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8 FARMS, a limited liability company

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF LOS ANGELES**

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

13 ANTELOPE VALLEY GROUNDWATER
14 CASES

14 Included actions:

15 Los Angeles County Waterworks District No.
16 40 vs. Diamond Farming Company
17 Los Angeles Superior Court
18 Case No. BC 325201

18 Los Angeles County Waterworks District No.
19 40 vs. Diamond Farming Company
20 Kern County Superior Court
21 Case No. S-1500-CV 254348 NFT

20 Diamond Farming Company vs. City of
21 Lancaster
22 Riverside County Superior Court
23 Lead Case No. RIC 344436 [Consolidated
24 w/Case Nos. 344668 & 353840]

24 AND RELATED CROSS-ACTIONS.

Judicial Council Coordination No. 4408

Case No.: 1-05-CV-049053

**CROSS-COMPLAINT OF DIAMOND
FARMING COMPANY AND CRYSTAL
ORGANIC FARMS, LLC FOR
EQUITABLE AND MONETARY
RELIEF AGAINST CROSS-
COMPLAINANT PHELAN PIÑON
HILLS COMMUNITY SERVICES
DISTRICT**

1 DIAMOND FARMING COMPANY, a
2 California corporation, and CRYSTAL
3 ORGANIC FARMS, a limited liability
4 company,

5 Cross-Complainants,

6 vs.

7 PHELAN PIÑON HILLS COMMUNITY
8 SERVICES DISTRICT, and ROES 1 - 200,
9 inclusive,

10 Cross-Defendants.

11 Cross-Complainants, Diamond Farming Company (“Diamond”) and Crystal Organic Farms, LLC
12 (“Crystal”), make the following allegations against Cross-Defendant Phelan Piñon Hills Community
13 Services District (“Phelan”), and ROES 1-200, inclusive, as follows:

14 **General Allegations:**

15 1. Phelan is a community services district located in western San Bernardino County.
16 Phelan is organized under the Community Services District Law (Government Code section 61000, et
17 seq.). The San Bernardino County Local Agency Formation Commission confirmed the order of
18 reorganization and issued the certificate of completion for Phelan in March of 2008. Phelan’s official
19 date of inception is on or about March 18, 2008.

20 2. Cross-Complainant Crystal is a limited liability company that owns and leases overlying
21 land within the Antelope Valley. Crystal owns and operates water wells that draw water from beneath
22 the land for use on the lands for irrigation. Crystal and its predecessors in interest, are currently, and
23 have historically, pumped water from beneath the land for farming.

24 3. Cross-Complainant Diamond is a California Corporation that owns and leases overlying
25 land within the Antelope Valley. Diamond owns and operates water wells that draw water from beneath
26 the land for use on the lands for irrigation. Diamond and its predecessors in interest, are currently, and
27 have historically, pumped water from beneath the land for farming.

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4. Cross-Complainants are ignorant of the true names and capacities of cross-defendants sued herein as ROES 1-200, inclusive, and therefore sue these cross-defendants by such fictitious names. Cross-Complainants will amend this Cross-Complaint to allege their true names and capacities when ascertained.

5. Cross-Complainants, are informed and believe, and thereon allege, that Phelan began pumping appropriated surplus water from the Antelope Valley to provide water for their municipal and industrial water customers. At the onset of pumping by Phelan, the same was lawful and permissive and did not immediately nor prospectively invade or impair any overlying right.

6. Over time, the urban areas within the Antelope Valley continued to expand and grow both in land area and population, and thus, over time Phelan increased, and today, continue to increase their demand for water. Cross-Complainants, are informed and believe, and thereon allege, that at some as yet unidentified historical point, the aggregate extractions of groundwater from the Antelope Valley began to exceed the safe yield of the Valley. Despite the potential for damage to the water supply and the rights of owners of real property within the Valley, Phelan, with knowledge, continued to extract groundwater from the common supply, and increased and continue to increase their extractions of groundwater over time. Phelan continued the act of pumping with the knowledge that the continued extractions were damaging, long term, the Antelope Valley and in the short term, impairing the rights of the property owners, including the rights in the land owned by Diamond and Crystal, which is overlying and within the Antelope Valley.

7. Cross-Complainants, are informed and believe, and thereon allege, that Phelan pumped and continue to pump water in excess of the safe yield with the knowing intent and belief that they could take by claim of prescription, without compensation, the water rights of Diamond and Crystal and all landowners overlying the Antelope Valley. Additionally, Phelan continued to pump ever increasing quantities of groundwater, knowing that even if their prescriptive claims failed, they could preserve the right to continue their pumping under a claim of an intervening public use. Despite the knowing intent to take the overlying property landowners' rights, Phelan did not take any steps calculated and intended

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1 to inform or otherwise notify any landowner of their adverse and hostile claim or that their pumping of
2 groundwater was an invasion of and a taking of the landowners' property rights.

3 8. During the material time that Phelan was pumping, none physically trespassed upon nor
4 invaded any overlying property. Phelan has not stopped, restricted, interfered with or physically or by
5 regulation reduced Diamond and/or Crystal's or any overlying landowner's right and ability to pump
6 groundwater from the Antelope Valley. Phelan did not undertake any affirmative action reasonably
7 calculated to inform or notify any overlying landowner that Phelan intended to take or were taking by
8 prescription the overlying water rights.

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

17 10. Diamond and Crystal did not have actual knowledge that Phelan's pumping of
18 groundwater was adverse to or hostile to its present and/or future priority rights.

19 11. Based upon information and belief, no landowner had actual knowledge that Phelan's
20 pumping of groundwater was adverse to or hostile to its present and/or future priority rights.

21 12. Phelan has not invoked the power of eminent domain nor paid any compensation to
22 Diamond and/or Crystal or any other overlying owner of land located within Antelope Valley for the
23 property rights they have allegedly and knowingly claimed to have taken.

24 **First Cause of Action**

25 13. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs
26 1 through 12, inclusive, of this Cross-Complaint.

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1 14. In or about 1951, the Legislature of the State of California enacted Sections 55000 et seq.
2 of the Water Code, known as the County Waterworks District Law, hereinafter referred to as the
3 "Waterworks Statutes." In 1953, the legislature added section 55370. This section, since its adoption has
4 been, and now is, in full force and effect. This statute provides as follows:

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

7 15. Phelan contends that the Community Services District Law does not limit in any manner,
8 the manner, method or mode of its acquisition of any overlying landowner's water rights within the
9 Antelope Valley and that, despite its status as a public entity, Article 1, Section 19 of the California
10 Constitution, and the 5th Amendment to the Federal Constitution, it is nonetheless empowered to acquire
11 private property for public use through the common law doctrine of prescription, without due process
12 and without compensation.

13 16. Diamond and Crystal contend that the act is constitutional, and when conjoined with the
14 California state and Federal Constitutions, limits the method, manner and mode by which Phelan may
15 acquire private property for a public use and the rights appurtenant thereto. By virtue of the actions of
16 Phelan as set forth above, an actual controversy has arisen and now exists between Phelan and Diamond
17 and Crystal concerning their respective rights, duties, and responsibilities under that statute and both
18 Constitutions.

19 17. Diamond and Crystal desire a declaration of their rights with respect to the
20 constitutionality and application or nonapplication of the statute and asks the court to make a declaration
21 of such rights, duties, and responsibilities, and to make a declaration as to the validity and
22 constitutionality of the statute. Diamond and Crystal seek a declaration that the effort of Phelan to
23 deprioritize Diamond and Crystal's overlying rights are, without compensation, ultra vires and
24 unconstitutional. Such a declaration is necessary and appropriate at this time in order that Diamond and
25 Crystal's property rights be protected and to ensure that Phelan proceeds according to the law and
26 Constitution of the state and the Federal Constitution. There are no administrative remedies available
27 to Diamond and Crystal.

18. A timely declaration by this court is urgent for the following reasons: by way of this action Phelan is seeking to adjudicate, enjoin and take the property rights of Diamond and Crystal and thousands of other parties who own property overlying the Antelope Valley, absent a timely declaration by this court, an injustice will result from the improper awarding of property rights to Phelan should this statute be later found to apply to Phelan.

19. Diamond and Crystal and numerous other private parties will suffer irreparable and lasting injury unless declaratory relief is granted.

Second Cause of Action

20. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs 1 through 19, inclusive, of this Cross-Complaint.

21. Article 1 Section 19 of the California Constitution provides as follows:

“Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor 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.”

22. Phelan contends that, even though they are political subdivisions who are vested with the power of eminent domain, they are nonetheless legally permitted to knowingly take private property for public use without first paying just compensation.

23. Diamond and Crystal contend that the use of the word “only” within Article 1 Section 19 is a clear temporal limitation on Phelan’s lawful ability to knowingly take private property for the public benefit to only those instances where just compensation has first been paid. By virtue of Phelan’s actions as set forth above, an actual controversy has arisen and now exists between Phelan and Diamond and Crystal concerning their respective rights, duties, and responsibilities.

24. Diamond and Crystal desire a declaration of its rights with respect to the application or nonapplication of Article 1 Section 19 to Phelan and asks the court to make a declaration of such rights, duties, and responsibilities. Such a declaration is necessary and appropriate at this time in order that Diamond and Crystal's property rights may be protected and to ensure that Phelan proceed according to the California Constitution. There are no administrative remedies available to Diamond and Crystal.

25. A timely declaration by this court is urgent for the following reasons: by way of this action Phelan is seeking to adjudicate, enjoin and take the property rights of Diamond and Crystal and thousands of other parties who own property overlying the water supply without first paying just compensation therefor, absent a timely declaration by this court, injustice will result from the improper taking of Diamond and Crystal's property rights should Article 1 section 19 of the California Constitution be found to apply.

26. Diamond and Crystal and numerous other private parties will suffer irreparable and lasting injury unless declaratory relief is granted.

Third Cause of Action

27. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs 1 through 26, inclusive, of this Cross-Complaint.

28. Article 1 Section 19 of the California Constitution provides as follows:

“Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor 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.”

29. Phelan contends that, even though they are political subdivisions who are vested with the power of eminent domain, they are nonetheless legally allowed to knowingly take private property for public use through prescription or adverse possession and without compensation.

30. Diamond and Crystal contend that the use of the word “only” within Article 1 Section 19 is a clear limitation on Phelan’s authority and the manner in which they may take private property for the public benefit. That this limitation forecloses the ability of any governmental entity to knowingly take or acquire private property for a public use under a theory of prescription or adverse possession. By virtue of Phelan’s actions as set forth above, an actual controversy has arisen and now exists between the Phelan and Diamond and Crystal concerning their respective rights, duties, and responsibilities.

31. Diamond and Crystal desire a declaration of its rights with respect to the application or nonapplication of Article 1 Section 19 to Phelan's prescription claims and asks the court to make a declaration of such rights, duties, and responsibilities. Such a declaration is necessary and appropriate

1 at this time in order that Diamond and Crystal's property rights may be protected and to ensure that
2 Phelan may proceed according to the California Constitution. There are no administrative remedies
3 available to Diamond and Crystal.

4 32. A timely declaration by this court is urgent for the following reasons: by way of this
5 action Phelan is seeking to adjudicate and enjoin the property rights of Diamond and Crystal and
6 thousands of other parties by avoiding the due process protections provided to these landowners under
7 Code of Civil Procedure sections 1230.010 through 1237.040. Absent a timely declaration by this court,
8 injustice will result from the improper use and adjudication of Diamond and Crystal's property rights
9 should Article 1 section 19 of the California Constitution be found to apply.

10 33. Diamond and Crystal and numerous other private parties will suffer irreparable and
11 lasting injury unless declaratory relief is granted.

12 **Fourth Cause of Action**

13 34. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs
14 1 through 33, inclusive, of this Cross-Complaint.

15 35. Article I Section 7 of the California Constitution provides in pertinent part as follows:

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

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

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

22 36. Phelan contends that, even though they are political subdivisions who are uniquely
23 invested with the power of eminent domain, they are allowed to surreptitiously take private property for
24 public use by prescription or adverse possession without providing substantive or procedural due process
25 of law to each overlying landowner. Phelan contends that prescription commences with "overdraft," and
26 that presumed or constructive notice alone is sufficient. Phelan denies that it had any duty to take steps
27 reasonably calculated and intended to advise cross-complainants of its claim of adversity.

1 37. Diamond and Crystal contend that the Article I, Section 7, of the State Constitution, and
2 the 5th Amendment as applied by the 14th Amendment of the Federal Constitution, mandates that
3 governmental entities must provide substantive and procedural due process of law when taking private
4 property for a public use. Diamond and Crystal contend that the prescriptive period cannot commence
5 until the governmental entity takes affirmative action designed and intended to give notice and inform
6 the overlying landowners of the governmental entity's adverse and hostile claim. Diamond and Crystal
7 further contend that this limitation forecloses the ability of any governmental agency to take or acquire
8 private property for a public use when constitutionally sufficient due process notice has not been
9 provided to the land owner. By virtue of Phelan's actions as set forth above, an actual controversy has
10 arisen and now exists between Phelan and Diamond and Crystal concerning their respective rights,
11 duties, and responsibilities.

12 38. Diamond and Crystal desire a declaration of its rights with respect to the application or
13 nonapplication of Article I Section 7 and the 5th Amendment to the U.S. Constitution to Phelan's
14 prescription claims and asks the court to make a declaration of such rights, duties, and responsibilities.
15 Such a declaration is necessary and appropriate at this time in order that Diamond and Crystal's property
16 rights may be protected and to ensure that Phelan may proceed according to the California Constitution.
17 There are no administrative remedies available to Diamond and Crystal.

18 39. A timely declaration by this court is urgent for the following reasons: by way of this
19 action Phelan is seeking to adjudicate and enjoin the property rights of Diamond and Crystal and
20 thousands of other parties by avoiding the due process protections provided to these landowners under
21 Article I Section 7, the 5th and 14th Amendments and Code of Civil Procedure sections 1230.010 through
22 1237.040. Absent a timely declaration by this court, injustice will result from the improper use and
23 adjudication of Diamond and Crystal's property rights should the foregoing constraints and statutory
24 mandate be found applicable.

25 40. Diamond and Crystal and numerous other private parties will suffer irreparable and
26 lasting injury unless declaratory relief is granted.

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Fifth Cause of Action

41. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs 1 through 40, inclusive, of this Cross-Complaint.

42. Diamond and Crystal are the owners and/or lessees of real property located within the Antelope Valley. Located on Diamond and Crystal's property are water wells which produce water from the groundwater supply. Diamond and Crystal and/or its predecessors in interest, have continually produced water from these wells without restriction and in quantities as were needed to perform its farming and irrigation operations from year to year.

43. Based on information and belief, it is alleged that Phelan pumps groundwater from the Antelope Valley and then sells it to other individuals and entities outside the adjudication boundaries, specifically other individuals within western San Bernardino County.

44. An actual controversy has arisen and now exists between Diamond and Crystal and Phelan concerning their respective rights and duties in that Phelan contends that it has been pumping water during a period when the common supply has been in a state of overdraft; that this pumping has resulted in a reversal of the common law legal priority granted to overlying land owners pursuant to the common law doctrine of prescription. Whereas, Diamond and Crystal dispute this contention and contend that by continuing to pump groundwater from the wells on its land, and by continuing to thus meet all of the water needs to perform its farming operations, Diamond and Crystal has preserved and maintained its priority rights to the use of groundwater.

45. Diamond and Crystal desire a judicial determination of each party's rights and duties, and a declaration as to the status of each party's priority rights to the water in the Valley whether they be overlying, appropriative or prescriptive.

46. A judicial declaration is necessary and appropriate at this time under the circumstances in order that Diamond and Crystal may ascertain their rights and duties relating to production of water from the Antelope Valley.

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1 **Sixth Cause of Action**

2 47. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs
3 1 through 46 inclusive, of this Cross-Complaint.

4 48. AVEK and others provide the Antelope Valley with water imported from northern
5 California. This imported water was and is available for purchase by Phelan.

6 49. Despite having knowledge that the pumping of groundwater in excess of the safe yield
7 caused damage, and despite the knowledge and belief that continued pumping would damage the rights
8 of the landowners whose property overlies the water supply, Phelan has failed and refused to slow, stop
9 or reduce their groundwater extractions from the supply and/or to supplement or replace their water
10 needs from the available imported AVEK water.

11 50. The California Constitution, Article X, section 2 provides, in pertinent part, as follows:

12 "It is hereby declared that because of the conditions prevailing in this State the general
13 welfare requires that the water resources of the State be put to beneficial use to the fullest
14 extent of which they are capable, and that the waste or unreasonable use or unreasonable
15 method of use of water be prevented, and that the conservation of such waters is to be
16 exercised with a view to the reasonable and beneficial use thereof in the interest of the
17 people and for the public welfare. The right to water or to the use or flow of water in or
18 from any natural stream or water course in this State is and shall be limited to such water
19 as shall be reasonably required for the beneficial use to be served, and such right does not
20 and shall not extend to the waste or unreasonable use or unreasonable method of use or
21 unreasonable method of diversion of water. . . ."

22 51. An actual controversy has arisen and now exists between Diamond and Crystal and
23 Phelan concerning their respective rights and duties in that Diamond and Crystal contend that Phelan's
24 continued dependance on, and use of, the groundwater, their continued and increased extractions of
25 groundwater from the common supply, with knowledge that the extractions exceed the safe yield, and
26 their failure and/or refusal to take all of the available imported water and the method and use of
27 groundwater taken, is unreasonable and constitutes a waste in violation of Article X, Section 2 of the
28 California Constitution. Phelan disputes these contentions and contend that their dependance on
groundwater, their continued and increasing extractions of groundwater from the Antelope Valley in
excess of the safe yield and their failure and refusal to take all of the available imported water is

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