

1 RICHARD G. ZIMMER - SBN 107263
T. MARK SMITH - SBN 162370
2 CLIFFORD & BROWN
3 A Professional Corporation
Attorneys at Law
4 Bank of America Building
1430 Truxtun Avenue, Suite 900
5 Bakersfield, CA 93301-5230
(661) 322-6023
6

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

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SANTA CLARA

10 * * *

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)
WATERWORKS DISTRICT NO. 40 v.)
17 DIAMOND FARMING COMPANY, et al.,) **BOLTHOUSE PROPERTIES, LLC'S**
Los Angeles Superior Court Case No.) **AND WM. BOLTHOUSE FARMS,**
18 BC325201) **INC.'S CASE MANAGEMENT**
) **CONFERENCE STATEMENT**
19 LOS ANGELES COUNTY)
20 WATERWORKS DISTRICT NO. 40 v.)
DIAMOND FARMING COMPANY, et al.,)
21 Kern County Superior Court Case No. S-)
1500-CV-254348) **DATE: November 15, 2011**
22) **TIME: 9:00 a.m.**
DIAMOND FARMING COMPANY, and) **DEPT: 15**
23 W.M. BOLTHOUSE FARMS, INC., v.)
24 CITY OF LANCASTER, et al.,)
Riverside Superior Court)
25 Case No. RIC 344436 [c/w case no. RIC)
344668 and 353840])
26)
27)

28 \\\

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") address the following issues in this Case
4 Management Conference Statement:

- 5 1. The status of mediation and settlement activities,
- 6 2. The need for an order requiring parties who have not previously done so, to
7 make any claimed pumping rights known to the Court and parties and or to waive such claims,
8 and
- 9 3. Whether a next phase trial date should be set at this time.

10 **STATUS OF MEDIATION AND SETTLEMENT ACTIVITIES**

11 As this Court is aware, the parties have been engaged in extensive mediation
12 conferences with the Honorable Justice Robie. These conferences have been very effective in
13 obtaining party participation, in facilitating what claims the various parties have regarding
14 pumping rights, return flow rights and prescriptive rights and regarding the present and future
15 needs of various parties including the US. This process has included discussions regarding a
16 potential stipulated judgment and physical solution to resolve the underlying dispute, to provide
17 for an orderly and effective way for the parties to manage available water supplies in the
18 Antelope Valley, to minimize future disputes and to protect the groundwater basin.

19 In addition to numerous mediation sessions with Justice Robie, and because of the
20 significant progress made by Justice Robie toward an overall settlement and stipulated
21 judgment, some of the parties prepared a list of issues fundamental to settlement and
22 fundamental to the contents of the stipulated judgment and physical solution. These issues
23 have been discussed at length and refined to reflect what most parties believe will be
24 potentially acceptable components of a stipulated judgment and physical solution, including
25 definition of terms, allocation of rights/safe yield, Federal reserved right, carryover, issues
26 surrounding foregone production, exports from basin, ramp down, assessments and transfers.

27 In addition to numerous e-mails and telephone conversations, these issues have been
28 discussed at an open meeting available to all parties hosted by AVEK to discuss areas of

1 disagreement and to reach consensus regarding these issues. In addition, AVEK prepared an
2 initial proposal regarding of a potential stipulated judgment and physical solution which the
3 parties also discussed at the meeting.

4 At the continued mediation on November 9, 2011, the parties held an open forum with
5 Justice Robie where these issues were discussed and where all parties had the opportunity to
6 express agreement and/or disagreement with the various issues. It would be inappropriate to
7 get into the details of the issues and/or the potential settlement terms to be incorporated into a
8 stipulated judgment and physical solution in this Case Management Statement.. However, in
9 general, it appeared there was significant agreement regarding most of the issues which was
10 consistent with very helpful insights of Justice Robie regarding these issues.

11 The parties are continuing to discuss potential allocation and are obtaining additional
12 information bearing on allocation issues. The relative claims of the parties regarding allocation
13 have been refined significantly. With a few exceptions, the parties have an estimate regarding
14 what will be necessary regarding allocation to reach a stipulated judgment and physical
15 solution. Additional time is necessary to obtain further allocation information and to determine
16 whether preliminary agreement can be reached regarding allocation, subject to agreement to the
17 other issues necessary for the stipulated judgment and physical solution. However, by
18 contemporaneously discussing both the allocation issues and the form and substance of a
19 stipulated judgment and physical solution, this certainly will shorten time for this process to
20 occur.

21 On a going forward basis, Justice Robie set this matter for a further mediation session
22 on December 7, 2011 in Sacramento. The parties have committed to continuing their open
23 forum meetings at AVEK to discuss and reach agreement on the important issues set forth
24 above. We have committed to Justice Robie that we will continue this process prior to the next
25 Mediation session which he set for December 7, 2011. At he next AVEK meeting, we will
26 refine concepts and potential language for the stipulated judgment and physical solution.

27 \\\

28 \\\

1 **NEED FOR AN ORDER REQUIRING PARTIES WHO HAVE NOT PREVIOUSLY**
2 **DONE SO, TO MAKE ANY CLAIMED PUMPING RIGHTS KNOWN TO THE**
3 **COURT AND THE PARTIES**

4 From a procedural standpoint, it is important that all parties to the litigation confirm if
5 they are making any water right claims in this litigation, to confirm the nature of such claims
6 and the quantity of any pumping rights claimed. Before the matter is properly at issue, these
7 claims must be made. Likewise, in order to resolve the allocation issue, all claims to
8 groundwater must be known and/or waived.

9 At the mediation, the parties discussed with Justice Robie, how to confirm that there are
10 no other claims to groundwater other than those made at mediation, in order for the parties to
11 determine how much of an allocation they are willing to accept. The parties, with the guidance
12 of Justice Robie, request that this Court procedurally require currently unknown claims to be
13 made and asserted, and that if such claims are not made and asserted by a date certain, that such
14 claims be deemed to have been waived or forfeited.

15 The parties' further request the assistance of this Court in evaluating such an order or
16 other procedural mechanism to assure that all claims to groundwater rights are made, waived or
17 forfeited to facilitate a settlement of this matter. This clearly will be necessary to finally agree
18 upon allocation and will provide more certainty to parties making accommodations and/or
19 concessions in the stipulated judgment and physical solution.

20 **WHETHER A NEXT PHASE TRIAL DATE SHOULD BE SET AT THIS TIME**

21 The parties have invested considerable time and resources into the mediation sessions
22 with Justice Robie and the open forum meetings to discuss issues regarding allocation and the
23 components of a stipulated judgment and physical solution. With the assistance, insight and
24 input of Justice Robie, these issues have been discussed at mediation between the parties and
25 Justice Robie. Significant progress has been made regarding resolution of allocation issues and
26 regarding the component parts of a stipulated judgment and physical solution.

27 Setting a trial date at this point would be disruptive and probably would derail the
28 mediation and party discussions working on allocation, a stipulated judgment and physical

1 solution. A so called water allocation hearing involving the water rights of all parties
2 including, but not limited to appropriative rights, prescriptive rights, overlying rights, federal
3 rights, etc. would set in motion voluminous written discovery, motions, percipient depositions,
4 retention of experts, expert depositions, etc. which undoubtedly would cause parties to direct
5 time and resources to litigation rather than to reaching a stipulated judgment and physical
6 solution. Doing so would be counterproductive and inconsistent with Justice Robie's
7 Mediation process and with the cooperative meetings between the parties leading up to the
8 Justice Robie mediations. Accordingly, Bolthouse requests that the Court set no trial dates at
9 present, assure that claims are made or waived by all parties before setting a trial date and allow
10 the mediation process to continue for a short period of time to determine whether a trial date
11 will need to be set.

12 Bolthouse suggests that a further Case Management Conference and/or Trial Setting
13 Conference be set for approximately sixty (60) days, or at a minimum of thirty (30) days, to
14 allow the parties to complete the settlement discussions and to have further mediation sessions
15 with Justice Robie.

16 Bolthouse feels strongly that a trial date should not be set. However, if the Court
17 believes that forcing a trial date is necessary, the various types of water rights claimed by the
18 parties should be tried separately, starting with whether parties claim appropriative rights, and
19 the priority of such appropriative rights. A determination of the priority of appropriative rights
20 will be necessary to determine whether any parties claiming prescription held any appropriative
21 rights during claimed periods of prescription. If a party had appropriative rights during a
22 claimed period of prescription, pumping of such appropriative rights could not lawfully provide
23 the basis for a claim of prescription.

24 Some of the purveyors have existed and have pumped groundwater since the turn of the
25 century. Other purveyors have been come into existence and have commenced pumping
26 groundwater in more recent times. Appropriative rights are based upon the first in time, first in
27 right principle. In the event of a limited water supply, but where limited surplus exists, first in
28 time appropriators may lawfully exercise their first in time appropriative rights without doing

1 so adversely to overlying groundwater users. In the event of insufficient surplus to satisfy the
2 needs of all, the last in time appropriator will of necessity be the first in time potential
3 prescriptor.

4 By way of example, if we hypothetically assume that the evidence establishes that:

- 5 1. The "safe yield," equals 100,000 acre feet;
- 6 2. The aggregate of all overlying landowner pumping at a given point in time
7 equals 80,000 acre feet;
- 8 3. The aggregate of all purveyor pumping at the same point in time equals 30,000
9 acre feet.

10 Based upon this hypothetical, the basin would be overdrafted to the extent of ten thousand acre
11 feet. Parties with senior appropriative rights could lawfully pump 20,000 af. Accordingly, this
12 pumping would not be adverse to overlying landowners and would not provide the basis for an
13 alleged claim of prescription. Only the appropriator with junior water rights, who could not
14 pump lawfully, could properly claim a basis for an adverse prescriptive claim. Parties
15 claiming appropriative rights would also be required to prove the amount and priority of their
16 appropriative rights. Additionally, they would need to prove based upon the mandates of
17 *Tulare Irrigation District v. Lindsay Strathmore Irrigation District* (1935) 3 Cal.2d 489, that
18 their pumping was reasonable, as a prerequisite to enjoining pumping of any other parties as
19 requested in their Complaint.

20 \\\

21 \\\

22 \\\

23 \\\

24 \\\

25 \\\

26 \\\

27 \\\

28 \\\

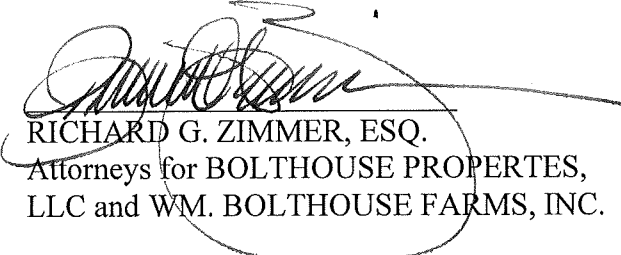
1 Accordingly, any appropriative right claims, the priority thereof, and the reasonableness
2 thereof, need to be tried first. Allowing appropriative claims to be tried first also would limit
3 the scope of discovery, experts and the expenditure of time and resources which more properly
4 should be directed to the continuing efforts to resolve this matter.

5
6 DATED: November 10, 2011

Respectfully submitted.

7
8 CLIFFORD & BROWN

9
10 By:


11 RICHARD G. ZIMMER, ESQ.
12 Attorneys for BOLTHOUSE PROPERTES,
13 LLC and WM. BOLTHOUSE FARMS, INC.
14
15
16
17
18
19
20
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 November 10, 2011, 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 November 10, 2011, 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