

Case No. E063153

**EXEMPT FROM FILING FEES UNDER  
GOVERNMENT CODE § 6103**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION 2

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PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

Respondent.

LOS ANGELES COUNTY WATER WORKS DISTRICT NO. 40, et al.

Real Parties in Interest

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**PRELIMINARY OPPOSITION TO PETITION  
FOR WRIT OF MANDATE**

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TO BE FILED IN THE COURT OF APPEAL

APP-008

<b>COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION 2</b>	Court of Appeal Case Number: <p style="text-align: center; font-weight: bold;">E063153</p>
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Thomas S. Bunn III (89502) Lagerlof, Senecal, Gosney & Kruse, LLP 301 N. Lake Ave., 10th Floor Pasadena, CA 91101-5123 TELEPHONE NO.: (626)793-9400 FAX NO. (Optional): (626)793-5900 E-MAIL ADDRESS (Optional): TomBunn@lagerlof.com ATTORNEY FOR (Name): Palmdale Water District	Superior Court Case Number: <p style="text-align: center; font-weight: bold;">JCCP 4408</p> <p style="text-align: center; font-weight: bold; font-size: small;">FOR COURT USE ONLY</p>
APPELLANT/PETITIONER: Phelan Piñon Hills Community Services District  RESPONDENT/REAL PARTY IN INTEREST: Los Angeles County Waterworks 40	
<b>CERTIFICATE OF INTERESTED ENTITIES OR PERSONS</b> (Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
<b>Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.</b>	

1. This form is being submitted on behalf of the following party (name): Palmdale Water District

2. a.  There are no interested entities or persons that must be listed in this certificate under rule 8.208.  
 b.  Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
--	-------------------------------

- (1)
- (2)
- (3)
- (4)
- (5)

Continued on attachment 2.

**The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).**

Date: 26 March 2015

Thomas S. Bunn III  
 \_\_\_\_\_  
 (TYPE OR PRINT NAME)

▶   
 \_\_\_\_\_  
 (SIGNATURE OF PARTY OR ATTORNEY)

## PRELIMINARY OPPOSITION

Real party in interest Palmdale Water District submits this preliminary opposition to the Verified Petition for Writ of Mandate, Writ of Prohibition, or Other Appropriate Relief, filed March 25, 2015.

The Antelope Valley Groundwater cases are a comprehensive adjudication of all the groundwater rights in the Antelope Valley. Trial of the coordinated and consolidated cases has been held in phases. One of those phases was a trial of two of the eight causes of action in Petitioner's cross complaint. The trial court found that Petitioner has no water rights. Petitioner is asking this court to overturn that determination. However, Petitioner has an adequate remedy by appeal.

The case has been going on for over fifteen years. It is extraordinarily complex. There are over 140 active parties, including the federal government, plus a class consisting of all landowners who have never pumped water, and a second class consisting of landowners who pumped small amounts. The case was assigned by the Chair of the Judicial Council to Judge Jack Komar in Santa Clara County, who is experienced in groundwater cases. Judge Komar has conducted five phases of trial, determining such matters as basin boundaries and safe yield. In the meantime, the parties have devoted immense amounts of time to settlement discussions. They have employed three different mediators, the last one being Justice Ronald Robie of the Third District Court of Appeal, who devoted over ten full days of his time at no charge.

Petitioner's claims were tried separately because Petitioner is differently situated from the other public water suppliers. Petitioner did not pump water from the adjudication area until after the lawsuit was commenced. While the other public water suppliers base their water rights claims mainly on prescriptive rights, Petitioner does not have prescriptive rights, which require continuous pumping for five years prior to the lawsuit. (See *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 279; *Yorba v. Anaheim Union Water Co.* (1953) 41 Cal.2d 265, 270.)

The parties were unable to reach settlement with Petitioner, and suggested to the court that Petitioner's rights be determined, in order to facilitate the overall settlement. At Petitioner's request, only two of Petitioner's eight causes of action were tried, namely Petitioner's claims of appropriative rights and return flow rights. The trial was largely on stipulated facts, with additional testimony by Petitioner's general manager and an expert witness on hydrology. At the conclusion of Petitioner's evidence, the court granted a motion for judgment (Civ. Proc. Code sec. 631.8), and determined that Petitioner had no water rights. The court supported this determination with a statement of decision. (A copy of the statement of decision is attached as Exhibit 1; it is also in Petitioner's Appendix, Vol. 15, Tab 165.)

Subsequently, the overwhelming majority of the other parties agreed on a settlement. The settlement includes a physical solution, which is a plan for management of the groundwater basin. This settlement was filed with the court for approval. An approval hearing is currently scheduled for August 3, 2015. As part of this hearing, claims of non-stipulating parties, including Petitioner's remaining claims, will be heard and determined.

The petition is an attempt to derail this process. Petitioner is concerned that the settlement excludes Petitioner. However, Petitioner has an adequate remedy by appeal. It makes more sense to allow the court to determine whether to approve the settlement and its physical solution, to which numerous parties have devoted so much time and effort, and then to review Petitioner's claims of error in the context of the entire case.

Contrary to Petitioner's assertion, there will not be an unnecessary trial if the writ is not granted. In any case, it will be necessary to consider the parties' proposed physical solution. Nor is Petitioner prejudiced, because there is no restriction on Petitioner's pumping in the meantime.

This preliminary opposition does not address the merits of Petitioner's claims of error. Those are best addressed in a future appeal. However, if the court desires a further opposition, Real Party would be happy to provide it.

Dated: March 26, 2015

LAGERLOF, SENECAL, GOSNEY & KRUSE, LLP

By: Thomas S. Bunn III  
Thomas S. Bunn III  
Attorneys for Real Party in Interest  
Palmdale Water District

**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and am not a party to the within action; my business address is 301 North Lake Avenue, 10<sup>th</sup> Floor, Suite 1000, Pasadena, California 91101-5123.

On March 27, 2015, I served the document described as **PRELIMINARY OPPOSITION** on the interested parties in this action by transmitting a true copy thereof as follows:

**SEE ATTACHED SERVICE LIST**

- X   (BY REGULAR MAIL) As follows: 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 at Pasadena, California in the ordinary course of business. I am aware that on motion of 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.
  
- (BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered by air courier, with next day service.
  
- (BY PERSONAL SERVICE) I delivered such envelope(s) by hand to the offices of the addressee(s).
  
- (BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission. I caused the document to be sent to the person at the e-mail address listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

EXECUTED at Pasadena, California on March 27, 2015.

\_\_\_\_\_  
Linda Lane

SERVICE LIST

*Phelan Piñon Hills Community Services District v.  
Superior Court for the State of California, County of Los Angeles*

Case No. E063153

<p>Hon. Jack Komar Santa Clara County Superior Court 161 N. First Street San Jose, CA 95113 Tel: (408) 882-2286</p>	<p>Presiding Judge</p>
<p>Erie L. Garner (SBN 130665) Jeffrey V. Dunn (SBN 131926) Wendy Y. Wang (SBN 228923) Best, Best &amp; Krieger LLP 18101 Von Karman Avenue, Suite 1000 Irvine, CA 92612 Tel: (949) 263-2600 Fax: (949) 260-0972 Email: eric.garner@bbklaw.com jvdunn@bbklaw.com</p>	<p>Attorneys for Real Party in Interest /Plaintiff, Los Angeles County Waterworks District No. 40</p>
<p>Richard G. Zimmer (SBN 107263) T. Mark Smith (SBN 162370) Clifford &amp; Brown Bank of America Building 1430 Truxtun Avenue, Suite 900 Bakersfield, CA 93301-5230 Tel: (661) 322-6023 Fax: (661) 322-3508 Email: rzimmer@clifford-brownlaw.com msmith@clifford-brownlaw.com</p>	<p>Attorneys for Real Party in Interest /Defendant, Bolthouse Properties, LLC, and Real Party in Interest / Cross- Defendant, Wm. Bolthouse Farms, Inc.</p>
<p>Michael T. Fife (SBN 203025) Bradley J. Herrema (SBN 228976) Brownstein Hyatt Farber Schreck, LLP 1020 State Street Santa Barbara, CA 93101 Tel: (805) 963-7000 Fax: (805) 965-4333 Email: mfife@bhfs.com bherrema@bhfs.com</p>	<p>Attorneys for Real Parties in Interest / Defendant / Cross-Complainant, Antelope Valley Groundwater Agreement Association</p>

<p>Douglas J. Evertz (SBN 123066)  Murphy &amp; Evertz LLP  650 Town Center Drive, Suite 550  Costa Mesa, CA 92626  Tel: (714) 277-1700  Fax: (714) 277-1777  Email: devertz@murphyevertz.com</p>	<p>Attorneys for Real Parties in Interest /  Defendants, City of Lancaster and Rosamond  Community Services District</p>
<p>Janet J. Goldsmith (065959)  Kronick, Moskovitz,  Tiedemann &amp; Girard  400 Capital Mall, 27th Floor  Sacramento, CA 95814  Tel: (916) 321-4500  Fax: (916) 321-4555  Email: jgoldsmith@kmtg.com</p>	<p>Attorneys for Real Parties in Interest /  Defendant / Cross-Defendants, City of Los  Angeles and Los Angeles World Airports</p>
<p>Christopher M. Sanders (SBN 195990) Ellison,  Schneider &amp; Harris, LLP 2600 Capital  Avenue, Suite 400  Sacramento, CA 95816  Tel: (916) 447-2166  Fax: (916) 447-3512  Email: cms@eslawfirm.com</p>	<p>Attorneys for Real Party in Interest / Cross-  Defendant, County Sanitation Districts of Los  Angeles County Nos. 14 and 20</p>
<p>Theodore A. Chester, Jr. (SBN 105405)  Smiland, Chester, Alden, LLP  140 South Lake Avenue, Suite 274  Pasadena, CA 91101  Tel: (213) 891-1010  Fax: Not Available  Email: tchester@smilandlaw.com</p>	<p>Attorneys for Real Parties in Interest / Cross-  Defendants, Landinv, Inc.; Bruce Burrows;  300 A 40 H, LLC; Little Rock Sand and  Gravel, Inc.; The George and Charlene Lane  Family Trust; The Frank and Yvonne Lane  1993 Family Trust; Monte Vista Building  Sites, Inc.; and, A.V. Materials, Inc.</p>
<p>Wayne K. Lemieux (SBN 43501)  W. Keith Lemieux (SBN 161850)  Christine Carson (SBN 188603)  Lemieux &amp; O'Neill  4165 E. Thousand Oaks Blvd., Suite 350  Westlake Village, CA 91362  Tel: (805) 495-4770  Fax: (805) 495-2787  Email: wayne@lemieux-oneill.com  keith@lemieux-oneill.com  Christine@lemieux-oneill.com</p>	<p>Attorneys for Real Parties in Interest /  Cross-Complainants, Littlerock Creek  Irrigation District; Palm Ranch Irrigation  District; North Edwards Water District, Desert  Lake Community Services District; Llano Del  Rio Water Co.; Llano Water Co.; and, Big  Rock Mutual Water Co.</p>



<p>Marilyn H. Leven (SBN 92800)  Noah Golden-Krasner (217556)  Deputy Attorney General  300 South Spring Street, Suite 1702  Los Angeles, CA 90013  Tel: (213) 897-2614  Fax: (213) 897-2802  Email: Marilyn.Levin@doj.ca.gov  Noah.Goldenkrasnergdoj.ca.gov</p>	<p>Attorneys for Real Parties in Interest /  Defendant, State of California and State of  California 50<sup>th</sup> District Agricultural  Association</p>
<p>Robert G. Kuhs (SBN 160291)  Bernard C. Barmann, Jr. (SBN 149890)  Kuhns &amp; Parker  1200 Truxtun Avenue, Suite 200  Bakersfield, CA 93303  Tel: (661) 322-4004  Fax: (661) 322-2906  Email: rgkuhs@kuhsparkerlaw.com  bbarmann@kuhsparkerlaw.com</p>	<p>Attorneys for Real Parties in Interest /  Defendant, Tejon Ranchcorp Tejon Ranch  Company, and Real Party in Interest / Cross-  Defendant, Granite Construction Company</p>
<p>Lee Leininger  James Dubois  United States Department of Justice  Environment &amp; Natural Resources Div.  999 18th St., South Terrace, Suite 370  Denver, CO 80202  Tel: (303) 844-1364  Fax: (303) 844-1350  Email: lee.leininger@usdoj.gov  james.dubois@usdoj.gov</p>	<p>Attorneys for Real Party in Interest /Plaintiff /  Defendant, United States of America</p>

Exhibit “1”

1  
2  
3  
4  
5  
6 SUPERIOR COURT OF CALIFORNIA  
7 COUNTY OF LOS ANGELES  
8

9 **ANTELOPE VALLEY GROUNDWATER**  
10 **CASES**

11 Included Consolidated Actions:

12 Los Angeles County Waterworks District No.  
13 40 v. Diamond Farming Co.  
14 Superior Court of California  
15 County of Los Angeles, Case No. BC 325 201

16 Los Angeles County Waterworks District No.  
17 40 v. Diamond Farming Co.  
18 Superior Court of California, County of Kern,  
19 Case No. S-1500-CV-254-348

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

26 Rebecca Lee Willis v. Los Angeles County  
27 Waterworks District No. 40  
28 Superior Court of California, County of Los  
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County  
Waterworks District No. 40  
Superior Court of California, County of Los  
Angeles, Case No. BC 391 869

Judicial Council Coordination  
Proceeding No. 4408

Lead Case No. BC 325 201

**PARTIAL STATEMENT OF  
DECISION FOR TRIAL RELATED  
TO PHELAN PIÑON HILLS  
COMMUNITY SERVICES  
DISTRICT (2<sup>ND</sup> AND 6<sup>TH</sup> CAUSES  
OF ACTION)**

Trial: November 4, 2014

Judge: Honorable Jack Komar, Ret.

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 percipient and expert witnesses,  
6 documentary evidence, and a Stipulation of agreed upon facts.

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

16 The court, having considered the evidence and arguments of counsel, orally issued its  
17 tentative decision granting the motion for judgment on November 5, 2014 in favor of the Phelan  
18 Cross-Defendants. For the reasons described in further detail below, the Court now issues its  
19 Statement of Decision and finds that the cross defendants are entitled to judgment in their favor  
20 on the Phelan Piñon Hills' second and sixth cause of action.

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

24 The standard for a statement of decision as set forth in Code of Civil Procedure section  
25 632 requires a court to explain " ... the legal and factual basis for its decision as to each of the  
26 principal contraverted issues at trial. ... "Case law is clear that a court must provide the factual  
27 and legal basis for the decision on those issues only closely related to the ultimate issues on the  
28 case. (See *People v. CasaBlanca Convalescent Homes* (1984) 159 Cal. App. 3d 509, 523-524.) It

1 is also clear that a court need not respond to requests that are in the nature of "interrogatories."  
2 (See *id.* at pp. 525-526.)

3 The principal issues at this phase of the trial were to determine if the Phelan Piñon Hills  
4 Community Service Area was entitled to an appropriator's right to produce water from a well  
5 located in the Antelope Valley Ground Water Adjudication Area (Second Cause of Action of its  
6 Cross Complaint) and whether it had a right to return flows created by the return of water from  
7 its use in areas outside the adjudication area but within the aquifer boundaries (6<sup>th</sup> Cause of  
8 Action).

9 In order to establish a right to the reasonable and beneficial production of water from an  
10 aquifer in an adjudication area, the claimant must establish rights defined as either overlying  
11 rights, appropriative rights from surplus water, or prescriptive rights. If the aquifer is in a state of  
12 overdraft and there is no surplus because annual recharge is less than extraction, an overlying  
13 owner is entitled only to a *correlative* right to produce water for reasonable and beneficial uses  
14 on the owner's property, subject to all other correlative rights. Such a party cannot pump more  
15 than the reasonable and beneficial amount needed for the owned land from which the water is  
16 pumped and would be a wrongful appropriator for any excess amounts or exported water and  
17 would be subject to injunctive or other relief.

18 The boundaries of the Antelope Valley Adjudication Area (the Adjudication Area)  
19 consist of an area overlying and coextensive with the aquifer which were determined by the court  
20 in the Phase One trial in these coordinated proceedings. A small area which overlies the aquifer  
21 in the south east corner was excluded from the Adjudication Area because it is within the Mojave  
22 Adjudication Area and under the jurisdiction of the Mojave County Superior Court Ground  
23 Water adjudication, although as the evidence later established, disconnected from the Mojave  
24 Aquifer.

25 In the Second Phase of trial in these coordinated proceedings, the Antelope Valley  
26 Adjudication area was found to contain a single aquifer and while there are variations in water  
27 level within the various subareas (sub basins), there is hydraulic connectivity and conductivity  
28 with all parts of the several sub basins within the adjudication area aquifer.

1 In the Third Phase of Trial in these coordinated proceedings, the court found that the  
2 entire aquifer was in a state of over draft since prior to 2005 <sup>1</sup>and suffering degradation and  
3 detriment of a permanent nature as a result of extractions exceeding annual recharge over many  
4 years both preceding and after 2005.

5 Phelan filed its Cross Complaint in these proceedings and sought relief in Eight Causes of  
6 Action. The Second Cause of Action sought to establish “an appropriative right for public use to  
7 pump groundwater from the Adjudication area” from Well # 14 to its service area which is  
8 outside the adjudication area.

9 Phelan Piñon Hills Community Services District (Phelan) owns Well # 14 which it  
10 acquired and from which it began producing water in 2005. The well is located in the Antelope  
11 Valley Adjudication Area but none of the water produced is directly used within the Antelope  
12 Valley Ground Water Adjudication area. The water is pumped to and used in the Phelan Service  
13 area for use by residents in the service area, an area outside the Adjudication area.

14  
15  
16 **1. GENERAL FINDINGS OF FACT**

17 The Court finds that the following facts were established by the evidence, including  
18 testimony of witnesses, documentary evidence, and the parties’ stipulation of facts, as follows  
19 below.

20 Phelan Piñon Hills is a California community services district. It was formed on March  
21 18, 2008. It provides public water service within its service area which is entirely within San  
22 Bernardino County.

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

25 The Well 14 Parcel has an operating groundwater well, which is commonly referred to as  
26  
27

28  

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<sup>1</sup> The evidence at the Third Phase of Trial established that the Antelope Valley Basin was in a state of overdraft from 1951 through 2005.

1 Phelan Piñon Hills' "Well 14." Well 14 Parcel is within the Antelope Valley Adjudication Area  
2 ("Adjudication Area") as determined by this Court's order, dated March 12, 2007

3 A part of Phelan Piñon Hills' service area overlies a portion of the Antelope Valley  
4 Groundwater Basin as described and shown in California Department of Water Resources  
5 Bulletin 118 (2003). That portion of the Phelan Piñon Hills' service area is within the existing  
6 Mojave Basin Adjudication Area in San Bernardino County. It is outside of the Antelope Valley  
7 Adjudication Area. Although the south-eastern boundary of the Antelope Valley Adjudication  
8 Area is the county line between San Bernardino and Los Angeles Counties, the portion of the  
9 Antelope Valley Groundwater Basin located in San Bernardino County is hydrologically  
10 connected to the Antelope Valley Adjudication Area in Los Angeles County.

## 11 **2. SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW**

12 Prior to Phelan Piñon Hills' formation a community services district, a predecessor  
13 agency had installed Well 14 on the Well 14 Parcel in 2004. Well 14's groundwater production  
14 is as follows:  
15

16 2004 and earlier: none;

17 2005 (beginning in September): 1.11 acre feet ("af");

18 2006: 164.15 af;

19 2007: 20.95 af;

20 2008: 493.27 af;

21 2009: 558.65 af;

22 2010: 1,110.45 af;

23 2011: 1,053.14 af;

24 2012: 1,035.26 af; and

25 2013: 1,028 af.

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

1 Phelan Piñon Hills does not import water from the State Water Project or from any other  
2 source. But Phelan Piñon Hills claims a right to “return flows” from Well 14. Phelan Piñon  
3 Hills contends that some amount of the groundwater produced from Well 14 is used by Phelan  
4 Piñon Hills customers outside the Adjudication Area, recharges the Adjudication Area. Phelan  
5 Piñon characterizes the recharge as “return flows.” The Phelan Piñon Hills’ groundwater  
6 production from Well 14 during the years from 2010 to 2013 exceeds the average amount of the  
7 Phelan Piñon Hills claimed “return flows” during that same period.

8 Well 14 is located in an area of the Adjudication Area generally known as the Butte  
9 subbasin, which borders the Lancaster subbasin to the west. The Butte sub basin and the  
10 Lancaster sub basin physically adjacent and are hydrologically connected. Groundwater  
11 pumping in a sub basin can lower the groundwater level in an adjacent sub basin.  
12

13 Phelan Piñon Hills operates three groundwater wells in San Bernardino County that are  
14 within one mile of Well 14. These three wells are located within the Antelope Valley  
15 Groundwater Basin, but outside of the Adjudication Area. These three wells intercept  
16 groundwater that would otherwise flow into and recharge the Adjudication Area.

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

19 The Court finds and determines that the Phelan Piñon Hills does not have water rights to  
20 pump groundwater and export it from the Adjudication Area to an area for use other than on its  
21 property where Well 14 is located within the adjudication area. All of its pumping from the  
22 inception from Well 14 is used on other than the property from which it is pumped. While it is  
23 entitled to use the water from Well 14 on its land within the adjudication area, so long as there is  
24 no surplus within the Adjudication Area aquifer, it is an appropriator without a right to pump.  
25 There was no credible testimony or evidence to the contrary.

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

27 Under California law, “[a]ny water not needed for the reasonable beneficial use of those  
28 having prior rights is excess or surplus water and may rightly be appropriated on privately owned



1 land for non-overlying use” so long as the basin is not in overdraft. (*City of Barstow v. Mojave*  
2 *Water Agency* (2000) 23 Cal.4th 1224, 1241 (“*Mojave Water Agency*”) [citing *California Water*  
3 *Service Co. v. Edward Sidebotham & Son* (1964) 224 Cal.App.2d 715, 725-726].) While Phelan  
4 Piñon Hills owns land in the Adjudication Area, it does not use the water it pumps from Well 14  
5 on its land within the Adjudication Area. Instead, Phelan Piñon Hills provides such water to its  
6 customers outside of the Adjudication Area and not on its own property.

7 To establish an appropriative right, Phelan Piñon Hills bears the burden of proof to  
8 establish that the water it pumped from the Antelope Valley Adjudication Area is *surplus* water,  
9 that the aquifer from which it is pumped is not in overdraft, and that its use is reasonable and  
10 beneficial. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal. 4th 1224, 1241 (“*Mojave*  
11 *Water Agency*”); *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 926 (“*Pasadena*”);  
12 *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 278, 293 (“*San Fernando*”);  
13 *Allen v. California Water & Tel. Co.* (1946) 29 Cal.2d 466, 481; *City of Santa Maria v. Adam*  
14 (2012) 211 Cal.App.4th 266, 279 (“*Santa Maria*”).)

15 The California Supreme Court has explained the concepts of surplus water and overdraft  
16 in a groundwater basin:  
17

18 A ground basin is in a state of surplus when the amount of water  
19 being extracted from it is less than the maximum that could be  
20 withdrawn without adverse effects on the basin's long term supply.  
21 While this state of surplus exists, none of the extractions from the  
22 basin for beneficial use constitutes such an invasion of any water  
23 right as will entitle the owner of the right to injunctive, as distinct  
24 from declaratory, relief. (*City of Pasadena v. City of Alhambra*,  
25 *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  
26 whenever extractions increase, or the withdrawable maximum  
27 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.**

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

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

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

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

22 Thus, it is not surprising that the overall overdraft condition would impact the Butte sub  
23 basin differently than it impacts the Lancaster sub basin. Uneven impact from groundwater  
24 pumping is not an indication that an overdraft condition does not exist or that surplus water  
25 exists. The Court finds that groundwater pumping in the Butte subbasin negatively impacts  
26 groundwater recharge in the Lancaster subbasin and that Phelan Piñon Hills failed to meet its  
27 burden of proof that surplus water exists within the Adjudication Area.  
28

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

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

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

9  
10                     Even though all deliveries produce a return flow, only deliveries  
11                     derived from imported water add to the ground supply. The  
12                     purpose of giving the right to recapture returns from delivered  
13                     imported water priority over overlying rights and rights based on  
14                     appropriations of the native ground supply is to credit the importer  
15                     with the fruits of his expenditures and endeavors in bringing into  
16                     the basin water that would not otherwise be there. Returns from  
17                     deliveries of extracted native water do not add to the ground  
18                     supply but only lessen the diminution occasioned by the  
19                     extractions.

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

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

1 455-456; *Fortman v. Forvaltningsbolaget Insulan AB* (2013) 212 Cal.App.4th 830, 844; *Kelly v.*  
2 *Vons 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  
13 **C. Impact of Phelan Piñon Hills' Pumping of Groundwater Upon the**  
14 **Adjudication Area**

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

18 It is uncontested that Phelan Piñon Hills' Well 14 is located in an area of the  
19 Adjudication Area generally known as the Butte subbasin, which borders the Lancaster sub  
20 basin. (Ex. Phelan CSD-27.) The Court finds that the Butte subbasin and the Lancaster sub  
21 basin are hydrologically connected. The Court also finds that groundwater from the Butte sub  
22 basin is a source of groundwater recharge for the Lancaster sub basin, and that groundwater  
23 pumping in the Butte sub basin could lower the groundwater level in the aquifer. The Court  
24 further finds that Phelan Piñon Hills' operation of its three groundwater wells located near Well  
25 14 intercepts groundwater that would otherwise flow into and recharge the Adjudication Area.  
26 Based on these uncontroverted facts, the Court concludes that Phelan Piñon Hills' pumping of  
27 groundwater from the Antelope Valley Groundwater Basin as described in Bulletin 118  
28 negatively impacts the Butte subbasin, the Lancaster subbasin, and the Adjudication Area.

1           **D.     Burden of Proof**

2           The court finds that Phelan Piñon Hills has the burden of proof to establish each fact  
3 necessary to its second and sixth causes of action, and it failed to meet its burden of proof.

4           There was no credible testimony or evidence offered by Phelan Piñon Hills to the contrary.

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

10           Phelan Piñon Hills does not deny that it has the burden of proof for its sixth cause of  
11 action for return flow rights. Phelan Piñon Hills contends that, before it has the burden of prove  
12 the existence of surplus water, existing appropriators, riparian, or overlying owners must  
13 establish their use is reasonable and beneficial. (*See e.g., Tulare Irrigation Dist. v. Lindsay-*  
14 *Strathmore Irrigation Dist.* (1935) 3 Cal. 2d 489, 535 [“In the present case, while it is true the  
15 burden was on appellant to prove the existence of a surplus, that burden did not come into  
16 existence until after the respondent riparians first proved the amount required by them for  
17 reasonable beneficial purposes.”].) The Court recognizes that while overdraft and native safe  
18 yield of the Adjudication Area were determined in Phase 3 trial and that Adjudication Area  
19 groundwater pumping in 2011 and 2012 exceeded the safe yield<sup>2</sup>, this Court has not made a  
20 determination as to whether each party’s water use is reasonable and beneficial. The Court will  
21 make such a determination prior to the entry of final judgment.

22           Phelan Piñon Hills has not proved that there is a surplus contrary to the court’s  
23 determination that the basin aquifer is in overdraft. If a final judgment is entered based upon the  
24 overdraft, the court will be required to provide for the management of the basin aquifer and will  
25 provide for monitoring pumping to preserve the integrity of the aquifer. Phelan Piñon Hills has  
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<sup>2</sup> Statement of Decision, Phase 4 Trial (June 29, 2013).

1 five other causes of action in its cross complaint and as a pumper may be required to participate  
2 in the monitoring program which will establish the reasonable and beneficial use of each  
3 pumper within the aquifer as well as rights to produce water, whether as appropriator, overlying  
4 owner, or prescriber. The decision here only determines that at this time Phelan Piñon Hills is an  
5 appropriator without a priority as to overlying owners and appropriators with prescribed rights (if  
6 any).

7  
8  
9 Dated: FEB - 3 2015

  
10 Hon. Jack Komar (Ret.)  
11 Judge of the Superior Court  
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