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Attorneys for Cross-Defendant
Phelan Piñon Hills Community Services District

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

Coordination Proceeding
Special Title (Rule 1550(b))
**ANTELOPE VALLEY
GROUNDWATER CASES**
Included Actions:
*Los Angeles County Waterworks District
No. 40 v.
Diamond Farming Co., et al.,
Los Angeles County Superior Court, Case
No. BC 325 201*
*Los Angeles County Waterworks District
No. 40 v.
Diamond Farming Co., et al.,
Kern County Superior Court, 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.*
Riverside County Superior Court,
Consolidated Action, Case Nos. RIC 353
840, RIC 344 436, RIC 344 668
AND RELATED CROSS-ACTIONS

Judicial Council Coordination Proceeding
No. 4408

For Filing Purposes Only: Santa Clara
County Case No.: 1-05-CV-049053

Assigned to the Honorable Jack Komar,
Department 17

ANSWER OF PHELAN PIÑON HILLS
COMMUNITY SERVICES DISTRICT TO
CROSS-COMPLAINT OF BOLTHOUSE
PROPERTIES, LLC AND CROSS-
COMPLAINT OF WM. BOLTHOUSE
FARMS, INC.

Cross-Defendant Phelan Piñon Hills Community Services District hereby answers the Cross-Complaint of Bolthouse Properties, LLC and Cross-Complaint of Wm. Bolthouse Farms, Inc., as follows:

ANSWER

Pursuant to Code of Civil Procedure section 431.30(d), cross-defendant hereby generally denies each and every allegation contained in the cross-complaints and further denies that cross-complainants, and each of them, are entitled to any relief against cross-defendant.

FIRST AND SEPARATE AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

The cross-complaints fail to state facts sufficient to constitute a cause of action.

SECOND AND SEPARATE AFFIRMATIVE DEFENSE

(Governmental Immunity Against Prescription)

Cross-complainants, and each of them, are barred by Civil Code section 1007 from perfecting prescriptive rights against cross-defendants.

THIRD AND SEPARATE AFFIRMATIVE DEFENSE

(Waiver)

Cross-complainants, and each of them, by their silence and inaction have acquiesced to cross-defendant's extraction of groundwater from the Basin.

FOURTH AND SEPARATE AFFIRMATIVE DEFENSE

(Waste and Unreasonable Use of Water)

The relief requested in the cross-complaints is barred by Article X, section 2 of the California Constitution in that the requested relief would be wasteful and result in unreasonable use, unreasonable method of use, or unreasonable method of diversion of water.

FIFTH AND SEPARATE AFFIRMATIVE DEFENSE

(Waiver)

Cross-complainants, and each of them, have knowingly and intentionally waived any right to assert some or all of the claims set forth in each and every cause of action contained in the cross-complaints.

SIXTH AND SEPARATE AFFIRMATIVE DEFENSE

(Physical Solution)

In the event of the imposition of a physical solution or some form of declaratory relief, due regard must be given to the prior and paramount nature of cross-defendant's prescriptive water rights.

SEVENTH AND SEPARATE AFFIRMATIVE DEFENSE

(Waste)

Cross-defendant is informed and believes, and on that basis alleges, that cross complainants, and each of them, are guilty of waste.

EIGHTH AND SEPARATE AFFIRMATIVE DEFENSE

(Unclean Hands)

Cross-complainants, and each of them, are guilty of unclean hands because they seek to restrict the pumping of other users but not their own pumping.

NINTH AND SEPARATE AFFIRMATIVE DEFENSE

(California Constitution, article X, Section 2)

Cross-complainants' claims of an absolute priority for overlying rights are barred because they are unreasonable pursuant to Article X, section 2 of the California Constitution in that they do not properly balance overlying uses with other reasonable and beneficial uses.

TENTH AND SEPARATE AFFIRMATIVE DEFENSE

(Public Agency Discretion)

Each and every cause of action in the cross-complaints is barred because it improperly seeks to control the exercise of discretion of various public agencies and they improperly seeks to complete the exercise of discretion in a particular manner.

ELEVENTH AND SEPARATE AFFIRMATIVE DEFENSE

(Estoppel)

Cross-defendant is informed and believes, and on that basis alleges, that cross-complainants, and each of them, by their acts and omissions are estopped from asserting any of the claims upon which they seek relief.

TWELFTH AND SEPARATE AFFIRMATIVE DEFENSE

(Doctrine of Unjust Enrichment)

Cross-complainants, and each of them, are barred from the relief they seek by the doctrine of unjust enrichment.

THIRTEENTH AND SEPARATE AFFIRMATIVE DEFENSE

(Failure to Name and Join Indispensable and Necessary Parties)

Each and every cause of action contained in the cross-complaints are barred in whole or in part in accordance with Code of Civil Procedure section 389 inasmuch as Cross-complainants, and each of them, have failed to name and join indispensable parties, including but not limited to producers of water from the Basin.

FOURTEENTH AND SEPARATE AFFIRMATIVE DEFENSE

(Inverse Condemnation Claim Barred by Statute of Limitations)

Cross-complainants' claim for inverse condemnation is barred by the five year statute of limitations. To obtain a prescriptive right to produce groundwater in California, the water production must be for a reasonable and beneficial purpose, open and notorious, adverse and hostile, exclusive and under a claim of right, and continuous and uninterrupted for the statutory period of five years. Appropriative and prescriptive rights to groundwater, as well as the rights of an overlying owner, can be lost to an adverse user. When the statutory five-year period runs for a prescriptive right, then any claim for inverse condemnation is barred by the five year statute of limitations for such claims.

FIFTEENTH AND SEPARATE AFFIRMATIVE DEFENSE

(Right to produce Groundwater is Usufructuary)

Cross-complainants' rights to produce groundwater are usufructuary, and confer no right of private ownership in public waters.

SIXTEENTH AND SEPARATE AFFIRMATIVE DEFENSE

(No Damages or Losses)

Cross-complainants, and each of them, are not entitled to recover monetary damages for any groundwater pumped by cross-defendants.

SEVENTEENTH AND SEPARATE AFFIRMATIVE DEFENSE

(Failure to Mitigate Any Damages)

Cross-complainants, and each of them, have failed and continue to fail to mitigate their damages, if any, and cross-complainants, and each of them, are barred from recovery against cross-defendant to the extent of such failure to mitigate.

EIGHTEENTH AND SEPARATE AFFIRMATIVE DEFENSE

(Actions of Cross-complainant Is the Proximate and Actual Cause of Any Damages)

The damages alleged, if there were any, were proximately and actually caused by the voluntary actions of cross-complainants, and each of them, and not by any actions and/or omissions of cross-defendant.

NINETEENTH AND SEPARATE AFFIRMATIVE DEFENSE

(Tort Claims Act)

To the extent the cross-complaints could be construed to allege damages based upon anything other than a constitutional theory for just compensation, the cross-complainants, and each of them, are barred due to the failure of cross-complainants, and each of them, to present a timely claim to cross-defendant under the Tort Claims Act, Government Code section 905 et seq.

TWENTIETH AND SEPARATE AFFIRMATIVE DEFENSE

(Failure to Exercise Administrative Remedies)

The cause of action for inverse condemnation is barred by the failure of cross-complainants, and each of them, to exhaust their available administrative remedies.

TWENTY-FIRST AND SEPARATE AFFIRMATIVE DEFENSE

(Failure to Exercise Reasonable Diligence)

The injuries and damages of cross-complainants, and each of them, if any, have been aggravated as a result of their failure to exercise reasonable diligence to minimize those damages, and cross-defendant's liability, if any, is limited to the amount of damage which would have been suffered had cross-complainants exercised the diligence required of them.

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TWENTY-SECOND AND SEPARATE AFFIRMATIVE DEFENSE

(Doctrine of Laches)

Some or all of cross-complainants' claims for relief are barred by the doctrine of laches. For at least five years prior to the commencement of the instant action, the Basin was in a continuous state of overdraft. That overdraft continued and was exacerbated by increased domestic and agricultural production. Cross-defendant has relied upon cross-complainants' inaction and their failure to make a formal assertion of any prior and paramount right to that of cross-defendant.

TWENTY-THIRD AND SEPARATE AFFIRMATIVE DEFENSE

(Description of Land)

Cross-complainants, and each of them, have not described the property at issue with sufficient certainty as required by Code of Civil Procedure section 455.

TWENTY-FOURTH AND SEPARATE AFFIRMATIVE DEFENSE

(Failure to Comply With Code of Civil Procedure Section 425.10)

Cross-complainants, and each of them, have failed to comply with the requirements of Code of Civil Procedure section 425.10 in that the cross-complainants' Prayer for Relief directly contradicts the causes of action pled elsewhere in the cross-complaints.

TWENTY-FIFTH AND SEPARATE AFFIRMATIVE DEFENSE

(Uncertainty and Ambiguity)

The cross-complaints, and each and every purported cause of action contained therein, are uncertain, ambiguous and unintelligible.

TWENTY-SIXTH AND SEPARATE AFFIRMATIVE DEFENSE

(Right to Assert Additional Affirmative Defenses)

Cross-defendant does not presently have sufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defense. Cross-defendant reserves the right to assert additional affirmative defenses in the event discovery indicates that they would be appropriate.

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1 **TWENTY-SEVENTH AND SEPARATE AFFIRMATIVE DEFENSE**

2 (Incorporation By Reference)

3 As permitted by the Court's Appearance Form, cross-defendant incorporates by reference,
4 as if fully set forth herein, each and every affirmative defense to the cross-complaints filed by any
5 other defendant or cross-defendant, whether their answers are filed before or after the filing of
6 this answer.

7 WHEREFORE, cross-defendant Phelan Piñon Hills Community Services District prays
8 for relief as follows:

- 9 1. That cross-complainants take nothing by way of their cross-complaints;
10 2. That cross-defendant be awarded attorneys' fees as may be allowed by statute or
11 law; and
12 3. For such other and further relief as the court may deem just and proper.

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14 Dated: February 17, 2009

15 **SMITH TRAGER** LLP
16 A Partnership of Professional Corporations

17 By 
18 Susan M. Trager
19 Attorneys for Cross-Defendant Phelan
20 Piñon Hills Community Services
21 District
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PROOF OF SERVICE

I, Carol J. Hamel, declare:

I am employed in the County of Orange, State of California. I am over the age of 18 and am not a party to the within action; my business address is 19712 MacArthur Blvd., Suite 120, Irvine, California 92612.

On February 17, 2009, I served the foregoing document(s) described as
**ANSWER OF PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT TO
CROSS-COMPLAINT OF BOLTHOUSE PROPERTIES, LLC AND CROSS-
COMPLAINT OF WM. BOLTHOUSE FARMS, INC** as follows:

X **(ELECTRONIC SERVICE)** By posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter pursuant to the Court's Clarification Order. electronic service and electronic posting completed through www.scefilings.org.

— **(REGULAR MAIL)** By enclosing the document(s) listed in sealed envelope(s), addressing as shown below, and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this firm's practice for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. 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 date of deposit for mailing in affidavit.

— **(FEDERAL EXPRESS)** By placing the document(s) listed above in a sealed overnight envelope, with delivery fees paid or provided for; addressed as shown below, and depositing it for overnight delivery at a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf, for delivery on the next business day.

— **(FACSIMILE)** by transmitting the document(s) listed above via facsimile to the office of the addressee(s) shown below. A true and correct copy of the transmission report indicating transmission without error is attached hereto.

— **(PERSONAL SERVICE)** By delivering the document(s) listed above in a sealed envelope addressed to the parties as noted by hand to the offices of the addressee.

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

Executed this 17th day of February, 2009, in Irvine, California.

/s/

Carol J. Hamel