

1 SCOTT K. KUNEY, Esq., SB# 111115  
 2 ERNEST A. CONANT, Esq., SB# 089111  
 3 THE LAW OFFICES OF YOUNG WOOLDRIDGE, LLP  
 4 1800 30<sup>th</sup> Street, Fourth Floor  
 5 Bakersfield, CA 93301  
 6 Telephone: (661) 327-9661  
 7 Facsimile: (661) 327-0720  
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 9 Attorneys for Gertrude J. Van Dam and Delmar D. Van Dam  
 10 And Craig Van Dam and Gary Van Dam

11  
 12  
 13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 14 COUNTY OF LOS ANGELES

15 Coordination Proceeding  
 16 Special Title (Rule 1550(b))

Judicial Council Coordination Proceeding  
 No. 4408

17 ANTELOPE VALLEY GROUNDWATER  
 18 CASES

SC Case No. 105CV 049053

19 Included Actions:

20 Los Angeles County Waterworks District  
 21 No. 40 v. Diamond Farming Co.  
 22 Superior Court of California  
 23 County of Los Angeles, Case No. BC  
 24 325201

ANSWER OF GERTRUDE J. VAN DAM,  
 DELMAR D. VAN DAM, CRAIG VAN DAM  
 AND GARY VAN DAM TO CROSS-  
 COMPLAINT OF PHELAN PINON HILLS  
 COMMUNITY SERVICES DISTRICT

25 Los Angeles County Waterworks District  
 26 No. 40 v. Diamond Farming Co.  
 27 Superior Court of California, County of  
 28 Kern, Case No. S-1500-CV 254348

Honorable Jack Komar

Wm. Bolthouse Farms, Inc. v. City of  
 Lancaster Diamond Farming Co. v. City of  
 Lancaster Diamond Farming Co. v. Palmdale  
 Water Dist. Superior Court of California,  
 County of Riverside, consolidated actions,  
 Case Nos. RIC 353840, RIC 344436, RIC  
 344668

Cross-Defendants GERTRUDE J. VAN DAM, DELMAR D. VAN DAM, CRAIG VAN

1 DAM AND GARY VAN DAM (collectively "VAN DAMS") answer the unverified Cross-  
2 Complaint of Phelan Pinon Hills Community Services District (hereinafter "Cross-  
3 Complainant"), as follows:

4 1. VAN DAMS are individuals residing in Lancaster, California.

5 2. Pursuant to California Code of Civil Procedure Section 431.30(d), VAN  
6 DAMS generally deny each and every allegation set forth in the Cross-Complaint.

#### 7 AFFIRMATIVE DEFENSES

##### 8 FIRST AFFIRMATIVE DEFENSE

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

##### 11 SECOND AFFIRMATIVE DEFENSE

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

##### 14 THIRD AFFIRMATIVE DEFENSE

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

##### 17 FOURTH AFFIRMATIVE DEFENSE

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

##### 20 FIFTH AFFIRMATIVE DEFENSE

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

##### 23 SIXTH AFFIRMATIVE DEFENSE

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

##### 26 SEVENTH AFFIRMATIVE DEFENSE

27 Cross-Complainants have delayed an unreasonable period of time in bringing this action,  
28 which delay has been so prejudicial to VAN DAMS so as to bar-Cross-Complainants from any

recovery in this action.

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

The relief sought in each and every cause of action contained in the Cross-Complaint would constitute an unjust enrichment of Cross-Complainants to the detriment of VAN DAMS.

THIRTEENTH AFFIRMATIVE DEFENSE

VAN DAMS allege that it is the owner of certain real property overlying the groundwater identified in the Cross-Complaint and therefore has the prior and paramount right, presently and in the future, to extract groundwater.

FOURTEENTH AFFIRMATIVE DEFENSE

Cross-Complainants are not entitled to the relief requested in that, by virtue of the doctrine of self-help, VAN DAMS has protected and preserved its paramount overlying rights to extract groundwater presently and in the future.

FIFTEENTH AFFIRMATIVE DEFENSE

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

## 1 SIXTEENTH AFFIRMATIVE DEFENSE

2 VAN DAMS allege that Cross-Complainants are not entitled to declaratory relief or  
3 injunctive relief because the actual condition of the groundwater supply is not presently known  
4 and is not presently ascertainable to the degree of certainty required for declaratory relief or  
5 injunctive relief.

## 6 SEVENTEENTH AFFIRMATIVE DEFENSE

7 VAN DAMS allege that the relief sought by Cross-Complainants would constitute an  
8 illegal taking without compensation in violation of the United States Constitution and the  
9 California Constitution. Cross-Complainants lack the authority to acquire the rights sought in  
10 the manner alleged in the Cross-Complaint.

## 11 EIGHTEENTH AFFIRMATIVE DEFENSE

12 VAN DAMS are informed and believe and on that basis alleges that the groundwater  
13 basin at issue is not in a state of overdraft and that the amounts withdrawn from it have not  
14 been nonsurplus supplies in excess of the safe yield.

## 15 NINETEENTH AFFIRMATIVE DEFENSE

16 The Cross-Complaint is defective and uncertain in that it cannot be ascertained there  
17 from the nature of the water rights that Cross-Complainants are claiming and the nature of the  
18 water rights that Cross-Complainants claim that VAN DAMS are asserting.

## 19 TWENTIETH AFFIRMATIVE DEFENSE

20 The Cross-Complaint is defective and uncertain in that it cannot be ascertained there  
21 from when the alleged prescriptive period, if any, commenced and ended.

## 22 TWENTY-FIRST AFFIRMATIVE DEFENSE

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

## TWENTY-SECOND AFFIRMATIVE DEFENSE

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

## TWENTY-THIRD AFFIRMATIVE DEFENSE

6  
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.

## TWENTY-FOURTH AFFIRMATIVE DEFENSE

9  
10 Cross-Complainants lack standing to bring the claims that are set forth in the Cross-  
11 Complaint.

## TWENTY-FIFTH AFFIRMATIVE DEFENSE

12  
13 Each and every cause of action contained in the Cross-Complaint is barred in whole or in  
14 part in accordance with Code of Civil Procedure section 389 on the ground that Cross-  
15 Complainants have failed to name, join, and have subject matter jurisdiction over an  
16 indispensable and/or a necessary party.

## TWENTY-SIXTH AFFIRMATIVE DEFENSE

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

## TWENTY-SEVENTH AFFIRMATIVE DEFENSE

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

## TWENTY-EIGHTH AFFIRMATIVE DEFENSE

23  
24 VAN DAMS incorporate by reference any other applicable affirmative defense asserted  
25 by any other responding Cross-Defendants to the Cross-Complaint as if fully set forth herein.

## TWENTY-NINTH AFFIRMATIVE DEFENSE

26  
27 VAN DAMS have insufficient knowledge or information upon which to form a belief as  
28

1 to whether there may be additional, as yet unstated, affirmative defenses available, and  
2 therefore reserves the right to allege other affirmative defenses as they become appropriate or  
3 known through the course of discovery.

### THIRTIETH AFFIRMATIVE DEFENSE

#### (Justification)

5 Any conduct of VAN DAMS in relation to the matters alleged in the Cross-Complaint,  
6 if they occurred, was justified and the Cross-Complainant, therefore, is barred from any  
7 recovery on the Cross-Complaint.

### THIRTY-FIRST AFFIRMATIVE DEFENSE

#### (Defective Claim of Prescriptive Rights)

10 The Cross-Complaint is defective and uncertain in that it asserts prescriptive water  
11 rights, but fails to allege: (a) when the alleged prescriptive rights commenced and ended; (b) the  
12 specific amount of water that the Cross-Complainant pumped continuously during the alleged  
13 prescriptive period; (c) the manner in which Cross-Complainant pumped water under a claim of  
14 right; and (d) how Cross-Complainant gave, and cross-defendants received actual, or  
15 constructive notice of Cross-Complainant's allegedly wrongful pumping during the alleged  
16 prescriptive period.

### THIRTY-SECOND AFFIRMATIVE DEFENSE

#### (Representation of Condition of Aquifer)

19 Cross-Complainant, directly through the issuance of will-serve letters or other  
20 documents or indirectly through approvals of land uses, represented that the relevant  
21 groundwater aquifers were adequate for new groundwater pumping and thus may not now seek  
22 prescriptive rights during periods when Cross-Complainant was making such direct or indirect  
23 representations.

### THIRTY-THIRD AFFIRMATIVE DEFENSE

#### (Different Aquifers)

26 The Cross-Complainant seeks to establish water rights, and water management  
27 measures, in aquifers other than those used by VAN DAMS.  
28

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(No Basis for Return Flows)

Cross-Complainant is not physically pumping return flows from its use of imported water.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(No Net Augmentation)

Cross-Complainant's activities have not augmented the safe yield of the relevant groundwater aquifer sufficient to support any water right claimed by Cross-Complainant.

WHEREFORE, VAN DAMS pray for relief as follows:

1. That Cross-Complainant take nothing as against VAN DAMS by way of the Cross-Complaint on file herein, or
2. If the court determines that Cross-Complainant is entitled to any relief against VAN DAMS, that VAN DAMS be awarded the fair market value of their interest in any property taken by Cross-Complainant.
3. That VAN DAMS 's water rights be determined as prior and paramount to all those claimed by any other parties.
4. That VAN DAMS be awarded attorney's fees as may be allowed by statute, or case law.
5. That VAN DAMS be awarded costs of suit.
6. For such other and further relief as the Court deems just.

Dated: January 30, 2009 THE LAW OFFICES OF YOUNG WOOLDRIDGE, LLP

By: \_\_\_\_\_

SCOTT K. KUNEY, Esq., Attorneys for Gertrude J. Van Dam and Delmar D. Van Dam, and Craig Van Dam and Gary Van Dam

## PROOF OF SERVICE

1 STATE OF CALIFORNIA, COUNTY OF KERN

2  
3 I, LEANN BANDUCCI, declare: I am and was at the times of the service hereunder  
4 mentioned, over the age of eighteen (18) years, and not a party to the within cause. My business  
5 address is The Law Offices of Young Wooldridge LLP, 1800 30th Street, Fourth Floor,  
6 Bakersfield, CA 93301.

7 On January 30, 2009, I caused the foregoing document(s) entitled as: Answer of  
8 Gertrude J. Van Dam and Delmar D. Van Dam, Craig Van Dam and Gary Van Dam to the  
9 cross complaint of Phelan Pinon Hills Community Services District to be served on the parties  
10 via the following service:

11   X   By Posting: I posted the document(s) listed above to the Santa Clara County Superior  
12 Court website in regard to the Antelope Valley Groundwater matter pursuant to the Court's  
13 Clarification Order. Electronic service and electronic posting completed through  
14 [www.scefiling.org](http://www.scefiling.org).

15 Executed on January 30, 2009, at Bakersfield, California.

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

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LEANN BANDUCCI