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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*
- 24 *Diamond Farming Co. v. City of Lancaster*
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)

**REPLY TO WATERMASTER'S
OPPOSITION TO PHELAN PIÑON
HILLS COMMUNITY SERVICES
DISTRICT'S MOTION FOR
DECLARATORY RELIEF RE
WATERMASTER RESOLUTION NO. R-
19-27 AND NOTICE OF ASSESSMENT
OF REPLACEMENT WATER
ASSESSMENTS FOR 2016, 2017 AND 2018**

Assigned for All Purposes To:
Hon. Jack Komar

Date: November 14, 2019

Time: 9:00 a.m.

Place: Via CourtCall

ALESHIRE &
WYNDER LLP
ATTORNEYS AT LAW



1 Phelan Piñon Hills Community Services District files the following Reply to the Antelope
2 Valley Watermaster’s Opposition to Phelan’s Motion for Declaratory Relief re Watermaster
3 Resolution No. R-19-27 and Notice of Assessment of Replacement Water Assessments for 2016, 2017
4 and 2018.

5 **I. IF THE ISSUE IS WHAT TYPE OF INJUNCTION THE JUDGMENT IS, THE**
6 **JUDGMENT IS A MANDATORY INJUNCTION THAT IS AUTOMATICALLY**
7 **STAYED BY APPEAL BECAUSE THE JUDGMENT CHANGED THE STATUS QUO**

8 The Watermaster rejects Phelan’s characterization of the invoice as requiring Phelan to pay or
9 post a bond for a money judgment pending appeal, preferring instead to look at the issue from the
10 perspective of whether an injunction is stayed on appeal. Assuming for the sake of argument that the
11 Watermaster’s characterization of the issue is accurate, the correct conclusion is that the enforcement
12 of the RWA as to Phelan is automatically stayed pending appeal.

13 The Watermaster cites cases involving preliminary injunctions and writs of supersedeas to
14 support its position and ends up missing the point entirely. The question whether the injunction is
15 mandatory or prohibitory, does not depend on whether the injunction compels or prohibits action.
16 Rather, it depends on whether the injunction requires a party to change its position.

17 “An appeal stays a mandatory but not a prohibitory injunction. This rule is
18 clear, but whether a decree is one or the other may be difficult to determine in some
19 situations since *an order entirely negative or prohibitory in form may prove upon*
20 *analysis to be mandatory and affirmative in essence and effect.” (Kettenhofen v.*
21 *Superior Court, supra, 55 Cal.2d at p. 191, 10 Cal.Rptr. 356, 358 P.2d 684.) Courts*
22 *are not “bound by the form of the [injunction] order but will look to its substance to*
23 *determine its real nature.” (Feinberg v. One Doe Co. (1939) 14 Cal.2d 24, 28, 92 P.2d*
24 *640.) This inquiry “does not depend on semantic characterizations.” (Union Pacific*
25 *R.R. Co. v. State Bd. of Equalization (1989) 49 Cal.3d 138, 158, 260 Cal.Rptr. 565,*
26 *776 P.2d 267.)*

27 Courts distinguish between mandatory and prohibitory injunctions to preserve
28 the status quo pending appeals. (*Paramount Pictures Corp. v. Davis (1964) 228*



1 Cal.App.2d 827, 835, 39 Cal.Rptr. 791.) “An order enjoining action by a party is
 2 prohibitory in nature if its effect is to leave the parties in the same position as they
 3 were prior to the entry of the judgment. On the other hand, it is mandatory in effect if
 4 its enforcement would be to change the position of the parties and compel them to act
 5 in accordance with the judgment rendered.” (Musicians Club of L. A. v. Superior
 6 Court (1958) 165 Cal.App.2d 67, 71, 331 P.2d 720.)
 7 (URS Corp. v. Atkinson/Walsh Joint Venture (2017) 15 Cal.App.5th 872, 884 [emph. added].)

8 Before the Judgment and Physical Solution was entered, Phelan was free to pump as much
 9 water as it desired from its Well 14, whether or not it resulted in Material Injury and without paying a
 10 RWA. Under the Judgment and Physical Solution, Phelan’s position is changed. The Judgment and
 11 Physical Solution limits the amount of Phelan’s pumping, and conditions it on not causing Material
 12 Injury and payment of a RWA. If the Judgment and Physical Solution is to be characterized as an
 13 injunction, then, the injunction is mandatory because it changes Phelan’s position. As a mandatory
 14 injunction, it is stayed by Phelan’s pending appeals, and Phelan is not required to pay the RWA until
 15 the appeals are concluded.

16 **II. THE RWA RATE FOR PARTIES OUTSIDE THE AVSWCA BOUNDARIES**
 17 **GENERATES A PROFIT FOR AVSWCA OR ITS MEMBERS**

18 It makes economic sense for AVSWCA and/or its members to recover fixed costs, including
 19 capital costs arising out of the construction of the State Water Project. The problem is that the RWA
 20 for parties outside the boundaries of AVSWCA’s members, is structured to allow AVSWCA to
 21 recover that cost over and over and over again, amounting to a profit for AVSWCA and/or its
 22 members.

23 The derivation of the fixed cost component of the RWA includes the cost of construction from
 24 the inception of the State Water Project. The Opposition and the Raftelis report refer to the payment
 25 of property taxes by the parties (although more likely they mean the payment of property taxes by
 26 persons who own property in the water districts comprising the AVSWCA), and to water rates
 27 charged by those water districts, as the means of recovery of costs from property owners and rate
 28 payers within AVSWCA members’ boundaries.



1 The statement that property taxes are a source of recovery of those costs does not quite make
2 sense. Property taxes get paid to the county. Perhaps what the Watermaster and AVSWCA really
3 mean is that there is some assessment (likely used to repay bonds) that shows up on property tax bills
4 that covers those costs. There is still no explanation of how much of those capital costs have already
5 been recovered.

6 But this lack of precision in describing how customers of AVSWCA members pay for that
7 capital cost is part and parcel of the difficulty of understanding why parties outside the boundaries of
8 AVSWCA's members should pay a RWA rate that is about double what the parties inside those
9 boundaries are asked to pay. The Raftelis report does not indicate any consideration was given to
10 whether any of these capital costs have already been recouped from other sources, such as property
11 taxes, water rates or charges, contracts with parties who receive direct water deliveries from the State
12 Water Project, state, federal or other grants, or other sources, such that the RWA rates should be
13 lower, or perhaps should not include a component for these capital costs at all. No information is
14 provided that allows for comparison of what parties inside the boundaries of AVSWCA's member are
15 paying for capital costs with what parties outside the boundaries of AVSWCA's members are being
16 asked to pay. Absent such information, it is impossible to tell whether the RWA rates are fair and
17 equitable.

18 Instead, using the Raftelis model and plugging relevant data into it each year (see Exhibit 12,
19 p. 73 attached to Declaration of Matthew Knudson in support of the Opposition), the Watermaster will
20 charge parties outside the boundaries of AVSWCA an RWA that allows AVSWCA, over the years, to
21 recoup the cost of construction of the system many times over. Absent information about how much
22 of the system construction costs have been recovered to date, it is possible AVSWCA has already
23 recovered that cost and approximately half of the RWA rate is *pure profit for AVSWCA*.

24 The Watermaster points out *it* is not receiving any markup or profit from the RWA.
25 (Opposition, p. 9, fn. 2.) While that may be true, it is not clear the same can be said of AVSWCA.
26 Instead of trying to keep replacement water costs down, the Watermaster simply accepted,
27 uncritically, what AVSWCA demanded. The Watermaster does not care what its costs are, because it
28 will not actually be the one paying those costs. The fact the parties to the Judgment and Physical

1 Solution are “captives” of AVSWCA because, practically speaking, there are limited sources of
2 replacement water, does not justify RWA rates for parties outside AVSWCA’s boundaries that are
3 twice the rate paid by those inside AVSWCA’s boundaries, especially in the absence of any
4 information on how much the parties inside AVSWCA’s boundaries have paid and are continuing to
5 pay toward capital costs.

6 This Court has the authority to require the Watermaster to ensure that replacement water costs
7 are equitably distributed among the parties and should exercise that authority to require the
8 Watermaster to demand more information from AVSWCA regarding recovery of fixed costs, ensure
9 that those costs are being fairly distributed, and adjust RWA rates accordingly.

10 **III. THE ABSENCE OF SCHEDULES AND PROCEDURES FOR COLLECTION OF**
11 **RWAS IS NOT A MATTER OF FORM OVER SUBSTANCE**

12 The Watermaster contends the “procedures and schedules” for levying and collecting RWAs,
13 referenced in section 18.4.12 of the Judgment, do not have to be part of the court approved “rules and
14 regulations” referenced in section 18.4.2 of the Judgment. The Watermaster’s characterization of
15 Phelan’s insistence on there being some sort of identifiable and known process for the levying and
16 collecting of RWAs is that Phelan is elevating form over substance is undermined by the
17 Watermaster’s own evidence.

18 Section 18.4.12 states RWAs “shall be levied and collected in accordance with the procedures
19 and schedules determined by the Watermaster.” Whether this unique phrase “procedures and
20 schedules” was intended to mean something different from “rules and regulations” or not, when the
21 Watermaster adopted a memo by Watermaster’s counsel regarding the collecting of past due
22 assessments, the Watermaster directed that those procedures be incorporated into the Watermaster’s
23 rules and regulations, yet to be prepared. So whether the Judgment requires it or not, the Watermaster
24 has already decided it is going to address the levying and collection of RWAs in the rules and
25 regulations.

26 Concern about how notices of assessment are prepared is not elevating form over substance.
27 The Watermaster and its counsel thought it important enough to address at least the collection of
28 overdue assessments in a memo. Why the routine levying and collection of assessments is not worthy





1 of similar treatment is nowhere explained in the Opposition.

2 In fact, the Declaration of Patricia Rose and the discussion in the Opposition of how the
3 invoice to Phelan was prepared, coupled with the error in the amount of water Phelan pumped in 2017,
4 simply demonstrates that this is a real issue with real impact on the parties from whom the
5 Watermaster seeks to collect assessments. One person, we know not who, either by name, title or
6 training, created template invoices. Someone else, again unidentified by either name, title or training,
7 came along later and filled in the data regarding the amount pumped, the RWA rate and the total
8 amount due. What information either of those individuals were looking at or relying on is not
9 disclosed. The date of the invoice, potentially critical to whether penalties and interest are due, was
10 treated as unworthy of being changed before the invoices were actually sent out. Rather than change
11 the date on the invoice, a notation was added that brought into question the process by which the
12 RWA rate was determined, by making it appear the invoice was prepared before the rate was
13 determined.

14 This is not about form. It is about the accuracy and integrity of the billing process and
15 procedures and schedules are necessary, whether or not they are approved by the Court, and should
16 precede the issuance of invoices.

17 **IV. CONCLUSION**


18 For the reasons set forth in the moving papers and this Reply, the Court should enter an order
19 requiring the Watermaster to: (1) rescind the notice of assessment to Phelan; (2) rescind Watermaster
20 Resolution No. R-19-27; (3) adopt rules and regulations, procedures and schedules, for the levying
21 and collection of RWAs; (4) establish, with proper notice, new RWA rates that are supported by
22 substantial evidence and do not exceed the Watermaster's recovery of costs for obtaining replacement
23 water; (5) issue a new notice of assessment to Phelan for the RWA for the year 2018 only, after a
24 proper RWA rate has been determined; and (6) defer issuance of any notice of assessment to Phelan
25 for RWAs for the years 2016 and 2017 until after the Court of Appeal's decision on Phelan's appeal
26 from the April 2018 Order is final.

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1 DATED: October 31, 2019

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

By: 

JUNE S. AILIN
Attorneys for Phelan Piñon Hills Community
Services District

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2 **PROOF OF SERVICE**

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

4 I, Beverly Mikell,

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

7 On November 1, 2019, I served the within document(s) described as **REPLY TO**
8 **WATERMASTER'S OPPOSITION TO PHELAN PIÑON HILLS COMMUNITY SERVICES**
9 **DISTRICT'S MOTION FOR DECLARATORY RELIEF RE WATERMASTER**
10 **RESOLUTION NO. R-19-27 AND NOTICE OF ASSESSMENT OF REPLACEMENT WATER**
ASSESSMENTS FOR 2016, 2017 AND 2018 on the interested parties in this action as follows:

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

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

16 Craig Andrews Parton
Price Postel & Parma
17 200 E. Carrillo St., Suite 400
Santa Barbara, CA 93101
18 Tel: (805) 962-0011
(805) 965-3978

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

VIA OVERNIGHT MAIL

19
20 I declare under penalty of perjury under the laws of the State of California that the foregoing is
21 true and correct.

22 Executed on November 1, 2019, at El Segundo, California.

23
24 
Beverly Mikell