

1 ALESHIRE & WYNDER, LLP  
JUNE S. AILIN, State Bar No. 109498  
2 *jailin@awattorneys.com*  
STEPHEN R. ONSTOT, State Bar No. 139319  
3 *sonstot@awattorneys.com*  
18881 Von Karman Avenue, Suite 1700  
4 Irvine, California 92612  
Telephone: (949) 223.1170  
5 Facsimile: (949) 223.1180

6 Attorneys for Defendant and Cross-Complainant,  
Phelan Piñon Hills Community Services District  
7  
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**  
11

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

14 **ANTELOPE VALLEY**  
**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*  
23 *Lancaster*
- 24 *Diamond Farming Co. v. City of Lancaster*  
*Diamond Farming Co. v. Palmdale Water*  
*Dist.*
- 25 Riverside County Superior Court,  
Consolidated Action, Case Nos. RIC 353  
26 840, RIC 344 436, RIC 344 668

27 **AND RELATED CROSS-ACTIONS**  
28

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 NOTICE OF  
MOTION AND MOTION FOR  
DECLARATORY RELIEF RE  
WATERMASTER RESOLUTION NO. R-  
19-27 AND NOTICE OF ASSESSMENT  
OF REPLACEMENT WATER  
ASSESSMENTS FOR 2016, 2017 AND  
2018; DECLARATIONS OF JUNE S.  
AILIN AND DON BARTZ IN SUPPORT  
THEREOF**

Assigned for All Purposes To:  
Hon. Jack Komar

Date: November 7, 2019

Time: 9:00 a.m.

Place: Via CourtCall



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

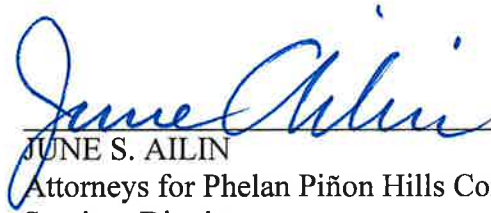
**TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE** that on November 7, 2019, at 9:00 a.m. or as soon thereafter as this matter may be heard by telephonic appearance via CourtCall, Cross-Defendant Phelan Piñon Hills Community Services District (“Phelan”) will, and hereby does, move for declaratory relief regarding the Antelope Valley Watermaster’s Resolution No. R-19-27 and the notice of assessment issued to Phelan by the Antelope Valley Watermaster dated July 15, 2019 which purports to demand payment by Phelan of replacement water assessments for 2016, 2017 and 2018.

This Motion is based on this Notice, the attached Memorandum of Points and Authorities, Declarations of Don Bartz and June S. Ailin, Exhibits 1 through 13, and on any other evidence and argument that may be presented on or before hearing on this matter.

DATED: September 27, 2019

ALESHIRE & WYNDER, LLP  
JUNE S. AILIN  
STEPHEN R. ONSTOT

By:   
\_\_\_\_\_  
JUNE S. AILIN  
Attorneys for Phelan Piñon Hills Community  
Services District



**TABLE OF CONTENTS**

**Page**

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

I.	INTRODUCTION.....	5
II.	STATEMENT OF RELEVANT FACTS .....	7
	A.    The December 23, 2015 Judgment Contemplates the Watermaster Will Establish Rules and Regulations for the Assessment and Collection of Replacement Water Assessments, But No Such Rules and Regulations Have Been Established .....	7
	B.    Phelan’s Appeal From the Court’s Order That Phelan Is Subject To A Replacement Water Assessments for Water Produced In 2016 and 2017 Is Still Pending.....	8
	C.    The Watermaster Purports to Adopt Replacement Water Assessment Rates .....	8
	D.    Phelan Receives The Invoice .....	10
III.	ARGUMENT .....	10
	A.    The Instant Motion Is Timely And Proper .....	10
	B.    With Regard to 2016 and 2017, the Notice of Assessment Is Improper Because It Is Tantamount to Requiring Phelan to Post a Bond Pending the Outcome of the Appeal Regarding the April 2018 Order .....	11
	C.    There Is No Substantial Evidence to Support the Amount of the Assessment .....	12
	D.    The Invoice is Invalid Because the Watermaster Has Not Adopted Rules and Regulations, or Procedures and Schedules, For Levying and Collecting Replacement Water Assessments.....	13
	E.    The Invoice Reflects Several Irregularities in Its Issuance .....	14
IV.	CONCLUSION .....	14

**ALESHIRE &  
WYNDER**  
ATTORNEYS AT LAW



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

**TABLE OF AUTHORITIES**

**Page**

**Cases**

*City of South San Francisco v. Cypress Lawn Cemetery*,  
(1992) 11 Cal.App.4<sup>th</sup> 916..... 11

**Statutes**

Code Civ. Proc. § 917.1 ..... 11  
Code Civ. Proc. § 995.220 ..... 11, 12  
Code Civ. Proc. § 1060 ..... 10

**INDEX TO EXHIBITS**

1 – Invoice .....19  
2 – Judgment Excerpts .....21  
3 – Notice of Appeal .....35  
4 – Resolution No. R-18-08 .....59  
5 – Resolution No. R-19-10 .....61  
6 – Letter dated April 23, 2019 .....63  
7 – Resolution No. R-19-11 .....66  
8 – April 24, 2019 Watermaster Agenda Packet .....68  
9 – Letter dated April 23, 2019 .....259  
10 – Resolution No. R-19-20 .....262  
11 – Resolution No. R-19-27 .....267  
12 – Letter dated August 26, 2019 .....269  
13 – Revised Invoice .....272

**ALESHIRE &  
WYNDER LLP**  
ATTORNEYS AT LAW



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On December 23, 2015, the Court signed a Judgment in the above-captioned action  
4 (“Judgment”), which included in Exhibit A to the Judgment the conditions of a physical solution for  
5 the Antelope Valley Adjudication Area under which parties would pay “Replacement Water  
6 Assessments” in certain circumstances. Phelan contends that under the Judgment it is not obligated to  
7 pay Replacement Water Assessments (“RWA” or “RWAs”) for water pumped during the first two  
8 calendar years after entry of the Judgment, which are also the first two years of a seven-year  
9 “rampdown period” (i.e., 2016 and 2017) during which no party to the Judgment is required to pay  
10 RWAs.

11 On January 24, 2018, the Antelope Valley Watermaster (“Watermaster”) voted to direct staff  
12 to impose RWAs (unspecified in amount) on Phelan for 2016 and 2017. Phelan filed a motion for  
13 declaratory relief which was heard by this Court on April 18, 2018. The Court denied Phelan’s  
14 motion in an order dated April 26, 2018 and entered on April 27, 2018 (the “April 2018 Order”).  
15 Phelan timely filed a notice of appeal from that order on May 17, 2018. That appeal is still pending.

16 On August 28, 2019, the Watermaster adopted Resolution No. R-19-27, purportedly  
17 establishing RWA rates for the years 2016, 2017 and 2018.

18 On September 6, 2019, Phelan received a notice of assessment in the form of a document  
19 identified as “INVOICE 1650CY19-IRWA,” dated July 15, 2019 with a stated due date of August 14,  
20 2019. The notice of assessment (generally referred to hereafter as the “invoice”) states amounts  
21 purportedly due from Phelan for RWAs for 2016, 2017 and 2018. It also states that delinquent  
22 balances will be assessed a 10% late fee. The July 15, 2019 invoice bears the following notation:  
23 “Per Resolution No. R-19-27 as passed by the Board of Directors of the Antelope Valley Watermaster  
24 at its meeting held August 28, 2019, in Palmdale, California.”

25 Phelan seeks a judicial determination of its rights and obligations with respect to Resolution  
26 No. R-18-27 and the invoice for the following reasons:

27 ///

28 ///





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

- The Judgment requires the Watermaster to establish rules and regulations, “procedures and schedules,” for the levying and collection of RWAs. The Watermaster has not yet established such rules and regulations, procedures and schedules.
- Phelan’s appeal from the April 2018 Order is still pending. As a public entity, Phelan is not obligated to pay an amount purportedly due pursuant to a judgment pending appeal.
- The Watermaster’s determination of the RWA rates, purportedly established in Watermaster Resolution No. R-19-27, is not supported by substantial evidence.
- The RWA rates are not properly related to the Watermaster’s costs. The invoice was prepared prior to the establishment of the RWA rates, showing the Watermaster had already decided, prior to any public notice or public hearing, what the RWA rates would be, prior to the adoption of Resolution No. R-19-27.
- The amount demanded by the invoice cannot be subject to penalties as of August 14, 2019, a date prior to the establishment of the RWA rates and prior to adoption of Resolution No. R-19-27.

Accordingly, a dispute exists between Phelan and the Watermaster as to Phelan’s rights and obligations with respect to Resolution No. R-19-27 and the invoice. For the reasons set forth below, Phelan requests that the Court direct the Watermaster to: (1) rescind the notice of assessment to Phelan; (2) rescind Watermaster Resolution No. R-19-27; (3) adopt rules and regulations, procedures and schedules, for the levying and collection of RWAs; (4) establish, with proper notice, new RWA rates that are supported by substantial evidence and do not exceed the Watermaster’s recovery of costs for obtaining replacement water; (5) issue a new notice of assessment to Phelan for the RWA for the year 2018 only; and (6) defer issuance of any notice of assessment to Phelan for RWAs for the years 2016 and 2017 until after the Court of Appeal’s decision on Phelan’s appeal from the April 2018 Order is final.

1 **II. STATEMENT OF RELEVANT FACTS**

2 **A. The December 23, 2015 Judgment Contemplates the Watermaster Will Establish**  
3 **Rules and Regulations for the Assessment and Collection of Replacement Water**  
4 **Assessments, But No Such Rules and Regulations Have Been Established**

5 Section 18.4.12 of the Judgment<sup>1</sup> provides that RWAs authorized by Paragraph 9 of the  
6 Judgment<sup>2</sup> “shall be levied and collected in according with the procedures and schedules  
7 determined by the Watermaster.” (Ex. 2 to Declaration of June S. Ailin, pages 31-32.) Section  
8 18.4.2 of the Judgment (Ex. 2 to Declaration of June S. Ailin, page 30) states that: “Before  
9 proposing rules and regulations, the Watermaster shall hold a public hearing. Thirty (30) days  
10 prior to the date of hearing, the Watermaster shall send to all Parties notice of the hearing and a  
11 copy of the proposed rules and regulations or amendments thereto.”

12 To date, the Watermaster has not adopted rules and regulations, or procedures and schedules,  
13 for levying and collecting RWAs. The Watermaster admits as much in its Resolution No. R-19-20,  
14 which purports to adopt a memorandum of its General Counsel concerning the collection of  
15 delinquent assessments, in which it “directs that the memorandum be incorporated into the final set of  
16 Rules and Regulations being prepared for Board adoption and approval by the Court.” (See Exhibit 10  
17 to Declaration of June S. Ailin attached hereto.) The adoption of Resolution No. R-19-20 was not  
18 itself the subject of a public hearing, and was not preceded by the release of a copy of the  
19 memorandum at least 30 days prior to a public hearing, as required by Section 18.4.2 of the Judgment.  
20  
21  
22  
23

24 <sup>1</sup> Defined terms used herein that are not defined herein have the meanings given to them by the  
25 Judgment and its Exhibit A.

26 <sup>2</sup> Paragraph 9 of the Judgment addresses RWAs levied on Producers “whose Production of  
27 Groundwater from the Basin in any Year is in excess of the sum of such Producer’s Production Right  
28 and Imported Water Return Flow available in that Year” and on members of the Non-Pumper Class.  
Nothing in Paragraph 9 addresses the levying of RWAs on Phelan, but Paragraph 9 is presumably the  
basis for the notice of assessment to Phelan.



1           **Phelan’s Appeal From the Court’s Order That Phelan Is Subject To A**  
2           **Replacement Water Assessments for Water Produced In 2016 and 2017 Is Still**  
3           **Pending**

4           On January 24, 2018 the Watermaster voted to direct staff to impose RWAs (unspecified in  
5 amount) on Phelan for 2016 and 2017. Phelan filed a motion for declaratory relief which was heard  
6 by this Court on April 18, 2018. The Court denied Phelan’s motion in an order dated April 26, 2018  
7 and entered on April 27, 2018 (the “April 2018 Order”). Phelan timely filed a notice of appeal from  
8 that order on May 17, 2018. That appeal is still pending. (See Declaration of June S. Ailin attached  
9 hereto.)

10           **The Watermaster Purports to Adopt Replacement Water Assessment Rates**

11           On February 28, 2018, the Watermaster adopted Resolution No. R-18-08, purporting to set a  
12 RWA rate for 2018 of \$415.00 per acre foot for Producers within the Antelope Valley – East Kern  
13 Water Agency (“AVEK”) service area. The resolution also stated a RWA rate for Producers outside  
14 the AVEK service area would be determined at a later date. (See Exhibit 4 to Declaration of June S.  
15 Ailin attached hereto.) The resolution does not incorporate by reference or identify any supporting  
16 reports, evidence or other materials to establish this rate, but it states the RWA is “consistent with the  
17 terms of the Judgment and is based on the actual cost of Replacement Water included Watermaster  
18 spreading costs.” Pursuant to Paragraph 3.5.41 of the Judgment, RWAs are to be limited to the costs  
19 incurred by the Watermaster related to Replacement Water.

20           On April 24, 2019, the Watermaster adopted Resolution No. R-19-10 purporting to set a RWA  
21 rate for 2018 of \$415.00 per acre foot for Producers within the service areas of Palmdale Water  
22 District and Littlerock Irrigation District. (See Exhibit 5 to Declaration of June S. Ailin attached  
23 hereto.) The resolution does not incorporate by reference or identify any supporting reports, evidence  
24 or other materials to establish this ratebut states the rate is “reflective of the proportional share of State  
25 Water Project fixed costs applicable to those Producers outside the AVSWCA boundaries, are  
26 consistent with the terms of the Judgment and are based on the actual cost of Replacement Water,  
27 including Watermaster spreading costs.”  
28





1 Also on April 24, 2019, the Watermaster adopted Resolution No. R-19-11 purporting to set a  
2 RWA rate for 2019 of \$451.00 per acre foot for Producers within the boundaries of the Antelope  
3 Valley State Water Contractors Association (“AVSWCA”), and a RWA rate of \$948 per acre foot for  
4 Producers outside the AVSWCA boundaries. (See Exhibit 7 to Declaration of June S. Ailin attached  
5 hereto.) Like Resolution No. R-19-10, this resolution does not incorporate by reference or identify  
6 any supporting reports, evidence or other materials to establish this rate, but states the rates are  
7 “reflective of the proportional share of State Water Project fixed costs applicable to those Producers  
8 outside the AVSWCA boundaries, are consistent with the terms of the Judgment and are based on the  
9 actual cost of Replacement Water, including Watermaster spreading costs.” The agenda packet for the  
10 April 24, 2019 meeting of the Watermaster contains no staff report regarding these resolutions, but  
11 does include a Financial Analysis Study for Replacement Water Assessment prepared by Raftelis for  
12 the AVSWCA (the “Raftelis Report”). (See Exhibit 8 to Declaration of June S. Ailin attached hereto.)

13 Counsel for Phelan, having obtained the agenda for the April 24, 2019 meeting of the  
14 Watermaster and the Raftelis Report, submitted a comment letter on the agenda item regarding the  
15 setting of RWA rates. (See Exhibit 9 to Declaration of June S. Ailin attached hereto.)

16 On August 28, 2019, the Watermaster adopted Resolution No. R-19-27 purporting to set a  
17 RWA rate for 2016 and 2017 of \$415.00 per acre foot for Producers within the boundaries of the  
18 AVSWCA. (See Exhibit 11 to Declaration of June S. Ailin attached hereto.) The resolution does not  
19 incorporate by reference or identify any supporting reports, evidence or other materials to establish  
20 this rate, but states the rates are “reflective of the proportional share of State Water Project fixed costs  
21 applicable to those Producers outside the AVSWCA boundaries, are consistent with the terms of the  
22 Judgment and are based on the actual cost of Replacement Water, including Watermaster spreading  
23 costs.” Counsel for Phelan, having obtained the agenda for the August 28, 2019 meeting of the  
24 Watermaster and the Raftelis Report, submitted a comment letter on the agenda item regarding the  
25 setting of RWA rates. (See Exhibit 12 to Declaration of June S. Ailin attached hereto.)

26 The rates purportedly established by Resolution No. R-19-27 are as follows:

- 27 • For Producers within the boundaries of the AVSWCA, \$415.00 per acre foot for 2016  
28 and 2017



- 1           • For Producers outside the boundaries of the AVSWCA:
  - 2               ○ \$896.00 per acre foot for 2016
  - 3               ○ \$896.00 per acre foot for 2017
  - 4               ○ \$914.00 per acre foot for 2018

5           **D.     Phelan Receives The Invoice**

6           On September 6, 2019, Don Bartz, Phelan’s general manager, received an invoice from the  
7 Watermaster in the mail. (See Exhibit 1 to Declaration of Don Bartz attached hereto, ¶¶ 1,2.) The  
8 invoice is dated July 15, 2019 and states the invoiced amount is due August 14, 2019 and delinquent  
9 balances will be assessed a 10% late fee. The invoice, despite its July 15, 2019 date, also states: “Per  
10 Resolution No. R-19-27 as passed by the Board of Directors of the Antelope Valley Watermaster at its  
11 meeting held August 28, 2019, in Palmdale, California.”

12           The rates per acre foot stated in the invoice are those stated in Resolution No. R-19-27.  
13 However, the number of acre feet stated to have been pumped in 2018, 385.18, is incorrect. The  
14 correct amount is 176.83 acre feet. Mr. Bartz’s staff informed the Watermaster of the error with  
15 respect to the amount pumped in 2018. Phelan received a revised invoice on September 26, 2019.  
16 (See Exhibit 13 to Declaration of Don Bartz attached hereto, ¶¶ 3 4.) The only changes made were to  
17 the number of acre feet and assessment amount for 2018.

18           **III.    ARGUMENT**

19           **A.     The Instant Motion Is Timely And Proper**

20           Section 6.5 of the Judgment states that the Court is to retain jurisdiction over its interpretation  
21 and enforcement. (Ex. 2, pp. 36-37.) Section 20.3 states that the Court may review actions of the  
22 Watermaster via motion, and Section 20.3.3 states that motions regarding Watermaster actions may be  
23 made within 90 days after the action was taken, except that motions to review assessments must be  
24 filed within 30 days after the date the Watermaster mailed the notice of assessment. (Ex. 2, pp. 42,  
25 43.) Accordingly, the instant Motion is timely. Resolution No. R-19-27 setting the RWA rates was  
26 adopted on August 28, 2019. The notation on the invoice regarding adoption of Resolution No. R-19-  
27 27 indicates the invoice could not have been mailed earlier than August 28, 2019. Therefore, this  
28 motion is timely.



1 Code of Civil Procedure section 1060 states, in relevant part:

2 Any person interested under a written instrument... or who desires a  
3 declaration of his or her rights or duties with respect to another... may, in cases of  
4 actual controversy relating to the legal rights and duties of the respective parties, bring  
5 an ... action for a declaration of his or her rights and duties ... including a  
6 determination of any question of construction or validity arising under the  
7 instrument... The declaration may be had before there has been any breach of the  
8 obligation in respect to which said declaration is sought.

9 Accordingly, the instant Motion for declaratory relief is proper to determine the validity of Resolution  
10 No. R-19-27 and the notice of assessment.

11 **B. With Regard to 2016 and 2017, the Notice of Assessment Is Improper Because It**  
12 **Is Tantamount to Requiring Phelan to Post a Bond Pending the Outcome of the**  
13 **Appeal Regarding the April 2018 Order**

14 A private party, subject to a judgment for the payment of money, is in most instances required  
15 to post a bond or make a deposit to forestall enforcement of the judgment pending appeal. (Code of  
16 Civil Procedure § 917.1.) By contrast, a government agency, such as Phelan, is not required to post a  
17 bond or make a deposit to avoid enforcement of a money judgment pending appeal. (Code of Civil  
18 Procedure § 995.220.) The rule that government agencies are not required to post bonds or make  
19 deposits for any purpose applies even when a statute requires a bond or deposit. (*City of South San*  
20 *Francisco v. Cypress Lawn Cemetery* (1992) 11 Cal.App.4<sup>th</sup> 916.) Code of Civil Procedure § 995.220  
21 “reflects the deliberate conclusion of the Legislature that the public good is best served by excusing  
22 governmental entities from the security requirements otherwise imposed on litigants. One of the  
23 benefits fostered by this policy is the reduction of public funds expended in furnishing undertakings,  
24 defending against efforts to recover, and responding in damages like private parties.” (*Id.* at 922.)

25 While the April 2018 Order that is the subject of a pending appeal by Phelan was not a money  
26 judgment, it paved the way for the Watermaster’s issuance of the invoice. Further, if the April 2018  
27 Order had stated Phelan was liable for a specific amount, Phelan would not have to pay that amount  
28 pending appeal or post a bond or make a deposit pending appeal. By issuing an invoice to Phelan for



1 RWAs for the two years at issue in the April 2018 Order, the Watermaster is, in effect, seeking to  
2 enforce the April 2018 Order, or seeking a bond or deposit, while the appeal from the April 2018  
3 Order is pending. In light of Code of Civil Procedure § 995.220, Phelan cannot be made to pay  
4 RWAs for 2016 and 2017 until its appeal from the April 2018 Order is final.

5 Accordingly, this Court should order the Watermaster to rescind the invoice, at least as to the  
6 RWAs for 2016 and 2017, until Phelan’s appeal from the April 2018 Order is final.

7 **C. There Is No Substantial Evidence to Support the Amount of the Assessment**

8 Section 3.5.41 of the Judgment defines a Replacement Water Assessment as: “the amount  
9 charged by the Watermaster to pay for all costs incurred by the Watermaster related to Replacement  
10 Water.” (Ex. 2, page 22). There is no substantial evidence establishing that the RWA rates in fact  
11 represent all such costs or any of such costs, and no substantial evidence explaining why some  
12 Producers receive significantly lower rates than those demanded of Phelan, and why some of the rates  
13 change every year while others do not.

14 Resolution Nos. R-19-11 and R-19-27 state that the rate is “reflective of the proportional share  
15 of State Water Project fixed costs applicable to those Producers outside the AVSWCA boundaries, are  
16 consistent with the terms of the Judgment and are based on the actual cost of Replacement Water,  
17 including Watermaster spreading costs.” (See Exhibits 7 and 11 to Declaration of June S. Ailin  
18 attached hereto.) There is no substantial evidence to support this finding.

19 The April 24, 2019 agenda packet includes a copy of the Raftelis Report, which was not  
20 prepared for the Watermaster, but for the AVSCWA. (See Ex. 8 to Declaration of June S. Ailin, pages  
21 192-208.) The purpose of the report appears to be to justify recovery of costs incurred by the  
22 AVSCWA rather than the Watermaster. The Raftelis Report centers around recovery of various costs,  
23 including, but not limited to, capital costs inflated to current values, incurred by the members of the  
24 State Water Project, since the inception of the State Water Project. The original cost of construction  
25 of the State Water Project in 1962 has been inflated from its original dollar amounts to supposedly  
26 2018 values, using an average cost escalation factor of 3.9 percent which is purported equal to the  
27 average annual increase in the Consumer Price Index between 1962 and 2017. Which Consumer Price  
28 Index was used for this calculation is not disclosed.



1 The report does not indicate any consideration has been given to whether any of these capital  
2 costs have already been recouped from other sources, such as property taxes, water rates or charges,  
3 contracts with parties who receive direct water deliveries from the State Water Project, state, federal  
4 or other grants, or other sources, such that the RWA rates should be lower, or perhaps should not  
5 include a component for these capital costs at all. The objective appears to be to generate a revenue  
6 stream for the AVSCWA rather than recover the Watermaster's costs.

7 The Raftelis Report does not examine whether or how the costs presented in the report relate to  
8 costs incurred by the Watermaster in providing Replacement Water. There is no evidence presented  
9 that the Watermaster has in fact purchase any Replacement Water, what costs it incurred to do so and  
10 what spreading costs the Watermaster has incurred.

11 Accordingly, Resolution No. R-19-27 and the invoice issued to Phelan should be invalidated  
12 because there is no substantial evidence to show that the RWA rates in fact represent the  
13 Watermaster's cost of obtaining Replacement Water. Further, the Watermaster, if it wishes to levy  
14 RWAs, must be required to adopt a new resolution supported by substantial evidence of the  
15 Watermaster's actual costs

16 **D. The Invoice is Invalid Because the Watermaster Has Not Adopted Rules and**  
17 **Regulations, or Procedures and Schedules, For Levying and Collecting**  
18 **Replacement Water Assessments**

19 To date, the Watermaster has not adopted rules and regulations, or procedures and schedules,  
20 for levying and collecting, RWAs, as required by Sections 18.4.12 and 18.4.2 of the Judgment.

21 Because the Watermaster has not complied with the directive of the Judgment to adopt rules  
22 and regulations, or procedures and schedules, for levying and collecting RWAs, the invoice must be  
23 invalidated and the Watermaster must be directed to adopt the necessary rules and regulations  
24 procedures and schedules, before re-issuing the invoice.

25 While the adoption of rules and regulations, or procedures and schedules, for levying and  
26 collecting RWAs may seem like a mere formality, the irregularities in the invoice itself demonstrate  
27 that such rules and regulations, procedures and schedules, are in fact necessary and are not a trivial  
28 matter.



1           **E.       The Invoice Reflects Several Irregularities in Its Issuance**

2           Only after the invoice was prepared did the Watermaster actually determine the applicable  
3 RWA rates. The July 15, 2019 invoice date predates the admitted later adoption of Resolution No. R-  
4 19-27 by approximately six weeks. Fundamentally, the RWA rates were actually adopted in secret  
5 and the adoption of Resolution No. R-19-27 at the August 28, 2019 Watermaster meeting.

6           The invoice states delinquent balances will be assessed a 10% late fee. Exactly when that late  
7 fee becomes applicable is unclear, but given that the due date on both the original and the revised  
8 invoices is two weeks early than the purported public adoption of Resolution No. R-19-27, and the  
9 invoice, received by Phelan on September 6, 2019, could not even have been mailed until August 28,  
10 2019 at the earliest, it would be outrageous for the Watermaster to expect payment of a delinquency  
11 fee. (See Declaration of Don Bartz, ¶ 2.)

12           Further, as to the RWA for 2018, the Watermaster used incorrect information regarding how  
13 much Groundwater Phelan had Produced in 2018. (See Declaration of Don Bartz, ¶ 3.)

14           These irregularities require invalidation of the assessments reflected in the invoice and the  
15 invoice itself. Moreover, it is these kinds of irregularities that demonstrate the need for and the  
16 importance of the Watermaster properly adopting rules and regulations, procedures and schedules,  
17 before issuing notices of assessment.

18           **IV.       CONCLUSION**


19           For all of the foregoing reasons, the Court should enter an order requiring the Watermaster to:  
20 (1) rescind the notice of assessment to Phelan; (2) rescind Watermaster Resolution No. R-19-27; (3)  
21 adopt rules and regulations, procedures and schedules, for the levying and collection of RWAs; (4)  
22 establish, with proper notice, new RWA rates that are supported by substantial evidence and do not  
23 exceed the Watermaster's recovery of costs for obtaining replacement water; (5) issue a new notice of  
24 assessment to Phelan for the RWA for the year 2018 only; and (6) defer issuance of any notice of  
25 assessment to Phelan for RWAs for the years 2016 and 2017 until after the Court of Appeal's decision  
26 on Phelan's appeal from the April 2018 Order is final.

27       ///

28       ///

1 DATED: September 27, 2019

ALESHIRE & WYNDER, LLP  
JUNE S. AILIN  
STEPHEN R. ONSTOT

By:   
JUNE S. AILIN  
Attorneys for Phelan Piñon Hills Community  
Services District

ALESHIRE &  
WYNDER, LLP  
ATTORNEYS AT LAW



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



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

**DECLARATION OF DON BARTZ**

I, Don Bartz, declare as follows:

1. I am the General Manager for Phelan Piñon Hills Community Services District (“Phelan”), which is a party to this groundwater adjudication commonly referred to as the Antelope Valley Groundwater Cases. I have been employed by Phelan since its formation in 2008. I make this declaration in support of Phelan’s Motion for Declaratory Relief Re Watermaster Resolution No. R-19-27 and Notice of Assessment of Replacement Water Assessments for 2016, 2017 and 2018. I have personal knowledge of the facts set forth in this Declaration, and if called as a witness, could and would testify competently to such facts under oath.

2. Attached hereto as Exhibit 1 is a true and correct copy of an invoice from the Antelope Valley Watermaster which I received via U.S. Mail on September 6, 2019. I interpret this invoice to be a notice of assessment issued pursuant to the Judgment in the above-captioned action.

3. A member of my staff, in reviewing the invoice, noted that the invoice incorrectly states the number of acre feet of groundwater pumped by Phelan in 2018 from Well 14, its only well in the Antelope Valley Groundwater Adjudication Area. The correct number of acre feet pumped is 176.83.

4. On September 26, 2019, I received a revised invoice from the Watermaster. A true and correct copy of the revised invoice is attached as Exhibit 13.

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

Executed on this 27th day of September 2019, at Irvine, California.

Don Bartz



**DECLARATION OF JUNE S. AILIN**

I, June S. Ailin, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a partner with Aleshire & Wynder, LLP, attorneys of record in the above-captioned action for Defendant and Cross-Complainant Phelan Piñon Hills Community Services District. I make this declaration in support of Phelan’s Motion for Declaratory Relief Re Watermaster Resolution No. R-19-27 and Notice of Assessment of Replacement Water Assessments for 2016, 2017 and 2018.

2. Attached hereto as Exhibit 2 is a true and correct copy of excerpts from Exhibit A to the Judgment entered on December 28, 2015 containing the portions of that document pertinent to this Motion.

3. On January 24, 2018 the Watermaster voted to direct staff to impose Replacement Water Assessments (unspecified in amount) on Phelan for 2016 and 2017. On Phelan’s behalf, my law firm filed a motion for declaratory relief which I argued before this Court on April 18, 2018. The Court denied Phelan’s motion in an order dated April 26, 2018 and entered on April 27, 2018 (the “April 2018 Order”). Phelan timely filed a notice of appeal from that order on May 17, 2018. A true and correct copy of the notice of appeal is attached hereto as Exhibit 3. That appeal is still pending.

4. Attached hereto as Exhibit 4 is a true and correct copy of Resolution No. R-18-08 of the Antelope Valley Watermaster, dated February 28, 2018, Adopting a Replacement Water Assessment for Year 2018. I printed this copy of the resolution was printed from the Watermaster’s website on September 25, 2019.

5. Attached hereto as Exhibit 5 is a true and correct copy of Resolution No. R-19-10 of the Antelope Valley Watermaster, dated April 24, 2019, Adopting Replacement Water Assessments for Year 2018 for Palmdale Water District and Littlerock Irrigation District. I printed this copy of the resolution from the Watermaster’s website on September 25, 2019.

6. Attached hereto as Exhibit 6 is a true and correct copy of a letter I sent to the Watermaster engineer, copied to the Watermaster’s legal counsel, on April 23, 2019.

7. Attached hereto as Exhibit 7 is a true and correct copy of Resolution No. R-19-11 of the Antelope Valley Watermaster, dated April 24, 2019, Adopting Replacement Water Assessments

**ALESHIRE &  
WYNDER**  
ATTORNEYS AT LAW





1 for Year 2019. I printed this copy of the resolution from the Watermaster's website on September 25,  
2 2019.

3 8. Attached hereto as Exhibit 8 is a true and correct copy of the entire agenda packet for  
4 the Watermaster's April 24, 2019 board meeting. I printed this copy of the agenda packet from the  
5 Watermaster's website on September 25, 2019.

6 9. Attached hereto as Exhibit 9 is a true and correct copy of a letter I sent to the  
7 Watermaster engineer, copied to the Watermaster's legal counsel, on April 23, 2019.

8 10. Attached hereto as Exhibit 10 is a true and correct copy of Resolution No. R-19-20 of  
9 the Antelope Valley Watermaster, dated June 26, 2019, Adopting May 16, 2019 Memorandum from  
10 General Counsel Concerning Collecting Delinquent Assessments. I printed this copy of the resolution  
11 was printed from the Watermaster's website on September 25, 2019.

12 11. Attached hereto as Exhibit 11 is a true and correct copy of Resolution No. R-19-27 of  
13 the Antelope Valley Watermaster, dated August 28, 2019, Adopting Replacement Water Assessments  
14 for Years 2016, 2017 and 2018 for Antelope Valley Water Contractors Association. I printed this  
15 copy of the resolution was printed from the Watermaster's website on September 25, 2019.

16 12. Attached hereto as Exhibit 12 is a true and correct copy of a letter I sent to the  
17 Watermaster engineer, copied to the Watermaster's legal counsel, on August 26, 2019.

18  
19 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
20 true and correct.

21 Executed on this 27 th day of September 2019, at El Segundo, California.

22  
23   
24 June S. Ailin

28