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

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:	)	BOLTHOUSE PROPERTIES, LLC'S
	)	AND WM. BOLTHOUSE FARMS,
LOS ANGELES COUNTY	)	INC.'S OBJECTION TO SMALL
WATERWORKS DISTRICT NO. 40 v.	)	PUMPER CLASS' CASE
DIAMOND FARMING COMPANY, et al.,	)	MANAGEMENT CONFERENCE
Los Angeles Superior Court Case No.	)	STATEMENT
BC325201)	
)	
LOS ANGELES COUNTY)	
WATERWORKS DISTRICT NO. 40 v.)	
DIAMOND FARMING COMPANY, et al.,	)	DATE: November 15, 2011
Kern County Superior Court Case No. S-	)	TIME: 9:00 a.m.
1500-CV-254348	)	DEPT: 15
)	
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 PLEASE TAKE NOTICE that Bolthouse Properties, LLC and Wm. Bolthouse Farms,
3 Inc. (hereinafter "Bolthouse") hereby object to and respond to the Small Pumper Class' Case
4 Management Conference Statement and Declaration of Michael D. McLachlan as follows:

5 **SETTLEMENT DISCUSSIONS**

6 Settlement discussions are confidential. It is improper to discuss the particulars of
7 settlement discussions with this Court. Bolthouse objects to the comments by the Small
8 Pumper Class' attorney, on Page 2, from Line 15 through Line 21 and the Declaration of
9 Michael D. McLachlan on Page 5, from Line 18, starting with the words "The public . . ."
10 through Line 25, on the grounds that counsel for the Small Pumper Class is improperly
11 discussing the details of a potential settlement agreement with this Court. Notwithstanding and
12 without waiving the objection, the suggestion by the Small Pumper Class attorney that the
13 Public Water Purveyors and larger landowners are somehow inappropriately attempting to
14 allocate the safe yield is inaccurate and misrepresents what is occurring in the mediation
15 sessions. To the contrary, Justice Robie was very pleased with the fact that larger landowners
16 initiated meaningful discussion of allocation of safe yield by indicating they would take
17 substantial cuts in their water usage.

18 It will be very helpful to dispel this misconception, if the attorney for the Small Pumper
19 Class attends more than one mediation session, attends the next settlement meeting at AVEK
20 on November 18, 2011 and the attends the further mediation set by Justice Robie on December
21 7, 2011. This will help the Small Pumper Class attorney analyze water usage by the class and
22 other issues in hopes of reaching a settlement agreement agreeable to all water users in the
23 Antelope Valley. Virtually all other parties who have any significant claim have attended the
24 mediation sessions and are attending the AVEK meetings and are willing to make significant
25 concessions to reach a settlement..

26 **DEMAND FOR AN EXPERT**

27 Notwithstanding the Small Pumper Class attorney's misunderstanding of what is
28 occurring in the settlement discussions, Bolthouse does agree that the Small Pumper Class

1 should have the opportunity to evaluate writings and documents regarding water usage and to
2 retain the services of an expert if they so desire to help them evaluate water use. However, the
3 Small Pumper Class is no more entitled to a court appointed and paid for expert than any other
4 party. Appointing a court appointed expert to some parties and not to others would confer an
5 unfair advantage to the Class by providing it with a free expert, while other parties are paying
6 rather significant expert fees.

7 The Class should be given some time to evaluate whether it will retain an expert.
8 As noted in the Bolthouse Case Management Conference Statement filed earlier, an allocation
9 trial on all issues would be unmanageable, would mix jury and non-jury issues and would
10 disrupt the settlement discussions. Although Bolthouse continues to assert that a trial should
11 not be set at this time, a trial over alleged appropriative rights, if any, would not meaningfully
12 implicate Small Pumper rights and would be less disruptive of the settlement process.
13 Suggesting that a trial of all water rights could occur in May of 2012 is unrealistic. A trial of
14 all water right priorities probably would entail twelve months of discovery, motions and
15 depositions, not to mention in depth expert analysis of the issues thereafter.

16 **PROPOSED JOINT ORDER**


17 Following discussion with some Purveyor attorneys and some Landowner attorneys,
18 and after discussion with the Honorable Justice Robie, a Joint Proposed Order to require all
19 water rights claims to be properly asserted or forfeited and waived will be submitted
20 contemporaneously with this filing.

21
22 DATED: November 15, 2011

Respectfully submitted.

23 CLIFFORD & BROWN

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26 By:


27 RICHARD G. ZIMMER, ESQ.
28 Attorneys for BOLTHOUSE PROPETES,
LLC and WM. BOLTHOUSE FARMS, INC

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

On November 14, 2011, I served the foregoing document(s) entitled:

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