years prior to the filing of this cross-complaint.

- 39. The Public Water Suppliers have pumped water from, and/or stored water in the Antelope Valley Basin, by reasonable extraction means. They have used the Basin and/or its water for reasonable and beneficial purposes; and they have done so under a claim of right in an actual, open, notorious, exclusive, continuous, uninterrupted, hostile, adverse use and/or manner for a period of time of at least five years and before filling this cross-complaint.
- 40. To provide water to the public, the Public Water Suppliers have and claim the following rights:
- (A) The right to pump groundwater from the Antelope Valley Groundwater

 Basin in an annual amount equal to the highest volume of groundwater extracted by each of the

 Public Water Suppliers in any year preceding entry of judgment in this action;
- (B) The right to pump or authorize others to extract from the Antelope Valley Groundwater Basin an amount of water equal in quantity to that amount of water previously purchased by each of the Public Water Suppliers from the Antelope Valley-East Kern Water Agency, and which has augmented the supply of water in the Basin in any year preceding entry of judgment in this action.
- (C) The right to pump or authorize others to extract from the Antelope Valley
 Groundwater Basin an amount of water equal in quantity to that amount of water purchased in the
 future by each of the Public Water Suppliers from the Antelope Valley-East Kern Water Agency
 which augments the supply of water in the Basin; and
- (D) The right to pump or authorize others to extract from the Antelope Valley

 Basin an amount of water equal in quantity to that volume of water injected into the Basin or

 placed within the Basin by each of the Public Water Suppliers or on behalf of any of them.

FIRST CAUSE OF ACTION

(Declaratory Relief - Prescriptive Rights - Against All Cross-Defendants Except the United States And Other Public Entity Cross-Defendants)

- 41. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.
- 42. For over fifty years, the California Supreme Court has recognized prescriptive water rights. The Public Water Suppliers allege that, for more than five years and before the date of this cross-complaint, they have pumped water from the Basin for reasonable and beneficial purposes, and done so under a claim of right in an actual, open, notorious, exclusive, continuous, hostile and adverse manner. The Public Water Suppliers further allege that each cross-defendant had actual and/or constructive notice of these activities, either of which is sufficient to establish the Public Water Suppliers' prescriptive rights.
- 43. Public Water Suppliers contend that each cross-defendant's rights to pump water from the Basin are subordinate to the Public Water Suppliers' prescriptive rights and to the general welfare of the citizens, inhabitants and customers within the Public Water Suppliers' respective service areas and/or jurisdictions.
- 44. An actual controversy has arisen between the Public Water Suppliers and cross-defendants, and each of them. Public Water Suppliers allege, on information and belief, that each cross-defendant disputes the Public Water Suppliers' contentions, as described in the immediately preceding paragraph.
- 45. Public Water Suppliers seek a judicial determination as to the correctness of their contentions and a finding as to the priority and amount of water they and each cross-defendant are entitled to pump from the Basin.

SECOND CAUSE OF ACTION

(Declaratory Relief - Appropriative Rights - Against All Cross-Defendants)

- 46. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.
- 47. Public Water Suppliers allege that, in addition or alternatively to their prescriptive rights, they have appropriative rights to pump water from the Basin.
 - 48. Appropriative rights attach to surplus water from the Basin.
- 49. Surplus water exists when the pumping from the Basin is less than the safe yield. It 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 results" generally refer to gradual lowering of the groundwater levels in the Basin, but also includes subsidence.
- 50. Persons and/or entities with overlying rights to water in the Basin are only entitled to make reasonable and beneficial use of the Basin's native safe yield.
- 51. An actual controversy has arisen between the Public Water Suppliers and crossdefendants, and each of them. The Public Water Suppliers allege, on information and belief, that all cross-defendants, and each of them, seek to prevent the Public Water Suppliers from pumping surplus water.
- 52. The Public Water Suppliers seek a judicial determination as to the Basin's safe yield, the quantity of surplus water available, if any, the correlative overlying rights of each cross-defendant to the safe yield and a determination of the rights of persons an/or entities with

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overlying, appropriative and prescriptive rights to pump water from the Basin.

THIRD CAUSE OF ACTION

(Declaratory Relief - Physical Solution - Against All Cross-defendants)

- 53. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.
- 54. Upon information and belief, the Public Water Suppliers allege that cross-defendants, and each of them, claim an interestror right to Busin water, and further claim they can increase their pumping without regard to the rights of the Public Water Suppliers. Unless restrained by order of the court, cross-defendants will continue to take increasing amounts of water from the Busin, causing great and irreparable damage and injury to the Public Water Suppliers and to the Busin. Money damages cannot compensate for the damage and injury to the Busin.
- 55. The amount of Basin water available to the Public Water Suppliers has been reduced because cross-defendants have extracted, and continue to extract increasingly large amounts of water from the Basin. Unless the court enjoins and restrains cross-defendants, and each of them, the aforementioned conditions will worsen. Consequently, the Basin's groundwater supply will be further depleted, thus reducing the amount of Basin water available to the public.
- 56. California law makes it 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 the California Constitution (Article X, section 2) that the water resources of the State be put to use to the fullest extent of which they are capable.

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57. This court must determine, impose and retain continuing jurisdiction in order to enforce a physical solution upon the parties who pump water from the Basin, and thereby prevent irreparable injury to the Basin. Available solutions to the Basin problems may include, but are not limited to, the court appointment of a watermaster, and monetary and metering and assessments upon water extraction from the Basin. Such assessments would pay for the purchase, delivery of supplemental supply of water to the Basin.

FOURTH CAUSE OF ACTION

(For Declaratory Relief - Municipal Priority - Against All Cross-Defendants)

- 58. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.
- 59. The Public Water Suppliers have rights to pump water from the Basin to meet existing public water needs, and also to take increased amounts of Basin water as necessary to meet future public needs. The Public Water Suppliers' rights to Basin water exist both as a result of the priority and extent of their appropriative and prescriptive rights, and 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.)
- 60. 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. . . ."
- Under Water Code sections 106 and 106.5, the Public Water Suppliers have a prior and paramount right to Basin water as against all non-municipal uses.

62.	An actual controversy has arisen between the Public Water Suppliers and cross-
defendants,	The Public Water Suppliers allege, on information and belief, that cross-defendants
dispute the	contentions in Paragraphs 1 through 43, inclusive, of this cross-complaint. The Public
Water Supp	liers are informed and believe, and on that bas,'s allege, that the majority of the cross-
defendants j	oump groundwater from the Basin for agricultural purposes.

63. The Public Water Suppliers seek a judicial determination as to the correctness of their contentions and to the amount of water the parties may pump from the Basin. The Public Water Suppliers also seek a declaration of their right to pump water from the Basin to meet their reasonable present and future needs, and that such rights are prior and paramount to the rights, if any, of cross-defendants to use Basin water for irrigation purposes.

FIFTH CAUSE OF ACTION

(Declaratory Relief - Storage Of Imported Water - Against All Cross-defendants)

- 64. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.
- 65. The Public Water Suppliers purchase and use water from the State Water Project. State Project water is not native to the Basin. Importing State Project water decreases the Public Water Suppliers' need to pump water from the Basin. The Public Water Suppliers' purchase and delivery of State Project water is the reason it has been brought to the Basin. The Public Water Suppliers pay a substantial annual cost to import State Project water, this amount is subject to periodic increases.
- 66. The Public Water Suppliers allege there is underground space available in the Basin for storing imported State Project water.

	67.	As importers of State Project water, the Public Water Suppliers have the right to
S	ore imported	State Project water underground in the Basin, and also have the sole right to pump
O	r otherwise u	se such stored State Project water. The rights of cross-defendants, if any, are
li	mited to the	native supply of the Basin and to their own imported water. Cross-defendant.
n	ghts, if any,	do not extend to water imported into the Basin by the Public Water Suppliers.

- 68. An actual controversy has arisen between the Public Water Suppliers and crossdefendants. The Public Water Suppliers allege, on information and belief, that cross-defendants dispute their contentions in Paragraphs 1 through 39, of this cross-complaint.
- 69. The Public Water Suppliers seek a judicial determination as to the correctness of their contentions that they may store imported State Project water in the Basin, recapture such imported State Project water, and that they have the sole right to pump or otherwise use such imported State Project water.

SETTI CAUSE OF ACTION

(Declaratory Relief - Recapture Of Return Flows

From Imported Water Stored in The Basin - Against All Cross-defendants)

- 70. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.
- 71. Some of the State Project water typically returns and/or enters the Basin, and will continue to do so. This water is commonly known as "return flows." These return flows further augment the Basin's water supply.
- 72. The Public Water Suppliers allege there is underground space available in the Basin to store return flows from imported State Project water.

73. The Public Water Suppliers have the sole right to recapture return flows attributable to their State Project water, or such water imported on their behalf. The rights of cross-defendants, if any, are limited to the Basin's native supply and/or to their imported water, and do not extend to groundwater attributable to the Public Water Suppliers' return it, ws.

- 74. An actual controversy has arisen between the Public Water Suppliers and cross-defendants. The Public Water Suppliers allege, on information and belief, that cross-defendants dispute their contentions in Paragraphs 1 through 43 of this cross-complaint.
- 75. The Public Water Suppliers seek a judicial determination as to the correctness of their contentions, and that they have the sole right to recapture return flows in the Basin, both at present and in the future.

SEVENTH CAUSE OF ACTION

(Unreasonable Use Of Water - Against All Cross-Defendants Except Public Entity Cross-Defendants)

- 76. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.
- 77. The California Constitution (Article X, Section 2) provides 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 of each case; what may be reasonable in areas of abundant water may be unreasonable in an area of scarcity; and, what is a beneficial use at one time may become a waste of water at a later time.
- 78. The Public Water Suppliers are informed and believe, and on that basis allege, that some cross-defendants' use of water is unreasonable in the arid Antelope Valley and therefore

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constitutes waste, unreasonable use or an unreasonable method of diversion or use within the meaning of the California Constitution (Article X, section 2). Such uses are thereby unlawful.

- 79. An actual controversy has arisen between the Public Water Suppliers and cross-defendants. The Public Water Suppliers allege, on information and belief, that the cross-defendants dispute their contentions in Paragraphs 1 through 43 of this Cross-Complaint.
- 80. The Public Water Suppliers seek a judicial declaration that cross-defendants have no right to any unreasonable use, unreasonable methods of use, or waste of water. Cross-defendants' rights, if any, must be determined based on the reasonable use of water in the Antelope Valley rather than upon the amount of water actually used.

EIGHTH CAUSE OF ACTION

(Declaratory Relief Re Boundaries Of Basin)

- 91. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.
- 92. An actual controversy has arisen between the Public Water Suppliers and cross-defendants, and each of them, regarding the actual physical dimensions and description of the Basin for purposes of determining the parties rights to water located therein. The Public Water Suppliers allege, on information and belief, that cross-defendants dispute the Public Water Suppliers' contentions, as set forth in Paragraphs 1 through 38, inclusive, of this cross-complaint
- 93. The Public Water Suppliers seek a judicial determination as to the correctness of their contentions and a finding as to the actual physical dimensions and description of the Basin.

PRAYER FOR RELIEF

WHEREFORE, the Public Water Suppliers pray for judgment as follows:

1. Judicial declarations consistent with the Public Water Suppliers' contentions in the

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 wifhin action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California 92614. On ...amuary 10, 2007, I served the within document(s):

[PROPOSED] FIRST-AMENDED CROSS-COMPLAINT OF PUBLIC WATER SUPPLIERS FOR DECLARATORY AND INJUNCTIVE RELIEF AND ADJUDICATION OF WATER RIGHTS

	man or the contract the contrac
×	by posting the document(s) listed above to the Santa Clara County Superior Counterbalte in regard to the Antelope Valley Groundwater matter.
	by placing the document(s) listed above in a sealed envelope with postage thereofully prepaid, in the United States mail at Irvine, California addressed as set fortbelow.
	by causing personal delivery by ASAP Corporate Services or the document(s listed above to the person(s) at the address(es) set forth below.
and the second	by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
Lama	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.
Service on that	I am readily familiar with the firm's practice of collection and processing see for mailing. Under that practice it would be deposited with the U.S. Postal at same day with postage thereon fully prepaid in the ordinary course of business. It can motion of the party served, service is presumed invalid if postal cancellation to make the more than one day after date of deposit for mailing in affidavit.
above is true	I declare under penalty of perjury under the laws of the State of California that the and correct.
	Executed on January 10, 2007, at Irvine, California.
	Hally Keefe
,	

LAW OFFICES OF EEST BESTA, KRIEGER LLP S PARK PLAZA, SUITE 1 BOD IRVINE, CALIFORNIA 9261 A ŀ

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