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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES
BEFORE THE HONORABLE JACK KOMAR, JUDGE

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COORDINATION PROCEEDING)	
SPECIAL TITLE (RULE 1550(b)))	
)	
ANTELOPE VALLEY GROUNDWATER CASES)	JUDICIAL COUNCIL
)	COORDINATION PROCEEDING
)	NO. 4408
)	
)	SANTA CLARA COUNTY
)	CASE NO. 1-05-CV-049053
)	(E-Posting/E-Service
)	Purposes Only)
)	
_____	/	LOS ANGELES COUNTY
		SUPERIOR COURT
		CASE NO. BC 325 201

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

DEPARTMENT NO. 12
JANUARY 22, 2015

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APPEARANCES:

FOR PHELAN PINON HILLS:	WESLEY A. MILIBAND, ESQ.
FOR THE WILLIS PLAINTIFFS:	RALPH KALFAYAN, ESQ. LYNNE M. BRENNAN, ESQ.
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1 CONTINUED APPEARANCES:

2 FOR THE STATE OF CALIFORNIA: NOAH GOLDEN-KRASNER, ESQ.

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4 FOR THE COUNTY SANITATION CHRISTOPHER M. SANDERS, ESQ.
5 DISTRICTS OF LOS ANGELES:

6

7 FOR THE LOS ANGELES COUNTY JEFFREY V. DUNN, ESQ.
8 WATERWORKS DISTRICT NO. 40:

9

10 U.S. BORAX, INC. WILLIAM M. SLOAN, ESQ.

11

12 FOR THE PALMDALE WATER THOMAS S. BUNN, III, ESQ.
13 DISTRICT:

14

15 FOR RICHARD WOOD: MICHAEL D. MCLACHLAN, APC.

16

17 FOR THE BLUM TRUST: SHELDON BLUM, ESQ.

18

19

20 ATTORNEYS PRESENT VIA COURT CALL:

21 Andrew Brady W. Keith Lemieux

22 Robert Brumfield Andrew Ramos

23 Heather James Edward Renwick

24 William Brunick Walter Rusinek

25 Theodore Chester John Tootle

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31 Jeff Green Richard Wood

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40 OFFICIAL COURT REPORTER: DEANNE M. HELGESEN, CSR. 8445

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1 SAN JOSE, CALIFORNIA

JANUARY 22, 2015

2 PROCEEDINGS

3
4 THE COURT: All right.

5 Good morning and thank you for not complaining about
6 the eleven o'clock start time for this hearing. I appreciate
7 it.

8 We have several matters on calendar. You've all
9 received or had an opportunity to examine the Notice to
10 Counsel setting forth our agenda.

11 I'm going to start with the first item, which is the
12 motion by the Blum Trust. The Court has issued a tentative
13 ruling.

14 Mr. Blum?

15 MR. BLUM: Good morning, Your Honor. Sheldon Blum
16 on behalf of the Blum Trust.

17 What I would like to comment, Your Honor, is that
18 the beauty of making a Motion for Summary Judgement and
19 submitting documentation is in conjunction with oral argument
20 that's to be heard at a hearing, which is for today. And I
21 realize that this Court finds that there may be a defect in
22 the judicial notice document submitted, but I think it's a
23 matter of writing style.

24 I notice that in the judicial notice of statute, it
25 specifically requires the party to provide sufficient notice
26 of the request through the pleadings or, otherwise, to enable
27 such adverse party to prepare to meet the request and furnish
28 the Court with sufficient information to enable it to take

1 judicial notice of the matter. That's exactly what the Blum
2 Trust did.

3 In the judicial notice documents, both Evidence Code
4 451, 452, and 453 were cited. And those exhibits were
5 identified as one in the declaration of Sheldon Blum and
6 they're also identified in the Memorandum of Points and
7 Authorities in support.

8 Interesting that the reply brief also mentioned that
9 a Court's file is subject to judicial notice with hearsay
10 exceptions. And the 25 documents, which include both exhibit
11 lists and judicial notice documents, all fit completely
12 within hearsay exceptions.

13 We have an admission by the declarant. We have an
14 authorized admission under Evidence Code 1222. We have a
15 declaration that is made in connection with the right title
16 or interest in property or a claim which is in issue under
17 Evidence Code 1225.

18 Under Evidence Code 1414, you have an admission that
19 relies upon authenticity by an adverse party. That's
20 important because our writing may be authenticated by
21 evidence that the party against whom it is offered at any
22 time had admitted its authenticity, or the writing has been
23 acted upon as authenticated by the party to whom it's
24 offered.

25 When we're talking about deeds of trust, we've
26 got -- we have documents that are -- disposes of --
27 conveyances are acceptable. We have official writings under
28 Evidence Code 1280. We have -- and also Evidence Code 1530.

1 We have recorded writings under Evidence Code 1532,
2 which is the record of a fact, and in an office of a public
3 entity, in the statute, authorizes such writing to be
4 reported in that office.

5 And we have presumptions of signatures of public
6 employees, specifically under Evidence Code 1453. Signature
7 is presumed to be genuine and authorized if it is purported
8 to be the signature affixed in the official capacity of a
9 public employee of the United States or a public entity. We
10 also have the ancient writings under, for example, the two
11 well index cards because they're over 30 years old.

12 So I am a little uncertain as to why this Court
13 would not consider those documents in light of the part of
14 the Court's file they're admissions, they're official
15 records, the recorded records, and there's no issue of its
16 authenticity.

17 I would also comment that, with that in mind, if
18 considered, you would find that the Blum Trust is entitled to
19 a judgement as a matter of law. There hasn't been any
20 controverted evidence, by declaration or otherwise, some
21 other form of evidentiary matter which could reasonably give
22 you inferences. There's just a running boilerplate list of
23 objections for the evidence.

24 The purpose behind these kinds of motions is to
25 avoid the trial and the expense. And when you're talking
26 about consistent claims of place of use, talking of the way
27 in which it's calculated by the applied crop duty with the
28 water efficiency values, and we're talking about the highest

1 usage between 2001 and 2011, this is the judicial benchmark.
2 There's no question that Blum Plaza has established 531 acre
3 feet per year.

4 And also, we have the declaration of Ali Sharudi
5 (phonetic) who is our expert, that has specifically gone
6 through all of the records and laid a proper foundation for
7 that opinion to come in. It is uncontroverted. And,
8 basically, the argument is whether the Blum Trust water
9 rights are inferior or subordinate or non-existent to that of
10 the public water suppliers.

11 And I clearly have established, through the
12 evidence, and through written argument, that the Blum Trust
13 water rights are either priority to the -- or superior to the
14 public water suppliers or otherwise co-equal but certainly
15 not subordinate.

16 And I also know that the Court has mentioned that
17 there's a defect in proof by the cause of action not listing
18 an element. It's the burden of proof of the public water
19 suppliers to establish that their water rights are superior
20 to Blum Plaza, Blum Trust, or otherwise that the usage of
21 their water from whatever settlement they make is still at a
22 deficiency to the Blum Trust such that they then can try to
23 capture Blum Trust water rights.

24 That's been a serious defect in the element of the
25 Complaint because we don't have that as a basis to say that
26 there is a point so that we are able to capture it all from
27 Blum Trust water rights, and that's important to keep in
28 mind.

1 I also want to point out that Blum Trust, as this
2 Court has always been advised, has been treated unequal to
3 that of others, and as a result, not being entitled to its
4 due process. There's no reason or rational basis for Blum
5 Trust not to have been part of that settlement group. Let's
6 not overlook that in the event the place of use should be
7 disputed, it's still viable.

8 But, more importantly, the Blum Trust has
9 correlative rights as well. If it doesn't come in under --
10 if the Blum Trust can't be part of the settlement group as an
11 overlying land owner with a quantified right on usage in case
12 of overdraft or drought, then it certainly comes in under its
13 correlative right, in that we've established that we hold
14 title to the overlying land, which is situated above the
15 basin.

16 So there was a denial of the equal protection for
17 not being a member of that and being singled out. And I know
18 this Court makes it sound as if that's not critical, but it
19 actually is because if you were able to glean from what the
20 public water suppliers' argument was, that Blum Trust can
21 establish self help since '51 through 2004, and, therefore,
22 has no self help and, therefore, no defense to the
23 descriptive right.

24 Yet, if you're a member of the settlement, you don't
25 have to worry over that insurmountable burden of proof of
26 establishing 60 years of self-usage and through two
27 generations of farmers.

28 So it seems to me that being a member of that

1 settlement group, you're avoiding the insurmountable burden
2 of having to prove self help because all you're showing is
3 that you used the water between 2001 and 2012 to get a water
4 right. And, basically, that's exactly what the Blum Trust
5 has always attempted to do.

6 So, in essence, Your Honor, we have a defect in
7 proof on a public water suppliers based upon my current
8 arguments, as well as that the unequal protection for eight
9 consecutive years has to be readdressed by this Court, and
10 that is simply allowing the 531 acre feet per year to come
11 in.

12 And yet, separate and distinct from that, there's
13 been nothing to refute, rebut, or dilute what's been said by
14 the expert, Mr. Ali Sharudi.

15 So based on that declaration alone, Blum Trust is
16 entitled to a judgement as a matter of law. And I would wait
17 for the response before I continue.

18 THE COURT: All right.

19 Counsel -- any of counsel in opposition like to
20 comment or argue?

21 MR. BUNN: Your Honor, Thomas Bunn for Palmdale
22 Water District. I don't want to argue. I want to submit on
23 the tentative, but I want to point out that the tentative
24 ruling, in its list of the names of the public water
25 suppliers, does not include Palmdale Water District, my
26 client. We did join in the opposition to the summary
27 judgement motion. We were one of the parties against whom
28 the Blum Trust sought summary judgement and, of course, we

1 did sue him.

2 So I would like to request the final ruling include
3 Palmdale Water District in that list. Unless I missed it, I
4 looked through it a couple of times.

5 THE COURT: It does include the City of Palmdale,
6 but not the Palmdale Water District; is that what you're
7 saying?

8 MR. BUNN: That's what I'm saying.

9 THE COURT: You filed your opposition?

10 MR. BUNN: The opposition filed by the public water
11 suppliers, including Palmdale Water District.

12 THE COURT: Well, technically, you're probably
13 included by the language that says, "Oppositions have been
14 filed or joined in by the public water suppliers, including,
15 but certainly not excluding." We'll make sure that reflects
16 your position.

17 MR. BUNN: Thank you, Your Honor.

18 THE COURT: Anybody else wish to be heard?

19 Mr. Blum, do you want to conclude on rebuttal as to
20 what was just said?

21 MR. BLUM: There's nothing that I believe would be
22 important for me to say.

23 THE COURT: Thank you.

24 Mr. Blum, I know how hard you worked on preparing
25 your motion and the reply. I also know what your concerns
26 are about being -- having a fair opportunity to present your
27 case and to participate fully in these proceedings and to
28 have due process, as well as equal protection under the law.

1 And, of course, my judgement is you've not been
2 deprived of any of that by the Court. The Court has given
3 you an opportunity to present, fully, all of your arguments
4 as well as your evidence, as well as your opinion as to the
5 propriety of the evidence, its admissibility, and so on.

6 The fact that a group of parties to this litigation
7 have entered into a tentative agreement to settle their
8 interests, vis-a-vis each other, is entirely appropriate.

9 Any parties who wish to settle among themselves may
10 certainly do so. For whatever reason, to the extent that
11 they choose not to include other parties who may have a
12 similar interest in their settlement is beyond the scope of
13 this Court's jurisdiction to deal with or to control.

14 If parties wish to settle among themselves, they may
15 do so. And in this case, there have been, so far, two
16 settlement proposals that have gone beyond just the
17 discussion, the Woods Class and the Willis Class. The Willis
18 Class resulted in a judgement. That's totally different and
19 apart from any adjudicative issues with your client. That's
20 between the parties that sued the Willis Class initially,
21 sued Ms. Willis and others.

22 And the cross-Complaint that was filed by Mrs.
23 Willis as a cross-Complainant against the public water
24 suppliers and only against the public water suppliers, if I
25 recall correctly, that settlement was approved by the Court.
26 There were initial objections by several of the parties to
27 that settlement on the basis of that, somehow or other, it
28 was going to affect them. But, in effect, all it really did

1 was limit the public water suppliers in any response they
2 might make to water issues with regard to the non-pumper
3 class.

4 The Wood's class, or Wood Class, more accurately,
5 has entered into a settlement agreement with a number of
6 parties. That has yet to be approved by the Court. It's
7 going to be set for preliminary approval hearing's time
8 today. It's actually already been set for that but it's
9 being asked to be moved for good cause.

10 In terms of your request for judicial notice, the
11 documents that you've requested, the Court notice have not
12 been authenticated, number one. And, number two, the
13 documents which you've requested, for the most part, could be
14 recognized with proper authentication and foundation, but the
15 substance of the material in the documents is not admissible
16 for the truth of the matter asserted therein.

17 There are very few exceptions where such facts
18 become not only noticeable, but are deemed proven as a result
19 of the Court taking judicial notice of those documents.

20 With regard to the public water suppliers' burden to
21 prove their water rights, you're absolutely right: They do
22 have a duty and a burden to prove their water rights with
23 regard to the prescription with regard to your client's
24 property. That has not yet happened.

25 They are talking with others about settling their
26 claims to prescriptive rights. That's going to be,
27 presumably, part of the settlement, and that settlement only
28 relates to the parties entering into and not to your client,

1 so that your client still stands free of a claim till it's
2 proven.

3 At this point, your client owns property.
4 Presumably, the property that you referenced, which as the
5 Court, I think, indicated in its decision, tentative
6 decision, acknowledges your ownership but certainly not the
7 details that are contained within the non-authenticated
8 deeds, the non-certified documents.

9 So that both the details of the property and the
10 location of any wells on your property have yet to be proved.
11 That's one of the failures, but not the total failure, for
12 the reason if you read the Court's decision carefully, the
13 reason for the Court's ruling as it did in its tentative
14 decision.

15 There are no unequal rights that are being accorded
16 to you by this Court or this judicial process. You have
17 every right, under the law and the constitution, and the
18 Court is obviously going to ensure that those rights are
19 protected in every way and giving you an opportunity to
20 establish whatever those rights are.

21 There's no question that a property owner, and
22 overlying owner to an aquifer, has the right to a reasonable
23 beneficial use, subject to whatever restrictions can be
24 proved by showing a contrary interest to another party. I
25 don't know how many acre feet you have produced on your land.
26 There's no conflict evidence to establish that at this point,
27 but your motion for summary judgement versus -- or I should
28 say summary -- alternatively summary adjudication does not

1 establish there is no issue of fact as to your claim.

2 Having said that, it's not a determination that you
3 have no water rights. It's not a determination as to what
4 limitations there may be on your water rights. It's only a
5 determination that you have not proved that, by the evidence
6 that you presented or attempted to present, that you have a
7 specific water right or that the public water suppliers have
8 any prescriptive right. It has nothing to do in the
9 determination of the Court as to any of those things. It's
10 just that you haven't proved your case.

11 And I warned you before you undertook to file this
12 rather large motion for summary judgement and summary
13 adjudication that, in my experience, it's very difficult in a
14 case such as this, particularly where there are controversies
15 between parties, to be able to establish that you have a
16 particular right and that there's no issue of fact as to
17 that.

18 The thrust of your case -- the thrust of your motion
19 is that you are part of a farming unit with Bolthouse.
20 That's the thrust of your case. Therefore, because Bolthouse
21 was pumping water and using it on your land because it was a
22 farming unit, you have a right to a claim to that amount of
23 pumping.

24 The facts are in dispute, and, clearly, the law is
25 in dispute with regard to the claim of a farming unit, and I
26 don't know how that's going to turn out because it's, to my
27 mind, not adequately briefed. And because there's issue of
28 fact, the Court doesn't have to make that decision at this

1 point.

2 So I'm going to affirm the tentative decision
3 denying your motion for summary judgement or summary
4 adjudication for the reasons that I've stated, both here in
5 the decision and here on the record, but I felt it important
6 to respond to your specific allegations here in your argument
7 that you have somehow or other been deprived of your rights
8 to due process and equal protection under the law.

9 That is not established by any evidence that has
10 been presented to the Court. So I really felt a need to
11 comment on that. It has nothing to do with your correlative
12 rights which are preserved, whatever those rights may be.
13 And the fact that this settlement that is proposed, both by
14 the so-called global settlement, as well as the Wood Class
15 settlement, have, really, no bearing whatsoever on whatever
16 rights you might have.

17 Now, I have not read the proposed settlement, but I
18 can assure you that if it imposed upon your rights and you
19 were not a party to that settlement, the Court would not
20 approve it.

21 So having said that, I'm going to grant -- I'm
22 sorry -- deny the motion. I'm going to affirm the tentative
23 decision that I published.

24 MR. BLUM: Your Honor, may I just add one point? And
25 that is, it appears that this Court isn't taking into
26 consideration the declaration of Ali Sharudi.

27 THE COURT: Yeah, the Court is. I'm not taking that
28 as -- it's almost irrelevant because, first of all, Mr.

1 Sharudi is opining about a lot of things that are not within
2 his -- not properly within his opinion for him to look at and
3 consider.

4 The fact that there was pumping, the fact that it
5 was on somebody else's property is clear. Nobody is really
6 arguing that, but it doesn't matter in terms of the Court's
7 decision in terms of the summary judgement or summary
8 adjudication.

9 MR. BLUM: Okay. Thank you, Your Honor.

10 THE COURT: All right. And I do appreciate the
11 amount of work that you put in on this motion, but I can
12 assure you that the Court put an enormous amount of work in
13 reviewing and reading and considering your motion and
14 supporting authorities, as well as all of the opposition to
15 it. I'm not going to tell you how many hours I spent on it.
16 All right. So that's going to be the order. I thank you
17 very much.

18 All right. The motion -- let's deal with Mr.
19 Miliband's motion, Phelan Pinon Hills Statement of
20 Decision.

21 MR. MILIBAND: Good morning, Your Honor. Wes
22 Miliband appearing on behalf of Phelan Pinon Hills Community
23 Services District.

24 THE COURT: Yes. Good morning.

25 MR. MILIBAND: So I did see the Court's tentative or
26 proposed Statement of Decision and, frankly, Your Honor, I
27 don't want to spend a lot of time this morning, but I would
28 like to make a few points, make some comments.

1 I did do a side-by-side, page-by-page comparison of
2 the proposed statement that was submitted by Mr. Dunn on
3 behalf of District 40 and some of the other parties in
4 complete comparison to the Court's proposed statement. I
5 didn't really see a whole lot of significant change or,
6 really, any significant change, for that matter. So I really
7 do stand on the grounds that I put forth through the two
8 particular filings which were from November 17th and from
9 December 18th.

10 Beyond that, though, I would like to make some
11 observations about it. One thing that was in neither
12 proposed Statement of Decision is, really, the fact that back
13 in early 2011, during the Phase 3 trial, when I was
14 attempting to present some evidence, the Court said, "We'll
15 hear that another day," and that day was last November of
16 2014. Even following that, first with me in trial before,
17 Your Honor, was before there was an overdraft finding. And
18 then following that, through the Phase 3 decision was very
19 explicit language saying that the overdraft finding was
20 generalized and doesn't relate to any historical findings to
21 whatever type of water right a party may attempt to later on
22 prove.

23 That's exactly the position I was in when trying to
24 prove a couple of months ago an appropriative right based on
25 two different theories; one being the surplus issue, which we
26 talked quite a bit about and there's been briefing on. The
27 fact that's not addressed in the Statement of Decision, I
28 think, is very problematic under a Phase 3 Statement of

1 Decision, saying one thing almost charted on a course heading
2 north saying this doesn't relate to historical findings, only
3 now to be told that that finding of overdraft does preclude
4 what I am trying to prove now; that there was surplus at the
5 time Well 14 failed to produce.

6 I find that very problematic in terms of timing, and
7 even when looking at the San Fernando that the overdraft
8 finding had not been made yet, I was told I would have that
9 opportunity later. When I get that opportunity, I'm told
10 that that prior decision precludes that --

11 THE COURT: That's actually not quite true.

12 MR. MILIBAND: How so, Your Honor?

13 THE COURT: The issue of whether or not you have any
14 appropriative rights is going to be decided, presumably,
15 based upon your other causes of action. What you were asking
16 for in this decision was a quantitative appropriative right
17 that was a priority over others. And you established that
18 you had that right because you did not establish that there
19 was a surplus of water in the aquifer, the well-connected
20 aquifer. So that's still an issue that ultimately is going
21 to have to be decided.

22 The other thing I think you're doing is confusing an
23 appropriative right with a prescribed right. And the
24 question that is being asked here is what rights do you have
25 as an appropriative, and I do not have a sufficient basis to
26 make a finding as to that, based upon the evidence that you
27 presented at your trial.

28 What you did present was that you had been pumping

1 for a period dating back to your predecessor's pumping, which
2 was somehow around 2005, if I remember correctly.

3 MR. MILIBAND: Correct.

4 THE COURT: And you also established, through your
5 expert, that there was a connection between the Butes
6 sub-basin and the rest of the aquifer, which is beyond
7 dispute, because the Court has heard all of the evidence
8 anybody has ever offered concerning that, and your expert
9 certainly didn't disagree with that.

10 He recognizes there's a connection, and the only
11 question, really, is then what rights do you have, and I
12 don't have a sufficient factual basis to make that
13 determination right now. But, certainly, at some point,
14 whether or not you're able to pump and how much you're able
15 to pump without limitation or without costs is going to get
16 decided in this proceeding.

17 So you've not been deprived of anything at this
18 point. You just failed to prove your contention that you
19 have a right to pump water for public purposes. That's all.

20 MR. MILIBAND: I appreciate the Court's comments. I
21 personally don't think I'm confused on the distinction
22 between a prescriptive right and appropriated right. That's
23 why we made a very open-court, on-the-record decision last
24 August saying we are not pursuing that first cause of action.

25 But here, Your Honor, really, I understand what the
26 Court is saying. I, obviously, take issue and have
27 disagreement with that.

28 So beyond the surplus issue, that's really at the

1 heart of what I've been hearing since we had that 631.8
2 motion, is that you cannot have surplus -- by the finding.

3 What I would still inquire and ask respectfully of
4 the Court is how the Court can say, in its Stage 3 decision,
5 that it's not making historical findings; but now, during
6 2014-2015, saying that that finding of overdraft in 2011
7 precludes any ability to be able to prove surplus.

8 THE COURT: But I think the Court made a finding
9 that it was excessive pumping in excess of 50 years, not just
10 from 2005, what impact that might have on a particular
11 party's pumping was, what the Court was not determining in
12 the Phase 3 trial, and I was pretty specific in my Statement
13 of Decision with regard to that.

14 Because there's no question that there are variables
15 throughout the basin, and whether somebody is pumping
16 somebody else's water is an issue that I can't address for
17 everybody without hearing particular evidence concerning
18 that. And I think the parties may speculate a little bit.

19 We're entering into these settlements and doing so
20 because they recognize the difficulty and sometimes the
21 futility of attempting to establish evidence to support
22 claims like that so that there's no question in my mind that
23 the parties are wise to settle this, because the Court's
24 finding, in terms of prescription, or lack thereof, could be
25 significant and have some economic consequences to a party,
26 and I think you appreciate that too.

27 But I just think that the problem is -- whether it's
28 a problem or not, I don't know. The Court is certainly not

1 making any findings concerning prescription or anybody's
2 right to curtail pumping by these proceedings or by your
3 trial at this point. So there's some way to go on this
4 matter before we reach a point where we are making that kind
5 of decision.

6 At this point, the only thing I'm certain of is that
7 your client is pumping. They are pumping water in the
8 aquifer. It's going outside the adjudication area. I suppose
9 if I had a regret, it is that we did not extend the
10 adjudication area co-extensive with the aquifer. I didn't
11 think, at the time, nobody presented contrary evidence that
12 the Mojave jurisdiction and adjudication pre-empted that
13 issue.

14 MR. MILIBAND: And the feeling wasn't even formed at
15 that point.

16 But, Your Honor, I would like to move on to a couple
17 of other points. One is on public use theory.

18 And Your Honor and I had some dialogue on November
19 5th, last year, about the *Peabody v. City of Vallejo* case.
20 And I've looked many times at that case and many times since
21 we had our dialogue. That was one of the concerns I wanted
22 to raise here, is the Statement of Decision does not address
23 that theory that Phelan was advancing in support of
24 establishing their appropriate water right.

25 And more to the point is that that case, I believe,
26 through Page 369 and again at 377, in that range of pages, it
27 talks very specifically about how seven years earlier, 1928,
28 and this is in 1935, the California Supreme Court rendered

1 this opinion. It's talking about that landmark amendment to
2 the California Constitution Article 10, Section 2.

3 So it's basically --

4 THE COURT: You're just arguing again what you've
5 already argued. I appreciate you're not doing that. The
6 Court is satisfied that it made a proper ruling with regard
7 to those issues of law, and that's reflected in the Statement
8 of Decision. I would also point out, as I indicated in my
9 Statement of Decision, that you don't have a right to
10 interrogatories to the Court, which is basically what you
11 submitted.

12 MR. MILIBAND: And it's certainly not the intent
13 there, Your Honor. I'm trying to get at it.

14 I would like to add something new about the *Peabody*
15 case because that case, particularly at Page 369, talks very
16 specifically about how determinations are made on a
17 case-by-case basis. It's not just a matter of whether water
18 is going to be wasted. It's other variables that are
19 articulated in that opinion about unused or lost. There is
20 evidence that supports those theories.

21 So the Court, on November 5th, was talking about the
22 scenario that was specifically fashioned by hand, and that
23 particular case involved the City of Vallejo with water being
24 lost to the ocean. That's not, obviously, the very factual
25 specific circumstance here. That doesn't preclude
26 application of it. So I just wanted to raise that point --

27 THE COURT: I think that the Supreme Court or the
28 Appellate Court or the legislature is going to have to deal

1 with that issue. The existing law was to the contrary in
2 this case.

3 MR. MILIBAND: And just two other quick points, if I
4 may, Your Honor.

5 THE COURT: Yes.

6 MR. MILIBAND: One is on the return flow issue,
7 which in these recent filings that I posted on behalf of
8 Phelan -- and, again, not within the Statement of Decision --
9 is the fact that their number one is not precedent set forth
10 by San Fernando. What that case was specifically doing was
11 talking about priority, which even my application suggests
12 that there is a native ground water return flow rider pumping
13 caliber that's phrased.

14 Beyond that are very specific California statutes
15 within the Water Code Section 71610, which relates to
16 municipal water districts, which Phelan is not, but very
17 clearly, in Phelan's governing statutes, I believe it's 6110,
18 also cited in our papers, said that Phelan has, in it, whole
19 water district powers.

20 Going back to the Water Code Section on the
21 substance, it talks very specifically about the right of that
22 agency, such as Phelan, to be able to recapture water. So
23 that's not addressed in the Statement of Decision. I think
24 it's very critical when evaluating and providing the analysis
25 for denying that particular cause of action.

26 So I have some other points on the Statement of
27 Decision that I take issue with where I think it's covered in
28 the other papers I filed, but there are some things that I

1 think are inaccurate that I think are worth noting, just to
2 raise before the Court's attention.

3 One such thing is that on the Court's Statement of
4 Decision that posted yesterday, Page 6, Lines No. 11 through
5 12, talked about impact and the interconnectivity, and there
6 wasn't, really, any evidence whatsoever in which the evidence
7 during our trial, which was only really put forth through
8 Phelan's witnesses and exhibits, that Phelan was having any
9 direct impact on the Landcaster sub-unit.

10 In fact, Mr. Harder's (phonetic) testimony, which I
11 have cited pretty thoroughly within the December 18th filing,
12 talks very, very specifically about how the Butes sub-unit
13 which Phelan's Well 14 is located, it had a very distinct
14 hydrogeological signature.

15 So this impact and interconnectivity, number one, I
16 don't even think it should be part of the evaluation as to
17 whether Phelan has a water right. That might be a management
18 issue for later --

19 THE COURT: Which lines are you talking about on
20 Page 6?

21 MR. MILIBAND: Yes, Lines 11 through 12, Your Honor.
22 I want to confirm I'm correct on that citation.

23 THE COURT: Hydrological connection.

24 MR. MILIBAND: Correct, Your Honor. And then
25 starting with the next word, going to Line No. 11 and a half,
26 "Ground water pumping in a sub-basin can lower the ground
27 level in an adjacent sub-basin." That might be theoretically
28 true, but there's not any evidence that that's happening from

1 Butes to Lancaster, much less by Phelan's pumping that's 25
2 miles away.

3 THE COURT: I wasn't making a finding. That's just
4 a statement of law or statement of fact general.

5 MR. MILIBAND: So the next item, Your Honor, also on
6 Page 6, Line 20, deals with the exported where the Court
7 there, I think, by the language itself, starting at Line 19,
8 says, "The Court finds and determines that Phelan Pinon Hills
9 does not have water rights to pump ground water and export
10 it."

11 The export cause of action was the eighth cause of
12 action that I was hoping to include in this trial during our
13 discussions last August, but that was not part of the trial.
14 So I think that's particularly troubling that there's a
15 finding as to export, and that cause of action was not even
16 set for trial last November.

17 Next is at Page 7; on Page 7, Line 8.

18 THE COURT: I suppose that -- well, I'll let your
19 opponents raise the issue, but I suppose that what I was
20 really talking about is you don't have quantified water
21 rights because that was the thrust of your claim that you had
22 quantified appropriative rights. And that's the only finding
23 I was really making there.

24 MR. MILIBAND: And can the Court indulge me, if I
25 may, the difference between the Court's understanding of the
26 quantified appropriative right versus the unquantified
27 appropriative right? I didn't really glean that from the
28 Statement of Decision as there being a distinction within the

1 Court's analysis of quantified versus unquantified.

2 THE COURT: Go ahead.

3 MR. MILIBAND: I was asking if the Court has an
4 understanding as to that distinction because I did not -- I'm
5 not aware of any such distinction --

6 THE COURT: It's called the amount of pumping that
7 you're entitled to.

8 MR. MILIBAND: Right, but this isn't making a
9 distinction between unquantified and quantified.

10 THE COURT: Well, actually, it does. Maybe not in
11 that sentence, but if you read the decision, the decision
12 here only determines at this time, Phelan Pinon Hills is not
13 appropriated without a priority as to overlying owners and
14 appropriators with prescribed rights, if any. It's the last
15 sentence in the decision.

16 MR. MILIBAND: I see it on Page 12, Your Honor.

17 THE COURT: Does that help you understand what I --

18 MR. MILIBAND: It helps me understand the Court's
19 thinking, because I have read this thoroughly.

20 One other last item. On Page 8, Line 8, this is a
21 very significant fact where within Footnote 1, the Court is
22 noting that in its Phase 3 decision, the overdraft finding
23 was from, essentially, 1951 to 2005. And what the evidence,
24 as it relates to Phelan's file, shows is that it had a very
25 small amount of pumping that started in 2005. I think
26 September or October, if I'm correct, 1.11 acre feet. 2006
27 was really the year, and for the stipulation of facts when
28 there was the production of water that was being applied for

1 municipal uses and for the public use.

2 So, really, the Phase 3 decision itself, even by way
3 of a Statement of Decision, establishes that there isn't any
4 overdraft as of 2006. And, again, Mr. Harder's testimony --

5 THE COURT: Say that again.

6 MR. MILIBAND: This language notes that the
7 overdraft finding from Phase 3 was from 1951 through 2005.
8 Phelan's trial evidence, and per the stipulation of facts,
9 focused on 2006 for surplus. We were not trying to establish
10 that there's currently surplus or that there was surplus in
11 1951 or any other time, but that there was, at the time, Well
12 14 really started to produce water for those municipal
13 purposes --

14 THE COURT: Notice the last sentence starting
15 between -- Line 7 and a half, actually, "The adjudication
16 area had no surplus water for Phelan Pinon Hills to pump
17 since at least 2005."

18 MR. MILIBAND: Your Honor, that's what that says at
19 that citation.

20 THE COURT: That's what the Court said.

21 MR. MILIBAND: Right, but a few pages prior, the
22 Court has given in Footnote 1 --

23 THE COURT: Well, Mr. Miliband, I'm not going to
24 argue with you. The Court's decision is going to stand.

25 MR. MILIBAND: Your Honor, if I may, Page 4,
26 Footnote 1 says, "The evidence of third phase of trial
27 established that the Antelope Valley basin was in a state of
28 overdraft from 1951 to 2005." That was not in Mr. Dunn's

1 proposed statement. That is something new that I can only
2 assume is from Your Honor, and I think that's an accurate
3 statement. That's, again, supporting the point that the
4 overdraft finding from before can preclude the surplus.

5 THE COURT: I'm going to allow Mr. Bunn to argue.

6 MR. BUNN: Your Honor, I guess I'll call them the
7 aquifer, because they're not -- the aquifer's parties do have
8 a couple of concerns about the language in the proposed
9 Statement of Decision. And since we just got that yesterday,
10 what I would like to request is an opportunity to submit
11 those concerns to you in writing, explaining those and
12 proposing a change.

13 THE COURT: Well, were they contained in your
14 initial proposed statements?

15 MR. BUNN: No. This is the revised language that we
16 just got yesterday.

17 THE COURT: Well, I want to permit counsel to have
18 an opportunity to argue whatever they want to argue. If you
19 have some additional language that you want to submit, is
20 there some reason you can't do it now?

21 MR. BUNN: The main reason is that I feel
22 uncomfortable speaking on behalf of a number of parties who I
23 know share this concern. I can speak for myself.

24 THE COURT: Tell me what your concerns are.

25 MR. BUNN: I have two. One is a small one, and I'm
26 not sure I can find it now. Let me go to the -- it is the
27 concern with the last paragraph of the ruling --

28 THE COURT: Okay.

1 MR. BUNN: And in particular, the determination of
2 reasonable and beneficial use. In the second to last
3 paragraph, the Court recites an argument, contention by
4 Phelan Pinon Hills that the Court -- according to Phelan
5 Pinon Hills, the Court has to ensure the reasonable and
6 beneficial use before the duty comes up for Phelan Pinon
7 Hills to prove surplus.

8 And I think that the way that that is addressed
9 could be clearer. And, in particular, my belief is the
10 intention of all parties, that as part of the prove-up of the
11 settlement, whatever that turns out to be, that part of that
12 prove-up will be that the parties to the lawsuit's water use
13 is reasonable and beneficial. One could read that last
14 sentence of the Court's draft as saying that the reasonable
15 and beneficial use won't come until after the judgement. I
16 don't think that's what the Court intended by it. I would
17 like to clarify that language, if we could.

18 THE COURT: Let's look at the specific language
19 you're talking about. Are you on Page 11?

20 MR. BUNN: Yes, 11 and 12.

21 THE COURT: The last paragraph?

22 MR. BUNN: Yes. And what we propose is that that
23 paragraph state, as part of the final judgement, will be a
24 determination of the parties' reasonable and official use.

25 THE COURT: Now, are you referring to the last
26 sentence on 11, "Pinon Hills has five other causes of action
27 in the cross-Complaint and, as a pumper, may be required to
28 participate in a monitoring program which will establish the

1 reasonable and beneficial use of each pumper within the
2 aquifer, as well as the rights to pump water, whether as
3 appropriated, overlying owner or prescriber.

4 MR. BUNN: Yes.

5 THE COURT: So what is it about that? What is not
6 accurate?

7 MR. BUNN: It talks about a monitoring program and
8 establishing, in the future tense, establishing the
9 reasonable and beneficial use of each pumper. I would like
10 it to be clear that there will be a determination made by the
11 Court prior to final judgement of the reasonable and
12 beneficial use of each other.

13 THE COURT: Well, what I'm saying is as a pumper may
14 be required to participate in the monitoring program, and
15 maybe I should say a monitoring pump --

16 MR. BUNN: My concern is not Phelan Hills, Your
17 Honor. In the proceeding paragraph, Phelan Pinion Hills
18 raised the issue of other parties' reasonable and beneficial
19 use and argued that it should have an opportunity to contest
20 that reasonable and beneficial use before being required to
21 prove surplus. And my point is that that will be at issue in
22 the final judgement and proved up as part of that judgement.

23 THE COURT: Well, that's true.

24 MR. BUNN: Okay.

25 THE COURT: Certainly, the Court is not making any
26 findings at this point. The Court can't make a finding about
27 prescriptive rights or other rights until that has been
28 established; that there's been reasonable and beneficial use.

1 And that it is not excessive use.

2 I don't think there's any request about that, and
3 I'm trying to understand why it is -- this last sentence
4 may be somewhat awkward, or last paragraph may be somewhat
5 awkward, but, certainly, it's not suggesting that there's not
6 going to be an establishing of reasonable and beneficial use
7 for purposes of a judgement.

8 And it's my understanding as to those parties that
9 aren't going to settle among themselves, they're going to try
10 to resolve that issue as part of the settlement. So that is
11 only going to be applicable to parties who are not settling
12 their case and are seeking to litigate their claims against
13 others.

14 For example, the public water producers who are
15 making a claim for prescription may find they are being
16 challenged by a non-settling party.

17 MR. BUNN: What you just said is absolutely right,
18 Your Honor, and I'm merely suggesting that that be reflected
19 in the Statement of Decision, and I can propose language to
20 the Court to do that.

21 THE COURT: Why don't you submit it in writing.

22 MR. BUNN: Okay. Thank you, Your Honor.

23 THE COURT: That's better than trying to wordsmith
24 something here.

25 MR. BUNN: Well, that's what I thought. I wasn't
26 trying to postpone --

27 THE COURT: Is that the only other issue?

28 MR. BUNN: Yes.

1 THE COURT: I am concerned of any other parties, and
2 I suppose that given the complexity of this case and the
3 short period of opportunity to review and comment, that I
4 should give you ten days to submit modified language.

5 MR. BUNN: Thank you, Your Honor. I appreciate
6 that.

7 MR. MILIBAND: And, Your Honor, would there be a
8 brief opportunity, if I see some need, to respond to Mr.
9 Bunn's proposal?

10 THE COURT: Yes. Five days.

11 MR. MILIBAND: That's great. Thank you, Your Honor.

12 THE COURT: Sure. All right. But at this point,
13 I'm overruling your objection.

14 MR. MILIBAND: Understood, Your Honor.

15 THE COURT: Yes. So we have five minutes to finish
16 everything.

17 Let's talk about the request for approval of
18 Court-appointed expert bills in the Wood Class.

19 MR. MCLACHLAN: Good morning, Your Honor. Michael
20 McLachlan for Richard Wood in the small pumper class.

21 THE COURT: Is there any objection to the request
22 for approval? Approval is granted.

23 The request to dismiss Hidden Valley Mutual Water
24 Company, Roe 2315, without prejudice, any objection? That's
25 granted.

26 And the next most serious one is the application by
27 the Wood Class for an order modifying the case management
28 order. I received an opposition from the Willis Class to

1 that request.

2 Now, I note, Mr. Kalfayan, that you have filed an
3 extensive written opposition, so I would appreciate you being
4 brief.

5 MR. KALFAYAN: Yes, Your Honor. Thank you very
6 much.

7 THE COURT: Appearances.

8 MR. KALFAYAN: Ralph Kalfayan on behalf of the
9 Willis Class. And, you know, sitting back --

10 THE COURT: Let's have your co-counsel --

11 MR. KALFAYAN: Sorry.

12 MS. BRENNAN: Lynne Brennan also for the Plaintiff,
13 Willis Class. Thank you, Your Honor. Good morning.

14 MR. KALFAYAN: Sitting back, I was reflecting that
15 it's my birthday today, and it's been nine years now since
16 I've been involved in this --

17 THE COURT: Happy birthday.

18 MR. KALFAYAN: Thank you, Your Honor.

19 About the opposition, we are terribly concerned
20 about the CMO that was presented by the other side. We
21 presented an alternative Case Management Conference Order
22 that, I think, better lays out how we can present our
23 opposition.

24 The concern I have with their CMO is that it
25 provides for a motion for preliminary approval that will come
26 from the Wood Class, and the motion for preliminary approval,
27 along with the stipulation of settlement, combines a physical
28 solution with the Wood Class itself. And in that physical

1 solution, there's a physical solution in addition to the Wood
2 Class settlement. The Wood Class settlement allocates water
3 on a permanent basis in perpetuity. So, for example, let's
4 assume Bolthouse in that settlement asks for and requests --
5 it's allocated 20,000 units.

6 THE COURT: You're going to have to speak up a
7 little bit.

8 MR. KALFAYAN: Sure. If Bolthouse was to, in that
9 settlement, have an allocation of out of 82,300 units, 20,000
10 units on a permanent basis, it reduces the Willis Class, it
11 reduces and diminishes the co-relative rights of the 65,000
12 land owners --

13 THE COURT: It cannot do that. Cannot do that, Mr.
14 Kalfayan.

15 MR. KALFAYAN: Respectfully, Your Honor, I agree
16 with the Court; they cannot do that --

17 THE COURT: Parties to a settlement only --

18 MR. KALFAYAN: It --

19 THE COURT: -- for water amongst themselves. That is
20 not binding on anybody that is not a party to this
21 settlement. So I don't understand what the basis for your
22 objection is.

23 MR. KALFAYAN: Two-fold. When the Wood Class moves
24 for approval of the settlement, it will do two things: It
25 will have a settlement that permanently allocates its water
26 rights and, by definition, will extinguish the rights of the
27 Willis Class.

28 THE COURT: Cannot.

1 MR. KALFAYAN: I appreciate that, Your Honor, and I
2 wish the Court had a copy of that stipulated proposed
3 physical solution --

4 THE COURT: Do you remember the arguments against
5 the approval of the Willis Class?

6 MR. KALFAYAN: I do, Your Honor.

7 THE COURT: Do you remember what those arguments
8 were?

9 MR. KALFAYAN: Yes.

10 THE COURT: Do you remember what the Court did with
11 those arguments?

12 MR. KALFAYAN: Yes, I do, Your Honor. Your Honor,
13 frankly, I believe they're disregarding this, and I can't
14 talk about the settlement with you because it's confidential
15 and it's not before the Court.

16 THE COURT: I haven't seen it. I don't much care at
17 this point with regard to your argument what's in it because
18 you're not a party to it, and you're not bound by it.
19 It's -- as between those parties, they can agree not to
20 oppose claims. They can agree to oppose claims. They can, as
21 between themselves, allocate water, but the total amount of
22 water that was in the aquifer is going to be allocated by
23 Court order, by judgement, and it's not going to be bound by
24 any agreement between parties among themselves.

25 MR. KALFAYAN: And I agree with the Court. And I
26 want the Court to recall that the Willis Class judgement that
27 was entered into and the Court entered that was appealed and
28 resolved did provide for the rights as between the Willis

1 Class and the public water suppliers and resolved all of the
2 claims between those two parties with the -- and then also
3 provided one other item which is this: The Willis Class is
4 subject to a physical solution that's consistent with the
5 Court's judgement in the Willis Class.

6 So that provision is there. And when the Wood Class
7 moves for preliminary approval -- which, by the way, I don't
8 see a date as to when they're going to move for preliminary
9 approval --

10 THE COURT: It's in the proposed case management
11 stated.

12 MR. KALFAYAN: I believe -- it's not expressly in
13 the proposed case management stated, but I believe it says
14 that there's a hearing on a particular day for the motion,
15 but I don't see exactly when the motion is going to get
16 filed.

17 The problem that I have, Your Honor, is that that
18 motion for preliminary approval will include a physical
19 solution, and it puts an obligation on the Willis Class to
20 oppose that physical solution. And the only way I can oppose
21 that physical solution is two-fold.

22 I need to provide the Court with alternative
23 physical solutions that are consistent with the Willis Class
24 judgement. That's one point. The other point that I need to
25 provide the Court in opposition is because they've
26 permanently advocated the aquifer, and without showing
27 reasonable beneficial uses, I will need an expert to
28 challenge the reasonable beneficial uses of all of the

1 property land owners.

2 Now Mr. Bunn earlier said that that will come in a
3 prove-up. The problem with the CMO, which is the Case
4 Management Order, before the Court is it leaves open a
5 prove-up of the stipulation, the stipulated physical
6 solution, and I don't know if the Willis Class needs to
7 oppose that, but it may have to oppose that. And if it does
8 have to oppose that, then we'll need to consider and review
9 the reasonable beneficial use of the land owners.

10 The Willis Class will need experts to oppose the
11 Wood Class motion for settlement, preliminary approval, and
12 the reasonable beneficial uses of all of the parties in the
13 basin. I don't want to undertake that task, but if I have
14 to, I will need to, and I will be asking the Court for
15 experts.

16 The reasonable beneficial uses, if they were to come
17 in a prove-up to this Court regarding the reasonable
18 beneficial uses, there won't be any opposition because they
19 have agreed among themselves, and Mr. Bunn said it's up to
20 the Court to make that determination, that's correct. But
21 there's no opposition in a prove-up. If they all agree, the
22 only opposition will fall on the non-settling parties, and
23 right now, we have a settlement with the public water
24 suppliers. We don't have a settlement with the broader
25 parties.

26 So I believe I will need to move this Court for
27 experts to determine the reasonable beneficial uses. What's
28 reasonable and what's beneficial are two distinct matters.

1 And I can't effectively oppose their stipulated proposed
2 solution without an expert that tells me what's reasonable in
3 this basin, what's beneficial, what's Bolthouse's use is
4 agricultural, beneficial use in this basin, is any other --
5 is putting a pecan farm a beneficial use?

6 I can't effectively oppose the motion for
7 preliminary approval by the Wood Class without having those
8 experts for reasonable and beneficial uses and without an
9 expert that can provide this Court with a consistent physical
10 solution that is consistent with the Willis Class judgement.

11 If there's pain to be had in this basin because of
12 an overdraft, this pain has to be shared by all the
13 overlookers. And the Willis Class, while they're not pumping
14 today, they may pump in the future, just like the Archdiocese
15 might or Baker Estrada (phonetic), and their rights have to
16 be protected if and when they pump.

17 So if their physical solution abrogates the entire
18 Willis Class over -- which Your Honor has not seen and not
19 looked at it, it puts the Willis Class in a position to
20 oppose their physical solution as soon as it's presented,
21 because Mr. McLachlan is going to file a motion for
22 preliminary approval, and it will give us the burden of
23 opposing it, and to effectively oppose it, I will need
24 experts.

25 And, Your Honor, the attorney fee is not an issue
26 that needs to be discussed now, but if the Court recalls the
27 Willis Class counsel has no ability to recover attorney's
28 fees pursuant to the consolidation order from any of the

1 overlying landowners, including the Wood Class. And they're
2 limited in their ability to get attorney's fees from the
3 public water suppliers. The undertaking is massive.

4 For the last two months, I've been trying to get my
5 arms around how. I've sent letters. I've communicated. We
6 should resolve this adjudication. It's a monument -- it's
7 just a monumental burden for the Willis Class to undertake a
8 challenge of reasonable beneficial uses of every landowner in
9 this basin and do it without the ability to recover
10 attorney's fees. It's just irreconcilable.

11 And if we have to brief this issue now as soon as
12 they file that settlement, it triggers an obligation on our
13 part to oppose that settlement. That's why, Your Honor, we
14 have an ex parte. And the ex parte that we filed proposes a
15 schedule for the Court to get the stipulated solution before
16 it encumbers us on a program that's going to be extensive and
17 time consuming, at least for a period of time and they call
18 us back in here for a Case Management Conference to figure
19 out what we're going to do next. At least that we can then,
20 all of us, talk about this so-called global physical solution
21 and determine where to go from there.

22 THE COURT: Let me make sure you understand. When I
23 use the word "global," I'm referring to the parties globally
24 who are parties to the settlement, not to anybody else.

25 MR. KALFAYAN: I understand that. Thank you, Your
26 Honor. I appreciate that comment. It's not global. It's
27 really not global because --

28 THE COURT: Global means as among themselves --

1 MR. KALFAYAN: Correct --

2 THE COURT: -- they're settling all of their
3 issues --

4 MR. KALFAYAN: Correct.

5 THE COURT: -- including prescription and other
6 issues. The Court has the responsibility and the obligation
7 to determine what an appropriate physical solution is, and
8 the Court is going to do that.

9 And at this point, if it's necessary, the Court will
10 appoint an official Court expert that will be paid for by all
11 parties to assist the Court in determining what the proper
12 physical solution might be, if necessary. Your motion right
13 now and your request to modify is premature.

14 I'm not seeing a proposed settlement. I can assure
15 every party that's a party to this adjudication that to the
16 extent they need an opportunity to oppose any proposed
17 physical solution, they will have plenty of time to do that,
18 an opportunity. That is not a promise that I'm going to
19 appoint attorneys for parties. I'm not likely to do that.
20 That is not something that is authorized by the Evidence
21 Code.

22 The Court can appoint a neutral expert, if
23 necessary, to assist the Court in determining the issues, but
24 that is not the same as the right or the opportunity that an
25 individual, for example, in a criminal case might have to
26 request the assistance of the Court by the appointment of
27 experts or counsel or anything else.

28 I'm not inclined to modify this order except as

1 requested to give the parties who are proposing these
2 settlements among themselves additional time to accomplish
3 their duties with their clients. That's the only thing
4 that's being proposed to me, and I'm inclined to grant that
5 use.

6 MR. KALFAYAN: Your Honor, the CMO also, it
7 triggers -- because if I understand it correctly, the Wood
8 class will be filing a motion for preliminary approval on the
9 date that the stip is being filed, and it will trigger an
10 opposition on our part. And then not only that, it also says
11 that they'll present this physical solution without an
12 opportunity to be heard. The CMO says that they can present
13 to you the stipulated proposed physical solution without an
14 opportunity for the Willis Class to argue. That is
15 inherently unfair, Your Honor.

16 THE COURT: It's not part of the proposal as I
17 understand it, but let me hear from Mr. McLachlan.

18 MR. MCLACHLAN: Well, briefly, I would like to make
19 clear that the stipulation of Mr. Kalfayan received on
20 December the 23rd confidentially has not changed other than
21 the correction of a few typos. So he has the deal, as it is
22 being presented right now and being signed by some-odd 20
23 parties so far. I don't --

24 THE COURT: You're talking about the Wood Class?

25 MR. MCLACHLAN: I'm talking about the global -- what
26 we're calling the global settlement, which will -- Mr.
27 Kalfayan's correct in terms of the mechanics. But as the
28 Case Management Order sets forth, first amended Case

1 Management Order sets forth on August 3rd, the month of
2 August, we set forth two weeks in which objections by Mr.
3 Kalfayan would be submitted and heard by the Court.

4 I was counting, and I believe the number was 11
5 times Mr. Kalfayan used the word "preliminary" and the
6 preliminary approval, as the name might suggest, is just
7 that. It's preliminary. And so it is not binding the Willis
8 Class. It doesn't prejudice them. All it does is it gives
9 class numbers of what's going on and give them, along with
10 the Willis Class, the opportunity to object if they don't
11 like the settlement that I've entered into.

12 And then all of those objections happen at the same
13 time.

14 Hearing the Willis Class' objections at both times,
15 both the preliminary approval phase and the final preliminary
16 hearing, would waste a great amount of Court resources if, in
17 fact, Mr. Kalfayan is going to do what he suggested, to
18 challenge a hundred different parties' reasonable beneficial
19 use of their water rights. That should all be done at one
20 time and done only one time. We don't need it in the record
21 twice.

22 And so the proper sensible place to put all of these
23 objections is in one joint proceeding when everyone has been
24 given notice.

25 MR. KALFAYAN: Your Honor, if I may respond to this.
26 Mr. McLachlan is moving us away from the Court considering
27 approvals and pushing it back, but he will be moving for
28 approval before he sent out the notice and moving it at the

1 same time that the stipulation is being fought. Because the
2 stipulation includes the Wood Class, it is the Wood Class
3 settlement.

4 You're going to see one document. That one document
5 is the Wood Class settlement, and it is the physical
6 solution. It's one document. It's one agreement. When he
7 files that and moves for a preliminary approval, we have the
8 burden to oppose it.

9 And if you look on Paragraph G, it says no objection
10 to the stipulated judgement will be heard. It's -- he files
11 a motion, he includes his settlement in that motion, which is
12 a global settlement, we get 14 days to oppose, and we can't
13 even be heard on the motion. That is not fair. It's just
14 not fair.

15 THE COURT: Well, I don't know that there's no
16 authority for not permitting objections on March the 19th.
17 You can always file an objection any time you want to, any
18 parties can, and where there's a proposed stipulated
19 judgement as between the parties, that's one thing.

20 The physical solution potentially goes beyond just
21 the interest of the parties to the stipulation, and to the
22 extent that any physical solution appears to be a proposal
23 for the Court to consider and adopt independently and to make
24 a finding on all parties, would demand that any party have an
25 opportunity to object and weigh in on that.

26 So just because a group of people, parties to a
27 lawsuit, think that a particular physical solution is the
28 appropriate one does not necessarily mean that the Court is

1 going to be bound to adopt that. There's got to be an
2 independent evaluation or something like that, and parties
3 have to have an opportunity to weigh in. Due process would
4 require that. The Court does have an interest in protecting
5 the class members in both classes.

6 And I can't tell you how appreciative I am that we
7 have two classes and lawyers who would be willing to step
8 forward and represent those classes, I think, very
9 effectively.

10 And so it helps everybody else who is involved in
11 this lawsuit or who lives in the Antelope Valley. That's a
12 good thing.

13 So I'm going to ask Mr. McLachlan, given those
14 comments, do you really think that Paragraph G is
15 appropriate?

16 MR. MCLACHLAN: I do, because --

17 THE COURT: It's 2-G, actually.

18 MR. MCLACHLAN: Yes, 2-G. I do, but I'm not -- I do
19 in terms of the reason I stated judicial economy, because the
20 Willis Class is not being prevented from making its
21 objection.

22 When I present my motion, which is attached to my
23 settlement that Mr. Kalfayan has incorrectly stated what it's
24 going to look like, there's a settlement agreement in my case
25 and then there is the global settlement, which is just,
26 essentially, a writing to that. I'm not asking the Court to
27 approve that in some sort of global sense.

28 What I'm asking the Court to do is what any class

1 lawyer does is to look it over and to determine whether the
2 rights, as dealt with for the class members, a small pumper
3 class members only, is fair and protect the interest of the
4 class to the extent that notice can be given and then the
5 final approval can occur.

6 But if the Court is willing to indulge Mr.
7 Kalfayan's objections on two different occasions, I'm willing
8 to sit through them twice. It doesn't make a lot of sense to
9 me, but Mr. Kalfayan really seems quite tied to this. I
10 won't speak for other parties, but this is not an agreement
11 that I drafted. I drafted portions of it, but largely, it was
12 a collective, and it was circulated to all of the settling
13 parties prior to submission. But I'm happy to modify that if
14 the Court wishes to allow Mr. Kalfayan to object at the
15 preliminary phase of the prove-up.

16 THE COURT: Here's my take on this: The usual way
17 of a class action when the matter is on for preliminary
18 approval, the parties file objections. They can make oral
19 arguments. But the Court is not going to hear evidence at
20 that time in opposition to the preliminary approval. But
21 what the Court will hear is objections and evidence at the
22 time of the final approval to determine whether or not that's
23 appropriate for the Court to approve.

24 Mostly, vis-a-vis the parties to the stipulation and
25 not parties -- who are not parties to the stipulation. And
26 what the Court would be interested in is a showing of why
27 this type of a physical solution, if that becomes the issue,
28 is not appropriate. But that's going to be happening on

1 August the 3rd, but not on the first date, which would be
2 March 19th.

3 MR. MCLACHLAN: So I'm willing, at the Court's
4 direction, to modify that Paragraph 2-G in whatever fashion
5 the Court feels that it makes sense. If I get clear guidance
6 on that, I can submit that to the Court.

7 THE COURT: Well, I think in the normal class action
8 settlement, this objection to the proposed settlement may be
9 filed at any time prior to the time of the preliminary
10 hearing or hearing for preliminary approval. In fact, I
11 could write that in condition I.

12 MR. MCLACHLAN: Or you could simply strike paragraph
13 G, if that's the Court's preference --

14 THE COURT: It's implicit in our procedure to permit
15 objections to be filed at the time of the hearing on the
16 preliminary approval, so I can do that.

17 MR. KALFAYAN: So we'll be heard on the objections?

18 THE COURT: I'll hear any objections that are filed.

19 MR. KALFAYAN: And I don't know what evidence will
20 be presented with the motion.

21 THE COURT: I don't have any idea what that might
22 be.

23 MR. KALFAYAN: I don't either, Your Honor. They did
24 not ask for my input when they put this CMO together. And my
25 concern is we're going to be back there. I will need more
26 time to oppose that motion --

27 THE COURT: I heard that. I'm sorry to ruin your
28 birthday. The proposed Case Management Order amendment, I'm

1 striking paragraph subsection 2-G, the law as it is in the
2 reply.

3 MR. KALFAYAN: Your Honor, we provide an alternative
4 proposed physical solution to the Court at the time next
5 requested.

6 THE COURT: You're certainly welcome to object.
7 Today is the 22nd.

8 MR. KALFAYAN: Your Honor, all right.

9 THE COURT: Ms. Walker, as usual, is keeping me
10 honest here. The matter was submitted on November 5. We
11 have 90 days to get the final Statement of Decision filed,
12 even though it's going to be the phase --

13 MR. BUNN: That --

14 THE COURT: -- that would be February the 3rd. I've
15 given Mr. Bunn ten days to get his proposed language -- I
16 think I'm going to shorten that --

17 MR. BUNN: That would be fine, Your Honor.

18 THE COURT: Make it five days --

19 MR. BUNN: Fine.

20 THE COURT: And then five days for Mr. Miliband.

21 MR. MILIBAND: Thank you, Your Honor.

22 THE COURT: And that will be February the 1st, which
23 is a Sunday, so I think we need to have your response, Mr.
24 Miliband, by February -- I'm sorry, January -- it's the last
25 day, 30th or 31st. The 30th would be Friday; correct?

26 The 30th would be Friday, next Friday, for your
27 opposition. That makes it short for you. And then I can
28 sign whatever I'm going to sign on the 2nd of February.

1 MR. MILIBAND: Understood.

2 THE COURT: And that's within one day. I don't like
3 to do it that close, but that's what we're going to have to
4 do.

5 MR. BUNN: We can do it, Your Honor. Thomas Bunn.

6 MR. KALFAYAN: Your Honor, I just have one more
7 serious concern that I just need to share with the Court,
8 just so it's aware of the CMO, which is this: I will not be
9 able to, for the final approval hearing and the August 3rd or
10 August 3rd deadline, be able to oppose the prove-up by the
11 stipulated party, a prove-up regarding a physical solution or
12 a proof of claim to produce ground water by 65,0000
13 landowners --

14 THE COURT: If you choose to do that. Let's see
15 what's going to be approved preliminarily before you know the
16 answer to that question.

17 MR. KALFAYAN: Thank you, Your Honor.

18 THE COURT: And I don't know what we're going to do.
19 Okay.

20 Now, we're actually violating the law that pays for
21 these people who are here working hard for you. We do have
22 just a couple of other matters. I would like to move through
23 them more quickly.

24 The motion to add the Archdiocese of Los Angeles as
25 a class representative of the Willis Class, I'm really not
26 prepared to grant that motion at this time because I'm not
27 sure what the impact of adding this corporate defendant to
28 Plaintiff, I should say, as a class representative.

1 So at this point, I'm going to continue to deny it.
2 I'm going to permit you to renew it, or we can continue it to
3 the next time we have a hearing to permit the Court to
4 further consider the application. And the next hearing date
5 we have is -- is it March 19th? I'm going to put it over to
6 that date, and we'll evaluate and I'll make a decision at
7 that time.

8 MR. KALFAYAN: That's fine, Your Honor. The
9 Archdiocese is important for the class because it's an
10 institution, it's a safe entity, and you don't have to fall
11 in the same predicament that we fell into with Mrs. Willis.
12 So from that --

13 THE COURT: I'm --

14 MR. KALFAYAN: -- it's very difficult to have class
15 members step up.

16 THE COURT: I'm assuming that the Archdiocese also
17 has funds to hire experts.

18 MR. KALFAYAN: Your Honor, but the Willis Class
19 specifically provides that the class members are not
20 responsible for fees and costs. Now, the Court can impose
21 that on 65,000 land owners --

22 THE COURT: I can impose them on the class
23 representative who advanced them.

24 MR. KALFAYAN: I don't think so, Your Honor, but,
25 again, we can talk about that.

26 THE COURT: That will be the order, then.

27 March 19th. It's ten o'clock at the request of the
28 federal representatives' counsel, who have indicated it's

1 much harder to get in from out of state for a ten o'clock
2 hearing -- or nine o'clock hearing. That will be in Los
3 Angeles.

4 MS. BRENNAN: Your Honor, can I address the Court
5 briefly for clarification on this motion with regard to the
6 Archdiocese? You mentioned that the Archdiocese is a
7 corporate defendant; correct?

8 THE COURT: Yes.

9 MS. BRENNAN: Does the Court have a concern that,
10 under the law, that a class representative cannot be a
11 corporate defendant?

12 THE COURT: No.

13 MS. BRENNAN: Or -- if you can provide the Court's
14 reasoning, that would be very helpful for us, because as far
15 as the case law we've cited to the Court and based on the
16 facts of this case, we do not see any objection that is
17 sustainable for keeping the Archdiocese out as a class
18 representative.

19 THE COURT: I never said that.

20 MS. BRENNAN: Okay. And --

21 THE COURT: I just asked a question.

22 MS. BRENNAN: So then you're not granting the motion
23 now because you are just continuing it?

24 THE COURT: I'm continuing it. I want to hear and I
25 want to consider it further under the circumstance to make
26 sure that it's an adequate representative and it's just
27 not counsel who is doing it.

28 MS. BRENNAN: Okay. So you are addressing the --

1 THE COURT: Counsel, there are a number of factors
2 that I'm taking under consideration. I will enumerate them
3 when I make the decision. You've well briefed it.

4 MS. BRENNAN: All right. Thank you, Your Honor.

5 THE COURT: Thank you.

6 Now, there was a motion by the Willis Class to
7 dismiss the Leslie property answer. Is there any objection
8 to that? So ordered.

9 MR. KALFAYAN: Maybe we should merge that, Your
10 Honor, to the Archdiocese, because it deals with the
11 Archdiocese together --

12 THE COURT: No. I'm dismissing it. Your request is
13 granted.

14 Now, there's also the question of the informal
15 discovery conference. Is that still necessary?

16 MR. KALFAYAN: A couple of things. First, the CMO
17 described some deadlines for discovery, but I have no issue
18 with the deposition --

19 THE COURT: The Court can waive that.

20 MR. KALFAYAN: I have no issue with the deposition,
21 provided a subpoena is served on my office.

22 THE COURT: You don't want to volunteer and provide
23 them for a deposition?

24 MR. KALFAYAN: I just don't want to do it under a
25 notice, because there's no --

26 THE COURT: Mr. Kalfayan, you know Mr. McLachlan,
27 don't you?

28 MR. KALFAYAN: I do.

1 THE COURT: You know where his office is and his
2 phone number. Why don't you call him and talk to him about
3 when he would like to take Mr. Estrada's deposition.

4 MR. KALFAYAN: Frankly, Your Honor, since this, I've
5 been trying to get into the club, if you will --

6 THE COURT: You're both here today, so figure it
7 out.

8 MR. KALFAYAN: And I've been trying to find out what
9 he's trying to discover from 65,000 items described, but I
10 will do that. I'll continue talking to him.

11 THE COURT: Thank you.

12 Is there anything else that needs to be dealt with
13 here this morning? Okay. We are in recess.

14 Thank you very much.

15 Let me just -- let me make an observation here.
16 I'll do it on the record.

17 The Santa Clara County Superior Court has a very
18 wonderful website that has been administered now for about 14
19 years in permanency filing.

20 This case is venued in the County of Los Angeles by
21 virtue of the early coordination order. What Santa Clara
22 County is doing is providing you with an opportunity to use
23 this -- what I consider to be a wonderful service that has
24 been improved on several times.

25 And I think we should be very grateful that they're
26 permitting us to continue to use the e-filing website without
27 any complaint or anything. The minute we ask for something,
28 they provide it. And I think that all of the parties to this

1 lawsuit should reflect upon what would happen if we didn't
2 have access to this website for the administration of this
3 lawsuit, and we should thank them, be grateful for their
4 permitting us to use it, and hope that it continues on. So
5 even in these times of short money in courts.

6 And the other thing I would note is whenever you're
7 up here, there's a court reporter. Isn't that amazing? We
8 don't get that everywhere, do we?

9 MR. KALFAYAN: I should add, that website and the
10 ability to file by that website is way superior than what
11 I've seen in other jurisdictions. So it's commendable.

12 THE COURT: It is. It is.

13 All right. Thank you very much.

14 (Whereupon, the Court recessed.)

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1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)

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I, DEANNE M. HELGESEN, HEREBY CERTIFY THAT:

The foregoing is a full, true, and correct transcript of the testimony given and proceedings had in the above-entitled action taken on the above-entitled date; that it is a full, true, and correct transcript of the evidence offered and received, acts and statements of the Court, also all objections of counsel, and all matters to which the same relate; that I reported the same in stenotype to the best of my ability, being the duly appointed and acting stenographic reporter of said Court, and thereafter had the same transcribed into typewriting as herein appears.

I further certify that I have complied with CCP 237(a)(2) in that all personal juror identifying information has been redacted, if applicable.

Dated: FEBRUARY 4, 2015

Deanne M. Helgesen, C.S.R.
Certificate No. 8445

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