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27 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
28 CENTRAL DISTRICT

COORDINATION PROCEEDING
SPECIAL TITLE (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER
CASES

INCLUDED ACTIONS:

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

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

DIAMOND FARMING COMPANY, and W.M.

JUDICIAL COUNCIL COORDINATION
PROCEEDING No. 4408

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

**DECLARATION OF RICHARD G. ZIMMER
IN SUPPORT OF SUPPLEMENTAL
BRIEF IN OPPOSITION TO PURVEYORS'
MOTION FOR RAMPDOWN
PRODUCTION RIGHTS AND
CARRYOVER OF UNUSED FEDERAL
RESERVE RIGHTS**

Date: January 31, 2018
Time: 9:00 a.m.
Dept: Room 222

1 BOLTHOUSE FARMS, INC., v. CITY OF
2 LANCASTER, et al.,
3 Riverside Superior Court Case No. RIC
344436 [c/w case no. RIC 344668 and
353840]

4 AND RELATED ACTIONS.
5

6 I, RICHARD G. ZIMMER, declare:

7 1. I am an attorney at law duly licensed to practice before all the Courts of the State
8 of California, and am a partner of the firm of Clifford & Brown, attorneys for the Bolthouse
9 Properties, LLC and Wm. Bolthouse Farms, Inc. in the above-entitled matter. I am thoroughly
10 familiar with all aspects of this matter and could competently testify as to it if called upon. I make
11 this Declaration based upon my own personal knowledge, except as to those matters stated
12 upon information and belief, and as to those matters, I believe them to be true.

13 2. Attached hereto as Exhibit "A" is what I believe to be a true and correct copy of
14 portions of the trial transcript from November 29, 2015, pages 25323 through 25328, just
15 before the trial testimony of Dr. Dennis Williams.

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct. Executed this 18th day of January, 2018, at Bakersfield, Kern
18 County, California.

19 DATED: January 18, 2018

CLIFFORD & BROWN

20
21 By 

22 RICHARD G. ZIMMER, ESQ.
23 Attorneys for BOLTHOUSE PROPERTIES,
24 LLC and WM. BOLTHOUSE FARMS, INC.
25
26
27
28

EXHIBIT "A"

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT

COORDINATION PROCEEDING)	JUDICIAL COUNCIL
SPECIAL TITLE (RULE 1550(B)))	COORDINATED
)	PROCEEDING
ANTELOPE VALLEY GROUNDWATER)	CASE NO. 4408
CASES)	
_____)	APPEAL FILED:
)	2/19/16, 2/25/16,
AND RELATED ACTIONS.)	3/2/16 & 3/2/16
_____)	

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE JACK KOMAR, JUDGE PRESIDING
REPORTERS' TRANSCRIPT ON APPEAL

SEPTEMBER 29, 2015

APPEARANCES:

FOR DEFENDANT AND CROSS-COMPLAINANT/APPELLANT PHELAN
PINON HILLS COMMUNITY SERVICES DISTRICT:

ALESHIRE & WYNDER, LLP
BY: JUNE S. AILIN, ESQ.
MILES P. HOGAN, ESQ.
18881 VON KARMAN AVENUE
SUITE 1700
IRVINE, CALIFORNIA 92612
(949) 223-1170

(APPEARANCES CONTINUED ON THE
NEXT PAGE.)

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SANDRA GECO, CSR #3806
OFFICIAL REPORTER

1 PARTIES, WHO ARE EXTANT, STILL HAVE IN THIS PROCEEDING IN
2 THE ABSENCE OF A SETTLEMENT OF THOSE CLAIMS.

3 IN EVERY REAL SENSE, THE WILLIS CLASS DOES HAVE THE
4 RIGHT TO PROTECT WHAT IT THINKS IS ITS CLAIMS AND RIGHTS
5 UNDER THE JUDGMENT. MR. LEMIEUX MENTIONS THAT THE
6 COMPLAINT IS STAYED. WELL, THE COMPLAINT'S REALLY NOT
7 STAYED. THE JUDGMENT'S BEEN ENTERED. THE COMPLAINT IS NO
8 LONGER VIABLE. THE ONLY THING WE HAVE IS THE STIPULATED
9 SETTLEMENT IN THE WILLIS CLASS AND THE JUDGMENT APPROVING
10 THAT. SO -- AND I WILL TELL YOU THAT THERE'S SOME -- SOME
11 LANGUAGE USAGES IN THIS PROPOSED GLOBAL SETTLEMENT THAT ARE
12 A LITTLE BIT PERPLEXING BECAUSE OF THEIR PHRASEOLOGY.
13 WE'LL GET INTO THAT WHEN WE START TALKING ABOUT WHETHER OR
14 NOT THE COURT'S GOING TO GRANT IT OR DENY APPROVAL OF THAT.

15 AT THIS POINT, WE'RE STILL HEARING EVIDENCE
16 CONCERNING IT AND I GUESS DR. WILLIAMS IS THE FIRST WITNESS
17 AND I DON'T WANT TO KEEP HIM WAITING ANY LONGER SO I WANT
18 TO PROCEED TO HEAR THAT. NOW MR. ZIMMER, YOU HAD SOMETHING
19 YOU WANTED TO RAISE?

20 MR. ZIMMER: YES, YOUR HONOR. YOUR HONOR, AT THE
21 END OF THE DAY YESTERDAY, THERE WERE SOME COMMENTS BETWEEN
22 MR. DUNN AND MR. BRUNICK THAT RELATED TO THE TESTIMONY OF
23 DR. WILLIAMS. AND SO I THINK IT'S A GOOD IDEA THAT THE
24 COURT AT LEAST UNDERSTANDS WHAT THAT'S ABOUT SO WE DON'T
25 END UP IN OBJECTIONS WHILE DR. WILLIAMS IS TESTIFYING. AS
26 THE COURT KNOWS, ALL THE PARTIES THAT HAVE STIPULATED ARE
27 RESERVING THEIR OBJECTIONS ACROSS THE BOARD INTER SE.
28 THIS -- THIS CASE HAS BEEN GOING ON SINCE 2000 AND I DON'T

1 THINK I COULD COUNT THE NUMBER OF TIMES THAT WE HAVE
2 DISCUSSED SETTLEMENT THROUGHOUT THAT TIME. TO THE CREDIT
3 OF ALL THE PARTIES THAT ARE SEATED IN THIS ROOM, A
4 SETTLEMENT HAS BEEN REACHED WHICH REDUCES, THROUGH A LOT OF
5 PAIN AND VERY HARD FOUGHT NEGOTIATIONS, REDUCES THE OVERALL
6 PUMPING TO BELOW OR AT WHAT THE COURT DETERMINED THE SAFE
7 YIELD TO BE. AND IT IS THAT GLOBAL REDUCTION TO THE SAFE
8 YIELD WHICH IS AT THE HEART OF THE STIPULATED JUDGMENT AND
9 PHYSICAL SOLUTION. THAT, AS THE COURT IS -- CAN PROBABLY
10 IMAGINE, A LOT OF THE PARTIES HAD VARIOUS CONCERNS ABOUT
11 HOW THAT WOULD ALL WORK OUT. BUT IN A CONSISTENT WAY TO
12 WHAT THE COURT HAS ARTICULATED IN THE PAST, THAT THERE
13 WOULD BE SOME MECHANISM SET UP TO MANAGE THIS BASIN IN THE
14 FUTURE IN CONJUNCTION WITH REDUCTION TO THE SAFE YIELD,
15 THAT THERE WOULD BE THIS MECHANISM TO MANAGE THE BASIN,
16 THAT THE BASIN WOULD THEN BE PROTECTED AND THAT WAS THE
17 BASIS OF THE SETTLEMENT. HOW THAT WOULD BE DONE, YOU CAN
18 IMAGINE THERE WOULD BE A LOT OF DISAGREEMENT AS TO EXACTLY
19 HOW THAT WOULD BE DONE BUT THE PROCEDURE CERTAINLY IS SET
20 FORTH IN THE STIPULATED JUDGMENT.

21 THE COUNTY HAS DONE SOME ADDITIONAL WORK IN WORKING
22 ON A MODEL THAT TALKS ABOUT VARIOUS SCENARIOS ABOUT WHAT --
23 HOW THE PHYSICAL SOLUTION COULD BENEFIT THE BASIN. THE --
24 THE PARTIES, LAND OWNERS HAVE NOT ALL AGREED TO THE MODEL
25 AS THE WAY TO DO THAT IN THE FUTURE AS THE MANAGEMENT TOOL,
26 BUT ALL THE LAND OWNERS AGREE THAT A MODEL CAN BE A VERY
27 EFFECTIVE TOOL IN THE FUTURE TO DO THAT. THE PARTIES, I
28 ALSO THINK, AGREE THAT THE MODEL THAT'S BEING PRESENTED BY

1 THE COUNTY IS THEIR VIEW OF HOW THIS PHYSICAL SOLUTION WILL
2 BENEFIT THE BASIN AND NONE OF THE LAND OWNER PARTIES ARE
3 OBJECTING TO THAT BEYOND RESERVING THE RIGHTS TO CHALLENGE
4 A MODEL, IF NECESSARY IN THE FUTURE, TO HAVE CONTRIBUTION
5 TO A MODEL IN THE FUTURE, TO HAVE A MODEL IN THE FUTURE
6 VETTED WHICH WILL BE USED FOR PURPOSES OF ULTIMATE -- WHICH
7 WILL BE THE ULTIMATE MODEL THAT'S USED.

8 SO PUTTING THAT ASIDE, MR. DUNN AND I HAVE TALKED
9 ABOUT THIS BRIEFLY AND THERE MAY BE SOME DIFFERENCES IN
10 PHRASEOLOGY BUT WHAT HAS BEEN AGREED IS DR. WILLIAMS'
11 TESTIMONY WILL NOT BE OBJECTED TO BY THE LAND OWNERS FOR
12 EXPEDIENCY, AND BECAUSE THOSE RIGHTS ARE RESERVED THE
13 PARTIES HAVE AGREED THAT THIS PRESENTATION OF THIS PHYSICAL
14 SOLUTION IS FOR THE PURPOSE OF SHOWING HOW A MODEL COULD
15 HELP THE BASIN UNDER THIS OVERALL MANAGEMENT PROCESS OF
16 REDUCING THE SAFE YIELD THAN HAVING A PROCEDURE IN PLACE IN
17 THE FUTURE TO WORK OUT THE DETAILS, WHICH OBVIOUSLY AS THE
18 COURT HAS EXPRESSED MANY TIMES WOULD BE INFLUX AND WILL
19 HAVE TO BE DEALT WITH IN THE FUTURE. SO THEY'VE AGREED
20 THAT THAT'S WHAT THE PURPOSE IS. IT'S NOT FOR PURPOSES OF
21 MANAGEMENT, IT'S NOT FOR PURPOSES OF SELECTING A WATER
22 MASTER. THE MODEL WILL NOT BE INTRODUCED IN EVIDENCE AND
23 THE SLIDES WILL NOT BE INTRODUCED INTO EVIDENCE, BUT WILL
24 BE USED FOR DEMONSTRATIVE PURPOSES ONLY AS TO UNDERSTANDING
25 DR. WILLIAMS' TESTIMONY.

26 THE COURT: ALL RIGHT.

27 MS. AILIN: JUNE AILIN FOR PHELAN PINON HILLS
28 COMMUNITY SERVICES DISTRICT. YOUR HONOR, IN RULING ON THE

1 MOTION IN LIMINE, YOU REFERRED SEVERAL TIMES TO A GLOBAL
2 SETTLEMENT AND I JUST HAVE TO POINT OUT THAT IT IS NOT
3 QUITE GLOBAL BECAUSE MY CLIENT HAS NOT SIGNED ONTO IT.

4 THE COURT: YOU NOTICED I USED THE WORD "SO-CALLED."

5 MS. AILIN: NO, I ACTUALLY DID NOT, BUT I APPRECIATE
6 THAT.

7 THE COURT: WELL, I DID.

8 MS. AILIN: AND IN RESPONSE TO MR. ZIMMER'S COMMENTS
9 FOR OUR PURPOSES DR. WILLIAMS' TESTIMONY HAS A VERY
10 DIFFERENT EFFECT. AT LEAST PART OF IT APPARENTLY IS GOING
11 TO GO TO MY CLIENT'S IMPACT ON THE ADJUDICATION AREA SO IT
12 IS REALLY NOT JUST DEMONSTRATIVE IN THAT SENSE.

13 MR. ZIMMER: YOUR HONOR, JUST TO BRIEFLY RESPOND TO
14 MS. AILIN'S POINT AND ALSO TO MR. KALFAYAN'S, TO A CERTAIN
15 EXTENT. THE TESTIMONY IS NOT BEING INTRODUCED, AS I
16 UNDERSTAND IT, MR. DUNN COULD HIGHLIGHT THIS, TO SHOW
17 THAT'S EXACTLY HOW IT WILL HAPPEN IN THE FUTURE, SO I THINK
18 SOME OF THESE COMMENTS ABOUT HOW EXACTLY THEY WILL BE
19 IMPACTED WOULD BE PREMATURE.

20 THE COURT: DO I UNDERSTAND CORRECTLY THIS IS A
21 HYPOTHETICAL EXAMPLE? IS THAT WHAT THE MODEL IS?

22 MR. DUNN: AND I APPRECIATE MR. ZIMMER'S COMMENTS
23 AND CONCUR. WHAT I'D LIKE TO ADD IS, FIRST OF ALL, ANSWER
24 THE COURT'S QUESTION. WHEN WE COME BEFORE THE COURT TO
25 PROVE UP A PHYSICAL SOLUTION, A PHYSICAL SOLUTION TO BE
26 SUCCESSFULLY PROVED UP WOULD SHOW THAT, OVER TIME, IF
27 IMPLEMENTED, THE PHYSICAL SOLUTION WILL SOLVE A PROBLEM AND
28 THE PROBLEM HERE IS A LONG STANDING OVERDRAFT. SO IT

1 DOESN'T HAPPEN INSTANTANEOUSLY, IT TAKES PLACE OVER TIME.
2 AND WHAT DR. WILLIAMS' TESTIMONY WILL SHOW IS THAT THIS
3 PHYSICAL SOLUTION IS IN FACT A PHYSICAL SOLUTION. HE HAS
4 DEVELOPED A MODEL, WHICH CAN BE USED TO SHOW OVER TIME HOW
5 THE PHYSICAL SOLUTION WILL IMPACT THE BASIN. AND IT SHOULD
6 BE NO SURPRISE COMING FROM US THAT WE'RE OFFERING THIS TO
7 SHOW THAT IT IS IN FACT A PHYSICAL SOLUTION. SO YES, IT
8 DOES SHOW, OVER TIME, HOW THE BASIN WILL RESPOND.

9 THE COURT: BUT MR. DUNN, THE PURPOSE OF OUR
10 PROCEEDINGS HERE IS TO DETERMINE WHETHER OR NOT THE COURT
11 IS GOING TO APPROVE THE SETTLEMENT. THE COURT IS GOING TO
12 EVALUATE THE SETTLEMENT BOTH IN TERMS OF THE IMPACT ON THE
13 PARTIES TO THE SETTLEMENT, THE IMPACT ON THE FUTURE, THE --
14 AND IN PARTICULAR, THE PUBLIC INTEREST WHICH INCLUDES, BY
15 THE WAY, COUNSEL, EVERYBODY THAT IS IN AREA OF THE VALLEY
16 DOES NOT INCLUDE EVERYBODY EXCEPT THE WILLIS CLASS. I -- I
17 DO NOT UNDERSTAND WHERE THAT LANGUAGE CAME FROM. YOU DON'T
18 HAVE TO TELL ME NOW, EITHER, BUT I FIND IT NONSENSICAL WHEN
19 THE COURT TALKS ABOUT THE PUBLIC INTEREST, THAT YOU THINK
20 IT EXCLUDES SOMEBODY. SO IF THE COURT WERE TO SAY THE
21 COURT FINDS THAT THE PROPOSED PHYSICAL SOLUTION IS A GOOD
22 ONE, IT'S EFFECTIVE BUT THE TERMS OF THE GLOBAL SETTLEMENT
23 AND THE IMPACT ON THE PUBLIC INTEREST ARE NOT EXACTLY IN
24 THE PUBLIC INTEREST AND SHOULD BE MODIFIED, THE COURT WILL
25 BE ONLY ABLE TO TELL YOU THAT YOUR MOTION TO APPROVE IS
26 DENIED. I DO NOT HAVE BEFORE ME, AND NOBODY HAS PRESENTED
27 IT TO ME IN THIS FASHION, THAT THE COURT MAY FIND THAT
28 THERE IS A GOOD PHYSICAL SOLUTION BUT THE TERMS OF THE

1 AGREEMENT ARE NOT APPROVED. SO I'M GOING TO GO AHEAD AND
2 APPROVE THE PHYSICAL SOLUTION AS I SEE IT AND I'M GOING TO
3 DENY YOUR SETTLEMENT IN TERMS OF THE TERMS. THAT'S NOT
4 BEFORE ME. I DON'T BELIEVE I CAN DO THAT AS MUCH AS I
5 MIGHT LIKE TO.

6 SO AT THIS POINT, WE'RE DEALING WITH THE GLOBAL
7 SETTLEMENT, SO-CALLED, MS. AILIN, AND WE ARE GOING TO
8 DETERMINE WHETHER OR NOT IT AND THE TERMS AND CONDITIONS OF
9 THE SETTLEMENT AGREEMENT CAN BE APPROVED.

10 MR. DUNN: OKAY.

11 THE COURT: THAT'S ALL THAT'S BEFORE US WITH REGARD
12 TO THAT EXCEPT FOR THE DEFAULTING PARTIES.

13 MR. DUNN: YES.

14 THE COURT: TRUE?

15 MR. DUNN: YES, YOUR HONOR.

16 THE COURT: OKAY. THEN WITH THAT IN MIND, LET'S
17 HEAR THE EVIDENCE. MR. MCLACHLAN?

18 MR. MCLACHLAN: MICHAEL MCLACHLAN FOR RICHARD WOOD
19 AND SMALL PUMPER CLASS. I WAS A LITTLE SLOW TO STAND UP
20 EARLIER. I WANTED TO JUST PUT A COUPLE OF COMMENTS ON THE
21 RECORD REALLY BRIEFLY REGARDING THE MOTION IN LIMINE. I
22 DIDN'T GET A CHANCE TO DO THAT AND I'LL TRY TO BE SUCCINCT.
23 WHILE I DO, LIKE MOST OF THE OTHER SO-CALLED GLOBAL
24 STIPULATORS, DISAGREE WITH MR. KALFAYAN AND MS. BRENNAN'S
25 LEGAL POSITION, I DO HAVE SOME LEVEL OF SYMPATHY FOR THE
26 TASK THEY HAVE IN HAND. AND MY CONCERN MORE GLOBALLY, AND
27 I THINK THIS MOTION IN LIMINE WE'RE GOING TO SEE THIS COME
28 UP IN A FEW DIFFERENT AREAS, I MAY BE WRONG, BUT I THINK