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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 FIRST-AMENDED CROSS-  
COMPLAINT OF PUBLIC WATER  
SUPPLIERS**

Lebata, Inc. ("Defendant and Cross-Defendant") hereby answers the First-Amended Cross-  
Complaint of Public Water Suppliers ("Cross-Complaint").

Lebata, Inc. does not intend to participate at trial or other proceedings unless ordered by the  
Court to do so, but Lebata, Inc. reserves the right to do so upon giving written notice to that effect to

1 the Court and all parties. Leбата, Inc. owns the following properties located in the Antelope Valley:  
2 APN 3039-021, APN 3039-010 and APN 3039-011.

3  
4 **GENERAL DENIAL**

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

9 **AFFIRMATIVE DEFENSES**

10 **First Affirmative Defense**

11 (Failure to State a Cause of Action)

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

14 **Second Affirmative Defense**

15 (Statute of Limitation)

16 3. Each and every cause of action contained in the Cross-Complaint is barred, in whole  
17 or in part, by the applicable statutes of limitation, including, but not limited to, sections 318, 319,  
18 321, 338, and 343 of the California Code of Civil Procedure.

19 **Third Affirmative Defense**

20 (Laches)

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

23 **Fourth Affirmative Defense**

24 (Estoppel)

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

27 ///

1 **Fifth Affirmative Defense**

2 (Waiver)

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

5 **Sixth Affirmative Defense**

6 (Self-Help)

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

10 **Seventh Affirmative Defense**

11 (California Constitution Article X, Section 2)

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

15 **Eighth Affirmative Defense**

16 (Additional Defenses)

17 9. The Cross-Complainant does not state its allegations with sufficient clarity to enable  
18 Defendant and Cross-defendant to determine what additional defenses may exist to Cross-  
19 Complainant's causes of action. Defendant and Cross-defendant therefore reserve the right to assert  
20 all other defenses which may pertain to the Cross Complaint.

21 **Ninth Affirmative Defense**

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

25 **Tenth Affirmative Defense**

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

1 **Eleventh Affirmative Defense**

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

5 **Twelfth Affirmative Defense**

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

10 **Thirteenth Affirmative Defense**

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

13 **Fourteenth Affirmative Defense**

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

16 **Fifteenth Affirmative Defense**

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

19 **Sixteenth Affirmative Defense**

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

23 **Seventeenth Affirmative Defense**

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

26 **Eighteenth Affirmative Defense**

27 19. Each Cross-Complainant is barred from recovery under each and every cause of  
28

1 action contained in the Cross-Complaint by the doctrine of unclean hands and/or unjust  
2 enrichment.

3 **Nineteenth Affirmative Defense**

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

6 **Twentieth Affirmative Defense**

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

9 **Twenty-First Affirmative Defense**

10 22. The governmental entity Cross-Complainants are seeking to transfer water right  
11 priorities and water usage which will have significant effects on the Antelope Valley  
12 Groundwater basin and the Antelope Valley. Said actions are being done without complying with  
13 and contrary to the provisions of California's Environmental Quality Act (CEQA) (Pub.Res.C.  
14 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  
19 provisions 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  
22 water right priorities and water usage within the Antelope Valley will be *ultra vires* as it will be  
23 subverting the pre-project legislative requirements and protections of California's Environmental  
24 Quality Act (CEQA) (Pub.Res.C. 2100 *et seq.*).

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

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

Dated: November 4, 2009

/ s /

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Matthew A. Keces  
Attorney for LEBATA, INC.

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 FIRST-AMENDED CROSS-COMPLAINT OF PUBLIC**  
12 **WATER SUPPLIERS** on the interested parties 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](http://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 November 4, 2009 at Newport Beach, CA.

/ s /

Sandra Chavez