

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 **(661) 322-6023**

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

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

11 COORDINATION PROCEEDING) Judicial Council Coordination Proceeding
12 SPECIAL TITLE (Rule 1550(b))) No. 4408
13 ANTELOPE VALLEY GROUNDWATER) CASE NO. 1-05-CV-409053
14 CASES)
15 INCLUDED ACTIONS:)
16 LOS ANGELES COUNTY)
17 WATERWORKS DISTRICT NO. 40 v.)
18 DIAMOND FARMING COMPANY, et al.,) **BOLTHOUSE PROPERTIES, LLC'S**
19 Los Angeles Superior Court Case No.) **AND WM. BOLTHOUSE FARMS,**
20 BC325201) **INC.'S CASE MANAGEMENT**
21) **CONFERENCE STATEMENT**
22 LOS ANGELES COUNTY)
23 WATERWORKS DISTRICT NO. 40 v.)
24 DIAMOND FARMING COMPANY, et al.,)
25 Kern County Superior Court Case No. S-)
26 1500-CV-254348) **DATE: March 8, 2010**
27) **TIME: 9:00 a.m.**
28 DIAMOND FARMING COMPANY, and) **DEPT: 1**
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 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 Case Management Conference
4 Statement without prejudice to the contention that this matter should not proceed given the
5 170.6 challenge heretofore filed with the Court.
6

7 **AT ISSUE STATUS/DEMAND FOR JURY TRIAL**

8 At the last Case Management Conference, parties confirmed with the Court that this
9 matter is not at issue. It does not appear that the original parties contemplated to be joined have
10 been joined. Further, it is reported that many properties have sold requiring dismissal of many
11 parties and adding many new parties. Bolthouse objects to setting trial in the absence of the
12 matter being properly at issue with all parties served, all responsive pleadings filed, and
13 sufficient time for meaningful discovery regarding the issues for the next phase of trial.

14 As the Court is aware, Bolthouse previously objected to trial of this matter on limited
15 issues not clearly tied to a cause of action, without clearly defined elements of proof and where
16 the burden of proof is unclear. Additionally, these responding parties have demanded jury trial
17 on each and every issue and fact which will be used in any way in an attempt to prove any
18 claim of prescription. These responding parties specifically have objected to trial of “safe
19 yield” and “overdraft” in the absence of a cause of action, elements of proof and burden of
20 proof. These responding parties have demanded jury trial on these issues to the extent that any
21 of these issues will be used in any way to prove a claim of prescription.

22 **TRIAL PHASING**

23 Notwithstanding the foregoing objections, and without waiving them, and given the Court’s
24 decision, over substantial objection, to proceed with safe yield and overdraft at the next phase
25 of trial, these responding parties suggest the following phasing. The already tried First and
26 Second Phases are included for context.

27 Phase I – Area of adjudication
28

1 Phase II – Whether the area of adjudication is hydraulically
2 connected so as to be considered a single basin

3 Phase III – Evaluation of current safe yield and whether a current
4 overdraft exists, including necessary determination of Article X,
5 section 2 issues, in order to evaluate what issues will need to be
6 tried and to determine whether a trial will be necessary on the
7 issue of a potential physical solution

8 Phase IV – If an overdraft exists based upon the correct legal
9 standard, trial to determine the water rights of the various parties,
10 including, but not limited to, overlying rights, appropriative
11 rights, rights transferred by prescription and other rights to
12 determine which parties will be required to cut back water usage
13 based upon their relative priorities in light of the current safe
14 yield

15 Phase V – If there is a determination of current overdraft, and
16 after the water rights and priorities of the parties with water rights
17 have been determined, trial as to a potential physical solution to
18 ameliorate the harsh affects of a potential injunction against
19 parties with lower priority water rights

20 Phase VI – If there is a current overdraft, after determination of
21 the water rights of the parties and after a physical solution is tried
22 and decided, a trial on the taking claims and any remaining
23 claims of the various parties

24 **PRE-TRIAL ORDER**

25 There seems to be a substantial difference of opinion regarding what will be tried in the
26 next phase of trial. Following decision as to what precisely will be tried in the next phase of
27 trial, a Pre-Trial Order is requested from the Court to clearly document what issues will be tried
28 in the next phase of trial. It is requested that the Pre-Trial Order include appropriate definitions
regarding issues to be tried, identify controlling law the Court will be relying upon, such as safe
yield and overdraft, etc., and that these definitions should be fully reviewed, researched and
discussed by all parties so that they may be included in the Pre-Trial Order. The elements of
proof and burden of proof also should be addressed in the Pre Trial Order. This will allow all
parties to know before the Phase 3 trial, precisely what issues are intended to be tried, the legal
definitions and standards being applied and give the parties the ability to focus their discovery
and expert evaluation on these issues.

1
2 **DATE FOR NEXT PHASE OF TRIAL**

3 No trial date should be set before the action is properly at issue. Parties also must be
4 provided with statutory timeframes to challenge the pleadings. The trial date and Pre Trial
5 Order, based upon the scope of the issues to be tried, must provide sufficient time for the
6 parties to confirm all necessary parties and property are before the court, challenge the
7 pleadings, complete discovery, compel responses as necessary to discovery, conduct percipient
8 depositions, conduct appropriate expert analysis based upon the scope of the issues to be tried
9 and after sufficient time to obtain appropriate response to discovery and production of
10 documents, conduct expert depositions, engage in mediation or settlement conference and
11 prepare for trial. Statutory requirements for pleading, discovery, expert disclosure and trial
12 should be followed.

13 As noted above, these responding parties submit that the next phase of trial should deal
14 only with **current safe yield** and **current overdraft**. The Court previously refused to try the
15 safe yield and overdraft issues within the context of a cause of action such as prescription.
16 These responding parties again respectfully request the Court proceed as previously requested.
17 However, assuming the Court continues to proceed as it previously expressed, over substantial
18 party objections, trial to determine current safe yield and current overdraft, should only be tried
19 in the next phase to determine what action is necessary to prevent damage to the Basin and to
20 determine what further phases of trial are necessary.

21 **Historical safe yield** and/or **historical overdraft** are only potentially relevant to the
22 issue of prescription. Since these responding parties, as well as many other parties, have
23 demanded jury trial on any issues and/or facts which may be argued to support a claim of
24 prescription, historical safe yield and/or overdraft can issue be argued in the fourth phase of
25 trial which will deal with the water rights being claimed by the various parties, including claims
26 of prescription. These responding parties again **demand jury trial** on all issues to which they
27
28

1 are entitled to a jury trial, including but not limited of any and all issues which will be used in
2 an effort to prove prescription.

3
4 These responding parties do not agree that July and/or August is sufficient time to
5 properly prepare for even a current overdraft and current safe yield trial. It is unclear when the
6 case will properly be at issue and the parties should be afforded sufficient time to challenge
7 pleadings, conduct discovery, obtain meaningful expert analysis, conduct expert depositions,
8 attempt to settle the case, and if not, prepare for trial. If the trial is limited to current overdraft
9 and current safe yield, setting a trial date sometime in December 2010 may be possible. If
10 historical overdraft and historical safe yield will be at issue at the next phase of trial, a trial date
11 before December 2010 will be impossible in any meaningful due process sense. As noted
12 below, the Case Management Conference Statement prepared by Los Angeles County is
13 inaccurate and self serving regarding the present readiness of this case to be tried in July.

14 **LOS ANGELES COUNTY CASE MANAGEMENT STATEMENT**

15 Los Angeles County indicates the following in its Case Management Conference
16 Statement at Page 3, Lines 9 through 12:

17 “Once the Court make a safe yield determination and decides
18 **whether a prescriptive period has resulted from**
19 **overproduction**, the parties will be able to assess the strength of
their claims of priority to Basin water while understanding the
total amount available for all producers.” [Emphasis added.]

20 Based on this statement it is clear that Los Angeles County intends to use
21 determinations of safe yield and/or overdraft at the next phase of trial, as a basis for a claim of
22 prescription. These responding parties again demand a jury trial on these issues. The
23 foregoing statement also presumes that a prescriptive period results from over production. Los
24 Angeles County has provided little or no responses and documents in response to discovery
25 related to the issue of prescription, citing a wide variety of legal objections as the basis for not
26 responding and/or not producing documents. Given the Court’s apparent intention to set an
27 early trial date, these responding parties request a meet and confer conference with the Court
28 regarding outstanding discovery.

1 Los Angeles County's Statement that "As the Court is aware, the parties' experts
2 participated in an informal Technical Committee that spent over a year collecting and analyzing
3 data concerning groundwater recharge including precipitation and return flows from imported
4 water. They are ready to testify on Basin characteristics." This statement is both inaccurate
5 and misleading. All the parties' experts did not participate in the Technical Committee. In
6 fact, experts for most party did not participate since they were not parties at that time. Many
7 parties still do not have experts. Additionally, without getting into details of the meetings of
8 the experts because of a Confidentiality Agreement, it is sufficient to state that the Technical
9 Committee was dominated by parties having a particular bias and their was no willingness to
10 subject the process to appropriate scientific scrutiny.

11
12 The participation in the Technical Committee, to the extent one wants to characterize it
13 in that manner, did not involve appropriate legal discovery of documents and was of very little
14 assistance in helping to prepare for trial of this matter on the issues of historical overdraft and
15 safe yield in the context of a potential prescription claim. The landowner experts will not be
16 "ready to testify" until appropriate discovery has been provided and analyzed, until appropriate
17 percipient depositions have been completed and until there is time to review the potential
18 opinions of other experts, explore the basis for those opinions, both from a documentary
19 standpoint and from a technical standpoint and to prepare for trial.

20 The intent of Los Angeles County and other purveyor parties to push this matter to trial
21 as quickly as possible based on a perceived informational and technical advantage, is patent.
22 The water rights at issue are fundamental and critical to all users of water in the Antelope
23 Valley, not just to the purveyor parties. The matter is still not at issue with all parties before
24 the Court. Expecting persons and entities who only recently became involved in this case to be
25 able to proceed to trial while the purveyors hold a stacked deck, would be manifestly unjust.
26 Regardless of the need to move the matter along, the opportunity for all parties to meaningfully
27 litigate claims and matters at issue must be protected. Defendants in minor car accident cases
28 are afforded more procedural due process and discovery rights than what the purveyors are

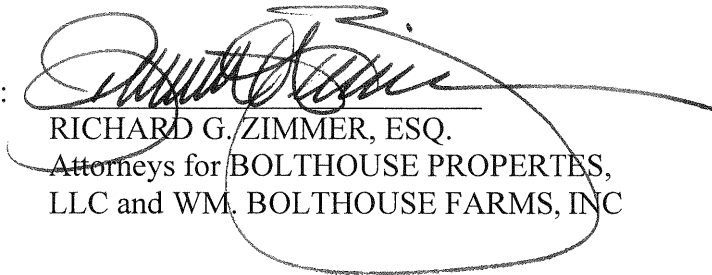
1 suggesting should be allowed to the landowner parties. These responding parties respectfully
2 request the Court require this action to proceed within the bounds of the *Code of Civil*
3 *Procedure* recognizing and allowing the rights of all parties to protect their water rights.
4

5 The length of trial for a determination of current safe yield and current overdraft will
6 probably take about two weeks. Assuming this matter is promptly and properly placed at issue,
7 trial on current overdraft and current safe yield possibly could occur in December 2010. If
8 trial is to be held regarding the broader issues of historical safe yield and/or historical overdraft,
9 a trial date should not be set before the spring of 2011 given the voluminous nature of
10 documents to be reviewed, discovery to be accomplished, expert analysis to be conducted and
11 expert depositions which will be necessary. A trial on historical safe yield and historical
12 overdraft probably will require approximately four weeks.

13 DATED: March 2, 2010

Respectfully submitted.

14 CLIFFORD & BROWN

15
16
17 By: 
18 RICHARD G. ZIMMER, ESQ.
19 Attorneys for BOLTHOUSE PROPERTES,
20 LLC and WM. BOLTHOUSE FARMS, INC
21
22
23
24
25
26
27
28

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 March 2, 2010, I served the foregoing document(s) entitled:

**BOLTHOUSE PROPERTIES, LLC'S AND WM. BOLTHOUSE FARMS, INC.'S CASE
MANAGEMENT CONFERENCE 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 March 2, 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