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7

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

11 Coordination Proceeding
Special Title (Rule 1550(b))

12 **ANTELOPE VALLEY**
13 **GROUNDWATER CASES**

14 Included Actions:

15 *Los Angeles County Waterworks District*
No. 40 v.
16 *Diamond Farming Co., et al.*
Los Angeles County Superior Court, Case
17 No. BC 325 201

18 *Los Angeles County Waterworks District*
No. 40 v.
19 *Diamond Farming Co., et al.*
Kern County Superior Court, Case No.
20 S-1500-CV-254-348

21
22 *Wm. Bolthouse Farms, Inc. v. City of*
Lancaster
23 *Diamond Farming Co. v. City of Lancaster*
Diamond Farming Co. v. Palmdale Water
24 *Dist.*
Riverside County Superior Court,
25 Consolidated Action, Case Nos. RIC 353
840, RIC 344 436, RIC 344 668

26 AND RELATED CROSS-ACTIONS
27
28

) Judicial Council Coordination Proceeding
) No. 4408

) (For Filing Purposes Only: Santa Clara
) County Case No.: 1-05-CV-049053)

) Assigned for All Purposes To:
) Judge: Hon. Jack Komar

) (Filing Fees Exempt, Per Gov't Code § 6103)

) **STATEMENT BY PHELAN PIÑON**
) **HILLS COMMUNITY SERVICES**
) **DISTRICT FOR CONFERENCE SET**
) **FOR AUGUST 11, 2014**

) **[[PROPOSED] CASE MANAGEMENT**
) **ORDER FILED CONCURRENTLY**
) **HEREWITH]**

) **DATE:** August 11, 2014
) **TIME:** 10:00 a.m.
) **LOCATION:** Stanley Mosk Courthouse
111 N. Hill Street, Rm. 222
Los Angeles, California

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

3 Phelan Piñon Hills Community Services District ("Phelan Piñon Hills") hereby submits this
4 Statement in advance of the August 11, 2014 Conference which pursuant to the Court from
5 July 11, 2014 includes determining a process for resolution of claims of non-settling parties, such
6 as Phelan Piñon Hills. As explained herein:

7 (i) *Phelan Piñon Hills met-and-conferred* as ordered by the Court, with the consensus
8 reached with the Liaison Committee being for: (a) Phelan Piñon Hills to prepare a proposed Case
9 Management Order ("Proposed CMO"); and (b) Phelan Piñon Hills to consider bifurcation of
10 causes of action, including those by other parties' cross complaints against Phelan Piñon Hills.

11 (ii) *Phelan Piñon Hills has prepared the Proposed CMO* and filed and circulated the
12 same via electronic service on August 6, 2014, and, *Phelan Piñon Hills is agreeable to bifurcation*
13 *as generally proposed by the Liaison Committee and more specifically set forth below.*

14 (iii) Due to at least one party¹ saying that it will *not* stipulate to *any* facts involving
15 Phelan Piñon Hills², *discovery is necessary* - at least by Phelan Piñon Hills - but the scope of
16 discovery will depend on the scope of this next trial to be determined by the Court.

17 (iv) *To assist with formulating the scope and process of this next trial and the related*
18 *discovery, Phelan Piñon Hills has prepared this Statement as well as the Proposed CMO*, with this
19 Statement including identification of the "at issue" items and a description of the discovery
20 necessary for adequate trial preparation (if the Court approves the Proposed CMO in its current
21 form), while the Proposed CMO suggests the scope and process for this next trial and related
22 discovery.

23 _____
24 ¹ The Bolthouse entities have explicitly taken this position, and though there are at least two (2)
25 Bolthouse entities, these entities are referred to herein collectively as "Bolthouse."

26 ² This includes even the most fundamental of evidentiary issues, such as authentication of public
27 records that Phelan Piñon Hills intends to offer at trial. Bolthouse previously indicated willingness
28 to stipulate to facts at least for Phase Five, but has since indicated that it will not stipulate to any
fact because Phelan Piñon Hills has indicated (as it consistently has done) that it contests
Bolthouse's use of water.

1 (v) Ultimately, Phelan Piñon Hills desires resolution of its claims in this case in the
2 near future, and while Phelan Piñon Hills desires such and is agreeable to bifurcation as set forth
3 below, the decision by the potentially settling parties not to include Phelan Piñon Hills in
4 settlement triggers the need for a “process” as described herein and in the Proposed CMO, which
5 unfortunately becomes more protracted by at least one party’s unwillingness to stipulate to facts.

6 **I. THE MEET-AND-CONFER & CURRENT STATUS.**

7 Following on Phelan Piñon Hills’ Case Management Statement for the July 11, 2014
8 conference³ and the Court’s subsequent order for Phelan Piñon Hills and the Liaison Committee to
9 meet-and-confer regarding adjudication of remaining issues, Phelan Piñon Hills wrote to the
10 Liaison with a proposed process. *The group assembled for the meet-and-confer on July 30.*

11 The only consensus reached was for Phelan Piñon Hills to prepare the Proposed CMO and
12 to consider bifurcation of causes of action, including those of other parties’ cross complaints
13 against Phelan Piñon Hills. Phelan Piñon Hills has done both items, as set forth below.

14 Much of the meet-and-confer discussion involved some parties questioning the need for any
15 discovery. The sum of that discussion is that at least one (1) party has indicated it will not stipulate
16 to any facts and only two (2) parties have expressly stated they will challenge Phelan Piñon Hills,
17 while it remains uncertain as to which of the other parties will challenge Phelan Piñon Hills. Also,
18 at least one party thinks a trial should be set sixty (60) days from August 11, even though that same
19 party has not expressly stated it will challenge Phelan Piñon Hills nor does Phelan Piñon Hills
20 know if that party or any other has any documents or witnesses (percipient or expert) relating to
21 Phelan Piñon Hills issues, particularly the water right issues for which discovery is incomplete.

22 Notably, Phelan Piñon Hills was “ready” to offer evidence during Phase Three about
23 hydrogeological conditions in the Southeast area, and Phelan Piñon Hills was “ready” to offer
24 evidence during Phase Five regarding its return flow claim; however, the objections by some
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26
27 ³ Phelan Piñon Hills’ CMC Statement for the July 11, 2014 conference provided a “snapshot” of
28 key issues, with legal and factual discussion regarding these issues.

1 parties during Phase Three and the representations by some parties of settlement during Phase Five
2 caused the presentation of this evidence to be delayed.

3 What is unclear *now* is the extent to which other parties intend to challenge Phelan Piñon
4 Hills on those issues, *and* whether additional discovery is permissible on those issues involving the
5 hydrogeologic conditions of the Southeast area, namely the Buttes subunit as commonly referred to
6 in scientific research. Also, what has not been vetted yet through discovery are the water rights
7 issues which were set for Phase Six but vacated based upon settlement discussions.

8 *Accordingly, the Court's intervention is requested for setting forth the scope of the next*
9 *trial and the related process including lifting the stay on discovery so that Phelan Piñon Hills may*
10 *properly prepare for trial by having the other parties state whether they are challenging Phelan*
11 *Piñon Hills and on what basis. Absent that type of process and information, Phelan Piñon Hills is*
12 *subject to unfair surprise during trial.*

13 **II. "AT-ISSUE" ITEMS & PROPOSED SCOPE.**

14 Multiple cross-complaints between Phelan Piñon Hills and other parties exist, thus placing
15 various causes of action "at issue" by those parties suing and being sued by Phelan Piñon Hills.

16 Phelan Piñon Hills' cross-complaint contains eight (8) causes of action. Phelan Piñon Hills
17 seeks resolution on all causes of action, except for its first cause of action in which a prescriptive
18 water right is pled. Phelan Piñon Hills is no longer pursuing the first cause of action. Instead,
19 Phelan Piñon Hills seeks to establish an appropriator for public use water right⁴, as set forth in its
20 second cause of action (also described in Phelan Piñon Hills' CMC Statement for the July 11, 2014
21 conference). Thus, Phelan Piñon Hills' remaining seven (7) causes of action relate are as follows:

- 22 • **Second Cause of Action** for Declaratory Relief for an Appropriative Right, with
23 paragraph 82 articulating that surplus water is where production is not causing a
drop in the water table.⁵

24 ⁴ Notably, Bolthouse recognizes this right in its cross-complaint on page 6, paragraph 13, lines 15-
25 17: "...knowing that even if their prescriptive claims failed, *they could preserve the right to*
26 *continue their pumping under a claim of an intervening public use.*" (Emphasis added.)

27 ⁵ The cross-complaint by Los Angeles County Waterworks District No. 40 states substantially the
28 same at Paragraph 47 in that surplus exists when undesirable results are not occurring such as
lowering of the groundwater table or subsidence.

- **Third Cause of Action** for Declaratory Relief for a Physical Solution.
- **Fourth Cause of Action** for Declaratory Relief for Municipal Priority, with Paragraphs 93 & 94 articulating Water Code section 106 in support of such priority.
- **Fifth Cause of Action** for Declaratory Relief for Use of Storage Space.
- **Sixth Cause of Action** for Declaratory Relief for Recapture of Return Flows.
- **Seventh Cause of Action** for Declaratory Relief for Unreasonable Use of Water by some Cross-Defendants.
- **Eighth Cause of Action** for Declaratory Relief regarding Basin Boundaries.

Beyond Phelan Piñon Hills' cross-complaint are approximately seven (7) other cross-complaints, with Bolthouse's cross-complaint containing nineteen (19) causes of action.

To manage all of these cross-complaints and various causes of action between Phelan Piñon Hills and those suing Phelan Piñon Hills, the following is proposed for this next trial:

(1) Bifurcation, which was generally requested by some during the July 30 meet-and-confer, is acceptable to Phelan Piñon Hills as follows:

(a) Issue of surplus water in the Southeast area is deferred to later proceedings, if the Court finds that Phelan Piñon Hills' appropriator for public use water right may exist and also, pending determination on surplus status, that Phelan Piñon Hills is not subject to "takings" liability nor is Phelan Piñon Hills subject to a replacement assessment (unless such an assessment is applicable to the other parties as part of Watermaster operations and administration of the anticipated judgment).

(b) If the Court is agreeable to the approach set forth above in section (1)(a), then:

(i) Phelan Piñon Hills' Seventh Cause of Action regarding other parties' alleged unreasonable use of water may also be deferred. This cause of action primarily involves disputes between Phelan Piñon Hills and Bolthouse; specifically, this cause of action is particularly important because the extent to which Bolthouse's use of water is wasteful should count toward surplus, and Bolthouse's causes of action against Phelan Piñon Hills include inverse condemnation⁶, which should be offset by the extent to which surplus exists.

⁶ Third, eleventh, and thirteenth causes of action in Bolthouse's cross-complaint against Phelan Piñon Hills.

1 (ii) Bolthouse's and other parties' inverse condemnation claims may
2 likewise be deferred, to the extent such claims have already been pleaded by a party.

3 (c) Phelan Piñon Hills is agreeable to deferring its Third and Fifth Causes of
4 Action involving the Physical Solution and Use of Storage Space to a later proceeding, subject to
5 the Court finding that Phelan Piñon Hills maintains the right to assert these rights even if it loses on
6 some other cause of action; *in other words, loss on one cause of action is not a loss on all.*

7 Bifurcation as proposed above allows the Court to make legal determinations on Phelan
8 Piñon Hills' water right and other key issues such as the return flow claim and place of use claim,
9 without having to engage in a technical issue that may entail further discovery and delay, as well as
10 jury trial rights⁷, and perhaps this may be an issue for Watermaster involvement subject to the
11 Court's continuing jurisdiction that presumably will exist following entry of judgment in this case.

12 *Thus, at issue for this next trial phase pursuant to the above approach would be:*

13 (1) *Phelan Piñon Hills' Second (except for surplus status), Fourth, Sixth, and Eighth*
14 *Causes of Action, which essentially seek to establish a water right and its priority, a return flow*
15 *right, and the right to exercise the water right within Phelan Piñon Hills' service area that lies*
16 *over the hydrogeological portion of the Antelope Valley groundwater basin.*

17 (2) *Currently unclear is the extent to which other parties' causes of action (whether*
18 *inverse condemnation or otherwise) are or should be part of this next trial phase. As a cross-*
19 *defendant on causes of action asserted by other parties, Phelan Piñon Hills has the right to*
20 *challenge those parties' causes of action and Phelan Piñon Hills seeks to reserve that right.*

21 **III. PROPOSED CMO & DISCOVERY.**

22 Should the Court approve the scope of the next trial as set forth above (with clarification
23 from other parties and direction from the Court needed on those parties' cross-complaints against
24 Phelan Piñon Hills), *the Proposed CMO and related discovery would reflect such, much like the*

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27 ⁷ Bolthouse asserted rights to a jury trial many times in the past; presumably Bolthouse might assert
28 the same related to inverse condemnation, part of which depends on surplus status.

1 *Case Management Orders the Court and parties utilized in prior trial phases including a date for*
2 *the parties to file a Notice of Intention to Participate in the trial.*

3 *Also included in the Proposed CMO is a schedule for motion(s) for summary adjudication*
4 *or judgment, which is proposed to offset the inconvenience caused by other parties' unwillingness*
5 *to stipulate to facts (even if not subject to reasonable dispute), with the benefit being greater*
6 *efficiency for the Court and participating parties to engage in resolution by dispositive law and*
7 *motion if possible, rather than trial.*

8 *As for discovery, should the Court approve the approach being proposed and lift the*
9 *current stay on discovery, Phelan Piñon Hills would seek Court approval of a discovery order, also*
10 *much like those done for prior trial phases so that Phelan Piñon Hills discovers which parties are*
11 *opposing Phelan Piñon Hills and on what basis, particularly when the water rights claim has not*
12 *been subjected to complete discovery or trial to date. Specifically, Phelan Piñon Hills envisions for*
13 *those parties timely indicating their Intention to Participate in trial discovery such as: (i) form*
14 *interrogatories for identification of witnesses and 17.1 responses; (ii) requests for admissions on*
15 *such fundamental facts such as Phelan Piñon Hills' ownership of Well 14, its production numbers,*
16 *Phelan Piñon Hills being a public water supplier, etc.; and (iii) requests for production of*
17 *documents, including for those documents in support of all other responses provided by that party.*
18 *Other discovery would be for designation of experts and subsequent depositions, to the extent*
19 *technical and/or other expert testimony is purportedly necessary for this next trial.*

20 *Phelan Piñon Hills intends to offer evidence through its previously-designated expert,*
21 *particularly as to the return flow claim; however, discovery was completed in that regard for Phase*
22 *Five, and accordingly, should not be reopened.*

23 *Ultimately, the discovery and time needed for adequate trial preparation turns largely*
24 *upon: (i) the scope of this next trial; (ii) the number of parties participating; and (iii) whether the*
25 *"surplus issue (which relates to "regional" or subunit differences as recognized in the Phase*
26 *Three Statement of Decision) is to be tried within this next trial. The Proposed CMO is prepared*
27 *based upon the above in Section II, meaning the surplus issue and related causes of action are not*
28 *part of this next trial.*

1 **IV. CONCLUSION.**

2 A number of parties have sued one another in this case, and many of those cross-complaints
3 between Phelan Piñon Hills and other parties remain unresolved. As much as Phelan Piñon Hills
4 attempted settlement beyond the two (2) classes with which it already settled, some parties are
5 unwilling to settle with Phelan Piñon Hills. Those parties now call upon the Court to resolve
6 Phelan Piñon Hills' claims, and while some of these same parties have previously requested time to
7 do the proper discovery to prepare for a trial, these same parties now seek an expedited process to
8 adjudicate Phelan Piñon Hills' claims. As much as Phelan Piñon Hills supports resolution of this
9 long-standing matter, absent stipulations, certain discovery must be done, which the Court
10 indicated during the last status conference on July 11, 2014 is a right to which no party will be
11 deprived. As such, Phelan Piñon Hills respectfully proposes the approach as set forth above.

12
13 Dated: August 6, 2014

Respectfully submitted,
ALESHIRE & WYNDER, LLP

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16 By: 

Wesley A. Miliband
Attorneys for Cross-Defendant and
Cross-Complainant,
Phelan Piñon Hills Community
Services District

PROOF OF SERVICE

I, Marie Young,

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 August 6, 2014, I served the within document(s) described as **STATEMENT BY PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT FOR CONFERENCE SET FOR AUGUST 11, 2014**, 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.

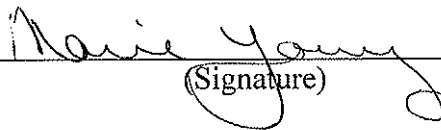
☐ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence 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 August 6, 2014, at Irvine, California.

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

Marie Young
(Type or print name)


(Signature)