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GOVERNMENT CODE SECTION 6103

8 Attorneys for the United States  
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

12 Coordination Proceeding  
Special Title (Rule 1550(b))

) Judicial Council Coordination  
) Proceeding No. 4408

13 ANTELOPE VALLEY GROUNDWATER  
14 CASES

)  
) FEDERAL DEFENDANTS'  
) TRIAL SETTING CONFERENCE  
) STATEMENT

15 Included actions:

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

18 Los Angeles County Waterworks District No. 40 v.  
Diamond Farming Co., et al.  
19 Kern County Superior Court, Case No. S-1500-CV-  
20 254-348

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

24 AND RELATED CROSS ACTIONS  
25

26  
27 Cross-Defendant United States of America respectfully submits this narrative trial setting  
28 conference statement in advance of the Trial Setting Conference on July 9, 2012. See *Minute*

1 *Order*, dated June 19, 2012.

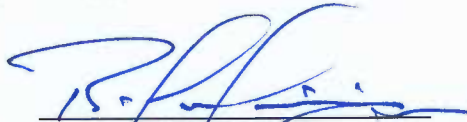
2 The parties have been engaged in a year of mediation and negotiations in an attempt to  
3 settle this case. Any eventual settlement must satisfy the McCarran Amendment, 43 U.S.C. §  
4 666, and result in a comprehensive determination of all rights to water in the Antelope Valley  
5 Groundwater Basin aquifer. While settlement talks are on-going and may still yield a  
6 comprehensive settlement of all rights to water, the discussion has reached an impasse on  
7 fundamental issues and the United States, therefore, submits that the next logical phase of trial is  
8 the adjudication of the parties' individual water rights. Certain claims to water may be  
9 significantly curtailed or potentially even eliminated if allegations of prescription made by the  
10 Cross-Complainants are proven. Accordingly, the United States suggests a Phase IV trial to  
11 determine the parties' correlative water rights to the Basin safe yield, including claims of  
12 prescription, defenses of self-help, and determination of the rights to return flows from imported  
13 water.

14 The use of a Court-appointed expert to assist the trier of fact in determining a claimant's  
15 reasonable and beneficial use has been discussed and is the subject of a pending motion by the  
16 Wood Class. Assuming the Court and parties are amenable to the use of an expert, the expert  
17 could assist by examining reasonable and beneficial use of small domestic users, agricultural  
18 crop consumptive use (or a reasonable "duty of water"), as well as actual diversions of other  
19 users of groundwater in the Antelope Valley. The Court-appointed expert may also recommend a  
20 threshold for the amount and type of evidence necessary to establish every claimant's right. If  
21 the Court were to adopt an evidentiary standard it may significantly shorten the trial length.

22 Accordingly, the United States proposes the following schedule for litigation in Phase IV.  
23 This proposed schedule sets a trial date for early 2013. In the event the parties settle their  
24 disputes and enter into a stipulated judgment and physical solution over the ensuing months, the  
25 trial may be altered to a "prove-up" hearing establishing the sound factual and legal basis of the  
26 settlement without additional delay in the proceedings.

1. Immediate: Commence written discovery for the purpose of disclosing facts related to the Phase IV trial issues. Appointment of an expert to assist the Court in determination of reasonable and beneficial use and establishing evidentiary thresholds for each party claiming a right to groundwater. Setting of a deadline for initial disclosures to the Court expert of each party's diversion or pumping records or other relevant information establishing groundwater use.
2. November 16, 2012: Discovery closes.
3. December 14, 2012: Report of the expert due. Court adopts expert's recommendations or sets other threshold standards for evidence of reasonable and beneficial use.
4. January 18, 2013: Exchange of exhibits to be used at trial.
5. February 1, 2013: Opening trial briefs due.
6. February 11, 2013: Trial commences.  
Estimated trial time is four weeks.

Respectfully submitted this 6th day of July, 2012.



R. LEE LEININGER  
JAMES J. DUBOIS  
United States Department of Justice

**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 July 6, 2012, I caused the foregoing document(s) described as: **FEDERAL DEFENDANTS' TRIAL SETTING CONFERENCE STATEMENT** 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 July 6, 2012 at Denver, Colorado.

/s/ Amber Petrie  
Amber Petrie  
Legal Assistant

