

1 KAMALA D. HARRIS
Attorney General of California
2 ERIC M. KATZ
Supervising Deputy Attorney General
3 MARILYN H. LEVIN (SBN 92800)
NOAH GOLDEN-KRASNER (SBN 217556)
4 300 South Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-2614
Fax: (213) 897-2802
6 E-mail: Marilyn.Levin@doj.ca.gov
E-mail: Noah.Goldenkrasner@doj.ca.gov
7 *Attorneys for State of California and State of
California 50th District Agricultural Association*

EXEMPT FROM FILING FEES
[Gov. Code, § 6103]

8
9 ADDITIONAL PARTIES LISTED ON PAGE 2 HEREOF

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

12
13 **Coordination Proceeding
Special Title (Rule 3.550(c))**

14 **ANTELOPE VALLEY GROUNDWATER
15 CASES**

16 **Included Actions:**

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

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

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

25 -----
26 **AND RELATED ACTIONS.**
27
28

Judicial Council Coordination
Proceeding No. 4408

Santa Clara Case No. 1-05-CV-049053

**JOINT OPPOSITION OF STATE OF
CALIFORNIA, CITY OF LOS ANGELES,
COUNTY SANITATION DISTRICTS OF
LOS ANGELES COUNTY NOS. 14 & 20,
AND ANTELOPE VALLEY-EAST KERN
WATER AGENCY TO BLUM TRUST'S
MOTION FOR SUMMARY JUDGMENT**

[Assigned for All Purposes to the Honorable
Jack Komar]

Hearing: December 22, 2014

Time: 9:00 a.m.

Place: Los Angeles County Superior Court
Department:

Action Filed: October 26, 2005

1
2 JANET K. GOLDSMITH, State Bar No. 065959
3 KRONICK, MOSKOVITZ, TIEDEMANN &
4 GIRARD A Professional Corporation
5 400 Capitol Mall, 27th Floor
6 Sacramento, CA 95814-4416
7 Telephone: (916) 321-4500
8 Facsimile: (916) 321-4555

9
10 MICHAEL N. FEUER, State Bar No. 111529
11 Los Angeles City Attorney RICHARD M. BROWN, General Counsel,
12 Water and Power
13 RAYMOND ILGUNAS, General Counsel,
14 Los Angeles World Airports
15 1 World Way, Room 104
16 Los Angeles, CA 90045-5803
17 Attorneys for Cross-Defendants, CITY OF LOS
18 ANGELES and LOS ANGELES WORLD
19 AIRPORTS

20
21 ELLISON, SCHNEIDER & HARRIS LLP
22 Christopher M. Sanders, Bar No. 195990
23 2600 Capitol Avenue, Suite 400
24 Sacramento, California 95816
25 Telephone: (916) 447-2166
26 Facsimile: (916) 447-3512
27 Attorneys for Cross-Defendant
28 COUNTY SANITATION DISTRICTS OF
LOS ANGELES COUNTY NOS. 14 & 20

William J. Brunick, Esq. (State Bar No. 46289)
BRUNICK, McELHANEY & KENNEDY PLC
1839 Commercenter West
San Bernardino, California 92408-3303

MAILING:
P.O. Box 13130
San Bernardino, California 92423-3130

Telephone: (909) 889-8301
Facsimile: (909) 388-1889
E-Mail: bbrunick@bmklawplc.com
Attorneys for Cross-Complainant,
ANTELOPE VALLEY-EAST KERN WATER
AGENCY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION

Cross-Defendants, State of California, State of California 50th District Agricultural Association (collectively, State of California), the City of Los Angeles, by and through its Department of Airports, Los Angeles World Airports (LAWA) and the County Sanitation Districts of Los Angeles County Nos. 14 and 20 (LA County Sanitation), and Cross-Complainant Antelope Valley-East Kern Water Agency (AVEK) (collectively, Public Overliers) submit the following Opposition to the Motion of Blum Trust for Summary Judgment in this matter (Blum Trust Motion).

ARGUMENT

Summary judgment requires that either a Party prove that an “action has no merit” or that “there is no triable issue as to any material fact.” (Code Civil Proc., § 437c (c).) It must resolve the action in its entirety. (*Ibid.*) Summary adjudication must completely dispose of a cause of action; if a cause of action is not shown to be barred in its entirety, no order for summary judgment or summary adjudication can be entered. (*Id.* at 437c (f)(1); *McCaskey v. California State Auto Ass’n* (2010) 189 Cal.App.4th 947, 975.) As the party moving for summary judgment/summary adjudication on PWS’ cross-complaint, Blum Trust has the burden to show, by competent and admissible evidence, that it is entitled to judgment with respect to all theories of liability asserted in this action. (*Lopez v. Superior Court* (2008) 45 Cal.App.4th 705, 717.) Blum Trust’s evidence must be strictly construed with any doubts resolved in the Public Overliers’ favor. (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64.) The Public Overliers’ have no burden until Blum Trust shows a complete defense to a cause of action. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 840.) Further, Blum Trust has the burden of proof to quiet title to a production right as an overlying landowner in an overdrafted basin. *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 285; Cal. Evid. Code section 500).

1 **I. BLUM TRUST'S MOTION DOES NOT COMPLETELY DISPOSE OF A CAUSE**
2 **OF ACTION OR THE ACTION IN ITS ENTIRETY AND DOES NOT SUPPORT A**
3 **PRODUCTION RIGHT IN AN OVERDRAFTED BASIN**

4 Blum Trust's Memorandum of Points and Authorities in Support of its Motion for
5 Summary Judgment (Blum Memorandum) does not coherently state what action or actions have
6 no merit or for which actions there are no triable issues of material fact as required by Code of
7 Civil Procedure Section 437c. Neither does the Blum Memorandum meaningfully discuss and
8 seek to dispose of any cause of action in this consolidated proceeding. The Blum Memorandum
9 begins its argument with the ultimate conclusion -- stating that it is entitled to groundwater
10 production rights in this comprehensive adjudication. (Blum Memorandum pp. 8-11.) Blum
11 Trust, however, has not brought a Complaint seeking such a production right in this case. Blum
12 Trust further does not even mention the lawsuits brought by other overlying landowners seeking
13 similar rights, such as the Complaints by Diamond Farming Company and Bolthouse Farms, Inc.
14 Blum Trust's Memorandum does not explain how its groundwater production could be construed
15 to be a complete defense to any of the causes of action brought by the Public Water Suppliers in
16 their First Amended Cross-Complaint in this matter. Finally, Blum Trust states no defenses to
17 AVEK's Cross-Complaint in this coordinated proceeding.

18 The Court in this consolidated proceeding, as the trier of fact in a complex case, has the
19 flexibility to hear evidence and specific issues in the order and in the manner it wishes at trial.
20 However, seeking summary judgment that does not dispose of a cause of action or defense or an
21 entire action is improper and is seeking merely an advisory opinion as to one or more issues of
22 law or fact. Code of Civil Procedure Section 437c is clear on how it is to be used by courts--if a
23 cause of action is not shown to be barred in its entirety, no order for summary judgment or
24 summary adjudication can be entered, period. (*Id.* at 437c (f)(1); *McCaskey v. California State*
25 *Auto Ass'n* (2010) 189 Cal.App.4th 947, 975.) The proper place and time for Blum Trust's
26 unique issues of law and facts are at trial. Only at trial can the entire causes of action involving
27 prescription, Federal Reserved Rights, return flows and correlative rights, all of which affect
28 Blum Trust's rights to groundwater be resolved.

1 Second, Blum Trust argues for judicial and equitable estoppel against Bolthouse Farms and
2 the Public Water Suppliers. Regarding Bolthouse Farms, once again no causes of action or
3 defenses are mentioned. (Blum Trust Memorandum pp. 12-15.) (If it involves Blum Trust's
4 cross-complaint against Bolthouse Farms, then it is not properly before this court in these
5 consolidated proceedings as that action was never consolidated with the other actions seeking
6 adjudication of groundwater rights.) Further, Blum Trust mentions no facts or evidence to
7 support a case for judicial or equitable estoppel against the Public Water Suppliers, and once
8 again fails to mention any specific cause of action for which it seeks summary adjudication.

9 **II. BLUM TRUST CANNOT PROVE 531 ACRE-FEET OF PRODUCTION**

10 The remainder of Blum Trust's Memorandum does at least seek to resolve the First through
11 Seventh Causes of Action of the Public Water Suppliers' Cross Complaint against Blum Trust.
12 The Public Overliers do not take a position as to Blum Trust's attempt to resolve those causes of
13 action as against the Public Water Suppliers, but do oppose Blum Trust's conclusions that its
14 water rights would be established were it to prevail on the First through Seventh Causes of Action
15 in the Public Water Suppliers' cross-complaint. Blum Trust argues that because the First through
16 Seventh Causes of Action in the Public Water Suppliers' cross-complaint have no merit, Blum
17 Trust has an overlying right to 531 acre-feet of water in the basin without being subject to
18 reduction. (Blum Trust Memorandum p. 14.) This is simply incorrect. As an overlying
19 landowner, Blum Trust's pumping is still subject to reduction in the same way any other
20 landowner's pumping is subject to reduction in an overdrafted basin.

21 Further, Blum Trust has the burden of proof to quiet title to a production right as an
22 overlying landowner in an overdrafted basin. *City of Santa Maria v. Adam* (2012) 211
23 Cal.App.4th 266, 285; Cal. Evid. Code section 500). At most, Blum Trust has only a correlative
24 share of the Basin's Native Safe Yield.

25 In addition, Blum Trust has not proved as part of any trial, or any affirmative defense in its
26 Blum Trust Motion, that it has in fact produced 531 acre-feet, that it is entitled to a right to its
27 highest production in any one year, what year of production should be utilized by the court to
28 address production claims, what years of production should be produced to defend against claims

1 of prescription, or that it is entitled to claim groundwater pumped from another party's wells.
2 These issues of fact and law will be subjects of further trials related to the remaining Complaints
3 in this consolidated proceeding. Citing to a Case Management Statement of another party is not a
4 citation to law that secures you a production right at any level, let alone at the highest production
5 amount in one year.

6 **III. BLUM TRUST HAS NOT PROVED THAT IT, WM. BOLTHOUSE FARMS, INC.**
7 **AND BOLTHOUSE PROPERTIES LLC ARE A SINGLE FARMING UNIT**

8 Blum Trust also argues that its land and Bolthouse Properties, LLC's land and WM.
9 Bolthouse Farms, Inc.'s farming activities on those lands are one farming unit. For this
10 proposition Blum Trust cites *Pabst v. Finmand* (1922) 190 Cal. 124. *Pabst*, if it stands for
11 anything related to this matter, stands only for the proposition that if a Party owns more than one
12 parcel and uses water from one parcel on another, that use can be counted towards its production
13 of water in that year. The Supreme Court has in fact stated that "Defendants rely on *Pabst v.*
14 *Finmand*, 190 Cal. 124, 211 P. 11, but that case involved a controversy between riparian owners
15 and others making a nonriparian use of the waters of a stream. Since none of the parties to this
16 action are claiming as riparian owners, the rules announced in the *Pabst* case are not applicable
17 here." *City of Los Angeles v. City of Glendale* (1943) 23 Cal.2d 68, 79. Blum Trust cannot rely
18 on *Pabst*. It also does not support Blum Trust's contention that if WM. Bolthouse Farms, Inc.
19 uses water from Bolthouse Properties LLC's wells to farm Blum Trust land that it counts towards
20 Blum Trust's production rights. It does not begin to meet Blum Trust's burden of proof and does
21 not seem to be contemplated at all in the lease agreement.

22 It is also disingenuous for Blum Trust to claim that no dispute as to material facts exists.
23 The settlement agreement between Blum Trust and both Bolthouse Properties LLC and WM.
24 Bolthouse Farms Inc. acknowledges that a dispute exists as to material facts between these parties
25 as to who has the rights to claim pumped groundwater and whether these rights were
26 contractually waived.¹

27 ¹ See Exhibit 10, ¶1.g to Blum Trust Motion for Summary Judgment/Summary
28 Adjudication, which provides:

1 Further, how do the Public Overliers or the Court know whether in fact onions or carrots
2 were even grown on Blum Trust land in those years, and the crop duties that should apply? No
3 admissible facts support Blum Trust's arguments and no foundation was laid for this Court or any
4 Party to make a determination as to the amount of water applied and whether this is a single
5 farming unit. Does Blum Trust have any control over Bolthouse Properties LLC or WM.
6 Bolthouse Farms, Inc. such that it can be called a single farming unit?

7 **IV. BLUM TRUST'S EVIDENCE IS FATALLY DEFICIENT**

8 As stated in the Public Overliers' Objections to Evidence, Opposition to Blum Trust's
9 Request for Judicial Notice and Response to Blum Trust's Separate Statement of Undisputed
10 Facts, Blum Trust's evidence in support of the Blum Motion is fatally flawed. For example, the
11 declaration of Mr. Blum is fatally deficient because it fails to establish any material facts
12 supported by admissible evidence that are based on personal knowledge. (Code Civ. Proc., §
13 437c, subd. (d); Evid. Code § 702, subd. (a).) Code of Civil Procedure 437c, subdivision (d),
14 requires that declarations be based on personal knowledge, supported by admissible evidence.

15 Further, the statements Mr. Blum makes are based upon hearsay evidence unsupported by
16 documentary evidence. As the courts have reiterated, "[n]ot only must it appear that the
17 averments in the affidavit are 'within the personal knowledge of the affiant' (Code Civ. Proc., §
18 437c), thus not hearsay (*Gardenswartz v. Equitable etc. Soc.*, supra 23 Cal.App.2d 353 at p. 750),
19 but, equally important, it must affirmatively appear from the affidavit that affiant 'can testify
20 competently thereto.'" (Code Civ. Proc., § 437c; *House v. Lala* (1960) 180 Cal.App.2d 412, 416;
21 *Southern Pacific Fish Co. v. Fish* (1958) 166 Cal.App.2d 353, 362.)

22
23 (…continued)

24 Plaintiff [Blum Trust] reserves the right in the Groundwater Adjudication
25 to contend on a correlative basis that the volume or amount of groundwater
26 pumped by WM. BOLTHOUSE FARMS, INC. and its sublessees in undertaking
27 its/their farming operations was/is for the beneficial use on the Parcels during the
28 calendar years of January 1, 2002 through December 31, 2009, and such claims
should be allocated and credited to the Parcels under any California water priority
allocation system. Defendants [Bolthouse] dispute the contentions set forth by
Plaintiff in this paragraph and reserve the right to dispute these contentions in the
Groundwater Adjudication. (emphasis added)

1 A naked claim in a declaration that the declarant "would be a competent witness,"
2 unaccompanied by an affirmative showing of his personal knowledge "discloses a lack of
3 legitimate compliance with the statute's strict requirements," justifying denial of a summary
4 judgment motion. In *Southern Pacific Fish Co. v. Fish, supra*, 166 Cal.App.2d 353 at 362 the
5 court reversed a summary judgment because the supporting declaration did not demonstrate the
6 declarant's personal knowledge of the matters to which he was averring. The court examined
7 each averment and concluded that the declarant could not have, or did not demonstrate that he did
8 have, personal knowledge of the facts.

9 Mr. Blum's statement that the facts in his declaration "are within my personal knowledge
10 and if called as a witness herein, I can and will competently testify thereto" must similarly be
11 tested. For example, his knowledge of the WM. Bolthouse Farms' farming operation and WM.
12 Bolthouse Farms' farming methods appear to be based entirely on information he obtained from
13 others, are hearsay and are not based on his own personal knowledge (see Blum Declaration,
14 paragraphs 10, 11 and 12). His statements of the amount of water used on the Blum Trust
15 property is also hearsay, based on records he did not keep, and for which no foundation has been
16 laid for the hearsay exception. Mr. Leggio's declaration does not state that Mr. Leggio is related
17 in any way to WM. Bolthouse Farms, Inc., only to Bolthouse Properties LLC, nor does it lay out
18 how much water was used on Blum Trust's land, or the farming operations WM. Bolthouse
19 Farms, Inc. used on Blum Trust lands. Mr. Shahroody's declaration is based on the same hearsay
20 documents.

21 The vast bulk of Mr. Blum's Declaration consists of argumentation, irrelevant statements,
22 inadmissible legal conclusions (by both Mr. Blum and Mr. Shahroody), inadmissible hearsay and
23 statements that have no evidentiary foundation. The objections to these "facts" are set forth in the
24 Public Overliers' Statement of Objections and Undisputed Facts, Objections to Evidence,
25 Response to Blum Trust's Separate Statement of Undisputed Facts and Opposition to Blum
26 Trust's Request for Judicial Notice, filed concurrently herewith.

1 **CONCLUSION**

2 Blum Trust must prove that an action has no merit or that there is no triable issue as to any
3 material fact. The motion for summary judgment must also resolve the action in its entirety or
4 completely dispose of a cause of action. The motion for summary judgment or summary
5 adjudication by the Blum Trust has not met any of these necessary requisites that would allow the
6 court to grant the motion. The motion, if granted, will not adjudicate the action in its entirety or
7 any of the individual causes of action. The motion has not presented material facts based on
8 admissible evidence. The motion has not demonstrated there is no triable issue as to any material
9 fact. Any one of these reasons, individually, provide sufficient justification for the court to deny
10 the motion, but collectively these reasons mandate that the court deny the motion.

11 \\\
12 \\\
13 \\\
14 \\\
15 \\\
16 \\\
17 \\\
18 \\\
19 \\\
20 \\\
21 \\\
22 \\\
23 \\\
24 \\\
25 \\\
26 \\\
27 \\\
28 \\\

1 Dated: December 8, 2014

OFFICE OF THE ATTORNEY GENERAL
STATE OF CALIFORNIA

2
3
4 By: 

NOAH GOLDEN-KRASNER
Attorneys for the State of California,
Santa Monica Mountains Conservancy,
and State of California 50th District
Agricultural Association

5
6
7
8 Dated: December __, 2014

ELLISON, SCHNEIDER & HARRIS L.L.P.

9
10 By: _____

CHRISTOPHER M. SANDERS
Attorneys for the County Sanitation
Districts of Los Angeles County Nos. 14
and 20

11
12
13
14 Dated: December __, 2014

Kronick, Moskowitz, Tiedemann & Girard

15
16 By: _____

JANET K. GOLDSMITH
Attorneys for the City of Los Angeles By
and Through Its Department of Airports, Los
Angeles World Airports

17
18
19 Dated: December __, 2014

BRUNICK, MCELHANEY & KENNEDY
PLC

20
21
22 By: _____

WILLIAM J. BRUNICK
Attorneys for the ANTELOPE VALLEY-
EAST KERN WATER AGENCY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

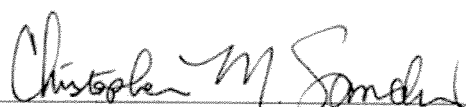
Dated: December __, 2014

OFFICE OF THE ATTORNEY GENERAL
STATE OF CALIFORNIA


By: _____
NOAH GOLDEN-KRASNER
Attorneys for the State of California,
Santa Monica Mountains Conservancy,
and State of California 50th District
Agricultural Association

Dated: December 8, 2014

ELLISON, SCHNEIDER & HARRIS L.L.P.

By:  _____
CHRISTOPHER M. SANDERS
Attorneys for the County Sanitation
Districts of Los Angeles County Nos. 14
and 20

Dated: December 9, 2014

Kronick, Moskovitz, Tiedemann & Girard
By:  _____
JANET K. GOLDSMITH
Attorneys for the City of Los Angeles By
and Through Its Department of Airports, Los
Angeles World Airports

Dated: December __, 2014

BRUNICK, MCELHANEY & KENNEDY
PLC
By: _____
WILLIAM J. BRUNICK
Attorneys for the ANTELOPE VALLEY-
EAST KERN WATER AGENCY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: December __, 2014

OFFICE OF THE ATTORNEY GENERAL
STATE OF CALIFORNIA

By: _____
NOAH GOLDEN-KRASNER
Attorneys for the State of California,
Santa Monica Mountains Conservancy,
and State of California 50th District
Agricultural Association

Dated: December __, 2014

ELLISON, SCHNEIDER & HARRIS L.L.P.

By: _____
CHRISTOPHER M. SANDERS
Attorneys for the County Sanitation
Districts of Los Angeles County Nos. 14
and 20


Dated: December __, 2014

Kronick, Moskovitz, Tiedemann & Girard

By: _____
JANET K. GOLDSMITH
Attorneys for the City of Los Angeles By
and Through Its Department of Airports, Los
Angeles World Airports

Dated: December 8, 2014

BRUNICK, MCELHANEY & KENNEDY
PLC

By:  _____
WILLIAM J. BRUNICK
Attorneys for the ANPELOPE VALLEY-
EAST KERN WATER AGENCY

CERTIFICATE OF SERVICE

Case Name: Antelope Valley Groundwater No. JCCP 4408
Cases

I hereby certify that on December 8, 2014, I electronically filed the following document(s) with the Clerk of the Court by using the CM/ECF system:

**JOINT OPPOSITION OF STATE OF CALIFORNIA, CITY OF LOS ANGELES,
COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY NOS. 14 & 20, AND
ANTELOPE VALLEY-EAST KERN WATER AGENCY TO BLUM TRUST'S MOTION
FOR SUMMARY JUDGMENT**

on the interested parties in this action, by posting the document(s) listed above to the Santa Clara County Superior Court e-filing website (<http://www.scefiling.org>) under the Antelope Valley Groundwater matter pursuant to the Court's Order dated October 27, 2005.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 8, 2014, at Los Angeles, California.

Gwen Blanchard
Declarant

Gwen Blanchard
Signature