

1 JOHN S. TOOTLE, ESQ. (SBN 181822)
CALIFORNIA WATER SERVICE COMPANY
2 2632 West 237th 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
11) [Assigned to the Honorable Jack Komar]
12 Los Angeles County Waterworks)
District No. 40 v. Diamond Farming) ANSWER OF CALIFORNIA WATER SERVICE
13 Co. Los Angeles County Superior Court) COMPANY TO CROSS-COMPLAINT OF CRYSTAL
Case No. BC 325201;) ORGANIC FARMS FOR EQUITABLE AND
14 Los Angeles County Waterworks) MONETARY RELIEF
District No. 40 v. Diamond Farming)
15 Co., Kern County Superior Court, Case)
No. S-1500-CV-234348;)
16 Wm. Crystal Farms, Inc. v. City of)
Lancaster Diamond Farming Co. v. City)
17 of Lancaster v. Palmdale Water)
District, Riverside County Superior)
18 Court, Consolidated Actions, Case)
Nos. RIC 353840, RIC 344436, RIC)
19 344668)
20 CRYSTAL ORGANIC FARMS, LLC.)
Cross-Complainant,)
21 Vs.)
22 ROSAMOND COMMUNITY SERVICES)
DISTRICT; LOS ANGELES COUNTY)
23 WATERWORKS DISTRICT NO. 40; PALMDALE)
WATER DISTRICT; CITY OF LANCASTER;)
24 CITY OF PALMDALE; LITTLEROCK CREEK)
IRRIGATION DISTRICT; PALM RANCH)
25 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 Crystal Properties, LLC; and)
6 MOES 1 through 10,000)
7 Cross Defendants.)
8)
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

6 California Water Service Company (herein "Cal Water") is the successor
7 in interest by merger with the Antelope Valley Water Company. Cal Water
8 responds to the Cross-Complaint of Crystal Organic Farms (herein "Crystal"),
9 as follows:

10 Cal Water generally and specifically denies each and every
11 allegation contained in Crystal's Cross-Complaint.

12 **AFFIRMATIVE DEFENSES**

13 **FIRST AFFIRMATIVE DEFENSE**

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

23 **SECOND AFFIRMATIVE DEFENSE**

24 2. Cal Water has a prior and paramount right to the rights of Crystal
25

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 3. Cal Water has an equal right to the rights of Crystal 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
24 14. Cross-Complainant fails to mitigate its damages, if any, and
25 Cross-Complainant is barred from recovery against cross-defendants to the

1 extent of such failure to mitigate.

2 **FIFTEENTH AFFIRMATIVE DEFENSE**

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

5 **SIXTHTEENTH AFFIRMATIVE DEFENSE**

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

8 **SEVENTEENTH AFFIRMATIVE DEFENSE**

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

11 **EIGHTTEENTH AFFIRMATIVE DEFENSE**

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

14 **NINETEENTH AFFIRMATIVE DEFENSE**

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

18 **TWENTIETH AFFIRMATIVE DEFENSE**

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

21 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

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

25 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

1 22. 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-THIRD AFFIRMATIVE DEFENSE**

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

8 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

9 24. 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-FIFTH AFFIRMATIVE DEFENSE**

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

17 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

18 26. 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-SEVENTH AFFIRMATIVE DEFENSE**

24 27. As permitted by the Court's Appearance Form, cross-defendants
25 Incorporate by reference, as if fully set forth herein, each and every

1 affirmative defense to the Cross-Complaint filed by any other defendant or
2 cross-defendant, whether their answers are filed before or after the filing
3 of this answer.

4 **PRAYER**

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

- 6 1. Declare California Water Service Company's water rights as equal or
7 paramount to the water rights of Crystal as set forth in California Water
8 Service Company's affirmative defenses.
- 9 2. Award California Water Service Company cost of suit.
- 10 3. Award California Water Service Company reasonable attorneys' fees.
- 11 4. Impose such further relief as the Court deems appropriate.
- 12

13 DATED: December 13, 2010

CALIFORNIA WATER SERVICE COMPANY

14
15 By: 

16 JOHN S. TOOTLE, ESQ.

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 237th 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 CRYSTAL**
10 **ORGANIC FARMS FOR EQUITABLE AND MONETARY RELIEF**

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

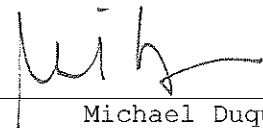
14 by placing _ the original, _ a true copy thereof,
15 enclosed in a sealed enveloped addressed as follows:

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