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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.*

18 Los Angeles County Superior Court, Case
No. BC 325 201

) **PHELAN PIÑON HILLS COMMUNITY
SERVICES DISTRICT'S EX PARTE
APPLICATION FOR AMENDMENT TO
DISCOVERY ORDER FOR PHASE 4
TRIAL; DECLARATION OF WESLEY
A. MILIBAND IN SUPPORT THEREOF**

19 *Los Angeles County Waterworks District*
No. 40 v.

20 *Diamond Farming Co., et al.*

21 Kern County Superior Court, Case No.
S-1500-CV-254-348

) **[[PROPOSED] First Amended Discovery
Order For Phase 4 Trial lodged
concurrently herewith]**

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.*

26 Riverside County Superior Court,
Consolidated Action, Case Nos. RIC 353
840, RIC 344 436, RIC 344 668

) Phase Four Trial Date: February 11, 2013

27 **AND RELATED CROSS-ACTIONS**
28

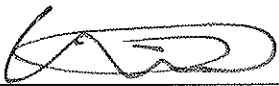
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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on December 20, 2012 at 8:30 a.m., a telephonic hearing will occur on Phelan Piñon Hills Community Services District's ("PPHCSD") *Ex Parte* Application for Amendment to Discovery Order for Phase 4 Trial. The Court will participate telephonically with all interested parties.

Dated: December 18, 2012

ALESHIRE & WYNDER, LLP

By: 
Wesley A. Miliband
Attorneys for Cross-Defendant and
Cross-Complainant,
Phelan Piñon Hills Community
Services District

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PPHCSD REQUESTS INCLUSION OF TWO POINTS IN THE EXISTING**
3 **DISCOVERY ORDER FOR PHASE 4 TRIAL.**

4 PPHCSD does not seek to expand the scope of the Phase 4 Trial or related discovery, as set
5 forth by the Court on December 12, 2012 through the: (i) Case Management Order For Phase 4
6 Trial (“Phase 4 CMO”) and (ii) Discovery Order For Phase 4 Trial (“Phase 4 Discovery Order”).
7 However, in order to avoid any misunderstanding amongst the parties and/or with the Court, and to
8 preserve rights to due process, PPHCSD respectfully requests inclusion of the following two points
9 by way of amendment to the Phase 4 Discovery Order, both of which counsel for PPHCSD raised
10 during recent Case Management Conferences (“CMCs” or “CMC”):

- 11 (1) The Parties are entitled to produce as much information as desired, including for
12 years 2005 through 2010, rather than being limited to years 2000 through 2004; and,
13 (2) Phase 4 does not include any claims to return flows resulting from use of native
14 water; any such claims are preserved for determination during later proceedings.

15 **A. The Parties Are Entitled To Produce As Much Information As Desired,**
16 **Including For Years 2005 Through 2010, Not Just Years 2000 through 2004.**

17 The Court indicated during the CMC on November 9, 2012 that a party may produce
18 additional information beyond the 2000 through 2004 period, which may include years 2005
19 through 2010. Despite other counsel who were preparing the proposed discovery order
20 representing to PPHCSD’s counsel that this language would be included, the proposed discovery
21 order did not include this language, which other legal counsel kindly recognized as an inadvertent
22 omission during the CMC on December 11, 2012. The Phase 4 Discovery Order in its current form
23 does not include this language. Accordingly, this language should be included to remain consistent
24 with the Court’s prior statements, which ultimately allows each party to offer evidence potentially
25 relevant to groundwater *production* to the extent such production is relevant for the Phase 4 Trial.

26 In order to dispel any concerns or potential opposition, PPHCSD does not seek inclusion of
27 this language for itself or for any other party to augment the scope of the Phase 4 Trial.
28

1 Rather, this inclusion is sought for purposes consistent with Phase 4, namely establishing
2 groundwater production (*not groundwater rights*), and this inclusion is sought to allow a party to
3 offer evidence for year(s) that can differ for legitimate reasons from the time period of 2000
4 through 2004. After all, those five (5) years have not been cast in stone with any legal significance
5 or legal finding by the Court, but instead were proffered by some counsel for a time period to use
6 for “historical” production.

7 **Phase 4 Does Not Include Any Claims To Return Flows Resulting From Use Of**
8 **Native Water; Any Such Claims Are Preserved For Determination During**
9 **Later Proceedings.**

10 Though the Phase 4 CMO and Phase 4 Discovery Order explicitly state that return flow
11 credits involve “water imported” or “imported water,” one or more parties may have a claim to
12 return flows resulting from use of native water.¹ As such, PPHCSD seeks clarification from the
13 Court that any such claim is preserved for determination during later proceedings, not during Phase
14 4. By making this clarification, the Court confirms the issue may be subject to determination at a
15 later time, and the Court eliminates the risk of some party claiming this issue should have been
16 litigated during Phase 4.

17 **PPHCSD RESPECTFULLY REQUESTS THE COURT ADOPT THE PROPOSED**
18 **FIRST AMENDED DISCOVERY ORDER FOR PHASE 4 TRIAL, LODGED**
19 **CONCURRENTLY HEREWITH.**

20 For the foregoing reasons, and any other reasons set forth through oral argument, PPHCSD
21 respectfully requests the Court adopt the proposed First Amended Discovery Order For Phase 4
22 Trial.

23
24
25 ¹ See, e.g., Slater, Scott S., *California Water Law & Policy* (Butterworth Legal Publishers, 2005)
26 (“Slater”) p. 2-19, sec. 2.08[7] (Return Flows) [“Water that returns to a stream ground-water basin,
27 after having been applied to beneficial use, is subject to further appropriation. The water remains
subject to appropriation irrespective of whether the return flows are traced to native or foreign
water supplies.”]

1 No party is unduly prejudiced by adopting either of these two points, yet some party(s) may
2 be prejudiced by either of these points not being included in the discovery order.

3 Dated: December 18, 2012

ALESHIRE & WYNDER, LLP

4

5

By: 

6

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

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DECLARATION OF WESLEY A. MILIBAND

I, Wesley A. Miliband, declare as follows:

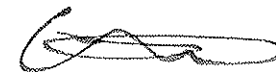
1. I am an attorney at law duly licensed to practice before all of the courts in the State of California. I am an attorney with the law firm of Aleshire & Wynder, LLP, counsel of record for Defendant and Cross-Complainant, Phelan Piñon Hills Community Services District (“PPHCSD”), in this action. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. Attached hereto as Exhibit “A” is a true and correct copy of my objection filed and posted on the Court’s website on November 19, 2012, which includes the court transcript from November 9, 2012 wherein the Court indicated that a party may produce information beyond the 2004 time period.

3. I raised this issue of including years 2005 through 2010 with all counsel attending the Court-ordered teleconference on Friday, December 14, 2012. I was requested to email the “liaison committee” the point that I seek for clarification, which I did that day. On Monday, December 17, 2012, I spoke with Michael D. McLachlan, Esq., counsel for Wood Class. Mr. McLachlan indicated that the *ex parte* application he was preparing relates only to the Phase 4 CMO, not to the Phase 4 Discovery Order. Accordingly, this separate *ex parte* application became necessary, and I prepared it as quickly as possible to afford as much notice and opportunity to the Court and to the parties in advance of Thursday morning.

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

Executed on this 18th day of December, 2012, at Irvine, California.



Wesley A. Miliband

Exhibit A

ORIGINAL FILED

NOV 19 2012

LOS ANGELES SUPERIOR COURT

By Fax

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 2 WILLIAM W. WYNDER, Bar No. 84753
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 5 daleshire@awattorneys.com
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 6 wmiliband@awattorneys.com

7 Attorneys for Defendant and Cross-Complainant,
 Phelan Piñon Hills Community Services District
 8

9 SUPERIOR COURT OF CALIFORNIA
 10 COUNTY OF LOS ANGELES - CENTRAL DISTRICT
 11

12 Coordination Proceeding
 Special Title (Rule 1550(b))
 13 ANTELOPE VALLEY
 14 GROUNDWATER CASES
 15 Included Actions:
 16 *Los Angeles County Waterworks District*
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 Los Angeles County Superior Court, Case
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 21 S-1500-CV-254-348
 22
 23 *Wm. Bolthouse Farms, Inc. v. City of*
Lancaster
 24 *Diamond Farming Co. v. City of Lancaster*
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 25 *Dist.*
 Riverside County Superior Court,
 26 Consolidated Action, Case Nos. RIC 353
 840, RIC 344 436, RIC 344 668
 27
 28 AND RELATED CROSS-ACTIONS

) Judicial Council Coordination Proceeding
) No. 4408
)
) (For Filing Purposes Only.: Santa Clara
) County Case No.: 1-05-CV-049053)
)
) Assigned for All Purposes To:
) Judge: Hon. Jack Komar
)
) (Filing Fees Exempt; Per Gov't Code § 6103)
)
) **OBJECTION BY PHELAN PIÑON**
) **HILLS COMMUNITY SERVICES**
) **DISTRICT TO PROPOSED ORDER(S)**
) **REGARDING DISCOVERY FOR**
) **PHASE FOUR; DECLARATION OF**
) **WESLEY A. MILIBAND IN SUPPORT**
) **THEREOF**

COPY

OBJECTION BY PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT
 TO PROPOSED ORDER(S) RE DISCOVERY FOR PHASE FOUR

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

3 Phelan Piñon Hills Community Services District (“PPHCSD”) hereby objects to the
4 proposed orders submitted regarding discovery for Phase Four to the extent that the proposed
5 orders do not reflect the Court’s position as stated during the Case Management Conference on
6 November 9, 2012 (“CMC”) allowing for production information to be provided for years 2005
7 through 2011.

8 During the CMC, the Court indicated that a party is “...entitled to provide as much
9 information” as desired, including for years 2005 through 2011. (Declaration of
10 Wesley A. Miliband (“Miliband Decl.”), ¶ 2, Exhibit A, Reporter’s Transcript of Proceedings from
11 November 9, 2012 (“Reporter’s Transcript”), pp. 20:8-22:6). Moreover, discovery beyond the
12 2000 through 2004 time period may be relevant to what the Court indicated it seeks in the next
13 phase of trial: “...what production of water is claimed by each party – irrespective of claims of
14 prescription, irrespective of whether parties are appropriators or overlying landowners, whether
15 they are governmental entities, or farmers...” (*Ibid.* at p. 10:16-22.)

16 To conform to the CMC, an Order involving discovery for Phase Four should state: “A
17 party may produce as much information as desired, including for years 2005 through 2011.”
18 Counsel for PPHCSD received confirmation from the “designated lead counsel” for public water
19 suppliers and overlayers that this language would be included, however, it was not included in a
20 proposed order, and other counsel has since indicated the omission was inadvertent. (Miliband
21 Decl., ¶ 3.)

22 In addition, and to conform to relevant legal authorities in determining a party’s water
23 rights including as set forth in *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224,
24 discovery beyond the 2000 through 2004 time period may be appropriate for some parties.

25 ///

26 ///

27 ///

28 ///

1 Accordingly, PPHCSD respectfully requests that the Court's Order regarding discovery for
2 Phase Four state that production information between years 2005 through 2011 is permissible, as
3 proposed above.

4
5 Dated: November 19, 2012

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

6
7
8 By: 

9 _____
10 Wesley A. Miliband
11 Attorneys for Cross-Defendant and
12 Cross-Complainant,
13 Phelan Piñon Hills Community
14 Services District
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DECLARATION OF WESLEY A. MILIBAND

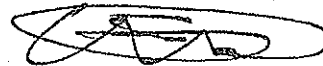
I, Wesley A. Miliband, declare:

1. I am an attorney at law duly licensed to practice before the Court of the State of California, and I am an attorney of record for Phelan Piñon Hills Community Services District (“PPHCSD”). I have personal knowledge of the facts contained herein as one of the attorneys handling this matter, and could and would testify competently thereto. This declaration is made in support of PPHCSD’s Objection to Proposed Order(s) Regarding Discovery for Phase Four.

2. Attached hereto as Exhibit “A” is a true and correct copy of the relevant pages from the Reporter’s Transcript of Proceedings for the Case Management Conference held on November 19, 2012.

3. Through email correspondence, I received confirmation from Mr. Steven R. Orr on Monday, November 12, 2012 and confirmation from Mr. Michael Fife on Wednesday, November 14, 2012 that the proposed order would include the following language: “A party may produce as much information as desired, including for years 2005 through 2011.” On Friday, November 16, 2012, Mr. Orr indicated to me that he inadvertently omitted this language from the proposed order that Mr. Orr submitted earlier that day.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on the 19th day of November, 2012, in Irvine, California.



Wesley A. Miliband

Exhibit A

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 1 HON. JACK KOMAR, JUDGE
4 COORDINATION PROCEEDING)
5 SPECIAL TITLE (RULE 1550(B)) JUDICIAL COUNCIL
6 ANTELOPE VALLEY GROUNDWATER CASES) COORDINATION NO.
7) JCCP4408
8)
9) SANTA CLARA CASE NO.
10) 1-05-CV-049053
11)
12)
13)
14)

8 PALMDALE WATER DISTRICT AND QUARTZ)
9 HILL WATER DISTRICT,)
10 CROSS-COMPLAINANTS,)
11 VS.)
12 LOS ANGELES COUNTY WATERWORKS)
13 DISTRICT NO. 40, ET AL.,)
14 CROSS-DEFENDANTS.)

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 FRIDAY, NOVEMBER 9, 2012

17
18 APPEARANCES:

19 FOR LOS ANGELES LEMIEUX & O'NEILL
COUNTY WATERWORKS BY: WAYNE LEMIEUX, ESQ.
20 DISTRICT 40, 4165 E. THOUSAND OAKS BLVD, SUITE 350
ET. AL. WESTLAKE VILLAGE, CALIFORNIA 91362
21 (805) 495-4770

22 FOR CITY OF RICHARDS WATSON & GERSHON
PALMDALE: BY: STEVEN R. ORR, ESQ.
23 355 SOUTH GRAND AVENUE, 40TH FL.
LOS ANGELES, CALIFORNIA 90071-3101
24 (213) 626-8484

25 FOR ANTELOPE BROWNSTEIN HYATT FARBER SCHRECK
VALLEY BY: MICHAEL FIFE, ESQ.
26 GROUNDWATER 21 EAST CARRILLO STREET
ASSOCIATION: SANTA BARBARA, CALIFORNIA 93101
27 (805) 882-1453

28 (APPEARANCES CONTINUED ON NEXT PAGE.)

‡

ANTE1109

2 WOOD: BY: MICHAEL MC LACHLAN, ESQ.
10490 SANTA MONICA BOULEVARD
3 LOS ANGELES, CALIFORNIA 90025
(310) 954-8270

4 FOR LOS ANGELES BEST BEST & KRIEGER
COUNTY WATERWORKS BY: JEFFREY V. DUNN, ESQ.
5 DISTRICT 40: 5 PARK PLAZA, SUITE 1500
IRVINE, CA 92614
6 (949) 263-2600

7 FOR ROSAMOND LAW OFFICES OF FRANK SATALINO
RANCH; ELIAS BY: FRANK SATALINO, ESQ.
8 SHOKRIAN; SHIRLEY 19 VELARDE COURT
SHOKRIAN: RANCHO SANTA MARGARITA, CA. 92688
9 (949) 735-7604

10 FOR UNITED U.S. DEPARTMENT OF JUSTICE
STATES: ENVIRONMENT AND NATURAL
11 RESOURCES DIVISION
BY: R. LEE LEININGER, ESQ.
12 999 18TH STREET, SUITE 370
DENVER, CO 80202
13 (303) 844-1364

14 APPEARANCES BY TELEPHONE:

15 SHELDON BLUM
WILLIAM BRUNICK
16 MARLENE ALLEN
THEODORE CHESTER
JANET GOLDSMITH
17 KATRINA GONZALEZ
STEFANIE HEDLUND
18 BRAD HERREMA
JOSEPH HUGHES
19 BOB JOYCE
RALPH KALFAYAN
20 ROBERT KUHS
SCOTT KUNEY
21 JAMES LEWIS
ANTHONY LEGGIO
22 EMILY MADUENO
WESLEY MILLIBAND
23 MANUEL RIVAS
CHRISTOPHER SANDERS
24 WILLIAM SLOAN
JENNIFER SPALETTA
25 JOHN TOOTLE
JOHN UKKESTAD
26 JAMES WORTH
RICHARD ZIMMER
27

SANDRA GECO, CSR NO. 3806
28 OFFICIAL REPORTER

‡

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 1 HON. JACK KOMAR, JUDGE

6 DEPARTMENT NO. 1 ANTE1109 HON. JACK KOMAR, JUDGE
7 REPORTER: SANDRA GECO, CSR NO. 3806
8 TIME: 09:00 A.M.
9 APPEARANCES: (AS NOTED ON TITLE PAGE.)

10

11 (THE FOLLOWING PROCEEDINGS WERE HELD
12 IN OPEN COURT:)

13

14 THE COURT: GOOD MORNING. THIS IS THE CASE, I
15 BELIEVE, CALLED THE ANTELOPE VALLEY COORDINATED CASES.
16 ALSO CONSOLIDATED.

17 OKAY. I UNDERSTAND THAT ROLL CALL HAS BEEN
18 MADE OF THOSE ON THE TELEPHONE.

19 I WOULD JUST REMIND YOU, IF YOU'RE ON THE
20 TELEPHONE AND YOU WISH TO BE HEARD, BE SURE EACH TIME YOU
21 IDENTIFY YOURSELF BY NAME SO THE REPORTER WILL BE ABLE TO
22 KEEP TRACK OF WHO'S TALKING, AS WILL I.

23 @ THOSE IN THE COURTROOM, I WOULD EXPECT YOU
24 TO IDENTIFY YOURSELVES EACH TIME YOU SPEAK FOR THE
25 BENEFIT OF THE COURT REPORTER. AND THAT WAY WE'LL HAVE A
26 CLEAR RECORD.

27 MR. BLUM: YOUR HONOR, IF I MAY SAY. THIS IS
28 SHELDON BLUM. I WAS NOT PRESENT WHEN ROLL CALL WAS MADE,

♀

2

1 BUT I AM CURRENTLY ON THE PHONE.

2 THE COURT: ALL RIGHT. THANK YOU, MR. BLUM.

3 MR. TOOTLE: YOUR HONOR, THIS IS JOHN TOOTLE. AND
4 I WAS NOT ON THE PHONE WHEN ROLL CALL WAS CALLED. AND I
5 AM PRESENT AS WELL.

6 THANK YOU, YOUR HONOR.

7 THE COURT: THANK YOU.

8 MS. GOLDSMITH: YOUR HONOR, THIS IS JAN GOLDSMITH

24 EVENT THAT ALL MATTERS HAVE TO BE -- THERE ARE NO EVEN
25 PARTIAL SETTLEMENTS.

26 AND I'VE REVIEWED THOSE SUGGESTIONS. AND
27 FRANKLY, THERE'S A LOT OF COMMONALITY TO THE VARIOUS
28 PROPOSALS.

♀

9

1 AND IT DOES SEEM TO ME THAT ONE OF THE
2 THINGS THAT WILL HELP US TO HAVE A TRIAL DURING THAT
3 PERIOD OF TIME THAT WILL BE EFFECTIVE TO RESOLVE A NUMBER
4 OF THE ISSUES WILL BE IF THE COURT MAKES AN ORDER FOR
5 SOME FORM DISCOVERY, AS I INDICATED THE LAST TIME WE WERE
6 IN SESSION.

7 AND I HAD ASKED THAT SOME OF THE
8 ADVERSARIES TO MEET AND CONFER. WE TOOK A BRIEF RECESS.
9 AND WHEN I TOOK THE BENCH AGAIN FOLLOWING THE RECESS, I
10 WAS TOLD THAT THERE WAS NO AGREEMENT AND THERE COULDN'T
11 BE.

12 SO AT THIS POINT, I THINK I'M GOING TO HAVE
13 TO MAKE SOME SPECIFIC ORDERS CONCERNING WHAT THAT
14 DISCOVERY OUGHT TO BE.

15 AND I'M PREPARED TO DO THAT.

16 AND I WILL TELL YOU THAT I THINK IN THAT
17 PHASE OF TRIAL, I WILL BE INTERESTED IN KNOWING WHAT
18 PRODUCTION OF WATER IS CLAIMED BY EACH PARTY --
19 IRRESPECTIVE OF CLAIMS OF PRESCRIPTION, IRRESPECTIVE OF
20 WHETHER PARTIES ARE APPROPRIATORS OR OVERLYING
21 LANDOWNERS, WHETHER THEY ARE GOVERNMENTAL ENTITIES, OR
22 FARMERS, OR SOUP COMPANIES OR ANYTHING ELSE -- SO THAT
23 I'M GOING TO EXPECT THAT WE HAVE ENOUGH INFORMATION SO
24 THAT PARTIES CAN DECIDE WHETHER OR NOT THEY WISH TO
25 DISPUTE ANY OF THE PARTICULAR CLAIMS.

17 CLAIMS ARE.

18 THERE ARE LEGAL ISSUES. THERE HAVE BEEN,
19 IN THE PAST, CONCERNS THAT IT'S INAPPROPRIATE FOR THE
20 GOVERNMENT TO OBTAIN RIGHTS AS A RESULT OF PRESCRIPTION.

21 THERE ARE A NUMBER OF CLAIMS THAT THAT
22 SHOULD BE, AT THE VERY LEAST, INVERSE CONDEMNATION, OR
23 EXPRESS CONDEMNATION.

24 AND I'M NOT RULING ON THOSE THINGS. BUT
25 THOSE ARE LEGAL ISSUES THAT ULTIMATELY ARE GOING TO HAVE
26 TO BE DECIDED IF THEY'RE RAISED.

27 AND AT THIS POINT IN TIME, I'M TELLING YOU
28 THAT I'M NOT GOING TO CONSIDER THOSE IN THE NEXT PHASE OF
19

1 THE TRIAL.

2 MR. LEMIEUX: OKAY.

3 THE COURT: WE'RE GOING TO TRY AND CONSIDER
4 EVERYTHING ELSE OTHER THAN THAT. AND THEN WE'LL PROBABLY
5 HAVE TO -- IF THE PARTIES REQUIRE IT -- IMPANEL A JURY TO
6 DEAL WITH PRESCRIPTION CLAIMS.

7 MR. LEMIEUX: OKAY. THANK YOU, YOUR HONOR.

8 MR. MILIBAND: YOUR HONOR, THIS IS WEST MILIBAND
9 FOR PHELAN PINON HILLS CSD.

10 THE COURT: YES.

11 MR. MILIBAND: GOING BACK TO THE HISTORICAL PERIOD
12 OF 2000 TO 2004, WE BECAME A PARTY AT THE END OF 2008.
13 SO I'D REQUEST THAT THE COURT ALLOW HISTORICAL PRODUCTION
14 OF INFORMATION TO INCLUDE THE PERIOD AFTER 2004. IN
15 OTHER WORDS, FROM 2005 TO 2011.

16 THE COURT: WELL, I'LL MAKE THAT DECISION AT THE
17 APPROPRIATE TIME.

18 IF YOU HAVE THE INFORMATION THAT YOU WISH
19 TO PROVIDE, YOU SHOULD DO SO.

20 AND I'M NOT SURE THAT IT'S GOING TO MAKE A
21 LOT OF DIFFERENCE.
22 OBVIOUSLY, THIS MAY HAVE TO BE BRIEFED AT
23 AN APPROPRIATE TIME. BUT IT DOES OCCUR TO ME THAT -- THE
24 CLAIM OF PRESCRIPTION IS BASICALLY A CLAIM OF ADVERSE
25 POSSESSION. AND THE TIME FOR THE PERIOD TO RUN COMMENCES
26 AT THE TIME WHEN THERE IS OVERDRAFT, WHENEVER THAT WAS.
27 AND THE PERIOD OF THE STATUTE OF LIMITATIONS DETERMINES
28 WHEN THE RIGHT ACCRUES.

20

1 I'M NOT MAKING AN ORDER CONCERNING THAT.
2 I'M NOT MAKING A DECISION. I'M OPINING.

3 GENERALLY, I WILL EXPECT THE PARTIES TO
4 PROVIDE ME WITH BRIEFING AT THE APPROPRIATE TIME
5 CONCERNING WHAT THE PERIOD OF THE STATUTE OF LIMITATIONS
6 MIGHT BE. BUT IT'S NOT AS IF YOU TAKE THE TIME OF THE
7 FILING OF THE COMPLAINT AND THEN GO BACK FIVE YEARS.

8 THAT IS NOT THE WAY ADVERSE POSSESSION IS
9 ESTABLISHED AS I UNDERSTAND THE LAW, NOR IS IT THE WAY
10 PRESCRIPTION IS ESTABLISHED AS I UNDERSTAND THE LAW.

11 BASICALLY, PRESCRIPTION AND ADVERSE
12 POSSESSION ARE NOTHING MORE THAN A PERIOD WHERE THE
13 STATUTE OF LIMITATIONS ON A CLAIM IS RUN.

14 NOW, THERE ARE PROBABLY SOME EXCEPTIONS TO
15 THAT. AND CERTAINLY WHEN THE RIGHT IS ESTABLISHED MAY BE
16 AT ISSUE, AS IT CLEARLY WILL BE IN THIS CASE.

17 IT'S NOT TOTALLY CLEAR AS TO WHAT FORM THE
18 PRESCRIPTION CLAIM TRIAL WILL TAKE AT THIS POINT.

19 MR. FIFE, YOU'RE STANDING THERE PATIENTLY.

20 MR. MILIBAND: YOUR HONOR, MAY I JUST PROVIDE A
21 QUICK RESPONSE? WEST MILIBAND FOR PHELAN CSD.

22 THE COURT: YES.

23 MR. MILIBAND: I UNDERSTAND EVERYTHING THE COURT
24 IS SAYING. AND IT'S PRECISELY FOR THOSE REASONS THAT I
25 JUST WANTED TO MAKE IT CLEAR, OR ASK FOR CLARIFICATION,
26 THAT A PARTY SUCH AS MY CLIENT IS NOT PRECLUDED FROM
27 PROVIDING ADDITIONAL INFORMATION BEYOND THE 2004 PERIOD
28 ARTICULATED BY THE COURT.

21

1 THE COURT: MR. MILIBAND, THAT'S TRUE. AND YOU'RE
2 CERTAINLY ENTITLED TO PROVIDE AS MUCH INFORMATION AS YOU
3 CAN, RECOGNIZING THAT THERE ARE SOME, I THINK, HAZY
4 ISSUES CONCERNING THE LOCATION OF YOUR PRODUCTION IN THAT
5 PORTION OF THE VALLEY, GIVEN THE MOJAVE LITIGATION, WHICH
6 IS ADJACENT TO IT.

7 ALL RIGHT. NOW, MR. FIFE.

8 MR. FIFE: GOOD MORNING, YOUR HONOR. MICHAEL FIFE
9 FOR THE ANTELOPE VALLEY GROUNDWATER AGREEMENT
10 ASSOCIATION.

11 TWO ISSUES. ONE ON RETURN FLOWS AND ONE ON
12 THE FEDERAL RIGHTS.

13 THE RETURN FLOWS WERE ACTUALLY VERY
14 CONTESTED IN PHASE THREE. SO I JUST WANT TO CORRECT
15 THAT. THERE WAS A LOT OF CROSS-EXAMINATION ON THAT.

16 BUT MORE --

17 THE COURT: CROSS-EXAMINATION DOESN'T NECESSARILY
18 ESTABLISH CONFLICT OR DISPUTE. IT MAY BE AN ATTEMPT.

19 MR. FIFE: I'LL SIMPLY STATE, THERE WAS -- WE
20 DISPUTE THEM.

21 BUT MORE IMPORTANTLY, THE CALCULATIONS THAT
22 WERE DONE IN PHASE THREE WERE DONE ON A GROSS BASIS. SO
23 SIMPLY LOOKING AT THE GROSS TOTAL OF WATER THAT WAS
24 IMPORTED AND APPLYING A PERCENTAGE TO IT.

2
3 **PROOF OF SERVICE**

4 I, Linda 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 November 19, 2012, I served the within document(s) described as **OBJECTION BY
8 PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT TO PROPOSED
ORDER(S) REGARDING DISCOVERY FOR PHASE FOUR; DECLARATION OF
9 WESLEY A. MILIBAND IN SUPPORT THEREOF** 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.

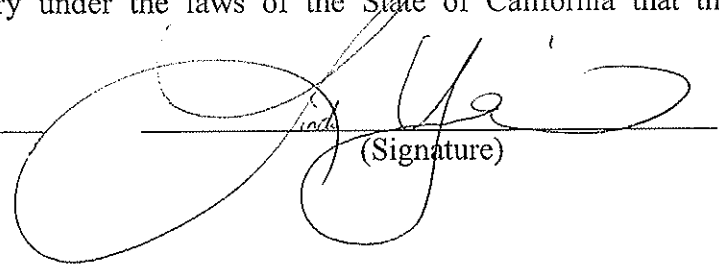
12 (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope
13 addressed as set forth above. I placed each such envelope for collection and mailing following
ordinary business practices. I am readily familiar with this Firm's practice for collection and
14 processing of correspondence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

19 Executed on November 19, 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)


(Signature)

2
3 **PROOF OF SERVICE**

4 I, Marie W. Young,

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 400,
Irvine, CA 92612.

7 On December 18, 2012, I served the within document(s) described as PHELAN PINON
8 HILLS COMMUNITY SERVICES DISTRICT'S EX PARTE APPLICATION FOR
AMENDMENT TO DISCOVERY ORDER FOR PHASE 4 TRIAL; DECLARATION OF
9 WESLEY A. MILIBAND IN SUPPORT THEREOF, as follows:

10 (ELECTRONIC SERVICE) By posting the document(s) listed above to the Santa Clara
County Sueprior 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.

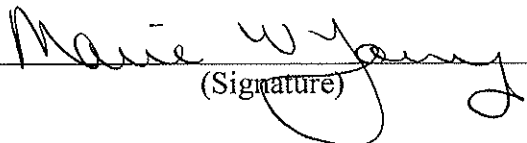
12 (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope
13 addressed as set forth above. I placed each such envelope for collection and mailing following
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14 processing of correspondence for mailing. Under that practice, 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 December 18, 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 Marie W. Young
23 (Type or print name)

24 
25 (Signature)