

1 ALESHIRE & WYNDER, LLP
DAVID J. ALESHIRE, Bar No. 65022
2 WILLIAM W. WYNDER, Bar No. 84753
WESLEY A. MILIBAND, Bar No. 241283
3 18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612
4 Telephone: (949) 223-1170
Facsimile: (949) 223-1180
5 daleshire@awattorneys.com
wwynder@awattorneys.com
6 wmiliband@awattorneys.com

7 Attorneys for Defendant and Cross-Complainant,
Phelan Piñon Hills Community Services District
8

9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

11 Coordination Proceeding
12 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*
17 *No. 40 v.*

) (Filing Fees Exempt, Per Gov't Code § 6103)

18 *Diamond Farming Co., et al.*

19 *Los Angeles County Superior Court, Case*
20 *No. BC 325 201*

) **RESPONSE AND DECLARATION OF**
) **PHELAN PINON HILLS COMMUNITY**
) **SERVICES DISTRICT TO THE**
) **COURT'S ORDER TO ALL PARTIES**
) **FOR DISCLOSURE OF CERTAIN**
) **INFORMATION BY JANUARY 31, 2013**

21 *Los Angeles County Waterworks District*
22 *No. 40 v.*

23 *Diamond Farming Co., et al.*

24 *Kern County Superior Court, Case No.*
25 *S-1500-CV-254-348*

26 *Wm. Bolthouse Farms, Inc. v. City of*
27 *Lancaster*

) Phase Four Trial Date: May 28, 2013

28 *Diamond Farming Co. v. City of Lancaster*

Diamond Farming Co. v. Palmdale Water
Dist.

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

AND RELATED CROSS-ACTIONS

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 Pursuant to the Court’s Case Management Order for Phase 4 Trial dated December 12,
3 2012 and the Court’s First Amendment to Case Management Order for Phase 4 Trial dated January
4 17, 2013 (collectively, “Phase 4 CMO”), Phelan Piñon Hills Community Services District
5 (“PPHCSD”) hereby submits the following response and declaration:

6 The Declaration of PPHCSD provided below by and through its General Manager, Don
7 Bartz, is pursuant to the Phase 4 CMO, referred to herein as the PPHCSD Declaration, and follows
8 the form of the December 21, 2012 Court-ordered disclosure and provides additional information.

9 The PPHCSD Declaration is made solely for the purpose of this action and more
10 specifically for the Phase 4 Trial, based upon such information and documents as are presently
11 available to and specifically known by PPHCSD. Although PPHCSD has undertaken significant
12 efforts since its formation in 2008 to evaluate and enhance services to its residents and customers,
13 including among other things, water service as previously provided by County of San Bernardino
14 Special Districts District, further discovery or evaluation may supply additional facts or documents,
15 add meaning to the known facts, or establish entirely new conclusions. The following responses
16 are given without prejudice to PPHCSD’s right to produce evidence of any such additional facts or
17 documents subsequently discovered, recalled, or otherwise responsive to further discovery,
18 investigation, research, or analysis. Accordingly, PPHCSD reserves the right to amend or to
19 supplement responses provided herein, though absent further orders or appropriate requests, no
20 such affirmative obligation exists to amend or supplement the responses provided herein.

21 Notwithstanding the foregoing comments, and consistent with the Phase 4 CMO and the
22 Court’s comments regarding the same, the PPHCSD Declaration provides ample, credible, and
23 admissible information to enable parties to understand and agree to the quantity of groundwater
24 produced by PPHCSD from the Antelope Valley Adjudication Area during the time period relevant
25 to Phase 4 *and* identification of the beneficial uses of that water.

26 ///
27 ///
28 ///

1 Based upon this sufficient and admissible information, the parties should agree to the
2 quantities of groundwater produced for calendar years 2011 and 2012 and the beneficial uses for
3 which such water was produced by PPHCSD so that deposition and trial testimony from PPHCSD
4 are not necessary for the Phase 4 Trial.

5 **DECLARATION OF DON BARTZ**

6 I, Don Bartz, declare as follows:

7 1. I am the General Manager for Phelan Piñon Hills Community Services District
8 (“PPHCSD”), which is a party to this groundwater adjudication commonly referred to as the
9 Antelope Valley Groundwater Cases. I make this Declaration on behalf of PPHCSD in response to
10 the Court’s Phase 4 CMO, and I am authorized to do so. I have personal knowledge of the facts set
11 forth in this Declaration, and if called as a witness, could and would testify competently to such
12 facts under oath.

13 2. I have been employed by PPHCSD since its formation in 2008. Prior to PPHCSD, I
14 worked in similar capacities as a general manager for public water suppliers. Over the course of
15 my career, including my ongoing tenure with PPHCSD, I have become very familiar with
16 operations and maintenance of water systems, including groundwater production wells that are part
17 of a water system, as well as the uses to which water delivered through a water system to residents
18 and customers is applied. Also over the course of my career, I have become very familiar with
19 water-industry customs and practices for providing water service to the public.

20 3. PPHCSD is a public agency organized as a community services district following an
21 election conducted February 5, 2008, in which the voters approved with an eighty-one percent
22 (81%) rating the formation of PPHCSD as the consolidation of three special districts: San
23 Bernardino County Zone L-70 (Water); San Bernardino CSA 09 (Phelan Parks and Street
24 Lighting); and San Bernardino County CSA 56-F1 (Piñon Hills Parks) (collectively, “San
25 Bernardino County”). PPHCSD’s formation was finalized on March 18, 2008 by Resolution of the
26 San Bernardino County Local Agency Formation Commission (“LAFCO”). Attached to this
27 Declaration as Exhibit “A” is a true and correct certified copy of LAFCO’s Certificate of
28 Completion of PPHCSD’s formation.

1 4. PPHCSD provides municipal water service to more than 21,000 residents through
2 approximately 6,700 service connections, with PPHCSD's service area located next to the Los
3 Angeles / San Bernardino County line.

4 5. All of PPHCSD's water service facilities, including groundwater production wells,
5 that are serving PPHCSD's residents and customers were constructed and operated by San
6 Bernardino County Zone L-70. One of these groundwater production wells - Well 14 - was
7 constructed by San Bernardino County on a parcel located within Los Angeles County. San
8 Bernardino County purchased this parcel on September 13, 1999 for the purpose of constructing
9 Well 14 from Los Angeles County as part of a Surplus Property sale in which Los Angeles County
10 apparently sought to dispose of property it no longer had any interest to own ("Well 14 Parcel").

11 6. Attached to this Declaration as Exhibit "B" is a true and correct copy of the deed for
12 the Well 14 Parcel from Los Angeles County to San Bernardino County, dated September 13,
13 1999. Also, attached as Exhibit "C" are true and correct copies of public records regarding San
14 Bernardino County's publicly-noticed process for constructing Well 14 on the Well 14 Parcel.

15 7. Well 14 is the only PPHCSD well located within the Antelope Valley Adjudication
16 Area as previously defined by the Court. Because of such, only groundwater production from Well
17 14 is provided in this Declaration, although production from other wells is a matter of public record
18 and is timely reported to Upper Mojave River Valley Groundwater Basin Watermaster pursuant to
19 the final judgment reached in *City of Barstow, et al. v. Mojave Water Agency, et al.* (Riverside
20 County Superior Court Case Number 208568).

21 8. Well 14 is located on that single parcel of real property identified as Lot 32 as
22 shown on the licensed surveyors map filed in Book 74, Page 43, Record of Surveys, in the office of
23 the County Recorder of Los Angeles County, with Los Angeles County Assessor's Identification
24 Number ("AIN") 3089-021-270L, however the number on the deed from Los Angeles County to
25 San Bernardino County identifies the AIN for this parcel as 3089-021-902, which I am informed
26 and believe is due to Los Angeles County changing the AIN when it conveys ownership of one of
27 its parcels, such as this one, to a different entity.

28 9. Well 14's identification number is 05N08W25J001S.

1 10. Pursuant to the Phase 4 CMO, PPHCSD provides Well 14's production and does so
2 as authorized by the Phase 4 CMO for years beyond calendar years 2011 and 2012, as follows:
3 2005: 1.11 acre feet ("af"); 2006: 164.15 af; 2007: 20.95 af; 2008: 493.27 af; 2009: 558.65 af;
4 2010: 1,110.45 af; 2011: 1,053.14 af; and, 2012 (through November 30): 955.73 af. Further
5 investigation reveals that PPHCSD mistakenly reported production from Well 14 as being
6 1,190.32 af when production actually was 1,110.45 af for 2010, and 957.97 af instead of 955.73
7 af for January 1, 2012 through November 30, 2012, so these latter figures amend my statement
8 from the December 21, 2012 "Discovery Disclosure." PPHCSD is amending with the State
9 Water Resources Control Board its Notice of Extraction and Diversion of Water for 2010 to reflect
10 production as 1,110.45 af. That Notice was included, as well as for other years, in PPHCSD's
11 "Discovery Disclosure" on December 21, 2012.

12 11. Shortly after Well 14 came online, Well 14 was not able to operate at its full
13 capacity due to difficulty with the pump installed by and the direction of San Bernardino County.
14 The pump was replaced, allowing Well 14 to become fully operational to meet the public's needs.

15 12. Regular flowmeter readings are the methodology used in determining the amount of
16 groundwater produced by Well 14, with Well 14's flowmeter regularly maintained and calibrated.

17 13. Attached to this Declaration as Exhibit "D" are true and correct copies of flowmeter
18 readings for Well 14 for calendar years 2011 through November 30, 2012 ("Well Log" or "Well
19 Logs"). Exhibit D represents PPHCSD's records, prepared in accordance with PPHCSD's customs
20 and practices, including recordation of the information based upon the water year from October 1
21 through September 30. Also, attached to this Declaration as Exhibit "E" are true and correct copies
22 of Certificates of Accuracy for tests performed on Well 14, which speak to the accuracy of Well
23 14's meter.

24 14. As part of the municipal use to which groundwater produced by all of PPHCSD's
25 wells is applied, including groundwater produced by Well 14, the groundwater is used for domestic
26 purposes, commercial purposes, and for fire protection including support to or within Los Angeles
27 County as needed, with recent occurrences last year.

28 ///

1 15. A very small portion of PPHCSD’s municipal use is for commercial purposes, given
2 the relatively low commercial presence in PPHCSD’s service area and much of what commercial
3 area does exist in the surrounding area is served by a different supplier, Sheep Creek Mutual Water
4 Company.

5 16. The vast majority of PPHCSD’s municipal use is for domestic purposes. Part of the
6 domestic includes outdoor irrigation, and husbandry in some instances given the rural environment
7 of PPHCSD and surrounding area. PPHCSD does not quantify the percentage of water used by
8 domestic customers for outdoor irrigation, but the use of water for outdoor irrigation is limited
9 given that many water customers within PPHCSD’s service area have natural desert landscape for
10 which outdoor irrigation is not used. Based on this natural landscape common throughout
11 PPHCSD’s service area, domestic outdoor irrigation may be lower within PPHCSD than other
12 areas in the Antelope Valley where lawns and outdoor vegetation is more common, including those
13 areas testified to by Joseph Scalmanini during the Phase 3 Trial that fifty-five percent (55%) of
14 domestic use in the Antelope Valley is used outside of the house. This 55% figure also is reflected
15 in *The Summary Expert Report Phase 3 - Basin Yield and Overdraft*, dated July, 2010 and prepared
16 by Robert Beeby *et al.* (including Mr. Scalmanini)(“*Summary Expert Report*”), at Appendix D, on
17 page D-21. Attached to this Declaration as Exhibit “F” are true and correct copies of pages from
18 the Phase 3 Trial transcript reflecting Mr. Scalmanini’s testimony indicated above. Also, attached
19 to this Declaration as Exhibit “G” are true and correct copies of pages from the *Summary Expert*
20 *Report* reflecting the same language testified to by Mr. Scalmanini.

21 17. Also, to help ensure water is used wisely by and within its service area, PPHCSD
22 actively encourages and provides “tips” to its residents and customers on the importance of water
23 conservation and how to do so, with such encouragement and tips available at PPHCSD’s official
24 website, found at www.pphcsd.org. PPHCSD’s two parks consist of traditional desert landscape,
25 consistent with its surroundings and in furtherance of water conservation principles.

26 18. Based upon my training and experience within the water industry including as a
27 general manager, I believe the facts as stated above to be true, and particularly for purposes of the
28 Phase 4 Trial that PPHCSD’s groundwater production for Well 14 is as stated above in Paragraph

1 10 which is used for municipal uses which is used for domestic and other municipal uses set forth
2 above in Paragraphs 4, 14, 15, and 16.

3 19. As General Manager for PPHCSD, I am familiar with the customs and practices for
4 creating and maintaining records, including for each and every one of PPHCSD's records attached
5 as an exhibit to this Declaration. Each such record was made within the scope of duties for the
6 PPHCSD employee who created the record, and was done at or near the time the act was
7 completed. Specifically as to the Well Log records (Exhibit D), PPHCSD employees are trained on
8 how to identify, and then to identify, the data for each column on the Well Log for each day of each
9 month as indicated in the rows, with the month denoted at the top of the Well Log record. Having
10 reviewed each such record attached to this Declaration, I believe each record to be a true, accurate
11 and complete copy of the original.


12 Executed on this 31st day of January 2013, at Phelan, California.

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

15 
16 _____
17 Don Bartz

18 Dated: January 31, 2013

ALESHIRE & WYNDER, LLP

19
20 By: 
21 _____
22 Wesley A. Miliband
23 Attorneys for Cross-Defendant and
24 Cross-Complainant,
25 Phelan Piñon Hills Community
26 Services District
27
28

2
3 **PROOF OF SERVICE**

4 I, Linda Yarvis,

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 January 31, 2013, I served the within document(s) described as **RESPONSE AND
8 DECLARATION OF PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT TO
THE COURT'S ORDER TO ALL PARTIES FOR DISCLOSURE OF CERTAIN
9 INFORMATION BY JANUARY 31, 2013** as follows:

10 (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
11 Court's Clarification Order. Electronic service and electronic posting completed through
www.scefiling.org.

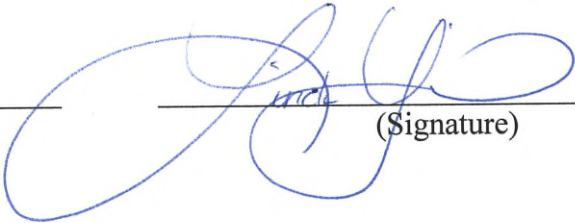
12 (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope
13 addressed as set forth above. I placed each such envelope for collection and mailing following
ordinary business practices. I am readily familiar with this Firm's practice for collection and
14 processing of correspondence 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 January 31, 2013, 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 Linda Yarvis
23 (Type or print name)

24 
25 _____
26 (Signature)