

Case No. F082094

**IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA  
FIFTH APPELLATE DISTRICT**

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**ANTELOPE VALLEY GROUNDWATER CASES**

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**PETITION FOR REHEARING OF APPELLANT PHELAN  
PIÑON HILLS COMMUNITY SERVICES DISTRICT**

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On Appeal From the Superior Court for the State of  
California, County of Los Angeles, Case No. JCCP 4408,  
Hon. Jack Komar

ALESHIRE & WYNDER, LLP  
\*June S. Ailin, State Bar No. 109498  
jailin@awattorneys.com  
Nicolas Papajohn, State Bar No. 305364  
npapajohn@awattorneys.com  
2361 Rosecrans Ave., Suite 475  
El Segundo, California 90245  
Tel: (310) 527.6660  
Fax: (310) 532.7395

Attorneys for Appellant  
PHELAN PIÑON HILLS COMMUNITY SERVICES  
DISTRICT

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Appellant Phelan Piñon Hills Community Services District requests rehearing for the reasons set forth below.

**I. REHEARING SHOULD BE GRANTED TO ADDRESS A FACT OMITTED FROM THE STATEMENT OF FACTS**

In its opinion in this case, the Court has adopted as fact the opinion of Dr. Dennis Williams that Phelan’s pumping causes the AVAA “to have a net loss to the AVAA groundwater supplies of 700 afy.” This opinion of Dr. Williams is mentioned in the Court’s opinion multiple times. (Slip Opinion, pp. 1,5, 21, 23, 27.)

By simply stating the opinion in this way, however, the Court has obscured another important fact, which is also evidence from Dr. Williams’ testimony – that *Phelan’s pumping prevents 500 afy from flowing into the adjacent El Mirage Valley, outside the AVAA.* Absent Phelan’s pumping, the AVAA would experience a net loss of 1200 afy, not 700 afy. (47 RT 25609:19-27) Phelan made

reference to this aspect of Dr. Williams' testimony in its briefs. (Opening Brief at 37, 47; Reply Brief at 26 fn. 7)

The opinion in this appeal should be modified to include this additional fact, which, when recognized, impacts the discussion, and the outcome of the analysis of, whether Phelan is entitled to any water without payment of a replacement water assessment, as imported water, salvage water or return flow.

**II. RECOGNITION OF THE OMITTED FACT  
REQUIRES A DIFFERENT CONCLUSION  
REGARDING WHETHER PHELAN IS ENTITLED TO  
SOME FREE PUMPING**

Recognition of the fact Phelan's pumping keeps 500 afy from leaving the AVAA requires a change in the conclusion regarding whether Phelan imports or salvages water. While this 500 afy may not be entirely new to the water cycle in the eastern end of the Antelope Valley groundwater basin, without Phelan's pumping, it would not be available to *any* of the parties to this groundwater adjudication.

One who salvages water is entitled to the use of that water. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4<sup>th</sup> 266, 304-305, citing *Pomona Land & Water Co. v. San Antonio Water Co.* (1908) 152 Cal. 618.) Therefore, Phelan is entitled to pump the 500 afy that remains in the basin due to Phelan's actions *without* paying a replacement water assessment. Such a conclusion impacts no other party to this case because, absent Phelan's pumping, that 500 afy would not be available to other parties to the adjudication.

Alternatively, Phelan could be viewed as an importer of that 500 afy, which would entitle Phelan to pump the return flow from that 500 afy.

Objections may be raised that Phelan never claimed to have rights to that 500 afy. However, it was only in the very last phase of the trial, on whether the proposed physical solution would be effective, that Dr. Williams' testimony on this point became part of the evidentiary record. Thus, Phelan could not have raised it in an earlier phase of the trial.

Objections may also be raised that this issue was not raised earlier in the course of the appeal in this case. In fact, Phelan did argue it was entitled to some free pumping based on Dr. William's opinion. Phelan's counsel did argue, at the end of the last phase of trial, that on the basis of Dr. Williams' opinion in this regard, Phelan should be viewed as an importer as to the 500 afy that Phelan's pumping retains in the AVAA and should not be obligated to pay a replacement water assessment for that 500 afy. (50 RT 27445:2-24, 27448:10-22) While the reasons stated as to why Phelan is entitled to some consideration for keeping 500 afy in the AVAA may be somewhat different, the issue is not new. Nevertheless, even if this were a new issue, it is within the Court's discretion to consider it because it would likely produce either a different result or different reasoning. (*Alameda County Mgmt. Employees Ass'n v. Superior Court* (2011) 195 CA4th 325, 338, fn. 10.)

**III. CONCLUSION**

For the reasons set forth above, Appellant respectfully requests that the Court grant the petition for rehearing and modify the opinion.

DATED: Dec. 21, 2020      ALESHIRE & WYNDER, LLP  
Attorneys At Law  
JUNE S. AILIN  
NICOLAS D. PAPAJOHN

By:         /s/ June S. Ailin          
JUNE S. AILIN  
Attorneys for Appellant  
PHELAN PIÑON HILLS  
COMMUNITY SERVICES  
DISTRICT



**CERTIFICATE OF WORD COUNT**

[Cal. Rules of Court, Rule 8.204(c)(1)]

I certify pursuant to Rule 8.204(c) of the California Rules of Court, the attached Petition for Rehearing of Phelan Piñon Hills Community Services District was produced on a computer and contains 677 words, excluding cover pages, tables of contents and authorities, and signature lines, as counted by the Microsoft Word 2010 word-processing program used to generate this brief.

/s/ June S. Ailin

June S. Ailin

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF ORANGE**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 2361 Rosecrans Ave., Suite 475, El Segundo, CA 90245.

On December 21, 2020, I served true copies of the following document(s) described as **PETITION FOR REHEARING OF APPELLANT PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT** on the interested parties in this action as follows:

**BY TRUEFILING (EFS):** I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling portal operated by ImageSoft, Inc. Participants in the case who are registered EFS users will be served by the TrueFiling EFS system. Participants in the case who are not registered TrueFiling EFS users will be served by mail or by other means permitted by the court rules.

**BY ELECTRONIC SERVICE:** By posting the document(s) to the Antelope Valley WaterMaster website in regard to Antelope Valley Groundwater matter with e-service to all parties listed on the website's Service List. Electronic service and electronic posting completed through [www.avwatermaster.org](http://www.avwatermaster.org) via Glotrans.

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

Executed on December 21, 2020, at El Segundo, California.



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Lilia Madrid