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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES – CENTRAL DISTRICT
16

17 **ANTELOPE VALLEY**
18 **GROUNDWATER CASES**
19 Included Actions:
20 Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
21 Court of California, County of Los
Angeles, Case No. BC 325201;
22 Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
23 Court of California, County of Kern, Case
No. S-1500-CV-254-348;
24 Wm. Bolthouse Farms, Inc. v. City of
25 Lancaster, Diamond Farming Co. v. City of
Lancaster, Diamond Farming Co. v.
26 Palmdale Water Dist., Superior Court of
California, County of Riverside, Case Nos.
27 RIC 353 840, RIC 344 436, RIC 344 668
28

Judicial Council Coordination No. 4408
CLASS ACTION
Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

**OPPOSITION TO AGWA’S MOTION IN
LIMINE NO. 4; DECLARATION OF
STEFANIE HEDLUND**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

AGWA’s Motion in Limine No. 4 is meritless. The Public Water Suppliers’ expert designation provided adequate notice that Mr. Scalmanini would testify regarding subsidence and Mr. Scalmanini was deposed for three days on various topics, including subsidence. Additionally, the expert report submitted to all parties contains statements, data and references regarding ongoing subsidence. Furthermore, even though AGWA has known since mid July that the Public Water Suppliers’ experts would opine about subsidence, it has not designated an expert to rebut or opine land subsidence, so there can be no surprise or prejudice now.

II. ARGUMENT

A. Mr. Scalmanini’s Expert Designation Was Sufficiently Broad To Cover Subsidence

The Public Water Suppliers Expert Declaration states:

Mr. Scalmanini will testify as to characteristics and hydrologic conditions of the groundwater in the Antelope Valley Groundwater Adjudication Area ("Basin"). Mr. Scalmanini will testify concerning the Basin's sustainable yield and geology and the occurrence of groundwater in the Basin. Mr. Scalmanini's testimony will include historic groundwater conditions, effects of groundwater development and the current status and past changes in groundwater conditions.

The subject of subsidence is covered in several of these topics, most notably “effects of groundwater development and the current status and past changes in groundwater conditions” and “geology.” The Oxford Dictionary defines geology as “the science that deals with the earth's physical structure and substance, its history, and the processes that act on it.” Subsidence is included in geology and is a geologic term describing when water is depleted in areas that contain fine grain sediments. The de-watering of fine grain sediments causes the eventually subsiding of land levels, also know as subsidence. Thus the designation for current

1 status and past changes in groundwater conditions would cover subsidence. Furthermore, the
2 geology of the Basin is broad enough to include subsidence.

3 **B. The Data Is The Type of Information That Can Be Judicially Noticed**

4 The USGS reports and data that AGWA is attempting to exclude is simply data, collected
5 by a government entity. It is hard to understand how there can be “surprise” or “prejudice” to
6 any party when the USGS data is publically available to all. The USGS reports are subject to
7 judicial notice, publically available and the type of data that experts regularly rely on.

8 **C. The Expert Report Relied And Cited To Reports Containing**
9 **Extensometer Data**

10 The expert report posted by the Public Water Suppliers on July 15, 2010 as an exhibit to
11 the expert witness declaration contains statements about ongoing subsidence and references
12 the United States Geological Services (“USGS”) report. The report states: “Subsidence has
13 been occurring in the basin since about 1930, indicating that pumping has exceeded
14 sustainable yield since at least that time, and has continued to the present as pore pressures
15 within the thickest aquitards slowly equilibrate with lower heads in the aquifer units.” (Expert
16 Report at p. V-2.) In addition, an entire section, 4.5 is dedicated to the discussion of land
17 subsidence and how it was used in the change of storage calculation. The USGS report is
18 used and referenced in the expert report. (See Hedlund Decl., ¶ 2.)

19 While the expert report does not focus solely on subsidence, it does document subsidence
20 in both the main body and appendices. In order to properly calculate the change in
21 groundwater storage over time, it was necessary to summarize how much water came out of
22 compaction of fine grain sediments. Stated another way, subsidence results from the fact that
23 water slowly drains out from compaction and it is necessary to quantify it in order to account
24 for change in storage. To completely and properly calculate the change in storage over time,
25 it is necessary to know where subsidence took place and to quantify the water from
26 compaction. The expert report relied on USGS maps that show the spatial and vertical extent
27 of subsidence in the Antelope Valley. The work was based on surface measurement surveying
28 of the ground surface to identify how much the land was subsiding. The last USGS report on

1 subsidence and its widespread occurrence covered the period up to 1992. In 1990 as part of
2 the ongoing work, the USGS installed extensometers. The data collected from the
3 extensometers and associated monitoring wells was not included in the work through 1992
4 and was first reported in the USGS 2005 Fact Sheet authored by Sneed, et al., and referenced
5 in the expert report. While extensometer data doesn't add to the change in storage
6 calculation, it is informative to demonstrate how much subsidence has occurred.

7 The disclosure of the expert report and the citations to the 2005 USGS Fact Sheet
8 demonstrate that all parties have been aware of the extensometer data since at least as early as
9 July 2010.

10
11 **D. Mr. Scalmanini Was Deposed For Three Days And All Parties Had Adequate**
12 **Time to Ask Mr. Scalmanini About His Opinions Regarding Land Subsidence**

13 Mr. Scalmanini deposition lasted for three days and each party had adequate time to
14 depose Mr. Scalmanini regarding his opinions relating to subsidence. Landowner counsel
15 was aware on the first day of Mr. Scalmanini's deposition that he had opinions on subsidence:

16 Q. Okay. Based upon the work that you did and work -- strike that.
17 Have you formed any opinions in this case you've been asked to or
intend to offer in the Phase III trial?

18 A. Yes.

19 Q. And what are those opinions? In summary format. We'll get into
the opinions in more detail.

20 A. They're summarized in the last chapter of report.

21 Q. And --

22 A. Pumping exceeds the sustainable yield.

23 Q. Just hold on a second. If you could just -- you said the last
24 chapter. You're talking about Chapter 5 --

25 A. I am.

26 Q. -- entitled Groundwater Resources --

27 A. Conditions.

28 Q. -- conditions. Okay. Go ahead. I didn't mean to interrupt you.

1 a reference, by about 40,000 acre feet a year. As a result of both
2 historical and more recent ongoing exceedence of sustainable yield,
3 groundwater storage has been significantly depleted in recent years
4 by an average of -- meaning the last decade or thereabouts, an
5 average of on the order of 50,000 acre feet a year. And up to about
6 six feet or a little more of land subsidence in that central, roughly
7 speaking, third of the basin has occurred as a result of water level
8 declines, dewatering of fine-grained so-called aquitard, or confining
9 beds. And so land subsidence is an indication of one of the
10 undesirable effects that would be definitive of overdraft. (Hedlund
11 Decl., ¶ 3, Scalmanini Vol., 1, 66:9-67:21.)

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On day two of Mr. Scalmanini's deposition testified that land subsidence was ongoing and
was one of the undesirable effects that indicated that the groundwater Basin was in overdraft:

Q: And what undesirable conditions are currently occurring that
cause you to say the basin is currently in overdraft?

A. Groundwater levels are declining, groundwater storage has
been declining and continues to decline; and subsidence has been
mapped and is ongoing. (Hedlund Decl., ¶ 3, Scalmanini Vol., 2,
277:20-278:1.)

Mr. Scalmanini was questioned about data beyond 1992 and responded that he wasn't sure
and needed to go back and look at the data he relied on in drafting the expert report:

A. So what I'm struggling with from memory is because
Wildermuth did the change in storage from compaction, so that
kind of took possession of the subsidence topic in terms of writing
it up. I can't from memory recall you know the fate of the active
extensometers and piezometers that are associated with those, that
were installed by the USGS as part of an investigation and whether
that data comes forward in time. I just don't remember. So I intend
to go back and look. (Hedlund Decl., ¶ 4, Scalmanini Vol., 2,
371:6-16.)

Mr. Scalmanini did go back and review his records and on the third day of his deposition
testified:

Q. Let's talk about Grismer and -- were there and any other
opinions on Sheehan?

A. I told if you I thought there was anything else from memory
over lunch I'd tell you, so I guess I better tell you. The thing I didn't
mention was subsidence. He makes some pretty matter of fact
statements of how subsidence had leveled off in the early '90s and

1 then there wasn't any ongoing subsidence in the basin. And I would
2 disagree with that.

3 Q. And why?

4 A. Well, when was I here last? Two weeks ago?

5 Q. Right. Close enough.

6 A. So you asked me some questions about that topic.

7 Q. I asked you whether subsidence was continuing or not. And
8 you said you hadn't looked at it.

9 A. Yeah, I did. And I don't often admit this out loud, but I will. I
10 was frustrated because I knew I had, but I couldn't call it to mind
11 when I was sitting here. But I was thinking to myself -- so I was
12 answering your question and I was thinking to myself I'm going to
13 go home and double check. So I did. And remember we talked
14 about extensometers. It might have been more when Michael was
15 asking me questions.

16 Q. It was.

17 A. And I said I couldn't remember about the ongoing data
18 collection because I thought there was a possibility the funding
19 had dried up and they might just be sitting out there. But I was
20 wrong on that speculation. So there have been extensometers out
21 there since 1990. They have been read. And there's a clear and
22 complete data set that tracks water levels and monitoring wells
23 around the extensometers and subsidence itself from the
24 extensometers since they went in. And subsidence continues for all
25 practical purposes linearly from 1990 to the present.

26 Q. When you say linearly, do you mean it's remained the same or
27 --

28 A. At the same rate. (Hedlund Decl., ¶ 5, Scalmanini Vol., 3,
485:9-486:24.)

There was adequate time to depose Mr. Scalmanini regarding the current subsidence and
extensometer data. Mr. Scalmanini was deposed on November 15 and 16 and December 13.
Mr. Fife and Mr. Zimmer questioned Mr. Scalmanini extensively about the subsidence data.
Mr. Scalmanini's opinion regarding ongoing subsidence did not change. Thus, there is no
prejudice or surprise.

E. No AGWA Expert Is Designated On Land Subsidence

Since as early as July 15, 2010, AGWA and all parties have been on notice that the Public
Water Suppliers intended to put evidence on regarding land subsidence. The Public Water

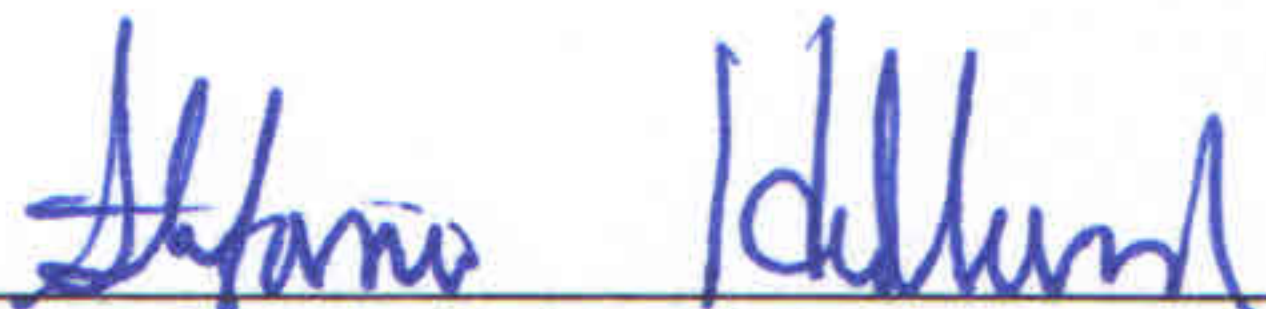
1 Suppliers expert report disclosed at the time of expert designations states: “up to about six
2 feet of land subsidence has resulted from historical lowering of groundwater levels in the
3 central part of the basin.” (Expert Report V-1.) At this time, AGWA did not designate any
4 expert that would be qualified to rebut land subsidence. AGWA has designated Joel
5 Kimmelshue, Jan Hendrickz, John Wilson, Steve Orloff, Eugene Nebeker, Julie Kyle, and
6 John Calandri. None of these experts are designated to opine or rebut geologic topics such as
7 subsidence, rather they are designated to opine on topics such as recharge, crop water use,
8 irrigation methods, return flows, evapotranspiration, and recharge to the Basin. Thus, there
9 can be no prejudice to AGWA.¹

10
11 **III. CONCLUSION**

12 AGWA’s Motion in Limine No. 4 should be denied. Mr. Scalmini’s expert designation
13 includes the topic of subsidence and he was deposed regarding his opinions on subsidence.
14 Furthermore, all parties have been on notice that the expert report discusses and refers to
15 subsidence material and the data relied upon is publically available and subject to Judicial
16 Notice.

17
18 Dated: December 29, 2010

BEST BEST & KRIEGER LLP

19
20 By 
21 ERIC L. GARNER
22 JEFFREY V. DUNN
23 STEFANIE D. HEDLUND
24 Attorneys for Cross-Complainant
25 LOS ANGELES COUNTY
26 WATERWORKS DISTRICT NO. 40

27
28 ¹ There is equally no surprise or prejudice to the other landowners. Mr. Bachman used the Public Water Suppliers’
expert calculation for water derived from compaction to calculate his yield and Mr. Sheahan opined in his deposition
that land subsidence is not one of the undesirable effects created by overdraft.

DECLARATION OF STEFANIE HEDLUND

I, Stefanie D. Hedlund, declare:

1. I am an associate of the law firm of Best, Best & Krieger LLP, counsel for cross-defendant, Los Angeles County Waterworks District No. 40. I have personal knowledge of the facts stated herein and if called upon to do so, I could and would competently testify to these facts.

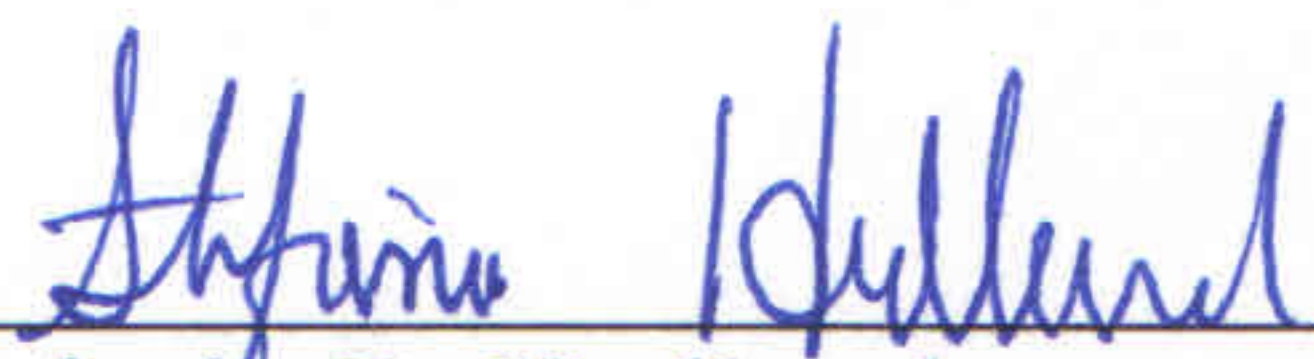
2. Attached to this declaration as Exhibit "A" is a true and correct copy of the Bibliography to Appendix B of the Public Water Suppliers Expert Report posted on the Court's website on July 15, 2010. The Appendix at page 9 shows a citation to the USGS Fact Sheet 2005-3112.

3. Attached to this declaration as Exhibit "B" is a true and correct copy of relevant portions of Joseph Scalmanini's Deposition, Volume 1.

4. Attached to this declaration as Exhibit "C" is a true and correct copy of relevant portions of Joseph Scalmanini's Deposition, Volume 2.

5. Attached to this declaration as Exhibit "D" is a true and correct copy of relevant portions of Joseph Scalmanini's Deposition, Volume 3.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed this 29th day of December, 2010, at Truckee, California.



Stefanie D. Hedlund

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PROOF OF SERVICE

I, Stefanie D. Hedlund, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 400 Capitol Mall, Suite 1650, Sacramento, California 95814. On December 29, 2010, I served the within document(s):

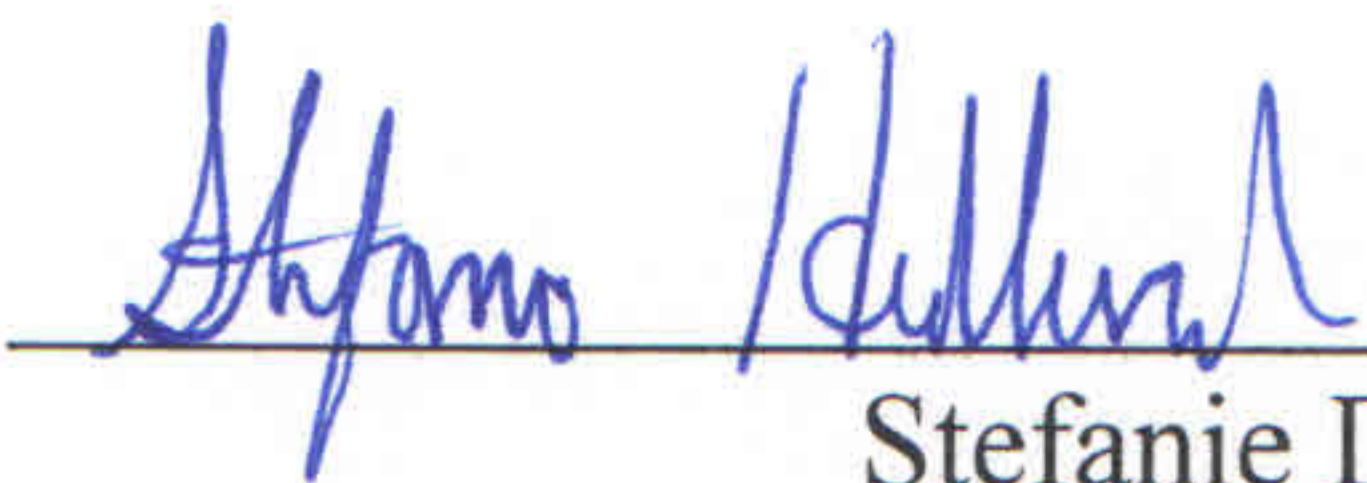
OPPOSITION TO AGWA'S MOTION IN LIMINE NO. 4; DECLARATION OF STEFANIE HEDLUND

- by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on December 29, 2010, at Truckee, California.



Stefanie D. Hedlund