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7 a California corporation, CRYSTAL ORGANIC
8 FARMS, a limited liability company, GRIMMWAY
9 ENTERPRISES, INC., and LAPIS LAND COMPANY, LLC

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF LOS ANGELES**

11 Coordination Proceeding Special Title
12 (Rule 1550 (b))

Judicial Council Coordination No. 4408

13 ANTELOPE VALLEY GROUNDWATER
14 CASES

Case No.: 1-05-CV-049053

14 Included actions:

**BRIEFING ON EXCLUSION OF
EXPERT TESTIMONY REGARDING
OPINIONS OUTSIDE THE STATED
PARAMETERS OF TESTIMONY
CONTAINED IN THE EXPERT
WITNESS DECLARATION**

15 Los Angeles County Waterworks District No.
16 40 vs. Diamond Farming Company
17 Los Angeles Superior Court
18 Case No. BC 325201

18 Los Angeles County Waterworks District No.
19 40 vs. Diamond Farming Company
20 Kern County Superior Court
21 Case No. S-1500-CV 254348 NFT

20 Diamond Farming Company vs. City of
21 Lancaster
22 Riverside County Superior Court
23 Lead Case No. RIC 344436 [Consolidated
24 w/Case Nos. 344668 & 353840]

24 **AND RELATED CROSS-ACTIONS.**

25 At the time the United States of America (USA) served its original designation of Expert
26 Witnesses pursuant to Code of Civil Procedure section 2034.260, counsel for USA declared that the
27 proposed expert, Rand F. Herbert would testify as follows:
28

1 "Mr. Herbert has been asked to provide testimony for the upcoming Phase 5 Trial on
2 the historical acquisitions and/or reservations of land and for purposes of acquisitions
3 and/or reservations that comprise Edwards Air Force Base and Air Force Plant 42."
4 (Exhibit 1 attached hereto.)

5 This statement under Code of Civil Procedure section 2034.260(c). Subsection (c) requires,
6 in pertinent part, that an expert witness declaration must represent:

7 "(2) A brief narrative statement of the general substance of the testimony the
8 expert is expected to give.

* * *

9 (4) That the expert will be sufficiently familiar with the pending action to submit to a
10 meaningful oral deposition concerning the specific testimony, including any opinion
and its basis, that the expert is expected to give at trial." [emphasis added]

11 The sum and substance of the testimony by Mr. Herbert was confirmed by him at his
12 deposition. (Deposition of R. Herbert, p. 23:22 to p. 24:11; o. 29:7-16 attached hereto as Exhibit 2.)
13 The purpose of the statutory scheme set forth in Code of Civil Procedure section 2034.210 *et seq.* is
14 to prevent "sandbagging" by the parties of their respective experts. Thus, to permit a party's experts
15 to appear at trial and testify concerning opinions that had not been disclosed in the Expert Witness
16 Declaration would be unjust and contrary to the spirit of Code of Civil Procedure section 2034.210 *et*
17 *seq.* (See, *Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, 1254-
18 1255.)

19 It would be inherently unfair and prejudicial to the other parties who have relied on the
20 designation and the prior testimony of Mr. Herbert to allow new expert testimony based on any new
21 opinions not previously disclosed. To rule otherwise would allow counsel to manipulate the
22 discovery process by omitting opinions from the designation or deposition to avoid having them
23 contradicted at trial. Further, it would also be unfair and prejudicial to defendant for the USA's
24 experts to offer testimony at trial different from his declaration when the change in his opinions
25 originated only after the time for expert discovery had ended.

26 In analyzing the requirements of expert witness declarations, under former Code of Civil
27 Procedure section 2034 (now 2034.210 *et seq.*), the Court in *Bonds v. Roy* (1999) 20 Cal.4th 140,

1 after a detailed analysis, stated:

2 "In short, the statutory scheme as a whole envisions timely disclosure of the general
3 substance of an expert's expected testimony so that the parties may properly prepare
4 for trial. Allowing new and unexpected testimony for the first time at trial so long as a
5 party has submitted any expert witness declaration whatsoever is inconsistent with
6 this purpose. We therefore conclude that the exclusion sanction of subdivision (j)
7 [now 2034.300] applies when a party unreasonably fails to submit an expert witness
8 declaration that fully complies with the content requirements of subdivision (f)(2)
9 [now 2034.260], including the requirement that the declaration contain '[a] brief
10 narrative statement of the general substance of the testimony that the expert is
11 expected to give.' (Subd. (f)(2)(B) [now 2034.260].) This encompasses situations,
12 like the present one, in which a party has submitted an expert witness declaration, but
13 the narrative statement fails to disclose the general substance of the testimony the
14 party later wishes to elicit from the expert at trial. To expand the scope of an expert's
15 testimony beyond what is stated in the declaration, a party must successfully move for
16 leave to amend the declaration under subdivision (k) [now 2034.610]. (*Bonds v. Roy*,
17 *supra*, 20 Cal. 4th at 149.)

18 The objecting defendants have relied on these statements in the preparation of this matter for
19 trial. Any attempt to interrogate the USA's expert, or to refer to or inquire regarding any opinions not
20 expressed or related to the area of testimony expressed in the expert witness declaration and
21 deposition, would be highly prejudicial to defendant. Furthermore, any attempt to introduce
22 opinions which were not expressed in this declaration significantly prejudices defendant in his
23 ability to address these issues at the time of trial. (See *Bonds v. Roy, supra*, 20 Cal.4th 140 and
24 *Jones v. Moore* (2000) 80 Cal.App.4th 557.) Hence, any such line of questioning by the USA's
25 counsel outside the stated parameters of the declaration should be excluded pursuant to the
26 provisions of Evidence Code section 352 as it would be irrelevant, incompetent, immaterial, and not
27 supported by a proper evidentiary foundation, and should be excluded.

28 Dated: February 8, 2014

LeBEAU • THELEN, LLP

By: 

ANDREW SHEFFIELD
Attorneys for DIAMOND FARMING COMPANY,
a California corporation, CRYSTAL ORGANIC
FARMS, a limited liability company, GRIMMWAY
ENTERPRISES, INC., and LAPIS LAND
COMPANY, LLC

EXHIBIT 1

1 ROBERT G. DREHER, Acting Assistant Attorney
2 General Environment & Natural Resources Division

EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
§6103

3
4 LEE LEININGER, Trial Attorney
5 JAMES DUBOIS, Trial Attorney
6 United States Department of Justice
7 Environment and Natural Resources Division
8 999 18th Street, South Terrace, Suite 370
9 Denver, Colorado, 80202
10 Tel: (303) 844-1464
11 Fax: (303) 844-1350
12 Email: lee.leininger@usdoj.gov
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14 Attorneys for Plaintiff United States of America

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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF LOS ANGELES**
18

19 Coordination Proceeding 20 Special Title (Rule 1550 (b)), 21 22 ANTELOPE VALLEY GROUNDWATER 23 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 PHASE 5 EXPERT WITNESS DESIGNATIONS AND DECLARATIONS
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25 Pursuant to the October 23, 2013, *Case Management Order for Phase 5 and Phase 6*
26 *Trials*, Cross-Defendant, United States of America, hereby discloses the following witnesses
27 who may be called to testify at the time of the Phase 5 Trial or related hearings pursuant to the
28

1 *California Code of Civil Procedure* § 2034.260. The United States reserves the right to
2 supplement this witness list and designate additional witnesses including expert witnesses for use
3 in rebuttal. The United States further reserves the right to call as a witness at trial an expert not
4 previously designated for impeachment purposes pursuant to *Code of Civil Procedure* §
5 2034.310.
6

7 The United States hereby declares and designates as expert witnesses:

8 1. Dr. June Oberdorfer.

- 9 a. Dr. Oberdorfer is a Professional Geologist and Certified Hydrogeologist in the
10 State of California. She has a Doctor of Philosophy degree in Geology and
11 Geophysics, with an emphasis in hydrogeology, from the University of Hawaii.
12 She has conducted groundwater investigations for over 33 years. Dr. Oberdorfer
13 is a Professor in the Department of Geology at San Jose State University and acts
14 as a consultant on groundwater related issues. In the course of her work, she has
15 conducted aerial photo interpretation and is experienced in the field of remote
16 sensing.
17
18 b. Dr. Oberdorfer has been asked to provide testimony for the upcoming Phase 5
19 trial on the amount of agricultural water use on areas of land that were
20 subsequently reserved or acquired to form the present Edwards Air Force Base
21 (AFB) and Air Force Plant 42 (AFB 42).
22
23 c. Dr. Oberdorfer has agreed to testify at the Phase 5 trial.
24
25 d. Dr. Oberdorfer is sufficiently familiar with this pending action. She has already
26 been deposed on her expected testimony.
27
28

1 2. Rand F. Herbert.

- 2 a. Mr. Herbert is Principal/Vice President, JRP Historical Consulting, LLC, located
3 in Davis, California and for more than 35 years has worked as a consulting
4 historian on a wide variety of historical research and cultural resources
5 management projects, as a researcher, writer, and project manager. He earned his
6 MAT in History from the University of California Davis (1977) and his BA in
7 History from the University of California, Berkeley (1973). His academic fields
8 of specialization were in California and Western United States history. Mr.
9 Herbert has taught history at community colleges in Sacramento and Solano
10 counties and taught a graduate seminar in public history at California State
11 University, Sacramento (2001–2012). In 1990, he was elected chairman of the
12 California Council for the Promotion of History (CCPH) and served a two-year
13 term. He served as one of CCPH's representatives on California Resources
14 Secretary Douglas Wheeler's Historic Preservation Task Force (1992–1994). Mr.
15 Herbert is a Registered Professional Historian (#508) with CCPH and a member
16 of the National Council on Public History, California Historical Society, and
17 Ninth Circuit Court Historical Society. He has provided expert witness services
18 and testimony in more than a dozen legal cases or administrative proceedings.
19 b. Mr. Herbert has been asked to provide testimony for the upcoming Phase 5 trial
20 on the historical acquisitions and/or reservations of land and the purposes of the
21 acquisitions and/or reservations that comprise Edwards Air Force Base and Air
22 Force Plant 42.
23 c. Mr. Herbert has agreed to testify at the Phase 5 trial.

- 1 d. Mr. Herbert is sufficiently familiar with this pending action. He has already been
2 deposed on his expected testimony.
- 3 3. Dr. Richard P. Hallion.
- 4
- 5 a. Dr. Hallion was Curator of Science and Technology, and subsequently Curator of
6 Space Science, National Air and Space Museum, Smithsonian Institution, 1974-
7 1980. He was NASA Contract Historian for the NASA Dryden Research Center
8 at Edwards AFB, 1980-82. He was Air Force Flight Test Center Chief Historian,
9 Edwards AFB, 1982-1986. He was The Air Force Historian, Headquarters United
10 States Air Force, Pentagon, Washington, D.C., 1991-2002.
- 11
- 12 b. Dr. Hallion has been asked to testify at the upcoming Phase 5 trial on the history
13 of Edwards AFB and AFP 42.
- 14
- 15 c. Dr. Hallion has agreed to testify at the Phase 5 trial.
- 16
- 17 d. Dr. Hallion is sufficiently familiar with this pending action. He has already been
18 deposed on his expected testimony.
- 19 4. Brigadier General Michael T. Brewer
- 20
- 21 a. General Brewer is Commander of the 412th Test Wing and the Installation
22 Commander of Edwards AFB, California. He is responsible for operating the
23 base, including the infrastructure, communication systems, security, medical
24 services, fire protection, supply, finance, contracting, legal services, personnel
25 and manpower support, housing, education, chapel and quality-of-life programs.
- 26
- 27 b. General Brewer has been asked to testify at the upcoming Phase 5 trial on past,
28 current and potential future missions of Edwards AFB.
- c. General Brewer has agreed to testify at the Phase 5 trial.

1 d. General Brewer is sufficiently familiar with this pending action. He has already
2 been deposed on his expected testimony.

3 5. Lieutenant Colonel Gene F. Cummins

4 a. Lt. Col. Cummins is Director of AFP 42, located in Palmdale, California. He is
5 responsible for operating AFP 42, including the infrastructure, communication
6 systems, security, fire protection, finance, contracting and Civil Engineering
7 functions. He received his commission on 14 May 1995. His previous
8 assignments include Flight Test Engineer; Assistant Test and Evaluation Flight
9 Commander; Deputy Director, Flight Test Division; Force Modernization
10 Integration Officer, Directorate of Intelligence, Surveillance and Reconnaissance;
11 Chief of System Test and Evaluation Division, Space Based Infrared Systems
12 Wing; Chief of Capabilities Division, Systems Integration Squadron, Space Based
13 Infrared Systems Wing; Chief of Infrastructure, Education Technology
14 Transformation Division, Education Support Squadron, Maxwell AFB; Director
15 of Operations, Education Support Squadron, Carl A. Spaatz Center for Officer
16 Professional Military Education, Maxwell AFB; Director, Air Force Life Cycle
17 Management Center Operating Location (AFLCMC OL), AFP 42, Palmdale CA.
18 Lt. Col. Cummins's educational background includes Bachelor and Masters of
19 Science Degrees in Aerospace Engineering, and studies in Squadron Officer
20 School, Intelligence Master Skills Course, Air Command and Staff College, and
21 the Air War College.

22 b. Lt. Col. Cummins has been asked to testify at the upcoming Phase 5 trial as a
23 primary witness on past, present and potential future missions of AFP 42.
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1 d. Mr Judkins is sufficiently familiar with this pending action. He has already been
2 deposited on his expected testimony.

3 7. Jared E. Scott

4 a. Mr. Scott is Chief, Industrial Facilities Branch, Acquisition Environmental and
5 Industrial Facilities Division, Agile Combat Support Directorate, Air Force Life
6 Cycle Management Center, Wright Patterson AFB (WPAFB), Ohio. Mr. Scott is
7 the industrial facility engineering and real property technical authority for all Air
8 Force owned Industrial Plants and National Defense base critical
9 development/production/sustainment facilities, covering 16.5 million square feet
10 of facilities on 9,850 acres with a replacement value of \$7.2 billion. He
11 represents the Air Force on all facility engineering and real property issues related
12 to the effective management of the Air Force Plant industrial base portfolio. He
13 implements all real property lease, financial and business processes to ensure the
14 accounting and validation of value received to the government in the execution of
15 real property leases. He is responsible for yearly execution average of
16 approximately 55 projects valued at \$65 million, which are prioritized and
17 approved to ensure continued industrial base operational suitability, safety and
18 effectiveness.

19 b. Mr. Scott has been asked to provide testimony for the upcoming Phase 5 trial as a
20 primary witness on the following matters: past, present and potential future
21 missions of AFP 42; historical and current water production and use at AFP 42,
22 including pumping, purchases and conservation; and the impact of changing
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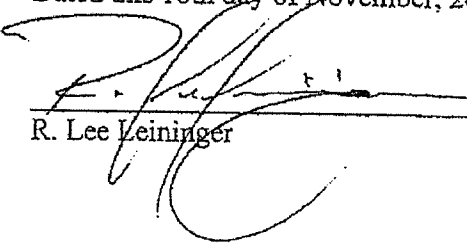
1 mission requirements, both current missions and potential future mission growth,
2 on the water needs of AFP 42.

3 c. Mr. Scott has agreed to testify at the Phase 5 trial.

4
5 d. Mr. Scott is sufficiently familiar with this pending action. He has already been
6 deposed on his expected testimony.

7
8 I declare under the penalty of perjury, the above statements are true and correct.
9

10 Dated this 18th day of November, 2013.

11 
12 R. Lee Leininger
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Coordination Proceeding Special Title (Rule
1550(b)) ANTELOPE VALLEY GROUNDWATER CASES
(JCCP 4408) Included Actions: Los Angeles
County Waterworks District No. 40

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-254-348 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, consolidated actions, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

AND RELATED ACTIONS

Hon. Jack Komar

I am employed in the County of Alameda, State of California.

I am over the age of 18 and not a party to the within action; my business address is 2915 McClure
t, Oakland, CA 94609.

The documents described on page 2 of this Electronic Proof of Service were submitted via the worldwide web on Mon. November 18, 2013 at 4:39 PM PST and served by electronic mail notification.

I have reviewed the Court's Order Concerning Electronic Filing and Service of Pleading Documents and am readily familiar with the contents of said Order. Under the terms of said Order, I certify the above-described document's electronic service in the following manner:

The document was electronically filed on the Court's website, <http://www.scefiling.org>, on Mon. November 18, 2013 at 4:39 PM PST

Upon approval of the document by the Court, an electronic mail message was transmitted to all parties on the electronic service list maintained for this case. The message identified the document and provided instructions for accessing the document on the worldwide web.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and

correct. Executed on November 18, 2013 at Oakland, California.

Dated: November 18, 2013

For WWW.SCEFILING.ORG

Andy Jamieson

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EXHIBIT 2

1 A. To an extent.

2 Q. To an extent. I realize it may not be
3 fully comprehensive.

4 MR. JOYCE: Let's go ahead and take a look
5 at that index, and we'll mark it as Exhibit 5. 10:01AM

6 (Deposition Exhibit 5 was marked for
7 identification.)

8 MR. JOYCE: If you could provide one to the
9 court reporter.

10 All right. You know, let's take a break so 10:02AM
11 the reporter can get caught up and mark all the
12 exhibits.

13 (Recess taken.)

14 BY MR. JOYCE:

15 Q. I think we've now marked all the exhibits 10:14AM
16 you brought with you today; correct?

17 A. Yes.

18 Q. And that comprises the entirety of your
19 file on the retention in connection with this
20 litigation? 10:14AM

21 A. Yes.

22 Q. And as I understand it, based upon the
23 designation -- the expert witness designation filed
24 by Mr. Leininger, the substance of your testimony
25 has been identified on page 4 in lower case 10:14AM

Page 23

1 alphabetical B as follows, quote:

2 "Mr. Herbert has been asked to
3 provide testimony for the upcoming
4 Phase IV trial on the historical
5 acquisitions and/or reservations of land
6 and the purposes of the acquisitions
7 and/or reservations that comprise
8 Edwards Air Force Base and Air Force
9 Plant 42."

10:15AM

10 Is that accurate?

10:15AM

11 A. Yes.

12 Q. All right. I note in looking at the
13 Exhibit 1 that there is a reference under the
14 relevant experience to an entry entitled, quote:

15 "Edwards Air Force Base Water
16 Rights, Kern, San Bernardino, and
17 Los Angeles County, California prepared
18 for U.S. DOJ. 2009, 2012-13."

10:15AM

19 Do you see that?

20 A. Yes.

10:16AM

21 Q. What is that referring to?

22 A. That's referring to this case.

23 Q. Okay. As distinct from any particular
24 publication or --

25 A. That's correct.

10:16AM

1 Q. All right. Let's turn our attention then
2 to, substantively, what you're intending to testify
3 to at trial.

4 What is your -- give me a broad brush and
5 then we'll try to get into some of the minutiae. 10:22AM

6 A. All right.

7 Broadly speaking, the substance of my
8 testimony will be as stated in the scope that you
9 read --

10 Q. Okay. 10:22AM

11 A. -- scope of work, that I will present for
12 the court the sequence of acquisitions, either
13 through executive action by the federal government
14 or through purchase or condemnation that led to the
15 creation of Edwards Air Force Base, as we understand 10:23AM
16 it today, and of Plant 42 as we understand it today.

17 Q. And you make a distinction apparently
18 between Edwards Air Force Base and Plant 42; right?

19 A. Yes.

20 Q. Are they -- either from a legal ownership, 10:23AM
21 administrative or regulatory basis, is there
22 anything unique that distinguishes the two?

23 In other words, what separates them,
24 geographically or regulatorily or administratively,
25 whatever? 10:23AM

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PROOF OF SERVICE

ANTELOPE VALLEY GROUNDWATER CASES
JUDICIAL COUNCIL PROCEEDING NO. 4408
CASE NO.: 1-05-CV-049053

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter Drive, Suite 300, Bakersfield, California 93309. On February 10, 2014, I served the within **BRIEFING ON EXCLUSION OF EXPERT TESTIMONY REGARDING OPINIONS OUTSIDE THE STATED PARAMETERS OF TESTIMONY CONTAINED IN THE EXPERT WITNESS DECLARATION**

☒ (BY POSTING) I am "readily familiar" with the Court's Clarification Order. Electronic service and electronic posting completed through www.sceffiling.org ; All papers filed in Los Angeles County Superior Court and copy sent to trial judge and Chair of Judicial Council.

Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012
Attn: **Department 1**
(213) 893-1014

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordinator)
Carlotta Tillman
455 Golden Gate Avenue
San Francisco, CA 94102-3688
Fax (415) 865-4315

☐ (BY MAIL) 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 at Bakersfield, California, in the ordinary course of business.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that the foregoing was executed on February 10, 2014, in Bakersfield, California.


LEQUETTA HANSEN