

1 **Triple M Property F.K.A. 3M Property Investment Co**  
2 **(Sued Herein as Doe 402)**  
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**ORIGINAL FILED**

AUG 31 2007

**LOS ANGELES  
SUPERIOR COURT**

9 *[Insert address, phone number, fax number, and e-*  
10 *mail address]*

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF LOS ANGELES

13 **ANTELOPE VALLEY**  
14 **GROUNDWATER CASES**

15 Included Actions:

16 Los Angeles County Waterworks District  
17 No. 40 v. Diamond Farming Co.  
18 Los Angeles County Superior Court  
19 Case No. BC 325201

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

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

Judicial Council Coordination No. 4408

For filing purposes only:  
Santa Clara County Case No. 1-05-CV-049053

Assigned to The Honorable Jack Komar

**MODEL ANSWER TO COMPLAINT AND  
ALL CROSS-COMPLAINTS**

1 I hereby answer the Complaint and all Cross-Complaints which have been filed as of this  
2 date, specifically those of Antelope Valley East-Kern Water Agency, Palmdale Water District &  
3 Quartz Hill Water District, Rosamond Community Services District and Waterworks District No.  
4 40 of Los Angeles County. I do not intend to participate at trial or other proceedings unless  
5 ordered by the Court to do so, but I reserve the right to do so upon giving written notice to that  
6 effect to the Court and all parties. I own the following property(ies) located in the Antelope  
7 Valley:

8 **APN: 359-020-05-006, Kern County, California**

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9  
10 *[Insert address and/or APN Number]*

11  
12 **GENERAL DENIAL**

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

17 **AFFIRMATIVE DEFENSES**

18 **First Affirmative Defense**

19 (Failure to State a Cause of Action)

20 2. The Complaint and Cross-Complaint and every purported cause of action  
21 contained therein fail to allege facts sufficient to constitute a cause of action against Defendant  
22 and Cross-Defendant.

23 **Second Affirmative Defense**

24 (Statute of Limitation)

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

1 **Third Affirmative Defense**

2 (Laches)

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

5 **Fourth Affirmative Defense**

6 (Estoppel)

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

9 **Fifth Affirmative Defense**

10 (Waiver)

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

13 **Sixth Affirmative Defense**

14 (Self-Help)

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

18 **Seventh Affirmative Defense**

19 (California Constitution Article X, Section 2)

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

23 **Eighth Affirmative Defense**

24 (Additional Defenses)

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

1 Complaint.

2 **Ninth Affirmative Defense**

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

6 **Tenth Affirmative Defense**

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

9 **Eleventh Affirmative Defense**

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

13 **Twelfth Affirmative Defense**

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

18 **Thirteenth Affirmative Defense**

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

21 **Fourteenth Affirmative Defense**

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

24 **Fifteenth Affirmative Defense**

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

27 **Sixteenth Affirmative Defense**

28 17. The request for the court to use its injunctive powers to impose a physical solution

1 seeks a remedy that is in violation of the doctrine of separation of powers set forth in Article 3  
2 section 3 of the California Constitution.

3 **Seventeenth Affirmative Defense**

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

6 **Eighteenth Affirmative Defense**

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

10 **Nineteenth Affirmative Defense**

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

13 **Twentieth Affirmative Defense**

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

16 **Twenty-First Affirmative Defense**

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

22 **Twenty-Second Affirmative Defense**

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

27 **Twenty-Third Affirmative Defense**

28 24. Any imposition by this court of a proposed physical solution that reallocates the


1 water right priorities and water usage within the Antelope Valley will be *ultra vires* as it will be  
2 subverting the pre-project legislative requirements and protections of California's Environmental  
3 Quality Act (CEQA) (Pub.Res.C. 2100 *et seq.*).

4  
5 **WHEREFORE**, Defendant and Cross-defendant prays that judgment be entered as  
6 follows:

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

12  
13 Dated: August 30, 2007

Signature

  
G.R. TRIPLEM Property F.X.A. 3M Property Investment CO.  
[Print name of party and/or attorney]

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16  
17 [FILE IN LA SUPERIOR COURT AND POST ON COURT WEBSITE – FOR E-FILING  
18 INSTRUCTIONS, PLEASE GO TO [WWW.SCEFILING.ORG/FAQ](http://WWW.SCEFILING.ORG/FAQ) OR CONTACT GLOTRANS  
19 AT (510) 208-4775.]

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21  
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23  
24 ORANGEVDUNN32353.1

**PROOF OF SERVICE**

**I, Michael J. Smith, declare:**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 75 Malaga Cove, Suite 14, Palos Verdes Estates, CA 90274. I am over the age of 18 years and not a party to the action in which this service is made.

On August 31, 2007, I served the document(s) described as ANSWER TO FIRST AMENDED CROSS-COMPLAINT OF CROSS-DEFENDENT TRIPLE M PROPERTY F.K.A. 3M PROPERTY INVESTMENT CO (Sued herein as Doe 402) on the interested parties in this action as follows:

BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.

BY ELECTRONIC MAIL: By posting the document listed above to the Santa Clara Superior Court website: [www.sccfiling.org](http://www.sccfiling.org) regarding the ANTELOPE VALLEY GROUNDWATER matter.


BY FEDERAL EXPRESS  UPS NEXT DAY AIR  OVERNIGHT DELIVERY: I deposited such envelope in a facility regularly maintained by  FEDERAL EXPRESS  UPS  Overnight Delivery [specify name of service: ] with delivery fees fully provided for or delivered the envelope to a courier or driver of  FEDERAL EXPRESS  UPS  OVERNIGHT DELIVERY [specify name of service:] authorized to receive documents at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

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

[Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 31, 2007, at Palos Verdes Estates, California

  
Michael J. Smith