

# Exhibit 5

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a limited liability company

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF LOS ANGELES

Coordination Proceeding Special Title  
(Rule 1550 (b))  
  
ANTELOPE VALLEY GROUNDWATER  
CASES  
  
Included actions:  
  
Los Angeles County Waterworks District No.  
40 vs. Diamond Farming Company  
Los Angeles Superior Court  
Case No. BC 325201  
  
Los Angeles County Waterworks District No.  
40 vs. Diamond Farming Company  
Kern County Superior Court  
Case No. S-1500-CV 254348 NFT  
  
Diamond Farming Company vs. City of  
Lancaster  
Riverside County Superior Court  
Lead Case No. RIC 344436 [Consolidated  
w/Case Nos. 344668 & 353840]

Judicial Council Coordination No. 4408  
  
Case No.: 1-05-CV-049053  
  
**CROSS-COMPLAINT OF CRYSTAL  
ORGANIC FARMS FOR EQUITABLE  
AND MONETARY RELIEF AGAINST  
CALIFORNIA WATER SERVICE  
COMPANY, CITY OF LANCASTER,  
CITY OF PALMDALE, LITTLEROCK  
CREEK IRRIGATION DISTRICT,  
LOS ANGELES COUNTY  
WATERWORKS DISTRICT NO. 40,  
PALMDALE WATER DISTRICT,  
ROSAMOND COMMUNITY SERVICES  
DISTRICT, PALM RANCH  
IRRIGATION DISTRICT AND  
QUARTZ HILL WATER DISTRICT**

Crystal Organic Farms, LLC,  
  
Cross-Complainant,  
  
vs.

1 California Water Service Company; City of  
2 Lancaster; City of Palmdale; Littlerock  
3 Creek Irrigation District; Los Angeles  
4 County Waterworks District No. 40;  
5 Palmdale Water District; Rosamond  
6 Community Services District; Palm Ranch  
7 Irrigation District; and Quartz Hill Water  
8 District; and ROES 1-200, inclusive,

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Cross-Defendants.

8 Cross-Complainant, Crystal Organic Farms, LLC, (ROE 584), makes the following allegations  
9 against Cross-Defendants California Water Service Company, City of Lancaster, City of Palmdale,  
10 Littlerock Creek Irrigation District, Los Angeles County Waterworks District No. 40, Palmdale Water  
11 District, Rosamond Community Services District, Palm Ranch Irrigation District and Quartz Hill Water  
12 District (collectively referred to herein as "Purveyors"), and ROES 1-200, inclusive, as follows:

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**General Allegations:**

14 1. California Water Service Company is a California corporation which provides water to  
15 customers located within the geographic boundaries of the Basin and which extracts water from the  
16 Basin.

17 2. City of Lancaster is a municipal corporation located within the County of Los Angeles,  
18 and within the geographic boundaries of the Basin.

19 3. City of Palmdale is a municipal corporation located within the County of Los Angeles,  
20 and within the geographic boundaries of the Basin.

21 4. Littlerock Creek Irrigation District is a public agency which provides water to customers  
22 located within the geographic boundaries of the Basin and which extracts water from the Basin.

23 5. Los Angeles County Waterworks District 40 (hereinafter "District 40") is a public agency  
24 governed by the Los Angeles County board of Supervisors operating under Division 16 of the California  
25 Water Code. District 40 was established on November 4, 1993 to provide water service to the public  
26 within the Antelope Valley.

6. Palmdale Water District (hereinafter “Palmdale”) was formed as a public irrigation district in 1918 and operates under Division 11 of the California Water Code and is producing water from the Antelope Valley Water Supply and selling it to its customers.

7. Rosamond Community Services District (hereinafter “Rosamond”) is a County Water District voted into being in 1966 , and operating under Division 12 of the California Water Code to provide water for domestic, irrigation, and fire flow, collection and treatment of waste and storm water, maintenance of street lights, graffiti abatement and parks and recreation.

8. Palm Ranch Irrigation District is a public agency which provides water to customers located within the geographic boundaries of the Basin and which extracts water from the Basin.

9. Quartz Hill Water District (hereinafter “Quartz Hill”) is a county water district organized and operating under Division 12 of the California Water Code and is producing water from the Antelope Valley Water Supply and selling it to its customers.

10. Cross-Complainant Crystal Organic Farms (hereinafter “Crystal”) is a limited liability company that owns and leases overlying land within the Antelope Valley. Crystal owns and operates water wells that draw water from beneath the land for use on the lands for irrigation. Crystal and its predecessors in interest, are currently, and have historically, pumped water from beneath the land for farming.

11. Cross-Complainant is ignorant of the true names and capacities of cross-defendants sued herein as ROES 1-200, inclusive, and therefore sue these cross-defendants by such fictitious names. Cross-Complainant will amend this Cross-Complaint to allege their true names and capacities when ascertained. Each reference in this Cross-Complaint to "Purveyors," "the Purveyors," or a specifically named cross-defendant, refers also to all cross-defendants sued under fictitious names.

12. Cross-Complainant, is informed and believes, and thereon alleges, that Rosamond, District 40, Palmdale and Quartz Hill (collectively “the Purveyors”) began pumping appropriated surplus water from the Antelope Valley to provide water for their municipal and industrial water customers. At

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1 the onset of pumping by the Purveyors, the same was lawful and permissive and did not immediately  
2 nor prospectively invade or impair any overlying right.

3 13. Over time, the urban areas within the Antelope Valley continued to expand and grow both  
4 in land area and population, and thus, over time the Purveyors increased, and today, continue to increase  
5 their demand for water. Cross-Complainant, is informed and believes, and thereon alleges, that at some  
6 as yet unidentified historical point, the aggregate extractions of groundwater from the Antelope Valley  
7 began to exceed the safe yield of the Valley. Despite the potential for damage to the water supply and  
8 the rights of owners of real property within the Valley, the Purveyors, with knowledge continued to  
9 extract groundwater from the common supply, and increased and continue to increase their extractions  
10 of groundwater over time. The Purveyors continued the act of pumping with the knowledge that the  
11 continued extractions were damaging, long term, the Antelope Valley and in the short term, impairing  
12 the rights of the property owners, including the rights in the land owned by Crystal, which is overlying  
13 and within the Antelope Valley.

14 14. Cross-Complainant, is informed and believes, and thereon alleges, that the Purveyors  
15 pumped and continue to pump water in excess of the safe yield with the knowing intent and belief that  
16 they could take by claim of prescription, without compensation, the water rights of Crystal and all  
17 landowners overlying the Antelope Valley. Additionally, all Purveyors continued to pump ever  
18 increasing quantities of groundwater, knowing that even if their prescriptive claims failed, they could  
19 preserve the right to continue their pumping under a claim of an intervening public use. Despite the  
20 knowing intent to take the overlying property landowners' rights, no Purveyor took any steps calculated  
21 and intended to inform or otherwise notify any landowner of their adverse and hostile claim or that their  
22 pumping of groundwater was an invasion of and a taking of the landowners' property rights.

23 15. During the material time that each Purveyor was pumping, none physically trespassed  
24 upon nor invaded any overlying property. No Purveyor stopped, restricted, interfered with or physically  
25 or by regulation reduced Crystal's or any overlying landowner's right and ability to pump groundwater  
26 from the Antelope Valley. No Purveyor ever took any affirmative action reasonably calculated to  
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1 inform or notify any overlying landowner that the Purveyor intended to take or were taking by  
2 prescription the overlying water rights.

3 16. Between 1960 and 1980, the Antelope Valley East Kern Water Agency (hereinafter  
4 "AVEK") was created to import water from northern California to southern California. As part of its  
5 operations, AVEK, in addition to other water importers, have brought and now brings imported water  
6 to the Antelope Valley. This imported water was at all material times available for purchase by the  
7 Purveyors. Based upon information and belief, it is alleged that the Purveyors consciously chose to not  
8 purchase all of the available higher priced imported water to meet their water needs and instead chose  
9 to continue to pump and to increase their extractions of groundwater from the Antelope Valley, because,  
10 despite the damage to the Valley, groundwater was cheaper than the imported water.

11 17. In late 2004, the Los Angeles County Board of Supervisors unanimously voted to  
12 authorize District 40 to file and prosecute the present legal actions which seeks a judicial declaration that  
13 District 40 has obtained, without compensation and without due process notice, the overlying  
14 landowner's appurtenant water rights through the common law doctrine of prescription. Based on this  
15 authorization, District 40 filed these actions.

16 18. Crystal did not have actual knowledge that any Purveyor's pumping of groundwater was  
17 adverse to or hostile to its present and/or future priority rights.

18 19. Based upon information and belief, no landowner had actual knowledge that any  
19 Purveyor's pumping of groundwater was adverse to or hostile to its present and/or future priority rights.

20 20. In January 2006, the Purveyors identified herein jointly filed a Cross-Complaint in place  
21 of the original Complaint seeking to obtain a judicial declaration that they had obtained the overlying  
22 landowner's water rights, without compensation, within the Antelope Valley through the common law  
23 doctrine of prescription.

24 21. In January 2007, the Purveyors identified herein jointly filed the present First Amended  
25 Cross-Complaint in place of the Cross-Complaint and in place of the original Complaint seeking to

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1 obtain a judicial declaration that they had obtained the overlying landowner's water rights, without  
2 compensation, within the Antelope Valley through the common law doctrine of prescription.

3 22. None of the Purveyors have invoked the power of eminent domain nor paid any  
4 compensation to Crystal or any other overlying owner of land located within Antelope Valley for the  
5 property rights they have allegedly and knowingly claimed to have taken.

6 **First Cause of Action**

7 (Declaratory Relief Against Los Angeles County Waterworks District 40 to Determine Validity and  
8 Applicability of Statute)

9 23. Cross-Complainant refers to and incorporates, as though fully set forth herein, paragraphs  
10 1 through 22, inclusive, of this Cross-Complaint.

11 24. In or about 1951, the Legislature of the State of California enacted Sections 55000 et seq.  
12 of the Water Code, known as the County Waterworks District Law, hereinafter referred to as the  
13 "Waterworks Statutes." In 1953, the legislature added section 55370. This section, since its adoption has  
14 been, and now is, in full force and effect. This statute provides as follows:

15 "A district may acquire property by purchase, gift, devise, exchange, descent, and  
16 eminent domain. The title to all property which may have been acquired for a district  
shall be vested in the district."

17 25. District 40 contends that section 55370 of the Water Code does not apply to, or limit in  
18 any manner, its acquisition of any overlying landowner's water rights within the Antelope Valley and  
19 that, despite its status as a public entity, Article 1, Section 19 of the California Constitution, and the 5th  
20 Amendment to the Federal Constitution, it is nonetheless empowered to acquire private property for  
21 public use through the common law doctrine of prescription, without due process and without  
22 compensation.

23 26. Crystal contends that the statute is constitutional, and when conjoined with the California  
24 state and Federal Constitutions, limits the method, manner and mode by which District 40 may acquire  
25 private property for a public use and the rights appurtenant thereto. By virtue of the actions of District  
26 40 and the Board of Supervisors as set forth above, an actual controversy has arisen and now exists

1 between District 40 and Crystal concerning their respective rights, duties, and responsibilities under that  
2 statute and both Constitutions.

3 27. Crystal desires a declaration of its rights with respect to the constitutionality and  
4 application or nonapplication of the statute and asks the court to make a declaration of such rights,  
5 duties, and responsibilities, and to make a declaration as to the validity and constitutionality of the  
6 statute. Crystal seeks a declaration that the effort of the district to deprioritize Crystal's overlying right  
7 is, without compensation, ultra vires and unconstitutional. Such a declaration is necessary and  
8 appropriate at this time in order that Crystal's property rights be protected and to ensure that District 40  
9 proceeds according to the law and Constitution of the state and the Federal Constitution. There are no  
10 administrative remedies available to Crystal.

11 28. A timely declaration by this court is urgent for the following reasons: by way of this  
12 action District 40 is seeking to adjudicate, enjoin and take the property rights of Crystal and thousands  
13 of other parties who own property overlying the Antelope Valley, absent a timely declaration by this  
14 court, an injustice will result from the improper awarding of property rights to District 40 should this  
15 statute be later found to apply to District 40.

16 29. Crystal and numerous other private parties will suffer irreparable and lasting injury  
17 unless declaratory relief is granted.

### 18 **Second Cause of Action**

19 (Declaratory Relief Against Palmdale Water District to Determine Validity of Statute)

20 30. Cross-Complainant refers to and incorporates, as though fully set forth herein, paragraphs  
21 1 through 22, inclusive, of this Cross-Complaint.

22 31. In or about 1943, the Legislature of the State of California enacted Sections 20500 et seq.  
23 of the Water Code, known as the Irrigation District Law, hereinafter referred to as the "Irrigation

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1 Statutes." In 1943, the legislature added section 22456. This section, since its adoption has been, and  
2 now is, in full force and effect. This statute provides as follows:

3 "The district may exercise the right of eminent domain to take any property necessary to  
4 carry out its purposes."

5 32. Palmdale contends that section 22456 of the Water Code does not act to limit, in any  
6 manner, the mode or method of acquiring an overlying landowner's water rights within the Antelope  
7 Valley and that, despite its status as a public entity, Article 1, Section 19 of the California Constitution,  
8 and the 5th Amendment to the Federal Constitution, it is nonetheless empowered to acquire private  
9 property for public use through the common law doctrine of prescription, without due process and  
10 without compensation.

11 33. Crystal contends that the statute is constitutional, and when conjoined with the California  
12 state and Federal Constitutions, limits the method, manner and mode by which Palmdale may acquire  
13 private property for a public use and the rights appurtenant thereto by declaring that the only legal right  
14 of the district to take possession of land without consent of the owners is under its power of eminent  
15 domain. By virtue of Palmdale's actions as set forth above, an actual controversy has arisen and now  
16 exists between Palmdale and Crystal concerning their respective rights, duties, and responsibilities under  
17 that statute and both Constitutions.

18 34. Crystal desires a declaration of its rights with respect to the constitutionality and  
19 application or nonapplication of the statute and asks the court to make a declaration of such rights,  
20 duties, and responsibilities, and to make a declaration as to the validity and constitutionality of the  
21 statute. Crystal seeks a declaration that the effort of the district to deprioritize Crystal's overlying right  
22 is, without compensation, ultra vires and unconstitutional. Such a declaration is necessary and  
23 appropriate at this time in order that Crystal's property rights be protected and to ensure that Palmdale  
24 proceeds according to the law and Constitution of the state and the Federal Constitution. There are no  
25 administrative remedies available to Crystal.

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35. A timely declaration by this court is urgent for the following reasons: by way of this action Palmdale is seeking to adjudicate, enjoin and take the property rights of Crystal and thousands of other parties who own property overlying the Antelope Valley, absent a timely declaration by this court, an injustice will result from the improper awarding of property rights to Palmdale should this statute be later found to limit the method by which Palmdale may forcibly acquire property rights.

36. Crystal and numerous other private parties will suffer irreparable and lasting injury unless declaratory relief is granted.

### Third Cause of Action

(Declaratory Relief Against Rosamond and Quartz Hill to Determine Validity of Statute)

37. Cross-Complainant refers to and incorporates, as though fully set forth herein, paragraphs 1 through 22, inclusive, of this Cross-Complaint.

38. In or about 1949, the Legislature of the State of California enacted Sections 30000 et seq. of the Water Code, known as the County Water District Law, hereinafter referred to as the "County Water Statutes." In 1975, the legislature amended section 31040. This amended statute became operative on July 1, 1976 and since then, has been, and now is, in full force and effect. This section provides as follows:

“A district may take any property necessary to carry out the business of the district by grant, purchase, gift, devise, condemnation, or lease with or without the privilege of purchase.”

39. Rosamond and Quartz Hill contend that section 31040 of the Water Code does not act to limit, in any manner, the mode or method by which they may acquire an overlying landowner's water rights within the Antelope Valley and that, despite their status as public entities, Article 1, Section 19 of the California Constitution, and the 5th Amendment to the Federal Constitution, they are nonetheless empowered to take private property for public use through the common law doctrine of prescription, without due process and without compensation.

40. Crystal contends that the statute is constitutional, and when conjoined with the California state and Federal Constitutions, limits the method, manner and mode by which Rosamond and Quartz

1 Hill may acquire private property for a public use and the rights appurtenant thereto by declaring that  
2 the only legal right of the districts to take possession of property without consent of the owners is under  
3 its power of eminent domain. By virtue of Rosamond's and Quartz Hill's actions as set forth above, an  
4 actual controversy has arisen and now exists between Rosamond, Quartz Hill and Crystal concerning  
5 their respective rights, duties, and responsibilities under that statute and both Constitutions.

6 41. Crystal desires a declaration of its rights with respect to the constitutionality and  
7 application or nonapplication of the statute and asks the court to make a declaration of such rights,  
8 duties, and responsibilities, and to make a declaration as to the validity and constitutionality of the  
9 statute. Crystal seeks a declaration that the effort of the district to deprioritize Crystal's overlying right  
10 is, without compensation, ultra vires and unconstitutional. Such a declaration is necessary and  
11 appropriate at this time in order that Crystal's property rights be protected and to ensure that Rosamond  
12 and Quartz Hill proceed according to the law and Constitution of the state and the Federal Constitution.  
13 There are no administrative remedies available to Crystal.

14 42. A timely declaration by this court is urgent for the following reasons: by way of this  
15 action Rosamond and Quartz Hill are seeking to adjudicate, enjoin and take the property rights of Crystal  
16 and thousands of other parties who own property overlying the Antelope Valley, absent a timely  
17 declaration by this court, injustice will result from the improper awarding of property rights to  
18 Rosamond and/or Quartz Hill should this statute be later found to apply.

19 43. Crystal and numerous other private parties will suffer irreparable and lasting injury  
20 unless declaratory relief is granted.

#### 21 **Fourth Cause of Action**

22 (Declaratory Relief Against All Cross-Defendants to Determine Applicability of California  
23 Constitution.)

24 44. Cross-Complainant refers to and incorporates, as though fully set forth herein, paragraphs  
25 1 through 43, inclusive, of this Cross-Complaint.

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

“Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.”

46. The Purveyors contend that, even though they are political subdivisions who are vested with the power of eminent domain, they are nonetheless legally permitted to knowingly take private property for public use without first paying just compensation.

47. Crystal contends that the use of the word “only” within Article 1 Section 19 is a clear temporal limitation on the Purveyor’s lawful ability to knowingly take private property for the public benefit to only those instances where just compensation has first been paid. By virtue of the Purveyor’s actions as set forth above, an actual controversy has arisen and now exists between the Purveyors and Crystal concerning their respective rights, duties, and responsibilities.

48. Crystal desires a declaration of its rights with respect to the application or nonapplication of Article 1 Section 19 to the Purveyors and asks the court to make a declaration of such rights, duties, and responsibilities. Such a declaration is necessary and appropriate at this time in order that Crystal's property rights may be protected and to ensure that the municipal Purveyors proceed according to the California Constitution. There are no administrative remedies available to Crystal.

49. A timely declaration by this court is urgent for the following reasons: by way of this action the Purveyors are seeking to adjudicate, enjoin and take the property rights of Crystal and thousands of other parties who own property overlying the water supply without first paying just compensation therefor, absent a timely declaration by this court, injustice will result from the improper taking of the Crystal's property rights should Article 1 section 19 of the California Constitution be found to apply.

50. Crystal and numerous other private parties will suffer irreparable and lasting injury unless declaratory relief is granted.

1 **Fifth Cause of Action**

2 (Declaratory Relief Against All Cross-Defendants to Determine Applicability of Constitutional  
3 Article.)

4 51. Cross-Complainant refers to and incorporates, as though fully set forth herein, paragraphs  
5 1 through 50, inclusive, of this Cross-Complaint.

6 52. Article 1 Section 19 of the California Constitution provides as follows:

7 “Private property may be taken or damaged for public use only when just compensation,  
8 ascertained by a jury unless waived, has first been paid to, or into court for, the owner.  
9 The Legislature may provide for possession by the condemnor following commencement  
of eminent domain proceedings upon deposit in court and prompt release to the owner  
of money determined by the court to be the probable amount of just compensation.”

10 53. The Purveyors contend that, even though they are political subdivisions who are vested  
11 with the power of eminent domain, they are nonetheless legally allowed to knowingly take private  
12 property for public use through prescription or adverse possession and without compensation.

13 54. Crystal contends that the use of the word “only” within Article 1 Section 19 is a clear  
14 limitation on the Purveyor’s authority and the manner in which they may take private property for the  
15 public benefit. That this limitation forecloses the ability of any governmental entity to knowingly take  
16 or acquire private property for a public use under a theory of prescription or adverse possession. By  
17 virtue of the Purveyor’s actions as set forth above, an actual controversy has arisen and now exists  
18 between the Purveyors and Crystal concerning their respective rights, duties, and responsibilities.

19 55. Crystal desires a declaration of its rights with respect to the application or nonapplication  
20 of Article 1 Section 19 to the Purveyors’ prescription claims and asks the court to make a declaration  
21 of such rights, duties, and responsibilities. Such a declaration is necessary and appropriate at this time  
22 in order that Crystal’s property rights may be protected and to ensure that the municipal Purveyors may  
23 proceed according to the California Constitution. There are no administrative remedies available to  
24 Crystal.

25 56. A timely declaration by this court is urgent for the following reasons: by way of this  
26 action the Purveyors are seeking to adjudicate and enjoin the property rights of Crystal and thousands  
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1 of other parties by avoiding the due process protections provided to these landowners under Code of  
2 Civil Procedure sections 1230.010 through 1237.040. Absent a timely declaration by this court, injustice  
3 will result from the improper use and adjudication of the cross-defendants' property rights should Article  
4 1 section 19 of the California Constitution be found to apply.

5 57. Crystal and numerous other private parties will suffer irreparable and lasting injury unless  
6 declaratory relief is granted.

### 7 **Sixth Cause of Action**

8 (Declaratory Relief Against All Cross-Defendants to Determine Applicability of Constitution.)

9 58. Cross-Complainant refers to and incorporates, as though fully set forth herein, paragraphs  
10 1 through 57, inclusive, of this Cross-Complaint.

11 59. Article I Section 7 of the California Constitution provides in pertinent part as follows:

12 "A person may not be deprived of life, liberty, or property without due process of law or  
13 denied equal protection of the laws; . . ."

14 The 5<sup>th</sup> Amendment to the Constitution as applied by the 14<sup>th</sup> Amendment in relevant part  
15 provides:

16 "No person shall . . . be deprived of life, liberty, or property, without due process of law;  
nor shall private property be taken for public use, without just compensation."

17 60. The Purveyors contend that, even though they are political subdivisions who are uniquely  
18 invested with the power of eminent domain, they are allowed to surreptitiously take private property for  
19 public use by prescription or adverse possession without providing substantive or procedural due process  
20 of law to each overlying landowner. The Purveyors contend that prescription commences with  
21 "overdraft," and that presumed or constructive notice is sufficient.

22 61. Crystal contends that the Article I, Section 7, of the State Constitution, and the 5<sup>th</sup>  
23 Amendment as applied by the 14<sup>th</sup> Amendment of the Federal Constitution, mandates that governmental  
24 entities must provide substantive and procedural due process of law when taking private property for a  
25 public use. Crystal contends that the prescriptive period cannot commence until the governmental entity  
26 takes affirmative action designed and intended to give notice and inform the overlying landowners of  
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1 the governmental entity's adverse and hostile claim. Crystal further contends that this limitation  
2 forecloses the ability of any governmental agency to take or acquire private property for a public use  
3 when constitutionally sufficient due process notice has not been provided to the land owner. By virtue  
4 of the Purveyor's actions as set forth above, an actual controversy has arisen and now exists between the  
5 Purveyors and Crystal concerning their respective rights, duties, and responsibilities.

6 62. Crystal desires a declaration of its rights with respect to the application or nonapplication  
7 of Article I Section 7 and the 5<sup>th</sup> Amendment to the U.S. Constitution to the Purveyors' prescription  
8 claims and asks the court to make a declaration of such rights, duties, and responsibilities. Such a  
9 declaration is necessary and appropriate at this time in order that Crystal's property rights may be  
10 protected and to ensure that the municipal Purveyors may proceed according to the California  
11 Constitution. There are no administrative remedies available to Crystal.

12 63. A timely declaration by this court is urgent for the following reasons: by way of this  
13 action the Purveyors are seeking to adjudicate and enjoin the property rights of Crystal and thousands  
14 of other parties by avoiding the due process protections provided to these landowners under Article I  
15 Section 7, the 5<sup>th</sup> and 14<sup>th</sup> Amendments and Code of Civil Procedure sections 1230.010 through  
16 1237.040. Absent a timely declaration by this court, injustice will result from the improper use and  
17 adjudication of Crystal's property rights should the foregoing constraints and statutory mandate be found  
18 applicable.

19 64. Crystal and numerous other private parties will suffer irreparable and lasting injury  
20 unless declaratory relief is granted.

### 21 **Seventh Cause of Action**

22 (Declaratory Relief Against All Cross-Defendants.)

23 65. Cross-Complainant refers to and incorporates, as though fully set forth herein, paragraphs  
24 1 through 64, inclusive, of this Cross-Complaint.

25 66. Crystal is the owner and/or lessee of real property located within the Antelope Valley.  
26 Located on Crystal's property are water wells which produce water from the groundwater supply.

1 Crystal and or its predecessors in interest, have continually produced water from these wells without  
2 restriction and in quantities as were needed to perform its farming and irrigation operations from year  
3 to year.

4 67. Based on information and belief, it is alleged that Purveyors all pump groundwater from  
5 the Antelope Valley and then sell it to other individuals and entities who reside within Kern County and  
6 Los Angeles Counties.

7 68. An actual controversy has arisen and now exists between Crystal and the Purveyors  
8 concerning their respective rights and duties in that the Purveyors contend that they have been pumping  
9 water during a continuous 5 year period during which the common supply has been in a state of  
10 overdraft; that this pumping has resulted in a reversal of the common law legal priority granted to  
11 overlying land owners pursuant to the common law doctrine of prescription. Whereas, Crystal disputes  
12 this contention and contends that by continuing to pump groundwater from the wells on its land, and by  
13 continuing to thus meet all of the water needs to perform its farming operations, Crystal has preserved  
14 and maintained its priority rights to the use of groundwater.

15 69. Crystal desires a judicial determination of each party's rights and duties, and a declaration  
16 as to the status of each party's priority rights to the water in the Valley whether they be overlying,  
17 appropriative or prescriptive.

18 70. A judicial declaration is necessary and appropriate at this time under the circumstances  
19 in order that Crystal may ascertain its rights and duties relating to production of water from the Antelope  
20 Valley.

### 21 **Eighth Cause of Action**

22 (Declaratory Relief Against All Cross-Defendants.)

23 71. Cross-Complainant refers to and incorporates, as though fully set forth herein, paragraphs  
24 1 through 70, inclusive, of this Cross-Complaint.

25 72. AVEK and others provide the Antelope Valley with water imported from northern  
26 California. This imported water was and is available for purchase by the Purveyors.



1           73.     Despite having knowledge that the pumping of groundwater in excess of the safe yield  
2 caused damage, and despite the knowledge and belief that continued pumping would damage the rights  
3 of the landowners whose property overlies the water supply, the Purveyors have failed and refused to  
4 slow, stop or reduce their groundwater extractions from the supply and/or to supplement or replace their  
5 water needs from the available imported AVEK water.

6           74.     The California Constitution, Article X, section 2 provides, in pertinent part, as follows:

7            “It is hereby declared that because of the conditions prevailing in this State the general  
8 welfare requires that the water resources of the State be put to beneficial use to the fullest  
9 extent of which they are capable, and that the waste or unreasonable use or unreasonable  
10 method of use of water be prevented, and that the conservation of such waters is to be  
11 exercised with a view to the reasonable and beneficial use thereof in the interest of the  
12 people and for the public welfare. The right to water or to the use or flow of water in or  
from any natural stream or water course in this State is and shall be limited to such water  
as shall be reasonably required for the beneficial use to be served, and such right does not  
and shall not extend to the waste or unreasonable use or unreasonable method of use or  
unreasonable method of diversion of water. . . .”

13           75.     An actual controversy has arisen and now exists between Crystal and each Purveyor  
14 concerning their respective rights and duties in that Crystal contends that the Purveyor’s continued  
15 dependance on, and use of, the groundwater, their continued and increased extractions of groundwater  
16 from the common supply, with knowledge that the extractions exceed the safe yield, and their failure  
17 and/or refusal to take all of the available imported water and the method and use of groundwater taken,  
18 is unreasonable and constitutes a waste in violation of Article X, Section 2 of the California Constitution.  
19 The Purveyors dispute these contentions and contend that their dependance on groundwater, their  
20 continued and increasing extractions of groundwater from the Antelope Valley in excess of the safe yield  
21 and their failure and refusal to take all of the available imported water is reasonable and does not  
22 constitute waste of groundwater and/or available imported water under Article X, Section 2 of the  
23 California Constitution.

24           76.     Crystal desires a declaration of its rights with respect to the constitutionality and  
25 application or nonapplication of Article X, Section 2 to the Purveyors’ actions and asks the court to make  
26 a declaration of such rights, duties, and responsibilities, and to make a declaration as to the validity and  
27

1 constitutionality of the Article X, Section 2. Such a declaration is necessary and appropriate at this time  
2 in order that Crystal's property rights may be protected and to ensure that the Purveyors may proceed  
3 under the law and cause no further damage to Crystal or property overlying the water supply. There are  
4 no administrative remedies available to Crystal.

5 77. A timely declaration by this court is urgent for the following reasons: by way of this  
6 action, the Purveyors are seeking to have the court ratify their method and choice of water usage and  
7 declare that they have the right to continue to extract groundwater from the Valley in excess of the safe  
8 yield and to continue to cause damage to the Valley itself as well as to the land overlying the water  
9 supply, absent a timely declaration by this court, an injustice will result from the improper validation of  
10 the Purveyors' water usage should this constitutional provision be found to apply to the Purveyors.

11 78. Crystal and numerous other private parties will suffer irreparable and lasting injury  
12 unless declaratory relief is granted.

### 13 **Ninth Cause of Action**

14 (Declaratory Relief Against All Cross-Defendants.)

15 79. Cross-Complainant refers to and incorporates, as though fully set forth herein, paragraphs  
16 1 through 78, inclusive, of this Cross-Complaint.

17 80. On January 8, 2006, the Purveyors filed a Cross-Complaint in this matter seeking to  
18 implement policy objectives which were stated in paragraph 1 as follows:

19 "To promote the general public welfare in the Antelope Valley; protect the public water  
20 supplier's rights to pump groundwater and provide water to the public; protect the  
21 Antelope Valley from a loss of the public's water supply; prevent degradation of the  
quality of the public groundwater supply; stop land subsidence; and avoid higher water  
costs to the public."

22 81. In order to implement these policy objectives, the Purveyors have brought a cause of  
23 action against all owners of property overlying the Antelope Valley seeking the imposition of a "physical  
24 solution" that would manage the groundwater supply by augmenting the water supply, manage the  
25 pumping and storage of water and impose monetary assessments on water extraction from the supply.

26 ///

82. An actual controversy has arisen and now exists between Crystal and the Purveyors concerning their respective rights and duties in that Crystal contends that it is a violation of the Constitutional doctrine of the separation of powers for this Court to implement the Purveyors' policy objectives as they are by nature legislative actions, subject to the provisions of the California Environmental Quality Act (hereinafter "CEQA"; Public Resources Code sections 21000-21177.) That the requirements of CEQA are both procedural (requiring notice, disclosure and a review process) and substantive (by requiring public agencies to take affirmative measures to avoid environmental harm and to also protect the citizens and landowners of the State of California.)

83. The Purveyors contend that they may use the judicial system to circumvent CEQA and impose by judicial fiat what should be a legislative policy. In doing so, they seek to avoid providing the public with the required disclosures and evaluations, and thereby deny Crystal and the public their procedural and substantive protections required by CEQA.

84. Crystal desires a judicial determination of the Purveyors' rights and duties, and a declaration as to the application of Public Resources Code sections 21000-21177 to any proposed water management plan sought to be implemented by judicial decree by the Purveyors. That the legislative protections afforded to the public under CEQA cannot be ignored or subverted by resorting to the court to implement the Purveyor's plan, and that such a request of this Court induces a violation of the doctrine of the separation of powers.

85. A judicial declaration is necessary and appropriate at this time under the circumstances in order that Crystal may ascertain its rights and duties relating to production of water from the Antelope Valley.

### Tenth Cause of Action

(Declaratory Relief Against All Cross-Defendants.)

86. Cross-Complainant refers to and incorporates, as though fully set forth herein, paragraphs 1 through 85, inclusive, of this Cross-Complaint.

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1           87.     On January 8, 2006, the Purveyors filed a Cross-Complaint in this matter seeking to  
2 implement policy objectives which were stated in paragraph 1 as follows:

3           “To promote the general public welfare in the Antelope Valley; protect the public water  
4 supplier’s rights to pump groundwater and provide water to the public; protect the  
5 Antelope Valley from a loss of the public’s water supply; prevent degradation of the  
6 quality of the public groundwater supply; stop land subsidence; and avoid higher water  
7 costs to the public.”

8           88.     In order to implement these policy objectives, the Purveyors have brought a cause of  
9 action against all owners of property overlying the Antelope Valley seeking the imposition of a “physical  
10 solution” that would manage the groundwater supply by augmenting the water supply, manage the  
11 pumping and storage of water and impose monetary assessments on water extraction from the supply.

12           89.     An actual controversy has arisen and now exists between Crystal and the Purveyors  
13 concerning their respective rights and duties in that Crystal contends that it is a violation of the  
14 Constitutional doctrine of the separation of powers for this Court to implement the Purveyors’ policy  
15 objectives as they are by nature legislative and executive actions that are within the power of the  
16 Purveyors to enact by following the statutory requirements set forth in Water Code sections 10700-  
17 10795.20. These sections of the Water Code provide the procedural method by which the Purveyors  
18 must implement a ground water management plan and also ensures constitutionally required process  
19 through the required public hearings, notice, and publication of the proposed management plan, and the  
20 opportunity for public discourse, input and objection.

21           90.     The Purveyors contend that they may use the judicial system to impose by judicial fiat  
22 what would otherwise be done through legislative action. In doing so, they seek to avoid providing the  
23 public with the required notice, hearing and disclosures and deny them their procedural and substantive  
24 protections provided by the Constitution and the Water Code sections 10700-10795.20..

25           91.     Crystal desires a judicial determination of the Purveyors’ rights and duties, and a  
26 declaration as to the application and propriety of Water Code sections 10700-10795.20 to the proposed  
27 water management project sought to be implemented by the Purveyors. That the legislative protections

1 afforded to the public under the Water Code may not be ignored or subverted by the filing of a legal  
2 action by a public agency, and that such action requests this court to violate the doctrine of separation  
3 of powers.

4 92. A judicial declaration is necessary and appropriate at this time under the circumstances  
5 in order that Crystal may ascertain its rights and duties relating to its continued production of water from  
6 the Antelope Valley.

7 **Eleventh Cause of Action**

8 (Declaratory Relief Against All Cross-Defendants.)

9 93. Cross-Complainant refers to and incorporates, as though fully set forth herein, paragraphs  
10 1 through 92, inclusive, of this Cross-Complaint.

11 94. Commencing in early 2000, each Purveyor has claimed that the Antelope Valley was in  
12 a state of “overdraft” for more than five (5) years prior to October 1999.

13 95. Based on information and belief, it is alleged that immediately prior to, during and after  
14 the same claimed five year period of “overdraft” claimed by the Purveyors, the Purveyors did approve  
15 and have continued to approve the issuance of well permits to Crystal and others, have approved large  
16 scale developments and have authorized others and have thus increased the demand for groundwater  
17 pumped by the Purveyors from the Antelope Valley. In performing their ministerial and discretionary  
18 functions, each Purveyor has asserted that the additional well permits, hook ups and added residential,  
19 industrial and commercial developments, and the concomitant increased pumping of ground water  
20 caused thereby, would not, and did not, have under CEQA or otherwise an adverse affect on the water  
21 supply available from the Antelope Valley.

22 96. An actual controversy has arisen and now exists between Crystal and each Purveyor  
23 concerning their respective rights and duties in that Crystal contends that the Purveyors are barred from  
24 claiming that the Antelope Valley is in a state of “overdraft” during the time that they have authorized,  
25 permitted and approved new and increased pumping from the supply pursuant to Evidence Code section

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1 623. The Purveyors deny Crystal's contentions and assert that they may assert overdraft as an element  
2 of their prescription claims. Section 623 provides as follows:

3 "Whenever a party has, by his own statement or conduct, intentionally and deliberately  
4 led another to believe a particular thing true and to act upon such belief, he is not, in any  
5 litigation arising out of such statement or conduct, permitted to contradict it."

6 97. Crystal desires a judicial determination of its rights and duties, and a declaration as to the  
7 application of the doctrine of equitable estoppel to the Purveyors' ability to claim that the Antelope  
8 Valley was in a state of overdraft when the same Purveyors were issuing well permits, will serve letters  
9 and adding new water customers and authorizing new large scale development projects under the  
10 assertion that there was an available, adequate and appropriate water supply in the Antelope Valley to  
11 sustain these permits and projects.

12 98. A judicial declaration is necessary and appropriate at this time under the circumstances  
13 in order that Crystal may ascertain its rights and duties relating to its real property that overlies the  
14 Antelope Valley.

### 15 **Twelfth Cause of Action**

16 (Public and Private Nuisance Against All Cross-Defendants.)

17 99. Cross-Complainant refers to and incorporates, as though fully set forth herein, paragraphs  
18 1 through 98, inclusive, of this Cross-Complaint.

19 100. Crystal is the owner of land overlying the Antelope Valley. Each of the Purveyors are  
20 users of water pumped from the Antelope Valley which underlies Crystal's land.

21 101. Initially, the Purveyors, and each of them, legally used, and maintained water wells that  
22 extracted water from the Antelope Valley for public distribution. Over time the increased urbanization  
23 and the Purveyors continued and increasing extractions exceeded their legal boundaries, such that the  
24 water extracted from the supply has exceeded the ability to naturally recharge the water supply. The  
25 Purveyors have claimed to have knowledge that this continuous and increasing use caused a progressive  
26 and chronic decline in long term water supply and the available natural supply is being and has been  
27

1 chronically depleted. Based on the present trends, demand will continue to exceed supply which will  
2 cause damage to private rights and ownership of real property.

3 102. The aforementioned extractions of groundwater from the supply constitute a continuing  
4 progressive nuisance within the meaning of Section 3479 of the Civil Code, in that it the Purveyors have  
5 created a condition in the future supply that is injurious to Crystal's right, in the future, to freely use and  
6 exercise its overlying property rights to extract groundwater from the common supply in the customary  
7 manner. The Purveyors are attempting, through the combined efforts of their pumping groundwater and  
8 this present legal action, to take, and or alter, Crystal's overlying property rights to use and access the  
9 Antelope Valley supply.

10 103. In early 2000, the Purveyors asserted that the available groundwater supply was in  
11 jeopardy and increased pumping would harm Antelope Valley Water Supply. Despite this assertion, the  
12 Purveyors, and each of them, have continued to and have increased their pumping, despite the  
13 knowledge of the damage caused by that pumping. The Purveyors have refused, and continue to refuse,  
14 to stop or reduce their pumping despite the damage to the supply and to Crystal's property rights.

15 104. This nuisance affects, at the same time, a substantial number of persons in that, the  
16 Purveyors claim that the continued pumping in excess of the supply's safe yield is, and will, eventually  
17 cause a chronic decline in water levels and the available natural supply will be chronically depleted, that,  
18 based on the present trends, demand will continue to exceed supply which will continue to cause a  
19 reduction in the long term supply. Additionally, the continued pumping by the Purveyors under these  
20 conditions will result in the unlawful obstruction of the overlying landowner's rights to use the water  
21 supply in the customary manner.

22 105. The Purveyors, and each of them, have threatened to and will, unless restrained by this  
23 court, continue to pump groundwater in increasing amounts, and each and every act has been, and will  
24 be, without the consent, against the will, and in violation of the rights of Crystal.

25 106. As a proximate result of the nuisance created by the Purveyors, and each of them, Crystal  
26 has been, and will be, damaged in a sum to be proven at trial.

107. Unless the Purveyors, and each of them, are restrained from increasing their pumping from the supply by order of this court, it will be necessary for plaintiff to commence many successive actions against each Purveyor, and each of them, to secure a project by project injunction and/or compensation for the continuing and repeated damages sustained, thus requiring a multiplicity of suits.

108. Should the Purveyors continue to increase their pumping without replenishing the Valley's water supply, Crystal will suffer irreparable injury in that the usefulness and economic value of Crystal's overlying property right will be substantially diminished and Crystal will be deprived of the comfortable, reasonable and beneficial use and enjoyment of its property.

109. In maintaining this nuisance, the Purveyors, and each of them, are, and have been, acting with full knowledge of the consequences and damage being caused to Crystal, and their conduct is willful, oppressive, malicious and designed to interfere with and take the Crystal's right to freely access the water supply in its customary manner. Accordingly, each Purveyor has intentionally dirtied hands and no right to involve equity in these actions.

### Thirteenth Cause of Action

(42 U.S.C. A 1983 Against All Cross-Defendants.)

110. Cross-Complainant refers to and incorporates, as though fully set forth herein, paragraphs 1 through 109, inclusive, of this Cross-Complaint.

111. This cause of action is brought under 42 U.S.C. § 1983 to recover damages against the Purveyors for violation of Crystal's right under the 5th and Fourteenth Amendments of the United States Constitution through the Purveyors' taking of Crystal's private property for public use without paying just compensation and depriving Crystal of both substantive or procedural due process of law.

112. The Purveyors, and each of them are, and at all times mentioned in this cross-complaint were, governmental entities organized and operating in Los Angeles and/or Kern County and in the State of California. All are organized and existing under the laws of the State of California, with the capacity to sue and be sued.

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1           113. The Purveyors, and each of them, were, at all times mentioned in this cross-complaint,  
2 acting under color of state law.

3           114. At an as yet unidentified historical point in time, the Purveyors began pumping water  
4 from the Antelope Valley as permissive appropriators. Over the course of time, it is believed and  
5 therefore alleged, that the aggregate amount of water being extracted from the Valley began to exceed  
6 the safe yield resulting in a condition called "overdraft." Crystal is informed and believes and based  
7 thereon alleges, that the Purveyors had knowledge of the "overdraft" condition and nonetheless  
8 continued pumping and increased their pumping with the specific intent to impair and take all superior  
9 overlying property rights to extract groundwater, including that of Crystal. Each Purveyor continued to  
10 pump and increased its pumping of groundwater believing that given the intervention of the committed  
11 public use, that no injunction would issue to restrain and/or compel the Purveyor to reduce its  
12 dependence upon groundwater. Each Purveyor contends that despite its status as a governmental entity,  
13 it can nonetheless take private property for a public use under a theory of prescription and without  
14 compensation. Each Purveyor claims that presumed or constructive knowledge of the overdraft  
15 condition alone was sufficient to commence the running of the statutory prescriptive period. Each  
16 Purveyor did not undertake any affirmative action reasonably calculated and intended to provide notice  
17 and inform any affected landowner, including Crystal, of its adverse and hostile claim. Each Purveyor  
18 contends that it has taken the private property rights of Crystal and others, and have committed them to  
19 a public use, without following the Constitutional constraints imposed by Article 1, Section 19, of the  
20 California Constitution, and the eminent domain law, Code of Civil Procedure Section 1230.010 et seq.,  
21 and specifically, the substantive and procedural protections contemplated by Code of Civil Procedure  
22 Section 1245.230. The acts of the Purveyors were done under the color of state law with the intent of  
23 depriving Crystal of its property rights without substantive and procedural due process of law and to  
24 avoid payment of compensation to Crystal for the property rights taken, all in violation of the 5th and  
25 14th Amendments to the United States Constitution.

26 ///

115. Crystal is informed and believes and thereon alleges that it was subjected to a violation of its right to due process of law prior to the taking of its property and its right to receive just compensation when its property was taken for the public benefit. This violation was a direct result of the knowing customs, practices, and policies of the Purveyors to continue to pump in excess of the supply, to suppress the assertion of their adverse and hostile claim, and the resulting ever increasing intervening public use and dependance, without acceding to Constitutional limits.

116. The customs, practices, and policies of the Purveyors to prescript or adversely possess the property rights of property owners and/or to establish a nonenjoinable intervening use amounted to deliberate indifference to the rights of persons, such as Crystal, who stand to lose their rights to extract water from the Antelope Valley for use on their property through the actions of each Purveyor and all of them.

117. As a direct and proximate result of the acts of the Purveyors, Crystal has suffered injury, loss, and damage, including a cloud upon its title to its real property, a reduction in value, and the loss of its right in the future to extract and use groundwater from the Valley.

### First Cause of Action

WHEREFORE, cross-complainant prays for a declaratory judgment as follows:

1. That the court declare the respective rights, duties, and responsibilities of District 40 and Crystal under the statute in question and that by its declaration and judgment the court declare that the statute applies to District 40 in this matter, and that the statutes is constitutional and valid;

2. That District 40 and all others acting in or on its behalf, be enjoined from taking property or the rights attendant thereto in any manner not expressly set forth and authorized in the provisions of Water Code section 55370;

3. For costs of suit herein incurred; and

4. For such other and further relief as the court deems proper.

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**Second Cause of Action**

WHEREFORE, cross-complainant prays for a declaratory judgment as follows:

1. That the court declare the respective rights, duties, and responsibilities of Palmdale and Crystal under the statute in question and that by its declaration and judgment the court declare that the statute applies to Palmdale in this matter, and that the statutes is constitutional and valid;
2. That Palmdale and all others acting in or on its behalf, be enjoined from taking property or the rights attendant thereto in any manner not expressly set forth and authorized in the provisions of Water Code section 22456;
3. For costs of suit herein incurred; and
4. For such other and further relief as the court deems proper.

**Third Cause of Action**

WHEREFORE, cross-complainant prays for a declaratory judgment as follows:

1. That the court declare the respective rights, duties, and responsibilities of Rosamond and Quartz Hill under the statute in question and that by its declaration and judgment the court declare that Water Code section 31040 applies to Rosamond and Quartz Hill in this matter, and that the statute is constitutional and valid;
2. That Rosamond and Quartz Hill and all others acting in or on their behalf, be enjoined from taking property or the rights attendant thereto in any manner not expressly set forth and authorized in the provisions of Water Code section 31040;
3. For costs of suit herein incurred; and
4. For such other and further relief as the court deems proper.

**Fourth Cause of Action**

WHEREFORE, cross-complainant prays for a declaratory judgment as follows:

1. That the court declare the respective rights, duties, and responsibilities of the Purveyors under Article 1 Section 19 of the California Constitution and that by its declaration and judgment the

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1 court declare that Article 1 Section 19 applies to the Purveyors in this matter, and that just compensation  
2 is a prerequisite to any taking by each of these governmental entities;

3 2. That the Purveyors and all others acting in or on their behalf, be enjoined from taking  
4 property or the rights attendant thereto in any manner not expressly set forth and authorized in the  
5 provisions of Article 1 Section 19 of the California Constitution;

6 3. For costs of suit herein incurred; and

7 4. For such other and further relief as the court deems proper.

8 **Fifth Cause of Action**

9 WHEREFORE, cross-complainant prays for a declaratory judgment as follows:

10 1. That the court declare the respective rights, duties, and responsibilities of the Purveyors  
11 under Article 1 Section 19 of the California Constitution and that by its declaration and judgment the  
12 court declare that Article 1 Section 19 applies to the Purveyors in this matter, and that Section 19  
13 prohibits a governmental entity from taking private property for a public use without compensation  
14 under the doctrines of prescription or adverse possession;

15 2. That the Purveyors and all others acting in or on their behalf, be enjoined from taking  
16 property or the rights attendant thereto in any manner not expressly set forth and authorized in the  
17 provisions of Article 1 Section 19 of the California Constitution;

18 3. For costs of suit herein incurred; and

19 4. For such other and further relief as the court deems proper.

20 **Sixth Cause of Action**

21 WHEREFORE, cross-complainant prays for a declaratory judgment as follows:

22 1. That the court declare the respective rights, duties, and responsibilities of the Purveyors  
23 under Article 1 Section 7 of the California Constitution and that by its declaration and judgment the  
24 court declare that Article 1 Section 7 applies to the municipal Purveyors in this matter, and that Section  
25 7 prohibits a governmental entity from taking private property for a public use without providing due  
26 process of law to the individual whose property is being taken;

2. That the municipal Purveyors and all others acting in or on their behalf, be enjoined from taking property or the rights attendant thereto in any manner not expressly set forth and authorized in the provisions of Article 1 Section 7 of the California Constitution;

3. For costs of suit herein incurred; and

4. For such other and further relief as the court deems proper.

### Seventh Cause of Action

WHEREFORE, plaintiff prays judgment as follows:

1. For a declaration that Crystal's continued pumping has interrupted any period of adverse pumping by the Municipal Purveyors negating any claim of prescription and thereby preserving Crystal's overlying priority right to pump water from the Antelope Valley;

2. For costs of suit herein incurred; and

3. For such other and further relief as the court may deem proper.

### **Eighth Cause of Action**

WHEREFORE, cross-complainant prays for a declaratory judgment as follows:

1. That the court declare the respective rights, duties, and responsibilities of the Purveyors and Crystal under the statute in question and that by its declaration and judgment the court declare that the Article X, Section 2 applies and that the Purveyors continued dependence on, and increased use of, groundwater in excess of the safe yield is unreasonable and constitutes waste;

2. That the Purveyors and all others acting in or on their behalf, be enjoined from engaging in the continued unreasonable and wasteful use of the groundwater in violation of the provisions of Article X, Section 2 of the California Constitution;

3. For costs of suit herein incurred; and

4. For such other and further relief as the court deems proper.

**Abstract**

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**Ninth Cause of Action**

WHEREFORE, plaintiff prays judgment as follows:

1. For a declaration that the doctrine of separation of powers prohibits this court from imposing the objectives of he Purveyors upon the groundwater supply; that the implementation of the Purveyors’ objectives requires compliance with the California Environmental Quality Act (Public Resources Code sections 21000-21177 to provide the required procedural and substantive protections to the citizens of the State of California.
2. For costs of suit herein incurred; and
3. For such other and further relief as the court may deem proper.

**Tenth Cause of Action**

WHEREFORE, plaintiff prays judgment as follows:

1. For a declaration that the doctrine of separation of powers prohibits this court from imposing the objectives of he Purveyors upon the groundwater supply; that the implementation of the Purveyors’ objectives requires the Purveyors to act pursuant to the requirements of Water Code section 10700-10795.20;
2. For costs of suit herein incurred; and
3. For such other and further relief as the court may deem proper.

**Eleventh Cause of Action**

WHEREFORE, plaintiff prays judgment as follows:

1. For a declaration that each Purveyor is barred from asserting that the Antelope Valley is or was in a state of “overdraft” during the time that the Purveyors were issuing new water well permits, adding new water customers and authorizing new large scale developments and projects, and thus an increased demand on the water supply pursuant to Evidence Code section 623;
2. For costs of suit herein incurred; and
3. For such other and further relief as the court may deem proper.

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**Twelfth Cause of Action**

WHEREFORE, plaintiff prays judgment against defendants, and each of them, as follows:

1. For a physical solution enjoining the Purveyors from increasing their extractions from the Antelope Valley and ordering the Purveyors to collectively abate the nuisance by purchasing, from time to time, all available imported water, and to bank and to replenish the groundwater supply and replace, in the aggregate, the extractions made by the Purveyors in excess of the safe yield;
2. For general damages according to proof;
3. For punitive damages;
4. For costs of suit herein incurred; and
5. For such other and further relief as the court may deem proper.

**Thirteenth Cause of Action**

WHEREFORE, Crystal prays judgment against each Purveyor as follows:

1. For compensatory damages, in an amount to be determined according to proof at trial;
2. For reasonable attorney's fees, pursuant to 42 U.S.C. § 1988;
3. For costs of suit incurred in this action; and
4. For such other and further relief as the Court deems proper.

Dated: September 21, 2007 LeBEAU • THELEN, LLP

ORIGINAL SIGNED  
By: \_\_\_\_\_  
BOB H. JOYCE  
Attorneys for CRYSTAL ORGANIC FARMS,  
a limited liability company

1 **PROOF OF SERVICE**

2 ANTELOPE VALLEY GROUNDWATER CASES  
3 JUDICIAL COUNCIL PROCEEDING NO. 4408  
4 CASE NO.: 1-05-CV-049053

5 I am a citizen of the United States and a resident of the county aforesaid; I am over the age of  
6 eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter  
7 Drive, Suite 300, Bakersfield, California 93309. On September 21, 2007, I served the within

8 **CROSS-COMPLAINT OF CRYSTAL ORGANIC FARMS FOR EQUITABLE AND**  
9 **MONETARY RELIEF AGAINST CALIFORNIA WATER SERVICE COMPANY, CITY OF**  
10 **LANCASTER, CITY OF PALMDALE, LITTLEROCK CREEK IRRIGATION DISTRICT,**  
11 **LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40, PALMDALE WATER**  
12 **DISTRICT, ROSAMOND COMMUNITY SERVICES DISTRICT, PALM RANCH**  
13 **IRRIGATION DISTRICT AND QUARTZ HILL WATER DISTRICT**

14 ☒ (BY POSTING) I am "readily familiar" with the Court's Clarification Order.  
15 Electronic service and electronic posting completed through www.scefiling.org ; All papers filed in  
16 Los Angeles County Superior Court and copy sent to trial judge and Chair of Judicial Council.

17 Los Angeles County Superior Court  
18 111 North Hill Street  
19 Los Angeles, CA 90012  
20 Attn: **Department 1**  
21 (213) 893-1014

Chair, Judicial Council of California  
Administrative Office of the Courts  
Attn: Appellate & Trial Court Judicial Services  
(Civil Case Coordinator)  
Carlotta Tillman  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688  
Fax (415) 865-4315

22 ☐ (BY MAIL) I am "readily familiar" with the firm's practice of collection and  
23 processing correspondence for mailing. Under that practice it would be deposited with the U.S.  
24 Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California, in the  
25 ordinary course of business.

26 ☒ (STATE) I declare under penalty of perjury under the laws of the State of California  
27 that the above is true and correct, and that the foregoing was executed on September 21, 2007, in  
28 Bakersfield, California.

ORIGINAL SIGNED

\_\_\_\_\_  
DONNA M. LUIS



# Exhibit 6

1 Bob H. Joyce, (SBN 84607)  
2 Andrew Sheffield (SBN 220735)  
3 LAW OFFICES OF  
4 LEBEAU • THELEN, LLP  
5 5001 East Commercenter Drive, Suite 300  
6 Post Office Box 12092  
7 Bakersfield, California 93389-2092  
8 (661) 325-8962; Fax (661) 325-1127

9 Attorneys for GRIMMWAY ENTERPRISES, INC.  
10 and LAPIS LAND COMPANY, LLC

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 IN AND FOR THE COUNTY OF LOS ANGELES

13 Coordination Proceeding Special Title  
14 (Rule 1550 (b))

15 ANTELOPE VALLEY GROUNDWATER  
16 CASES

17 Included actions:

18 Los Angeles County Waterworks District No.  
19 40 vs. Diamond Farming Company  
20 Los Angeles Superior Court  
21 Case No. BC 325201

22 Los Angeles County Waterworks District No.  
23 40 vs. Diamond Farming Company  
24 Kern County Superior Court  
25 Case No. S-1500-CV 254348 NFT

26 Diamond Farming Company vs. City of  
27 Lancaster  
28 Riverside County Superior Court  
Lead Case No. RIC 344436 [Consolidated  
w/Case Nos. 344668 & 353840]

Judicial Council Coordination No. 4408

Case No.: 1-05-CV-049053

**CROSS-COMPLAINT OF GRIMMWAY  
ENTERPRISES, INC. AND LAPIS  
LAND COMPANY, LLC FOR  
EQUITABLE AND MONETARY  
RELIEF AGAINST  
CALIFORNIA WATER SERVICE  
COMPANY, CITY OF LANCASTER,  
CITY OF PALMDALE, LITTLEROCK  
CREEK IRRIGATION DISTRICT,  
LOS ANGELES COUNTY  
WATERWORKS DISTRICT NO. 40,  
PALMDALE WATER DISTRICT,  
ROSAMOND COMMUNITY SERVICES  
DISTRICT, PALM RANCH  
IRRIGATION DISTRICT, QUARTZ  
HILL WATER DISTRICT, AND  
PHELAN PIÑON HILLS COMMUNITY  
SERVICES DISTRICT**

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CROSS-COMPLAINT OF GRIMMWAY ENTERPRISES, INC. AND LAPIS LAND COMPANY, LLC FOR  
EQUITABLE AND MONETARY RELIEF AGAINST CALIFORNIA WATER SERVICE COMPANY, CITY OF  
LANCASTER, CITY OF PALMDALE, LITTLEROCK CREEK IRRIGATION DISTRICT, LOS ANGELES COUNTY  
WATERWORKS DISTRICT NO. 40, PALMDALE WATER DISTRICT, ROSAMOND COMMUNITY SERVICES  
DISTRICT, PALM RANCH IRRIGATION DISTRICT, QUARTZ HILL WATER DISTRICT, AND PHELAN PIÑON  
HILLS COMMUNITY SERVICES DISTRICT

1 Grimmway Enterprises, Inc. and LAPIS Land  
2 Company, LLC,

3 Cross-Complainants,

4 vs.

5 California Water Service Company; City of  
6 Lancaster; City of Palmdale; Littlerock  
7 Creek Irrigation District; Los Angeles  
8 County Waterworks District No. 40;  
9 Palmdale Water District; Rosamond  
Community Services District; Palm Ranch  
Irrigation District; Quartz Hill Water  
District, and Phelan Piñon Community  
Services District; and ROES 1-200, inclusive,

10 Cross-Defendants.

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12 Cross-Complainants, Grimmway Enterprises, Inc. (ROE 605) and LAPIS Land Company, LLC,  
13 make the following allegations against Cross-Defendants California Water Service Company, City of  
14 Lancaster, City of Palmdale, Littlerock Creek Irrigation District, Los Angeles County Waterworks  
15 District No. 40, Palmdale Water District, Rosamond Community Services District, Palm Ranch  
16 Irrigation District, Quartz Hill Water District, and Phelan Piñon Hills Community Services District  
17 (collectively referred to herein as "Purveyors"), and ROES 1-200, inclusive, as follows:

18 **General Allegations:**

19 1. California Water Service Company is a California corporation which provides water to  
20 customers located within the geographic boundaries of the Basin and which extracts water from the  
21 Basin.

22 2. City of Lancaster is a municipal corporation located within the County of Los Angeles,  
23 and within the geographic boundaries of the Basin.

24 3. City of Palmdale is a municipal corporation located within the County of Los Angeles,  
25 and within the geographic boundaries of the Basin.

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4. Little Rock Creek Irrigation District is a public agency which provides water to customers located within the geographic boundaries of the Basin and which extracts water from the Basin.

5. Los Angeles County Waterworks District 40 (hereinafter "District 40") is a public agency governed by the Los Angeles County board of Supervisors operating under Division 16 of the California Water Code. District 40 was established on November 4, 1993 to provide water service to the public within the Antelope Valley.

6. Palmdale Water District (hereinafter "Palmdale") was formed as a public irrigation district in 1918 and operates under Division 11 of the California Water Code and is producing water from the Antelope Valley Water Supply and selling it to its customers.

7. Rosamond Community Services District (hereinafter "Rosamond") is a County Water District voted into being in 1966 , and operating under Division 12 of the California Water Code to provide water for domestic, irrigation, and fire flow, collection and treatment of waste and storm water, maintenance of street lights, graffiti abatement and parks and recreation.

8. Palm Ranch Irrigation District is a public agency which provides water to customers located within the geographic boundaries of the Basin and which extracts water from the Basin.

9. Quartz Hill Water District (hereinafter "Quartz Hill") is a county water district organized and operating under Division 12 of the California Water Code and is producing water from the Antelope Valley Water Supply and selling it to its customers.

10. Piñon Hills Community Services District is a community services district located in western San Bernardino County. Piñon Hills Community Services District is organized under the Community Services District Law (Government Code section 61000, et seq.). The San Bernardino County Local Agency Formation Commission confirmed the order of reorganization and issued the certificate of completion for Phelan in March of 2008. Phelan's official date of inception is on or about March 18, 2008.

11. Cross-Complainant Grimmway Enterprises, Inc., (hereinafter "Grimmway") is a California corporation that owns and leases overlying land within the Antelope Valley. Grimmway owns

1 and operates water wells that draw water from beneath the land for use on the lands for irrigation.  
2 Grimmway and its predecessors in interest, are currently, and have historically, pumped water from  
3 beneath the land for farming.

4 12. Cross-Complainant LAPIS Land Company, LLC, (hereinafter "LAPIS") is a limited  
5 liability company that owns and leases overlying land within the Antelope Valley. LAPIS owns and  
6 operates water wells that draw water from beneath the land for use on the lands for irrigation. LAPIS  
7 and its predecessors in interest, are currently, and have historically, pumped water from beneath the land  
8 for farming.

9 13. Cross-Complainants are ignorant of the true names and capacities of cross-defendants  
10 sued herein as ROES 1-200, inclusive, and therefore sue these cross-defendants by such fictitious names.  
11 Cross-Complainants will amend this Cross-Complaint to allege their true names and capacities when  
12 ascertained. Each reference in this Cross-Complaint to "Purveyors," "the Purveyors," or a specifically  
13 named cross-defendant, refers also to all cross-defendants sued under fictitious names.

14 14. Cross-Complainants are informed and believe, and thereon allege, that Rosamond,  
15 District 40, Palmdale and Quartz Hill (collectively "the Purveyors") began pumping appropriated surplus  
16 water from the Antelope Valley to provide water for their municipal and industrial water customers. At  
17 the onset of pumping by the Purveyors, the same was lawful and permissive and did not immediately  
18 nor prospectively invade or impair any overlying right.

19 15. Over time, the urban areas within the Antelope Valley continued to expand and grow both  
20 in land area and population, and thus, over time the Purveyors increased, and today, continue to increase  
21 their demand for water. Cross-Complainants are informed and believe, and thereon allege, that at some  
22 as yet unidentified historical point, the aggregate extractions of groundwater from the Antelope Valley  
23 began to exceed the safe yield of the Valley. Despite the potential for damage to the water supply and  
24 the rights of owners of real property within the Valley, the Purveyors, with knowledge continued to  
25 extract groundwater from the common supply, and increased and continue to increase their extractions  
26 of groundwater over time. The Purveyors continued the act of pumping with the knowledge that the

1 continued extractions were damaging, long term, the Antelope Valley and in the short term, impairing  
2 the rights of the property owners, including the rights in the land owned by Grimmway and LAPIS,  
3 which is overlying and within the Antelope Valley.

4 16. Cross-Complainants are informed and believe, and thereon allege, that the Purveyors  
5 pumped and continue to pump water in excess of the safe yield with the knowing intent and belief that  
6 they could take by claim of prescription, without compensation, the water rights of Grimmway and  
7 LAPIS, and all landowners overlying the Antelope Valley. Additionally, all Purveyors continued to  
8 pump ever increasing quantities of groundwater, knowing that even if their prescriptive claims failed,  
9 they could preserve the right to continue their pumping under a claim of an intervening public use.  
10 Despite the knowing intent to take the overlying property landowners' rights, no Purveyor took any steps  
11 calculated and intended to inform or otherwise notify any landowner of their adverse and hostile claim  
12 or that their pumping of groundwater was an invasion of and a taking of the landowners' property rights.

13 17. During the material time that each Purveyor was pumping, none physically trespassed  
14 upon nor invaded any overlying property. No Purveyor stopped, restricted, interfered with or physically  
15 or by regulation reduced Grimmway and LAPIS, or any overlying landowner's right and ability to pump  
16 groundwater from the Antelope Valley. No Purveyor ever took any affirmative action reasonably  
17 calculated to inform or notify any overlying landowner that the Purveyor intended to take or were taking  
18 by prescription the overlying water rights.

19 18. Between 1960 and 1980, the Antelope Valley East Kern Water Agency (hereinafter  
20 "AVEK") was created to import water from northern California to southern California. As part of its  
21 operations, AVEK, in addition to other water importers, have brought and now brings imported water  
22 to the Antelope Valley. This imported water was at all material times available for purchase by the  
23 Purveyors. Based upon information and belief, it is alleged that the Purveyors consciously chose to not  
24 purchase all of the available higher priced imported water to meet their water needs and instead chose  
25 to continue to pump and to increase their extractions of groundwater from the Antelope Valley, because,  
26 despite the damage to the Valley, groundwater was cheaper than the imported water.

19. In late 2004, the Los Angeles County Board of Supervisors unanimously voted to authorize District 40 to file and prosecute the present legal actions which seeks a judicial declaration that District 40 has obtained, without compensation and without due process notice, the overlying landowner's appurtenant water rights through the common law doctrine of prescription. Based on this authorization, District 40 filed these actions.

20. Grimmway and LAPIS did not have actual knowledge that any Purveyor's pumping of groundwater was adverse to or hostile to its present and/or future priority rights.

21. Based upon information and belief, no landowner had actual knowledge that any Purveyor's pumping of groundwater was adverse to or hostile to its present and/or future priority rights.

22. In January 2006, the Purveyors identified herein jointly filed a Cross-Complaint in place of the original Complaint seeking to obtain a judicial declaration that they had obtained the overlying landowner's water rights, without compensation, within the Antelope Valley through the common law doctrine of prescription.

23. In January 2007, the Purveyors identified herein jointly filed the present First Amended Cross-Complaint in place of the Cross-Complaint and in place of the original Complaint seeking to obtain a judicial declaration that they had obtained the overlying landowner's water rights, without compensation, within the Antelope Valley through the common law doctrine of prescription.

24. None of the Purveyors have invoked the power of eminent domain nor paid any compensation to Grimmway or LAPIS or any other overlying owner of land located within Antelope Valley for the property rights they have allegedly and knowingly claimed to have taken.

### First Cause of Action

(Declaratory Relief Against Los Angeles County Waterworks District 40 to Determine Validity and Applicability of Statute)

25. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs 1 through 24, inclusive, of this Cross-Complaint.

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1           26.     In or about 1951, the Legislature of the State of California enacted Sections 55000 et seq.  
2 of the Water Code, known as the County Waterworks District Law, hereinafter referred to as the  
3 "Waterworks Statutes." In 1953, the legislature added section 55370. This section, since its adoption has  
4 been, and now is, in full force and effect. This statute provides as follows:

5           "A district may acquire property by purchase, gift, devise, exchange, descent, and  
6 eminent domain. The title to all property which may have been acquired for a district  
shall be vested in the district."

7           27.     District 40 contends that section 55370 of the Water Code does not apply to, or limit in  
8 any manner, its acquisition of any overlying landowner's water rights within the Antelope Valley and  
9 that, despite its status as a public entity, Article 1, Section 19 of the California Constitution, and the 5th  
10 Amendment to the Federal Constitution, it is nonetheless empowered to acquire private property for  
11 public use through the common law doctrine of prescription, without due process and without  
12 compensation.

13           28.     Grimmway and LAPIS contend that the statute is constitutional, and when conjoined with  
14 the California state and Federal Constitutions, limits the method, manner and mode by which District  
15 40 may acquire private property for a public use and the rights appurtenant thereto. By virtue of the  
16 actions of District 40 and the Board of Supervisors as set forth above, an actual controversy has arisen  
17 and now exists between District 40 and Grimmway and LAPIS concerning their respective rights, duties,  
18 and responsibilities under that statute and both Constitutions.

19           29.     Grimmway and LAPIS desire a declaration of its rights with respect to the  
20 constitutionality and application or nonapplication of the statute and asks the court to make a declaration  
21 of such rights, duties, and responsibilities, and to make a declaration as to the validity and  
22 constitutionality of the statute. Grimmway and LAPIS seek a declaration that the effort of the district to  
23 deprioritize Grimmway and LAPIS's overlying right is, without compensation, ultra vires and  
24 unconstitutional. Such a declaration is necessary and appropriate at this time in order that Grimmway  
25 and LAPIS's property rights be protected and to ensure that District 40 proceeds according to the law

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1 and Constitution of the state and the Federal Constitution. There are no administrative remedies available  
2 to Grimmway and LAPIS.

3 30. A timely declaration by this court is urgent for the following reasons: by way of this  
4 action District 40 is seeking to adjudicate, enjoin and take the property rights of Grimmway and LAPIS  
5 and thousands of other parties who own property overlying the Antelope Valley, absent a timely  
6 declaration by this court, an injustice will result from the improper awarding of property rights to District  
7 40 should this statute be later found to apply to District 40.

8 31. Grimmway and LAPIS and numerous other private parties will suffer irreparable and  
9 lasting injury unless declaratory relief is granted.

### 10 **Second Cause of Action**

11 (Declaratory Relief Against Palmdale Water District to Determine Validity of Statute)

12 32. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs  
13 1 through 31, inclusive, of this Cross-Complaint.

14 33. In or about 1943, the Legislature of the State of California enacted Sections 20500 et seq.  
15 of the Water Code, known as the Irrigation District Law, hereinafter referred to as the "Irrigation  
16 Statutes." In 1943, the legislature added section 22456. This section, since its adoption has been, and  
17 now is, in full force and effect. This statute provides as follows:

18 "The district may exercise the right of eminent domain to take any property necessary to  
19 carry out its purposes."

20 34. Palmdale contends that section 22456 of the Water Code does not act to limit, in any  
21 manner, the mode or method of acquiring an overlying landowner's water rights within the Antelope  
22 Valley and that, despite its status as a public entity, Article 1, Section 19 of the California Constitution,  
23 and the 5th Amendment to the Federal Constitution, it is nonetheless empowered to acquire private  
24 property for public use through the common law doctrine of prescription, without due process and  
25 without compensation.

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35. Grimmway and LAPIS contend that the statute is constitutional, and when conjoined with the California state and Federal Constitutions, limits the method, manner and mode by which Palmdale may acquire private property for a public use and the rights appurtenant thereto by declaring that the only legal right of the district to take possession of land without consent of the owners is under its power of eminent domain. By virtue of Palmdale's actions as set forth above, an actual controversy has arisen and now exists between Palmdale and Grimmway and LAPIS concerning their respective rights, duties, and responsibilities under that statute and both Constitutions.

36. Grimmway and LAPIS desire a declaration of its rights with respect to the constitutionality and application or nonapplication of the statute and asks the court to make a declaration of such rights, duties, and responsibilities, and to make a declaration as to the validity and constitutionality of the statute. Grimmway and LAPIS seek a declaration that the effort of the district to deprioritize Grimmway and LAPIS's overlying right is, without compensation, ultra vires and unconstitutional. Such a declaration is necessary and appropriate at this time in order that Grimmway and LAPIS's property rights be protected and to ensure that Palmdale proceeds according to the law and Constitution of the state and the Federal Constitution. There are no administrative remedies available to Grimmway and LAPIS.

37. A timely declaration by this court is urgent for the following reasons: by way of this action Palmdale is seeking to adjudicate, enjoin and take the property rights of Grimmway and LAPIS and thousands of other parties who own property overlying the Antelope Valley, absent a timely declaration by this court, an injustice will result from the improper awarding of property rights to Palmdale should this statute be later found to limit the method by which Palmdale may forcibly acquire property rights.

38. Grimmway and LAPIS and numerous other private parties will suffer irreparable and lasting injury unless declaratory relief is granted.

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1 **Third Cause of Action**

2 (Declaratory Relief Against Rosamond and Quartz Hill to Determine Validity of Statute)

3 39. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs  
4 1 through 38, inclusive, of this Cross-Complaint.

5 40. In or about 1949, the Legislature of the State of California enacted Sections 30000 et seq.  
6 of the Water Code, known as the County Water District Law, hereinafter referred to as the "County  
7 Water Statutes." In 1975, the legislature amended section 31040. This amended statute became operative  
8 on July 1, 1976 and since then, has been, and now is, in full force and effect. This section provides as  
9 follows:

10 "A district may take any property necessary to carry out the business of the district by  
11 grant, purchase, gift, devise, condemnation, or lease with or without the privilege of  
purchase."

12 41. Rosamond and Quartz Hill contend that section 31040 of the Water Code does not act  
13 to limit, in any manner, the mode or method by which they may acquire an overlying landowner's water  
14 rights within the Antelope Valley and that, despite their status as public entities, Article 1, Section 19  
15 of the California Constitution, and the 5th Amendment to the Federal Constitution, they are nonetheless  
16 empowered to take private property for public use through the common law doctrine of prescription,  
17 without due process and without compensation.

18 42. Grimmway and LAPIS contend that the statute is constitutional, and when conjoined with  
19 the California state and Federal Constitutions, limits the method, manner and mode by which Rosamond  
20 and Quartz Hill may acquire private property for a public use and the rights appurtenant thereto by  
21 declaring that the only legal right of the districts to take possession of property without consent of the  
22 owners is under its power of eminent domain. By virtue of Rosamond's and Quartz Hill's actions as set  
23 forth above, an actual controversy has arisen and now exists between Rosamond, Quartz Hill and  
24 Grimmway and LAPIS concerning their respective rights, duties, and responsibilities under that statute  
25 and both Constitutions.

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43. Grimmway and LAPIS desire a declaration of its rights with respect to the constitutionality and application or nonapplication of the statute and asks the court to make a declaration of such rights, duties, and responsibilities, and to make a declaration as to the validity and constitutionality of the statute. Grimmway and LAPIS seek a declaration that the effort of the district to deprioritize Grimmway and LAPIS's overlying right is, without compensation, ultra vires and unconstitutional. Such a declaration is necessary and appropriate at this time in order that Grimmway and LAPIS's property rights be protected and to ensure that Rosamond and Quartz Hill proceed according to the law and Constitution of the state and the Federal Constitution. There are no administrative remedies available to Grimmway and LAPIS.

44. A timely declaration by this court is urgent for the following reasons: by way of this action Rosamond and Quartz Hill are seeking to adjudicate, enjoin and take the property rights of Grimmway and LAPIS and thousands of other parties who own property overlying the Antelope Valley, absent a timely declaration by this court, injustice will result from the improper awarding of property rights to Rosamond and/or Quartz Hill should this statute be later found to apply.

45. Grimmway and LAPIS and numerous other private parties will suffer irreparable and lasting injury unless declaratory relief is granted.

#### Fourth Cause of Action

(Declaratory Relief Against All Cross-Defendants to Determine Applicability of California Constitution.)

46. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs 1 through 45, inclusive, of this Cross-Complaint.

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

“Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.”

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48. The Purveyors contend that, even though they are political subdivisions who are vested with the power of eminent domain, they are nonetheless legally permitted to knowingly take private property for public use without first paying just compensation.

49. Grimmway and LAPIS contend that the use of the word "only" within Article 1 Section 19 is a clear temporal limitation on the Purveyor's lawful ability to knowingly take private property for the public benefit to only those instances where just compensation has first been paid. By virtue of the Purveyor's actions as set forth above, an actual controversy has arisen and now exists between the Purveyors and Grimmway and LAPIS concerning their respective rights, duties, and responsibilities.

50. Grimmway and LAPIS desire a declaration of its rights with respect to the application or nonapplication of Article 1 Section 19 to the Purveyors and asks the court to make a declaration of such rights, duties, and responsibilities. Such a declaration is necessary and appropriate at this time in order that Grimmway and LAPIS's property rights may be protected and to ensure that the municipal Purveyors proceed according to the California Constitution. There are no administrative remedies available to Grimmway and LAPIS.

51. A timely declaration by this court is urgent for the following reasons: by way of this action the Purveyors are seeking to adjudicate, enjoin and take the property rights of Grimmway and LAPIS and thousands of other parties who own property overlying the water supply without first paying just compensation therefor, absent a timely declaration by this court, injustice will result from the improper taking of the Grimmway and LAPIS's property rights should Article 1 section 19 of the California Constitution be found to apply.

52. Grimmway and LAPIS and numerous other private parties will suffer irreparable and lasting injury unless declaratory relief is granted.

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 100%  
 100%

1. *What is the main purpose of the study?*  
 2. *What are the research objectives?*  
 3. *What is the scope of the study?*

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1 **Fifth Cause of Action**

2 (Declaratory Relief Against All Cross-Defendants to Determine Applicability of Constitutional  
3 Article.)

4 53. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs  
5 1 through 52, inclusive, of this Cross-Complaint.

6 54. Article 1 Section 19 of the California Constitution provides as follows:

7 "Private property may be taken or damaged for public use only when just compensation,  
8 ascertained by a jury unless waived, has first been paid to, or into court for, the owner.  
9 The Legislature may provide for possession by the condemnor following commencement  
of eminent domain proceedings upon deposit in court and prompt release to the owner  
of money determined by the court to be the probable amount of just compensation."

10 55. The Purveyors contend that, even though they are political subdivisions who are vested  
11 with the power of eminent domain, they are nonetheless legally allowed to knowingly take private  
12 property for public use through prescription or adverse possession and without compensation.

13 56. Grimmway and LAPIS contend that the use of the word "only" within Article 1 Section  
14 19 is a clear limitation on the Purveyor's authority and the manner in which they may take private  
15 property for the public benefit. That this limitation forecloses the ability of any governmental entity to  
16 knowingly take or acquire private property for a public use under a theory of prescription or adverse  
17 possession. By virtue of the Purveyor's actions as set forth above, an actual controversy has arisen and  
18 now exists between the Purveyors and Grimmway and LAPIS concerning their respective rights, duties,  
19 and responsibilities.

20 57. Grimmway and LAPIS desire a declaration of its rights with respect to the application  
21 or nonapplication of Article 1 Section 19 to the Purveyors' prescription claims and asks the court to  
22 make a declaration of such rights, duties, and responsibilities. Such a declaration is necessary and  
23 appropriate at this time in order that Grimmway and LAPIS's property rights may be protected and to  
24 ensure that the municipal Purveyors may proceed according to the California Constitution. There are no  
25 administrative remedies available to Grimmway and LAPIS.

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58. A timely declaration by this court is urgent for the following reasons: by way of this action the Purveyors are seeking to adjudicate and enjoin the property rights of Grimmway and LAPIS and thousands of other parties by avoiding the due process protections provided to these landowners under Code of Civil Procedure sections 1230.010 through 1237.040. Absent a timely declaration by this court, injustice will result from the improper use and adjudication of the cross-defendants' property rights should Article 1 section 19 of the California Constitution be found to apply.

59. Grimmway and LAPIS and numerous other private parties will suffer irreparable and lasting injury unless declaratory relief is granted.

### Sixth Cause of Action

(Declaratory Relief Against All Cross-Defendants to Determine Applicability of Constitution.)

60. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs 1 through 59, inclusive, of this Cross-Complaint.

61. Article I Section 7 of the California Constitution provides in pertinent part as follows:

"A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws; . . ."

The 5<sup>th</sup> Amendment to the Constitution as applied by the 14<sup>th</sup> Amendment in relevant part provides:

"No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

62. The Purveyors contend that, even though they are political subdivisions who are uniquely invested with the power of eminent domain, they are allowed to surreptitiously take private property for public use by prescription or adverse possession without providing substantive or procedural due process of law to each overlying landowner. The Purveyors contend that prescription commences with "overdraft," and that presumed or constructive notice is sufficient.

63. Grimmway and LAPIS contend that the Article I, Section 7, of the State Constitution, and the 5<sup>th</sup> Amendment as applied by the 14<sup>th</sup> Amendment of the Federal Constitution, mandates that

1 governmental entities must provide substantive and procedural due process of law when taking private  
2 property for a public use. Grimmway and LAPIS contend that the prescriptive period cannot commence  
3 until the governmental entity takes affirmative action designed and intended to give notice and inform  
4 the overlying landowners of the governmental entity's adverse and hostile claim. Grimmway and LAPIS  
5 further contend that this limitation forecloses the ability of any governmental agency to take or acquire  
6 private property for a public use when constitutionally sufficient due process notice has not been  
7 provided to the land owner. By virtue of the Purveyor's actions as set forth above, an actual controversy  
8 has arisen and now exists between the Purveyors and Grimmway and LAPIS concerning their respective  
9 rights, duties, and responsibilities.

10 64. Grimmway and LAPIS desire a declaration of its rights with respect to the application  
11 or nonapplication of Article I Section 7 and the 5<sup>th</sup> Amendment to the U.S. Constitution to the  
12 Purveyors' prescription claims and asks the court to make a declaration of such rights, duties, and  
13 responsibilities. Such a declaration is necessary and appropriate at this time in order that Grimmway  
14 and LAPIS's property rights may be protected and to ensure that the municipal Purveyors may proceed  
15 according to the California Constitution. There are no administrative remedies available to Grimmway  
16 and LAPIS.

17 65. A timely declaration by this court is urgent for the following reasons: by way of this  
18 action the Purveyors are seeking to adjudicate and enjoin the property rights of Grimmway and LAPIS  
19 and thousands of other parties by avoiding the due process protections provided to these landowners  
20 under Article I Section 7, the 5<sup>th</sup> and 14<sup>th</sup> Amendments and Code of Civil Procedure sections 1230.010  
21 through 1237.040. Absent a timely declaration by this court, injustice will result from the improper use  
22 and adjudication of Grimmway and LAPIS's property rights should the foregoing constraints and  
23 statutory mandate be found applicable.

24 66. Grimmway and LAPIS and numerous other private parties will suffer irreparable and  
25 lasting injury unless declaratory relief is granted.

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1 **Seventh Cause of Action**

2 (Declaratory Relief Against All Cross-Defendants.)

3 67. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs  
4 1 through 66, inclusive, of this Cross-Complaint.

5 68. Grimmway and LAPIS are the owners and/or lessees of real property located within the  
6 Antelope Valley. Located on Grimmway and LAPIS's property are water wells which produce water  
7 from the groundwater supply. Grimmway and LAPIS and or its predecessors in interest, have  
8 continually produced water from these wells without restriction and in quantities as were needed to  
9 perform its farming and irrigation operations from year to year.

10 69. Based on information and belief, it is alleged that Purveyors all pump groundwater from  
11 the Antelope Valley and then sell it to other individuals and entities who reside within Kern County and  
12 Los Angeles Counties.

13 70. An actual controversy has arisen and now exists between Grimmway and LAPIS and the  
14 Purveyors concerning their respective rights and duties in that the Purveyors contend that they have been  
15 pumping water during a continuous 5 year period during which the common supply has been in a state  
16 of overdraft; that this pumping has resulted in a reversal of the common law legal priority granted to  
17 overlying land owners pursuant to the common law doctrine of prescription. Whereas, Grimmway and  
18 LAPIS dispute this contention and contends that by continuing to pump groundwater from the wells on  
19 its land, and by continuing to thus meet all of the water needs to perform its farming operations,  
20 Grimmway and LAPIS have preserved and maintained its priority rights to the use of groundwater.

21 71. Grimmway and LAPIS desire a judicial determination of each party's rights and duties,  
22 and a declaration as to the status of each party's priority rights to the water in the Valley whether they  
23 be overlying, appropriative or prescriptive.

24 72. A judicial declaration is necessary and appropriate at this time under the circumstances  
25 in order that Grimmway and LAPIS may ascertain their rights and duties relating to production of water  
26 from the Antelope Valley.

1 **Eighth Cause of Action**

2 (Declaratory Relief Against All Cross-Defendants.)

3 73. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs  
4 1 through 72, inclusive, of this Cross-Complaint.

5 74. AVEK and others provide the Antelope Valley with water imported from northern  
6 California. This imported water was and is available for purchase by the Purveyors.

7 75. Despite having knowledge that the pumping of groundwater in excess of the safe yield  
8 caused damage, and despite the knowledge and belief that continued pumping would damage the rights  
9 of the landowners whose property overlies the water supply, the Purveyors have failed and refused to  
10 slow, stop or reduce their groundwater extractions from the supply and/or to supplement or replace their  
11 water needs from the available imported AVEK water.

12 76. The California Constitution, Article X, section 2 provides, in pertinent part, as follows:

13 "It is hereby declared that because of the conditions prevailing in this State the general  
14 welfare requires that the water resources of the State be put to beneficial use to the fullest  
15 extent of which they are capable, and that the waste or unreasonable use or unreasonable  
16 method of use of water be prevented, and that the conservation of such waters is to be  
17 exercised with a view to the reasonable and beneficial use thereof in the interest of the  
18 people and for the public welfare. The right to water or to the use or flow of water in or  
from any natural stream or water course in this State is and shall be limited to such water  
as shall be reasonably required for the beneficial use to be served, and such right does not  
and shall not extend to the waste or unreasonable use or unreasonable method of use or  
unreasonable method of diversion of water. . . ."

19 77. An actual controversy has arisen and now exists between Grimmway and LAPIS and each  
20 Purveyor concerning their respective rights and duties in that Grimmway and LAPIS contend that the  
21 Purveyor's continued dependance on, and use of, the groundwater, their continued and increased  
22 extractions of groundwater from the common supply, with knowledge that the extractions exceed the  
23 safe yield, and their failure and/or refusal to take all of the available imported water and the method and  
24 use of groundwater taken, is unreasonable and constitutes a waste in violation of Article X, Section 2  
25 of the California Constitution. The Purveyors dispute these contentions and contend that their  
26 dependance on groundwater, their continued and increasing extractions of groundwater from the

1 Antelope Valley in excess of the safe yield and their failure and refusal to take all of the available  
2 imported water is reasonable and does not constitute waste of groundwater and/or available imported  
3 water under Article X, Section 2 of the California Constitution.

4 78. Grimmway and LAPIS desire a declaration of its rights with respect to the  
5 constitutionality and application or nonapplication of Article X, Section 2 to the Purveyors' actions and  
6 asks the court to make a declaration of such rights, duties, and responsibilities, and to make a declaration  
7 as to the validity and constitutionality of the Article X, Section 2. Such a declaration is necessary and  
8 appropriate at this time in order that Grimmway and LAPIS's property rights may be protected and to  
9 ensure that the Purveyors may proceed under the law and cause no further damage to Grimmway and  
10 LAPIS or property overlying the water supply. There are no administrative remedies available to  
11 Grimmway and LAPIS.

12 79. A timely declaration by this court is urgent for the following reasons: by way of this  
13 action, the Purveyors are seeking to have the court ratify their method and choice of water usage and  
14 declare that they have the right to continue to extract groundwater from the Valley in excess of the safe  
15 yield and to continue to cause damage to the Valley itself as well as to the land overlying the water  
16 supply, absent a timely declaration by this court, an injustice will result from the improper validation of  
17 the Purveyors' water usage should this constitutional provision be found to apply to the Purveyors.

18 80. Grimmway and LAPIS and numerous other private parties will suffer irreparable and  
19 lasting injury unless declaratory relief is granted.

#### 20 **Ninth Cause of Action**

21 (Declaratory Relief Against All Cross-Defendants.)

22 81. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs  
23 1 through 80, inclusive, of this Cross-Complaint.

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1           82.     On January 8, 2006, the Purveyors filed a Cross-Complaint in this matter seeking to  
2 implement policy objectives which were stated in paragraph 1 as follows:

3           “To promote the general public welfare in the Antelope Valley; protect the public water  
4 supplier’s rights to pump groundwater and provide water to the public; protect the  
5 Antelope Valley from a loss of the public’s water supply; prevent degradation of the  
6 quality of the public groundwater supply; stop land subsidence; and avoid higher water  
7 costs to the public.”

8           83.     In order to implement these policy objectives, the Purveyors have brought a cause of  
9 action against all owners of property overlying the Antelope Valley seeking the imposition of a “physical  
10 solution” that would manage the groundwater supply by augmenting the water supply, manage the  
11 pumping and storage of water and impose monetary assessments on water extraction from the supply.

12           84.     An actual controversy has arisen and now exists between Grimmway and LAPIS and the  
13 Purveyors concerning their respective rights and duties in that Grimmway and LAPIS contend that it is  
14 a violation of the Constitutional doctrine of the separation of powers for this Court to implement the  
15 Purveyors’ policy objectives as they are by nature legislative actions, subject to the provisions of the  
16 California Environmental Quality Act (hereinafter “CEQA”; Public Resources Code sections 21000-  
17 21177.) That the requirements of CEQA are both procedural (requiring notice, disclosure and a review  
18 process) and substantive (by requiring public agencies to take affirmative measures to avoid  
19 environmental harm and to also protect the citizens and landowners of the State of California.)

20           85.     The Purveyors contend that they may use the judicial system to circumvent CEQA and  
21 impose by judicial fiat what should be a legislative policy. In doing so, they seek to avoid providing the  
22 public with the required disclosures and evaluations, and thereby deny Grimmway and LAPIS and the  
23 public their procedural and substantive protections required by CEQA.

24           86.     Grimmway and LAPIS desire a judicial determination of the Purveyors’ rights and duties,  
25 and a declaration as to the application of Public Resources Code sections 21000-21177 to any proposed  
26 water management plan sought to be implemented by judicial decree by the Purveyors. That the  
27 legislative protections afforded to the public under CEQA cannot be ignored or subverted by resorting

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1 to the court to implement the Purveyor's plan, and that such a request of this Court induces a violation  
2 of the doctrine of the separation of powers.

3 87. A judicial declaration is necessary and appropriate at this time under the circumstances  
4 in order that Grimmway and LAPIS may ascertain their rights and duties relating to production of water  
5 from the Antelope Valley.

6 **Tenth Cause of Action**

7 (Declaratory Relief Against All Cross-Defendants.)

8 88. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs  
9 1 through 87, inclusive, of this Cross-Complaint.

10 89. On January 8, 2006, the Purveyors filed a Cross-Complaint in this matter seeking to  
11 implement policy objectives which were stated in paragraph 1 as follows:

12 "To promote the general public welfare in the Antelope Valley; protect the public water  
13 supplier's 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 the public groundwater supply; stop land subsidence; and avoid higher water  
costs to the public."

15 90. In order to implement these policy objectives, the Purveyors have brought a cause of  
16 action against all owners of property overlying the Antelope Valley seeking the imposition of a "physical  
17 solution" that would manage the groundwater supply by augmenting the water supply, manage the  
18 pumping and storage of water and impose monetary assessments on water extraction from the supply.

19 91. An actual controversy has arisen and now exists between Grimmway and LAPIS and the  
20 Purveyors concerning their respective rights and duties in that Grimmway and LAPIS contend that it is  
21 a violation of the Constitutional doctrine of the separation of powers for this Court to implement the  
22 Purveyors' policy objectives as they are by nature legislative and executive actions that are within the  
23 power of the Purveyors to enact by following the statutory requirements set forth in Water Code sections  
24 10700-10795.20. These sections of the Water Code provide the procedural method by which the  
25 Purveyors must implement a ground water management plan and also ensures constitutionally required

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1 process through the required public hearings, notice, and publication of the proposed management plan,  
2 and the opportunity for public discourse, input and objection.

3 92. The Purveyors contend that they may use the judicial system to impose by judicial fiat  
4 what would otherwise be done through legislative action. In doing so, they seek to avoid providing the  
5 public with the required notice, hearing and disclosures and deny them their procedural and substantive  
6 protections provided by the Constitution and the Water Code sections 10700-10795.20..

7 93. Grimmway and LAPIS desire a judicial determination of the Purveyors' rights and duties,  
8 and a declaration as to the application and propriety of Water Code sections 10700-10795.20 to the  
9 proposed water management project sought to be implemented by the Purveyors. That the legislative  
10 protections afforded to the public under the Water Code may not be ignored or subverted by the filing  
11 of a legal action by a public agency, and that such action requests this court to violate the doctrine of  
12 separation of powers.

13 94. A judicial declaration is necessary and appropriate at this time under the circumstances  
14 in order that Grimmway and LAPIS may ascertain their rights and duties relating to its continued  
15 production of water from the Antelope Valley.

### 16 **Eleventh Cause of Action**

17 (Declaratory Relief Against All Cross-Defendants.)

18 95. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs  
19 1 through 94, inclusive, of this Cross-Complaint.

20 96. Commencing in early 2000, each Purveyor has claimed that the Antelope Valley was in  
21 a state of "overdraft" for more than five (5) years prior to October 1999.

22 97. Based on information and belief, it is alleged that immediately prior to, during and after  
23 the same claimed five year period of "overdraft" claimed by the Purveyors, the Purveyors did approve  
24 and have continued to approve the issuance of well permits to Grimmway and LAPIS and others, have  
25 approved large scale developments and have authorized others and have thus increased the demand for  
26 groundwater pumped by the Purveyors from the Antelope Valley. In performing their ministerial and

1 discretionary functions, each Purveyor has asserted that the additional well permits, hook ups and added  
2 residential, industrial and commercial developments, and the concomitant increased pumping of ground  
3 water caused thereby, would not, and did not, have under CEQA or otherwise an adverse affect on the  
4 water supply available from the Antelope Valley.

5 98. An actual controversy has arisen and now exists between Grimmway and LAPIS and each  
6 Purveyor concerning their respective rights and duties in that Grimmway and LAPIS contend that the  
7 Purveyors are barred from claiming that the Antelope Valley is in a state of "overdraft" during the time  
8 that they have authorized, permitted and approved new and increased pumping from the supply pursuant  
9 to Evidence Code section 623. The Purveyors deny Grimmway and LAPIS's contentions and assert that  
10 they may assert overdraft as an element of their prescription claims. Section 623 provides as follows:

11 "Whenever a party has, by his own statement or conduct, intentionally and deliberately  
12 led another to believe a particular thing true and to act upon such belief, he is not, in any  
litigation arising out of such statement or conduct, permitted to contradict it."

13 99. Grimmway and LAPIS desire a judicial determination of its rights and duties, and a  
14 declaration as to the application of the doctrine of equitable estoppel to the Purveyors' ability to claim  
15 that the Antelope Valley was in a state of overdraft when the same Purveyors were issuing well permits,  
16 will serve letters and adding new water customers and authorizing new large scale development projects  
17 under the assertion that there was an available, adequate and appropriate water supply in the Antelope  
18 Valley to sustain these permits and projects.

19 100. A judicial declaration is necessary and appropriate at this time under the circumstances  
20 in order that Grimmway and LAPIS may ascertain their rights and duties relating to their real property  
21 that overlies the Antelope Valley.

## 22 **Twelfth Cause of Action**

23 (Public and Private Nuisance Against All Cross-Defendants.)

24 101. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs  
25 1 through 100, inclusive, of this Cross-Complaint.

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102. Grimmway and LAPIS are the owners of land overlying the Antelope Valley. Each of the Purveyors are users of water pumped from the Antelope Valley which underlies Grimmway and LAPIS's land.

103. Initially, the Purveyors, and each of them, legally used, and maintained water wells that extracted water from the Antelope Valley for public distribution. Over time the increased urbanization and the Purveyors continued and increasing extractions exceeded their legal boundaries, such that the water extracted from the supply has exceeded the ability to naturally recharge the water supply. The Purveyors have claimed to have knowledge that this continuous and increasing use caused a progressive and chronic decline in long term water supply and the available natural supply is being and has been chronically depleted. Based on the present trends, demand will continue to exceed supply which will cause damage to private rights and ownership of real property.

104. The aforementioned extractions of groundwater from the supply constitute a continuing progressive nuisance within the meaning of Section 3479 of the Civil Code, in that it the Purveyors have created a condition in the future supply that is injurious to Grimmway and LAPIS's right, in the future, to freely use and exercise its overlying property rights to extract groundwater from the common supply in the customary manner. The Purveyors are attempting, through the combined efforts of their pumping groundwater and this present legal action, to take, and or alter, Grimmway and LAPIS's overlying property rights to use and access the Antelope Valley supply.

105. In early 2000, the Purveyors asserted that the available groundwater supply was in jeopardy and increased pumping would harm Antelope Valley Water Supply. Despite this assertion, the Purveyors, and each of them, have continued to and have increased their pumping, despite the knowledge of the damage caused by that pumping. The Purveyors have refused, and continue to refuse, to stop or reduce their pumping despite the damage to the supply and to Grimmway and LAPIS's property rights.

106. This nuisance affects, at the same time, a substantial number of persons in that, the Purvevors claim that the continued pumping in excess of the supply's safe yield is, and will, eventually



1 cause a chronic decline in water levels and the available natural supply will be chronically depleted, that,  
2 based on the present trends, demand will continue to exceed supply which will continue to cause a  
3 reduction in the long term supply. Additionally, the continued pumping by the Purveyors under these  
4 conditions will result in the unlawful obstruction of the overlying landowner's rights to use the water  
5 supply in the customary manner.

6 107. The Purveyors, and each of them, have threatened to and will, unless restrained by this  
7 court, continue to pump groundwater in increasing amounts, and each and every act has been, and will  
8 be, without the consent, against the will, and in violation of the rights of Grimmway and LAPIS.

9 108. As a proximate result of the nuisance created by the Purveyors, and each of them,  
10 Grimmway and LAPIS have been, and will be, damaged in a sum to be proven at trial.

11 109. Unless the Purveyors, and each of them, are restrained from increasing their pumping  
12 from the supply by order of this court, it will be necessary for plaintiff to commence many successive  
13 actions against each Purveyor, and each of them, to secure a project by project injunction and/or  
14 compensation for the continuing and repeated damages sustained, thus requiring a multiplicity of suits.

15 110. Should the Purveyors continue to increase their pumping without replenishing the  
16 Valley's water supply, Grimmway and LAPIS will suffer irreparable injury in that the usefulness and  
17 economic value of Grimmway and LAPIS's overlying property right will be substantially diminished  
18 and Grimmway and LAPIS will be deprived of the comfortable, reasonable and beneficial use and  
19 enjoyment of their property.

20 111. In maintaining this nuisance, the Purveyors, and each of them, are, and have been, acting  
21 with full knowledge of the consequences and damage being caused to Grimmway and LAPIS, and their  
22 conduct is willful, oppressive, malicious and designed to interfere with and take the Grimmway and  
23 LAPIS's right to freely access the water supply in its customary manner. Accordingly, each Purveyor  
24 has intentionally dirtied hands and no right to involve equity in these actions.

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1 **Thirteenth Cause of Action**

2 (42 U.S.C. A 1983 Against All Cross-Defendants.)

3 112. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs  
4 1 through 111, inclusive, of this Cross-Complaint.

5 113. This cause of action is brought under 42 U.S.C. § 1983 to recover damages against the  
6 Purveyors for violation of Grimmway and LAPIS's rights under the 5th and Fourteenth Amendments  
7 of the United States Constitution through the Purveyors' taking of Grimmway and LAPIS's private  
8 property for public use without paying just compensation and depriving Grimmway and LAPIS of both  
9 substantive or procedural due process of law.

10 114. The Purveyors, and each of them are, and at all times mentioned in this cross-complaint  
11 were, governmental entities organized and operating in Los Angeles and/or Kern County and in the State  
12 of California. All are organized and existing under the laws of the State of California, with the capacity  
13 to sue and be sued.

14 115. The Purveyors, and each of them, were, at all times mentioned in this cross-complaint,  
15 acting under color of state law.

16 116. At an as yet unidentified historical point in time, the Purveyors began pumping water  
17 from the Antelope Valley as permissive appropriators. Over the course of time, it is believed and  
18 therefore alleged, that the aggregate amount of water being extracted from the Valley began to exceed  
19 the safe yield resulting in a condition called "overdraft." Grimmway and LAPIS are informed and  
20 believe and based thereon allege, that the Purveyors had knowledge of the "overdraft" condition and  
21 nonetheless continued pumping and increased their pumping with the specific intent to impair and take  
22 all superior overlying property rights to extract groundwater, including that of Grimmway and LAPIS.  
23 Each Purveyor continued to pump and increased its pumping of groundwater believing that given the  
24 intervention of the committed public use, that no injunction would issue to restrain and/or compel the  
25 Purveyor to reduce its dependence upon groundwater. Each Purveyor contends that despite its status as  
26 a governmental entity, it can nonetheless take private property for a public use under a theory of

1 prescription and without compensation. Each Purveyor claims that presumed or constructive knowledge  
2 of the overdraft condition alone was sufficient to commence the running of the statutory prescriptive  
3 period. Each Purveyor did not undertake any affirmative action reasonably calculated and intended to  
4 provide notice and inform any affected landowner, including Grimmway and LAPIS, of its adverse and  
5 hostile claim. Each Purveyor contends that it has taken the private property rights of Grimmway and  
6 LAPIS and others, and have committed them to a public use, without following the Constitutional  
7 constraints imposed by Article 1, Section 19, of the California Constitution, and the eminent domain  
8 law, Code of Civil Procedure Section 1230.010 et seq., and specifically, the substantive and procedural  
9 protections contemplated by Code of Civil Procedure Section 1245.230. The acts of the Purveyors were  
10 done under the color of state law with the intent of depriving Grimmway and LAPIS of their property  
11 rights without substantive and procedural due process of law and to avoid payment of compensation to  
12 Grimmway and LAPIS for the property rights taken, all in violation of the 5th and 14th Amendments  
13 to the United States Constitution.

14 117. Grimmway and LAPIS are informed and believe and thereon allege that they were  
15 subjected to a violation of their right to due process of law prior to the taking of their property and their  
16 right to receive just compensation when their property was taken for the public benefit. This violation  
17 was a direct result of the knowing customs, practices, and policies of the Purveyors to continue to pump  
18 in excess of the supply, to suppress the assertion of their adverse and hostile claim, and the resulting ever  
19 increasing intervening public use and dependance, without acceding to Constitutional limits.

20 118. The customs, practices, and policies of the Purveyors to prescript or adversely possess  
21 the property rights of property owners and/or to establish a nonenjoinable intervening use amounted to  
22 deliberate indifference to the rights of persons, such as Grimmway and LAPIS, who stand to lose their  
23 rights to extract water from the Antelope Valley for use on their property through the actions of each  
24 Purveyor and all of them.

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1 119. As a direct and proximate result of the acts of the Purveyors, Grimmway and LAPIS have  
2 suffered injury, loss, and damage, including a cloud upon their title to their real property, a reduction in  
3 value, and the loss of their right in the future to extract and use groundwater from the Valley.

4 **First Cause of Action**

5 WHEREFORE, cross-complainants pray for a declaratory judgment as follows:

6 1. That the court declare the respective rights, duties, and responsibilities of District 40 and  
7 Grimmway and LAPIS under the statute in question and that by its declaration and judgment the court  
8 declare that the statute applies to District 40 in this matter, and that the statutes is constitutional and  
9 valid;

10 2. That District 40 and all others acting in or on its behalf, be enjoined from taking property  
11 or the rights attendant thereto in any manner not expressly set forth and authorized in the provisions of  
12 Water Code section 55370;

13 3. For costs of suit herein incurred; and

14 4. For such other and further relief as the court deems proper.

15 **Second Cause of Action**

16 WHEREFORE, cross-complainants pray for a declaratory judgment as follows:

17 1. That the court declare the respective rights, duties, and responsibilities of Palmdale and  
18 Grimmway and LAPIS under the statute in question and that by its declaration and judgment the court  
19 declare that the statute applies to Palmdale in this matter, and that the statutes is constitutional and valid;

20 2. That Palmdale and all others acting in or on its behalf, be enjoined from taking property  
21 or the rights attendant thereto in any manner not expressly set forth and authorized in the provisions of  
22 Water Code section 22456;

23 3. For costs of suit herein incurred; and

24 4. For such other and further relief as the court deems proper.

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**Third Cause of Action**

WHEREFORE, cross-complainants pray for a declaratory judgment as follows:

- 1. That the court declare the respective rights, duties, and responsibilities of Rosamond and Quartz Hill under the statute in question and that by its declaration and judgment the court declare that Water Code section 31040 applies to Rosamond and Quartz Hill in this matter, and that the statute is constitutional and valid;
- 2. That Rosamond and Quartz Hill and all others acting in or on their behalf, be enjoined from taking property or the rights attendant thereto in any manner not expressly set forth and authorized in the provisions of Water Code section 31040;
- 3. For costs of suit herein incurred; and
- 4. For such other and further relief as the court deems proper.

**Fourth Cause of Action**

WHEREFORE, cross-complainants pray for a declaratory judgment as follows:

- 1. That the court declare the respective rights, duties, and responsibilities of the Purveyors under Article 1 Section 19 of the California Constitution and that by its declaration and judgment the court declare that Article 1 Section 19 applies to the Purveyors in this matter, and that just compensation is a prerequisite to any taking by each of these governmental entities;
- 2. That the Purveyors and all others acting in or on their behalf, be enjoined from taking property or the rights attendant thereto in any manner not expressly set forth and authorized in the provisions of Article 1 Section 19 of the California Constitution;
- 3. For costs of suit herein incurred; and
- 4. For such other and further relief as the court deems proper.

**Fifth Cause of Action**

WHEREFORE, cross-complainants pray for a declaratory judgment as follows:

- 1. That the court declare the respective rights, duties, and responsibilities of the Purveyors under Article 1 Section 19 of the California Constitution and that by its declaration and judgment the

1 court declare that Article 1 Section 19 applies to the Purveyors in this matter, and that Section 19  
2 prohibits a governmental entity from taking private property for a public use without compensation  
3 under the doctrines of prescription or adverse possession;

4 2. That the Purveyors and all others acting in or on their behalf, be enjoined from taking  
5 property or the rights attendant thereto in any manner not expressly set forth and authorized in the  
6 provisions of Article 1 Section 19 of the California Constitution;

7 3. For costs of suit herein incurred; and

8 4. For such other and further relief as the court deems proper.

9 **Sixth Cause of Action**

10 WHEREFORE, cross-complainants pray for a declaratory judgment as follows:

11 1. That the court declare the respective rights, duties, and responsibilities of the Purveyors  
12 under Article 1 Section 7 of the California Constitution and that by its declaration and judgment the  
13 court declare that Article 1 Section 7 applies to the municipal Purveyors in this matter, and that Section  
14 7 prohibits a governmental entity from taking private property for a public use without providing due  
15 process of law to the individual whose property is being taken;

16 2. That the municipal Purveyors and all others acting in or on their behalf, be enjoined from  
17 taking property or the rights attendant thereto in any manner not expressly set forth and authorized in  
18 the provisions of Article 1 Section 7 of the California Constitution;

19 3. For costs of suit herein incurred; and

20 4. For such other and further relief as the court deems proper.

21 **Seventh Cause of Action**

22 WHEREFORE, cross-complainants pray judgment as follows:

23 1. For a declaration that Grimmway and LAPIS's continued pumping has interrupted any  
24 period of adverse pumping by the Municipal Purveyors negating any claim of prescription and thereby  
25 preserving Grimmway and LAPIS's overlying priority right to pump water from the Antelope Valley;

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2. For costs of suit herein incurred; and
3. For such other and further relief as the court may deem proper.

#### **Eighth Cause of Action**

WHEREFORE, cross-complainants pray for a declaratory judgment as follows:

1. That the court declare the respective rights, duties, and responsibilities of the Purveyors and Grimmway and LAPIS under the statute in question and that by its declaration and judgment the court declare that the Article X, Section 2 applies and that the Purveyors continued dependence on, and increased use of, groundwater in excess of the safe yield is unreasonable and constitutes waste;

2. That the Purveyors and all others acting in or on their behalf, be enjoined from engaging in the continued unreasonable and wasteful use of the groundwater in violation of the provisions of Article X, Section 2 of the California Constitution;

3. For costs of suit herein incurred; and
4. For such other and further relief as the court deems proper.

#### **Ninth Cause of Action**

WHEREFORE, cross-complainants pray judgment as follows:

1. For a declaration that the doctrine of separation of powers prohibits this court from imposing the objectives of the Purveyors upon the groundwater supply; that the implementation of the Purveyors' objectives requires compliance with the California Environmental Quality Act (Public Resources Code sections 21000-21177 to provide the required procedural and substantive protections to the citizens of the State of California.

2. For costs of suit herein incurred; and
3. For such other and further relief as the court may deem proper.

#### **Tenth Cause of Action**

WHEREFORE, cross-complainants pray judgment as follows:

1. For a declaration that the doctrine of separation of powers prohibits this court from imposing the objectives of the Purveyors upon the groundwater supply; that the implementation of the

1 Purveyors' objectives requires the Purveyors to act pursuant to the requirements of Water Code section  
2 10700-10795.20;

3 2. For costs of suit herein incurred; and

4 3. For such other and further relief as the court may deem proper.

5 **Eleventh Cause of Action**

6 WHEREFORE, cross-complainants pray judgment as follows:

7 1. For a declaration that each Purveyor is barred from asserting that the Antelope Valley is  
8 or was in a state of "overdraft" during the time that the Purveyors were issuing new water well permits,  
9 adding new water customers and authorizing new large scale developments and projects, and thus an  
10 increased demand on the water supply pursuant to Evidence Code section 623;

11 2. For costs of suit herein incurred; and

12 3. For such other and further relief as the court may deem proper.

13 **Twelfth Cause of Action**

14 WHEREFORE, cross-complainants pray judgment against cross-defendants, and each of them, as  
15 follows:

16 1. For a physical solution enjoining the Purveyors from increasing their extractions from  
17 the Antelope Valley and ordering the Purveyors to collectively abate the nuisance by purchasing, from  
18 time to time, all available imported water, and to bank and to replenish the groundwater supply and  
19 replace, in the aggregate, the extractions made by the Purveyors in excess of the safe yield;

20 2. For general damages according to proof;

21 3. For punitive damages;

22 4. For costs of suit herein incurred; and

23 5. For such other and further relief as the court may deem proper.

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1 **Thirteenth Cause of Action**

2 WHEREFORE, Grimmway and LAPIS pray judgment against each Purveyor as follows:

- 3 1. For compensatory damages, in an amount to be determined according to proof at trial;  
4 2. For reasonable attorney's fees, pursuant to 42 U.S.C. § 1988;  
5 3. For costs of suit incurred in this action; and  
6 4. For such other and further relief as the Court deems proper.

7 Dated: April 24, 2009

LeBEAU • THELEN, LLP

8  
9 By: 

10 BOB H. JOYCE  
11 Attorneys for Grimmway Enterprises, Inc. and  
12 LAPIS Land Company, LLC  
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**PROOF OF SERVICE**

ANTELOPE VALLEY GROUNDWATER CASES  
JUDICIAL COUNCIL PROCEEDING NO. 4408  
CASE NO.: 1-05-CV-049053

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I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter Drive, Suite 300, Bakersfield, California 93309. On April 24, 2009, I served the within

**CROSS-COMPLAINT OF GRIMMWAY ENTERPRISES, INC. AND LAPIS LAND COMPANY, LLC FOR EQUITABLE AND MONETARY RELIEF AGAINST CALIFORNIA WATER SERVICE COMPANY, CITY OF LANCASTER, CITY OF PALMDALE, LITTLEROCK CREEK IRRIGATION DISTRICT, LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40, PALMDALE WATER DISTRICT, ROSAMOND COMMUNITY SERVICES DISTRICT, PALM RANCH IRRIGATION DISTRICT, QUARTZ HILL WATER DISTRICT, AND PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT**

☒ (BY POSTING) I am "readily familiar" with the Court's Clarification Order. Electronic service and electronic posting completed through [www.sceefiling.org](http://www.sceefiling.org) ; All papers filed in Los Angeles County Superior Court and copy sent to trial judge and Chair of Judicial Council.

Los Angeles County Superior Court  
111 North Hill Street  
Los Angeles, CA 90012  
Attn: **Department 1**  
(213) 893-1014

Chair, Judicial Council of California  
Administrative Office of the Courts  
Attn: Appellate & Trial Court Judicial Services  
(Civil Case Coordinator)  
Carlotta Tillman  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688  
Fax (415) 865-4315

☐ (BY MAIL) 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 at Bakersfield, California, in the ordinary course of business.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that the foregoing was executed on April 24, 2009, in Bakersfield, California.

  
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**DONNA M. LUIS**