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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**
11

12 Coordination Proceeding
Special Title (Rule 1550(b))
13

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

27 **AND RELATED CROSS-ACTIONS**
28

Case No. Judicial Council Coordination
Proceeding No. 4408

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

**PHELAN PIÑON HILLS COMMUNITY
SERVICES DISTRICT'S NOTICE OF
MOTION AND MOTION IN LIMINE NO.
1 TO EXCLUDE EVIDENCE NOT
RELEVANT TO PHELAN'S SECOND
AND SIXTH CAUSES OF ACTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Filed concurrently with Phelan's Motions In
Limine Nos. 2 and 3 and Declaration of
Wesley A. Miliband In Support Thereof]

Assigned for All Purposes to:
Hon. Jack Komar

Trial Date: November 4, 2014
(Trial Related to Phelan Piñon
Hills Community Services
District)

Time: 10:00 a.m.
Location: Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, California
Dept: 56 / Room 514 (5th Floor)



1 TO ALL PARTIES HEREIN AND TO THEIR ATTORNEY OF RECORD:

2 PLEASE TAKE NOTICE that on November 4, 2014, at 10:00 a.m., in Department 56 of the
3 above-entitled Court, located at 111 North Hill Street, Los Angeles, California, PHELAN PIÑON
4 HILLS COMMUNITY SERVICES DISTRICT (hereinafter "Phelan Piñon Hills") will, and hereby
5 does move, in *limine*, for an order to exclude all testimony or other evidence not relevant to Phelan's
6 Second and Sixth Causes of Action. Phelan specifically moves to exclude all evidence relating to any
7 other cause of action or affirmative defense of any party.

8 This motion is based upon this Notice, the Memorandum of Points and Authorities, the
9 Declaration Of Wesley A. Miliband In Support Of Phelan's Motions In *Limine* Nos. 1-3 filed
10 concurrently herewith, all other pleadings and papers on file herein, and such evidence and argument
11 as may be presented at the hearing on this motion.

12
13 DATED: October 31, 2014

ALESHIRE & WYNDER, LLP
WESLEY A. MILIBAND
MILES P. HOGAN

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17 By:

A handwritten signature in black ink, appearing to be 'Wesley A. Miliband', written over a horizontal line.

18 WESLEY A. MILIBAND
19 Attorneys for Defendant and Cross-Complainant
20 Phelan Piñon Hills Community Services District
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Phelan Piñon Hills seeks an order excluding all evidence not relevant to Phelan Piñon Hills'
4 Second Cause of Action – for a determination of Phelan’s appropriative right – and Phelan’s Sixth
5 Cause of Action – for a determination regarding return flows. (*See* Phelan Piñon Hills’ Cross-
6 Complaint filed on or about December 30, 2008, at 15:1-20 and 18:4-23.) Phelan Piñon Hills
7 specifically moves to exclude all evidence relating to any other cause of action or affirmative defense
8 of any party.

9 The Court set this three-day trial for adjudicating two of Phelan Piñon Hills’ causes of action,
10 thus establishing a scope limited to the Second and Sixth Causes of Action in Phelan’s Cross-
11 Complaint. Thus, any evidence offered in support of parties’ other causes of action or defenses is
12 irrelevant and inadmissible at this trial. (*See* Evid. Code, § 350.) Such evidence lacks probative value
13 because it would not be offered to prove any of the essential issues related to either of the two causes
14 of action at issue in this trial.

15 Moreover, evidence outside the scope of Phelan Piñon Hills’ Second and Sixth Causes of
16 Action would unduly prejudice Phelan Piñon Hills given the ongoing discovery stay; by causing
17 delay; taking time away from the key issues; and confusing the claims or issues before the Court. (*See*
18 Evid. Code, § 352.) Therefore, this Court should order that such evidence is inadmissible and shall
19 not be offered at trial.

20 **II. STATEMENT OF FACTS**

21 On December 30, 2008, Phelan Piñon Hills filed a cross-complaint against various parties for
22 declaratory, injunctive, and other equitable relief including a physical solution, which included eight
23 causes of action (“Phelan Piñon Hills Cross-Complaint”). On September 26, 2014, the Court set this
24 three-day trial to begin on November 4, 2014 for issues only related to Phelan Piñon Hills. (*See*
25 8/29/2014 Minute Order, and 9/26/2014 Minute Order.) The Court limited the scope of this trial to the
26 Second and Sixth Causes of Action in Phelan’s Cross-Complaint. (*Ibid.*)

27 Phelan Piñon Hills’ Second Cause of Action is for declaratory relief, for a determination of
28 Phelan’s appropriative right to pump water from the Antelope Valley Groundwater Basin (“Basin”).

01133.0012/228246.2



(Phelan’s Cross-Complaint, at 15:1-20.) Phelan Piñon Hills specifically alleges therein that, “Appropriative rights attach to surplus water from the Basin pumped and put to reasonable and beneficial use,” and that, “Phelan and the County [of San Bernardino] pumped surplus water from within the Basin and put that water to reasonable and beneficial use.” (*Id.* at 15:8-9 and 15:12-13.) In turn, Phelan Piñon Hills seeks a judicial determination that it has an appropriative water right to pump water from the Basin.

Phelan Piñon Hills’ Sixth Cause of Action is for declaratory relief, for a determination regarding return flows. (Phelan Piñon Hills Cross-Complaint, at 18:4-23.) The Sixth Cause of Action seeks in pertinent part “a judicial determination of the amount of its return flows to the Basin.” (*Id.* at 18:21-23.)

These allegations in Phelan Piñon Hills’ Second and Sixth Causes of Action are the only claims before the Court in this trial on issues specific to Phelan Piñon Hills.

III. THE COURT HAS BROAD POWER TO GRANT MOTIONS IN LIMINE

In the context of a bench trial, motions in *limine* permit more careful consideration of evidentiary issues than would take place in the heat of battle during trial and minimize side-bar conferences and disruptions, allowing for an uninterrupted flow of evidence. (*Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 669-670.) Importantly, they also allow the Court to resolve critical evidentiary issues at the outset, resulting in enhanced efficiency in the trial process. (*Ibid.*; see also, *Amtower v. Photon Dynamics, Inc.* (2008) 158 Cal.App.4th 1582.)

The Court has inherent power to grant motions in *limine* pursuant to its authority to: (1) “provide for the orderly conduct of the proceedings before it” (Code Civ. Proc. § 128(a)(3)); (2) “amend and control its process and orders so as to make them conform to law and justice” (Code Civ. Proc. § 128(a)(8)); (3) exclude evidence that is **irrelevant** (Evid. Code § 350) or its probative value is substantially outweighed by the probability that its admission will **consume undue time**, create **substantial danger of undue prejudice** or **confusion of the issues** (Evid. Code § 352); and (4) curb abuses and promote fair process (see *Peat, Marwick, Mitchell & Co. v. Sup. Ct.* (1988) 200 Cal.App.3d 272, 287).



1 **IV. EVIDENCE NOT RELEVANT TO PHELAN PIÑON HILLS' SECOND AND SIXTH**
 2 **CAUSES OF ACTION IS NOT RELEVANT AT THIS TRIAL AND SHOULD BE**
 3 **EXCLUDED**

4 Evidence is relevant if it has “any tendency in reason to prove or disprove any disputed fact
 5 that is of consequence to the determination of the action.” (Evid. Code, § 210.) The only disputed
 6 facts for purposes of *this trial* are facts related to Phelan’s Second and Sixth Causes of Action. Thus,
 7 appropriate items for evidence are, for example, otherwise admissible testimony on whether there has
 8 been surplus water in the Buttes subunit or the extent of return flows contributed by Phelan Piñon
 9 Hills to the Basin. However, evidence offered in support of unrelated issues has no tendency to prove
 10 or disprove any disputed fact that is of consequence.

11 The only test of relevancy is logic and common sense. (*Traxler v. Thompson* (1970) 4
 12 Cal.App.3d 278.) Disputed facts that are not encompassed in Phelan Piñon Hills’ two causes of action
 13 at issue are irrelevant and are of no consequence to the determination of Phelan Piñon Hills’ claims.

14 Pursuant to Evidence Code Section 350, any evidence not relevant to Phelan Piñon Hills’
 15 Second and Sixth Causes must be excluded and deemed inadmissible at this trial. (Evid. Code, § 350
 16 [“No evidence is admissible except relevant evidence.”]; *see also, People v. Kelly* (1992) 1 Cal.4th
 17 495, 523.)

18 **V. INTRODUCTION OF EVIDENCE BEYOND PHELAN’S SECOND AND SIXTH**
 19 **CAUSES OF ACTION WOULD UNDULY PREJUDICE PHELAN, WASTE TIME,**
 20 **AND CONFUSE THE ISSUES**

21 This three-day trial will involve complex, technical issues that will require efficient courtroom
 22 time management and a strict focus on the key legal and factual allegations in Phelan Piñon Hills’ two
 23 causes of action at issue in this trial. At least 18 attorneys filed notices of intent to participate in this
 24 trial on issues related to Phelan. (*See* 9/26/2014 Minute Order, at 3.) These complex issues and this
 25 large number of participants already creates the potential for delay and inefficiency in the proceedings.
 26 Moreover, these risks would be further multiplied by the introduction of irrelevant evidence on issues
 27 not before the Court for this trial.



This Court has authority to exclude evidence if its probative value is substantially outweighed by the probability that its admission will consume undue amounts of time, create substantial danger of undue prejudice, or confuse of the issues. (Evid. Code, § 352.) Any evidence that is not offered to prove or disprove Phelan Piñon Hills' Second and Sixth Causes of Action lacks any probative value given that this Court explicitly set this trial for only those two causes of action. This same evidence would consume unnecessary time and potentially limit time for meaningful argument and presentation on the essential issues. Additionally, irrelevant evidence regarding other parties' causes of action would confuse the issues, which are specifically limited to only Phelan Piñon Hills' Second and Sixth Causes of Action.

Finally, the introduction of such evidence would unduly prejudice Phelan Piñon Hills' because of the ongoing discovery stay and doing so would impede Phelan Piñon Hills from having its day in court with adequate time and attention to its critical claims. For these reasons, evidence outside the scope of Phelan Piñon Hills' Second and Sixth Causes of Action should be excluded at trial.

VI. CONCLUSION

Phelan Piñon Hills' respectfully requests that the Court exclude all documents, testimony, or demonstrative evidence not relevant to Phelan Piñon Hills' Second and Sixth Causes of Action.

DATED: October 31, 2014

Respectfully submitted,

ALESHIRE & WYNDER, LLP

By:

WESLEY A. MILIBAND

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

3 **PROOF OF SERVICE**

4 **STATE OF CALIFORNIA, COUNTY OF ORANGE**

5 I, Linda Yarvis,

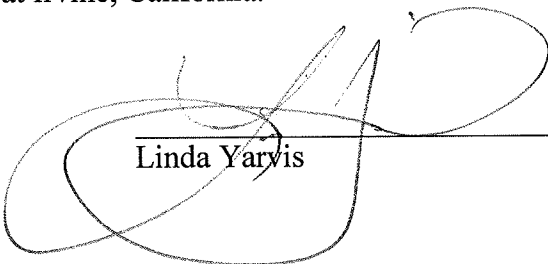
6 I am employed in the County of Orange, State of California. I am over the age of 18 and not a
7 party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA
8 92612.

9 On October 31, 2014, I served the within document(s) described as **PHELAN PIÑON HILLS
10 COMMUNITY SERVICES DISTRICT'S NOTICE OF MOTION AND MOTION IN LIMINE
11 NO. 1 TO EXCLUDE EVIDENCE NOT RELEVANT TO PHELAN'S SECOND AND SIXTH
12 CAUSES OF ACTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
13 THEREOF** on the interested parties in this action as follows:

14 **BY ELECTRONIC SERVICE:** By posting the document(s) listed above to the Santa Clara
15 County Superior Court website in regard to Antelope Valley Groundwater matter pursuant to the
16 Court's Clarification Order. Electronic service and electronic posting completed through
17 www.scefiling.org.

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

20 Executed on October 31, 2014, at Irvine, California.

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Linda Yarvis