

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.
3 TO EXCLUDE EVIDENCE OF
MODELING BY DESIGNATED EXPERT
DENNIS WILLIAMS; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[Filed concurrently with Phelan's Motions In
Limine Nos. 1 and 2 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 and other evidence of modeling by
6 designated expert Dr. Dennis Williams and related work and opinions.

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's Motions In *Limine* Nos. 1-3 filed
9 concurrently herewith, all other pleadings and papers on file herein, and such evidence and argument
10 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

13
14
15
16 By:

A handwritten signature of Wesley A. Miliband, consisting of a stylized 'W' and 'M'.

17 WESLEY A. MILIBAND
18 Attorneys for Defendant and Cross-Complainant
19 Phelan Piñon Hills Community Services District
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Phelan Piñon Hills seeks an order excluding all testimony and other evidence of modeling by
4 designated expert Dr. Dennis Williams and related work and opinions. Phelan Piñon Hills *does not*
5 move to exclude all prior testimony of Dr. Williams, but instead the testimony of his modeling work.

6 During depositions during January and October of this year, Dr. Williams stated that he
7 utilized a United States Geological Survey (“USGS”) model of the Antelope Valley Area of
8 Adjudication (“AVAA”), a model that did not include Phelan Piñon Hills’ service area. Dr. Williams
9 testified that with regard to Phelan Piñon Hills, he only did one model run to simulate the effect of
10 Phelan’s pumping on the amount of outflow from the AVAA. This “outflow” opinion is Dr.
11 Williams’ only opinion with regard to Phelan Piñon Hills from his modeling work. More broadly, Dr.
12 Williams’ modeling testimony addresses general issues of basin management and developing a
13 physical solution, neither of which are relevant to the two causes of action at issue in this trial.

14 The Court set this three-day trial for issues only related to Phelan Piñon Hills, and limited the
15 scope to its Second and Sixth Causes of Action in the Cross-Complaint. Dr. Williams’ outflow
16 opinion and testimony regarding basin management have no relevance to Phelan Piñon Hills’ Second
17 Cause of Action for a determination of its appropriative right, nor for Phelan Piñon Hills’ Sixth Cause
18 of Action for a determination regarding return flows. Such irrelevant evidence should be excluded at
19 trial. (*See* Evid. Code, § 350.)

20 Moreover, Dr. Williams’ modeling work and related testimony are unreliable. The USGS
21 model has not finished undergoing peer review, Phelan Piñon Hills’ service area and its wells are not
22 included in the model, and Dr. Williams’ run as it related to Phelan Piñon Hills is a 50-year forecast
23 that does not factor in changes in pumping behaviors (which are inevitable through Basin management
24 by way of this adjudication, the Sustainable Groundwater Management Act effective January 2015, or
25 otherwise). The unreliability of this evidence diminishes its probative value and greatly increases the
26 risk of prejudice to Phelan Piñon Hills. For these reasons, Phelan Piñon Hills requests an order
27 excluding Dr. Williams’ modeling evidence at this trial.



II. STATEMENT OF FACTS

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

Phelan Piñon Hills’ Second Cause of Action is for declaratory relief, for a determination of Phelan Piñon Hills’ appropriative right to pump water from the Antelope Valley Groundwater Basin (“Basin”). (Phelan Piñon Hills’ Cross-Complaint, at 15:1-20.) Phelan Piñon Hills’ Sixth Cause of Action is for declaratory relief, for a determination regarding return flows. (*Ibid.*, at 18:4-23.) These allegations are the only one before the Court in this trial.

On November 18, 2013, counsel for other Public Water Suppliers (“PWS”) designated Dr. Dennis Williams as an expert witness in the Phase Five trial in this matter, and counsel for PWS has stated they plan to use Dr. Williams’ modeling testimony at this trial on issues related to Phelan.

Dr. Williams was deposed on January 16, 2014, and on October 20, 2014. At the deposition of Dr. Williams on January 16, 2014, Dr. Williams testified that his opinions with respect to Phase Five are based entirely on a single run of a basin-wide model of the Antelope Valley Groundwater Basin (“Basin”). (1/16/2014 Williams’ Depo. Transcript, at 13:4-10 and 20-21.) This model was obtained by the PWS in 2012 from the United States Geological Survey (“USGS”). (*Id.* at 18-19.)

During both the January and October depositions, Dr. Williams stated that the USGS model did not include Phelan Piñon Hills’ service area. (1/16/2014 Williams’ Depo. Transcript, at 206:22-25 and 207:1-6; 2014-10-13 Williams’ Depo. Transcript, at 69:23-25 and 70:1-4.)

Dr. Williams testified that with regard to Phelan Piñon Hills he only did one model run with and without Phelan Piñon Hills’ pumping to simulate the effect of Phelan Piñon Hills’ pumping on the amount of outflow from the AVAA.

Q Now, did you see anywhere within the summary expert report that groundwater production by Phelan Piñon Hills Community Services District was accounted for?



1 A It was outside the model, no. The only thing we did – that I
 2 did, I looked at Harder’s report, and I looked at the decline in water
 3 levels that he had in his report of almost a half a foot a year, page 14 of
 4 his report, and then we did a run, with and without the pumping. We
 5 simulated for 50 years and without Phelan pumping and assumed that
 6 with the pumping, the water level decline in the general head
 7 boundary, which is the southeastern most area of the model, would
 8 result in an increased outflow of 200 acre-feet a year from the Antelope
 9 Valley area to El Mirage Valley.

10 (1/16/2014 Williams’ Depo. Transcript, at 210:14-25 and 211:1-3.)

11 Dr. Williams’ repeatedly testified and confirmed that this “outflow” opinion is his only
 12 opinion with regard to Phelan Piñon Hills from his modeling work:

13 Q Sir, what opinions do you have as it relates to Phelan Pinon
 14 Hills Community Services District?

15 A That lowering of groundwater levels immediately east of the
 16 model would produce more outflow from the Antelope Valley area of
 17 adjudication.

18 (1/16/2014 Williams’ Depo. Transcript, at 217:14-18 and 220:19-23;
 19 see also, 10/13/2014 Williams’ Depo. Transcript, at 70:13-16.)

20 Otherwise, Dr. Williams’ modeling testimony addresses general issues of basin management
 21 and developing a physical solution.

22 When questioned on topics *directly applicable* to Phelan Piñon Hills’ causes of action, such as
 23 surplus and return flows, Dr. Williams’ expressed agreement with Phelan Piñon Hills’ designated
 24 expert Thomas Harder’s report, figures, contour lines on flow direction, and other data. (10/13/2014
 25 Williams’ Depo. Transcript, at 71:15-18 and 72:2-7.) However, none of this involved Dr. Williams’
 26 model run.

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

28 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).

IV. DR. WILLIAMS’ DEPOSITION TESTIMONY REGARDING OUTFLOW AND REGARDING BASIN MANAGEMENT ISSUES IS NOT RELEVANT AT THIS IS TRIAL AND SHOULD BE EXCLUDED

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.) The only disputed facts for purposes of *this trial* are facts related to Phelan Piñon Hills’ Second and Sixth Causes of Action. Pursuant to Evidence Code Section 350, any evidence not relevant to Phelan Piñon Hills’ Second and Sixth Causes must be excluded and deemed inadmissible at this trial. (Evid. Code, § 350 [“No evidence is admissible except relevant evidence.”]; *see also, People v. Kelly* (1992) 1 Cal.4th 495, 523.)

A. Dr. Williams’ Outflow Opinion from His Modeling Work Is Irrelevant

Dr. Williams testified that his “outflow” opinion was his only opinion with regard to Phelan Piñon Hills based on his modeling work. This opinion is derived from one model run.

This outflow evidence from Dr. Williams’ modeling and his related “outflow” opinion have absolutely no bearing on whether Phelan Piñon Hills has an appropriative right to extract water from the Antelope Valley Groundwater Basin nor applicability to the issue of return flows; rather, Phelan Piñon Hills’ pumping, distribution, and use of the water are examples of items relevant to the trial. Thus, Dr. Williams’ modeling testimony has no relevance to Phelan Piñon Hills’ Second and Sixth Causes of Action, the only items at issue in this trial. The evidence will have no tendency to prove or



disprove any fact of consequence at this trial, and is therefore irrelevant and must be excluded at trial.
 (See Evid. Code, §§ 210, 350.)

B. Dr. Williams' Modeling Done for Basin Management Issues Is Irrelevant

Dr. Williams modeling testimony and evidence based thereon is also irrelevant because it focused on basin management issues that are not at issue in this trial. Dr. Williams testified that the purpose of the modeling was to create a management tool that could be used in developing a physical solution. (1/16/2014 Williams' Depo. Transcript, at 23:16-22.) Basin management issues are not at issue in this trial on issues related to Phelan Piñon Hills. Therefore, Dr. Williams' modeling and any evidence based thereon is irrelevant and should be excluded. (See Evid. Code, §§ 210, 350.)

V. EVIDENCE RELATED TO MODELING DONE BY DR. WILLIAMS IS UNRELIABLE, WHICH DECREASES ITS PROBATIVE VALUE AND INCREASES ITS RISK OF PREJUDICING PHELAN

Dr. Williams was provided with a model that was developed by USGS, and this model is still being peer reviewed. In addition, the Phelan Piñon Hills service area and its wells are not even included in the model. As Dr. Williams stated several times in his depositions, the model utilized a 50-year forecast based on the current pumping of all producers included in the model. However, these assumptions built into the model completely neglect the fact that, either by adjudication or the new Sustainable Groundwater Management Act effective January, 2015, pumping behaviors will absolutely change. The model does not predict or account for these changes, further demonstrating its lack of reliability.

The fact that the model is not finalized and has not completed peer review diminishes its reliability. Furthermore, expert Thomas Harder enumerated various deficiencies with the modeling. Despite these deficiencies, this unreliable model is the *sole* basis for Dr. Williams' outflow opinion in relation to Phelan Piñon Hills. These facts greatly decrease the probative value of Dr. Williams' modeling evidence and his related outflow opinion. (See Evid. Code, § 352.)



**VI. INTRODUCTION OF EVIDENCE OF MODELING BY DR. WILLIAMS AND
OPINIONS BASED THEREON WOULD UNDULY PREJUDICE PHELAN, WASTE
TIME, AND CONFUSE THE ISSUES**

This three-day trial will involve complex, technical issues that will require efficient courtroom time management and a strict focus on the key legal and factual allegations in Phelan Piñon Hills' causes of action. At least 19 attorneys filed notices of intent to participate in this trial on issues related to Phelan. (*See* 9/26/14 Minute Order, at 3.) These complex issues and this large number of participants already creates the potential for delay and inefficiency in the proceedings. These risks would be amplified by the introduction of irrelevant evidence on issues not before the Court for this trial, such as Dr. Williams' modeling and his associated "outflow" opinion.

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 confusion 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 and would merely confuse the issues. This same evidence would consume unnecessary time and potentially limit time for meaningful argument and presentation on the essential issues. For these reasons, evidence based on Dr. Williams' modeling should be ordered inadmissible and excluded at trial.

VII. CONCLUSION

Phelan Piñon Hills respectfully requests that the Court exclude all documents, testimony, or demonstrative evidence not relevant to Phelan's 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,

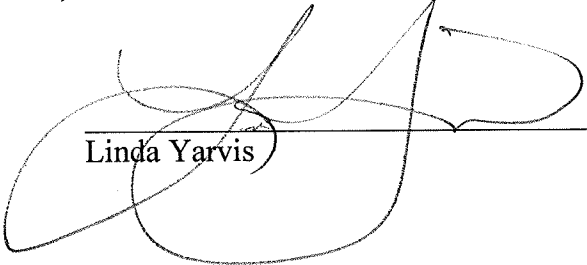
6 I am employed in the County of Orange, State of California. I am over the age of 18 and not a
7 party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA
8 92612.

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. 3 TO EXCLUDE EVIDENCE OF MODELING BY DESIGNATED EXPERT DENNIS
12 WILLIAMS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**
13 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.

21
22
23
24
25
26
27
28

Linda Yarvis