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EXEMPT FROM FILING FEES UNDER  
GOVERNMENT CODE SECTION 6103

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES**

Coordination Proceeding	)	Judicial Council Coordination
Special Title (Rule 1550(b))	)	Proceeding No. 4408
ANTELOPE VALLEY GROUNDWATER CASES	)	
Included actions:	)	UNITED STATES'
<u>Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., et al.</u>	)	SUPPLEMENTAL RESPONSE TO
Los Angeles County Superior Court, Case No. BC 325 201	)	AGWA'S MOTION IN LIMINE NO. 4
<u>Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., et al.</u>	)	Phase 3 Trial Date:
Kern County Superior Court, Case No. S-1500-CV-254-348	)	Date: January 4, 2011
<u>Wm. Bolthouse Farms, Inc. v. City of Lancaster</u>	)	Time: 9:00 a.m.
<u>Diamond Farming Co. v. City of Lancaster</u>	)	Dept: 1, LASC
<u>Diamond Farming Co. v. Palmdale Water District</u>	)	
Riverside County Superior Court, Consolidated Action, Case nos. RIC 353 840, RIC 344 436, RIC 344 668	)	
AND RELATED CROSS ACTIONS	)	

The United States joined in the Public Water Supplier's Opposition to AGWA's Motion in Limine No. 4 ("PWS Response"), filed December 29, 2010. AGWA sought to limit the testimony of Mr. Joseph Scalmanini relating to overdraft, and specifically evidence of

1 subsidence. *See* Motion In Limine: AGWA's Notice of Motion and Motion in Limine No.4 to  
2 Exclude Evidence Regarding Extensometer Data; Memorandum of Points and Authorities in  
3 Support Thereof ("AGWA Mtn."), filed December 14, 2010. By order of the Court dated  
4 December 23, 2010, AGWA's Motion "seeking to limit testimony concerning ground  
5 subsidence" was ordered off calendar as having been untimely filed. Order After Pre-Trial  
6 Conference Held on December 15, 2010, at 2-3. The Court allowed movants to re-notice its  
7 Motion in Limine. AGWA did not re-notice its motion. Nevertheless, the United States files this  
8 supplemental briefing in anticipation that AGWA will renew its objection at trial to prohibit all  
9 testimony regarding subsidence in the Antelope Valley Groundwater Basin ("Basin"), including  
10 testimony from the United States' expert Dr. June Oberdorfer.

11 AGWA argued that it was unfairly surprised by deposition testimony of Mr. Joseph  
12 Scalmanini on December 13, 2010, regarding "data collected by extensometers located in the  
13 Antelope Valley during the period of 1993 to present," and that expert opinion testimony related  
14 to this information would be prejudicial to AGWA. AGWA Mtn. at 3. The PWS Response  
15 refutes this argument and explains that the Public Water Suppliers' expert designation provided  
16 adequate notice that Mr. Scalmanini's would testify regarding subsidence and that Mr.  
17 Scalmanini was deposed on the topic of subsidence. Accordingly, as shown by the PWS  
18 Response, AGWA's Motion in Limine No. 4 is meritless.

19 Dr. June Oberdorfer has made similar declarations regarding the deleterious effects of  
20 overdraft in the Basin. In her July 15, 2010, declaration on Phase 3: Status of Aquifer and Issue  
21 of Overdraft, Dr. Oberdorfer was identified as an expert witness testifying on the state of the  
22 aquifer including "whether the groundwater basin is in overdraft, with extraction exceeding  
23 recharge so that the basin will suffer serious degradation" Expert Witness Declaration attached as  
24 Exhibit B at 2 (Dkt. No. 3737). She concludes that the Basin is in overdraft and further states  
25 that the "overdraft demonstrates that the current rate of pumping is unsustainable and, if water  
26 levels continue to decline as they have over the last decade in many areas, significant land  
27 subsidence could be re-initiated and additional negative consequences to the basin be produced."  
28 *Id.* at 6-7. Therefore, Dr. Oberdorfer notified all parties that she would address serious

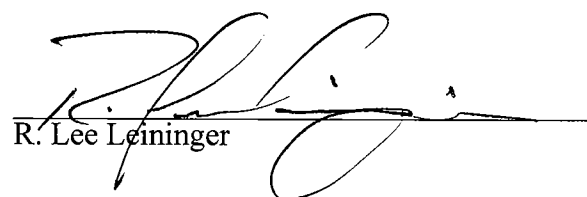
1 hydrologic degradation in the Basin and that such groundwater conditions includes subsidence.

2 Furthermore, the fact that the United States's expert witness will discuss the negative  
3 effects of subsidence on the Antelope Valley Groundwater Basin and at Edwards Air Force Base  
4 in particular, and that decades of USGS data provide the foundation for her opinion, should not  
5 come as a surprise to AGWA. During her deposition, Dr. Oberdorfer named subsidence as one  
6 of the significant negative consequences of overdraft in the Basin. Oberdorfer Dep. at 36; except  
7 attached as Exhibit 1. Opposing counsel specifically questioned Dr. Oberdorfer regarding her  
8 knowledge of subsidence in the Basin, and Dr. Oberdorfer explained that the reason she was  
9 aware of subsidence was her familiarity with studies performed by the United States Geological  
10 Survey ("USGS"), dating back to the 1960s. Oberdorfer Dep. at 68-69. Further, she stated that  
11 her general awareness of the small amounts of subsidence that had occurred in the past decade  
12 came from more recent studies containing USGS extensometer data. Oberdorfer Dep. at 68-70.  
13 Counsel also asked Dr. Oberdorfer about her knowledge of ground fissures resulting from  
14 subsidence, quoting directly from the Summary Expert Report, Phase 3 Trial on Safe Yield and  
15 Overdraft, Antelope Valley Area of Adjudication, which itself cites to relevant USGS studies.  
16 Oberdorfer Dep. at 97-98. Subsidence in the Antelope Valley Groundwater Basin and the USGS  
17 studies that evidence it were a recurring topic during Dr. Oberdorfer's deposition in November.

18 Dr. Oberdorfer's expert designation, therefore, includes the topic of subsidence and she  
19 was deposed regarding her opinions on subsidence. As in the designation and deposition  
20 testimony of Mr. Scalmanini, there is no prejudice or surprise in the substance of Dr.  
21 Oberdorfer's expected testimony on subsidence including extensometer data.

22 Dated this 30th day of December, 2010.

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R. Lee Leininger

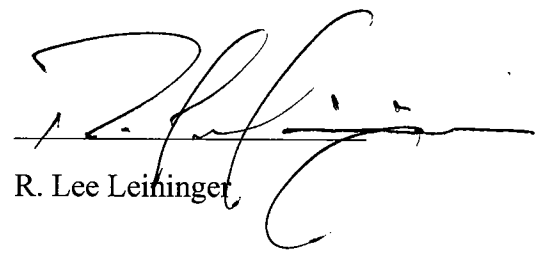
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DECLARATION OF R. LEE LEININGER

I, R. Lee Leininger, declare:

1. I am a trial attorney for the U.S. Department of Justice, representing Cross-Defendant United States in the above titled action. 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 1 is a true and correct copy of relevant portions of the Deposition of Dr. June A. Oberdorfer, taken Thursday November 4, 2010.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed this 30<sup>th</sup> day of December, 2010, at Denver, Colorado.

  
R. Lee Leininger

**PROOF OF SERVICE**

I, Karmen Robinson, declare:

I am a resident of the State of Colorado and over the age of 18 years, and not a party to the within action. My business address is U.S. Department of Justice, Environment and Natural Resources Section, 999 18th Street, South Terrace - Suite 370, Denver, Colorado 80202.

On December 30, 2010, I caused the foregoing document(s) described as: **UNITED STATES' SUPPLEMENTAL RESPONSE TO AGWA'S MOTION IN LIMINIE NO. 4**, to be served on the parties via the following service:

BY ELECTRONIC SERVICE AS FOLLOWS by posting the document(s) listed above to the Santa Clara website in regard to the Antelope Valley Groundwater matter.

BY MAIL AS FOLLOWS (to parties so indicated on attached service list): By placing true copies thereof enclosed in sealed envelopes addressed as indicated on the attached service list.

BY OVERNIGHT COURIER: I caused the above-referenced document(s) be delivered to FEDERAL EXPRESS for delivery to the above address(es).

Executed on December 30, 2010, at Denver, Colorado.

/s/ Karmen Robinson  
Karmen Robinson  
Paralegal Specialist