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BUSHNELL ENTERPRISES, LLC
9

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF LOS ANGELES
12

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

15 Included Actions:

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

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

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

Judicial Counsel Coordination No. 4408

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

Assigned to: The Hon. Jack Komar

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

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1 BUSHNELL ENTERPRISES, LLC, a Delaware limited liability (“Defendant and
2 Cross-Defendant”) on behalf of itself and no other party, hereby answers the Complaint
3 and all Cross-Complaints which have been filed as of this date, including but not limited to
4 those of Antelope Valley East-Kern Water Agency, Palmdale Water District & Quartz Hill
5 Water District, Rosamond Community Services District and Waterworks District No. 40 of
6 Los Angeles County. Defendant and Cross-Defendant does not intend to participate at trial
7 or other proceedings unless ordered by the Court to do so, but Defendant and Cross-
8 Defendant reserve the right to do so upon giving written notice to that effect to the court
9 and all parties. Defendant and Cross-Defendant owns the following property located in the
10 Antelope Valley: APN 3048-008-003.

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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
15 and all Cross-Complaints, and the whole thereof, and each and every alleged cause of
16 action thereof, and further denies that Plaintiff and Cross-Complainants are entitled to any
17 relief against Defendant and Cross-Defendant.

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19 **AFFIRMATIVE DEFENSES**

20 **First Affirmative Defense**

21 (Failure to State a Cause of Action)

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

1 **Second Affirmative Defense**

2 (Statute of Limitation)

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

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8 **Third Affirmative Defense**

9 (Laches)

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

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13 **Fourth Affirmative Defense**

14 (Estoppel)

15 5. The Complaint and all Cross-Complaints, and each and every cause of action
16 contained therein, is barred by the doctrine of estoppel.

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18 **Fifth Affirmative Defense**

19 (Waiver)

20 6. The Complaint and all Cross-Complaints, and each and every cause of action
21 contained therein, is barred by the doctrine of waiver.

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23 **Sixth Affirmative Defense**

24 (Self-Help)

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

1 **Seventh Affirmative Defense**

2 (California Constitution Article X, Section 2)

3 8. Plaintiff and Cross-Complainants' methods of water use and storage are
4 unreasonable and wasteful in the arid conditions of the Antelope Valley and thereby
5 violate Article X, Section 2 of the California Constitution.

6
7 **Eighth Affirmative Defense**

8 (Additional Defenses)

9 9. The Complaint and all Cross-Complaints do not state their allegations with
10 sufficient clarity to enable defendant and cross-defendant to determine what additional
11 defenses may exist to Plaintiff and Cross-Complainants' causes of action. Defendant and
12 Cross-defendant therefore reserve the right to assert all other defenses which may pertain
13 to the Complaint and all Cross-Complaints.

14
15 **Ninth Affirmative Defense**

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

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20 **Tenth Affirmative Defense**

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

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24 **Eleventh Affirmative Defense**

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

1 **Twelfth Affirmative Defense**

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

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7 **Thirteenth Affirmative Defense**

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

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11 **Fourteenth Affirmative Defense**

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

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15 **Fifteenth Affirmative Defense**

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

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19 **Sixteenth Affirmative Defense**

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

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24 **Seventeenth Affirmative Defense**

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

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Eighteenth Affirmative Defense

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

Nineteenth Affirmative Defense

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

Twentieth Affirmative Defense

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

Twenty-First Affirmative Defense

22. The governmental entity Cross-Complainants 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.C. 2100 *et seq.*).

Twenty-Second Affirmative Defense

23. The governmental entity Cross-Complainants 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's Environmental Quality Act (CEQA) (Pub.Res.C. 2100 *et seq.*).

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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.*).

Twenty-Fourth Affirmative Defense

25. Defendant and Cross-Defendant is informed and believes, and on that basis alleges, that to the extent Plaintiff and Cross-Complainants are overlying owners, as overlying owners who are not using the underlying groundwater, Plaintiff and Cross-Complainants have no standing to sue for an adjudication of water rights in the Antelope Valley and the underlying groundwater.

Twenty-Fifth Affirmative Defense

26. Defendant and Cross-Defendant is informed and believes, and on that basis alleges, that to the extent Plaintiff and Cross-Complainants are overlying owners, as overlying owners who are making no use of underlying groundwater, Plaintiff and Cross-Complainants are not entitled to injunctive relief against overlying users.

Twenty-Sixth Affirmative Defense

27. Plaintiff and Cross-Complainants at most have a right to a declaration of correlative water rights, not an adjudication of water rights.

Twenty-Seventh Affirmative Defense

28. Plaintiff and Cross-Complainants will not be harmed by the alleged use of the groundwater by defendants and cross-defendants and injunctive relief is therefore inappropriate.

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Twenty-Eighth Affirmative Defense

29. Plaintiff and Cross-Complainants do not have standing to maintain this action because they have no alleged a present reasonable and beneficial use of the groundwater.

Twenty-Ninth Affirmative Defense

30. Defendant and Cross-Defendant is informed and believes, and on that basis alleges, that numerous defendants and cross-defendants are overlying users and their rights are correlative to those of other overlying users, including Plaintiff and Cross-Complainants to the extent they are overlying users.

Thirtieth Affirmative Defense

31. Plaintiff and Cross-Complainants are barred from the relief sought because, under California law, they are not entitled to hoard water for future use or enjoin any present use when they are not presently using.

Thirty-First Affirmative Defense

32. Whether as a riparian, overlying, appropriative or prescriptive user, or otherwise, Defendant and Cross-Defendant claims the prior, paramount and vested rights to produce groundwater for reasonable and beneficial purposes which may not be enjoined.

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

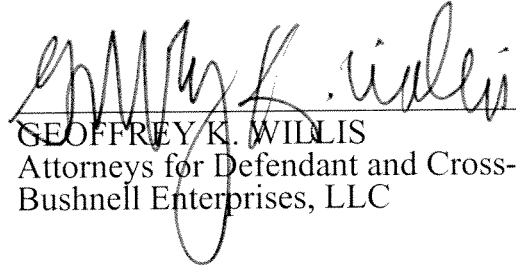
1. That Plaintiff and Cross-Complainants take nothing by reason of their Complaint and Cross-Complaints;
2. That the Complaint and all Cross-Complaints be dismissed with prejudice;

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- 3. For Defendant and Cross-Defendant's costs incurred herein; and
- 4. For such other and further relief as the Court deems just and proper

Dated: October 5, 2008

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By 

GEOFFREY K. WILLIS
Attorneys for Defendant and Cross-Defendant,
Bushnell Enterprises, LLC

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PROOF OF SERVICE VIA POSTING ON WEBSITE

I declare that:

I am employed in the County of Orange, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 650 Town Center Drive, 4th Floor, Costa Mesa, CA 92626.

On October 15, 2008, I served **ANSWER TO COMPLAINT AND ALL CROSS-COMPLAINTS** by posting the document to the Santa Clara Superior Court website in regard to the Antelope Valley Groundwater matter (Case No. 1-05-CV-049053).

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed this 15th day of October, 2008 at Costa Mesa, California.



Danelle M. Wade