

R. LEE LEININGER
JAMES J. DUBOIS
United States Department of Justice
Environment and Natural Resources Division
Natural Resources Section
1961 Stout Street, Suite 800
Denver, Colorado 80294
lee.leininger@usdoj.gov
james.dubois@usdoj.gov
Phone: 303/844-1364 Fax: 303/844-1350

EXEMPT FROM FILING FEES UNDER
GOVERNMENT CODE SECTION 6103

Attorneys for the United States

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

Included actions:

) FEDERAL DEFENDANTS'
) OBJECTION TO RICHARD
) WOOD'S PROPOSED NOTICE OF
) CLASS ACTION FOR THE SMALL
) PUMPER CLASS ACTION

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 Pursuant to the Minute Order dated June 1, 2009 requiring the submission of
2 objections to the [proposed] NOTICE OF CLASS ACTION FOR THE “SMALL
3 PUMPER” CLASS ACTION (“Notice”), Cross-Defendant United States of America
4 respectfully submits the following. Mr. McLachlan, counsel for small pumpers class
5 representative Richard Wood, circulated his draft Notice to other parties following the last
6 hearing on this matter on May 29. The United States informally suggested certain
7 changes to the document. Counsel for both parties worked cooperatively and effectively
8 to address most of the United States’ concerns. For example, the most recent draft Notice
9 removed from the proposed Small Pumper’s Class Action Response Form a requirement
10 that recipients of the Notice select whether he or she wants to remain in the class. This is
11 unnecessary as all recipients actually or constructively noticed who meet the criteria of
12 class membership articulated in the section titled “Are You A Member of the Class?” are
13 members of the class. Furthermore, requiring small pumpers to affirmatively select the
14 option of wanting to remain in the Class may be interpreted as an inappropriate opt-in
15 requirement.^{1/} This option has been removed from the proposed Form.^{2/} See Notice, at 6.

16 The United States is still concerned, however, with one change to the draft Notice
17 that was suggested by government counsel but not adopted. On page 4 of the Notice, the
18 small pumper class members are informed that if they exclude their parcel from the Class,
19 in other words if they opt-out, they 1) will not be bound by any decision that affects the
20 Class, and 2) they or their parcel may be added to the lawsuit as an individual defendant.
21 The United States objects to the use of the word “may” and respectfully asks that it be
22 changed to “will.” A pumper, even a small pumper, who opts out of the class must be
23 individually served and joined to this adjudication. Failure to join all such water users
24 risks proceeding with less than a full and comprehensive adjudication of all rights to water

25 ^{1/} As Mr. McLachlan noted in his filing captioned Plaintiff’s Ex Parte Application for Order
26 Staying Class Notice (filed May 18, 2009), opt-in class actions are disfavored in California. *See id.*
27 at 5, citing *Hypertouch, Inc. v. Superior Court* (2005) 128 Cal.App.4th 1527, 1543-1550.

28 ^{2/} The United States also notes that the heading for this section of the Form should be altered
to state, PLEASE SELECT *ONE* OF THE FOLLOWING ~~THREE~~ **TWO** OPTIONS:

1 as required by the McCarran Amendment, 43 U.S.C. § 666.

2 Respectfully submitted this 9th day of June, 2009.

3
4 JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division

5
6 s/
R. LEE LEININGER
JAMES J. DUBOIS
United States Department of Justice
Environment and Natural Resources Division

PROOF OF SERVICE

I, Linda 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 June 9, 2009, I caused the foregoing documents described as; **FEDERAL DEFENDANTS' OBJECTION TO RICHARD WOOD'S PROPOSED NOTICE OF CLASS ACTION FOR THE SMALL PUMPER CLASS ACTION**, 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 June 9, 2009, at Denver, Colorado.

/s/ Linda Shumard
Linda Shumard
Legal Support Assistant