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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)

**STATEMENT BY PHELAN PIÑON
HILLS COMMUNITY SERVICES
DISTRICT FOR JANUARY 22, 2015
HEARINGS RE PROPOSED
STATEMENT OF DECISION, CASE
MANAGEMENT CONFERENCE, AND
PROPOSED ORDER MODIFYING CASE
MANAGEMENT ORDER;
DECLARATION OF WESLEY A.
MILIBAND IN SUPPORT THEREOF**

Assigned for All Purposes to:
Hon. Jack Komar

Hearing Date: January 22, 2015
Time: 11:00 a.m.
Location: 191 N. 1st Street, Dept. 12
San Jose, CA



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

Phelan Piñon Hills Community Services District (“Phelan Piñon Hills”) hereby submits this
 Statement with regard to the following three matters identified within the Court’s Notice from January
 20, 2015: (1) Hearing on Proposed Statement of Decision on Phelan Piñon Hills’ Trial on Causes of
 Action 2 and 6 (“Proposed Statement of Decision”); (2) Case Management Conference (“CMC”); and,
 (3) the [Proposed] Amendment to the Case Management Order that is part of *Ex Parte* Application by
 the Wood Class (“Proposed CMO Amendment”).

I. The Proposed Statement of Decision and/or Clarification in the Court’s Minutes.

The Court’s November 4 and 5, 2014 Minutes reflect that Phelan Piñon Hills’ trial exhibits –
 namely, Phelan CSD Exhibits 1 through 24 – were admitted into evidence but the minutes do not
 identify whether Phelan CSD Exhibits 25 through 52 were admitted into evidence. The Court
 Transcript, however, does reflect that Phelan CSD Exhibits 25 through 52 were admitted into
 evidence with the exceptions of Exhibits 36, 41, 42, 50, 51. (Declaration of Wesley A. Miliband,
 paragraph 2, Court Reporter’s Transcript.)

*Accordingly, Phelan Piñon Hills requests that either the Court’s Statement of Decision or
 the Court’s Minutes reflect the same.*

II. The CMC and Proposed CMO Amendment.

Phelan Piñon Hills requests inclusion of the following items in any amendment to the
 November 4, 2014 Case Management Order:

A. Filing of the Potential Settlement.

The much-anticipated “global settlement” as referred to by some other counsel has yet to be
 filed with the Court or otherwise made available, including to Phelan Piñon Hills. With a structured
 process for potential Court approval, particularly given requirements for Wood Class approval, this
 document will need to be submitted soon, but *Phelan Piñon Hills requests that a filing deadline be
 identified*, such as pursuant to the Code of Civil Procedure. Doing so enables parties that are not
 included in this potential settlement to evaluate this complex document to ascertain the extent to
 which the processes for discovery and prove up or trial will be engaged by a “non-settling party.”



B. Burden of Proof for Prove-Up and/or Trial.

Paragraph 3 of the Proposed CMO Amendment refers to "...the prior Orders of the Court" without identifying which prior orders, in a case where hundreds of orders now exist. *This Paragraph should identify which orders, whether that simply be the November 4, 2014 Order and/or others.*

Paragraph 6 should identify the burden of proof for the prove-up or trial. For instance, for those settling parties, language should exist in an order stating that each settling party bears the burden of proof (such as by the preponderance of admissible evidence) for any and all rights that party seeks the Court to approve by way of the potential settlement document.

C. Discovery Process.

Paragraphs 4 and 5 identify a discovery process available to all parties (settling and non-settling). By implication of the Court approving such an order, the ongoing discovery stay is lifted, but clarification of the same would certainly avoid potential misunderstanding by a party. Also, unlike prior trial phases where "form" or "Court-approved" discovery was utilized, the discovery process now is undefined and does not state whether any discovery dispute would first be referred to the Liaison Committee.

Phelan Piñon Hills accepts this process "as is," subject to:

(1) It being understood Phelan Piñon Hills reserves the right to engage in written and/or testimonial discovery of other parties, including landowner parties; and,

(2) Paragraph 5 does not include – as it should – the phrase from Paragraph 4 that discovery may include discovery to the "Stipulating Parties for the Stipulated Judgment and Physical Solution." Notably, Paragraph 4 provides for disclosure of witnesses and exhibits by all settling parties – including Stipulating Parties for the Stipulated Judgment and Physical Solution – but Paragraph 5 does include this phrase. *Accordingly, such phrase should be inserted into Paragraph 5 for consistency and clarity.*

D. Remaining Causes of Action and Affirmative Defenses.

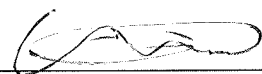
As the Court indicated during the January 7, 2015 status conference, this potential settlement is not binding on non-settling parties. Many cross-complaints and answers with affirmative defenses exist between Phelan Piñon Hills and other parties. Also, Phelan Piñon Hills' cross-complaint

1 contains other causes of action that have not yet been adjudicated. The existing Case Management
2 Order or the proposed amendment do not state when or how resolution of non-water rights
3 claims/causes of action will be resolved, whether those of Phelan Piñon Hills or those parties with
4 causes of action and affirmative defenses against Phelan Piñon Hills. *As a matter of civil procedure,*
5 *any amendment to the Case Management Order should identify when and how these other causes*
6 *of action will be resolved, whether as part of the proposed August trial dates or otherwise.*

7 Ultimately, Phelan Piñon Hills respectfully requests that the Court incorporate the foregoing
8 items into any amendment to the Proposed CMO Amendment.

9
10 DATED: January 21, 2015

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

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12
13 By: 

14 WESLEY A. MILIBAND
15 Attorneys for Defendant and Cross-Complainant
16 Phelan Piñon Hills Community Services District
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ALESHIRE &
WYNDER^{LLP}
ATTORNEYS AT LAW



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Judicial Council Coordination Proceeding No. 4408
For Filing Purposes Only: Santa Clara County Case No.: 1-05-CV-049053

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, Linda Yarvis,

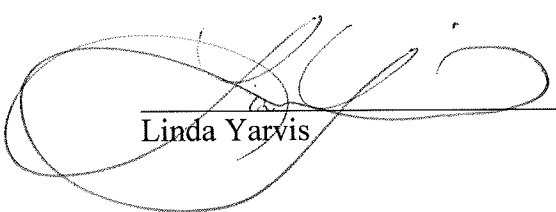
I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA 92612.

On January 21, 2015, I served the within document(s) described as **STATEMENT BY PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT FOR JANUARY 22, 2015 HEARINGS RE PROPOSED STATEMENT OF DECISION, CASE MANAGEMENT CONFERENCE, AND PROPOSED ORDER MODIFYING CASE MANAGEMENT ORDER; DECLARATION OF WESLEY A. MILIBAND 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 January 21, 2015, at Irvine, California.


Linda Yarvis

ALESHIRE &
WYNDER LLP
ATTORNEYS AT LAW

