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Via E-mail

To All Counsel

Re: *Antelope Valley Groundwater Litigation*
Santa Clara County Superior Court Case No. 1-05-CV-049053
Judicial Council Coordination Proceeding No. 4408

Dear Counsel:

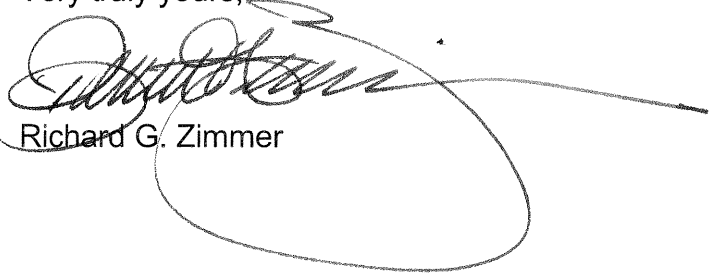
Attached please find an Amended Answer to the First Amended Cross-Complaint your review and consideration. We have added a few affirmative defenses raised by other parties which for sake of completeness we have added in our Answer.

Additionally, please find an Amended Cross-Complaint of Bolthouse Properties, LLC and Cross-Complaint of Wm. Bolthouse Farms, Inc. which adds allegations pleaded by others.

Please advise within ten (10) days if you have any objection to the filing of our Amended Answer to the First Amended Cross-Complaint and Amended Cross-Complaint/Cross-Complaint of Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc.. If we receive no objections, we will request that the Court approve the Amended Answer to Cross-Complaint and Amended Cross-Complaint/Cross-Complaint at the next hearing.

Thank you for your courtesy and consideration of this request.

Very truly yours,



Richard G. Zimmer

RGZ/nm
Enclosures

BL/ANTELOPE VALLEY/SANTA MARIA/ALL COUNSEL-06

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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

14 INCLUDED ACTIONS:

15 LOS ANGELES COUNTY WATERWORKS) [PROPOSED] BOLTHOUSE
16 DISTRICT NO. 40 v. DIAMOND) PROPERTIES, LLC and WM.
17 FARMING COMPANY, et al.,) BOLTHOUSE FARMS, INC.'S AMENDED
18 Los Angeles Superior Court) ANSWER TO THE FIRST AMENDED
19 Case No. BC325201) CROSS-COMPLAINT OF PUBLIC WATER
20) SUPPLIERS FOR DECLARATORY AND
21) INJUNCTIVE RELIEF AND
22) ADJUDICATION OF WATER RIGHTS
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COMES NOW Cross-Defendants, BOLTHOUSE PROPERTIES, LLC and WM. BOLTHOUSE FARMS, INC., appearing for themselves and no others, and in answer to the First Amended Cross-Complaint of Cross-Complainants California Water Service Company, City of Lancaster, City of Palmdale, Littlerock Creek Irrigation District, Los Angeles County Water Works District No. 40, Palmdale Water District, Rosamond Community Services District, Palm Ranch Irrigation District and Quartz Hill Water District (collectively, the "Public Water Suppliers"), on file herein, admit, deny and allege as follows:

FIRST AFFIRMATIVE DEFENSE

(General Denial)

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

SECOND AFFIRMATIVE DEFENSE

(Fails to State Facts)

FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE to each and every alleged cause of action, these answering Cross-Defendants allege Cross-Complainants' First Amended Cross-Complaint and each alleged cause of action therein fails to state facts sufficient 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 to the action based
23 upon the pleadings and relief requested so as to bar the claims,
24 allegations and relief requested by Cross-Complainants.

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1 **TWENTIETH AFFIRMATIVE DEFENSE**

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

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 named all parties to this
6 action who are necessary and indispensable to the action for
7 compliance with the McCarran Act so as to bar the claims,
8 allegations and relief requested by Cross-Complainants.

9 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

10 **(Superior Water Right)**

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-Defendants' water rights are superior and
14 senior to, and take precedence over, any rights asserted in the
15 First Amended Cross-Complaint so as to bar the claims herein.

16 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

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

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 have failed to prove priorities
21 under California water law as between appropriators, as between
22 appropriators and overlying landowners and as between all others
23 necessary for the Court to cut back water production in time of
24 shortage based upon the California priority water allocation
25 system so as to bar the claims herein.

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1 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

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

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 failed to prove that Cross-
6 Complainants' actions prevented Cross-Defendant from pumping what
7 Cross-Defendants desired to pump during any alleged period of
8 adverse possession or prescription so as to bar the claims
9 herein.

10 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

11 **(Unlawful Taking)**

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

18 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

19 **(Denial Of Equal Protection)**

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 are barred by State and Federal
23 Constitutions which require equal protection of law to Cross-
24 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, Section 1009)**

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 Section 1009 of the California Civil
22 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 powers
6 to impose a physical solution seeks a remedy that is in violation
7 of the doctrine of separation of powers set forth in Article 3,
8 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, 5th and 14th 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 Fourteenth Amendment of the United States
5 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 **PRAYER**

15 WHEREFORE, Cross-Defendants pray judgment that Cross-
16 Complainants take nothing by reason of the First Amended Cross-
17 Complaint on file herein, for costs of suit, and for such other
18 and further relief as the Court deems just and proper.

19
20 DATED: January 4, 2008

CLIFFORD & BROWN

21
22 By:

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24 T. MARK SMITH, ESQ.
Attorneys for cross-defendant,
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Attorneys for Bolthouse Properties, LLC

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

* * *

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])	
	<u>ROSAMOND COMMUNITY SERVICES</u>)	
	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 additional parties, including but not limited to SHELDON R. BLUM, Trustee for the SHELDON R. BLUM TRUST, 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 ALLEGATION

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, 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.

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.

1 5. Each PARCEL overlies percolating groundwater, the
2 extent of which is unknown to Cross-Complainants. Cross-
3 Complainants hereby incorporate by reference, as if set forth at
4 length verbatim, all Complaints and Cross-Complaints filed by any
5 party to this action, and/or filed in the future by any party, not
6 for the truth thereof, but as and for a basis for bringing this
7 Cross-Complaint.

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

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

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

26 9. Cross-Complainants have an appurtenant right and/or

1 other water right to pump and reasonably use groundwater on the
2 parcels at issue in this lawsuit. These rights to pump
3 groundwater are/may be superior to rights of the Cross-Defendants
4 and/or other Cross-Defendants depending upon the priority rights
5 of such Cross-Defendants based upon the California priority water
6 allocation system.

7 10. Cross-Complainants are informed and believe, and on the
8 basis of such information and belief alleges, that each Cross-
9 Defendant claims/may claim that it has water rights to extract
10 groundwater for uses that are superior to, or coequal with, Cross-
11 Complainants' overlying water rights, based upon an alleged
12 superior water right, claim of prescription or otherwise, whether
13 in law or in equity.

14 11. The quantity of alleged superior and/or coequal rights
15 claimed by Cross-Defendants, each of them, currently is not known.

16 **FIRST CAUSE OF ACTION**

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

18 12. Cross-Complainants set forth herein at length verbatim
19 the general allegations contained in paragraphs 1 through 11 of
20 this Cross-Complaint.

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

25 14. Cross-Complainants herein request a declaration from
26 the Court quieting title to Cross-Complainants' appurtenant rights

1 to pump and reasonably use groundwater on their PARCELS.

2 **SECOND CAUSE OF ACTION**

3 **(Declaratory Relief)**

4 15. Cross-Complainants set forth herein at length verbatim
5 the general allegations contained in paragraphs 1 through 11 of
6 this Cross-Complaint.

7 16. Cross-complainants contend that by virtue of the filing
8 of the Complaints filed by Los Angeles County Waterworks District
9 No. 40 in Kern County and Los Angeles County, herein coordinated
10 with the Riverside action, that a current controversy exists as
11 between Cross-Complainants and Cross-Defendants and as to all
12 other Defendants in that Los Angeles County has requested a
13 complete basin-wide adjudication of all rights of all parties to
14 water in the Antelope Valley basin. Cross-Complainants request
15 quiet title and/or other appropriate declaration of the right to
16 pump and reasonably use groundwater on its PARCELS and/or to pump
17 and use other groundwater based upon its rights as declared by the
18 Court herein.

19 **THIRD CAUSE OF ACTION**

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

21 17. Cross-Complainants set forth herein at length verbatim
22 the general allegations contained in paragraphs 1 through 11 of
23 this Cross-Complaint.

24 18. State and federal constitutions and 42 USC § 1983
25 prevent the unlawful taking of property without due process and
26 just compensation. Cross-Defendants concealed their efforts to

1 obtain prescriptive rights against Cross-Complainants and have
2 failed to take property by appropriate legal means and without
3 notice, due process and/or the right to be heard, and have taken
4 such property in the absence of just compensation.

5 **FOURTH CAUSE OF ACTION**

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

7 19. Cross-Complainants set forth herein at length verbatim
8 the general allegations contained in paragraphs 1 through 11 of
9 this Cross-Complaint.

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

18 21. Cross-Defendants also potentially make claims that
19 separate management areas should exist. Separate management areas
20 as between correlative overlying rights holders and treating these
21 areas differently, denies equal protection to overlying landowners
22 in violation of State and Federal Constitutions and violates 42
23 USC § 1983.

24 **FIFTH CAUSE OF ACTION**

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

26 22. Cross-Complainants set forth herein at length verbatim

1 the general allegations contained in paragraphs 1 through 11 of
2 this Cross-Complaint.

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

22 **SIXTH CAUSE OF ACTION**

23 **(Return Flows - Against All Defendants)**

24 24. Cross-Complainants set forth herein at length verbatim
25 the general allegations contained in paragraphs 1 through 11 of
26 this Cross-Complaint.

1 25. Cross-complainants have pumped and used groundwater on
2 its PARCELS to irrigate crops. This water was pumped from a lower
3 aquifer not significantly hydraulically connected to the upper
4 aquifer and which water would not otherwise be supplied to the
5 upper aquifer. A portion of this water has reached the upper
6 aquifer by percolation. Cross-Complainants have a priority right
7 to these return flows as well as a right to store water in the
8 upper aquifer from the return flows and have a paramount right
9 against all other parties to this water and a paramount right
10 against all other parties to recapture this water or an equivalent
11 amount of such water.

12 **SEVENTH CAUSE OF ACTION**

13 **(Self Help - Against Purveyor Parties)**

14 26. Cross-Complainants set forth herein at length verbatim
15 the general allegations contained in paragraphs 1 through 11 of
16 this Cross-Complaint.

17 27. Cross-complainants contend that Cross-Defendants must
18 prove any claim for prescription or adverse possession and prove
19 that they prevented Cross-Complainants from pumping amounts which
20 Cross-Complaints desired to pump during any alleged period of
21 adverse possession or prescription. However, to the extent the
22 Court rules that self help constitutes an affirmative request for
23 relief by Cross-Complainants, Cross-Complainants claim water
24 rights based upon self help.

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1 **EIGHTH CAUSE OF ACTION**

2 **(Storage Rights)**

3 28. Cross-Complainants set forth herein at length verbatim
4 the general allegations contained in paragraphs 1 through 11 of
5 this Cross-Complaint.

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

12 **NINTH CAUSE OF ACTION**

13 **(Storage Space - Against All Defendants)**

14 30. Cross-Complainants set forth herein at length verbatim
15 the general allegations contained in paragraphs 1 through 11 of
16 this Cross-Complaint.

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

22 **TENTH CAUSE OF ACTION**

23 **(Injunction/Physical Solution)**

24 32. Cross-Complainants set forth herein at length verbatim
25 the general allegations contained in paragraphs 1 through 11 of
26 this Cross-Complaint.

33. Cross-Complainants contend that Cross-Defendants, which are seeking an injunction/physical solution, must prove common law overdraft, the nature and extent of all pumping occurring in the Antelope Valley, appropriative *inter se* priority rights, the rights of all groundwater producers in the Antelope Valley and a legal basis for an injunction against parties holding inferior rights based upon the California groundwater allocation priority system. Cross-Complainants further contend that if water cutbacks are necessary, appropriative users must be cutback first to prevent continuing common law overdraft. To the extent Cross-Defendants prove that common law overdraft exists, Cross-Complainants request the Court enjoin parties holding inferior appropriative rights from pumping and/or that the Court impose a physical solution on appropriators to prevent continuing common law overdraft.

PRAYER

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

1. For a judgment against the Cross-Defendants;
2. For a declaration quieting title to Cross-Complainants' right to pump and reasonably use groundwater on their PARCELS and to their rights to otherwise pump groundwater;
3. If the Court determines based upon the Cross-Defendants basin-wide adjudication that the fractured bedrock and alluvial groundwater basin is in common law overdraft, for an injunction

1 and/or a physical solution cutting back appropriative water use to
2 prevent continuing common law overdraft;

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

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

10 6. For a judgment for Cross-Complainants for all available
11 remedies to secure and protect Cross-Complainants' continuing
12 overlying water rights;

13 7. For an award of reasonable attorneys' fees and costs of
14 suit; and

15 8. For such other and further relief as the court deems
16 just and proper.

17
18 DATED: January ___, 2008

19 CLIFFORD & BROWN

20
21
22 By:

23 RICHARD G. ZIMMER, ESQ.
24 T. MARK SMITH, ESQ.
25 Attorneys for
26 BOLTHOUSE PROPERTIES, LLC and
WM. BOLTHOUSE FARMS, INC.