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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

OILDALE MUTUAL WATER COMPANY,)	1: 13-CV-02054-AWI - JLT
))	
Plaintiff,)	SCHEDULING ORDER (Fed. R. Civ. P. 16)
))	
v.)	Pleading Amendment Deadline: 12/10/2014
))	
CROP PRODUCTION SERVICES, INC.,)	Discovery Deadlines:
))	Initial Disclosures: 5/16/2014
Defendants.)	Non Expert: 6/26/2015
))	Expert: 12/18/2015
_____)	Mid-Discovery Status Conference:
))	12/10/2014 at 8:30 a.m.
))	
))	Non-Dispositive Motion Deadlines:
))	Filing: 1/8/2016
))	Hearing: 2/5/2016
))	
))	Dispositive Motion Deadlines:
))	Filing: 3/11/2016
))	Hearing: 5/16/2016
))	
))	Settlement Conference:
))	12/10/2014 at 9:30 a.m.
))	510 19th Street, Bakersfield, CA
))	
))	Pre-Trial Conference:
))	7/6/2016 at 10:30 a.m.
))	Courtroom 2
))	
))	Trial: 9/13/2016 at 8:30 a.m.
))	Courtroom 2
))	Bench: 2-3 days
))	Jury: 5-7 days

1 **I. Date of Scheduling Conference**

2 April 2, 2014.

3 **II. Appearances of Counsel**

4 Jed Borghei and Todd Robbins appeared on behalf of Plaintiff.

5 T. Mark Smith, Edward Cohen, Joseph Kellmeyer, and Ryan Kemper appeared on behalf of
6 Defendants.

7 **III. Information Concerning the Court's Schedule**

8 Out of fairness, the Court believes it is necessary to forewarn litigants that the Fresno Division
9 of the Eastern District of California now has the heaviest District Court Judge caseload in the entire
10 nation. While the Court will use its best efforts to resolve this case and all other civil cases in a timely
11 manner, the parties are admonished that not all of the parties' needs and expectations may be met as
12 expeditiously as desired. As multiple trials are now being set to begin upon the same date, parties may
13 find their case trailing with little notice before the trial begins. The law requires that the Court give any
14 criminal trial priority over civil trials or any other matter. The Court must proceed with a criminal trial
15 even if a civil trial was filed earlier and set for trial first. Continuances of any civil trial under these
16 circumstances will no longer be entertained, absent a specific and stated finding of good cause. All
17 parties should be informed that any civil trial set to begin during the time a criminal trial is proceeding
18 will trail the completion of the criminal trial.

19 The parties are reminded of the availability of a United States Magistrate Judge to conduct all
20 proceedings in this action. A United States Magistrate Judge is available to conduct trials, including
21 entry of final judgment, pursuant to 28 U.S.C. § 28 U.S.C. 636(c), Federal Rule of Civil Procedure 73,
22 and Local Rule 305. The same jury pool is used by both United States Magistrate Judges and United
23 States District Court Judges. Any appeal from a judgment entered by a United States Magistrate Judge
24 is taken directly to the United States Court of Appeal for the Ninth Circuit. However, the parties are
25 hereby informed that no substantive rulings or decisions will be affected by whether a party chooses to
26 consent.

27 Finally, the Fresno Division of the Eastern District of California, whenever possible, is utilizing
28 United States Article III District Court Judges from throughout the nation as Visiting Judges. Pursuant

1 to the Local Rules, Appendix A, reassignments will be random, and the parties will receive no advance
2 notice before their case is reassigned to an Article III District Court Judge from outside of the Eastern
3 District of California.

4 Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to
5 conduct all further proceedings, including trial. **Within 10 days** of the date of this order, counsel
6 **SHALL** file a consent/decline form (provided by the Court at the inception of this case) indicating
7 whether they will consent to the jurisdiction of the Magistrate Judge.

8 **IV. Pleading Amendment Deadline**

9 Any requested pleading amendments are ordered to be filed, either through a stipulation or
10 motion to amend, no later than **December 10, 2014**.

11 **V. Discovery Plan and Cut-Off Date**

12 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)
13 on or before **May 16, 2014**.

14 The parties agree that depositions pursuant to Fed. R. Civ. P. 30(b)(6) may take up to 14 hours
15 which may be spread over 2 days.

16 The parties are ordered to complete all discovery pertaining to non-experts on or before **June**
17 **26, 2015**, and all discovery pertaining to experts on or before **December 18, 2015**.

18 Plaintiff is directed to disclose all expert witnesses, in writing, on or before **July 10, 2015**, and
19 to disclose all rebuttal experts on or before **September 11, 2015**. Defendant is directed to disclose all
20 expert witnesses, in writing, on or before **August 14, 2015**. The parties agree that no depositions of
21 experts shall be noticed until after the final disclosure is made.

22 The written designation of retained and non-retained experts shall **be made pursuant to Fed.**
23 **R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and shall include all information required thereunder.**

24 Failure to designate experts in compliance with this order may result in the Court excluding the
25 testimony or other evidence offered through such experts that are not disclosed pursuant to this order.

26 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to experts
27 and their opinions. Experts must be fully prepared to be examined on all subjects and opinions
28

1 included in the designation. Failure to comply will result in the imposition of sanctions, which may
2 include striking the expert designation and preclusion of expert testimony.

3 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement
4 disclosures and responses to discovery requests will be strictly enforced.

5 A mid-discovery status conference is scheduled for **December 10, 2014**, at 8:30 a.m. before the
6 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,
7 California. A Joint Mid-Discovery Status Conference Report, carefully prepared and executed by all
8 counsel, shall be electronically filed in CM/ECF, one full week prior to the Conference, and shall be e-
9 mailed, in Word format, to JLTorders@caed.uscourts.gov. Counsel may appear via CourtCall,
10 providing a written request to so appear is made to the Magistrate Judge's Courtroom Clerk no later
11 than five court days before the noticed hearing date.

12 **VI. Pre-Trial Motion Schedule**

13 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
14 than **January 8, 2016**, and heard on or before **February 5, 2016**. Non-dispositive motions are heard at
15 9:00 a.m., before the Honorable Jennifer L. Thurston, United States Magistrate Judge, at the United
16 States District Courthouse located at 510 19th Street, Bakersfield, California.

17 No written discovery motions shall be filed without the prior approval of the assigned
18 Magistrate Judge. A party with a discovery dispute must first confer with the opposing party in a good
19 faith effort to resolve by agreement the issues in dispute. If that good faith effort is unsuccessful, the
20 moving party promptly shall seek a telephonic hearing with all involved parties and the Magistrate
21 Judge. It shall be the obligation of the moving party to arrange and originate the conference call to the
22 court. To schedule this telephonic hearing, the parties are ordered to contact Courtroom Deputy Clerk,
23 Susan Hall at (661) 326-6620 or via email at SHall@caed.uscourts.gov. **Counsel must comply with**
24 **Local Rule 251 with respect to discovery disputes or the motion will be denied without prejudice**
25 **and dropped from calendar.**

26 In scheduling such motions, the Magistrate Judge may grant applications for an order shortening
27 time pursuant to Local Rule 144(e). However, if counsel does not obtain an order shortening time, the
28 notice of motion *must* comply with Local Rule 251.

1 Counsel may appear and argue non-dispositive motions via CourtCall, providing a written
2 request to so appear is made to the Magistrate Judge's Courtroom Clerk no later than five court days
3 before the noticed hearing date.

4 All dispositive pre-trial motions shall be filed no later than **March 11, 2016**, and heard no later
5 than **May 16, 2016**, in Courtroom 2 at 1:30 p.m. before the Honorable Anthony W. Ishii, United States
6 District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R. Civ. P. 56 and**
7 **Local Rules 230 and 260.**

8 **VII. Motions for Summary Judgment or Summary Adjudication**

9 Prior to filing a motion for summary judgment or motion for summary adjudication the parties
10 are **ORDERED** to meet, in person or by telephone, and confer to discuss the issues to be raised in the
11 motion **at least 21 days before** filing of the motion.

12 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a
13 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole
14 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the
15 issues for review by the court; 5) explore the possibility of settlement before the parties incur the
16 expense of briefing a summary judgment motion; 6) to arrive at a joint statement of undisputed facts.

17 The moving party shall initiate the meeting and provide a draft of the joint statement of
18 undisputed facts. **In addition to the requirements of Local Rule 260, the moving party shall file a**
19 **joint statement of undisputed facts.**

20 In the notice of motion the moving party shall certify that the parties have met and conferred as
21 ordered above, or set forth a statement of good cause for the failure to meet and confer.

22 **VIII. Pre-Trial Conference Date**

23 **July 6, 2016**, at 10:30 a.m. in Courtroom 2 before Judge Ishii.

24 The parties are ordered to file a **Joint Pretrial Statement pursuant to Local Rule 281(a)(2).**
25 The parties are further directed to submit a digital copy of their pretrial statement in Word format,
26 directly to Judge Ishii's chambers, by email at AWIOrders@caed.uscourts.gov.

27 Counsels' attention is directed to **Rules 281 and 282 of the Local Rules** of Practice for the
28 Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference.

1 The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the
2 Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the
3 Court to explain the nature of the case to the jury during voir dire.

4 **IX. Trial Date**

5 **September 13, 2016**, at 8:30 a.m. in Courtroom 2 before the Honorable Anthony W. Ishii,
6 United States District Court Judge.

- 7 A. This is a bench and jury trial.
- 8 B. Counsels' Estimate of Trial Time: 5-7 days for the jury trial and 2-3 days for the bench
9 trial related to legal/equitable claims.
- 10 C. Counsel's attention is directed to Local Rules of Practice for the Eastern District of
11 California, Rule 285.

12 **X. Settlement Conference**

13 A Settlement Conference is scheduled for **December 10, 2014** at 9:30 a.m., located at 510 19th
14 Street, Bakersfield, California. The settlement conference will be conducted by Magistrate Judge
15 Thurston. **If any party prefers that the settlement conference be conducted by a judicial officer**
16 **who is not normally assigned to this matter, that party is directed to notify the Court no later**
17 **than 60 days in advance of the scheduled settlement conference** to allow sufficient time for another
18 judicial officer to be assigned to handle the conference.

19 Unless otherwise permitted in advance by the Court, **the attorneys who will try the case shall**
20 **appear** at the Settlement Conference **with the parties** and the person or persons having **full authority**
21 to negotiate and settle the case **on any terms**¹ at the conference. Consideration of settlement is a
22 serious matter that requires preparation prior to the settlement conference. Set forth below are the
23 procedures the Court will employ, absent good cause, in conducting the conference.

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26 ¹ Insurance carriers, business organizations, and governmental bodies or agencies whose settlement agreements
27 are subject to approval by legislative bodies, executive committees, boards of directors or the like shall be represented by
28 a person or persons who occupy high executive positions in the party organization and who will be directly involved in
the process of approval of any settlement offers or agreements. To the extent possible the representative shall have the
authority, if he or she deems it appropriate, to settle the action on terms consistent with the opposing party's most recent
demand.

1 **At least 21 days before** the settlement conference, Plaintiff **SHALL** submit to Defendant via
2 fax or e-mail, a written itemization of damages and a meaningful² settlement demand which includes a
3 brief explanation of why such a settlement is appropriate. Thereafter, **no later than 14 days before** the
4 settlement conference, Defendant **SHALL** respond via fax or e-mail, with an acceptance of the offer or
5 with a meaningful counteroffer and a brief explanation of why such a settlement is appropriate.

6 If settlement is not achieved, each party **SHALL** attach copies of their settlement offers to their
7 Confidential Settlement Conference Statement, as described below. Copies of these documents shall
8 not be filed on the court docket.

9 **CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT**

10 At least five court days prior to the Settlement Conference, the parties shall submit, directly to
11 Judge Thurston's chambers by e-mail to JLTOrders@caed.uscourts.gov, a Confidential Settlement
12 Conference Statement. The statement **should not be filed** with the Clerk of the Court **nor served on**
13 **any other party**, although the parties may file a Notice of Lodging of Settlement Conference
14 Statement. Each statement shall be clearly marked "confidential" with the date and time of the
15 Settlement Conference indicated prominently thereon.

16 The Confidential Settlement Conference Statement shall include the following:

- 17 A. A brief statement of the facts of the case.
- 18 B. A brief statement of the claims and defenses, i.e., statutory or other grounds upon which
19 the claims are founded; a forthright evaluation of the parties' likelihood of prevailing on
20 the claims and defenses; and a description of the major issues in dispute.
- 21 C. A summary of the proceedings to date.
- 22 D. An estimate of the cost and time to be expended for further discovery, pretrial and trial.
- 23 E. The relief sought.
- 24 F. The party's position on settlement, including present demands and offers and a history of
25 past settlement discussions, offers and demands.

26 _____
27 ² "Meaningful" means that the offer is reasonably calculated to settle the case on terms acceptable to the
28 offering party. "Meaningful" does not include an offer which the offering party knows will not be acceptable to the
other party. If, however, the offering party is only willing to offer a settlement which it knows the other party will not
accept, this should trigger a recognition that the case is not in a settlement posture and the parties should confer about
continuing or vacating the settlement conference via stipulation.

1 **XI. Requests for Bifurcation, Appointment of Special Master, or other**
2 **Techniques to Shorten Trial**

3 Not applicable at this time.

4 **XII. Related Matters Pending**

5 There are no pending related matters.

6 **XIII. Other matters**

7 No later than May 15, 2014, counsel will file a joint, stipulated protective order for the Court's
8 consideration.

9 Counsel will meet and confer related to preservation/production of electronic data. Likewise,
10 they will meet and confer related to Defendant's intention to file an amended answer.

11 **XIV. Compliance with Federal Procedure**

12 All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure
13 and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any
14 amendments thereto. The Court must insist upon compliance with these Rules if it is to efficiently
15 handle its increasing case load, and sanctions will be imposed for failure to follow the Rules as
16 provided in both the Federal Rules of Civil Procedure and the Local Rules of Practice for the Eastern
17 District of California.

18 **XV. Effect of this Order**

19 The foregoing order represents the best estimate of the court and counsel as to the agenda most
20 suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the
21 parties determine at any time that the schedule outlined in this order cannot be met, counsel are ordered
22 to notify the court immediately of that fact so that adjustments may be made, either by stipulation or by
23 subsequent status conference.

24 **The dates set in this Order are considered to be firm and will not be modified absent a**
25 **showing of good cause even if the request to modify is made by stipulation. Stipulations**
26 **extending the deadlines contained herein will not be considered unless they are accompanied by**
27 **affidavits or declarations, and where appropriate attached exhibits, which establish good cause**
28 **for granting the relief requested.**

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

IT IS SO ORDERED.

Dated: April 2, 2014

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE