

1 MALISSA HATHAWAY McKEITH, SB# 112917
E-Mail: mckeith@lbbslaw.com
2 CLAIRE HERVEY COLLINS, SB# 233890
E-Mail: hervey@lbbslaw.com
3 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
221 North Figueroa Street, Suite 1200
4 Los Angeles, California 90012
Telephone: 213.250.1800
5 Facsimile: 213.250.7900
6 Attorneys for Anaverde, LLC
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA

11 **ANTELOPE VALLEY GROUNDWATER**
12 **CASES:**
13 Included Actions:
14 Los Angeles County Waterworks District No. 40
v. Diamond Farming Co.
Superior Court of California
15 County of Los Angeles, Case No. BC325201
16 Los Angeles County Waterworks District No. 40
17 v. Diamond Farming Co.
Superior Court of California
18 County of Kern, Case No. S-1500-CV-254-348
19 Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
20 Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California
21 County of Riverside, consolidated actions
Case Nos. RIC 353840, RIC 344436,
22 RIC 344668

Judicial Council Coordination
Proceeding No. 4408

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

**ANAVERDE, LLC.'S CROSS-
COMPLAINT**

24 Cross-Defendant/Cross-Complainant, ANAVERDE LLC ("Anaverde"), complains of
25 Cross-Defendants and as against each and every party which subsequently files a Cross-Complaint
26 against Anaverde as follows:
27 ///
28 ///

GENERAL ALLEGATIONS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. For purposes of this Cross-Complaint, the key government agencies of which Anaverde complains are the Los Angeles County Waterworks, District 40 (hereinafter "District 40"); and the PALMDALE WATER DISTRICT, as well as any other Cross-Defendant claiming a right superior to that of Anaverde. District 40 is a public agency governed by the Los Angeles County Board of Supervisors operating under Division 16 of the California Water Code. District 40 was established and authorized by statute to provide water services to the public within the Antelope Valley.

2. Palmdale Water District (hereinafter "Palmdale") was formed as a public irrigation district in 1918 and operates under Division 11 of the California Water Code and is producing water from the Antelope Valley Water Supply and selling it to its customers.

3. Cross-Complainant Anaverde is a Delaware Corporation doing business in California that owns approximately 1,545 acres of land within the Antelope Valley. Anaverde owns and operates water wells that draw water from beneath its land for beneficial use on its lands, and it is dependent upon this water for purposes of assuring a water supply for future development. Anaverde is, and at all times herein mentioned was, a Delaware Corporation authorized to do business in the State of California. By virtue of the location of its overlying, and the groundwater, Anaverde holds an overlying water right or other right to groundwater, entitling it to extract groundwater and to put the water to reasonable and beneficial use on the property.

4. Cross-Complainant is ignorant of the true names and capacities of Cross-Defendants sued herein as ROES 1-200, inclusive, and therefore sues said Cross-Defendants by such fictitious names. Cross-Complainant will amend this Cross-Complaint to allege their true names and capacities when ascertained.

5. Cross-Complainant, is informed and believes, and thereon alleges that the Cross-Defendants, Palmdale and District 40, began pumping appropriated surplus water from the Antelope Valley to provide water for their municipal and industrial water customers. Cross-Complainant, is informed and believes, and thereon alleges, that at some as yet unidentified historical point, the aggregate extractions of groundwater from the Antelope Valley began to exceed the safe yield. Despite the potential for damage to the water supply and the rights of owners of real property within

1 the Valley, Cross-Defendants, with knowledge continued to extract groundwater from the common
2 supply, and increased and continue to increase their extractions of groundwater over time. Cross-
3 Defendants continued the act of pumping with the knowledge that the continued extractions were
4 damaging the Antelope Valley and the rights of the property owners, including Anaverde, whose land
5 was overlying. Cross-Complainant also alleges that District 40 failed to undertake the steps necessary
6 to avoid overdraft of the aquifer by importing and storing the necessary waters to accommodate the
7 planned growth in the area, all to the potential detriment of Cross-Complainant.

8 6. Between 1960 and 1980, the Antelope Valley East Kern Water Agency (hereinafter
9 "AVEK") was created to import water from northern California to southern California. As part of its
10 operations, AVEK, in addition to other water importers, have brought and now brings imported water
11 to the Antelope Valley. This imported water was at all material times available for purchase by
12 District 40 and Palmdale. Based upon information and belief, it is alleged that the these Cross-
13 Defendants failed to purchase imported water to meet their water needs and instead chose to continue
14 to pump and to increase their extractions of groundwater from the Antelope Valley despite the damage
15 associated therewith.

16 7. Cross-Complainant is informed and believes, and on the basis of such information and
17 belief alleges, that each of the Cross-Defendants currently extracts groundwater for use on property
18 not held by the extracting Cross-Defendant or for some other non-overlying use.

19 8. Cross-Complainant has an appurtenant right and/or other water right to pump and
20 reasonably use groundwater on the parcels owned by it. These rights to pump groundwater are
21 superior to rights of the Cross-Defendants.

22 9. Cross-Complainant is informed and believes, and on the basis of such information and
23 belief alleges, that each Cross-Defendant's claim that it has water rights to extract groundwater for
24 uses that are superior to, or coequal with, Cross-Complainant's overlying water rights, based upon
25 alleged superior water rights, claim of prescription or otherwise, whether in law or in equity, is not
26 true and has no legal basis to support such an allegation.

27 10. The quantity of alleged superior and/or co-equal rights claimed by Cross-Defendants,
28 each of them, currently is not known.

1 **FIRST CAUSE OF ACTION**

2 **(Declaratory Relief Against District 40 and Palmdale)**

3 11. Cross-Complainant refers to and incorporates, as though fully set forth herein,
4 paragraphs 1 through 10, inclusive, of this Cross-Complaint. Anaverde is the owner and/or lessee of
5 real property located in Los Angeles County. Anaverde's properties overly the Antelope Valley.
6 Located on Anaverde's property are water wells which produce water. Anaverde has produced water
7 from these wells without restriction and in quantities have been needed to perform its operations from
8 year to year. Because of the overdraft created by Cross-Defendants; their failure to import water; and
9 their inability to provide an uninterrupted source of water, Anaverde has been forced to incorporate
10 into its business plan for development, the infrastructure necessary to provide water services to its
11 development relying on its underlying source of groundwater.

12 12. An actual controversy has arisen and now exists between Anaverde and Cross-
13 Defendants concerning the priority of water use.

14 13. Anaverde desires a judicial determination of each party's rights and duties, and as
15 declaration as to the status of each party's priority rights to the water in the Valley whether they be
16 overlying, appropriative or prescriptive.

17 14. A judicial declaration is necessary and appropriate at this time under the circumstances
18 in order that Anaverde may ascertain its rights and duties relating to production of water from the
19 Antelope Valley.

20 **SECOND CAUSE OF ACTION**

21 **(Quiet Title/Appurtenant Rights)**

22 15. Cross-Complainant sets forth herein at length verbatim the general allegations
23 contained in paragraphs 1 through 10 of this Cross-Complaint.

24 16. Cross-Complainant owns property overlying the Antelope Valley alluvial groundwater
25 basis. Accordingly, Cross-Complainant has appurtenant rights to pump and reasonably use
26 groundwater on such land.

27 17. Cross-Complainant herein requests a declaration from the Court quieting title to Cross-
28 Complainant's appurtenant rights to pump and reasonably use groundwater on the PARCELS owned

1 by Anaverde.

2 **THIRD CAUSE OF ACTION**

3 **(Declaratory Relief)**

4 18. Cross-Complainant sets forth herein at length verbatim the general allegations
5 contained in paragraphs 1 through 11 of this Cross-Complaint.

6 19. Cross-Complainant contends that by virtue of the filing of the Complaints filed by Los
7 Angeles County Waterworks District No. 40 in Kern County and Los Angeles County, herein
8 coordinated with the Riverside action, that a current controversy exists as between Cross-Complainant
9 and Cross-Defendants and as to all other Defendants in that Los Angeles County has requested a
10 complete basin-wide adjudication of all rights of all parties to water in the Antelope Valley basin.
11 Cross-Complainant requests quiet title and/or other appropriate declaration of the right to pump and
12 reasonably use groundwater on its land and/or to pump and use other groundwater based upon its
13 rights as declared by the Court herein.

14 **FOURTH CAUSE OF ACTION**

15 **(Return Flows – Against All Defendants)**

16 20. Cross-Complainant sets forth herein at length verbatim the general allegations
17 contained in paragraphs 1 through 10 of this Cross-Complaint.

18 21. Cross-Complaint has pumped and used groundwater on its land. Anaverde is informed
19 and believes that the water was, and is, being pumped from a portion of the overlying aquifer that is
20 not hydraulic connection with aquifers pumped by Cross-Defendants. Cross-Complainant has a
21 priority right to these return flows, as well as a right to store water in the upper aquifer from the return
22 flows and has a paramount right against all other parties to this water, and a paramount right against
23 all other parties to recapture this water or an equivalent amount of such water.

24 **FIFTH CAUSE OF ACTION**

25 **(Storage Rights)**

26 22. Cross-Complainant sets forth herein at length verbatim the general allegations
27 contained in paragraphs 1 through 10 of this Cross-Complaint.

28

1 by it in the Antelope Valley. Cross-Complainant possesses an appurtenant right to storage space in
2 the fractured bedrock and alluvial water basin beneath its land.

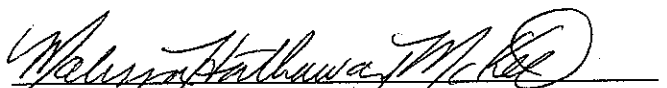
3
4 **PRAYER**

5 WHEREFORE, Cross-Complainant prays for judgment against Cross-Defendants, and each of
6 them, and against all other persons or entities, as follows:

- 7 1. For a judgment against the Cross-Defendants;
- 8 2. For a declaration quieting title to Cross-Complainant's rights to pump and reasonably use
9 groundwater on the parcels owned by it and to uphold and enforce each and all of their
10 rights to otherwise pump groundwater;
- 11 3. For continuing jurisdiction of the Court to litigate disputes as necessary in the future
12 consistent with the Court judgment herein and California water law;
- 13 4. For a declaration that no party hereto may hereinafter obtain prescriptive rights as against
14 any other party to this action and that all parties will act in conformance with the terms of
15 any such judgment;
- 16 5. For a judgment for Cross-Complainant for all available remedies to secure and protect
17 Cross-Complainant's continuing overlying water rights including the right to store water
18 on its lands;
- 19 6. Fro an award of reasonable attorneys' fees and costs of suit; and
- 20 7. For such other and further relief as the court deems just and proper.

21 DATED: June 20, 2007

MALISSA HATHAWAY McKEITH
CLAIRE HERVEY COLLINS
LEWIS BRISBOIS BISGAARD & SMITH LLP

22
23
24 By: 
25 Malissa Hathaway McKeith
26 Attorneys for Anaverde LLC
27
28