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8

9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**
11

12 Coordination Proceeding
Special Title (Rule 1550(b))
13

14 **ANTELOPE VALLEY**
GROUNDWATER CASES

15 Included Actions:

16 *Los Angeles County Waterworks District*
No. 40 v.
17 *Diamond Farming Co., et al.*
Los Angeles County Superior Court, Case
18 No. BC 325 201

19 *Los Angeles County Waterworks District*
No. 40 v.
20 *Diamond Farming Co., et al.*
Kern County Superior Court, Case No.
21 S-1500-CV-254-348

22
23 *Wm. Bolthouse Farms, Inc. v. City of*
Lancaster
24 *Diamond Farming Co. v. City of Lancaster*
Diamond Farming Co. v. Palmdale Water
25 *Dist.*
Riverside County Superior Court,
26 Consolidated Action, Case Nos. RIC 353
840, RIC 344 436, RIC 344 668
27
28

AND RELATED CROSS-ACTIONS

) Judicial Council Coordination Proceeding
) No. 4408
)
) (For Filing Purposes Only: Santa Clara
) County Case No.: 1-05-CV-049053)
)
) Assigned for All Purposes To:
) Judge: Hon. Jack Komar
)
) (Filing Fees Exempt, Per Gov't Code § 6103)
)
) **PHELAN PIÑON HILLS COMMUNITY**
) **SERVICES DISTRICT'S OPPOSITION**
) **TO BOLTHOUSE PROPERTIES, LLC'S**
) **AND WM. BOLTHOUSE FARMS,**
) **INC.'S MOTION IN LIMINE NO. 2**
) **OBJECTING TO INTRODUCTION OF**
) **EVIDENCE ON UNSUPPORTED**
) **LEGAL THEORY**

) **Phase Five Trial:**

) Date: February 10, 2014
) Time: 9:00 a.m.
) Dept.: Room 222 (Old Dept. 1)

) (Phase Six Trial Date: August 4, 2014)
)
)
)

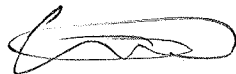
1 TO ALL PARTIES HEREIN AND TO THEIR ATTORNEY OF RECORD:

2 COMES NOW Phelan Piñon Hills Community Services District ("Phelan Piñon Hills"),
3 hereby opposes Defendants' Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc.'s
4 (collectively, "Bolthouse") Motion in Limine No. 2 Objecting to Introduction of Evidence on
5 Unsupported Legal Theory ("Motion").

6 This opposition is made and based upon the attached memorandum of points and authorities
7 in support thereof, the papers and records on file herein, and upon such further oral and/or
8 documentary evidence as may be presented at the time of the hearing of this motion and/or trial.

9
10 Dated: January 31, 2014

ALESHIRE & WYNDER, LLP

11
12 By: 

13 Wesley A. Miliband
14 Attorneys for Cross-Defendant and
15 Cross-Complainant,
16 Phelan Piñon Hills Community
17 Services District
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION & SUMMARY OF ARGUMENT.**

3 This is a unique groundwater adjudication with unique circumstances. Phelan Piñon Hills'
4 claim to a return flow right, while unique in this case, is *not* an unsupported legal theory as
5 Bolthouse casts the line. Rather, various authorities exist, founded in law, science, and fact.
6 Decisions from the United States Supreme Court, State of Washington Supreme Court, and the
7 federal District Court for the District of Utah support Phelan Piñon Hills' claim. Moreover, this is
8 not just a "claim," but instead a cause of action that was pled by Phelan Piñon Hills. Accordingly,
9 Bolthouse's attempt to deny Phelan Piñon Hills the opportunity to offer evidence regarding its
10 return flow right is procedurally defective because a motion for summary adjudication is the device
11 to be utilized for disposing of a cause of action.

12 Beyond Bolthouse's defect, as well as the legal basis for Phelan Piñon Hills' cause of
13 action, is the undeniable fact that the substance underlying this complex litigation matter relates to
14 the limited supply of a natural resource, for which hydrogeological characteristics and conditions
15 cannot be ignored. With this Court presiding as a Court of Equity comes the fashioning of
16 solutions particular to the circumstances (ultimately, the "physical solution"), whether those be
17 circumstances on a more "global" level (basin wide), "regional" level (localized areas within the
18 basin), or specific level to individual parties.

19 ***Ultimately, the Court should deny the Motion for any one of the following reasons:***

20 (1) Procedurally, the Motion is fatally and incurably defective because the Motion seeks
21 to dispose of Phelan Piñon Hills' Sixth Cause of Action, making a motion for summary
22 adjudication the proper motion that Bolthouse could have and should have brought months ago.

23 (2) Bolthouse has had notice and opportunity to bring a motion for summary
24 adjudication for over five (5) years by way of Phelan Piñon Hills' Cross-Complaint pleading this
25 claim, *and*, with Phelan Piñon Hills' return flow cause of action having been the subject of various
26 Case Management Conferences and Statements over the past year, thus providing an unduly
27 prejudicial and unjust result to Phelan Piñon Hills *if* the Court allows Bolthouse's motion *in limine*
28 to serve as the procedural device to potentially dispose of this cause of action.

1 (3) This Court presides as a Court of Equity, and given the additional unique nature of
2 this litigation being a groundwater adjudication, and one that must be “comprehensive” for
3 purposes of the McCarran Amendment, the Court should afford Phelan Piñon Hills the opportunity
4 to offer evidence related to Phelan Piñon Hills’ return flow claim.

5 (4) Numerous authorities - as discussed in detail herein - establish the legitimacy of
6 Phelan Piñon Hills’ cause of action for recapturing return flows from native groundwater, as a
7 matter of law, science, and fact. Also, Phelan Piñon Hills’ cause of action regarding return flow is
8 *not* claimed as a “water right” but instead a “return flow right.”

9 (5) The “science” establishes several pertinent circumstances, including: (i) the
10 Antelope Valley Groundwater Basin (“Basin”) extends east of the Los Angeles/San Bernardino
11 County line;¹ (ii) a portion of Phelan Piñon Hills’ service area lies over the Basin;² (iii) Phelan
12 Piñon Hills produces groundwater from the Basin (namely, Well 14 which is located within the
13 Adjudication Area (“AVAA”)), which Phelan Piñon Hills distributes to customers who are almost
14 exclusively residential and unsewered users located within that portion of the service that lies over
15 the Basin; (iv) native groundwater return flow results from Phelan Piñon Hills’ production and
16 distribution to these customers; and, (v) this return flow flows toward the AVAA and Well 14, with
17 Well 14 located hydrologically downgradient, placing Well 14 in a position to recapture the native
18 groundwater that was used by customers in that portion of Phelan Piñon Hills’ service area that lies
19 over the Basin.

20 (6) Neither Phelan Piñon Hills’ production nor its native groundwater return flow have
21 not been factored into the evidence (despite Phelan Piñon Hills’ earlier efforts), meaning that part
22 of the natural recharge to the Basin is unaccounted.

24 ¹ Court’s Order After Hearing on Jurisdictional Boundaries (November 3, 2006, Document No. 325
25 on the Court’s website), p. 4:6-8 [“The court concludes that the alluvial basin as described in
26 California Department of Water Resources Bulletin 118-2003 should be the basic jurisdictional
27 boundary for purposes of this litigation.”]

28 ² *See*, Exhibit A attached hereto depicting, among other things, a portion of Phelan Piñon Hills’
service area lies over the Basin.

1 (7) Subsequent trial phase(s) or proceedings may lead to determinations that subject
2 Phelan Piñon Hills to liability, whether that be liability based upon existing complaints or cross-
3 complaints of other parties for alleged “takings,” or, some other basis for potential liability such as
4 potential claims or concerns of that Phelan Piñon Hills is “exporting” groundwater it produces from
5 Well 14 in the AVAA that is distributed to and used by Phelan Piñon Hills customers in the portion
6 of service area that lies over part of the Basin. Such circumstances make the return flow right
7 sought by Phelan Piñon Hills an appropriate measure to offset any such liability.

8 Accordingly, Phelan Piñon Hills respectfully requests the Court deny Bolthouse’s Motion
9 with prejudice based upon law, science, and fact, which establish a sufficient basis for this Court
10 allow Phelan Piñon Hills to offer evidence to establish a return flow right.

11 **II. ARGUMENT**

12 Broadly speaking, Bolthouse’s Motion reveals several fundamental oversights or
13 misunderstandings by Bolthouse. **First**, Bolthouse boldly states that no “other party is making a
14 return flow claim based upon native water”,³ yet *Bolthouse itself pled its purported priority right to*
15 *recapture return flows from its use of native groundwater for irrigation.*⁴ Also, Bolthouse seems to
16 implicitly suggest that because no other party makes this claim (other than Bolthouse and Phelan
17 Piñon Hills), that somehow this claim lacks merit, in which case Bolthouse’s implicit “pack-
18 mentality” argument ignores circumstances described herein for which the Court has more
19 generally noted at times to be - or possibly be - unique circumstances for Phelan Piñon Hills.
20 **Second**, Phelan Piñon Hills does not contend its return flow right is a “groundwater right,”⁵ given
21 the latter is an appropriative, federal reserved, overlying/riparian, pueblo, or prescriptive right.

22 _____
23 ³ Motion, p. 3:13-14.

24 ⁴ Bolthouse’s Cross-Complaint against Phelan Piñon Hills (filed 1/19/09, Document No. 2394 on
25 the Court’s website), Paragraph 42, Sixth Cause of Action (Return Flows), wherein Bolthouse
26 alleges it has “pumped and used groundwater on its [parcels]...a portion of this water has reached
the upper aquifer by percolation...and [Bolthouse has] a paramount right against all other parties to
recapture this water...”).

27 ⁵ Motion, p. 2, lines 3, 17, and 21.
28

1 **Third**, Phelan Piñon Hills does not seek a right based on “*release* of native water”⁶ but instead a
2 right to *recapture* water, or stated differently, the right to reuse water that Phelan Piñon Hills has
3 already used (through its customers).

4 Ultimately, Phelan Piñon Hills’ cause of action for a return flow right serves to be part of
5 the overall water balance with Phelan Piñon Hills’ receiving an offset against potentially future
6 assessments or liabilities, anti-export provisions, or otherwise arising from the anticipated physical
7 solution to be fashioned by the Court.

8 A. **Bolthouse’s Motion Is Procedurally Defective Because Motions *In Limine* Are**
9 **For Excluding Evidence, Not For Determining A Cause Of Action As Granting**
10 **The Motion Would Do.**

11 Bolthouse’s Motion is fatally and incurably defective because the Motion seeks to dispose,
12 or would have the effect of disposing, a cause of action by excluding all evidence related to that
13 cause of action through a motion *in limine* rather than a motion for summary adjudication.

14 Los Angeles Superior Court (“LASC”) Rules, which apply to this case given its venue is
15 Los Angeles County, specifically forbid motions *in limine* for purposes of summary adjudication of
16 an issue. LASC Rule 3.57(b) (Summary Adjudication Improper) states that a “motion *in limine*
17 ***may not be used*** for the purpose of seeking summary judgment or the summary adjudication of an
18 issue or issues. Those motions may only be made in compliance with Code of Civil Procedure
19 section 437c and applicable court rules.”⁷ Also, a motion in limine may be inappropriate where the
20 effect of granting the motion would be to eliminate the opportunity for the opponent “to present
21 evidence to establish its cause of action.” (See *R & B Auto Ctr., Inc. v. Farmers Group, Inc.* (2006)
22 140 Cal.App.4th 327, 359; see also, *R & B Auto Ctr., Inc. v. Farmers Group, Inc.* (2006) 140
23 Cal.App.4th 327, 359; *Amtower v. Photon Dynamics, Inc.* (2008) 158 Cal.App.4th 1582, 1593-
24 1594.)

25 _____
26 ⁶ Motion, p. 2:26-27 (emphasis added).

27 ⁷ Emphasis added.
28

1 “What in limine motions *are not designed to do* is to replace the dispositive motions
2 prescribed by the Code of Civil Procedure.”⁸

3 Phelan Piñon Hills pled as its Sixth Cause of Action in its Cross-Complaint the right to
4 “recapture of return flows,”⁹ which is the very claim targeted by the Motion. Bolthouse has had
5 notice and opportunity to bring a motion for summary adjudication for over five (5) years by way
6 of Phelan Piñon Hills’ cross-complaint, with Phelan Piñon Hills’ return flow cause of action having
7 been the subject of various Case Management Conferences and Statements over the past year, with
8 the Court confirming on October 25, 2013 that Phelan Piñon Hills’ return flow claim is part of the
9 Phase 5 trial. Nonetheless, Bolthouse elected - or neglected - to address its opposition to this cause
10 of action until now. *To grant the Motion in light of Bolthouse’s significant defect caused by its*
11 *own inaction would impose an unduly prejudicial and unjust result to Phelan Piñon Hills.*

12 **B. The Inherent Discretion Of A Court Of Equity, Such As This Court, Empowers**
13 **This Court To Find A Sufficient Legal, Scientific, And Factual Basis Exist For**
14 **Phelan Piñon Hills’ Return Flow Cause Of Action.**

15 As this Court is aware, and other parties have indicated during earlier proceedings or
16 hearings, this Court presides as a Court of Equity. Given the additional unique nature of this
17 litigation being a “comprehensive” groundwater adjudication, Phelan Piñon Hills should have the
18 opportunity to offer evidence related to Phelan Piñon Hills’ return flow claim.

19 The powers of a court of equity, dealing with the subject-matters within its
20 jurisdiction, are not cribbed or confined by the rigid rules of law. From the very
21 nature of equity, a wide play is left to the conscience of the chancellor in
22 formulating his decrees. ... *It is of the very essence of equity that its powers*
23 *should be so broad as to be capable of dealing with novel conditions.* Equity
acts in order to meet the requirements of every case, and to satisfy the needs of a
progressive social condition, in which *new primary rights and duties are*
constantly arising, and new kinds of wrongs are constantly committed.¹⁰

24 ⁸ *Amtower v. Photon Dynamics, Inc.* (2008) 158 Cal.App.4th 1582, 1593 (emphasis added).

25 ⁹ Phelan Piñon Hills Cross-Complaint, Sixth Cause of Action at p. 18:7-23 (filed December 31,
26 2008, Document No. 2350 on the Court’s website).

27 ¹⁰ *Toscano v. Greene Music* (2004) 124 Cal.App.4th 685, 694 (emphasis added; internal citations
28 omitted).

1 More specific to water adjudications, “Since the adoption of the 1928 constitution
2 amendment, *it is not only within the power but it is also the duty of the trial court to admit*
3 *evidence relating to possible physical solution...*”¹¹ “The doctrine of physical solution is a
4 practical way to carry out the mandate of Article X, Section 2, that the state’s water resources be
5 put to use ‘to the fullest extent of which they are capable’”; “[u]nder the doctrine, as one text states,
6 ‘[s]olution of water rights problems by *use of all available information* and expertise is attempted
7 in order that the *best possible use is made of the waters* in their apportionment among contending
8 parties.””¹² *Accordingly, this Court is uniquely positioned for this case to resolve on the merits*
9 *and substance issues or causes of action, such as that of Phelan Piñon Hills, that might*
10 *otherwise not be permitted in other cases.*

11 **C. The Inherent Power Of This Court, As A Court Of Equity, Allows This Court**
12 **To Look To Out-Of-State Law As The Legal Basis, And, As A Matter Of Law,**
13 **United States Supreme Court Decisions Are Controlling Authority.**

14 Despite a handful, relatively speaking, of published California opinions involving water
15 adjudications, none have confirmed or rejected whether a return flow right to native water exists,
16 such as that claimed by Phelan Piñon Hills. This Court is presented with the opportunity to address
17 “novel conditions” as Section B, *supra*, says the Court may - and should - do in this type of case,
18 particularly where California law has not been established (e.g., State law is uncertain) as to
19 whether a return flow right resulting from native groundwater use exists.

20 *Legal authority for this right does exist, albeit out-of-state authority, as discussed in Section*
21 *D, infra, including from the United States Supreme Court. **Decisions of the United States***
22 *Supreme Court constitute controlling authority in all California appellate courts.*¹³

23 _____
24 ¹¹ *City of Lodi v. East Bay Municipal Utility District* (1936) 7 Cal.2d 316, 341, *citing to, Tulare v. Lindsay-Strathmore* (1935) 3 Cal.2d 489, 574.

25 ¹² Littleworth & Garner, *California Water II* (2d ed. 2007) Equitable Apportionment and the
26 Doctrine of Physical Solution, ch. 7, pp. 173-174; *see also*, at p. 174, *citing to*, Rogers and Nichols,
pp. 547-548.

27 ¹³ *See, Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455–456.

1 Also, where California law is uncertain, such as here, the decision of a court of last resort of
2 another state, though not binding as authority, is persuasive.¹⁴ Likewise, the decisions of federal
3 courts are persuasive.¹⁵ As explained in Section D, *infra*, the Supreme Court of Washington and
4 the federal District Court for the District of Utah establish that the return flow right sought by
5 Phelan Piñon Hills indeed has a legal basis. *Accordingly, the Court should rely on these*
6 *authorities as the legal basis to determine whether the evidence that Phelan Piñon Hills is*
7 *prepared to offer establishes Phelan Piñon Hills' a return flow right.*

8 **D. The Highest Court Of The Land Has Spoken, As Well As A State Supreme**
9 **Court And Federal District Court, All In Favor Of A Return Flow Right**
10 **Resulting From Use Of Native Water.**

11 Return flow from *imported* water typically *adds* to (or “augments”) the supply of a
12 groundwater basin, while *return flow from native water limits the depletion of the supply to the*
13 *extent part of the produced groundwater returns to the basin.* This is precisely why a “water
14 balance” evaluates *imported and native water* sources, which explains, at least in part, why a return
15 flow right from native water is recognized.

16 Starting at the top, the United States Supreme Court recently re-affirmed the “doctrine of
17 recapture” in an inter-state dispute.¹⁶ The recaptured water was “runoff and seepage water” from
18 surface water. In looking to other cases, including those explained herein, Justice Thomas
19 explained that an appropriator retains the right to recapture, and in some narrow circumstances,
20 even after the water leaves the appropriator’s property.¹⁷

21
22
23 ¹⁴ *People ex rel. Morgan v. Hayne* (1890) 83 Cal. 111, 119.

24 ¹⁵ *See, Estate of Sloan* (1963) 222 Cal.App.2d 283, 293; *Silman v. Reghetti* (1935) 7 Cal.App.2d
25 726, 729; *People v. Herbert's of Los Angeles, Inc.* (1935) 3 Cal.App.2d 482, 484.

26 ¹⁶ *State of Montana v. State of Wyoming* (2011) 131 S. Ct. 1765, 1774-1775, and fn. 7. (“*State of Montana*”).

27 ¹⁷ *State of Montana, supra*, 131 S. Ct. at 1774-1775; *see*, 1 *Wiel* §§ 38-40, at 37-43 and at fn.7.

1 As explained by the Supreme Court for the State of Washington in *Department of Ecology*
2 v. *U.S. Bureau of Reclamation* (1992) 118 Wash. 2d 761 ("*Department of Ecology*"), at p. 770, the
3 test is one of "control and possession":

4 We conclude that an appropriator's rights in particular molecules of water do
5 not end while the water remains within the boundaries of the appropriator's
6 property, and that after water has left those boundaries, the termination of the
7 appropriator's rights depends on the "control and possession" test. Accordingly, once an appropriator has discharged water from his or her own
8 property, then the issue becomes whether the appropriator nevertheless
9 retains an intent to recapture that water, whether downstream on another
10 piece of property or otherwise.

11 Similarly, in *Strawberry Water Users Association v. United States* 2006 U.S. Dist. LEXIS
12 19767 ("*Strawberry*"), in which Utah District Judge Jenkins, after quoting the same from
13 *Department of Ecology*, sagely said:

14 The Washington court's synthesis may reflect the broadest current reading of
15 an appropriator's continuing right to return flows available in current
16 Western water law. Cf. 45 Am. Jur. 2d *Irrigation* § 33 (1999) ("Generally,
17 escaped water is not subject to recapture where nothing is done to reclaim it
18 before it reaches a stream."). Yet its analysis is grounded entirely upon state
19 law, without any suggestion that the Reclamation Act, the specific federal
20 project legislation, or the federal reclamation contracts confer any greater
21 reach upon appropriators of water delivered by federal projects--including
22 the Bureau of Reclamation itself--in recapturing waste, seepage or return
23 flow of project waters.¹⁸

24 Thus, *Strawberry* further affirms a native water return flow right, while also demonstrating
25 that the native return flow right is not limited to federal project water.

26 The learned Mr. Wiel also opined that:

27 The point which distinguishes these cases is the intent not to abandon
28 it, but, on the contrary, always intending to reclaim it, and the
carrying out of that intent within a reasonable time. The intent to
recapture the water must be present at the time it is discharged from
control.¹⁹

¹⁸ *Strawberry Water Users Association*, *supra*, at 63-64 (emphasis in original).

¹⁹ Wiel, Samuel C., *Water Rights in the Western States* (1911), Vol. I, § 39, p. 43,
citing to, *Shultz v. Sweeny* (1886) 19 Nev. 359 [in which the water was clearly let
loose to be rid of it].

1 Though *State of Montana* involved surface water, the analogous approach in California with
2 respect to the rules for groundwater and surface water is well known.²⁰ Moreover, as to
3 appropriation, there is no distinction between return flows from native water and return flows from
4 imported water.²¹ *Thus, the surface water at issue in State of Montana does not alter its*
5 *applicability here to groundwater, particularly given the full force of the Supreme Court and*
6 *other authorities.*

7 Further establishing that this Court may rely on these other authorities is looking to
8 California water law history itself. In the landmark decision by the California Supreme Court in
9 *Los Angeles v. Glendale* (1943) 23 Cal.2d 68 (“*Glendale*”), the high court “referred with approval
10 to cases from other jurisdictions in which the recapture of seepage water after leaving project
11 boundaries was authorized where it had been planned in advance.”²² *Accordingly, this Court, as*
12 *done by the California Supreme Court in Glendale, may “refer with approval to cases from other*
13 *jurisdictions.”*

14 E. **The Right To Return Flow From Native Water Provides A Critical Function**
15 **For Phelan Piñon Hills, And In Light Of Legal Authorities In Support Thereof,**
16 **Phelan Piñon Hills’ Should Be Afforded The Opportunity To Present Its**
17 **Evidence.**

18 The “science” establishes several pertinent circumstances, including: (i) the Antelope
19 Valley Groundwater Basin (“Basin”) extends east of the Los Angeles/San Bernardino County line;

20
21 ²⁰ Scott S. Slater, *California Water Law and Policy* (2012) § 3.01, *citing to, City of Barstow v.*
22 *Mojave Water Agency* (2000) 23 Cal.4th 12243, 1240 [“An overlying right is considered analogous
23 to that of the riparian owner in a surface stream.”] Likewise, “[t]he rules applicable to
appropriation of percolating ground water are generally those arising under common-law
appropriation of surface water and subterranean flow within known and defined channels.” [*Id.* at
§ 2.15.]

24 ²¹ *Ibid.* at § 2.08[7], *citing City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199. 262-
25 263.

26 ²² Hutchins, Wells A., *The California Law of Water Rights* (1956), at p. 388, *citing at footnote 69*
27 *to Los Angeles v. Glendale* (1943) 23 Cal.2d 68, 77-78, in which the subject citations were *Ide v.*
United States (1924) 263 U.S. 497 and *United States v. Haga* (1921) 276 F. 41.

(ii) a portion of Phelan Piñon Hills' service area lies over the Basin, with Phelan Piñon Hills producing groundwater from Well 14, which is located within the AVAA and the Basin, and which Phelan Piñon Hills distributes to customers who are almost exclusively residential and unsewered users located within that portion of the service that lies over the Basin; and, (iii) native groundwater return flow results from this production and distribution to these customers, with such flow toward the AVAA and Well 14 for recapture given that Well 14 is located hydrologically downgradient.

Thus, though a legal basis exists for Phelan Piñon Hills' claim and Phelan Piñon Hills is prepared to offer its evidence in support thereof, this claim to right of return flow may still nonetheless be limited to Phelan Piñon Hills, or perhaps a small number of parties, given the requirement for the intent to recapture as well as factual circumstances unique to Phelan Piñon Hills' service area being located entirely outside of the AVAA. Further demonstrating that Phelan Piñon Hills' claim to return flow right should proceed are the facts that: (i) Phelan Piñon Hills' production, nor any native groundwater return flow, have been considered; and, (ii) subsequent trial phase(s) or proceedings may lead to determinations that subject Phelan Piñon Hills to liability, whether that be liability based upon complaints or cross-complaints of other parties for alleged "takings" or some other basis for potential liability such as alleged "export" by Phelan Piñon Hills' Well 14 producing native groundwater in the AVAA that is distributed to and used by Phelan Piñon Hills customers in the service area that lies over part of the Basin. Such circumstances make the return flow right sought by Phelan Piñon Hills an appropriate measure to offset any such liability.

III. CONCLUSION

For the foregoing reasons, Phelan Piñon Hills respectfully requests that the Court deny Bolthouse's Motion with prejudice given the fact that legal authority *does* exist, and coupled with science and facts, Bolthouse's Motion should be denied with prejudice.

Dated: January 31, 2014

ALESHIRE & WYNDER, LLP

By: 

Wesley A. Miliband
Attorneys for Cross-Defendant and
Cross-Complainant,
Phelan Piñon Hills Community Services Dist.

PROOF OF SERVICE

I, Linda Yarvis,

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA 92612.

On January 31, 2014, I served the within document(s) described as **PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT'S OPPOSITION TO BOLTHOUSE PROPERTIES, LLC'S AND WM. BOLTHOUSE FARMS, INC.'S MOTION IN LIMINE NO. 2 OBJECTING TO INTRODUCTION OF EVIDENCE ON UNSUPPORTED LEGAL THEORY** as follows:

☒ (ELECTRONIC SERVICE) By posting the document(s) listed above to the Santa Clara County Superior Court website in regard to Antelope Valley Groundwater matter pursuant to the Court's Clarification Order. Electronic service and electronic posting completed through www.scefiling.org.

☐ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Irvine, California, 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.

☐ (BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained by Overnight Express, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in a sealed envelope or package designated by the express service carrier, addressed as set forth above, with fees for overnight delivery paid or provided for.

Executed on January 31, 2014, at Irvine, California.

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

Linda Yarvis
(Type or print name)

(Signature)