

1 RICHARD G. ZIMMER - SBN 107263  
2 T. MARK SMITH - SBN 162370  
3 CLIFFORD & BROWN  
4 A Professional Corporation  
5 Attorneys at Law  
6 Bank of America Building  
7 1430 Truxtun Avenue, Suite 900  
8 Bakersfield, CA 93301-5230  
9 (661) 322-6023  
10 (661) 322-3508 (fax)

Attorneys for Bolthouse Properties, LLC

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

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11	COORDINATION PROCEEDING	)	Judicial Council Coordination
12	SPECIAL TITLE (Rule 1550(b))	)	Proceeding No. 4408
13	ANTELOPE VALLEY GROUNDWATER	)	CASE NO. 1-05-CV-049053
14	CASES	)	
15	INCLUDED ACTIONS:	)	
16	LOS ANGELES COUNTY WATERWORKS	)	
17	DISTRICT NO. 40 v. DIAMOND	)	CROSS-COMPLAINT OF BOLTHOUSE
18	FARMING COMPANY, et al.,	)	PROPERTIES, LLC AND CROSS-
19	Los Angeles Superior Court	)	COMPLAINT OF WM. BOLTHOUSE
20	Case No. BC325201	)	FARMS, INC. AGAINST PHELAN
21	LOS ANGELES COUNTY WATERWORKS	)	PINON HILLS COMMUNITY SERVICES
22	DISTRICT NO. 40 v. DIAMOND	)	DISTRICT
23	FARMING COMPANY, et al.,	)	
24	Kern County Superior Court	)	
25	Case No. S-1500-CV-254348	)	
26	DIAMOND FARMING COMPANY, and	)	
	W.M. BOLTHOUSE FARMS, INC., v.	)	
	CITY OF LANCASTER, et al.,	)	
	Riverside Superior Court	)	
	Case No. RIC 344436 [c/w case no.	)	
	RIC 344668 and 353840]	)	
	ROSAMOND COMMUNITY SERVICES	)	
	DISTRICT,	)	
	CROSS-COMPLAINANT,	)	

1 BOLTHOUSE PROPERTIES, LLC, WM. )  
 2 BOLTHOUSE FARMS, INC., )  
 3 Cross-Complainant, )  
 4 v. )  
 5 ROSAMOND COMMUNITY SERVICES )  
 6 DISTRICT; LOS ANGELES COUNTY )  
 7 WATERWORKS DISTRICT NO. 40; )  
 8 PALMDALE WATER DISTRICT; CITY )  
 9 OF LANCASTER; CITY OF )  
 10 PALMDALE; LITTLE ROCK CREEK )  
 11 IRRIGATION DISTRICT; PALM )  
 12 RANCH IRRIGATION DISTRICT; )  
 13 CALIFORNIA WATER SERVICE )  
 14 COMPANY; ANTELOPE VALLEY-EAST )  
 15 KERN WATER AGENCY; COUNTY OF )  
 16 SANITATION DISTRICTS NOS. 14; )  
 and MOES 1 through 10,000, )  
 Cross-Defendants. )  
 AND ALL RELATED CROSS-ACTIONS. )

17 Cross-Defendants/Cross-Complainants, BOLTHOUSE PROPERTIES,  
 18 LLC., and WM. BOLTHOUSE FARMS, INC., complain against PHELAN  
 19 PINION HILLS COMMUNITY SERVICES DISTRICT, on such grounds as are  
 20 appropriate given the allegations in such Cross-Complaints, as  
 21 follows:

22 **GENERAL ALLEGATIONS**

23 1. Cross-Complainant, BOLTHOUSE PROPERTIES, LLC, is and at  
 24 all times herein mentioned was, a Limited Liability Company  
 25 authorized to do business in the State of California.  
 26

1           2.    Cross-Complainant, WM. BOLTHOUSE FARMS, INC., is a  
2 California Corporation authorized to do business in the State of  
3 California.

4           3.    Cross-Complainant BOLTHOUSE PROPERTIES, LLC, own in fee  
5 certain parcels of real property, and/or own/lease water rights  
6 for certain properties, (hereinafter individually referred to as a  
7 "PARCEL") in the Antelope Valley area of Los Angeles County and  
8 Kern County, California. Each PARCEL is identified in Exhibit "A"  
9 attached hereto and herein incorporated by reference.

10          4.    Cross-Complainant WM. BOLTHOUSE FARMS, INC., own in fee  
11 certain parcels of real property, and/or own/lease water rights  
12 for certain properties, (hereinafter individually referred to as a  
13 "PARCEL") in the Antelope Valley area of Los Angeles County,  
14 California. Each PARCEL has previously been identified in  
15 previous Complaints filed by WM. BOLTHOUSE FARMS, INC. in the  
16 Riverside action which was later coordinated with the Los Angeles  
17 County and Kern County actions filed by Los Angeles County  
18 Waterworks District No. 40.

19          5.    Each PARCEL overlies percolating groundwater, the  
20 extent of which is unknown to Cross-Complainants. Cross-  
21 Complainants hereby incorporate by reference, as if set forth at  
22 length verbatim, all Complaints and Cross-Complaints filed by any  
23 party to this action, and/or filed in the future by any party, not  
24 for the truth thereof, but as and for a basis for bringing this  
25 Cross-Complaint.

26          6.    Cross-Complainants are ignorant of the true names and

1 capacities, whether individual, corporate, governmental, or  
2 otherwise, of the Cross-Defendants named in this Cross-Complaint  
3 as Moes 1 through 10,000, inclusive, and therefore sues these  
4 Cross-Defendants by these fictitious names. Cross-Complainants  
5 will amend this Cross-Complaint to allege the fictitiously-named  
6 Cross-Defendants' names and capacities when ascertained.

7 7. By virtue of the location of each PARCEL overlying  
8 groundwater, Cross-Complainants hold an overlying water right or  
9 other right to groundwater, entitling Cross-Complainants to  
10 extract groundwater and to put the water to reasonable and  
11 beneficial use on the property ("Cross-Complainants' overlying  
12 water rights").

13 8. Cross-Complainants are informed and believe, and on the  
14 basis of such information and belief allege, that each of the  
15 Cross-Defendants currently extracts, and/or claims a right to  
16 extract, groundwater for use on property not held by the  
17 extracting Cross-Defendants or for some other non-overlying use.

18 9. Cross-Complainants have an appurtenant right and/or  
19 other water right to pump and reasonably use groundwater on the  
20 parcels at issue in this lawsuit. These rights to pump  
21 groundwater are/may be superior to rights of the Cross-Defendants  
22 and/or other Cross-Defendants depending upon the priority rights  
23 of such Cross-Defendants based upon the California priority water  
24 allocation system.

25 10. Cross-Complainants are informed and believe, and on the  
26 basis of such information and belief, allege that each Cross-

1 Defendants' claim that it has water rights to extract groundwater  
2 for uses that are superior to, or coequal with, Cross-  
3 Complainants' overlying water rights, based upon an alleged  
4 superior water right, claim of prescription or otherwise, whether  
5 in law or in equity.

6 11. Cross-Complainants are informed and believe, and on the  
7 basis of such information and belief, allege that Phelan Pinon  
8 Hills Community Services District began pumping appropriated  
9 surplus water from the Antelope Valley to provide water for their  
10 municipal and industrial water customers. At the onset of pumping  
11 by the Phelan Pinon Hills Community Services District, the same  
12 was lawful and permissive and did not immediately nor  
13 prospectively invade or impair any overlying right.

14 12. Over time, the urban areas within the Antelope Valley  
15 continued to expand and grow both in land area and population, and  
16 thus, over time the Phelan Pinon Hills Community Services District  
17 increased, and today, continue to increase their demand of water.

18 Cross-Complainants are informed and believe, and on the basis of  
19 such information and belief, allege that at some as yet  
20 unidentified historical point, the aggregate extractions of  
21 groundwater from the Antelope Valley began to exceed the safe  
22 yield of the Valley. Despite the potential for damage to the  
23 water supply and the rights of owners of real property within the  
24 Valley, the Phelan Pinon Hills Community Services District, with  
25 knowledge, continued to extract groundwater from the common  
26 supply, and increased and continue to increase their extractions

1 of groundwater over time. The Phelan Pinon Hills Community  
2 Services District continued the act of pumping with the knowledge  
3 that the continued extractions were damaging, long term, the  
4 Antelope Valley and in the short term, impairing the rights of  
5 property owners, including the rights in the land owned by Cross-  
6 Complainants, which is overlying and within the Antelope Valley.

7 13. Cross-Complainants are informed and believe, and on the  
8 basis of such information and belief, allege that the Phelan Pinon  
9 Hills Community Services District pumped and continue to pump  
10 water in excess of the safe yield with the knowing intent and  
11 belief that they could take by claim of prescription, without  
12 compensation, the water rights of Cross-Complainants and all  
13 landowners overlying the Antelope Valley. Additionally, all  
14 Phelan Pinon Hills Community Services District continued to pump  
15 ever increasing quantities of groundwater, knowing that even if  
16 their prescriptive claims failed, they could preserve the right to  
17 continue their pumping under a claim of an intervening public use.

18 Despite the knowing intent to take the overlying property  
19 landowners' rights, no Phelan Pinon Hills Community Services  
20 District took any steps calculated and intended to inform or  
21 otherwise notify any landowner of their adverse and hostile claim  
22 or that their pumping of groundwater was an invasion of and a  
23 taking of the landowners' property rights.

24 14. During the material time that each Phelan Pinon Hills  
25 Community Services District was pumping, none physically  
26 trespassed upon nor invaded any overlying property. No Phelan

1 Pinon Hills Community Services District stopped, restricted,  
2 interfered with or physically or by regulation reduced Cross-  
3 Complainants' or any overlying landowners' right and ability to  
4 pump groundwater from the Antelope Valley. No Phelan Pinon Hills  
5 Community Services District ever took any affirmative action  
6 reasonably calculated to inform or notify any overlying landowner  
7 that the Phelan Pinon Hills Community Services District intended  
8 to take or were taking by prescription the overlying water rights.

9 15. Between 1960 and 1980, the Antelope Valley East Kern  
10 Water Agency (hereinafter "AVEK") was created to import water from  
11 northern California to southern California. As part of its  
12 operations, AVEK, in addition to other water importers, have  
13 brought and now brings imported water to the Antelope Valley.  
14 This imported water was at all material times available for  
15 purchase by the Phelan Pinon Hills Community Services District.  
16 Based upon information and belief, it is alleged that the Phelan  
17 Pinon Hills Community Services District consciously chose to not  
18 purchase all of the available higher priced imported water to meet  
19 their water needs and instead chose to continue to pump and to  
20 increase their extractions of groundwater from the Antelope  
21 Valley, because, despite the damage to the Valley, groundwater was  
22 cheaper than the imported water.

23 16. In late 2004, the Los Angeles County Board of  
24 Supervisors unanimously voted to authorize Los Angeles County  
25 Waterworks District 40 to file and prosecute the present legal  
26 actions which seeks a judicial declaration that Los Angeles County

1 Waterworks District 40 has obtained, without compensation and  
2 without due process notice, the overlying landowners' appurtenant  
3 water rights through the common law doctrine of prescription.  
4 Based on this authorization, Los Angeles County Waterworks  
5 District 40 filed these actions.

6 17. Cross-Complainants did not have actual knowledge that  
7 any Phelan Pinon Hills Community Services District's pumping of  
8 groundwater was adverse to or hostile to its present and/or future  
9 priority rights.

10 18. Based upon information and belief, no landowner had  
11 actual knowledge that any Phelan Pinon Hills Community Services  
12 District's pumping of groundwater was adverse to or hostile to its  
13 present and/or future priority rights.

14 19. In January 2006, the Phelan Pinon Hills Community  
15 Services District identified herein jointly filed a Cross-  
16 Complaint in place of the original Complaint seeking to obtain a  
17 judicial declaration that they had obtained the overlying  
18 landowners' water rights, without compensation, within the  
19 Antelope Valley through the common law doctrine of prescription.

20 20. In January 2007, the Phelan Pinon Hills Community  
21 Services District identified herein jointly filed the present  
22 First Amended Cross-Complaint in place of the Cross-Complaint and  
23 in place of the original Complaint seeking to obtain a judicial  
24 declaration that they had obtained the overlying landowners' water  
25 rights, without compensation, within the Antelope Valley through  
26 the common law doctrine of prescription.



1           21. None of the Phelan Pinon Hills Community Services  
2 District have invoked the power of eminent domain nor paid any  
3 compensation to Cross-Complainants or any other overlying owner of  
4 land located within Antelope Valley for the property rights they  
5 have allegedly and knowingly claimed to have taken.

6           22. The quantity of alleged superior and/or coequal rights  
7 claimed by Cross-Defendants, each of them, currently is not known.

8                           **FIRST CAUSE OF ACTION**

9                           **(Quiet Title/Appurtenant Rights)**

10           23. Cross-Complainants set forth herein at length verbatim  
11 the general allegations contained in paragraphs 1 through 22 of  
12 this Cross-Complaint.

13           24. Cross-Complainants own PARCELS overlying the Antelope  
14 Valley alluvial groundwater basin. Accordingly, Cross-  
15 Complainants have appurtenant rights to pump and reasonably use  
16 groundwater on such PARCELS.

17           25. Cross-Complainants herein request a declaration from  
18 the Court quieting title to Cross-Complainants' appurtenant rights  
19 to pump and reasonably use groundwater on their PARCELS.

20                           **SECOND CAUSE OF ACTION**

21                           **(Declaratory Relief)**

22           26. Cross-Complainants set forth herein at length verbatim  
23 the general allegations contained in paragraphs 1 through 22 of  
24 this Cross-Complaint.

25           27. Cross-complainants contend that by virtue of the filing  
26 of the Complaints filed by Los Angeles County Waterworks District

1 No. 40 in Kern County and Los Angeles County, herein coordinated  
2 with the Riverside action, that a current controversy exists as  
3 between Cross-Complainants and Cross-Defendants and as to all  
4 other Defendants in that Los Angeles County has requested a  
5 complete basin-wide adjudication of all rights of all parties to  
6 water in the Antelope Valley basin. Cross-Complainants request  
7 quiet title and/or other appropriate declaration of the right to  
8 pump and reasonably use groundwater on its PARCELS and/or to pump  
9 and use other groundwater based upon its rights as declared by the  
10 Court herein.

11 **THIRD CAUSE OF ACTION**

12 **(Unlawful Taking/42 USC § 1983)**

13 28. Cross-Complainants set forth herein at length verbatim  
14 the general allegations contained in paragraphs 1 through 22 of  
15 this Cross-Complaint.

16 29. This cause of action is brought under 42 U.S.C. § 1983  
17 to recover damages against the Phelan Pinon Hills Community  
18 Services District for violation of Cross-Complainants' rights  
19 under the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution  
20 through the Phelan Pinon Hills Community Services District' taking  
21 of Cross-Complainants' private property for public use without  
22 paying just compensation and depriving Cross-Complainants' of both  
23 substantive or procedural due process of law.

24 30. The Phelan Pinon Hills Community Services District, and  
25 each of them, and at all times mentioned in this Cross-Complaint,  
26 were governmental entities organized and operating in Los Angeles

1 and/or Kern County and in the State of California. All are  
2 organized and existing under the laws of the State of California,  
3 with the capacity to sue and be sued.

4 31. The Phelan Pinon Hills Community Services District, and  
5 each of them, were, at all times mentioned in this Cross-  
6 Complaint, acting under color of state law.

7 32. At an as yet unidentified historical point in time, the  
8 Phelan Pinon Hills Community Services District began pumping water  
9 from the Antelope Valley as permissive appropriators. Over the  
10 course of time, it is believed and therefore alleged, that the  
11 aggregate amount of water being extracted from the Valley began to  
12 exceed the safe yield resulting in a condition called "overdraft."

13 Cross-Complainant is informed and believes and based thereon  
14 alleges that the Phelan Pinon Hills Community Services District  
15 had knowledge of the "overdraft" condition and nonetheless  
16 continued pumping and increased their pumping with the specific  
17 intent to impair and take all superior overlying property rights  
18 to extract groundwater, including that of Cross-Complainants.  
19 Each Phelan Pinon Hills Community Services District continued to  
20 pump and increased its pumping of groundwater believing that given  
21 the intervention of the committed public use that no injunction  
22 would issue to restrain and/or compel the Phelan Pinon Hills  
23 Community Services District to reduce its dependence upon  
24 groundwater. Each Phelan Pinon Hills Community Services District  
25 contends that despite its status as a governmental entity, it can  
26 nonetheless take private property for a public use under a theory

1 of prescription and without compensation. Each Phelan Pinon Hills  
2 Community Services District claims that presumed or constructive  
3 knowledge of the overdraft condition alone was sufficient to  
4 commence the running of the statutory prescriptive period. Each  
5 Phelan Pinon Hills Community Services District did not undertake  
6 any affirmative action reasonably calculated and intended to  
7 provide notice and inform any affected landowner, including Cross-  
8 Complainants, of its adverse and hostile claim. Each Phelan Pinon  
9 Hills Community Services District contends that it has taken the  
10 private property rights of Cross-Complainants and others, and has  
11 committed them to a public use, without following the  
12 Constitutional constraints imposed by Article 1, Section 19 of the  
13 California Constitution, and the eminent domain law, *Code of Civil*  
14 *Procedure*, Section 1245.230. The acts of the Phelan Pinon Hills  
15 Community Services District were done under the color of state law  
16 with the intent of depriving Cross-Complainants of its property  
17 rights without substantive and procedural due process of law and  
18 to avoid payment of compensation to Cross-Complainants for the  
19 property rights taken, all in violation of the 5<sup>th</sup> and 14<sup>th</sup>  
20 Amendments to the United States Constitution.

21 33. Cross-Complainants are informed and believe and thereon  
22 allege that they were subjected to a violation of their right to  
23 due process of law prior to the taking of their property and their  
24 right to receive just compensation when their property was taken  
25 for the public benefit. This violation was a direct result of the  
26 knowing customs, practices and policies of the Phelan Pinon Hills

1 Community Services District to continue to pump in excess of the  
2 supply, to suppress the assertion of their adverse and hostile  
3 claim, and the resulting ever increasing intervening public use  
4 and dependence, without acceding to Constitutional limits.

5 34. The customs, practices and policies of the Phelan Pinon  
6 Hills Community Services District to prescript or adversely  
7 possess the property rights of property owners and/or to establish  
8 a non-enjoinable intervening use amounted to deliberate  
9 indifference to the rights of persons, such as Cross-Complainants,  
10 who stand to lose their rights to extract water from the Antelope  
11 Valley for use on their property through the actions of each  
12 Phelan Pinon Hills Community Services District and all of them.

13 35. As a direct and proximate result of the acts of the  
14 Phelan Pinon Hills Community Services District, Cross-Complainants  
15 have suffered injury, loss and damage, including a cloud upon  
16 their title to their real property, a reduction in value, and the  
17 loss of its right in the future to extract and use groundwater  
18 from the Valley.

#### 19 FOURTH CAUSE OF ACTION

##### 20 (Equal Protection/Due Process 42 USC § 1983)

21 36. Cross-Complainants set forth herein at length verbatim  
22 the general allegations contained in paragraphs 1 through 22 of  
23 this Cross-Complaint.

24 37. The State and federal constitutions require equal  
25 protection under the law. Cross-Defendants seek to exclude what  
26 they define as "*de minimus*" overlying water producers and other

1 appropriators from the lawsuit. They intend not to name and/or  
2 serve these individuals, thereby intentionally treating them  
3 differently than similarly situated persons with no rational basis  
4 for different treatment denying them equal protection under the  
5 law and in violation of 42 USC § 1983.

6 38. Cross-Defendants also potentially make claims that  
7 separate management areas should exist. Separate management areas  
8 as between correlative overlying rights holders and treating these  
9 areas differently, denies equal protection to overlying landowners  
10 in violation of State and Federal Constitutions and violates 42  
11 USC § 1983.

#### 12 FIFTH CAUSE OF ACTION

##### 13 **(Declaratory Relief of *Inter Se* Appropriative Rights)**

14 39. Cross-Complainants set forth herein at length verbatim  
15 the general allegations contained in paragraphs 1 through 22 of  
16 this Cross-Complaint.

17 40. Cross-Complainants have failed to name all  
18 appropriators as defendants. In the event that Cross-Defendants  
19 prove the Antelope Valley Groundwater basin is, or has been, in a  
20 state of common law overdraft, cutbacks may be required to balance  
21 the demand with the supply available. The California priority  
22 water allocation system requires that appropriative user's cutback  
23 water usage before overlying landowners are required to cutback  
24 usage. Cutbacks among the appropriators are based upon priority  
25 as between appropriators. Appropriators with first in time  
26 appropriative rights have priority over later in time

1 appropriators. Accordingly, in order to apply the California  
2 priority water allocation system, all appropriators must be  
3 included in the action so that the priority of appropriative  
4 rights can be litigated which will allow the Court by injunction  
5 or physical solution to cutback appropriators based upon such  
6 priorities in the event that Cross-Defendants prove the Antelope  
7 Valley Groundwater basin is in common law overdraft and that an  
8 injunction and/or physical solution is necessary to balance the  
9 water demand with water supply.

10 **SIXTH CAUSE OF ACTION**

11 **(Return Flows)**

12 41. Cross-Complainants set forth herein at length verbatim  
13 the general allegations contained in paragraphs 1 through 22 of  
14 this Cross-Complaint.

15 42. Cross-complainants have pumped and used groundwater on  
16 its PARCELS to irrigate crops. This water was pumped from a lower  
17 aquifer not significantly hydraulically connected to the upper  
18 aquifer and which water would not otherwise be supplied to the  
19 upper aquifer. A portion of this water has reached the upper  
20 aquifer by percolation. Cross-Complainants have a priority right  
21 to these return flows as well as a right to store water in the  
22 upper aquifer from the return flows and have a paramount right  
23 against all other parties to this water and a paramount right  
24 against all other parties to recapture this water or an equivalent  
25 amount of such water.

26 \\\







1 Complainants request the Court enjoin parties holding inferior  
2 appropriative rights from pumping and/or that the Court impose a  
3 physical solution on appropriators to prevent continuing common  
4 law overdraft.

5 **ELEVENTH CAUSE OF ACTION**

6 **(Declaratory Relief to Determine Applicability**  
7 **of California Constitution)**

8 51. Cross-Complainants set forth herein at length verbatim  
9 the general allegations contained in paragraphs 1 through 22 of  
10 this Cross-Complaint.

11 52. Article 1, Section 19 of the California Constitution  
12 provides as follows:

13 "Private property may be taken or damaged for  
14 public use only when just compensation,  
15 ascertained by a jury unless waived, has  
16 first been paid to, or into court for, the  
17 owner. The Legislature may provide for  
18 possession by the condemner following  
commencement of eminent domain proceedings  
upon deposit in court and prompt release to  
the owner of money determined by the court to  
be the probable amount of just compensation."

19 53. The Phelan Pinon Hills Community Services District  
20 contend that, even though they are political subdivisions who are  
21 vested with the power of eminent domain, they are nonetheless  
22 legally permitted to knowingly take private property for public  
23 use without first paying just compensation.

24 54. Cross-Complainants contend that the use of the word  
25 "only" within Article 1, Section 19 is a clear temporal limitation  
26 on the Phelan Pinon Hills Community Services District's lawful

1 ability to knowingly take private property for the public benefit  
2 to only those instances where just compensation has first been  
3 paid. By virtue of the Phelan Pinon Hills Community Services  
4 District's actions as set forth above, an actual controversy has  
5 arisen and now exists between the Phelan Pinon Hills Community  
6 Services District and Cross-Complainants concerning their  
7 respective rights, duties and responsibilities.

8 55. Cross-Complainants desire a declaration of its rights  
9 with respect to the application or non-application of Article 1,  
10 Section 19 to the Phelan Pinon Hills Community Services District  
11 and ask the court to make a declaration of such rights, duties and  
12 responsibilities. Such a declaration is necessary and appropriate  
13 at this time in order that Cross-Complainants' property rights may  
14 be protected and to ensure that the municipal Phelan Pinon Hills  
15 Community Services District proceed according to the California  
16 Constitution. There are no administrative remedies available to  
17 Cross-Complainants.

18 56. A timely declaration by this court is urgent for the  
19 following reasons: by way of this action, the Phelan Pinon Hills  
20 Community Services District are seeking to adjudicate, enjoin and  
21 take the property rights of Cross-Complainants and thousands of  
22 other parties who own property overlying the water supply without  
23 first paying just compensation therefore, absent a timely  
24 declaration by this court, injustice will result from the improper  
25 taking of the Cross-Complainants' property rights should Article  
26 1, Section 19 of the California Constitution be found to apply.

1           57. Cross-Complainants and numerous other private parties  
2 will suffer irreparable and lasting injury unless declaratory  
3 relief is granted.

4                           **TWELFTH CAUSE OF ACTION**

5                           **(Declaratory Relief to Determine Applicability**  
6                           **of Constitutional Article)**

7           58. Cross-Complainants set forth herein at length verbatim  
8 the general allegations contained in paragraphs 1 through 22 of  
9 this Cross-Complaint.

10          59. Article 1, Section 19 of the California Constitution  
11 provides as follows:

12                   "Private property may be taken or damaged for  
13 public use only when just compensation,  
14 ascertained by a jury unless waived, has  
15 first been paid to, or into court for, the  
16 owner. The Legislature may provide for  
17 possession by the condemner following  
commencement of eminent domain proceedings  
upon deposit in court and prompt release to  
the owner of money determined by the court to  
be the probable amount of just compensation."

18          60. The Phelan Pinon Hills Community Services District  
19 contend that, even though they are political subdivisions who are  
20 vested with the power of eminent domain, they are nonetheless  
21 legally allowed to knowingly take private property for public use  
22 through prescription or adverse possession and without  
23 compensation.

24          61. Cross-Complainants contend that the use of the word  
25 "only" within Article 1, Section 19 is a clear temporal limitation  
26 on the Phelan Pinon Hills Community Services District's authority

1 and the manner in which they may take private property for the  
2 public benefit. That this limitation forecloses the ability of  
3 any governmental entity to knowingly take or acquire private  
4 property for a public use under a theory of prescription or  
5 adverse possession. By virtue of the Phelan Pinon Hills Community  
6 Services District's actions as set forth above, an actual  
7 controversy has arisen and now exists between the Phelan Pinon  
8 Hills Community Services District and Cross-Complainants  
9 concerning their respective rights, duties and responsibilities.

10 62. Cross-Complainants desire a declaration of its rights  
11 with respect to the application or non-application of Article 1,  
12 Section 19 to the Phelan Pinon Hills Community Services District'  
13 prescription claims and ask the court to make a declaration of  
14 such rights, duties and responsibilities. Such a declaration is  
15 necessary and appropriate at this time in order that Cross-  
16 Complainants' property rights may be protected and to ensure that  
17 the municipal Phelan Pinon Hills Community Services District  
18 proceed according to the California Constitution. There are no  
19 administrative remedies available to Cross-Complainants.

20 63. A timely declaration by this court is urgent for the  
21 following reasons: by way of this action, the Phelan Pinon Hills  
22 Community Services District are seeking to adjudicate, enjoin and  
23 take the property rights of Cross-Complainants and thousands of  
24 other parties by avoiding the due process protections provided to  
25 these landowners under *Code of Civil Procedure*, Sections 1230.010  
26 through 1237.040. Absent a timely declaration by this court,

1 | injustice will result from the improper taking of the Cross-  
2 | Complainants' property rights should Article 1, Section 19 of the  
3 | California Constitution be found to apply.

4 |         64. Cross-Complainants and numerous other private parties  
5 | will suffer irreparable and lasting injury unless declaratory  
6 | relief is granted.

7 |                     **THIRTEENTH CAUSE OF ACTION**

8 |                     **(Declaratory Relief to Determine Validity and**  
9 |                     **Applicability of Statute)**

10 |         65. Cross-Complainants set forth herein at length verbatim  
11 | the general allegations contained in paragraphs 1 through 22 of  
12 | this Cross-Complaint.

13 |         66. In or about 1951, the Legislature of the State of  
14 | California enacted Section 55000, et seq., of the *Water Code*,  
15 | known as the County Waterworks District Law, hereinafter referred  
16 | to as the "Waterworks Statutes." In 1953, the Legislature added  
17 | Section 55370. This Section, since its adoption has been, and now  
18 | is, in full force and effect. This statute provides as follows:

19 |                 "A district may acquire property by purchase,  
20 |                 gift, devise, exchange, descent, and eminent  
21 |                 domain. The title to all property which may  
22 |                 have been acquired for a district shall be  
23 |                 vested in the district."

24 |         67. The Phelan Pinon Hills Community Services District  
25 | contend that Section 55370 of the *Water Code* does not apply to, or  
26 | limit in any manner, its acquisition of any overlying landowners'  
water rights within the Antelope Valley and that, despite its  
status as public entities, Article 1, Section 19 of the California