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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

**EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103**

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’
SUPPLEMENTAL TRIAL BRIEF
RE PHELAN PIÑON HILLS
COMMUNITY SERVICES
DISTRICT**

Date: August 25, 2015

Time: 10:00 a.m.

Dept.: 12

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 supplemental trial brief in response to Phelan Piñon Hills Community Services District’s (“Phelan”) trial brief.

I. PHELAN HAS NO RIGHT TO EXPORT GROUNDWATER FROM THE OVERDRAFTED BASIN EITHER WITHIN OR WITHOUT THE BULLETIN 118 BOUNDARIES

Phelan wants to introduce testimony of its groundwater pumping within an area designated by the Department of Water Resources’ Bulletin 118 (“Bulletin 118 boundaries”) as an Antelope Valley groundwater basin. Phelan takes groundwater from the overdrafted Antelope Valley Adjudication Area (“Basin”) for export to customers in the El Mirage Valley groundwater basin and Upper Mojave River Valley groundwater basin.¹ Phelan has no right to take groundwater from within the Adjudication Area or the Bulletin 118 boundaries because Phelan dismissed its prescriptive rights claim and, as an appropriator, has no right to take groundwater from an overdrafted basin. Thus, any evidence as to whether Phelan’s customers are within the Bulletin 118 boundaries is irrelevant.

II. PHELAN IS NOT ENTITLED TO A REPLACEMENT ASSESSMENT DISCOUNT

Phelan claims that it is not an “exporter” and that any water it delivers to its customers within the Bulletin 118 boundaries should not be subject to a groundwater replacement assessment. (Phelan’s Trial Brief at 4:18-21.) There are at least two flaws in Phelan’s claim. First, Phelan asks the Court to ignore the jurisdictional boundary of the Mojave Groundwater Adjudication. In other words, Phelan wants to be exempt from both Adjudication Areas’ replacement assessment requirements. Second, it makes no difference whether Phelan is or is not

¹ Phelan admits in its trial brief that “Water from all but two of Phelan’s wells is blended and distributed through the district.” (Phelan’s Trial Brief at 3:21-22.)

1 an exporter because Phelan cannot take groundwater from an overdrafted basin. Whether the
2 Bulletin 118 boundaries or Basin boundaries are used to analyze Phelan's claims, it has no right
3 to take groundwater.

4 **III. THE DOCTRINE OF INTERVENING PUBLIC USE DOES NOT CREATE A**
5 **WATER RIGHT FOR PHELAN**

6 Phelan erroneously applies the doctrine of intervening public use in arguing for a
7 municipal appropriator's rights. (Phelan's Trial Brief at 5:6-25.) The Court has previously
8 considered and rejected this argument. (Phelan's Trial Brief for Its Second and Sixth Causes of
9 Action, dated October 31, 2014, at 4:14-6:9.) The Court should not allow Phelan to re-litigate
10 this settled matter.

11 The doctrine of intervening public use provides that injunctive relief is not available
12 against a holder of a junior water right, if the water has been dedicated to a public use prior to the
13 commencement of the action. The doctrine does not establish a water right for the municipal
14 supplier. Instead, the doctrine provides a damages remedy under a theory of inverse
15 condemnation. (*See, e.g., Peabody v. Vallejo* (1935) 2 Cal.2d 351, 377-81; *Wright v. Goleta*
16 *Water Dist.* (1985) 174 Cal.App.3d 74, 90-91 ["Intervention of a public use does not bar suit by
17 the owner of a water right; it merely limits his remedy to damages in place of an injunction."].)
18 Moreover, for the doctrine to apply, the public use must have intervened prior to the
19 commencement of the action. (*Id.*) Here, Phelan did not start pumping groundwater from Well 14
20 until after this action commenced. Any evidence of a predecessor's pumping is irrelevant
21 because Phelan has dismissed its prescriptive rights cause of action.

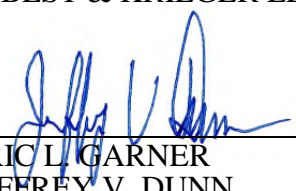
22 **IV. CONCLUSION**

23 Phelan cannot establish a right to export non-surplus groundwater. Thus, the Court should
24 find that Phelan has no right to pump groundwater from the Antelope Valley Adjudication Area.

1 Dated: August 24, 2015

BEST BEST & KRIEGER LLP

2
3 By


ERIC L. GARNER
JEFFREY V. DUNN
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LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

PROOF OF SERVICE

I, Rosanna R. Pérez, declare:

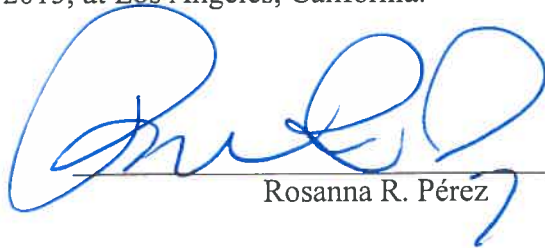
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 300 S. Grand Avenue, 25th Floor, Los Angeles, California 90071. On August 24, 2015, I served the following document(s):

**PUBLIC WATER SUPPLIERS' SUPPLEMENTAL 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 24, 2015, at Los Angeles, California.



Rosanna R. Pérez

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