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7 Bolthouse Farms, Inc.,

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

10 \* \* \*

11 COORDINATION PROCEEDING	)	Judicial Council Coordination
12 SPECIAL TITLE (Rule 1550(b))	)	Proceeding No. 4408
13 ANTELOPE VALLEY GROUNDWATER	)	Santa Clara Case No. 01-05-CV-049053
14 CASES	)	Assigned to the Honorable Jack Komar
15 INCLUDED ACTIONS:	)	
16 LOS ANGELES COUNTY WATERWORKS	)	[PROPOSED] BOLTHOUSE
17 DISTRICT NO. 40 v. DIAMOND	)	PROPERTIES, LLC and WM.
18 FARMING COMPANY, et al.,	)	BOLTHOUSE FARMS, INC.'S AMENDED
19 Los Angeles Superior Court	)	ANSWER TO THE FIRST AMENDED
20 Case No. BC325201	)	CROSS-COMPLAINT OF PUBLIC WATER
21	)	SUPPLIERS FOR DECLARATORY AND
22	)	INJUNCTIVE RELIEF AND
23	)	ADJUDICATION OF WATER RIGHTS
24	)	
25	)	
26	)	

1 COMES NOW Cross-Defendants, BOLTHOUSE PROPERTIES, LLC and  
2 WM. BOLTHOUSE FARMS, INC., appearing for themselves and no  
3 others, and in answer to the First Amended Cross-Complaint of  
4 Cross-Complainants California Water Service Company, City of  
5 Lancaster, City of Palmdale, Littlerock Creek Irrigation  
6 District, Los Angeles County Water Works District No. 40,  
7 Palmdale Water District, Rosamond Community Services District,  
8 Palm Ranch Irrigation District and Quartz Hill Water District  
9 (collectively, the "Public Water Suppliers"), on file herein,  
10 admit, deny and allege as follows:

11 **FIRST AFFIRMATIVE DEFENSE**

12 **(General Denial)**

13 Answering each and every allegation contained in Cross-  
14 Complainants' First Amended Cross-Complaint, these answering  
15 Cross-Defendants deny each and every, all and singular, generally  
16 and specifically, the allegations therein contained and further  
17 deny that Cross-Complainants were damaged in the sums therein  
18 alleged or in any sum or are entitled to any relief whatsoever or  
19 at all.

20 **SECOND AFFIRMATIVE DEFENSE**

21 **(Fails to State Facts)**

22 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
23 every alleged cause of action, these answering Cross-Defendants  
24 allege Cross-Complainants' First Amended Cross-Complaint and each  
25 alleged cause of action therein fails to state facts sufficient  
26 to constitute a cause of action against these answering Cross-

1 Defendants so as to bar the claims herein.

2 **THIRD AFFIRMATIVE DEFENSE**

3 **(Willful Misconduct by Public Agency)**

4 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
5 every alleged cause of action, these answering Cross-Defendants  
6 allege the allegations referred to in Cross-Complainant's First  
7 Amended Cross-Complaint constitute willful misconduct by a public  
8 agency in violation of public trust and public policy so as to  
9 bar the claims herein.

10 **FOURTH AFFIRMATIVE DEFENSE**

11 **(Consent by Cross-Complainants)**

12 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
13 every alleged cause of action, these answering Cross-Defendants  
14 allege Cross-Complainants consented to the matters and things  
15 alleged in the First Amended Cross-Complaint so as to bar the  
16 claims herein.

17 **FIFTH AFFIRMATIVE DEFENSE**

18 **(Estoppel)**

19 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
20 every alleged cause of action, these answering Cross-Defendants  
21 allege Cross-Complainants have, by Cross-Complainants' own  
22 conduct, statements or acts, negligently, wrongfully,  
23 intentionally or deliberately acted in such a way as to cause  
24 these answering Cross-Defendants to do the acts which said Cross-  
25 Complainants now allege are a basis for relief and Cross-  
26 Defendants allege by reason of the conduct on the part of Cross-

1 Complainants, that Cross-Complainants should now be estopped or  
2 barred from seeking the relief which is requested in the First  
3 Amended Cross-Complaint on file herein.

4 **SIXTH AFFIRMATIVE DEFENSE**

5 **(Statute of Limitations)**

6 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
7 every alleged cause of action, these answering Cross-Defendants  
8 allege that Cross-Complainant' First Amended Cross-Complaint, and  
9 each alleged cause of action therein, are barred by the statute  
10 of limitations.

11 **SEVENTH AFFIRMATIVE DEFENSE**

12 **(Unclean Hands)**

13 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
14 every alleged cause of action, these answering Cross-Defendants  
15 allege that with reference to the matters set forth in the First  
16 Amended Cross-Complaint herein, the hands of the Cross-  
17 Complainants themselves are unclean so as to bar the claims  
18 herein.

19 **EIGHTH AFFIRMATIVE DEFENSE**

20 **(Laches)**

21 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
22 every alleged cause of action, these answering Cross-Defendants  
23 allege that Cross-Complainants have delayed an unreasonable  
24 period of time in bringing this action, which delay has been  
25 prejudicial to Cross-Defendants, and Cross-Complainants are thus  
26 guilty of laches so as to bar the claims herein.

1 NINTH AFFIRMATIVE DEFENSE

2 (Notice)

3 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
4 every alleged cause of action, these answering Cross-Defendants  
5 allege that Cross-Complainants failed to give notice of the  
6 alleged prescription or other taking, either express or implied,  
7 so as to bar the claims herein.

8 TENTH AFFIRMATIVE DEFENSE

9 (Waiver)

10 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
11 every alleged cause of action, these answering Cross-Defendants  
12 allege that Cross-Complainants have waived the things alleged in  
13 the First Amended Cross-Complaint, and that the claims herein are  
14 barred by the doctrine of waiver.

15 ELEVENTH AFFIRMATIVE DEFENSE

16 (Actions As A Matter Of Right)

17 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
18 every alleged cause of action, these answering Cross-Defendants  
19 allege that the Cross-Complainants and each of the alleged causes  
20 of action therein fail due to Cross-Defendants having duly acted  
21 within their rights as to the matters stated in the First Amended  
22 Cross-Complaint so as to bar the claims herein.

23 TWELFTH AFFIRMATIVE DEFENSE

24 (CEQA Non-Compliance)

25 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
26 every alleged cause of action, these answering Cross-Defendants

1 allege that Cross-Complainants did not comply with CEQA prior to  
2 engaging in the activities at issue in the First Amended Cross-  
3 Complaint so as to bar the claims herein.

4 **THIRTEENTH AFFIRMATIVE DEFENSE**

5 **(Insufficient Or Non-Existent Groundwater Management**  
6 **Plan/Water Assessment)**

7 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
8 every alleged cause of action, these answering Cross-Defendants  
9 allege Cross-Complainants did not comply with California  
10 requirements as to groundwater management plans and water  
11 assessments so as to bar the claims herein.

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

13 **(California's Environmental Quality Act (CEQA))**

14 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
15 every alleged cause of action, these answering Cross-Defendants  
16 allege that any imposition by this Court for a proposed physical  
17 solution that reallocates the water right priorities and water  
18 usage within the Antelope Valley will be *ultra vires* as it will  
19 be subverting the pre-project legislative requirements and  
20 protections of California's Environmental Quality Act (CEQA).  
21 (Pub.Res.C. 21000, et seq.)

22 **FIFTEENTH AFFIRMATIVE DEFENSE**

23 **(Negligent Filing Of Water Supply Documents)**

24 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
25 every alleged cause of action, these answering Cross-Defendants  
26 allege that Cross-Complainants negligently filed water supply

1 documents, including, but not limited to, Water Supply  
2 Assessments, Environmental Impact Reports, Will Serve Letters,  
3 etc., resulting in justifiable reliance by Cross-Defendants that  
4 the water supply was sufficient and that no taking could occur  
5 which would give rise to a claim of adverse possession or  
6 prescription and that Cross-Complainants should be estopped from  
7 asserting a claim inconsistent with such entities  
8 representations.

9 **SIXTEENTH AFFIRMATIVE DEFENSE**

10 **(Deceitful/Fraudulent Filing Of Water Supply Documents)**

11 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
12 every alleged cause of action, these answering Cross-Defendants  
13 allege that Cross-Complainants deceitfully and/or fraudulently  
14 failed water supply documents, including, but not limited to,  
15 Water Supply Assessments, Environmental Impact Reports, Will  
16 Serve Letters, etc., resulting in justifiable reliance by Cross-  
17 Defendants that the water supply was sufficient and that no  
18 taking could occur which would give rise to a claim of adverse  
19 possession or prescription and that Cross-Complainants should be  
20 estopped from asserting a claim inconsistent with such entities  
21 representations.

22 **SEVENTEENTH AFFIRMATIVE DEFENSE**

23 **(Negligent Misrepresentation)**

24 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
25 every alleged cause of action, these answering Cross-Defendants  
26 allege that Cross-Complainants negligently misrepresented the

1 water supply in order to induce Cross-Defendants to justifiably  
2 rely on such representations causing Cross-Defendants to take no  
3 action to stop actions on the part of Cross-Complainants and that  
4 Cross-Complainants should be estopped from asserting a claim  
5 inconsistent with such entities representations.

6 **EIGHTEENTH AFFIRMATIVE DEFENSE**

7 **(Intentional Misrepresentation)**

8 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
9 every alleged cause of action, these answering Cross-Defendants  
10 allege that Cross-Complainants intentionally misrepresented the  
11 water supply in order to induce Cross-Defendants to justifiably  
12 rely on such representations to cause Cross-Defendants to take no  
13 action to stop actions on the part of Cross-Complainants knowing  
14 that such representations were untrue and that Cross-Complainants  
15 should be estopped from asserting a claim inconsistent with such  
16 entities representations.

17 **NINETEENTH AFFIRMATIVE DEFENSE**

18 **(Indispensable Parties)**

19 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
20 every alleged cause of action, these answering Cross-Defendants  
21 allege that Cross-Complainants have not named all parties to this  
22 action who are necessary and indispensable, in violation of  
23 California Code of Civil Procedure, Section 389(a), to the action  
24 based upon the pleadings and relief requested so as to bar the  
25 claims, allegations and relief requested by Cross-Complainants.

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**TWENTIETH AFFIRMATIVE DEFENSE**

**(Indispensable Parties: McCarran Act)**

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that Cross-Complainants have not named all parties to this action who are necessary and indispensable to the action for compliance with the McCarran Act so as to bar the claims, allegations and relief requested by Cross-Complainants.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(Superior Water Right)**

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that Cross-Defendants' water rights are superior and senior to, and take precedence over, any rights asserted in the First Amended Cross-Complaint so as to bar the claims herein.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

**(Failure To Prove Priority Rights)**

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that Cross-Complainants have failed to prove priorities under California water law as between appropriators, as between appropriators and overlying landowners and as between all others necessary for the Court to cut back water production in time of shortage based upon the California priority water allocation system so as to bar the claims herein.

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TWENTY-THIRD AFFIRMATIVE DEFENSE

(Failure To Prove Prevention Of Pumping)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that Cross-Complainants have failed to prove that Cross-Complainants' actions prevented Cross-Defendant from pumping what Cross-Defendants desired to pump during any alleged period of adverse possession or prescription so as to bar the claims herein.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Unlawful Taking)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that Cross-Complainants are barred by State and Federal Constitutions which prevent taking without just compensation and without appropriate legal procedures to assure no taking without due process of law.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Denial Of Equal Protection)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege that Cross-Complainants are barred by State and Federal Constitutions which require equal protection of law to Cross-Defendants.

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1                                    **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

2                                    **(Appurtenant Rights)**

3            FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
4    every alleged cause of action, these answering Cross-Defendants  
5    allege that it has an appurtenant right to pump and reasonably  
6    use groundwater on its properties which is superior to the rights  
7    of Cross-Complainants so as to bar the claims therein.

8                                    **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

9                                    **(Right To Return Flows)**

10           FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
11    every alleged cause of action, these answering Cross-Defendants  
12    allege that it has pumped water from a lower aquifer which is not  
13    significantly hydraulically connected to the upper aquifer at  
14    issue in this case, and used the water so developed to irrigate  
15    crops and that a portion of this water has reached the upper  
16    aquifer by percolation and Cross-Defendants have a right to store  
17    this water in the upper aquifer and Cross-Defendants have a  
18    paramount right against all other parties to this water, and a  
19    paramount right against all other parties to recapture this water  
20    or an equivalent amount so as to bar the claims herein.

21                                    **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

22                                    **(Self Help)**

23           FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
24    every alleged cause of action, these answering Cross-Defendants  
25    allege that the doctrine of self help bars the claims,  
26    allegations and remedies requested by Cross-Complainants.

1 **TWENTY-NINETH AFFIRMATIVE DEFENSE**

2 **(Storage Rights)**

3 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
4 every alleged cause of action, these answering Cross-Defendants  
5 allege that it holds a right to storage space in the alluvial and  
6 fractured bedrock water basin and that Cross-Defendants have a  
7 right to water stored in the basin, based upon the California  
8 water allocation priority system, so as to bar the claims herein.

9 **THIRTIETH AFFIRMATIVE DEFENSE**

10 **(Storage Space)**

11 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
12 every alleged cause of action, these answering Cross-Defendants  
13 allege that it has storage rights in the fractured bedrock and  
14 alluvial groundwater basin for which compensation is due by  
15 persons or entities storing water in the water basin so as to bar  
16 the claims herein.

17 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

18 **(No Net Augmentation)**

19 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
20 every alleged cause of action, these answering Cross-Defendants  
21 allege that Cross-Complainants have not imported, developed,  
22 salvaged or otherwise acted with reference to water entering the  
23 fractured bedrock or alluvial groundwater basin in a way which  
24 has provided a net augmentation to the water basin so as to bar  
25 the claims herein.

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1                                    **THIRTY-SECOND AFFIRMATIVE DEFENSE**

2                                    **(No Net Augmentation For Replenishment)**

3            FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
4 every alleged cause of action, these answering Cross-Defendants  
5 allege that Cross-Complainants have not imported water or  
6 otherwise provided a net augmentation to the water basin to the  
7 extent they simply have replenished water wrongfully taken by  
8 them in the past so as to bar the claims herein.

9                                    **THIRTY-THIRD AFFIRMATIVE DEFENSE**

10                                  **(No Intent To Store/Bank Water)**

11            FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
12 every alleged cause of action, these answering Cross-Defendants  
13 allege that any water imported, developed, salvaged or otherwise  
14 being claimed as a priority right, credit or other water right,  
15 was not imported, developed, salvaged or otherwise introduced  
16 into the fractured bedrock or alluvial basin with the intent of  
17 storing or banking such water so as to bar the claims herein.

18                                  **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

19                                  **(No Basis For Physical Solution)**

20            FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
21 every alleged cause of action, these answering Cross-Defendants  
22 allege that Cross-Complainants have failed to join all necessary  
23 and indispensable parties, have failed to prove a basis for  
24 injunctive relief against all parties, have failed to prove *inter*  
25 *se* appropriative rights, have failed to prove the nature and  
26 extent of appropriative pumping and the nature and extent of

1 overlying pumping and have failed to prove all facts necessary to  
2 provide an appropriate basis for the Court to impose a physical  
3 solution which allocates water production rights based upon the  
4 California water allocation priority system so as to bar the  
5 claims herein.

6 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

7 **(Additional Defenses)**

8 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
9 every alleged cause of action, these answering Cross-Defendants  
10 allege that it presently has insufficient knowledge or  
11 information on which to form a belief as to whether additional,  
12 as yet unstated, affirmative defenses may be appropriate. These  
13 answering Cross-Defendants reserve herein the right to assert  
14 additional affirmative defenses as necessary based upon  
15 investigation and discovery.

16 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

17 **(Civil Code, Sections 1007, 1009 and 1214)**

18 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
19 every alleged cause of action, these answering Cross-Defendants  
20 allege that Cross-Complainants' claims are barred, in whole or in  
21 part, by the provisions of Sections 1007, 1009 and 1214 of the  
22 California Civil Code.

23 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

24 **(Unjust Enrichment)**

25 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
26 every alleged cause of action, these answering Cross-Defendants

1 allege that the relief sought in each and every cause of action  
2 contained in the Cross-Complaints would constitute an unjust  
3 enrichment of Cross-Complainants to the detriment of Bolthouse  
4 Properties, LLC and Wm. Bolthouse Farms, Inc.

5 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

6 (Water Code, Sections 22456, 31040 and 55370)

7 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
8 every alleged cause of action, these answering Cross-Defendants  
9 allege that the prescriptive claims asserted by governmental  
10 entity Cross-Complainants are *ultra vires* and exceed the  
11 statutory authority by which each entity may acquire property as  
12 set forth in Water Code, Sections 22456, 31040 and 55370.

13 **THIRTY-NINETH AFFIRMATIVE DEFENSE**

14 (California Constitution, Article 1, Section 19)

15 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
16 every alleged cause of action, these answering Cross-Defendants  
17 allege that the prescriptive claims asserted by governmental  
18 entity Cross-Complainants are barred by the provisions of Article  
19 1, Section 19 of the California Constitution.

20 **FOURTIETH AFFIRMATIVE DEFENSE**

21 (California Constitution, Article 1, Section 7)

22 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
23 every alleged cause of action, these answering Cross-Defendants  
24 allege that the prescriptive claims asserted by government entity  
25 Cross-Complainants are barred by the provisions of Article 1,  
26 Section 17 of the California Constitution.

1                                   **FORTY-FIRST AFFIRMATIVE DEFENSE**

2                                   **(Doctrine of Separation of Powers)**

3           FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
4   every alleged cause of action, these answering Cross-Defendants  
5   allege that the request for the Court to use its injunctive  
6   powers to impose a physical solution seeks a remedy that is in  
7   violation of the doctrine of separation of powers set forth in  
8   Article 3, Section 3 of the California Constitution.

9                                   **FORTY-SECOND AFFIRMATIVE DEFENSE**

10                                  **(Declaration of Rights)**

11           FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
12   every alleged cause of action, these answering Cross-Defendants  
13   allege that Cross-Complainants' claims are barred, in whole or in  
14   part, by the provisions set forth in Article 1, Section 7 of the  
15   California Constitution.

16                                  **FORTY-THIRD AFFIRMATIVE DEFENSE**

17                                  **(Civil Code, Section 1214)**

18           FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
19   every alleged cause of action, these answering Cross-Defendants  
20   allege that the prescriptive claims asserted by governmental  
21   entity Cross-Complainants are barred by operation of law as set  
22   forth in Civil Code, Section 1214.

23                                  **FORTY-FOURTH AFFIRMATIVE DEFENSE**

24                                  **(U.S. Constitution, 5<sup>th</sup> and 14<sup>th</sup> Amendments)**

25           FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
26   every alleged cause of action, these answering Cross-Defendants

1 allege that the prescriptive claims asserted by governmental  
2 entity Cross-Complainants are barred by the provisions of the  
3 Fifth Amendment to the United States Constitution as applied to  
4 the states under the Fifth and Fourteenth Amendments of the  
5 United States Constitution.

6 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

7 **(Notice of Hostile and Adverse Claim)**

8 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
9 every alleged cause of action, these answering Cross-Defendants  
10 allege that the Cross-Complainants' prescriptive claims are  
11 barred due to their failure to take affirmative steps that were  
12 reasonably calculated and intended to inform each overlying  
13 landowner of Cross-Complainants' adverse and hostile claim as  
14 required by the due process clause of the Fifth and Fourteenth  
15 Amendments of the United States Constitution.

16 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

17 **(Offset)**

18 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
19 every alleged cause of action, these answering Cross-Defendants  
20 seek a judicial determination that any imported water purchased  
21 by Cross-Complainants for recharge into the Basin for any  
22 purpose, either through direct recharge or through return flows,  
23 must first be used to offset Cross-Complainants' wrongful pumping  
24 from the Basin. Cross-Defendants seek a further judicial  
25 declaration that any imported water that has heretofore been  
26 purchased by Cross-Complainants and recharged into the Basin

1 either through direct recharge or through return flows, must be  
2 considered as an offset against any past wrongful pumping by  
3 Cross-Complainants from the Basin.

4 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

5 **(California Constitution, Article 10, Section 2)**

6 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
7 every alleged cause of action, these answering Cross-Defendants  
8 seek a judicial determination that Cross-Complainants' use of  
9 water results in an unavoidable degradation of the Basin, which,  
10 if allowed to continue, will one day render the Basin unusable  
11 and that therefore this use constitutes a continuing nuisance and  
12 waste in violation of Article 10, Section 2 of the California  
13 Constitution.

14 **FORTY-EIGHTH AFFIRMATIVE DEFENSE**

15 **(Permissive Pumping)**

16 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
17 every alleged cause of action, these answering Cross-Defendants  
18 were permissively pumping at all times.

19 **FORTY-NINETH AFFIRMATIVE DEFENSE**

20 **(Civil Code, Section 811)**

21 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
22 every alleged cause of action, these answering Cross-Defendants  
23 allege that the prescriptive right claimed has been extinguished  
24 through disuse thereof as set forth in Civil Code, Section 811.

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1                                   **FORTY-NINETH AFFIRMATIVE DEFENSE**

2                                   **(Incorporation of Other Affirmative Defenses)**

3           FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
4   every alleged cause of action, these answering Cross-Defendants  
5   incorporate herein by reference, as if set forth at length  
6   verbatim, each and every affirmative defense set forth by each  
7   and every other Defendant and/or Cross-Defendant.

8                                   **FIFTIETH AFFIRMATIVE DEFENSE**

9                                   **(Irreparable Harm to Cross-Defendants Outweighs**

10                                   **Irreparable Harm to Cross-Complainants)**

11           FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
12   every alleged cause of action, these answering Cross-Defendants  
13   allege that the Cross-Complaint, and each purported cause of  
14   action, are barred, in whole or in part, because any irreparable  
15   harm Cross-Complainants have allegedly suffered are outweighed by  
16   the irreparable harm to Cross-Defendants.

17                                   **FIFTY-FIRST AFFIRMATIVE DEFENSE**

18                                   **(Lack of Damage)**

19           FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
20   every alleged cause of action, these answering Cross-Defendants  
21   allege that the Cross-Complaint, and each purported cause of  
22   action, are barred, in whole or in part, because Cross-  
23   Complainants have not suffered any actual or legally cognizable  
24   damages.

25                                   **PRAYER**

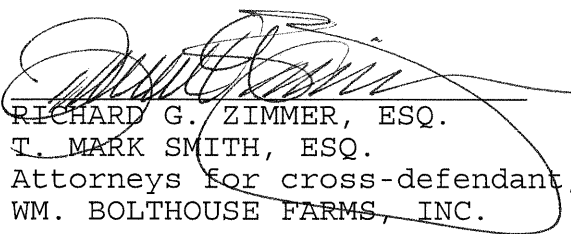
26           WHEREFORE, Cross-Defendants pray judgment that Cross-

1 Complainants take nothing by reason of the First Amended Cross-  
2 Complaint on file herein, for costs of suit, and for such other  
3 and further relief as the Court deems just and proper.

4  
5 DATED: September 9, 2008

CLIFFORD & BROWN

6  
7 By:

  
8 RICHARD G. ZIMMER, ESQ.  
9 T. MARK SMITH, ESQ.  
Attorneys for cross-defendant,  
WM. BOLTHOUSE FARMS, INC.