

EXHIBIT D

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Amendment to Complaint)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY
GROUNDWATER CASES**

Included Actions:

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

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

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

Judicial Council Coordination No. 4408

For Filing purpose only:
Santa Clara County Case No. 1-05-CV-049053

**[ANSWER TO COMPLAINT AND ALL
CROSS-COMPLAINTS]**

The "Leslie Property", which is designated as Doe Defendant no. 107 in the Amendment to Complaint of plaintiff Los Angeles County Water Works District No. 40, hereby answers the Complaint and all Cross-Complaints which have been filed as of this date, specifically those of Antelope Valley East-Kern Water Agency, Palmdale Water District & Quartz Hill Water District, Rosamond Community Services District and Waterworks District No. 40 of Los Angeles County.

1 The "Leslie Property" does not intend to participate at trial or other proceedings unless ordered by
2 the Court to do so, but reserves the right to do so upon giving written notice to that effect to the
3 Court and all parties. The "Leslie Property" is 104 acres located at the intersection of 238th
4 Street and Avenue X in the Antelope Valley, APN 3088-001-005.

5 **GENERAL DENIAL**

6 1. Pursuant to Code of Civil Procedure section 43 1.30(d), Defendant and Cross-
7 Defendant hereby generally denies each and every allegation set forth in the Complaint and
8 Cross-Complaint, and the whole thereof, and further denies that Plaintiff and Cross-Complainant
9 are entitled to any relief against Defendant and Cross-Defendant.

10 **AFFIRMATIVE DEFENSES**

11 **First Affirmative Defense**

12 (Failure to State a Cause of Action)

13 2. The Complaint and Cross-Complaint and every purported cause of action
14 contained therein fail to allege facts sufficient to constitute a cause of action against Defendant
15 and Cross-Defendant.

16 **Second Affirmative Defense**

17 (Statute of Limitation)

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

21 **Third Affirmative Defense**

22 (Laches)

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

25 **Fourth Affirmative Defense**

26 (Estoppels)

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

1 **Fifth Affirmative Defense**

2 (Waiver)

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

5 **Sixth Affirmative Defense**

6 (Self-Help)

7 7. Defendant and Cross-Defendant has, by virtue of the doctrine of self-help,
8 preserved its paramount overlying right to extract groundwater by continuing, during all
9 timesrelevant hereto, to extract groundwater and put it to reasonable and beneficial use on its
10 property (California Constitution Article X, Section 2).

11 **Seventh Affirmative Defense**

12 (California Constitution Article X, Section 2)

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

16 **Eighth Affirmative Defense**

17 (Additional Defenses)

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

23 **Ninth Affirmative Defense**

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

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1 **Tenth Affirmative Defense**

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

4 **Eleventh Affirmative Defense**

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

8 **Twelfth Affirmative Defense**

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

13 **Thirteenth Affirmative Defense**

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

16 **Fourteenth Affirmative Defense**

17 15. The prescriptive claims asserted by governmental entity cross-Complainants are
18 barred by the provisions of the 14th Amendment to the United States Constitution.

19 **Fifteenth Affirmative Defense**

20 16. The governmental entity-Cross-Complainants were permissively pumping at all
21 times.

22 **Sixteenth Affirmative Defense**

23 17. The request for the court to use its injunctive powers to impose a physical solution
24 seeks a remedy that is in violation of the doctrine of separation of powers set forth in Article
25 section 3 of the California Constitution.

26 **Seventeenth Affirmative Defense**

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

1 **Eighteenth Affirmative Defense**

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

5 **Nineteenth Affirmative Defense**

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

8 **Twentieth Affirmative Defense**

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

11 **Twenty-first Affirmative Defense**

12 22. The governmental entity Cross-Complainants are seeking to transfer water right
13 priorities and water usage which will have significant effects on the Antelope Valley
14 Groundwater basin and the Antelope Valley. Said actions are being done without complying with
15 and contrary to the provisions of California's Environmental Quality Act (CEQA)
16 (Pub.Res.C. 100 *et seq.*).

17 **Twenty-second Affirmative Defense**

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

22 **Twenty-third Affirmative Defense**

23 24. Any imposition by this court of a proposed physical solution that reallocates the
24 water right priorities and water usage within the Antelope Valley will be *ultra vires* as it will be
25 subverting the pre-project legislative requirements and protections of California's Environmental
26 Quality Act (CEQA) (Pub.Res.C. 2100 *et seq.*).

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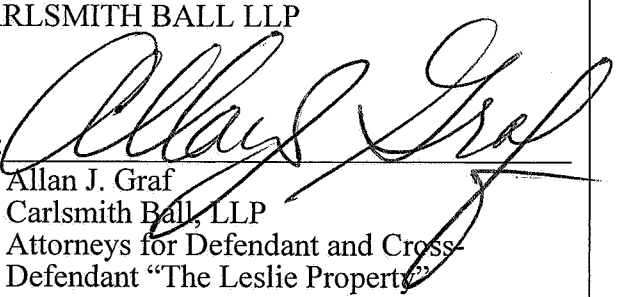
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1 **WHEREFORE**, Defendant and Cross-defendant prays that judgment be entered as
2 follows:

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

8 Dated: December 26, 2006

CARLSMITH BALL LLP

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10 By: 

Allan J. Graf
Carlsmith Ball, LLP
Attorneys for Defendant and Cross-
Defendant "The Leslie Property"

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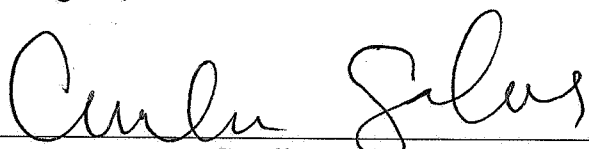
PROOF OF SERVICE BY MAIL

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 444 South Flower Street, 9th Floor, Los Angeles, California 90071-2901. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On December 26, 2006, I e-filed the following at www.scefilings.org in accordance with the Court's Order:

ANSWER TO COMPLAINT

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

Executed on December 26, 2006, at Los Angeles, California.



Carolina Salas