

1 SCOTT K. KUNEY, Esq., SB# 111115
2 ERNEST A. CONANT, Esq., SB# 089111
3 THE LAW OFFICES OF YOUNG WOOLDRIDGE, LLP
4 1800 30th Street, Fourth Floor
5 Bakersfield, CA 93301
6 skuney@youngwooldridge.com
7 Telephone: (661) 327-9661
8 Facsimile: (661) 327-0720
9 Attorneys for Craig Van Dam and Gary Van Dam

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

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

Judicial Council Coordination Proceeding
No. 4408

14 ANTELOPE VALLEY GROUNDWATER
15 CASES

SC Case No. 105CV 049053

16 Included Actions:

17 Los Angeles County Waterworks District
18 No. 40 v. Diamond Farming Co.
19 Superior Court of California
20 County of Los Angeles, Case No. BC
21 325201

ANSWER OF CROSS-DEFENDANTS
CRAIG VAN DAM AND GARY VAN DAM
TO CROSS-COMPLAINT OF LOS
ANGELES COUNTY WATERWORKS
DISTRICT NO. 40, ET AL.

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

Honorable Jack Komar

26 Wm. Bolthouse Farms, Inc. v. City of
27 Lancaster Diamond Farming Co. v. City of
28 Lancaster Diamond Farming Co. v. Palmdale
Water Dist. Superior Court of California,
County of Riverside, consolidated actions,
Case Nos. RIC 353840, RIC 344436, RIC
344668

Cross-Defendants Craig Van Dam and Gary Van Dam (hereinafter "VAN DAMS")

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

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

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

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

Each and every cause of action contained in the Cross-Complaint 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 equitable estoppel.

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

1 Cross-Complainants' claims are barred, in whole or in part, by the provisions of section
2 1009 of the California Civil Code.

NINTH AFFIRMATIVE DEFENSE

3
4 Cross-Complainants allege uses of water that are unreasonable and wasteful in
5 violation of Article X, Section 2 of the California Constitution.

TENTH AFFIRMATIVE DEFENSE

6
7 Cross-Complainants are barred from seeking equitable relief because they have adequate
8 legal remedies for any alleged injuries.

ELEVENTH AFFIRMATIVE DEFENSE

9
10 Cross-Complainants' claims are barred, in whole or in part, by the applicable statutes
11 of limitation, including but not limited to California Code of Civil Procedure Sections 318,
12 319, 321, 338, and 343.

TWELFTH AFFIRMATIVE DEFENSE

13
14 The relief sought in each and every cause of action contained in the Cross-Complaint
15 would constitute an unjust enrichment of Cross-Complainants to the detriment of VAN DAMS.

THIRTEENTH AFFIRMATIVE DEFENSE

16
17 VAN DAMS allege that it is the owner of certain real property overlying the groundwater
18 identified in the Cross-Complaint and therefore has the prior and paramount right, presently and
19 in the future, to extract groundwater.

FOURTEENTH AFFIRMATIVE DEFENSE

20
21 Cross-Complainants are not entitled to the relief requested in that, by virtue of the
22 doctrine of self-help, VAN DAMS has protected and preserved its paramount overlying rights
23 to extract groundwater presently and in the future.

FIFTEENTH AFFIRMATIVE DEFENSE

24
25 Each and every cause of action contained in the Cross-Complaint is barred in whole or in
26 part because the Cross-Complainants' claims are not ripe for adjudication.
27
28

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.

5 SEVENTEENTH AFFIRMATIVE DEFENSE

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 jurisdiction and other authority to acquire
9 the rights sought in the manner alleged in the Cross-Complaint.

10 EIGHTEENTH AFFIRMATIVE DEFENSE

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.

14 NINETEENTH AFFIRMATIVE DEFENSE

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.

18 TWENTIETH AFFIRMATIVE DEFENSE

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.

21 TWENTY-FIRST AFFIRMATIVE DEFENSE

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.

26 TWENTY-SECOND AFFIRMATIVE DEFENSE

27 The Cross-Complaint is defective and uncertain in that the legal descriptions of VAN
28

1 DAM'S properties, as to which Cross-Complainants claim to have acquired prescriptive rights,
2 are not set out in the Cross-Complaint, and because it cannot be ascertained from the Cross-
3 Complaint which of VAN DAM'S properties the Cross-Complainants claim to have acquired
4 prescriptive rights.

5 TWENTY-THIRD AFFIRMATIVE DEFENSE

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

8 TWENTY-FOURTH AFFIRMATIVE DEFENSE

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

11 TWENTY-FIFTH AFFIRMATIVE DEFENSE

12 Each and every cause of action contained in the Cross-Complaint is barred in whole or
13 in part in accordance with Code of Civil Procedure section 389 on the ground that Cross-
14 Complainants have failed to name, join, and have subject matter jurisdiction over an
15 indispensable and/or a necessary party.

16 TWENTY-SIXTH AFFIRMATIVE DEFENSE

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

19 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

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

22 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

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

25 TWENTY-NINTH AFFIRMATIVE DEFENSE

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

known through the course of discovery.

THIRTIETH AFFIRMATIVE DEFENSE

The Cross-Complaint is uncertain and defective in that it fails to describe with specificity the groundwater basin or aquifer or aquifers or pertinent sub-basins, if any, from which Cross-complainants are extracting, or claim the right to extract, groundwater.

THIRTY-FIRST AFFIRMATIVE DEFENSE


This Court lacks subject matter jurisdiction. There is no waiver of the sovereign immunity of the United States for this suit under the McCarran Amendment, 43 U.S.C. Sec. 666, or any other statute.

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 20, 2007

THE LAW OFFICES OF YOUNG WOOLDRIDGE, LLP

By: 
 SCOTT K. KUNEY, Esq., Attorneys for Craig
 Van Dam and Gary Van Dam

PROOF OF SERVICE

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

STATE OF CALIFORNIA, COUNTY OF KERN

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

On December 20, 2007, I caused the foregoing document(s) entitled as: ANSWER OF CRAIAG VAN DAM and GARY VAN DAM TO CROSS-COMPLAINT OF LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40, ET AL to be served on the parties via the following service:

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

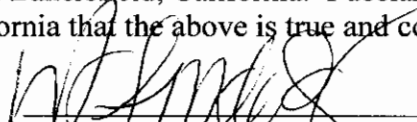
X (By Mail) On the same date, at Bakersfield, California, pursuant to C.C.P. section 1013(a). By placing / / the original or / x / a true copy thereof enclosed in a sealed envelope. I am readily familiar with the firm's practice of collection and processing of documents for mailing. Under that practice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

Honorable Jack Komar
Santa Clara County Superior Court
191 North First Street, Department 17C
San Jose, CA 95113

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Appellate and Trial Court Judicial
Services (Civil Case Coordination)
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Served original to the Presiding Judge on December 20, 2007
Superior Court of California
County of Los Angeles
Stanley Mosk Courthouse – Department 1, Room 534
111 North Hill Street
Los Angeles, CA 90012-3014

Executed on December 20, 2007, at Bakersfield, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


LEANN BANDUCCI