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10 *Attorneys for the United States*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF LOS ANGELES**

13 Coordination Proceeding  
14 Special Title (Rule 1550(b))

) Judicial Council Coordination  
)  
) Proceeding No. 4408  
)

15 **ANTELOPE VALLEY GROUNDWATER**  
16 **CASES**

17 Included actions:

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

) **FEDERAL DEFENDANTS' CASE**  
) **MANAGEMENT STATEMENT**  
)

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

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

26 **AND RELATED CROSS ACTIONS**  
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2 Cross-Defendant United States of America respectfully submits this narrative Case  
3 Management Statement in advance of the October 12 Case Management Conference.

4 By bench order at hearing on August 30, 2011, and Minute Order dated September 2, 2011,  
5 counsel are ordered to submit declarations regarding their final position with regard to setting the  
6 next phase of trial in this contested matter. The United States responds as follows.

7 Following the ruling on the third phase of trial and the determination of the Basin's safe  
8 yield and overdrafted condition, the parties engaged in a number of rounds of settlement  
9 negotiations. While various topics including transferability of water rights and a physical  
10 solution have been discussed, *see, e.g.*, Letter to All Counsel and Parties, filed September 23,  
11 2011 (describing topics for discussion at September 27 and 28 settlement conference), the focus  
12 of these negotiations has been the allocation of rights to water among the parties. Although the  
13 discussions have yielded some progress, the United States submits that setting a Phase IV trial on  
14 the determination of parties' correlative water rights, including claims of prescription and  
15 defenses of self-help, is the next logical phase for trial. Determination of correlative rights will  
16 move this adjudication toward resolution, or will alternatively spur concerted good faith  
17 negotiations on a stipulated resolution of the parties' respective water rights, as well as the  
18 physical solution.

19 The United States does not agree with various parties' suggestions that the next phase of  
20 trial should be the imposition of a physical solution. A physical solution trial is premature. As  
21 the Court ruled in *City of Barstow v. Mojave Water Agency*, 23 Cal. 4th 1224, 1250, 5 P.3d 853,  
22 869 (2000), vested rights must be considered in applying a physical solution.

23 [A]lthough it is clear that a trial court may impose a physical solution to achieve a  
24 practical allocation of water to competing interests, the solution's general purpose  
25 cannot simply ignore the priority rights of the parties asserting them. In ordering  
26 a physical solution, therefore, a court may neither change priorities among the  
27 water rights holders nor eliminate vested rights in applying the solution without  
28 first considering them in relation to the reasonable use doctrine.

Internal citations omitted. First considering claims to correlative and prescriptive rights,

1 therefore, appears to be a prerequisite or at least a concurrent requirement to the imposition of a  
2 physical solution.

3 In addition, the United States' waiver of immunity under the McCarran Amendment does  
4 not allow for a proceeding on administration of rights to precede a determination of the rights to  
5 be administered. A physical solution to maximize the reasonable beneficial use of available  
6 waters to all parties is an equitable remedy. *City of Lodi v. E. Bay Mun. Util. Dist.*, 7 Cal. 2d  
7 316, 337, 60 P.2d 739, 448 (1936). It is not a determination of the parties' rights to water.  
8 While enjoining excess groundwater pumping in the Basin has the laudable goal of reducing the  
9 overdraft, it is an administrative solution.

10 The United States has not waived its sovereign immunity for the administration of rights  
11 to water, prior to a determination of respective water rights. The second prong of the McCarran  
12 Amendment, which follows the provision addressing adjudication of rights to the use of water of  
13 a river system or other source, 43 U.S.C. § 666(a)(1), addresses the "administration of such  
14 rights, where it appears that the United States is the owner of or is in the process of acquiring  
15 water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the  
16 United States is a necessary party to such suit."

17 The waiver of immunity in subsection (a)(2) of the McCarran Amendment applies only  
18 after a comprehensive general stream adjudication under subsection (a)(1) has occurred. *E.g.*,  
19 *Dugan v. Rank*, 372 U.S. 609, 617-19 (1963); *Metro. Water Dist. of S. Cal. v. United States*, 830  
20 F.2d 139, 144 (9th Cir. 1987), *aff'd*, *California v. United States*, 490 U.S. 920 (1989)(per  
21 curium). As explained by the Ninth Circuit Court of Appeals,

22 [t]o administer a decree is to execute it, to enforce its provisions, to resolve  
23 conflicts as to its meaning, to construe and to interpret its language. Once there  
24 has been such an adjudication and a decree entered, then one or more persons who  
25 hold adjudicated water rights can, within the framework of § 666(a)(2),  
commence among others such actions as described above, subjecting the United  
States, in a proper case, to the judgments, orders and decrees of the court having  
jurisdiction.

26 *S. Delta Water Agency v. U.S., Dept. of Interior, Bureau of Reclamation*, 767 F.2d 531, 541  
27  
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1 (9th Cir. 1985), quoting *United States v. Hennen*, 300 F. Supp. 256, 263 (D. Nev. 1968). There  
2 has not been a determination of parties' respective water rights in this adjudication. Therefore,  
3 the United States is immune and would not be subject to a proceeding to impose a physical  
4 solution for the administration of water use in the Basin.

5 Accordingly, the United States' position with regard to setting the next phase of trial is to  
6 proceed with litigation on determining the correlative rights to ground water, including  
7 prescriptive claims to determine vested rights of parties in the adjudication. The determination  
8 of vested rights will permit the Court to then consider a physical solution, or encourage the  
9 parties to stipulate to such a remedy and avoid further phases of trial. *See City of Barstow*, 23  
10 Cal. 4th at 1238, 5 P.3d at 861 ("We see no reason why the parties cannot stipulate to a judgment  
11 incorporating the physical solution. . . .").

12  
13 Respectfully submitted this 7<sup>th</sup> day of October 2011.

14  
15 /s/ R. Lee Leininger  
16 R. LEE LEININGER  
JAMES J. DUBOIS  
United States Department of Justice

17 *Attorneys for the United States*  
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## **PROOF OF SERVICE**

I, Karmen Miller, 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 October 7, 2011, I caused the foregoing document(s) described as: **Federal Defendants' Case Management 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 October 7, 2011 at Denver, Colorado.

/s/ Karmen Miller

Karmen Miller  
Paralegal Specialist