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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

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:

**PHELAN PIÑON HILLS COMMUNITY  
SERVICES DISTRICT'S EX PARTE  
APPLICATION FOR CONTINUANCE OF  
TRIAL DATE AND ADOPTION OF  
LITIGATION SCHEDULE;  
DECLARATION OF WESLEY A.  
MILIBAND IN SUPPORT THEREOF**

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

Filed Concurrently with [Proposed] Order

17 *Diamond Farming Co., et al.*  
Los Angeles County Superior Court, Case  
18 No. BC 325 201

Date: September 26, 2014  
Time: 10:00 a.m.  
Dept.: 20  
161 N. 1<sup>st</sup> Street  
San Jose, CA 95113

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.*

Trial Date: October 7, 2014  
(Trial Related to Phelan Piñon  
Hills Community Services Dist.)

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

Location: TBD

27 **AND RELATED CROSS-ACTIONS**



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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

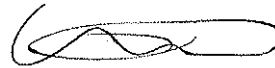
PLEASE TAKE NOTICE that on September 26, 2014 at 10:00 a.m., a hearing will occur in Department 20 of the Santa Clara Superior Court located at 161 N. 1<sup>st</sup> Street in San Jose, California, on an *Ex Parte* Application by Phelan Piñon Hills Community Services District (“Phelan Piñon Hills”) for continuance of the trial date and adoption of a litigation schedule (“Application”).

This Application is made pursuant to California Rules of Court, rules 3.1200 *et seq.* and 3.1332, and Code of Civil Procedure section 128. This Application is based on the application, attached memorandum of points and authorities, the Declaration of Wesley A. Miliband and exhibits attached thereto, the [Proposed] Order, the pleadings and papers on file herein, and on such further arguments and material as the Court may consider at the hearing on this matter.

DATED: September 24, 2014

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

By:



WESLEY A. MILIBAND  
Attorneys for Defendant and Cross-Complainant  
Phelan Piñon Hills Community Services District

ALESHIRE &  
WYNDER, LLP  
ATTORNEYS AT LAW



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Slow actions by some counsel and inactions of other counsel necessitate this *Ex Parte*  
4 Application for Continuance of Trial and Adoption of Litigation Schedule (“Application”) as it relates  
5 to the Court’s prior directive to attempt to reach a stipulation as to pertinent facts involving Phelan  
6 Piñon Hills’ Second and Sixth Causes of Action.

7 Phelan Piñon Hills continues to demonstrate diligence to bring its causes of action to trial,  
8 however, Phelan Piñon Hills cannot adequately prepare for trial given the ongoing conduct of other  
9 counsel not working toward a stipulation of facts, coupled with the ongoing stay on discovery which  
10 precludes Phelan Piñon Hills from doing written discovery or depositions.

11 Accordingly, Phelan Piñon Hills respectfully requests the Court continue the trial and adopt a  
12 litigation schedule, including discovery, with an ample basis for good cause articulated herein.

13 Specifically, Phelan Piñon Hills requests the new trial date be January 12, 2015 and a proposed  
14 Litigation Schedule is articulated in Section II.E, *infra*. This proposed schedule allows time for the  
15 stipulation to be pursued further, while also allowing Phelan Piñon Hills to conduct focused written  
16 discovery (also discussed in Section II.E, *infra*) as well as allowing parties to opt out of responding to  
17 discovery should a sufficient stipulation be reached or should that party formally state that its  
18 participation in the Phelan Piñon Hills trial is *not* for purposes of engaging in the presentation of  
19 evidence (i.e., simply to monitor and/or submit legal briefs). This proposed schedule also allows time  
20 for extra delay in the parties (or their counsel) effectively communicating, partly evident from the  
21 facts contained herein. This proposed schedule does not disrupt the potential settlement, since that  
22 process would take at least three months (more specifically discussed in Section II.B, *infra*).

23 Ultimately, over six weeks have passed since the August 11 hearing, one month has passed  
24 since Phelan Piñon Hills circulated a detailed set of Proposed Facts. Though a stipulation may be  
25 reached, and discovery (written and deposition) may be limited, time is necessary for reasons well  
26 beyond the control of Phelan Piñon Hills. The Declaration of Wesley A. Miliband (“Miliband  
27 Declaration”) attached hereto provides a detailed factual account of events relevant to this  
28 Application. Without a sufficient continuance, Phelan Piñon Hills will suffer irreparable harm.

01133.0012/208497.1





1 **II. GOOD CAUSE EXISTS TO GRANT THE REQUEST FOR CONTINUANCE OF THE**  
2 **TRIAL.**

3 Good cause for granting Phelan Piñon Hills' Application is well demonstrated herein,  
4 including the Miliband Declaration, which illustrates Phelan Piñon Hills' challenges in obtaining  
5 cooperation from those parties who filed Notices of Intent to Participate in the Phelan Piñon Hills  
6 Trial ("Participating Parties"). Participating Parties Request is being made as soon as reasonably  
7 practical once the necessity for the continuance was discovered, given the Court's unavailability from  
8 September 10 to this week, and some counsel indicating they were reviewing proposed facts for a  
9 stipulation.

10 **A. The Standard For Continuing The Trial.**

11 California Code of Civil Procedure section 128 provides the Court with tremendous discretion.  
12 More specific to a trial continuance are California Rules of Court, specifically Rules 3.1202 and  
13 3.1332. Rule 3.1202 requires the applicant to make an affirmative factual showing in a declaration  
14 containing competent testimony based on personal knowledge of irreparable harm, immediate danger,  
15 or any other statutory basis for granting relief *ex parte*. Rule 3.1332 sets forth a non-exclusive list of  
16 factors to be considered by the Court in determining whether to grant a trial continuance.

17 Subsection (c) of Rule 3.1332 states in pertinent part: Although continuances of trials are  
18 disfavored, each request for a continuance must be considered on its own merits. The court may grant  
19 a continuance only on an affirmative showing of good cause requiring the continuance. Circumstances  
20 that may indicate good cause include: (6) A party's excused inability to obtain essential testimony,  
21 documents, or other material evidence despite diligent efforts.

22 Subsection (d) of Rule 3.1332 states: In ruling on a motion or application for continuance, the  
23 court must consider all the facts and circumstances that are relevant to the determination. These may  
24 include:

- 25 (1) The proximity of the trial date;  
26 (2) Whether there was any previous continuance, extension of time, or delay of trial due  
to any party;  
27 (3) The length of the continuance requested;  
28 (4) The availability of alternative means to address the problem that gave rise to the  
motion or application for a continuance;

- (5) The prejudice that parties or witnesses will suffer as a result of the continuance;
- (6) If the case is entitled to a preferential trial setting, the reasons for that status and whether the need for a continuance outweighs the need to avoid delay;
- (7) The court's calendar and the impact of granting a continuance on other pending trials;
- (8) Whether trial counsel is engaged in another trial;
- (9) Whether all parties have stipulated to a continuance;
- (10) Whether the interests of justice are best served by a continuance, by the trial of the matter, or by imposing conditions on the continuance; and
- (11) Any other fact or circumstance relevant to the fair determination of the motion or application.

**B. Good Cause Exists To Continue The Trial As Requested.**

Refusing to allow a trial continuance under the circumstances would be grossly unfair. The Miliband Declaration sets forth a detailed account of Phelan Piñon Hills' efforts to work with opposing parties for a stipulation, with counsel for Phelan Piñon Hills circulating a detailed set to the parties on August 28, 2014 - one month ago.

In addition, the various factors under California Rule of Court 3.1332 are addressed, as follows:

- (1) The current trial date is October 7, 2014, less than two weeks from now.
- (2) There has not been any previous trial continuance for this trial on two of Phelan Piñon Hills' causes of action, nor has Phelan Piñon Hills previously requested a trial continuance.
- (3) The length of the continuance requested will allow the stipulation process to be completed and to the extent a stipulation of necessary facts is not reached, written and deposition discovery can be completed for proper trial preparation.
- (4) No alternative means can adequately address the bases giving rise to this application for a continuance, particularly with an ongoing stay on discovery and even without the stay the Code of Civil Procedure requiring at least twelve days for noticing the deposition of trial witnesses; in fact, the stipulation of facts is the alternative means undertaken as of August 11, 2014 to justify setting the trial fifty-six days later for October 7, 2014, yet without other parties' collective cooperation to reach a set of stipulated facts, no other alternative to a trial continuance is feasible or appropriate.
- (5) The parties or witnesses will *not* suffer prejudice as a result of the continuance. A number of parties are not even participating in the Phelan Piñon Hills trial. For those Participating Parties, several counsel have indicated they only wish to observe or monitor the trial. For those Participating Parties actively engaging in the presentation of evidence, namely including Los Angeles County Waterworks District No. 40 ("WD 40"), those parties (and the two-designated witnesses by WD 40) likewise do not suffer prejudice as a result of the continuance; WD 40 previously expressed necessity to resolve some of Phelan Piñon Hills' causes of action prior to a settlement being reached, but WD



1 40 fails to present any legal authority or factual basis supporting such a notion. Should  
2 the WD 40 notion be indulged, this section (II.B) *infra* addresses how the potential  
3 settlement and its preliminary Court approval would not occur before the trial date  
4 requested by Phelan Piñon Hills.

- 4 (6) There is not a basis for trial preference.
- 5 (7) In the interest of justice and equity, the Court should be able to grant the trial  
6 continuance. Phelan Piñon Hills can accommodate the Court's schedule and preferences  
7 in many ways.
- 8 (8) Phelan Piñon Hills' trial counsel, Wesley A. Miliband, is not set to be engaged in another  
9 trial during the week of October 7; however, this date was selected by some other  
10 counsel conferring with one another about their schedules without consultation with  
11 Phelan Piñon Hills' trial counsel's calendar, which has other obligations still set for the  
12 week of October 7.
- 13 (9) Some counsel for Participating Parties have indicated they will not oppose Phelan Piñon  
14 Hills' Application to continue the trial; based on those communications, Phelan Piñon  
15 Hills' counsel anticipates these counsel (or some of them) will file notices of non-  
16 opposition to the Application. Given this Application arises in large part from a number  
17 of other counsel for Participating Parties failing to respond to Phelan Piñon Hills'  
18 counsel's multiple attempts to confer about the Proposed Facts, counsel for Phelan Piñon  
19 Hills has similarly been unable to obtain consensus from these other counsel to continue  
20 the trial.
- 21 (10) The interests of justice are best served by a continuance of this matter. In order for all  
22 parties to have a full and fair trial, each party must be afforded process that allows for  
23 adequate preparation. With an ongoing discovery stay, and insufficient progress and  
24 cooperation from other counsel on the alternative means to stipulate to facts (with some  
25 of these same counsel representing they would stipulate to the facts), Phelan Piñon Hills  
26 will be irreparably harmed and unduly prejudiced if forced to trial on October 7, 2014  
27 and if not given the opportunity to conduct discovery to fill the void between stipulated  
28 facts and other facts Phelan Piñon Hills deems necessary for the Court to consider as  
evidence.

22 **C. Phelan Piñon Hills' Does Not Need To Precede The Settlement Approval Process.**

23 Phelan Piñon Hills' trial does not have to occur before potential approval of the anticipated  
24 potential settlement is approved by the Court. Some other parties contend otherwise – during the  
25 August 11, 2014 hearing, Palmdale Water District's counsel stated that if Phelan Piñon Hills does not  
26 have a water right, then Phelan Piñon Hills does not have any ability to challenge the potential  
27  
28



1 settlement.<sup>1</sup> Nothing could be further from the truth, as a matter of fundamental and well-established  
2 law. Instead, Phelan Piñon Hills is a party to this case and ultimately to the Judgment and Physical  
3 Solution, with or without a water right, *unless* each and every party that sued Phelan Piñon Hills  
4 dismisses Phelan Piñon Hills with prejudice from this complex action.

5 Even if the Court were inclined to try two of Phelan Piñon Hills causes of action currently set  
6 for trial before potential approval of a settlement between other parties, potential approval is several  
7 months away – various counsel have consistently represented to the Court that even from *the point*  
8 *counsel reach agreement* (which has yet to occur), many of those settling parties require an *additional*  
9 *eight weeks* to go through the necessary client-approval process, which if successfully completed,  
10 must be followed by a motion seeking the Court’s preliminary approval, thus *requiring approximately*  
11 *one more month before the settlement is before the Court, for a total of at least three months needed*  
12 *by the settling parties to obtain client approval and the Court’s preliminary approval.*

13 Accordingly, even though determination of Phelan Piñon Hills’ causes of action does not need  
14 to precede approval of a settlement amongst other parties, the three-month continuance sought now by  
15 Phelan Piñon Hills still allows the Court to try two of Phelan Piñon Hills causes of action before the  
16 Court would – under the best of circumstances – preliminarily approve the anticipated settlement  
17 between other parties.

18 **D. Phelan Piñon Hills Would Be Irreparably Harmed If A Sufficient Continuance Is**  
19 **Not Granted.**

20 In *Taylor v. Bell* (1971) 21 Cal.App.3d 1002, 1007<sup>2</sup>, the Court noted trial judges have a great  
21 amount of discretion in granting continuances, by stating:

22 The factors which influence the granting or denying of a continuance in any particular  
23 case are so varied that the trial judge must necessarily exercise a broad discretion. On  
24 an appeal from a judgment (the order itself being non-appealable) it is particularly

25 <sup>1</sup> Miliband Declaration, ¶ 8, Exhibit E, August 11, 2014 Reporter’s Transcript of Proceedings, pp.  
33:16-34:3.

26 <sup>2</sup> See also, *Hartford Accident & Indemnity Co. v. Gropman* (1984) 163 Cal.App.3d Supp. 33, 41; *In re*  
27 *Marriage of Hoffmeister* (1984) 161 Cal.App.3d 1163, 1169 [The trial judge must exercise his  
28 discretion with due regard to all interests involved, and the refusal of a continuance which has the  
practice effect of denying the applicant a fair hearing is reversible error.]



1 impossible to show reversible error in *granting* of a continuance.  
2 [Emphasis in original.]

3 A continuance should be granted if failure to allow the continuance would probably or  
4 possibly prejudice the party seeking the continuance by depriving that party of the opportunity to fully  
5 and fairly present his case.<sup>3</sup> The Court should “consider the degree of diligence in [counsel’s] efforts  
6 to bring the case to trial, including participating in earlier court hearings, conducting discovery, and  
7 preparing for trial.”<sup>4</sup>

8 Accordingly, a continuance is appropriate and necessary.

9 **E. Proposed Trial Date, Schedule, and Discovery.**

10 Phelan Piñon Hills proposed January 12, 2015 to be the new trial date.

11 Case history demonstrates that prior trial continuance requests by other parties have been  
12 granted to allow sufficient time to prepare for trial. Case history, including these past two months as  
13 related to Phelan Piñon Hills, also demonstrates that given a large number of parties – even among  
14 groups typically aligned with one another, such as other public water suppliers or landowner/overlier  
15 groups – requires more time for effective coordination than required by many other cases.

16 It is clear a full stipulation will not be reached. In turn, Phelan Piñon Hills requests the Court  
17 lift the stay on discovery to allow written discovery and depositions to the Participating Parties, which  
18 based on the September 9, 2014 filings by Participating Parties, consists of approximately twenty-five  
19 parties, plus WD 40’s two witnesses. By following the Code of Civil Procedure, written discovery  
20 allows for up to thirty-two days (30 days plus 2 for service) for parties to respond. Discovery would  
21 consist of Form Interrogatories (primarily for 17.1 responses involving Requests for Admissions);  
22 Requests for Admissions (primarily the set of Proposed Facts and surplus); and, Requests for  
23 Production of Documents (e.g., documents identified in support of that party’s responses to the other  
24 discovery).

25  
26 <sup>3</sup> *In re Dolly A.* (1986) 77 Cal.App.3d 195, 201.

27 <sup>4</sup> *Mahoney v. Southland Mental Health Associates Medical Group* (1990) 223 Cal.App.3d 167, 172;  
28 *see also, Link v. Carter* (1998) 60 Cal.App.4<sup>th</sup> 1315, 1324-1325.





1           Once those responses are received and/or the stipulation is reached, then Phelan Piñon Hills is  
2 in the appropriate position to depose the WD 40 witnesses, based in part on knowing the extent of a  
3 stipulation (e.g., what does not need to be covered in a deposition).

4           To help expedite the matter, Phelan Piñon Hills would serve the discovery next week. Also to  
5 help expedite the process, and as an alternative to responding in full or part (as the case may be),  
6 Phelan Piñon Hills offers that a Participating Party need not respond to discovery if that party files a  
7 statement that its participation in this trial will not include participation in the presentation of  
8 evidence. Also, to the extent a stipulation covers an identical part of discovery, Phelan Piñon Hills  
9 would not require a discovery response to that particular item (e.g., a proposed fact).

10           As such, Phelan Piñon Hills proposes the following schedule:<sup>5</sup>

11           **September 30, 2014:** Phelan Piñon Hills Discovery served

12           **October 30, 2014:** Deadline for responses to Phelan Piñon Hills Discovery

13           **Week of November 3 and/or 10, 2014:** Depositions

14           **December 15, 2014:** Deadline to file and serve witness and exhibit lists

15           **December 15, 2014:** Deadline to file and serve Motion *In Limine* or other motion

16           **December 22, 2014:** Deadline to file and serve Trial Brief

17           **January 2, 2015:** Deadline to file and serve Opposition to Motion *In Limine* or other motion

18           **January 5, 2015:** Participating Parties exchange trial exhibits and jury instructions

19           **January 5, 2015:** Deadline to file and serve Reply to Motion *In Limine* or other motion

20           **January 12, 2015: Phase Six Trial**

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27 <sup>5</sup> Part of the basis for requesting a January trial date instead of December is due to Phelan Piñon Hills'  
28 indicating to me his unavailability during the month of December due to other professional and  
personal obligations. (Miliband Declaration, ¶ 24.)

1 **III. CONCLUSION.**

2 For the foregoing reasons, Phelan Piñon Hills respectfully requests the Court grant this  
3 Application and adopt the schedule set forth herein and in the [Proposed] Order submitted  
4 concurrently herewith.

5  
6 DATED: September 24, 2014

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

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8  
9 By: 

10 \_\_\_\_\_  
11 WESLEY A. MILIBAND  
12 Attorneys for Defendant and Cross-Complainant  
13 Phelan Piñon Hills Community Services District  
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ALESHIRE &  
WYNDER, LLP  
ATTORNEYS AT LAW



1 DECLARATION OF WESLEY A. MILIBAND

2 I, Wesley A. Miliband, declare as follows:

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

8 2. On June 24, 2014, I prepared and directed my staff to serve via posting to the Court’s  
9 website (Tab No. 8988 on the Court’s website) a communication to all counsel containing confidential  
10 settlement communications as well as a request for counsel to inform me as to which parties are  
11 adverse to Phelan Piñon Hills and as to which causes of action. Within the following two or three  
12 weeks, only two counsel had responded to indicate they contest all of Phelan Piñon Hills’ causes of  
13 action (or “claims”).

14 3. On July 8, 2014, I prepared and directed my staff to file and serve (Tab No. 9020) a  
15 Case Management Statement for the July 11, 2014 Case Management Conference (“July 11  
16 Statement”). At pages 2 and 3 of the July 11 Statement, I stated Phelan Piñon Hills’ request for to the  
17 Court to lift the stay on discovery and to adopt a discovery schedule. Attached hereto as **Exhibit “A”**  
18 is a true and correct copy of Phelan Piñon Hills’ July 11 Statement.

19 4. During the July 11, 2014 Case Management Conference, the Court ordered the Phelan  
20 Piñon Hills and the Liaison Committee to meet-and-confer to develop a process for resolving claims  
21 of non-settling parties. The Court did not lift the discovery stay.

22 5. On July 17, 2014, I prepared and directed my staff to serve (Tab No. 9055) a letter to  
23 the Liaison Committee attempting to engage the meet-and-confer process, as directed by the Court.  
24 Attached hereto as **Exhibit “B”** is a true and correct copy of my July 17, 2014 letter. I met-and-  
25 conferred with other counsel on July 30, 2014.

26 6. On August 6, 2014, I prepared and directed my staff to file and serve (Tab No. 9075) a  
27 Case Management Statement for the August 11, 2014 Case Management Conference (“August 11  
28 Statement”). At pages 3 and 4 of the August 11 Statement, I described the meet-and-confer from July

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1 30, 2014. The remainder of the August 11 Statement sets forth a proposed plan in great detail for  
2 adjudicating Phelan Piñon Hills' issues, including my preparation of a [Proposed] Case Management  
3 Order (Tab No. 9076), which is substantially similar to case management orders utilized for earlier  
4 trial phases. Attached hereto as **Exhibit "C"** is a true and correct copy of Phelan Piñon Hills' August  
5 11 Statement. Also attached hereto as **Exhibit "D"** is a true and correct copy of Phelan Piñon Hills'  
6 [Proposed] Case Management Order for the August 11 Case Management Conference.

7 7. During the August 11 Case Management Conference, neither the proposed plan for  
8 adjudicating Phelan Piñon Hills' causes or action nor the [Proposed] Case Management Order were  
9 adopted. Instead, the Court directed the parties to attempt to meet-and-confer on this issues and facts  
10 for a trial regarding Phelan Piñon Hills.

11 8. Attached hereto as **Exhibit "E"** is a true and correct copy of pertinent pages from the  
12 Court Reporter's Transcript from the August 11, 2014 Case Management Conference, including pages  
13 28, 30, 33, 34, 39 through 43, 76, and 78. At page 28, Mr. Zimmer for the Bolthouse entities indicates  
14 that he is "perfectly willing now" to "stipulate to the facts upon this return flow claim is based...I  
15 don't have any problem stipulating to those facts." Mr. Zimmer continues on at page 30, stating "...as  
16 I sit here now, we will stipulate to the facts on return flows...I actually know what they are...other  
17 parties will be in agreement to what those facts are..." Similarly, at page 39, line 5-12, Mr. Dunn for  
18 WD 40 states that the facts are not in dispute. At page 43, lines 1 through 7, Mr. Dunn continues to  
19 say that a stipulation can be done "pretty quickly...certainly by the end of the week, probably by  
20 tomorrow."

21 9. To date, neither Mr. Zimmer nor Mr. Dunn have responded to my proposed set of  
22 stipulated facts, not even to say other counsel are taking the lead for now, assuming that may be one  
23 reason for a lack of response in over six weeks since counsel made those statements. Yet these are the  
24 two most active counsel to engage or discuss Phelan Piñon Hills while in the courtroom.

25 10. Also from **Exhibit E**, specifically page 40, line 24 through page 41, line 2, the Court  
26 directed the parties on August 11 to enter into a stipulation setting forth the issues to be tried, with the  
27 balance of Phelan Piñon Hills' reserved. At page 40, lines 8-10, the Court inquires about discovery,  
28 with Mr. Dunn replying that any discovery would be a very limited focus given that experts have been



1 deposed. At pages 41 through 42, I indicated that discovery would be needed to the extent a  
2 stipulation of facts cannot be reached in order to determine what evidence, if any, adverse parties plan  
3 to present during trial.

4 11. Also from **Exhibit E**, specifically page 76, the Court indicated the October 7 date is  
5 being set for trial, but that more discussion regarding that date will follow on August 29. At page 78, I  
6 stated my objections to the trial date being set without certainty as to which issues are being tried, the  
7 ability to do discovery, and concerns whether the parties would be effective in working toward a  
8 stipulation of facts.

9 12. On August 28, 2014, I prepared and directed my staff to serve (Tab No. 9177) a formal  
10 meet-and-confer statement that sets forth approximately five pages of proposed facts for a stipulation  
11 (“Proposed Facts”).

12 13. The August 29 Case Management Conference focused on the ongoing efforts of  
13 reaching a stipulation and possibly Mr. Dunn for WD 40 filing a motion *in limine* regarding surplus.  
14 That motion has not been served to date.

15 14. On September 9, 2014, eighteen different counsel representing approximately twenty-  
16 five parties filed Notices of Intent to Participate in the Trial (“Participating Parties”), with WD 40  
17 designating one percipient witness and one expert witness.

18 15. On September 15, 2014, I emailed Mr. Kuhs and Mr. Bunn, for Tejon Ranch/Granite  
19 Construction and Palmdale Water District, respectively, to inquire about their review of the Proposed  
20 Facts. Mr. Kuhs replied within minutes that he was reviewing the facts. Attached hereto as **Exhibit**  
21 **“F”** is a true and correct copy of said email.

22 16. On September 18, 2014, I prepared and directed my staff to serve (Tab No. 9283) a  
23 letter to all counsel, namely the Participating Parties, wherein I again attempt to meet-and-confer  
24 regarding the Proposed Facts, while stating my ongoing concern with a lack of stipulation and a stay  
25 on discovery. Attached as **Exhibit “G”** is a true and correct copy of said letter.

26 17. On September 22, 2014, I prepared and directed my staff to file and serve (Tab No.  
27 9291) the “status update” as previously directed by the Court, wherein I provide notice that I will be  
28



1 filing this *Ex Parte* Application for a trial continuance to be heard on September 26, 2014. Attached  
2 hereto as **Exhibit "H"** is a true and correct copy of said filing.

3 18. On September 22, 2014, Mr. Kuhs emailed to me a revised set of the Proposed Facts.

4 19. On September 23, 2014, I had a conference call with Mr. Kuhs and Mr. Bunn regarding  
5 the Proposed Facts. The call was productive, but it is clear that we will not stipulate to all necessary  
6 facts.

7 20. It is unclear to what extent other Participating Parties will agree to the Proposed Facts,  
8 whether as revised by Messrs. Kuhs and Bunn or otherwise, though Mr. Joyce emailed to confirm he  
9 joins in Mr. Kuhs' comments.

10 21. As of this writing, other public water supplier counsel have not responded to any of the  
11 above efforts by Phelan Piñon Hills, as well as telephonic attempts in which I provided my cellular  
12 number for a call back. Nor has a single public water supplier counsel replied as of this writing to my  
13 email on September 23, 2014 inquiring about the Proposed Facts as revised by Messrs. Kuhs and  
14 Bunn, for which a true and correct copy is attached hereto (without the attachment) as **Exhibit "I."**

15 22. This Application is being made as soon as reasonably practical once the necessity for  
16 the continuance was discovered, given the Court's unavailability between September 10 through 21,  
17 and my and at least some other counsel attempting to work toward an agreement on the Proposed  
18 Facts.

19 23. In addition to informing all parties and their counsel of this *Ex Parte Application*  
20 through Exhibit H described in paragraph 17, *supra*, I have directed my staff to serve this Application  
21 via the Court's website today, well in advance of the requirement to provide notice. To date, I have  
22 been informed only by two counsel who are among the Participating Parties that they will not oppose  
23 this Application.

24 24. Part of the basis for requesting a January trial date instead of December is due to  
25 Phelan Piñon Hills' indicating to me his unavailability during the month of December due to other

26 ///

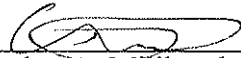
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1 professional and personal obligations.

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

4 Executed on this 24<sup>th</sup> day of September, 2014, at Irvine, California.

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7 Wesley A. Miliband

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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, Marie Young,

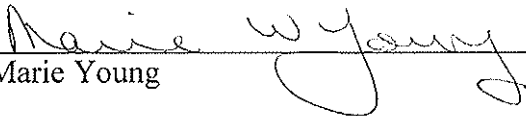
5 I am employed in the County of Orange, State of California. I am over the age of 18 and not a  
6 party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA  
7 92612.

8 On September 24, 2014, I served the within document(s) described as **PHELAN PIÑON  
9 HILLS COMMUNITY SERVICES DISTRICT'S EX PARTE APPLICATION FOR  
10 CONTINUANCE OF TRIAL DATE AND ADOPTION OF LITIGATION SCHEDULE;  
11 DECLARATION OF WESLEY A. MILIBAND IN SUPPORT THEREOF** on the interested  
parties in this action as follows:

12 **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  
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 September 24, 2014, at Irvine, California.

16   
17 Marie Young

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ALESHIRE &  
WYNDER LLP  
ATTORNEYS AT LAW

