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EXEMPT FROM FILING FEE
(Government Code § 6103)

Attorneys for Defendant/Cross-Defendant,
BORON COMMUNITY SERVICES
DISTRICT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER CASES

Included Actions:
Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior Court of
California, County of Los Angeles, Case No. BC
325201;

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior Court of
California, County of Kern, 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.,
Superior Court of California, County of Riverside,
Case Nos. RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

[Code Civ. Proc., § 382]

**ANSWER OF BORON COMMUNITY
SERVICES DISTRICT TO FIRST
AMENDED CROSS-COMPLAINT OF
PUBLIC WATER SUPPLIERS FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND ADJUDICATION OF
WATER RIGHTS**

BORON COMMUNITY SERVICES DISTRICT, a California community services district
formed under and operating pursuant to section 61000 of the California Government Code
("BORON"), sued herein as Roe 588, hereby answers the Complaint and all Cross-Complaints
which have been filed as of this date, specifically the First Amended Cross-Complaint of Public
Water Suppliers for Declaratory and Injunctive Relief and Adjudication of Water Rights of Antelope
Valley East-Kern Water Agency, Palmdale Water District & Quartz Hill Water District, Rosamond
Community Services District and Waterworks District No. 40 of Los Angeles County ("Cross-

1 Complaints"). BORON does not intend to participate at trial or other proceedings unless ordered by
2 the Court to do so, but BORON reserves the right to do so upon giving written notice to that effect to
3 the Court and all parties. BORON owns the following property(ies) located in the Antelope Valley:
4 Wells, well sites and water rights, including without limitation prescriptive, appropriative, and
5 overlying water rights.

6 **GENERAL DENIAL**

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

11 **AFFIRMATIVE DEFENSES**

12 **First Affirmative Defense**

13 **(Failure to State a Cause of Action)**

14 2. The Complaint and Cross-Complaint and every purported cause of action against
15 Defendant and Cross-Defendant.

16 **Second Affirmative Defense**

17 **(Statute of Limitation)**

18 3. Each and every cause of action contained in the Complaint and Cross-Complaint is
19 barred, in whole or in part, by the applicable statutes of limitation, including, but not limited to,
20 sections 318, 319, 321, 338, and 343 of the California Code of Civil Procedure.

21 **Third Affirmative Defense**

22 **(Laches)**

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

25 **Fourth Affirmative Defense**

26 **(Estoppel)**

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

1 **Fifth Affirmative Defense**

2 **(Waiver)**

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

5 **Sixth Affirmative Defense**

6 **(Self-Help)**

7 7. Defendant and Cross-Defendant has, by virtue of the doctrine of self-help, preserved
8 its paramount overlying right to extract groundwater by continuing, during all times relevant hereto,
9 to extract groundwater and put it to reasonable and beneficial use on its property and/or by
10 substituting an imported water supply therefor.

11 **Seventh Affirmative Defense**

12 **(California Constitution Article X, Section 2)**

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

16 **Eighth Affirmative Defense**

17 **(Additional Defenses)**

18 9. The Complaint and Cross-Complaint do not state their allegations with sufficient
19 clarity to enable Defendant and Cross-Defendant to determine what additional defenses may exist to
20 Plaintiff and Cross-Complainant's causes of action. Defendant and Cross-Defendant therefore
21 reserve the rights to assert all other defenses which may pertain to the Complaint and Cross-
22 Complaint.

23 **Ninth Affirmative Defense**

24 10. The prescriptive claims asserted by governmental entity Cross-Complainants are *ultra*
25 *vires* and exceed the statutory authority by which each entity may acquire property as set forth in
26 Water Code sections 22456, 31040, and 55370.

1 **Tenth Affirmative Defense**

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

4 **Eleventh Affirmative Defense**

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

8 **Twelfth Affirmative Defense**

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

13 **Thirteenth Affirmative Defense**

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

16 **Fourteenth Affirmative Defense**

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

19 **Fifteenth Affirmative Defense**

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

21 **Sixteenth Affirmative Defense**

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

25 **Seventeenth Affirmative Defense**

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

1 **Eighteenth Affirmative Defense**

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

4 **Nineteenth Affirmative Defense**

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

7 **Twentieth Affirmative Defense**

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

10 **Twenty-First Affirmative Defense**

11 22. The governmental entity Cross-Complainants are seeking to transfer water right
12 priorities and water usage which will have significant effects on the Antelope Valley Groundwater
13 Basin and the Antelope Valley. Said actions are being done without complying with and contrary to
14 the provisions of California's Environmental Quality Act (CEQA) (Public Resources Code section
15 2100, et seq.).

16 **Twenty-Second Affirmative Defense**

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

21 **Twenty-Third Affirmative Defense**

22 24. Any imposition by this court of a proposed physical solution that reallocates the water
23 right priorities and water usage within the Antelope Valley will be subverting the pre-project
24 legislative requirements and protections of California's Environmental Quality Act (CEQA) (Public
25 Resources Code section 2100, et seq.).

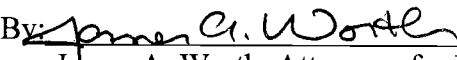
26 **WHEREFORE**, Defendant and Cross-Defendant prays that judgment be entered as follows:

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

- 1 2. That the Complaint and Cross-Complaints be dismissed with prejudice;
2 3. For Defendant and Cross-Defendant's costs incurred herein; and
3 4. For such other and further relief as the Court deems just and proper.
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5 DATED: December 13, 2007
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McMURTREY, HARTSOCK & WORTH
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9 By: 
10 James A. Worth, Attorneys for Defendant/
11 Cross-Defendant, BORON COMMUNITY
12 SERVICES DISTRICT
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