

EXHIBIT “H”

1 **RICHARD G. ZIMMER - SBN 107263**
2 **T. MARK SMITH - SBN 162370**
3 **CLIFFORD & BROWN**
4 **A Professional Corporation**
5 **Attorneys at Law**
6 **Bank of America Building**
7 **1430 Truxtun Avenue, Suite 900**
8 **Bakersfield, CA 93301-5230**
9 **(661) 322-6023**

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

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

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COORDINATION PROCEEDING
SPECIAL TITLE (Rule 1550(b))

Judicial Council Coordination Proceeding No.
4408

ANTELOPE VALLEY GROUNDWATER
CASES

CASE NO. 1-05-CV-049053

INCLUDED ACTIONS:

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

**BOLTHOUSE PROPERTIES, LLC'S
AND WM. BOLTHOUSE FARMS, INC.'S
PROPOSAL RE CONTENT OF
STATEMENT OF DECISION**

[C.C.P. §632]

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

Phase 3 Trial Date:
January 4, 2011

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]

ROSAMOND COMMUNITY SERVICES
DISTRICT,

CROSS-COMPLAINANT,

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1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that pursuant to California *Code of Civil Procedure* § 632,
3 Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc. (hereinafter "Bolthouse"), make the
4 following initial proposals as to the content of the Statement of Decision following the issuance
5 of the Court's Tentative Decision Phase 3 Trial dated May 4, 2011, references to which are set
6 forth below.

- 7 1. That the Statement of Decision be limited to "the safe yield of the Antelope
8 Valley Aquifer" and "whether the Aquifer is in a state of overdraft such that the
9 Court should exercise equitable powers to protect the Aquifer from detriment
10 caused by any such overdraft" as set forth in the Order After Hearing Held on
11 November 18, 2010 setting forth the scope of the Phase 3 Trial.
- 12 2. The legal definition and basis thereof used by the Court to determine the safe
13 yield of the Antelope Valley Aquifer.
- 14 3. All facts relied upon by the Court to determine the safe yield as defined by the
15 Court for the purpose of the Phase 3 Trial.
- 16 4. The legal definition, and the basis thereof, that the Court used to determine
17 "whether the Aquifer is in a state of overdraft such that the Court should
18 exercise equitable powers to protect the Aquifer from detriment caused by any
19 such overdraft."
- 20 5. All facts relied upon by the Court to support "whether the Aquifer is in a state of
21 overdraft such that the Court should exercise equitable powers to protect the
22 Aquifer from detriment caused by any such overdraft."
- 23 6. The legal definition, and the basis thereof, that the Court used to determine
24 "whether the Aquifer is in a state of temporary surplus".
- 25 7. All facts relied upon by the Court to support "whether the Aquifer is in a state of
26 temporary surplus".
- 27 8. The specific testimony of each testifying expert which the Court relied upon to
28 determine the "safe yield of the Antelope Valley Aquifer."

- 1 9. The specific testimony of each testifying expert which the Court relied upon to
2 determine "whether the Aquifer is in a state of overdraft such that the Court
3 should exercise equitable powers to protect the Aquifer from detriment caused
4 by any such overdraft."
- 5 10. All facts relied upon by the Court to determine that "The preponderance of the
6 evidence presented establishes that the basin is in a state of overdraft," as set
7 forth on Page 4, Lines 27 through 28.
- 8 11. Specific expert testimony relied upon by the Court to determine that "The
9 preponderance of the evidence presented establishes that the basin is in a state of
10 overdraft," as set forth on Page 4, Lines 27 through 28.
- 11 12. All facts relied upon by the Court to determine that "Reliable estimates of long-
12 term extractions from the basin have exceeded reliable estimates of the basin's
13 recharge by significant margins, and empirical evidence of overdraft in the basin
14 corroborates that conclusion," as set forth on Page 4, Line 28 through Page 5,
15 Lines 1 through 2.
- 16 13. Specific expert testimony relied upon by the Court to determine that "Reliable
17 estimates of long-term extractions from the basin have exceeded reliable
18 estimates of the basin's recharge by significant margins, and empirical evidence
19 of overdraft in the basin corroborates that conclusion," as set forth on Page 4,
20 Line 28 through Page 5, Lines 1 through 2.
- 21 14. All facts relied upon by the Court to determine that "The basin has sustained a
22 significant loss of groundwater storage since 1951," as set forth on Page 5, Lines
23 2 through 3.
- 24 15. Specific expert testimony relied upon by the Court to determine that "The basin
25 has sustained a significant loss of groundwater storage since 1951," as set forth
26 on Page 5, Lines 2 through 3.

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1 16. All facts relied upon by the Court to determine that "While pumping in recent
2 years has reduced and moderated the margin between pumping and recharge as
3 cultural conditions have changed and precipitation has increased with the
4 appearance of wetter parts of the historical cycle, pumping in some areas of the
5 aquifer is continuing to cause harm to the basin," as set forth on Page 5, Lines 3
6 through 6.

7 17. Specific expert testimony relied upon by the Court to determine that "While
8 pumping in recent years has reduced and moderated the margin between
9 pumping and recharge as cultural conditions have changed and precipitation has
10 increased with the appearance of wetter parts of the historical cycle, pumping in
11 some areas of the aquifer is continuing to cause harm to the basin," as set forth
12 on Page 5, Lines 3 through 6.

13 18. All facts relied upon by the Court to determine that "The evidence is persuasive
14 that current extractions continue to exceed recharge and therefore that the basin
15 continues to be in a state of overdraft, although by a much reduced amount," as
16 set forth on Page 5, Lines 6 through 8.

17 19. Specific expert testimony relied upon by the Court to determine that "The
18 evidence is persuasive that current extractions continue to exceed recharge and
19 therefore that the basin continues to be in a state of overdraft, although by a
20 much reduced amount," as set forth on Page 5, Lines 6 through 8.

21 20. All facts relied upon by the Court to determine that "Since 1951, there is
22 evidence of substantial pumping (principally agricultural in the early years of
23 the period) coinciding with periods of drought, with continuous lowering of
24 water levels and subsidence extending to the present time, with intervals of only
25 slight rises in water levels in some areas," as set forth on Page 5, Lines 8
26 through 12.

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1 21. Specific expert testimony relied upon by the Court to determine that "Since
2 1951, there is evidence of substantial pumping (principally agricultural in the
3 early years of the period) coinciding with periods of drought, with continuous
4 lowering of water levels and subsidence extending to the present time, with
5 intervals of only slight rises in water levels in some areas," as set forth on Page
6 5, Lines 8 through 12.

7 22. All facts relied upon by the Court to determine that "In the areas of increased
8 pumping, in particular in the Palmdale and Lancaster areas, there is a continual
9 lowering of water levels such that it may have a serious effect on water rights in
10 other areas, causing cones of depression, altering natural water flow gradients,
11 causing the lowering of water levels in adjacent areas, and causing subsidence
12 and loss of aquifer storage capacity," as set forth on Page 5, Lines 13 through
13 17.

14 23. Specific expert testimony relied upon by the Court to determine that "In the
15 areas of increased pumping, in particular in the Palmdale and Lancaster areas,
16 there is a continual lowering of water levels such that it may have a serious
17 effect on water rights in other areas, causing cones of depression, altering
18 natural water flow gradients, causing the lowering of water levels in adjacent
19 areas, and causing subsidence and loss of aquifer storage capacity," as set forth
20 on Page 5, Lines 13 through 17.

21 24. All facts relied upon by the Court to determine that "Given population growth,
22 and agricultural and industrial changes, the valley is at risk of being in an even
23 more serious continuing overdraft in the future," as set forth on Page 5, Lines 17
24 through 18.

25 25. Specific expert testimony relied upon by the Court to determine that "Given
26 population growth, and agricultural and industrial changes, the valley is at risk
27 of being in an even more serious continuing overdraft in the future," as set forth
28 on Page 5, Lines 17 through 18. 5

1 26. All facts relied upon by the Court to determine that "While the lowering of
2 current water levels has slowed, and some levels in wells in some areas have
3 risen in recent years, significant areas within the aquifer continue to show
4 declining levels, some slightly so, but many with material lowering of water
5 levels," as set forth on Page 5, Lines 19 through 21.

6 27. Specific expert testimony relied upon by the Court to determine that "While the
7 lowering of current water levels has slowed, and some levels in wells in some
8 areas have risen in recent years, significant areas within the aquifer continue to
9 show declining levels, some slightly so, but many with material lowering of
10 water levels," as set forth on Page 5, Lines 19 through 21.

11 28. All facts relied upon by the Court to determine that "Thus, the Antelope Valley
12 adjudication area has been in a state of overdraft for more than 50 years and
13 based on estimates of extraction and recharge, corroborated by physical
14 evidence of conditions in the basin as a whole, and while the annual amount of
15 overdraft has lessened in recent years with increased precipitation and recharge,
16 the effects of overdraft remain and are in danger of being exacerbated with
17 increased pumping and the prospective cyclical precipitation fluctuations shown
18 by the historical record," as set forth on Page 5, Lines 22 through 26 through
19 Page 6, Line 1.

20 29. Specific expert testimony relied upon by the Court to determine that "Thus, the
21 Antelope Valley adjudication area has been in a state of overdraft for more than
22 50 years and based on estimates of extraction and recharge, corroborated by
23 physical evidence of conditions in the basin as a whole, and while the annual
24 amount of overdraft has lessened in recent years with increased precipitation and
25 recharge, the effects of overdraft remain and are in danger of being exacerbated
26 with increased pumping and the prospective cyclical precipitation fluctuations
27 shown by the historical record," as set forth on Page 5, Lines 22 through 26
28 through Page 6, Line 1.

1 30. All facts relied upon by the Court to determine that "The physical evidence
2 establishes that there was significant subsidence occurring throughout the valley
3 ranging from two to six feet or more in certain areas of the valley caused by
4 such pumping and that measurable water levels fell in a substantial part of the
5 valley," as set forth on Page 6, Line 1 through 4.

6 31. Specific expert testimony relied upon by the Court to determine that "The
7 physical evidence establishes that there was significant subsidence occurring
8 throughout the valley ranging from two to six feet or more in certain areas of the
9 valley caused by such pumping and that measurable water levels fell in a
10 substantial part of the valley," as set forth on Page 6, Line 1 through 4.

11 32. All facts relied upon by the Court to determine that "While some of the ongoing
12 subsidence may be attributable to residual subsidence (from earlier periods of
13 shortfall) that would not seem to be an explanation for the extent of continued
14 subsidence," as set forth on Page 6, Lines 4 through 6.

15 33. Specific expert testimony relied upon by the Court to determine that "While
16 some of the ongoing subsidence may be attributable to residual subsidence
17 (from earlier periods of shortfall) that would not seem to be an explanation for
18 the extent of continued subsidence," as set forth on Page 6, Lines 4 through 6.

19 34. All facts relied upon by the Court to determine that "One expert selected two
20 shorter base periods (the total time span of which was considerably less than the
21 50 year period the court believes is more credible), each having a different
22 estimated average natural recharge based upon different precipitation averages
23 from each base period," as set forth on Page 6, Lines 20 through 23.

24 35. Specific expert testimony relied upon by the Court to determine that "One expert
25 selected two shorter base periods (the total time span of which was considerably
26 less than the 50 year period the court believes is more credible), each having a
27 different estimated average natural recharge based upon different precipitation
28 averages from each base period," as set forth on Page 6, Lines 20 through 23.

1 36. All facts relied upon by the Court to determine that "A period of precipitation
2 fluctuations from 1951 to 2004 satisfies that standard. Shorter periods do not,"
3 as set forth on Page 6, Lines 28 through Page 7, Line 1 through 2.

4 37. Specific expert testimony relied upon by the Court to determine that "A period
5 of precipitation fluctuations from 1951 to 2004 satisfies that standard. Shorter
6 periods do not," as set forth on Page 6, Lines 28 through Page 7, Line 1 through
7 2.

8 38. All facts relied upon by the Court to determine that "The total amount of
9 extractions of water by pumping is not seriously in dispute by any of the experts
10 who testified. All seem to agree that pumping currently is estimated to range
11 from 130,000 to 150,000 acre feet a year," as set forth on Page 7, Lines 3
12 through 5.

13 39. Specific expert testimony relied upon by the Court to determine that "The total
14 amount of extractions of water by pumping is not seriously in dispute by any of
15 the experts who testified. All seem to agree that pumping currently is estimated
16 to range from 130,000 to 150,000 acre feet a year," as set forth on Page 7, Lines
17 3 through 5.

18 40. All facts relied upon by the Court to determine that "Other sources of recharge
19 to the basin, including artificial recharge-water pumped into the aquifer from
20 external sources are not in dispute," as set forth on Page 7, Lines 8 through 10.

21 41. Specific expert testimony relied upon by the Court to determine that "Other
22 sources of recharge to the basin, including artificial recharge-water pumped into
23 the aquifer from external sources are not in dispute," as set forth on Page 7,
24 Lines 8 through 10.

25 42. All facts relied upon by the Court to determine that "The nature of the
26 agricultural duties has changed as well," as set forth on Page 7, Line 15.

27 43. Specific expert testimony relied upon by the Court to determine that "The nature
28 of the agricultural duties has changed as well," as set forth on Page 7, Line 15.

- 1 44. All facts relied upon by the Court to determine that "The type of irrigation used
2 by farmers has become more efficient and less water is needed per acre
3 (depending on the crops grown) with more efficient uses of water," as set forth
4 on Page 7, Lines 15 through 17.
- 5 45. Specific expert testimony relied upon by the Court to determine that "The type
6 of irrigation used by farmers has become more efficient and less water is needed
7 per acre (depending on the crops grown) with more efficient uses of water," as
8 set forth on Page 7, Lines 15 through 17.
- 9 46. All facts relied upon by the Court to determine that "But there has also been an
10 increase as well as a change in the nature of the type of agriculture in the valley
11 in material quantities in recent years," as set
12 forth on Page 7, Lines 17 through 19.
- 13 47. Specific expert testimony relied upon by the Court to determine that "But there
14 has also been an increase as well as a change in the nature of the type of
15 agriculture in the valley in material quantities in recent years," as set
16 forth on Page 7, Lines 17 through 19.
- 17 48. All facts relied upon by the Court to determine that "Observable conditions in
18 the valley are inconsistent with those conclusions" as set forth on Page 8, Lines
19 15 through 16.
- 20 49. Specific expert testimony relied upon by the Court to determine that
21 "Observable conditions in the valley are inconsistent with those conclusions" as
22 set forth on Page 8, Lines 15 through 16.
- 23 50. All facts relied upon by the Court to determine that "If there were a surplus,
24 even in the shortened base periods used by the same experts, there should not be
25 subsidence of land, nor the need to drill for water at deeper and deeper levels in
26 those parts of the aquifer most affected by the overdraft" as set forth on Page 8,
27 Lines 16 through 19.

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1 51. Specific expert testimony relied upon by the Court to determine that "If there
2 were a surplus, even in the shortened base periods used by the same experts,
3 there should not be subsidence of land, nor the need to drill for water at deeper
4 and deeper levels in those parts of the aquifer most affected by the overdraft" as
5 set forth on Page 8, Lines 16 through 19.

6 52. All facts relied upon by the Court to determine that "The physical condition of
7 the valley is inconsistent with those estimates that there is and has been a surplus
8 of water in the aquifer" as set forth on Page 8, Lines 19 through 20.

9 53. Specific expert testimony relied upon by the Court to determine that "The
10 physical condition of the valley is inconsistent with those estimates that there is
11 and has been a surplus of water in the aquifer" as set forth on Page 8, Lines 19
12 through 20.

13 54. All facts relied upon by the Court to determine that "Weighing the various
14 opinions, however, the Court finds by a preponderance of the evidence that
15 setting a safe yield at a conservative 110,000 acre feet a year will permit
16 management of the valley in such a way as to preserve the rights of all parties in
17 accordance with the Constitution and laws of the State of California" as set forth
18 on Page 9, Lines 7 through 10.

19 55. Specific expert testimony relied upon by the Court to determine that "Weighing
20 the various opinions, however, the Court finds by a preponderance of the
21 evidence that setting a safe yield at a conservative 110,000 acre feet a year will
22 permit management of the valley in such a way as to preserve the rights of all
23 parties in accordance with the Constitution and laws of the State of California"
24 as set forth on Page 9, Lines 7 through 10.

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1 56. All facts relied upon by the Court to determine that "It should not be assumed
2 that the safe yield management number may not change as climate
3 circumstances and pumping may change, or as the empirical evidence based on
4 experience in managing the basin suggests it is either too high or too low" as set
5 forth on Page 9, Lines 15 through 17.

6 57. Specific expert testimony relied upon by the Court to determine that "It should
7 not be assumed that the safe yield management number may not change as
8 climate circumstances and pumping may change, or as the empirical evidence
9 based on experience in managing the basin suggests it is either too high or too
10 low" as set forth on Page 9, Lines 15 through 17.

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12 DATED: May 24, 2011

Respectfully submitted.

13 CLIFFORD & BROWN

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16 By: 

RICHARD G. ZIMMER, ESQ.

T. MARK SMITH, ESQ.

Attorneys for

BOLTHOUSE PROPERTIES, LLC and

WM. BOLTHOUSE FARMS, INC.

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On May 24, 2011, I served the foregoing document(s) entitled:

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