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9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

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

) Judicial Council Coordination Proceeding
) No. 4408

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

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

15 Included Actions:

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

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

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

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

) **OPPOSITION BY PHELAN PIÑON**
) **HILLS COMMUNITY SERVICES**
) **DISTRICT TO MOTION BY**
) **LOS ANGELES COUNTY**
) **WATERWORKS DISTRICT NO. 40 FOR**
) **LEGAL FINDINGS ON WATER CODE**
) **REQUIREMENTS TO REPORT**
) **EXTRACTIONS OF GROUNDWATER**
) **IN LOS ANGELES COUNTY**

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

) Date: February 14, 2012
) Time: 9:00 a.m.
) Room: 1515 (Dept. 316)

27 AND RELATED CROSS-ACTIONS
28

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

3 Phelan Piñon Hills Community Services District (“PPHCSD”) hereby opposes the motion
4 filed on or about January 17, 2012 by Los Angeles County Waterworks District No. 40
5 (“District 40”) seeking legal findings on Water Code requirements to report extractions of
6 groundwater in Los Angeles County (the “Motion”).¹

7 **I. INTRODUCTION AND SUMMARY**

8 Notwithstanding the breadth of the findings sought through the Motion, the findings sought
9 should be denied for the reasons stated herein; however, assuming, *arguendo*, that the Court finds
10 Water Code Section 4999 *et seq.*² applicable to parties to this proceeding, which should not be the
11 case, the Court’s findings should reflect the following standards:

- 12 (1) Absent an investigation pursuant to Section 5007 resulting in a determination by the
13 State Water Resources Control Board (“SWRCB”) involving facts stated in a Notice
14 of Extraction and Diversion of Water (“Notice”), “such notices shall not be evidence
15 of any fact stated therein” (Section 5007);
- 16 (2) As a matter of statutory construction, Section 4999 *et seq.* – namely, Section 5001 –
17 does not specifically preclude other exceptions for a party’s non-filing or late-filing
18 of a Notice from being invoked by a party or the Court, due to this adjudication
19 occurring as a single action in a “court of equity,” and/or due to those parties
20 situated in Kern County not being subject to Section 4999 *et seq.* while parties
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23 ¹ The Motion seeks legal findings (not factual findings) as to the applicability, and effect thereof, of
24 Water Code §§ 4999 *et seq.* to parties to this proceeding. Accordingly, PPHCSD submits this
25 opposition for purposes of clarifying what would be appropriate legal findings, should any such
26 findings be made, although first and foremost, PPHCSD contends the Motion is premature and
27 hereby joins in Sections I and III of the Opposition to the Motion filed January 31, 2012 by the
28 State of California, *et al.* (“State”). In addition to the State’s questions is: What standing does a
party have to invoke these statutes if the State Water Resources Control Board has not inquired
about non-filings or rejected late-filings of Notices? Does a statute of limitations apply?

² All references herein are to the California Water Code, unless otherwise stated.

1 situated in Los Angeles County are subject to these statutes, thereby potentially
2 creating different treatment of parties;

3 (3) Pursuant to Section 5003, the non-filing of a Notice means that a party did not
4 establish “notice” for purposes of proving prescription that otherwise would be
5 established by filing the Notice; however, the non-filing of a Notice does not
6 preclude a party from offering evidence that otherwise establishes “notice,”
7 including during the period of a non-filing;

8 (4) Similarly, pursuant to Sections 5003 and 5004, the non-filing of a Notice does not
9 preclude a party from offering evidence that groundwater was indeed produced
10 during any period of a non-filing of a Notice, and that such water was indeed
11 applied to a beneficial use; and,

12 (5) To find that non-filing of a Notice precludes a party from offering any evidence
13 during that period of non-filing regarding “notice” or “beneficial use,” whether for
14 proving prescription or otherwise potentially relevant, may amount to a forfeiture of
15 a water right, which is a draconian result contrary to California water law.

16 Ultimately, “[n]o case has determined the validity of this section, nor of late but retroactive
17 filings.” (Littleworth, Arthur L. and Garner, Eric L., *California Water II* (2007 Second Edition),
18 p. 78 [referring to Section 5004].) As such, the “validity” is subject to scrutiny, and for the reasons
19 stated *supra* and herein, the Motion should be denied, or alternatively, granted with findings
20 consistent with those stated herein.

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1 **II. ARGUMENT**

2 **A. Absent An Investigation Pursuant To Section 5007 Resulting In A**
3 **Determination By The State Water Resources Control Board (“SWRCB”)**
4 **Involving Facts Stated In A Notice Of Extraction And Diversion Of Water**
5 **(“Notice”), “Such Notices Shall Not Be Evidence Of Any Fact Stated Therein”**
6 **(Section 5007).**

7 The Motion incorrectly seeks for the amount stated in a Notice to be deemed the amount of
8 groundwater used by that party for that year. (Motion, p. 5:11-12; Notice of Motion, p. ii:11-12.)
9 The plain language of Section 5007, however, is clearly to the contrary: “In any action or
10 proceeding hereafter pending in which the facts, or any of them, contained in the notices so filed
11 are material, **such notices shall not be evidence of any fact stated therein**, but such
12 determination by the board shall be prima facie evidence of said facts.” (*Id.* [emphasis added].)

13 Instead, the language of Section 5003 allows for an amount from a Notice to be utilized, but
14 for purposes of establishing the maximum amount that may be claimed. (*See*, Section 5003 [“The
15 beneficial use of water from any ground water source within the four counties in any year by the
16 person shall be deemed not to exceed the quantity reported in the notice filed for that year.”].)
17 Thus, the Notice is not used to establish the amount of groundwater produced, but instead to place
18 a “cap” on the amount produced.

19 **B. Section 5001 Does Not Specifically Preclude Other Exceptions For A Party’s**
20 **Non-Filing Or Late-Filing Of A Notice From Being Invoked By A Party Or The**
21 **Court.**

22 As stated in the Motion, “In interpreting a statute, the California Supreme Court has held
23 that courts should adopt a literal or plain meaning interpretation. (*Lungren v. Deukmejian* (1988)
24 45 Cal. 3d 727, 735.” (Motion, p. 4:15-16.) Section 5001 identifies exceptions to the reporting

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1 requirements of Section 4999 *et seq.*³, however, the plain language of the statute does not include
2 any language stating that these exceptions are all inclusive, or that the Legislature otherwise
3 intended for any other exceptions to apply potentially. As such, other exceptions may apply, as
4 may be the case and subject to a court’s independent review and findings.

5 For instance, this matter is proceeding in a “court of equity,” wherein the Court is deciding
6 equitable causes of action, ultimately in furtherance of establishing a physical solution to protect
7 and manage the Basin on a long-term basis. In addition, the California Rules of Court (“CRC”),
8 including CRC 3.541, provide the Court with broad management powers for managing the case.

9 Consistent with the equitable nature of the Court and its broad powers, and given the fact
10 that this matter is now proceeding as a single action (particularly following consolidation on
11 February 19, 2010), those parties situated in Kern County not being subject to Section 4999 *et seq.*,
12 while parties situated in Los Angeles County are subject to these statutes, creates different
13 treatment of parties in a matter that is supposed to proceed as a single action, such that
14 consideration should be made as to whether different treatment caused by these statutes is
15 appropriate in this matter.

16 Other scenarios may exist in which the Court’s equitable and management powers call for
17 other “exceptions” to be made, beyond those identified in Section 5001. For purposes of
18 establishing general “legal findings” as sought through the Motion, however, the foregoing reasons
19 and bases for the same justify the Court finding now that other exceptions may apply, subject to the
20 Court’s determination at a later time, should such be sought by any party.

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26 ³ The Motion recognizes Section 5001 as listing exceptions, though the Motion summarily
27 concludes without any factual inquiries having been made that these exceptions “do not appear
28 applicable these [sic] coordinated proceedings.” (Motion, p. 2, fn. 2.)

1 **C. Pursuant To Section 5003, The Non-Filing Of A Notice Means That A Party**
2 **Did Not Establish “Notice” For Purposes Of Proving Prescription That**
3 **Otherwise Would Be Established By Filing The Notice; However, The Non-**
4 **Filing Of A Notice Does Not Preclude A Party From Offering Evidence That**
5 **Otherwise Establishes “Notice,” Including During The Period Of A Non-Filing.**

6 Returning to the plain language of a statute (discussed, *supra*), Section 5003 does not go so
7 far as to state that failure to file a Notice is failure to establish “notice” for purposes of proving
8 prescription. Conceivably, “notice” may very well be established as “actual notice” rather than the
9 “constructive notice” imparted by filing the Notice. Moreover, “[t]he initiation of legal
10 proceedings to protect a claim has been held sufficient to satisfy the claim of right element.”
11 (Slater, Scott S., *California Water Law & Policy* (Butterworth Legal Publishers, 2005) (“Slater”)
12 p. 4-17, sec. 4.06, *citing to, Yorba v. Anaheim Union Water Co.* (1953) 41 Cal.2d 265, 270; *also*
13 *citing to, Abbott v. Pond* (1904) 142 Cal. 393, 395 [“In most situations, the use of water is itself
14 sufficient proof of the claim of right.”].) Thus, Section 5003 is not a bar to otherwise establishing
15 notice during a period of non-filing of a Notice.

16 **D. Similarly, Pursuant To Sections 5003 And 5004, The Non-Filing Of A Notice**
17 **Does Not Preclude A Party From Offering Evidence That Groundwater Was**
18 **Indeed Produced During Any Period Of A Non-Filing Of A Notice, And That**
19 **Such Water Was Indeed Applied To A Beneficial Use.**

20 For the reasons stated in Section C, *supra*, Sections 5003 and 5004 are not a bar to
21 otherwise establishing groundwater produced was applied to a beneficial use during a period of
22 non-filing of a Notice. These Sections not supersede other statutory authorities, including those
23 stating: “It is hereby declared to be the established policy of this State that the use of water for
24 domestic purposes is the highest use of water and the next highest use is for irrigation.”
25 (Section 106.) Moreover, Section 106.5 provides: “It is hereby declared to be the established
26 policy of this state that the right of a municipality to acquire and hold rights to the use of water
27 should be protected to the fullest extent necessary for existing and future uses...” Accordingly,
28 Sections 5003 and 5004 are not a bar, at least to a public water supplier, to otherwise establishing

1 that such an entity produced water and applied it to beneficial use during a period of non-filing of a
2 Notice.

3 **E. To Find That Non-Filing Of A Notice Precludes A Party From Offering Any**
4 **Evidence During That Period Of Non-Filing Regarding "Notice" Or**
5 **"Beneficial Use," Whether For Prescription Or Otherwise Potentially Relevant,**
6 **May Amount To A Forfeiture Of A Water Right, Which Is Draconian Result**
7 **Contrary To California Water Law.**

8 The "legal findings" sought by the Motion theoretically could rise to a forfeiture of a
9 party's water right, which is a severe result and contrary to the authorities and compelling reasons
10 set forth, *supra*. Moreover, by way of analogy for forfeiture of surface water rights (for which the
11 SWRCB has jurisdiction), forfeiture is *not* subject to *automatic cessation*, but instead requiring
12 notice and opportunity to be heard. (*See, e.g., Slater, p. 2-100.3, Sec. 2.31[4], referring to*
13 *Section 1241 [Conditions forfeiture for nonuse upon a determination of the SWRCB, thus not*
14 *allowing an automatic cessation of rights but instead requiring a "predicate determination of some*
15 *form of an adverse use or abandonment."].) Thus, automatic forfeiture pursuant to Section 4999 *et*
16 *seq.* should not be permitted as a legal finding in this matter. Instead, the Motion should be denied,
17 or, alternatively, many unanswered factual and procedural questions should be answered and the
18 Court should afford a process regarding "exceptions" as set forth in Section B, *supra*.*

19 **III. CONCLUSION**

20 For the foregoing reasons, Phelan Piñon Hills Community Services District respectfully
21 requests the Court deny the Motion, or alternatively, make findings consistent as set forth, *supra*.

22 Dated: January 31, 2012

ALESHIRE & WYNDER, LLP
DAVID J. ALESHIRE
WILLIAM W. WYNDER
WESLEY A. MILIBAND

25 By: 

26 Wesley A. Miliband
27 Attorneys for Cross-Defendant and
28 Cross-Complainant,
Phelan Piñon Hills Community
Services District

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3 **PROOF OF SERVICE**

4 I, Linda M. Yarvis,

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 January 31, 2012, I served the within document(s) described as **OPPOSITION BY
8 PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT TO MOTION BY
9 LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 FOR LEGAL FINDINGS
ON WATER CODE REQUIREMENTS TO REPORT EXTRACTIONS OF
GROUNDWATER IN LOS ANGELES COUNTY** as follows:

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

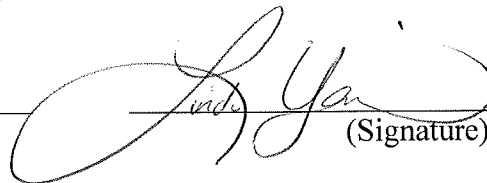
12 (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope
13 addressed as set forth above. I placed each such envelope for collection and mailing following
ordinary business practices. I am readily familiar with this Firm's practice for collection and
14 processing of correspondence 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
16 than one day after date of deposit for mailing in affidavit.

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

20 Executed on January 31, 2012, at Irvine, California.

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

22
23 Linda Yarvis
(Type or print name)


(Signature)