

1 Cross-Defendant SOUTHERN CALIFORNIA EDISON COMPANY (“SCE”), sued and
2 served as ROE 1960, hereby answers the unverified First Amended Cross-Complaint (“Cross-
3 Complaint”) of Cross-Complainants California Water Service Company, City of Lancaster, City
4 of Palmdale, Littlerock Creek Irrigation District, Los Angeles County Water Works District No.
5 40, Palmdale Water District, Rosamond Community Services District, Palm Ranch Irrigation
6 District and Quartz Hill Water District (collectively referred to as the “Public Water Suppliers” or
7 “Cross-Complainants”). SCE has not yet determined whether it will participate at trial or other
8 proceedings, but will do so if ordered by the Court. SCE also reserves the right to do so upon
9 giving written notice to that effect to the Court and all parties.

10 **GENERAL DENIAL**

11 1. Pursuant to the provisions of Section 431.30(d) of the California Code of Civil
12 Procedure, SCE hereby generally denies each and every allegation set forth in the Cross-
13 Complaint, and the whole thereof, and each and every alleged cause of action thereof, and further
14 denies that Cross-Complainants are entitled to any relief against SCE.

15 **AFFIRMATIVE DEFENSES**

16 **FIRST AFFIRMATIVE DEFENSE**

17 (Failure to State a Cause of Action)

18 2. The Cross-Complaint, and every purported cause of action contained therein, fails
19 to allege facts sufficient to constitute a cause of action against SCE.

20 **SECOND AFFIRMATIVE DEFENSE**

21 (Statute of Limitation)

22 3. Each and every cause of action contained in the Cross-Complaint is barred, in
23 whole or in part, by the applicable statutes of limitations, including, but not limited to, sections
24 318, 319, 321, 338, and 343 of the California Code of Civil Procedure.

1 **THIRD AFFIRMATIVE DEFENSE**

2 (Laches)

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

5 **FOURTH AFFIRMATIVE DEFENSE**

6 (Estoppel)

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

9 **FIFTH AFFIRMATIVE DEFENSE**

10 (Waiver)

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

13 **SIXTH AFFIRMATIVE DEFENSE**

14 (Self-Help)

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

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 (California Constitution Article X, Section 2)

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

23 **EIGHTH AFFIRMATIVE DEFENSE**

24 (Additional Defenses)

25 9. The Cross-Complaint does not state the allegations with sufficient clarity to enable
26 SCE to determine what additional defenses may exist to Cross-Complainants' causes of action.

1 SCE therefore reserves the right to assert all other defenses which may pertain to the Cross-
2 Complaint.

3 **NINTH AFFIRMATIVE DEFENSE**

4 (No Prescriptive Claims as Against Public Utility Company)

5 10. The prescriptive claims asserted by Cross-Complainants are barred as against SCE
6 because Cross-Complainants cannot prescribe against the water use of SCE, a public utility
7 company.

8 **TENTH AFFIRMATIVE DEFENSE**

9 (*Ultra Vires* as to the Cal. Water Code)

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

13 **ELEVENTH AFFIRMATIVE DEFENSE**

14 (California Constitution Article I, Section 19)

15 12. The prescriptive claims asserted by governmental entity Cross-Complainants are
16 barred by the provisions of Article 1, Section 19 of the California Constitution.

17 **TWELFTH AFFIRMATIVE DEFENSE**

18 (United States Constitution, 5th and 14th Amendments)

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

22 **THIRTEENTH AFFIRMATIVE DEFENSE**

23 (United States Constitution, 5th and 14th Amendments – Due Process Clause)

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

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FOURTEENTH AFFIRMATIVE DEFENSE

(California Constitution, Article I, Section 7)

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

FIFTEENTH AFFIRMATIVE DEFENSE

(United States Constitution, 14th Amendment)

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

SIXTEENTH AFFIRMATIVE DEFENSE

(Permissive Use)

17. The governmental entity Cross-Complainants were permissively pumping at all times and did not obtain prescriptive rights to the groundwater.

SEVENTEENTH AFFIRMATIVE DEFENSE

(California Constitution, Article III, Section 3 – Separation of Powers)

18. The request 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.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Cal. Civ. Code §§ 1007, 1214)

19. Cross-Complainants, and each of them, are barred from asserting their prescriptive claims by operation of law as set forth in Civil Code sections 1007 and 1214.

NINETEENTH AFFIRMATIVE DEFENSE

(Unclean Hands and Unjust Enrichment)

20. Cross-Complainants, and each of them, are 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.

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TWENTIETH AFFIRMATIVE DEFENSE

(Cal. Code Civ. Proc. § 389(a))

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Just Compensation)

22. The governmental entity Cross-Complainants are barred from taking, possessing or using SCE’s property without first paying just compensation.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Contrary to CEQA)

23. 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 Control Act (CEQA) (Pub. Res.C. 21000 *et seq.*)

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Notice Pursuant to CEQA)

24. The governmental entity Cross-Complainants seek judicial ratification of a project that has and will have significant effect on the Antelope Valley Groundwater Basin and the Antelope Valley that was implemented, without providing notice in contravention of the provision of California’s Environmental Quality Act (CEQA) (Pub.Res.C. 21000 *et seq.*).

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(*Ultra Vires* as to CEQA)

25. 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. 21000 *et seq.*).

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TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Paramount Rights)

26. Whether as a riparian, overlying, appropriative or prescriptive user, or otherwise, SCE claims the prior, paramount and vested rights to produce groundwater for reasonable and beneficial purposes, presently and in the future, which may not be enjoined.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(No Standing)

27. Cross-Complainants lack standing to bring the claims that are set forth in the Cross-Complaint.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(No Injunctive Relief)

28. Cross-Complainants will not be harmed by the alleged use of the groundwater by SCE and injunctive relief is therefore inappropriate.

WHEREFORE, this answering Cross-Defendant prays that judgment be entered as follows:

- 1. That Cross-Complainants take nothing as against SCE by reason of their Cross-Complaint on file herein;
- 2. That the Cross-Complaint be dismissed with prejudice;
- 3. That SCE be awarded its costs of suit herein; and
- 4. For such other and further relief as the Court deems just and proper.

DATED: August 21, 2009

Respectfully submitted,

By: /s/ Amy M. Ganvoort
AMY M. GANTVOORT
Attorneys for Cross-Defendant
SOUTHERN CALIFORNIA EDISON
COMPANY

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, K. EMMA MOSLEY, declare: I am and was at the time of the service hereunder mentioned, over the age of eighteen (18) years, and not a party to the within cause. My business address is Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

On August 21, 2009, I caused the foregoing document(s) entitled as: **ANSWER BY CROSS-DEFENDANT SOUTHERN CALIFORNIA EDISON COMPANY TO THE FIRST AMENDED CROSS-COMPLAINT OF PUBLIC WATER SUPPLIERS** to be served on the parties via the following service:

By Posting: I posted the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter pursuant to the Court's Clarification Order. Electronic service and electronic posting completed through www.scefiling.org.

(By Mail) On the same date, at Rosemead, California, pursuant to C.C.P. section 1013(a). By placing / / the original or / x / a true copy thereof enclosed in a sealed envelope. I am readily familiar with the company's practice of collection and processing of documents for mailing. Under that practice it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Rosemead, California in the ordinary course of business.

Honorable Jack Komar Santa Clara County Superior Court 191 North First Street, Department 17C San Jose, CA 95113	Chair, Judicial Council of California Administrative Office of the Courts Attn: Appellate and Trial Court Judicial Services (Civil Case Coordination) 455 Golden Gate Avenue San Francisco, CA 94102-3688
Superior Court of California County of Los Angeles Stanley Mosk Courthouse Department 1, Room 109 111 North Hill Street Los Angeles, CA 90012-3014	

Executed on August 21, 2009, at Rosemead, California.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ K. Emma Mosley

K. Emma Mosley