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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) **PHELAN PIÑON HILLS COMMUNITY**
SERVICES DISTRICT'S TRIAL BRIEF
FOR PHASE FOUR TRIAL
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) Phase Four Trial Date: May 28, 2013
Time: 10:00 a.m.
22 Location: Central Civil West
600 S. Commonwealth Avenue,
23 *Wm. Bolthouse Farms, Inc. v. City of*)
Lancaster) 17th Floor, Dept. 322
Diamond Farming Co. v. City of Lancaster) Los Angeles, California
Diamond Farming Co. v. Palmdale Water)
24 *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 Cross-Defendant and Cross-Complainant, Phelan Piñon Hills Community Services District
4 (“PPHCSD”), submits the following trial brief for the Phase Four trial.

5 **I. INTRODUCTION.**

6 Pursuant to the Court’s Case Management Order For Phase 4 Trial (“CMO”) and four
7 subsequent amendments to the CMO, as well as consistent comments from the Court during
8 numerous hearings over the past many months regarding the scope of this trial phase, PPHCSD had
9 focused its efforts for this trial phase on: (1) establishing the quantities of water produced from
10 PPHCSD’s Well 14 during the time period deemed relevant by the Court¹; (2) establishing that
11 PPHCSD’s beneficial use of water is for municipal purposes²; and (3) establishing that PPHCSD
12 owns the parcel of land upon which Well 14 is located³. *Pursuant to the Court’s Fifth Amendment*
13 *to the CMO, PPHCSD is now focused on establishing its production during 2011 and 2012.*

14 Also during this phase of trial, PPHCSD may seek to challenge the claims asserted by
15 another party. At this point, PPHCSD remains concerned with claims by Bolthouse Properties,
16 LLC and Wm. Bolthouse Farms, Inc. (collectively “Bolthouse” unless otherwise distinguished).⁴

17 _____
18 ¹ The CMO at ¶ 2 states in pertinent part that the “Phase 4 trial will address the issue of current
19 groundwater production of all parties for the calendar year 2011 and January 1 through November
20 30, 2012...” The First Amendment to the CMO states at page 2, lines 9-11: “Parties that wish to
21 produce evidence during the years of 2000 through 2012 may do so if they timely produce such
22 evidence in discovery.” PPHCSD has timely produced in discovery the quantities of water
23 produced by Well 14 for calendar year 2005 through November 30, 2012.

24 ² Pursuant to the First Amendment to the CMO at page 2, lines 11-13, “Trial of the parties’ claimed
25 reasonable and beneficial uses of water will include the amount of water used by each party and the
26 *identification of the beneficial use...*” (emphasis added).

27 ³ Though no party has made claim or otherwise challenged that PPHCSD owns the parcel of land
28 on which Well 14 is located, PPHCSD seeks to establish this fact to establish a clear record of
ownership. Accordingly, PPHCSD filed and served a Request for Judicial Notice concurrently
with this Trial Brief, which contains a certified copy of the deed on which Well 14 is located.

⁴ As required by the CMO and its subsequent amendments as to timing and content, PPHCSD has
articulated evidentiary and substantive objections and the bases thereof to Bolthouse’s claims, on
February 28, 2013, April 15, 2013, and May 3, 2013.

1 **II. PPHCSD’S FACTUAL BACKGROUND AND ITS PHASE FOUR TRIAL**
2 **EVIDENCE.**

3 **A. PPHCSD’s Background And Ownership Of The Parcel On Which Well 14 Is**
4 **Located.**

5 PPHCSD will offer evidence, to the extent necessary, that PPHCSD is a public agency
6 organized under the Community Services District Law, found at Government Code §§ 61000 *et*
7 *seq.* It was formed by Resolution of the San Bernardino County Local Agency Formation
8 Commission following an election conducted February 5, 2008, in which the voters approved the
9 formation of PPHCSD as the consolidation of three special districts: San Bernardino County Zone-
10 L-70 (Water); San Bernardino County CSA09 (Phelan Parks and Street Lighting); and San
11 Bernardino County CSA 56-F1 (Piñon Hills Parks) (collectively, “San Bernardino County”). As
12 such, PPHCSD is the successor to San Bernardino County.

13 The evidence PPHCSD will offer shows that one of PPHCSD’s wells – Well 14 – is located
14 in Los Angeles County and draws water from the Antelope Valley Groundwater Basin, thus
15 placing this well within both the Antelope Valley Adjudication Area and the hydrogeologic
16 Antelope Valley Groundwater Basin.⁵ Well 14 is located on one parcel, which located within Los
17 Angeles County and identified as Los Angeles County Assessor’s Identification Number 3089-021-
18 270L. San Bernardino County was the previous owner, and had acquired this parcel from Los
19 Angeles County on September 13, 1999 through a Surplus Property sale in which Los Angeles
20 County apparently sought to dispose of property it no longer had any interest to own, leading to its
21 sale of this parcel to San Bernardino County. Accordingly, Well 14 is the only one of PPHCSD’s
22 wells at issue, at least for purposes of this trial phase.

23 _____
24 ⁵ PPHCSD owns and operates other wells for distributing water to its residents and otherwise
25 providing public water service for municipal (domestic and commercial) and related purposes,
26 however, Well 14 is the only PPHCSD well located within the Antelope Valley Adjudication Area,
27 with all other PPHCSD wells being located within the area adjudicated in the Upper Mojave River
28 Valley Groundwater Basin Adjudication (“Mojave Valley Adjudication”), in which a final
judgment was reached and a watermaster appointed. (See, *City of Barstow, et al. v. Mojave Water
Agency, et al.* (2000) 23 Cal.4th 1224).

1 **PPHCSD’s Beneficial Use Of Groundwater Produced Is For Municipal**
2 **Purposes.**

3 PPHCSD will offer evidence, to the extent necessary, that PPHCSD distributes the
4 groundwater it produces for municipal purposes, which is a long and well-established beneficial
5 use (that also holds high priority).⁶ Specifically, the use of groundwater produced by PPHCSD
6 including that from Well 14 is primarily for domestic use with low commercial use, with other uses
7 being for fire protection and related emergency services including support to Los Angeles County
8 as needed, with recent occurrences during calendar year 2012 wherein PPHCSD provided water to
9 Los Angeles County in support of fighting fires.

10 **The Quantities Of Water Produced By Well 14 For Calendar Years Deemed**
11 **Relevant To This Trial Phase.**

12 The evidence PPHCSD will offer, if for some reason deemed necessary given this
13 information is undisputed, shows that the methodology used in determining the amount of
14 groundwater produced by Well 14 is from regular flowmeter readings, with Well 14’s flowmeter
15 maintained and calibrated on a regular basis, demonstrable by records electronically served on all
16 parties.⁷ PPHCSD’s evidence shows that Well 14’s production was as follows for each calendar
17 year – 2005: 1.11 acre feet (“af”); 2006: 164.15 af; 2007: 20.95 af; 2008: 493.27 af; 2009:
18 558.65 af; 2010: 1,110.45 af; 2011: 1,053.14 af; and, 2012 (through November 30): 955.73 af.
19 ///

20 ⁶ Pursuant to the California Code of Regulations (“CCR”), Title 23, § 663, “municipal use” means
21 the use of water for the municipal water supply of a city, town, or other similar population group
22 [e.g., community services district], and use incidental thereto for any beneficial purpose. Also,
23 Title 23 CCR § 660 states that “domestic use” means the use of water in homes, resorts, motels,
24 organization camps, camp grounds, etc., including the incidental watering of domestic stock for
family sustenance or enjoyment and the irrigation of not to exceed one-half acre in lawn,
ornamental shrubbery, or gardens at any single establishments.

25 ⁷ PPHCSD General Manager Don Bartz provided written testimony that was, along with all of
26 PPHCSD’s trial exhibits, electronically served on all parties on December 21, 2012, January 31,
27 2013 and April 18, 2013. PPHCSD’s exhibits include, among other things, Well 14’s Well Logs
through 2012 (handwritten notes of flowmeter readings from Well 14), Certificates of Accuracy for
tests performed on Well 14 (reflecting the flowmeter’s accuracy).

1 **III. PPHCSD’S PHASE FOUR TRIAL EVIDENCE IS UNDISPUTED GIVEN THE**
2 **FOURTH AND FIFTH AMENDMENTS TO THE CASE MANAGEMENT ORDER.**

3 Not a single party disputes the quantity of water produced by PPHCSD’s Well 14 for any of
4 the years from 2005 through 2012.

5 PPHCSD has received stipulations, at least for purposes of the Phase Four Trial, from: (1)
6 the Wood Class, as to PPHCSD’s Well 14 production, PPHCSD’s beneficial use being for
7 municipal purposes, and PPHCSD owning the parcel of land on which Well 14 is located; (2) Copa
8 De Oro Land Company, on the same issues as the Wood Class stipulated; and (3) most, if not all, of
9 the other public water suppliers as to Well 14’s production.

10 For those parties that have not explicitly stipulated to the quantities of water produced by
11 PPHCSD’s Well 14 (for at least January 1, 2011 through November 30, 2012), those parties have
12 effectively agreed to PPHCSD’s quantities of groundwater production by voluntarily electing not to
13 do so while knowing that any such “portion of a Stipulation or Declaration to which no objection
14 has been made by the time set forth in paragraph 3 hereof will be accepted by the Court in the Trial
15 as *competent evidence of the facts stated therein*, without the necessity to call a witness to
16 establish the fact.”⁸ As against PPHCSD, only two filings were posted on or by the May 3, 2013
17 deadline set forth by the Fourth Amendment to the CMO, and neither of those filings objected to
18 the portions of PPHCSD’s proposed stipulation electronically served on March 11, 2013
19 (“Proposed Stipulation”) relating to the quantities of water produced by Well 14 from 2005 through
20 November 30, 2012.⁹

21 The fact that these same parties that did not object to Well 14 production quantities but did
22 so for other portions of the Proposed Stipulation illustrates a deliberate choice not to challenge
23 PPHCSD on the quantities of water produced by Well 14.

24 _____
25 ⁸ Fourth Amendment to the CMO, ¶ 5 (emphasis added).

26 ⁹ See, PPHCSD’s Motion In Limine filed concurrently herewith, wherein PPHCSD identifies with
27 specificity that those few parties that did raise objection(s) to PPHCSD’s Phase Four evidence did
28 not object at all to PPHCSD’s groundwater production.

1 This process of sorting out which party objects to another party and as to what issues is
2 precisely the purpose underlying the Court's CMO and subsequent amendments.

3 Accordingly, the absence of objection by any party to PPHCSD's Well 14 production
4 amounts should be deemed accepted without further evidence being presented during trial, as
5 explicitly set forth in the Fourth Amendment to the CMO.

6 As to PPHCSD's initial intentions to offer evidence that shows PPHCSD uses groundwater
7 for municipal purposes and that Well 14 is located on a parcel of land owned by PPHCSD, the
8 Court's Fifth Amendment to those parties that filed objections to PPHCSD on May 3, 2013
9 pursuant to the Fourth Amendment to the CMO objected to this information as being irrelevant.
10 Notably, these parties failed to comply with this amendment to the CMO by neglecting to identify
11 the bases for the objection, such as the documents or witnesses the objecting party relies upon for
12 making the objection. Assuming, *arguendo*, the Court overlooks these defects with other parties'
13 objections (which should not be the case), PPHCSD's discovery disclosures made between
14 December 21, 2012 and April 18, 2013, provide an ample basis for finding favorably for PPHCSD
15 on these issues, with the only question being whether the Court finds this information to be relevant
16 to this trial phase.

17 **IV. ESTIMATED TIME FOR PPHCSD TO PRESENT ITS PHASE FOUR TRIAL**
18 **EVIDENCE.**

19 PPHCSD timely designated its witnesses, including its previously-qualified expert Thomas
20 E. Harder. In its Witness List filed concurrently herewith, PPHCSD more fully sets forth the
21 nature and estimated time for presenting its evidence. In sum, PPHCSD estimates that it can present
22 its evidence on the three issues enumerated in Section I above in approximately three (3) hours,
23 subject to the uncertainty of the length of any cross-examination. Also, in challenging the claims
24 set forth by Bolthouse, PPHCSD estimates that it can present its evidence through its designated
25 expert in approximately two (2) hours, subject to the uncertainty of the length of any cross-
26 examination.

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28

1 **V. CONCLUSION.**


2 Ultimately, PPHCSD respectfully requests the Court find that: (1) PPHCSD's Well 14
3 produced the quantities of water as presented by PPHCSD; (2) PPHCSD's beneficial use was for
4 municipal purposes including domestic use; and (3) PPHCSD owns the parcel of land on which
5 Well 14 is located.

6 Dated: May 23, 2013

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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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 May 24, 2013, I served the within document(s) described as **PHELAN PIÑON HILLS**
8 **COMMUNITY SERVICES DISTRICT'S TRIAL BRIEF FOR PHASE FOUR TRIAL** as
follows:

9 (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
10 Court's Clarification Order. Electronic service and electronic posting completed through
www.scefiling.org.

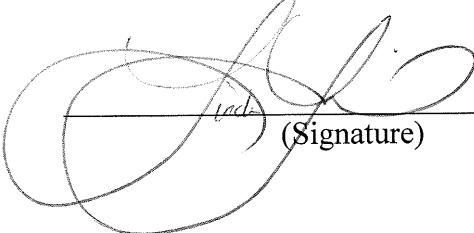
11 (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope
12 addressed as set forth above. I placed each such envelope for collection and mailing following
ordinary business practices. I am readily familiar with this Firm's practice for collection and
13 processing of correspondence for mailing. Under that practice, the correspondence would be
deposited with the United States Postal Service on that same day, with postage thereon fully
14 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
15 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
by Overnight Express, an express service carrier, or delivered to a courier or driver authorized by
17 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,
18 with fees for overnight delivery paid or provided for.

19 Executed on May 24, 2013, at Irvine, California.

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

21
22 _____
Linda Yarvis
(Type or print name)

23 

(Signature)