

RICHARD G. ZIMMER, ESQ. - SBN 107263  
T. MARK SMITH, ESQ. - SBN 162370  
CLIFFORD & BROWN  
A Professional Corporation  
Attorneys at Law  
Bank of America Building  
1430 Truxtun Avenue, Suite 900  
Bakersfield, CA 93301-5230  
Tel: (661) 322-6023 Fax: (661) 322-3508

Attorneys for BOLTHOUSE PROPERTIES, LLC  
and WM. BOLTHOUSE FARMS, INC.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

\* \* \*

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*

**NOTICE OF INTENT NOT TO  
PERSONALLY APPEAR AT TRIAL,  
ARGUMENT AS TO PHELAN PINION  
HILLS COMMUNITY SERVICES  
DISTRICT CLAIMS AND JOINDER WITH  
OTHER PARTIES IN OPPOSITION TO  
PHELAN PINION HILLS COMMUNITY  
SERVICES DISTRICT CLAIMS**

Trial Date: August 25, 2015  
Time: 9:00 a.m.

////

////

////

1                    **NOTICE OF INTENT NOT TO PERSONALLY APPEAR AT TRIAL**

2            Counsel for Bolthouse will be out of the country during the time set for trial of the Phelan  
3 Pinion Hills Community Services District claims. Rather than seeking to delay the trial which was  
4 available on the calendars of most counsel, Bolthouse has agreed to waive its personal presence at the  
5 trial, however, submits the following arguments as to the Phelan claims and hereby joins in the  
6 opposition to Phelan claims.

7                    **STATEMENT OF POSITION RE: PHELAN CLAIMS**

8            **General Arguments**

9            Phelan lacks standing to object to the Proposed Judgment and Physical Solution because  
10 Phelan has no groundwater rights in the Area of Adjudication. Phelan has no appropriative rights  
11 because there is no surplus, the native supply being fully consumed by those with overlying  
12 landowner rights and because Phelan could not have proved any prescriptive rights against Bolthouse  
13 because Bolthouse filed its quiet title action long before Phelan ever pumped groundwater or made  
14 any claims. Further, Phelan confirmed to the court that it would not be making any prescription  
15 claims. Given the fact that Phelan has no groundwater rights in the Area of Adjudication, Phelan has  
16 no standing to object to the Judgment, Physical Solution and/or any claims by Bolthouse.

17            The Area of Adjudication was determined by the Court to be one groundwater basin. The  
18 Court provided Phelan with the opportunity to request a change in the Area of Adjudication  
19 boundaries. However, Phelan declined to make this request. Phelan cannot now seek to change the  
20 basin boundaries or make claims to groundwater which should have been made in the context of a  
21 change in the basin boundaries.

22            Having no claim to groundwater rights, Phelan potentially could have filed a condemnation  
23 action seeking to take groundwater rights. However, Phelan did not do so and did not first pay just  
24 compensation as required by law. Even if Phelan had pursued a condemnation action, there would  
25 have been legal arguments by parties claiming that Phelan had no right to condemn water rights in the  
26 Area of Adjudication since Phelan did not seek to change the groundwater basin boundaries. Finally,  
27 even if the Court were to entertain a condemnation claim or determine that Phelan is entitled to  
28 groundwater beyond what is provided for in the Judgment and Physical Solution, Bolthouse and other

landowners would be entitled to just compensation and other appropriate relief.

As noted, Phelan failed to join in the action in a timely manner. It appears that Phelan, knowing the adjudication was in process, sought to pump groundwater from the basin after the adjudication was initiated in an attempt to create a groundwater right in an overdrafted basin. Phelan should be equitably enjoined from making such claims based upon laches, waiver, unclean hands or other appropriate legal or equitable basis.

### **Specific Comments As To Remaining Causes Of Action**

The Court previously adjudicated the Second and Sixth Causes of Action and found that Phelan had no groundwater rights based upon these causes of action. As to the First Cause of Action, prescriptive rights, Phelan could not possibly have obtained prescriptive rights against Bolthouse which filed its action in 2000, long before Phelan ever pumped any groundwater. Further, Phelan specifically asserted to this Court on the record that it would be dismissing its prescriptive rights claim and would not make any prescriptive rights claims.

The Second Cause of Action for appropriative rights also lacks any factual basis. When Phelan filed its Cross-Complaint, the basin native supply was entirely consumed by overlying pumping and Phelan is not an overlying owner seeking to use groundwater on its property. Further, the evidence indicates there was no surplus of water for Phelan to appropriate at any time. Even if there was a surplus, the first in time rights of other appropriative users fully consumed any surplus. Therefore, there would be no surplus for appropriation by Phelan as a late appropriator of water.

The Third Cause of Action for injunctive relief and a physical solution also lacks merit because Phelan has no standing to request injunctive relief or to object to a physical solution since Phelan has no groundwater right.

The Fourth Cause of Action for a municipal priority based on *Water Code* section 106.5 also lacks merit. The area where the water is being used was never included in the Area of Adjudication by the Court. More importantly, Phelan never requested modification of the basin boundaries to include the area where the water is being used notwithstanding the Court's invitation for Phelan to do so. Additionally, *Water Code* section 106.5 does not apply to water uses involved in the present action.

1 The Fifth Cause of Action for storage space fails as well given the fact that Phelan does not  
2 have a water right to pump groundwater within the basin, because Phelan does not import water from  
3 outside the watershed and because Phelan does not use any groundwater in the basin. Phelan waived  
4 any right to expand the Area of Adjudication.

5 The Sixth Cause of Action for return flows was decided against Phelan in the prior phase of  
6 trial.

7 The Seventh Cause of Action claims unreasonable use of water. Phelan has no standing to  
8 claim unreasonable use of water because it has no groundwater right. Additionally, the water use by  
9 all the parties clearly involves reasonable use of water given that each stipulating landowner has cut  
10 water use in half. However, this issue is set for trial beginning September 28, 2015 in conjunction  
11 with the prove-up of the Judgment and Physical Solution. As part of the September 28 trial, to the  
12 extent necessary, the Court will hear evidence of all parties' reasonable and beneficial water use.

13 The Eighth Cause of Action seeks declaratory relief as to the basin boundaries. As noted, the  
14 Court provided Phelan with the opportunity to seek clarification and/or expansion of the basin  
15 boundaries early on in the case. Phelan never requested any change in the basin boundaries and  
16 cannot now, after multiple phases of trial, claim that the basin boundaries should be adjusted.

17 **JOINDER WITH OTHER PARTIES IN OPPOSITION TO PHELAN CLAIMS**

18 Based upon conversations between the various Stipulating Parties, Bolthouse has discussed  
19 the various Phelan claims and the reasons why the Phelan claims have no merit. Bolthouse further  
20 understands that the Stipulating Parties will contest the Phelan claims at the August 25, 2015 trial and  
21 that they will present briefs, arguments, evidence and/or cross-examination in opposition to the  
22 Phelan claims. Bolthouse hereby joins in the briefs, arguments, evidence and/or cross-examination  
23 presented by other parties in opposition to the Phelan claims.

24 **RESERVATION OF ALL RIGHTS TO PRESENT EVIDENCE, TESTIMONY AND**  
25 **ARGUMENTS AT THE SEPTEMBER TRIAL**

26 As noted, in the continuation of the trial set on September 28, 2015, the Stipulating Parties  
27 will prove up the appropriateness of the Physical Solution including reasonable and beneficial use of  
28 groundwater by the Stipulating Parties. Bolthouse reserves its rights to present briefs, evidence,

1 testimony and arguments as appropriate at the September trial.

2 Respectfully submitted,

3 DATED: August 17, 2015

CLIFFORD & BROWN

4  
5 By 

6 RICHARD G. ZIMMER, ESQ.

7 T. MARK SMITH, ESQ

8 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***

STATE OF CALIFORNIA, COUNTY OF KERN

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, my email address is shays@clifford-brownlaw.com.

On August 17, 2015, I served the foregoing document(s) entitled:

**NOTICE OF INTENT NOT TO PERSONALLY APPEAR AT TRIAL, ARGUMENT AS TO  
PHELAN PINION HILLS COMMUNITY SERVICES DISTRICT CLAIMS AND JOINDER  
WITH OTHER PARTIES IN OPPOSITION TO PHELAN PINION HILLS COMMUNITY  
SERVICES DISTRICT CLAIMS**

by posting 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-FILEING IN COMPLEX LITIGATION  
PURSUANT TO CLARIFICATION ORDER DATED OCTOBER 27, 2005.**

Executed on August 17, 2015, 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  
{2455-2}