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EXEMPT FROM FILING FEES UNDER
GOVERNMENT CODE SECTION 6103

Attorneys for the United States

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Coordination Proceeding)
Special Title (Rule 1550(b)))
Judicial Council Coordination
Proceeding No. 4408

ANTELOPE VALLEY GROUNDWATER CASES)

Included actions:)
UNITED STATES' OBJECTION TO
MANDATORY SETTLEMENT
CONFERENCE

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

Los Angeles County Waterworks District No. 40 v.
Diamond Farming Co., et al.)
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. Palmdale Water District)
Riverside County Superior Court, Consolidated Action,)
Case nos. RIC 353 840, RIC 344 436, RIC 344 668)

AND RELATED CROSS ACTIONS)

Cross-Defendant United States of America respectfully submits this objection to
the Mandatory Settlement Conference (MSC) set in this action for May 13, 2009. The
conference is scheduled to discuss settlement matters between the Wood class of small
pumpers and the Public Water Suppliers, and the Willis class of non-pumping landowners

1 and the Public Water Suppliers. *Order Setting Hearing Dates for Mandatory Settlement*
2 *Conference and Trial Setting Conference*, dated April 24, 2009, at 2. Counsel for all
3 parties are ordered to attend with full settlement authority. *Id.* Further, the settlement
4 conference will be conducted by the trial judge. The Court has allowed parties until April
5 30, 2009 to file and serve objections to the mandatory settlement conference.

- 6 1. The United States should be permitted to participate in the mandatory
7 settlement conference represented by counsel with authority to recommend
8 settlement.

9 California court rules require trial counsel to personally attend a mandatory
10 settlement conference “with full authority to settle the case.” Cal. Rules of Court, Rule
11 3.1380(b). In this complex case proceeding, trial counsel may be excused from the
12 requirement of appearing with full settlement authority for good cause shown. *See*
13 *Guidelines - Complex Civil Litigation Department*, Section IX, ¶ 2 (containing local rules
14 of the Superior Court of California, County of Santa Clara for the administration of
15 complex cases). As the following demonstrates, good cause is shown to excuse the United
16 States’ trial counsel from appearing at the mandatory settlement conference with full
17 authority to settle the case.

18 Congress has vested plenary power over all litigation in the Attorney General of
19 the United States, including the settlement of litigation in which the United States or its
20 agencies are a party. *United States v. Walcott*, 972 F.2d 323, 326 (11th Cir. 1992).
21 Pursuant to the Federal Housekeeping Statute, 5 U.S.C. § 301, the Attorney General has
22 promulgated regulations that delegate the authority to settle claims on behalf of the United
23 States to various Department of Justice officials, including the Assistant Attorneys General
24 for the litigating divisions. Settlement on behalf of the federal government in this case
25 would require approval at the level of the Assistant Attorney General for the Environment
26 and Natural Resources Division or above. 28 C.F.R. § 0.160(a)(1).

27 Notwithstanding this restriction, undersigned trial counsel has authority to
28 recommend settlement in this case. Trial attorneys are empowered to negotiate on behalf
of the United States and make a recommendation to the Assistant Attorney General or


1 government official with ultimate settlement authority to settle a case or issue. Thus, the
2 trial attorney plays an absolutely critical role in the settlement process. He or she is the
3 attorney in the federal government most familiar with the case; accordingly, his/her
4 recommendations with respect to a settlement are given great weight.

5 The Department's longstanding policy of concentrating settlement authority and
6 requiring a written memorandum recommending settlement serves a number of policy
7 goals. It fosters uniformity of settlements, and fairness of settlements to both litigants and
8 to the government. It affords a high level review of the settlement recommendations by
9 trial attorneys, insuring a record of reasons for all settlements, including such
10 considerations as litigative risks, and an opportunity to assess the proposed settlement
11 outside the context of a heated negotiation. Moreover, uniformity in settlements afforded
12 by the policy of high level review is an important consideration given the Department's
13 nationwide docket of cases.

14 To promote the Department's policy encouraging amicable disposition of
15 litigation, the Department endeavours to make timely decisions on settlement
16 recommendations. Where time is of the essence, settlement decisions can usually be made
17 in a matter of weeks if not days. Accordingly, the United States respectfully asks the
18 Court to excuse counsel for the United States from attending the mandatory settlement
19 conference with full settlement authority with the understanding that the trial attorney may
20 negotiate settlement offers and make recommendations to the official having ultimate
21 settlement authority.

1 Respectfully submitted this 30th day of April, 2009.

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3 JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division

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11 *Attorneys for the United States*

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 April 30, 2009, I caused the foregoing documents described as; **UNITED STATES' OBJECTION TO MANDATORY SETTLEMENT CONFERENCE**, 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 April 30, 2009, at Denver, Colorado.

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