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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
)
) (Filing Fees Exempt, Per Gov't Code § 6103)
)
) **RESPONSE BY PHELAN PIÑON HILLS**
) **COMMUNITY SERVICES DISTRICT**
) **TO [PROPOSED] CASE**
) **MANAGEMENT ORDER FOR PHASES**
) **5 AND 6 TRIALS**

1 TO THE HONORABLE COURT AND ALL PARTIES HEREIN:

2 Phelan Piñon Hills Community Services District (“PPHCSD”) hereby respectfully submits
3 the following response to the [Proposed] Case Management Order For Phases 5 and 6 Trials filed
4 by Los Angeles County Waterworks District No. 40 on September 27, 2013 (“Proposed CMO”):

5 The Proposed CMO is substantially consistent with the Court’s comments and direction as
6 provided to the parties during hearings held on September 6 and 13, and the Proposed CMO reveals
7 that the Liaison Committee has aptly worked to provide structure to the upcoming trial phases.
8 However, to better support the needed structure for these trial phases and to enhance the parties’
9 ability to properly prepare for trial, two items arise from the Proposed CMO that PPHCSD requests
10 the Court incorporate into what is likely to become the Case Management Order for Phases 5 and 6
11 Trials (“CMO”), as follows:

12 (1) Whether claims to return flows resulting from use of *native* water are for
13 determination in Phase 5 or Phase 6. By way of the Court’s First Amended Discovery Order For
14 Phase 4 Trial (posted February 21, 2013), the Court recognized this issue is for determination
15 “during later proceedings.” On September 13, 2013, PPHCSD inquired as to which trial phase this
16 issue will be tried, with counsel for Diamond Farming Company indicating it also has such as
17 claim. The Court indicated this claim should be part of Phase 5. The Proposed CMO, under
18 “Alternative 1” and “Alternative 2” for Phases 5 and 6, does not address this issue, except perhaps
19 by implication for Phase 6 Alternative 1 suggesting that the “Phase 6 trial will determine claims to
20 a prescriptive right *and all remaining claims to groundwater.*” (Proposed CMO, p. 2: 14-15
21 [emphasis added].) Accordingly, PPHCSD respectfully requests the Court reflect in the CMO
22 which Phase this issue of return flows resulting from use of native water will be tried.

23 (2) Phase 6 Alternative 2 would limit trial to “prescriptive rights and defenses thereto.”
24 (Proposed CMO, p. 2:16-17.) Neither Phase 5 Alternatives 1 and 2, nor Phase 6 Alternative 2,
25 address when non-prescriptive rights will be tried. Only Phase 6 Alternative 1 broadens the scope
26 for determining “claims to a prescriptive right *and all remaining claims to groundwater.*”
27 (Proposed CMO, p. 2:14-15 [emphasis added].) So unless the Court adopts Phase 6 Alternative 1,
28 it is unclear whether the Court recognizes that non-prescriptive claims exist, and, when such claims

1 may be offered to the Court for determination. Accordingly, if the Court does *not* adopt Phase 6
2 Alternative 1 which presumably includes non-prescriptive claims, then PPHCSD respectfully
3 requests the Court reflect in the CMO that the Court recognizes that non-prescriptive claims exist
4 (even if by a public water supplier) and that such claims are for determination in proceedings
5 following Phase 6.

6 Incorporating the two items set forth above into the CMO will help provide the structure
7 necessary for effective case management, as well as enhance the ability of the parties - including
8 PPHCSD - to properly prepare for trial.

9
10 Dated: October 1, 2013

Respectfully submitted,

11 ALESHIRE & WYNDER, LLP

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13 By: 

14 Wesley A. Miliband
15 Attorneys for Cross-Defendant and
16 Cross-Complainant,
17 Phelan Piñon Hills Community
18 Services District
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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 October 1, 2013, I served the within document(s) described as **RESPONSE BY PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT TO [PROPOSED] CASE MANAGEMENT ORDER FOR PHASES 5 AND 6 TRIALS** 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 October 1, 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)