

1 RICHARD G. ZIMMER, ESQ. - SBN 107263  
T. MARK SMITH, ESQ. - SBN 162370  
2 CLIFFORD & BROWN  
A Professional Corporation  
3 Attorneys at Law  
Bank of America Building  
4 1430 Truxtun Avenue, Suite 900  
Bakersfield, CA 93301-5230  
5 Tel: (661) 322-6023 Fax: (661) 322-3508

6 Attorneys for BOLTHOUSE PROPERTIES, LLC  
and WM. BOLTHOUSE FARMS, INC.  
7

8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

10 \* \* \*

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.,  
Kern County Superior Court Case No. S-1500-  
19 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 AND RELATED ACTIONS.  
24

JUDICIAL COUNCIL COORDINATION PROCEEDING  
No. 4408

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

**BOLTHOUSE PROPERTIES, LLC'S AND  
WM. BOLTHOUSE FARMS, INC.'S  
MOTION IN LIMINE NO. 2 OBJECTING  
TO INTRODUCTION OF EVIDENCE ON  
UNSUPPORTED LEGAL THEORY**

Phase 5 Trial Date: February 20, 2014  
Time: 9:00 a.m.  
Dept: Old Dept. 1

25 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

26 PLEASE TAKE NOTICE that WM. BOLTHOUSE FARMS, INC. and BOLTHOUSE  
27 PROPERTIES, LLC, (hereinafter "BOLTHOUSE") hereby move in limine objecting to testimony or  
28 other evidence based upon an unsupported legal theory at the upcoming Phase 5 trial. Specifically,

1 BOLTHOUSE objects to introduction of evidence or testimony by PHELAN PINION HILLS  
2 COMMUNITY SERVICES DISTRICT (hereinafter “PHELAN PINION HILLS”), or any other party  
3 seeking to prove that such party has a groundwater right based upon return flows from native water.

4 I.

5 SUMMARY OF FACTS

6 The Antelope Valley Area of Adjudication (AVAA) was determined by the Court in a prior  
7 phase of trial. PHELAN PINION HILLS has one well, Well 14, within the AVAA which is located  
8 slightly to the west of the Mojave Area of Adjudication (MAA). PHELAN PINION HILLS claims  
9 that the water basin underlying the AVAA, extends in an easterly direction beyond the eastern  
10 boundary of the AVAA and into the MAA.

11 PHELAN PINION HILLS pumps water from Well 14 and delivers this water to municipal  
12 customers outside the AVAA and in the opinion of PHELAN PINION HILLS’ expert, within the  
13 same water basin which underlies the AVAA. Based upon this set of facts, PHELAN PINION HILLS  
14 claims a right to return flows from this native delivered water (425 feet for 2013) which result from  
15 municipal customer disposal of water by way of outside irrigation, sinks and toilets.

16 These facts, even if accepted as true, give rise to the following legal question: whether a party  
17 may claim a ground water right based upon pumping, use and release of native water?

18 II.

19 PUMPING NATIVE GROUNDWATER DOES  
20 NOT CREATE A GROUNDWATER RIGHT

21 The moving party is aware of no law which stands for the proposition that a water right is  
22 created by simply pumping, using and releasing native water, native water being defined as water  
23 which naturally occurs in the watershed and which recharges the groundwater basin. Although  
24 Glendale and San Fernando stand for the proposition that **importing water from outside the**  
25 **watershed** and into a groundwater basin may, under appropriate circumstances, create a right to  
26 recapture such groundwater, the moving party is aware of no cases or law supporting the claim that  
27 simply pumping, using and then releasing native water, creates any type of groundwater water right.

28 ///

1 III.

2 PRESENTING EVIDENCE BASED UPON A LEGAL THEORY WHICH  
3 HAS NO MERIT, WOULD BE A WASTE OF TIME AND RESOURCES

4 In the absence of a showing that a party may obtain a legal right to pump groundwater based  
5 upon pumping, use and release of native water, along testimony or evidence to support such a legal  
6 claim, would be a waste of time. Based upon *Evidence Code* § 352, such evidence should be  
7 excluded since the evidence has no probative value and would result in an undue consumption of  
8 time.

9 In order to determine whether any other party was claiming a right similar to that being  
10 claimed by PHELAN PINION HILLS, and to ferret out any potentially unknown law on this issue,  
11 BOLTHOUSE served special interrogatories inquiring whether any other party was making a claim  
12 similar to that of PHELAN PINION HILLS, or whether any other party was aware of any law  
13 supporting this claim. The discovery responses received do not reveal that any other party is making  
14 a return flow claim based upon native water and do not indicate any legal basis for making this claim.

15 IV.

16 CONCLUSION

17 There is no legal basis for PHELAN PINION HILLS or any other party to claim a ground-  
18 water right based upon use of native water. Accordingly, BOLTHOUSE requests this Court either  
19 preclude evidence based upon an invalid legal theory or in the alternative set briefing on the legal  
20 issue of whether a party may obtain a groundwater right based upon pumping or use of native  
21 groundwater. If the claim to return flows from native water has no legal merit, evidence as to this

22 ////

23 ////

24 ////

25 ////

26 ////

27 ////

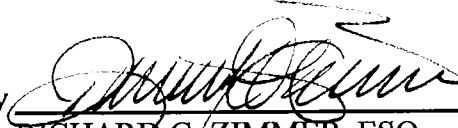
28 ////

1 claim would have no probative value and would result in an undue consumption of time and should  
2 be excluded under *Evidence Code* § 352.

3 DATED: January 24, 2014

Respectfully submitted,

4 CLIFFORD & BROWN

5  
6 By   
7 RICHARD G. ZIMMER, ESQ.  
8 T. MARK SMITH, ESQ.  
9 Attorneys for BOLTHOUSE PROPERTIES, LLC  
10 and WM. BOLTHOUSE FARMS, INC.

11  
12  
13  
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, Suite 900, Bakersfield, CA 93301.

On January 24, 2014, I served the foregoing document(s) entitled:

**BOLTHOUSE PROPERTIES, LLC'S AND WM. BOLTHOUSE FARMS, INC.'S  
MOTION IN LIMINE NO. 2 OBJECTING TO INTRODUCTION OF EVIDENCE ON  
UNSUPPORTED LEGAL THEORY**

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

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

Executed on January 24, 2014, 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.

  
\_\_\_\_\_  
SUE HAYS  
{2455-2}