

1 Constitution, and the 5th Amendment to the Federal Constitution,
2 it is nonetheless empowered to acquire private property for public
3 use through the common law doctrine of prescription, without due
4 process and without compensation.

5 68. In or about 1943, the Legislature of the State of
6 California enacted Sections 20500, et seq., of the *Water Code*,
7 known as the Irrigation District Law, hereinafter referred to as
8 the "Irrigation Statutes." In 1943, the Legislature added Section
9 22456. This Section, since its adoption has been, and now is, in
10 full force and effect. This statute provides as follows:

11 "The district may exercise the right of
12 eminent domain to take nay property necessary
to carry out its purposes."

13 69. The Phelan Pinon Hills Community Services District
14 contend that Section 22456 of the *Water Code* does not act to
15 limit, in any manner, the mode or method of acquiring an overlying
16 landowners' water rights within the Antelope Valley and that,
17 despite its status as public entities, Article 1, Section 19 of
18 the California Constitution, and the 5th Amendment to the Federal
19 Constitution, it is nonetheless empowered to acquire private
20 property for public use through the common law doctrine of
21 prescription, without due process and without compensation.

22 70. In or about 1949, the Legislature of the State of
23 California enacted Sections 30000, et seq., of the *Water Code*,
24 known as the County Water District Law, hereinafter referred to as
25 the "County Water Statutes." In 1975, the Legislature amended
26 Section 31040. This amended statute became operative on July 1,

1 1976, and since then, has been, and now is, in full force and
2 effect. This Section provides as follows:

3 "A district may take any property necessary
4 to carry out the business of the district by
5 grant, purchase, gift, devise, condemnation,
or lease with or without the privilege of
purchase."

6 71. The Phelan Pinon Hills Community Services District
7 contend that Section 31040 of the *Water Code* does not act to
8 limit, in any manner, the mode or method by which they may acquire
9 an overlying landowners' water rights within the Antelope Valley
10 and that, despite their status as public entities, Article 1,
11 Section 19 of the California Constitution, and the 5th Amendment
12 to the Federal Constitution, they are nonetheless empowered to
13 take private property for public use through the common law
14 doctrine of prescription, without due process and without
15 compensation.

16 72. Cross-Complainants contend that the statute is
17 constitutional, and when conjoined with the California state and
18 Federal Constitutions, limits the method, manner and mode by which
19 the Phelan Pinon Hills Community Services District may acquire
20 private property for a public use and the rights appurtenant
21 thereto by declaring that the only legal right of the Phelan Pinon
22 Hills Community Services District to take possession of property
23 without consent of the owners is under its power of eminent
24 domain. By virtue of the Phelan Pinon Hills Community Services
25 District' actions as set forth above, an actual controversy has
26 arisen and now exists between the Phelan Pinon Hills Community

1 Services District and Cross-Complainants concerning their
2 respective rights, duties and responsibilities under these
3 statutes and both Constitutions.

4 73. Cross-Complainants desire a declaration of their rights
5 with respect to the constitutionality and application or non-
6 application of the statute and ask the court to make a declaration
7 of such rights, duties and responsibilities, and to make a
8 declaration as to the validity and constitutionality of the
9 statutes. Cross-Complainants seek a declaration that the effort
10 of the Phelan Pinon Hills Community Services District to
11 deprioritize Cross-Complainants' overlying right is, without
12 compensation, *ultra vires* and unconstitutional. Such a declaration
13 is necessary and appropriate at this time in order that Cross-
14 Complainants' property rights be protected and to ensure that the
15 Phelan Pinon Hills Community Services District proceed according
16 to the law and Constitution of the state and Federal Constitution.

17 There are no administrative remedies available to Cross-
18 Complainants.

19 74. A timely declaration by this court is urgent for the
20 following reasons: By way of this action, the Phelan Pinon Hills
21 Community Services District are seeking to adjudicate, enjoin and
22 take the property rights of Cross-Complainants and thousands of
23 other parties who own property overlying the Antelope Valley,
24 absent a timely declaration of this court, injustice will result
25 from its improper awarding of property rights to the Phelan Pinon
26 Hills Community Services District should these statutes be later

1 found to apply.

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

5 **FOURTEENTH CAUSE OF ACTION**

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

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

10 77. Article I, Section 7 of the California Constitution
11 provides in pertinent part as follows:

12 "A person may not be deprived of life,
13 liberty, or property without due process of
14 law or denied equal protection of the laws; .
15"

16 The 5th Amendment to the Constitution as applied by the
17 14th Amendment in relevant part provides:

18 "No person shall . . . be deprived of life,
19 liberty, or property, without due process of
20 law; nor shall private property be taken for
21 public use, without just compensation."

22 78. The Phelan Pinon Hills Community Services District
23 contend that, even though they are political subdivisions who are
24 uniquely invested with the power of eminent domain, they are
25 allowed to surreptitiously take private property for public use by
26 prescription or adverse possession without providing substantive
or procedural due process of law to each overlying landowner. The
Phelan Pinon Hills Community Services District contend that

1 prescription commences with "overdraft," and that presumed or
2 constructive notice is sufficient.

3 79. Cross-Complainants contend that the Article I, Section
4 7 of the California Constitution, and the 5th Amendment as applied
5 by the 14th Amendment of the Federal Constitution, mandates that
6 governmental entities must provide substantive and procedural due
7 process of law when taking private property for a public use.
8 Cross-Complainants contend that the prescriptive period cannot
9 commence until the governmental entity takes affirmative action
10 designed and intended to give notice and inform the overlying
11 landowners of the governmental entity's adverse and hostile claim.
12 Cross-Complainants further contend that this limitation forecloses
13 the ability of any governmental agency to take or acquire private
14 property for a public use when constitutionally sufficient due
15 process notice has not been provided to the landowner. By virtue
16 of the Phelan Pinon Hills Community Services District' actions, as
17 set forth above, an actual controversy has arisen and now exists
18 between the Phelan Pinon Hills Community Services District and
19 Cross-Complainants concerning their respective rights, duties and
20 responsibilities.

21 80. Cross-Complainants desire a declaration of their rights
22 with respect to the application or non-application of Article I,
23 Section 7 of the California Constitution and the 5th Amendment to
24 the U.S. Constitution to the Phelan Pinon Hills Community Services
25 District' prescription claims and ask the court to make a
26 declaration of such rights, duties and responsibilities. Such a

1 declaration is necessary and appropriate at this time in order
2 that Cross-Complainants' property rights may be protected and to
3 ensure that the municipal Phelan Pinon Hills Community Services
4 District may proceed according to the California Constitution.
5 There are no administrative remedies available to Cross-
6 Complainants.

7 81. A timely declaration by this court is urgent for the
8 following reasons: By way of this action, the Phelan Pinon Hills
9 Community Services District are seeking to adjudicate and enjoin
10 the property rights of Cross-Complainants and thousands of other
11 parties by avoiding the due process protections provided to these
12 landowners under Article I, Section 7, the 5th and 14th Amendments
13 and *Code of Civil Procedure*, Sections 1230.010 through 1237.040.
14 Absent a timely declaration by this court, injustice will result
15 from the improper use and adjudication of Cross-Complainants'
16 property rights should the foregoing constraints and statutory
17 mandate be found applicable.

18 82. Cross-Complainants and numerous other private parties
19 will suffer irreparable and lasting injury unless declaratory
20 relief is granted.

21 **FOURTEENTH CAUSE OF ACTION**

22 **(Declaratory Relief)**

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

26 84. Cross-Complainants are the owners and/or lessees of

1 real property located within the Antelope Valley. Located on
2 Cross-Complainants' property are water wells which produce water
3 from the groundwater supply. Cross-Complainants and or its
4 predecessors in interest, have continually produced water from
5 these wells without restriction and in quantities as were needed
6 to perform its farming and irrigation operations from year to
7 year.

8 85. Based on information and belief, it is alleged that
9 Phelan Pinon Hills Community Services District all pump
10 groundwater from the Antelope Valley and then sell it to other
11 individuals and entities who reside within Kern County and Los
12 Angeles Counties.

13 86. An actual controversy has arisen and now exists between
14 Cross-Complainants and the Phelan Pinon Hills Community Services
15 District concerning their respective rights and duties in that the
16 Phelan Pinon Hills Community Services District contend that they
17 have been pumping water during a continuous 5 year period during
18 which the common supply has been in a state of overdraft; that
19 this pumping has resulted in a reversal of the common law legal
20 priority granted to overlying landowners pursuant to the common
21 law doctrine of prescription. Whereas Cross-Complainants dispute
22 this contention and contend that by continuing to pump groundwater
23 from the wells on their land, and by continuing to thus meet all
24 of the water needs to perform their farming operations, Cross-
25 Complainants have preserved and maintained their priority rights
26 to the use of groundwater.

1 87. Cross-Complainants desire a judicial determination of
2 each party's rights and duties, and a declaration as to the status
3 of each party's priority rights to the water in the Valley whether
4 they be overlying, appropriative or prescriptive.

5 88. A judicial declaration is necessary and appropriate at
6 this time under the circumstances in order that Cross-Complainants
7 may ascertain their rights and duties relating to production of
8 water from the Antelope Valley.

9 **FIFTEENTH CAUSE OF ACTION**

10 **(Declaratory Relief)**

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

14 90. AVEK and others provide the Antelope Valley with water
15 imported from northern California. This imported water was and is
16 available for purchase by the Phelan Pinon Hills Community
17 Services District.

18 91. Despite having knowledge that the pumping of
19 groundwater in excess of the safe yield caused damage, and despite
20 the knowledge and belief that continued pumping would damage the
21 rights of the landowners whose property overlies the water supply,
22 the Phelan Pinon Hills Community Services District have failed and
23 refused to slow, stop or reduce their groundwater extractions from
24 the supply and/or to supplement or replace their water needs from
25 the available imported AVEK water.

26 92. The California Constitution, Article X, Section 2,

1 provides, in pertinent part, as follows:

2 "It is hereby declared that because of the
3 conditions prevailing in this State the
4 general welfare requires that the water
5 resources of the State be put to beneficial
6 use to the fullest extent of which they are
7 capable, and that the waste or unreasonable
8 use or unreasonable method of use of water be
9 prevented, and that the conservation of such
10 waters it to be exercised with a view to the
11 reasonable and beneficial use thereof in the
12 interest of the people and for the public
welfare. The right to water or to the use or
flow of water in or from any natural stream
or water course in this State is and shall be
limited to such water as shall be reasonably
required for the beneficial use to be served,
and such right does not and shall not extend
to the waste or unreasonable use or
unreasonable method of use or unreasonable
method of diversion of water"

13 93. An actual controversy has arisen and now exists between
14 Cross-Complainants and each Phelan Pinon Hills Community Services
15 District concerning their respective rights and duties in that
16 Cross-Complainants contend that the Phelan Pinon Hills Community
17 Services District' continued dependence on, and use of, the
18 groundwater, their continued and increased extractions of
19 groundwater from the common supply, with knowledge that the
20 extractions exceed the safe yield, and their failure and/or
21 refusal to take all of the available imported water and the method
22 and use of groundwater taken, is unreasonable and constitutes a
23 waste in violation of Article X, Section 2 of the California
24 Constitution. The Phelan Pinon Hills Community Services District
25 dispute these contentions and contend that their dependence on
26 groundwater, their continued and increasing extractions of

1 groundwater from the Antelope Valley in excess of the safe yield
2 and their failure and refusal to take all of the available
3 imported water is reasonable and does not constitute waste of
4 groundwater and/or available imported water under Article X,
5 Section 2 of the California Constitution.

6 94. Cross-Complainants desire a declaration of their rights
7 with respect to the constitutionality and application or non-
8 application of Article X, Section 2 to the Phelan Pinon Hills
9 Community Services District' actions and ask the court to make a
10 declaration of such rights, duties and responsibilities, and to
11 make a declaration as to the validity and constitutionality of the
12 Article X, Section 2. Such a declaration is necessary and
13 appropriate at this time in order that Cross-Complainants'
14 property rights may be protected and to ensure that the Phelan
15 Pinon Hills Community Services District may proceed under the law
16 and cause no further damage to Cross-Complainants' or property
17 overlying the water supply. There are no administrative remedies
18 available to Cross-Complainants.

19 95. A timely declaration by this court is urgent for the
20 following reasons: By way of this action, the Phelan Pinon Hills
21 Community Services District are seeking to have the court ratify
22 their method and choice of water usage and declare that they have
23 the right to continue to extract groundwater from the Valley in
24 excess of the safe yield and to continue to cause damage to the
25 Valley itself as well as to the land overlying the water supply,
26 absent a timely declaration by this court, an injustice will

1 result from the improper validation of the Phelan Pinon Hills
2 Community Services District' water usage should this
3 constitutional provision be found to apply to the Phelan Pinon
4 Hills Community Services District.

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

8 **SIXTEENTH CAUSE OF ACTION**

9 **(Declaratory Relief)**

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

13 98. On January 8, 2006, the Phelan Pinon Hills Community
14 Services District filed a Cross-Complaint in this matter seeking
15 to implement policy objectives which were stated in Paragraph 1 as
16 follows:

17 "To promote the general public welfare in the
18 Antelope Valley; protect the public water
19 supplier's rights to pump groundwater and
20 provide water to the public; protect the
21 Antelope Valley from a loss of the public's
22 water supply; prevent degradation of the
23 quality of the public groundwater supply;
24 stop land subsidence; and avoid higher water
25 costs to the public."

26 99. In order to implement these policy objectives, the
Phelan Pinon Hills Community Services District have brought a
cause of action against all owners of property overlying the
Antelope Valley seeking the imposition of a "physical solution"
that would manage the groundwater supply by augmenting the water

1 supply, manage the pumping and storage of water and impose
2 monetary assessments on water extraction from the supply.

3 100. An actual controversy has arisen and now exists between
4 Cross-Complainants and the Phelan Pinon Hills Community Services
5 District concerning their respective rights and duties in that
6 Cross-Complainants contend that it is a violation of the
7 constitutional doctrine of the separation of powers for this Court
8 to implement the Phelan Pinon Hills Community Services District'
9 policy objectives as they are by nature legislative actions,
10 subject to the provisions of the California Environmental Quality
11 Act (hereinafter "CEAQ;" *Public Resources Code*, Sections 21000-
12 21177). That the requirements of CEQA are both procedural
13 (requiring notice, disclosure and a review process) and
14 substantive (by requiring public agencies to take affirmative
15 measures to avoid environmental harm and to also protect the
16 citizens and landowners of the State of California).

17 101. The Phelan Pinon Hills Community Services District
18 contend that they may use the judicial system to circumvent CEQA
19 and impose by judicial fiat what should be a legislative policy.
20 In doing so, they seek to avoid providing the public with the
21 required disclosures and evaluations, and thereby deny Cross-
22 Complainants and the public their procedural and substantive
23 protections required by CEQA.

24 102. Cross-Complainants desire a judicial determination of
25 the Phelan Pinon Hills Community Services District' rights and
26 duties, and a declaration as to the application of *Public*

1 Resources Code, sections 21000-21177 to any proposed water
2 management plan sought to be implemented by judicial decree by the
3 Phelan Pinon Hills Community Services District. That the
4 legislative protections afforded to the public under CEQA cannot
5 be ignored or subverted by resorting to the court to implement the
6 Phelan Pinon Hills Community Services District's plan, and that
7 such a request of this Court induces a violation of the doctrine
8 of the separation of powers.

9 103. A judicial declaration is necessary and appropriate at
10 this time under the circumstances in order that Cross-Complainants
11 may ascertain their rights and duties relating to production of
12 water from the Antelope Valley.

13 **SEVENTEENTH CAUSE OF ACTION**

14 **(Declaratory Relief)**

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

18 105. On January 8, 2006, the Phelan Pinon Hills Community
19 Services District filed a Cross-Complaint in this matter seeking
20 to implement policy objectives which were stated in Paragraph 1 as
21 follows:

22 "To promote the general public welfare in the
23 Antelope Valley; protect the public water
24 supplier's rights to pump groundwater and
25 provide water to the public; protect the
26 Antelope Valley from a loss of the public's
water supply; prevent degradation of the
quality of the public groundwater supply;
stop land subsidence; and avoid higher water
costs to the public."

1 106. In order to implement these policy objectives, the
2 Phelan Pinon Hills Community Services District have brought a
3 cause of action against all owners of property overlying the
4 Antelope Valley seeking the imposition of a "physical solution"
5 that would manage the groundwater supply by augmenting the water
6 supply, manage the pumping and storage of water and impose
7 monetary assessments on water extraction from the supply.

8 107. An actual controversy has arisen and now exists between
9 Cross-Complainants and the Phelan Pinon Hills Community Services
10 District concerning their respective rights and duties in that
11 Cross-Complainants contend that it is a violation of the
12 constitutional doctrine of the separation of powers for this Court
13 to implement the Phelan Pinon Hills Community Services District'
14 policy objectives as they are by nature legislative and executive
15 actions that are within the power of the Phelan Pinon Hills
16 Community Services District to enact by following the statutory
17 requirements set forth in *Water Code*, sections 10700-10795.20.
18 These sections of the *Water Code* provide the procedural method by
19 which the Phelan Pinon Hills Community Services District must
20 implement a groundwater management plan and also ensure
21 constitutionality required process through the required public
22 hearings, notice and publication of the proposed management plan,
23 and the opportunity for public discourse, input and objection.

24 108. The Phelan Pinon Hills Community Services District
25 contend that they may use the judicial system to impose by
26 judicial fiat what would otherwise be done through legislative

1 action. In doing so, they seek to avoid providing the public with
2 the required notice, hearing and disclosures and deny them their
3 procedural and substantive protections provided by the
4 Constitution and the *Water Code*, Sections 10700-10795.20.

5 109. Cross-Complainants desire a judicial determination of
6 the Phelan Pinon Hills Community Services District' rights and
7 duties, and a declaration as to the application and propriety of
8 *Water Code*, Sections 10700-10795.20 to the proposed water
9 management project sought to be implemented by the Phelan Pinon
10 Hills Community Services District. That the legislative
11 protections afforded to the public under the *Water Code* may not be
12 ignored or subverted by the filing of a legal action by a public
13 agency, and that such action requests this court to violate the
14 doctrine of separation of power.

15 110. A judicial declaration is necessary and appropriate at
16 this time under the circumstances in order that Cross-Complainants
17 may ascertain their rights and duties relating to production of
18 water from the Antelope Valley.

19 **EIGHTEENTH CAUSE OF ACTION**

20 **(Declaratory Relief)**

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

24 112. Commencing in early 2000, each Phelan Pinon Hills
25 Community Services District has claimed that the Antelope Valley
26 was in a state of "overdraft" for more than five years prior to

1 October 1999.

2 113. based on information and belief, it is alleged that
3 immediately prior to, during and after the same claimed five year
4 period of "overdraft" claimed by the Phelan Pinon Hills Community
5 Services District, the Phelan Pinon Hills Community Services
6 District did approve and have continued to approve the issuance of
7 well permits to Cross-Complainants and others, have approved large
8 scale developments and have authorized others and have thus
9 increased the demand for groundwater pumped by the Phelan Pinon
10 Hills Community Services District from the Antelope Valley. In
11 performing their ministerial and discretionary functions, each
12 Phelan Pinon Hills Community Services District has asserted that
13 the additional well permits, hook ups and added residential,
14 industrial and commercial developments, and the concomitant
15 increased pumping of groundwater caused thereby, would not, and
16 did not, have under CEQA or otherwise an adverse affect on the
17 water supply available from the Antelope Valley.

18 114. An actual controversy has arisen and now exists between
19 Cross-Complainants and each Phelan Pinon Hills Community Services
20 District concerning their respective rights and duties in that
21 Cross-Complainants contend that the Phelan Pinon Hills Community
22 Services District are barred from claiming that the Antelope
23 Valley is in a state of "overdraft" during the time that they have
24 authorized, permitted and approved new and increased pumping from
25 the supply pursuant to *Evidence Code*, Section 623. The Phelan
26 Pinon Hills Community Services District deny Cross-Complainants'

1 contentions and assert that they may assert overdraft as an
2 element of their prescription claims. Section 623 provides as
3 follows:

4 "Whenever a party has, by his own statement
5 or conduct, intentionally and deliberately
6 led another to believe a particular thing
7 true and to act upon such belief, he is not,
8 in any litigation arising out of such
9 statement or conduct, permitted to contradict
10 it."

11 115. Cross-Complainants desire a judicial determination of
12 its rights and duties, and a declaration as to the application of
13 the doctrine of equitable estoppel to the Phelan Pinon Hills
14 Community Services District' ability to claim that the Antelope
15 Valley was in a state of overdraft when the same Phelan Pinon
16 Hills Community Services District were issuing well permits, will
17 serve letters and adding new water customers and authorizing new
18 large scale development projects under the assertion that there
19 was an available, adequate and appropriate water supply in the
20 Antelope Valley to sustain these permits and projects.

21 116. A judicial declaration is necessary and appropriate at
22 this time under the circumstances in order that Cross-Complainants
23 may ascertain their rights and duties relating to its real
24 property that overlies the Antelope Valley.

25 NINETEENTH CAUSE OF ACTION

26 (Declaratory Relief)

1 117. Cross-Complainants set forth herein at length verbatim
2 the general allegations contained in paragraphs 1 through 22 of
3 this Cross-Complaint.

1 118. Cross-Complainants are the owners of land overlying the
2 Antelope Valley. Each of the Phelan Pinon Hills Community
3 Services District are users of water pumped from the Antelope
4 Valley which underlies Cross-Complainants' land.

5 119. Initially, the Phelan Pinon Hills Community Services
6 District, and each of them, legally used and maintained water
7 wells that extracted water from the Antelope Valley for public
8 distribution. Over time the increased urbanization and the Phelan
9 Pinon Hills Community Services District continued and increasing
10 extractions exceeded their legal boundaries, such that the water
11 extracted from the supply has exceeded the ability to naturally
12 recharge the water supply. The Phelan Pinon Hills Community
13 Services District have claimed to have knowledge that this
14 continuous and increasing use caused a progressive and chronic
15 decline in long term water supply and the available natural supply
16 is being and has been chronically depleted. Based on the present
17 trends, demand will continue to exceed supply which will cause
18 damage to private rights and ownership of real property.

19 120. The aforementioned extractions of groundwater from the
20 supply constitute a continuing progressive nuisance within the
21 meaning of Section 3479 of the *Civil Code*, in that the Phelan
22 Pinon Hills Community Services District have created a condition
23 in the future supply that is injurious to Cross-Complainants'
24 rights, in the future, to freely use and exercise its overlying
25 property rights to extract groundwater from the common supply in
26 the customary manner. The Phelan Pinon Hills Community Services

1 District are attempting, through the combined efforts of their
2 pumping groundwater and this present legal action, to take, and or
3 alter, Cross-Complainants' overlying property rights to use and
4 access the Antelope Valley supply.

5 121. In early 2000, the Phelan Pinon Hills Community
6 Services District asserted that the available groundwater supply
7 was in jeopardy and increased pumping would harm Antelope Valley
8 Water Supply. Despite this assertion, the Phelan Pinon Hills
9 Community Services District, and each of them, have continued to
10 and have increased their pumping, despite the knowledge of the
11 damages caused by that pumping. The Phelan Pinon Hills Community
12 Services District have refused, and continue to refuse, to stop or
13 reduce their pumping despite the damage to the supply and to
14 Cross-Complainants' property rights.

15 122. This nuisance affects, at the same time, a substantial
16 number of persons in that, the Phelan Pinon Hills Community
17 Services District claim that the continued pumping in excess of
18 the supply's safe yield is, and will, eventually cause a chronic
19 decline in water levels and the available natural supply will be
20 chronically depleted, that, based on the present trends, demand
21 will continue to exceed supply which will continue to cause a
22 reduction in the long term supply. Additionally, the continued
23 pumping by the Phelan Pinon Hills Community Services District
24 under these conditions will result in the unlawful obstruction of
25 the overlying landowners' rights to use the water supply in the
26 customary manner.

1 123. The Phelan Pinon Hills Community Services District, and
2 each of them, have threatened to and will, unless restrained by
3 this court, continue to pump groundwater in increasing amounts,
4 and each and every act has been, and will be, without the consent,
5 against the will, and in violation of the rights of Cross-
6 Complainants.

7 124. As a proximate result of the nuisance created by the
8 Phelan Pinon Hills Community Services District, and each of them,
9 Cross-Complainants has been, and will be, damaged in a sum to be
10 proven at trial.

11 125. Unless the Phelan Pinon Hills Community Services
12 District, and each of them, are restrained from increasing their
13 pumping from the supply by order of this court, it will be
14 necessary for plaintiff to commence many successive actions
15 against each Phelan Pinon Hills Community Services District, and
16 each of them, to secure a project by project injunction and/or
17 compensation for the continuing and repeated damages sustained,
18 thus requiring a multiplicity of suits.

19 126. Should the Phelan Pinon Hills Community Services
20 District continue to increase their pumping without replenishing
21 the Valley's water supply, Cross-Complainants will suffer
22 irreparable injury in that the usefulness and economic value of
23 Cross-Complainants' overlying property right will be substantially
24 diminished and Cross-Complainants will be deprived of the
25 comfortable, reasonable and beneficial use and enjoyment of its
26 property.

127. In maintaining this nuisance, the Phelan Pinon Hills Community Services District, and each of them, are, and have been, acting with full knowledge of the consequences and damage being caused to Cross-Complainants, and their conduct is willful, oppressive, malicious and designed to interfere with and take the Cross-Complainants' right to freely access the water supply in its customary manner. Accordingly, each Phelan Pinon Hills Community Services District has intentionally dirtied hands and no right to involve equity in these actions.

PRAYER

WHEREFORE, Cross-Complainants pray for judgment against Cross-Defendants, and each of them, and against all other persons or entities, as follows:

1. For a judgment against the Cross-Defendants;
2. For a declaration quieting title to Cross-Complainants' right to pump and reasonably use groundwater on their PARCELS and to their rights to otherwise pump groundwater;
3. If the Court determines based upon the Cross-Defendants basin-wide adjudication that the fractured bedrock and alluvial groundwater basin is in common law overdraft, for an injunction and/or a physical solution cutting back appropriative water use to prevent continuing common law overdraft;
4. For continuing jurisdiction of the Court to litigate disputes as necessary in the future consistent with the Court judgment herein and consistent with California water law;
5. For a declaration that no party hereto may hereinafter

1 obtain prescriptive rights as against any other party to this
2 action and that all parties will act in conformance with the terms
3 of any such judgment;

4 6. For a judgment for Cross-Complainants for all available
5 remedies to secure and protect Cross-Complainants' continuing
6 overlying water rights;

7 7. For an award of reasonable attorneys' fees and costs of
8 suit; and

9 8. For such other and further relief as the court deems
10 just and proper.

11
12 DATED: January 19, 2008

13 CLIFFORD & BROWN

14
15
16 By: 

RICHARD G. ZIMMER, ESQ.

T. MARK SMITH, ESQ.

Attorneys for
BOLTHOUSE PROPERTIES, LLC and
WM. BOLTHOUSE FARMS, INC.

Antelope Valley Groundwater Cases

Santa Clara County Superior Court Case No. 1-05-CV-049053

On January 19, 2009, I served the foregoing document(s) entitled: