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

Coordination Proceeding Special Title (Rule 1550 (b)), ANTELOPE VALLEY GROUNDWATER CASES	Judicial Council Coordination Proceeding No. 4408 [Assigned to the Honorable Jack Komar, Judge Santa Clara County Superior Court, Dept. 17] Santa Clara Court Case No. 1-05-CV-049053 UNITED STATES' PHASE IV PRE- TRIAL BRIEF
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Cross-Defendant United States of America (“United States”) respectfully submits this pre-trial brief in preparation for the commencement of the Phase IV trial. The Phase IV trial will determine the amount of groundwater pumped from the aquifer underlying the Antelope Valley Groundwater Adjudication in calendar years 2011 and 2012. *See* Fifth Amendment to the Case

1 Management Order dated May 20, 2013. The United States will submit evidence of its
2 groundwater pumping in these years within Edwards Air Force Base (EAFB) and Air Force Plant
3 42 (AFP 42). The United States has identified three potential testifying witnesses:

- 4 1. Gerald Boetsch, Mechanical Engineer, Air Force Materiel Command, 412th Test
5 Wing, EAFB, California.
- 6 2. James Judkins, Base Civil Engineer, Air Force Materiel Command, 412th Test Wing,
7 EAFB, California.
- 8 3. Jared Scott, Chief, Industrial Facilities Branch, Air Force Materiel Command, Air
9 Force Life Cycle Management Center, Wright Patterson AFB, Ohio.

10 Mr. Boetsch and Mr. Scott have submitted sworn declarations. *See* Doc. No. 6627,
11 Declaration: Revised Declaration of Gerald T. Boetsch Jr. in Lieu of Deposition Testimony for
12 Phase 4 Trial, filed May 21, 2013 (“Revised Boetsch Decl.”); Doc. No. 6628, Declaration:
13 Second Revised Declaration of Jared Scott in Lieu of Deposition Testimony for Phase 4 Trial
14 (“2d Revised Scott Decl.”), filed May 21, 2013. Mr. Boetsch’s declaration presents a description
15 of all sources of information he relied upon to draw his conclusion regarding the amount of
16 groundwater pumped at EAFB in 2011 and 2012. Mr. Scott’s declaration similarly presents a
17 description of all sources of information he relied upon to draw his conclusion regarding the
18 amount of groundwater pumped at AFP 42 in 2001 and 2012. This information has been Bates-
19 labeled and posted on the Court’s web-site containing discoverable documents, and therefore
20 made available to all parties. Meter logs and Air Force Form 1461 for December 2012 at
21 Edward AFB are in Exhibit E to the Revised Boetsch Decl. The United States will have copies
22 of this information and offer them into evidence at the Phase IV trial.
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1 Cal. Evid. Code § 1271 provides an exception to the hearsay rule by eliminating the
2 necessity for calling witnesses by substituting the record of the transaction or event in place of
3 the testimony of witnesses. The Evidence Code provides that evidence of a writing made as a
4 record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to
5 prove the act, condition, or event if:

7 (a) The writing was made in the regular course of a business;

8 (b) The writing was made at or near the time of the act, condition, or event;

9 (c) The custodian or other qualified witness testifies to its identity and the mode of its
10 preparation; and
11

12 (d) The sources of information and method and time of preparation were such as to indicate its
13 trustworthiness.

14 See § 1271. A “business” as used in this Code may include “governmental activity.” Cal. Evid.
15 Code § 1270. Thus, governmental records of pumping at EAFB and AFP 42 and business
16 records of contractors at AFP 42 qualify as an exception to the general hearsay rule if they meet
17 the § 1271 requirements of a proper foundation. The trial court has wide discretion in
18 determining whether sufficient foundation is laid to qualify the evidence as a business record, the
19 exercise of which will not be disturbed on appeal absent a showing of abuse. *People v. Jones*, 17
20 Cal. 4th 279, 70 Cal. Rptr. 2d 793, 949 P.2d 890 (1998); *In re Troy D.*, 215 Cal. App. 3d 889,
21 263 Cal. Rptr. 869 (4th Dist. 1989). Here, Messrs. Boetsch and Scott have met their burden of
22 establishing the trustworthiness and reliability of the evidence that has formed the basis of their
23 conclusions.
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26 1. Boetsch declaration in support of evidence of pumping at EAFB.

27 Mr. Boetsch declares that he:
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- 1 a. has personal knowledge of the facts contained in his declaration or has obtained these
2 facts from the business records of Edwards AFB. Revised Boetsch Decl. at ¶ 1;
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4 b. that the records of groundwater pumping are meter data collected and recorded daily by
5 military or civilian employee personnel in the regular scope of their governmental
6 activity. *Id.* at ¶ 7;
7
8 c. the meter records were recorded daily and entered into a log book. *Id.* at ¶ 7;
9
10 d. the mode of their preparation is a hand-written log of entries made by military or civilian
11 personnel, and custodial care of the information is retained by EAFB. *Id.* at ¶ 7;
12
13 e. The records include the date of the recording, pumping station, meter recordings, water
14 quality treatment and the recorder's initials. *See* Bates-numbered documents
15 USAF000854 – USAF001648, USAF005494 – USAF005799 and USAF005800 -
16 USAF007238 in the U.S. Document Production and Revised Boetsch Decl. ¶ 7 and
17 Exhibit E.

18 2. Scott declaration in support of evidence of pumping at AFP 42.

19 Mr. Scott declares that he:

- 20 a. has personal knowledge of the facts contained in his declaration or has obtained these
21 facts from the business records of AFP 42 or the contractors at AFP 42. 2d Revised Scott
22 Decl. at ¶ 1;
23
24 b. that the records of groundwater pumping are meter data collected and recorded daily by
25 civilian contractor personnel in the regular scope of their business activity.¹ *Id.* at ¶ 7;
26
27 c. the meter records were recorded daily. *Id.* at ¶ 7;

28 ¹ For two fire water wells at AFP 42, Mr. Scott's estimate of 64.45 acre-feet per annum of production at based on an observed and calculated estimate. 2d Revised Scott Decl. at ¶¶ 8 and 9.

- 1 d. the mode of their preparation is a log of entries made by military or civilian personnel,
2 and custodial care of the information is retained by the contractors but provided to the
3 military upon request. *Id.* at ¶ 7;
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5 e. The records include relevant information on the date of recording, the pumping station,
6 and the meter recordings. *See* Bates-numbered documents USAF007239 – USAF012618
7 in the U.S. Document Production and Revised Boetsch Decl. ¶7

8 This business and governmental records information will be offered into evidence at trial. The
9 United States respectfully asks that the Court find that the federal government has met its burden
10 of establishing that the offered records satisfy the Cal. Evid. Code § 1271 exception to the
11 hearsay rule, and that further testimony of Messrs. Boetsch and Scott will not be necessary.
12

13 RESPECTFULLY SUBMITTED this 28th day of May 2013.

14
15 /s/ R. Lee Leininger
16 R. LEE LEININGER
17 JAMES J. DuBOIS
18 ATTORNEYS FOR THE UNITED
19 STATES OF AMERICA
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