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IGNACIA S. MORENO
Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

R. LEE LEININGER
United States Department of Justice
Environment and Natural Resources Division
999 18th Street
South Terrace, Suite 370
Denver, Colorado 80202
lee.leininger@usdoj.gov
Phone: 303/844-1364 Fax: 303/844-1350
Attorneys for Federal Defendants

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>	)	AGWA'S NOTICE OF MOTION
<u>Diamond Farming Co., et al.</u>	)	AND MOTION FOR LEGAL
Los Angeles County Superior Court, Case No. BC 325	)	FINDINGS REGARDING SCOPE
201	)	OF RIGHTS OF FEDERAL
	)	DEFENDANTS
<u>Los Angeles County Waterworks District No. 40 v.</u>	)	Date: February 14, 2012
<u>Diamond Farming Co., et al.</u>	)	Time: 9:00 am
Kern County Superior Court, Case No. S-1500-CV-	)	Room: 1515
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 hereby responds to the Antelope Valley Groundwater Agreement Association ("AGWA") motion to confirm rights of the federal government "relevant to the issues the Court designates to be heard in fourth phase of trial." See AGWA'S Notice of Motion

1 *for Legal Findings Regarding Scope of Rights of Federal Defendants; Memorandum of Points*
2 *and Authorities In Support Thereof*, filed January 18, 2012, (hereinafter “AGWA Scope Mtn.”),
3 at 2. AGWA’s motion is premature. The Court has not designated a fourth phase of trial and,
4 until a future phase is designated and the extent of triable issues, if any, are identified, the
5 questions presented by AGWA are conjectural and ill-defined. Alternatively, if the Court wishes
6 to entertain AGWA’s motion now, the United States respectfully requests a more definite
7 statement of the issues presented, and time to respond to legal issues with relevant facts which
8 may or may not be in dispute.

9 AGWA cites to a well-established principle of federal reserved water rights; the United
10 States “reserves appurtenant water then unappropriated to the extent needed to accomplish the
11 purpose of the reservation [and] acquires a reserved right in unappropriated water which vests on
12 the date of the reservation...” *Cappaert v. United States*, 426 U.S. 128, 138 (1976); *see also*
13 *United States v. New Mexico*, 438 U.S. 696, 700 (1978). AGWA then states that “the Antelope
14 Valley has long been settled, and land within the Basin has long been held in private ownership.”
15 AGWA Scope Mtn. at 6. AGWA appears to be arguing that all the groundwater in the Antelope
16 Valley Underground Basin was fully appropriated prior to the establishment of the U.S. military
17 airfield in the 1930s due to “overlying rights existing at the time of the reservation” and “any
18 federal reserved right is subject to the property of all overlying rights existing at the time of the
19 reservation. . . .” *Id.* The United States, however, is unsure that this is the AGWA argument
20 because it would be an admission that prescriptive rights in the Basin were established almost
21 one hundred years ago. To the best of counsel’s knowledge, AGWA has never admitted
22 prescription of any water rights, much less prescriptive rights vesting prior to the 1930s.^{1/}

23 Even if the United States could discern the vague and ambiguous issue presented, the

25 ^{1/} In any case, the United States disagrees with AGWA’s premise that a federal reserved water
26 right cannot attach to lands acquired by the United States to satisfy a federal purpose. *See e.g.*
27 *Arizona v. California*, 373 U.S. 546, 597-598(1963) (“[w]e have no doubt about the power of the
28 United States under [the Commerce and Property Clauses of the U.S. Constitution] to reserve water
rights for its reservations and its property.” (Emphasis added).

1 motion is premature. AGWA declares that a ruling on the scope of the federal reserved right will
2 be “relevant to the issues the Court designates to be heard in fourth [sic] phase of trial.” AGWA
3 Scope Mtn. at 2. The Court, of course, has not designated a fourth phase of trial and announced
4 whether it will involve a determination of prescriptive rights, or a determination of correlative
5 rights, or a determination of reserved rights, or some combination of these and other issues. It
6 does not benefit the parties or the Court to proceed with the time and effort needed to address
7 issues that may not be pertinent to the next phase of trial.

8 Finally, the United States respectfully asks that should the Court set the determination of
9 federal reserved rights as a Phase IV trial issue the United States be allowed sufficient time to
10 present the facts regarding the amount of land reserved from the public domain and never in
11 private ownership, and the history of its acquisition of properties in the Antelope Valley, as well
12 as facts that may be relevant to the issue(s) contained in the AGWA motion upon further
13 clarification of precisely what issues are involved.

14 Dated this 31st day of January 2012.

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/s/ R. Lee Leininger
R. LEE LEININGER

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 Rights of Federal Defendants**, 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