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9 Attorneys for Laverne Burroughs, Trustee,
10 The Burroughs Family Irrevocable Trust dated August 1, 1995

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF LOS ANGELES

13 **ANTELOPE VALLEY**
14 **GROUNDWATER CASES**

15 **Included Actions:**

16 Los Angeles County Waterworks District
17 No. 40 v. Diamond Farming Co.
18 Los Angeles County Superior Court
19 Case No. BC 325201

20 Los Angeles County Waterworks District
21 No. 40 v. Diamond Farming Co.
22 Kern County Superior Court
23 Case No. S-1500-CV-254-348

24 Wm. Bolthouse Farms, Inc. v. City of
25 Lancaster, Diamond Farming Co. v. City of
26 Lancaster, Diamond Farming Co. v.
27 Palmdale Water Dist.
28 Riverside County Superior Court
Consolidated actions
Case Nos. RIC 353 840, RIC 344 436, RIC
344 668

Judicial Council Coordination No. 4408

For filing purposes only:
Santa Clara County Case No. 1-05-CV-049053

Assigned to The Honorable Jack Komar

**MODEL ANSWER TO COMPLAINT AND
ALL CROSS-COMPLAINTS**

1 I hereby answer the Complaint and all Cross-Complaints which have been filed as of this
2 date, specifically those of Antelope Valley East-Kern Water Agency, Palmdale Water District &
3 Quartz Hill Water District, Rosamond Community Services District and Waterworks District No.
4 40 of Los Angeles County. I do not intend to participate at trial or other proceedings unless
5 ordered by the Court to do so, but I reserve the right to do so upon giving written notice to that
6 effect to the Court and all parties. I own the following property(ies) located in the Antelope
7 Valley:

8 APN: 3279-004-002

9 APN: 3256-013-005

10 [Insert address and/or APN Number]

11
12 **GENERAL DENIAL**

13 1. Pursuant to Code of Civil Procedure section 431.30(d), Defendant and Cross-
14 Defendant hereby generally denies each and every allegation set forth in the Complaint and
15 Cross-Complaint, and the whole thereof, and further denies that Plaintiff and Cross-Complainant
16 are entitled to any relief against Defendant and Cross-Defendant.

17 **AFFIRMATIVE DEFENSES**

18 **First Affirmative Defense**

19 (Failure to State a Cause of Action)

20 2. The Complaint and Cross-Complaint and every purported cause of action
21 contained therein fail to allege facts sufficient to constitute a cause of action against Defendant
22 and Cross-Defendant.

23 **Second Affirmative Defense**

24 (Statute of Limitation)

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

1 **Third Affirmative Defense**

2 (Laches)

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

5 **Fourth Affirmative Defense**

6 (Estoppel)

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

9 **Fifth Affirmative Defense**

10 (Waiver)

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

13 **Sixth Affirmative Defense**

14 (Self-Help)

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

18 **Seventh Affirmative Defense**

19 (California Constitution Article X, Section 2)

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

23 **Eighth Affirmative Defense**

24 (Additional Defenses)

25 9. The Complaint and Cross-Complaint do not state their allegations with sufficient
26 clarity to enable defendant and cross-defendant to determine what additional defenses may exist
27 to Plaintiff and Cross-Complainant's causes of action. Defendant and Cross-defendant therefore
28 reserve the right to assert all other defenses which may pertain to the Complaint and Cross-

1 Complaint.

2 **Ninth Affirmative Defense**

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

6 **Tenth Affirmative Defense**

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

9 **Eleventh Affirmative Defense**

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

13 **Twelfth Affirmative Defense**

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

18 **Thirteenth Affirmative Defense**

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

21 **Fourteenth Affirmative Defense**

22 15. The prescriptive claims asserted by governmental entity Cross-Complainants are
23 barred by the provisions of the 14th Amendment to the United States Constitution.

24 **Fifteenth Affirmative Defense**

25 16. The governmental entity Cross-Complainants were permissively pumping at all
26 times.

27 **Sixteenth Affirmative Defense**

28 17. The request for the court to use its injunctive powers to impose a physical solution

1 seeks a remedy that is in violation of the doctrine of separation of powers set forth in Article 3
2 section 3 of the California Constitution.

3 **Seventeenth Affirmative Defense**

4 18. Cross-Complainants are barred from asserting their prescriptive claims by
5 operation of law as set forth in Civil Code sections 1007 and 1214.

6 **Eighteenth Affirmative Defense**

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

10 **Nineteenth Affirmative Defense**

11 20. The Cross-Complaint is defective because it fails to name indispensable parties in
12 violation of California Code of Civil Procedure Section 389(a).

13 **Twentieth Affirmative Defense**

14 21. The governmental entity Cross-Complainants are barred from taking, possessing
15 or using cross-defendants' property without first paying just compensation.

16 **Twenty-First Affirmative Defense**

17 22. The governmental entity Cross-Complainants are seeking to transfer water right
18 priorities and water usage which will have significant effects on the Antelope Valley
19 Groundwater basin and the Antelope Valley. Said actions are being done without complying with
20 and contrary to the provisions of California's Environmental Quality Act (CEQA) (Pub.Res.C.
21 2100 *et seq.*).

22 **Twenty-Second Affirmative Defense**

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

27 **Twenty-Third Affirmative Defense**

28 24. Any imposition by this court of a proposed physical solution that reallocates the

1 water right priorities and water usage within the Antelope Valley will be *ultra vires* as it will be
2 subverting the pre-project legislative requirements and protections of California's Environmental
3 Quality Act (CEQA) (Pub.Res.C. 2100 *et seq.*).
4

5 **WHEREFORE**, Defendant and Cross-defendant prays that judgment be entered as
6 follows:

- 7 1. That Plaintiff and Cross-Complainant take nothing by reason of its Complaint or
8 Cross-Complaint;
9 2. That the Complaint and Cross-Complaints be dismissed with prejudice;
10 3. For Defendant and Cross-Defendant's costs incurred herein; and
11 4. For such other and further relief as the Court deems just and proper.

12 Law Offices of Angelo Salvatore Parise

13 Dated: December 20, 2006

Signature 

Daniel M. Hattis

[Print name of party and/or attorney]

15 Attorneys for Laverne Burroughs, Trustee,
16 The Burroughs Family Irrevocable Trust dated 8/1/95

17 [FILE IN LA SUPERIOR COURT AND POST ON COURT WEBSITE – FOR E-FILING
18 INSTRUCTIONS, PLEASE GO TO WWW.SCEFILING.ORG/FAQ OR CONTACT GLOTRANS
19 AT (510) 208-4775.]
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PROOF OF SERVICE

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California 92614. On December 21, 2006, I served the within document(s):

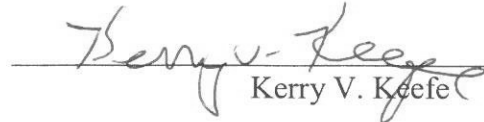
MODEL ANSWER TO COMPLAINT AND ALL CROSS-COMPLAINTS (Laverne Burroughs, Trustee, The Burroughs Family Irrevocable Trust Dated August 1, 1995)

- ☒ by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- ☐ by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 21, 2006, at Irvine, California.


Kerry V. Keefe