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23 DISTRICT NO. 40

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

**ANTELOPE VALLEY
GROUNDWATER CASES**

Included Actions:
Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
Court of California, County of Los
Angeles, Case No. BC 325201;

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
Court of California, County of Kern, Case
No. S-1500-CV-254-348;

Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
Lancaster, Diamond Farming Co. v.
Palmdale Water Dist., Superior Court of
California, County of Riverside, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408
Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

**ANSWER OF ROSAMOND COMMUNITY
SERVICES DISTRICT AND LOS
ANGELES COUNTY WATERWORKS
DISTRICT NO. 40 TO CROSS-
COMPLAINT OF BOLTHOUSE
PROPERTIES, LLC**

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Cross-Defendants Rosamond Community Services District and Los Angeles County Waterworks District, No. 40 (“Cross-defendants”) hereby answer the Cross-Complaint of Bolthouse Properties, LLC, as follows:

ANSWER

Pursuant to Code of Civil Procedure section 431.30(d), cross-defendants hereby generally deny each and every allegation contained in the cross-complaint and further deny that cross-complainant is entitled to any relief against cross-defendants.

FIRST AND SEPARATE AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

The cross-complaint fails to state facts sufficient to constitute a cause of action.

SECOND AND SEPARATE AFFIRMATIVE DEFENSE

(Waiver)

Cross-complainant by its silence and inaction has acquiesced to cross-defendants’ extraction of groundwater from the Basin.

THIRD AND SEPARATE AFFIRMATIVE DEFENSE

(Unreasonable Use of Water)

The relief requested in the cross-complaint is barred by Article X, section 2 of the California Constitution in that the requested relief would be wasteful and result in unreasonable use, unreasonable method of use, or unreasonable method of diversion of water.

FOURTH AND SEPARATE AFFIRMATIVE DEFENSE

(Waiver)

Cross-complainant has knowingly and intentionally waived any right to assert some or all of the claims set forth in each and every cause of action contained in the cross-complaint.

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FIFTH AND SEPARATE AFFIRMATIVE DEFENSE

(Physical Solution)

In the event of the imposition of a physical solution or some form of declaratory relief, due regard must be given to the prior and paramount nature of cross-defendants' prescriptive water rights.

SIXTH AND SEPARATE AFFIRMATIVE DEFENSE

(Waste)

Cross-defendants are informed and believe, and on that basis allege, that cross-complainant is guilty of waste.

SEVENTH AND SEPARATE AFFIRMATIVE DEFENSE

(Unclean Hands)

Cross-complainant is guilty of unclean hands because it seeks to restrict the pumping of other users but not its own pumping.

EIGHTH AND SEPARATE AFFIRMATIVE DEFENSE

(California Constitution, Article X, Section 2)

Cross-complainant's claim of an absolute priority for overlying rights is barred because it is unreasonable, pursuant to Article X, section 2 of the California Constitution in that it does not properly balance overlying uses with other reasonable and beneficial uses.

NINTH AND SEPARATE AFFIRMATIVE DEFENSE

(Public Agency Discretion)

Each and every cause of action in the cross-complaint is barred because they improperly seek to control the exercise of discretion of various public agencies and they improperly seek to compel the exercise of discretion in a particular manner.

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TENTH AND SEPARATE AFFIRMATIVE DEFENSE

(Estoppel)

Cross-defendants are informed and believe, and on that basis allege, that cross-complainant by its acts and omissions is estopped from asserting any of the claims upon which it seeks relief.

ELEVENTH AND SEPARATE AFFIRMATIVE DEFENSE

(Doctrine of Unjust Enrichment)

Cross-complainant is barred from the relief it seeks by the doctrine of unjust enrichment.

TWELFTH AND SEPARATE AFFIRMATIVE DEFENSE

(Failure to Name and Join Indispensable and Necessary Parties)

Each and every cause of action contained in the cross-complaint is barred in whole or in part in accordance with Code of Civil Procedure section 389 inasmuch as Cross-complainant has failed to name and join indispensable parties, including but not limited to producers of water from the Basin.

THIRTEENTH AND SEPARATE AFFIRMATIVE DEFENSE

(Inverse Condemnation Claim Barred by Statute of Limitations)

Cross-complainant's claim for inverse condemnation is barred by the five year statute of limitations. To obtain a prescriptive right to produce groundwater in California, the water production must be for a reasonable and beneficial purpose, open and notorious, adverse and hostile, exclusive and under a claim of right, and continuous and uninterrupted for the statutory period of five years. Appropriative and prescriptive rights to groundwater, as well as the rights of an overlying owner, can be lost to an adverse user. When the statutory five-year period runs for a prescriptive right, then any claim for inverse condemnation is barred by the five year statute of limitations for such claims. (See, e.g., *Otay Water Dist. v. Beckwith* (1991) 1 Cal.App.4th 1041, 1048; Code of Civil Procedure §§ 318 and 319; *Institoris v. City of Los Angeles* (1989) 210

1 Cal.App.3d 10, 16-18.)
2

3 **FOURTEENTH AND SEPARATE AFFIRMATIVE DEFENSE**

4 (Right to Produce Groundwater is Usufructuary)

5 Cross-complainant's right to produce groundwater is usufructuary, and confers no right of
6 private ownership in public waters.
7

8 **FIFTEENTH AND SEPARATE AFFIRMATIVE DEFENSE**

9 (No Damages or Losses)

10 Cross-complainant is not entitled to recover monetary damages for any groundwater
11 pumped by cross-defendants.
12

13 **SIXTEENTH AND SEPARATE AFFIRMATIVE DEFENSE**

14 (Failure to Mitigate Any Damages)

15 Cross-complainant fails to mitigate its damages, if any, and cross-complainant is barred
16 from recovery against cross-defendants to the extent of such failure to mitigate.
17

18 **SEVENTEENTH AND SEPARATE AFFIRMATIVE DEFENSE**

19 (Actions of Cross-complainant Is the Proximate and Actual Cause of Any Damages)

20 The damages alleged, if any there were, were proximately and actually caused by the
21 voluntary actions of cross-complainant, and not by any acts and/or omissions of cross-defendants.
22

23 **EIGHTEENTH AND SEPARATE AFFIRMATIVE DEFENSE**

24 (Tort Claims Act)

25 To the extent the cross-complaint could be construed to allege damages based upon
26 anything other than a constitutional theory for just compensation, the cross-complainant is barred
27 due to cross-complainant's failure to present a timely claim to cross-defendants under the Tort
28 Claims Act, Government Code section 905 et seq.

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NINETEENTH AND SEPARATE AFFIRMATIVE DEFENSE

(Failure to Exercise Administrative Remedies)

The cause of action for inverse condemnation is barred by cross-complainant's failure to exhaust its available administrative remedies.

TWENTIETH AND SEPARATE AFFIRMATIVE DEFENSE

(Failure to Exercise Reasonable Diligence)

Cross-complainant's injuries and damages, if any, have been aggravated as a result of its failure to exercise reasonable diligence to minimize those damages, and cross-defendants' liability, if any, is limited to the amount of damage which would have been suffered had cross-complainant exercised the diligence required of it.

TWENTY-FIRST AND SEPARATE AFFIRMATIVE DEFENSE

(Doctrine of Laches)

Some or all of cross-complainant's claims for relief are barred by the doctrine of laches. For at least five years prior to the commencement of the instant action, the Basin was in a continuous state of overdraft. That overdraft continued and was exacerbated by increased domestic and agricultural production, including nurseries. Cross-defendants have relied upon cross-complainant's inaction and their failure to make a formal assertion of any prior and paramount right to that of cross-defendants.

TWENTY-SECOND AND SEPARATE AFFIRMATIVE DEFENSE

(Description of Land)

Cross-complainant has not described the property at issue with sufficient certainty as required by Code of Civil Procedure section 455.

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TWENTY-THIRD AND SEPARATE AFFIRMATIVE DEFENSE

(Failure to Comply With Code of Civil Procedure Section 425.10)

Cross-complainant has failed to comply with the requirements of Code of Civil Procedure section 425.10 in that the cross-complainant's Prayer for Relief directly contradicts the causes of action pled elsewhere in the cross-complaint.

TWENTY-FOURTH AND SEPARATE AFFIRMATIVE DEFENSE

(Uncertainty and Ambiguity)

The cross-complaint, and each and every purported cause of action contained therein, is uncertain, ambiguous and unintelligible.

TWENTY-FIFTH AND SEPARATE AFFIRMATIVE DEFENSE

(Right to Assert Additional Affirmative Defenses)

Cross-defendants do not presently have sufficient knowledge or information on which to form a belief as to whether they may have additional, as yet unstated, affirmative defenses. Cross-defendants reserve the right to assert additional affirmative defenses in the event discovery indicates that they would be appropriate.

TWENTY-SIXTH AND SEPARATE AFFIRMATIVE DEFENSE

(Incorporation By Reference)

As permitted by the Court's Appearance Form, cross-defendants incorporate by reference, as if fully set forth herein, each and every affirmative defense to the cross-complaint filed by any other defendant or cross-defendant, whether their answers are filed before or after the filing of this answer.

WHEREFORE, cross-defendants Rosamond Community Services District and Los Angeles County Water Works District No. 40 pray for relief as follows:

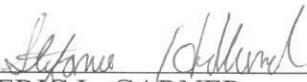
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1. That cross-complainant take nothing by way of its cross-complaint;
2. That cross-defendants be awarded attorneys' fees as may be allowed by statute or law; and,
3. For such other and further relief as the court may deem just and proper.

Dated: February 1, 2007

BEST BEST & KRIEGER LLP

By 
ERIC L. GARNER
JEFFREY V. DUNN
STEFANIE D. HEDLUND
Attorneys for Cross-Complainants
ROSAMOND COMMUNITY SERVICES
DISTRICT and LOS ANGELES
COUNTY WATERWORKS DISTRICT
NO. 40

ORANGE\33368.1

1 **PROOF OF SERVICE**

2 I, Kerry V. Keefe, declare:

3 I am a resident of the State of California and over the age of eighteen years, and
4 not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza,
Suite 1500, Irvine, California 92614. On February 1, 2007, I served the within document(s):

5 **ANSWER OF ROSAMOND COMMUNITY SERVICES DISTRICT AND LOS**
6 **ANGELES COUNTY WATERWORKS DISTRICT NO. 40 TO CROSS-COMPLAINT**
7 **OF BOLTHOUSE PROPERTIES, LLC**

- 8 by posting the document(s) listed above to the Santa Clara County Superior Court
website in regard to the Antelope Valley Groundwater matter.
- 9 by placing the document(s) listed above in a sealed envelope with postage thereon
10 fully prepaid, in the United States mail at Irvine, California addressed as set forth
below.
- 11 by causing personal delivery by ASAP Corporate Services of the document(s)
12 listed above to the person(s) at the address(es) set forth below.
- 13 by personally delivering the document(s) listed above to the person(s) at the
14 address(es) set forth below.
- 15 I caused such envelope to be delivered via overnight delivery addressed as
16 indicated on the attached service list. Such envelope was deposited for delivery
by Federal Express following the firm's ordinary business practices.

17
18 I am readily familiar with the firm's practice of collection and processing
19 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
20 Service on that same day with postage thereon fully prepaid in the ordinary course of business. I
am aware that on motion of the party served, service is presumed invalid if postal cancellation
date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

22 Executed on February 1, 2007, at Irvine, California.

23
24 
25 _____
Kerry V. Keefe

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