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Government Code § 6103

7 Attorneys for
8 Antelope Valley Watermaster

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

11 Coordination Proceeding,
12 Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No. 4408

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

LASC Case No.: BC 325201

Santa Clara Court Case No. 1-05-CV-049053
Assigned to the Hon. Jack Komar, Judge of the
Santa Clara Superior Court

**NOTICE OF ENTRY OF ORDER AFTER
HEARING ON NOVEMBER 14, 2019**

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18 **AND ALL RELATED ACTIONS**
19

20 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

21 NOTICE IS HEREBY GIVEN that on November 22, 2019, the Court issued its Order
22 After Hearing on November 14, 2019 (“Order”) denying Defendant and Cross-Complainant
23 Phelan Pinon Hills Community Services District’s Motion for Declaratory Relief Re Watermaster
24 Resolution No. R-19-27 and Notice of Assessment of Replacement Water Assessments for 2016,
25 2017 and 2018. An executed copy of the Order is attached hereto as Exhibit A.
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Respectfully submitted,

Dated: November 25, 2019

PRICE, POSTEL & PARMA LLP


By: 
CRAIG A. PARTON
CAMERON GOODMAN
Attorneys for
Antelope Valley Watermaster

Exhibit A

Envelope: 3656869

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Consolidated Actions:

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348

Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of
Riverside, consolidated actions, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 391 869

Judicial Council Coordination
Proceeding No. 4408

Lead Case No. BC 325 201

**ORDER AFTER HEARING ON
NOVEMBER 14, 2019**

**Motion by Phelan Pinon Hills
Community Services District for
Declaratory Relief re Watermaster
Resolution No. R-19-27 and Notice of
Assessment of Replacement Water
Assessments for 2016, 2017 and 2018**

Judge: Honorable Jack Komar, Ret.

1 **This Document Pertains to Add-On Case:**

2 Little Rock Sand and Gravel, Inc., a California
3 corporation v. Granite Construction Company
4 Superior Court of California
5 County of Los Angeles, Case No. MC026932

6 The above-entitled matter came on regularly for hearing on November 14, 2019 at 9:00
7 a.m., telephonically via CourtCall, the Honorable Jack Komar (Ret.) presiding. The
8 appearances are as stated in the record. The Court, having read and considered the supporting
9 and opposing papers, and having heard and considered the arguments of counsel, and good
10 cause appearing therefore, makes the following order:

11 Phelan Piñon Hills Community Services District (Phelan) has filed this motion for
12 declaratory relief requesting that Phelan receive the benefit of the right to a stay of payment on
13 invoices from the Watermaster without posting a bond and seeking a determination that the
14 Watermaster's (WM) assessment of replacement water (RWA) costs is excessive and
15 improper on the following grounds:

- 16 1. The determination of the proper replacement water assessment (RWA) is excessive and
17 not supported by the evidence.
- 18 2. That imposition of RWA assessments is improper because the WM failed to abide by the
19 judgment to establish rules, regulations, procedures and schedules;
- 20 3. The established rates are not related to the WM's actual costs of replacement water.
- 21 4. The amount of any assessment cannot be subject to penalties (interest) prior to August
22 14, 2019 since that date on the invoice is prior to the adoption by the WM by Resolution.

23
24 Phelan also seeks a declaration that the assessment for RWA for the years 2016, 2017,
25 and 2018 should be stayed because requiring payment of those assessments is tantamount to
26 requiring Phelan (a governmental agency) to post an appeal bond.

1 **HISTORY**

2 Phelan is an objecting, non-stipulating and non-supporting party to the Antelope Valley
3 Coordinated Cases Adjudication (JCCP 4408) but is presently bound by the judgment which was
4 entered therein on December 28, 2015.

5 This motion was heard telephonically on November 14, 2019 at 9:00 a.m. All
6 appearances are noted in the minutes of the court.

7 The original judgment which was entered in this matter on December 28, 2015,
8 adjudicated and determined the various water rights of the parties in this comprehensive
9 groundwater adjudication. The judgment provided that Phelan (who had not pumped material
10 amounts of water prior to the initiation of this adjudication) had neither vested legacy rights nor
11 appropriative or other prescriptive rights to ground water in the Antelope Valley adjudication
12 area¹. Phelan's appeal from that judgment is still pending.

13 As a governmental agency, Phelan provides water to consumers in an area outside the
14 Antelope Valley and outside the adjudication area from its one well in the adjudication area and
15 other wells it owns in its service area outside the adjudication area. In view of those
16 circumstances, in the best interests of the people of this state, the stipulating parties in this matter
17 (the vast majority of water producers and overlying land owners who pump), Phelan was granted
18 a right to produce up to 1200 acre feet a year for the use of its customers in its service area,
19 subject to certain express conditions which included the duty to pay a RWA for all water it
20 pumped.

21 On April 26, 2019, this court denied Phelan's motion which had requested an
22 interpretation of the judgment that would relieve it of any RWAs for the years 2016 and 2017.
23 Phelan has also appealed that order in a separate appeal that is pending.

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27 ¹ Phelan had not pumped from its well in the adjudication area prior to the initiation of this adjudication and there
28 was no surplus of water for an appropriator in the aquifer at any such time or thereafter, it being in a condition of
severe overdraft. Thus all water it pumped was not available for prescriptive right, all of which was used outside the
adjudication area.

1 CONCLUSIONS

2 A. THE INVOICES FOR 2016, 2017, AND 2018

3 Phelan contends that the payment on the invoices from the WM for the years 2016, 2017,
4 and 2018 should be stayed because the matter is on appeal both from the original judgment as
5 well as the denial of the later motion for declaratory relief decided in April 2018.

6 Phelan argues that pursuant to the Code of Civil Procedure Section 995.220, governmental
7 agencies are entitled to an automatic stay of money judgments without the necessity of posting
8 an appeal bond. While Phelan recognizes the court's order denying relief on April 26, 2019 is not
9 a money judgment, it is its contention that the order which interpreted the language in the
10 judgment authorized the demand for payment for the 2016 and 2017 assessments for replacement
11 water and is tantamount to a money judgment, and as such its appeal should be automatically
12 stay payment to prevent depletion of public funds.²

13 Neither the court's original judgment nor the court's order made any determination of
14 money owing; it merely adjudged that Phelan could not pump water for use outside the
15 adjudication (aquifer) area and then at Phelan's request issued a declaration that Phelan was not
16 entitled to the specific provisions of the judgment which exempted parties with pumping rights
17 from replacement water assessments during the first two years of a rampdown process. Phelan
18 has no right whatsoever to pump water for use outside the aquifer and the adjudication area
19 unless it pays to replace the water. Payment is an express condition to the right to pump water for
20 use outside the basin.

21 The judgment generally, with very few exceptions, prohibits and enjoins most parties
22 from exporting water from the adjudication area for uses outside the basin. Phelan is not
23 authorized to pump for export without payment. In its simplest terms the effect is the same as a
24 prohibitory injunction; not mandatory, although except for the language in the judgment itself,
25 the court has made no specific orders concerning Phelan's conduct.

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28 ² Here there are no additional costs other than the cost of replacement water.

1 Phelan can choose to refrain from pumping until the appeal has been decided. Permitting
2 it to pump without payment for replacement water would materially inhibit the process of
3 restoring this significantly over drafted basin and cause continuing detriment to the aquifer.
4

5 B) REPLACEMENT WATER RATES

6 The judgment provides that all replacement water rate assessments must be at the rate
7 paid by the Watermaster for such water plus certain additional costs. All water acquired by the
8 Watermaster in this and other areas principally is California Water Project water which is
9 acquired from the California Water Project and sold to public and other entities by State Water
10 Contractors.

11 On January 24, 2018, the WM adopted Resolution R-18-04. Thereafter it approved the
12 rate for the parties in the AVEK service area reserving decision on the rate issue for those parties
13 outside the AVEK area.

14 The Antelope Valley State Water Contractors Association (AVSWCA) is the association
15 of all entities that contract to provide state water project water to all who contract with it for that
16 purpose. The AVSWCA is not a party to this adjudication. The Antelope Valley Water Master
17 does contract with its members to provide replacement water and must pay its rates.

18 On March 14, 2019, the AVSWCA adopted an economic study (Raftelis) that
19 recommended certain costs for water in the various areas in which it provided state water project
20 water essentially following the recommendations in the economic report.

21 On April 24, 2019, the WM Board by resolution approved and adopted the rate structure,
22 attached and incorporated the economic study and its conclusions, and established that rate
23 structure for all parties outside the AVEC jurisdictional area.

24 Phelan contends that the dates on the invoices prove the invoices were prepared before
25 the rates were established. The evidence establishes that In July 2019, WM Staff began preparing
26 invoices for those who would be assessed for RWA in order to be prepared when the Board
27 approved the rate structure. The template invoices carried a July date but no actual invoices were
28 prepared pending the board decision. After the board decision was made and Resolution R-19-27

1 was adopted, the rates were then computed (not without some errors) and placed in the invoice
2 template for delivery to those parties who would be responsible for payment- including Phelan.
3 The dates on the invoices reflected the July date which was the template preparation date but not
4 the date the individual invoices were prepared.

5 On August 28, 2019, the WM Board adopted R-19-27 which set rates for those within the
6 AVSWCA area and those outside of it. In this motion, Phelan disputes the rates set by
7 AVSWCA's resolution asserting that it includes costs of depreciation dating back to the original
8 creation of the California Water Project. Whether the RWA's imposed by the AVSWCA were
9 fairly computed or not, that is the only source of replacement water for the Watermaster, and it
10 passes on actual costs to the purchasers.

11 Phelan contends that the judgment requires that the WM adopt rules, regulations,
12 procedures and the like before it may impose RWA's. While with regard to many other issues of
13 WM operations, that may be correct. But as to water it provides to parties who must pay for it,
14 there must be internal accounting and records and internal procedures. That requirement is
15 satisfied herein.

16 17 CONCLUSION AND ORDER

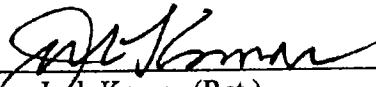
- 18 1. There is no automatic stay to which Phelan is entitled regarding the WM invoices for the
19 years 2016- through 2018, or otherwise.
- 20 2. The WM Invoices are only for the cost of water it must pay to replace the ground water
21 that Phelan exports.
- 22 3. The evidence is sufficient to support the conclusion that the Watermaster RWA rates for
23 Phelan water to be exported are reasonable. No contrary evidence has been submitted.
- 24 4. Phelan may consider whether it wishes to present further evidence challenging the
25 reasonableness of the WM rates in which case the court may continue decision on that
26 issue to a hearing date to be determined. All other issues decided herein will remain as
27 concluded.

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5. A further conference call hearing is set for November 22, 2019 at 9:00 a.m.

SO ORDERED.

Dated: November 14, 2019



Hon. Jack Komar (Ret.)
Judge of the Superior Court

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

3 I am employed in the County of Santa Barbara, State of California. I am over the age of
4 eighteen (18) and not a party to the within action. My business address is 200 East Carrillo Street,
4 Fourth Floor, Santa Barbara, California 93101.

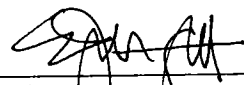
5 On November 25, 2019, I served the foregoing document described as **NOTICE OF**
6 **ENTRY OF ORDER AFTER HEARING ON NOVEMBER 14, 2019** on all interested parties
6 in this action by the original and/or true copy thereof enclosed in sealed envelopes, addressed as
7 follows:

8 **BY ELECTRONIC SERVICE:** I posted the document(s) listed above to the Santa
9 Clara County Superior Court Website @ www.scefilings.org and Glotrans website in the
10 action of the Antelope Valley Groundwater Cases.

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

13 **(FEDERAL)** I hereby certify that I am employed in the office of a member of the Bar of
14 this Court at whose direction the service was made.

15 Executed on November 25, 2019, at Santa Barbara, California.

16 
17 _____
18 Signature
19 Elizabeth Wright