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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SANTA CLARA**

11 **ANTELOPE VALLEY GROUNDWATER**  
12 **CASES:**

13 Included Actions:

14 Los Angeles County Waterworks District No.  
40 v. Diamond Farming Co.  
Superior Court of California  
15 County of Los Angeles, Case No. BC325201

16 Los Angeles County Waterworks District No.  
40 v. Diamond Farming Co.  
Superior Court of California  
17 County of Kern, Case No. S-1500-CV-254-  
18 348

19 Wm. Bolthouse Farms, Inc. v. City of  
Lancaster  
20 Diamond Farming Co. v. City of Lancaster  
Diamond Farming Co. v. Palmdale Water Dist.  
21 Superior Court of California  
County of Riverside, consolidated actions  
22 Case Nos. RIC 353840, RIC 344436,  
RIC 344668

Judicial Council Coordination  
Proceeding No. 4408

Santa Clara Case No. 1-05-CV-049053  
Assigned to the Honorable Jack Komar

**SUPPLEMENTAL DECLARATION OF  
MALISSA HATHAWAY MCKEITH IN  
SUPPORT OF CROSS-DEFENDANT  
ANAVERDE LLC's OPPOSITION TO  
MOTION TO QUASH TRIAL SUBPOENA  
OF N. THOMAS SHEAHAN**

**Date:** October 31, 2008

**Time:** 9:00 a.m.

**Dept.:** 17C

**Phase 2 Trial:** November 3, 2008

**Time:** 9 a.m.

**Location:** LASC, Dept. 1

24 I, Malissa Hathaway McKeith, declare and state as follows:

25 1. I make this deposition in further opposition to the motion to quash the subpoena of Mr. Tom  
26 Sheahan, Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc.'s (hereinafter collectively  
27 referred to as "Bolthouse") expert witness. The statements made herein are of my own personal  
28

1 knowledge and, if called as a witness, I would and could testify to the truth thereof. The following  
2 declaration addresses three issues: (1) statements of Mr. Zimmer that there were prior court orders  
3 excusing Mr. Sheahan from trial testimony; (2) Mr. Zimmer's preventing Anaverde LLC ("Anaverde")  
4 and Tejon Ranch ("Tejon") from first conducting depositions prior to Mr. Zimmer's "direct"  
5 examination; (3) the production of three boxes of documents at the deposition (not including CD-  
6 ROMs with additional information that is not yet printed); (4) the production of an expert report  
7 developed by Mr. Sheahan in connection with the Technical Committee dated March 2008 that had  
8 not been produced in pre-trial discovery. The declaration also briefly addresses the belligerent and  
9 harassing conduct of Mr. Zimmer during the deposition, which the Court will be able to observe itself  
10 when the video is ultimately available.  
11

12 2. The deposition of Mr. Sheahan was completed on October 29, 2008, at approximately 5:40  
13 p.m.  
14

15 3. On September 30, 2008, Mr. Zimmer requested that Anaverde agree that the deposition of Mr.  
16 Sheahan not go forward, as previously scheduled, on October 1, 2008 and that, in return, he would  
17 provide a full opportunity for a deposition first *if Mr. Sheahan was going to be called to provide*  
18 *rebuttal testimony*. As discussed below, Anaverde was not provided the opportunity to depose Mr.  
19 Sheahan before Mr. Zimmer undertook what he views as direct testimony for trial.  
20

21 4. The issue before this Court concerns the trial subpoena of Mr. Sheahan for which Mr. Zimmer  
22 filed a motion to quash and seeks sanctions. During the deposition, Mr. Zimmer stated, on several  
23 occasions, that this Court had already ordered that Mr. Sheahan's testimony go forward through video  
24 deposition, and that the Court had ruled that Mr. Sheahan was not required to appear at trial because  
25 of his vacation. Mr. Zimmer also stated that I personally was in the courtroom when such a ruling was  
26 made and that service upon Mr. Sheahan was in contravention of that order. I confirmed with both  
27 Joseph Salazar, trial counsel for Anaverde, and Robert Kuhs, trial counsel for Tejon, that this Court  
28

1 has issued no such order and made no ruling on October 10, 2008 when the new trial date was set. For  
2 the record, I was not at the trial on October 9 or 10 as I was in Washington D.C. speaking at the World  
3 Food Council. If there was a court order concerning Mr. Sheahan's unavailability to appear at trial, I  
4 was unaware of it at the time of trial and when the subpoena was served on Mr. Sheahan.

5  
6 5. On Monday, October 27, 2008, I appeared at Mr. Sheahan's deposition prepared to proceed  
7 pursuant to a deposition noticed served by Anaverde on October 17, 2008. At that time, Mr. Zimmer  
8 completely pre-empted Mr. Kuhs and me from proceeding first, stating that this Court had already  
9 ruled on the order of deposition. He also stated that after he finished, we could then take our  
10 depositions, and that he would give us a "short" break to speak to our experts and prepare a trial cross-  
11 examination. Mr. Zimmer then commenced his "direct-examination" for trial. He completed his  
12 "direct examination" concerning Anaverde during mid-afternoon. He then proceeded with the direct  
13 examination concerning Tejon. I understand he adjourned the deposition on Monday evening at  
14 approximately 5:12 p.m. I personally left the deposition at 4:30 p.m. due to prior commitments.  
15 According to Mr. Kuhs, Mr. Zimmer asked to stop at 5:00 p.m. and resumed his "direct" the following  
16 morning.

17  
18 6. On October 28, 2008, I arrived at the deposition at 9:15 a.m. Mr. Kuhs previously had  
19 informed me that he had several hours of questions, and therefore my presence was not needed. Mr.  
20 Zimmer resumed his "direct" examination of Mr. Sheahan, and Mr. Kuhs completed his examination  
21 at approximately 2:15 p.m. Only then did I commence my examination of Mr. Sheahan.

22  
23 7. At that point, Mr. Zimmer began demanding that I complete the deposition and the "trial  
24 rebuttal" that day as he was not coming back because he wanted to go home. I informed him that the  
25 deposition would stop at 5:30 p.m. and resume the following morning. I offered to reconvene the  
26 deposition in Temecula, for the convenience of the witness, or in Bakersfield, to accommodate Mr.  
27 Zimmer. Ultimately, Mr. Zimmer relented and said he would produce Mr. Sheahan for four hours the  
28

1 next day. Though I committed to attempt to finish within four hours, I did not agree to terminate the  
2 deposition prematurely.

3 8. The deposition commenced at 8:00 a.m. and ended at 5:40 p.m. Throughout the entire time of  
4 questioning on both the afternoon of October 28 and 29, Mr. Zimmer engaged in extremely belligerent  
5 behavior. He repeatedly interrupted the questioning with "speaking objections"; he constantly  
6 complained about whether I went to the bathroom on a break or whether I instead used the time to  
7 speak to my expert witness; he was very demeaning and nasty in his manner; and he frequently  
8 interjected how he thought I should conduct the deposition or ask questions. Throughout his  
9 commentary, he repeatedly implied that I was delaying the deposition intentionally and that my  
10 absence from some of the proceedings regarding Tejon interfered with his proceeding. Since I have  
11 had no prior dealings with Mr. Zimmer, I was quite taken aback by his constant sniping and  
12 aggressive behavior which was unconstructive and disruptive.  
13

14 9. On October 23, 2008, Mr. Zimmer posted a 77-page expert report of Mr. Sheahan. This report  
15 went well beyond attacking the foundation and opinions of Mr. Lambie and stated new opinions on a  
16 wide range of topics. The latest report was based almost completely on the analysis and methodology  
17 that Mr. Sheahan previously developed in March 2008 for his estimating groundwater recharge along  
18 the mountain front of the Antelope Valley. That report was dated March 2008 and, according to Mr.  
19 Kuhs, had been provided to other members of the Technical Committee.  
20

21 10. Mr. Sheahan's analysis of Anaverde was based almost entirely on taking his calculations and  
22 methodologies from the earlier report and applying them to Anaverde. Anaverde was not a participant  
23 in Phase 1 of this matter nor did it participate in the Technical Committee.  
24

25 11. In addition to these two new technical reports, Mr. Sheahan produced three boxes of  
26 documents and several CD-ROMs with technical data. Mr. Zimmer had not provided Mr. Sheahan  
27 with a copy of the deposition notice, and Mr. Sheahan acknowledged not producing several of the  
28

1 categories of documents requested in that notice. Mr. Zimmer did not file objections to the deposition  
2 notice or the request for production of documents.

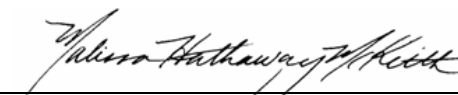
3 12. I have known and worked with Mr. Sheahan for at least 15 years or longer and I have  
4 absolutely no desire to disrupt his family reunion in Hawaii. We offered Mr. Sheahan a first class  
5 round trip ticket to leave for Hawaii on November 4, 2008 so that he could testify at trial and, at the  
6 deposition, I extended that offer to include his wife.  
7

8 13. As much as I personally like Mr. Sheahan, I have a fiduciary duty to protect my client's due  
9 process rights, which includes being able to conduct meaningful cross-examination. I do not believe  
10 that the circumstances under which Mr. Sheahan was deposed adequately constitutes meaningful  
11 rebuttal for purposes of trial. This is particularly the case given the truncated pre-trial discovery  
12 between June and September 2008, which did not allow adequate time to prepare a case of this  
13 magnitude.  
14

15 14. Nevertheless, Anaverde has done its utmost to meet all of the Court's deadline. The order of  
16 questioning at the Sheahan deposition and the circumstances under which it was conducted have  
17 further eroded Anaverde's ability to properly prepare for trial particularly if this Court deems the  
18 deposition sufficient to constitute rebuttal testimony.

19 15. I read the declaration submitted on my behalf yesterday in opposition to the motion to quash. I  
20 had relayed those facts, in general, to my office on October 28, 2008, and I did not have an  
21 opportunity to review or to sign it before it was submitted as I was consumed with attempting  
22 completion of the questioning of Mr. Sheahan as described herein.  
23

24 I declare under penalty of perjury that the foregoing is true and correct. I make this  
25 Declaration on the 30th day of October 2008 in Los Angeles, California.  
26

27   
28 Malissa Hathaway McKeith