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9 **SUPERIOR COURT OF CALIFORNIA**

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

11  
12 Coordination Proceeding ) Judicial Council Coordination Proceeding  
Special Title (Rule 1550(b)) ) No. 4408  
13 )  
14 **ANTELOPE VALLEY** ) (For Filing Purposes Only: Santa Clara  
**GROUNDWATER CASES** ) 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 ) **TRIAL SETTING CONFERENCE**  
 ) **STATEMENT OF PHELAN PIÑON**  
 ) **HILLS COMMUNITY SERVICES**  
19 *Los Angeles County Waterworks District* ) **DISTRICT**  
*No. 40 v.* )  
20 *Diamond Farming Co., et al.* )  
Kern County Superior Court, Case No. )  
21 S-1500-CV-254-348 )  
22 )  
23 *Wm. Bolthouse Farms, Inc. v. City of* )  
*Lancaster* ) **DATE: July 9, 2012**  
24 *Diamond Farming Co. v. City of Lancaster* ) **TIME: 9:00 a.m.**  
*Diamond Farming Co. v. Palmdale Water* ) **LOCATION: Stanley Mosk Courthouse,**  
25 *Dist.* ) **Dept. 1, Room 534**  
Riverside County Superior Court, )  
26 Consolidated Action, Case Nos. RIC 353 )  
840, RIC 344 436, RIC 344 668 )  
27 )  
28 **AND RELATED CROSS-ACTIONS** )

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

3 Phelan Piñon Hills Community Services District (“PPHCSD”) hereby submits this Trial  
4 Setting Conference (“TSC”) Statement for the TSC set for July 9, 2012.

5 PPHCSD has supported the ongoing mediation sessions before the Honorable  
6 Justice Ronald B. Robie, as well as ongoing settlement discussions among the parties in between  
7 sessions with Justice Robie. PPHCSD has continuously participated in these mediation sessions  
8 and settlement meetings. Though some tentative agreement has reportedly been reached by some  
9 parties on allocation of the safe yield, this issue remains unresolved for those parties with a  
10 tentative allocation agreement *and* those parties that are not part of the tentative agreement. In  
11 other words, allocation of the safe yield remains at issue for all parties.

12 To that end, and consistent with the Court’s Minute Order dated June 19, 2012, PPHCSD  
13 submits the following list of items to invite direction from the Court on various procedural, factual,  
14 and legal issues pertaining to Phase Four<sup>1</sup>:

15 **I. IDENTIFICATION OF PHASE FOUR ISSUES.**

16 Various Case Management Conferences (“CMC”) since the Summer of 2011 have explored  
17 issues for the next phase of trial, ranging from management and regionalized issues to allocation  
18 issues, including prescription. Numerous issues remain unresolved involving water rights (and  
19 rights to return flows, whether from imported or native supplies) and components to a “physical  
20 solution.”

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27 <sup>1</sup> PPHCSD understands that several of these items may be more appropriately addressed at a later  
28 time through briefing and otherwise. PPHCSD identifies these items as a non-exclusive list simply  
to identify issues that it believes assist with management of and preparation for Phase Four.

1           **A.     Establish Production History.**

2           To move this complex matter closer toward resolution in an efficient manner, the next  
3 phase of trial should entail each party offering sufficient and admissible evidence to the Court of  
4 that party’s production history, given the fact that allocation of the safe yield remains unresolved  
5 and for the following reasons:

6           (i)           This process would provide the factual foundation for legal issues to be resolved  
7                           through settlement *or* by the Court, which inevitably is necessary at some point  
8                           for settling and non-settling parties, thereby removing this critical component to  
9                           resolution of each party’s claim to water; and,

10          (ii)          This process would not require the Court and the parties to engage now in the  
11                           complexities of what the Court has correctly and generally recognized as  
12                           regional differences in the aquifer (discussed *infra*), which relates to *both* the  
13                           type of water right a party must establish *and* to physical solution components.

14          This proposed process is consistent with the Court’s comment from the Status Conference  
15 held on June 19, 2012, wherein the Court indicated that “whether by trial or prove up, the parties  
16 have to establish by competent evidence pumping history.”

17                       **1.     Same Standard And Burden Of Proof For Settling And Non-Settling**  
18                                       **Parties.**

19          Irrespective of whether this proposed process is adopted, no lesser standard or burden of  
20 proof should apply for settling parties to establish their claims to an allocation of the safe yield,  
21 particularly if the settling parties allocate the entire safe yield to the exclusion of non-settling  
22 parties (i.e., to the detriment of other parties’ rights). To allow such could produce a legally  
23 deficient result under relevant legal authorities, including *City of Barstow v. Mojave Water Agency*  
24 (2000) 23 Cal.4th 1224, by permitting a lower standard or burden of proof for approval of a  
25 settlement while holding non-settling parties to a different standard at trial.

26          Practically, the same standard should apply to non-settling and settling parties because of  
27 the contingencies inherent with the settlement process, including parties’ agreeing to an allocation  
28 contingent upon resolution of other issues, as well as many of the parties (public and private)

1 having to seek approval from their respective legislative or governing bodies. Even if these  
2 contingencies are successfully navigated, the ultimate contingency rests with the Court's approval,  
3 or lack thereof, of a settlement.

4 Thus, employing a more universal approach as proposed would ensure that all parties  
5 provide a sufficient basis for a water right through a legally-sound approach, while also achieving  
6 maximum efficiency relative to the alternative of diving into the type of water rights to be  
7 established by each party.

8 **2. Identification Of Time Period(s) For Offering Evidence Of Production**  
9 **History.**

10 Also irrespective of whether this proposed process specifically is adopted, the base period  
11 for production would need to be established. During the Status Conference on June 19, 2012, the  
12 Court indicated that it does not have a "firm notion in mind" but the Court may want current  
13 production information depending "in part on how much of the case gets settled." This notion  
14 lends itself to significant practical import for management of the basin. Recent historical  
15 production would also assist in this regard, as well as lay the foundation for later establishing (if  
16 necessary) an appropriative right, or prescriptive right (and related self-help invoked by overlying  
17 parties). The "base period" issue specific to prescription was briefed by various parties earlier this  
18 year, but the motion was denied without prejudice pending further case developments.

19 **B. Regional Issues.**

20 At some point, specific regional issues must be resolved, particularly before a phase of trial  
21 is set for establishing a specific type of water right – namely, prescriptive or appropriative rights.

22 The Court stated in the Statement of Decision Phase Three Trial (July 13, 2011) that: **"But**  
23 **having heard evidence about the aquifer as a whole, the Court is not making historical**  
24 **findings that would be applicable to specific areas of the aquifer or that could be used in a**  
25 **specific way to determine water rights in particular areas of the aquifer."** (Statement of  
26 Decision Phase Three Trial (July 13, 2011) ("Phase Three Decision"), p.4:21-24 [emphasis  
27 added].)

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1 This language indicates that the Phase Three Decision finding that the aquifer is in overdraft  
2 does not necessarily require an appropriator (whether a public or private entity) to prove  
3 prescription, but instead that further inquiry and findings are needed, whether that be: (i) to address  
4 regionalized issues for identifying whether that portion of the “aquifer” is in overdraft; (ii) to  
5 determine the type of water right held by a party in that portion of the aquifer (e.g., appropriative or  
6 prescriptive); and/or (iii) to identify management areas.

7 The Court also mentioned this issue during the June 19, 2012 Status Conference by noting  
8 that there are “variances in the valley and different relationships among and between parties, and  
9 we have been talking about the basin as a whole but sub-parts exist.” The Court also noted that it is  
10 unclear where and how this issue will be dealt with, and it would make for a very complicated trial.

11 To date, the trial phases have evolved from a global approach by identifying Adjudication  
12 Area boundaries; to identifying parties within those boundaries; to the general condition of the  
13 aquifer. Thus, prior to engaging in prescription issues, these regional issues are a legally-necessary  
14 step, particularly given: (i) the vast geographical size of the Basin, (ii) the Court’s comments stated,  
15 *supra*, as well as recognizing that the aquifer is not like a “bathtub” due to regionalized differences  
16 in geology and pumping (*Ibid.* at p. 9:13-19), and, (iii) whether those differences affect what type  
17 of right a party would need to prove at the time of trial.

18 **C. The Adjudication Boundary In The “Southeast Area” Of The Basin.**

19 Through prior dialogue with the Court during a Case Management Conference (“CMC”)  
20 this year, the Court invited PPHCSD to bring an evidentiary motion to address the existing  
21 adjudication boundary in the “southeast area,” specifically relating to the existence of the Antelope  
22 Valley hydrogeological basin extending farther east than the adjudication boundary currently set  
23 along the Los Angeles / San Bernardino County line. PPHCSD has been working diligently to be  
24 able to bring such a motion, which requires significant preparation.

25 Changing the circumstances since that CMC is a pending study of the Antelope Valley  
26 groundwater basin by the United States Geological Survey (“USGS”) that recently became known  
27 to many parties in this case, including PPHCSD.

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1 Separate from a confidential-mediation presentation by USGS to parties in this matter, the  
2 USGS made a public presentation on May 10, 2012 in Monterey, California during the semi-annual  
3 conference hosted by the Association of California Water Agencies. During this public  
4 presentation, the USGS discussed portions of its groundwater modeling, including aspects that  
5 relate to the southeast area of the basin. As such, USGS's work seems to relate directly to this  
6 issue (and many others), however, USGS has not provided significant detail and does not anticipate  
7 doing so until later this year.

8 Given the impact USGS's work may offer to the Court and the parties, it may be more  
9 appropriate to brief this issue at a later date, which would not create any further or unnecessary  
10 delay in this matter if the next phase of trial is for the parties to establish production history.  
11 Notably, this issue relates directly to PPHCSD's Eighth Cause of Action (Declaratory Relief –  
12 Boundaries of Basin).

13 **II. READINESS FOR TRIAL.**

14 In furtherance of facilitating as much efficiency as possible moving forward and advancing  
15 the abilities of the parties to prepare for Phase Four, PPHCSD respectfully submits the foregoing  
16 list of items for the upcoming Trial Setting Conference.

17 The time necessary to adequately prepare for trial turns on the scope and nature of the  
18 issues set for Phase Four, as well as what, if any, case management mechanisms are employed by  
19 the Court. Absent this information, PPHCSD is unable to identify the amount of time needed for  
20 trial preparation and for the trial itself, though PPHCSD respectfully suggests that expert  
21 disclosures, pre-trial statements, and motions in limine proceed toward a trial date set between  
22 May 2013 and July 2013, or as otherwise deemed most appropriate by the Court, if Phase Four  
23 serves to establish production history.

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1           **A. Utilization Of “Universal” Discovery, And, Any Remaining Defaults On**  
2           **Complaints Or Cross-Complaints.**

3           Given the breadth of discretion vested with the Court to manage this complex action  
4 pursuant to the California Rules of Court, this item relates to a question of whether, and if so to  
5 what extent, written and testimonial discovery for Phase Four can proceed by utilizing “universal”  
6 or “model” discovery, similar in concept to the “Model Answer” employed by the Court earlier in  
7 this action. Without any such discovery devices or standards, discovery would be extraordinarily  
8 cumbersome for the Court and the parties, due to the vast number of parties and potentially  
9 multiple water rights held by some parties (e.g., an overlying water right holder that also  
10 appropriates water). In addition, some parties may have yet to even file the “Model Answer” or  
11 otherwise avail themselves to the Court’s jurisdiction, raising a question of when to move for  
12 default (and the effect thereof on the final, single judgment to be entered by the Court).

13           Likewise, for those parties who filed Answers that include affirmative defenses, a  
14 procedural question exists as to which of those defenses that party seeks to establish, and whether  
15 those defenses would be part of Phase Four.

16           In addition, some parties may be in default for failure to respond to a complaint or cross-  
17 complaint in which that party is named. Direction from the Court as to when the Court prefers any  
18 motion for default be addressed would help maximize efficiency, rather than parties moving for  
19 default at different times.


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1           **B.     Establishing The Burden Of Proof, And, Whether Phase Four Issues Are**  
2                                   **Subject To A Jury Or Bench Trial.**

3           Though issues relating to identifying which parties bear – and what is – the appropriate  
4 burden of proof may seem like simple questions of law, the burden of proof for Phase Three was in  
5 dispute evident from relevant pleadings, and CMC Statements filed since conclusion of Phase  
6 Three reveal varying perspectives on other issues. Similarly, depending on what Phase Four  
7 encompasses, some issues may or may not be subject to a bench trial. Accordingly, all of these  
8 issues might lack consensus among the parties, which irrespective of consensus, are issues  
9 ultimately within the Court’s purview.

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11 Dated: July 6, 2012

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

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14 By:   
15 \_\_\_\_\_  
16 Wesley A. Miliband  
17 Attorneys for Cross-Defendant and  
18 Cross-Complainant,  
19 Phelan Piñon Hills Community  
20 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 July 6, 2012, I served the within document(s) described as **TRIAL SETTING**  
8 **CONFERENCE STATEMENT OF PHELAN PIÑON HILLS COMMUNITY SERVICES**  
**DISTRICT** 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.

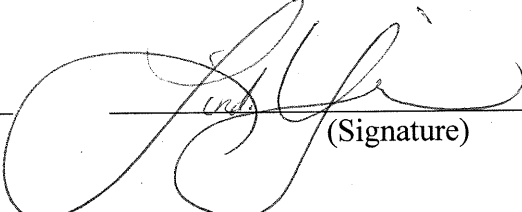
12  (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope  
13 addressed as set forth above. I placed each such envelope for collection and mailing following  
ordinary business practices. I am readily familiar with this Firm's practice for collection and  
14 processing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

16  (BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained  
17 by Overnight Express, an express service carrier, or delivered to a courier or driver authorized by  
said express service carrier to receive documents, a true copy of the foregoing document(s) in a  
18 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 July 6, 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  
(Type or print name)

23   
(Signature)