

JAN 24 2011

John A. Clarke, Executive Officer/Clerk  
BY Shaunya Weslev, Deputy

1 JAMES W. LEWIS (SBN 207599)  
2 WALSH DELANEY ATTORNEYS  
3 42306 10<sup>th</sup> Street W., Suite C  
4 Lancaster, CA 93534  
5 Telephone: (661) 945-3184  
6 Facsimile: (661) 945-5695

7 Attorneys for Cross-Defendant,  
8 A.C. WARNACK, as Trustee of  
9 The A.C. WARNACK TRUST,  
10 sued herein as ROE 395

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12  
13 FOR THE COUNTY OF LOS ANGELES

14 ANTELOPE VALLEY  
15 GROUNDWATER CASES

16 Included Actions:

17 Los Angeles County Waterworks District  
18 No. 40 v. Diamond Farming Co.  
19 Los Angeles County Superior Court  
20 Case No. BC 325201

21 Los Angeles County Waterworks District  
22 No. 40 v. Diamond Farming Co.  
23 Kern County Superior Court  
24 Case No. S-1500-CV-254-348

25 Wm. Bolthouse Farms, Inc. v. City of  
26 Lancaster, Diamond Farming Co. V. City of  
27 Lancaster, Diamond Farming co. v.  
28 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 The southwest quarter of the southeast quarter of Section 3, Township  
7 7 North, Range 15 West, and Lots 2 and 5 in Section 10, Township 7  
8 North, Range 15 West, and the east half of the southeast quarter of the  
9 northwest quarter of Section 10, Township 7 North, Range 15 West,  
and the southwest quarter of the northeast quarter of Section 10,  
Township 7 North, Range 15 West, all based on the San Bernardino  
Base and Meridian. [APN 3240-010-004; 3240-017-010]

10 and

11 PARCEL 1:

12 Section 2, Township 7 North, Range 15 West, San Bernardino  
13 Meridian, in the County of Los Angeles, State of California, according  
to the official plat of said land.

14 Except from the West 100 acres of the southwest quarter of said  
15 Section 1 strip 100 feet wide containing 4.17 acres extending across  
said property, conveyed to the City of Los Angeles, by Deed dated  
16 January 18, 1909 recorded in Book 3614 Page 193, Official Records.

17 Also except from said West 100 acres in said southwest quarter, half  
of all oil, gas, asphaltum, or any other petroleum substances in or  
18 under said land, as reserved in the Deed from Ida Correll and Geneva  
Hazel Correll, recorded August 22, 1934 in Book 12953, Page 143,  
19 Official Records.

20 Also except that portion described in Parcel 1 in the Deed to the State  
of California, recorded July 11, 1967 as Instrument No. 485, in Book  
21 D-3698 Page 501 Official Records.

22 Also except from West 30 acres of the East 60 acres of the southwest  
quarter of Section 2, that portion of said land included within the lines  
of the land described in Deeds to the State of California, recorded  
23 January 26, 1967, in Book D-3541 Page 683, Official Records and  
recorded October 13, 1967 in Book D-3796 Page 553, Official  
24 Records.

25 Also except that portion described as Parcels 1, 2 and 3 in the Deed to  
the State of California, in Deed recorded October 16, 1972 as  
26 Instrument No. 229. [APNs 3240-010-005; 3240-010-006; 3240-010-  
007; 3240-010-009]

27

28

1 PARCEL 2:

2 Section 3, Township 7 North, Range 15 West, San Bernardino  
3 Meridian, in the County of Los Angeles, State of California, according  
4 to the official plat of said land.

5 Except the southwest quarter of the southeast quarter of said Section.

6 Also except Lot 4 of the southeast quarter of said Section.

7 Also except that portion described in Parcel 1 in the Deed to the State  
8 of California, recorded July 11, 1967 as Instrument No. 486, in Book  
9 D-3698 Page 506, Official Records. [APNs 3240-010-001; 3240-010-  
10 002]

11 PARCEL 3:

12 The east half of Section 4, Township 7 North, Range 15 West, San  
13 Bernardino Meridian, in the County of Los Angeles, State of  
14 California, according to the official plat of said land.

15 Except that portion described in Parcel 1 in the Deed to the State of  
16 California, recorded July 11, 1967 as Instrument No. 487 in Book D-  
17 3698 Page 510, Official Records.

18 Also except from the southwest quarter of the southeast quarter of the  
19 said Section, all the coal and other mineral in and under said land, as  
20 reserved by the United States of America in patent recorded December  
21 27, 1934 in Book 13184 Page 153, Official Records. [APNs 3240-011-  
22 002]

23 PARCEL 4:

24 Lot 1 in the northeast quarter of Section 10, and the northwest quarter  
25 of northwest quarter of Section 11, all Township 7 North, Range 15  
26 West, San Bernardino Meridian, in the County of Los Angeles, State  
27 of California, according to the official plat of said land. [APNs 3240-  
28 017-014; 3240-018-001]

29 **GENERAL DENIAL**

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

34 **AFFIRMATIVE DEFENSES**

35 **First Affirmative Defense**

36 (Failure to State a Cause of Action)

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

4                                   **Second Affirmative Defense**

5                                   (Statute of Limitation)

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

9                                   **Third Affirmative Defense**

10                                  (Laches)

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

13                                  **Fourth Affirmative Defense**

14                                  (Estoppel)

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

17                                  **Fifth Affirmative Defense**

18                                  (Waiver)

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

21                                  **Sixth Affirmative Defense**

22                                  (Self-Help)

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

26                                  **Seventh Affirmative Defense**

27                                  (California Constitution Article X, Section 2)

28          8.       Plaintiff and Cross-Complainant's methods of water use and storage are unreasonable

1 and wasteful in the arid conditions of the Antelope Valley and thereby violate Article X, Section 2  
2 of the California Constitution.

3 **Eighth Affirmative Defense**

4 (Additional Defenses)

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

9 **Ninth Affirmative Defense**

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

13 **Tenth Affirmative Defense**

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

16  
17 **Eleventh Affirmative Defense**

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

21 **Twelfth Affirmative Defense**

22 13. Cross-Complainants' prescriptive claims are barred due to their failure to take  
23 affirmative steps that were reasonably calculated and intended to inform each overlying landowner  
24 of cross-complainants' adverse and hostile claim as required by the due process clause of the 5th and  
25 14th Amendments of the United States Constitution.

26 **Thirteenth Affirmative Defense**

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

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

**Fourteenth Affirmative Defense**

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

**Fifteenth Affirmative Defense**

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

**Sixteenth Affirmative Defense**

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

**Seventeenth Affirmative Defense**

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

**Eighteenth Affirmative Defense**

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

**Nineteenth Affirmative Defense**

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

**Twentieth Affirmative Defense**

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

**Twenty-First Affirmative Defense**

22. The governmental entity Cross-Complainants are 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**

23. The governmental entity Cross-Complainants seek judicial ratification of a project

1 that has had and will have a significant effect on the Antelope Valley Groundwater Basin and the  
2 Antelope Valley that was implemented without providing notice in contravention of the provisions  
3 of California's Environmental Quality Act (CEQA) (Pub.Res.C. 2100 *et seq.*).

4 **Twenty-Third Affirmative Defense**

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

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

- 10 1. That Plaintiff and Cross-Complainant take nothing by reason of its Complaint or  
11 Cross-Complaint;  
12 2. That the Complaint and Cross-Complaints be dismissed with prejudice;  
13 3. For Defendant and Cross-Defendant's costs incurred herein; and  
14 4. For such other and further relief as the Court deems just and proper.

15 Dated: November 15, 2008

WALSH DELANEY ATTORNEYS

16  
17  
18 By 

JAMES W. LEWIS  
Attorneys for Cross-Defendant,  
A.C. WARNACK, as Trustee of  
The A.C. WARNACK TRUST,  
sued herein as ROE 395

19  
20  
21  
22 [FILE IN LA SUPERIOR COURT AND POST ON COURT WEBSITE - FOR E-FILING  
23 INSTRUCTIONS, PLEASE GO TO [WWW.SCEFILING.ORG/FAQ](http://WWW.SCEFILING.ORG/FAQ) OR CONTACT GLOTRANS AT  
(510) 208-4775.]

24 Y:\WWW\AV\08-270 AV Groundwater\lg\Answer to Compl Warnack.wpd  
25  
26  
27  
28