

1 reasonable and does not constitute waste of groundwater and/or available imported water under Article
2 X, Section 2 of the California Constitution.

3 52. Diamond and Crystal desire a declaration of their rights with respect to the
4 constitutionality and application or nonapplication of Article X, Section 2 to Phelan's actions and asks
5 the court to make a declaration of such rights, duties, and responsibilities, and to make a declaration as
6 to the validity and constitutionality of the Article X, Section 2. Such a declaration is necessary and
7 appropriate at this time in order that Diamond and Crystal's property rights may be protected and to
8 ensure that Phelan may proceed under the law and cause no further damage to Diamond and Crystal or
9 property overlying the water supply. There are no administrative remedies available to Diamond and
10 Crystal.

11 53. A timely declaration by this court is urgent for the following reasons: by way of this
12 action, Phelan is seeking to have the court ratify their method and choice of water usage and declare that
13 they have the right to continue to extract groundwater from the Valley in excess of the safe yield and to
14 continue to cause damage to the Valley itself as well as to the land overlying the water supply, absent
15 a timely declaration by this court, an injustice will result from the improper validation of Phelan's water
16 usage should this constitutional provision be found to apply to Phelan.

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

19 **Seventh Cause of Action**

20 55. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs
21 1 through 54, inclusive, of this Cross-Complaint.

22 56. Phelan filed a Cross-Complaint in this matter seeking to implement policy objectives.

23 57. In order to implement these policy objectives, Phelan has brought a cause of action
24 against all owners of property overlying the Antelope Valley seeking the imposition of a "physical
25 solution" that would manage the groundwater supply by augmenting the water supply, manage the
26 pumping and storage of water and impose monetary assessments on water extraction from the supply.

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58. An actual controversy has arisen and now exists between Diamond and Crystal and Phelan concerning their respective rights and duties in that Diamond and Crystal contend that it is a violation of the Constitutional doctrine of the separation of powers for this Court to implement Phelan's objectives as they are by nature legislative actions, subject to the provisions of the California Environmental Quality Act (hereinafter "CEQA"; Public Resources Code sections 21000-21177.) That the requirements of CEQA are both procedural (requiring notice, disclosure and a review process) and substantive (by requiring public agencies to take affirmative measures to avoid environmental harm and to also protect the citizens and landowners of the State of California.)

59. Phelan contends that they may use the judicial system to circumvent CEQA and impose by judicial fiat what should be a legislative policy. In doing so, they seek to avoid providing the public with the required disclosures and evaluations, and thereby deny Diamond and Crystal and the public their procedural and substantive protections required by CEQA.

60. Diamond and Crystal desire a judicial determination of Phelan's rights and duties, and a declaration as to the application of Public Resources Code sections 21000-21177 to any proposed water management plan sought to be implemented by judicial decree by Phelan. That the legislative protections afforded to the public under CEQA cannot be ignored or subverted by resorting to the court to implement Phelan's plan, and that such a request of this Court induces a violation of the doctrine of the separation of powers.

61. 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.

Eighth Cause of Action

62. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs 1 through 61, inclusive, of this Cross-Complaint.

63. Phelan filed a Cross-Complaint in this matter seeking to implement policy objectives.

64. In order to implement these policy objectives, Phelan has brought a cause of action against all owners of property overlying the Antelope Valley seeking the imposition of a “physical

1 solution” that would manage the groundwater supply by augmenting the water supply, manage the
2 pumping and storage of water and impose monetary assessments on water extraction from the supply.

3 65. An actual controversy has arisen and now exists between Diamond and Crystal and
4 Phelan concerning their respective rights and duties in that Diamond and Crystal contend that it is a
5 violation of the Constitutional doctrine of the separation of powers for this Court to implement Phelan’s
6 policy objectives as they are by nature legislative and executive actions that are within the power of
7 Phelan to enact by following the statutory requirements set forth in Water Code sections 10700-
8 10795.20. These sections of the Water Code provide the procedural method by which Phelan must
9 implement a ground water management plan and also ensures constitutionally required process through
10 the required public hearings, notice, and publication of the proposed management plan, and the
11 opportunity for public discourse, input and objection.

12 66. Phelan contends that it may use the judicial system to impose by judicial fiat what would
13 otherwise be done through legislative action. In doing so, it seeks to avoid providing the public with the
14 required notice, hearing and disclosures and deny them their procedural and substantive protections
15 provided by the Constitution and the Water Code sections 10700-10795.20..

16 67. Diamond and Crystal desire a judicial determination of Phelan’s rights and duties, and
17 a declaration as to the application and propriety of Water Code sections 10700-10795.20 to the proposed
18 water management project sought to be implemented by Phelan. That the legislative protections afforded
19 to the public under the Water Code may not be ignored or subverted by the filing of a legal action by a
20 public agency, and that such action requests this court to violate the doctrine of separation of powers.

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

24 **Ninth Cause of Action**

25 69. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs
26 1 through 68, inclusive, of this Cross-Complaint.

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1 70. Diamond and Crystal are the owners of land overlying the Antelope Valley. Phelan is
2 a user of water pumped from the Antelope Valley which underlies Diamond and Crystal's land.

3 71. Initially, Phelan legally used and maintained water wells that extracted water from the
4 Antelope Valley for public distribution. Over time the increased urbanization and Phelan's continued
5 and increasing extractions exceeded their legal boundaries, such that the water extracted from the supply
6 has exceeded the ability to naturally recharge the water supply. Phelan has claimed to have knowledge
7 that this continuous and increasing use caused a progressive and chronic decline in long term water
8 supply and the available natural supply is being and has been chronically depleted. Based on the present
9 trends, demand will continue to exceed supply which will cause damage to private rights and ownership
10 of real property.

11 72. The aforementioned extractions of groundwater from the supply constitute a continuing
12 progressive nuisance within the meaning of Section 3479 of the Civil Code, in that Phelan has created
13 a condition in the future supply that is injurious to Diamond and Crystal's right, in the future, to freely
14 use and exercise its overlying property rights to extract groundwater from the common supply in the
15 customary manner. Phelan is attempting, through the efforts of their pumping groundwater and this
16 present legal action, to take, and or alter, Diamond and Crystal's overlying property rights to use and
17 access the Antelope Valley supply.

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

25 74. Phelan has threatened to and will, unless restrained by this court, continue to pump
26 groundwater in increasing amounts, and each and every act has been, and will be, without the consent,
27 against the will, and in violation of the rights of Diamond and Crystal.

75. As a proximate result of the nuisance created by Phelan, Diamond and Crystal have been, and will be, damaged in a sum to be proven at trial.

76. Unless Phelan is restrained from increasing their pumping from the supply by order of this court, it will be necessary for Cross-Complainant to commence many successive actions against Phelan to secure a project by project injunction and/or compensation for the continuing and repeated damages sustained, thus requiring a multiplicity of suits.

77. Should Phelan continue to increase their pumping without replenishing the Valley's water supply, Diamond and Crystal will suffer irreparable injury in that the usefulness and economic value of Diamond and Crystal's overlying property right will be substantially diminished and Diamond and Crystal will be deprived of the comfortable, reasonable and beneficial use and enjoyment of its property.

78. In maintaining this nuisance, Phelan is, and has been, acting with full knowledge of the consequences and damage being caused to Diamond and Crystal, and their conduct is willful, oppressive, malicious and designed to interfere with and take Diamond and Crystal's right to freely access the water supply in its customary manner. Accordingly, Phelan has intentionally dirtied hands and no right to involve equity in these actions.

Tenth Cause of Action

79. Cross-Complainants refer to and incorporate, as though fully set forth herein, paragraphs 1 through 78, inclusive, of this Cross-Complaint.

80. This cause of action is brought under 42 U.S.C. § 1983 to recover damages against Phelan for violation of Diamond and Crystal's right under the 5th and Fourteenth Amendments of the United States Constitution through Phelan's taking of Diamond and Crystal's private property for public use without paying just compensation and depriving Diamond and Crystal of both substantive or procedural due process of law.

81. Phelan, at all times mentioned in this cross-complaint, was a governmental entity organized and operating in San Bernardino County and in the State of California, and is organized and existing under the laws of the State of California, with the capacity to sue and be sued.

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1 82. Phelan, at all times mentioned in this cross-complaint, was acting under color of state
2 law.

3 83. At an as yet unidentified historical point in time, Phelan began pumping water from the
4 Antelope Valley as a permissive appropriator. Over the course of time, it is believed and therefore
5 alleged, that the aggregate amount of water being extracted from the Valley began to exceed the safe
6 yield resulting in a condition called “overdraft.” Diamond and Crystal are informed and believe and
7 based thereon allege, that Phelan had knowledge of the “overdraft” condition and nonetheless continued
8 pumping and increased their pumping with the specific intent to impair and take all superior overlying
9 property rights to extract groundwater, including that of Diamond and Crystal. Phelan continued to
10 pump and increased its pumping of groundwater believing that given the intervention of the committed
11 public use, that no injunction would issue to restrain and/or compel Phelan to reduce its dependence
12 upon groundwater. Phelan contends that despite its status as a governmental entity, it can nonetheless
13 take private property for a public use under a theory of prescription and without compensation. Phelan
14 claims that presumed or constructive knowledge of the overdraft condition alone was sufficient to
15 commence the running of the statutory prescriptive period. Phelan did not undertake any affirmative
16 action reasonably calculated and intended to provide notice and inform any affected landowner,
17 including Diamond and Crystal, of its adverse and hostile claim. Phelan contends that it has taken the
18 private property rights of Diamond and Crystal and others, and have committed them to a public use,
19 without following the Constitutional constraints imposed by Article 1, Section 19, of the California
20 Constitution, and the eminent domain law, Code of Civil Procedure Section 1230.010 et seq., and
21 specifically, the substantive and procedural protections contemplated by Code of Civil Procedure Section
22 1245.230. The acts of Phelan were done under the color of state law with the intent of depriving
23 Diamond and Crystal of their property rights without substantive and procedural due process of law and
24 to avoid payment of compensation to Diamond and Crystal for the property rights taken, all in violation
25 of the 5th and 14th Amendments to the United States Constitution.

26 84. Diamond and Crystal are informed and believe and thereon allege that it was subjected
27 to a violation of its right to due process of law prior to the taking of its property and its right to receive
28

1 just compensation when its property was taken for the public benefit. This violation was a direct result
2 of the knowing customs, practices, and policies of Phelan to continue to pump in excess of the supply,
3 to suppress the assertion of their adverse and hostile claim, and the resulting ever increasing intervening
4 public use and dependance, without acceding to Constitutional limits.

5 85. The customs, practices, and policies of Phelan to prescript or adversely possess the
6 property rights of property owners and/or to establish a nonenjoinable intervening use amounted to
7 deliberate indifference to the rights of persons, such as Diamond and Crystal, who stand to lose their
8 rights to extract water from the Antelope Valley for use on their property through the actions of Phelan.

9 86. As a direct and proximate result of the acts of Phelan, Diamond and Crystal have suffered
10 injury, loss, and damage, including a cloud upon their title to their real property, a reduction in value,
11 and the loss of its right in the future to extract and use groundwater from the Valley.

12 **First Cause of Action**

13 WHEREFORE, cross-complainants pray for a declaratory judgment as follows:

14 1. That the court declare the respective rights, duties, and responsibilities of Phelan and
15 Diamond and Crystal under the statute in question and that by its declaration and judgment the court
16 declare that the statute applies to Phelan in this matter, and that the statutes is constitutional and valid;

17 2. That Phelan and all others acting in or on its behalf, be enjoined from taking property or
18 the rights attendant thereto in any manner not expressly set forth and authorized in the provisions of
19 Water Code section 55370;

20 3. For costs of suit herein incurred; and

21 4. For such other and further relief as the court deems proper.

22 **Second Cause of Action**

23 WHEREFORE, cross-complainants pray for a declaratory judgment as follows:

24 1. That the court declare the respective rights, duties, and responsibilities of Phelan under
25 Article 1 Section 19 of the California Constitution and that by its declaration and judgment the
26 court declare that Article 1 Section 19 applies to Phelan in this matter, and that just compensation is a
27 prerequisite to any taking by each of these governmental entities;

2. That Phelan and all others acting in or on their behalf, be enjoined from taking property or the rights attendant thereto in any manner not expressly set forth and authorized in the provisions of Article 1 Section 19 of the California Constitution;

3. For costs of suit herein incurred; and

4. For such other and further relief as the court deems proper.

Third Cause of Action

WHEREFORE, cross-complainants pray for a declaratory judgment as follows:

1. That the court declare the respective rights, duties, and responsibilities of Phelan under Article 1 Section 19 of the California Constitution and that by its declaration and judgment the court declare that Article 1 Section 19 applies to Phelan in this matter, and that Section 19 prohibits a governmental entity from taking private property for a public use without compensation under the doctrines of prescription or adverse possession;

2. That Phelan and all others acting in or on their behalf, be enjoined from taking property or the rights attendant thereto in any manner not expressly set forth and authorized in the provisions of Article 1 Section 19 of the California Constitution;

3. For costs of suit herein incurred; and

4. For such other and further relief as the court deems proper.

Fourth Cause of Action

WHEREFORE, cross-complainants pray for a declaratory judgment as follows:

1. That the court declare the respective rights, duties, and responsibilities of Phelan under Article 1 Section 7 of the California Constitution and that by its declaration and judgment the court declare that Article 1 Section 7 applies to the municipal Phelan in this matter, and that Section 7 prohibits a governmental entity from taking private property for a public use without providing due process of law to the individual whose property is being taken;

2. That the municipal Phelan and all others acting in or on their behalf, be enjoined from taking property or the rights attendant thereto in any manner not expressly set forth and authorized in the provisions of Article 1 Section 7 of the California Constitution;

3. For costs of suit herein incurred; and

4. For such other and further relief as the court deems proper.

Fifth Cause of Action

WHEREFORE, cross-complainants pray judgment as follows:

1. For a declaration that Diamond and Crystal's continued pumping has interrupted any period of adverse pumping by the municipal Phelan negating any claim of prescription and thereby preserving Diamond and Crystal's overlying priority right to pump water from the Antelope Valley;

2. For costs of suit herein incurred; and

3. For such other and further relief as the court may deem proper.

Sixth Cause of Action

WHEREFORE, cross-complainants pray for a declaratory judgment as follows:

1. That the court declare the respective rights, duties, and responsibilities of Phelan and Diamond and Crystal under the statute in question and that by its declaration and judgment the court declare that the Article X, Section 2 applies and that Phelan's continued dependence on, and increased use of, groundwater in excess of the safe yield is unreasonable and constitutes waste;

2. That Phelan and all others acting in or on their behalf, be enjoined from engaging in the continued unreasonable and wasteful use of the groundwater in violation of the provisions of Article X, Section 2 of the California Constitution;

3. For costs of suit herein incurred; and

4. For such other and further relief as the court deems proper.

Seventh Cause of Action

WHEREFORE, cross-complainants pray judgment as follows:

1. For a declaration that the doctrine of separation of powers prohibits this court from imposing the objectives of Phelan upon the groundwater supply; that the implementation of Phelan's objectives requires compliance with the California Environmental Quality Act (Public Resources Code sections 21000-21177 to provide the required procedural and substantive protections to the citizens of the State of California.

2. For costs of suit herein incurred; and
3. For such other and further relief as the court may deem proper.

Eighth Cause of Action

WHEREFORE, cross-complainants pray judgment as follows:

1. For a declaration that the doctrine of separation of powers prohibits this court from imposing the objectives of Phelan upon the groundwater supply; that the implementation of Phelan's objectives requires Phelan to act pursuant to the requirements of Water Code section 10700-10795.20;

2. For costs of suit herein incurred; and
3. For such other and further relief as the court may deem proper.

Ninth Cause of Action

WHEREFORE, cross-complainants pray judgment against Phelan as follows:

1. For a physical solution enjoining Phelan from increasing their extractions from the Antelope Valley and ordering Phelan to collectively abate the nuisance by purchasing, from time to time, all available imported water, and to bank and to replenish the groundwater supply and replace, in the aggregate, the extractions made by Phelan in excess of the safe yield;

2. For general damages according to proof;
3. For punitive damages;
4. For costs of suit herein incurred; and
5. For such other and further relief as the court may deem proper.

Tenth Cause of Action

WHEREFORE, Diamond and Crystal pray judgment against Phelan as follows:

1. For compensatory damages, in an amount to be determined according to proof at trial;
2. For reasonable attorney's fees, pursuant to 42 U.S.C. § 1988;

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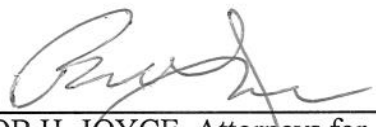
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- 3. For costs of suit incurred in this action; and
- 4. For such other and further relief as the Court deems proper.

Dated: April 16, 2009

LeBEAU • THELEN, LLP

By: 
BOB H. JOYCE, Attorneys for
DIAMOND FARMING COMPANY, a California
corporation, and CRYSTAL ORGANIC FARMS,
a limited liability company

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PROOF OF SERVICE

ANTELOPE VALLEY GROUNDWATER CASES
JUDICIAL COUNCIL PROCEEDING NO. 4408
CASE NO.: 1-05-CV-049053

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter Drive, Suite 300, Bakersfield, California 93309. On April 16, 2009, I served the within **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**

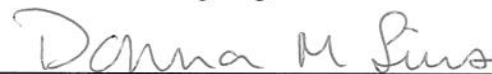
☒ **(BY POSTING)** I am "readily familiar" with the Court's Clarification Order. Electronic service and electronic posting completed through www.scefiling.org ; All papers filed in Los Angeles County Superior Court and copy sent to trial judge and Chair of Judicial Council.

Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012
Attn: **Department 1**
(213) 893-1014

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordinator)
Carlotta Tillman
455 Golden Gate Avenue
San Francisco, CA 94102-3688
Fax (415) 865-4315

☐ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California, in the ordinary course of business.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that the foregoing was executed on April 16, 2009, in Bakersfield, California.



DONNA M. LUIS