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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10
11 Coordination Proceeding
12 Special Title (Rule 3.550)

13 **ANTELOPE VALLEY**
14 **GROUNDWATER CASES**

15 Included Actions:

16 *Los Angeles County Waterworks District No. 40 v.*
17 *Diamond Farming Co.*

Los Angeles County Superior Court
Case No. BC 325 201

18 *Los Angeles County Waterworks District No. 40 v.*
19 *Diamond Farming Co.*

Kern County Superior Court
Case No. S-1500-CV-254-348

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

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4408

Los Angeles County Superior Court
Lead Case No. BC 325 201

For e-service purposes only:
Santa Clara County Superior Court
Case No. 1-05-CV-049053

**U.S. BORAX'S NOVEMBER 9, 2012
TRIAL SETTING CONFERENCE
STATEMENT**

Date: November 9, 2012
Time: 9:00 a.m.
Dept: 1 (Los Angeles Superior)
Judge: Hon. Jack Komar

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26 U.S. Borax submits the following trial proposal for the trial currently set on February 11,
27 2013. To have a productive trial three months from now that will resolve important issues, there are
28 both legal and practical considerations. As Borax previously submitted in July of this year, there is

1 an expressed preference in the law for the complete disposition of causes of action. *See, e.g.,*
2 *Lilienthal & Fowler v. Superior Court*, 12 Cal. App. 4th 1848, 1853 (1993). At this stage, and given
3 the ongoing efforts to settle, there is a cause of action at issue still unresolved in this case that will be
4 of particular assistance in moving this litigation to the finish line. In the operative complaint, the
5 Sixth Cause of Action (Return Flows) would present a discrete and important issue that could
6 conceivably be tried three months from now. In particular, the following issues would be addressed:

- 7 1. What are the quantities or percentages that apply to determine how many acre feet of
8 return flows derive from a given water use?
- 9 2. When do those return flows reach the aquifer and become available?
- 10 3. Who holds the right to produce the return flows?
- 11 4. When a water user pumps groundwater, may that water user elect to claim that its
12 pumping is both adverse and from the native supply, even when return flows are
13 available in the aquifer to that water user?

14 Resolving these important issues not only will assist the parties in settlement efforts, but it
15 will also dispose of another complete cause of action in this case. Discovery and any pretrial motions
16 would be limited to these issues and could conceivably be completed in the next three months.
17 U.S. Borax believes that expanding the trial beyond this issue will only lead to broad disagreements
18 over what is and is not relevant, what issues and sub-issues are in play, and whether there is sufficient
19 time between now and February to achieve a fair trial.

20 Respectfully submitted,

21 Dated: November 5, 2012

EDGAR B. WASHBURN
WILLIAM M. SLOAN
MORRISON & FOERSTER LLP

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24 By: 
25 WILLIAM M. SLOAN
26 Attorneys for U.S. BORAX INC.
27
28

1 **PROOF OF SERVICE**

2 I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is
3 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I
4 am over the age of eighteen years.

5 I further declare that on November 5, 2012, I served a copy of:

6 **U.S. BORAX'S NOVEMBER 9, 2012
7 TRIAL SETTING CONFERENCE STATEMENT**

8 ☒ **BY ELECTRONIC SERVICE** by electronically posting a true copy thereof to Santa Clara County Superior
9 Court's electronic filing website for complex civil litigation cases (Judge Jack Komar, Dept. 17C -
10 <http://www.scefiling.org>) with respect to Judicial Council Coordination Proceeding No. 4408 (Antelope
11 Valley Groundwater matter).

12 ☐ **BY U.S. MAIL** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully
13 prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San
14 Francisco, California 94105-2482 in accordance with Morrison & Foerster LLP's ordinary business practices.
15 I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence
16 for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster
17 LLP's business practice the document(s) described above will be deposited with the United States Postal
18 Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP with postage thereon fully
19 prepaid for collection and mailing.

20 ☐ **BY FACSIMILE** by sending a true copy from Morrison & Foerster LLP's facsimile transmission telephone
21 number 415.268.7522 to the fax number(s) set forth below, or as stated on the attached service list. The
22 transmission was reported as complete and without error. The transmission report was properly issued by the
23 transmitting facsimile machine. I am readily familiar with Morrison & Foerster LLP's practice for sending
24 facsimile transmissions, and know that in the ordinary course of Morrison & Foerster LLP's business practice
25 the document(s) described above will be transmitted by facsimile on the same date that it (they) is (are) placed
26 at Morrison & Foerster LLP for transmission.

27 I declare under penalty of perjury under the laws of the State of California that the foregoing
28 is true and correct.

Executed at San Francisco, California, November 5, 2012.

21 CATHERINE L. BERTÉ
22 (typed)


(signature)