

1 RICHARD G. ZIMMER - SBN 107263  
 2 T. MARK SMITH - SBN 162370  
 3 CLIFFORD & BROWN  
 4 A Professional Corporation  
 5 Attorneys at Law  
 6 Bank of America Building  
 7 1430 Truxtun Avenue, Suite 900  
 8 Bakersfield, CA 93301-5230  
 9 Tel (661) 322-6023  
 10 Fax (661) 322-6508

11 Attorneys for Bolthouse Properties, LLC

12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF SANTA CLARA

14 \* \* \*

15	COORDINATION PROCEEDING	)	Judicial Council Coordination
16	SPECIAL TITLE (Rule 1550(b))	)	Proceeding No. 4408
17		)	
18	<b>ANTELOPE VALLEY GROUNDWATER</b>	)	<b>CASE NO. 1-05-CV-409053</b>
19	<b>CASES</b>	)	
20		)	
21	INCLUDED ACTIONS:	)	
22		)	
23	LOS ANGELES COUNTY WATERWORKS	)	<b>BOLTHOUSE PROPERTIES, LLC'S</b>
24	DISTRICT NO. 40 v. DIAMOND	)	<b>OPPOSITION TO MOTION IN LIMINE</b>
25	FARMING COMPANY, et al.,	)	<b>OF TEJON RANCHCORP TO EXCLUDE</b>
26	Los Angeles Superior Court	)	<b>EXPERT TESTIMONY OF N. THOMAS</b>
27	Case No. BC325201	)	<b>SHEAHAN</b>
28		)	
29	LOS ANGELES COUNTY WATERWORKS	)	
30	DISTRICT NO. 40 v. DIAMOND	)	
31	FARMING COMPANY, et al.,	)	
32	Kern County Superior Court	)	
33	Case No. S-1500-CV-254348	)	
34		)	
35	DIAMOND FARMING COMPANY, and	)	
36	W.M. BOLTHOUSE FARMS, INC., v.	)	
37	CITY OF LANCASTER, et al.,	)	
38	Riverside Superior Court	)	
39	Case No. RIC 344436 [c/w case	)	
40	no. RIC 344668 and 353840]	)	<b>Phase 2 Trial: October 6, 2008</b>
41		)	
42		)	
43		)	
44		)	
45		)	

## SUMMARY OF ARGUMENT IN OPPOSITION

TEJON RANCHCORP ("Tejon") has asserted a Motion in Limine which is unfounded, inconsistent with the law and mischaracterizes the content of BOLTHOUSE PROPERTIES, LLC's ("BHP") expert disclosure.

First, the disclosure statement must contain "a brief narrative statement of the **general substance** of the testimony that the expert is expected to give[,]" not a recitation of the experts opinions themselves as Tejon's Motion suggests. (*Code Civ. Proc.* §2034.260(c)(2) [emphasis added]) BHP has fully complied with the *Code* by setting forth the general substance of the opinions Mr. Sheahan will render. Second, Tejon is flat out wrong when it claims that BHP failed to state that its expert would be sufficiently familiar with the pending action to submit to an meaningful oral deposition, as that very compliance statement is set forth on page 5, beginning at line 14, of the disclosure. Third, unlike an action in Federal court, a party to a California state court action is not required to create expert reports when designating its expert trial witnesses. (See e.g., *Federal Rules of Civil Procedure*, Rule 26(a)(2)(B) & *Code Civ. Proc.* §2034.270.) Fourth, if there was any lack of clarity as to the general substance of Mr. Sheahan's expected testimony, counsel for BHP submitted the letter attached to the Motion as Exhibit "C." Thus, Tejon's frivolous Motion in Limine should be denied.

1 II

2 **EXPERT DISCLOSURE DECLARATION REQUIREMENTS**

3 In designating a retained expert trial witness, a party must  
4 provide the following specific information in its disclosure and  
5 attorney declaration:

6 "(1) A brief narrative statement of the qualifications  
7 of each expert.

8 (2) A brief narrative statement of the general  
9 substance of the testimony that the expert is expected  
10 to give.

11 (3) A representation that the expert has agreed to  
12 testify at the trial.

13 (4) A representation that the expert will be  
14 sufficiently familiar with the pending action to submit  
15 to a meaningful oral deposition concerning the specific  
16 testimony, including any opinion and its basis, that  
17 the expert is expected to give at trial.

18 (5) A statement of the expert's hourly and daily fee  
19 for providing deposition testimony and for consulting  
20 with the retaining attorney." (Code Civ. Proc.  
21 §2034.260(c).)

22 As is readily apparent from a review of BHP's expert  
23 disclosure and accompanying attorney declaration, conveniently  
24 attached as Exhibit "A" to the Motion, BHP has fully complied  
25 with each of the foregoing disclosure requirements. Mr.  
26 Sheahan's qualifications are set forth in his attached CV (Page  
4, Line 13), a brief narrative of the general substance of Mr.  
Sheahan's expected testimony is set forth (Page 4, Line 22), it  
is represented that Mr. Sheahan has agreed to testify at trial  
(Page 5, Line 14), a representation is made that Mr. Sheahan will  
be sufficiently familiar with the pending action to submit to a  
meaningful oral deposition (Page 5, Line 15) and Mr. Sheahan's  
deposition fee is set forth therein (Page 5, Line 12).

1 Had Tejon endeavored to conduct some simple research on what  
2 the term "general substance" is intended to mean, it would have  
3 discovered that "[a]lthough a party is required to "disclose the  
4 substance of the facts and the opinions to which the expert will  
5 testify," this "does not require disclosure of specific facts  
6 and opinions. (Williams v. Volkswagenwerk Aktiengesellschaft,  
7 (1986) 180 Cal.App.3d 1244, 1257, 1258.)" (DePalma v. Rodriguez,  
8 (2007) 151 Cal.App.4th 159, 165 [emphasis in original].) *Code of*  
9 *Civil Procedure* §2034.260(c)(2) does not require disclosure of  
10 the specific opinions and supporting facts retained experts  
11 intend to offer at trial as suggested by Tejon. (See Kennemur v.  
12 State of California, (1982) 133 Cal.App.3d 907, 919; Sprague v.  
13 Equifax, Inc., (1985) 166 Cal.App.3d 1012, 1040.) "Such a  
14 requirement would defy the clear language of the section and the  
15 practical dynamics of intelligent trial preparation." (Williams  
16 v. Volkswagenwerk Aktiengesellschaft, supra, 180 Cal.App.3d at  
17 1258.)

18 As set forth in the foregoing authorities, which have held  
19 consistently over the last twenty-five years that only the  
20 general substance of the testimony of retained experts need be  
21 stated in a retained expert witness declaration, Tejon's Motion  
22 is without merit.

23 ///

24 ///

25 ///

26 ///

1 III

2 DISCOVERABLE EXPERT REPORTS

3 The Code of Civil Procedure is quite clear in setting forth  
4 when a discoverable expert trial witness report must be produced  
5 in response to an appropriate production demand therefore:

6 "If a demand for an exchange of information concerning  
7 expert trial witnesses includes a demand for  
8 production of reports and writings as described in  
9 subdivision (c) of Section 2034.210, all parties shall  
10 produce and exchange, at the place and on the date  
11 specified in the demand, all discoverable reports and  
12 writings, if any, made by any designated expert  
13 described in subdivision (b) of Section 2034.210."  
14 (Code Civ. Proc. §2034.270 [emphasis added].)

15 Section 2034.270 requires production of such reports only to  
16 the extent they already exist, not that the expert must create a  
17 written report simply because he or she has been disclosed in a  
18 section 2034.260 disclosure. If no report has been created, no  
19 report need be generated. Tejon should, instead, avail itself of  
20 the expert discovery tools outlined in the Code, principally, a  
21 deposition pursuant to Code of Civil Procedure §2034.410, et seq.

18 \\\  
19 \\\  
20 \\\  
21 \\\  
22 \\\  
23 \\\  
24 \\\  
25 \\\  
26 \\\

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

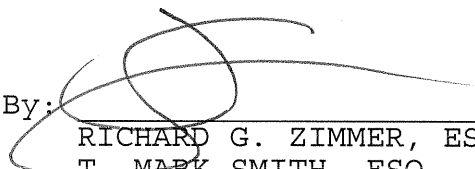
IV

CONCLUSION & REQUEST FOR RELIEF

For the reasons and upon the authorities set forth herein, Tejon's Motion in Limine to exclude the testimony of N. Thomas Sheahan should be denied as the relief sought therein is inconsistent with the mandate of *Code of Civil Procedure* §§2034.260 and 2034.270 and is sought without adequate foundation.

DATED: October 2, 2008

CLIFFORD & BROWN

By:   
RICHARD G. ZIMMER, ESQ.  
T. MARK SMITH, ESQ.  
Attorneys for  
BOLTHOUSE PROPERTIES, LLC.

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

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

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

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

On October 2, 2008, I served the foregoing document(s) entitled:

**BOLTHOUSE PROPERTIES, LLC'S OPPOSITION TO MOTION IN LIMINE OF  
TEJON RANCHCORP TO EXCLUDE EXPERT TESTIMONY OF N. THOMAS  
SHEAHAN**

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

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

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

Executed on October 2, 2008, at Bakersfield, California.

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

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

  
NANETTE MAXEY  
2455-2