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8 **Attorneys for:** Gene T. Bahlman, William Barnes, William R. Barnes & Eldora M. Barnes Family
9 Trust of 1989, Thomas M. Bookman, B.J. Calandri, John Calandri, John Calandri as Trustee of the
10 John and B.J. Calandri 2001 Trust, Son Rise Farms, Calmat Land Company, Sal and Connie L.
11 Cardile, Efren and Luz Chavez, Consolidated Rock Products, Del Sur Ranch LLC, Steven Godde as
12 Trustee of the Forrest G. Godde Trust, Lawrence A. Godde, Lawrence A. Godde and Godde Trust,
13 Robert and Phillip Gorrindo, Gorrindo Family Trust, Laura Griffin, Healy Farms, Healy Enterprises,
14 Inc., John Javadi and Sahara Nursery, Juniper Hills Water Group, Gailen Kyle, Gailen Kyle as
15 Trustee of the Kyle Trust, James W. Kyle, James W. Kyle as Trustee of the Kyle Family Trust, Julia
16 Kyle, Wanda E. Kyle, Maritorena Living Trust, Jose and Marie Maritorena, Richard H. Miner, Barry
17 S. Munz, Terry A. Munz and Kathleen M. Munz, Eugene B. Nebeker, R and M Ranch, Inc., Richard
18 and Michael Nelson, Robert Jones, John and Adrienne Reca, Mabel Selak, Jeffrey L. & Nancee J.
19 Siebert, Dr. Samuel Kremen and Tierra Bonita Ranch Company, Beverly Tobias, Triple M Property
20 FKA and 3M Property Investment Co., Vulcan Materials Co. and Vulcan Lands Inc., Willow
21 Springs Company, Donna Wilson, **collectively known as the Antelope Valley Groundwater
22 Agreement Association (“AGWA”)**

23 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

24 **FOR THE COUNTY OF LOS ANGELES**

25 **ANTELOPE VALLEY**)
26 **GROUNDWATER CASES**)
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29 Included Actions:)
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Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

**AGWA’s REPLY TO UNITED STATES’
RESPONSE TO LANDOWNERS’ MOTION
IN LIMINE TO ESTABLISH UNITED
STATES’ BURDEN OF PROOF FOR ANY
RESERVED WATER RIGHTS**

1 The Antelope Valley Groundwater Agreement Association (“AGWA”) hereby replies to
2 the United States’ Response to Landowners Motion in Limine to Establish United States’ Burden
3 of Proof for any Reserved Water Rights, filed April 19, 2013 (“Federal Response”). The Federal
4 Response restates the arguments contained in its own *Motion in Limine to Establish the United*
5 *States’ Legal Entitlement to a Federal Reserved Water Right and to Limit the Scope of Evidence*
6 *Necessary at Trial*, filed March 29, 2013, and therefore, in addition to the following points in
7 reply, AGWA also relies upon the *Landowners’ Opposition to the United States’ Motion in*
8 *Limine*, filed April 19, 2013.

9 The essential element of a federal reserved right is the intent behind the reservation, as
10 acknowledged by the Federal Response. (Federal Response, at 4:17-22.) While the Federal
11 Response expends pages discussing the broad military purposes behind the series of reservations
12 surrounding Edwards Air Force Base, the Federal Response does not once refer to or discuss the
13 best indicator of intent behind the federal reservations: the language of the actual reservations
14 themselves. As explained in the Landowners’ Motion in Limine, each of the eight reservations at
15 issue state that the reservations are “subject to existing rights,” or “subject to...all valid existing
16 rights....” (Landowners’ Motion in Limine, at 2:4-3:9.)

17 The fundamental legal issue to be resolved with respect to the scope of the federal
18 reserved rights is therefore the meaning of this language. Under the California system of
19 overlying rights to groundwater, the fact that the reservations are subject to existing rights at the
20 time of the reservation means that, as a matter of law, the United States cannot have acquired a
21 reserved right as conceived in the Federal Response.

22 The United States attempts to deal with this issue obliquely in the Federal Response,
23 stating that the reservation of water by the United States:

24 ...effects an apportionment of water to the government without
25 impacting overlying landowners’ legal rights to withdraw
26 groundwater from the remaining available supply. The creation of
27 new rights to withdraw ground water, including the federal reserved
28 water right, does not change the right of overlayers to draw their
 correlative share from the remaining available supply.


1 (Federal Response, at 5:15-21.) The United States appears to argue that since the overlying
2 landowners have a right to the “available supply,” and since—after the reserved right is deducted
3 from the Safe Yield of the Basin—the landowners still have a right to the available supply, the
4 overlying landowners’ rights have not been impaired. This argument is incorrect and turns
5 California groundwater law on its head.

6 As explained in the Landowners’ Motion in Limine, the “valid existing rights” the
7 reservations were subject to include the overlying landowners' priority right to use the Basin's
8 “Safe yield,” not the “available supply after the reserved right is deducted from the safe yield.”
9 (Motion in Limine, at 8:23-9:12.) Overlying landowners have a correlative share of the safe
10 yield. When the safe yield is insufficient to satisfy the reasonable and beneficial needs of all
11 users, those with overlying rights take precedence. (*City of Santa Maria v. Adam* (2012) 211
12 Cal.App.4th 266, 279-80.) Because overlying rights are based on land ownership and thus vest
13 with land ownership, the rights of the Antelope Valley's overlying landowners vested under
14 California law as private ownership in the Valley was established. The interpretation offered by
15 the United States in the Federal Response is contrary to the explicit stated intent of Congress
16 because it would effectively eliminate the “subject to existing rights” qualification of the
17 reservations.

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Dated: May 3, 2013

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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 May 3, 2013, I served the foregoing document described as:

AGWA's REPLY TO UNITED STATES' RESPONSE TO LANDOWNERS MOTION IN LIMINE TO ESTABLISH UNITED STATES' BURDEN OF PROOF FOR ANY RESERVED WATER RIGHTS

on the interested parties in this action.

By posting it on the website by 5:00 p.m. on May 3, 2013.

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 May 3, 2013.

**LINDA MINKY
TYPE OR PRINT NAME**



SIGNATURE