

Attorney for Cross-Defendants
Clark C. Lu

ANTELOPE VALLEY GROUNDWATER CASES

Included Actions:

Los Angeles County Waterworks District No. 40 v.
Diamond Farming Co. Los Angeles County Superior
Court Case No. BC 325201

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

Wm. Bolthouse Farms, Inc. v. City of Lancaster,
Diamond Farming Co. v. City of Lancaster,
Diamond Farming Co. v. Palmdale Water Dist.
Riverside County Superior Court Consolidated
actions Case Nos. RIC 353 840, RIC 344 436, RIC
344 668

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CLARK C. LU'S ANSWER TO THE COMPLAINT AND CROSS-COMPLAINT

1 participate at trial or other proceedings unless ordered by the Court to do so, but reserve the right to do so
2 upon giving written notice to that effect to the Court and all parties. Clark C. Lu owns the following
3 property located in the Antelope Valley:

4
5 APN: 254-063-10-01 with the following legal description: SEC/TWN/RNG/MERIDIAN: SEC 30
6 TWN 9 RNG 16.
7

8 **GENERAL DENIAL**

9 Pursuant to Code of Civil Procedure section 431.30(d), Defendant and Cross-Defendant hereby
10 generally denies each and every allegation set forth in the Complaint and Cross-Complaint, and the whole
11 thereof, and further denies that Plaintiff and Cross-Complainant are entitled to any relief against Defendant
12 and Cross-Defendant.
13

14 **AFFIRMATIVE DEFENSES**

15 **First Affirmative Defense**

16 (Failure to State a Cause of Action)
17

18 The Complaint and Cross-Complaint and every purported cause of action contained therein fail to
19 allege facts sufficient to constitute a cause of action against Defendant and Cross-Defendant.

20 **Second Affirmative Defense**

21 (Statute of Limitation)

22 Each and every cause of action contained in the Complaint and Cross-Complaint is barred, in whole
23 or in part, by the applicable statute of limitation, including, but no limited to, sections 318, 319, 321, 338,
24 and 343 of the California Code of Civil Procedure.

25 **Third Affirmative Defense**

26 (Laches)

27 The Complaint and Cross-Complaint, and each and every cause of action contained therein, is barred
28 by the doctrine of laches.

1 **Fourth Affirmative Defense**

2 (Estoppel)

3 The Complaint and Cross-Complaint, and each and every cause of action contained therein, is barred
4 by the doctrine of estoppel.

5 **Fifth Affirmative Defense**

6 (Waiver)

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

10 **Sixth Affirmative Defense**

11 (Self-Help)

12 Defendant and Cross-Defendant has, by virtue of the doctrine of self-help, preserved its paramount
13 overlying right to extract groundwater by continuing, during all times relevant hereto, to extract groundwater
14 and put it to reasonable and beneficial use on its property.

15 **Seventh Affirmative Defense**

16 (California Constitution Article X, Section 2)

17 Plaintiff and Cross-Complainant's methods of water use and storage are unreasonable and wasteful in
18 the arid conditions of the Antelope Valley and thereby violate Article X, Section 2 of the California
19 Constitution.

20 **Eighth Affirmative Defense**

21 (Additional Defenses)

22 The Complaint and Cross-Complaint do not state their allegations with sufficient clarity to enable
23 Defendant and Cross-Defendant to determine what additional defenses may exist to Plaintiff and Cross-
24 Complainant's causes of action. Defendant and Cross-Defendant therefore reserves the right to assert all
25 other defenses which may pertain to the Complaint and Cross-Complaint.

26 **Ninth Affirmative Defense**

27 The prescriptive claims asserted by governmental entity Cross-Complainants are *ultra vires* and
28 exceed the statutory authority by which each entity may acquire property as set forth in Water Code section

1 22456, 31040, and 55370.

2 **Tenth Affirmative Defense**

3 The prescriptive claims asserted by governmental entity Cross-Complainants are barred by the
4 provisions of Article 1 Section 19 of the California Constitution.

5 **Eleventh Affirmative Defense**

6 The prescriptive claims asserted by governmental entity Cross-Complainants are barred by the
7 provisions of the 5th Amendment to the United States Constitution as applied to the states under the 14th
8 Amendment of the United States Constitution.

9 **Twelfth Affirmative Defense**

10 Cross-Complainants' prescriptive claims are barred due to their failure to take affirmative steps that
11 are reasonably calculated and intended to inform each overlaying landowner of cross-complainants' adverse
12 and hostile claim as required by the due process clause of the 5th and 14th Amendments of the United States
13 Constitution.

14 **Thirteenth Affirmative Defense**

15 The prescriptive claims asserted by governmental entity Cross-Complainants are barred by the
16 provisions of Article 1 Section 7 of the California Constitution.

17 **Fourteenth Affirmative Defense**

18 The prescriptive claims asserted by governmental entity Cross-Complainants are barred by the
19 provisions of the 14th Amendment to the United States Constitution.

20 **Fifteenth Affirmative Defense**

21 The governmental entity Cross-Complainants were permissively pumping at all times.

22 **Sixteenth Affirmative Defense**

23 The request for the court to use its injunctive powers to impose a physical solution seeks a remedy
24 that is in violation of the doctrine of separation of powers set forth in Article 3 section 3 of the California
25 Constitution.

26 **Seventeenth Affirmative Defense**

27 Cross-Complainants are barred from asserting their prescriptive claims by operation of law as set
28 forth in Civil Code sections 1007 and 1214.

1 **Eighteenth Affirmative Defense**

2 Each Cross-Complainant is barred from recovery under each and every cause of action contained in
3 the Cross-Complaint by the doctrine of unclean hands and/or unjust enrichment.

4 **Nineteenth Affirmative Defense**

5 The Cross-Complaint is defective because it fails to name indispensable parties in violation of
6 California Code of Civil Procedure Section 389(a).

7 **Twentieth Affirmative Defense**

8 The governmental entity Cross-Complainants are barred from taking, possessing or using Defendant
9 and Cross-Defendant's property without first paying just compensation.

10 **Twenty-First Affirmative Defense**

11 The governmental entity Cross-Complainants are seeking to transfer water rights priorities and water
12 usage which will have significant effects on the Antelope Valley Groundwater basin and the Antelope
13 Valley. Said actions are being done without complying with and contrary to the provisions of California's
14 Environmental Quality Act (CEQA) (Pub.Res.C. 2100 *et seq.*).

15 **Twenty-Second Affirmative Defense**

16 The governmental entity Cross-Complainants seek judicial ratification of a project that has had and
17 will have a significant effect on the Antelope Valley Groundwater Basin and the Antelope Valley that was
18 implemented without providing notice in contravention of the provisions of California's Environmental
19 Quality Act (CEQA) (Pub.Res.C. 2100 *et seq.*).

20 **Twenty-Third Affirmative Defense**

21 Any imposition by this court of a proposed physical solution that reallocates the water right priorities
22 and water usage within the Antelope Valley will be *ultra vires* as it will be subverting the pre-project
23 legislative requirements and protections of California's Environmental Quality Act (CEQA) (Pub.Res.C.
24 2100 *et seq.*).

25
26 **WHEREFORE**, Defendant and Cross-Defendant Clark C. Lu prays for judgment as follows:

- 27 1. That Plaintiff and Cross-Complainant take nothing by reason of its Complaint or Cross-
28 Complaint;

2. That the Complaint and Cross-Complaints be dismissed with prejudice;
3. For Defendant and Cross-Defendant's costs incurred herein; and
4. For such other and further relief as the Court deems just and proper.

DATED: August 14, 2007

LAW OFFICES OF LYNN CHAO, A.P.C.

By: _____

LYNN CHAO, ESQ.

Attorney for Clark C. Lu