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7

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10 \* \* \*

11 COORDINATION PROCEEDING  
SPECIAL TITLE (Rule 1550(b))

JUDICIAL COUNCIL COORDINATION PROCEEDING  
No. 4408

12 ANTELOPE VALLEY GROUNDWATER  
13 CASES

CASE NO. 1-05-CV-049053  
*Action Filed: October 26, 2005*

14 INCLUDED ACTIONS:

15 LOS ANGELES COUNTY WATERWORKS  
DISTRICT NO. 40 v. DIAMOND FARMING  
16 COMPANY, et al.,  
Los Angeles Superior Court Case No. BC325201

**BOLTHOUSE TRIAL SETTING  
CONFERENCE STATEMENT**

17 LOS ANGELES COUNTY WATERWORKS  
DISTRICT NO. 40 v. DIAMOND FARMING  
18 COMPANY, et al.,  
Kern County Superior Court Case No. S-1500-  
19 CV-254348

20 DIAMOND FARMING COMPANY, and W.M.  
21 BOLTHOUSE FARMS, INC., v. CITY OF  
LANCASTER, et al.,  
22 Riverside Superior Court Case No. RIC 344436  
[c/w case no. RIC 344668 and 353840]  
23

24 AND RELATED ACTIONS.  
25

26 TRIAL SETTING ISSUES

27 Although the Court ultimately did not require a personal meet and confer conference regarding  
28 trial setting issues, many of the party representative attorneys had the opportunity to meaningfully

1 discuss trial issues at the AVEK sponsored telephone conference on Thursday morning. A lengthy and  
2 meaningful conversation occurred, including representatives of public land owners, private land owners  
3 and purveyors. All parties shared a mutual concern that trial be scheduled in such a way as to allow all  
4 parties sufficient time to conduct investigation and discovery and to allow for orderly and timely trial of  
5 issues with a trial duration not requiring attorneys to be in trial for a month or more.

6 The parties on the call seemed to generally agree that the primary areas of dispute between the  
7 parties, and the primary impediment to resolution of the case, continue to be the federal reserved right,  
8 return flows, ownership and quantity, prescription and reasonable use, as set forth in the AVEK Trial  
9 Setting Conference Statement filed on Wednesday. These issues previously have been discussed as trial  
10 issues which need to be resolved. In fact, the Phase IV trial initially was to include the federal reserved  
11 right and return flows. Further, the Court indicated it would like to try prescription issues in Phase V.

12 As a part of a global Phase V trial, or separately, these matters can be litigated consecutively in a  
13 meaningful time frame which will allow parties to engage in settlement discussions throughout this time  
14 frame without delaying trial. The federal reserved right and return flows probably can be tried in two  
15 week mini-trials or increments of a Phase V trial during successive, but not contiguous, two week time  
16 frames. If resolution of these matters does not resolve the case, prescription could be heard as the last  
17 mini-trial or phase of a global Phase V trial. The duration of this trial can be set for an appropriate length  
18 of time based upon discovery and legal motions as the date for trial of that issue approaches.

19 In terms of discovery, many parties expressed concern over the cost of lengthy discovery,  
20 particularly with regard to the prescription claims. Other parties expressed an interest in being able to  
21 begin discovery on prescription claims sooner rather than later in order to meaningfully assess the  
22 information. John Tootle, attorney for California Water Service, suggested that discovery commence on  
23 the federal reserved right and return flow issues in the near future and that discovery regarding the  
24 prescription claims be staged in such a way that preliminary information is obtained during a first  
25 segment of discovery followed by what clearly will be more intensive discovery thereafter depending  
26 upon the contentions of parties claiming prescription. Legal challenges and motions can be set  
27 accordingly. This would have the benefit of moving forward with the federal reserved right and return  
28 flow discovery and beginning discovery on prescription without being completely bogged down in

1 prescription discovery requiring parties to spend vast amounts of money and time dealing with issues  
2 which hopefully can be avoided if the case can be resolved.

3 Jan Goldsmith, attorney for City of Los Angeles, suggested the mini trial/phase trial approach.  
4 The parties in attendance on the call generally agreed with the order for sequential trials starting with the  
5 federal reserved right, followed by return flows, ownership and quantity, followed by prescription,  
6 followed by reasonable use as set forth by Mr. Brunick in the AVEK Trial Setting Conference  
7 Statement. The parties in attendance seemed to generally agree that the federal reserved right trial could  
8 be heard sometime in March, followed by the return flow trial in the May or June time frame, followed  
9 by a prescription trial in December.

10 The thought process behind this schedule was that the federal reserved right claim has been set as  
11 a trial issue in the past and to some extent, has had some discovery and depositions in this regard and  
12 accordingly could proceed first. The return flow claims have not been the subject of any meaningful  
13 discovery and depositions but the issues are limited and it is believed could be addressed in order to  
14 prepare for trial in May or June. The prescription issues clearly will require substantial investigation,  
15 discovery and expert review and will require the longest trial if necessary. Additionally, if the Court  
16 determines that a jury trial is necessary, this would be more easily accommodated as the last segment of  
17 trial for Phase V. Likewise, if the prescription trial is necessary and requires a more lengthy period of  
18 time, it would not disrupt a trial on the federal reserved rights or return flows, since these trials would  
19 already be completed.

20 All parties in attendance seemed to agree that a trial of multiple matters, all at the same time,  
21 would be problematic in terms of preparation, presentation of evidence, attorney time and expenditure of  
22 capital. Accordingly, the following trial schedule is recommended:

- 23 1. Federal reserved right March 2014;
- 24 2. Return flows, ownership and quantity May/June 2014
- 25 3. Prescription December 2014
- 26 4. Reasonable use: to follow prescription as an affirmative defense.

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1                    COURT'S REQUEST TO CONTINUE SETTLEMENT DISCUSSIONS

2                    A great deal of time was spent by the parties in attendance on the AVEK call regarding potential  
3 for settlement. All parties continue to believe that settlement would be preferred to litigation of the  
4 matters at issue. Likewise, the conversation was very productive and all parties in the discussion appear  
5 in good faith to be pursuing settlement of the case. Discussion regarding potential settlement involved  
6 discussion of both potential allocations of water and potential terms of a settlement agreement. The  
7 mediation process was discussed at length along with ways to improve this process. Numerous  
8 alternatives regarding mediation, including using a different mediator, using your Honor as the mediator  
9 and improved structure regarding further mediation with Justice Robie were discussed.

10                  John Tootle recommended improved structure regarding any further mediation effort with Justice  
11 Robie. He suggested that each group, for example purveyors, private land owners, public land owners,  
12 the United States and any other groups, meet together to discuss among each group what each group  
13 would require to resolve the matter. If necessary, individual groups could meet with Justice Robie  
14 separately to resolve issues within their group. Thereafter, these groups would conduct further mediation  
15 with Justice Robie. A spokesman for each group could communicate with Justice Robie conveying the  
16 group position regarding various settlement issues. Mediation with all parties present could then be  
17 accomplished to try and bring each group to a point where it is agreeable to a global resolution of the  
18 matter. Although speaking through a representative, having all parties present at the mediation will  
19 allow each group representative(s) to meet with their respective groups to iron out any details at the  
20 mediation.

21                  The parties on the call discussed whether this Court should order further mediation with Justice  
22 Robie. Certainly, the parties agree that having participation by all groups ultimately is necessary to reach  
23 a global resolution of the matter. It is requested that this Court consider an order for all parties to attend  
24 the mediation.

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1 CONCLUSION

2 A significant cross-section of parties attended the AVEK conference call. Unfortunately, all  
3 parties were not on the call. Nevertheless, it is believed that the approach stated herein would move the  
4 case swiftly to a resolution of the primary matters at issue, would facilitate further attempts to settle the  
5 case and would provide a meaningful framework for discovery and trial of these issues.

6 DATED: September 12, 2013

Respectfully submitted,

7 CLIFFORD & BROWN

8  
9 By 

10 RICHARD G. ZIMMER, ESQ.

11 MARK T. SMITH, ESQ.

12 Attorneys for BOLTHOUSE PROPERTIES, LLC  
13 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, Suite 900, Bakersfield, CA 93301.

On September 12, 2013, I served the foregoing document(s) entitled:

**TRIAL SETTING CONFERENCE STATEMENT**

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

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

Executed on September 12, 2013, 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.



SUE HAYS

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