

1 ALESHIRE & WYNDER, LLP
DAVID J. ALESHIRE, Bar No. 65022
2 WILLIAM W. WYNDER, Bar No. 84753
WESLEY A. MILIBAND, Bar No. 241283
3 18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612
4 Telephone: (949) 223-1170
Facsimile: (949) 223-1180
5 daleshire@awattorneys.com
wwynder@awattorneys.com
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) 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) **PHELAN PIÑON HILLS COMMUNITY**
) **SERVICES DISTRICT'S OFFER OF**
) **PROOF AND [PROPOSED] ORDER RE**
19 *Los Angeles County Waterworks District*) **SAME; DECLARATION OF WESLEY A.**
No. 40 v.) **MILIBAND IN SUPPORT THEREOF**
20 *Diamond Farming Co., et al.*)
Kern County Superior Court, Case No.)
21 S-1500-CV-254-348)
) Phase Four Trial
22) Date: May 28, 2013
) Time: 10:00 a.m.
) Location: Central Civil West
23 *Wm. Bolthouse Farms, Inc. v. City of*)
Lancaster) 600 S. Commonwealth Avenue,
24 *Diamond Farming Co. v. City of Lancaster*)
Diamond Farming Co. v. Palmdale Water) 17th Floor, Dept. 322
Dist.) Los Angeles, California
25 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 Cross-Defendant and Cross-Complainant, Phelan Piñon Hills Community Services District
4 (“PPHCSD”), makes an Offer of Proof and moves this Court for admission into evidence
5 PPHCSD’s groundwater production quantities for 2011 and 2012, based upon the evidence it
6 previously and timely served on all parties to which some parties have stipulated while all other
7 parties have elected not to object to whatsoever as to PPHCSD’s groundwater production during
8 2011 and 2012.

9 PPHCSD bases this Motion on the Fourth Amendment to the Case Management Order for
10 Phase Four Trial and other authorities and references cited herein, including the Declaration of
11 Wesley A. Miliband.

12 **I. INTRODUCTION & OFFER OF PROOF.**

13 For approximately the past seven (7) months, the Court has held numerous hearings and
14 invited the parties on many occasions to offer proposals as to which of the many issues involved
15 with this highly complex matter should be tried during the Phase Four Trial. Those efforts came to
16 fruition during December 2012 with the fashioning of a Case Management Order for the Phase
17 Four Trial (“CMO”), followed by five (5) amendments to the CMO. With each amendment, this
18 trial phase became more tightly tailored, with the most recent amendment limiting the substantive
19 issue for this trial phase to groundwater production during 2011 and 2012.

20 The Fourth Amendment to the CMO is of particular import to the procedural process for
21 this trial phase, for this particular amendment sought to identify which parties are adversarial in this
22 phase and to provide an efficient process for trial. Specifically, the Fourth Amendment to the
23 CMO sets forth in great detail the effect of a party not serving objection(s) to another party’s
24 declarations or proposed stipulations.

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26 ///

27 ///

28 ///

1 As this amendment relates to PPHCSD, only two sets of objections were posted by the
2 Court-mandated deadline of May 3, 2013 yet none of those objections involved PPHCSD's
3 groundwater production for 2011 or 2012 (or even dating back to 2005).¹ Instead, the objections
4 raised against PPHCSD related to subject matter other than the quantities of groundwater produced,
5 all of which are beyond the scope of the Phase Four Trial.²

6 Irrespective of the Fourth Amendment to the CMO, PPHCSD's various discovery
7 disclosures over the past many months have been attested to by its General Manager as to the
8 substance and authenticity of various records that demonstrate the quantities and accuracy thereof
9 for groundwater produced by PPHCSD during 2011 and 2012.³

10 Having been given ample opportunity to object over the course of nearly six (6) months
11 since PPHCSD first disclosed its groundwater production information, and now with trial
12 commencing, the Court should deem this evidence admitted for purposes of this trial phase as *not a*
13 *single party* has objected to PPHCSD's groundwater production information in PPHCSD's
14 Proposed Stipulation,⁴ nor has any party sought the deposition of PPHCSD.

15 Specifically, PPHCSD's Offer of Proof as to its groundwater production for 2011 and 2012
16 is as follows:

17 ///

18 ///

19 ¹ See, Declaration of Wesley A. Miliband herein ("Miliband Decl."), ¶ 2, Exhibit A (Objections by
20 Bolthouse Properties, LLC *et al.*) and ¶ 3, Exhibit B (Objections by Los Angeles County
21 Waterworks District No. 40 *et al.*).

22 ² Miliband Decl., ¶ 2, Exhibit A, p. 12, lines 6-10, which simply say as to PPHCSD's Proposed
23 Stipulation: "Paragraphs 1-4, 10: Lack foundation and irrelevant to Phase 4 trial. Paragraphs 7-9:
24 Lack foundation, contains irrelevant matter not supported by admissible evidence." Paragraphs 5
25 and 6 are not challenged. *See also*, Miliband Decl., ¶ 3, Exhibit B, p. 17, lines 12-15, which says in
26 pertinent part for its objection: "Entire stipulation, except Paragraphs 5 and 6."

27 ³ *E.g.*, Discovery disclosures and declarations from December 21, 2012, January 31, 2013, and
28 April 18, 2013.

29 ⁴ Miliband Decl., ¶ 4, Exhibit C (PPHCSD's Proposed Stipulation and Exhibits, as electronically
30 served on all parties on March 11, 2013 ("Proposed Stipulation")), which provides at ¶¶ 5 and 6
31 PPHCSD's Well 14 production quantities and underlying records from which those quantities are
32 derived.

PPHCSD's Well 14	2011 Groundwater Pumping	2012 Groundwater Pumping
Pumping for 2011 and 2012 is for PPHCSD's Well 14, which is the only PPHCSD well located within the Antelope Valley Adjudication Area.	1,053.14 acre feet	1,035.26 acre feet ⁵

II. ARGUMENT.

This Court is vested with broad discretionary powers, evident from the history of this most unique case requiring significant case management decisions in order to navigate toward global resolution. PPHCSD joins in the legal argument and authorities set forth by the City of Los Angeles by and through its Department of Airports (“LAWA”) in its Motion In Limine For Admission Into Evidence Of Undisputed Portions Of Stipulation posted at page 5, lines 18 through 24. These authorities speak to the Court’s inherent and broad supervisory and administrative powers which include implementing specific procedures and requirements.⁶

Also, and as stated in the Fourth Amendment to the CMO:

“The Court intends for this Order to establish, consistent with the unique circumstances of these coordinated cases, a process for narrowing the factual disputes to be determined at the Trial and to eliminate, to the extent possible, the necessity of presenting evidence through witnesses at Trial. *The Court finds that the parties have had adequate time to review the substantial amounts of information disclosed pursuant to the Court’s prior orders for Phase Four of this matter.*”⁷

⁵ PPHCSD timely submitted on January 31, 2013 its records for Well 14 for calendar years 2011 and 2012, including handwritten “Well Logs” for all of the flowmeter and related readings involving the quantities of water produced by Well 14. PPHCSD provided a computation of groundwater production through November 30, 2012 based on that being the time frame set by the First Amendment to the CMO, however, with the Fifth Amendment indicating this trial phase seeks groundwater production “during” 2011 and 2012 (perhaps not just through November 2012), PPHCSD’s 2012 groundwater production stated above is for the entire calendar year and based upon the previously served records.

⁶ See, e.g., *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967; *First State Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 324, 336.)

⁷ Fourth Amendment to the CMO, ¶ 1, p. 3, lines 6-11 (emphasis added).

1 Contrary to what a small number of parties may claim, the fact is that all parties have been
2 afforded sufficient opportunity to identify objections and to do so in the manner prescribed by the
3 Court. While a disgruntled party may claim the Court did not allow sufficient time because the
4 Fourth Amendment to the CMO was entered on April 30, 2013 with a compliance time of May 3,
5 2013, the fact is (evident from a document search on the Court's website for this case) that the
6 *proposed* Fourth Amendment to the CMO was submitted on March 28, 2013, well over one month
7 prior to being entered. Thus, the parties were all on notice of the need to review one another's
8 groundwater production to formulate objections.

9 Nor does accepting a party's evidence, whether justified by the Court's inherent authority
10 and discretion in this case or by the Fourth Amendment to the CMO, somehow shift the burden of
11 proof. Instead, accepting a party's evidence, such as PPHCSD's Offer of Proof, establishes the
12 preponderance of evidence for which no contrary evidence has been disclosed.


13 Ultimately, parties cannot have *carte blanche* authority to raise an objection at any given
14 time; instead, rules and procedures imposed by the Court guide and protect against such an
15 unfettered and unjust process. In this instance, the Court elicited ideas from all counsel as to how
16 to tailor this trial phase in a manageable way, with the Fourth Amendment to the CMO being one
17 component toward that end while the Court maintains its discretion to do otherwise, such as
18 admitting into evidence an offer of proof, such as PPHCSD's made above.

19 **III. CONCLUSION.**

20 For all of the foregoing reasons, PPHCSD respectfully requests that the Court grant
21 PPHCSD's Offer of Proof as stated above for years 2011 and 2012.

22 Dated: May 23, 2013

ALESHIRE & WYNDER, LLP

23
24 By: 
25 Wesley A. Miliband
26 Attorneys for Cross-Defendant and
27 Cross-Complainant,
28 Phelan Piñon Hills Community
Services District

1 **DECLARATION OF WESLEY A. MILIBAND**

2 I, Wesley A. Miliband, declare:

3 1. I am a partner with the law firm of Aleshire & Wynder, LLP and I am the attorney
4 of record for Cross-Complainant Phelan Piñon Hills Community Services District (“PPHCSD”) in
5 this action. I have personal knowledge of each fact stated in this Declaration, which I make in
6 support of PPHCSD’s Offer of Proof for the Phase Four Trial.

7 2. Attached to this Declaration as Exhibit A are true and correct copies from the
8 Court’s website of pertinent sections of Objections by Bolthouse Properties, LLC *et al.* filed on
9 May 3, 2013.

10 3. Attached to this Declaration as Exhibit B are true and correct copies from the
11 Court’s website of pertinent sections of Objections by Los Angeles County Waterworks District
12 No. 40 *et al.* filed on May 3, 2013.

13 4. Attached to this Declaration as Exhibit C are true and correct copies from the
14 Court’s website of PPHCSD’s Proposed Stipulation and Exhibits, as electronically served on all
15 parties on March 11, 2013 (“Proposed Stipulation”).

16 5. PPHCSD timely submitted on January 31, 2013, at my direction, its records for Well
17 14 for calendar years 2011 and 2012, including handwritten “Well Logs” for all of the flowmeter
18 and related readings involving the quantities of water produced by Well 14. PPHCSD provided a
19 computation of groundwater production through November 30, 2012 based on that being the time
20 frame set by the First Amendment to the CMO, however, with the Fifth Amendment indicating this
21 trial phase seeks groundwater production “during” 2011 and 2012 (perhaps not just through
22 November 2012), PPHCSD’s 2012 groundwater production stated above is for the entire calendar
23 year and based upon the previously served records.

24 I declare under penalty of perjury under the laws of the State of California on this 23rd day
25 of May 2013 that the foregoing is true and correct.

26
27 By: 
28 Wesley A. Miliband

1 **[PROPOSED] ORDER**

2 **THE COURT FINDS THAT** the Offer of Proof made by PHELAN PIÑON HILLS
3 COMMUNITY SERVICES DISTRICT is either stipulated to or not materially contested by any
4 party.

5 **THE COURT FURTHER FINDS THAT** the Offer of Proof satisfies the requirements of
6 this Court for the purposes of the Phase 4 Trial proceedings.

7 **IT IS HEREBY ORDERED** that this Order shall not result in any determination of any
8 water right, or the reasonableness of PHELAN PIÑON HILLS COMMUNITY SERVICES
9 DISTRICT'S water use or manner of applying water to the use. This Order will not preclude
10 PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT from introducing in a later phase
11 evidence to support its claimed water rights, or any other party to this action from introducing in a
12 later phase evidence to contest PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT'S
13 claimed water rights, including, without limitation, evidence of water use in years other than 2011
14 and 2012. All parties reserve their rights to produce any evidence to support their claimed water
15 rights and to make any related legal arguments including, without limitation, arguments based on
16 any applicable constitutional, statutory, or decisional authority.

17 **IT IS FURTHER ORDERED** that pursuant to the Stipulation(s) of the parties to this
18 action and/or upon the failure of any party to make a valid objection thereto; and based upon the
19 offer of proof and/or evidence presented to this Court, the groundwater pumping claimed by
20 PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT for purposes of the Phase 4 trial
21 is as follows:

22

PERIOD	ACRE FEET PER YEAR
2011	1,053.14 acre feet
2012	1,035.26 acre feet

23
24
25

26 **IT IS SO ORDERED:**

27 DATED: _____, 2013

HONORABLE JACK KOMAR

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 May 24, 2013, I served the within document(s) described as **PHELAN PIÑON HILLS**
8 **COMMUNITY SERVICES DISTRICT'S OFFER OF PROOF AND [PROPOSED] ORDER**
9 **RE SAME; DECLARATION OF 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
Court's Clarification Order. Electronic service and electronic posting completed through
11 www.scefilng.org.

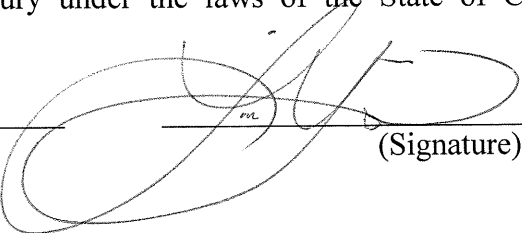
12 (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope
addressed as set forth above. I placed each such envelope for collection and mailing following
13 ordinary business practices. I am readily familiar with this Firm's practice for collection and
processing of correspondence for mailing. Under that practice, the correspondence would be
14 deposited with the United States Postal Service on that same day, with postage thereon fully
prepaid at Irvine, California, in the ordinary course of business. I am aware that on motion of the
15 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 May 24, 2013, 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 
25 (Signature)