

1 RICHARD G. ZIMMER, ESQ., State Bar No. 107263
2 CLIFFORD & BROWN
3 A Professional Corporation
4 Attorneys at Law
5 1430 Truxtun Avenue, Suite 900
6 Bakersfield, CA 93301-5230
7 (661) 322-6023
8 (661) 322-3508 - Fax

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

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

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

Judicial Council Coordination
Proceeding No. 4408

**ANTELOPE VALLEY GROUNDWATER
CASES ,**

CASE NO.: 1-05-CV-049053

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

**BOLTHOUSE PROPERTIES LLC'S AND
WM. BOLTHOUSE FARMS, INC.'S
JOINDER AND REPLY TO
OBJECTIONS BY OTHER PARTIES TO
WOOD CLASS REQUEST FOR
APPROVAL OF SETTLEMENT**

LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40 v. DIAMOND FARMING
COMPANY, et al. ,
Kern County Superior Court Case No. S-1500-
CV-254348,

DATE: MAY 24, 2011
TIME: 0:00 a.m.
DEPT: 316
JUDGE: Hon. J. Komar

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 Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc. (hereinafter "Bolthouse")
2 hereby join in and reply to the objections by other parties to the Wood Class request for
3 preliminary approval of settlement, including, but not limited to, objections filed by Antelope
4 Valley Ground Water Agreement Association ("AGWA"), Tejon Ranchcorp and Copa De Oro
5 Land Company.

6 Bolthouse further refers the Court and all parties to *Water Code*, Section 103, which
7 provides as follows:

8 "In the enactment of this code, the Legislature does not intend
9 thereby to effect any change in the law relating to water rights."

10 The correlative overlying water right existed in case law prior to enactment of *Water*
11 *Code*, Section 106, which was enacted along with Section 103 on or about 1943. The overlying
12 correlative water right has been recognized many times since 1943 in case law which does not
13 recognize any alleged priority overlying right based upon domestic use. A review of the
14 annotations following *Water Code*, Section 106 reveals that cases involving a priority for
15 domestic use involve riparian water use, not groundwater use. For example, the *Deetz* case
16 cited by other counsel was a riparian case. Accordingly, there is no legal basis for the claimed
17 priority. Further, any claimed priority must be litigated, not simply created in a Settlement
18 Agreement.

19 Further, as numerous other parties have pointed out, the Class includes individuals and
20 entities, as well as numerous different types of water usage. Notwithstanding the fact that there
21 is no legal basis to claim the priority, and given the reality that no appropriate definition has
22 been provided for domestic use, the Class clearly includes parties who may or may not meet that
23 definition, either as an entity or as an individual, and depending upon the particular type of
24 water use involved. Accordingly, not only must the legal right to the priority be adjudicated, the
25 factual basis for the priority must be litigated and proved. Neither has occurred and the parties
26 to the Settlement cannot create and/or agree to such a right to the detriment of other

27 ///

28 ///

1 Overlying Landowners in the litigation.

2
3 DATED: May 12, 2011

Respectfully submitted,

4
5 CLIFFORD & BROWN

6
7 By: 

RICHARD G. ZIMMER, ESQ.

Attorneys for

8 BOLTHOUSE PROPERTIES, LLC and WM.
9 BOLTHOUSE FARMS, INC.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **PROOF OF SERVICE (C.C.P. §1013a, 2015.5)**

2 ***Antelope Valley Groundwater Cases***

3 ***Judicial Counsel Coordination Proceeding No. 4408***

4 ***Santa Clara County Superior Court Case No. 1-05-CV-049053***

5 I am employed in the County of Kern, State of California. I am over the age of 18 and not a
6 party to the within action; my business address is 1430 Truxtun Avenue, Bakersfield, CA 93301.

7 On May 12, 2011, I served the foregoing document(s) entitled:

8 **BOLTHOUSE PROPERTIES LLC'S AND WM. BOLTHOUSE FARMS, INC.'S**
9 **JOINDER AND REPLY TO OBJECTIONS BY OTHER PARTIES TO WOOD CLASS**
10 **REQUEST FOR APPROVAL OF SETTLEMENT**

11 — by placing the true copies thereof enclosed in sealed envelopes
12 addressed as stated on the attached mailing list.

13 — by placing _ the original, _ a true copy thereof, enclosed in a sealed
14 enveloped addressed as follows:

15 **X BY SANTA CLARA SUPERIOR COURT E-FILEING IN COMPLEX**
16 **LITIGATION PURSUANT TO CLARIFICATION ORDER DATED OCTOBER**
17 **27, 2005.**

18 Executed on May 12, 2011, at Bakersfield, California.

19 **X** (State) I declare under penalty of perjury under the laws of the State of California
20 that the above is true and correct.

21 — (Federal) I declare that I am employed in the office of a member of the Bar of
22 this Court at whose direction the service was made.

23 
24 **NANETTE MAXEY**
25 **2455-2**
26