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5 Attorneys for Defendant and Cross-Complainant,  
6 Palmdale Water District  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**  
10

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

Judicial Council Coordination  
Proceeding No. 4408

13 **ANTELOPE VALLEY GROUNDWATER**  
14 **CASES**

[Assigned to The Honorable Jack Komar, Judge  
Santa Clara County Superior Court, Dept. 17]

Santa Clara Court Case No. 1-05-CV-049053

**Public Water Suppliers' Response to Phelan  
Piñon Hills Community Services District's  
Trial Brief**

15 Date: September 28, 2015  
16 Time: 10:00 a.m.  
17 Place: Los Angeles Superior Court  
18 Old Dept. 1 (Room 222)  
19  
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21  
22 The Public Water Suppliers, in their trial brief and elsewhere, have already set out their legal  
23 position in response to the claims of Phelan Piñon Hills Community Services District (Phelan), and will  
24 not repeat that position here. However, in its trial brief, Phelan proposed a number of modifications to  
25 the proposed Stipulated Judgment and Physical Solution. These modifications are inappropriate for  
26 several reasons, as explained below.  
27  
28

1 **I. The Stipulation provides that if the Court does not approve the Judgment as presented, the**  
2 **Stipulation is void.**

3 Paragraph 4 of the Second Amended Stipulation for Entry of Judgment and Physical Solution  
4 provides:

5 The provisions of the Judgment are related, dependent and not severable. Each and every term of  
6 the Judgment is material to the Stipulating Parties' agreement. If the Court does not approve the  
7 Judgment as presented, or if an appellate court overturns or remands the Judgment entered by the  
8 trial court, then this Stipulation is *void ab initio* with the exception of Paragraph 6, which shall  
9 survive.

10  
11 **II. The proposed modifications are inappropriate.**

12 The requested modifications are stated in italics, followed by the Public Water Suppliers'  
13 response.

14 **Proposal:** *Exhibit 3 to the Proposed Physical Solution should include "non-overlying*  
15 *production rights" in an amount of at least 700 AFY for Phelan Piñon Hills, consistent with Sections*  
16 *3.5.21 and 5.1.6.* **Response:** Phelan is not entitled to a production right in any amount.

17 **Proposal:** *Phelan Piñon Hills requests the following language be added to the end of [Section*  
18 *3.5.8]: "The Basin as so defined excludes some areas that are, in fact, hydrogeologically connected to*  
19 *and part of the basin, pursuant to Department of Water Resources Bulletin 118."* **Response:** The word  
20 "Basin" in the Judgment is a defined term used to denote the boundaries of the adjudicated area, as  
21 determined by the Court in Phase 1. While the area generally follows the Bulletin 118 boundaries, there  
22 are a number of deviations, as determined by the court following trial. There is nothing magic about a  
23 boundary drawn by the Department of Water Resources, and basin boundaries can be drawn in different  
24 places for different purposes.

25 **Proposal:** *The following language in Section 5.1.10 should be stricken, as there is no basis for it*  
26 *under the law: ... but shall not be entitled to benefits provided by Stipulation, including but not limited to*  
27 *Carry Over pursuant to Paragraph 15 and Transfers pursuant to Paragraph 16.* **Response:** Phelan has  
28 it backwards. While a number of stipulated physical solutions in California contain provisions for carry

1 over and transfer, there is no independent basis for those provisions in the law, and no court has granted  
2 such rights following a contested trial. The only basis for carry over and transfer rights is by stipulation  
3 of the parties. Phelan declined to participate in the stipulation, and therefore is not entitled to any  
4 benefits that arise solely by reason of the stipulation.

5 **Proposal:** *The Proposed Physical Solution should be modified so as not to characterize Phelan*  
6 *Piñon Hills as an “exporter.”* **Response:** Paragraph 6.4.1.2 of the Judgment provides that the  
7 injunction against “transporting Groundwater hereafter Produced from the Basin to areas outside the  
8 Basin” does not apply to certain production by Phelan, as specified. As stated above, “Basin” is a  
9 defined term meaning the area of adjudication. The word “export” appears only in the caption to  
10 Paragraph 6.4.1. According to Paragraph 20.12 of the Judgment, captions and headings are used solely  
11 as reference aids for ease and convenience and have no substantive effect.

12 **Proposal:** *In section 6.4.1.2, the phrase “together with any other costs deemed necessary to*  
13 *protect Production Rights decreed herein” should be stricken.* **Response:** This phrase simply gives  
14 discretion to the Watermaster to impose costs. The Watermaster’s discretion is subject to court review  
15 under Paragraph 20.3.

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17 Therefore, the Court should decline to make the modifications proposed by Phelan.

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19 Dated: September 24, 2015

Lagerlof, Senecal, Gosney & Kruse LLP

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21 By:                     /s/                      
22 Thomas S. Bunn III  
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