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

Coordination Proceeding Special Title  
(Rule 1550 (b))

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

ANTELOPE VALEY GROUNDWATER  
CASES

**ANSWER OF LANDINV, INC. TO FIRST  
AMENDED CROSS-COMPLAINT OF  
PUBLIC WATER SUPPLIERS**

Included actions:

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

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

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

1 Landinv, Inc. hereby answers the First Amended Cross-Complaint of the Public Water  
2 Suppliers for Declaratory and Injunctive Relief and Adjudication of Water Rights, dated January  
3 10, 2007.

4 GENERAL DENIAL

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

9 AFFIRMATIVE DEFENSES

10 First Affirmative Defense

11 (Failure to State a Cause of Action)

12 2. The Cross-Complaint and every purported cause of action contained therein fail to  
13 allege facts sufficient to constitute a cause of action against this answering Cross-Defendant.

14  
15 Second Affirmative Defense

16 (Statute of Limitations)

17 3. Each and every cause of action contained in the Cross-Complaint is barred, in  
18 whole or in part, by the applicable statutes of limitation, including, but not limited to, sections  
19 315, 318, 319, 321, 338, and 343 of the California Code of Civil Procedure.

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21 Third Affirmative Defense

22 (Laches)

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

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1 Fourth Affirmative Defense

2 (Estoppel)

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

6 Fifth Affirmative Defense

7 (Waiver)

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

11 Sixth Affirmative Defense

12 (Self-Help)

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

17 Seventh Affirmative Defense

18 (California Constitution Article X, Section 2)

19 8. Cross-Complainants' methods of water use and storage are unreasonable and  
20 wasteful in the arid conditions of the Antelope Valley and thereby violate Article X, Section 2 of  
21 the California Constitution.

23 Eighth Affirmative Defense

24 (Additional Defenses)

25 9. The Cross-Complainants do not state their allegations with sufficient clarity to  
26 enable this answering Cross-Defendant to determine what additional defenses may exist to  
27 Cross-Complainants' causes of action. Cross-Defendant therefore reserves the right to assert all  
28 other defenses which pertain to the Cross-Complaint.

1 Ninth Affirmative Defense

2 10. The prescriptive claims asserted by governmental entity Cross-Complainants are  
3 *ultra vires* and exceed the statutory authority by which each entity may acquire property as set  
4 forth in Water Code sections 22456, 31040 and 55370, and violate the express limitations set  
5 forth in Article 1 Section 19 of the California State Constitution.

6  
7 Tenth Affirmative Defense

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

10  
11 Eleventh Affirmative Defense

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

15  
16 Twelveth Affirmative Defense

17 13. Cross-Complainants' prescriptive claims are barred due to their failure to take  
18 affirmative steps that were reasonably calculated and intended to inform each overlying  
19 landowner of Cross-Complainants' adverse and hostile claim as required by the due process  
20 clause of the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution.

21  
22 Thirteenth Affirmative Defense

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

25  
26 Fourteenth Affirmative Defense

27 15. The prescriptive claims asserted by governmental entity Cross-Complainants are  
28 barred by the 14<sup>th</sup> Amendment to the United States Constitution.

1 Fifteenth Affirmative Defense

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

4 Sixteenth Affirmative Defense

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

8  
9 Seventeenth Affirmative Defense

10 18. Cross-Complainants are barred from asserting their prescriptive claims by  
11 operation of law as set forth in Civil Code sections 1007, 1009 and 1214.

12  
13 Eighteenth Affirmative Defense

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

17 Nineteenth Affirmative Defense

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

20  
21 Twentieth Affirmative Defense

22 21. The governmental entity Cross-Complainants are barred from taking, possessing  
23 or using Cross-Defendant's property without first paying just compensation. (United States  
24 Constitution, Amendment 5; Article 1 Section 19 of the California Constitution; California Code  
25 of Civil Procedure Section 1263.010(a)).

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Twenty-First Affirmative Defense

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

Twenty-Second Affirmative Defense

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

Twenty-Third Affirmative Defense

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

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Twenty-Fourth Affirmative Defense

25. The prescriptive right claimed has been extinguished through disuse thereof as set forth in Civil Code Section 811 and Water Code Section 1240.

WHEREFORE, this answering Cross-Defendant prays that judgment be entered as follows:

1. That Cross-Complainants take nothing by reason of their Cross-Complaint;
2. That the Cross-Complaint be dismissed with prejudice;
3. For Cross-Defendant's costs incurred herein; and
4. For such other and further relief as the Court deems just and proper.

Dated: November 26, 2008

SMILAND & CHESTER

By: 

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

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA  
3 COUNTY OF LOS ANGELES

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

7 On November 26, 2008, I served the foregoing document described as:  
8 **ANSWER OF LANDINV, INC. TO FIRST AMENDED CROSS-COMPLAINT OF**  
9 **PUBLIC WATER SUPPLIERS** on the interested parties in this action.

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

12 *(SEE ATTACHED SERVICE LIST)*

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

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

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

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23  
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25  
26  
27  
28  
  
Jane J. Dang



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