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Attorneys for Defendants and Cross-Defendants
Bruce Burrows and 300 A 40 H, LLC

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 BRUCE BURROWS AND
300 A 40 H, LLC TO COMPLAINT AND
ALL CROSS-COMPLAINTS**

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]

Defendants and Cross-Defendants Bruce Burrows and 300 A 40 H, LLC (“Landowners”) 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,
2 Quartz Hill Water District, Rosamond Community Services District, Phelan Pinion Hills CSD
3 and all cross-complaints filed hereinafter against Bruce Burrows and 300 A 40 H, LLC.

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

6 A. Los Angeles County APN: 3275-007-013 (previous APN: 3275-007-010).

7 B. Los Angeles County APNS: 3275-002-001, 007, 008, 010, 012, 015, 016, 017,
8 018, 019, and 020.

9 C. Los Angeles APNS: 3275-007-001, 002 and 015.

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

13 **GENERAL DENIAL**

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

18 **AFFIRMATIVE DEFENSES**

19 **First Affirmative Defense**

20 **(Failure to State a Cause of Action)**

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

24 **Second Affirmative Defense**

25 **(Statute of Limitations)**

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

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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 1214.

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 doctrine
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, damaging,
26 possessing or using Landowners' property without first paying just compensation.

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1 **Twenty-First Affirmative Defense**

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

3 22. The Complainant and each Cross-Complainant is seeking to transfer water right
4 priorities and water usage which will have significant effects on the Antelope Valley
5 Groundwater basin and the Antelope Valley. Said actions are being done without complying
6 with and contrary to the provisions of California’s Environmental Quality Act (CEQA) (Pub.
7 Res. C. § 2100 *et seq.*).

8 **Twenty-Second Affirmative Defense**

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

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

14 **Twenty-Third Affirmative Defense**

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

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

20 **Twenty-Fourth Affirmative Defense**

21 **(Water Code Section 5000 *et seq.*)**

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

24 **Twenty-Fifth Affirmative Defense**

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

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1 **Twenty-Sixth Affirmative Defense**

2 **(Additional Defenses)**

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

7 WHEREFORE, Landowners pray that judgment be entered as follows:

8 1. That Complainant and each and every Cross-Complainant take nothing by reason
9 of its Complaint or Cross-Complaint;

10 2. That the Complaint and Cross-Complaint be dismissed with prejudice;

11 3. For a judicial determination that Landowners' right to pump water from the basin
12 is superior and paramount to the right of Complainant and each Cross-Complainant, if any;

13 4. That if the Court determines that the Complaint or any Cross-Complainant is
14 entitled to any relief, that Landowners be awarded just compensation for any property interest
15 taken or damaged thereby;

16 5. For attorney's fees as provided by law;

17 6. For costs incurred herein; and

18 4. For such other and further relief as the Court deems just and proper.

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20 Dated: November 3, 2014

SMILAND CHESTER LLP

21
22 /s/ Theodore A. Chester
23 Attorneys for Cross-Defendants
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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 1100, Los Angeles, California 90071.

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

/s/ Felicia Herbstreith
Felicia Herbstreith