

Exhibit 1

1 Ralph B. Kalfayan, SBN133464
David B. Zlotnick, SBN 195607
2 KRAUSE, KALFAYAN, BENINK
& SLAVENS LLP
3 Tel: (619) 232-0331
Fax: (619) 232-4019

4 Attorneys for Plaintiff and the Class
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**
10

11 **ANTELOPE VALLEY**
12 **GROUNDWATER CASES**

) JUDICIAL COUNCIL COORDINATION
) PROCEEDING No. 4408
) Santa Clara Case No. 1-05-CV-049053
) Assigned to The Honorable Jack Komar
) Case No.

14 This Pleading Relates to Included Action:
REBECCA LEE WILLIS, on behalf of herself
15 and all others similarly situated,

) **SECOND AMENDED CLASS ACTION**
) **COMPLAINT FOR DAMAGES AND**
) **EQUITABLE RELIEF**

16 Plaintiff,

17 vs.

) **JURY TRIAL DEMANDED**
)

18 LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40; CITY OF LANCASTER;
19 CITY OF LOS ANGELES; CITY OF
PALMDALE; PALMDALE WATER
20 DISTRICT; LITTLEROCK CREEK
IRRIGATION DISTRICT; PALM RANCH
21 IRRIGATION DISTRICT; QUARTZ HILL
WATER DISTRICT; ANTELOPE VALLEY
22 WATER CO.; ROSAMOND COMMUNITY
SERVICE DISTRICT; MOJAVE PUBLIC
23 UTILITY DISTRICT; CALIFORNIA WATER
SERVICE COMPANY and DOES 2 through
24 1,000;

25 Defendants.
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1 Plaintiff, Rebecca Lee Willis, by her counsel, alleges on information and belief for her
2 Second Amended Complaint as follows:

3 **I.**
4 **NATURE OF THE ACTION**

5 1. Plaintiff brings this action on behalf of herself and the class of certain other private
6 landowners in the Antelope Valley (as defined below) seeking a judicial determination of their rights
7 to use the groundwater within the Antelope Valley Groundwater Basin ("the Basin"). In addition,
8 Plaintiff seeks damages and just compensation for herself and the Class arising from the government
9 entity defendants taking and interfering with plaintiff's and the Class' property rights. This action
10 is necessary in that defendants assert a common law prescriptive right to the groundwater in the
11 Basin which right they claim is superior to that of Plaintiff and the Class. By definition, a
12 prescriptive right requires a wrongful taking of non-surplus water from the Basin, in an open,
13 notorious, continuous, uninterrupted, hostile and adverse manner to the original owner for the
14 statutory period of five years. To the extent defendants fail to prove any element of prescription or
15 the evidence shows that defendants have indeed taken non-surplus water in derogation of the rights
16 of overlying landowners, plaintiff's and the Class's property interests have been damaged and/or
17 infringed.
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19 2. As overlying landowners, Plaintiff and the Class have a property right in the water
20 within the Basin. Plaintiff and the Class also have a priority to the use of the Basin's
21 groundwater. To the extent the Government entity defendants assert rights to that ground water
22 or have taken non-surplus groundwater in derogation of the rights of the overlying landowners,
23 Plaintiff and the Class are entitled to damages and just compensation under the Fifth and
24 Fourteenth Amendments of the United States Constitution and Article 1, Section 19 of the
25 California Constitution.
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II.
JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to the California Constitution, Article XI, § 10 and under California Code of Civil Procedure (“CCP”) § 410.10.

4. Venue is proper in this jurisdiction pursuant to CCP § 395 in that Plaintiff resides in Los Angeles County, a number of defendants reside in this County, and a substantial part of the unlawful conduct at issue herein has taken place in this County. In addition, this case is related to Judicial Council Coordination Proceeding No. 4408, which is pending in this Court.

5. Plaintiff and the Class have suffered actual damages as a result of defendant’s unlawful conduct in a presently undetermined amount.

III.
THE PARTIES

6. Plaintiff REBECCA LEE WILLIS (“WILLIS”) resides in Palmdale, California. Willis owns approximately 10 acres of property at 200th Street West and Avenue “B” in Lancaster, California, within the Basin. Plaintiff’s property overlies percolating groundwater, the precise extent of which is unknown.

7. Defendants are persons and entities who claim rights to use groundwater from the Basin, whose interests are in conflict with Plaintiff’s interests. On information and belief, they are as follows:

A. Defendant LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 is a public agency governed by the Los Angeles County Board of supervisors that drills and pumps water in the Basin and sells such water to the public in portions of the Antelope Valley.

B. Defendant PALMDALE WATER DISTRICT is a public agency that

1 pumps and/or provides groundwater from the Basin.

2 C. Defendant LITTLE ROCK CREEK IRRIGATION DISTRICT is a public
3 agency that pumps and/or provides groundwater from the Basin.

4 D. Defendant PALM RANCH IRRIGATION DISTRICT is a public agency that
5 pumps and/or provides groundwater from the Basin.

6 E. Defendant QUARTZ HILL WATER DISTRICT is a public agency that
7 pumps and/or provides groundwater from the Basin.

8 F. Defendant ANTELOPE VALLEY WATER CO. is an entity that pumps
9 and/or provides groundwater from the Basin.

10 G. Defendant ROSAMOND COMMUNITY SERVICE DISTRICT is an entity
11 that pumps and/or provides groundwater from the Basin.

12 H. Defendant MOJAVE PUBLIC UTILITY DISTRICT is a public agency that
13 pumps and/or provides groundwater from the Basin.

14 I. Defendant CALIFORNIA WATER SERVICE COMPANY is a California
15 Corporation that pumps and/or provides groundwater from the Basin and is added herein as
16 Doe 1. Defendants A-I shall collectively be referred to as "Appropriators."

17 J. Defendant CITY OF LANCASTER is a municipal corporation located within
18 the County of Los Angeles.

19 K. Defendant CITY OF LOS ANGELES is a municipal corporation located
20 within the County of Los Angeles.

21 L. Defendant CITY OF PALMDALE is a municipal corporation located within
22 the County of Los Angeles.

1 M. DOE DEFENDANTS 2 through 1,000. Plaintiff alleges on information and
2 belief that at all relevant times DOE DEFENDANTS 2 through 1000, inclusive, are persons
3 or entities who either are currently taking or providing water from the Basin or claim rights
4 to take groundwater from the Basin. Plaintiff is presently unaware of the true names and
5 identities of those persons sued herein as DOE Defendants 2 through 1000 and therefore sues
6 these Defendants by these fictitious names. Plaintiff will amend this Complaint to allege the
7 Doe Defendants' legal names and capacities when that information is ascertained.
8

9 **IV.**

10 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

11 8. The Antelope Valley Groundwater Basin is part of the South Lahontan Hydrologic
12 Region. The Basin underlies an extensive alluvial valley in the western Mojave Desert. The Basin
13 is bounded on the northwest by the Garlock fault zone at the base of the Tehachapi Mountains and
14 on the southwest by the San Andreas fault at the base of the San Gabriel Mountains. The Basin is
15 bounded on the east by ridges and low hills that form a groundwater divide and on the north by
16 various geographic features that separate it from the Fremont Valley Basin.
17

18 9. Average annual rainfall in the Basin ranges from 5 to 10 inches. Most of the Basin's
19 recharge comes from runoff from the surrounding mountains and hills – in particular, from the San
20 Gabriel and Tehachapi Mountains and from hills and ridges surrounding other portions of the Valley.
21

22 10. The Basin has two main aquifers – an upper aquifer, which is the primary source of
23 groundwater for the Valley, and a lower aquifer. Generally, in the past, wells in the Basin have
24 been productive and have met the needs of users in conjunction with other sources of water,
25 including the State Water Project.

26 11. In recent years, however, population growth and urban demands have led to increased
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1 pumping and declining groundwater levels. Plaintiff and the Class are informed and believe that at
2 some yet unidentified point in the past, the Appropriators began to extract groundwater from the
3 Antelope Valley to a point above and beyond an average annual safe yield. Plaintiff and the Class
4 are further informed and believe that future population growth and demands will place increased
5 burdens on the Basin. If the trend continues, demand will significantly exceed supply which will
6 cause damage to private rights and ownership in real property. Presently, the rights to the Basin's
7 groundwater have not been adjudicated and there are no legal restrictions on pumping. Each of the
8 Defendants is pumping water from the Basin and /or claims an interest in the Basin's groundwater.
9 Despite the actual and potential future damage to the water supply and the rights of owners of real
10 property within the Valley, the Appropriators have knowingly continued to extract groundwater from
11 the Basin, and increased and continue to increase their extractions of groundwater over time. The
12 Appropriators continued the act of pumping with the knowledge that the continued extractions were
13 damaging, long term, the Antelope Valley and in the short term, impairing the rights of the property
14 owners.

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17 12. Plaintiff and the Class are informed and believe that the Appropriators pumped and
18 continue to pump water in excess of the safe yield with the knowing intent and belief that they could
19 take by claim of prescription, without compensation, the water rights of all landowners overlying the
20 Antelope Valley. Additionally, all Appropriators continued to pump ever increasing quantities of
21 groundwater, knowing that even if their prescriptive claims failed, they could preserve the right to
22 continue their pumping under a claim of an intervening public use. Despite the knowing intent to
23 take the overlying property landowners' rights, no Appropriator took any steps to inform or
24 otherwise notify Plaintiff or the Class of their adverse and hostile claim or that their pumping of
25 groundwater was an invasion of and a taking of the landowners' property rights.
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1 13. None of the Appropriators have invoked the power of eminent domain nor paid any
2 compensation to overlying owners of land located within Antelope Valley for the property rights they
3 have knowingly taken.

4 14. Various water users have instituted suit to assert rights to pump water from the Basin.
5 In particular, Defendant L.A. Waterworks District 40 and other municipal Appropriators have
6 brought suit asserting that they have prescriptive rights to pump water from the Basin, which they
7 claim are paramount and superior to the overlying rights of Plaintiff and the Class. Those claims
8 threaten Plaintiff's right to pump water on her property.

9 15. Plaintiff Rebecca Willis purchased her ten (10) acre property in the Antelope Valley
10 in order to build a home and develop a landscape nursery. She purchased the property with the intent
11 of development in the future, upon retirement from her employment. The most important and
12 fundamental aspect of her purchase was the property right to use water below her land *in the future*,
13 i.e. from the Basin, since the property is not currently within a water district's service area. Her right
14 to use water below the surface of the land is a valuable property right- regardless of whether it is
15 presently exercised or will be exercised in the future. Without the right to use the water below her
16 property, her land is virtually worthless and her dreams of building a home and nursery cannot be
17 accomplished.

18 16. Plaintiff is informed and believes that defendant Appropriators have extracted so
19 much water from the Basin, by extracting non-surplus water that exceeds a safe yield for a period
20 as yet undetermined, that it has become too costly or will become too costly for her to drill a well
21 in the future. Plaintiff is further informed and believes that the water level has fallen to such an
22 unreasonable level that her property right in the use of the water has been infringed or
23 extinguished and her interest in the real property has been impaired by the diminution of its fair
24 value.

1 market value. The Appropriators have made it economically difficult, if not impossible, for her
2 to exercise her future right to use the water because they have extracted too much water from the
3 supply in the Basin. Her water rights and the value in the real property have been damaged and
4 will continue to be damaged unless this court intervenes on her behalf and on behalf of all
5 dormant landowners.
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8 **V.**
CLASS ACTION ALLEGATIONS

9 17. Plaintiff brings this action on behalf of the following class:

10 All private (i.e., non-governmental) persons and entities that own real property within
11 the Basin, as adjudicated, and that are not presently pumping on their property and have not done so
12 within the five year period preceding the filing of this action. The Class excludes the defendants
13 herein, any person, firm, trust, corporation, or other entity in which any defendant has a controlling
14 interest or which is related to or affiliated with any of the defendants, and the representatives, heirs,
15 affiliates, successors-in-interest or assigns of any such excluded party. The Class also excludes all
16 persons to the extent their properties are connected to a municipal water system, public utility, or
17 mutual water company from which they receive water service.
18

19 18. The Class is so numerous that joinder of all members is impracticable. Plaintiff's
20 claims are typical of the claims of the members of the Class. Plaintiff and members of the class have
21 sustained damages arising out of the conduct complained of herein.
22

23 19. Plaintiff will fairly and adequately protect the interests of the members of the Class
24 and Plaintiff has no interests which are contrary to or in conflict with those of the Class members
25 she seeks to represent. Plaintiff has retained competent counsel experienced in class action litigation
26 to ensure such protection.
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1 20. A class action is superior to other available methods for the fair and efficient
2 adjudication of this controversy since joinder of all members is impracticable. Plaintiff knows of
3 no difficulty that will be encountered in the management of this litigation that would preclude its
4 maintenance as a class action.
5

6 21. There are common question of law and fact as to all members of the Class, which
7 predominate over any questions affecting solely individual members of the Class. Specifically, the
8 Class members are united in establishing (1) their priority to the use of the Basin's groundwater
9 given their capacity as overlying landowners; (2) the determination of the Basin's characteristics
10 including yield; (3) adjudication of the Public Water Suppliers' groundwater rights including
11 prescriptive rights; (4) determination of a physical solution to water shortage conditions including
12 all parties' rights to store and recover non-native water in the Basin; (5) a taking, if any, under the
13 U.S. and California Constitution; (6) damages for trespass, interference, nuisance and conversion;
14 and (7) availability of injunctive relief.
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18 **FIRST CAUSE OF ACTION**
19 **(For Declaratory Relief Against All Defendants)**

20 22. Plaintiff realleges and incorporates herein by reference each of the allegations
21 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
22 as follows:

23 23. By virtue of their property ownership, Plaintiff and the Class hold overlying rights
24 to the Basin's groundwater, which entitle them to extract that water and put it to reasonable and
25 beneficial uses on their respective properties.
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1 24. Plaintiff is informed and believes, and on the basis of that information and belief
2 alleges, that each of the defendants presently extracts and/or purveys groundwater from the Basin
3 and/or asserts rights to that groundwater which conflict with the overlying rights of Plaintiff and
4 the Class.
5

6 25. Plaintiff is informed and believes and, on the basis of that information and belief,
7 alleges that each of the Defendants extracts groundwater primarily for non-overlying use – i.e.,
8 for use on properties other than the property on which the water is extracted. In addition, certain
9 of those defendants have asserted that they hold prescriptive rights to such water which they
10 claim are superior to the rights of Plaintiff and the Class.
11

12 26. Plaintiff's and the Class' present and planned overlying uses of the Basin's
13 groundwater are superior in right to any non-overlying rights held by the Appropriator
14 Defendants.
15

16 27. Plaintiff's and the Class' overlying rights need to be apportioned in a fair and
17 equitable manner among all persons holding rights to the Basin's water.
18

19 28. Plaintiff and the Class seek a judicial determination that their rights as overlying
20 users are superior to the rights of all non-overlying users and that they have correlative rights vis-
à-vis other overlying landowners.
21

22 29. Plaintiff and the Class further seek a judicial determination as to the priority and
23 amount of water that all parties in interest are entitled to pump from the Basin.
24

25 30. By virtue of their property ownership, Plaintiff and the Class hold rights to utilize
26 or derive benefit from the storage capacity of the Basin. Plaintiff and the Class seek a judicial
27 determination as to priority and ownership of those rights. In addition, Plaintiff and the Class
28 contend that California Water Code Sections 55370, 22456, and 31040 limit the method, manner

1 and mode by which Appropriators may acquire private property and requires payment of
2 compensation through eminent domain proceedings. Plaintiff and the Class seek a declaration of
3 rights with respect to the constitutionality and applications of these Statutes.
4

5 **SECOND CAUSE OF ACTION**

6 **(Against All Defendants to Quiet Title)**

7 31. Plaintiff realleges and incorporates herein by reference each of the allegations
8 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants as
9 follows:

10 32. Plaintiff and the Class own land overlying the Antelope Valley alluvial groundwater
11 basin. Accordingly, Plaintiff and the Class have appurtenant rights to pump and reasonably use
12 groundwater on their land.
13

14 33. Plaintiff and the Class herein request a declaration from the Court quieting title to
15 their appurtenant rights to pump and reasonably use groundwater on their land in the future.
16

17 **THIRD CAUSE OF ACTION**

18 **(Against All Defendant Appropriators For Damages Pursuant to
19 The California Constitution Takings Clause)**

20 34. Plaintiff realleges and incorporates herein by reference each of the allegations
21 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants as
22 follows:

23 35. Article 1 Section 19 of the California Constitution provides as follows:

24 Private Property may be *taken or damaged* for public use only when just
25 compensation, ascertained by a jury unless waived, has first been paid to, or into
26 court for, the owner.

27 The scope of compensable injury to property is broader in California than other States or
28 under the U.S. Constitution. It includes a "taking" or "damage" to property. Here, Plaintiff's and

1 the Class' interests have been infringed by the defendants. On information and belief, defendant
2 Appropriators have extracted and will continue to extract non-surplus groundwater from the Basin
3 in excess of a safe yield. Defendants allege that the production forms the basis of their claim for
4 prescriptive rights. Defendants' extraction of water above a safe yield has made it more difficult and
5 expensive for Plaintiff and the Class to use the water under their properties and constitutes an
6 invasion of Plaintiff's property interests and therefore a taking in violation of the California
7 Constitution. On information and belief, Plaintiff's and the Class' properties have been injured in
8 the form of degradation of the water level and degradation of the quality of the water, in addition to
9 the actual taking of non-surplus water.
10

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12 36. The public entity Defendants claim priority rights to take and use the Basin's
13 groundwater by "prescription" and as a matter of public interest and need.

14 37. If and to the extent the public entities are granted rights to use the Basin's
15 groundwater with priority to the rights held by Plaintiff and other overlying landowners, Plaintiff and
16 the Class are entitled to just and fair compensation pursuant to Article 1, Section 19 of the California
17 Constitution for the diminution in fair market value of the real property. If and to the extent the
18 public entities are not granted rights to use the Basin's groundwater with priority to the rights held
19 by Plaintiff and other overlying landowners, Plaintiff and the Class are entitled to just and fair
20 compensation pursuant Article 1, Section 19 of the California Constitution for wrongful taking of
21 water rights.
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24 **FOURTH CAUSE OF ACTION**
25 **(Against All Defendant Appropriators For Damages Pursuant to**
26 **The United States Constitution Takings Clause)**

27 38. Plaintiff realleges and incorporates herein by reference each of the allegations
28 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants as

1 follows:

2 39. This cause of action is brought to recover damages against the Appropriators for
3 violation of Plaintiff's and the Class's right under the 5th and 14th Amendments of the U.S.
4 Constitution through the Appropriator's taking of private property for public use without paying just
5 compensation and depriving them of both substantive and procedural due process of law.
6

7 40. The Appropriators, and each of them are, and at all times mentioned in this second
8 amended complaint were, governmental entities with the capacity to sue and be sued. The
9 Appropriators, and each of them, were, at all times mentioned in this second amended complaint,
10 acting under color of state law.
11

12 41. At a yet unidentified historical point in time, the Appropriators began pumping water
13 from the Antelope Valley as permissive appropriators. Over the course of time, it is believed that
14 the aggregate amount of water being extracted from the Valley began to exceed the safe yield. Each
15 Appropriator continued to pump and increased its pumping of groundwater believing that given the
16 intervention of the committed public use, no injunction would issue to restrain and/or compel the
17 Appropriator to reduce its dependence upon such groundwater. Each Appropriator contends that
18 despite its status as a governmental entity, it can nonetheless take private property for a public use
19 under a theory of prescription and without compensation. Each Appropriator did not undertake any
20 affirmative action reasonably calculated and intended to provide notice and inform any affected
21 landowner of its adverse and hostile claim.
22

23 42. Plaintiff is informed and believes and thereon alleges that she was denied due
24 process of law prior to the taking of her property. This violation was a direct result of the
25 knowing customs, practices, and policies of the Appropriators to continue to pump in excess of the
26 supply, to suppress the assertion of their adverse and hostile claim, and the resulting ever increasing
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1 intervening public use and dependence, without acceding to Constitutional limits.

2 43. The customs, practices, and policies of the Appropriators to prescript or adversely
3 possess the property rights of property owners and/or to establish a nonenjoinable intervening use
4 amounted to deliberate indifference to the rights of persons who stand to lose their rights to extract
5 water from the Antelope Valley for use on their property through the actions of each Appropriator
6 and all of them.

7
8 44. As a direct and proximate result of the acts of the Appropriators, Plaintiff and the
9 Class have suffered injury, loss, and damage, including a cloud upon the title to their real property,
10 a reduction in value, and the loss of rights in the future to extract and use groundwater from the
11 Valley.

12
13 **FIFTH CAUSE OF ACTION**
14 **(Public and Private Nuisance Against All Defendant Appropriators)**

15 45. Plaintiff realleges and incorporates herein by reference each of the allegations
16 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
17 as follows:

18 46. The Appropriators' extractions of groundwater from the supply constitute a
19 continuing progressive nuisance within the meaning of Section 3479 of the Civil Code, in that
20 the Appropriators have interfered with the future supply of available water that is injurious to
21 Plaintiff's and the Class' rights to freely use and exercise their overlying property rights to
22 extract groundwater from the Basin. The Appropriators are attempting, through the combined
23 efforts of their pumping groundwater to take, and or alter, overlying property rights to use and
24 access the Antelope Valley supply.
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1 47. The Appropriators, and each of them, have continued to and have increased their
2 pumping, despite the knowledge of the damage caused by pumping. The Appropriators have
3 refused, and continue to refuse, to stop or reduce their pumping despite the damage to the supply
4 of water. This nuisance affects a substantial number of persons in that the Appropriators claim
5 that the continued pumping in excess of the supply's safe yield is, and will, eventually cause a
6 chronic decline in water levels and the available natural water supply will be chronically
7 depleted. If the present trend continues, demand will continue to exceed supply which will
8 continue to cause a reduction in the long term supply. Additionally, the continued pumping by
9 the Appropriators under these conditions will result in the unlawful obstruction of the overlying
10 landowner's rights to use the water supply in the customary manner.
11

12 48. The Appropriators, and each of them, have threatened to and will, unless
13 restrained by this court, continue to pump groundwater in increasing amounts, and each and
14 every act has been, and will be, without the consent, against the will, and in violation of the
15 rights of plaintiff and the Class.
16

17 49. As a proximate result of the nuisance created by the Appropriators, and each of
18 them, plaintiff and the Class have been, and will be, damaged in a sum to be proven at trial.
19

20 50. In maintaining this nuisance, the Appropriators, and each of them are, and have
21 been, acting with full knowledge of the consequences and damage being caused and their
22 conduct is willful, oppressive, malicious and designed to interfere with and take plaintiff's right
23 to freely access the water supply in its customary manner.
24

25
26 **SIXTH CAUSE OF ACTION**
27 **(Trespass Against All Defendant Appropriators)**
28

1 51. Plaintiff realleges and incorporates herein by reference each of the allegations
2 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
3 as follows:

4 52. On information and belief, each Defendant alleges that it has produced more water
5 from the Basin than it has a right to produce as an Appropriator. Defendants allege that this
6 production forms the basis for their claims of prescriptive rights. To the extent that the alleged
7 production in excess of rights actually occurred, this alleged production of water constitutes a
8 trespass against plaintiff and the Class.

9 53. Defendants' use of the Basin's water has interfered with and made it more
10 difficult for plaintiff and the Class to exercise their rights.

11 54. Plaintiff requests that the Court award monetary damages to compensate for any
12 past injury that may have occurred to plaintiff and the Class by Defendants' trespass in an
13 amount to be determined at trial.

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16 **SEVENTH CAUSE OF ACTION**
17 **(Conversion Against All Defendant Appropriators)**

18 55. Plaintiff realleges and incorporates herein by reference each of the allegations
19 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
20 as follows:

21 56. Plaintiff and the Class are, and at all times relevant herein were, the owners of or
22 entitled to water rights in the Basin as overlying landowners.

23 57. Defendants wrongfully interfered with Plaintiff's interests in the above-described
24 property by extracting non-surplus water that exceed a safe yield and by claiming priority over
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1 overlying landowners to water rights. Defendants conduct was without notice to plaintiff or the
2 Class.

3 58. As a result of Defendants' acts of conversion, plaintiff and the Class have been
4 damaged in the sum or sums to be proven at trial, including all compensatory damages. Plaintiff
5 and the Class are further entitled to compensation for the time and money expended to protect
6 their property rights.
7

8 59. In doing the acts herein alleged, Defendants acted with oppression, fraud, malice,
9 and in conscious disregard of the rights of Plaintiff, and Plaintiff is therefore entitled to punitive
10 damages according to proof at the time of trial.
11

12 **EIGHTH CAUSE OF ACTION**
13 **(Against All Defendants For Injunctive Relief)**

14 60. Plaintiff and the Class reallege and incorporate herein by reference each of the
15 allegations contained in the preceding paragraphs of this Complaint, and further allege against
16 Defendants as follows:

17 61. As overlying landowners, Plaintiff and the Class have superior rights to take and
18 make reasonable and beneficial use of the Basin's groundwater.
19

20 62. By pumping and selling water from the Basin, Defendants have interfered with and
21 made it more difficult for Plaintiff and the Class to exercise their rights to use that groundwater. If
22 allowed to continue, Defendants' pumping from and depletion of the Basin's groundwater will
23 further interfere with Plaintiff's and the Class's ability to exercise their lawful and superior rights
24 as overlying landowners to make reasonable use of the Basin's groundwater.
25

26 63. Plaintiff and the Class have no adequate remedy at law.

27 64. Unless the Court enjoins or limits Defendants production of water from the Basin,
28

1 Plaintiff and the Class will suffer irreparable injury in that they will be deprived of their rights to
2 use and enjoy their properties.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays that this Court enter judgment on her behalf and on behalf
6 of the Class against all Defendants, jointly and severally, as follows:

7 1. Determining that the instant action is a proper class action maintainable under
8 Section 382 of the Code of Civil Procedure;

9 2. Declaring that Plaintiff's and the Class' overlying rights to use water from the
10 Basin are superior and have priority vis-a-vis all non-overlying users and Appropriators;

11 3. Apportioning water rights from the Basin in a fair and equitable manner and
12 enjoining any and all uses inconsistent with such apportionment;

13 4. Awarding Plaintiff and members of the Class damages from the public entity
14 defendants in the full amount that will compensate Plaintiff and the Class for past and future
15 takings by those Defendants and damages for past and future property infringement;

16 5. Awarding economic and compensatory damages;

17 6. Awarding Plaintiff and the Class the costs of this suit, including reasonable
18 attorneys' and experts' fees and other disbursements; as well as such other and further relief as
19 may be just and proper.
20

21 Dated: May 6, 2008

KRAUSE KALFAYAN BENINK &
SLAVENS LLP

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25 /s/ Ralph B. Kalfayan
Ralph B. Kalfayan, Esq.
David B. Zlotnick, Esq.
Attorneys for Plaintiff and the Class
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1 **PROOF OF SERVICE**

2 I, Ashley Polyascko, declare:

3 I am a resident of the State of California and over the age of eighteen years, and not a
4 party to the within action; my business address is 625 Broadway, Suite 635, San Diego,
California, 92101. On **May 6, 2008**, I served the within document(s):

5 **SECOND AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND**
6 **EQUITABLE RELIEF.**

7 ☒ by posting the document(s) listed above to the Santa Clara County Superior Court
website in regard to the Antelope Valley Groundwater matter.

8 ☐ by placing the document(s) listed above in a sealed envelope with postage thereon
9 fully prepaid, in the United States mail at San Diego, California addressed as set
forth below:

10 ☐ by causing personal delivery by Cal Express of the document(s) listed above to the
11 person(s) at the address(es) set forth below.

12 ☐ by personally delivering the document(s) listed above to the person(s) at the
address(es) set forth below.

13 ☐ I caused such envelope to be delivered via overnight delivery addressed as
14 indicated on the attached service list. Such envelope was deposited for delivery
by UPS following the firm's ordinary business practices.

15 I am readily familiar with the firm's practice of collection and processing correspondence
16 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
day with the postage thereon fully prepaid in the ordinary course of business. I am aware that on
17 motion of the party served, service is presumed invalid if postal cancellation date or postage
meter date is more than one day after date of deposit for mailing in affidavit.

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

20 Executed on **May 6, 2008**, at San Diego, California.

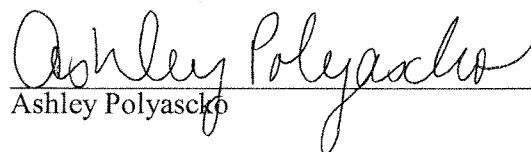
21 
22 Ashley Polyascko

Exhibit 2

1 Michael D. McLachlan (State Bar No. 181705)
2 **LAW OFFICES OF MICHAEL D. McLACHLAN, APC**
3 523 West Sixth Street, Suite 215
4 Los Angeles, California 90014
5 Telephone: (213) 630-2884
6 Facsimile: (213) 630-2886
7 mike@mclachlanlaw.com

8 Daniel M. O'Leary (State Bar No. 175128)
9 **LAW OFFICE OF DANIEL M. O'LEARY**
10 523 West Sixth Street, Suite 215
11 Los Angeles, California 90014
12 Telephone: (213) 630-2880
13 Facsimile: (213) 630-2886
14 dan@danolearylaw.com

15 Attorneys for Plaintiff

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

14 RICHARD A. WOOD, an individual, on behalf
15 of himself and all others similarly situated,

16 Plaintiff,

17 v.

18 LOS ANGELES COUNTY WATERWORKS
19 DISTRICT NO. 40; CITY OF LANCASTER;
20 CITY OF LOS ANGELES; CITY OF
21 PALMDALE; PALMDALE WATER
22 DISTRICT; LITTLEROCK CREEK
23 IRRIGATION DISTRICT; PALM RANCH
24 IRRIGATION DISTRICT; QUARTZ HILL
25 WATER DISTRICT; ANTELOPE VALLEY
26 WATER CO.; ROSAMOND COMMUNITY
27 SERVICE DISTRICT; MOJAVE PUBLIC
28 UTILITY DISTRICT; CALIFORNIA WATER
SERVICE COMPANY and DOES 1 through
100;

Defendants.

Case No.: BC391869

(related to JUDICIAL COUNCIL
COORDINATION PROCEEDING No. 4408;
Santa Clara Case No. 1-05-CV-049053,
Honorable Jack Komar)

**FIRST AMENDED CLASS ACTION
COMPLAINT**

REQUEST FOR JURY TRIAL

1 Plaintiff, Richard A. Wood, by his counsel, alleges on information and belief as follows:

2 **I.**

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this action on behalf of himself and the class of certain other
5 private landowners in the Antelope Valley (as defined below) seeking a judicial determination of
6 their rights to use the groundwater within the Antelope Valley Groundwater Basin ("the Basin").
7 In addition, Plaintiff seeks damages and just compensation for himself and the Class arising from
8 the government entity defendants taking and interfering with plaintiff's and the Class' property
9 rights. This action is necessary in that defendants assert a common law prescriptive right to the
10 groundwater in the Basin which right they claim is superior to that of Plaintiff and the Class. By
11 definition, a prescriptive right requires a wrongful taking of non-surplus water from the Basin, in
12 an open, notorious, continuous, uninterrupted, hostile and adverse manner to the original owner
13 for the statutory period of five years. To the extent defendants fail to prove any element of
14 prescription or the evidence shows that defendants have indeed taken non-surplus water in
15 derogation of the rights of overlying landowners, plaintiff's and the Class's property interests
16 have been damaged and/or infringed.

17 2. As overlying landowners, Plaintiff and the Class have a property right in the water
18 within the Basin. Plaintiff and the Class also have a priority to the use of the Basin's
19 groundwater. To the extent the Government entity defendants assert rights to that ground water
20 or have taken non-surplus groundwater in derogation of the rights of the overlying landowners.
21 Plaintiff and the Class are entitled to damages and just compensation under the Fifth and
22 Fourteenth Amendments of the United States Constitution and Article 1, Section 19 of the
23 California Constitution.

24 **II.**

25 **JURISDICTION AND VENUE**

26 3. This Court has jurisdiction over this action pursuant to the California
27 Constitution, Article XI, § 10 and under California Code of Civil Procedure ("CCP") § 410.10.
28

4. Venue is proper in this jurisdiction pursuant to CCP § 395 in that Plaintiff resides in Los Angeles County, a number of defendants reside in this County, and a substantial part of the unlawful conduct at issue herein has taken place in this County. In addition, this case is related to Judicial Council Coordination Proceeding No. 4408, which is pending in this Court.

5. Plaintiff and the Class have suffered actual damages as a result of defendant's unlawful conduct in a presently undetermined amount.

III.

THE PARTIES

6. Plaintiff RICHARD A. WOOD (“Wood” or “Plaintiff”) resides in Lancaster, California. Wood owns approximately 10 acres of property at 45763 North 90th Street East in Lancaster, California, within the Basin. Plaintiff’s property overlies percolating groundwater, the precise extent of which is unknown.

7. Defendants (referred to alternatively as “Appropriators”) are persons and entities who claim rights to use groundwater from the Basin, whose interests are in conflict with Plaintiff’s interests. On information and belief, they are as follows:

A. Defendant LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 is a public agency governed by the Los Angeles County Board of supervisors that drills and pumps water in the Basin and sells such water to the public in portions of the Antelope Valley.

B. Defendant PALMDALE WATER DISTRICT is a public agency that pumps and/or provides groundwater from the Basin.

C. Defendant LITTLE ROCK CREEK IRRIGATION DISTRICT is a public agency that pumps and/or provides groundwater from the Basin.

D. Defendant PALM RANCH IRRIGATION DISTRICT is a public agency that pumps and/or provides groundwater from the Basin.

E. Defendant QUARTZ HILL WATER DISTRICT is a public agency that pumps and/or provides groundwater from the Basin.

1 F. Defendant ANTELOPE VALLEY WATER CO. is an entity that pumps
2 and/or provides groundwater from the Basin.

3 G. Defendant ROSAMOND COMMUNITY SERVICE DISTRICT is an
4 entity that pumps and/or provides groundwater from the Basin.

5 H. Defendant MOJAVE PUBLIC UTILITY DISTRICT is a public agency
6 that pumps and/or provides groundwater from the Basin.

7 I. Defendant CALIFORNIA WATER SERVICE COMPANY is a California
8 Corporation that pumps and/or provides groundwater from the Basin and is added herein
9 as Doe 1. Defendants A-I shall collectively be referred to as "Appropriators."

10 J. Defendant CITY OF LANCASTER is a municipal corporation located
11 within the County of Los Angeles.

12 K. Defendant CITY OF PALMDALE is a municipal corporation located
13 within the County of Los Angeles.

14 L. DOE DEFENDANTS 1 through 100. Plaintiff alleges on information and
15 belief that at all relevant times DOE DEFENDANTS 1 through 100, inclusive, are
16 persons or entities who either are currently taking or providing water from the Basin or
17 claim rights to take groundwater from the Basin. Plaintiff is presently unaware of the
18 true names and identities of those persons sued herein as DOE Defendants 1 through 100
19 and therefore sues these Defendants by these fictitious names. Plaintiff will amend this
20 Complaint to allege the Doe Defendants' legal names and capacities when that
21 information is ascertained.

22 IV.

23 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

24 8. The Antelope Valley Groundwater Basin is part of the South Lahontan
25 Hydrologic Region. The Basin underlies an extensive alluvial valley in the western Mojave
26 Desert. The Basin is bounded on the northwest by the Garlock fault zone at the base of the
27 Tehachapi Mountains and on the southwest by the San Andreas fault at the base of the San
28 Gabriel Mountains. The Basin is bounded on the east by ridges and low hills that form a

1 groundwater divide and on the north by various geographic features that separate it from the
2 Fremont Valley Basin.

3 9. Average annual rainfall in the Basin ranges from 5 to 10 inches. Most of the
4 Basin's recharge comes from runoff from the surrounding mountains and hills -- in particular,
5 from the San Gabriel and Tehachapi Mountains and from hills and ridges surrounding other
6 portions of the Valley.

7 10. The Basin has two main aquifers -- an upper aquifer, which is the primary source
8 of groundwater for the Valley, and a lower aquifer. Generally, in the past, wells in the Basin
9 have been productive and have met the needs of users in conjunction with other sources of water,
10 including the State Water Project.

11 11. In recent years, however, population growth and urban demands have led to
12 increased pumping and declining groundwater levels. Plaintiff and the Class are informed and
13 believe that at some yet unidentified point in the past, the Appropriators began to extract
14 groundwater from the Antelope Valley to a point above and beyond an average annual safe yield.
15 Plaintiff and the Class are further informed and believe that future population growth and
16 demands will place increased burdens on the Basin. If the trend continues, demand may exceed
17 supply which will cause damage to private rights and ownership in real property. Presently, the
18 rights to the Basin's groundwater have not been adjudicated and there are no legal restrictions on
19 pumping. Each of the Defendants is pumping water from the Basin and /or claims an interest in
20 the Basin's groundwater. Despite the actual and potential future damage to the water supply and
21 the rights of owners of real property within the Valley, the Appropriators have knowingly
22 continued to extract groundwater from the Basin, and increased and continue to increase their
23 extractions of groundwater over time. The Appropriators continued the act of pumping with the
24 knowledge that the continued extractions were damaging, long term, the Antelope Valley and in
25 the short term, impairing the rights of the property owners.

26 12. Plaintiff and the Class are informed and believe that the Appropriators may have
27 pumped water in excess of the safe yield with the knowing intent and belief that they could take
28 by claim of prescription, without compensation, the water rights of all landowners overlying the

1 Antelope Valley. Additionally, all Appropriators continued to pump ever increasing quantities
2 of groundwater, knowing that even if their prescriptive claims failed, they could preserve the
3 right to continue their pumping under a claim of an intervening public use. Despite the knowing
4 intent to take the overlying property landowners' rights, no Appropriator took any steps to
5 inform or otherwise notify Plaintiff or the Class of their adverse and hostile claim or that their
6 pumping of groundwater was an invasion of and a taking of the landowners' property rights.

7 13. None of the Appropriators have invoked the power of eminent domain nor paid
8 any compensation to overlying owners of land located within Antelope Valley for the property
9 rights they have knowingly taken.

10 14. Various water users have instituted suit to assert rights to pump water from the
11 Basin. In particular, Defendant L.A. Waterworks District 40 and other municipal Appropriators
12 have brought suit asserting that they have prescriptive rights to pump water from the Basin,
13 which they claim are paramount and superior to the overlying rights of Plaintiff and the Class.
14 Those claims threaten Plaintiff's right to pump water on his property.

15 15. In 1983, Plaintiff purchased his ten (10) acre property in the Antelope Valley to
16 serve as his sole residence, which has continued to be the case to date. The most important and
17 fundamental aspect of his purchase was the property right to use water below his land. At all
18 relevant times, Plaintiff has extracted and used groundwater from beneath his property for
19 standard residential purposes. Plaintiff's right to use water below the surface of the land is a
20 valuable property right. Without the right to use the water below his property, the value of
21 Plaintiff's land is substantially reduced.

22 16. Plaintiff is informed and believes that defendant Appropriators have extracted so
23 much water from the Basin, by extracting non-surplus water that exceeds a safe yield for a period
24 as yet undetermined, that his ability to pump water is threatened. Plaintiff is further informed
25 and believes that the water level has fallen to such an unreasonable level that his property right in
26 the use of the water has been infringed or extinguished and his interest in the real property has
27 been impaired by the diminution of its fair market value. The Appropriators have made it
28 economically difficult, if not impossible, for him to exercise his future right to use the water

1 because they have extracted too much water from the supply in the Basin. His water rights and
2 the value in the real property have been damaged and will continue to be damaged unless this
3 court intervenes on his behalf and on behalf of all class members.

4 17. Plaintiff brings this action on behalf of the following class:

5 All private (i.e., non-governmental) persons and entities that own real property
6 within the Basin, as adjudicated, and that have been pumping on their property within the five
7 year period preceding the filing of this action. The Class excludes the defendants herein, any
8 person, firm, trust, corporation, or other entity in which any defendant has a controlling interest
9 or which is related to or affiliated with any of the defendants, and the representatives, heirs,
10 affiliates, successors-in-interest or assigns of any such excluded party. The Class also excludes
11 all persons and entities to the extent their properties are connected to a municipal water system,
12 public utility, or mutual water company from which they receive water service, as well as all
13 property pumping 25 acre-feet per year or more on an average annual basis during the class
14 period.

15 18. The Class is so numerous that joinder of all members is impracticable. Plaintiff's
16 claims are typical of the claims of the members of the Class. Plaintiff and members of the class
17 have sustained damages arising out of the conduct complained of herein.

18 19. Plaintiff will fairly and adequately protect the interests of the members of the
19 Class and Plaintiff has no interests which are contrary to or in conflict with those of the Class
20 members he seeks to represent. Plaintiff has retained competent counsel experienced in class
21 action litigation to ensure such protection.

22 20. A class action is superior to other available methods for the fair and efficient
23 adjudication of this controversy since joinder of all members is impracticable. Plaintiff knows of
24 no difficulty that will be encountered in the management of this litigation that would preclude its
25 maintenance as a class action.

26 21. There are common question of law and fact as to all members of the Class, which
27 predominate over any questions affecting solely individual members of the Class. Specifically,
28 the Class members are united in establishing (1) their priority to the use of the Basin's

1 groundwater given their capacity as overlying landowners; (2) the determination of the Basin's
2 characteristics including yield; (3) adjudication of the Public Water Suppliers' groundwater
3 rights including prescriptive rights; (4) determination of a physical solution to water shortage
4 conditions including all parties' rights to store and recover non-native water in the Basin; (5) a
5 taking, if any, under the U.S. and California Constitution; (6) damages for trespass, interference,
6 nuisance and conversion; (7) due process violations; and (8) availability of injunctive relief.

8 **FIRST CAUSE OF ACTION**

9 **(For Declaratory Relief Against All Defendants)**

10 22. Plaintiff realleges and incorporates herein by reference each of the allegations
11 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
12 as follows:

13 23. By virtue of their property ownership, Plaintiff and the Class hold overlying rights
14 to the Basin's groundwater, which entitle them to extract that water and put it to reasonable and
15 beneficial uses on their respective properties.

16 24. Plaintiff is informed and believes, and on the basis of that information and belief
17 alleges, that each of the defendants presently extracts and/or purveys groundwater from the Basin
18 and/or asserts rights to that groundwater which conflict with the overlying rights of Plaintiff and
19 the Class.

20 25. Plaintiff is informed and believes and, on the basis of that information and belief,
21 alleges that each of the Defendants extracts groundwater primarily for non-overlying use – i.e.,
22 for use on properties other than the property on which the water is extracted. In addition, certain
23 of those defendants have asserted that they hold prescriptive rights to such water which they
24 claim are superior to the rights of Plaintiff and the Class.

25 26. Plaintiff's and the Class' present overlying uses of the Basin's
26 groundwater are superior in right to any non-overlying rights held by the Appropriator
27 Defendants.

28 27. Plaintiff's and the Class' overlying rights need to be apportioned in a fair and

1 equitable manner among all persons holding rights to the Basin's water.

2 28. Plaintiff and the Class seek a judicial determination that their rights as overlying
3 users are superior to the rights of all non-overlying users and that they have correlative rights vis-
4 a-vis other overlying landowners.

5 29. Plaintiff and the Class further seek a judicial determination as to the priority and
6 amount of water that all parties in interest are entitled to pump from the Basin.

7 30. By virtue of their property ownership, Plaintiff and the Class hold rights to utilize
8 or derive benefit from the storage capacity of the Basin. Plaintiff and the Class seek a judicial
9 determination as to priority and ownership of those rights. In addition, Plaintiff and the Class
10 contend that California Water Code Sections 55370, 22456, and 31040 limit the method, manner
11 and mode by which Appropriators may acquire private property and requires payment of
12 compensation through eminent domain proceedings. Plaintiff and the Class seek a declaration of
13 rights with respect to the constitutionality and applications of these Statutes.

14 **SECOND CAUSE OF ACTION**

15 **(Against All Defendants to Quiet Title)**

16 31. Plaintiff realleges and incorporates herein by reference each of the allegations
17 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
18 as follows:

19 32. Plaintiff and the Class own land overlying the Antelope Valley alluvial
20 groundwater basin. Accordingly, Plaintiff and the Class have appurtenant rights to pump and
21 reasonably use groundwater on their land.

22 33. Plaintiff and the Class herein request a declaration from the Court quieting title to
23 their appurtenant rights to pump and reasonably use groundwater on their land in the future.

24 **THIRD CAUSE OF ACTION**

25 **(Against All Defendant Appropriators For Damages Pursuant to**

26 **The California Constitution Takings Clause)**

27 34. Plaintiff realleges and incorporates herein by reference each of the allegations
28

1 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
2 as follows:

3 35. Article 1 Section 19 of the California Constitution provides as follows:

4 Private Property may be *taken or damaged* for public use only when just
5 compensation, ascertained by a jury unless waived, has first been paid to, or
6 into court for, the owner.

7 The scope of compensable injury to property is broader in California than other States or
8 under the U.S. Constitution. It includes a “taking” or “damage” to property. Here, Plaintiff’s
9 and the Class’ interests have been infringed by the defendants. On information and belief,
10 defendant Appropriators have extracted and will continue to extract non-surplus groundwater
11 from the Basin in excess of a safe yield. Defendants allege that the production forms the basis of
12 their claim for prescriptive rights. Defendants’ extraction of water above a safe yield has made it
13 more difficult and expensive for Plaintiff and the Class to use the water under their properties
14 and constitutes an invasion of Plaintiff’s property interests and therefore a taking in violation of
15 the California Constitution. On information and belief, Plaintiff’s and the Class’ properties have
16 been injured in the form of degradation of the water level and degradation of the quality of the
17 water, in addition to the actual taking of non-surplus water.

18 36. The public entity Defendants claim priority rights to take and use the Basin’s
19 groundwater by “prescription” and as a matter of public interest and need.

20 37. If and to the extent the public entities are granted rights to use the Basin’s
21 groundwater with priority to the rights held by Plaintiff and other overlying landowners, Plaintiff
22 and the Class are entitled to just and fair compensation pursuant to Article 1, Section 19 of the
23 California Constitution for the diminution in fair market value of the real property. If and to the
24 extent the public entities are not granted rights to use the Basin’s groundwater with priority to the
25 rights held by Plaintiff and other overlying landowners, Plaintiff and the Class are entitled to just
26 and fair compensation pursuant Article 1, Section 19 of the California Constitution for wrongful
27 taking of water rights.

1 **FOURTH CAUSE OF ACTION**

2 **(Against All Defendant Appropriators For Damages Pursuant to**
3 **The United States Constitution Takings Clause)**

4 38. Plaintiff realleges and incorporates herein by reference each of the allegations
5 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
6 as follows:

7 39. This cause of action is brought to recover damages against the Appropriators for
8 violation of Plaintiff's and the Class's right under the 5th and 14th Amendments of the U.S.
9 Constitution through the Appropriator's taking of private property for public use without paying
10 just compensation and depriving them of both substantive and procedural due process of law.

11 40. The Appropriators, and each of them are, and at all times mentioned in this
12 second amended complaint were, governmental entities with the capacity to sue and be sued.
13 The Appropriators, and each of them, were, at all times mentioned in this second amended
14 complaint, acting under color of state law.

15 41. At a yet unidentified historical point in time, the Appropriators began pumping
16 water from the Antelope Valley as permissive appropriators. Over the course of time, it is
17 believed that the aggregate amount of water being extracted from the Valley began to exceed the
18 safe yield. Each Appropriator continued to pump and increased its pumping of groundwater
19 believing that given the intervention of the committed public use, no injunction would issue to
20 restrain and/or compel the Appropriator to reduce its dependence upon such groundwater. Each
21 Appropriator contends that despite its status as a governmental entity, it can nonetheless take
22 private property for a public use under a theory of prescription and without compensation. Each
23 Appropriator did not undertake any affirmative action reasonably calculated and intended to
24 provide notice and inform any affected landowner of its adverse and hostile claim.

25 42. Plaintiff is informed and believes and thereon alleges that he was denied due
26 process of law prior to the taking of his property. This violation was a direct result of the
27
28

1 knowing customs, practices, and policies of the Appropriators to continue to pump in excess of
2 the supply, to suppress the assertion of their adverse and hostile claim, and the resulting ever
3 increasing intervening public use and dependence, without acceding to Constitutional limits.

4 43. The customs, practices, and policies of the Appropriators to prescript or adversely
5 possess the property rights of property owners and/or to establish a nonenjoinable intervening
6 use amounted to deliberate indifference to the rights of persons who stand to lose their rights to
7 extract water from the Antelope Valley for use on their property through the actions of each
8 Appropriator and all of them.

9 44. As a direct and proximate result of the acts of the Appropriators, Plaintiff and the
10 Class have suffered injury, loss, and damage, including a cloud upon the title to their real
11 property, a reduction in value, and the loss of rights in the future to extract and use groundwater
12 from the Valley.

13 **FIFTH CAUSE OF ACTION**

14 **(Public and Private Nuisance Against All Defendant Appropriators)**

15 45. Plaintiff realleges and incorporates herein by reference each of the allegations
16 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
17 as follows:

18 46. The Appropriators' extractions of groundwater from the supply constitute a
19 continuing progressive nuisance within the meaning of Section 3479 of the Civil Code, in that
20 the Appropriators have interfered with the future supply of available water that is injurious to
21 Plaintiff's and the Class' rights to freely use and exercise their overlying property rights to
22 extract groundwater from the Basin. The Appropriators are attempting, through the combined
23 efforts of their pumping groundwater to take, and or alter, overlying property rights to use and
24 access the Antelope Valley supply.

25 47. The Appropriators, and each of them, have continued to and have increased their
26 pumping, despite the knowledge of the damage caused by pumping. The Appropriators have
27 refused, and continue to refuse, to stop or reduce their pumping despite the damage to the supply
28 of water. This nuisance affects a substantial number of persons in that the Appropriators claim

1 that the continued pumping in excess of the supply's safe yield is, and will, eventually cause a
2 chronic decline in water levels and the available natural water supply will be chronically
3 depleted. If the present trend continues, demand will continue to exceed supply which will
4 continue to cause a reduction in the long term supply. Additionally, the continued pumping by
5 the Appropriators under these conditions will result in the unlawful obstruction of the overlying
6 landowner's rights to use the water supply in the customary manner.

7 48. The Appropriators, and each of them, have threatened to and will, unless
8 restrained by this court, continue to pump groundwater in increasing amounts, and each and
9 every act has been, and will be, without the consent, against the will, and in violation of the
10 rights of plaintiff and the Class.

11 49. As a proximate result of the nuisance created by the Appropriators, and each of
12 them, plaintiff and the Class have been, and will be, damaged in a sum to be proven at trial.

13 50. In maintaining this nuisance, the Appropriators, and each of them are, and have
14 been, acting with full knowledge of the consequences and damage being caused and their
15 conduct is willful, oppressive, malicious and designed to interfere with and take plaintiff's right
16 to freely access the water supply in its customary manner.

17 **SIXTH CAUSE OF ACTION**

18 **(Trespass Against All Defendant Appropriators)**

19 51. Plaintiff realleges and incorporates herein by reference each of the allegations
20 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
21 as follows:

22 52. On information and belief, each Defendant alleges that it has produced more
23 water from the Basin than it has a right to produce as an Appropriator. Defendants allege that
24 this production forms the basis for their claims of prescriptive rights. To the extent that the
25 alleged production in excess of rights actually occurred, this alleged production of water
26 constitutes a trespass against plaintiff and the Class.

27 53. Defendants' use of the Basin's water has interfered with and made it more
28 difficult for plaintiff and the Class to exercise their rights.

1 54. Plaintiff requests that the Court award monetary damages to compensate for any
2 past injury that may have occurred to plaintiff and the Class by Defendants' trespass in an
3 amount to be determined at trial.

4 **SEVENTH CAUSE OF ACTION**

5 **(Conversion Against All Defendant Appropriators)**

6 55. Plaintiff realleges and incorporates herein by reference each of the allegations
7 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
8 as follows:

9 56. Plaintiff and the Class are, and at all times relevant herein were, the owners of or
10 entitled to water rights in the Basin as overlying landowners.

11 57. Defendants wrongfully interfered with Plaintiff's interests in the above-described
12 property by extracting non-surplus water that exceed a safe yield and by claiming priority over
13 overlying landowners to water rights. Defendants conduct was without notice to plaintiff or the
14 Class.

15 **EIGHTH CAUSE OF ACTION**

16 **(Against All Defendants For Violation of 42 U.S.C. § 1983)**

17 58. Plaintiff realleges and incorporates herein by reference each of the allegations
18 contained in the preceding paragraphs of this Complaint, and further alleges against Defendants
19 as follows:

20 59. In committing the acts alleged above, Defendants violated plaintiff's rights
21 guaranteed under the Constitution of the United States, including the due process clauses of the
22 5th and 14th Amendments and the Takings Clause. These rights include the right not to be
23 deprived of property with out due process by persons and entities acting under color of law.
24 These rights include the right to be free from the use of excessive force by the police.

25 60. As a direct and proximate result of defendants' conduct, and each of them,
26 including Does 1 through 100, and their agents, supervisors, managers and employees, plaintiff
27 has suffered damages as alleged in this complaint above.
28

5. Awarding Plaintiff and the Class the costs of this suit, including reasonable attorneys' and experts' fees and other disbursements; as well as such other and further relief as may be just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable as a matter of right.

DATED: June 20, 2008

LAW OFFICES OF MICHAEL D. McLACHLAN, APC
LAW OFFICE OF DANIEL M. O'LEARY

By:

Michael D. McLachlan
Attorneys for Plaintiff

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PROOF OF SERVICE

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action. My business address is 523 West Sixth Street, Suite 215, Los Angeles, CA, 90014. On the date set forth below, I served the within document(s) by posting the document(s) listed below to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter: **FIRST AMENDED CLASS ACTION COMPLAINT**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 20, 2008, at Los Angeles, California.

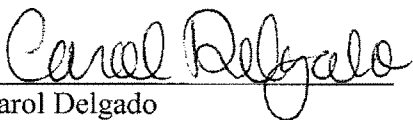

Carol Delgado

Exhibit 3

1 BEST BEST & KRIEGER LLP

ERIC L. GARNER, Bar No. 130665

2 JEFFREY V. DUNN, Bar No. 131926

3 STEFANIE D. HEDLUND, Bar No. 239787

5 PARK PLAZA, SUITE 1500

IRVINE, CALIFORNIA 92614

4 TELEPHONE: (949) 263-2600

TELECOPIER: (949) 260-0972

5 Attorneys for Cross-Complainants

ROSAMOND COMMUNITY SERVICES

6 DISTRICT and LOS ANGELES COUNTY

WATERWORKS DISTRICT NO. 40

7 OFFICE OF COUNTY COUNSEL

8 COUNTY OF LOS ANGELES

RAYMOND G. FORTNER, JR., Bar No. 42230

9 COUNTY COUNSEL

FREDERICK W. PFAEFFLE, Bar No. 145742

10 PRINCIPAL DEPUTY COUNTY COUNSEL

500 WEST TEMPLE STREET

11 LOS ANGELES, CALIFORNIA 90012

TELEPHONE: (213) 974-1901

12 TELECOPIER: (213) 458-4020

Attorneys for Cross-Complainant LOS ANGELES

13 COUNTY WATERWORKS DISTRICT NO. 40

14 [See Next Page For Additional Counsel]

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

18 **ANTELOPE VALLEY**
19 **GROUNDWATER CASES**

Included Actions:

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

22 Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
23 Court of California, County of Kern, Case
No. S-1500-CV-254-348;

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

Judicial Council Coordination No. 4408

CLASS ACTION

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

[Code Civ. Proc., § 382]

~~[PROPOSED]~~ FIRST-AMENDED CROSS-
COMPLAINT OF PUBLIC WATER
SUPPLIERS FOR DECLARATORY AND
INJUNCTIVE RELIEF AND
ADJUDICATION OF WATER RIGHTS

1 STRADLING YOCCA CARLSON & RAUTH

Douglas J. Evertz, Bar No. 123066
2 660 Newport Center Drive, Ste. 1600
Newport Beach, CA 92660
3 (949) 737-4720 (916) 823-6720 fax
Attorneys for City of Lancaster

4 RICHARDS WATSON & GERSHON

James L. Markman, Bar No. 43536
Steven Orr, Bar No. 136615
5 355 S. Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
6 (213) 626-8484 (213) 626-0078 fax
Attorneys for City of Palmdale

8 LEMIEUX & O'NEILL

Wayne Lemieux, Bar No. 43501
2393 Townsgate Road, Ste. 201
9 Westlake Village, CA 91361
(805) 495-4770 (805) 495-2787 fax
10 Attorneys for Littlerock Creek Irrigation District and
Palm Ranch Irrigation District

12 LAGERLOF SENEAL BRADLEY GOSNEY &
13 KRUSE

Thomas Bunn III, Bar No. 89502
14 301 North Lake Avenue, 10th Floor
Pasadena, CA 91101-4108
15 (626) 793-9400 (626) 793-5900 fax
Attorneys for Palmdale Water District and Quartz
16 Hill Water District

17 CALIFORNIA WATER SERVICE COMPANY

John Tootle, Bar No. 181822
18 2632 West 237th Street
Torrance, CA 90505
19 (310) 257-1488; (310) 325-4605-fax

1 Cross-Complainants California Water Service Company, City of Lancaster, City of
2 Palmdale, Littlerock Creek Irrigation District, Los Angeles County Water Works District No. 40,
3 Palmdale Water District, Rosamond Community Services District, Palm Ranch Irrigation District
4 and Quartz Hill Water District (collectively, the "Public Water Suppliers") allege:

5
6 **INTRODUCTION**

7 1. This cross-complaint seeks a judicial determination of rights to all water within the
8 adjudication area of the Antelope Valley Groundwater Basin as determined by the Court's Orders
9 in this case (the "Basin"). An adjudication is necessary to protect and conserve the limited water
10 supply that is vital to the public health, safety and welfare of all persons and entities that depend
11 upon water from the Public Water Suppliers. For these reasons, the Public Water Suppliers file
12 this cross-complaint to promote the general public welfare in the Antelope Valley; protect the
13 Public Water Suppliers' rights to pump groundwater and provide water to the public; protect the
14 Antelope Valley from a loss of the public's water supply; prevent degradation of the quality of
15 the public groundwater supply; stop land subsidence; and avoid higher water costs to the public.

16
17 **CROSS-COMPLAINANTS**

18 2. California Water Service Company is a California corporation which extracts
19 groundwater from the Basin to serve customers within the Basin.

20
21 3. The City of Lancaster is a municipal corporation located in the County of Los
22 Angeles, and which produces and receives water for reasonable and beneficial uses, including
23 overlying uses. The City of Lancaster further provides ministerial services to mutual water
24 companies that produce groundwater from the Basin.

25
26 4. The City of Palmdale is a municipal corporation in the County of Los Angeles.
27 The City of Palmdale receives water from the Basin.

5. Littlerock Creek Irrigation District is a public agency which extracts groundwater from the Basin to serve customers within the Basin.

6. Los Angeles County Waterworks District No. 40 is a public agency governed by the Los Angeles County Board of Supervisors. District 40 has been lawfully organized to perform numerous functions, including providing Basin groundwater to the public in a large portion of the Antelope Valley. To this end, District 40 has constructed, maintained and operated a public waterworks system to supply water to the public.

7. Palmdale Water District is an irrigation district organized and operating under Division 11 of the California Water Code. Palmdale Water District extracts groundwater from the Basin for delivery to customers.

8. Palm Ranch Irrigation District Palm Ranch Irrigation District is a public agency which extracts groundwater from the Basin to serve customers within the Basin.

9. Rosamond Community Services District provides water to more than 3,500 residents of Kern County for domestic uses, fire protection, and irrigation. Rosamond has drilled and equipped wells to pump groundwater from the Basin. Rosamond has constructed, maintained and operated a public waterworks system to supply water to the public.

10. Quartz Hill Water District is a county water district organized and operating under Division 12 of the California Water Code. Quartz Hill extracts groundwater from the Lancaster Sub-basin of the Antelope Valley Groundwater Basin for delivery to customers.

CROSS-DEFENDANTS

11. The following persons and/or entities are the owners of, and/or are beneficial interest holders in real property within the geographic boundaries of the Basin. These persons

1 and/or entitles claim overlying rights to extract water from the Basin, whether or not they have
2 heretofore exercised such overlying rights: ABC Williams Enterprises LP, ACEH Capital, LLC,
3 Jacqueline Ackermann, Cenon Advincula, Oliva M. Advincula, Mashallah Afshar, Antonio U.
4 Agustines, Airtrust Singapore Private Limited, Marwan M. Aldais, Allen Alevy, Allen Alevy and
5 Alevy Family Trust, Georgine J. Archer, Georgine J. Archer as Trustee for the Georgine J. Archer
6 Trust, A V Materials, Inc., Guss A. Barks, Jr., Peter G. Barks, Ildefonso S. Bayani, Nilda V.
7 Bayani, Big West Corp, Randall Y. Blayney, Melody S. Bloom, Bolthouse Properties, Inc., David
8 L. Bowers, Ronald E. Bowers, Leroy Daniel Bronston, Marilyn Burgess, Laverne C. Burroughs,
9 Laverne C. Burroughs, Trustee of the Burroughs Family Irrevocable Trust Dated August 1, 1995,
10 Bruce Burrows, John and B. Calandri 2001 Trust, California Portland Cement Company, Calmat
11 Land Co., Melinda E. Cameron, Castle Butte Dev Corp, Catellus Development Corporation,
12 Bong S. Chang, Jeanna Y. Chang, Moon S. Chang, Jacob Chetrit, Frank S. Chiodo, Lee S. Chiou,
13 M S Chung, City of Los Angeles, Carol K. Claypool, Clifford N. Claypool, W. F. Clunen, Jr., W.
14 F. Clunen, Jr. as Trustee for the P C Rev Inter Vivos Trust, Consolidated Rock Products Co.,
15 County Sanitation District No. 14 of Los Angeles County, County Sanitation District No. 20 of
16 Los Angeles County, Ruth A. Cumming, Ruth A. Cumming as Trustee of the Cumming Family
17 Trust, Catharine M. Davis, Milton S. Davis, Del Sur Ranch LLC, Diamond Farming Company,
18 Sarkis Djanibekyan, Hong Dong, Ying X Dong, Dorothy Dreier, George E. Dreier, Morteza M.
19 Foroughi, Morteza M. Foroughi as Trustee of the Foroughi Family Trust, Lewis Fredrichsen,
20 Lewis Fredrichsen as Trustee of the Friedrichsen Family Trust, Joan A. Funk, Eugene Gabrych,
21 Marian Gabrych, Aurora P. Gabuya, Rodrigo L. Gabuya, GGF LLC, Genus LP, Betty Gluckstein,
22 Joseph H. Gluckstein, Forrest G. Godde, Forrest G. Godde as Trustee of the Forrest G. Godde
23 Trust, Lawrence A. Godde, Lawrence A. Godde and Godde Trust, Maria B. Gorrindo, Maria B.
24 Gorrindo as Trustee for the M. Gorrindo Trust, Wendell G. Hanks, Andreas Hauke, Marilyn
25 Hauke, Healy Enterprises, Inc., Walter E. Helmick, Donna L. Higelmire, Michael N. Higelmire,
26 Davis L. and Diana D. Hines Family Trust, Hooshpack Dev Inc., Chi S. Huang, Suchu T. Huang,
27 John Hui, Hypericum Interests LLC, Daryush Iraninezhad, Minoo Iraninezhad, Esfandiar
28 Kadivar, Esfandiar Kadivar as Trustee of the Kadivar Family Trust, A. David Kagon, A. David

1 Kagon as Trustee for the Kagon Trust, Jack D. Kahlo, Cheng Lin Kang, Herbert Katz, Herbert
2 Katz as Trustee for the Katz Family Trust, Marianne Katz, Lilian S. Kauffman, Lilian S.
3 Kaufman as Trustee for the Kaufman Family Trust, Kazuko Yoshimatsu, Barbara L. Keys,
4 Barbara L. Keys as Trustee of the Barbara L. Keys Family Trust, Billy H. Kim, Illy King, Illy
5 King as Trustee of the Illy King Family Trust, Kootenai Properties, Inc., Kutu Investment Co.,
6 Gailen Kyle, Gailen Kyle as Trustee of the Kyle Trust, James W. Kyle, James W. Kyle as Trustee
7 of the Kyle Family Trust, Julia Kyle, Wanda E. Kyle, Fares A. Lahoud, Eva Lai, Paul Lai, Ying
8 Wah Lam, Land Business Corporation, Richard E. Landfield, Richard E. Landfield as Trustee of
9 the Richard E. Landfield Trust, Lawrence Charles Trust, William Lewis, Mary Lewis, Pei Chi
10 Lin, Man C. Lo, Shiung Ru Lo, Lyman C. Miles, Lyman C. Miles as Trustee for the Miles Family
11 Trust, Malloy Family Partners LP, Mission Bell Ranch Development, Barry S. Munz, Kathleen
12 M. Munz, Terry A. Munz, M.R. Nasir, Souad R. Nasir, Eugene B. Nebeker, Simin C. Neman,
13 Henry Ngo, Frank T. Nguyen, Juanita R. Nichols, Oliver Nichols, Oliver Nichols as Trustee of
14 the Nichols Family Trust, Owl Properties, Inc., Palmdale Hills Property LLC, Norman L.
15 Poulsen, Marilyn J. Prewoznik, Marilyn J. Prewoznik as Trustee of the Marilyn J. Prewoznik
16 Trust, Elias Qarmout, Victoria Rahimi, R and M Ranch, Inc., Patricia A. Recht, Veronika Reinelt,
17 Reinelt Rosenloeche Corp. PSP, Patricia J. Riggins, Patricia J. Riggins as Trustee of the Riggins
18 Family Trust, Edgar C. Ritter, Paula E. Ritter, Paula E. Ritter as Trustee of the Ritter Family
19 Trust, Roman Catholic Archbishop of Los Angeles, Romo Lake Los Angeles Partnership,
20 Rosemount Equities LLC Series, Royal Investors Group, Royal Western Properties LLC, Oscar
21 Rudnick, Rebecca Rudnick, Santa Monica Mountains Conservancy, Marygrace H. Santoro,
22 Marygrace H. Santoro as Trustee for the Marygrace H. Santoro Rev Trust, San Yu Enterprises,
23 Inc., Daniel Saparzadeh, Helen Stathatos, Savas Stathatos, Savas Stathatos as Trustee for the
24 Stathatos Family Trust, Seven Star United LLC, Mark H. Shafron, Robert L. Shafron, Kamram S.
25 Shakib, Donna L. Simpson, Gareth L. Simpson, Gareth L. Simpson as Trustee of the Simpson
26 Family Trust, Soaring Vista Properties, Inc., State of California, George C. Stevens, Jr., George
27 C. Stevens, Jr. as Trustee of the George C. Stevens, Jr. Trust, George L. Stimson, Jr., George L.
28 Stimson, Jr. as Trustee of the George L. Stimson, Jr. Trust, Tejon Ranch, Mark E. Thompson A P

1 C Profit Sharing Plan, Tierra Bonita Ranch Company, Tiong D. Tiu, Beverly J. Tobias, Beverly J.
2 Tobias as Trustee of the Tobias Family Trust, Jung N. Tom, Wilma D. Trueblood, Wilma D.
3 Trueblood as Trustee of the Trueblood Family Trust, Unison Investment Co., LLC, Delmar D.
4 Van Dam, Gertrude J. Van Dam, Keith E. Wales, E C Wheeler LLC, William Bolthouse Farms,
5 Inc., Alex Wodchis, Elizabeth Wong, Mary Wong, Mike M. Wu, Mike M. Wu as Trustee of the
6 Wu Family Trust, State of California 50th District and Agricultural Association, and U.S. Borax,
7 Inc.

8
9 12. The Public Water Suppliers are informed and believe, and thereon allege, that
10 cross-defendant Roes 1 through 100,000 are the owners, lessees or other persons or entities
11 holding or claiming to hold ownership or possessory interests in real property within the
12 boundaries of the Basin; extract water from the Basin; claim some right, title or interest to water
13 located within the Basin; or that they have or assert claims adverse to the Public Water Suppliers'
14 rights and claims. The Public Water Suppliers are presently unaware of the true names and
15 capacities of the Roe cross-defendants, and therefore sue those cross-defendants by fictitious
16 names. The Public Water Suppliers will seek leave to amend this cross-complaint to add names
17 and capacities when they are ascertained.

18
19 **CLASS ACTION ALLEGATIONS**

20 13. The Public Water Suppliers bring this action against all persons similarly situated.
21 The class will be composed of all owners of land within the adjudication area that is not within
22 the service area of a public entity, public utility, or mutual water company. The persons in this
23 class are so numerous, consisting of approximately 65,000 parcels, that the joinder of all such
24 persons is impracticable and that the disposition of their claims in a class action rather than in
25 individual actions will benefit the parties and the court.

26
27 14. There is a well-defined community of interests in the questions of law and fact
28 affecting the defendant class members in that they each allege an identical overlying right to take

1 native groundwater from a common supply for their reasonable and beneficial use. As they each
2 seek a common right, they have predominantly common issues of fact and law. Additionally,
3 each class member will have common defenses against competing water rights including a claim
4 by the United States that it has a Federal Reserved right. These questions of law and fact
5 predominate over questions that affect only the individual class members. The claims and
6 defenses of the class members and the class representative are typical of those of the class and the
7 class representative will fairly and adequately represent the interests of the class.

8
9 **THE UNITED STATES IS A NECESSARY PARTY TO THIS ACTION**

10 15. This is an action to comprehensively adjudicate the rights of all claimants to the
11 use of a source of water located entirely within California, *i.e.*, the Basin, and for the ongoing
12 administration of all such claimants' rights.

13
14 16. The Public Water Suppliers are informed and believe, and on that basis allege, that
15 the United States claims rights to the Basin water subject to adjudication in this action by virtue
16 of owning real property overlying the Basin, including Edwards Air Force Base.

17
18 17. For the reasons expressed in this cross-complaint, the United States is a necessary
19 party to this action pursuant to the McCarran Amendment, 43 U.S.C. § 666.

20
21 18. Under the McCarran Amendment, the United States, as a necessary party to this
22 action, is deemed to have waived any right to plead that the laws of California are not applicable,
23 or that the United States is not subject to such laws by virtue of its sovereignty.

24
25 19. Under the McCarran Amendment, the United States, as a necessary party to this
26 action, is subject to the judgments, orders and decrees of this Court.

HISTORY OF THE ANTELOPE VALLEY GROUNDWATER BASIN

20. For over a century, California courts have used the concept of a groundwater basin to resolve groundwater disputes. A groundwater basin is an alluvial aquifer with reasonably well-defined lateral and vertical boundaries.

21. The Antelope Valley Groundwater Basin is located in an arid valley in the Mojave Desert, about 50 miles northeast of the City of Los Angeles. The Basin encompasses about 1,000 square miles in both Los Angeles and Kern Counties, and is separated from the northern part of the Antelope Valley by faults and low-lying hills. The Basin is bounded on the south by the San Gabriel Mountains and on the northwest by the Tehachapi Mountains. The Basin generally includes the communities of Lancaster, Palmdale and Rosamond as well as Edwards Air Force Base.

22. Various investigators have studied the Antelope Valley and some have divided the Basin into "sub-basins." According to the Public Water Suppliers' information and belief, to the extent the Antelope Valley is composed of such "sub-basins," they are sufficiently hydrologically connected to justify treating them as a single source of water for purposes of adjudicating the parties' water rights.

23. Before public and private entities began pumping water from the Basin, its natural water recharge balanced with water discharged from the Basin. Its water levels generally remained in a state of long-term equilibrium. In approximately 1915, however, agricultural uses began to pump groundwater and since then, greatly increased agricultural pumping has upset the Basin's groundwater equilibrium causing a continuous decline in the Basin's groundwater storage.

24. Although private agricultural entities temporarily curtailed their pumping activities when groundwater levels were extremely low, agricultural pumping has increased overall during

1 the past decade. During the same time, urbanization of the Antelope Valley has resulted in
2 increased public demand for water.

3
4 25. Groundwater pumping in the Basin has never been subject to any limits. This lack
5 of groundwater management caused the Basin to lose an estimated eight million acre feet of water
6 over the past eighty years.

7
8 26. Uncontrolled pumping caused repeated instances of land subsidence. It is the
9 sinking of the Earth's surface due to subsurface movement of earth materials and is primarily
10 caused by groundwater pumping. The Public Water Suppliers are informed and believe, and
11 thereupon allege, that portions of the Basin have subsided as much as six feet because of
12 chronically low groundwater levels caused by unlimited pumping. The harmful effects of land
13 subsidence observed in the Basin include loss of groundwater storage space, cracks and fissures
14 on the ground's surface, and damage to real property. Land subsidence problems continue and
15 will continue because of unlimited pumping.

16
17 27. The declining groundwater levels, diminished groundwater storage, and land
18 subsidence damage the Basin, injure the public welfare, and threaten communities that depend
19 upon the Basin as a reliable source of water. These damaging effects will continue, and likely
20 worsen until the court establishes a safe yield for the Basin and limits pumping to the safe yield.

21
22 **PUBLIC WATER SUPPLIERS SUPPLEMENT AND COMMINGLE THEIR**
23 **SUPPLEMENTAL SUPPLY OF WATER WITH BASIN WATER**

24 28. Due to the shortage of water in the Basin, certain Public Water Suppliers purchase
25 State Water Project water from the Antelope Valley-East Kern Water Agency. State Project
26 water originates in northern California and would not reach the Basin absent the Public Water
27 Suppliers purchases.

1 29. Public Water Suppliers purchase State Project water each year. They deliver the
2 State Project water to their customers through waterworks systems. The Public Water Suppliers'
3 customers use the State Project water for irrigation, domestic, municipal and industrial uses.
4 After the Public Water Suppliers' customers use the water, some of the imported State Project
5 water commingles with other percolating groundwater in the Basin. In this way, State Project
6 water augments the natural supply of Basin water.

7
8 30. Public Water Suppliers depend on the Basin as their source of water. But for the
9 Public Water Suppliers' substantial investment in State Project water, they would need to pump
10 additional groundwater each year. By storing State Project water or other imported water in the
11 Basin, Public Water Suppliers can recover the stored water during times of drought, water supply
12 emergencies, or other water shortages to ensure a safe and reliable supply of water to the public.

13
14 **THE BASIN HAS BEEN IN A STATE OF OVER-DRAFT FOR OVER FIVE YEARS**

15 31. The Public Water Suppliers are informed and believe, and upon that basis allege,
16 that the Basin is and has been in an overdraft condition for more than five (5) consecutive years
17 before the filing of this cross-complaint. During these time periods, the total annual demand on
18 the Basin has exceeded the supply of water from natural sources. Consequently, there is and has
19 been a progressive and chronic decline in Basin water levels and the available natural supply is
20 being and has been chronically depleted. Based on the present trends, demand on the Basin will
21 continue to exceed supply. Until limited by order and judgment of the court, potable Basin water
22 will be exhausted and land subsidence will continue.

23
24 32. Upon information and belief, the cross-defendants have, and continue to pump,
25 appropriate and divert water from the natural supply of the Basin, and/or claim some interest in
26 the Basin water. The Public Water Suppliers are informed and believe, and upon that basis
27 allege, that cross-defendants' combined extraction of water exceeds the Basin's safe yield.

1 33. Upon information and belief, each cross-defendant claims a right to take water and
2 threatens to increase its taking of water without regard to the Public Water Suppliers' rights.
3 Cross-defendants' pumping reduces Basin water tables and contributes to the deficiency of the
4 Basin water supply as a whole. The deficiency creates a public water shortage.

5
6 34. Cross-defendants' continued and increasing extraction of Basin water has resulted
7 in, and will result in a diminution, reduction and impairment of the Basin's water supply, and land
8 subsidence.

9
10 35. Cross-defendants' continued and increasing extraction of Basin water has and will
11 deprive the Public Water Suppliers of their rights to provide water for the public health, welfare
12 and benefit.

13
14 **THERE IS A DISPUTE AMONG THE PARTIES REGARDING THE EXTENT AND**
15 **PRIORITY OF THEIR RESPECTIVE WATER RIGHTS**

16 36. The Public Water Suppliers are informed and believe, and thereon allege, there are
17 conflicting claims of rights to the Basin and/or its water.

18
19 37. The Public Water Suppliers are informed and believe, and thereon allege, that
20 cross-defendants who own real property in the Basin claim an overlying right to pump Basin
21 water. The overlying right is limited to the native safe yield of the Basin. The Public Water
22 Suppliers allege that, because subsidence is occurring in the Basin, cross-defendants have been
23 pumping, and continue to pump water in amounts greater than the Basin's safe yield.

24
25 38. The Public Water Suppliers are informed and believe, and thereon allege, they
26 have appropriative and prescriptive rights to groundwater in the Antelope Valley Basin. The
27 Public Water Suppliers are informed and believe, and thereon allege, they and/or their
28 predecessors-in-interest, have pumped water from the Antelope Valley Basin for more than five

1 years prior to the filing of this cross-complaint.
2

3 39. The Public Water Suppliers have pumped water from, and/or stored water in the
4 Antelope Valley Basin, by reasonable extraction means. They have used the Basin and/or its
5 water for reasonable and beneficial purposes; and they have done so under a claim of right in an
6 actual, open, notorious, exclusive, continuous, uninterrupted, hostile, adverse use and/or manner
7 for a period of time of at least five years and before filing this cross-complaint.
8

9 40. To provide water to the public, the Public Water Suppliers have and claim the
10 following rights:
11

12 (A) The right to pump groundwater from the Antelope Valley Groundwater
13 Basin in an annual amount equal to the highest volume of groundwater extracted by each of the
14 Public Water Suppliers in any year preceding entry of judgment in this action;

15 (B) The right to pump or authorize others to extract from the Antelope Valley
16 Groundwater Basin an amount of water equal in quantity to that amount of water previously
17 purchased by each of the Public Water Suppliers from the Antelope Valley-East Kern Water
18 Agency; and which has augmented the supply of water in the Basin in any year preceding entry of
19 judgment in this action.

20 (C) The right to pump or authorize others to extract from the Antelope Valley
21 Groundwater Basin an amount of water equal in quantity to that amount of water purchased in the
22 future by each of the Public Water Suppliers from the Antelope Valley-East Kern Water Agency
23 which augments the supply of water in the Basin; and

24 (D) The right to pump or authorize others to extract from the Antelope Valley
25 Basin an amount of water equal in quantity to that volume of water injected into the Basin or
26 placed within the Basin by each of the Public Water Suppliers or on behalf of any of them.
27
28

FIRST CAUSE OF ACTION

(Declaratory Relief – Prescriptive Rights – Against All Cross-Defendants Except the United States And Other Public Entity Cross-Defendants)

41. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

42. For over fifty years, the California Supreme Court has recognized prescriptive water rights. The Public Water Suppliers allege that, for more than five years and before the date of this cross-complaint, they have pumped water from the Basin for reasonable and beneficial purposes, and done so under a claim of right in an actual, open, notorious, exclusive, continuous, hostile and adverse manner. The Public Water Suppliers further allege that each cross-defendant had actual and/or constructive notice of these activities, either of which is sufficient to establish the Public Water Suppliers' prescriptive rights.

43. Public Water Suppliers contend that each cross-defendant's rights to pump water from the Basin are subordinate to the Public Water Suppliers' prescriptive rights and to the general welfare of the citizens, inhabitants and customers within the Public Water Suppliers' respective service areas and/or jurisdictions.

44. An actual controversy has arisen between the Public Water Suppliers and cross-defendants, and each of them. Public Water Suppliers allege, on information and belief, that each cross-defendant disputes the Public Water Suppliers' contentions, as described in the immediately preceding paragraph.

45. Public Water Suppliers seek a judicial determination as to the correctness of their contentions and a finding as to the priority and amount of water they and each cross-defendant are entitled to pump from the Basin.

SECOND CAUSE OF ACTION

(Declaratory Relief – Appropriative Rights – Against All Cross-Defendants)

46. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

47. Public Water Suppliers allege that, in addition or alternatively to their prescriptive rights, they have appropriative rights to pump water from the Basin.

48. Appropriative rights attach to surplus water from the Basin.

49. Surplus water exists when the pumping from the Basin is less than the safe yield. It is the maximum quantity of water which can be withdrawn annually from a groundwater Basin under a given set of conditions without causing an undesirable result. “Undesirable results” generally refer to gradual lowering of the groundwater levels in the Basin, but also includes subsidence.

50. Persons and/or entities with overlying rights to water in the Basin are only entitled to make reasonable and beneficial use of the Basin’s native safe yield.

51. An actual controversy has arisen between the Public Water Suppliers and cross-defendants, and each of them. The Public Water Suppliers allege, on information and belief, that all cross-defendants, and each of them, seek to prevent the Public Water Suppliers from pumping surplus water.

52. The Public Water Suppliers seek a judicial determination as to the Basin’s safe yield, the quantity of surplus water available, if any, the correlative overlying rights of each cross-defendant to the safe yield and a determination of the rights of persons an/or entities with

1 overlying, appropriative and prescriptive rights to pump water from the Basin.

2
3 **THIRD CAUSE OF ACTION**

4 **(Declaratory Relief – Physical Solution – Against All Cross-defendants)**

5 53. The Public Water Suppliers re-allege and incorporate by reference each and all of
6 the preceding paragraphs as though fully set forth herein.

7
8 54. Upon information and belief, the Public Water Suppliers allege that cross-
9 defendants, and each of them, claim an interest or right to Basin water; and further claim they can
10 increase their pumping without regard to the rights of the Public Water Suppliers. Unless
11 restrained by order of the court, cross-defendants will continue to take increasing amounts of
12 water from the Basin, causing great and irreparable damage and injury to the Public Water
13 Suppliers and to the Basin. Money damages cannot compensate for the damage and injury to the
14 Basin.

15
16 55. The amount of Basin water available to the Public Water Suppliers has been
17 reduced because cross-defendants have extracted, and continue to extract increasingly large
18 amounts of water from the Basin. Unless the court enjoins and restrains cross-defendants, and
19 each of them, the aforementioned conditions will worsen. Consequently, the Basin's groundwater
20 supply will be further depleted, thus reducing the amount of Basin water available to the public.

21
22 56. California law makes it the duty of the trial court to consider a "physical solution"
23 to water rights disputes. A physical solution is a common-sense approach to resolving water
24 rights litigation that seeks to satisfy the reasonable and beneficial needs of all parties through
25 augmenting the water supply or other practical measures. The physical solution is a practical way
26 of fulfilling the mandate of the California Constitution (Article X, section 2) that the water
27 resources of the State be put to use to the fullest extent of which they are capable.
28

1 57. This court must determine, impose and retain continuing jurisdiction in order to
2 enforce a physical solution upon the parties who pump water from the Basin, and thereby prevent
3 irreparable injury to the Basin. Available solutions to the Basin problems may include, but are
4 not limited to, the court appointment of a watermaster, and monetary and metering and
5 assessments upon water extraction from the Basin. Such assessments would pay for the purchase,
6 delivery of supplemental supply of water to the Basin.

7
8 **FOURTH CAUSE OF ACTION**

9 **(For Declaratory Relief – Municipal Priority – Against All Cross-Defendants)**

10 58. The Public Water Suppliers re-allege and incorporate by reference each and all of
11 the preceding paragraphs as though fully set forth herein.

12
13 59. The Public Water Suppliers have rights to pump water from the Basin to meet
14 existing public water needs, and also to take increased amounts of Basin water as necessary to
15 meet future public needs. The Public Water Suppliers' rights to Basin water exist both as a result
16 of the priority and extent of their appropriative and prescriptive rights, and as a matter of law and
17 public policy of the State of California: "It is hereby declared to be the established policy of this
18 State that the use of water for domestic purposes is the highest use of water and that the next
19 highest use is for irrigation." (*Water Code* §106.)

20
21 60. *Water Code* Section 106.5 provides: "It is hereby declared to be the established
22 policy of this State that the right of a municipality to acquire and hold rights to the use of water
23 should be protected to the fullest extent necessary for existing and future uses. . . ."

24
25 61. Under *Water Code* sections 106 and 106.5, the Public Water Suppliers have a prior
26 and paramount right to Basin water as against all non-municipal uses.
27
28

10

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27

1 73. The Public Water Suppliers have the sole right to recapture return flows
2 attributable to their State Project water, or such water imported on their behalf. The rights of
3 cross-defendants, if any, are limited to the Basin's native supply and/or to their imported water,
4 and do not extend to groundwater attributable to the Public Water Suppliers' return flows.

5
6 74. An actual controversy has arisen between the Public Water Suppliers and cross-
7 defendants. The Public Water Suppliers allege, on information and belief, that cross-defendants
8 dispute their contentions in Paragraphs 1 through 43 of this cross-complaint.

9
10 75. The Public Water Suppliers seek a judicial determination as to the correctness of
11 their contentions, and that they have the sole right to recapture return flows in the Basin, both at
12 present and in the future.

13
14 **SEVENTH CAUSE OF ACTION**

15 **(Unreasonable Use Of Water - Against All Cross-Defendants Except Public Entity Cross-**
16 **Defendants)**

17 76. The Public Water Suppliers re-allege and incorporate by reference each and all of
18 the preceding paragraphs as though fully set forth herein.

19
20 77. The California Constitution (Article X, Section 2) provides the cardinal principle
21 of California water law, superior to any water rights priorities and requires that water use not be
22 unreasonable or wasteful. The reasonable use of water depends on the facts and circumstances of
23 each case; what may be reasonable in areas of abundant water may be unreasonable in an area of
24 scarcity; and, what is a beneficial use at one time may become a waste of water at a later time.

25
26 78. The Public Water Suppliers are informed and believe, and on that basis allege, that
27 some cross-defendants' use of water is unreasonable in the arid Antelope Valley and therefore
28

1 constitutes waste, unreasonable use or an unreasonable method of diversion or use within the
2 meaning of the California Constitution (Article X, section 2). Such uses are thereby unlawful.
3

4 79. An actual controversy has arisen between the Public Water Suppliers and cross-
5 defendants. The Public Water Suppliers allege, on information and belief, that the cross-
6 defendants dispute their contentions in Paragraphs 1 through 43 of this Cross-Complaint.
7

8 80. The Public Water Suppliers seek a judicial declaration that cross-defendants have
9 no right to any unreasonable use, unreasonable methods of use, or waste of water. Cross-
10 defendants' rights, if any, must be determined based on the reasonable use of water in the
11 Antelope Valley rather than upon the amount of water actually used.
12

13 EIGHTH CAUSE OF ACTION

14 (Declaratory Relief Re Boundaries Of Basin)

15 91. The Public Water Suppliers re-allege and incorporate by reference each and all of
16 the preceding paragraphs as though fully set forth herein.
17

18 92. An actual controversy has arisen between the Public Water Suppliers and cross-
19 defendants, and each of them, regarding the actual physical dimensions and description of the
20 Basin for purposes of determining the parties rights to water located therein. The Public Water
21 Suppliers allege, on information and belief, that cross-defendants dispute the Public Water
22 Suppliers' contentions, as set forth in Paragraphs 1 through 38, inclusive, of this cross-complaint.

23 93. The Public Water Suppliers seek a judicial determination as to the correctness of
24 their contentions and a finding as to the actual physical dimensions and description of the Basin.

25 PRAYER FOR RELIEF

26 WHEREFORE, the Public Water Suppliers pray for judgment as follows:

27 1. Judicial declarations consistent with the Public Water Suppliers' contentions in the
28

1 First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action in this cross-
2 complaint;

3
4 2. For preliminary and permanent injunctions which prohibit cross-defendants, and
5 each of them, from taking, wasting or failing to conserve water from the Basin in any manner
6 which interferes with the rights of the Public Water Suppliers to take water from or store water in
7 the Basin to meet their reasonable present and future needs;

8
9 3. For prejudgment interest as permitted by law;

10
11 4. For attorney, appraisal and expert witness fees and costs incurred in this action;
12 and

13
14 5. Such other relief as the court deems just and proper.

15 Dated: January 10, 2007

BEST BEST & KRIEGER LLP

16
17 By 

18 ERIC L. GARNER
19 JEFFREY V. DUNN
20 STEFANIE D. HEDLUND
21 Attorneys for Cross-Complainants
22 ROSAMOND COMMUNITY SERVICES
23 DISTRICT and LOS ANGELES
24 COUNTY WATERWORKS DISTRICT
25 NO. 40
26
27
28

ORANGE32819.1

PROOF OF SERVICE

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California 92614. On March 13, 2007, I served the within document(s):

FIRST-AMENDED CROSS COMPLAINT OF PUBLIC WATER SUPPLIERS FOR DECLARATORY AND INJUNCTIVE RELIEF AND ADJUDICATION OF WATER RIGHTS

- ☒ by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- ☐ by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on March 13, 2007, at Irvine, California.


Kerry V. Keefe