

1 Vernon L. Putnam, SB# 54363
2 Soby M. Mathews, SB# 208317
3 AVILA & PUTNAM
4 Professional Law Corporation
5 515 So. Figueroa Street, Suite 1550
6 Los Angeles, California 90071
7 Telephone: (213) 892-1444
8 Facsimile: (213) 892-1555

9 Attorneys for Defendant and Cross Defendant,
10 David S. Mason, Co-trustee of the Mason Family 1993 Trust,
11 erroneously sued herein as David S. Mason, Co-trustee

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

11 ANTELOPE VALLEY
12 GROUNDWATER CASES

13 Included Actions:

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

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

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

) Judicial Council Coordination No. 4408

) CLASS ACTION

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

) LASC Case No. BC 325201

) **ANSWER OF DOE 335: DAVID S. MASON,
) CO-TRUSTEE OF THE MASON FAMILY
) 1993 TRUST, TO COMPLAINT AND ALL
) CROSS-COMPLAINANTS**

23
24 Defendant and Cross-Defendant, **Doe 335: DAVID S. MASON, CO-TRUSTEE OF THE**
25 **MASON FAMILY 1993 TRUST, erroneously sued herein as DAVID S. MASON, CO-TRUSTEE**
26 **("MASON")**, hereby answer the Complaint and all Cross-Complaints which have been filed as of this
27 date, specifically those of Antelope Valley East-Kern Water Agency, Palmdale Water District & Quartz
28 Hill Water District, Rosamond Community Services District and Waterworks District No. 40 of Los

1 Angeles County. MASON does not intend to participate at trial or other proceedings unless ordered by
2 the Court to do so, but MASON reserves the right to do so upon giving written notice to that effect to the
3 Court and all parties. MASON owns the following Property located in the Antelope Valley: APN 3062-
4 008-076; formerly APN's 3062-008-010, 3062-008-011, 3062-008-024, 3062-008-028, 3062-008-035,
5 3062-008-036, 3062-008-057, 3062-008-058, 3062-008-059, 3062-008-060, 3062-008-061, 3062-008-
6 070, 3062-008-071, 3062-008-073, & 3062-008-074.

7
8 **GENERAL DENIAL**

9 1. Pursuant to Code of Civil Procedure section 431.30(d), Defendant and Cross-Defendant
10 hereby generally denies each and every allegation set forth in the Complaint and Cross-Complaint, and
11 the whole thereof, and further denies that Plaintiff and Cross-Complainant are entitled to any relief
12 against Defendant and Cross-Defendant

13 **AFFIRMATIVE DEFENSES**

14 **First Affirmative Defense**

15 (Failure to State a Cause of Action)

16 2. The Complaint and Cross-Complainant and every purported cause of action contained
17 therein fail to allege facts sufficient to constitute a cause of action against Defendant and Cross-
18 Defendant.

19 **Second Affirmative Defense**

20 (Statute of Limitation)

21 3. Each and every cause of action contained in the Complaint and Cross-Complaint is
22 barred, in whole or in part, by the applicable statutes of limitation, including, but not limited to, sections
23 318, 319, 321, 338, and 343 of the California Code of Civil Procedure.

24 **Third Affirmative Defense**

25 (Laches)

26 4. The Complaint and Cross-Complaint, and each and every cause of action contained herein,
27 is barred by the doctrine of laches.

1 **Fourth Affirmative Defense**

2 (Estoppel)

3 5. The Complaint and Cross-Complaint, and each and every cause of action contained
4 therein, is barred by the doctrine of estoppel.

5 **Fifth Affirmative Defense**

6 (Waiver)

7 6. The Complaint and Cross-Complaint, and each and every cause of action contained
8 therein, is barred by the doctrine of waiver.

9 **Sixth Affirmative Defense**

10 (Self-Help)

11 7. Defendant and Cross-Defendant has, by virtue of the doctrine of self-help, preserved its
12 paramount overlying right to extract groundwater by continuing, during all times relevant hereto, to
13 extract groundwater and put it to reasonable beneficial use on its property.

14 **Seventh Affirmative Defense**

15 (California Constitution Article X, Section 2)

16 8. Plaintiff and Cross-Complainant's methods of water use and storage are unreasonable and
17 wasteful in the arid conditions of the Antelope Valley and thereby violate Article X, Section 2 of the
18 California Constitution.

19 **Eighth Affirmative Defense**

20 (Additional Defenses)

21 9. The Complaint and Cross-Complaint do not state their allegations with sufficient clarity
22 to enable defendant and cross-defendant to determine what additional defenses may exist to Plaintiff and
23 Cross-Complainant's causes of action. Defendant and Cross-defendant therefore reserve the right to
24 assert all other defenses which may pertain to the Complaint and Cross-Complaint.

25 ///

26 ///

27 ///

1 **Ninth Affirmative Defense**

2 10. The prescriptive claims asserted by governmental entity Cross-Complainants are *ultra*
3 *vires* and exceed the statutory authority by which each entity may acquire property as set forth in Water
4 Code sections 22456, 31040 and 55370.

5 **Tenth Affirmative Defense**

6 11. The prescriptive claims asserted by governmental entity Cross-Complainants are barred by
7 the provisions of Article 1 Section 19 of the California Constitution.

8 **Eleventh Affirmative Defense**

9 12. The prescriptive claims asserted by governmental entity Cross-Complainants are barred by
10 the provisions of the 5th Amendment to the United States Constitution as applied to the states under the
11 14th Amendment of the United States Constitution.

12 **Twelfth Affirmative Defense**

13 13. Cross-Complainants' prescriptive claims are barred due to their failure to take affirmative
14 steps that were reasonably calculated and intended to inform each overlying landowner of cross-
15 complainants' adverse and hostile claim as required by the due process clause of the 5th and 14th
16 Amendments of the United States Constitution.

17 **Thirteenth Affirmative Defense**

18 14. The prescriptive claims asserted by governmental entity Cross-Complainants are barred by
19 the provisions of Article 1 Section 7 of the California Constitution.

20 **Fourteenth Affirmative Defense**

21 15. The prescriptive claims asserted by governmental entity Cross-Complainants are barred by
22 the provisions of the 14th Amendment to the United States Constitution.

23 **Fifteenth Affirmative Defense**

24 16. The governmental entity Cross-Complainants were permissively pumping at all times.

25 ///

26 ///

27 ///

1 **Sixteenth Affirmative Defense**

2 17. The request for the court to use its injunctive powers to impose a physical solution seeks a
3 remedy that is in violation of the doctrine of separation of powers set forth in Article 3 section 3 of the
4 California Constitution.

5 **Seventeenth Affirmative Defense**

6 18. Cross-Complainants are barred from asserting their prescriptive claims by operation of law
7 as set forth in Civil Code sections 1007 and 1214.

8 **Eighteenth Affirmative Defense**

9 19. Each Cross-Complainant is barred from recovery under each and every cause of action
10 contained in the Cross-Complaint by the doctrine of unclean hands and/or unjust enrichment.

11 **Nineteenth Affirmative Defense**

12 20. The Cross-Complaint is defective because it fails to name indispensable parties in
13 violation of California Code of Civil Procedure Section 389(a).

14 **Twentieth Affirmative Defense**

15 21. The governmental entity Cross-Complainants are barred from taking, possessing or using
16 cross-defendants' property without first paying just compensation.

17 **Twenty-First Affirmative Defense**

18 22. The governmental entity Cross-Complainants are seeking to transfer water right priorities
19 and water usage which will have significant effects on the Antelope Valley Groundwater basin and the
20 Antelope Valley. Said actions are being done without complying with and contrary to the provisions of
21 California's Environmental Quality Act (CEQA) Pub.Res.C. 2100 *et seq.*)

22 **Twenty-Second Affirmative Defense**

23 23. The governmental entity Cross-Complainants seek judicial ratification of a project that has
24 had and will have a significant effect on the Antelope Valley Groundwater Basin and the Antelope Valley
25 that was implemented without providing notice in contravention of the provisions of California's
26 Environmental Quality Act (CEQA) Pub.Res.C. 2100 *et seq.*)

27 ///

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

Twenty-Third Affirmative Defense

24. Any imposition by this court of a proposed physical solution that reallocates the water right priorities and water usage within the Antelope Valley will be *ultra vires* as it will be subverting the pre-project legislative requirements and protections of California's Environmental Quality Act (CEQA) (Pub.Res.C. 2100 *et seq.*).

WHEREFORE, Defendant and Cross-defendant prays that judgment be entered as follows:

1. That Plaintiff and Cross-Complainant take nothing by reason of its Complaint or Cross-Complaint;
2. That the Complaint and Cross-Complaints be dismissed with prejudice;
3. For Defendant and Cross-Defendants's costs incurred herein; and
4. For such other and further relief as the Court deems just and proper.

Dated: July 18, 2007

AVILA & PUTNAM

PROFESSIONAL LAW CORPORATION

By: 

Vernon L. Putnam,
Soby M. Mathews,

Attorneys for Defendant and Cross-Defendant,
Doe 335: David S. Mason, Co-trustee of the Mason Family
1993 Trust, erroneously sued herein as David S. Mason, Co-
trustee

1 **PROOF OF SERVICE**

2 I, Darlene Martinez, declare:

3 I am a resident of the State of California and over the age of 18 years and not a party to the within
4 action; my business address is Avila & Putnam, Professional Law Corporation, 515 South Figueroa
Street, Suite 1550, Los Angeles, CA 90071-3332.

5 On July 18, 2007, I served the within document(s):

6 **ANSWER OF DOE 335: DAVID S. MASON, CO-TRUSTEE OF THE MASON FAMILY**
7 **1993 TRUST, TO COMPLAINT AND ALL CROSS-COMPLAINANTS**

- 8 by posting the document(s) listed above to the Santa Clara County Superior Court website in
regard to the Antelope Valley Groundwater matter.
- 9 by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid,
10 in the United States mail at Los Angeles, California addressed as set forth below
- 11 by causing personal delivery by O'Mally & Associates, Attorney Service of the document(s) listed
above to the person(s) at the address(es) set forth below.
- 12 by personally delivering the document(s) listed above to the person(s) at the address(es) set forth
13 below.
- 14 I caused such envelope to be delivered via overnight delivery addressed as indicated on the
attached service list. Such envelope was deposited for delivery by Via Overnite Express
15 following the firm's ordinary business practices.
- 16 (MAIL) I am readily familiar with Avila & Putnam's practice of collection and
processing correspondence for mailing. Under that practice it would be deposited with the U.S.
17 Postal Service on that same day with postage thereon fully prepaid in the ordinary course of
business. I am aware that on motion of the party served, service is presumed invalid if postal
18 cancellation date or postage meter date is ore than one day after date of deposit for mailing in
affidavit.
- 19 (STATE) I declare under penalty of perjury under the laws of the State of California that
20 the foregoing is true and correct.

21 Executed on July 18, 2007, at Los Angeles, California.

22
23 
24 Darlene Martinez
25
26
27
28