

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

Electronically Filed on March 14, 2014

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MICHAEL ETCHEGOINBERRY, <i>et al.</i> ,)	
Plaintiffs,)	No. 11-564 L
)	
v.)	Judge Marian Blank Horn
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
_____)	

SECOND JOINT STATUS REPORT REGARDING SETTLEMENT DISCUSSIONS

Pursuant to the Court’s Order dated October 25, 2013 (ECF No. 82), Plaintiffs and Defendant United States of America (the “Parties”) respectfully submit the following Second Joint Status Report regarding the progress of their settlement discussions.

1. As reported by the Parties during the October 24, 2013, status conference in this matter, settlement discussions between the Parties, together with other interested entities, have been ongoing. As a result, the Parties requested and received a six-month stay of this case in order to pursue settlement. Order, Oct. 25, 2013 (ECF No. 82). That six-month stay is scheduled to end on April 25, 2014. The Court also ordered the Parties to file joint status reports on January 14, March 14, and May 14, 2014, to indicate the progress of their settlement discussions and whether it continues to be appropriate for this case to be stayed. *Id.* The first of these joint status reports was filed on January 14, 2014. First Joint Status Report Regarding Settlement Proceedings, Jan. 14, 2014 (ECF No. 83).

2. As was reported in the First Joint Status Report, the United States and Westlands Water District (“Westlands”) have identified principles on which to negotiate a potential settlement agreement which, if approved, would resolve all pending claims in this case and in

Westlands Water Dist. v. United States, Case No. 2013-5069 (Fed. Cir.) (“*Westlands*”), and those claims in *Firebaugh Canal Water Dist., et al. v. United States, et al.*, Case No. 88-cv-634-LJO (E.D. Cal.) (“*Firebaugh*”) which involve the provision of drainage in the San Luis Unit, including Westlands and those water districts located in the northerly area of the San Luis Unit (the “Northerly Districts”).

3. Based on the progress of discussions with Westlands and representatives of the Northerly Districts, counsel for the United States in this case and in *Firebaugh* have conferred with Department of Justice leadership and will pursue the negotiation of specific settlement terms based generally on the broad principles outlined by the United States and Westlands.

4. On March 20, 2014, the United States and Westlands are scheduled to meet again to continue settlement negotiations and to commence the drafting of a proposed settlement agreement.

5. In addition, counsel for Plaintiffs and representatives of Westlands also continue to be engaged in discussions regarding a potential settlement that would resolve the claims of Plaintiffs and other affected landowners in Westlands which are predicated on the alleged lack of drainage or drainage service. Additional follow-up meetings are planned, with the next one currently scheduled for on or around April 16, 2014. Because of critical drought-related response issues faced by Westlands representatives last month, Plaintiffs’ meeting with Westlands that had been scheduled for February 2014 (and which had been reported in the First Joint Status Report) had to be rescheduled to April 2014.

6. In addition, on March 7, 2014, in the *Westlands v. United States* action, Westlands and the United States filed their Joint Status Report and Motion for Stay of Proceedings in that matter. Joint Status Report and Stay of Proceedings, Mar. 7, 2014, *Westlands* (ECF No. 37). On

March 12, the Federal Circuit granted a stay of the appeal in that case for 60 days from that date, with direction to the parties to provide the court of appeals with a status report in 60 days indicating whether the stay should continue. Order, Mar. 12, 2014, *Westlands* (ECF No. 38).

7. The six-month partial suspension of the Revised Control Schedule entered in the *Firebaugh* matter which was ordered by United States District Court for the Eastern District of California in November 2013 in order to allow parties to pursue settlement remains in effect. Order Temporarily Suspending Federal Defendants' Drainage Activities Within Westlands, Nov. 13, 2013, *Firebaugh*, at 3 (ECF No. 973).

8. Based on the foregoing, the Parties remain optimistic that a settlement may be reached. Accordingly, the Parties believe that this case's six-month stay should continue.

9. Pursuant to the Court's October 25, 2013, Order – notwithstanding the conclusion of the current six-month stay on April 25, 2014 – the Parties will file their Third Joint Status Report regarding ongoing settlement efforts on May 14, 2014, which will include the Parties' proposal of how to proceed in this action based on any settlement developments to date, unless the Court directs otherwise.

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Dated: March 14, 2014

BEVERIDGE & DIAMOND, P.C.

s/ Lily N. Chinn

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