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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 REPLY BRIEF TO ALL  
OPPOSITION IN CONJUNCTION WITH  
ORAL ARGUMENT AT HEARING IN  
SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT/SUMMARY ADJUDICATION OF  
ISSUES**

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

) Hearing Date: January 22, 2015  
) Time: 10:00 a.m.  
) San Jose 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  
Palmdate Water District.  
Riverside County Superior Court  
Consolidated Action Nos. RIC 344 840,  
RIC 344 436, RIC 344 668

AND RELATED CROSS-ACTIONS

1

Blum Trust's Reply Brief To All Opposition In Conjunction With Oral Argument In Support of Motion For  
Summary Judgment/Summary Adjudication Of Issues

1 BLUM TRUST respectfully submits the following Reply Brief to all filed Oppositions in  
2 support of its Motion For Summary Judgment/Summary Adjudication of Issues ("Motion").

3 **A. INTRODUCTION**

4 It is undisputed that BLUM TRUST as a 30 year Overlying Landowner has groundwater  
5 production rights to a correlative share of the native safe yield for the reasonable and beneficial use  
6 of its farmland, free of replacement assessment in the Antelope Valley Adjudication area.

7 BLUM TRUST's reasonable and beneficial 'Place of Use' methodology for establishing  
8 groundwater Ac. Ft. production rights is a case of first impression before any California court and a  
9 precedent in times of overdraft and cutback in any complex coordinated proceedings.

10 Constitutional protection of inalienable rights under the Equal Protection Clause and Due Process  
11 Clause must be carefully safeguarded and redressed in these proceedings.

12 BLUM TRUST's Motion should be granted for each of the following reasons:

13 1. The record is clear that BLUM TRUST has been denied Equal Protection and Due  
14 Process under the law in presenting its groundwater production rights in the same manner and  
15 under the same circumstances as other Overlying Landowners. Similarly, BLUM TRUST was  
16 arbitrarily excluded as an Overlying Landowner from participating in the Global Physical Solution.

17 2. It is undisputed that the PUBLIC WATER SUPPLIERS agree with the BLUM  
18 TRUST reasonable and beneficial 'Place of Use' methodology when 2 or more APN overlying  
19 parcels are used as a 'Farming Unit' or operation when calculating groundwater production rights in  
20 times of overdraft and cutback from the native safe yield.

21 3. It is also undisputed that the PUBLIC WATER SUPPLIERS' Cross-Complaint sets  
22 forth a method of calculating the right to pump groundwater from the Antelope Valley Adjudicated

1 area in an annual amount equal to the highest volume of groundwater extracted in any year  
2 preceding entry of judgment in this action. This formula has been agreed to and applied by all  
3 Overlying Landowners in this action, including BLUM TRUST.

4 4. It is undisputed that the PUBLIC WATER SUPPLIERS' prescriptive acre feet claim  
5 may have already been fully satisfied under the Global Physical Solution and therefore no further  
6 prescriptive rights or claims exists as against BLUM TRUST. This is an essential element on all  
7 causes of action against BLUM TRUST, and triable issue. The burden of proof as to the right to  
8 recover any remaining balance against BLUM TRUST's water rights has not been met.  
9

10 5. The PUBLIC WATER SUPPLIERS responsive Separate Statement of Undisputed  
11 Material Facts often raises running boiler plate objections to both the separate statement and  
12 evidence presented, and either ignores applicable hearsay exceptions or established preliminary  
13 facts. When properly applied, the separate statements and supporting documents provide  
14 competent evidence under under BLUM TRUST's burden of proof which remain uncontroverted.  
15

16 6. BLUM TRUST'S 10/6/14 Motion redacted Judicial Notice Ex. "M", and does not  
17 inappropriately disclose an 'Offer to Compromise' under the express statutory language of  
18 Evidence Code §1152. Rather it was attached for a different purpose, and supported BLUM  
19 TRUST's uncontested triable issue that the PUBLIC WATER SUPPLIERS, Overlying Landowner's  
20 and Federal Government have denied BLUM TRUST equal protection and due process in this  
21 action. Furthermore, Ex. M was to coincide with this Court's 9/5/14 Minute Order requiring a  
22 10/10/14 filing deadline for the Global Physical Solution without providing any procedure to  
23 challenge the groundwater allocation of excluded party BLUM TRUST.  
24

1 **B. LEGAL ANALYSIS**

2 **I. BLUM TRUST'S THIRTEENTH AFFIRMATIVE DEFENSE TO THE PUBLIC WATER**  
3 **SUPPLIERS CROSS-COMPLAINT ALLEGED "SELF-HELP", HOWEVER IT WAS NOT**  
4 **ADDRESSED IN THE MOTION BECAUSE OF THE RATIONAL BASIS THAT BLUM TRUST**  
5 **WAS TO BE TREATED EQUALLY WITH DUE PROCESS AS OTHER OVERLYING**  
6 **LANDOWNERS REGARDING ITS BURDEN OF PROOF FOR GROUNDWATER PRODUCTION**  
7 **ALLOCATION RIGHTS**

8 In BLUM TRUST's Answer to the PUBLIC WATER SUPPLIERS' Compliant/Cross-  
9 Complaint it alleged a Thirteenth Affirmative Defense for "Self Help" (*Judicial Notice Ex. G*, 5:17-  
10 19); a Seventeenth Affirmative defense of "Laches" (6:10-13); and a Twenty Second through  
11 Twenty Fifth Affirmative Defense denial of Equal Protection and Due Process under the US  
12 Constitution 14<sup>th</sup> & 5<sup>th</sup> Amendment and the CA Const. Art. I, §7(a) (*Judicial Notice Ex. G*, 7:6-24).

13 These constitutional guarantees are inalienable rights which were denied to BLUM TRUST  
14 based on the manner in which the PUBLIC WATER SUPPLIERS have sought to proceed and  
15 enforce their Cross-Complaints' alleged prescriptive claims, singling out BLUM TRUST in the  
16 Antelope Valley Groundwater Adjudication.

17 Although this court determined in Phase 3 Trial that the Antelope Valley Adjudication area  
18 was in a condition of overdraft since 1951, and the PUBLIC WATER SUPPLIERS' Statement of  
19 Claim appears to establish a prescriptive right dating back since 1946, BLUM TRUST understood  
20 that its groundwater production burden of proof would be the **same** under the circumstances as all  
21 other Overlying Landowners, regardless of denied membership in the Global Physical Solution.

22 It is highly unlikely, if not impossible for an Overlying Landowner to be able to meet the  
23 insurmountable burden of proof of establishing "Self Help" documents and records of continuous  
24 beneficial water use, expanding over sixty (60) years, through the farming efforts of at least two (2)

1 generations. This may only be successfully accomplished by a handful of Overlying Landowners.  
2 BLUM TRUST should not be expected to meet an asymmetrical 'Burden of Proof'. The above-  
3 stated affirmative defenses are sustainable to the merits of the Cross-Complaint. 1

4 **II. THE PUBLIC WATER SUPPLIERS PRESCRIPTIVE CLAIMS MAY HAVE ALREADY**  
5 **BEEN FULLY SATISFIED UNDER THE GLOBAL PHYSICAL SOLUTION AND THEREFORE NO**  
6 **PRESCRIPTIVE CLAIMS FURTHER EXISTS AS AGAINST BLUM TRUST**

7 The PUBLIC WATER SUPPLIERS have posted on the court's web site its Statement of  
8 Claim indicating its highest groundwater pumping year occurred in 1998, when 17,659.07 Ac.  
9 Ft., were prescriptively taken. To avoid unjust enrichment, the PUBLIC WATER SUPPLIERS  
10 burden of proof against BLUM TRUST requires all Overlying Landowners to establish "Self Help"  
11 water records of continuous uninterrupted beneficial use from 1951, to present.

12 This is necessary in order to determine if there is any remaining prescriptive Ac. Ft. balance  
13 to be captured against BLUM TRUST's overlying rights, which were not previously recovered under  
14 the parties Global Physical Solution The handful of Overlying Landowners, if any, that can properly  
15 establish "Self Help" beneficial use records would be protected while others not. The PUBLIC  
16 WATER SUPPLIERS remaining unsatisfied prescriptive claim balance, if any, against BLUM  
17 TRUST requires proof. For example, if 82% of the 110,000 Ac. Ft. safe yield is allocated to the  
18 Overlying Landowners, this leaves a balance of 18% to the PUBLIC WATER SUPPLIERS and  
19 Federal Govt. The PUBLIC WATER SUPPLIERS' defect in proof as against BLUM TRUST results  
20 in the Cross-Complaint to be without merit.  
21

22  
23 1. There was no rational basis for BLUM TRUST to have been excluded as an Overlying Landowner from the  
24 Global Physical Solution. The arbitrary denial had an obvious chilling and stifling effect on meeting its burden  
25 of proof. What status or attributes did Rosamond Community Services District have to "join" the settling  
Overlying Landowner Group, while BLUM TRUST as a 30 year Overlying Landowner was excluded.

**III. BLUM TRUST HAS MET ITS BURDEN OF PROOF FOR A GROUNDWATER PRODUCTION ENTITLEMENT IF BLUM TRUST WAS NOT WRONGFULLY DENIED EQUAL PROTECTION AND DUE PROCESS OF LAW**

BLUM TRUST's requested that this court take judicial notice pursuant to *Evidence Code* §§451, 452 & 453, for consideration in connection with its Motion, and furnished the court and all parties with an Exhibit List with copy *excerpts* of Exhibits "A"- "L", to enable it to respond. BLUM also attached copy *excerpts* of evidentiary documents under Exhibits "1"- "11".

A court may take judicial notice of each document in a court file. Hearsay exceptions apply. (*Columbia Cas. Co. v. Northwestern Nat'l Ins. Co.* (1991) 231 CA3d 457, 473; *Laabs v. City of Victorville* (2008) 163 CA4th 1242, 1266).

BLUM TRUST has advanced the concept and methodology applied for a reasonable and beneficial 'Place of Use' groundwater production right. BLUM TRUST has advanced two (2) viable alternative legal theories in establishing its groundwater production rights. The **First** legal theory is that a farming unit or operation was created between BLUM TRUST and BOLTHOUSE FARMS under an Agriculture Lease Agreement with covenants running with the land in recognition of the Antelope Valley Basin adjudication and does not involve double counting nor conflicting claims. The **Second (2<sup>nd</sup>)** legal theory is that the 'Place of Use' methodology is an incident of overlying ownership, and absent agreement to the contrary, once applied to the beneficial 'Place of Use' parcel for crop irrigation becomes the production right of the farmland by operation of law, regardless of the method in which the groundwater had been diverted.

It is a legally supportable proposition for the state of California that if groundwater has not been severed from the ground it does not belong to anyone and remains real property. Once the severance occurs for beneficial irrigation, groundwater ownership rights become vested in the

1 "moistened" overlying parcel by operation of law. (*CA Const. Art. 10, Sec. 2; Stanislaus Water Co.*  
2 *v. Bachman* (1908) 152 Cal. 716, 725-728; See *Motion* 8:14-25, 9:1-20).

3 The PUBLIC WATER SUPPLIERS' opposition to the Motion does not address the triable  
4 issue with respect to said 'Place of Use' methodology when calculating water rights, but rather  
5 firmly agrees with the proposition. (*Judicial Notice Ex. J & K*). In addition, the PUBLIC WATER  
6 SUPPLIERS advocates its groundwater allocation in an amount equal to the highest volume of  
7 groundwater extracted in any year proceeding entry of judgment. (*Judicial Notice Ex. F* 13:9-14).

8 Since these triable issues should be mutual, BLUM TRUST agrees with the above-stated  
9 foundation for its groundwater production computations. When applying BOLTHOUSE ENTITIES  
10 Declaration (*Evid. Code §1220*), which are prior consistent statements (*Evid. Code §1236*), of past  
11 recollection recorded events (*Evid. Code §1237*), which result in declarations against interest (*Evid.*  
12 *Code §1230*) to entries in its business records ( *Evid. Code §1271; Judicial Notice Ex. C & D*),  
13 BLUM TRUST's burden of proof is met on an annual 531 Ac. Ft., for its farmland to grow onions as  
14 occurred in Years 2004 & 2005. (*Judicial Notice Ex. E* ).

15 Likewise, both doctrines of 'Equitable Estoppel' and 'Judicial Estoppel' apply to the PUBLIC  
16 WATER SUPPLIERS and BOLTHOUSE ENTITIES as asserted by BLUM TRUST in its Tenth  
17 Affirmative Defense. (*Judicial Notice Ex. G*, 4:24-26; 5:1).

18 The denial of BLUM TRUST's equal protection and due process is eight (8) years long  
19 standing. Membership within the Global Physical Solution is procedurally critical, as it dramatically  
20 changes BLUM TRUST's burden of proof regarding its groundwater production entitlement. Similar  
21 to other members, BLUM TRUST has utilized the same Applied Crop Water Duty formula (*Judicial*  
22 *Notice Ex. E*), judicial benchmark between Years 2001 to 2012 (*Judicial Notice Ex. H*), and 'Place

1 of Use' methodology to calculate its water production rights (*Judicial Notice Ex. J & K*) as others.

2 The PUBLIC WATER SUPPLIERS responsive Separate Statement of Undisputed Material  
3 Facts raises running boiler plate objections and often ignores applicable hearsay exceptions and  
4 established preliminary facts. The determination of whether a particular preliminary fact issue falls  
5 under *Evidence Code* §§403, 405, & 702, requires a process of elimination by the court. If the  
6 preliminary fact issue does not come within one of the four categories set out in §403, then it is  
7 governed by §405. 2

8 Here, BLUM TRUST's Exhibit List 1-11, as well as its Judicial Notice Exhibit List A-L, have  
9 provided preliminary facts for the admissibility of the evidence or from which inferences can be  
10 reasonably deductible. The burden of proof shifted to the PUBLIC WATER SUPPLIERS who have  
11 not introduced in their opposition to Separate Statement conflicting competent evidence or  
12 contradictions drawn from inferences of the evidence. Accordingly, the PUBLIC WATER  
13 SUPPLIERS have not meet their burden of proof as to each separate statement.

14 Additionally for consideration, is the Declaration of Ali Shahroody dated and filed on October  
15 14, 2014. Although objections were raised as to its timeliness (*id.* 6 days late) it was previously  
16 unavailable, however, identified in the Motion under triable specific issues; no opposition claimed  
17 prejudice; and *Code of Civil Procedure* §437c does not prescribe evidentiary preclusion.

18 Further objections were raised that Mr. Shahroody expressed an improper opinion, however  
19 however *Evid. Code* §801(b), provides otherwise. Evidence which is: (1) Observed by the expert;

20  
21  
22 2. *Evid. Code* 403, provides that evidence is sufficient to sustain a finding of the existence of the preliminary  
23 fact when: (1) The relevance of the proffered evidence depends on the existence of the preliminary fact; (2)  
24 The preliminary fact is the personal knowledge of a witness concerning the subject matter of his testimony; (3)  
25 The preliminary fact is the authenticity of a writing; or (4) The proffered evidence is of a statement or other  
26 conduct of a particular person and the preliminary fact is whether that person made the statement or so  
27 conducted himself.



(2) Personally known to the expert; or (3) Made known to the expert at or before the trial; and (4) of a type that reasonably may be relied on by experts in forming opinions on the subject to which the opinion relates, even though the matter relied on may be hearsay statements of others, establishes a proper basis for the expert opinion.

Based on the foregoing, BLUM TRUST's respectfully requests that this court consider Mr. Shahroody's Declaration with the Motion.

**IV. BLUM TRUST'S EXHIBIT "M" DOES NOT DISCLOSE AN "OFFER TO COMPROMISE" UNDER EVIDENCE CODE 1152 SINCE IT DOES NOT REVEAL THAT ANYONE HAS OR WILL SUSTAIN ANY LOSS, DAMAGE OR LIABILITY, BUT RATHER TO NOTIFY THE COURT THAT THE AGREEMENT VIOLATES BLUM TRUST'S EQUAL PROTECTION AND DUE PROCESS, AKIN TO BAD FAITH, AND WAS TO CONICIDE WITH THE COURT'S 9/5/14 MINUTE ORDER WHICH ESTABLISHED A 10/10/14 FILING DEADLINE FOR THE GLOBAL PHYSICAL SOLUTION WITHOUT PROVIDING A METHOD TO CHALLENGE ALLOCATION**

Under *Evidence Code §1152*, evidence that a person has, in compromise or from humanitarian motives, furnished or promised to furnish money or any other thing, act or service to another who has sustained or will sustain *loss or damage*, as well as any conduct or statements made in negotiations thereof, is *inadmissible to prove his or her liability for the loss or damage or any part of it*. The statute allows such evidence in an action for breach of the covenant of good faith and fair dealing or a violation of Insurance Code §790.03(h), Unfair Claims Settlement Practices (*Evid. Code §1152(b)*), which are both Bad Faith actions.

More importantly, such evidence is admissible if offered for a purpose other than to prove liability. (*Zhou v. Unisource Worldwide* (2007) 157 CA4th 14711, 1478; *Carney v. Santa Cruz Women Against Rape* (1990) 221 CA3d 1009 1023).

In support of the Motion, BLUM TRUST attached Judicial Notice Ex. "M", (*id.* redacted

1 Ex. "4" attachment to the Global Physical Solution) which advanced its Twenty Two through  
2 Twenty Five Affirmative Defenses (*id.* Denial of equal protection and due process; See *Memo*  
3 *Points & Auth.* 20:16-25; 21:1-25; & 22: 1-7). These matters necessarily involve 'Bad Faith'.  
4 The disclosure of zero (0) water rights against BLUM TRUST is also of no secret, it was not an  
5 offer to compromise, nor did it establish anyone's liability, loss or damage who participated in the  
6 negotiations of the Global Physical Solution.  
7

8 The Motion was filed on October 6, 2014, which preceded and was to coincide with the  
9 October 10, 2014, Court hearing and filing deadline of the Global Physical Solution under its  
10 9/5/14 Minute Order. It was only on November 4, 2014, that this Court entertained a filing  
11 approval hearing procedure to take place in 2015, again well after BLUM TRUST's filed Motion.

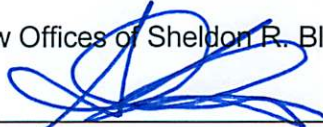
12 The PUBLIC WATER SUPPLIERS claim of inappropriate disclosure is inapplicable to  
13 the case facts, express statutory language and purpose of its disclosure.

14 **C. CONCLUSION**

15 Based on the foregoing and to redress 8 years of constitutional infringements, BLUM  
16 TRUST respectfully requests that its Motion be granted, and that it be awarded an annual 531 Ac.  
17 Ft. for its 120 acres of farmland, and correlative share on its dormant 30 acres. Since BLUM  
18 TRUST's case is of first impression and worthy of precedent which will result in the enforcement of  
19 an important right affecting the public interest, while providing a significant benefit to an effected  
20 large class of overlying landowners, an award of attorney fees is proper under CCP. §1021.5.

21 Dated: December 17, 2014

22 Law Offices of Sheldon R. Blum

23 By:   
24 Sheldon R. Blum, Esq.  
25 Attorney For BLUM TRUST