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**LAW OFFICES OF
SHELDON R. BLUM**

2242 CAMDEN AVENUE, SUITE 201
SAN JOSE, CALIFORNIA 95124
TEL: (408) 377-7320
FAX: (408) 377-2199
STATE BAR No. 83304

Attorney for Defendant SHELDON R. BLUM,
Trustee For The SHELDON R. BLUM TRUST

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES - CENTRAL DISTRICT

Coordinated Proceedings
Special Title {Rule 1550 (b)}

Judicial Council Coordination
Proceeding No. 4408

**ANTELOPE VALLEY GROUNDWATER
CASES**

Santa Clara Case No. 1-05-CV-049053
Assigned to Hon. Jack Komar

Included Actions:

**DEFENDANT SHELDON R. BLUM,
TRUSTEE FOR THE SHELDON
R. BLUM TRUST'S ANSWER TO
COMPLAINT OF PLAINTIFF LOS
ANGELES COUNTY WATERWORKS
DIST. NO. 40**

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.
Los Angeles County Superior Court
Case No. BC 325 201

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

Wm. Bolthouse Farms, Inc., v. City of
Lancaster; Diamond Farming Co. v. City of
Lancaster; Diamond Farming Co. v. City of
Palmdate Water District.
Riverside County Superior Court
Consolidated Action Nos. RIC 344 840,
RIC 344 436, RIC 344 668

AND RELATED CROSS-ACTIONS.

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2242 CAMDEN AVENUE, SUITE 201
SAN JOSE, CALIFORNIA 95124
TEL: (408) 3777320, FAX: (408) 377-2199

1 COMES NOW Defendant SHELDON R. BLUM, TRUSTEE For The SHELDON R.
2 BLUM TRUST, having no prior notice and/or having never been serviced with Plaintiff LOS
3 ANGELES COUNTY WATERWORKS DISTRICT NO. 40, Complaint For Declaratory And
4 Injunctive Relief and Adjudication of Water Rights, filed on November 29, 2004, hereby
5 voluntarily answers and asserts affirmative defenses only to the First through Seventh Causes
6 of Action, since Plaintiff's Eighth Cause of Action is not being alleged against this answering
7 Defendant. Therefore, Defendant admits, denies, and alleges, as follows:

9 **GENERAL DENIAL**

10 1. Pursuant to Code of Civil Procedure, Section 431.30(d), Defendant SHELDON
11 R. BLUM, TRUSTEE For The SHELDON R. BLUM TRUST denies generally and specifically
12 each and every allegation set forth in the First through Seventh Causes of Action of Plaintiff's
13 Complaint, and the whole thereof, and further denies that this answering Defendant was
14 responsible and/or liable for any of the adverse and/or negative occurrences, events, relief
15 and/or damages alleged in Plaintiff's Complaint.
16

17 **AFFIRMATIVE DEFENSES**

18
19 **First Affirmative Defense**
20 **(Failure to State a Cause of Action)**

21 2. All causes of action alleged in Plaintiff's Complaint, and each and every
22 allegation contained therein, fail to state facts sufficient to constitute a cause of action against
23 this Defendant. Plaintiff's Eighth Cause of Action does not attempt to state a cause of action
24 against this answering Defendant.

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**Second Affirmative Defense
(Statute of Limitations)**

3. All causes of action alleged in the Complaint, except the Eighth Cause of Action, are barred, in whole or in part, by the applicable statutes of limitations, including but not limited to, Code of Civil Procedure, Sections 318, 319, 321, 338, and 343.

**Third Affirmative Defense
(Right to Reasonable Use - Non-Responsibility For Acts of Others)**

4. This Defendant is entitled to the reasonable and beneficial use of water which the property overlays. This answering Defendant is not responsible for the acts or omissions of others and thereby should not suffer any loss, liability or damage by reason thereof. Any conduct of Defendant in regards to the matters alleged in the Complaint, if it occurred, was justified, and as a result thereof, Plaintiff is barred from any recovery.

**Fourth Affirmative Defense
(Condemnation)**

5. To the extent the relief sought by Plaintiff would deprive this Defendant of the right to use, and use of reasonable amounts of water, such relief is a "taking" of Defendant's property (water and water rights) without just compensation in violation of the United States and California Constitutions and the laws of eminent domain.

**Fifth Affirmative Defense
(Uncertainty as to Basin Boundaries)**

6. Each and every cause of action of the Complaint, except the Eight Cause of Action, is defective and uncertain in that it fails to delineate the lateral and vertical boundaries of the groundwater that Plaintiff refers to as the "Antelope Valley Groundwater Basin." Therefore, it is impossible to determine from the Complaint the extent of the water rights claimed by Plaintiff or the extent of the lands included within the groundwater basin.

LAW OFFICES OF SHELDON R. BLUM
2242 CAMDEN AVENUE, SUITE 201
SAN JOSE, CALIFORNIA 95124
TEL: (408) 3773320. FAX: (408) 377-2199

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**Sixth Affirmative Defense
(Uncertainty as to Claimed Water Rights)**

7. Each and every cause of action of the Complaint is defective and uncertain, except the Eighth Cause of Action, in that it cannot be ascertained therefrom the nature of the water rights that Plaintiff is claiming for itself, and the nature and extent of the water rights that Plaintiff asserts are being claimed by Defendant SHELDON R. BLUM TRUST and the other Defendants.

**Seventh Affirmative Defense
(Unjust Enrichment/Unclean Hands)**

8. Plaintiff is barred from any not entitled to any relief or recovery under each and every cause of action contained in the Complaint by the doctrine of unjust enrichment and/or unclean hands.

**Eight Affirmative Defense
(Prescription Claims)**

9. Each and every cause of action contained in the Complaint, except the Eighth Cause of Action is barred from asserting their prescriptive claims by operation of law as set forth in Sections 1007, 1009 and 1214 of the California Civil Code.

**Ninth Affirmative Defense
(Indispensable and/or Necessary Party)**

10. The entire Complaint, excluding the Eighth Cause of Action is barred by Code of Civil Procedure Section 389(a), on the ground that Plaintiff failed to name and join indispensable and/or necessary parties, e.g. other pumpers and non-pumpers of water in the Antelope Valley Groundwater Basin.

**Tenth Affirmative Defense
(Estoppel)**

11. The entire Complaint, except the Eighth Cause of Action is barred by the

1 doctrine of estoppel.

2 **Eleventh Affirmative Defense**
3 **(Declaratory Relief)**

4 12. This Defendant is entitled to a declaratory judgment with Plaintiff's
5 representations of Defendant's contentions alleged in Paragraphs 32, 41, 49, 55, 61, and 66 of
6 Plaintiff's Complaint and that this Defendant is constitutionally entitled to just compensation for
7 any restrictions and limitations on this Defendant's rights to use reasonable quantities of water
8 that may be imposed by any judgment herein. Pursuant to the laws of eminent domain, Plaintiff
9 is also taking Defendant's water rights for a public use without due process and compensation.

10 **Twelfth Affirmative Defense**
11 **(Superior/Senior Water Rights)**

12 13. This Defendant's water rights are superior and senior to, and thereby
13 take priority over any rights asserted in the Complaint by Plaintiff and/or other Co-
14 Defendants.

15 **Thirteenth Affirmative Defense**
16 **(Self Help)**

17 14. Defendant has, by virtue of the doctrine of self-help, preserved it's paramount
18 overlying right to extract groundwater by continuing during all times relevant hereto, to extract
19 groundwater and put it to reasonable and beneficial use on it's Parcels.

20 **Fourteenth Affirmative Defense**
21 **(Uncertain Storage Claim)**

22 15. The Fifth Cause of Action is defective and uncertain in that it fails to allege the
23 amount of water that Plaintiff has allegedly imported and stored in the Antelope Valley
24 Groundwater Basin.

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LAW OFFICES OF SHELDON R. BLUM
2242 CAMDEN AVENUE, SUITE 201
SAN JOSE, CALIFORNIA 95124
TEL: 14081 3777920, FAX: 14081 377-2199

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**Fifteenth Affirmative Defense
(Uncertain Return Flows Claim)**

16. The Sixth Cause of Action is defective and uncertain in that it fails to allege the specific amount of "return flows" that allegedly augment the Antelope Valley Groundwater Basin supply and that Plaintiff Claims the right to recapture.

**Sixteenth Affirmative Defense
(Failure to Mitigate)**

17. Plaintiff has failed to take adequate steps to mitigate, alter, reduce, or otherwise diminish the damages, if any, with respect to the matters alleged in the Complaint.

**Seventeenth Affirmative Defense
(Laches)**

18. The Complaint, and each cause of action contained therein, is barred by the doctrine of laches.

**Eighteenth Affirmative Defense
(Waiver)**

19. The Complaint, and each cause of action contained therein, is barred by the doctrine of waiver.

**Nineteenth Affirmative Defense
(California Constitution Article X, Section 2)**

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

**Twentieth Affirmative Defense
(Ultra Vires Acts)**

21. The prescriptive claims asserted by government entity Plaintiff are *ultra vires* and exceed the statutory authority by which each entity may acquire property as set forth in the

1 Water Code Sections 22456, 31040, and 55370.

2 **Twenty First Affirmative Defense**
3 **(California Constitution Article 1, Section 19)**

4 22. The prescriptive claims asserted by governmental entity Plaintiff are
5 barred by the provisions of Article 1, Section 19, of the California Constitution.

6 **Twenty Second Affirmative Defense**
7 **(US Constitution 5th / 14th Amendment)**

8 23. The prescriptive claims asserted by government entity Plaintiff are barred by the
9 provisions of the 5th Amendment to the United States Constitution as applied to the states under
10 the 14th Amendment of the United States Constitution.

11 **Twenty Third Affirmative Defense**
12 **(Due Process)**

13 24. Plaintiff's 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
15 Plaintiff's adverse and hostile claim as required by the due process clause of the 5th and 14th
16 Amendments of the United States Constitution.

17 **Twenty Fourth Affirmative Defense**
18 **(California Constitution Article 1, Section 7)**

19 25. The prescriptive claims asserted by governmental entity Plaintiff are barred by the
20 provisions of Article 1, Section 7, of the California Constitution.

21 **Twenty Fifth Affirmative Defense**
22 **(US Constitution 14th Amendment)**

23 26. The prescriptive claims by governmental entity Plaintiff are barred by the
24 provisions of the 14th Amendment to the United States Constitution.

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**Twenty Sixth Affirmative Defense
(Permissive Pumping)**

27. The governmental entity Plaintiff were permissively pumping at all times mentioned herein.

**Twenty Seventh Affirmative Defense
(California Constitution Article 3, Section 3)**

28. The request for the court to use its injunctive powers to impose a physical solution seeks a remedy that is in violation of the doctrine of separation of powers as set forth in Article 3, Section 3, of the California Constitution.

**Twenty Eighth Affirmative Defense
(California's Environmental Quality Act)**

29. The governmental entity Plaintiffs are seeking to transfer water right priorities and water usage which will have significant effects on the Antelope Valley Groundwater Basin and the Antelope Valley. Said actions are being done without complying with and contrary to the provisions of California's Environmental Quality Act (CEQA), (Pub. Res. Code 2100 *et seq.*).

**Twenty Ninth Affirmative Defense
(California Environmental Quality Act)**

30. The governmental entity Plaintiffs seek judicial ratification of a project that has had and will have a significant effect on the Antelope Valley Groundwater Basin and the Antelope Valley that was implemented without providing notice in contravention of the provisions of California Environmental Quality Act (CEQA) (Pub Res. Code 2100 *et seq.*).

**Thirtieth Affirmative Defense
(Ultra Vires Act)**

31. Any imposition by this court of a proposed physical solution that relocates the water rights priorities and water usage within the Antelope Valley will be *ultra vires*

1 as it will be subverting the pre-project legislative requirements and protections of California's
2 Environmental Quality Act (CEQA), (Pub. Res. C. 2100 *et seq.*)

3 **Thirty First Affirmative Defense**
4 **(Possible Additional Defenses)**

5 32. This Defendant presently has insufficient knowledge and/or information upon
6 which to form a belief as to whether it may have additional, as yet unstated affirmative
7 defenses. This Defendant reserves the right to assert additional defenses in the event that the
8 discovery indicates they would be appropriate. In addition, the Complaint does not state
9 Plaintiff's allegations with sufficient particularity or clarity to enable Defendant to determine what
10 additional defenses may exist to Plaintiff's causes of action. Defendant therefore reserves the
11 right to assert all other defenses which may pertain to the Complaint once the precise nature of
12 Plaintiff's causes of action is more fully ascertained.

13 **WHEREFORE**, Defendant SHELDON R. BLUM TRUSTEE For The SHELDON R.
14 BLUM TRUST prays that judgment be entered against Plaintiff LOS ANGELES COUNTY
15 WATERWORKS DISTRICT NO. 40., and any and all other parties who claim against
16 Defendant, as follows:

- 17
- 18 1. That Plaintiff take nothing by reason of its Complaint;
 - 19 2. That the Complaint be dismissed with prejudice;
 - 20 3. That Defendant's water rights be determined to be superior and senior to all
21 those claimed by other parties;
 - 22 4. For Declaratory Relief consistent with the above Fourth and Fifth Causes of
23 Action, including but not limited to the payment of just compensation for the "taking" of this
24 Defendant's property rights inherent in the relief sought by Plaintiff;
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- 5. For Defendant's attorney fees incurred herein;
- 6. For Defendant's costs incurred herein, including but not limited to expert fees and appraisal fees; and
- 7. For such other and further relief as the Court deems just and proper.

Dated: December 18, 2007



SHELDON R. BLUM, Esq.
 Attorney For Defendant SHELDON R.
 BLUM, TRUSTEE For The SHELDON R.
 BLUM TRUST

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 2242 CAMDEN AVENUE, SUITE 201
 SAN JOSE, CALIFORNIA 95124
 TEL: (408) 3777320, FAX: (408) 377-2199

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