

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**LAW OFFICES OF
SHELDON R. BLUM**
2242 CAMDEN AVENUE, SUITE 201
SAN JOSE, CALIFORNIA 95124
TEL: (408) 377-7320
FAX: (408) 377-2199
STATE BAR No. 83304

Attorney for BLUM TRUST

**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:

**BLUM TRUST'S CASE MANAGEMENT
CONFERENCE STATEMENT**

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

Date: July 11, 2014

Los Angeles County Superior Court
Case No. BC 325 201

Time: 9:00 a.m.

Place: Telephonic

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

BLUM TRUST respectfully submits the following Case Management Conference Statement:

1 **I. STATEMENT OF FACTS**

2 At the *May 23, 2014* Case Management Conference, Judge Jack Komar instructed
3 counsel for BLUM TRUST to attempt to resolve all unresolved issues and evidentiary matters in
4 dispute with the settling parties, arising out of BLUM TRUST's overlying groundwater production
5 rights.

6
7 On *May 23, 2014*, counsel for BLUM TRUST *emailed* to all settling parties a request to
8 engage in a 'meet and confer' dialog to learn of their respective position(s) regarding the allocation
9 of groundwater to BLUM TRUST's farmland. It was made known that a resolution was necessary
10 to avoid a Phase 6 Trial.

11 Without receiving any response, counsel for BLUM TRUST next E-filed on the court's
12 'Discovery' web site a *June 12, 2014*, letter addressed to All Attorneys and Unrepresented Parties
13 which outlined twenty (20) undisputed facts with footnotes, supported by twenty (22) evidentiary
14 exhibits and decisional law. This letter was further supplemented by an E-filed *June 20, 2014*,
15 letter which attached one (1) exhibit.

16
17 Based on this counsel's 'good faith' attempts to reach a resolution on BLUM TRUST's
18 entitlement to groundwater production with the settling Overlying Landowners, Water Suppliers
19 and/or Federal Government, there has been only one (1) objection raised by counsel for WM.
20 BOLTHOUSE FARMS, INC, and BOLTHOUSE PROPERTIES, LLC. The objection did not
21 contest any of BLUM TRUST's 20 undisputed facts or 23 evidentiary exhibits, as above-
22 referenced. It is now a matter of account, that no other counsel or party has voiced any legal
23 position, but rather have abstained from any involvement.

24
25 It is this counsel's impression that there appears to be only one (1) long-standing

1 Query among the settling parties, to wit, *Whether the groundwater production applied and*
2 *beneficially used to irrigate onions and carrots on Lessor BLUM TRUST's overlying farmland*
3 *during Lessee BOLTHOUSE FARMS lease term (id. 2002 through 2009), is to be allocated to*
4 *BLUM TRUST or BOLTHOUSE FARMS? There are no factual or evidentiary matters in dispute.*

5 **II. LEGAL ANALYSIS**

6
7 As a matter of law, there cannot be a forfeiture especially when the forfeiture would entail
8 evaporating over **1,006,684,079 total gallons** of beneficially used groundwater to irrigate onions
9 and carrots on BLUM TRUST's approximate 120 acres of leased farmland for eight (8)
10 consecutive years. (See 'Summary Expert Report', Appendix D-3; Table 4, 'Applied Crop Duties &
11 Irrigation Efficiency Values Chart' For Onions & Carrots). The law disfavors forfeitures which are
12 strictly construed in favor of the persons against whom they are sought to be imposed. (*Tamalpais*
13 *Land & Water Co. v. Northwestern Pac. R. Co.* (1946) 73 Cal.App.2d 917, 929; *County of Los*
14 *Angeles v. Granite State Ins. Co.* (2004) 121 Cal.App.4th 1,3.).

15
16 Here, supportive by evidentiary exhibits, applicable constitutional, statutory and decisional
17 law, there are no genuine unresolved issues nor evidentiary matters in dispute between the
18 settling parties and BLUM TRUST that would preclude BLUM from receiving its documented
19 groundwater production share, free of replacement assessment. The denial of groundwater rights
20 are unwarranted, prejudicial, constitutes a forfeiture, abrogates the law and violates BLUM
21 TRUST's equal protection among other settling parties.

22
23 Under the legal principal of 'Freedom of Contract' which established 'Privity of Contract'
24 arising out of an Agriculture Lease Agreement between Lessor BLUM TRUST and Lessee WM.
25 BOLTHOUSE FARMS, INC, a 'Farming Unit' was created between the parties with the lease

1 acknowledging the Antelope Valley Groundwater Adjudication, and the impact on water pumping and
2 water rights which may affect the amount and cost of available groundwater for the subject property.
3 In recognition of the Basin's adjudication, all covenants and agreements contained in the lease were
4 deemed to be *covenants running with the land and shall inure to the benefit of and be binding upon*
5 *the successors in interest of the parties.*
6

7 In lieu of servicing and pumping from BLUM TRUST's three (3) water wells, BOLTHOUSE
8 FARMS elected to construct an underground pipeline delivery system from its adjacent parcels' water
9 wells and route it underneath Avenue J and 70th St. East onto the BLUM TRUST'S farmland. These
10 wells were identified by BOLTHOUSE FARMS as AVOL 14-3N; & AVOL 14-3S bearing APN 3384-
11 004-004; and LAID 13-3 bearing APN 3384-008-002.

12 In form and in substance for eight (8) consecutive years, BOLTHOUSE FARMS' wells
13 AVOL 14-3 N; AVOL 14-3 S; & LAID 13-3, and the BLUM TRUST'S approximate 120 acres of
14 health non-contaminant farmland, were farmed as a "*Contiguous (or Collective) Farming Unit*".
15

16 The operation was a valid exercise of overlying production rights in conformity with good agriculture
17 farming standards and practices, and in compliance with all applicable State and Federal laws. 1

18 Although the BOLTHOUSE ENTITIES seek an unwarranted and prejudicial forfeiture, on
19 *May 9, 2008*, BOLTHOUSE PROPERTIES, President Anthony L. Leggio provided a verified
20 Response To BLUM TRUST's Special Interrogatories, Set One, Interr. No. 92, and finally
21

22 1. On *November 14, 2003*, and *December 3, 2003*, BOLTHOUSE FARMS filed a *Second Amended*
23 *Complaint to Quiet Title* in Riverside County which identified twenty eight (28) leased parcels in which it
24 engaged in this same or similar contiguous farming model as BLUM TRUST. On *January 2, 2007*,
25 BOLTHOUSE PROPERTIES filed a *Cross-Complaint* which alleged pumping rights on the same leased
26 parcels previously identified by BOLTHOUSE FARMS' pleadings. (See *E-File Docs. Nos.: 206, 207 & 417*).
Rather than deny the existence of these farming unit(s) BOLTHOUSE PROPERTIES responded to BLUM
TRUST's Special Interrogatory No. 93, by objecting to its disclosure as "*private or proprietary corporate*
information/documents."

1 admitted that: "**WM. BOLTHOUSE FARMS, INC lease water rights regarding the SUBJECT**
2 **PROPERTY are set forth in the lease agreement and are contractual in nature. BOLTHOUSE**
3 **PROPERTIES, LLC does not have any leasehold or contractual water rights relationship with**
4 **BLUM.**"

5
6 Consistent with BLUM TRUST's legal position, General Counsel for BOLTHOUSE FARMS,
7 Ms. Tracy M. Saiki's Declaration In Lieu of Deposition Testimony For Phase 4 Trial dated January
8 31, 2013, also declared under verification that "**BOLTHOUSE FARMS is not claiming any**
9 **groundwater rights in this action.**"

10 Therefore, BLUM TRUST production rights are not in conflict with nor duplicative to any of
11 the groundwater production claims/rights of 'successor in interest' BOLTHOUSE PROPERTIES.
12 Likewise, the BLUM TRUST's production claims for Overlying Landowners has not been factored
13 nor considered under any formula or calculation used by BOLTHOUSE PROPERTIES to establish
14 its Annual Acre Feet within the approximate 85% pro-rata share. Rather, BOLTHOUSE
15 PROPERTIES calculated its pumping usage on crop farming involving other parcels during
16 different calendar years than BLUM TRUST. As noted, BOLTHOUSE FARMS previously
17 relinquished all of its groundwater rights in this action. (*supra.*)

18
19 Most importantly, between the calendar years of 2000 up through 2012, all of the settling
20 Overlying Landowners, Water Suppliers and the Federal Government have used a garden variety
21 of methods, practices, and time-frames to calculate their overlying production rights, however
22 unlike BLUM TRUST, were accorded a percentage share of the water available from the Antelope
23 Valley Basin.

24 The method of extracting groundwater from one water well on a APN parcel for use on a
25

1 contiguous or adjoining APN parcel is both an Overlying Landowner farming practice and Water
2 Supplier practice historically known to exist in the Antelope Valley community.

3 Consistent with 'Privity of Contract' and BLUM TRUST's valid exercise of its overlying
4 production rights, the PUBLIC WATER SUPPLIERS' CASE MANAGEMENT STATEMENT dated
5 January 15, 2013, at Page 1, Lines 22-26, (See *E-Filed #5825*), addressed the 'Place of Use' Query,
6 as follows:
7

8 "It is also important to determine the parcels upon which the water was
9 used versus where the water was pumped, because the water rights
10 belong to the owner of the property where the water was used absent
11 contractual agreement. If this is not taken into account, there is a danger
12 of double counting. This information is essential to be able to analyze
13 and verify the claimed groundwater use and current pumping."

14 So long as the parcel overlies the groundwater basin, it is irrelevant whether the
15 groundwater being applied to it is pumped from the same parcel. As California's courts have long
16 recognized, the analogy between riparian and overlying groundwater rights is a very close one.
17 (See W.A. Hutchins, The California Law of Water Rights (Calif. 1956) at 252-53; *Hudson v. Daily*
18 (1909) 156 Cal. 617, 628; *Peabody vs. Vallejo* (1935) 2. Cal.2d 351, 372,383. Just as water
19 diverted from a surface stream pursuant to a riparian right need not be diverted on the riparian
20 parcel itself, (See *Pabst v. Finmand* (1922) 190 Cal. 124, 137-38; *Hutchins, supra*, at 248-49),
21 water may be pumped from a groundwater basin for use on a different parcel so long as the parcel
22 of use overlies the basin.

23 The California Supreme Court in *Stanislaus Water Co. v. Bachman* [(1908) 152 Cal. 716,
24 725-726], has also held that where the right to water is delivered in pipes and the pipes themselves
25 constitute an appurtenance to real property, the water retains its character as realty until severance

1 is completed by its delivery from the pipes to the consumer. Water diverted from a natural source of
2 supply into artificial conduits for the purpose of conducting it to land for irrigation has been uniformly
3 classified in California as real property, and it does not change its character from realty to personal
4 property upon being delivered upon the land for the irrigation thereof. (*Stanislaus Water Company v.*
5 *Bachman, supra; Relovich v. Stuart* (1931) 211 Cal. 422, 428).
6

7 Whenever groundwater is delivered in ditches or pipes for irrigation purposes, severance
8 from the realty does not take place at all. (*Copeland v. Fairview Land & Water Co.* (1913) 165 Cal.
9 148, 154). Such water "remains real property throughout the process until it serves its purpose by
10 being absorbed into the land which it moistens." (*Stanislaus Water Co. v. Bachman, supra*, 725,
11 728).
12

13 The CITY OF LOS ANGELES' PROPOSAL CONCERNING FORM DISCOVERY dated
14 November 20, 2012, at Pages 2-3, Lines 16-21, 26-28, and 1-3, (See *E-filed #5347*), also
15 addressed the *Query* :

16 Some landowners, such as the City of Los Angeles, own
17 multiple contiguous parcels as identified by APNs, and may extract
18 water from a well on one AP for use on an adjoining or nearby AP. The
19 proper scope of inquiry is the extent and nature of water use on
20 property owned by a party, and on the description of the property on
21 which the water is used.....

22 Should the Court prefer the more detailed discovery order proposed by
23 the PWS, the City of Los Angeles suggests that the term "parcel" as
24 used in the interrogatories be defined as "a parcel identified by an
25 Assessor's Parcel Number or multiple contiguous parcels so identified
26 that as operated and farmed as a unit." Such a definition would allow
27 farmers and water users who operate property identified by several
28 APNs but which is contiguous and operated or farmed as a unit to
properly characterize their water extraction and use."

BLUM TRUST's groundwater rights are independently verified by BOLTHOUSE

1 PROPERTIES business pumping records, which include:

2 (A) Declaration of Anthony L. Leggio In Lieu of Deposition Testimony For
3 Phase 4 Trial dated 1/30/13, with attachment Exhibit "F", '*Groundwater Production In Acre Feet of*
4 *Water*' and Exhibits "E-1& E-2" '*Pump Hours Reading Log*';

5 (B) Addendum Exhibits To Declaration of Anthony L. Leggio dated 5/13/13, Exhibit
6 "P-1", *Crop Rotation*, & Exhibit "P-2" *Crop Legend Map*;

7 (C) 'Annual Notice(s) of Groundwater Extraction & Diversion' Forms on
8 AVOL 14-3N & AVOL 14-3S, (Filed for 2002-2007); and

9 (D) Crop Duties & Irrigated Acres, *Summary Expert Report Appendix D-3: Table 4*
10 "Applied Crop Water Duties and Irrigation Efficiency Values" for 'Carrots' & 'Onions'.

11 BLUM TRUST's groundwater entitlement is derived from its contiguous farming unit with
12 BOLTHOUSE FARMS during calendar years 2004-2005, when 'Onions' were irrigated and harvested
13 on 118 acres of BLUM TRUST's farmland. Under the above-stated (B) Addendum Exhibits To
14 Declaration of Anthony L. Leggio Exhibit "P-1", *Crop Rotation*, & Exhibit "P-2" *Legend Crop Map*;
15 and (D) *Summary Expert Report Appendix D-3: Table 4* "Applied Crop Water Duties and Irrigation
16 Efficiency Values" for 'Onions', BLUM TRUST production rights equal **531 Ac. Ft. Per Year**. (118
17 Acres Irrigated x 4.5 Applied Crop Water Duty).

18 This 'Place of Use' methodology most accurately represents BLUM TRUST's reasonable
19 and beneficial water usage without any danger of "double counting", nor impairment or injurious to
20 the rights of others. Failure to accord the BLUM TRUST water production as herein stated, would
21 significantly affect the value of the parcels and deprive BLUM TRUST of the agriculture use for
22 growing any crop, including onions, carrots and alfalfa on its approximate 120 acres of healthy non-
23 containment farmland.

LAW OFFICES OF SHELDON R. BLUM
2242 CAMDEN AVENUE, SUITE 201
SAN JOSE, CALIFORNIA 95124
TEL: (408) 377-7320, FAX: (408) 377-2199

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


III. CONCLUSION

Based on the foregoing, it is necessary that either BOLTHOUSE PROPERTIES or otherwise all settling Overlying Landowners' concur in a like 531 Ac. Ft. Per Year pro-rata subtraction and allocation revision under the 'Global Settlement'. It is respectfully submitted that BLUM TRUST should not be excluded from participating in the 'Global Settlement' because of one (1) abstract objection raised by the BOLTHOUSE ENTITIES who are clearly acting out of ill will, and fatally inconsistent and defective to their verified 'Special Interrogatory' responses and Declarations In Lieu of Testimony.

Alternatively, should this court order BLUM TRUST to proceed in a Phase 6 Trial, doctrines of 'Freedom of Contract' and 'Equal Protection' under the law would be abrogated because of a valid exercise of BLUM TRUST's overlying production rights.

Dated: July 8, 2014

Respectfully submitted,
LAW OFFICES OF SHELDON R. BLUM

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