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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 TRIAL BRIEF

Date: 9/28-10/16/15
Time: 9:00 a.m.
Location/Dept.: Room 222

Assigned for All Purposes to:
Hon. Jack Komar

Date/Time: 09/28-10/16/15, 9:00 a.m., Room
222 (Prove-up Hearings [evidentiary hearing for a
physical solution])



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

Phelan Piñon Hills Community Services District (“Phelan Piñon Hills”) hereby submits this
 Trial Brief for the Prove-up Hearings scheduled to commence on September 28, 2015.

I. THE COURT HAS ADMITTED PHELAN PIÑON HILLS’ EVIDENCE.

Phelan Piñon Hills offered documentary and testimonial evidence during previous trial Phases,
 and during the November 3-4, 2014 and August 25, 2015 trials on claims raised in Phelan Piñon Hills’
 Cross-Complaint for Declaratory, Injunctive and Other Equitable Relief Including a Physical Solution
 Against All Parties, filed on December 30, 2008 (“Cross-Complaint”). For the remaining Prove-up
 Hearings, Phelan Piñon Hills does not anticipate presenting additional evidence as part of its case in
 chief. However, Phelan Piñon Hills reserves the right to present rebuttal testimony and evidence in
 response to any evidence offered by other parties relating to Phelan Piñon Hills’ claims and how
 Phelan Piñon Hills may be impacted by the Proposed Physical Solution. This rebuttal testimony will
 be in the form of documentary evidence and testimony by Phelan Piñon Hills’ designated expert,
 Thomas E. Harder. Mr. Harder is available for such testimony on October 5, 13, 14, 15, or 16.

II. PHELAN PIÑON HILLS REITERATES ITS CLAIMS.

Phelan Piñon Hills contends, in light of the overall history of its pumping in the Antelope
 Valley Groundwater Basin (“AV Groundwater Basin”), as defined by Department of Water Resources
 Bulletin No. 118, and the timing of that pumping, that it should be allowed to pump up to 1,200 AFY
 without a replenishment assessment. Alternatively, Phelan Piñon Hills could accept a lower allocation
 based on the Court’s consideration of all of the evidence, as low as 700 AFY, without a replenishment
 assessment.

For purposes of determining the significance of Phelan Piñon Hills’ municipal priority as an
 appropriator, this Court should take into account Phelan Piñon Hills’ years of pumping, not just from
 Well 14, but from the AV Groundwater Basin, and specifically the Buttes Subunit. That history, the
 particular conditions in the Buttes Subunit, the lack of adverse impact of Phelan’s pumping on the
 existence of surplus, or at least stability, in the Buttes Subunit, demonstrates Phelan Piñon Hills has
 rights that should be recognized in the physical solution by allowing Phelan to pump without paying a



1 replenishment assessment. (*See Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 374-75 [“This is but
2 another way of saying that the appropriator may use the stream surface or underground, or percolating
3 water, so long as the land having the paramount right is not materially damaged.”].)

4 **III. PHELAN PIÑON HILLS WILL PARTICIPATE IN THE PHYSICAL SOLUTION**
5 **PROCEEDINGS.**

6 Phelan Piñon Hills understands the Court will consider all the evidence in this case and enter a
7 final Judgment and Physical Solution. A Proposed Judgment and Physical Solution was submitted by
8 several parties, including the Public Water Suppliers, on March 4, 2015. (*See Exhibit A.1 to the*
9 *Declaration of Michael D. McLachlan In Support Of Motion For Preliminary Approval Of Class*
10 *Settlement.*) As currently drafted, the Proposed Physical Solution binds the potential future
11 Watermaster in its dealing with Phelan Piñon Hills in several ways. Therefore, even though the Court
12 may feel that certain decisions must be made at a later time by the Watermaster, rather than now by
13 this Court, certain provisions in the Proposed Physical Solution must be modified so that the Court-
14 entered final Physical Solution allows for that flexibility. The following modifications must be
15 incorporated in order for the Physical Solution to be consistent with California law, due process, and
16 principles of equity.

17 First, Exhibit 3 to the Proposed Physical Solution should include “non-overlying production
18 rights” in an amount of at least 700 AFY for Phelan Piñon Hills, consistent with Sections 3.5.21 and
19 5.1.6.

20 Second, Section 3.5.8 defines Basin without an explanation of the hydrogeologic reality of the
21 AV Groundwater Basin. Phelan Piñon Hills requests the following language be added to the end of
22 that Section: “The Basin as so defined excludes some areas that are, in fact, hydrogeologically
23 connected to and part of the basin, pursuant to Department of Water Resources Bulletin 118.”

24 Third, the following language in Section 5.1.10 should be stricken, as there is no basis for it
25 under the law:

26 **Production Rights Claimed by Non-Stipulating Parties.** Any claim to a right to
27 Produce Groundwater from the Basin by a Non-Stipulating Party shall be subject to
28 procedural or legal objection by any Stipulating Party. Should the Court, after taking
evidence, rule that a Non-Stipulating Party has a Production Right, the Non-Stipulating
Party shall be subject to all provisions of this Judgment, including reduction in



1 Production necessary to implement the Physical Solution and the requirements to pay
2 assessments, but shall not be entitled to benefits provided by Stipulation, including but
3 not limited to Carry Over pursuant to Paragraph 15 and Transfers pursuant to
Paragraph 16. [...]

4 No legal or other basis exists to support certain parties being excluded from some terms or benefits
5 available in the Physical Solution. As a party subject to the ultimate Physical Solution for this case,
6 Phelan should be entitled to Carry Over and Transfers like any other party.

7 If the Court is not inclined to grant a production right to Phelan Piñon Hills, then Phelan Piñon
8 Hills requests the following, additional modifications be made to the Proposed Physical Solution.

9 First, the Proposed Physical Solution should be modified so as not to characterize Phelan
10 Piñon Hills as an “exporter.” Section 6.4 allows the United States to “transport” produced water to
11 any portion of Edwards Air Force Base, “whether or not the location of use is within the Basin.” It
12 also does not prevent Saint Andrew’s Abbey, Inc., U.S. Borax, and Tejon Ranchcorp/Tejon Ranch
13 Company from “transporting” produced water for “those operations and for use on those lands outside
14 the Basin and within the watershed of the Basin....”

15 In contrast, Phelan Piñon Hills is included in the next Section 6.4.1 entitled “Export by Boron
16 and Phelan Pinon Hills Community Services Districts.” As discussed in its Trial Brief for the August
17 25, 2015 trial, Phelan Piñon Hills should not be characterized as an “exporter” since portions of its
18 service area overlie the AV Groundwater Basin. Moreover, the term “export” is not defined anywhere
19 in the Proposed Physical Solution, which could lead to unintended consequences due to the many
20 potential definitions and implications of the term export. Phelan Piñon Hills should be shifted from
21 Section 6.4.1.2 into Section 6.4.1, and any references to export with regard to Phelan should be
22 removed.

23 Second, in Section 6.4.1.2, the phrase “together with any other costs deemed necessary to
24 protect Production Rights decreed herein” should be stricken. As drafted, that Section would already
25 require Phelan Piñon Hills to pay a Replacement Water Assessment on every acre-foot of water
26 produced from the Basin. This additional language is vague, unsupported, and has no reasonable
27 justification. This Section already requires the Watermaster to make a determination regarding
28 whether Phelan Piñon Hills’ pumping would cause Material Injury. However, no reasonable standard



exists by which the future Watermaster could evaluate whether a cost is “deemed necessary to protect” Production Rights. This language greatly increases the risk of future disputes between Phelan Piñon Hills, the Watermaster, and any number of parties, even after the final Judgment has been entered. In the event that Phelan Piñon Hills has to pay a replacement water assessment for some or all of the water it pumps, it should only have to pay the assessment, as is the condition for any other party subject to the ultimate judgment.

Phelan Piñon Hills will participate in the physical solution proceedings and hereby reiterates its request that these changes be incorporated in the final Judgement and Physical Solution adopted by the Court.

IV. CONCLUSION.

For the reasons set forth above and as demonstrated by evidence already in the record, Phelan Piñon Hills respectfully requests that the Court enter judgment providing for a physical solution: with a free pumping allocation for Phelan Piñon Hills of 1,200 AFY, but in any event, not less than 700 AFY; recognizing Phelan Piñon Hills is a municipal water provider and recognizing Phelan Piñon Hills’ priority pursuant to Water Code sections 106 and 106.5; declaring that, notwithstanding the boundaries of the Antelope Valley Adjudication Area, Phelan Piñon Hills’ history of pumping in the AV Groundwater Basin should be reflected in determination of its municipal priority rights as an appropriator and in determining the amount of Phelan Piñon Hills’ free pumping allowance.

Phelan Piñon Hills reserves the right to present additional evidence during the Prove-up Hearings based on direction from the Court, and upon review of the other parties’ Trial Briefs and presentation of evidence.

DATED: September 22, 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

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 September 22, 2015, I served the within document(s) described as **PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT'S TRIAL BRIEF** 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.scefilig.org.

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

Executed on September 22, 2015, at Irvine, California.



Linda Yarvis

ALESHIRE &
WYNDER LLP
ATTORNEYS AT LAW

