

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  
(661) 322-3508 (FAX)

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>JOINDER IN DIAMOND FARMING</b>
	)	<b>COMPANY'S MOTION IN LIMINE FOR</b>
LOS ANGELES COUNTY WATERWORKS	)	<b>AN ORDER ESTABLISHING THE</b>
DISTRICT NO. 40 v. DIAMOND	)	<b>EVIDENTIARY STANDARD FOR NOTICE</b>
FARMING COMPANY, et al.,	)	<b>OF HOSTILITY NECESSARY FOR</b>
Los Angeles Superior Court	)	<b>PROOF OF PRESCRIPTION BY THE</b>
Case No. BC325201	)	<b>PUBLIC WATER SUPPLIERS WITH</b>
	)	<b>CLARIFICATION</b>
	)	
LOS ANGELES COUNTY WATERWORKS	)	
DISTRICT NO. 40 v. DIAMOND	)	
FARMING COMPANY, et al.,	)	<b>DATE:</b> May 21, 2007
Kern County Superior Court	)	<b>TIME:</b> 10:00 a.m.
Case No. S-1500-CV-254348	)	<b>DEPT:</b> D-1, Room 534
	)	
DIAMOND FARMING COMPANY, and	)	
W.M. BOLTHOUSE FARMS, INC., v.	)	
CITY OF LANCASTER, et al.,	)	Location:
Riverside Superior Court	)	
Case No. RIC 344436 [c/w case no.	)	Los Angeles Superior Court
RIC 344668 and 353840]	)	Central District
	)	111 North Hill Street
ROSAMOND COMMUNITY SERVICES	)	Los Angeles, CA 90012
DISTRICT,	)	
	)	
CROSS-COMPLAINANT,	)	
	)	

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Bolthouse Properties, LLC, hereby  
3 joins in Diamond Farming Company's Motion In Limine For An Order  
4 Establishing The Evidentiary Standard For Notice Of Hostility  
5 Necessary For Proof Of Prescription By The Public Water  
6 Suppliers. However, Bolthouse Properties clarifies its position  
7 as follows.

8 Bolthouse Properties agrees that the purveyors must prove  
9 they took steps reasonably calculated to provide actual notice to  
10 parties against whom they are claiming prescription. However,  
11 Bolthouse Properties contends that even if the purveyors prove  
12 they attempted to provide actual notice, the purveyors thereafter  
13 must prove that each owner of land against which prescription is  
14 claimed, had legally sufficient notice of the hostile and adverse  
15 claim being made against that landowner's property. Only when  
16 the landowner has such notice can the landowner be charged with  
17 the obligation of taking action to protect that property right or  
18 in the absence of action, the peril of losing that property  
19 right.

20 The two prong notice requirements articulated above,  
21 require separate analysis as to each purveyor and analysis as to  
22 each landowner. Each individual against whom a claim of  
23 forfeiture for property right is made, must have had legally  
24 sufficient notice of the hostile and adverse taking of the  
25 usufructory water right. In the face of such notice, the  
26 landowner must have failed to take action to protect the water

1 right for each parcel of property against which the prescriptive  
2 claim is made. Notice for the second prong is notice subjectively  
3 in the mind of the property owner based upon facts and  
4 circumstances known to the specific property owner.


5 Accordingly, Bolthouse Properties agrees the Court should  
6 set the evidentiary standard regarding necessary purveyor actions  
7 calculated to give actual notice. Also, the court should set the  
8 evidentiary standard of subjective notice for a prescriptive  
9 claim against an individual property owner in the event that a  
10 purveyor proves that it took steps reasonably calculated to give  
11 actual notice.

12  
13 DATED: May 16, 2007

14 Respectfully submitted,

15 CLIFFORD & BROWN

16  
17 By:

  
18 RICHARD G. ZIMMER, ESQ.  
19 T. MARK SMITH, ESQ.  
20 Attorneys for  
21 BOLTHOUSE PROPERTIES, LLC  
22  
23  
24  
25  
26

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6

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 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**.

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

Rosemary Myers  
ROSEMARY MYERS