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7 a California corporation

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF LOS ANGELES

13 Coordination Proceeding Special Title
14 (Rule 1550 (b))

15 ANTELOPE VALLEY GROUNDWATER
16 CASES

16 Included actions:

17 Los Angeles County Waterworks District No.
18 40 vs. Diamond Farming Company
19 Los Angeles Superior Court
20 Case No. BC 325201

20 Los Angeles County Waterworks District No.
21 40 vs. Diamond Farming Company
22 Kern County Superior Court
23 Case No. S-1500-CV 254348 NFT

22 Diamond Farming Company vs. City of
23 Lancaster
24 Riverside County Superior Court
25 Lead Case No. RIC 344436 [Consolidated
26 w/Case Nos. 344668 & 353840]

Judicial Council Coordination No. 4408

Case No.: 1-05-CV-049053

**OBJECTION TO PROPOSED FORM
OF ANSWER POSTED BY LOS
ANGELES COUNTY WATERWORKS
DISTRICT NO. 40**

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28 **OBJECTION TO PROPOSED FORM OF ANSWER POSTED BY LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40**

1 Diamond Farming makes the following written objections to the Proposed Form of Answer
2 posted on the Court's website (www.scefilings.org) on November 28, 2006 by Los Angeles County
3 Waterworks District No. 40.

4 The present proposed model answer is insufficient to fully and comprehensively address all of
5 the issues raised by the municipal purveyors' cross-complaints. In order to correct the deficiencies in
6 the proposed answer, additional necessary affirmative defenses must be included in any form answer to
7 fully address all of the issues raised in the cross-complaints. The additional necessary affirmative
8 defenses are set forth hereinafter.

9 **NECESSARY ADDITIONAL AFFIRMATIVE DEFENSES:**

10 **Ninth Affirmative Defense**

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

14 **Tenth Affirmative Defense**

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

17 **Eleventh Affirmative Defense**

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

21 **Twelfth Affirmative Defense**

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

26 **Thirteenth Affirmative Defense**

27 The prescriptive claims asserted by governmental entity Cross-Complainants are barred by
28

1 the provisions of Article 1 Section 7 of the California Constitution.

2 **Fourteenth Affirmative Defense**

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

5 **Fifteenth Affirmative Defense**

6 The governmental entity Cross-Complainants were permissively pumping at all times.

7 **Sixteenth Affirmative Defense**

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

11 **Seventeenth Affirmative Defense**

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

14 **Eighteenth Affirmative Defense**

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

17 **Nineteenth Affirmative Defense**

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

20 **Twentieth Affirmative Defense**

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

23 **Twenty-First Affirmative Defense**

24 The governmental entity Cross-Complainants are seeking to transfer water right priorities and
25 water usage which will have significant effects on the Antelope Valley Groundwater basin and the
26 Antelope Valley. Said actions are being done without complying with and contrary to the provisions
27 of California's Environmental Quality Act (CEQA) (Pub.Res.C. 21000 et seq.).
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2 **Twenty-Second Affirmative Defense**

3 The governmental entity Cross-Complainant seek judicial ratification of a project that has
4 had and will have a significant effect on the Antelope Valley Groundwater basin and the Antelope
5 Valley that was implemented without providing notice in contravention of the provisions of
6 California's Environmental Quality Act (CEQA) (Pub.Res.C. 21000 et seq.).

7 **Twenty-Third Affirmative Defense**

8 Any imposition by this court of a proposed physical solution that reallocates the water right
9 priorities and water usage within the Antelope Valley will be *ultra vires* as it will be subverting the
10 pre-project legislative requirements and protections of California's Environmental Quality Act
11 (CEQA) (Pub.Res.C. 21000 et seq.).

12 Dated: December 8, 2006

LeBEAU • THELEN, LLP

13
14 By: 

15 BOB H. JOYCE
16 Attorneys for DIAMOND FARMING COMPANY,
17 a California corporation
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1 **PROOF OF SERVICE**

2 ANTELOPE VALLEY GROUNDWATER CASES
3 JUDICIAL COUNSEL PROCEEDING NO. 4408
4 CASE NO.: 1-05-CV-049053

5 I am a citizen of the United States and a resident of the county aforesaid; I am over the age
6 of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter
7 Drive, Suite 300, Bakersfield, California 93309. On December 8, 2006, I served the within
8 **OBJECTION TO PROPOSED FORM OF ANSWER POSTED BY LOS ANGELES COUNTY**
9 **WATERWORKS DISTRICT NO. 40**

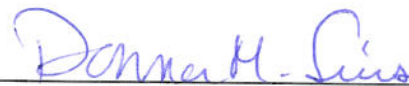
10 ☒ (BY POSTING) I am "readily familiar" with the Court's Clarification Order.
11 Electronic service and electronic posting completed through www.scefiling.org ; All papers filed
12 in Los Angeles County Superior Court.

13 ☐ (BY MAIL) I am "readily familiar" with the firm's practice of collection and
14 processing correspondence for mailing. Under that practice it would be deposited with the U.S.
15 Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California, in
16 the ordinary course of business.

17 ☐ (BY FACSIMILE) I placed the above-described document in a facsimile machine
18 (pursuant to California Rules of Court, Rule 2008(e)(1)) with the fax number of (661) 325-1127,
19 addressed as stated above. Upon facsimile transmission of the document, I obtained a report from
the transmitting facsimile machine stating that the facsimile transmission was complete and
without error. A copy of the transmission report is attached to this Proof of Service pursuant to
California Rules of Court, Rule 2008(e)(4).

20 ☐ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to
21 the offices of the addressee(s). Executed on _____, 2006, at Bakersfield, California.

22 ☒ (STATE) I declare under penalty of perjury under the laws of the State of
23 California that the above is true and correct, and that the foregoing was executed on December 8,
24 2006, in Bakersfield, California.

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26 **DONNA M. LUIS**
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