

Matthew A. Keces, SBN 157494
Law Office of Matthew A. Keces
4621 Teller Avenue, Suite 130
Newport Beach, CA 92660-2165
Telephone: (949) 253-2800
Facsimile: (949) 852-0351
Email: makeces@yahoo.com

Attorney for
LEBATA, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

**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

) **ANSWER TO COMPLAINT AND ALL
CROSS-COMPLAINANTS**

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 Hill Water District, Rosamond Community Services District and Waterworks District No.
40 of Los Angeles County.

1 I do not intend to participate at trial or other proceedings unless ordered by the Court to do
2 so, but I reserve the right to do so upon giving written notice to that effect to the Court and all
3 parties. I own the following properties located in the Antelope Valley: APN 3039-021, APN 3039-
4 010 and APN 3039-011.

5
6 **GENERAL DENIAL**

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

11 **AFFIRMATIVE DEFENSES**

12 **First Affirmative Defense**

13 (Failure to State a Cause of Action)

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

17 **Second Affirmative Defense**

18 (Statute of Limitation)

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

22 **Third Affirmative Defense**

23 (Laches)

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

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27 ///

1 **Fourth Affirmative Defense**

2 (Estoppel)

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

5 **Fifth Affirmative Defense**

6 (Waiver)

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

9 **Sixth Affirmative Defense**

10 (Self-Help)

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

14 **Seventh Affirmative Defense**

15 (California Constitution Article X, Section 2)

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

19 **Eighth Affirmative Defense**

20 (Additional Defenses)

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

26 **Ninth Affirmative Defense**

27 10. The prescriptive claims asserted by governmental entity Cross-Complainants are

1 *ultra vires* and exceed the statutory authority by which each entity may acquire property as set
2 forth in Water Code sections 22456, 31040 and 55370.

3 **Tenth Affirmative Defense**

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

6 **Eleventh Affirmative Defense**

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

10 **Twelfth Affirmative Defense**

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

15 **Thirteenth Affirmative Defense**

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

18 **Fourteenth Affirmative Defense**

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

21 **Fifteenth Affirmative Defense**

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

24 **Sixteenth Affirmative Defense**

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

1 **Seventeenth Affirmative Defense**

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

4 **Eighteenth Affirmative Defense**

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

8 **Nineteenth Affirmative Defense**

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

11 **Twentieth Affirmative Defense**

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

14 **Twenty-First Affirmative Defense**

15 22. The governmental entity Cross-Complainants are seeking to transfer water right
16 priorities and water usage which will have significant effects on the Antelope Valley
17 Groundwater basin and the Antelope Valley. Said actions are being done without complying with
18 and contrary to the provisions of California's Environmental Quality Act (CEQA) (Pub.Res.C.
19 2100 *et seq.*).

20 **Twenty-Second Affirmative Defense**

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

25 **Twenty-Third Affirmative Defense**

26 24. Any imposition by this court of a proposed physical solution that reallocates the
27 water right priorities and water usage within the Antelope Valley will be *ultra vires* as it will be

1 subverting the pre-project legislative requirements and protections of California's Environmental
2 Quality Act (CEQA) (Pub.Res.C. 2100 *et seq.*).

3
4 **WHEREFORE**, Defendant and Cross-defendant prays that judgment be entered
5 as follows:

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

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12 Dated: July 7, 2009

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14 _____
15 Matthew A. Keces
16 Attorney for LEBATA, INC.
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1 **PROOF OF SERVICE**

2 Antelope Valley Groundwater Cases
3 Santa Clara Superior Court Case No. 1-05-CV-049053

4 STATE OF CALIFORNIA)
5) ss.
6 COUNTY OF ORANGE)

7 I am employed in the County of Orange, State of California. I am over the age of eighteen
8 years and not a party to the within action; my business address is 4621 Teller Avenue, Suite 130,
9 Newport Beach, CA 92660.

10 On the date below, I served the foregoing document(s) described as:
11 **ANSWER TO COMPLAINT AND ALL CROSS-COMPLAINANTS** on the interested parties
12 in this as follows:

13 () **BY MAIL.** I caused such envelope with postage thereon fully prepaid to be placed in the
14 U.S. Mail at Newport Beach, CA. I am "readily familiar" with the firm's practice of collection and
15 processing correspondence for mailing. Under that practice, it would be deposited with the U.S.
16 Postal Service on that same day with postage thereon fully prepaid at Newport Beach, CA in the
17 ordinary course of business. I am aware that on motion of the party served, service is presumed
18 invalid if postal cancellation date or postage meter date is more than one day after date of deposit
19 for mailing in affidavit.

20 (X) **BY ELECTRONIC SERVICE.** I caused the above-entitled document(s) to be served
21 through the County of Santa Clara, Superior Court e-filing service at www.scefiling.org addressed
22 to all parties appearing on the electronic service list for the above-entitled case. The service
23 transmission was reported as complete and a copy of the Filing Receipt Page/Confirmation will be
24 maintained with the original document(s) in this office.

25 () **BY PERSONAL DELIVERY.** I delivered such envelope by hand to the offices of the
26 addressee(s) noted herein.

27 () **BY FACSIMILE TRANSMISSION.** I caused such document to be transmitted to the
28 addressee(s) facsimile number(s) noted herein. The facsimile machine used complies with Rule
2003 and no error was reported by the machine. Pursuant to Rule 2008(e), I caused the machine to
print a transmission record of the transmission, a copy of which is attached to this declaration.

(X) **STATE.** I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

Executed on July 7, 2009 at Newport Beach, CA.

/ s /

Sandra Chavez