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11 SUPERIOR COURT OF CALIFORNIA

12 COUNTY OF SANTA CLARA

13 * * *

14 COORDINATION PROCEEDING) Judicial Council Coordination Proceeding No.
15 SPECIAL TITLE (Rule 1550(b))) 4408

16 ANTELOPE VALLEY GROUNDWATER)
17 CASES) CASE NO. 1-05-CV-409053

18 INCLUDED ACTIONS:)

19 LOS ANGELES COUNTY)
20 WATERWORKS DISTRICT NO. 40 v.)
21 DIAMOND FARMING COMPANY, et al.,) **BOLTHOUSE PROPERTIES, LLC'S**
22 Los Angeles Superior Court Case No.) **AND WM. BOLTHOUSE FARMS, INC.'S**
23 BC325201) **REPLY TO WATER PURVEYOR BRIEF**
24) **RE TRIAL PHASING AND JURY TRIAL**

25 LOS ANGELES COUNTY)
26 WATERWORKS DISTRICT NO. 40 v.) **Date: April 24, 2009**
27 DIAMOND FARMING COMPANY, et al.,) **Time: 9:00 a.m.**
28 Kern County Superior Court Case No. S-) **Dept.: LA Superior Court**
1500-CV-254348) **Dept. 1**

DIAMOND FARMING COMPANY, and)
W.M. BOLTHOUSE FARMS, INC., v.)
CITY OF LANCASTER, et al.,)
Riverside Superior Court)
Case No. RIC 344436 [c/w case no. RIC)
344668 and 353840]

1 Bolthouse Properties, LLC and WM. Bolthouse Farms, Inc. (hereinafter referred to as
2 “Bolthouse parties”) hereby reply to Water Purveyor Brief Re Trial Phasing and Jury Trial:

3 I. INTRODUCTION

4 The parties all appear to agree that the “gist” of the action should control whether a jury
5 trial is appropriate. However, the parties disagree on what constitutes the “gist.” In its
6 November 25, 2008 Order, the Court proposed that Phase 3 should include the determination of
7 safe yield and overdraft. The Water Purveyors propose that the Court limit Phase 3 to these
8 issues, and argue this limitation should exclude the determination of the prescriptive rights
9 (Water Purveyor Brief (“WPB”), p. 10, lines 3 – 6.) However, this is not possible as these issues
10 are interrelated with the determinations of the prescriptive rights of the Water Purveyors.

11 The main “gist” of this action is to determine the rights of the parties to the ground water
12 underlying the Area of Adjudication. This is clearly a legal matter and accordingly the
13 landowner parties possess the right to a trial by jury.

14 II. ARGUMENT

15 A. There Is A Right To Jury Trial In This Case.

16 1. *This Is Not An Equitable Or Special Proceeding.*

17 The Bolthouse parties generally agree with the proposition that there is no right to a jury
18 trial in a solely equitable or special proceeding (WPB, p. 2, lines 17 – 21; p. 3, lines 1 -8).
19 However, “[i]n determining whether the action was one triable by a jury at common law, the
20 Court is not bound by the form of the action but rather by the nature of the rights involved and
21 the facts of the particular case – the gist of the action. A jury trial must be granted where the gist
22 of the action is legal, where the action is in reality cognizable at law.” *Arciero Ranches v.*
23 *Amadorr.Meza* (1993) 17 Cal.App.4th 114, 123-124.

24 2. *The “Gist” Of This Action Is For Legal Relief.*

25 The “gist” of this adjudication is a request for legal, not equitable, relief. Instead of
26 focusing on the “gist” of the action, the Water Purveyors continually rely on statements such as,
27 “declaratory relief and injunctive relief are equitable” (WPB, p. 3, line 26), but fail to focus on
28 the “nature of the rights” at issue in this action. (WPB, p. 2, line 17). “The Court has expressly

1 cautioned that the right to a trial by jury ‘cannot be avoided by merely calling an action a special
2 proceeding or equitable in nature.’” Wisden v. Superior Court (2004) 124 Cal.App.4th 750, 754-
3 755. In fact, the Water Purveyors are attempting to accomplish exactly what Wisden warns
4 against.

5 The “gist” of this action is the water rights of the parties, and specifically the prescription
6 claim. The issues of overdraft and safe yield are significant elements that may form the basis of
7 the Water Purveyors’ prescription claims. “An appropriative taking of water which is not
8 surplus is wrongful and may ripen into a prescriptive right where the use is actual, open and
9 notorious, hostile and adverse to the original owner, continuous and uninterrupted for the
10 statutory period of five (5) years, and under claim of right.” City of San Bernardino v. City of
11 Riverside (1921) 186 Cal. 7, 22-23. Thus, a party cannot prove their use was “hostile and
12 adverse” without first establishing the existence of overdraft and safe yield. As it is proper for a
13 jury to decide the prescriptive rights of the Water Purveyors as it is legal in nature (see more
14 detail on Arciero Ranche, supra, 17 Cal.App.4th 114, below), it would be inappropriate to
15 separate the determination of these two issues.

16 The California Supreme Court emphasized the legal nature of prescription claims in City
17 of Barstow v. Mojave Water Agency (2000) 23 Cal.4th 1224. The Mojave court stated that it was
18 reviewing “whether a trial court may definitively resolve water right priorities in an overdrafted
19 basin with a ‘physical solution’ that relies on the equitable apportionment doctrine but does not
20 consider the affected owners’ legal water rights in the basin.” Mojave Water Agency, supra, 23
21 Cal.4th at 1233 (emphasis added). Because overlying landowners’ usufructory rights to pump
22 groundwater are legal in nature, the “gist” of this matter concerning those same overlying
23 landowners’ water rights is legal and not equitable.

24 The Water Purveyors’ reliance on Estate of Phelps v. Odekerken (1990) 223 Cal.App.3d
25 332, 340, for the proposition that a quiet title action is fundamentally equitable, is misplaced.
26 This case is distinguishable for two reasons: (1) the action was a probate matter and thus would
27 ordinarily require a specific statute to have a right for jury as it is a special proceeding; and (2)
28 the remedy seeking ejectment from the real property was not raised which caused the Phelps

1 court to conclude that it was not a legal action. *Id.*, at p. 340. On the other hand, *Arciero*
2 *Ranches, supra*, 17 Cal.App.4th, is directly applicable to this Court’s analysis since the overlying
3 landowners’ usufructory rights to pump groundwater is at issue in the pleadings in this action
4 due to the prescriptive claim, and others. The *Arciero Ranches* court ruled that a jury trial is
5 guaranteed under the California Constitution for prescriptive claims.

6 In addition, the Water Purveyors fail to provide any authority that a jury trial is
7 inappropriate for a prescriptive claim, but instead rely on a generic statement that “courts have
8 historically resolved groundwater adjudications through a bench trial.” (WPB, p. 4, lines 14-15).
9 Their cited cases fail to address this issue, and provide no basis for an exclusion of a jury in this
10 matter. Furthermore, *Katz v. Walkinshaw* (1902) 141 Cal. 116, 141-142, cited by the Water
11 Purveyors, belies the Water Purveyors’ position. In *Katz*, the court specifically relied on an
12 English water law case from 1843 (*Acton v. Blundell*) in which a jury acted as the trier of fact. If
13 the matter of the entitlement jury trial is decided by the state of the English common law in 1850
14 (see Section 3(a)), it is clear that there exists precedent in the common law for the entitlement to
15 a jury.

16 **3. *The Cases Involving Prescriptive Easements Are Not Inapposite To Ground***
17 ***Water Adjudication.***

18 The Water Purveyors apply their cited case law incorrectly in this section, and fail to
19 distinguish *Frahm v. Briggs* (1970) 12 Cal.App.3d 441 from the instant matter.

20 **a. *Establishing The Right To The Reasonable And Beneficial Use Of***
21 ***Water Is Not Legally Distinguishable From Establishing An Easement***
22 ***On Real Property.***

23 The Water Purveyors contend that the constitutional right to a jury is “a purely historical
24 question” and “a problem of a right to jury trial must still be approached in the context of 1850
25 common law pleading.” (WPB, p. 5, lines 9 – 17.) However, the Water Purveyors immediately
26 divert from their cited case law by expending substantial effort discussing the history of water
27 law after 1850 as the basis for the prohibition of a jury trial in this matter. Thus, the correct law
28 is cited, but applied in an incorrect manner.

1 *Arciero Ranches*, *supra*, 17 Cal.App.4th at 125 concluded that a prescription claim
2 provides a right to a jury trial based upon the English common law in 1850. “If, however, [as
3 here] the right to an easement is involved in substantial dispute, no injunction will be granted
4 until the claim has been established at law... [i]f a plaintiff applies for an injunction to restrain
5 the violation of a common law right, if either the existence of the right or the fact of its violation
6 be disputed, he must establish that right at law, simply; or, in other words by a jury, if one
7 demanded.” Thus, “the proper remedy available to appellants at common law... was an action
8 on the case. The right of trial by jury existed with respect to (this) common law remedy... and,
9 consequently, such right exists in a civil action under modern practice which formally would
10 have fallen within that common law form of action.” It is a violation of a party’s constitutional
11 rights to prohibit a jury trial upon the party properly requesting such for a prescriptive claim.
12 Furthermore, even though an injunction was involved, the *Arciero Ranches* court maintained that
13 a jury trial was appropriate. This is further support for the proposition that the Court should not
14 get mired by the title of the causes of action, but instead focus on the “gist” of the matter.

15 The Water Purveyors attempt to distinguish *Frahm v. Briggs*, *supra*, 12 Cal.App.3d, by
16 stating that, “[h]ere the ownership interest at issue is not title or interest in land but, rather, the
17 right to use water.” (WPB, p. 5, lines 22 – 27.) The Water Purveyors then rely on a quote from
18 *Big Rock Mutual Water Company v. Valyermo Ranch Co., et al.* (1926) 78 Cal.App. 266, 274,
19 for the proposition that prescriptive rights to water are somehow different from the same type of
20 rights to real property. However, the Water Purveyors’ assertion is unsupported by the relevant
21 case authorities. Under California law, the entire basis for the recognition legal claims to water
22 rights is because of the similarity to real property. “Because water rights are a species of real
23 property the action may also be characterized as a quiet title action to adjudicate conflicting
24 claims to water under Code of Civil Procedure, Section 738.” (Now Code of Civil Procedure,
25 Sections 760.020 and 764.020.) *Tehachapi-Cummings County Water District v. Frank*
26 *Armstrong*, *supra*, 49 Cal.App.3d 992, p. 999, fn 5.

27 Other case authorities state language similar to *Big Mountain (City of Barstow v. Mojave*
28 *Water Agency* , *supra*, 23 Cal.4th, at 1237, fn 2 and 3), but still classify actions for water rights as

1 legal claims. (See *City of Barstow v. Mojave Water Agency* , supra, 23 Cal.4th, at 1233, and
2 1237, fn 3.) Further, the quoted language from *Big Rock Mutual Water Company v. Valyermo*
3 *Ranch Co., et al, supra* 78 Cal.App. at 274, is very similar to the description of an easement for
4 real property. “An easement is a nonpossessory interest in the land of another that gives its
5 owner the right to use the land of another or to prevent the property owner from using his land...
6 It represents a limited privilege to use the land of another for the benefit of the easement holder’s
7 land, but does not create an interest in the land itself.” *Alan F. Byer v. Tahoe Sands Resort*
8 (2005) 129 Cal. App. 4th 1458, 1472.

9 The Water Purveyors also argue that reasonable use is a “determination that is made by
10 the court, not a jury,” relying on *Josin v. Marin Municipal Water District* (1967) 67 Cal.2d 132.
11 (WPB, p. 6, lines 14 – 19). They misinterpret of the significance of *Josin*. The *Josin* court states
12 that the trier of fact should make a determination regarding the reasonableness and beneficial use
13 of the water; but never states that a judge, and not a jury, should act as the trier of fact. “What is
14 a reasonable use or method of use of water is a question of fact to be determined according to the
15 circumstances in each particular case.” *Josin, supra*, 67 Cal.2d at 139. The court of appeal
16 reversed the trial court’s order granting summary judgment. The appellate court remanded the
17 issue to the trial court for determination of the factual issues. Nowhere does the court of appeal
18 identify the trier of fact.

19 Finally, the Water Purveyors continue in this section to address the history of water law
20 since 1850 in hopes of classifying this matter as a “special proceeding.” However, it should be
21 noted that the Water Purveyors do not cite to a single case where a water law adjudication was
22 determined to be a “special proceeding.”

23 **B. The Water Purveyors Fail To Identify an Applicable Statute to the Infringement**
24 **Claim.**

25 The Water Purveyors assert that *Code of Civil Procedure*, Section 534 “provides the
26 legal procedure involving actions concerning the diverting of surface water... this section further
27 provides that only the issue of valuation is to be presented to the jury.” (WPB, p. 8, lines 8 –
28 12.) However, the matter here involves an underground basin, and thus overlying water rights

1 and appropriators are at issue. *C.C.P.* Section 534 is inapposite because it is specifically limited
2 to riparian owners. “That section [534] attempts to provide a special type of condemnation
3 procedure applicable only in water cases and, by its own provisions, is limited to cases where the
4 defendant seeks to condemn the excess over the ‘actual and necessary beneficial uses’ of the
5 riparian.” *Tulare Irrigation District v. Lindsey-Strathmore Irrigation District* (1935) 3 Cal.2d
6 489, 534 (emphasis added). Since this case does not involve riparian rights, this section is
7 inapplicable. Furthermore, even if applicable, it does not appear that the proper procedures to
8 trigger it were followed.

9 In addition, even if a statute existed as such, it cannot replace the right to a jury trial
10 enunciated in *Arciero Ranches, supra*, 17 Cal.App.4th at 125. “The constitutional right to a jury
11 trial does not permit the legislature to confer on the courts the power of trying according to the
12 course of chance any question which has always been triable according to the course of common
13 law by a jury. In other words, the legislature cannot by providing new remedies... in form
14 equitable, convert a legal right into an equitable one so as to infringe upon the right of trial by
15 jury.” *Wisden v. Superior Court* (2004) 124 Cal.App.4th 750, 754-755. Therefore, the Water
16 Purveyors fail to provide any statutory authority that interferes with the Bolthouse parties’ right
17 to a jury trial.

18 **C. Under The Facts of This Case The Court Cannot Try The Claims of Overdraft and**
19 **Safe Yield Before Prescription.**

20 Bolthouse does not dispute the general principle that a court can often decide the
21 equitable issues before the legal. However, here overdraft and safe yield must be decided at the
22 same time as the prescription claim. “It is settled in this state that where legal and equitable
23 issues are joined in the same action the parties are entitled to a jury trial on the legal issues.”
24 *Frahm v. Briggs, supra*, 12 Cal.App.3d, at 445. As overdraft and safe yield are facts that must
25 be shown to establish prescription, it is impossible to “simply not includ[e] any issue involving
26 prescription in this phase of the trial.” (WPB, p. 10, lines 2-3.)
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III. CONCLUSION

The landowners possess a constitutional right to a jury trial as the “gist” of this dispute is concerning the prescriptive rights of the Water Purveyors and thus pursuant to *Arciero Ranches, supra*, 17 Cal.App.4th at 125, is a legal issue. It is impossible to avoid the claim of prescription in Phase 3, as suggested by the Water Purveyors, because the trial is to deal with overdraft and safe yield. These issues are factually intertwined and constitute elements to prove the Water Purveyors’ prescription claims. Therefore, the landowners are entitled to a jury trial for the issues of safe yield and overdraft in the Phase 3 trial proceeding.

DATED: January 26, 2009

Respectfully submitted,

CLIFFORD & BROWN

By: 

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Attorneys for BOLTHOUSE PROPERTES,
LLC and WM. BOLTHOUSE FARMS, INC.

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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 January 26, 2009, I served the foregoing document(s) entitled:

BOLTHOUSE PROPERTIES, LLC'S AND WM. BOLTHOUSE FARMS, INC.'S REPLY TO WATER PURVEYOR BRIEF RE TRIAL PHASING AND JURY TRIAL

— 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 January 26, 2009, 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