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1 SUPERIOR COURT OF CALIFORNIA

2 COUNTY OF SANTA CLARA

3 \* \* \*

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

6 ANTELOPE VALLEY GROUNDWATER ) CASE NO. 1-05-CV-409053  
7 CASES )

8 INCLUDED ACTIONS: )

9 LOS ANGELES COUNTY )  
10 WATERWORKS DISTRICT NO. 40 v. )  
11 DIAMOND FARMING COMPANY, et al., )  
Los Angeles Superior Court Case No. )  
BC325201 )

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT**

12 LOS ANGELES COUNTY )  
13 WATERWORKS DISTRICT NO. 40 v. )  
14 DIAMOND FARMING COMPANY, et al., )  
Kern County Superior Court Case No. S- )  
15 1500-CV-254348 )

**DATE: JANUARY 15, 2010  
TIME: 9:00 a.m.  
DEPT: 1**

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

22  
23 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

24 The following parties, BOLTHOUSE PROPERTIES, LLC and WM. BOLTHOUSE  
25 FARMS, INC., by and through their attorneys of record, Clifford & Brown, by Richard G.  
26 Zimmer; DIAMOND FARMING COMPANY and CRYSTAL ORGANIC FARMS, LLC, by  
27 and through their attorneys of record, LeBeau Thelen, LLP, by Bob Joyce; ANTELOPE  
28 VALLEY GROUNDWATER AGREEMENT ASSOCIATION (“AGWA”), by and through its

1 attorneys of record, Brownstein, Hyatt, Farber & Schreck, LLP, by Michael Fife; SERVICE  
2 ROCK PRODUCTS CORPORATION, SHEEP CREEK WATER COMPANY, INC. and A.V.  
3 UNITED MUTUAL GROUP, by and through their attorneys of record, Gresham Savage Nolan  
4 & Tilden, APC, by Michael Duane Davis (hereinafter collectively referred to as “These  
5 Responding Parties”) file this Case Management Conference Statement.

6 **STATUS OF CONSOLIDATION**

7 These responding parties contends that in order to properly align the parties in these  
8 coordinated proceedings, all properties in the Antelope Valley must be joined *in rem* and the  
9 current and future owners of all such properties must be named in order for there to be a  
10 complete adjudication of the water rights appurtenant to such properties. These responding  
11 parties contend that given the scope and nature of the allegations in the Cross-Complaints filed  
12 by Los Angeles County, all such parties need to be named as cross-defendants to said action.  
13 The plaintiff classes need to be named as defendant classes and certified accordingly.

14 These responding parties disagree with the Court’s previously expressed position that  
15 complete jurisdiction can be achieved by an alignment of the coordinated proceedings and the  
16 parties to each, under a “consolidation order” in which the classes would be permitted to solely  
17 remain as plaintiff classes, and only the declaratory relief causes of action would be  
18 “coordinated,” finding such a potential procedural alignment both infeasible and unworkable.  
19 The pleadings must clearly set forth each and every cause of action that is being asserted by  
20 each party as against each other party. Such clarification is necessary to give such parties  
21 proper due process notice of the allegations against them in order for them to properly defend  
22 such allegations and to properly frame cross-complaint causes of action, if necessary.  
23 Additionally, such clarification is necessary in order for the parties to propound appropriate  
24 discovery to assess the factual basis for each of the pleaded causes of action, to assess the  
25 strengths and weaknesses of each such allegation, to meaningfully participate in settlement  
26 discussions and if necessary, to litigate the issues properly raised in the pleadings by and  
27 against them at trial.



1           These responding parties continue to assert that the coordinated proceedings should be  
2 pleaded and tried as an *in rem* action. Unless the matter is litigated as an *in rem* action,  
3 including the filing of *lis pendens* notice, many properties that should be subject to the Court's  
4 jurisdiction will be accidentally omitted. The result will be that many parcels, the owners  
5 thereof and/or the subsequent owners thereof, will never receive notice (i.e., due process) of the  
6 litigation and be afforded the opportunity to protect themselves and their properties from the  
7 potential effects of the coordinated proceedings on the water rights appurtenant to their parcels.  
8 The result will be a legal quagmire of parcels not bound by the adjudication, parcel owners  
9 claiming that their parcels are not bound, irreparable due process problems and the real  
10 potential that the coordinated proceedings need to be re-litigated in their entirety.

11           These responding parties request that the pleadings in the coordinated proceedings be  
12 re-pled or amended such that these coordinated proceedings must be tried as *in rem* actions and  
13 that all procedural requirements relating to *in rem* actions be properly met.

14 **Service of Process.**

15           The true status of Service of Process is unknown, probably to everyone. Some parties  
16 have been served with the original Cross-Complaint. Other parties have been given notice of  
17 the Plaintiff and/or Defendant Class Actions. Some parties have opted into one of the classes,  
18 and some parties opted out. Even the definitions of the classes have been subject to  
19 considerable question and have changed over time. Because the pleadings are not yet finalized,  
20 it does not appear that the Court has any way to track the names of all parties and whether they  
21 have properly filed responsive pleadings. Likewise, it does not appear that Los Angeles  
22 County has any accurate records concerning all parties, whether they have been served or not,  
23 or what they were served with. Once the coordinated proceedings have been consolidated and  
24 the pleadings finalized, there must be some reliable written record of all parties to each of the  
25 remaining action(s), confirmation of service on all parties to each of the action(s), and  
26 confirmation of the filing of responsive pleadings by all parties in each of the actions followed  
27 by the defaults of all parties who fail to file responsive pleadings.

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1 **The Class Actions.**

2 The Class Action process has suffered from the same procedural and pleading issues as  
3 the rest of the coordinated proceedings. Although these responding parties are not entirely  
4 certain on the issue, they recall that a defendant class was previously certified by this Court;  
5 but, because no counsel was willing to undertake representation of the parties of that defendant  
6 class, this Court then certified a plaintiff's class of non-pumpers and a plaintiff's class of small  
7 pumpers. These responding parties believe the defendant's class was never decertified.  
8 Though possibly less than fully documented in the transcripts of the numerous hearings on  
9 these issues, the definitions of the various classes have changed over time; and even presently,  
10 there is less than unanimity amongst the various parties over the specific definitions of each of  
11 the classes.

12 Finally, as discussed in more detail above, these responding parties continue to contend  
13 that the dormant class and the small pumpers' class must be named as defendants to the Los  
14 Angeles County Cross-Complaint. Otherwise, the causes of action alleged and claims made in  
15 the Los Angeles County Cross-Complaint cannot be adjudicated, lacking indispensable parties,  
16 and must be dismissed.

17 **Discovery.**

18 The court and the parties seem to have ignored many of the rules of *Civil Procedure*  
19 regarding pleadings, discovery and process. As mentioned above, no one appears able to  
20 specifically name all of the plaintiffs, all of the defendants, all of the cross-complainants and all  
21 of the cross-defendants in each of the various coordinated proceedings, due in no small part to  
22 the ambiguities of and confusion caused by the pleadings. The current plan appears to be for  
23 the parties to agree on some type of "consolidation order" which, in theory, would somehow  
24 address these issues. However, it is highly unlikely if not certain that the parties will ever  
25 mutually understand such an order even if they are able to agree upon one. The rules of  
26 pleading were legislatively designed to confer due process and avoid confusion of the nature  
27 being experienced in these coordinated proceedings, by requiring that a complaint set forth all  
28 allegations by one party against another, afford the opportunity for a cross-complaint, and

1 accommodate a party's right to legally challenge the sufficiency of each alleged cause of  
2 action. Until the allegations are known, understood and legally challenged, a party cannot  
3 properly engage in discovery in a cost effective and legally appropriate manner. Accordingly,  
4 discovery in the coordinated proceedings has stalled, pending clarification of the classes,  
5 pleadings, causes of action and claims of the various parties in each of the coordinated  
6 proceedings.

7 **Trial.**

8 Because the rules of *Civil Procedure* have not been followed by the parties and the  
9 court, two phases of trial have already occurred, notwithstanding that many of the present and  
10 potentially future parties had not yet been named and served, or appeared. Notwithstanding the  
11 frequent suggestions that personal jurisdiction over all potentially affected parties was not  
12 necessary because these two phases of trial have been procedural only, serious questions  
13 remain over whether subsequently appearing parties will be able to claim they were deprived of  
14 due process of law and at a later time, such as on appeal, which could invalidate or nullify the  
15 entire process. In truth, any unnamed party, could claim that, had they been afforded due  
16 process, they would have been able to present evidence that would have brought about a totally  
17 different result in one or more of these two already tried phases of trial.

18 Also because the rules of *Civil Procedure* have not been followed by the parties and the  
19 court, it is not clear what causes of action and claims are being asserted by each party as against  
20 each other party; making it extremely difficult if not impossible to determine exactly what  
21 issues will be or are being tried in any particular phase of trial. It has been suggested that the  
22 next phase of trial will deal with issues of safe yield and overdraft; though the context in which  
23 those issues will be tried remains unclear. However, without knowing the specific allegations  
24 being made by each party as against each other party, the significance of these issues remains  
25 very unclear.

26 Additionally, these responding parties have contended and continue to contend, that  
27 proper pleading requires specifically identified causes of action which are being tried by a  
28 specific party as against other parties. The idea that declaratory relief somehow encompasses

1 any and all claims is insufficient both procedurally and as a practical matter, because it wholly  
2 fails to place parties on notice of what is being litigated. Simply trying issues is neither  
3 sufficient nor legally proper. Issues are non-dispositive. Which party bears the burden of proof  
4 is unclear and the legal and/or factual significance of the issues is unclear. Furthermore, the  
5 parties are left to guess about the significance of these issues, compelled to spend exorbitant  
6 amounts of money on discovery without knowing the significance of the issues, and challenged  
7 to address legal rulings regarding these issues with unknown and potentially devastating  
8 consequences.

9 Finally, neither the definition nor the scope of the issues that the court has suggested  
10 will likely be tried, is clear. The terms “safe yield” and “overdraft” do not have clear,  
11 consistent meaning. These terms are often used in different ways by hydrologists to define  
12 hydrogeologic conditions for different purposes. There are no consistent meanings for these  
13 terms throughout the water law cases in California. Discovery propounded upon the purveyor  
14 parties has been responded to with objections and refusals to define these terms. The Court has  
15 not provided any legal mechanism to define these terms. Even the experts used by the various  
16 parties in these coordinated proceedings do not agree on the meaning of the terms. If the court  
17 intends to require the parties to try “safe yield” and “overdraft” in the next phase, those terms  
18 have to be given clear, relevant and hydrologically meaningful definitions that are legally  
19 consistent with authoritative California case law.

20 These terms need to be defined in order to properly conduct discovery and engage in  
21 litigation wherein rulings will be made by the Court regarding hydrogeologic conditions and  
22 conclusions made using these terms. Likewise, the scope of litigation regarding these terms  
23 needs to be determined. For example, assuming the terms are defined, is a factual  
24 determination to be made by the Court in the next phase regarding “safe yield” and/or  
25 “overdraft” currently, as of the date of the filing of the Complaint by Los Angeles County, as of  
26 the date of the filing of the Complaint by Bolthouse and Diamond Farming circa 2001 or as to  
27 some prior date or dates over the past one hundred (100) years. This determination must be  
28 clearly made, in order for the parties to conduct discovery, prepare for trial and conduct trial.



1 Finally, such terms must be in the context of the causes of action, in order for them to be  
2 properly tried. These issues need to be resolved, along with the procedural issues discussed  
3 above, before another trial date can be set.

4 **Demand for Jury Trial.**

5 The Court previously ruled and acknowledged that all parties may demand a jury trial as  
6 to all matters as to which jury trial is authorized. Issues related to “safe yield” and “overdraft”  
7 depending on how they are defined, and depending upon the scope and burden of proof at a  
8 trial, may very well be necessary elements of a claim of prescription. Prescription is a central  
9 claim by the purveyors against the landowners. The landowners, including Bolthouse, have  
10 continued to demand a jury trial as to the claim of prescription. Bolthouse continues to demand  
11 jury trial on any claim of prescription, including all required factual findings and elements of  
12 proof thereof. Bolthouse demands jury trial on the issues of “safe yield” and “overdraft” since  
13 they have not been properly defined and the meaning and legal impact thereof cannot be  
14 determined.

15 **CONCLUSION**

16 Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc. request that rules of *Civil*  
17 *Procedure*, including pleading and practice be followed, that the pleadings be clarified and that  
18 proper notice and service of process occur. Thereafter, appearances of all parties need to be  
19 made and/or defaults taken. There must be a window of time for proper legal challenge to the  
20 sufficiency of the various pleadings. Thereafter, all parties must be afforded the opportunity to  
21 engage in meaningful discovery and to prepare for the next phase of trial. The next phase of  
22 trial must be well defined including the matters which will be tried, the legal causes of action  
23 asserted, and, if the Court is to rule on issues dependent on definitions, those definitions have to

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1 be properly, clearly and justifiably defined.

2  
3 DATED: January 8, 2010

Respectfully submitted.

4 CLIFFORD & BROWN

5  
6 By: 

RICHARD G. ZIMMER, ESQ.  
Attorneys for BOLTHOUSE PROPertes,  
LLC and WM. BOLTHOUSE FARMS, INC.

7  
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9  
10  
11 DATED: January 8, 2010

Respectfully submitted,

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19  
20 DATED: January 8, 2010

Respectfully submitted,

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GROUNDWATER AGREEMENT  
ASSOCIATION ("AGWA")



1 be properly, clearly and justifiably defined.

2  
3 DATED: January 8, 2010

Respectfully submitted.

4 CLIFFORD & BROWN

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11 DATED: January 8, 2010

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19 INC.

20 DATED: January 8, 2010

Respectfully submitted,

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22 SCHRECK, LLP

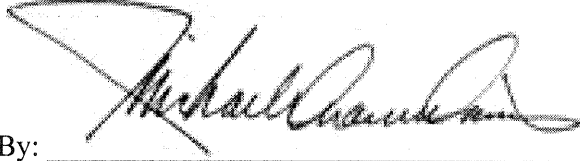
23  
24 By:

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26 MICHAEL FIFE, ESQ.  
27 BRADLEY HERREMA, ESQ.  
28 Attorneys for ANTELOPE VALLEY  
GROUNDWATER AGREEMENT  
ASSOCIATION ("AGWA")

1 DATED: January 8, 2010

Respectfully submitted,

2 GRESHAM SAVAGE NOLAN & TIDEN, APC

3  
4 

5  
6 By:

MICHAEL DUANE DAVIS, ESQ.  
7 Attorneys for SERVICE ROCK PRODUCTS  
8 CORPORATION, SHEEP CREEK WATER  
9 COMPANY, and A.V. UNITED MUTUAL  
10 GROUP

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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 8, 2010, I served the foregoing document(s) entitled:

**JOINT CASE MANAGEMENT STATEMENT**

— 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 8, 2010, 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