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CITY OF PALMDALE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Actions:

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

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.
Superior Court of California, County of Kern,
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
District

Superior Court of California, County of
Riverside, consolidated actions, Case Nos.
RIC 353840, RIC 344436, RIC 344668

Judicial Council Coordination
Proceeding No. 4408

**ANSWER OF DEFENDANTS CITY
OF PALMDALE AND CITY OF
LANCASTER TO WOOD CLASS
ACTION COMPLAINT**

Phase 2 Trial: October 6, 2008
(Hon. Jack Komar)

[Exempt from Filing Fees Pursuant to Govt. Code
§6103]

Defendants City of Palmdale (“Palmdale”) and City of Lancaster (“Lancaster”)
hereby answer the Complaint as follows:

1. Palmdale and Lancaster generally deny the allegations of the complaint.

As and for separate and independent affirmative defenses, Palmdale and Lancaster allege as follows:

FIRST AFFIRMATIVE DEFENSE

2. In the event of the imposition of a physical solution or some form of declaratory relief, due regard must be given to the prior and paramount nature of the overlying rights of Palmdale and Lancaster to groundwater in the Antelope Valley Groundwater Basin (“Basin”).

SECOND AFFIRMATIVE DEFENSE

3. No party is entitled to recover monetary compensation from Palmdale or Lancaster.

THIRD AFFIRMATIVE DEFENSE

4. Plaintiffs and/or their predecessors or successors in interest have been aware for many years of the conditions in the Basin, and the expenditure of public money, time and resources to develop the facilities necessary to extract the groundwater and deliver it to residents of the Antelope Valley, and of the significant population growth in the Antelope Valley. By their silence and inaction, such parties have unreasonably delayed commencement of their claims to the prejudice of Palmdale and Lancaster.

FOURTH AFFIRMATIVE DEFENSE

5. Plaintiffs are barred from relief by the provisions of one or more of sections 318, 319, 321, 335.1, 338, 342, or 343 of the Code of Civil Procedure.

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FIFTH AFFIRMATIVE DEFENSE

6. Plaintiffs have failed to join indispensable and necessary parties, namely other landowners and significant water producers with in the Antelope Valley Basin.

SIXTH AFFIRMATIVE DEFENSE

7. Any injunction against the production of groundwater to be served to points of use in Palmdale and Lancaster will cause undue hardship.

SEVENTH AFFIRMATIVE DEFENSE

8. Plaintiffs have not complied with the Government Claims Act, Government Code sections 900, *et seq.*

EIGHTH AFFIRMATIVE DEFENSE.

9. For many years, public water suppliers have produced groundwater from the Basin and distributed the water through its water system to its customers for reasonable and beneficial uses, including to customers within the jurisdictional boundaries of Palmdale and Lancaster. Such production of groundwater from the Basin has been open, notorious and under claim of right, hostile to any rights of other parties, and has continued for a period of more than five consecutive years during which the Basin was in a state of overdraft. By reason of said historical production of groundwater, certain parties have acquired an appropriative or prescriptive right to groundwater that is equal or superior in priority to that of other parties herein.

NINTH AFFIRMATIVE DEFENSE

10. The parties herein, including plaintiffs, by their silence and inaction, have acquiesced to the public water suppliers' extraction of groundwater from the Basin.

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TENTH AFFIRMATIVE DEFENSE

11. The relief requested by plaintiffs is barred by Article X, section 2 of the California Constitution in that the requested relief would be wasteful and result in an unreasonable use, unreasonable method of use, or unreasonable method of diversion of water.

ELEVENTH AFFIRMATIVE DEFENSE

12. The parties herein, including plaintiffs, have knowingly and intentionally waived any right to assert some or all of the claims set forth in each and every cause of action contained in their complaints and cross-complaints.

TWELFTH AFFIRMATIVE DEFENSE

13. In the event of the imposition of a physical solution or some form of declaratory relief, due regard must be given to the prior and paramount nature of prescriptive water rights.

THIRTEENTH AFFIRMATIVE DEFENSE

14. By their acts and omissions, the parties herein, including plaintiffs, are estopped from asserting any of the claims upon which they seek relief.

FOURTEENTH AFFIRMATIVE DEFENSE

15. Some or all of plaintiffs' claims for relief are barred by the doctrine of laches. For at least five years prior to the commencement of the instant action, the Basin was in a continuous state of overdraft. That overdraft continued and was exacerbated by increased domestic and agricultural production. Palmdale and Lancaster have relied upon plaintiffs' inaction and failure to make a formal assertion of any prior and paramount right to that of Palmdale, Lancaster, or their water suppliers.

FIFTEENTH AFFIRMATIVE DEFENSE

16. Some parties purchase water that is imported from outside the Basin and thereafter distribute that water to customers within the boundaries of the Basin. After use by these customers for irrigation, domestic, municipal and industrial uses, a portion of the imported water percolates in to the Basin and augments the native supply of water in the Basin. The party who imports such water has a right to extract from the Basin the amount of water equal to the portion of water imported from outside the Basin which augments the Basin. This right is superior in priority to the rights claimed by some or all of plaintiffs.

SIXTEENTH AFFIRMATIVE DEFENSE

17. On information and belief, the water production of the parties that provide water to Palmdale and Lancaster does not interfere with plaintiffs', or any of their, claimed water rights, except to the extent such water production has resulted in the creation of rights by prescription.

SEVENTEENTH AFFIRMATIVE DEFENSE

18. Palmdale and Lancaster incorporate by reference each affirmative defense to the complaints or cross complaints filed by any other defendant or cross-defendant, whether such answer was filed before or after the filing of this answer.

EIGHTEENTH AFFIRMATIVE DEFENSE

19. Palmdale and Lancaster do not presently have sufficient knowledge or information on which to form a belief as to whether they may have additional, as yet unstated, affirmative defenses. Palmdale and Lancaster therefore reserve the right to assert additional affirmative defenses in the event discovery indicates that they would be appropriate.

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NINETEENTH AFFIRMATIVE DEFENSE

20. The Complaint fails to allege facts sufficient to constitute a cause of action or a claim against Palmdale or Lancaster upon which any form of relief may be granted.

TWENTIETH AFFIRMATIVE DEFENSE

21. The Complaint is barred, whole or in part, because the actions, conduct, activities and omissions of plaintiffs, and not of Palmdale or Lancaster, were the legal or proximate cause of any damages or loss suffered by plaintiffs.

TWENTY-FIRST AFFIRMATIVE DEFENSE

22. To the extent persons or entities other than Palmdale or Lancaster proximately caused injury or damage to plaintiffs, if any there were, plaintiffs' right to recovery from Palmdale or Lancaster should be correspondingly reduced.

TWENTY-SECOND AFFIRMATIVE DEFENSE

23. Palmdale and Lancaster are informed and believe, and on that basis allege, that plaintiffs failed to mitigate their damages, if any, and plaintiffs are barred from recovery against Palmdale and Lancaster to the extent of such failure to mitigate.

TWENTY-THIRD AFFIRMATIVE DEFENSE

24. Palmdale and Lancaster are informed and believe, and on that basis allege, that plaintiffs have suffered no taking of their property as a result of any actions taken by Palmdale or Lancaster, and that Palmdale and Lancaster are not liable to plaintiffs on a theory of inverse condemnation or unlawful taking requiring payment of compensation under the California or Federal Constitutions.

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TWENTY-FOURTH AFFIRMATIVE DEFENSE

25. The Complaint fails to allege any pattern or practice of violating plaintiffs' civil rights, and hence, fails to allege a claim under 42 U.S.C. § 1983.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

26. Palmdale and Lancaster are informed and believe, and on that basis allege, that plaintiffs lack standing to pursue their claims against Palmdale and Lancaster.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

27. The Complaint and each and every cause of action alleged therein do not implicate a constitutionally protected property interest and do not rise to the level of a constitutional violation under the Federal or California Constitutions, and plaintiffs therefore cannot recover damages or just compensation.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

28. The Complaint and each and every cause of action alleged therein is barred, in whole or in part, by the doctrine of ripeness.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

29. The Complaint and each and every cause of action alleged therein are barred, in whole or in part, by the equitable doctrine of unclean hands.

WHEREFORE, Palmdale and Lancaster pray for relief as follows:

1. For an *inter se* determination as to the priority and amount of Basin water to which each party is entitled to pump.


2. For a determination of the quantity of the safe yield, the quantity of surplus water available, the correlative overlying rights of the parties to the safe yield, the rights *inter se* among overlying, appropriative and prescriptive pumpers from the Basin.

3. For the imposition of a physical solution.
4. For a declaration of municipal priority.
5. For a determination of rights to store and recapture imported water,
including return flows.
6. For a determination *inter se* as to reasonable uses of water in the Antelope
Valley.
7. For its costs, including attorney's fees.
8. That plaintiffs take no damages by way of their Complaint.
9. For declarations, orders and injunctions so as to implement a physical
solution to manage water production in the Basin in order to maximize the beneficial use
of that valuable resource.
10. For such other and further relief as the Court may deem just and proper.

Dated: June 20, 2008

LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
DOUGLAS J. EVERTZ

RICHARDS, WATSON & GERSHON
A Professional Corporation
JAMES L. MARKMAN
STEVEN R. ORR
WHITNEY G. MCDONALD

By: 
WHITNEY G. MCDONALD
Attorneys for Defendant, Cross-
Complainant, and Cross-Defendant
CITY OF PALMDALE

1 **PROOF OF SERVICE**

2 I, Kelley Herrington, declare:

3 I am a resident of the State of California and over the age of eighteen years, and
4 not a party to the within action; my business address is Richards, Watson & Gershon, 355 South
5 Grand Avenue, 40th Floor, Los Angeles, California 90071. On June 20, 2008, I served the within
6 documents:

7 **ANSWER OF DEFENDANTS CITY OF PALMDALE AND CITY OF**
8 **LANCASTER TO WOOD CLASS ACTION COMPLAINT**

- 9 ☐ by causing facsimile transmission of the document(s) listed above from (213) 626-
10 0078 to the person(s) and facsimile number(s) set forth below on this date before
11 5:00 P.M. This transmission was reported as complete and without error. A copy
12 of the transmission report(s), which was properly issued by the transmitting
13 facsimile machine, is attached. Service by facsimile has been made pursuant to a
14 prior written agreement between the parties.
- 15 ☒ by posting the document(s) listed above to the Santa Clara County Superior Court
16 website in regard to the Antelope Valley Groundwater matter.
- 17 ☐ by placing the document(s) listed above in a sealed envelope and affixing a pre-
18 paid air bill, and causing the envelope to be delivered to an agent for delivery, or
19 deposited in a box or other facility regularly maintained by , in an envelope or
20 package designated by the express service carrier, with delivery fees paid or
21 provided for, addressed to the person(s) at the address(es) set forth below.
- 22 ☐ by personally delivering the document(s) listed above to the person(s) at the
23 address(es) set forth below.
- 24 ☐ by causing personal delivery by First Legal Support Services, 1511 West Beverly
25 Boulevard, Los Angeles, California 90026 of the document(s) listed above to the
26 person(s) at the address(es) set forth below.

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

Executed on June 20, 2008.

21 
22 _____
23 Kelley Herrington