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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

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COORDINATION PROCEEDING SPECIAL TITLE (Rule 1550(b)) ANTELOPE VALLEY GROUNDWATER CASES INCLUDED ACTIONS: LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 v. DIAMOND FARMING COMPANY, et al., Los Angeles Superior Court Case No. BC325201 LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 v. DIAMOND FARMING COMPANY, et al., Kern County Superior Court Case No. S-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] AND RELATED ACTIONS.	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408 CASE NO. 1-05-CV-049053 *Action Filed: October 26, 2005* **REPLY TO PHELAN PINION HILLS COMMUNITY SERVICES DISTRICT OPPOSITION TO BOLTHOUSE PROPERTIES, LLC'S AND WM. BOLTHOUSE FARMS, INC.'S MOTION IN LIMINE NO. 2 OBJECTING TO INTRODUCTION OF EVIDENCE ON UNSUPPORTED LEGAL THEORY** **Phase 5 Trial** **Date: February 10, 2014** **Time: 9:00 a.m.** **Dept.: Old Dept. One**

WM. BOLTHOUSE FARMS, INC. and BOLTHOUSE PROPERTIES, LLC, (hereinafter "BOLTHOUSE") reply as follows to the arguments by PHELAN PINION HILLS COMMUNITY SERVICES DISTRICT (hereinafter "PHELAN")., in the order presented in the Opposition.

A. BOLTHOUSE AGREES WITH PHELAN'S POSITION THAT A MOTION IN LIMINE IS APPROPRIATE TO EXCLUDE EVIDENCE AND BOLTHOUSE IS NOT REQUESTING ANYTHING FURTHER AT THIS POINT

BOLTHOUSE agrees with PHELAN's observation that a motion is appropriate in limine to exclude evidence. Given the fact there is no legal support for PHELAN's claim, presentation of evidence in support of a legal claim which does not exist, should be excluded pursuant to Evidence Code section 352. Bolthouse is not seeking summary judgement but may present a motion for non-suit at the appropriate time.

B. PHELAN IS NOT ENTITLED TO AN UNSUPPORTED WATER RIGHT CLAIM IN EQUITY.

California law provides that under appropriate circumstances, a claim may be made to the net augmentation of imported water return flows. However, PHELAN's Well No. 14 is located within the Area of Adjudication and within the groundwater basin underlying the Area of Adjudication. There is no legal basis to claim a groundwater right based upon use of native water. The party pumping groundwater either has a right to pump the groundwater in a period of shortage based upon California law, or the party does not. In this case, PHELAN is an appropriator which only began pumping recently. As such, it does not appear to have any appropriative rights and clearly has no overlying groundwater rights.

C.–D. THE CASE LAW CITED BY PHELAN DOES NOT SUPPORT IT'S CLAIM TO A GROUNDWATER RIGHT.

Phelan admits that no California case stands for the proposition that pumping native groundwater creates a groundwater right. The cases cited by Phelan also do not support Phelan's claim. *Montana v. State of Wyoming* (2011) 131 S.Ct. 1765, involved litigation between Montana and Wyoming regarding a river compact and had nothing to do with groundwater. The case does not stand for the proposition that a party in a groundwater basin creates a groundwater right based upon pumping native groundwater.

Phelan also cites *The Department of Ecology v. The U.S. Bureau of Reclamation* (1992) 118 Wash.2d 761. This case involved a dispute between two appropriators related to diversion of surface

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water. The case does not stand for the proposition that a groundwater right is created by pumping native groundwater.

City of Los Angeles v. City of San Fernando (1975) 14 Cal.3d 199 and *Los Angeles v. Glendale* (1943) 23 Cal.2d 68, also cited by Phelan, likewise do not support PHELAN's position. Both of these cases involved entities importing water from outside the watershed. These cases stand for the proposition that under appropriate circumstances, a party may claim rights to the net augmentation from **imported** water. These cases do not support the PHELAN claim that it is entitled to a groundwater right as a result of pumping **native** water.

E. WHETHER OR NOT NATIVE WATER PROVIDES A CRITICAL FUNCTION TO PHELAN DOES NOT CREATE A GROUNDWATER RIGHT.

All parties in the action would claim that pumping groundwater is necessary to serve some critical function. Evidence that pumping native water by PHELAN serves some critical function does not create a groundwater right.

DATED: February 5, 2014

Respectfully submitted,

CLIFFORD & BROWN

By _____
RICHARD G. ZIMMER, ESQ.
T. MARK SMITH, ESQ.
Attorneys for BOLTHOUSE PROPERTIES, LLC and WM. BOLTHOUSE FARMS, INC.

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 February 5, 2014, I served the foregoing document(s) entitled:

REPLY TO PHELAN PINION HILLS COMMUNITY SERVICES DISTRICT OPPOSITION TO BOLTHOUSE PROPERTIES, LLC'S AND WM. BOLTHOUSE FARMS, INC.'S MOTION IN LIMINE NO. 2 OBJECTING TO INTRODUCTION OF EVIDENCE ON UNSUPPORTED LEGAL THEORY

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-FILING IN COMPLEX LITIGATION PURSUANT TO CLARIFICATION ORDER DATED OCTOBER 27, 2005.**

Executed on February 5, 2014, 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

SUE HAYS

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