1 2	SMILAND CHESTER LLP Theodore A. Chester, Jr., Esq., (SBN 105405) tchester@smilandlaw.com			
3	William M. Smiland, Esq., (SBN 41928) wsmiland@smilandlaw.com			
4	601 West Fifth Street, Suite 1100 Los Angeles, California 90071			
5	Telephone: (213) 891-1010 Facsimile: (213) 891-1414			
6 7	Attorneys for Defendants and Cross-Defendants Bruce Burrows and 300 A 40 H, LLC			
8	SUPERIOR COURT OF THE STATE OF CALIFORNIA			
9	IN AND FOR THE COUNTY OF LOS ANGELES			
10				
11	Coordination Proceeding Special Title)	Judicial Council Coordination No. 4408		
12	(Rule 1550 (b))	Case No.: 1-05-CV-049053		
13	ANTELOPE VALEY GROUNDWATER CASES	ANSWER OF BRUCE BURROWS AND		
14	Included actions:	300 A 40 H, LLC TO COMPLAINT AND ALL CROSS-COMPLAINTS		
15	included actions.	THE CROSS COM EMPLY		
16	Los Angeles County Waterworks District No. 3			
17 18	Los Angeles Superior Court Case No.) BC325201			
19	Los Angeles County Waterworks District No.			
20	40 vs. Diamond Farming Company Kern County Superior Court Case No. S-1500-)			
21	CV-254348 NFT			
22	Diamond Farming Company vs. City of			
23	Lancaster) Riverside County Superior Court Lead Case			
24	No. RIC 344436 [Consolidated w/ Case Nos. 344668 & 353840]			
25)			
26	Defendents and Corres Defendents Dones	D		
27	Defendants and Cross-Defendants Bruce Burrows and 300 A 40 H, LLC ("Landowners")			
28	hereby answer the complaint of Los Angeles County Waterworks District No. 40 (the			
	"Complaint") and all Cross-Complaints that have been filed as of this date, specifically those of			
		1		

the Public Water Suppliers, Antelope Valley East-Kern Water Agency, Palmdale Water District				
Quartz Hill Water District, Rosamond Community Services District, Phelan Pinion Hills CSD				
and all cross-complaints filed hereinafter against Bruce Burrows and 300 A 40 H, LLC.				

Landowners own, or previously owned but continue to retain all water rights with respect to, the following properties located in the Antelope Valley:

- A. Los Angeles County APN: 3275-007-013 (previous APN: 3275-007-010).
- B. Los Angeles County APNS: 3275-002-001, 007, 008, 010, 012, 015, 016, 017, 018, 019, and 020.
 - C. Los Angeles APNS: 3275-007-001, 002 and 015.

Landowners have filed documents and participated in this litigation as parties since December 6, 2011, including participation in the Phase IV trial, and other general appearances through their counsel.

GENERAL DENIAL

1. Pursuant to Code of Civil Procedure section 431.30 (d), Landowners hereby generally deny each and every allegation set forth in the Complaint and Cross-Complaints, and the whole thereof, and further deny that Complainants and Cross-Complainants are entitled to any relief.

AFFIRMATIVE DEFENSES

First Affirmative Defense

(Failure to State a Cause of Action)

2. The Complaint and Cross-Complaints and every purported cause of action contained therein fail to allege facts sufficient to constitute a cause of action against these answering Landowners.

Second Affirmative Defense

(Statute of Limitations)

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

1	Third Affirmative Defense
2	(Laches)
3	4. The Complaint and Cross-Complaint, and each and every cause of action
4	contained therein, is barred by the doctrine of laches.
5	Fourth Affirmative Defense
6	(Estoppel)
7	5. The Complaint and Cross-Complaints, and each and every cause of action
8	contained therein, is barred by the doctrine of estoppel.
9	Fifth Affirmative Defense
10	(Waiver)
11	6. The Complaint and Cross-Complaint, and each and every cause of action
12	contained therein, is barred by the doctrine of waiver.
13	Sixth Affirmative Defense
14	(Self-Help)
15	7. Landowners have, by virtue of the doctrine of self-help, preserved their
16	paramount overlying right to extract groundwater by continuing, during all times relevant
17	thereto, to extract groundwater and put it to reasonable and beneficial use.
18	Seventh Affirmative Defense
19	(California Constitution Article X, Section 2)
20	8. The Complainant and Cross-Complainants' methods of water use and storage are
21	unreasonable and wasteful in the arid conditions of the Antelope Valley and thereby violate
22	Article X, Section 2 of the California Constitution.
23	Eighth Affirmative Defense
24	(Adequate Legal Remedy)
25	9. The Complainant and Cross-Complainants are barred from seeking equitable
26	relief because they have an adequate remedy at law.
27	
28	

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	ĺ
11	
12	ĺ
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
	١

Ninth Affirmative Defense

(Ultra Vires Conduct)

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

Tenth Affirmative Defense

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

Eleventh Affirmative Defense

(U.S. Constitution, 5th Amendment)

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

Twelfth Affirmative Defense

(Due Process)

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

Thirteenth Affirmative Defense

(Cal. Constitution, Art. 1, Section 7)

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

Fourteenth Affirmative Defense

(U.S. Constitution, 14th Amendment)

15. The prescriptive claims asserted by the Complainant and Cross-Complainants are barred by the provisions of the 14th Amendment to the United States Constitution.

1	Fifteenth Affirmative Defense	
2	(Consent)	
3	16. The Complainant and Cross-Complainants were permissively pumping at all	
4	times.	
5	Sixteenth Affirmative Defense	
6	(Cal. Constitution, Article 3, Section 3)	
7	17. The request for the Court to use its injunctive powers to impose a physical	
8	solution seeks a remedy that is in violation of the doctrine of separation of powers set forth in	
9	Article 3 Section 3 of the California Constitution.	
10	Seventeenth Affirmative Defense	
11	(Cal. Civil Code)	
12	18. The Complainant and each Cross-Complainant is barred from asserting their	
13	prescriptive claims by operation of law as set forth in Civil Code Sections 1007, 1009 and 12	14.
14	Eighteenth Affirmative Defense	
15	(Unclean Hands/Unjust Enrichment)	
16	19. The Complainant and each Cross-Complainant is barred from recovery under	
17	each and every cause of action contained in the Complaint and Cross-Complaints by the doctr	rin
18	of unclean hands and/or unjust enrichment.	
19	Nineteenth Affirmative Defense	
20	(Failure to Join Indispensable Parties)	
21	20. The Complaint and each Cross-Complaint is defective because it fails to name	
22	indispensable parties in violation of California Code of Civil Procedure Section 389.	
23	Twentieth Affirmative Defense	
24	(Failure to Pay Compensation)	
25	21. The Complainant and each Cross-Complainant is barred from taking, damagin	g,
26	possessing or using Landowners' property without first paying just compensation.	
27		
28		

Twenty-First Affirmative Defense

(Pub. Res. Code Section 2100 et seq.)

22. The Complainant and each Cross-Complainant is 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

(Pub. Res. Code Section 2100 et seq.)

23. The Complainant and each Cross-Complainant 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

(Pub. Res. Code Section 2100 et seq.)

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.*).

Twenty-Fourth Affirmative Defense

(Water Code Section 5000 et seq.)

25. The Complaint and Cross-Complaints and each and every purported cause of action alleged therein is barred by Water Code Section 5000 *et seq*.

Twenty-Fifth Affirmative Defense

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

27 | /

Twenty-Sixth Affirmative Defense

(Additional Defenses)

27. The Complaint and Cross-Complaints do not state their allegations with sufficient clarity to enable Landowners to determine what additional defenses may exist to Complainant and Cross-Complainants' causes of actions. Landowners therefore reserve the right to assert all other defenses which may pertain to the Complaint and Cross-Complaints.

WHEREFORE, Landowners pray that judgment be entered as follows:

- 1. That Complainant and each and every Cross-Complainant take nothing by reason of its Complaint or Cross-Complaint;
 - 2. That the Complaint and Cross-Complaint be dismissed with prejudice;
- 3. For a judicial determination that Landowners' right to pump water from the basin is superior and paramount to the right of Complainant and each Cross-Complainant, if any;
- 4. That if the Court determines that the Complaint or any Cross-Complainant is entitled to any relief, that Landowners be awarded just compensation for any property interest taken or damaged thereby;
 - 5. For attorney's fees as provided by law;
 - 6. For costs incurred herein; and
 - 4. For such other and further relief as the Court deems just and proper.

Dated: November 3, 2014 SMILAND CHESTER LLP

/s/ Theodore A. Chester Attorneys for Cross-Defendants

PROOF OF SERVICE STATE OF CALIFORNIA) **COUNTY OF LOS ANGELES** 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 1100, Los Angeles, California 90071. On November 3, 2014, I served the foregoing document described as: **ANSWER OF** BRUCE BURROWS AND 300A 40 H, LLC TO FIRST AMENDED CROSS-**COMPLAINT OF PUBLIC WATER SUPPLIERS** on the interested parties in this action by posting the document listed above to the Santa Clara County Superior website in regard to the Antelope Valley Groundwater Adjudication matter, pursuant to the Electronic Filing and Service Standing Order of Judge Komar. I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 3, 2014 at Los Angeles, California. Felicia Herbstreith Felicia Herbstreith