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EXEMPT FROM FILING FEES UNDER
GOVERNMENT CODE SECTION 6103

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

Coordination Proceeding	)	Judicial Council Coordination
Special Title (Rule 1550(b))	)	Proceeding No. 4408
ANTELOPE VALLEY GROUNDWATER CASES)	
Included actions:	)	UNITED STATES' RESPONSE TO
<u>Los Angeles County Waterworks District No. 40 v.</u>	)	LOS ANGELES COUNTY
<u>Diamond Farming Co., et al.</u>	)	WATERWORKS DISTRICT NO.
Los Angeles County Superior Court, Case No. BC 325	)	40'S BRIEF RE: EQUITABLE
201	)	APPORTIONMENT OF WILLIS
	)	CLASS FEE AWARD
<u>Los Angeles County Waterworks District No. 40 v.</u>	)	Phase 3 Trial Date:
<u>Diamond Farming Co., et al.</u>	)	Date: March 22, 2011
Kern County Superior Court, Case No. S-1500-CV-	)	Time:10:00 a.m.
254-348)	
<u>Wm. Bolthouse Farms, Inc. v. City of Lancaster</u>)	
<u>Diamond Farming Co. v. City of Lancaster</u>)	
<u>Diamond Farming Co. v. Palmdale Water District</u>)	
Riverside County Superior Court, Consolidated Action,)	
Case nos. RIC 353 840, RIC 344 436, RIC 344 668)	
AND RELATED CROSS ACTIONS)	

The United States respectfully responds to the Los Angeles County Waterworks District No. 40 ("District 40") opposition to the Willis Class motion for attorney fees. District 40 argues that "in the event that the Court sees fit to award fees, the Court should apportion fees to each party that pumps from the Antelope Valley Groundwater Basin ("Basin") based on a pro

1 rata share of their pumping.” See Los Angeles County Waterworks District No. 40's Brief Re
2 Equitable Apportionment of Willis Class Fee Award, filed March 9, 2011, at 1. Although the
3 United States takes no position on whether or not the requested fees are appropriate, it is clear
4 that the United States is immune from having such fees imposed on it.

5 Any jurisdiction the Court has over the United States as a defendant in this alleged
6 general stream adjudication is based on the waiver of immunity contained in the McCarran
7 Amendment, 43 U.S.C. § 666. *Id.* at 5. Paragraph (a) of the McCarran Amendment, states in its
8 entirety

9 (a) Joinder of United States as defendant; costs
10 Consent is hereby given to join the United States as a defendant in any suit (1) for
11 the adjudication of rights to the use of water of a river system or other source, or
12 (2) for the administration of such rights, where it appears that the United States is
13 the owner of or is in the process of acquiring water rights by appropriation under
14 State law, by purchase, by exchange, or otherwise, and the United States is a
15 necessary party to such suit. The United States, when a party to any such suit,
16 shall (1) be deemed to have waived any right to plead that the State laws are
17 inapplicable or that the United States is not amenable thereto by reason of its
18 sovereignty, and (2) shall be subject to the judgments, orders, and decrees of the
19 court having jurisdiction, and may obtain review thereof, in the same manner and
20 to the same extent as a private individual under like circumstances: **Provided,**
21 **that no judgment for costs shall be entered against the United States in any**
22 **such suit.**

23 43 U.S.C.A. § 666 (emphasis added).

24 As sovereign, the United States and/or its agencies may be sued only when consent has
25 been given. See, e.g., *Richard A. Balsler v. Dep't of Justice*, 327 F.3d 903, 907 (9th Cir. 2003).
26 "It is axiomatic that the United States may not be sued without its consent and that the existence
27 of consent is a prerequisite for jurisdiction." *United States v. Mitchell*, 463 U.S. 206, 212 (1983).
28 Waivers of sovereign immunity must be unequivocally expressed and when given must be
construed strictly and narrowly. *Block v. North Dakota*, 461 U.S. 273, 287 (1983). Where
Congress has waived sovereign immunity, its waiver is to be "construed strictly in favor of the
sovereign." *McMahon v. United States*, 342 U.S. 25, 27 (1951); Further,

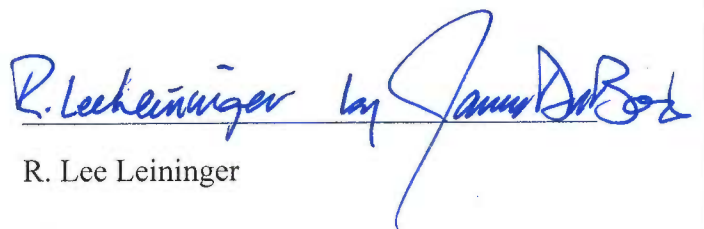
a necessary corollary of this rule is that when Congress attaches conditions to
legislation waiving the sovereign immunity of the United States, those conditions
must be strictly observed, and exceptions thereto are not to be lightly implied.
* * * Accordingly, * * * we must be careful not to interpret it in a manner that
would extend the waiver beyond that which Congress intended.

1 *Block v. North Dakota*, 461 U.S. at 287 (emphasis added); see also *United States v. Kubrick*, 444
2 U.S. 111, 117 (1979).

3 The McCarran Amendment does not expressly waive the United States' immunity from
4 monetary exactions. Rather, it expressly prohibits the imposition of costs. In *United States v.*
5 *Idaho ex rel. Director, Idaho Dept. of Water Resources*, 508 U.S. 1 (1993), the Supreme Court
6 unanimously overturned the Idaho court's decision requiring the United States pay filing fees in a
7 comprehensive water rights adjudication of the Snake River Basin in Idaho. In *Idaho*, the Court
8 reiterated that waivers of sovereign immunity as to monetary exactions from the United States
9 must be express and unambiguous. *Id.* at 7. The Court further noted efforts to assess monetary
10 liability against the United States for costs associated with "normal incidents of litigation" have
11 been routinely rejected. *Id.* at 7-8 (citations omitted). The Court defined 'costs' as "those items
12 of expense incurred in litigation that a prevailing party is allowed by rule to tax against the losing
13 party." *Id.* at 8.^{1/}

14 Here, the Willis Class has asked for reimbursement of expenses incurred in litigation.
15 District 40 argues that such costs should be apportioned to all parties. The case law is quite clear
16 that the McCarran Amendment does not waive the United States' immunity from such monetary
17 exactions. These costs cannot be allocated to the United States.

18 Dated this 18th day of March 2011.

19
20 A handwritten signature in blue ink, appearing to read "R. Lee Leininger by James D. [unclear]".
21 R. Lee Leininger

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23
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25 ^{1/} The *Idaho* Court determined that the fees the Idaho statute required were akin to the costs
26 associated with expenses incurred in conducting comprehensive water rights adjudications, and
27 determined that the McCarran Amendment does not allow imposition of such costs or fees on the
28 United States. *Id.* at 8; see also *United States v. State of Oregon Water Resources Dept.*, 44 F.3d 758
(9th Cir. 1994)(where the Ninth Circuit overturned the district court's decision that the United States
is liable for certain filing fees).

PROOF OF SERVICE

I, Karmen Robinson, 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, Environment and Natural Resources Section, 999 18th Street, South Terrace - Suite 370, Denver, Colorado 80202.

On March 18, 2011, I caused the foregoing document(s) described as: **United States' Response To Los Angeles County Waterworks District NO. 40'S Brief Re: Equitable Apportionment of Willis Class Fee Award**, to be served on the parties via the following service:

BY ELECTRONIC SERVICE AS FOLLOWS by posting the document(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 March 18, 2011, at Denver, Colorado.

/s/ Karmen Robinson
Karmen Robinson
Paralegal Specialist