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LLC and Wm. Bolthouse Farms, Inc.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

* * *

COORDINATION PROCEEDING)	Judicial Council Coordination
SPECIAL TITLE (Rule 1550(b)))	Proceeding No. 4408
)	
ANTELOPE VALLEY GROUNDWATER)	CASE NO. 1-05-CV-409053
CASES)	
)	
INCLUDED ACTIONS:)	
)	
LOS ANGELES COUNTY WATERWORKS)	COMMENTS OF BOLTHOUSE
DISTRICT NO. 40 v. DIAMOND)	PROPERTIES, LLC AND WM.
FARMING COMPANY, et al.,)	BOLTHOUSE FARMS, INC. REGARDING
Los Angeles Superior Court)	PROPOSED PHASING OF TRIAL
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])	
)	
)	
)	
)	
)	

1 **TRIAL PHASES SHOULD BE SET UP TO DISPOSE OF SIGNIFICANT CAUSES OF**
2 **ACTION TO EXPEDITE TRIAL AND/OR RESOLUTION OF THE LAWSUIT**

3 Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc.
4 disagree with the concept of litigating Basin characteristics in
5 a separate phase of trial. Having a separate phase of trial for
6 Basin characteristics will not dispose of any cause of action.
7 The burden of proof, standard of proof and judicial basis for
8 proving the cause of action are not clear. Finally, trying this
9 non-determinative issue will have the overall effect of unduly
10 delaying trial and/or resolution of the matter.

11 Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc.
12 suggest that the first phase of trial should be a trial on the
13 claim of alleged prescription of water rights. This cause of
14 action is one of the major disputes between the parties and will
15 be determinative of this cause of action. The burden of proof
16 clearly rests with the parties claiming prescription. The
17 standard of proof, by clear and convincing evidence, also is
18 known. Finally, case law gives guidance as to what must be
19 proved to prove a prescriptive rights claim. Finally, the basis
20 for the prescriptive rights claim by the purveyors will
21 necessitate proof of the physical characteristics of the water
22 basin thereby accomplishing in a single trial what would
23 otherwise require two trials.

24 Following a trial on the prescriptive rights issue, other
25 phases of trial can be considered and appropriately analyzed.

26 Wm. Bolthouse Farms, Inc. and Diamond Farming have been

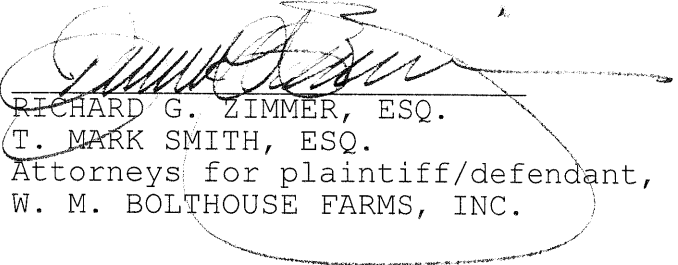
1 engaged in this litigation for over seven (7) years. Los Angeles
2 County derailed the action by filing the Los Angeles County and
3 Kern County actions, which ultimately were consolidated before
4 this court. Bolthouse Properties, LLC and Wm. Bolthouse Farms,
5 Inc. request that the prescriptive rights claims proceed as the
6 first phase of trial.

7
8 DATED: April 22, 2008

Respectfully submitted.

9 CLIFFORD & BROWN

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11 By:


RICHARD G. ZIMMER, ESQ.

T. MARK SMITH, ESQ.

Attorneys for plaintiff/defendant,
W. M. 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, Bakersfield, CA 93301.

On April 22, 2008, I served the foregoing document(s) entitled:

COMMENTS OF BOLTHOUSE PROPERTIES, LLC AND WM. BOLTHOUSE FARMS, INC. REGARDING PROPOSED PHASING OF TRIAL

XX by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

— by placing _ the original, _ a true copy thereof, enclosed in a sealed enveloped addressed as follows:

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

Executed on April 22, 2008, 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.


NANETTE MAXEY
2455-2