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10

11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF LOS ANGELES
13

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

Judicial Council Coordination Proceeding No.
4408

15 **ANTELOPE VALLEY GROUNDWATER**
16 **CASES**

ASSIGNED FOR ALL PURPOSES TO:
Judge: Honorable Jack Komar

17 Included Actions:

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

**ANSWER OF COUNTY SANITATION
DISTRICTS NOS. 14 AND 20 OF LOS
ANGELES COUNTY TO CROSS-
COMPLAINT OF ANTELOPE VALLEY-
EAST KERN WATER AGENCY**

20 Los Angeles County Waterworks District No.
21 40 v. Diamond Farming Co.
Superior Court of California, County of Kern,
22 Case No. S-1500-CV-254-348

23 Wm. Bolthouse Farms, Inc. v. City of
Lancaster
24 Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water
25 Dist.
Superior Court of California, County of
26 Riverside, consolidated actions, Case Nos.
RIC 353 840, RIC 344 436,
27 RIC 344 668.

1 Cross-defendants, County Sanitation District Nos. 14 and 20 of Los Angeles County
2 (hereafter “Districts”), respond to the Cross-Complaint of Antelope Valley-East Kern Water
3 Agency (“Cross-complainant” or “AVEK”), as follows:

4 1. The Districts admit the allegation contained in paragraph 1 that AVEK seeks the stated
5 judicial determination. The Districts also admit that the water supply is vital to the public health,
6 safety and welfare of all persons and entities. The Districts deny that an adjudication is
7 necessary. The Districts lack sufficient information or belief to admit or deny the remaining
8 allegations of paragraph 1 and on the basis of such lack of information and belief, deny such
9 allegations.

10 2. The Districts admit that the allegations contained in paragraph 2 are true.

11 3. The Districts lack sufficient information or belief to admit or deny the allegations of
12 paragraphs 3 and 4 and on the basis of such lack of information and belief, deny such allegations.

13 4. The Districts admit the allegations contained in paragraph 5 that the Basin is
14 topographically closed and is located in the western part of the Mojave Desert, near Los Angeles.
15 The Districts lack sufficient information or belief to admit or deny the remaining allegations of
16 paragraph 5 and on that basis of such lack of information and belief, deny such allegations.

17 5. The Districts admit that the allegations contained in paragraphs 6 and 7 are true.

18 6. The Districts admit the allegation contained in paragraph 8 that the Basin is an important
19 source of water and that but for imported water additional groundwater would need to be
20 pumped. The Districts also admit the allegation that by storing imported water in the Basin, the
21 parties herein can recover the stored water. The Districts deny any allegation that only imported
22 water can be stored in the Basin.

23 7. The Districts lack sufficient information or belief to admit or deny the allegations of
24 paragraph 9 and on the basis of such lack of information and belief, deny such allegations.

25 8. The Districts admit the allegation contained in paragraph 10 that the Cross-Defendants all
26 claim some interest in the Basin. The Districts lack sufficient information or belief to admit or
27 deny the remaining allegations in paragraph 10 and on that basis of such lack of information and
28 belief, deny such allegations.

1 9. As to the Districts, the Districts admit the allegation in paragraph 11 that the Districts
2 claim a right to take water and deny the allegation that the Districts threaten to increase the
3 taking of water without regard to AVEK's rights. The Districts lack sufficient information or
4 belief to admit or deny the remaining allegations of paragraph 11 and on the basis of such lack of
5 information and belief, deny such allegations.

6 10. The Districts lack sufficient information or belief to admit or deny the allegations of
7 paragraphs 12, 13, 14, 15, 16 and 17, and on the basis of such lack of information and belief,
8 deny such allegations.

9 11. The Districts admit the allegations in paragraphs 18 and 19.

10 12. The Districts lack sufficient information or belief to admit or deny the allegations of
11 paragraph 20, and on the basis of such lack of information and belief, deny such allegations.

12
13 **FIRST CAUSE OF ACTION**

14 13. In response to the allegations contained in paragraphs 21, 22 and 23 of the cross-
15 complaint, the Districts allege and incorporate by reference the Districts' responses to the
16 allegations in paragraphs 1 through 20, inclusive, of the cross-complaint.

17
18 **SECOND CAUSE OF ACTION**

19 14. In response to the allegations contained in paragraph 24 of the cross-complaint, the
20 Districts allege and incorporate by reference the Districts' responses to the allegations in
21 paragraphs 1 through 23, inclusive, of the cross-complaint.

22 15. The Districts admit the allegation contained in paragraph 25 that the Districts claim an
23 interest or right to Basin water. The Districts deny the claim that they can increase their
24 pumping without regard to the rights of the Cross-Complainant. The Districts lack sufficient
25 information or belief to admit or deny the remaining allegations of paragraph 25, and on the
26 basis of such lack of information and belief, deny such allegations.

27 16. The Districts lack sufficient information or belief to admit or deny the allegations of
28 paragraph 26 and on the basis of such lack of information and belief, deny such allegations.

1 17. Paragraphs 27 and 28 contain legal conclusions to which no response is required. The
2 Districts lack sufficient information or belief to admit or deny the allegations of paragraphs 27
3 and 28, if any, and on the basis of such lack of information and belief, deny such allegations.
4

5 **THIRD CAUSE OF ACTION**

6 18. In response to the allegations contained in paragraph 29 of the cross-complaint, the
7 Districts allege and incorporate by reference the Districts' responses to the allegations in
8 paragraphs 1 through 28, inclusive, of the cross-complaint.

9 19. The Districts deny that AVEK is the only reason State Water Project water is brought to
10 the Basin. The Districts admit the remainder of the allegations contained in paragraph 30.

11 20. The Districts admit the Cross-Complainant has made the allegation contained in
12 paragraph 31.

13 21. The Districts deny that AVEK is the only reason State Water Project water is brought to
14 the Basin. The Districts admit the allegation in paragraph 32 that the Cross-Complainant has the
15 right to store imported State Project water underground in the Basin and also has the sole right to
16 pump or otherwise use such stored water or an equivalent amount, after accounting for losses.
17 The Districts deny the allegation that the Districts are limited to the native supply of the Basin
18 and/or their own imported water. The Districts' rights extend to the native supply of the Basin
19 and all of the recycled water treated by the Districts.

20 22. The Districts admit the allegations in paragraph 33 that an actual controversy has arisen
21 between Cross-Complainant and the Districts, and that the Districts dispute contentions
22 contained in the cross-complaint. The Districts lack sufficient information or belief to admit or
23 deny the remaining allegations of paragraph 33 and on the basis of such lack of information and
24 belief, deny such allegations.

25 23. The Districts admit the Cross-Complainant has made the allegations contained in
26 paragraph 34.
27
28

1 **FOURTH CAUSE OF ACTION**

2 24. In response to the allegations contained in paragraph 35 of the cross-complaint, the
3 Districts allege and incorporate by reference the Districts' responses to the allegations in
4 paragraphs 1 through 34, inclusive, of the cross-complaint.

5 25. The Districts admit the allegations in paragraph 36 and 37.

6 26. The Districts deny the allegations in paragraph 38. The Districts' rights extend to the
7 native supply of the Basin and all of the recycled water treated by the Districts.

8 27. The Districts admit the allegations in paragraph 39 that an actual controversy has arisen
9 between Cross-Complainant and the Districts, and that the Districts dispute contentions
10 contained in the cross-complaint.

11 28. The Districts admit the allegation in paragraph 40 that the Cross-Complainant seeks the
12 specified judicial determination.

13
14 **FIFTH CAUSE OF ACTION**

15 29. The Districts believe that this cause of action has been addressed by the court in its recent
16 Order dated November 3, 2006. To the extent this is not the case, in response to the allegations
17 contained in paragraph 41 of the cross-complaint, the Districts allege and incorporate by
18 reference the Districts' responses to the allegations in paragraphs 1 through 40, inclusive, of the
19 cross-complaint and admit the allegations of paragraphs 42 and 43.

20
21 **SIXTH CAUSE OF ACTION**

22 30. In response to the allegations contained in paragraph 44 of the cross-complaint, the
23 Districts allege and incorporate by reference the Districts' responses to the allegations in
24 paragraphs 1 through 43, inclusive, of the cross-complaint.

25 31. The Districts deny the allegations of paragraph 45.

26 32. The Districts lack sufficient information or belief to admit or deny the allegations of
27 paragraphs 46, 47, 48 and 49, and on the basis of such lack of information and belief, deny such
28 allegations.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

33. The Cross-Complaint and every purported cause of action therein fail to allege facts sufficient to constitute a cause of action against the Districts.

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

36. The Cross-Complaint, and each and every cause of action therein, are barred by the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

37. The Districts have a paramount right against all other parties, in accordance with California Water Code section 1210, to the recycled water produced by the Districts' water reclamation plants. This right shall remain in effect until this right is sold or the water abandoned.

SIXTH AFFIRMATIVE DEFENSE

38. The Districts have a right to extract groundwater from the Basin for reasonable and beneficial use on the Districts' properties, and this right is prior and paramount to AVEK's

1 claims to groundwater from the Basin due to return flows and is correlative with all other
2 overlying groundwater rights.

3
4 **SEVENTH AFFIRMATIVE DEFENSE**

5 39. The Districts’ recycled water has reached the Basin through various means including
6 percolation of return flows, and may seek to store recycled water in the future through the use of
7 recharge basins or other facilities. The Districts have a right to store this water in the Basin, a
8 paramount right against all other parties to this water, and a paramount right against all other
9 parties to recapture this water or an equivalent amount.

10
11 **EIGHTH AFFIRMATIVE DEFENSE**

12 40. In California Water Code section 13550, et seq., the California Legislature finds and
13 declares that the use of potable domestic water for nonpotable uses, including industrial and
14 irrigation uses, is a waste or an unreasonable use of water if recycled water of adequate quality
15 and at a reasonable price is available, and meets all statutory conditions as determined by the
16 State Water Resources Control Board. The Districts contend that they are now and will in the
17 future make substantial quantities of recycled water of adequate quality and reasonable price
18 available for nonpotable uses in the Antelope Valley. The Districts are informed and believe and
19 on that basis allege that the availability and use of recycled water directly and significantly
20 affects the Basin and must be fully taken into account in the adjudication of all rights to water in
21 the Antelope Valley Groundwater Basin. To the extent that AVEK supplies potable domestic
22 water for nonpotable uses, the court shall find this to be an unreasonable use of water.

23
24 **NINTH AFFIRMATIVE DEFENSE**

25 41. The Districts have, pursuant to the doctrine of “self help,” preserved their right to extract
26 groundwater from the Basin by pumping groundwater during all relevant time periods for
27 reasonable and beneficial use on the Districts’ properties.

1 **TENTH AFFIRMATIVE DEFENSE**

2 42. The Cross-Complaint and each cause of action alleged therein, in whole or part, are
3 barred by the applicable statutes of limitation, including but not limited to section 318, 319, 321,
4 337, 338, 339, 342 and 343 of the Code of Civil Procedure.

5
6 **ELEVENTH AFFIRMATIVE DEFENSE**

7 43. The Cross-Complaint and each cause of action alleged therein are barred by the AVEK's
8 failure to join indispensable and necessary parties.

9
10 **TWELFTH AFFIRMATIVE DEFENSE**

11 44. All the groundwater extracted by the Districts from the Basin is devoted to public use.
12 As a result of this dedication to public use, AVEK cannot obtain any judicial relief that will in
13 any way restrain or prevent the Districts from exercising their rights to extract groundwater from
14 the Basin.

15
16 **THIRTEENTH AFFIRMATIVE DEFENSE**

17 45. The Districts reserve the right to assert additional defenses or to amend this Answer as
18 may be appropriate.

19 **PRAYER**

20 WHEREFORE, Districts pray for Judgment as follows:

- 21 1. For a declaration that the Districts' rights to the recycled water are paramount to any
- 22 other entity, until that water right is sold or the water abandoned;
- 23 2. For a declaration that the Districts' rights to extract groundwater from the Basin for
- 24 reasonable and beneficial use on the Districts' properties are prior and paramount to any claims
- 25 to groundwater from the Basin for non-overlying (appropriative) use and are correlative with all
- 26 other overlying groundwater rights;
- 27 3. For a declaration that the Districts have a right to store their recycled water in the Basin, a
- 28 paramount right to credit for their recycled water which recharged the Basin, and a paramount

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right to recapture that water;

4. For a declaration that the use of recycled water must be an integral element in any physical solution and that the use of potable domestic water for non-potable uses is an unreasonable use of water;

5. For an injunction restraining Cross-complainants, and their agents, servants and employees, and all persons acting under, in concert with, or for them, or anyone acting through them or on their behalf, from acting in any manner which interferes with the rights of the Districts to control the disposition of recycled water or to take water from the Basin to meet their present and future needs or to meet regulatory requirements;

6. For this Court to maintain continuing jurisdiction over this controversy to carry out and enforce the terms of the judgment;

7. For costs of suit; and

8. For such other relief as the Court deems just and proper.

Dated: December 27, 2006

ELLISON, SCHNEIDER & HARRIS L.L.P.

By: _____
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1 **PROOF OF SERVICE**

2 I declare that:

3 I am employed in the County of Sacramento, State of California. I am over the age of
4 eighteen years and am not a party to the within action. My business address is ELLISON,
5 SCHNEIDER & HARRIS, L.L.P.; 2015 H Street; Sacramento, California 95814-3109; telephone
6 (916) 447-2166.

7 On December 27, 2006, I served the County Sanitation Districts' *Answer of County*
8 *Sanitation Districts Nos. 14 and 20 of Los Angeles County to Cross-Complaint of Antelope*
9 *Valley-East Kern Water Agency* by electronic posting to the Santa Clara Superior Court E-Filing
10 website, <http://www.scefiling.org/cases/casehome.jsp?caseId=19> with electronic mail to the
11 parties' email addresses shown below.

12 I declare under penalty of perjury that the foregoing is true and correct and that this
13 declaration was executed on December 27, 2006, at Sacramento, California.

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15 _____
16 Patty Slomski
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25 R&M Ranch, Inc., Forrest G. Godde and
26 Steve Godde, Gailen Kyle on behalf of Kyle
27 & Kyle Ranch, Inc., and John Calandri on
28 behalf of Calandri/Sonrise Farms,
collectively known as the Antelope Valley
Ground Water Agreement Association
("AGWA")

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