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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

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COORDINATION PROCEEDING)	Judicial Council Coordination Proceeding
SPECIAL TITLE (Rule 1550(b)))	No. 4408
)	
ANTELOPE VALLEY GROUNDWATER)	CASE NO. 1-05-CV-409053
CASES)	<i>Trial Date: 02/11/13</i>
)	
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 TRIAL SETTING
)	CONFERENCE STATEMENT AND
LOS ANGELES COUNTY)	REQUEST FOR JURY TRIAL ON
WATERWORKS DISTRICT NO. 40 v.)	PRESCRIPTIVE CLAIMS
DIAMOND FARMING COMPANY, et al.,)	
Kern County Superior Court Case No. S-)	
1500-CV-254348)	
)	
DIAMOND FARMING COMPANY, and)	DATE: December 11, 2012
W.M. BOLTHOUSE FARMS, INC., v.)	TIME: 9:00 a.m.
CITY OF LANCASTER, et al.,)	DEPT: 1
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") provide the following Trial Setting
4 Conference Statement.

5 **INTRODUCTION**

6 The parties have engaged in a Mediation with the Honorable Justice Robie for over one
7 year. In order to narrow discovery and trial issues, the Court and the parties have been waiting
8 to determine whether a significant number of parties would reach a settlement agreement
9 before setting specific issues for the two week trial on February 11, 2013. The last Mediation
10 session on November 30, 2012, resulted in a settlement agreeable to most of the parties. Justice
11 Robie advised the parties that in his view the settlement was entered into in good faith, that the
12 settlement represented substantial and good faith compromise by the settling parties and that
13 the settlement was in the best interest of the groundwater basin. Justice Robie put the
14 settlement on the record, including bullet points of the agreement and an exhibit showing party
15 agreement to their correlative share of the native supply. Justice Robie asked the parties to
16 state for the record their acceptance, opposition, neutrality or undecided status on the
17 settlement. The settlement was recorded with comments by Justice Robie and the parties and
18 was transcribed onto a CD.

19 The settlement now defines remaining issues which need to be tried. This Trial Setting
20 Conference Statement addresses the status of agreement to the mediation settlement, addresses
21 which issues still need to be litigated notwithstanding the settlement and discusses which of
22 these issues should be litigated in February.

23 **MEDIATION STATUS**

24 Based upon calculations discussed at Mediation, it appears that approximately 90% of
25 party production, representing approximately 79% of the parties, have agreed to settle, are
26 neutral/maybe or are landowners who were not in attendance.

27 Only approximately 10% of the production, representing approximately 21% of the
28 parties (who are primarily purveyor parties), do not agree to the settlement. It is hoped that

1 these parties will ultimately recognize that the settlement is a good faith settlement representing
2 substantial compromise after over one year of comprehensive negotiations with Justice Robie,
3 that the settlement is in the best interest of the parties, and that the settlement is in the best
4 interest of the basin. If the Purveyor Parties will not ultimately agree to the settlement, some
5 discrete issues can be tried which will place the case in a posture where the settlement can be
6 approved, including a physical solution.

7 **ISSUES WHICH NEED TO BE LITIGATED**

8 **A. There Is No Current Need For A Trial On Correlative Rights To The Native**
9 **Supply.**

10 Virtually all of the Landowners and parties with a correlative share of the native supply
11 have agreed to the settlement. Accordingly, there is no need to have a trial on individual
12 pumping of parties with a share of the correlative native supply. These parties who are legally
13 entitled to a share of the correlative supply, have agreed to the allocation as between
14 themselves and undoubtedly will work on a way to verify numbers and a way to present this
15 information to the Court for purposes of a physical solution.

16 Given the current posture of the case including the settlement, the only potential
17 relevance of Landowner pumping would be in the context a potential self-help defense to
18 prescription. Such a defense would only be relevant and legally appropriate when and if a
19 claim of prescription is proved. As a matter of law and judicial economy, a prescription trial
20 should occur before a trial on self-help.

21 **B. No Settlement Has Been Reached Regarding Return Flow Claims Or Prescription**
22 **Claims.**

23 The parties to the settlement have not agreed to purveyor return flow claims or purveyor
24 claims of prescription unless the purveyor parties agree to the settlement. Accordingly, these
25 issues will need to be tried if the Purveyor Parties refuse to agree to the settlement.

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1 **WHICH ISSUES SHOULD BE LITIGATED IN FEBRUARY**

2 **A. Prescription Claims Cannot Meaningfully Be Tried In A Two Week Trial In**
3 **February.**

4 As this Court properly recognized over the last few Trial Setting Conferences, the
5 Purveyor Parties have been unwilling to limit the time frame within which they are claiming
6 prescription. A trial of prescription claims over a sixty-five (65) year period will require
7 lengthy discovery. Additionally, at the last Trial Setting Conference, the Court addressed the
8 existence of potential legal challenges to claims of prescription which Landowner Parties have
9 discussed in the past. Clearly the opportunity to make legal challenges to prescription claims is
10 not only required by due process, but may limit the scope of a prescription trial saving precious
11 judicial and party resources. For example, the Court discussed a possible motion for summary
12 adjudication of issues. Such motions require not only discovery, but sufficient notice to file
13 such challenges.

14 As the Court also properly discussed at the last Trial Setting Conference, a jury trial
15 logically should be separated from other phases of trial. Finally, a prescription trial over sixty-
16 five (65) years of groundwater production, could not possibly be tried in two weeks, and could
17 take years.

18 **B. The Purveyor Return Flow Claims Could Be Meaningfully Tried In February.**

19 As noted, Purveyor return flow claims have not been settled. Resolution of these claims
20 is not factually complicated. Challenges to the return flow claims involve legal challenges and
21 limited factual issues related to the party having the rights to return flows, the ability to
22 contractually control who has the rights to return flows and the amounts thereof. Limited
23 discovery would be necessary regarding these claims and these claims potentially could be tried
24 within the two week time frame identified by the Court in February.

25 **C. Alternatively, The Federal Reserved Right Could Be Tried**

26 At the last Mediation session, the United States stated that it was neutral on the
27 settlement. However, the United States indicated it would like to see the settlement agreement
28 in writing. It is believed that the settlement terms are acceptable to the United States subject to

1 reviewing a written agreement. Therefore, a trial on the Federal Reserved Right will be
2 unnecessary if the United States is in agreement with the settlement. However, if the United
3 States does not agree to the settlement, the Federal Reserved Right also could be tried in
4 February.

5 **CONCLUSION: RETURN FLOWS SHOULD BE TRIED IN FEBRUARY**

6 In conclusion, the only claims which can be meaningfully tried in February, given due
7 consideration to the parties' need to conduct discovery, make appropriate legal challenges and
8 to be properly afforded due process, are the Purveyor claims to return flows and/or the Federal
9 Reserved Right. Given the fact that we believe the United States is generally in agreement with
10 the settlement, and assuming the United States confirms this, return flows should be tried in
11 February.

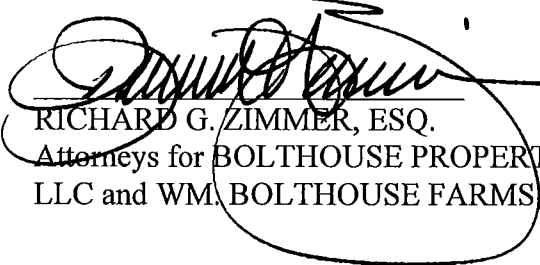
12 Based upon the forgoing, it is respectfully requested that this Court confirm that
13 Purveyor return flows will be litigated in the February trial.

14
15 DATED: December 6, 2012

Respectfully submitted.

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17 CLIFFORD & BROWN

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19 By:


20 RICHARD G. ZIMMER, ESQ.

21 Attorneys for BOLTHOUSE PROPERTIES,
22 LLC and WM. BOLTHOUSE FARMS, INC.
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PROOF OF SERVICE (C.C.P. §1013a, 2015.5)
Antelope Valley Groundwater Cases
Judicial Counsel Coordination Proceeding No. 4408
Santa Clara County Superior Court Case No. 1-05-CV-049053

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

On December 6, 2012, I served the foregoing document(s) entitled:

**BOLTHOUSE PROPERTIES, LLC'S AND WM. BOLTHOUSE FARMS, INC.'S TRIAL
SETTING CONFERENCE STATEMENT AND REQUEST FOR JURY TRIAL ON
PRESCRIPTIVE CLAIMS**

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

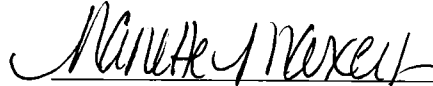
— by placing _ the original, _ a true copy thereof, enclosed in a sealed enveloped addressed as follows:

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

Executed on December 6, 2012, at Bakersfield, California.

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

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



NANETTE MAXEY

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