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7

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SANTA CLARA

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11 COORDINATION PROCEEDING) Judicial Council Coordination
SPECIAL TITLE (Rule 1550(b))) Proceeding No. 4408
12)
13 ANTELOPE VALLEY GROUNDWATER) CASE NO. 1-05-CV-409053
CASES)
14 INCLUDED ACTIONS:)
15 LOS ANGELES COUNTY WATERWORKS)
DISTRICT NO. 40 v. DIAMOND)
16 FARMING COMPANY, et al.,) BOLTHOUSE PROPERTIES, LLC'S AND
Los Angeles Superior Court) WM. BOLTHOUSE FARMS, INC.'S
17 Case No. BC325201) CASE MANAGEMENT CONFERENCE
STATEMENT, PRELIMINARY COMMENTS
18 LOS ANGELES COUNTY WATERWORKS) REGARDING SUB-BASINS, COMMENTS
DISTRICT NO. 40 v. DIAMOND) REGARDING WILLIS' REPLY
19 FARMING COMPANY, et al.,) MEMORANDUM REGARDING MOTION TO
Kern County Superior Court) STRIKE, COMMENTS REGARDING
20 Case No. S-1500-CV-254348) MOTION FOR CONTINUANCE OF TRIAL
DATE
21 DIAMOND FARMING COMPANY, and)
W.M. BOLTHOUSE FARMS, INC., v.)
22 CITY OF LANCASTER, et al.,)
Riverside Superior Court)
23 Case No. RIC 344436 [c/w case) DATE: August 11, 2008
no. RIC 344668 and 353840]) TIME: 9:00 a.m.
24) DEPT: 1
25)
26)

1 presented by the case, such as basin characteristics, sub-basins,
2 safe yield, etc, is critical. Some parties have not yet been
3 able to retain experts. Other parties have only recently
4 retained experts, which experts have not had an opportunity to
5 evaluate documents for purposes of a trial regarding basin
6 characteristics, sub-basins, safe yield, etc.

7 Disclosure of experts cannot meaningfully be accomplished at
8 the same time parties are being named and at the very beginning
9 of discovery. Moving this matter along is laudable goal, and
10 something the above represented parties applaud in concept.
11 However trying to do everything at the same time in the manner
12 things are currently being done, risks procedural and substantive
13 problems which could otherwise be avoided with an early, yet
14 otherwise workable, trial date.

15 **JURISDICTIONAL VERSUS SUBSTANTIVE ISSUES**

16 The rationale for having the Phase 1 trial to determine
17 basin boundaries was clear. Boundaries were being determined for
18 jurisdictional purposes only, that is, simply to determine which
19 parties should initially be included in the lawsuit for purposes
20 of naming and serving them. It was recognized by the Court, and
21 agreed to by the parties, that the Phase 1 trial was
22 jurisdictional only and for no substantive purpose.

23 To the contrary, the proposed Phase 2 trial, whether it
24 involves basin characteristics and safe yield or only sub-basins,
25 by its nature, involves determinations of fact and acceptance of,
26 or non-acceptance of, expert testimony. These determinations of

1 fact and expert testimony clearly involve substantive issues
2 which form the basis of the purveyor Cross-Complaint, which bear
3 on landowner affirmative defenses and which bear on cross-
4 complaint claims being made by landowners back against the
5 purveyors.

6 Trial of substantive matters cannot properly occur before
7 all parties are in the named, served, given the opportunity to
8 file responsive pleadings and before such parties conduct some
9 amount of reasonable discovery to protect against claims and/or
10 to assert claims.

11 **COMMENTS REGARDING SUB-BASIN ISSUE**

12 As discussed elsewhere in this Brief, the Riverside
13 litigation did not involve sub-basins. No party was contending
14 that sub-basins were an issue to be determined based upon the
15 claims and defenses asserted. Accordingly, there was little
16 evaluation of the sub-basin issue by any of the experts involved
17 up to the point when the case was consolidated. Accordingly, the
18 following comments are made without prejudice and or judicial
19 admission and based upon very general knowledge of the
20 hydrogeology of the Antelope Valley Groundwater Basin.

21 The term "sub-basin" potentially has different meanings to
22 different experts, attorneys and/or to the Court. In terms of
23 groundwater adjudications, the term is sometimes described as "an
24 area sharing a common source of water." Other times, the term
25 has been described as "an area within which pumping on one side

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1 of a so called sub-basin line, would have no effect on pumping on
2 the other side of the line." However, as noted above, there is
3 little agreement as to precisely what the term means.

4 In determining the area of adjudication for purposes of the
5 Riverside case, the parties entered into a stipulation regarding
6 the meaning of the basin for purposes of that adjudication to the
7 effect that pumping outside the adjudicated area would have no
8 effect on pumping inside the adjudicated area. After over a
9 month of arguments as to how this definition should read, and
10 after a stipulation was reached based upon input from all
11 parties, the purveyors later sought to be relieved of the
12 stipulation, claiming that there was some mistake or
13 misunderstanding as to what those words meant. Accordingly, the
14 term sub basin, if one is to have a trial to determine the
15 existence of sub basins, must be properly defined so that all
16 parties are operating under the same definition and can present
17 factual and expert testimony accordingly.

18 Notwithstanding the above, Bolthouse Properties, LLC and Wm.
19 Bolthouse Farms, Inc. believe, without having completed the
20 necessary discovery and expert analysis, that the entire area of
21 adjudication shares a common source of water. Further, it is
22 believed that although the area of adjudication shares a common
23 source of water, that pumping in one part of the area of
24 adjudication may not have any observable and detrimental effect
25 on pumping in other parts of the area of adjudication.
26 Differences in the underground hydrogeology of the area of

1 adjudication, the movement and flow of water, the aquifer
2 characteristics, including an upper and/or lower aquifer, the
3 types of sedimentary materials, the gradient, cones of
4 depression, etc., all will have a bearing on whether pumping in
5 purveyor wells is causing any observable and detrimental effect
6 on pumping from any landowner well on any particular part of the
7 area of adjudication.

8 Potential sub basins within the area of adjudication,
9 including all of the factors set forth above, have not been
10 sufficiently analyzed by experts. Doing so would be impossible
11 at this point, since all the supporting documentation has not
12 been obtained.

13 It is also unclear, without sufficient analysis by any
14 party, including the purveyors, during what times if any, demand
15 may have exceeded supply, even on a short term basis. Inaccurate
16 record keeping, limited studies, limited data, faulty assumptions
17 and lack of study focus regarding water supplies and demands
18 complicate analysis of potential sub basins and safe yield
19 issues.

20 Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc.
21 contend that although the concept of safe yield, putting aside
22 for the moment its meaning, will be important in terms of
23 managing the available water supply in the basin. However, safe
24 yield is not determinative of claims of prescription. Claims of
25 prescription must be evaluated based upon an appropriate purveyor
26 showing that whatever action the purveyors took regarding alleged

1 prescription of water, was open, notorious, hostile, adverse and
2 under claim of right as against any property right of any
3 particular landowner pumping water from any particular well or
4 location within the area of adjudication.

5 Although the purveyor experts have done some analysis of
6 water supplies and demands within the area of adjudication, there
7 has been no discovery, investigation and/or expert analysis as to
8 the affect of pumping in particular purveyor wells on wells owned
9 by landowners.

10 In summary, based upon preliminary data, it appears that the
11 area of adjudication has a common water source. However, the
12 affect of pumping by the purveyors and the effects such pumping
13 has had either observably, or actually, on any landowner wells,
14 has not been investigated nor discovered, nor has there been any
15 significant expert analysis regarding this issue.

16 DISCOVERY

17 Once it was understood that there was no discovery stay and
18 the Court set a trial date, the landowner parties, including the
19 class parties, served discovery on the purveyor parties.
20 Responses to the first sets of discovery served are only now
21 being provided. It is clear based upon the responses that very
22 little information was provided by the purveyor parties and that
23 the time frame during which they claim prescription is
24 substantially longer than the five (5) years preceding litigation
25 which was previously suggested. The time frame of now alleged
26 prescription may extend sixty (60) years or more.

1 The purveyors have not yet responded to additional discovery
2 served by other parties. Given the fact that some potential
3 parties are not in the case at present, these parties as a
4 practical matter have no possibility of doing any discovery
5 leading up to the Phase 2 trial. Discovery is necessary to
6 determine party contentions, narrow issues and obtain backup
7 information upon which parties are relying to prove their
8 respective claims. Until such claims are narrowed and
9 understood, and supporting documentation provided, it would be
10 impossible in any meaningful fashion to properly direct experts
11 as to the multitude of issues which need to be addressed to
12 defend against such claims. Accordingly, some reasonable time
13 period, although expedited, should be provided for all parties to
14 properly complete discovery.

15 **EXPERTS**

16 As noted above, it is critical that all parties have the
17 opportunity to retain an expert. It is likewise critical that
18 discovery be conducted to allow attorneys the ability properly
19 direct an expert as to what issues to evaluate. This cannot
20 possibly occur in the time frame necessary to disclose experts on
21 August 15, 2008, followed by a trial in October.

22 **NO AGREEMENT AS TO PHASE 2 ISSUES**

23 At present, there is still no agreement as to what issues
24 will be tried in Phase 2. Although initial discussions regarding
25 Phase 2 issues involved general basin characteristics to help the
26 Court understand the general geology and hydrogeology of the

1 basin, this morphed into an extensive, and substantive,
2 evaluation of the geology and hydrogeology of the basin,
3 including safe yield which necessarily includes very complicated
4 analysis of water supplies and water demands. This then morphed
5 into a trial evaluating such characteristics, not simply for the
6 five (5) years preceding the litigation as previously suggested,
7 but for a time period which could span over sixty (60) years.
8 The extent of this substantive analysis of the basin has clear
9 and concerning implications regarding other phases of trial, such
10 as prescription. The volume of information regarding water
11 supplies and water demands over a sixty (60) year period is
12 enormous. The amount of time necessary for an expert to evaluate
13 this data in any meaningful and scientific way is also
14 substantial. This cannot possibly occur prior to October.

15 **MOST RECENT PROPOSAL REGARDING PHASE 2 ISSUES**

16 Most recently, as of the last Case Management Conference,
17 some parties suggested having a trial only on the issue of sub-
18 basins. No discovery has been served by any party at this point
19 directed solely to the issue of sub-basins. Further, the trial
20 in Riverside involving the purveyors, Wm. Bolthouse Farms, Inc.
21 and Diamond Farming, was not for the purpose of determining sub-
22 basins. No party there was contending there were any sub-basins
23 within the current area of adjudication, with a different water
24 supply, expert analysis was not focused on sub-basins and
25 defendants' experts did not prepare for a trial based on sub-
26 basins. Accordingly, even parties who have been in the case

1 since the time it was filed in Riverside, have not had any
2 opportunity to conduct discovery, investigation and expert review
3 of potential issues involving sub-basins within the current area
4 of adjudication, which are now being raised as a possible basis
5 for a Phase 2 trial.

6 **WILLIS MOTION TO STRIKE**

7 Early on in the coordinated action, counsel for Diamond
8 Farming filed a rather extensive demurrer. Part of the basis for
9 the demurrer was essentially the same argument, although couched
10 as "ultra virus" acts, as that being raised by the Willis Class.

11 The argument is in substance, that the purveyors do not have the
12 authority to take landowner water rights by prescription without
13 paying just compensation. Wm. Bolthouse Farms, Inc. and possibly
14 Bolthouse Properties, LLC, joined at that time in the demurrer.

15 Although the demurrers were filed some time ago, to the best
16 recollection of these asserting parties, the Court denied the
17 demurrers without prejudice suggesting that these issues would be
18 taken up at a later time. Although it is not entirely clear
19 exactly what the Court envisioned, the court may have been
20 referring to subsequent demurrers and/or motions for judgment on
21 the pleadings. In either case, Wm. Bolthouse Farms, Inc. and
22 Bolthouse Properties, LLC agree that the purveyors may not
23 properly take water rights by prescription from landowners
24 without paying just compensation and request the Court clarify
25 whether such motions should now be made by joinder in the Willis

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1 Class motion, by demurrer and/or by motion for judgment on the
2 pleadings.

3 **MOTION TO CONTINUE TRIAL DATE**

4 The early trial date has achieved the purpose of sparking
5 the parties and their attorneys and experts into action.
6 However, forcing the parties to trial in October either on the
7 basis of basin characteristics and safe yield and/or on the the
8 issue of sub-basins, would be procedurally defective and would
9 deny the defendant parties due process of law and opportunity to
10 be heard. Notwithstanding the desire of all parties to move the
11 case along expeditiously, property rights under our Constitution
12 and in our judicial system are zealously guarded and protected.
13 Accordingly, the trial date should be continued.

14 If the Court tries the sub basin issue in Phase 2A, followed
15 by a trial on basin characteristics in a Phase 2B, it will be
16 important to have sufficient time between the two phases to do
17 discovery and additional expert analysis. The time suggested in
18 the joint brief it seems was only about thirty (30) days which is
19 not nearly enough time. Ninety (90) days would be a better
20 estimate.

21 **CONCLUSION**

22 Litigation of the important property rights of all
23 landowners in the Antelope Valley requires the following
24 procedural and due process safeguards:

- 25 1. All landowners, by class or otherwise, must be properly
26 named and served, given the opportunity to opt in or

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out of classes, obtain legal representation and file appropriate responsive pleadings.

2. All landowners involved in the litigation must be given the opportunity to conduct discovery including determination of contentions asserted against their property rights, obtain production of documents which allegedly support such adverse assertions and have the opportunity to have an expert of their choice evaluate such assertions and factual documentations.

3. After appropriate discovery, all parties must have the opportunity to, in a knowing and intelligent way, disclose experts of their choosing, evaluate and depose adverse experts and disclose supplemental experts as necessary.

4. All parties, including landowners, must have an appropriate amount of time to properly prepare for any and all phases of trial, including Phase 2.

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1 In order to protect the procedural and due process rights of
2 all landowners, including Bolthouse Properties, LLC and Wm.
3 Bolthouse Farms, Inc., it is requested that the date for the
4 Phase 2 trial be adjusted appropriately given the issues to be
5 tried, once this is finally decided, which will allow sufficient
6 time to complete the foregoing, and rather standard, litigation
7 activities.

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DATED: August 6, 2008

Respectfully submitted,

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CLIFFORD & BROWN

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By: 

RICHARD G. ZIMMER, ESQ.

F. MARK SMITH, ESQ.

Attorneys for plaintiff/defendant,
W. M. BOLTHOUSE FARMS, INC.

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1 **PROOF OF SERVICE (C.C.P. §1013a, 2015.5)**

2 *Antelope Valley Groundwater Cases*
3 *Judicial Counsel Coordination Proceeding No. 4408*
4 *Santa Clara County Superior Court Case No. 1-05-CV-049053*

5 I am employed in the County of Kern, State of California. I am over the age of 18 and not a
6 party to the within action; my business address is 1430 Truxtun Avenue, Bakersfield, CA 93301.

7 On August 6, 2008, I served the foregoing document(s) entitled:

8 **BOLTHOUSE PROPERTIES, LLC'S AND WM. BOLTHOUSE FARMS, INC.'S CASE**
9 **MANAGEMENT CONFERENCE STATEMENT, PRELIMINARY COMMENTS REGARDING**
10 **SUB-BASINS, COMMENTS REGARDING WILLIS' REPLY MEMORANDUM REGARDING**
11 **MOTION TO STRIKE, COMMENTS REGARDING MOTION FOR CONTINUANCE OF**
12 **TRIAL DATE**

13 — by placing the true copies thereof enclosed in sealed envelopes
14 addressed as stated on the attached mailing list.

15 — by placing _ the original, _ a true copy thereof, enclosed in a sealed
16 enveloped addressed as follows:

17 **X BY SANTA CLARA SUPERIOR COURT E-FILING IN COMPLEX**
18 **LITIGATION PURSUANT TO CLARIFICATION ORDER DATED OCTOBER**
19 **27, 2005.**

20 Executed on August 6, 2008, at Bakersfield, California.

21 **X** (State) I declare under penalty of perjury under the laws of the State of California
22 that the above is true and correct.

23 — (Federal) I declare that I am employed in the office of a member of the Bar of
24 this Court at whose direction the service was made.

25 
26 **NANETTE MAXEY**
2455-2