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9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF LOS ANGELES  
12

13 Coordination Proceeding

Case No. 105 CV 049053

14 ANTELOPE VALLEY  
GROUNDWATER CASES

Judicial Council Coordination Proceeding  
No. 4408

15 Los Angeles County Waterworks District  
16 No. 40 v. Diamond Farming Co.

The Honorable Jack Komar  
Santa Clara Case No. Case No. 105 CV 049053

17 Los Angeles County Waterworks District  
18 No. 40 v. Diamond Farming Co.

**CITY OF LOS ANGELES'S RESPONSE TO  
BOLTHOUSE FARMS' OBJECTION TO  
PROPOSED FOURTH AMENDMENT TO  
CASE MANAGEMENT ORDER FOR  
PHASE FOUR TRIAL**

19 Wm. Bolthouse Farms, Inc. v. City of  
Lancaster

20 Diamond Farming Co. v. City of  
Lancaster

Riverside County Superior Court  
Lead Case No. RIC 344436  
Case No. RIC 344668  
Case No. RIC 353840

21 Diamond Farming Co. v. Palmdale Water  
22 District

Los Angeles Superior Court  
Case No. BC 325201  
Kern County Superior Court  
Case No. S-1500-CV-254348

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26 The City of Los Angeles by and through its Department of Airports, Los Angeles World  
27 Airports ("LAWA") offers the following response to the "Objection to [Proposed] Fourth

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1 Amendment to Case Management Order for Phase Four Trial” submitted by Bolthouse Properties,  
2 LLC and Wm. Bolthouse Farms, Inc. (“Bolthouse Objection”).

3 The Bolthouse Objection made “on the grounds that it [the proposed Fourth Amendment to  
4 Case Management Statement for Phase Four Trial (“4th CMO Amendment”)] does not meet the  
5 requirements of Civil Procedure Sections 187 and 404.7 and Rule of Court 3.504(c).” These cited  
6 provisions provide statutory authority for the Court to prescribe a suitable manner of proceeding if  
7 an adequate process is not provided in the constitution or statute.<sup>1</sup> The 4th CMO Amendment  
8 exercises that authority and establishes a process for the efficient presentation of evidence at trial  
9 by requiring identification of the factual issues that are disputed, the parties identified in that  
10 dispute, and the evidence relevant to that dispute. That information will allow undisputed  
11 declaration testimony to be accepted into evidence by the Court, and eliminate the trial time  
12 needed for presentation of undisputed factual testimony. Trial time for Phase 4 Trial will be  
13 shortened, and judicial resources and costs efficiently conserved for both the Court and the parties.

14 ***The Bolthouse Objection Misstates the Effect of the 4th CMO Amendment***

15 The Objection’s characterization of the process contemplated in the order is incorrect.  
16 Specifically, the Objection states:

17 The Stipulations propose that failure to stipulate is the equivalent to  
18 proof of an adjudicated fact or a prima facie case,<sup>2</sup> which is  
inappropriate under the Code of Civil Procedure.

19 This is not correct. Acceptance by the Court of unopposed factual statements in a party’s  
20 Declaration or Stipulation does not equate to a finding that the party has met its burden of proof for  
21 its case, nor even that the statement is true. The 4th CMO Amendment simply eliminates the need

22 <sup>1</sup> Section 187 of the Code of Civil Procedure provides: “When jurisdiction is, by the Constitution or this Code,  
23 or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also  
24 given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code  
or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the  
spirit of this Code.”

25 Section 404.7 of the Code of Civil Procedure provides: “Notwithstanding any other provision of law, the Judicial  
Council shall provide by rule the practice and procedure for coordination of civil actions in convenient courts,  
26 including provision for giving notice and presenting evidence.”

27 Rule of Court 3.504(c) provides: “If the manner of proceeding is not prescribed by chapter 3 (commencing with  
section 404) of title 4 of part 2 of the Code of Civil Procedure or by the rules in this chapter, or if the prescribed  
28 manner of proceeding cannot, with reasonable diligence, be followed in a particular coordination proceeding, the  
assigned judge may prescribe any suitable manner of proceeding that appears most consistent with those statutes and  
rules.”

<sup>2</sup> Objection at 2:8 to 2:10.

1 for a witness to appear in court to testify to factual statements that have not been disputed by any  
2 party. It thus defines a process to shorten trial and more clearly define disputed factual issues. It  
3 requires that statements be filed by April 15, 2013 specifying any objections or disputes  
4 concerning statements made in either Stipulations or Declarations filed in response to this Court's  
5 prior orders<sup>3</sup>, and specific information be provided to define the factual disputes in preparation for  
6 trial.

7 The Proposed 4<sup>th</sup> CMO Amendment does not provide that a failure to file an objection "is  
8 the equivalent to proof of an adjudicated fact or a prima facie case" as argued in the Bolthouse  
9 Objection. It provides only that in the absence of a timely and specific objection, the factual  
10 statements in the Stipulations or Declarations "will be accepted by the Court in the Trial as  
11 competent evidence of the facts stated therein, without the necessity to call a witness to establish  
12 the fact."

13 The Proposed 4th CMO Amendment would not prevent a party from disputing any fact,  
14 even if that party had not submitted an objection by April 15. An opposing party is not precluded  
15 from submitting contrary evidence on the same factual issue stated in an unopposed Declaration or  
16 Stipulation. Further, the Proposed 4th CMO Amendment provides a mechanism for a party to  
17 object to a Declaration, even after the April 15, 2013 deadline, upon a showing of good cause. In  
18 sum, the Proposed 4th CMO Amendment simply provides a mechanism for the efficient submittal  
19 of evidence at trial, and does not establish adjudicated facts or rule that prima facie cases have  
20 been established in advance of trial.

21 ***No Statutory Procedure Provides An Equivalent Process***

22 The Bolthouse Objection further argues that the authorities cited in the [Proposed] 4th  
23 CMO Amendment, Rule 3.504(c), Code of Civil Procedure Sections 187 and 404.7, "do not apply  
24 since the Code of Civil Procedure sets forth the appropriate methods for summary adjudication of  
25 issues." While Bolthouse cites no specific portion of the Code of Civil Procedure which it believes  
26 to provide an appropriate equivalent procedure, Section 437c(f) of the Code of Civil Procedure  
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<sup>3</sup> December 12, 2012 Discovery Order and its January 17, 2013 First Amendment to Case Management Order

1 covers summary adjudications, not elimination of undisputed facts.<sup>4</sup>

2 The application of Code of Civil Procedure section 437c(f) is limited to the complete  
3 disposition of entire causes of action, affirmative defenses, claims of damages, or issues of duty. It  
4 does not provide for identification and elimination of undisputed facts and cannot therefore serve  
5 the purposes of the [Proposed] 4<sup>th</sup> CMO Amendment. Put another way, the process provided in the  
6 Proposed 4th CMO Amendment does not, and is not intended to, provide for the summary  
7 adjudication of issues. It is merely designed to allow submission of evidence without the need to  
8 call a witness.

9 For these reasons, the process presented in the [Proposed] 4th CMO Amendment is  
10 consistent with the Court's authority under Civil Procedure sections 187 and 404.7 and Rule of  
11 Court 3.504(c).

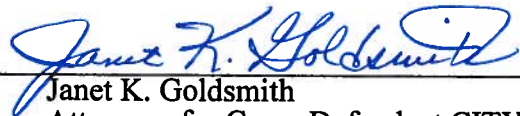
12 The City of Los Angeles urges the Court to approve the proposed order.

13 DATED: April 11, 2013

CARMEN A. TRUTANICH, Los Angeles City Attorney  
RICHARD M. BROWN, General Counsel, Water and Power  
RAYMOND ILGUNAS, General Counsel, Los Angeles  
World Airports

16 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD,  
17 Professional Corporation

18  
19 By



Janet K. Goldsmith

Attorneys for Cross-Defendant CITY OF LOS  
ANGELES and LOS ANGELES WORLD  
AIRPORTS

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24 <sup>4</sup> Section 437c(f) provides, in part:

25 "A party may move for summary adjudication as to one or more causes of action  
26 within an action, one or more affirmative defenses, one or more claims for  
27 damages, or one or more issues of duty, if that party contends that the cause of  
28 action has no merit or that there is no affirmative defense thereto, or that there is  
no merit to an affirmative defense as to any cause of action, or both, or that there is  
no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or  
that one or more defendants either owed or did not owe a duty to the plaintiff or  
plaintiffs. A motion for summary adjudication shall be granted only if it  
completely disposes of a cause of action, an affirmative defense, a claim for  
damages, or an issue of duty."

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PROOF OF SERVICE

I DECLARE THAT:

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 400 Capitol Mall, 27<sup>th</sup> Floor, Sacramento, California 95814.

On April 11, 2013, I served the attached **CITY OF LOS ANGELES'S RESPONSE TO BOLTHOUSE FARMS' OBJECTION TO PROPOSED FOURTH AMENDMENT TO CASE MANAGEMENT ORDER FOR PHASE FOUR TRIAL** by posting the document to the Santa Clara Superior Court website [www.scefiling.org](http://www.scefiling.org). in regard to the Antelope Valley Groundwater matter.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this document was executed on April 11, 2013.

  
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Lorraine Lippolis