

March 8, 2010

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08-AFC-9

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VIA E-MAIL: FMiller@energy.state.ca.us
AND FIRST CLASS MAIL

Felicia Miller, Project Manager
Siting, Transmission and Environmental Protection Division
California Energy Commission
1516 Ninth Street, MS-15
Sacramento, CA 95814

Re: Proposed Palmdale Hybrid Power Project (08-AFC-9): Comments of the
Antelope Valley United Mutual Group on Preliminary Staff Assessment

Dear Ms. Miller:

Gresham Savage Nolan & Tilden, APC represents Antelope Valley United Mutual Group ("AV United") and presents these comments on AV United's behalf regarding the California Energy Commission's Preliminary Staff Assessment ("PSA")¹ of the Proposed Palmdale Hybrid Power Project (the "Project"). AV United appreciates the opportunity to submit comments on the PSA.

AV United is composed of fifteen (15) mutual water companies whose members own property which overly the Antelope Valley Groundwater Basin ("Basin"). AV United members exercise overlying groundwater rights since groundwater is extracted from the Basin for beneficial use on their properties. Under California law, these landowners have prior rights to the waters of the Basin.² While AV United supports the Project and believes it will provide much-needed economic development for the region, AV United is concerned as to how the City of Palmdale (the "City") and Los Angeles County Waterworks District 40 ("District No. 40") can support new demands when they are claiming that sufficient water does not exist to meet current demands. The PSA contains inadequate analysis of water supplies available for the Project as it does not address this issue or the availability of recycled water in the context of that adjudication.

¹ California Energy Commission, Palmdale Hybrid Power Project, Preliminary Staff Assessment, Docket 08-AFC-09.

² *City of Barstow v. Mojave Water Agency* (2000) 3 Cal.4th 1224, 1240; *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 924-25.



The Basin underlies the Project area and serves as water supply for both the City and District No. 40. The rights to the Basin's groundwater are presently the subject of a Basin-wide adjudication (the "Adjudication").³ In the Adjudication, both District No. 40 and the City claim that there is currently insufficient water in the Basin to meet present uses⁴ and that the Basin is presently in an overdraft condition.⁵ Generally, a basin in an overdraft condition exists when groundwater extractions exceed groundwater recharge. If water extractions exceed recharge in the Basin, then all waters that would recharge the Basin are necessary to support present uses and avoid further groundwater level subsidence.⁶

In its brief discussion of the Adjudication in support of its claim that water is available for the Project, the PSA states that "[r]eclaimed water discharged to evaporation/percolation ponds, irrigation sites, and furrowed land from the Palmdale and Lancaster WRPs does not appear to be a part of the adjudication." To the contrary, recycled water is a part of the Adjudication – which is precisely why Los Angeles County Sanitation Districts Nos. 14 and 20 are parties to the Adjudication. In their Cross-Complaint, the Los Angeles County Sanitation Districts seek a judicial determination of the right to control recycled water in the Basin.⁷ The Sanitation Districts claim that the use of recycled water directly and significantly affects the Basin and must be fully taken into account in the Adjudication of all rights to water in the Basin.⁸ Thus, it is improper for the PSA to simply gloss over the Adjudication and its potential effect on reliable water supplies for the Project because the Project will use recycled water.

In reliance on its erroneous conclusion that recycled water is not at issue in the Adjudication, the PSA concludes: "The Antelope Valley Groundwater Basin and groundwater users would benefit by the project's proposed use of recycled water. Therefore, staff believes that there would be no significant cumulative impacts to the

³ Included actions are *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.* Superior Court of California, County of Los Angeles, Case No. BC 325201; *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.*, Superior Court of California, County of Kern, 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.*, Superior Court of California, County of Riverside, Case Nos. RIC 353840, RIC 344436, RIC 344668.

⁴ District No. 40 and City's First Amended Cross-Complaint in Los Angeles County Sup. Ct. Case No. BC 325201, filed March 13, 2007, attached hereto under Tab 1, at ¶¶28, 33.

⁵ District No. 40 and City's First Amended Cross-Complaint, at ¶¶31-35.

⁶ See *In the Matter of the Petition for Extension of Time of the City of San Luis Obispo Permit 5882* (Application 10216) (2000) Order WR 2000-13. at 25-26)(It is not in the public interest to allow additional overdraft of an impacted basin in a water-short area and any further overdraft is unacceptable.

⁷ Cross-Complaint of Los Angeles County Sanitation Districts, filed Dec. 27, 2006, attached hereto under Tab 2, at ¶¶ 44-47.

⁸ Cross-Complaint of Los Angeles County Sanitation Districts, at ¶¶ 54.

groundwater resources in the Basin as a result of the project.”⁹ Not only is it improper for the PSA to conclude that the use of recycled water will not have any impact on the other supplies in the Basin, this statement characterizing recycled water supply as if it is severable from total water supply concerns in the Basin signals a fundamental flaw in the PSA’s analysis. The PSA should better explain the connection between recycled water and groundwater in the Basin, and the potential effect of the Adjudication on Project water supplies.

Although the PSA states that staff evaluated criteria such as whether the Project will substantially deplete groundwater supplies, result in lower groundwater levels, or interfere substantially with groundwater recharge,¹⁰ the PSA does not answer these questions with any substantive discussion. The fact that the Energy Commission’s certified program under CEQA exempts it from having to prepare an Environmental Impact Report highlights the need to adequately discuss any significant adverse effect the Project may have on the environment at this time.

The PSA does not make clear how its proposed mitigation measures compensate for potential effects that the Project might have on recharge in the Basin. For example, the PSA states: “Although the use of recycled water would remove a source of groundwater recharge from the Basin, it would also remove a source of salt and nutrient loading to the groundwater as prescribed by RWQCB order.”¹¹ The PSA does not adequately explain how removal of a source of salt and nutrient loading mitigates removal of a source of recharge for the Basin which – if the Basin is in a state of overdraft – would be needed for present uses.

The failure to appropriately consider Project water supplies is further evidenced by the February 11, 2010 Public Workshop for the PSA. Early in the meeting, CEC staff stated that there was “nothing major there” relating to water, and explained that the staff member responsible for preparing the water analysis section had been sent home for the day because water was not anticipated to be a substantial discussion topic. The subsequent brief discussion of water supplies for the Project demonstrated that the Energy Commission has not taken water supply for the Project and its effect on the Basin seriously.

⁹ PSA Vol. 2, p. 4.9-25.

¹⁰ PSA Vol. 2, pp. 4.9-10, 11.

¹¹ PSA Vol. 2, p. 4.9-23.

Felicia Miller, Project Manager

March 8, 2010

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AV United requests that the Commission address these comments and further explain its determination as to the Project's impacts on Basin water supplies and looks forward to future opportunities for comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Duane Davis". The signature is written in a cursive style with a large, sweeping initial "M".

Michael Duane Davis, of
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

MDD:tdg

Enclosure

cc: A.V. United Mutual Group

TAB "1"

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7 WATERWORKS DISTRICT NO. 40

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13 Attorneys for Cross-Complainant LOS ANGELES
COUNTY WATERWORKS DISTRICT NO. 40

14 [See Next Page For Additional Counsel]

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF LOS ANGELES - CENTRAL DISTRICT

17
18 **ANTELOPE VALLEY
GROUNDWATER CASES**

19 Included Actions:

20 Los Angeles County Waterworks District
21 No. 40 v. Diamond Farming Co., Superior
Court of California, County of Los
22 Angeles, Case No. BC 325201;

23 Los Angeles County Waterworks District
24 No. 40 v. Diamond Farming Co., Superior
Court of California, County of Kern, Case
25 No. S-1500-CV-254-348;

26 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
27 Lancaster, Diamond Farming Co. v.
Palmdale Water Dist., Superior Court of
28 California, County of Riverside, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Koniar

[Code Civ. Proc., § 382]

~~[PROPOSED]~~ FIRST-AMENDED CROSS-
COMPLAINT OF PUBLIC WATER
SUPPLIERS FOR DECLARATORY AND
INJUNCTIVE RELIEF AND
ADJUDICATION OF WATER RIGHTS

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7 (213) 626-8484 (213) 626-0078 fax
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9 Wayne Lemieux, Bar No. 43501
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10 Westlake Village, CA 91361
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11 Attorneys for Littlerock Creek Irrigation District and
Palm Ranch Irrigation District

12 LAGERLOF SENEAL BRADLEY GOSNEY &
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15 (626) 793-9400 (626) 793-5900 fax
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16 Hill Water District

17 CALIFORNIA WATER SERVICE COMPANY
John Tootle, Bar No. 181822
18 2632 West 237th Street
Torrance, CA 90505
19 (310) 257-1488; (310) 325-4605-fax

20
21
22
23
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25
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27
28

1 Cross-Complainants California Water Service Company, City of Lancaster, City of
2 Palmdale, Littlerock Creek Irrigation District , Los Angeles County Water Works District No. 40,
3 Palmdale Water District, Rosamond Community Services District, Palm Ranch Irrigation District
4 and Quartz Hill Water District (collectively, the “Public Water Suppliers”) allege:

5
6 **INTRODUCTION**

7 1. This cross-complaint seeks a judicial determination of rights to all water within the
8 adjudication area of the Antelope Valley Groundwater Basin as determined by the Court’s Orders
9 in this case (the “Basin”). An adjudication is necessary to protect and conserve the limited water
10 supply that is vital to the public health, safety and welfare of all persons and entities that depend
11 upon water from the Public Water Suppliers. For these reasons, the Public Water Suppliers file
12 this cross-complaint to promote the general public welfare in the Antelope Valley; protect the
13 Public Water Suppliers’ rights to pump groundwater and provide water to the public; protect the
14 Antelope Valley from a loss of the public’s water supply; prevent degradation of the quality of
15 the public groundwater supply; stop land subsidence; and avoid higher water costs to the public.

16
17 **CROSS-COMPLAINANTS**

18 2. California Water Service Company is a California corporation which extracts
19 groundwater from the Basin to serve customers within the Basin.

20
21 3. The City of Lancaster is a municipal corporation located in the County of Los
22 Angeles, and which produces and receives water for reasonable and beneficial uses, including
23 overlying uses. The City of Lancaster further provides ministerial services to mutual water
24 companies that produce groundwater from the Basin.

25
26 4. The City of Palmdale is a municipal corporation in the County of Los Angeles.
27 The City of Palmdale receives water from the Basin.

1 and/or entitles claim overlying rights to extract water from the Basin, whether or not they have
2 heretofore exercised such overlying rights: ABC Williams Enterprises LP, ACEH Capital, LLC,
3 Jacqueline Ackermann, Cenon Advincula, Oliva M. Advincula, Mashallah Afshar, Antonio U.
4 Agustines, Airtrust Singapore Private Limited, Marwan M. Aldais, Allen Alevy, Allen Alevy and
5 Alevy Family Trust, Georgine J. Archer, Georgine J. Archer as Trustee for the Georgine J. Archer
6 Trust, A V Materials, Inc., Guss A. Barks, Jr., Peter G. Barks, Ildefonso S. Bayani, Nilda V.
7 Bayani, Big West Corp, Randall Y. Blayney, Melody S. Bloom, Bolthouse Properties, Inc., David
8 L. Bowers, Ronald E. Bowers, Leroy Daniel Bronston, Marilyn Burgess, Laverne C. Burroughs,
9 Laverne C. Burroughs, Trustee of the Burroughs Family Irrevocable Trust Dated August 1, 1995,
10 Bruce Burrows, John and B. Calandri 2001 Trust, California Portland Cement Company, Calmat
11 Land Co., Melinda E. Cameron, Castle Butte Dev Corp, Catellus Development Corporation,
12 Bong S. Chang, Jeanna Y. Chang, Moon S. Chang, Jacob Chetrit, Frank S. Chiodo, Lee S. Chiou,
13 M S Chung, City of Los Angeles, Carol K. Claypool, Clifford N. Claypool, W. F. Clunen, Jr., W.
14 F. Clunen, Jr. as Trustee for the P C Rev Inter Vivos Trust, Consolidated Rock Products Co.,
15 County Sanitation District No. 14 of Los Angeles County, County Sanitation District No. 20 of
16 Los Angeles County, Ruth A. Cumming, Ruth A. Cumming as Trustee of the Cumming Family
17 Trust, Catharine M. Davis, Milton S. Davis, Del Sur Ranch LLC, Diamond Farming Company,
18 Sarkis Djanibekyan, Hong Dong, Ying X Dong, Dorothy Dreier, George E. Dreier, Morteza M.
19 Foroughi, Morteza M. Foroughi as Trustee of the Foroughi Family Trust, Lewis Fredrichsen,
20 Lewis Fredrichsen as Trustee of the Friedrichsen Family Trust, Joan A. Funk, Eugene Gabrych,
21 Marian Gabrych, Aurora P. Gabuya, Rodrigo L. Gabuya, GGF LLC, Genus LP, Betty Gluckstein,
22 Joseph H. Gluckstein, Forrest G. Godde, Forrest G. Godde as Trustee of the Forrest G. Godde
23 Trust, Lawrence A. Godde, Lawrence A. Godde and Godde Trust, Maria B. Gorrindo, Maria B.
24 Gorrindo as Trustee for the M. Gorrindo Trust, Wendell G. Hanks, Andreas Hauke, Marilyn
25 Hauke, Healy Enterprises, Inc., Walter E. Helmick, Donna L. Higelmire, Michael N. Higelmire,
26 Davis L. and Diana D. Hines Family Trust, Hooshpack Dev Inc., Chi S. Huang, Suchu T. Huang,
27 John Hui, Hypericum Interests LLC, Daryush Iraninezhad, Minoos Iraninezhad, Esfandiar
28 Kadivar, Esfandiar Kadivar as Trustee of the Kadivar Family Trust, A. David Kagon, A. David

1 Kagon as Trustee for the Kagon Trust, Jack D. Kahlo, Cheng Lin Kang, Herbert Katz, Herbert
2 Katz as Trustee for the Katz Family Trust, Marianne Katz, Lilian S. Kauffman, Lilian S.
3 Kaufman as Trustee for the Kaufman Family Trust, Kazuko Yoshimatsu, Barbara L. Keys,
4 Barbara L. Keys as Trustee of the Barbara L. Keys Family Trust, Billy H. Kim, Illy King, Illy
5 King as Trustee of the Illy King Family Trust, Kootenai Properties, Inc., Kutu Investment Co.,
6 Gailen Kyle, Gailen Kyle as Trustee of the Kyle Trust, James W. Kyle, James W. Kyle as Trustee
7 of the Kyle Family Trust, Julia Kyle, Wanda E. Kyle, Fares A. Lahoud, Eva Lai, Paul Lai, Ying
8 Wah Lam, Land Business Corporation, Richard E. Landfield, Richard E. Landfield as Trustee of
9 the Richard E. Landfield Trust, Lawrence Charles Trust, William Lewis, Mary Lewis, Pei Chi
10 Lin, Man C. Lo, Shiung Ru Lo, Lyman C. Miles, Lyman C. Miles as Trustee for the Miles Family
11 Trust, Malloy Family Partners LP, Mission Bell Ranch Development, Barry S. Munz, Kathleen
12 M. Munz, Terry A. Munz, M.R. Nasir, Souad R. Nasir, Eugene B. Nebeker, Simin C. Neman,
13 Henry Ngo, Frank T. Nguyen, Juanita R. Nichols, Oliver Nichols, Oliver Nichols as Trustee of
14 the Nichols Family Trust, Owl Properties, Inc., Palmdale Hills Property LLC, Norman L.
15 Poulsen, Marilyn J. Prewoznik, Marilyn J. Prewoznik as Trustee of the Marilyn J. Prewoznik
16 Trust, Elias Qarniout, Victoria Rahimi, R and M Ranch, Inc., Patricia A. Recht, Veronika Reinelt,
17 Reinelt Rosenloecher Corp. PSP, Patricia J. Riggins, Patricia J. Riggins as Trustee of the Riggins
18 Family Trust, Edgar C. Ritter, Paula E. Ritter, Paula E. Ritter as Trustee of the Ritter Family
19 Trust, Roman Catholic Archbishop of Los Angeles, Romo Lake Los Angeles Partnership,
20 Rosemount Equities LLC Series, Royal Investors Group, Royal Western Properties LLC, Oscar
21 Rudnick, Rebecca Rudnick, Santa Monica Mountains Conservancy, Marygrace H. Santoro,
22 Marygrace H. Santoro as Trustee for the Marygrace H. Santoro Rev Trust, San Yu Enterprises,
23 Inc., Daniel Saparzadeh, Helen Stathatos, Savas Stathatos, Savas Stathatos as Trustee for the
24 Stathatos Family Trust, Seven Star United LLC, Mark H. Shafron, Robert L. Shafron, Kamram S.
25 Shakib, Donna L. Simpson, Gareth L. Simpson, Gareth L. Simpson as Trustee of the Simpson
26 Family Trust, Soaring Vista Properties, Inc., State of California, George C. Stevens, Jr., George
27 C. Stevens, Jr. as Trustee of the George C. Stevens, Jr. Trust, George L. Stimson, Jr., George L.
28 Stimson, Jr. as Trustee of the George L. Stimson, Jr. Trust, Tejon Ranch, Mark E. Thompson A P

1 C Profit Sharing Plan, Tierra Bonita Ranch Company, Tiong D. Tiu, Beverly J. Tobias, Beverly J.
2 Tobias as Trustee of the Tobias Family Trust, Jung N. Tom, Wilma D. Trueblood, Wilma D.
3 Trueblood as Trustee of the Trueblood Family Trust, Unison Investment Co., LLC, Delmar D.
4 Van Dam, Gertrude J. Van Dam, Keith E. Wales, E C Wheeler LLC, William Bolthouse Farms,
5 Inc., Alex Wodchis, Elizabeth Wong, Mary Wong, Mike M. Wu, Mike M. Wu as Trustee of the
6 Wu Family Trust, State of California 50th District and Agricultural Association, and U.S. Borax,
7 Inc.
8

9 12. The Public Water Suppliers are informed and believe, and thereon allege, that
10 cross-defendant Roes 1 through 100,000 are the owners, lessees or other persons or entities
11 holding or claiming to hold ownership or possessory interests in real property within the
12 boundaries of the Basin; extract water from the Basin; claim some right, title or interest to water
13 located within the Basin; or that they have or assert claims adverse to the Public Water Suppliers'
14 rights and claims. The Public Water Suppliers are presently unaware of the true names and
15 capacities of the Roe cross-defendants, and therefore sue those cross-defendants by fictitious
16 names. The Public Water Suppliers will seek leave to amend this cross-complaint to add names
17 and capacities when they are ascertained.
18

19 CLASS ACTION ALLEGATIONS

20 13. The Public Water Suppliers bring this action against all persons similarly situated.
21 The class will be composed of all owners of land within the adjudication area that is not within
22 the service area of a public entity, public utility, or mutual water company. The persons in this
23 class are so numerous, consisting of approximately 65,000 parcels, that the joinder of all such
24 persons is impracticable and that the disposition of their claims in a class action rather than in
25 individual actions will benefit the parties and the court.
26

27 14. There is a well-defined community of interests in the questions of law and fact
28 affecting the defendant class members in that they each allege an identical overlying right to take

1 native groundwater from a common supply for their reasonable and beneficial use. As they each
2 seek a common right, they have predominantly common issues of fact and law. Additionally,
3 each class member will have common defenses against competing water rights including a claim
4 by the United States that it has a Federal Reserved right. These questions of law and fact
5 predominate over questions that affect only the individual class members. The claims and
6 defenses of the class members and the class representative are typical of those of the class and the
7 class representative will fairly and adequately represent the interests of the class.
8

9 **THE UNITED STATES IS A NECESSARY PARTY TO THIS ACTION**

10 15. This is an action to comprehensively adjudicate the rights of all claimants to the
11 use of a source of water located entirely within California, *i.e.*, the Basin, and for the ongoing
12 administration of all such claimants' rights.
13

14 16. The Public Water Suppliers are informed and believe, and on that basis allege, that
15 the United States claims rights to the Basin water subject to adjudication in this action by virtue
16 of owning real property overlying the Basin, including Edwards Air Force Base.
17

18 17. For the reasons expressed in this cross-complaint, the United States is a necessary
19 party to this action pursuant to the McCarran Amendment, 43 U.S.C. § 666.
20

21 18. Under the McCarran Amendment, the United States, as a necessary party to this
22 action, is deemed to have waived any right to plead that the laws of California are not applicable,
23 or that the United States is not subject to such laws by virtue of its sovereignty.
24

25 19. Under the McCarran Amendment, the United States, as a necessary party to this
26 action, is subject to the judgments, orders and decrees of this Court.
27
28

1 HISTORY OF THE ANTELOPE VALLEY GROUNDWATER BASIN

2 20. For over a century, California courts have used the concept of a groundwater basin
3 to resolve groundwater disputes. A groundwater basin is an alluvial aquifer with reasonably well-
4 defined lateral and vertical boundaries.
5

6 21. The Antelope Valley Groundwater Basin is located in an arid valley in the Mojave
7 Desert, about 50 miles northeast of the City of Los Angeles. The Basin encompasses about 1,000
8 square miles in both Los Angeles and Kern Counties, and is separated from the northern part of
9 the Antelope Valley by faults and low-lying hills. The Basin is bounded on the south by the San
10 Gabriel Mountains and on the northwest by the Tehachapi Mountains. The Basin generally
11 includes the communities of Lancaster, Palmdale and Rosamond as well as Edwards Air Force
12 Base.

13
14 22. Various investigators have studied the Antelope Valley and some have divided the
15 Basin into "sub-basins." According to the Public Water Suppliers' information and belief, to the
16 extent the Antelope Valley is composed of such "sub-basins," they are sufficiently hydrologically
17 connected to justify treating them as a single source of water for purposes of adjudicating the
18 parties' water rights.
19

20 23. Before public and private entities began pumping water from the Basin, its natural
21 water recharge balanced with water discharged from the Basin. Its water levels generally
22 remained in a state of long-term equilibrium. In approximately 1915, however, agricultural uses
23 began to pump groundwater and since then, greatly increased agricultural pumping has upset the
24 Basin's groundwater equilibrium causing a continuous decline in the Basin's groundwater
25 storage.
26

27 24. Although private agricultural entities temporarily curtailed their pumping activities
28 when groundwater levels were extremely low, agricultural pumping has increased overall during

1 the past decade. During the same time, urbanization of the Antelope Valley has resulted in
2 increased public demand for water.

3
4 25. Groundwater pumping in the Basin has never been subject to any limits. This lack
5 of groundwater management caused the Basin to lose an estimated eight million acre feet of water
6 over the past eighty years.

7
8 26. Uncontrolled pumping caused repeated instances of land subsidence. It is the
9 sinking of the Earth's surface due to subsurface movement of earth materials and is primarily
10 caused by groundwater pumping. The Public Water Suppliers are informed and believe, and
11 thereupon allege, that portions of the Basin have subsided as much as six feet because of
12 chronically low groundwater levels caused by unlimited pumping. The harmful effects of land
13 subsidence observed in the Basin include loss of groundwater storage space, cracks and fissures
14 on the ground's surface, and damage to real property. Land subsidence problems continue and
15 will continue because of unlimited pumping.

16
17 27. The declining groundwater levels, diminished groundwater storage, and land
18 subsidence damage the Basin, injure the public welfare, and threaten communities that depend
19 upon the Basin as a reliable source of water. These damaging effects will continue, and likely
20 worsen until the court establishes a safe yield for the Basin and limits pumping to the safe yield.

21
22 **PUBLIC WATER SUPPLIERS SUPPLEMENT AND COMMINGLE THEIR**
23 **SUPPLEMENTAL SUPPLY OF WATER WITH BASIN WATER**

24 28. Due to the shortage of water in the Basin, certain Public Water Suppliers purchase
25 State Water Project water from the Antelope Valley-East Kern Water Agency. State Project
26 water originates in northern California and would not reach the Basin absent the Public Water
27 Suppliers purchases.

1 29. Public Water Suppliers purchase State Project water each year. They deliver the
2 State Project water to their customers through waterworks systems. The Public Water Suppliers'
3 customers use the State Project water for irrigation, domestic, municipal and industrial uses.
4 After the Public Water Suppliers' customers use the water, some of the imported State Project
5 water commingles with other percolating groundwater in the Basin. In this way, State Project
6 water augments the natural supply of Basin water.

7
8 30. Public Water Suppliers depend on the Basin as their source of water. But for the
9 Public Water Suppliers' substantial investment in State Project water, they would need to pump
10 additional groundwater each year. By storing State Project water or other imported water in the
11 Basin, Public Water Suppliers can recover the stored water during times of drought, water supply
12 emergencies, or other water shortages to ensure a safe and reliable supply of water to the public.

13
14 **THE BASIN HAS BEEN IN A STATE OF OVER-DRAFT FOR OVER FIVE YEARS**

15 31. The Public Water Suppliers are informed and believe, and upon that basis allege,
16 that the Basin is and has been in an overdraft condition for more than five (5) consecutive years
17 before the filing of this cross-complaint. During these time periods, the total annual demand on
18 the Basin has exceeded the supply of water from natural sources. Consequently, there is and has
19 been a progressive and chronic decline in Basin water levels and the available natural supply is
20 being and has been chronically depleted. Based on the present trends, demand on the Basin will
21 continue to exceed supply. Until limited by order and judgment of the court, potable Basin water
22 will be exhausted and land subsidence will continue.

23
24 32. Upon information and belief, the cross-defendants have, and continue to pump,
25 appropriate and divert water from the natural supply of the Basin, and/or claim some interest in
26 the Basin water. The Public Water Suppliers are informed and believe, and upon that basis
27 allege, that cross-defendants' combined extraction of water exceeds the Basin's safe yield.

28

1 33. Upon information and belief, each cross-defendant claims a right to take water and
2 threatens to increase its taking of water without regard to the Public Water Suppliers' rights.
3 Cross-defendants' pumping reduces Basin water tables and contributes to the deficiency of the
4 Basin water supply as a whole. The deficiency creates a public water shortage.

5
6 34. Cross-defendants' continued and increasing extraction of Basin water has resulted
7 in, and will result in a diminution, reduction and impairment of the Basin's water supply, and land
8 subsidence.

9
10 35. Cross-defendants' continued and increasing extraction of Basin water has and will
11 deprive the Public Water Suppliers of their rights to provide water for the public health, welfare
12 and benefit.

13
14 **THERE IS A DISPUTE AMONG THE PARTIES REGARDING THE EXTENT AND**
15 **PRIORITY OF THEIR RESPECTIVE WATER RIGHTS**

16 36. The Public Water Suppliers are informed and believe, and thereon allege, there are
17 conflicting claims of rights to the Basin and/or its water.

18
19 37. The Public Water Suppliers are informed and believe, and thereon allege, that
20 cross-defendants who own real property in the Basin claim an overlying right to pump Basin
21 water. The overlying right is limited to the native safe yield of the Basin. The Public Water
22 Suppliers allege that, because subsidence is occurring in the Basin, cross-defendants have been
23 pumping, and continue to pump water in amounts greater than the Basin's safe yield.

24
25 38. The Public Water Suppliers are informed and believe, and thereon allege, they
26 have appropriative and prescriptive rights to groundwater in the Antelope Valley Basin. The
27 Public Water Suppliers are informed and believe, and thereon allege, they and/or their
28 predecessors-in-interest, have pumped water from the Antelope Valley Basin for more than five

1 years prior to the filing of this cross-complaint.
2

3 39. The Public Water Suppliers have pumped water from, and/or stored water in the
4 Antelope Valley Basin, by reasonable extraction means. They have used the Basin and/or its
5 water for reasonable and beneficial purposes; and they have done so under a claim of right in an
6 actual, open, notorious, exclusive, continuous, uninterrupted, hostile, adverse use and/or manner
7 for a period of time of at least five years and before filing this cross-complaint.
8

9 40. To provide water to the public, the Public Water Suppliers have and claim the
10 following rights:
11

12 (A) The right to pump groundwater from the Antelope Valley Groundwater
13 Basin in an annual amount equal to the highest volume of groundwater extracted by each of the
14 Public Water Suppliers in any year preceding entry of judgment in this action;

15 (B) The right to pump or authorize others to extract from the Antelope Valley
16 Groundwater Basin an amount of water equal in quantity to that amount of water previously
17 purchased by each of the Public Water Suppliers from the Antelope Valley-East Kern Water
18 Agency; and which has augmented the supply of water in the Basin in any year preceding entry of
19 judgment in this action.

20 (C) The right to pump or authorize others to extract from the Antelope Valley
21 Groundwater Basin an amount of water equal in quantity to that amount of water purchased in the
22 future by each of the Public Water Suppliers from the Antelope Valley-East Kern Water Agency
23 which augments the supply of water in the Basin; and

24 (D) The right to pump or authorize others to extract from the Antelope Valley
25 Basin an amount of water equal in quantity to that volume of water injected into the Basin or
26 placed within the Basin by each of the Public Water Suppliers or on behalf of any of them.
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FIRST CAUSE OF ACTION

(Declaratory Relief – Prescriptive Rights – Against All Cross-Defendants Except the United States And Other Public Entity Cross-Defendants)

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41. The Public Water Suppliers re-allege and incorporate by reference each and all of the preceding paragraphs as though fully set forth herein.

42. For over fifty years, the California Supreme Court has recognized prescriptive water rights. The Public Water Suppliers allege that, for more than five years and before the date of this cross-complaint, they have pumped water from the Basin for reasonable and beneficial purposes, and done so under a claim of right in an actual, open, notorious, exclusive, continuous, hostile and adverse manner. The Public Water Suppliers further allege that each cross-defendant had actual and/or constructive notice of these activities, either of which is sufficient to establish the Public Water Suppliers' prescriptive rights.

43. Public Water Suppliers contend that each cross-defendant's rights to pump water from the Basin are subordinate to the Public Water Suppliers' prescriptive rights and to the general welfare of the citizens, inhabitants and customers within the Public Water Suppliers' respective service areas and/or jurisdictions.

44. An actual controversy has arisen between the Public Water Suppliers and cross-defendants, and each of them. Public Water Suppliers allege, on information and belief, that each cross-defendant disputes the Public Water Suppliers' contentions, as described in the immediately preceding paragraph.

45. Public Water Suppliers seek a judicial determination as to the correctness of their contentions and a finding as to the priority and amount of water they and each cross-defendant are entitled to pump from the Basin.

SECOND CAUSE OF ACTION

(Declaratory Relief – Appropriative Rights – Against All Cross-Defendants)

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3 46. The Public Water Suppliers re-allege and incorporate by reference each and all of
4 the preceding paragraphs as though fully set forth herein.
5

6 47. Public Water Suppliers allege that, in addition or alternatively to their prescriptive
7 rights, they have appropriative rights to pump water from the Basin.
8

9 48. Appropriative rights attach to surplus water from the Basin.
10

11 49. Surplus water exists when the pumping from the Basin is less than the safe yield.
12 It is the maximum quantity of water which can be withdrawn annually from a groundwater Basin
13 under a given set of conditions without causing an undesirable result. “Undesirable results”
14 generally refer to gradual lowering of the groundwater levels in the Basin, but also includes
15 subsidence.
16

17 50. Persons and/or entities with overlying rights to water in the Basin are only entitled
18 to make reasonable and beneficial use of the Basin’s native safe yield.
19

20 51. An actual controversy has arisen between the Public Water Suppliers and cross-
21 defendants, and each of them. The Public Water Suppliers allege, on information and belief, that
22 all cross-defendants, and each of them, seek to prevent the Public Water Suppliers from pumping
23 surplus water.
24

25 52. The Public Water Suppliers seek a judicial determination as to the Basin’s safe
26 yield, the quantity of surplus water available, if any, the correlative overlying rights of each cross-
27 defendant to the safe yield and a determination of the rights of persons an/or entities with
28

1 overlying, appropriative and prescriptive rights to pump water from the Basin.
2

3 **THIRD CAUSE OF ACTION**

4 **(Declaratory Relief – Physical Solution – Against All Cross-defendants)**

5 53. The Public Water Suppliers re-allege and incorporate by reference each and all of
6 the preceding paragraphs as though fully set forth herein.
7

8 54. Upon information and belief, the Public Water Suppliers allege that cross-
9 defendants, and each of them, claim an interest or right to Basin water; and further claim they can
10 increase their pumping without regard to the rights of the Public Water Suppliers. Unless
11 restrained by order of the court, cross-defendants will continue to take increasing amounts of
12 water from the Basin, causing great and irreparable damage and injury to the Public Water
13 Suppliers and to the Basin. Money damages cannot compensate for the damage and injury to the
14 Basin.
15

16 55. The amount of Basin water available to the Public Water Suppliers has been
17 reduced because cross-defendants have extracted, and continue to extract increasingly large
18 amounts of water from the Basin. Unless the court enjoins and restrains cross-defendants, and
19 each of them, the aforementioned conditions will worsen. Consequently, the Basin's groundwater
20 supply will be further depleted, thus reducing the amount of Basin water available to the public.
21

22 56. California law makes it the duty of the trial court to consider a "physical solution"
23 to water rights disputes. A physical solution is a common-sense approach to resolving water
24 rights litigation that seeks to satisfy the reasonable and beneficial needs of all parties through
25 augmenting the water supply or other practical measures. The physical solution is a practical way
26 of fulfilling the mandate of the California Constitution (Article X, section 2) that the water
27 resources of the State be put to use to the fullest extent of which they are capable.
28

1 57. This court must determine, impose and retain continuing jurisdiction in order to
2 enforce a physical solution upon the parties who pump water from the Basin, and thereby prevent
3 irreparable injury to the Basin. Available solutions to the Basin problems may include, but are
4 not limited to, the court appointment of a watermaster, and monetary and metering and
5 assessments upon water extraction from the Basin. Such assessments would pay for the purchase,
6 delivery of supplemental supply of water to the Basin.

7
8 **FOURTH CAUSE OF ACTION**

9 **(For Declaratory Relief – Municipal Priority – Against All Cross-Defendants)**

10 58. The Public Water Suppliers re-allege and incorporate by reference each and all of
11 the preceding paragraphs as though fully set forth herein.

12
13 59. The Public Water Suppliers have rights to pump water from the Basin to meet
14 existing public water needs, and also to take increased amounts of Basin water as necessary to
15 meet future public needs. The Public Water Suppliers’ rights to Basin water exist both as a result
16 of the priority and extent of their appropriative and prescriptive rights, and as a matter of law and
17 public policy of the State of California: “It is hereby declared to be the established policy of this
18 State that the use of water for domestic purposes is the highest use of water and that the next
19 highest use is for irrigation.” (*Water Code* §106.)

20
21 60. *Water Code* Section 106.5 provides: “It is hereby declared to be the established
22 policy of this State that the right of a municipality to acquire and hold rights to the use of water
23 should be protected to the fullest extent necessary for existing and future uses. . . .”

24
25 61. Under *Water Code* sections 106 and 106.5, the Public Water Suppliers have a prior
26 and paramount right to Basin water as against all non-municipal uses.
27
28

1 62. An actual controversy has arisen between the Public Water Suppliers and cross-
2 defendants. The Public Water Suppliers allege, on information and belief, that cross-defendants
3 dispute the contentions in Paragraphs 1 through 43, inclusive, of this cross-complaint. The Public
4 Water Suppliers are informed and believe, and on that basis allege, that the majority of the cross-
5 defendants pump groundwater from the Basin for agricultural purposes.

6
7 63. The Public Water Suppliers seek a judicial determination as to the correctness of
8 their contentions and to the amount of water the parties may pump from the Basin. The Public
9 Water Suppliers also seek a declaration of their right to pump water from the Basin to meet their
10 reasonable present and future needs, and that such rights are prior and paramount to the rights, if
11 any, of cross-defendants to use Basin water for irrigation purposes.

12
13 **FIFTH CAUSE OF ACTION**

14 **(Declaratory Relief – Storage Of Imported Water – Against All Cross-defendants)**

15 64. The Public Water Suppliers re-allege and incorporate by reference each and all of
16 the preceding paragraphs as though fully set forth herein.

17
18 65. The Public Water Suppliers purchase and use water from the State Water Project.
19 State Project water is not native to the Basin. Importing State Project water decreases the Public
20 Water Suppliers’ need to pump water from the Basin. The Public Water Suppliers’ purchase and
21 delivery of State Project water is the reason it has been brought to the Basin. The Public Water
22 Suppliers pay a substantial annual cost to import State Project water; this amount is subject to
23 periodic increases.

24
25 66. The Public Water Suppliers allege there is underground space available in the
26 Basin for storing imported State Project water.

1 67. As importers of State Project water, the Public Water Suppliers have the right to
 2 store imported State Project water underground in the Basin, and also have the sole right to pump
 3 or otherwise use such stored State Project water. The rights of cross-defendants, if any, are
 4 limited to the native supply of the Basin and to their own imported water. Cross-defendants’
 5 rights, if any, do not extend to water imported into the Basin by the Public Water Suppliers.

6
 7 68. An actual controversy has arisen between the Public Water Suppliers and cross-
 8 defendants. The Public Water Suppliers allege, on information and belief, that cross-defendants
 9 dispute their contentions in Paragraphs 1 through 39, of this cross-complaint.

10
 11 69. The Public Water Suppliers seek a judicial determination as to the correctness of
 12 their contentions that they may store imported State Project water in the Basin, recapture such
 13 imported State Project water, and that they have the sole right to pump or otherwise use such
 14 imported State Project water.

15
 16 **SIXTH CAUSE OF ACTION**

17 **(Declaratory Relief – Recapture Of Return Flows**

18 **From Imported Water Stored in The Basin – Against All Cross-defendants)**

19 70. The Public Water Suppliers re-allege and incorporate by reference each and all of
 20 the preceding paragraphs as though fully set forth herein.

21
 22 71. Some of the State Project water typically returns and/or enters the Basin, and will
 23 continue to do so. This water is commonly known as “return flows.” These return flows further
 24 augment the Basin’s water supply.

25
 26 72. The Public Water Suppliers allege there is underground space available in the
 27 Basin to store return flows from imported State Project water.

1 73. The Public Water Suppliers have the sole right to recapture return flows
2 attributable to their State Project water, or such water imported on their behalf. The rights of
3 cross-defendants, if any, are limited to the Basin's native supply and/or to their imported water,
4 and do not extend to groundwater attributable to the Public Water Suppliers' return flows.

5
6 74. An actual controversy has arisen between the Public Water Suppliers and cross-
7 defendants. The Public Water Suppliers allege, on information and belief, that cross-defendants
8 dispute their contentions in Paragraphs 1 through 43 of this cross-complaint.

9
10 75. The Public Water Suppliers seek a judicial determination as to the correctness of
11 their contentions, and that they have the sole right to recapture return flows in the Basin, both at
12 present and in the future.

13
14 **SEVENTH CAUSE OF ACTION**

15 **(Unreasonable Use Of Water - Against All Cross-Defendants Except Public Entity Cross-**
16 **Defendants)**

17 76. The Public Water Suppliers re-allege and incorporate by reference each and all of
18 the preceding paragraphs as though fully set forth herein.

19
20 77. The California Constitution (Article X, Section 2) provides the cardinal principle
21 of California water law, superior to any water rights priorities and requires that water use not be
22 unreasonable or wasteful. The reasonable use of water depends on the facts and circumstances of
23 each case; what may be reasonable in areas of abundant water may be unreasonable in an area of
24 scarcity; and, what is a beneficial use at one time may become a waste of water at a later time.

25
26 78. The Public Water Suppliers are informed and believe, and on that basis allege, that
27 some cross-defendants' use of water is unreasonable in the arid Antelope Valley and therefore
28

1 constitutes waste, unreasonable use or an unreasonable method of diversion or use within the
2 meaning of the California Constitution (Article X, section 2). Such uses are thereby unlawful.

3
4 79. An actual controversy has arisen between the Public Water Suppliers and cross-
5 defendants. The Public Water Suppliers allege, on information and belief, that the cross-
6 defendants dispute their contentions in Paragraphs 1 through 43 of this Cross-Complaint.

7
8 80. The Public Water Suppliers seek a judicial declaration that cross-defendants have
9 no right to any unreasonable use, unreasonable methods of use, or waste of water. Cross-
10 defendants' rights, if any, must be determined based on the reasonable use of water in the
11 Antelope Valley rather than upon the amount of water actually used.

12
13 **EIGHTH CAUSE OF ACTION**

14 **(Declaratory Relief Re Boundaries Of Basin)**

15 91. The Public Water Suppliers re-allege and incorporate by reference each and all of
16 the preceding paragraphs as though fully set forth herein.

17 92. An actual controversy has arisen between the Public Water Suppliers and cross-
18 defendants, and each of them, regarding the actual physical dimensions and description of the
19 Basin for purposes of determining the parties rights to water located therein. The Public Water
20 Suppliers allege, on information and belief, that cross-defendants dispute the Public Water
21 Suppliers' contentions, as set forth in Paragraphs 1 through 38, inclusive, of this cross-complaint.

22 93. The Public Water Suppliers seek a judicial determination as to the correctness of
23 their contentions and a finding as to the actual physical dimensions and description of the Basin.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, the Public Water Suppliers pray for judgment as follows:

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27 1. Judicial declarations consistent with the Public Water Suppliers' contentions in the
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First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action in this cross-complaint;

2. For preliminary and permanent injunctions which prohibit cross-defendants, and each of them, from taking, wasting or failing to conserve water from the Basin in any manner which interferes with the rights of the Public Water Suppliers to take water from or store water in the Basin to meet their reasonable present and future needs;


3. For prejudgment interest as permitted by law;

4. For attorney, appraisal and expert witness fees and costs incurred in this action;
and

5. Such other relief as the court deems just and proper.

Dated: January 10, 2007

BEST BEST & KRIEGER LLP

By 
ERIC L. GARNER
JEFFREY V. DUNN
STEFANIE D. HEDLUND
Attorneys for Cross-Complainants
ROSAMOND COMMUNITY SERVICES
DISTRICT and LOS ANGELES
COUNTY WATERWORKS DISTRICT
NO. 40

ORANGE32819.1

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PROOF OF SERVICE

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California 92614. On March 13, 2007, I served the within document(s):

FIRST-AMENDED CROSS COMPLAINT OF PUBLIC WATER SUPPLIERS FOR DECLARATORY AND INJUNCTIVED RELIEF AND ADJUDICATION OF WATER RIGHTS

- by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. 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.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 13, 2007, at Irvine, California.



 Kerry V. Keefe

TAB "2"

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9 Attorneys for Cross-Complainants and Cross-Defendants County Sanitation Districts Nos. 14
10 and 20 of Los Angeles County

11 SUPERIOR COURT OF CALIFORNIA

12 COUNTY OF LOS ANGELES

13 Coordination Proceeding
14 Special Title (Rule 1550(b))

Judicial Council Coordination Proceeding No.
4408

15 ANTELOPE VALLEY GROUNDWATER
16 CASES

ASSIGNED FOR ALL PURPOSES TO:
Judge: Honorable Jack Komar

17 Included Actions:

18 **CROSS-COMPLAINT OF COUNTY
19 SANITATION DISTRICTS NOS. 14 AND
20 20 OF LOS ANGELES COUNTY**

21 Los Angeles County Waterworks District No.
22 40 v. Diamond Farming Co. I; Los Angeles
County Waterworks District No. 40 v.
23 Diamond Farming Co.; Wm. Bolthouse
24 Farms, Inc. v. City of Lancaster; Diamond
25 Farming Co. v. City of Lancaster; Diamond
26 Farming Co. v. Palmdale Water Dist.

General Civil Case
Trial Date: Not Set

27 COUNTY SANITATION DISTRICTS NOS.
28 14 AND 20 OF LOS ANGELES COUNTY,
public agencies,

Cross-Complainants and Cross-
Defendants

vs.

LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40; ROSAMOND
COMMUNITY SERVICES DISTRICT;
PALMDALE WATER DISTRICT; QUARTZ
HILL WATER DISTRICT; PALM RANCH

1 IRRIGATION DISTRICT; LITTLEROCK
2 CREEK IRRIGATION DISTRICT;
3 CALIFORNIA WATER SERVICE
4 COMPANY; CITY OF LANCASTER; CITY
5 OF PALMDALE,

6
7 Cross-Defendants and Cross-
8 Complainants

9 And

10 DIAMOND FARMING COMPANY;
11 WM. BOLTHOUSE FARMS, INC.;
12 BOLTHOUSE PROPERTIES, INC.;
13 CITY OF LOS ANGELES; ANTELOPE
14 VALLEY EAST KERN WATER AGENCY;
15 TEJON RANCHCORP; And DOES 1 through
16 25,000 inclusive,

17 Cross-Defendants.

18
19 Cross-Complainants and Cross-Defendants County Sanitation Districts Nos. 14 and 20 of Los
20 Angeles County allege as follows:

21
22 **I. THE PARTIES**

23
24 1. The County Sanitation Districts of Los Angeles County are independent special
25 districts that serve, among other things, the wastewater treatment and reclamation needs of Los
26 Angeles County. The Districts were formed under the authority provided by the County
27 Sanitation District Act of 1923, Cal. Health & Safety Code §§4700-4857. One of those Districts,
28 Cross-Complainant and Cross-Defendant County Sanitation District No. 14 of Los Angeles
County, formed on August 31, 1938, is and at all times mentioned was a local agency formed
under the laws of the State of California. Cross-Complainant and Cross-Defendant, County
Sanitation District No. 20 of Los Angeles County, formed August 7, 1951, is and at all times
mentioned was a local agency formed under the laws of the State of California. Cross-
Complainants and Cross-Defendants County Sanitation District Nos. 14 and 20 of Los Angeles
County are hereafter collectively referred to as the "Districts." Under Health and Safety Code §

1 4738, the Districts have the power to bring this action in the name of the Districts.

2 2. The Districts operate wastewater treatment facilities in the Antelope Valley and
3 on behalf of their rate paying customers seek to protect the Districts' rights to retain control over
4 the disposition of their recycled water and to ensure protection of their rights to pump
5 groundwater for use on their overlying property. The Districts currently contribute
6 approximately 21 million gallons per day ("mgd") (23,000 acre-feet per year) to the water supply
7 of the Basin, primarily through sale for direct reuse for irrigation purposes and for habitat
8 maintenance. The Districts intend to pump a portion of the recycled water that has reached the
9 Basin as part of a water quality remediation program pursuant to orders from the Regional Water
10 Quality Control Board – Lahontan Region ("RWQCB").

11 3. The Districts have funded and continue to fund costly capital improvements and
12 treatment processes beyond those required by the regulations in order to increase capacity and
13 make higher quality recycled water available to users in the arid Antelope Valley. The Districts
14 expect to charge reasonable rates for the sale of this recycled water. The Districts have also
15 funded initial groundwater extraction and treatment efforts, under orders from the RWQCB, to
16 remediate problems from past recycled water management activities.

17 4. The Districts are informed and believe that the Plaintiff, Los Angeles County
18 Waterworks District No. 40, is a public agency governed by the Los Angeles County Board of
19 Supervisors and lawfully organized to provide water to the public in a large portion of the
20 Antelope Valley.

21 5. The Districts are informed and believe that Diamond Farming Company is a
22 California corporation doing business in Los Angeles County.

23 6. The Districts are informed and believe that Wm. Bolthouse Farms, Inc. is a
24 Michigan corporation doing business in Los Angeles County.

25 7. The Districts are informed and believe that Bolthouse Properties, Inc. is a
26 California Corporation doing business in Los Angeles County.

27 8. The Districts are informed and believe that California Water Service Company
28 is a California corporation that provides water to customers within Los Angeles County.

1 9. The Districts are informed and believe that the City of Lancaster is a municipal
2 corporation situated within Los Angeles County.

3 10. The Districts are informed and believe that the City of Los Angeles is a
4 municipal corporation situated within Los Angeles County.

5 11. The Districts are informed and believe that the City of Palmdale is a municipal
6 corporation situated within Los Angeles County.

7 12. The Districts are informed and believe that Littlerock Creek Irrigation District is
8 a public agency that provides water to consumers within Los Angeles County.

9 13. The Districts are informed and believe that the Palmdale Water District is a
10 public agency that provides water to consumers within Los Angeles County.

11 14. The Districts are informed and believe that the Palm Ranch Irrigation District is
12 a public agency that provides water to consumers within Los Angeles County.

13 15. The Districts are informed and believe that the Quartz Hill Water District is a
14 public agency that provides water to consumers within Los Angeles County.

15 16. The Districts are informed and believe that the Rosamond Community Services
16 District is a public agency that provides water to customers within Kern County.

17 17. The Districts are informed and believe that the United States of America owns
18 Edwards Air Force Base.

19 18. The Districts are informed and believe that the Antelope Valley East Kern
20 Water Agency (“AVEK”) is a public agency that provides imported water to customers within
21 the Antelope Valley.

22 19. The Districts are informed and believe that Tejon Ranchcorp is a California
23 corporation that owns the Tejon Ranch.

24 20. The Districts are informed and believe that Los Angeles County Waterworks
25 District No. 40, California Water Service Company, the City of Lancaster, the City of Palmdale,
26 Littlerock Creek Irrigation District, Palmdale Water District, Palm Ranch Irrigation District,
27 Quartz Hill Water District, and Rosamond Community Services District (“Municipal Water
28 Purveyors”) are municipal water purveyors.

1 28. In 2005, the Lancaster WRP collected and treated an average flow of 12.6
2 million gallons per day (“mgd”) and made available for reuse an average of 12.3 mgd of
3 industrial, commercial, and municipal wastewater from a population of approximately 120,000.
4 The Lancaster WRP provides primary and secondary wastewater treatment; a small portion of
5 the recycled water also receives tertiary treatment and disinfection. The Lancaster WRP is
6 located just north of the City of Lancaster in Los Angeles County.

7 29. The Lancaster WRP produces recycled water that is either retained in storage
8 reservoirs, conveyed to agricultural areas for irrigation use, or delivered to the Piute Ponds or the
9 adjacent impoundment areas. Tertiary treated recycled water, approximately 0.2 mgd, is
10 conveyed to Apollo Lakes Regional County Park.

11 30. District No. 14 is obligated to maintain Piute Ponds under a three-party Letter
12 of Agreement with the California Department of Fish and Game and Edwards Air Force Base.
13 This Letter of Agreement, dated May 6, 1981, requires District No. 14 to discharge effluent from
14 the Lancaster WRP to Piute Ponds at a rate sufficient to maintain a minimum of 200 wetted acres
15 of habitat. Neither the ponds nor their extensive marsh-type habitat would exist if it were not for
16 the discharge of recycled water from the Lancaster WRP.

17 31. The Regional Water Quality Control Board (“RWQCB”) issued Waste
18 Discharge Requirements (“WDRs”) for the Lancaster WRP on September 11, 2002 (RWQCB
19 Order No. R6V-2002-053). The WDRs contain both water reclamation requirements and waste
20 discharge requirements. The WDRs allow the Lancaster WRP to treat up to 16 mgd.

21 32. In May 2004, District No. 14 released its Final Lancaster Water Reclamation
22 Plant 2020 Facilities Plan after public review and comment (the “2020 Plan”). The 2020 Plan
23 addresses accommodating increasing wastewater flows and fluctuating seasonal demands by
24 increasing wastewater treatment and storage capacity, purchasing additional agricultural land for
25 recycled water reuse, and increasing demand for recycled water treated to tertiary standards.

26 33. District No. 20 owns and operates the Palmdale Water Reclamation Plant
27 (“Palmdale WRP”), and also owns other certain property located in Los Angeles County and
28 within the Antelope Valley.

1 34. In 2005, the Palmdale WRP collected and treated an average flow of 8.4 mgd
2 and made available for reuse all 8.4 mgd of industrial, commercial, and municipal wastewater
3 from a population of approximately 100,000. All Palmdale WRP recycled water is provided
4 primary and secondary treatment, followed by chlorination for disinfection. The Palmdale WRP
5 is located at two sites in an unincorporated area of the County of Los Angeles adjacent to the
6 City of Palmdale.

7 35. The Palmdale WRP currently produces recycled water that is used for irrigation
8 of crops or recharges the groundwater Basin.

9 36. The City of Los Angeles World Airports (“LAWA”) is the landowner of the
10 effluent management site (“EMS”) where the majority of the District No. 20’s recycled water is
11 applied to land.

12 37. The Regional Water Quality Control Board (“RWQCB”) issued Waste
13 Discharge Requirements (“WDRs”) for the Palmdale WRP on June 14, 2000 (RWQCB Order
14 No. 6-00-57). The waste discharge requirements contain both water reclamation requirements
15 for various reuse projects and waste discharge requirements for the land application at the EMS.
16 The WDRs allow the Palmdale WRP to treat up to 15 mgd.

17 38. Order No. 6-00-57 required District No. 20 to submit a corrective action plan,
18 an effluent disposal plan, and a farm management plan to investigate and mitigate nitrate levels
19 in the groundwater underlying the EMS. District No. 20 has submitted and is currently
20 implementing these plans.

21 39. On November 12, 2003, the RWQCB issued Cleanup and Abatement Order No.
22 R6V-2003-056 to further address levels of nitrate in groundwater. Order No. R6V-2003-056
23 requires District No. 20 to perform cleanup activities (via plume delineation, plume containment
24 and plume remediation), and to propose and implement abatement actions to ultimately reduce
25 the amount of nitrogen that may reach groundwater.

26 40. In October, 2004, the RWQCB issued Cease and Desist Order No. R6V-2004-
27 039 which requires, among other things, that District No. 20 eliminate land application of
28 recycled water by October 15, 2008.

1 41. In September 2005, District No. 20 adopted the Final Palmdale Water
2 Reclamation Plant 2025 Facilities Plan and Environmental Impact Report (“2025 Plan”). The
3 2025 Plan addresses the three primary needs of providing wastewater management for an
4 increasing population, increasing regulatory requirements, and increasing demand for recycled
5 water. District No. 20 addressed the projected population increase by proposing to increase the
6 treatment and effluent management capacity, and addressed the increasing regulatory
7 requirements and recycled water demand by increasing the level of treatment and purchasing
8 additional lands for storage reservoir and recycled water reuse. The recommended alternative
9 proposed in the plan is to provide tertiary treatment for 22.4 mgd.

10 42. California Water Code section 1210 provides that the owner of a wastewater
11 treatment plant holds the exclusive right to the recycled water as against anyone who has
12 supplied the water discharged into the wastewater collection system, absent another agreement.
13 The Districts own and operate the Lancaster WRP and the Palmdale WRP, the largest
14 wastewater treatment plants in the Basin, for the exclusive purpose of treating wastewater. The
15 Districts have made no agreements allowing any supplier of wastewater to their WRPs to retain
16 the rights to this water.

17 43. The Districts have contracts to deliver more than 14 mgd (15,000 af) per year of
18 recycled water from both Antelope Valley WRPs to users within the Basin.

19 **III. FIRST CAUSE OF ACTION**

20 **(For Declaratory Relief – Statutory Rights to Recycled Water – Against All Parties)**

21 44. The Districts allege and incorporate by reference herein allegations in
22 paragraphs 1 through 43, inclusive.

23 45. An actual controversy has arisen and now exists between Districts and Cross-
24 Defendants, to the extent any or all of them claim any right to the Districts’ treated effluent or
25 demand specific disposition of the effluent, as follows:

- 26 a. Cross-Defendants import water into the Basin, and a portion of that water is water
27 that, after use, goes to the Districts’ WRPs. Cross-Defendants claim the exclusive
28 right to recapture water that reaches the Basin after the Districts have treated the

1 water at their WRPs, sold the water for non-potable (primarily irrigation) uses,
2 and a portion of that water has recharged the Basin.

- 3 b. The Districts are informed and on that basis allege that Cross-Defendants have
4 taken the position that the Districts' recycled water must be fully recharged to the
5 Basin for pumping by Cross-Defendants without compensation to the Districts.

6 46. The Districts contend that, in accordance with California Water Code section
7 1210, the Districts' rights to the recycled water are paramount to that of any other entity, until
8 that water is either sold or abandoned.

9 47. The Districts desire a judicial declaration that the Districts' rights to their
10 recycled water are paramount to any other entity until that water is either sold or abandoned.

11 **VII. SECOND CAUSE OF ACTION**

12 **(For Declaratory Relief – Storage and Recapture of Water in the Basin – Against All**
13 **Parties)**

14 48. The Districts allege and incorporate by reference herein allegations in
15 paragraphs 1 through 47, inclusive.

16 49. An actual controversy has arisen and now exists between the Districts and
17 Cross-Defendants, as follows:

- 18 a. The Districts contend that their rights to the recycled water are paramount to that
19 of any other entity, until that water is either sold or abandoned.
- 20 b. The Districts contend that they have a right to store recycled water in the Basin.
- 21 c. The Districts are informed and believe and on that basis allege that there is
22 available space in the Basin in which to store its treated effluent.
- 23 d. The Districts' recycled water has reached the Basin through various means
24 including percolation of return flows, and may seek to store recycled water in the
25 future through the use of recharge basins or other facilities.
- 26 e. Municipal Water Purveyors and AVEK import water into the Basin, and a portion
27 of that water is water that, after use, goes to the Districts' WRPs. Municipal
28 Water Purveyors and AVEK claim the sole right to recapture imported water that

1 reaches the Basin after the Districts have treated the water at their WRPs, sold the
2 water for non-potable (primarily irrigation) uses, and a portion of that water has
3 recharged the Basin.

4 50. The Districts desire a judicial declaration that the Districts have a right to store
5 their recycled water in the Basin, a paramount right to credit for their recycled water which
6 recharged the Basin, and a paramount right to recapture that water.

7 **VIII. THIRD CAUSE OF ACTION**

8 **(For Declaratory Relief – Recycled Water for Nonpotable Uses – Against All Parties)**

9 51. The Districts allege and incorporate by reference herein allegations in
10 paragraphs 1 through 50, inclusive.

11 52. In California Water Code section 13550 *et seq.*, the California Legislature finds
12 and declares that the use of potable domestic water for non-potable uses, including industrial and
13 irrigation uses, is a waste or an unreasonable use of water if recycled water of adequate quality
14 and at a reasonable price is available, and meets all statutory conditions as determined by the
15 State Water Resources Control Board.

16 53. The Districts contend that they are now and will in the future make substantial
17 quantities of recycled water of adequate quality and reasonable price available for non-potable
18 uses in the Antelope Valley.

19 54. The Districts are informed and believe and on that basis allege that the
20 availability and use of recycled water directly and significantly affects the Basin and must be
21 fully taken into account in the adjudication of all rights to water in the Antelope Valley
22 Groundwater Basin.

23 55. The Districts desire a judicial declaration that the use of recycled water must be
24 an integral element in any physical solution.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, the Districts pray for Judgment as follows:

- 27 1. For a declaration that the Districts' rights to the recycled water are paramount to any
28 other entity, until that water is either sold or abandoned;

- 1 2. For a declaration that the Districts' rights to extract groundwater from the Basin and
- 2 put to reasonable and beneficial use on the Districts' properties are paramount to Cross-
- 3 Defendants' claims to extract and use groundwater from the Basin for non-overlying
- 4 use and that Districts' rights are correlative with all other overlying groundwater rights;
- 5 3. For a declaration that the Districts have a right to store their recycled water in the
- 6 Basin, a paramount right to credit for their recycled water which recharged the Basin,
- 7 and a paramount right to recapture that water;
- 8 4. For a declaration that the use of recycled water must be an integral element in any
- 9 physical solution.
- 10 5. For an injunction restraining Cross-Defendants, and their agents, servants and
- 11 employees, and all persons acting under, in concert with, or for them, or anyone acting
- 12 through them or on their behalf, from acting in any manner which interferes with the
- 13 rights of the Districts to control the disposition of recycled water or to take water from
- 14 the Basin to meet their present and future needs or to meet regulatory requirements.
- 15 6. For this Court to maintain continuing jurisdiction over this controversy to carry out and
- 16 enforce the terms of the judgment;
- 17 7. For costs of suit; and
- 18 8. For such other relief as the Court deems just and proper.

19
20 Dated: December 27, 2006

ELLISON, SCHNEIDER & HARRIS L.L.P.

21
22 By: _____
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28

1 PROOF OF SERVICE

2 I declare that:

3 I am employed in the County of Sacramento, State of California. I am over the age of
4 eighteen years and am not a party to the within action. My business address is ELLISON,
5 SCHNEIDER & HARRIS, L.L.P.; 2015 H Street; Sacramento, California 95814-3109; telephone
6 (916) 447-2166.

7 On December 27, 2006, I served the County Sanitation Districts' *Cross-Complaint of*
8 *County Sanitation Districts Nos. 14 and 20 of Los Angeles County* by electronic posting to the
9 Santa Clara Superior Court E-Filing website,
10 <http://www.scefiling.org/cases/casehome.jsp?caseId=19> with electronic mail to the parties' email
11 addresses shown below.

12 I declare under penalty of perjury that the foregoing is true and correct and that this
13 declaration was executed on December 27, 2006, at Sacramento, California.

14
15 _____
16 Patty Slomski
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16 collectively known as the Antelope Valley
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17 ("AGWA")

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