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11 **SUPERIOR COURT OF CALIFORNIA**

12 **COUNTY OF SANTA CLARA**

13 * * *

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

16 ANTELOPE VALLEY GROUNDWATER) CASE NO. 1-05-CV-409053
17 CASES)

18 INCLUDED ACTIONS:)

19 LOS ANGELES COUNTY)
20 WATERWORKS DISTRICT NO. 40 v.)
21 DIAMOND FARMING COMPANY, et al.,)
22 Los Angeles Superior Court Case No.)
23 BC325201)

**BOLTHOUSE PROPERTIES, LLC'S
AND WM. BOLTHOUSE FARMS,
INC.'S CASE MANAGEMENT/TRIAL
SETTING CONFERENCE STATEMENT**

24 LOS ANGELES COUNTY)
25 WATERWORKS DISTRICT NO. 40 v.)
26 DIAMOND FARMING COMPANY, et al.,)
27 Kern County Superior Court Case No. S-)
28 1500-CV-25438)

DATE: July 9, 2012

TIME: 9:00 a.m.

DEPT: 1515

DIAMOND FARMING COMPANY, and)
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") provide the following Case
4 Management/Trial Setting Conference Statement.

5 **INTRODUCTION**

6 As the Court is aware, the parties are continuing their efforts to resolve this matter and a
7 current further mediation is scheduled with Justice Robie on September 11, 2012. The
8 landowner parties previously tentatively agreed to a reduced allocation of water rights
9 contingent upon being able to exercise those rights. Some parties now appear to be unwilling
10 to go forward with the original agreement. If agreement is reached as to this critical issue it is
11 believed that settlement will fall into place regarding other remaining issues without significant
12 difficulty. The parties are continuing to discuss these issues at further AVEK meetings and will
13 discuss the issues with Justice Robie as necessary at the upcoming mediation. However, if
14 resolution of this issue cannot be achieved, determination of whether non-landowners have any
15 priority rights will be necessary to reaching a settlement as provided for in the trial scheduling
16 outline set forth below.

17 **PROCEDURAL STATUS**

18 In the Phase 3 Trial, the Court determined that the conservative safe yield of the
19 groundwater basin is 110,000 acre feet per year. The Court further found that the groundwater
20 basin is currently in overdraft, with demand exceeding supply.

21 The parties engaged in a mediation process with Justice Robie for over a year.
22 Unfortunately, the matter has not yet been resolved. If non-landowners are unwilling to allow
23 landowners to exercise their groundwater rights even at a greatly decreased level, then the court
24 must determine whether non-landowners can prove any priority rights to the groundwater
25 supply.

26 The District 40 Cross-Complaint is the over arching operative pleading in this matter.
27 In light of the Overdraft finding, widely disputed priority claims of prescription and rights to
28 imported water return flows require adjudication. Adjudication of these claims is necessary to

1 resolve the Cross Complaint causes of action and a necessary prerequisite to adjudication of
2 other causes of action under California law. Additionally, adjudication of these widely
3 contested causes of action likely will facilitate settlement of the entire matter.

4 The proposed phasing and trial schedule set forth herein is intended to litigate causes of
5 action in the sequence in which they need to be adjudicated based upon California law if no
6 settlement is achieved. Additionally, the trial phasing and trial schedule set forth herein is
7 intended to facilitate resolution of the matter following the Phase 4 Trial.

8 The District 40 Cross-Complaint consists of eight (8) causes of action. The Eighth
9 Cause of Action which requested that the Court determine the boundaries of the area of
10 adjudication and groundwater basin has been adjudicated. The First Cause of Action,
11 Prescription, and the Third Cause of Action, Return Flows, have been widely disputed by the
12 parties. Resolution of these causes of action is expected to facilitate settlement following the
13 Phase 4 Trial.

14 **PHASE 4 TRIAL**

15 Trial of Return Flows may be the least time consuming and most decisive priority issue
16 to adjudicate. If the court is willing to try this issue separately in advance of the Prescription
17 and Appropriative Rights trial, Bolthouse is willing to support this approach. If the Court
18 determines that Return Flow rights are less than claimed or non-existent because the basin is
19 being harmed rather than augmented, as discussed in the AGWA Statement, this likely will lead
20 to resolution of the case.

21 However, if the Court is inclined to try related causes of action together, the following
22 causes of action should be adjudicated in the Phase 4 Trial:

- 23 ○ First Cause of Action – Prescription
- 24 ○ Second Cause of Action – Appropriative Rights
- 25 ○ Third Cause of Action – Return Flows.

26 The prescription cause of action has been widely disputed. In fact, Diamond Farming
27 and Bolthouse filed the first action in Riverside in 1999 after learning that certain public
28 agencies were intending to take water rights based upon a claim of prescription. Accordingly,

1 the prescription claim is the longest standing disputed issue between the parties. There are
2 numerous **legal challenges** to a potential prescription claim which can be litigated first,
3 followed if necessary by **factual issues** necessary to prove a prescription claim. The legal
4 challenges should be addressed in pre-trial motions. **The landowner parties have demanded**
5 **a jury trial on factual issues which should then proceed if the prescription claims survive**
6 **legal challenges.**

7 It is unclear whether any party is claiming appropriative rights. Depending upon the
8 time period alleged to be the prescriptive time period, and the extent of overdraft if any at that
9 time, appropriative rights may need to be determined. For example, if during the claimed
10 prescriptive period there was enough surplus water to satisfy the first in time appropriative
11 rights of some but not all appropriators, only appropriators which had no appropriative rights or
12 had subordinate appropriative rights, would be pumping unlawfully for purposes of a
13 prescription claim.

14 The return flow claim also is widely disputed. Issues exist as to what party or entity
15 may claim the right to return flows, whether any return flows in the present case actually
16 resulted in a "net augmentation" of the groundwater basin and/or the amount of such
17 augmentation.

18 The return flow claims and prescription claims will involve similar legal, factual and
19 expert analysis. For example, if a party was lawfully pumping return flow groundwater rights,
20 such pumping would not have been adverse and unlawful and accordingly would not support a
21 claim of prescription. Therefore, trying these causes of action together will be cost effective
22 and efficient.

23 The following discovery and trial time frame is suggested but certainly subject to
24 discussion:

25	Written Discovery	July – September
26	Mediation with Justice Robie	September 11, 2012
27	Discovery	October- December
28	Depositions	January– February

1	Expert Depositions	March
2	Dispositive Motions	April
3	Trial	May
4	Trial time estimate	30 days

5 **PHASE 5 TRIAL**

6 Hopefully, the case will be resolved by agreement following the Phase 4 Trial since this
7 trial will bring to conclusion widely disputed priority claims which must be resolved first under
8 California law and to facilitate settlement. If the matter cannot be resolved by resolution of the
9 Phase 4 claims, it is recommended that the Federal Reserve right, along with the following
10 District 40 Cross Complaint Causes of Action be litigated:

- 11 ○ Fourth Cause of Action – Municipal Priority
- 12 ○ Fifth Cause of Action – Storage of Imported Water
- 13 ○ Seventh Cause of Action – Unreasonable Use.

14 The discovery and trial time frame can be discussed in more detail at a Case
15 Management/Trial Setting Conference following the Phase 4 Trial and after the parties have
16 had an opportunity to make further attempts to resolve the case.

17 **PHASE 6 TRIAL**

18 If the case still cannot be resolved by agreement, the Phase 6 trial will allocate water
19 rights based upon California priorities in order to balance water demand with water supply so
20 that an overdraft does not continue. The Court also will consider a physical solution to avoid
21 the harsh results of injunction of pumping by parties with lower priority rights. Additionally, if
22 the safe yield is determined to be insufficient to meet the current water demands of overlying
23 landowners, and assuming the landowners cannot agree how to allocate the correlative supply,
24 then the Court may also be called upon to equitably allocate overlying landowner water rights.

25 Trying these Phase 6 issues together also is consistent with California groundwater law
26 and with efficient use of court and party time and resources. Legal, expert and factual issues
27 will be similar and can effectively be tried together if the issues cannot be resolved by party
28 agreement.

1 CONCLUSION

2 The phasing and trial approach set forth above is necessary based upon California law.
3 Further, this approach litigates longstanding and widely disputed issues which must be tried
4 first under California law. Resolution of such causes of action likely will lead to resolution of
5 the entire case without the need to litigate all of the remaining causes of action. For example,
6 litigation of priority claims of prescription and return flows must be tried before any physical
7 solution can be evaluated. If litigation of these issues does not result in settlement,
8 determining the Federal Reserve right and/or any other priority claims, will likely lead to
9 resolution without the need for a lengthy trial on a physical solution.

10 Simply stated, priorities must first be determined under California law to determine
11 groundwater pumping rights. Additionally, priorities must first be determined to evaluate a
12 physical solution. However, once priorities are determined, hopefully the parties will agree
13 upon a physical solution without the need for a physical solution trial.


14 Finally, whether or not all parties agree to resolve the case, at some point virtually all of
15 the parties will be in agreement to resolve the case. Then, the remaining focused issues can be
16 litigated in an efficient manner. For these reasons, it is suggested that this approach is
17 necessary pursuant to California law, and is the most expeditious and cost effective manner in
18 which to litigate and resolve this complicated matter.

19
20 DATED: July 6, 2012

Respectfully submitted.

21
22 CLIFFORD & BROWN

23
24 By:


25 RICHARD G. ZIMMER, ESQ.
26 Attorneys for BOLTHOUSE PROPERTES,
27 LLC and WM. BOLTHOUSE FARMS, INC.
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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 July 6, 2012, 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 July 6, 2012, 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