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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) BOLTHOUSE PROPERTIES, LLC and
DISTRICT NO. 40 v. DIAMOND) WM. BOLTHOUSE FARMS, INC.'S
16 FARMING COMPANY, et al.,) ANSWER TO THE CROSS-COMPLAINT
Los Angeles Superior Court) OF PHELAN PINON HILLS COMMUNITY
17 Case No. BC325201) SERVICES DISTRICT FOR
DECLARATORY, INJUNCTIVE AND
18) OTHER EQUITABLE RELIEF
LOS ANGELES COUNTY WATERWORKS) INCLUDING A PHYSICAL SOLUTION
DISTRICT NO. 40 v. DIAMOND) AGAINST ALL PARTIES
19 FARMING COMPANY, et al.,)
Kern County Superior Court)
20 Case No. S-1500-CV-254348)
21)
DIAMOND FARMING COMPANY, and)
22 W.M. BOLTHOUSE FARMS, INC., v.)
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 Cross-Complaint of Cross-Complainant
4 Phelan Pinon Hills Community Services District, on file herein,
5 admit, deny and allege as follows:

6 **FIRST AFFIRMATIVE DEFENSE**

7 **(General Denial)**

8 Answering each and every allegation contained in Cross-
9 Complainant's Cross-Complaint, these answering Cross-Defendants
10 deny each and every, all and singular, generally and
11 specifically, the allegations therein contained and further deny
12 that Cross-Complainant was damaged in the sums therein alleged or
13 in any sum or are entitled to any relief whatsoever or at all.

14 **SECOND AFFIRMATIVE DEFENSE**

15 **(Fails to State Facts)**

16 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
17 every alleged cause of action, these answering Cross-Defendants
18 allege Cross-Complainant's Cross-Complaint and each alleged cause
19 of action therein fails to state facts sufficient to constitute a
20 cause of action against these answering Cross-Defendants so as to
21 bar the claims herein.

22 **THIRD AFFIRMATIVE DEFENSE**

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

24 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
25 every alleged cause of action, these answering Cross-Defendants
26 allege the allegations referred to in Cross-Complainant's Cross-

1 Complaint constitute willful misconduct by a public agency in
2 violation of public trust and public policy so as to bar the
3 claims herein.

4 **FOURTH AFFIRMATIVE DEFENSE**

5 **(Consent by Cross-Complainant)**

6 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
7 every alleged cause of action, these answering Cross-Defendants
8 allege Cross-Complainant consented to the matters and things
9 alleged in the Cross-Complaint so as to bar the claims herein.

10 **FIFTH AFFIRMATIVE DEFENSE**

11 **(Estoppel)**

12 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
13 every alleged cause of action, these answering Cross-Defendants
14 allege Cross-Complainant has, by Cross-Complainant's own conduct,
15 statements or acts, negligently, wrongfully, intentionally or
16 deliberately acted in such a way as to cause these answering
17 Cross-Defendants to do the acts which said Cross-Complainant now
18 alleges are a basis for relief and Cross-Defendants allege by
19 reason of the conduct on the part of Cross-Complainant, that
20 Cross-Complainant should now be estopped or barred from seeking
21 the relief which is requested in the Cross-Complaint on file
22 herein.

23 **SIXTH AFFIRMATIVE DEFENSE**

24 **(Statute of Limitations)**

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-Complainant's Cross-Complaint, and each alleged
2 cause of action therein, are barred by the statute of
3 limitations.

4 **SEVENTH AFFIRMATIVE DEFENSE**

5 **(Unclean Hands)**

6 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
7 every alleged cause of action, these answering Cross-Defendants
8 allege that with reference to the matters set forth in the Cross-
9 Complaint herein, the hands of the Cross-Complainant itself are
10 unclean so as to bar the claims herein.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 **(Laches)**

13 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
14 every alleged cause of action, these answering Cross-Defendants
15 allege that Cross-Complainant has delayed an unreasonable period
16 of time in bringing this action, which delay has been prejudicial
17 to Cross-Defendants, and Cross-Complainant is thus guilty of
18 laches so as to bar the claims herein.

19 **NINTH AFFIRMATIVE DEFENSE**

20 **(Notice)**

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-Complainant failed to give notice of the
24 alleged prescription or other taking, either express or implied,
25 so as to bar the claims herein.

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TENTH AFFIRMATIVE DEFENSE

(Waiver)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that Cross-Complainant has waived the things alleged in the Cross-Complaint, and that the claims herein are barred by the doctrine of waiver.

ELEVENTH AFFIRMATIVE DEFENSE

(Actions As A Matter Of Right)

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

TWELFTH AFFIRMATIVE DEFENSE

(CEQA Non-Compliance)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that Cross-Complainant did not comply with CEQA prior to engaging in the activities at issue in the Cross-Complaint so as to bar the claims herein.

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and

1 every alleged cause of action, these answering Cross-Defendants
2 allege Cross-Complainant did not comply with California
3 requirements as to groundwater management plans and water
4 assessments so as to bar the claims herein.

5 **FOURTEENTH AFFIRMATIVE DEFENSE**

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

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

15 **FIFTEENTH AFFIRMATIVE DEFENSE**

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

17 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
18 every alleged cause of action, these answering Cross-Defendants
19 allege that Cross-Complainant negligently filed water supply
20 documents, including, but not limited to, Water Supply
21 Assessments, Environmental Impact Reports, Will Serve Letters,
22 etc., resulting in justifiable reliance by Cross-Defendants that
23 the water supply was sufficient and that no taking could occur
24 which would give rise to a claim of adverse possession or
25 prescription and that Cross-Complainant should be estopped from
26 asserting a claim inconsistent with such entities

1 representations.

2 **SIXTEENTH AFFIRMATIVE DEFENSE**

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

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

15 **SEVENTEENTH AFFIRMATIVE DEFENSE**

16 **(Negligent Misrepresentation)**

17 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
18 every alleged cause of action, these answering Cross-Defendants
19 allege that Cross-Complainant negligently misrepresented the
20 water supply in order to induce Cross-Defendants to justifiably
21 rely on such representations causing Cross-Defendants to take no
22 action to stop actions on the part of Cross-Complainant and that
23 Cross-Complainant should be estopped from asserting a claim
24 inconsistent with such entities representations.

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EIGHTEENTH AFFIRMATIVE DEFENSE

(Intentional Misrepresentation)

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

NINETEENTH AFFIRMATIVE DEFENSE

(Indispensable Parties)

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

TWETIETH 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-Complainant has not named all parties to this action who are necessary and indispensable to the action for

1 compliance with the McCarran Act so as to bar the claims,
2 allegations and relief requested by Cross-Complainant.

3 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

4 **(Superior Water Right)**

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

10 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

11 **(Failure To Prove Priority Rights)**

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

20 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

21 **(Failure To Prove Prevention Of Pumping)**

22 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
23 every alleged cause of action, these answering Cross-Defendants
24 allege that Cross-Complainant has failed to prove that Cross-
25 Complainant's actions prevented Cross-Defendants from pumping
26 what Cross-Defendants desired to pump during any alleged period

1 of adverse possession or prescription so as to bar the claims
2 herein.

3 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

4 (Unlawful Taking)

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

11 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

12 (Denial Of Equal Protection)

13 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
14 every alleged cause of action, these answering Cross-Defendants
15 allege that Cross-Complainant is barred by State and Federal
16 Constitutions which require equal protection of law to Cross-
17 Defendants.

18 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

19 (Appurtenant Rights)

20 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
21 every alleged cause of action, these answering Cross-Defendants
22 allege that it has an appurtenant right to pump and reasonably
23 use groundwater on its properties which is superior to the rights
24 of Cross-Complainant so as to bar the claims therein.

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1 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

2 **(Right To Return Flows)**

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 pumped water from a lower aquifer which is not
6 significantly hydraulically connected to the upper aquifer at
7 issue in this case, and used the water so developed to irrigate
8 crops and that a portion of this water has reached the upper
9 aquifer by percolation and Cross-Defendants have a right to store
10 this water in the upper aquifer and Cross-Defendants have a
11 paramount right against all other parties to this water, and a
12 paramount right against all other parties to recapture this water
13 or an equivalent amount so as to bar the claims herein.

14 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

15 **(Self Help)**

16 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
17 every alleged cause of action, these answering Cross-Defendants
18 allege that the doctrine of self help bars the claims,
19 allegations and remedies requested by Cross-Complainant.

20 **TWENTY-NINETH AFFIRMATIVE DEFENSE**

21 **(Storage Rights)**

22 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
23 every alleged cause of action, these answering Cross-Defendants
24 allege that it holds a right to storage space in the alluvial and
25 fractured bedrock water basin and that Cross-Defendants have a
26 right to water stored in the basin, based upon the California

1 water allocation priority system, so as to bar the claims herein.

2 **THIRTIETH AFFIRMATIVE DEFENSE**

3 **(Storage Space)**

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

10 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

11 **(No Net Augmentation)**

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

19 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

20 **(No Net Augmentation For Replenishment)**

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-Complainant has not imported water or otherwise
24 provided a net augmentation to the water basin to the extent they
25 simply have replenished water wrongfully taken by them in the
26 past so as to bar the claims herein.

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

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(Additional Defenses)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and

1 every alleged cause of action, these answering Cross-Defendants
2 allege that it presently has insufficient knowledge or
3 information on which to form a belief as to whether additional,
4 as yet unstated, affirmative defenses may be appropriate. These
5 answering Cross-Defendants reserve herein the right to assert
6 additional affirmative defenses as necessary based upon
7 investigation and discovery.

8 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

9 (Civil Code, Sections 1007, 1009 and 1214)

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-Complainant's claims are barred, in whole or in
13 part, by the provisions of Sections 1007, 1009 and 1214 of the
14 California Civil Code.

15 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

16 (Unjust Enrichment)

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 relief sought in each and every cause of action
20 contained in the Cross-Complaint would constitute an unjust
21 enrichment of Cross-Complainant to the detriment of Bolthouse
22 Properties, LLC and Wm. Bolthouse Farms, Inc.

23 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

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

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 prescriptive claims asserted by governmental
2 entity Cross-Complainant is *ultra vires* and exceed the statutory
3 authority by which each entity may acquire property as set forth
4 in Water Code, Sections 22456, 31040 and 55370.

5 **THIRTY-NINETH AFFIRMATIVE DEFENSE**

6 (California Constitution, Article 1, Section 19)

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-Complainant is barred by the provisions of Article
11 1, Section 19 of the California Constitution.

12 **FOURTIETH AFFIRMATIVE DEFENSE**

13 (California Constitution, Article 1, Section 7)

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

19 **FORTY-FIRST AFFIRMATIVE DEFENSE**

20 (Doctrine of Separation of Powers)

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 request for the Court to use its injunctive
24 powers to impose a physical solution seeks a remedy that is in
25 violation of the doctrine of separation of powers set forth in
26 Article 3, Section 3 of the California Constitution.

1 **FORTY-SECOND AFFIRMATIVE DEFENSE**

2 **(Declaration of 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 Cross-Complainant's claims are barred, in whole or in
6 part, by the provisions set forth in Article 1, Section 7 of the
7 California Constitution.

8 **FORTY-THIRD AFFIRMATIVE DEFENSE**

9 **(Civil Code, Section 1214)**

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

15 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

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

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 prescriptive claims asserted by governmental
20 entity Cross-Complainant is barred by the provisions of the Fifth
21 Amendment to the United States Constitution as applied to the
22 states under the Fifth and Fourteenth Amendments of the United
23 States Constitution.

24 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

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

26 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and

1 every alleged cause of action, these answering Cross-Defendants
2 allege that the Cross-Complainant's prescriptive claims are
3 barred due to their failure to take affirmative steps that were
4 reasonably calculated and intended to inform each overlying
5 landowner of Cross-Complainant's adverse and hostile claim as
6 required by the due process clause of the Fifth and Fourteenth
7 Amendments of the United States Constitution.

8 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

9 (Offset)

10 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
11 every alleged cause of action, these answering Cross-Defendants
12 seek a judicial determination that any imported water purchased
13 by Cross-Complainant for recharge into the Basin for any purpose,
14 either through direct recharge or through return flows, must
15 first be used to offset Cross-Complainant's wrongful pumping from
16 the Basin. Cross-Defendants seek a further judicial declaration
17 that any imported water that has heretofore been purchased by
18 Cross-Complainant and recharged into the Basin either through
19 direct recharge or through return flows, must be considered as an
20 offset against any past wrongful pumping by Cross-Complainant
21 from the Basin.

22 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

23 (California Constitution, Article 10, Section 2)

24 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
25 every alleged cause of action, these answering Cross-Defendants
26 seek a judicial determination that Cross-Complainant's use of

1 water results in an unavoidable degradation of the Basin, which,
2 if allowed to continue, will one day render the Basin unusable
3 and that therefore this use constitutes a continuing nuisance and
4 waste in violation of Article 10, Section 2 of the California
5 Constitution.

6 **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

7 **(Permissive Pumping)**

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

11 **FORTY-NINETH AFFIRMATIVE DEFENSE**

12 **(Civil Code, Section 811)**

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

17 **FORTY-NINETH AFFIRMATIVE DEFENSE**

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

19 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
20 every alleged cause of action, these answering Cross-Defendants
21 incorporate herein by reference, as if set forth at length
22 verbatim, each and every affirmative defense set forth by each
23 and every other Defendant and/or Cross-Defendant.

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1 FIFTIETH AFFIRMATIVE DEFENSE

2 (Irreparable Harm to Cross-Defendants Outweighs
3 Irreparable Harm to Cross-Complainant)

4 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
5 every alleged cause of action, these answering Cross-Defendants
6 allege that the Cross-Complaint, and each purported cause of
7 action, are barred, in whole or in part, because any irreparable
8 harm Cross-Complainant has allegedly suffered are outweighed by
9 the irreparable harm to Cross-Defendants.

10 FIFTY-FIRST AFFIRMATIVE DEFENSE

11 (Lack of Damage)

12 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
13 every alleged cause of action, these answering Cross-Defendants
14 allege that the Cross-Complaint, and each purported cause of
15 action, are barred, in whole or in part, because Cross-
16 Complainant has not suffered any actual or legally cognizable
17 damages.

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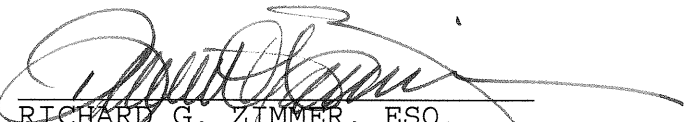
PRAYER

WHEREFORE, Cross-Defendants pray judgment that Cross-Complainant takes nothing by reason of the Cross-Complaint on file herein, for costs of suit, and for such other and further relief as the Court deems just and proper.

DATED: January 19, 2009

CLIFFORD & BROWN

By:



RICHARD G. ZIMMER, ESQ.
T. MARK SMITH, ESQ.
Attorneys for Cross-Defendants,
BOLTHOUSE PROPERTIES, LLC and
WM. BOLTHOUSE FARMS, INC.

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PROOF OF SERVICE (C.C.P. §1013a, 2015.5)
Antelope Valley Groundwater Cases
Judicial Counsel Coordination Proceeding No. 4408
Santa Clara County Superior Court Case No. 1-05-CV-049053

I am employed in the County of Kern, State of California. I am over the age of 18 and not a party to the within action; my business address is 1430 Truxtun Avenue, Bakersfield, CA 93301.

On January 19, 2009, I served the foregoing document(s) entitled:

**BOLTHOUSE PROPERTIES, LLC'S AND WM. BOLTHOUSE FARMS, INC.'S
ANSWER TO THE CROSS-COMPLAINT OF PHELAN PINON HILLS COMMUNITY
SERVICES DISTRICT FOR DECLARATORY, INJUNCTIVE AND OTHER EQUITABLE
RELIEF INCLUDING A PHYSICAL SOLUTION AGAINST ALL PARTIES**

— by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

— by placing _ the original, _ a true copy thereof, enclosed in a sealed enveloped addressed as follows:

X BY SANTA CLARA SUPERIOR COURT E-FILING IN COMPLEX LITIGATION PURSUANT TO CLARIFICATION ORDER DATED OCTOBER 27, 2005.

Executed on January 19, 2009, at Bakersfield, California.

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

— (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.



NANETTE MAXEY
2455-2