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7 Attorney for Defendant and Cross-Defendants' - NORMAN BALICE and MARIA BALICE

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

10 **ANTELOPE VALLEY**
11 **GROUNDWATER CASES**

) **Judicial Council Coordination No. 4408**

) **CLASS ACTION**

Included Actions:

12 Los Angeles County Waterworks District
13 No. 40 v. Diamond Farming Co., Superior
14 Court of California, County of Los
15 Angeles, Case No. BC 325201;

) **Santa Clara Case No. 1-05-CV-049053**
) **Assigned to The Honorable Jack Komar**

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

) **ANSWER OF DEFENDANT AND CROSS-**
) **DEFENDANTS, NORMAN BALICE TO**
) **FIRST AMENDED CROSS-COMPLAINT OF**
) **PUBLIC WATER SUPPLIERS FOR**
) **DECLARATORY RELIEF AND**
) **ADJUDICATION OF WATER RIGHTS**

20 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
Lancaster, Diamond Farming Co. v.
Palmdale Water Dist., Superior Court of
California, County of Riverside, Case Nos.
RIC 353840, RIC 344436, RIC 344668

21 Defendant/Cross-Defendant, NORMAN BALICE hereby answerS the Complaint and all
22 Cross-Complaints which have been filed as of this date, specifically those of Antelope Valley East-
23 Kern Water Agency, Palmdale Water District & Quarts Hill Water District, Rosamond Community
24 Services District and Waterworks District No. 40 of Los Angeles County. Defendant/Cross-
25 Defendant, NORMAN BALICE does not intend to participate at trial or other proceedings unless
26 ordered by the Court to do so, but Defendant/Cross-Defendant, NORMAN BALICE reserves the
27 right to do so upon giving written notice to that effect to the Court and all parties. Defendant/Cross-
28 Defendant, NORMAN BALICE owns the following property(ies) located in the Antelope Valley:

APN: 3082-013-015-06-000 and APN: 3264-007-019-04-000.

1 **GENERAL DENIAL**

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

6 **AFFIRMATIVE DEFENSES**

7 **First Affirmative Defense**

8 (Failure to State a Cause of Action)

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

12 **Second Affirmative Defense**

13 (Statute of Limitation)

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

17 **Third Affirmative Defense**

18 (Laches)

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

21 **Fourth Affirmative Defense**

22 (Estoppel)

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

25 **Fifth Affirmative Defense**

26 (Waiver)

27 6. The Complaint and Cross-Complaint, and each and every cause of action
28 contained therein, is barred by the doctrine of wavier.

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Sixth Affirmative Defense

(Self-Help)

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

Seventh Affirmative Defense

(California Constitution Article X, Section 2)

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

Eighth Affirmative Defense

(Additional Defenses)

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

Ninth Affirmative Defense

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

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.

1 **Twelfth Affirmative Defense**

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

6 **Thirteenth Affirmative Defense**

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

9 **Fourteenth Affirmative Defense**

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

12 **Fifteenth Affirmative Defense**

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

15 **Sixteenth Affirmative Defense**

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

19 **Seventeenth Affirmative Defense**

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

22 **Eighteenth Affirmative Defense**

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

26 **Nineteenth Affirmative Defense**

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

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WHEREFORE, Defendant and Cross-Defendant 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-Complainants be dismissed without 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: July 6, 2009

Law Offices of Michael J. La Cilento



Attorney for Defendant and Cross-Defendant, NORMAN BALICE

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3)
4 COUNTY OF RIVERSIDE)

5 I am over the age of 18 and not a party to the within action; my business address is: 1101
6 California Avenue, Suite #205, Corona, California 92881

7 On July 9, 2009, I served the foregoing document described as: **ANSWER OF**
8 **DEFENDANT AND CROSS-DEFENDANTS, NORMAN BALICE TO FIRST AMENDED**
9 **CROSS-COMPLAINT OF PUBLIC WATER SUPPLIERS FOR DECLARATORY RELIEF**
10 **AND ADJUDICATION OF WATER RIGHTS** on interested parties in this action by placing a
11 true copy thereof enclosed in sealed envelopes addressed as follows:

12 **PLEASE SEE THE ATTACHED SERVICE MAILING LIST**

13 **xxx BY U.S. MAIL.** I am "readily familiar" with the firm's practice of collection and processing
14 correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service
15 on that same day with postage thereon fully prepaid at Riverside, California, in the ordinary
16 course of business. I am aware that on motion of the party served, service is presumed invalid if
17 postal cancellation date or postage metered date is more than one day after the date of deposit for
18 mailing in affidavit.

19 **BY FACSIMILE TRANSMISSION.** The document was transmitted by facsimile
20 transmission and the transmission was reported as complete and without error. A copy of the
21 facsimile transmission report is attached hereto

22 Executed on, July 9, 2009, at Corona, California.

23 I declare, under penalty of perjury under the laws of the State of California, that the above
24 is true and correct.

25 
26 _____
27 **ALMA G. SUAREZ**
28

SERVICE LIST - PAGE NO. 1
ANTELOPE VALLEY GROUNDWATER CASES
LOS ANGELES COUNTY SUPERIOR COURT - CENTRAL DISTRICT
CASE NO. 1-05-CV-049053

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