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

Coordinated Proceedings	)	Judicial Council Coordination
Special Title {Rule 1550 (b)}	)	Proceeding No. 4408
ANTELOPE VALLEY GROUNDWATER CASES	)	Santa Clara Case No. 1-05-CV-049053
Included Actions:	)	Assigned to Hon. Jack Komar
<u>Los Angeles County Waterworks District</u>	)	DECLARATION OF SHELDON BLUM IN
<u>No. 40 v. Diamond Farming Co.</u>	)	SUPPORT OF BLUM TRUST'S MOTION FOR
Los Angeles County Superior Court	)	SUMMARY JUDGMENT/SUMMARY
Case No. BC 325 201	)	ADJUDICATION
<u>Los Angeles County Waterworks District</u>	)	[C.C.P. §437c; Rules of Court, Rule 3.1350]
<u>No. 40 v. Diamond Farming Co.</u>	)	Hearing Date: December 22, 2014
Kern County Superior Court	)	Trial Date: 10:00 a.m.
Case No. S-1500-CV-254-348	)	Dept. No.: TBD
<u>Wm. Bolthouse Farms, Inc., v. City of</u>	)	Judge: Hon. Jack Komar
<u>Lancaster; Diamond Farming Co. v. City of</u>	)	Trial Date: None Set
<u>Lancaster; Diamond Farming Co. v. City of</u>)	
<u>Palmdale Water District.</u>)	
Riverside County Superior Court)	
Consolidated Action Nos. RIC 344 840,)	
RIC 344 436, RIC 344 668)	
AND RELATED CROSS-ACTIONS.)	

1 I, Sheldon R. Blum, declare as follows:

2 1. I am an attorney duly licensed to practice law before all courts of the State of
3 California, with my principal law office located at 2242 Camden Avenue, Suite 201, San Jose,
4 CA 95124. I am the attorney of record for Cross-Defendant BLUM TRUST in this action.
5 This declaration is made in support of Cross-Defendant BLUM TRUST's Motion for Summary
6 Judgment/Summary Adjudication of Issues in the Antelope Valley Basin adjudication. The
7 following facts are within my personal knowledge, and if called as a witness herein, I can and
8 will competently testify thereto.
9

10 2. Since 1985, up to present, Sheldon Blum/BLUM TRUST, (herinafter "BLUM TRUST"),
11 was and still is, an overlying landowner in the Antelope Valley Basin of 150 acres of farmland
12 located in the City of Lancaster, County of Los Angeles, CA, identified by APNs and acreage, as
13 follows: (1) 3384-009-001= 80+/-Acs.; (2) 3384-009-006= 39+/-Acs.; (3) 3384-020-012=10+/-Acs.;
14 (4) 3384- 020-013=10+/-Acs.; and (5) 3262-016-011=10+/- Acs. (See *Request For Judicial Notice*
15 *Ex. "A"*).
16

17 3. BLUM TRUST bought the parcels because of its location with respect to the Basin's
18 underlying groundwater, without which the property would have little value to BLUM TRUST.

19 4. Each year BLUM TRUST paid the Los Angeles County Annual Property Tax Bills on the
20 above-described parcels which included a "Special Water" assessment.

21 5. There are three (3) water wells on BLUM TRUST's farmland located on APNs 3384-
22 009-001 = 80+/- Acs.; & (2) 3384-009-006 = 39 +/- Acs. The BLUM TRUST water wells were
23 illustrated by Lessee BOLTHOUSE FARMS on its "MAP OF BLUM PARCEL". A true and correct
24 copy of the subject Map is attached and marked Exhibit "2, on the Exhibit List.
25

1 the amount and cost of available groundwater for the subject property. (See Exhibit List Ex. 1, Pg.
2 15, Section 22. Water Adjudication). In recognition of the need for the groundwater pumping to
3 belong to the BLUM TRUST farmland under any California allocation system, all lease covenants
4 and agreements were deemed to be *covenants running with the BLUM TRUST farmland, and shall*
5 *inure to the benefit of and be binding upon the successors in interest of the parties.* (See Exhibit List
6 Ex. 1, Pg. 14 & 15).

8 10. In lieu of servicing BLUM TRUST's three (3) water wells, BOLTHOUSE FARMS elected
9 to construct an underground pipeline delivery system from its adjacent parcels' water wells and
10 route it underneath the city streets of Ave. J & 70th St. E. onto the BLUM TRUST's farmland. These
11 water wells were designated by BOLTHOUSE FARMS as LAID 13-3, located on APN 3384-008-
12 002 at Ave. J & 75th St. E., and AVOL 14-3N; & AVOL 14-3S located on APN 3384-004-004 at Ave.
13 J & 65th St. E.

14 11. This information was confirmed to me by BOLTHOUSE FARMS' counsel Mr. Richard
15 Zimmer's via email dated 11/30/11, a true and correct copy of which is attached and marked
16 Exhibit "3", to the Exhibit List.

18 12. This information was also communicated to me by BOLTHOUSE FARMS Ag.
19 Properties/Legal Manager Michael W. Kovacevich via email dated 11/16/2009, in which he
20 identifies Ave. J and 75th Street E., from where the routed irrigation pipes were cut on BLUM
21 TRUST'S leased farmland, at the expiration of the lease. Attached to Mr. Kovacevich's email
22 were photographs and an illustrated BLUM-MAP diagram dated November 11, 2009. True and
23 correct copies of Mr. Kovacevich's email and Diagram are collectively attached and marked
24 Exhibit "4", to the Exhibit List.

1 13. Additionally helpful to the location of BOLTHOUSE FARMS' 'Place of Diversion' onto
2 the BLUM TRUST's 'Place of Use' parcels, are excerpts from the deposition of BOLTHOUSE
3 FARMS' designated "Person Most Knowledgeable" Irrigation Equipment Manager DANIEL WILKE
4 taken on February 6, 2013, under C.C.P. §2025.230. Mr. WILKE testified that during the 2002-
5 2009, lease term BOLTHOUSE FARMS' water well(s) designated as AVOL 14-3, NORTH and/or
6 14-3 SOUTH, located on Ave. J & 65 St. E were pumped onto the BLUM TRUST parcels. Mr.
7 Wilke further testified that he was not aware whether LAID 13-3 water well located at or near Ave.
8 J. & 75 St. E., was used to deliver groundwater to the BLUM TRUST parcels. True and correct
9 excerpt pages from Mr. Wilke's deposition are attached and marked Exhibit "5" to the Exhibit List.
10

11 14. An Ariel View Photographs of BLUM TRUST's farmland depicting its 3 water wells,
12 and approximate location of BOLTHOUSE FARMS' designated wells: AVOL 14-3N; AVOL 14-3S;
13 & LAID 13-3 are attached and marked Exhibit "6" to the Exhibit List.
14

15 15. In accordance with the parties lease agreement, Lessee BOLTHOUSE FARMS' acted
16 on behalf of Lessor BLUM TRUST in securing City Permits to construct and route its groundwater
17 pipeline system onto the leased BLUM TRUST farmland. In addition, Lessee filed Annual Notice(s)
18 of Groundwater Extraction & Diversion' Forms with the CA Water Resources Control Board,
19 Division of Water Rights, depicting the applied groundwater on the BLUM TRUST farmland.
20

21 16. On May 18, 2003, I took photographs depicting the crops irrigated and harvested on
22 Lessor BLUM TRUST's leased farmland. At the time that the photographs were taken, I did not
23 observe any groundwater pipes routed at 70 Street East which would have been pumped from
24 AVOL 14-3N and/or AVOL 14-3S onto Lessor BLUM TRUST farmland. True and correct copies
25 of the subject photographs are attached to and marked Exhibit "7(1-3)" to the Exhibit List.
26

1 17. On August 2, 2007, I returned to the BLUM TRUST leased farmland and took
2 photographs of BOLTHOUSE FARMS' pipeline delivery system which I observed routed at 70
3 Street East onto the BLUM TRUST leased parcels. The groundwater would have been pumped
4 from water wells AVOL 14-3N and/or AVOL 14-3S. True and correct copies of the subject
5 photographs are attached to and marked Exhibit "8(1-7)" to the Exhibit List.
6

7 18. In accordance with the Agriculture Lease Agreement, Lessor BLUM TRUST and
8 Lessee BOLTHOUSE FARMS' farming operation represents a valid exercise of overlying
9 production rights in conformity with good agriculture farming standards and practices, and in
10 compliance with all applicable State and Federal laws. (See *Exhibit List, Ex. "1" Section 2 "Purpose*
11 *For Which Premises Are To Be Used*).

12 19. BLUM TRUST's overlying groundwater production rights are evidentiary supported and
13 verified by BOLTHOUSE ENTITIES Business Records and Declarations filed in this action. (See
14 *Request For Judicial Notice Ex. "C" & "D"*).

15 20. BLUM TRUST's groundwater production rights are measured by its 'Place of Use'
16 methodology arising out of the Agriculture Lease 'Farming Unit with BOLTHOUSE FARMS, with
17 reference to crop season Years 2004-2005, when 'Onions' were irrigated on 118 acres of BLUM
18 TRUST's farmland. (See *Request For Judicial Notice, Exhibits "E" , "F" 13:9-14; "J" 1:22-26; &*
19 *"K"2:3-28, 3:1-3*).

20 21. During the Phase 3 Trial testimony of PUBLIC WATER SUPPLIERS' introduced into
21 evidence through the testimony of Expert Witness Mr. Joseph Scalmanini, an Exhibit 58 "Summary
22 of Applied Crop Water Duties, Antelope Valley Area of Adjudication". A similar document entitled
23 *Summary Expert Report Appendix D-3: Table 4 Applied Crop Duties & Irrigation Efficiency Values*
24
25

1 was used in Phase 4 Trial discovery. In accordance with the expert witness Declaration of Ali
2 Shahroody, P.E., expert witness Mr. Joseph Scalmanini's testimonial chart introduced as Exhibit 58
3 during Phase 3 Trial, the applied water duties for 'Onions' during BLUM TRUST's crop season
4 Years 2004-2005, computes at 531 Ac. Ft. Per Year. (118 Acres Irrigated x 4.5 Applied Water For
5 Onions). (See *Declaration of Ali Shahroody & Request For Judicial Notice, Ex. "E"*).

6
7 22. On December 20, 2007, Cross-Defendant BLUM TRUST voluntarily answered and
8 electronically served on all parties a response to the PUBLIC WATER SUPPLIERS' Complaint /
9 Cross-Complaint For Declaratory And Injunctive Relief And Adjudication of Water Rights. The First
10 through Seventh Causes of Action were denied as to their alleged prescriptive rights, appropriative
11 rights, Municipal rights and any other water right as having priority over BLUM TRUST's overlying
12 rights, or otherwise that BLUM's rights are subordinate as oppose to co-equal. The response also
13 asserted 31 Affirmative Defenses. A true and correct copy of BLUM TRUST's Answer to the
14 Complaint/Cross-Complaint is attached and marked as *Request For Judicial Notice, Ex. "G"*.

15
16 23. On December 20, 2007, BLUM TRUST concurrently filed in these coordinated
17 proceedings a Complaint/Cross-Complaint against BOLTHOUSE FARMS, and BOLTHOUSE
18 PROPERTIES, LLC, (hereinafter collectively "BOLTHOUSE ENTITIES"), bearing Superior Court of
19 Santa Clara County Case No. 1-05-CV-049053. BLUM TRUST alleged various causes of actions
20 against the BOLTHOUSE ENTITIES, including Breach of Agriculture Lease Agreement/Modification
21 Agreement arising out of the parties 'Farming Unit', and sought the recovery of all groundwater
22 production allocation rights for the leased 'Place of Use' farmland during the lease term.

23
24 24. The BLUM TRUST action was subsequently severed by Stipulation & Court Order and
25 proceeded as an independent companion case to the Antelope Valley Basin Adjudication action.

1 During discovery, BLUM TRUST served its *First Set of Special Interrogatories, Set One*, on the
2 BOLTHOUSE ENTITIES on February 20, 2008. Special Interrogatory No. 92 requested to quote
3 the lease language which authorized the BOLTHOUSE ENTITIES to delivery groundwater onto
4 the BLUM TRUST farmland from its adjacent parcel.

5
6 25. On May 9, 2008, BOLTHOUSE PROPERTIES, President Anthony L. Leggio provided
7 a verified Response To BLUM TRUST's Interr. No. 92, declaring "**WM. BOLTHOUSE FARMS,**
8 **INC lease water rights regarding the SUBJECT PROPERTY** are set forth in the lease
9 *agreement and are contractual in nature. BOLTHOUSE PROPERTIES, LLC does not have any*
10 *leasehold or contractual water rights relationship with BLUM.*" True and correct copies of BLUM
11 TRUST's Special Interrogatory No. 92., and BOLTHOUSE PROPERTIES response thereto, are
12 collectively attached and marked as Exhibit "9(1 & 2)" to the Exhibit List.

13
14 26. On or about December 16, 2008, the BLUM TRUST and BOLTHOUSE ENTITIES
15 settled the above-stated action under BLUM TRUST's express '*reservation of rights*' to contend in
16 the Basin adjudication that the volume of groundwater pumped by BOLTHOUSE FARMS and its
17 sublessees in undertaking its/their farming operations was for the beneficial use of the BLUM
18 TRUST's farmland during the lease term, and that such pumping should be allocated and
19 credited to BLUM TRUST's farmland under any California water priority allocation system. A true
20 and correct copy of excerpts from BLUM TRUST's & BOLTHOUSE ENTITIES Settlement
21 Agreement dated 12/16/08, are attached and marked as Exhibit "10" to the Exhibit List.

22
23 27. Consistent with the allocation of the groundwater production rights to BLUM TRUST, I
24 was served in this adjudication with General Counsel for BOLTHOUSE FARMS' Ms. *Tracy M.*
25 *Saiki's Declaration In Lieu of Deposition Testimony For Phase 4 Trial* dated January 31, 2013. Ms.

1 Saiki's Declaration stated that ***"BOLTHOUSE FARMS is not claiming any groundwater rights in***
2 ***this action.***". A true and correct copy of excerpts from Ms. Saiki's Declaration are attached and
3 marked as Exhibit "I" to the Request For Judicial Notice.

4
5 28. Based on: (1) The terms of the Agriculture Lease Agreement that all covenant's
6 and agreements run with the land, (2) BOLTHOUSE ENTITIES verified discovery response
7 that it leased BLUM TRUST's water rights, and (3) General Counsel for BOLTHOUSE
8 FARMS' declaration of relinquishing its water rights in this action, it is now unjust, highly
9 prejudicial and inconsistent for the BOLTHOUSE ENTITIES to now contest or contradict
10 BLUM TRUST's groundwater production rights acquired during the 8 year lease term.

11 29. BLUM TRUST's production rights are not in conflict with nor duplicative to any of the
12 groundwater production claims of *'successor in interest'* BOLTHOUSE PROPERTIES.
13 BOLTHOUSE PROPERTIES calculated its pumping on crop farming involving different parcels
14 during Years 2011-2012. BLUM TRUST's production claims for Overlying Landowners have not
15 been factored within the 85% of the Overlying Landowners' Basin allocation under the Proposed
16 Global Stipulation For Entry of Interlocutory Judgment & Physical Solution Agreement. BLUM
17 TRUST is not among the settling parties. (See *Request For Judicial Notice, Ex. "M"*).

18
19 30. On or about May 23, 2013, BLUM TRUST and all of the PUBLIC WATER SUPPLIERS
20 executed and e-filed a Stipulation to introduce in a later phase evidence to support water usage
21 in years other than 2011 and 2012. A true and correct copy of the Stipulation is attached and
22 marked as Exhibit "H" to the Request For Judicial Notice.

23
24 31. There are no set of facts that I am aware of to declare that the BLUM TRUST
25 'Place of Use' production entitlement is either subordinate to the 'Place of Diversion', or

1 otherwise constitute a forfeiture of groundwater production rights.

2 32. BLUM TRUST has also suffered a severe legal injury and hardship because of the
3 damage to its three (3) water wells which has resulted in involuntary and compelled disuse. At the
4 expiration of the lease agreement BOLTHOUSE FARMS agreed to weld a steel plate at each water
5 well opening to secure access to avoid damage. Instead, BLUM TRUST's 3 water well
6 openings were not steel plate welded by BOLTHOUSE FARMS, but rather capped and left
7 unsecure resulting in someone causing each well opening to be filled with debris, rocks and dirt.
8 True and correct copies of photographs depicting an uncapped water well (See *Ex. "6", Ariel View*
9 *Photo, BT Well #2*) taken by myself on August 2, 2007, and photographs taken by BOLTHOUSE
10 FARMS/Clifford Brown on or about October, 2007, which depict subsequently capped water wells
11 without welding its openings (See *Ex. "6", BT Wells #1 #3*), are collectively attached and marked as
12 Exhibit "11", to the Exhibit List.
13

14 33. BLUM TRUST has been unable to lease its approximate 120 acres of farmland to a
15 farmer because: (1) BLUM TRUST's 3 water wells require substantial repair at a significant
16 expense; (2) The groundwater allocation entitlement for the BLUM TRUST parcels remain
17 uncertain and unreasonably rejected by the settling overlying landowners and Public Water
18 Suppliers in this Antelope Valley Basin adjudication, (See *Request For Judicial Notice, Ex. "M"*),
19 and (3) There exists a cost prohibitive economic risk for a farmer to farm the parcels under a 3 to
20 5 year lease term without assurance of annual water production rights in times of overdraft and
21 cut back under the CA water priority groundwater allocation system.
22

23 34. Since this action is now coming to a conclusion, in September and October, 2014, I
24 have been notified by an agriculture realtor that 2 Antelope Valley farmers are interested in
25

1 leasing BLUM TRUST's 119 acres of farmland. The lease would be subject to being awarded
2 groundwater allocation production right for the parcels in times of overdraft and cutback, and
3 servicing the water wells. Based on the foregoing, upon award by this court of BLUM TRUST's
4 annual production entitlement, BLUM TRUST's legal injury and financial hardship would be
5 resolved so that the subject water wells can be restored on the parcels to fully functional pumping
6 capacity for irrigating 'Onions' without prejudice or loss of production rights.
7

8 35. BLUM TRUST seeks to preserve its groundwater production allocation rights on its 120
9 acres in the Basin adjudication computed annually at 531 Ac. Ft., in times of overdraft and cutback
10 under the California water priority allocation system. In addition, BLUM TRUST seeks to preserve
11 its overlying/correlative 'present and prospective' water rights for the beneficial use of its dormant 30
12 acres from the Basin's native safe yield, free of replacement assessment.
13

14 36. In awarding judgment to BLUM TRUST, it is necessary that either BOLTHOUSE
15 FARMS offset its groundwater allocated production share by 531 Ac. Ft., or otherwise all
16 Overlying Landowners equally reduce their pro-rata allocated share under their proposed Global
17 Stipulation, so that BLUM TRUST is properly allocated its annual Ac. Ft. entitlement in times of
18 overdraft and cutback under the CA water priority allocation system.
19

20 37. BLUM TRUST was not been sued as a party Defendant and/or Cross-Defendant in the
21 *Richard Woods Class Action vs. Los Angeles County Waterworks District No. 40, et al.* BLUM
22 TRUST is also similarly situated as an overlying landowner to the Woods' Class members, as
23 well as similarly situated as an overlying landowner with the Willis Class members in regards to
24 its dormant parcels. Furthermore, there has been no direct or significant benefit(s) or any value
25 to BLUM TRUST derived from the Woods Class' attorney services or costs, which were not
26

1 independently accomplished by BLUM TRUST's counsel against the PUBLIC WATER
2 SUPPLIERS in this action. Since BLUM TRUST made a voluntary appearance in this action, as
3 counsel for BLUM TRUST, I have not received any attorney fees for my services.

4 38. On August 11 & 12, 2014, a Case Status Conference was held before the Hon. Jack
5 Komar, during which I was granted permission to file a motion for summary judgment and in
6 the alternative, a motion for summary adjudication on behalf of BLUM TRUST.
7

8 I declare under penalty of perjury under the laws of the state of California that the
9 foregoing is true and correct.

10 Executed on October 5, 2014, at San Jose, California.

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12 _____
13 Sheldon R. Blum, Esq.
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