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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

* * *

COORDINATION PROCEEDING)	Judicial Council Coordination Proceeding
SPECIAL TITLE (Rule 1550(b))	)	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
Los Angeles Superior Court Case No.	)	AND WM. BOLTHOUSE FARMS,
BC325201	)	INC.'S REPLY TO CASE
	)	MANAGEMENT STATEMENTS FILED
LOS ANGELES COUNTY	)	BY THE PUBLIC WATER SUPPLIERS,
WATERWORKS DISTRICT NO. 40 v.	)	PHELAN PINON HILLS AND THE
DIAMOND FARMING COMPANY, et al.,	)	FEDERAL DEFENDANTS WITH
Kern County Superior Court Case No. S-	)	REFERENCE TO THE PHASE III
1500-CV-254348	)	TRIAL
)	
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])	
)	
)	

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1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 BOLTHOUSE PROPERTIES, LLC and WM. BOLTHOUSE FARMS, INC.
3 (hereinafter collectively referred to as "Bolthouse") make the following reply to Case
4 Management Statements filed by Public Water Suppliers, Phelan Pinon Hills Community
5 Services District and Federal Defendants:

6 **PUBLIC WATER SUPPLIERS**

7 Given the time constraints which result from the early setting of the trial date already
8 objected to by overlying landowners, and without waiving objections to the early trial date and
9 all other dates already set by the Court, the time for completing non-expert discovery should be
10 by Code rather than June 30, 2010, as set forth in the Public Water Suppliers' Statement on
11 Item No. 1. Discovery already will be incomplete. The earlier the deadline is set the less
12 discovery can be accomplished.

13 **PHELAN PINON HILLS**

14 On Page 3 of its Case Management Statement, Lines 13 through 24, and Page 4, Lines 1
15 through 2, Phelan Pinon Hills articulates additional issues which it believes should be tried in
16 the Phase III Trial, including what "portions of the Basin are in a state of overdraft," what
17 "areas in the Basin may be at risk of being overdrafted," what "areas of the Basin may be in a
18 condition of equilibrium," the "existing condition of the southwestern portion of the Basin,"
19 and "the geographic and hydrogeologic setting of its Well 14, as well as evidence of production
20 and return flow." These issues are far too broad and vague to be effectively or meaningfully
21 tried in the next phase of trial. Likewise, it would be impossible to conduct discovery
22 regarding these issues in the time frame before the current trial date.

23 Potentially separate "areas," whatever that means, has not been tried nor determined.
24 Accordingly, it would be impossible to evaluate and have a trial regarding which of these
25 undefined areas may be in a state of overdraft. Without knowing the precise area to be tried,
26 discovery and expert analysis is impossible. This also presupposes a legal conclusion that
27 different water basins exist. The Court already determined in Phase II the boundaries of the
28 water basin included in this adjudication.

1 It is true that the affects of pumping water in one area of the Basin may be different.
2 The affects of pumping may also be different as to separate properties because the underground
3 hydrogeological characteristics are different. While these issues may be relevant to the issue of
4 prescription and/or management in the event of a physical solution, they are not relevant to the
5 next phase of trial and will unduly complicate issues and deprive parties of notice and due
6 process. Finally, even if specific “areas” already had been determined, which they have not,
7 the potential affect of pumping in one area on another area, is potentially relevant to the
8 prescription claims and the defendants of these prescription claims have demanded jury trial on
9 these issues.

10 **FEDERAL DEFENDANTS**

11 The Federal Defendants have included definitions of safe yield and other hydrogeologic
12 terms. Bolthouse agrees that definitions of controlling principles and case law should be
13 agreed upon, and/or decided by the Court, so that all parties know what issue they are trying
14 and the controlling rule of law. Bolthouse makes the following observations. The Federal
15 Defendants safe yield definition on Page 2, Lines 5 through 9 from *Wright* is generally
16 accurate. However, the breakdown on Page 3, Lines 1 through 13 is not accurate. Likewise,
17 the overdraft definition on Page 3, Lines 14 through 16 is not accurate.

18 Safe yield should not be confused with average natural recharge of the basin, total
19 sustainable yield and/or native yield. Safe yield has a particular legal meaning and application
20 separate and apart from these concepts. Safe yield is a long term evaluation whereas the
21 average natural recharge definition included in the Federal Brief is an annual figure

22 Finally, the definition of overdraft on Line 14, Page 3, is not accurate. The overdraft
23 definition fails to reflect that overdraft must be evaluated on a long term basis.

24 This term has been defined in the case law and should be defined accordingly.

25 An in depth discussion of important terms follows which includes discussion of relevant
26 case law and hydrogeologic issues. Finally, the last section of this Reply lists suggested terms
27 which are consistent with controlling case law.

1 **SUGGESTED DEFINITIONS OF IMPORTANT TERMS BASED UPON**
2 **CONTROLLING CASE LAW AND CURRENT SCIENTIFIC AND ENGINEERING**
3 **PRINCIPLES**

4 The following definitions are restatements of the California Supreme Court's definitions
5 of these terms from its 1975 decision in *Los Angeles v. City of San Fernando*, as supported by
6 the court's 1985 decision in *Wright v. Goleta Water District*.

- 7 a. **"Safe Yield Defined"** - Safe yield is the maximum quantity of water which can
8 be withdrawn annually from a groundwater supply over a long period of time
9 under a given set of conditions without causing an undesirable result.
- 10 b. **"Surplus Defined"** - Surplus is the additional amount of water that could be
11 withdrawn annually from a groundwater basin under a given set of conditions
12 without causing an undesirable result, which is an amount in excess of the
13 annual amount being currently extracted when the amount of water being
14 currently extracted is less than the safe yield.
- 15 c. **"Temporary Surplus Defined"** -Temporary Surplus is the additional amount of
16 water in excess of the safe yield that could be withdrawn from a groundwater
17 basin, which if withdrawn would create additional groundwater storage capacity
18 and avoid waste of water without adversely affecting the basin's safe yield.
- 19 d. **"Overdraft Defined"** - Overdraft is the amount of water that is withdrawn
20 annually over a long period of time from a groundwater basin in excess of the
21 total of the basin's safe yield plus temporary surplus.

22 **DISCUSSION OF SUGGESTED TERMS**

23 Since publication of the 1975 decision in *Los Angeles v. City of San Fernando*, the
24 California Supreme Court's definition for safe yield has been widely used in text books,
25 articles, and additional, more-recent court decisions, and has become both the legal definition
26
27
28

1 and the technically-accepted definition of the term safe yield in California.¹ The Supreme
2 Court defined the term “Safe Yield” as follows.

3 “Safe yield” is defined as ‘the maximum quantity of water which
4 can be withdrawn annually from a ground water supply under a
5 given set of conditions without causing an undesirable result.’”^{2, 3}

6 The definition has essentially three key phrases, as listed below:

- 7 • maximum quantity of water which can be withdrawn
- 8 annually;
- 9 • given set of conditions; and
- 10 • undesirable result.

11 Each of these is discussed separately in the paragraphs, below.

12 **Maximum Quantity of Water**

13 The phrase “maximum quantity of water which can be withdrawn annually” refers to
14 the average annual extraction of groundwater from the basin. It is understood that short-term
15 variations in seasonal or annual extraction rates may occur, but that periods of greater
16 extraction should generally balance with periods of lesser extractions.

17 **Given Set of Conditions**

18 The phrase “given set of conditions” refers to the geometry of the basin, the long-term
19 average annual value for infiltration of precipitation, the general level of the water table with
20 respect to adjacent sources of subsurface inflow and areas of subsurface outflow, the amounts
21 of artificially-induced recharge from natural sources, the artificial recharge from imported
22 water, and the geographic distribution of withdrawal of groundwater throughout the basin. All
23 of these factors, or conditions, affect the safe yield of a basin.

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25 ¹ Todd, D.K., 1980. *Ground Water Hydrology*, Second Edition, John Wiley & Sons, Inc., p. 363.

26 ² *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, p. 278.

27 ³ For the facts in the case of *City of Los Angeles v. City of San Fernando* (1975), the phrase “undesirable result”
28 was understood to refer to a gradual lowering of the ground water levels resulting eventually in depletion of the
supply. This decision references “(*City of Pasadena v. City of Alhambra*, supra, 33 Cal.2d at p. 929.);” however,
the decision in *City of Pasadena v. City of Alhambra* does not mention the term “undesirable result.” For a
different set of facts, it is possible that the term “undesirable result” may be defined differently.

Undesirable Result

The phrase “undesirable result” refers to the acceptability of the result of groundwater withdrawal. The definition recognizes that groundwater withdrawal produces impacts on a basin, but allows such impacts to occur as long as they are considered acceptable. Lowering of the water table to allow withdrawal of water for a beneficial purpose may be acceptable, as long as the withdrawal is controlled to avoid eventual depletion of the groundwater supply. For example, withdrawals that lower the water table and increase the cost of pumping may be acceptable up to a certain water table depth and such withdrawals would be within the safe yield; however, increased drawdown beyond that certain depth may be economically unacceptable and would not be within the safe yield. Similarly, withdrawals that cause some amount or rate of ground subsidence may be acceptable, but continued withdrawals that result in increased rates of ground subsidence might be considered an undesired result even if the withdrawal was still economically acceptable for some purpose. From another perspective, groundwater withdrawals that lower the water table may result in increased safe yield due to induced additional recharge from underflow inflow, reduced discharge from underflow outflow, and/or release of water locked in the aquifer that would otherwise not be available for use; these may be acceptable results even though the water-table lowering also results in greater expense of pumping.

Changes in Storage

Changes in groundwater storage are commonly assessed as a function of changes in the depth to groundwater in basin wells. If after a period of heavier withdrawals that lower the water table, the annual withdrawal rate is reduced and the average or generalized depth to the groundwater table levels out and remain essentially the same over a subsequent representative long period of time it indicates that there is essentially no change in groundwater storage during that subsequent period. Consequently, the sum of all the recharge components of the basin is approximately equal to the sum of all the discharge components over that subsequent time period of essentially no change in storage. If the pumping costs and water quality are

1 acceptable for the beneficial uses of the extracted groundwater during that subsequent period,
2 the information for that subsequent period may be used to determine the safe yield.

3 **Application to Antelope Valley Groundwater Basin**

4 Due to the depth of the water table, there is no concern in the Antelope Valley for
5 excessive evaporation losses in high groundwater areas, groundwater infiltration into sewers, or
6 rising water outflow. Under these conditions, based on the *City of Los Angeles v. City of San*
7 *Fernando* definition, of safe yield, and assuming that the water levels in the basin remain
8 essentially the same (i.e., no change in groundwater in storage), the safe yield can be defined as
9 the total of:

10 Recharge from native precipitation + recharge from associated
11 runoff + recharge from subsurface inflows + recharge from return
12 flows from delivered groundwater + recharge from imported
13 water less discharge from natural subsurface outflow + discharge
14 from evaporation through vegetation along streams.

15 Quantification of the safe yield for the Antelope Valley Groundwater Basin can be
16 accomplished by quantifying the above hydrogeologic components for the Basin over a
17 representative long period of time during which there is essentially no change in storage and
18 substituting the component values into the hydrologic equation for the Basin.

18 **Basis for Definitions of Surplus, Temporary Surplus, and Overdraft**

19 The court in *Los Angeles v. City of San Fernando* also defined three other terms related
20 to safe yield; these terms are *surplus*, *temporary surplus*, and *overdraft*. Understanding the
21 definitions of these terms helps put the definition of safe yield into perspective.

22 **Surplus**

23 The term “surplus” was defined by the California Supreme Court in its 1975 decision in
24 *Los Angeles v. City of San Fernando* as follows:

25 “A ground [water] basin is in a state of surplus when the amount
26 of water being extracted from it is less than the maximum that
27 could be withdrawn without adverse effects on the basin's long
28 term supply.”⁴

⁴ *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, p. 277.

1 The phrase “maximum that could be withdrawn without adverse effects on the basin's
2 long term supply” is taken to mean the safe yield, as defined by the court. Also, in this context,
3 the term “without adverse effects” is taken to mean “without causing an undesired result.”
4 Thus, surplus water is the difference between the amount of water that is designated as the safe
5 yield and the amount of water that is being withdrawn, when the amount being withdrawn is
6 less than the safe yield. In other words, if the total amount of groundwater being extracted is
7 less than the safe yield, there is surplus groundwater available for withdrawal from the Basin.

8 **Temporary Surplus**

9 The term “temporary surplus” was defined by the California Supreme Court in its 1975
10 decision in *Los Angeles v. City of San Fernando* in the following statement:

11 “...if a ground [water] basin's lack of storage space will cause a
12 limitation of extractions to safe yield to result in a probable waste
13 of water, the amount of water which if withdrawn would create
14 the storage space necessary to avoid the waste and not adversely
affect the basin's safe yield is a temporary surplus available for
appropriation to beneficial use.”⁵

15 In general, withdrawal of groundwater from storage which makes room for storage of
16 future recharge that would otherwise be lost to the basin or wasted is withdrawal of temporary
17 surplus as long as the withdrawal is controlled or subsequently reduced to avoid eventual
18 depletion of the groundwater supply. Withdrawal at a heavier rate for a period of time during
19 which the groundwater levels decline, followed by a period of reduced withdrawal rate during
20 which the trends in change in depths to the groundwater table levels out, may be considered
21 withdrawal of temporary surplus. Even though lowering of the water table may cause
22 consolidation of the aquifer and result in a reduction of the available storage space in the
23 formation, the lowering of the water table would be considered acceptable if it makes room for
24 storage of future recharge water that would otherwise be lost, thereby avoiding waste of water.
25 The amount of water withdrawn that results from the consolidation of the formation materials is
26 water that would otherwise be unavailable for use and would be wasted but for the lowering of

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28 ⁵ *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, p. 280.

1 the water table. Consequently, extraction of the water that results from consolidation of
2 formation materials may also be considered extraction of temporary surplus.

3 The water that can be used to fill the groundwater storage space that is made available
4 by withdrawal of temporary surplus may come from a combination of sources including:
5 induced natural recharge from the surface or through increased underflow inflow induced by
6 the additional differential head; reduced natural discharge by evapotranspiration; reduced
7 underflow outflow; and the water that is artificially recharged from imported sources. Induced
8 natural recharge may result from increasing the differential hydrostatic head between the basin
9 aquifer material and the fractured bedrock along the lateral boundaries of the basin and
10 underlying the basin. Without the lowering of the water table resulting from withdrawal of
11 temporary surplus, the additional, induced infiltration of groundwater from fractured bedrock
12 areas would not be available to the basin, and would, therefore, be wasted.

13 Similarly, reduced natural discharge by subsurface outflow may result from decreasing
14 the differential hydrostatic head between the basin aquifer material and the adjacent
15 groundwater basins along the lateral boundaries of the basin where underflow outflow occurs.
16 Without the lowering of the water table resulting from withdrawal of temporary surplus, the
17 additional discharge of groundwater from the basin by subsurface outflow that may occur
18 would be groundwater lost from the basin, and therefore wasted.

19 During wet seasons or longer, multi-year wet periods, there may be excess surface
20 water available from runoff or from various imported water sources that could be used to
21 recharge the basin. If there is insufficient groundwater storage capacity to store the excess
22 runoff and/or available imported water, it may result in water flowing out of or past the basin,
23 perhaps to the ocean, which would be lost or wasted; similarly water may be wasted through
24 excessive evaporation or evapotranspiration of native vegetation. Without the lowering of the
25 water table resulting from withdrawal of temporary surplus, the excess runoff and imported
26 water that may be available during wet seasons or longer wet periods may be lost to the basin,
27 and therefore wasted.

1 **Overdraft**

2 The term “overdraft” was defined by the California Supreme Court in its 1975 decision
3 in *Los Angeles v. City of San Fernando* as follows:

4 “... overdraft occurs only if extractions from the basin exceed its
5 safe yield plus any such temporary surplus.”⁶

6 Withdrawal of groundwater in excess of the safe yield is considered “deficit” pumping.
7 Deficit pumping, however, should not be equated with “detrimental” pumping, and may, in
8 fact, be beneficial to the basin. The court in *Santa Maria Valley Water Conservation District v.*
9 *City of Santa Maria, et al.*, explained this as follows:

10 “California courts recognize and distinguish two kinds of deficit.
11 A beneficial deficit increases yield by creating needed storage
12 space. Pumping during such a deficit is never wrongful. Pumping
13 in times of a deficit that will exhaust the supply is always
14 wrongful. The difference between a destructive and a beneficial
15 overdraft is the presence or absence of ‘temporary surplus’. Our
16 Courts recognize that underground strata must be dewatered to
17 provide storage space if the resource is to [be] put [to] maximum
18 use as is Constitutionally required. This pumping in excess of
19 safe [yield] for the purpose of creating needed space is called the
20 ‘exhaustion of the temporary surplus’. Pumping is not wrongful
21 until the temporary surplus has been exhausted.”⁷

22 To the extent that groundwater withdrawal from a groundwater basin over an extended
23 period of time does not exceed the total of the safe yield plus the amount of additional
24 withdrawal deemed to be temporary surplus, the basin would not be in overdraft. Whether a
25 basin is in a condition of overdraft cannot be determined on a short-term basis, such as
26 seasonally, or even over a few years of withdrawal. To assess the issue of overdraft, it is
27 necessary to have determined the safe yield of a basin and the amount of additional withdrawal
28 that is appropriately deemed temporary surplus, and to consider these conditions over a
reasonably long period of time.

27 ⁶ *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, p. 280.

28 ⁷ *Santa Maria Valley Water Conservation District v. City of Santa Maria, et al.*, Santa Maria Groundwater
Litigation, Lead Case No. 1-97-CV770214, Amended [Proposed] Statement of Decision Following Phase 4 Trial,

1 CONCLUSION

2 Based on the foregoing and without waiving the objections heretofore stated, if the
3 Court is determined to try factual issues rather than causes of action and determined to try the
4 issues of safe yield and overdraft, the trial should be limited to safe yield and current overdraft.

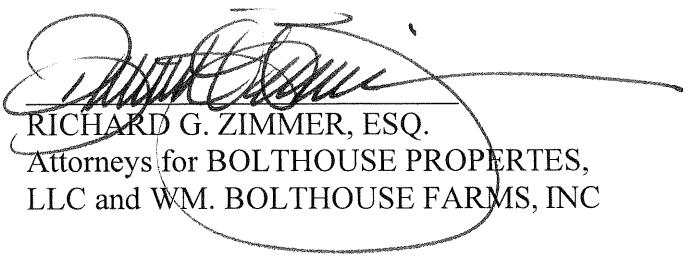
5 It is critical that all parties understand the issues to be litigated in the Phase 3 Trial and
6 the definitions of important terms which will apply. It is hoped that the parties and their
7 experts can evaluate, modify if necessary, and agree to the definitions of the important terms
8 suggested herein, for the purposes of the Phase 3 trial.. If the parties cannot agree, Bolthouse
9 requests the Court make pre-trial orders setting forth the definitions of important terms which
10 will apply at the Phase 3 trial.

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12 DATED: March 19, 2010

Respectfully submitted.

13 CLIFFORD & BROWN

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15 By:


16 RICHARD G. ZIMMER, ESQ.
17 Attorneys for BOLTHOUSE PROPERTIES,
18 LLC and WM. BOLTHOUSE FARMS, INC
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*Antelope Valley Groundwater Cases
Judicial Counsel Coordination Proceeding No. 4408
Santa Clara County Superior Court Case No. 1-05-CV-049053*

On March 19, 2010, I served the foregoing document(s) entitled:

Nanette Maxey
NANETTE MAXEY
2455-2