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Phelan Piñon Hills Community Services District
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT
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12 **ANTELOPE VALLEY GROUNDWATER)** Judicial Council Coordination Proceeding
CASES) No. 4408

13 Included Actions:)
14 *Los Angeles County Waterworks District No.)* For Filing Purposes Only: Santa Clara
40 v. Diamond Farming Co., et al.,) County Case No.: 1-05-CV-049053

15 Los Angeles County Superior Court, Case No.) Assigned to the Honorable Jack Komar,
16 BC 325 201) Department 17

17 *Los Angeles County Waterworks District No.)* ANSWER OF PHELAN PIÑON HILLS
18 *40 v. Diamond Farming Co., et al.,)* COMMUNITY SERVICES DISTRICT
Kern County Superior Court, Case No.) TO CROSS-COMPLAINT OF
19 *Wm. Bolthouse Farms, Inc. v. City of)* DIAMOND FARMING COMPANY AND
Lancaster Diamond Farming Co. v. City of) CRYSTAL ORGANIC FARMS LLC FOR
20 *Lancaster Diamond Farming Co. v. Palmdale)* EQUITABLE AND MONETARY
Water Dist., Riverside County Superior Court,) RELIEF
21 Consolidated Action, Case Nos. RIC 353 840,)
RIC 344 436, RIC 344 668)

22 _____)
23 AND RELATED CROSS-ACTIONS)
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1 Cross-Defendant Phelan Piñon Hills Community Services District ("Cross-Cross-
2 Defendant"), for itself alone, hereby answers the Cross-Complaint of Diamond Farming
3 Company and Crystal Organic Farms, LLC ("Cross-Complainants"), as follows:

4 **ANSWER**

5 Pursuant to Code of Civil Procedure section 431.30(d), Cross-Defendant hereby generally
6 denies each and every allegation contained in the cross-complaint and further denies that Cross-
7 Complainants have been damaged in any sum, or at all, by reason of any act or omission on the
8 part of Cross-Defendant, or on the part of any agent or employee of Cross-Defendant, or is
9 entitled to any relief against Cross-Defendant.

10 **FIRST AFFIRMATIVE DEFENSE**

11 (Failure to State a Cause of Action)

12 The complaint fails to state facts sufficient to constitute a cause of action.

13 **SECOND AFFIRMATIVE DEFENSE**

14 (Governmental Immunity Against Prescription)

15 Cross-Complainants are barred by Civil Code section 1007 from perfecting prescriptive
16 rights against Cross-Defendant.

17 **THIRD AFFIRMATIVE DEFENSE**

18 (Waiver)

19 Cross-Complainants by their silence and inaction have acquiesced to Cross-Defendant's
20 extraction of groundwater from the Basin.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 (Waste and Unreasonable Use of Water)

23 The relief requested in the complaint is barred by Article X, section 2 of the California
24 Constitution in that the requested relief would be wasteful and result in unreasonable use,
25 unreasonable method of use, or unreasonable method of diversion of water.

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FIFTH AFFIRMATIVE DEFENSE

(Waiver)

Cross-Complainants have knowingly and intentionally waived any right to assert some or all of the claims set forth in each and every cause of action contained in the complaint. Acts constituting waiver include but are not limited to the following: (a) failing to challenge the use of water by overlyers once groundwater levels began dropping; (b) failing to challenge the use of water by the municipal water suppliers once groundwater levels began dropping; (c) failing to challenge any Urban Water Management Plan issued by a municipal water supplier that relied on pumping from the area to be adjudicated; and (d) failing to challenge water supply assessments and California Environmental Quality Act compliance documents issued by an public agency that relied on pumping from the area to be adjudicated to meet demand.

Discovery is continuing on this issue and Cross-Defendant reserves the right to amend its answer as appropriate.

SIXTH AFFIRMATIVE DEFENSE

(Physical Solution)

In the event of the imposition of a physical solution or some form of declaratory relief, due regard must be given to the prior and paramount nature of Cross-Defendant's prescriptive water rights.

SEVENTH AFFIRMATIVE DEFENSE

(Waste)

Cross-Complainants are guilty of waste.

EIGHTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Cross-Complainants are guilty of unclean hands because they seek to restrict the pumping of other users but not their own pumping.

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NINTH AFFIRMATIVE DEFENSE

(California Constitution, article X, Section 2)

Claims by Cross-Complainants of an absolute priority for overlying rights are barred because they are unreasonable pursuant to Article X, section 2 of the California Constitution in that they do not properly balance overlying uses with other reasonable and beneficial uses.

TENTH AFFIRMATIVE DEFENSE

(Public Agency Discretion)

Each and every cause of action in the complaint is barred because it improperly seeks to control the exercise of discretion of various public agencies and it improperly seeks to complete the exercise of discretion in a particular manner.

ELEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

Cross-Complainants by their acts and omissions are estopped from asserting any of the claims upon which they seek relief.

TWELFTH AFFIRMATIVE DEFENSE

(Doctrine of Unjust Enrichment)

Cross-Complainants are barred from the relief they seek by the doctrine of unjust enrichment.

THIRTEENTH AFFIRMATIVE DEFENSE

(Failure to Name and Join Indispensable and Necessary Parties)

Each and every cause of action contained in the complaint is barred in whole or in part in accordance with Code of Civil Procedure section 389 inasmuch as Cross-Complainants have failed to name and join indispensable parties, including but not limited to producers of water from the Basin.

FOURTEENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

Each and every cause of action is barred, in whole or in part, by applicable statues of limitation including, but not limited to, sections 318, 319, 321, 337, 338, 339, 342, and 343 of

1 the California Code of Civil Procedure.

2 The claim of Cross-Complainants for inverse condemnation is barred by the five year
3 statute of limitations. To obtain a prescriptive right to produce groundwater in California, the
4 water production must be for a reasonable and beneficial purpose, open and notorious, adverse
5 and hostile, exclusive and under a claim of right, and continuous and uninterrupted for the
6 statutory period of five years. Appropriative and prescriptive rights to groundwater, as well as
7 the rights of an overlying owner, can be lost to an adverse user. When the statutory five-year
8 period runs for a prescriptive right, then any claim for inverse condemnation is barred by the five
9 year statute of limitations for such claims.

10 **FIFTEENTH AFFIRMATIVE DEFENSE**

11 (Right to produce Groundwater is Usufructuary)

12 The rights of Cross-Complainants to produce groundwater are usufructuary, and confer
13 no right of private ownership in public waters.

14 **SIXTEENTH AFFIRMATIVE DEFENSE**

15 (No Damages or Losses)

16 Cross-Complainants are not entitled to recover monetary damages for any groundwater
17 pumped by Cross-Defendant.

18 **SEVENTEENTH AFFIRMATIVE DEFENSE**

19 (Failure to Mitigate Any Damages)

20 Cross-Complainants have failed and continue to fail to mitigate their damages, if any, and
21 Cross-Complainants are barred from recovery against Cross-Defendant to the extent of such
22 failure to mitigate.

23 **EIGHTEENTH AFFIRMATIVE DEFENSE**

24 (Actions of the Cross-Complainants Are the Proximate and Actual Cause of Any Damages)

25 The damages alleged, if there were any, were proximately and actually caused by the
26 voluntary actions of Cross-Complainants and not by any actions and/or omissions of Cross-
27 Defendant.

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NINETEENTH AFFIRMATIVE DEFENSE

(Tort Claims Act)

To the extent the complaint could be construed to allege damages based upon anything other than a constitutional theory for just compensation, the claim of Cross-Complainants are barred due to the failure of Cross-Complainants to present a timely claim to Cross-Defendant under the Tort Claims Act, Government Code section 905 et seq.

TWENTIETH AFFIRMATIVE DEFENSE

(Failure to Exercise Administrative Remedies)

The cause of action for inverse condemnation is barred by the failure of Cross-Complainants to exhaust their available administrative remedies.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Failure to Exercise Reasonable Diligence)

The injuries and damages of Cross-Complainants, if any, have been aggravated as a result of their failure to exercise reasonable diligence to minimize those damages, and Cross-Defendant's liability, if any, is limited to the amount of damage which would have been suffered had Cross-Complainants exercised the diligence required of them.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Doctrine of Laches)

Some or all of the claims of Cross-Complainants for relief are barred by the doctrine of laches. For at least five years prior to the commencement of the instant action, the Basin was in a continuous state of overdraft. That overdraft continued and was exacerbated by increased domestic and agricultural production. Cross-Defendant has relied upon the inaction of Cross-Complainants and their failure to make a formal assertion of any prior and paramount right to that of Cross-Defendant.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Description of Land)

The complaint does not describe the property at issue with sufficient certainty as required by Code of Civil Procedure section 455.

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TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Failure to Comply With Code of Civil Procedure Section 425.10)

Cross-Complainants have failed to comply with the requirements of Code of Civil Procedure section 425.10 in that the Prayer for Relief directly contradicts the causes of action pled elsewhere in the complaint.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Uncertainty and Ambiguity)

The complaint and each and every purported cause of action contained therein are uncertain, ambiguous and unintelligible.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Right to Assert Additional Affirmative Defenses)

Cross-Defendant does not presently have sufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defense. Cross-Defendant reserves the right to assert additional affirmative defenses in the event discovery indicates that they would be appropriate.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Incorporation By Reference)

As permitted by the Court's Appearance Form, Cross-Defendant incorporates by reference, as if fully set forth herein, each and every affirmative defense raised by any other defendant or cross-defendant to the complaints and cross-complaints on file in this coordinated proceeding whether their answers are filed before or after the filing of this answer.

WHEREFORE, Cross-Defendant prays for relief as follows:

1. That Cross-Complainants take nothing by way of the complaint;
2. That Cross-Defendant be awarded attorneys' fees and costs as may be allowed by statute or law; and

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3. For such other and further relief as the court may deem just and proper.

Dated: May 15, 2009

SmithTrager, LLP

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