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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES
10

11 Coordination Proceeding
Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No. 4408

12 **ANTELOPE VALLEY GROUNDWATER**
13 **CASES**

ANSWER OF CROSS-
DEFENDANT U.S. BORAX INC.
TO ALL CROSS-COMPLAINTS

14 Included Actions:

15 Los Angeles County Waterworks District No. 40
v. Diamond Farming Co.
16 Superior Court of California,
County of Los Angeles, Case No. BC 325 201

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

20 Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
21 Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of
22 Riverside, consolidated actions, Case
Nos. RIC 353 840, RIC 344 436, RIC 344 668
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1 Cross-Defendant U.S. Borax Inc. (hereinafter "U.S. Borax") hereby answers all cross-
2 complaints against it, including the First Amended Cross-Complaint of Los Angeles County
3 Waterworks District No. 40, et al. and Cross-Complaint of Antelope Valley-East Kern Water
4 Agency, as amended on April 24, 2007 (each individually "Cross-Complainant" and "Cross-
5 Complaint"), and all cross-complaints hereinafter filed that name U.S. Borax as a cross-defendant, as
6 follows:

7 1. U.S. Borax is a Delaware corporation doing business in the State of California.

8 2. Pursuant to California Code of Civil Procedure Section 431.30(d), U.S. Borax
9 generally denies each and every allegation set forth in the Cross-Complaints including the whole of
10 each Cross-Complaint and further denies that the Cross-Complainants are entitled to any relief as
11 against U.S. Borax.

12 **AFFIRMATIVE DEFENSES**

13 **FIRST AFFIRMATIVE DEFENSE**

14 The Cross-Complaints, and each cause of action thereof, fails to state facts sufficient to
15 constitute a claim upon which relief can be granted.

16 **SECOND AFFIRMATIVE DEFENSE**

17 The Cross-Complaints, and each cause of action therein, is barred by the equitable doctrines
18 of res judicata and collateral estoppel.

19 **THIRD AFFIRMATIVE DEFENSE**

20 Each and every cause of action contained in the Cross-Complaints is barred by the doctrine of
21 laches.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 Each and every cause of action contained in the Cross-Complaints is barred by the doctrine of
24 equitable estoppel.

25 **FIFTH AFFIRMATIVE DEFENSE**

26 Each and every cause of action contained in the Cross-Complaints is barred by the doctrine of
27 waiver.

28

1 **SIXTH AFFIRMATIVE DEFENSE**

2 Each and every cause of action contained in the Cross-Complaints is barred by the doctrine of
3 unclean hands.

4 **SEVENTH AFFIRMATIVE DEFENSE**

5 Cross-Complainants have delayed an unreasonable period of time in bringing this action,
6 which delay has been prejudicial to U.S. Borax so as to bar Cross-Complainants from any recovery in
7 this action.

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 Cross-Complainants' claims are barred, in whole or in part, by the provisions of section 1009
10 of the California Civil Code.

11 **NINTH AFFIRMATIVE DEFENSE**

12 Cross-Complainants allege uses of water that are unreasonable and wasteful in violation of
13 Article X, Section 2 of the California Constitution

14 **TENTH AFFIRMATIVE DEFENSE**

15 Cross-Complainants are barred from seeking equitable relief because they have adequate legal
16 remedies for any alleged injuries.

17 **ELEVENTH AFFIRMATIVE DEFENSE**

18 Cross-Complainants' claims are barred, in whole or in part, by the applicable statutes of
19 limitation, including but not limited to California Code of Civil Procedure Sections 318, 319, 321,
20 338, and 343.

21 **TWELFTH AFFIRMATIVE DEFENSE**

22 The relief sought in each and every cause of action contained in the Cross-Complaints would
23 constitute an unjust enrichment of Cross-Complainants to the detriment of U.S. Borax.

24 **THIRTEENTH AFFIRMATIVE DEFENSE**

25 U.S. Borax alleges that it is the owner of certain real property overlying the groundwater
26 identified in the Cross-Complaints and therefore has the prior and paramount right, presently and in
27 the future, to extract groundwater.

1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 Cross-Complainants are not entitled to the relief requested in that, by virtue of the doctrine of
3 self-help, U.S. Borax has protected and preserved its paramount overlying rights to extract
4 groundwater.

5 **FIFTEENTH AFFIRMATIVE DEFENSE**

6 Each and every cause of action contained in the Cross-Complaints is barred in whole or in
7 part because the Cross-Complainants' claims are not ripe for adjudication.

8 **SIXTEENTH AFFIRMATIVE DEFENSE**

9 U.S. Borax alleges that Cross-Complainants are not entitled to declaratory relief or injunctive
10 relief because the actual condition of the groundwater supply is not presently known and is not
11 presently ascertainable to the degree of certainty required for declaratory relief or injunctive relief.

12 **SEVENTEENTH AFFIRMATIVE DEFENSE**

13 U.S. Borax alleges that the relief sought by Cross-Complainants would constitute an illegal
14 taking without compensation in violation of the United States Constitution and the California
15 Constitution. Cross-Complainants lack the authority to acquire the rights sought in the manner
16 alleged in the Cross-Complaints.

17 **EIGHTEENTH AFFIRMATIVE DEFENSE**

18 U.S. Borax is informed and believe and on that basis alleges that the groundwater basin at
19 issue is not in a state of overdraft and that the amounts withdrawn from it have not been nonsurplus
20 supplies in excess of the safe yield.

21 **NINETEENTH AFFIRMATIVE DEFENSE**

22 The Cross-Complaints are defective and uncertain in that it cannot be ascertained therefrom
23 the nature of the water rights that Cross-Complainants are claiming.

24 **TWENTIETH AFFIRMATIVE DEFENSE**

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

1 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

2 The Cross-Complaints are defective and uncertain in that it cannot be ascertained therefrom
3 that the alleged condition of overdraft and use of groundwater by Cross-Complainants, was actual,
4 notorious, hostile and adverse to U.S. Borax, for a continuous and uninterrupted period of time
5 required by law.

6 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

7 The Cross-Complaints are defective and uncertain in that the legal descriptions of U.S.
8 Borax's properties, as to which Cross-Complainants claim to have acquired prescriptive rights, are
9 not set out in the Cross-Complaints, and because it cannot be ascertained from the Cross-Complaints
10 which of U.S. Borax's properties the Cross-Complainants claim to have acquired prescriptive rights.

11 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

12 The Cross-Complaints are defective and uncertain in that a quantification of the prescriptive
13 water rights that Cross-Complainants claim to have acquired cannot be ascertained therefrom.

14 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

15 Cross-Complainants lack standing to bring the claims that are set forth in the Cross-
16 Complaints.

17 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

18 Each and every cause of action contained in the Cross-Complaints is barred in whole or in
19 part in accordance with Code of Civil Procedure section 389 on the ground that Cross-Complainants
20 have failed to name and join an indispensable and/or a necessary party.

21 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

22 The Court lacks subject matter jurisdiction over some or all of the matters alleged in the
23 Cross-Complaints.

24 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

25 The Cross-Complaints, and each cause of action therein, are barred by the failure to exhaust
26 available administrative remedies.

1 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

2 U.S. Borax incorporates by reference any other applicable affirmative defense asserted by any
3 other responding Cross-Defendants to the Cross-Complaints as if fully set forth herein.

4 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

5 U.S. Borax has insufficient knowledge or information upon which to form a belief as to
6 whether there may be additional, as yet unstated, affirmative defenses available, and therefore
7 reserves the right to allege other affirmative defenses as they become appropriate or known through
8 the course of discovery.

9
10 WHEREFORE, U.S. Borax prays for relief as follows:

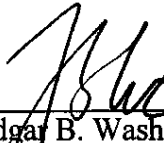
- 11 1. That Cross-Complainants take nothing as against U.S. Borax by way of the Cross-
12 Complaints on file herein, or
- 13 2. If the court determines that Cross-Complainants are entitled to any relief against U.S.
14 Borax, that U.S. Borax be awarded the fair market value of their interest in any property taken by
15 Cross-Complainants.
- 16 3. That U.S. Borax's water rights be determined as prior and paramount to all those
17 claimed by any other parties.
- 18 4. That U.S. Borax be awarded attorney's fees as may be allowed by statute, or case law.
- 19 5. That U.S. Borax be awarded costs of suit.
- 20 6. For such other and further relief as the Court deems just.

21
22 Dated: May 11, 2007

Respectfully submitted,

23 MORRISON & FOERSTER LLP

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25 By:


Edgar B. Washburn
Attorneys for U.S. Borax Inc.

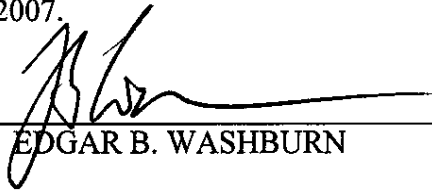
VERIFICATION

I, Edgar B. Washburn, declare:

I am an attorney representing U.S. Borax Inc., a corporation organized and existing under the laws of Delaware, which is the U.S. Borax in the above-entitled action. I make this verification on its behalf pursuant to California Code of Civil Procedure Section 446(a) because U.S. Borax is absent from the county where I have my office. I have read the foregoing U.S. Borax Answer to All Cross-Complaints, I am informed and believe that the matters therein are true, and on that ground I allege them to be true.

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

Executed at San Francisco, California on May 11, 2007.



EDGAR B. WASHBURN