

ALESHIRE & WYNDER, LLP
WESLEY A. MILIBAND, State Bar No. 241283
wmiliband@awattorneys.com
MILES P. HOGAN, State Bar No. 287345
mhogan@awattorneys.com
18881 Von Karman Avenue, Suite 1700
Irvine, California 92612
Telephone: (949) 223.1170
Facsimile: (949) 223.1180

Attorneys for Defendant and Cross-Complainant
Phelan Piñon Hills Community Services District

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

Coordination Proceeding
Special Title (Rule 1550(b))

**ANTELOPE VALLEY
GROUNDWATER CASES**

Included Actions:

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

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

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

AND RELATED CROSS-ACTIONS

Case No. Judicial Council Coordination
Proceeding No. 4408

(For Filing Purposes Only: Santa Clara
County Case No.: 1-05-CV-049053)

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

Assigned for All Purposes to:
Hon. Jack Komar

Trial Date: November 4, 2014
(Trial Related to Phelan Piñon
Hills Community Services
District)

Time: 10:00 a.m.
Location: Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, California
Dept: 56 / Room 514 (5th Floor)

1 TO THE HONORABLE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF
2 RECORD HEREIN:

3 Cross-Defendant and Cross-Complainant, Phelan Piñon Hills Community Services District
4 (“Phelan Piñon Hills”), submits the following in response to the [Proposed] Statement of Decision for
5 Trial Related to Phelan Piñon Hills Community Services District (“Proposed Statement”) by way of
6 these objections (“Objections”).

7 **I. INTRODUCTION**

8 These objections seek to specifically identify and explain numerous deficiencies with the
9 Proposed Statement, which generally fall into two categories: (i) omissions from Phelan Piñon Hills’
10 November 17, 2014 Statement specifying items for inclusion in the Proposed Statement (“Requests
11 for Proposed Statement”); and, (ii) inaccuracies of law and evidence as well as inclusion of collateral
12 issues not within the scope of this trial.

13 Phelan Piñon Hills requests the Court to direct those parties that prepared the Proposed
14 Statement to submit a revised statement consistent with these Objections the Court’s Phase Three
15 Decision, and the law and evidence, which is described with particularity herein. Alternatively, if the
16 Court is inclined to adopt the Proposed Statement in substantially its current form, Phelan Piñon Hills
17 requests the Court do so by way of an order.

18 **II. CATEGORIES AND ITEMS MISSING FROM THE PROPOSED STATEMENT**

19 Phelan Piñon Hills timely filed its Requests for Proposed Statement, however many of these
20 items have been ignored, but should not be omitted from the Statement of Decision to be fashioned by
21 the Court, including the following items replicated or summarized from the Requests for Proposed
22 Statement:

23 **A. The Proposed Statement’s Omissions**

24 **1. Generally:**

25 (a) Explanation of the factual and legal grounds for granting the oral motion for
26 judgment (pursuant to CCP 631.8 despite not explicitly stated by the moving party) of Los Angeles
27 County Waterworks District No. 40 (“District 40”).

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(b) The Court's decision as to each of the principal controverted issues at trial on Phelan Piñon Hills' Second and Sixth Causes of Action and as set forth herein.

(c) whether the Court made rulings on causes of action or affirmative defenses, factual or legal findings, or otherwise relied or based any factual or legal findings on causes of action or affirmative defenses other than Phelan Piñon Hills' Second and Sixth Causes of Action, particularly given District 40's oral motion being based in part on "impact" and "export" (e.g., Phelan Piñon Hills' Eighth Cause of Action) of and by Phelan Piñon Hills' use of Well 14, as well as the Court's comments that Phelan Piñon Hills had not established that its pumping has "absolutely" no impact on the aquifer.

2. Burden of Proof:

(a) To what extent, if any, did the Court permit the opportunity to procure and offer evidence as to other whether parties other than Phelan Piñon Hills have established their water rights, including as to reasonable and beneficial use; waste; and whether that particular party's right has been impaired by Phelan Piñon Hills within or outside of the Buttes subunit.

(b) To what extent, and why on a factual and legal basis, did Phelan Piñon Hills bear a burden a proof on its Second and Sixth Causes of Action as well as to whether, and if so for purposes of this trial, the factual and legal basis thereof that Phelan Piñon Hills had to establish its pumping had no impact to the Antelope Valley Groundwater Basin or Antelope Valley Area of Adjudication.

3. Appropriator Elements & Phelan Piñon Hills as an Appropriator in a Basin generally in Overdraft:

The Proposed Statement ignores almost every requested item, despite this category relating to Phelan Piñon Hills' Second Cause of Action for a water right, including as to;

(a) The elements of an appropriative right and which of those elements were established by Phelan Piñon Hills.

(b) Whether Phelan Piñon Hills applied water from Well 14 to reasonable and beneficial use since calendar year 2005; The legal basis for the Court stating on November 5, 2014 that Phelan Piñon Hills is an appropriator despite the Court also stating surplus does not exist; The



factual basis for the Court stating on November 5, 2014 that Phelan Piñon Hills is an appropriator;
 Whether Phelan Piñon Hills' Well 14 has a right to continue to produce groundwater, even if not a
 water right, and on what factual and legal basis; Whether Phelan Piñon Hills' Well 14 may continue to
 produce groundwater, and on what factual and legal basis; The factual finding that Phelan Piñon Hills
 owns Well 14 and the parcel on which Well 14 is located; The factual finding that Well 14 water was
 first delivered to customers on January 2006, and since then, Well 14 water is distributed through
 Phelan Piñon Hills' water system for delivery to customers; The factual finding that shortly after Well
 14 came online, Well 14 was not able to operate at its full capacity due to difficulty with the pump
 installed by or at the direction of SB County; The pump was replaced toward the end of calendar year
 2008, allowing Well 14 to become fully operational part way into calendar year 2009; and, The legal
 finding that Phelan Piñon Hills appropriates water from Well 14 and has done so for Well 14 through
 Phelan Piñon Hills' predecessor since January 2006.

4. Surplus:

Applicability to this trial of definitions of: (a) "surplus" being that "condition which exists
 when the draft on the ground water supply is less than the safe yield"; (b) "safe yield" defined as "the
 maximum quantity of water which can be withdrawn annually from a ground water supply under a
 given set of conditions without causing an undesirable result;" and, (c) "undesirable result" referring
 to a "gradual lowering of the ground water levels resulting eventually in depletion of the supply."
(Los Angeles v. San Fernando (1975) 14 Cal.3d 199, 278-279.)

Definitions of the above terms, if different than stated above, as it relates to this trial, and the
 applicability of those definitions to this trial.

The legal basis for concluding in this trial that surplus cannot exist because of the Court's
 finding in Phase Three that overdraft generally exists, notwithstanding the Court's Phase Three
 Statement of Decision stating in pertinent part: "[b]ut having heard evidence about the aquifer as a
 whole, the Court is not making historical findings that would be applicable to specific areas of the
 aquifer or that could be used in a specific way to determine water rights in particular areas of the
 aquifer"; the Court also recognized that the aquifer is not like a "bathtub" due to "regional" (local)



1 differences and that “we have been talking about the basin as a whole but sub-parts exist.” (Phase
 2 Three Statement of Decision, Tab No. 4523, 07/13/11, p. 4.)

3 The existence and boundaries of the Buttes Subunit as of at least calendar year 2005.

4 The legal and factual basis that the Buttes Subunit could, or could not, have had been in a state
 5 of surplus during calendar years 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, or
 6 2009.

7 Whether the evidence demonstrated by the preponderance of the evidence that the groundwater
 8 levels within the Buttes Subunit have mostly remained stable if not rising during calendar years 1999,
 9 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, and 2009, and if not, on what basis.

10 The extent of applicability of the Mojave Judgment definitions of overdraft as: “A condition
 11 wherein the current total Annual Consumptive Use of water in the Mojave Basin Area or any of its
 12 Subareas exceeds the long term Annual natural water supply to the Basin Area or subareas.”
 13 (Judgment, Section II.A.4 (Definitions) subsection u, at page 10 [emphasis added].)

14 The extent of applicability of the Mojave Judgment’s language illustrating that non-overdraft
 15 (i.e., surplus) can exist within subareas by indicating that the subareas (rather than Basin generally)
 16 has been in a state of overdraft. (Mojave Judgment, Section II.B.7 (Existence of Overdraft), at page
 17 14 [“...the Mojave Basin Area and each of its respective Subareas have been and are in a state of
 18 Overdraft...”].) What *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351 requires for determining
 19 whether surplus water is available for appropriation. What other statutory or decisional authorities
 20 require for determining whether surplus water is available for appropriation. On what legal and factual
 21 basis overdraft may only exist on a “basin-wide basis” as contended by District 40. To what extent
 22 overdraft can exist in portions of a groundwater basin but not in portions of a basin with limited
 23 connectivity to other parts of the basin. To what extent connectivity between parts of a groundwater
 24 basin is required to allow for surplus to exist. To what extent conductivity between parts of a
 25 groundwater basin is required to allow for surplus to exist. Whether Phelan Piñon Hills established
 26 that recharge was greater than discharge in the Buttes Subunit during any year, and if so for which
 27 calendar years from 1999 through 2009. Whether Phelan Piñon Hills established that surplus did exist
 28 in the Buttes Subunit during any year, and if so for which calendar years from 1999 through 2009.



The factual basis as to whether Phelan Piñon Hills complies with the State Constitutional mandate set forth in Article X, Section 2.

5. Impact of Pumping, Public Use, Intervening Use, Commencement of the Action, Waste, Applicability of Water Code Sections 106 and 106.5, and Implications for Well 14:

Impact of Pumping and Recapture Doctrine are addressed by the Proposed Statement in its own way without including one single item from the Requests for Proposed Statement for Impact of Pumping and virtually every item for Recapture Doctrine except as to San Fernando, with each of the other categories identified here completely left out in the Proposed Statement. Notably as to public and intervening use, Mr. Bartz testified that Well 14 provides one third of the water supply for Phelan Pinon Hills. (Trial Transcript, November 4, 2014, p. 88:1-3.) Also, many of the exhibits (namely, 1-15) speak to the “commencement of the action” issue. Yet, the Proposed Statement is silent.

B. The Proposed Statement Fails to Meet the Standard

A statement of decision is limited to the issues litigated in the case. (*Colony Ins. Co. v. Crusader Ins. Co.* (2010) 188 Cal.App.4th 743, 750-751.) Code of Civil Procedure section 632 limits the statement of decision to each of the principal controverted issues, with a principal issue being a material issue that is relevant and essential to the ultimate issues being litigated. (*Kuffel v. Seaside Oil Co.* (1977) 69 Cal.App.3d 555, 565.) “Export” or “negative impact” from Phelan to the aquifer was not at issue in this trial; instead, the trial was supposed to be limited to the Second and Sixth Causes of Action from Phelan Piñon Hills’ cross-complaint.

In its simplest form, the Proposed Statement reveals the same flaws underlying the “631.8 motion” brought by parties following Phelan Piñon Hills’ presentation of evidence, namely pointing to Well 14 water being “exported” (despite Phelan Piñon Hills’ Eight Cause of Action on place of use not part of the scope of this trial) and the Phase Three Statement of Decision (“Phase Three Decision”) precluding the Court from finding now that surplus did exist when Phelan Piñon Hills’ predecessor (San Bernardino County) successfully initiated efforts for Well 14 to pump groundwater after a purchasing the parcel from Well 14 through a public process. Also, the Proposed Statement seeks to piece meal elements of Phelan Piñon Hills’ Second Cause of Action by deferring any determination of whether Phelan Piñon Hills’ reasonable and beneficial use of water. Reasonable and beneficial use of



water is an element for establishing water right, and Phelan Piñon Hills has proved it reasonably and beneficially uses water.

The consequences of the Proposed Statement, should it become the Statement of Decision in current or substantially similar form, are deficient for reasons including:

(1) Inadequate due process to Phelan Piñon Hills, including: (i) Phelan Piñon Hills being told in the Phase Three trial to present its evidence later, with the Phase Three Decision preserving the issue only to be decided now that the Phase Three Decision's overdraft finding precludes a surplus finding, despite the preponderance of the evidence now demonstrating surplus; and, (ii) Phelan Piñon Hills was not permitted to do discovery despite its requests and proposals, including as to others parties water use for determining reasonable and beneficial use as a prerequisite to determining surplus.

(2) The Proposed Statement is contrary to Court of Equity principles for determining Phelan Piñon Hills' rights as to the two causes of action at issue in this trial (with others remaining to be adjudicated), given the evidence and established principles of law and equity.

(3) The Proposed Statement is contrary to Cal. Const. Art. X, Sec. 2 and related cases for adjudicating groundwater and related rights.

In addition to the foregoing points, the items discussed, *infra*, are specific points arising from the Proposed Statement that Phelan Piñon Hills seeks to bring to the Court's attention so that the Statement of Decision satisfies the requirements set forth for a statement of decision. Accordingly, the Proposed Statement fails to completely or adequately address the issues that are determinative of this particular proceeding.

III. DEFICIENCIES WITH THE PROPOSED STATEMENT

The Proposed Statement is deficient for reasons arising from law, equity, evidence, and this Court's prior decisions and findings, as discussed, *infra*, primarily by going through each "issue" or topic set forth in the Proposed Statement. All citations are to the Proposed Statement unless otherwise noted.

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A. General Facts

(1) **Page 2:4-5:** This statement about Phelan Piñon Hills acquiring the Well 14 parcel is confusing and vague because Phelan Piñon Hills' predecessor received ownership of the parcel (Stipulated Fact No. 7), 8 years prior to Phelan Piñon Hills formation with Phelan Piñon Hills succeeding to ownership of the parcel and Well 14.

(2) **Page 2:12:** Citation to California Department of Water Resources Bulletin 118 (2003) ("Bulletin 118") should make reference to the Court's order, dated March 12, 2007 (referenced in the Proposed Statement at p. 2:8) because the March 12, 2007 Order references Bulletin 118 as a general indicator of the Adjudication Area's boundaries.

(3) **Page 2:12-14:** The significance of these "general facts" regarding Phelan Piñon Hills' service area being located outside of the Antelope Valley Adjudication area is lacking, given Phelan Piñon Hills' Eighth Cause of Action regarding basin boundaries was not scoped to be part of this trial.

B. Specific Facts

(1) **Page 3:16-23** states that Mr. Harder testified about impact to the Lancaster subunit, as follows: "...groundwater pumping in the Butte [sic] subbasin could lower the groundwater level and reverse the flow of the groundwater from the Lancaster subbasin to the Butte [sic] subbasin."

As more particularly explained and demonstrated from the record, *infra*, this statement is a gross misstatement of Mr. Harder's testimony. Mr. Harder testified: "The pumping within the Buttes subunit has never caused water to be drawn from the Lancaster subunit into the Buttes subunit, at least since 1951, based on the *Summary Expert Report* and Mr. Harder's opinion." (Trial Transcript, November 5, 2014, pp. 196:20-197:11.) Thus, the Proposed Statement misstates and misconstrues the evidence, which demonstrates that with the mountain front head at the source of the southeast of the Buttes subunit and the much higher pumping in the Lancaster subunit drawing water northwest, the flow has been and continues to be (at least in part) from the Buttes subunit to the Lancaster subunit, with it very unlikely (and contrary to 60 years of data) that flow would reverse to go from the Lancaster subunit to the Buttes subunit.

Also, this particular issue is a management matter for later determinations, and is beyond the scope of this trial. This language from the Proposed Statement should be deleted, as being irrelevant



to this trial or at least modified as provided above to accurately describe the evidence.

(2) The Proposed Statement repeatedly states: “there was no credible testimony or evidence...” This statement is misplaced given the Court remarked that Mr. Harder has given very competent opinions (Trial Transcript, November 5, 2014, p. 185:5-7) and no other party offered evidence (testimonial or documentary) contrary to the evidence offered and admitted by Phelan Piñon Hills.

Accordingly, this phrase should be stricken wherever it appears in the Proposed Statement.

C. Second Cause of Action for an Appropriative Right

(1) **Page 4:4:** The Proposed Statement should also include a finding (and the legal and factual basis thereof) as to whether Phelan Piñon Hills established an “appropriative right for public use” to pump groundwater from the Adjudication Area. Phelan Piñon Hills sought to establish this as a right to produce water from Well 14.

(2) **Page 4:15-17:** The Proposed Statement says: “To establish an appropriative right, Phelan Piñon Hills bears the burden of proof to establish that the water it pumped from the Antelope Valley Adjudication Area is surplus water and that its use is reasonable and beneficial.”

This statement is vague and ambiguous because it does not say whether Phelan Piñon Hills had to prove surplus from before Well 14 started to pump in 2005, or when it started to pump in 2005, and/or after it started to pump in 2005. This should be clarified so that the sentence at page 4, line 16 reads: “...establish that the water it pumped from the Antelope Valley Adjudication Area was at the time of initiation of the right (2005) surplus water and that its use was reasonable and beneficial.”

Also, Phelan Piñon Hills has proved it reasonably and beneficially uses the water, with the Court stating: “...the reasonable and beneficial use of the water use is something that needs no expert opinion testimony for.” (Trial Transcript, November 5, 2014, pp. 184:22-185:10.)

(3) **Pages 5:5-6:3:** The Proposed Statement states that the Phase Three Decision precludes a finding of surplus water because of the Adjudication Area being in a state of overdraft since at least 2005.

First, it is inaccurate to say “at least 2005” because the Phase Three Decision refers to the base period of 1951-2005 as set forth at page 7, line 22.



Second, the Proposed Statement misconstrues the Phase Three Decision, which states: (i) at page 2, line 11: "...only issues at this phase of the trial were simply to determine whether the adjudication area aquifer is in a current state of overdraft and as part of that adjudication to determine the safe yield"; (ii) at page 3, lines 21-22: "...the findings here have no application to other phases, such as prescription *or rights of appropriators*...." (emphasis added); and, (iii) at page 4, lines 21-24: The Court is "...not making historical findings that would be applicable to *specific areas of the aquifer* or that could be used in a *specific way to determine water rights in particular areas of the aquifer*" (emphasis added).

Third, the Phase Three Decision also states, at page 6, lines 5-9: "Areas of increased pumping, with concomitant lowering of water levels, can have a serious effect on water rights in other areas, caused by cones of depression, which alter natural water flow gradients, causing the lowering of water levels in adjacent areas, with resulting subsidence and loss of aquifer storage capacity."

In this trial, the preponderance of evidence establishes that the Buttes Subunit has had stable groundwater levels from 1951 through at least 2009; groundwater flows from Buttes to other subunits, thus contributing to recharge (not the other way around); and there is no subsidence in the Buttes subunit, including the following:

(a) Stable or Rising Groundwater Levels in the Buttes Subunit:

Trial Transcript, November 5, 2014, p. 141:13-15: The groundwater levels have been fairly stable in those wells and in this area.

Trial Transcript, November 5, 2014, p. 142:18-28: From 2006 to 2009 in the furthest southeast area of the Antelope Valley Adjudication Area the change of storage is either positive – meaning groundwater levels are rising – or no change in storage – meaning groundwater levels are stable.

Trial Transcript, November 5, 2014, p. 145:12-16: Referencing Exhibit 31, the vicinity of Well 14 has stable groundwater levels, which is consistent with the summary expert report.

Phase Three Decision, p. 4:16-21, citing to *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199 (emphasis added): "Generally, neither overdraft nor safe yield can be determined by looking at a groundwater basin in a single year but must be determined by evaluating the basin conditions over a sufficient period of time to determine whether pumping rates have or will lead to

eventual permanent lowering of the water level in the aquifer and ultimately depletion of the water supply or other harm. *Recharge must equal discharge over the long term.*”

It is well understood that an indication of overdraft is declining water levels in a groundwater basin. (*See City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908; *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199; *see also* Littleworth & Garner, California Water II [noting that “overdraft” is “defined generally as the deficit between the water pumped from a groundwater basin and long-term recharge”], *citing* Bulletin 160-98, p. 3-49.) An indication of surplus is not overdraft. (*See City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 277-78, 280.) Thus, surplus is established by constant or increasing water levels.

The foregoing establishes that Phelan Piñon Hills proved surplus existed.

(b) Impact to the Lancaster Subunit.

This issue of “impact” is not an element of establishing an appropriative right, and should be disregarded. Notwithstanding that objection, the evidence demonstrates negligible impact from the Buttes Subunit, much less from Phelan Piñon Hills:

Trial Transcript, November 5, 2014, p. 125:19-20: The Buttes subunit has distinct hydrogeological characteristics that separate it from the neighboring basins.

Trial Transcript, November 5, 2014, p. 149:13-18: There is definitely a different storage change signature that would identify the Buttes subunit as distinct from the Lancaster subunit to the northwest.

Trial Transcript, November 5, 2014, p. 159:7-160:8: The hydrograph signature within the Lancaster subunit is markedly different than the hydrograph signature within the Buttes subunit.

Trial Transcript, November 5, 2014, p. 161:7-20: The conditions within the Buttes subunit are distinct hydrogeological conditions in the Lancaster subunit. Exhibit 33 is just one of several exhibits that illustrates these distinct differences.

Trial Transcript, November 5, 2014, p. 196:20-197:11: The pumping within the Buttes subunit has never caused water to be drawn from the Lancaster subunit into the Buttes subunit, at least since 1951, based on the *Summary Expert Report* and Mr. Harder’s opinion.

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1 Trial Transcript, November 5, 2014, p. 161:18-24: There is not any subsidence in the Buttes
 2 subunit.

3 Trial Transcript, November 5, 2014, p. 185:15-20: Well 14, due to its distance and the unique
 4 qualities or distinct qualities of the Buttes subunit, does not likely have a significant impact – direct or
 5 significant impact on the groundwater levels in the neighboring Lancaster subunit. Exhibit 27
 6 demonstrates Well 14 is located approximately 24 miles from the Lancaster subunit.

7 The forgoing points demonstrate by a preponderance of the evidence that the grounds and
 8 opportunity to prove surplus was made available by the Phase Three Decision, and that surplus was
 9 proved so that human behavior, geologic/hydrogeologic conditions, and/or negligible impact from the
 10 Buttes subunit to other areas should not preclude a party such as Phelan Piñon Hills from establishing
 11 surplus in its subunit that is well-defined and established and to which multiple experts (including the
 12 very experts relied upon by the Court in Phase Three) plus Phelan Piñon Hills' expert opined has
 13 stable or even increasing groundwater levels *since 1951*.

14 (4) **Page 5:13:** The Proposed Statement says that Phelan Piñon Hills ...argued surplus
 15 “exists,” when in fact Phelan Piñon Hills ’s...position and admitted evidence relate to surplus existing
 16 at the time of initiation, not currently whether surplus exists. (see also, Proposed Statement at p. 6:3,
 17 making the same mistake by saying “exists.”)

18 (5) **Page 5:16:** The Proposed Statement speaks only to Mr. Harder’s testimony, when in
 19 fact the work of the other experts who compiled the *Summary Expert Report* (and with whom the
 20 Court relied on to fashion its Phase Three Decision) opined as Mr. Harder that the Buttes subunit has
 21 maintained relatively stable (and some increasing) groundwater levels since 1951.

22 (6) **Page 5:20-23:** The Proposed Statement then refers again to the Phase Three Decision
 23 in which the Court stated: “If there was no hydro-connectivity with the aquifer, an area was excluded
 24 from the adjudication.” (Phase Three Decision, p. 5:5-6.) This statement is utilized in the Proposed
 25 Statement to support the contention that some connectivity between subunits and impact from one to
 26 another precludes the Court from finding that surplus existed as presented by Phelan Piñon Hills’
 27 evidence. (Proposed Statement, p. 5.)

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1 Relying on the Court's Phase Two finding that if interconnectivity exists between different
 2 parts of the Antelope Valley Groundwater Basin (or subunits such as is the case here with Phelan
 3 Piñon Hills and the Buttes subunit) to preclude a finding *now* that surplus did exist when Phelan Piñon
 4 Hills (through its predecessor) started to pump from Well 14 in 2005 is flawed for many reasons,
 5 including reasons arising from the Phase Three Decision itself:

6 (i) "All areas were included within the adjudication area because they all have
 7 some level of hydro-connection, some more or some less. *How to deal with those differences is*
 8 *ultimately a basin management decision that is well beyond the scope of this phase of trial.*" (Phase
 9 Three Decision, p. 5:9-13 [emphasis added].)

10 (ii) "But having heard evidence about the aquifer as a whole, *the Court is not*
 11 *making historical findings that would be applicable to specific areas of the aquifer or that could be*
 12 *used in a specific way to determine water rights in particular areas of the aquifer.*" (Phase Three
 13 Decision, p. 4:21-24 [emphasis added].)

14 The excerpt above as to "not making historical findings" was not found by Phelan Piñon Hills'
 15 counsel's review of the filings surrounding drafting and finalization of the Phase Three Decision,
 16 making those words all the more potent and directly from the Court.

17 These two excerpts, separately and together, unequivocally establish that interconnectivity and
 18 the general finding of overdraft from Phase Three cannot now preclude Phelan Piñon Hills from
 19 establishing surplus.

20 The Court stated in Phase Three that interconnectivity differences relate to future management
 21 decisions (not determination of water rights), yet interconnectivity between the Buttes subunit and
 22 other parts of the aquifer is being used to find that Phelan Piñon Hills does not have a water right.
 23 And, the prior finding of overdraft in "the aquifer as a whole" is being used now to preclude a surplus
 24 finding, despite the Court stating in its Phase Three Decision that its overdraft finding is not a
 25 "historical finding...applicable to specific areas of the aquifer" for determining water rights.
 26 Notwithstanding this language from the prior decision, the moving parties to the CCP 631.8 motion
 27 following Phelan Piñon Hills' presentation of evidence, and now through the Proposed Statement, rely
 28 predominantly almost to the point of exclusively on interconnectivity and general overdraft in the

1 “aquifer” to conclude now as it relates to Phelan Piñon Hills that surplus did not exist when Phelan
2 Piñon Hills’ predecessor commenced pumping of Well 14 during 2005.

3 Making these grounds for precluding a surplus finding even more legally deficient is the
4 undisputable fact for which a clear record exists that Phelan Piñon Hills attempted to present
5 “regional” (i.e., local) evidence regarding its pumping and conditions within its area (i.e., the Buttes
6 subunit) during the Phase Three trial, only for objections to be sustained and Phelan Piñon Hills to be
7 told that it may present its evidence at a later date.

8 To defer Phelan Piñon Hills’ presentation of evidence from Phase Three to now, coupled with
9 the above excerpts from the Phase Three Decision, but only to conclude now that Phases Two and
10 Three preclude a surplus finding is exceptionally prejudicial to Phelan Piñon Hills, making the
11 granting of the CCP 631.8 motion and the Proposed Statement fatally deficient in terms of procedural
12 and substantive law as a matter of law and equity.

13 Ultimately, Phelan Piñon Hills’ rights have been violated and it has been unduly prejudiced if
14 the Court does not follow its Phase Three Decision by finding now that decision precludes a finding
15 that surplus water existed in the Buttes subunit at the time Phelan Piñon Hills’ predecessor
16 commenced efforts for Well 14 to produce groundwater for public use. The parties proposing the
17 Court rely upon the Phase Three Decision to preclude a finding of surplus for this trial are inviting the
18 Court to commit error.

19 (7) **Pages 5:26-6:3:** The Proposed Statement says: “Uneven impact from groundwater
20 pumping is not an indication that overdraft condition does not exist or that surplus water exists...[and]
21 groundwater pumping in the Butte [sic] subbasin negatively impacts the groundwater recharge in the
22 Lancaster subbasin.”

23 As articulated above, “impact” is not an issue for this trial, but in any event this statement
24 misstates the evidence.

25 **D. The Sixth Cause of Action for Recapture of Return Flows**

26 (1) **Page 6:9-16:** The Proposed Statement says: “The right to return flows is limited to
27 return flows from imported water.” This statement is wrong as a matter of law and equity.

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1 *Santa Maria* echoes *San Fernando*, but neither case precluded a native groundwater return
 2 flow right, and neither was presented with the circumstance presented here by Phelan Piñon Hills for
 3 grounds for a native groundwater return flow right – potential liability based on existing allegations by
 4 some landowners of a “takings” and potential liability to a watermaster (or similar authority given new
 5 Statewide regulations over groundwater) for replacement or supplemental water assessments arising
 6 from Phelan Piñon Hills’ service area being located outside of the adjudication area (even though part
 7 of the service area lies over part of the Antelope Valley Groundwater Basin).

8 *San Fernando* does not preclude a right to recapture returns flows resulting from use of native
 9 groundwater; instead, *San Fernando* established a *priority to imported water return flows*. Imported
 10 water return flows are the “first right.”

11 Nothing in *San Fernando* says that there is no right to native water return flows. This is
 12 clearly shown by adding back the omitted first part in the Proposed Statement of the quotation from
 13 page 261 of *San Fernando*: “Defendants contend that the same rights should be given to the return
 14 flow from delivered water derived from all other sources, including native water extracted from local
 15 wells.” The Proposed Statement’s authors misconceive the holding and reasoning of *San Fernando*,
 16 which at page 261, makes clear the imported return flow right exists and is one of priority, whereas a
 17 native return flow right does not have the same priority because “returns flows from delivered of
 18 extracted native water do not add to the ground supply but only lessen the diminution occasioned by
 19 the extractions.” (*San Fernando, supra*, 14 Cal.3d at p. 261.) This language confirms native returns
 20 exist, albeit not as a priority.

21 Thus, neither *San Fernando* nor *Santa Maria*, nor any other California decision, holds that a
 22 native return flow right does not exist; instead, an imported right exists as a matter of priority as the
 23 importer’s reward for “...the fruits of his expenditures and endeavors in brining into the basin water
 24 that would not otherwise be there.” (*Id.*)

25 Lending further support to the right to recapture return flows from the use of native
 26 groundwater is the statutory authority arising from California Water Code section 71610, which in
 27 conjunction with California Government Code section 61100, provides additional grounds for Phelan
 28 Piñon Hills to recapture its return flows.



1 Section 71610 of the California Water Code, which is written under the statutes for municipal
 2 water districts, states in pertinent part: "...a district may acquire, control, distribute, store, spread,
 3 sink, treat, purify, recycle, recapture, and salvage any water, including sewage and storm waters, for
 4 the beneficial use or uses of the district, its inhabitants, or the owners of rights to water in the district."

5 Section 61100 of the California Government Code, by which Phelan Piñon Hills is governed
 6 (Stipulated Fact No. 17; *see also*, Exhibit 1, page 2, section 2(e).), states in pertinent part at Section
 7 61100(a): "Supply water for any beneficial uses, in the same manner as a municipal water district,
 8 formed pursuant to the Municipal Water District Law of 1911, Division 20 (commencing with Section
 9 71000) of the Water Code."

10 California water law has taken monumental steps with the recent passage of the Sustainable
 11 Groundwater Management Act. Another of aspect of California water law that has not kept astride as
 12 it relates to return flows. In the *Mojave* adjudication, extensive briefing was done through the appeals
 13 process, which included a lurking issue as to native water return flows (or recirculation as it was often
 14 referred to, or even "net pumping" as to how this Court has referred to this concept). This issue,
 15 however, never rose to becoming part of the Supreme Court's decisions briefing in the *Mojave*
 16 adjudication.

17 Accordingly, a statutory basis pursuant to California law exists for establishing Phelan Piñon
 18 Hills' return flow right, with no California decision precluding. Other cases previously cited and
 19 briefed by Phelan Piñon Hills (including from the United States Supreme Court) recognize such a
 20 right and bring California decisional law up to date.

21 (2) **Page 7:3-11:** The Proposed Statement says: "[T]o the extent 'return flows' from
 22 native water pumped by Phelan Piñon Hills enter the Adjudication Area, they merely 'lessen the
 23 diminution occasioned' by Phelan Piñon Hills' extraction..." Even if the return flow is less than
 24 pumping, that speaks to the extent of the right, not whether the right exists.

25 **E. Impact of Phelan Piñon Hills on Groundwater**

26 At pages 7, line 14 through page, line 2, the Proposed Statement more particularly focus on
 27 "impact" of Phelan Piñon Hills' pumping, yet the authors provide no authority or basis as to the
 28 relevance of "impact" for purposes of determining what was at issue for this trial – namely, Phelan

Piñon Hills'...water right and return flow right set forth in Phelan Piñon Hills' Second and Sixth Causes of Action, respectively. Nor does the Proposed Statement identify any particular evidence that demonstrates Phelan Piñon Hills'...pumping causes negative impacts.

As set forth above, the Proposed Statement fixates on this issue that is beyond the scope of this trial, as well as misstating and misconstruing the evidence, which demonstrates that with the mountain front head at the source of the southeast of the Buttes subunit and the much higher pumping in the Lancaster subunit drawing water northwest, the flow has been and continues to be (at least in part) from the Buttes subunit to the Lancaster subunit, with it very unlikely that flow would reverse to go from the Lancaster subunit to the Buttes subunit. This particular issue is a management matter for later determinations, and is beyond the scope of this trial.

If anything, Phelan Piñon Hills' approximate 1,000 af annually pumped from Well 14 (its only well in the Adjudication Area), part of which the evidence demonstrates is recharged by return flows from Phelan Piñon Hills' customers, is a relatively small amount of pumping and located many miles from other users, much less the urbanized and "problem areas" where subsidence and other adverse impacts are evident from long-term, intense pumping. Thus, Phelan Piñon Hills pumping is of negligible impact, further mitigated by the "net pumping" from its well.

F. Burden of Proof

At pages 8, line 12 through page 9, line 1, the Proposed Statement recognizes the need for reasonable and beneficial use of water to be determined, yet seeks to defer the Court finding now that Phelan Piñon Hills reasonably and beneficially has and continues to use water, and also seeks to have surplus left open pending determination at some point as to the other parties' reasonable and beneficial use (or lack thereof) of groundwater.

If the Court is to put "on hold," as suggested by the authors of the Proposed Statement, findings of reasonable and beneficial use, with surplus clearly a function of the extent of reasonable and beneficial use, and with Phelan Piñon Hills' water right is a function of surplus (at least at the time of initiation), then the logical and legally correct method is to put them *all* on hold until reasonable and beneficial use is determined, rather than this piece-meal approach that is specific to only one party in this case – Phelan Piñon Hills.



Ultimately, as to Phelan Piñon Hills' Second Cause of Action for an appropriative water right, including as to public use, the Phase Three Decision provided flexibility that is now not being recognized by the Proposed Statement or by the Court in its ruling on the 631.8 motion, despite the Phase Three Decision expressly providing a basis upon which Phelan Piñon Hills has relied and proceeded in this groundwater adjudication for establishing its water right. Also, the casting of *San Fernando* by the authors of the Proposed Statement is flat wrong; that landmark case decision established a priority right, and in doing so, illustrating by implication that there is a right in California to recapture native water return flows, which is further established by Justice Thomas' opinion (and the other federal decisions) as well as the two California statutes cited, *supra*.

IV. CONCLUSION

For the reasons discussed herein, the Court should direct those parties that prepared the Proposed Statement to submit a revised statement consistent with these Objections, the Court's Phase Three Decision, and the law and evidence. Alternatively, if the Court is inclined to adopt the Proposed Statement in substantially its current form, Phelan Piñon Hills requests the Court do so by way of an order.

DATED: December 18, 2014

Respectfully submitted,
ALESHIRE & WYNDER, LLP
WESLEY A. MILIBAND
MILES P. HOGAN

By:

WESLEY A. MILIBAND
Attorneys for Defendant and Cross-Complainant
Phelan Piñon Hills Community Services District

3 **PROOF OF SERVICE**

4 **STATE OF CALIFORNIA, COUNTY OF ORANGE**

5 I, Linda Yarvis,

6 I am employed in the County of Orange, State of California. I am over the age of 18 and not a
7 party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA
8 92612.

9 On December 18, 2014, I served the within document(s) described as **OBJECTIONS TO**
10 **[PROPOSED] STATEMENT OF DECISION FOR TRIAL RELATED TO PHELAN PIÑON**
11 **HILLS COMMUNITY SERVICES DISTRICT** on the interested parties in this action as follows:

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

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

18 Executed on December 18, 2014, at Irvine, California.

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Linda Yarvis