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and WM. BOLTHOUSE FARMS, INC.  
7

8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

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11 COORDINATION PROCEEDING  
SPECIAL TITLE (Rule 1550(b))

12 ANTELOPE VALLEY GROUNDWATER  
13 CASES

14 INCLUDED ACTIONS:

15 LOS ANGELES COUNTY WATERWORKS  
DISTRICT NO. 40 v. DIAMOND FARMING  
16 COMPANY, et al.,  
Los Angeles Superior Court Case No. BC325201

17 LOS ANGELES COUNTY WATERWORKS  
DISTRICT NO. 40 v. DIAMOND FARMING  
18 COMPANY, et al.,  
19 Kern County Superior Court Case No. S-1500-  
CV-254348

20 DIAMOND FARMING COMPANY, and W.M.  
21 BOLTHOUSE FARMS, INC., v. CITY OF  
LANCASTER, et al.,  
22 Riverside Superior Court Case No. RIC 344436  
[c/w case no. RIC 344668 and 353840]

23  
24  
25  
26  
27 AND RELATED ACTIONS.  
28

JUDICIAL COUNCIL COORDINATION PROCEEDING  
No. 4408

CASE NO. 1-05-CV-049053  
*Action Filed: October 26, 2005*

**JOINDER IN NOTICE OF LODGING OF  
[PROPOSED] CASE MANAGEMENT  
ORDER FOR PHASE 5 AND 6 TRIALS  
AND MEMORANDUM REGARDING  
SCOPE OF TRIAL, RESPONSE TO  
PURVEYOR [PROPOSED] CASE  
MANAGEMENT ORDER FOR PHASE 5  
AND 6 TRIALS, RESPONSE TO PHELAN  
PIÑON HILLS COMMUNITY SERVICES  
DISTRICT RESPONSE TO PURVEYOR  
[PROPOSED] CASE MANAGEMENT  
ORDER FOR PHASES 5 AND 6 TRIALS**

DATE: October 16, 2013  
TIME: 9:00 A.M.  
PLACE: 111 N. Hill Street  
Los Angeles, CA  
DEPT: Room 222

JUDGE: Honorable Jack Komar

1 **JOINDER IN NOTICE OF LODGING OF [PROPOSED] CASE**  
2 **MANAGEMENT ORDER FOR PHASE 5 AND 6 TRIALS**  
3 **AND MEMORANDUM REGARDING SCOPE OF TRIAL**

4 Voluminous e-mails, written submission, clarifications and comments were made by numerous  
5 parties both as members of the Liaison Committee and including other parties, regarding the proper form  
6 and content of a Case Management Order for the Phase 5 and 6 trials. The Notice of Lodging of  
7 [Proposed] Case Management Order for Phase 5 and 6 Trials and Memorandum Regarding Scope of  
8 Trial filed by Small Pumper Class attorney Michael McLachlan, appears to properly track the Court's  
9 intent and comments in previous Case Management Conferences and in particular, the last Case  
10 Management Conference held on September 6, 2013. WM. BOLTHOUSE FARMS, INC., and  
11 BOLTHOUSE PROPERTIES, LLC (hereinafter BOLTHOUSE) hereby join in the Small Pumper Class  
12 Proposed Order and request that this Order be adopted by the Court as the operative Case Management  
13 Order for the Phase 5 and 6 trials. The primary differences between the Proposed Order submitted by  
14 various purveyor parties relates to the scope of trial which is discussed below in more detail in the  
15 Response to the Purveyors' [Proposed] Case Management Order for Phase 5 and 6 trials.

16 **RESPONSE TO PURVEYOR [PROPOSED] CASE**  
17 **MANAGEMENT ORDER FOR PHASES 5 AND 6 TRIALS**

18 Due process of law requires that all parties have notice of the issues being litigated at trial. In the  
19 absence of such notice, the parties cannot properly present documentary evidence and both lay and  
20 expert witness testimony in order to properly litigate the case. Likewise, hearsay evidence may be  
21 admitted on a particular with reference to a particular issue not for the truth of the matter, but solely  
22 as a basis for an expert opinion.

23 In a complicated water adjudication, failure to strictly adhere to due process notice  
24 requirements and/or failure to strictly adhere to rules of evidence regarding hearsay evidence can  
25 easily result in a denial of due process and a miscarriage of justice. In this case, the Phase 3 trial  
26 involved a determination of the safe yield. Many of the trial lawyers involved objected vociferously  
27 to presentation of evidence developed by experts who were not allowed to be deposed and  
28 vociferously objected to admission of hearsay evidence for any reason other than as a basis for expert  
opinion regarding the safe yield.

1 This Court was very careful in the Phase 3 trial to accept hearsay evidence only as a basis for  
2 the experts' opinion as to safe yield and not for any other purpose. Likewise, the Court was very  
3 careful to articulate that safe yield and overdraft were the only issues being litigated. In fact, District  
4 40 and the San District objected to allowing the deposition of the purveyor expert whose testimony  
5 would have been essential to a return flow analysis based upon the representation of District 40 and  
6 the San District that the Phase 3 trial issues were limited to safe yield and overdraft. (This is  
7 discussed at length in Exhibit A attached hereto and herein incorporated by reference.) This Court  
8 made no findings regarding the specific percentage of return flows because these were not trial issues  
9 and because of the hearsay issues.

10 Prior to the Phase 4 trial, it appeared that return flows would be a trial issue for Phase 4. The  
11 purveyors attempted to claim that return flows already had been litigated, thereby attempting to  
12 deprive all other parties of the opportunity to conduct discovery, retain experts, present evidence,  
13 cross-examine experts and make arguments regarding the alleged percentages of return flows and the  
14 ownership thereof. Based upon the Court's representations and Statement of Decision following  
15 Phase 3, the parties challenging return flows relied upon the fact that the return flow percentages and  
16 ownership thereof, were not litigated in Phase 3 and objected to the purveyor claim that the issue  
17 previously was tried in Phase 3. Ultimately, the Court removed return flows as a trial issue in Phase  
18 4.

19 The purveyor parties are once again attempting to deny due process to parties opposing  
20 claimed return flows and the percentages thereof at the Phase 5 trial. BOTLHOUSE previously  
21 exhaustively reviewed the record and identified the numerous occasions when this Court very clearly  
22 limited the scope of the Phase 3 trial to safe yield and overdraft, wherein the Court admitted hearsay  
23 evidence solely as a basis for the expert opinion of safe yield and not for the truth of information  
24 contained in the document or opinions of other non-testifying experts. This Court also made clear  
25 that any findings in the Phase 3 trial would in no way affect the rights of other parties to contest  
26 return flows in the future. This issue is generally addressed in the Small Pumper Class Proposed  
27 Order and is discussed in detail in the previous objection brief filed by BOLTHOUSE which is  
28 attached hereto as Exhibit A for convenient reference by the Court.

1 Allowing purveyor parties to prevent other parties from contesting return flows and the  
2 percentages thereof would manifestly deny these parties due process. BOTLHOUSE strongly objects  
3 to this attempt by the purveyors to deny a trial on return flows and the percentages thereof.  
4 Accordingly, the Small Pumper Class Proposed Case Management Order for Phase 5 and 6 trials  
5 which clarifies that return flows and the percentages thereof will be litigated along with rights to  
6 return flows in the Phase 5 trial should be adopted by this Court. Parties such as AVEK retained  
7 experts, long after the Phase 3 trial, to address these issues and should not be denied this opportunity.

8 **RESPONSE TO PHELAN PIÑON HILLS COMMUNITY**  
9 **SERVICES DISTRICT RESPONSE TO PURVEYOR [PROPOSED] CASE**  
10 **MANAGEMENT ORDER FOR PHASES 5 AND 6 TRIALS**

11 The Small Pumper Class Proposed Order for Phase 5 and 6 trials properly articulates that the  
12 “Phase 6 trial will determine claims to a [sic] prescriptive rights and defenses thereto”. The purveyor  
13 Proposed Order contains rather unclear language that the Phase 6 trial will determine claims to a  
14 prescriptive right *and all remaining claims to groundwater*. PHELAN PIÑON HILLS correctly  
15 questions the meaning of that statement. It is in fact unclear and would allow trial on unspecified  
16 non-specific issues which a party could raise without proper due process notice at the time of trial.

17 PHELAN indicates it intends to make a claim for “return flows resulting from the use of  
18 *native water*”. It is unclear what claim to return flows would be made based upon use of native water.  
19 However, there are numerous other claims made in the pleadings including but not limited to claims  
20 of priority, takings claims, requests for a physical solution, requests for injunction, etc. Clarifying  
21 that the Phase 6 trial will litigate claims of prescriptions and defenses thereto will properly clarify the  
22 issues being tried. Litigating these issues will be a monumental task in the time leading up to an  
23 August trial. Attempting to add additional issues would substantially complicate and lengthen the  
24 time necessary for discovery and would make the August trial date even more questionable. It is  
25 suggested that if the case does not settle following the August trial, these additional party specific  
26 claims could be evaluated legally and litigated only if the case cannot be settled at that point.  
27 Allowing party specific claims to be litigated separately also would allow uninterested parties to  
28 avoid attending trial on such issues.

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1 The Small Pumper Class Proposed Order for the Phase 5 and 6 trials properly defines the  
2 Phase 6 trials in specific terms rather than generalities as requested by the purveyor parties.  
3 BOLTHOUSE respectfully requests that this Court adopt the Small Pumper Class Proposed Order  
4 which already has been joined in by AVEK and AGWA. All non-purveyor parties will suffer  
5 irreparable harm if they are denied due process rights to litigate the measure and right to return flows.  
6

7 DATED: October 2, 2013

Respectfully submitted,

8 CLIFFORD & BROWN

9  
10 By 

RICHARD G. ZIMMER, ESQ.

T. MARK SMITH, ESQ

Attorneys for BOLTHOUSE PROPERTIES, LLC  
and WM. BOLTHOUSE FARMS, INC.

1 **PROOF OF SERVICE (C.C.P. §1013a, 2015.5)**

2 *Antelope Valley Groundwater Cases*  
3 *Judicial Counsel Coordination Proceeding No. 4408*  
4 *Santa Clara County Superior Court Case No. 1-05-CV-049053*

5 I am employed in the County of Kern, State of California. I am over the age of 18 and not a  
6 party to the within action; my business address is 1430 Truxtun Avenue, Suite 900, Bakersfield, CA  
7 93301.

8 On October 2, 2013, I served the foregoing document(s) entitled:

9 **JOINDER IN NOTICE OF LODGING OF [PROPOSED] CASE**  
10 **MANAGEMENT ORDER FOR PHASE 5 AND 6 TRIALS AND**  
11 **MEMORANDUM REGARDING SCOPE OF TRIAL, RESPONSE TO**  
12 **PURVEYOR [PROPOSED] CASE MANAGEMENT ORDER FOR PHASE**  
13 **5 AND 6 TRIALS, RESPONSE TO PHELAN PIÑON HILLS**  
14 **COMMUNITY SERVICES DISTRICT RESPONSE TO PURVEYOR**  
15 **[PROPOSED] CASE MANAGEMENT ORDER FOR PHASES 5 AND 6**  
16 **TRIALS**

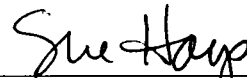
17 by placing the document listed above to the Santa Clara Superior Court website in regard to the  
18 Antelope Valley Groundwater Matter. All parties listed on the Santa Clara Superior Court in  
19 regard to the Antelope Valley Groundwater Matter are hereby incorporated within by this  
20 reference.

21 **X BY SANTA CLARA SUPERIOR COURT E-FILING IN COMPLEX**  
22 **LITIGATION PURSUANT TO CLARIFICATION ORDER DATED**  
23 **OCTOBER 27, 2005.**

24 Executed on October 2, 2013, at Bakersfield, California.

25 X (State) I declare under penalty of perjury under the laws of the State of California  
26 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.

27 

28 SUE HAYS

29 {2455-2}