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DISTRICT NO. 40

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES - CENTRAL DISTRICT
14

15 LOS ANGELES COUNTY
16 WATERWORKS DISTRICT NO. 40,

17 Plaintiff,

18 vs.

19 DIAMOND FARMING COMPANY, a
corporation;
20 WM. BOLTHOUSE FARMS, INC., a
corporation;
21 CALIFORNIA WATER SERVICE
COMPANY;
22 CITY OF LANCASTER;
CITY OF PALMDALE;
23 LITTLEROCK CREEK IRRIGATION
DISTRICT;
24 PALMDALE WATER DISTRICT;
PALM RANCH IRRIGATION
25 DISTRICT,
QUARTZ HILL WATER DISTRICT;
26 and DOES 1 through 25,000 inclusive;

27 Defendants.
28

EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Sup. Court

NOV 29 2004

John A. Clarke, Executive Officer/Clerk
By JENNY CHEA, Deputy

Case No.

BC 325201

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND
ADJUDICATION OF WATER RIGHTS

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND ADJUDICATION OF WATER RIGHTS

EXHIBIT 3

1 Plaintiff Los Angeles County Waterworks District No. 40 alleges:

2
3 INTRODUCTION
4

5 1. This action seeks a judicial determination of all rights to ground water within the
6 Antelope Valley Groundwater Basin. The adjudication is necessary to protect and conserve the
7 vital water groundwater supply of the Antelope Valley that is vital to the health, safety and
8 welfare of tens of thousands of persons and entities in communities who depend upon water
9 deliveries from Los Angeles County Waterworks District No. 40, Antelope Valley (the
10 "District"). For these reasons, the District files this complaint to promote and protect the general
11 public welfare in the Antelope Valley; to protect the District's rights to pump and deliver water to
12 the public; to protect the Antelope Valley from a loss of the public groundwater supply, to
13 prevent degradation of the quality of the public groundwater supply; and to prevent land
14 subsidence and higher costs to the public for water.

15
16 2. The District is a public agency governed by the Los Angeles County Board of
17 Supervisors and lawfully organized to, among other things, provide water to the public in a large
18 portion of the Antelope Valley. District customers must have a reliable and safe groundwater
19 supply for domestic and business needs. To provide water to the public, the District has drilled
20 and equipped wells to pump groundwater. The District has also constructed, maintained and
21 operated a waterworks delivery system to supply the groundwater to the public. Without an
22 adequate and safe groundwater supply, Antelope Valley residents and businesses in the Antelope
23 Valley would likely not have enough water.

24
25 3. The District has appropriative and prescriptive rights to Basin groundwater as the
26 District has pumped water from the Basin since at least 1919. Since that time, the District has
27 pumped water from the Antelope Valley Basin and/or stored water in the Antelope Valley Basin
28 by reasonable extraction means and has used the Antelope Valley Basin and/or its water for

1 reasonable and beneficial purposes, and has done so under a claim of right in an actual, open,
2 notorious, exclusive, continuous, uninterrupted, hostile, adverse, use and/or manner for a period
3 of time of at least five and before filing this complaint.

4
5 4. Due to the shortage of water in the Basin, the District has purchased State Water
6 Project water from the Antelope Valley-East Kern Water Agency in addition to pumping
7 groundwater. The State Water Project water originates in northern California and would not
8 reach the Basin but for the District's purchases. District customers pay millions of dollars each
9 year for State Water Project water. The District purchases approximately 30,000 acre feet of
10 Project water each year and delivers the purchased Project water to the public through the
11 District's waterworks systems.

12
13 5. The District depends on the Basin for pumping of approximately 20,000 acre feet
14 of water each year. District customers use Project water for a variety of uses and thus a portion of
15 the Project water percolates into the Basin and commingles with the Basin's water from natural
16 sources. The District's purchase and delivery of Project water augments the natural supply of
17 groundwater in the Basin. Without the substantial investment of the District in purchasing the
18 State Water Project water, the District would need to pump 50,000 acre feet of groundwater each
19 year.

20
21 6. By storing Project water or other imported water in the Basin, the District could
22 recover the stored water during times of drought, water supply emergencies, or other water
23 shortages to ensure a safe and reliable supply of water to the public. The District is pursuing
24 approvals to allow for the construction and operation of injection wells or other means by which
25 State Water Project water or other water imported from outside the Basin may be injected or
26 placed for storage in the Basin.

27
28 7. To provide water to the public, the District has and claims the following rights,

1 each of which is paramount and superior to any overlying rights or other water rights, if any,
2 claimed by any defendant:

3
4 A. The right to pump groundwater from the Antelope Valley Groundwater
5 Basin in an annual amount equal to the highest volume of groundwater extracted by the District in
6 any year preceding entry of judgment in this action according to proof, but not less than 18,944
7 acre feet;

8
9 B. The right to pump or authorize others to extract from the Antelope Valley
10 Groundwater Basin a volume of water equal in quantity to that volume of water previously
11 purchased by the District from the Antelope Valley-East Kern Water Agency and which has
12 augmented the supply of water in the Basin in any year preceding entry of judgment in this action
13 according to proof, but not less than 18,944 acre feet;

14
15 C. The right to pump or authorize others to extract from the Antelope Valley
16 Groundwater Basin a volume of water equal in quantity to that volume of water purchased in the
17 future by the District from the Antelope Valley-East Kern Water Agency which augments the
18 supply of water in the Basin; and

19
20 D. The right to pump or authorize others to extract from the Antelope Valley
21 Basin a volume of water equal in quantity to that volume of water injected into the Basin or
22 placed within the Basin by the District or on its behalf.

THE ANTELOPE VALLEY GROUNDWATER BASIN IS AND HAS BEEN IN A STATE
OF OVERDRAFT

8. The Antelope Valley Groundwater Basin is located in Los Angeles and Kern counties. The Basin is located in an arid valley in the Mojave Desert, about 50 miles northeast of Los Angeles. The Basin encompasses about 940 square miles and generally includes the communities of Lancaster, Palmdale and Rosamond. The Basin is bounded on the south by the San Gabriel Mountains and on the northwest by the Tehachapi Mountains.

9. For over a century courts in California have used the groundwater basin concept to resolve groundwater disputes. A groundwater basin is an alluvial aquifer with reasonably well-defined boundaries in a lateral direction and a definable bottom.

10. Before there was groundwater pumping, natural water recharge to the Basin was in balance with water discharged from the Basin and water levels generally remained constant and in a state of long-term equilibrium. In or about 1915 there was significant pumping, primarily for agricultural purposes. Over time the rise of agricultural pumping destroyed the ground water level equilibrium and caused a, long-term decline in groundwater levels and groundwater storage in the Basin.

11. There has never been a limit on groundwater pumping in the Basin. As a result of this lack of groundwater control and management over the past eighty years, the Basin has lost an estimated eight million acre feet of water. This loss of groundwater caused chronic declines in groundwater levels and land subsidence.

12. Land subsidence is the sinking of the Earth's surface due to subsurface movement of earth materials and is primarily caused by groundwater pumping. The District is informed and believes and upon that basis alleges that as much as six feet of subsidence has occurred in

1 portions of the Basin. The negative effects of land subsidence observed in the Basin include loss
2 of groundwater storage space, cracks and fissures at the land surface and damage to real property.

3
4 13. Land subsidence, loss of groundwater storage, and declining groundwater levels
5 injure the public welfare and threaten the communities that depend upon the Basin water. Land
6 subsidence and chronic declines in groundwater levels continue because of unlimited
7 groundwater pumping in the Basin.

8
9 14. Although agricultural pumping decreased for a limited time when groundwater
10 levels became too low for agriculture to pump water from the Basin, agricultural pumping has
11 increased in the past decade. During the same time, continued urbanization in and around the
12 cities of Palmdale and Lancaster has increased the public's need for water. Existing pumping
13 causes damage and injury to the Basin including land subsidence. Land subsidence exists and
14 will increase unless the court establishes a safe yield for the Basin and limits pumping to the
15 Basin's safe yield.

16
17 15. The District is informed and believes and upon that basis alleges the Basin is and
18 has been in an overdraft condition for more than five (5) consecutive years and before the filing
19 of the complaint in Riverside County Superior Court Case No. 34436 entitled *Diamond Farming*
20 *Company vs. City of Lancaster*, and before the filing of this complaint. During said time periods,
21 total annual demands upon the Basin have exceeded and continue to exceed the supply of water
22 from natural sources. Consequently, there is and has been a progressive and chronic decline in
23 Basin water levels and the available natural supply is being and has been chronically depleted.
24 Unless limited by order and judgment of the court, potable Basin water will be exhausted and
25 land subsidence will continue.

26
27 16. Each defendant has, and is now, pumping, appropriating and diverting water from
28 the natural supply of the Basin, and/or claims some interest in the Basin water. The District is

1 informed and believes and upon that basis alleges that the combined extraction of water by
2 defendants exceeds the annual production of water from the Antelope Valley Basin, and that each
3 defendant claims a right to take water and threatens to increase its taking of water without regard
4 to the rights of the District. Defendants' pumping reduces Basin water tables and contributes to
5 the deficiency of the Basin water supply as a whole. The deficiency results in a shortage of water
6 to the public who depend upon the District to supply water from the Basin. Defendants continued
7 and increasing extraction of Basin water has resulted in, and will result in, a diminution, reduction
8 and impairment of the Basin water supply; causes land subsidence; and has and will deprive the
9 District of its rights to provide water for the public's health, welfare and benefit.

10
11 17. The District is informed and believes and thereon alleges there are conflicting
12 claims of rights to the Basin and/or its water.

13
14 18. The District is informed and believes and thereon alleges that defendants who own
15 real property in the Basin claim an overlying right to pump Basin water. The overlying right is
16 limited to the native safe yield of the Basin. The District alleges that because subsidence is an
17 undesirable result and is occurring in the Basin, defendants are and have been pumping more than
18 the Basin's safe yield.

19
20
21 PARTIES

22
23 19. The District is informed and believes that Diamond Farming Company is a
24 California corporation doing business in Los Angeles County.

25
26 20. The District is informed and believes that Wm. Bolthouse Farms, Inc. is a
27 Michigan corporation doing business in Los Angeles County.

21. The District is informed and believes that the California Water Service Company is a California corporation that provides water to consumers within Los Angeles County.

22. The District is informed and believes that the City of Lancaster is a municipal corporation situated within Los Angeles County.

23. The District is informed and believes that the City of Palmdale is a municipal corporation situated within Los Angeles County.

24. The District is informed and believes that the Littlerock Creek Irrigation District is a public agency that provides water to consumers within Los Angeles County.

25. The District is informed and believes that the Palmdale Water District is a public agency that provides water to consumers within Los Angeles County.

26. The District is informed and believes that the Palm Ranch Irrigation District is a public agency that provides water to consumers within Los Angeles County.

27. The District is informed and believes that the Quartz Hill Water District is a public agency that provides water to consumers within Los Angeles County.

28. The District is informed and believes, and on that basis alleges, that defendant Does 1 through 25,000, inclusive, own and/or lease real property within the Antelope Valley Groundwater Basin, extract water from the Basin, claim some right, title or interest to Basin water, and/or that their claims are adverse to the District's rights and claims. The District is unaware of their true names and capacities and therefore sues those defendants by fictitious names. The District will seek leave to amend this complaint to add such names and capacities when ascertained.

FIRST CAUSE OF ACTION

(For Declaratory Relief – Prescriptive Rights – Against all Defendants Except Public Entity Defendants)

29. The District alleges and incorporates by reference herein allegations in paragraphs 1 through 28, inclusive.

30. Prescriptive rights have been recognized by the California Supreme Court for public entities for over fifty years. The District alleges that it has continuously and for more than five years and before the date of this action pumped water from the Basin for reasonable and beneficial purposes and has done so under a claim of right in an actual, open, notorious, exclusive, continuous, hostile and adverse manner. The District further alleges that defendants have had actual and/or constructive notice of District's pumping either of which is sufficient to establish District's prescriptive right.

31. The District contends that defendants' rights to pump Basin water are subordinate to the prescriptive right of the District and to the general welfare of the citizens, inhabitants and customers serviced by Los Angeles County Waterworks District No. 40, Antelope Valley.

32. An actual controversy has arisen between the District and defendants. The District alleges, on information and belief, that defendants' dispute the contentions of the District as described in the immediately preceding paragraph.

33. The District seeks a judicial determination as to the correctness of its contentions and an *inter se* finding as to the priority and amount of Basin water to which the District and each defendant are entitled to pump from the Basin.

//

SECOND CAUSE OF ACTION

(For Declaratory Relief – Appropriative Rights – Against all Defendants)

34. The District alleges and incorporates by reference herein allegations in paragraphs 1 through 33, inclusive.

35. The District alleges that in addition to, or alternatively to, its prescriptive rights, it has appropriative rights to pump water from the Basin. Appropriative rights attach to surplus water from the Basin. There is surplus water in the Basin when the amount of water being extracted from it is less than the maximum that can be withdrawn without adverse effects on the Basin's long-term supply.

36. Surplus water exists when the pumping from the Basin is less than the safe yield. Safe yield is the maximum quantity of water which can be withdrawn annually from a groundwater Basin under a given set of conditions without causing an undesirable result. Undesirable result generally refers to a gradual lowering of the groundwater levels in the Basin, but also includes subsidence.

37. Overlying pumpers are only entitled to make reasonable and beneficial use of the native safe yield.

38. An actual controversy has arisen between the District and defendants. The District alleges, on information and belief, that defendants seek to prevent District from pumping surplus water.

39. The District seeks judicial determination as to the quantity of safe yield, the quantity of surplus water available, the correlative overlying rights of defendants to the safe yield

and an *inter se* determination of the rights of overlying, appropriative and prescriptive pumpers.

THIRD CAUSE OF ACTION

(For Declaratory Relief – Physical Solution – Against all Defendants)

40. The District alleges and incorporates by reference herein allegations in paragraphs 1 through 39, inclusive.

41. Upon information and belief, the District alleges that defendants claim an interest or rights to Basin water and further claim they can increase their pumping without regard to the rights of the District. Unless restrained by order of the court, defendants will continue to take increasing amounts of Basin water to the great and irreparable damage and injury to the District and to the Basin. The damage and injury to the Basin cannot be compensated for in money damages.

42. By reason of the large and increasing amounts of Basin water extracted by defendants as alleged above, the amount of Basin water available to the District has been reduced. Unless defendants and each of them are enjoined and restrained, the aforementioned conditions will continue and will become more severe; and there will be further depletion of the Basin groundwater supply which will further permanently damage the Basin's ability to supply water to the public.

43. Pursuant to California law it is the duty of the trial court to consider a "physical solution" to water rights disputes. A physical solution is a common sense approach to resolving water rights litigation that seeks to satisfy the reasonable and beneficial needs of all parties through augmenting the water supply or other practical measures. The physical solution is a practical way of fulfilling the mandate of Article X, section 2 of the California Constitution that the water resources of the State be put to use to the fullest extent of which they are capable.

44. To prevent irreparable injury to the Basin, it is necessary that the court determine, impose and retain continuing jurisdiction to enforce a physical solution upon the parties who pump water from the Basin. The solution to the Basin problems may include, but is not limited to, a monetary assessment, and metering and assessments upon Basin water extraction to pay for the purchase, delivery of supplemental supply of water to the Basin, and the court appointment of a watermaster.

FOURTH CAUSE OF ACTION

(For Declaratory Relief – Municipal Priority – Against all Defendants)

45. The District alleges and incorporates by reference herein allegations in paragraphs 1 through 44, inclusive.

46. The District has the right to pump water from the Basin not only to meet existing public needs for water, but also to take increased amounts of Basin water as necessary to meet future public needs. The District's rights to Basin water exist not only as a result of the priority and extent of the District's appropriative and prescriptive rights, but exist as a matter of law and public policy of the State of California: "It is hereby declared to be the established policy of this State that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation." (*Water Code* §106.)

47. *Water Code* Section 106.5 provides: "It is hereby declared to be the established policy of this State that the right of a municipality to acquire and hold rights to the use of water should be protected to the fullest extent necessary for existing and future uses. . . ."

48. Under *Water Code* sections 106 and 106.5, the District has a prior and paramount right to Basin water as against all non-municipal uses.

49. An actual controversy has arisen between the District and defendants. The District alleges, on information and belief, that defendants dispute the District's contentions as described in the paragraphs 46 through 48, inclusive. The District is informed and believes and on that basis alleges that the groundwater pumped by a majority of the defendants is used for irrigation purposes.

50. The District seeks a judicial determination as to the correctness of its contentions and to the amount of Basin water to which the parties are entitled to pump from the Basin. The District also seeks a declaration that it has the right to pump water from the Basin to meet its reasonable present and future needs, and that such rights are prior and paramount to the rights, if any, of defendants to the use of Basin water for irrigation purposes.

(Declaratory Relief – Storage of Imported Water in The Basin – Against all Defendants)

51. The District alleges and incorporates by reference herein allegations in paragraphs 1 through 50, inclusive.

52. The District purchases and uses water from the State Water Project. The Project water is not native to the Basin and the imported Project water decreases the District's pumping from the Basin. This imported water would not otherwise have been brought to the Basin but for the District purchase and delivery. The District pays a substantial cost for this imported water supply which cost is an annual amount subject to cost increases over time.

53. The District alleges that there is available space in the Basin in which to store imported water.

54. As an importer of Project water, the District has the right to store imported Project

1 water in the Basin and the District has the sole right to pump or otherwise use its stored imported
2 Project water. The rights, if any, of defendants are limited to the native supply of the Basin and
3 to their own imported water, and defendants' rights, if any, do not extend to groundwater derived
4 from any water imported into the Basin by the District.

5
6 55. An actual controversy has arisen between the District and defendants. The District
7 alleges, on information and belief, that defendants' dispute the District's contentions described in
8 paragraphs 52 through 54, inclusive.

9
10 56. The District seeks a judicial determination as to the correctness of its contentions,
11 that the District can store and recapture its imported Project water in the Basin, and that the
12 District has the sole right to pump or otherwise use such stored Project water.

13
14
15 SIXTH CAUSE OF ACTION

16 (Declaratory Relief – Recapture of Return Flows

17 From Imported Water Stored in The Basin – Against all Defendants)

18
19 57. The District alleges and incorporates by reference herein allegations in paragraphs
20 1 through 56, inclusive.

21
22 58. A portion of the water that the District imports and uses and continues to import
23 and use from outside the Basin returns or enters and will continue to return or enter the Basin and
24 are commonly known as "return flows." These return flows augment the Basin's water supply.

25
26 59. The District alleges that there is available space in the Basin to store return flows
27 from us of the water imported by District.

60. The District has the sole right to recapture return flows attributable to the water it imports or is imported on the District's behalf. The rights, if any, of defendants are limited to the Basin's native supply and/or to their imported water, and do not extend to groundwater attributable to the District's return flows.

61. An actual controversy has arisen between the District and defendants. The District alleges, on information and belief, that defendants' dispute the contentions of the District as described in paragraphs 58 through 60, inclusive.

62. The District seeks a judicial determination as to the correctness of its contentions and that the District has the sole right to recapture its imported return flows in the Basin at the present and into the future.

SEVENTH CAUSE OF ACTION

(Unreasonable Use of Water - Against all Defendants Except Public Entity Defendants)

63. The District alleges and incorporates by reference herein allegations in paragraph 1 through 62, inclusive.

64. Article X, Section 2 of the California Constitution is the cardinal principle of California water law, superior to any water rights priorities and requires that water use not be unreasonable or wasteful. The reasonable use of water depends on the facts and circumstances each case. What may be reasonable in areas of abundant water may be unreasonable in an area scarcity, and what is a beneficial use at one time may become a waste of water at a later time.

65. The District is informed and believes and on that basis alleges that the use of water by some defendants for irrigation purposes is unreasonable in the arid Antelope Valley and

1 constitutes waste, unreasonable use or an unreasonable method of diversion or use within the
2 meaning of Article X, Section 2 of the California Constitution, and is thereby unlawful.

3
4 66. An actual controversy has arisen between the District and defendants. The District
5 alleges, on information and belief, the defendants' dispute the District's contentions in paragraphs
6 64 through 65, inclusive.

7
8 67. The District seeks a judicial declaration that defendants have no rights to
9 unreasonable use, unreasonable methods of use, or waste of water, and their rights, if any, should
10 be determined *inter se* on the reasonable use of water in the arid Antelope Valley rather than upon
11 the amount of water actually used.

12
13 EIGHTH CAUSE OF ACTION

14
15 (Unreasonable Use of Water - Against Defendants Diamond Farming and
16 Wm. Bolthouse Farms)

17
18 68. The District alleges and incorporates by reference herein allegations in paragraph
19 1 through 67, inclusive.

20
21 69. Article X, Section 2 of the California Constitution is the cardinal principle of
22 California water law, superior to any priorities and requires that water use not be unreasonable
23 wasteful. Reasonable use of water depends on the facts and circumstances of each case.

24
25 70. The District is informed and believes and on that basis alleges that there were and
26 are overdraft conditions in the Basin before defendants Diamond Farming and Wm. Bolthouse
27 Farms began pumping Basin water in the 1990's. For their own private profit and in harm to the
28 public's need for a secure supply of Basin water, Defendants Diamond Farming and Wm.

1 Bolthouse Farms have increased their pumping so that they collectively take more Basin water
2 than any other single user of Basin water - despite existing Basin overdraft conditions including
3 land subsidence.

4
5 71. Defendants Diamond Farming and Wm. Bolthouse Farms recently commenced
6 additional, excessive pumping of Basin water for their private profit that causes harm to existing
7 agricultural users of Basin water and to the entities supplying water to the public all of whom
8 depend upon a safe and secure Basin water supply. Given the water overdraft conditions in the
9 Basin, the excessive uses of Basin water by defendants Diamond Farming and Wm. Bolthouse
10 Farms require an unreasonable amount of Basin water in the arid Antelope Valley and threaten
11 established communities and agricultural users that were and are already dependent upon Basin
12 water.

13
14 72. The District is informed and believes and on that basis alleges that the recently
15 commenced use of Basin water by defendants Diamond Farming and Wm Bolthouse Farms is
16 unreasonable in the arid Antelope Valley and constitutes waste, unreasonable use or an
17 unreasonable method of diversion or use within the meaning of Article X, Section 2 of the
18 California Constitution, and is injurious to the public and thereby unlawful.

19
20 73. An actual controversy has arisen between the District and defendants Diamond
21 Farming and Wm. Bolthouse Farms. The District alleges, on information and belief, the
22 defendants' dispute the District's contentions in paragraphs 69 through 72, inclusive.

23
24 74. The District seeks a judicial declaration that defendants Diamond Farming and
25 Wm. Bolthouse Farms have no right to take Basin water in any way that harms the public, creat
26 a risk of overdraft conditions in the Basin, constitutes unreasonable methods of use, or waste of
27 water; and their rights, if any, should be determined *inter se* on the previously-existing public a
28 agricultural needs and uses of Basin water in the arid Antelope Valley.

PRAYER FOR RELIEF

WHEREFORE, Los Angeles County Waterworks District No. 40, Antelope Valley prays for judgment as follows:

1. Judicial declarations consistent with the District's contentions in paragraphs 31, 35-39, 40-44, 46-50, 52-56, 58-62, 64-67, and 69-74, above;

2. For preliminary and permanent injunctions which prohibit defendants, and each of them, from taking, wasting or failing to conserve water from the Antelope Valley Groundwater Basin in any manner which interferes with the rights of the Los Angeles Waterworks District No. 40, Antelope Valley to take water from or store water in the Basin to meet its reasonable present and future needs;

3. For prejudgment interest as permitted law;

4. For attorney, appraisal and expert witness fees and costs incurred in this action; and

5. Such other relief as the court deems just and proper.

Dated: November 29, 2004

BEST BEST & KRIEGER LLP

By: 

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LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40