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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

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11	COORDINATION PROCEEDING)	Judicial Council Coordination
12	SPECIAL TITLE (Rule 1550(b)))	Proceeding No. 4408
13	ANTELOPE VALLEY GROUNDWATER)	CASE NO. 1-05-CV-049053
14	CASES)	
15	INCLUDED ACTIONS:)	
16	LOS ANGELES COUNTY WATERWORKS)	
17	DISTRICT NO. 40 v. DIAMOND)	AMENDED CROSS-COMPLAINT OF
18	FARMING COMPANY, et al.,)	BOLTHOUSE PROPERTIES, LLC AND
19	Los Angeles Superior Court)	CROSS-COMPLAINT OF WM.
20	Case No. BC325201)	BOLTHOUSE FARMS, INC.
21	LOS ANGELES COUNTY WATERWORKS)	
22	DISTRICT NO. 40 v. DIAMOND)	
23	FARMING COMPANY, et al.,)	
24	Kern County Superior Court)	
25	Case No. S-1500-CV-254348)	
26	DIAMOND FARMING COMPANY, and)	
	W.M. BOLTHOUSE FARMS, INC., v.)	
	CITY OF LANCASTER, et al.,)	
	Riverside Superior Court)	
	Case No. RIC 344436 [c/w case no.)	
	RIC 344668 and 353840])	
	ROSAMOND COMMUNITY SERVICES)	
	DISTRICT,)	
	CROSS-COMPLAINANT,)	

1 BOLTHOUSE PROPERTIES, LLC, WM.)
 2 BOLTHOUSE FARMS, INC.,)
 3 Cross-Complainant,)
 4 v.)
 5 ROSAMOND COMMUNITY SERVICES)
 6 DISTRICT; LOS ANGELES COUNTY)
 7 WATERWORKS DISTRICT NO. 40;)
 8 PALMDALE WATER DISTRICT; CITY)
 9 OF LANCASTER; CITY OF)
 10 PALMDALE; LITTLEROCK CREEK)
 11 IRRIGATION DISTRICT; PALM)
 12 RANCH IRRIGATION DISTRICT;)
 13 CALIFORNIA WATER SERVICE)
 14 COMPANY; ANTELOPE VALLEY-EAST)
 15 KERN WATER AGENCY; COUNTY OF)
 16 SANITATION DISTRICTS NOS. 14;)
 17 and MOES 1 through 10,000,)
 18 Cross-Defendants.)
 19)
 20)
 21)
 22)
 23)
 24)
 25)
 26)

Cross-Defendants/Cross-Complainants, BOLTHOUSE PROPERTIES, LLC., and WM. BOLTHOUSE FARMS, INC., complain against all parties which have filed Cross-Complaints against Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc. and against parties which may in the future file Cross-Complaints against Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc., on such grounds as are appropriate given the allegations in such Cross-Complaints, as follows:

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GENERAL ALLEGATIONS

1. Cross-Complainant, BOLTHOUSE PROPERTIES, LLC, is and at all times herein mentioned was, a Limited Liability Company authorized to do business in the State of California.

2. Cross-Complainant, WM. BOLTHOUSE FARMS, INC., is a California Corporation authorized to do business in the State of California.

3. Cross-Complainant BOLTHOUSE PROPERTIES, LLC, own in fee certain parcels of real property, and/or own/lease water rights for certain properties, (hereinafter individually referred to as a "PARCEL") in the Antelope Valley area of Los Angeles County and Kern County, California. Each PARCEL is identified in Exhibit "A" attached hereto and herein incorporated by reference.

4. Cross-Complainant WM. BOLTHOUSE FARMS, INC., own in fee certain parcels of real property, and/or own/lease water rights for certain properties, (hereinafter individually referred to as a "PARCEL") in the Antelope Valley area of Los Angeles County, California. Each PARCEL has previously been identified in previous Complaints filed by WM. BOLTHOUSE FARMS, INC. in the Riverside action which was later coordinated with the Los Angeles County and Kern County actions filed by Los Angeles County Waterworks District No. 40.

5. Each PARCEL overlies percolating groundwater, the extent of which is unknown to Cross-Complainants. Cross-Complainants hereby incorporate by reference, as if set forth at length verbatim, all Complaints and Cross-Complaints filed by any

1 party to this action, and/or filed in the future by any party, not
2 for the truth thereof, but as and for a basis for bringing this
3 Cross-Complaint.

4 6. Cross-Complainants are ignorant of the true names and
5 capacities, whether individual, corporate, governmental, or
6 otherwise, of the Cross-Defendants named in this Cross-Complaint
7 as Moes 1 through 10,000, inclusive, and therefore sues these
8 Cross-Defendants by these fictitious names. Cross-Complainants
9 will amend this Cross-Complaint to allege the fictitiously-named
10 Cross-Defendants' names and capacities when ascertained.

11 7. By virtue of the location of each PARCEL overlying
12 groundwater, Cross-Complainants hold an overlying water right or
13 other right to groundwater, entitling Cross-Complainants to
14 extract groundwater and to put the water to reasonable and
15 beneficial use on the property ("Cross-Complainants' overlying
16 water rights").

17 8. Cross-Complainants are informed and believe, and on the
18 basis of such information and belief allege, that each of the
19 Cross-Defendants currently extracts, and/or claims a right to
20 extract, groundwater for use on property not held by the
21 extracting Cross-Defendants or for some other non-overlying use.

22 9. Cross-Complainants have an appurtenant right and/or
23 other water right to pump and reasonably use groundwater on the
24 parcels at issue in this lawsuit. These rights to pump
25 groundwater are/may be superior to rights of the Cross-Defendants
26 and/or other Cross-Defendants depending upon the priority rights

1 of such Cross-Defendants based upon the California priority water
2 allocation system.

3 10. Cross-Complainants are informed and believe, and on the
4 basis of such information and belief, allege that each Cross-
5 Defendants' claim that it has water rights to extract groundwater
6 for uses that are superior to, or coequal with, Cross-
7 Complainants' overlying water rights, based upon an alleged
8 superior water right, claim of prescription or otherwise, whether
9 in law or in equity.

10 11. Cross-Complainants are informed and believe, and on the
11 basis of such information and belief, allege that Rosamond, Los
12 Angeles County Waterworks District 40, Palmdale and Quartz Hill
13 (collectively "the Purveyors") began pumping appropriated surplus
14 water from the Antelope Valley to provide water for their
15 municipal and industrial water customers. At the onset of pumping
16 by the Purveyors, the same was lawful and permissive and did not
17 immediately nor prospectively invade or impair any overlying
18 right.

19 12. Over time, the urban areas within the Antelope Valley
20 continued to expand and grow both in land area and population, and
21 thus, over time the Purveyors increased, and today, continue to
22 increase their demand of water. Cross-Complainants are informed
23 and believe, and on the basis of such information and belief,
24 allege that at some as yet unidentified historical point, the
25 aggregate extractions of groundwater from the Antelope Valley
26 began to exceed the safe yield of the Valley. Despite the

1 potential for damage to the water supply and the rights of owners
2 of real property within the Valley, the Purveyors, with knowledge,
3 continued to extract groundwater from the common supply, and
4 increased and continue to increase their extractions of
5 groundwater over time. The Purveyors continued the act of pumping
6 with the knowledge that the continued extractions were damaging,
7 long term, the Antelope Valley and in the short term, impairing
8 the rights of property owners, including the rights in the land
9 owned by Cross-Complainants, which is overlying and within the
10 Antelope Valley.

11 13. Cross-Complainants are informed and believe, and on the
12 basis of such information and belief, allege that the Purveyors
13 pumped and continue to pump water in excess of the safe yield with
14 the knowing intent and belief that they could take by claim of
15 prescription, without compensation, the water rights of Cross-
16 Complainants and all landowners overlying the Antelope Valley.
17 Additionally, all Purveyors continued to pump ever increasing
18 quantities of groundwater, knowing that even if their prescriptive
19 claims failed, they could preserve the right to continue their
20 pumping under a claim of an intervening public use. Despite the
21 knowing intent to take the overlying property landowners' rights,
22 no Purveyor took any steps calculated and intended to inform or
23 otherwise notify any landowner of their adverse and hostile claim
24 or that their pumping of groundwater was an invasion of and a
25 taking of the landowners' property rights.

26 14. During the material time that each Purveyor was

1 pumping, none physically trespassed upon nor invaded any overlying
2 property. No Purveyor stopped, restricted, interfered with or
3 physically or by regulation reduced Cross-Complainants' or any
4 overlying landowners' right and ability to pump groundwater from
5 the Antelope Valley. No Purveyor ever took any affirmative action
6 reasonably calculated to inform or notify any overlying landowner
7 that the Purveyor intended to take or were taking by prescription
8 the overlying water rights.

9 15. Between 1960 and 1980, the Antelope Valley East Kern
10 Water Agency (hereinafter "AVEK") was created to import water from
11 northern California to southern California. As part of its
12 operations, AVEK, in addition to other water importers, have
13 brought and now brings imported water to the Antelope Valley.
14 This imported water was at all material times available for
15 purchase by the Purveyors. Based upon information and belief, it
16 is alleged that the Purveyors consciously chose to not purchase
17 all of the available higher priced imported water to meet their
18 water needs and instead chose to continue to pump and to increase
19 their extractions of groundwater from the Antelope Valley,
20 because, despite the damage to the Valley, groundwater was cheaper
21 than the imported water.

22 16. In late 2004, the Los Angeles County Board of
23 Supervisors unanimously voted to authorize Los Angeles County
24 Waterworks District 40 to file and prosecute the present legal
25 actions which seeks a judicial declaration that Los Angeles County
26 Waterworks District 40 has obtained, without compensation and

1 without due process notice, the overlying landowners' appurtenant
2 water rights through the common law doctrine of prescription.
3 Based on this authorization, Los Angeles County Waterworks
4 District 40 filed these actions.

5 17. Cross-Complainants did not have actual knowledge that
6 any Purveyor's pumping of groundwater was adverse to or hostile to
7 its present and/or future priority rights.

8 18. Based upon information and belief, no landowner had
9 actual knowledge that any Purveyor's pumping of groundwater was
10 adverse to or hostile to its present and/or future priority
11 rights.

12 19. In January 2006, the Purveyors identified herein
13 jointly filed a Cross-Complaint in place of the original Complaint
14 seeking to obtain a judicial declaration that they had obtained
15 the overlying landowners' water rights, without compensation,
16 within the Antelope Valley through the common law doctrine of
17 prescription.

18 20. In January 2007, the Purveyors identified herein
19 jointly filed the present First Amended Cross-Complaint in place
20 of the Cross-Complaint and in place of the original Complaint
21 seeking to obtain a judicial declaration that they had obtained
22 the overlying landowners' water rights, without compensation,
23 within the Antelope Valley through the common law doctrine of
24 prescription.

25 21. None of the purveyors have invoked the power of eminent
26 domain nor paid any compensation to Cross-Complainants or any

1 other overlying owner of land located within Antelope Valley for
2 the property rights they have allegedly and knowingly claimed to
3 have taken.

4 22. The quantity of alleged superior and/or coequal rights
5 claimed by Cross-Defendants, each of them, currently is not known.

6 **FIRST CAUSE OF ACTION**

7 **(Quiet Title/Appurtenant Rights)**

8 23. Cross-Complainants set forth herein at length verbatim
9 the general allegations contained in paragraphs 1 through 22 of
10 this Cross-Complaint.

11 24. Cross-Complainants own PARCELS overlying the Antelope
12 Valley alluvial groundwater basin. Accordingly, Cross-
13 Complainants have appurtenant rights to pump and reasonably use
14 groundwater on such PARCELS.

15 25. Cross-Complainants herein request a declaration from
16 the Court quieting title to Cross-Complainants' appurtenant rights
17 to pump and reasonably use groundwater on their PARCELS.

18 **SECOND CAUSE OF ACTION**

19 **(Declaratory Relief)**

20 26. Cross-Complainants set forth herein at length verbatim
21 the general allegations contained in paragraphs 1 through 22 of
22 this Cross-Complaint.

23 27. Cross-complainants contend that by virtue of the filing
24 of the Complaints filed by Los Angeles County Waterworks District
25 No. 40 in Kern County and Los Angeles County, herein coordinated
26 with the Riverside action, that a current controversy exists as

1 between Cross-Complainants and Cross-Defendants and as to all
2 other Defendants in that Los Angeles County has requested a
3 complete basin-wide adjudication of all rights of all parties to
4 water in the Antelope Valley basin. Cross-Complainants request
5 quiet title and/or other appropriate declaration of the right to
6 pump and reasonably use groundwater on its PARCELS and/or to pump
7 and use other groundwater based upon its rights as declared by the
8 Court herein.

9 **THIRD CAUSE OF ACTION**

10 **(Unlawful Taking/42 USC § 1983)**

11 28. Cross-Complainants set forth herein at length verbatim
12 the general allegations contained in paragraphs 1 through 22 of
13 this Cross-Complaint.

14 29. This cause of action is brought under 42 U.S.C. § 1983
15 to recover damages against the Purveyors for violation of Cross-
16 Complainants' rights under the 5th and 14th Amendments of the
17 United States Constitution through the Purveyors' taking of Cross-
18 Complainants' private property for public use without paying just
19 compensation and depriving Cross-Complainants' of both substantive
20 or procedural due process of law.

21 30. The Purveyors, and each of them, and at all times
22 mentioned in this Cross-Complaint, were governmental entities
23 organized and operating in Los Angeles and/or Kern County and in
24 the State of California. All are organized and existing under the
25 laws of the State of California, with the capacity to sue and be
26 sued.

1 31. The Purveyors, and each of them, were, at all times
2 mentioned in this Cross-Complaint, acting under color of state
3 law.

4 32. At an as yet unidentified historical point in time, the
5 Purveyors began pumping water from the Antelope Valley as
6 permissive appropriators. Over the course of time, it is believed
7 and therefore alleged, that the aggregate amount of water being
8 extracted from the Valley began to exceed the safe yield resulting
9 in a condition called "overdraft." Cross-Complainant is informed
10 and believes and based thereon alleges that the Purveyors had
11 knowledge of the "overdraft" condition and nonetheless continued
12 pumping and increased their pumping with the specific intent to
13 impair and take all superior overlying property rights to extract
14 groundwater, including that of Cross-Complainants. Each Purveyor
15 continued to pump and increased its pumping of groundwater
16 believing that given the intervention of the committed public use
17 that no injunction would issue to restrain and/or compel the
18 Purveyor to reduce its dependence upon groundwater. Each Purveyor
19 contends that despite its status as a governmental entity, it can
20 nonetheless take private property for a public use under a theory
21 of prescription and without compensation. Each Purveyor claims
22 that presumed or constructive knowledge of the overdraft condition
23 alone was sufficient to commence the running of the statutory
24 prescriptive period. Each Purveyor did not undertake any
25 affirmative action reasonably calculated and intended to provide
26 notice and inform any affected landowner, including Cross-

1 Complainants, of its adverse and hostile claim. Each Purveyor
2 contends that it has taken the private property rights of Cross-
3 Complainants and others, and has committed them to a public use,
4 without following the Constitutional constraints imposed by
5 Article 1, Section 19 of the California Constitution, and the
6 eminent domain law, *Code of Civil Procedure*, Section 1245.230.
7 The acts of the Purveyors were done under the color of state law
8 with the intent of depriving Cross-Complainants of its property
9 rights without substantive and procedural due process of law and
10 to avoid payment of compensation to Cross-Complainants for the
11 property rights taken, all in violation of the 5th and 14th
12 Amendments to the United States Constitution.

13 33. Cross-Complainants are informed and believe and thereon
14 allege that they were subjected to a violation of their right to
15 due process of law prior to the taking of their property and their
16 right to receive just compensation when their property was taken
17 for the public benefit. This violation was a direct result of the
18 knowing customs, practices and policies of the Purveyors to
19 continue to pump in excess of the supply, to suppress the
20 assertion of their adverse and hostile claim, and the resulting
21 ever increasing intervening public use and dependence, without
22 acceding to Constitutional limits.

23 34. The customs, practices and policies of the Purveyors to
24 prescript or adversely possess the property rights of property
25 owners and/or to establish a non-enjoinable intervening use
26 amounted to deliberate indifference to the rights of persons, such

1 as Cross-Complainants, who stand to lose their rights to extract
2 water from the Antelope Valley for use on their property through
3 the actions of each Purveyor and all of them.

4 35. As a direct and proximate result of the acts of the
5 Purveyors, Cross-Complainants have suffered injury, loss and
6 damage, including a cloud upon their title to their real property,
7 a reduction in value, and the loss of its right in the future to
8 extract and use groundwater from the Valley.

9 **FOURTH CAUSE OF ACTION**

10 **(Equal Protection/Due Process 42 USC § 1983)**

11 36. Cross-Complainants set forth herein at length verbatim
12 the general allegations contained in paragraphs 1 through 22 of
13 this Cross-Complaint.

14 37. The State and federal constitutions require equal
15 protection under the law. Cross-Defendants seek to exclude what
16 they define as "*de minimus*" overlying water producers and other
17 appropriators from the lawsuit. They intend not to name and/or
18 serve these individuals, thereby intentionally treating them
19 differently than similarly situated persons with no rational basis
20 for different treatment denying them equal protection under the
21 law and in violation of 42 USC § 1983.

22 38. Cross-Defendants also potentially make claims that
23 separate management areas should exist. Separate management areas
24 as between correlative overlying rights holders and treating these
25 areas differently, denies equal protection to overlying landowners
26 in violation of State and Federal Constitutions and violates 42

1 USC § 1983.

2 **FIFTH CAUSE OF ACTION**

3 **(Declaratory Relief of *Inter Se* Appropriative Rights)**

4 39. Cross-Complainants set forth herein at length verbatim
5 the general allegations contained in paragraphs 1 through 22 of
6 this Cross-Complaint.

7 40. Cross-Complainants have failed to name all
8 appropriators as defendants. In the event that Cross-Defendants
9 prove the Antelope Valley Groundwater basin is, or has been, in a
10 state of common law overdraft, cutbacks may be required to balance
11 the demand with the supply available. The California priority
12 water allocation system requires that appropriative user's cutback
13 water usage before overlying landowners are required to cutback
14 usage. Cutbacks among the appropriators are based upon priority
15 as between appropriators. Appropriators with first in time
16 appropriative rights have priority over later in time
17 appropriators. Accordingly, in order to apply the California
18 priority water allocation system, all appropriators must be
19 included in the action so that the priority of appropriative
20 rights can be litigated which will allow the Court by injunction
21 or physical solution to cutback appropriators based upon such
22 priorities in the event that Cross-Defendants prove the Antelope
23 Valley Groundwater basin is in common law overdraft and that an
24 injunction and/or physical solution is necessary to balance the
25 water demand with water supply.

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1 Court rules that self help constitutes an affirmative request for
2 relief by Cross-Complainants, Cross-Complainants claim water
3 rights based upon self help.

4 **EIGHTH CAUSE OF ACTION**

5 **(Storage Rights)**

6 45. Cross-Complainants set forth herein at length verbatim
7 the general allegations contained in paragraphs 1 through 22 of
8 this Cross-Complaint.

9 46. Cross-Complainants possess overlying rights to produce
10 water on its PARCELS in the Antelope Valley. Cross-Complainants
11 possess an appurtenant right to storage space in the fractured
12 bedrock and alluvial water basin and the right to water stored
13 therein based upon the California water allocation priority
14 system.

15 **NINTH CAUSE OF ACTION**

16 **(Storage Space)**

17 47. Cross-Complainants set forth herein at length verbatim
18 the general allegations contained in paragraphs 1 through 22 of
19 this Cross-Complaint.

20 48. Cross-Complainants possess a right to produce
21 groundwater in the Antelope Valley and storage rights related
22 thereto. Accordingly, assuming there is storage space available
23 for all overlying needs, Cross-Complainants possess a right to
24 compensation from parties storing water in the basin.

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1 52. Article 1, Section 19 of the California Constitution
2 provides as follows:

3 "Private property may be taken or damaged for
4 public use only when just compensation,
5 ascertained by a jury unless waived, has
6 first been paid to, or into court for, the
7 owner. The Legislature may provide for
8 possession by the condemner following
commencement of eminent domain proceedings
upon deposit in court and prompt release to
the owner of money determined by the court to
be the probable amount of just compensation."

9 53. The Purveyors contend that, even though they are
10 political subdivisions who are vested with the power of eminent
11 domain, they are nonetheless legally permitted to knowingly take
12 private property for public use without first paying just
13 compensation.

14 54. Cross-Complainants contend that the use of the word
15 "only" within Article 1, Section 19 is a clear temporal limitation
16 on the Purveyor's lawful ability to knowingly take private
17 property for the public benefit to only those instances where just
18 compensation has first been paid. By virtue of the Purveyor's
19 actions as set forth above, an actual controversy has arisen and
20 now exists between the Purveyors and Cross-Complainants concerning
21 their respective rights, duties and responsibilities.

22 55. Cross-Complainants desire a declaration of its rights
23 with respect to the application or non-application of Article 1,
24 Section 19 to the Purveyors and ask the court to make a
25 declaration of such rights, duties and responsibilities. Such a
26 declaration is necessary and appropriate at this time in order

1 that Cross-Complainants' property rights may be protected and to
2 ensure that the municipal Purveyors proceed according to the
3 California Constitution. There are no administrative remedies
4 available to Cross-Complainants.

5 56. A timely declaration by this court is urgent for the
6 following reasons: by way of this action, the Purveyors are
7 seeking to adjudicate, enjoin and take the property rights of
8 Cross-Complainants and thousands of other parties who own property
9 overlying the water supply without first paying just compensation
10 therefore, absent a timely declaration by this court, injustice
11 will result from the improper taking of the Cross-Complainants'
12 property rights should Article 1, Section 19 of the California
13 Constitution be found to apply.

14 57. Cross-Complainants and numerous other private parties
15 will suffer irreparable and lasting injury unless declaratory
16 relief is granted.

17 **TWELFTH CAUSE OF ACTION**

18 **(Declaratory Relief to Determine Applicability**
19 **of Constitutional Article)**

20 58. Cross-Complainants set forth herein at length verbatim
21 the general allegations contained in paragraphs 1 through 22 of
22 this Cross-Complaint.

23 59. Article 1, Section 19 of the California Constitution
24 provides as follows:

25 "Private property may be taken or damaged for
26 public use only when just compensation,
ascertained by a jury unless waived, has

1 first been paid to, or into court for, the
2 owner. The Legislature may provide for
3 possession by the condemner following
4 commencement of eminent domain proceedings
upon deposit in court and prompt release to
the owner of money determined by the court to
be the probable amount of just compensation."

5 60. The Purveyors contend that, even though they are
6 political subdivisions who are vested with the power of eminent
7 domain, they are nonetheless legally allowed to knowingly take
8 private property for public use through prescription or adverse
9 possession and without compensation.

10 61. Cross-Complainants contend that the use of the word
11 "only" within Article 1, Section 19 is a clear temporal limitation
12 on the Purveyor's authority and the manner in which they may take
13 private property for the public benefit. That this limitation
14 forecloses the ability of any governmental entity to knowingly
15 take or acquire private property for a public use under a theory
16 of prescription or adverse possession. By virtue of the
17 Purveyor's actions as set forth above, an actual controversy has
18 arisen and now exists between the Purveyors and Cross-Complainants
19 concerning their respective rights, duties and responsibilities.

20 62. Cross-Complainants desire a declaration of its rights
21 with respect to the application or non-application of Article 1,
22 Section 19 to the Purveyors' prescription claims and ask the court
23 to make a declaration of such rights, duties and responsibilities.
24 Such a declaration is necessary and appropriate at this time in
25 order that Cross-Complainants' property rights may be protected
26 and to ensure that the municipal Purveyors proceed according to

1 the California Constitution. There are no administrative remedies
2 available to Cross-Complainants.

3 63. A timely declaration by this court is urgent for the
4 following reasons: by way of this action, the Purveyors are
5 seeking to adjudicate, enjoin and take the property rights of
6 Cross-Complainants and thousands of other parties by avoiding the
7 due process protections provided to these landowners under *Code of*
8 *Civil Procedure*, Sections 1230.010 through 1237.040. Absent a
9 timely declaration by this court, injustice will result from the
10 improper taking of the Cross-Complainants' property rights should
11 Article 1, Section 19 of the California Constitution be found to
12 apply.

13 64. Cross-Complainants and numerous other private parties
14 will suffer irreparable and lasting injury unless declaratory
15 relief is granted.

16 **THIRTEENTH CAUSE OF ACTION**

17 **(Declaratory Relief to Determine Validity and**
18 **Applicability of Statute)**

19 65. Cross-Complainants set forth herein at length verbatim
20 the general allegations contained in paragraphs 1 through 22 of
21 this Cross-Complaint.

22 66. In or about 1951, the Legislature of the State of
23 California enacted Section 55000, et seq., of the *Water Code*,
24 known as the County Waterworks District Law, hereinafter referred
25 to as the "Waterworks Statutes." In 1953, the Legislature added
26 Section 55370. This Section, since its adoption has been, and now

1 is, in full force and effect. This statute provides as follows:

2 "A district may acquire property by purchase,
3 gift, devise, exchange, descent, and eminent
4 domain. The title to all property which may
have been acquired for a district shall be
vested in the district."

5 67. The Purveyors contend that Section 55370 of the *Water*
6 *Code* does not apply to, or limit in any manner, its acquisition of
7 any overlying landowners' water rights within the Antelope Valley
8 and that, despite its status as public entities, Article 1,
9 Section 19 of the California Constitution, and the 5th Amendment
10 to the Federal Constitution, it is nonetheless empowered to
11 acquire private property for public use through the common law
12 doctrine of prescription, without due process and without
13 compensation.

14 68. In or about 1943, the Legislature of the State of
15 California enacted Sections 20500, et seq., of the *Water Code*,
16 known as the Irrigation District Law, hereinafter referred to as
17 the "Irrigation Statutes." In 1943, the Legislature added Section
18 22456. This Section, since its adoption has been, and now is, in
19 full force and effect. This statute provides as follows:

20 "The district may exercise the right of
21 eminent domain to take nay property necessary
to carry out its purposes."

22 69. The Purveyors contend that Section 22456 of the *Water*
23 *Code* does not act to limit, in any manner, the mode or method of
24 acquiring an overlying landowners' water rights within the
25 Antelope Valley and that, despite its status as public entities,
26 Article 1, Section 19 of the California Constitution, and the 5th

1 Amendment to the Federal Constitution, it is nonetheless empowered
2 to acquire private property for public use through the common law
3 doctrine of prescription, without due process and without
4 compensation.

5 70. In or about 1949, the Legislature of the State of
6 California enacted Sections 30000, et seq., of the *Water Code*,
7 known as the County Water District Law, hereinafter referred to as
8 the "County Water Statutes." In 1975, the Legislature amended
9 Section 31040. This amended statute became operative on July 1,
10 1976, and since then, has been, and now is, in full force and
11 effect. This Section provides as follows:

12 "A district may take any property necessary
13 to carry out the business of the district by
14 grant, purchase, gift, devise, condemnation,
or lease with or without the privilege of
purchase."

15 71. The Purveyors contend that Section 31040 of the *Water*
16 *Code* does not act to limit, in any manner, the mode or method by
17 which they may acquire an overlying landowners' water rights
18 within the Antelope Valley and that, despite their status as
19 public entities, Article 1, Section 19 of the California
20 Constitution, and the 5th Amendment to the Federal Constitution,
21 they are nonetheless empowered to take private property for public
22 use through the common law doctrine of prescription, without due
23 process and without compensation.

24 72. Cross-Complainants contend that the statute is
25 constitutional, and when conjoined with the California state and
26 Federal Constitutions, limits the method, manner and mode by which

1 the Purveyors may acquire private property for a public use and
2 the rights appurtenant thereto by declaring that the only legal
3 right of the Purveyors to take possession of property without
4 consent of the owners is under its power of eminent domain. By
5 virtue of the Purveyors' actions as set forth above, an actual
6 controversy has arisen and now exists between the Purveyors and
7 Cross-Complainants concerning their respective rights, duties and
8 responsibilities under these statutes and both Constitutions.

9 73. Cross-Complainants desire a declaration of their rights
10 with respect to the constitutionality and application or non-
11 application of the statute and ask the court to make a declaration
12 of such rights, duties and responsibilities, and to make a
13 declaration as to the validity and constitutionality of the
14 statutes. Cross-Complainants seek a declaration that the effort
15 of the Purveyors to deprioritize Cross-Complainants' overlying
16 right is, without compensation, *ultra vires* and unconstitutional.
17 Such a declaration is necessary and appropriate at this time in
18 order that Cross-Complainants' property rights be protected and to
19 ensure that the Purveyors proceed according to the law and
20 Constitution of the state and Federal Constitution. There are no
21 administrative remedies available to Cross-Complainants.

22 74. A timely declaration by this court is urgent for the
23 following reasons: By way of this action, the Purveyors are
24 seeking to adjudicate, enjoin and take the property rights of
25 Cross-Complainants and thousands of other parties who own property
26 overlying the Antelope Valley, absent a timely declaration of this

1 court, injustice will result from its improper awarding of
2 property rights to the Purveyors should these statutes be later
3 found to apply.

4 75. Cross-Complainants and numerous other private parties
5 will suffer irreparable and lasting injury unless declaratory
6 relief is granted.

7 **FOURTEENTH CAUSE OF ACTION**

8 **(Declaratory Relief to Determine Applicability of Constitution)**

9 76. Cross-Complainants set forth herein at length verbatim
10 the general allegations contained in paragraphs 1 through 22 of
11 this Cross-Complaint.

12 77. Article I, Section 7 of the California Constitution
13 provides in pertinent part as follows:

14 "A person may not be deprived of life,
15 liberty, or property without due process of
16 law or denied equal protection of the laws; .
17"

18 The 5th Amendment to the Constitution as applied by the
19 14th Amendment in relevant part provides:

20 "No person shall . . . be deprived of life,
21 liberty, or property, without due process of
22 law; nor shall private property be taken for
23 public use, without just compensation."

24 78. The Purveyors contend that, even though they are
25 political subdivisions who are uniquely invested with the power of
26 eminent domain, they are allowed to surreptitiously take private
property for public use by prescription or adverse possession
without providing substantive or procedural due process of law to

1 each overlying landowner. The Purveyors contend that prescription
2 commences with "overdraft," and that presumed or constructive
3 notice is sufficient.

4 79. Cross-Complainants contend that the Article I, Section
5 7 of the California Constitution, and the 5th Amendment as applied
6 by the 14th Amendment of the Federal Constitution, mandates that
7 governmental entities must provide substantive and procedural due
8 process of law when taking private property for a public use.
9 Cross-Complainants contend that the prescriptive period cannot
10 commence until the governmental entity takes affirmative action
11 designed and intended to give notice and inform the overlying
12 landowners of the governmental entity's adverse and hostile claim.
13 Cross-Complainants further contend that this limitation forecloses
14 the ability of any governmental agency to take or acquire private
15 property for a public use when constitutionally sufficient due
16 process notice has not been provided to the landowner. By virtue
17 of the Purveyors' actions, as set forth above, an actual
18 controversy has arisen and now exists between the Purveyors and
19 Cross-Complainants concerning their respective rights, duties and
20 responsibilities.

21 80. Cross-Complainants desire a declaration of their rights
22 with respect to the application or non-application of Article I,
23 Section 7 of the California Constitution and the 5th Amendment to
24 the U.S. Constitution to the Purveyors' prescription claims and
25 ask the court to make a declaration of such rights, duties and
26 responsibilities. Such a declaration is necessary and appropriate

1 at this time in order that Cross-Complainants' property rights may
2 be protected and to ensure that the municipal Purveyors may
3 proceed according to the California Constitution. There are no
4 administrative remedies available to Cross-Complainants.

5 81. A timely declaration by this court is urgent for the
6 following reasons: By way of this action, the Purveyors are
7 seeking to adjudicate and enjoin the property rights of Cross-
8 Complainants and thousands of other parties by avoiding the due
9 process protections provided to these landowners under Article I,
10 Section 7, the 5th and 14th Amendments and *Code of Civil Procedure*,
11 Sections 1230.010 through 1237.040. Absent a timely declaration
12 by this court, injustice will result from the improper use and
13 adjudication of Cross-Complainants' property rights should the
14 foregoing constraints and statutory mandate be found applicable.

15 82. Cross-Complainants and numerous other private parties
16 will suffer irreparable and lasting injury unless declaratory
17 relief is granted.

18 **FOURTEENTH CAUSE OF ACTION**

19 **(Declaratory Relief)**

20 83. Cross-Complainants set forth herein at length verbatim
21 the general allegations contained in paragraphs 1 through 22 of
22 this Cross-Complaint.

23 84. Cross-Complainants are the owners and/or lessees of
24 real property located within the Antelope Valley. Located on
25 Cross-Complainants' property are water wells which produce water
26 from the groundwater supply. Cross-Complainants and or its

1 predecessors in interest, have continually produced water from
2 these wells without restriction and in quantities as were needed
3 to perform its farming and irrigation operations from year to
4 year.

5 85. Based on information and belief, it is alleged that
6 Purveyors all pump groundwater from the Antelope Valley and then
7 sell it to other individuals and entities who reside within Kern
8 County and Los Angeles Counties.

9 86. An actual controversy has arisen and now exists between
10 Cross-Complainants and the Purveyors concerning their respective
11 rights and duties in that the Purveyors contend that they have
12 been pumping water during a continuous 5 year period during which
13 the common supply has been in a state of overdraft; that this
14 pumping has resulted in a reversal of the common law legal
15 priority granted to overlying landowners pursuant to the common
16 law doctrine of prescription. Whereas Cross-Complainants dispute
17 this contention and contend that by continuing to pump groundwater
18 from the wells on their land, and by continuing to thus meet all
19 of the water needs to perform their farming operations, Cross-
20 Complainants have preserved and maintained their priority rights
21 to the use of groundwater.

22 87. Cross-Complainants desire a judicial determination of
23 each party's rights and duties, and a declaration as to the status
24 of each party's priority rights to the water in the Valley whether
25 they be overlying, appropriative or prescriptive.

26 88. A judicial declaration is necessary and appropriate at

1 this time under the circumstances in order that Cross-Complainants
2 may ascertain their rights and duties relating to production of
3 water from the Antelope Valley.

4 **FIFTEENTH CAUSE OF ACTION**

5 **(Declaratory Relief)**

6 89. Cross-Complainants set forth herein at length verbatim
7 the general allegations contained in paragraphs 1 through 22 of
8 this Cross-Complaint.

9 90. AVEK and others provide the Antelope Valley with water
10 imported from northern California. This imported water was and is
11 available for purchase by the Purveyors.

12 91. Despite having knowledge that the pumping of
13 groundwater in excess of the safe yield caused damage, and despite
14 the knowledge and belief that continued pumping would damage the
15 rights of the landowners whose property overlies the water supply,
16 the Purveyors have failed and refused to slow, stop or reduce
17 their groundwater extractions from the supply and/or to supplement
18 or replace their water needs from the available imported AVEK
19 water.

20 92. The California Constitution, Article X, Section 2,
21 provides, in pertinent part, as follows:

22 "It is hereby declared that because of the
23 conditions prevailing in this State the
24 general welfare requires that the water
25 resources of the State be put to beneficial
26 use to the fullest extent of which they are
capable, and that the waste or unreasonable
use or unreasonable method of use of water be
prevented, and that the conservation of such
waters it to be exercised with a view to the

1 reasonable and beneficial use thereof in the
2 interest of the people and for the public
3 welfare. The right to water or to the use or
4 flow of water in or from any natural stream
5 or water course in this State is and shall be
6 limited to such water as shall be reasonably
7 required for the beneficial use to be served,
8 and such right does not and shall not extend
9 to the waste or unreasonable use or
10 unreasonable method of use or unreasonable
11 method of diversion of water"

12 93. An actual controversy has arisen and now exists between
13 Cross-Complainants and each Purveyor concerning their respective
14 rights and duties in that Cross-Complainants contend that the
15 Purveyors' continued dependence on, and use of, the groundwater,
16 their continued and increased extractions of groundwater from the
17 common supply, with knowledge that the extractions exceed the safe
18 yield, and their failure and/or refusal to take all of the
19 available imported water and the method and use of groundwater
20 taken, is unreasonable and constitutes a waste in violation of
21 Article X, Section 2 of the California Constitution. The
22 Purveyors dispute these contentions and contend that their
23 dependence on groundwater, their continued and increasing
24 extractions of groundwater from the Antelope Valley in excess of
25 the safe yield and their failure and refusal to take all of the
26 available imported water is reasonable and does not constitute
waste of groundwater and/or available imported water under Article
X, Section 2 of the California Constitution.

94. Cross-Complainants desire a declaration of their rights
with respect to the constitutionality and application or non-

1 application of Article X, Section 2 to the Purveyors' actions and
2 ask the court to make a declaration of such rights, duties and
3 responsibilities, and to make a declaration as to the validity and
4 constitutionality of the Article X, Section 2. Such a declaration
5 is necessary and appropriate at this time in order that Cross-
6 Complainants' property rights may be protected and to ensure that
7 the Purveyors may proceed under the law and cause no further
8 damage to Cross-Complainants' or property overlying the water
9 supply. There are no administrative remedies available to Cross-
10 Complainants.

11 95. A timely declaration by this court is urgent for the
12 following reasons: By way of this action, the Purveyors are
13 seeking to have the court ratify their method and choice of water
14 usage and declare that they have the right to continue to extract
15 groundwater from the Valley in excess of the safe yield and to
16 continue to cause damage to the Valley itself as well as to the
17 land overlying the water supply, absent a timely declaration by
18 this court, an injustice will result from the improper validation
19 of the Purveyors' water usage should this constitutional provision
20 be found to apply to the Purveyors.

21 96. Cross-Complainants and numerous other private parties
22 will suffer irreparable and lasting injury unless declaratory
23 relief is granted.

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26 \\\

1 the provisions of the California Environmental Quality Act
2 (hereinafter "CEQA;" *Public Resources Code*, Sections 21000-21177).
3 That the requirements of CEQA are both procedural (requiring
4 notice, disclosure and a review process) and substantive (by
5 requiring public agencies to take affirmative measures to avoid
6 environmental harm and to also protect the citizens and landowners
7 of the State of California).

8 101. The Purveyors contend that they may use the judicial
9 system to circumvent CEQA and impose by judicial fiat what should
10 be a legislative policy. In doing so, they seek to avoid
11 providing the public with the required disclosures and
12 evaluations, and thereby deny Cross-Complainants and the public
13 their procedural and substantive protections required by CEQA.

14 102. Cross-Complainants desire a judicial determination of
15 the Purveyors' rights and duties, and a declaration as to the
16 application of *Public Resources Code*, sections 21000-21177 to any
17 proposed water management plan sought to be implemented by
18 judicial decree by the Purveyors. That the legislative
19 protections afforded to the public under CEQA cannot be ignored or
20 subverted by resorting to the court to implement the Purveyor's
21 plan, and that such a request of this Court induces a violation of
22 the doctrine of the separation of powers.

23 103. A judicial declaration is necessary and appropriate at
24 this time under the circumstances in order that Cross-Complainants
25 may ascertain their rights and duties relating to production of
26 water from the Antelope Valley.

1 that are within the power of the Purveyors to enact by following
2 the statutory requirements set forth in *Water Code*, sections
3 10700-10795.20. These sections of the *Water Code* provide the
4 procedural method by which the Purveyors must implement a
5 groundwater management plan and also ensure constitutionality
6 required process through the required public hearings, notice and
7 publication of the proposed management plan, and the opportunity
8 for public discourse, input and objection.

9 108. The Purveyors contend that they may use the judicial
10 system to impose by judicial fiat what would otherwise be done
11 through legislative action. In doing so, they seek to avoid
12 providing the public with the required notice, hearing and
13 disclosures and deny them their procedural and substantive
14 protections provided by the Constitution and the *Water Code*,
15 Sections 10700-10795.20.

16 109. Cross-Complainants desire a judicial determination of
17 the Purveyors' rights and duties, and a declaration as to the
18 application and propriety of *Water Code*, Sections 10700-10795.20
19 to the proposed water management project sought to be implemented
20 by the Purveyors. That the legislative protections afforded to
21 the public under the *Water Code* may not be ignored or subverted by
22 the filing of a legal action by a public agency, and that such
23 action requests this court to violate the doctrine of separation
24 of power.

25 110. A judicial declaration is necessary and appropriate at
26 this time under the circumstances in order that Cross-Complainants

1 may ascertain their rights and duties relating to production of
2 water from the Antelope Valley.

3 **EIGHTEENTH CAUSE OF ACTION**

4 **(Declaratory Relief)**

5 111. Cross-Complainants set forth herein at length verbatim
6 the general allegations contained in paragraphs 1 through 22 of
7 this Cross-Complaint.

8 112. Commencing in early 2000, each Purveyor has claimed
9 that the Antelope Valley was in a state of "overdraft" for more
10 than five years prior to October 1999.

11 113. based on information and belief, it is alleged that
12 immediately prior to, during and after the same claimed five year
13 period of "overdraft" claimed by the Purveyors, the Purveyors did
14 approve and have continued to approve the issuance of well permits
15 to Cross-Complainants and others, have approved large scale
16 developments and have authorized others and have thus increased
17 the demand for groundwater pumped by the Purveyors from the
18 Antelope Valley. In performing their ministerial and
19 discretionary functions, each Purveyor has asserted that the
20 additional well permits, hook ups and added residential,
21 industrial and commercial developments, and the concomitant
22 increased pumping of groundwater caused thereby, would not, and
23 did not, have under CEQA or otherwise an adverse affect on the
24 water supply available from the Antelope Valley.

25 114. An actual controversy has arisen and now exists between
26 Cross-Complainants and each Purveyor concerning their respective

1 rights and duties in that Cross-Complainants contend that the
2 Purveyors are barred from claiming that the Antelope Valley is in
3 a state of "overdraft" during the time that they have authorized,
4 permitted and approved new and increased pumping from the supply
5 pursuant to *Evidence Code*, Section 623. The Purveyors deny Cross-
6 Complainants' contentions and assert that they may assert
7 overdraft as an element of their prescription claims. Section 623
8 provides as follows:

9 "Whenever a party has, by his own statement
10 or conduct, intentionally and deliberately
11 led another to believe a particular thing
12 true and to act upon such belief, he is not,
in any litigation arising out of such
statement or conduct, permitted to contradict
it."

13 115. Cross-Complainants desire a judicial determination of
14 its rights and duties, and a declaration as to the application of
15 the doctrine of equitable estoppel to the Purveyors' ability to
16 claim that the Antelope Valley was in a state of overdraft when
17 the same Purveyors were issuing well permits, will serve letters
18 and adding new water customers and authorizing new large scale
19 development projects under the assertion that there was an
20 available, adequate and appropriate water supply in the Antelope
21 Valley to sustain these permits and projects.

22 116. A judicial declaration is necessary and appropriate at
23 this time under the circumstances in order that Cross-Complainants
24 may ascertain their rights and duties relating to its real
25 property that overlies the Antelope Valley.

26 \\\

1 NINETEENTH CAUSE OF ACTION

2 (Declaratory Relief)

3 117. Cross-Complainants set forth herein at length verbatim
4 the general allegations contained in paragraphs 1 through 22 of
5 this Cross-Complaint.

6 118. Cross-Complainants are the owners of land overlying the
7 Antelope Valley. Each of the Purveyors are users of water pumped
8 from the Antelope Valley which underlies Cross-Complainants' land.

9 119. Initially, the Purveyors, and each of them, legally
10 used and maintained water wells that extracted water from the
11 Antelope Valley for public distribution. Over time the increased
12 urbanization and the Purveyors continued and increasing
13 extractions exceeded their legal boundaries, such that the water
14 extracted from the supply has exceeded the ability to naturally
15 recharge the water supply. The Purveyors have claimed to have
16 knowledge that this continuous and increasing use caused a
17 progressive and chronic decline in long term water supply and the
18 available natural supply is being and has been chronically
19 depleted. Based on the present trends, demand will continue to
20 exceed supply which will cause damage to private rights and
21 ownership of real property.

22 120. The aforementioned extractions of groundwater from the
23 supply constitute a continuing progressive nuisance within the
24 meaning of Section 3479 of the *Civil Code*, in that the Purveyors
25 have created a condition in the future supply that is injurious to
26 Cross-Complainants' rights, in the future, to freely use and

1 exercise its overlying property rights to extract groundwater from
2 the common supply in the customary manner. The Purveyors are
3 attempting, through the combined efforts of their pumping
4 groundwater and this present legal action, to take, and or alter,
5 Cross-Complainants' overlying property rights to use and access
6 the Antelope Valley supply.

7 121. In early 2000, the Purveyors asserted that the
8 available groundwater supply was in jeopardy and increased pumping
9 would harm Antelope Valley Water Supply. Despite this assertion,
10 the Purveyors, and each of them, have continued to and have
11 increased their pumping, despite the knowledge of the damages
12 caused by that pumping. The Purveyors have refused, and continue
13 to refuse, to stop or reduce their pumping despite the damage to
14 the supply and to Cross-Complainants' property rights.

15 122. This nuisance affects, at the same time, a substantial
16 number of persons in that, the Purveyors claim that the continued
17 pumping in excess of the supply's safe yield is, and will,
18 eventually cause a chronic decline in water levels and the
19 available natural supply will be chronically depleted, that, based
20 on the present trends, demand will continue to exceed supply which
21 will continue to cause a reduction in the long term supply.
22 Additionally, the continued pumping by the Purveyors under these
23 conditions will result in the unlawful obstruction of the
24 overlying landowners' rights to use the water supply in the
25 customary manner.

26 123. The Purveyors, and each of them, have threatened to and

1 will, unless restrained by this court, continue to pump
2 groundwater in increasing amounts, and each and every act has
3 been, and will be, without the consent, against the will, and in
4 violation of the rights of Cross-Complainants.

5 124. As a proximate result of the nuisance created by the
6 Purveyors, and each of them, Cross-Complainants has been, and will
7 be, damaged in a sum to be proven at trial.

8 125. Unless the Purveyors, and each of them, are restrained
9 from increasing their pumping from the supply by order of this
10 court, it will be necessary for plaintiff to commence many
11 successive actions against each Purveyor, and each of them, to
12 secure a project by project injunction and/or compensation for the
13 continuing and repeated damages sustained, thus requiring a
14 multiplicity of suits.

15 126. Should the Purveyors continue to increase their pumping
16 without replenishing the Valley's water supply, Cross-Complainants
17 will suffer irreparable injury in that the usefulness and economic
18 value of Cross-Complainants' overlying property right will be
19 substantially diminished and Cross-Complainants will be deprived
20 of the comfortable, reasonable and beneficial use and enjoyment of
21 its property.

22 127. In maintaining this nuisance, the Purveyors, and each
23 of them, are, and have been, acting with full knowledge of the
24 consequences and damage being caused to Cross-Complainants, and
25 their conduct is willful, oppressive, malicious and designed to
26 interfere with and take the Cross-Complainants' right to freely

1 access the water supply in its customary manner. Accordingly,
2 each Purveyor has intentionally dirtied hands and no right to
3 involve equity in these actions.

4 PRAYER

5 WHEREFORE, Cross-Complainants pray for judgment against
6 Cross-Defendants, and each of them, and against all other persons
7 or entities, as follows:

8 1. For a judgment against the Cross-Defendants;

9 2. For a declaration quieting title to Cross-Complainants'
10 right to pump and reasonably use groundwater on their PARCELS and
11 to their rights to otherwise pump groundwater;

12 3. If the Court determines based upon the Cross-Defendants
13 basin-wide adjudication that the fractured bedrock and alluvial
14 groundwater basin is in common law overdraft, for an injunction
15 and/or a physical solution cutting back appropriative water use to
16 prevent continuing common law overdraft;

17 4. For continuing jurisdiction of the Court to litigate
18 disputes as necessary in the future consistent with the Court
19 judgment herein and consistent with California water law;

20 5. For a declaration that no party hereto may hereinafter
21 obtain prescriptive rights as against any other party to this
22 action and that all parties will act in conformance with the terms
23 of any such judgment;

24 6. For a judgment for Cross-Complainants for all available
25 remedies to secure and protect Cross-Complainants' continuing
26 overlying water rights;

1 7. For an award of reasonable attorneys' fees and costs of
2 suit; and

3 8. For such other and further relief as the court deems
4 just and proper.

5
6 DATED: September 9, 2008

7 CLIFFORD & BROWN

8
9 By: 

10 RICHARD G. ZIMMER, ESQ.
11 T. MARK SMITH, ESQ.
12 Attorneys for
13 BOLTHOUSE PROPERTIES, LLC and
14 WM. BOLTHOUSE FARMS, INC.
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