

Attorneys for Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc.,

COUNTY OF SANTA CLARA

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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.,) **BOLTHOUSE PROPERTIES, LLC'S AND**
Los Angeles Superior Court) **WM. BOLTHOUSE FARMS, INC.'S**
Case No. BC325201) **CASE MANAGEMENT CONFERENCE**
) **STATEMENT**
LOS ANGELES COUNTY WATERWORKS)
DISTRICT NO. 40 v. DIAMOND)
FARMING COMPANY, et al.,)
Kern County Superior Court)
Case No. S-1500-CV-254348) **DATE: January 9, 2009**
) **TIME: 1:30 p.m.**
) **DEPT: 1**
DIAMOND FARMING COMPANY, and)
W.M. BOLTHOUSE FARMS, INC., v.)
CITY OF LANCASTER, et al.,)
Riverside Superior Court)
Case No. RIC 344436 [c/w case)
no. RIC 344668 and 353840])

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 BOLTHOUSE PROPERTIES, LLC and WM. BOLTHOUSE FARMS, INC. file
3 this Case Management Conference Statement.

4 **PLEADINGS**

5 It is essential that the operative pleadings are identified
6 and that all parties have filed Answers to Complaints and/or
7 Answers to Cross-Complaints. As the Court recently articulated,
8 the pleadings must define the scope of the proceeding, including
9 the claims of the various parties in order to determine which
10 party has the burden of proof on particular issues. Landowners
11 request the Court create a procedure to document operative
12 pleadings.

13 **JURY TRIAL**

14 Landowner parties previously have requested jury trial on
15 all issues to which they are entitled to a jury trial. These
16 include, but are not limited to, claims of prescription and any
17 and all necessary elements to a claim of prescription. The
18 purveyor parties claim they have prescription against landowners
19 by pumping in an overdraft basin. Accordingly, overdraft is an
20 element of the claim of prescription and the landowners request a
21 jury trial not only on the issue of prescription, but on the
22 issues of overdraft, safe yield, sustainable yield, etc. to the
23 extent that the purveyors intend to rely on such concepts as a
24 basis for a claim of prescription.

PHASE 3 TRIAL

Consistent with the previously filed Joint Case Management Conference Statement filed by Bolthouse in conjunction with numerous other landowner parties, Bolthouse requests that the Phase 3 Trial cover all causes of action set forth in the pleadings by the parties, with the exception of arguments regarding a potential physical solution, management and other equitable issues which may be decided by the Court following trial of the causes of action which are alleged in the pleadings.

Likewise, Bolthouse requests jury trial on these issues.

Trial must be on causes of action. Trial on causes of action will have many beneficial consequences, including clarification of the party with the burden of proof, notice to all parties regarding the issues to be tried, opportunity for discovery on such issues, judicial clarification of disputed legal issues and controlling law, opportunity for expert analysis, disposal of causes of action by judgment in order to provide a basis for potential physical solution, management and equitable issues.

The Phase 2 Trial is exemplary of why causes of action should be tried and why multiple issues should be tried at the same time. In retrospect, it is clear that none of the parties had the same view of what was being tried in Phase 2. Given the fact that different parties had different ideas of what was going to be tried in Phase 2, experts were prepared on different issues within a very short time frame with rebuttal and sir (??)

1 rebuttal issues outstanding. Although there was insufficient
2 time to conduct any meaningful discovery, the scope of discovery
3 was unclear because the issues were unclear. Numerous
4 discussions regarding the burden of proof and the burden of
5 production of evidence occurred because dispositive causes of
6 action were not being litigated. It was unclear what was being
7 tried, whether it was basins, sub-basins, hydraulic connection or
8 otherwise. Even the experts did not agree. Attorneys suspected
9 other attorneys of gamesmanship probably innocently arising as a
10 result of different conceptions of what was being tried. No
11 causes of action were disposed of. Finally, the Phase 2 Trial
12 was extremely expensive and time consuming to the parties. It
13 became clear during the course of trial that various issues
14 involving expert testimony could potentially have a bearing on
15 causes of action not being tried, resulting in a further
16 consumption of resources which could have been better spent in a
17 trial where such issues would be evaluated in context to the
18 cause of action alleged.

19 The landowners suggest the following approach leading up to
20 the Phase 3 Trial:

- 21 1. Confirm service of process and/or notice on all
22 necessary parties and class members;
- 23 2. Assure proper identification of all operative pleadings
24 and appearances by parties accordingly;
- 25 3. Identify with specificity all causes of action asserted
26 by all parties;

- 1 4. Assure proper interim identification of all parcels
- 2 subject to the litigation;
- 3 5. Confirm United States agreement to jurisdiction for
- 4 McCarran purposes;
- 5 6. Sufficient time for discovery on all causes of action
- 6 alleged by all parties;
- 7 7. Sufficient time for expert analysis by all parties on
- 8 all causes of action;
- 9 8. Sufficient time for expert depositions; and
- 10 9. Jury trial on all causes of action, with the exception
- 11 of potential physical solution, management and
- 12 equitable issues.

13 **MEET AND CONFER CONFERENCE WITH ALL PARTIES WHO HAVE OUTSTANDING**

14 **DISCOVERY**

15 As noted above, notwithstanding the fact that the Court did

16 not limit discovery to any particular phase, most of the purveyor

17 parties objected to discovery which the purveyors thought was

18 beyond the scope of the Phase 2 Trial. Conducting discovery in

19 this way will unduly complicate and make discovery more

20 expensive. The parties will have multiple and continuing

21 disputes over what is at issue and what is not at issue, along

22 with required meet and confer conferences with the Court.

23 Allowing trial on pleaded causes of action as set forth above

24 will streamline the discovery process, allowing the Court to make

25 rulings as necessary along the way, so that the parties are clear

26

1 what causes of action are being tried and the evidence upon which
2 such causes of action are based.

3 Several of the landowner parties recently had a telephonic
4 conference with Jeffrey Dunn for L.A. County regarding
5 outstanding discovery. Mr. Dunn advised he would look at the
6 issues again in light of the court's comments at the last CMC
7 hearing and advise if the County will provide meaningful
8 responses.

9 In order to expedite resolution of these outstanding
10 discovery requests, Bolthouse requests that the Court set a date
11 for a meet and confer conference with the Court and all parties
12 who have outstanding discovery disputes and order that all
13 parties with outstanding discovery disputes meet and confer prior
14 to the conference with the Court.

15 DATED: December 31, 2008

17 Respectfully submitted,

18 CLIFFORD & BROWN

20 By: 

21 RICHARD G. ZIMMER, ESQ.
22 T. MARK SMITH, ESQ.
23 Attorneys for BOLTHOUSE PROPETES,
24 LLC and WM. BOLTHOUSE FARMS, INC.
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PROOF OF SERVICE (C.C.P. §1013a, 2015.5)
Antelope Valley Groundwater Cases
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 December 31, 2008, I served the foregoing document(s) entitled:

**BOLTHOUSE PROPERTIES, LLC'S AND WM. BOLTHOUSE FARMS, INC.'S CASE
MANAGEMENT CONFERENCE STATEMENT**

— 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-FILEING IN COMPLEX LITIGATION PURSUANT TO CLARIFICATION ORDER DATED OCTOBER 27, 2005.**

Executed on December 31, 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
2455-2