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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES
10

11 Coordination Proceeding
Special Title (Rule 1550(b))

12 ANTELOPE VALLEY GROUNDWATER
13 CASES

14 Included Actions:

15 Los Angeles County Waterworks District No. 40
v. Diamond Farming Co.
16 Superior Court of California,
County of Los Angeles, Case No. BC 325 201

17 Los Angeles County Waterworks District No. 40
v. Diamond Farming Co.
18 Superior Court of California,
County of Kern, Case No. S-1500-CV-254-348

20 Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
21 Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of
22 Riverside, consolidated actions, Case
Nos. RIC 353 840, RIC 344 436, RIC 344 668
23
24

Judicial Council Coordination
Proceeding No. 4408

ANSWER OF CROSS-
DEFENDANT U.S. BORAX INC.
TO CROSS-COMPLAINT OF LOS
ANGELES COUNTY
WATERWORKS DISTRICT
NO. 40, ET AL.

1 Cross-Defendant U.S. Borax Inc. (hereinafter "U.S. Borax") answers the unverified Cross-
2 Complaint of Los Angeles County Waterworks District No. 40, et al. (herinafter "Cross-
3 Complainants"), as follows:

4 1. U.S. Borax, designated as Doe # 41 in the Cross-Complaint, is a Delaware corporation
5 doing business in the State of California.

6 2. Pursuant to California Code of Civil Procedure Section 431.30(d), U.S. Borax
7 generally denies each and every allegation set forth in the Cross-Complaint.

8 **AFFIRMATIVE DEFENSES**

9 **FIRST AFFIRMATIVE DEFENSE**

10 The Cross-Complaint, and each cause of action thereof, fails to state facts sufficient to
11 constitute a claim upon which relief can be granted.

12 **SECOND AFFIRMATIVE DEFENSE**

13 The Cross-Complaint, and each cause of action therein, is barred by the equitable doctrines of
14 res judicata and collateral estoppel.

15 **THIRD AFFIRMATIVE DEFENSE**

16 Each and every cause of action contained in the Cross-Complaint is barred by the doctrine of
17 laches.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 Each and every cause of action contained in the Cross-Complaint is barred by the doctrine of
20 equitable estoppel.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 Each and every cause of action contained in the Cross-Complaint is barred by the doctrine of
23 waiver.

24 **SIXTH AFFIRMATIVE DEFENSE**

25 Each and every cause of action contained in the Cross-Complaint is barred by the doctrine of
26 unclean hands.
27
28

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 Cross-Complainants have delayed an unreasonable period of time in bringing this action,
3 which delay has been so prejudicial to U.S. Borax so as to bar Cross-Complainants from any
4 recovery in this action.

5 **EIGHTH AFFIRMATIVE DEFENSE**

6 Cross-Complainants' claims are barred, in whole or in part, by the provisions of section 1009
7 of the California Civil Code.

8 **NINTH AFFIRMATIVE DEFENSE**

9 Cross-Complainants allege uses of water that are unreasonable and wasteful in violation of
10 Article X, Section 2 of the California Constitution.

11 **TENTH AFFIRMATIVE DEFENSE**

12 Cross-Complainants are barred from seeking equitable relief because they have adequate legal
13 remedies for any alleged injuries.

14 **ELEVENTH AFFIRMATIVE DEFENSE**

15 Cross-Complainants' claims are barred, in whole or in part, by the applicable statutes of
16 limitation, including but not limited to California Code of Civil Procedure Sections 318, 319, 321,
17 338, and 343.

18 **TWELFTH AFFIRMATIVE DEFENSE**

19 The relief sought in each and every cause of action contained in the Cross-Complaint would
20 constitute an unjust enrichment of Cross-Complainants to the detriment of U.S. Borax.

21 **THIRTEENTH AFFIRMATIVE DEFENSE**

22 U.S. Borax alleges that it is the owner of certain real property overlying the groundwater
23 identified in the Cross-Complaint and therefore has the prior and paramount right, presently and in
24 the future, to extract groundwater.

25 **FOURTEENTH AFFIRMATIVE DEFENSE**

26 Cross-Complainants are not entitled to the relief requested in that, by virtue of the doctrine of
27 self-help, U.S. Borax has protected and preserved its paramount overlying rights to extract
28 groundwater.

1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 Each and every cause of action contained in the Cross-Complaint is barred in whole or in part
3 because the Cross-Complainants' claims are not ripe for adjudication.

4 **SIXTEENTH AFFIRMATIVE DEFENSE**

5 U.S. Borax alleges that Cross-Complainants are not entitled to declaratory relief or injunctive
6 relief because the actual condition of the groundwater supply is not presently known and is not
7 presently ascertainable to the degree of certainty required for declaratory relief or injunctive relief.

8 **SEVENTEENTH AFFIRMATIVE DEFENSE**

9 U.S. Borax alleges that the relief sought by Cross-Complainants would constitute an illegal
10 taking without compensation in violation of the United States Constitution and the California
11 Constitution. Cross-Complainants lack the authority to acquire the rights sought in the manner
12 alleged in the Cross-Complaint.

13 **EIGHTEENTH AFFIRMATIVE DEFENSE**

14 U.S. Borax is informed and believe and on that basis alleges that the groundwater basin at
15 issue is not in a state of overdraft and that the amounts withdrawn from it have not been nonsurplus
16 supplies in excess of the safe yield.

17 **NINETEENTH AFFIRMATIVE DEFENSE**

18 The Cross-Complaint is defective and uncertain in that it cannot be ascertained therefrom the
19 nature of the water rights that Cross-Complainants are claiming and the nature of the water rights that
20 Cross-Complainants claim that U.S. Borax is asserting.

21 **TWENTIETH AFFIRMATIVE DEFENSE**

22 The Cross-Complaint is defective and uncertain in that it cannot be ascertained therefrom
23 when the alleged prescriptive period, if any, commenced and ended.

24 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

25 The Cross-Complaint is defective and uncertain in that it cannot be ascertained therefrom that
26 the alleged condition of overdraft and use of groundwater by Cross-Complainants, was actual,
27 notorious, hostile and adverse to U.S. Borax, for a continuous and uninterrupted period of time
28 required by law.

1 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

2 The Cross-Complaint is defective and uncertain in that the legal descriptions of U.S. Borax's
3 properties, as to which Cross-Complainants claim to have acquired prescriptive rights, are not set out
4 in the Cross-Complaint, and because it cannot be ascertained from the Cross-Complaint which of
5 U.S. Borax's properties the Cross-Complainants claim to have acquired prescriptive rights.

6 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

7 The Cross-Complaint is defective and uncertain in that a quantification of the prescriptive
8 water rights that Cross-Complainants claim to have acquired cannot be ascertained therefrom.

9 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

10 Cross-Complainants lack standing to bring the claims that are set forth in the Cross-
11 Complaint.

12 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

13 Each and every cause of action contained in the Cross-Complaint is barred in whole or in part
14 in accordance with Code of Civil Procedure section 389 on the ground that Cross-Complainants have
15 failed to name and join an indispensable and/or a necessary party.

16 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

17 The Court lacks subject matter jurisdiction over some or all of the matters alleged in the
18 Cross-Complaint.

19 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

20 The Cross-Complaint, and each cause of action therein, is barred by the failure to exhaust
21 available administrative remedies.

22 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

23 U.S. Borax incorporates by reference any other applicable affirmative defense asserted by any
24 other responding Cross-Defendants to the Cross-Complaint as if fully set forth herein.

25 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

26 U.S. Borax has insufficient knowledge or information upon which to form a belief as to
27 whethehere may be additional, as yet unstated, affirmative defenses available, and therefore reserves
28

1 the right to allege other affirmative defenses as they become appropriate or known through the course
2 of discovery.

3 WHEREFORE, U.S. Borax prays for relief as follows:

4 1. That Cross-Complainants take nothing as against U.S. Borax by way of the Cross-
5 Complaint on file herein, or

6 2. If the court determines that Cross-Complainants are entitled to any relief against U.S.
7 Borax, that U.S. Borax be awarded the fair market value of their interest in any property taken by
8 Cross-Complainants.

9 3. That U.S. Borax's water rights be determined as prior and paramount to all those
10 claimed by any other parties.

11 4. That U.S. Borax be awarded attorney's fees as may be allowed by statute, or case law.

12 5. That U.S. Borax be awarded costs of suit.

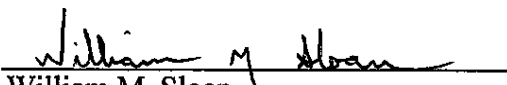
13 6. For such other and further relief as the Court deems just.

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15 Dated: June 28, 2006

Respectfully submitted,

16 MORRISON & FOERSTER LLP

17
18 By:


19 William M. Sloan
Attorneys for U.S. Borax Inc.