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

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

**ANTELOPE VALLEY
GROUNDWATER 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

**UNITED STATES' POST-TRIAL
STATEMENT**

1 **I. SUMMARY**

2 As the United States proved in the Phase V trial, the United States reserved and acquired
3 lands specifically for military purposes at Edwards Air Force Base (EAFB) and Air Force Plant
4 42 (AFP 42) within the Antelope Valley area of adjudication and, for a large segment of EAFB,
5 was ceded exclusive jurisdiction. Water is necessary to fulfill the military purposes. Therefore,
6 the federal reserved water rights doctrine applies to reserve water (1) for the lands reserved and
7 acquired by the government for the federal enclaves, and (2) for the exclusive jurisdiction lands
8 within EAFB. The reservation of water for military purposes effects an apportionment of the
9 Basin groundwater supply to the United States that is distinct and separate from any correlative
10 rights the United States may have as the owner of nearly 300,000 acres overlying the aquifer.
11 Under the federal reserved water rights doctrine, the United States is entitled to up to 11,500
12 acre-feet of groundwater per year for military purposes.

13 In the *Order After Hearing On January 27, 2014, re: Motion by Cross-Complainant*
14 *Antelope Valley Groundwater Agreement Association ("AGWA") for Summary Adjudication re*
15 *Federal Reserve*, the Court “determine[d] that in fact there is a federal reservation for military
16 purposes for all ten executive orders but there is no evidence presented to establish what quantity
17 of water is necessarily reserved for military purposes nor what is used for secondary purposes, if
18 any.” *Id.* at 2-3. The Phase V three day trial (February 10, 11 and 18, 2014) was therefore
19 primarily focused on the past, present and reasonably foreseeable future military activities at
20 EAFB and AFP 42, and the amount of water necessary to fulfill the military purpose. The
21 United States provides this post-trial statement in order to briefly summarize the legal doctrine of
22 federal reserved water rights, succinctly state the evidence and testimony submitted at trial, and
23 demonstrate how the law and the facts support the United States’ claim.

24 **II. POST-TRIAL STATEMENT**

25 **A. Overview of the Implied Federal Reserved Water Rights Doctrine.**

26 The United States’ rights to water for EAFB and Plant 42 exist under federal law based
27 on the implied federal reserved water rights doctrine. The judicially-created federal reserved
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1 water rights doctrine provides that when the federal government dedicates its land for a particular
2 purpose, it also reserves by implication, sufficient water to accomplish the purposes for which
3 the land was reserved. *See, Winters v. United States*, 207 U.S. 564 (1908); *Arizona v. California*,
4 373 U.S. 546, 601 (1963); *Cappaert v. United States*, 426 U.S. 128, 138 (1976); *United States v.*
5 *New Mexico*, 438 U.S. 696, 715 (1978). *See also* 4 Robt. E. Beck, *Waters and Water Rights* § 37
6 (1996). The U.S. Supreme Court succinctly explained the doctrine of the implied federal
7 reservation of water as follows:

8 This Court has long held that when the Federal Government withdraws its land
9 from the public domain and reserves it for a federal purpose, the Government, by
10 implication, reserves appurtenant water then unappropriated to the extent needed
11 to accomplish the purpose of the reservation. In so doing, the United States
12 acquires a reserved right in unappropriated water which vests on the date of the
13 reservation and is superior to the rights of future appropriators.

14 *Cappaert*, 426 U.S. at 138. The “[r]eservation of water rights is empowered by the Commerce
15 Clause, art. I, § 8, which permits federal regulation of navigable streams, and the Property
16 Clause, art. IV, § 3, which permits federal regulation of federal lands.” *Id.* at 138; *see also*
17 *United States v. City and Cnty. of San Francisco*, 310 U.S. 16, 30 (1940) (regulation of federal
18 land is an “exercise of the complete power which Congress has over particular public property
19 entrusted to it”). In other words, a federal reserved water right “does not depend solely on a
20 formal reservation of land from the public domain, but rather on Congress' exercise of a
21 constitutional authority such as the Property or Commerce Clauses, coupled with the Supremacy
22 Clause.” 6 U.S. Op. O.L.C. 328, 332-33 (1982) (Memorandum for the Assistant Attorney
23 General, Land and Natural Resources Division, United States Department of Justice).

24 The judicially created doctrine does not distinguish between lands reserved from the
25 public domain and lands acquired from private entities. Once the land is federal property
26 dedicated to a particular use, and that use by necessity requires water, a federal reserved water
27 right is formed. *See e.g., United States v. Anderson*, 736 F.2d 1358 (9th Cir. 1984) (where the
28 Ninth Circuit Court of Appeals held that reserved water rights attached to lands reacquired from
private ownership and located within the boundaries of the Spokane Indian Reservation.) Thus,

1 the reserved water rights doctrine applies to all federal lands, whether reserved from the public
2 domain or acquired from private entities, dedicated to specific purposes.¹

3 A reservation of water extends to the amount of water needed to fulfill both the present
4 and future uses of the federal enclave. *See Arizona*, 373 U.S. at 600 (holding that the quantity of
5 water intended to be reserved must satisfy the future as well as the present needs of the Indian
6 reservation); *Sierra Club v. Lyng*, 661 F. Supp. 1490 n.10 (D.Colo.,1987) (concluding that
7 federal reserved water rights under the Wilderness Act “includes any future wilderness area
8 water needs.”); *Federal Reserved Water Rights*, 86 Interior Dec. 553, 573 (1979) (“reserved
9 water rights encompass both existing uses and future water requirements necessary to fulfill the
10 purposes of the reservation.”). The right also extends to water in the ground. The “reserved
11 water rights doctrine applies not only to surface water but to groundwater.” *In re the General*
12 *Adjudication of all Rights to Use Water in the Gila River Sys. and Source*, 989 P.2d 739, 748
13 (1999) (holding that where other waters are inadequate to accomplish the purpose of a
14 reservation, groundwater may be reserved).

15 Also of significance to the authority of the United States to reserve water for Edwards Air
16 Force Base is the State of California’s ceding of exclusive jurisdiction to the United States for
17 approximately two-thirds of the Base, including the developed lands containing the South and
18 North Base areas. By acquiring exclusive jurisdiction, the United States is conferred exclusive
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20

21 ¹ The federal and state courts have extended the doctrine to many different types of federal
22 enclaves. *E.g.*, *Arizona*, 373 U.S. at 601 (1963) (finding reserved water rights for a National
23 Recreation Area and National Wildlife Refuges); *Cappaert v. United States*, 426 U.S. 128 (1976)
24 (reservation of Devil’s Hole as a national monument reserved federal water rights in
25 unappropriated water); *United States v. Idaho*, 959 P.2d 449 (Idaho 1998) (holding that executive
26 order Public Water Reserve No. 107 reserved water to protect springs needed for stock watering
27 from private monopolization.); *see In re the General Adjudication of all Rights to Use Water in*
28 *the Gila River System and Source*, 989 P.2d 739, 745 (1999) (“*Gila River*”)(“The [reserved
rights] doctrine applies not only to Indian reservations, but to other federal enclaves, such as
national parks, forests, monuments, military reservations, and wildlife preserves.”) (citing
Cappaert, 426 U.S. at 138-39).

1 power over its property and resources, including water.² *See California v. United States*, 235
2 F.2d 647, 655-56 (9th Cir. 1956) (“[The United States’] rights within the borders [of Marine
3 Base Camp Pendleton] were sovereign, paramount and supreme. This principle applied to the
4 use of water appurtenant to the land This sovereign authority was essential and was granted
5 by the Constitution.”). Consequently, the State has no legislative authority over the Base’s water
6 resources on the exclusive jurisdiction lands and the federal government retains all necessary
7 authority to reserve the water underlying EAFB for its military needs.

8 **B. Federal Reserved Water Rights are an Apportionment of Water That May**
9 **Occur in a Riparian System of Correlative Rights.**

10 1. Federal Reserved Water Rights are, in substantial part, a unique quasi-
11 riparian water right with a federal law nexus.

12 Federal reserved water rights are analogous to a reasonable apportionment of a shared
13 resource. *See Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n*, 443 U.S.
14 658, 684 (1979). *Fishing Vessel* involved tribal rights to a “fair share” of the available fishing
15 stock. The Court analogized the tribe’s fair share to federal reserved water rights. Reserved
16 water rights, the Court stated, “were merely implicitly secured to the Indians by treaties reserving
17 land – treaties that the Court enforced by ordering an apportionment to the Indians of enough
18 water to meet their subsistence and cultivation needs.” *Id.* In other words, federal reserved
19 water rights are in the nature of an apportionment of a shared resource. In the context of the
20 riparian/correlative system applicable to the Antelope Valley Basin aquifer, the government
21 implicitly reserved a reasonable portion of the shared resource - defined as the amount of water
22 needed to fulfill the purpose of the federal enclave.
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27 ² The exclusive jurisdiction granted was not intended to require Congress to exercise all powers
28 itself, but was meant to exclude any question of state power over the area. *See Dist.*
of Columbia v. John R. Thompson Co., 346 U.S. 100, 109-10 (1953); *Stoutenburgh v. Hennick*,
129 U.S. 141, 147-48 (1889); *Thompson v. Carroll*, 63 U.S. (22 How.) 422, 432-33 (1860).

1 By viewing the federal reserved water right as an apportionment, the reserved water
2 rights merge easily with a riparian legal system such as California's. In fact, the federal reserved
3 water rights doctrine, first set forth in *Winters v. United States*, 207 U.S. 564 (1908) was
4 originally framed in terms of riparian use rights. Carl Rasch, the Assistant U.S. Attorney who
5 presented the *Winters* case to the trial court, made riparianism the centerpiece of his legal
6 argument. See John Shurts, Indian Reserved Water Rights: The *Winters* Doctrine in Its Social
7 and Legal Context, 1880s-1930s 87-88 (2000).

9 The significant difference from state-law based overlying (or riparian) rights, however, is
10 that the federal rights are not subject to diminishment by correlative reduction or failure to
11 continually apply the water to beneficial use. See *United States v. Orr Water Ditch Co.*, 309 F.
12 Supp. 2d 1245, 1252 (D. Nev. 2004) ("[state law doctrines of forfeiture, abandonment, or lack of
13 perfection] do not apply to [] federal reserved water rights"); see also *In re General Adjudication*
14 *of All Rights to Use Water in Gila River System and Source*, 989 P.2d 739, 748 (Ariz.
15 1999)(*"Gila River III"*) ("[F]ederal reserved water rights are by nature a preserve intended to
16 'continue[] through years.'" (quoting *Winters*, 207 U.S. at 577). Rather the United States "may
17 invoke federal law to protect its groundwater from subsequent diversion to the extent such
18 protection is necessary to fulfill its reserved right." *Gila River III*, 989 P.2d at 747. See also
19 *United States v. Rio Grande Dam & Irrig. Co.*, 174 U.S. 690, 703 (1899) (state law cannot be
20 applied to destroy the federal government's right to water on its lands).

21 2. The water apportioned to the United States as a federal reserved right does
22 not diminish the rights of correlative overlyers under state law.

23 Opposing parties at trial argued that the clause in certain land reservations for EAFB,
24 "subject to valid existing rights" foreclosed the United States' ability to reserve and apportion
25 water from the common source because the water was already correlatively apportioned at the
26 time of reservation. This is incorrect. When the United States reserved its land "subject to valid
27 existing rights", the government merely acknowledged that the United States' property was
28 encumbered by the same liabilities that rested on the land at the time of the reservation. See e.g.

1 *French v. Gapen*, 105 U.S. 509, 523 (1881). However, the riparian interests of overlying
2 landowners' do not burden or encumber the federal lands. To the extent the federal reservation
3 of water removes and reserves a quantity of water from the Basin safe yield, other state-law
4 based water rights remain in the same correlative position to each other, maintaining the right to
5 a correlative share of the remaining legally available water. Because those overlying landowners
6 have no property right to a set amount of water, the United States has taken no property interest,
7 and need not show the existence of surplus water in order to reserve an apportionment of the
8 shared resource to the United States.

9 In *Stupak-Thrall v. United States*, 843 F.Supp. 327, 331 (W.D.Mich.,1994), the plaintiff
10 landowner argued that the reservation of a wilderness area "subject to valid existing rights"
11 prohibited the federal agency administering the wilderness from imposing restriction on the
12 plaintiff's riparian rights, and that any such regulation was a taking of private property. In
13 rejecting this claim, the court noted that "[r]iparian rights are not, however, absolute rights. . . .
14 [r]iparian rights are not absolute but come encumbered with the possibility of being limited or
15 regulated under the "reasonable use" doctrine." *Id.* at 331, 333. Such is the nature of all riparian
16 rights including those in California; they come encumbered with the possibility of being limited.
17 Neither the explicit federal reservation of land nor the implicit reservation of groundwater takes
18 away or changes any "existing rights" the overlayers may have had at the time of the reservations.

19 **C. The Evidence Demonstrates That There Has Been a Reservation of Land for**
20 **a Military Purpose.**

21 1. Edwards Air Force Base.

22 At trial, the United States showed how EAFB grew through withdrawal and reservations
23 of public lands as well as private land acquisitions, to create a military installation to support a
24 military purpose. When the War Department began to utilize the Rogers and Rosamond
25 lakebeds and surrounding area in the 1930s, the land was a patchwork of public domain,
26 homesteads, and railroad ownership. The first withdrawal for military purposes occurred on
27 February 6, 1934 when President Franklin D. Roosevelt issued Executive Order 6588 reserving a
28 seven-by-fourteen-mile strip of public land to be used as a bombing and gunnery range. *See* Exh.

1 No. 5-USAF-011. A tent encampment was erected, and by 1935 the facility included a mess
2 hall, a radio building, storage and armament structures, and a new well to provide water for
3 potable and other purposes. *See* Exh. No. 5-USAF-010. Within the approximately 82,000 acres
4 of land defining the borders of the reservation at that time, it was necessary to acquire 38,994
5 acres in private hands for full use and safety of the range facility. *Id.* With the passage of the
6 Act of August 12, 1935, Pub. L. No. 74-263, 49 Stat. 610, Congress approved the creation of
7 “permanent . . . Air Corps stations and depots” facilities.³ Under this authority, the War
8 Department purchased or condemned all private lands to form the military base.

9 In 1937, Executive Orders 7707 and 7740 withdrew and reserved approximately 72,720
10 acres for “military purposes” at what was then named Muroc Army Air Field. *See* Exh. No. 5-
11 USAF 015, Exh. No. 5-USAF-016. The Army Appropriations Act for Fiscal Year 1938, 46 Stat.
12 452, provided the funding for the purchase of private property at Muroc and the War Department
13 began additional acquisitions. Purchase and conveyance of 59,419 acres from the Southern
14 Pacific Railroad lands occurred by deed in March 1938. *See* Exh. No. 5-USAF-017. For
15 unwilling sellers, condemnation suits were filed accompanied by Declarations of Takings. *See*
16 *e.g.*, Exh. No. 5-USAF-027, 5-USAF-047, 5-USAF-109. By July 1939, approximately 60,000
17 acres needed to complete the Muroc bombing facility had been purchased or condemned. By the
18 end of 1939, nearly 100,000 acres had been consolidated into military control for the Army Air
19 Corp.

20 It was quickly evident that Muroc’s remote location, excellent flying weather, railroad
21 facilities and the broad, concrete-hard lakebed were ideal for the purpose of aircraft testing. On
22 June 20, 1940, President Roosevelt signed Executive Order 8450, superseding the earlier
23 executive orders and withdrawing and reserving all lands of Muroc for use of the War
24 Department as a bombing and gunnery range. *See* Exh. No. 5-USAF-018. With the threat of
25 war on the horizon, the air field continued to grow. The Corps of Engineers initiated the
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27 ³ *See* Section 2 of the Act: “To accomplish the purposes of this Act, the Secretary of War is
28 authorized to . . . purchase [private lands] by agreement or through condemnation proceedings.”
49 Stat. 611.

1 construction of new housing and administrative facilities and utilities on the western shore of
2 Rogers Dry Lake in September 1940. *See* Exh. No. 5-USAF-019. A 6,500 ft concrete runway
3 with apron and taxiways was laid out, and construction began. *Id.* In April 1942, Muroc Air
4 Field became the Army Air Field Materiel Center, initiating its long career as a center for
5 military flight testing.

6 In 1946, the Army produced a draft Master Plan for the Muroc Army Air Field. This
7 plan contained recommendations to enlarge the installation to the current boundary of Edwards
8 Air Force Base; the additional land deemed necessary to accommodate the Army Air Forces'
9 future flight-test needs. *See* Exh. No. 5-USAF-063. Approximately 190 square miles of
10 additional private and public land adjoining the base on the north, west, and south would be
11 required. It also provided for safety air clearance zones, a new housing area located a secure
12 distance from flying activities, and for moving the railroad crossing Rogers Dry Lake. *Id.* The
13 Master Plan was eventually approved in January 1952.

14 A number of Public Land Orders (PLO) were issued withdrawing and reserving the
15 public parcels in the expansion area. PLO 480 withdrew 489.76 acres on June 2, 1948 for
16 "military purposes"; PLO 613 withdrew 564.46 acres on October 19, 1949 "in connection with
17 and air force base"; PLO 646 withdrew 20,901.82 acres on May 10, 1950 "as an air force base";
18 PLO 1126 withdrew 120 acres on April 15, 1955 for "military purposes"; and PLO 2270
19 withdrew 230 acres on February 21, 1961 for "military purposes."⁴ *See* Exh. Nos. 5-USAF-021
20 through 5-USAF-025. In addition, acquisition of private lands in the expansion area continued
21 until 1958, when the final piece of private land was procured. The condemnation suits generally
22 claimed the reason for the taking as the "[e]xpanding needs and requirements for the Department
23 of the Air Force and for other military purposes incident thereto." *See e.g.* Exh. No. 5-USAF-
24 027.

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27 ⁴ As explained more fully below, the variable use of descriptive terms in these and other
28 reservation documents demonstrates that such terms were not intended to be narrowly construed
limitations, but rather flexible terms describing the more general military use.

1 In addition, the unrefuted evidence presented at trial established that the State of
2 California ceded exclusive jurisdiction over all lands comprising the Muroc Army Air Field in
3 1943 to the United States. By letter dated April 16, 1943, Secretary of War Stimson notified
4 California Governor Warren that the United States was exercising its right under the laws of the
5 State to assume exclusive jurisdiction over lands within California “acquired by the United
6 States for military and certain other purposes.” *See* Exh. Nos. 5-USAF-028 and 257. The
7 exclusive jurisdiction lands encompass approximately two-thirds of present day EAFB, including
8 the area of Base population and infrastructure and all but three of the groundwater wells. *See*
9 Exhibit 5-USAF-028, 029 and 102 and 2/20/14 transcript pp96-100.

10 2. Air Force Plant 42.

11 In addition to the Army’s operations at the Muroc, a dirt landing strip near Palmdale,
12 California was used by Army aviation units as early as January 1935 as a bivouac site for
13 squadrons that were training at the nearby bombing and gunnery range. After the war, the
14 Palmdale Army Air Field was closed. The installation was declared a surplus facility in 1946
15 and was transferred by quit-claim deed to Los Angeles County for use as a municipal airport.
16 However, “under the provisions of [the quit-claim] deed, the United States Government has the
17 right to recapture not only the original 950 acres but all the additional acreage that has been
18 acquired by the County of Los Angeles as additions to the original airport. . . .” *See* Exh. No. 5-
19 USAF-086. The airport lands were recapturable due to the declared Korean War emergency. In
20 addition it was the intent of the “Air Force to make substantial improvements to this property and
21 to retain it as a permanent installation.” *Id.* Consequently, the decision was made to purchase
22 the lands in fee simple rather than have the facility revert to the County at the termination of the
23 declared emergency.

24 Congressional authorization for the military construction and acquisition was approved in
25 1951, *see* Pub. L. No. 82-155, 65 Stat. 336 (1951), and on February 2, 1954, the United States
26 secured Air Force Plant 42 by purchase of 4552 acres from the County of Los Angeles. *See* Exh.
27 No. 5-USAF-113. Today, AFP 42 consists of approximately 4,870 government-owned acres.
28 Exhibit No. 5-Tejon-5.

1 **D. Water is necessary to fulfill the military purposes of Edwards Air Force Base**
2 **and Plant 42.**

3 That water is necessary to fulfill the military and military-related functions at these
4 installations has not been, and cannot reasonably be disputed. Edwards Air Force Base is, in
5 effect, a quasi-municipal facility that requires water for its residents as well as its military
6 applications. Phase V Trial Transcript (hereafter “Trans.”), Feb. 11, 2014, p. 166 (Judkins).⁵
7 AFP 42 requires water for its large-scale industrial fabrications, as well as its workers’ domestic
8 needs. Trans. Feb. 18, pp. 75-76, 80-83, 86-87 (Cummins), Trans. Feb. 18, pp. 113-114 (Scott).
9 “Where water is necessary to fulfill the very purposes for which a federal reservation was
10 created, it is reasonable to conclude, even in the face of Congress' express deference to state
11 water law in other areas, that the United States intended to reserve the necessary water.” *New*
12 *Mexico*, 438 U.S. at 702.⁶

13 1. Historical and Current Water Use.

14 a. EAFB

15 One of the first things needed to make EAFB useful as a training or military facility was
16 the acquisition of a water supply. *See* Exhibit 5-USAF 10, letters ranging in date from July,
17 1935 to December, 1935 requesting funds to install water pumps on Muroc Bombing and
18 Gunnery Range. The current water needs of the Base for various municipal and industrial type
19 purposes were described by the United States’ witnesses. Trans. Feb. 11, pp. 166-171 (Judkins);
20 Trans. Feb. 11, pp. 74-83 (Brewer). These needs include a wide variety of water uses which
21 contribute to the health and combat readiness of the military personnel, as well as the
22 maintenance of the machinery of modern warfare. *Id.*

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24 ⁵ Citation to the Phase V Trial transcript will include the month and day, page and testifying
25 witness.

26 ⁶ The fact that as a landowner in the Antelope Valley the United States has a right to pump a
27 correlative share of water under state law, or that both facilities use water that is provided from
28 outside sources, is of no legal consequence.⁶ Water that may be available under state law, either
through purchase or pumping, does not negate the necessity for a reserved water right under
federal law.

1 The uses of water include support for the test mission, industrial and maintenance
2 facilities, fire suppression, research and training, and domestic water use for the thousands of
3 Base personnel. See Trans. Feb. 11, pp. 166-167 (Judkins). The uses by contractors, NASA, the
4 AFTC, and based personnel are all related to the military purposes at EAFB. Uses by NADA
5 and AFTC are all part of continuum from research to weapons and training, and part of the
6 military mission. Trans. Feb. 11, pp. 80-82 (Brewer). Moreover, because of its isolated location
7 and size, the Base serves as a quasi-municipal infrastructure to meet the military purposes.
8 Water is used for such things as Base housing and schools, the Base Exchange, Commissary and
9 even fast-food restaurants. Trans. Feb. 11, pp. 91-94 (Brewer); Trans. Feb. 11, pp. 158-160
10 (Judkins). The water uses for morale, welfare and recreation, for example, a recreation center,
11 swimming pool and golf course, at this remote Base are “absolutely critical.” Trans. Feb. 11, p.
12 94 (Brewer); see also Trans. Feb. 11, pp. 158-160 (Judkins). All of the water use at EAFB is
13 therefore “inextricably linked” to the military use of the base. Trans. Feb. 18, p. 43 (Judkins).

14 Unrefuted evidence was presented on the historic and current amount of water used at
15 EAFB. The maximum historical pumping in any one year was 7,480 acre-feet in 1964. Exh
16 USAF-083, -084, 178? - -151, -259, Trans. Feb. 10, pp. 128-133 (Herbert). Documents show
17 that water use at EAFB alone exceeded 6,000 acre-feet in a number of years. Id; 5-USAF-178;
18 Trans. Feb. 11, pp. 171-175 (Judkins). Over a more recent 5 year span, the average has been
19 4,500 acre-feet. Trans. Feb. 11, pp. 189-190 (Judkins).

20 b. Air Force Plant 42.

21 The evidence at trial established that all water use at AFP 42 supports a military purpose.
22 AFP 42 is known as an industrial preparedness property. Trans. Feb. 18, p. 75 (Cummins),
23 Exhibit 5-USAF-148, pp. USAF050623, USAF050627. The Air Force owns the real property
24 and leases it to industrial defense contractors. Trans. Feb. 18, p. 75 (Cummins). Those
25 contractors use water to produce, test, maintain and modify aircraft and aircraft systems for the
26 U.S. Department of Defense, including the U.S. Air Force. Trans. Feb. 18, pp. 75-77
27 (Cummins). The contractors at AFP 42 are Boeing (currently, X-15 hypersonic flight test, F-15
28 flight test), Lockheed Martin (U-2 intelligence, surveillance and reconnaissance aircraft, depot-

1 level maintenance), and Northrop Grumman (B-2 depot-level maintenance; manufacture of the
2 mid-fuselage section of the F-35 Joint Strike Fighter; manufacture of the Global Hawk (for Air
3 Force) and Triton (for Navy) unmanned drones). Trans. Feb. 18, pp. 80-81 (Cummins).

4 In addition to defense contractors, the Air Force has stationed 190 employees at AFP 42
5 for civil engineering, firefighting, emergency services, plant security, contracting and financial
6 management support. Trans. Feb. 18, p. 71 (Cummins). Air Force staff manage and maintain
7 the common areas of the property used by all the defense contractors, including the airfield
8 runways and fire protection systems. Trans. Feb. 18, pp. 75-76 (Cummins). Aircraft from
9 EAFB use the runways for pilot proficiency and aircraft testing. Trans. Feb. 18, p. 83
10 (Cummins). Air National Guard units use the runways for pilot proficiency. Trans. Feb. 18, p.
11 83 (Cummins). Water is necessary for all these activities.

12 Focusing on the time period originally established for the Phase IV trial, the Air Force
13 compiled water use data for the years 2000-2004 and 2011-2012, by obtaining water well meter
14 data from the defense contractors, reviewing invoices of purchased water, and estimating
15 production from unmetered fire protection water wells. Trans. Feb. 18, pp. 114-119 (Scott).
16 During the 2000-2004, 2011-2012 time period, the annual water use at AFP 42 ranged from 425
17 to 473 acre-feet per year. Trans. Feb. 18, pp. 116-17 (Scott), Exhibit 5-USAF-151, p.
18 USAF050631. The total of the highest level in any year for each of the eight sites at AFP 42
19 during this time period is 677 acre-feet. Trans. Feb. 18, pp. 118-119 (Scott), Exhibit 5-USAF-
20 151, p. USAF050631. All eight sites are capable of operating at this highest level
21 simultaneously. Trans. Feb. 18, pp. 118 (Scott).

22 **E. The United States Needs Sufficient Water to Fulfill Present and Potential**
23 **Future Operational Needs of EAFB and AFP 42, as Those Needs Are Defined by the**
24 **Department of Defense.**

25 1. EAFB.

26 As the Supreme Court has recognized, water reserved for federal enclaves is intended to
27 satisfy the future as well as the present needs of the reservation. *Arizona v California*, 373 U.S.
28 546, 600 (1963). Thus it is necessary for the Court to apportion to the United States not only that

1 amount necessary to fulfill the current needs of EAFB and AFP 42, but also the future needs.

2 While this inherently requires a degree of forecasting, the evidence presented at trial established
3 the unique attributes of EAFB and AFP 42, their capacity to absorb additional missions and the
4 trends within the Air Force and military that make EAFB a site for a potential expansion of
5 mission, and thus water use.
6

7 Testimony and evidence established that the military purpose has evolved over time and
8 is expected to evolve in the future. Trans. Feb. 11, pp. 11-38 (Hallion). The size and function of
9 the military operations at EAFB and AFP 42 are not static. When EAFB was originally built and
10 used as a training range in the 1930's and 1940's, there could not have been a contemplation of
11 changes in complexity and needs of the modern Air Force, and size and types of operations in
12 place today. The nature of the flight test business is ebb and flow. Trans. Feb. 11, pp. 83-84
13 (Brewer). As new technologies are developed, old ones are retired. *Id.* Aircraft being used
14 today, like the B-52 and the F-22, will fill and complete their life cycle and be replaced by new
15 technology. *Id.* The Air Force must contemplate the additional mission changes and
16 mobilization demands that may occur in the future.
17

18 EAFB has unique qualities that make it suitable for additional missions. The large lake
19 bed ensures safe landing as needed, such as when landing gear fails to open on a fighter plane or
20 when aircraft engines are shut off and attempted to be restarted during flight testing. Trans. Feb.
21 11, pp. 84-89 (Brewer), Exhibit 5-USAF-243. The remoteness ensures that populated areas are
22 not disturbed by noise or in danger during flight testing. Trans. Feb. 11, pp. 90-91 (Brewer),
23 Exhibit 5-USAF-194. The excellent weather allows 345 to 350 days per year of flight testing.
24 Trans. Feb. 11, pp. 95-96 (Brewer). The airspace and physical infrastructure allow for multiple
25 test sorties simultaneously. Trans. Feb. 11, pp. 96-103 (Brewer). These qualities enable mission
26 growth. Trans. Feb. 11, p. 92 (Brewer). No other base has these qualities. *Id.*
27
28

1 Moreover, the Air Force is in a fiscally constrained environment, which leads to
2 consolidation of facilities. Trans. Feb. 11, pp. 107-110 (Brewer). Other bases are at or near
3 capacity, especially in terms of airspace. *Id.* EAFB, on the other hand, has capacity to take on
4 additional missions. *Id.* Thus, EAFB is a prime candidate to receive new missions in
5 consolidation, because of its capacity and ability to do so. *Id.*

6 Based on a five year average of recent historical use, plus a factor for risk and
7 uncertainty, water needs for current and reasonably foreseeable missions at EAFB is 5,800 acre-
8 feet per year. Trans. Feb. 11, pp. 188-192 (Judkins). Based on the current capacity and airspace
9 needs, and the expert testimony of the installation commander and base civil engineer, EAFB
10 could absorb the equivalent of another wing, with a potential water demand of an additional
11 4,900 acre-feet of water. Trans. Feb. 11, pp. 109-110, 134-138 (Brewer), Trans. Feb. 11, pp.
12 185-187 (Judkins), Exhibit 5-USAF-187. Combining these figures, potential future water
13 demand at EAFB ranges from 10,000 to 10,500 acre-feet per year. Trans. Feb. 11, pp. 188-192
14 (Judkins).

15 2. Air Force Plant 42.

16 Like EAFB, AFP 42's water needs will increase in the future. AFP 42's responsibility
17 includes the entire gamut of Air Force and Department of Defense aircraft assets. Trans. Feb.
18 18, pp. 83-85, 89-90, 95-98 (Cummins). These include maintenance of strategic bombers like
19 the B-2; maintenance of intelligence, surveillance and reconnaissance aircraft like the U-2,
20 Global Hawk and Triton; and production of fighter aircraft like the F-35 and F15. *Id.*

21 AFP 42 is a key installation for the Air Force, well-situated to support similar aircraft
22 missions in the future. *Id.* Unique qualities of AFP 42 include buildings and runway
23 infrastructure already in place; proximity to EAFB and its test mission; excellent weather and
24 flight conditions; good relationships with neighbors and local cities with respect to
25 encroachment; and proximity to aerospace companies in the Los Angeles area. *Id.* There are no
26 noise constraints and flights can occur at any time of the day. *Id.*

27 Numbers of contractor employees on site at AFP 42 ebb and flow with project needs.
28 Trans. Feb. 18, p. 98 (Cummins); Trans. Feb. 18, pp. 108-110, 117 (Scott). The Air Force

1 recently worked a project to add 120,000 square foot of office space for 600 additional engineers
2 to support new weapon systems programs. *Id.* At another site, Air Force is converting a
3 warehouse into a workspace for engineers and aircraft maintainers. *Id.* Water use at one
4 location nearly doubled between the early 2000s and 2011/2012 because of the addition of new
5 manufacturing programs. *Id.* The Air Force is constantly working new and changing space
6 requirements for the defense contractors. *Id.* There is space for construction of a new industrial
7 site if needed. *Id.*

8 The Air Force projects that water use at AFP 42 will double by 2033 to 966 acre-feet per
9 year. Trans. Feb. 18, pp. 120-124 (Scott), 5-USAF-164. The two primary reasons are the
10 expected full utilization of each industrial site and changes in aerospace manufacturing that
11 require more water for heating and cooling. *Id.* The defense contractors at several of the
12 industrial sites are currently planning new programs that will all require more water to meet their
13 needs. *Id.*

14 **III. The Evidence presented at the Phase V trial is sufficient to establish facts and law**
15 **necessary to support that part of the proposed Judgment and Physical Solution related to**
16 **the Recognition and Quantification of the United States' Federal Reserved Water Right**
17 **without the presentation of additional evidence in Phase VI.**

18 The trial testimony and evidence presented by the United States in the Phase V trial was
19 more than sufficient to support the provisions of the Proposed Judgment and Physical Solution
20 that relate to the establishment and quantification of the federal reserved water right as described
21 in the proposed Settlement. The Proposed Judgment and Physical Solution to which the United
22 States has stipulated recognizes a federal reserved water right for EAFB and AFP 42 in the
23 amount of 7,600 acre-feet per year. The evidence presented to the Court supports a claim to
24 reserved water rights for present and future uses at these two facilities in an amount between
25 11,000 and 11,500 acre-feet per year. Additional evidence from the United States regarding its
26 claim to a reserved water right should not be required in the Phase VI proceeding.

27 Those parties challenging the federal reserved water right at trial have all stipulated to the
28 proposed Judgment and Physical Solution. Those parties who remain in opposition to the

1 Proposed Judgment and Physical Solution, including both the Willis Class and Phelan Pinon
2 Hills, had notice of the Phase V trial, opportunity to participate, and reason to participate, as the
3 allocation of water to the reserved water right would necessarily affect the amount of water
4 remaining available to other users sharing in any correlative water right.⁷ Nevertheless, they
5 declined or failed to participate in the Phase V proceedings. “PPHCSD's participation in the
6 Phase 5 trial will not include that portion involving the federal reserved right being claimed by
7 the United States.” *Amended Notice of Intention of Phelan Pinon Hills Community Service*
8 *District to Participate in Phases 5 and 6 Trials*, dated November 5, 2013, Document No. 7342.
9 That failure does not allow them to now attempt to reopen the Phase V proceedings.

10 RESPECTFULLY SUBMITTED this 12th day of June 2015.

11
12 /s/ R. Lee Leininger
13 R. LEE LEININGER
14 JAMES J. DuBOIS
15 ATTORNEYS FOR THE UNITED
16 STATES OF AMERICA
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25
26 ⁷ The Willis Class, moreover, stipulated to the existence of the Federal Reserved Right and
27 agreed “that the Court will decide the amount of the Federal Reserved Right and [] agree[s] to be
28 bound by the Court's determination.” Willis Class Stipulation of Settlement, at 9, approved by
the Court in the Amended Final Judgment Final Judgment Approving Willis Class Action
Settlement, dated September 22, 2011. Accordingly, the Willis Class not only had opportunity to
participate in the Phase V trial, but also the incentive.