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12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF SANTA CLARA

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15 COORDINATION PROCEEDING )  
16 SPECIAL TITLE (Rule 1550(b)) ) Judicial Council Coordination  
17 ) Proceeding No. 4408  
18 )  
19 ANTELOPE VALLEY GROUNDWATER )  
20 CASES ) CASE NO. 1-05-CV-049053  
21 )  
22 INCLUDED ACTIONS: )  
23 )  
24 LOS ANGELES COUNTY WATERWORKS )  
25 DISTRICT NO. 40 v. DIAMOND ) CROSS-COMPLAINT OF BOLTHOUSE  
26 FARMING COMPANY, et al., ) PROPERTIES, LLC AND CROSS-  
Los Angeles Superior Court ) COMPLAINT OF WM. BOLTHOUSE  
Case No. BC325201 ) FARMS, INC. AGAINST PHELAN  
PINON HILLS COMMUNITY SERVICES  
DISTRICT  
LOS ANGELES COUNTY WATERWORKS )  
DISTRICT NO. 40 v. DIAMOND )  
FARMING COMPANY, et al., )  
Kern County Superior Court )  
Case No. S-1500-CV-254348 )  
DIAMOND FARMING COMPANY, and )  
W.M. BOLTHOUSE FARMS, INC., v. )  
CITY OF LANCASTER, et al., )  
Riverside Superior Court )  
Case No. RIC 344436 [c/w case no. )  
RIC 344668 and 353840] )  
ROSAMOND COMMUNITY SERVICES )  
DISTRICT, )  
CROSS-COMPLAINANT, )

1 BOLTHOUSE PROPERTIES, LLC, WM. )  
 BOLTHOUSE FARMS, INC., )  
 2 )  
 Cross-Complainant, )  
 3 )  
 v. )  
 4 )  
 ROSAMOND COMMUNITY SERVICES )  
 5 DISTRICT; LOS ANGELES COUNTY )  
 WATERWORKS DISTRICT NO. 40; )  
 6 PALMDALE WATER DISTRICT; CITY )  
 OF LANCASTER; CITY OF )  
 7 PALMDALE; LITTLE ROCK CREEK )  
 IRRIGATION DISTRICT; PALM )  
 8 RANCH IRRIGATION DISTRICT; )  
 CALIFORNIA WATER SERVICE )  
 9 COMPANY; ANTELOPE VALLEY-EAST )  
 KERN WATER AGENCY; COUNTY OF )  
 10 SANITATION DISTRICTS NOS. 14; )  
 and MOES 1 through 10,000, )  
 11 )  
 Cross-Defendants. )  
 12 )  
 13 )  
 14 )  
 15 )  
 16 AND ALL RELATED CROSS-ACTIONS. )

17 Cross-Defendants/Cross-Complainants, BOLTHOUSE PROPERTIES,  
 18 LLC., and WM. BOLTHOUSE FARMS, INC., complain against PHELAN  
 19 PINION HILLS COMMUNITY SERVICES DISTRICT, on such grounds as are  
 20 appropriate given the allegations in such Cross-Complaints, as  
 21 follows:

22 **GENERAL ALLEGATIONS**

23 1. Cross-Complainant, BOLTHOUSE PROPERTIES, LLC, is and at  
 24 all times herein mentioned was, a Limited Liability Company  
 25 authorized to do business in the State of California.  
 26

1           2.    Cross-Complainant, WM. BOLTHOUSE FARMS, INC., is a  
2 California Corporation authorized to do business in the State of  
3 California.

4           3.    Cross-Complainant BOLTHOUSE PROPERTIES, LLC, own in fee  
5 certain parcels of real property, and/or own/lease water rights  
6 for certain properties, (hereinafter individually referred to as a  
7 "PARCEL") in the Antelope Valley area of Los Angeles County and  
8 Kern County, California. Each PARCEL is identified in Exhibit "A"  
9 attached hereto and herein incorporated by reference.

10          4.    Cross-Complainant WM. BOLTHOUSE FARMS, INC., own in fee  
11 certain parcels of real property, and/or own/lease water rights  
12 for certain properties, (hereinafter individually referred to as a  
13 "PARCEL") in the Antelope Valley area of Los Angeles County,  
14 California. Each PARCEL has previously been identified in  
15 previous Complaints filed by WM. BOLTHOUSE FARMS, INC. in the  
16 Riverside action which was later coordinated with the Los Angeles  
17 County and Kern County actions filed by Los Angeles County  
18 Waterworks District No. 40.

19          5.    Each PARCEL overlies percolating groundwater, the  
20 extent of which is unknown to Cross-Complainants. Cross-  
21 Complainants hereby incorporate by reference, as if set forth at  
22 length verbatim, all Complaints and Cross-Complaints filed by any  
23 party to this action, and/or filed in the future by any party, not  
24 for the truth thereof, but as and for a basis for bringing this  
25 Cross-Complaint.

26          6.    Cross-Complainants are ignorant of the true names and

1 capacities, whether individual, corporate, governmental, or  
2 otherwise, of the Cross-Defendants named in this Cross-Complaint  
3 as Moes 1 through 10,000, inclusive, and therefore sues these  
4 Cross-Defendants by these fictitious names. Cross-Complainants  
5 will amend this Cross-Complaint to allege the fictitiously-named  
6 Cross-Defendants' names and capacities when ascertained.

7 7. By virtue of the location of each PARCEL overlying  
8 groundwater, Cross-Complainants hold an overlying water right or  
9 other right to groundwater, entitling Cross-Complainants to  
10 extract groundwater and to put the water to reasonable and  
11 beneficial use on the property ("Cross-Complainants' overlying  
12 water rights").

13 8. Cross-Complainants are informed and believe, and on the  
14 basis of such information and belief allege, that each of the  
15 Cross-Defendants currently extracts, and/or claims a right to  
16 extract, groundwater for use on property not held by the  
17 extracting Cross-Defendants or for some other non-overlying use.

18 9. Cross-Complainants have an appurtenant right and/or  
19 other water right to pump and reasonably use groundwater on the  
20 parcels at issue in this lawsuit. These rights to pump  
21 groundwater are/may be superior to rights of the Cross-Defendants  
22 and/or other Cross-Defendants depending upon the priority rights  
23 of such Cross-Defendants based upon the California priority water  
24 allocation system.

25 10. Cross-Complainants are informed and believe, and on the  
26 basis of such information and belief, allege that each Cross-

1 Defendants' claim that it has water rights to extract groundwater  
2 for uses that are superior to, or coequal with, Cross-  
3 Complainants' overlying water rights, based upon an alleged  
4 superior water right, claim of prescription or otherwise, whether  
5 in law or in equity.

6 11. Cross-Complainants are informed and believe, and on the  
7 basis of such information and belief, allege that Phelan Pinon  
8 Hills Community Services District began pumping appropriated  
9 surplus water from the Antelope Valley to provide water for their  
10 municipal and industrial water customers. At the onset of pumping  
11 by the Phelan Pinon Hills Community Services District, the same  
12 was lawful and permissive and did not immediately nor  
13 prospectively invade or impair any overlying right.

14 12. Over time, the urban areas within the Antelope Valley  
15 continued to expand and grow both in land area and population, and  
16 thus, over time the Phelan Pinon Hills Community Services District  
17 increased, and today, continue to increase their demand of water.

18 Cross-Complainants are informed and believe, and on the basis of  
19 such information and belief, allege that at some as yet  
20 unidentified historical point, the aggregate extractions of  
21 groundwater from the Antelope Valley began to exceed the safe  
22 yield of the Valley. Despite the potential for damage to the  
23 water supply and the rights of owners of real property within the  
24 Valley, the Phelan Pinon Hills Community Services District, with  
25 knowledge, continued to extract groundwater from the common  
26 supply, and increased and continue to increase their extractions

1 of groundwater over time. The Phelan Pinon Hills Community  
2 Services District continued the act of pumping with the knowledge  
3 that the continued extractions were damaging, long term, the  
4 Antelope Valley and in the short term, impairing the rights of  
5 property owners, including the rights in the land owned by Cross-  
6 Complainants, which is overlying and within the Antelope Valley.

7 13. Cross-Complainants are informed and believe, and on the  
8 basis of such information and belief, allege that the Phelan Pinon  
9 Hills Community Services District pumped and continue to pump  
10 water in excess of the safe yield with the knowing intent and  
11 belief that they could take by claim of prescription, without  
12 compensation, the water rights of Cross-Complainants and all  
13 landowners overlying the Antelope Valley. Additionally, all  
14 Phelan Pinon Hills Community Services District continued to pump  
15 ever increasing quantities of groundwater, knowing that even if  
16 their prescriptive claims failed, they could preserve the right to  
17 continue their pumping under a claim of an intervening public use.

18 Despite the knowing intent to take the overlying property  
19 landowners' rights, no Phelan Pinon Hills Community Services  
20 District took any steps calculated and intended to inform or  
21 otherwise notify any landowner of their adverse and hostile claim  
22 or that their pumping of groundwater was an invasion of and a  
23 taking of the landowners' property rights.

24 14. During the material time that each Phelan Pinon Hills  
25 Community Services District was pumping, none physically  
26 trespassed upon nor invaded any overlying property. No Phelan

1 Pinon Hills Community Services District stopped, restricted,  
2 interfered with or physically or by regulation reduced Cross-  
3 Complainants' or any overlying landowners' right and ability to  
4 pump groundwater from the Antelope Valley. No Phelan Pinon Hills  
5 Community Services District ever took any affirmative action  
6 reasonably calculated to inform or notify any overlying landowner  
7 that the Phelan Pinon Hills Community Services District intended  
8 to take or were taking by prescription the overlying water rights.

9 15. Between 1960 and 1980, the Antelope Valley East Kern  
10 Water Agency (hereinafter "AVEK") was created to import water from  
11 northern California to southern California. As part of its  
12 operations, AVEK, in addition to other water importers, have  
13 brought and now brings imported water to the Antelope Valley.  
14 This imported water was at all material times available for  
15 purchase by the Phelan Pinon Hills Community Services District.  
16 Based upon information and belief, it is alleged that the Phelan  
17 Pinon Hills Community Services District consciously chose to not  
18 purchase all of the available higher priced imported water to meet  
19 their water needs and instead chose to continue to pump and to  
20 increase their extractions of groundwater from the Antelope  
21 Valley, because, despite the damage to the Valley, groundwater was  
22 cheaper than the imported water.

23 16. In late 2004, the Los Angeles County Board of  
24 Supervisors unanimously voted to authorize Los Angeles County  
25 Waterworks District 40 to file and prosecute the present legal  
26 actions which seeks a judicial declaration that Los Angeles County

1 Waterworks District 40 has obtained, without compensation and  
2 without due process notice, the overlying landowners' appurtenant  
3 water rights through the common law doctrine of prescription.  
4 Based on this authorization, Los Angeles County Waterworks  
5 District 40 filed these actions.

6 17. Cross-Complainants did not have actual knowledge that  
7 any Phelan Pinon Hills Community Services District's pumping of  
8 groundwater was adverse to or hostile to its present and/or future  
9 priority rights.

10 18. Based upon information and belief, no landowner had  
11 actual knowledge that any Phelan Pinon Hills Community Services  
12 District's pumping of groundwater was adverse to or hostile to its  
13 present and/or future priority rights.

14 19. In January 2006, the Phelan Pinon Hills Community  
15 Services District identified herein jointly filed a Cross-  
16 Complaint in place of the original Complaint seeking to obtain a  
17 judicial declaration that they had obtained the overlying  
18 landowners' water rights, without compensation, within the  
19 Antelope Valley through the common law doctrine of prescription.

20 20. In January 2007, the Phelan Pinon Hills Community  
21 Services District identified herein jointly filed the present  
22 First Amended Cross-Complaint in place of the Cross-Complaint and  
23 in place of the original Complaint seeking to obtain a judicial  
24 declaration that they had obtained the overlying landowners' water  
25 rights, without compensation, within the Antelope Valley through  
26 the common law doctrine of prescription.





1 No. 40 in Kern County and Los Angeles County, herein coordinated  
2 with the Riverside action, that a current controversy exists as  
3 between Cross-Complainants and Cross-Defendants and as to all  
4 other Defendants in that Los Angeles County has requested a  
5 complete basin-wide adjudication of all rights of all parties to  
6 water in the Antelope Valley basin. Cross-Complainants request  
7 quiet title and/or other appropriate declaration of the right to  
8 pump and reasonably use groundwater on its PARCELS and/or to pump  
9 and use other groundwater based upon its rights as declared by the  
10 Court herein.

11 **THIRD CAUSE OF ACTION**

12 **(Unlawful Taking/42 USC § 1983)**

13 28. Cross-Complainants set forth herein at length verbatim  
14 the general allegations contained in paragraphs 1 through 22 of  
15 this Cross-Complaint.

16 29. This cause of action is brought under 42 U.S.C. § 1983  
17 to recover damages against the Phelan Pinon Hills Community  
18 Services District for violation of Cross-Complainants' rights  
19 under the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution  
20 through the Phelan Pinon Hills Community Services District' taking  
21 of Cross-Complainants' private property for public use without  
22 paying just compensation and depriving Cross-Complainants' of both  
23 substantive or procedural due process of law.

24 30. The Phelan Pinon Hills Community Services District, and  
25 each of them, and at all times mentioned in this Cross-Complaint,  
26 were governmental entities organized and operating in Los Angeles

1 and/or Kern County and in the State of California. All are  
2 organized and existing under the laws of the State of California,  
3 with the capacity to sue and be sued.

4 31. The Phelan Pinon Hills Community Services District, and  
5 each of them, were, at all times mentioned in this Cross-  
6 Complaint, acting under color of state law.

7 32. At an as yet unidentified historical point in time, the  
8 Phelan Pinon Hills Community Services District began pumping water  
9 from the Antelope Valley as permissive appropriators. Over the  
10 course of time, it is believed and therefore alleged, that the  
11 aggregate amount of water being extracted from the Valley began to  
12 exceed the safe yield resulting in a condition called "overdraft."

13 Cross-Complainant is informed and believes and based thereon  
14 alleges that the Phelan Pinon Hills Community Services District  
15 had knowledge of the "overdraft" condition and nonetheless  
16 continued pumping and increased their pumping with the specific  
17 intent to impair and take all superior overlying property rights  
18 to extract groundwater, including that of Cross-Complainants.  
19 Each Phelan Pinon Hills Community Services District continued to  
20 pump and increased its pumping of groundwater believing that given  
21 the intervention of the committed public use that no injunction  
22 would issue to restrain and/or compel the Phelan Pinon Hills  
23 Community Services District to reduce its dependence upon  
24 groundwater. Each Phelan Pinon Hills Community Services District  
25 contends that despite its status as a governmental entity, it can  
26 nonetheless take private property for a public use under a theory

1 of prescription and without compensation. Each Phelan Pinon Hills  
2 Community Services District claims that presumed or constructive  
3 knowledge of the overdraft condition alone was sufficient to  
4 commence the running of the statutory prescriptive period. Each  
5 Phelan Pinon Hills Community Services District did not undertake  
6 any affirmative action reasonably calculated and intended to  
7 provide notice and inform any affected landowner, including Cross-  
8 Complainants, of its adverse and hostile claim. Each Phelan Pinon  
9 Hills Community Services District contends that it has taken the  
10 private property rights of Cross-Complainants and others, and has  
11 committed them to a public use, without following the  
12 Constitutional constraints imposed by Article 1, Section 19 of the  
13 California Constitution, and the eminent domain law, *Code of Civil*  
14 *Procedure*, Section 1245.230. The acts of the Phelan Pinon Hills  
15 Community Services District were done under the color of state law  
16 with the intent of depriving Cross-Complainants of its property  
17 rights without substantive and procedural due process of law and  
18 to avoid payment of compensation to Cross-Complainants for the  
19 property rights taken, all in violation of the 5<sup>th</sup> and 14<sup>th</sup>  
20 Amendments to the United States Constitution.

21 33. Cross-Complainants are informed and believe and thereon  
22 allege that they were subjected to a violation of their right to  
23 due process of law prior to the taking of their property and their  
24 right to receive just compensation when their property was taken  
25 for the public benefit. This violation was a direct result of the  
26 knowing customs, practices and policies of the Phelan Pinon Hills

1 Community Services District to continue to pump in excess of the  
2 supply, to suppress the assertion of their adverse and hostile  
3 claim, and the resulting ever increasing intervening public use  
4 and dependence, without acceding to Constitutional limits.

5 34. The customs, practices and policies of the Phelan Pinon  
6 Hills Community Services District to prescript or adversely  
7 possess the property rights of property owners and/or to establish  
8 a non-enjoinable intervening use amounted to deliberate  
9 indifference to the rights of persons, such as Cross-Complainants,  
10 who stand to lose their rights to extract water from the Antelope  
11 Valley for use on their property through the actions of each  
12 Phelan Pinon Hills Community Services District and all of them.

13 35. As a direct and proximate result of the acts of the  
14 Phelan Pinon Hills Community Services District, Cross-Complainants  
15 have suffered injury, loss and damage, including a cloud upon  
16 their title to their real property, a reduction in value, and the  
17 loss of its right in the future to extract and use groundwater  
18 from the Valley.

19 **FOURTH CAUSE OF ACTION**

20 **(Equal Protection/Due Process 42 USC § 1983)**

21 36. Cross-Complainants set forth herein at length verbatim  
22 the general allegations contained in paragraphs 1 through 22 of  
23 this Cross-Complaint.

24 37. The State and federal constitutions require equal  
25 protection under the law. Cross-Defendants seek to exclude what  
26 they define as "*de minimus*" overlying water producers and other

1 appropriators from the lawsuit. They intend not to name and/or  
2 serve these individuals, thereby intentionally treating them  
3 differently than similarly situated persons with no rational basis  
4 for different treatment denying them equal protection under the  
5 law and in violation of 42 USC § 1983.

6 38. Cross-Defendants also potentially make claims that  
7 separate management areas should exist. Separate management areas  
8 as between correlative overlying rights holders and treating these  
9 areas differently, denies equal protection to overlying landowners  
10 in violation of State and Federal Constitutions and violates 42  
11 USC § 1983.

12 **FIFTH CAUSE OF ACTION**

13 **(Declaratory Relief of *Inter Se* Appropriative Rights)**

14 39. Cross-Complainants set forth herein at length verbatim  
15 the general allegations contained in paragraphs 1 through 22 of  
16 this Cross-Complaint.

17 40. Cross-Complainants have failed to name all  
18 appropriators as defendants. In the event that Cross-Defendants  
19 prove the Antelope Valley Groundwater basin is, or has been, in a  
20 state of common law overdraft, cutbacks may be required to balance  
21 the demand with the supply available. The California priority  
22 water allocation system requires that appropriative user's cutback  
23 water usage before overlying landowners are required to cutback  
24 usage. Cutbacks among the appropriators are based upon priority  
25 as between appropriators. Appropriators with first in time  
26 appropriative rights have priority over later in time

1 appropriators. Accordingly, in order to apply the California  
2 priority water allocation system, all appropriators must be  
3 included in the action so that the priority of appropriative  
4 rights can be litigated which will allow the Court by injunction  
5 or physical solution to cutback appropriators based upon such  
6 priorities in the event that Cross-Defendants prove the Antelope  
7 Valley Groundwater basin is in common law overdraft and that an  
8 injunction and/or physical solution is necessary to balance the  
9 water demand with water supply.

10 **SIXTH CAUSE OF ACTION**

11 **(Return Flows)**

12 41. Cross-Complainants set forth herein at length verbatim  
13 the general allegations contained in paragraphs 1 through 22 of  
14 this Cross-Complaint.

15 42. Cross-complainants have pumped and used groundwater on  
16 its PARCELS to irrigate crops. This water was pumped from a lower  
17 aquifer not significantly hydraulically connected to the upper  
18 aquifer and which water would not otherwise be supplied to the  
19 upper aquifer. A portion of this water has reached the upper  
20 aquifer by percolation. Cross-Complainants have a priority right  
21 to these return flows as well as a right to store water in the  
22 upper aquifer from the return flows and have a paramount right  
23 against all other parties to this water and a paramount right  
24 against all other parties to recapture this water or an equivalent  
25 amount of such water.

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1 SEVENTH CAUSE OF ACTION

2 (Self Help)

3 43. Cross-Complainants set forth herein at length verbatim  
4 the general allegations contained in paragraphs 1 through 22 of  
5 this Cross-Complaint.

6 44. Cross-complainants contend that Cross-Defendants must  
7 prove any claim for prescription or adverse possession and prove  
8 that they prevented Cross-Complainants from pumping amounts which  
9 Cross-Complaints desired to pump during any alleged period of  
10 adverse possession or prescription. However, to the extent the  
11 Court rules that self help constitutes an affirmative request for  
12 relief by Cross-Complainants, Cross-Complainants claim water  
13 rights based upon self help.

14 EIGHTH CAUSE OF ACTION

15 (Storage Rights)

16 45. Cross-Complainants set forth herein at length verbatim  
17 the general allegations contained in paragraphs 1 through 22 of  
18 this Cross-Complaint.

19 46. Cross-Complainants possess overlying rights to produce  
20 water on its PARCELS in the Antelope Valley. Cross-Complainants  
21 possess an appurtenant right to storage space in the fractured  
22 bedrock and alluvial water basin and the right to water stored  
23 therein based upon the California water allocation priority  
24 system.

25 \\\

26 \\\





1 Complainants request the Court enjoin parties holding inferior  
2 appropriative rights from pumping and/or that the Court impose a  
3 physical solution on appropriators to prevent continuing common  
4 law overdraft.

5 **ELEVENTH CAUSE OF ACTION**

6 **(Declaratory Relief to Determine Applicability**  
7 **of California Constitution)**

8 51. Cross-Complainants set forth herein at length verbatim  
9 the general allegations contained in paragraphs 1 through 22 of  
10 this Cross-Complaint.

11 52. Article 1, Section 19 of the California Constitution  
12 provides as follows:

13 "Private property may be taken or damaged for  
14 public use only when just compensation,  
15 ascertained by a jury unless waived, has  
16 first been paid to, or into court for, the  
17 owner. The Legislature may provide for  
18 possession by the condemner following  
19 commencement of eminent domain proceedings  
20 upon deposit in court and prompt release to  
21 the owner of money determined by the court to  
22 be the probable amount of just compensation."

19 53. The Phelan Pinon Hills Community Services District  
20 contend that, even though they are political subdivisions who are  
21 vested with the power of eminent domain, they are nonetheless  
22 legally permitted to knowingly take private property for public  
23 use without first paying just compensation.

24 54. Cross-Complainants contend that the use of the word  
25 "only" within Article 1, Section 19 is a clear temporal limitation  
26 on the Phelan Pinon Hills Community Services District's lawful

1 ability to knowingly take private property for the public benefit  
2 to only those instances where just compensation has first been  
3 paid. By virtue of the Phelan Pinon Hills Community Services  
4 District's actions as set forth above, an actual controversy has  
5 arisen and now exists between the Phelan Pinon Hills Community  
6 Services District and Cross-Complainants concerning their  
7 respective rights, duties and responsibilities.

8 55. Cross-Complainants desire a declaration of its rights  
9 with respect to the application or non-application of Article 1,  
10 Section 19 to the Phelan Pinon Hills Community Services District  
11 and ask the court to make a declaration of such rights, duties and  
12 responsibilities. Such a declaration is necessary and appropriate  
13 at this time in order that Cross-Complainants' property rights may  
14 be protected and to ensure that the municipal Phelan Pinon Hills  
15 Community Services District proceed according to the California  
16 Constitution. There are no administrative remedies available to  
17 Cross-Complainants.

18 56. A timely declaration by this court is urgent for the  
19 following reasons: by way of this action, the Phelan Pinon Hills  
20 Community Services District are seeking to adjudicate, enjoin and  
21 take the property rights of Cross-Complainants and thousands of  
22 other parties who own property overlying the water supply without  
23 first paying just compensation therefore, absent a timely  
24 declaration by this court, injustice will result from the improper  
25 taking of the Cross-Complainants' property rights should Article  
26 1, Section 19 of the California Constitution be found to apply.



1 and the manner in which they may take private property for the  
2 public benefit. That this limitation forecloses the ability of  
3 any governmental entity to knowingly take or acquire private  
4 property for a public use under a theory of prescription or  
5 adverse possession. By virtue of the Phelan Pinon Hills Community  
6 Services District's actions as set forth above, an actual  
7 controversy has arisen and now exists between the Phelan Pinon  
8 Hills Community Services District and Cross-Complainants  
9 concerning their respective rights, duties and responsibilities.

10 62. Cross-Complainants desire a declaration of its rights  
11 with respect to the application or non-application of Article 1,  
12 Section 19 to the Phelan Pinon Hills Community Services District'  
13 prescription claims and ask the court to make a declaration of  
14 such rights, duties and responsibilities. Such a declaration is  
15 necessary and appropriate at this time in order that Cross-  
16 Complainants' property rights may be protected and to ensure that  
17 the municipal Phelan Pinon Hills Community Services District  
18 proceed according to the California Constitution. There are no  
19 administrative remedies available to Cross-Complainants.

20 63. A timely declaration by this court is urgent for the  
21 following reasons: by way of this action, the Phelan Pinon Hills  
22 Community Services District are seeking to adjudicate, enjoin and  
23 take the property rights of Cross-Complainants and thousands of  
24 other parties by avoiding the due process protections provided to  
25 these landowners under *Code of Civil Procedure*, Sections 1230.010  
26 through 1237.040. Absent a timely declaration by this court,

1 injustice will result from the improper taking of the Cross-  
2 Complainants' property rights should Article 1, Section 19 of the  
3 California Constitution be found to apply.

4 64. Cross-Complainants and numerous other private parties  
5 will suffer irreparable and lasting injury unless declaratory  
6 relief is granted.

7 **THIRTEENTH CAUSE OF ACTION**

8 **(Declaratory Relief to Determine Validity and**  
9 **Applicability of Statute)**

10 65. Cross-Complainants set forth herein at length verbatim  
11 the general allegations contained in paragraphs 1 through 22 of  
12 this Cross-Complaint.

13 66. In or about 1951, the Legislature of the State of  
14 California enacted Section 55000, et seq., of the *Water Code*,  
15 known as the County Waterworks District Law, hereinafter referred  
16 to as the "Waterworks Statutes." In 1953, the Legislature added  
17 Section 55370. This Section, since its adoption has been, and now  
18 is, in full force and effect. This statute provides as follows:

19 "A district may acquire property by purchase,  
20 gift, devise, exchange, descent, and eminent  
21 domain. The title to all property which may  
22 have been acquired for a district shall be  
23 vested in the district."

24 67. The Phelan Pinon Hills Community Services District  
25 contend that Section 55370 of the *Water Code* does not apply to, or  
26 limit in any manner, its acquisition of any overlying landowners'  
water rights within the Antelope Valley and that, despite its  
status as public entities, Article 1, Section 19 of the California

1 Constitution, and the 5<sup>th</sup> Amendment to the Federal Constitution,  
2 it is nonetheless empowered to acquire private property for public  
3 use through the common law doctrine of prescription, without due  
4 process and without compensation.

5 68. In or about 1943, the Legislature of the State of  
6 California enacted Sections 20500, et seq., of the *Water Code*,  
7 known as the Irrigation District Law, hereinafter referred to as  
8 the "Irrigation Statutes." In 1943, the Legislature added Section  
9 22456. This Section, since its adoption has been, and now is, in  
10 full force and effect. This statute provides as follows:

11 "The district may exercise the right of  
12 eminent domain to take nay property necessary  
to carry out its purposes."

13 69. The Phelan Pinon Hills Community Services District  
14 contend that Section 22456 of the *Water Code* does not act to  
15 limit, in any manner, the mode or method of acquiring an overlying  
16 landowners' water rights within the Antelope Valley and that,  
17 despite its status as public entities, Article 1, Section 19 of  
18 the California Constitution, and the 5<sup>th</sup> Amendment to the Federal  
19 Constitution, it is nonetheless empowered to acquire private  
20 property for public use through the common law doctrine of  
21 prescription, without due process and without compensation.

22 70. In or about 1949, the Legislature of the State of  
23 California enacted Sections 30000, et seq., of the *Water Code*,  
24 known as the County Water District Law, hereinafter referred to as  
25 the "County Water Statutes." In 1975, the Legislature amended  
26 Section 31040. This amended statute became operative on July 1,

1 1976, and since then, has been, and now is, in full force and  
2 effect. This Section provides as follows:

3 "A district may take any property necessary  
4 to carry out the business of the district by  
5 grant, purchase, gift, devise, condemnation,  
or lease with or without the privilege of  
purchase."

6 71. The Phelan Pinon Hills Community Services District  
7 contend that Section 31040 of the *Water Code* does not act to  
8 limit, in any manner, the mode or method by which they may acquire  
9 an overlying landowners' water rights within the Antelope Valley  
10 and that, despite their status as public entities, Article 1,  
11 Section 19 of the California Constitution, and the 5<sup>th</sup> Amendment  
12 to the Federal Constitution, they are nonetheless empowered to  
13 take private property for public use through the common law  
14 doctrine of prescription, without due process and without  
15 compensation.

16 72. Cross-Complainants contend that the statute is  
17 constitutional, and when conjoined with the California state and  
18 Federal Constitutions, limits the method, manner and mode by which  
19 the Phelan Pinon Hills Community Services District may acquire  
20 private property for a public use and the rights appurtenant  
21 thereto by declaring that the only legal right of the Phelan Pinon  
22 Hills Community Services District to take possession of property  
23 without consent of the owners is under its power of eminent  
24 domain. By virtue of the Phelan Pinon Hills Community Services  
25 District' actions as set forth above, an actual controversy has  
26 arisen and now exists between the Phelan Pinon Hills Community



1 Services District and Cross-Complainants concerning their  
2 respective rights, duties and responsibilities under these  
3 statutes and both Constitutions.

4 73. Cross-Complainants desire a declaration of their rights  
5 with respect to the constitutionality and application or non-  
6 application of the statute and ask the court to make a declaration  
7 of such rights, duties and responsibilities, and to make a  
8 declaration as to the validity and constitutionality of the  
9 statutes. Cross-Complainants seek a declaration that the effort  
10 of the Phelan Pinon Hills Community Services District to  
11 deprioritize Cross-Complainants' overlying right is, without  
12 compensation, *ultra vires* and unconstitutional. Such a declaration  
13 is necessary and appropriate at this time in order that Cross-  
14 Complainants' property rights be protected and to ensure that the  
15 Phelan Pinon Hills Community Services District proceed according  
16 to the law and Constitution of the state and Federal Constitution.

17 There are no administrative remedies available to Cross-  
18 Complainants.

19 74. A timely declaration by this court is urgent for the  
20 following reasons: By way of this action, the Phelan Pinon Hills  
21 Community Services District are seeking to adjudicate, enjoin and  
22 take the property rights of Cross-Complainants and thousands of  
23 other parties who own property overlying the Antelope Valley,  
24 absent a timely declaration of this court, injustice will result  
25 from its improper awarding of property rights to the Phelan Pinon  
26 Hills Community Services District should these statutes be later

1 found to apply.

2 75. Cross-Complainants and numerous other private parties  
3 will suffer irreparable and lasting injury unless declaratory  
4 relief is granted.

5 **FOURTEENTH CAUSE OF ACTION**

6 **(Declaratory Relief to Determine Applicability of Constitution)**

7 76. Cross-Complainants set forth herein at length verbatim  
8 the general allegations contained in paragraphs 1 through 22 of  
9 this Cross-Complaint.

10 77. Article I, Section 7 of the California Constitution  
11 provides in pertinent part as follows:

12 "A person may not be deprived of life,  
13 liberty, or property without due process of  
14 law or denied equal protection of the laws; .  
15 . . ."

16 The 5<sup>th</sup> Amendment to the Constitution as applied by the  
17 14<sup>th</sup> Amendment in relevant part provides:

18 "No person shall . . . be deprived of life,  
19 liberty, or property, without due process of  
20 law; nor shall private property be taken for  
21 public use, without just compensation."

22 78. The Phelan Pinon Hills Community Services District  
23 contend that, even though they are political subdivisions who are  
24 uniquely invested with the power of eminent domain, they are  
25 allowed to surreptitiously take private property for public use by  
26 prescription or adverse possession without providing substantive  
or procedural due process of law to each overlying landowner. The  
Phelan Pinon Hills Community Services District contend that

1 prescription commences with "overdraft," and that presumed or  
2 constructive notice is sufficient.

3 79. Cross-Complainants contend that the Article I, Section  
4 7 of the California Constitution, and the 5<sup>th</sup> Amendment as applied  
5 by the 14<sup>th</sup> Amendment of the Federal Constitution, mandates that  
6 governmental entities must provide substantive and procedural due  
7 process of law when taking private property for a public use.  
8 Cross-Complainants contend that the prescriptive period cannot  
9 commence until the governmental entity takes affirmative action  
10 designed and intended to give notice and inform the overlying  
11 landowners of the governmental entity's adverse and hostile claim.  
12 Cross-Complainants further contend that this limitation forecloses  
13 the ability of any governmental agency to take or acquire private  
14 property for a public use when constitutionally sufficient due  
15 process notice has not been provided to the landowner. By virtue  
16 of the Phelan Pinon Hills Community Services District' actions, as  
17 set forth above, an actual controversy has arisen and now exists  
18 between the Phelan Pinon Hills Community Services District and  
19 Cross-Complainants concerning their respective rights, duties and  
20 responsibilities.

21 80. Cross-Complainants desire a declaration of their rights  
22 with respect to the application or non-application of Article I,  
23 Section 7 of the California Constitution and the 5<sup>th</sup> Amendment to  
24 the U.S. Constitution to the Phelan Pinon Hills Community Services  
25 District' prescription claims and ask the court to make a  
26 declaration of such rights, duties and responsibilities. Such a

1 declaration is necessary and appropriate at this time in order  
2 that Cross-Complainants' property rights may be protected and to  
3 ensure that the municipal Phelan Pinon Hills Community Services  
4 District may proceed according to the California Constitution.  
5 There are no administrative remedies available to Cross-  
6 Complainants.

7 81. A timely declaration by this court is urgent for the  
8 following reasons: By way of this action, the Phelan Pinon Hills  
9 Community Services District are seeking to adjudicate and enjoin  
10 the property rights of Cross-Complainants and thousands of other  
11 parties by avoiding the due process protections provided to these  
12 landowners under Article I, Section 7, the 5<sup>th</sup> and 14<sup>th</sup> Amendments  
13 and *Code of Civil Procedure*, Sections 1230.010 through 1237.040.  
14 Absent a timely declaration by this court, injustice will result  
15 from the improper use and adjudication of Cross-Complainants'  
16 property rights should the foregoing constraints and statutory  
17 mandate be found applicable.

18 82. Cross-Complainants and numerous other private parties  
19 will suffer irreparable and lasting injury unless declaratory  
20 relief is granted.

21 **FOURTEENTH CAUSE OF ACTION**

22 **(Declaratory Relief)**

23 83. Cross-Complainants set forth herein at length verbatim  
24 the general allegations contained in paragraphs 1 through 22 of  
25 this Cross-Complaint.

26 84. Cross-Complainants are the owners and/or lessees of

1 real property located within the Antelope Valley. Located on  
2 Cross-Complainants' property are water wells which produce water  
3 from the groundwater supply. Cross-Complainants and or its  
4 predecessors in interest, have continually produced water from  
5 these wells without restriction and in quantities as were needed  
6 to perform its farming and irrigation operations from year to  
7 year.

8 85. Based on information and belief, it is alleged that  
9 Phelan Pinon Hills Community Services District all pump  
10 groundwater from the Antelope Valley and then sell it to other  
11 individuals and entities who reside within Kern County and Los  
12 Angeles Counties.

13 86. An actual controversy has arisen and now exists between  
14 Cross-Complainants and the Phelan Pinon Hills Community Services  
15 District concerning their respective rights and duties in that the  
16 Phelan Pinon Hills Community Services District contend that they  
17 have been pumping water during a continuous 5 year period during  
18 which the common supply has been in a state of overdraft; that  
19 this pumping has resulted in a reversal of the common law legal  
20 priority granted to overlying landowners pursuant to the common  
21 law doctrine of prescription. Whereas Cross-Complainants dispute  
22 this contention and contend that by continuing to pump groundwater  
23 from the wells on their land, and by continuing to thus meet all  
24 of the water needs to perform their farming operations, Cross-  
25 Complainants have preserved and maintained their priority rights  
26 to the use of groundwater.



1 provides, in pertinent part, as follows:

2 "It is hereby declared that because of the  
3 conditions prevailing in this State the  
4 general welfare requires that the water  
5 resources of the State be put to beneficial  
6 use to the fullest extent of which they are  
7 capable, and that the waste or unreasonable  
8 use or unreasonable method of use of water be  
9 prevented, and that the conservation of such  
10 waters it to be exercised with a view to the  
11 reasonable and beneficial use thereof in the  
12 interest of the people and for the public  
13 welfare. The right to water or to the use or  
14 flow of water in or from any natural stream  
15 or water course in this State is and shall be  
16 limited to such water as shall be reasonably  
17 required for the beneficial use to be served,  
18 and such right does not and shall not extend  
19 to the waste or unreasonable use or  
20 unreasonable method of use or unreasonable  
21 method of diversion of water . . . ."

13 93. An actual controversy has arisen and now exists between  
14 Cross-Complainants and each Phelan Pinon Hills Community Services  
15 District concerning their respective rights and duties in that  
16 Cross-Complainants contend that the Phelan Pinon Hills Community  
17 Services District' continued dependence on, and use of, the  
18 groundwater, their continued and increased extractions of  
19 groundwater from the common supply, with knowledge that the  
20 extractions exceed the safe yield, and their failure and/or  
21 refusal to take all of the available imported water and the method  
22 and use of groundwater taken, is unreasonable and constitutes a  
23 waste in violation of Article X, Section 2 of the California  
24 Constitution. The Phelan Pinon Hills Community Services District  
25 dispute these contentions and contend that their dependence on  
26 groundwater, their continued and increasing extractions of

1 groundwater from the Antelope Valley in excess of the safe yield  
2 and their failure and refusal to take all of the available  
3 imported water is reasonable and does not constitute waste of  
4 groundwater and/or available imported water under Article X,  
5 Section 2 of the California Constitution.

6 94. Cross-Complainants desire a declaration of their rights  
7 with respect to the constitutionality and application or non-  
8 application of Article X, Section 2 to the Phelan Pinon Hills  
9 Community Services District' actions and ask the court to make a  
10 declaration of such rights, duties and responsibilities, and to  
11 make a declaration as to the validity and constitutionality of the  
12 Article X, Section 2. Such a declaration is necessary and  
13 appropriate at this time in order that Cross-Complainants'  
14 property rights may be protected and to ensure that the Phelan  
15 Pinon Hills Community Services District may proceed under the law  
16 and cause no further damage to Cross-Complainants' or property  
17 overlying the water supply. There are no administrative remedies  
18 available to Cross-Complainants.

19 95. A timely declaration by this court is urgent for the  
20 following reasons: By way of this action, the Phelan Pinon Hills  
21 Community Services District are seeking to have the court ratify  
22 their method and choice of water usage and declare that they have  
23 the right to continue to extract groundwater from the Valley in  
24 excess of the safe yield and to continue to cause damage to the  
25 Valley itself as well as to the land overlying the water supply,  
26 absent a timely declaration by this court, an injustice will



1 result from the improper validation of the Phelan Pinon Hills  
2 Community Services District' water usage should this  
3 constitutional provision be found to apply to the Phelan Pinon  
4 Hills Community Services District.

5 96. Cross-Complainants and numerous other private parties  
6 will suffer irreparable and lasting injury unless declaratory  
7 relief is granted.

8 **SIXTEENTH CAUSE OF ACTION**

9 **(Declaratory Relief)**

10 97. Cross-Complainants set forth herein at length verbatim  
11 the general allegations contained in paragraphs 1 through 22 of  
12 this Cross-Complaint.

13 98. On January 8, 2006, the Phelan Pinon Hills Community  
14 Services District filed a Cross-Complaint in this matter seeking  
15 to implement policy objectives which were stated in Paragraph 1 as  
16 follows:

17 "To promote the general public welfare in the  
18 Antelope Valley; protect the public water  
19 supplier's rights to pump groundwater and  
20 provide water to the public; protect the  
21 Antelope Valley from a loss of the public's  
22 water supply; prevent degradation of the  
23 quality of the public groundwater supply;  
24 stop land subsidence; and avoid higher water  
25 costs to the public."

26 99. In order to implement these policy objectives, the  
Phelan Pinon Hills Community Services District have brought a  
cause of action against all owners of property overlying the  
Antelope Valley seeking the imposition of a "physical solution"  
that would manage the groundwater supply by augmenting the water

1 supply, manage the pumping and storage of water and impose  
2 monetary assessments on water extraction from the supply.

3 100. An actual controversy has arisen and now exists between  
4 Cross-Complainants and the Phelan Pinon Hills Community Services  
5 District concerning their respective rights and duties in that  
6 Cross-Complainants contend that it is a violation of the  
7 constitutional doctrine of the separation of powers for this Court  
8 to implement the Phelan Pinon Hills Community Services District'  
9 policy objectives as they are by nature legislative actions,  
10 subject to the provisions of the California Environmental Quality  
11 Act (hereinafter "CEAQ;" *Public Resources Code*, Sections 21000-  
12 21177). That the requirements of CEQA are both procedural  
13 (requiring notice, disclosure and a review process) and  
14 substantive (by requiring public agencies to take affirmative  
15 measures to avoid environmental harm and to also protect the  
16 citizens and landowners of the State of California).

17 101. The Phelan Pinon Hills Community Services District  
18 contend that they may use the judicial system to circumvent CEQA  
19 and impose by judicial fiat what should be a legislative policy.  
20 In doing so, they seek to avoid providing the public with the  
21 required disclosures and evaluations, and thereby deny Cross-  
22 Complainants and the public their procedural and substantive  
23 protections required by CEQA.

24 102. Cross-Complainants desire a judicial determination of  
25 the Phelan Pinon Hills Community Services District' rights and  
26 duties, and a declaration as to the application of *Public*

1 Resources Code, sections 21000-21177 to any proposed water  
2 management plan sought to be implemented by judicial decree by the  
3 Phelan Pinon Hills Community Services District. That the  
4 legislative protections afforded to the public under CEQA cannot  
5 be ignored or subverted by resorting to the court to implement the  
6 Phelan Pinon Hills Community Services District's plan, and that  
7 such a request of this Court induces a violation of the doctrine  
8 of the separation of powers.

9 103. A judicial declaration is necessary and appropriate at  
10 this time under the circumstances in order that Cross-Complainants  
11 may ascertain their rights and duties relating to production of  
12 water from the Antelope Valley.

13 **SEVENTEENTH CAUSE OF ACTION**

14 **(Declaratory Relief)**

15 104. Cross-Complainants set forth herein at length verbatim  
16 the general allegations contained in paragraphs 1 through 22 of  
17 this Cross-Complaint.

18 105. On January 8, 2006, the Phelan Pinon Hills Community  
19 Services District filed a Cross-Complaint in this matter seeking  
20 to implement policy objectives which were stated in Paragraph 1 as  
21 follows:

22 "To promote the general public welfare in the  
23 Antelope Valley; protect the public water  
24 supplier's rights to pump groundwater and  
25 provide water to the public; protect the  
26 Antelope Valley from a loss of the public's  
water supply; prevent degradation of the  
quality of the public groundwater supply;  
stop land subsidence; and avoid higher water  
costs to the public."

1           106. In order to implement these policy objectives, the  
2 Phelan Pinon Hills Community Services District have brought a  
3 cause of action against all owners of property overlying the  
4 Antelope Valley seeking the imposition of a "physical solution"  
5 that would manage the groundwater supply by augmenting the water  
6 supply, manage the pumping and storage of water and impose  
7 monetary assessments on water extraction from the supply.

8           107. An actual controversy has arisen and now exists between  
9 Cross-Complainants and the Phelan Pinon Hills Community Services  
10 District concerning their respective rights and duties in that  
11 Cross-Complainants contend that it is a violation of the  
12 constitutional doctrine of the separation of powers for this Court  
13 to implement the Phelan Pinon Hills Community Services District'  
14 policy objectives as they are by nature legislative and executive  
15 actions that are within the power of the Phelan Pinon Hills  
16 Community Services District to enact by following the statutory  
17 requirements set forth in *Water Code*, sections 10700-10795.20.  
18 These sections of the *Water Code* provide the procedural method by  
19 which the Phelan Pinon Hills Community Services District must  
20 implement a groundwater management plan and also ensure  
21 constitutionality required process through the required public  
22 hearings, notice and publication of the proposed management plan,  
23 and the opportunity for public discourse, input and objection.

24           108. The Phelan Pinon Hills Community Services District  
25 contend that they may use the judicial system to impose by  
26 judicial fiat what would otherwise be done through legislative

1 action. In doing so, they seek to avoid providing the public with  
2 the required notice, hearing and disclosures and deny them their  
3 procedural and substantive protections provided by the  
4 Constitution and the *Water Code*, Sections 10700-10795.20.

5 109. Cross-Complainants desire a judicial determination of  
6 the Phelan Pinon Hills Community Services District' rights and  
7 duties, and a declaration as to the application and propriety of  
8 *Water Code*, Sections 10700-10795.20 to the proposed water  
9 management project sought to be implemented by the Phelan Pinon  
10 Hills Community Services District. That the legislative  
11 protections afforded to the public under the *Water Code* may not be  
12 ignored or subverted by the filing of a legal action by a public  
13 agency, and that such action requests this court to violate the  
14 doctrine of separation of power.

15 110. A judicial declaration is necessary and appropriate at  
16 this time under the circumstances in order that Cross-Complainants  
17 may ascertain their rights and duties relating to production of  
18 water from the Antelope Valley.

19 **EIGHTEENTH CAUSE OF ACTION**

20 **(Declaratory Relief)**

21 111. Cross-Complainants set forth herein at length verbatim  
22 the general allegations contained in paragraphs 1 through 22 of  
23 this Cross-Complaint.

24 112. Commencing in early 2000, each Phelan Pinon Hills  
25 Community Services District has claimed that the Antelope Valley  
26 was in a state of "overdraft" for more than five years prior to

1 October 1999.

2 113. based on information and belief, it is alleged that  
3 immediately prior to, during and after the same claimed five year  
4 period of "overdraft" claimed by the Phelan Pinon Hills Community  
5 Services District, the Phelan Pinon Hills Community Services  
6 District did approve and have continued to approve the issuance of  
7 well permits to Cross-Complainants and others, have approved large  
8 scale developments and have authorized others and have thus  
9 increased the demand for groundwater pumped by the Phelan Pinon  
10 Hills Community Services District from the Antelope Valley. In  
11 performing their ministerial and discretionary functions, each  
12 Phelan Pinon Hills Community Services District has asserted that  
13 the additional well permits, hook ups and added residential,  
14 industrial and commercial developments, and the concomitant  
15 increased pumping of groundwater caused thereby, would not, and  
16 did not, have under CEQA or otherwise an adverse affect on the  
17 water supply available from the Antelope Valley.

18 114. An actual controversy has arisen and now exists between  
19 Cross-Complainants and each Phelan Pinon Hills Community Services  
20 District concerning their respective rights and duties in that  
21 Cross-Complainants contend that the Phelan Pinon Hills Community  
22 Services District are barred from claiming that the Antelope  
23 Valley is in a state of "overdraft" during the time that they have  
24 authorized, permitted and approved new and increased pumping from  
25 the supply pursuant to *Evidence Code*, Section 623. The Phelan  
26 Pinon Hills Community Services District deny Cross-Complainants'

1 contentions and assert that they may assert overdraft as an  
2 element of their prescription claims. Section 623 provides as  
3 follows:

4 "Whenever a party has, by his own statement  
5 or conduct, intentionally and deliberately  
6 led another to believe a particular thing  
7 true and to act upon such belief, he is not,  
8 in any litigation arising out of such  
9 statement or conduct, permitted to contradict  
10 it."

11 115. Cross-Complainants desire a judicial determination of  
12 its rights and duties, and a declaration as to the application of  
13 the doctrine of equitable estoppel to the Phelan Pinon Hills  
14 Community Services District' ability to claim that the Antelope  
15 Valley was in a state of overdraft when the same Phelan Pinon  
16 Hills Community Services District were issuing well permits, will  
17 serve letters and adding new water customers and authorizing new  
18 large scale development projects under the assertion that there  
19 was an available, adequate and appropriate water supply in the  
20 Antelope Valley to sustain these permits and projects.

21 116. A judicial declaration is necessary and appropriate at  
22 this time under the circumstances in order that Cross-Complainants  
23 may ascertain their rights and duties relating to its real  
24 property that overlies the Antelope Valley.

25 **NINETEENTH CAUSE OF ACTION**

26 **(Declaratory Relief)**

1 117. Cross-Complainants set forth herein at length verbatim  
2 the general allegations contained in paragraphs 1 through 22 of  
3 this Cross-Complaint.

1           118. Cross-Complainants are the owners of land overlying the  
2 Antelope Valley. Each of the Phelan Pinon Hills Community  
3 Services District are users of water pumped from the Antelope  
4 Valley which underlies Cross-Complainants' land.

5           119. Initially, the Phelan Pinon Hills Community Services  
6 District, and each of them, legally used and maintained water  
7 wells that extracted water from the Antelope Valley for public  
8 distribution. Over time the increased urbanization and the Phelan  
9 Pinon Hills Community Services District continued and increasing  
10 extractions exceeded their legal boundaries, such that the water  
11 extracted from the supply has exceeded the ability to naturally  
12 recharge the water supply. The Phelan Pinon Hills Community  
13 Services District have claimed to have knowledge that this  
14 continuous and increasing use caused a progressive and chronic  
15 decline in long term water supply and the available natural supply  
16 is being and has been chronically depleted. Based on the present  
17 trends, demand will continue to exceed supply which will cause  
18 damage to private rights and ownership of real property.

19           120. The aforementioned extractions of groundwater from the  
20 supply constitute a continuing progressive nuisance within the  
21 meaning of Section 3479 of the *Civil Code*, in that the Phelan  
22 Pinon Hills Community Services District have created a condition  
23 in the future supply that is injurious to Cross-Complainants'  
24 rights, in the future, to freely use and exercise its overlying  
25 property rights to extract groundwater from the common supply in  
26 the customary manner. The Phelan Pinon Hills Community Services



1 District are attempting, through the combined efforts of their  
2 pumping groundwater and this present legal action, to take, and or  
3 alter, Cross-Complainants' overlying property rights to use and  
4 access the Antelope Valley supply.

5 121. In early 2000, the Phelan Pinon Hills Community  
6 Services District asserted that the available groundwater supply  
7 was in jeopardy and increased pumping would harm Antelope Valley  
8 Water Supply. Despite this assertion, the Phelan Pinon Hills  
9 Community Services District, and each of them, have continued to  
10 and have increased their pumping, despite the knowledge of the  
11 damages caused by that pumping. The Phelan Pinon Hills Community  
12 Services District have refused, and continue to refuse, to stop or  
13 reduce their pumping despite the damage to the supply and to  
14 Cross-Complainants' property rights.

15 122. This nuisance affects, at the same time, a substantial  
16 number of persons in that, the Phelan Pinon Hills Community  
17 Services District claim that the continued pumping in excess of  
18 the supply's safe yield is, and will, eventually cause a chronic  
19 decline in water levels and the available natural supply will be  
20 chronically depleted, that, based on the present trends, demand  
21 will continue to exceed supply which will continue to cause a  
22 reduction in the long term supply. Additionally, the continued  
23 pumping by the Phelan Pinon Hills Community Services District  
24 under these conditions will result in the unlawful obstruction of  
25 the overlying landowners' rights to use the water supply in the  
26 customary manner.

1           123. The Phelan Pinon Hills Community Services District, and  
2 each of them, have threatened to and will, unless restrained by  
3 this court, continue to pump groundwater in increasing amounts,  
4 and each and every act has been, and will be, without the consent,  
5 against the will, and in violation of the rights of Cross-  
6 Complainants.

7           124. As a proximate result of the nuisance created by the  
8 Phelan Pinon Hills Community Services District, and each of them,  
9 Cross-Complainants has been, and will be, damaged in a sum to be  
10 proven at trial.

11           125. Unless the Phelan Pinon Hills Community Services  
12 District, and each of them, are restrained from increasing their  
13 pumping from the supply by order of this court, it will be  
14 necessary for plaintiff to commence many successive actions  
15 against each Phelan Pinon Hills Community Services District, and  
16 each of them, to secure a project by project injunction and/or  
17 compensation for the continuing and repeated damages sustained,  
18 thus requiring a multiplicity of suits.

19           126. Should the Phelan Pinon Hills Community Services  
20 District continue to increase their pumping without replenishing  
21 the Valley's water supply, Cross-Complainants will suffer  
22 irreparable injury in that the usefulness and economic value of  
23 Cross-Complainants' overlying property right will be substantially  
24 diminished and Cross-Complainants will be deprived of the  
25 comfortable, reasonable and beneficial use and enjoyment of its  
26 property.



1 obtain prescriptive rights as against any other party to this  
2 action and that all parties will act in conformance with the terms  
3 of any such judgment;

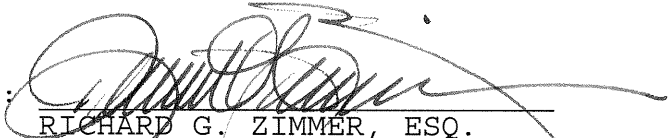
4 6. For a judgment for Cross-Complainants for all available  
5 remedies to secure and protect Cross-Complainants' continuing  
6 overlying water rights;

7 7. For an award of reasonable attorneys' fees and costs of  
8 suit; and

9 8. For such other and further relief as the court deems  
10 just and proper.

11  
12 DATED: January 19, 2008

13 CLIFFORD & BROWN

14  
15  
16 By:   
17 RICHARD G. ZIMMER, ESQ.  
18 T. MARK SMITH, ESQ.  
19 Attorneys for  
20 BOLTHOUSE PROPERTIES, LLC and  
21 WM. BOLTHOUSE FARMS, INC.  
22  
23  
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