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8 FARMS, a limited liability company

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

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

13 ANTELOPE VALLEY GROUNDWATER
14 CASES

14 Included actions:

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

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

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

24 AND RELATED CROSS-ACTIONS.

Judicial Council Coordination No. 4408

Case No.: 1-05-CV-049053

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

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

5 Cross-Complainants,

6 vs.

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

10 Cross-Defendants.

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

14 **General Allegations:**

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **First Cause of Action**

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

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

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

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

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

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

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

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

Second Cause of Action

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

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

“Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.”

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

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

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

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

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

Third Cause of Action

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

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

“Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.”

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

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

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

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

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

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

12 **Fourth Cause of Action**

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

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

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

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

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

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

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

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

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

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

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Fifth Cause of Action

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

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

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

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

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

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

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1 **Sixth Cause of Action**

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

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

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

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

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

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

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

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

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

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

19 **Seventh Cause of Action**

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

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

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

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

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

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

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

Eighth Cause of Action

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

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

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

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

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

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

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

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

24 **Ninth Cause of Action**

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

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

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

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

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

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

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

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

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

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

Tenth Cause of Action

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

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

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

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

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

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

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

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

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

12 **First Cause of Action**

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

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

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

20 3. For costs of suit herein incurred; and

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

22 **Second Cause of Action**

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

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

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

3. For costs of suit herein incurred; and

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

Third Cause of Action

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

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

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

3. For costs of suit herein incurred; and

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

Fourth Cause of Action

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

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

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

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

Eighth Cause of Action

WHEREFORE, cross-complainants pray judgment as follows:

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

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

Ninth Cause of Action

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

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

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

Tenth Cause of Action

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

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

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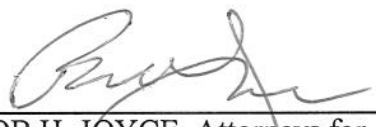
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- 3. For costs of suit incurred in this action; and
- 4. For such other and further relief as the Court deems proper.

Dated: April 16, 2009

LeBEAU • THELEN, LLP

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

PROOF OF SERVICE

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

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter Drive, Suite 300, Bakersfield, California 93309. On April 16, 2009, I served the within **CROSS-COMPLAINT OF DIAMOND FARMING COMPANY AND CRYSTAL ORGANIC FARMS, LLC FOR EQUITABLE AND MONETARY RELIEF AGAINST CROSS- COMPLAINANT PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT**

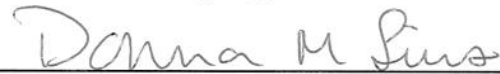
☒ **(BY POSTING)** I am "readily familiar" with the Court's Clarification Order. Electronic service and electronic posting completed through www.scefiling.org ; All papers filed in Los Angeles County Superior Court and copy sent to trial judge and Chair of Judicial Council.

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

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

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

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



DONNA M. LUIS