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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
CENTRAL DISTRICT

COORDINATION PROCEEDING,  
SPECIAL TITLE (Rule 1550 (b)),

**ANTELOPE VALLEY GROUNDWATER  
CASES ,**

INCLUDED ACTIONS:, LOS ANGELES  
COUNTY WATERWORKS DISTRICT NO.  
40 v. DIAMOND FARMING COMPANY, et  
al.,  
Los Angeles Superior Court Case No.  
BC325201,

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.,  
Riverside Superior Court Case No. RIC  
344436 [c/w case no. RIC 344668 and 353840] ,

Judicial Council Coordination  
Proceeding No. 4408

CASE NO.: 1-05-CV-049053

DEFENDANT BOLTHOUSE PROPERTIES,  
LLC'S<sup>1</sup> MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF ITS  
DEMURRER TO CROSS-  
COMPLAINANT'S CROSS-COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE  
RELIEF AND ADJUDICATION OF WATER  
RIGHTS

DATE: February 6, 2005  
TIME: 10:00 a.m.  
DEPT: 1, Room 534

LOCATION: LA SUPERIOR COURT  
111 NORTH HILL ST.  
LOS ANGELES, CA 90012

<sup>1</sup> Bolthouse Properties, LLC. responds on behalf of erroneously named defendant Bolthouse Properties, Inc.



1 )  
2 ROSAMOND COMMUNITY SERVICES  
3 DISTRICT,  
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6 CROSS-COMPLAINANT,  
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### INTRODUCTION

7 Cross-complainant, ROSAMOND COMMUNITY SERVICES DISTRICT'S  
8 ("Rosamond") Cross-complaint for Declaratory and Injunctive Relief and Adjudication of Water  
9 Rights suffers from a fundamental flaw. It is impossible to determine which action of the three  
10 coordinated lawsuits the cross-complaint has been filed in or is directed to. The caption page  
11 merely states that it is filed in the coordinated action. Other than the generalized caption, no  
12 referenced is made to the underlying lawsuits (i.e., *Los Angeles County Waterworks District v.*  
13 *Diamond Farming Co.*, Superior Court of California, County of Los Angeles, Case No. BC 325  
14 201; *Los Angeles County Waterworks District v. Diamond Farming Co.*, Superior Court of  
15 California, County of Kern, Case No. S-1500-CV-254348; *Wm. Bolthouse Farms, Inc. v. City of*  
16 *Lancaster*, Superior Court of California, County of Riverside, consolidated actions, Case Nos.  
17 RIC 353 840, RIC 344 436, RIC 344 668). Accordingly, the Cross-Complaint is unintelligible  
18 and cannot be responded to.

19 Moreover, the Cross-Complaint is an amalgamation of loose arguments that fail to  
20 coalesce into articulable claims for relief. Rosamond's inartful attempt to "seek a judicial  
21 determination of all rights to groundwater with the Antelope Valley Groundwater Basin" merely  
22 parrots the complaints of LA County Waterworks District No. 40 in the Los Angeles and Kern  
23 County actions and is otherwise flawed in numerous respects. The primary method used to  
24 attempt to adjudicate the rights claimed by Rosamond and all other landowners in the Antelope  
25 Valley is through a variety of declaratory relief actions. These causes of action are not properly  
26 pled, the claims are incomprehensibly vague, and Rosamond seeks to disguise its true goal.  
27 Essentially, Rosamond seeks to enjoin all parties including Bolthouse Properties, LLC  
28 ("Bolthouse") from pumping groundwater in the Antelope Valley Groundwater Basin. However,



1 Rosamond seeks this injunction without ever pleading any cause of action for preliminary or  
2 permanent injunction.

3 Each of Rosamond's claims fail to state facts sufficient to constitute a cause of action.  
4 Moreover, each of Rosamond's claims is vague and uncertain.

5 **ARGUMENT**

6 **I. Rosamond's Cross-Complaint is Unintelligible as it Fails to Identify the Action in**  
7 **Which it is Filed.**

8 Rosamond's cross-complaint is merely captioned as filed in the coordinated Antelope  
9 Valley Groundwater Cases. It identifies no individual action in which the cross-complaint was  
10 filed. Accordingly, the cross-complaint is fatally defective and cannot be responded to.

11 On June 17, 2005 David C. Velasquez, Judge of the Orange County Superior Court,  
12 granted LA County Waterworks District No. 40's petition for coordination and ordered the  
13 actions *Los Angeles County Waterworks District v. Diamond Farming Co.*, Superior Court of  
14 California, County of Los Angeles, Case No. BC 325 201; *Los Angeles County Waterworks*  
15 *District v. Diamond Farming Co.*, Superior Court of California, County of Kern, Case No. S-  
16 1500-CV-254348; *Wm. Bolthouse Farms, Inc. v. City of Lancaster*, Superior Court of California,  
17 County of Riverside, consolidated actions, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668  
18 be coordinated. Judge Velasquez's order was followed by the August 31, 2005 order of the Chair  
19 of the Judicial Council, Chief Justice of the California Supreme Court, Ronald George. These  
20 orders merely coordinated the actions filed separately in Riverside, Los Angeles and Kern  
21 Counties pursuant to Cal. Code of Civ. Proc. § 404 *et seq.*

22 It is important to note that the actions have **not** been consolidated. Indeed, no party has  
23 made a motion under Cal. Code of Civ. Proc. § 1048 to consolidate the various cases. Because  
24 there is no single consolidated action, the cross-complaint which fails to identify the action in  
25 which it was filed is non-sensical and cannot be responded to.

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1 **II. Bolthouse's Previously Filed Action for Quiet Title Filed in Riverside County Takes**  
2 **Precedence Over Rosamond's Cross-complaint.**

3 Rosamond's late filed (October 27, 2005) cross-complaint seeks to take precedence on the  
4 issue of water rights adjudication in the Antelope Valley over Bolthouse's previously filed  
5 Complaint for Quiet Title. Bolthouse filed its Complaint for Quiet Title in Riverside County on  
6 January 25, 2001. Bolthouse offered proof of its ownership of water rights based on its interests  
7 in overlying land in Antelope Valley and requested that Court issue a declaration that  
8 Bolthouse's overlying right is undisturbed. Bolthouse's action has now been coordinated with the  
9 actions filed by LA County Waterworks District No. 40 in Los Angeles and Kern Counties.  
10 Rosamond's First, Second, Fourth, Fifth and Sixth Causes of Action challenge the priority of  
11 overlying landowners and, by implication, seek to adjudicate their claims prior to Bolthouse's  
12 claims.

13 In fact, on the first-in-time principle, Bolthouse has an absolute right to adjudication of  
14 issues regarding prescription based on the filing date of the Riverside County Complaint. The  
15 pendency of another earlier action growing out of the same nexus of facts and between the same  
16 parties is a ground for abatement of the second action. *Leadford v. Leadford* (1992) 6  
17 Cal.App.4<sup>th</sup> 571, 574; *Cal. Code of Civ. Proc.* § 410.30(c). If the Court determines that there is  
18 another action pending raising substantially the same issues between the same parties, it is to  
19 enter an interlocutory judgment specified in *Cal. Code of Civ. Proc.* § 597. "Abatement of the  
20 second action is a matter of right. A trial court has no discretion to allow the second action to  
21 proceed if it finds the first involves substantially the same controversy between the same  
22 parties." *Leadford*, 6 Cal.App.4<sup>th</sup> at 574. Bolthouse's quiet title action seeks to adjudicate the  
23 identical claims as The District's first cause of action for prescriptive rights. Essentially, The  
24 District's claim for prescription is a defense to the quiet title relief that must be adjudicated in  
25 response to Bolthouse's claim.

26 These issues are critical in adverse possession proceedings. Certainly, Rosamond had the  
27 obligation to state any new matter constituting a defense as part of its Answer to Bolthouse's  
28 Complaint. *California Code of Civil Procedure* §761.03. Any rival claims to the supremacy of



1 Bolthouse's and Diamond Farms' rights of overlying landowners were brought by answer.  
2 Certainly, in an action involving rights to property, adverse possession issues should be decided  
3 according to quiet title provisions. *California Code of Civil Procedure* §760.30(b). Rather than  
4 proceed by Rosamond's overbroad cross-complaint, this Court should require Rosamond to  
5 proceed by its Answer to Bolthouse's Complaint for Quiet Title. Indeed, if all Rosamond truly  
6 seeks by way of its cross-complaint is a declaration as to its rights to water in the Antelope  
7 Valley Groundwater Basin, the quiet title statutes provide the appropriate vehicle for such  
8 adjudication.

9 **III. Rosamond's Second Cause of Action for Appropriative Rights is Ambiguous and**  
10 **Unintelligible.**

11 Bolthouse demurs to Rosamond's Second Cause of Action on the grounds that the cross-  
12 complaint fails to state facts that would allow the Court to grant the requested relief.  
13 Additionally, the Cross-complaint is unintelligible. *California Civil Procedure* §430.10 (e) (f).

14 It is settled that water can be pumped based upon an overlying right or based upon an  
15 appropriative right. Pumping for use on overlying land is based on the overlying right. Pumping  
16 for sale to others or for export outside the area overlying the supply is appropriative. As Cross-  
17 complainant claims, appropriative pumpers hold rights to water that is surplus to the needs of  
18 overlying owners. Complaint 10:1-2. As among appropriators, priority is based on the first-in-  
19 time principle.

20 The Second Cause of Action asks the Court to declare the first-in-time priority among  
21 appropriators. The infirmity in the Cross-complaint is that it is confusing and contradictory in its  
22 factual allegations of the nature of Bolthouse's pumping.

23 The Cross-complaint alleges that "each defendant" has and is "appropriating." Cross-  
24 Complaint 6:20-21. Elsewhere in the cross-complaint Rosamond alleges that Bolthouse is a  
25 property owner (Complaint 7:8), irrigates land within the Antelope Valley (Complaint 15:21-22),  
26 and that owners of land claim overlying rights (Complaint 7:7-8). These factual allegations, if  
27 proved, would make Bolthouse an overlying pumper rather than an appropriator.

28 If Bolthouse is an overlying pumper as the cross-complaint alleges, the Second Cause of



1 action is not properly directed at Bolthouse because, as a matter of settled law, Bolthouse would  
2 have no claim to any appropriative rights and no position in the first-in-time appropriator rights  
3 hierarchy. As to Bolthouse, there would be nothing in the Second Cause of Action for the Court  
4 to determine.

5 On the other hand, if Rosamond believes Bolthouse to be an appropriative pumper,  
6 Plaintiff must support this legal conclusion with allegations of facts of exportation or sale that  
7 would make Bolthouse an appropriator.

8 As the complaint stands, the second cause of action fails to state facts sufficient to  
9 constitute a Cause of Action against Bolthouse and is ambiguous and unintelligible. It should be  
10 dismissed. *Cal. Civ. Proc. §430.10 (e) (f)*. Leave to amend should be granted to allow Plaintiffs  
11 to plead facts sufficient to establish Bolthouse's status as an appropriative pumper if that is  
12 Rosamond's claim. On the other hand, if Rosamond believes Bolthouse's pumping is overlying,  
13 the cause of action to determine appropriative rights cannot be directed at Bolthouse.

14 **IV. Rosamond's Claims for Declaratory Relief in Causes of Actions Three Through**  
15 **Eight are Improper.**

16 Rosamond's claims for declaratory relief fail to state causes of action and are uncertain.

17 **A. Rosamond's claims for declaratory relief are wholly improper.**

18 *California Code of Civil Procedure §1060* sets forth the narrow circumstances under  
19 which a declaratory relief action will lie. *Cal. Code of Civ. Proc. §1061* provides the Court with  
20 discretion to refuse to exercise its power of declaratory relief "where its declaration or  
21 determination is not necessary or proper at the time under all the circumstances." An action for  
22 declaratory relief is authorized only when an actual controversy relating to the legal rights and  
23 duties of the respective parties exists. The controversy must be of a character that admits of  
24 specific and conclusive relief by a judgment within the field of judicial determination, as  
25 distinguished from an advisory opinion on a particular or hypothetical set of facts. *Zetterberg v.*  
26 *State Department of Public Health* (1974) 43 Cal.App.3d 657, 661. A justiciable controversy  
27 must be definite, concrete, and touching the legal relations of the parties having adverse legal  
28 interest. *LePage v. Oakland* (1970) 13 Cal.App.3d 689, 692.



1 Rosamond fails to establish that an actual controversy exists because it is impossible to  
2 determine Rosamond's position in the alleged controversies. For example, Rosamond's third  
3 Cause of Action for "physical solution" apparently seeks to compel the Court to adopt "a  
4 common sense approach to resolving water rights litigation." Rosamond seeks to have this Court  
5 disregard the parties' existing rights to groundwater, such as an overlying landowner's priority  
6 right to the use of water, in an effort to "satisfy the reasonable and beneficial needs of all  
7 parties." Precisely, what is Rosamond's position in connection with this "physical solution"?  
8 What are the positions of each of the parties involved in this litigation? Indeed, how would the  
9 rights of the parties be adjudicated under this purported rubric? In essence, Rosamond seeks to  
10 create a cause of action for a Physical Solution where none exists as a matter of law simply by  
11 attaching the moniker "Declaratory Relief." Claims for declaratory relief should not be used to  
12 drag the Court into advisory matters which do not present a justiciable claim.

13 **B. Each of Rosamond's Causes of Action are Disguised Claims for Permanent**  
14 **Injunction.**

15 Essentially, each of Rosamond's causes of action seeks to curtail Bolthouse's pumping by  
16 way of injunction. Causes of actions three through eight request far more than a simple  
17 declaration of Rosamond's pumping rights. Indeed, Rosamond's prayer for relief articulates a  
18 request "for preliminary and permanent injunctions which prohibits defendants, and each of  
19 them, from taking, wasting or failing to conserve water from Antelope Valley Groundwater  
20 Basin in any manner which interferes with the rights of [Rosamond]..." Nevertheless, the causes  
21 of action themselves merely plead for a declaration of rights. The level of specificity and detail  
22 contained within the cross-complaint does not sufficiently plead the factual predicates required  
23 for injunctions. The allegations of the Complaint must be factual. Conclusory averments are  
24 insufficient to support issuing an injunction. *Leavy v. City of Santa Monica* (2004) 114  
25 Cal.App.4th 1252, 1262 (declarations relying on conclusory statements, hearsay and speculation  
26 are insufficient).

27 The amalgamation of facts alleged in causes of action three through eight do not properly  
28 frame legal causes of action and are simply insufficient to support the injunctive relief requested.


1 Accordingly, Bolthouse's Demurrers should be sustained.

2  
3 DATED: November 30, 2005

Respectfully submitted,

4 CLIFFORD & BROWN

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6  
7 By:

  
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10 BOLTHOUSE PROPERTIES, LLC  
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