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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 OPPOSITION  
TO SMALL PUMPER CLASS  
SETTLEMENT**

[Filed Concurrently with Declaration of  
Miles P. Hogan in Support Thereof]

Date: August 3-4, 2015  
Time: 10:00 a.m.  
Dept.: TBA (Los Angeles)

Assigned for All Purposes to:  
Hon. Jack Komar

Trial Date: August 25, 2015  
(Trial Related to Phelan Piñon  
Hills Community Services  
District)  
Time: 10:00 a.m.  
Location: TBD (San Jose)  
Dept: TBA

ALESHIRE &  
WYNDER  
ATTORNEYS AT LAW





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 (“Phelan Piñon Hills”), submits the following Opposition to the Small Pumper Class Settlement  
5 submitted jointly by the Wood Class and Los Angeles County Waterworks District No. 40  
6 (collectively, “Moving Parties”) in the above-entitled action on March 4, 2015.

7 **I. INTRODUCTION**

8 Phelan Piñon Hills opposes the Small Pumper Class Settlement because its terms are  
9 inconsistent with and violate the Wood Class Stipulation of Settlement entered into on  
10 October 17, 2013 by and between the Wood Class, Phelan Piñon Hills, and other parties. (*See*  
11 Declaration of Miles P. Hogan, ¶ 2, Exh. A [“2013 Settlement Agreement”].) By seeking approval of  
12 the Class Settlement which is reliant upon the Proposed Physical Solution, the Wood Class is  
13 breaching the 2013 Settlement Agreement and willfully infringing upon the rights of Phelan Piñon  
14 Hills established pursuant thereto, for the following reasons:

15 (1) The Proposed Physical Solution would force Phelan Piñon Hills to pay a Replacement  
16 Water Assessment on every acre-foot of water it extracts from the Basin, in *direct* conflict with the  
17 Wood Class 2013 Settlement Agreement wherein the Wood Class agreed not to challenge Phelan  
18 Piñon Hills’ right to pump 1,053.14 acre-feet each year free of any Replacement Water Assessment.<sup>1</sup>

19 (2) The requirement in the Proposed Physical Solution that Phelan Piñon Hills pay an  
20 assessment for 100% of the water it pumps violates the 2013 Settlement Agreement’s recognition of  
21 return flow rights that are applicable to Phelan Piñon Hills, which was not limited to “imported” water  
22 and for which ample evidence exists from the November 4, 2014 trial that a portion of water produced  
23 by Phelan Piñon Hills and used by its customers returns to the Basin.

24 (3) The Proposed Physical Solution allocates “99.8%” of the native safe yield<sup>2</sup>, which is  
25 82,300 acre-feet (“af”) based upon the settling parties’ contention, thereby leaving only about 168 af

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27 <sup>1</sup> 1,053.14 was based on the Court’s Phase Four finding.

28 <sup>2</sup> Motion for Preliminary Approval of Class Settlement, p. 3:20-21.



1 for allocation to a non-settling party, which is about one-tenth (1/10) of Phelan Piñon Hills' claimed  
2 rights.<sup>3</sup>

3 Therefore, the Motion for Preliminary Approval of Class Settlement contravenes the 2013  
4 Settlement Agreement, and thus the Motion should be denied.

5 **II. STATEMENT OF RELEVANT FACTS**

6 The 2013 Settlement Agreement “set forth the terms of a settlement...between and among the  
7 Settling Parties compromising and dismissing the claims and defenses they ha[d] asserted in [this]  
8 action as amongst and between the Settling Parties.” (2013 Settlement Agreement, 1:8-11.) This  
9 included a settlement of claims between the Wood Class and Phelan Piñon Hills.

10 On February 26, 2015, a Stipulation of Settlement was entered into by and between the Wood  
11 Class, several other parties, but not Phelan Piñon Hills. (*See* Declaration of Michael D. McLachlan In  
12 Support Of Motion for Preliminary Approval of Class Settlement [“McLachlan Decl.”], ¶ 6, Exh. A.)  
13 The Stipulation of Settlement includes a Proposed Physical Solution. (*See* McLachlan Decl., ¶ 6,  
14 Exhibit A.1 [“Proposed Physical Solution”].)

15 **III. ARGUMENT**

16 In the 2013 Settlement Agreement, the Wood Class made certain agreements with the settling  
17 parties, including Phelan Piñon Hills, and agreed that it would “not take any positions or enter into any  
18 agreements that are inconsistent with the exercise of Settling Defendants’ rights as set forth [t]herein.”  
19 (2013 Settlement Agreement, 9:1-2.) However, the Proposed Physical Solution is inconsistent with  
20 the 2013 Settlement Agreement and would cause great harm to Phelan Piñon Hills, as described  
21 below.

22 Moreover, the Wood Class agreed that the ultimate Physical Solution would be consistent with  
23 the partial settlement. “The Settling Parties agree to be part of such a Physical Solution *but only to*  
24 *the extent it is consistent* with the terms of this Stipulation....” (*Id.* at 11:26-28 [emph. added].)

25 \_\_\_\_\_  
26 <sup>3</sup> Though the Court ruled against Phelan Piñon Hills on its 2<sup>nd</sup> and 6<sup>th</sup> Causes of Action, the 2013  
27 Settlement Agreement is still a “live” and valid agreement. Also, various other causes of action  
28 remain unadjudicated, including for a Physical Solution, which, among other things, could and should  
include “net pumping” or “pure appropriator” rights as previously discussed by the Court.



1 Now, the Wood Class is going back on its “word” despite what is set forth explicitly in the written,  
2 Court-approved 2013 Settlement Agreement by offering the Proposed Physical Solution with wholly  
3 contradictory terms as it relates to Phelan Piñon Hills.

4 It is well established in California that a settlement cannot bind or prejudice the interests of a  
5 non-settling party. (*See Levy v. Superior Court* (1995) 10 Cal.4th 578, 580, 585-586 [stipulated  
6 settlements must be signed by the parties themselves to be enforceable]; *see also Harris v. Rudin,*  
7 *Richman & Appel et al.* (1999) 74 Cal.App.4th 299, 304-306 [to be binding settlement must be signed  
8 by both the party seeking enforcement and the party against whom it is to be enforced]; *Williams v.*  
9 *Saunders* (1997) 55 Cal.App.4th 1158, 1163 [court could not enforce settlement agreement against  
10 party who did not participate in creation of the agreement nor sign the agreement].) However, the  
11 proposed Class Settlement and its associated Physical Solution would do just that – gravely prejudice  
12 Phelan Piñon Hills.

13 A. **The Proposed Physical Solution Eliminates Phelan Piñon Hills’ Right To Pump**  
14 **1053.14 Acre-Foot Assessment-Free.**

15 In the 2013 Settlement Agreement, the Wood Class recognized the right for each party to  
16 pump certain amounts of water without having to pay a replacement assessment. “The Wood Class  
17 agrees not to contest each Settling Defendant’s right to pump the following amounts annually from the  
18 Native Safe Yield *free of any Replacement Water Assessment*, but only if competent evidence is  
19 presented to and incorporated by the Court in the Final Judgment and such rights of the Settling  
20 Defendants shall not diminish in any way the water rights of the Wood Class as set forth herein...”  
21 (2013 Settlement Agreement, 8:16-21 [emph. added].) The Settlement Agreement then listed  
22 ***1,053.14 acre-feet for Phelan Piñon Hills***, based upon “competent evidence” admitted into evidence  
23 by the Court during Phase Four proceedings.

24 In stark contrast, the Proposed Physical Solution prohibits Phelan Piñon Hills from getting any  
25 water free of an assessment:

26 The injunction does not apply to any Groundwater Produced within the Basin by  
27 Phelan Piñon Hills Community Services District and delivered to its service areas, so  
28 long as the total Production does not exceed 1,200 acre-feet per Year, such water is  
available for Production without causing Material Injury, and the District pays a  
Replacement Water Assessment pursuant to Paragraph 9.2, together with any other



1 costs deemed necessary to protect Production Rights decreed herein, on all water  
2 Produced and exported in this manner. (Proposed Physical Solution, 28:20-25.)

3 Therefore, by agreeing to and/or advocating for the Proposed Physical Solution, the Wood  
4 Class is breaching the 2013 Settlement Agreement and violating Phelan Piñon Hills' rights thereunder.

5 **B. The Return Flow Provision In The 2013 Settlement Agreement Would Be Made**  
6 **Meaningless By The Proposed Physical Solution.**

7 The 2013 Settlement Agreement defines "Return Flows" as "the amount of water that is put to  
8 reasonable and beneficial agricultural, municipal or other use and thereafter returns to the Basin and is  
9 part of the Basin's Total Safe Yield." (2013 Settlement Agreement, 6:18-20.) This specifically  
10 defined term encompasses a return flow right *irrespective* of arising from imported water or native  
11 groundwater, which for Phelan Piñon Hills arises from use of native groundwater produced and used  
12 by Phelan Piñon Hills and its customers in the portion of the service area that lies over the Basin.

13 Again, in stark contrast, the Proposed Physical Solution strips Phelan Piñon Hills of any return  
14 flow rights that were within the 2013 Settlement Agreement with the Wood Class by requiring a 100%  
15 replacement assessment, despite "competent [and unrebutted] evidence" admitted by the Court during  
16 the November 4, 2014 trial.

17 **C. The Settling Parties Have Allocated The Entire Safe Yield Amongst Themselves,**  
18 **Despite Their Potential Settlement Not Being "Global" Amongst All Parties.**

19 The Proposed Physical Solution allocates "99.8%" of the native safe yield<sup>4</sup>, which is 82,300  
20 acre-feet ("af") based upon the settling parties' contention, thereby leaving only about 168 af for  
21 allocation to a non-settling party, which is about one-tenth (1/10) of Phelan Piñon Hills' claimed  
22 rights. These parties not only are squeezing out non-settling parties, but potentially jeopardizing their  
23 own settlement should a non-settling party such as Phelan Piñon Hills prevail on one or more causes  
24 of action during some stage of these proceedings and/or the judicial process.

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28 <sup>4</sup> Motion, p. 3:20-21.

1 **IV. CONCLUSION**

2 For the foregoing reasons, Phelan Piñon Hills respectfully requests that the Court not approve  
3 the proposed Small Pumper Class Settlement. Phelan Piñon Hills intends to appear and be heard at  
4 the final approval hearing set for August 3-4, 2015, and reserves the right to present further objections  
5 to the Proposed Physical Solution at the appropriate stages pursuant to the Second Amended Case  
6 Management Order and as otherwise exists pursuant to law and equity.

7  
8 DATED: May 14, 2015

ALESHIRE & WYNDER, LLP  
JUNE S. AILIN  
MILES P. HOGAN

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10  
11 By:   
12 MILES P. HOGAN  
13 Attorneys for Defendant and Cross-Complainant  
14 Phelan Piñon Hills Community Services District

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2 **PROOF OF SERVICE**

3 **STATE OF CALIFORNIA, COUNTY OF ORANGE**

4 I, Linda Yarvis,

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  
92612.

7 On May 15, 2015, I served the within document(s) described as **PHELAN PIÑON HILLS**  
8 **COMMUNITY SERVICES DISTRICT'S OPPOSITION TO SMALL PUMPER CLASS**  
9 **SETTLEMENT** on the interested parties in this action as follows:

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  
11 www.scefiling.org.

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

13 Executed on May 15, 2015, at Irvine, California.

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17 Linda Yarvis  
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