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11 and Wm. Bolthouse Farms, Inc.

12 **SUPERIOR COURT OF CALIFORNIA**

13 **COUNTY OF SANTA CLARA**

14 COORDINATION PROCEEDING  
15 SPECIAL TITLE (Rule 1550(b))

) Judicial Council Coordination Proceeding No.  
4408

16 ANTELOPE VALLEY GROUNDWATER  
17 CASES

) CASE NO. 1-05-CV-049053

18 INCLUDED ACTIONS:

) **PHASE 4 TRIAL BRIEF**

19 LOS ANGELES COUNTY  
20 WATERWORKS DISTRICT NO. 40 v.  
21 DIAMOND FARMING COMPANY, et al.,  
22 Los Angeles Superior Court Case No.  
23 BC325201

24 LOS ANGELES COUNTY  
25 WATERWORKS DISTRICT NO. 40 v.  
26 DIAMOND FARMING COMPANY, et al.,  
27 Kern County Superior Court Case No. S-  
28 1500-CV-254348

) Trial Date: May 28, 2013  
) Action Filed: October 26, 2005

29 DIAMOND FARMING COMPANY, and  
30 W.M. BOLTHOUSE FARMS, INC., v.  
31 CITY OF LANCASTER, et al.,  
32 Riverside Superior Court  
33 Case No. RIC 344436 [c/w case no. RIC  
34 344668 and 353840]

35 AND RELATED ACTIONS

36 ///

37 ///

1 **I**

2 **SCOPE OF THE PHASE 4 TRIAL**

3  
4 Based upon the Fifth Amended Case Management Order, the only issue to be tried in  
5 the Phase 4 trial is pumping in 2011 and 2012. The Fifth Amended Case Management Order  
6 provides that the Phase 4 pumping findings will not in any way determine any party's water  
7 rights. Nevertheless, to assure no party at a later time misconstrues the evidence presented,  
8 Bolthouse files this Trial Brief.

9 **II**

10 **OBJECTIONS TO PHASE 4 TRIAL**

11 **Objection To Any Limitation Of Overlying Right Based Upon Phase 4 Findings**

12 Bolthouse objects to any Phase 4 findings which have any effect on any determination  
13 of Bolthouse Properties groundwater rights. Bolthouse previously objected to the current  
14 proposed trial on current pumping because there has been a lack of compliance with the Code  
15 of Civil Procedure, a lack of fundamental due process and because the purpose and results of  
16 the trial are unclear because no discernible cause of action or other right or remedy is being  
17 litigated.

18 **The Case Is Not Properly At Issue**

19 The parties have repeatedly requested a showing by the purveyor parties, which filed  
20 the Cross Complaint requesting a comprehensive adjudication of water rights in the Area of  
21 Adjudication, to 1) List all landowners in the Area of Adjudication; 2) List all landowners in  
22 the Area of Adjudication which have been served and 3) Confirm default has been entered  
23 against all landowners in the Area of Adjudication which have not appeared. This showing has  
24 not been made. Counsel for the parties have on various occasions, Lancaster most recently,  
25 advised that all landowners have not been named and served. Accordingly the case is not  
26 properly at issue to litigate any correlative usufructuary right (which the court indicates is not  
27 being litigated in the Phase 4 trial), or to obtain an accurate determination of current pumping  
28 in 2011 and 2012 as requested by the court for the Phase 4 trial.

1 **The Burden Of Production Of Evidence And Burden Of Proof Have Been Improperly**  
2 **Shifted To Landowners**

3 The overlying usufructuary right is a flexible right to use groundwater based upon  
4 need. A landowner is not required to prove any particular quantity of groundwater production  
5 to prove the existence of this right. *City of Santa Maria v Adam*, 42 ELR 20241, No. H032750  
6 (Cal. Ct. App. 6<sup>th</sup> Dist, 11/21/2012). The burden of production of evidence and the burden of  
7 proof of pumping quantity is on the party seeking to enjoin pumping. *Tulare Irrigation*  
8 *District et al. v Lindsay-Strathmore* (1935) 3 Cal. 2<sup>nd</sup> 489. The purveyor parties filed the  
9 Cross Complaint seeking a comprehensive adjudication of water rights in the Area of  
10 Adjudication and accordingly have the burden of production of evidence and the burden of  
11 proof. The Phase 4 trial improperly shifts both the burden of production of evidence and the  
12 burden of proof to landowners asserting an overlying groundwater right.

15 **The Proof Necessary To Prove 2011 and 2012 Pumping Is Unclear And Must Not Be**  
16 **Greater For Some Parties Than It is For Others**

17 The proof necessary to prove water use for the Phase 4 trial is unclear. Parties are  
18 attempting to prove pumping in various ways. Some parties are entering into stipulations with  
19 other parties but the stipulations do not bind all parties. At the last Case Management  
20 Conference, the Court advised it will solicit objections to declarations of other parties pumping  
21 numbers for 2011 and 2012. However, there are no cross complaints between overlying  
22 landowners seeking to adjudicate inter se correlative rights and the court has advised that the  
23 phase 4 pumping numbers will not determine any water right. Accordingly, no objection  
24 should be necessary other than as between the purveyor parties which filed the Cross  
25 Complaint seeking a comprehensive adjudication of water rights and the party presenting  
26 evidence of its 2011 and 2012 pumping.  
27  
28

1 The court is conducting an evidentiary hearing in the Phase 4 trial. The court must  
2 determine what proof is necessary to prove 2011 and 2012 pumping and determine whether  
3 such proof has been established as to each party. Importantly, notwithstanding stipulations,  
4 declarations and or objections, the Court must not require more or different proof from parties  
5 which stipulate or file declarations, than it does for those parties which present evidence in  
6 court.  
7

8  
9 **Any Lack of Objection By Bolthouse To Declarations Submitted By The Parties To 2011**  
10 **and 2012 Pumping Is Based Upon The Court Ordered Limitations On The Scope Of the**  
11 **Phase 4 Trial And Without Waiver Of Objections**

12 Any lack of objection to party declarations at the Phase 4 trial is based upon the court  
13 ordered limitations on the scope of the Phase 4 trial and without waiving objections. In order  
14 to expedite the hearing, Bolthouse may not verbally object to party declarations. Bolthouse has  
15 objected to preserve issues in an abundance of caution given the unclear nature of what is  
16 being tried in the absence of causes of action or legal rights. Any lack of objection is also  
17 based upon the understanding that the same type of proof of 2011 and 2012 pumping accepted  
18 by the court in declarations, will be accepted by the court when presented by other parties at  
19 trial.  
20

21 **III**

22 **BOLTHOUSE CLAIMS AN UNQUANTIFIED OVERLYING CORRELETIVE**  
23 **USUFRUCTUARY RIGHT.**

24 Bolthouse claims an unquantified overlying correlative usufructuary right to pump and  
25 use groundwater. The right is unquantified and flexible based upon the current and future  
26 needs of Bolthouse. This is the nature of the overlying right. *See City of Santa Maria v. Adam.*  
27 The overlying correlative usufructuary right may be limited by Article 10 Section 2 of the  
28 California Constitution prohibiting unreasonable use of water, based upon appropriate proof.

1 Subject to this limitation, water may be used for any purpose, farming, domestic and/or  
2 industrial. Therefore, water use will fluctuate consistent with the use of the property.  
3 Although Bolthouse currently grows a variety of row crops, Bolthouse claims the right to use  
4 the property for other agricultural uses, such as growing alfalfa which may consume  
5 significantly more water than what is currently being used. Likewise, Bolthouse claims the  
6 right to develop the property and to exercise the overlying correlative usufructuary right as  
7 appropriate under such circumstances. The court has indicated that the Phase 4 trial will not  
8 affect this right.

9  
10 **V**

11 **BOLTHOUSE EVIDENCE OF CURRENT PUMPING FOR PURPOSES OF THE**  
12 **PHASE 4 TRIAL.**

13 Bolthouse currently leases its property for the purpose of growing row crops. Row  
14 crops are seasonal and require crop rotation. Due to a variety of factors inherent to and  
15 required by farming practices, actual water use is highly variable from season to season and/or  
16 year to year. Bolthouse will present evidence of water use for 2011 and 2012 based upon the  
17 court's limitation of the scope of the phase 4 trial. In order to expedite the Phase 4 trial given  
18 the court ordered limitation on the scope of the issues, Bolthouse will present only general  
19 historical reference to aid the court in considering the variable nature of agricultural pumping,  
20 varying needs and the need for flexibility.

21 **VI**

22 **CONCLUSION**


23 Bolthouse claims an unqualified correlative usufructuary right to pump and use  
24 groundwater. Evidence of 2011 and 2012 pumping will be presented at the court's request to  
25 evaluate overall pumping in the groundwater basin in the area of adjudication based upon the  
26 court ordered limitation of the scope of the Phase 4 trial and not for the purpose of determining  
27 water rights.  
28

1 DATED: May 27, 2013

Respectfully submitted.

2 CLIFFORD & BROWN

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4  
5 By:

  
RICHARD G. ZIMMER, ESQ.  
Attorneys for  
BOLTHOUSE PROPERTIES, LLC and  
WM. BOLTHOUSE FARMS, INC.

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  
6 not a party to the within action; my business address is 1430 Truxtun Avenue, Suite 900,  
7 Bakersfield, CA 93301.

8 On May 28, 2013, I served the foregoing document(s) entitled:

9 **PHASE 4 TRIAL BRIEF**

10 by uploading the document listed above to the Santa Clara Superior Court website in regard to  
11 the Antelope Valley Groundwater Matter. All parties listed on the Santa Clara Superior Court  
12 in regard to the Antelope Valley Groundwater Matter are hereby incorporated within by this  
13 reference.

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

16 Executed on May 28, 2013, at Bakersfield, California.

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

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VICKI STREET  
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