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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 )  
Special Title (Rule 1550(b)) )  
 )  
ANTELOPE VALLEY GROUNDWATER CASES )  
 )  
Included actions: )  
 )  
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 )  
 )

Judicial Council Coordination  
Proceeding No. 4408

UNITED STATES' RESPONSE TO  
AGWA'S NOTICE OF MOTION  
AND MOTION FOR LEGAL  
FINDINGS REGARDING SCOPE  
OF IMMUNITY UNDER CIVIL  
CODE SECTION 1007

Date: February 14, 2012  
Time: 9:00 am  
Room: 1515

The United States hereby responds to the Antelope Valley Groundwater Agreement  
Association ("AGWA") motion regarding the scope of governmental immunity under Civil Code  
§ 1007. See *AGWA'S Notice of Motion and Motion for Legal Findings Regarding Scope of  
Immunity Under Civil Code Section 1007; Memorandum of Points and Authorities In Support*

1 *Thereof*, filed January 18, 2012. AGWA requests that the Court make a determination that,  
2 prior to the 1968 amendment to Civil Code § 1007, the scope of governmental immunity is  
3 limited to water rights on public lands used in a governmental capacity, and not in a proprietary  
4 capacity. *Id.* at 5-6. Further, AGWA argues that prior to 1968 property owned by the state or  
5 municipalities in a proprietary capacity, and not devoted to public use, was subject to adverse  
6 possession and prescription. *Id.*

7 While AGWA does not specifically confine its argument for prescription of pre-1968  
8 governmental water rights to state and local California entities, the United States assumes the  
9 motion was not directed at federal rights. It is black letter law that “prescriptive rights cannot be  
10 obtained against the federal government.” *See United States v. 1,629.6 Acres of Land*, 503 F.2d  
11 764, 767 (3rd Cir. 1974)(holding that riparian rights cannot be obtained by prescription against  
12 the federal government); *see also Yamashita v. Territory of Guam*, 59 F.3d 114, 116 (9th Cir.  
13 1995); *United States v. Hato Rey Bldg.*, 886 F.2d 448, 450 (1st Cir. 1989); *Sweeten v. U.S. Dep’t*  
14 *of Agric. Forest Service*, 684 F.2d 679, 682 (10th Cir. 1982). Prescriptive claims cannot be  
15 made against the federal government for the simple reason that adverse possession cannot be  
16 achieved against the federal government. *United States v. Vasarajs*, 908 F.2d 443, 447 (9th Cir.  
17 1990) (citing *United States v. Pappas*, 814 F.2d 1342, 1343 n. 3 (9th Cir. 1987)).

18 Thus, whatever the merits of AGWA’s claim of limited immunity from prescription by  
19 state and local governments and municipalities, there is no merit to such an argument against the  
20 United States.

21 Dated this 31st day of January 2012.

22 /s/ R. Lee Leininger  
23 R. LEE LEININGER  
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**PROOF OF SERVICE**

I, Amber Petrie, 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 January 31, 2012, I caused the foregoing document(s) described as: **United States' Response to AGWA's Notice of Motion and Motion for Legal Findings Regarding Scope of Immunity Under Civil Code Section 1007**, 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 January 31, 2012 at Denver, Colorado.

/s/ Amber Petrie  
Amber Petrie  
Legal Assistant