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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 COUNTY OF LOS ANGELES

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

Judicial Council Coordination Proceeding
 No. 4408

13 ANTELOPE VALLEY GROUNDWATER
 14 CASES

SC Case No. 105CV 049053

15 Included Actions:

16 Los Angeles County Waterworks District
 17 No. 40 v. Diamond Farming Co.
 Superior Court of California
 County of Los Angeles, Case No. BC
 325201

ANSWER OF CROSS-DEFENDANTS
 GERTRUDE J. VAN DAM AND DELMAR
 D. VAN DAM TO CROSS-COMPLAINT OF
 LOS ANGELES COUNTY WATERWORKS
 DISTRICT NO. 40, ET AL.

18 Los Angeles County Waterworks District
 19 No. 40 v. Diamond Farming Co.
 Superior Court of California, County of
 Kern, Case No. S-1500-CV 254348

Honorable Jack Komar

20 Wm. Bolthouse Farms, Inc. v. City of
 21 Lancaster Diamond Farming Co. v. City of
 22 Lancaster Diamond Farming Co. v. Palmdale
 23 Water Dist. Superior Court of California,
 County of Riverside, consolidated actions,
 24 Case Nos. RIC 353840, RIC 344436, RIC
 344668

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 26
 27 Cross-Defendants Gertrude J. Van Dam and Delmar D. Van Dam (hereinafter "VAN
 28

1 DAMS” answer the unverified Cross-Complaint of Los Angeles County Waterworks District
2 No. 40, et al. (hereinafter "Cross-Complainants"), as follows:

- 3 1. VAN DAMS are individuals residing in Lancaster, California.
- 4 2. Pursuant to California Code of Civil Procedure Section 431.30(d), VAN

5 DAMS generally deny each and every allegation set forth in the Cross-Complaint.

6 **AFFIRMATIVE DEFENSES**

7 **FIRST AFFIRMATIVE DEFENSE**

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

10 **SECOND AFFIRMATIVE DEFENSE**

11 The Cross-Complaint, and each cause of action therein, is barred by the equitable
12 doctrines of res judicata and collateral estoppel.

13 **THIRD AFFIRMATIVE DEFENSE**

14 Each and every cause of action contained in the Cross-Complaint is barred by the
15 doctrine of laches.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 Each and every cause of action contained in the Cross-Complaint is barred by the
18 doctrine of equitable estoppel.

19 **FIFTH AFFIRMATIVE DEFENSE**

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

22 **SIXTH AFFIRMATIVE DEFENSE**

23 Each and every cause of action contained in the Cross-Complaint is barred by the
24 doctrine of unclean hands.

25 **SEVENTH AFFIRMATIVE DEFENSE**

26 Cross-Complainants have delayed an unreasonable period of time in bringing this action,
27 which delay has been so prejudicial to VAN DAMS so as to bar-Cross-Complainants from any
28 recovery in this action.

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EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

The relief sought in each and every cause of action contained in the Cross-Complaint would constitute an unjust enrichment of Cross-Complainants to the detriment of VAN DAMS.

THIRTEENTH AFFIRMATIVE DEFENSE

VAN DAMS allege that it is the owner of certain real property overlying the groundwater identified in the Cross-Complaint and therefore has the prior and paramount right, presently and in the future, to extract groundwater.

FOURTEENTH AFFIRMATIVE DEFENSE

Cross-Complainants are not entitled to the relief requested in that, by virtue of the doctrine of self-help, VAN DAMS has protected and preserved its paramount overlying rights to extract groundwater presently and in the future.

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

1 VAN DAMS allege that Cross-Complainants are not entitled to declaratory relief or
2 injunctive relief because the actual condition of the groundwater supply is not presently known
3 and is not presently ascertainable to the degree of certainty required for declaratory relief or
4 injunctive relief.

SEVENTEENTH AFFIRMATIVE DEFENSE

5
6 VAN DAMS allege that the relief sought by Cross-Complainants would constitute an
7 illegal taking without compensation in violation of the United States Constitution and the
8 California Constitution. Cross-Complainants lack the authority to acquire the rights sought in
9 the manner alleged in the Cross-Complaint.

EIGHTEENTH AFFIRMATIVE DEFENSE

10
11 VAN DAMS are informed and believe and on that basis alleges that the groundwater
12 basin at issue is not in a state of overdraft and that the amounts withdrawn from it have not
13 been nonsurplus supplies in excess of the safe yield.

NINETEENTH AFFIRMATIVE DEFENSE

14
15 The Cross-Complaint is defective and uncertain in that it cannot be ascertained there
16 from the nature of the water rights that Cross-Complainants are claiming and the nature of the
17 water rights that Cross-Complainants claim that VAN DAMS are asserting.

TWENTIETH AFFIRMATIVE DEFENSE

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19 The Cross-Complaint is defective and uncertain in that it cannot be ascertained there
20 from when the alleged prescriptive period, if any, commenced and ended.

TWENTY-FIRST AFFIRMATIVE DEFENSE

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22 The Cross-Complaint is defective and uncertain in that it cannot be ascertained
23 therefrom that the alleged condition of overdraft and use of groundwater by Cross-
24 Complainants, was actual, notorious, hostile and adverse to VAN DAMS, for a continuous
25 and uninterrupted period of time required by law.

TWENTY-SECOND AFFIRMATIVE DEFENSE

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27 The Cross-Complaint is defective and uncertain in that the legal descriptions of VAN
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DAM'S properties, as to which Cross-Complainants claim to have acquired prescriptive rights, are not set out in the Cross-Complaint, and because it cannot be ascertained from the Cross-Complaint which of VAN DAM'S properties the Cross-Complainants claim to have acquired prescriptive rights.

TWENTY-THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Cross-Complainants lack standing to bring the claims that are set forth in the Cross-Complaint.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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 on the ground that Cross-Complainants have failed to name, join, and have subject matter jurisdiction over an indispensable and/or a necessary party.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

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

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

The Cross-Complaint, and each cause of action therein, is barred by the failure to exhaust available administrative remedies.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

VAN DAMS incorporate by reference any other applicable affirmative defense asserted by any other responding Cross-Defendants to the Cross-Complaint as if fully set forth herein.

TWENTY-NINTH AFFIRMATIVE DEFENSE

VAN DAMS have insufficient knowledge or information upon which to form a belief as to whether there may be additional, as yet unstated, affirmative defenses available, and therefore reserves the right to allege other affirmative defenses as they become appropriate or

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known through the course of discovery.

WHEREFORE, VAN DAMS pray for relief as follows:

1. That Cross-Complainants take nothing as against VAN DAMS by way of the Cross-Complaint on file herein, or

2. If the court determines that Cross-Complainants are entitled to any relief against VAN DAMS, that VAN DAMS be awarded the fair market value of their interest in any property taken by Cross-Complainants.

3. That VAN DAMS 's water rights be determined as prior and paramount to all those claimed by any other parties.

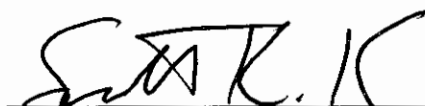
4. That VAN DAMS be awarded attorney's fees as may be allowed by statute, or case law.

5. That VAN DAMS be awarded costs of suit.

6. For such other and further relief as the Court deems just.

Dated: December 19, 2006

THE LAW OFFICES OF YOUNG WOOLDRIDGE, LLP

By: 
SCOTT K. KUNEY, Esq., Attorneys for Gertrude J. Van Dam and Delmar D. Van Dam

PROOF OF SERVICE

1 STATE OF CALIFORNIA, COUNTY OF KERN

2 I, LEANN BANDUCCI, declare: I am and was at the times of the service hereunder
3 mentioned, over the age of eighteen (18) years, and not a party to the within cause. My business
4 address is The Law Offices of Young Wooldridge LLP, 1800 30th Street, Fourth Floor,
5 Bakersfield, CA 93301.

6 On December 20, 2006, I caused the foregoing document(s) entitled as: ANSWER
7 OF GERTRUDE J. VAN DAM and DELMAR D. VAN DAM TO CROSS-COMPLAINT OF
8 LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40, ET AL to be served on the
9 parties via the following service:

10 X By Posting: I posted the document(s) listed above to the Santa Clara County Superior
11 Court website in regard to the Antelope Valley Groundwater matter pursuant to the Court's
12 Clarification Order. Electronic service and electronic posting completed through
13 www.scefilng.org.

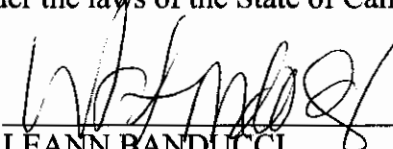
14 X (By Mail) On the same date, at Bakersfield, California, pursuant to C.C.P. section
15 1013(a). By placing / / the original or / x / a true copy thereof enclosed in a sealed envelope. I
16 am readily familiar with the firm's practice of collection and processing of documents for
17 mailing. Under that practice it would be deposited with United States Postal Service on that
18 same day with postage thereon fully prepaid at Bakersfield, California in the ordinary course of
19 business.

20	Honorable Jack Komar	Chair, Judicial Council of California
21	Santa Clara County Superior Court	Administrative Office of the Courts
22	191 North First Street, Department 17C	Attn: Appellate and Trial Court Judicial
23	San Jose, CA 95113	Services (Civil Case Coordination)
24		455 Golden Gate Avenue
25		San Francisco, CA 94102-3688

26 Served original via Federal Express to the Presiding Judge on December 20, 2006
27 Superior Court of California
28 County of Los Angeles
Stanley Mosk Courthouse – Department 1, Room 534
111 North Hill Street
Los Angeles, CA 90012-3014

Executed on December 20, 2006, at Bakersfield, California.

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


LEANN BANDUCCI