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10 Attorneys for DIAMOND FARMING COMPANY,
11 a California corporation

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 IN AND FOR THE COUNTY OF LOS ANGELES

14 Coordination Proceeding Special Title
15 (Rule 1550 (b))

Judicial Council Coordination No. 4408

16 ANTELOPE VALLEY GROUNDWATER
17 CASES

Case No.: 1-05-CV-049053

18 Included actions:

19 Los Angeles County Waterworks District No.
20 40 vs. Diamond Farming Company
21 Los Angeles Superior Court
22 Case No. BC 325201

**DIAMOND FARMING COMPANY,
INC.'S ANSWER TO CROSS-
COMPLAINTS FILED BY LOS
ANGELES COUNTY WATERWORKS
DISTRICT NO. 40, ROSAMOND
COMMUNITY SERVICES DISTRICT,
PALMDALE WATER DISTRICT, AND
QUARTZ HILL WATER DISTRICT**

23 Los Angeles County Waterworks District No.
24 40 vs. Diamond Farming Company
25 Kern County Superior Court
26 Case No. S-1500-CV 254348 NFT

27 Diamond Farming Company vs. City of
28 Lancaster
Riverside County Superior Court
Lead Case No. RIC 344436 [Consolidated
w/Case Nos. 344668 & 353840]

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1 Pursuant to the Order issued on December 5, 2006, Granting Rosamond Community
2 Services District and Los Angeles County Waterworks District No. 40's Request to Extend the
3 Parties Time For Parties to Answer or Otherwise Appear to December 30, 2006, and since December
4 30, 2006 was a Saturday thereby moving the response date to January 2, 2007 pursuant to Code of
5 Civil Procedure sections 13, 13a, and 13b, COMES NOW cross-defendant, DIAMOND FARMING
6 COMPANY, INC., and answers the Cross Complaints filed by LOS ANGELES COUNTY
7 WATERWORKS DISTRICT NO. 40, ROSAMOND COMMUNITY SERVICES DISTRICT,
8 PALMDALE WATER DISTRICT, and QUARTZ HILL WATER DISTRICT, as these are the only
9 cross-complainants who, pursuant to the Court's Order, notified Diamond they were pursuing a
10 Cross-Complaint filed on January 18, 2006 against Diamond:

11 I

12 It appearing herein that the Cross-Complaints are unverified, cross-defendant hereby files
13 its general denial pursuant to the Code of Civil Procedure section 431.30(d).

14 II

15 Cross-defendant herein denies, generally and specifically, each and every allegation of said
16 Cross-Complaint, both conjunctively and disjunctively and the whole thereof, and denies further that
17 it is liable to cross-complainant or that cross-complainant is entitled to any relief against cross-
18 defendant, whether legal or equitable.

19 **First Affirmative Defense**

20 The Cross-Complaints and every purported cause of action contained therein fail to allege facts
21 sufficient to constitute a cause of action against Diamond Farming Company, Inc.

22 **Second Affirmative Defense**

23 Each and every cause of action contained in the Cross-Complaint is barred, in whole or in part,
24 by the applicable statutes of limitations, including, but not limited to, Sections 318, 319, 321, 337, 338,
25 and 343 of the Code of Civil Procedure.

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Third Affirmative Defense

The Cross-Complaint, and each and every cause of action contained therein, is barred by the doctrine of laches.

Fourth Affirmative Defense

Each and every cause of action contained in the Cross-Complaint is barred by the doctrine of estoppel, because cross-complainant seeks a judgment decreeing that it has taken or impaired cross-defendant's property, despite the lack of compensation, notice, or hearing in violation of the State and Federal Constitutions.

Fifth Affirmative Defense

The Cross-Complaint, and each and every cause of action contained therein, is barred by the doctrine of waiver.

Sixth Affirmative Defense

The Cross-Complaint, and each and every cause of action contained therein, is barred because cross-complainants' claims are not ripe for adjudication.

Seventh Affirmative Defense

The Cross-Complaint, and each and every cause of action contained therein, is barred by the provisions of Section 1009 of the Civil Code.

Eighth Affirmative Defense

Cross-Complainants are not entitled to the aid of this court, sitting as a court of equity, nor to the injunctive relief sought, in that cross-complainants have an adequate, speedy, and statutorily recognized remedy at law. Specifically, under the Constitution and statutes of this state, cross-complainants are endowed with the power of eminent domain, and by virtue of that power, can achieve the relief sought and prayed for herein.

Ninth Affirmative Defense

The prescriptive claims asserted by the governmental entity cross-complainants are *ultra vires* and exceed the statutory authority by which each entity may acquire property as set forth in Water Code sections 22456, 31040 and 55370.

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Tenth Affirmative Defense

The prescriptive claims asserted by the governmental entity cross-complainants are barred by the provisions of Article I, Section 19 of the California Constitution.

Eleventh Affirmative Defense

The prescriptive claims asserted by the governmental entity cross-complainants are barred by the provisions of the 5th Amendment to the United States Constitution as applied to the states under the 14th Amendment of the United States Constitution.

Twelfth Affirmative Defense

Cross-Complainants' prescriptive claims are barred due to their failure to take affirmative steps that were reasonably calculated and intended to inform each overlying landowner of cross-complainants' adverse and hostile claim as required by the due process clause of the 5th and 14th Amendments of the United States Constitution.

Thirteenth Affirmative Defense

The prescriptive claims asserted by the governmental entity cross-complainants are barred by the provisions of Article I, Section 7 of the California Constitution.

Fourteenth Affirmative Defense

The prescriptive claims asserted by the governmental entity cross-complainants are barred by the provisions of the 14th Amendment to the United States Constitution.

Fifteenth Affirmative Defense

The governmental entity cross-complainants were permissively pumping at all times.

Sixteenth Affirmative Defense

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 III, Section 3 of the California Constitution.

Seventeenth Affirmative Defense

Cross-Complainants are barred from asserting their prescriptive claims by operation of law as set forth in Civil Code sections 1007 and 1214.

1 **Eighteenth Affirmative Defense**

2 Each cross-complainant is barred from recovery under each and every cause of action contained
3 in the Cross-Complaint by the doctrine of unjust enrichment.

4 **Nineteenth Affirmative Defense**

5 The Cross-Complaint is defective because it fails to name indispensable parties in violation
6 of California Code of Civil Procedure Section 389(a).

7 **Twentieth Affirmative Defense**

8 The governmental entity cross-complainants are barred from taking, possessing or using cross-
9 defendants' property without first paying just compensation.

10 **Twenty-First Affirmative Defense**

11 The governmental entity cross-complainants are seeking to transfer water right priorities and
12 water usage which will have significant effects on the Antelope Valley Groundwater basin and the
13 Antelope Valley. Said actions are being done without complying with and contrary to the provisions
14 of California's Environmental Quality Act (CEQA) (Pub.Res.C. 21000 et seq.).

15 **Twenty-Second Affirmative Defense**

16 The governmental entity cross-complainants seek judicial ratification of a project that has had,
17 and will have, a significant effect on the Antelope Valley Groundwater basin and the Antelope Valley
18 that was implemented without providing notice in contravention of the provisions of California's
19 Environmental Quality Act (CEQA) (Pub.Res.C. 21000 et seq.).

20 **Twenty-Third Affirmative Defense**

21 Any imposition by this court of a proposed physical solution that reallocates the water right
22 priorities and water usage within the Antelope Valley will be *ultra vires* as it will be subverting the pre-
23 project legislative requirements and protections of California's Environmental Quality Act (CEQA)
24 (Pub.Res.C. 21000 et seq.).

25 **Twenty-Fourth Affirmative Defense**

26 Cross-Complainants are not entitled to the relief requested by virtue of the doctrine of self help.

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Twenty-Fifth Affirmative Defense

Cross-Complainants' alleged current and future uses of water are unreasonable and wasteful in violation of Article X, Section 2 of the California Constitution.

Twenty-Sixth Affirmative Defense

The Cross-Complaint, and each and every cause of action contained therein, are barred because each cross-complainant lacks standing to bring the claims set forth in the Cross-Complaints.

Twenty-Seventh Affirmative Defense

Cross-Defendant alleges that cross-defendant is the owner of certain real property (fee estate, mineral estate, or other such real property estate or interest) overlying the groundwater in question and therefore has the prior and paramount right, presently and in the future, to withdraw and use groundwater on its property and within the basin or watershed.

Twenty-Eighth Affirmative Defense

Each and every cause of action contained in the Cross-Complaint is barred by the doctrine of unclean hands, in that cross-complainants knowingly engaged in the alleged adverse activities with the intent to deprive cross-defendant of its property without providing cross-defendant with sufficient notice intending thereby to deprive cross-defendant of the opportunity to protect its rights.

Twenty-Ninth Affirmative Defense

Cross-Complainant is barred from maintaining this action because cross-complainant has previously ratified the cross-defendant's course of conduct complained of.

Thirtieth Affirmative Defense

The purported actions of cross-defendant was done with the consent of cross-complainant.

Thirty-First Affirmative Defense

The Cross-Complaints are defective and uncertain in that it cannot be ascertained therefrom the nature of the water rights that cross-complainants are claiming for themselves and the nature of the water rights that cross-complainants claim that the cross-defendant is asserting.

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1 **Thirty-Second Affirmative Defense**

2 The Cross-Complaints are defective and uncertain in that it cannot be ascertained therefrom when
3 the alleged prescriptive periods, if any, commenced and ended.

4 **Thirty-Third Affirmative Defense**

5 The Cross-Complaints are defective and uncertain in that the legal descriptions of this answering
6 cross-defendant's properties, as to which cross-complainants claim to have acquired prescriptive rights, are
7 not set out in the Cross-Complaint, and because it cannot be ascertained from the Cross-Complaint which
8 of these cross-defendant's properties cross-complainants claim to have acquired prescriptive rights.

9 **Thirty-Fourth Affirmative Defense**

10 The Cross-Complaints are defective and uncertain in that a quantification of the prescriptive water
11 rights that cross-complainants claim to have acquired cannot be ascertained therefrom.

12 **Thirty-Fifth Affirmative Defense**

13 The Cross-Complaints are defective and uncertain in that it cannot be ascertained therefrom whether
14 this action as alleged, is an action *in rem* or *in personam*, and therefore whether all real property and/or
15 persons required to be joined are parties to the action.

16 **Thirty-Sixth Affirmative Defense**

17 The Cross-Complaint and every cause of action asserted therein is barred by virtue of cross-
18 complainants' failure to assert the causes of action in the original actions filed by Diamond Farming in 1999
19 and 2000 pursuant to Code of Civil Procedure section 426.30.

20 **Thirty-Seventh Affirmative Defense**

21 This answering cross-defendant has insufficient knowledge or information upon which to form a
22 belief as to whether there may be additional, as yet unstated, affirmative defenses available, and answering
23 cross-defendant reserves the right to assert such additional affirmative defenses in the event discovery
24 indicates they are proper.

25 **Thirty-Eighth Affirmative Defense**

26 Cross-Defendant incorporates by reference any other applicable affirmative defense asserted by any
27 other responding cross-defendants to the Cross-Complaints as if fully set forth herein.

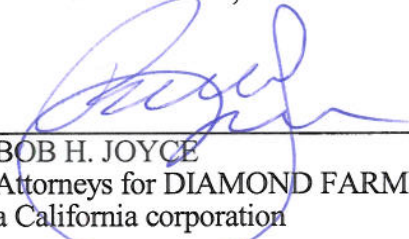
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WHEREFORE, cross-defendant prays for relief as follows:

1. Cross-Complainants take nothing as against cross-defendant by way of their Cross-Complaints on file herein;
2. This answering cross-defendant be dismissed with its costs of suit incurred herein;
3. If this Court grants cross-complainants the relief sought and thereby affects, impairs, or diminishes this cross-defendant's property rights, that this Court retain jurisdiction and thereafter fix the just compensation to which this cross-defendant would be due pursuant to the Federal and State Constitutions;
4. This answering cross-defendant be awarded attorney's fees as may be allowed by statute, or case law; and
5. Such other and proper relief as the court deems appropriate.

Dated: January 2, 2007

LeBEAU • THELEN, LLP

By: 
BOB H. JOYCE
Attorneys for DIAMOND FARMING COMPANY,
a California corporation

1 **PROOF OF SERVICE**

2 ANTELOPE VALLEY GROUNDWATER CASES
3 JUDICIAL COUNSEL PROCEEDING NO. 4408
4 CASE NO.: 1-05-CV-049053

5 I am a citizen of the United States and a resident of the county aforesaid; I am over the age
6 of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter
7 Drive, Suite 300, Bakersfield, California 93309. On January 2, 2007, I served the within **DIAMOND**
8 **FARMING COMPANY, INC.'S ANSWER TO CROSS-COMPLAINTS FILED BY LOS**
9 **ANGELES COUNTY WATERWORKS DISTRICT NO. 40, ROSAMOND COMMUNITY**
10 **SERVICES DISTRICT, PALMDALE WATER DISTRICT, AND QUARTZ HILL WATER**
11 **DISTRICT**

12 (BY POSTING) I am "readily familiar" with the Court's Clarification Order.
13 Electronic service and electronic posting completed through www.scefilng.org; All papers filed
14 in Los Angeles County Superior Court and copy sent to trial judge and Chair of Judicial Council.

15 (BY MAIL) I am "readily familiar" with the firm's practice of collection and
16 processing correspondence for mailing. Under that practice it would be deposited with the U.S.
17 Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California, in
18 the ordinary course of business.

19 (BY FACSIMILE) I placed the above-described document in a facsimile machine
20 (pursuant to California Rules of Court, Rule 2008(e)(1)) with the fax number of (661) 325-1127,
21 addressed as stated above. Upon facsimile transmission of the document, I obtained a report from
22 the transmitting facsimile machine stating that the facsimile transmission was complete and
23 without error. A copy of the transmission report is attached to this Proof of Service pursuant to
24 California Rules of Court, Rule 2008(e)(4).

25 (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to
26 the offices of the addressee(s). Executed on _____, 2007, at Bakersfield, California.

27 (STATE) I declare under penalty of perjury under the laws of the State of
28 California that the above is true and correct, and that the foregoing was executed on January 2,
2007, in Bakersfield, California.



DONNA M. LUIS