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**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 MEMORANDUM OF POINTS
& AUTHORITIES IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT OR IN THE
ALTERNATIVE SUMMARY ADJUDICATION
OF ISSUES**
) **[C.C.P §437c & Rules of Court, Rule 3.1350]**

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

) Hearing Date: December 22, 2014
) Time: 10:00 a.m.
) Dept. No: TBD
) Judge: Hon. Jack Komar

Wm. Bolthouse Farms, Inc., v. City of
Lancaster; Diamond Farming Co. v. City of
Lancaster; Diamond Farming Co. v. City of
Palmdate Water District.
Riverside County Superior Court
Consolidated Action Nos. RIC 344 840,
RIC 344 436, RIC 344 668

) Trial Date: None Set

AND RELATED CROSS-ACTIONS.

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I.
**BLUM TRUST'S OVERLYING AND CORRELATIVE GROUNDWATER PRODUCTION
RIGHTS AND THE ANTELOPE VALLEY BASIN AJUDICATION**

1. Since 1985 to present, Sheldon Blum/BLUM TRUST (aka "Sheldon R. Blum, Trust For The Sheldon R. Blum Trust"), was and is, an overlying landowner' of approximately 150 acres of farmland in the Antelope Valley Basin located in the City of Lancaster, County of Los Angeles, California, identified by APNs and acreage, as follows: (1) 3384-009-001 = 80+/- Acs.; (2) 3384-009-006 = 39 +/- Acs.; (3) 3384-020-012 = 10+/-Acs.; (4) 3384-020-013 =10+/- Acs.; and (5) 3262-016-011 = 10+/- Acs. (Separate Statement of Undisputed Material Facts, Issue No. 1, Pg. 2, #1).

2. By virtue of the location of each overlying parcel, the BLUM TRUST has a overlying/correlative right to pump and/or divert groundwater for the reasonable beneficial use of its farmland. *(Separate Statement, Issue No. 1, Pg. 2, #2).*

3. On August 2, 2001, an Agriculture Lease Agreement was executed between Lessor BLUM TRUST and Lessee WM. BOLTHOUSE FARMS, INC. (hereinafter 'BOLTHOUSE FARMS), wherein Lessee agreed to have all groundwater pumped for the reasonable beneficial use of BLUM TRUST's approximate 120 acres of farmland at APN 3384-009-001 & 3384-009-006. *(Separate Statement, Issue No. 1, Pg. 3, #7).*

4. The parties farming operation created a "Farming Unit", and was a valid exercise of BLUM TRUST's overlying production rights in conformity with good agriculture farming standards and community practices, and in compliance with all applicable State and Federal laws. *(Separate Statement Issue No. 1, Pgs. 4 #9 & 7 #20; & Declaration of Ali Shahroody, PE.).*

5. BLUM TRUST's groundwater production rights are limited and measured by its 'Place of Use' methodology with BOLTHOUSE FARMS, with reference to crop season Years 2004-2005,

1 when 'Onions' were irrigated on 118 acres of BLUM TRUST's farmland. The Summary of Applied
2 Crop Duties for Onions (aka *Summary Expert Report Appendix D-3: Table 4 "Applied Crop Water*
3 *Duties and Irrigation Efficiency Values"*), represents the most accurate measurement for
4 groundwater production rights, without any danger of double counting or impairment to the rights of
5 other overlying landowners and rights through prescription. Under these evidentiary supported
6 charts, BLUM TRUST's water production rights are independently established from BOLTHOUSE
7 ENTITIES business records and computes annually at **531 Ac. Ft. Per Year**. (*Separate Statement*
8 *Issue No. 1, Pgs. 6-7, #15 - #19*).

10 6. On or about November 29, 2004, Los Angeles County Waterworks District No. 40,
11 (hereinafter "PUBLIC WATER SUPPLIERS") filed a Complaint For Declaratory And Injunctive Relief
12 And Adjudication of Water Rights in the Superior Court of Los Angeles County (Case No. BC
13 325201), and the Superior Court of Kern County (Case No. S-1500-CV 254348). The Complaints
14 sought a judicial determination of all rights to groundwater in the Antelope Valley Basin. The
15 Complaint further sought to restrict and cut back the right to pump the Basin's groundwater based
16 on priority rights, in order to protect and conserve the limited water supply as a consequence of the
17 Basin's overdraft and lack of groundwater control and management.

19 7. On or about January 10, 2007, the PUBLIC WATER SUPPLIERS filed a First Amended
20 Cross-Complaint For Declaratory And Injunctive Relief & Adjudication of Water Rights for purposes
21 of these coordinated proceedings, and alleged the same causes of actions as its Complaint. The
22 First Amended Cross-Complaint sought a judicial determination of the extent and priority of each
23 party's groundwater rights within the adjudication area of the Antelope Valley Groundwater Basin,
24 as determined by the Court's Orders in this case. (*Request For Judicial Notice, Ex. "F"*).

1 8. On December 20, 2007, Cross-Defendant BLUM TRUST voluntarily answered and
2 electronically served on all parties its Answer to the PUBLIC WATER SUPPLIER's pleadings and
3 asserted Thirty One (31) Affirmative Defenses. (*Separate Statement Issue No. 1, Pg. 7 #21*).

4 9. In response to Cross-Complainants' Cross-Complaint, numerous parties filed other
5 Cross-Complaints which sought various forms of relief, including the priority right to pump from the
6 Basin pursuant to overlying rights. In addition, a Willis Class Action was formed and a Complaint
7 filed consisting of 'non-pumping' dormant overlying property owners, as well as a Woods Class
8 Action was formed and a Complaint on their behalf filed consisting of small overlying pumping
9 owners, which sought declaratory relief and money damages, including class counsel's attorney
10 fees against the PUBLIC WATER SUPPLIERS, *only*. (*See Request For Judicial Notice, Ex. "L"*).

11 10. On December 20, 2007, BLUM TRUST filed in these coordinated proceedings, a Cross-
12 Complaint against BOLTHOUSE FARMS, and BOLTHOUSE PROPERTIES, LLC, (hereinafter
13 "BOLTHOUSE PROPERTIES" and collectively "BOLTHOUSE ENTITIES"), in the Superior Court of
14 Santa Clara County (Case No. 1-05-CV-049053). BLUM TRUST's pleadings alleged various
15 causes of actions, including Breach of Agriculture Lease Agreement and Modification Lease
16 Agreement arising out of the parties "*Farming Unit*". (*Separate Statement, Issue No. 2, Pg. 8, #2*).

17 11. The BLUM TRUST action was severed by Stipulation & Court Order and on December
18 16, 2008, settled by the parties with Plaintiff BLUM TRUST reserving under '**reservation of**
19 **rights**' the following:

20 f. That consistent with the terms of the Stipulation and Order
21 severing the Complaint from the Groundwater Adjudication,
22 **the Parties shall continue to remain parties to the**
23 **Groundwater Adjudication and each will prosecute and/or**
24 **defend their respective groundwater rights.**

g. Without changing the terms of paragraph "f." above, **Plaintiff reserves the right in the Groundwater Adjudication to contend on a correlative basis that the volume or amount of groundwater pumped by Wm. Bolthouse Farms, Inc, and its sublessees in undertaking its/their farming operations was/is for the beneficial use on the Parcels during the relevant calendar years of January 1, 2002, through December 31, 2009, and claims such pumping should be allocated and credited to the Parcels under any California water priority allocation system.**

Defendants dispute the contentions set forth by Plaintiff in this paragraph and reserve the right to dispute these contentions in the Groundwater Adjudication.
(*Separate Statement Issue No. 2, Pg. 9 #5*).

12. On or about May 23, 2013, BLUM TRUST and the PUBLIC WATER SUPPLIERS executed and e-filed a document entitled STIPULATION OF BLUM TRUST AND PUBLIC WATER SUPPLIERS FOR PHASE 4 TRIAL REGARDING 2011 & 2012 WATER USE which provided BLUM TRUST with the right to introduce in a later phase any evidence to support its claimed water rights based on evidence of water use in years other than 2011 and 2012.
(*Separate Statement Issue No. 1, Pg. 6 #16*).

13. Now pending before this court is a Proposed Global Stipulation For Entry of Interlocutory Judgment And Physical Solution which was drafted by the settling Overlying Landowners, Public Water Suppliers and the Federal Government at BLUM TRUST's exclusion. Without revealing the substance of the terms of the proposed global settlement, the agreement in its present form circumvents well settled principals of law, conflicts with equitable doctrines, impairs or breaches Cross-Complainants' and BLUM TRUST's May 23, 2013 Stipulation, as well as contravenes overlying rights of due process and equal protection under the law as to BLUM TRUST's groundwater rights. (*Separate Statement Issue No. 3, Pgs. 11-14, Sections A-D; Request For*

1 *Judicial Notice, Ex. "M").*

2 14. Furthermore, the Woods Class counsel's attorney fee claim is not the responsibility of
3 BLUM TRUST to satisfy either pro-rata or under any other formula, as a matter of law. (*Separate*
4 *Statement Issue No. 5, Pg. 16, #1-4).*

5 15. On August 11 & 12, 2014, a Case Status Conference was held before the Hon. Jack
6 Komar, during which the Court granted BLUM TRUST's counsel permission to file a motion for
7 summary judgment/summary adjudication of issues. (*Declaration of Sheldon Blum Pg. 12 ¶38*).

8 As demonstrated herein, and in BLUM TRUST's Separate Statement of Undisputed
9 Material

10 Facts and Supporting Evidence set forth herein, BLUM TRUST is entitled to a judgment as a matter
11 of law, as there are no genuine triable issue(s) of any material fact nor evidentiary matters in
12 dispute which would bar BLUM TRUST's superior and/or co-equal correlative share of 85% of the
13 Federally adjusted native safe yield for reasonable beneficial use of BLUM TRUST's approximate
14 150 acres, free of replenishment assessment, and a quantified annual extraction/production right
15 in times of overdraft and cutback under the California water priority allocation system.
16

17
18 **II**

19 **A PARTY MAY MOVE FOR SUMMARY JUDGMENT OR SUMMARY ADJUDICATION AS TO**
20 **ONE OR MORE CAUSES OF ACTION OR ISSUES WHERE THE ACTION OR CAUSE OF**
21 **ACTION HAS NO MERIT**

22 **1. Summary Judgment**

23 Under C.C.P. §437c(a), any party may move for summary judgment in any action or
24 proceeding if it is contended that the action has no merit. A motion for summary judgment shall be
25 granted if all the papers submitted show that there is no triable issue as to any material fact and

1 that the moving party is entitled to a judgment as a matter of law. [C.C.P. 437c(c); *Mammoth*
2 *Mountain Ski Area v. Graham*, 135 Cal. App. 4th 1367, 1370, 38 Cal. Rptr. 3d 422 (3d Dist. 2006)].

3 In determining whether the papers show that there is no triable issue as to any material fact
4 the court shall consider all of the evidence set forth in the papers, except that to which objections
5 have been made and sustained by the court, and all inferences reasonably deductible from the
6 evidence, except that summary judgment shall not be granted based on inferences deductible from
7 the evidence, if contradicted by other inferences or evidence which raises a triable issue as to any
8 material fact. [C.C.P. §437c(c)].

9
10 A defendant or cross-defendant has met his/her/its burden of showing that a cause of action
11 has no merit if either of the following exists: (1) One or more of the elements of the cause of action
12 cannot be separately established, even if that element is separately pleaded; or (2) A defendant or
13 cross-defendant establishes an affirmative defense to that cause of action. [C.C.P. §437c(o)].

14
15 Where a defendant or cross-defendant establishes an affirmative defense to all of the claims
16 against him summary judgment, and not summary adjudication is the proper remedy. [24 Hour
17 *Fitness, Inc. v. Superior Ct*, 66 Cal.App. 4th 1199, 1216, fn. 12, 78 Cal.Rptr. 2d 533 (1st Dist. 1998).

18 Once the defendant or cross-defendant has met that burden, the burden shifts to the
19 plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to
20 that cause of action or a defense thereto. The plaintiff or cross-complainant may not rely upon the
21 mere allegations or denials of its pleadings to show that a triable issue of material fact exists, but
22 instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that
23 cause of action or a defense thereto. (C.C.P. §437c(p)(2).

1 **2. Summary Adjudication**

2 Specific to this motion under C.C.P. §437c(f)(1), a party may move for summary
3 adjudication as to one or more causes of action within an action, one or more affirmative defenses,
4 one or more claims for damages, or one or more issues of duty, if that party contends that the
5 cause of action has no merit. A motion for summary adjudication shall be granted only if it
6 completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue
7 of duty.
8

9 A motion for summary adjudication may be made by itself or as an alternative to a motion
10 for summary judgment and shall proceed in all procedural respects as a motion for summary
11 judgment [C.C.P. §437c(f)(2)]. If made in the alternative, a motion for summary adjudication may
12 make reference to and depend upon the same evidence submitted in support of the summary
13 judgment motion. [Cal. Rules of Court, Rule 3.1350(b)].
14

15 **III**

16 **ALL GROUNDWATER PUMPED AND DELIVERED VIA IRRIGATION PIPES BY BOLTHOUSE**
17 **FARMS ONTO BLUM TRUST'S FARMLAND FOR GROWING CROPS, REPRESENTS A**
18 **'FARMING UNIT' ENTITLING BLUM TRUST TO ALL GROUNDWATER PRODUCTION**
19 **ALLOCATION RIGHTS**

20 The California Supreme Court has long recognized the analogy between riparian and
21 overlying groundwater rights and have accorded the same principals and rights to the case of
22 percolating waters . (See *W. A. Hutchins*, The California Law of Water Rights (Calif. 1956) at 452-
23 453; *Hudson v. Daily* (1909) 156 Cal. 617, 628; *Peabody v. Vallejo* (1935) 2 Cal.2d 351, 372, 383).
24 "Overlying beneficial uses are regarded in law as akin to riparian beneficial uses and are given the
25 same protection." (*United States v. 4.105 Acres of Land in Pleasanton* 68 Fed. Supp. 279, 288
(N.D. Calif. 1946). The two doctrines, correlative and riparian, are founded on the same principals

1 that each proprietor has the right to use the waters on his land, but is limited to a reasonable share
2 as against the others similarly situated. (*O'Leary v. Herbert*, 5 C. 2d 416, 422, 55 P. 2d. 834).

3 Just as water diverted from a surface stream pursuant to a riparian right need not be
4 diverted on the riparian parcel itself, water may be pumped from a groundwater basin for use on a
5 different parcel so long as the parcel of use overlies the basin, there is no unreasonable loss of use
6 of water caused by the diversion, and the rights of others are not injuriously affected thereby.
7 (*Pabst v. Finmand* (1922) 190 Cal. 124, 137-138; See *W.A Hutchins, The California Law of Water*
8 *Rights* (1956) 248-249; 452-453).

9 The California Supreme Court in *Stanislaus Water Co. v. Bachman* [(1908) 152 Cal. 716,
10 725-726], extended the groundwater diversion right, holding that where the right to water is
11 delivered in pipes the pipes themselves constitute an appurtenance to real property, and the water
12 retains its character as realty until severance is completed by its delivery from the pipes to the
13 consumer. (*Relovich v. Stuart* (1931) 211 Cal. 422, 428; *Standard v. Round Valley Co.* 77 Cal. 403,
14 19 P. 689). Groundwater does not change its character from realty to personal property upon being
15 delivered upon the land for the irrigation. The water, by that use of it, permeates the soil and
16 remains a part of the realty. (*Copeland v. Fairview Land & Water Co.* (1913) 165 Cal. 148, 154).
17 Such water "remains real property throughout the process until it serves its purpose by being
18 absorbed into the land which it moistens." (*Stanislaus Water Co. v. Bachman, supra*, 725, 728).

19 BLUM TRUST's groundwater production rights on its leased 120 acres of farmland are
20 derived from the same principal, and classified as a '*Farming Unit*' with BOLTHOUSE FARMS,
21 measured and limited by the '*Place of Use*' methodology. (*Ickes v. Fox* (2/1/1937) 300 US 82, 94;
22 57 S.Ct. 412). The '*Place of Use*' approach most accurately represents reasonable and beneficial
23

1 groundwater usage, without any danger of "double counting", nor impairment or injurious to the
2 rights of others. (*Separate Statement Issue No. 1, Pg. 6, #15; See Declaration of Ali Shahroody*)

3 This is in harmony with the PUBLIC WATER SUPPLIERS' CASE MANAGEMENT
4 STATEMENT dated January 15, 2013, which addressed the 'Place of Use' production allocation,
5 as follows:
6

7 "It is also important to determine the parcels upon which the water was
8 used versus where the water was pumped, because the water rights
9 belong to the owner of the property where the water was used absent
10 contractual agreement. If this is not taken into account, there is a danger
of double counting. This information is essential to be able to analyze
and verify the claimed groundwater use and current pumping."
(*Request For Judicial Notice, Ex. "J", Page 1, Lines 22-26*).

11 Likewise, the CITY OF LOS ANGELES' PROPOSAL CONCERNING FORM
12 DISCOVERY dated November 20, 2012, sets forth the same proposition that multiple contiguous
13 parcels must be classified as a "Unit" to properly characterize and allocate the extraction to the
14 'Place of Use' parcel, as follows:
15

16 Some landowners, such as the City of Los Angeles, own
17 multiple contiguous parcels as identified by APNs, and may extract
18 water from a well on one AP for use on an adjoining or nearby AP. The
proper scope of inquiry is the extent and nature of water use on
property owned by a party, and on the description of the property on
19 which the water is used.....

20 Should the Court prefer the more detailed discovery order proposed by
21 the PWS, the City of Los Angeles suggests that the term "parcel" as
22 used in the interrogatories be defined as "a parcel identified by an
Assessor's Parcel Number or multiple contiguous parcels so identified
that as operated and farmed as a unit." Such a definition would allow
23 farmers and water users who operate property identified by several
APNs but which is contiguous and operated or farmed as a unit to
properly characterize their water extraction and use."
24 (*Request For Judicial Notice, Ex. "K", Pages 2-3, Lines 5-28, & 1-3*).

1 Here, Cross-Complainants do not have any quarrel with adopting a doctrine that provides
2 the groundwater production entitlement right be allocated to the '*Place of Use*' farmland, as
3 oppose to the '*Place of Diversion*', as a valid exercise of overlying production rights. There
4 cannot be a forfeiture, especially when the general welfare and public interest of water use is
5 declared to be "*put to the beneficial use to the fullest extent of which they are capable...*". (CA
6 *Constitution, Art. 10, Sec. 2 'Water'*). Similarly, the law disfavors forfeitures which are strictly
7 construed in favor of the persons against whom they are sought to be imposed. (*Tamalpais Land &*
8 *Water Co. v. Northwestern Pac. R. Co.* (1946) 73 Cal.App.2d 917, 929).

9 Failure to accord and quantify BLUM TRUST's water production rights on its leased APNs:
10 3384-009-001 = 80+/- Acs.; & 3384-009-006 = 39 +/- Acs., especially in times of overdraft and
11 cutback under the California priority water allocation system would leave its farmland barren,
12 unproductive, and result in irreparable loss, significantly affect the value of the parcels, and deprive
13 BLUM TRUST of the agriculture use for growing any crop, including onions, carrots and alfalfa.

14 Although BLUM TRUST's overlying groundwater rights for its 30 acs. under APNs: (1) 3384-
15 020-012 = 10+/-; (2) 3384-020-013 = 10+/- Acs.; and (3) 3262-016-011 = 10+/- Acs., are dormant,
16 BLUM TRUST's correlative rights attaches to such 'future or prospective' reasonable beneficial
17 uses, the quantity of which cannot be fixed in amount until the need arises." (*Tulare Irrigation*
18 *District v. H. E. Wright* (1935) 3 Cal.2nd 489, p. 525, 45 P.2d 972). The rights of an overlying
19 landowner, like a riparian owner, are not extinguished or impaired by the fact that the water has not
20 been beneficially used on the overlying land, as the overlying right exists, whether exercised or not.

IV

THE BOLTHOUSE ENTITIES HAVE ADMITTED BOTH UNDER THE LEASE AGREEMENT & IN DISCOVERY THAT BOLTHOUSE FARMS LEASED BLUM TRUST'S "WATER RIGHTS", WHICH IS PRIMA FACIA FOR THE APPLICATION OF THE DOCTRINES OF EQUITABLE ESTOPPEL & JUDICIAL ESTOPPEL

Under the terms of the Agriculture Lease Agreement dated August 2, 2001, BLUM TRUST and BOLTHOUSE FARMS expressly cited the Antelope Valley Basin adjudication and addressed the importance of water production rights in times of shortage and cutback, since its impact on well pumping, the volume available, and cost of the groundwater for the BLUM TRUST's farmland would have a significant consequence on their farming operation. By declaring that "*all covenants run with the land* and shall inure to the benefit of and be binding upon *the successors in interest* of the parties", they adopted the technical definitions of such covenants to express their intention, consideration, and in effect, avowed the words of *Civil Code §1460, 1461 & 1462. 1* (*Stanislaus Water Co. v. Bachman, supra*, 152 Cal. 716, 728). (*Separate Statement Issue No. 2, Pg. 8, #1*).

On May 9, 2008, BOLTHOUSE PROPERTIES, President Anthony L. Leggio provided a verified Response To BLUM TRUST's Special Interrogatories, Set One, and admitted under Response No. 92 that: "**WM. BOLTHOUSE FARMS, INC lease water rights regarding the SUBJECT PROPERTY** *are set forth in the lease agreement and are contractual in nature. BOLTHOUSE PROPERTIES, LLC does not have any leasehold or contractual water rights relationship with BLUM.*" (*Separate Statement Issue No. 2, Pg. 9, #4*).

1. Civil Code §1460, "Certain covenants contained in grants of estate in real property, are appurtenant to such estates and pass with them so as to bind the assigns of the covenantor and to vest in the assigns of the covenantee, in the same manner as if they had personally entered into them."
Civil Code §1462, "Every covenant contained in a grant of an estate in real property which is made for the direct benefit of the property, or some part of it then in existence runs with the land."

Consistent with BLUM TRUST's 'Place of Use' production allocation right, BOLTHOUSE FARMS, INC's General Counsel, Ms. Tracy M. Saiki' testified in her Declaration in lieu of Phase 4 Trial dated January 31, 2013, that "**BOLTHOUSE FARMS is not claiming any groundwater rights in this action.**" (*Separate Statement Issue No. 2, Pg. 9 #6*").

"Equitable Estoppel" also arises from declarations or conduct of the party estopped. "Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and act upon such belief, he is not, in any litigation arising out of such statement or conduct permitted to contradict it." (*Evidence Code §623; Klein v. Farmer* (1948) 85 Cal.App.2d 545, 552, 194 P.2d 106).

"Judicial Estoppel", sometimes referred to as the doctrine of preclusion of inconsistent positions, prevents a party from "asserting a position in a legal proceedings that is contrary to a position previously taken in the same or some earlier proceedings. The doctrine serves a clear purpose to protect the integrity of the judicial process." (*Jackson v. Los Angeles* (1997) 60 Cal.App.4th 171, 181; 70 Cal.Rptr.2d 96).

Based on: (1) The terms of the Agriculture Lease that all covenants run with the land; (2) BOLTHOUSE ENTITIES verified discovery response that it leased BLUM TRUST's water rights; and (3) General Counsel to BOLTHOUSE FARMS' declaration of relinquishing its groundwater rights, doctrines of *Equitable Estoppel* and *Judicial Estoppel* bar the BOLTHOUSE ENTITIES, both by conduct and judicially, from contesting or contradicting BLUM TRUST's groundwater production rights. (*Separate Statement Issue No. 2, Pg. 10, #7 & #10*).

Failure to apply these equitable principals and judicial admissions, would work an injustice against BLUM TRUST, and nullify a declared strong public interest policy of water usage to the

1 fullest extent in which the land is capable. (CA. Const. Art. 10, Sec. 2, supra).

2 It is also obvious that the BOLTHOUSE ENTITIES have long recognized and documented
3 the quantity of groundwater reasonably beneficially used on the BLUM TRUST's APN 3384-009-
4 001, & APN 3384-009-006, farmland in its business 'Pumping Records'. This includes:

5 (A) Declaration of Anthony L. Leggio In Lieu of Deposition Testimony For
6 Phase 4 Trial dated 1/30/13, with attachment Exhibit "F", '*Groundwater Production In Acre Feet*
7 *of Water*' and Exhibits "E-1& E-2" '*Pump Hours Reading Log*'. (Request For Judicial Notice, Ex.
8 "C").

9 (B) Addendum Exhibits To Declaration of Anthony L. Leggio dated 5/13/13,
10 Exhibit "P-1", *Crop Rotation*, & Exhibit "P-2" *Crop Legend Map*. (Request For Judicial Notice, Ex.
11 "D").

12 (C) 'Annual Notice(s) of Groundwater Extraction & Diversion' Forms on
13 AVOL 14-3N & AVOL 14-3S, (*id.* Recovered for Yrs. 2002-2007). (*Separate Statement Issue No.*
14 *1 Pg. 4 #10*).

15 (D) Crop Duties & Irrigated Acres, *Summary Expert Report Appendix D-3: Table 4*
16 "Applied Crop Water Duties and Irrigation Efficiency Values" for 'Carrots' & 'Onions'.
17 (*Separate Statement Issue No. 1 Pg. 6 #18*).

18 Based on the foregoing, BLUM TRUST's groundwater rights are computed from its
19 "Farming Unit" with BOLTHOUSE FARMS during crop season years 2004-2005, when 'Onions'
20 were irrigated and harvested on 118 acres of BLUM TRUST's farmland. Under the above-stated
21 (*id.* (B) Addendum Exhibits To Declaration of Anthony L. Leggio, Exhibit "P-1", *Crop Rotation*, &
22 Exhibit "P-2" *Legend Crop Map*; and (D) *Summary Expert Report Appendix D-3: Table 4 Applied*
23 *Crop Water Duties and Irrigation Efficiency Values*), BLUM TRUST's production rights equal 531
24 Ac. Ft. Per Year. (118 acres irrigated x 4.5 Onions). (*Separate Statement Issue No. 1, Pgs. 6-7,*
25 *#18 & 19; See Declaration of Ali Shahroody, P.E.*).

26 The PUBLIC WATER SUPPLIERS' First Amended Cross-Complaint, at Page 13,
27 Paragraph 40(A), creates a mutual and reciprocal foundation for the principal of the highest annual
28

1 volume of groundwater extracted as a basis for computing a PUBLIC WATER SUPPLIERS' and
2 Overlying Landowners' groundwater production right. 2 (*Separate Statement, Issue No. 1, Pg. 5,*
3 *#14.*)

4 BOLTHOUSE FARMS relinquished its groundwater rights in this action, after having
5 declared under in discovery responses that it *leased BLUM TRUST'S water rights*. Based on the
6 doctrines of Equitable Estoppel & Judicial Estoppel the BOLTHOUSE ENTITIES, as well as the
7 PUBLIC WATER SUPPLIERS must be estopped from contesting or contradicting BLUM TRUST's
8 production rights. (*Separate Statement Issue No. 2, Pg. 10 #7 & #10, and Issue No. 3 B., Pg. 12*
9 *#1-4.*)

11 V

12 **THE PUBLIC WATER SUPPLIERS' FIRST THROUGH SEVENTH CAUSES OF ACTION**
13 **AGAINST BLUM TRUST'S OVERLYING/CORRELATIVE WATER RIGHTS HAVE NO MERIT**

14 The PUBLIC WATER SUPPLIERS' First Amended Cross-Complaint alleged against all
15 Cross-Defendants, including BLUM TRUST, a First Cause of Action for Declaratory Relief-
16 Prescriptive Rights; Second Cause of Action for Declaratory Relief-Appropriative Rights; Third
17 Cause of Action for Declaratory Relief-Physical Solution; Fourth Cause of Action for Declaratory
18 Relief-Municipal Priority; Fifth Cause of Action for Declaratory Relief-Storage of Imported Water;
19 Sixth Cause of Action for Declaratory Relief-Recapture of Return Flows From Imported Water
20 Stored in the Basin; Seventh Cause of Action for Unreasonable Use of Water; And Eight Cause of
21 Action for Declaratory Relief on the Boundaries of Basin.

22 The First Amended Cross-Complaint against BLUM TRUST has no merit. BLUM TRUST

23
24 2. "40. To provide water to the public, the Public Water Suppliers have and claim the following rights: (A) The
25 right to pump groundwater from the Antelope Valley Groundwater Basin in an annual amount equal to the
highest volume of groundwater extracted by each of the Public Water Suppliers in any year preceding entry of
judgment in this action;"

1 as an overlying landowner of approximately 150 acres of farmland has a superior, but not less than
2 a co-equal right to pump groundwater for the reasonable beneficial use of its farmland as against
3 the PUBLIC WATER SUPPLIERS' alleged prescriptive rights from the native safe yield. The
4 PUBLIC WATER SUPPLIERS' Municipal rights are co-equal to BLUM TRUST's water rights, while
5 their appropriative water rights are subordinate to BLUM TRUST's overlying/correlative landowner
6 rights in times of the Basin's overdraft. (*Separate Statement, Issue No. 1, Pg. 7, #22*).

8 "Court's typically classify water rights in an underground basin as overlying, appropriative or
9 prescription" (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal4th 1224, 1240; 99 Cal.Rptr2d
10 294). Overlying rights are special rights to use groundwater under the owner's property, and are
11 superior to all other users. (*Mojave, supra*, 23 Cal.4th 1224, 1237, fn. 7.). The overlying right, like
12 the riparian right, is associated with the ownership of the land, is appurtenant thereto, and
13 correlative among overlying landowners. (*Mojave, supra*, p. 1240).

15 When the safe yield is insufficient to satisfy the reasonable beneficial needs of all users,
16 those with overlying rights take precedent. "Each may use only his reasonable share when water
17 is insufficient to meet the needs of all." (*California Water Service Co. v. Edward Sidebotham &*
18 *Son* (1964) 224 Cal.App.2d 715, 725; See *Mojave supra*, p. 1242). When there is a shortage,
19 the court must determine how much each of the overlying owners is using in order to fairly
20 allocate the available supply among them. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th
21 266, 298, 149 Cal.Rptr.3d 491, 518).

22 As the Supreme Court directed, when the total amount of water covered by all of the rights
23 of the parties exceeds the available supply consisting of the basin's native safe yield and any
24 temporary surplus," overlying owners" should be awarded the full amount of their overlying rights,
25

1 less any amounts of such rights lost by prescription, from the part of the supply shown to constitute
2 native ground water. (Citation). The full amount of the overlying right to groundwater is that required
3 for the landowners' *present and prospective* reasonable beneficial use upon the land. (*City of Santa*
4 *Maria v. Adam* (2012) 211 Cal.App.4th 266, 298, 149 Cal.Rptr.3d 491, 518; *Mojave, supra*, 23
5 Cal.4th at p. 1240.) "As to such future or prospective reasonable beneficial uses, it is quite
6 obvious that the quantity of water so required for such uses cannot be fixed in amount until the
7 need for such uses arises." (*Tulare Dist. v. Lindsay-Strathmore Dist.* (1935) 3 Cal.2nd 489, 525).

8
9 In *City of Los Angeles v. City of Glendale* (1943) 23 Cal.2d 68, 74-75), the purpose of
10 the action "was not to protect rights in water already being used---there then being enough water
11 for all---but to *preserve* a potential right to water that would be required for plaintiff's *future*
12 needs." (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 268, citing *City of*
13 *Glendale, supra*).

14
15 Although an appropriator is entitled to take groundwater that the overlying landowner
16 does not need limited to the remainder of the "safe yield," (*San Fernando, supra*, 14 Cal.3d 199,
17 214), the appropriator must yield to that of the overlying owner in the event of a shortage, unless
18 the appropriator has gained prescriptive rights through the adverse, open hostile taking of non-
19 surplus waters, continuous and uninterrupted for the statutory period of five years under a claim
20 of right. (*Mojave supra*, p. 1242).

21
22 Acquiring a prescriptive right has no practical effect unless there is an overdraft. The
23 prescriptive is based upon the volume pumped during the prescriptive period. Prescriptive rights
24 are limited to the amount of water actually taken and lost for nonuse. (*City of San Fernando,*
25 *supra*, pp. 285-286.) Acquisition of a prescriptive right in groundwater rearranges water rights

1 priorities among water users, elevating the right of the one acquiring it above that of an
2 appropriator to a right equivalent in priority to that of a landowner. (*San Fernando, supra*, 14
3 Cal.3d 199, 293).

4 The only evidence necessary to prove an overlying right is evidence of title to the
5 overlying land (*California Water Service Co. supra*, 224 Cal.App.2d p. 725). After the landowner
6 has met that burden, the burden shifts to the person claiming prescriptive rights to show the
7 validity of that claim. (*Tulare Dist. v. Lindsay-Strathmore Dist.* (1935) 3 Cal.2nd 489, 548).

8 BLUM TRUST has established title to the overlying lands. (*Request For Judicial Notice*,
9 Ex. "A").

10
11 VI

12 **BLUM TRUST HAS COMPLETE AFFIRMATIVE DEFENSES TO ALL CAUSES OF ACTION**
13 **WHICH BARS ANY BASIN PRIORITY RELIEF AGAINST BLUM TRUST'S WATER RIGHTS**

14 **A. BLUM TRUST Has Duly Acted Within Its Rights As To The Matters Stated In The**
15 **First Amended Cross-Complaint And Is Not Responsible For The Loss Or Damage Resulting**
16 **From The Acts Or Omissions Of Others.**

17 **(Third Affirmative Defense).**

18 BLUM TRUST has exercised its groundwater production rights in accordance with the CA
19 Constitution, decisional and statutory law and in conformity with good community farming standards
20 and operations. In harmony with equitable principals, BLUM TRUST's and BOLTHOUSE FARMS'
21 'Farming Unit', is recognized as an Antelope Valley Basin practice exercised by the PUBLIC
22 WATER SUPPLIERS and other Overlying Landowners. There is no legal basis to classify the
23 'Place of Use' methodology either subordinate or non-existent to the 'Place of Diversion' for the
24 groundwater allocation right to apply or otherwise to declare it as a forfeiture of water rights.
(*Separate Statement Issue No. 2 Pg. 10, #9; Issue No. 3A, Pg. 11 #1-3; Declaration of Shahroody*).

1 BLUM TRUST's production rights are not in conflict with nor duplicative to any of the
2 groundwater production claims/rights of 'successor in interest' BOLTHOUSE PROPERTIES.
3 Similarly, the BLUM TRUST's production claims for Overlying Landowners has not been factored
4 nor considered under any formula used by BOLTHOUSE PROPERTIES to establish its Annual
5 Ac. Ft. within the Overlying Landowners' 85% Basin share. Instead BOLTHOUSE PROPERTIES
6 calculated its production right on pumping different parcels during crop season Years 2011 &
7 2012 in this Basin adjudication. (*Separate Statement, Issue No. 2, Pg. 10, #8*).

9 Based on the foregoing, each cause of action alleged against Cross-Defendant BLUM
10 TRUST's priority and/or co-equal water rights is fatally defective so as to bar the claims therein.

11 **B. The Doctrines Of Equitable Estoppel And Judicial Estoppel Bar The PUBLIC**
12 **WATER SUPPLIERS From Contradicting BLUM TRUST's Groundwater Production**
13 **Entitlement To The Basin**

14 **(Tenth Affirmative Defense)**

15 As illustrated herein, the PUBLIC WATER SUPPLIERS have engaged in utilizing multiple
16 parcels as a 'Unit' when delivering groundwater to the beneficial use parcels. Furthermore, they
17 admitted under these circumstances, the beneficial use parcel(s) (*id.* 'Place of Use') must be
18 allocated the groundwater production right, and not the parcel where the water was pumped, (*id.*
19 'Place of Diversion'), absent contractual agreement. (*Separate Statement, Issue No. 1, Pg. 5*
20 *#11-13*).

21 Furthermore, the PUBLIC WATER SUPPLIERS readily admit that the right to pump
22 groundwater from the Antelope Valley Basin shall be in an amount equal to the highest volume
23 extracted in any year preceding entry of judgment in this action. (*Separate Statement, Issue No.*
24 *1, Pg. 5, #14*).

1 Cross-Complainants' have engaged in the same or similar operation as BLUM TRUST's
2 & BOLTHOUSE FARMS 'Farming Unit', and BLUM TRUST's annual production rights derived
3 from crop season Years 2004 & 2005, are entirely consistent with Cross Complainants' basis so
4 as to bar its claims against BLUM TRUST. (See *Declaration of Ali Shahroody, PE*).

5
6 **C. BLUM TRUST's Water Rights Are Superior Or Co-Equal To The PUBLIC WATER
7 SUPPLIERS' Water Rights Under the CA Priority Allocation System
(Twelfth Affirmative Defense)**

8 As demonstrated herein, and in BLUM TRUST's Separate Statement of Undisputed
9 Material Facts in support of this motion, the First through Seventh causes of action alleged in the
10 PUBLIC WATER SUPPLIERS First Amended Cross-Complaint against BLUM TRUST's
11 reasonable beneficial use of its overlying farmland has no merit. There are no material facts in
12 dispute nor reasonable inferences which can be drawn from such facts which would deny or bar
13 BLUM TRUST of its overlying/correlative rights from the Basin. (*Separate Statement Issue No.*
14 *3C, Pg. 13 #1-2*).

15
16 **D. BLUM TRUST Is Denied Equal Protection & Due Process Under The Law By
17 Cross-Complainants, Overlying Landowners & the Federal Govt. In the Antelope Valley
Basin Adjudication
(Twenty Second Through Twenty Fifth Affirmative Defenses)**

18 *The US Constitution 14th Amendment* as applied to the states under the 5th Amendment
19 and the *CA Constitution Art. I, §7(a)* expressly prohibits the denial of equal protection of the laws.
20 The Equal Protection Clause requires that persons under like circumstances be given equal
21 protection and security in the enjoyment of personal and civil rights, the acquisition and enjoyment
22 of property, the enforcement of contracts, and the prevention and redress of wrongs, among other
23 inalienable rights. (*Separate Statement Issue 3C, Pg. 13-14, #1*).

24
25 Furthermore, the constitutional guarantee of the Due Process Clause under the Fifth

1 Amendment provides that no person shall be deprived of property without due process of law.

2 Here, the Global Stipulation For Entry of Judgment & Physical Solution as currently drafted,
3 contravenes due process and equal protection under the law in regards to BLUM TRUST's 'present
4 and prospective' co-equal overlying/correlative share of the Federally adjusted native safe yield for
5 reasonable beneficial use of its 150 acre parcels, free of replacement assessment, and quantified
6 annual Ac. Ft., production right regarding its 120 acres of farmland in times of overdraft and cutback
7 under the CA water priority allocation system. (*Separate Statement Issue No. 3D, Pg. 14, #2-4;*
8 *Request For Judicial Notice, Ex. "M"*).

9
10 Instead, the parties to the global agreement have either subordinated or extinguished all of
11 BLUM TRUST's overlying and/or correlative rights despite its overlying status. The Stipulation
12 between BLUM TRUST and the PUBLIC WATER SUPPLIERS dated May 23, 2013, has also been
13 impaired or breached under the proposed Global Stipulation & Physical Solution, which violates
14 both the equal protection and due process clauses. (*Request For Judicial Notice, Ex. "H", Ex. "M"*).

15
16 Although the Court has the power and duty to fashion a solution to insure the reasonable
17 and beneficial use of the state's water resources as required by the California Constitution,
18 Article X, Section 2, the *only restriction is that absent a party's consent, a physical solution may*
19 *not adversely affect that party's existing water rights.* (*Mojave, supra.*, 23 Cal.4th 1224, 1243-
20 1244, 1250-1251).

21 Between the calendar years of 2000 up through 2012, Overlying Landowners, Water
22 Suppliers and the Federal Government have used a variety of methods and various time-frames
23 to calculate their groundwater production rights, present and prospective. However, unlike BLUM
24 TRUST who has adopted the very same applied crop water duties, crop irrigation efficiency
25

values, and 'Place of Use' methodology for its 120 acres of farmland, were accorded a percentage share of the Basin in times of overdraft. (*Separate Statement, Issue No. 3D, Pg. 14, #3 #5*).

Likewise, the Overlying Landowners and PUBLIC WATER SUPPLIERS have denied BLUM TRUST of its highest annual groundwater extracted as a basis for computing BLUM TRUST's groundwater entitlement equal to **531 Ac. Ft. Per Year**. (118 Acres Irrigated x 4.5 Applied Crop Water Duty). (*Separate Statement, Issue No. 3D, Pg. 14, #4*).

VII

BLUM TRUST HAS SUFFERED A LEGAL INJURY AND SEVERE FINANCIAL HARDSHIP BECAUSE OF SUBSTANTIAL DAMAGE TO ITS 3 WATER WELLS, AND UNCERTAINTY OF ANY WATER PRODUCTION RIGHTS CAUSING INVOLUNTARY AND COMPELLED DISUSE, WHICH SHOULD NOT EXTINGUISH NOR PREJUDICE BLUM TRUST'S WATER PRODUCTION RIGHTS IN TIMES OF OVERDRAFT

At the expiration of the lease term, BOLTHOUSE FARMS agreed to cause a steel plate to be *welded* to each well opening to secure BLUM TRUST's 3 water wells from access under Section 13, SURRENDER OF PREMISES, of the Agriculture Lease. 3

Instead, BLUM TRUST's 3 water well openings were not steel plate welded by BOLTHOUSE FARMS, but rather capped and left unsecure resulting in someone causing each well opening to be filled with debri, rocks and dirt. (*Separate Statement, Issue No. 4 Pg. 15 #1-2*).

BLUM TRUST's 3 water wells now require substantial repairs at a significant expense, and through conduct, BOLTHOUSE ENTITIES should be estopped from contesting the natural and probable consequences of its acts and omissions.

BLUM TRUST's groundwater allocation entitlement for its farmland remains uncertain, and unreasonably rejected by the settling parties, and there also exists a cost prohibitive

3. The Lease provides at Pg. 8, Section 13 Surrender of Premises: "Upon expiration, termination or Lessee's vacating the Premises, whichever occurs first, Lessee represents and warrants that Lessee shall

1 economic risk for a Lessee Farmer to farm the parcels under any lease term without assurance
2 of any quantified groundwater annual 'Ac. Ft.' production right in times of overdraft and cut back
3 in accordance with the California groundwater priority allocation system. (*Separate Statement*
4 *Issue No. 4, Pg. 15, #3*).

5
6 Based on the foregoing, BLUM TRUST has suffered a legal injury to its 3 water wells and
7 its disuse is involuntary, compelled and equitably reasonable under the circumstances. Under
8 the facts it does not seem reasonable or just to adopt a rule that would deprive BLUM TRUST's
9 farmland of its chief element of value (*id.* Water), leave its farmland barren, unproductive, and
10 deprive BLUM TRUST of the agriculture use for growing any crop, including onions, carrots and
11 alfalfa in times of overdraft. Upon award by this Court of BLUM TRUST's quantified allocated
12 production right, BLUM TRUST's legal injury would be resolved so that BLUM TRUST's water wells
13 can be restored to fully functional pumping capacity for irrigating 'Onions' without prejudice or loss
14 or production rights. (*Declaration of Sheldon Blum Pg. 10-11 ¶¶32-35, Declaration of Ali Shahroody*).

15
16 **VIII**

17 **BLUM TRUST IS NOT LIABLE FOR THE WOODS CLASS ACTION ATTORNEY FEES OR**
18 **COSTS UNDER ANY THEORY, AS A MATTER OF LAW**

19 BLUM TRUST was not been sued as a party Defendant and/or Cross-Defendant in the
20 *Richard Woods Class Action vs. Los Angeles County Waterworks District No. 40, et al.* BLUM
21 TRUST is also similarly situated with the same or similar interests as the Woods Class members,
22 as well as the Willis Class members. Furthermore, there has been no direct or significant benefit
23 or any value to BLUM TRUST derived from the Woods Class' attorney services which was not
24 independently accomplished by BLUM TRUST's counsel against the PUBLIC WATER
25 SUPPLIERS in this action. For these reasons *Code of Civil Procedure §1021.5*, does not apply

1 to BLUM TRUST in this Basin adjudication. (*Separate Statement Issue No. 5, Pg. 16 #1-4*).

2 In *Lealao v. Beneficial California, Inc.* [(2000) 97 Cal.Rptr.2d 797, 803, 82 Cal.App.4th 19],
3 class counsel sought attorney fees and costs in a consumer class action against the Lender.
4 Alternative to *C.C.P. §1021.5*, under an attorney fee lodestar formula against opposing parties,
5 the Appellate Court held that class counsel's attorney fees can be claimed from "Fee Spreading"
6 in cases in which there is a common fund for the benefit of the class, and therefore borne by its
7 beneficiary members. This would have all the markings of a 'Contingency Fee Retainer
8 Agreement' between attorney and his/her client(s).
9

10 Here, either well settled approaches are available to the Wood's class counsel.

11 **VIII.**
12 **CONCLUSION**

13 As demonstrated herein, and in Cross-Defendant BLUM TRUST's Separate Statement of
14 Undisputed Material Facts in support of its motion it is respectfully submitted that BLUM TRUST be
15 awarded summary judgment as a matter of law pursuant to *C.C.P. §437c(c)*, or alternatively
16 summary adjudication of issues under *C.C.P. §437c(f)(1)*, as set forth herein.

17 BLUM TRUST has met its burden of showing that the PUBLIC WATER SUPPLIERS' First
18 Amended Cross-Complaint First through Seventh Causes of Action against BLUM TRUST's priority
19 and/or co-equal overlying/correlative rights have no merit, there are complete defenses to all
20 causes of action, and BLUM TRUST's production allocation rights are well established under
21 decisional, statutory, constitutional law and under equitable principals avoiding disuse concepts.


22 This includes a judgment that the Woods Class attorney fees be determined and paid by
23 either the PUBLIC WATER SUPPLIERS under *C.C.P. §2021.5*, or under the "common fund" 'Fee
24

1 Spreading' doctrine.

2 In awarding judgment to BLUM TRUST, it is necessary that either BOLTHOUSE FARMS
3 offset its groundwater allocated production share annually by 531 Ac. Ft., or otherwise all
4 Overlying Landowners equally reduce their pro-rata allocated share under their Proposed Global
5 Stipulation For Entry of Judgment & Physical Solution. Under either formula, BLUM TRUST and
6 the overlying landowners are not prejudiced and BLUM TRUST recovers its annual Ac. Ft.
7 entitlement in times of overdraft and cutback under the CA water priority allocation system.
8
9 (*Separate Statement, Issue No. 3C, Pg. 13, #2*).

10 Dated: October 5, 2014

Respectfully submitted,
LAW OFFICES OF SHELDON R. BLUM

11 
12 _____
13 Sheldon R. Blum, Esq.
14 Attorney For Cross-Defendant BLUM TRUST
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