

**RICHARD G. ZIMMER - SBN 107263**  
**T. MARK SMITH - SBN 162370**  
**CLIFFORD & BROWN**  
**A Professional Corporation**  
**Attorneys at Law**  
**Bank of America Building**  
**1430 Truxtun Avenue, Suite 900**  
**Bakersfield, CA 93301-5230**  
**(661) 322-6023**

Attorneys for Bolthouse Properties, LLC

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

COORDINATION PROCEEDING	)	Judicial Council Coordination Proceeding No.
SPECIAL TITLE (Rule 1550(b))	)	4408
	)	
ANTELOPE VALLEY GROUNDWATER	)	CASE NO. 1-05-CV-049053
CASES	)	
	)	
INCLUDED ACTIONS:	)	
	)	<b>RESPONSE OF BOLTHOUSE</b>
LOS ANGELES COUNTY	)	<b>PROPERTIES, LLC TO UNITED</b>
WATERWORKS DISTRICT NO. 40 v.	)	<b>STATES' MOTION FOR JUDGMENT</b>
DIAMOND FARMING COMPANY, et al.,	)	<b>ON THE PLEADINGS</b>
Los Angeles Superior Court Case No.	)	
BC325201	)	
	)	
LOS ANGELES COUNTY	)	
WATERWORKS DISTRICT NO. 40 v.	)	
DIAMOND FARMING COMPANY, et al.,	)	
Kern County Superior Court Case No. S-	)	
1500-CV-254348	)	DATE: September 21, 2006
	)	TIME: 10:00 a.m.
	)	DEPT: D-1, Room 534
DIAMOND FARMING COMPANY, and	)	
W.M. BOLTHOUSE FARMS, INC., v.	)	
CITY OF LANCASTER, et al.,	)	
Riverside Superior Court	)	Location:
Case No. RIC 344436 [c/w case no. RIC	)	
344668 and 353840]	)	Los Angeles Superior Court
	)	Central District
	)	111 North Hill Street
ROSAMOND COMMUNITY SERVICES	)	Los Angeles, CA 90012
DISTRICT,	)	
CROSS-COMPLAINANT,	)	

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Bolthouse Properties, LLC, responds to the United States'  
3 Motion for Judgment on the Pleadings and Memorandum in Support as follows.

4 **INTRODUCTION**

5 Bolthouse Properties, LLC agrees with the position of the United States that, under the  
6 facts of this case, a complete adjudication pursuant to the requirements of the McCarran Act  
7 cannot occur without adjudication of the rights of all users of water from sources which flow to  
8 the alluvial groundwater basin in the Antelope Valley. Tejon RanchCorp. ("Tejon") argues that  
9 *U.S. v. Oregon* (9<sup>th</sup> Cir. 1994) 44 F.3d 758 ("*Oregon*") compels a more limited view of the  
10 McCarran Act than the application urged by the United States. Tejon contends that a complete  
11 adjudication in this case does not require determination of the rights of all appropriators of water  
12 which flows to the Antelope Valley alluvial groundwater basin. As explained below, Tejon's  
13 application of *Oregon* would invite error by failing to comply with the McCarran Act and would  
14 result in an incomplete adjudication of the rights to water which flows to the alluvial  
15 groundwater basin. Moreover, Tejon's limited view could permanently deprive the Court of  
16 jurisdiction over necessary parties within the watershed.

17  
18 **I**  
**ARGUMENT**

19 **TEJON MISAPPLIES *OREGON* BY URGING A LESS THAN COMPLETE**  
20 **ADJUDICATION OF WATER RIGHTS**

21 *Oregon* involved a statutory procedure invoked by the Oregon Water Resources  
22 Department for the mass adjudication of water rights to determine all claims to "*surface water*"  
23 in the Klamath River Basin. The United States was named as a defendant. The United States  
24 filed a suit in U.S. district court seeking declaration of the water rights in "certain tributaries  
25 within the Klamath basin." The court held that the United States had reserved water rights to  
26 rivers involved in the litigation but held that the "quantification of those rights [should be  
27 determined in] a comprehensive state adjudication of water rights under the provisions of the  
28 McCarran Amendment."

1 In 1990, the state reissued notices of its intention to adjudicate water rights in the  
2 Klamath Basin. On this occasion the United States, as the owner of federal land in the Klamath  
3 Basin, filed an action in the U.S. District Court for declaratory relief claiming that it had not  
4 waived sovereign immunity. The district court held that the United States waived its sovereign  
5 immunity for purposes of participation in the adjudication. On appeal to the Ninth Circuit, the  
6 United States claimed that the adjudication was insufficiently complete to be considered a  
7 "comprehensive suit" for purposes of waiver of sovereign immunity under the McCarran Act.  
8 The Ninth Circuit disagreed.

9 The factual analogy Tejon attempts to make is inapt. *Oregon*, dealt with whether a  
10 complete adjudication under the facts of that case required determination of groundwater rights.  
11 In this case, one of the questions is whether the appropriators and/or landowners using water  
12 outside the confines of the alluvial groundwater basin should be included in the lawsuit to satisfy  
13 the "comprehensive adjudication" requirements of the McCarran Act. For reasons discussed  
14 more fully below, satisfaction of the McCarran Act does require joining the appropriators and/or  
15 landowners outside the confines of the alluvial groundwater basin.

16 It is important to note that *Oregon* does not stand for the proposition that, regardless of  
17 the facts, pleadings and claims, a comprehensive adjudication of water rights does not require  
18 adjudication of surface and groundwater within a watershed. To the contrary, *Oregon* simply  
19 held that in the context of the factual issues involved in that specific water rights adjudication,  
20 complete adjudication did not require inclusion of groundwater rights since the case involved  
21 only surface water rights in the Klamath River. The determination of whether an action is a  
22 "comprehensive adjudication" for purposes of the McCarran Act, and for purposes of assuring a  
23 comprehensive adjudication pursuant to California water law, requires analysis of the facts,  
24 claims of the parties and the relief requested by the parties.

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26 ///

27 ///

1 II.

2 **APPROPRIATE FACTUAL AND LEGAL ANALYSIS IS CRUCIAL TO THE**  
3 **INTEGRITY OF THE JUDICIAL PROCESS AND THE COMPLETE ADJUDICATION**  
4 **OF THIS CASE**

- 5 1. *The Parties Cannot Afford, and Should Not Be Forced, to Litigate This Case*  
6 *Multiple Times as a Result of Incomplete Adjudication.*

7 Diamond Farming and Bolthouse Properties, LLC filed limited quiet title actions in the  
8 Riverside Superior Court to quiet title as to their rights to reasonably pump groundwater on their  
9 properties located within the Antelope Valley. These statutory quiet title actions named certain  
10 water purveyor parties with potential rival claims as to the specific identified parcels. After  
11 roughly six to seven years of litigation, the County of Los Angeles demanded a complete basin-  
12 wide adjudication of all groundwater interests in the Antelope Valley groundwater basin. This  
13 action on the part of Los Angeles County, was the functional equivalent of a mistrial of the trial  
14 underway in the Riverside court on the quiet title actions of Diamond Farming and Bolthouse  
15 Properties, LLC.

16 Diamond Farming and Bolthouse Properties, LLC spent nearly a million dollars and six  
17 to seven years litigating their quiet title actions. The purveyors were nevertheless successful in  
18 their consolidation motion which changed the nature of the actions from limited quiet title  
19 actions to a comprehensive basin-wide adjudication. Now, certain parties, including the County,  
20 appear to oppose a comprehensive adjudication of water rights in the Antelope Valley. The  
21 County should be estopped from seeking a basin-wide adjudication for the purpose of aborting the  
22 Riverside trial and thereafter seeking to limit the adjudication in a way which easily could result  
23 in an incomplete judgment, potential appeals and additional potential lawsuits by unnamed  
24 parties. Failure to assure a comprehensive adjudication at this point could subject Diamond  
25 Farming, Bolthouse Properties, LLC and hundreds of new parties from achieving a  
26 comprehensive adjudication.

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1           2.     *The Parties Should Put Aside Individual Perceived Strategic Advantage*  
2                   *Regarding the Area of Adjudication.*

3           It is extremely important that this adjudication be conducted properly to comprehensively  
4 adjudicate the facts, claims and requests for relief by the parties. Some parties have suggested  
5 geographic lines for the Area of Adjudication which patently illuminate their desire to keep their  
6 property out of the adjudication. By seeking to keep their properties out of the adjudication, they  
7 wish to preserve their right to appropriate and/or pump as much water as they desire while other  
8 parties in the same watershed are limited in their appropriation and/or use of water.

9           All parties should be concerned with determining a comprehensive "Area of  
10 Adjudication" which will result in a comprehensive adjudication of all water rights rather than  
11 seeking strategic advantage in the drawing of the geographic area of adjudication. Drawing the  
12 geographic boundaries of the Area of Adjudication comprehensively and correctly will allow  
13 proper factual and legal analysis and minimize the possibility of multiple appeals, re-trials and  
14 new parties filing new actions.

15           3.     *Correct Factual and Legal Analysis Will be Important to Minimize the Prospect*  
16                   *of Multiple Adjudications, Inconsistent Results, Pockets of Un-adjudicated Water*  
17                   *Rights and Continual Lawsuits with Parties Who Are Not Joined.*

18           The correct Area of Adjudication is critical to proper hydrological analysis, critical to  
19 proper legal analysis, critical to granting relief requested by the various parties and critical to  
20 continuing jurisdiction of the Court. Finally, groundwater adjudications are still in a state of  
21 evolution in terms of proper analysis and comprehensiveness. Proper factual and legal analysis  
22 in this case is critical to proper factual and legal analysis in subsequent adjudications.

23                   **III.**

24                   **PURPOSE OF AREA OF ADJUDICATION IN THIS CASE**

25           The process of determining the Area of Adjudication should have the goal of  
26 accomplishing the following.

27           1.     *Comprehensive Adjudication of Water Rights in the Antelope Valley.*

28           As stated above, Los Angeles County transformed the limited quiet title actions filed by  
Diamond Farming and Bolthouse Properties, LLC, into a basin-wide comprehensive

1 adjudication. Pleadings submitted by Los Angeles County and the numerous other parties  
2 involved in the lawsuit request adjudication of both surface water rights and groundwater rights.  
3 The United States likewise has requested comprehensive adjudication of both surface water  
4 rights and groundwater rights for purposes of satisfying the McCarran Act. All necessary parties  
5 must be before the Court to achieve a comprehensive adjudication under current California water  
6 law.

7 2. The Area of Adjudication Selected Must Allow for Meaningful Evaluation of  
8 Supply and Demand for Groundwater.

9 Under current California water law, based upon the relief requested in the pleadings,  
10 complete adjudication will require detailed hydrologic analysis of the water supply and demands  
11 in the Antelope Valley. The water supply derives primarily from precipitation in the  
12 mountainous watershed surrounding the Antelope Valley. Demand on the water supply occurs at  
13 many points within the watershed. Appropriation, pumping and diversion of water within the  
14 watershed – including those areas which do not overly the basin -- will inevitably affect the  
15 amount of demand and recharge to the Antelope Valley alluvial groundwater basin.

16 3. The Area of Adjudication Must Allow The Court Jurisdiction Over Parties Which  
17 Can Impede, Appropriate and/or Pump Groundwater Which Would Otherwise  
18 Make its Way to The Alluvial Groundwater Basin.

19 It has been correctly pointed out in other briefs to the Court, that the Antelope Valley  
20 watershed is primarily a high desert area with little rainfall surrounded on the south and east and  
21 to a limited extent on the north, by mountains. Water which ultimately makes its way to the  
22 alluvial groundwater basin within the Antelope Valley primarily comes from precipitation in the  
23 watershed including the San Gabriel Mountains on the south side of the valley and the Tehachapi  
24 Mountains on the west and northwest sides of the valley. This precipitation is collected by the  
25 mountainous watershed and moves down gradient from the mountains both over the surface and  
26 through fractured bedrock and other consolidated and unconsolidated materials, into the alluvial  
27 groundwater basin. Supply not only derives from precipitation but also from natural springs  
28 within the watershed. Also, several lakes are present in the San Gabriel Mountains on the south  
side of the Antelope Valley. These lakes collect precipitation and spring runoff. These lakes

1 percolate through shallow alluvium and into the fractured bedrock below moving down gradient  
2 into the alluvial groundwater basin. Past, current and prospective surface water and  
3 groundwater appropriation and pumping affect the amount of water which makes its way into,  
4 and/or which remains, in the alluvial groundwater basin. Without jurisdiction over parties which  
5 can affect the movement of these ground water sources, the Court cannot completely adjudicate  
6 the rights and liabilities of the parties under current California water law as requested in the  
7 pleadings.

8 Attached hereto as Exhibit A, is a map which depicts the Antelope Valley watershed, the  
9 alluvial groundwater basin including existing wells, streams and springs. Wells depicted on the  
10 Map and located outside the alluvial basin are drilled in bedrock. In addition, the Court will note  
11 there are numerous wells at the very edge of the alluvial basin where the alluvium is very  
12 shallow. These wells are most likely drilled in bedrock. Also attached as Exhibit B, Figures 13  
13 and 11, is a cross section of the watershed and a portion of the alluvial basin. Figure 13 depicts  
14 the down gradient flow of groundwater in the fractured bedrock from the mountains into the  
15 alluvial basin. Exhibit B also shows how existing lakes collect water from the mountains which  
16 percolates from the lakes into the fractured bedrock and then moves down gradient into the  
17 alluvial basin. As previously noted, there are several lakes on the south side of the valley which  
18 provide water to the basin in this manner. Exhibits A and B graphically demonstrate the need for  
19 a comprehensive adjudication of the watershed in order to evaluate and regulate water supply  
20 and use in this area without the need for multiple litigations.

21 4. *The Area of Adjudication Must Include a Sufficient Study Area to Allow Proper*  
22 *Hydrologic Factual Analysis of All Surface and Groundwater Uses in the Area of*  
23 *Adjudication to Evaluate Critical Legal Issues Such as The Following:*

- 24 ● Supply
- 25 ● Demand
- 26 ● Historical Surplus and Deficit
- 27 ● Temporary Surplus
- 28 ● Safe Yield
- Alleged Prescription among and against Appropriators

- Alleged prescription against overlying landowners
- Self-Help
- Dormant Rights
- Pumping Volume and Patterns of Appropriators
- Pumping Volume and Patterns of Groundwater Users
- Interrelationship Between Pumping and Water Use of Appropriators and Other Pumpers in the Area of Adjudication.
- Inter se Appropriative Rights
- Correlative Overlying Landowner Rights
- Prioritization of Appropriative, Overlying and Priority Rights Pursuant to California Priority Groundwater Law
- Remedies, If Appropriate, Such as the Following:
  - Limitation/Injunction of Surface Water Appropriation
  - Limitations/Injunction of Appropriative Groundwater Pumping
  - Limitation/Injunction of Overlying Groundwater Pumping
  - Continuing jurisdiction to adjudicate disputes between appropriative and overlying rights with necessary jurisdiction over surface and groundwater flow.

The Area of Adjudication must be sufficiently geographically broad to effectively litigate and determine the above issues. Determination of each of these issues requires geographic boundaries that encompass the entirety of water interests in the region.

#### IV

#### CONCLUSION

Complete adjudication for purposes of satisfying the McCarran Act and additionally for purposes of a comprehensive adjudication of water rights under California water law based upon



1 the pleadings in these consolidated actions, requires analysis of a broad Area of Adjudication.  
2 The Area of Adjudication must have geographic parameters which include all appropriation  
3 and/or pumping of water within the Antelope Valley which would otherwise make its way down  
4 gradient into the Antelope Valley alluvial groundwater basin.

5 The parties must put aside individual perceived strategic advantage regarding the  
6 geographic boundaries of the Area of Adjudication. Instead, the parties should agree upon an  
7 Area of Adjudication which is drawn correctly to comprehensively adjudicate the facts, the  
8 claims of the parties and the relief requested by the parties to avoid the threat of multiple  
9 adjudications, inconsistent results, pockets of un-adjudicated ground and continuing lawsuits  
10 with parties who are not joined. The Area of Adjudication is critical to correct hydrological  
11 analysis, correct legal analysis, complete relief as requested by the parties and effective  
12 continuing jurisdiction by the Court. The legal issues raised in the pleadings are many and  
13 require a broad Area of Adjudication.

14 Bolthouse Properties, LLC, contends that the proper Area of Adjudication includes the  
15 watershed surrounding the Antelope Valley alluvial groundwater basin. There are a few areas  
16 which may bear further discussion, expert analysis and potential agreement for practical reasons  
17 including the existence of the Mojave adjudicated basin to the east of the proposed Antelope  
18 Valley Area of Adjudication. These issues can be more meaningfully evaluated once the Court  
19 rules on the McCarran Act issue. If the Court rules as we believe it should, that the McCarran  
20 Act requires inclusion of a broader Area of Adjudication than the mere alluvial confines of the  
21 Antelope Valley groundwater basin, an agreement as to the Area of Adjudication is much more  
22 likely.

23 DATED: September 1, 2006

Respectfully submitted,

24 CLIFFORD & BROWN

25  
26 By: [original signed]  
27 Richard G. Zimmer, Esq.  
28 T. Mark Smith, Esq.  
Attorneys for BOLTHOUSE PROPERTIES, LLC

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I am a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 1430 Truxtun Avenue, Suite 900, Bakersfield, California, 93301.

(xx) BY SANTA CLARA SUPERIOR COURT E-FILING IN COMPLEX LITIGATION  
PURSUANT TO CLARIFICATION ORDER DATED OCTOBER 27, 2005.

( ) VIA OVERNIGHT DELIVERY on the date below stated, pursuant to CCP §1013(c)(d), I deposited such envelope with delivery fees fully prepaid with **CALIFORNIA OVERNIGHT**.

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

Executed on September 1, 2006, at Bakersfield, California.

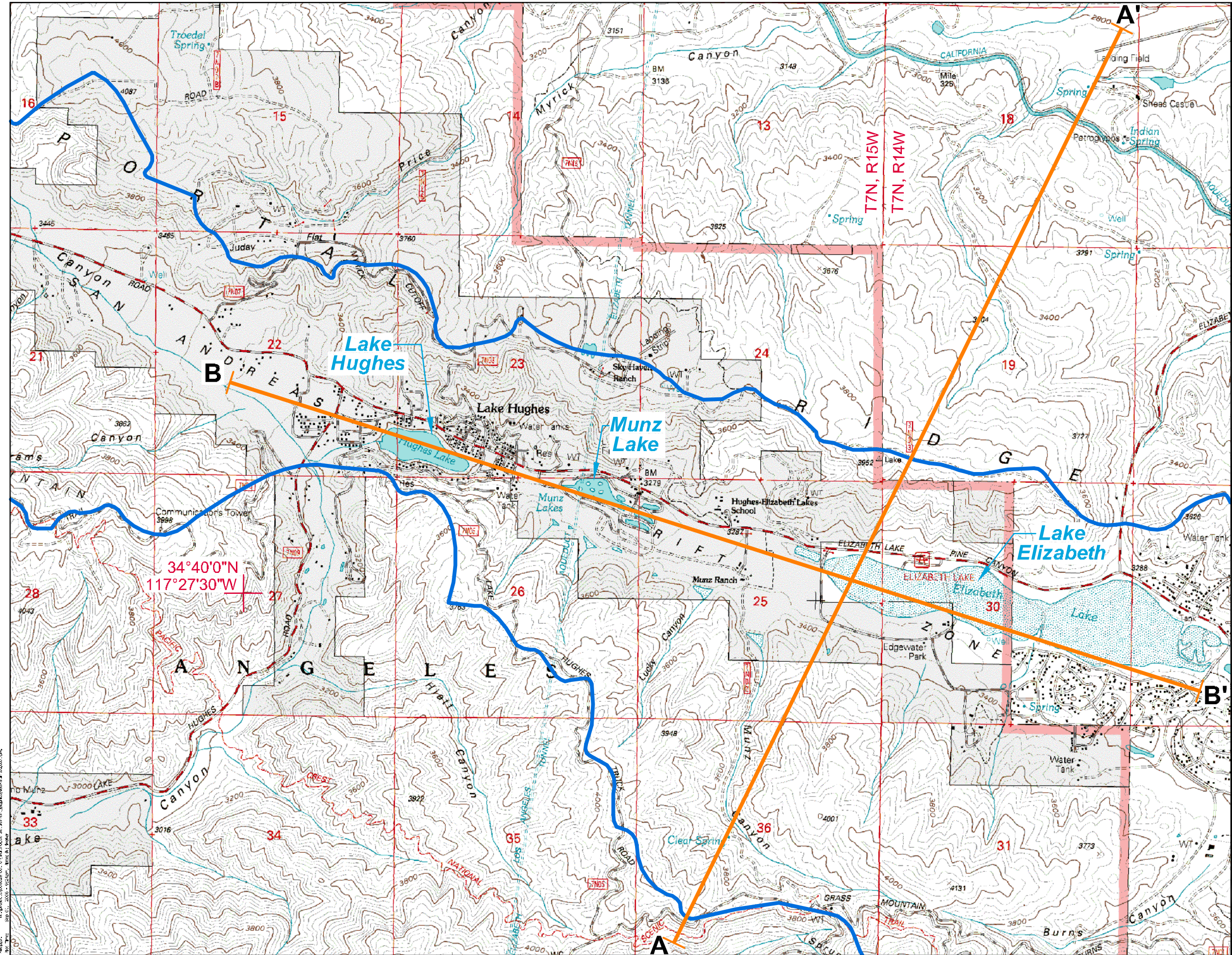
[ORIGINAL SIGNED]  
ROSEMARY MYERS

**EXHIBIT "A"**



**EXHIBIT "B"**



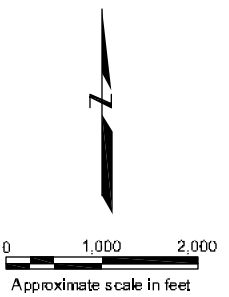


DRAFT

Explanation

Watershed boundary

A-A' Line of cross section



Basemap modified from U.S.G.S. 7.5 minute quadrangle LAKE HUGHES, California, dated 1994 with revisions by USDA Forest Service, dated 1995.

LAKES IN THE LEONA VALLEY  
WITH CROSS SECTION LINES

Antelope Valley Adjudication  
Antelope Valley, California

By: jrw Date: 8/31/06 Project No. 8029.001

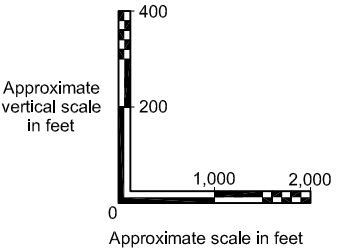
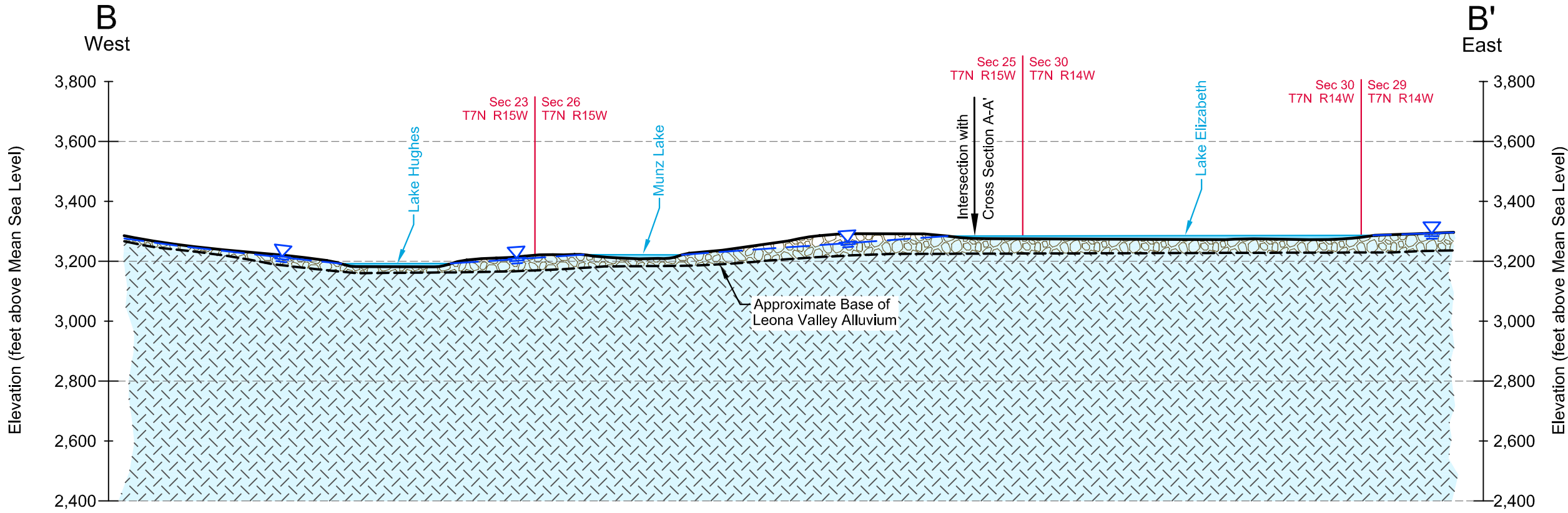
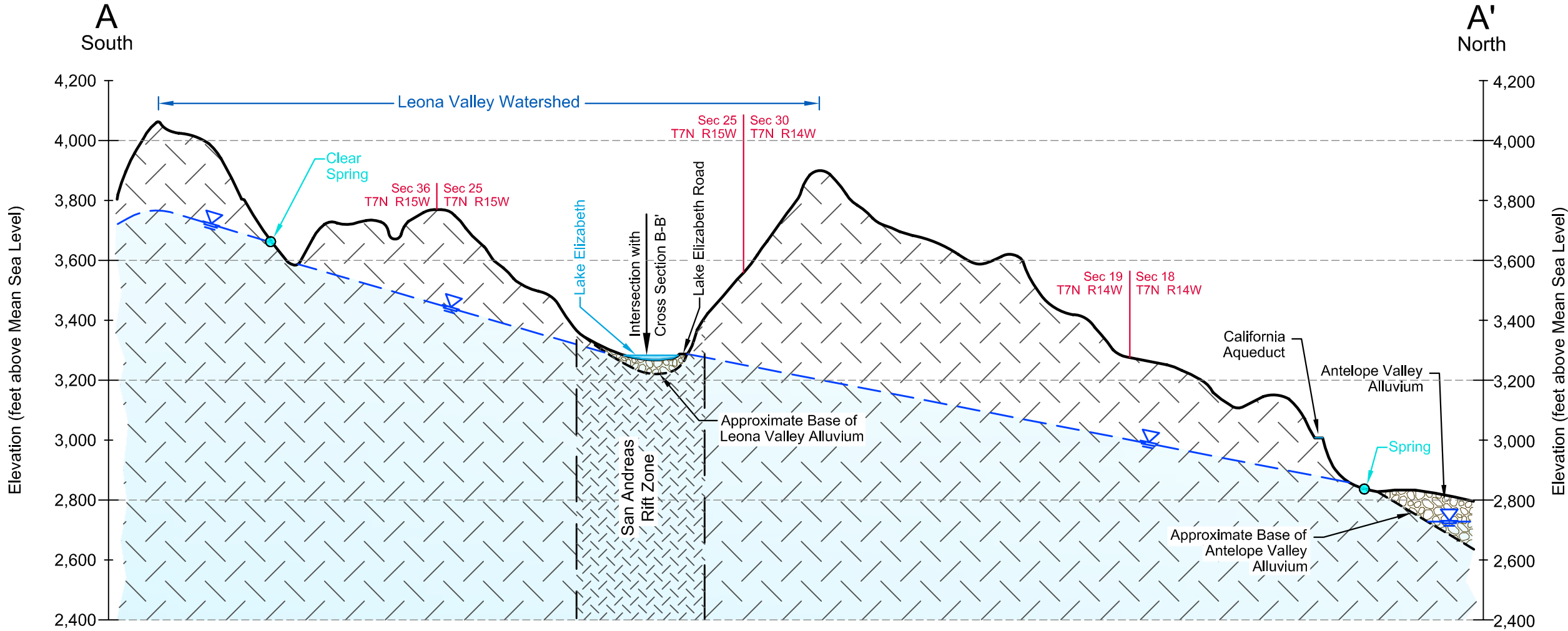
Geomatrix



DRAFT

Explanation

- Fractured bedrock
- Alluvium
- Spring
- Approximate groundwater table
- Geological contact



CROSS SECTIONS  
A-A' and B-B'

Antelope Valley Adjudication  
Antelope Valley, California

By: jrw Date: 8/31/06 Project No. 8029.001

Geomatrix Figure 13