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Phelan Piñon Hills Community Services District
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9 **SUPERIOR COURT OF THE STATE 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*
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)

**STATEMENT OF PHELAN PIÑON
HILLS COMMUNITY SERVICES
DISTRICT FOR PROPOSED
STATEMENT OF DECISION**

Assigned for All Purposes to:
Hon. Jack Komar

Trial Date: November 4, 2014
(Trial Related to Phelan Piñon
Hills Community Services
District)

Time: 10:00 a.m.
Location: Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, California
Dept: 56 / Room 514 (5th Floor)





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 Statement for preparation of the Proposed Statement of
5 Decision:

6 Pursuant to the Court’s direction on November 5, 2014, Phelan Piñon Hills hereby submits this
7 Statement be incorporated into a Proposed Statement of Decision to be prepared by other parties¹
8 pursuant to Code of Civil Procedure sections 631.8 and 632 and California Rule of Court 3.1590.

9 Specifically, Phelan Piñon Hills seeks an explanation of the Court’s factual and legal basis for:
10 (1) granting the oral motion for judgment (pursuant to CCP 631.8 despite not explicitly stated by the
11 moving party) of Los Angeles County Waterworks District No. 40 (“District 40”), (2) the Court’s
12 decision as to each of the principal controverted issues at trial on Phelan Piñon Hills’ Second and
13 Sixth Causes of Action and as set forth herein; and (3) whether the Court made rulings on causes of
14 action or affirmative defenses, factual or legal findings, or otherwise relied or based any factual or
15 legal findings on causes of action or affirmative defenses other than Phelan Piñon Hills’ Second and
16 Sixth Causes of Action, particularly given District 40’s oral motion being based in part on “impact”
17 and “export” (e.g., Phelan Piñon Hills’ Eighth Cause of Action) of and by Phelan Piñon Hills’ use of
18 Well 14, as well as the Court’s comments that Phelan Piñon Hills had not established that its pumping
19 has “absolutely” no impact on the aquifer.

20 As part of the above, Phelan Piñon Hills seeks explanation of the factual and legal basis of the
21 following:

22 **(1) Burden of Proof:**

23 The “burden of *proving surplus does not come into existence until the existing appropriators,*
24 *riparians, or overlying owners first* provide satisfactory evidence that a valid property right has been
25 impaired.” (*California Water Law & Policy* (Slater), Sec. 11.04, pp. 11-20 to 11-21 [emphasis

26 _____
27 ¹ Phelan Piñon Hills has settled with the Willis Class and Wood Class, and various other parties did
28 not participate in this trial. Los Angeles County Waterworks District No. 40 was took the lead in this
trial for participating parties.



1 added], *citing to, Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.* (1935) 3 Cal. 2d 489, 566-567;
2 *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 381. [Emphasis added.]

3 To what extent, if any, did the Court permit the opportunity to procure and offer evidence as to
4 other whether parties other than Phelan Piñon Hills have established their water rights, including as to
5 reasonable and beneficial use; waste; and whether that particular party's right has been impaired by
6 Phelan Piñon Hills within or outside of the Buttes Subunit.

7 To what extent, and why on a factual and legal basis, did Phelan Piñon Hills bear a burden a
8 proof on its Second and Sixth Causes of Action as well as to whether, and if so for purposes of this
9 trial, the factual and legal basis thereof that Phelan Piñon Hills had to establish its pumping had no
10 impact to the Antelope Valley Groundwater Basin or Antelope Valley Area of Adjudication.

11 To what extent, and why on a factual and legal basis, did Phelan Piñon Hills not meet its
12 burden of proof on its Second and Sixth Causes of Action.

13 **(2) Appropriator Elements & Phelan Piñon Hills as an Appropriator in a Basin**
14 **generally in Overdraft:**

15 The elements necessary for Phelan Piñon Hills to establish an appropriative water right.

16 The extent, with factual and legal basis, as to which Phelan Piñon Hills established, or did not
17 establish, itself as an appropriator for each calendar year since Well 14 began production during
18 calendar year 2005.

19 Whether Phelan Piñon Hills applied water from Well 14 to reasonable and beneficial use since
20 calendar year 2005.

21 The legal basis for the Court stating on November 5, 2014 that Phelan Piñon Hills is an
22 appropriator despite the Court also stating surplus does not exist.

23 The factual basis for the Court stating on November 5, 2014 that Phelan Piñon Hills is an
24 appropriator.

25 Whether Phelan Piñon Hills' Well 14 has a right to continue to produce groundwater, even if
26 not a water right, and on what factual and legal basis.

27 Whether Phelan Piñon Hills' Well 14 may continue to produce groundwater, and on what
28 factual and legal basis.



1 The factual finding that Phelan Piñon Hills owns Well 14 and the parcel on which Well 14 is
2 located.

3 The factual finding that Well 14's production is as follows, by calendar year: 2004 and earlier:
4 none; 2005 (beginning in September): 1.11 acre feet ("af"); 2006: 164.15 af; 2007: 20.95 af; 2008:
5 493.27 af; 2009: 558.65 af; 2010: 1,110.45 af; 2011: 1,053.14 af; 2012: 1,035.26 af; and 2013:
6 1,028.02.

7 The factual finding that Well 14 water was first delivered to customers on January 2006, and
8 since then, Well 14 water is distributed through Phelan Piñon Hills' water system for delivery to
9 customers.

10 The factual finding that shortly after Well 14 came online, Well 14 was not able to operate at
11 its full capacity due to difficulty with the pump installed by or at the direction of SB County. The
12 pump was replaced toward the end of calendar year 2008, allowing Well 14 to become fully
13 operational part way into calendar year 2009.

14 The legal finding that Phelan Piñon Hills appropriates water from Well 14 and has done so for
15 Well 14 through Phelan Piñon Hills' predecessor since January 2006.

16 **(3) Surplus:**

17 Applicability to this trial of definitions of: (a) "surplus" being that "condition which exists
18 when the draft on the ground water supply is less than the safe yield"; (b) "safe yield" defined as "the
19 maximum quantity of water which can be withdrawn annually from a ground water supply under a
20 given set of conditions without causing an undesirable result;" and, (c) "undesirable result" referring
21 to a "gradual lowering of the ground water levels resulting eventually in depletion of the supply."
22 (*Los Angeles v. San Fernando* (1975) 14 cal. 3d 199, 278-279.)

23 Definitions of the above terms, if different than stated above, as it relates to this trial, and the
24 applicability of those definitions to this trial.

25 The legal basis for concluding in this trial that surplus cannot exist because of the Court's
26 finding in Phase Three that overdraft generally exists, notwithstanding the Court's Phase Three
27 Statement of Decision stating in pertinent part: "[b]ut having heard evidence about the aquifer as a
28 whole, the Court is not making historical findings that would be applicable to specific areas of the

1 aquifer or that could be used in a specific way to determine water rights in particular areas of the
2 aquifer”; the Court also recognized that the aquifer is not like a “bathtub” due to “regional” (local)
3 differences and that “we have been talking about the basin as a whole but sub-parts exist.” (Phase
4 Three Statement of Decision, Tab No. 4523, 07/13/11, p. 4.)

5 The applicability of the above statements from the Court’s Phase Three Statement of Decision
6 to this trial, specifically including the Court’s rulings on the motion for judgment and Phelan Piñon
7 Hills’ Second and Sixth Causes of Action.

8 The existence and boundaries of the Buttes Subunit as of at least calendar year 2005.

9 The legal and factual basis that the Buttes Subunit could, or could not, have had been in a state
10 of surplus during calendar years 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, or
11 2009.

12 Whether the evidence demonstrated by the preponderance of the evidence that the Buttes
13 Subunit has not had land subsidence, and if not, on what basis.

14 Whether the evidence demonstrated by the preponderance of the evidence that the groundwater
15 levels within the Buttes Subunit have mostly remained stable if not rising during calendar years 1999,
16 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, and 2009, and if not, on what basis.

17 When surplus in the Buttes Subunit existed, and when surplus in the Buttes Subunit did not
18 exist.

19 The extent of applicability of the Mojave Judgment definitions of overdraft as: “A condition
20 wherein the current total Annual Consumptive Use of water in the Mojave Basin Area or any of its
21 Subareas exceeds the long term Annual natural water supply to the Basin Area or subareas.”
22 (Judgment, Section II.A.4 (Definitions) subsection u, at page 10 [emphasis added].)

23 The extent of applicability of the Mojave Judgment’s language illustrating that non-overdraft
24 (i.e., surplus) can exist within subareas by indicating that the subareas (rather than Basin generally)
25 has been in a state of overdraft. (Mojave Judgment, Section II.B.7 (Existence of Overdraft), at page
26 14 [“...the Mojave Basin Area and each of its respective Subareas have been and are in a state of
27 Overdraft...”].)



1 What *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351 requires for determining whether surplus
2 water is available for appropriation.

3 What other statutory or decisional authorities require for determining whether surplus water is
4 available for appropriation.

5 On what legal and factual basis overdraft may only exist on a “basin-wide basis” as contended
6 by District 40.

7 To what extent overdraft can exist in portions of a groundwater basin but not in portions of a
8 basin with limited connectivity to other parts of the basin.

9 To what extent connectivity between parts of a groundwater basin is required to allow for
10 surplus to exist.

11 To what extent conductivity between parts of a groundwater basin is required to allow for
12 surplus to exist.

13 Whether Phelan Piñon Hills established that recharge was greater than discharge in the Buttes
14 Subunit during any year, and if so for which calendar years from 1999 through 2009.

15 Whether Phelan Piñon Hills established that surplus did exist in the Buttes Subunit during any
16 year, and if so for which calendar years from 1999 through 2009.

17 The factual basis as to whether Phelan Piñon Hills complies with the State Constitutional
18 mandate set forth in Article X, Section 2.

19 The legal finding that surplus water existed at the time Well 14 began production in 2005 and
20 2006.

21 **(4) Public Use:**

22 Whether Phelan Piñon Hills has reasonably and beneficially applied water from Well 14 for
23 public use since calendar year 2005.

24 The legal and factual basis for which Phelan Piñon Hills has, or has not, reasonably and
25 beneficially applied water to public use from Well 14 since calendar year 2005.

26 The factual finding that two governing bodies (the Los Angeles County Board of Supervisors
27 and the San Bernardino County Board of Supervisors) approved the land transaction involving
28 acquisition of the parcel on which Well 14 is located.



1 The factual finding that the land transaction involving acquisition of the parcel on which Well
2 14 is located preceded Phelan Piñon Hills' formation.

3 The factual finding that publicly-noticed documents between 1999 and 2004 demonstrate Well
4 14 was going to be drilled by San Bernardino County on the parcel located within Los Angeles
5 County and acquired from Los Angeles County.

6 The factual finding that during 1999, San Bernardino County and the California Department of
7 Health Services exchanged correspondence and conducted meetings to address whether SB County
8 was able to maintain a sufficient water supply for CSA 70L.

9 The factual finding that Phelan Piñon Hills is a public agency organized as a community
10 services district and operating pursuant to California Government Code section 61000 et seq.

11 The factual finding that Phelan Piñon Hills' formation was finalized on March 18, 2008 by
12 Resolution 2994 of San Bernardino Local Agency Formation Commission.

13 The factual finding that As part of the reorganization, Phelan Piñon Hills became the successor
14 agency to SB County's CSA 70L.

15 The factual finding that All of Phelan Piñon Hills water service facilities, including
16 groundwater production wells like Well 14, that are serving Phelan Piñon Hills' residents and
17 customers were constructed by or at the direction of SB County, and operated by SB County up until
18 SB LAFCO approved the reorganization and SB County transitioned everything to Phelan Piñon Hills
19 approximately six (6) months following SB LAFCO's approval.

20 The factual finding that As of the October 2014, Phelan Piñon Hills provides municipal water
21 service to more than 21,576 residents through approximately 6,778 service connections.

22 The factual finding that Phelan Piñon Hills provides water for municipal use to which
23 groundwater produced by all of Phelan Piñon Hills' wells is applied, including groundwater produced
24 by Well 14, with the groundwater used almost exclusively – approximately 97% – for domestic
25 purposes, with some unknown amount of groundwater used for emergency fire protection including
26 support to or within Los Angeles County as needed.

27 The legal finding that Well 14 is committed to public use and has been since 1999 and since
28 coming online for customer service during January 2006.



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(5) Intervening Use:

Whether, and on what factual and legal basis, Phelan Piñon Hills has established, or not established, an intervening use by Well 14 since calendar year 2005.

The legal finding that Well 14 is an intervening use.

(6) Commencement of the “Action”:

When the action “commenced” for purpose of Phelan Piñon Hills’ Second and Sixth Causes of Action.

The factual and legal basis for determining when the action “commenced” for purpose of Phelan Piñon Hills’ Second and Sixth Causes of Action.

In determining when the action “commenced” for purpose of Phelan Piñon Hills’ Second and Sixth Causes of Action, whether the complaints filed in 1999 by Diamond Farming *et al.* have any significance, and if so, the basis of such significance given those complaints did not allege overdraft.

In determining when the action “commenced” for purpose of Phelan Piñon Hills’ Second and Sixth Causes of Action, whether the cross-complaint filed in 2004 by District 40 *et al.* has any significance, and if so, the basis of such significance given Phelan Piñon Hills was not formed at that time and Phelan Piñon Hills’ predecessor was not a party to this lawsuit at any time.

The legal finding that the action as it relates to Phelan Piñon Hills did not “commence” until Phelan Piñon Hills sought intervention and was sued in December 2008.

(7) Waste:

The definition of “waste,” and the legal source of that definition, as it relates to this trial.

Whether Phelan Piñon Hills has wasted water since Well 14 began producing water during calendar year 2005, and the legal and factual basis for such determination.

Whether any party has wasted water in the Buttes Subunit, and the legal and factual basis for such determination.

Whether any party has wasted water in the Antelope Valley Area of Adjudication, and the legal and factual basis for such determination.

(8) Impact of Pumping:



1 The legal basis for considering in this trial whether Phelan Piñon Hills' pumping from Well 14
2 impacts the Buttes Subunit.

3 The legal basis for considering in this trial whether Phelan Piñon Hills' pumping from Well 14
4 impacts the Lancaster Subunit.

5 The legal basis for considering in this trial whether Phelan Piñon Hills' pumping from Well 14
6 impacts the Antelope Valley Area of Adjudication.

7 The legal basis for considering in this trial whether Phelan Piñon Hills' pumping from Well 14
8 impacts the Antelope Valley Groundwater Basin.

9 The legal basis for considering in this trial whether Phelan Piñon Hills' pumping from Phelan
10 Piñon Hills wells other than Well 14 impacts the Buttes Subunit.

11 The legal basis for considering in this trial whether Phelan Piñon Hills' pumping from Phelan
12 Piñon Hills wells other than Well 14 impacts the Lancaster Subunit.

13 The legal basis for considering in this trial whether Phelan Piñon Hills' pumping from Phelan
14 Piñon Hills wells other than Well 14 impacts the Antelope Valley Area of Adjudication.

15 The factual basis that Phelan Piñon Hills impacts the Buttes Subunit.

16 The factual basis that Phelan Piñon Hills impacts the Lancaster Subunit.

17 The factual basis that Phelan Piñon Hills impacts the Antelope Valley Area of Adjudication.

18 The factual basis that Phelan Piñon Hills impacts the Antelope Valley Groundwater Basin.

19 **(9) Whether Water Code sections 106 and 106.5 provide any legal or factual basis for**
20 **Well 14 to produce water as a matter of right.**

21 **(10) Recapture Doctrine and Net Pumping:**

22 The facts demonstrating Phelan Piñon Hills contributes recharge to the Antelope Valley
23 Groundwater Basin.

24 The facts demonstrating Phelan Piñon Hills contributes recharge to the Antelope Valley Area
25 of Adjudication.

26 The quantity, and factual basis thereof, of recharge or return flow that Phelan Piñon Hills
27 contributes to the Antelope Valley Groundwater Basin.

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1 The location of recharge or return flow, and factual basis thereof, that Phelan Piñon Hills
2 contributes to the Antelope Valley Groundwater Basin.

3 Whether, and the factual and legal basis thereof, Phelan Piñon Hills may receive a credit for
4 “net pumping” based on Phelan Piñon Hills’ distribution of water to its customers resulting in
5 recharge to part of the Antelope Valley Groundwater Basin which is recaptured by Phelan Piñon Hills.

6 The basis for rejecting the legal authorities offered by Phelan Piñon Hills for a right to
7 recapture native groundwater return flows.

8 Whether, and if so, why, *Los Angeles v. San Fernando* (1975) 14 cal. 3d 199 disallows a right
9 to recapture return flow as sought in this trial by Phelan Piñon Hills.

10 Whether continuous control of pumped water is required in order to have a right to recapture
11 water, and if so, on what legal basis.

12 Whether a prior water right, or right to water, is required in order to have a right to recapture
13 water, and if so, on what legal basis.

14 Relating to the Court’s comments November 5, 2014 comment of looking to Phelan Piñon
15 Hills’ “net pumping,” whether and to what extent there is applicability of the Mojave Judgment,
16 (Judgment, Section II.A.4 (Definitions) subsection cc, at page 12, defining “Recirculated Water” as
17 “Water that is produced but not consumed by the Parties listed in Table B-2 of Exhibit ‘B’ and then
18 returned either to the Mojave River or to the Groundwater basin underlying the place of use.”

19 The factual finding that use of water for outdoor irrigation is limited given that many water
20 customers within Phelan Piñon Hills’ service area have natural desert landscape for which outdoor
21 irrigation is not used.

22 The factual finding that Phelan Piñon Hills production and distribution to customers results in
23 426 acre-feet annually of recharge to the Antelope Valley Groundwater Basin that is recaptured by
24 Phelan Piñon Hills.

25 The legal finding that Phelan Piñon Hills has a “net pumping” right to recapture said 426 acre
26 feet annually.

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(11) Place of Use of Well 14 Water:

Which of the Court's legal and factual findings in this trial rely to any extent on Phelan Piñon Hills' service area being located completely outside of the Antelope Valley Area of Adjudication.

The significance, factually and legally, of Phelan Piñon Hills distributing water to customers in that portion of Phelan Piñon Hills' service area that lies over a portion of the Antelope Valley Groundwater Basin.

A factual finding that Phelan Piñon Hills' water distribution system is interconnected, including water produced by Well 14.

The significance, factually and legally, of water produced from Well 14 by Phelan Piñon Hills entering Phelan Piñon Hills' interconnected water distribution system.


(12) Implications for Well 14:

Whether the Court will allow Well 14 to continue to produce water, and if so, on what conditions if any.

How Well 14 can be used, if at all, to provide water for firefighting to Los Angeles County due to the Court finding that Well 14 does not have a water right under the Second Cause of Action.

DATED: November 17, 2014

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

By: 
WESLEY A. MILIBAND
Attorneys for Defendant and Cross-Complainant
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2 **PROOF OF SERVICE**

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

4 I, Linda Yarvis,

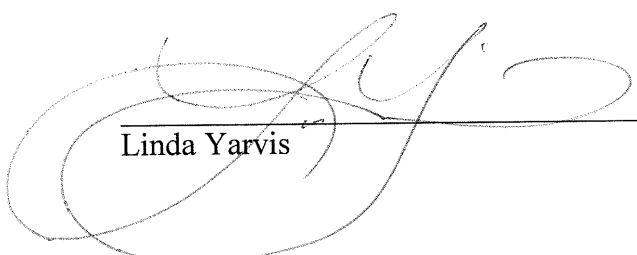
5 I am employed in the County of Orange, State of California. I am over the age of 18 and not a
6 party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA
92612.

7 On November 17, 2014, I served the within document(s) described as **STATEMENT OF**
8 **PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT FOR PROPOSED**
9 **STATEMENT OF DECISION** 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.scefilling.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 November 17, 2014, at Irvine, California.

14
15
16 
Linda Yarvis

ALESHIRE &
WYNDER LLP
ATTORNEYS AT LAW

