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9 Thomas M. and Julie Bookman, B.J. Calandri, John Calandri, John Calandri as Trustee of the John  
10 and B.J. Calandri 2001 Trust, Calmat Land Company, Sal and Connie L. Cardile, Consolidated Rock  
11 Products, Del Sur Ranch LLC, Forrest G. Godde, Forrest G. Godde as Trustee of the Forrest G.  
12 Godde Trust, Lawrence A. Godde, Lawrence A. Godde and Godde Trust, Gorrindo Family Trust,  
13 Leonard and Laura Griffin, Dennis L. & Marjorie E. Groven Trust, Healy Enterprises, Inc., Hines  
14 Family Trust, Habod Javadi, Juniper Hills Water Group, Eugene V., Beverly A., & Paul S. Kindig,  
15 Paul S. & Sharon R. Kindig, Kootenai Properties, Inc., Gailen Kyle, Gailen Kyle as Trustee of the  
16 Kyle Trust, James W. Kyle, James W. Kyle as Trustee of the Kyle Family Trust, Julia Kyle, Wanda  
17 E. Kyle, Malloy Family Partners, Maritorea Living Trust, Jose Richard H. Miner, Barry S. Munz,  
18 Terry A. Munz and Kathleen M. Munz, Eugene B. Nebeker, R and M Ranch, Inc., John and  
19 Adrienne Reca, Edgar C. Ritter, Paula E. Ritter, Paula E. Ritter as Trustee of the Ritter Family Trust,  
20 Sahara Nursery, Marygrace H. Santoro as Trustee for the Marygrace H. Santoro Rev Trust,  
21 Marygrace H. Santoro, Mabel Selak, Jeffrey L. & Nancee J. Siebert, Leo L. Simi, Helen Stathatos,  
22 Savas Stathatos, Savas Stathatos as Trustee for the Stathatos Family Trust, Tierra Bonita Ranch  
23 Company, Beverly Tobias, **collectively known as the Antelope Valley Ground Water Agreement**  
24 **Association (“AGWA”)**

25 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
26 **FOR THE COUNTY OF LOS ANGELES**

27 **ANTELOPE VALLEY**  
28 **GROUNDWATER CASES**

) Judicial Council Coordination Proceeding  
) No. 4408  
)

29 Included Actions:

) **Santa Clara Case No. 1-05-CV-049053**  
) Assigned to The Honorable Jack Komar  
)

30 Los Angeles County Waterworks District No. )  
31 40 v. Diamond Farming Co. Superior Court of )  
32 California County of Los Angeles, Case No. BC )  
33 325 201 Los Angeles County Waterworks )  
34 District No. 40 v. Diamond Farming Co. )  
35 Superior Court of California, County of Kern, )  
36 Case No. S-1500-CV-254-348Wm. Bolthouse )  
37 Farms, Inc. v. City of Lancaster Diamond )  
38 Farming Co. v. City of Lancaster Diamond )  
39 Farming Co. v. Palmdale Water Dist. Superior )  
40 Court of California, County of Riverside, )  
41 consolidated actions, Case No. RIC 353 840, )  
42 RIC 344 436, RIC 344 668 )

) **OBJECTIONS OF ANTELOPE VALLEY**  
) **GROUNDWATER AGREEMENT**  
) **ASSOCIATION TO UNITED STATES’**  
) **REQUEST FOR JUDICIAL NOTICE**

) **Phase 3 Trial Date**  
) **Date: January 4, 2011**  
) **Time: 9:00 am**  
) **Dept.: 1**

1 The Request for Judicial Notice filed by the United States ("Request") is a continuation of  
2 the effort begun by the purveyors at the deposition of Mr. Scalmanini on December 13, 2010 and  
3 continued by the United States through the filing of its Motion to Amend Expert Witness  
4 Declaration ("Motion to Amend") of Ms. Oberdorfer filed on December 14, 2010.

5 The data for which the United States makes the Request consists of nearly 900 pages of  
6 numbers, which the United States indicates is subsidence data pertaining to the extensometer located  
7 at the "Holly Site" on Edwards Air Force Base. (Request, at 2:1.) At the deposition of Mr.  
8 Scalmanini on December 13, 2010, the attorney for the Los Angeles County Waterworks District  
9 No. 40 ("County"), Mr. Dunn, agreed to provide the landowners with any trial exhibits that Mr.  
10 Scalmanini intends to use at trial concerning his newly produced subsidence data. (Declaration of  
11 Michael T. Fife in Support of Objections of Antelope Valley Agreement Association to United  
12 States' Request for Judicial Notice, attached hereto (hereafter, "Fife Declaration"), at ¶ 8.) On  
13 December 14, 2010, Mr. Dunn provided the landowners with a single figure entitled "Compaction  
14 Data – Holly Extensometer Facility – Edwards Air Force Base." (Fife Declaration, at ¶ 9.) No other  
15 exhibits have been provided to the landowners. (Fife Declaration, at ¶ 10.) Based on its Request, it  
16 appears that the evidence that the United States seeks to introduce is the same evidence that the  
17 County seeks to introduce.

18 The introduction of this data into evidence was discussed at length at the December 15, 2010  
19 Pre-Trial Conference and is the subject of AGWA's Motion in Limine No. 4. The Court has clearly  
20 indicated that it wants to hear all relevant evidence during the Phase III Trial and believes that it has  
21 an affirmative duty to seek out such evidence if not presented by the parties.

22 However, using the vehicle of judicial notice will not accomplish this goal. While courts may  
23 notice official acts and public records, "we do not take judicial notice of the truth of all matters  
24 stated therein." (*Love v. Wolf* (1964) 226 Cal.App.2d 378, 403; accord, *People v. Long* (1970) 7  
25 Cal.App.3d 586, 591.) "[T]he taking of judicial notice of the official acts of a governmental entity  
26 does not in and of itself require acceptance of the truth of factual matters which might be deduced  
27 therefrom, since in many instances what is being noticed, and thereby established, is no more than  
28 the existence of such acts and not, without supporting evidence, what might factually be associated

1 with or flow therefrom." (*Cruz v. County of Los Angeles* (1985) 173 Cal.App.3d 1131, 1134.)

2 Legality aside, AGWA acknowledges the Court's duties with respect to the public interest in  
3 the Antelope Valley Groundwater Basin, but also urges the Court to consider the context in which  
4 this evidence is being offered as it relates to the credibility of the interpretations that will be  
5 provided by the United States and the purveyors regarding this data.

6 At the December 15, 2010 hearing, the Court denied the United States' Motion to Amend. In  
7 its Phase 3 Trial Brief, filed December 20, 2010, the United States cited to the exact proposed  
8 testimony that was the subject of its Motion to Amend, and on the basis of that proposed testimony  
9 offers the conclusion that: "The ongoing subsidence is evidence of both past and current overdraft . .  
10 . ." (United States' Phase 3 Trial Brief 8:20-24.) Presumably, the purveyors intend to offer Mr.  
11 Scalmanini's testimony on the Holly Site data for the same purpose – as physical evidence of current  
12 overdraft.

13 The United States and the purveyors hope to give the impression that the landowners are  
14 attempting to exclude objective, neutral data from being introduced into evidence during Phase III.

15 At the December 15, 2010 Pre-Trial Conference, Mr. Bunn characterized the situation as:

16 The other thing that I would like to point out with respect to prejudice  
17 is that the new data is a direct measurement of subsidence. And the  
18 extensometers actually measure how much the land goes down. There  
is no analysis that goes into this.

19 (December 15, 2010 Reporter's Transcript, 43:9-16.)

20 However, in the proposed "Amendment Number Two to Declaration of June A. Oberdorfer"  
21 offered by the United States in its Motion to Amend, it is not proposed that Ms. Oberdorfer will  
22 provide new testimony on "direct measurements" of extensometer data for which there is "no  
23 analysis." Rather, in both instances in which she is proposed to opine on current subsidence, the  
24 specific amounts of alleged subsidence are qualified as amounts that ". . . I calculated . . .," and ". . . I  
25 have calculated . . ." (Proposed Amendment Number Two to Declaration of June A. Oberdorfer, at  
26 page 2, last paragraph beginning, "Data on land subsidence....")

27 Even if the data were as characterized by Mr. Bunn, the meaning of the data and its  
28 significance as it pertains to the question of current overdraft requires expert analysis. For example,

1 in the 2003 USGS paper cited by Ms. Oberdorfer in her proposed Amendment Number Two, the  
2 following is reported:

3           The measured land subsidence at BM 1171A east of Lancaster is  
4 related to the water-level decline measured in nearby well 7N/10W-  
5 5E1 from about 1950-1970, however the continued measured land  
6 subsidence from 1970s to the early 1990s does not correspond to the  
7 measured water-level recovery in the nearby well during this same  
8 time period. The subsidence that occurred at BM 1171A from the  
9 1970s to the early 1990s may be the result of residual compaction.

10 (Leighton, D.A and Phillips, S.P., 2003 Simulation of Ground-Water Flow and Land Subsidence in  
11 the Antelope Valley Ground-Water Basin, California, U.S. Geological Survey Water-Resources  
12 Investigations Report 03-4016, p.25.) In other words, subsidence was measured at a benchmark  
13 location (BM 1171A), but based on the expert analysis of the context in which that subsidence was  
14 measured, the authors believe the subsidence may be related to past overpumping and not to present  
15 conditions.

16           During depositions, the experts for the United States and the purveyors were each asked  
17 explicitly whether they had data regarding current subsidence. Each clearly answered that they did  
18 not. (See Wildermuth Deposition Transcript Vol. III (November 8, 2010) 444:4-11; Scalmanini  
19 Deposition Transcript, Volume II (November 16, 2010) 280:12-17; Oberdorfer Deposition  
20 Transcript (Nov. 4, 2010) 69:8-25.) These exchanges are described in detail in AGWA's Objection  
21 to the United States' Motion to Amend and in AGWA's Motion in Limine No. 4. But, after all of  
22 these exchanges, at the end of the final day of the deposition of the purveyors' final expert witness,  
23 suddenly such data appeared.

24           The United States and the purveyors know that the Court will want to consider all relevant  
25 evidence during the Phase III trial. By waiting until the last minute to bring this data forward, the  
26 United States and the purveyors hope to be able to offer not just the data, but also their "calculations"  
27 and expert interpretations of such data without providing the landowners an opportunity to review  
28 and critique such calculations and interpretations. If the United States and the purveyors thought the  
data unambiguously supported the kind of conclusion asserted by the United States in its Phase III  
Trial Brief, then they would not be afraid of such review and critique. Instead they have chosen to

1 wait and to rely on the Court's desire to hear all relevant information in order to have their  
2 interpretations of this data entered into evidence unopposed. It is just such gamesmanship that  
3 section 2034 of the Code of Civil Procedure is designed to prevent.

4 Several months ago the purveyors provided the landowners with their so-called "Summary  
5 Expert Report" and identified it as the substance of the testimony that the purveyors and the United  
6 States would offer at the Phase III trial to satisfy their burden of proof. The landowners utilized the  
7 limited resources available to them and prepared a response. This response was articulated to the  
8 purveyors through the deposition process. Having seen the landowner response, the purveyors and  
9 the United States are now attempting to change as much of their case as possible, and to do so in a  
10 way that curtails the ability of the landowners to prepare or to be able to effectively cross-examine  
11 the purveyor witnesses. Unfortunately, as it becomes even more difficult to respond to such efforts  
12 because of the imminence of the holidays, AGWA anticipates that this effort to limit the landowner's  
13 ability to effectively cross-examine will continue.

14 Dated: December 22, 2010

BROWNSTEIN HYATT FARBER SCHRECK, LLP

15  
16  
17 By: 

MICHAEL T. FIFE  
BRADLEY J. HERREMA  
ATTORNEYS FOR AGWA

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA,  
COUNTY OF SANTA BARBARA**

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action; my business address is: 21 E. Carrillo Street, Santa Barbara, California 93101.

On December 22, 2010, I served the foregoing document described as:

**OBJECTIONS OF ANTELOPE VALLEY GROUNDWATER AGREEMENT  
ASSOCIATION TO UNITED STATES' REQUEST FOR JUDICIAL NOTICE**

on the interested parties in this action.

By posting it on the website by 5:00 p.m. on December 22, 2010.  
This posting was reported as complete and without error.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed in Santa Barbara, California, on December 22, 2010.



MARIA KLACHKO-BLAIR  
**TYPE OR PRINT NAME**

SIGNATURE