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8

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.

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

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

) **OPPOSITION BY PHELAN PIÑON**
) **HILLS COMMUNITY SERVICES**
) **DISTRICT TO MOTION BY AGWA**
) **FOR LEGAL FINDINGS DEFINING**
) **POTENTIAL PRESCRIPTIVE PERIOD**
) **PRIOR TO 1999**

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

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

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

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 18, 2012 by the Antelope Valley Groundwater Agreement Association
5 (“AGWA”) seeking legal findings defining the potential prescriptive period prior to 1999 (the
6 “Motion”).

7 **I. INTRODUCTION AND SUMMARY**

8 The Motion is premature, due to the Court not “officially” declaring that the next phase of
9 trial will involve prescription.¹ Assuming, *arguendo*, that the Court desires to address prescription
10 at this juncture and deems the Motion’s timing appropriate, the “base period” for prescription is but
11 one issue – or element – to handle. AGWA seeks for the base period to be the “initiation of the
12 adjudication” (Motion, p. 3:11), with AGWA purporting such period to be 1999 when “the first of
13 the lawsuits to adjudicate the Basin’s groundwater rights was filed by carrot growers” (*Ibid.* at p.
14 4:13-14).

15 For the reasons stated herein, the “base period” should not be 1999 or sooner as a matter of
16 law, but instead a period that appropriately encapsulates law, equity, and this Honorable Court’s
17 inherent discretion to manage this complex matter.

18 To that end, the base period(s) could, and should, be determined by when this adjudication
19 became a single action, for which a clear baseline does in fact exist: February 19, 2010, the date in
20 which the Court issued its Order Transferring And Consolidating Actions For All Purposes

21 _____
22 ¹ Various Case Management Conferences since the Summer of 2011 have explored issues for the
23 next phase of trial, ranging from management and regionalized issues to allocation issues,
24 including prescription, though more recent dialogue with the Court has focused on the latter.
25 Notably, however, the Court stated in the Statement of Decision Phase Three Trial (July 13, 2011)
26 that: “But having heard evidence about the aquifer as a whole, the Court is not making historical
27 findings that would be applicable to specific areas of the aquifer **or that could be used in a
28 specific way to determine water rights in particular areas of the aquifer.**” (*Id.* at p.4:21-24
[emphasis added].) This language suggests that further inquiry is needed to particular areas of the
aquifer, whether that be: (i) to address regionalized issues for identifying whether that portion of
the “aquifer” is in overdraft; (ii) to determine the type of water in that portion of the aquifer (e.g.,
appropriative or prescriptive); and/or (iii) to identify management areas.

1 (“Consolidation Order”) (*see*, footnote 2, *infra* at p. 4). Utilization of such a base period, or,
2 alternatively, making this base period available to parties claiming prescription, is consistent with
3 the law and appropriate for the following reasons:

- 4 (1) The Consolidation Order states in pertinent part that “Complete consolidation will
5 permit these matters to proceed as an *inter se* adjudication...” (*Id.* at p. 4:4-8), thus
6 giving rise to a single action;
- 7 (2) The Consolidation Order facilitated, if not fulfilled, compliance with the *McCarran*
8 *Amendment*, thus marking the time to which the “comprehensive adjudication”
9 requirement of federal law was adhered;
- 10 (3) Consolidation allows a single judgment among the various lawsuits existing prior to
11 consolidation, thus complying with the “single-judgment rule” and giving rise to a
12 single action commencing at the time of consolidation on February 19, 2010;
- 13 (4) Due process rights are infringed upon by utilizing a base period as proposed by
14 AGWA (October 29, 1999 based on Diamond Farming Co.’s filing) – or even the
15 date related lawsuits were filed by other parties including Wm. Bolthouse Farms,
16 Inc. on January 25, 2001 and Los Angeles County Waterworks District No. 40
17 during 2004 – as to those *current* parties who were not parties then, nor even in
18 existence; and,
- 19 (5) This Honorable Court is vested with broad discretion pursuant to the California
20 Rules of Court (“CRC”) to manage this complex matter, and utilization of a base
21 period based on the Consolidation Order’s date is consistent with procedures
22 previously employed by the Court to manage this matter.

23 **II. ARGUMENT**

24 While the general rule is that commencement of an “action” tolls the statute of limitations
25 for prescription, identification of *when* the “action” commenced is the critical inquiry.

26 In this complex matter, commencement of the action is not simply the date on which one of
27 the various lawsuits was filed, for the reasons stated, *infra*. Thus, AGWA’s request for the base
28 period to be defined prior to 1999 based on the first filing of one of the many lawsuits (Motion,

1 p. 5:4-5) – which was in a different county and did not encompass the current parties to this matter
2 – is inappropriate as a matter of law.

3 Instead, and for purposes of judicial economy, due process and other reasons as set forth
4 herein, commencement of this action for purposes of prescription occurred on February 19, 2010
5 due to this being the date in which the various related lawsuits were consolidated.² Because the
6 Phase Three Trial Statement Of Decision found that overdraft has occurred since 1951 (p. 6:1-4),
7 hundreds (and, perhaps thousands) of different base periods theoretically exist given that amount of
8 time and the number of parties potentially claiming prescriptive rights, which theoretically includes
9 those overlies who are also appropriators (e.g., groundwater produced is not used on that
10 property).

11 Accordingly, and consistent with California law, the Court’s prior Orders and case
12 management practices as authorized by the California Rules of Court, the “action” should be
13 determined to have commenced for purposes of prescription as set forth in footnote 2, *infra*, or, on
14 February 19, 2010.

15 **A. The Consolidation Order States In Pertinent Part That “Complete**
16 **Consolidation Will Permit These Matters To Proceed As An *Inter Se***
17 **Adjudication...” Thus Giving Rise To A Single Action.**

18 As the Court is all too aware, this complex proceeding is the product of several different
19 lawsuits, with the final cohesion of all cases coming together through the Court’s

20 _____
21 ² Alternatively and perhaps more appropriately, a base period could be determined by when the
22 Phase 4 proceeding “commenced/commences,” assuming Phase 4 involves prescription. That is to
23 say, is the base period determined by when Phase 3 ended, or when the Court identifies prescription
24 as being among the issues for Phase 4? The case authorities involving prescription generally entail
25 a more “traditional” litigation matter, rather than the unique and extraordinarily lengthy and
26 complex nature imposed by a groundwater adjudication involving a vast geographical area with
27 geological differences and thousands of parties to the proceeding. More specifically, a traditional
28 lawsuit would address the water rights claims sought through declaratory relief and quiet title
causes of action much sooner than can happen in a case of this magnitude. Thus, a “phase” of trial
on prescription is in many ways *the* trial, and in turn, an appropriate benchmark for identifying the
base period(s). Ultimately, the Court in this complex proceeding is vested with broad discretion to
fashion “tools” for managing this litigation toward final resolution, such as the base period(s)
proposed herein.

1 February 19, 2010 Order Transferring And Consolidating Actions For All Purposes
2 (“Consolidation Order”). The Consolidation Order states, in part, that “Complete consolidation
3 will permit these matters to proceed as an *inter se* adjudication of the rights of all the parties to
4 these consolidated cases to withdraw groundwater from the Antelope Valley Groundwater Basin.”
5 (*Ibid.* at p. 4:4-8.)

6 In turn, the consolidated actions are viewed as if there were a single complaint on joined
7 causes of action. (4 Witkin, Cal. Proc. (5th ed. 2008) Pleadings § 346 at p. 475.) As such, the date
8 of consolidation is when each party’s causes of action, or defenses thereto, were made *inter se*, or
9 “between or amongst themselves,” consequently giving rise to the “action” by and between *all* the
10 parties (rather than based selectively on the filing of one of the lawsuits consolidated into this
11 single action, whether Diamond Farming *et al.*’s in 1999, Bolthouse Properties, *et al.*’s in 2001,
12 Los Angeles County Waterworks District No. 40 (“District 40”) in 2004, etc.) Any of these filing
13 dates of the separate lawsuits, whether 1999 or 2004, would be inconsistent with well-settled case
14 law because not all parties *currently* in this action were a party to the lawsuits filed in 1999, 2001
15 or 2004. (*See, e.g., Montecito Valley Water Co. v. Santa Barbara* (1904) 144 Cal. 578.) Thus, the
16 consolidation date should serve as a base period.

17 **B. The Consolidation Order Facilitated, If Not Fulfilled, Compliance With The**
18 **McCarran Amendment, Thus Marking The Time To Which The**
19 **“Comprehensive Adjudication” Requirement Of Federal Law Was Adhered.**

20 The Consolidation Order serves not only as a clear “line in the sand” as to the time in which
21 the action “commenced,” but also as to when compliance occurred pursuant to the *McCarran*
22 *Amendment’s* requirement for a comprehensive adjudication in which the rights of all competing
23 claims are adjudicated, thereby lending another logical basis for the Court to identify a base period
24 for prescription.

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1 **C. Consolidation Allows A Single Judgment Among The Various Lawsuits**
2 **Existing Prior To Consolidation, Thus Complying With The “Single-Judgment**
3 **Rule” And Giving Rise To A Single Action Commencing At The Time Of**
4 **Consolidation On February 19, 2010.**

5 The “single-judgment rule” lends additional weight for finding that the action commenced
6 for purposes of prescription on February 19, 2010. As held by the California Supreme Court in
7 *Bank of America National Trust & Savings Ass’n. v. Superior Court of Los Angeles County* (1942)
8 20 Cal.2d 697, 700, “[T]here can be but one judgment in an action no matter how many counts the
9 complaint contains.” In light of rights to groundwater production in the Basin by a party
10 potentially affecting the rights of another party, a single-judgment is necessary; hence, the
11 consolidation, and in turn, the basis for the action “commencing” on February 19, 2010 for
12 purposes of prescription.

13 **D. Due Process Rights Are Infringed Upon By Utilizing A Base Period As**
14 **Proposed By AGWA (October 29, 1999 Based On Diamond Farming Co.’s**
15 **Filing) – Or Even The Date Related Lawsuits Were Filed By Other Parties**
16 **Including Wm. Bolthouse Farms, Inc. On January 25, 2001 And Los Angeles**
17 **County Waterworks District No. 40 During 2004 – As To Those Current Parties**
18 **Who Were Not Parties Then, Nor Even In Existence.**

19 Fundamental issues of due process (e.g., notice and opportunity to be heard) are triggered
20 by utilizing a base period determined by the filing of a lawsuit at a time in which a *current* party
21 was not named in that lawsuit. (Hutchins, Wells A. *The California Law of Water Rights* (State of
22 California 1956), p. 320 [Stopping of the running of the statute of limitations does not occur by a
23 “suit brought against the adverse claimant by a third party with whose title the owner of the
24 invaded right is not connected.”], *citing to, Montecito Valley Water Co. v. Santa Barbara* (1904)
25 144 Cal. 578.) Moreover, the primary purpose of the Phase One and Phase Two proceedings were
26 to identify the Basin boundaries and those parties to whom notice of the matter must be given,
27 particularly to comply with the *McCarran Amendment*.

28 ///

1 PPHCSD nor its predecessor-in-interest, however, were ever given notice by any party
2 before, during or after trial on Phases One and Two. Instead, PPHCSD, shortly after its formation,
3 requested intervention in this matter. As such, a party – whether PPHCSD or otherwise – cannot
4 be bound by the filing date of other lawsuits in which PPHCSD (nor its predecessor-in-interest)
5 was neither named, served or sought to be served, even after the Court issued its Orders following
6 trial on Phases One and Two.

7 Specifically, at the time of the lawsuits filed in 1999, 2001, and 2004, PPHCSD was not in
8 existence, nor was its predecessor-in-interest (County of San Bernardino Special Districts
9 Department’s Service Area 70) served with any complaint now consolidated into this action.
10 Moreover, the 2004 filing by District 40 is not controlling, at least on prescription issues relating to
11 PPHCSD, due to Civil Code § 1007 immunity against prescription, enjoyed by both PPHCSD and
12 District 40. In other words, District 40 cannot prescribe against PPHCSD, rendering its complaint
13 (or at least to the extent it seeks prescriptive rights) against PPHCSD an inappropriate benchmark
14 for identifying a base period.

15 Accordingly, the action did not “commence” for purposes of prescription, at least as to
16 PPHCSD, based on the filing date of the various lawsuits identified above and in the Motion.

17 **E. This Honorable Court Is Vested With Broad Discretion Pursuant To The**
18 **California Rules Of Court (“CRC”) To Manage This Complex Matter, And**
19 **Utilization Of A Base Period Based On The Consolidation Order’s Date Is**
20 **Consistent With Procedures Previously Employed By The Court To Manage**
21 **This Matter.**

22 The Court is uniquely vested with broad discretion in managing this complex matter
23 pursuant to California Rules of Court (“CRC”), namely CRC 3.541. This Court has previously
24 recognized its discretionary authority pursuant to CRC 3.541, including imposition of a procedure
25 for parties to file complaints and answers, including a *pro forma* format with parties answering “all
26 complaints and cross-complaints” or use of a “model answer.” The same can, and should be, done
27 with establishing a base period based, whether based on when Phase 4 (or whichever phase
28 involves prescription) commences/commenced, or based upon the Consolidation Order.

1 Accordingly and consistent with: (i) California law, including the authorities set forth,
2 *supra*, including those involving prescription and the single-judgment rule; (ii) the Court's
3 Consolidation Order, namely recognizing that a "single" action now exists by way of this Order,
4 and other pertinent procedural facts; and (iii) the Court's inherent power to manage this complex
5 proceeding pursuant to the California Rules of Court, the most appropriate base period for purposes
6 of determining a prescriptive right is to establish the five-year period immediately preceding when
7 Phase 4 (or whichever phase involves prescription) commences/commenced, or based upon the
8 Consolidation Order dated February 19, 2010. Either base period provides the Court and the
9 parties an appropriate and manageable period for discovery and trial. Thus, either base period
10 should either be employed by the Court, or, alternatively, be made available to a party seeking to
11 establish a prescriptive right.


12 **III. CONCLUSION**

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

15 Dated: January 31, 2012

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

18 By: _____


19 Wesley A. Miliband
20 Attorneys for Cross-Defendant and
21 Cross-Complainant,
22 Phelan Piñon Hills Community
23 Services District
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2
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 AGWA
FOR LEGAL FINDINGS DEFINING POTENTIAL PRESCRIPTIVE PERIOD PRIOR TO
1999** 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.

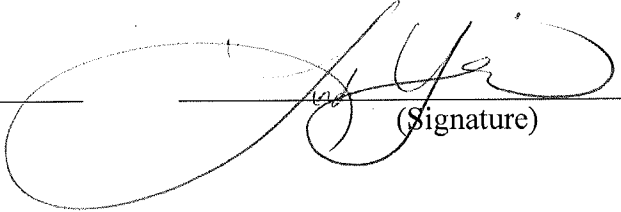
12 (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope
13 addressed as set forth above. I placed each such envelope for collection and mailing following
ordinary business practices. I am readily familiar with this Firm's practice for collection and
14 processing of correspondence 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
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,
with fees for overnight delivery paid or provided for.

19 Executed on January 31, 2012, 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 Linda Yarvis
23 (Type or print name)


24 (Signature)