

1 IGNACIA S. MORENO
Assistant Attorney General
2 Environment and Natural Resources Division

3 R. LEE LEININGER
United States Department of Justice
4 Environment and Natural Resources Division
1961 Stout St., Suite 800
5 Denver, Colorado 80294
lee.leininger@usdoj.gov
6 Phone: 303/844-1364 Fax: 303/844-1350

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7 Attorneys for Federal Defendants

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

10 Coordination Proceeding
Special Title (Rule 1550(b))

) Judicial Council Coordination
) Proceeding No. 4408
)

11 ANTELOPE VALLEY GROUNDWATER CASES

12 Included actions:

13 Los Angeles County Waterworks District No. 40 v.
14 Diamond Farming Co., et al.
Los Angeles County Superior Court, Case No. BC
325 201

) **UNITED STATES' OPPOSITION**
) **TO AGWA's MOTIONS IN**
) **LIMINE NOS. 1, 2, and 3**
)

15 Los Angeles County Waterworks District No. 40 v.
16 Diamond Farming Co., et al.
Kern County Superior Court, Case No. S-1500-CV-
17 254-348

18 Wm. Bolthouse Farms, Inc. v. City of Lancaster
19 Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water District
20 Riverside County Superior Court, Consolidated
Action, Case nos. RIC 353 840, RIC 344 436, RIC
344 668

21 AND RELATED CROSS ACTIONS
22 _____
23

24 Cross-Defendant United States hereby opposes the Motions in Limine filed by the
25 Antelope Valley Ground Water Agreement Association ("AGWA") on December 1, 2010.
26 AGWA seeks court orders (1) defining "overdraft" and "safe yield", (2) declaring that the
27 Basin's safe yield, as it may be determined during the third phase of trial, is subject to
28 redetermination, and (3) declaring that current overdraft is not a condition precedent to the

1 Court's exercise of its ability to implement a physical solution.^{1/} They request the Court exclude
2 from the trial any evidence incompatible with such orders.

3 AGWA's motions should be denied because they do not assist the Court in determining
4 the competency of certain evidence. Rather, AGWA seeks rulings on legal determinations.
5 They are, therefore, improper as motions *in limine*. "*In limine* motions are designed to facilitate
6 the management of a case, generally by deciding difficult evidentiary issues in advance of trial."
7 Amtower v. Photon Dynamics, Inc., 158 Cal. App. 4th 1582, 1593 (2008). *In limine* motions
8 seeking rulings "which would merely be declaratory of existing law" are improper. Kelly v.
9 New West Fed. Sav., 49 Cal. App. 4th 659, 670 (1996).

10 As AGWA acknowledges, safe yield has been judicially
11 defined as "the maximum quantity of water which can be withdrawn annually
12 from a ground water supply under a given set of conditions without causing an
13 undesirable result."
14 City of Los Angeles v. City of San Fernando, 14 Cal. 3d 199, 214 (1975) (disapproved of on
15 other grounds by, City of Barstow v. Mojave Water Agency, 23 Cal. 4th 1224 (2000) (citing City
16 of Pasadena v. City of Alhambra, 33 Cal. 2d 908, 929 (1949))). There is no reason for the Court
17 to make a declaration of existing law in an *in limine* ruling. Moreover, the parties should not be
18 broadly precluded from presenting relevant evidence to assist the Court in determining safe yield
19 and overdraft. The "given set of conditions" for safe yield of a groundwater basin are variable.
20 For example, in City of San Fernando, the Court found that safe yield consisted of net ground
21 water recharge adjusted for, *inter alia*, subsurface outflow, excessive evaporative losses in high
22 ground water areas and through vegetation along streams, and rising water outflow, or water

23 ^{1/} See AGWA's Notice of Motion and Motion in Limine No. 1 to Define "Overdraft" and "Safe
24 Yield" and to Exclude Evidence Not Relevant to Terms as Defined; Memorandum of Points and
25 Authorities in Support Thereof; [Proposed] Order ("Mtn. No. 1"); AGWA's Notice of Motion and
26 Motion in Limine No. 2 Regarding Redetermination of "Safe Yield" and to Exclude Evidence;
27 Memorandum of Points and Authorities in Support Thereof; [Proposed] Order ("Mtn. No. 2");
AGWA's Notice of Motion and Motion in Limine No. 3 Regarding Court's Ability to implement
a Physical Solution and to Exclude Evidence Not Relevant to Terms as Defined; Memorandum of
Points and Authorities in Support Thereof; [Proposed] Order ("Mtn. No. 3").

1 emerging from the ground and flowing past a gauging station to the sea. City of San Fernando,
2 14 Cal. 3d at 278-279. These factors were specific to the San Fernando basin and are highly
3 unlikely to occur in the Antelope Valley basin. In other words, evidence to determine safe yield
4 is dependent on the physical conditions of the particular groundwater basin. The Court,
5 therefore, should not be restricted *in limine* in considering evidence of safe yield, but determine
6 in the course of trial the admissibility of evidence relevant to the Antelope Valley groundwater
7 basin and its unique physical parameters. Furthermore, although “overdraft” has been broadly
8 defined as an excess of groundwater extractions over safe yield, see generally, City of Pasadena,
9 *supra*, the concept depends “on the facts of the case.” City of San Fernando 14 Cal. 3d at 280.
10 Thus, the parties should similarly not be constrained by a broad ruling *in limine* that restricts
11 proof of overdraft in the Antelope Valley groundwater basin.

12 AGWA’s *in limine* motion requesting the Court make a ruling that the safe yield is
13 subject to redetermination is also improper. AGWA appears to be asking for a legal ruling that
14 a determination of safe yield in Phase III trial is not *res judicata* and may be reopened “should
15 conditions in the Basin change or additional information regarding the Basin’s condition become
16 available.” Mtn. No. 2 at 1. Movants are again improperly asking for a legal determination, i.e.,
17 the preclusive effect of an eventual ruling. Moreover, whether a safe yield decision not yet
18 rendered may be reopened in the future calls for an advisory opinion. At the very least,
19 AGWA’s request is premature and should await presentation of facts of changed conditions or
20 additional information when and if those events occur.

21 Finally, AGWA’s request in Mtn. No. 3 for an *in limine* ruling that an overdraft condition
22 is not necessary before implementation of a physical solution is wholly premature. This phase of
23 trial will not determine a remedy for problems associated with groundwater withdrawals from
24 the Basin. Therefore, it is too early to determine if an equitable and injunctive remedy in the
25 form of a physical solution is even applicable. After the Court’s rulings in Phase III, AGWA
26 will certainly have the opportunity to argue what effect the safe yield and overdraft
27 determinations have on a physical solution. But, such a request is not the proper subject of an *in*
28

1 *limine* motion to exclude evidence now. Should the Court entertain this motion, however,
2 AGWA's argument is incorrect as a matter of law. "A physical solution is an equitable remedy
3 designed to alleviate overdrafts and the consequential depletion of water resources in a particular
4 area, consistent with the constitutional mandate to prevent waste and unreasonable water use. . .
5 ." California Am. Water v. City of Seaside, 183 Cal. App. 4th 471, 480 (2010). Therefore, a
6 finding of overdraft is an important precondition to the implementation of a physical solution.

7 For the foregoing reason, the United States respectfully asks that AGWA's motions be
8 denied.

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10 Respectfully submitted this 10th day of December, 2010,

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12 s/ R. Lee Leininger
13 R. LEE LEININGER
14 United States Department of Justice
15 Environment and Natural Resources Division
16 Natural Resources Section
17 1961 Stout Street, Suite 800
18 Denver, Colorado 80294
19 lee.leininger@usdoj.gov
20 james.dubois@usdoj.gov
21 Phone: 303/844-1364 Fax: 303/844-1350
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