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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

15 ANTELOPE VALLEY GROUNDWATER
16 CASES

Judicial Council Coordination Proceeding
No. 4408

17 Included Actions:
Los Angeles County Waterworks District No.
18 40 v. Diamond Farming Co., Superior Court of
California, County of Los Angeles, Case No.
19 BC 325201;

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053
Assigned to the Honorable Jack Komar

20 Los Angeles County Waterworks District No.
40 v. Diamond Farming Co., Superior Court of
21 California, County of Kern, Case No. S-1500-
CV-254-348;

**[PROPOSED] STATEMENT OF
DECISION FOR TRIAL RELATED TO
PHELAN PIÑON HILLS COMMUNITY
SERVICES DISTRICT**

Trial Date: November 4, 2014

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

26 RICHARD WOOD, on behalf of himself and
all other similarly situated v. A.V. Materials,
27 Inc., et al., Superior Court of California,
County of Los Angeles, Case No. BC509546
28

1 Cross-Complainant Phelan Piñon Hills Community Services District’s (“Phelan Piñon
2 Hills”) second and sixth causes of action for a declaration of its appropriative and return flow
3 rights, respectively, came on regularly for trial before this court commencing on November 4,
4 2014, in Department 56 of the Los Angeles County Superior Court, the Honorable Jack Komar
5 presiding. During trial, Phelan Piñon Hills presented documentary evidence and called Don Bartz
6 as its percipient witness, and Thomas Harder as its expert witness.

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

15 The court, having considered the evidence and heard the arguments of counsel and being
16 fully advised, granted the motion for judgment on November 5, 2014 in favor of the Phelan
17 Cross-Defendants. For the reasons described in further detail below, judgment is entered against
18 Phelan Piñon Hills for its second and sixth cause of action.

19 The court instructed Phelan Piñon Hills to submit its request for specific issues to be
20 identified in the proposed statement of decision and further instructed Phelan Cross-Defendants to
21 prepare a proposed statement of decision.

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

25 **I. GENERAL FINDINGS OF FACT**

26 The Court finds that the following factual findings were established by the evidence,
27 including testimony from Phelan Piñon Hills’ witnesses Messrs. Bartz and Harder, the parties’
28 stipulation of facts, and documentary evidence as set forth below.

1 Phelan Piñon Hills is a California community services district. It was formed on March
2 18, 2008. (Ex. Phelan CSD-1.) It provides public water service within its service area which is
3 entirely within San Bernardino County. (Ex. Phelan CSD-15.)

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

6 The Well 14 Parcel has an operating groundwater well, which is commonly referred to as
7 Phelan Piñon Hills’ “Well 14.” Well 14 Parcel is within the Antelope Valley Adjudication Area
8 (“Adjudication Area”) as determined by this Court’s order, dated March 12, 2007. (*Id.* & Ex.
9 Phelan CSD-14.)

10 A part of Phelan Piñon Hills’ service area overlies a portion of the Antelope Valley
11 Groundwater Basin as described and shown in California Department of Water Resources
12 Bulletin 118 (2003). (Ex. Phelan CSD-15.) That portion of the Phelan Piñon Hills’ service area
13 is within the existing Mojave Basin Adjudication Area in San Bernardino County. It is outside of
14 the Antelope Valley Adjudication Area. (Exs. Phelan CSD-26 & Phelan CSD-34.)

15 Although the south-eastern boundary of the Antelope Valley Adjudication Area is the
16 county line between San Bernardino and Los Angeles Counties, the portion of the Antelope
17 Valley Groundwater Basin located in San Bernardino County is hydrologically connected to the
18 Antelope Valley Adjudication Area in Los Angeles County.

19 **II. SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW**

20 Prior to Phelan Piñon Hills’ formation a community services district, a predecessor agency
21 had installed Well 14 on the Well 14 Parcel in 2004. (Ex. Phelan CSD-13.) Well 14’s
22 groundwater production is as follows:

23 2004 and earlier: none;

24 2005 (beginning in September): 1.11 acre feet (“af”);

25 2006: 164.15 af;

26 2007: 20.95 af;

27 2008: 493.27 af;

28 2009: 558.65 af;

1 2010: 1,110.45 af;
2 2011: 1,053.14 af;
3 2012: 1,035.26 af; and
4 2013: 1,028 af.
5 (Ex. Phelan CSD-18.)

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

9 Phelan Piñon Hills does not import water from the State Water Project or from any other
10 source. But Phelan Piñon Hills claims a right to “return flows” from Well 14. Phelan Piñon Hills
11 contends that some amount of the groundwater produced from Well 14 is used by Phelan Piñon
12 Hills customers outside the Adjudication Area, recharges the Adjudication Area. Phelan Piñon
13 characterizes the recharge as “return flows.” Mr. Harder testified that Phelan Piñon Hills’
14 groundwater production from Well 14 during the years from 2010 to 2013 exceeds the average
15 amount of the Phelan Piñon Hills claimed “return flows” during that same period.

16 Well 14 is located in an area of the Adjudication Area generally known as the Butte
17 subbasin, which borders the Lancaster subbasin to the west. (Ex. Phelan CSD-27.) Mr. Harder
18 testified that the Butte subbasin and the Lancaster subbasin are hydrologically connected; and that
19 groundwater flows from and through the Butte subbasin to the Lancaster subbasin. Mr. Harder
20 further testified that groundwater from the Butte subbasin is a source of recharge for the
21 Lancaster subbasin and that groundwater pumping in the Butte subbasin could lower the
22 groundwater level and reverse the flow of the groundwater from the Lancaster subbasin to the
23 Butte subbasin.

24 Phelan Piñon Hills operates three groundwater wells in San Bernardino County that are
25 within one mile of Well 14. (Ex. Phelan CSD-26.) These three wells are located within the
26 Antelope Valley Groundwater Basin, but outside of the Adjudication Area. Mr. Harder testified
27 that these three wells intercept groundwater that would otherwise flow into and recharge the
28 Adjudication Area.

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

3 The Court finds and determines that the Phelan Piñon Hills does not have appropriative
4 water rights to pump groundwater from the Adjudication Area. There was no credible testimony
5 or evidence to the contrary.

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

7 Under California law, “[a]ny water not needed for the reasonable beneficial use of those
8 having prior rights is excess or surplus water and may rightly be appropriated on privately owned
9 land for non-overlying use.” (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224,
10 1241 (“*Mojave Water Agency*”) [citing *California Water Service Co. v. Edward Sidebotham &*
11 *Son* (1964) 224 Cal.App.2d 715, 725-726].) While Phelan Piñon Hills owns land in the
12 Adjudication Area, it does not use the water it pumps from Well 14 on land within the
13 Adjudication Area. Instead, Phelan Piñon Hills provides such water to its customers outside of the
14 Adjudication Area. (Ex. Phelan CSD-15.)

15 To establish an appropriative right, Phelan Piñon Hills bears the burden of proof to
16 establish that the water it pumped from the Antelope Valley Adjudication Area is surplus water
17 and that its use is reasonable and beneficial. (*City of Barstow v. Mojave Water Agency* (2000) 23
18 Cal. 4th 1224, 1241 (“*Mojave Water Agency*”); *City of Pasadena v. City of Alhambra* (1949) 33
19 Cal.2d 908, 926 (“*Pasadena*”); *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d
20 199, 278, 293 (“*San Fernando*”); *Allen v. California Water & Tel. Co.* (1946) 29 Cal.2d 466, 481;
21 *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 279 (“*Santa Maria*”).)

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

24 A ground basin is in a state of surplus when the amount of water
25 being extracted from it is less than the maximum that could be
26 withdrawn without adverse effects on the basin's long term supply.
27 While this state of surplus exists, none of the extractions from the
28 basin for beneficial use constitutes such an invasion of any water
right as will entitle the owner of the right to injunctive, as distinct
from declaratory, relief. (*City of Pasadena v. City of Alhambra*,
supra, 33 Cal.2d at pp. 926-927; *City of Los Angeles v. City of*
Glendale, supra, 23 Cal.2d at p. 79.) Overdraft commences

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whenever extractions increase, or the withdrawable maximum decreases, or both, to the point where the surplus ends. **Thus on the commencement of overdraft there is no surplus available for the acquisition or enlargement of appropriative rights.**

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

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

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

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

Thus, it is not surprising that the overall overdraft condition would impact the Butte subbasin less than the Lancaster subbasin. Uneven impact from groundwater pumping is not an indication that overdraft condition does not exist or that surplus water exists. The Court finds

1 that groundwater pumping in the Butte subbasin negatively impacts groundwater recharge in the
2 Lancaster subbasin and that Phelan Piñon Hills failed to meet its burden of proof that surplus
3 water exists within the Adjudication Area.

4 **B. Phelan Piñon Hills’ Sixth Cause of Action for a Declaration of Its Return**
5 **Flow Rights**

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

9 The right to return flows is limited to return flows from imported water. In *San Fernando*,
10 *supra*, the California Supreme Court rejected a party’s claim to a return flow right from native
11 water, stating:

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

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

23 Phelan Piñon Hills asked the Court to adopt the doctrine of recapture as applied in federal
24 court litigation between Montana and Wyoming, in lieu of California law on return flow rights as
25 set forth in *San Fernando* and *Santa Maria*. (See *Montana v. Wyoming* (2011) 131 S.Ct. 1765,
26 1774-75.) The doctrine of stare decisis prohibits this Court to apply case law from other
27 jurisdiction when there are controlling decisions issued by the California Supreme Court and
28 Courts of Appeal. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455-456;

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

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

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

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

18 It is uncontested that Phelan Piñon Hills’ Well 14 is located in an area of the Adjudication
19 Area generally known as the Butte subbasin, which borders the Lancaster subbasin. (Ex. Phelan
20 CSD-27.) The Court finds that the Butte subbasin and the Lancaster subbasin are hydrologically
21 connected and that groundwater flows from and through the Butte subbasin to the Lancaster
22 subbasin. Based on Mr. Harder’s testimony, the Court also finds that groundwater from the Butte
23 subbasin is a source of groundwater recharge for the Lancaster subbasin, and that groundwater
24 pumping in the Butte subbasin could lower the groundwater level and reverse the flow of the
25 groundwater from the Lancaster subbasin to the Butte subbasin. The Court further finds that
26 Phelan Piñon Hills’ operation of its three groundwater wells located near Well 14 intercepts
27 groundwater that would otherwise flow into and recharge the Adjudication Area. Based on these
28 uncontroverted facts, the Court concludes that Phelan Piñon Hills’ pumping of groundwater from

1 the Antelope Valley Groundwater Basin as described in Bulletin 118 negatively impacts the Butte
2 subbasin, the Lancaster subbasin, and the Adjudication Area.

3 **D. Burden of Proof**

4 The court finds that Phelan Piñon Hills has the burden of proof to establish each fact
5 necessary to its second and sixth causes of action, and it failed to meet its burden of proof.
6 There was no credible testimony or evidence offered by Phelan Piñon Hills to the contrary.

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

12 Phelan Piñon Hills does not deny that it has the burden of proof for its sixth cause of
13 action for return flow rights. Phelan Piñon Hills contends that, before it has the burden of prove
14 the existence of surplus water, existing appropriators, riparian, or overlying owners must establish
15 their use is reasonable and beneficial. (*See e.g., Tulare Irrigation Dist. v. Lindsay-Strathmore*
16 *Irrigation Dist.* (1935) 3 Cal. 2d 489, 535 [“In the present case, while it is true the burden was on
17 appellant to prove the existence of a surplus, that burden did not come into existence until after
18 the respondent riparians first proved the amount required by them for reasonable beneficial
19 purposes.”].) The Court recognizes that while overdraft and native safe yield of the Adjudication
20 Area were determined in Phase 3 trial and that Adjudication Area groundwater pumping in 2011
21 and 2012 exceeded the safe yield¹, this Court has not made a determination as to whether each
22 party’s water use is reasonable and beneficial. The Court fully expects a trial and/or hearings on
23 the parties’ reasonable and beneficial water use at a later date and that Phelan Piñon Hills can
24 participate in those proceedings. To the extent the Court determines that a certain amount of
25 water use is not reasonable or beneficial, Phelan Piñon Hills can then bring a motion to determine
26 whether surplus water exists once unreasonable and non-beneficial uses are deducted from the

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28 ¹ Statement of Decision, Phase 4 Trial (June 29, 2013).

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comparison of groundwater demand and groundwater supply.

Dated: _____

JUDGE OF THE SUPERIOR COURT
HONORABLE JACK KOMAR

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PROOF OF SERVICE

I, Sandra Rosales, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 300 South Grand Avenue, 25th Floor, Los Angeles, CA 90071. On December 8, 2014, I served the within document(s):

[PROPOSED] STATEMENT OF DECISION FOR TRIAL RELATED TO PHELAN
PIÑON HILLS COMMUNITY SERVICES DISTRICT

- by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 8, 2014, at Los Angeles, California.



Sandra Rosales

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