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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 FINAL APPROVAL OF SMALL PUMPER CLASS SETTLEMENT

[Filed Concurrently with Declaration of Miles P. Hogan in Support Thereof]

Date: August 3-4, 2015
Time: 9:00 a.m.
Dept.: TBA (Los Angeles)

Assigned for All Purposes to:
Hon. Jack Komar

Date/Time: 08/03-04/15, 9:00 a.m., LASC
(Final Fairness Hearing [Small Pumper/Wood Class Settlement] and Motion to Admit Alternative Proposed Physical Solutions into Evidence)
Date/Time: 08/25-27/15, 9:00 a.m., San Jose
(Trial/Hearing on claims by Phelan Piñon Hills CSD)
Date/Time: 09/28-10/16/15, 9:00 a.m., LASC
(Prove-up Hearings [evidentiary hearing for a physical solution])

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 Final Approval of Small Pumper Class Settlement submitted by the Wood Class ("Moving Party") in the above-entitled action on July 9, 2015.

I. INTRODUCTION

Phelan Piñon Hills opposes the Small Pumper 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 Miles P. Hogan, ¶ 2, Exh. A ["2013 Settlement Agreement"].) By seeking approval of the Class Settlement which is reliant upon the 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.

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[1] 1,053.14 af was based on the Court's Phase Four finding.

(3) The Proposed Physical Solution allocates "99.8%" of the native safe yield, 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.[2]

Therefore, the Class Settlement contravenes the 2013 Settlement Agreement, and thus it should not be approved by the Court.

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.

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[2] 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 unadjudicated, 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.

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].) 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.

It is well established in California that a settlement cannot bind or prejudice the interests of a non-settling party. (*See Levy v. Superior Court* (1995) 10 Cal.4th 578, 580, 585-586 [stipulated settlements must be signed by the parties themselves to be enforceable]; *see also Harris v. Rudin, Richman & Appel et al.* (1999) 74 Cal.App.4th 299, 304-306 [to be binding settlement must be signed by both the party seeking enforcement and the party against whom it is to be enforced]; *Williams v. Saunders* (1997) 55 Cal.App.4th 1158, 1163 [court could not enforce settlement agreement against party who did not participate in creation of the agreement nor sign the agreement].) However, the proposed Class Settlement and its associated Physical Solution would do just that – gravely prejudice Phelan Piñon Hills.

A. <u>The Proposed Physical Solution Eliminates Phelan Piñon Hills' Right To Pump 1053.14 Acre-Feet Assessment-Free.</u>

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. <u>The Return Flow Provision In The 2013 Settlement Agreement Would Be Made Meaningless By The Proposed Physical Solution.</u>

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 term 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 unrebutted] evidence" admitted by the Court during the November 4, 2014 trial.

C. <u>The Settling Parties Have Allocated The Entire Safe Yield Amongst Themselves, Despite Their Potential Settlement Not Being "Global" Amongst All Parties.</u>

The Proposed Physical Solution allocates "99.8%" of the native safe yield, 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.

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IV. CONCLUSION

For the foregoing reasons, Phelan Piñon Hills respectfully requests that the Court not approve the proposed Small Pumper Class Settlement. Phelan Piñon Hills intends to appear and be heard at the final approval hearing set for August 3-4, 2015, and reserves the right to present further objections to the Proposed Physical Solution at the appropriate stages pursuant to the Second Amended Case Management Order and as otherwise exists pursuant to law and equity.

DATED: July 15, 2015

ALESHIRE & WYNDER, LLP
JUNE S. AILIN
MILES P. HOGAN

By: _____
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Phelan Piñon Hills Community Services District

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Judicial Council Coordination Proceeding No. 4408
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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 July 15, 2015, I served the within document(s) described as **PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT'S OPPOSITION TO MOTION FOR FINAL APPROVAL OF SMALL PUMPER CLASS SETTLEMENT** 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 July 15, 2015, at Irvine, California.

Linda Yarvis

ALESHIRE & WYNDER LLP ATTORNEYS AT LAW