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8 Attorneys for Cross-Defendant,
9 NIBBELINK FAMILY TRUST,
10 sued herein as ROE 1662

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

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**ANTELOPE VALLEY
GROUNDWATER CASES**

Included Actions:

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.
Los Angeles County Superior Court
Case No. BC 325201
Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.
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 actions
Case Nos. RIC 353 840, RIC 344 436, RIC
344, 668

) Judicial Council Coordination No. 4408

) For filing purposes only:
) Santa Clara County Case No.
) 1-05-CV-049053

) Assigned to the Honorable Jack Komar

) **MODEL ANSWER TO COMPLAINT
AND ALL CROSS-COMPLAINTS**

) Judge : Hon. James R. Dunn, Dept. 26

) Complaint Filed : January 10, 2008

) Discovery Cut-Off : TBD

) Motion Cut-Off : TBD

) Trial Date : TBD

I hereby answer the Complaint and all Cross-Complaints which have been filed as of this date,
specifically those of Antelope Valley East-Kern Water Agency, Palmdale Water District & Quartz

1 Hill Water District, Rosamond Community Services District and Waterworks District No. 40 of Los
2 Angeles County. I do not intend to participate at trial or other proceedings unless ordered by the court
3 to do so, but I reserve the right to do so upon giving written notice to that effect to the Court and all
4 parties. I own the following property(ies) located in the Antelope Valley:

5 *[Insert address and/or APN Number]*

6 **APN Number - 3109-025-014**

7 **APN Number - 3109-025-033**

8 **APN Number - 3109-024-054**

9 **APN Number - 3109-024-010**

10 **GENERAL DENIAL**

11 1. Pursuant to Code of Civil Procedure section 431.30(d), Defendant and
12 Cross-Defendant hereby generally denies each and every allegation set forth in the Complaint and
13 Cross-Complaint, and the whole thereof, and further denies that Plaintiff and Cross-Complainant are
14 entitled to any relief against Defendant and Cross-Defendant.

15 **AFFIRMATIVE DEFENSES**

16 **First Affirmative Defense**

17 (Failure to State a Cause of Action)

18 2. The Complaint and Cross-Complaint and every purported cause of action contained
19 therein fail to allege facts sufficient to constitute a cause of action against Defendant and
20 Cross-Defendant.

21 **Second Affirmative Defense**

22 (Statute of Limitation)

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

26 **Third Affirmative Defense**

27 (Laches)

28 4. The Complaint and Cross-Complaint, and each and every cause of action contained

1 therein, is barred by the doctrine of laches.

2 **Fourth Affirmative Defense**

3 (Estoppel)

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

6 **Fifth Affirmative Defense**

7 (Waiver)

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

10 **Sixth Affirmative Defense**

11 (Self-Help)

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

15 **Seventh Affirmative Defense**

16 (California Constitution Article X, Section 2)

17 8. Plaintiff and Cross-Complainant's methods of water use and storage are unreasonable
18 and wasteful in the arid conditions of the Antelope Valley and thereby violate Article X, Section 2
19 of the California Constitution.

20 **Eighth Affirmative Defense**

21 (Additional Defenses)

22 9. The Complaint and Cross-Complaint do not state their allegations with sufficient
23 clarity to enable defendant and cross-defendant to determine what additional defenses may exist
24 to Plaintiff and Cross-Complainant's causes of action. Defendant and Cross-defendant therefore
25 reserve the right to assert all other defenses which may pertain to the Complaint and Cross-

26 **Ninth Affirmative Defense**

27 10. The prescriptive claims asserted by governmental entity Cross-Complainants are ultra
28 vires and exceed the statutory authority by which each entity may acquire property as set forth in

1 Water Code sections 22456, 31040 and 55370.

2 **Tenth Affirmative Defense**

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

5 **Eleventh Affirmative Defense**

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

9 **Twelfth Affirmative Defense**

10 13. Cross-Complainants' prescriptive claims are barred due to their failure to take
11 affirmative steps that were reasonably calculated and intended to inform each overlying landowner
12 of cross-complainants' adverse and hostile claim as required by the due process clause of the 5th and
13 14th Amendments of the United States Constitution.

14 **Thirteenth Affirmative Defense**

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

17 **Fourteenth Affirmative Defense**

18 15. The prescriptive claims asserted by governmental entity Cross-Complainants are
19 barred by the provisions of the 14th Amendment to the United States Constitution.

20 **Fifteenth Affirmative Defense**

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

22 **Sixteenth Affirmative Defense**

23 17. The request for the court to use its injunctive powers to impose a physical solution
24 seeks a remedy that is in violation of the doctrine of separation of powers set forth in Article section
25 3 of the California Constitution.

26 **Seventeenth Affirmative Defense**

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

1 **Eighteenth Affirmative Defense**

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

4 **Nineteenth Affirmative Defense**

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

7 **Twentieth Affirmative Defense**

8 21. The governmental entity Cross-Complainants are barred from taking, possessing
9 or using cross-defendants' property without first paying just compensation.

10 **Twenty-First Affirmative Defense**

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

15 **Twenty-Second Affirmative Defense**

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

20 **Twenty-Third Affirmative Defense**

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

25 **WHEREFORE**, Defendant and Cross-defendant prays that judgment be entered as follows:

26 1. That Plaintiff and Cross-Complainant take nothing by reason of its Complaint or
27 Cross-Complaint;

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

- 1 3. For Defendant and Cross-Defendant's costs incurred herein; and
2 4. For such other and further relief as the Court deems just and proper.

3 Dated: February 4, 2011

WALSH DELANEY ATTORNEYS

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6 By


JAMES W. LEWIS

Attorneys for Cross-Defendant,
NIBBELINK FAMILY TRUST,
sued herein as ROE 1662

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9 *[FILE IN LA SUPERIOR COURT AND POST ON COURT WEBSITE - FOR E-FILING*
10 *INSTRUCTIONS, PLEASE GO TO WWW.SCEFILING.ORG/FAQ OR CONTACT GLOTRANS AT*
11 *(510) 208-4775.]*

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