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DISTRICT NO. 40

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DISTRICT NO. 40

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER CASES

Included Actions:

Los Angeles County Waterworks District No. 40 v.
Diamond Farming Co., Superior Court of
California, County of Los Angeles, Case No. BC
325201;

Los Angeles County Waterworks District No. 40 v.
Diamond Farming Co., Superior Court of
California, County of Kern, 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.,
Superior Court of California, County of Riverside,
Case Nos. RIC 353 840, RIC 344 436, RIC 344
668;

RICHARD WOOD, on behalf of himself and all
other similarly situated v. **A.V. Materials, Inc.**, et
al., Superior Court of California, County of Los
Angeles, Case No. BC509546

Judicial Council Coordination
Proceeding No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053
Assigned to the Honorable Jack Komar

**PUBLIC WATER SUPPLIERS'
REPLY TO PHELAN PIÑON
HILLS COMMUNITY SERVICES
DISTRICT'S OPPOSITION TO
MOTION FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT**

Date: March 26, 2015
Time: 10 :00 a.m.
Place: Superior Court of California
County of Los Angeles
111 N. Hill Street, Rm. 222
Los Angeles, CA 90012

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1 Los Angeles County Waterworks District No. 40 ("District No. 40"), City of Palmdale,
2 City of Lancaster, Rosamond Community Services District, Littlerock Creek Irrigation District,
3 Palm Ranch Irrigation District, Desert Lake Community Services District, North Edwards Water
4 District, Llano Del Rio Water Company, Llano Mutual Water Company, Big Rock Mutual Water
5 Company, Palmdale Water District, Quartz Hill Water District, and California Water Service
6 Company (collectively "Public Water Suppliers") hereby submit their reply to the Phelan Piñon
7 Hills Community Services District's ("Phelan Piñon") Opposition to Motion for Preliminary
8 Approval of Class Settlement.

9 **I. THERE HAS BEEN NO BREACH OF THE EARLIER COURT-APPROVED**
10 **PARTIAL WOOD CLASS SETTLEMENT AGREEMENT BECAUSE THE**
11 **WOOD CLASS HAS NOT CHALLENGED PHELAN PIÑON'S WATER CLAIM**

12 Phelan Piñon, certain Public Water Suppliers and the Wood Class have entered into a
13 court-approved settlement agreement ("2013 Partial Class Settlement"), in which the Wood Class
14 agreed "not to contest each Settling Defendant's right to pump [certain amounts] annually from
15 the Native Safe Yield free of any Replacement Water Assessment, but only if competent evidence
16 is presented to and incorporated by the Court in the Final Judgment." (Phelan Piñon Opposition,
17 Declaration of Wesley A. Miliband ("Miliband Decl."), Ex. A at 8:17-19 [emphasis added].) The
18 Public Water Suppliers are unaware of any challenges by the Wood Class to Phelan Piñon's water
19 claim after the Court approved the 2013 Partial Class Settlement. The Wood Class did not
20 participate in the phase of trial regarding Phelan Piñon's appropriative and return flow water right
21 claims. Nor has the Wood Class challenged any of Phelan Piñon's water right claims that have
22 not yet been tried.

23
24 **II. PHELAN PIÑON'S HAS NOT PRODUCED COMPETENT EVIDENCE THAT**
25 **PHELAN PIÑON IS ENTITLED TO A WATER RIGHT**

26 As the Court is aware, Phelan Piñon withdrew its prescriptive right claim and
27 unsuccessfully litigated its appropriative and return flow water right claims. To date, Phelan
28 Piñon has not produced competent evidence to establish its claimed right to produce 1,053 acre-

1 feet per year of groundwater.¹ Until Phelan Piñon establishes such right, a determination as to
2 whether the proposed Wood Class Settlement currently pending before the Court (“Proposed
3 2015 Wood Class Settlement”) is inconsistent with Phelan Piñon’s settlement with the Wood
4 Class is premature.

5 **III. PHELAN PIÑON’S OPPOSITION DOES NOT ADDRESS THE ISSUE PENDING**
6 **BEFORE THE COURT**

7 The scope of the Court’s review for a Motion for Preliminary Approval is limited to
8 whether the Proposed 2015 Wood Class Settlement falls within the range of reasonableness for
9 possible final approval, and “thus whether it is worthwhile to issue notice to the class of the terms
10 and conditions as well as schedule a formal fairness hearing.” (1-14 Cabraser, California Class
11 Actions and Coordinated Proceedings (2d ed), § 14.02 (2014) [citations omitted]; *see also*,
12 *Holden v. Burlington N., Inc.* (D. Minn. 1987) 665 F. Supp. 1398, 1402; *In re Traffic Executive*
13 *Asso.--Eastern Railroads* (2d Cir. 1980) 627 F.2d 631, 634 [a court’s preliminary approval of a
14 proposed class settlement “is at most a determination that there is what might be termed ‘probable
15 cause’” of fairness and reasonableness]; *In re Montgomery County Real Estate Antitrust*
16 *Litigation* (D. Md. 1979) 83 F.R.D. 305, 313.)²

17 A proposed settlement is presumed to be reasonable and fair, if: “(1) the settlement is
18 reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow
19 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
20 the percentage of [class member] objectors is small.” (*Wershba v. Apple Computer, Inc.* (2001)
21 91 Cal.App.4th 224, 245-46.) Phelan Piñon’s Opposition fails to show that the Proposed 2015
22 Wood Class Settlement is unfair or unreasonable to the Wood Class or why the Court should not
23

24 ¹ The remaining causes of action in Phelan Piñon’s Cross-Complaint that have not been withdrawn or determined by
25 the Court are: a declaratory relief for a physical solution; a declaratory relief for a municipal priority; a declaratory
26 relief for use to storage space; a declaratory relief of unreasonable use of water; and a declaratory relief for the basin
27 boundary.

28 ² California courts may look to federal rules of procedure regarding class actions and the federal cases interpreting
them for guidance or “where California precedent is lacking.” (*Wershba, supra*, 91 Cal. App. 4th at 239-240; *see*
also, Apple Computer, Inc. v. Superior Court (2005) 126 Cal. App. 4th 1253, 1264 [“California courts may look to
federal authority for guidance on matters involving class action procedures.”] [citation and quotation marks
omitted].)

1 presume the settlement, reached after an intensive year-long negotiation and multi-year litigation,
2 is unfair or unreasonable.

3 To the extent that the Court finds arguments raised in Phelan Piñon's Opposition
4 constitute an objection to the proposed Stipulated Judgment and Physical Solution submitted by
5 the United States and District No. 40 on behalf of the approximately 140 stipulating parties
6 ("Proposed Judgment and Physical Solution"), the Court should hear Phelan Piñon's objection on
7 the same date as other potential objections to the Proposed Judgment and Physical Solution,
8 which is scheduled for August 3, 2015.

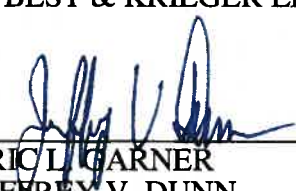
9 **IV. CONCLUSION**

10 For the reasons stated above, the Public Water Suppliers respectfully request that the
11 Court preliminarily approve the Wood Class Settlement.

12 Dated: March 19, 2015

BEST BEST & KRIEGER LLP

13
14 By


15 ERIC L. GARNER
16 JEFFREY V. DUNN
17 WENDY Y. WANG
18 Attorneys for
19 LOS ANGELES COUNTY
20 WATERWORKS DISTRICT NO. 40
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PROOF OF SERVICE

I, Rosanna R. Pérez, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 300 South Grand Avenue, 25th Floor, Los Angeles, California 0 90071. On March 19, 2015, I served the within document(s):

**PUBLIC WATER SUPPLIERS' REPLY TO PHELAN PIÑON HILLS
COMMUNITY SERVICES DISTRICT'S OPPOSITION TO MOTION FOR
PRELIMINARY APPROVAL OF CLASS SETTLEMENT**



by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 19, 2015, at Los Angeles, California.



Rosanna R. Pérez

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