

RICHARD G. ZIMMER - SBN 107263  
T. MARK SMITH - SBN 162370  
CLIFFORD & BROWN  
A Professional Corporation  
Attorneys at Law  
Bank of America Building  
1430 Truxtun Avenue, Suite 900  
Bakersfield, CA 93301-5230  
(661) 322-6023

Attorneys for 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.,	)	BOLTHOUSE PROPERTIES, LLC'S AND
Los Angeles Superior Court	)	WM. BOLTHOUSE FARMS, INC.'S
Case No. BC325201	)	REPLY TO PUBLIC WATER SUPPLERS'
	)	OPPOSITION TO RICHARD WOOD'S
LOS ANGELES COUNTY WATERWORKS	)	MOTION FOR APPOINTMENT OF
DISTRICT NO. 40 v. DIAMOND	)	EXPERT
FARMING COMPANY, et al.,	)	
Kern County Superior Court	)	
Case No. S-1500-CV-254348	)	
	)	
DIAMOND FARMING COMPANY, and	)	DATE: MARCH 5, 2009
W.M. BOLTHOUSE FARMS, INC., v.	)	TIME: 9:00 a.m.
CITY OF LANCASTER, et al.,	)	DEPT: 17
Riverside Superior Court	)	
Case No. RIC 344436 [c/w case	)	
no. RIC 344668 and 353840]	)	
	)	
	)	
	)	
	)	
	)	

1 BOLTHOUSE PROPERTIES, LLC and WM. BOLTHOUSE FARMS, INC.  
2 (hereinafter collectively referred to as "Bolthouse") file this  
3 Reply to Purveyors' Opposition to Richard Wood's Motion for  
4 Appointment of Expert.

5 PURVEYORS' REQUESTED CLASS TREATMENT

6 The Purveyors requested class treatment. Landowners,  
7 including Bolthouse, opposed class treatment. The Purveyors  
8 asserted they could not effectively serve landowners in the  
9 absence of class treatment. The Court granted their request.

10 If the Purveyors do not agree to reimburse the Class  
11 representatives for expert fees, it is conceivable that the  
12 Classes may not continue to exist. It is hard to imagine, in a  
13 non-contingent fee case such as this case, that class attorneys  
14 will pay for services of experts when they will not be reimbursed  
15 for such fees and where there is no monetary recovery from which  
16 to pay such fees. Accordingly, if the Purveyors do not agree to  
17 reimburse the Classes for expert fees, Bolthouse requests the  
18 Court reconsider certification of the classes, rescind its  
19 previous order certifying the classes and order that the  
20 Purveyors serve all parties which they named. Such parties then  
21 will be free to litigate their potential claims as they deem  
22 necessary. Each party will thereby be in a position to  
23 personally evaluate whether to retain and pay for experts.

24 COURT APPOINTMENT OF EXPERT FOR THE CLASSES IS NOT PREMATURE

25 The Purveyors assert they have obtained water rights of the  
26 defendants by prescription. Unless the Purveyors agree that

1 determination of safe yield and overdraft will not be used in any  
2 way as a basis for prescription, appointment of experts is  
3 critical to proper evaluation of matters which will be at issue  
4 in the next phase.

5 **SELF HELP MAY VERY WELL INVOLVE EXPERT TESTIMONY**

6 Expert testimony will be important to determine whether the  
7 Purveyors can meet their burden of proof by clear and convincing  
8 evidence that Purveyors adversely took Landowner water rights and  
9 that the Landowners were not exercising self help by pumping, or  
10 otherwise, during the five (5) year statutory period. Expert  
11 analysis of hydrogeologic information, aerial photographs and  
12 crop information may be necessary by Landowners to properly rebut  
13 the Purveyors' claims of adverse pumping.

14 **CLASS MEMBERS DO NOT HAVE THE SAME INTERESTS AS OTHER OVERLYING**  
15 **LANDOWNERS**

16 The interests of Landowners are not the same. First,  
17 evaluation of prescription properly should be done on a parcel by  
18 parcel basis. Second, the interests of Dormant Landowners will  
19 differ from interests of Pumping Landowners. Third, the  
20 interests of Small Pumpers will differ from Larger Pumpers.  
21 Fourth, the alleged time period for prescription as to Bolthouse  
22 and Diamond Farming, given the earlier filing dates, will be  
23 different from other Landowners. Accordingly, it is clear that  
24 all parties are in need of expert evaluation, consultation and  
25 opinion to properly represent their specific interests and  
26 circumstances in this matter.

1     **THE COURT HAS MADE NO RULING THAT IT WILL PRECLUDE ANY PARTY FROM**  
2                             **PRESENTING EXPERT TESTIMONY**

3             The suggestion by Los Angeles County that the Court will  
4     decide how many Landowner experts will testify has not been  
5     decided by the Court. The Court has not ruled that it will  
6     prevent testimony by any Landowner expert. In particular, as  
7     noted above, the interests of Dormant Landowners and Small Pumper  
8     Landowners are different as are the interests of each and every  
9     Landowner who may be in a different part of the Basin where  
10    different hydrogeologic conditions exist. Accordingly, it is  
11    improper to suggest that some Landowners will be denied the right  
12    to present expert testimony and improper to suggest that the  
13    Class parties do not need expert representation.

14             **CLASS MEMBERS ARE NOT THE PRIMARY BENEFICIARIES OF THE CLASS**  
15                             **ACTION**

16            The Purveyors demanded class treatment over the objections  
17    of numerous Landowners. Notwithstanding these objections, and in  
18    light of Purveyors' assertions that they could not effectively  
19    and/or economically serve Class members, the Court granted their  
20    request for class treatment. Accordingly, they are the primary  
21    beneficiaries of class treatment. In fact, the Court advised the  
22    parties that its certification of the classes did not in any way  
23    impair any Landowners' right to argue that proof of prescription  
24    requires proof of prescription on a parcel by parcel basis.  
25    Accordingly, the only benefit to class treatment inures to the

1 Purveyors as a means of more economically effecting service of  
2 process.

3 CONCLUSION

4 The Class should be appointed experts to represent their  
5 interests at the expense of the Purveyors since the Purveyors  
6 demanded class treatment to facilitate service of process. If  
7 the Purveyor parties refuse to pay expert fees for the Class  
8 Members and/or if the Court declines to appoint experts for the  
9 Class Members at Purveyor expense, the Court should vacate its  
10 prior orders certifying the Class and order the Purveyors to  
11 promptly serve all parties they sued.

12  
13 DATED: March 2, 2009

14 CLIFFORD & BROWN

15  
16 By: 

17 RICHARD G. ZIMMER, ESQ.  
18 T. MARK SMITH, ESQ.  
19 Attorneys for BOLTHOUSE PROPERTES,  
20 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 March 2, 2009, I served the foregoing document(s) entitled:

**BOLTHOUSE PROPERTIES, LLC'S AND WM. BOLTHOUSE FARMS, INC.'S REPLY  
TO PUBLIC WATER SUPPLIERS' OPPOSITION TO RICHARD WOOD'S MOTION  
FOR APPOINTMENT OF EXPERT**

— 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 March 2, 2009, 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