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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**
11

12 Coordination Proceeding
Special Title (Rule 1550(b))
13

Case No. Judicial Council Coordination
Proceeding No. 4408

14 **ANTELOPE VALLEY**
14 **GROUNDWATER CASES**

(For Filing Purposes Only: Santa Clara
County Case No.: 1-05-CV-049053)

15 Included Actions:

**STATEMENT BY PHELAN PIÑON
HILLS COMMUNITY SERVICES
DISTRICT RE [PROPOSED] CASE
MANAGEMENT ORDER SERVED BY
THE UNITED STATES ON OCTOBER 20,
2014**

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

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

Assigned for All Purposes to:
Hon. Jack Komar

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

Hearing Date: November 4, 2014

22 *Wm. Bolthouse Farms, Inc. v. City of*
23 *Lancaster*
Diamond Farming Co. v. City of Lancaster
24 *Diamond Farming Co. v. Palmdale Water*
Dist.
25 Riverside County Superior Court,
Consolidated Action, Case Nos. RIC 353
26 840, RIC 344 436, RIC 344 668

27 **AND RELATED CROSS-ACTIONS**
28

01133.0012/229180.1





1 TO THE HONORABLE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF
2 RECORD HEREIN:

3 Phelan Piñon Hills Community Services District (“Phelan Piñon Hills”) hereby submits this
4 Statement with regard to the [Proposed] Case Management Order served by the United States on
5 October 20, 2014 with regard to the processes for the Court and the parties (settling and non-settling
6 parties) to work toward and obtain Court approval of the potential settlement between a number of
7 parties (“Proposed CMO”).

8 Phelan Piñon Hills supports the Proposed CMO for the following reasons:

9 (1) The proposed schedule provides an opportunity for settling and non-settling parties
10 (including Phelan Piñon Hills) to conduct discovery to ensure that the settlement terms – whatever
11 those might be once made available publicly – are supported by sufficient evidence pursuant to
12 applicable law.

13 (2) Phelan Piñon Hills would like the opportunity to engage in the process set forth in the
14 Proposed CMO, which Phelan Piñon Hills has the right to do – regardless of the outcome in the
15 upcoming trial set for November 4, 2014 – due to Phelan Piñon Hills having other unadjudicated
16 causes of action at issue and Phelan Piñon Hills maintaining party status in this case regardless of the
17 outcome on all of its causes of action.

18 (3) The discovery process set forth in the Proposed CMO is similar to what Phelan Piñon
19 Hills proposed in advance of and on August 11, 2014 to ensure that Phelan Piñon Hills would be
20 afforded an adequate process for trial preparation in advance of trial on Phelan Piñon Hills’ Second
21 and Sixth Causes of Action, including on the issue of “surplus.”

22 (4) Though the basis for not lifting the discovery stay (other than for the depositions of
23 experts Thomas Harder and Dennis Williams) has and continues to be that the parties would attempt
24 to formulate a sufficient stipulation of facts, the reality to date is that not all participating counsel for
25 the upcoming Phelan Piñon Hills trial have indicated they agree to the stipulation of facts. “Liaison
26 counsel” for other “groups of parties” (e.g., landowner and supplier parties) do not know to what
27 extent other counsel within those groups agrees with the stipulation of facts. Thus, the concerns
28 regarding this process as previously expressed by Phelan Piñon Hills’ counsel are validated.

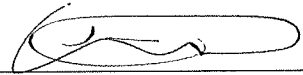


1 (5) The absence of a fully-executed Stipulation just three (3) Court days before trial, in
2 conjunction with a proposed process that would allow discovery even among *settling* parties, all the
3 more justifies Phelan Piñon Hills' prior request for a trial continuance and prior requests for the
4 opportunity to conduct discovery. One such key area of discovery, as mentioned on August 11, 2014,
5 relates to surplus. California case authorities clearly require that prior to an appropriator such as
6 Phelan Piñon Hills proving surplus, *first* any party claiming interference from an appropriator must
7 establish a valid property right and that such right has been impaired by the appropriator. Through
8 that process, those parties must establish reasonable *and* beneficial use of the pumped water; if those
9 parties establish such, then the burden shifts to an appropriator such as Phelan Piñon Hills to establish
10 surplus.¹

11 Accordingly, Phelan Piñon Hills respectfully requests that the Court adopt the Proposed CMO;
12 vacate the Phelan Piñon Hills trial date set for November 4, 2014; and reset the Phelan Piñon Hills
13 trial to a date that conforms to a discovery process approved by the Court for settling and non-settling
14 parties. Doing so creates consistency and allows for a necessary discovery process to take place
15 between the parties, both for settlement and non-settlement purposes.

16
17 DATED: October 30, 2014

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

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19
20 By: 
21 _____
22 WESLEY A. MILIBAND
23 Attorneys for Defendant and Cross-Complainant
24 Phelan Piñon Hills Community Services District

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26 ¹ The “burden of *proving surplus* does *not come into existence until* the existing appropriators,
27 riparians, or *overlying owners first* provide satisfactory evidence that a valid property right has been
28 impaired.” (*California Water Law & Policy* (Slater), Sec. 11.04, pp. 11-20 to 11-21 [emphasis
added], *citing to, Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.* (1935) 3 Cal. 2d 489, 566-567;
Peabody v. City of Vallejo (1935) 2 Cal.2d 351, 381.)

3 **PROOF OF SERVICE**

4 **STATE OF CALIFORNIA, COUNTY OF ORANGE**

5 I, Marie Young,

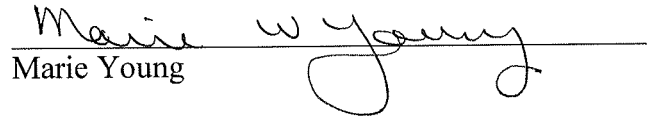
6 I am employed in the County of Orange, State of California. I am over the age of 18 and not a
7 party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA
8 92612.

9 On October 30, 2014, I served the within document(s) described as **STATEMENT BY
10 PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT RE [PROPOSED] CASE
11 MANAGEMENT ORDER SERVED BY THE UNITED STATES ON OCTOBER 20, 2014** on
12 the interested parties in this action as follows:

13 **BY ELECTRONIC SERVICE:** By posting the document(s) listed above to the Santa Clara
14 County Superior Court website in regard to Antelope Valley Groundwater matter pursuant to the
15 Court's Clarification Order. Electronic service and electronic posting completed through
16 www.scefilng.org.

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

19 Executed on October 30, 2014, at Irvine, California.

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Marie Young 
Marie Young

ALESHIRE &
WYNDER LLP
ATTORNEYS AT LAW

