

1 ALESHIRE & WYNDER, LLP  
DAVID J. ALESHIRE, Bar No. 65022  
2 WILLIAM W. WYNDER, Bar No. 84753  
WESLEY A. MILIBAND, Bar No. 241283  
3 18881 Von Karman Avenue, Suite 1700  
Irvine, CA 92612  
4 Telephone: (949) 223-1170  
Facsimile: (949) 223-1180  
5 daleshire@awattorneys.com  
wwynder@awattorneys.com  
6 wmiliband@awattorneys.com  
7 Attorneys for Defendant and Cross-Complainant,  
Phelan Piñon Hills Community Services District  
8

9 **SUPERIOR COURT OF CALIFORNIA**  
10 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**  
11

12 Coordination Proceeding ) Judicial Council Coordination Proceeding  
Special Title (Rule 1550(b)) ) No. 4408  
13 )  
14 **ANTELOPE VALLEY** ) (For Filing Purposes Only: Santa Clara  
**GROUNDWATER CASES** ) County Case No.: 1-05-CV-049053)  
15 Included Actions: ) Assigned for All Purposes To:  
Judge: Hon. Jack Komar  
16 *Los Angeles County Waterworks District* )  
*No. 40 v.* ) (Filing Fees Exempt, Per Gov't Code § 6103)  
17 *Diamond Farming Co., et al.* )  
Los Angeles County Superior Court, Case )  
18 No. BC 325 201 ) **CASE MANAGEMENT CONFERENCE**  
 ) **STATEMENT OF PHELAN PIÑON**  
 ) **HILLS COMMUNITY SERVICES**  
19 *Los Angeles County Waterworks District* ) **DISTRICT; DECLARATION OF**  
*No. 40 v.* ) **WESLEY A. MILIBAND IN SUPPORT**  
20 *Diamond Farming Co., et al.* ) **THEREOF**  
Kern County Superior Court, Case No. )  
21 S-1500-CV-254-348 )  
22 )  
23 *Wm. Bolthouse Farms, Inc. v. City of* )  
*Lancaster* ) **DATE: March 13, 2012**  
24 *Diamond Farming Co. v. City of Lancaster* ) **TIME: 9:00 a.m.**  
*Diamond Farming Co. v. Palmdale Water* ) **LOCATION: Central Civil West, 15<sup>th</sup> Fl.,**  
25 *Dist.* ) **Room 1515**  
Riverside County Superior Court, )  
26 Consolidated Action, Case Nos. RIC 353 )  
840, RIC 344 436, RIC 344 668 )  
27 )  
28 **AND RELATED CROSS-ACTIONS** )

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

3 Phelan Piñon Hills Community Services District ("PPHCSD") hereby submits this Case  
4 Management Conference ("CMC") Statement for the CMC set for March 13, 2012.

5 PPHCSD supports the ongoing mediation sessions before the Honorable Justice Ronald B.  
6 Robie, as well as ongoing settlement discussions among the parties in between sessions with  
7 Justice Robie. PPHCSD has been actively participating in these mediation sessions and settlement  
8 meetings.

9 Consistent with prior Case Management Conference ("CMC") Statements submitted by  
10 other parties in recent months, the parties are not all very close to allocation of water rights. To  
11 that end, and consistent with the Court's Minute Order dated March 2, 2012, PPHCSD submits the  
12 following list of items to facilitate direction from the Court on various procedural, factual, and  
13 legal issues pertaining to Phase Four, should commencement of Phase Four proceedings be  
14 necessary<sup>1</sup>:

15 **I. IDENTIFICATION OF PHASE FOUR ISSUES.**

16 Various Case Management Conferences since the Summer of 2011 have explored issues for  
17 the next phase of trial, ranging from management and regionalized issues to allocation issues,  
18 including prescription. More recent dialogue with the Court during CMCs has focused on the  
19 latter. Ultimately, numerous issues remain to be resolved involving water rights (and rights to  
20 return flows, whether from imported or native supplies) and components to a "physical solution."

21 Notably, the Court stated in the Statement of Decision Phase Three Trial (July 13, 2011)  
22 that: "But having heard evidence about the aquifer as a whole, the Court is not making historical  
23 findings that would be applicable to specific areas of the aquifer **or that could be used in a**  
24 **specific way to determine water rights in particular areas of the aquifer.**" (Declaration of

25 \_\_\_\_\_  
26 <sup>1</sup> PPHCSD understands that several of these items may be more appropriately addressed at a later  
27 time through briefing and otherwise; however, given the nature of the matters set for  
28 March 14, 2012, PPHCSD identifies these items as a non-exclusive list simply to identify issues  
that it believes assist with management of and preparation for Phase Four proceedings.

1 Wesley A. Miliband (“Miliband Decl.”), ¶ 3, Exhibit A, Statement of Decision Phase Three Trial  
2 (July 13, 2011) (“Phase Three Decision”), p.4:21-24 [emphasis added].)

3 This language suggests that the Phase Three Decision finding that the aquifer is in overdraft  
4 does not necessarily require an appropriator (whether a public or private entity) to prove  
5 prescription, but instead that further inquiry and findings are needed, whether that be: (i) to address  
6 regionalized issues for identifying whether that portion of the “aquifer” is in overdraft; (ii) to  
7 determine the type of water right held by a party in that portion of the aquifer (e.g., appropriative or  
8 prescriptive); and/or (iii) to identify management areas.

9 Accordingly, PPHCSD requests clarification and direction from the Court as it relates to the  
10 language identified above from the Phase Three Decision.

11 **A. Regional Issues.**

12 The trial phases have evolved from a global approach by identifying Adjudication Area  
13 boundaries; to identifying parties within those boundaries; to the general condition of the aquifer.  
14 The next logical step consistent with this history and the Phase Three Decision would involve  
15 regionalized issues, particularly given: (i) the vast geographical size of the Basin, (ii) the Court’s  
16 comments stated, *supra*, as well as recognizing that the aquifer is not like a “bathtub” due to  
17 regionalized differences in geology and pumping (*Ibid.* at p. 9:13-19), and, (iii) whether those  
18 differences affect what type of right a party would need to prove at the time of trial.

19 Resolving these issues next would provide for a more efficient process for determining  
20 water rights, including prescriptive water rights, as well as attending to long-term issues related to  
21 management.

22 **B. Prescription “Issues.”**

23 If Phase Four is determined to address allocation of the safe yield, numerous questions and  
24 legal issues arise as to the type of water right sought to be established, by which parties, *and*  
25 against which parties.

26 For instance, if prescriptive water rights are the subject of Phase Four, various questions  
27 arise, including: (i) identification of which parties claim a prescriptive right; (ii) whether that right  
28 must be established against every overliar party in the Adjudication Area, or only those within the

1 same region of the Adjudication Area as the prescriptor, or some other basis; and, (iii) whether self-  
2 help claims would be included in the same trial phase as prescription.

3 In addition, various legal findings pertaining to the elements of prescription would set the  
4 bar for the parties to prepare for trial, including: (i) standards for and/or identification of the base  
5 period(s); (ii) whether the finding of overdraft satisfies the adversity element<sup>2</sup>; and, (iii)  
6 identification of the controlling standard(s) for quantifying prescriptive rights<sup>3</sup>.

7 In furtherance of facilitating as much efficiency as possible moving forward and advancing  
8 the abilities of the parties to prepare for Phase Four, PPHCSD respectfully submits the foregoing  
9 list of items for the upcoming Trial Readiness Setting Conference.

10 **C. Effect Of, Or Modification To, The Adjudication Boundary In The “Southeast**  
11 **Area” Of The Basin.**

12 Irrespective of regional or prescription issues serving as the platform for Phase Four, the  
13 adjudication boundary in the “southeast area” remains unresolved. The record is clear that the  
14 Adjudication Area boundaries determined through Phase One preceded PPHCSD’s formation as an  
15 entity during 2008, much less PPHCSD’s becoming a party to this action. Moreover, PPHCSD’s  
16 predecessor-in-interest, the County of San Bernardino Special Districts Department’s Service Area  
17 70L, was never named as a party to any of the many lawsuits now consolidated into one action,  
18 despite earlier phases of trial serving, in part, to identify “necessary” parties to this action. Only  
19 upon PPHCSD’s formation<sup>4</sup> and through its proactive efforts did it become a party to this action.

20  
21  
22 <sup>2</sup> See, e.g., *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 929 [Each taking of water  
23 in excess of the safe yield...was wrongful and was an injury...because the overdraft, from its  
24 beginning, operated progressively to reduce the total available supply.] See also, Slater, Scott S.,  
25 *California Water Law & Policy* (Butterworth Legal Publishers, 2005) (“Slater”) p. 11-19,  
26 § 11.04[5].

27 <sup>3</sup> The method for quantifying the exact amount of the prescriptive right is subject to some differing  
28 interpretations. (*Ibid.* at n. 76.)

<sup>4</sup> PPHCSD’s service area is located in San Bernardino County, adjacent to the eastside of the  
County line delineating the eastern boundary of the Adjudication Area, with PPHCSD’s “Well 14”  
located just within Los Angeles County.

1 At that point, however, the eastern boundary for the Adjudication Area had already been drawn at  
2 the Los Angeles/San Bernardino County line.

3 Through various Orders recognizing that the Antelope Valley *hydrogeological* basin  
4 extends farther east into San Bernardino County, the Court has acknowledged this issue may need  
5 to be addressed at some unknown juncture.

6 The Court stated as part of its Order After Hearing On Jurisdictional Boundaries, dated  
7 November 3, 2006 ("Phase One Order"), that: " ... the alluvial basin as described in California  
8 Department of Water Resources [DWR] Bulletin 118-223 should be the basic jurisdictional  
9 boundary for purposes of this litigation." (Miliband Decl., ¶ 4, Exhibit B, Phase One Order,  
10 p. 4:6-8.)

11 In addition, the Court's March 12, 2007 Order entitled, "Revised Order After Hearing on  
12 Jurisdictional Boundaries" ("Revised Order") states: "The court concludes that the alluvial basin as  
13 described in California Department of Water Resources Bulletin 118-2003 should be the basic  
14 jurisdictional boundary for purposes of this litigation." (Miliband Decl., ¶ 5, Exhibit C, Revised  
15 Order, p. 4:7-9.) However, this same Order also states that "[t]he eastern boundary will be the  
16 jurisdictional line on the east which was established as the westernmost boundary in the Mojave  
17 litigation." (*Ibid.* at p. 4:17-18.)

18 Ultimately, the Court recognizes that DWR Bulletin 118 (2003 update) illustrates that the  
19 hydrogeologic Antelope Valley Groundwater Basin extends east of the Los Angeles/San  
20 Bernardino County line, into San Bernardino County. Anticipating the present circumstance, the  
21 Court, through its February 19, 2010 "Order Transferring and Consolidating Actions for All  
22 Purposes" ("Consolidation Order"), stated:

23 Any claim to declaratory relief regarding basin boundaries has been determined by  
24 the Court by Order dated November 6, 2008. To the extent any current party was  
25 not a party at the time of the determination of this issue, that party may seek to  
26 reopen or, consistent with the order, move to amend the basin boundary.  
(Miliband Decl., ¶ 6, Exhibit D, Consolidation Order, p. 7:4-8.)

26 The foregoing Orders demonstrate two critical points: (i) the *hydrogeological* basin cannot  
27 be ignored (nor should such technical and scientific issues be ignored in a groundwater  
28 adjudication seeking to understand sub-surface characteristics and conditions in order to establish

1 water rights and a physical solution); and, (ii) a party, such as PPHCSD, must be afforded due  
2 process (i.e., notice and opportunity to be heard) to address this issue.

3 Accordingly, PPHCSD seeks to address this boundary issue; however, the timing was not  
4 appropriate prior to now, and subject to the Court's direction and depending on what issues  
5 comprise Phase Four, the time to address this issue may indeed be near.

6 During the February 14, 2012 CMC, counsel for PPHCSD raised this issue, with the Court  
7 requesting that any party opposing, objecting, or otherwise adverse to PPHCSD addressing this  
8 issue to state its position in its CMC Statement for the March 13, 2012 CMC.

9 **II. READINESS FOR TRIAL.**

10 The time necessary to adequately prepare for trial turns on the scope and nature of the  
11 issues set for Phase Four, as well as what, if any, case management mechanisms are employed by  
12 the Court. Though the Court through its March 2, 2012 Minute Order continued a Trial Setting  
13 Conference from March 13, 2012 to April 17, 2012 (including a statement from each party as to  
14 trial "readiness"), PPHCSD submits the following items for the Court's consideration in an effort  
15 to maximize efficiency for trial preparation (in addition to the foregoing items).

16 **A. Utilization Of "Universal" Discovery, And, Any Remaining Defaults On**  
17 **Complaints Or Cross-Complaints.**

18 Given the breadth of discretion vested with the Court to manage this complex action  
19 pursuant to the California Rules of Court, this item relates to a question of whether, and if so to  
20 what extent, written and testimonial discovery for Phase Four can proceed by utilizing "universal"  
21 or "model" discovery, similar in concept to the "Model Answer" employed by the Court earlier in  
22 this action. Without any such discovery devices or standards, discovery would be extraordinarily  
23 cumbersome for the Court and the parties, due to the vast number of parties and potentially  
24 multiple water rights held by some parties (e.g., an overlying water right holder that also  
25 appropriates water). In addition, some parties may have yet to even file the "Model Answer" or  
26 otherwise avail themselves to the Court's jurisdiction, raising a question of when to move for  
27 default (and the effect thereof on the final, single judgment to be entered by the Court).

28 ///

1 Likewise, for those parties who filed Answers that include affirmative defenses, a  
2 procedural question exists as to which of those defenses that party seeks to establish, and whether  
3 those defenses would be part of Phase Four.

4 **B. Establishing The Burden Of Proof, And, Whether Phase Four Issues Are**  
5 **Subject To A Jury Or Bench Trial.**

6 Though issues relating to identifying which parties bear – and what is – the appropriate  
7 burden of proof may seem like simple questions of law, the burden of proof for Phase Three was in  
8 dispute evident from relevant pleadings, and CMC Statements filed since conclusion of Phase  
9 Three reveal varying perspectives on other issues. Similarly, depending on what Phase Four  
10 encompasses, some issues may or may not be subject to a bench trial. Accordingly, all of these  
11 issues might lack consensus among the parties, which irrespective of consensus, are issues  
12 ultimately within the Court's purview.

13  
14 Dated: March 12, 2012

ALESHIRE & WYNDER, LLP  
DAVID J. ALESHIRE  
WILLIAM W. WYNDER  
WESLEY A. MILIBAND

15  
16  
17 By: 

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

**DECLARATION OF WESLEY A. MILIBAND**

I, Wesley A. Miliband, declare:

1. I am an attorney at law duly licensed to practice law in all of the courts of the State of California, and I am an attorney of record for Phelan Piñon Hills Community Services District ("PPHCSD"). If called as a witness, I could and would competently testify as to the matters set forth herein as they are based upon my own personal knowledge and belief.

2. This declaration is submitted in support of PPHCSD's Case Management Conference And Trial Readiness Setting Statement.

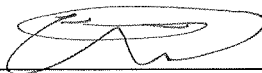
3. Exhibit A attached hereto is a true and correct copy of the Statement of Decision Phase Three Trial, dated July 13, 2011.

4. Exhibit B attached hereto is a true and correct copy of the Order After Hearing On Jurisdictional Boundaries, dated November 3, 2006.

5. Exhibit C attached hereto is a true and correct copy of the Revised Order After Hearing on Jurisdictional Boundaries, dated March 12, 2007.

6. Exhibit D attached hereto is a true and correct copy of the Order Transferring and Consolidating Actions for All Purposes, dated February 19, 2010.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on this 12<sup>th</sup> day of March 2012 in Irvine, California.

  
\_\_\_\_\_  
WESLEY A. MILIBAND



**PROOF OF SERVICE**

I, Linda M. 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 March 12, 2012, I served the within document(s) described as **CASE MANAGEMENT CONFERENCE STATEMENT OF PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT; DECLARATION OF WESLEY A. MILIBAND IN SUPPORT THEREOF** as follows:

☒ (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](http://www.scefiling.org).

☐ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Irvine, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ (BY OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained by Overnight Express, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in a sealed envelope or package designated by the express service carrier, addressed as set forth above, with fees for overnight delivery paid or provided for.

Executed on March 12, 2012, at Irvine, California.

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

Linda Yarvis  
(Type or print name)

(Signature)