

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Consolidated Actions:

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

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, consolidated actions, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 391 869

Judicial Council Coordination
Proceeding No. 4408

Lead Case No. BC 325 201

**PARTIAL STATEMENT OF
DECISION FOR TRIAL RELATED
TO PHELAN PIÑON HILLS
COMMUNITY SERVICES
DISTRICT (2ND AND 6TH CAUSES
OF ACTION)**

Trial: November 4, 2014

Judge: Honorable Jack Komar, Ret.

1 Cross-Complainant Phelan Piñon Hills Community Services District's ("Phelan Piñon
2 Hills") second and sixth causes of action for a declaration of its appropriative and return flow
3 rights, respectively, came on regularly for trial before this court commencing on November 4,
4 2014, in Department 56 of the Los Angeles County Superior Court, the Honorable Jack Komar
5 presiding. During trial, Phelan Piñon Hills presented percipient and expert witnesses,
6 documentary evidence, and a Stipulation of agreed upon facts.

7 After Phelan Piñon Hills completed its presentation of evidence, the following Cross-
8 Defendants jointly moved for judgment pursuant to section 631.8 of the Code of Civil Procedure:
9 Los Angeles County Waterworks District No. 40, Palmdale Water District, Littlerock Creek
10 Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District,
11 North Edwards Water District, Llano Del Rio Water Company, Llano Mutual Water Company,
12 and Big Rock Mutual Water Company, the State of California, the City of Los Angeles, Tejon
13 Ranchcorp, Tejon Ranch Company, and Granite Construction Company (collectively, "Phelan
14 Cross-Defendants").
15

16 The court, having considered the evidence and arguments of counsel, orally issued its
17 tentative decision granting the motion for judgment on November 5, 2014 in favor of the Phelan
18 Cross-Defendants. For the reasons described in further detail below, the Court now issues its
19 Statement of Decision and finds that the cross defendants are entitled to judgment in their favor
20 on the Phelan Piñon Hills' second and sixth cause of action.

21 Phelan Piñon Hills has filed its written request for findings of fact and conclusions of law
22 on numerous issues. Only those issues that are determinative of the outcome of this proceeding
23 are addressed in this Statement of Decision.

24 The standard for a statement of decision as set forth in Code of Civil Procedure section
25 632 requires a court to explain" ... the legal and factual basis for its decision as to each of the
26 principal contraverted issues at trial. ... "Case law is clear that a court must provide the factual
27 and legal basis for the decision on those issues only closely related to the ultimate issues on the
28 case. (See *People v. CasaBlanca Convalescent Homes* (1984) 159 Cal. App. 3d 509, 523-524.) It

1 is also clear that a court need not respond to requests that are in the nature of "interrogatories."
2 (See *id.* at pp. 525-526.)

3 The principal issues at this phase of the trial were to determine if the Phelan Piñon Hills
4 Community Service Area was entitled to an appropriator's right to produce water from a well
5 located in the Antelope Valley Ground Water Adjudication Area (Second Cause of Action of its
6 Cross Complaint) and whether it had a right to return flows created by the return of water from
7 its use in areas outside the adjudication area but within the aquifer boundaries (6th Cause of
8 Action).

9 In order to establish a right to the reasonable and beneficial production of water from an
10 aquifer in an adjudication area, the claimant must establish rights defined as either overlying
11 rights, appropriative rights from surplus water, or prescriptive rights. If the aquifer is in a state of
12 overdraft and there is no surplus because annual recharge is less than extraction, an overlying
13 owner is entitled only to a *correlative* right to produce water for reasonable and beneficial uses
14 on the owner's property, subject to all other correlative rights. Such a party cannot pump more
15 than the reasonable and beneficial amount needed for the owned land from which the water is
16 pumped and would be a wrongful appropriator for any excess amounts or exported water and
17 would be subject to injunctive or other relief.

18 The boundaries of the Antelope Valley Adjudication Area (the Adjudication Area)
19 consist of an area overlying and coextensive with the aquifer which were determined by the court
20 in the Phase One trial in these coordinated proceedings. A small area which overlies the aquifer
21 in the south east corner was excluded from the Adjudication Area because it is within the Mojave
22 Adjudication Area and under the jurisdiction of the Mojave County Superior Court Ground
23 Water adjudication, although as the evidence later established, disconnected from the Mojave
24 Aquifer.

25 In the Second Phase of trial in these coordinated proceedings, the Antelope Valley
26 Adjudication area was found to contain a single aquifer and while there are variations in water
27 level within the various subareas (sub basins), there is hydraulic connectivity and conductivity
28 with all parts of the several sub basins within the adjudication area aquifer.

1 In the Third Phase of Trial in these coordinated proceedings, the court found that the
2 entire aquifer was in a state of over draft since prior to 2005 ¹and suffering degradation and
3 detriment of a permanent nature as a result of extractions exceeding annual recharge over many
4 years both preceding and after 2005.

5 Phelan filed its Cross Complaint in these proceedings and sought relief in Eight Causes of
6 Action. The Second Cause of Action sought to establish “an appropriative right for public use to
7 pump groundwater from the Adjudication area” from Well # 14 to its service area which is
8 outside the adjudication area.

9 Phelan Piñon Hills Community Services District (Phelan) owns Well # 14 which it
10 acquired and from which it began producing water in 2005. The well is located in the Antelope
11 Valley Adjudication Area but none of the water produced is directly used within the Antelope
12 Valley Ground Water Adjudication area. The water is pumped to and used in the Phelan Service
13 area for use by residents in the service area, an area outside the Adjudication area.

14
15
16 **1. GENERAL FINDINGS OF FACT**

17 The Court finds that the following facts were established by the evidence, including
18 testimony of witnesses, documentary evidence, and the parties’ stipulation of facts, as follows
19 below.

20 Phelan Piñon Hills is a California community services district. It was formed on March
21 18, 2008. It provides public water service within its service area which is entirely within San
22 Bernardino County.

23 As part of its formation, Phelan Piñon Hills acquired a parcel of land within Los Angeles
24 County (“Well 14 Parcel”). The Well 14 Parcel is not within the Phelan Piñon Hills service area.

25 The Well 14 Parcel has an operating groundwater well, which is commonly referred to as
26
27

28

1 The evidence at the Third Phase of Trial established that the Antelope Valley Basin was in a state of overdraft from 1951 through 2005.

1 Phelan Piñon Hills' "Well 14." Well 14 Parcel is within the Antelope Valley Adjudication Area
2 ("Adjudication Area") as determined by this Court's order, dated March 12, 2007

3 A part of Phelan Piñon Hills' service area overlies a portion of the Antelope Valley
4 Groundwater Basin as described and shown in California Department of Water Resources
5 Bulletin 118 (2003). That portion of the Phelan Piñon Hills' service area is within the existing
6 Mojave Basin Adjudication Area in San Bernardino County. It is outside of the Antelope Valley
7 Adjudication Area. Although the south-eastern boundary of the Antelope Valley Adjudication
8 Area is the county line between San Bernardino and Los Angeles Counties, the portion of the
9 Antelope Valley Groundwater Basin located in San Bernardino County is hydrologically
10 connected to the Antelope Valley Adjudication Area in Los Angeles County.

11 **2. SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW**

12 Prior to Phelan Piñon Hills' formation a community services district, a predecessor
13 agency had installed Well 14 on the Well 14 Parcel in 2004. Well 14's groundwater production
14 is as follows:
15

16 2004 and earlier: none;

17 2005 (beginning in September): 1.11 acre feet ("af");

18 2006: 164.15 af;

19 2007: 20.95 af;

20 2008: 493.27 af;

21 2009: 558.65 af;

22 2010: 1,110.45 af;

23 2011: 1,053.14 af;

24 2012: 1,035.26 af; and

25 2013: 1,028 af.

26 Phelan Piñon Hills pumps groundwater for municipal uses from a number of wells
27 including Well 14. Well 14 is the only Phelan Piñon Hills well outside the Phelan Piñon Hills
28 service area.

1 Phelan Piñon Hills does not import water from the State Water Project or from any other
2 source. But Phelan Piñon Hills claims a right to “return flows” from Well 14. Phelan Piñon
3 Hills contends that some amount of the groundwater produced from Well 14 is used by Phelan
4 Piñon Hills customers outside the Adjudication Area, recharges the Adjudication Area. Phelan
5 Piñon characterizes the recharge as “return flows.” The Phelan Piñon Hills’ groundwater
6 production from Well 14 during the years from 2010 to 2013 exceeds the average amount of the
7 Phelan Piñon Hills claimed “return flows” during that same period.

8 Well 14 is located in an area of the Adjudication Area generally known as the Butte
9 subbasin, which borders the Lancaster subbasin to the west. The Butte sub basin and the
10 Lancaster sub basin physically adjacent and are hydrologically connected. Groundwater
11 pumping in a sub basin can lower the groundwater level in an adjacent sub basin.
12

13 Phelan Piñon Hills operates three groundwater wells in San Bernardino County that are
14 within one mile of Well 14. These three wells are located within the Antelope Valley
15 Groundwater Basin, but outside of the Adjudication Area. These three wells intercept
16 groundwater that would otherwise flow into and recharge the Adjudication Area.

17 **A. Phelan Piñon Hills’ Second Cause of Action for a Declaration of Its**
18 **Appropriative Rights**

19 The Court finds and determines that the Phelan Piñon Hills does not have water rights to
20 pump groundwater and export it from the Adjudication Area to an area for use other than on its
21 property where Well 14 is located within the adjudication area. All of its pumping from the
22 inception from Well 14 is used on other than the property from which it is pumped. While it is
23 entitled to use the water from Well 14 on its land within the adjudication area, so long as there is
24 no surplus within the Adjudication Area aquifer, it is an appropriator without a right to pump.
25 There was no credible testimony or evidence to the contrary.

26 **1. *The factual and legal basis for the Court's decision is as follows:***

27 Under California law, “[a]ny water not needed for the reasonable beneficial use of those
28 having prior rights is excess or surplus water and may rightly be appropriated on privately owned

1 land for non-overlying use” so long as the basin is not in overdraft. (*City of Barstow v. Mojave*
2 *Water Agency* (2000) 23 Cal.4th 1224, 1241 (“*Mojave Water Agency*”) [citing *California Water*
3 *Service Co. v. Edward Sidebotham & Son* (1964) 224 Cal.App.2d 715, 725-726].) While Phelan
4 Piñon Hills owns land in the Adjudication Area, it does not use the water it pumps from Well 14
5 on its land within the Adjudication Area. Instead, Phelan Piñon Hills provides such water to its
6 customers outside of the Adjudication Area and not on its own property.

7
8 To establish an appropriative right, Phelan Piñon Hills bears the burden of proof to
9 establish that the water it pumped from the Antelope Valley Adjudication Area is *surplus* water,
10 that the aquifer from which it is pumped is not in overdraft, and that its use is reasonable and
11 beneficial. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal. 4th 1224, 1241 (“*Mojave*
12 *Water Agency*”); *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 926 (“*Pasadena*”);
13 *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 278, 293 (“*San Fernando*”);
14 *Allen v. California Water & Tel. Co.* (1946) 29 Cal.2d 466, 481; *City of Santa Maria v. Adam*
15 (2012) 211 Cal.App.4th 266, 279 (“*Santa Maria*”).)

16 The California Supreme Court has explained the concepts of surplus water and overdraft
17 in a groundwater basin:

18
19 A ground basin is in a state of surplus when the amount of water
20 being extracted from it is less than the maximum that could be
21 withdrawn without adverse effects on the basin's long term supply.
22 While this state of surplus exists, none of the extractions from the
23 basin for beneficial use constitutes such an invasion of any water
24 right as will entitle the owner of the right to injunctive, as distinct
25 from declaratory, relief. (*City of Pasadena v. City of Alhambra*,
supra, 33 Cal.2d at pp. 926-927; *City of Los Angeles v. City of*
Glendale, supra, 23 Cal.2d at p. 79.) Overdraft commences
26 whenever extractions increase, or the withdrawable maximum
27 decreases, or both, to the point where the surplus ends. **Thus on**
the commencement of overdraft there is no surplus available
for the acquisition or enlargement of appropriative rights.

28 (*San Fernando, supra*, 14 Cal.3d at pp. 277-78 [emphasis added].)

1 This Court has already determined, after considering extensive oral and documentary
2 evidence and hearing arguments, that there is hydraulic connectivity within the entire
3 Adjudication Area, that the Adjudication Area has sustained a significant loss of groundwater
4 since 1951, that the Adjudication Area has been in a state of overdraft since at least 2005 and
5 that no surplus water has been available for pumping at least since then. (Statement of
6 Decision, Phase 3 Trial (Jul. 18, 2011) at 5:17–6:4, 5:15–5:22, and 9:4–9:11.) Phelan Piñon
7 Hills presented no evidence to the contrary. Hence, the Adjudication Area had no surplus
8 water for Phelan Piñon Hills to pump since at least 2005.

9 Phelan Piñon Hills argues that surplus water exists in the Butte subbasin where Well 14
10 is located. In support of its contention, Phelan Piñon Hills offered testimony by Mr. Harder
11 that the groundwater levels in the Butte subbasin remain relatively the same since the 1950's
12 and there is no land subsidence in the Butte subbasin. Mr. Harder's testimony, however, does
13 not contradict the Court's finding in Phase 3 that the Adjudication Area is in overdraft and no
14 surplus water exists.

15 The Court has found that all areas of the Antelope Valley Adjudication Area
16 hydrologically connected and a part of a single groundwater aquifer: "The Court defined the
17 boundaries of the valley aquifer based upon evidence of hydro-connection within the aquifer. If
18 there was no hydro-connectivity with the aquifer, an area was excluded from the adjudication."
19 (Statement of Decision, Phase 3 Trial (Jul. 18, 2011) at p. 5.) This finding is consistent with
20 Mr. Harder's testimony that the Butte sub basin is hydrologically connected to the Lancaster
21 sub basin and that groundwater from the Butte sub basin recharges the adjudication aquifer.

22 Thus, it is not surprising that the overall overdraft condition would impact the Butte sub
23 basin differently than it impacts the Lancaster sub basin. Uneven impact from groundwater
24 pumping is not an indication that an overdraft condition does not exist or that surplus water
25 exists. The Court finds that groundwater pumping in the Butte subbasin negatively impacts
26 groundwater recharge in the Lancaster subbasin and that Phelan Piñon Hills failed to meet its
27 burden of proof that surplus water exists within the Adjudication Area.
28

1 **B. Phelan Piñon Hills' Sixth Cause of Action for a Declaration of Its Return**
2 **Flow Rights**

3 The Court finds and determines that Phelan Piñon Hills does not have return flows rights
4 to groundwater in the Adjudication Area. There was no credible testimony or evidence offered
5 by Phelan Piñon Hills to the contrary.

6 The right to return flows is limited to return flows from imported water. In *San*
7 *Fernando, supra*, the California Supreme Court rejected a party's claim to a return flow right
8 from native water, stating:

9
10 Even though all deliveries produce a return flow, only deliveries
11 derived from imported water add to the ground supply. The
12 purpose of giving the right to recapture returns from delivered
13 imported water priority over overlying rights and rights based on
14 appropriations of the native ground supply is to credit the importer
15 with the fruits of his expenditures and endeavors in bringing into
16 the basin water that would not otherwise be there. Returns from
17 deliveries of extracted native water do not add to the ground
18 supply but only lessen the diminution occasioned by the
19 extractions.

20 (*San Fernando, supra*, 14 Cal.3d at p. 261.) The policy behind granting an importer the return
21 flow right is to award the importer with the fruit of its labor. (*Santa Maria, supra*, 211
22 Cal.App.4th at p. 301 [“[O]ne who brings water into a watershed may retain a prior right to it
23 even after it is used. . . . The practical reason for the rule is that the importer should be credited
24 with the ‘fruits . . . of his endeavors in bringing into the basin water that would not otherwise be
25 there.’”] [citations omitted].)

26 Phelan Piñon Hills asked the Court to adopt the doctrine of recapture as applied in a
27 federal court litigation between Montana and Wyoming, in lieu of California law on return flow
28 rights as set forth in *San Fernando* and *Santa Maria*. (See *Montana v. Wyoming* (2011) 131
S.Ct. 1765, 1774-75.) The doctrine of stare decisis prohibits this Court from applying case law
from another jurisdiction when there are controlling decisions issued by the California Supreme
Court and Courts of Appeal. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450,

1 455-456; *Fortman v. Forvaltningsbolaget Insulan AB* (2013) 212 Cal.App.4th 830, 844; *Kelly v.*
2 *Vons Companies, Inc.* (1998) 67 Cal.App.4th 1329, 1337.)

3 The Court finds that Phelan Piñon Hills provided no credible evidence that demonstrated
4 that Phelan Piñon Hills imported water or otherwise augmented the groundwater supply in the
5 Adjudication Area. By its own admission, Phelan Piñon Hills never imported any water into the
6 Adjudication Area, and has not net augmented the groundwater supply in the Adjudication Area.
7 Mr. Harder's testimony indicates that the amount of groundwater pumped by Phelan Piñon Hills
8 exceeds its total amount of claimed return flows within the Adjudication Area. Additionally, to
9 the extent "return flows" from native water pumped by Phelan Piñon Hills enter the Adjudication
10 Area, they merely "lessen the diminution occasioned" by Phelan Piñon Hills' extraction and do
11 not augment the Adjudication Area's groundwater supply. (*Id.*)

12
13 **C. Impact of Phelan Piñon Hills' Pumping of Groundwater Upon the**
14 **Adjudication Area**

15 The Court finds that Phelan Piñon Hills' pumping of groundwater from the Antelope
16 Valley Groundwater Basin negatively impacts the Butte sub basin and the Adjudication Area.
17 There was no credible testimony or evidence offered by Phelan Piñon Hills to the contrary.

18 It is uncontested that Phelan Piñon Hills' Well 14 is located in an area of the
19 Adjudication Area generally known as the Butte subbasin, which borders the Lancaster sub
20 basin. (Ex. Phelan CSD-27.) The Court finds that the Butte subbasin and the Lancaster sub
21 basin are hydrologically connected. The Court also finds that groundwater from the Butte sub
22 basin is a source of groundwater recharge for the Lancaster sub basin, and that groundwater
23 pumping in the Butte sub basin could lower the groundwater level in the aquifer. The Court
24 further finds that Phelan Piñon Hills' operation of its three groundwater wells located near Well
25 14 intercepts groundwater that would otherwise flow into and recharge the Adjudication Area.
26 Based on these uncontroverted facts, the Court concludes that Phelan Piñon Hills' pumping of
27 groundwater from the Antelope Valley Groundwater Basin as described in Bulletin 118
28 negatively impacts the Butte subbasin, the Lancaster subbasin, and the Adjudication Area.

1 **D. Burden of Proof**

2 The court finds that Phelan Piñon Hills has the burden of proof to establish each fact
3 necessary to its second and sixth causes of action, and it failed to meet its burden of proof.

4 There was no credible testimony or evidence offered by Phelan Piñon Hills to the contrary.

5 Evidence Code Section 500 provides, “[e]xcept as otherwise provided by law a party has
6 the burden of proof as to each fact, the existence or nonexistence of which is essential to the
7 claim for relief or defense that he is asserting.” As the Cross-Complainant, Phelan Piñon Hills
8 has the affirmative obligation to prove the facts that are essential to its claims, which it has failed
9 to do for the reasons discussed above.


10 Phelan Piñon Hills does not deny that it has the burden of proof for its sixth cause of
11 action for return flow rights. Phelan Piñon Hills contends that, before it has the burden of prove
12 the existence of surplus water, existing appropriators, riparian, or overlying owners must
13 establish their use is reasonable and beneficial. (*See e.g., Tulare Irrigation Dist. v. Lindsay-*
14 *Strathmore Irrigation Dist.* (1935) 3 Cal. 2d 489, 535 [“In the present case, while it is true the
15 burden was on appellant to prove the existence of a surplus, that burden did not come into
16 existence until after the respondent riparians first proved the amount required by them for
17 reasonable beneficial purposes.”].) The Court recognizes that while overdraft and native safe
18 yield of the Adjudication Area were determined in Phase 3 trial and that Adjudication Area
19 groundwater pumping in 2011 and 2012 exceeded the safe yield², this Court has not made a
20 determination as to whether each party’s water use is reasonable and beneficial. The Court will
21 make such a determination prior to the entry of final judgment.

22 Phelan Piñon Hills has not proved that there is a surplus contrary to the court’s
23 determination that the basin aquifer is in overdraft. If a final judgment is entered based upon the
24 overdraft, the court will be required to provide for the management of the basin aquifer and will
25 provide for monitoring pumping to preserve the integrity of the aquifer. Phelan Piñon Hills has
26
27

28 ² Statement of Decision, Phase 4 Trial (June 29, 2013).

1 five other causes of action in its cross complaint and as a pumper may be required to participate
2 in the monitoring program which will establish the reasonable and beneficial use of each
3 pumper within the aquifer as well as rights to produce water, whether as appropriator, overlying
4 owner, or prescriber. The decision here only determines that at this time Phelan Piñon Hills is an
5 appropriator without a priority as to overlying owners and appropriators with prescribed rights (if
6 any).

7
8
9 Dated: FEB - 3 2015


10 Hon. Jack Komar (Ret.)
11 Judge of the Superior Court
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28