

RICHARD G. ZIMMER - SBN 107263  
T. MARK SMITH - SBN 162370  
CLIFFORD & BROWN  
A Professional Corporation  
Attorneys at Law  
Bank of America Building  
1430 Truxtun Avenue, Suite 900  
Bakersfield, CA 93301-5230  
(661) 322-6023

Attorneys for Cross-Defendant, Wm. Bolthouse Farms, Inc.,

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

\* \* \*

COORDINATION PROCEEDING	)	Judicial Council Coordination
SPECIAL TITLE (Rule 1550(b))	)	Proceeding No. 4408
	)	
ANTELOPE VALLEY GROUNDWATER	)	Santa Clara Case No. 01-05-CV-049053
CASES	)	Assigned to the Honorable Jack Komar
	)	
INCLUDED ACTIONS:	)	
	)	
LOS ANGELES COUNTY WATERWORKS	)	WM. BOLTHOUSE FARMS, INC.'S
DISTRICT NO. 40 v. DIAMOND	)	ANSWER TO THE FIRST AMENDED
FARMING COMPANY, et al.,	)	CROSS-COMPLAINT OF PUBLIC WATER
Los Angeles Superior Court	)	SUPPLIERS FOR DECLARATORY AND
Case No. BC325201	)	INJUNCTIVE RELIEF AND
	)	ADJUDICATION OF WATER RIGHTS
	)	
LOS ANGELES COUNTY WATERWORKS	)	
DISTRICT NO. 40 v. DIAMOND	)	
FARMING COMPANY, et al.,	)	
Kern County Superior Court	)	
Case No. S-1500-CV-254348	)	
	)	
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]	)	

1 COMES NOW Cross-Defendant, WM. BOLTHOUSE FARMS, INC., sued  
2 and served herein as DOE 198, appearing for itself and no others,  
3 and in answer to the First Amended Cross-Complaint of Cross-  
4 Complainants California Water Service Company, City of Lancaster,  
5 City of Palmdale, Littlerock Creek Irrigation District, Los  
6 Angeles County Water Works District No. 40, Palmdale Water  
7 District, Rosamond Community Services District, Palm Ranch  
8 Irrigation District and Quartz Hill Water District (collectively,  
9 the "Public Water Suppliers"), on file herein, admits, denies and  
10 alleges as follows:

11 **FIRST AFFIRMATIVE DEFENSE**

12 **(General Denial)**

13 Answering each and every allegation contained in Cross-  
14 Complainants' First Amended Cross-Complaint, this answering  
15 Cross-Defendant denies each and every, all and singular,  
16 generally and specifically, the allegations therein contained  
17 and further denies that Cross-Complainants were damaged in the  
18 sums therein alleged or in any sum or are entitled to any relief  
19 whatsoever or 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, this answering Cross-Defendant  
24 alleges Cross-Complainants' First Amended Cross-Complaint and  
25 each alleged cause of action therein fails to state facts  
26 sufficient to constitute a cause of action against this answering

1 Cross-Defendant 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, this answering Cross-Defendant  
6 alleges 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, this answering Cross-Defendant  
14 alleges 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, this answering Cross-Defendant  
21 alleges 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 this answering Cross-Defendant to do the acts which said Cross-  
25 Complainants now allege are a basis for relief and Cross-  
26 Defendant alleges 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, this answering Cross-Defendant  
8 alleges that Cross-Complainant' First Amended Cross-Complaint,  
9 and each alleged cause of action therein, are barred by the  
10 statute 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, this answering Cross-Defendant  
15 alleges 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, this answering Cross-Defendant  
23 alleges that Cross-Complainants have delayed an unreasonable  
24 period of time in bringing this action, which delay has been  
25 prejudicial to Cross-Defendant, 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, this answering Cross-Defendant  
5 alleges 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, this answering Cross-Defendant  
12 alleges 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, this answering Cross-Defendant  
19 alleges that the Cross-Complainants and each of the alleged  
20 causes of action therein fail due to Cross-Defendant having duly  
21 acted within its rights as to the matters stated in the First  
22 Amended 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, this answering Cross-Defendant

1 alleges 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, this answering Cross-Defendant  
9 alleges 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 **(Negligent Filing Of Water Supply Documents)**

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

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1 **FIFTEENTH AFFIRMATIVE DEFENSE**

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

3 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
4 every alleged cause of action, this answering Cross-Defendant  
5 alleges that Cross-Complainants deceitfully and/or fraudulently  
6 failed water supply documents, including, but not limited to,  
7 Water Supply Assessments, Environmental Impact Reports, Will  
8 Serve Letters, etc., resulting in justifiable reliance by Cross-  
9 Defendant that the water supply was sufficient and that no taking  
10 could occur which would give rise to a claim of adverse  
11 possession or prescription and that Cross-Complainants should be  
12 estopped from asserting a claim inconsistent with such entities  
13 representations.

14 **SIXTEENTH AFFIRMATIVE DEFENSE**

15 **(Negligent Misrepresentation)**

16 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
17 every alleged cause of action, this answering Cross-Defendant  
18 alleges that Cross-Complainants negligently misrepresented the  
19 water supply in order to induce Cross-Defendant to justifiably  
20 rely on such representations causing Cross-Defendant to take no  
21 action to stop actions on the part of Cross-Complainants and that  
22 Cross-Complainants should be estopped from asserting a claim  
23 inconsistent with such entities representations.

24 **SEVENTHEENTH AFFIRMATIVE DEFENSE**

25 **(Intentional Misrepresentation)**

26 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and

1 every alleged cause of action, this answering Cross-Defendant  
2 alleges that Cross-Complainants intentionally misrepresented the  
3 water supply in order to induce Cross-Defendant to justifiably  
4 rely on such representations to cause Cross-Defendant to take no  
5 action to stop actions on the part of Cross-Complainants knowing  
6 that such representations were untrue and that Cross-Complainants  
7 should be estopped from asserting a claim inconsistent with such  
8 entities representations.

9 **EIGHTEENTH AFFIRMATIVE DEFENSE**

10 **(Indispensable Parties)**

11 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
12 every alleged cause of action, this answering Cross-Defendant  
13 alleges that Cross-Complainants have not named all parties to  
14 this action who are necessary and indispensable to the action  
15 based upon the pleadings and relief requested so as to bar the  
16 claims, allegations and relief requested by Cross-Complainants.

17 **NINETEENTH AFFIRMATIVE DEFENSE**

18 **(Indispensable Parties: McCarran Act)**

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

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1                                   **TWENTIETH AFFIRMATIVE DEFENSE**

2                                   **(Superior Water Right)**

3           FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
4 every alleged cause of action, this answering Cross-Defendant  
5 alleges that Cross-Defendant's water rights are superior and  
6 senior to, and take precedence over, any rights asserted in the  
7 First Amended Cross-Complaint so as to bar the claims herein.

8                                   **TWENTY-FIRST AFFIRMATIVE DEFENSE**

9                                   **(Failure To Prove Priority Rights)**

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

18                                   **TWENTY-SECOND AFFIRMATIVE DEFENSE**

19                                   **(Failure To Prove Prevention Of Pumping)**

20          FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
21 every alleged cause of action, this answering Cross-Defendant  
22 alleges that Cross-Complainants have failed to prove that Cross-  
23 Complainants' actions prevented Cross-Defendant from pumping what  
24 Cross-Defendant desired to pump during any alleged period of  
25 adverse possession or prescription so as to bar the claims  
26 herein.

1 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

2 **(Unlawful Taking)**

3 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
4 every alleged cause of action, this answering Cross-Defendant  
5 alleges that Cross-Complainants are barred by State and Federal  
6 Constitutions which prevent taking without just compensation and  
7 without appropriate legal procedures to assure no taking without  
8 due process of law.

9 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

10 **(Denial Of Equal Protection)**

11 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
12 every alleged cause of action, this answering Cross-Defendant  
13 alleges that Cross-Complainants are barred by State and Federal  
14 Constitutions which require equal protection of law to Cross-  
15 Defendant.

16 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

17 **(Appurtenant Rights)**

18 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
19 every alleged cause of action, this answering Cross-Defendant  
20 alleges that it has an appurtenant right to pump and reasonably  
21 use groundwater on its properties which is superior to the rights  
22 of Cross-Complainants so as to bar the claims therein.

23 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

24 **(Right To Return Flows)**

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

1 alleges that it has pumped water from a lower aquifer which is  
2 not significantly hydraulically connected to the upper aquifer at  
3 issue in this case, and used the water so developed to irrigate  
4 crops and that a portion of this water has reached the upper  
5 aquifer by percolation and Cross-Defendant has a right to store  
6 this water in the upper aquifer and Cross-Defendant has a  
7 paramount right against all other parties to this water, and a  
8 paramount right against all other parties to recapture this water  
9 or an equivalent amount so as to bar the claims herein.

10 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

11 **(Self Help)**

12 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
13 every alleged cause of action, this answering Cross-Defendant  
14 alleges that the doctrine of self help bars the claims,  
15 allegations and remedies requested by Cross-Complainants.

16 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

17 **(Storage Rights)**

18 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
19 every alleged cause of action, this answering Cross-Defendant  
20 alleges that it holds a right to storage space in the alluvial  
21 and fractured bedrock water basin and that Cross-Defendant has a  
22 right to water stored in the basin, based upon the California  
23 water allocation priority system, so as to bar the claims herein.

24 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

25 **(Storage Space)**

26 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and

1 every alleged cause of action, this answering Cross-Defendant  
2 alleges that it has storage rights in the fractured bedrock and  
3 alluvial groundwater basin for which compensation is due by  
4 persons or entities storing water in the water basin so as to bar  
5 the claims herein.

6 **THIRTIETH AFFIRMATIVE DEFENSE**

7 **(No Net Augmentation)**

8 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
9 every alleged cause of action, this answering Cross-Defendant  
10 alleges that Cross-Complainants have not imported, developed,  
11 salvaged or otherwise acted with reference to water entering the  
12 fractured bedrock or alluvial groundwater basin in a way which  
13 has provided a net augmentation to the water basin so as to bar  
14 the claims herein.

15 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

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

17 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
18 every alleged cause of action, this answering Cross-Defendant  
19 alleges that Cross-Complainants have not imported water or  
20 otherwise provided a net augmentation to the water basin to the  
21 extent they simply have replenished water wrongfully taken by  
22 them in the past so as to bar the claims herein.

23 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

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

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

1 alleges that any water imported, developed, salvaged or otherwise  
2 being claimed as a priority right, credit or other water right,  
3 was not imported, developed, salvaged or otherwise introduced  
4 into the fractured bedrock or alluvial basin with the intent of  
5 storing or banking such water so as to bar the claims herein.

6 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

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

8 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
9 every alleged cause of action, this answering Cross-Defendant  
10 alleges that Cross-Complainants have failed to join all necessary  
11 and indispensable parties, have failed to prove a basis for  
12 injunctive relief against all parties, have failed to prove *inter*  
13 *se* appropriative rights, have failed to prove the nature and  
14 extent of appropriative pumping and the nature and extent of  
15 overlying pumping and have failed to prove all facts necessary to  
16 provide an appropriate basis for the Court to impose a physical  
17 solution which allocates water production rights based upon the  
18 California water allocation priority system so as to bar the  
19 claims herein.

20 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

21 **(Additional Defenses)**

22 FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and  
23 every alleged cause of action, this answering Cross-Defendant  
24 alleges that it presently has insufficient knowledge or  
25 information on which to form a belief as to whether additional,  
26 as yet unstated, affirmative defenses may be appropriate. This

1 answering Cross-Defendant reserves herein the right to assert  
2 additional affirmative defenses as necessary based upon  
3 investigation and discovery.

4 **PRAYER**

5 WHEREFORE, Cross-Defendant prays judgment that Cross-  
6 Complainants take nothing by reason of the First Amended Cross-  
7 Complaint on file herein, for costs of suit, and for such other  
8 and further relief as the Court deems just and proper.

9  
10 DATED: July 10, 2007

CLIFFORD & BROWN

11  
12 By: 

RICHARD G. ZIMMER, ESQ.

T. MARK SMITH, ESQ.

Attorneys for cross-defendant,  
WM. BOLTHOUSE FARMS, INC.

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I am employed in the County of Kern, State of California. I am over the age of 18 and not a party to the within action; my business address is 1430 Truxtun Avenue, Bakersfield, CA 93301.

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