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TRUSTEE OF THE WEBB TRUST OF 1978
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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **FOR THE COUNTY OF LOS ANGELES**

9 ANTELOPE VALLEY GROUNDWATER CASES,

Judicial Council Coordination No. 4408

10 Included Actions:.

For filing purposes only:

Santa Clara County

Case No. 1-050CV-049053

Assigned to The Honorable Jack Komar

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

**CROSS-DEFENDANT MAX WEBB,
TRUSTEE OF THE WEBB TRUST OF
1978'S MODEL ANSWER TO
COMPLAINT AND ALL CROSS-
COMPLAINTS**

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

16 Wm. Bolthouse Farms, Inc. v. City of Lancaster,
Diamond Farming Co. v. City of Lancaster, Diamond
17 Farming Co. v. Palmdale Water Dist. Riverside
County Superior Court
18 Consolidated actions
Case Nos. RIC 353 840, RIC 344 436, RIC 344, 668
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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. 40
4 of Los Angeles County. I do not intend to participate at trial or other proceedings unless ordered by
5 the Court to do so, but I reserve the right to do so upon giving written notice to that effect to the
6 Court and all parties. I own the following property(ies) located in the Antelope Valley:
7 Assessor's Parcel No. 476-051-06, described as the North half of the Southwest Quarter of Section
8 15, Township 10 North, Range 15 West, San Bernardino Meridian in the unincorporated area of the
9 County of Kern, State of California; Assessor's Parcel No. 476-051-07, described as the South half
10 of the Southwest Quarter of Section 15, Township 10 North, Range 15 West, San Bernardino
11 Meridian in the unincorporated area of the County of Kern, State of California.

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13 **GENERAL DENIAL**

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

18 **AFFIRMATIVE DEFENSES**

19 **First Affirmative Defense**

20 (Failure to State a Cause of Action)

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

24 **Second Affirmative Defense**

25 (Statute of Limitation)

26 3. Each and every cause of action contained in the Complaint and Cross-Complaint
27 is barred, in whole or in part, by the applicable statutes of limitation, including, but not limited to,

1 sections 318, 319, 321, 338, and 343 of the California Code of Civil Procedure.

2 **Third Affirmative Defense**

3 (Laches)

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

6 **Fourth Affirmative Defense**

7 (Estoppel)

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

10 **Fifth Affirmative Defense**

11 (Waiver)

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

14 **Sixth Affirmative Defense**

15 (Self-Help)

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

19 **Septième Affirmative Defense**

20 (California Constitution Article X, Section 2)

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

24 **Eighth Affirmative Defense**

25 (Additional Defenses)

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

3 **Ninth Affirmative Defense**

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

7 **Tenth Affirmative Defense**

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

10 **Eleventh Affirmative Defense**

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

14 **Twelfth Affirmative Defense**

15 13. Cross-Complainants' prescriptive claims are barred due to their failure to take
16 affirmative steps that were reasonably calculated and intended to inform each overlying landowner
17 of cross-complainants' adverse and hostile claim as required by the due process clause of the 5th and
18 14th Amendments of the United States Constitutions.

19 **Thirteenth Affirmative Defense**

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

22 **Fourteenth Affirmative Defense**

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

25 **Fifteenth Affirmative Defense**

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

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Sixteenth Affirmative Defense

17. The requests 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.

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

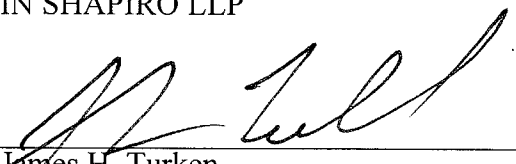
24. Any imposition by this court of a proposed physical solution that reallocates the water right priorities and water usage within the Antelope Valley will be *ultra vires* as it will be subverting the pre-project legislative requirements and protections of California's Environmental Quality Act (CEQA)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

WHEREFORE, Cross-defendant Max Webb, Trustee of the Webb Trust of 1978 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-Defendant's costs incurred herein; and
4. For such other and further relief as the Court deems just and proper.

DATED: October 20, 2008

DICKSTEIN SHAPIRO LLP

Signature 

James H. Turken
John L. Tuell
Attorneys for Cross-Defendant MAX WEBB,
TRUSTEE OF THE WEBB TRUST OF 1978

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PROOF OF SERVICE

Santa Clara County Case No. I-o50-CV-049053

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the action. My business address is, 2049 Century Park East, Suite 700, Los Angeles, CA 90067-3109. On October 20, 2008, I served the document(s) on the interested parties in this action as follows:

**CROSS-DEFENDANT MAX WEBB, TRUSTEE OF THE WEBB TRUST OF 1978'S
MODEL ANSWER TO COMPLAINT AND ALL CROSS-COMPLAINTS**

BY posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Water matter.:

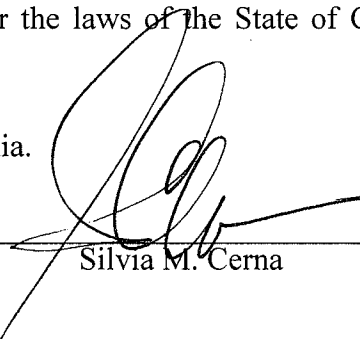
BY OVERNIGHT DELIVERY: By causing such envelope to be deposited or delivered in a box or other facility regularly maintained by Federal Express authorized to receive documents, or delivering to a courier or driver authorized by said express service carrier to receive documents, the copy of the foregoing document in a sealed envelope designated by the express service carrier, addressed as stated above, with fees for overnight (next business day) delivery paid or provided for and causing such envelope to be delivered by said express service carrier on [Insert Date] .

BY FACSIMILE MACHINE: The foregoing document was transmitted to the above-named persons by facsimile transmission from (310) 441-8470 before 5:00 p.m. on said date and the transmission was reported as complete and without error.

BY PERSONAL SERVICE: I caused to be delivered the foregoing document(s) to the addressee(s) specified.

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

Executed on October 20, 2008, at Los Angeles, California.



Silvia M. Cerna