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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **IN AND FOR THE COUNTY OF LOS ANGELES**

14 Coordination Proceeding Special Title  
15 (Rule 1550 (b))

16 ANTELOPE VALLEY GROUNDWATER  
17 CASES

18 Included actions:

19 Los Angeles County Waterworks District No.  
20 40 vs. Diamond Farming Company  
21 Los Angeles Superior Court  
22 Case No. BC 325201

23 Los Angeles County Waterworks District No.  
24 40 vs. Diamond Farming Company  
25 Kern County Superior Court  
26 Case No. S-1500-CV 254348 NFT

27 Diamond Farming Company vs. City of  
28 Lancaster  
Riverside County Superior Court  
Lead Case No. RIC 344436 [Consolidated  
w/Case Nos. 344668 & 353840]

AND RELATED CROSS-ACTIONS.

Judicial Council Coordination No. 4408

Case No.: 1-05-CV-049053

**CRYSTAL ORGANIC FARMS'**  
**OPPOSITION TO PUBLIC WATER**  
**SUPPLIERS' MOTION *IN LIMINE* NO.**  
**1**

DATE: October 6, 2008  
TIME: 9:00 a.m.  
DEPT: 1

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1 OPPOSITION TO MOTION IN LIMINE

2 Crystal Organic Farms, LLC comes before the Court to respectfully request that the Court DENY  
3 the Public Water Suppliers' motion *in limine* No. 1. The testimony to be adduced from Mr. Joseph  
4 Scalmanini is neither cumulative nor unduly time consuming.

5 Importantly, Crystal Organic Farms was not a party to the Phase 1 litigation that took place in  
6 October of 2006. Crystal Organic Farms was first served with process on August 8, 2007 --  
7 approximately ten months **after** presentation of the testimony that the Public Water Suppliers moves to  
8 exclude. As Crystal Organic Farms was not a party to the Phase 1 litigation, no finding or evidence  
9 offered during Phase 1 trial should be binding upon Crystal Organic Farms. Neither *res judicata* nor  
10 collateral estoppel can apply as against Crystal Organic Farms.

11 Further, due process would be violated should the motion of the Public Water Suppliers be  
12 granted and Crystal Organic Farms be barred from presenting the testimony of Mr. Scalmanini.

13 This Opposition is based on the attached Memorandum of Points and Authorities and such other  
14 evidence as may be introduced at the time of the hearing, and is made upon the ground that Mr. Joseph  
15 Scalmanini's testimony is neither cumulative nor unduly time consuming. As Crystal Organic Farms was  
16 not a party to the previous phase of litigation, any attempt to exclude testimony based on something that  
17 occurred during Phase 1 in October 2006 should be denied.

18  
19 Dated: October 2, 2008

LeBEAU • THELEN, LLP

20  
21  
22 By: 

BOB H. JOYCE  
Attorneys for CRYSTAL ORGANIC  
FARMS, a limited liability company

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Without launching into a lengthy recitation of the history of the proceedings before the Court,  
3 Phase 1 of the trial took place before this Court in October of 2006. While Diamond Farming  
4 Company was a party to this litigation during Phase 1, Crystal Organic Farms was served and made a  
5 party to this suit on August 8, 2007 -- almost ten months after the presentation of testimony by Mr.  
6 Joseph Scalmanini.

7 Diamond Farming Company is not the party offering the testimony of Mr. Scalmanini in  
8 Phase 2, as its holdings are within the Neenach/Lancaster central sub-basin. Rather, it is Crystal  
9 Organic Farming, with holdings in the area north of the Willow Spring Fault, that is offering the  
10 testimony of Mr. Scalmanini.

11 No evidence introduced or testimony adduced at the Phase 1 trial should be able to be used as  
12 a sword against the presentation of testimony on behalf of Crystal Organic Farms, LLC as they were  
13 not a party to the October 2006 Phase 1 portion of this trial. "Res judicata" describes the preclusive  
14 effect of a final judgment on the merits. Res judicata, or claim preclusion, prevents relitigation of the  
15 same cause of action in a second suit **between the same parties or parties in privity with them.**  
16 Collateral estoppel, or issue preclusion, 'precludes relitigation of issues argued and decided in prior  
17 proceedings.'" [Emphasis added] (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896).  
18 Collateral estoppel only applies when the party "against whom preclusion is sought" is the "same as,  
19 or in privity with, the party to the former proceeding." (*Lucido v. Superior Court* (1990) 51 Cal.3d  
20 335, 341). As Crystal Organic Farms was only brought into this litigation as a party on August 8,  
21 2007, neither collateral estoppel nor res judicata should preclude Crystal Organic Farms, LLC from  
22 presenting testimony from Mr. Scalmanini at the Phase 2 portion of this trial.

23 The Public Water Suppliers are attempting to have any potential testimony offered by Mr.  
24 Scalmanini excluded despite the fact his testimony is being offered **by a different party** than that  
25 which presented the testimony in the October 2006 Phase 1 portion of the trial. The case of *Cubic*  
26 *Corp. v. Marty* (1986) 185 Cal.App.3d 438, 455 is cited by the Public Water Suppliers as authority  
27 for this Court to exclude Mr. Scalmanini's testimony on the grounds that it is cumulative in nature.  
28 However, in the *Cubic Corp.* case, the Court of Appeal excluded evidence offered by the defendant

1 that was previously offered, in that same proceeding with the same parties, by the defendant:

2 "[Defendant] next objects to the exclusion of proffered evidence of the United States  
3 Air Force's request for proposals for an On Board Electronic Warfare Simulation  
4 System (OBEWS). [Defendant] argued the evidence was relevant to show his invention  
5 had a "stand-alone" capacity separate from the ACMR. The trial court noted  
6 [Defendant] had already presented evidence the invention had a stand-alone capacity.  
7 The court ruled that under Evidence Code section 352, the probative value of the  
8 OBEWS testimony was outweighed by the fact the testimony would consume an undue  
9 amount of time. This ruling was well within the trial court's discretion." [Emphasis  
10 added] (*Cubic Court, supra*, 185 Cal.App.3d at 455)

11 Crystal Organic Farms has never presented the testimony of Mr. Scalmanini in this proceeding  
12 or presented evidence at any trial phase that resembles what is expected to be testified to by Mr.  
13 Scalmanini *because Crystal Organic Farms was not a prior party to the Phase 1 portion of the trial*  
14 *in October 2006.*

15 Phase 1 of trial was an effort to determine the jurisdictional boundary of the adjudication area,  
16 as it was a necessity for determining how to effect service of process on a class basis. Phase 1 *did not*  
17 determine that all areas within the boundary were hydro-geologically connected in a manner whereby  
18 pumping in one area would have a noticeable, appreciated effect in another area. In fact, that is the  
19 specific question before the Court in Phase 2. As a result, any testimony offered by the Public Water  
20 Suppliers through Mr. Scalmanini cannot possibly have a preclusive or cumulative effect on evidence  
21 presented by Crystal Organic Farms.

22 Due Process will be violated if the Public Water Suppliers' Motion *in Limine* No. 1 is granted  
23 as Crystal Organic Farms was not a party to this action when the Public Water Suppliers offered the  
24 testimony of Mr. Scalmanini.

25 Dated: October 2, 2008

LeBEAU • THELEN, LLP

26 By: 

BOB H. JOYCE  
Attorneys for CRYSTAL ORGANIC  
FARMS, a limited liability company

**PROOF OF SERVICE**

1 ANTELOPE VALLEY GROUNDWATER CASES  
2 JUDICIAL COUNCIL PROCEEDING NO. 4408  
3 CASE NO.: 1-05-CV-049053

4 I am a citizen of the United States and a resident of the county aforesaid; I am over the age  
5 of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter  
6 Drive, Suite 300, Bakersfield, California 93309. On October 2, 2008, I served the within

7 **CRYSTAL ORGANIC FARMS, LLC.'S OPPOSITION TO PUBLIC WATER SUPPLIERS'**  
8 **MOTION IN LIMINE NO. 1**

9  (BY POSTING) I am "readily familiar" with the Court's Clarification Order.  
10 Electronic service and electronic posting completed through [www.scefilings.org](http://www.scefilings.org) ; All papers filed  
11 in Los Angeles County Superior Court and copy sent to trial judge and Chair of Judicial Council.

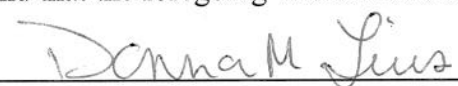
12 Los Angeles County Superior Court  
13 111 North Hill Street  
14 Los Angeles, CA 90012  
15 Attn: **Department 1**  
(213) 893-1014

Chair, Judicial Council of California  
Administrative Office of the Courts  
Attn: Appellate & Trial Court Judicial Services  
(Civil Case Coordinator)  
Carlotta Tillman  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688  
Fax (415) 865-4315

16  (BY MAIL) I am "readily familiar" with the firm's practice of collection and  
17 processing correspondence for mailing. Under that practice it would be deposited with the U.S.  
18 Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California, in  
the ordinary course of business.

19  (OVERNIGHT/EXPRESS MAIL) By enclosing a true copy thereof in a sealed  
20 envelope designated by United States Postal Service (Overnight Mail)/Federal Express/United  
21 Parcel Service ("UPS") addressed as shown on the above by placing said envelope(s) for ordinary  
22 business practices from Kern County. I am readily familiar with this business' practice of  
23 collecting and processing correspondence for overnight/express/UPS mailing. On the same day  
24 that the correspondence is placed for collection and mailing, it is deposited in the ordinary course  
25 of business with the United States Postal Service/Federal Express/UPS in a sealed envelope with  
26 delivery fees paid/provided for at the facility regularly maintained by United States Postal Service  
(Overnight Mail/Federal Express/United Postal Service [or by delivering the documents to an  
authorized courier or driver authorized by United States Postal Service (Overnight Mail)/Federal  
Express/United Postal Service to receive documents].

27  (STATE) I declare under penalty of perjury under the laws of the State of  
28 California that the above is true and correct, and that the foregoing was executed on October 2,  
2008, in Bakersfield, California.

  
\_\_\_\_\_  
DONNA M. LUIS