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9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**
11

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
23 *Wm. Bolthouse Farms, Inc. v. City of*
Lancaster
24 *Diamond Farming Co. v. City of Lancaster*
Diamond Farming Co. v. Palmdale Water
25 *Dist.*
Riverside County Superior Court,
26 Consolidated Action, Case Nos. RIC 353
840, RIC 344 436, RIC 344 668
27

28 **AND RELATED CROSS-ACTIONS**

) Judicial Council Coordination Proceeding
) No. 4408

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

)
) Assigned for All Purposes To:
) Judge: Hon. Jack Komar

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) (Filing Fees Exempt, Per Gov't Code § 6103)

) **CASE MANAGEMENT CONFERENCE**
) **AND TRIAL READINESS SETTING**
) **STATEMENT OF PHELAN PIÑON**
) **HILLS COMMUNITY SERVICES**
) **DISTRICT; DECLARATION OF**
) **WESLEY A. MILIBAND IN SUPPORT**
) **THEREOF**

) **DATE:** February 14, 2012
) **TIME:** 9:00 a.m.
) **LOCATION:** Central Civil West, 15th Fl.,
) Room 1515

1 TO THE HONORABLE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF
2 RECORD HEREIN:

3 Phelan Piñon Hills Community Services District ("PPHCSD") hereby submits this Case
4 Management Conference and Trial Readiness Setting Statement regarding these matters set for
5 February 14, 2012.

6 PPHCSD supports the ongoing mediation sessions before the Honorable Justice Ronald B.
7 Robie, as well as ongoing settlement discussions among the parties in between sessions with
8 Justice Robie. PPHCSD has been actively participating in these mediation sessions and settlement
9 meetings.

10 Consistent with prior Case Management Conference ("CMC") Statements submitted by
11 other parties in recent months – and contrary to Bolthouse Properties, LLC's and Wm. Bolthouse
12 Farms, Inc.'s CMC Statement dated February 1, 2012 ("Bolthouse CMC") – "the parties" are not
13 "very close" to allocation of water rights, thus, calling into question the viability for all parties to
14 be "in agreement to an allocation of water rights" (Bolthouse CMC, p. 2:7-12). Moreover, and
15 evident from new water rights claims continuing to surface, the parties are not close to agreement.

16 To that end, PPHCSD submits the following list of items to facilitate direction from the
17 Court on various procedural, factual, and legal issues pertaining to Phase Four, should
18 commencement of Phase Four proceedings be necessary¹:

19 **(1) Identification Of Phase Four Issues.**

20 Various Case Management Conferences since the Summer of 2011 have explored issues for
21 the next phase of trial, ranging from management and regionalized issues to allocation issues,
22 including prescription. More recent dialogue with the Court during CMCs has focused on the
23 latter. As the scope of issues for Phase Four has yet to be "officially" identified, this item bears
24 further discussion.

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26 ¹ PPHCSD understands that several of these items may be more appropriately addressed at a later
27 time through briefing and otherwise; however, given the nature of the matters set for
28 February 14, 2012, PPHCSD identifies these items as a non-exclusive list simply to identify issues
that it believes assist with management of and preparation for Phase Four proceedings.

1 Notably, the Court stated in the Statement of Decision Phase Three Trial (July 13, 2011)
2 that: “But having heard evidence about the aquifer as a whole, the Court is not making historical
3 findings that would be applicable to specific areas of the aquifer **or that could be used in a**
4 **specific way to determine water rights in particular areas of the aquifer.”** (Declaration of
5 Wesley A. Miliband (“Miliband Decl.”), ¶ 3, Exhibit A, Statement of Decision Phase Three Trial
6 (July 13, 2011) (“Phase Three Decision”), p.4:21-24 [emphasis added].)

7 This language suggests that the Phase Three Decision finding that the aquifer is in overdraft
8 does not necessarily require an appropriator (whether a public or private entity) to prove
9 prescription, but instead that further inquiry and findings are needed, whether that be: (i) to address
10 regionalized issues for identifying whether that portion of the “aquifer” is in overdraft; (ii) to
11 determine the type of water right held by a party in that portion of the aquifer (e.g., appropriative or
12 prescriptive); and/or (iii) to identify management areas.

13 The trial phases have evolved from a global approach by identifying Adjudication Area
14 boundaries; to identifying parties within those boundaries; to the general condition of the aquifer.
15 The next logical step consistent with this history and the Phase Three Decision would involve
16 regionalized issues, particularly given: (i) the vast geographical size of the Basin, (ii) the Court’s
17 comments stated, *supra*, as well as recognizing that the aquifer is not like a “bathtub” due to
18 regionalized differences in geology and pumping (*Ibid.* at p. 9:13-19), and, (iii) whether those
19 differences affect what type of right a party would need to prove at the time of trial.

20 **(2) Utilization Of “Universal” Discovery, And, Any Remaining Defaults On**
21 **Complaints Or Cross-Complaints.**

22 Given the breadth of discretion vested with the Court to manage this complex action
23 pursuant to the California Rules of Court, this item relates to a question of whether, and if so to
24 what extent, written and testimonial discovery for Phase Four can proceed by utilizing “universal”
25 or “model” discovery, similar in concept to the “Model Answer” employed by the Court earlier in
26 this action. Without any such discovery devices or standards, discovery would be extraordinarily
27 cumbersome for the Court and the parties, due to the vast number of parties and potentially
28 multiple water rights held by some parties (e.g., an overlying water right holder that also

1 appropriates water). In addition, some parties may have yet to even file the “Model Answer” or
2 otherwise avail themselves to the Court’s jurisdiction, raising a question of when to move for
3 default (and the effect thereof on the final, single judgment to be entered by the Court).

4 **(3) Establishing The Burden Of Proof, And, Whether Phase Four Issues Are**
5 **Subject To A Jury Or Bench Trial.**

6 Though issues relating to identifying which parties bear – and what is – the appropriate
7 burden of proof may seem like simple questions of law, the burden of proof for Phase Three was in
8 dispute evident from relevant pleadings, and CMC Statements filed since conclusion of Phase
9 Three reveal varying perspectives on other issues. Similarly, depending on what Phase Four
10 encompasses, some issues may or may not be subject to a bench trial. Accordingly, all of these
11 issues might lack consensus among the parties, which irrespective of consensus, are issues
12 ultimately within the Court’s purview.

13 **(4) Effect Of, Or Modification To, The Adjudication Boundary In The “Southeast**
14 **Area” Of The Basin.**

15 The record is clear that the Adjudication Area boundaries determined through Phase One
16 preceded PPHCSD’s formation as an entity during 2008, much less PPHCSD’s becoming a party to
17 this action. Moreover, PPHCSD’s predecessor-in-interest, the County of San Bernardino Special
18 Districts Department’s Service Area 70, was never named as a party to any of the many lawsuits
19 now consolidated into one action, despite earlier phases of trial serving, in part, to identify
20 “necessary” parties to this action. Only upon PPHCSD’s formation² and its proactive efforts did it
21 become a party to this action. At that point, however, the eastern boundary for the Adjudication
22 Area had already been drawn at the Los Angeles/San Bernardino County line.

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26 ² PPHCSD’s service area is located in San Bernardino County, adjacent to the eastside of the
27 County line delineating the eastern boundary of the Adjudication Area, with PPHCSD’s “Well 14”
28 located just within Los Angeles County.

1 Through various Orders recognizing that the Antelope Valley *hydrogeological* basin
2 extends farther east into San Bernardino County, the Court has acknowledged this issue may need
3 to be addressed at some unknown juncture.

4 The Court stated as part of its Order After Hearing On Jurisdictional Boundaries, dated
5 November 3, 2006 (“Phase One Order”), that: “ ... the alluvial basin as described in California
6 Department of Water Resources [DWR] Bulletin 118-223 should be the basic jurisdictional
7 boundary for purposes of this litigation.” (Miliband Decl., ¶ 4, Exhibit B, Phase One Order,
8 p. 4:6-8.)

9 In addition, the Court’s March 12, 2007 Order entitled, “Revised Order After Hearing on
10 Jurisdictional Boundaries” (“Revised Order”) states: “The court concludes that the alluvial basin as
11 described in California Department of Water Resources Bulletin 118-2003 should be the basic
12 jurisdictional boundary for purposes of this litigation.” (Miliband Decl., ¶ 5, Exhibit C, Revised
13 Order, p. 4:7-9.) However, this same Order also states that “[t]he eastern boundary will be the
14 jurisdictional line on the east which was established as the westernmost boundary in the Mojave
15 litigation.” (*Ibid.* at p. 4:17-18.)

16 Ultimately, the Court recognizes that DWR Bulletin 118 (2003 update) illustrates that the
17 hydrogeologic Antelope Valley Groundwater Basin extends east of the Los Angeles/San
18 Bernardino County line, into San Bernardino County. Anticipating the present circumstance, the
19 Court, through its February 19, 2010 “Order Transferring and Consolidating Actions for All
20 Purposes” (“Consolidation Order”), stated:

21 Any claim to declaratory relief regarding basin boundaries has been determined by
22 the Court by Order dated November 6, 2008. To the extent any current party was
23 not a party at the time of the determination of this issue, that party may seek to
reopen or, consistent with the order, move to amend the basin boundary.
(Miliband Decl., ¶ 6, Exhibit D, Consolidation Order, p. 7:4-8.)

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1 The foregoing Orders demonstrate two critical points: (i) the *hydrogeological* basin cannot
2 be ignored (nor should such technical and scientific issues be ignored in a groundwater
3 adjudication seeking to understand sub-surface characteristics and conditions in order to establish
4 water rights and a physical solution); and, (ii) a party, such as PPHCSD, must be afforded due
5 process (i.e., notice and opportunity to be heard) to address this issue.

6 Accordingly, PPHCSD seeks to address this boundary issue; however, the timing was not
7 appropriate prior to now, and subject to the Court's direction and depending on what issues
8 comprise Phase Four, the time to address this issue may indeed be near.

9 **(5) Prescription "Issues."**

10 If Phase Four is determined to address allocation of the safe yield, numerous questions and
11 legal issues arises as to the type of water right sought to be established, by which parties, *and*
12 against which parties.

13 For instance, if prescriptive water rights are the subject of Phase Four, various questions
14 arise, including: (i) identification of which parties claim a prescriptive right; (ii) whether that right
15 must be established against every overlier party in the Adjudication Area, or only those within the
16 same region of the Adjudication Area as the prescriptor; and, (iii) whether self-help claims would
17 be included in the same phase as prescription.

18 In addition, various legal findings on elements of prescription would set the bar for the
19 parties to prepare for trial, including: (i) standards for and/or identification of the base period(s);
20 (ii) whether the finding of overdraft satisfies the adversity element³; and, (iii) identification of the
21 controlling standard(s) for quantifying prescriptive rights⁴.

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24 ³ See, e.g., *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 929 [Each taking of water
25 in excess of the safe yield...was wrongful and was an injury...because the overdraft, from its
26 beginning, operated progressively to reduce the total available supply. ... The proper time to act in
27 preserving the supply is when the overdraft commences.].) See also, Slater, Scott S., *California*
Water Law & Policy (Butterworth Legal Publishers, 2005) ("Slater") p. 11-19, § 11.04[5].

28 ⁴ The method for quantifying the exact amount of the prescriptive right is subject to some differing
interpretations. (*Id.* at n. 76.)

1 In furtherance of facilitating as much efficiency as possible moving forward and advancing
2 the abilities of the parties to prepare for Phase Four, PPHCSD respectfully submits the foregoing
3 list of items for the upcoming Trial Readiness Setting Conference.

4 Dated: February 9, 2012

ALESHIRE & WYNDER, LLP
DAVID J. ALESHIRE
WILLIAM W. WYNDER
WESLEY A. MILIBAND

7
8 By: 

Wesley A. Miliband
Attorneys for Cross-Defendant and
Cross-Complainant,
Phelan Piñon Hills Community
Services District

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PROOF OF SERVICE

I, Linda M. Yarvis,

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.

On February 9, 2012, I served the within document(s) described as **CASE MANAGEMENT CONFERENCE AND TRIAL READINESS SETTING STATEMENT OF PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT; DECLARATION OF WESLEY A. MILIBAND IN SUPPORT THEREOF** as follows:

☒ (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.scefiling.org.

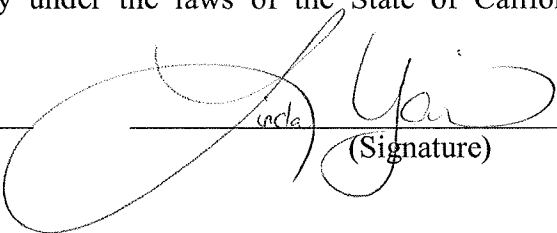
☐ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Irvine, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ (BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained by Overnight Express, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in a sealed envelope or package designated by the express service carrier, addressed as set forth above, with fees for overnight delivery paid or provided for.

Executed on February 9, 2012, at Irvine, California.

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

Linda Yarvis
(Type or print name)


(Signature)