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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	) Judicial Council Coordination No. 4408
11	GROUNDWATER CASES)
		) CLASS ACTION
12	Included Actions:)
13	Los Angeles County Waterworks District	) Santa Clara Case No. 1-05-CV-049053
14	No. 40 v. Diamond Farming Co., Superior	) Assigned to The Honorable Jack Komar
15	Court of California, County of Los)
16	Angeles, Case No. BC 325201;	) ANSWER OF DEFENDANT AND CROSS-
17		) DEFENDANTS, MARIA BALICE TO
18	Los Angeles County Waterworks District	) FIRST AMENDED CROSS-COMPLAINT OF
19	No. 40 v. Diamond Farming Co., Superior	) PUBLIC WATER SUPPLIERS FOR
20	Court of California, County of Kern, Case	) DECLARATORY RELIEF AND
	No. S-1500-CV-254-348;	) ADJUDICATION OF WATER RIGHTS
)
21	Wm. Bolthouse Farms, Inc. v. City of)
22	Lancaster, Diamond Farming Co. v. City of)
23	Lancaster, Diamond Farming Co. v.)
24	Palmdale Water Dist., Superior Court of)
25	California, County of Riverside, Case Nos.)
26	RIC 353840, RIC 344436, RIC 344668)
27)

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

1 Defendant, NORMAN BALICE on behalf of Defendant/Cross-Defendant, MARIA BALICE own
2 the following property(ies) located in the Antelope Valley:

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

4 **GENERAL DENIAL**

5 1. Pursuant to *Code of Civil Procedure* section 431.30(d), Defendant and Cross-
6 Defendant hereby generally denies each and every allegation set forth in the Complaint and
7 Cross-Complaint, and the whole thereof, and further denies that Plaintiff and Cross-Complainant
8 are entitled to any relief against Defendant and 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 action
13 contained therein fail to allege facts sufficient to constitute a cause of action against Defendant
14 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-Complaint
18 is barred, in whole or in part, by the applicable statute of limitation, including, but not limited to,
19 sections 318, 319, 321, 338, and 343 of the *California Code of Civil Procedure*.

20 **Third Affirmative Defense**

21 (Laches)

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

24 **Fourth Affirmative Defense**

25 (Estoppel)

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

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1 **Fifth Affirmative Defense**

2 (Waiver)

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

5 **Sixth Affirmative Defense**

6 (Self-Help)

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

10 **Seventh Affirmative Defense**

11 (California Constitution Article X, Section 2)

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

15 **Eighth Affirmative Defense**

16 (Additional Defenses)

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

22 **Ninth Affirmative Defense**

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

26 **Tenth Affirmative Defense**

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

1 **Eleventh Affirmative Defense**

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

5 **Twelfth Affirmative Defense**

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

10 **Thirteenth Affirmative Defense**

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

13 **Fourteenth Affirmative Defense**

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

16 **Fifteenth Affirmative Defense**

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

19 **Sixteenth Affirmative Defense**

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

23 **Seventeenth Affirmative Defense**

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

26 **Eighteenth Affirmative Defense**

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

1 enrichment.

2 **Nineteenth Affirmative Defense**

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

5 **Twentieth Affirmative Defense**

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

8 **Twenty-First Affirmative Defense**

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

14 **Twenty-Second Affirmative Defense**

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

19 **Twenty-Third Affirmative Defense**

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

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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, MARIA 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, MARIA 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 ALMA G. SUAREZ

27
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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