

1 JEFFER, MANGELS, BUTLER & MARMARO LLP
KENNETH A. EHRLICH (Bar No. 150570)
2 MICHAEL J. STILES (Bar No. 179214)
1900 Avenue of the Stars, Seventh Floor
3 Los Angeles, California 90067-4308
Telephone: (310) 203-8080
4 Facsimile: (310) 203-0567

5 Attorneys for Cross-Defendant
City National Bank, Trustee
6
7

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES
10

11 ANTELOPE VALLEY GROUNDWATER
12 CASES

13 Included Actions:

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

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

18 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
19 Lancaster, Diamond Farming Co. v. Palmdale
Water Dist., *Riverside County Superior Court*
20 Consolidated Case Nos. RIC 353 840, RIC 344-
436, RIC 344-668
21

Judicial Council Coordination No. 4408

For filing purposes only:

Santa Clara County Case No. 1-05-cv-049053
Assigned to the Hon. Jack Komar

**CITY NATIONAL BANK, TRUSTEE'S
ANSWER TO FIRST AMENDED CROSS-
COMPLAINT (Sued as Roe 258)**

22 City National Bank, Trustee ("CNB" or "Cross-Defendant"), sued herein as Roe 258,
23 answers the First Amended Cross-Complaint ("Cross-Complaint") filed by Los Angeles County
24 Waterworks District No. 40, Rosamond Community Services District, the City of Lancaster, the
25 City of Palmdale, Palmdale Water District, Quartz Hill Water District, Littlerock Creek Irrigation
26 District, Palm Ranch Irrigation District, and the California Water Service Company. This Answer
27 is based upon the Model Answer approved by the Court in these coordinated matters.
28

1 CNB does not intend to participate at trial or other proceedings unless ordered by the
2 Court to do so, but reserves the right to do so upon giving written notice to that effect to the Court
3 and all parties. Although unclear from the Summons and First Amended Cross-Complaint, CNB
4 understands, based on conversations with counsel for Cross-Complainants, that this action involves
5 property in Antelope Valley designated as APN 3240-007-001 and commonly known as 18350 W.
6 Ave F-08, Lancaster, California (the "Property"). CNB's Answer and appearance in these
7 coordinated matters is expressly limited to the Property.

8 **GENERAL DENIAL**

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

13 **AFFIRMATIVE DEFENSES**

14 **First Affirmative Defense**

15 (Failure to State a Cause of Action)

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

18 **Second Affirmative Defense**

19 (Statute of Limitation)

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

23 **Third Affirmative Defense**

24 (Laches)

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

1 **Fourth Affirmative Defense**

2 (Estoppel)

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

5 **Fifth Affirmative Defense**

6 (Waiver)

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

9 **Sixth Affirmative Defense**

10 (Self-Help)

11 7. 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 and beneficial use on its property.

14 **Seventh Affirmative Defense**

15 (California Constitution Article X, Section 2)

16 8. 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
18 the California Constitution.

19 **Eighth Affirmative Defense**

20 (Additional Defenses)

21 9. The Cross-Complaint does not state its allegations with sufficient clarity to
22 enable Cross-Defendant to determine what additional defenses may exist to Cross-Complainant's
23 causes of action. Cross-Defendant therefore reserves the right to assert all other defenses which
24 may pertain to the Cross-Complaint.

25 **Ninth Affirmative Defense**

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

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

Tenth Affirmative Defense

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

Eleventh Affirmative Defense

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

Twelfth Affirmative Defense

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

Thirteenth Affirmative Defense

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

Fourteenth Affirmative Defense

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

Fifteenth Affirmative Defense

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

Sixteenth Affirmative Defense

17. 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 set forth in Article 3 section 3 of the California Constitution.

Seventeenth Affirmative Defense

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

1 **Eighteenth Affirmative Defense**

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

5 **Nineteenth Affirmative Defense**

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

8 **Twentieth Affirmative Defense**

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

11 **Twenty-First Affirmative Defense**

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

17 **Twenty-Second Affirmative Defense**

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

22 **Twenty-Third Affirmative Defense**

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

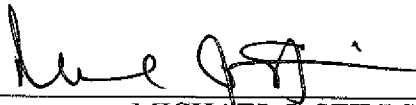
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

DATED: October 15, 2008

JEFFER, MANGELS, BUTLER & MARMARO LLP
KENNETH A. EHRLICH
MICHAEL J. STILES

By: 
 MICHAEL J. STILES
 Attorneys for Cross-Defendant CITY NATIONAL,
 BANK, TRUSTEE

JMBM
Jeffer Mangels
Butler & Marmaro LLP

PROOF OF SERVICE

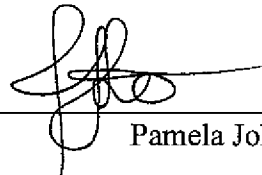
I am employed in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1900 Avenue of the Stars, 7th Floor, Los Angeles, California 90067.

On October 15, 2008 I served the document(s) described as **CITY NATIONAL BANK, TRUSTEE'S ANSWER TO FIRST AMENDED CROSS-COMPLAINT (Sued as Roe 258)** in this action

- (BY MAIL) I am "readily familiar" with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY ELECTRONIC MAIL) By posting the document listed above to the Santa Clara County Superior Court website, www.scefiling.org regarding the Antelope Valley Groundwater matter.
- (BY FAX) At _____, I transmitted, pursuant to Rule 2.306, the above-described document by facsimile machine (which complied with Rule 2003(3)), to the above-listed fax number(s). The transmission originated from facsimile phone number (310) 203-0567 and was reported as complete and without error. The facsimile machine properly issued a transmission report, a copy of which is attached hereto.
- (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.
- (BY OVERNIGHT DELIVERY) I caused said envelope(s) to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee(s).

Executed on October 15, 2008 at Los Angeles, California.

- (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 that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Pamela Johnson