

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SAN LUIS UNIT FOOD PRODUCERS; EL)
DORADO FARMS; LAGUNA EXCELSIOR)
FARMS LLC; JLK; RYAN FAMILY)
FARMS LP; MARLU FARMS; SIMCOT)
FARMS; BRAD GLEASON; ROSS ALLEN;)
CALIFORNIA PISTACHIO LLC; DOUBLE)
B. FARMS; BUSTER ALLEN, INC.;)
TURK STATION LLC; C.S.)
STEFANOPOULOS; ELENA)
STEFANOPOULOS; D.D.)
STEFANOPOULOS; PAGONA)
STEFANOPOULOS; UNIVERSAL LAND)
CO.; CORT BLACKBURN; LAURA)
BLACKBURN; MC FARMS LLC; MARTY)
ACQUISTAPACE; CURTIS)
STUBBLEFIELD,)

Plaintiff,)

v.)

UNITED STATES OF AMERICA;)
DEPARTMENT OF THE INTERIOR;)
BUREAU OF RECLAMATION,)

Defendants.)

_____)

1:09-cv-1871 OWW SMS
SCHEDULING CONFERENCE ORDER
Cross-Dispositive Motions
Filing Deadline: 2/22/10
Oppositions Filing
Deadline: 3/22/10
Replies Filing Deadline:
4/5/10
Cross-Dispositive Motions
Hearing Date: 4/26/10 11:00
Ctrm. 3 (extended time
reserved)

- I. Date of Scheduling Conference.
February 3, 2010.
- II. Appearances Of Counsel.
Smiland & Chester by William M. Smiland, Esq., and Theodore

1 A. Chester, Jr., Esq., appeared on behalf of Plaintiffs.

2 David B. Glazer, Esq., appeared on behalf of Defendants.

3 III. Summary of Pleadings.

4 1. This action arises out of the San Luis Unit (the
5 "Unit") of the Central Valley Project ("CVP"). The Plaintiffs
6 are 22 landowners and water users in the Unit and an
7 unincorporated association; the Defendants are the United States,
8 the Department of the Interior ("Interior"), and the Bureau of
9 Reclamation (the "Bureau"). Plaintiffs assert in their complaint
10 15 claims for relief under the Administrative Procedure Act.
11 Each such claim alleges that Defendants have a mandatory
12 statutory duty under the Reclamation Act of 1902 (the "1902
13 Act"), as amended, the CVP Authorization Act of 1937 (the "1937
14 Act"), as amended, or the San Luis Unit Authorization Act of 1960
15 (the "1960 Act"). Each claim charges that Defendants are
16 violating such duty. Each claim seeks declaratory relief that
17 Defendants possess such a duty and are violating it. It also
18 seeks mandatory injunctive relief. Five of the claims for relief
19 allege mandatory statutory duties to operate the CVP and Unit
20 irrigation facilities; four claims allege duties to exercise the
21 project water rights; six claims allege duties to sell the water
22 to recoup project costs.

23 2. Defendants deny that they owe Plaintiffs, or have
24 breached, any of the duties Plaintiffs allege are mandatory
25 duties imposed on Defendants. To the extent that Plaintiffs'
26 allegations are construed to state more than legal conclusions,
27 Defendants have either admitted, denied, or pled insufficient
28 knowledge as to each such allegation. Defendants deny that

1 Plaintiffs are entitled to declaratory relief or injunctive
2 relief. Defendants plead six defenses in response to some or all
3 of Plaintiffs' claims: lack of jurisdiction; sovereign immunity;
4 failure to state a claim for relief; statute of limitations;
5 laches; failure to exhaust administration remedies.

6 IV. Orders Re Amendments To Pleadings.

7 1. The parties do not presently intend to amend the
8 pleadings.

9 V. Factual Summary.

10 A. Admitted Facts Which Are Deemed Proven Without Further
11 Proceedings.

12 1. Plaintiffs are farming entities that claim rights
13 under the Reclamation laws of the United States.

14 2. Defendants, United States of America and its
15 Department of the Interior and Bureau of Reclamation, are claimed
16 to have statutory duties regarding the delivery and
17 administration of water claimed by Plaintiffs.

18 B. Contested Facts.

19 1. Defendants contest that they owe Plaintiffs, or
20 have violated, the duties that Plaintiffs allege. At this point,
21 Defendants do not know what the factual predicates of Plaintiffs'
22 claims are.

23 2. Plaintiffs contest the factual predicates of
24 Defendants' defenses, including laches and failure to exhaust
25 administrative remedies.

26 3. All remaining legal issues are contested.

27 ///

28 ///

1 VI. Legal Issues.

2 A. Uncontested.

3 1. The issue of jurisdiction is disputed, although
4 if jurisdiction exists, it is invoked under the Reclamation laws
5 of the United States and the Administrative Procedure Act, 5
6 U.S.C. § 702 et seq.

7 2. Venue is proper under 28 U.S.C. § 1391.

8 3. There are no supplemental claims under State law.

9 4. Plaintiffs seek dispositive relief and declaratory
10 relief.

11 B. Contested.

12 1. Jurisdiction.

13 2. Waiver of sovereign immunity.

14 3. Statute of limitations.

15 4. All remaining legal issues are contested.

16 VII. Consent to Magistrate Judge Jurisdiction.

17 1. The parties have not consented to transfer the
18 case to the Magistrate Judge for all purposes, including trial.

19 VIII. Corporate Identification Statement.

20 1. Any nongovernmental corporate party to any action in
21 this court shall file a statement identifying all its parent
22 corporations and listing any entity that owns 10% or more of the
23 party's equity securities. A party shall file the statement with
24 its initial pleading filed in this court and shall supplement the
25 statement within a reasonable time of any change in the
26 information.

27 ///

28 ///

1 IX. Discovery Plan and Cut-Off Date.

2 A. Proposal by Parties.

3 1. As discussed in the next section, the parties
4 propose to file in the near term simultaneous motions that could
5 well dispose of all or most of the issues in the case.
6 Accordingly, they jointly request that the normally required
7 discovery plan and disclosures be deferred. The dispositive
8 cross-motions, the parties now believe, can be resolved largely
9 on declarations and matters of which judicial notice can be
10 taken. Defendants believe that issues concerning their alleged
11 liability, if not resolved by Defendants' motion for judgment on
12 the pleadings, should be resolved on the administrative record,
13 under the Administrative Procedures Act, 28 U.S.C. §§ 701-706,
14 and that discovery would therefore not be appropriate. However,
15 after reviewing Plaintiffs' motion for summary judgment and
16 supporting declarations, Defendants reserve the right to seek
17 leave to conduct such discovery as may be appropriate under Fed.
18 R. Civ. P. 56(f).

19 2. After the resolution of such dispositive cross-
20 motions, Plaintiffs may seek mandatory injunctive relief. Either
21 or both parties may seek to conduct discovery in this connection,
22 in which case the parties could make the required disclosures and
23 prepare a discovery plan and seek approval of the Court.

24 B. The Court.

25 1. The parties agree that cross-dispositive motions
26 are appropriate to define and resolve legal issues presented by
27 the complaint.

28 2. Cross-motions shall be filed on or before February

1 22, 2010. Oppositions shall be filed on or before March 22,
2 2010. Replies shall be filed on or before April 5, 2010. April
3 26, 2010 will be the hearing date of the Cross-Motions. The
4 Court sets the hearing of the motions at 11:00 a.m. and reserves
5 time for extended oral argument.

6 3. The parties have agreed and the Court orders that
7 the page limitation shall be suspended for this case for the
8 initial cross-motions. The opening legal motions and memoranda
9 in support thereof shall not exceed 40 pages. Opposition legal
10 memoranda shall not exceed 40 pages. Replies shall not exceed 25
11 pages.

12 X. Motions - Hard Copy.

13 1. The parties shall submit one (1) courtesy paper copy to
14 the Court of any motions filed. Exhibits shall be marked with
15 PROTRUDING numbered or lettered tabs so that the Court can easily
16 identify such exhibits.

17 XI. Trial.

18 1. There is no right to jury trial claimed in this action.

19 2. Counsels' Estimate Of Trial Time:

20 a. Not applicable.

21 3. Counsels' attention is directed to Local Rules
22 of Practice for the Eastern District of California, Rule 285.

23 XII. Settlement Conference.

24 1. There is no need to schedule a Settlement Conference at
25 this time. The parties will notify the Courtroom Deputy in the
26 event they believe a Settlement Conference would be productive.

27 2. Unless otherwise permitted in advance by the
28 Court, the attorneys who will try the case shall appear at the

1 Settlement Conference with the parties and the person or persons
2 having full authority to negotiate and settle the case on any
3 terms at the conference.

4 3. Permission for a party [not attorney] to attend
5 by telephone may be granted upon request, by letter, with a copy
6 to the other parties, if the party [not attorney] lives and works
7 outside the Eastern District of California, and attendance in
8 person would constitute a hardship. If telephone attendance is
9 allowed, the party must be immediately available throughout the
10 conference until excused regardless of time zone differences.
11 Any other special arrangements desired in cases where settlement
12 authority rests with a governing body, shall also be proposed in
13 advance by letter copied to all other parties.

14 4. Confidential Settlement Conference Statement.
15 At least five (5) days prior to the Settlement Conference the
16 parties shall submit, directly to the Magistrate Judge's
17 chambers, a confidential settlement conference statement. The
18 statement should not be filed with the Clerk of the Court nor
19 served on any other party. Each statement shall be clearly
20 marked "confidential" with the date and time of the Settlement
21 Conference indicated prominently thereon. Counsel are urged to
22 request the return of their statements if settlement is not
23 achieved and if such a request is not made the Court will dispose
24 of the statement.

25 5. The Confidential Settlement Conference
26 Statement shall include the following:

27 a. A brief statement of the facts of the
28 case.

1 b. A brief statement of the claims and
2 defenses, i.e., statutory or other grounds upon which the claims
3 are founded; a forthright evaluation of the parties' likelihood
4 of prevailing on the claims and defenses; and a description of
5 the major issues in dispute.

6 c. A summary of the proceedings to date.

7 d. An estimate of the cost and time to be
8 expended for further discovery, pre-trial and trial.

9 e. The relief sought.

10 f. The parties' position on settlement,
11 including present demands and offers and a history of past
12 settlement discussions, offers and demands.

13 XIII. Request For Bifurcation, Appointment Of Special Master,
14 Or Other Techniques To Shorten Trial.

15 1. The parties believe that no bifurcation order is
16 necessary at this time. The above-proposed cross-motions may
17 resolve all or a major part of the case. Thereafter, further
18 proceedings on possible injunctive relief may be scheduled.

19 XIV. Related Matters Pending.

20 1. The related cases are described in the Court's Order
21 Reassigning Case filed December 8, 2009.

22 XV. Compliance With Federal Procedure.

23 1. The Court requires compliance with the Federal
24 Rules of Civil Procedure and the Local Rules of Practice for the
25 Eastern District of California. To aid the court in the
26 efficient administration of this case, all counsel are directed
27 to familiarize themselves with the Federal Rules of Civil
28 Procedure and the Local Rules of Practice of the Eastern District

1 of California, and keep abreast of any amendments thereto.

2 XVI. Effect Of This Order.

3 1. The foregoing order represents the best
4 estimate of the court and counsel as to the agenda most suitable
5 to bring this case to resolution. The trial date reserved is
6 specifically reserved for this case. If the parties determine at
7 any time that the schedule outlined in this order cannot be met,
8 counsel are ordered to notify the court immediately of that fact
9 so that adjustments may be made, either by stipulation or by
10 subsequent scheduling conference.

11 2. Stipulations extending the deadlines contained
12 herein will not be considered unless they are accompanied by
13 affidavits or declarations, and where appropriate attached
14 exhibits, which establish good cause for granting the relief
15 requested.

16 3. Failure to comply with this order may result in
17 the imposition of sanctions.

18 XVII. Telephone Appearances.

19 1. The parties are authorized to appear telephonically for
20 scheduling matters. The parties shall be present for arguments
21 on the dispositive cross-motions.

22

23 IT IS SO ORDERED.

24 Dated: February 3, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

25

26

27

28