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

Coordinated Proceedings
Special Title {Rule 1550 (b)}

) Judicial Council Coordination Proceeding
) No. 4408

**ANTELOPE VALLEY GROUNDWATER
CASES**

) Santa Clara Case No. 1-05-CV-049053

Included Actions:

**TRIAL SETTING CONFERENCE STATEMENT
OF THE BLUM TRUST**

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.
Los Angeles County Superior Court
Case No. BC 325 201

) Date: July 9, 2012
) Time: 9:00 a.m.
) Dept. No.: 1, Room 534, Central Civil West
) Judge: Hon. Jack Komar

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.
Kern County Superior Court
Case No. S-1500-CV-254-348

Wm. Bolthouse Farms, Inc., v. City of
Lancaster; Diamond Farming Co. v. City of
Lancaster; Diamond Farming Co. v. City of
Palmdate Water District.
Riverside County Superior Court
Consolidated Action Nos. RIC 344 840,
RIC 344 436, RIC 344 668

AND RELATED CROSS-ACTIONS

TO: All Parties and their Attorneys of Record:

1 The BLUM TRUST respectfully submits the following Trial Setting Conference Statement
2 which briefly addresses the current status of Mediation and potential Phase IV Trial issues.

3 **I. MEDIATION STATUS**

4 The parties are continuing to engage in mediation sessions with Justice Ronald Robie in
5 Sacramento, CA, with the next session scheduled for September 11, 2012. During the interim, the
6 parties have continued to meet and submit language changes, including possible special provisions
7 applicable to their clients which are to be incorporated into the Judgment & Physical Solution. If the
8 parties reach a settlement on all of the terms of the proposed Judgment & Physical Solution, the next
9 phase of the trial could be a hearing to establish facts necessary for the Court to approve and enter
10 the Judgment & Physical Solution, and evidentiary 'Prove-Up' on each party's entitlement to the
11 native safe yield based on that party's historic pumping records during the assigned five (5) year
12 production period of 2000 through 2004, or other court determined time-frame.

13
14
15 If the parties are unable to reach a settlement agreement, the next phase of the trial should
16 be proving claims for overlying groundwater rights, prescriptive groundwater rights, appropriator
17 water rights, water transfers, replacement water, exchange water, recharging of supplemental
18 supply, entitlement to return flows, structural management of the basin via water master rules and
19 ramp down periods. Furthermore, the trial should resolve all remedies and relief necessitated as a
20 consequence of the Court's findings in Phase IV, including the implementation of water control
21 safeguards and methods of achieving anticipated reduction of production pumping in the future
22 arising out of overdraft and/or triggering cutbacks.

23
24 The trial setting for Phase IV should provide sufficient time for the disclosure and discovery
25 of lay and expert witnesses, filing of dispositive motions, filing of in limine motions and exchanging of

1 Trial Exhibits and Briefs between the parties.

2 Another Trial Settling Conference hearing in late September, 2012, should also be
3 scheduled to obtain a status report on the progress of the mediation and settlement discussions.

4 **II. BLUM TRUST'S GROUNDWATER ALLOCATION RIGHTS**

5 Since 1985, the BLUM TRUST has remained an overlying owner of approximately 150
6 acres of farmland located in the Antelope Valley basin in the city of Lancaster.

7
8 The BLUM TRUST's overlying groundwater extraction/allocation rights on its Los Angeles
9 County APN 3384-009-001 (79+/- Acres), and APN 3384-009-006, (39+/- Acres), located at Avenue
10 J and 70th Street East, Lancaster, CA, arises out of the historic beneficial use of its farmland by
11 former Lessee WM. BOLTHOUSE FARMS, INC, (hereinafter "BOLTHOUSE FARMS"), who leased
12 the same under an Agriculture Lease Agreement dated August 2, 2001, and Modification Lease
13 Agreement dated May 17, 2004. BOLTHOUSE FARMS conducted its farming operations via
14 irrigating and harvesting carrots and onions on the BLUM TRUST leased 119 acre parcels from
15 January 1, 2002, up through December 31, 2009.

16
17 It is significant to note that the Lease Agreement between the parties expressly
18 acknowledged the pending Antelope Valley Basin adjudication of well pumping throughout the
19 Antelope Valley and that any adverse finding would negatively impact the amount of groundwater,
20 cost of the water and future overlying pumping rights for the BLUM TRUST parcels.

21 Furthermore, all lease covenants and agreements in the lease were deemed **covenants**
22 **running with the land** and inured to the benefit of and be binding upon the successors in interest
23 of the parties. The lease further stated that Lessee shall **not assign, sublease or transfer** the
24 Lease or any of its obligations thereunder, without first obtaining the written consent of Lessor and
25

1 in no event unless the assignee, sublessee and/or transferee provides evidence of financial
2 resources to Lessor.

3 Here, in lieu of Lessee BOLTHOUSE FARMS' utilizing any of Lessor BLUM TRUST's
4 three (3) water wells to undertake its groundwater pumping on Lessor BLUM TRUST's 119 acre
5 leased parcels, from 2001, up through 2009, Lessee breached the lease terms by leasing the
6 parcels directly across the street and **thereafter** constructed thereon, two (2) water wells and a
7 groundwater pipeline delivery system underneath the streets of Avenue J and 70th Street East,
8 onto the BLUM TRUST parcels without Lessor's knowledge or consent.

9
10 *Civil Code §2649, 'Understanding of Obligee'*, provides,

11 "If the terms of a promise are in any respect ambiguous or uncertain,
12 it must be interpreted in the sense in which the promisor believed, at
13 the time of making it, that the promisee understood it."

14 Similarly, *Civil Code §1647, 'Surrounding Circumstances'*, and *Code of Civil Procedure*
15 *§1860, 'Construction-Surrounding Circumstances'*, provides:

16 "For the proper construction of an instrument, the circumstances
17 under which it was made, including the situation of the subject of
18 the instrument, and of the parties to it, may also be shown, so
19 that the Judge be placed in the position of those whose language
20 he is to interpret."

21 Furthermore, *Civil Code §1448, 'Notice Essential'* provides:

22 "If the party having the right of selection between alternative acts does not
23 give notice of his selection to the other party within the time, if any, fixed,
24 by the obligation for that purpose, or, if none, is so fixed, before the time at
25 which the obligation ought to be performed, the right of selection passes to
26 other party."

27 The California Department of Water Resources, Southern District archives identifies **two**
28 **(2) recorded "Water Well Index Cards"** filed by BLUM TRUST's farming predecessors, who

1 drilled water wells on the BLUM TRUST parcels. A **third (3rd) water well** is also present.

2 Furthermore, the California Secretary of State business status records document that on
3 **March 15, 2005, BOLTHOUSE PROPERTIES, LLC** (hereinafter "BOLTHOUSE PROPERTIES"),
4 became a **California Limited Liability Company**, who on or about **June 3, 2005**, purchased in
5 Fee, title to the BOLTHOUSE FARMS' leased parcels directly across the street from the BLUM
6 TRUST parcels. In material breach of the lease terms, BOLTHOUSE FARMS and BOLTHOUSE
7 PROPERTIES entered into assignment and/or transfer agreement for BOLTHOUSE
8 PROPERTIES to pump and deliver groundwater onto the BLUM TRUST's leased parcels.

9 It is also important to note that the California Secretary of State business status records,
10 reflect that in **June, 2006**, BOLTHOUSE FARMS filed for California corporate domicile status in
11 lieu of its prior Michigan corporate status, and in **2006**, sold its farming operation business to the
12 Chicago Illinois equity firm of **MADISON DAVIDSON PARTNERS, LLC**.

13 While at all times herein mentioned, the real party in interest remains former Lessor BLUM
14 TRUST to the above-stated groundwater extraction/allocation claims, the new successor in
15 interests of BOTLHOUSE FARMS is now MADISON DAVIDSON PARTNERS, LLC, associated
16 with the recent formation of BOLTHOUSE PROPERTIES.

17 The BLUM TRUST overlying pumping rights during the assigned 2001-2004 production
18 period **annually averaged 245.7 Total Acre Fee**, which are both crop determined and recorded
19 under an Annual Notice of Groundwater Extraction And Diversion by the BOLTHOUSES. Pursuant
20 to the **June 26, 2012, Updated Declaration** of BOLTHOUSE FARMS' Irrigation Equipment
21 Manager Daniel Wilke, a yearly Planting Schedule was established on the BLUM TRUST leased
22 parcels to calculate the amount of acre feet of groundwater necessary to grow onions and carrots.

1 Based on the crop multiplied by the number of irrigated acres used to harvest the crop, the 'Total
2 Acre Feet Applied' has been computed. Additionally marked and attached Declaration Exhibits of
3 recorded Annual Notices of Groundwater Extraction And Diversion provides back-up data to the
4 BLUM TRUST groundwater allocation claim.

5
6 The groundwater extraction claim of the BLUM TRUST is not duplicative to any of
7 BOLTHOUSE PROPERTIES' claims nor injuries or prejudicial to any overlying party as it arises
8 out of historical well documented uses. Likewise, the water allocation to the BLUM TRUST in lieu
9 of BOLTHOUSE PROPERTIES does not adversely affect the rights of others to the water
10 involved, nor does it unreasonably effect the overall economy, or the fish, wildlife or other instream
11 beneficial uses of the basin. (*Water Code §1736*; and *Barnes v. Hussa* (2006) 136 Cal.App.4th
12 1358, 39 Cal.Rptr. 3d 659).

13
14 Although, Mr Richard Zimmer for both successors in interest BOLTHOUSE FARMS and
15 BOLTHOUSE PROPERTIES previously Stipulated on the record before Judge Jack Komar, as well
16 as personally to Mr. Sheldon R. Blum that both BOLTHOUSE FARMS and BOLTHOUSE
17 PROPERTIES are NOT making claim to the groundwater pumped to irrigate BOLTHOUSE FARMS'
18 carrots and onions on the BLUM TRUST's parcels, Mr. Zimmer now requests a forfeiture stating that
19 the subject extracted groundwater was not technically pumped from any water well located on the
20 BLUM TRUST parcels.

21 The law disfavors forfeitures which are strictly construed in favor of the persons against
22 whom they are sought to be imposed. (*People v. \$17,522.08 United States Currency* (2006) 142
23 Cal.App.4th 1076, 1081-82; see also, *Tamalpais Land & Water Co. v. Northwestern Pac. R. Co.*
24 (1946) 73 Cal.App.2d 917, 929; *County of Los Angeles v. Granite State Ins. Co.* (2004) 121
25

1 Cal.App.4th 1,3.). Whenever it can possibly be avoided the courts will not allow a forfeiture to be
2 enforced on purely technical grounds. (*Associated Engineers, Inc. v. American Nat. Fire Ins. Co.*
3 (1959) 175 F. Supp. 352). For the same underlying policy reasons, forfeiture of contract rights is also
4 disfavored and conditions or ambiguities will be construed to avoid a forfeiture if at all possible. (See
5 *Civil Code §1442; Ballard v. MacCallum* (1940) 15 Cal.2nd 439, 444; *City of Palmdale Springs v.*
6 *Living Desert Reserve* (1999) 70 Cal.App.4th 613, 622).

8 **III. BLUM TRUST vs. BOLTHOUSE FARMS & BOLTHOUSE PROPERTIES CASE**
9 **SPECIFIC HISTORY**

10 The case history of this matter is long standing between the parties which arises out of the
11 BLUM TRUST's Cross-Complaint against BOLTHOUSE FARMS and BOLTHOUSE PROPERTIES
12 filed on **December 20, 2007**, in the Superior Court of Santa Clara County bearing Case No. 1-05-
13 CV-09053. (See e-file Doc. #1088). Through Court Order by Stipulation between counsel Mr.
14 Zimmer and Mr. Blum, the BLUM TRUST Cross-Complaint was severed from this complex action
15 however the court ordered that each party shall continue to prosecute and/or defend their
16 respective groundwater claims. (See e-filed 9/22/08; Doc. #2041).

17 On or about **December 16, 2008**, the BLUM TRUST's Cross-Complaint was settled by
18 the parties under terms which provided that BLUM TRUST reserves the right in the Groundwater
19 Adjudication to contend on a correlative basis that the amount of groundwater pumped by the
20 BOLTHOUSES was/is for the beneficial use of the leased parcels during the relevant calendar
21 years of January 1, 2002, through December 31, 2009, and that such pumping should be allocated
22 to the BLUM TRUST parcels under any California water priority allocation system. Whereas, the
23 BOLTHOUSES' may dispute these contentions in the Groundwater Adjudication."
24

25 Consequently, BOLTHOUSE PROPERTIES was a trespasser as a result of it's
26

1 unauthorized easement on the BLUM TRUST parcels. Under these case specific facts, as a matter
2 of law, the BLUM TRUST should be allocated the groundwater pumping rights of all reasonable and
3 beneficial irrigation use on it's above-referenced leased parcels. The pivotal focus in reaching this
4 finding is the overriding beneficial agriculture use on the BLUM TRUST leased parcels under privity
5 of contract, covenants running with the land, as well as the assignment and/or transfer lease
6 provisions.
7

8 *Water Code §1052* terms unauthorized diversion of water a "trespass" and *Water Code*
9 *§1851* speaks of unspecified "equitable and legal relief" available to any person for "harm caused by
10 an unauthorized diversion or a violation of a term or condition of a permit or license issued under this
11 code." Analogous to a 'Joint Venture', 'Water Transfer' under *Water Code §1735*, et seq, or
12 otherwise a 'Constructive Trust' under *Civil Code §2224*, the BLUM TRUST has a prima facie
13 overlying extraction/allocation right.
14

15 *Water Code §1740*, provides a safeguard and resolution for these type of occurrences as
16 follows:

17 "Any water right determined under a court decree issued pursuant
18 to Chapter 3 (commencing with Section 2500) of Part 3, after January
19 1, 1981, shall be transferable pursuant to this chapter and Chapter 10
20 (commencing with Section 1700). The court having the appropriate
jurisdiction over the decreed rights may enter a supplemental decree
modifying any rights involved upon motion of the board or any party
with a vested water right."


21 **IV. CONCLUSION**

22 Based on the foregoing, it is respectfully requested that this Court make the above-stated
23 findings and issue an order consistent with the matters stated herein, subject to further discussions
24 and proposals that this Court deems appropriate and just. Furthermore, the discovery dispute
25 between counsel Mr. Blum and Mr. Zimmer relative to the previously Noticed Taking of Depositions
26

1 and Production of Documents (See e-filed Docs. #4911 & 5009), is for now, in abeyance and subject
2 to this court's determination as to the type of evidence and pumping duration necessary to present at
3 the 'Prove-Up' groundwater allocation hearing.

4 Dated: July 6, 2012

5 Respectfully submitted,
6 LAW OFFICES OF SHELDON R. BLUM

7 By: 
8 SHELDON R. BLUM, Esq.
9 Attorney For The BLUM TRUST

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