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 WATERWORKS DISTRICT NO. 40

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 Los Angeles Superior Court**

AUG 21 2008

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

18 **ANTELOPE VALLEY**  
**GROUNDWATER CASES**  
 19  
 20 Included Actions:  
 Los Angeles County Waterworks District  
 No. 40 v. Diamond Farming Co., Superior  
 21 Court of California, County of Los  
 Angeles, Case No. BC 325201;  
 22  
 Los Angeles County Waterworks District  
 No. 40 v. Diamond Farming Co., Superior  
 23 Court of California, County of Kern, Case  
 No. S-1500-CV-254-348;  
 24  
 25 Wm. Bolthouse Farms, Inc. v. City of  
 Lancaster, Diamond Farming Co. v. City of  
 26 Lancaster, Diamond Farming Co. v.  
 Palmdale Water Dist., Superior Court of  
 27 California, County of Riverside, Case Nos.  
 RIC 353 840, RIC 344 436, RIC 344 668  
 28

Judicial Council Coordination No. 4408

CLASS ACTION

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

[Code Civ. Proc., § 382]

~~[PROPOSED]~~ **FIRST-AMENDED CROSS-  
 COMPLAINT OF PUBLIC WATER  
 SUPPLIERS FOR DECLARATORY AND  
 INJUNCTIVE RELIEF AND  
 ADJUDICATION OF WATER RIGHTS**

**FILED**

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16 Hill Water District

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19 (310) 257-1488; (310) 325-4605-fax

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1 Cross-Complainants California Water Service Company, City of Lancaster, City of  
 2 Palmdale, Littlerock Creek Irrigation District, Los Angeles County Water Works District No. 40,  
 3 Palmdale Water District, Rosamond Community Services District, Palm Ranch Irrigation District  
 4 and Quartz Hill Water District (collectively, the "Public Water Suppliers") allege:

5  
 6 **INTRODUCTION**

7 1. This cross-complaint seeks a judicial determination of rights to all water within the  
 8 adjudication area of the Antelope Valley Groundwater Basin as determined by the Court's Orders  
 9 in this case (the "Basin"). An adjudication is necessary to protect and conserve the limited water  
 10 supply that is vital to the public health, safety and welfare of all persons and entities that depend  
 11 upon water from the Public Water Suppliers. For these reasons, the Public Water Suppliers file  
 12 this cross-complaint to promote the general public welfare in the Antelope Valley; protect the  
 13 Public Water Suppliers' rights to pump groundwater and provide water to the public; protect the  
 14 Antelope Valley from a loss of the public's water supply; prevent degradation of the quality of  
 15 the public groundwater supply; stop land subsidence; and avoid higher water costs to the public.

16  
 17 **CROSS-COMPLAINANTS**

18 2. California Water Service Company is a California corporation which extracts  
 19 groundwater from the Basin to serve customers within the Basin.

20  
 21 3. The City of Lancaster is a municipal corporation located in the County of Los  
 22 Angeles, and which produces and receives water for reasonable and beneficial uses, including  
 23 overlying uses. The City of Lancaster further provides ministerial services to mutual water  
 24 companies that produce groundwater from the Basin.

25  
 26 4. The City of Palmdale is a municipal corporation in the County of Los Angeles.  
 27 The City of Palmdale receives water from the Basin.

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1 5. Littlerock Creek Irrigation District is a public agency which extracts groundwater  
2 from the Basin to serve customers within the Basin.

3  
4 6. Los Angeles County Waterworks District No. 40 is a public agency governed by  
5 the Los Angeles County Board of Supervisors. District 40 has been lawfully organized to  
6 perform numerous functions, including providing Basin groundwater to the public in a large  
7 portion of the Antelope Valley. To this end, District 40 has constructed, maintained and operated  
8 a public waterworks system to supply water to the public.

9  
10 7. Palmdale Water District is an irrigation district organized and operating under  
11 Division 11 of the California Water Code. Palmdale Water District extracts groundwater from  
12 the Basin for delivery to customers.

13  
14 8. Palm Ranch Irrigation District Palm Ranch Irrigation District is a public agency  
15 which extracts groundwater from the Basin to serve customers within the Basin.

16  
17 9. Rosamond Community Services District provides water to more than 3,500  
18 residents of Kern County for domestic uses, fire protection, and irrigation. Rosamond has drilled  
19 and equipped wells to pump groundwater from the Basin. Rosamond has constructed, maintained  
20 and operated a public waterworks system to supply water to the public.

21  
22 10. Quartz Hill Water District is a county water district organized and operating under  
23 Division 12 of the California Water Code. Quartz Hill extracts groundwater from the Lancaster  
24 Sub-basin of the Antelope Valley Groundwater Basin for delivery to customers.

25  
26 **CROSS-DEFENDANTS**

27 11. The following persons and/or entities are the owners of, and/or are beneficial  
28 interest holders in real property within the geographic boundaries of the Basin. These persons

1 and/or entitles claim overlying rights to extract water from the Basin, whether or not they have  
 2 heretofore exercised such overlying rights: ABC Williams Enterprises LP, ACEH Capital, LLC,  
 3 Jacqueline Ackermann, Cenon Advincula, Oliva M. Advincula, Mashallah Afshar, Antonio U.  
 4 Agustines, Airtrust Singapore Private Limited, Marwan M. Aldais, Allen Alevy, Allen Alevy and  
 5 Alevy Family Trust, Georgine J. Archer, Georgine J. Archer as Trustee for the Georgine J. Archer  
 6 Trust, A V Materials, Inc., Guss A. Barks, Jr., Peter G. Barks, Ildefonso S. Bayani, Nilda V.  
 7 Bayani, Big West Corp, Randall Y. Blayney, Melody S. Bloom, Bolthouse Properties, Inc., David  
 8 L. Bowers, Ronald E. Bowers, Leroy Daniel Bronston, Marilyn Burgess, Laverne C. Burroughs,  
 9 Laverne C. Burroughs, Trustee of the Burroughs Family Irrevocable Trust Dated August 1, 1995,  
 10 Bruce Burrows, John and B. Calandri 2001 Trust, California Portland Cement Company, Calmat  
 11 Land Co., Melinda E. Cameron, Castle Butte Dev Corp, Catellus Development Corporation,  
 12 Bong S. Chang, Jeanna Y. Chang, Moon S. Chang, Jacob Chetrit, Frank S. Chiodo, Lee S. Chiou,  
 13 M S Chung, City of Los Angeles, Carol K. Claypool, Clifford N. Claypool, W. F. Clunen, Jr., W.  
 14 F. Clunen, Jr. as Trustee for the P C Rev Inter Vivos Trust, Consolidated Rock Products Co.,  
 15 County Sanitation District No. 14 of Los Angeles County, County Sanitation District No. 20 of  
 16 Los Angeles County, Ruth A. Cumming, Ruth A. Cumming as Trustee of the Cumming Family  
 17 Trust, Catharine M. Davis, Milton S. Davis, Del Sur Ranch LLC, Diamond Farming Company,  
 18 Sarkis Djanibekyan, Hong Dong, Ying X Dong, Dorothy Dreier, George E. Dreier, Morteza M.  
 19 Foroughi, Morteza M. Foroughi as Trustee of the Foroughi Family Trust, Lewis Fredrichsen,  
 20 Lewis Fredrichsen as Trustee of the Friedrichsen Family Trust, Joan A. Funk, Eugene Gabrych,  
 21 Marian Gabrych, Aurora P. Gabuya, Rodrigo L. Gabuya, GGF LLC, Genus LP, Betty Gluckstein,  
 22 Joseph H. Gluckstein, Forrest G. Godde, Forrest G. Godde as Trustee of the Forrest G. Godde  
 23 Trust, Lawrence A. Godde, Lawrence A. Godde and Godde Trust, Maria B. Gorrindo, Maria B.  
 24 Gorrindo as Trustee for the M. Gorrindo Trust, Wendell G. Hanks, Andreas Hauke, Marilyn  
 25 Hauke, Healy Enterprises, Inc., Walter E. Helmick, Donna L. Higelmire, Michael N. Higelmire,  
 26 Davis L. and Diana D. Hines Family Trust, Hooshpack Dev Inc., Chi S. Huang, Suchu T. Huang,  
 27 John Hui, Hypericum Interests LLC, Daryush Iraninezhad, Minoo Iraninezhad, Esfandiar  
 28 Kadivar, Esfandiar Kadivar as Trustee of the Kadivar Family Trust, A. David Kagon, A. David

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1 Kagon as Trustee for the Kagon Trust, Jack D. Kahlo, Cheng Lin Kang, Herbert Katz, Herbert  
2 Katz as Trustee for the Katz Family Trust, Marianne Katz, Lilian S. Kauffman, Lilian S.  
3 Kaufman as Trustee for the Kaufman Family Trust, Kazuko Yoshimatsu, Barbara L. Keys,  
4 Barbara L. Keys as Trustee of the Barbara L. Keys Family Trust, Billy H. Kim, Illy King, Illy  
5 King as Trustee of the Illy King Family Trust, Kootenai Properties, Inc., Kutu Investment Co.,  
6 Gailen Kyle, Gailen Kyle as Trustee of the Kyle Trust, James W. Kyle, James W. Kyle as Trustee  
7 of the Kyle Family Trust, Julia Kyle, Wanda E. Kyle, Fares A. Lahoud, Eva Lai, Paul Lai, Ying  
8 Wah Lam, Land Business Corporation, Richard E. Landfield, Richard E. Landfield as Trustee of  
9 the Richard E. Landfield Trust, Lawrence Charles Trust, William Lewis, Mary Lewis, Pei Chi  
10 Lin, Man C. Lo, Shiung Ru Lo, Lyman C. Miles, Lyman C. Miles as Trustee for the Miles Family  
11 Trust, Malloy Family Partners LP, Mission Bell Ranch Development, Barry S. Munz, Kathleen  
12 M. Munz, Terry A. Munz, M.R. Nasir, Souad R. Nasir, Eugene B. Nebeker, Simin C. Neman,  
13 Henry Ngo, Frank T. Nguyen, Juanita R. Nichols, Oliver Nichols, Oliver Nichols as Trustee of  
14 the Nichols Family Trust, Owl Properties, Inc., Palmdale Hills Property LLC, Norman L.  
15 Poulsen, Marilyn J. Prewoznik, Marilyn J. Prewoznik as Trustee of the Marilyn J. Prewoznik  
16 Trust, Elias Qarmout, Victoria Rahimi, R and M Ranch, Inc., Patricia A. Recht, Veronika Reinelt,  
17 Reinelt Rosenloecher Corp. PSP, Patricia J. Riggins, Patricia J. Riggins as Trustee of the Riggins  
18 Family Trust, Edgar C. Ritter, Paula E. Ritter, Paula E. Ritter as Trustee of the Ritter Family  
19 Trust, Roman Catholic Archbishop of Los Angeles, Romo Lake Los Angeles Partnership,  
20 Rosemount Equities LLC Series, Royal Investors Group, Royal Western Properties LLC, Oscar  
21 Rudnick, Rebecca Rudnick, Santa Monica Mountains Conservancy, Marygrace H. Santoro,  
22 Marygrace H. Santoro as Trustee for the Marygrace H. Santoro Rev Trust, San Yu Enterprises,  
23 Inc., Daniel Saparzadeh, Helen Stathatos, Savas Stathatos, Savas Stathatos as Trustee for the  
24 Stathatos Family Trust, Seven Star United LLC, Mark H. Shafron, Robert L. Shafron, Kamram S.  
25 Shakib, Donna L. Simpson, Gareth L. Simpson, Gareth L. Simpson as Trustee of the Simpson  
26 Family Trust, Soaring Vista Properties, Inc., State of California, George C. Stevens, Jr., George  
27 C. Stevens, Jr. as Trustee of the George C. Stevens, Jr. Trust, George L. Stimson, Jr., George L.  
28 Stimson, Jr. as Trustee of the George L. Stimson, Jr. Trust, Tejon Ranch, Mark E. Thompson A P

1 C Profit Sharing Plan, Tierra Bonita Ranch Company, Tiong D. Tiu, Beverly J. Tobias, Beverly J.  
2 Tobias as Trustee of the Tobias Family Trust, Jung N. Tom, Wilma D. Trueblood, Wilma D.  
3 Trueblood as Trustee of the Trueblood Family Trust, Unison Investment Co., LLC, Delmar D.  
4 Van Dam, Gertrude J. Van Dam, Keith E. Wales, E C Wheeler LLC, William Bolthouse Farms,  
5 Inc., Alex Wodchis, Elizabeth Wong, Mary Wong, Mike M. Wu, Mike M. Wu as Trustee of the  
6 Wu Family Trust, State of California 50<sup>th</sup> District and Agricultural Association, and U.S. Borax,  
7 Inc.

8  
9 12. The Public Water Suppliers are informed and believe, and thereon allege, that  
10 cross-defendant Roes 1 through 100,000 are the owners, lessees or other persons or entities  
11 holding or claiming to hold ownership or possessory interests in real property within the  
12 boundaries of the Basin; extract water from the Basin; claim some right, title or interest to water  
13 located within the Basin; or that they have or assert claims adverse to the Public Water Suppliers'  
14 rights and claims. The Public Water Suppliers are presently unaware of the true names and  
15 capacities of the Roe cross-defendants, and therefore sue those cross-defendants by fictitious  
16 names. The Public Water Suppliers will seek leave to amend this cross-complaint to add names  
17 and capacities when they are ascertained.

18  
19 **CLASS ACTION ALLEGATIONS**

20 13. The Public Water Suppliers bring this action against all persons similarly situated.  
21 The class will be composed of all owners of land within the adjudication area that is not within  
22 the service area of a public entity, public utility, or mutual water company. The persons in this  
23 class are so numerous, consisting of approximately 65,000 parcels, that the joinder of all such  
24 persons is impracticable and that the disposition of their claims in a class action rather than in  
25 individual actions will benefit the parties and the court.

26  
27 14. There is a well-defined community of interests in the questions of law and fact  
28 affecting the defendant class members in that they each allege an identical overlying right to take

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1 native groundwater from a common supply for their reasonable and beneficial use. As they each  
2 seek a common right, they have predominantly common issues of fact and law. Additionally,  
3 each class member will have common defenses against competing water rights including a claim  
4 by the United States that it has a Federal Reserved right. These questions of law and fact  
5 predominate over questions that affect only the individual class members. The claims and  
6 defenses of the class members and the class representative are typical of those of the class and the  
7 class representative will fairly and adequately represent the interests of the class.

8  
9 **THE UNITED STATES IS A NECESSARY PARTY TO THIS ACTION**

10 15. This is an action to comprehensively adjudicate the rights of all claimants to the  
11 use of a source of water located entirely within California, *i.e.*, the Basin, and for the ongoing  
12 administration of all such claimants' rights.

13  
14 16. The Public Water Suppliers are informed and believe, and on that basis allege, that  
15 the United States claims rights to the Basin water subject to adjudication in this action by virtue  
16 of owning real property overlying the Basin, including Edwards Air Force Base.

17  
18 17. For the reasons expressed in this cross-complaint, the United States is a necessary  
19 party to this action pursuant to the McCarran Amendment, 43 U.S.C. § 666.

20  
21 18. Under the McCarran Amendment, the United States, as a necessary party to this  
22 action, is deemed to have waived any right to plead that the laws of California are not applicable,  
23 or that the United States is not subject to such laws by virtue of its sovereignty.

24  
25 19. Under the McCarran Amendment, the United States, as a necessary party to this  
26 action, is subject to the judgments, orders and decrees of this Court.

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## HISTORY OF THE ANTELOPE VALLEY GROUNDWATER BASIN

20. For over a century, California courts have used the concept of a groundwater basin to resolve groundwater disputes. A groundwater basin is an alluvial aquifer with reasonably well-defined lateral and vertical boundaries.

21. The Antelope Valley Groundwater Basin is located in an arid valley in the Mojave Desert, about 50 miles northeast of the City of Los Angeles. The Basin encompasses about 1,000 square miles in both Los Angeles and Kern Counties, and is separated from the northern part of the Antelope Valley by faults and low-lying hills. The Basin is bounded on the south by the San Gabriel Mountains and on the northwest by the Tehachapi Mountains. The Basin generally includes the communities of Lancaster, Palmdale and Rosamond as well as Edwards Air Force Base.

22. Various investigators have studied the Antelope Valley and some have divided the Basin into "sub-basins." According to the Public Water Suppliers' information and belief, to the extent the Antelope Valley is composed of such "sub-basins," they are sufficiently hydrologically connected to justify treating them as a single source of water for purposes of adjudicating the parties' water rights.

23. Before public and private entities began pumping water from the Basin, its natural water recharge balanced with water discharged from the Basin. Its water levels generally remained in a state of long-term equilibrium. In approximately 1915, however, agricultural uses began to pump groundwater and since then, greatly increased agricultural pumping has upset the Basin's groundwater equilibrium causing a continuous decline in the Basin's groundwater storage.

24. Although private agricultural entities temporarily curtailed their pumping activities when groundwater levels were extremely low, agricultural pumping has increased overall during

1 the past decade. During the same time, urbanization of the Antelope Valley has resulted in  
2 increased public demand for water.

3  
4 25. Groundwater pumping in the Basin has never been subject to any limits. This lack  
5 of groundwater management caused the Basin to lose an estimated eight million acre feet of water  
6 over the past eighty years.

7  
8 26. Uncontrolled pumping caused repeated instances of land subsidence. It is the  
9 sinking of the Earth's surface due to subsurface movement of earth materials and is primarily  
10 caused by groundwater pumping. The Public Water Suppliers are informed and believe, and  
11 thereupon allege, that portions of the Basin have subsided as much as six feet because of  
12 chronically low groundwater levels caused by unlimited pumping. The harmful effects of land  
13 subsidence observed in the Basin include loss of groundwater storage space, cracks and fissures  
14 on the ground's surface, and damage to real property. Land subsidence problems continue and  
15 will continue because of unlimited pumping.

16  
17 27. The declining groundwater levels, diminished groundwater storage, and land  
18 subsidence damage the Basin, injure the public welfare, and threaten communities that depend  
19 upon the Basin as a reliable source of water. These damaging effects will continue, and likely  
20 worsen until the court establishes a safe yield for the Basin and limits pumping to the safe yield.

21  
22 **PUBLIC WATER SUPPLIERS SUPPLEMENT AND COMMINGLE THEIR**  
23 **SUPPLEMENTAL SUPPLY OF WATER WITH BASIN WATER**

24 28. Due to the shortage of water in the Basin, certain Public Water Suppliers purchase  
25 State Water Project water from the Antelope Valley-East Kern Water Agency. State Project  
26 water originates in northern California and would not reach the Basin absent the Public Water  
27 Suppliers purchases.

1 29. Public Water Suppliers purchase State Project water each year. They deliver the  
2 State Project water to their customers through waterworks systems. The Public Water Suppliers'  
3 customers use the State Project water for irrigation, domestic, municipal and industrial uses.  
4 After the Public Water Suppliers' customers use the water, some of the imported State Project  
5 water commingles with other percolating groundwater in the Basin. In this way, State Project  
6 water augments the natural supply of Basin water.

7  
8 30. Public Water Suppliers depend on the Basin as their source of water. But for the  
9 Public Water Suppliers' substantial investment in State Project water, they would need to pump  
10 additional groundwater each year. By storing State Project water or other imported water in the  
11 Basin, Public Water Suppliers can recover the stored water during times of drought, water supply  
12 emergencies, or other water shortages to ensure a safe and reliable supply of water to the public.

13  
14 **THE BASIN HAS BEEN IN A STATE OF OVER-DRAFT FOR OVER FIVE YEARS**

15 31. The Public Water Suppliers are informed and believe, and upon that basis allege,  
16 that the Basin is and has been in an overdraft condition for more than five (5) consecutive years  
17 before the filing of this cross-complaint. During these time periods, the total annual demand on  
18 the Basin has exceeded the supply of water from natural sources. Consequently, there is and has  
19 been a progressive and chronic decline in Basin water levels and the available natural supply is  
20 being and has been chronically depleted. Based on the present trends, demand on the Basin will  
21 continue to exceed supply. Until limited by order and judgment of the court, potable Basin water  
22 will be exhausted and land subsidence will continue.

23  
24 32. Upon information and belief, the cross-defendants have, and continue to pump,  
25 appropriate and divert water from the natural supply of the Basin, and/or claim some interest in  
26 the Basin water. The Public Water Suppliers are informed and believe, and upon that basis  
27 allege, that cross-defendants' combined extraction of water exceeds the Basin's safe yield.  
28

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1           33.     Upon information and belief, each cross-defendant claims a right to take water and  
2 threatens to increase its taking of water without regard to the Public Water Suppliers' rights.  
3 Cross-defendants' pumping reduces Basin water tables and contributes to the deficiency of the  
4 Basin water supply as a whole. The deficiency creates a public water shortage.

5  
6           34.     Cross-defendants' continued and increasing extraction of Basin water has resulted  
7 in, and will result in a diminution, reduction and impairment of the Basin's water supply, and land  
8 subsidence.

9  
10          35.     Cross-defendants' continued and increasing extraction of Basin water has and will  
11 deprive the Public Water Suppliers of their rights to provide water for the public health, welfare  
12 and benefit.

13  
14           **THERE IS A DISPUTE AMONG THE PARTIES REGARDING THE EXTENT AND**  
15           **PRIORITY OF THEIR RESPECTIVE WATER RIGHTS**

16          36.     The Public Water Suppliers are informed and believe, and thereon allege, there are  
17 conflicting claims of rights to the Basin and/or its water.

18  
19          37.     The Public Water Suppliers are informed and believe, and thereon allege, that  
20 cross-defendants who own real property in the Basin claim an overlying right to pump Basin  
21 water. The overlying right is limited to the native safe yield of the Basin. The Public Water  
22 Suppliers allege that, because subsidence is occurring in the Basin, cross-defendants have been  
23 pumping, and continue to pump water in amounts greater than the Basin's safe yield.

24  
25          38.     The Public Water Suppliers are informed and believe, and thereon allege, they  
26 have appropriative and prescriptive rights to groundwater in the Antelope Valley Basin. The  
27 Public Water Suppliers are informed and believe, and thereon allege, they and/or their  
28 predecessors-in-interest, have pumped water from the Antelope Valley Basin for more than five

1 years prior to the filing of this cross-complaint.  
2

3 39. The Public Water Suppliers have pumped water from, and/or stored water in the  
4 Antelope Valley Basin, by reasonable extraction means. They have used the Basin and/or its  
5 water for reasonable and beneficial purposes; and they have done so under a claim of right in an  
6 actual, open, notorious, exclusive, continuous, uninterrupted, hostile, adverse use and/or manner  
7 for a period of time of at least five years and before filing this cross-complaint.  
8

9 40. To provide water to the public, the Public Water Suppliers have and claim the  
10 following rights:  
11

12 (A) The right to pump groundwater from the Antelope Valley Groundwater  
13 Basin in an annual amount equal to the highest volume of groundwater extracted by each of the  
14 Public Water Suppliers in any year preceding entry of judgment in this action;

15 (B) The right to pump or authorize others to extract from the Antelope Valley  
16 Groundwater Basin an amount of water equal in quantity to that amount of water previously  
17 purchased by each of the Public Water Suppliers from the Antelope Valley-East Kern Water  
18 Agency; and which has augmented the supply of water in the Basin in any year preceding entry of  
19 judgment in this action.

20 (C) The right to pump or authorize others to extract from the Antelope Valley  
21 Groundwater Basin an amount of water equal in quantity to that amount of water purchased in the  
22 future by each of the Public Water Suppliers from the Antelope Valley-East Kern Water Agency  
23 which augments the supply of water in the Basin; and

24 (D) The right to pump or authorize others to extract from the Antelope Valley  
25 Basin an amount of water equal in quantity to that volume of water injected into the Basin or  
26 placed within the Basin by each of the Public Water Suppliers or on behalf of any of them.  
27  
28

**FIRST CAUSE OF ACTION**

**(Declaratory Relief – Prescriptive Rights – Against All Cross-Defendants Except the United States And Other Public Entity Cross-Defendants)**

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41. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

42. For over fifty years, the California Supreme Court has recognized prescriptive water rights. The Public Water Suppliers allege that, for more than five years and before the date of this cross-complaint, they have pumped water from the Basin for reasonable and beneficial purposes, and done so under a claim of right in an actual, open, notorious, exclusive, continuous, hostile and adverse manner. The Public Water Suppliers further allege that each cross-defendant had actual and/or constructive notice of these activities, either of which is sufficient to establish the Public Water Suppliers' prescriptive rights.

43. Public Water Suppliers contend that each cross-defendant's rights to pump water from the Basin are subordinate to the Public Water Suppliers' prescriptive rights and to the general welfare of the citizens, inhabitants and customers within the Public Water Suppliers' respective service areas and/or jurisdictions.

44. An actual controversy has arisen between the Public Water Suppliers and cross-defendants, and each of them. Public Water Suppliers allege, on information and belief, that each cross-defendant disputes the Public Water Suppliers' contentions, as described in the immediately preceding paragraph.

45. Public Water Suppliers seek a judicial determination as to the correctness of their contentions and a finding as to the priority and amount of water they and each cross-defendant are entitled to pump from the Basin.

**SECOND CAUSE OF ACTION**

**(Declaratory Relief – Appropriative Rights – Against All Cross-Defendants)**

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4 46. The Public Water Suppliers re-allege and incorporate by reference each and all of  
5 the preceding paragraphs as though fully set forth herein.

6  
7 47. Public Water Suppliers allege that, in addition or alternatively to their prescriptive  
8 rights, they have appropriative rights to pump water from the Basin.

9  
10 48. Appropriative rights attach to surplus water from the Basin.

11  
12 49. Surplus water exists when the pumping from the Basin is less than the safe yield.  
13 It is the maximum quantity of water which can be withdrawn annually from a groundwater Basin  
14 under a given set of conditions without causing an undesirable result. "Undesirable results"  
15 generally refer to gradual lowering of the groundwater levels in the Basin, but also includes  
16 subsidence.

17  
18 50. Persons and/or entities with overlying rights to water in the Basin are only entitled  
19 to make reasonable and beneficial use of the Basin's native safe yield.

20  
21 51. An actual controversy has arisen between the Public Water Suppliers and cross-  
22 defendants, and each of them. The Public Water Suppliers allege, on information and belief, that  
23 all cross-defendants, and each of them, seek to prevent the Public Water Suppliers from pumping  
24 surplus water.

25  
26 52. The Public Water Suppliers seek a judicial determination as to the Basin's safe  
27 yield, the quantity of surplus water available, if any, the correlative overlying rights of each cross-  
28 defendant to the safe yield and a determination of the rights of persons an/or entities with



1 overlying, appropriative and prescriptive rights to pump water from the Basin.

2  
3 **THIRD CAUSE OF ACTION**

4 **(Declaratory Relief – Physical Solution – Against All Cross-defendants)**

5 53. The Public Water Suppliers re-allege and incorporate by reference each and all of  
6 the preceding paragraphs as though fully set forth herein.

7  
8 54. Upon information and belief, the Public Water Suppliers allege that cross-  
9 defendants, and each of them, claim an interest or right to Basin water; and further claim they can  
10 increase their pumping without regard to the rights of the Public Water Suppliers. Unless  
11 restrained by order of the court, cross-defendants will continue to take increasing amounts of  
12 water from the Basin, causing great and irreparable damage and injury to the Public Water  
13 Suppliers and to the Basin. Money damages cannot compensate for the damage and injury to the  
14 Basin.

15  
16 55. The amount of Basin water available to the Public Water Suppliers has been  
17 reduced because cross-defendants have extracted, and continue to extract increasingly large  
18 amounts of water from the Basin. Unless the court enjoins and restrains cross-defendants, and  
19 each of them, the aforementioned conditions will worsen. Consequently, the Basin's groundwater  
20 supply will be further depleted, thus reducing the amount of Basin water available to the public.

21  
22 56. California law makes it the duty of the trial court to consider a "physical solution"  
23 to water rights disputes. A physical solution is a common-sense approach to resolving water  
24 rights litigation that seeks to satisfy the reasonable and beneficial needs of all parties through  
25 augmenting the water supply or other practical measures. The physical solution is a practical way  
26 of fulfilling the mandate of the California Constitution (Article X, section 2) that the water  
27 resources of the State be put to use to the fullest extent of which they are capable.

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57. This court must determine, impose and retain continuing jurisdiction in order to enforce a physical solution upon the parties who pump water from the Basin, and thereby prevent irreparable injury to the Basin. Available solutions to the Basin problems may include, but are not limited to, the court appointment of a watermaster, and monetary and metering and assessments upon water extraction from the Basin. Such assessments would pay for the purchase, delivery of supplemental supply of water to the Basin.

**FOURTH CAUSE OF ACTION**

**(For Declaratory Relief – Municipal Priority – Against All Cross-Defendants)**

58. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

59. The Public Water Suppliers have rights to pump water from the Basin to meet existing public water needs, and also to take increased amounts of Basin water as necessary to meet future public needs. The Public Water Suppliers' rights to Basin water exist both as a result of the priority and extent of their appropriative and prescriptive rights, and as a matter of law and public policy of the State of California: "It is hereby declared to be the established policy of this State that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation." (*Water Code* §106.)

60. *Water Code* Section 106.5 provides: "It is hereby declared to be the established policy of this State that the right of a municipality to acquire and hold rights to the use of water should be protected to the fullest extent necessary for existing and future uses. . . ."

61. Under *Water Code* sections 106 and 106.5, the Public Water Suppliers have a prior and paramount right to Basin water as against all non-municipal uses.







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constitutes waste, unreasonable use or an unreasonable method of diversion or use within the meaning of the California Constitution (Article X, section 2). Such uses are thereby unlawful.

79. An actual controversy has arisen between the Public Water Suppliers and cross-defendants. The Public Water Suppliers allege, on information and belief, that the cross-defendants dispute their contentions in Paragraphs 1 through 43 of this Cross-Complaint.

80. The Public Water Suppliers seek a judicial declaration that cross-defendants have no right to any unreasonable use, unreasonable methods of use, or waste of water. Cross-defendants' rights, if any, must be determined based on the reasonable use of water in the Antelope Valley rather than upon the amount of water actually used.

**EIGHTH CAUSE OF ACTION**

**(Declaratory Relief Re Boundaries Of Basin)**

91. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

92. An actual controversy has arisen between the Public Water Suppliers and cross-defendants, and each of them, regarding the actual physical dimensions and description of the Basin for purposes of determining the parties rights to water located therein. The Public Water Suppliers allege, on information and belief, that cross-defendants dispute the Public Water Suppliers' contentions, as set forth in Paragraphs 1 through 38, inclusive, of this cross-complaint.

93. The Public Water Suppliers seek a judicial determination as to the correctness of their contentions and a finding as to the actual physical dimensions and description of the Basin.

**PRAYER FOR RELIEF**

WHEREFORE, the Public Water Suppliers pray for judgment as follows:

- 1. Judicial declarations consistent with the Public Water Suppliers' contentions in the

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First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action in this cross-complaint;

2. For preliminary and permanent injunctions which prohibit cross-defendants, and each of them, from taking, wasting or failing to conserve water from the Basin in any manner which interferes with the rights of the Public Water Suppliers to take water from or store water in the Basin to meet their reasonable present and future needs;

3. For prejudgment interest as permitted by law;


4. For attorney, appraisal and expert witness fees and costs incurred in this action;

and

5. Such other relief as the court deems just and proper.

Dated: January 10, 2007

BEST BEST & KRIEGER LLP

By   
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JEFFREY V. DUNN  
STEFANIE D. HEDLUND  
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ROSAMOND COMMUNITY SERVICES  
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**PROOF OF SERVICE**

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California 92614. On March 13, 2007, I served the within document(s):

**FIRST-AMENDED CROSS COMPLAINT OF PUBLIC WATER SUPPLIERS FOR DECLARATORY AND INJUNCTIVED RELIEF AND ADJUDICATION OF WATER RIGHTS**

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

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal 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.

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

Executed on March 13, 2007, at Irvine, California.

  
Kerry V. Keefe



1 THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
ELECTRONIC FILING - WWW.SCEFILING.ORG  
c/o Glotrans  
2915 McClure Street  
Oakland, CA94609  
2 TEL: (510) 208-4775  
FAX: (510) 465-7348  
3 EMAIL: Info@Glotrans.com

4 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
5 IN AND FOR THE COUNTY OF SANTA CLARA

6	Antelope Valley Groundwater Cases (JCCP 4408)	)	Antelope Valley Groundwater Cases
	Plaintiff.	)	Lead Case No.1-05-CV-049053
7	vs.	)	Judge Jack Komar
	Defendant.	)	
8		)	
9	<u>AND RELATED ACTIONS</u>	)	<b>PROOF OF SERVICE</b>
		)	<b>Electronic Proof of Service</b>

10 I am employed in the County of Alameda, State of California.

11 I am over the age of 18 and not a party to the within action; my business address is 2915 McClure Street, Oakland, CA 94609.

12 The documents described on page 2 of this Electronic Proof of Service were submitted via the worldwide web on Tue. March 13, 2007 at 2:40 PM PDT and served by electronic mail notification.

13 I have reviewed the Court's Order Concerning Electronic Filing and Service of Pleading Documents and am readily familiar with the contents of said Order. Under the terms of said Order, I certify the above-described document's electronic service in the following manner:

14 The document was electronically filed on the Court's website, <http://www.scefilling.org>, on Tue. March 13, 2007 at 2:40 PM PDT

15 Upon approval of the document by the Court, an electronic mail message was transmitted to all parties on the electronic service list maintained for this case. The message identified the document and provided instructions for accessing the document on the worldwide web.

16 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 13, 2007 at Oakland, California.

17 Dated: March 13, 2007

18 For WWW.SCEFILING.ORG

19 Andy Jamieson

20  
21  
22  
23

1 THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
ELECTRONIC FILING SYSTEM - WWW.SCEFILING.ORG

2 Electronic Proof of Service  
Page 2

3 Document(s) submitted by Jeffrey Dunn of Best Best & Krieger LLP on Tue. March 13, 2007 at 2:40 PM PDT

4 1. 1st Amended Cross Complaint: First-Amended Cross-Complaint of Public Water Suppliers For Declaratory And Injunctive  
Relief And Adjudication of Water Rights

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