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4 Attorney for Defendants/Cross-Complaints  
5 ANTELOPE VALLEY WATER COMPANY

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 IN AND FOR THE COUNTY OF LOS ANGELES

8 Coordinated Proceeding ) Judicial Council Coordination  
9 Special Title (Rule 1550 (b)) ) Proceeding No. 4408  
10 ANTELOPE VALLEY GROUNDWATER CASES ) Santa Clara Case No. 1-05-CV-049053  
Included Actions: ) [Assigned to the Honorable Jack Komar]

11 Los Angeles County Waterworks )  
12 District No. 40 v. Diamond Farming ) ANSWER OF CALIFORNIA WATER SERVICE  
Co. Los Angeles County Superior Court ) COMPANY TO CROSS-COMPLAINT OF  
13 Case No. BC 325201; ) BOLTHOUSE PROPERTIES, LLC

14 Los Angeles County Waterworks )  
15 District No. 40 v. Diamond Farming )  
Co., Kern County Superior Court, Case )  
16 No. S-1500-CV-234348; )  
17 Wm. Bolthouse Farms, Inc. v. City of )  
Lancaster Diamond Farming Co. v. City )  
18 of Lancaster v. Palmdale Water )  
District, Riverside County Superior )  
19 Court, Consolidated Actions, Case )  
Nos. RIC 353840, RIC 344436, RIC )  
344668 )

20 BOLTHOUSE PROPERTIES, LLC.

21 Cross-Complainant,

22 Vs.

23 ROSAMOND COMMUNITY SERVICES )  
DISTRICT; LOS ANGELES COUNTY )  
24 WATERWORKS DISTRICT NO. 40; PALMDALE )  
WATER DISTRICT; CITY OF LANCASTER; )  
CITY OF PALMDALE; LITTLE ROCK CREEK )  
25 IRRIGATION DISTRICT; PALM RANCH )  
IRRIGATION DISTRICT; CALIFORNIA WATER )  
SERVICE COMPANY; ANTELOPE VALLEY-EAST )  
KERN WATER AGENCY; COUNTY OF )

1 SANITATION DISTRICTS NOS. 14 AND 20 )  
2 OF LOS ANGELES COUNTY; and as )  
3 against each and every party which )  
4 subsequently files a Cross-Complaint )  
5 against Bolthouse Properties, LLC; )  
6 and MOES 1 through 10,000 )  
7 Cross Defendants. )

8 California Water Service Company (herein "Cal Water") is the successor  
9 in interest by merger with the Antelope Valley Water Company. Cal Water  
10 responds to the unverified Cross-Complaint of Bolthouse Properties, LLC.  
11 ("Bolthouse"), as follows:

12 1. Cal Water generally and specifically denies each and every  
13 allegation contained in Bolthouses's unverified First Amended Cross-  
14 Complaint.

#### 15 AFFIRMATIVE DEFENSES

##### 16 **FIRST AFFIRMATIVE DEFENSE**

17 2. Cal Water has a right prior and paramount to the rights of Bolthouse  
18 to pump the portion of the water percolated into the Basin which has been  
19 imported by Antelope Valley East Kern Water Agency through the State Water  
20 Project and delivered to Cal Water or through an intermediary. This right,  
21 sometimes referred to as the "right to recapture return flows," exists as to  
22 percolating water which can be identified as return flow regardless of the  
23 length of time since the percolation, regardless of the number of times the  
24 water is pumped and regardless whether the percolating water is commingled  
25 with the waters in the Basin.

##### 26 **SECOND AFFIRMATIVE DEFENSE**

27 3. Cal Water has a prior and paramount right to the rights of Bolthouse

1 to pump the native waters in the Basin because water and water rights  
2 belonging to the State of California within Cal Water have been given,  
3 dedicated, and set apart for the use and purposes of Cal Water.

4 **THIRD AFFIRMATIVE DEFENSE**

5 4. Cal Water has an equal right to the rights of Bolthouse to use the  
6 native waters for municipal purposes.

7 **FOURTH AFFIRMATIVE DEFENSE**

8 5. Cal Water has an equal right to the rights of the public entity  
9 cross-defendants to the native waters in the Basin by virtue of mutual  
10 prescription.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 6. All the groundwater extracted by Cal Water from the Basin is  
13 devoted to public use. As a result of this dedication to public use, the  
14 Cross-Complainant cannot obtain any judicial relief that will in any way  
15 restrain or prevent Cal Water from exercising their rights to extract  
16 groundwater from the Basin.

17 **SIXTH AFFIRMATIVE DEFENSE**

18 7. In the event of the imposition of a physical solution or some  
19 form of declaratory relief, due regard must be given to the prior and  
20 paramount nature of cross-defendants' prescriptive water rights.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 8. Cal Water has a right to extract groundwater from the Basin for  
23 reasonable and beneficial use on behalf of its customers who have transferred  
24 and granted to Cal Water all their overlying groundwater rights which right  
25 is prior and paramount to Public Water Suppliers' claims to extract and use

1 groundwater from the Basin for non-overlying (appropriative) use and is  
2 correlative with all other overlying groundwater rights.

3 **EIGHTH AFFIRMATIVE DEFENSE**

4 9. The Cross-Complaint and every purported cause of action therein  
5 fail to allege facts sufficient to constitute a cause of action against Cal  
6 Water.

7 **NINTH AFFIRMATIVE DEFENSE**

8 10. The Cross-Complaint, and each and every cause of action therein,  
9 are barred by the doctrine of waiver.

10 **TENTH AFFIRMATIVE DEFENSE**

11 11. The Cross-Complaint, and each and every cause of action therein,  
12 are barred by the doctrine of laches.

13 **ELEVENTH AFFIRMATIVE DEFENSE**

14 12. The Cross-Complaint, and each and every cause of action therein,  
15 are barred by the doctrine of estoppel.

16 **TWELVETH AFFIRMATIVE DEFENSE**

17 13. The Cross-Complaint and each cause of action alleged therein are  
18 barred by the failure to join indispensable and necessary parties.

19 **THIRTEENTH AFFIRMATIVE DEFENSE**

20 14. The Cross-Complaint fails to state facts sufficient to constitute  
21 a cause of action.

22 **FOURTEENTH AFFIRMATIVE DEFENSE**

23 15. Cross-Complainant is barred from the relief it seeks by the  
24 Doctrine of unjust enrichment.

25 **FIFTEENTH AFFIRMATIVE DEFENSE**

16. Cross-Complainant fails to mitigate its damages, if any, and  
**CAL WATER'S ANSWER TO BOLTHOUSE PROPERTIES LLC'S CROSS COMPLAINT - 4**

1 Cross-Complainant is barred from recovery against cross-defendants to the  
2 extent of such failure to mitigate.

3 **SIXTEENTH AFFIRMATIVE DEFENSE**

4 17. Cross-Complainant has not described the property at issue with  
5 sufficient certainty as required by Code of Civil Procedure section 455.

6 **SEVENTEENTH AFFIRMATIVE DEFENSE**

7 18. The Cross-Complaint, and each and every purported cause of action  
8 Contained therein, is uncertain, ambiguous and unintelligible.

9 **EIGHTEENTH AFFIRMATIVE DEFENSE**

10 19. Cross-Complainant's right to produce groundwater is usufructary,  
11 and confers no right of private ownership in public waters.

12 **NINETEENTH AFFIRMATIVE DEFENSE**

13 20. Cross-Complainant is not entitled to recover monetary damages  
14 for any groundwater pumped by cross-defendants.

15 **TWENTIETH AFFIRMATIVE DEFENSE**

16 21. Cross-Complainant has knowingly and intentionally waived any  
17 right to assert some or all of the claims set forth in each and every cause  
18 of action contained in the Cross-Complaint.

19 **TWENT-FIRST AFFIRMATIVE DEFENSE**

20 22. Cross-Complainant is guilty of unclean hands because it seeks to  
21 restrict the pumping of other users but not its own pumping.

22 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

23 23. The damages alleged, if any there were, were proximately and  
24 actually caused by the voluntary actions of Cross-Complainant, and not by any  
25 acts and/or omissions of cross-defendants.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

1           24.    The relief requested in the Cross-Complaint is barred by Article  
2 X, section 2 of the California Constitution in that the requested relief  
3 would be wasteful and result in unreasonable use, unreasonable method of use,  
4 or unreasonable method of diversion of water.

5                                   **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

6           25.    The cause of action for inverse condemnation is barred by Cross-  
7 Complainant's failure to exhaust its available administrative remedies.

8                                   **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

9           26.    Cross-Complainant's injuries and damages, if any, have been  
10 aggravated as a result of its failure to exercise reasonable diligence to  
11 minimize those damages, and cross-defendants' liability, if any, is limited  
12 to the amount of damage which would have been suffered had Cross-Complainant  
13 exercised the diligence required of it.

14                                   **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

15           27.    Cross-defendants are informed and believe, and on that basis  
16 allege, that Cross-Complainant is guilty of waste.

17                                   **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

18           28.    Cross-defendants do not presently have sufficient knowledge or  
19 information on which to form a belief as to whether they may have additional,  
20 as yet unstated, affirmative defenses. Cross-defendants reserve the right to  
21 assert additional affirmative defenses in the event discovery indicates that  
22 they would be appropriate or to amend this Answer as may be appropriate.

23                                   **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

24           29.    As permitted by the Court's Appearance Form, cross-defendants  
25 Incorporate by reference, as if fully set forth herein, each and every  
affirmative defense to the Cross-Complaint filed by any other defendant or

1 cross-defendant, whether their answers are filed before or after the filing  
2 of this answer.

3 **PRAYER**

4 **WHEREFORE**, California Water Service Company prays for the Court to:

- 5 1. Declare California Water Service Company's water rights as equal or  
6 paramount to the water rights of Bolthouse as set forth in California Water  
7 Service Company's affirmative defenses.
- 8 2. Award California Water Service Company cost of suit.
- 9 3. Award California Water Service Company reasonable attorneys' fees.
- 10 4. Impose such further relief as the Court deems appropriate.
- 11

12 DATED: February 22, 2007

CALIFORNIA WATER SERVICE COMPANY

13  
14 By: 

15 JOHN S. TOOTLE, ESQ.  
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