

1 Bob H. Joyce, (SBN 84607)
2 Andrew K. Sheffield (SBN 220735)

3 LAW OFFICES OF
4 **LEBEAU • THELEN, LLP**
5 5001 East Commercenter Drive, Suite 300
Post Office Box 12092
6 Bakersfield, California 93389-2092
7 (661) 325-8962; Fax (661) 325-1127

8 Attorneys for GRIMMWAY ENTERPRISES, INC. and
9 LAPIS LAND COMPANY, LLC

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF LOS ANGELES**
13

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

Judicial Council Coordination No. 4408

16 ANTELOPE VALLEY GROUNDWATER
17 CASES

Case No.: 1-05-CV-049053

18 Included actions:

**ANSWER OF GRIMMWAY
ENTERPRISES, INC. (ROE 605) AND
LAPIS LAND COMPANY, LLC, TO
FIRST AMENDED CROSS-
COMPLAINT OF PUBLIC WATER
SUPPLIER**

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

(JURY TRIAL DEMANDED)

23 Los Angeles County Waterworks District No.
24 40 vs. Diamond Farming Company
25 Kern County Superior Court
26 Case No. S-1500-CV 254348 NFT

27 Diamond Farming Company vs. City of
28 Lancaster
Riverside County Superior Court
Lead Case No. RIC 344436 [Consolidated
w/Case Nos. 344668 & 353840]

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1 Grimmway Enterprises, Inc. (Roe 605) and LAPIS Land Company, LLC, hereby answer the First
2 Amended Cross-Complaint of the Public Water Suppliers for Declaratory and Injunctive Relief and
3 Adjudication of Water Rights, which has been filed as of this date, specifically those of California Water
4 Service Company, City of Lancaster, City of Palmdale, Littlerock Creek Irrigation District, Los Angeles
5 County Water Works District No. 40, Palmdale Water District, Rosamond Community Services District,
6 Palm Ranch Irrigation District, and Quartz Hill Water District.

7 GENERAL DENIAL

8 1. Pursuant to Code of Civil Procedure section 431.30(d), Cross-Defendants hereby
9 generally deny each and every allegation set forth in the First Amended Cross-Complaint, and the whole
10 thereof, and further deny that Cross-Complainants are entitled to any relief against Cross-Defendants.

11 AFFIRMATIVE DEFENSES

12 First Affirmative Defense

13 (Failure to State a Cause of Action)

14 2. The First Amended Cross-Complaint and every purported cause of action contained
15 therein fail to allege facts sufficient to constitute a cause of action against these answering Cross-
16 Defendants.

17 Second Affirmative Defense

18 (Statute of Limitations)

19 3. Each and every cause of action contained in the First Amended Cross-Complaint is
20 barred, in whole or in part, by the applicable statutes of limitation, including, but not limited to, sections
21 315, 318, 319, 321, 338, and 343 of the California Code of Civil Procedure.

22 Third Affirmative Defense

23 (Laches)

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

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1 Fourth Affirmative Defense

2 (Estoppel)

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

5 Fifth Affirmative Defense

6 (Waiver)

7 6. The First Amended Cross-Complaint, and each and every cause of action contained
8 therein, is barred by the doctrine of waiver.

9 Sixth Affirmative Defense

10 (Self-Help)

11 7. Cross-Defendants have, by virtue of the doctrine of self-help, preserved their paramount
12 overlying right to extract groundwater by continuing, during all times relevant hereto, to extract
13 groundwater and put it to reasonable and beneficial use on its properties.

14 Seventh Affirmative Defense

15 (California Constitution Article X, Section 2)

16 8. Cross-Complainants' methods of water use and storage are unreasonable and wasteful
17 in the arid conditions of the Antelope Valley and thereby violate Article X, Section 2 of the California
18 Constitution.

19 Eighth Affirmative Defense

20 (Additional Defenses)

21 9. The Cross-Complainants do not state their allegations with sufficient clarity to enable
22 these answering Cross-Defendants to determine what additional defenses may exist to Cross-
23 Complainants' causes of action. Cross-Defendants therefore reserve their right to assert all other
24 defenses which may pertain to the First Amended Cross-Complaint.

25 Ninth Affirmative Defense

26 10. The prescriptive claims asserted by governmental entity Cross-Complainants are *ultra*
27 *vires* and exceed the statutory authority by which each entity may acquire property as set forth in Water
28

1 Code sections 22456, 31040 and 55370, and violate the express limitations set forth in Article 1 Section
2 19 of the California State Constitution.

3 Tenth Affirmative Defense

4 11. The prescriptive claims asserted by governmental entity Cross-Complainants are barred
5 by the provisions of Article I Section 19 of the California Constitution.

6 Eleventh Affirmative Defense

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

10 Twelfth Affirmative Defense

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

15 Thirteenth Affirmative Defense

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

18 Fourteenth Affirmative Defense

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

21 Fifteenth Affirmative Defense

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

23 Sixteenth Affirmative Defense

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

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Twenty-Third Affirmative Defense

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

Twenty-Fourth Affirmative Defense

25. The prescriptive right claimed has been extinguished through disuse thereof as set forth in Civil Code section 811.

WHEREFORE, these answering Cross-Defendants pray that judgment be entered as follows:

1. That Cross-Complainants take nothing by reason of their First Amended Cross-Complaint;
2. That the First Amended Cross-Complaint be dismissed with prejudice;
3. For Cross-Defendants' costs incurred herein; and
4. For such other and further relief as the Court deems just and proper.

Dated: April 24, 2009

LeBEAU • THELEN, LLP

By: 

BOB H. JOYCE

Attorneys for GRIMMWAY ENTERPRISES, INC.
and LAPIS LAND COMPANY, LLC

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PROOF OF SERVICE

ANTELOPE VALLEY GROUNDWATER CASES
JUDICIAL COUNCIL PROCEEDING NO. 4408
CASE NO.: 1-05-CV-049053

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter Drive, Suite 300, Bakersfield, California 93309. On April 24, 2009, I served the within

ANSWER OF GRIMMWAY ENTERPRISES, INC. (ROE 605) AND LAPIS LAND COMPANY, LLC, TO FIRST AMENDED CROSS-COMPLAINT OF PUBLIC WATER SUPPLIER

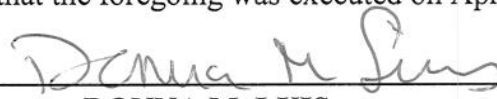
☒ (BY POSTING) I am "readily familiar" with the Court's Clarification Order. Electronic service and electronic posting completed through www.scefiling.org ; All papers filed in Los Angeles County Superior Court and copy sent to trial judge and Chair of Judicial Council.

Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012
Attn: **Department 1**
(213) 893-1014

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordinator)
Carlotta Tillman
455 Golden Gate Avenue
San Francisco, CA 94102-3688
Fax (415) 865-4315

☐ (BY MAIL) 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 at Bakersfield, California, in the ordinary course of business.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that the foregoing was executed on April 24, 2009, in Bakersfield, California.


DONNA M. LUIS