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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

ALESHIRE &  
WYNDER  
ATTORNEYS AT LAW



12 Coordination Proceeding  
Special Title (Rule 1550(b))

13 **ANTELOPE VALLEY**  
14 **GROUNDWATER CASES**

15 Included Actions:

16 *Los Angeles County Waterworks District*  
*No. 40 v.*  
17 *Diamond Farming Co., et al.*  
Los Angeles County Superior Court, Case  
18 No. BC 325 201

19 *Los Angeles County Waterworks District*  
*No. 40 v.*  
20 *Diamond Farming Co., et al.*  
Kern County Superior Court, Case No.  
21 S-1500-CV-254-348

22 *Wm. Bolthouse Farms, Inc. v. City of*  
*Lancaster*  
23 *Diamond Farming Co. v. City of Lancaster*  
*Diamond Farming Co. v. Palmdale Water*  
24 *Dist.*  
Riverside County Superior Court,  
25 Consolidated Action, Case Nos. RIC 353  
840, RIC 344 436, RIC 344 668  
26

27 **AND RELATED CROSS-ACTIONS**

Case No. Judicial Council Coordination  
Proceeding No. 4408

(For Filing Purposes Only: Santa Clara  
County Case No.: 1-05-CV-049053)

**PHELAN PIÑON HILLS COMMUNITY  
SERVICES DISTRICT'S OBJECTIONS  
TO PROPOSED STATEMENT OF  
DECISION**

[Filed concurrently with: 1) [Proposed]  
Statement of Decision; and, 2) Phelan Piñon  
Hills' Objections to Proposed Judgment]

Date: December 23, 2015  
Time: 10:00 a.m.  
Location/Dept.: Room 222, 2<sup>nd</sup> Floor  
Stanley Mosk Courthouse  
111 N. Hill Street  
Los Angeles, CA 90012

Assigned for All Purposes to:  
Hon. Jack Komar

Date/Time/Loc: 12/23/15, 10:00 a.m., Rm. 222  
(Hearing on Objections to Proposed Statement of  
Decision)

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1 TO THE HONORABLE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF  
2 RECORD HEREIN:

3 Pursuant to California Rule of Court 3.1590(g), Phelan Piñon Hills Community Services  
4 District (“Phelan”) hereby submits its objections to the Proposed Statement of Decision filed by  
5 Los Angeles County Waterworks District No. 40 on December 4, 2015 (“PSOD”).

6 **I. INTRODUCTION**

7 The PSOD fundamentally fails to explain “the factual and legal basis for [the Court’s] decision  
8 as to each of the principal controverted issues at trial.” (*See* Code Civ. Proc., § 632.) These  
9 objections identify and explain numerous deficiencies with the PSOD, and they are divided into  
10 (1) general objections regarding overarching problems with the PSOD, and (2) specific objections  
11 highlighting errors in language or reasoning.

12 Phelan attaches hereto as Exhibit 1 a modified version of the PSOD, which makes important  
13 changes to the PSOD and identifies key areas where the Court needs to further explain the “factual  
14 and legal basis” for its decision on the controverted issues at trial. For the Court’s reference, attached  
15 as Exhibit 2 is a redline comparison of the modified PSOD to the original submitted by Los Angeles  
16 County Waterworks District No. 40.

17 Phelan incorporates by reference its previously filed Objections to [Proposed] Statement of  
18 Decision for Trial Related to Phelan Piñon Hills Community Services District filed on December 18,  
19 2014, as part of these Objections, and attaches a copy hereto as Exhibit 3.

20 Phelan requests the Court adopt Phelan’s version of the PSOD, or alternatively, make  
21 additional revisions to the PSOD so as to address the fundamental problems with the Court’s  
22 reasoning in the PSOD in its current form.

23 **II. THE COURT’S ORAL TENTATIVE DECISION**

24 At the conclusion of closing arguments, the Court issued an oral tentative decision, with the  
25 following discussion of Phelan:

26 AGAIN, THE COURT ADOPTS THE PHASE FOUR -- I'M SORRY -- THE  
27 PHASE FIVE FINDING AS TO THE PHELAN PINON HILLS WATER DISTRICT,



1 OR COMMUNITY SERVICE DISTRICT. THEY ARE APPROPRIATOR  
2 WITHOUT A PRIORITY.

3 THERE'S NO SURPLUS. THEY ARE, THEREFORE, SUBJECT TO THE  
4 ACQUISITION OF FEES TO REPLACE ANY WATER THAT THEY MAY PUMP.

5 AND, OF COURSE, THE WILLIS CLASS -- I'M SORRY -- THE PHELAN  
6 PARTIES WILL APPLY TO THE WATERMASTER. THEY ARE NOT  
7 ENJOINED FROM PUMPING.

8 (11-4-15 Reporter's Transcript of Proceedings, attached hereto as Exhibit 7, at 169:14-23.)

9 **III. GENERAL OBJECTIONS**

10 Phelan hereby generally objects to the PSOD on the grounds that it fails to explain the legal  
11 and factual basis of the decision "as to each of the principal controverted issues" at trial, it omits  
12 findings on critical issues controverted at trial, and its findings on certain issues are ambiguous. (*See*  
13 *Code Civ. Proc.*, § 634; *Cal. Ct. Rule 3.1590(g)*; *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130,  
14 1132-1133.)

15 **A. Does Not Accurately Reflect the Court's Oral Tentative Decision**

16 As quoted, *supra*, the Court's oral tentative decision makes several statements that are not  
17 reflected in the PSOD.

18 **1. *Appropriator Without a Priority***

19 The PSOD does not explain what it means under California water law to be an "appropriator  
20 without a priority." This was part of the Court's oral tentative decision and it needs to be thoroughly  
21 explained in the Statement of Decision.

22 **2. *Phelan's Expected Pumping Assessments***

23 The Court's oral tentative decision states that Phelan will be subject to fees "to replace any  
24 water that [Phelan] may pump." Thus, the Court's decision is that Phelan should only be subject to  
25 fees for replacement water costs.

26 In contrast, the PSOD incorporates a Proposed Physical Solution that requires Phelan to pay "a  
27 Replacement Water Assessment...together with any other costs deemed necessary to protect  
28 Production Rights." (Proposed Physical Solution, Section 6.4.1.2.) The Court's oral tentative



1 decision does not find that Phelan needs to pay, or that it is reasonable for Phelan to have to pay, “any  
2 other costs deemed necessary to protect Production Rights.” Thus, this language needs to be removed  
3 from the Proposed Physical Solution, or, if it remains, the Statement of Decision needs to make  
4 findings about why such a provision is consistent with California water law.

5 **3. *Phelan Will Apply to the Watermaster***

6 The Court’s oral tentative decision states that Phelan will “apply to the Watermaster.”  
7 However, nothing in the PSOD or Proposed Physical Solution explains a need for Phelan to apply to  
8 the future Watermaster for anything. This suggests that the Court does not understand how Phelan  
9 and its pumping from Well 14 will be addressed by the future Watermaster under the Proposed  
10 Physical Solution.

11 **4. *Phelan Is Not Enjoined From Pumping***

12 The Court’s oral tentative decision states that Phelan is “not enjoined from pumping.” This  
13 statement is absent from the PSOD. This language must be included in the PSOD.

14 **B. Does Not Explain How Evidence Supports Finding that Proposed Physical**  
15 **Solution Will Be Effective**

16 Phelan’s Third Cause of Action is for declaratory and injunctive relief for a physical solution.  
17 Phelan alleges that physical solutions can be fashioned to resolve water rights disputes to satisfy the  
18 reasonable and beneficial needs of all parties through practical measures and the augmentation of the  
19 native water supply. (*See* Phelan’s Cross-Complaint for Declaratory, Injunctive and Other Equitable  
20 Relief Including a Physical Solution Against All Parties, 16:12-15.)

21 The PSOD lacks any explanation of competent evidence in the record to support a finding that  
22 the Proposed Physical Solution will be effective and meet the reasonable and beneficial needs of all  
23 parties. To support the claim that the Proposed Physical Solution will be effective, the PSOD only  
24 relies on evidence of the testimony of two expert witnesses: Mr. Charles Binder and Dr. Dennis  
25 Williams. These two expert witnesses provide the Court’s entire basis for the finding that the  
26 Proposed Physical Solution will be effective. However, neither witness’ testimony is supported by  
27 adequate foundation, and neither witness’ testimony is competent, credible, or persuasive.

28 ///



1 The PSOD fails to explain how Mr. Binder’s testimony is competent or credible when:

- 2 • Mr. Binder used an undistributed model in his analysis of whether the Proposed Physical  
3 Solution would be effective (*see, e.g.*, 10-15-15 Reporter’s Transcript, attached hereto as  
4 Exhibit 6, at 15:20-17:15);
- 5 • His water balance factored in surface water controlled by Palmdale Water District, which  
6 has nothing to do with the groundwater equation (*id.* at 20:10-12, 70:1-71:15); and,
- 7 • He changed significant portions of his testimony between his deposition – taken less than  
8 one week before the start of hearings on the physical solution -- and his trial testimony  
9 regarding groundwater production by overlying landowners (*see* Trial Exhibit 6-AVEK-2,  
10 page 6) and how many acre-feet of supplemental direct deliveries there will be from the  
11 State Water Project (6-AVEK-2, page 9), despite the fact that he had spent over 400 hours  
12 of his time on this case (Exhibit 6, at 10:20-21, 66:5-69:28).

13 The PSOD fails to explain how Dr. Williams’ testimony is competent or credible when:

- 14 • Dr. Williams’ model does not cover the entire Antelope Valley Adjudication Area or the  
15 Antelope Valley Groundwater Basin (PWS-0543-0006), and Dr. Williams did not even  
16 consider turning on additional cells in the model (9-30-15 Reporter’s Transcript, attached  
17 hereto as Exhibit 5, at 14:6-8);
- 18 • Scenarios supposedly depicting the success of the Proposed Physical Solution do not take  
19 into account all relevant factors and conditions, including amounts of evapotranspiration  
20 (*id.* at 19:12-22:11); and,
- 21 • He offers contradictory testimony about whether water flowing out of the Southeast Area  
22 of his model is going to other portions of the Antelope Valley Groundwater Basin or  
23 whether it is going into El Mirage Valley (*id.* at 23:5-27:2).

24 The fact that Dr. Williams’ model does not cover the entire Antelope Valley Adjudication  
25 Area or Antelope Valley Groundwater Basin is important because there are active wells that are not  
26 covered by the model, including wells operated by Bolthouse (PWS-0543-00048), by West Valley  
27 County Water District (PWS-0543-00051), and even Phelan’s own Well 14 (PWS-0543-00092). Dr.  
28 Williams testified on direct that, to address the fact Phelan’s wells are not within the area covered by



1 the model, he “simulated” Phelan’s pumping by treating Phelan’s pumping as if it were occurring at a  
2 different location which may have different geology and hydrogeology than the actual location of  
3 Phelan’s pumping. (Exhibit 5, at 8:14-9:4.) He did not testify on direct that he did the same thing  
4 with Bolthouse and West Valley County Water District wells, but did admit to that on cross-  
5 examination. (Exhibit 5, at 14:22-16:17.) The fact he did not admit it on direct makes it questionable  
6 whether he really included the pumping from the wells outside the model in his analysis. In fact,  
7 during cross-examination, Dr. Williams admitted that he actually did not consider the pumping from  
8 those wells. (*Id.* at 48:8-11.) But whether he ignored the pumping outside the model area, or whether  
9 he “simulated” it, what he did completely defeats the point of using the distributed model.

10 The point of the distributed model is that it is supposed to replicate the geology and the  
11 hydrogeology and be a more realistic representation of what actually happens in the ground. Dr.  
12 Williams testified that the model does not know who is pumping, but it does care where entities are  
13 pumping because the geology is not uniform. (*Id.* at 14:22-16:17.)

14 Using this incomplete model, Dr. Williams prepared a water budget based on annual average  
15 conditions. (Trial Exhibit PWS-0543-00031.) One of the factors taken into account in that water  
16 budget was “ET.” Dr. Williams never explained on direct examination what that was. On cross-  
17 examination, he admitted that it is evapotranspiration, the water lost to the air through evaporation and  
18 transpiration. (Exhibit 5, at 19:22-22:11.) Even though he showed ET as 9,300 AF in the annual  
19 average water budget, that somehow becomes zero, and stays zero, when Dr. Williams projects the  
20 impact of the Proposed Physical Solution. (Trial Exhibit PWS-0543-0078.) His explanation is that  
21 there is no surface water (which is contrary to what Mr. Binder testified, but the surface water Mr.  
22 Binder is relying on is not from groundwater), even with the success of the Proposed Physical  
23 Solution, so there is no evaporation. Trial Exhibit PWS-0543-0078 shows that is not true, because in  
24 the third and fourth scenarios Dr. Williams shows surface discharge at dry lakes – but somehow he  
25 concludes none of that is going to evaporate (ET remains at zero even in those scenarios). Dr.  
26 Williams admitted on cross-examination that there is agriculture in the Antelope Valley, there are  
27 plants, and there will be transpiration, which is not accounted for in his water budget for any of his  
28 various scenarios intended to show the physical solution will be effective. (Exhibit 5, at 19:12-22:11.)





1           Additionally, one of the key arguments made by the both the Public Water Suppliers and the  
2 Private Landowners during closing arguments was that the Proposed Physical Solution would be  
3 effective because of its “carryover” provision. (Exhibit 7, at 18:12-21:8, 124:5-126:16, 155:12-26.)  
4 They argued that the carryover provision was critical to the success of the Proposed Physical Solution  
5 and for bringing the Basin into recovery because it would encourage people to leave water in the  
6 Basin and instead purchase imported water. There are three big problems with this argument. First,  
7 the rationale and the factual and legal basis for this key provision are not based on any evidence and  
8 are not discussed in the PSOD. Second, logically it makes no sense that a party would forego a free  
9 pumping allowance and instead purchase imported water. Third, there is significant uncertainty about  
10 the availability of sufficient imported water.

11           The following provides an alleged explanation of this provision that is apparently key to the  
12 success of the Proposed Physical Solution:

13                       NOW, I THOUGHT MR. KUHS EXPLAINED CARRYOVER THIS  
14 MORNING MUCH BETTER THAN I DID YESTERDAY AFTERNOON IN  
15 RESPONSE TO THE COURT'S QUESTION.

16                       BUT I WILL SIMPLY SAY THIS.

17                       IF WE LOOK INSIDE THE PHYSICAL SOLUTION DOCUMENT THAT  
18 WE PRESENTED TO THE COURT, THERE IS A DEFINITION SECTION. AND  
19 ONE OF THE DEFINITIONS THAT'S LISTED, THEY ARE ALL IN  
20 ALPHABETICAL ORDER, IT TALKS ABOUT CONJUNCTIVE USE. AND I DO  
21 WANT TO COMMENT ABOUT THAT IN REGARDS TO CARRYOVER  
22 BECAUSE CARRYOVER WAS RAISED BY THE WILLIS CLASS COUNSEL.

23                       CARRYOVER AND CONJUNCTIVE USE. CONJUNCTIVE USE IN THE  
24 PHYSICAL SOLUTION IS THE CONCEPT THAT WHEN WE'RE GOING TO USE  
25 SUPPLEMENTAL SUPPLIES OF WATER FROM THE STATE WATER PROJECT  
26 WHEN THEY ARE AVAILABLE, AND WHEN THEY'RE NOT AVAILABLE  
27 WE'RE GOING TO USE GROUNDWATER.

28                       THERE'S A MANAGEMENT CONCEPT IN PLACE.



1 NOW, WHY IS THIS IMPORTANT? IT'S IMPORTANT -- IT'S MORE  
2 THAN IMPORTANT. IT'S CRITICAL. IT IS VITAL TO THIS BASIN FOR  
3 SEVERAL REASONS.

4 NUMBER ONE. THE TESTIMONY OR EVIDENCE THAT CAME  
5 BEFORE THIS COURT, AND WE SAW THIS IN DR. WILLIAMS' TESTIMONY  
6 IN PARTICULAR.

7 BUT THE COURT SAW IT IN PHASE THREE TESTIMONY AS WELL.

8 THERE IS AN INSUFFICIENT SUPPLY OF NATIVE GROUNDWATER IN  
9 THIS BASIN. IN FACT, THE COURT'S TOTAL SAFE YIELD  
10 DETERMINATION OF THE 110,000 ACRE FEET INCLUDED BOTH A NATIVE  
11 YIELD COMPONENT AND RECOGNITION THAT THERE ARE RETURN  
12 FLOWS FROM STATE PROJECT WATER.

13 IF WE DO NOT HAVE A CARRY-OVER PROVISION IN THE  
14 JUDGMENT, WHAT IT MEANS IS THIS. IF YOU'RE -- IF YOU'RE A PUBLIC  
15 OR PRIVATE GROUNDWATER USER, IF YOU ARE MY CLIENT -- PROBABLY  
16 NOT MY CLIENT IS A GOOD EXAMPLE. LET'S USE A PRIVATE PARTY. MY  
17 CLIENT IS NOT A GOOD EXAMPLE BECAUSE WE ARE GOING TO BUY  
18 STATE PROJECT WATER UNDER THIS PHYSICAL SOLUTION.

19 LET'S USE ANY ONE OF THE LANDOWNERS AS AN EXAMPLE. IF  
20 THEY WERE TO DECIDE TO BUY STATE PROJECT WATER IN THE FUTURE  
21 WITHOUT THE CARRY-OVER PROVISION, THEY RUN THE RISK THAT  
22 THAT DECISION TO BUY STATE PROJECT WATER COULD COST THEM  
23 THE LOSS OF USE OF GROUNDWATER.

24 IN OTHER WORDS, WE DO NOT WANT A PHYSICAL SOLUTION FOR  
25 THIS BASIN THAT DISCOURAGES THE USE OF A SUPPLEMENTAL SUPPLY  
26 OF WATER.

27 WE WANT TO MAKE SURE THE WHETHER IT'S A PUBLIC  
28 LANDOWNER, A PRIVATE LANDOWNER OR PUBLIC WATER SUPPLIER,



1 THAT THEY HAVE THE ABILITY TO PURCHASE STATE PROJECT WATER  
2 WHEN IT'S AVAILABLE, PARTICULARLY WHEN IT'S PLENTIFUL AND  
3 LESS COSTLY, AND USE THAT AND THEREBY REDUCE DEMAND ON THE  
4 BASIN.

5 (Exhibit 7, at 124:5-125:28.)

6 The Proposed Physical Solution relies heavily on rampdown and imported water to bring the  
7 Basin into hydrologic balance and recovery. Here, the Moving Parties argue that this carryover  
8 provision that allegedly encourages pumpers to forego pumping and purchase imported water will  
9 facilitate the importation of significant amounts of water to the Basin. This argument is logically  
10 flawed for several reasons. First, not all parties are situated so as to be able to accept imported water  
11 and there is insufficient evidence in the record to identify which parties are able to do so. Second, the  
12 source of imported water is uncertain in light of the recent history of State Water Project deliveries.

13 A key controverted issue at trial is whether the Proposed Physical Solution will be effective.  
14 The PSOD must explain what *competent* and *credible* evidence supports the finding that the Proposed  
15 Physical Solution will be effective.

16 C. **Does Not Explain How the Proposed Physical Solution Is Fair and Reasonable**  
17 **When It Treats Like Parties Inequitably**

18 The PSOD is defective as it fails to explain the legal and factual basis for the Proposed  
19 Physical Solution being fair and reasonable, which was a principal controverted issue at the trial of  
20 this action.

21 Section 6.4 of the Proposed Physical Solution allows three parties – Saint Andrew’s Abbey,  
22 Inc., U.S. Borax, and Tejon Ranchcorp/Tejon Ranch Company – to transport groundwater produced  
23 from the Adjudication Area to “those lands outside the Basin and within the watershed of the Basin,”  
24 and yet does not make them pay a Replacement Water Assessment for that water used outside the  
25 Adjudication Area. In contrast, the Proposed Physical Solution requires Phelan to pay a Replacement  
26 Water Assessment on every acre-foot of water it pumps from the Adjudication Area (see Section  
27 6.4.1.2), despite the fact that Phelan introduced evidence at trial that approximately 630 acre-feet of  
28 the water it pumps from the Adjudication Area is used within the watershed of the Basin. (Trial



1 Exhibit, PhelanCSD-53; 8-25-15 Reporter’s Transcript, attached hereto as Exhibit 4, at 69:9-21;  
2 United States’ Exhibits, October 10-12, 2006, Trial, Exhibit 87.) The PSOD does not make findings  
3 or explain why the Proposed Physical Solution is “fair and reasonable” given that it permits some  
4 parties to use water pumped from *within* the Adjudication Area *outside* of the Adjudication Area, but  
5 within the watershed of the Basin, *free* of Replacement Water Assessment, and yet requires Phelan to  
6 pay a Replacement Water Assessment for doing the same.

7 **D. Does Not Make Findings As to the Legal Impact of Phelan’s History of Pumping**  
8 **in the Antelope Valley Groundwater Basin**

9 Phelan introduced evidence at trial illustrating that it began pumping in the Antelope Valley  
10 Groundwater Basin in 1986, not in 2005-2006 when Well 14 first began producing water. (See Trial  
11 Exhibit PhelanCSD-56.) This timing is relevant to the issue of priority, which is central to the issue of  
12 whether Phelan is entitled to an appropriative or other water right. The PSOD does not explain the  
13 legal and factual basis for Phelan being denied a water right even though it has been pumping from the  
14 aquifer since 1986, which was a principal controverted issue at the trial of this action.

15 **E. Does Not Correlate the Facts and the Law on the Issue of Export**

16 The Proposed Physical Solution characterizes Phelan as exporting from the Basin all of the  
17 groundwater it extracts from Well 14 within the Adjudication Area. The PSOD at page 9, lines 8-10,  
18 also states that Phelan is “exporting” groundwater from the Adjudication Area.

19 Phelan introduced evidence at trial showing that it spans multiple groundwater sources – the  
20 Antelope Valley Groundwater Basin, the El Mirage Valley, and the Mojave Groundwater Basin –  
21 pumping water from all three and delivering water in all three. (See Trial Exhibit PhelanCSD-26.)  
22 Phelan also introduced evidence at trial that approximately 630 acre-feet of the water it pumps from  
23 the Adjudication Area is used within the portion of its service area that overlies the Antelope Valley  
24 Groundwater Basin. (Trial Exhibit, PhelanCSD-53; Exhibit 4, at 69:9-21.)

25 The fact that Phelan is allegedly “exporting” seems central to the Court’s finding that Phelan  
26 does not have a water right. However, the PSOD does not explain the Court’s understanding of the  
27 law of export, what it means to be an “exporter” pursuant to California water law, and does not  
28 explain how Phelan is a so-called “exporter” despite the evidence in the record that Phelan uses at



1 least a portion of the water it extracts from the Adjudication Area in the portion of its service area that  
2 overlies the Groundwater Basin and within the Basin's watershed.

3 **F. On the Issue of Surplus, the PSOD Fails to Address the New Evidence Introduced**  
4 **at Trial**

5 Phelan reiterates all of its objections to the Court's Partial Statement of Decision for Trial  
6 Related to Phelan Piñon Hills Community Services District (2<sup>nd</sup> and 6<sup>th</sup> Causes of Action). To rebut  
7 some of the issues in that Partial Statement of Decision, Phelan introduced evidence at the August 25,  
8 2015 trial by way of testimony of its expert witness Mr. Thomas Harder, who testified that  
9 groundwater levels in the area of Phelan's pumping have remained relatively stable, even during  
10 current and projected drought situations. (Exhibit 4, at 84:14-85:12.) The PSOD needs to address this  
11 evidence which is critical to the principal controverted issue of whether there is surplus.

12 The Buttes Subunit (as well as the Pearland Subunit adjacent to the south) is one of those areas  
13 where there is less connectivity and conductivity, particularly the southeastern portion where Phelan's  
14 wells are located. While the Lancaster Subunit to the northwest of the Buttes Subunit is in overdraft  
15 and has experienced significant subsidence, Mr. Harder's testimony in November 2014 and on August  
16 25, 2015 showed the Buttes Subunit has experienced generally stable water levels during the period of  
17 time studied for purposes of this case, and has even seen rising groundwater levels at times when  
18 groundwater levels elsewhere in the Antelope Valley Groundwater Basin have been declining. (Trial  
19 Exhibits PhelanCSD-27, 28, 29, 31, 32, 33.) Even Dr. Williams agrees this area is different. (Exhibit  
20 5, at 23:7-11.)

21 Furthermore, Dr. Williams testified that Phelan's pumping actually benefits the Antelope  
22 Valley Adjudication Area by keeping 500 acre-feet in the Adjudication Area. (Exhibit 5, at 25:10-11  
23 ["So there's a benefit to the basin of 500 [AF]."]) Dr. Williams' testimony contradicts the Court's  
24 findings that Phelan's pumping has not augmented the groundwater supply in the Adjudication Area.  
25 Keep in mind, Dr. Williams initially characterized this as Phelan preventing water from flowing into  
26 El Mirage Valley – on cross-examination he admitted what Phelan's pumping actually did was keep  
27 water in the adjudication area, it wasn't water going into El Mirage Valley. (*Id.* at 23:5-27:2.)

28 ///



1 This water is surplus water. It is water in excess of water being pumped by others. It wouldn't  
2 even be in the Antelope Valley Adjudication Area if Phelan were not pumping it. As an appropriator,  
3 Phelan has the right to surplus water, if there is surplus. The PSOD lacks any discussion of this 500  
4 acre-feet and why it is not surplus water.

5 **G. On the Issue of Harm, It Fails to Address the New Evidence Introduced at Trial**

6 The PSOD fails to explain to what extent, and on what factual and legal basis, Phelan had to  
7 establish its pumping had no impact on the Antelope Valley Adjudication Area or Antelope Valley  
8 Groundwater Basin or on other pumpers, and whether it bore the burden of proof on that issue.  
9 Moreover, both the Court's previous Partial Statement of Decision for Trial Related to Phelan Piñon  
10 Hills Community Services District (2<sup>nd</sup> and 6<sup>th</sup> Causes of Action) and the PSOD are premised on the  
11 conclusion Phelan's pumping negatively impacts the Basin and Buttes Subunit. (*See* PSOD, 9:16-19.)  
12 Evidence supporting that conclusion is not identified in the PSOD. To the contrary, evidence was  
13 introduced at trial that demonstrates Phelan's pumping is not harming the Basin or other pumpers.

14 Mr. Harder testified that Well 14 is 20 miles from the Lancaster Subunit, and the closest well  
15 is 5 miles away. (Exhibit 4, at 80:3-24.) Mr. Harder testified that the cone of depression from Well  
16 14 would be negligible within 2 miles, that no wells of other pumpers are within this cone of  
17 depression, that no other pumpers have had to lower their pumps due to Phelan's pumping, and that  
18 Phelan's impact on subsidence is negligible or not even measurable. (*Id.* at 81:22-83:8, 83:11-28.)  
19 Mr. Harder also testified that groundwater levels in the area of Phelan's pumping have remained  
20 relatively stable, even during current and projected drought situations. (*Id.* at 84:14-85:12.)

21 Dr. Williams testified that under his simulation, the Adjudication Area will recover with or  
22 without Phelan's pumping. (Exhibit 5, at 27:21-25.) Even more significantly, Dr. Williams testified  
23 that Phelan's pumping actually benefits the AVAA by keeping 500 AF in the AVAA. (*Id.* at 25:10-11  
24 ["So there's a benefit to the basin of 500 [AF]."]) Dr. Williams' testimony contradicts the Court's  
25 findings that Phelan's pumping negatively impacts the Buttes Subunit and the Adjudication Area.

26 The PSOD must explain how the issue of harm is relevant to one or all of Phelan's Causes of  
27 Action and the principal controverted issues at trial, which parties bore the burden of proof on that

28 ///



1 issue, what evidence the Court weighed in reaching its decision, and how the Court addresses  
2 contradictory evidence.

3 **H. Fails to Address Phelan’s Fourth Cause of Action for Municipal Priority and to**  
4 **Make Findings Regarding Water Code Sections 106 and 106.5**

5 The PSOD fails to address and make findings regarding Phelan’s Fourth Cause of Action for  
6 Declaratory Relief for Municipal Priority. Water Code section 106 provides that: “It is hereby  
7 declared to be the established policy of this State that the use of water for domestic purposes is the  
8 highest use of water and that the next highest use is for irrigation.” Water Code section 106.5  
9 provides: “It is hereby declared to be the established policy of this State that the right of a  
10 municipality to acquire and hold rights to the use of water should be protected to the fullest extent  
11 necessary for existing and future uses....”

12 Depriving Phelan of a production right in light of the Phelan’s history of pumping from the  
13 Basin going back to 1986 -- in light of the evidence of minimal connectivity between the Buttes  
14 Subunit and the rest of the aquifer, in light of the evidence groundwater levels in the Buttes Subunit  
15 are stable and not in overdraft, in light of evidence Phelan’s pumping from Well 14 keeps 500 AFY in  
16 the Adjudication Area -- is inconsistent with these State policies when Phelan is solely attempting to  
17 meet the limited needs of its municipal customers. The PSOD must include specific findings with  
18 regarding to Phelan’s Municipal Priority and Water Code sections 106 and 106.5.

19 **IV. SPECIFIC OBJECTIONS**

20 Below are more specific problems with the PSOD that need to be addressed.

21 **A. Surplus**

22 **5:6-10, footnote 1, and 9:12-14:** The PSOD states that there is “Basin-wide overdraft” and  
23 that by at least 1951 to present “there was no groundwater surplus, temporary or otherwise.”  
24 Footnote 1 notes that, “There was no evidence of a temporary surplus condition.”

25 As discussed in Phelan’s previous Objections at pages 9-10, Phelan proved surplus in the  
26 southeastern portion of the Buttes Subunit in the November 2014 trial. Surplus is further supported by  
27 the recent testimony of Mr. Harder that groundwater levels in the area of Phelan’s pumping have  
28 remained relatively stable, even during current and projected drought situations (Exhibit 4, at 84:14-



1 85:12), and Dr. Williams' testimony that Phelan's pumping from Well 14 keeps 500 AFY in the  
2 Adjudication Area (Exhibit 5, at 25:10-11). This evidence is contradictory to the PSOD's comments  
3 that there has never been any surplus in any portion of the Basin.

4 **B. Use of Terms "Adjudication Area" and "Basin"**

5 **8:26-9:1:** "Phelan seeks a court-adjudicated right pump groundwater from the Basin for use  
6 outside of the Adjudication Area." The word "Basin" is not accurate because Phelan already has a  
7 right to pump groundwater from the portion of the Groundwater Basin that is in the Mojave  
8 Adjudication Area. Thus, the word "Basin" should be changed to "Adjudication Area."

9 This is one example, however, the Court should confirm which term it intends to use and  
10 various places throughout the PSOD, especially the provisions addressing Phelan.

11 **C. Typographical Changes**

12 **9:6-10:** "Court's Partial Statement of Decision for Trial Related to Phelan" should be  
13 modified with its full title as "Court's Partial Statement of Decision for Trial Related to Phelan Piñon  
14 Hills Community Services District (2<sup>nd</sup> and 6<sup>th</sup> Causes of Action)."

15 **9:14:** The citation to page 4, line 9 of the Court's Partial Statement of Decision for Trial  
16 Related to Phelan Piñon Hills Community Services District (2<sup>nd</sup> and 6<sup>th</sup> Causes of Action) is not  
17 accurate and should be removed.

18 **V. CONCLUSION**

19 Phelan respectfully requests the Court adopt Phelan's version of the PSOD, or alternatively,  
20 make additional revisions to the PSOD so as to address the fundamental problems with the Court's  
21 reasoning in the PSOD in its current form.

22 DATED: December 14, 2015

ALESHIRE & WYNDER, LLP  
JUNE S. AILIN  
MILES P. HOGAN

25 By:

  
\_\_\_\_\_  
JUNE S. AILIN

Attorneys for Defendant and Cross-Complainant  
Phelan Piñon Hills Community Services District



1 Judicial Council Coordination Proceeding No. 4408  
For Filing Purposes Only: Santa Clara County Case No.: 1-05-CV-049053

2 **PROOF OF SERVICE**

3 **STATE OF CALIFORNIA, COUNTY OF ORANGE**

4 I, Linda Yarvis,

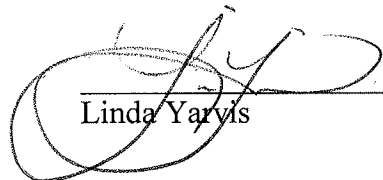
5 I am employed in the County of Orange, State of California. I am over the age of 18 and not a  
6 party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA  
92612.

7 On December 14, 2015, I served the within document(s) described as **PHELAN PIÑON**  
8 **HILLS COMMUNITY SERVICES DISTRICT'S OBJECTIONS TO PROPOSED**  
9 **STATEMENT OF DECISION** on the interested parties in this action as follows:

10 **BY ELECTRONIC SERVICE:** By posting the document(s) listed above to the Santa Clara  
County Superior Court website in regard to Antelope Valley Groundwater matter pursuant to the  
Court's Clarification Order. Electronic service and electronic posting completed through  
11 www.scefiling.org.

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

13 Executed on December 14, 2015, at Irvine, California.

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16 Linda Yarvis

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ALESHIRE &  
WYNDR LLP  
ATTORNEYS AT LAW

