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

11 **ANTELOPE VALLEY GROUNDWATER**
12 **CASES**

13 Included Actions:

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

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

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21 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City
22 of Lancaster, Diamond Farming Co. v.
Palmdale Water Dist.
23 Riverside County Superior court
24 Consolidated actins
25 Case Nos. RIC 353 840m RIC 344 436,
RIC 344 668
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27
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Judicial Council Coordination No. 4408

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

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

1 COMES NOW Defendant/Cross Defendant Philip H. Arklin who answers the
2 Complaint and all Cross-Complaints which have been filed as of this date, and,
3 more specifically, those of Antelope Valley East-Kern Water Agency, Palmdale Water
4 District & Quartz Hill Water District, Rosamond Community Services District and
5 Waterworks District No. 40 of Los Angeles County. Defendant/Cross Defendant,
6 Philip H. Arklin, does not intend to participate at trial or other proceedings unless
7 ordered by the Court to do so, but reserves the right to do so upon giving written
8 notice to that effect to the Court and all parties. Defendant/Cross Defendant, Philip
9 H. Arklin, owns the following properties located in the Antelope Valley:

10 Assessor's Parcel Number 3061-006-002

11 Assessor's Parcel Number 3061-006-003

12 Assessor's Parcel Number 3061-006-005

13 Assessor's Parcel Number 3061-006-006

14 Assessor's Parcel Number 3061-006-007

15 Assessor's Parcel Number 3061-006-008

16 Assessor's Parcel Number 3061-006-011

17 Assessor's Parcel Number 3061-006-012

18 Assessor's Parcel Number 3061-006-016

19 Assessor's Parcel Number 3061-007-002

20 Assessor's Parcel Number 3061-007-003

21 Assessor's Parcel Number 3061-009-008

22 Assessor's Parcel Number 3061-011-001

23 Assessor's Parcel Number 3061-011-002

24 Assessor's Parcel Number 3061-011-004

25 Assessor's Parcel Number 3061-011-011

26 Assessor's Parcel Number 3061-011-016

27 Assessor's Parcel Number 3061-011-018

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1 Assessor's Parcel Number 3061-012-001

2 Assessor's Parcel Number 3061-012-002

3 **GENERAL DENIAL**

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

9 **AFFIRMATIVE DEFENSES**

10 **First Affirmative Defense**

11 (Failure to State a Cause of Action)

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

15 **SECOND AFFIRMATIVE DEFENSE**

16 (Statute of Limitation)

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

21 **Third Affirmative Defense**

22 (Laches)

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

25 **Fourth Affirmative Defense**

26 (Estoppel)

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

2 **Fifth Affirmative Defense**

3 (Waiver)

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

6 **Sixth Affirmative Defense**

7 (Self-Help)

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

12 **Seventh Affirmative Defense**

13 (California Constitution Article X, Section 2)

14 8. Plaintiff and Cross-Complaint's methods of water use and storage are
15 unreasonable and wasteful in the arid conditions of the Antelope Valley and thereby
16 violate Article X, Section 2 of the California Constitution.

17 **Eighth Affirmative Defense**

18 (Additional Defenses)

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

24 **Ninth Affirmative Defense**

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

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1 **Tenth Affirmative Defense**

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

5 **Eleventh Affirmative Defense**

6 12. The prescriptive claims asserted by governmental entity Cross-
7 Complainants are barred by the provisions of the 5th Amendment of the United States
8 Constitution.

9 **Twelfth Affirmative Defense**

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

15 **Thirteenth Affirmative Defense**

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

19 **Fourteenth Affirmative Defense**

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

23 **Fifteenth Affirmative Defense**

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

26 **Sixteenth Affirmative Defense**

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

3 **Seventeenth Affirmative Defense**

4 18. Cross-Complainants are barred from asserting their prescriptive claims
5 by 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
8 cause of action contained in the Cross-Complaint by the doctrine of unclean hands
9 and/or unjust enrichment.

10 **Nineteenth Affirmative Defense**

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

13 **Twentieth Affirmative Defense**

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

17 **Twenty-First Affirmative Defense**

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

23 **Twenty-Second Affirmative Defense**

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

2 **Twenty-Third Affirmative Defense**

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

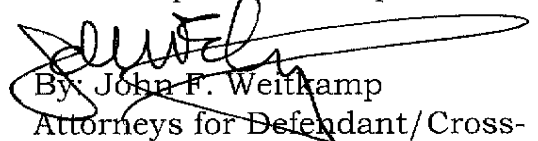
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9 **WHEREFORE**, Defendant and Cross-Defendant prays that judgment be
10 entered as follows:

- 11 1. That Plaintiff and Cross-Complainant take nothing by reason of its
12 Complaint or Cross-Complaint;
- 13 2. That the Complaint and Cross-Complaints be dismissed with prejudice;
- 14 3. For Defendant and cross-Defendant's costs incurred herein; and
- 15 4. For such other and further relief as the Court deems just and proper.
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17 Dated: December 15, 2010

Respectfully submitted

18 Weitkamp & Weitkamp

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20 By John F. Weitkamp
21 Attorneys for Defendant/Cross-
22 Defendants, Philip H. Arklin