

EXHIBIT 4



August 17, 2017

REVISED DRAFT MEMORANDUM

To: Dennis LaMoreaux, Chair
Antelope Valley Watermaster Advisory Committee

Robert Parris, Chair
Antelope Valley Watermaster Board of Directors

From: Phyllis Stanin, Vice President/Principal Geologist
Kate White, Senior Engineer
Todd Groundwater, Watermaster Engineer

Re: Phelan Piñon Hills Community Services District
2016 Production and Potential Replacement Water Obligation

In the Draft Antelope Valley Watermaster 2016 Annual Report (published on the Watermaster website July 12, 2017), Todd Groundwater listed 2016 production of 770.63 AF for Phelan Piñon Hills Community Services District (Phelan). The Judgment allows Phelan to produce up to 1,200 AFY for its service area, providing no Material Injury and subject to a Replacement Water Assessment (§9.2). Because of this section in the Judgment, Todd Groundwater assumed that the production was subject to a Replacement Water Assessment; accordingly, Phelan was identified in the Draft report as having a Replacement Water Obligation (see Appendix J and Sections 1.5.2 and 3.3.2 of the Draft report).

On July 19, Todd Groundwater discussed the issue of Phelan's Replacement Water Obligation with June S. Ailin, Partner with Aleshire & Wynder LLP and legal counsel to Phelan. In that conversation and in a follow-up letter dated July 19, 2017, Ms. Ailin requested corrections to the Administrative Draft¹ 2016 Annual Report. In particular, she requested that Phelan be identified as a "Producer" as defined by the Judgment and stated that no Producer is subject to a Replacement Water Assessment during the first two years of the Rampdown Period (i.e., 2016 and 2017). Ms. Ailin's letter is attached to this memorandum as **Attachment 1**.

At a Public Hearing on the Draft 2016 Annual Report (July 26, 2017), Mr. Don Bartz, Phelan General Manager, reiterated its position that, as a Producer, it was eligible for a two-year exemption from a Replacement Water Assessment. He notes that Phelan has been pumping

¹ The written comments by Aleshire & Wynder LLP were on the *Administrative Draft* report rather than the *Draft* report. Nonetheless, both versions contained the same information on Phelan Piñon Hills CSD.

its Antelope Valley well (Well 14) under the assumption that a Replacement Water Obligation was not applicable. Todd Groundwater noted Phelan's concerns in the Final 2016 Annual Report.

Mr. Bartz, a Board member of Phelan, and legal counsel (via teleconference) attended the August 16, 2017 Advisory Committee meeting. Mr. Bartz addressed the committee, providing additional details and the opportunity to answer questions. He reiterated many of the points in the memorandum.

The purpose of this memorandum is to summarize relevant portions of the Judgment and other information to support discussion by the Advisory Committee and determination of the Watermaster Board regarding Replacement Water Obligations, if any, for Phelan's 2016 and 2017 production. It is recognized that this may require a legal determination.

RELEVANT PORTIONS OF THE JUDGMENT

The Phelan service area is located in San Bernardino County, along the southeastern boundary of the Antelope Valley Adjudication Area but outside of the adjudicated area. As noted in the Judgment, Phelan owns land with one well (i.e., Well 14) inside of the Adjudication Area and has a right to pump groundwater from that well under the terms of the Court-approved Physical Solution of the Final Judgment. The Physical Solution allows Phelan CSD² to export groundwater from the Adjudication Area for delivery to its service area outside of the adjudication boundary, subject to the following conditions (§6.4.1.2):

- pumping does not exceed 1,200 AFY,
- pumping does not cause Material Injury,
- Phelan pays a Replacement Water Assessment pursuant to Paragraph 9.2,
- Phelan pays any other costs deemed necessary to protect Production Rights decreed in the Judgment.

The Court's Statement of Decision (§V) provides a discussion of Phelan's water rights. In that discussion, the Statement of Decision finds "Phelan Pifion Hills does not have water rights to pump groundwater and export it from the Adjudication Area or to an area of use other than on its property where Well 14 is located with the Adjudication area."

Paragraph 9.2 of the Judgment notes that Replacement Water Assessments are used "to ensure that each Party may fully exercise its Production Right." The Judgment summarizes the Replacement Water Assessment as follows:

Except as is determined to be exempt during the Rampdown period pursuant to the Drought Program provided for in Paragraph 8.4, the Watermaster shall impose the Replacement Water Assessment on any Producer whose Production of Groundwater from the Basin in any Year is in excess of the

² Also allows export by Boron CSD.

sum of such Producer's Production Right and Imported Water Return Flow available in that Year... (§9.2).

The Judgment continues with a discussion of certain exemptions and conditions regarding the Federal water right. It also notes that Replacement Water Assessments do not apply to "Stored Water, In-Lieu Production or Production of Imported Water Return Flows" (§9.2). Phelan is not mentioned specifically in this paragraph of the Judgment.

Paragraph 9.2 above mentions an exemption to a Replacement Water Assessment during the Rampdown period pursuant to the Drought Program, as documented in Paragraph 8.4 of the Judgment. Paragraph 8.4 provides details for implementation of a drought water management program only during the Rampdown period that affects operations and Replacement Water Assessments of the participating Public Water Suppliers. As stated in Paragraph 8.4.2, the Drought Program Participants each agree that, in order to minimize the amount of excess groundwater production in the Basin, they will use all water made available by AVEK at no more than the current AVEK treated water rate in any Year in which they produce groundwater in excess of their respective rights under the Judgment. The exemption from a Replacement Water Assessment allowed to the Drought Program participants is further explained in Paragraph 8.4.3.

An exemption from the Replacement Water Assessment in 2016 and 2017 is provided as the first sentence in Paragraph 8.3, which is titled "**Reduction of Production During Rampdown**" and states, as follows:

During the first two Years of the Rampdown Period no Producer will be subject to a Replacement Water Assessment. During Years three through seven of the Rampdown Period, the amount that each Party may Produce from the Native Safe Yield will be progressively reduced, as necessary, in equal annual increments from its Pre-Rampdown Production to its Production Right. (emphasis added, §8.3).

Because no reference is made to the Drought Program Participants in Paragraph 8.3, it appears that the exemption from a Replacement Water Assessment in Paragraph 8.3 is not related to the Drought Program exemption referred to in Paragraph 8.4.

Given that Phelan's production is not subject to rampdown and is not part of the Native Safe Yield as defined in the Judgment, it was not obvious to Todd Groundwater that the exemption to a Replacement Water Assessment as documented in Paragraph 8.3 in the Judgment was applicable to Phelan. However, as emphasized in Ms. Ailin's letter, the first sentence is clear that no Producer will be subject to a Replacement Water Assessment during the first two years of the Judgment (i.e., 2016 and 2017) (see **Attachment 1**).

According to the Judgment, *Producer* is defined simply as "a Party who Produces Groundwater." Given this definition, it seems reasonable to conclude that Phelan is a *Producer* and, therefore, may be exempt from the Replacement Water Assessment for 2016 and 2017.

PHELAN COMMENTS AT PUBLIC HEARING AND ADVISORY COMMITTEE MEETING

Phelan General Manager, Don Bartz, provided comments on this issue at the Watermaster Board meeting on July 26, 2017. Mr. Bartz stated that Phelan has been pumping groundwater from its Well 14 based on the assumption that it was eligible for a two-year exemption from Replacement Water Assessments. Mr. Bartz noted that Phelan would have operated its wells differently if it had thought that the production was subject to a Replacement Water Assessment. Further, he noted that the costs for Replacement Water have not yet been determined; he objected to the application of yet-to-be-determined costs retroactively, given that Phelan reasonably assumed that it was exempt from such costs.

Mr. Bartz and a member of the Phelan Board of Directors attended the meeting of the Advisory Committee on August 16, 2017; legal counsel for Phelan attended via teleconference. At the meeting, Mr. Bartz reiterated many of the points summarized herein. He also wanted to assure the committee that Phelan was working hard in these first two years of the Rampdown Period to move all of its production into its service area outside of the Antelope Valley Adjudication Area. Mr. Bartz explained that it had been managing its wellfield and installing new infrastructure to mitigate water quality issues (e.g., chromium). Over the last two years, Phelan has decreased production in Well 14 significantly, and anticipates using Well 14 primarily for fire protection only in the future. Mr. Bartz answered questions from the committee and emphasized that they are working hard to move production out of the Adjudication Area; they believed that they had a two-year window free of a Replacement Water Obligation to do so. Phelan realizes that a legal determination may be required to resolve this issue.

WATER ACCOUNTING RECORDS

Once the applicability of the Replacement Water Assessment has been determined as it relates to Phelan, Todd Groundwater will adjust its water accounting database accordingly. Todd Groundwater will work with Administrative staff on proper invoicing or adjustments to Phelan's account, as applicable. These records will be included in the 2017 Annual Report. Phelan is requested to continue reporting production from Well 14 to the Antelope Valley Watermaster.

Attachment 1: Letter to Phyllis Stanin, Todd Groundwater, from June Ailin, Aleshire & Wynder, LLP, Re: Administrative Draft of Antelope Valley Watermaster 2016 Annual Report – References to Phelan Piñon Hills Community Services District, July 19, 2017.



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July 19, 2017

VIA E-MAIL AND U.S. MAIL

Phyllis Stanin
Vice President, Principal Geologist
Todd Groundwater
2490 Mariner Square Loop, Suite 215
Alameda, CA 94501-1080

Re: Administrative Draft of Antelope Valley Watermaster 2016 Annual Report –
References to Phelan Piñon Hills Community Services District

Dear Ms. Stanin:

This office serves as legal counsel to Phelan Piñon Hills Community Services District (“Phelan”) in connection with the Antelope Valley Groundwater Adjudication. We have reviewed the Administrative Draft of the Antelope Valley Watermaster 2016 Annual Report (“Administrative Draft”). The purpose of this letter is to address inaccurate references to Phelan in the Administrative Draft with respect to Replacement Water Assessments.

Section 1.3.2 and Section 3.3.2 of the Administrative Draft both state that Phelan “is not a Producer and does not have Production Rights.” In addition, Section 3.3.2 notes that Producers do not have to pay Replacement Water Assessments for 2016 and 2017, but goes on to suggest that Phelan will be obligated to pay Replacement Water Assessments for those years.

In fact, Phelan is a “Producer” as that term is defined in Section 3.5.30 of the Judgment and Physical Solution (“Judgment”). A “Producer” is “a Party who Produces Groundwater.” The term “Producer” is not limited in that definition or elsewhere in the Judgment to parties that have “Production Rights” as defined in Section 3.5.32 of the Judgment. The defined terms in the definition of “Producer” are similarly broadly defined and Phelan is within the scope of each of those terms.

Section 8.3 of the Judgment states: “During the first two Years of the Rampdown Period **no Producer** will be subject to a Replacement Water Assessments.” This emphatic language is not modified in any way. The deferral of Replacement Water Assessments is not limited to Producers who have Production Rights; it is applicable to all Producers.

Phyllis Stanin
July 19, 2017
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Accordingly, the final Watermaster 2016 Annual Report, should contain no references to Phelan in Sections 1.3.2 and 3.3.2, and Appendix J, which purports to identify Replacement Water Obligations, should be deleted in its entirety. Phelan is not subject to any different treatment at this time from any other Producer and should not be inaccurately singled out in the 2016 Annual Report.

Very truly yours,

ALESHIRE & WYNDER, LLP



June S. Ailin
Partner

JSA

cc: Antelope Valley Watermaster (via overnight)
c/o Antelope Valley-East Kern Water Agency
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