

1 IGNACIA S. MORENO
Assistant Attorney General
2 Environment and Natural Resources Division

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

EXEMPT FROM FILING FEES
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' CASE**
) **MANAGEMENT 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

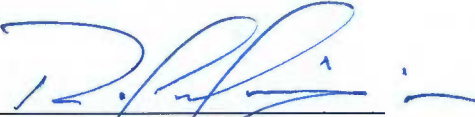
26
27 Cross-Defendant United States of America respectfully submits this narrative case
28 management conference statement in advance of the Case Management Conference on December

1 11, 2012. In preparation for the Phase IV trial scheduled to commence on February 11, 2013,
2 parties have proposed trying the issue of entitlement and amount of return flows, *see* Bolthouse
3 Properties LLC's and Wm. Bolthouse Farms, Inc.'s Trial Setting Conference Statement, filed
4 December 6, 2012, at 5, and trying each parties' correlative share of the native safe yield supply,
5 *see* Blum Trust's Trial Setting Conference Statement (the "Blum Trust CMS"), filed December
6 8, 2012, at 3. The United States believes there is merit to proceeding on both proposals at the
7 next phase of trial. Evidence of the amount of return flow to the basin aquifer from imported
8 water usage was presented at the Phase III trial and, therefore, the amount to be decreed among
9 the parties should be fairly straight-forward. Furthermore, the determination of the correlative
10 share of safe yield of each party may commence in Phase IV with presentation of evidence of the
11 amount of water each party has pumped. Such evidence may be presented in a matter of days or
12 weeks.

13 The Public Water Suppliers suggest the next phase of trial focus on current pumping for
14 the purpose of preliminarily enjoining over-pumping in the basin. *See* Public Water Suppliers'
15 Phase 4 Trial Setting Conference Statement, filed December 10, 2012, at 2. Whether the Court
16 considers a preliminary injunction or not, evidence on pumping is essential to make final
17 determinations on the outstanding issues in this case. Any prove-up of a proposed settlement (a
18 partial stipulated judgment is referenced by Bolthouse) or adjudication of prescriptive rights
19 (discussed as a next step by the Public Water Suppliers) must include evidence of actual
20 pumping. Evidence of actual pumping is also an important step in the comprehensive
21 determination of all rights to water, as required by the McCarran Amendment, 43 U.S.C. § 666,
22 whether through a "prove-up" phase of trial or a later prescriptive phase of trial. Moreover, the
23 evidence presented in Court will, we believe, also encourage a wider settlement. Doubts such as
24 those expressed by the Blum Trust over "unverified pumping volume without any standard of
25 proof", *see* Blum Trust CMC at 1, can be rectified by presentation of evidence at trial.
26 Accordingly, the United States supports a Phase IV trial on a party's right and amount of

1 pumping return flows, and presentation of evidence to verify correlative claims to the native safe
2 yield.

3 Respectfully submitted this 10th day of December 2012.

4
5 
6 R. LEE LEININGER
7 JAMES J. DUBOIS
8 United States Department of Justice
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I, Laurie B. Himebaugh, 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 December 10, 2012, 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.

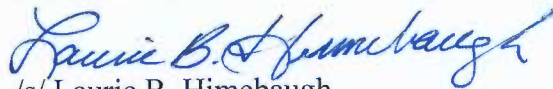
☐

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 December 10, 2012 at Denver, Colorado.



/s/ Laurie B. Himebaugh

Laurie B. Himebaugh
Paralegal Specialist