

1 JOHN S. TOOTLE, ESQ. (SBN 181822)  
CALIFORNIA WATER SERVICE COMPANY  
2 2632 West 237<sup>th</sup> Street  
Torrance, CA 90505  
3 Telephone: (310) 257-1488  
Facsimile: (310) 325-5658

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** )  
Included Actions: ) Santa Clara Case No. 1-05-CV-049053  
[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; ) **GRIMMWAY ENTERPRISES, INC. AND LAPIS**  
 ) **LAND COMPLAN, LLC**  
14 Los Angeles County Waterworks )  
District No. 40 v. Diamond Farming )  
15 Co., Kern County Superior Court, Case )  
No. S-1500-CV-234348; )  
16 Wm. Cross-Complainants Farms, Inc. v. )  
City of Lancaster Diamond Farming Co. )  
17 v. City of Lancaster v. Palmdale )  
Water District, Riverside County )  
18 Superior Court, Consolidated Actions, )  
Case Nos. RIC 353840, RIC 344436, RIC )  
19 344668 )  
20 GRIMMWAY ENTERPRISES, INC. AND LAPIS )  
LAND COMPANY, 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; )  
25 CITY OF PALMDALE; LITTLEROCK CREEK )  
IRRIGATION DISTRICT; PALM RANCH )  
IRRIGATION DISTRICT; CALIFORNIA WATER )  
SERVICE COMPANY; ANTELOPE VALLEY-EAST

1 KERN WATER AGENCY; COUNTY OF )  
2 SANITATION DISTRICTS NOS. 14 AND 20 )  
3 OF LOS ANGELES COUNTY; and as against )  
4 each and every party which )  
5 subsequently files a Cross-Complaint )  
6 against Cross-Complainants )  
7 Properties, LLC; and MOES 1 through )  
8 10,000 )  
9 )

10 Cross Defendants.

11  
12 California Water Service Company (herein "Cal Water") is the successor  
13 in interest by merger with the Antelope Valley Water Company. Cal Water  
14 responds to the Cross-Complaint of Grimmway Enterprises, Inc. and LAPIS Land  
15 Company, LLC ("Cross-Complainants"), as follows:

16 Cal Water generally and specifically denies each and every  
17 allegation contained in Cross-Complainants Cross-Complaint.

#### 18 AFFIRMATIVE DEFENSES

##### 19 FIRST AFFIRMATIVE DEFENSE

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

##### 29 SECOND AFFIRMATIVE DEFENSE

30 2. Cal Water has a prior and paramount right to the rights of Cross

1 Complainants to pump the native waters in the Basin because water and water  
2 rights 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 3. Cal Water has an equal right to the rights of Cross-Complainants to  
6 use the native waters for municipal purposes.

7 **FOURTH AFFIRMATIVE DEFENSE**

8 4. 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 5. 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 6. 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 7. 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 8. 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 9. The Cross-Complaint, and each and every cause of action therein,  
9 are barred by the doctrine of waiver.

10 **TENTH AFFIRMATIVE DEFENSE**

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

13 **ELEVENTH AFFIRMATIVE DEFENSE**

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

16 **TWELVETH AFFIRMATIVE DEFENSE**

17 12. The Cross-Complaint fails to state facts sufficient to constitute  
18 a cause of action.

19 **THIRTEENTH AFFIRMATIVE DEFENSE**

20 13. Cross-Complainant is barred from the relief it seeks by the  
21 Doctrine of unjust enrichment.

22 **FOURTEENTH AFFIRMATIVE DEFENSE**

23 14. Cross-Complainant fails to mitigate its damages, if any, and  
24 Cross-Complainant is barred from recovery against cross-defendants to the  
25 extent of such failure to mitigate.

**FIFTEENTH AFFIRMATIVE DEFENSE**

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

**SIXTEENTH AFFIRMATIVE DEFENSE**

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

**SEVENTEENTH AFFIRMATIVE DEFENSE**

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

**EIGHTEENTH AFFIRMATIVE DEFENSE**

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

**NINETEENTH AFFIRMATIVE DEFENSE**

19. Cross-Complainant has 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 the Cross-Complaint.

**TWENTIETH AFFIRMATIVE DEFENSE**

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

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

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

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

22. The relief requested in the Cross-Complaint is barred by Article

1 X, section 2 of the California Constitution in that the requested relief  
2 would be wasteful and result in unreasonable use, unreasonable method of use,  
3 or unreasonable method of diversion of water.

4 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

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

7 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

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

13 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

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

16 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

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

22 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

23 27. As permitted by the Court's Appearance Form, cross-defendants  
24 Incorporate by reference, as if fully set forth herein, each and every  
25 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 Cross-Complainants as set forth in  
7 California Water 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: December 13, 2010

CALIFORNIA WATER SERVICE COMPANY

13  
14 By: 

15 JOHN S. TOOTLE, ESQ.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1                                    **PROOF OF SERVICE (C.C.P. §1013a, 2015.5)**  
2                                    **Antelope Valley Groundwater Cases**  
3                                    **Judicial Counsel Proceeding No. 4408**  
4                                    **Santa Clara County Superior Court Case No. 1-05-CV-049053**

5            I am employed in the County of Los Angeles, State of California. I am  
6 over the age of 18 and not a party to the within action; my business address  
7 is 2632 West 237<sup>th</sup> Street, Torrance, CA 90505.

8            On December 14, 2010, I served the foregoing document(s) entitled:

9            **ANSWER OF CALIFORNIA WATER SERVICE COMPANY TO CROSS-COMPLAINT OF GRIMMWAY**  
10           **ENTERPRISES, INC. AND LAPIS LAND COMPANY, LLC**

11           by placing the true copies thereof enclosed in sealed  
12 envelopes addressed as stated on the attached mailing  
13 list.

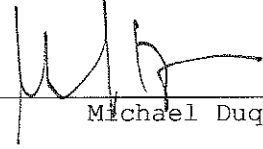
14           by placing \_ the original, \_ a true copy thereof,  
15 enclosed in a sealed enveloped addressed as follows:

16           **X**           **BY SANTA CLARA SUPERIOR COURT E-FILING IN COMPLEX LITIGATION**  
17           **PURSUANT TO CLARIFICATION ORDER DATED OCTOBER 27, 2005.**

18           Executed on December 14, 2010, at Torrance, California

19           **X**           (State)        I declare under penalty of perjury under the laws of  
20 the State of California that the above is true and  
21 correct.

22           \_\_\_\_\_ (Federal)    I declare that I am employed in the office of a  
23 member of the Bar of this Court at whose direction  
24 the service was made.

25             
                 Michael Duque