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

ANTELOPE VALLEY
GROUNDWATER CASES

Included Actions:

Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California County of Los Angeles, Case No. BC 325 201 Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California, County of Kern, Case No. S-1500-CV-254-348Wm. Bolthouse Farms, Inc. v. City of Lancaster Diamond Farming Co. v. City of Lancaster Diamond Farming Co. v. Palmdale Water Dist. Superior Court of California, County of Riverside, consolidated actions, Case No. RIC 353 840, RIC 344 436, RIC 344 668

) Judicial Council Coordination Proceeding
) No. 4408
)

) **Santa Clara Case No. 1-05-CV-049053**
) Assigned to The Honorable Jack Komar
)

) **AGWA's OPPOSITION TO UNITED STATES' MOTION TO AMEND EXPERT WITNESS DECLARATION**
)
)

) **Date: December 15, 2010**
) **Time: 9:00 am**
) **Dept.: 1**
)

1 The Antelope Valley Groundwater Agreement Association (“AGWA”) opposes the United
2 States’ Motion to Amend Expert Witness Declaration (“Motion”), filed December 14, 2010 on the
3 same grounds as those contained in AGWA’s Motion in Limine No. 4 to Exclude Extensometer
4 Data, filed December 14, 2010. The United States moves to file a second amendment to Dr. June
5 Oberdorfer’s July 2010 declaration (filed July 15, 2010), which introduces evidence of land
6 subsidence following 1992. To allow the introduction of evidence related to such data when it has
7 only been disclosed at this late date constitutes unfair surprise, would be prejudicial to AGWA, and
8 it should therefore be excluded. The Motion of the United States must therefore be denied.

9 In the proposed second amendment to Dr. June Oberdorfer’s July 2010 declaration, attached
10 to the Motion (“Second Amendment”), Dr. Oberdorfer indicates she will introduce a variety of
11 evidence on land subsidence and interpretation of extensometer data. Dr. Oberdorfer states,
12 “Subsequent studies...[citations omitted] indicate that subsidence continued after 1992 over much of
13 the same area....” (Second Amendment, at p. 2.) Dr. Oberdorfer then states:

14
15 Data on land subsidence are available for much of the last
16 decade for EAFB. Sneed *et al.*, (2005) showed subsidence
17 rates at the Base for 1990 – 2004 that I calculated to be
18 about 15 mm per year. More recent extensometer data
19 provided by the U.S. Geological Survey (Michelle Sneed,
personal communication) show subsidence that I have
calculated to be about 11 mm/year at portions of EAFB for
the period Sept. 2004 to Sept. 2009. (Second Amendment,
at p. 2.)

20 These statements contrast with statements made at Dr. Oberdorfer’s November 4, 2010
21 deposition. At Dr. Oberdorfer’s deposition on November 4, 2010, the following exchange took
22 place with Dr. Oberdorfer:

23 Q: Are you aware of any locations that currently are
24 experiencing subsidence?

25 A: I don’t think I’ve seen any data since the 90s since
26 USGS looked up through that period. (Oberdorfer
27 Deposition Transcript (Nov. 4, 2010) 69:8-11 (a true and
28 correct copy of pages 69-70 attached hereto as “Exhibit
A”).)

Furthermore, when Dr. Oberdorfer was asked about her knowledge of any work done at

1 Edwards Air Force Base, she replied, “I haven’t really worked down in that area, so no.”
2 (Oberdorfer Deposition Transcript (Nov. 4, 2010) 69:19-25 (pages 69-70 attached hereto as “Exhibit
3 A”).) Now, the United States seeks at the last minute to introduce data on subsidence and
4 extensometer data that was apparently obtained from personal communications with an individual at
5 USGS.

6 It is unclear from the Second Amendment when Dr. Oberdorfer made her extensometer data
7 calculations, but to amend her July 10, 2010 declaration to allow her to offer evidence about
8 subsidence data at this late stage in the proceedings would be prejudicial to AGWA. AGWA did not
9 retain an expert in subsidence or extensometer data in part because Dr. Oberdorfer and Public Water
10 Supplier experts had previously indicated that they had not done any work on such data.

11 A party’s failure to timely disclose changed or new testimony of an expert witness is grounds
12 for excluding that testimony due to the prejudice to the other side for “unfair surprise.” (*Dickison v.*
13 *Howen* (1990) 220 Cal.App.3d 1471, 1478). Thus here, AGWA opposes the United States’ Motion.

14
15 Dated: December 14, 2010

BROWNSTEIN HYATT FARBER SCHRECK, LLP

16
17 By: 

MICHAEL T. FIFE
BRADLEY J. HERREMA
ATTORNEYS FOR AGWA

PROOF OF SERVICE

**STATE OF CALIFORNIA,
COUNTY OF SANTA BARBARA**

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action; my business address is: 21 E. Carrillo Street, Santa Barbara, California 93101.

On December 14, 2010, I served the foregoing document described as:

**AGWA's OPPOSITION TO UNITED STATES' MOTION TO AMEND EXPERT WITNESS
DECLARATION**

on the interested parties in this action.

By posting it on the website at 6:00 p.m. on December 14, 2010.
This posting was reported as complete and without error.

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

Executed in Santa Barbara, California, on December 14, 2010.

MARIA KLACHKO-BLAIR
TYPE OR PRINT NAME



SIGNATURE