, the Purveyors, and each of them, legally
10 used and maintained water wells that extracted water from the
11 Antelope Valley for public distribution. Over time the increased
12 urbanization and the Purveyors continued and increasing
13 extractions exceeded their legal boundaries, such that the water
14 extracted from the supply has exceeded the ability to naturally
15 recharge the water supply. The Purveyors have claimed to have
16 knowledge that this continuous and increasing use caused a
17 progressive and chronic decline in long term water supply and the
18 available natural supply is being and has been chronically
19 depleted. Based on the present trends, demand will continue to
20 exceed supply which will cause damage to private rights and
21 ownership of real property.

22 120. The aforementioned extractions of groundwater from the
23 supply constitute a continuing progressive nuisance within the
24 meaning of Section 3479 of the *Civil Code*, in that the Purveyors
25 have created a condition in the future supply that is injurious to
26 Cross-Complainants' rights, in the future, to freely use and

1 exercise its overlying property rights to extract groundwater from
2 the common supply in the customary manner. The Purveyors are
3 attempting, through the combined efforts of their pumping
4 groundwater and this present legal action, to take, and or alter,
5 Cross-Complainants' overlying property rights to use and access
6 the Antelope Valley supply.

7 121. In early 2000, the Purveyors asserted that the
8 available groundwater supply was in jeopardy and increased pumping
9 would harm Antelope Valley Water Supply. Despite this assertion,
10 the Purveyors, and each of them, have continued to and have
11 increased their pumping, despite the knowledge of the damages
12 caused by that pumping. The Purveyors have refused, and continue
13 to refuse, to stop or reduce their pumping despite the damage to
14 the supply and to Cross-Complainants' property rights.

15 122. This nuisance affects, at the same time, a substantial
16 number of persons in that, the Purveyors claim that the continued
17 pumping in excess of the supply's safe yield is, and will,
18 eventually cause a chronic decline in water levels and the
19 available natural supply will be chronically depleted, that, based
20 on the present trends, demand will continue to exceed supply which
21 will continue to cause a reduction in the long term supply.
22 Additionally, the continued pumping by the Purveyors under these
23 conditions will result in the unlawful obstruction of the
24 overlying landowners' rights to use the water supply in the
25 customary manner.

26 123. The Purveyors, and each of them, have threatened to and

1 will, unless restrained by this court, continue to pump
2 groundwater in increasing amounts, and each and every act has
3 been, and will be, without the consent, against the will, and in
4 violation of the rights of Cross-Complainants.

5 124. As a proximate result of the nuisance created by the
6 Purveyors, and each of them, Cross-Complainants has been, and will
7 be, damaged in a sum to be proven at trial.

8 125. Unless the Purveyors, and each of them, are restrained
9 from increasing their pumping from the supply by order of this
10 court, it will be necessary for plaintiff to commence many
11 successive actions against each Purveyor, and each of them, to
12 secure a project by project injunction and/or compensation for the
13 continuing and repeated damages sustained, thus requiring a
14 multiplicity of suits.

15 126. Should the Purveyors continue to increase their pumping
16 without replenishing the Valley's water supply, Cross-Complainants
17 will suffer irreparable injury in that the usefulness and economic
18 value of Cross-Complainants' overlying property right will be
19 substantially diminished and Cross-Complainants will be deprived
20 of the comfortable, reasonable and beneficial use and enjoyment of
21 its property.

22 127. In maintaining this nuisance, the Purveyors, and each
23 of them, are, and have been, acting with full knowledge of the
24 consequences and damage being caused to Cross-Complainants, and
25 their conduct is willful, oppressive, malicious and designed to
26 interfere with and take the Cross-Complainants' right to freely

1 access the water supply in its customary manner. Accordingly,
2 each Purveyor has intentionally dirtied hands and no right to
3 involve equity in these actions.

4 PRAYER

5 WHEREFORE, Cross-Complainants pray for judgment against
6 Cross-Defendants, and each of them, and against all other persons
7 or entities, as follows:

- 8 1. For a judgment against the Cross-Defendants;
- 9 2. For a declaration quieting title to Cross-Complainants'
10 right to pump and reasonably use groundwater on their PARCELS and
11 to their rights to otherwise pump groundwater;
- 12 3. If the Court determines based upon the Cross-Defendants
13 basin-wide adjudication that the fractured bedrock and alluvial
14 groundwater basin is in common law overdraft, for an injunction
15 and/or a physical solution cutting back appropriative water use to
16 prevent continuing common law overdraft;
- 17 4. For continuing jurisdiction of the Court to litigate
18 disputes as necessary in the future consistent with the Court
19 judgment herein and consistent with California water law;
- 20 5. For a declaration that no party hereto may hereinafter
21 obtain prescriptive rights as against any other party to this
22 action and that all parties will act in conformance with the terms
23 of any such judgment;
- 24 6. For a judgment for Cross-Complainants for all available
25 remedies to secure and protect Cross-Complainants' continuing
26 overlying water rights;

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7. For an award of reasonable attorneys' fees and costs of suit; and

8. For such other and further relief as the court deems just and proper.

DATED: August 5, 2008

CLIFFORD & BROWN

By: _____
RICHARD G. ZIMMER, ESQ.
T. MARK SMITH, ESQ.
Attorneys for
BOLTHOUSE PROPERTIES, LLC and
WM. BOLTHOUSE FARMS, INC.