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14 Attorneys for Cross-Defendant United States of America

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

<p>15 Coordination Proceeding 16 Special Title (Rule 1550 (b)), 17 18 19 ANTELOPE VALLEY 20 GROUNDWATER CASES 21 22 23 24 25 26 27 28</p>	<p>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' RESPONSE TO AGWA'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF ISSUES</p>
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1 The United States submits the following separate statement in opposition to the Antelope
 2 Valley Groundwater Agreement Association (“AGWA”) Motion for Summary Adjudication of
 3 Issues pursuant to Code Civ. Proc., § 437c, subd. (b).
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AGWA ALLEGED MATERIAL FACTS AND SUPPORTING EVIDENCE	U.S. RESPONSE AND SUPPORTING EVIDENCE	U.S. ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE
1. The United States claims, in this action, an aggregated federal reserved water right of 11,683 acre-feet per year. United States’ Revised Response to Court’s Discovery Order for Phase IV Trial (Feb. 22, 2013), at 9:7	Undisputed	
2. The United States’ claimed aggregated federal reserved right amount is over ten percent of the Basin’s total safe yield of 110,000 acre-feet per year, as determined by the Court after the Phase Three trial. Statement of Decision Phase Three Trial (July 13, 2011), pp. 9-10.	Undisputed	
3. The United States’ federal reserved right claim includes 10,717 acre-feet per year for Edwards Air Force Base and 966 acre-feet per year for Air Force Plant 42. Revised U.S. Discovery Response, p. 9:10-20	Undisputed	
4. The United States’ first reservation, accomplished via Executive Order No. 6588, dated February 6,	Disputed. The approximately 82,000 acres of land defining the borders of the reservation contained private lands that	

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<p>1934, reserved approximately 132 sections of land – 84,480 acres – “as a bombing and gunnery range“ and stated it was “subject to valid existing rights.” USAF001653.</p>	<p>the War Department deemed necessary to acquire. USAF023125</p>	
<p>5. Executive Order No. 6910, dated November 26, 1934, reserved “all of the vacant, unreserved and unappropriated lands of the public domain” within 12 Western states, including California, temporarily “pending determination of the most useful purpose to which such land may be put” under a 1934 act], “and for conservation and development of natural resources.” USAF001654-USA001655.</p>	<p>Undisputed</p>	<p>The purpose of Executive Order No. 6910 was to prevent injury to the public grazing lands and provide for the improvement and development of grazing lands and to stabilize the livestock industry development upon the public range. USAF001654-001655</p>
<p>6. Executive Order No. 6910, dated November 26, 1934, stated it “is subject to existing valid rights.” USAF001655</p>	<p>Undisputed</p>	
<p>7. Executive Order No. 7707, dated September 11, 1937, amended Executive order No. 6910 and reserved approximately 116 sections of land – 74,240 acres – which the order stated were “temporarily withdrawn from settlement, location, sale, or entry, and reserved for use of the War Department for military purposes.” USAF001656</p>	<p>Undisputed</p>	
<p>8. Executive Order No. 7707, dated September 11,</p>	<p>Undisputed</p>	

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1937, states that it is “[s]ubject to . . . all valid existing rights” USAF001656		
9. Executive Order No. 7740, dated November 15, 1937, amended Executive Order No. 6910, reserved 480 acres “for use of the War Department for military purposes” and stated it was “[s]ubject . . . to all valid existing rights” USAF001657	Undisputed	
10. Executive Order No. 8450, dated June 26, 1940, superseded Executive Orders Nos. 6588, 7707 and 7740, reserved 245 sections of land – 156,800 acres – “for the use of the War Department as a bombing and gunnery range” and stated that the reservation was “subject to valid existing rights.” USAF001658	Undisputed	
11. Public Land Order 613, dated October 19, 1940, reserved 564.46 acres “for use of the Department of the Air Force in connection with an air force base” and stated it was “[s]ubject to valid existing rights.” USAF001661	Undisputed	
12. Public Land Order 646, dated May 10, 1950, reserved 20,901.82 acres “for use of the Department of the Air Force as an air force base” and stated that it was “[s]ubject to valid	Undisputed	

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<p>existing rights.” USAF001663-1664</p>		
<p>13. The 1955 Public Land Order 1126 reserved 120 acres “for use of the Department of the Air Force for military purposes in connection with Edwards Air Force Base” and stated that it was “[s]ubject to valid existing rights.” USAF001666</p>	<p>Undisputed</p>	
<p>14. Edwards Air Force Base covers more than 307,000 acres and Air Force Plant 42 includes approximately 5,800 acres. Revised U.S. Discovery Response, pp. 13:4-5, 16:1</p>	<p>Undisputed</p>	
<p>15. The United States acquired, for Plant 42, at least 5,083.51 acres in 21 separate acquisitions, including 4,552.07 acres from the County of Los Angeles in one acquisition. Air Force Plant No. 42, Report of Excess Real Property to General Service Administration (1960), USAF004884</p>	<p>Undisputed</p>	
<p>16. A 1971 audited summary of land within Edwards states that it includes 123,090.15 acres as acquired in “FEE.” USAF004852</p>	<p>Undisputed</p>	
<p>17. The page in the 1971 audited summary of land within Edwards depicting “SEGMENT '7'” of Edwards identifies 89</p>	<p>Undisputed</p>	

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separate acquisitions totaling of 4,236.89 acres. USAF004858		
		18. Public Land Order No. 480 withdrew 489.76 acres on June 2, 1948 for “military purposes” USAF 023436-37
		19. Public Land Order No. 2270 withdrew 230 acres on February 21, 1961 for “military purposes.” USAF 023438-39
		20. By letter dated April 16, 1943, Secretary of War Stimson notified California Governor Warren that the United States was exercising its right under the laws of the State to assume exclusive jurisdiction over lands within California “acquired by the United States for military and certain other purposes.” USAF012619-621; 012640-12653.
		21. Water is necessary to fulfill the military purposes of Edwards Air Force Base and Plant 42. Transcripts of Deposition of BRIGADIER GENERAL MICHAEL THOMAS BREWER, March 6, 2013, pp 11,86-87, and; Deposition of LIEUTENANT COLONEL GENE FRANKLIN CUMMINS, March 7, 2013, pp 11-13, 39-40.
		22. Muroc Air Field (the future EAFB) by 1935 included a mess hall, a radio building, storage and armament structures, and a

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		new well to provide water for potable and other purposes. USAF022905-22920.
		23. Within the approximately 82,000 acres of land defining the borders of the reservation in 1935, it was necessary to acquire 38,994 acres in private hands for full use and safety within the area reserved as a bombing range. USAF023125.
		24. With the passage of the Act of August 12, 1935, Pub. L. No. 74-263, 49 Stat. 610, Congress approved the creation of “permanent . . . Air Corps stations and depots” facilities.
		25. In 1946, the Army produced a draft Master Plan for the Muroc Army Air Field. This plan contained recommendations to enlarge the installation with approximately 190 square miles of additional private and public land adjoining the base on the north, west, and south; the additional land deemed necessary to accommodate the Army Air Forces’ future flight-test needs. USAF019563-19567.
		26. Acquisition of private lands in the expansion area of Edwards AFB continued until 1958, when the final piece of private land was procured. The condemnation suits

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		generally claimed the reason for the taking as the “[e]xpanding needs and requirements for the Department of the Air Force and for other military purposes incident thereto.” USAF003330-3359.
		27. In addition to the Army’s operations at the Muroc, a dirt landing strip near Palmdale, California was used by Army aviation units as early as January 1935 as a bivouac site for squadrons that were training at the nearby bombing and gunnery range. The facility soon became the Palmdale Airport and was used for commercial as well as military activities. USAF023617 (excerpt from Plant 42 history).
		28. After the war, the Palmdale Army Air Field was closed. The installation was declared a surplus facility in 1946 and was transferred by quit-claim deed to Los Angeles County for use as a municipal airport. However, “under the provisions of [the quit-claim] deed, the United States Government has the right to recapture not only the original 950 acres but all the additional acreage that has been acquired by the County of Los Angeles as additions to the original airport. . . .” USAF023762-65.

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		<p>29. The airport lands were recapturable due to the declared Korean War emergency. In addition it was the intent of the “Air Force to make substantial improvements to this property and to retain it as a permanent installation.” USAF023762-65.</p>
		<p>30. The planned Palmdale Test Facility is now owned by the federal government and leased to military aircraft manufacturers. Congressional authorization for the military construction and acquisition was approved in 1951, <i>see</i> Pub. L. No. 82-155, 65 Stat. 336 (1951), and on February 2, 1954, the United States secured this important military installation by purchase of 4552 acres from the County of Los Angeles. USAF023766-770.</p>

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RESPECTFULLY SUBMITTED this 27th day of December 2013.

/s/ R. Lee Leininger
R. LEE LEININGER
JAMES J. DuBOIS
ATTORNEYS FOR THE UNITED
STATES OF AMERICA