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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)

**PHELAN PIÑON HILLS COMMUNITY
SERVICES DISTRICT'S OPPOSITION
TO MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT**

[Filed concurrently with: Declaration of
Wesley A. Miliband in Support Thereof]

Date: March 26, 2015
Time: 10:00 a.m.
Dept.: Room 222

Assigned for All Purposes to:
Hon. Jack Komar

Trial Date: August 3, 2015
(Trials or Hearings on Final
Approval of the Small Pumper
Class Settlement and on Prove-up
of the Stipulated Judgment and
Physical Solution)

Time: 10:00 a.m.
Location: Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, California
Dept: TBD



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

Cross-Defendant and Cross-Complainant, Phelan Piñon Hills Community Services District
 (“Phelan Piñon Hills”), submits the following opposition to the Motion for Preliminary Approval of
 Class Settlement submitted jointly by the Wood Class and Los Angeles County Waterworks District
 No. 40 (collectively, “Moving Parties”) in the above-entitled action on March 4, 2015.

I. INTRODUCTION

Phelan Piñon Hills opposes the Motion for Preliminary Approval of Class Settlement because
 its terms are inconsistent with and violate the Wood Class Stipulation of Settlement entered into on
 October 17, 2013 by and between the Wood Class, Phelan Piñon Hills, and other parties. (*See*
 Declaration of Wesley A. Miliband, ¶ 2, Exh. A [“2013 Settlement Agreement”].) By seeking
 preliminary approval of the Class Settlement which is reliant upon Proposed Physical Solution, the
 Wood Class is breaching the 2013 Settlement Agreement and willfully infringing upon the rights of
 Phelan Piñon Hills established pursuant thereto, for the following reasons:

(1) The Proposed Physical Solution would force Phelan Piñon Hills to pay a Replacement
 Water Assessment on every acre-foot of water it extracts from the Basin, in *direct* conflict with the
 Wood Class 2013 Settlement Agreement wherein the Wood Class agreed not to challenge Phelan
 Piñon Hills’ right to pump 1,053.14 acre-feet each year free of any Replacement Water Assessment.¹

(2) The requirement in the Proposed Physical Solution that Phelan Piñon Hills pay an
 assessment for 100% of the water it pumps violates the 2013 Settlement Agreement’s recognition of
 return flow rights that are applicable to Phelan Piñon Hills, which was not limited to “imported” water
 and for which ample evidence exists from the November 4, 2014 trial that a portion of water produced
 by Phelan Piñon Hills and used by its customers returns to the Basin.

(3) The Proposed Physical Solution allocates “99.8%” of the native safe yield², which is
 82,300 acre-feet (“af”) based upon the settling parties’ contention, thereby leaving only about 168 af

¹ 1,053.14 was based on the Court’s Phase Four finding.

² Motion, p. 3:20-21.



for allocation to a non-settling party, which is about one-tenth (1/10) of Phelan Piñon Hills' claimed rights.³

Therefore, the Motion for Preliminary Approval of Class Settlement contravenes the 2013 Settlement Agreement, and thus the Motion should be denied.

II. STATEMENT OF RELEVANT FACTS

The 2013 Settlement Agreement "set forth the terms of a settlement...between and among the Settling Parties compromising and dismissing the claims and defenses they ha[d] asserted in [this] action as amongst and between the Settling Parties." (2013 Settlement Agreement, 1:8-11.) This included a settlement of claims between the Wood Class and Phelan Piñon Hills.

On February 26, 2015, a Stipulation of Settlement was entered into by and between the Wood Class, several other parties, but not Phelan Piñon Hills. (*See* Declaration of Michael D. McLachlan In Support Of Motion for Preliminary Approval of Class Settlement ["McLachlan Decl.," ¶ 6, Exh. A.) The Stipulation of Settlement includes a Proposed Physical Solution. (*See* McLachlan Decl., ¶ 6, Exhibit A.1 ["Proposed Physical Solution"].)

III. ARGUMENT

In the 2013 Settlement Agreement, the Wood Class made certain agreements with the settling parties, including Phelan Piñon Hills, and agreed that it would "not take any positions or enter into any agreements that are inconsistent with the exercise of Settling Defendants' rights as set forth [t]herein." (2013 Settlement Agreement, 9:1-2.) However, the Proposed Physical Solution is inconsistent with the 2013 Settlement Agreement and would cause great harm to Phelan Piñon Hills, as described below.

Moreover, the Wood Class agreed that the ultimate Physical Solution would be consistent with the partial settlement. "The Settling Parties agree to be part of such a Physical Solution *but only to the extent it is consistent* with the terms of this Stipulation...." (*Id.* at 11:26-28 [emph. added].)

³ Though the Court ruled against Phelan Piñon Hills on its 2nd and 6th Causes of Action, the 2013 Settlement Agreement is still a "live" and valid agreement. Also, various other causes of action remain adjudicated, including for a Physical Solution, which, among other things, could and should include "net pumping" or "pure appropriator" rights as previously discussed by the Court.

Now, the Wood Class is going back on its “word” despite what is set forth explicitly in the written, Court-approved 2013 Settlement Agreement by offering the Proposed Physical Solution with wholly contradictory terms as it relates to Phelan Piñon Hills.

A. The Proposed Physical Solution Eliminates Phelan Piñon Hills’ Right To Pump 1053.14 Acre-Feet Assessment-Free.

In the 2013 Settlement Agreement, the Wood Class recognized the right for each party to pump certain amounts of water without having to pay a replacement assessment. “The Wood Class agrees not to contest each Settling Defendant’s right to pump the following amounts annually from the Native Safe Yield *free of any Replacement Water Assessment*, but only if competent evidence is presented to and incorporated by the Court in the Final Judgment and such rights of the Settling Defendants shall not diminish in any way the water rights of the Wood Class as set forth herein....” (2013 Settlement Agreement, 8:16-21 [emph. added].) The Settlement Agreement then listed *1,053.14 acre-feet for Phelan Piñon Hills*, based upon “competent evidence” admitted into evidence by the Court during Phase Four proceedings.

In stark contrast, the Proposed Physical Solution prohibits Phelan Piñon Hills from getting any water free of an assessment:

The injunction does not apply to any Groundwater Produced within the Basin by Phelan Piñon Hills Community Services District and delivered to its service areas, so long as the total Production does not exceed 1,200 acre-feet per Year, such water is available for Production without causing Material Injury, and the District pays a Replacement Water Assessment pursuant to Paragraph 9.2, together with any other costs deemed necessary to protect Production Rights decreed herein, on all water Produced and exported in this manner. (Proposed Physical Solution, 28:20-25.)

Therefore, by agreeing to and/or advocating for the Proposed Physical Solution, the Wood Class is breaching the 2013 Settlement Agreement and violating Phelan Piñon Hills’ rights thereunder.

B. The Return Flow Provision In The 2013 Settlement Agreement Would Be Made Meaningless By The Proposed Physical Solution.

The 2013 Settlement Agreement defines “Return Flows” as “the amount of water that is put to reasonable and beneficial agricultural, municipal or other use and thereafter returns to the Basin and is part of the Basin’s Total Safe Yield. (2013 Settlement Agreement, 6:18-20.) This specifically defined terms encompasses a return flow right *irrespective* of arising from imported water or native



groundwater, which for Phelan Piñon Hills arises from use of native groundwater produced and used by Phelan Piñon Hills and its customers in the portion of the service area that lies over the Basin.

Again, in stark contrast, the Proposed Physical Solution strips Phelan Piñon Hills of any return flow rights that were within the 2013 Settlement Agreement with the Wood Class by requiring a 100% replacement assessment, despite “competent [and un rebutted] evidence” admitted by the Court during the November 4, 2014 trial.

C. The Settling Parties Have Allocated The Entire Safe Yield Amongst Themselves, Despite Their Potential Settlement Not Being “Global” Amongst All Parties.

The Proposed Physical Solution allocates “99.8%” of the native safe yield⁴, which is 82,300 acre-feet (“af”) based upon the settling parties’ contention, thereby leaving only about 168 af for allocation to a non-settling party, which is about one-tenth (1/10) of Phelan Piñon Hills’ claimed rights. These parties not only are squeezing out non-settling parties, but potentially jeopardizing their own settlement should a non-settling party such as Phelan Piñon Hills prevail on one or more causes of action during some stage of these proceedings and/or the judicial process.

IV. CONCLUSION

For the foregoing reasons, Phelan Piñon Hills respectfully requests that the Court deny the Motion for Preliminary Approval of Class Settlement. Additionally, Phelan Piñon Hills reserves the right to present further objections to the Proposed Physical Solution at the appropriate stages pursuant to the First Amended Case Management Order and as otherwise exists pursuant to law and equity.

DATED: March 13, 2015

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

By: 

WESLEY A. MILIBAND
 Attorneys for Defendant and Cross-Complainant
 Phelan Piñon Hills Community Services District

⁴ Motion, p. 3:20-21.

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3 **PROOF OF SERVICE**

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

5 I, Linda Yarvis,

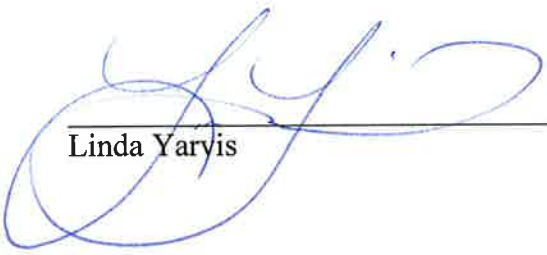
6 I am employed in the County of Orange, State of California. I am over the age of 18 and not a
party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA
92612.

7 On March 13, 2015, I served the within document(s) described as **PHELAN PIÑON HILLS**
8 **COMMUNITY SERVICES DISTRICT'S OPPOSITION TO MOTION FOR PRELIMINARY**
APPROVAL OF CLASS SETTLEMENT on the interested parties in this action as follows:

9 **BY ELECTRONIC SERVICE:** By posting the document(s) listed above to the Santa Clara
10 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
11 www.scefiling.org.

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

13 Executed on March 13, 2015, at Irvine, California.

14
15
16 
Linda Yarvis

ALESHIRE &
WYNDER LLP
ATTORNEYS AT LAW

