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DISTRICT NO. 40

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER CASES

Included Actions:

Los Angeles County Waterworks District No. 40 v.

Diamond Farming Co., Superior Court of
California, County of Los Angeles, Case No. BC
325201;

Los Angeles County Waterworks District No. 40 v.

Diamond Farming Co., Superior Court of
California, County of Kern, Case No. S-1500-CV-
254-348;

Wm. Bolthouse Farms, Inc. v. City of Lancaster,
Diamond Farming Co. v. City of Lancaster,
Diamond Farming Co. v. Palmdale Water Dist.,
Superior Court of California, County of Riverside,
Case Nos. RIC 353 840, RIC 344 436, RIC 344 668

RICHARD WOOD, on behalf of himself and all
other similarly situated v. **A.V. Materials, Inc.**, et
al., Superior Court of California, County of Los
Angeles, Case No. BC509546

Judicial Council Coordination
Proceeding
No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053
Assigned to the Honorable Jack Komar

**PUBLIC WATER SUPPLIERS'
TRIAL BRIEF RE PHELAN PIÑON
HILLS COMMUNITY SERVICES
DISTRICT**

Date: August 25, 2015

Time: 10:00 a.m.

Dept.: TBD

Location: San Jose Superior Court
191 N. First Street
San Jose, CA 95113

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Los Angeles County Waterworks District No. 40, City of Palmdale, City of Lancaster, Rosamond Community Services District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District, North Edwards Water District, Llano Del Rio Water Company, Llano Mutual Water Company, Big Rock Mutual Water Company, Palmdale Water District, Quartz Hill Water District, and California Water Service Company (collectively, “Public Water Suppliers”) respectfully submit the following trial brief on Phelan Piñon Hills Community Services District’s (“Phelan”) causes of action.

I. INTRODUCTION

Phelan has no appropriative right to pump groundwater from the overdrafted Antelope Valley Groundwater Adjudication Area (“Basin” or “Adjudication Area”), it dismissed its prescriptive rights claim, and its remaining causes of action do not state a cause of action to export Basin groundwater to users outside the Basin.

II. THE COURT FOUND THAT PHELAN HAS NO APPROPRIATE RIGHT AND PHELAN CANNOT CLAIM RETURN FLOWS

The Court conducted a trial on Phelan’s appropriative right and return flow claims in November 2014. After Phelan presented its evidence, the Court found that Phelan “is an appropriator without a right to pump” non-surplus water and “does not have return flows rights to groundwater in the Adjudication Area.” (Ex. “A” [Partial Statement of Decision] at 6:24 & 9:3-4.) The Court further found that “Phelan Piñon Hill’s pumping of groundwater from the Antelope Valley Groundwater Basin negatively impacts the Butte sub basin and the Adjudication Area.” (*Id.* at 10:15-16.)

Phelan voluntarily dismissed its prescriptive rights cause of action. Thus, the remaining issues are whether Phelan’s other causes of action for physical solution, municipal priority, right to use storage space, unreasonable use of water by others and basin boundaries support Phelan’s claim to water.¹ They do not. As explained below, Phelan cannot export groundwater from the

¹ Phelan’s cross-complaint alleges eight causes of action: (1) prescriptive rights (dismissed by Phelan); (2) appropriative rights; (3) physical solution; (4) municipal priority; (5) use of storage space; (6) recapture of return flows; (7) unreasonable use of water; and (8) boundaries of the Basin.

1 Basin without paying a replacement assessment as provided by the proposed Physical Solution
2 and Settlement Agreement.

3 **III. ARGUMENT**

4 **A. Phelan Cannot Establish Prescriptive Rights**

5 Phelan withdrew its first cause of action for a prescriptive right. (*See* Ex. “B” [Phelan’s
6 Case Management Statement filed Aug. 6, 2014] at 4:16-18; Ex. “C” [Minute Order of Aug. 11,
7 2014] at p. 2.) In any case, Phelan was not entitled to a prescriptive right.

8 “Prescriptive rights arise when an appropriator continues to pump water during times of
9 overdraft.” (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 279.) “An appropriative
10 taking of water which is not surplus is wrongful and may ripen into a prescriptive right where the
11 use is actual, open and notorious, hostile and adverse to the original owner, continuous and
12 uninterrupted for the statutory period of five years, and under claim of right.” (*Ibid.* [citation
13 omitted].) The filing of an action interrupts the running of the prescriptive period. (*Yorba v.*
14 *Anaheim Union Water Co.* (1953) 41 Cal.2d 265, 270.)

15 Here, Phelan’s use of its groundwater well did not begin until after the adjudication cross-
16 complaint was filed. (Ex. “A” [Partial Statement of Decision] at 5:12-25.) Therefore, Phelan did
17 not have a prescriptive right.

18 **B. Phelan Failed to Establish an Appropriative Right to Pump Groundwater**

19 After considering the evidence presented by Phelan during the November 2014 trial, the
20 Court found that Phelan “does not have water rights to pump groundwater and export it from the
21 Adjudication Area to an area for use other than on its property where Well 14 is located within
22 the adjudication area.” (Ex. “A” [Partial Statement of Decision] at 5:19-21.) Specifically, the
23 Court found:

24 To establish an appropriative right, Phelan Piñon Hills bears the
25 burden of proof to establish that the water it pumped from the
26 Antelope Valley Adjudication Area is *surplus* water, that the
aquifer from which it is pumped is not in overdraft, and that its use
is reasonable and beneficial. . . .

27 This Court has already determined, after considering extensive oral
28 and documentary evidence and hearing arguments, that there is
hydraulic connectivity within the entire Adjudication Area, that the

1 Adjudication Area has sustained a significant loss of groundwater
2 since 1951, that the Adjudication Area has been in a state of
3 overdraft since at least 2005 and that no surplus water has been
4 available for pumping at least since then. Phelan Piñon Hills
presented no evidence to the contrary. Hence, the Adjudication
Area had no surplus water for Phelan Piñon Hills to pump since at
least 2005. . . .

5 The Court has found that all areas of the Antelope Valley
6 Adjudication Area hydrologically connected and a part of a single
7 groundwater aquifer: “The Court defined the boundaries of the
8 valley aquifer based upon evidence of hydro-connection within the
9 aquifer. If there was no hydro-connectivity with the aquifer, an area
10 was excluded from the adjudication.” (Statement of Decision, Phase
11 3 Trial (Jul. 18, 2011) at p. 5.) This finding is consistent with Mr.
12 Harder’s testimony that the Butte sub basin is hydrologically
13 connected to the Lancaster sub basin and that groundwater from the
14 Butte sub basin recharges the adjudication aquifer.

15 Thus, it is not surprising that the overall overdraft condition would
16 impact the Butte sub basin differently than it impacts the Lancaster
17 sub basin. Uneven impact from groundwater pumping is not an
18 indication that an overdraft condition does not exist or that surplus
19 water exists. The Court finds that groundwater pumping in the
20 Butte subbasin negatively impacts groundwater recharge in the
21 Lancaster subbasin and that Phelan Piñon Hills failed to meet its
22 burden of proof that surplus water exists within the Adjudication
23 Area.

24 (Ex. A [Partial Statement of Decision] at 7:7-8:28 [citations and quotation marks omitted]
25 [emphasis in original].)

26 The Court’s decision is supported by testimony from Phelan’s witness, Mr. Harder; and
27 Phelan should not be allowed to re-litigate an appropriative right claim. Allowing evidence on a
28 decided issue defeats one of the primary purposes of dividing trial into different phases – efficient
resolution of disputes. (Code Civ. Proc., §1048, subd. (b) [“The court, in furtherance of
convenience or to avoid prejudice, or *when separate trials will be conducive to expedition and
economy*, may order a separate trial of any cause of action, including a cause of action asserted in
a cross-complaint, or of any separate issue or of any number of causes of action or issues. . . .”]
[emphasis added].) The Court should not allow Phelan to re-litigate findings determined in a
prior phase.

1 **C. A Physical Solution Cannot Provide a Party Water Rights**

2 Phelan may argue that the physical solution should allow Phelan to pump up to 1,200
3 acre-feet per year without payment of an assessment. In adopting a physical solution, however,
4 courts are not to give water rights that parties do not otherwise have. In *City of Barstow v.*
5 *Mojave Water Agency* (2000) 23 Cal. 4th 1224, 1250 (“*Barstow*”), the California Supreme Court
6 held:

7
8 [A]lthough it is clear that a trial court may impose a physical
9 solution to achieve a practical allocation of water to competing
10 interests, the solution’s general purpose cannot simply ignore the
11 priority rights of the parties asserting them. In ordering a physical
12 solution, therefore, a court may neither change priorities among the
13 water rights holders nor eliminate vested rights in applying the
14 solution without first considering them in relation to the reasonable
15 use doctrine. (Citations omitted.)

12 California courts generally recognize three groundwater rights: overlying, appropriative,
13 and prescriptive. (*Great Oaks Water Co. v. Santa Clara Valley Water Dist.* (Aug. 12, 2015,
14 H035885) ___ Cal.App.4th ___ [p. 16] [2015 Cal.App. LEXIS 694] (“*Great Oaks*”) citing
15 *Barstow, supra*, 23 Cal.4th at p. 1240.) Phelan has none of the three rights.

16 Phelan does not have an overlying right because Phelan puts the Basin groundwater in
17 Phelan’s public water supplier distribution system, exporting the Basin water to Phelan customers
18 outside of the Basin. (*San Bernardino v. Riverside* (1921) 186 Cal.7, 25; *Wright v. Goleta Water*
19 *Dist.* (1985) 174 Cal.App. 3d 74, 90 [“The rights of a public utility regarding water which it
20 exports to customers located outside the basin area, could not be overlying in character, but are
21 either appropriative or prescriptive.”] [citing *City of Pasadena v. City of Alhambra* (1949) 33
22 Cal.2d 908, 927].)

23 The Court has found that Phelan cannot establish an appropriative right, and Phelan
24 dismissed its prescriptive right claim. Thus, the Court cannot allocate 1,200 acre-feet of Basin
25 groundwater to Phelan unless its pays an assessment to the watermaster in an amount sufficient to
26 allow the watermaster to purchase sufficient replacement supplemental water. Doing otherwise
27 would be akin to granting rights superior or equal to water rights held by overlying landowners,
28 Public Water Suppliers and the United States.

1 The proposed Physical Solution does not prevent Phelan from exporting Basin
2 groundwater from Phelan's Well 14 to Phelan's service area outside the Basin. Section 6.4.1.2 of
3 the proposed Physical Solution provides:

4 The injunction does not apply to any Groundwater Produced within
5 the Basin by Phelan Piñon Hills Community Services District and
6 delivered to its service areas, so long as the total Production does
7 not exceed 1,200 acre-feet per Year, such water is available for
8 Production without causing Material Injury, and the District pays a
9 Replacement Water Assessment pursuant to Paragraph 9.2, together
10 with any other costs deemed necessary to protect Production Rights
11 decreed herein, on all water Produced and exported in this manner.

12 Therefore, the only substantive dispute between Phelan and the Settling Parties is whether
13 Phelan has a right superior to the rights of the Settling Parties. This Court has already properly
14 determined that Phelan does not have a superior right. (Ex. A [Partial Statement of Decision] at
15 12:4-7.)

16 Phelan may contend that it should pay a diminished assessment because Phelan
17 customers' groundwater use recharges the Basin. The Court has already found that groundwater
18 pumping by Phelan's Well 14 "negatively impacts the Butte sub basin and the Adjudication
19 Area." (*Id.* at 10:15-16.) To allow Phelan to avoid a replacement assessment obligation would,
20 in essence, provide Phelan with a superior water right.

21 The Public Water Suppliers are unaware of any other adjudicated basin with a physical
22 solution that provides a replacement assessment discount based on native water potentially re-
23 entering the basin. Any such discount would require the court to re-determine the basin's safe
24 yield.

25 **D. Phelan Does Not Have A Municipal Priority**

26 Water Code sections 106 and 106.5 do not allow Phelan to export groundwater from the
27 overdrafted Basin. Section 106 declares, "the use of water for domestic purposes is the highest
28 use of water" and section 106.5 provides, "the right of a municipality to acquire and hold rights to
the use of water should be protected to the fullest extent necessary for existing and future uses."
While these two sections give preference to domestic and municipal uses, they do not, alone,
establish a right to export groundwater from an overdrafted basin.

1 **E. Phelan Does Not Have a Prior and Paramount Right to Use of Storage Space**

2 Phelan's alleges that "it has the prior and paramount right to import water into the Basin,
3 to recharge and store imported water in that storage space, to carry over the stored water from one
4 water year to the next, and to pump the stored water at later times." (Phelan's Cross-Complaint at
5 ¶100.) This cause of action fails for a number of reasons. First, there is no legal basis for such a
6 prior and paramount right. At least one court has rejected the argument that a party can obtain a
7 superior right to storage space. (*See Central and West Basin Water Replenishment Dist. v.*
8 *Southern Cal. Water Co.* (2003) 109 Cal.App.4th 891, 908.) Second, the Court has already
9 determined that Phelan has not imported supplemental water supplies into the Basin and, thus, has
10 no return flow right. (Ex. A [Partial Statement of Decision] at 9:3-10:12.) Third, because the
11 entire Basin is hydrologically connected, Phelan does not have exclusive control over the
12 existence or use of any available underground storage space in the Adjudication Area.
13 Consequently, Phelan does not have a superior right to use any storage space. Finally, Section 14
14 of the proposed Physical Solution provides "the right to store water in the Basin pursuant to a
15 Storage Agreement with the Watermaster." The proposed Physical Solution would apply to all
16 groundwater users and there is no basis for a different or superior set of rights to use storage
17 space.

18 **F. Phelan Does Not Have A Return Flow Right Because Phelan Does Not**
19 **Purchase Supplemental Water**

20 The Court's Partial Statement of Decision from the previous trial phase states that Phelan
21 does not have a return flow right because Phelan has not purchased supplemental water:

22 [Phelan] provided no credible evidence that demonstrated that
23 Phelan Piñon Hills imported water or otherwise augmented the
24 groundwater supply in the Adjudication Area. By its own
25 admission, Phelan Piñon Hills never imported any water into the
26 Adjudication Area, and has not net augmented the groundwater
27 supply in the Adjudication Area. Mr. Harder's testimony indicates
28 that the amount of groundwater pumped by Phelan Piñon Hills
 exceeds its total amount of claimed return flows within the
 Adjudication Area. Additionally, to the extent "return flows" from
 native water pumped by Phelan Piñon Hills enter the Adjudication
 Area, they merely "lessen the diminution occasioned" by Phelan
 Piñon Hills' extraction and do not augment the Adjudication Area's
 groundwater supply.

(Ex. A [Partial Statement of Decision] at 10:3-12.)

G. Phelan's Cross-Complaint Seventh's Cause of Action of Unreasonable Use of Water Will Be Tried

As part of the Settling Parties' "prove-up" trial for the proposed Physical Solution, the Settling Parties intend to present evidence that the groundwater has been put to reasonable and beneficial uses pursuant to Article X, Section 2 of the California Constitution. The Court should not make any findings with respect to water used by the Settling Parties until first hearing evidence on the Settling Parties' respective groundwater uses.

H. Revising Boundaries of the Adjudication Area Will Not Change Phelan's Status as an Exporter of Water nor Entitle Phelan to Return Flows

Phelan will ask the Court to revise the boundaries of the Adjudication Area to conform to the boundary of the Antelope Valley groundwater basin as described in Department of Water Resources' Bulletin No. 118 ("Bulletin 118"). Phelan may contend that because part of its service area is in the Bulletin 118 area, but outside of the Adjudication Area, the delivery of water from Phelan Well 14 should not be characterized as an "export." There are at least three reasons why the Adjudication Area should not be adjusted.

First, the argument ignores the fact that Phelan's service area extends beyond the Bulletin 118 area and into the El Mirage Valley groundwater basin and the Upper Mojave River Valley groundwater basin. In other words, if the Adjudication Area were identical to the Bulletin 118 area, water pumped from Phelan Well 14 will still be exported to Phelan's customers in the El Mirage and Upper Mojave basins.

Second, as shown in the last phase of trial, Phelan's pumping in the portion of the Bulletin 118 area that is outside of the Adjudication Area, has contributed to the continuing decline of water levels.

Third, adoption of the Bulletin 118 area would intrude into the Riverside County Superior Court jurisdiction over the Mojave groundwater basin adjudication area.

Finally, an expansion of the Adjudication Area will necessarily require new landowner parties to be added to the coordinated and consolidated proceedings; they are already subject to

1 the Riverside County Superior Court jurisdiction and they would become subject to two
2 adjudications. The additional delay and cost of further expanding the proceedings would be
3 unduly prejudicial to both existing and new parties.

4 In the absence of a boundary adjustment, Phelan will likely argue that any recharge or
5 inflow of water into the Adjudication Area from the portion of the Bulletin 118 area and outside
6 of the Adjudication Area should constitute "imported" water. The Court has already considered
7 and rejected this argument during the November 2014 trial. (Ex. A [Partial Statement of
8 Decision] at 10:3-12.) The Court should not allow Phelan to re-litigate this issue.

9 **IV. CONCLUSION**

10 For the reasons stated above, Phelan cannot establish a right to export non-surplus
11 groundwater. Thus, the Court should find that Phelan has no right to pump groundwater from the
12 Adjudication Area.

13
14 Dated: August 17, 2015

BEST BEST & KRIEGER LLP

15
16 By 

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21 LOS ANGELES COUNTY
22 WATERWORKS DISTRICT NO. 40
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24
25
26
27
28

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Consolidated Actions:

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348

Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of
Riverside, consolidated actions, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 391 869

Judicial Council Coordination
Proceeding No. 4408

Lead Case No. BC 325 201

**PARTIAL STATEMENT OF
DECISION FOR TRIAL RELATED
TO PHELAN PIÑON HILLS
COMMUNITY SERVICES
DISTRICT (2ND AND 6TH CAUSES
OF ACTION)**

Trial: November 4, 2014

Judge: Honorable Jack Komar, Ret.

1 Cross-Complainant Phelan Piñon Hills Community Services District's ("Phelan Piñon
2 Hills") second and sixth causes of action for a declaration of its appropriative and return flow
3 rights, respectively, came on regularly for trial before this court commencing on November 4,
4 2014, in Department 56 of the Los Angeles County Superior Court, the Honorable Jack Komar
5 presiding. During trial, Phelan Piñon Hills presented percipient and expert witnesses,
6 documentary evidence, and a Stipulation of agreed upon facts.

7 After Phelan Piñon Hills completed its presentation of evidence, the following Cross-
8 Defendants jointly moved for judgment pursuant to section 631.8 of the Code of Civil Procedure:
9 Los Angeles County Waterworks District No. 40, Palmdale Water District, Littlerock Creek
10 Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District,
11 North Edwards Water District, Llano Del Rio Water Company, Llano Mutual Water Company,
12 and Big Rock Mutual Water Company, the State of California, the City of Los Angeles, Tejon
13 Ranchcorp, Tejon Ranch Company, and Granite Construction Company (collectively, "Phelan
14 Cross-Defendants").
15

16 The court, having considered the evidence and arguments of counsel, orally issued its
17 tentative decision granting the motion for judgment on November 5, 2014 in favor of the Phelan
18 Cross-Defendants. For the reasons described in further detail below, the Court now issues its
19 Statement of Decision and finds that the cross defendants are entitled to judgment in their favor
20 on the Phelan Piñon Hills' second and sixth cause of action.

21 Phelan Piñon Hills has filed its written request for findings of fact and conclusions of law
22 on numerous issues. Only those issues that are determinative of the outcome of this proceeding
23 are addressed in this Statement of Decision.

24 The standard for a statement of decision as set forth in Code of Civil Procedure section
25 632 requires a court to explain " ... the legal and factual basis for its decision as to each of the
26 principal contraverted issues at trial. ... "Case law is clear that a court must provide the factual
27 and legal basis for the decision on those issues only closely related to the ultimate issues on the
28 case. (See *People v. CasaBlanca Convalescent Homes* (1984) 159 Cal. App. 3d 509, 523-524.) It

1 is also clear that a court need not respond to requests that are in the nature of "interrogatories."
2 (See *id.* at pp. 525-526.)

3 The principal issues at this phase of the trial were to determine if the Phelan Piñon Hills
4 Community Service Area was entitled to an appropriator's right to produce water from a well
5 located in the Antelope Valley Ground Water Adjudication Area (Second Cause of Action of its
6 Cross Complaint) and whether it had a right to return flows created by the return of water from
7 its use in areas outside the adjudication area but within the aquifer boundaries (6th Cause of
8 Action).

9 In order to establish a right to the reasonable and beneficial production of water from an
10 aquifer in an adjudication area, the claimant must establish rights defined as either overlying
11 rights, appropriative rights from surplus water, or prescriptive rights. If the aquifer is in a state of
12 overdraft and there is no surplus because annual recharge is less than extraction, an overlying
13 owner is entitled only to a *correlative* right to produce water for reasonable and beneficial uses
14 on the owner's property, subject to all other correlative rights. Such a party cannot pump more
15 than the reasonable and beneficial amount needed for the owned land from which the water is
16 pumped and would be a wrongful appropriator for any excess amounts or exported water and
17 would be subject to injunctive or other relief.

18 The boundaries of the Antelope Valley Adjudication Area (the Adjudication Area)
19 consist of an area overlying and coextensive with the aquifer which were determined by the court
20 in the Phase One trial in these coordinated proceedings. A small area which overlies the aquifer
21 in the south east corner was excluded from the Adjudication Area because it is within the Mojave
22 Adjudication Area and under the jurisdiction of the Mojave County Superior Court Ground
23 Water adjudication, although as the evidence later established, disconnected from the Mojave
24 Aquifer.

25 In the Second Phase of trial in these coordinated proceedings, the Antelope Valley
26 Adjudication area was found to contain a single aquifer and while there are variations in water
27 level within the various subareas (sub basins), there is hydraulic connectivity and conductivity
28 with all parts of the several sub basins within the adjudication area aquifer.

1 In the Third Phase of Trial in these coordinated proceedings, the court found that the
2 entire aquifer was in a state of over draft since prior to 2005¹ and suffering degradation and
3 detriment of a permanent nature as a result of extractions exceeding annual recharge over many
4 years both preceding and after 2005.

5 Phelan filed its Cross Complaint in these proceedings and sought relief in Eight Causes of
6 Action. The Second Cause of Action sought to establish "an appropriative right for public use to
7 pump groundwater from the Adjudication area" from Well # 14 to its service area which is
8 outside the adjudication area.

9 Phelan Piñon Hills Community Services District (Phelan) owns Well # 14 which it
10 acquired and from which it began producing water in 2005. The well is located in the Antelope
11 Valley Adjudication Area but none of the water produced is directly used within the Antelope
12 Valley Ground Water Adjudication area. The water is pumped to and used in the Phelan Service
13 area for use by residents in the service area, an area outside the Adjudication area.

14 15 16 **1. GENERAL FINDINGS OF FACT**

17 The Court finds that the following facts were established by the evidence, including
18 testimony of witnesses, documentary evidence, and the parties' stipulation of facts, as follows
19 below.

20 Phelan Piñon Hills is a California community services district. It was formed on March
21 18, 2008. It provides public water service within its service area which is entirely within San
22 Bernardino County.

23 As part of its formation, Phelan Piñon Hills acquired a parcel of land within Los Angeles
24 County ("Well 14 Parcel"). The Well 14 Parcel is not within the Phelan Piñon Hills service area.

25 The Well 14 Parcel has an operating groundwater well, which is commonly referred to as
26
27

28

¹ The evidence at the Third Phase of Trial established that the Antelope Valley Basin was in a state of overdraft from 1951 through 2005.

1 Phelan Piñon Hills' "Well 14." Well 14 Parcel is within the Antelope Valley Adjudication Area
2 ("Adjudication Area") as determined by this Court's order, dated March 12, 2007

3 A part of Phelan Piñon Hills' service area overlies a portion of the Antelope Valley
4 Groundwater Basin as described and shown in California Department of Water Resources
5 Bulletin 118 (2003). That portion of the Phelan Piñon Hills' service area is within the existing
6 Mojave Basin Adjudication Area in San Bernardino County. It is outside of the Antelope Valley
7 Adjudication Area. Although the south-eastern boundary of the Antelope Valley Adjudication
8 Area is the county line between San Bernardino and Los Angeles Counties, the portion of the
9 Antelope Valley Groundwater Basin located in San Bernardino County is hydrologically
10 connected to the Antelope Valley Adjudication Area in Los Angeles County.
11

12 **2. SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW**

13 Prior to Phelan Piñon Hills' formation a community services district, a predecessor
14 agency had installed Well 14 on the Well 14 Parcel in 2004. Well 14's groundwater production
15 is as follows:

16 2004 and earlier: none;

17 2005 (beginning in September): 1.11 acre feet ("af");

18 2006: 164.15 af;

19 2007: 20.95 af;

20 2008: 493.27 af;

21 2009: 558.65 af;

22 2010: 1,110.45 af;

23 2011: 1,053.14 af;

24 2012: 1,035.26 af; and

25 2013: 1,028 af.

26 Phelan Piñon Hills pumps groundwater for municipal uses from a number of wells
27 including Well 14. Well 14 is the only Phelan Piñon Hills well outside the Phelan Piñon Hills
28 service area.

1 Phelan Piñon Hills does not import water from the State Water Project or from any other
2 source. But Phelan Piñon Hills claims a right to "return flows" from Well 14. Phelan Piñon
3 Hills contends that some amount of the groundwater produced from Well 14 is used by Phelan
4 Piñon Hills customers outside the Adjudication Area, recharges the Adjudication Area. Phelan
5 Piñon characterizes the recharge as "return flows." The Phelan Piñon Hills' groundwater
6 production from Well 14 during the years from 2010 to 2013 exceeds the average amount of the
7 Phelan Piñon Hills claimed "return flows" during that same period.

8 Well 14 is located in an area of the Adjudication Area generally known as the Butte
9 subbasin, which borders the Lancaster subbasin to the west. The Butte sub basin and the
10 Lancaster sub basin physically adjacent and are hydrologically connected. Groundwater
11 pumping in a sub basin can lower the groundwater level in an adjacent sub basin.
12

13 Phelan Piñon Hills operates three groundwater wells in San Bernardino County that are
14 within one mile of Well 14. These three wells are located within the Antelope Valley
15 Groundwater Basin, but outside of the Adjudication Area. These three wells intercept
16 groundwater that would otherwise flow into and recharge the Adjudication Area.

17 **A. Phelan Piñon Hills' Second Cause of Action for a Declaration of Its**
18 **Appropriative Rights**

19 The Court finds and determines that the Phelan Piñon Hills does not have water rights to
20 pump groundwater and export it from the Adjudication Area to an area for use other than on its
21 property where Well 14 is located within the adjudication area. All of its pumping from the
22 inception from Well 14 is used on other than the property from which it is pumped. While it is
23 entitled to use the water from Well 14 on its land within the adjudication area, so long as there is
24 no surplus within the Adjudication Area aquifer, it is an appropriator without a right to pump.
25 There was no credible testimony or evidence to the contrary.

26 **1. *The factual and legal basis for the Court's decision is as follows:***

27 Under California law, "[a]ny water not needed for the reasonable beneficial use of those
28 having prior rights is excess or surplus water and may rightly be appropriated on privately owned

1 land for non-overlying use” so long as the basin is not in overdraft. (*City of Barstow v. Mojave*
2 *Water Agency* (2000) 23 Cal.4th 1224, 1241 (“*Mojave Water Agency*”) [citing *California Water*
3 *Service Co. v. Edward Sidebotham & Son* (1964) 224 Cal.App.2d 715, 725-726].) While Phelan
4 Piñon Hills owns land in the Adjudication Area, it does not use the water it pumps from Well 14
5 on its land within the Adjudication Area. Instead, Phelan Piñon Hills provides such water to its
6 customers outside of the Adjudication Area and not on its own property.

7 To establish an appropriative right, Phelan Piñon Hills bears the burden of proof to
8 establish that the water it pumped from the Antelope Valley Adjudication Area is *surplus* water,
9 that the aquifer from which it is pumped is not in overdraft, and that its use is reasonable and
10 beneficial. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal. 4th 1224, 1241 (“*Mojave*
11 *Water Agency*”); *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 926 (“*Pasadena*”);
12 *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 278, 293 (“*San Fernando*”);
13 *Allen v. California Water & Tel. Co.* (1946) 29 Cal.2d 466, 481; *City of Santa Maria v. Adam*
14 (2012) 211 Cal.App.4th 266, 279 (“*Santa Maria*”).)

15 The California Supreme Court has explained the concepts of surplus water and overdraft
16 in a groundwater basin:
17

18 A ground basin is in a state of surplus when the amount of water
19 being extracted from it is less than the maximum that could be
20 withdrawn without adverse effects on the basin's long term supply.
21 While this state of surplus exists, none of the extractions from the
22 basin for beneficial use constitutes such an invasion of any water
23 right as will entitle the owner of the right to injunctive, as distinct
24 from declaratory, relief. (*City of Pasadena v. City of Alhambra*,
25 *supra*, 33 Cal.2d at pp. 926-927; *City of Los Angeles v. City of*
Glendale, supra, 23 Cal.2d at p. 79.) Overdraft commences
26 whenever extractions increase, or the withdrawable maximum
27 decreases, or both, to the point where the surplus ends. **Thus on**
the commencement of overdraft there is no surplus available
for the acquisition or enlargement of appropriative rights.

28 (*San Fernando, supra*, 14 Cal.3d at pp. 277-78 [emphasis added].)

1 This Court has already determined, after considering extensive oral and documentary
2 evidence and hearing arguments, that there is hydraulic connectivity within the entire
3 Adjudication Area, that the Adjudication Area has sustained a significant loss of groundwater
4 since 1951, that the Adjudication Area has been in a state of overdraft since at least 2005 and
5 that no surplus water has been available for pumping at least since then. (Statement of
6 Decision, Phase 3 Trial (Jul. 18, 2011) at 5:17–6:4, 5:15–5:22, and 9:4–9:11.) Phelan Piñon
7 Hills presented no evidence to the contrary. Hence, the Adjudication Area had no surplus
8 water for Phelan Piñon Hills to pump since at least 2005.

9
10 Phelan Piñon Hills argues that surplus water exists in the Butte subbasin where Well 14
11 is located. In support of its contention, Phelan Piñon Hills offered testimony by Mr. Harder
12 that the groundwater levels in the Butte subbasin remain relatively the same since the 1950's
13 and there is no land subsidence in the Butte subbasin. Mr. Harder's testimony, however, does
14 not contradict the Court's finding in Phase 3 that the Adjudication Area is in overdraft and no
15 surplus water exists.

16 The Court has found that all areas of the Antelope Valley Adjudication Area
17 hydrologically connected and a part of a single groundwater aquifer: "The Court defined the
18 boundaries of the valley aquifer based upon evidence of hydro-connection within the aquifer. If
19 there was no hydro-connectivity with the aquifer, an area was excluded from the adjudication."
20 (Statement of Decision, Phase 3 Trial (Jul. 18, 2011) at p. 5.) This finding is consistent with
21 Mr. Harder's testimony that the Butte sub basin is hydrologically connected to the Lancaster
22 sub basin and that groundwater from the Butte sub basin recharges the adjudication aquifer.

23 Thus, it is not surprising that the overall overdraft condition would impact the Butte sub
24 basin differently than it impacts the Lancaster sub basin. Uneven impact from groundwater
25 pumping is not an indication that an overdraft condition does not exist or that surplus water
26 exists. The Court finds that groundwater pumping in the Butte subbasin negatively impacts
27 groundwater recharge in the Lancaster subbasin and that Phelan Piñon Hills failed to meet its
28 burden of proof that surplus water exists within the Adjudication Area.

1 **B. Phelan Piñon Hills' Sixth Cause of Action for a Declaration of Its Return**
2 **Flow Rights**

3 The Court finds and determines that Phelan Piñon Hills does not have return flows rights
4 to groundwater in the Adjudication Area. There was no credible testimony or evidence offered
5 by Phelan Piñon Hills to the contrary.

6 The right to return flows is limited to return flows from imported water. In *San*
7 *Fernando, supra*, the California Supreme Court rejected a party's claim to a return flow right
8 from native water, stating:

9
10 Even though all deliveries produce a return flow, only deliveries
11 derived from imported water add to the ground supply. The
12 purpose of giving the right to recapture returns from delivered
13 imported water priority over overlying rights and rights based on
14 appropriations of the native ground supply is to credit the importer
15 with the fruits of his expenditures and endeavors in bringing into
the basin water that would not otherwise be there. Returns from
deliveries of extracted native water do not add to the ground
supply but only lessen the diminution occasioned by the
extractions.

16 (*San Fernando, supra*, 14 Cal.3d at p. 261.) The policy behind granting an importer the return
17 flow right is to award the importer with the fruit of its labor. (*Santa Maria, supra*, 211
18 Cal.App.4th at p. 301 ["[O]ne who brings water into a watershed may retain a prior right to it
19 even after it is used. . . . The practical reason for the rule is that the importer should be credited
20 with the 'fruits . . . of his endeavors in bringing into the basin water that would not otherwise be
21 there.'"] [citations omitted].)

22 Phelan Piñon Hills asked the Court to adopt the doctrine of recapture as applied in a
23 federal court litigation between Montana and Wyoming, in lieu of California law on return flow
24 rights as set forth in *San Fernando* and *Santa Maria*. (See *Montana v. Wyoming* (2011) 131
25 S.Ct. 1765, 1774-75.) The doctrine of stare decisis prohibits this Court from applying case law
26 from another jurisdiction when there are controlling decisions issued by the California Supreme
27 Court and Courts of Appeal. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450,
28

1 455-456; *Fortman v. Forvaltningsbolaget Insulan AB* (2013) 212 Cal.App.4th 830, 844; *Kelly v.*
2 *Vons Companies, Inc.* (1998) 67 Cal.App.4th 1329, 1337.)

3 The Court finds that Phelan Piñon Hills provided no credible evidence that demonstrated
4 that Phelan Piñon Hills imported water or otherwise augmented the groundwater supply in the
5 Adjudication Area. By its own admission, Phelan Piñon Hills never imported any water into the
6 Adjudication Area, and has not net augmented the groundwater supply in the Adjudication Area.
7 Mr. Harder's testimony indicates that the amount of groundwater pumped by Phelan Piñon Hills
8 exceeds its total amount of claimed return flows within the Adjudication Area. Additionally, to
9 the extent "return flows" from native water pumped by Phelan Piñon Hills enter the Adjudication
10 Area, they merely "lessen the diminution occasioned" by Phelan Piñon Hills' extraction and do
11 not augment the Adjudication Area's groundwater supply. (*Id.*)

12
13 C. Impact of Phelan Piñon Hills' Pumping of Groundwater Upon the
14 Adjudication Area

15 The Court finds that Phelan Piñon Hills' pumping of groundwater from the Antelope
16 Valley Groundwater Basin negatively impacts the Butte sub basin and the Adjudication Area.
17 There was no credible testimony or evidence offered by Phelan Piñon Hills to the contrary.

18 It is uncontested that Phelan Piñon Hills' Well 14 is located in an area of the
19 Adjudication Area generally known as the Butte subbasin, which borders the Lancaster sub
20 basin. (Ex. Phelan CSD-27.) The Court finds that the Butte subbasin and the Lancaster sub
21 basin are hydrologically connected. The Court also finds that groundwater from the Butte sub
22 basin is a source of groundwater recharge for the Lancaster sub basin, and that groundwater
23 pumping in the Butte sub basin could lower the groundwater level in the aquifer. The Court
24 further finds that Phelan Piñon Hills' operation of its three groundwater wells located near Well
25 14 intercepts groundwater that would otherwise flow into and recharge the Adjudication Area.
26 Based on these uncontroverted facts, the Court concludes that Phelan Piñon Hills' pumping of
27 groundwater from the Antelope Valley Groundwater Basin as described in Bulletin 118
28 negatively impacts the Butte subbasin, the Lancaster subbasin, and the Adjudication Area.

1 **D. Burden of Proof**

2 The court finds that Phelan Piñon Hills has the burden of proof to establish each fact
3 necessary to its second and sixth causes of action, and it failed to meet its burden of proof.
4 There was no credible testimony or evidence offered by Phelan Piñon Hills to the contrary.

5 Evidence Code Section 500 provides, “[e]xcept as otherwise provided by law a party has
6 the burden of proof as to each fact, the existence or nonexistence of which is essential to the
7 claim for relief or defense that he is asserting.” As the Cross-Complainant, Phelan Piñon Hills
8 has the affirmative obligation to prove the facts that are essential to its claims, which it has failed
9 to do for the reasons discussed above.

10 Phelan Piñon Hills does not deny that it has the burden of proof for its sixth cause of
11 action for return flow rights. Phelan Piñon Hills contends that, before it has the burden of prove
12 the existence of surplus water, existing appropriators, riparian, or overlying owners must
13 establish their use is reasonable and beneficial. (*See e.g., Tulare Irrigation Dist. v. Lindsay-*
14 *Strathmore Irrigation Dist.* (1935) 3 Cal. 2d 489, 535 [“In the present case, while it is true the
15 burden was on appellant to prove the existence of a surplus, that burden did not come into
16 existence until after the respondent riparians first proved the amount required by them for
17 reasonable beneficial purposes.”].) The Court recognizes that while overdraft and native safe
18 yield of the Adjudication Area were determined in Phase 3 trial and that Adjudication Area
19 groundwater pumping in 2011 and 2012 exceeded the safe yield², this Court has not made a
20 determination as to whether each party’s water use is reasonable and beneficial. The Court will
21 make such a determination prior to the entry of final judgment.

22 Phelan Piñon Hills has not proved that there is a surplus contrary to the court’s
23 determination that the basin aquifer is in overdraft. If a final judgment is entered based upon the
24 overdraft, the court will be required to provide for the management of the basin aquifer and will
25 provide for monitoring pumping to preserve the integrity of the aquifer. Phelan Piñon Hills has
26
27

28 ² Statement of Decision, Phase 4 Trial (June 29, 2013).

1 five other causes of action in its cross complaint and as a pumper may be required to participate
2 in the monitoring program which will establish the reasonable and beneficial use of each
3 pumper within the aquifer as well as rights to produce water, whether as appropriator, overlying
4 owner, or prescriber. The decision here only determines that at this time Phelan Piñon Hills is an
5 appropriator without a priority as to overlying owners and appropriators with prescribed rights (if
6 any).

7
8
9 Dated: FEB - 3 2015

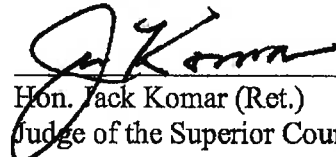

Hon. Jack Komar (Ret.)
Judge of the Superior Court

EXHIBIT B

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**
10

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

12 **ANTELOPE VALLEY**
13 **GROUNDWATER CASES**

14 Included Actions:

15 *Los Angeles County Waterworks District*
No. 40 v.
16 *Diamond Farming Co., et al.*
Los Angeles County Superior Court, Case
17 No. BC 325 201

18 *Los Angeles County Waterworks District*
No. 40 v.
19 *Diamond Farming Co., et al.*
Kern County Superior Court, Case No.
20 S-1500-CV-254-348

21
22 *Wm. Bolthouse Farms, Inc. v. City of*
Lancaster
23 *Diamond Farming Co. v. City of Lancaster*
Diamond Farming Co. v. Palmdale Water
24 *Dist.*
Riverside County Superior Court,
25 Consolidated Action, Case Nos. RIC 353
840, RIC 344 436, RIC 344 668
26

27 **AND RELATED CROSS-ACTIONS**
28

) Judicial Council Coordination Proceeding
) No. 4408

) (For Filing Purposes Only: Santa Clara
) County Case No.: 1-05-CV-049053)

) Assigned for All Purposes To:
) Judge: Hon. Jack Komar

) (Filing Fees Exempt, Per Gov't Code § 6103)

) **STATEMENT BY PHELAN PIÑON**
) **HILLS COMMUNITY SERVICES**
) **DISTRICT FOR CONFERENCE SET**
) **FOR AUGUST 11, 2014**

) **[[PROPOSED] CASE MANAGEMENT**
) **ORDER FILED CONCURRENTLY**
) **HEREWITH]**

) **DATE: August 11, 2014**
) **TIME: 10:00 a.m.**
) **LOCATION: Stanley Mosk Courthouse**
) **111 N. Hill Street, Rm. 222**
) **Los Angeles, California**

1 TO THE HONORABLE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF
2 RECORD HEREIN:

3 Phelan Piñon Hills Community Services District ("Phelan Piñon Hills") hereby submits this
4 Statement in advance of the August 11, 2014 Conference which pursuant to the Court from
5 July 11, 2014 includes determining a process for resolution of claims of non-settling parties, such
6 as Phelan Piñon Hills. As explained herein:

7 (i) *Phelan Piñon Hills met-and-conferred* as ordered by the Court, with the consensus
8 reached with the Liaison Committee being for: (a) Phelan Piñon Hills to prepare a proposed Case
9 Management Order ("Proposed CMO"); and (b) Phelan Piñon Hills to consider bifurcation of
10 causes of action, including those by other parties' cross complaints against Phelan Piñon Hills.

11 (ii) *Phelan Piñon Hills has prepared the Proposed CMO* and filed and circulated the
12 same via electronic service on August 6, 2014, and, *Phelan Piñon Hills is agreeable to bifurcation*
13 *as generally proposed by the Liaison Committee and more specifically set forth below.*

14 (iii) Due to at least one party¹ saying that it will *not* stipulate to *any* facts involving
15 Phelan Piñon Hills², *discovery is necessary* - at least by Phelan Piñon Hills - but the scope of
16 discovery will depend on the scope of this next trial to be determined by the Court.

17 (iv) *To assist with formulating the scope and process of this next trial and the related*
18 *discovery, Phelan Piñon Hills has prepared this Statement as well as the Proposed CMO*, with this
19 Statement including identification of the "at issue" items and a description of the discovery
20 necessary for adequate trial preparation (if the Court approves the Proposed CMO in its current
21 form), while the Proposed CMO suggests the scope and process for this next trial and related
22 discovery.

23
24 ¹ The Bolthouse entities have explicitly taken this position, and though there are at least two (2)
25 Bolthouse entities, these entities are referred to herein collectively as "Bolthouse."

26 ² This includes even the most fundamental of evidentiary issues, such as authentication of public
27 records that Phelan Piñon Hills intends to offer at trial. Bolthouse previously indicated willingness
28 to stipulate to facts at least for Phase Five, but has since indicated that it will not stipulate to any
fact because Phelan Piñon Hills has indicated (as it consistently has done) that it contests
Bolthouse's use of water.

1 (v) *Ultimately, Phelan Piñon Hills desires resolution of its claims in this case in the*
2 *near future*, and while Phelan Piñon Hills desires such and is agreeable to bifurcation as set forth
3 below, the decision by the potentially settling parties not to include Phelan Piñon Hills in
4 settlement triggers the need for a “process” as described herein and in the Proposed CMO, which
5 unfortunately becomes more protracted by at least one party’s unwillingness to stipulate to facts.

6 **I. THE MEET-AND-CONFER & CURRENT STATUS.**

7 Following on Phelan Piñon Hills’ Case Management Statement for the July 11, 2014
8 conference³ and the Court’s subsequent order for Phelan Piñon Hills and the Liaison Committee to
9 meet-and-confer regarding adjudication of remaining issues, Phelan Piñon Hills wrote to the
10 Liaison with a proposed process. *The group assembled for the meet-and-confer on July 30.*

11 The only consensus reached was for Phelan Piñon Hills to prepare the Proposed CMO and
12 to consider bifurcation of causes of action, including those of other parties’ cross complaints
13 against Phelan Piñon Hills. Phelan Piñon Hills has done both items, as set forth below.

14 Much of the meet-and-confer discussion involved some parties questioning the need for any
15 discovery. The sum of that discussion is that at least one (1) party has indicated it will not stipulate
16 to any facts and only two (2) parties have expressly stated they will challenge Phelan Piñon Hills,
17 while it remains uncertain as to which of the other parties will challenge Phelan Piñon Hills. Also,
18 at least one party thinks a trial should be set sixty (60) days from August 11, even though that same
19 party has not expressly stated it will challenge Phelan Piñon Hills nor does Phelan Piñon Hills
20 know if that party or any other has any documents or witnesses (percipient or expert) relating to
21 Phelan Piñon Hills issues, particularly the water right issues for which discovery is incomplete.

22 Notably, Phelan Piñon Hills was “ready” to offer evidence during Phase Three about
23 hydrogeological conditions in the Southeast area, and Phelan Piñon Hills was “ready” to offer
24 evidence during Phase Five regarding its return flow claim; however, the objections by some
25

26
27 ³ Phelan Piñon Hills’ CMC Statement for the July 11, 2014 conference provided a “snapshot” of
28 key issues, with legal and factual discussion regarding these issues.

1 parties during Phase Three and the representations by some parties of settlement during Phase Five
2 caused the presentation of this evidence to be delayed.

3 What is unclear *now* is the extent to which other parties intend to challenge Phelan Piñon
4 Hills on those issues, *and* whether additional discovery is permissible on those issues involving the
5 hydrogeologic conditions of the Southeast area, namely the Buttes subunit as commonly referred to
6 in scientific research. Also, what has not been vetted yet through discovery are the water rights
7 issues which were set for Phase Six but vacated based upon settlement discussions.

8 *Accordingly, the Court's intervention is requested for setting forth the scope of the next*
9 *trial and the related process including lifting the stay on discovery so that Phelan Piñon Hills may*
10 *properly prepare for trial by having the other parties state whether they are challenging Phelan*
11 *Piñon Hills and on what basis. Absent that type of process and information, Phelan Piñon Hills is*
12 *subject to unfair surprise during trial.*

13 **II. "AT-ISSUE" ITEMS & PROPOSED SCOPE.**

14 Multiple cross-complaints between Phelan Piñon Hills and other parties exist, thus placing
15 various causes of action "at issue" by those parties suing and being sued by Phelan Piñon Hills.

16 Phelan Piñon Hills' cross-complaint contains eight (8) causes of action. Phelan Piñon Hills
17 seeks resolution on all causes of action, except for its first cause of action in which a prescriptive
18 water right is pled. Phelan Piñon Hills is no longer pursuing the first cause of action. Instead,
19 Phelan Piñon Hills seeks to establish an appropriator for public use water right⁴, as set forth in its
20 second cause of action (also described in Phelan Piñon Hills' CMC Statement for the July 11, 2014
21 conference). Thus, Phelan Piñon Hills' remaining seven (7) causes of action relate are as follows:

- 22
 - **Second Cause of Action** for Declaratory Relief for an Appropriative Right, with
23 paragraph 82 articulating that surplus water is where production is not causing a
drop in the water table.⁵

24 ⁴ Notably, Bolthouse recognizes this right in its cross-complaint on page 6, paragraph 13, lines 15-
25 17: "...knowing that even if their prescriptive claims failed, *they could preserve the right to*
26 *continue their pumping under a claim of an intervening public use.*" (Emphasis added.)

27 ⁵ The cross-complaint by Los Angeles County Waterworks District No. 40 states substantially the
28 same at Paragraph 47 in that surplus exists when undesirable results are not occurring such as
lowering of the groundwater table or subsidence.

- **Third Cause of Action** for Declaratory Relief for a Physical Solution.
- **Fourth Cause of Action** for Declaratory Relief for Municipal Priority, with Paragraphs 93 & 94 articulating Water Code section 106 in support of such priority.
- **Fifth Cause of Action** for Declaratory Relief for Use of Storage Space.
- **Sixth Cause of Action** for Declaratory Relief for Recapture of Return Flows.
- **Seventh Cause of Action** for Declaratory Relief for Unreasonable Use of Water by some Cross-Defendants.
- **Eighth Cause of Action** for Declaratory Relief regarding Basin Boundaries.

Beyond Phelan Piñon Hills' cross-complaint are approximately seven (7) other cross-complaints, with Bolthouse's cross-complaint containing nineteen (19) causes of action.

To manage all of these cross-complaints and various causes of action between Phelan Piñon Hills and those suing Phelan Piñon Hills, the following is proposed for this next trial:

(1) Bifurcation, which was generally requested by some during the July 30 meet-and-confer, is acceptable to Phelan Piñon Hills as follows:

(a) Issue of surplus water in the Southeast area is deferred to later proceedings, if the Court finds that Phelan Piñon Hills' appropriator for public use water right may exist and also, pending determination on surplus status, that Phelan Piñon Hills is not subject to "takings" liability nor is Phelan Piñon Hills subject to a replacement assessment (unless such an assessment is applicable to the other parties as part of Watermaster operations and administration of the anticipated judgment).

(b) If the Court is agreeable to the approach set forth above in section (1)(a), then:

(i) Phelan Piñon Hills' Seventh Cause of Action regarding other parties' alleged unreasonable use of water may also be deferred. This cause of action primarily involves disputes between Phelan Piñon Hills and Bolthouse; specifically, this cause of action is particularly important because the extent to which Bolthouse's use of water is wasteful should count toward surplus, and Bolthouse's causes of action against Phelan Piñon Hills include inverse condemnation⁶, which should be offset by the extent to which surplus exists.

⁶ Third, eleventh, and thirteenth causes of action in Bolthouse's cross-complaint against Phelan Piñon Hills.

1 (ii) Bolthouse's and other parties' inverse condemnation claims may
2 likewise be deferred, to the extent such claims have already been pleaded by a party.

3 (c) Phelan Piñon Hills is agreeable to deferring its Third and Fifth Causes of
4 Action involving the Physical Solution and Use of Storage Space to a later proceeding, subject to
5 the Court finding that Phelan Piñon Hills maintains the right to assert these rights even if it loses on
6 some other cause of action; *in other words, loss on one cause of action is not a loss on all.*

7 Bifurcation as proposed above allows the Court to make legal determinations on Phelan
8 Piñon Hills' water right and other key issues such as the return flow claim and place of use claim,
9 without having to engage in a technical issue that may entail further discovery and delay, as well as
10 jury trial rights⁷, and perhaps this may be an issue for Watermaster involvement subject to the
11 Court's continuing jurisdiction that presumably will exist following entry of judgment in this case.

12 *Thus, at issue for this next trial phase pursuant to the above approach would be:*

13 (1) *Phelan Piñon Hills' Second (except for surplus status), Fourth, Sixth, and Eighth*
14 *Causes of Action, which essentially seek to establish a water right and its priority, a return flow*
15 *right, and the right to exercise the water right within Phelan Piñon Hills' service area that lies*
16 *over the hydrogeological portion of the Antelope Valley groundwater basin.*

17 (2) *Currently unclear is the extent to which other parties' causes of action (whether*
18 *inverse condemnation or otherwise) are or should be part of this next trial phase. As a cross-*
19 *defendant on causes of action asserted by other parties, Phelan Piñon Hills has the right to*
20 *challenge those parties' causes of action and Phelan Piñon Hills seeks to reserve that right.*

21 **III. PROPOSED CMO & DISCOVERY.**

22 Should the Court approve the scope of the next trial as set forth above (with clarification
23 from other parties and direction from the Court needed on those parties' cross-complaints against
24 Phelan Piñon Hills), *the Proposed CMO and related discovery would reflect such, much like the*

25
26
27 ⁷ Bolthouse asserted rights to a jury trial many times in the past; presumably Bolthouse might assert
28 the same related to inverse condemnation, part of which depends on surplus status.

1 *Case Management Orders the Court and parties utilized in prior trial phases including a date for*
2 *the parties to file a Notice of Intention to Participate in the trial.*

3 *Also included in the Proposed CMO is a schedule for motion(s) for summary adjudication*
4 *or judgment, which is proposed to offset the inconvenience caused by other parties' unwillingness*
5 *to stipulate to facts (even if not subject to reasonable dispute), with the benefit being greater*
6 *efficiency for the Court and participating parties to engage in resolution by dispositive law and*
7 *motion if possible, rather than trial.*

8 *As for discovery, should the Court approve the approach being proposed and lift the*
9 *current stay on discovery, Phelan Piñon Hills would seek Court approval of a discovery order, also*
10 *much like those done for prior trial phases so that Phelan Piñon Hills discovers which parties are*
11 *opposing Phelan Piñon Hills and on what basis, particularly when the water rights claim has not*
12 *been subjected to complete discovery or trial to date. Specifically, Phelan Piñon Hills envisions for*
13 *those parties timely indicating their Intention to Participate in trial discovery such as: (i) form*
14 *interrogatories for identification of witnesses and 17.1 responses; (ii) requests for admissions on*
15 *such fundamental facts such as Phelan Piñon Hills' ownership of Well 14, its production numbers,*
16 *Phelan Piñon Hills being a public water supplier, etc.; and (iii) requests for production of*
17 *documents, including for those documents in support of all other responses provided by that party.*
18 *Other discovery would be for designation of experts and subsequent depositions, to the extent*
19 *technical and/or other expert testimony is purportedly necessary for this next trial.*

20 *Phelan Piñon Hills intends to offer evidence through its previously-designated expert,*
21 *particularly as to the return flow claim; however, discovery was completed in that regard for Phase*
22 *Five, and accordingly, should not be reopened.*


23 *Ultimately, the discovery and time needed for adequate trial preparation turns largely*
24 *upon: (i) the scope of this next trial; (ii) the number of parties participating; and (iii) whether the*
25 *"surplus issue (which relates to "regional" or subunit differences as recognized in the Phase*
26 *Three Statement of Decision) is to be tried within this next trial. The Proposed CMO is prepared*
27 *based upon the above in Section II, meaning the surplus issue and related causes of action are not*
28 *part of this next trial.*

1 **IV. CONCLUSION.**

2 A number of parties have sued one another in this case, and many of those cross-complaints
3 between Phelan Piñon Hills and other parties remain unresolved. As much as Phelan Piñon Hills
4 attempted settlement beyond the two (2) classes with which it already settled, some parties are
5 unwilling to settle with Phelan Piñon Hills. Those parties now call upon the Court to resolve
6 Phelan Piñon Hills' claims, and while some of these same parties have previously requested time to
7 do the proper discovery to prepare for a trial, these same parties now seek an expedited process to
8 adjudicate Phelan Piñon Hills' claims. As much as Phelan Piñon Hills supports resolution of this
9 long-standing matter, absent stipulations, certain discovery must be done, which the Court
10 indicated during the last status conference on July 11, 2014 is a right to which no party will be
11 deprived. As such, Phelan Piñon Hills respectfully proposes the approach as set forth above.

12
13 Dated: August 6, 2014

Respectfully submitted,
ALESHIRE & WYNDER, LLP

14
15 By: 
16 Wesley A. Miliband
17 Attorneys for Cross-Defendant and
18 Cross-Complainant,
19 Phelan Piñon Hills Community
20 Services District
21
22
23
24
25
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27
28

3 **PROOF OF SERVICE**

4 I, Marie Young,

5 I am employed in the County of Orange, State of California. I am over the age of 18 and
6 not a party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700,
Irvine, CA 92612.

7 On August 6, 2014, I served the within document(s) described as **STATEMENT BY**
8 **PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT FOR CONFERENCE SET**
FOR AUGUST 11, 2014, as follows:

9 ☒ (ELECTRONIC SERVICE) By posting the document(s) listed above to the Santa Clara
10 County Superior Court website in regard to Antelope Valley Groundwater matter pursuant to the
Court's Clarification Order. Electronic service and electronic posting completed through
11 www.scefiling.org.

12 ☐ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope
13 addressed as set forth above. I placed each such envelope for collection and mailing following
ordinary business practices. I am readily familiar with this Firm's practice for collection and
14 processing of correspondence for mailing. Under that practice, the correspondence would be
deposited with the United States Postal Service on that same day, with postage thereon fully
15 prepaid at Irvine, California, in the ordinary course of business. I am aware that on motion of the
party served, service is presumed invalid if postal cancellation date or postage meter date is more
than one day after date of deposit for mailing in affidavit.

16 ☐ (BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained
17 by Overnight Express, an express service carrier, or delivered to a courier or driver authorized by
said express service carrier to receive documents, a true copy of the foregoing document(s) in a
18 sealed envelope or package designated by the express service carrier, addressed as set forth above,
with fees for overnight delivery paid or provided for.

19 Executed on August 6, 2014, at Irvine, California.

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

22 Marie Young
23 (Type or print name)

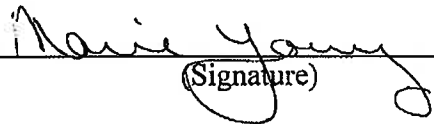
24 
25 (Signature)

EXHIBIT C

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/11/14

DEPT. 222

HONORABLE JACK KOMAR

JUDGE

E. LOPEZ

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NADIA S. GOTT, CSR #12597
PRO TEMPORE

Reporter

10:00 am JCCP4408

Coordination Proceeding Special
Title Rule (1550(b))
ANTELOPE VALLEY
GROUNDWATER CASES
*ASSIGNED TO JUDGE JACK KOMAR
IN SANTA CLARA COUNTY (8/31/05)

Plaintiff	MICHAEL D. McLACHLAN (X)
Counsel	JEFFREY V. DUNN (X)
	WESLEY A. MILIBAND (X)
Defendant	THOMAS S. BUNN III (X)
Counsel	EDWARD S. RENWICK (X)
	SHELDON R. BLUM (X)
	THEODORE A. CHESTER, (X)
	MARILYN H. LEVIN (X)

NATURE OF PROCEEDINGS:

ALSO APPEARING: EDWARD J. CASEY (X) DEPHNE
BORROMEO HALL (X); SCOTT K. KUNEY (X); CHRISTOPHER
M. SANDERS (X); WILLIAM M. SLOAN (X); ALLAN I.
GRAF (X); R. LEE LEININGER (X); RALPH B.
KALFAYAN; MICHAEL T. FIFE (X); NOAH GOLDEN-KRASNER;
DEREK R. HOFFMAN (X); ERIC L. GARNER (X); DUANE
DAVIS; DOUGLAS J. EVERTZ (X); JANET K. GOLDSMITH;
W. KEITH LEMIEUX (X); WILLIAM J. BRUNICK (X)
RICHARD ZIMMER (X); BOB H. JOYCE (X); ROBERT G.
KUHS (X); JOSEPH D. HUGHES; BRADLEY T. WEEKS (X);

ALSO APPEARING VIA COURT CALL: JAMES J. DUBOIS (X)
WAKTER E, RUSINEK (X); KYLE W. HOLMES (X); JAMES
A. WORTH (X); ANDREW J. RAMOS (X); BRADLEY J.
HERREMA (X);

CASE MANAGMENT CONFERENCE;

EXPARTE APPLICATION TO REMOVE AND ADD CLASS MEMBERS
IN WOOD V. LOS ANGELES COUNTY WATERWORKS DISTRICT NO.
40;

The Order Appointing Court Approved Reporter as
Official Reporter Pro Tempore is signed and filed
this date.

Matter is called for hearing.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/11/14

DEPT. 222

HONORABLE JACK KOMAR

JUDGE

E. LOPEZ

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NADIA S. GOTT, CSR #12597
PRO TEMPORE

Reporter

10:00 am JCCP4408

Plaintiff	MICHAEL D. McLACHLAN (X)
Counsel	JEFFREY V. DUNN (X)
	WESLEY A. MILIBAND (X)
Defendant	THOMAS S. BUNN III (X)
Counsel	EDWARD S. RENWICK (X)
	SHELDON R. BLUM (X)
	THEODORE A. CHESTER, (X)
	MARILYN H. LEVIN (X)

Coordination Proceeding Special
Title Rule (1550(b))
ANTELOPE VALLEY
GROUNDWATER CASES
*ASSIGNED TO JUDGE JACK KOMAR
IN SANTA CLARA COUNTY (8/31/05)

NATURE OF PROCEEDINGS:

Court and counsel confer as fully reflected in the notes of the court reporter and incorporated herein by reference.

Mr. Miliband, counsel for Phelan, represents that he will not be pursuing the perscription claim.

Counsel are meet and try to reach a stipulation and the matter will resume at 3:00pm this afternoon.

The court having read and considered the ex parte application rules as follows:

The ex parte request is GRANTED.

Order Modigying Small Pumper Class List is signed and filed this date and incorporated herein by reference to the court file.

At 3:00pm the matter is called for hearing.

Court and counsel confer as fully reflected in the notes of the court reporter and incorporated herein by reference.

Mr. Miliband indicates his unavailability tomorrow.

The court's sets a Status Conference on the unresolved issues for August 29, 2014 at 11:00am in San Jose in a place to be determined.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/11/14

DEPT. 222

HONORABLE JACK KOMAR

JUDGE E. LOPEZ

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NADIA S. GOTT, CSR #12597

PRO TEMPORE

Reporter

10:00 am JCCP4408

Plaintiff MICHAEL D. McLACHLAN (X)

Counsel JEFFREY V. DUNN (X)

Coordination Proceeding Special
Title Rule (1550(b))

WESLEY A. MILIBAND (X)

ANTELOPE VALLEY

Defendant THOMAS S. BUNN III (X)

GROUNDWATER CASES

Counsel EDWARD S. RENWICK (X)

*ASSIGNED TO JUDGE JACK KOMAR

SHELDON R. BLUM (X)

IN SANTA CLARA COUNTY (8/31/05)

THEODORE A. CHESTER, (X)

MARILYN H. LEVIN (X)

NATURE OF PROCEEDINGS:

A 3 day Trial is set for October 7, 2014 at 9:00am in
a place to be determined.

Counsel are to submit briefs on issues, for example
the right to have to pump and the right to return
flows.

Counsel are to submit agreement on stipulated facts.

After meet and confer counsel are to submit a proposed
schedule.

Conference is continued to August 12, 2014 at 9:00am
in Room 222.

PROOF OF SERVICE

I, Rosanna R. Pérez, declare:

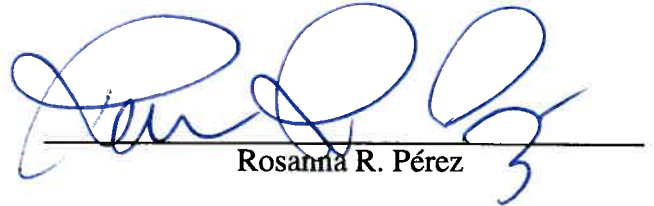
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 300 S. Grand Avenue, 25th Floor, Los Angeles, California 90071. On August 17, 2015, I served the within document(s):

**PUBLIC WATER SUPPLIERS' TRIAL BRIEF RE PHELAN PIÑON HILLS
COMMUNITY SERVICES DISTRICT**



by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 17, 2015, at Los Angeles, California.


Rosanna R. Pérez

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