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November 1, 2007

2455-2

Via E-mail

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

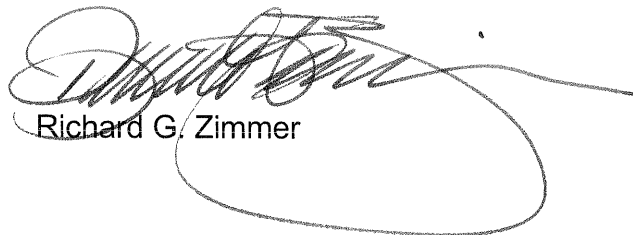
Dear Counsel:

Attached please find an Amended Answer to the First Amended Cross-Complaint for your review and consideration. We have added a few affirmative defenses raised by other parties which for sake of completeness, should be included in our Answer.

Please advise within ten (10) days if have any objection to the filing of our Amended Answer to the First Amended Cross-Complaint. If we receive no objections, we will request that the Court approve the Amended Answer to Cross-Complaint at the next hearing.

Thank you for your courtesy and consideration of this request.

Very truly yours,



Richard G. Zimmer

RGZ/nm
Enclosure

BL/ANTELOPE VALLEY/SANTA MARIA/ALL COUNSEL-03

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7 Bolthouse Farms, Inc.,

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

10 * * *

11 COORDINATION PROCEEDING) Judicial Council Coordination
12 SPECIAL TITLE (Rule 1550(b))) Proceeding No. 4408
13 ANTELOPE VALLEY GROUNDWATER)
14 CASES) Santa Clara Case No. 01-05-CV-049053
15) Assigned to the Honorable Jack Komar
16 INCLUDED ACTIONS:)
17)
18 LOS ANGELES COUNTY WATERWORKS) [PROPOSED] BOLTHOUSE
19 DISTRICT NO. 40 v. DIAMOND) PROPERTIES, LLC and WM.
20 FARMING COMPANY, et al.,) BOLTHOUSE FARMS, INC.'S AMENDED
21 Los Angeles Superior Court) ANSWER TO THE FIRST AMENDED
22 Case No. BC325201) CROSS-COMPLAINT OF PUBLIC WATER
23) SUPPLIERS FOR DECLARATORY AND
24) INJUNCTIVE RELIEF AND
25) ADJUDICATION OF WATER RIGHTS
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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 to the action based
23 upon the pleadings and relief requested so as to bar the claims,
24 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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1 TWENTY-THIRD AFFIRMATIVE DEFENSE

2 (Failure To Prove Prevention Of Pumping)

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 have failed to prove that Cross-
6 Complainants' actions prevented Cross-Defendant from pumping what
7 Cross-Defendants desired to pump during any alleged period of
8 adverse possession or prescription so as to bar the claims
9 herein.

10 TWENTY-FOURTH AFFIRMATIVE DEFENSE

11 (Unlawful Taking)

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-Complainants are barred by State and Federal
15 Constitutions which prevent taking without just compensation and
16 without appropriate legal procedures to assure no taking without
17 due process of law.

18 TWENTY-FIFTH AFFIRMATIVE DEFENSE

19 (Denial Of Equal Protection)

20 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
21 every alleged cause of action, these answering Cross-Defendants
22 allege that Cross-Complainants are barred by State and Federal
23 Constitutions which require equal protection of law to Cross-
24 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.

1 **TWENTY-NINETH AFFIRMATIVE DEFENSE**

2 **(Storage 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 holds a right to storage space in the alluvial and
6 fractured bedrock water basin and that Cross-Defendants have a
7 right to water stored in the basin, based upon the California
8 water allocation priority system, so as to bar the claims herein.

9 **THIRTIETH AFFIRMATIVE DEFENSE**

10 **(Storage Space)**

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

17 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

18 **(No Net Augmentation)**

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 imported, developed,
22 salvaged or otherwise acted with reference to water entering the
23 fractured bedrock or alluvial groundwater basin in a way which
24 has provided a net augmentation to the water basin so as to bar
25 the claims herein.

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1 THIRTY-SECOND AFFIRMATIVE DEFENSE

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

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 have not imported water or
6 otherwise provided a net augmentation to the water basin to the
7 extent they simply have replenished water wrongfully taken by
8 them in the past so as to bar the claims herein.

9 THIRTY-THIRD AFFIRMATIVE DEFENSE

10 **(No Intent To Store/Bank Water)**

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

18 THIRTY-FOURTH AFFIRMATIVE DEFENSE

19 **(No Basis For Physical Solution)**

20 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and
21 every alleged cause of action, these answering Cross-Defendants
22 allege that Cross-Complainants have failed to join all necessary
23 and indispensable parties, have failed to prove a basis for
24 injunctive relief against all parties, have failed to prove *inter*
25 *se* appropriative rights, have failed to prove the nature and
26 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, Section 1009)**

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 Section 1009 of the California Civil
22 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.

PRAYER

WHEREFORE, Cross-Defendants pray judgment that Cross-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: October 26, 2007 CLIFFORD & BROWN

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