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7
8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10 * * *

11 COORDINATION PROCEEDING) Judicial Council Coordination
12 SPECIAL TITLE (Rule 1550(b))) Proceeding No. 4408
13)
14 ANTELOPE VALLEY GROUNDWATER) CASE NO. 1-05-CV-049053
15 CASES)
16 INCLUDED ACTIONS:)
17)
18 LOS ANGELES COUNTY WATERWORKS)
19 DISTRICT NO. 40 v. DIAMOND)
20 FARMING COMPANY, et al.,)
21 Los Angeles Superior Court)
22 Case No. BC325201)
23)
24 LOS ANGELES COUNTY WATERWORKS)
25 DISTRICT NO. 40 v. DIAMOND)
26 FARMING COMPANY, et al.,)
DATE: February 17, 2006
Kern County Superior Court)
TIME: 9:00 a.m.
Case No. S-1500-CV-254348)
DEPT: D-1, ROOM 534
DIAMOND FARMING COMPANY, and)
W.M. BOLTHOUSE FARMS, INC., v.)
CITY OF LANCASTER, et al.,)
LOCATION: LA SUPERIOR COURT
Riverside Superior Court)
111 NORTH HILL ST.
Case No. RIC 344436 [c/w case no.)
LOS ANGELES, CA 90012
RIC 344668 and 353840]
ROSAMOND COMMUNITY SERVICES)
DISTRICT,)
CROSS-COMPLAINANT,)

1 BOLTHOUSE PROPERTIES, LLC¹, submits the following Case
2 Management Statement:

3 I

4 PROCEDURAL BACKGROUND

5 Briefly stated, DIAMOND FARMING and BOLTHOUSE filed quiet
6 title actions approximately six years ago seeking to quiet title
7 to their respective ground water rights as against possible
8 claims of prescription. A four day trial in the Riverside County
9 Superior Court was conducted at the request of the purveyors to
10 determine the geographical area for consideration in the lawsuit.

11 The water purveyors contended that the area for consideration
12 was merely the groundwater aquifer in the Antelope Valley. The
13 landowners contended that the entire watershed should be
14 considered given the fact that water coming into and/or out of
15 the Antelope Valley groundwater basin would be important to
16 evaluate in terms of claims of prescription. The Court
17 ultimately decided that drawing a basin boundary line was not
18 necessary and that each respective party could make its arguments
19 regarding prescription based upon the aquifer and/or watershed at
20 the time of a final trial. The Court set a final trial date
21 within several months.

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26 ¹ For ease of reference, Bolthouse Properties, LLC and its predecessor in interest
Bolthouse Farms, Inc. are collectively referred to herein as "Bolthouse."

1 II

2 SUGGESTED APPROACH IN THIS CASE

3 *Prejudice to Diamond Farming and Bolthouse:*

4 BOLTHOUSE and DIAMOND FARMING have been attempting for
5 approximately six years to quiet title to their water rights as
6 against claims of prescription. The parties, after six years of
7 investigation, discovery and expert analysis, were on the verge
8 of completing the matter by trial. Notwithstanding the fact that
9 the water purveyors should have pursued a basin-wide adjudication
10 if they felt that was appropriate at the beginning of the
11 Riverside action, they caused a mistrial of the Riverside action
12 by filing two separate basin-wide adjudications in Los Angeles
13 County and Kern County. Prejudice to Bolthouse and Diamond
14 Farming has been manifest in terms of time and expense, each
15 party spending nearly a half million dollars pursuing the
16 previous action. Putting Bolthouse and Diamond Farming in the
17 position of potentially litigating these matters all over again
18 over the approximately next ten years would further compound the
19 prejudice to Bolthouse and Diamond Farming.

20 *The Riverside Action Should Not Be Consolidated:*

21 The Riverside action should not be consolidated with the Los
22 Angeles County and Kern County actions currently pending before
23 the Court in the coordinated proceeding. As noted above, doing
24 so would be extremely prejudicially to Bolthouse and Diamond
25 Farming. At the last Case Management Conference, this Court
26 advised that it would consider hearing the Riverside action to

1 some extent in advance of the other matters given the prejudice
2 Bolthouse and Diamond Farming have previously suffered.

3 Bolthouse suggests that the Riverside action proceed as a
4 separate trial in the near future and tried to conclusion on the
5 issues presented therein. At the very least, the issue of
6 prescription should be tried to conclusion. As noted in the Case
7 Management Statement filed by Diamond Farming, there are no
8 common issues of fact regarding the prescriptive claims of the
9 purveyors against Bolthouse and Diamond Farming compared with the
10 prescriptive claims against the other defendants and potential
11 defendants. This is because the time period for analysis is
12 completely different. The time period for analysis of potential
13 prescriptive claims in the Riverside action is the five years
14 immediately preceding the filing of that action. The time period
15 for analysis of prescriptive claims in the Los Angeles County and
16 Kern County actions will be the five years before those actions
17 were filed. Since the actions were filed over five years apart,
18 there is no overlap of analysis whatsoever. Two completely
19 different distinct time periods and factual circumstances will be
20 analyzed in terms of whether the purveyors can prove prescriptive
21 claims.

22 Based on the foregoing, and in the interest of justice, the
23 quiet title actions of Bolthouse and Diamond Farming should be
24 tried without delay. At a minimum, the alleged prescription
25 claims against Bolthouse and Diamond Farming should be tried
26 without delay since these claims will be factually different than

1 the claims against the remaining defendants.

2 **If the Court Decides to Consolidate All Matters For Trial, There**
3 **Should Be No Bifurcation:**

4 Given the substantial prejudice to Bolthouse and Diamond
5 Farming as discussed above, determination of Bolthouse's and
6 Diamond Farming's claims should not be delayed. Bifurcation will
7 undoubtedly delay determination of these quiet title claims.

8 Bolthouse disagrees with the water purveyors brief that the
9 Court must determine basin boundaries as a prerequisite to any
10 other issue being tried. The water purveyor defendants in the
11 Riverside action have investigated, conducted discovery
12 regarding, and obtained expert analysis regarding the
13 geographical configurations of the aquifer in the Antelope
14 Valley. They easily can determine what parties in this
15 geographical area exist by referring to public records and can
16 name and serve these parties. They can name any parties they
17 believe are appropriate given their analysis in the respect.
18 Further, determination of basin boundaries is not dispositive of
19 any legal issue in the case. Accordingly, there is no reason to
20 have a trial phase determining basin boundaries.

21 **The First Phase of the Litigation Should Be Directed to**
22 **Dispositive Issues Which May Render Further Phases Unnecessary:**

23 As noted above, the Riverside actions were filed to quiet
24 title to water rights as against claims of prescription. The
25 purveyors must prove traditional elements of prescription such as
26 Open, Notorious, Hostile, Adverse, Use of Water Under Claim of

1 Right each for the five year prescriptive period. Of these
2 elements, adversity and notice are the least dependent upon
3 extremely involved scientific analysis and can be adjudicated
4 more quickly. Additionally, determination of these will be
5 dispositive of the prescription claims.

6 For example, in order to prove adversity, the water
7 purveyors will need to prove that based upon their pumping,
8 overlying landowners' water rights were impaired. It is well
9 recognized that under the doctrine of "Self-Help", an overlying
10 landowner's water rights are not impaired when the landowner
11 continues to pump groundwater for his use. Accordingly, unless
12 the water purveyors can prove they stopped the overlying
13 landowners from pumping during the requisite five year period,
14 their claims will fail as a matter of law. Likewise, if an
15 overlying landowner was not pumping on the property during the
16 requisite time, overlying rights could not have been impaired as
17 a matter of law. Similarly, the water purveyors must prove that
18 an overlying landowner had notice of the impairment of water
19 rights caused by a particular party and failed to take action to
20 prevent this improper taking or use of water. This is
21 fundamental to the concept of prescription and/or adverse
22 possession. In the absence of sufficient proof of notice on the
23 part of the overlying landowner, the water purveyors' claims must
24 fail as a matter of law.

25 The self-help and notice elements of a claim of prescription
26 and/or adverse possession can be tried most efficiently as the

1 first phase of this litigation. Failure of the water purveyors
2 to prove these necessary elements will make trial of remaining
3 issues regarding prescription unnecessary. Another option would
4 be to allow the Riverside parties to complete that action on the
5 issues of self-help and notice before determination of these
6 issues as to other parties. Although a ruling favorable to
7 Bolthouse and Diamond Farming would be collateral estoppel to the
8 water purveyors, it would not be collateral estoppel or to any
9 other party not litigating that issue at that time.

10 **III**

11 **CONCLUSION**

12 Bolthouse and Diamond Farming have been prejudiced by the
13 actions of Los Angeles County and the other water purveyors.
14 Bolthouse and Diamond Farming deserve a speedy judicial
15 determination of their quiet title claims. Accordingly, the
16 Riverside matter should not be consolidated with the Los Angeles
17 and Kern County actions.

18 If the Court determines that it will consolidate the
19 Riverside matters with the Los Angeles and Kern County actions,
20 Bolthouse requests no bifurcation and that a trial be set
21 promptly as to all issues.

22 If the Court determines that bifurcation is appropriate,
23 Bolthouse requests that the first phase be directed to whether
24 the water purveyors can prove adversity and notice as against
25 Bolthouse and/or Diamond Farming. Alternatively, the Court could
26 bifurcate the matter to hear issues of adversity and notice as to

1 all defendants as the first phase of a multi phase litigation.

2 Bolthouse opposes any bifurcation where basin boundaries are
3 first litigated. A determination of basin boundaries will not be
4 dispositive of any issue and is not necessary. Additionally, a
5 discussion and analysis of basin boundaries is the most factually
6 and expert intensive issue to be evaluated by the parties. If
7 the water purveyors are unable to prove adversity and notice,
8 such analysis is not necessary or appropriate.

9

10 DATED: January 24, 2006

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CLIFFORD & BROWN

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By: 

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T. MARK SMITH, ESQ.
Attorneys for
BOLTHOUSE PROPERTIES, LLC

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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA COUNTY OF KERN:

3 I am a resident of the County aforesaid; I am over the age of
4 eighteen years and not a party to the within entitled action; my
5 business address is 1430 Truxtun Avenue, Suite 900, Bakersfield,
6 California, 93301.

7 On January 24, 2006, I served the **BOLTHOUSE PROPERTIES, LLC'S**
8 **CASE MANAGEMENT STATEMENT** on the interested parties in said action.

9
10 (xx) BY SANTA CLARA SUPERIOR COURT E-FILING IN COMPLEX LITIGATION
11 PURSUANT TO CLARIFICATION ORDER DATED OCTOBER 27, 2005.

12 () VIA FACSIMILE - [C.C.P. § 1013(e)]; - The telephone number of
13 the sending facsimile machine was (661) 322-3508. The
14 telephone(s) number of the receiving facsimile machine(s) is
15 listed below. The Court, Rule 2004 and no error was reported by
16 the machine. Pursuant to California Rules of Court, Rule
17 2006(d), the machine was caused to print a transmission record
18 of the transmission, a copy of which is attached hereto.

19 () VIA OVERNIGHT DELIVERY on the date below stated, pursuant to CCP
20 §1013(c)(d), I deposited such envelope with delivery fees fully
21 prepaid with CALIFORNIA OVERNIGHT.

22 () BY MAIL I am readily familiar with the business' practice for
23 collection and processing of correspondence and documents for
24 mailing with the United States Postal Service. Under that
25 practice, the correspondence and documents would be deposited
26 with the United States Postal Service that same day, with
postage thereon fully prepaid, in the ordinary course of
business at Bakersfield, California.

I declare, under penalty of perjury under the laws of the State
of California, that the foregoing is true and correct.

Executed on January 24, 2006, at Bakersfield, California.


ROSEMARY MYERS