

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

Coordination Proceeding
Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No. 4408

**ANTELOPE VALLEY GROUNDWATER
CASES**

**RESPONSE TO [PROPOSED]
CASE MANAGEMENT ORDER
FOR PHASE 5 TRIAL**

Included Actions:

Los Angeles County Waterworks District No. 40 v.
Diamond Farming Co.
Superior Court of California, County of Los Angeles,
Case No. BC 325 201

DATE: February 10, 2014
TIME: 9:00 A.M.
PLACE: 111 N. Hill Street
Los Angeles, CA
DEPT.: 222

Los Angeles County Waterworks District No. 40 v.
Diamond Farming Co.
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348

JUDGE: Honorable Jack Komar

Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of Riverside,
consolidated actions, Case Nos. RIC 353 840, RIC
344 436,
RIC 344 668.

The United States is submitting this response to the Public Water Suppliers' (PWS)
[Proposed] Case Management Order for Phases 5 and 6 Trials ("Proposed CMO"), filed Sept.
27, 2013. The United States supports the PWS's proposed case management order with the
following qualifications. The Proposed CMO suggests two alternative trial schedules for Phase
5 litigation which includes the federal reserved water rights and return flows. The United States
respectfully requests the Court enter the schedule termed "Alternative 2," for the following

1 reasons:

2 1. Alternative 1 proposes a summary judgment motion deadline of October 18, 2013, with a
3 hearing on the motion[s] on January 10, 2014. Alternative 2 proposes a summary judgment
4 motion deadline of November 13, 2013, with a hearing on the motion[s] on January 27, 2014.

5 *See Proposed CMO at 3.*

6
7 2. The Proposed CMO states in footnote two that:

8 The Parties recognize that the first set of timelines for phase 5 complies with the
9 California Code of Civil Procedure but at least one of the members of the liaison
10 committee would like the court to consider a compressed time schedule for the
hearing (e.g. change the hearing date for the summary judgment motions for
January 27, 2014, which would then alter the corresponding deadlines to file the
motions.)

11 3. Counsel for the United States is the unidentified member of the liaison committee
12 referenced in footnote 2 who is advocating for a hearing date outside the timeline stated in the
13 code of civil procedure.

14
15 4. The code of civil procedure requires: (a) that a motion for summary judgment be filed 75
16 days before a hearing on the motion, and (b) that the hearing date be 30 days prior to trial.
17 Cal.C.C.P. § 437c(a).

18 5. Alternative 1 complies with both of these requirements by setting the hearing on January
19 10, or 30 days before the start of trial on February 10, and the motion filing deadline for October
20 18, or 75 days before the hearing.

21
22 6. Alternative 2 proposes the deadline for summary judgment motions be set for November
23 13, and the hearing on the motion[s] be set for January 27. This complies with part of Code §
24 437c(a) because there are 75 days between the filing of a summary judgment motion on
25 November 13 and the hearing on January 27. However, January 27 is two weeks before the start
26 of trial, and therefore the portion of the Code stating that motions shall be heard no later than 30
27 days before the date of trial would not be met.

1 7. The United States requests this schedule (Alternative 2) because it allows time for
2 propounding written discovery and receiving responses prior to the due date for summary
3 judgment motions. The United States is preparing and intends to serve discovery no later than
4 October 4. Under the California Code of Civil Procedure responses would be due in 30 days, or
5 on or before November 4. This would permit movants for summary or partial summary
6 judgment 10 days to review and include discovery responses and/or documents in their motions
7 or declarations. Discovery may greatly aid the disposition of the motions by helping to establish
8 disputed and undisputed facts, as well as narrow the matters of law at issue.
9

10 8. Inclusion in a summary judgment motion of responses to written discovery served on
11 October 4 is not feasible under Alternative 1.
12

13 9. For good cause shown, the Court may order a hearing date less than 30 days before trial.
14 *See* Code § 437c(a). *Cf. Robinson v. Woods*, 168 Cal.App.4th 1258, 1268, 86 Cal.Rptr.3d 241,
15 249 (Cal.App. 2008) (finding that while the 75 day period between motion filing and hearing is
16 mandatory, a Court may use its discretion to lessen the time between hearing and trial).
17

18 10. Good cause is shown here to set the summary judgment motion hearing on January 27,
19 2014 in order to coordinate final discovery on the federal reserved water right, the motion for
20 summary judgment and the already established trial date.
21

22 THEREFORE, the United States respectfully asks the Court to order the implementation
23 of proposed Alternative 2 in the public water providers' Proposed CMO, thereby allowing for
24 receipt of discovery responses prior to the filing of summary judgment motions.
25

26 RESPECTFULLY SUBMITTED this 30th day of September 2013.
27

28 /s/ R. Lee Leininger
R. LEE LEININGER
JAMES J. DuBOIS
ATTORNEYS FOR THE UNITED
STATES OF AMERICA