

Exhibit 7

MICHAEL T. FIFE (State Bar No. 203025)
STEVEN L. HOCH (State Bar No.: 59505)
STEPHANIE OSLER. HASTINGS (State Bar No.: 186716)
BRADLEY J. HERREMA (State Bar No. 228976)
HATCH & PARENT, A LAW CORPORATION
21 East Carrillo Street
Santa Barbara, CA 93101
Telephone No: (805) 963-7000
Facsimile No: (805) 965-4333

Attorneys for: B.J. Calandri, John Calandri, John Calandri as Trustee of the John and B.J. Calandri 2001 Trust, Forrest G. Godde, Forrest G. Godde as Trustee of the Forrest G. Godde Trust, Lawrence A. Godde, Lawrence A. Godde and Godde Trust, Kootenai Properties, Inc., Gailen Kyle, Gailen Kyle as Trustee of the Kyle Trust, James W. Kyle, James W. Kyle as Trustee of the Kyle Family Trust, Julia Kyle, Wanda E. Kyle, Eugene B. Nebeker, R and M Ranch, Inc., Edgar C. Ritter Paula E. Ritter, Paula E. Ritter as Trustee of the Ritter Family Trust, Trust, Hines Family Trust, Malloy Family Partners, Consolidated Rock Products, Calmat Land Company, Marygrace H. Santoro as Trustee for the Marygrace H. Santoro Rev Trust, Marygrace H. Santoro, Helen Stathatos, Savas Stathatos, Savas Stathatos as Trustee for the Stathatos Family Trust, Dennis L. & Marjorie E. Groven Trust, Scott S. & Kay B. Harter, Habod Javadi, Eugene V., Beverly A., & Paul S. Kindig, Paul S. & Sharon R. Kindig, Jose Maria Maritorena & Marie Pierre Maritorena, Trustees of the Maritorena Living Trust, Richard H. Miner, Jeffrey L. & Nancee J. Siebert, Barry S. Munz, Terry A. Munz and Kathleen M. Munz, Beverly Tobias, Leo L. Simi, White Fence Farms Mutual Water Co. No. 3, William R. Barnes & Eldora M. Barnes Family Trust of 1989, **collectively known as the Antelope Valley Ground Water Agreement Association ("AGWA")**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

ANTELOPE VALLEY
GROUNDWATER CASES

Included Actions:

Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California County of Los Angeles, Case No. BC 325 201 Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California, County of Kern, Case No. S-1500-CV-254-348 Wm. Bolthouse Farms, Inc. v. City of Lancaster Diamond Farming Co. v. City of Lancaster Diamond Farming Co. v. Palmdale Water Dist. Superior Court of California, County of Riverside, consolidated actions, Case No. RIC 353 840, RIC 344 436, RIC 344 668

) Judicial Council Coordination Proceeding
) No. 4408
)

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

) **FIRST AMENDED CROSS-COMPLAINT**
) **OF ANTELOPE VALLEY**
) **GROUNDWATER AGREEMENT**
) **ASSOCIATION**

1 B.J. Calandri, John Calandri, John Calandri as)
2 Trustee of the John and B.J. Calandri 2001)
3 Trust, Forrest G. Godde, Forrest G. Godde as)
4 Trustee of the Forrest G. Godde Trust,)
5 Lawrence A. Godde, Lawrence A. Godde and)
6 Godde Trust, Kootenai Properties, Inc., Gailen)
7 Kyle, Gailen Kyle as Trustee of the Kyle Trust,)
8 James W. Kyle, James W. Kyle as Trustee of)
9 the Kyle Family Trust, Julia Kyle, Wanda E.)
10 Kyle, Eugene B. Nebeker, R and M Ranch, Inc.,)
11 Edgar C. Ritter, Paula E. Ritter, Paula E. Ritter)
12 as Trustee of the Ritter Family Trust, Trust, ,)
13 Hines Family Trust , Malloy Family Partners,)
14 Consolidated Rock Products, Calmat Land)
15 Company, Marygrace H. Santoro as Trustee for)
16 the Marygrace H. Santoro Rev Trust, Marygrace)
17 H. Santoro, Helen Stathatos, Savas Stathatos,)
18 Savas Stathatos as Trustee for the Stathatos)
19 Family Trust, Dennis L. & Marjorie E. Groven)
20 Trust, Scott S. & Kay B. Harter, Habod Javadi,)
21 Eugene V., Beverly A., & Paul S. Kindig, Paul)
22 S. & Sharon R. Kindig, Jose Maria Maritorena)
23 & Marie Pierre Maritorena, Trustees of the)
24 Maritorena Living Trust, Richard H. Miner,)
25 Jeffrey L. & Nancee J. Siebert, Barry S. Munz,)
26 Terry A. Munz and Kathleen M. Munz, Beverly)
27 Tobias, Leo L. Simi, White Fence Farms Mutual)
28 Water Co. No. 3, William R. Barnes & Eldora)
M. Barnes Family Trust of 1989 collectively)
known as the Antelope Valley Ground Water)
Agreement Association ("AGWA"))

Cross Complainants,

vs.

22 Los Angeles County Waterworks District No.)
23 40, Palmdale Water District, The City of)
24 Palmdale, City of Lancaster, Littlerock Creek)
25 Irrigation District, Palm Ranch Irrigation)
26 District, Quartz Hill Water District, California)
27 Water Service Company, Rosamond)
28 Community Services District, Antelope Valley)
East Kern Water District, County Sanitation)
Districts Nos. 14 and 20, DOES 1 through 100)

Cross-Defendants

1 This Cross-Complaint for declaratory and injunctive relief seeks a judicial determination of
2 rights to all water and associated resources in the Antelope Valley, including but not limited to
3 priority rights to water imported to the region. This Cross-Complaint also seeks to promote proper
4 management of the Antelope Valley through the imposition of a Physical Solution and seeks to
5 prevent further degradation of the quality of the groundwater supply and to protect those who
6 depend on the groundwater supply from wasteful practices that may impair that supply. Such judicial
7 determination is necessary in order to ensure that the resources of the Antelope Valley are managed
8 and utilized for the long-term benefit of the people of the Antelope Valley.

9 JURISDICTION AND VENUE

10 1. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
11 Sections 526 and 1060. Venue is proper before this Court pursuant to the coordination order issued
12 by the Judicial Council.

13 PARTIES

14 2. Cross-Complainants are a diverse group of individuals and businesses who own
15 property in the Antelope Valley. Some Cross-Complainants pump water from the groundwater basin,
16 some utilize imported or recycled water, and some do not use any water at all. However, each Cross-
17 Complainant is the owner or beneficial interest holder of real property within the geographic
18 boundaries of the Basin and each shares a concern for the community in the Antelope Valley and
19 recognizes that proper management of the water resources of the Valley is essential for the future
20 health of the community. Some Cross-Complainants own businesses that were founded in the
21 Antelope Valley two and three generations ago.

22 3. Cross-Complainants are informed and believe and thereon allege that the Los Angeles
23 County Waterworks District No. 40 is a public agency which extracts water from and provides water
24 to customers located within the geographic boundaries of the Basin.

25 4. Cross-Complainants are informed and believe and thereon allege that Palmdale Water
26 District is a public agency which extracts water from and provides water to customers located within
27 the geographic boundaries of the Basin.

1 5. Cross-Complainants are informed and believe and thereon allege that The City of
2 Palmdale is a municipal corporation located in the County of Los Angeles.

3 6. Cross-Complainants are informed and believe and thereon allege that the City of
4 Lancaster is a municipal corporation located within the County of Los Angeles, and within the
5 geographic boundaries of the Basin.

6 7. Cross-Complainants are informed and believe and thereon allege that Littlerock
7 Creek Irrigation District is a public agency which provides water to customers located within the
8 geographic boundaries of the Basin and which extracts water from the Basin.

9 8. Cross-Complainants are informed and believe and thereon allege that Palm Ranch
10 Irrigation District is a public agency which provides water to customers located within the
11 geographic boundaries of the Basin and which extracts water from the Basin.

12 9. Cross-Complainants are informed and believe and thereon allege the Quartz Hill
13 Water District is a public agency which provides water to customers located within the geographic
14 boundaries of the Basin and which extracts water from the Basin.

15 10. Cross-Complainants are informed and believe and thereon allege that California
16 Water Service Company is a California corporation which provides water to customers located
17 within the geographic boundaries of the Basin and which extracts water from the Basin.

18 11. Cross-Complainants are informed and believe and thereon allege that Rosamond
19 Community Services District is a public agency which provides water to customers located within
20 the geographic boundaries of the Basin and which extracts water from the Basin.

21 12. Cross-Complainants are informed and believe and thereon allege that Antelope
22 Valley East Kern Water District ("AVEK") is a public agency which provides imported water to
23 customers located within the geographic boundaries of the Basin.

24 13. Cross-Complainants are informed and believe and thereon allege that County
25 Sanitation Districts Nos. 14 and 20 of Los Angeles County ("Sanitation Districts") are independent
26 special districts that serve, among other things, the wastewater treatment and reclamation needs of
27 Los Angeles County.

1 15. The Antelope Valley is a topographically closed watershed in the Western part of the
2 Mojave Desert, about 50 miles northeast of Los Angeles. Dry lake beds have formed at the “bottom”
3 of the Valley which are currently used as runways by Edwards Air Force Basin. Also contained in
4 the Valley is a large alluvial groundwater basin (“Basin”).

16. The Antelope Valley is situated at a cross-roads of major water supply infrastructure that serves the entire Los Angeles area: the East Branch of the State Water Project runs along the entire Southern side of the Valley and the Los Angeles aqueduct runs along the Northeast side of the Valley.

17. The Basin contains a large amount of vacated underground space which can be used for the storage of water. Cross-Complainants are informed and believe that there is as much as eight million acre-feet of available storage capacity in the Basin. Utilization of this storage capacity will be an essential component to the resolution of the water supply issues in the adjudication. This storage capacity, in combination with the ready access to water transportation infrastructure, also presents the risk that the resources of the Antelope Valley could be used to serve interests outside the Valley in a manner that does not contribute to a solution to the problems of the Valley.

/ / /

CONTROVERSY

18. Cross-Complainants are informed and believe, and thereon allege, that there are conflicting claims of rights to the water resources of the Valley, including the water storage capacity of the Basin.

FIRST CAUSE OF ACTION

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

19. Cross-Complainants re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

20. An actual controversy has arisen between Cross-Complainants and each of the Cross-Defendants as to the nature, extent, and priority of each party's right to produce groundwater from the Basin. As overlying landowners, Cross-Complainants allege that their water rights are superior in priority to those of any Cross-Defendant.

21. On information and belief, Cross-Complainants believe that Cross-Defendants dispute these contentions.

22. Cross-Complainants seek a declaration and judicial determination as to the validity of their contentions set forth herein, the amount of Basin water to which each party is entitled to produce from the Basin and the priority and character of each party's respective rights.

SECOND CAUSE OF ACTION

**(Damages – Trespass – Against All Cross-Defendants Except Sanitation Districts
and City of Palmdale)**

23. Cross-Complainants re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

24. On information and belief, each Cross-Defendant alleges that it produces or threatens to produce more water from the Basin than it has a right to produce. Cross-Defendants allege that this production forms the basis for claims of prescriptive rights. To the extent Cross-Defendants fail to prove any element of their claim for prescriptive rights, and to the extent that the alleged

1 production in excess of rights actually occurred, this alleged production of water constitutes a
2 trespass against Cross-Complainants.

3 25. On information and belief, Cross-Complainants believe that Cross-Defendants
4 dispute these contentions.

5 26. Cross-Complainants request the Court to award monetary damages to compensate for
6 any past injury that may have occurred to Cross-Complainants by Cross-Defendants' trespass in an
7 amount to be determined at trial.

8 **THIRD CAUSE OF ACTION**

9 **(Damages – 42 USC §1983/Taking – Against All Cross-Defendants Except Sanitation Districts
10 and City of Palmdale)**

11 27. Cross-Complainants re-allege and incorporate by reference each and all of the
12 preceding paragraphs as though fully set forth herein.

13 28. On information and belief, each Cross-Defendant alleges that it produces or threatens
14 to produce more water from the Basin than it has a right to produce. Cross-Defendants allege that
15 this production forms the basis for claims of prescriptive rights. To the extent Cross-Defendants fail
16 to prove any element of their claim for prescriptive rights, this alleged production of water
17 constitutes an invasion of Cross-Complainants property interests and is therefore a taking in
18 violation of the Fifth Amendment to the United States Constitution and in violation of Article 1,
19 Section 19 of the California Constitution.

20 29. Every person who, under color of any custom or usage, subjects or causes to be
21 subjected any citizen of the United States to the deprivation of any rights or privileges secured by the
22 Constitution and laws, shall be liable to the party injured in an action at law. (42 USC § 1983.)

23 30. On information and belief, Cross-Complainants believe that Cross-Defendants
24 dispute these contentions.

25 31. Cross-Complainants request the Court to award monetary damages, including
26 attorney's fees, to compensate for any past injury that may have occurred to Cross-Complainants by
27 Cross-Defendants' taking in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

**(Injunctive Relief – Water Rights – Against All Cross-Defendants Except Sanitation Districts
and City of Palmdale)**

32. Cross-Complainants re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

33. Each Cross-Defendant alleges that it produces or threatens to produce more water from the Basin than it has a right to produce. If allowed to continue, this production in excess of rights will interfere with the right of Cross-Complainants to produce groundwater and will cause injury to Cross-Complainants.

34. Cross-Complainants have no adequate remedy at law.

35. On information and belief, Cross-Complainants believe that Cross-Defendants dispute these contentions.

36. Unless the Court orders that Cross-Defendants cease production of water in excess of their rights, Cross-Complainants will suffer irreparable harm in that the supply of groundwater will become depleted and other undesirable effects will occur.

FIFTH CAUSE OF ACTION

(Declaratory Relief – Imported Water -- Against All Defendants Except Sanitation Districts)

37. Cross-Complainants re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

38. An actual controversy has arisen between Cross-Complainants and each of the Cross-Defendants as to the priority of each party's right to receive imported water. Agriculture has a long history of water resources use in the Antelope Valley, and the economy of the Antelope Valley is intimately tied to and dependant on agriculture. It has only been with the relatively recent increase in municipal demand that the water resources problems of the Antelope Valley have resulted in litigation.

39. The use of imported water will be a necessity to alleviate the stress on the groundwater Basin. The Court has broad equitable powers under Article X, section 2, to fashion a

1 physical solution for the Antelope Valley that ameliorates impacts associated with the loss of
2 common law water right priorities. If the Court finds that any overlying landowner has lost any
3 portion of its water rights, then one element of the physical solution should be to recognize a priority
4 right of those parties to receive and purchase imported water.

5 40. Basin on information and belief, Cross-Complainants believe that Cross-Defendants
6 dispute these contentions.

7 41. Cross-Complainants seek a declaration and judicial determination as to the validity of
8 their contentions set forth herein.

9 **SIXTH CAUSE OF ACTION**

10 **(Declaratory Relief – Imported Water – Against All Cross-Defendants**

11 **Except Sanitation Districts)**

12 42. Cross-Complainants re-allege and incorporate by reference each and all of the
13 preceding paragraphs as though fully set forth herein.

14 43. As an element of their claim for prescriptive rights, Cross-Defendants allege that their
15 pumping from the Basin is wrongful.

16 44. Cross-Complainants seek a judicial determination that any imported water purchased
17 by Cross-Defendants for recharge into the Basin for any purpose, either through direct recharge or
18 through return flows, must first be used to offset Cross-Defendants wrongful pumping from the
19 Basin. Cross-Complainants seek a further judicial declaration that any imported water that has
20 heretofore been purchased by Cross-Defendants and recharged into the Basin either through direct
21 recharge or through return flows, must be considered as an offset against any past wrongful pumping
22 by Cross-Defendants from the Basin.

23 45. Basin on information and belief, Cross-Complainants believe that Cross-Defendants
24 dispute these contentions.

25 46. Cross-Complainants seek a declaration and judicial determination as to the validity of
26 their contentions set forth herein.

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SEVENTH CAUSE OF ACTION

(Declaratory Relief – Waste/Nuisance – Against All Cross-Defendants)

47. Cross-Complainants re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

48. The Antelope Valley is a closed hydrologic region. While infrastructure exists to import water to the Valley, there is no infrastructure to export wastes from the Valley. These wastes are primarily the sewage that is the result of the water use of customers of Cross-Defendants. It is an unavoidable feature of the nature of the water use of Cross-Defendants that such wastes will be produced.

49. Based on information and belief, to the extent that wastewater services are provided by entities other than the water service providers, officials from these water service providers compose the governing bodies of the waste disposal entities.

50. Disposal of this waste into the groundwater Basin has resulted in degradation of groundwater quality and threatens to impair the ability to use portions of the Basin for water supply and storage purposes. Based on information and belief, Cross-Complainants believe that the waste disposal entities allege that there is no other way to handle the wastes from Cross-Defendants except disposal into the Basin.

51. Based on information and belief, Cross-Complainants believe that Cross-Defendants dispute these contentions.

52. Cross-Complainants seek a judicial determination that Cross-Defendants use of water results in an unavoidable degradation of the Basin, which, if allowed to continue, will one day render the Basin unusable and that therefore this use constitutes a continuing nuisance and waste in violation of Article X, section 2 of the California Constitution.

EIGHTH CAUSE OF ACTION

(Injunctive Relief – Waste – Against All Defendants)

53. Cross-Complainants re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

55. Cross-Complainants have no adequate remedy at law.

56. On information and belief, Cross-Complainants believe that Cross-Defendants
e these contentions.

57. Unless the Court orders that Cross-Defendants cease disposing of wastewater into the water Basin, Cross-Complainants will suffer irreparable injury because their use of the water Basin for water supply and for water storage purposes will be impaired.

NINTH CAUSE OF ACTION

(Declaratory Relief – Waste – Against All Cross-Defendants Except Sanitation Districts)

58. Cross-Complainants re-allege and incorporate by reference each and all of the foregoing paragraphs as though fully set forth herein.

59. On information and belief, the Cross-Defendants intend to pump and sell water
ily for domestic use. On information and belief, most of this water will be used for outside
ape irrigation. On information and belief, the landscape features irrigated with this water will
-native plant species unsuited to the arid conditions of the Antelope Valley.

60. On information and belief, Cross-Complainants believe that Cross-Defendants
these contentions.

61. Cross-Complainants seek a judicial determination that Cross-Defendants use of water manner constitutes waste under Article X, section 2 of the California Constitution.

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TENTH CAUSE OF ACTION

(Declaratory Relief – Physical Solution – Against All Cross-Defendants)

62. Cross-Complainants re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

63. In order to prevent irreparable injury to Cross-Complainants and other parties, it is necessary and appropriate that the Court exercise and retain continuing jurisdiction to develop and enforce a physical solution that protects, manages and conserves the water resources of the Antelope Valley.

64. The physical solution for the Valley should include the appointment of a Watermaster that is representative of all interests in the Valley, including landowners.

65. The physical solution should include the establishment of a water transfer program that will permit the transferability of Basin pumping rights between any Basin users.

66. If the physical solution involves groundwater banking, then the physical solution must ensure that the benefits of such banking will be used for the benefit of the Antelope Valley and will be spread equitably amongst all interests in the Valley with proper recognition given to the priority rights of overlying landowners.

Prayer for Relief

WHEREFORE, Cross-Complainants pray for judgment as follows:

1. Judicial declarations consistent with Cross-Complainants' contentions in the First, Fifth, Sixth, Seventh, Ninth, and Tenth Causes of Action in this Cross-Complaint.
2. Judicial award of damages, including punitive damages, consistent with Cross-Complainants' contentions in the Second and Third Causes of Action in this Cross-Complaint.
3. For preliminary and permanent injunctions consistent with the Fourth and Eighth Causes of Action in this Cross-Complaint.

- 1 4. For prejudgment interest as permitted by law.
- 2 5. For attorney, appraisal, and expert witness fees and costs incurred in this action.
- 3 6. For such other relief as the Court deems just and proper.
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- 5

6 Dated: January 25, 2007

HATCH & PARENT, A LAW CORPORATION

8 By: 

9 MICHAEL T. FIFE
10 ATTORNEYS FOR AGWA
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PROOF OF SERVICE

**STATE OF CALIFORNIA,
COUNTY OF SANTA BARBARA**

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action; my business address is: 21 E. Carrillo Street, Santa Barbara, California 93101.

On January 26, 2007, I served the foregoing document described as:

**AMENDED CROSS-COMPLAINT OF ANTELOPE VALLEY
GROUNDWATER AGREEMENT ASSOCIATION**

on the interested parties in this action.

By posting it on the website at 12:45 p.m./a.m. on January 26, 2007. This posting was reported as complete and without error.

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

Executed in Santa Barbara, California, on January 26, 2007.

RACHEL ROBERTO

TYPE OR PRINT NAME

Rachel Roberto

SIGNATURE

Exhibit 8

1 Fred Kia
2 5225 Wilshire Boulevard
3 Suite 1000
4 Los Angeles, California 90036
5 Telephone: (323) 934-5000
6 Facsimile: (323) 936-5274

7 Defendant in *Pro Per*

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

SEP 26 2008

John A. Clarke, Executive Officer/Clerk

By A. Mendickson Deputy

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES, CENTRAL DIVISION

10
11 **ANTELOPE VALLEY GROUNDWATER**
12 **CASES:**

13 Included Actions:

14 Los Angeles County Waterworks District No.
15 40 v. Diamond Farming Co. Superior Court
of California, County of Los Angeles, Case
No. BC325201;

16 Los Angeles County Waterworks District No.
17 40 v. Diamond Farming Co. Superior Court
of California, County of Kern, Case No. S-
1500-CV254-348;

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

22
23 FRED KIA and ALAN KIA, doing business
24 as Gateway Triangle Properties

25 **Cross-Complainants,**

26 **vs.**

27 LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40; CITY
28 OF LANCASTER; CITY OF PALMDALE;
PALMDALE WATER DISTRICT;
LITTLEROCK CREEK IRRIGATION

Judicial Council Coordination
Proceeding No. 4408

Santa Clara Case No. 1-05-CV-049053

Assigned to the Honorable Jack Komar

**CROSS-COMPLAINT OF GATEWAY
TRIANGLE PROPERTIES**

CROSS-COMPLAINT OF
GATEWAY TRIANGLE PROPERTIES

1 DISTRICT; PALM RANCH IRRIGATION)
DISTRICT; ROSAMOND COMMUNITY)
2 SERVICE DISTRICT; CALIFORNIA)
WATER SERVICE COMPANY; QUARTZ)
3 HILL WATER DISTRICT; AND AS)
AGAINST EACH AND EVERY PARTY)
4 WHICH SUBSEQUENTLY FILES A)
CROSS-COMPLAINT AGAINST)
5 GATEWAY TRIANGLE PROPERTIES; and)
DOES 2 through 1,000;)

6 **Cross-Defendants.**)
7)
8)
9)

10 Cross-Complainants, Fred Kia and Alan Kia, doing business as Gateway Triangle
11 Properties (collectively referred to as "Gateway" or "Cross-Complainants") makes the
12 following allegations against Cross-Defendants California Water Service Company, City of
13 Lancaster, City of Palmdale, Littlerock Creek Irrigation District, Los Angeles County
14 Waterworks District No. 40, Palmdale Water District, Rosamond Community Services District,
15 Palm Ranch Irrigation District and Quartz Hill Water District (collectively referred to herein as
16 "Districts" or "Cross-Defendants"), and DOES 1-1,000, inclusive, as follows:

17 **THE PARTIES**

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

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

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

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

8 5. Palmdale Water District was formed as a public irrigation district in 1918 and
9 operates under Division 11 of the California Water Code and is producing water from the
10 Antelope Valley Water Supply and selling it to its customers.

11 6. California Water Service Company is a California corporation which provides
12 water to customers located within the geographic boundaries of the Basin and which extracts
13 water from the Basin.

14 7. City of Palmdale is a municipal corporation located within the County of Los
15 Angeles, and within the geographic boundaries of the Basin.

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

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

22 10. Cross-Complainants, Fred Kia and Alan Kia, individually, doing business under
23 the name Gateway Triangle Properties that owns certain real property in Kern County, State of
24 California.

25 11. Cross-Complainants is ignorant of the true names and capacities of cross-
26 defendants sued herein as DOES 1-1,000, inclusive, and therefore sue these cross-defendants
27 by such fictitious names. Cross-Complainants will amend this Cross-Complaint to allege their
28 true names and capacities when ascertained. Each reference in this Cross-Complaint to

1 "Districts," "the Districts," or a specifically named cross-defendant, refers also to all cross-
2 defendants sued under fictitious names. Cross-Complainants will reserve the right to amend
3 this Cross-Complaint to allege the Doe Defendants' legal names and capacities when that
4 information is ascertained.

5 6 JURISDICTION AND VENUE

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

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

14 14. Cross-Complainants have suffered actual damages as a result of District's
15 unlawful conduct in a presently undetermined amount.

16 17 ALLEGATIONS

18 15. Cross-Complainants bring this action on behalf of himself seeking a judicial
19 determination of its rights and interest to use the groundwater within the Antelope Valley
20 Groundwater Basin (the "Basin"). In addition, Cross-Complainants seek damages and just
21 compensation for himself from the government entity Cross-Defendants taking and interfering
22 with Cross-Complainants property rights. This action is necessary in that Cross-Defendants
23 assert a common law prescriptive right to the groundwater in the Basin which right they claim
24 is superior to that of Cross-Complainants. To the extent Cross-Defendants fail to prove any
25 element of prescription or the evidence shows that Cross-Defendants have indeed taken non-
26 surplus water in derogation of the rights of overlying landowners, Cross-Complainants
27 property rights and interests have been damaged and/or infringed.

1 16. The Cross-Complainants have a property right in the water within the Basin. The
2 Cross-Complainants also have a priority to the use of the Basin's groundwater. To the extent
3 the Cross-Defendants assert rights to that ground water or have taken non-surplus groundwater
4 in derogation of the rights of the overlying landowners, Cross-Complainants are entitled to
5 damages and just compensation under the Fifth and Fourteenth Amendments of the United
6 States Constitution and Article 1, Section 19 of the California Constitution.

7 17. Cross-Complainants are informed and believe that at some yet unidentified point
8 in the past, the Districts began to extract groundwater from the Basin to a point above and
9 beyond an average annual safe yield. Cross-Complainants are further informed and believe that
10 future population growth and demands will place increased burdens on the Basin. If the trend
11 continues, demand will significantly exceed supply which will cause damage to private rights
12 and ownership in real property. Presently, the rights to the Basin's groundwater have not been
13 adjudicated and there are no legal restrictions on pumping. Cross-Complainants are informed
14 and believe that the Cross-Defendants are pumping water from the Basin and/or claims an
15 interest in the Basin's groundwater, without payment of just compensation and without due
16 process notice. Despite the actual and potential future damage to the water supply and the
17 rights of owners of real property within the Valley, the Districts have knowingly continued to
18 extract groundwater from the Basin, and increased and continue to increase their extractions of
19 groundwater over time. The Districts continued the act of pumping with the knowledge that the
20 continued extractions impairing the rights and interests of the Cross-Complainants.

21 18. Cross-Complainants is informed and believes, and thereon alleges, that without
22 any notification to Cross-Complainants, the Districts pumped and continue to pump water in
23 excess of the safe yield with the knowing intent and belief that they could take by claim of
24 prescription, without just compensation and without due process notice, the water rights of
25 Cross-Complainants.

26 19. Cross-Complainants right to use water below the surface of the land is a valuable
27 property rights; regardless of whether it is presently exercised or will be exercised in the future.
28

1 None of the Cross-Defendants have invoked the power of eminent domain nor paid any
2 compensation to Cross-Complainants for the property rights they have knowingly taken.

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

7 **FIRST CAUSE OF ACTION**

8 **(For Declaratory Relief Against All Cross-Defendants)**

9 21. Cross-Complainants realleges and incorporates herein by reference each of the
10 allegations contained in the preceding paragraphs of this Cross-Complaint, and further alleges
11 against Cross-Defendants as follows:

12 22. By virtue of their property ownership, Cross-Complainants hold overlying rights
13 to the Basin's groundwater, which entitle them to extract that water and put it to reasonable and
14 beneficial uses on their respective properties.

15 23. Cross-Complainants is informed and believes, and on the basis of that
16 information and belief, alleges that each of the Cross-Defendants presently extracts and/or
17 purveys groundwater from the Basin and/or asserts rights to that groundwater which conflict
18 with the overlying rights of Cross-Complainants.

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

25 25. Cross-Complainants present and planned overlying uses of the Basin's
26 groundwater are superior in right to any non-overlying rights held by the Cross-Defendants.

27 26. Cross-Complainants overlying rights need to be apportioned in a fair and
28 equitable manner among all persons holding rights to the Basin's water.

27. Cross-Complainant seek a judicial determination that its rights as overlying users are superior to the rights of all non-overlying users and that they have correlative rights vis-à-vis other overlying landowners.

28. Cross-Complainants further seek a judicial determination as to the priority and amount of water that all parties in interest are entitled to pump from the Basin.

29. Cross-Complainants hold rights to utilize or derive benefit from the storage capacity of the Basin. Cross-Complainants seek a judicial determination as to priority and ownership of those rights. In addition, Cross-Complainants contend that California Water Code Sections 55370, 22456, and 31040 limits the method, manner and mode by which Districts may acquire private property and requires payment of just compensation through eminent domain proceedings. Cross-Complainants seek a declaration of rights with respect to the constitutionality and applications of these Statutes.

SECOND CAUSE OF ACTION

(Against All Cross-Defendants to Quiet Title)

30. Cross-Complainants realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Cross-Complaint, and further alleges against Cross-Defendants as follows:

31. Cross-Complainants own land overlying the Antelope Valley alluvial groundwater basin. Accordingly, Cross-Complainants have appurtenant rights to pump and reasonably use groundwater on their land.

32. Cross-Complainants herein request a declaration from the Court quieting title to their appurtenant rights to pump and reasonably use groundwater on their land in the future.

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1 **THIRD CAUSE OF ACTION**

2 **(Against All Cross-Defendants For Damages Pursuant to**
3 **The California Constitution Takings Clause)**

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

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

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

10 On information and belief, Cross-Defendants have extracted and will continue to extract
11 non-surplus groundwater from the Basin in excess of a safe yield. On information and belief,
12 Cross-Complainants property have been injured in the form of degradation of the water level
13 and degradation of the quality of the water, in addition to the actual taking of non-surplus
14 water.

15 35. The Cross-Defendants claim priority rights to take and use the Basin's
16 groundwater by "prescription" and as a matter of public interest and need.

17 36. If and to the extent the Cross-Defendants are granted rights to use the Basin's
18 groundwater with priority to the rights held by Cross-Complainants and other overlying
19 landowners, Cross-Complainants are entitled to just compensation pursuant to Article 1,
20 Section 19 of the California Constitution for the diminutions in fair market value of the real
21 property. If and to the extent the public entities are not granted rights to use the Basin's
22 groundwater with priority to the rights held by Cross-Complainants, Cross-Complainants and
23 are entitled to just compensation pursuant Article 1, Section 19 of the California Constitution
24 for wrongful taking of water rights.

25 37. Cross-Complainants seek just compensation for such taking and/or damaging
26 according to proof at trial.

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **(Against All Cross-Defendants For Damages Pursuant to**
3 **The United States Constitution Takings Clause)**

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

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

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

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

25 42. Cross-Complainants are informed and believe and thereon allege that he was
26 denied due process of law prior to the taking of his property. This violation was a direct result
27 of the knowing customs, practices, and policies of the Districts to continue to pump in excess
28

1 of the supply, to suppress the assertion of their adverse and hostile claim, and the resulting ever
2 increasing intervening public use and dependence, without acceding to Constitutional limits.

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

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

12 45. Cross-Complainants seek just compensation for such taking and/or damaging
13 according to proof at trial.

15 **FIFTH CAUSE OF ACTION**

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

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

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

27 ///

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48. The Districts, and each of them, have continued to and have increased their pumping, despite the knowledge of the damage caused by pumping. The Districts have refused, and continue to refuse, to stop or reduce their pumping despite the damage to the supply of water. This nuisance affects a substantial number of persons in that the Appropriators claim that the continued pumping in excess of the supply's safe yield is, and will, eventually cause a chronic decline in water levels and the available natural water supply will be chronically depleted. If the present trend continues, demand will continue to exceed supply which will continue to cause a reduction in the long term supply. Additionally, the continued pumping by the Districts under these conditions will result in the unlawful obstruction of the overlying landowner's rights to use the water supply in the customary manner.

49. The Districts have threatened to and will, unless restrained by this court, continue to pump groundwater in increasing amounts, and each and every act has been, and will be, without the consent, against the will, and in violation of the rights of Cross-Complainants.

50. As a proximate result of the nuisance created by the Districts, Cross-Complainants have been, and will be, damaged in a sum to be proven at trial.

51. In maintaining this nuisance, the Districts, and each of them are, and have been, acting with full knowledge of the consequences and damage being caused and their conduct is willful, oppressive, malicious and designed to interfere with and take Cross-Complainant's right to freely access the water supply in its customary manner.

SIXTH CAUSE OF ACTION

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

52. Cross-Complainant realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Cross-Complaint, and further alleges against Cross-Defendants as follows:

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

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

5 The 5th Amendment to the Constitution as applied by the 14th Amendment in relevant
6 part provides:

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

9 54. The Districts contend that, even though they are political subdivisions who are
10 uniquely invested with the power of eminent domain, they are allowed to surreptitiously take
11 private property for public use by prescription or adverse possession without providing
12 substantive or procedural due process of law to each overlying landowner.

13 55. Gateway contends that the Article I, Section 7, of the State Constitution, and the
14 5th Amendment as applied by the 14th Amendment of the Federal Constitution, mandates that
15 governmental entities must provide substantive and procedural due process of law when taking
16 private property for a public use. Gateway contends that the prescriptive period cannot
17 commence until the governmental entity takes affirmative action designed and intended to give
18 notice and inform the overlying landowners of the governmental entity's adverse and hostile
19 claim. Gateway further contends that this limitation forecloses the ability of any governmental
20 agency to take or acquire private property for a public use when constitutionally sufficient due
21 process notice has not been provided to the land owner. By virtue of the District's actions as
22 set forth above, an actual controversy has arisen and now exists between the Districts and
23 Gateway concerning their respective rights, duties, and responsibilities.

24 56. Gateway desires a declaration of its rights with respect to the application or
25 nonapplication of Article I Section 7 and the 5th Amendment to the U.S. Constitution to the
26 Districts' prescription claims and asks the court to make a declaration of such rights, duties,
27 and responsibilities. Such a declaration is necessary and appropriate at this time in order that
28 Gateway's property rights may be protected and to ensure that the municipal Districts may

1 proceed according to the California Constitution. There are no administrative remedies
2 available to Gateway.

3 57. A timely declaration by this court is urgent for the following reasons: by way of
4 this action the Districts are seeking to adjudicate and enjoin the property rights of Gateway and
5 thousands of other parties by avoiding the due process protections provided to these
6 landowners under Article I Section 7, the 5th and 14 h Amendments and Code of Civil
7 Procedure sections 1230.010 through 1237.040. Absent a timely declaration by this court,
8 injustice will result from the improper use and adjudication of Gateway's property rights
9 should the foregoing constraints and statutory mandate be found applicable.

10 58. Gateway will suffer irreparable and lasting injury unless declaratory relief is
11 granted.

12 13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Cross-Complainants prays that this Court enter judgment on his behalf
15 against all Cross-Defendants, jointly and severally, as follows:

16 1. Declaring that Cross-Complainant's overlying rights to use water from the Basin
17 are superior and have priority vis-a-vis all non-overlying users and the Districts;

18 2. Apportioning water rights from the Basin in a fair and equitable manner and
19 enjoining any and all uses inconsistent with such apportionment;

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

25 4. Awarding Cross-Complainants just compensation and damages for the subject
26 property taken and damages, in amounts to be proven at trial together with interest thereon at
27 the legal rate from the date of the damages as provided by law;;

28 5. Awarding economic and compensatory damages;

1 6. Awarding Cross-Complainants reasonable attorneys' and experts' fees and other
2 disbursements;

3 7. And for such other and further relief as may be just and proper.

4 Dated: September 26, 2008

5
6
7 By: _____

8 Fred Kia
9 doing business as Gateway Triangle
10 Properties
11 Defendant in *Pro Per*

12 By: _____

13 Alan Kia
14 doing business as Gateway
15 Triangle Properties
16 Defendant in *Pro Per*

1
2
3 **PROOF OF SERVICE**
4

5 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES
6

7 I declare that:

8 I am employed in the County of Los Angeles, State of California. I am over the age of
9 eighteen years and not a party to the within action. My business address is 5225 Wilshire
10 Boulevard, Suite 1000, Los Angeles, California 90036.
11

12 On September 26, 2008, I served **CROSS-COMPLAINT OF GATEWAY**
13 **TRIANGLE PROPERTIES** by posting the document(s) listed above to the Santa Clara
14 Superior website (<http://www.scefilling.org>) under the Antelope Valley Groundwater matter.
15

16 I declare under penalty of perjury under the laws of the State of California that the
17 above is true and correct, executed on September 26, 2008.
18


19 
20 _____
21 JOSEPHINE VILLAMENA
22
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28

Exhibit 9

1 SMILAND & CHESTER
2 William M. Smiland, Esq., SBN 41928
3 Theodore A. Chester, Jr., Esq., SBN 105405
4 601 West Fifth Street, Suite 700
5 Los Angeles, California 90071
6 Telephone: (213) 891-1010
7 Facsimile: (213) 891-1414

8 Attorneys for Landinv, Inc.

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

11 Coordination Proceeding Special Title
12 (Rule 1550 (b))

) Judicial Council Coordination No. 4408
) Case No.: 1-05-CV-049053

13 ANTELOPE VALEY GROUNDWATER
14 CASES

) **CROSS-COMPLAINT OF LANDINV, INC.**

15 Included actions:

16 Los Angeles County Waterworks District No.
17 40 vs. Diamond Farming Company
18 Los Angeles Superior Court Case No.
19 BC325201

20 Los Angeles County Waterworks District No.
21 40 vs. Diamond Farming Company
22 Kern County Superior Court Case No. S-1500-
23 CV-254348 NFT

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

1 1. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
2 Sections 526 and 1060. Venue is proper before this Court pursuant to the coordination order
3 issued by the Judicial Council.

4 2. Cross-Complainant is a California corporation. Cross-Complainant is the owner
5 of real property within the geographic boundaries of the Antelope Valley Groundwater Basin
6 (the "Basin").

7 3. Cross-Complainant is informed and believes and thereon alleges that the Los
8 Angeles County Waterworks District No. 40 is a public agency which extracts water from and
9 provides water to customers located within the geographic boundaries of the Basin.

10 4. Cross-Complainant is informed and believes and thereon alleges that Palmdale
11 Water District is a public agency which extracts water from and provides water to customers
12 located within the geographic boundaries of the Basin.

13 5. Cross-Complainant is informed and believes and thereon alleges that the City of
14 Palmdale is a municipal corporation located in the County of Los Angeles.

15 6. Cross-Complainant is informed and believes and thereon alleges that the City of
16 Lancaster is a municipal corporation located within the County of Los Angeles, and within the
17 geographic boundaries of the Basin.

18 7. Cross-Complainant is informed and believes and thereon alleges that Littlerock
19 Creek Irrigation District is a public agency which provides water to customers located within the
20 geographic boundaries of the Basin and which extracts water from the Basin.

21 8. Cross-Complainant is informed and believes and thereon alleges that Palm Ranch
22 Irrigation District is a public agency which provides water to customers located within the
23 geographic boundaries of the Basin and which extracts water from the Basin.

24 9. Cross-Complainant is informed and believes and thereon alleges the Quartz Hill
25 Water District is a public agency which provides water to customers located within the
26 geographic boundaries of the Basin and which extracts water from the Basin.

27 ///

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1 10. Cross-Complainant is informed and believes and thereon alleges the California
2 Water Service Company is a California corporation which provides water to customers located
3 within the geographic boundaries of the Basin and which extracts water from the Basin.

4 11. Cross-Complainant is informed and believes and thereon alleges the Rosamond
5 Community Services District is a public agency which provides water to customers located
6 within the geographic boundaries of the Basin and which extracts water from the Basin.

7
8 **FIRST CAUSE OF ACTION**

9 **(Declaratory Relief Water Rights Against All Cross-Defendants)**

10 12. Cross-Complainant re-alleges and incorporates by reference each and all of the
11 preceding paragraphs as though fully set forth herein.

12 13. An actual controversy has arisen between Cross-Complainant and each of the
13 Cross-Defendants as to the nature, extent, and priority of each party's right to produce
14 groundwater from the Basin. As an overlying landowner, Cross-Complainant alleges that its
15 water rights are superior in priority to those of any Cross-Defendant.

16 14. On information and belief, Cross-Complainant believes that Cross-Defendants
17 dispute these contentions.

18 15. Cross-Complainant seeks a declaration and judicial determination as to the
19 validity of its contentions set forth herein, and the priority and character of each party's
20 respective rights.

21
22 **SECOND CAUSE OF ACTION**

23 **(Damages Continuing Trespass Against all Cross-Defendants)**

24 16. Cross-Complainant re-alleges and incorporates by reference each and all of the
25 preceding paragraphs as though fully set forth herein.

26 17. On information and belief, each Cross-Defendant alleges that it produces or
27 threatens to produce more water from the Basin than it has a right to produce. Cross-Defendants
28 allege that this production forms the basis for claims of prescriptive rights. To the extent Cross-

1 Defendants fail to prove any element of their claim for prescriptive rights, and to the extent that
2 the alleged production in excess of rights actually occurs, this alleged production of water
3 constitutes a continuing trespass against Cross-Complainant.

4 18. Cross-Complainant requests the Court to award monetary damages to compensate
5 for any injury that may have occurred to Cross-Complainant by Cross-Defendants' continuing
6 trespass in an amount to be determined at trial.

7 8 **THIRD CAUSE OF ACTION**

9 **(Damages Continuing Nuisance Against All Cross-Defendants)**

10 19. Cross-Complainant re-alleges and incorporates by reference each and all of the
11 preceding paragraphs as though fully set forth herein.

12 20. On information and belief, each Cross-Defendant alleges that it produces or
13 threatens to produce more water from the Basin than it has a right to produce. Cross-Defendants
14 allege that this production forms the basis for claims of prescriptive rights. To the extent Cross-
15 Defendants fail to prove any element of their claim for prescriptive rights, this alleged
16 production of water constitutes a continuing nuisance under Civil Code §3479 and §3480.

17 21. Cross-Complainant requests the Court to award monetary damages to compensate
18 for any injury to Cross-Complainant by Cross-Defendants' continuing nuisance in an amount to
19 be determined at trial.

20 21 **FOURTH CAUSE OF ACTION**

22 **(Damages Dangerous Condition Govt. Code §§830 et seq. Against All Cross-Defendants)**

23 22. Cross-Complainant re-alleges and incorporates by reference each and all of the
24 preceding paragraphs as though fully set forth herein.

25 23. On information and belief, each Cross-Defendant alleges that it produces or
26 threatens to produce more water from the Basin than it has a right to produce. Cross-Defendants
27 allege that this production forms the basis for claims of prescriptive rights. To the extent Cross-
28 Defendants fail to prove any element of their claim for prescriptive rights, this alleged

1 production of water constitutes a dangerous condition causing injury to Cross-Complainant's
2 property interests.

3 24. Cross-Complainant requests the Court to award monetary damages to compensate
4 for any injury to Cross-Complainant by Cross-Defendants' maintenance of a dangerous
5 condition in an amount to be determined at trial.

6
7 **FIFTH CAUSE OF ACTION**

8 **(Damages Inverse Condemnation Against All Cross-Defendants)**

9 25. Cross-Complainant re-alleges and incorporates by reference each and all of the
10 preceding paragraphs as though fully set forth herein.

11 26. On information and belief, each Cross-Defendant alleges that it produces or
12 threatens to produce more water from the Basin than it has a right to produce. Cross-Defendants
13 allege that this production forms the basis for claims of prescriptive rights. To the extent Cross-
14 Defendants fail to prove any element of their claim for prescriptive rights, this alleged
15 production of water constitutes an invasion of Cross-Complainant's property interests and is
16 therefore a taking in violation of the Fifth Amendment to the United States Constitution and
17 Article 1, Section 19 of the California Constitution.

18 27. Cross-Complainant requests the Court to award monetary damages to compensate
19 for any injury to Cross-Complainant by Cross-Defendants' inverse condemnation in an amount
20 to be determined at trial.

21
22 **SIXTH CAUSE OF ACTION**

23 **(Damages 42 USC §1983/Taking Against All Cross-Defendants)**

24 28. Cross-Complainant re-alleges and incorporates by reference each and all of the
25 preceding paragraphs as though fully set forth herein.

26 29. On information and belief, each Cross-Defendant alleges that it produces or
27 threatens to produce more water from the Basin than it has a right to produce. Cross-Defendants
28 allege that this production forms the basis for claims of prescriptive rights. To the extent Cross-

1 Defendants fail to prove any element of their claim for prescriptive rights, this alleged
2 production of water constitutes an invasion of Cross-Complainant's property interests and is
3 therefore a taking in violation of the Fifth Amendment to the United States Constitution.

4 30. Every person who, under color of any custom or usage, subjects or causes to be
5 subjected any citizen of the United States to the deprivation of any rights or privileges secured by
6 the Constitution and laws, shall be liable to the party injured in an action at law. (42 US §1983.)

7 31. Cross-Complainant requests the Court to award monetary damages, including
8 attorney's fees, to compensate for any injury to Cross-Complainant by Cross-Defendants' taking
9 in an amount to be determined at trial.

10 11 **SEVENTH CAUSE OF ACTION**

12 **(Injunctive Relief Water Rights Against All Cross-Defendants)**

13 32. Cross-Complainant re-alleges and incorporates by reference each and all of the
14 preceding paragraphs as though fully set forth herein.

15 33. Each Cross-Defendant alleges that it produces or threatens to produce more water
16 from the Basin than it has a right to produce. If allowed to continue, this production in excess of
17 rights will interfere with the right of Cross-Complainant to produce groundwater and will cause
18 injury to Cross-Complainant.

19 34. Cross-Complainant has no adequate remedy at law.

20 35. Unless the Court orders that Cross-Defendant cease production of water in excess
21 of their rights, Cross-Complainant will suffer irreparable harm in that the supply of groundwater
22 will become depleted and other undesirable effects will occur.

23 24 **EIGHTH CAUSE OF ACTION**

25 **(Injunctive Relief Waste Against All Defendants)**

26 36. Cross-Complainant re-alleges and incorporates by reference each and all of the
27 preceding paragraphs as though fully set forth herein.

37. On information and belief, each Cross-Defendant disposes or allows to be disposed wastewater which is a result of its water use to the detriment of the Basin. On information and belief, Cross-Defendants intend to increase the amount of wastewater that they dispose or allow to be disposed into the Basin. This disposal interferes with the right of Cross-Complainant to produce groundwater.

38. Cross-Complainant has no adequate remedy at law.

39. Unless the Court orders that Cross-Defendants cease disposing of wastewater into the groundwater Basin, Cross-Complainant will suffer irreparable injury because its use of the groundwater Basin for water supply and for water storage purposes will be impaired.

Prayer for Relief

WHEREFORE, Cross-Complainant prays for judgment as follows:

1. Judicial declarations consistent with Cross-Complainant's contentions in the First Cause of Action in this Cross-Complaint.
2. Judicial award of damages, consistent with Cross-Complainant's contentions in the Second, Third, Fourth, Fifth and Sixth Causes of Action in this Cross-Complaint.
3. For preliminary and permanent injunctions consistent with the Seventh and Eighth Causes of Action in this Cross-Complaint.
4. For prejudgment interest as permitted by law.
5. For attorney, appraisal, and expert witness fees and costs incurred in this action.
6. For such other relief as the Court deems just and proper.

Dated: November 26, 2008

SMILAND & CHESTER

By: Theodore A. Chester, Jr.
Attorneys for Landinv, Inc.

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I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 601 West Fifth Street, Suite 700, Los Angeles, California 90071.

on the interested parties in this action.

[XX] **BY U.S. MAIL:** On that date and at that place of business, the document was placed in an envelope addressed as follows:

The envelope was sealed and placed for collection and mailing following ordinary business practices. I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. The correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business with postage thereon fully prepaid. [CCP § 1013a(3)]

Executed in Los Angeles, California, on November 26, 2008.


Jane J. Dang

SERVICE LIST

STRADLING YOCCA CARLSON & RAUTH

Douglas J. Evertz, Esq.

660 Newport Center Drive, Suite 1600

Newport Beach, California 92660

(916) 823-6720

Attorneys for City of Lancaster

RICHARDS WATSON & GERSHON

James L. Markman, Esq.

Steven Orr, Esq.

355 S. Grand Avenue, 40th Floor

Los Angeles, California 90071-3101

(213) 626-0078

Attorneys for City of Palmdale

LEMIEUX & O'NEILL

Wayne Lemieux, Esq.

2393 Townsgate Road, Suite 201

Westlake Village, California 91361

(805) 495-2787

Attorneys for Littlerock Creek Irrigation District

and Palm Ranch Irrigation District

LAGERLOF SENECA BRADLEY GOSNEY & KRUSE

Thomas Bunn, III, Esq.

301 North Lake Avenue, 10th Floor

Pasadena, California 91101-4108

(626) 793-5900

Attorneys for Palmdale Water District and Quartz Hill Water District

CALIFORNIA WATER SERVICE COMPANY

John Tootle, Esq.

2532 West 237th Street

Torrance, California 90505

(310) 325-4605

Exhibit 10

1 **HANNA AND MORTON LLP**
2 **EDWARD S. RENWICK** (State Bar No. 29325)
3 444 South Flower Street, Suite 1500
4 Los Angeles, California 90071-2916
5 Telephone: (213) 628-7131
6 Facsimile: (213) 623-3379

7
8 Attorneys for Cross-Complainant
9 **WAGAS LAND COMPANY LLC**

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28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

13 **Included Actions:**

14 Los Angeles County Waterworks District
15 No. 40 v. Diamond Farming Co., Superior
16 Court of California, County of Los Angeles
17 Case No. BC325201; Los Angeles County
18 Waterworks District No. 40 v. Diamond
19 Farming Co., Superior Court of California,
20 County of Kern Case No. S-1500-
21 CV254348; Wm. Bolthouse Farms, Inc. v.
22 City of Lancaster; Diamond Farming Co. v.
23 City of Lancaster; Diamond Farming Co. v.
24 Palmdale Water Dist., Superior Court of
25 California, County of Riverside,
26 Consolidated Actions, Case Nos.
27 RIC353840, RIC344436, RIC344668.

21 **WAGAS LAND COMPANY LLC**

22 Cross-Complainant,

23 v.

24 Los Angeles County Waterworks District
25 No. 40; Palmdale Water District; The City
26 of Palmdale; City of Lancaster; Littlerock
27 Creek Irrigation District; Palm Ranch
28 Irrigation District; Quartz Hill Water
District; California Water Service
Company; Rosamond Community Services
District; Antelope Valley East Kern Water
District; County Sanitation Districts Nos.
14 and 20; DOES 1 through 100

Cross-Defendants.

Judicial Council Coordination Proceeding
No. 4408

For filing purposes only:
Santa Clara Case No. 1-05-CV-049053

Assigned to the Hon. Jack Komar

CROSS-COMPLAINT OF WAGAS LAND
COMPANY LLC

This Cross-Complaint for declaratory and injunctive relief seeks a judicial determination of rights to all water and associated resources in the Antelope Valley, including, but not limited to, priority rights to water imported to the region. This Cross-Complaint also seeks to promote proper management of the Antelope Valley through the imposition of a physical solution and seeks to prevent further degradation of the quality of the groundwater supply and to protect those who depend on the groundwater supply from wasteful practices that may impair that supply. Such judicial determination is necessary in order to ensure that the resources of the Antelope Valley are managed and utilized for the long-term benefit of the people of the Antelope Valley.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Code of Civil Procedure Sections 526 and 1060. Venue is proper before this Court pursuant to the coordination order issued by the Judicial Council.

PARTIES

2. Cross-Complainant, WAGAS LAND COMPANY LLC ("WAGAS"), is an entity owning property in the Antelope Valley. WAGAS has pumped water from the Basin (as defined in item 15 below) since approximately 1925, and has applied all of the water that it has pumped to a beneficial use on its overlying land. WAGAS recognizes that proper management of the water resources of the Antelope Valley is essential for the future health of the community.

3. WAGAS is informed and believes and thereon alleges that the Los Angeles County Waterworks District No. 40 is a public agency which extracts water from and provides water to customers located within the geographic boundaries of the Basin.

4. WAGAS is informed and believes and thereon alleges that Palmdale Water District is a public agency which extracts water from and provides water to customers located within the geographic boundaries of the Basin.

5. WAGAS is informed and believes and thereon alleges that the City of Palmdale is a municipal corporation located in the County of Los Angeles.

6. WAGAS is informed and believes and thereon alleges that the City of Lancaster is a municipal corporation located within the County of Los Angeles, and within the geographic

1 boundaries of the Basin.

2 7. WAGAS is informed and believes and thereon alleges that Littlerock Creek
3 Irrigation District is a public agency which provides water to customers located within the
4 geographic boundaries of the Basin and which extracts water from the Basin.

5 8. WAGAS is informed and believes and thereon alleges that Palm Ranch Irrigation
6 District is a public agency which provides water to customers located within the geographic
7 boundaries of the Basin and which extracts water from the Basin.

8 9. WAGAS is informed and believes and thereon alleges that the Quartz Hill Water
9 District is a public agency which provides water to customers located within the geographic
10 boundaries of the Basin and which extracts water from the Basin.

11 10. WAGAS is informed and believes and thereon alleges that California Water
12 Service Company is a California corporation which provides water to customers located within
13 the geographic boundaries of the Basin and which extracts water from the Basin.

14 11. WAGAS is informed and believes and thereon alleges that Rosamond Community
15 Services District is a public agency which provides water to customers located within the
16 geographic boundaries of the Basin and which extracts water from the Basin.

17 12. WAGAS is informed and believes and thereon alleges that Antelope Valley East
18 Kern Water District is a public agency which provides imported water to customers located
19 within the geographic boundaries of the Basin.

20 13. WAGAS is informed and believes and thereon alleges that County Sanitation
21 Districts Nos. 14 and 20 of Los Angeles County ("Sanitation Districts") are independent special
22 districts that serve, among other things, the wastewater treatment and reclamation needs of
23 Los Angeles County.

24 14. WAGAS is presently unaware of whether other parties in the adjudication assert
25 claims adverse to the rights of WAGAS as overlying landowner or whether there are parties not
26 involved in the adjudication who may assert claims adverse to WAGAS. Cross-Defendants
27 Does 1 through 100 include any party, other than the Cross-Defendants specifically named herein,
28 who assert claims adverse to the rights of WAGAS as overlying landowner. Since WAGAS is

1 unaware of the true names and identities of Does 1 through 100, WAGAS hereby sues them by
2 such fictitious names and will seek leave to amend this Cross-Complaint to add their true names
3 and capacities when they are ascertained.

4 **FACTUAL ALLEGATIONS**

5 15. The Antelope Valley is a topographically closed watershed in the Western part of
6 the Mojave Desert, about 50 miles northeast of Los Angeles. Dry lake beds have formed at the
7 bottom of the Antelope Valley which are currently used as runways by Edwards Air Force Basin.
8 Also contained in the Antelope Valley is a large alluvial groundwater basin ("Basin").

9 16. The Antelope Valley is situated at a cross-roads of major water supply
10 infrastructure that serves the entire Los Angeles area: the east branch of the State Water Project
11 runs along the entire southern side of the Antelope Valley and the Los Angeles aqueduct runs
12 along the northeast side of the Antelope Valley.

13 17. The Basin contains a large amount of vacated underground space which can be
14 used for the storage of water. WAGAS is informed and believe that there is as much as
15 eight million acre-feet of available storage capacity in the Basin. Utilization of this storage
16 capacity will be an essential component to the resolution of the water supply issues in the
17 adjudication. This storage capacity, in combination with the ready access to water transportation
18 infrastructure, also presents the risk that the resources of the Antelope Valley could be used to
19 serve interests outside the Antelope Valley in a manner that does not contribute to a solution to
20 the problems of the Antelope Valley.

21 **CONTROVERSY**

22 18. WAGAS is informed and believes and thereon alleges that there are conflicting
23 claims of rights to the water resources of the Antelope Valley, including the water storage
24 capacity of the Basin.

25 **FIRST CAUSE OF ACTION**

26 **(Declaratory Relief – Water Rights – Against All Cross-Defendants)**

27 19. WAGAS re-alleges and incorporates by reference each and all of the preceding
28 paragraphs as though fully set forth herein.

1 20. An actual controversy has arisen between WAGAS and each of the Cross-
2 Defendants as to the nature, extent, and priority of each party's right to produce groundwater
3 from the Basin. As overlying landowner, WAGAS alleges that its water rights are superior in
4 priority to those of any Cross-Defendant.

5 21. On information and belief, WAGAS believes that Cross-Defendants dispute these
6 contentions.

7 22. WAGAS seeks a declaration and judicial determination as to the validity of its
8 contentions set forth herein, the amount of Basin water to which each party is entitled to produce
9 from the Basin, and the priority and character of each party's respective rights.

10 **SECOND CAUSE OF ACTION**

11 **(Damages – Trespass – Against All Cross-Defendants**

12 **Except Sanitation Districts and City of Palmdale)**

13 23. WAGAS re-alleges and incorporates by reference each and all of the preceding
14 paragraphs as though fully set forth herein.

15 24. On information and belief, WAGAS alleges that each Cross-Defendant produces
16 or threatens to produce more water from the Basin than it has a right to produce. Cross-
17 Defendants allege that this production forms the basis for claims of prescriptive rights. To the
18 extent Cross-Defendants fail to prove any element of their claim for prescriptive rights, and to the
19 extent that the alleged production in excess of rights actually occurred, this alleged production of
20 water constitutes a trespass against WAGAS.

21 25. On information and belief, WAGAS believes that Cross-Defendants dispute these
22 contentions.

23 26. WAGAS requests the Court to award monetary damages to compensate for any
24 past injury that may have occurred to WAGAS by Cross-Defendants' trespass in an amount to be
25 determined at trial.

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1 **THIRD CAUSE OF ACTION**

2 **(Damages – 42 U.S.C. § 1983/Taking – Against All Cross-Defendants**

3 **Except Sanitation Districts and City of Palmdale)**

4 27. WAGAS re-alleges and incorporates by reference each and all of the preceding
5 paragraphs as though fully set forth herein.

6 28. On information and belief, WAGAS alleges that each Cross-Defendant produces
7 or threatens to produce more water from the Basin than it has a right to produce. Cross-
8 Defendants allege that this production forms the basis for claims of prescriptive rights. To the
9 extent Cross-Defendants fail to prove any element of their claim for prescriptive rights, this
10 alleged production of water constitutes an invasion of WAGAS's property interests and is
11 therefore a taking in violation of the Fifth Amendment to the United States Constitution and in
12 violation of Article I, Section 19 of the California Constitution.

13 29. Every person who, under color of any custom or usage, subjects or causes to be
14 subjected any citizen of the United States to the deprivation of any rights or privileges secured by
15 the Constitution and laws, shall be liable to the party injured in an action at law. (42 U.S.C.
16 § 1983.)

17 30. On information and belief, WAGAS believes that Cross-Defendants dispute these
18 contentions.

19 31. WAGAS requests the Court to award monetary damages, including attorney's
20 fees, to compensate for any past injury that may have occurred to WAGAS by Cross-Defendants'
21 taking in an amount to be determined at trial.

22 **FOURTH CAUSE OF ACTION**

23 **(Injunctive Relief – Water Rights – Against All Cross-Defendants**

24 **Except Sanitation Districts and City of Palmdale)**

25 32. WAGAS re-alleges and incorporates by reference each and all of the preceding
26 paragraphs as though fully set forth herein.

27 33. On information and belief, WAGAS alleges that each Cross-Defendant produces
28 or threatens to produce more water from the Basin than it has a right to produce. If allowed to

1 continue, this production in excess of rights will interfere with the right of WAGAS to produce
2 groundwater and will cause injury to WAGAS.

3 34. WAGAS has no adequate remedy at law.

4 35. On information and belief, WAGAS believes that Cross-Defendants dispute these
5 contentions.

6 36. Unless the Court orders that Cross-Defendants cease production of water in excess
7 of their rights, WAGAS will suffer irreparable harm in that the supply of groundwater will
8 become depleted and other undesirable effects will occur.

9 **FIFTH CAUSE OF ACTION**

10 **(Declaratory Relief – Imported Water – Against All Defendants Except Sanitation Districts)**

11 37. WAGAS re-alleges and incorporates by reference each and all of the preceding
12 paragraphs as though fully set forth herein.

13 38. An actual controversy has arisen between WAGAS and each of the Cross-
14 Defendants as to the priority of each party's right to receive imported water. Agriculture,
15 including wildlife habitat preservation, have a long history of water resources use in the Antelope
16 Valley, and the economy of the Antelope Valley is intimately tied to and dependent upon
17 agriculture, including wildlife habitat preservation. It has only been with the relatively recent
18 increase in municipal demand that the water resources problems of the Antelope Valley have
19 resulted in litigation.

20 39. The use of imported water will be a necessity to alleviate the stress on the
21 groundwater Basin. The Court has broad equitable powers under Article X, Section 2 of the
22 California Constitution, to fashion a physical solution for the Antelope Valley that ameliorates
23 impacts associated with the loss of common law water right priorities. If the Court finds that an
24 overlying landowner has lost any portion of its water rights, then one element of the physical
25 solution should be to recognize a priority right of those parties to receive and purchase imported
26 water.

27 40. Based on information and belief, WAGAS believes that Cross-Defendants dispute
28 these contentions.

1 41. WAGAS seeks a declaration and judicial determination as to the validity of its
2 contentions set forth herein.

3 **SIXTH CAUSE OF ACTION**

4 **(Declaratory Relief – Imported Water – Against All Cross-Defendants**
5 **Except Sanitation Districts)**

6 42. WAGAS re-alleges and incorporates by reference each and all of the preceding
7 paragraphs as though fully set forth herein.

8 43. As an element of their claim for prescriptive rights, Cross-Defendants allege that
9 their pumping from the Basin is wrongful.

10 44. WAGAS seeks a judicial determination that any imported water purchased by
11 Cross-Defendants for recharge into the Basin for any purpose, either through direct recharge or
12 through return flows, must first be used to offset Cross-Defendants' wrongful pumping from the
13 Basin. WAGAS seeks a further judicial declaration that any imported water that has heretofore
14 been purchased by Cross-Defendants and recharged into the Basin either through direct recharge
15 or through return flows, must be considered as an offset against any past wrongful pumping by
16 Cross-Defendants from the Basin.

17 45. Based on information and belief, WAGAS believes that Cross-Defendants dispute
18 these contentions.

19 46. WAGAS seeks a declaration and judicial determination as to the validity of their
20 contentions set forth herein.

21 **SEVENTH CAUSE OF ACTION**

22 **(Declaratory Relief – Waste/Nuisance – Against All Cross-Defendants)**

23 47. WAGAS re-alleges and incorporates by reference each and all of the preceding
24 paragraphs as though fully set forth herein.

25 48. The Antelope Valley is a closed hydrologic region. While infrastructure exists to
26 import water to the Antelope Valley, there is no infrastructure to export wastes from the Antelope
27 Valley. These wastes are primarily the sewage that is the result of the water use of customers of
28 Cross-Defendants. It is an unavoidable feature of the nature of the water use of Cross-Defendants

1 that such wastes will be produced.

2 49. Based on information and belief, to the extent that wastewater services are
3 provided by entities other than the water service providers, officials from these water service
4 providers compose the governing bodies of the waste disposal entities.

5 50. Disposal of this waste into the Basin has resulted in degradation of groundwater
6 quality and threatens to impair the ability to use portions of the Basin for water supply and
7 storage purposes. Based on information and belief, WAGAS believes that the waste disposal
8 entities allege that there is no other way to handle the wastes from Cross-Defendants except
9 disposal into the Basin.

10 51. Based on information and belief, WAGAS believes that Cross-Defendants dispute
11 these contentions.

12 52. WAGAS seeks a judicial determination that Cross-Defendants use of water results
13 in an unavoidable degradation of the Basin, which, if allowed to continue, will one day render the
14 Basin unusable and that therefore this use constitutes a continuing nuisance and waste in violation
15 of Article X, Section 2 of the California Constitution.

16 **EIGHTH CAUSE OF ACTION**

17 **(Injunctive Relief – Waste – Against All Defendants)**

18 53. WAGAS re-alleges and incorporates by reference each and all of the preceding
19 paragraphs as though fully set forth herein.

20 54. On information and belief, WAGAS alleges that each Cross-Defendant disposes or
21 allows to be disposed wastewater which is a result of its water use to the detriment of the Basin.
22 On information and belief, Cross-Defendants intend to increase the amount of wastewater that
23 they dispose or allow to be disposed into the Basin. This disposal interferes with the right of
24 WAGAS to produce groundwater.

25 55. WAGAS has no adequate remedy at law.

26 56. On information and belief, WAGAS believes that Cross-Defendants dispute these
27 contentions.

28 57. Unless the Court orders that Cross-Defendants cease disposing of wastewater into

1 the Basin, WAGAS will suffer irreparable injury because its use of the Basin for water supply and
2 for water storage purposes will be impaired.

3 **NINTH CAUSE OF ACTION**

4 **(Declaratory Relief – Waste – Against All Cross-Defendants Except Sanitation Districts)**

5 58. WAGAS re-alleges and incorporates by reference each and all of the preceding
6 paragraphs as though fully set forth herein.

7 59. On information and belief, WAGAS alleges that the Cross-Defendants intend to
8 pump and sell water primarily for domestic use. On information and belief, most of this water
9 will be used for outside landscape irrigation. On information and belief, the landscape features
10 irrigated with this water will be non-native plant species unsuited to the arid conditions of the
11 Antelope Valley.

12 60. On information and belief, WAGAS believes that Cross-Defendants dispute these
13 contentions.

14 61. WAGAS seeks a judicial determination that Cross-Defendants' use of water in this
15 manner constitutes waste under Article X, Section 2 of the California Constitution.

16 **TENTH CAUSE OF ACTION**

17 **(Declaratory Relief – Physical Solution – Against All Cross-Defendants)**

18 62. WAGAS re-alleges and incorporates by reference each and all of the preceding
19 paragraphs as though fully set forth herein.

20 63. In order to prevent irreparable injury to WAGAS and other parties, it is necessary
21 and appropriate that the Court exercise and retain continuing jurisdiction to develop and enforce a
22 physical solution that protects, manages and conserves the water resources of the Antelope
23 Valley.

24 64. The physical solution for the Antelope Valley should include the appointment of a
25 watermaster that is representative of all interests in the Antelope Valley, including landowners.

26 65. The physical solution should include the establishment of a water transfer program
27 that will permit the transferability of Basin pumping rights between any Basin users.

28 66. If the physical solution involves groundwater banking, then the physical solution

1 must ensure that the benefits of such banking will be used for the benefit of the Antelope Valley
2 and will be spread equitably amongst all interests in the Antelope Valley with proper recognition
3 given to the priority rights of overlying landowners.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, WAGAS prays for judgment as follows:

- 6 1. Judicial declarations consistent with WAGAS's contentions in the First, Fifth,
7 Sixth, Seventh, Ninth, and Tenth Causes of Action in this Cross-Complaint.
- 8 2. Judicial award of damages, including punitive damages, consistent with
9 WAGAS's contentions in the Second and Third Causes of Action in this Cross-Complaint.
- 10 3. For preliminary and permanent injunctions consistent with the Fourth and Eighth
11 Causes of Action in this Cross-Complaint.
- 12 4. For prejudgment interest as permitted by law.
- 13 5. For attorney, appraisal, and expert witness fees and costs incurred in this action.
- 14 6. For such other relief as the Court deems just and proper.

15 Dated: June 29, 2007

HANNA AND MORTON LLP
EDWARD S. RENWICK

16
17
18 By: 

Edward S. Renwick

19 Attorneys for Cross-Complainant
20 WAGAS LAND COMPANY LLC
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of eighteen and not a party to the within action. I am employed by Hanna and Morton LLP in the County of Los Angeles, State of California. My business address is 444 South Flower Street, Suite 1500, Los Angeles, CA 90071-2916.

On July 3, 2007, I served the following document(s) in the *Antelope Valley Groundwater Adjudication* cases, JCCP No. 4408, described as: **CROSS-COMPLAINT OF WAGAS LAND COMPANY LLC**

on the interested parties in this action, by posting the document(s) listed above to the Santa Clara County Superior Court e-filing website (<http://www.scefilings.org>) under the Antelope Valley Groundwater matter pursuant to the Court's Order dated October 27, 2005.

Executed on July 3, 2007, at Los Angeles, California.

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

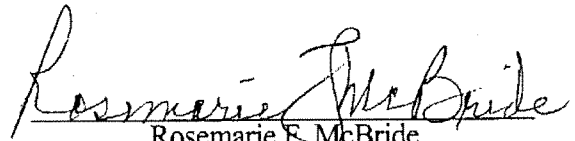

Rosemarie F. McBride

Exhibit 11

1 ROBERT E. DOUGHERTY [SBN: 41317]
2 WILLIAM A. HAUCK [SBN: 202669]
3 Covington & Crowe, LLP
4 1131 West Sixth Street, Suite 300
5 Ontario, California 91762
6 (909) 983-9393; Fax (909) 391-6762

7 Attorneys for White Fence Farms Mutual Water Co. Inc., El Dorado Mutual Water Co., West
8 Side Park Mutual Water Co., Shadow Acres Mutual Water Co., Antelope Park Mutual Water
9 Co., Averydale Mutual Water Co., Sundale Mutual Water Co., Evergreen Mutual Water Co.,
10 Aqua J Mutual Water Co., Bleigh Flat Mutual Water Co., Colorado Mutual Water Co.,
11 Sunnyside Farms Mutual Water Co., **collectively known as A.V. United Mutual Group**

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

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

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

18 Los Angeles County Waterworks District
19 No. 40 v. Diamond Farming Co., Superior
20 Court of California, County of Kern, Case
21 No.: S-1500-CV-254-348;

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

28 White Fence Farms Mutual Water Co. Inc.;
El Dorado Mutual Water Co.; West Side
Park Mutual Water Co.; Shadow Acres
Mutual Water Co.; Antelope Park Mutual
Water Co.; Averydale Mutual Water Co.;
Sundale Mutual Water Co.; Evergreen
Mutual Water Co.; Aqua J Mutual Water
Co.; Bleigh Flat Mutual Water Co.;
Colorado Mutual Water Co.; Sunnyside
Farms Mutual Water Co.; **collectively**
known as A.V. United Mutual Group,

Judicial Council Coordination Proceeding
No. 4408

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

**CROSS-COMPLAINT OF A.V. UNITED
MUTUAL GROUP AGAINST PURVEYORS
FOR:**

- 1) **Declaratory Relief, Water Rights;**
- 2) **Injunctive Relief, Water Rights;**
- 3) **Declaratory Relief, Return Flows;**
- 4) **Declaratory Relief, Physical Solution;**
- 5) **Injunctive Relief, Physical Solution.**

1 Cross-Complainants,
2
3 v.
4 California Water Service Company; City of
5 Lancaster; City of Palmdale; Littlerock
6 Creek Irrigation District; Los Angeles
7 County Water Works District No. 40;
8 Palmdale Water District; Rosamond
9 Community Services District; Palm Ranch
10 Irrigation District; and Quartz Hill Water
11 District; and ZOES 1-200, inclusive,
12
13 Cross-Defendants.

14 Cross-Complainants A.V. United Mutual Group (“AVUMG”) allege against Cross-
15 Defendants California Water Service Company, City of Lancaster, City of Palmdale, Littlerock
16 Creek Irrigation District, Los Angeles County Water Works District No. 40, Palmdale Water
17 District, Rosamond Community Services District, Palm Ranch Irrigation District, and Quartz
18 Hill Water District (“collectively referred to herein as “Purveyors”), and ZOES 1-200, inclusive,
19 as follows:

20 **GENERAL ALLEGATIONS**

21 1. The Court has jurisdiction over this action pursuant to Code of Civil Procedure
22 sections 526 and 1060. Venue is proper before this Court pursuant to the coordination order
23 issued by the Judicial Council.

24 2. Cross-Complainants herein, White Fence Farms Mutual Water Co. Inc., El
25 Dorado Mutual Water Co., West Side Park Mutual Water Co., Shadow Acres Mutual Water Co.,
26 Antelope Park Mutual Water Co., Averydale Mutual Water Co., Sundale Mutual Water Co.,
27 Evergreen Mutual Water Co., Aqua J Mutual Water Co., Bleigh Flat Mutual Water Co.,
28 Colorado Mutual Water Co., Sunnyside Farms Mutual Water Co., collectively known as A.V.
United Mutual Group (“AVUMG”), are mutual water companies whose shareholders are owners
of land in the Antelope Valley. Each Cross-Complainant holds a beneficial right to the
shareholders’ interest in ground water within the geographic boundaries of the Antelope Valley

1 Ground Water Basin ("Basin"). The Cross-Complainants have historically pumped water from
2 beneath the shareholders land for the shareholders use.

3 3. Cross-Complainants are informed and believe and thereon allege that California
4 Water Service Company is a California corporation which provides water to customers located
5 within the geographic boundaries of the Basin and which extracts water from the Basin.

6 4. Cross-Complainants are informed and believe and thereon allege that City of
7 Lancaster is a municipal corporation located within the County of Los Angeles, and within the
8 geographic boundaries of the Basin.

9 5. Cross-Complainants are informed and believe and thereon allege that City of
10 Palmdale is a municipal corporation located within the County of Los Angeles.

11 6. Cross-Complainants are informed and believe and thereon allege that Littlerock
12 Creek Irrigation District is a public agency which provides water to customers located within the
13 geographic boundaries of the Basin and which extracts water from the Basin.

14 7. Cross-Complainants are informed and believe and thereon allege that Los Angeles
15 County Waterworks District No. 40 is a public agency governed by the Los Angeles County
16 Board of Supervisors operating under Division 16 of the California Water Code. Los Angeles
17 County Waterworks District No. 40 was established on November 4, 1993 to provide water
18 service to the public within the Basin.

19 8. Cross-Complainants are informed and believe and thereon allege that Palmdale
20 Water District was formed as a public irrigation district in 1918 and operates under Division 11
21 of the California Water Code and is producing water from the Basin and selling it to its
22 customers.

23 9. Cross-Complainants are informed and believe and thereon allege that Rosamond
24 Community Services District is a county water district voted into being in 1966, and operating
25 under Division 12 of the California Water Code to provide water for domestic use and irrigation,
26 among other things.

27 10. Cross-Complainants are informed and believe and thereon allege that Palm Ranch
28

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

3 11. Cross-Complainants are informed and believe and thereon allege that Quartz Hill
4 Water District is a county water district organized and operating under Division 12 of the
5 California Water Code and is producing water from the Basin and selling it to its customers.

6 12. Cross-Complainants are ignorant of the true names and capacities of Cross-
7 Defendants sued herein as ZOES 1-200, inclusive, and therefore sue these Cross-Defendants by
8 such fictitious names. Cross-Complainants will amend this Cross-Complaint to allege their true
9 names and capacities when ascertained. References to "Purveyors" in this Cross-Complaint also
10 refer to all Cross-Defendants sued under such fictitious names.

11 **FACTUAL ALLEGATIONS**

12 13. The Antelope Valley is located in northern Los Angeles County and the
13 southeastern portion of Kern County, California. The Antelope Valley comprises the western tip
14 of the Mojave Desert, opening up to the Victor Valley and the Great Basin to the east. The
15 Antelope Valley is a desert ecosystem which spans approximately 2,200 square miles. Human
16 water use in the Antelope Valley depends mainly on pumping of groundwater from the valley's
17 aquifers and the importing of additional water. Cross-Complainants herein acquire water both by
18 pumping underlying groundwater and purchasing imported water to supplement the pumped
19 water.

20 14. Cross-Complainants are informed and believe and thereon allege that Purveyors
21 began pumping appropriated surplus water from the Basin to provide water for their municipal,
22 industrial, or other water customers, which was initially lawful and did not immediately nor
23 prospectively invade or impair any overlying rights.

24 15. However, since the initial pumping began, with the expanded population growth
25 of the Antelope Valley, Purveyors have dramatically increased their demand for water, which
26 created a potential for damages to the water supply. Despite the potential for damages to the
27 water supply, Purveyors have continued the act of pumping.

16. Cross-Complainants are informed and believe and thereon allege that Purveyors, with knowledge did extract, and have continued to extract, groundwater from the common supply, and have continued the act of pumping the groundwater to increase their extractions of groundwater with the knowledge that the continued extractions are damaging the long-term rights of the mutual water companies, including its shareholders who are the property owners, among others.

17. Cross-Complainants are informed and believe and thereon allege that Purveyors, with full intent and knowing that they could take by claim of prescription, without compensation, the water rights of all landowners overlying the Basin. Despite the knowledge and intent to take overlying property owners' water rights, the Purveyors did not take any steps necessary or intended to inform or otherwise notify any landowner of their adverse and hostile claim or that their pumping of groundwater was an invasion of the landowners' property rights.

18. During the time that each Purveyor was pumping the groundwater, no Purveyor ever took any affirmative action reasonably calculated to inform or notify any overlying landowner that the Purveyor intended to take by prescription the overlying water rights.

19. For the five years immediately preceding the filing of this Cross-Complaint, the Cross-Complainants, and their shareholders who are property owners in the Basin, did not have actual knowledge that any Purveyor's pumping of groundwater was adverse to or hostile to their present and/or future priority rights.

20. In or about March 2007, Cross-Complainants were served as Does by Cross-Defendants seeking to obtain a judicial determination that they had obtained the overlying landowners' water rights, without compensation, within the Basin through the common law doctrine of prescription.

21. None of the Purveyors have invoked the power of eminent domain, nor paid any compensation to the Cross-Complainants or their shareholders, for the property rights that they have allegedly and knowingly taken.

///

1 **FIRST CAUSE OF ACTION**

2 **(Declaratory Relief; Water Rights)**

3 **(Against all Cross-Defendants and Zoes 1-200, inclusive)**

4 22. Cross-Complainants reallege and incorporate by reference paragraphs 1 through
5 21 of this Cross-Complaint as though fully set forth herein.

6 23. An actual controversy has arisen between Cross-Complainants and each of the
7 Cross-Defendants as to the nature, extent and priority of each party's right to produce
8 groundwater from the Basin. As mutual water companies whose shareholders are overlying
9 landowners, Cross-Complainants allege that their water rights are superior in priority to those of
10 any of Cross-Defendants, and that they have preserved and maintained their priority rights to the
11 use of groundwater.

12 24. Cross-Complainants are informed and believe and thereon allege that Cross-
13 Defendants dispute these contentions.

14 25. Cross-Complainants seek a declaration and judicial determination as to the
15 validity of their contentions set forth herein, the amount of Basin water to which each party is
16 entitled to produce from the Basin, and the priority and character of each party's respective
17 rights.

18 **SECOND CAUSE OF ACTION**

19 **(Injunctive Relief; Water Rights)**

20 **(Against all Cross-Defendants and Zoes 1-200, inclusive)**

21 26. Cross-Complainants reallege and incorporate by reference paragraphs 1 through
22 25 of this Cross-Complaint as though fully set forth herein.

23 27. In their First-Amended Cross-Complaint, Cross-Defendants allege that they
24 produce more water from the Basin than they have a right to produce. If allowed to continue,
25 this production in excess of rights will interfere with the right of Cross-Complainants to produce
26 groundwater and will cause injury to Cross-Complainants.

27 28. Cross-Complainants have no adequate remedy at law.

29. Cross-Complainants are informed and believe and thereon allege that Cross-Defendants dispute these contentions.

30. Unless the Court orders that Cross-Defendants cease production of water in excess of their rights, Cross-Complainants will suffer irreparable harm in that the supply of groundwater will become depleted and other undesirable effects will occur.

THIRD CAUSE OF ACTION

(Declaratory Relief; Return Flows)

(Against all Cross-Defendants and Zoes 1-200, inclusive)

31. Cross-Complainants reallege and incorporate by reference paragraphs 1 through 30 of this Cross-Complaint as though fully set forth herein.

32. Some of the imported State Project water typically returns and/or enters the Basin, and will continue to do so. This water is commonly known as “return flows.” These return flows further augment the Basin’s water supply.

33. Cross-Complainants are informed and believe and thereon allege that there is underground space available in the Basin to store return flows from imported State Project water.

34. Cross-Complainants have the right to recapture the return flows from that water attributable to their purchase of imported State Project water, or such water imported on their behalf. The rights of Cross-Defendants, if any, are limited to the Basin's native supply, and/or their imported water, and do not extend to groundwater attributable to the Cross-Complainants' return flows.

35. An actual controversy has arisen between Cross-Complainants and each of the Cross-Defendants. Cross-Complainants are informed and believe and thereon allege that Cross-Defendants dispute their contentions as set forth in this Cross-Complaint.

36. Cross-Complainants seek a declaration and judicial determination as to the validity of their contentions, and that they have the sole right to recapture return flows in the Basin, both at the present and in the future.

11

1 **FOURTH CAUSE OF ACTION**

2 **(Declaratory Relief; Physical Solution)**

3 **(Against all Cross-Defendants and Zoes 1-200, inclusive)**

4 37. Cross-Complainants reallege and incorporate by reference paragraphs 1 through
5 36 of this Cross-Complaint as though fully set forth herein.

6 38. Cross-Complainants contend that Cross-Defendants, who are seeking an
7 injunction/physical solution, must prove common law overdraft, the nature and extent of all
8 pumping occurring in the Antelope Valley, appropriate *inter se* priority rights, the rights of all
9 groundwater producers in the Antelope Valley and a legal basis for an injunction against parties
10 holding inferior rights based upon the California groundwater allocation priority system.

11 39. Cross-Complainants seek a declaration and judicial determination as to the
12 validity of their contentions, and that a physical solution shall be implemented.

13 **FIFTH CAUSE OF ACTION**

14 **(Injunctive Relief; Physical Solution)**

15 **(Against all Cross-Defendants and Zoes 1-200, inclusive)**

16 40. Cross-Complainants reallege and incorporate by reference paragraphs 1 through
17 39 of this Cross-Complaint as though fully set forth herein.

18 41. Cross-Complainants contend that if water cutbacks are necessary, appropriate
19 users must be cutback first to prevent continuing common law overdraft. To the extent Cross-
20 Defendants prove that common law overdraft exists, Cross-Complainants request the Court
21 enjoin parties holding inferior appropriative rights from pumping and/or that the Court impose a
22 physical solution on appropriators to prevent continuing common law overdraft.

23 **WHEREFORE**, Cross-Complainants pray that judgment be entered as follows:

- 24 1. For a judgment against Cross-Defendants;
- 25 2. For a declaration of Cross-Complainants rights to pump and reasonable use
26 groundwater underlying the shareholders' property;
- 27 3. If the Court determines based upon the Cross-Defendants' basin-wide

1 adjudication that the groundwater basin is in common law overdraft, for an injunction and/or a
2 physical solution cutting back appropriative water use to prevent continuing common law
3 overdraft;

4 4. For continuing jurisdiction of the Court to litigate disputes as necessary in the
5 future consistent with the Court judgment herein and consistent with California water law;

6 5. For a declaration that no party hereto may hereinafter obtain prescriptive rights
7 against any other party to this action and that all parties will act in conformance with the terms of
8 any such judgment;

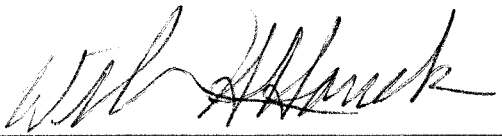
9 6. For a judgment for Cross-Complainants for all available remedies to secure and
10 protect Cross-Complainants' continuing overlying water rights;

11 7. For an award or reasonable attorneys' fees and costs of suit; and

12 8. For such other and further relief as the Court deems just and proper.

13
14 Dated: May 3, 2007

COVINGTON & CROWE, LLP

15
16 By: 

17 ROBERT E. DOUGHERTY

18 WILLIAM A. HAUCK

19 Attorneys for Cross-Defendants and Cross-
20 Complainants A.V. United Mutual Group
21
22
23
24
25
26
27
28

1
2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

4 I am employed in the County of San Bernardino, State of California. I am over the
5 age of 18 and not a party to the within action; my business address is Covington & Crowe,
LLP, 1131 West Sixth Street, Suite 300, Ontario, California 91762.

6 On **May 3, 2007**, I served the foregoing document described as **CROSS-COMPLAINT**
7 **OF A.V. UNITED MUTUAL GROUP AGAINST PURVEYORS FOR: 1) Declaratory Relief,**
8 **Water Rights; 2) Injunctive Relief, Water Rights; 3) Declaratory Relief, Return Flows;**
4) **Declaratory Relief, Physical Solution; 5) Injunctive Relief, Physical Solution** on the
interested parties in this action:

9 ☒ by posting the document listed above to the Santa Clara County Superior Court e-
10 filing website under the Antelope Valley Groundwater matter pursuant to the Court's
Order dated October 27, 2005.

11 ☐ by placing ☐ the original ☐ a true copy thereof enclosed in a sealed envelope
12 addressed as follows:

13 ☐ **BY MAIL**

14 ☐ * I deposited such envelope in the mail at Ontario, California. The envelope was
15 mailed with postage thereon fully prepaid.

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

20 ☐ **BY PERSONAL SERVICE** I delivered such envelope by hand to the offices of the
addressee.

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

23 Executed on **May 3, 2007**, at Ontario, California.

24 
25 **CAROL SANCHEZ**

Exhibit 12

1 ROBERT E. DOUGHERTY [SBN 41317]
2 WILLIAM A. HAUCK [SBN 202669]

3 **COVINGTON & CROWE, LLP**

4 **ATTORNEYS AT LAW**

5 1131 West Sixth Street, Suite 300

6 Ontario, California 91762

7 (909) 983-9393; Fax (909) 391-6762

(SPACE BELOW FOR FILING STAMP ONLY)

8 Attorneys for White Fence Farms Mutual Water Co. Inc., El Dorado Mutual Water Co., West
9 Side Park Mutual Water Co., Shadow Acres Mutual Water Co., Antelope Park Mutual Water
10 Co., Averydale Mutual Water Co., Sundale Mutual Water Co., Evergreen Mutual Water Co.,
11 Aqua J Mutual Water Co., Bleigh Flat Mutual Water Co., Colorado Mutual Water Co.,
12 Sunnyside Farms Mutual Water Co., Land Projects Mutual Water Co., Tierra Bonita Mutual
13 Water Co. and Landale Mutual Water Co.; **collectively known as A.V. United Mutual Group**

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

16 **ANTELOPE VALLEY**
17 **GROUNDWATER CASES**

18 Included Actions:

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

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

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

Judicial Council Coordination Proceeding
No. 4408

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

**CROSS-COMPLAINT OF LANDALE
MUTUAL WATER COMPANY, AS A NEW
MEMBER OF A.V. UNITED MUTUAL
GROUP, AGAINST PURVEYORS FOR:**

- 1) Declaratory Relief, Water Rights;
- 2) Injunctive Relief, Water Rights;
- 3) Declaratory Relief, Return Flows;
- 4) Declaratory Relief, Physical Solution;
- 5) Injunctive Relief, Physical Solution.

White Fence Farms Mutual Water Co. Inc.;
El Dorado Mutual Water Co.; West Side
Park Mutual Water Co.; Shadow Acres
Mutual Water Co.; Antelope Park Mutual
Water Co.; Averydale Mutual Water Co.;
Sundale Mutual Water Co.; Evergreen
Mutual Water Co.; Aqua J Mutual Water
Co.; Bleigh Flat Mutual Water Co.;
Colorado Mutual Water Co.; Sunnyside
Farms Mutual Water Co., Land Projects

1 Mutual Water Co., and Tierra Bonita Mutual
2 Water Co.; collectively known as A.V.
3 United Mutual Group,

4 Cross-Complainants,

5 v.

6 California Water Service Company; City of
7 Lancaster; City of Palmdale; Littlerock
8 Creek Irrigation District; Los Angeles
9 County Water Works District No. 40;
10 Palmdale Water District; Rosamond
11 Community Services District; Palm Ranch
12 Irrigation District; and Quartz Hill Water
13 District; and ZOES 1-200, inclusive,

14 Cross-Defendants.

15 Landale Mutual Water Company, as a member of A.V. United Mutual Group
16 (“AVUMG”), joins that group in alleging against Cross-Defendants California Water Service
17 Company, City of Lancaster, City of Palmdale, Littlerock Creek Irrigation District, Los Angeles
18 County Water Works District No. 40, Palmdale Water District, Rosamond Community Services
19 District, Palm Ranch Irrigation District, and Quartz Hill Water District (“collectively referred to
20 herein as “Purveyors”), and ZOES 1-200, inclusive, as follows:

21 GENERAL ALLEGATIONS

22 1. The Court has jurisdiction over this action pursuant to Code of Civil Procedure
23 sections 526 and 1060. Venue is proper before this Court pursuant to the coordination order
24 issued by the Judicial Council.

25 2. Cross-Complainants herein, White Fence Farms Mutual Water Co. Inc., El
26 Dorado Mutual Water Co., West Side Park Mutual Water Co., Shadow Acres Mutual Water Co.,
27 Antelope Park Mutual Water Co., Averydale Mutual Water Co., Sundale Mutual Water Co.,
28 Evergreen Mutual Water Co., Aqua J Mutual Water Co., Bleigh Flat Mutual Water Co.,
Colorado Mutual Water Co., Sunnyside Farms Mutual Water Co., Land Projects Mutual Water
Co., and Tierra Bonita Mutual Water Co.; collectively known as A.V. United Mutual

1 Group("AVUMG"), are mutual water companies whose shareholders are owners of land in the
2 Antelope Valley. Each Cross-Complainant holds a beneficial right to the shareholders' interest
3 in ground water within the geographic boundaries of the Antelope Valley Ground Water Basin
4 ("Basin"). The Cross-Complainants have historically pumped water from beneath the
5 shareholders land for the shareholders use.

6 3. Cross-Complainants are informed and believe and thereon allege that California
7 Water Service Company is a California corporation which provides water to customers located
8 within the geographic boundaries of the Basin and which extracts water from the Basin.

9 4. Cross-Complainants are informed and believe and thereon allege that City of
10 Lancaster is a municipal corporation located within the County of Los Angeles, and within the
11 geographic boundaries of the Basin.

12 5. Cross-Complainants are informed and believe and thereon allege that City of
13 Palmdale is a municipal corporation located within the County of Los Angeles.

14 6. Cross-Complainants are informed and believe and thereon allege that Littlerock
15 Creek Irrigation District is a public agency which provides water to customers located within the
16 geographic boundaries of the Basin and which extracts water from the Basin.

17 7. Cross-Complainants are informed and believe and thereon allege that Los Angeles
18 County Waterworks District No. 40 is a public agency governed by the Los Angeles County
19 Board of Supervisors operating under Division 16 of the California Water Code. Los Angeles
20 County Waterworks District No. 40 was established on November 4, 1993 to provide water
21 service to the public within the Basin.

22 8. Cross-Complainants are informed and believe and thereon allege that Palmdale
23 Water District was formed as a public irrigation district in 1918 and operates under Division 11
24 of the California Water Code and is producing water from the Basin and selling it to its
25 customers.

26 9. Cross-Complainants are informed and believe and thereon allege that Rosamond
27 Community Services District is a county water district voted into being in 1966, and operating

1 under Division 12 of the California Water Code to provide water for domestic use and irrigation,
2 among other things.

3 10. Cross-Complainants are informed and believe and thereon allege that Palm Ranch
4 Irrigation District is a public agency which provides water to customers located within the
5 geographic boundaries of the Basin and which extracts water from the Basin.

6 11. Cross-Complainants are informed and believe and thereon allege that Quartz Hill
7 Water District is a county water district organized and operating under Division 12 of the
8 California Water Code and is producing water from the Basin and selling it to its customers.

9 12. Cross-Complainants are ignorant of the true names and capacities of Cross-
10 Defendants sued herein as ZOES 1-200, inclusive, and therefore sue these Cross-Defendants by
11 such fictitious names. Cross-Complainants will amend this Cross-Complaint to allege their true
12 names and capacities when ascertained. References to "Purveyors" in this Cross-Complaint also
13 refer to all Cross-Defendants sued under such fictitious names.

14 **FACTUAL ALLEGATIONS**

15 13. The Antelope Valley is located in northern Los Angeles County and the
16 southeastern portion of Kern County, California. The Antelope Valley comprises the western tip
17 of the Mojave Desert, opening up to the Victor Valley and the Great Basin to the east. The
18 Antelope Valley is a desert ecosystem which spans approximately 2,200 square miles. Human
19 water use in the Antelope Valley depends mainly on pumping of groundwater from the valley's
20 aquifers and the importing of additional water. Cross-Complainants herein acquire water both by
21 pumping underlying groundwater and purchasing imported water to supplement the pumped
22 water.

23 14. Cross-Complainants are informed and believe and thereon allege that Purveyors
24 began pumping appropriated surplus water from the Basin to provide water for their municipal,
25 industrial, or other water customers, which was initially lawful and did not immediately nor
26 prospectively invade or impair any overlying rights.

27 15. However, since the initial pumping began, with the expanded population growth

1 of the Antelope Valley, Purveyors have dramatically increased their demand for water, which
2 created a potential for damages to the water supply. Despite the potential for damages to the
3 water supply, Purveyors have continued the act of pumping.

4 16. Cross-Complainants are informed and believe and thereon allege that Purveyors,
5 with knowledge did extract, and have continued to extract, groundwater from the common
6 supply, and have continued the act of pumping the groundwater to increase their extractions of
7 groundwater with the knowledge that the continued extractions are damaging the long-term
8 rights of the mutual water companies, including its shareholders who are the property owners,
9 among others.

10 17. Cross-Complainants are informed and believe and thereon allege that Purveyors,
11 continued pumping with intent and knowing that they could take by claim of prescription,
12 without compensation, the water rights of all landowners overlying the Basin. Despite the
13 knowledge and intent to take overlying property owners' water rights, the Purveyors did not take
14 any steps necessary or intended to inform or otherwise notify any landowner of their adverse and
15 hostile claim or that their pumping of groundwater was an invasion of the landowners' property
16 rights.

17 18. During the time that each Purveyor was pumping the groundwater, no Purveyor
18 ever took any affirmative action reasonably calculated to inform or notify any overlying
19 landowner that the Purveyor intended to take by prescription the overlying water rights.

20 19. For the five years immediately preceding the filing of this Cross-Complaint, the
21 Cross-Complainants, and their shareholders who are property owners in the Basin, did not have
22 actual knowledge that any Purveyor's pumping of groundwater was adverse to or hostile to their
23 present and/or future priority rights.

24 20. In or about March 2007, Cross-Complainants were served as Does by Cross-
25 Defendants seeking to obtain a judicial determination that they had obtained the overlying
26 landowners' water rights, without compensation, within the Basin through the common law
27 doctrine of prescription.

1 21. None of the Purveyors have invoked the power of eminent domain, nor paid any
2 compensation to the Cross-Complainants or their shareholders, for the property rights that they
3 have allegedly and knowingly taken.

4 **FIRST CAUSE OF ACTION**

5 **(Declaratory Relief; Water Rights)**

6 **(Against all Cross-Defendants and Zoes 1-200, inclusive)**

7 22. Cross-Complainants reallege and incorporate by reference paragraphs 1 through
8 21 of this Cross-Complaint as though fully set forth herein.

9 23. An actual controversy has arisen between Cross-Complainants and each of the
10 Cross-Defendants as to the nature, extent and priority of each party's right to produce
11 groundwater from the Basin. As mutual water companies whose shareholders are overlying
12 landowners, Cross-Complainants allege that their water rights are superior in priority to those of
13 any of Cross-Defendants, and that they have preserved and maintained their priority rights to the
14 use of groundwater.

15 24. Cross-Complainants are informed and believe and thereon allege that Cross-
16 Defendants dispute these contentions.

17 25. Cross-Complainants seek a declaration and judicial determination as to the
18 validity of their contentions set forth herein, the amount of Basin water to which each party is
19 entitled to produce from the Basin, and the priority and character of each party's respective
20 rights.

21 **SECOND CAUSE OF ACTION**

22 **(Injunctive Relief; Water Rights)**

23 **(Against all Cross-Defendants and Zoes 1-200, inclusive)**

24 26. Cross-Complainants reallege and incorporate by reference paragraphs 1 through
25 25 of this Cross-Complaint as though fully set forth herein.

26 27. In their First-Amended Cross-Complaint, Cross-Defendants allege that they
27 produce more water from the Basin than they have a right to produce. If allowed to continue,

1 this production in excess of rights will interfere with the right of Cross-Complainants to produce
2 groundwater and will cause injury to Cross-Complainants.

3 28. Cross-Complainants have no adequate remedy at law.

4 29. Cross-Complainants are informed and believe and thereon allege that Cross-
5 Defendants dispute these contentions.

6 30. Unless the Court orders that Cross-Defendants cease production of water in
7 excess of their rights, Cross-Complainants will suffer irreparable harm in that the supply of
8 groundwater will become depleted and other undesirable effects will occur.

9 **THIRD CAUSE OF ACTION**

10 **(Declaratory Relief; Return Flows)**

11 **(Against all Cross-Defendants and Zoes 1-200, inclusive)**

12 31. Cross-Complainants reallege and incorporate by reference paragraphs 1 through
13 30 of this Cross-Complaint as though fully set forth herein.

14 32. Some of the imported State Project water typically returns and/or enters the Basin,
15 and will continue to do so. This water is commonly known as "return flows." These return
16 flows further augment the Basin's water supply.

17 33. Cross-Complainants are informed and believe and thereon allege that there is
18 underground space available in the Basin to store return flows from imported State Project water.

19 34. Cross-Complainants have the right to recapture the return flows from that water
20 attributable to their purchase of imported State Project water, or such water imported on their
21 behalf. The rights of Cross-Defendants, if any, are limited to the Basin's native supply, and/or
22 their imported water, and do not extend to groundwater attributable to the Cross-Complainants'
23 return flows.

24 35. An actual controversy has arisen between Cross-Complainants and each of the
25 Cross-Defendants. Cross-Complainants are informed and believe and thereon allege that Cross-
26 Defendants dispute their contentions as set forth in this Cross-Complaint.

27 36. Cross-Complainants seek a declaration and judicial determination as to the

1 validity of their contentions, and that they have the sole right to recapture return flows in the
2 Basin, both at the present and in the future.

3 **FOURTH CAUSE OF ACTION**

4 **(Declaratory Relief; Physical Solution)**

5 **(Against all Cross-Defendants and Zoes 1-200, inclusive)**

6 37. Cross-Complainants reallege and incorporate by reference paragraphs 1 through
7 36 of this Cross-Complaint as though fully set forth herein.

8 38. Cross-Complainants contend that Cross-Defendants, who are seeking an
9 injunction/physical solution, must prove common law overdraft, the nature and extent of all
10 pumping occurring in the Antelope Valley, appropriative *inter se* priority rights, the rights of all
11 groundwater producers in the Antelope Valley and a legal basis for an injunction against parties
12 holding inferior rights based upon the California groundwater allocation priority system.

13 39. Cross-Complainants seek a declaration and judicial determination as to the
14 validity of their contentions, and that a physical solution shall be implemented.

15 **FIFTH CAUSE OF ACTION**

16 **(Injunctive Relief; Physical Solution)**

17 **(Against all Cross-Defendants and Zoes 1-200, inclusive)**

18 40. Cross-Complainants reallege and incorporate by reference paragraphs 1 through
19 39 of this Cross-Complaint as though fully set forth herein.

20 41. Cross-Complainants contend that if water cutbacks are necessary, appropriative
21 users must be cutback first to prevent continuing common law overdraft. To the extent Cross-
22 Defendants prove that common law overdraft exists, Cross-Complainants request the Court
23 enjoin parties holding inferior appropriative rights from pumping and/or that the Court impose a
24 physical solution on appropriators to prevent continuing common law overdraft.

25 **WHEREFORE**, Cross-Complainants pray that judgment be entered as follows:

- 26 1. For a judgment against Cross-Defendants;
- 27 2. For a declaration of Cross-Complainants rights to pump and reasonable use

1 groundwater underlying the shareholders' property;

2 3. If the Court determines based upon the Cross-Defendants' basin-wide
3 adjudication that the groundwater basin is in common law overdraft, for an injunction and/or a
4 physical solution cutting back appropriative water use to prevent continuing common law
5 overdraft;

6 4. For continuing jurisdiction of the Court to litigate disputes as necessary in the
7 future consistent with the Court judgment herein and consistent with California water law;

8 5. For a declaration that no party hereto may hereinafter obtain prescriptive rights
9 against any other party to this action and that all parties will act in conformance with the terms of
10 any such judgment;

11 6. For a judgment for Cross-Complainants for all available remedies to secure and
12 protect Cross-Complainants' continuing overlying water rights;

13 7. For an award of reasonable attorneys' fees and costs of suit; and

14 8. For such other and further relief as the Court deems just and proper.

15
16 Dated: February 19, 2008

COVINGTON & CROWE, LLP

17
18
19 By: 

ROBERT E. DOUGHERTY
WILLIAM A. HAUCK

Attorneys for Cross-Defendants and Cross-
Complainants A.V. United Mutual Group

1
2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

4 I am employed in the County of San Bernardino, State of California. I am over the
5 age of 18 and not a party to the within action; my business address is Covington & Crowe,
LLP, 1131 West Sixth Street, Suite 300, Ontario, California 91762.

6 On February 19, 2008, I served the foregoing document described as
7 **CROSS-COMPLAINT OF LANDALE MUTUAL WATER COMPANY, AS A NEW**
8 **MEMBER OF A.V. UNITED MUTUAL GROUP, AGAINST PURVEYORS FOR: 1)**
9 **DECLARATORY RELIEF, WATER RIGHTS; 2) INJUNCTIVE RELIEF, WATER**
10 **RIGHTS; 3) DECLARATORY RELIEF, RETURN FLOWS; 4) DECLARATORY**
11 **RELIEF, PHYSICAL SOLUTION; 5) INJUNCTIVE RELIEF, PHYSICAL SOLUTION**
12 on the interested parties in this action:

13 ☒ by posting the document listed above to the Santa Clara County Superior Court e-
14 filing website under the Antelope Valley Groundwater matter pursuant to the
15 Court's Order dated October 27, 2005.

16 ☐ by placing ☐ the original ☐ a true copy thereof enclosed in a sealed envelope
17 addressed as follows:

18 ☐ BY MAIL

19 ☐ * I deposited such envelope in the mail at Ontario, California. The envelope
20 was mailed with postage thereon fully prepaid.

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

27 ☐ **BY PERSONAL SERVICE** I delivered such envelope by hand to the offices of
28 the addressee.

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

Executed on **February 19, 2008**, at Ontario, California.

25
26 
27 DOLORES C. CRUZ
28

Exhibit 13

1 ROBERT E. DOUGHERTY [SBN 41317]

(SPACE BELOW FOR FILING STAMP ONLY)

2 WILLIAM A. HAUCK [SBN 202669]

3 **COVINGTON & CROWE, LLP**

4 **ATTORNEYS AT LAW**

5 1131 West Sixth Street, Suite 300

6 Ontario, California 91762

7 (909) 983-9393; Fax (909) 391-6762

8 Attorneys for White Fence Farms Mutual Water Co. Inc., El Dorado Mutual Water Co., West
9 Side Park Mutual Water Co., Shadow Acres Mutual Water Co., Antelope Park Mutual Water
10 Co., Averydale Mutual Water Co., Sundale Mutual Water Co., Evergreen Mutual Water Co.,
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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

16 **ANTELOPE VALLEY**
17 **GROUNDWATER CASES**

Judicial Council Coordination Proceeding
No. 4408

18 **Included Actions:**

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28 Lancaster, Diamond Farming Co. v. City of
Lancaster, Diamond Farming Co. v.
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Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

**CROSS-COMPLAINT OF LANDALE
MUTUAL WATER COMPANY, AS A NEW
MEMBER OF A.V. UNITED MUTUAL
GROUP, AGAINST PURVEYORS FOR:**

- 1) **Declaratory Relief, Water Rights;**
- 2) **Injunctive Relief, Water Rights;**
- 3) **Declaratory Relief, Return Flows;**
- 4) **Declaratory Relief, Physical Solution;**
- 5) **Injunctive Relief, Physical Solution.**

White Fence Farms Mutual Water Co. Inc.;
El Dorado Mutual Water Co.; West Side
Park Mutual Water Co.; Shadow Acres
Mutual Water Co.; Antelope Park Mutual
Water Co.; Averydale Mutual Water Co.;
Sundale Mutual Water Co.; Evergreen
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Co.; Bleigh Flat Mutual Water Co.;
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1 Mutual Water Co., and Tierra Bonita Mutual
2 Water Co.; collectively known as A.V.
3 **United Mutual Group,**

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5 v.

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

11 Cross-Defendants.

12 Landale Mutual Water Company, as a member of A.V. United Mutual Group
13 (“AVUMG”), joins that group in alleging against Cross-Defendants California Water Service
14 Company, City of Lancaster, City of Palmdale, Littlerock Creek Irrigation District, Los Angeles
15 County Water Works District No. 40, Palmdale Water District, Rosamond Community Services
16 District, Palm Ranch Irrigation District, and Quartz Hill Water District (“collectively referred to
herein as “Purveyors”), and ZOES 1-200, inclusive, as follows:

17 **GENERAL ALLEGATIONS**

18 1. The Court has jurisdiction over this action pursuant to Code of Civil Procedure
19 sections 526 and 1060. Venue is proper before this Court pursuant to the coordination order
20 issued by the Judicial Council.

21 2. Cross-Complainants herein, White Fence Farms Mutual Water Co. Inc., El
22 Dorado Mutual Water Co., West Side Park Mutual Water Co., Shadow Acres Mutual Water Co.,
23 Antelope Park Mutual Water Co., Averydale Mutual Water Co., Sundale Mutual Water Co.,
24 Evergreen Mutual Water Co., Aqua J Mutual Water Co., Bleigh Flat Mutual Water Co.,
25 Colorado Mutual Water Co., Sunnyside Farms Mutual Water Co., Land Projects Mutual Water
26 Co., and Tierra Bonita Mutual Water Co.; collectively known as A.V. United Mutual
27

1 Group("AVUMG"), are mutual water companies whose shareholders are owners of land in the
2 Antelope Valley. Each Cross-Complainant holds a beneficial right to the shareholders' interest
3 in ground water within the geographic boundaries of the Antelope Valley Ground Water Basin
4 ("Basin"). The Cross-Complainants have historically pumped water from beneath the
5 shareholders land for the shareholders use.

6 3. Cross-Complainants are informed and believe and thereon allege that California
7 Water Service Company is a California corporation which provides water to customers located
8 within the geographic boundaries of the Basin and which extracts water from the Basin.

9 4. Cross-Complainants are informed and believe and thereon allege that City of
10 Lancaster is a municipal corporation located within the County of Los Angeles, and within the
11 geographic boundaries of the Basin.

12 5. Cross-Complainants are informed and believe and thereon allege that City of
13 Palmdale is a municipal corporation located within the County of Los Angeles.

14 6. Cross-Complainants are informed and believe and thereon allege that Littlerock
15 Creek Irrigation District is a public agency which provides water to customers located within the
16 geographic boundaries of the Basin and which extracts water from the Basin.

17 7. Cross-Complainants are informed and believe and thereon allege that Los Angeles
18 County Waterworks District No. 40 is a public agency governed by the Los Angeles County
19 Board of Supervisors operating under Division 16 of the California Water Code. Los Angeles
20 County Waterworks District No. 40 was established on November 4, 1993 to provide water
21 service to the public within the Basin.

22 8. Cross-Complainants are informed and believe and thereon allege that Palmdale
23 Water District was formed as a public irrigation district in 1918 and operates under Division 11
24 of the California Water Code and is producing water from the Basin and selling it to its
25 customers.

26 9. Cross-Complainants are informed and believe and thereon allege that Rosamond
27 Community Services District is a county water district voted into being in 1966, and operating

1 under Division 12 of the California Water Code to provide water for domestic use and irrigation,
2 among other things.

3 10. Cross-Complainants are informed and believe and thereon allege that Palm Ranch
4 Irrigation District is a public agency which provides water to customers located within the
5 geographic boundaries of the Basin and which extracts water from the Basin.

6 11. Cross-Complainants are informed and believe and thereon allege that Quartz Hill
7 Water District is a county water district organized and operating under Division 12 of the
8 California Water Code and is producing water from the Basin and selling it to its customers.

9 12. Cross-Complainants are ignorant of the true names and capacities of Cross-
10 Defendants sued herein as ZOES 1-200, inclusive, and therefore sue these Cross-Defendants by
11 such fictitious names. Cross-Complainants will amend this Cross-Complaint to allege their true
12 names and capacities when ascertained. References to "Purveyors" in this Cross-Complaint also
13 refer to all Cross-Defendants sued under such fictitious names.

14 **FACTUAL ALLEGATIONS**

15 13. The Antelope Valley is located in northern Los Angeles County and the
16 southeastern portion of Kern County, California. The Antelope Valley comprises the western tip
17 of the Mojave Desert, opening up to the Victor Valley and the Great Basin to the east. The
18 Antelope Valley is a desert ecosystem which spans approximately 2,200 square miles. Human
19 water use in the Antelope Valley depends mainly on pumping of groundwater from the valley's
20 aquifers and the importing of additional water. Cross-Complainants herein acquire water both by
21 pumping underlying groundwater and purchasing imported water to supplement the pumped
22 water.

23 14. Cross-Complainants are informed and believe and thereon allege that Purveyors
24 began pumping appropriated surplus water from the Basin to provide water for their municipal,
25 industrial, or other water customers, which was initially lawful and did not immediately nor
26 prospectively invade or impair any overlying rights.

27 15. However, since the initial pumping began, with the expanded population growth

1 of the Antelope Valley, Purveyors have dramatically increased their demand for water, which
2 created a potential for damages to the water supply. Despite the potential for damages to the
3 water supply, Purveyors have continued the act of pumping.

4 16. Cross-Complainants are informed and believe and thereon allege that Purveyors,
5 with knowledge did extract, and have continued to extract, groundwater from the common
6 supply, and have continued the act of pumping the groundwater to increase their extractions of
7 groundwater with the knowledge that the continued extractions are damaging the long-term
8 rights of the mutual water companies, including its shareholders who are the property owners,
9 among others.

10 17. Cross-Complainants are informed and believe and thereon allege that Purveyors,
11 continued pumping with intent and knowing that they could take by claim of prescription,
12 without compensation, the water rights of all landowners overlying the Basin. Despite the
13 knowledge and intent to take overlying property owners' water rights, the Purveyors did not take
14 any steps necessary or intended to inform or otherwise notify any landowner of their adverse and
15 hostile claim or that their pumping of groundwater was an invasion of the landowners' property
16 rights.

17 18. During the time that each Purveyor was pumping the groundwater, no Purveyor
18 ever took any affirmative action reasonably calculated to inform or notify any overlying
19 landowner that the Purveyor intended to take by prescription the overlying water rights.

20 19. For the five years immediately preceding the filing of this Cross-Complaint, the
21 Cross-Complainants, and their shareholders who are property owners in the Basin, did not have
22 actual knowledge that any Purveyor's pumping of groundwater was adverse to or hostile to their
23 present and/or future priority rights.

24 20. In or about March 2007, Cross-Complainants were served as Does by Cross-
25 Defendants seeking to obtain a judicial determination that they had obtained the overlying
26 landowners' water rights, without compensation, within the Basin through the common law
27 doctrine of prescription.

1 21. None of the Purveyors have invoked the power of eminent domain, nor paid any
2 compensation to the Cross-Complainants or their shareholders, for the property rights that they
3 have allegedly and knowingly taken.

4 **FIRST CAUSE OF ACTION**

5 **(Declaratory Relief; Water Rights)**

6 **(Against all Cross-Defendants and Zoes 1-200, inclusive)**

7 22. Cross-Complainants reallege and incorporate by reference paragraphs 1 through
8 21 of this Cross-Complaint as though fully set forth herein.

9 23. An actual controversy has arisen between Cross-Complainants and each of the
10 Cross-Defendants as to the nature, extent and priority of each party's right to produce
11 groundwater from the Basin. As mutual water companies whose shareholders are overlying
12 landowners, Cross-Complainants allege that their water rights are superior in priority to those of
13 any of Cross-Defendants, and that they have preserved and maintained their priority rights to the
14 use of groundwater.

15 24. Cross-Complainants are informed and believe and thereon allege that Cross-
16 Defendants dispute these contentions.

17 25. Cross-Complainants seek a declaration and judicial determination as to the
18 validity of their contentions set forth herein, the amount of Basin water to which each party is
19 entitled to produce from the Basin, and the priority and character of each party's respective
20 rights.

21 **SECOND CAUSE OF ACTION**

22 **(Injunctive Relief; Water Rights)**

23 **(Against all Cross-Defendants and Zoes 1-200, inclusive)**

24 26. Cross-Complainants reallege and incorporate by reference paragraphs 1 through
25 25 of this Cross-Complaint as though fully set forth herein.

26 27. In their First-Amended Cross-Complaint, Cross-Defendants allege that they
27 produce more water from the Basin than they have a right to produce. If allowed to continue,

1 this production in excess of rights will interfere with the right of Cross-Complainants to produce
2 groundwater and will cause injury to Cross-Complainants.

3 28. Cross-Complainants have no adequate remedy at law.

4 29. Cross-Complainants are informed and believe and thereon allege that Cross-
5 Defendants dispute these contentions.

6 30. Unless the Court orders that Cross-Defendants cease production of water in
7 excess of their rights, Cross-Complainants will suffer irreparable harm in that the supply of
8 groundwater will become depleted and other undesirable effects will occur.

9 **THIRD CAUSE OF ACTION**

10 **(Declaratory Relief; Return Flows)**

11 **(Against all Cross-Defendants and Zoes 1-200, inclusive)**

12 31. Cross-Complainants reallege and incorporate by reference paragraphs 1 through
13 30 of this Cross-Complaint as though fully set forth herein.

14 32. Some of the imported State Project water typically returns and/or enters the Basin,
15 and will continue to do so. This water is commonly known as "return flows." These return
16 flows further augment the Basin's water supply.

17 33. Cross-Complainants are informed and believe and thereon allege that there is
18 underground space available in the Basin to store return flows from imported State Project water.

19 34. Cross-Complainants have the right to recapture the return flows from that water
20 attributable to their purchase of imported State Project water, or such water imported on their
21 behalf. The rights of Cross-Defendants, if any, are limited to the Basin's native supply, and/or
22 their imported water, and do not extend to groundwater attributable to the Cross-Complainants'
23 return flows.

24 35. An actual controversy has arisen between Cross-Complainants and each of the
25 Cross-Defendants. Cross-Complainants are informed and believe and thereon allege that Cross-
26 Defendants dispute their contentions as set forth in this Cross-Complaint.

27 36. Cross-Complainants seek a declaration and judicial determination as to the

1 validity of their contentions, and that they have the sole right to recapture return flows in the
2 Basin, both at the present and in the future.

3 **FOURTH CAUSE OF ACTION**

4 **(Declaratory Relief; Physical Solution)**

5 **(Against all Cross-Defendants and Zoes 1-200, inclusive)**

6 37. Cross-Complainants reallege and incorporate by reference paragraphs 1 through
7 36 of this Cross-Complaint as though fully set forth herein.

8 38. Cross-Complainants contend that Cross-Defendants, who are seeking an
9 injunction/physical solution, must prove common law overdraft, the nature and extent of all
10 pumping occurring in the Antelope Valley, appropriative *inter se* priority rights, the rights of all
11 groundwater producers in the Antelope Valley and a legal basis for an injunction against parties
12 holding inferior rights based upon the California groundwater allocation priority system.

13 39. Cross-Complainants seek a declaration and judicial determination as to the
14 validity of their contentions, and that a physical solution shall be implemented.

15 **FIFTH CAUSE OF ACTION**

16 **(Injunctive Relief; Physical Solution)**

17 **(Against all Cross-Defendants and Zoes 1-200, inclusive)**

18 40. Cross-Complainants reallege and incorporate by reference paragraphs 1 through
19 39 of this Cross-Complaint as though fully set forth herein.

20 41. Cross-Complainants contend that if water cutbacks are necessary, appropriative
21 users must be cutback first to prevent continuing common law overdraft. To the extent Cross-
22 Defendants prove that common law overdraft exists, Cross-Complainants request the Court
23 enjoin parties holding inferior appropriative rights from pumping and/or that the Court impose a
24 physical solution on appropriators to prevent continuing common law overdraft.

25 **WHEREFORE**, Cross-Complainants pray that judgment be entered as follows:

- 26 1. For a judgment against Cross-Defendants;
27 2. For a declaration of Cross-Complainants rights to pump and reasonable use

1 groundwater underlying the shareholders' property;

2 3. If the Court determines based upon the Cross-Defendants' basin-wide
3 adjudication that the groundwater basin is in common law overdraft, for an injunction and/or a
4 physical solution cutting back appropriative water use to prevent continuing common law
5 overdraft;

6 4. For continuing jurisdiction of the Court to litigate disputes as necessary in the
7 future consistent with the Court judgment herein and consistent with California water law;

8 5. For a declaration that no party hereto may hereinafter obtain prescriptive rights
9 against any other party to this action and that all parties will act in conformance with the terms of
10 any such judgment;

11 6. For a judgment for Cross-Complainants for all available remedies to secure and
12 protect Cross-Complainants' continuing overlying water rights;

13 7. For an award or reasonable attorneys' fees and costs of suit; and

14 8. For such other and further relief as the Court deems just and proper.

15
16 Dated: February 19, 2008

COVINGTON & CROWE, LLP

17
18
19 By: 

ROBERT E. DOUGHERTY

WILLIAM A. HAUCK

Attorneys for Cross-Defendants and Cross-
Complainants A.V. United Mutual Group

1
2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

4 I am employed in the County of San Bernardino, State of California. I am over the
5 age of 18 and not a party to the within action; my business address is Covington & Crowe,
LLP, 1131 West Sixth Street, Suite 300, Ontario, California 91762.

6 On February 19, 2008, I served the foregoing document described as
7 **CROSS-COMPLAINT OF LANDALE MUTUAL WATER COMPANY, AS A NEW**
8 **MEMBER OF A.V. UNITED MUTUAL GROUP, AGAINST PURVEYORS FOR: 1)**
9 **DECLARATORY RELIEF, WATER RIGHTS; 2) INJUNCTIVE RELIEF, WATER**
10 **RIGHTS; 3) DECLARATORY RELIEF, RETURN FLOWS; 4) DECLARATORY**
11 **RELIEF, PHYSICAL SOLUTION; 5) INJUNCTIVE RELIEF, PHYSICAL SOLUTION**
12 on the interested parties in this action:

13 ☒ by posting the document listed above to the Santa Clara County Superior Court e-
14 filing website under the Antelope Valley Groundwater matter pursuant to the
15 Court's Order dated October 27, 2005.

16 ☐ by placing ☐ the original ☐ a true copy thereof enclosed in a sealed envelope
17 addressed as follows:

18 ☐ BY MAIL

19 ☐ * I deposited such envelope in the mail at Ontario, California. The envelope
20 was mailed with postage thereon fully prepaid.

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

27 ☐ **BY PERSONAL SERVICE** I delivered such envelope by hand to the offices of
28 the addressee.

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

Executed on February 19, 2008, at Ontario, California.

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Dolores C. Cruz
DOLORES C. CRUZ