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CITY OF PALMDALE

**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.
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

Judicial Council Coordination Proceeding
No. 4408

Santa Clara Case No. 1-05-CV-049053

(Hon. Jack Komar)

**CROSS-COMPLAINT IN KERN
COUNTY SUPERIOR COURT CASE
NO. S-1500-CV-254-348**

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

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

4 City of Palmdale,

5 Cross-Complainant,

6 vs.

7 Los Angeles County Waterworks District
8 No. 40; Palmdale Water District;
9 Diamond Farming Company; Bolthouse
10 Properties, Inc.; Wm. Bolthouse Farms,
11 Inc.; City of Lancaster; Littlecreek
12 Irrigation District; Palm Ranch Irrigation
13 District; Quartz Hill Water District;
14 California Water Service; City of Los
15 Angeles; Rosamond Community
16 Services District; B.J. Calandri; John
17 Calandri; John Calandri, as Trustee of
18 the John and B.J. Calandri 2001 Trust;
19 Forrest G. Godde; Forrest G. Godde, as
20 Trustee of the Forrest G. Godde Trust;
21 Lawrence A. Godde; Lawrence A.
22 Godde and Godde Trust; Kootenai
23 Properties, Inc.; Gailen Kyle; Gailen
24 Kyle, as Trustee of the Kyle Trust; James
25 W. Kyle; James W. Kyle, as Trustee of
26 the Kyle Family Trust; Julia Kyle;
27 Wanda E. Kyle; Eugene B. Nebeker; R
28 and M Ranch; Edgar C. Ritter; Paula E.
Ritter; Paula E. Ritter, as Trustee of the
Ritter Family Trust; and DOES 100,000
through 125,000 inclusive,

Cross-Defendants.

1 Cross-complainant City of Palmdale hereby cross-complains as follows:
2

3 **JURISDICTION AND VENUE**
4

5 1. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
6 Sections 526 and 1060. Venue is proper before this Court pursuant to the coordination
7 order issued by the Judicial Council.
8

9 **PARTIES**
10

11 2. The City of Palmdale (“Palmdale”) is a municipal corporation located in the
12 County of Los Angeles.

13 3. Palmdale is informed and believes and thereon alleges that the Los Angeles
14 County Waterworks District No. 40 is a public agency which extracts water from and
15 provides water to customers located within the geographic boundaries of the Antelope
16 Valley Groundwater Basin (“the Basin”).

17 4. Palmdale is informed and believes and thereon alleges that Palmdale Water
18 District is a public agency which extracts water from and provides water to customers
19 located within the geographic boundaries of the Basin.

20 5. Palmdale is informed and believes and thereon alleges that Diamond Farming
21 Company is a California corporation which conducts agricultural operations within the
22 geographic boundaries of the Basin, and which extracts water from the Basin.

23 6. Palmdale is informed and believes and thereon alleges that Bolthouse
24 Properties, Inc. is a California corporation which conducts agricultural operations within
25 the geographic boundaries of the Basin, and which extracts water from the Basin.

26 7. Palmdale is informed and believes and thereon alleges that William Bolthouse
27 Farms, Inc. is a California corporation which conducts agricultural operations within the
28 geographic boundaries of the Basin, and which extracts water from the Basin.

1 8. Palmdale is informed and believes and thereon alleges that the City of
2 Lancaster is a municipal corporation located within the County of Los Angeles, and
3 within the geographic boundaries of the Basin.

4 9. Palmdale is informed and believes and thereon alleges that Littlerock Creek
5 Irrigation District is a public agency which provides water to customers located within
6 the geographic boundaries of the Basin and which extracts water from the Basin.

7 10. Palmdale is informed and believes and thereon alleges that Palm Ranch
8 Irrigation District is a public agency which provides water to customers located within
9 the geographic boundaries of the Basin and which extracts water from the Basin.

10 11. Palmdale is informed and believes and thereon alleges that Quartz Hill Water
11 District is a public agency which provides water to customers located within the
12 geographic boundaries of the Basin and which extracts water from the Basin.

13 12. Palmdale is informed and believes and thereon alleges that California Water
14 Service Company is a California corporation which provides water to customers located
15 within the geographic boundaries of the Basin and which extracts water from the Basin.

16 13. Palmdale is informed and believes and thereon alleges that the City of Los
17 Angeles is a municipal corporation that owns land overlying the Basin, including the
18 Palmdale Regional Airport, and that the City of Los Angeles extracts water from the
19 Basin.

20 14. Palmdale is informed and believes and thereon alleges that Rosamond
21 Community Services District is a public agency which provides water to customers
22 located within the geographic boundaries of the Basin and which extracts water from the
23 Basin.

24 15. Palmdale is informed and believes and thereon alleges that B.J. Calandri, John
25 Calandri, John Calandri, as Trustee of the John and B.J. Calandri 2001 Trust, Forrest G.
26 Godde, Forrest G. Godde, as Trustee of the Forrest G. Godde Trust, Lawrence A. Godde,
27 Lawrence A. Godde and Godde Trust, Kootenai Properties, Inc., Gailen Kyle, Gailen
28 Kyle, as Trustee of the Kyle Trust, James W. Kyle, James W. Kyle, as Trustee of the

Kyle Family Trust, Julia Kyle, Wanda E. Kyle, Eugene B. Nebeker, R and M Ranch, Edgar C. Ritter, Paula E. Ritter, and Paula E. Ritter, as Trustee of the Ritter Family Trust are the owners of or beneficial interest holders in real property located within the geographical boundaries of the Basin, and who claim an overlying right to extract water from the basin, whether or not that overlying right has heretofore been exercised.

16. Palmdale is informed and believes and thereon alleges that cross-defendant Does 100,000 through 125,000 are the owners, lessees or other persons or entities holding or claiming to hold ownership or possessory interests in real property located within the boundaries of the Basin, or extract water from the Basin, or claim some right, title or interest to water located within the Basin, or that have or assert claims that are adverse to Palmdale's rights and claims. Palmdale is presently unaware of the true names and capacities of such Doe cross-defendants, and therefore sues those cross-defendants by fictitious names. Palmdale will seek leave to amend this cross-complaint to add such names and capacities when the same are ascertained.

FACTUAL ALLEGATIONS

17. Through these coordinated proceedings, Palmdale and other responsible public entities seek a judicial determination of the rights to produce groundwater within the geographic boundaries of the Basin, which is located in Los Angeles and Kern counties. The Basin is located in the arid Antelope Valley in the Mojave Desert, approximately 50 miles northeast of the City of Los Angeles. The Basin encompasses approximately 940 square miles, and generally includes Palmdale, Lancaster, Rosamond and the Edwards Air Force Base. The Basin is bounded on the south by the San Gabriel Mountains and on the northwest by the Tehachapi Mountains.

18. This groundwater adjudication has become necessary to protect, to conserve and to supplement the groundwater supply of the Basin, which is increasingly at risk due to overpumping and a long-term state of overdraft. The Basin's groundwater supply is

1 vital to the health, safety and welfare of the many people residing and working in the
2 many growing communities of the Antelope Valley, including Palmdale. The Basin's
3 supply has been put under stress due to increased production by agricultural operations,
4 such as that of defendants Diamond Farming Company, Bolthouse Properties, Inc. and
5 Wm. Bolthouse Farms, among others, and due to increasing urbanization as the cities of
6 Palmdale and Lancaster build out.

7 19. Palmdale brings this cross-complaint to promote and to protect the welfare of
8 its residents and businesses, to protect its rights as a landowner to provide water to its
9 public facilities, to protect its residents and businesses against the harmful effects of long-
10 term overdraft, including land subsidence and water quality degradation, and to assure a
11 long-term, safe, reliable, economic and certain supply of water for itself and its residents
12 and businesses.

13 20. Palmdale is a growing community, both in terms of residential development
14 and new and existing businesses. Palmdale's City Council is responsible for making
15 informed land use decisions that include consideration of whether a safe and reliable
16 supply of water is and will be available to the land owners, development entities, persons
17 and businesses involved and affected by those land use decisions. Palmdale further has
18 an interest in the responsible development of the entire Antelope Valley and the
19 reliability of water supplies necessary to sustain and service that development.

20 21. When reviewing applications for land use approvals, Palmdale is required to
21 comply with the provisions of the California Environmental Quality Act ("CEQA")
22 (Public Resources Code §§ 21000, *et seq.*). In so doing, Palmdale must consider the
23 availability of water for any proposed project. Thus, if, for example, a proposed project
24 would require an increase in pumping from a given location to serve groundwater to the
25 proposed project which could potentially result in land subsidence or other forms of
26 property damage, Palmdale would be required to disapprove the project or impose certain
27 conditions thereon to mitigate the forecast impact, such as a condition to apply
28 supplemental water to the project, assuming that supplemental water would be available.

22. For future residential subdivisions of 500 units or more, as the local legislative bodies, Palmdale's Planning Commission and City Council are required by Government Code section 66473.7 to "include as a condition in any tentative map that includes a subdivision a requirement that a sufficient water supply shall be available." A sufficient water supply under the statute means:

"... the total water supplies available during normal, single-dry, and multiple-dry years within a 20-year projection that will meet the projected demand associated with the proposed subdivision, in addition to existing and planned future uses, including, but not limited to, agricultural and industrial uses. In determining 'sufficient water supply,' all of the following factors shall be considered:

(A) The availability of water supplies over a historical record of at least 20 years.

(B) The applicability of an urban water shortage contingency analysis prepared pursuant to Section 10632 of the Water Code that includes actions to be undertaken by the public water system in response to water supply shortages.

(C) The reduction in water supply allocated to a specific water use sector pursuant to a resolution or ordinance adopted, or a contract entered into, by the public water system, as long as that resolution, ordinance, or contract does not conflict with Section 354 of the Water Code."

Further, Palmdale is precluded from approving a project subject to Government Code section 66463.7 unless a reliable water supply for the project over a twenty-year period is certified to be available by the proposed water supplier.

23. Palmdale owns land within the geographic boundaries of the Basin, including its Civic Center, an extensive park system and other public properties. As a landowner, Palmdale desires that its overlying right to produce groundwater from the Basin to be applied to its properties be recognized and established and that its priority to do so be adjudicated herein. To the extent that Palmdale does not presently extract groundwater itself for use on its property, Palmdale purchases water from other purveyors, and thus has a responsibility to its taxpayers and residents to assure that there will be stability in cost and certainty in the supply and quality of the water used by people utilizing Palmdale's facilities.

1 24. In order to assure a similarly reliable, efficient and certain supply of
2 electricity, Palmdale is presently studying the feasibility of developing an electric power
3 generation facility that would use locally supplied water in the generation of electricity.
4 Palmdale may, as well, consider other public utility projects in the future that would
5 require water, and may seek to expand its system of parks and other public properties for
6 the use and enjoyment of its citizens. The certainty of water supply is an integral factor
7 in Palmdale's ability to implement those public projects.

8 25. Palmdale is interested in preventing further land subsidence in the Basin
9 which could damage public facilities owned and operated by Palmdale and/or privately
10 owned property which constitute investments made by its residents and businesses.

11 26. Through the physical solution sought to be imposed through this cross-
12 complaint, Palmdale seeks to prevent its citizens and businesses from suffering physical
13 harm to their homes and places of work, and to avoid depressed property values and
14 impediments to growth associated with a chronic water shortage and land subsidence.
15 Such uncertainty as to long-term supply and harm from land subsidence could have
16 negative impacts on Palmdale's property tax base and could result in reductions in the
17 sales tax revenues upon which Palmdale bases its budgeting process.

18 27. Palmdale brings this cross-complaint generally to promote and protect the
19 welfare of its citizens and businesses and to serve the numerous public purposes
20 identified hereinabove.

21
22 **FIRST CAUSE OF ACTION**
23 **(DECLARATORY RELIEF AS TO WATER RIGHTS)**
24 **(AGAINST ALL CROSS-DEFENDANTS)**

25 28. Palmdale incorporates the allegations of paragraphs 1 through 27 as though set
26 forth in full herein.

27 29. Palmdale is informed and believes, and based upon that information and
28 belief, alleges that the Basin has been overdrafted for more than five consecutive years

1 immediately prior to the commencement of the first filed of these coordinated
2 proceedings, that, during that period of time, total annual demands upon and water
3 consumed from the Basin have exceeded, and do now exceed, the average annual supply
4 of water to the Basin, that, concomitantly, there has been a progressive and general
5 lowering of Basin water levels, the available supply of water contained in the Basin has
6 been and is being gradually and increasingly depleted, and if demands upon the water
7 supplies contained in the Basin are not limited, the Basin will suffer adverse effects
8 including, but not limited to, increased pump lifts, interference with well production, land
9 subsidence, decreased water quality and, eventually, exhaustion of the water supply.

10 30. Each cross-defendant has pumped, and is now pumping, water from the Basin
11 or purports to represent parties who do so. Palmdale is informed and believes, and based
12 upon that information and belief, alleges that said combined extraction and consumption
13 of water from the Basin by cross-defendants constitutes a substantial portion of the
14 annual production and consumption of water from the Basin, and that each cross-
15 defendant claims a prior and paramount right to continue to produce Basin water and
16 threatens to increase its taking of Basin water without regard to the rights and interests of
17 Palmdale in and to Basin water. Cross-defendants' extractions have contributed and
18 continue to contribute to the lowering of Basin water tables and land subsidence and that
19 extraction of water will continue to contribute to the adverse effects to the Basin alleged
20 herein. Cross-defendants continued and/or increased extraction of Basin water will result
21 in a diminution, reduction and impairment of the Basin water supply and will deprive
22 Palmdale of Basin water to which it is entitled.

23 31. Palmdale is informed and believes and on that basis alleges that there are
24 conflicting claims of overlying, appropriative and prescriptive water rights to the Basin
25 and/or its water among Palmdale and cross-defendants.

26 32. Palmdale asserts and contends that the right of any cross-defendant to continue
27 to produce water from the Basin and/or to increase its production of water from the Basin
28

1 is subordinate to the rights of Palmdale to do so pursuant to Palmdale's overlying water
2 rights, and its statutory priorities protecting municipal water use.

3 33. Palmdale is informed and believes, and based upon that information and
4 belief, alleges that an actual controversy has arisen between Palmdale and cross-
5 defendants, and each of them, in that cross-defendants, and each of them, dispute the
6 assertions and contentions of Palmdale set forth herein.

7 34. Palmdale desires a judicial determination and declaration as to the validity of
8 its assertions and contentions set forth herein, the amount of Basin water to which each
9 cross-defendant is entitled to produce from the Basin and the priority and character of
10 each party's respective rights.

11
12 **SECOND CAUSE OF ACTION**
13 **(FOR DECLARATORY AND INJUNCTIVE RELIEF - PHYSICAL SOLUTION)**
14 **(AGAINST ALL CROSS-DEFENDANTS)**

15 35. Palmdale incorporates the allegations of paragraphs 1 through 34 as though set
16 forth in full herein.

17 36. Palmdale is informed and believes, and on based upon that information and
18 belief, alleges that cross-defendants claim the right to take Basin water in increased
19 amounts without regard to the water rights of Palmdale and the long term health of the
20 Basin, and that unless restrained by order of the Court, cross-defendants will continue to
21 take increasing amounts of Basin water thereby causing irreparable damage and injury to
22 the Basin as a water bearing resource and, concomitantly, to Palmdale and the persons
23 and businesses in Palmdale, which damages and injuries cannot be redressed adequately
24 by the award of money damages.

25 37. Palmdale is informed and believes and on that basis alleges that due to the
26 large and increasing amounts of Basin water extracted by cross-defendants, the amount of
27 Basin water available has been reduced, and that unless and until cross-defendants and
28 each of them are enjoined and restrained from continuing or increasing such water

1 production from the Basin, the aforementioned conditions of overdraft will continue and
2 will become more severe and there will occur further depletion of water contained in the
3 Basin as well as increased incidents of land subsidence, thereby endangering public and
4 private property located in Palmdale and elsewhere in the Basin.

5 38. In order to prevent irreparable injury to the Basin and to Palmdale and the
6 persons to whom water is served therein, it is necessary that the Court, acting pursuant to
7 its equitable prerogatives, determine, impose and retain continuing jurisdiction to enforce
8 a physical solution upon the parties who produce and/or use water produced from the
9 Basin and who import and/or use water imported to the Basin, taking into consideration
10 in doing so any and all water rights of the parties established during trial, the relative
11 legal priorities thereof, priorities established by and through legislative provisions, and all
12 other relevant physical, climatic and equitable factors. The physical solution may
13 include, but not be limited to, injunctive limitations on water produced from, stored in
14 and/or imported into or exported from the Basin, the appointment of a Watermaster to aid
15 the Court in administering the physical solution, administrative monetary assessments to
16 facilitate the implementation of the physical solution and, if indicated, metering of and
17 assessments upon Basin water extractions to pay for the purchase, and delivery of
18 supplemental water to relieve the demand for production of Basin water and curtail the
19 condition of overdraft and provisions administering water sought to be stored in the
20 Basin.

21
22 WHEREFORE, Palmdale prays for judgment as against cross-defendants, and
23 each of them, on this cross-complaint as follows:

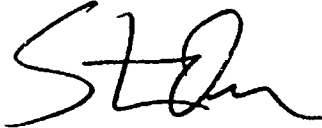
24 1. For an *inter se* determination as to the priority and amount of Basin water to
25 which each party is entitled to pump.

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

3. For the imposition of a physical solution, including declarations, orders and injunctions necessary to manage water production from the Basin in order to preserve the Basin as a resource and to supplement Basin supplies in order to maximize the beneficial use of water used in the Basin.
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. For such other and further relief as the court deems just and proper.

DATED: December 1, 2005

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



By: _____
STEVEN R. ORR
Attorney for Defendant and Cross-Complainant
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
Grand Avenue, 40th Floor, Los Angeles, California 90071. On December 1, 2005, I served the
5 within documents:


6 **CROSS-COMPLAINT IN KERN COUNTY SUPERIOR COURT CASE
NO. S-1500-CV-254-348**

- 7 ☐ by causing facsimile transmission of the document(s) listed above from (213) 626-
8 0078 to the person(s) and facsimile number(s) set forth below on this date before
9 5:00 P.M. This transmission was reported as complete and without error. A copy
10 of the transmission report(s), which was properly issued by the transmitting
11 facsimile machine, is attached. Service by facsimile has been made pursuant to a
12 prior written agreement between the parties.
- 13 ☒ by placing the document(s) listed above in a sealed envelope with postage thereon
14 fully prepaid, in the United States mail at Los Angeles, California, addressed as
15 set forth below. I am readily familiar with the firm's practice for collection and
16 processing correspondence for mailing with the United States Postal Service.
17 Under that practice, it would be deposited with the U.S. Postal Service on that
18 same day with postage thereon fully prepaid in the ordinary course of business. I
19 am aware that on motion of the party served, service is presumed invalid if postal
20 cancellation date or postage meter date is more than one day after date of deposit
21 for mailing contained in this affidavit.
- 22 ☐ by placing the document(s) listed above in a sealed envelope and affixing a pre-
23 paid air bill, and causing the envelope to be delivered to an agent for delivery, or
24 deposited in a box or other facility regularly maintained by, in an envelope or
25 package designated by the express service carrier, with delivery fees paid or
26 provided for, addressed to the person(s) at the address(es) set forth below.
- 27 ☐ by personally delivering the document(s) listed above to the person(s) at the
28 address(es) set forth below.
- 29 ☐ by causing personal delivery by First Legal Support Services, 1511 West Beverly
Boulevard, Los Angeles, California 90026 of the document(s) listed above to the
person(s) at the address(es) set forth below.

30 See Attached Service List

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

33 Executed on December 1, 2005.

34 
35 _____
36 Kelley Herrington

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