

1 RICHARD G. ZIMMER - SBN 107263  
T. MARK SMITH - SBN 162370  
2 CLIFFORD & BROWN  
A Professional Corporation  
3 Attorneys at Law  
Bank of America Building  
4 1430 Truxtun Avenue, Suite 900  
Bakersfield, CA 93301-5230  
5 (661) 322-6023  
(661) 322-3508 (fax)

6 Attorneys for Bolthouse Properties, LLC

7  
8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SANTA CLARA

10 \* \* \*

11 COORDINATION PROCEEDING ) Judicial Council Coordination  
SPECIAL TITLE (Rule 1550(b)) ) Proceeding No. 4408  
12 )  
13 ANTELOPE VALLEY GROUNDWATER ) CASE NO. 1-05-CV-049053  
CASES )  
14 INCLUDED ACTIONS: )  
15 LOS ANGELES COUNTY WATERWORKS )  
DISTRICT NO. 40 v. DIAMOND ) CROSS-COMPLAINT OF BOLTHOUSE  
16 FARMING COMPANY, et al., ) PROPERTIES, LLC  
Los Angeles Superior Court )  
17 Case No. BC325201 )  
18 LOS ANGELES COUNTY WATERWORKS )  
DISTRICT NO. 40 v. DIAMOND )  
19 FARMING COMPANY, et al., )  
Kern County Superior Court )  
20 Case No. S-1500-CV-254348 )  
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 no. )  
RIC 344668 and 353840 ]  
24 ROSAMOND COMMUNITY SERVICES )  
25 DISTRICT, )  
CROSS-COMPLAINANT, )  
26 )

1 BOLTHOUSE PROPERTIES, LLC, )  
 )  
 2 Cross-Complainant, )  
 )  
 3 v. )  
 )  
 4 ROSAMOND COMMUNITY SERVICES )  
 DISTRICT; LOS ANGELES COUNTY )  
 5 WATERWORKS DISTRICT NO. 40; )  
 PALMDALE WATER DISTRICT; CITY )  
 6 OF LANCASTER; CITY OF )  
 PALMDALE; LITTLE ROCK CREEK )  
 7 IRRIGATION DISTRICT; PALM )  
 RANCH IRRIGATION DISTRICT; )  
 8 CALIFORNIA WATER SERVICE )  
 COMPANY; ANTELOPE VALLEY-EAST )  
 9 KERN WATER AGENCY; COUNTY OF )  
 SANITATION DISTRICTS NOS. 14 )  
 10 and 20 OF LOS ANGELES COUNTY; )  
 and as against each and every )  
 11 party which subsequently files )  
 a Cross-Complaint against )  
 12 Bolthouse Properties, LLC; and )  
 MOES 1 through 10,000, )  
 13 )  
 Cross-Defendants. )  
 14 )  
 15 )

16 Cross-Defendant/Cross-Complainant, BOLTHOUSE PROPERTIES,  
 17 LLC., complains of Cross-Defendants, ROSAMOND COMMUNITY SERVICES  
 18 DISTRICT; LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40; PALMDALE  
 19 WATER DISTRICT; CITY OF LANCASTER; CITY OF PALMDALE; LITTLE ROCK  
 20 CREEK IRRIGATION DISTRICT; PALM RANCH IRRIGATION DISTRICT;  
 21 CALIFORNIA WATER SERVICE COMPANY; ANTELOPE VALLEY-EAST KERN WATER  
 22 AGENCY; COUNTY OF SANITATION DISTRICTS NOS. 14 and 20 OF LOS  
 23 ANGELES COUNTY, and MOES 1 through 10,000, inclusive, and each of  
 24 them (collectively "Cross-Defendants"), and as against each and  
 25 every party which subsequently files a Cross-Complaint against  
 26 Bolthouse Properties, LLC as follows:

GENERAL ALLEGATION

1  
2           1. Cross-Complainant, BOLTHOUSE PROPERTIES, LLC, is and at  
3 all times herein mentioned was, a California corporation  
4 authorized to do business in the State of California.

5           2. Cross-Complainant owns in fee certain parcels of real  
6 property, and/or own water rights for certain properties,  
7 (hereinafter individually referred to as a "PARCEL") in the  
8 Antelope Valley area of Los Angeles County, California. Each  
9 PARCEL has previously been identified in previous Complaints filed  
10 by WM. BOLTHOUSE FARMS, INC. in the Riverside action which was  
11 later coordinated with the Los Angeles County and Kern County  
12 actions filed by Los Angeles County Waterworks District No. 40.

13           3. Each PARCEL overlies percolating groundwater, the  
14 extent of which is unknown to Cross-Complainant. Cross-  
15 Complainant hereby incorporates by reference, as if set forth at  
16 length verbatim, the Cross-Complaints of Los Angeles County  
17 Waterworks District No. 40, et al., Antelope Valley-East Kern  
18 Water Agency and County Sanitation Districts Nos. 14 and 20 of Los  
19 Angeles County, not for the truth thereof, but as and for a basis  
20 for bringing this Cross-Complaint.

21           4. Cross-Complainant is ignorant of the true names and  
22 capacities, whether individual, corporate, governmental, or  
23 otherwise, of the Cross-Defendants named in this Cross-Complaint  
24 as Moes 1 through 10,000, inclusive, and therefore sues these  
25 Cross-Defendants by these fictitious names. Cross-Complainant will  
26 amend this Cross-Complaint to allege the fictitiously-named Cross-

1 Defendants' names and capacities when ascertained.

2 5. By virtue of the location of each PARCEL overlying  
3 groundwater, Cross-Complainant holds an overlying water right or  
4 other right to groundwater, entitling Cross-Complainant to extract  
5 groundwater and to put the water to reasonable and beneficial use  
6 on the property ("Cross-Complainant's overlying water rights").

7 6. Cross-Complainant is informed and believes, and on the  
8 basis of such information and belief alleges, that each of the  
9 Cross-Defendants currently extracts groundwater for use on  
10 property not held by the extracting Cross-Defendant or for some  
11 other non-overlying use.

12 7. Cross-Complainant has an appurtenant right and/or other  
13 water right to pump and reasonably use groundwater on the parcels  
14 at issue in this lawsuit. These rights to pump groundwater are  
15 superior to rights of the Cross-Defendants and/or other Cross-  
16 Defendants depending upon the priority rights of such Cross-  
17 Defendants based upon the California priority water allocation  
18 system.

19 8. Cross-Complainant is informed and believes, and on the  
20 basis of such information and belief alleges, that each Cross-  
21 Defendant claims that it has water rights to extract groundwater  
22 for uses that are superior to, or coequal with, Cross-  
23 Complainant's overlying water rights, based upon alleged superior  
24 water right, claim of prescription or otherwise, whether in law or  
25 in equity.

26 9. The quantity of alleged superior and/or coequal rights

1 claimed by Cross-Defendants, each of them, currently is not known.

2 **FIRST CAUSE OF ACTION**

3 **(Quiet Title/Appurtenant Rights)**

4 10. Cross-Complainant sets forth herein at length verbatim  
5 the general allegations contained in paragraphs 1 through 9 of  
6 this Cross-Complaint.

7 11. Cross-Complainant owns PARCELS overlying the Antelope  
8 Valley alluvial groundwater basin. Accordingly, Cross-Complainant  
9 has appurtenant rights to pump and reasonably use groundwater on  
10 such PARCELS.

11 12. Cross-Complainant herein requests a declaration from  
12 the Court quieting title to Cross-Complainant's appurtenant rights  
13 to pump and reasonably use groundwater on their PARCELS.

14 **SECOND CAUSE OF ACTION**

15 **(Declaratory Relief)**

16 13. Cross-Complainant sets forth herein at length verbatim  
17 the general allegations contained in paragraphs 1 through 9 of  
18 this Cross-Complaint.

19 14. Cross-complainant contends that by virtue of the filing  
20 of the Complaints filed by Los Angeles County Waterworks District  
21 No. 40 in Kern County and Los Angeles County, herein coordinated  
22 with the Riverside action, that a current controversy exists as  
23 between Cross-Complainant and Cross-Defendants and as to all other  
24 Defendants in that Los Angeles County has requested a complete  
25 basin-wide adjudication of all rights of all parties to water in  
26 the Antelope Valley basin. Cross-Complainant requests quiet title

1 and/or other appropriate declaration of the right to pump and  
2 reasonably use groundwater on its PARCELS and/or to pump and use  
3 other groundwater based upon its rights as declared by the Court  
4 herein.

5 **THIRD CAUSE OF ACTION**

6 **(Unlawful Taking/42 USC § 1983)**

7 15. Cross-Complainant sets forth herein at length verbatim  
8 the general allegations contained in paragraphs 1 through 9 of  
9 this Cross-Complaint.

10 16. State and federal constitutions and 42 USC § 1983  
11 prevent the unlawful taking of property without due process and  
12 just compensation. Cross-Defendants concealed their efforts to  
13 obtain prescriptive rights against Cross-Complainant and have  
14 failed to take property by appropriate legal means and without  
15 notice, due process and/or the right to be heard, and have taken  
16 such property in the absence of just compensation.

17 **FOURTH CAUSE OF ACTION**

18 **(Equal Protection/Due Process 42 USC § 1983)**

19 17. Cross-Complainant sets forth herein at length verbatim  
20 the general allegations contained in paragraphs 1 through 9 of  
21 this Cross-Complaint.

22 18. The State and federal constitutions require equal  
23 protection under the law. Cross-Defendants seek to exclude what  
24 they define as "*de minimus*" overlying water producers and other  
25 appropriators from the lawsuit. They intend not to name and/or  
26 serve these individuals, thereby intentionally treating them

1 differently than similarly situated persons with no rational basis  
2 for different treatment denying them equal protection under the  
3 law and in violation of 42 USC § 1983.

4 19. Cross-Defendants also potentially make claims that  
5 separate management areas should exist. Separate management areas  
6 as between correlative overlying rights holders and treating these  
7 areas differently, denies equal protection to overlying landowners  
8 in violation of State and Federal Constitutions and violates 42  
9 USC § 1983.

10 **FIFTH CAUSE OF ACTION**

11 **(Declaratory Relief of *Inter Se* Appropriative Rights)**

12 20. Cross-Complainant sets forth herein at length verbatim  
13 the general allegations contained in paragraphs 1 through 9 of  
14 this Cross-Complaint.

15 21. Cross-Complainants have failed to name all  
16 appropriators as defendants. In the event that Cross-Defendants  
17 prove the Antelope Valley Groundwater basin is, or has been, in a  
18 state of common law overdraft, cutbacks may be required to balance  
19 the demand with the supply available. The California priority  
20 water allocation system requires that appropriative users cutback  
21 water usage before overlying landowners are required to cutback  
22 usage. Cutbacks among the appropriators are based upon priority  
23 as between appropriators. Appropriators with first in time  
24 appropriative rights have priority over later in time  
25 appropriators. Accordingly, in order to apply the California  
26 priority water allocation system, all appropriators must be

1 included in the action so that the priority of appropriative  
2 rights can be litigated which will allow the Court by injunction  
3 or physical solution to cutback appropriators based upon such  
4 priorities in the event that Cross-Defendants prove the Antelope  
5 Valley Groundwater basin is in common law overdraft and that an  
6 injunction and/or physical solution is necessary to balance the  
7 water demand with water supply.

8 **SIXTH CAUSE OF ACTION**

9 **(Return Flows - Against All Defendants)**

10 22. Cross-Complainant sets forth herein at length verbatim  
11 the general allegations contained in paragraphs 1 through 9 of  
12 this Cross-Complaint.

13 23. Cross-complainant has pumped and used groundwater on  
14 its PARCELS to irrigate crops. This water was pumped from a lower  
15 aquifer not significantly hydraulically connected to the upper  
16 aquifer and which water would not otherwise be supplied to the  
17 upper aquifer. A portion of this water has reached the upper  
18 aquifer by percolation. Cross-Complainant has a priority right to  
19 these return flows as well as a right to store water in the upper  
20 aquifer from the return flows and has a paramount right against  
21 all other parties to this water and a paramount right against all  
22 other parties to recapture this water or an equivalent amount of  
23 such water.

24 **SEVENTH CAUSE OF ACTION**

25 **(Self Help - Against Purveyor Parties)**

26 24. Cross-Complainant sets forth herein at length verbatim



1 the general allegations contained in paragraphs 1 through 9 of  
2 this Cross-Complaint.

3 25. Cross-complainant contends that Cross-Defendants must  
4 prove any claim for prescription or adverse possession and prove  
5 that they prevented Cross-Complainant from pumping amounts which  
6 Cross-Complaint desired to pump during any alleged period of  
7 adverse possession or prescription. However, to the extent the  
8 Court rules that self help constitutes an affirmative request for  
9 relief by Cross-Complainant, Cross-Complainant claims water rights  
10 based upon self help.

11 **EIGHTH CAUSE OF ACTION**

12 **(Storage Rights)**

13 26. Cross-Complainant sets forth herein at length verbatim  
14 the general allegations contained in paragraphs 1 through 9 of  
15 this Cross-Complaint.

16 27. Cross-Complainant possesses overlying rights to produce  
17 water on its PARCELS in the Antelope Valley. Cross-Complainant  
18 possesses an appurtenant right to storage space in the fractured  
19 bedrock and alluvial water basin and the right to water stored  
20 therein based upon the California water allocation priority  
21 system.

22 **NINTH CAUSE OF ACTION**

23 **(Storage Space - Against All Defendants)**

24 28. Cross-Complainant sets forth herein at length verbatim  
25 the general allegations contained in paragraphs 1 through 9 of  
26 this Cross-Complaint.



PRAYER

WHEREFORE, Cross-Complainant prays for judgment against Cross-Defendants, and each of them, and against all other persons or entities, as follows:

1. For a judgment against the Cross-Defendants;

2. For a declaration quieting title to Cross-Complainant's rights to pump and reasonably use groundwater on their PARCELS and to their rights to otherwise pump groundwater;

3. If the Court determines based upon the Cross-Defendants basin-wide adjudication that the fractured bedrock and alluvial groundwater basin is in common law overdraft, for an injunction and/or a physical solution cutting back appropriative water use to prevent continuing common law overdraft;

4. For continuing jurisdiction of the Court to litigate disputes as necessary in the future consistent with the Court judgment herein and consistent with California water law;

5. For a declaration that no party hereto may hereinafter obtain prescriptive rights as against any other party to this action and that all parties will act in conformance with the terms of any such judgment;

6. For a judgment for Cross-Complainant for all available remedies to secure and protect Cross-Complainant's continuing overlying water rights;

7. For an award of reasonable attorneys' fees and costs of suit; and

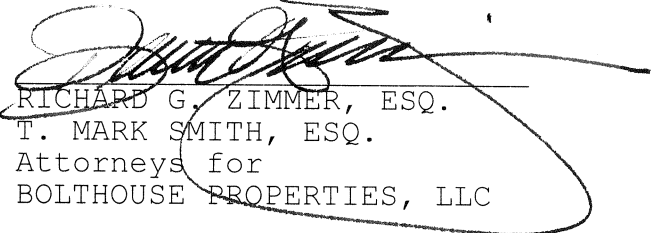
///

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

8. For such other and further relief as the court deems just and proper.

DATED: January 20, 2007

CLIFFORD & BROWN

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

