

**LAW OFFICES OF
SHELDON R. BLUM**

2242 CAMDEN AVENUE, SUITE 201
SAN JOSE, CALIFORNIA 95124
TEL: (408) 377-7320
FAX: (408) 377-2199
STATE BAR NO. 83304

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 SEPARATE STATEMENT OF
UNDISPUTED MATERIAL FACTS IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT/SUMMARY ADJUDICATION OF
ISSUES**
) **[C.C.P. §437c; Cal. Rules of Ct., Rule 3.1350]**

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

) Trial Date: December 22, 2014
) Time: 10:00 a.m.
) Dept. No.: TBD
) 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

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.

Cross-Defendant BLUM TRUST in support of its motion for summary judgment and in the alternative, motion for summary adjudication of issues, submits that the following material facts are undisputed in this action, and that these material facts establish by the evidence referred to herein, that the PUBLIC WATER SUPPLIERS' First Amended Cross-Complaint against BLUM TRUST's groundwater production rights cannot prevail on any cause of action, as a matter of law:

ISSUE NO. 1: CROSS-COMPLAINANTS' FIRST AMENDED CROSS-COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND ADJUDICATION OF WATER RIGHTS' FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF-PRESCRIPTIVE RIGHTS; SECOND FOR DECLARATORY RELIEF-APPROPRIATIVE RIGHTS; THIRD FOR DECLARATORY RELIEF-PHYSICAL SOLUTION; FOURTH FOR DECLARATORY RELIEF-MUNICIPAL PRIORITY; FIFTH FOR DECLARATORY RELIEF-STORAGE OF IMPORTED WATER; SIXTH FOR DECLARATORY RELIEF-RECAPTURE OF RETURN FLOWS; & SEVENTH FOR UNREASONABLE USE OF WATER AGAINST BLUM TRUST HAS NO MERIT BECAUSE BLUM TRUST'S REASONABLE BENEFICIAL USE OF ITS OVERLYING RIGHTS & CORRELATIVE RIGHTS ARE SUPERIOR, AND AT THE VERY LEAST CO-EQUAL TO CROSS-COMPLAINANTS' WATER RIGHTS, AND NOT SUBORDINATE.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE:	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>1. Since 1985 to present, Sheldon Blum/BLUM TRUST was and is, the Fee Owner of approximately 150 acres of farmland that overlies the Antelope Valley Basin located in the City of Lancaster, County of Los Angeles, CA, identified by APNs & 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.</p> <p><i>Declaration of Sheldon Blum Pg. 2, ¶2. Request For Judicial Notice Ex. "A".</i></p> <p>2. By virtue of the location of each overlying parcel, BLUM TRUST has a overlying and correlative right to pump and/or divert groundwater for the reasonable and beneficial use of its parcels.</p> <p><i>Request For Judicial Notice, Ex. "A" & "B".</i></p>	

3. BLUM TRUST bought the above-described parcels because of its location with respect to the Basin's underlying percolating water, without which the overlying lands would have little value to BLUM TRUST.

Declaration of Sheldon Blum - Pg. 2, ¶3.

4. There are three (3) water wells on BLUM TRUST's 120 acres of farmland located on APN 3384-009-001 & 3384-009-006. The wells are illustrated on BOLTHOUSE FARMS' Lease MAP OF BLUM PARCEL & Ariel Photo.

Declaration of Sheldon Blum, Pg. 2 ¶5, Exhibit List Ex. "2" & Ex. "6".

5. The public records of the CA Dept. of Water Resources, Southern District, records two (2) Water Well Index Cards on file which were drilled on BLUM TRUST's above-referenced farmland in 1932 & 1948, by farming predecessor T.D. KYLE.

Request For Judicial Notice, Ex. "B"; & Declaration of Sheldon Blum Pg. 3, ¶6.

6. BLUM TRUST's APN 3384-020-012 = 10 Acs.; APN 3384-020-013 = 10 Acs.; & 3262-016-011 = 10 Acs., have been dormant of groundwater pumping during the Basin's adjudication time-frame of 2000-2014, however the parcels overly the Basin and have correlative rights with other Overlying Landowners, free of replenishment assessment, from the native safe yield.

Declaration of Sheldon Blum Pg. 3, ¶7

7. On August 2, 2001, BLUM TRUST as Lessor, and BOLTHOUSE FARMS as Lessee, entered into an Agriculture Lease Agreement and Modification Of Lease dated May 17, 2004, to lease Lessors' APN: 3384-009-001 = 80+/- Acs. and 3384-009-006 = 39 +/- Acs., and have all groundwater pumped for the beneficial use of BLUM TRUST's approximate 120 Acres of farmland. Pumping was to be undertaken from servicing BLUM TRUST's existing three (3) water wells, and/or if agreed, pumped from BOLTHOUSE FARMS' adjacent parcel(s) well(s) and delivered onto the BLUM TRUST leased parcels.

*Declaration of Sheldon Blum, Pg. 3, ¶18.
Exhibit List Ex. "1".*

8. BOLTHOUSE FARMS elected to construct an underground pipeline delivery system from its adjacent parcels' water wells and route it underneath the city streets of Ave. J and 75th St. E. onto the BLUM TRUST's farmland. These water wells were designated by BOLTHOUSE FARMS as L A I D 13-3 bearing APN 3384-008-002; AVOL 14-3N; & AVOL 14-3S bearing APN 3384-004-004.

*Declaration of Sheldon Blum Pgs. 4-5 ¶10-14.
Exhibit List Ex. "3" - "6".
Request For Judicial Notice Ex. "C" & "D".*

9. Under the Agriculture Lease Agreement a contiguous **'Farming Unit'** for eight (8) consecutive years was created between Lessor BLUM TRUST's approximate 120 acres of healthy non-contaminate farmland, and Lessee BOLTHOUSE FARMS' above identified water wells, for the reasonable beneficial use of irrigating and harvesting carrots and onions on the leased farmland.

*Declaration of Sheldon Blum Pg. 3-4 ¶9.
Exhibit List Ex. "6"; Ex. "7(1-3)"; Ex. "8(1-7)".
Request For Judicial Notice Ex. "J"; & Ex. "K".
Declaration of Ali Shahroody, P.E.*

10. In accordance with Lessor's and Lessee's **'Farming Unit'**, BOLTHOUSE FARMS' acted in securing County of Los Angeles Dept. of Public Works Excavation Permits to construct and route its groundwater pipeline delivery system onto the leased BLUM TRUST farmland. In addition, BOLTHOUSE FARMS filed Annual Notice(s) of Groundwater Extraction & Diversion Forms with the CA State Water Resource Control Board, Division of Water Rights, depicting its applied groundwater on the BLUM TRUST farmland pursuant to CA Water Code §5001.

Declaration of Sheldon Blum Pg. 5 ¶15.

11. The method of extracting groundwater from one water well on a APN parcel for use on a contiguous or adjoining APN parcel as a 'Unit' is both an approved PUBLIC WATER SUPPLIER practice and Overlying Landowner farming practice known to exist in the Antelope Valley.

*Request For Judicial Notice, Ex. "J", & "K".
Declaration of Ali Shahroody.*

12. The PUBLIC WATER SUPPLIERS' 'Case Management Statement' dated 1/15/13, expressly states: "It is also important to determine the parcels upon which the water was used versus where the water was pumped, because the water rights belong to the owner of the property where the water was used absent contractual agreement. If this is not taken into account, there is a danger of double counting." The statement is consistent with a 'Place of Use' methodology in establishing groundwater production rights.

Request For Judicial Notice Ex. J, 1:22-25.

13. The CITY OF LOS ANGELES 'Proposal Concerning Form Discovery' dated 11/20/12, confirmed 'Place of Use', stating: "Some landowners such as the City of Los Angeles own multiple contiguous parcels as identified by APNs and may extract water from a well on one APN for use on an adjoining or nearby APN. The proper scope of inquiry is the extent and nature of the water use on property owned by a party, and on the description of the property on which the water is used." This statement is consistent with a 'Place of Use' methodology in establishing groundwater production rights.

Request For Judicial Notice Ex. "K", 2:17-21.

14. The PUBLIC WATER SUPPLIERS Cross-Complaint acknowledged in its pleading, the basis for computing groundwater rights as the right to pump groundwater from the Antelope Valley Groundwater Basin in an amount equal to the highest volume of groundwater extracted by each of the Cross-Complainants in any year preceding entry of judgment in this action.

1 *Request For Judicial Notice Ex. "J" Pg. 13 ¶40*
2 *(A), Lines 9-14.*

3 15. BLUM TRUST's groundwater production
4 rights are limited and measured by its 'Place of
5 Use' methodology arising out of the Agriculture
6 Lease 'Farming Unit' with BOLTHOUSE
7 FARMS. The 'Place of Use' methodology
8 most accurately represents BLUM TRUST's
9 reasonable and beneficial water usage without
10 any danger of "double counting", nor
11 impairment or injurious to the rights of others.

12 *Declaration of Sheldon Blum Pg. 6 ¶20*
13 *Declaration of Ali Shahroody, P.E.*

14 16. BLUM TRUST and the PUBLIC WATER
15 SUPPLIERS executed a Stipulation to
16 introduce in a later phase evidence to support
17 water usage in years other than 2011 and
18 2012 e-filed on or about May 23, 2013.

19 *Request For Judicial Notice Ex. "H".*
20 *Declaration of Sheldon Blum Pg. 9 ¶30.*

21 17. BLUM TRUST's overlying groundwater
22 production rights are evidentiary supported
23 and verified by BOLTHOUSE ENTITIES
24 Business Records and Declarations filed in
25 this action.

26 *Declaration of Sheldon Blum Pg. 6 ¶19.*
27 *Request For Judicial Notice Ex. "C" & "D".*

28 18. During the Phase 3 Trial the PUBLIC
WATER SUPPLIERS introduced through the
testimony of expert witness Mr. Joseph
Scalanini an Exhibit 58 "Summary of Applied
Crop Water Duties". The Chart identifies the
irrigation efficiency value for "Onions" at 4.5
Ac. Ft. Per Yr., and for "Carrots" 3.9 Ac. Ft.
Per Yr. A similar document was attached to
the Declarations In Lieu of Deposition
Testimony For Phase 4 Trial.

Request For Judicial Notice Ex. "E".
Declaration of Sheldon Blum Pgs. 6-7 ¶21".
Declaration of Ali Shahroody, P.E.

19. Pursuant to: (1) Phase 3 Trial Exhibit 58
'Applied Crop Water Duties', (2) May 23, 2013
Stipulation between Cross-Complainants and
BLUM TRUST; and (3) Cross-Complainants'

1 First Amended Cross-Complaint computations
2 for groundwater production rights computed at
3 the highest volume of groundwater extracted
4 and the Declaration of Ali Shahroody, PE; the
5 BLUM TRUST's groundwater production rights
equal **531 Ac. Ft. Per Yr.**, based on Years
2004-2005 when "Onions" were beneficially
irrigated on its farmland by BOLTHOUSE
FARMS.

6 *Declaration of Sheldon Blum Pg. 6 ¶19 - 21.*
7 *Request For Judicial Notice Ex. "E", "F" @ Pg.*
8 *13 ¶40 (A), Lines 9-14.*
9 *Declaration of Ali Shahroody.*

10 20. The BLUM TRUST's & BOLTHOUSE
11 FARMS' farming operation represents a valid
12 exercise of overlying production rights in
13 conformity with good agriculture farming
14 standards and practices, and in compliance
15 with all applicable State and Federal laws.

16 *Declaration of Sheldon Blum Pg. 6 ¶18.*
17 *Exhibit List Ex. "1", Pg. 1, Section 2 Purpose*
18 *For Which Premises Are To Be Used.*

19 21. On or about December 20, 2007 BLUM
20 TRUST served on all parties its Answer to the
21 PUBLIC WATER SUPPLIERS' Complaint/
22 Cross-Complaint. The First through Seventh
23 Causes of Action were denied as to their
24 alleged prescriptive rights, appropriative rights,
Municipal rights and any other water right as
having priority over BLUM TRUST's overlying
water rights or otherwise that BLUM's rights
are subordinate as oppose to co-equal, and
asserted 31 Affirmative Defenses.

25 *Declaration of Sheldon Blum Pg. 7 ¶22.*
26 *Request For Judicial Notice Ex. "G".*

27 22. BLUM TRUST has a superior right, but
28 not less than a co-equal right to pump water
for the reasonable beneficial use of its 120
Acs., as against Cross-Complainants' alleged
prescriptive rights in times of overdraft. Cross-
Complainants' appropriative rights are
subordinate to BLUM TRUST overlying/
correlative rights in times of overdraft.

City of Los Angeles v. City of San Fernando
(1975) 14 Cal.3d 199, 293

1 **ISSUE NO. 2: ALL GROUNDWATER PUMPED FROM LESSEE BOLTHOUSE FARMS'**
2 **ADJACENT PARCELS' WATER WELLS AND APPLIED FOR THE REASONABLE**
3 **BENEFICIAL USE ON BLUM TRUST'S FARMLAND TO IRRIGATE CROPS DURING THE**
4 **EIGHT (8) YEAR LEASE TERM, BELONGS TO BLUM TRUST AND NOT THE BOLTHOUSE**
5 **ENTITIES, AS A MATTER OF LAW**

6 **MOVING PARTY'S UNDISPUTED**
7 **MATERIAL FACTS AND SUPPORTING**
8 **EVIDENCE**

9 1. The Agriculture Lease Agreement between
10 Lessor BLUM TRUST and Lessee
11 BOLTHOUSE FARMS dated August 2, 2001,
12 expressly cited the *Antelope Valley*
13 *groundwater issues in this adjudication, and*
14 *the impact on water pumping and water rights*
15 *which may affect the amount and cost of*
16 *available groundwater for the BLUM TRUST*
17 *farmland. Based on these concerns, it was*
18 *agreed by the parties that all covenants and*
19 *agreements contained in the lease were*
20 *deemed to be covenants running with the land*
21 *and shall inure to the benefit of and be binding*
22 *upon the successors in interest of the parties.*

23 *Declaration of Sheldon Blum Pgs. 2 ¶13; 3-4 ¶19*
24 *Exhibit List Ex. "1" Pg. 14, Pg. 15, Section 22.*
25 *Water Adjudication.*

26 2. On or about December 20, 2007, BLUM
27 TRUST filed in these coordinated proceedings
28 a Complaint/Cross-Complaint against WM.
BOLTHOUSE FARMS, INC & BOLTHOUSE
PROPERTIES, LLC. which alleged various
causes of action, including Breach of
Agriculture Lease/Modification Agreement
arising out of the parties 'Farming Unit'. The
pleadings alleged that during the lease term
the groundwater allocation right belongs to the
leased BLUM TRUST 'Place of Use'
farmland.

Declaration of Sheldon Blum Pg. 7 ¶23.

3. The BLUM TRUST action was subsequently
severed by Stipulation & Order and proceeded
as an independent case to the Basin
adjudication. During discovery, BLUM TRUST
served a First Set of Special Interr. Set One,
on 2/20/08. Special Interr. No. 92, requested
that BOLTHOUSE quote the lease language

OPPOSING PARTY'S RESPONSE AND
SUPPORTING EVIDENCE

1 which authorized the BOLTHOUSE
 2 ENTITIES to deliver groundwater onto the
 3 BLUM TRUST farmland from its adjacent
 4 parcel(s).

5 *Declaration of Sheldon Blum Pgs. 7-8 ¶24.*
 6 *Exhibit List Ex. "9"(1)".*

7 4. On May 9, 2008, BOLTHOUSE
 8 PROPERTIES, LLC, President Anthony L.
 9 Leggio provided a verified Response To
 10 BLUM TRUST's Special Interr., Set One, and
 11 admitted in its response to Interr. No. 92 that:
 12 **"WM. BOLTHOUSE FARMS, INC lease**
 13 **water rights regarding the SUBJECT**
 14 **PROPERTY are set forth in the lease**
 15 **agreement and are contractual in nature.**
 16 **BOLTHOUSE PROPERTIES, LLC does not**
 17 **have any leasehold or contractual water**
 18 **rights relationship with BLUM."**

19 *Declaration of Sheldon Blum, Pg. 8 ¶25.*
 20 *Exhibit List Ex. "9(2)".*

21 5. On or about December 16, 2008, BLUM
 22 TRUST and BOLTHOUSE ENTITIES entered
 23 into a Settlement Agreement under BLUM
 24 TRUST's express 'reservation of rights' to
 25 contend in this adjudication that the volume
 26 of groundwater pumped by BOLTHOUSE
 27 FARMS and its sublessees in undertaking
 28 its/their farming operations was for the
 beneficial use of BLUM TRUST's farmland
 during the lease term, and that such pumping
 should be allocated and credited to BLUM
 TRUST's farmland under any CA water
 priority allocation system.

Declaration of Sheldon Blum Pg. 8 ¶26.
Exhibit List Ex. 10, Pgs. 1, & 4 ¶¶f. & g.

6. General Counsel Ms. Tracy M. Saiki for
 BOLTHOUSE FARMS' Declaration In Lieu of
 Deposition Testimony For Phase 4 Trial dated
 January 31, 2013, declared that
"BOLTHOUSE FARMS is not claiming
any groundwater rights in this action."

Declaration of Sheldon Blum, Pgs. 8-9 ¶27.
Request For Judicial Notice Ex. "I".

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

*Declaration of Sheldon Blum, Pgs. 3-4 ¶¶9; 7-8 ¶¶25 & ¶¶27, & 9 ¶28.
Exhibit List Ex. "9(1 & 2).
Request For Judicial Notice Ex. "I".*

8. BLUM TRUST's water production rights arising from 'Place of Use', are not in conflict with nor duplicative to any of BOLTHOUSE PROPERTIES groundwater production claims. BOLTHOUSE calculated its pumping usage based on irrigating different parcels during crop season Years 2011 2012.

*Declaration of Sheldon Blum Pg. 9, ¶29.
Request for Judicial Notice on Global Settlement Agreement, Ex. "M".*

9. There are no set of facts or basis to declare that the BLUM TRUST 'Place of Use' production entitlement is either subordinate to the 'Place of Diversion', or otherwise constitutes a forfeiture of groundwater production rights.

*Declaration of Sheldon Blum Pgs. 9-10 ¶¶31.
Request for Judicial Notice, Ex. "M".*

10. Based on the above-described conduct of the BOLTHOUSE ENTITIES, the doctrines of Equitably Estoppel and/or Judicially Estoppel should bar them from contesting or contradicting BLUM TRUST's groundwater production rights acquired during the 8 year lease term.

Declaration of Sheldon Blum, Pg. 9 ¶28.

ISSUE NO. 3: BLUM TRUST HAS COMPLETE AFFIRMATIVE DEFENSES AGAINST CROSS-COMPLAINANTS' FIRST THROUGH SEVENTH CAUSES OF ACTION WHICH BARS THE RELIEF SOUGHT AGAINST BLUM TRUST'S OVERLYING WATER RIGHTS FROM THE NATIVE SAFE YIELD, FREE OF REPLENISHMENT ASSESSMENT, AND IN TIMES OF OVERDRAFT/CUTBACK UNDER THE CA PRIORITY ALLOCATION SYSTEM.

A. BLUM TRUST DULY ACTED WITHIN ITS GROUNDWATER PRODUCTION RIGHTS, AND IS NOT RESPONSIBLE FOR THE LOSS OR DAMAGE RESULTING FROM THE ACTS OR OMISSIONS OF OTHERS.

(Third Affirmative Defense)

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>1. At all times mentioned in the Cross-Complaint, BLUM TRUST exercised its groundwater production rights in conformity with good agriculture operations and in compliance with all applicable State & Federal law.</p> <p><i>Declaration of Sheldon Blum Pg. 3 ¶8 Exhibit List Ex. "1", Pg. 1, Section 2 Purpose For Which Premises Are To Be Used. Request For Judicial Notice, Ex. "G", 3:6-12.</i></p> <p>2. The 'Place of Use' methodology under a 'Farming Unit' is an acceptable method to acquire groundwater production entitlement under the CA water priority allocation system.</p> <p><i>Request for Judicial Notice, Ex. "J", 1:22-25; & "K", 2:17-21. Declaration of Ali Shahroody, PE.</i></p> <p>3. At all times herein mentioned, BLUM TRUST was and is the Fee Owner and entitled to the reasonable beneficial use of groundwater which the parcels overlays. This overlying right includes the right to pump and divert groundwater from the native safe yield free of replenishment assessment, and a quantified production right on its leased 120 acres in times of overdraft and cutback under the CA water priority allocation system.</p> <p><i>Declaration of Sheldon Blum Pgs. 2 ¶2; & 11 ¶35. Request For Judicial Notice Ex. "A". Exhibit List Ex. "1".</i></p>	

**B. THE DOCTRINES OF EQUITABLY ESTOPPEL & JUDICIAL ESTOPPEL BAR
THE PUBLIC WATER SUPPLIERS FROM CONTESTING OR CONTRADICTING BLUM
TRUST'S GROUNDWATER PRODUCTION ENTITLEMENT TO THE BASIN.
(Tenth Affirmative Defense)**

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>1. Cross-Complainants have engaged in using multiple APN parcels as a "Unit" when applying groundwater to the beneficial 'Place of Use' parcel for groundwater priority production priority entitlement in this Basin adjudication. BLUM TRUST & BOLTHOUSE FARMS engaged in similar conduct.</p> <p><i>Request for Judicial Notice, Ex. "G" 4:26, 5:1; Ex. "J" 1:22-25; Ex. "K", 2:17-21. Declaration of Sheldon Blum Pg. 6 ¶18.</i></p> <p>2. Cross-Complainants' have calculated their right to pump groundwater from the Antelope Valley Basin in an annual amount equal to the highest volume of groundwater extracted in any year preceding entry of judgment in this action. BLUM TRUST has followed suit.</p> <p><i>Request For Judicial Notice Ex. "F" Pg. 13 ¶40 (A), Lines 9-14. Declaration of Sheldon Blum Pg. 6 ¶21.</i></p> <p>3. BLUM TRUST and the PUBLIC WATER SUPPLIERS executed a Stipulation to introduce in a later phase evidence to support water usage in years other than 2011 and 2012 dated May 21, 2013.</p> <p><i>Request For Judicial Notice Ex. "H". Declaration of Sheldon Blum Pg. 9 ¶30.</i></p> <p>4. Based on the above-stated facts, it is unjust and inconsistent for Cross-Complainants to contest or contradict BLUM TRUST' 'Place of Use' methodology and Annual Ac. Ft. production entitlement in the Basin adjudication.</p> <p><i>Request for Judicial Notice, Ex. "J", 1:22-25; Ex. "K", 2:17-21. Declaration of Sheldon Blum Pgs. 8-9 ¶28 ¶31</i></p>	

C. BLUM TRUST'S WATER RIGHTS ARE EITHER SUPERIOR TO AND TAKE PRIORITY OVER ANY WATER RIGHTS ASSERTED BY CROSS-COMPLAINANTS AGAINST BLUM TRUST, OR ARE CO-EQUAL BUT NOT SUBORDINATE TO CROSS-COMPLAINANTS' RIGHTS UNDER THE CA WATER PRIORITY ALLOCATION SYSTEM
(Twelfth Affirmative Defense)

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>1. BLUM TRUST refers to and incorporates by reference all statements of undisputed facts and supporting evidence under <u>ISSUE NOS. 1 & 2</u>, as though fully set forth hereat.</p> <p><i>Request For Judicial Notice, Ex. "G", 5:12-14.</i></p> <p>2. In awarding judgment to BLUM TRUST, it is necessary that either BOLTHOUSE FARMS offset its groundwater allocated production share by <u>531 Ac. Ft.</u>, or otherwise all Overlying Landowners equally reduce their pro-rata allocated share under their Global Stipulation, so that BLUM TRUST is properly allocated its annual Ac. Ft. entitlement in times of overdraft and cutback under the CA water priority allocation system.</p> <p><i>Declaration of Sheldon Blum, Pg. 11 ¶36. Request For Judicial Notice, Ex. "D", "E", "F" 13:9-14; "H", "I", "J" 1:22-26; "K" 2:3-28 & 3:1-3.</i></p>	

D. BLUM TRUST IS DENIED EQUAL PROTECTION & DUE PROCESS UNDER THE LAW BY CROSS-COMPLAINANTS, OVERLYING LANDOWNERS & THE FEDERAL GOVERNMENT IN THE ANTELOPE VALLEY BASIN ADJUDICATION
(Twenty Second through Twenty Fifth Affirmative Defenses)

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>1. The US Constitution 14th Amendment as applied to the states under the 5th Amendment, and the CA Constitution, Art. I, §7(a) prohibits the denial of equal protection of the law. In addition, the constitutional guarantees of the Due Process Clause of the 5th Amendment states that no person shall be <u>deprived of property without due process.</u></p> <p><i>Request For Judicial Notice Evid. Code §451.</i></p>	

2. The Proposed Global Stipulation & Physical Solution Agreement of the settling parties violates BLUM TRUST's 'present and prospective' overlying rights and correlative rights to the Basin's native safe yield, free of replenishment assessment. In addition, the agreement denies BLUM TRUST's of its annual 531 Ac. Ft. production right on its 120 acre farmland under the CA water priority allocation system in times of overdraft and cutback.

*Request For Judicial Notice, Ex. "M".
Declaration of Sheldon Blum Pgs. 9 ¶31; ¶35.
Declaration of Ali Shahroody, PE.*

3. Between the calendar years 2000 to 2012, the PUBLIC WATER SUPPLIERS and Overlying Landowners have used a variety of methods and time-frames to calculate their water production rights. Despite BLUM TRUST adopting the same Applied Crop Water Duty formula, and 'Place of Use' methodology to calculate its production rights for its 120 Acs., BLUM TRUST has been denied any percentage share or quantified annual volume from the Basin in times of overdraft and cutback under the CA priority water allocation system.

*Declaration of Sheldon Blum Pg. 6 ¶20 & 21.
Request for Judicial Notice, Ex. "J", 1:22-25; .
Ex. "K", 2:17-21. & Ex. "F" Pg. 13 ¶40 (A),
Lines 9-14.
Exhibit List, Ex. "M".*

4. The Proposed Global Settlement denies BLUM TRUST of its highest annual water extraction as a basis for computing BLUM TRUST's production entitlement in this Basin adjudication.

*Declaration of Sheldon Blum Pg. 11 ¶35.
Request For Judicial Notice, Ex. "M".
Declaration of Ali Shahroody, PE.*

5. BLUM TRUST's and the PUBLIC WATER SUPPLIERS' Stipulation e-filed on 5/23/13 on introducing evidence to support water usage in years other than 2011 & 2012, has been impaired or breached under the Proposed Global Stipulation which violates the Due Process & Equal Protection Clauses.

Request For Judicial Notice, Ex. "H" & "M".

ISSUE NO. 4: BLUM TRUST HAS SUFFERED A LEGAL INJURY AND SEVERE FINANCIAL HARDSHIP BECAUSE OF THE SUBSTANTIAL DAMAGE TO ITS 3 WATER WELLS, AND UNCERTAINTY OF PRODUCTION RIGHTS, CAUSING INVOLUNTARY & COMPELLED DISUSE, WHICH SHOULD NOT RESULT IN BLUM TRUST'S LOSS OF PRODUCTION ENTITLEMENT IN TIMES OF OVERDRAFT & CUTBACK UNDER THE CA. WATER PRIORITY ALLOCATION SYSTEM

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>1. Pursuant to the Agriculture Lease, Section 13, <i>Surrender of Premises</i>, at the expiration of the lease term Lessee 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 pursuant to the lease Section 13, <i>Surrender of Premises</i>.</p> <p><i>Declaration of Sheldon Blum, Pg. 10 ¶32. Exhibit List Ex. 1, Pg. 8, Section 13. Surrender of Premises ; and Ex. "11".</i></p> <p>2. Instead, BOLTHOUSE FARMS did not weld each water well opening but capped and left them unsecure, resulting in someone filling the wells with debris, rocks and dirt, requiring substantial repairs at a significant cost.</p> <p><i>Declaration of Sheldon Blum Pg. 10 ¶32. Exhibit List Ex. "11".</i></p> <p>3. BLUM TRUST has been unable to lease its 120 acres of farmland to a farmer based upon: (1) BLUM TRUST's 3 water wells requiring substantial repair at a significant expense; (2) The groundwater allocation entitlement for the BLUM TRUST parcels remain uncertain and unreasonably rejected by the settling parties in this Basin adjudication; and (3) There exists a cost prohibitive economic risk for a farmer to farm the parcels under a 3 to 5 year lease term without assurance of an annual groundwater allocated production right in times of overdraft and cutback based on a CA water priority allocation system. Once the production rights are restored by this court, BLUM TRUST's water wells will be serviced to functional operation in due course.</p> <p><i>Declaration Sheldon Blum Pg. 10-11 ¶33-34.</i></p>	

**ISSUE NO. 5: BLUM TRUST IS NOT LIABLE FOR THE WOODS CLASS ACTION
ATTORNEY FEES & COSTS UNDER ANY LEGAL THEORY AS A MATTER OF LAW**

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
<p>1. BLUM TRUST was not sued as an opposing party Defendant and/or Cross-Defendant in the <i>Richard Woods Class Action vs. Los Angeles County Waterworks District No. 40, et al.</i></p> <p><i>Declaration of Sheldon Blum Pgs. 11-12 ¶37</i></p> <p>2. There has been no direct or significant benefit or any value to BLUM TRUST derived from the Woods Class' attorney services which was not independently accomplished by BLUM TRUST's counsel against the PUBLIC WATER SUPPLIERS in this action.</p> <p><i>Declaration of Sheldon Blum Pg. 11 ¶37.</i></p> <p>3. Under the circumstances <i>Code of Civil Procedure §1021.5</i>, does not apply to BLUM TRUST; there is no duty owed by BLUM TRUST to the Woods' class; BLUM is similarly situated to the Willis class members, and it would not be in the interest of justice for BLUM TRUST to be responsible to satisfy pro-rata any of Woods' class counsel attorney fees or costs.</p> <p><i>Declaration of Sheldon Blum Pg. 11 ¶37.</i></p> <p>4. The Woods Class Supplemental Case Management Conference Statement for August 11, 2014, Hearing admits that it is the PUBLIC WATER SUPPLIERS, only who should pay for class counsel's attorney fees and costs and not the Overlying Landowners, including BLUM TRUST. The Order of Consolidation entered on February 24, 2010, also provided that no party may seek fees or cost from another party where they are not involved in the particular action.</p> <p><i>Request For Judicial Notice Ex. "L".</i> <i>Declaration of Sheldon Blum, Pg. 11, ¶37.</i></p>	

1 Dated: October 5, 2014

Respectfully submitted,
Law Offices of Sheldon R. Blum

2
3
4 By: 
Sheldon R. Blum, Esq.
Attorney For Cross-Defendant BLUM TRUST