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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 JOSEPH HARDESTY and YVETTE  
12 HARDESTY,

13 Plaintiffs,

14 v.

15 SACRAMENTO METROPOLITAN AIR  
16 QUALITY MANAGEMENT DISTRICT,  
17 et al.,

18 Defendants.

No. 2:10-cv-2414-KJM-KJN

19 JAY SCHNEIDER, et al.,

20 Plaintiffs,

21 v.

22 COUNTY OF SACRAMENTO, et al.,

23 Defendants.  
24  
25

No. 2:12-cv-2457-KJM-KJN

26 Plaintiffs have filed several motions in limine. Hardesty Mot., ECF No. 287; Pls.  
27 Int. Motion, ECF No. 291; Schneider Mot. No. 1, ECF No. 292; Schneider Mot. No. 2, ECF No.  
28 293. The court decided four of these motions in its Final Pretrial Conference Order. ECF No.

1 313 (granting two of the Hardestys' motions in limine, denying the joint motion without  
2 prejudice, and denying one of the Schneiders' motions without prejudice). The court did not  
3 address four of the motions in its prior order. *Id.* at 32. On February 6, 2017, county-related  
4 defendants filed their response to the remaining motions. Opp'n, ECF No. 334. Because  
5 defendants indicate their non-opposition to three of the four remaining motions, the court resolves  
6 those motions here.

7 I. EFFECT OF *IN LIMINE* RULINGS

8 The court issues rulings on the following motions in limine based on the record  
9 before the court. Each ruling is made without prejudice and is subject to proper renewal, in whole  
10 or in part, during trial. If a party wishes to contest a pre-trial ruling, it must do so through a  
11 proper motion or objection, or otherwise forfeit appeal on such grounds. *See* Fed. R. Evid.  
12 103(a); *Tennison v. Circus Circus Enters., Inc.*, 244 F.3d 684, 689 (9th Cir. 2001) ("Where a  
13 district court makes a tentative in limine ruling excluding evidence, the exclusion of that evidence  
14 may only be challenged on appeal if the aggrieved party attempts to offer such evidence at trial.")  
15 (alteration, citation, and quotation omitted). In addition, unless otherwise stated below,  
16 challenges to expert testimony under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S.  
17 579 (1993) are denied without prejudice. Should a party wish to renew a *Daubert* challenge at  
18 trial, it should alert the court, at which point the court may grant limited voir dire before such  
19 expert may be called to testify. The court now turns to the motions in limine pending before the  
20 court.

21 II. PLAINTIFF'S MOTIONS *IN LIMINE*

22 Plaintiffs' four remaining motions in limine seek to exclude the following  
23 evidence:

24 1. Evidence of or reference to the Hardestys' mining activity at the Big Cut Mine  
25 in El Dorado County, including alleged violations, water discharge dispute, actions taken against  
26 Joseph Hardesty, related press or news articles, or orders shutting down the mine. Hardesty Mot.

27 2. Evidence of or reference to the prior lawsuit between the Schneiders and  
28 Hardesty. *Id.*

1                   3. Evidence of or reference to comments or rulings by the Sacramento County  
2 Superior Court at a preliminary injunction hearing related to the existence or scope of a vested  
3 property interest or vested right to mine. *Id.*

4                   4. Evidence or references contradicting the County's administrative determination  
5 of the Schneiders' vested rights. Schneider Mot. No. 2.

6                   The county-related defendants do not oppose (1) and (2) above. Opp'n at 2.  
7 Accordingly, the court GRANTS Hardesty's motions as to that evidence.

8                   The county-related defendants do not oppose (4) above. *See id.* at 10–11.  
9 Schneider's motion seeks to exclude evidence from the jury. *See* Schneider Mot. No. 2 at 6. The  
10 county-related defendants do not object to such evidence being excluded from the jury. Opp'n at  
11 11. Accordingly, the court GRANTS Schneider's motion to the extent unopposed.

12                  The court does not address (3) above. Any remaining motions will be addressed  
13 by the court on the first day of trial.

14                  IT IS SO ORDERED.

15                  DATED: February 10, 2017

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19 UNITED STATES DISTRICT JUDGE  
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