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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))

) Judicial Council Coordination
) Proceeding No. 4408

ANTELOPE VALLEY GROUNDWATER CASES

) Santa Clara Case No. 1-05-CV-049053

Included actions:

) **UNITED STATES' RESPONSE TO
) CROSS-COMPLAINANTS'
) MOTION FOR APPOINTMENT
) OF BILL B. DENDY AS
) MANDATORY SETTLEMENT
) REFEREE**

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

_____)

1 Cross-defendant United States submits this response to the Motion For Appointment of Bill
2 B. Dendy as Mandatory Settlement Conference Referee, filed by cross-complainants Los Angeles
3 County Waterworks District No. 40 and City of Palmdale (hereinafter the “Motion for Appointment
4 of Referee”). While appointment of a settlement referee may be appropriate in the future, the United
5 States believes such appointment is premature at this time. Therefore, the United States respectfully
6 requests the Court deny the motion, without prejudice to reconsider the appointment of a mandatory
7 settlement conference referee at a more appropriate stage in these proceedings.

8 As movants point out, there is an ongoing voluntary process of dispute resolution in which
9 a number of parties participate. The parties involved in this process have been working on (1)
10 identifying key issues for resolution; (2) obtaining input from technical consultants; and (3)
11 resolution of competing water claims by developing a physical solution as soon as possible. *See*
12 *Motion for Appointment of Referee* at 3, lines 18-24. Notably, movants do not indicate that the
13 voluntary settlement process has been unfruitful. The United States has sent a representative to
14 meetings of the technical consultants and believes progress is being made toward the stated goals.
15 Consequently, the Court should allow the voluntary process to proceed.

16 Appointment of Mr. Dendy as a mandatory settlement referee at this stage may even be
17 counterproductive. Mr. Dendy’s role thus far has been that of an informal mediator. In this role he
18 may continue to assist litigants to voluntarily reach their own agreement. If he is appointed as a
19 referee, however, he will not be allowed to conduct meditations. Cal. Rules of Court, Rule 3.920(b).
20 The parties will lose the essential concept of the mediation process - “that parties are in control of
21 resolving their own dispute.” *Jeld-Wen, Inc. v. Sup. Ct.*, 146 Cal.App.4th 536, 540 (2007). To date,
22 the parties have not shown that they are incapable of resolving this dispute and, with or without Mr.
23 Dendy’s assistance, may very well settle substantial issues. There is no reason to derail this
24 voluntary settlement process.

25 Moreover, mandating settlement conferences at this time will not help movants attain their
26 stated goal of settlement participation by all parties. *See Motion for Appointment of Referee* at 3,
27 lines 12-13. An obvious impediment to full participation is the failure to join all overlying
28 landowners to the adjudication. While the Court may certify a plaintiffs’ class of overlying
landowners at the August 20, 2007 hearing or soon thereafter, the issues relating to notice and

1 joinder of class members must still be resolved. Only after certification and notice and joinder will
2 full participation by the landowner parties be possible. Even then, putative class members may wish
3 to opt out of the class and have independent representation in the litigation and settlement process.
4 Simply put, it is premature to conduct a mandatory settlement conference(s) of all parties until the
5 identification and joinder of all parties is settled.

6 Finally, the relief sought in this motion raises a particular problem for the United States. The
7 movants' proposal asks that the Court direct Mr. Dendy to conduct settlement conferences to resolve
8 the identified pending issues. *See* Motion for Appointment of Referee at 3, lines 25-26. California
9 Rules of Court require that mandatory settlement conferences be personally attended by persons with
10 "full authority to settle the case." Cal. Rules of Court, Rule 3.1380(b).

11 Under statute, the authority to settle cases and compromise claims by or against the United
12 States is vested in the Attorney General of the United States. *See* 28 U.S.C. § 509.^{1/} This senior
13 government official has a multitude of responsibilities, including ultimate settlement authority for
14 thousands of cases to which Federal Defendants are a party. Realistically, this official cannot attend
15 or even be available by telephone for settlement conferences in all cases in which he has settlement
16 authority.

17 Congress has recognized the "unique situation" of the Justice Department. Both the House
18 and Senate Reports on the Judicial Improvement Act of 1990 state that federal courts desiring to
19 stage settlement conferences involving persons with authority to settle should take into account the
20 dilemma facing the Justice Department in such situations and should not require the attendance of
21 the government officials having ultimate settlement authority. "The Department does not delegate
22 broad settlement authority to all trial counsel, but instead reserves that authority to senior officials
23 in [the Justice Department]. Clearly, the Department cannot realistically send officials with full
24 settlement authority to each settlement conference." *See* H.R. Rep. 101-732, 101st Cong., 2d Sess.
25 59; S.Rep. 101-416, 101st Cong. 2d Sess. 16-17. The federal courts have acknowledged the need
26

27 ^{1/} There has been a partial, conditional delegation of this settlement authority to the Assistants
28 Attorney General, *see*, 28 C.F.R. § 0.160(a), but it is impossible to tell at this juncture whether any
particular potential settlement would or would not fall within this delegated authority. *See, e.g.*, 28
C.F.R. § 0.160(c).

1 to consider the “peculiar position of the Attorney General and the special problems the Department
2 of Justice faces in handling the government’s ever-increasing volume of litigation.” *In re M.P.W.*
3 *Stone, et al.*, 986 F.2d 898, 904-05 (5th Cir. 1993) (holding that the district court abused its discretion
4 in routinely requiring a representative of the government with ultimate settlement authority to be
5 present at all pretrial or settlement conferences).

6 As mentioned above, the United States is committed to engaging in meaningful settlement
7 discussions with the parties. Should the Court decide, now or later, that mandatory settlement
8 conferences are desirable the United States respectfully requests that the Court accommodates the
9 federal government’s unique situation and exercises its discretionary authority, contained in the
10 Santa Clara County Superior Court Complex Litigation Department Guidelines at ¶ X.2., to accept
11 the trial attorney and/or agency counsel’s attendance at mandatory settlement conferences.^{2/} The
12 government representatives in attendance, including the undersigned, will have authority at the
13 conference to discuss and make recommendations as to settlement. If any proposed compromise or
14 settlement of issues or agreement in principle is developed at the settlement conference the
15 undersigned will promptly obtain the necessary approval from appropriate officials within the
16 Department of Justice.

17 Respectfully submitted this 7th day of August, 2007.

18
19 /s/ R.LEE LEININGER
20 R. LEE LEININGER
21 Trial attorney
22 U. S. Department of Justice
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27 ^{2/} The complex civil litigation guidelines at ¶ X.2. (Mandatory settlement conferences) state,
28 “[t]rial counsel, parties and persons with full authority to settle the case must personally attend
unless excused by the Court.”

PROOF OF SERVICE

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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 August 7, 2007, I caused the foregoing documents described as UNITED STATES' RESPONSE TO CROSS-COMPLAINANTS' MOTION FOR APPOINTMENT OF BILL B. DENDY AS MANDATORY SETTLEMENT REFEREE, 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 August 7, 2007, at Denver, Colorado.

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