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10

11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**
13

14 Coordination Proceeding) Judicial Council Coordination Proceeding
Special Title (Rule 1550(b))) No. 4408
15)
16 **ANTELOPE VALLEY**) (For Filing Purposes Only: Santa Clara
GROUNDWATER CASES) County Case No.: 1-05-CV-049053)
17 Included Actions:) Assigned for All Purposes To:
) Judge: Hon. Jack Komar
18 *Los Angeles County Waterworks District*) Dept: 17
No. 40 v.)
19 *Diamond Farming Co., et al.*) (Filing Fees Exempt, Per Gov't Code § 6103)
Los Angeles County Superior Court, Case)
20 *No. BC 325 201*) **PHASE III TRIAL BRIEF OF PHELAN**
) **PINON HILLS COMMUNITY**
21 *Los Angeles County Waterworks District*) **SERVICES DISTRICT**
No. 40 v.)
22 *Diamond Farming Co., et al.*)
Kern County Superior Court, Case No.)
23 *S-1500-CV-254-348*) Phase III Trial Date: January 4, 2011
) Time: 9:00 a.m.
24 *Wm. Bolthouse Farms, Inc. v. City of*) Dept.: 1
Lancaster)
25 *Diamond Farming Co. v. City of Lancaster*)
Diamond Farming Co. v. Palmdale Water)
26 *Dist.*)
27 *Riverside County Superior Court,*)
Consolidated Action, Case Nos. RIC 353)
28 *840, RIC 344 436, RIC 344 668*)

1 AND RELATED CROSS-ACTIONS)
2 _____)

3 Cross-Defendant and Cross-Complainant, Phelan Piñon Hills Community Services District
4 (“PPHCSD”), submits the following trial brief for Phase III of trial.

5 **I. INTRODUCTION**

6 Phase III of the Antelope Valley Groundwater Adjudication (“Adjudication”) is PPHCSD’s
7 first opportunity to participate in the trial of this matter. PPHCSD was formed in 2008, after the
8 Phase I trial. PPHCSD sought to become a party to the Adjudication in November 2008 by
9 informing the Court of PPHCSD’s intention to intervene in the Adjudication for a determination of
10 its water rights in the Antelope Valley Groundwater Basin (“Groundwater Basin”).¹ PPHCSD
11 seeks a declaration of its water rights and injunctive relief in the form of a physical solution
12 overseen by a Court-appointed watermaster, with the Court retaining jurisdiction over the case.

13 While PPHCSD’s service area is located in San Bernardino County, just east of the
14 Adjudication Area, a significant percentage of the groundwater PPHCSD produces is from the
15 hydrogeologic Groundwater Basin as described in DWR Bulletin 118. That description was relied
16 on in the Court’s Phase I Order (*see*, footnote 1, *supra*; *see also*, Exhibit 1, Phase I Order, p. 4,
17 _____)

18 ¹ “Groundwater basin” is not subject to a single definition. The Court stated as part of its Phase I
19 Order dated November 3, 2006 (“Phase I Order”), “ ... that the alluvial basin as described in
20 California Department of Water Resources [DWR] Bulletin 118-223 should be the basic
21 jurisdictional boundary for purposes of this litigation.” (*See*, Exhibit 1, Phase I Order, p. 4, lines 6-
22 8.) DWR Bulletin 118 (2003 update) illustrates (as does Exhibit 2, *infra*) that the hydrogeologic
23 Antelope Valley Groundwater Basin extends east of the Los Angeles/San Bernardino County line,
24 into San Bernardino County, extending to within the area adjudicated in the Upper Mojave River
25 Valley Groundwater Basin Adjudication (“Mojave Valley Adjudication”), in which a final
26 judgment was reached and a watermaster appointed. (*See, City of Barstow, et al. v. Mojave Water*
27 *Agency, et al.* (2000) 23 Cal.4th 1224.)

28 Unless otherwise noted, all references to the “Groundwater Basin” shall mean the hydrogeologic
Antelope Valley Groundwater Basin as set forth in the Phase I Order and DWR Bulletin 118. All
references to the “Adjudication Area,” unless otherwise noted, shall refer to that portion of the
Groundwater Basin established by the Court’s Phase I Order, meaning the Adjudication Area’s
eastern boundary is the Los Angeles/San Bernardino County line because the Mojave Valley
Adjudication Area’s western boundary is the Los Angeles/San Bernardino County line. As a result,
a portion of the hydrogeologic Groundwater Basin in this Adjudication exists within the area
adjudicated in the Mojave Valley Adjudication Area.

1 lines 6-8). One of PPHCSD's most productive wells – Well 14 – is located in Los Angeles County
2 and draws water from the Groundwater Basin, thus placing this well within both the Adjudication
3 Area and the hydrogeologic Groundwater Basin.

4 PPHCSD will offer evidence during Phase III about the condition of the aquifer in the
5 Southeastern portion of the Antelope Valley Groundwater Basin. The evidence will be offered
6 primarily through its designated expert, Thomas Harder. The nature of the hydrogeologic
7 Groundwater Basin and its relationship to the Adjudication Area is critical to understanding the
8 condition of the Antelope Valley Groundwater Basin. The evidence PPHCSD will offer focuses on
9 the condition of the Southeast area of the Groundwater Basin, and will show that as to the portion
10 of the Antelope Valley Groundwater Basin studied by PPHCSD, the Groundwater Basin is in
11 overdraft now, or trending toward overdraft.

12 Ultimately, PPHCSD seeks a finding by the Court that the prevailing condition of the
13 Groundwater Basin is such that the Court may exercise its equitable powers to move this matter
14 towards a declaration and final adjudication of water rights, together with this Court's injunctive
15 relief fashioned to provide a "physical solution" with localized management areas and continuing
16 jurisdiction.

17 **II. FACTUAL BACKGROUND OF PHELAN PINON HILLS COMMUNITY**
18 **SERVICES DISTRICT**

19 The evidence to be offered by PPHCSD will show that its service area is located at the
20 northern base of the San Gabriel Mountains in the westernmost portion of San Bernardino County,
21 placing PPHCSD within the Southeast area of the Groundwater Basin. (*See*, Exhibit 2,
22 *Groundwater Basins*².) Even though PPHCSD's service area is within the Mojave Valley
23 Adjudication Area, the majority of PPHCSD's pumping occurs within the Groundwater Basin as
24 identified in DWR Bulletin 118. DWR Bulletin 118 and other documents show that the

25 _____
26 ² Exhibit 2 is adopted from Figure 5 found in the report entitled, *Analysis of Historical*
27 *Groundwater Production by the Phelan Pinon Hills Community Services District* (July 13, 2010)
(the "Report"), prepared by PPHCSD's expert, Thomas Harder. The Report was electronically
28 served and disclosed to all parties July 15, 2010.

1 Groundwater Basin, from which PPHCSD pumps water, extends on either side of, and is
2 hydrogeologically continuous across, the Los Angeles/San Bernardino County line (*see*, Exhibit
3 2).

4 PPHCSD is a public agency organized under the Community Services District Law, found
5 at Government Code §§ 61000 *et seq.* It was formed by Resolution of the San Bernardino County
6 Local Agency Formation Commission following an election conducted February 5, 2008, in which
7 the voters approved the formation of PPHCSD as the consolidation of three special districts: San
8 Bernardino County Zone-L-70 (Water); San Bernardino County CSA09 (Phelan Parks and Street
9 Lighting); and San Bernardino County CSA 56-F1 (Piñon Hills Parks) (collectively, “San
10 Bernardino County”). As such, PPHCSD is the successor to San Bernardino County.

11 The evidence PPHCSD will offer shows that as a public water purveyor, PPHCSD provides
12 municipal and industrial water service to more than 21,000 residents through approximately 6,700
13 service connections, of which approximately 1,500 are located within the Groundwater Basin.
14 PPHCSD relies entirely on groundwater pumped from thirteen wells to provide water supply to a
15 service area of approximately 120 square miles. Historical land use in PPHCSD’s service area
16 includes cattle ranching, farming and residential uses, with the unincorporated communities of
17 Phelan and Piñon Hills serving as the population centers for the area.

18 The evidence PPHCSD will offer shows that prior to 2008, water service for the PPHCSD
19 service area was provided by San Bernardino County, which operated all of PPHCSD’s current
20 water service facilities, including groundwater production wells. Six of San Bernardino County’s
21 groundwater production wells are located within the Groundwater Basin. Although San
22 Bernardino County pumped groundwater from other groundwater basins to the east, a significant
23 portion of its production occurred from wells in the Groundwater Basin.

24 Until PPHCSD engaged Mr. Harder to undertake a focused study of the condition of the
25 aquifers from which it produces, both the Southeast area of the Groundwater Basin as well as the
26 West/Southwest portion of the Mojave Valley Adjudication Area had not been studied in detail.
27 Neither the Southeast area of the Adjudication Area, nor the West/Southwest portion of the Mojave
28 Valley Adjudication Area, had previously been studied for the purposes of the Mojave Valley

1 Adjudication. Except for the study undertaken by PPHCSD's expert hydrogeologist, this same area
2 has not been studied in detail by any of the experts who have previously testified in Phases I and II,
3 or who have been identified to testify during Phase III of these proceedings.

4 The evidence PPHCSD will offer will show that to meet the various land uses and needs of
5 its residents, PPHCSD operates thirteen wells, including one well – Well 14 – located on the west
6 side of the Los Angeles-San Bernardino County line. (*See, Exhibit 2, Groundwater Basins.*) In
7 addition to Well 14, PPHCSD pumps from five other wells located within the Groundwater Basin.
8 (*Id.*) The evidence PPHCSD will offer is that PPHCSD's pumping from wells located within the
9 Groundwater Basin intercepts groundwater that would otherwise flow into the Adjudication Area
10 and affects the condition of the Adjudication Area. Likewise, much of the water pumped and
11 delivered by PPHCSD results in "return flow" to the Groundwater Basin, which affects the water
12 balance of the Adjudication Area.

13 **III. PROCEDURAL BACKGROUND SINCE THE COURT ISSUED ITS PHASE I AND** 14 **PHASE II ORDERS**

15 PPHCSD was organized after the Court issued its Order following Phase I. PPHCSD was
16 brought into this groundwater adjudication as a party through cross-complaints filed by several
17 parties, to which PPHCSD responded by Answer and cross-complaints against various parties for
18 declaratory and injunctive relief.

19 The Court has held Case Management Conferences ("CMC" or "CMCs") to address various
20 issues, including the scope of Phase III of the trial.

21 During the CMC on March 8, 2010 ("March 8, 2010 CMC"), the Court indicated its
22 preference to hear in the "aggregate" but also to hear about the:

23 "... individual areas as to the basin and what's happening in those particular areas
24 in terms of what the impact is. I know there is conductivity and connectivity, but
25 I want to know the extent of it with regard to the various portions of it in the
26 valley now."

(*See, Exhibit 3, Court Reporter's Transcript ("Transcript") from March 8, 2010
26 CMC, p. 41, lines 19-24.*)

27 Similarly during the CMC held on March 22, 2010 ("March 22, 2010 CMC"), the Court
28 stated that its "concern at this point is with whether or not the basin as a whole or parts, thereof, are

1 in overdraft...” (See, Exhibit 4, Transcript from March 22, 2010 CMC, p. 14, line 28 through p.
2 15, line 2.) Broadly stated, the Court indicated that it wants to “hear the evidence as to the current
3 status of the basin” (*Id.*, at p. 20, lines 10-11), recognizing that “[i]t may be that somebody wants
4 to produce evidence that shows that their portion, their land is in an area where pumping has no
5 affect on anything” (*Id.*, at p. 22, lines 14-16).

6 The Court subsequently issued an Order dated March 22, 2010, in which the Court stated
7 that it:

8 “...will not hear any evidence concerning prescription claims nor does it expect to
9 hear evidence of individual pumping of water by any party within the basin; rather,
10 it expects to hear evidence concerning total pumping and total recharge from all
11 sources, with a further breakdown showing the amount of imported water on an
12 annual basis.”

(See, Exhibit 5, Order dated March 22, 2010, p. 3, lines 5-8.)

12 PPHCSD will offer evidence during Phase III consistent with the Court’s position as stated
13 during the CMCs and reflected in the Court’s Orders.

14 IV. THE CONDITION OF THE SOUTHEAST AREA OF THE 15 GROUNDWATER BASIN

16 The evidence PPHCSD will offer is that the entire hydrogeologic Groundwater Basin,
17 including that portion which is east of the Los Angeles/San Bernardino County line, must be
18 evaluated and taken into account in order to fully understand the condition of the Southeastern
19 portion of the Adjudication Area. PPHCSD’s expert hydrogeologist agrees with the identification
20 of the Groundwater Basin, as reflected in DWR Bulletin 118, and PPHCSD will offer evidence that
21 the groundwater basin is hydrogeologically continuous across the Los Angeles/San Bernardino
22 County line.

23 PPHCSD will offer evidence that pumping from PPHCSD’s six wells located within the
24 Groundwater Basin intercepts groundwater that would otherwise flow to the northwest and into a
25 portion of the Adjudication Area where irrigation pumping by others is occurring. The evidence
26 indicates, among other things, that the combination of PPHCSD pumping and downgradient
27 pumping by others has resulted in declining groundwater levels in the Southeast portion of the
28 Adjudication Area, particularly over the past ten years. Groundwater level trends indicate that

1 overdraft exists in the Southeast area of the Adjudication Area, or will exist in the near future, if
2 groundwater pumping in this area continues at current rates or increases.

3 **V. CONCLUSION**

4 Consistent with the Court's earlier Orders from Phase I of trial and more recent Case
5 Management Conference hearings, PPHCSD will offer evidence during Phase III that focuses on
6 the condition of the Groundwater Basin in the Southeast area. The entire hydrogeologic
7 Groundwater Basin must be evaluated in order to achieve a complete understanding of the
8 Groundwater Basin's condition, including east of the Los Angeles/San Bernardino County line.
9 Evidence about the condition of the Groundwater Basin in the Southeast area has not yet been
10 made available for the Court's consideration. This comprehensive examination of the Groundwater
11 Basin allows for a sound methodological study of the Southeast area, which yields results
12 demonstrating that the Groundwater Basin – or at least the Southeast area thereof – is in overdraft
13 or trending toward overdraft.

14 PPHCSD will ask the Court to exercise its equitable powers to work toward formulation of
15 a "physical solution" to protect the Groundwater Basin allowing management. This will allow the
16 parties to maximize the beneficial use of all water resources for the benefit of the residents and
17 customers who rely on the Antelope Valley Groundwater Basin.

18
19 Dated: December 10, 2010

SMITH TRAGER, LLP
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WESLEY A. MILIBAND

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21
22
23 By: 

Susan M. Trager
Attorneys for Cross-Defendant and
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 400,
Irvine, CA 92612.

7 On December 10, 2010, I served the within document(s) described as **PHASE III TRIAL**
8 **BRIEF OF PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT (Including**
Exhibits 1 through 5), 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.

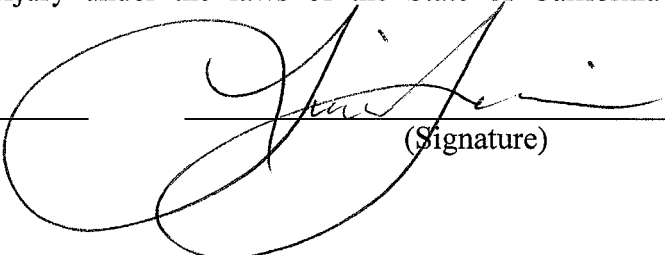
16 (BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained
17 by Overnight Express, an express service carrier, or delivered to a courier or driver authorized by
said express service carrier to receive documents, a true copy of the foregoing document(s) in a
18 sealed envelope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

19 (BY FAX) By transmitting a true copy of the foregoing document(s) via facsimile
20 transmission from this Firm's sending facsimile machine, whose telephone number is (949) 223-
1180, to each interested party at the facsimile machine telephone number(s) set forth above. Said
21 transmission(s) were completed on the aforesaid date at the time stated on the transmission record
issued by this Firm's sending facsimile machine. Each such transmission was reported as complete
22 and without error and a transmission report was properly issued by this Firm's sending facsimile
machine for each interested party served. A true copy of each transmission report is attached to the
23 office copy of this proof of service and will be provided upon request.

24 Executed on December 10, 2010, at Irvine, California.

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

26 Linda Yarvis
27 (Type or print name)

28 
(Signature)