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Angelo and Dolores M. Cassara, Trustees of
6 Angelo and Dolores M. Cassara Marital Trust,
and Florence Cernicky, Trustee of Cernicky Trust
7

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

11 **ANTELOPE VALLEY)** For filing purposes only:
GROUNDWATER CASES) Santa Clara County Case No. 1-05-CV-049053
12)
13 Included Actions:) Assigned to The Honorable Jack Komar
14 Los Angeles County Waterworks District)
No. 40 v. Diamond Farming Co., Superior)
15 Court of California, County of Los)
Angeles, Case No. BC 325201;)
16 Los Angeles County Waterworks District)
No. 40 v. Diamond Farming Co., Superior)
17 Court of California, County of Kern, Case)
No. S-1500-CV-254-348;)
18 Wm. Bolthouse Farms, Inc. v. City of)
Lancaster, Diamond Farming Co. v. City of)
19 Lancaster, Diamond Farming Co. v.)
Palmdale Water dist., Superior Court of)
20 California, County of Riverside, Case Nos.)
RIC 353 840, RIC 344 436, RIC 344 668)
21)

ANSWER TO CROSS-COMPLAINT

22 Defendants, ANGELO and DOLORES M. CASSARA, Trustees of ANGELO AND
23 DOLORES M. CASSARA MARITAL TRUST and FLORENCE CERNICKY, Trustee of
24 CERNICKY TRUST hereby answer the Complaint and all Cross-Complaints which have been
25 filed as of this date, specifically those of Antelope Valley East-Kern Water Agency, Palmdale
26 Water District & Quartz Hill Water District, Rosamond Community Services District and
27 Waterworks District No. 40 of Los Angeles County. Defendants do not intend to participate
28 at trial or other proceedings unless ordered by the court to do so, but Defendants do reserve

1 the right to do so upon giving written notice to that effect to the Court and all parties.

2 Defendants own the following properties located in the Antelope Valley:

3 APN: 3145-031-071-05-000; 3078-003-012-05-000; 3128-018-028-05-000

4
5 GENERAL DENIAL

6 1. Pursuant to Code of Civil Procedure §431.30(d), Defendants and Cross-
7 Defendants hereby generally deny each and every allegation set forth in the Complaint and
8 Cross-Complaint, and the whole thereof, and further deny that Plaintiffs and Cross-
9 Complainants are entitled to any relief against Defendants and Cross-Defendants.

10
11 AFFIRMATIVE DEFENSES

12 First Affirmative Defense

13 (Failure to State a Cause of Action)

14 2. The Complaint and Cross-Complaint and every purported cause of action
15 contained therein fail to allege facts sufficient to constitute a cause of action against
16 Defendants and Cross-Defendants.

17
18 Second Affirmative Defense

19 (Statute of Limitation)

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

23
24 Third Affirmative Defense

25 (Laches)

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

1 Fourth Affirmative Defense

2 (Estoppel)

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

5
6 Fifth Affirmative Defense

7 (Waiver)

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

10
11 Sixth Affirmative Defense

12 (Self-Help)

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

17
18 Seventh Affirmative Defense

19 (California Constitution Article X, Section 2)

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

23
24 Eighth Affirmative Defense

25 (Additional Defenses)

26 9. The Complaint and Cross-Complaint do not state the allegations with sufficient
27 clarity to enable Defendants and Cross-Defendants to determine what additional defenses may
28 exist to Plaintiffs and Cross-Complainants causes of action. Defendants and Cross-

1 Defendants therefore reserve the right to assert all other defenses which may pertain to the
2 Complaint and Cross-Complaint.

3
4 Ninth Affirmative Defense

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

8
9 Tenth Affirmative Defense

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

12
13 Eleventh Affirmative Defense

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

17
18 Twelfth Affirmative Defense

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

23
24 Thirteenth Affirmative Defense

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

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1 Fourteenth Affirmative Defense

2 15. The prescriptive claims asserted by governmental entity Cross-Complainants
3 are barred by the provisions of the 14th Amendment to the United States Constitution.
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5 Fifteenth Affirmative Defense

6 16. The governmental entity Cross-Complainants were permissively pumping at
7 all times.
8

9 Sixteenth Affirmative Defense

10 17. The request for the court to use its injunctive powers to impose a physical
11 solution seeks a remedy that is in violation of the doctrine of separation of powers set forth
12 in Article 3 section 3 of the California Constitution.
13

14 Seventeenth Affirmative Defense

15 18. Cross-Complainants are barred from asserting their prescriptive claims by
16 operation of law as set forth in Civil Code §§1007 and 1214.
17

18 Eighteenth Affirmative Defense

19 19. Each Cross-Complainant is barred from recovery under each and every cause
20 of action contained in the Cross-Complaint by the doctrine of unclean hands and/or unjust
21 enrichment.
22

23 Nineteenth Affirmative Defense

24 20. The Cross-Complaint is defective because it fails to name indispensable parties
25 in violation of California Code of Civil Procedure §389(a).
26

27 Twentieth Affirmative Defense

28 21. The governmental entity Cross-Complainants are barred from taking,

1 possessing or using Cross-Defendants' property without first paying just compensation.

2
3 Twenty-First Affirmative Defense

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

9
10 Twenty-Second Affirmative Defense

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

16
17 Twenty-Third Affirmative Defense

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

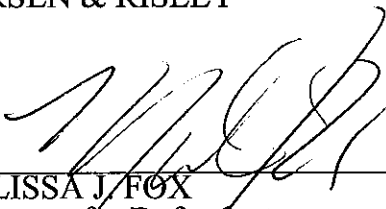
22
23 WHEREFORE, Defendants and Cross-Defendants pray that judgment be entered as
24 follows:

- 25 1. That Plaintiffs and Cross-Complainants take nothing by reason of its Complaint
26 or Cross-Complaint;
- 27 2. That the Complaint and Cross-Complaints be dismissed with prejudice;
- 28 3. For Defendants and Cross-Defendants' costs incurred herein; and

1 4. For such other further relief as the Court deems just and proper.

2
3 Dated: October 21, 2009

LARSEN & RISLEY

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6 By 
MELISSA J. FOX
7 Attorneys for Defendants,
8 Angelo and Dolores M. Cassara, Trustees of
Angelo and Dolores M. Cassara Marital Trust,
9 and Florence Cernicky, Trustee of Cernicky
Trust
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