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12 and WM. BOLTHOUSE FARMS, INC.

13 *(List of Counsel Continues on Next Page)*

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF LOS ANGELES

16 Coordination Proceeding
Special Title (Rule 1550(b))

17 **ANTELOPE VALLEY GROUNDWATER CASES**

18 Included Actions:

19 **Los Angeles County Waterworks District No. 40 v.**
20 **Diamond Farming Co.**
Superior Court of California, County of Los Angeles,
21 Case No. BC 325 201

22 **Los Angeles County Waterworks District No. 40 v.**
23 **Diamond Farming Co.**
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348

24 **Wm. Bolthouse Farms, Inc. v. City of Lancaster**
25 **Diamond Farming Co. v. City of Lancaster**
26 **Diamond Farming Co. v. Palmdale Water Dist.**
Superior Court of California, County of Riverside,
Case Nos. RIC 353 840, RIC 344 436, RIC 344 668
(Consolidated Actions)

Judicial Council Coordination
Proceeding No. 4408

Assigned to
The Honorable Jack Komar

**PEREMPTORY
CHALLENGE TO ASSIGNED
JUDGE (C.C.P. § 170.6)**

1 *List of Counsel (Continued):*

2 BOB H. JOYCE (BAR NO. 84607)
3 ANDREW SHEFFIELD (BAR NO. 220735)
4 KEVIN E. THELEN (BAR NO. 252665)
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14 FARMS, a limited liability company, GRIMMWAY
15 Enterprises, Inc., and LAPIS LAND COMPANY,
16 LLC.

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24 Attorneys for SERVICE ROCK PRODUCTS
25 CORPORATION, as successor-in-interest to Owl
26 Properties, Inc., SHEEP CREEK WATER
27 COMPANY, INC., and A.V. UNITED MUTUAL
28 GROUP

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27 Attorneys for the ANTELOPE VALLEY
28 GROUNDWATER AGREEMENT ASSOCIATION
("AGWA")

1 TO ALL PARTIES, THEIR COUNSEL OF RECORD AND THE COURT:

2 We, the undersigned counsel, declare as follows:

3 1. We are all attorneys duly licensed to practice law in the courts of the State of
4 California. We submit this declaration as Cross-Defendants' Peremptory Challenge to the Honorable
5 Jack Komar. We have personal knowledge of the facts stated herein, and we make this declaration
6 based upon personal knowledge, and, if called as a witness, could and would competently testify
7 thereto.

8 2. On October 13, 2009, despite significant opposition from numerous parties, including
9 our clients, Judge Komar granted the Public Water Suppliers' Motion to Transfer and Consolidate for
10 All Purposes each of the actions pending as part of Judicial Council Coordination Proceeding 4408
11 (also known as the Antelope Valley Groundwater Cases). This consolidation, among other things,
12 has the effect of unwillingly making our clients parties to two class actions involving separate causes
13 of action in which they have not been named.

14 3. The law provides that upon consolidation, the opportunity to exercise a peremptory
15 challenge under California Civil Procedure Code section 170.6 is available.

16 A party's acquiescence of a judge to hear one action does not impair his
17 or her right to exercise a challenge to prevent that judge from hearing
18 another matter, even if that matter raises issues closely related to those
19 in the first action. [Citations.] 'Assigning the same judge to hear a
20 series of complex actions, such as these where there exists subject
matter overlap, may promote judicial efficiency. However, judicial
efficiency is not to be fostered at the expense of a litigant's rights under
section 170.6 to peremptorily challenge a judge.'

21 *Nissan Motor Corp. v. Super Ct.*, 6 Cal. App. 4th 150, 155 (1992).

22 A party to any of the consolidated cases may disqualify the assigned
23 judge by a timely challenge under CCP section 170.6, even where that
24 party previously acquiesced to the judge in one of the consolidated
cases., i.e., consolidation with another case may create a second chance
for a section 170.6 challenge.

25 *Weil & Brown*, Section 12:369, Civil Procedure Before Trial (2009) (citing *Nissan Motor Corp.*).

26 4. The Honorable Jack Komar is prejudiced against the Cross-Defendants, or the
27 interests of the Cross-Defendants, in this newly consolidated action so that we believe the Cross-
28 Defendants cannot have a fair or impartial trial or hearing before him.

1 We declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed this 12th day of October at
4 San Francisco, California.

EDGAR B. WASHBURN
WILLIAM M. SLOAN
MORRISON & FOERSTER LLP

5
6 By: William M. Sloan
William M. Sloan
7 Attorneys for U.S. BORAX, INC.

8 Executed this 12th day of October at
9 Bakersfield, California.

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LAW OFFICES OF LEBEAU THELEN, LLP

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17 By: _____
Bob H. Joyce
18 Attorneys for DIAMOND FARMING
19 COMPANY, a California corporation,
20 CRYSTAL ORGANIC FARMS, a limited
liability company, GRIMMWAY Enterprises,
Inc., and LAPIS LAND COMPANY, L.L.C.

21 Executed this 12th day of October at
22 Riverside, California.

MICHAEL D. DAVIS (BAR NO. 93678)
GRESHAM SAVAGE NOLAN & TILDEN, APC

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24 By: _____
Michael D. Davis
25 Attorneys for SERVICE ROCK PRODUCTS
26 CORPORATION, as successor-in-interest to
Owl Properties, Inc., SHEEP CREEK WATER
27 COMPANY, INC., and A.V. UNITED
MUTUAL GROUP

1 We declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

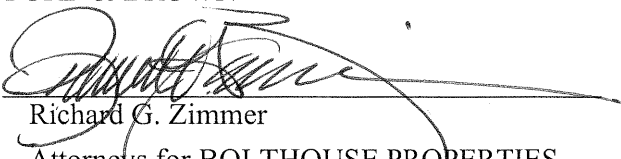
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2 Barbara, California.

MICHAEL T. FIFE (BAR NO. 203025)
BRADLEY J. HERREMA (BAR NO. 228976)
BROWNSTEIN HYATT FARBER SCHRECK, LLP

3
4 

5 By: _____
Michael T. Fife

6 Attorneys for the ANTELOPE VALLEY
7 GROUNDWATER AGREEMENT
8 ASSOCIATION ("AGWA")
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1 **PROOF OF SERVICE**

2 I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is
3 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I
4 am over the age of eighteen years.

5 I further declare that on October 13, 2009, I served a copy of the attached PEREMPTORY
6 CHALLENGE TO ASSIGNED JUDGE (c.c.p. § 170.6) by electronically posting a true copy thereof
7 to Santa Clara County Superior Court's electronic filing website for complex civil litigation cases
8 (Judge Jack Komar, Dept. 17C --- <http://www.scefilng.org>) with respect to Judicial Council
9 Coordination Proceeding No. 4408 (Antelope Valley Groundwater matter).

10 I declare under penalty of perjury under the laws of the State of California that the foregoing
11 is true and correct and that this document was executed at San Francisco, California, on October 13,
12 2009.

13
14
15 Catherine L. Berté
16 (typed)


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28 (signature)