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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination Proceeding
No. 4408

Included Actions:
Los Angeles County Waterworks District No.
40 v. Diamond Farming Co., Superior Court of
California, County of Los Angeles, Case No.
BC 325201;

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053
Assigned to the Honorable Jack Komar

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co., Superior Court of
California, County of Kern, Case No. S-1500-
CV-254-348;

**PUBLIC WATER SUPPLIERS'
OPPOSITION TO MOTION *IN LIMINE*
OF AGWA FOR ORDER EXCLUDING
EVIDENCE OF MODELING BY
DESIGNATED EXPERT DENNIS
WILLIAMS; DECLARATION OF
JEFFREY V. DUNN IN SUPPORT
THEREOF**

Wm. 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, Case Nos. RIC 353 840,
RIC 344 436, RIC 344 668

Trial Date: February 10, 2014 (Phase V)

RICHARD WOOD, on behalf of himself and
all other similarly situated v. A.V. Materials,
Inc., et al., Superior Court of California,
County of Los Angeles, Case No. BC509546

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1 **I. INTRODUCTION**

2 Los Angeles County Waterworks District No. 40 (“District No. 40”), Palmdale Water
3 District, City of Palmdale, City of Lancaster, Rosamond Community Services District, Littlerock
4 Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services
5 District, North Edwards Water District, Llano Del Rio Water Company, Llano Mutual Water
6 Company, Big Rock Mutual Water Company, Quartz Hill Water District, and California Water
7 Service Company (collectively, “Public Water Suppliers”) respectfully oppose the Antelope
8 Valley Groundwater Agreement Association’s (“AGWA”) motion *in limine* for an order
9 excluding evidence of modeling by designated expert Dennis Williams because AGWA’s motion
10 does not meet the statutory requirements for exclusion. Further, Dr. Williams groundwater
11 modeling testimony is highly probative of the return flow issue, and the Public Water Suppliers
12 will be prejudiced by its exclusion.

13 AGWA seeks to exclude evidence relating to Dr. Williams modeling runs of the Antelope
14 Valley Groundwater Basin (“Basin”) because of a three business day delay in the availability of
15 certain input and output files of Dr. Williams. The Public Water Suppliers provided Dr.
16 Williams’ modeling files to AGWA (as well as to the other two parties that requested them)
17 immediately after requested via overnight mail. The Public Water Suppliers have also repeatedly
18 indicated that they would make Dr. Williams available for further deposition regarding the
19 modeling files should any examining party care to examine him, but neither AGWA nor any other
20 party has so requested. Because trial on the return flow issue will not commence until February
21 18, 2014, there is ample time for AGWA to further examine Dr. Williams regarding his
22 groundwater modeling data, and he should not be precluded from testifying about such data at
23 trial.

24 **II. STATEMENT OF FACTS**

25 The Public Water Suppliers submitted their expert witness designations on November 18,
26 2013. (Declaration of Jeffrey V. Dunn (“Dunn Decl.”) ¶ 22.) The designation notes that Dr.
27 Dennis Williams has taught graduate courses in “groundwater modeling” since 1980. (*Id.*) It
28 provides that Dr. Williams will testify about “return flows, and the characteristics, structure,

1 hydrologic conditions of the groundwater underlying the Basin.” (*Id.*) Further, the designation
2 includes Dr. Williams’ curriculum vitae, which mentions groundwater modeling at least twenty
3 times. (*Id.*)

4 AGWA and other landowner parties deposed Dr. Williams on January 16, 2014 for nearly
5 seven hours, during which he provided his opinions and the bases for those opinions. (Dunn
6 Decl. ¶¶ 3, 5.) Dr. Williams brought approximately six bankers’ boxes of written materials to his
7 deposition. (Dunn Decl. ¶ 4; see also the rough draft of the deposition of Dennis Williams
8 attached as Exhibit B to the Declaration of Michael Fife, at p. 18:6-8: “And peeking over your
9 shoulder, I see a trolley with a couple of large banker’s boxes”.) The written materials were his
10 entire case file’s written documents. (*Id.*) He also brought a computer disc containing his case
11 file in electronic format. (*Id.*) During the deposition, Dr. Williams testified as to his use of the
12 United States Geological Survey (“USGS”) MODFLOW model. (Dunn Decl. ¶ 6.)
13 “MODFLOW is the USGS’s three-dimensional (3D) finite-difference groundwater model” and “is
14 considered an international standard for simulating and predicting groundwater conditions and
15 groundwater/surface-water interactions.” (See MODFLOW and Related Programs, available at
16 <http://water.usgs.gov/ogw/modflow/>.) The MODFLOW model is publicly available on the USGS
17 website. (Dunn Decl. ¶ 7.)

18 Dr. Dennis Williams also testified about his use of the USGS MODFLOW model. (Dunn
19 Decl. ¶ 9.) He took electronic data files prepared by the USGS for its long-time use of the USGS
20 MODFLOW model to analyze the overdraft condition of the Basin. (*Id.*) The USGS has been
21 analyzing the overdraft condition in the Basin with the safe yield of 110,000 acre-feet per year
22 (“afy”) determined by the Court in the Phase III trial. (*Id.*) Dr. Williams also took data gathered
23 by members of the Technical Committee – a former committee of California’s leading and most
24 experienced hydrologists formed to analyze the Antelope Valley Groundwater Basin – and used
25 the data as part of the input data for his USGS MODFLOW modeling work. (Dunn Decl. ¶ 10.)
26 In addition to the USGS MODFLOW model, Dr. Williams also based his opinions on his peer
27 review of the Phase III trial testimony by expert witnesses Joseph Scalmanini, Mark Wildermuth,
28 and Tim Durbin. (Dunn Decl. ¶ 11.) Dr. Williams conducted his own independent work and

1 analysis, which included his use of the USGS MODFLOW model. (Dunn Decl. ¶ 12.) In
2 detailed and extensive testimony, Dr. Williams explained how he took electronic data from the
3 USGS and from Technical Committee members, respectively, and used that data in a calibrated
4 USGS MODFLOW model. (*Id.*)

5 The MODFLOW electronic files comprise an estimated seventeen (17) gigabytes of data.
6 (Dunn Decl. ¶ 13.) The data is so extensive that it requires special processing for making
7 computer disk copies, and the files are too large to transmit via email or to post on the Court's
8 website. (*Id.*) Consequently, Dr. Williams did not bring those modeling files to his deposition.
9 (Dunn Decl. ¶ 12.) The Public Water Suppliers met and conferred with AGWA and the other
10 landowners' attorneys at Dr. Williams' deposition about producing Dr. Williams' modeling files.
11 (Dunn Decl. ¶ 14.) On January 22, 2014¹, three business days after Dr. Williams' deposition,
12 District No. 40 notified counsel that Dr. Williams' modeling files were available for copying
13 upon request. (Dunn Decl. ¶¶ 15, 16.) On January 24, 2014, District No. 40 served
14 correspondence noting that it had not received any request for Dr. Williams' modeling files.
15 (Dunn Decl. ¶ 17, 18.) District No. 40 also indicated that it would make Dr. Williams available
16 to answer further deposition questions about his modeling files. (*Id.*) AGWA did not formally
17 request the modeling files until after the close of business on January 29, 2014, and on January
18 30, 2014, District No. 40 sent Dr. Williams' modeling files to AGWA via overnight mail. (Dunn
19 Decl. ¶¶ 19, 20.) To date, neither AGWA nor any other party has requested a subsequent
20 deposition of Dr. Williams. (Dunn Decl. ¶ 23.)

21 AGWA's own expert Dr. Hendrickx will also testify about groundwater modeling at trial
22 and testified about groundwater modeling at his deposition. (Dunn Decl. ¶ 24.) Trial on the
23 return flow issue will not commence until February 18, 2014. (Dunn Decl. ¶ 21.) Thus, ample
24 time remains for AGWA to examine Dr. Williams further regarding his groundwater modeling, if
25 necessary.

26
27 ¹ This was also the date of the deposition of AGWA's expert Dr. Hendrickx. Dr. Hendrickx did not make his
28 modeling materials available until this date. Consequently, the modeling materials of both experts were available at
the same time. (Dunn Decl. ¶ 24.)

1 **III. ARGUMENT**

2 The Public Water Suppliers did not fail to disclose the content of Dr. Williams' testimony.
3 They made an appropriate expert designation, rife with references to groundwater modeling, and
4 Dr. Williams produced voluminous files that support his opinions regarding return flows for
5 Phase V purposes. AGWA and other parties examined Dr. Williams extensively about his
6 opinions and their bases. AGWA seeks to preclude Dr. Williams from testifying about
7 groundwater modeling because of a minor delay in the production of modeling files that are
8 difficult to copy and transmit. The Public Water Suppliers have since produced the requested
9 data to all parties requesting them, rendering AGWA's motion (and any joinders thereto) moot.
10 AGWA may further depose Dr. Williams regarding this data but has made no such request.
11 AGWA has no justification to preclude Dr. Williams' testimony regarding groundwater
12 modeling.

13 **A. AGWA Fails to Demonstrate that the Public Water Suppliers' Delay in**
14 **Production, If Any, Was Unreasonable.**

15 Code of Civil Procedure section 2034.300 provides for the exclusion of expert testimony
16 for failure to comply with certain disclosure requirements. However, the exclusion sanction
17 applies only if noncompliance with the statute was "unreasonable." (*Stanchfield v Hamer Toyota,*
18 *Inc.* (1995) 37 Cal.App.4th 1495, 1504.) In *Stanchfield*, the defendant's expert was unable to
19 testify fully because he had not had the opportunity to completely review the opinions of the
20 plaintiff's expert. (*Id.* at 1503.) Rather than requesting a follow-up deposition of the defendant's
21 expert, plaintiff's counsel moved to exclude the testimony of defendant's expert at trial. (*Id.*) The
22 trial court rejected the motion and the court of appeal affirmed, finding that the inability of the
23 expert to testify at the deposition had not been unreasonable and that plaintiff had had ample time
24 to further depose the expert. (*Id.* at 1503-5.) The court found that it was the plaintiff who had
25 acted unreasonably for his failure to attempt to correct the disclosure deficiencies prior to trial.
26 (*Id.* at 1504.)

27 As an initial matter, District No. 40 sent Dr. Williams' modeling files to AGWA on
28

1 January 30, 2014, immediately after AGWA requested them. (Dunn Decl. ¶¶ 19-20.)² The main
2 point about which AGWA complains is now moot. And, similar to *Stanchfield*, here, the delay in
3 producing Dr. Williams’ groundwater modeling data was not “unreasonable” but due to the
4 nature of the data and the difficulty in producing it. (Dunn Decl. ¶¶ 12, 13.) Dr. Williams
5 received some of his input files directly from USGS, and at the time of this deposition, he did not
6 know if there were any restrictions on producing those files. (Dunn Decl. ¶ 14.) As soon as
7 District No. 40 learned it could release those USGS files, it made them available to all counsel
8 who so requested. (Dunn Decl. ¶¶ 14, 16, 20.) Further, because trial on the return flow issues is
9 not set to commence until February 18, 2014, AGWA has ample time to further depose Dr.
10 Williams. AGWA must give the Public Water Suppliers an opportunity to correct their purported
11 expert disclosure deficiencies prior to trial rather than seek the draconian measure of exclusion.
12 (See *Stanchfield*, 37 Cal.App.4th at 1503-1505.)

13 **B. The Expert Designation of Dr. Williams Explicitly References Groundwater**
14 **Modeling**

15 AGWA claims that it did not realize Dr. Williams would testify about groundwater
16 modeling. (See AGWA’s motion in limine at p. 5:11-14.) Such a conclusion is not the result of a
17 deficiency in the Public Water Suppliers’ expert designation but a failure by AGWA to
18 understand the plain language in the designation and accompanying curriculum vitae. Dr.
19 Williams’ expert designation and curriculum vitae mention groundwater modeling dozens of
20 times, and the designation specifically provides that Dr. Williams will testify about “return flows,
21 and the characteristics, structure, hydrologic conditions of the groundwater underlying the Basin.”
22 (Dunn Decl. ¶ 22.) AGWA cannot argue that the Public Water Supplier did not provide an expert
23 witness designation, complete with an expert declaration signed by counsel. In fact, their original
24 designation is attached to AGWA’s motion (excepting key exhibits regarding Dr. Williams,
25 attached hereto to the Dunn Decl. ¶ 22), and AGWA quotes from that declaration in its motion.
26 Instead, AGWA attempts to impose a higher disclosure burden upon the Public Water Suppliers

27 _____
28 ² District No. 40 also sent Dr. Williams’ modeling files to Phelan Pinon Hills Community Services District and
Richard A. Wood immediately upon request. (Dunn Decl. ¶20.)

1 than is required by the Code.

2 Section 2034.260, subdivision (c) specifies the requirements for an expert witness
3 declaration. It provides that the declaration shall contain:

4 (1) A brief narrative statement of the qualifications of each expert.

5 (2) A brief narrative statement of the general substance of the
6 testimony that the expert is expected to give.

7 (3) A representation that the expert has agreed to testify at the trial.

8 (4) A representation that the expert will be sufficiently familiar
9 with the pending action to submit to a meaningful oral deposition
concerning the specific testimony, including any opinion and its
basis, that the expert is expected to give at trial.

10 (5) A statement of the expert's hourly and daily fee for providing
11 deposition testimony and for consulting with the retaining attorney.

12 (Cal. Civ. Proc. Code § 2034.260, subd. (c) (emphasis added).)

13 By its own terms, section 2034.260 does not require that the declaration specify what the
14 experts opinions will be, merely what the “general substance” of the testimony will be. AGWA
15 has supplied no authority in its motion for its proposition that the declaration must detail what
16 opinion the expert will give and methods for arriving at the opinion. An expert declaration
17 (which is, after all, prepared and signed by counsel, not the expert), need only specify the subject
18 matter or area of the expert's testimony, not specifically what opinion(s) the expert will render.
19 In *Sprague v. Equifax* (1985) 166 Cal.App.3d 1012, the Court held that a disclosure that a party's
20 expert “would testify ‘to the medical care and treatment rendered to plaintiff as well as [his]
21 diagnoses and prognoses of plaintiff's physical condition’” satisfied the statutory requirement that
22 the disclosing party disclose “the general substance of the testimony which the witness is
23 expected to give.” (See 166 Cal. App 3d at 1040.³) Such a disclosure did not specify what the
24 expert's opinion was, just what subject matters he would opine on – the expert would give his
25 diagnoses and prognoses of Plaintiff's physical condition, but there was no indication of what
26

27 ³ Although *Sprague* was decided under former Code of Civil Procedure Section 2037.3, the disclosure requirements
28 in that section mirror current Section 2034.260(c)(2) as applicable here. For the text of former section 2037.3, see
Kennemur v. State of California (1982) 133 Cal. App. 3d 907, 917.

1 those diagnoses or prognoses were.

2 Thus the “general substance” of an expert's expected testimony that must be disclosed in
3 the expert declaration does not necessarily include the actual opinion the expert will render, as
4 AGWA argues here. (See AGWA’s motion *in limine* section III.) In fact, the language of
5 Section 2034.260 itself shows that the expert deposition, not counsel’s expert declaration in the
6 disclosure, is where the expert’s actual opinion must be disclosed. Section 2034.260, subdivision
7 (c)(4) requires that the declaration contain a representation that the expert will be sufficiently
8 familiar with the case to give a deposition concerning “the specific testimony, including any
9 opinion and its basis, that the expert is expected to give at trial.” (Emphasis added).

10 Accordingly, under the specific language of the statute and the case law interpreting that
11 language, counsel's declaration need only contain a statement of the "general substance" of the
12 expert's testimony; the opportunity to learn the specifics of an expert's testimony, including the
13 expert's opinion and its basis, lies in the expert deposition.

14 The Public Water Suppliers’ expert declaration here contains the “general substance” of
15 Dr. Williams’ testimony and more specifically that he will testify about “return flows, and the
16 characteristics, structure, hydrologic conditions of the groundwater underlying the Basin.” (Dunn
17 Decl. ¶ 22.) This description is no less informative about the subject matter of the experts’
18 testimony that the description in *Sprague* that the doctor would testify to “the medical care and
19 treatment rendered to plaintiff as well as [his] diagnoses and prognoses of plaintiff’s condition”
20 which the Court held to be an adequate disclosure of the “general substance” of the expert's
21 testimony.

22 While Dr. Williams’ exact opinions regarding groundwater modeling are not specified in
23 the declaration, that is not required. Section 2034.260 provides only that the “general substance”
24 of an expert’s testimony be disclosed within counsel’s declaration as part of the expert disclosure.
25 The opportunity for discovery of the specifics of an expert’s testimony, including his or her
26 opinion and its basis, is at the expert’s deposition. The ability to take an expert’s deposition is the
27 Code of Civil Procedure’s answer to the problem of the “sporting theory of litigation” AGWA
28 discusses in its motion. Discovery of an expert’s specific testimony, including the opinion and its

1 basis, is the subject of the expert's deposition. Dr. Williams was made available for a deposition,
2 produced voluminous reliance materials, and was deposed at length. (Dunn Decl. ¶¶ 3-5.) And
3 the Public Water Suppliers have offered him for further deposition, to no avail. Any "surprise"
4 AGWA may experience from Dr. Williams' testimony is entirely self-imposed.

5 AGWA further complains that it has not hired a groundwater modeling expert to analyze
6 Dr. Williams' groundwater modeling because it was not aware he would offer such testimony.
7 (See AGWA's motion in limine at p. 6:12-14.) As discussed above, this claim is disingenuous.
8 Further, AGWA's own designated expert Dr. Hendrickx will also testify about groundwater
9 modeling at trial and testified about groundwater modeling at his deposition. (Dunn Decl. ¶ 24;
10 see also the relevant portions of the deposition of Dr. Hendrickx attached as Exhibit 7 to the
11 Dunn. Decl.)

12 Even assuming, *arguendo*, that Section 2034.260 did require the Public Water Suppliers to
13 disclose their expert's exact opinions in the expert designation as AGWA argues, exclusion here
14 would nevertheless still be inappropriate. Section 2034.300, under which AGWA brings this
15 motion *in limine* to exclude Dr. Williams groundwater modeling testimony, permits only a party
16 "who has made a complete and timely compliance with Section 2034.260" to object to another
17 party's expert disclosure and seek exclusion of their expert witnesses. (See Code Civ. Proc. §
18 2034.300.) If the designation of Dr. Williams is deficient, then so too is AGWA's designation of
19 Dr. Hendrickx because it is nearly identical to the designation of Dr. Williams. (Dunn Decl. ¶
20 24.) Both designations say that each expert has modeling experience, but neither specifically says
21 he will testify about groundwater modeling. Applying the standard for which AGWA advocates
22 in judging the Public Water Suppliers' expert designation to AGWA's own expert designation
23 reveals that AGWA's designation is similarly, if not more, deficient than is the Public Water
24 Suppliers' designation. If that standard applies, AGWA itself has not complied with the
25 requirements of Section 2034.260 and therefore is ineligible to raise any objection under Section
26 2034.300 to exclude any party's experts.

27 AGWA's motion *in limine* must thus be denied.
28

1 **C. Dr. Williams' Groundwater Modeling is Probative to the Issue of the Return**
2 **Flows**

3 AGWA's claim that Dr. Williams' testimony is prejudicial is equally baseless. The
4 prejudice referred to in Evidence Code section 352 applies to evidence that uniquely tends to
5 evoke an emotional bias against the party as an individual and that has very little effect on the
6 issues. (*Vorse v. Sarasy* (1997) 53 Cal.App.4th 998.) Discretion under Evidence Code section
7 352 is not absolute. If the probative value of evidence is great, the danger of prejudice must be
8 very substantial before the court may exclude the evidence. (*Kelly v. New West Federal Savings*
9 (1996) 49 Cal.App.4th 659 [trial court may not exclude evidence which is directly relevant to
10 primary issue of case because evidence is prejudicial to opponent].)

11 AGWA's contention that Dr. Williams' modeling is irrelevant as it concerns only
12 overdraft is absurd. As this Court noted in its Phase III statement of decision, overdraft and safe
13 yield cannot be determined without establishing return flows. The Public Water Suppliers, by
14 way of Dr. Williams' testimony, do not seek to re-litigate the safe yield issue (even though return
15 flow calculations are necessarily included in safe yield calculations). Indeed, the Public Water
16 Suppliers have filed a motion *in limine* to prevent the re-litigation of that very issue. The purpose
17 of Dr. Williams' modeling was to confirm the calculation of return flows as presented in Phase III
18 by Mr. Joseph Scalmanini. Thus, it is directly probative of return flows.

19 **IV. CONCLUSION**

20 For the foregoing reasons, AGWA's motion *in limine* is moot, inappropriate, and should
21 be denied.

22 Dated: January 31, 2014

BEST BEST & KRIEGER LLP

24 By _____

25 ERIC L. GARNER
26 JEFFREY V. DUNN
27 WENDY Y. WANG
28 Attorneys for Cross-Complainant
 LOS ANGELES COUNTY WATERWORKS
 DISTRICT NO. 40

DECLARATION OF JEFFREY V. DUNN

I, Jeffrey V. Dunn, declare:

1. I have personal knowledge of the facts below, and if called upon to do so, I could testify competently thereto in a court of law.

2. I am an attorney licensed to practice law in the State of California. I am a partner of Best, Best & Krieger LLP, attorneys of record for Los Angeles County Waterworks District No. 40 ("District No. 40").

3. On Thursday, January 16, 2014, I attended the deposition of Dr. Dennis Williams. His deposition was taken at the Los Angeles office of Veritext court report services. I represented Dr. Dennis Williams during the deposition because he is a designated expert witness by District No. 40 and other public water supplier parties.

4. Dr. Williams brought approximately six banker's boxes of written materials on a small utility trailer to his deposition. The written materials were his entire case file's written documents. He also brought a computer disc containing his entire case file in electronic format.

5. Dr. Williams answered all deposition questions concerning his opinions and the bases for this opinion over the course of seven hours of questioning by four landowner attorneys, including counsel for AGWA (Mr. Michael Fife).

6. During the deposition, Dr. Williams testified as to his use of the United States Geological Survey ("USGS") MODFLOW model. "MODFLOW is the USGS's three-dimensional (3D) finite-difference groundwater model. MODFLOW is considered an international standard for simulating and predicting groundwater conditions and groundwater/surface-water interactions." (<http://water.usgs.gov/ogw/modflow/>).

7. The MODFLOW model is publicly available on the USGS website. (<http://water.usgs.gov/ogw/modflow/>)

8. Dr. Dennis Williams is considered one of the preeminent experts in the use of the USGS MODFLOW model. Dr. Williams has been a consultant to the United Nations and several foreign governments. He is also a part-time research professor at the University of Southern California, where he has taught graduate level courses in geohydrology and groundwater

1 modeling since 1980. Dr. Williams is the author of numerous publications on groundwater, and
2 was the principal author of the Handbook of Ground Water Development (John Wiley & Sons,
3 1990).

4 9. In his deposition, Dr. Dennis Williams testified on his use of the USGS
5 MODFLOW model. In summary, he took electronic data files prepared by the USGS for its long-
6 time use of the USGS MODFLOW model to analyze the overdraft condition of the Antelope
7 Valley groundwater basin area. The USGS has been analyzing the overdraft condition in the
8 Basin with the safe yield of 110,000 afy determined by the Court in the Phase 3 trial.

9 10. Dr. Williams also took data gathered by members of the Technical Committee – a
10 former committee of California’s leading and most experienced hydrologists formed to analyze
11 the Antelope Valley Groundwater Basin – and used the data as part of the input data for his
12 USGS MODFLOW modeling work.

13 11. Dr. Williams’ opinions were not based solely on his use of the USGS MODFLOW
14 model but also included his peer review of the Phase III trial testimony by expert witnesses
15 Joseph Scalmanini, Mark Wildermuth, and Tim Durbin.

16 12. Dr. Williams had conducted his own independent work and analysis which
17 included his use of the USGS MODFLOW model. In detailed and extensive testimony, Dr.
18 Williams explained how he took electronic data from the USGS and from Technical Committee
19 members, respectively, and used that data in a calibrated USGS MODFLOW model.

20 13. The MODFLOW electronic files comprise an estimated seventeen (17) gigabytes
21 of data. The data is so extensive that it requires special processing for making computer disk
22 copies at my law office for other counsel. The files are too large to transmit via email. The files
23 are too voluminous to print or scan for posting on the court’s website. This is one reason why
24 these modeling files were not posted a few days in advance of the deposition on the court’s
25 website or with Dr. Williams at his deposition. And no other expert has provided his or her files
26 before the deposition with possibly one minor exception.

27 14. During the deposition Dr. Williams indicated that the electronic input files were
28 not brought with him that day. I explained to the few attorneys present (Mr. McLachlan, Mr. Fife

1 and Mr. McElhaney) and on the phone (Mr. Miliand and Mr. Kuhs) that I would inquire as to
2 whether it would be permissible to release the electronic data files. As indicated above, some
3 electronic files were received directly from the USGS and it was unknown what restrictions were
4 in place on the use of the USGS files. For that reason, I indicated to the attorneys present that I
5 would get back to them as soon as we know what the status is of the files. Also, I indicated that if
6 one of the attorneys at the deposition needed to depose Dr. Williams about the modeling files, we
7 would make him available for deposition to answer those questions.

8 15. The following day, Friday, I was in court in San Jose for a hearing in the Santa
9 Maria Groundwater Adjudication. The following Monday was a legal holiday and my law office
10 was closed. The next day, Tuesday, January 21, 2014, I was able to contact Dr. Williams and
11 make arrangements for the modeling files to be copied and made available to counsel upon
12 request with their agreement not to modify the USGS input files.

13 16. The next day, Wednesday, January 22, 2014 – three business days after Dr.
14 Williams' deposition – I notified counsel that the modeling files were available for copying upon
15 agreement that the input files would not be modified. (The reason for not modifying the input
16 files is to prevent a party from claiming that the input files generated output differently than what
17 was generated by the USGS or by Dr. Williams.) Attached as **Exhibit 1** is a true and correct copy
18 of an email that I sent to the attorneys present at Dr. Williams' deposition.

19 17. I sent additional correspondence on Friday, January 24, 2014. A true and correct
20 copy of the reply is attached as **Exhibit 2**.

21 18. **Exhibit 2** notes that District No. 40 had not received any request for Dr. Williams'
22 electronic or modeling files as of January 24, 2014. It also indicates that District No. 40 would
23 make Dr. Williams available to answer further deposition questions about his electronic or
24 modeling files.

25 19. The modeling files are and have been available since Wednesday, January 22,
26 2014 – three business days after the deposition of Dr. Williams. AGWA did not formally request
27 the modeling files until January 29, 2014. Attached as **Exhibit 5** is a true and correct copy of
28

1 AGWA's email correspondence to District No. 40 requesting Dr. Williams' digital files after
2 close of business on January 29, 2014, and District No. 40's response.

3 20. On January 30, 2014, my office sent Dr. Williams' modeling files to counsel for
4 AGWA via overnight mail. Attached as **Exhibit 6** is a true and correct copy of the
5 correspondence to AGWA enclosing Dr. Williams' modeling files via overnight courier. District
6 No. 40 also sent Dr. Williams' modeling files to Phelan Pinon Hills Community Services District
7 and Richard A. Wood immediately upon request.

8 21. On January 27, 2014, this Court ruled that motions *in limine* and trial on the issue
9 of the federal reserved rights would proceed on February 10, and 11, 2014 and that trial on the
10 return flow issue would not commence until February 18, 2014.

11 22. The Public Water Suppliers submitted their expert witness designations on
12 November 18, 2013. The designation notes that Dr. Williams has taught graduate courses in
13 "groundwater modeling" since 1980. It provides that Dr. Williams will testify about "return
14 flows, and the characteristics, structure, hydrologic conditions of the groundwater underlying the
15 Basin." Further, the designation includes Dr. Williams curriculum vitae, which mentions
16 groundwater modeling at least twenty times. A true and correct copy of the expert designation
17 and the declaration and exhibit attached thereto is attached as **Exhibit 3**.

18 23. To date, no party has requested a subsequent deposition of Dr. Williams.

19 24. AGWA's expert Dr. Hendrickx will also testify about groundwater modeling at
20 trial and testified about groundwater modeling at his deposition. He was deposed on January 22,
21 2014, and provided his modeling materials on this date, not before. A true and correct copy of
22 AGWA's expert designation is attached as **Exhibit 4**. A true and correct copy of the relevant
23 portions of Dr. Hendrickx deposition, taken on January 22, 2014, is attached hereto as **Exhibit 7**.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct. Executed this 31st day of January, 2014, at Los Angeles,
26 California.

27 
28 _____
Jeffrey V. Dunn

PROOF OF SERVICE

I, Sandra K. Sandoval, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 300 South Grand Avenue, 25th Floor, Los Angeles, CA 90071. On January 31, 2014, I served the within document(s):

OPPOSITION TO MOTION *IN LIMINE* OF AGWA FOR ORDER EXCLUDING EVIDENCE OF MODELING BY DESIGNATED EXPERT DENNIS WILLIAMS



by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.



by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.



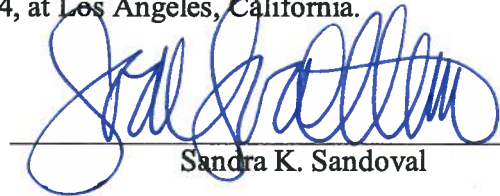
by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.



by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 31, 2014, at Los Angeles, California.



Sandra K. Sandoval