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2 SUPERIOR COURT OF THE STATE OF CALIFORNIA

3 COUNTY OF LOS ANGELES

4 Coordination Proceeding) Judicial Council Coordination
Special Title (Rule 1550(b)))

5 ANTELOPE VALLEY GROUNDWATER)
6 CASES)

7 Included actions:)

8 Los Angeles County Waterworks District No. 40 v.)
Diamond Farming Co., et al.)
9 Los Angeles County Superior Court, Case No. BC)
325 201)

) FEDERAL DEFENDANTS' CASE
) MANAGEMENT STATEMENT

10 Los Angeles County Waterworks District No. 40 v.)
11 Diamond Farming Co., et al.)
12 Kern County Superior Court, Case No. S-1500-CV-)
254-348)

13 Wm. Bolthouse Farms, Inc. v. City of Lancaster)
Diamond Farming Co. v. City of Lancaster)
14 Diamond Farming Co. v. Palmdale Water District)
15 Riverside County Superior Court, Consolidated)
Action, Case nos. RIC 353 840, RIC 344 436, RIC)
344 668)

16 AND RELATED CROSS ACTIONS)
17

18
19 Cross-Defendant United States of America respectfully submits this narrative case
20 management statement in advance of the November 25 Case Management Conference. The
21 Court asked parties to address: 1) the status of the service of notices in the two class action
22 proceedings; and 2) the setting for trial of the remaining phases of the trial. *See* Order After
23 Phase Two Trial on Hydrologic Nature of Antelope Valley, dated November 6, 2008 at 4.

24 A. Service of class action notice and joinder of remaining parties should be
25 accomplished expeditiously.

26 The United States understands that the Public Water Suppliers will serve the class action
27 notice in cooperation with the Willis Class of non-pumping landowners and the Wood Class of

1 small pumpers. The United States therefore anticipates that the Public Water Suppliers will
2 inform the Court on the status of service of notice and other documents upon the class members.
3 Accordingly, the United States confines its remarks to the scope and timing of service and
4 joinder of the class members.

5 The next step in the progress of this lawsuit should be the completion of notices to the
6 members of the Willis and Wood classes, and service and joinder of certain landowner parties
7 over whom the Cross-Plaintiffs have yet to acquire personal jurisdiction. It is the United States'
8 understanding that notices to class members, together with explanatory documents and an option
9 to opt-out of the adjudication and be personally served, are prepared and once approved by the
10 Court may be posted by U.S. mail service. The United States believes a deadline of December
11 31, 2008 is reasonable for the posting of these documents.

12 In his September 12, 2008, *Declaration Re: Status of Service of Process*, counsel for
13 Rosamond Community Services and Los Angeles County Waterworks District No. 40 informed
14 the Court that certain landowner parties outside of the class description were not yet served with
15 personal service and joined to the adjudication. These include 181 landowners owning 100 acres
16 or more within the adjudication area; 9 parties identified as potentially pumping more than 25
17 acre feet of water per annum; and, 11 mutual water companies. These parties and entities have
18 not been individually served despite the Public Water Suppliers' repeated attempts due to either
19 wrong addresses and/or insufficient information. *See id.* at ¶¶ 9, 12, 13.

20 Because of the repeated yet unsuccessful attempts to join these parties to the
21 adjudication, the United States believes methods of constructive notice should be employed.
22 Notice by publication may be sufficient to effect personal jurisdiction over these individuals and
23 entities. The United States believes such publication notice may also be accomplished by the
24 end of this year.

25 Class members should be afforded a 30 day period, to February 1, 2009, in which to opt
26 out of the class. Personal service on any landowner who opts out of the class may be completed
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1 within one month. In sum, all service should be completed and all parties joined by March 1,
2 2009.

3 Joinder must be completed prior to litigating the next phase of trial. Critical issues of
4 basin-wide importance to all parties, discussed below, will be determined. All potential
5 claimants to water need to be joined and bound by the decisions of the Court on these critical
6 issues. Moreover, failure to join all potential claimants prior to this phase may result in future
7 piecemeal adjudication of the rights of non-joined water users. This, in turn, may put at risk the
8 Court's jurisdiction over the United States under the McCarran Amendment, which waives the
9 United States' sovereign immunity only for comprehensive water rights adjudications.

10 B. The next phase of trial should commence after joinder of all parties and the
11 definition of the precise issues to be litigated.

12 Following notice and joinder of class members by mail and notice and joinder of all
13 remaining claimants and potential claimants by constructive service, Phase III litigation should
14 commence. However, the parties are likely to also pursue a negotiated resolution of this case
15 through the next calendar year. The United States understands that settlement proposals are
16 being drafted and will be distributed in the near future. Therefore, Phase III litigation should be
17 structured so that parties may proceed along concurrent tracks of negotiation and preparation for
18 trial.

19 Accordingly, the United States suggests the following schedule for litigation in Phase III:

- 20 1. March 1, 2009: Court Order or Minute Entry defining the subject matter for the Phase III
21 trial. The Court may request that parties submit a concise list of issues to be determined
22 in the Phase III trial, or issue an order based upon the list of issues previously filed in
23 advance of the Informed Issues Conference held March 24, 2006. In advance of that
24 conference, the United States suggested in its Statement of Issues that the Court
25 determine certain matters, summarized below:

- 26 a. What constitutes (or defines) safe yield in the Antelope Valley groundwater
27 basin? What is the amount of the safe yield in average acre-feet per annum in the
28

1 Antelope Valley groundwater basin?

2 b. Is the Antelope Valley groundwater basin in a state of overdraft today? If yes,
3 how long has this condition existed?

4 c. Has overdraft of the Antelope Valley groundwater basin resulted in land surface
5 subsidence within the Antelope Valley? If so, where? Where is the subsidence
6 most pronounced?

7 These issues may be appropriate for litigation in the Phase III trial.

8 2. March 1, 2009: Commence written discovery for the purpose of disclosing facts related
9 to the Phase III trial issues.

10 3. May 1, 2009: Deadline for the filing of experts' reports on the issues identified for
11 litigation in the Phase III trial. All parties intending to present expert testimony at trial
12 shall be required to file written expert reports. The report must contain a complete
13 statement of all opinions the witness will express and the basis and reasons for the
14 opinions, the data or other information the witness considered in forming the opinions,
15 any exhibits that will be used to summarize or support the opinions, and the witnesses'
16 qualifications. The submission of expert reports will assist in minimizing discovery costs
17 and increasing judicial efficiency by reducing discovery disputes.

18 4. July 1, 2009: Deadline for the filing of experts' rebuttals to initial reports of experts. All
19 parties intending to present rebuttal expert testimony at trial shall be required to file
20 written rebuttal expert reports. The report must contain a complete statement of all
21 opinions the witness will express and the basis and reasons for the opinions, the data or
22 other information the witness considered in forming the opinions, any exhibits that will
23 be used to summarize or support the opinion, and the witnesses' qualifications.

24 5. July 1, 2009 to September 1, 2009: Oral or written depositions of experts.

25 6. September 15, 2009: Opening trial briefs due.

26 7. September 25, 2009: Exchange of exhibits to be used at trial.

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1 8. September 30, 2009: Responsive briefs due.

2 9. October 5, 2009: Trial commences.

3 C. The trial setting for the remaining phases should be addressed after determination
4 of the Phase III issues.

5 Remaining phases of litigation may include a determination of prescriptive rights and
6 other issues. The scheduling and trial setting for subsequent phases, however, should be
7 deferred until after completion and ruling on Phase III issues.

8
9 Respectfully submitted this 21st day of November, 2009.

10 s/ R. Lee Leininger

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PROOF OF SERVICE

I, Linda C. Shumard, declare:

I am a resident of the State of Colorado and over the age of 18 years, and not a party to the within action. My business address is U.S. Department of Justice, Environmental and Natural Resources Section, 1961 Stout Street, 8th Floor, Denver, Colorado 80294.

On November 21, 2008, I caused the foregoing documents described as; **FEDERAL DEFENDANTS' CASE MANAGEMENT STATEMENT**, to be served on the parties via the following service:

BY ELECTRONIC SERVICE AS FOLLOWS by posting the documents(s) listed above to the Santa Clara website in regard to the Antelope Valley Groundwater matter.

BY MAIL AS FOLLOWS (to parties so indicated on attached service list): By placing true copies thereof enclosed in sealed envelopes addressed as indicated on the attached service list.

BY OVERNIGHT COURIER: I caused the above-referenced document(s) be delivered to FEDERAL EXPRESS for delivery to the above address(es).

Executed on November 21, 2008, at Denver, Colorado.

/s/Linda C. Shumard
Linda C. Shumard
Legal Support Assistant