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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))

Case No. 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:

**STATEMENT BY PHELAN PIÑON  
HILLS COMMUNITY SERVICES  
DISTRICT FOR JANUARY 22, 2015  
HEARINGS RE PROPOSED  
STATEMENT OF DECISION, CASE  
MANAGEMENT CONFERENCE, AND  
PROPOSED ORDER MODIFYING CASE  
MANAGEMENT ORDER;  
DECLARATION OF WESLEY A.  
MILIBAND IN SUPPORT THEREOF**

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

Assigned for All Purposes to:  
Hon. Jack Komar

22 *Wm. Bolthouse Farms, Inc. v. City of  
Lancaster*  
23 *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

Hearing Date: January 22, 2015  
Time: 11:00 a.m.  
Location: 191 N. 1<sup>st</sup> Street, Dept. 12  
San Jose, CA

27 **AND RELATED CROSS-ACTIONS**  
28

01133.0012/239679.1





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

3 Phelan Piñon Hills Community Services District (“Phelan Piñon Hills”) hereby submits this  
4 Statement with regard to the following three matters identified within the Court’s Notice from January  
5 20, 2015: (1) Hearing on Proposed Statement of Decision on Phelan Piñon Hills’ Trial on Causes of  
6 Action 2 and 6 (“Proposed Statement of Decision”); (2) Case Management Conference (“CMC”); and,  
7 (3) the [Proposed] Amendment to the Case Management Order that is part of *Ex Parte* Application by  
8 the Wood Class (“Proposed CMO Amendment”).

9 **I. The Proposed Statement of Decision and/or Clarification in the Court’s Minutes.**

10 The Court’s November 4 and 5, 2014 Minutes reflect that Phelan Piñon Hills’ trial exhibits –  
11 namely, Phelan CSD Exhibits 1 through 24 – were admitted into evidence but the minutes do not  
12 identify whether Phelan CSD Exhibits 25 through 52 were admitted into evidence. The Court  
13 Transcript, however, does reflect that Phelan CSD Exhibits 25 through 52 were admitted into  
14 evidence with the exceptions of Exhibits 36, 41, 42, 50, 51. (Declaration of Wesley A. Miliband,  
15 paragraph 2, Court Reporter’s Transcript.)

16 *Accordingly, Phelan Piñon Hills requests that either the Court’s Statement of Decision or*  
17 *the Court’s Minutes reflect the same.*

18 **II. The CMC and Proposed CMO Amendment.**

19 Phelan Piñon Hills requests inclusion of the following items in any amendment to the  
20 November 4, 2014 Case Management Order:

21 **A. Filing of the Potential Settlement.**

22 The much-anticipated “global settlement” as referred to by some other counsel has yet to be  
23 filed with the Court or otherwise made available, including to Phelan Piñon Hills. With a structured  
24 process for potential Court approval, particularly given requirements for Wood Class approval, this  
25 document will need to be submitted soon, but *Phelan Piñon Hills requests that a filing deadline be*  
26 *identified*, such as pursuant to the Code of Civil Procedure. Doing so enables parties that are not  
27 included in this potential settlement to evaluate this complex document to ascertain the extent to  
28 which the processes for discovery and prove up or trial will be engaged by a “non-settling party.”



1           **B.       Burden of Proof for Prove-Up and/or Trial.**

2           Paragraph 3 of the Proposed CMO Amendment refers to "...the prior Orders of the Court"  
3 without identifying which prior orders, in a case where hundreds of orders now exist. *This Paragraph*  
4 *should identify which orders, whether that simply be the November 4, 2014 Order and/or others.*

5           *Paragraph 6 should identify the burden of proof for the prove-up or trial.* For instance, for  
6 those settling parties, language should exist in an order stating that each settling party bears the burden  
7 of proof (such as by the preponderance of admissible evidence) for any and all rights that party seeks  
8 the Court to approve by way of the potential settlement document.

9           **C.       Discovery Process.**

10          Paragraphs 4 and 5 identify a discovery process available to all parties (settling and non-  
11 settling). By implication of the Court approving such an order, the ongoing discovery stay is lifted,  
12 but clarification of the same would certainly avoid potential misunderstanding by a party. Also,  
13 unlike prior trial phases where "form" or "Court-approved" discovery was utilized, the discovery  
14 process now is undefined and does not state whether any discovery dispute would first be referred to  
15 the Liaison Committee.

16          Phelan Piñon Hills accepts this process "as is," subject to:

17          (1)       It being understood Phelan Piñon Hills reserves the right to engage in written and/or  
18 testimonial discovery of other parties, including landowner parties; and,

19          (2)       Paragraph 5 does not include – as it should – the phrase from Paragraph 4 that  
20 discovery may include discovery to the "Stipulating Parties for the Stipulated Judgment and Physical  
21 Solution." Notably, Paragraph 4 provides for disclosure of witnesses and exhibits by all settling  
22 parties – including Stipulating Parties for the Stipulated Judgment and Physical Solution – but  
23 Paragraph 5 does include this phrase. *Accordingly, such phrase should be inserted into Paragraph 5*  
24 *for consistency and clarity.*

25          **D.       Remaining Causes of Action and Affirmative Defenses.**

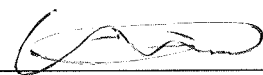
26          As the Court indicated during the January 7, 2015 status conference, this potential settlement is  
27 not binding on non-settling parties. Many cross-complaints and answers with affirmative defenses  
28 exist between Phelan Piñon Hills and other parties. Also, Phelan Piñon Hills' cross-complaint

1 contains other causes of action that have not yet been adjudicated. The existing Case Management  
2 Order or the proposed amendment do not state when or how resolution of non-water rights  
3 claims/causes of action will be resolved, whether those of Phelan Piñon Hills or those parties with  
4 causes of action and affirmative defenses against Phelan Piñon Hills. *As a matter of civil procedure,*  
5 *any amendment to the Case Management Order should identify when and how these other causes*  
6 *of action will be resolved, whether as part of the proposed August trial dates or otherwise.*

7 Ultimately, Phelan Piñon Hills respectfully requests that the Court incorporate the foregoing  
8 items into any amendment to the Proposed CMO Amendment.

9  
10 DATED: January 21, 2015

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

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13 By:   
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15 WESLEY A. MILIBAND  
16 Attorneys for Defendant and Cross-Complainant  
17 Phelan Piñon Hills Community Services District  
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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, attorney of record for  
4 Phelan Piñon Hills Community Services District (“Phelan Piñon Hills”) in this action. I have personal  
5 knowledge of each fact stated in this declaration, and if called as a witness, I could and would  
6 competently testify thereto.

7 2. Attached hereto as Exhibit “A” are true and correct copies of pertinent pages from the  
8 November 4 and November 5, 2014 Court Reporter’s Transcript.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
10 true and correct. Executed this 21<sup>st</sup> day of January, 2015, at Irvine, California.

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13 Wesley A. Miliband  
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ALESHIRE &  
WYNDER LLP  
ATTORNEYS AT LAW



1 Judicial Council Coordination Proceeding No. 4408  
For Filing Purposes Only: Santa Clara County Case No.: 1-05-CV-049053

2 **PROOF OF SERVICE**

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

4 I, Linda Yarvis,

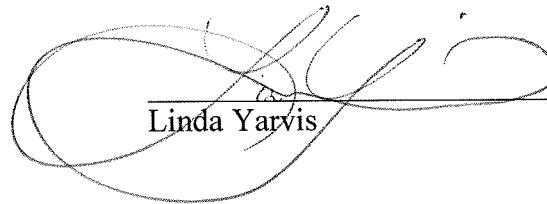
5 I am employed in the County of Orange, State of California. I am over the age of 18 and not a  
6 party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA  
92612.

7 On January 21, 2015, I served the within document(s) described as **STATEMENT BY  
8 PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT FOR JANUARY 22, 2015  
9 HEARINGS RE PROPOSED STATEMENT OF DECISION, CASE MANAGEMENT  
CONFERENCE, AND PROPOSED ORDER MODIFYING CASE MANAGEMENT ORDER;  
10 DECLARATION OF WESLEY A. MILIBAND IN SUPPORT THEREOF** on the interested  
parties in this action as follows:

11 **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  
12 Court's Clarification Order. Electronic service and electronic posting completed through  
www.scefiling.org.

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

15 Executed on January 21, 2015, at Irvine, California.

16   
17 \_\_\_\_\_  
Linda Yarvis

ALESHIRE &  
WYNDER LLP  
ATTORNEYS AT LAW

