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For The SHELDON R. BLUM TRUST**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES - CENTRAL DISTRICT

|  |   |   |
|--|---|---|
| Coordinated Proceedings<br>Special Title {Rule 1550 (b)}   | ) | Judicial Council Coordination<br>Proceeding No. 4408  |
| <b>ANTELOPE VALLEY GROUNDWATER<br/>CASES</b>   | ) | Santa Clara Case No. 1-05-CV-049053<br>Assigned to Hon. Jack Komar  |
| Included Actions:  | ) | <b>CASE MANAGEMENT CONFERENCE<br/>STATEMENT OF SHELDON R. BLUM,<br/>TRUSTEE FOR THE SHELDON R. BLUM<br/>TRUST</b> |
| <u>Los Angeles County Waterworks District<br/>No. 40 v. Diamond Farming Co.</u><br>Los Angeles County Superior Court<br>Case No. BC 325 201  | ) | Date: January 9, 2009<br>Time: 1:30 p.m.<br>Dept. No.: 1<br>Judge: Hon. Jack Komar                                |
| <u>Los Angeles County Waterworks District<br/>No. 40 v. Diamond Farming Co.</u><br>Kern County Superior Court<br>Case No. S-1500-CV-254-348  | ) | Phase 3 Trial Date: None Set  |
| <u>Wm. Bolthouse Farms, Inc., v. City of<br/>Lancaster; Diamond Farming Co. v. City of<br/>Lacncaster; Diamond Farming Co. v. City of<br/>Palmdate Water District.</u><br>Riverside County Superior Court<br>Consolidated Action Nos. RIC 344 840,<br>RIC 344 436, RIC 344 668 | ) |   |
| _____  | ) |   |
| AND RELATED CROSS-ACTIONS  | ) |   |
| _____  | ) |   |

1 SHELDON R. BLUM, Trustee For The SHELDON R. BLUM TRUST hereby submits the  
2 following Case Management Conference Statement scheduled for January 9, 2009, and briefly  
3 addresses the issues presented by the Court, as follows:

4 **1. Phase 3 Trial Issues Of Safe Yield, Overdraft And Prescriptive Rights Of**  
5 **Purveyor Parties**

6 Phase 3 trial should be all encompassing and address the issues of safe yield,  
7 sustainable yield and overdraft. Consideration should also include historical and current  
8 conditions; characteristics; and average annual native water supply to the Antelope Valley basin,  
9 including circumstances and factors surrounding defining and operating the native safe yield and  
10 sustainable yield. Furthermore, a determination of whether an overdraft to the Antelope Valley  
11 basin has for an appreciable period of time existed, and if so, dates and its duration, including  
12 whether this overdraft condition has been interrupted to disrupt the continuous statutory five (5)  
13 year time-frame must also be addressed in Phase 3.

14  
15 As a matter of law, the burden of proof on these particular issues are on the purveyors  
16 since they are elements contained within their operative pleadings, who have relied on these  
17 concepts as a basis for their claim of prescription.

18 This trial phase should also address each parties prior and current overlying and  
19 appropriation groundwater usage from the Antelope Valley basin, all competing claims of the  
20 parties, in addition to all remedies and relief necessitated as a consequence of the Court's  
21 findings in Phases 3.

22  
23 It is important to note that notwithstanding the prescriptive claim allegations of the  
24 purveyors under Code of Civil Procedure §321, the legislature under Civil Code §1007, appears to  
25 have defeated such claims as a matter of law based on the expressly stated statutory water right



1 exception, as follows:

2 "Occupancy for the period prescribed by the Code of Civil Procedure  
3 as sufficient to bar any action for the recovery of the property confers  
4 a title thereto, denominated a title by prescription, which is sufficient  
5 against all, but no possession by any person, firm or corporation no  
6 matter how long continued of any land, water, water right, easement,  
or other property whatsoever dedicated to a public use by a public  
utility, or dedicated to or owned by the state or any public entity, shall  
ever ripen into any title, interest or right against the owner thereof."

7 Since the Antelope Valley basin has been and still remains dedicated for public use  
8 and/or is regulated by the state via the California Constitution and numerous Legislative  
9 enactments, it appears obvious that no prescriptive water right claims by the purveyors can ever  
10 ripen into any title, interest or rights against any overlying landowner.

11 Commence of the Phase 3 trial should be scheduled for August or September, 2009,  
12 which would provide sufficient time for completion of discovery, disclosure and discovery of expert  
13 witnesses and exchanging of Trial Exhibits and Trial Briefs by the parties.

14  
15 **2. Right To A Jury Trial**

16 The landowner parties have timely requested a Jury Trial on all issues involving  
17 questions of fact. These include all elements necessary to establish a water right prescriptive  
18 claim against specified landowners. Should the court disagree with counsel's interpretation of  
19 Civil Code §1007, the purveyor parties who are claiming uninterrupted overdraft which have  
20 ripened into prescriptive water rights have the burden of proof on these issues. Therefore, it is  
21 incumbent upon each purveyor to establish by a preponderance of evidence against specified  
22 landowners that the overdraft of the Antelope Valley basin has existed for an **uninterrupted**  
23 **period of at least five (5) years**, and that during said time-frame their use of the basin water has  
24

1 been **open, notorious, continuous and adverse**. The term "Adverse use" of the property has  
2 been interpreted to mean that the claimant's use of the property was made without the explicit or  
3 implicit permission of the landowner. (*Harrison v Welch* (2004) 116 Cal.App.4<sup>th</sup> 1084, 1090, 11  
4 Cal.Rptr. 3d 92). Periodic interruption or otherwise safe yield and/or sustainable yield prevents  
5 acquisitive prescription. Whether the elements of overdraft and prescriptive use during the  
6 requisite time-frame have been established is ordinarily a question of fact for jury determination  
7 and appeal under the substantial evidence standard. (*Aaron v Durham*, [Cal.App. 1 Dist. 2006], 41  
8 Cal.Rptr.3d 32, 137 Cal.App. 4<sup>th</sup> 1244; *Felgenhauer v Soni* [Cal.App. 2 Dist. 2004] 17 Cal.Rptr. 3d  
9 135, 121 Cal.App. 4<sup>th</sup> 445).


11 In the event that the interpretation of the prescriptive claim does not depend on  
12 conflicting extrinsic evidence, it is a question of law for the court to determine. (*Beyer v. Tahoe*  
13 *Sands Resort*, [Cal.App. 3 Dist. 2005], 29 Cal.Rept. 3d 561, 129 Cal.App. 4<sup>th</sup> 1458).

14 The case at bar involves the interpretation and determination of conflicting extrinsic  
15 evidence by and against the purveyors and therefore a trial by jury is appropriate.

16 Based on the foregoing, it is respectfully requested that this Court issue the above-  
17 stated order, subject to further discussions and proposals that this Court deems appropriate.

18 Dated: January 2, 2009

19  
20 LAW OFFICES OF SHELDON R. BLUM

21  
22 By:   
23 SHELDON R. BLUM, Esq.  
24 Attorney For SHELDON R. BLUM, Trustee  
25 For The SHELDON R. BLUM TRUST