

ALESHIRE & WYNDER, LLP
WESLEY A. MILIBAND, State Bar No. 241283
wmiliband@awattorneys.com
MILES P. HOGAN, State Bar No. 287345
mhogan@awattorneys.com
18881 Von Karman Avenue, Suite 1700
Irvine, California 92612
Telephone: (949) 223.1170
Facsimile: (949) 223.1180

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

Coordination Proceeding
Special Title (Rule 1550(b))

**ANTELOPE VALLEY
GROUNDWATER CASES**

Included Actions:

*Los Angeles County Waterworks District
No. 40 v.
Diamond Farming Co., et al.*
Los Angeles County Superior Court, Case
No. BC 325 201

*Los Angeles County Waterworks District
No. 40 v.
Diamond Farming Co., et al.*
Kern County Superior Court, Case No.
S-1500-CV-254-348

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

AND RELATED CROSS-ACTIONS

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.
2 TO EXCLUDE EVIDENCE NOT
DISCLOSED TO PHELAN THROUGH
THE STIPULATION OF FACTS OR
DEPOSITIONS OF EXPERT WITNESSES
IN PREPARATION FOR THIS TRIAL;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Filed concurrently with Phelan's Motions In
Limine Nos. 1 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)

01133.0012/228306.1

PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT'S MOTION IN *LIMINE* NO. 2 TO EXCLUDE
EVIDENCE NOT DISCLOSED TO PHELAN THROUGH THE STIPULATION OF FACTS OR DEPOSITIONS
OF EXPERT WITNESSES IN PREPARATION FOR THIS TRIAL

ALESHIRE &
WYNDER LLP
ATTORNEYS AT LAW





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 evidence not disclosed to Phelan Piñon Hills through the
6 stipulation of facts or depositions of expert witnesses in preparation for this trial.

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

11
12 DATED: October 31, 2014

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

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16 By:

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

17 WESLEY A. MILIBAND
18 Attorneys for Defendant and Cross-Complainant
19 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 disclosed to Phelan Piñon Hills
4 through the stipulation of facts or through the depositions of expert witnesses in preparation for this
5 trial. Phelan Piñon Hills is entitled to know what evidence will be brought forth at trial against Phelan
6 Piñon Hills' causes of action. With Phelan Piñon Hills' requests denied for the stay on discovery to be
7 lifted in preparation for this trial on issues related to Phelan (with the exception of Phelan Piñon Hills
8 deposing expert Dennis Williams), Phelan Piñon Hills has not been able to fully ascertain whether any
9 party participating in this trial has evidence to offer against Phelan Piñon Hills.

10 Accordingly, any new evidence that has not been disclosed to Phelan Piñon Hills through the
11 stipulation of facts or these additional expert deposition should be deemed inadmissible. Furthermore,
12 the admission of said evidence would greatly prejudice Phelan Piñon Hills because it has not had any
13 opportunity to confirm the truth, authenticity, or veracity of the evidence, to assess what claims or
14 defenses that evidence may be used for, or to evaluate and identify evidence that can be offered to
15 clarify or counteract such evidence. Due to its lack of relevance (Evidence Code § 350), and its high
16 risk of prejudice (Evidence Code § 352), this evidence should not be admitted at trial.

17 **II. STATEMENT OF FACTS**

18 In the proceedings leading up to this trial, Phelan Piñon Hills requested many times, in written
19 filings and in open court, for the stay on discovery be lifted to allow for full discovery of matters
20 related to Phelan Piñon Hills' claims. (Phelan Piñon Hills' 11/7/2014 CMC Statement, at 3-4
21 ["Phelan Piñon Hills is entitled to full discovery and trial, and Phelan Piñon Hills in no way waives or
22 otherwise agrees to limit its rights to such."]; Phelan Piñon Hills' 8/6/2014 CMC Statement, at 7;
23 Phelan's Ex Parte App., at 6-7.) Phelan Piñon Hills specifically argued that it could not "adequately
24 prepare for trial until afforded the opportunity for discovery on outstanding causes of action, claims,
25 and issues" because the prior phases of trial and related discovery have not involved many of the
26 unresolved issues (e.g., water rights). (Phelan Piñon Hills' 7/11/2014 CMC Statement, at 3-4.)

27 As noted in Phelan Piñon Hills' Statement for the Case Management Conference on August
28 11, 2014, Phelan Piñon Hills was "ready" to offer evidence during Phase Three about hydrogeological
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1 conditions in the Buttes subunit, and was “ready” to offer evidence during Phase Five regarding its
 2 return flow claim; however, the objections by some parties during Phase Three and the representations
 3 by some parties of settlement during Phase Five caused the presentation of this evidence to be
 4 delayed. (Phelan Piñon Hills’ 8/6/2014 CMC Statement, at 7.)

5 This Court evaluated Phelan Piñon Hills’ requests for a temporary lift on the discovery stay
 6 and denied them based on the presumption that a stipulation of facts and additional depositions of
 7 experts would suffice. Accordingly, designated expert witness Dr. Dennis Williams’ deposition was
 8 taken again on October 13, 2014, and designated expert witness Mr. Thomas Harder’s deposition was
 9 taken again on October 20, 2014. The process for reaching a stipulated set of facts has been tedious
 10 and continues to be ongoing, despite Phelan Piñon Hills’ counsel reaching a complete compromise
 11 with a number of counsel; however, other counsel remain silent while one in particular continues to
 12 seek further refinements for facts that were drafted many versions ago. Specifically, one counsel
 13 questions whether Phelan Piñon Hills has “reasonably and beneficially” used water. The various
 14 Court hearings in recent months never revealed any party actually questioned whether Phelan Piñon
 15 Hills “reasonably and beneficially” uses water. Yet that issue has now arisen with trial set just two
 16 Court days from now.

17 Thus, since the Phase Five trial proceedings, the only additional discovery that has occurred is
 18 the additional depositions of Dr. Williams and Mr. Harder.

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

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

26 The Court has inherent power to grant motions in *limine* pursuant to its authority to: (1)
 27 “provide for the orderly conduct of the proceedings before it” (Code Civ. Proc. § 128(a)(3)); (2)
 28 “amend and control its process and orders so as to make them conform to law and justice” (Code Civ.

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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).

IV. EVIDENCE NOT DISCLOSED TO PHELAN THROUGH THE STIPULATION OF FACTS OR DEPOSITIONS OF EXPERT WITNESSES IN PREPARATION FOR THIS TRIAL IS NOT RELEVANT AND SHOULD BE EXCLUDED

By deciding not to lift the stay on discovery, and only allowing for additional depositions of expert witnesses, this Court effectively limited the evidence for this trial to (1) what was previously within the Court’s file from trial Phases One through Five, and, (2) the additional depositions of Dr. Williams and Mr. Harder conducted during October 2014. No written discovery was permitted in anticipation of this trial on issues related to Phelan Piñon Hills.

Evidence is relevant if it has “any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” (Evid. Code, § 210.) This Court did not lift the stay on discovery based on the presumption that a stipulation of facts and the additional depositions of expert witnesses would provide sufficient evidence to try Phelan Piñon Hills’ Second and Sixth Causes of Action at issue in this trial. Therefore, any evidence not disclosed to Phelan Piñon Hills’ by other parties in the stipulation of facts or in the additional depositions of Dr. Williams and Mr. Harder is irrelevant as a matter of law and cannot be admitted at trial. (Evid. Code, § 350 [“No evidence is admissible except relevant evidence.”]; *see also, People v. Kelly* (1992) 1 Cal.4th 495, 523.)

One such key area of discovery, as mentioned on August 11, 2014 and as a basis for Phelan Piñon Hills’ suggestion of which issues or causes of action to bifurcate relates to surplus. California case authorities clearly require that prior to an appropriator such as Phelan Piñon Hills proving surplus, *first* any party claiming interference from an appropriator must establish a valid property right and that such right has been impaired by the appropriator. Through that process, those parties must



establish reasonable *and* beneficial use of the pumped water; if those parties establish such, then the burden shifts to an appropriator such as Phelan Piñon Hills to establish surplus.¹

V. INTRODUCTION OF PREVIOUSLY UNDISCLOSED EVIDENCE WOULD UNDULY PREJUDICE PHELAN

This Court is authorized to exclude evidence if its probative value is substantially outweighed by the probability that its admission will create substantial danger of undue prejudice. (Evid. Code, § 352.) The introduction of evidence related to Phelan Piñon Hills’ Second and Sixth Causes of Action that *has not* been previously disclosed to Phelan Piñon Hills would be highly prejudicial without having had an opportunity to review said evidence and evaluate how it impacts its claims.

Furthermore, if this evidence did in fact have a high probative value, then it should have been introduced during previous phases of trial or in the preparations of the stipulation of facts for this trial. Therefore, this highly prejudicial evidence should be excluded at this trial.

A. The Purpose of Civil Discovery Is to Enable Parties to Obtain the Evidence Necessary to Evaluate the Claims and Defenses, and Prevent Surprise at Trial

If any parties attempt to introduce new evidence at this trial on issues related to Phelan Piñon Hills, Phelan Piñon Hills will not have had a meaningful opportunity to confirm the truth, authenticity, or veracity of the evidence, to assess what claims or defenses that evidence may be used for, or to evaluate and identify evidence that can be offered to clarify or counteract such evidence.

One of the primary reasons for civil discovery is to do away with the “sporting theory of litigation – namely, surprise at trial.” (*Chronicle Pub. Co. v. Superior Court* (1960) 54 Cal.2d 548, 561.) The purpose is accomplished by giving “greater assistance to the parties in ascertaining the truth and in checking and preventing perjury,” and by providing “an effective means of detecting and exposing false and fraudulent and sham claims and defenses.” (*Greyhound Corp. v. Superior Court*

¹ The “burden of *proving surplus* does *not come into existence until* the existing appropriators, riparians, or *overlying owners first* provide satisfactory evidence that a valid property right has been impaired.” (*California Water Law & Policy* (Slater), Sec. 11.04, pp. 11-20 to 11-21 [emphasis added], citing to, *Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.* (1935) 3 Cal. 2d 489, 566-567; *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 381.)



(1961) 56 Cal.2d 355, 376.) Pretrial discovery is designed to take the “game” out of pretrial preparation. (*Ibid.*; *Emerson Elec. Co. v. Sup. Ct. (Grayson)* (1997) 16 Cal.4th 1101, 1107.)

The Court is guided by these principles in deciding discovery matters, and also in ruling on motions in *limine*. (*See, e.g.*, Code Civ. Proc., § 128, subd. (a)(8) [allowing the Court to “amend and control its process and orders so as to make them conform to law and justice”].) By only allowing for one additional deposition of expert witnesses in anticipation of this trial, the Court must have determined that no other evidence was necessary for parties to effectively evaluate the claims and defenses to Phelan Piñon Hills’ Second and Sixth Causes of Action. Otherwise, if the Court were to allow new evidence outside the scope of the stipulation of facts or expert depositions to be included, then it would unduly prejudice Phelan by preventing it from exposing false claims or defenses. (*Greyhound Corp., supra*, 56 Cal.2d at 376.)

VI. CONCLUSION

Phelan Piñon Hills respectfully requests that the Court exclude all documents, testimony, or demonstrative evidence not disclosed to Phelan Piñon Hills through the stipulation of facts or through the depositions of expert witnesses in preparation for this trial.

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

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

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 31, 2014, I served the within document(s) described as **PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT'S NOTICE OF MOTION AND MOTION IN LIMINE NO. 2 TO EXCLUDE EVIDENCE NOT DISCLOSED TO PHELAN THROUGH THE STIPULATION OF FACTS OR DEPOSITIONS OF EXPERT WITNESSES IN PREPARATION FOR THIS TRIAL; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the interested parties in this action as follows:

BY 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.

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

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

Linda Yarvis

ALESHIRE &
WYNDELL
ATTORNEYS AT LAW

