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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

12 Coordination Proceeding  
Special Title (Rule 1550(b))

13 **ANTELOPE VALLEY**  
14 **GROUNDWATER CASES**

15 Included Actions:

16 *Los Angeles County Waterworks District*  
*No. 40 v.*  
17 *Diamond Farming Co., et al.*  
Los Angeles County Superior Court, Case  
18 No. BC 325 201

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

22 *Wm. Bolthouse Farms, Inc. v. City of*  
23 *Lancaster*  
*Diamond Farming Co. v. City of Lancaster*  
24 *Diamond Farming Co. v. Palmdale Water*  
*Dist.*  
25 Riverside County Superior Court,  
Consolidated Action, Case Nos. RIC 353  
26 840, RIC 344 436, RIC 344 668

27 **AND RELATED CROSS-ACTIONS**  
28

Case No. Judicial Council Coordination  
Proceeding No. 4408

(For Filing Purposes Only: Santa Clara  
County Case No.: 1-05-CV-049053)

**PHELAN PIÑON HILLS COMMUNITY  
SERVICES DISTRICT'S OPPOSITION  
TO MOTION FOR PRELIMINARY  
APPROVAL OF CLASS SETTLEMENT**

[Filed concurrently with: Declaration of  
Wesley A. Miliband in Support Thereof]

Date: March 26, 2015  
Time: 10:00 a.m.  
Dept.: Room 222

Assigned for All Purposes to:  
Hon. Jack Komar

Trial Date: August 3, 2015  
(Trials or Hearings on Final  
Approval of the Small Pumper  
Class Settlement and on Prove-up  
of the Stipulated Judgment and  
Physical Solution)

Time: 10:00 a.m.  
Location: Stanley Mosk Courthouse  
111 North Hill Street  
Los Angeles, California

Dept: TBD

01133.0012/245646.1





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 (“Phelan Piñon Hills”), submits the following opposition to the Motion for Preliminary Approval of  
5 Class Settlement submitted jointly by the Wood Class and Los Angeles County Waterworks District  
6 No. 40 (collectively, “Moving Parties”) in the above-entitled action on March 4, 2015.

7 **I. INTRODUCTION**

8 Phelan Piñon Hills opposes the Motion for Preliminary Approval of Class Settlement because  
9 its terms are inconsistent with and violate the Wood Class Stipulation of Settlement entered into on  
10 October 17, 2013 by and between the Wood Class, Phelan Piñon Hills, and other parties. (*See*  
11 Declaration of Wesley A. Miliband, ¶ 2, Exh. A [“2013 Settlement Agreement”].) By seeking  
12 preliminary approval of the Class Settlement which is reliant upon Proposed Physical Solution, the  
13 Wood Class is breaching the 2013 Settlement Agreement and willfully infringing upon the rights of  
14 Phelan Piñon Hills established pursuant thereto, for the following reasons:

15 (1) The Proposed Physical Solution would force Phelan Piñon Hills to pay a Replacement  
16 Water Assessment on every acre-foot of water it extracts from the Basin, in *direct* conflict with the  
17 Wood Class 2013 Settlement Agreement wherein the Wood Class agreed not to challenge Phelan  
18 Piñon Hills’ right to pump 1,053.14 acre-feet each year free of any Replacement Water Assessment.<sup>1</sup>

19 (2) The requirement in the Proposed Physical Solution that Phelan Piñon Hills pay an  
20 assessment for 100% of the water it pumps violates the 2013 Settlement Agreement’s recognition of  
21 return flow rights that are applicable to Phelan Piñon Hills, which was not limited to “imported” water  
22 and for which ample evidence exists from the November 4, 2014 trial that a portion of water produced  
23 by Phelan Piñon Hills and used by its customers returns to the Basin.

24 (3) The Proposed Physical Solution allocates “99.8%” of the native safe yield<sup>2</sup>, which is  
25 82,300 acre-feet (“af”) based upon the settling parties’ contention, thereby leaving only about 168 af

27 <sup>1</sup> 1,053.14 was based on the Court’s Phase Four finding.

28 <sup>2</sup> Motion, p. 3:20-21.



1 for allocation to a non-settling party, which is about one-tenth (1/10) of Phelan Piñon Hills' claimed  
2 rights.<sup>3</sup>

3 Therefore, the Motion for Preliminary Approval of Class Settlement contravenes the 2013  
4 Settlement Agreement, and thus the Motion should be denied.

5 **II. STATEMENT OF RELEVANT FACTS**

6 The 2013 Settlement Agreement “set forth the terms of a settlement...between and among the  
7 Settling Parties compromising and dismissing the claims and defenses they ha[d] asserted in [this]  
8 action as amongst and between the Settling Parties.” (2013 Settlement Agreement, 1:8-11.) This  
9 included a settlement of claims between the Wood Class and Phelan Piñon Hills.

10 On February 26, 2015, a Stipulation of Settlement was entered into by and between the Wood  
11 Class, several other parties, but not Phelan Piñon Hills. (See Declaration of Michael D. McLachlan In  
12 Support Of Motion for Preliminary Approval of Class Settlement [“McLachlan Decl.”], ¶ 6, Exh. A.)  
13 The Stipulation of Settlement includes a Proposed Physical Solution. (See McLachlan Decl., ¶ 6,  
14 Exhibit A.1 [“Proposed Physical Solution”].)

15 **III. ARGUMENT**

16 In the 2013 Settlement Agreement, the Wood Class made certain agreements with the settling  
17 parties, including Phelan Piñon Hills, and agreed that it would “not take any positions or enter into any  
18 agreements that are inconsistent with the exercise of Settling Defendants’ rights as set forth [t]herein.”  
19 (2013 Settlement Agreement, 9:1-2.) However, the Proposed Physical Solution is inconsistent with  
20 the 2013 Settlement Agreement and would cause great harm to Phelan Piñon Hills, as described  
21 below.

22 Moreover, the Wood Class agreed that the ultimate Physical Solution would be consistent with  
23 the partial settlement. “The Settling Parties agree to be part of such a Physical Solution *but only to*  
24 *the extent it is consistent* with the terms of this Stipulation....” (*Id.* at 11:26-28 [emph. added].)

25 \_\_\_\_\_  
26 <sup>3</sup> Though the Court ruled against Phelan Piñon Hills on its 2<sup>nd</sup> and 6<sup>th</sup> Causes of Action, the 2013  
27 Settlement Agreement is still a “live” and valid agreement. Also, various other causes of action  
28 remain adjudicated, including for a Physical Solution, which, among other things, could and should  
include “net pumping” or “pure appropriator” rights as previously discussed by the Court.



1 Now, the Wood Class is going back on its “word” despite what is set forth explicitly in the written,  
2 Court-approved 2013 Settlement Agreement by offering the Proposed Physical Solution with wholly  
3 contradictory terms as it relates to Phelan Piñon Hills.

4 **A. The Proposed Physical Solution Eliminates Phelan Piñon Hills’ Right To Pump**  
5 **1053.14 Acre-Feet Assessment-Free.**

6 In the 2013 Settlement Agreement, the Wood Class recognized the right for each party to  
7 pump certain amounts of water without having to pay a replacement assessment. “The Wood Class  
8 agrees not to contest each Settling Defendant’s right to pump the following amounts annually from the  
9 Native Safe Yield *free of any Replacement Water Assessment*, but only if competent evidence is  
10 presented to and incorporated by the Court in the Final Judgment and such rights of the Settling  
11 Defendants shall not diminish in any way the water rights of the Wood Class as set forth herein....”  
12 (2013 Settlement Agreement, 8:16-21 [emph. added].) The Settlement Agreement then listed  
13 *1,053.14 acre-feet for Phelan Piñon Hills*, based upon “competent evidence” admitted into evidence  
14 by the Court during Phase Four proceedings.

15 In stark contrast, the Proposed Physical Solution prohibits Phelan Piñon Hills from getting any  
16 water free of an assessment:

17 The injunction does not apply to any Groundwater Produced within the Basin by  
18 Phelan Piñon Hills Community Services District and delivered to its service areas, so  
19 long as the total Production does not exceed 1,200 acre-feet per Year, such water is  
20 available for Production without causing Material Injury, and the District pays a  
21 Replacement Water Assessment pursuant to Paragraph 9.2, together with any other  
22 costs deemed necessary to protect Production Rights decreed herein, on all water  
23 Produced and exported in this manner. (Proposed Physical Solution, 28:20-25.)

24 Therefore, by agreeing to and/or advocating for the Proposed Physical Solution, the Wood  
25 Class is breaching the 2013 Settlement Agreement and violating Phelan Piñon Hills’ rights thereunder.

26 **B. The Return Flow Provision In The 2013 Settlement Agreement Would Be Made**  
27 **Meaningless By The Proposed Physical Solution.**

28 The 2013 Settlement Agreement defines “Return Flows” as “the amount of water that is put to  
reasonable and beneficial agricultural, municipal or other use and thereafter returns to the Basin and is  
part of the Basin’s Total Safe Yield. (2013 Settlement Agreement, 6:18-20.) This specifically defined  
terms encompasses a return flow right *irrespective* of arising from imported water or native

1 groundwater, which for Phelan Piñon Hills arises from use of native groundwater produced and used  
2 by Phelan Piñon Hills and its customers in the portion of the service area that lies over the Basin.

3 Again, in stark contrast, the Proposed Physical Solution strips Phelan Piñon Hills of any return  
4 flow rights that were within the 2013 Settlement Agreement with the Wood Class by requiring a 100%  
5 replacement assessment, despite “competent [and un rebutted] evidence” admitted by the Court during  
6 the November 4, 2014 trial.

7 **C. The Settling Parties Have Allocated The Entire Safe Yield Amongst Themselves,**  
8 **Despite Their Potential Settlement Not Being “Global” Amongst All Parties.**

9 The Proposed Physical Solution allocates “99.8%” of the native safe yield<sup>4</sup>, which is 82,300  
10 acre-feet (“af”) based upon the settling parties’ contention, thereby leaving only about 168 af for  
11 allocation to a non-settling party, which is about one-tenth (1/10) of Phelan Piñon Hills’ claimed  
12 rights. These parties not only are squeezing out non-settling parties, but potentially jeopardizing their  
13 own settlement should a non-settling party such as Phelan Piñon Hills prevail on one or more causes  
14 of action during some stage of these proceedings and/or the judicial process.

15 **IV. CONCLUSION**

16 For the foregoing reasons, Phelan Piñon Hills respectfully requests that the Court deny the  
17 Motion for Preliminary Approval of Class Settlement. Additionally, Phelan Piñon Hills reserves the  
18 right to present further objections to the Proposed Physical Solution at the appropriate stages pursuant  
19 to the First Amended Case Management Order and as otherwise exists pursuant to law and equity.

20 DATED: March 13, 2015

ALESHIRE & WYNDER, LLP  
WESLEY A. MILIBAND  
MILES P. HOGAN

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22  
23  
24 By: 

WESLEY A. MILIBAND  
Attorneys for Defendant and Cross-Complainant  
Phelan Piñon Hills Community Services District

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28 <sup>4</sup> Motion, p. 3:20-21.

2 **PROOF OF SERVICE**

3 **STATE OF CALIFORNIA, COUNTY OF ORANGE**

4 I, Linda Yarvis,

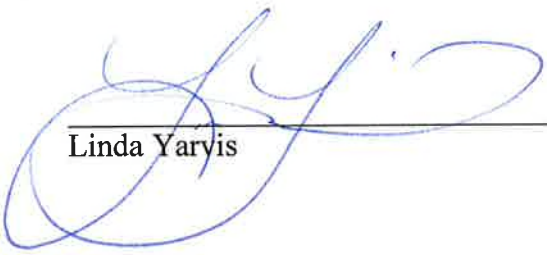
5 I am employed in the County of Orange, State of California. I am over the age of 18 and not a  
6 party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA  
92612.

7 On March 13, 2015, I served the within document(s) described as **PHELAN PIÑON HILLS**  
8 **COMMUNITY SERVICES DISTRICT'S OPPOSITION TO MOTION FOR PRELIMINARY**  
9 **APPROVAL OF CLASS SETTLEMENT** on the interested parties in this action as follows:

10 **BY 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.scefiling.org.

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

13 Executed on March 13, 2015, at Irvine, California.

14  
15  
16   
Linda Yarvis

ALESHIRE &  
WYNDER LLP  
ATTORNEYS AT LAW

