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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	)	<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 OBJECTION TO PHASE 4
	)	TRIAL, DISCOVERY ORDER FOR
LOS ANGELES COUNTY	)	PHASE 4 TRIAL AND SUBJECT TO
WATERWORKS DISTRICT NO. 40 v.	)	OBJECTION, ATTEMPT TO COMPLY
DIAMOND FARMING COMPANY, et al.,	)	WITH THE COURT'S DISCOVERY
Kern County Superior Court Case No. S-	)	ORDER
1500-CV-254348)	
)	
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 THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that Bolthouse Properties, LLC and Wm. Bolthouse Farms,
3 Inc. hereby object to the Phase 4 Trial and Discovery Order For Phase 4 Trial on the following
4 grounds:

- 5 1. The Case Management Order for Phase 4 Trial setting forth issues to be tried in
6 Phase 4 was not filed until December 12, 2012, less than sixty (60) days before
7 trial.
- 8 2. The Case Management Order for Phase 4 Trial and Discovery Order for Phase 4
9 Trial do not comply with the Code of Civil Procedure, Rules of Court and case
10 law.
- 11 3. The Case Management Order for Phase 4 Trial and Discovery Order for Phase 4
12 Trial, are unclear regarding what will be tried in Phase 4, the discovery order is
13 overbroad, there is inconsistency between the Case Management Order and the
14 Discovery Order, landowner production is not properly at issue given the status of
15 the case and there is insufficient time to comply.
- 16 4. The Case Management Order for Phase 4 Trial and Discovery Order for Phase 4
17 Trial, treats parties to the litigation differently by exempting or putting different
18 requirements on the parties in the Phase 4 Trial and Discovery Orders.
- 19 5. Discovery is, and for a lengthy period of time has been, stayed by the court
20 pending settlement discussions.
- 21 6. Confirmation of trial issues at this late date will prevent the parties from engaging
22 in written discovery.
- 23 7. The trial date and orders will effectively prevent any meaningful depositions.
- 24 8. The trial date and orders will prevent the parties from the ability to discover,
25 evaluate and file potential dispositive motions.
- 26 9. The trial date and orders will not allow sufficient time to retain experts.
- 27 10. The trial date and orders will prevent any meaningful evaluation of issues by
28 expert witnesses.

1 11. The trial date and orders will effectively prevent any meaningful expert
2 depositions.

3 12. The trial date and orders will prevent parties from being able to appropriately
4 prepare for trial.

5 The day before the Case Management Order For Phase 4 Trial was issued, which
6 confirmed issues to be tried in Phase 4, and the Discovery Order for Phase 4 Trial discovery order
7 was issued, the parties engaged in a lengthy Trial Setting and Case Management Conference with
8 the Court to determine what issues would be tried in Phase 4. For almost three hours, the parties
9 discussed what issues would be tried in Phase 4 and the significance of these issues. Following a
10 great deal of discussion by many parties with the Court, the Court seemed to be indicating that the
11 purpose of the Phase 4 Trial was simply to identify the volume of groundwater production by each
12 of the parties and the basis of the right to pump claimed by the parties. The Court further advised
13 that it did not intend to litigate particular use of groundwater and whether such uses were
14 reasonable and necessary. The indication was that the parties would simply identify the type of
15 use and the basis for their claimed right to pump.

16 Various representative parties met and conferred regarding Phase 4 issues on December
17 15, 2012, and e-mails were exchanged thereafter. It became very clear as a result of these
18 communications that the parties do not agree as to what will be tried in Phase 4. Some parties go
19 so far as to say that the Phase 4 issues have some bearing on prescription which the Court clearly
20 indicated will be tried in a later phase. In any event, Properties and Bolthouse Farms object to
21 beginning a trial where the parties do not agree upon what actually is being tried or under
22 circumstances where there may be some confusion based upon the wording of the Order compared
23 with statements of the Court during the Trial Setting/Case Management Conference, and upon
24 such short notice.

25 Finally, the Discovery Order for Phase 4 Trial is vague and ambiguous, burdensome and
26 oppressive. Additionally, Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc. reserve any
27 and all additional objections as may be appropriate based upon clarification of Phase 4 issues and or
28

1 objections which could now have been made but because of the short time for compliance, have
2 been overlooked and or not made at this time.

3 Notwithstanding the forgoing objections, and reserving same, and in an attempt to provide
4 the court with the information requested by the Court which could be provided in the very short
5 time provided by the Order, Bolthouse Properties provides the following responses including
6 attached or incorporated summaries attached herewith. Bolthouse Farms is not submitting any
7 factual response because it has never made any independent claim to groundwater rights in this
8 litigation following the transfer of its property to Bolthouse Properties.

9 Underlying documents are voluminous and cannot practically be attached or posted in
10 the short time allowed. The information provided is only what could be obtained within the
11 time provided and is not intended to be a complete discussion of all matters related to its
12 pumping or pumping rights, nor is the declaration or production of materials intended to
13 provide all available documents, nor in any respect any prima facie showing of any issue, real
14 or imagined, given the objections set forth above. If provided additional time, and after
15 clarification of Phase 4 trial issues, additional information may be provided at trial. Response is
16 made by Bolthouse Properties, as the owner and lessor of properties leased by Bolthouse
17 Farms.

18 **BOLTHOUSE PROPERTIES' CLAIM OF AN OVERLYING GROUNDWATER**
19 **RIGHT**

20 1(A) Subject to and without waiving the foregoing objections, see Schedule attached
21 as Exhibit "A."

22 1(B) Subject to and without waiving the foregoing objections, Bolthouse Farms 2000
23 to March 2005; Bolthouse Properties 2005 to present.

24 1(C) Subject to and without waiving the foregoing objections, yes, see Schedule
25 attached as Exhibit "B."

26 1(D) Subject to and without waiving the foregoing objections, yes.

27 1(E) Subject to and without waiving the foregoing objections, see Schedule attached
28 as Exhibit "C" which is based upon Bolthouse Farms' meter records and well test information.

1 1(F) Subject to and without waiving the foregoing objections, agricultural uses.

2 1(G) Subject to and without waiving the foregoing objections, groundwater was used
3 for agricultural purposes for the ranches identified on the Schedule attached as Exhibit "B."

4 1(H) Subject to and without waiving the foregoing objections, agricultural uses.

5 1(I) Subject to and without waiving the foregoing objections, there was insufficient
6 time to compile this information.

7 1(J) Subject to and without waiving the foregoing objections, groundwater rights
8 appurtenant to ownership.

9 1(K) Subject to and without waiving the foregoing objections, all water uses were
10 reasonable and beneficial.

11 1(M)(K-sic) Subject to and without waiving the foregoing objections, groundwater
12 needs and uses vary from year to year based upon a variety of factors, including but not limited
13 to, crop rotations, weather and other farming and economic factors.

14 2(A) Subject to and without waiving the foregoing objections, yes.

15 2(B) Subject to and without waiving the foregoing objections, Wm. Bolthouse Farms,
16 Inc.

17 2(C) Subject to and without waiving the foregoing objections, see Schedule attached
18 as Exhibit "A." From April 1, 2005, parcels identified on Exhibit A have been leased to Wm.
19 Bolthouse Farms, Inc.

20 2(D) Subject to and without waiving the foregoing objections, question unclear.

21 2(E) Subject to and without waiving the foregoing objections, question unclear;
22 insufficient time to evaluate or respond.

23 2(F) Subject to and without waiving the foregoing objections, question unclear;
24 insufficient time to evaluate or respond.

25 3(A). Subject to and without waiving the foregoing objections, "*prima facie*," unclear,
26 not intended as "*prima facie*" response. Without waiving and reserving the objections, see
27 Schedule attached as Exhibit "C" which is based upon Bolthouse Farms' meter records and
28 well test information.

1 3(B) Subject to and without waiving the foregoing objections, "*prima facie*," unclear,
2 not intended as "*prima facie*" response. Without waiving and reserving the objections, the
3 property has been used for general agricultural purposes for growing row crops.

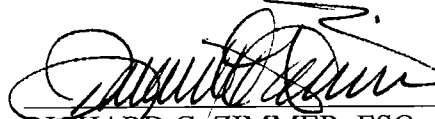
4 3(C) Subject to and without waiving the foregoing objections, "*prima facie*," unclear,
5 not intended as "*prima facie*" response. Without waiving and reserving the objections, we are
6 in the process of gathering additional materials.

7
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9
10 DATED: December 21, 2012

Respectfully submitted,

11 CLIFFORD & BROWN

12
13 By:


14 RICHARD G. ZIMMER, ESQ.
15 Attorneys for BOLTHOUSE PROPERTIES,
16 LLC and WM. BOLTHOUSE FARMS, INC.
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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF KERN

I have read the foregoing BOLTHOUSE PROPERTIES, LLC'S OBJECTION TO PHASE 4 TRIAL,
DISCOVERY ORDER FOR PHASE 4 TRIAL and know its contents.

☐ CHECK APPLICABLE PARAGRAPHS

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☒ I am ☒ an Officer ☐ a partner ☐ a _____ of BOLTHOUSE
PROPERTIES, LLC

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☒ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☒ The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for _____
a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on DECEMBER 21, 2012, at BAKERSFIELD, California.
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

ANTHONY L. LEGGIO

Type or Print Name

Anthony L. Leggio

Signature

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/00

STATE OF CALIFORNIA, COUNTY OF _____

I am employed in the county of _____, State of California.
I am over the age of 18 and not a party to the within action; my business address is: _____

On, _____ I served the foregoing document described as _____
_____ on _____ in this action

☐ 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 sealed envelopes addressed as follows:

☐ BY MAIL

☐ I deposited such envelope in the mail at _____, California.
The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, at _____, California.

☐ ****(BY PERSONAL SERVICE)** I delivered such envelope by hand to the offices of the addressee.

Executed on _____, at _____, California.

☐ (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.

Type or Print Name

Signature

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

** (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF KERN

I have read the foregoing **BOLTHOUSE PROPERTIES, LLC'S AND WM. BOLTHOUSE FARMS, INC.'S OBJECTION TO PHASE 4 TRIAL, DISCOVERY ORDER FOR PHASE 4 TRIAL AND SUBJECT TO OBJECTION, ATTEMPT TO COMPLY WITH THE COURT'S DISCOVERY ORDER** and know its contents.

I am a party to this action. This Verification covers the sole response contained therein on behalf of Bolthouse Farms, that "Bolthouse Farms is not submitting any factual response because it has never made any independent claim to groundwater rights in this litigation following the transfer of its property to Bolthouse Properties." This representation is true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on December 21, 2012, at Bakersfield, California.

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

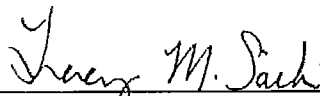

Tracy M. Saiki

EXHIBIT "A"

BOLTHOUSE PROPERTIES, LLC
LIST OF PARCELS BY APN

<u>PARCEL NUMBER</u>	<u>RANCH</u>
3378-023-005	Bushnell
3382-022-057	Bushnell
3382-023-027	Bushnell
3382-023-033	Bushnell
3382-023-034	Bushnell
3150-015-003	Minn
3150-015-004	Minn
3150-015-006	Minn
3154-017-009	Minn
3384-003-008	Minn
3384-003-010	Minn
3384-003-011	Minn
3384-004-004	Minn
3384-008-001	Minn
3384-008-020	Minn
3384-015-013	Minn
3384-016-013	Minn
3384-016-014	Minn
3384-017-001	Minn
3384-017-002	Minn
3384-017-003	Minn
3384-018-001	Minn
3384-018-002	Minn
3384-018-003	Minn
3384-018-004	Minn
3384-020-001	Minn
3386-013-010	Minn
3386-014-001	Minn
3376-022-004	Pardee
3376-022-005	Pardee
3376-022-006	Pardee
3376-022-016	Pardee
3376-022-017	Pardee
3376-022-018	Pardee
3376-026-002	Pardee
3376-026-003	Pardee
3376-026-004	Pardee
3376-026-005	Pardee
3376-026-006	Pardee
3376-026-007	Pardee
3376-026-008	Pardee

BOLTHOUSE PROPERTIES, LLC
LIST OF PARCELS BY APN

PARCEL NUMBER	RANCH
3376-026-009	Pardee
3376-026-010	Pardee
3376-026-011	Pardee
3376-026-012	Pardee
3376-026-013	Pardee
3376-026-014	Pardee
3376-026-015	Pardee
3376-026-016	Pardee
3376-026-017	Pardee
3376-026-018	Pardee
3376-026-019	Pardee
3376-026-020	Pardee
3376-026-021	Pardee
3376-026-022	Pardee
3376-026-023	Pardee
3376-026-024	Pardee
3376-026-025	Pardee
3376-026-026	Pardee
3376-026-027	Pardee
3376-026-028	Pardee
3376-026-029	Pardee
3376-026-030	Pardee
3376-026-031	Pardee
3376-026-032	Pardee
3376-026-033	Pardee
3378-002-003	Pardee
3378-003-001	Pardee
3378-004-008	Pardee
3378-005-001	Pardee
3378-005-002	Pardee
3378-005-004	Pardee
3378-005-005	Pardee
3378-005-006	Pardee
3075-011-017	Retlaw
3075-014-001	Retlaw
3075-015-001	Retlaw
3075-015-002	Retlaw
3075-015-003	Retlaw
3075-015-004	Retlaw
3075-015-005	Retlaw
3075-015-006	Retlaw

BOLTHOUSE PROPERTIES, LLC
LIST OF PARCELS BY APN

PARCEL NUMBER	RANCH
3075-015-007	Retlaw
3075-016-001	Retlaw
3075-016-002	Retlaw
3075-016-003	Retlaw
3075-016-004	Retlaw
3075-017-010	Retlaw
3075-017-011	Retlaw
3075-019-001	Retlaw
3075-019-002	Retlaw
3075-019-005	Retlaw
3075-019-006	Retlaw
3079-014-017	Retlaw
3079-015-001	Retlaw
3080-005-001	Retlaw
3080-005-002	Retlaw
3080-005-003	Retlaw
3080-005-009	Retlaw
3032-004-020	S&P Rowen
3032-004-021	S&P Rowen
3091-020-019	S&P Rowen
3091-020-020	S&P Rowen
3091-021-018	S&P Rowen
3091-024-006	S&P Rowen
3091-024-007	S&P Rowen

EXHIBIT "B"

BOLTHOUSE PROPERTIES, LLC
LIST OF WELLS BY RANCH

RANCH	WELL ID
Bushnell	Bushnell 10-3
Bushnell	Bushnell 10-4 W
Bushnell	Testo
Bushnell	Bushnell 15-2
Minn	Minn 21-3W
Minn	Minn 21-3E
Minn	Avol 21-1S
Minn	Avol 14-3N
Minn	Avol 14-3S
Minn	Minn 23-3
Minn	Minn 23-4
Minn	Minn 22-2W
Minn	Minn 22-2E
Minn	Minn 22-4
Minn	Minn 22-3W
Minn	Laid 13-3
Minn	Avol 25-3
Pardee	Piani 21-4
Pardee	Pardee 20-4NE
Pardee	Pardee 20-4E
Pardee	Pardee 20-4W
Pardee	Pardee 20-3SE
Pardee	Pardee 20-3M
Pardee	Pardee 20-3W
Pardee	Pardee 30-3
Pardee	Huang 30-4
Pardee	Hawaiian 29-1
Pardee	Hawaiian 29-1W
Pardee	Dack 29-3S
Pardee	Pardee 28-1S
Pardee	Pardee 28-1N
Pardee	Pardee 28-3
Retlaw	Brown 34-3 West
Retlaw	Brown 34-3 South
Retlaw	Big Field West
Retlaw	Big Field East
Retlaw	Big Field South
Retlaw	Yard NW
Retlaw	Back 32-2
Retlaw	Turner South
Retlaw	Turner NW
Retlaw	Anderson S

BOLTHOUSE PROPERTIES, LLC
LIST OF WELLS BY RANCH

RANCH	WELL ID
Retlaw	Anderson N
S&P Rowen	Rowan 2-6
S&P Rowen	Rowan 2-2N
S&P Rowen	Rowan 2-4
S&P Rowen	Rowan 2-1
S&P Rowen	S&P 35-1
S&P Rowen	S&P 35-3
S&P Rowen	S&P 35-4S
S&P Rowen	S&P 35-2
S&P Rowen	S&P 34-4 N

EXHIBIT "C"

BOLTHOUSE PROPERTIES, LLC
GROUNDWATER PRODUCTION IN ACRE FEET

RANCH	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Bushnell	0	474	174	536	236	57	766	2,107	2,028	1,895	316
Minn	4,996	8,546	9,000	8,876	7,000	4,480	8,328	9,123	5,230	5,654	1,562
Pardee	6,178	7,728	6,900	7,278	5,024	4,645	5,228	9,021	6,132	5,255	3,379
Retlaw	605	1,018	3,864	4,996	2,957	5,140	7,730	8,807	8,075	3,566	3,574
S&P Rowen	2,342	3,065	5,236	4,088	4,066	2,915	4,760	4,249	2,668	2,370	2,213
Total	14,121	20,831	25,174	25,774	19,283	17,237	26,812	33,307	24,133	18,740	11,044