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9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

11  
12 Coordination Proceeding  
Special Title (Rule 1550(b))

) 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:

) 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.*

18 Los Angeles County Superior Court, Case  
No. BC 325 201

) **PHELAN PIÑON HILLS COMMUNITY**  
) **SERVICES DISTRICT'S EX PARTE**  
) **APPLICATION FOR AMENDMENT TO**  
) **DISCOVERY ORDER FOR PHASE 4**  
) **TRIAL; DECLARATION OF WESLEY**  
) **A. MILIBAND IN SUPPORT THEREOF**

19 *Los Angeles County Waterworks District*  
*No. 40 v.*

20 *Diamond Farming Co., et al.*

21 Kern County Superior Court, Case No.  
S-1500-CV-254-348

) **[[PROPOSED] First Amended Discovery**  
) **Order For Phase 4 Trial lodged**  
) **concurrently herewith]**

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

24 *Diamond Farming Co. v. City of Lancaster*  
*Diamond Farming Co. v. Palmdale Water*  
25 *Dist.*

26 Riverside County Superior Court,  
Consolidated Action, Case Nos. RIC 353  
840, RIC 344 436, RIC 344 668

) Phase Four Trial Date: February 11, 2013

27 **AND RELATED CROSS-ACTIONS**  
28

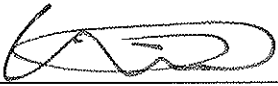
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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on December 20, 2012 at 8:30 a.m., a telephonic hearing will occur on Phelan Piñon Hills Community Services District's ("PPHCSD") *Ex Parte* Application for Amendment to Discovery Order for Phase 4 Trial. The Court will participate telephonically with all interested parties.

Dated: December 18, 2012

ALESHIRE & WYNDER, LLP

By:   
Wesley A. Miliband  
Attorneys for Cross-Defendant and  
Cross-Complainant,  
Phelan Piñon Hills Community  
Services District

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PPHCSD REQUESTS INCLUSION OF TWO POINTS IN THE EXISTING**  
3 **DISCOVERY ORDER FOR PHASE 4 TRIAL.**

4 PPHCSD does not seek to expand the scope of the Phase 4 Trial or related discovery, as set  
5 forth by the Court on December 12, 2012 through the: (i) Case Management Order For Phase 4  
6 Trial (“Phase 4 CMO”) and (ii) Discovery Order For Phase 4 Trial (“Phase 4 Discovery Order”).  
7 However, in order to avoid any misunderstanding amongst the parties and/or with the Court, and to  
8 preserve rights to due process, PPHCSD respectfully requests inclusion of the following two points  
9 by way of amendment to the Phase 4 Discovery Order, both of which counsel for PPHCSD raised  
10 during recent Case Management Conferences (“CMCs” or “CMC”):

- 11 (1) The Parties are entitled to produce as much information as desired, including for  
12 years 2005 through 2010, rather than being limited to years 2000 through 2004; and,  
13 (2) Phase 4 does not include any claims to return flows resulting from use of native  
14 water; any such claims are preserved for determination during later proceedings.

15 **A. The Parties Are Entitled To Produce As Much Information As Desired,**  
16 **Including For Years 2005 Through 2010, Not Just Years 2000 through 2004.**

17 The Court indicated during the CMC on November 9, 2012 that a party may produce  
18 additional information beyond the 2000 through 2004 period, which may include years 2005  
19 through 2010. Despite other counsel who were preparing the proposed discovery order  
20 representing to PPHCSD’s counsel that this language would be included, the proposed discovery  
21 order did not include this language, which other legal counsel kindly recognized as an inadvertent  
22 omission during the CMC on December 11, 2012. The Phase 4 Discovery Order in its current form  
23 does not include this language. Accordingly, this language should be included to remain consistent  
24 with the Court’s prior statements, which ultimately allows each party to offer evidence potentially  
25 relevant to groundwater *production* to the extent such production is relevant for the Phase 4 Trial.

26 In order to dispel any concerns or potential opposition, PPHCSD does not seek inclusion of  
27 this language for itself or for any other party to augment the scope of the Phase 4 Trial.  
28

1 Rather, this inclusion is sought for purposes consistent with Phase 4, namely establishing  
2 groundwater production (*not groundwater rights*), and this inclusion is sought to allow a party to  
3 offer evidence for year(s) that can differ for legitimate reasons from the time period of 2000  
4 through 2004. After all, those five (5) years have not been cast in stone with any legal significance  
5 or legal finding by the Court, but instead were proffered by some counsel for a time period to use  
6 for “historical” production.

7 **Phase 4 Does Not Include Any Claims To Return Flows Resulting From Use Of**  
8 **Native Water; Any Such Claims Are Preserved For Determination During**  
9 **Later Proceedings.**

10 Though the Phase 4 CMO and Phase 4 Discovery Order explicitly state that return flow  
11 credits involve “water imported” or “imported water,” one or more parties may have a claim to  
12 return flows resulting from use of native water.<sup>1</sup> As such, PPHCSD seeks clarification from the  
13 Court that any such claim is preserved for determination during later proceedings, not during Phase  
14 4. By making this clarification, the Court confirms the issue may be subject to determination at a  
15 later time, and the Court eliminates the risk of some party claiming this issue should have been  
16 litigated during Phase 4.

17 **PPHCSD RESPECTFULLY REQUESTS THE COURT ADOPT THE PROPOSED**  
18 **FIRST AMENDED DISCOVERY ORDER FOR PHASE 4 TRIAL, LODGED**  
19 **CONCURRENTLY HEREWITH.**

20 For the foregoing reasons, and any other reasons set forth through oral argument, PPHCSD  
21 respectfully requests the Court adopt the proposed First Amended Discovery Order For Phase 4  
22 Trial.

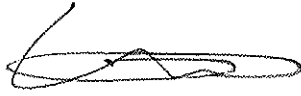
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25 <sup>1</sup> See, e.g., Slater, Scott S., *California Water Law & Policy* (Butterworth Legal Publishers, 2005)  
26 (“Slater”) p. 2-19, sec. 2.08[7] (Return Flows) [“Water that returns to a stream ground-water basin,  
27 after having been applied to beneficial use, is subject to further appropriation. The water remains  
28 subject to appropriation irrespective of whether the return flows are traced to native or foreign  
water supplies.”]

1 No party is unduly prejudiced by adopting either of these two points, yet some party(s) may  
2 be prejudiced by either of these points not being included in the discovery order.

3 Dated: December 18, 2012

ALESHIRE & WYNDER, LLP

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By: 

Wesley A. Miliband  
Attorneys for Cross-Defendant and  
Cross-Complainant,  
Phelan Piñon Hills Community  
Services District

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**DECLARATION OF WESLEY A. MILIBAND**

I, Wesley A. Miliband, declare as follows:

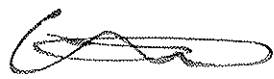
1. I am an attorney at law duly licensed to practice before all of the courts in the State of California. I am an attorney with the law firm of Aleshire & Wynder, LLP, counsel of record for Defendant and Cross-Complainant, Phelan Piñon Hills Community Services District (“PPHCSD”), in this action. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. Attached hereto as Exhibit “A” is a true and correct copy of my objection filed and posted on the Court’s website on November 19, 2012, which includes the court transcript from November 9, 2012 wherein the Court indicated that a party may produce information beyond the 2004 time period.

3. I raised this issue of including years 2005 through 2010 with all counsel attending the Court-ordered teleconference on Friday, December 14, 2012. I was requested to email the “liaison committee” the point that I seek for clarification, which I did that day. On Monday, December 17, 2012, I spoke with Michael D. McLachlan, Esq., counsel for Wood Class. Mr. McLachlan indicated that the *ex parte* application he was preparing relates only to the Phase 4 CMO, not to the Phase 4 Discovery Order. Accordingly, this separate *ex parte* application became necessary, and I prepared it as quickly as possible to afford as much notice and opportunity to the Court and to the parties in advance of Thursday morning.

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

Executed on this 18<sup>th</sup> day of December, 2012, at Irvine, California.

  
\_\_\_\_\_  
Wesley A. Miliband

2  
3 **PROOF OF SERVICE**

4 I, Marie W. Young,

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 18, 2012, I served the within document(s) described as PHELAN PINON  
8 HILLS COMMUNITY SERVICES DISTRICT'S EX PARTE APPLICATION FOR  
AMENDMENT TO DISCOVERY ORDER FOR PHASE 4 TRIAL; DECLARATION OF  
9 WESLEY A. MILIBAND IN SUPPORT THEREOF, as follows:

10  (ELECTRONIC SERVICE) By posting the document(s) listed above to the Santa Clara  
County Sueprior Court website in regard to Antelope Valley Groundwater matter pursuant to the  
11 Court's Clarification Order. Electronic service and electronic posting completed through  
www.scefiling.org.

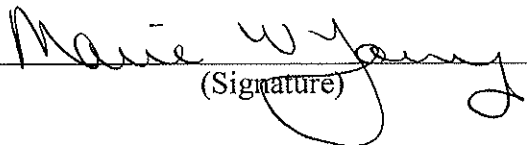
12  (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope  
13 addressed as set forth above. I placed each such envelope for collection and mailing following  
ordinary business practices. I am readily familiar with this Firm's practice for collection and  
14 processing 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  
16 than one day after date of deposit for mailing in affidavit.

17  (BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained  
by Overnight Express, an express service carrier, or delivered to a courier or driver authorized by  
18 said express service carrier to receive documents, a true copy of the foregoing document(s) in a  
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 December 18, 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 Marie W. Young  
23 (Type or print name)

24   
25 (Signature)