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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))

13 **ANTELOPE VALLEY**
14 **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 REPLY BRIEF
ON MOTION FOR DECLARATORY
RELIEF RE JUDGMENT ENTERED
DECEMBER 23, 2015 AND
WATERMASTER RESOLUTION NO. R-
18-04 REGARDING REPLACEMENT
WATER ASSESSMENTS FOR 2016 AND
2017**

Assigned for All Purposes To:
Hon. Jack Komar

Date: 4/18/2018

Time: 9:00 a.m.

Place: Dept. 31 (Room 407, 4th floor)
Los Angeles County Superior Court,
Stanley Mosk Courthouse,
Los Angeles, CA





1 Cross-Defendant Phelan Piñon Hills Community Services District (“Phelan”) hereby REPLIES
2 to the Oppositions to Phelan Piñon Hills Community Services District’s Motion For Declaratory
3 Relief filed by the Antelope Valley Watermaster (as joined by Palmdale Water District) and the Water
4 Suppliers (collectively, “Oppositions”).

5 **I. INTRODUCTION**

6 *“During the first two Years of the Rampdown Period, no Producer will be subject*
7 *to a Replacement Water Assessment.”*

8 *“Phelan is a Producer”*

9 *ergo*

10 *“During the first two Years of the Rampdown Period, Phelan will not be subject*
11 *to a Replacement Water Assessment”*

12 Neither the wording, nor the logic, could be any clearer or more persuasive; yet the
13 Oppositions posit a tortured interpretation of the Judgment in an effort to cobble together an argument
14 that the Judgment requires Phelan to pay Replacement Water Assessments (“RWA”) for 2016 and
15 2017. For the reasons set forth below, such argument has no merit.

16 **II. THE OPPOSITIONS CONCEDE THAT PURSUANT TO THE CUSTOMARY RULES**
17 **OF DOCUMENT INTERPRETATION, PHELAN IS NOT SUBJECT TO WRA’S FOR**
18 **2016 AND 2017**

19 In its Moving Papers, Phelan painstakingly walked the Court through the Judgment, Statement
20 of Decision, and February 5, 2018 Order applying the customary principles of document interpretation
21 including (1) words should be given their plain or specially-defined meanings, (2) all parts of a
22 document should be read together, and (3) “courts should not insert what has been omitted or omit
23 what has been inserted,” with such analysis leading to the inescapable conclusion that Phelan is not
24 required to pay RWAs for 2016 and 2017.

25 The Oppositions do not dispute this. Nor can they. Instead, as shown further below, they
26 cherry pick portions of the Judgment out of context and offer unsupported arguments why those
27 portions, *despite the rules of document interpretation*, require Phelan to pay the RWAs.
28

1 **III. THE ANTELOPE VALLEY WATERMASTER’S OPPOSITION HAS NO MERIT**

2 At 4:17-5:14 of its Opposition the Watermaster argues that Phelan must pay RWAs for 2016
3 and 2017 because it has no production rights or pre-rampdown production rights under the Judgment.
4 The Watermaster posits that Phelan only has a right to export groundwater under specified conditions,
5 and those conditions include payment of RWAs.

6 In response, Phelan notes that it, *as well as all other Producers*, may be subject to RWAs
7 under certain circumstances (including during the Rampdown Period), but Section 8.3 of Exhibit A to
8 the Judgment provides a two-year blanket exemption from RWAs for *all Producers*, without
9 qualification. (“During the first two Years of the Rampdown Period, no Producer will be subject to a
10 Replacement Water Assessment.”)

11 At 5:15-6:21 of its Opposition, the Watermaster speculates that Phelan is arguing that “right to
12 produce” is synonymous with “Production Rights,” and that because Producers with Production
13 Rights are exempted from RWAs, Phelan is exempt from paying RWAs. The Watermaster goes on to
14 explain such argument lacks merit because “right to produce” is not the same as “Production Rights.”

15 In response, Phelan makes no such argument. Phelan never contends that its “right to
16 produce” amounts to a “Production Right” under the Judgment. Thus, the Watermaster’s argument is
17 a red-herring. Phelan’s argument is that all Producers, whether they have Production Rights, rights to
18 produce, or anything else that meets the definition of “Producer” (being “a Party that Produces
19 Groundwater”) are exempt from two years of RWAs by the express terms of the Judgment.

20 At 6:22-7:16, the Watermaster contends that a two-year exemption from RWAs for Phelan
21 would be inconsistent with the Physical Solution because Phelan’s production *may* (not “did”) result
22 in Material Injury to the Adjudication Area without compensation by way of paying for replacement
23 water.

24 In response, Phelan notes that there has never been a finding that Phelan’s production resulted
25 in Material Injury as such term is defined in the Judgment. All Producers, including Phelan,
26 contributed to the Overdraft, and all Producers receive the two-year exemption from RWAs. Nothing
27 in the Judgment states, or even implies, that only Phelan should pay for contributing to the Overdraft
28 during 2016 and 2017.

1 At 7:17-8:13 of its Opposition, the Watermaster asserts that because Phelan is not listed on
2 Exhibits 3 or 4 to the Judgment and is not a “supporting but non-stipulating party;” therefore, it cannot
3 avail itself of the two-year exemption from RWAs.

4 In response, Phelan finds nothing in the Judgment that states that only those listed in Exhibits 3
5 or 4 or are “supporting but non-stipulating parties” receive a two-year exemption from RWAs. Such
6 exemption applies to all Producers, and the Court’s February 5, 2018 Order reflected such
7 interpretation, to wit “[t]hat clearly places (1) all water producers, (2) both Exhibit 3 and Exhibit 4
8 parties, and (3) supporting but non-stipulating parties who are bound by the judgment, within the
9 provisions of 8.3” (numbering added). If the intent of the Order was only to include Exhibit 3 and 4
10 parties and “supporting and non-stipulating parties” within Section 8.3, “water producers” would be
11 superfluous, which is an interpretation that flies in the face of document construction rules.

12 **IV. THE WATER SUPPLIERS’ OPPOSITION HAS NO MERIT**

13 At 2:16-3:8 of their Opposition, the Water Suppliers assert that Phelan should pay the RWA’s
14 because Phelan’s pumping “harms the Basin.”

15 In response, Phelan first notes that *everybody* who pumped groundwater and contributed to the
16 overdraft “harmed the Basin” to some degree. But “harm to the Basin” is not the test for determining
17 whether Phelan is exempt from RWAs for two years. The only “test” under the terms of Section 8.3 of
18 the Judgment is whether Phelan is a Producer, and it is undisputed that Phelan is a Producer.
19 Accordingly, the Water Suppliers’ assertion is irrelevant.¹

20 At 3:9-24 of their Opposition, *the* Water Suppliers contend that Section 6.4.1.2 of the Physical
21 Solution provides the only mechanism by which Phelan may pump groundwater, and that mechanism
22 includes payment of RWAs.

23 In response, Phelan notes that the Judgment provides other mechanisms by which Producers
24 may be required to pay RWAs (including during the Rampdown Period), so Phelan is not alone.
25 Phelan is simply a member of a class of parties subject to RWAs called Producers, and all Producers

26 _____
27 ¹ Although irrelevant to the instant Motion, “harm to the Basin” is not the same as “Material Injury,”
28 which is a specifically-defined term in the Judgment, and there is no finding that any pumping by
Phelan has caused Material Injury.



1 receive a two-year exemption from RWAs during the Rampdown Process. Indeed, in its February 5,
2 2018 Order, the Court stated:

3 *It must be emphasized that the court's approval of the physical solution in fact,*
4 *based upon competent evidence, contemplated that **all parties** would have the benefit*
5 *of the 7 year rampdown process and that the physical solution would achieve a*
6 *balanced aquifer during the specified period. (Id. at 10:3-7, emphasis added)*

7 Because Phelan is a Party, and the Rampdown Process includes the benefit of a two- year
8 exemption from RWAs, Phelan should receive such benefit just like everyone else.

9 At 3:25-4:11 of their Opposition, the Water Suppliers, like the Watermaster, contend that
10 because Phelan has no “water rights,” it cannot be exempt from two years of RWA’s.

11 In response, Phelan re-asserts its response to the same argument made by the Watermaster
12 above.

13 At 4:12-18 of their Opposition, the Water Suppliers assert that “[i]mplicit in the definitions of
14 “Produce” and “Producer” and the Rampdown provision is that to “Produce” groundwater during the
15 Rampdown Period a party must have a water right.”

16 In response, Phelan again contends that it is improper to “imply” something into a definition
17 that contradicts the “express” provisions of such definition. If the Judgment contemplated that
18 “Producers” be defined as “Parties with Water Rights” it would have said so. It does not.

19 At 4:19-24 of their Opposition, the Water Suppliers contend that under Phelan’s position,
20 “there would be nothing to prevent the tens of thousands of parties in this action who have never
21 pumped groundwater from the Basin from drilling a well and pumping Groundwater free of a RWA
22 for two years.”

23 In response, Phelan replies: Yes there is. The two year exemption from RWAs was for the
24 years 2016 and 2017 (Years 1 and 2 of Rampdown Period). It is now 2018. So, despite the Water
25 Suppliers’ assertion to the contrary, the time for the tens of thousands of parties to drill and pump and
26 avail themselves of the two year exemption from RWA’s has passed.

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28

1 **V. CONCLUSION**

2 In its Moving Papers, Phelan posed the following question:

3 “*[W]hat effect can possibly be given to the first sentence of Section 8.3 other than to*
4 *include Phelan in the class of Producers that are not required to pay Replacement*
5 *Water Assessments in 2016 and 2017?”*

6 None of the arguments presented in either of the Oppositions answer that question. Instead,
7 both Oppositions ask the court to disregard the first sentence of Section 8.3 and the defined terms in it,
8 all of which are part of a Judgment that the opposing parties stipulated to enter.

9 Accordingly, the court should GRANT the instant Motion, hold that Phelan is exempt from
10 paying Replacement Water Assessments for 2016 and 2017, and declare WATERMASTER
11 RESOLUTION NO. R-18-04 REGARDING REPLACEMENT WATER ASSESSMENTS FOR 2016
12 AND 2017 void as being contrary to the Judgment entered December 23, 2015 in the instant action.

13 DATED: April 10, 2018

ALESHIRE & WYNDER, LLP
JUNE S. AILIN
STEPHEN R. ONSTOT

14
15
16 By:



17 STEPHEN R. ONSTOT
18 Attorneys for Phelan Piñon Hills Community
19 Services District
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1 Judicial Council Coordination Proceeding No. 4408
2 For Filing Purposes Only: Santa Clara County Case No.: 1-05-CV-049053

3 **PROOF OF SERVICE**

4 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

5 I, Judy C. Carter,

6 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
7 not a party to the within action. My business address is 2361 Rosecrans Ave., Suite 475, El Segundo,
8 CA 90245.

9 On April 11, 2018, I served the within document(s) described as **PHELAN PIÑON HILLS
10 COMMUNITY SERVICES DISTRICT'S REPLY BRIEF ON MOTION FOR
11 DECLARATORY RELIEF RE JUDGMENT ENTERED DECEMBER 23, 2015 AND
12 WATERMASTER RESOLUTION NO. R-18-04 REGARDING REPLACEMENT WATER
13 ASSESSMENTS FOR 2016 AND 2017** on the interested parties in this action as follows:

14 **BY ELECTRONIC SERVICE:** By posting the document(s) listed above to the Antelope
15 Valley WaterMaster website in regard to Antelope Valley Groundwater matter with e-service to all
16 parties listed on the websites Service List. Electronic service and electronic posting completed
17 through www.avwatermaster.org via Glotrans.

18 **BY OVERNIGHT DELIVERY:** I enclosed said document(s) in an envelope or package
19 provided by the overnight service carrier and addressed to Craig Andrews Parton listed below. I
20 placed the envelope or package for collection and overnight delivery at an office or a regularly utilized
21 drop box of the overnight service carrier or delivered such document(s) to a courier or driver
22 authorized by the overnight service carrier to receive documents.

23 Craig Andrews Parton
24 Price Postel & Parma
25 200 E. Carrillo St., Suite 400
26 Santa Barbara, CA 93101
27 Tel: (805) 962-0011
28 (805) 965-3978

*Attorney for Watermaster Board for the Antelope
Valley Groundwater Adjudication*

VIA OVERNIGHT MAIL

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

Executed on April 11, 2018, at El Segundo, California.


Judy C. Carter

