

EXHIBIT 7

AV Watermaster – Regular Meeting
August 23, 2017

Memorandum
Lagerlof, Sencal, Gosney & Kruse LLC
Phelan Pinon Hills CSD

To: Antelope Valley Watermaster Board of Directors

From: Thomas S. Bunn III

Date: August 17, 2017

Re: Phelan Piñon Hills Community Services District

We are the attorneys for Palmdale Water District. This is in response to the letter from June Ailin, attorney for Phelan Piñon Hills Community Services District, to Phyllis Stanin, dated July 19, 2017. The Public Water Suppliers disagree with Ms. Ailin's interpretation of the Physical Solution¹ and believe that Phelan's 2016 production is subject to a replacement assessment.

Ms. Ailin's letter focuses on the Rampdown provisions in Article 8 of the Physical Solution, and in particular the statement in section 8.3 that "[d]uring the first two Years of the Rampdown Period no Producer will be subject to a Replacement Water Assessment." She argues that Phelan falls under the definition of "Producer," and therefore is not subject to an assessment. She ignores the Physical Solution provision dealing specifically with Phelan, which leads to a different result.

The Judgment states: "Phelan Piñon Hills Community Service District ('Phelan') has no right to pump groundwater from the Antelope Valley Adjudication Area except under the terms of the Physical Solution." (Judgment ¶ 3(f)). This means that Phelan must identify a provision specifically granting it the right to pump groundwater, and it may pump groundwater only in strict compliance with that provision. To the same effect is section 6.1 of the Physical Solution, which enjoins each and every party from producing groundwater except pursuant to the Physical Solution.

Phelan is only mentioned once in the Physical Solution:

"The injunction does not apply to any Groundwater Produced within the Basin by Phelan Piñon Hills Community Services District and delivered to its service areas, so long as the total Production does not exceed 1,200 acre-feet per Year, such water is available for Production without causing Material Injury, and the District pays a Replacement Water Assessment pursuant to Paragraph 9.2, together with any other costs deemed necessary to protect Production rights decreed herein, on all water Produced and exported in this manner." (Physical Solution §6.4.1.2.)

¹ The judgment signed by Judge Komar was four pages long, and contained an exhibit called Proposed Judgment and Physical Solution. To avoid confusion, I refer to the four-page document as the Judgment and the exhibit as the Physical Solution.

Under this section, Phelan's right to produce water from the Basin is *conditioned* on, among other things, payment of a Replacement Water Assessment. If the assessment is not paid, Phelan has no rights, regardless of what other provisions in the Physical Solution say. This is consistent with well-established principles of contract interpretation that when a general and a particular provision are inconsistent, the particular and specific provision is paramount. (*Prouty v. Gores Technology Group* (2004) 121 Cal.App.4th 1225) So a particular intent will control a general one that is inconsistent with it. (Civ. Proc. Code § 1859.)

The Public Water Suppliers request that the Board direct the Watermaster Engineer to begin the process of imposing a Replacement Water Assessment on Phelan for 2016 by determining the recommended amount of the assessment, pursuant to section 9.2 of the Physical Solution. The actual imposition of the assessment will come at a later date.