

1 ALESHIRE & WYNDER, LLP
DAVID J. ALESHIRE, Bar No. 65022
2 WILLIAM W. WYNDER, Bar No. 84753
WESLEY A. MILIBAND, Bar No. 241283
3 18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612
4 Telephone: (949) 223-1170
Facsimile: (949) 223-1180
5 daleshire@awattorneys.com
wwynder@awattorneys.com
6 wmiliband@awattorneys.com

7 Attorneys for Defendant and Cross-Complainant,
Phelan Piñon Hills Community Services District
8

9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**
11

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

) Judicial Council Coordination Proceeding
) No. 4408
)

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

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

15 Included Actions:

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

16 *Los Angeles County Waterworks District*
No. 40 v.

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

17 *Diamond Farming Co., et al.*

18 Los Angeles County Superior Court, Case
No. BC 325 201

) **PHELAN PIÑON HILLS COMMUNITY**
) **SERVICES DISTRICT'S PROPOSAL**
) **FOR PHASE V TRIAL ISSUES**
)

19 *Los Angeles County Waterworks District*
No. 40 v.

20 *Diamond Farming Co., et al.*

21 Kern County Superior Court, Case No.
S-1500-CV-254-348

) **DATE: July 29, 2013**
) **TIME: 10:30 a.m.**
) **LOCATION: 111 N. Hill Street, Dept. 48**
) **Los Angeles, California**
) **(Stanley Mosk Courthouse)**
)

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.*

26 Riverside County Superior Court,
Consolidated Action, Case Nos. RIC 353
840, RIC 344 436, RIC 344 668
27

28 **AND RELATED CROSS-ACTIONS**

1 TO THE HONORABLE COURT AND ALL PARTIES HEREIN:

2 Phelan Piñon Hills Community Services District (“PPHCSD”) hereby submits this proposal
3 in accordance with the Court’s recent telephonic status conferences with the parties and the Court’s
4 Minute Order dated July 12, 2013, wherein the Court directs the parties to identify which issue, or
5 set of issues, should encompass Phase V of these complex proceedings.

6 **I. INTRODUCTION.**

7 Various causes of action and issues contained within the numerous complaints and cross-
8 complaints in this consolidated action have yet to be litigated, with many of these items being of a
9 legal, equitable, or technical nature, or some combination thereof. Some are applicable to all
10 parties or a majority of parties, while other items are more unique to a smaller number of parties.

11 The four phases of trial to date reveal a “global” approach to advancing this case toward
12 final judgment, by having started with identification of the adjudication area; identification of
13 parties and potential parties; generalized determinations of “overdraft” status while recognizing
14 “regional” differences exist; and determinations of the parties’ groundwater production for recent
15 years. While this broad approach may provide determinations resulting in a foundation for
16 addressing certain causes of action and issues, no foundation exists yet for certain causes of action
17 or issues.

18 The most effective approach to identifying the scope of issues that *should* or *could* be part
19 of Phase V is to identify first which issue(s) should not, or cannot, be tried next. To that end, State-
20 law water rights, at least those involving prescriptive or appropriative water rights, *cannot* be tried
21 as the issues next in order. The reasons are unequivocal as a matter of law in light of the existing
22 record, as set forth herein. However, many other causes of action or issues remain unresolved, with
23 the most significant items being determination of: (i) return flow rights resulting from imported
24 water; (ii) the federal reserved right; and (iii) identification of sub-units within the Antelope Valley
25 Adjudication Area.

26 Ultimately, there are certain causes of action and issues that *cannot* as a matter of law be
27 tried yet; however, many other “hot button” items applicable to all parties’ interests are appropriate
28 for Phase V.

1 **II. A PUBLIC WATER SUPPLIER'S STATE-LAW WATER RIGHTS CANNOT BE**
2 **PART OF PHASE V.**

3 PPHCSD is concerned with the Court's comments during recent hearings¹ that Phase V
4 may include determination of prescriptive water rights claims, given the undisputable record
5 established by the Court during the Phase III proceedings. This record demonstrates unequivocally
6 that prescription cannot be tried next, which also demonstrates how this action differs from other
7 adjudications in many ways, meaning that the "blueprint" for trial phases in this action cannot
8 match phase-by-phase how some other adjudication progressed.

9 Instead, the law and history of this case must dictate what comes next. Looking back to the
10 Statement Of Decision Phase Three Trial dated July 13, 2011 ("Phase III Decision")² allows the
11 Court to identify correctly what *may* come next. The Phase III Decision must control.

12 Within the Phase III Decision, the Court stated that: **"But having heard evidence about**
13 **the aquifer as a whole, the Court is not making historical findings that would be applicable to**
14 **specific areas of the aquifer or that could be used in a specific way to determine water rights**
15 **in particular areas of the aquifer."**³ This language indicates that the Phase III Decision finding
16 *generally* that the aquifer is in overdraft does not - or as the Court stated in effect, cannot - require
17 an appropriator (whether a public or private entity) to prove prescription, but instead that further
18 inquiry and findings are needed, whether that be: (i) to address "regionalized" issues for identifying
19 whether that portion of the "aquifer" is in overdraft; (ii) to determine the type of water right held by
20 a party in that portion of the aquifer (e.g., appropriative or prescriptive); and/or (iii) to identify sub-
21 unit areas.⁴

22 _____
23 ¹ The Court expressed that prescription may be the next issue in order, during the conclusion of the
Phase IV Trial on May 30, 2013 and recent Minute Orders including July 12, 2013.

24 ² A true and correct copy of the Phase III Decision is attached hereto as Exhibit "A."

25 ³ *Ibid.* at p. 4:21-24 (emphasis added).

26 ⁴ The Court also recognized this issue during the June 19, 2012 Status Conference by noting that
27 there are "variances in the valley and different relationships among and between parties, and we
28 have been talking about the basin as a whole but sub-parts exist."

1 The Court is correct to have concluded “regional” - or local - differences exist.
2 Specifically, the Court’s Phase III Decision relies heavily upon evidence offered by public water
3 suppliers, which arose in large part from a complex technical document prepared by several experts
4 and simply referred to as the “Summary Expert Report” (the “Report”). Contents of the Report
5 further necessitate establishing regional differences prior to prescription; namely that overdraft has
6 not and does not exist in the area where PPHCSD’s Well 14 is located.⁵ For instance, Section 4.3
7 (Groundwater levels, Storage and Natural Recharge), Subsection 4.3.1.4 (East Antelope Valley), at
8 page IV-13 states: “In general, groundwater levels in the Buttes and Pearland subbasins have not
9 changed significantly since 1951 and, in some cases, have risen (06N/10W-22D1). Groundwater
10 flow direction in this area is generally to the west and has not changed significantly since 1951.”
11 In addition, Figures 4.3-1 through 4.3-9 show the Buttes and Pearland subbasins in the southeast
12 area of the of the Antelope Valley Adjudication Area and overlapping the Los Angeles/San
13 Bernardino County line into the southwest area of the Mojave Adjudication Area, as does the
14 Antelope Valley Groundwater Basin. Thus, prescription issues cannot come next.

15 Further demonstrating that prescriptive claims cannot precede these “regional” issues are
16 undeniable due process rights of PPHCSD (and perhaps other parties), given the undisputable fact
17 that PPHCSD, through its legal counsel, attempted during the Phase III Trial to present evidence of
18 “regional” differences; however, the Court sustained objections on the basis that this type of
19 evidence was beyond the scope of the Phase III Trial and was preserved for later determination.⁶

20 _____
21 ⁵ PPHCSD’s Well 14 is the only one of PPHCSD’s wells located within the Antelope Valley
Adjudication Area.

22 ⁶ Tejon Ranchorp also prepared to offer evidence of similar issues. PPHCSD’s basis for this
23 approach arose from earlier Case Management Conferences (“CMC”), wherein the Court indicated
24 on March 8, 2010 its preference to hear in the “aggregate” but also to hear about the “... individual
25 areas as to the basin and what’s happening in those particular areas in terms of what the impact is.
26 I know there is conductivity and connectivity, but I want to know the extent of it with regard to the
27 various portions of it in the valley now.” Also, during the CMC on March 22, 2010, the Court
28 stated that its “concern at this point is with whether or not the basin as a whole or parts, thereof, are
in overdraft...” and that it wants to “hear the evidence as to the current status of the basin,”
recognizing that “[i]t may be that somebody wants to produce evidence that shows that their
portion, their land is in an area where pumping has no affect on anything.”

1 Thus, prior to engaging in prescription issues, these “regional” issues are a legally-
2 necessary step, particularly given: (i) the vast geographical size of the Basin, (ii) the Court’s
3 comments stated, *supra*, as well as recognizing that the aquifer is not like a “bathtub” due to
4 regionalized differences in geology and pumping (Phase III Decision, at p. 9:13-19), and, (iii)
5 whether those differences affect what type of right a party would need to prove at the time of trial.

6 **III. VARIOUS OTHER CAUSES OF ACTION AND ISSUES APPROPRIATE FOR**
7 **PHASE V REMAIN UNRESOLVED.**

8 Of the various items yet to be determined in this action, very few, if any, are “simple,” due
9 to inherent complexities including the number of parties, the extent of competing interests over a
10 limited natural resource, and the vast size of the Antelope Valley Adjudication Area. Those
11 dynamics logically lead to the conclusion that Phase V should consist of causes of action and issues
12 that significantly advance this matter toward final judgment.

13 Until just short of commencement of the Phase IV Trial, return flows resulting from
14 imported water, and, the federal reserved right were within the scope of those trial proceedings.
15 Either of these would be very appropriate for Phase V.

16 Return flows resulting from imported water are ripe for determination due to: (i) uncertainty
17 among some parties whether Phase III determined these issues, and, (ii) competing claims to these
18 return flows exist, evident from briefing earlier this year wherein a wholesale water supplier
19 claimed interests in the return flows.

20 The federal reserved right also is very appropriate for determination. The federal reserved
21 right involves questions of federal law.⁷ Determination of the priority of the federal reserved right
22 is a contentious issue in this action, which lends necessity to determining this priority issue before
23 addressing State-law water rights. Given the unique nature of this right, coupled with the fact that
24 the United States of America is the largest single landowner party in this action, the federal
25 reserved right should be given significant consideration for inclusion in Phase V.

26 _____
27 ⁷ See, e.g., *United States v. New Mexico* (1978) 438 U.S. 696, 715.
28

1 A third option for Phase V is for identification of sub-units. Doing so does not relate just to
2 management issues, but as set forth in Section II, *supra*, clearly relates directly to the question of
3 what type of water right a party may, or needs to, establish. While many experts involved with this
4 action as well as many long before this action commenced have identified sub-units, the potential
5 disadvantage of undertaking this effort in Phase V is the fact that the United States Geological
6 Survey's ("USGS") pending study of the Antelope Valley is not completed, thus making it
7 undesirable from a case-management perspective for the Court to undertake determination of issues
8 that may be part of that work. Dr. Tracy Nishikawa of the USGS informed PPHCSD's counsel
9 recently that the USGS's "report" regarding the Antelope Valley is in the first of seven internal
10 steps of review, and may not be available to the public until at least October 2013.

11 **IV. CONCLUSION.**

12 Due to the USGS's pending work, either the return flow or federal reserved right issues are
13 best suited for Phase V. Consistent with the Court's comments and dialogue from some counsel
14 during the telephonic status conference on July 12, 2013 with the parties, determination of whether
15 a jury is necessary can be accomplished through briefing once the scope of Phase V is determined.

16 Dated: July 22, 2013

Respectfully submitted,

17 ALESHIRE & WYNDER, LLP

18 By: 

19 Wesley A. Miliband
20 Attorneys for Cross-Defendant and
21 Cross-Complainant,
22 Phelan Piñon Hills Community
23 Services District
24
25
26
27
28

PROOF OF SERVICE

I, Linda 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 July 22, 2013, I served the within document(s) described as **PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT'S PROPOSAL FOR PHASE V TRIAL ISSUES** 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 July 22, 2013, 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)