

SmithTrager LLP
Susan M. Trager, Esq. (SBN 58497)
Francis D. Logan, Jr., Esq. (SBN 163049)
Summer L. Nastich, Esq. (SBN 229985)
Laurel E. Adcock, Esq. (SBN 234201)
19712 MacArthur Blvd., Suite 120
Irvine, CA 92612
Telephone: (949) 752-8971
Facsimile: (949) 863-9804
smt@smithtrager.com

EXEMPT FROM FILING FEES UNDER
GOVERNMENT CODE § 6103

Attorneys for Defendant
Phelan Piñon Hills Community Services District

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

**ANTELOPE VALLEY GROUNDWATER)
CASES)**

Judicial Council Coordination Proceeding
No. 4408

Included Actions:)

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

*Los Angeles County Waterworks District No.)
40 v. Diamond Farming Co., et al.,)
Los Angeles County Superior Court, Case No.)
BC 325 201)*

Assigned to the Honorable Jack Komar,
Department 17

*Los Angeles County Waterworks District No.)
40 v. Diamond Farming Co., et al.,)
Kern County Superior Court, Case No.)
S-1500-CV-254-348)*

ANSWER OF PHELAN PIÑON HILLS
COMMUNITY SERVICES DISTRICT
TO CROSS-COMPLAINT OF A.V.
UNITED MUTUAL GROUP

*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)

Defendant Phelan Piñon Hills Community Services District ("Defendant"), for itself alone, hereby answers the Cross-Complaint of 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 Mutual Water Co., Tierra Bonita Mutual Water Co. and Landale Mutual Water Co., all collectively known as A.V. United Mutual Group ("Plaintiff"), as follows:

ANSWER

Pursuant to Code of Civil Procedure section 431.30(d), Defendant hereby generally denies each and every allegation contained in the complaint and further denies that Plaintiff has been damaged in any sum, or at all, by reason of any act or omission on the part of Defendant, or on the part of any agent or employee of Defendant, or is entitled to any relief against Defendant.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

The complaint fails to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

(Governmental Immunity Against Prescription)

Plaintiff is barred by Civil Code section 1007 from perfecting prescriptive rights against Defendant.

THIRD AFFIRMATIVE DEFENSE

(Waiver)

Plaintiff by its silence and inaction has acquiesced to Defendant's extraction of groundwater from the Basin.

FOURTH AFFIRMATIVE DEFENSE

(Waste and Unreasonable Use of Water)

The relief requested in the complaint 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 AFFIRMATIVE DEFENSE

(Waiver)

Plaintiff has 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 complaint. Acts constituting waiver include but are not limited to the following: (a) failing to challenge the use of water by overlyers once groundwater levels began dropping; (b) failing to challenge the use of water by the municipal water suppliers once groundwater levels began dropping; (c) failing to challenge any Urban Water Management Plan issued by a municipal water supplier that relied on pumping from the area to be adjudicated; and (d) failing to challenge water supply assessments and California Environmental Quality Act compliance documents issued by an public agency that relied on pumping from the area to be adjudicated to meet demand.

Discovery is continuing on this issue and Defendant reserves the right to amend its answer as appropriate.

SIXTH 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 Defendant's prescriptive water rights.

SEVENTH AFFIRMATIVE DEFENSE

(Waste)

Plaintiff is guilty of waste.

EIGHTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiff is guilty of unclean hands because it seeks to restrict the pumping of other users but not its own pumping.

\\

\\

NINTH AFFIRMATIVE DEFENSE

(California Constitution, article X, Section 2)

Claims by Plaintiff 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 AFFIRMATIVE DEFENSE

(Public Agency Discretion)

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

ELEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiff by its acts and omissions is estopped from asserting any of the claims upon which it seeks relief.

TWELFTH AFFIRMATIVE DEFENSE

(Doctrine of Unjust Enrichment)

Plaintiff is barred from the relief it seeks by the doctrine of unjust enrichment.

THIRTEENTH AFFIRMATIVE DEFENSE

(Failure to Name and Join Indispensable and Necessary Parties)

Each and every cause of action contained in the complaint is barred in whole or in part in accordance with Code of Civil Procedure section 389 inasmuch as Plaintiff has failed to name and join indispensable parties, including but not limited to producers of water from the Basin.

FOURTEENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

Each and every cause of action is barred, in whole or in part, by applicable statutes of limitation including, but not limited to, sections 318, 319, 321, 337, 338, 339, 342, and 343 of the California Code of Civil Procedure.

\\

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

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

10 (Right to produce Groundwater is Usufructuary)

11 The rights of Plaintiff to produce groundwater are usufructuary, and confer no right of
12 private ownership in public waters.

13 **SIXTEENTH AFFIRMATIVE DEFENSE**

14 (No Damages or Losses)

15 Plaintiff is not entitled to recover monetary damages for any groundwater pumped by
16 Defendant.

17 **SEVENTEENTH AFFIRMATIVE DEFENSE**

18 (Failure to Mitigate Any Damages)

19 Plaintiff has failed and continues to fail to mitigate its damages, if any, and Plaintiff is
20 barred from recovery against Defendant to the extent of such failure to mitigate.

21 **EIGHTEENTH AFFIRMATIVE DEFENSE**

22 (Actions of the Plaintiff Is the Proximate and Actual Cause of Any Damages)

23 The damages alleged, if there were any, were proximately and actually caused by the
24 voluntary actions of Plaintiff and not by any actions and/or omissions of Defendant.

25 **NINETEENTH AFFIRMATIVE DEFENSE**

26 (Tort Claims Act)

27 To the extent the complaint could be construed to allege damages based upon anything
28 other than a constitutional theory for just compensation, the claim of Plaintiff is barred due to the

1 failure of Plaintiff to present a timely claim to Defendant under the Tort Claims Act,
2 Government Code section 905 et seq.

3 **TWENTIETH AFFIRMATIVE DEFENSE**

4 (Failure to Exercise Administrative Remedies)

5 The cause of action for inverse condemnation is barred by the failure of Plaintiff to
6 exhaust its available administrative remedies.

7 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

8 (Failure to Exercise Reasonable Diligence)

9 The injuries and damages of Plaintiff, if any, have been aggravated as a result of its
10 failure to exercise reasonable diligence to minimize those damages, and Defendant's liability, if
11 any, is limited to the amount of damage which would have been suffered had Plaintiff exercised
12 the diligence required of it.

13 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

14 (Doctrine of Laches)

15 Some or all of the claims of Plaintiff for relief are barred by the doctrine of laches. For at
16 least five years prior to the commencement of the instant action, the Basin was in a continuous
17 state of overdraft. That overdraft continued and was exacerbated by increased domestic and
18 agricultural production. Defendant has relied upon the inaction of Plaintiff and its failure to
19 make a formal assertion of any prior and paramount right to that of Defendant.

20 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

21 (Description of Land)

22 The complaint does not describe the property at issue with sufficient certainty as required
23 by Code of Civil Procedure section 455.

24 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

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

26 Plaintiff has failed to comply with the requirements of Code of Civil Procedure section
27 425.10 in that its Prayer for Relief directly contradicts the causes of action pled elsewhere in the
28 complaint.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Uncertainty and Ambiguity)

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

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Right to Assert Additional Affirmative Defenses)

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. Defendant reserves the right to assert additional affirmative defenses in the event discovery indicates that they would be appropriate.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Incorporation By Reference)

As permitted by the Court's Appearance Form, Defendant incorporates by reference, as if fully set forth herein, each and every affirmative defense raised by any other defendant to the complaints and cross-complaints on file in this coordinated proceeding whether their answers are filed before or after the filing of this answer.

WHEREFORE, Defendant prays for relief as follows:

1. That Plaintiff take nothing by way the complaint;
2. That Defendant be awarded attorneys' fees and costs as may be allowed by statute or law; and
3. For such other and further relief as the court may deem just and proper.

Dated: April 7, 2009

SmithTrager, LLP

By Francis D. Logan, Jr.
Francis D. Logan, Jr.
Attorneys for Defendant Phelan Piñon
Hills Community Services District

Judicial Council Coordination Proceeding No. 4408
For Filing Purposes Only: Santa Clara County Case No.: 1-05-CV-049053

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 April 8, 2009, I served the foregoing documents(s) described as **ANSWER OF PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT TO CROSS-COMPLAINT OF A.V. UNITED MUTUAL GROUP**, 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.scefilng.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 8th day of April, 2009, in Irvine, California.

/s/
Carol J. Hamel