

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

## COUNTY OF LOS ANGELES - CENTRAL DISTRICT

## AND RELATED CROSS-ACTIONS

**DATE:** April 17, 2012  
**TIME:** 9:00 a.m.  
**LOCATION:** Central Civil West, 15<sup>th</sup> Fl.,  
 Room 1515

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 Trial  
4 Setting Conference ("TSC") Statement for the TSC set for April 17, 2012.

5 PPHCSD has supported the numerous mediation sessions before the Honorable Justice  
6 Ronald B. Robie, as well as ongoing settlement discussions among the parties in between sessions  
7 with Justice Robie. PPHCSD has actively participated in these mediation sessions and settlement  
8 meetings. During the most recent session, some, but not all, parties (or perhaps more accurately in  
9 many instances, legal counsel or a corporate party's representative) came to an agreement on  
10 allocation of the safe yield, which PPHCSD understands to be subject to Court approval, including  
11 a "prove up," and approval from various parties, including public and private entities with  
12 governing boards that must approve the agreement.

13 To that end, and consistent with the Court's Minute Order dated March 13, 2012, PPHCSD  
14 submits the following list of items to facilitate direction from the Court on various procedural,  
15 factual, and legal issues pertaining to Phase Four<sup>1</sup>:

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

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

22 **A. "Settlement" Approval.**

23 The first order of business should involve the process for Court approval of the agreement  
24 reached by some parties. Doing so, allows parties to "prove up" production, which becomes

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25 <sup>1</sup> PPHCSD understands that several of these items may be more appropriately addressed at a later  
26 time through briefing and otherwise; however, given the nature of the matters set for  
27 April 17, 2012, PPHCSD identifies these items as a non-exclusive list simply to identify issues that  
28 it believes assist with management of and preparation for Phase Four proceedings.

1 necessary through settlement or trial. Likewise, identification of the base period is a necessary  
2 component of the prove-up process.

3 If all parties are not included in this process, this approach may also identify with the  
4 necessary certainty which parties are going to trial on allocation of the safe yield. Various  
5 contingencies exist that could alter whether the existing agreement on this issue remains in place.  
6 For instance, a public entity must obtain approval from its governing body, and a private entity  
7 presumably must do the same, creating the possibility that approval may not be granted. Perhaps  
8 some parties' approval is contingent on resolution of other significant case issues. In addition, the  
9 Court must approve the agreement, and as seen with a prior settlement agreement among some  
10 parties, the Court did not approve that agreement based on its own reasons and some concerns  
11 stated by non-settling parties. As part of the Court-approval process, the settling parties will have  
12 to "prove up" the basis for their agreement, which inherently bears some uncertainty.  
13 Accordingly, the pending agreement should be addressed immediately.

14 **B. Regional Issues.**

15 Prior to engaging in a phase of trial on allocation issues (as opposed to a "prove up"),  
16 specific regional issues must be resolved. The Court stated in the Statement of Decision Phase  
17 Three Trial (July 13, 2011) that: **"But having heard evidence about the aquifer as a whole, the  
18 Court is not making historical findings that would be applicable to specific areas of the  
19 aquifer or that could be used in a specific way to determine water rights in particular areas of  
20 the aquifer."** (Statement of Decision Phase Three Trial (July 13, 2011) ("Phase Three Decision"),  
21 p.4:21-24 [emphasis added].)

22 This language indicates that the Phase Three Decision finding that the aquifer is in overdraft  
23 does not necessarily require an appropriator (whether a public or private entity) to prove  
24 prescription, but instead that further inquiry and findings are needed, whether that be: (i) to address  
25 regionalized issues for identifying whether that portion of the "aquifer" is in overdraft; (ii) to  
26 determine the type of water right held by a party in that portion of the aquifer (e.g., appropriative or  
27 prescriptive); and/or (iii) to identify management areas.

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

8 Resolving these issues next would provide for a more efficient process for determining  
9 water rights, including prescriptive water rights, as well as attending to long-term issues related to  
10 management. Accordingly, PPHCSD respectfully submits the foregoing issues are most  
11 appropriate for the next phase of trial, and even necessary given the language identified above from  
12 the Phase Three Decision.

13 **C. Prescription "Issues."**

14 Although the items set forth, *supra*, at Sections A and B should be resolved next, if Phase  
15 Four is set to address allocation of the safe yield, numerous questions and legal issues arise as to  
16 the type of water right sought to be established, by which parties, *and* against which parties. For  
17 instance, if prescriptive water rights are the subject of Phase Four, various questions arise,  
18 including: (i) identification of which parties must prove a prescriptive right; (ii) whether that right  
19 must be established against every overlier party in the Adjudication Area, or only those within the  
20 same region of the Adjudication Area as the prescriptor, or some other basis; and, (iii) whether self-  
21 help claims would be included in the same trial phase as prescription. The Court's affirmation that  
22 public agencies cannot be prescribed against pursuant to Civil Code § 1007 would assist case  
23 preparation and trial by identifying which parties may challenge another party's prescription claim  
24 (e.g., public entities cannot prescribe against each other, and should likewise not be in an  
25 adversarial posture for trial purposes).

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

5 **D. The Adjudication Boundary In The “Southeast Area” Of The Basin.**

6 Consistent with the Court’s suggestion during the March 13, 2012 Case Management  
7 Conference, PPHCSD distributed correspondence to all counsel inviting the opportunity to discuss  
8 the issue relating to the existence of the Antelope Valley hydrogeological basin extending farther  
9 east than the adjudication boundary currently set along the Los Angeles / San Bernardino County  
10 line. PPHCSD also requested counsel respond with any scheduling preferences, should a motion  
11 on this be necessary. No counsel has responded to this correspondence. PPHCSD would plan to  
12 bring a motion addressing this issue, if necessary, as soon as “reasonably possible,” as requested by  
13 the Court.

14 **II. READINESS FOR TRIAL.**

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

18 The time necessary to adequately prepare for trial turns on the scope and nature of the  
19 issues set for Phase Four, as well as what, if any, case management mechanisms are employed by  
20 the Court. Absent this information, PPHCSD is unable to identify the amount of time needed for  
21 trial preparation and for the trial itself, though PPHCSD respectfully suggests that expert

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22 <sup>2</sup> Extensive briefing on this issue is on file with the Court.

23 <sup>3</sup> See, e.g., *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 929 [Each taking of water  
24 in excess of the safe yield...was wrongful and was an injury...because the overdraft, from its  
25 beginning, operated progressively to reduce the total available supply.].) See also, Slater, Scott S.,  
26 *California Water Law & Policy* (Butterworth Legal Publishers, 2005) (“Slater”) p. 11-19,  
§ 11.04[5].

27 <sup>4</sup> The method for quantifying the exact amount of the prescriptive right is subject to some differing  
28 interpretations. (*Ibid.* at n. 76.)

1 disclosures, pre-trial statements, and motions in limine proceed pursuant to the Code of Civil  
2 Procedure, or as otherwise deemed most appropriate by the Court. Notably, potential trial issues  
3 may not even require experts.

4       **A.     Utilization Of “Universal” Discovery, And, Any Remaining Defaults On**  
5       **Complaints Or Cross-Complaints.**

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

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

19       In addition, some parties may be in default for failure to respond to a complaint or cross-  
20 complaint in which that party is named. Direction from the Court as to when the Court prefers any  
21 motion for default be addressed would help maximize efficiency, rather than parties moving for  
22 default at different times.

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

25       Though issues relating to identifying which parties bear – and what is – the appropriate  
26 burden of proof may seem like simple questions of law, the burden of proof for Phase Three was in  
27 dispute evident from relevant pleadings, and CMC Statements filed since conclusion of Phase  
28 Three reveal varying perspectives on other issues. Similarly, depending on what Phase Four

1 encompasses, some issues may or may not be subject to a bench trial. Accordingly, all of these  
2 issues might lack consensus among the parties, which irrespective of consensus, are issues  
3 ultimately within the Court's purview.  
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5 Dated: April 10, 2012

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8 By: 

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**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 April 10, 2012, I served the within document(s) described as **TRIAL SETTING CONFERENCE STATEMENT OF PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT** 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.

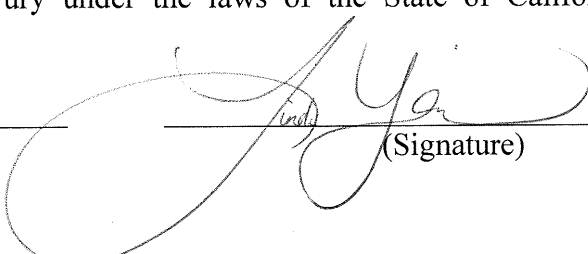
☐ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence 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 April 10, 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)