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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

Coordinated Proceedings
Special Title {Rule 1550 (b)}

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Actions:

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.
Los Angeles County Superior Court
Case No. BC 325 201

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.
Kern County Superior Court
Case No. S-1500-CV-254-348

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
Defendants.

Judicial Council Coordination Proceeding
No. 4408

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

**BLUM TRUST'S TRIAL BRIEF FOR PHASE
4 TRIAL**

Trial Date: May 28, 2013
Time: 9:00 a.m.
Dept. No.: TBD
Judge: Hon. Jack Komar

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STATEMENT OF CASE

Since 1985 to present, the BLUM TRUST has owned farmland that overlies the Antelope Valley Area of Adjudication located in Los Angeles County which is identified by the following APNs and Acreage: (1) 3384-009-001 = 80+/- Acs.; (2) 3384-009-006 = 39 +/- Acs.; (3) 3384-020-012 = 10+/-Acs.; (4) 3384-020-013 =10+/- Acs.; (5) 3262-016-011 = 10+/- Acs. (See *Blum Trust's List of Exhibits "1"- "5"*). By virtue of the location of each Parcel overlying groundwater, the BLUM TRUST has an appurtenant/correlative right to pump and/or divert groundwater for the reasonable and beneficial use of its farmland.

The BLUM TRUST's groundwater rights arises out of the historic beneficial use of its farmland by former Lessee WM. BOLTHOUSE FARMS, INC, (hereinafter "BOLTHOUSE FARMS"), who leased APNs: 3384-009-001 & 3384-009-006 under an Agriculture Lease Agreement dated August 2, 2001, and Modification Lease Agreement dated May 17, 2004. BOLTHOUSE FARMS conducted it's farming operations *via* irrigating and harvesting carrots and onions on the BLUM TRUST's leased 119 Acres from August 2, 2001, up through December 31, 2009. (See *Blum Trust's List of Exhibits "6" & "7"*).

At the commencement of the lease, in lieu of BOLTHOUSE FARMS utilizing 4 months of "Early Possession" "Free Rent" to service the 3 water wells on the BLUM TRUST farmland, BOLTHOUSE FARMS constructed an underground pipeline delivery system and pumped groundwater from its adjacent water well parcels identified as AVOL 14-3N; AVOL 14-3S; & LAID 13-3, onto the BLUM TRUST farmland in breach of the parties Agriculture Lease Agreement. (See *Blum Trust's List of Exhibits "12"*).

Similarly, on April 1, 2005, BOLTHOUSE FARMS "transferred" its adjacent parcels with water wells to BOLTHOUSE PROPERTIES, LLC, under a Master Farm Lease which included the

1 BLUM TRUST's lease irrigation performance which also constituted a breach of Lease Agreement.
2 Thereafter BOLTHOUSE FARMS' declared that it was not claiming any groundwater rights in this
3 action. (See *Blum Trust List of Exhibits "28", Page 3 & Ex. "B", therein*).

4 As discussed herein, former Lessee BOLTHOUSE FARMS and Transferee BOLTHOUSE
5 PROPERTIES have no legal nor equitable title to the groundwater beneficially and reasonably
6 used to irrigate and harvest Carrots & Onions on the BLUM TRUST's farmland.
7

8 Notwithstanding 'Freedom of Lease Contract' between private parties which allocated the
9 groundwater to BLUM TRUST, as a matter of law, the BOLTHOUSE ENTITIES and the BLUM
10 TRUST's farmland represents a "Collective Farming Unit", entitling BLUM TRUST to the water
11 entitlement as a valid exercises of overlying groundwater rights. Similar to riparian rights, so long as
12 the appurtenant parcel overlies the groundwater basin, California courts have long held that it is
13 irrelevant whether the groundwater being applied to it is pumped from the same parcel.
14

15 Consistent with the Summary Expert Report Appendix D-3: Table 4 "Applied Crop Water
16 Duties and Irrigation Efficiency Values" for 'Carrots' and 'Onions', the applied Annual Acre Feet on
17 the BLUM TRUST's farmland were as follows: 2002 Carrots = 456.30 Ac. Ft.; 2003 Carrots = 456.30
18 Ac. Ft.; 2004 Onions = 526.50 Ac. Ft.; 2005 Onions = 526.50; 2006 Fallow; 2007 Carrots = 351 Ac.
19 Ft.; 2008 Onions = 405 Ac. Ft.; 2009 Carrots = 349 Ac. Ft.; 2010-2012 Fallow. (See *Blum Trust's List*
20 *of Exhibits "17" & "18"*).

21 LEGAL ANALYSIS

22 **I. THE BOLTHOUSE ENTITIES AGREE IN RESPONSES TO CASE SPECIFIC DISCOVERY THAT**
23 **THERE WERE NO LEASE TERMS WHICH PROVIDED BOLTHOUSE FARMS WITH ANY**
24 **GROUNDWATER ALLOCATION RIGHTS ARISING OUT OF THEIR FARMING OPERATIONS ON**
THE BLUM TRUST'S LEASED PARCELS

25 The Agriculture Lease Agreement dated August 2, 2001, and Modification Of Lease dated
26

1 May 17, 2004, provided that all of the covenants and agreements herein contained shall be deemed
2 to be "covenants running with the land" which touched and concerned the leased parcels, and shall
3 inure to the benefit of and be binding upon the successors in interest of the parties hereto.

4 Furthermore, the lease expressly acknowledged the Antelope Valley Groundwater
5 Adjudication and its negative impact on the volume and/or cost of groundwater from well pumping
6 throughout the Antelope Valley. It was the intent of the parties and bargained for consideration that
7 the BLUM TRUST farmland retained all groundwater rights. In addition, the Lease prohibited Lessee
8 from assigning, subleasing or transferring the Lease or performance thereunder, without first
9 obtaining the written consent of Lessor.

10
11 Here, both BOLTHOUSE FARMS and BOLTHOUSE PROPERTIES, LLC provided verified
12 responses to BLUM TRUST's First Set Of Special Interrogatories, Set One, wherein they each
13 admitted that the Lease Agreement did not allocate any groundwater rights to the BOLTHOUSE
14 ENTITIES nor do they make such a contention. Rather, the BOLTHOUSE ENTITIES admit that
15 Lessee BOLTHOUSE FARMS only leased BLUM TRUST's water rights arising out its farming
16 operations on the leased parcels. (See *Blum Trust's Lists of Exhibits "8"- "11"*).

17
18 Despite the BOLTHOUSE ENTITIES above stated discovery responses and prior court
19 admissions that no such groundwater claims were being made, the BLUM TRUST has recently
20 learned that BOLTHOUSE PROPERTIES' now claim groundwater rights arising out of Lessee
21 BOLTHOUSE FARMS farming operations which "touched and concerned" Lessor BLUM TRUST's
22 leased parcels. (See *Blum Trust's List of Exhibits "14" & "15"*).

23
24 Based on the foregoing, the BOLTHOUSE ENTITIES have 'Unclean Hands', would be
25 unjustly enriched and acquire a windfall if they were to acquire the groundwater rights. Moreover,
26 the BLUM TRUST would irreparably suffer permanent, prejudicial, substantial and continuous

1 damages if no water allocation would be credited to the BLUM TRUST parcels arising out of the
2 BOLTHOUSE ENTITIES farming operations.

3 *Water Code §1052* terms unauthorized diversion of water a “trespass” and *Water Code*
4 *§1851* speaks of unspecified “equitable and legal relief” available to any person for “harm caused by
5 an unauthorized diversion or a violation of a term or condition of a permit or license issued under this
6 code.” Analogous to a ‘Joint Venture’, ‘Water Transfer’ under *Water Code §1735*, et seq, or
7 otherwise a ‘Constructive Trust’ under *Civil Code §2224*, the BLUM TRUST has a prima facie
8 overlying extraction/allocation right.

9
10 *Water Code §1740*, provides a safeguard and resolution for these type of occurrences as
11 follows:

12 “Any water right determined under a court decree issued pursuant
13 to Chapter 3 (commencing with Section 2500) of Part 3, after January
14 1, 1981, shall be transferable pursuant to this chapter and Chapter 10
15 (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.”

16 It is also significant to note that the Public Water Suppliers Case Management Statement
17 dated January 15, 2013, at Page 1, Lines 22-26, agrees with BLUM TRUST’s contractual analysis.
18 Specifically, the Purveyors state:

19 “It is also important to determine the parcels upon which the water was
20 used versus where the water was pumped, because the water rights
21 belong to the owner of the property where the water was used absent
22 contractual agreement. If this is not taken into account, there is a danger
23 of double counting. This information is essential to be able to analyze
and verify the claimed groundwater use and current pumping.”

24 ////

25 ////

1 **II. ALL GROUNDWATER PUMPED AND DELIVERED BY BOLTHOUSE ENTITIES ONTO THE**
2 **BLUM TRUST'S FARMLAND REPRESENTS A "COLLECTIVE FARMING UNIT" AND**
3 **THEREFORE ALL BENEFICIAL WATER USE IS A VALID EXERCISE OF BLUM TRUST'S**
4 **OVERLYING GROUNDWATER RIGHTS**

5 As California court's have long recognized, the analogy between riparian and overlying
6 groundwater rights is a very close one. (See *W. A. Hutchins*, The California Law of Water Rights
7 (Calif. 1956) at 452-453; *Hudson v. Daily* (1909) 156 Cal. 617, 628; *Peabody v. Vallejo* (1935) 2
8 Cal.2nd 351, 372, 383 ["the California Supreme Court accorded to the underlying and percolating
9 water right a status analogous to the riparian right"].

10 For a riparian right or overlying right to attach to farmland the property must be contiguous
11 to or underneath the watercourse watershed. Therefore, unless under a grant deed or lease
12 agreement the document expressly provides that the water rights do not go with the land, the water
13 right is part and parcel of the property. (*Holmes v. Nay*, (1921) 186 Cal. 231, 236).

14 This method of extracting groundwater for farming operations from one water well on a
15 APN parcel for use on a contiguous or adjoining APN parcel is well known to exist in the
16 Antelope Valley Basin among farmers. Just as water diverted from a surface stream pursuant to
17 a riparian right need not be diverted on the riparian parcel itself (see *Pabst v. Finmand* (1922) 190
18 Cal. 124, 137-138), water may be pumped from a groundwater basin for use on a different parcel
19 so long as the parcel of use overlies the basin, there is no unreasonable loss of use of water
20 caused by the diversion, and the rights of others are not injuriously affected thereby. (See *W.A*
21 *Hutchins*, The California Law of Water Rights (1935) 248-249; 452-453).

22 The California Supreme Court held in *Stanislaus Water Co. v. Bachman* [(1908) 152 Cal.
23 716, 725-726], that where the right to water is delivered in pipes and the pipes themselves constitute
24 an appurtenance to real property, the water retains its character as realty until severance is
25

1 completed by its delivery from the pipes to the consumer. Water diverted from a natural source of
2 supply into artificial conduits for the purpose of conducting it to land for irrigation has been uniformly
3 classified in California as real property, and it does not change its character from realty to personality
4 upon being delivered upon the land for the irrigation thereof. (*Stanislaus Water Company v.*
5 *Bachman, supra; Relovich v. Stuart* (1931) 211 Cal. 422, 428). The reason for this rule is that in the
6 case of water delivered in ditches or pipes for irrigation purposes, severance from the realty does not
7 take place at all. (*Copeland v. Fairview Land & Water Co.* (1913) 165 Cal. 148, 154). Such water
8 "remains real property throughout the process until it serves its purpose by being absorbed into the
9 land which it moistens." (*Stanislaus Water Co. v. Bachman, supra*, 725, 728). The Supreme Court in
10 the *Stanislaus Water Co.*, considered it evident that water may become personal property by being
11 severed from the land and confined in portable receptacles.

12 13 14 **III. BOLTHOUSE PROPERTIES, LLC's GROUNDWATER CLAIMS ARE SPECULATIVE AND DUPLICATIVE TO THE BLUM TRUST'S GROUNDWATER CLAIMS**

15 Pursuant to BLUM TRUST's Notice of Deposition & Production of Business Records dated
16 January 10, 2013, on January 16, 2013, the BLUM TRUST's 'meet and confer' discovery motion to
17 compel depositions and production of documents came before the Hon. Jack Komar. The Court
18 ordered a 6-hour deposition of BOLTHOUSE ENTITIES "PMK" (i.e. Person Most Knowledgeable),
19 with documents to be taken during the week of February 4, 2013. (See *Blum Trust's List of Exhibits*
20 *"19"*).

21
22 On February 8, 2013, in Bakersfield, California, the deposition of BOLTHOUSE FARMS
23 designated "PMK" Irrigation Equipment Manager DANIEL WILKE was taken who appeared with
24 BOLTHOUSE ENTITIES counselors' Mr. Richard Zimmer and Ms. Tracy Saiki without producing any
25 documents, whatsoever.

DANIEL WILKE testified that he understood his designated role as "PMK" by the BOLTHOUSE ENTITIES regarding the amount and duration of groundwater used on BLUM TRUST's farmland. Mr. WILKE also stated that he knew the location of the water well(s) where the groundwater pumping occurred. However as later determined, such was not the case.

Although Mr. WILKE testified that during the 2002- 2009, lease term the groundwater used on the BLUM TRUST farmland came from the water wells on AVOL 14-3, NORTH and/or 14-3 SOUTH, located on Avenue 65 East & J Street, Mr. WILKE was unable to identify which of the two (2), water wells or whether both were used at any given time or year on the BLUM TRUST parcels. Furthermore, Mr. WILKE did not know the type of crop or applied irrigated acreage of the AVOL 14-3 NORTH and 14-3 SOUTH water wells when not in use on the BLUM TRUST parcels. (See *Blum Trust's List of Exhibits "20" & "21"*).

Furthermore, Mr. WILKE testified that his "Updated Declaration of Dan Wilke Regarding Water Use on Blum Property" dated June 26, 2012, attached as Exhibits "C" & "D", State Water Resources Control Board Annual Notices of Groundwater Extraction from 2002-2007, pertained to the AVOL 14-3 SOUTH and the AVOL 14-3 NORTH water wells used on the BLUM TRUST parcels. However he was unable to apportion or segregate any of the recorded Annual Acre Feet to some other parcel then the BLUM TRUST leased parcel. (See *Blum Trust's List of Exhibits "13"*).

In addition, Mr. WILKE admitted that the subject Annual Notices were the same Groundwater Production Applied Acre Feet entries that are recorded in the Declaration of Anthony L. Leggio in Lieu of Deposition Testimony For Phase 4 trial, attached as Exhibit "F", thereto. (See *Blum Trust's List of Exhibits "14"*).

On October 22, 2009, at the hour of 11:00 am, counsel for BLUM TRUST meet with BOLTHOUSE ENTITIES Director of Farming Operations Mr. Darren Filkens and Lancaster Ranch

1 Manager Mr. Steve Rodrigues at the BLUM TRUST farmland for the purpose of inspecting and
2 surrendering the leasehold premises. During the walk-through of the BLUM TRUST leased parcels
3 the parties observed groundwater pipeline hardware casings on both sides of the bordered streets of
4 Avenue J, from imported groundwater delivered from the LAID 13-3 water well at APN 3384-008-
5 020, and 70th Street East from imported groundwater delivered from the AVOL 14-3 NORTH and
6 SOUTH water wells at 3384-004-004. On October 23, 2009, Mr. Blum wrote a confirming letter to
7 Mr. Filkens regarding the meeting and necessary steps to restore the leased premises at the
8 expiration of the lease term. (See *Blum Trust's List of Exhibits "25"*).

9
10 In response, on November 16, 2009, Mr. Blum received an email from BOLTHOUSE
11 FARMS' Agriculture Properties/Legal Manager Mr. Michael W. Kovacevich, which attached the Blum
12 October 23, 2009, letter To Mr. Filkens; a BLUM TRUST Plot Map Diagram; and Pictures that
13 identified two (2) separate sources of groundwater piping delivered onto the BLUM TRUST farmland
14 from both Avenue J and 70th Street East. (See *Blum Trust's List of Exhibits "26"*).

15
16 Mr. Kovacevich's subject email, Mr. Blum's confirming 10/23/009, letter, and the BLUM
17 TRUST Plot Map Diagram are factually inconsistent with Mr. WILKE's "PMK" sworn deposition
18 testimony of February 6, 2013, as well as his three (3) Declarations dated May 24, 2012, June 26,
19 2012 and September 6, 2012, regarding the location of the water wells from where the groundwater
20 was pumped. (See *Blum Trust's List of Exhibits "13" & "16"*).

21 Similarly, on November 30, 2011, Mr. Richard Zimmer remitted an email to Mr. Blum stating
22 that that BOLTHOUSE FARMS' imported groundwater onto the BLUM TRUST parcels from the
23 water wells designated as LAID 13-3 and AVOL 14-3 NORTH and SOUTH. Mr. Zimmer's email is
24 also factually inconsistent with Mr. WILKE's deposition testimony and declarations, however entirely
25 consistent with Mr. Kovacevich's email, and Mr. Blum's observations and letter. (See *Blum Trust's*
26

1 *List of Exhibits "22", "23" & "24")*.

2 Likewise, both Mr. Kovacevich's email and attachments, and Mr. Zimmer's email are entirely
3 consistent with Sheldon Blum's Declaration in Lieu of Deposition Testimony For Phase 4 Trial dated
4 and e-filed on February 8, 2012, as well as the BLUM TRUST's Responses To Discovery Order For
5 Phase 4 Trial dated and e-filed on December 21, 2012, which are incorporated herein by reference.
6

7 **IV. THE CROSS-COMPLAINT OF BLUM TRUST vs. BOLTHOUSE FARMS & BOLTHOUSE**
8 **PROPERTIES WAS SETTLED IN PART UNDER TERMS WHICH PROVIDED THAT BLUM**
9 **TRUST RESERVED THE RIGHT TO CONTEND ON A CORRELATIVE BASIS THAT THE**
10 **GROUNDWATER PUMPED BE ALLOCATED TO ITS LEASED PARCELS**

11 The case history of this matter is long standing between the parties resulting in the
12 BLUM TRUST filing a Cross-Complaint For Breach of Lease Agreement against BOLTHOUSE
13 FARMS and BOLTHOUSE PROPERTIES on December 20, 2007, in the Superior Court of Santa
14 Clara County bearing Case No. 1-05-CV-09053. (See e-file Doc. #1088). Through Court Order by
15 Stipulation between counsel the BLUM TRUST Cross-Complaint was severed from the complex
16 action however the court ordered that each party shall continue to prosecute and/or defend their
17 respective groundwater claims.

18 On or about December 16, 2008, the BLUM TRUST's Cross-Complaint was settled by the
19 parties under terms which provided that BLUM TRUST reserves the right in the Groundwater
20 Adjudication to contend on a correlative basis that the amount of groundwater pumped by the
21 BOLTHOUSES was/is for the beneficial use of the leased parcels during the relevant calendar
22 years of January 1, 2002, through December 31, 2009, and that such pumping should be allocated
23 to the BLUM TRUST parcels under any California water priority allocation system. Whereas, the
24 BOLTHOUSES' may dispute these contentions in the Groundwater Adjudication." Despite the
25 BOLTHOUSE ENTITIES claim that the lease disputes between the parties were entirely settled,
26

1 such was not the case. The Settlement Agreement speaks for itself. (See *Blum Trust's List of*
2 *Exhibits "27", Page 4, 1.e-g*).

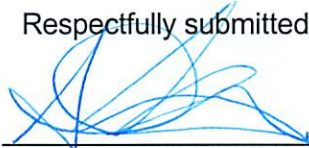
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4 **CONCLUSION**

5 Based on the foregoing, the Agriculture Lease Agreement, and as a matter of law, the
6 BLUM TRUST farmland must be allocated all groundwater rights associated to BOLTHOUSE
7 ENTITIES water wells AVOL 14-3N; AVOL 14-3S; & LAID 13-3, applied on the leased premises from
8 January 1, 2002 through December 31, 2009.

9 Utilizing Mr. Danile Wilke's Blum Ranch Water Usage Chart dated August 10, 2012, and the
10 Summary Expert Report entitled "Applied Crop Water Duties & Irrigation Efficiency Values" for
11 'Carrots' and 'Onions' the correct applied groundwater Annual Acre Feet on the BLUM TRUST
12 farmland were as follows: 2002 Carrots = 456.30 Ac. Ft.; 2003 Carrots = 456.30 Ac. Ft.; 2004 Onions
13 = 526.50 Ac. Ft.; 2005 Onions = 526.50; 2006 Fallow; 2007 Carrots = 351 Ac. Ft.; 2008 Onions =
14 405 Ac. Ft.; 2009 Carrots = 349 Ac. Ft.; 2010-2012 Fallow. (See *Blum Trust's List of Exhibits "17"*
15 *& "18"*).

16 Dated: May 13, 2013

17 Respectfully submitted,

18 
19 Sheldon R. Blum, Esq.
20 Attorney For BLUM TRUST

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