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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) **CASE MANAGEMENT CONFERENCE**
) **STATEMENT OF PHELAN PIÑON**
) **HILLS COMMUNITY SERVICES**
19 *Los Angeles County Waterworks District*) **DISTRICT**
No. 40 v.)
20 *Diamond Farming Co., et al.*)
Kern County Superior Court, Case No.)
21 S-1500-CV-254-348)
22)
23 *Wm. Bolthouse Farms, Inc. v. City of*) **DATE: November 9, 2012**
Lancaster) **TIME: 9:00 a.m.**
24 *Diamond Farming Co. v. City of Lancaster*) **LOCATION: Stanley Mosk Courthouse,**
Diamond Farming Co. v. Palmdale Water) **Dept. 1, Room 534**
25 *Dist.*)
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 Phelan Piñon Hills Community Services District (“PPHCSD”) hereby submits this Case
4 Management Conference (“CMC”) Statement for the CMC set for November 9, 2012, consistent
5 with the Court’s Minute Orders dated October 12, 2012 and June 19, 2012 seeking identification of
6 items on various procedural, factual, and legal issues pertaining to Phase Four.¹

7 Various issues remain to be resolved in this complex matter, a number of which cannot be
8 adequately prepared for through discovery and trial preparation given the proximity between now
9 and the current trial date. However, one of two critical issues can be set for the Phase Four trial:
10 (1) production history; or (2) return flow rights to imported water. Other key issues to be decided
11 in this litigation, in addition to those identified herein, are: (1) municipal priority (*see*, e.g., Water
12 Code §§ 106 and 106.5) and intervening public use (*see*, e.g., Municipal Water District Law of
13 1911); (2) interference (or lack thereof) of other users’ water rights and unreasonable use of water;
14 and (3) physical solution provisions, such as transferability, sub-area management, and native-
15 water return flows.

16 **I. IDENTIFICATION OF PHASE FOUR ISSUES.**

17 Despite the earliest of the lawsuits involved in this coordinated proceeding commencing
18 thirteen (13) years ago, and despite one-and-half (1 ½) years of various settlement efforts since the
19 Phase Three trial, allocation of the safe yield remains unresolved, with numerous parties having yet
20 to substantiate the quantity of water used, presently and/or historically. Some parties even seek to
21 forgo altogether proving – through settlement approval or trial – their water usage.²

22 _____
23 ¹ PPHCSD understands that several of these items may be more appropriately addressed at a later
24 time through briefing and otherwise. PPHCSD identifies these items as a non-exclusive list simply
25 to identify issues that it believes assist with management of and preparation for Phase Four.

26 ² *See*, e.g., Bolthouse Properties, LLC’s and WM. Bolthouse Farms, Inc.’s Trial Setting Conference
27 Statement for November 9, 2012 (“Bolthouse TSC Stmt.”), at page 3, lines 19-22: “...a trial and
28 determination of purveyor water rights to the safe yield, and the amount thereof, is necessary to
determine the amount of the safe yield which is available on a correlative basis to overlying
landowners.” “Therefore, it is likely that once the amount of water available to correlative rights
holders is established, that these correlative rights holders probably will agree to a method of
correlative sharing of the native supply rather than to litigate these issues.” (*Ibid.* at pg. 9:8-11.)

1 **A. Establish Production History.**

2 To move this complex matter closer toward resolution in an efficient manner, the next
3 phase of trial should entail each party offering admissible evidence to the Court of that party's
4 production history for any of the following reasons:

5 (i) Allocation of the safe yield remains unresolved (whether partially or globally
6 among the parties);

7 (ii) This process would provide the factual foundation for legal issues to be resolved
8 through settlement *or* by the Court, which inevitably is necessary at some point
9 for settling and non-settling parties, thereby removing this component to
10 resolution of each party's claim to water; and,

11 (iii) This process would not require the Court and the parties to engage now in the
12 complexities of what the Court has correctly and generally recognized as
13 regional differences in the aquifer (discussed *infra*), which relates to *both* the
14 type of water right a party must establish *and* to physical solution components;

15 This proposed process is consistent with the Court's comment from the Status Conference
16 held on June 19, 2012, wherein the Court indicated that "whether by trial or prove up, the parties
17 have to establish by competent evidence pumping history," and also is consistent with the Court's
18 July 9, 2012 Minute Order identifying this CMC to address "Default/Prove-Up/Trial" as well as
19 various other parties from all sides of the table previously suggesting prove-up be done. This
20 proposed process also is consistent with the Court's Minute Order dated October 12, 2012, wherein
21 the Court orders the parties to disclose various production information.

22 **1. Same Standard And Burden Of Proof For All Parties.**

23 Irrespective of whether this proposed process is adopted, no lesser standard or burden of
24 proof should apply for settling parties, if any, to establish their claims to an allocation of the safe
25 yield. To allow such could produce a legally deficient result under relevant legal authorities,
26 including *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, by permitting a lower
27 standard or burden of proof for approval of a settlement while holding non-settling parties to a
28 different standard at trial.

1 Practically, the same standard should apply to non-settling and settling parties because of
2 the contingencies inherent with the settlement process, including parties' agreeing to an allocation
3 contingent upon resolution of other issues, as well as many of the parties (public and private)
4 having to seek approval from their respective legislative or governing bodies. Even if these
5 contingencies are successfully navigated, the ultimate contingency rests with the Court's approval,
6 or lack thereof, of a settlement.

7 Thus, employing a more universal approach as proposed would ensure that all parties
8 provide a sufficient basis for a water right through a legally-sound approach, while also achieving
9 maximum efficiency relative to the alternative of diving into the type of water rights to be
10 established by each party.

11 **2. Identification Of Time Period(s) For Offering Evidence Of Production**

12 **History.**

13 Also irrespective of whether this proposed process specifically is adopted, the time period
14 for production would need to be established. During the Status Conference on June 19, 2012, the
15 Court indicated that it does not have a "firm notion in mind," but that current production may be
16 appropriate. The Court should – and may need to – hear current production. This notion lends
17 itself to significant legal and practical import.

18 There are essentially two time periods for which the parties' production needs "proving up,"
19 so to speak: (i) the necessarily inclusive prescriptive period (or, "base period," if prescription is
20 appropriate), which may be based on the date of consolidation, or other benchmarks, so as to,
21 among other things, satisfy the requirements of the McCarran Act; and (ii) the particular production
22 period for each party, which should extend to the present so as to provide a measure of the non-
23 prescriptive rights in the Basin and to identify the total demand on the Basin for which a "physical
24 solution" needs fashioning.

25 Production for these time periods would assist with laying the foundation for later
26 establishing an appropriative right or prescriptive right (and related self-help invoked by overlying
27 parties), and management purposes. The "base period" issue specific to prescription was briefed by
28 various parties earlier this year, with the motion denied pending further case developments.

1 **B. Determination Of Return Flow Rights To Imported Water.**

2 Alternatively to each party establishing their production history, Phase Four can be utilized
3 for determining a party's rights to return flows resulting from the use of imported water. Not only
4 has this issue been contentious over the past one-and-a-half (1 ½) years, this water remains subject
5 to appropriation, making quantification of imported-water return flow rights necessary for long-
6 term management of this Basin. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d
7 199, 262-263.)

8 **C. Regional Issues Must Be Addressed Prior To Prescription.**

9 At some point, specific regional issues must be resolved, particularly before a phase of trial
10 is set for establishing a specific type of water right – namely, prescriptive rights.

11 The Court stated in the Statement of Decision Phase Three Trial (July 13, 2011) that: **“But**
12 **having heard evidence about the aquifer as a whole, the Court is not making historical**
13 **findings that would be applicable to specific areas of the aquifer or that could be used in a**
14 **specific way to determine water rights in particular areas of the aquifer.”** (Statement of
15 Decision Phase Three Trial (July 13, 2011) (“Phase Three Decision”), p.4:21-24 [emphasis
16 added].)

17 This language indicates that the Phase Three Decision finding that the aquifer is in overdraft
18 does not necessarily require an appropriator (whether a public or private entity) to prove
19 prescription, but instead that further inquiry and findings are needed, whether that be: (i) to address
20 regionalized issues for identifying whether that portion of the “aquifer” is in overdraft; (ii) to
21 determine the type of water right held by a party in that portion of the aquifer (e.g., appropriative or
22 prescriptive); and/or (iii) to identify management areas.

23 The Court also mentioned this issue during the June 19, 2012 Status Conference by noting
24 that there are “variances in the valley and different relationships among and between parties, and
25 we have been talking about the basin as a whole but sub-parts exist.” The Court also noted that it is
26 unclear where and how this issue will be dealt with, and it would make for a very complicated trial.

27 The Court is correct to conclude regional differences exist. Specifically, the Court's Phase
28 Three Decision relies heavily upon evidence offered by public water suppliers, which arose in large

1 part from a complex technical document prepared by several experts and simply referred to as the
2 “Summary Expert Report” (the “Report”). Contents of the Report further necessitate establishing
3 regional differences prior to prescription; namely that overdraft has not and does not exist in the
4 area where PPHCSD is located. For instance, Section 4.3 (Groundwater levels, Storage and
5 Natural Recharge), Subsection 4.3.1.4 (East Antelope Valley), at page IV-13 states: “In general,
6 groundwater levels in the Buttes and Pearland subbasins have not changed significantly since 1951
7 and, in some cases, have risen (06N/10W-22D1). Groundwater flow direction in this area is
8 generally to the west and has not changed significantly since 1951.” In addition, Figures 4.3-1
9 through 4.3-9 show the Buttes and Pearland subbasins in the southeast area of the of the Antelope
10 Valley Adjudication Area and overlapping the Los Angeles/San Bernardino County line into the
11 southwest area of the Mojave Adjudication Area, as does the Antelope Valley Groundwater Basin.
12 Thus, prescription issues cannot precede these regional issues.

13 Ultimately, the trial phases have evolved from a global approach by identifying
14 Adjudication Area boundaries; to identifying parties within those boundaries; to the general
15 condition of the aquifer. Thus, prior to engaging in prescription issues, these regional issues are a
16 legally-necessary step, particularly given: (i) the vast geographical size of the Basin, (ii) the Court’s
17 comments stated, *supra*, as well as recognizing that the aquifer is not like a “bathtub” due to
18 regionalized differences in geology and pumping (*Ibid.* at p. 9:13-19), and, (iii) whether those
19 differences affect what type of right a party would need to prove at the time of trial.

20 **D. The Adjudication Boundary In The “Southeast Area” Of The Basin.**

21 Through prior dialogue with the Court during a CMC this year, the Court invited PPHCSD
22 to bring an evidentiary motion to address the existing adjudication boundary in the “southeast
23 area,” specifically relating to the existence of the Antelope Valley hydrogeological basin extending
24 farther east than the adjudication boundary currently set along the Los Angeles / San Bernardino
25 County line. PPHCSD had been working diligently to bring such a motion, which requires
26 significant preparation particularly given the Court’s direction to bring an evidentiary motion.

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1 Changing the circumstances since that CMC is a pending study of the Antelope Valley
2 groundwater basin by the United States Geological Survey (“USGS”) that became known recently
3 to many parties in this case, including PPHCSD.

4 Separate from a confidential-mediation presentation by USGS to parties in this matter, the
5 USGS made a public presentation on May 10, 2012 in Monterey, California during the semi-annual
6 conference hosted by the Association of California Water Agencies. During this public
7 presentation, the USGS discussed portions of its groundwater modeling, including aspects that
8 relate to the southeast area of the basin. As such, the USGS’s work seems to relate directly to this
9 issue (and many others), however, the USGS has not provided significant detail and does not
10 anticipate doing so until later this year.

11 Given the impact the USGS’s work may offer to the Court and the parties, it may be more
12 appropriate to brief this issue at a later date, which would not create any further or unnecessary
13 delay in this matter if the next phase of trial is for the parties to establish production history.
14 Notably, this issue relates directly to PPHCSD’s Eighth Cause of Action (Declaratory Relief –
15 Boundaries of Basin).³

16 Meanwhile, and consistent with the USGS’s policy, the study (or the model) should be
17 shared privately with the interested stakeholders (i.e., the parties), which to date, has not been done,
18 and under no circumstance, should this work be shared with select stakeholders. Failure to share
19 this work with all interested stakeholders such as PPHCSD and other parties to this case, or worse
20 yet to share only with some, casts an appearance of bias, raises suspicion as to how a select number
21 of parties may be influencing this work, and ultimately would damage the credibility of the work
22 product.

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26 ³ As also stated in the Cross-Complaint of Los Angeles County Waterworks District No. 40 as the
27 Eighth Cause of Action (Declaratory Relief Re Boundaries of Basin).

28

1 **E. Management Of Procedural And Discovery Issues**

2 **1. The Court's Disclosure Order From Minute Order Dated October 12,**
3 **2012.**

4 PPHCSD will comply to the best of ability, as it has with all other previous Orders from the
5 Court, with the Court's order for disclosure of production information as specified in the Minute
6 Order dated October 12, 2012. However, PPHCSD requests clarification from the Court as to the
7 deadline for the parties to comply with said Order and whether such disclosure shall be made
8 through the Court's electronic service system as "discovery" in order to limit access to this
9 potential evidence by and between the parties only.

10 **2. Utilization Of "Universal" Discovery.**

11 Given the breadth of discretion vested with the Court to manage this complex action
12 pursuant to the California Rules of Court, this item relates to a question of whether, and if so to
13 what extent, written and testimonial discovery for Phase Four can proceed by utilizing "universal"
14 or "model" discovery, similar in concept to the "Model Answer" employed by the Court earlier in
15 this action. Without any such discovery devices or standards, discovery would be extraordinarily
16 cumbersome for the Court and the parties, due to the vast number of parties and potentially
17 multiple water rights held by some parties (e.g., an overlying water right holder that also
18 appropriates water). In addition, some parties may have yet to even file the "Model Answer" or
19 otherwise avail themselves to the Court's jurisdiction, raising a question of when to move for
20 default (and the effect thereof on the final, single judgment to be entered by the Court).

21 Likewise, for those parties who filed Answers that include affirmative defenses, a
22 procedural question exists as to which of those defenses that party seeks to establish, and whether
23 those defenses would be part of Phase Four.


24 **3. Establishing The Burden Of Proof, And, Whether Phase Four Issues Are**
25 **Subject To A Jury Or Bench Trial.**

26 Though issues relating to identifying which parties bear – and what is – the appropriate
27 burden of proof may seem like simple questions of law, the burden of proof for Phase Three was in
28 dispute evident from relevant pleadings, and CMC Statements filed since conclusion of Phase

1 Three reveal varying perspectives on other issues. Similarly, depending on what Phase Four
2 encompasses, some issues may or may not be subject to a bench trial. Accordingly, all of these
3 issues might lack consensus among the parties, which irrespective of consensus, are issues
4 ultimately within the Court's purview.

5
6 Dated: November 5, 2012

ALESHIRE & WYNDER, LLP
DAVID J. ALESHIRE
WILLIAM W. WYNDER
WESLEY A. MILIBAND

7
8
9 By: 
10 _____
11 Wesley A. Miliband
12 Attorneys for Cross-Defendant and
13 Cross-Complainant,
14 Phelan Piñon Hills Community
15 Services District
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3 **PROOF OF SERVICE**

4 I, Janie Adams,

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 November 5, 2012, I served the within document(s) described as **CASE**
8 **MANAGEMENT CONFERENCE STATEMENT OF PHELAN PIÑON HILLS**
COMMUNITY SERVICES DISTRICT 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.

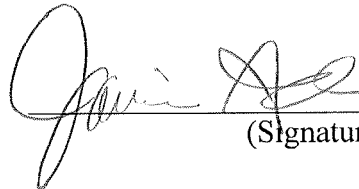
16 (BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained
17 by Overnight Express, an express service carrier, or delivered to a courier or driver authorized by
said express service carrier to receive documents, a true copy of the foregoing document(s) in a
18 sealed envelope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

19 Executed on November 5, 2012, 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 JANIE ADAMS

(Type or print name)



(Signature)