

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

6 Attorneys for Bolthouse Properties, LLC and Wm. Bolthouse Farms,  
7 Inc.,

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-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  
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 ) DATE: February 27, 2009  
TIME: 10:30 a.m.  
21 DIAMOND FARMING COMPANY, and ) DEPT: 17C  
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 )  
25 )  
26 )

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 BOLTHOUSE PROPERTIES, LLC and WM. BOLTHOUSE FARMS, INC.  
3 (hereinafter collectively referred to as "Bolthouse") file this  
4 Further Case Management Conference Statement.

5 **CLASS ISSUES**

6 The Class representatives have moved for Court appointment  
7 of experts for the Classes. The County of Los Angeles has filed  
8 Opposition to Richard Wood's Motion for Appointment of Expert.  
9 Bolthouse and other overlying Landowners opposed class treatment  
10 of his matter. The Purveyors pushed for class treatment to avoid  
11 having to properly serve notice on Landowners in the Antelope  
12 Valley. Notwithstanding the lengthy process attempting to  
13 certify classes and to provide notice to class members, proper  
14 class notice still has not occurred. Further, if the Court does  
15 not grant the Motions of the Class members for appointment of  
16 experts to be paid by the Purveyors who are benefiting from the  
17 class treatment, Class representation may not continue to exist.

18 Setting up a class solely for the purpose of service of  
19 process, without any economic means for the Classes to evaluate  
20 complex hydrologic and legal issues, is not helpful to due  
21 process adjudication of the case on its merits.

22 **PHASING**

23 The Court has discussed phasing on multiple different  
24 occasions. The Brief filed by the Public Water Suppliers in  
25 Opposition to Richard Wood's Motion for Appointment of Expert, is  
26 demonstrative of why setting up a phase solely for the purpose of

1 determining safe yield and overdraft, is prejudicial and  
2 judicially improper. In the Opposition, Los Angeles County takes  
3 the position that the classes are not in need of expert  
4 consultation and evaluation because the next phase of trial only  
5 deals with safe yield and overdraft. To the contrary, if the  
6 Purveyors intend to use determinations of safe yield and/or  
7 overdraft as a basis for alleged prescription, fundamental rights  
8 of the Classes and all other parties are at issue and expert  
9 testimony will be critical. Further, allowing trial on only safe  
10 yield and overdraft, without meaningful identification of  
11 critical prescriptive elements and the baring such issues have or  
12 may not have related to safe yield and overdraft, will deny  
13 landowners of the ability to properly defend against such claims.

14 Finally, the Class representatives cannot merely rely upon  
15 expert evaluation accomplished by other parties. First, LA  
16 County's argument in this regard assumes other Landowner experts  
17 have been able to do complete analysis of the issues. They have  
18 not. Information available to the Technical Committee was  
19 directed by Purveyor parties based upon a data pool maintained by  
20 the Purveyors. Landowners do not agree that the pool of  
21 information provided was complete and/or accurate. Further, the  
22 interests of the Small Pumpers, Dormant Pumpers and other  
23 overlying Landowners are not the same. Expert analysis is not  
24 the same and arguments are not the same. A trial of safe yield  
25 and overdraft in a vacuum impairs the ability of Small Pumpers,  
26 Non-Pumpers and other Landowners to meaningfully understand,

1 evaluate and try legal and factual issues which will be critical  
2 to their defense and/or assertion of claims on behalf of their  
3 clients.

4 Finally, the purveyors assert that self help must be proved  
5 on a parcel specific basis. This would result in mini trials of  
6 each landowner's pumping and or dormancy. The landowners  
7 objected to class treatment when the purveyors first requested  
8 class treatment. Landowners argued that prescription must be  
9 proved on a parcel by parcel basis and class treatment therefore  
10 was inappropriate. The Court advised that class certification  
11 was solely for the purpose of jurisdiction and that class  
12 treatment could not be used by the purveyors in an attempt to  
13 prove prescription on a basin wide basis. Now the purveyors  
14 suggest that proof of prescription may be made on a basin wide  
15 basis but proof of self help must be proved on a parcel specific  
16 basis. If so, the underlying basis for class certification  
17 evaporates other than the fact that it assists the purveyors in  
18 serving the parties they sued.

19 CONCLUSION


20 The purveyors requested class certification to avoid the  
21 requirement of serving the landowners they sued. Now, after  
22 receiving this benefit, Los Angeles County seeks to impair the  
23 ability of the Class representatives and other Landowners to  
24 properly conduct discovery and expert analysis necessary to  
25 evaluate their positions and to prepare this matter for trial.

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

Bolthouse requests the Court reconsider whether class certifications continue to be appropriate if the court intends to deny the Class requests for appointment of experts. Additionally, Bolthouse requests that any rulings regarding phasing and/or timing of further phases of trial, be deferred until after the Motions for Appointment of Expert, until the matter is at issue, until discovery disputes and discovery have been completed and until all parties have had the opportunity to properly evaluate, with expert input, legal and factual issues important to their positions.

DATED: February 23, 2009

CLIFFORD & BROWN

By:   
RICHARD G. ZIMMER, ESQ.  
T. MARK SMITH, ESQ.  
Attorneys for BOLTHOUSE PROPERTES,  
LLC and WM. BOLTHOUSE FARMS, INC.

