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Attorneys for Bolthouse Properties, LLC

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF SANTA CLARA**

\* \* \*

COORDINATION PROCEEDING	)	Judicial Council Coordination
SPECIAL TITLE (Rule 1550(b))	)	Proceeding No. 4408
	)	
<b>ANTELOPE VALLEY GROUNDWATER</b>	)	CASE NO. 1-05-CV-049053
<b>CASES</b>	)	
	)	
INCLUDED ACTIONS:	)	
	)	<b>OBJECTION TO THE PURVEYORS'</b>
LOS ANGELES COUNTY WATERWORKS	)	<b>PROPOSALS FOR CLASS DEFINITIONS</b>
DISTRICT NO. 40 v. DIAMOND	)	<b>AND METHOD OF NOTICE</b>
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	)	DATE: April 16, 2007
	)	TIME: 9:00 a.m.
DIAMOND FARMING COMPANY, and	)	DEPT: D-1, Room 534
W.M. BOLTHOUSE FARMS, INC., v.	)	
CITY OF LANCASTER, et al.,	)	
Riverside Superior Court	)	Location:
Case No. RIC 344436 [c/w case no.	)	
RIC 344668 and 353840]	)	Los Angeles Superior Court
	)	Central District
ROSAMOND COMMUNITY SERVICES	)	111 North Hill Street
DISTRICT,	)	Los Angeles, CA 90012
CROSS-COMPLAINANT,	)	

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Bolthouse Properties, LLC, hereby  
3 objects to Purveyors' Proposals for Class Definitions and Method  
4 of Notice as follows:

5 Bolthouse Properties hereby joins in White Fence Farms  
6 Mutual Water Co. Inc.'s Response to Public Water Suppliers'  
7 Proposals For Class Definitions and Method of Notice and the  
8 objections therein, as if set forth at length verbatim herein.  
9 Additionally, Bolthouse Properties objects on the following  
10 grounds.

11 **All Overlying Landowners and All Water Appropriators In The Area**  
12 **Of Adjudication As Determined By The Court, Must Be Included As**  
13 **Parties To The Litigation.**

14 The purveyors seek a judicial determination of rights to all  
15 water within the adjudication area of the Antelope Valley  
16 Groundwater basin as determined by the Court's orders in this  
17 case (the "Basin"). Page 3 of the First-Amended Cross-Complaint,  
18 lines 7 through 9. On Page 11, the purveyors claim that the Area  
19 of Adjudication has been in overdraft for over five (5) years.  
20 On page 12, lines 14 to 15, they claim "there is dispute among  
21 the parties regarding the extent and priority of their respective  
22 water rights."

23 The first cause of action, beginning on page 14, requests a  
24 declaration of prescriptive rights. The second cause of action,  
25 beginning on page 15, requests a declaration of appropriative  
26 rights. The third cause of action, beginning on page 16,

1 requests a physical solution enjoining parties from pumping water  
2 not consistent with their priority rights. In the fourth cause  
3 of action, beginning on page 17, they request declaratory relief  
4 of an alleged municipal priority. In the fifth cause of action,  
5 beginning on page 18, they request declaratory relief of storage  
6 of imported water. In the sixth cause of action, beginning on  
7 page 19, they request declaratory relief of recaptured return  
8 flows. In the seventh cause of action, beginning on page 20,  
9 they request that all cross-defendants be enjoined from  
10 unreasonable use of water. In the eighth cause of action, on page  
11 21, they request declaratory relief as to the boundaries of the  
12 basin.

13 It is clear based upon review of their Complaint, that the  
14 purveyors are seeking very broad relief against numerous parties  
15 whose interests are not the same. As discussed below, this case  
16 is not appropriate for class certification due to a lack of  
17 commonality as amongst alleged class defendants. Defendant class  
18 actions are rare and particularly inappropriate in this type of  
19 litigation due to the lack of commonality of interests, some of  
20 which are set forth below.

21 **Prescription:**

22 The purveyors claim they have perfected prescriptive water  
23 rights against overlying landowners. Taking a landowner's water  
24 rights by prescription is a drastic result not lightly  
25 entertained by the Court. Proper notice to a party against which  
26 a prescriptive right is being claimed is critical. In the

1 absence of proper notice, a party cannot be expected to step in  
2 and defend a right which he, she or it, does not know is being  
3 infringed upon. Notice must be viewed distinctly as to each  
4 landowner against whom a prescriptive right is being claimed.  
5 Accordingly, the factual underpinnings of an alleged claim of  
6 notice against one individual is necessarily different from the  
7 alleged factual underpinnings of a claim of notice against  
8 another individual. Accordingly, a class representative cannot  
9 effectively, without conflict, represent such individual  
10 interests.

11 Likewise, the elements required to prove a claim of  
12 prescription must be analyzed against each landowner against whom  
13 prescription is claimed. The purveyors bear the burden of  
14 proving, not by preponderance of evidence, but by clear and  
15 convincing evidence, that their conduct was open, notorious,  
16 hostile, adverse, under claim of right, continuous and  
17 uninterrupted for the statutory five year period. Elements of  
18 notice and other elements of prescription possibly could exist  
19 against one landowner and not against another landowner.  
20 Accordingly, as articulated above, a single class representative  
21 cannot, without conflict, represent all overlying landowners  
22 equally.

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1 Adjudication of All Water Rights Including Appropriative Water  
2 Rights, Overlying Water Rights, Rights to Storage and Rights to  
3 Return Flows Creates Conflicting and Different Interests Inter Se  
4 Between Appropriators, Inter Se Between Correlative Rights  
5 holders and Inter Se Between Appropriators and Correlative Rights  
6 Holders.

7 Not all purveyors may be claiming rights to imported water  
8 and their rights to import water may be based upon different  
9 theories and may involve different time periods.

10 As noted above, in the first cause of action the purveyors  
11 seek prescriptive rights. In the second cause of action, the  
12 purveyors seek declaratory relief of appropriative rights and in  
13 the third cause of action, they seek a physical solution. These  
14 three causes of action will require prioritization of water  
15 rights based upon the principles recently articulated in the case  
16 of City of Barstow v. Mojave Water Agency (2000) 23 Cal.4<sup>th</sup> 1224.

17 Given the fact that the purveyors are requesting an  
18 injunction to prevent pumping in excess of appropriative,  
19 correlative and/or other rights, the Court must out of necessity  
20 prioritize water rights and determine the amounts of claimed  
21 prescriptive rights. Appropriative rights are based upon first  
22 in time, first in right, priority. Accordingly, there will be  
23 disputes between these cross-defendants as to the appropriative  
24 priority of the rights they hold. Prescription will be claimed  
25 against overlying landowners. As noted above, prescription must  
26 be analyzed on a party specific basis. Prescriptive rights may  
be found against some parties and not against other parties.  
Accordingly, there will be conflicts as between claims against

1 such parties.

2 Based upon *Mojave*, the Court after determining the amount of  
3 available water, must in a time of overdraft cutback water users  
4 based upon the priorities. Accordingly, last in time  
5 appropriative users will be cutback first. If the water supply  
6 still is insufficient after cutting back appropriators,  
7 correlative rights holders will be cutback correlatively to  
8 protect the water supply. Accordingly, there is no commonality  
9 as between the various classes sufficient to support a class  
10 certification.

11 **Additional Conflicting Rights Make Defendant Class Certification**  
12 **Improper.**

13 In addition to the above, there is lack of commonality on  
14 numerous additional issues. The Complaint, in the fourth cause  
15 of action seeks declaration of storage rights. The sixth cause  
16 of action seeks declaration of recapture of return flows. The  
17 seventh cause of action seeks a declaration of unreasonable use  
18 of water. These causes of action will create additional  
19 conflicts, differing factual circumstances and conflicting claims  
20 between the parties which make class certification improper.

21 **All Overlying Landowners Must Be Included in the Lawsuit**  
22 **Including Those Provided With Water By the Purveyors.**

23 The purveyors have advised the Court that they do not want  
24 to name and serve water users to whom they are providing water.  
25 As noted above, all correlative overlying landowners must be  
26 included in the lawsuit in order to adjudicate all of the rights

1 identified by the purveyors. Landowners to whom the purveyors  
2 are providing water are nevertheless overlying landowners holding  
3 an appurtenant common law right to pump and use water reasonably  
4 on their properties. Accordingly, their rights must either be  
5 disclaimed or found not to exist. If not, such rights must be  
6 prioritized along with other landowner' rights with respect to  
7 appropriative and other rights. Without such identification,  
8 quantification and prioritization, a physical solution would be  
9 inappropriate. Additionally, other landowners will be denied  
10 equal protection of laws if only some overlying landowners are  
11 included in the lawsuit.

12 The purveyors have pursued this action seeking adjudication  
13 of all water rights. Under current law, and the dictates of  
14 Mojave, the purveyors cannot pick and choose what particular  
15 parties they want to sue if they are seeking identification,  
16 quantification and prioritization of water rights.

17 **The Bolthouse Properties and Diamond Farming Quiet Title Actions**  
18 **Involve a Different Factual Time Frame From The Purveyor Claims**  
**Against the New Coordinated Parties.**

19 The purveyors made rival claims, among them prescription,  
20 against Bolthouse Properties and Diamond Farming. The time  
21 period during which the purveyors have made rival claims against  
22 Bolthouse Properties and Diamond Farming is completely different  
23 than the time period during which these claims are being made  
24 against the new parties in the coordinated actions. The  
25 purveyors have identified the five year time period preceding  
26 filing of the Los Angeles County and Kern County Actions as the

1 time period during which they claim their maximum rights against  
2 adverse party landowners.

3 Bolthouse Properties and Diamond Farming stopped any further  
4 alleged claims of prescription when they filed their Complaints  
5 seven to eight years ago. Accordingly, the time period within  
6 which the purveyors claim maximum prescriptive rights against  
7 Bolthouse and Diamond would be the five year time period prior to  
8 the dates they filed their Complaints starting on October 28,  
9 1999. Accordingly, prescriptive and other claims against  
10 Bolthouse Properties and Diamond Farming lack commonality with  
11 the other defendants and cross-defendants.

12 **CONCLUSION**

13 For the foregoing reasons, Bolthouse Properties contends  
14 that class certification is improper and objects to certification  
15 of the purveyors proposed classes.

16  
17 DATED: April 9<sup>th</sup>, 2007

18 Respectfully submitted,

19 CLIFFORD & BROWN

20  
21 By: 

22 RICHARD G. ZIMMER, ESQ.  
23 T. MARK SMITH, ESQ.  
24 Attorneys for  
25 BOLTHOUSE PROPERTIES, LLC  
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I am a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 1430 Truxtun Avenue, Suite 900, Bakersfield, California, 93301.

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

( ) VIA FACSIMILE - [C.C.P. § 1013(e)]; - The telephone number of the sending facsimile machine was (661) 322-3508. The telephone(s) number of the receiving facsimile machine(s) is listed below. The Court, Rule 2004 and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2006(d), the machine was caused to print a transmission record of the transmission, a copy of which is attached hereto.

( ) VIA OVERNIGHT DELIVERY on the date below stated, pursuant to CCP §1013(c)(d), I deposited such envelope with delivery fees fully prepaid with **CALIFORNIA OVERNIGHT**.

( ) BY MAIL I am readily familiar with the business' practice for collection and processing of correspondence and documents for mailing with the United States Postal Service. Under that practice, the correspondence and documents would be deposited with the United States Postal Service that same day, with postage thereon fully prepaid, in the ordinary course of business at Bakersfield, California.

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on April 9, 2007, at Bakersfield, California.

Rosemary Myers  
ROSEMARY MYERS