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Phelan Piñon Hills Community Services District

**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 NOTICE OF  
MOTION AND MOTION FOR  
DECLARATORY RELIEF RE  
JUDGMENT ENTERED DECEMBER 23,  
2015 AND WATERMASTER  
RESOLUTION NO. R-18-04 REGARDING  
REPLACEMENT WATER  
ASSESSMENTS FOR 2016 AND 2017;  
DECLARATION OF JUNE S. AILIN IN  
SUPPORT THEREOF**

Assigned for All Purposes To:  
Hon. Jack Komar

Date: 4/18/2018

Time: 9:00 a.m.

Place: Room 222, Los Angeles County  
Superior Court, Stanley Mosk  
Courthouse, Los Angeles, CA



1           **TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:**

2           **PLEASE TAKE NOTICE** that on April 18, 2018 at 9:00 a.m. or as soon thereafter as this  
3 matter may be heard in Room 222 of the Stanley Mosk Courthouse, Los Angeles County Superior  
4 Court, 111 No. Hill St., Los Angeles, CA , Cross-Defendant Phelan Piñon Hills Community Services  
5 District (“Phelan”) will, and hereby does, move for declaratory relief regarding its rights and  
6 obligations under the Judgment entered in the above-captioned action on December 23, 2015 and  
7 Watermaster Resolution No. R-18-04 regarding the payment of Replacement Water Assessments by  
8 Phelan for 2016 and 2017.

9           This Motion is based on this Notice, the attached Memorandum of Points and Authorities,  
10 Declaration of June S. Ailin and Exhibits 1 through 4, and on any other evidence and argument that  
11 may be presented on or before hearing on this matter.

12  
13 DATED: March 19, 2018

ALESHIRE & WYNDER, LLP  
JUNE S. AILIN  
STEPHEN R. ONSTOT

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16 By:   
17 STEPHEN R. ONSTOT  
18 Attorneys for Phelan Piñon Hills Community  
19 Services District  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

On December 23, 2015, the Court signed a Judgment in the above-captioned action (“Judgment”), which included in Exhibit A to the Judgment the conditions of a physical solution for the Antelope Valley Adjudication Area under which parties would pay “Replacement Water Assessments” in certain circumstances. Phelan contends that under the Judgment it is not obligated to pay Replacement Water Assessments for water pumped during the first two calendar years after entry of the Judgment, which are also the first two years of a seven-year “rampdown period” (i.e., 2016 and 2017) during which no party to the Judgment is required to pay Replacement Water Assessments. On January 24, 2018 the Antelope Valley Watermaster (“Watermaster”) voted to direct staff to impose Replacement Water Assessments (unspecified in amount) on Phelan for 2016 and 2017.

Accordingly, via the instant Motion, Phelan seeks a judicial determination of its rights and obligations under the Judgment regarding replacement water assessments for 2016 and 2017 for the following reasons:

- Section 8.3 of Exhibit A to the Judgment provides: “During the first two Years of the Rampdown Period, no Producer will be subject to a Replacement Water Assessment.”
- Section 3.5.30 of Exhibit A to the Judgment defines “Producer(s)” as “a Party who Produces Groundwater.” It is undisputed that Phelan is a Party and produces groundwater.
- On January 24, 2018, the Watermaster Board adopted Resolution No. R-18-04 imposing Replacement Water Assessments on Phelan for 2016 and 2017.
- In its February 5, 2018 Order After Hearings On January 31, 2018, the Court found the definition of “Producer” in Exhibit A to the Judgment to be unqualified.
- Phelan exhausted its administrative remedies.

Accordingly, a dispute exists between Phelan and the Watermaster as to Phelan's rights and remedies under the Judgment. For the reasons set forth below, Phelan requests that the Court remain consistent with its February 5, 2018 Order and find that Phelan is not subject to Replacement Water Assessments for 2016 and 2017.

**II. STATEMENT OF RELEVANT FACTS**

**A. The December 23, 2015 Judgment Holds That Phelan Is Not Subject To A Replacement Water Assessment During The First Two-Years Of The Seven-Year Rampdown Period**

The first sentence of Section 8.3 of Exhibit A to the Judgment<sup>1</sup> states:

***"During the first two Years of the Rampdown Period no Producer will be subject to a Replacement Water Assessment."***

The "first two Years of the Rampdown Period" are calendar years 2016 and 2017. (See Sections 3.5.55, 8.2, Exhibit 3, pp. 35, 38.) A "Producer" is a "Party who Produces Groundwater." Section 3.5.30. Phelan is a "Party," and Phelan Produces Groundwater." Sections 3.5.27, 3.5.29, 3.5.14, and 6.4.1.2. (Ex. 3, p. 29, 31, 36.) As such, Phelan is a "Producer," and pursuant to the express terms of the Judgment, Producers are not subject to Replacement Water Assessments for 2016 and 2017.

**B. This Court's February 5, 2018 Order Interpreting the Judgment Holds That Phelan Is Not Subject To A Replacement Water Assessment In 2016 and 2017**

On February 5, 2018 this Court ruled on motions related to interpretation of the Judgment, i.e., declaratory relief, for "...the producers cannot pump water from the aquifer not knowing what the water replacement obligations are..." (See Order After Hearings On January 31, 2018 ("Order"), Ex. 2, p. 19, 5:14-15 (emphasis added).) In such ruling, the Court specifically found that "Producers" means parties that produce groundwater and that it is *unqualified* as to what type of "Producers"

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<sup>1</sup> All further references to "Sections" of the Judgment are references to the section numbers in Exhibit A to the Judgment.

receive the benefit of the Rampdown provisions. (*See* Order, Ex. 2, p. 22-23, 8:28-9:3 (emphasis added).) Nothing in the definition of “Producers” excludes Phelan.

Further, this Court’s Order states:

It must be emphasized that the court’s approval of the physical solution in fact, based upon competent evidence, contemplated that *all parties* would have the benefit of the 7 year rampdown process and that the physical solution would achieve a balanced aquifer during the specified period. No party objected or provided contrary evidence or argument during the approval process.

(Exhibit 2, p. 24, 10:3-8 [emph. added].) Because Phelan is a Party, Phelan is not required to pay replacement water assessments for the first two Years, 2016 and 2017.

**C. The Watermaster Votes To Impose An Unspecified Replacement Water Assessment On Phelan**

Despite the plain language of the Judgment, on January 24, 2018 the Watermaster adopted Resolution R-18-04 authorizing its staff to impose Replacement Water Assessments (unspecified in amount) on Phelan for 2016 and 2017. (*See* Exhibit 1 attached hereto and incorporated herein by this reference.)<sup>2</sup>

**III. ARGUMENT**

**A. The Instant Motion Is Timely And Proper**

Section 6.5 of the Judgment states that the Court is to retain jurisdiction over its interpretation and enforcement. (Ex. 3, pp. 36-37.) Section 20.3 states that the Court may review actions of the Watermaster via motion, and Section 20.3.3 states that motions regarding Watermaster actions may be made within 90 days after the action was taken. (Ex. 3, pp. 42, 43.) Accordingly, the instant Motion is timely because the Watermaster’s action directing its staff to impose Replacement Water Assessments took place on January 24, 2018.<sup>3</sup>

<sup>2</sup> Phelan has exhausted its administrative remedies on this issue. *See* Declaration of June S. Ailin attached hereto, ¶¶ 5, 6, 7.

<sup>3</sup> Note that Section 20.3.3 also states that motions to “review assessments” must be made within 30 days after mailing of notice of the assessment; however, because no assessment amount has been

1 Code of Civil Procedure section 1060 states, in relevant part:

2 Any person interested under a written instrument... or who desires a  
3 declaration of his or her rights or duties with respect to another... may, in cases of  
4 actual controversy relating to the legal rights and duties of the respective parties, bring  
5 an ... action for a declaration of his or her rights and duties ... including a  
6 determination of any question of construction or validity arising under the  
7 instrument... The declaration may be had before there has been any breach of the  
8 obligation in respect to which said declaration is sought.

9 Accordingly, the instant Motion for declaratory relief is proper to determine Phelan's rights and duties  
10 under the Judgment as to Replacement Water Assessments for 2016 and 2017.

11 **B. Pursuant To Customary Rules Of Document Construction, Phelan Is Not Subject**  
12 **To Replacement Water Assessments for 2016 and 2017**

13 **1. The "Plain Meaning" of Section 8.3 Dictates Its Interpretation.**

14 It is basic hornbook law that the plain meaning of a provision prevails when it is clear and  
15 unambiguous. (*People v. Superior Court* (Ghilotti) (2002) 27 Cal.4th 888, 905.) The first sentence of  
16 Section 8.3 of the Judgment clearly and unambiguously states:

17 "During the first two Years of the Rampdown Period no Producer will be subject to a  
18 Replacement Water Assessment."

19 (Ex. 3, p. 38.)

20 This language is not modified in any way and is, indeed, quite emphatic. Code of Civil  
21 Procedure section 1861 states:

22 The terms of a writing are presumed to have been used in their primary and general  
23 acceptance, but evidence is nevertheless admissible that they have a local, technical,  
24 or otherwise peculiar signification, and were so used and understood in the particular  
25 instance, in which case the agreement must be construed accordingly.

26 \_\_\_\_\_  
27 specified or imposed as to Phelan for 2016 and 2017, there was no notice of assessment mailed and,  
28 hence, there is no assessment to be reviewed. The instant Motion is for declaratory relief, not a  
challenge to an assessment amount. As such, the 90 day limitations period applies.

As noted above, in this case, the parties were meticulous in defining terms applicable to Section 8.3, specifically defining “Year,” “Party,” “Producer,” “Produce(d),” and “Groundwater” among others. (Ex. 3, pp. 29, 31, 33.) There is no ambiguity or uncertainty in such definitions; in fact, the very purpose for defining a term is to make sure the term is used in a manner consistent with the parties’ intent. As such, there can be no doubt that Phelan is a “Producer,” a Party that produces Groundwater. “Producer” is not limited to Parties that have Production Rights.

Importantly, in its February 5, 2018 Order, the Court read Section 8.3 exactly the same way when determining that public water suppliers are included in the provisions of Section 8.3, stating that it “specifically refers to producers *without qualification*.” (Order, Ex. 2, pp. 21-22, 7:22-8:1 [emph. added].) The Court should render the same holding here, as consistency in interpretation of the Judgment is important in making it intelligible to those who are bound by it.

In sum, the plain meaning of the first sentence of Section 8.3 compels the conclusion that Phelan is not subject to Replacement Water Assessments for Groundwater pumped in 2016 and 2017.

**2. All Parts of the Judgment Must Be Given Effect , If Reasonable To Do So.**

Entry of the Judgment was not unilaterally directed by the Court, it was *stipulated to* by parties representing a substantial portion of the production of groundwater in the basin. Such circumstance is important, for it may reasonably be inferred that the stipulating parties knew *exactly* what the Judgment said, including the simple statement in Section 8.3 that during the first two years of the Rampdown Period, no Producer will be subject to a Replacement Water Assessment. The Judgment does *not* state that “no Producer except Phelan” will be subject to the assessments, nor does it say that only Producers with Production Right or Producers subject to pumping restrictions during the Rampdown Period are subject to the assessments.<sup>4</sup> Section 6.4.1.2 (Ex. 3, p. 36) does not state Phelan

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<sup>4</sup> Other terms in the Judgment potentially pertinent to the issue before the Court are similarly defined without restriction. A “Party (Parties)” is “[a] Person(s) that has (have) been named and served or otherwise properly joined, or has (have) become subject to this Judgment and any prior judgments of this Court in this Action and all their respective heirs, successors-in-interest and assigns. For purposes of this Judgment, a ‘Person’ includes any natural person, firm, association, organization, joint venture, partnership, business, trust, corporation, or public entity.” Judgment, Section 3.5.27. “Produce(d)” means “[t]o pump Groundwater for existing and future reasonable beneficial uses.” Judgment, Section 3.5.29.



1 is to be treated different from other parties for purposes of the commencement of liability for  
 2 Replacement Water Assessments. In addition, none of the terms pertinent to resolution of the issue  
 3 now before the Court are limited so as to apply only to stipulating parties. Certainly, if the intent of  
 4 the parties was to exclude Phelan from the assessment “grace period,” they could have said so in the  
 5 Judgment. But they did not. Code of Civil Procedure section 1858 states:

6 In the construction of a statute or instrument, the office of the Judge is simply to  
 7 ascertain and declare what is in terms or in substance contained therein, not to insert  
 8 what has been omitted, or to omit what has been inserted; and where there are several  
 9 provisions or particulars, such a construction is, if possible, to be adopted as will give  
 10 effect to all.

11 Given this law, the question then becomes “what effect can possibly be given to the first sentence of  
 12 Section 8.3 *other than* to include Phelan in the class of Producers that are not required to pay  
 13 Replacement Water Assessments in 2016 and 2017?” The answer is: none. As Code of Civil  
 14 Procedure section 1858 teaches, it is not for the court “...to insert what has been omitted, or to omit  
 15 what has been inserted...”

16 Accordingly, this Court should refrain from adding qualifiers to the defined terms “Party” and  
 17 “Producer” when none exist, and should not omit Phelan from the class of “Parties” and “Producers”  
 18 when there is no evidence of any Party’s, or the Court’s, intent to do so.

#### 19 **IV. CONCLUSION**

20 For all of the foregoing reasons, the Court should find that the Judgment does not obligate  
 21 Phelan to pay Replacement Water Assessments for 2016 and 2017 and that Watermaster Resolution  
 22 No. R-18-04 is invalid and of no force and effect because it is inconsistent with the Judgment.

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1 DATED: March 19, 2018

ALESHIRE & WYNDER, LLP  
JUNE S. AILIN  
STEPHEN R. ONSTOT

By:



STEPHEN R. ONSTOT

Attorneys for Phelan Piñon Hills Community  
Services District

ALESHIRE &  
WYNDER, LLP



**DECLARATION OF JUNE S. AILIN**

I, June S. Ailin, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a partner with Aleshire & Wynder, LLP, attorneys of record for Defendant and Cross-Complainant Phelan Piñon Hills Community Services District. I have personal knowledge of the facts set forth herein. If called as a witness, I could and would competently testify to the matters stated herein. I make this declaration in support of Phelan's Motion for Declaratory Relief Re Judgment Entered December 23, 20015 and Water master Resolution No. R-18-04 Regarding Replacement Water Assessments for 2016 and 2017.

2. Attached hereto as Exhibit 1 is a true and correct copy of Resolution No. R-18-04 of the Antelope Valley Watermaster, dated January 24, 2018, Re: Replacement Water Assessments for the Phelan Pinon Hills Community Services District.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Order After Hearings On January 31, 2018 in the above-captioned matter entered on February 5, 2018.

4. Attached hereto as Exhibit 3 is a true and correct copy of excerpts from Exhibit A to the Judgment entered on December 28, 2015 containing the portions of that document pertinent to this Motion.


5. In July 2017, the issue of whether Phelan is liable for Replacement Water Assessments for 2016 and 2017 came up in the context of the Watermaster's 2016 draft annual report. I sent a letter to the Watermaster Engineer on this issue dated July 19, 2017. On August 23, 2017, at a meeting of the Watermaster Board, the question whether Phelan is liable for Replacement Water Assessments for 2016 and 2017 was presented to the Watermaster Board as an agenda item. I was present at that meeting and addressed the Watermaster Board on Phelan's behalf on that issue, taking the position that Phelan, like any other Producer, was not required to pay Replacement Water Assessments for 2016 and 2017, the first two years of the Rampdown Period.

6. Attached hereto as Exhibit 4 is a true and correct copy of the staff report to the Watermaster Board presented at the August 23, 2017, Watermaster Board meeting, with a copy of my July 19, 2017 letter attached.

7. The issue of whether Phelan is liable for Replacement Water Assessments for 2016 and 2017 came up again on the Watermaster Board's agenda for January 24, 2018, with the proposal that the Watermaster Board adopt Resolution No. R-18-04. I attended the January 24, 2018 meeting of the Watermaster Board and again addressed the Watermaster Board on Phelan's behalf on that issue, again taking the position that Phelan, like any other Producer, was not required to pay Replacement Water Assessments for 2016 and 2017, the first two years of the Rampdown Period.

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

Executed on this 19 th day of March, 2018, at El Segundo, California.

  
June S. Ailin

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I, Judy C. Carter,

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2361 Rosecrans Ave., Suite 475, El Segundo, CA 90245.

On March 20, 2018, I served the within document(s) described as **PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT'S NOTICE OF MOTION AND MOTION FOR DECLARATORY RELIEF RE JUDGMENT ENTERED DECEMBER 23, 2015 AND WATERMASTER RESOLUTION NO. R-18-04 REGARDING REPLACEMENT WATER ASSESSMENTS FOR 2016 AND 2017; DECLARATION OF JUNE S. AILIN IN SUPPORT THEREOF** on the interested parties in this action as follows:

**BY ELECTRONIC SERVICE:** By posting the document(s) listed above to the Antelope Valley WaterMaster website in regard to Antelope Valley Groundwater matter with e-service to all parties listed on the websites Service List. Electronic service and electronic posting completed through [www.avwatermaster.org](http://www.avwatermaster.org) via Glotrans.

**BY OVERNIGHT DELIVERY:** I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to Craig Andrews Parton listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

Craig Andrews Parton  
Price Postel & Parma  
200 E. Carrillo St., Suite 400  
Santa Barbara, CA 93101  
Tel: (805) 962-0011  
(805) 965-3978

*Attorney for Watermaster Board for the Antelope Valley Groundwater Adjudication*

**VIA OVERNIGHT MAIL**

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

Executed on March 20, 2018, at El Segundo, California.

  
Judy C. Carter