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Attorneys for Cross-Defendants, Bolthouse Properties, LLC and Wm.  
Bolthouse Farms, Inc.,

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

\* \* \*

COORDINATION PROCEEDING	)	Judicial Council Coordination
SPECIAL TITLE (Rule 1550(b))	)	Proceeding No. 4408
	)	
ANTELOPE VALLEY GROUNDWATER	)	CASE NO. 1-05-CV-409053
CASES	)	
	)	
INCLUDED ACTIONS:	)	
	)	
LOS ANGELES COUNTY WATERWORKS	)	
DISTRICT NO. 40 v. DIAMOND	)	
FARMING COMPANY, et al.,	)	CASE MANAGEMENT STATEMENT
Los Angeles Superior Court	)	OF BOLTHOUSE PROPERTIES, LLC
Case No. BC325201	)	AND WM. BOLTHOUSE FARMS, INC.
	)	
LOS ANGELES COUNTY WATERWORKS	)	
DISTRICT NO. 40 v. DIAMOND	)	
FARMING COMPANY, et al.,	)	
Kern County Superior Court	)	
Case No. S-1500-CV-254348	)	
	)	
DIAMOND FARMING COMPANY, and	)	
W.M. BOLTHOUSE FARMS, INC., v.	)	
CITY OF LANCASTER, et al.,	)	DATE: July 21, 2008
Riverside Superior Court	)	TIME: 10:00 a.m.
Case No. RIC 344436 [c/w case	)	DEPT: 1
no. RIC 344668 and 353840]	)	
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PHASE II TRIAL

It will be important to both the purveyors and the landowners alike to understand the issues, scope and affect of the Phase II Trial. The Court has advised generally that issues for purposes of the Phase II Trial include the characteristics of the basin and safe yield. However, in a vacuum, it is difficult, if not impossible, to determine the specific characteristics of the basin which may be relevant to the matter. In particular, without a clear understanding of the causes of action and claims being made by the purveyors and the specific characteristics of the basin which the purveyors claim support such claims, it would be impossible for the landowners to speculate as to such contentions and to present meaningful and cost effective evidence regarding characteristics of the basin. Depending upon the scope of inquiry and the level of inquiry, shotgun analysis of the characteristics of the basin could take years to accomplish. A great deal of judicial and party time and expense would be incurred in the process.

In order to narrow the focus on particular basin characteristics upon which the purveyors are relying to prove their claims and causes of action, discovery is being served on the purveyors requesting they identify what basin characteristics they rely upon to prove each of their claims and causes of action. In addition to narrowing the focus of basin characteristics which will be litigated in Phase II, it is essential to a meaningful Phase II Trial, and to succeeding

1 phases, that both purveyors and landowners understand the  
2 controlling California law which will apply to the issue of safe  
3 yield and the proof of this quantity based upon the  
4 characteristics of the basin. Discovery is being served on the  
5 purveyors to determine their contentions with regard to  
6 controlling California case law setting forth the legal  
7 definition of safe yield and related concepts of surplus,  
8 temporary surplus and overdraft.

9 The burden of production of evidence and the burden of proof  
10 also should be discussed. All parties seem to agree that the  
11 burden of proof rests with the purveyors to prove their claims  
12 and causes of action by clear and convincing evidence. This also  
13 places the burden of production of evidence on the purveyors to  
14 meet their burden of proof by clear and convincing evidence. As  
15 noted above, what is not clear given the posture of the case, is  
16 precisely what characteristics of the basin the purveyors contend  
17 support their claims and the law applicable to such claims, to  
18 determine whether proof is sufficient. For example, do the  
19 purveyors contend that prescription will be proved based upon  
20 specific characteristics of the basin applicable to a particular  
21 landowner, or applicable to a number of landowners based upon  
22 constructive notice within a sub-basin, on the basis of  
23 constructive notice as to the characteristics of the basin as a  
24 whole, or in some other manner. This contention must be known by  
25 overlying landowners to do appropriate discovery and expert  
26 analysis and to prepare for trial.

1           In the absence of clarity regarding what a particular  
2 purveyor is intending and required to prove, and without purveyor  
3 confirmation as to the characteristics of the basin which such  
4 purveyor contends supports its claims, it will be virtually  
5 impossible for the Court to determine whether proof has been made  
6 by clear and convincing evidence and impossible for a reviewing  
7 Court to determine whether such proof was made.

8           A trial in the absence of such clarity would leave  
9 landowners guessing what particular evidence presented by the  
10 purveyors would be used for what particular proof of what  
11 particular claim and/or cause of action. In a more traditional  
12 civil litigation setting, the party with the burden of proof  
13 would present its entire case before the responding party would  
14 present its case. In this way, the proffered evidence, claims  
15 and causes of action are known and can be meaningfully addressed  
16 with both evidence and legal analysis.

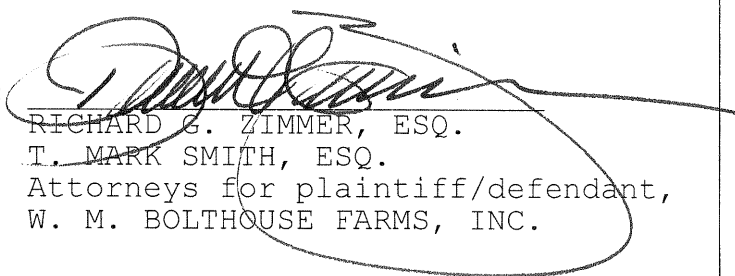
17           In order to protect due process concerns of the landowners  
18 against whom these claims are being made, it is essential that  
19 the Court make clear that any proof by the purveyors of the  
20 characteristics of the basin and any proof of safe yield or other  
21 Phase II issues, may be countered with presentation of evidence  
22 by the landowners at any later phase of the proceedings. Failure  
23 to do so would deprive landowners of the ability to evaluate all  
24 of the purveyors' evidence supporting each and every cause of  
25 action and to present evidence in opposition to such causes of  
26 action. Failure to do so also would deprive landowners of the

1 ability to make appropriate procedural motions such as motions  
2 for non-suit or directed verdict. The Court can protect these  
3 important defendant rights by assuring that all Phase II  
4 proceedings are without prejudice to the defendant landowners'  
5 production of evidence in later phases notwithstanding the fact  
6 that such evidence may provide different and/or more focused  
7 information regarding basin characteristics.

8 DATED: July 9, 2008

CLIFFORD & BROWN

9  
10 By:

  
11 RICHARD G. ZIMMER, ESQ.

12 T. MARK SMITH, ESQ.

13 Attorneys for plaintiff/defendant,  
14 W. M. BOLTHOUSE FARMS, INC.  
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*Judicial Counsel Coordination Proceeding No. 4408  
Santa Clara County Superior Court Case No. 1-05-CV-049053*

I am employed in the County of Kern, State of California. I am over the age of 18 and not a party to the within action; my business address is 1430 Truxtun Avenue, Bakersfield, CA 93301.

On July 16, 2008, I served the foregoing document(s) entitled:

CASE MANAGEMENT STATEMENT OF BOLTHOUSE PROPERTIES, LLC AND WM.  
BOLTHOUSE FARMS, INC.

— by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

— by placing \_ the original, \_ a true copy thereof, enclosed in a sealed enveloped addressed as follows:

X BY SANTA CLARA SUPERIOR COURT E-FILING IN COMPLEX  
LITIGATION PURSUANT TO CLARIFICATION ORDER DATED OCTOBER  
27, 2005.

Executed on July 16, 2008, at Bakersfield, California.

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

— (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

*Nanette Maxey*  
NANETTE MAXEY  
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