

JANET K. GOLDSMITH, State Bar No. 065959
ERIC N. ROBINSON, State Bar No. 191781
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation
400 Capitol Mall, 27th Floor
Sacramento, CA 95814-4416
Telephone: (916) 321-4500
Facsimile: (916) 321-4555

ROCKARD J. DELGADILLO, City Attorney
RICHARD M. BROWN, Senior Assistant
City Attorney for Water and Power
S. DAVID HOTCHKISS (Bar No. 076821)
Assistant City Attorney
JULIE A. CONBOY (Bar No. 197407)
Deputy City Attorney
111 North Hope Street, Suite 340
P. O. Box 51111
Los Angeles, California 90051-0100
Telephone: (213)367-4500
Attorneys for Defendant CITY OF LOS ANGELES

Exempt from Filing Fee Pursuant to
Government Code Section 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Coordination Proceeding

**ANTELOPE VALLEY
GROUNDWATER CASES**

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.

Wm. Bolthouse Farms, Inc. v. City of
Lancaster

Diamond Farming Co. v. City of
Lancaster

Diamond Farming Co. v. Palmdale Water
District

Case No. 105 CV 049053
Judicial Council Coordination Proceeding

No. 4408

Hon. Jack Komar

**ANSWER OF CITY OF LOS ANGELES TO
CROSS-COMPLAINT OF ANTELOPE
VALLEY EAST KERN WATER AGENCY**

Riverside County Superior Court
Lead Case No. RIC 344436
Case No. RIC 344668
Case No. RIC 353840

Los Angeles Superior Court
Case No. BC 325201

Kern County Superior Court
Case No. S-1500-CV-254348

1 Defendant City of Los Angeles, a public entity, by and through its Department of Water
2 and Power and on behalf of its Department of Airports, hereby answers the cross- complaint of
3 Antelope Valley East Kern Water Agency, referred to herein as "AVEK," as follows:

4 ANSWER

5 1. Pursuant to Code of Civil Procedure section 431.30(d), defendant City of Los Angeles
6 hereby denies each and every allegation contained in the complaint and further denies that AVEK
7 is entitled to any relief against cross-defendant.

8 AFFIRMATIVE DEFENSES

9 **First Affirmative Defense**

10 (Failure to State a Cause of Action)

11 2. The cross-complaint, and each and every cause of action alleged therein, fails to state facts
12 sufficient to constitute a cause of action.

13 **Second Affirmative Defense**

14 (Uncertainty)

15 3. AVEK is not entitled to any relief, as the cross-complaint is fatally uncertain as to the
16 geographical location and extent of the Antelope Valley Groundwater Basin as to which
17 comprehensive adjudication of water rights is sought.

18 **Third Affirmative Defense**

19 (Statutes of Limitation)

20 4. Each and every cause of action is barred, in whole or in part, by applicable statutes of
21 limitation including, but not limited to, sections 318, 319, 321, 337, 338, 339, 342, and 343 of the
22 California Code of Civil Procedure.

23 **Fourth Affirmative Defense**

24 (Laches)

25 5. The cross-complaint, and each and every cause of action contained therein, is barred by
26 the doctrine of laches.

27 ///

28 ///

1 **Fifth Affirmative Defense**

2 (Estoppel)

3 6. The cross-complaint, and each and every cause of action contained therein, is barred by
4 the doctrine of estoppel.

5 **Sixth Affirmative Defense**

6 (Waiver)

7 7. The cross-complaint, and each and every cause of action contained therein, is barred by
8 the doctrine of waiver.

9 **Seventh Affirmative Defense**

10 (Unclean Hands/ Unjust Enrichment)

11 8. AVEK is barred from recovery under the complaint, and each and every cause of action
12 contained therein, by the doctrine of unclean hands and/or unjust enrichment..

13 **Eighth Affirmative Defense**

14 (Civil Code § 1007)

15 9. Each and every cause of action contained in the cross-complaint is barred in whole or in
16 part by the provisions of section 1007 of the California Civil Code.

17 **Ninth Affirmative Defense**

18 (Indispensable and/or Necessary Party)

19 10. The cross-complaint is barred by Code of Civil Procedure Section 389 on the ground that
20 AVEK has failed to name and join indispensable and/or necessary parties, e.g., other producers of
21 water in the Antelope Valley Groundwater Basin.

22 **Tenth Affirmative Defense**

23 (Adequate Legal Remedy)

24 11. Without conceding that defendant has extracted or has threatened to extract water in
25 excess of its right to do so, as a separate affirmative defense to AVEK's claim for equitable relief,
26 defendant alleges that AVEK has adequate legal remedies for its injuries, if any, resulting from
27 the actual or threatened conduct of defendant.

28 ///

1 **Eleventh Affirmative Defense**

2 (Separation of Powers)

3 12. The injunctive remedy sought of a physical solution ordered by the Court is not available
4 due to the doctrine of separation of powers set forth in Article III, section 3 of the California
5 Constitution.

6 **Twelfth Affirmative Defense**

7 (Unreasonable Use)

8 13. Cross-complainant's methods of water use and storage are unreasonable and wasteful in
9 the arid conditions of Antelope Valley, violate California Constitution Article X section 2, and
10 therefore do not give rise to any claim of right to the water.

11 **Thirteenth Affirmative Defense**

12 (Additional Defenses)

13 14. The complaint does not state AVEK's allegations with sufficient particularity or clarity to
14 enable defendant to determine what additional defenses may exist to AVEK's causes of action.
15 Defendant therefore reserves the right to assert all defenses which may pertain to the complaint
16 once the precise nature of AVEK's causes of action is more fully ascertained.

17 WHEREFORE, defendant prays that judgment be entered against AVEK as follows:

- 18 1. That AVEK take nothing and be granted no relief by reason of the cross-
19 complaint;
20 2. That the cross-complaint be dismissed with prejudice;
21 3. For defendant's attorneys' fees incurred herein;
22 4. For defendant's costs incurred herein; and

23 ///

24 ///

25 ///

26 ///

27 ///

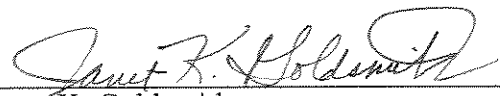
28 ///

1 5. For such other and further relief as the Court deems just and proper.

2 Dated: December 29, 2006

3 ROCKARD J. DELGADILLO, City Attorney
4 Richard M. Brown, Senior Assistant City Attorney for
 Water and Power

5 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
6 A Professional Corporation

7 By 
8 Janet K. Goldsmith
9 Attorneys for Defendant CITY OF LOS ANGELES

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I, Suzanne Stewart, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On December 29, 2006, I served a copy of the within document(s): ANSWER OF CITY OF LOS ANGELES TO CROSS-COMPLAINT OF ANTELOPE VALLEY EAST KERN WATER AGENCY via electronic posting to the Santa Clara Superior Court E-Filing website, <http://www.scefiling.org/cases/casehome.jsp?caseId=19> with electronic mail to the parties' email addresses shown on the service list attached hereto as Exhibit "A."

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

Executed on December 29, 2006, at Sacramento, California.

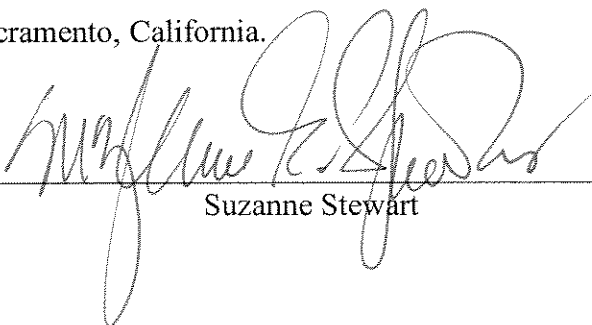

Suzanne Stewart

EXHIBIT "A"

Robert H. Joyce
Law Offices of Lebeau Thelen, LLP
5001 East Commerce Center Drive,
Suite 300
P.O. Box 12092
Bakersfield, CA 93389-2092
bjoyce@lebeauthelen.com,
DLuis@lebeauthelan.com

Attorneys for Diamond Farming Company

Douglas J. Evertz
Stradling, Yocca, Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660-6522
devertz@sycr.com

Attorneys for City of Lancaster

James L. Markman
Richards Watson & Gershon
P.O. Box 1059
Brea, CA 92822-1059
jmarkman@rwglaw.com

Attorneys for City of Palmdale

Steve R. Orr
Bruce G. McCarthy
Richards Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
sorr@rwglaw.com

Attorneys for City of Palmdale

Michael Fife
Hatch and Parent
21 East Carrillo Street
Santa Barbara, CA 93101-2782
mfife@hatchparent.com

Attorneys for Eugene B. Nebeker on behalf
of Nebeker Ranch, Inc., Bob Jones on behalf
of R&M Ranch, Inc., Forrest G. Godde and
Steve Godde, Gailen Kyle on behalf of
Kyle & Kyle Ranch, Inc. and John Calandri
on behalf of Canandri/Sonrise Farms,
collectively known as the Antelope Valley
Groundwater Agreement Association
("AGWA")

Richard Zimmer
Clifford & Brown
1430 Truxtun Avenue, Suite 900
Bakersfield, CA 93301
rzimmer@clifford-brownlaw.com

Attorneys for Bolthouse Properties, Inc.

Julie A. Conboy
Department of Water and Power
111 North Hope Street
P.O. Box 111
Los Angeles, CA 90012
Julie.Conboy@ladwp.com

Attorneys for Department of Water and
Power

1 Wayne K. Lemieux
Lemieux & O'Neill
2 2393 Townsgate Road, Suite 201
Westlake Village, CA 91361
3 Wayne@Lemieux-oneill.com

Attorneys for Littlerock Creek Irrigation
District and Palm Ranch Irrigation District

4 Thomas Bunn
Lagerlof, Senecal, Bradley, Gosney & Kruse
5 301 North Lake Avenue, 10th Floor
Pasadena, CA 91101-4108
6 TomBunn@lagerlof.com

Attorneys for Palmdale Water District and
Quartz Hill Water District

7 Henry Weinstock
Nossaman, Guthner, Knox, Elliott LLP
8 445 South Figueroa Street, 31st Floor
Los Angeles, CA 90071
9 hweinstock@nossaman.com
ffudacz@nossaman.com

Attorneys for Tejon Ranch

10
11 John Tootle
California Water Service Company
12 3625 Del Amo Boulevard, Suite 350
Torrance, CA 90503
13 jtootle@calwater.com

Attorneys for City of Palmdale
Attorneys for California Water Service
Company

14 Eric Garner
Best, Best & Krieger, LLP
15 P.O. Box 1028
Riverside, CA 92502-1028
16 ELGarner@bbklaw.com
Lynda.Serwy@bbklaw.com
17 JVDunn@bbklaw.com
kkeefe@bbklaw.com

Attorneys for Los Angeles County
Waterworks District No. 40 and Rosamond
Community Services District and on behalf
of City of Palmdale, City of Lancaster,
Palmdale Water District and Quartz Hill
Water District

18
19 Raymond G. Fortner, Jr.
County Counsel
20 Frederick W. Pfaeffle, Sr. Deputy Counsel
Office of County Counsel
21 County of Los Angeles
500 West Temple Street
22 Los Angeles, CA 90012
fpfaeffle@counsel.co.la.ca.us

23
24 Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial
25 Services
(Civil Case Coordination)
26 455 Golden Gate Avenue
San Francisco, CA 94102
27
28

1 Honorable Jack Komar
2 Judge of the Superior Court of California,
3 County of Santa Clara
4 191 North First Street, Dept. 17C
5 San Jose, CA 95113

6 Daniel V. Hyde
7 Lewis, Brisbois, Bisgaard & Smith, LLP
8 221 N. Figueroa Street, Suite 1200
9 Los Angeles, CA 90012
10 hyde@lbbslaw.com

11 Lee Leininger Attorneys for Edwards Air Force Base,
12 Environment and Natural Resources Division United States Department of the Air Force
13 Department of Justice
14 999 – 18th Street, Suite 945
15 Denver, CO 80202
16 Lee.leininger@usdoj.gov
17 Judy.Tetreault@usdoj.gov

18 Debra W. Yang
19 United States Attorney's Office
20 Central District of California
21 300 North Los Angeles Street
22 Los Angeles, CA 90012

23 Alberto Gonzales
24 United States Attorney General
25 Department of Justice
26 950 Pennsylvania Avenue, NW
27 Washington, DC 20530-0001

28 John Slezak, Esq.
Iverson, Yoakum, Papiano & Hatch
One Wilshire Boulevard., 27th Floor
624 S. Grand Avenue
Los Angeles, CA 90017
Jslezak@iyph.com

Attorneys for City of Los Angeles
Department of Water and Power

Janet K. Goldsmith
Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814-4417
jgoldsmith@kmtg.com

Attorneys for City of Los Angeles
Department of Water and Power

26
27
28