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Phelan Piñon Hills Community Services District
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**
11

12 Coordination Proceeding
Special Title (Rule 1550(b))
13

14 **ANTELOPE VALLEY**
GROUNDWATER CASES

15 Included Actions:

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

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

22 *Wm. Bolthouse Farms, Inc. v. City of*
23 *Lancaster*
Diamond Farming Co. v. City of Lancaster
24 *Diamond Farming Co. v. Palmdale Water*
Dist.
25 Riverside County Superior Court,
Consolidated Action, Case Nos. RIC 353
26 840, RIC 344 436, RIC 344 668.

27 **AND RELATED CROSS-ACTIONS**
28

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 NOTICE OF
MOTION AND MOTION *IN LIMINE* TO
EXCLUDE EVIDENCE OF ITS WATER
RIGHTS OR ASSESSMENTS OUTSIDE
THE ANTELOPE VALLEY
ADJUDICATION AREA;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
JUNE S. AILIN IN SUPPORT THEREOF**

Date: September 28, 2015
Time: 10:00 a.m.
Dept.: Room 222

Assigned for All Purposes to:
Hon. Jack Komar

Date/Time: 09/28-10/16/15, 10:00 a.m., Room
222 (Prove-up Hearings [evidentiary hearing for a
physical solution])

01133.0012/268719.1

PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT'S MOTION *IN LIMINE* TO EXCLUDE
EVIDENCE OF ITS WATER RIGHTS OR ASSESSMENTS OUTSIDE THE ANTELOPE VALLEY
ADJUDICATION AREA

ALESHIRE &
WYNDER LLP





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

PLEASE TAKE NOTICE that on September 28, 2015, at 10:00 a.m., in Room 222 of the
above-entitled Court, located at 111 North Hill Street, Los Angeles, California, PHELAN PIÑON
HILLS COMMUNITY SERVICES DISTRICT (hereinafter "Phelan Piñon Hills") will, and hereby
does move, *in limine*, for an order to exclude all testimony or other evidence of Phelan Piñon Hills'
water rights or assessments outside the Antelope Valley Adjudication Area ("AV Adjudication
Area").

This motion is based upon this Notice, the Memorandum of Points and Authorities, the
Declaration of June S. Ailin filed concurrently herewith, all other pleadings and papers on file herein,
and such evidence and argument as may be presented at the hearing on this motion.

DATED: September 21, 2015

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

By: 
 JUNE S. AILIN
 Attorneys for Defendant and Cross-Complainant
 Phelan Piñon Hills Community Services District



MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Phelan Piñon Hills seeks an order excluding all evidence of its water rights or assessments outside the AV Adjudication Area on the grounds that this evidence is not relevant to these proceedings. Phelan Piñon Hills anticipates that the Public Water Suppliers or other Settling Parties may seek to introduce such evidence during the remaining hearings by calling Mr. Don Bartz, General Manager for Phelan Piñon Hills, as a witness. (*See* Declaration of June S. Ailin filed concurrently herewith [“Ailin Decl.”], at ¶ 3 [discussing Mr. Dunn’s intention to call Mr. Bartz for such purposes disclosed during the Sept. 25, 2015 trial].)

In their Case Management Conference (“CMC”) Statements filed on September 3 and September 17, 2015, the Public Water Suppliers stated that “to the extent necessary, the Settling Parties intend to call...Mr. Don Bartz to offer rebuttal testimony.” (*See* Public Water Suppliers’ Sept. 3, 2015 CMC Statement at 4:17-19; Public Water Suppliers’ Sept. 17, 2015 CMC Statement at 5:5-7.) The Public Water Suppliers’ Statements do not provide the basis for or scope of this potential testimony by Mr. Bartz. Phelan Piñon Hills is left to assume that the purpose for this testimony is to introduce evidence of its water rights or assessments outside the AV Adjudication Area, as Mr. Dunn previously indicated off the record during the September 25, 2015 trial on Phelan Piñon Hills’ claims. (*See* Ailin Decl., at ¶ 3.)

Phelan Piñon Hills moves to exclude and will object to the introduction of such evidence of its water rights or assessments outside the AV Adjudication Area on the grounds that this evidence is irrelevant and inadmissible in these proceedings. (*See* Evid. Code, § 350.) Such evidence lacks probative value because it would not be offered to prove any of the essential claims at issue in this case, but rather to distort the Court’s view of Phelan Piñon Hills and its role as an appropriator for municipal use in this adjudication. Moreover, this irrelevant evidence would unduly prejudice Phelan Piñon Hills and the other parties by causing delay, taking time away from the key issues, and confusing the claims or issues before the Court. (*See id.* § 352.) Therefore, this Court should order that such evidence is inadmissible and shall not be offered, or shall otherwise sustain Phelan Piñon Hills’ objections to the introduction of this evidence during the remaining prove-up hearings.



II. STATEMENT OF RELEVANT FACTS

On December 30, 2008, Phelan Piñon Hills filed a cross-complaint against various parties for declaratory, injunctive, and other equitable relief including a physical solution, which included eight causes of action (“Phelan Piñon Hills Cross-Complaint”). On November 3-4, 2014, and August 25, 2015, the Court held trials on the claims in Phelan Piñon Hills’ Cross-Complaint. During these trials, ample evidence was admitted regarding Phelan Piñon Hills’ water use in the AV Adjudication Area, and the Antelope Valley Groundwater Basin (“AV Groundwater Basin”) as defined by the Department of Water Resources Bulletin No. 118, and Phelan Piñon Hills’ role as a municipal appropriator.

III. THE COURT HAS BROAD POWER TO GRANT MOTIONS *IN LIMINE*

In the context of a bench trial, motions *in limine* permit more careful consideration of evidentiary issues than would take place in the heat of battle during trial and minimize side-bar conferences and disruptions, allowing for an uninterrupted flow of evidence. (*Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 669-670.) Importantly, they also allow the Court to resolve critical evidentiary issues at the outset, resulting in enhanced efficiency in the trial process. (*Ibid.*; see also, *Amtower v. Photon Dynamics, Inc.* (2008) 158 Cal.App.4th 1582.)

The Court has inherent power to grant motions *in limine* pursuant to its authority to: (1) “provide for the orderly conduct of the proceedings before it” (Code Civ. Proc. § 128(a)(3)); (2) “amend and control its process and orders so as to make them conform to law and justice” (Code Civ. Proc. § 128(a)(8)); (3) exclude evidence that is **irrelevant** (Evid. Code § 350) or the probative value of which is substantially outweighed by the probability that its admission will **consume undue time**, create **substantial danger of undue prejudice** or **confusion of the issues** (Evid. Code § 352); and (4) curb abuses and promote fair process (see *Peat, Marwick, Mitchell & Co. v. Sup. Ct.* (1988) 200 Cal.App.3d 272, 287).

IV. EVIDENCE OF PHELAN PIÑON HILLS’ WATER RIGHTS OR ASSESSMENTS OUTSIDE THE AV ADJUDICATION AREA IS NOT RELEVANT AND SHOULD BE EXCLUDED

Evidence is relevant if it has “any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” (Evid. Code, § 210.) Any evidence of



Phelan Piñon Hills' water rights or assessments outside the AV Adjudication Area has no bearing on any issue in this case and is not "of consequence" for the determination of this action.

The Public Water Suppliers and Settling Parties explained the scope of the remaining issues in their most recent CMC Statement as follows:

The following matters need to be determined before final judgment can be entered: (1) non-stipulating parties' water rights, including rights of defaulted parties; and (2) a court-imposed physical solution for the entire Antelope Valley Adjudication Area ("Basin"). (Public Water Suppliers' Sept. 17, 2015 CMC Statement at 1:16-18.)

As to the first remaining matter, Phelan Piñon Hills' water rights or assessments outside the AV Adjudication Area do not relate to the issue of Phelan Piñon Hills' water rights in *this* action; otherwise, parties would have introduced such evidence at the earlier trials on Phelan Piñon Hills' claims, which they did not. As to the second remaining matter, no authority exists for a court to rely on a party's water rights or assessments in one adjudication area in determining what a party's water rights are, or in fashioning a physical solution for, another adjudication area.

It is appropriate for courts to look to several factors in determining whether a party's water usage is "reasonable and beneficial." (*See* Cal. Const., art. X, § 2; *Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.* (1935) 3 Cal.2d 489, 524-525 ["It is now necessary for the trial court to determine whether such owners, considering all the needs of those in the particular water field, are putting the waters to any reasonable beneficial uses, giving consideration to all factors involved, including reasonable methods of use and reasonable methods of diversion."].) For example, the Court may consider the evidence introduced by Phelan Piñon Hills regarding the amount of its water usage and the purpose of that usage. However, water rights beyond the scope of the claims in this action or what a party might pay for water in other adjudication areas is not relevant to the "reasonable and beneficial" inquiry nor the overall development and imposition of a physical solution.

The only test of relevancy is logic and common sense. (*Traxler v. Thompson* (1970) 4 Cal.App.3d 278.) Evidence offered in support of unrelated issues has no tendency to prove or disprove any disputed fact that is of consequence. Facts that are not encompassed in any party's claims are irrelevant and are of no consequence to the determination of the remaining proceedings. Pursuant to Evidence Code section 350, any evidence not relevant to this action must be excluded and



1 deemed inadmissible. (Evid. Code, § 350 ["No evidence is admissible except relevant evidence."];
 2 *see also, People v. Kelly* (1992) 1 Cal.4th 495, 523.)

3 **V. INTRODUCTION OF EVIDENCE OF PHELAN PIÑON HILLS' WATER RIGHTS**
 4 **OR ASSESSMENTS OUTSIDE THE AV ADJUDICATION AREA WOULD UNDULY**
 5 **PREJUDICE PHELAN, WASTE TIME, AND CONFUSE THE ISSUES**

6 This Court has authority to exclude evidence if its probative value is substantially outweighed
 7 by the probability that its admission will consume undue amounts of time, create substantial danger of
 8 undue prejudice, or confuse the issues. (Evid. Code, § 352.) The remaining prove up hearings will
 9 involve placing a considerable amount of documentary and testimonial evidence into the record. The
 10 vast amount of evidence and the large number of participants already create the potential for delay and
 11 inefficiency in the proceedings. The Court and the parties should not be burdened with irrelevant
 12 evidence that will waste time and confuse the issues.

13 Any evidence that is not offered to prove or disprove a party's claims lacks any probative
 14 value. Evidence of Phelan Piñon Hills' water rights or assessments outside the AV Adjudication Area
 15 has no bearing on any party's claims in this action. This same evidence would consume unnecessary
 16 time and potentially limit time for meaningful argument and presentation on the essential issues.
 17 Therefore, this evidence should be excluded pursuant to Evidence Code section 352.

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1 **VI. CONCLUSION**

2 Phelan Piñon Hills' respectfully requests that the Court exclude all documents, testimony, or
3 demonstrative evidence regarding Phelan Piñon Hills' water rights or assessments outside the AV
4 Adjudication Area during the remaining prove-up hearings.

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6 DATED: September 21, 2015

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

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8
9 By:


JUNE S. AILIN

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



DECLARATION OF JUNE S. AILIN

I, JUNE S. AILIN, hereby declare as follows:

1. I am an attorney duly licensed to practice law before this Court and all of the courts of the State of California, and am a Partner at Aleshire & Wynder, LLP, counsel of record for PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT (hereinafter "Phelan Piñon Hills") in the above-captioned case. I have personal knowledge of the facts set forth below and if called as a witness, I could and would competently testify to them. I make this Declaration in support of Phelan Piñon Hills' Motion *In Limine* to Exclude Evidence of Its Water Rights or Assessments Outside the Antelope Valley Adjudication Area.

2. On August 25, 2015, the Court held a trial on Phelan Piñon Hills' claims. Miles P. Hogan and I appeared for Phelan Piñon Hills; Jeffrey V. Dunn and Wendy Wang appeared for Los Angeles County Waterworks District No. 40; and, Robert G. Kuhs appeared for Tejon Ranchcorp, Tejon Ranch Company, and Granite Construction Company.

3. During the August 25 proceedings, the Court briefly recessed to allow the parties' counsel to meet and confer off the record regarding how those proceedings would progress. During this meet and confer, Mr. Dunn stated to me that he wanted to call Mr. Don Bartz, General Manager for Phelan Piñon Hills, as a witness to authenticate a document and to provide direct testimony regarding Phelan Piñon Hills' water rights and assessments outside the Antelope Valley Adjudication Area. I stated my opposition to such documentary evidence and testimony to Mr. Dunn, explaining that this request was not submitted prior to trial or discussed in trial briefs. Mr. Dunn stated that he would not call Mr. Bartz to the stand that day, but that he might call Mr. Bartz to the stand during the remaining prove-up hearings.

4. The CMC Statements filed on September 3 and 17, 2015 by the Public Water Suppliers indicate Mr. Dunn still intends to call Mr. Bartz as a witness in the remaining prove-up hearings.

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

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Executed this 21st day of September, 2015, at El Segundo, California.


JUNE S. AILIN

ALESHIRE &
WYNDER LLP



3 **PROOF OF SERVICE**

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

5 I, Linda Yarvis,

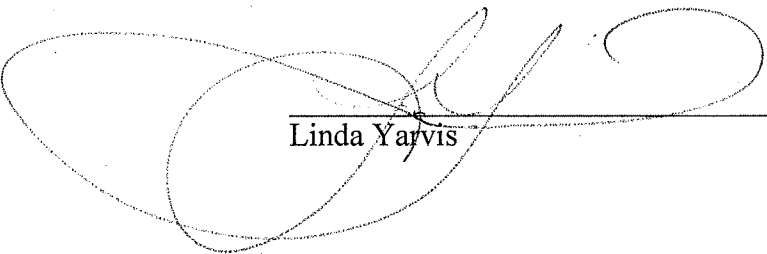
6 I am employed in the County of Orange, State of California. I am over the age of 18 and not a
7 party to the within action. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA
8 92612.

9 On September 21, 2015, I served the within document(s) described as **PHELAN PIÑON
10 HILLS COMMUNITY SERVICES DISTRICT'S NOTICE OF MOTION AND MOTION IN
11 LIMINE TO EXCLUDE EVIDENCE OF ITS WATER RIGHTS OR ASSESSMENTS
12 OUTSIDE THE ANTELOPE VALLEY ADJUDICATION AREA; MEMORANDUM OF
13 POINTS AND AUTHORITIES; DECLARATION OF JUNE S. AILIN IN SUPPORT
14 THEREOF** on the interested parties in this action as follows:

15 **BY ELECTRONIC SERVICE:** By posting the document(s) listed above to the Santa Clara
16 County Superior Court website in regard to Antelope Valley Groundwater matter pursuant to the
17 Court's Clarification Order. Electronic service and electronic posting completed through
18 www.scefiling.org.

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

21 Executed on September 21, 2015, at Irvine, California.

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Linda Yarvis