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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))

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

) **PHELAN PIÑON HILLS COMMUNITY**
) **SERVICES DISTRICT'S TRIAL BRIEF**
) **FOR PHASE FIVE TRIAL**

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

) **Phase Five Trial:**

) Date: February 10, 2014

) Time: 9:00 a.m.

) Dept.: Room 222 (Old Dept. 1)

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

) (Phase Six Trial Date: August 4, 2014)

27 **AND RELATED CROSS-ACTIONS**
28

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

3 Cross-Defendant and Cross-Complainant, Phelan Piñon Hills Community Services District
4 (“Phelan Piñon Hills”), submits the following trial brief for the Phase Five trial.

5 **I. INTRODUCTION**

6 Having formed during 2008, Phelan Piñon Hills sought to become a party to the
7 Adjudication in November 2008 by informing the Court of Phelan Piñon Hills’ intention to
8 intervene in the Adjudication for a determination of its water rights in the Antelope Valley
9 Groundwater Basin (“Basin”).¹ Phelan Piñon Hills seeks a declaration of its water rights and
10 injunctive relief in the form of a physical solution overseen by a Court-appointed watermaster, with
11 the Court retaining jurisdiction over the case.

12 While Phelan Piñon Hills’ service area is located in San Bernardino County, just east of the
13 Adjudication Area, a significant percentage of the groundwater Phelan Piñon Hills produces is
14 from the hydrogeologic Basin as described in DWR Bulletin 118. One of Phelan Piñon Hills’ most
15 productive wells – Well 14 – is located in Los Angeles County and draws water from the
16 Groundwater Basin, thus placing this well within both the Adjudication Area and the
17 hydrogeologic Basin.

18 Phelan Piñon Hills plans to offer evidence during Phase Five to establish its right to return
19 flow resulting from use of native groundwater. The evidence will be offered through its General
20 Manager (Don Bartz) and its designated expert (Thomas E. Harder), and may consume as little
21 three (3) hours for direct examination.

22 ¹ “Groundwater basin” is not subject to a single definition. The Court stated as part of its Phase I
23 Order dated November 3, 2006 (“Phase I Order”), “ ... that the alluvial basin as described in
24 California Department of Water Resources [DWR] Bulletin 118-223 should be the basic
25 jurisdictional boundary for purposes of this litigation.” (See, Exhibit 1, Phase I Order, p. 4, lines 6-
26 8.) DWR Bulletin 118 (2003 update) illustrates (as does Exhibit 2, *infra*) that the hydrogeologic
27 Antelope Valley Groundwater Basin extends east of the Los Angeles/San Bernardino County line,
28 into San Bernardino County, extending to within the area adjudicated in the Upper Mojave River
Valley Groundwater Basin Adjudication (“Mojave Valley Adjudication”), in which a final
judgment was reached and a watermaster appointed. (See, *City of Barstow, et al. v. Mojave Water
Agency, et al.* (2000) 23 Cal.4th 1224.)

1 Ultimately, Phelan Piñon Hills seeks a finding by the Court that Phelan Piñon Hills has
2 sufficiently established a return flow right, with such right quantified according to proof.

3 **II. PHELAN PINON HILLS' PHASE FIVE TRIAL EVIDENCE**

4 With United States Supreme Court case law, and that of other jurisdictions, establishing a
5 basis for Phelan Piñon Hills' return flow right resulting from native groundwater,² Phelan Piñon
6 Hills' trial evidence for Phase 5 consists of evidence from its expert, Mr. Harder, who is anticipated
7 to opine, among other things as he testified to during his deposition on January 22, 2014:

8 (i) the Antelope Valley Groundwater Basin ("Basin") extends east of the Los Angeles/San
9 Bernardino County line;

10 (ii) a portion of Phelan Piñon Hills' service area lies over the Basin, with Phelan Piñon Hills
11 producing groundwater from Well 14, which is located within the AVAA and the Basin, and which
12 Phelan Piñon Hills distributes to customers who are almost exclusively residential and unsewered
13 users located within that portion of the service that lies over the Basin; and,

14 (iii) native groundwater return flow results from this production and distribution to these
15 customers, with such flow toward the AVAA and Well 14 for recapture given that Well 14 is
16 located hydrologically downgradient.

17 Mr. Harder is anticipated to also testify that the five-year average for calendar years 2009
18 through 2013 is 426 acre feet of return flow to the Basin, resulting from Phelan Piñon Hills'
19 groundwater production and distribution to customers who are primarily residential and unsewered
20 users located within the portion of Phelan Piñon Hills' service area that lies over a portion of the
21 Basin.

22 **III. CONCLUSION**

23 Phelan Piñon Hills will ask the Court to exercise its powers to establish this return flow
24 right, and to work toward formulation of a "physical solution" to protect the Basin allowing
25

26 ² For recitation and analysis of pertinent law, *see*, Phelan Piñon Hills' Opposition to Bolthouse's
27 Motion *In Limine* No. 2 and Phelan Piñon Hills' Notice of Lodging of Authority, dated January 31,
28 2014.

1 management. This will allow the parties to maximize the beneficial use of all water resources for
2 the benefit of the residents and customers who rely on the Antelope Valley Groundwater Basin.

3

4 Dated: January 31, 2014

ALESHIRE & WYNDER, LLP

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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 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 January 31, 2014, I served the within document(s) described as **PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT'S TRIAL BRIEF FOR PHASE FIVE TRIAL** 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.

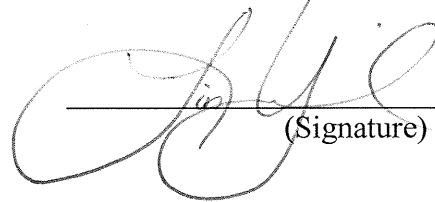
☐ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence 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 January 31, 2014, 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)