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**Attorney for BLUM TRUST**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

Coordinated Proceedings  
Special Title {Rule 1550 (b)}

Judicial Council Coordination  
Proceeding No. 4408

**ANTELOPE VALLEY GROUNDWATER  
CASES**

Santa Clara Case No. 1-05-CV-049053  
Assigned to Hon. Jack Komar

Included Actions:

**BLUM TRUST'S TRIAL SETTING  
CONFERENCE STATEMENT**

Los Angeles County Waterworks District

No. 40 v. Diamond Farming Co.

Los Angeles County Superior Court

Case No. BC 325 201

Date: April 17, 2012

Time: 9:00 a.m.

Dept. No.: 15<sup>th</sup> Floor, Room 1515

Judge: Hon. Jack Komar

Los Angeles County Waterworks District

No. 40 v. Diamond Farming Co.

Kern County Superior Court

Case No. S-1500-CV-254-348

Trial Date For Phase IV: None Set

Wm. Bolthouse Farms, Inc., v. City of

Lancaster; Diamond Farming Co. v. City of

Lancaster; Diamond Farming Co. v. City of

Palmdale Water District.

Riverside County Superior Court

Consolidated Action Nos. RIC 344 840,

RIC 344 436, RIC 344 668

**AND RELATED CROSS-ACTIONS**

TO: All Parties And Their Attorneys of Record:

1 The BLUM TRUST hereby submits the following Trial Setting Conference statement  
2 and briefly addresses the litigation issues to be tried for the Phase IV trial, subject to a evidentiary  
3 Prove-Up Hearing regarding each party's entitlement to their respective share of the native safe yield  
4 based upon that party's or privy to that party's historic extraction/allocation pumping rights.

5  
6 **I. MEDIATION TENTATIVE SETTLEMENT & STATUS**

7 A significant number of parties have attended Mediation Conferences before Justice Ronald  
8 Robie in Sacramento, CA, with the most recent mediation session held on April 2, and 3, 2012. The  
9 Mediation session was productive and resulted in a tentative settlement among certain parties  
10 regarding issues of overlying extraction/allocation water rights and prescriptive groundwater rights,  
11 leaving for further mediation discussions scheduled on April 30, 2012, at 8:30 am, in Sacramento,  
12 CA, groundwater transfers, replacement water, exchange water, recharging of supplemental supply,  
13 structural management of the basin via water master rules and ramp down periods.

14  
15 **II. TRIAL ISSUES FOR ADJUDICATION**

16 Phase IV of the Trial should cautiously marshal the facts which are the foundation for any  
17 and all tentative agreements of the settling parties before incorporating any Accord as the Judgment  
18 of the Court; address any of the above-stated issues raised by parties who are not a party to the  
19 tentative agreement(s); rule on all remedies and relief necessitated as a consequence of the Court's  
20 findings in Phase IV, including the implementation of water control safeguards and methods of  
21 achieving anticipated reduction of production pumping in the future arising out of overdraft and/or  
22 triggering cutbacks.

23  
24 In addition, the Trial must make a determination on the case specific facts regarding the  
25 overlying groundwater extraction/allocation rights of the BLUM TRUST arising out of the Landlord-

1 Tenant privity of contract Agriculture Lease Agreement between Lessor BLUM TRUST and Lessee  
2 WM. BOLTHOUSE FARMS, INC, under which the reasonable and beneficial use of the BLUM  
3 TRUST agriculture parcels were irrigated and crop harvested through the farming operations of  
4 Lessee WM. BOLTHOUSE FARMS, INC.

5  
6 It is most significant that Mr. Richard Zimmer previously Stipulated on behalf of WM.  
7 BOLTHOUSE FARMS, INC and BOLTHOUSE PROPERTIES, LLC, on this court's record before  
8 Judge Jack Komar on September 5, 2008, as well as to Mr. Sheldon R. Blum, that his clients are  
9 **NOT** making any allocation claim to the groundwater extracted to irrigate BOLTHOUSE FARMS'  
10 carrots and onions on the BLUM TRUST's parcels. However now, Mr. Zimmer has become turncoat  
11 and disingenuously alleges that "officious intermeddler" BOLTHOUSE PROPERTIES, LLC, is entitled  
12 to the groundwater allocation credit or otherwise requests a groundwater forfeiture stating that the  
13 subject extracted groundwater was not technically pumped from any water well located on the BLUM  
14 TRUST parcels. 1 Each of the party's parcel are appurtenant to one another.

15  
16 The groundwater extraction/allocation claim of BLUM TRUST is not duplicative to any of  
17 Lessee WM. BOLTHOUSE FARMS, INC's water claims nor injurious or prejudicial to any overlying  
18 party as it arises from historical well documented agriculture use. Similarly, a finding that the BLUM  
19 TRUST is entitled to a share of the basin's native safe yield based on the historic pumping of Lessee  
20 WM. BOLTHOUSE FARMS, INC's agriculture use on the leased parcels does not adversely affect  
21

22 1. Under a Joint Motion to Amend filed by BOLTHOUSE FARMS and BOLTHOUSE PROPERTIES heard on  
23 September 5, 2008, before Judge Jack Komar, the Court granted leave for BOLTHOUSE PROPERTIES to  
24 file an Amended Cross-Complaint and BOLTHOUSE FARMS to file a Cross-Complaint with an attached  
25 Exhibit "A", Spreadsheet that identified APNs' of a total of 7,491.05 acres of leased and owned farmland in  
26 the Antelope Valley basin. The Court further ordered the removal of the BLUM TRUST leased parcels from  
27 BOLTHOUSES' Cross-Complaint based on a recited Stipulation between counsel Mr. Richard Zimmer and  
28 Mr. Sheldon Blum, that Mr. Blum shall continue to protect the water rights of the properties owned by the  
BLUM TRUST in the area of the adjudication. (See Efiled 9/22/08; Doc. #2041).

1 the rights of others to the water involved, nor does it unreasonably effect the overall economy, or  
2 the fish, wildlife or other instream beneficial uses of the basin. (Water Code §1736; and *Barnes v.*  
3 *Hussa*, (2006) 136 Cal.App.4<sup>th</sup> 1358, 39 Cal.Rptr.3d 659).

4 Likewise, the law disfavors forfeitures which are strictly construed in favor of the persons  
5 against whom they are sought to be imposed. (*People v. \$17,522.08 United States Currency* (2006)  
6 142 Cal.App.4<sup>th</sup> 1076, 1081-82; see also, *Tamalpais Lands & Water Co. v. Northwestern Pac. R. Co.*  
7 (1946) 73 Cal.App.2d 917, 929; *County of Los Angeles v. Granite State Ins. Co.* (2004) 121  
8 Cal.App.4<sup>th</sup> 1,3.). Whenever it can possibly be avoided, the courts will not allow a forfeiture to be  
9 enforced on purely technical grounds. (*Associated Engineers, Inc. v. American Nat. Fire Ins. Co.*  
10 (1959) 175 F. Supp. 352).

11 *Water Code §1740*, provides a safeguard and resolution for these type of occurrences as  
12 follows:

13  
14 "Any water right determined under a court decree issued pursuant  
15 to Chapter 3 (commencing with Section 2500) of Part 3, after January  
16 1, 1981, shall be transferable pursuant to this chapter and Chapter 10  
17 (commencing with Section 1700). The court having the appropriate  
jurisdiction over the decreed rights may enter a supplemental decree  
modifying any rights involved upon motion of the board or any party  
with a vested water right."

18 **III. DISCOVERY OF BLUM TRUST IN PREPARATION FOR TRIAL**

19  
20 After having left three (3) telephone messages with Mr. Richard Zimmer to schedule the  
21 depositions of BOLTHOUSES' employees most knowledgeable of the historical groundwater usage  
22 on the BLUM TRUST leased parcels and production of documents at deposition verifying the same,  
23 Mr. Zimmer refused to respond or otherwise cooperate, whatsoever.

24 Therefore, on March 12, 2012, Mr. Sheldon R. Blum for the BLUM TRUST properly Noticed  
25 the depositions and requested the production of documents of WM. BOLTHOUSE FARMS, INC's

1 Agriculture Property Manager Mr. Michael Kovacevich and Groundwater Assessor Employee Mr.  
2 Daniel Wilke, as well as BOLTHOUSE PROPERTIES, LLC's Managerial Employee/Authorized Agent  
3 Mr. Anthony Leggio to commence during the morning hours of April 12, 2012, in Bakersfield, CA.  
4 (See e-file doc. 4911).

5  
6 Notwithstanding, on April 9, 2012, Mr. Zimmer filed a frivolous objection to the taking of the  
7 depositions and production of documents at deposition stating the witnesses and requested  
8 documents will not be produced for deposition. Moreover, Mr. Zimmer's objections did not comply  
9 with *Code of Civil Procedure §2025.410*, regarding errors or irregularities, as well as prior 3 days  
10 personal service of his objections. (See e-filed doc. 5009).

11 The above-stated depositions are meaningful and necessary to prepare for trial and are  
12 calculated to provide evidentiary support and relevant for Prove-Up on establishing the quantity of  
13 groundwater extracted for agriculture use on the BLUM TRUST leased parcels during all relevant  
14 years. None of the depositions are set for any improper purpose nor to cause unnecessary delay or  
15 needless increase in the cost of the litigation. Previously both counsel for Quartz Hill Water District in  
16 November, 2011, propounded written discovery and Los Angeles County Waterworks District No. 40,  
17 in February, 2012, noticed depositions of certain parties without hindrance.

18  
19 Based on the foregoing, it is respectfully requested that the court order the above-stated  
20 depositions and production of documents to proceed without further delay or obstruction by Mr.  
21 Zimmer.

22 **IV. SCHEDULING DATES**

23 Counsel for the BLUM TRUST will be out of state from July 10, 2012, up through July 16,  
24 2012, due to previous scheduling commitments, and suggests that the trial be set on September 10,  
25

1 2012, under an anticipated three (3) week time-frame. Mr. Blum further agrees with the scheduling  
2 suggestions proposed by counsel for Palmdale Water District regarding pre-trial matters.

3 **V. CONCLUSION**

4 Based on the foregoing, it is respectfully requested that this Court make the above-stated  
5 findings and issue an order consistent with the matters stated herein, including the ordering of the  
6 above-referenced depositions and production of documents of BOLTHOUSES' employees, subject  
7 to further discussions and proposals that this Court deems appropriate and just.  
8

9 Dated: April 10, 2012

Respectfully submitted,  
LAW OFFICES OF SHELDON R. BLUM

10  
11 By: 

SHELDON R. BLUM, Esq.  
Attorney For The BLUM TRUST