

1 ALESHIRE & WYNDER, LLP
WESLEY A. MILIBAND, State Bar No. 241283
2 *wmiliband@awattorneys.com*
MILES P. HOGAN, State Bar No. 287345
3 *mhogan@awattorneys.com*
18881 Von Karman Avenue, Suite 1700
4 Irvine, California 92612
Telephone: (949) 223.1170
5 Facsimile: (949) 223.1180

6 Attorneys for Defendant and Cross-Complainant
Phelan Piñon Hills Community Services District
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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

14 **ANTELOPE VALLEY**
GROUNDWATER CASES

15 Included Actions:

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

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

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

Case No. Judicial Council Coordination
Proceeding No. 4408

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

**PHELAN PIÑON HILLS COMMUNITY
SERVICES DISTRICT'S STATEMENT
RE PROPOSED PHYSICAL SOLUTION,
ASSERTION OF CLAIMS, AND NOTICE
OF INTENT TO ADJUDICATE ITS
CLAIMS**

Assigned for All Purposes to:
Hon. Jack Komar



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 pursuant to paragraph three of the Second Amended Case Management Order (“Second
5 Amended CMO”).

6 **I. The Proposed Physical Solution.**

7 Phelan Piñon Hills objects to the Proposed Physical Solution primarily based upon the
8 proposal seeking to allocate the entire safe yield amongst settling parties and the proposal seeking to
9 bind Phelan Piñon Hills by having to pay 100% water replacement assessment *if and only if* water is
10 available and delivery to Phelan Piñon Hills’ service area will not injure the basin. The Proposed
11 Physical Solution seeks to be *the* physical solution for the basin, and in doing so, to bind a non-settling
12 party like Phelan Piñon Hills without the benefits or rights created by other provisions. These
13 deficiencies, as well as others that may become known to Phelan Piñon Hills, make the Proposed
14 Physical Solution inconsistent with the Wood Class Settlement from 2013, thereby making the Wood
15 Class in breach, or in breach upon final Court approval, of that agreement as well as the often referred
16 to “Public Water Suppliers” in breach of the Willis Class Settlement from 2011 due to that agreement
17 providing Phelan Piñon Hills with a share to the 15% native safe yield being allocated to Phelan Piñon
18 Hills and these other public water suppliers.

19 Phelan Piñon Hills hereby incorporates its objections and statements from its recent filings
20 including its Petition for Writs of Mandate and Prohibition. In addition, Phelan Piñon Hills raises the
21 following objections to specific provisions of the Proposed Physical Solution:

22 (1) Section 3.5.8 reference to “Basin” is inconsistent with the Court’s early-on recognition
23 of DWR Bulletin 118’s configuration of the Antelope Valley Groundwater *Basin* as “the basic
24 jurisdictional boundary for purposes of this litigation.” (Revised Order dated 3/13/07, p. 4:7-9.)

25 (2) Section 3.5.21 reference to Exhibit 3 of “non-overlying production rights” fails to
26 include Phelan Piñon Hills despite ample evidence admitted through Phase 4 and the November 4,
27 2014 trials that Phelan Piñon Hills’ Well 14 produces approximately 1,100 af annually with
28 approximately 40% of that water “recirculating” through customers’ septic systems to contribute to

1 recharge of *the* Basin, for which the Court aptly characterized as bearing perhaps on a “net pumping”
2 right.

3 (3) Sections 6.4, 6.4.1, and 9.2 refer to “export” without any specific definition, which is
4 particularly problematic considering a portion of Phelan Piñon Hills’ service area lies over the
5 Antelope Valley Groundwater Basin. The commonly accepted definition of “export” does *not* include
6 transportation to and use on lands from which the return flows return to the aquifer from which
7 extracted, which is the case with much of Well 14’s production, evident from the November 4, 2014
8 trial.


9 Ultimately, this Proposed Physical Solution is inequitable and legally deficient for reasons set
10 forth above. Phelan Piñon Hills reserves its right to augment its objections as further information
11 becomes available during the process set forth in the Second Amended CMO.

12 **II. Assertion of Claims and Notice of Intent to Separately Adjudicate Its Claims.**

13 Phelan Piñon Hills has five remaining causes of action (3rd, 4th, 5th, 7th, and 8th) as pleaded in
14 its cross-complaint. Phelan Piñon Hills seeks to establish each one.

15
16 DATED: April 7, 2015

ALESHIRE & WYNDER, LLP

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19 By: 
20 WESLEY A. MILIBAND
21 Attorneys for Defendant and Cross-Complainant
22 Phelan Piñon Hills Community Services District
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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, Wesley A. Miliband,

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

7
8 On April 7, 2015, I served the within document(s) described as **PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT'S STATEMENT RE PROPOSED PHYSICAL SOLUTION, ASSERTION OF CLAIMS, AND NOTICE OF INTENT TO ADJUDICATE ITS CLAIMS** on the interested parties in this action as follows:

9
10 **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.scefilig.org.

11
12 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

13
14 Executed on April 7, 2015, at Irvine, California.

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16 

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18 _____
19 Wesley A. Miliband

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WYNDER LLP
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