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COURT APPEARANCES:

Wesley A. Miliband, Attorney at Law
Jeffrey V. Dunn, Attorney at Law

TELEPHONIC APPEARANCES:

Sheldon R. Blum, Attorney at Law
Heather A. Ijames, Attorney at Law
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Robert G. Kuhs, Attorney at Law
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Reported by:

**LISA L. BROWN, CSR
License Number CSR 13148**

1 **San Jose, California**

September 26, 2014

2 **PROCEEDINGS**

3
4 (At 10:03 a.m., court convened in the matter,
5 and the following proceedings were had:)

6
7 THE COURT: Good morning.

8 MR. MILIBAND: Good morning, Your Honor.

9 MR. DUNN: Good morning, Your Honor.

10 THE COURT: I assume we have a number of people
11 on CourtCall, and they've checked in.

12 THE CLERK: Would you like me to do a roll call
13 now?

14 THE COURT: It already has been done, hasn't it?

15 MS. WALKER: Yes, it's on CourtCall.

16 THE COURT: Yes.

17 All right. This is in the Antelope Valley Groundwater
18 coordinated cases.

19 Counsel in the courtroom state their appearances for
20 the record.

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

24 MR. DUNN: Good morning, Your Honor.
25 Jeffrey Dunn appearing on behalf of Los Angeles County
26 Waterworks District No. 40.

27 THE COURT: All right. I have read the motion.
28 I read the opposition. I got a late reply -- actually a

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1 late opposition from Mr. Dunn understandably given the
2 circumstances. I'm not criticizing the timing.

3 Is there anything further, Mr. Miliband, that you
4 wanted to tell the Court?

5 MR. MILIBAND: Not at this time, Your Honor.
6 Mr. Dunn and I have had the opportunity to discuss some
7 things this morning. We happened to be on the same flight
8 this morning and shared a cab ride over.

9 THE COURT: Can you keep your voice up?

10 MR. MILIBAND: Yes. We did discuss some related
11 logistics, but in terms of the actual papers and the
12 requests, I don't have anything to add at this point unless
13 you have further comments or questions from the Court or
14 counsel.

15 Thank you.

16 THE COURT: Well, I guess the thing that concerns
17 me is I was looking back at some of the attachments to your
18 application in particular the transcript of the August 11
19 case management conference. I'm looking at some of the
20 issues that were being described there, and it was my
21 understanding that there were very few facts that were in
22 dispute and that for the most part the only discovery that
23 was indicated might be applicable in preparation for the
24 trial would be your taking the deposition of any of the
25 experts that were indicated by private water producers or
26 others and possibly an update as to Mr. Williams,
27 Dennis Williams' deposition. And I'm trying to understand
28 what has changed that requires more preparation other than

1 what was indicated.

2 MR. MILIBAND: Would you like me to address that
3 now, Your Honor?

4 THE COURT: I would like you to.

5 MR. MILIBAND: Thank you.

6 Well, what I had included within the portions of the
7 transcript that I put in the ex parte application papers
8 also includes the concerns that I stated and that if we
9 can't reach a sufficient stipulation, I would need to do
10 discovery to really serve my client's best interest to try
11 to properly and fully prepare the case for trial.

12 Now, counsel on August 11th had made -- various counsel
13 that is -- had made representations that we would be able
14 to stipulate. And as the Court will recall, I was
15 agreeable and acceptable to that process and certainly
16 tried to demonstrate and exercise every possible effort to
17 reach a sufficient stipulation.

18 But the one thing I mentioned on August 11th above all
19 was concerns with the October 7 trial date without the
20 discovery stay being lifted and the ability to do discovery
21 to the extent we don't reach stipulation on the facts.

22 So what I did following August 11th was put together a
23 very detailed set of proposed facts that was nearly five
24 pages mostly single-spaced. And as the Court can see from
25 the various papers that have been filed, it has taken about
26 a month for other counsel to go through it. And I
27 appreciate the dialogue we've had this week. I think it
28 has been productive. But a couple of things are very

1 clear.

2 Number one, we're not going to have a full stipulation
3 on facts. And to the extent that we don't reach that, I
4 would like to be able to do discovery and to try to make it
5 an efficient process and to streamline it without
6 sacrificing those interests.

7 I would like us to continue to work toward that
8 stipulation, but I'd also like to be able to get discovery
9 out. And as I represented I could have it out as early as
10 next Tuesday to get that clock ticking. And if we reach
11 that stipulation then great.

12 I've provided multiple alternatives within my request
13 for a continuance and to lift the discovery stay so that
14 the parties who are participating in this trial would not
15 need to waste their time and effort to respond to discovery
16 if they do one of two things.

17 One, clarify that their participation is not to engage
18 or to participate in the presentation of evidence but
19 simply to monitor the proceeding, provide legal briefing,
20 things of that nature. And/or if we reach that stipulation
21 that covers all of those basis within my discovery.

22 THE COURT: I'm still unclear. You're talking in
23 generalities at this point not specifics.

24 What specific issues have not been sufficiently defined
25 or which are going to involve disputed facts?

26 MR. MILIBAND: It's still a little unclear
27 because I haven't heard from all counsel. Mr. Kuhs -- it
28 is clear to me that Mr. Kuhs has spent a good amount of

1 time at least over the last week or two. But whether he
2 speaks for the rest of large landowner parties, he couldn't
3 make that representation, and so I certainly can't. So we
4 have an uncertainty as to where that stands.

5 But specific facts and specific discovery are precisely
6 what I put into these papers. It would be a request for
7 admissions similar to what other parties have done in prior
8 phases that would include these proposed stipulated facts.
9 And if we can't stipulate to it then I think I'm entitled
10 on behalf of my client to know the basis for that --

11 THE COURT: There's no question that you have a
12 right to present evidence. That's not the issue here. The
13 issue is what's going on with regard to an agreement as to
14 what the facts are.

15 As I understand this case -- and I've perhaps been with
16 this case too long. It seems to me that the facts are well
17 known in particularly in your area involving the Phelan
18 Pinon Hills issues in terms of -- and they are well known
19 to everybody as to when you started pumping, when the
20 transfer from LA County occurred of that property, how much
21 you've been pumping, what your current pumping is. I've
22 not heard anybody dispute any of those facts.

23 The question of whether or not there is a surplus of
24 water is dependent upon apparently how the Court views the
25 connectivity of the various parts of the basin, number one.
26 And, secondly, what the testimony of the -- and the known
27 testimony of the experts might be.

28 Those are obviously facts that the Court can hear some

1 evidence about. But where is the real dispute here in
2 terms of anything other than the legal consequences?

3 MR. MILIBAND: Right. I understand the Court's
4 question, but unfortunately I'm not the one responsible for
5 not being able to say why we don't have a stipulation other
6 than I have undertaken every step to try to reach that
7 stipulation.

8 THE COURT: I know you've been diligent,
9 Mr. Miliband.

10 MR. MILIBAND: But why we can't reach agreement
11 on all of them, I just --

12 THE COURT: Well, you're just one party that is
13 going to answer this morning.

14 All right. Mr. Dunn, I think I need to have you
15 further address this.

16 MR. DUNN: Yes, Your Honor. Mr. Dunn -- Jeffrey
17 Dunn for Waterworks District No. 40.

18 There has been considerable effort on the part of
19 certain legal counsel to reach a set of stipulated facts
20 regarding Phelan Pinon Hills Community Services District.
21 Those efforts have been led by both Mr. Kuhs and Mr. Bunn,
22 and they have worked with Mr. Miliband.

23 The problem that we face today is one that the Court
24 has already noted this morning. When we look at the claim
25 by Phelan Pinon Hills, the claim itself rests upon what we
26 believe to be undisputed facts.

27 We know that they are a public water supplier. We know
28 where they are located. We know where their service area

1 is. We know that they use a groundwater well within the
2 adjudication area. We know where that well is. It is not
3 subject to any type of dispute as to how much water it can
4 pump or has pumped historically and most importantly that
5 the water from that well is exported outside the
6 adjudication area.

7 None of that is subject to dispute. All of that is
8 ready to be presented to the Court as a part of stipulated
9 facts. The frustration candidly on our part is that we
10 continue to hear from Phelan Pinon Hills that it wants to
11 conduct discovery, but it cannot identify what discovery is
12 needed in order to present its case. In other words, what
13 else is required over and above those facts that I just
14 recited?

15 At the end of the day I am confident that when we get
16 to the point where Phelan Pinon Hills is required to prove
17 its claim, its groundwater claim, there will not be
18 disputed facts. There may be some disagreement between
19 experts, between two experts, but at the end of the day,
20 two things. One is I'm not even sure there is a
21 disagreement there. And, second, I'm not sure that the
22 disagreement even matters.

23 Because in the context of resolving the Phelan claim,
24 we know what the adjudication area is. We've already
25 determined -- the Court has determined what the nature of
26 the overdraft condition is in the adjudication area, and it
27 applies across.

28 So at the end of the day what we hear from Phelan this

1 morning is what we've experienced now going back at least
2 to early August if not earlier is that we cannot get from
3 Phelan any fact that they need to develop they believe
4 through discovery that would be part of the case that they
5 would have to put on.

6 I would have to imagine that when we get to the day
7 when Phelan puts on its case that there would be these
8 stipulated facts perhaps some opinion testimony by an
9 expert. And at the end of all that we would simply say as
10 a matter of law based on these facts already presented to
11 the Court, they are not in our view entitled to export
12 water from an overdrafted basin into an outside basin. And
13 that's fundamentally the disagreement that we have in the
14 case with Phelan.

15 So I just want to make clear to the Court two things.
16 One is there's been considerable effort, including efforts
17 on the part Mr. Miliband, to try and develop these facts.
18 I still remain confident that we're going to get there.

19 But more importantly I don't see disputed facts as
20 forming the basis for the resolution of the Phelan claim
21 for all the reasons that I've stated here this morning.

22 So I am concerned that if we put off the Phelan claim
23 trial then it's going to further delay what I still hope to
24 be an ultimate resolution of the case by settlement because
25 one of the things that if there is going to be a
26 settlement, we'll need to -- and eventually proving up a
27 physical solution of that settlement, we will need to first
28 resolve the non-stipulating parties' claims to water.

1 And so if it continues to be that Phelan will be one of
2 those non-stipulating parties, and I believe they will
3 ultimately not be part of the settlement, then we will need
4 to get this resolved with the Court.

5 So I'm concerned that if we put this off that it may
6 further delay the ultimate resolution, which I still hope
7 will come before the Court.

8 THE COURT: What facts do you think are disputed?
9 Facts, not issues but facts.

10 You indicated that you thought there were some facts
11 that were in dispute.

12 MR. DUNN: There may be a difference -- I can't
13 think of any facts that are in dispute. There's a
14 difference of opinion perhaps between Phelan's expert and
15 the expert that District 40 has retained regarding the --
16 and that difference of opinion, Your Honor, is this.

17 Phelan's expert -- I'll defer to Mr. Miliband in a
18 moment here, but the Phelan expert seems to indicate that
19 there's -- that when Phelan pumps groundwater from the
20 adjudication area in the city of where the Phelan well is
21 located that ultimately there's no detrimental impact upon
22 the rest of the basin. And my expert disagrees with that.
23 My expert simply says that when you pump water from that
24 area of the basin, it does have an impact else where in the
25 basin.

26 That is the only potential dispute that I see. And I
27 don't think that's based on -- I don't think that's a
28 disputed fact. That might be an opinion that's in dispute.

1 But how those two experts form those opinions, I don't
2 think are based on disputed facts.

3 THE COURT: Okay. Well, those are facts that are
4 disputed are material to the extent that Phelan has the
5 right to pump. If Phelan doesn't have the right to pump
6 then those facts are immaterial.

7 MR. DUNN: Agreed, Your Honor, yes.

8 THE COURT: Now, the second -- and it may be that
9 I am misreading something. But the second area of dispute,
10 the factually dispute, is where the water is used.

11 I read something in Mr. Miliband's statement. I'm not
12 sure if it was in this statement or one of the earlier
13 statements. It indicated that a number of the public that
14 is supplied are supplied within the adjudication area. And
15 that, of course, could make a difference, couldn't it?

16 MR. DUNN: It could, Your Honor, yes. It
17 potentially could.

18 THE COURT: So that's a fact that may or may not
19 be disputed.

20 MR. DUNN: If Phelan -- it should not be in
21 dispute because if Phelan Pinon Hills is providing water to
22 a service area within the adjudication area that should not
23 be subject to reasonable dispute.

24 THE COURT: Okay. Do you know what the facts are
25 with regard to that?

26 MR. DUNN: Actually --

27 THE COURT: Mr. Miliband?

28 MR. MILIBAND: Sure.

1 THE COURT: Can you tell me?

2 MR. MILIBAND: I think one point of
3 clarification, Your Honor, is from what might have been in
4 my papers I think in an earlier statement. It was not as
5 to the adjudication area, but the actual hydro-geological
6 basin for the Antelope Valley groundwater basin.

7 THE COURT: Well, the specific language was in
8 the adjudication area; is that not correct?

9 MR. MILIBAND: We do not have customers or
10 residents within the adjudication area.

11 THE COURT: All right.

12 MR. MILIBAND: But we do have customers and
13 residents within our service area that overlie a portion of
14 the Antelope Valley groundwater basin that extends
15 underneath the --

16 THE COURT: That is within the Mojave
17 jurisdictional area.

18 MR. MILIBAND: That is within that jurisdictional
19 area. Yes, Your Honor.

20 THE COURT: Okay. So that is not a factual
21 dispute?

22 MR. MILIBAND: Well, it's hard for to me say
23 because it goes back to not all counsel have spoken as to
24 what's in dispute or not.

25 And I think the fundamental point that I'd like to make
26 is what discovery that Phelan wants to do. I tried to be
27 specific, and what I put in the papers is and what I said
28 this morning is to precisely put in the proposed set of

1 stipulated facts that I circulated one month ago as a
2 request for admissions and then to do form interrogatories,
3 particularly 17.1, so that I can learn the basis for any
4 kind of factual dispute if there is one.

5 Now, if parties don't have a dispute then the
6 alternative mechanism that I put in the papers is really
7 the mechanism that the Court has wanted us to do that I've
8 tried to do and some counsel have done and that is
9 stipulate.

10 So I don't even know that there are disputed facts, but
11 it is because other counsel are not affirming that they
12 don't dispute the facts. We don't know what is in dispute.

13 THE COURT: Maybe I haven't been clear. But it
14 seems to me that the disputed facts are material facts only
15 not evidentiary facts. They're ultimate facts that would
16 support the judgment. And it is the ultimate facts that
17 I'm concerned about. And it sounds to me as though you've
18 gone through evidentiary facts, which are different than
19 the ultimate facts, aren't they?

20 MR. MILIBAND: I think there is a difference
21 there. And on the ultimate facts, a good example of how I
22 come to this conclusion that we have not reached a
23 sufficient stipulation as of today is based upon a section
24 that I created for our sixth cause of action which is the
25 second -- which is one of the two that's at issue in this
26 trial and that relates to --

27 THE COURT: Return flows?

28 MR. MILIBAND: Yes, sir. That's the one.

1 And so I basically extracted testimony from Phelan's
2 expert. Mr. Zimmer had taken his deposition earlier this
3 year. And I tried to in my best way identify what those
4 facts are without even stating his ultimate opinions, but
5 they were ultimate facts that were used to form his
6 opinion.

7 THE COURT: Well, the ultimate facts with regard
8 to return flows is, number one, Phelan does not import
9 water. Number two, Phelan pumps water. Number three, the
10 users of that water generate return flows from the water
11 that is pumped from the native source that returns to the
12 aquifer to some extent.

13 Now, to whatever extent that might be, the legal issue
14 is does that create additional rights in the water?

15 Now, what is in dispute about what I just stated
16 factually?

17 MR. MILIBAND: From my opinion and my position
18 nothing, Your Honor. But that would be the question for
19 every participating counsel to say they agree to.

20 THE COURT: All right. There are groups of
21 parties in this case. There are public water suppliers.
22 There are overlying landowners. At this point you've been
23 talking with representatives from both of those groups.
24 And those are the principle groups that are at issue here
25 aside from the federal government, Edwards Airforce Base,
26 and the like.

27 Who among those parties has disputed the factual issues
28 that I just described?

1 MR. MILIBAND: Primarily as it relates to the
2 return flow, it was primarily Mr. Bunn for Palmdale Water
3 District with one caveat because he did, through his
4 efforts, strike out virtually every fact that I put in
5 there for the return flow issue. And through our
6 discussion on Tuesday afternoon -- he had another
7 commitment so we had a somewhat abbreviated amount of time.
8 And then Mr. Kuhs and I carried on for about another 50
9 minutes or so. And the idea became part it was maybe how
10 it was phrased, and it might be a wordsmithing issue.

11 Mr. Dunn and I also talked about this yesterday morning
12 to where perhaps I just read into the record what
13 Mr. Harder's [phonetic] opinions were as it relates to the
14 return flow issue. Because my position has been really two
15 things when it comes to discovery and the presentation of
16 evidence during trial.

17 As it relates to pre-trial discovery if we cannot reach
18 stipulation on these facts and ultimate facts, that's what
19 I think there needs to be some discovery for. And it would
20 be contention interrogatories. Very basic stuff. And --

21 THE COURT: But you haven't told me yet what the
22 dispute is for the facts that I just described and whether
23 those are accurate or not.

24 MR. MILIBAND: I think they are accurate.

25 THE COURT: All right.

26 MR. MILIBAND. The problem is not every counsel
27 is saying they agree.

28 THE COURT: Have you stated it that way?

1 See, sometimes it's the way you phrase the question
2 that makes the difference. And it seems to me that from
3 all the counsel that I've heard over the many years that
4 I've been involved in this case, I have not heard anybody
5 dispute that those are facts that you've raised the issue
6 about. But nobody really disputes facts. They dispute
7 your conclusion, which is a legal conclusion.

8 MR. MILIBAND: As well as some of the opinions of
9 the expert.

10 THE COURT: But why can't we decide that because
11 the opinions of the experts really are not germane to the
12 ultimate legal issue as to what the extent of the return
13 flows might be, et cetera, et cetera. Because there are
14 lots of variables and lots of opinions, as we know, by a
15 multitude of experts about how much of the return flow
16 occurs, how much is the return flow, what are the variables
17 as to how the water gets back into the aquifer, what the
18 aquifer does with it when it gets back, and so on and so
19 on. But those things are not germane to the ultimate
20 question, which is the legal question.

21 I'm trying to help the parties to get this resolved
22 with the least amount of expense possible, and that's the
23 reason that I'm insisting on the parties meeting and
24 conferring and coming up with a basis upon which you can
25 submit the disputed legal issues to the Court.

26 And I don't know what the ruling is going be on those
27 issues because you haven't provided me with the factual
28 context, which I think you can do very readily.

1 MR. MILIBAND: Well, I would agree on some of the
2 evidentiary -- most of those evidentiary facts really
3 aren't in dispute from the representatives that I've spoke
4 with. So if we had an affirmation from other counsel, that
5 certainly would close the door as it relates to those.

6 Where we left off this week was there is still further
7 work to do to develop more facts.

8 Mr. Sloan in particular had asked for a couple of
9 things a few weeks back. I've been working to get the
10 correct numbers to put in there and also trying to work
11 with counsel to make sure we rally do agree on these facts.

12 But the problem has been, Your Honor, we need -- or
13 least it is my position that the parties to have this
14 streamlined, efficient process like the Court wants, like I
15 would like, and I think a lot of the other parties would
16 like, we need the Court's hand. It takes the Court's
17 intervention to really fulfill that conceptual goal of
18 having a streamlined process.

19 That's why I had asked for, and I'm asking again, to be
20 able to at least propound that discovery to make sure that
21 we have, at least I have on behalf of my client, that base
22 covered should we not come to that agreement on what should
23 be a full set of stipulated facts. And to do that -- -

24 THE COURT: Ultimate facts. Ultimate facts not
25 evidentiary facts.

26 MR. MILIBAND: Well, and I think --

27 THE COURT: There may be disputes as to a
28 particular item or aspect but unless the facts, the

1 ultimate facts the Court would have to make, it seems to me
2 that it's beside the point.

3 And I want to help you to get your client's position
4 effectively before the Court. It's important that we have
5 sufficient factual basis for every court ruling and
6 determination and decision in this case.

7 So what I'm going to ask you to do is to continue to
8 meet and confer on this.

9 Is Mr. Bunn on the line?

10 MR. BUNN: Yes, Your Honor.

11 THE COURT: Mr. Bunn, you've heard this
12 discussion. Now, it's my understanding that you are one of
13 the lead participants in attempting to determine the
14 ultimate facts in this case on these disputed issues of
15 law; is that correct?

16 MR. BUNN: Yes, sir.

17 THE COURT: All right. And are you having any
18 difficulty in finding the time to spend along with Mr. Kuhs
19 and Mr. Miliband to come up with sufficient stipulated
20 facts?

21 MR. BUNN: No. I'm happy to spend that time,
22 Your Honor.

23 I would like to comment that I think that the Court has
24 it exactly right that the dispute to the extent that there
25 has been any is how things are phrased. I think that if we
26 could have phrased things the way -- issues the way the
27 Court phrased them a moment ago, we could have stipulated a
28 long time ago. But there are difficulties in how to phrase

1 those. We're going back and forth with Phelan Pinon Hills
2 about that.

3 And there's also the issue that Mr. Miliband and that I
4 hope the Court can clarify for us today is that
5 Mr. Miliband wants us to represent that anything that
6 Mr. Kuhs and I agree to will be acceptable to all the other
7 parties. And I can't make that representation. All I can
8 say is that I've been tasked with trying to come up with
9 something that will be acceptable to everyone. But that's
10 diverting a lot of our time.

11 THE COURT: Well, until you have a tentative
12 stipulation to present to the other counsel, how can you
13 know for certain whether they're going to accept it or not?
14 And it seems me that the first step is come to your
15 agreement. That's why you're working with the liaison
16 people both representing the landowners as well as the
17 public water suppliers. And once those groups'
18 representatives have reached some tentative understanding,
19 you can then get acquiescence from others.

20 But, you know, these statements have to be neutral.
21 They can't have loaded parts to them. They cannot infer a
22 particular result from them. They have to be neutral as
23 evidentiary facts that everybody would say this would be a
24 finding of fact the Court could make from the evidence.
25 Those are the ultimate facts.

26 And that's what I'm urging you to address, and I'd like
27 you to continue to do that because I suspect that you're
28 really not that far apart and that it would be wasteful to

1 then go through the whole discovery process to get to that
2 end.

3 And it seems to me that all parties in the case have
4 spent enormous amounts of money in this adjudication. And
5 some of it obviously has been necessary. But I think we've
6 reached the point where we should start to minimize those
7 further expenditures.

8 I understand Phelan's position with regard to the need
9 for pumping and whether they have a legal right to or not
10 and the extent to which they have that right is a very
11 important consideration the Court is going to have to
12 decide. But the facts give rise to that decision I think
13 they are pretty well known by everybody, and the legal
14 consequences that flow from that are something that the
15 Court is going to have to address, and I will address when
16 it's presented appropriately.

17 But I'm not going to waste everybody's money and time
18 and the Court's time and judicial resources if it's not
19 necessary to do that.

20 So I'm here to tell you now that I'm not going to grant
21 your motion to continue this. I'm going to reserve it.
22 And it may well be that something is going to happen
23 between now and October 7 that is going to cause me to
24 grant the motion. But at this point I'm not going to do it
25 because I don't think you've exhausted the efforts that
26 need to be exhausted to come to that agreement with the
27 parties that you're negotiating with and for them to have
28 an opportunity to present that to the other parties to

1 enter into a concurrence. And it seems to me that's in
2 everybody's best interest including the Court.

3 So, Mr. Kuhs, are you on the line?

4 MR. KUHS: Yes, sir.

5 THE COURT: Would you like to address the Court
6 on these issues?

7 MR. KUHS: Your Honor, I'm not sure what new
8 information I can add to it.

9 I think part of Phelan's effort has been to try to get
10 some facts in the stipulation which would invoke perhaps
11 the emotion of the Court dealing with, for example, the
12 percentage of voters that approved formation of Phelan.
13 How dire their water needs are. Those sorts of things.
14 And I don't view those as particularly relevant, and they
15 have slowed up the stipulation process.

16 And so to move things along, what Mr. Bunn agreed to is
17 that if those facts can be established to our satisfaction
18 that Mr. Miliband could include them in the stipulation
19 subject to a relevancy objection.

20 So, you know, I told Mr. Miliband frankly what I think
21 would help in terms of moving the process along was that if
22 he could post his proposed stipulation to the Court's
23 Website along with exhibits that folks could readily
24 reference. I think that would make it more expeditious for
25 all counsel to review those facts and see if they're
26 satisfactory.

27 The process to date has been that we've been told that
28 those documents and the information we're asking to

1 stipulate to has been posted previously in other phases of
2 the trial, and we're welcome to go find it on the Court's
3 Website.

4 I understand this is a lot of work for Mr. Miliband,
5 but from an efficiency standpoint it seems a lot more
6 efficient to have one lawyer gather the information and
7 post it to the Court's Website than for 50 lawyers to go
8 look for it. And so that's been my frustration.

9 But I don't want to paint Mr. Miliband in a bad light
10 with those comments. You know, I understand it is a
11 difficult task. I think those things would help move the
12 process along.

13 THE COURT: All right. First of all, the Court
14 does not have its emotion invested in this case. And it is
15 not going to be impacted by facts that may generate some
16 sympathy somewhere. But I am interested in getting it
17 done.

18 And it seems to me that you ought to be able to come to
19 an agreement as to even those facts and how they should be
20 handled. And if a party wants to object to a fact that is
21 true on the grounds that it is irrelevant, it seems to me
22 that's a very easy way to handle it.

23 MR. BUNN: Your Honor?

24 THE COURT: Yes.

25 MR. BUNN: This is Mr. Bunn.

26 THE COURT: Yes.

27 MR. BUNN: I agree with the notion of sitting
28 down again and trying to reach a final agreement, and I

1 believe that we can do that. And I feel strongly that
2 additional discovery along the lines of do you agree with
3 the way I've stated these facts and if not, why not is not
4 going to be productive. However, I do want to make sure
5 that Mr. Miliband is in the position to present his case,
6 and I wanted to ask the Court whether Mr. Miliband feels
7 that an additional deposition of the public water
8 suppliers' expert, Mr. Williams, is called for.

9 It's my understanding that if he does feel that way,
10 Mr. Dunn can make Mr. Williams available and considering
11 the time between now and October 7th, I'd like to make sure
12 that if Mr. Miliband needs that deposition, we have that
13 happen.

14 MR. MILIBAND: Well, I appreciate Mr. Bunn's
15 comments because that precisely is the problem. I think a
16 couple of things, going back to some of the comments,
17 Your Honor.

18 I'm really taken aback quite honestly that the Court
19 does not see a continuance as appropriate, number one,
20 given the discovery stay and given all of the efforts I've
21 made. And unfortunately it's what we sometimes see within
22 the case history even when it doesn't deal with Phelan
23 Pinon Hills necessarily is that there is really almost this
24 power of persuasion and the description about what the
25 efforts on my part have been and how those are
26 insufficient.

27 The framing of facts what that really relates to from
28 my understanding when I try to talk about Mr. Harder's

1 testimony as it relates to the return flow in talking about
2 what he testified to, now that's a simple fix. But it took
3 one month to get that response. And that was all the while
4 with me trying to generate interest. Who should I be
5 talking with? Who is reviewing it? In no way was that a
6 reflection on anything I should have done or could have
7 done differently.

8 Four weeks ago today when we were before Your Honor and
9 I'm back at the airport waiting to catch my flight back to
10 Orange County, I received an e-mail from Mr. Bunn asking
11 for where those documents could be found. And we had an
12 exchange the night before where I indicated through the
13 various declarations that were posted up for the Phase 4
14 trial and even going into Phase 5. There were numerous
15 postings, and I didn't identify the tab numbers or provide
16 them because my thinking was I have five pages of proposed
17 facts. Which ones are you potentially agreeable to subject
18 to reviewing documents, and I will chase those done.
19 But -- and sure enough a lot of it got cut out not even
20 ones that were potentially agreeable.

21 So to me it was an exercise where there was
22 communication about doing that instead of it being as how
23 it's been conveyed this morning.

24 And so again I'm very taken aback that the very
25 thorough papers and going through each and every factor for
26 a trial continuance that the Court is still coming to that
27 conclusion that Phelan Pinon Hills should be ready to go 11
28 days from now when as counsel for Phelan Pinon Hills I am

1 once again letting the Court know I'm not in a position to
2 be ready for that trial, and I don't think it is for any
3 lack of diligence on my part with the discovery stay and
4 the Court's repeated and pragmatic comments about trying to
5 stipulate rather than discovery even depositions.

6 I haven't been able -- or I haven't taken that
7 deposition of Dr. Williams. What Mr. Dunn referred to in
8 his papers from yesterday about the deposition of
9 Dr. Williams, yes, I was part of that deposition in January
10 of this year, but that was related to return flows not
11 surplus, one of those issues that we know we would need to
12 do some examination about.

13 And I anticipate it's relatively brief, but because I
14 have undertaken every effort I could within this courtroom
15 and outside of this courtroom knowing we're here weeks
16 afterward from multiple counsel versus the one counsel on
17 my side that is trying to put this back set together that
18 somehow this is because I didn't articulate things
19 correctly. That's not a good enough reason to deny my
20 request.

21 THE COURT: Well, that's not the only reason that
22 this request is denied at this point. I've indicated to
23 you I'm going to reserve it. And I want to give you an
24 opportunity to finish the job that you need to do.

25 I understand that. And Mr. Dunn has agreed that if you
26 wish to take the further deposition of Mr. Williams that
27 he'll be made available. And it seems me that that's the
28 only, only aspect of an evidentiary discovery issue that

1 you presented to the Court as something you need to do.
2 Everything else has been a very generalization.

3 I'm not criticizing you either for the reasons that
4 you're asking for the continuance or for the work that
5 you've done. I know you have worked very hard for your
6 client. Your client has an important stake in this
7 litigation, and your client is entitled to due process.

8 I could tell you, Okay. We'll have a full trial on
9 your client's issues. Be ready in another 60 days. I
10 could tell you that. That's not going to help your client.

11 What's going to help your client to get to the
12 resolution based upon the facts is getting agreement as to
13 what is not in dispute so that you can present the legal
14 issue. And as I've indicated to you earlier and nobody has
15 disagreed with this that the real problem is what are the
16 legal consequences of what everybody knows the facts to
17 be -- or most of the facts to be.

18 Now you're raising additional issues about surplus
19 water within that part of the aquifer. That's a factual
20 determination that may or may not have some bearing on the
21 ultimate decision in this case. Because the question of
22 connectivity is still an important question. And the
23 impact of pumping in an area where there may not have been
24 a lot of pumping until recently is an issue that the Court
25 may have to hear some evidence about.

26 But at this point, it seems to me that the known facts
27 and most of the opinions are really a concurrence among all
28 the parties. And you -- neither you nor anybody else has

1 indicated to the Court that that's not the case.

2 MR. MILIBAND: And again I go back to it always
3 takes the Court's hand in intervention to get things done
4 amongst the parties even when it doesn't relate to Phelan
5 Pinon Hills. And today is another good example of that.

6 August 11th is the date that started this process where
7 counsel indicated that they would stipulate. We haven't
8 been able to get there in the last six weeks. Today
9 counsel again are indicating they will, but 11 days from
10 now for the Court to say have that done as well as the
11 deposition of an expert is just not going to work.

12 And the alternative, Your Honor, I am absolutely
13 agreeable to following that through, and it sounds as
14 though counsel really are agreeable to that now. So that
15 should be a relatively quick task.

16 I don't think next week is really enough for, one, to
17 development this body of facts more and provide the
18 documentation for those who still would prefer to see that
19 rather than just agree. And that's fine. I get that. I
20 probably would want to be that diligent too. But that's
21 not enough time.

22 And in all fairness to try to take whatever remaining
23 deposition testimony of Dr. Williams that again here we are
24 Friday afternoon. It does not really give enough time next
25 week.

26 And so six weeks ago in August I was asking for early
27 February, and a lot of that was so that we could try to do
28 this forewarned motion for summary adjudication. I

1 appreciate that. This helps expedite and make more cost
2 efficiency. But instead October 7th was selected by the
3 convenience before coming to court that day amongst other
4 counsel on two of my causes of action, which I had no say
5 in really October 7th being set.

6 THE COURT: No, that's not correct, Mr. Miliband.
7 You've always had a say.

8 MR. MILIBAND: No. No. I didn't mean to say
9 that the Court didn't let me have a say. Other counsel
10 selected this trial date and proposed it to the Court. And
11 I had a problem with October 7th not only for the reasons
12 we've talked about but just general calendar. That's fine.
13 I kicked those things. But it still comes back to these
14 fundamental issues.

15 So in the alternative there at least needs to be a
16 continuance whether it's -- you know, instead to January,
17 early December. I mean this case, as the Court is probably
18 going to hear this morning, there's not a settlement
19 reached yet. So often we hear Phelan has to be addressed
20 first. It has to be resolved first. But that would still
21 take several months to get that done.

22 And what I'm asking for is something that allows us to
23 try to finish these facts and allows me to develop the
24 record that needs to be developed. I mean there is a lot
25 of prior deposition testimony that would come in
26 potentially or at least be offered into evidence. And, you
27 know, 11 days from now just does not allow those tasks to
28 be done.

1 THE COURT: All right. The fact that we don't
2 have a stipulation is not all your fault or responsibility.
3 It takes two to tango. In this case it takes probably 50
4 to tango.

5 What I'm going to do is extend the date for two weeks
6 from October 7th to the 21st. What I expect you diligently
7 to work with other counsel to come up with your stipulated
8 facts so that we can present this whatever other evidence
9 you want to present. It will also give you some additional
10 time to take Mr. Williams' deposition, and we will evaluate
11 where we are at that point.

12 If you cannot come up with a stipulated set of facts,
13 we're just going to try the case. You'll present your
14 evidence, and I'll set a date for that. But at this point
15 that's the order I'm going to make.

16 MR. DUNN: Your Honor, for clarification purposes
17 the two-week extension is a -- what happens on the 21st?
18 I'm sorry.

19 THE COURT: I'm hopeful that you will all provide
20 the Court with the ultimate facts needed to make the legal
21 decision as to the rights that Phelan Pinon Hills has in
22 the adjudication area including return flows.

23 MR. DUNN: And for further inquiry and
24 clarification, is the October -- so I take it the
25 October 7th trial date is vacated?

26 THE COURT: Yes.

27 MR. DUNN: Is the new trial date October 21st?

28 THE COURT: It is.

1 MR. DUNN: May I be heard just briefly on that
2 October 21st date?

3 THE COURT: Yes.

4 MR. DUNN: I leave the country on Thursday,
5 October 16th. I return on Saturday, November 1st. Would
6 the Court -- if the Court's inclination is to move it by
7 two weeks, could I request the Court consider an additional
8 two weeks on top of that.

9 I don't get back into the country until Saturday, and
10 I'm anticipating some jet lag --

11 THE COURT: What date are you asking for?

12 MR. DUNN: It would --

13 THE COURT: November?

14 MR. DUNN: Yes. It would be the --

15 MR. MILIBAND: I think the 4th, Your Honor, would
16 be exactly two weeks following the 21st.

17 THE COURT: I need to look at my calendar here.
18 November 4th is Election Day.

19 MR. DUNN: Would the -- this is Mr. Dunn.

20 Would the Court consider the following week? The 11th
21 is Veteran's Day. I anticipate that if we do have to put
22 on trial --

23 THE COURT: I'm not available that whole week. I
24 will -- with other matters. But I will put it on for
25 Election Day.

26 MR. DUNN: Okay.

27 THE COURT: That's fine. That's not a holiday.

28 MR. DUNN: So that would be November 4th,

1 Your Honor?

2 THE COURT: Yes. But I want an update between
3 now and then.

4 And let me see. I think we should have a conference
5 call on October the 7th. We can do that by telephone for
6 everybody. We don't need a courtroom for that.

7 MR. MILIBAND: If Your Honor likes, I'll post a
8 status update the day before by noon.

9 THE COURT: Yes. Well, let's make it at 10:00
10 o'clock on that date.

11 MR. MILIBAND: I'm sorry? For posting or on the
12 7th?

13 THE COURT: No. No. I want -- on the 7th I want
14 10:00 o'clock -- no, I better make it in the afternoon. I
15 have another matter that morning. So let's have the
16 conference call at 1:30 on the 7th. Everybody can call in.
17 We'll use the same CourtCall that we've used, and it will
18 be at 1:30.

19 And I expect a really positive report from everybody at
20 that time.

21 All right. So that will be the order.

22 MR. MILIBAND: And, Your Honor, if I can just --

23 MR. BUNN: Your Honor?

24 THE COURT: Yes.

25 MR. BUNN: This is Tom Bunn.

26 The Court previously set the date of October 1 for
27 submission of trial briefs. Perhaps it's appropriate to
28 continue that as well?

1 THE COURT: Yes. But what date do you want?

2 MR. MILIBAND: Well, that was going to be my
3 question as well, Your Honor. Just with the filing of
4 different documents whether it's motions in limine or trial
5 briefs how the Court would prefer to deal with that.
6 Certainly I would suggest that --

7 THE COURT: Well, the 4th is a Tuesday. What
8 about the preceding Friday?

9 MR. MILIBAND: For trial briefs and motions in
10 limine and the like?

11 THE COURT: Yes.

12 MR. BUNN: That's set for the 31st of October?

13 THE COURT: Yes. Filing date.

14 MR. BUNN: Okay.

15 MR. MILIBAND: And just for clarity that would
16 also be if we need witness lists and any live testimony,
17 exhibits, the usual trial documents.

18 THE COURT: Any additional witnesses that are
19 going to be called.

20 Now, I also expect, Mr. Miliband, that you're going to
21 take Dr. Williams' deposition between now and that date,
22 and I would recommend as soon as possible to set a date and
23 get an agreement as to when you can do that.

24 MR. MILIBAND: That is my plan, Your Honor.

25 And along those lines, Mr. Dunn and I were talking in
26 the hallway before coming in this morning. A couple of
27 logistical issues, the way we've dealt with that as a group
28 before we would typically go to downtown LA to Veritext

1 [phonetic], where it is a neutral site, very well equipped.
2 But given the universe of parties and really the
3 contentiousness here, I was suggesting informally with
4 Mr. Dunn and would make this request to other counsel that
5 we have the depositions at each of our offices. Mr. Dunn
6 and I both work in Irvine literally down the street from
7 one another so I would plan to, if it is agreeable to the
8 parties, to notice that deposition be taken at my office.
9 We can make the phone available to dial in for folks to
10 hear what is going on and participate. And likewise if
11 District 41 would like to take the deposition of Mr. Harder
12 I would be looking to reciprocate by having it held in
13 Mr. Dunn's Irvine office.

14 THE COURT: All right.

15 MR. MILIBAND: I just don't know if that's
16 agreeable to all.

17 THE COURT: Well, you need to propose it. Do it
18 by e-mail to everybody and see if you get any objections to
19 it. It sounds reasonable to me.

20 MR. MILIBAND: I was hoping to take care of that
21 this morning just like some stipulated facts, Your Honor.

22 And along with that is producing documents three days
23 in advance.

24 THE COURT: Well, I don't think this is the
25 appropriate place for that to happen. But if you'll
26 discuss it with Mr. Dunn and others and send out an e-mail,
27 I'm sure you'll come to an agreement as you're all
28 reasonable lawyers most of the time.

1 MR. MILIBAND: Thank you, Your Honor.

2 THE COURT: All right. So that takes care of
3 your motion at this point. I've got about six other things
4 on this calendar. So let's deal with them right now.

5 Is Mr. Blum on the line?

6 MR. BLUM: Yes, Your Honor.

7 THE COURT: Mr. Blum --

8 MR. BLUM: Sheldon Blum appearing on behalf of
9 the Blum Trust.

10 THE COURT: You've requested a page extension on
11 your motion, five to ten pages. I don't understand why
12 you're making that request in advance of knowing exactly
13 how many pages you need.

14 Have you prepared your papers?

15 MR. BLUM: I'm at the tail end of that,
16 Your Honor, and I know that I'm supposed to give the Court
17 24-hour notice before the filing, and that is the reason
18 I'm doing it now since I was then able as well to get a
19 date with Rowena on December 22nd for the motion hearing.

20 THE COURT: Well, the motion obviously --

21 MR. BLUM: It is close to 20 pages.

22 THE COURT: Well, the motion gives you a great
23 number of pages to file. It seems to me that we're not
24 dealing particularly with law that is not clear. I
25 understand your desire to be clear. I'll give you five
26 additional pages if that's what you need.

27 MR. BLUM: That's perfect, Your Honor.

28 THE COURT: But don't use them unless you need

1 it, Mr. Blum.

2 MR. BLUM: I understand. I don't believe I will
3 need them all, but I appreciate that.

4 THE COURT: Sometimes conciseness is a greater
5 benefit than more pages.

6 Okay. Five pages.

7 There's a motion by Charles and Nellie Tapia to set
8 aside the default.

9 MS. IJAMES: Yes, Your Honor. Heather Ijames.

10 THE COURT: I'm sorry?

11 MS. IJAMES: Heather Ijames appearing for
12 Mr. Tapia and the Trust.

13 THE COURT: Yes. Okay. I've read the papers.
14 I've read the opposition. Is there anything else that I
15 should know that -- concerning the motion or the opposition
16 from either party?

17 MS. IJAMES: Did Your Honor receive our reply to
18 the opposition?

19 THE COURT: I did.

20 MS. IJAMES: Otherwise, no.

21 THE COURT: Okay. Let me take a look at my notes
22 here.

23 Well, you know, the evidence in this case is not
24 totally clear to me as to whether or not the Tapias
25 received actual notice. I think that there's some
26 suggestions here based upon class notices and the like that
27 the Tapias were well aware of the litigation but that
28 doesn't establish that they were actually aware that they

1 were parties who had been served.

2 Publication was made. It was not inappropriate. It
3 was appropriate based upon the representations, which I
4 think were accurate by District 40. I do think, however,
5 that the process server could have done some other things.
6 Counsel could have done some other things by, for example,
7 mailing notice; that was never done apparently. There's no
8 evidence it was done.

9 I think that the response of counsel filing the motion
10 was relatively timely. Not unreasonable. I will grant the
11 motion to set aside the default.

12 I think it's in everybody's best interests that parties
13 be involved in this adjudication. I think the federal
14 government will agree to that under the circumstances.

15 So the motion is granted. You may file your answer.

16 MS. IJAMES: And will the answer be deemed filed
17 today?

18 THE COURT: Yes. That's fine.

19 MS. IJAMES: Thank you, Your Honor.

20 THE COURT: All right. Number 3, application by
21 the Wood Class for an order modifying the court appointed
22 expert firm name.

23 Mr. McLachlan, are you on the line?

24 MR. O'LEARY: Your Honor, this is Dan O'Leary for
25 the Wood Class.

26 THE COURT: All right. Mr. O'Leary, I find that
27 there's been nobody objecting to this. It's a reasonable
28 request. The motion is granted so that you may modify

1 the --

2 MR. O'LEARY: Thank you, Your Honor.

3 THE COURT: -- the order is modified to the
4 extent that the expert firm name is changed.

5 And number 4, application for an order compelling
6 defendants to pay court appointed expert invoices.

7 Is that still an issue?

8 MR. O'LEARY: Your Honor, Dan O'Leary.

9 You know, I'm not totally sure. I know we had some
10 progress on it, and it was not a question I asked
11 Mr. McLachlan to brief me on before the call.

12 THE COURT: Okay. I'm going to take it off
13 calendar. If you need to file it again making a request,
14 you may do so.

15 MR. O'LEARY: Very good.

16 THE COURT: There's a motion by Antelope Valley
17 Mobile Estates to be a class member of the Wood Class.

18 MR. WILSON: Yes. Good morning, Your Honor.
19 Walter Wilson here.

20 THE COURT: Yes. Mr. Wilson, good morning.

21 MR. WILSON: I'm making that motion, Your Honor.
22 We don't have a date yet set for the hearing of that.

23 THE COURT: I thought we were going to hear that
24 this morning.

25 MR. WILSON: I'm happy to, Your Honor.

26 THE COURT: Well, apparently nobody is ready so
27 we won't hear it this morning.

28 Do you want to pick a date and clear that with

1 Mrs. Walker please?

2 MR. WILSON: Yes, Your Honor.

3 Is there any chance that anything coming up that would
4 cut off my client's ability to join the class were the
5 Court to deny this particular motion?

6 THE COURT: No.

7 MR. WILSON: Other than the stipulation to
8 settlement. My sense is that we are not going to have that
9 in the next few weeks. But if that were to come into play,
10 would my clients' rights be cut off?

11 THE COURT: I don't think so at this point. In
12 the past we've included parties in class actions even after
13 there have been tentative settlements by the parties who
14 wish to be bound by them and who agree to them.

15 The other thing that I would suggest is that we've got
16 a couple of dates now when where we're going to be having
17 hearings, for example, on October the 31st. If you want to
18 set your motion for hearing on that day at 1:30, you may do
19 so.

20 MR. WILSON: That would be great, Your Honor.

21 THE COURT: My only concern was the amount of
22 pumping done by the group, mobile home park, rather than --
23 as a group rather than individually when I read your
24 motion. But I'm certainly not going to rule on it at this
25 point.

26 What I would suggest you do, Mr. Wilson, is confer with
27 Mr. McLachlan since he is representing -- or Mr. O'Leary
28 who is representing the Wood Class to determine whether or

1 not and how you might fit into that settlement.

2 MR. WILSON: I have -- I will certainly do so,
3 Your Honor. I looked at the settlement, and I've spoken
4 with Mr. McLachlan, but I will certainly discuss again how
5 we fit in.

6 THE COURT: Okay. Thank you.

7 And now we come to what I think is the last issue here
8 and that is the status of the global settlement with regard
9 to the issue of the Wood Class attorney fees.

10 Can anybody give me an update?

11 As you recall at the last CMC we ordered further
12 discussions for settlement purposes, and I'm interested in
13 knowing -- I did get one case management statement. It
14 said it was a failure. But I'm ever the optimist.

15 So maybe, Mr. Dunn, you can tell us about it.

16 MR. DUNN: Yes. This is Jeffrey Dunn for
17 District 40.

18 We have not yet had a resolution where we can present
19 the settlement to the Court. However, I can report to the
20 Court that the efforts since our last appearance here to
21 reach a resolution intensified.

22 We did follow the direction of the Court to continue to
23 work through this issue. We have met. There have been
24 extensive efforts on the part of many counsel working on
25 this issue.

26 But I can give the Court my individual assessment is
27 that I think that we've made progress. But we're not there
28 yet, and I don't know whether I'm an optimist by nature or

1 not, but I remain an optimist here on this. I do. But I
2 do have to report to the Court that we're not there yet.

3 But I would certainly tell the Court without any
4 equivocation that it is not for lack of effort on the part
5 of many attorneys involved in this case. There has been as
6 much of an effort in the last couple of weeks or however
7 long it's been since we were last before you as there have
8 ever been I think in the case. So and -- even continuing
9 up until the hearing this morning.

10 So I'll make that report to the Court. It's possible
11 that others see it differently and have their own
12 assessment. But that's my report.

13 THE COURT: All right. Mr. Dunn, thank you.

14 Does anybody else want to offer a comment about this
15 process?

16 MR. LEININGER: Your Honor, this is Mr. Leininger
17 for the United States.

18 THE COURT: Yes, Mr. Leininger.

19 MR. LEININGER: Thank you, Your Honor.

20 I concur with Mr. Dunn's statements, however, and we
21 remain optimistic also. However, it appears that we do
22 have an impasse. And to get beyond the potential impasse
23 is kind of alluding us. So at this point we, the United
24 States, continues to support the draft settlement. We
25 think it's a good judgment and a physical solution that
26 will help resolve the overdraft problems in this basin.

27 But at this point it doesn't appear to us that we
28 have -- that it's a settlement en masse, and we would ask

1 that the Court set October 10th, which I believe is already
2 on calendar, as our trial setting dates.

3 THE COURT: Well, I think October 10 is a filing
4 date for setting the hearing date for approval of the
5 settlement. And I'm going to leave that date on.

6 I understand the impasse, the nature of the impasse. I
7 obviously do not have information concerning the settlement
8 as a whole, and what's involved in that. But if this is
9 the last piece, it seems to me that maybe counsel need to
10 talk about how they might otherwise enter into the
11 settlement reserving the issue of the Wood Class settlement
12 as a totally separate issue that could be subject even to
13 appellate review depending upon the Court's decision
14 without upsetting the balance of the settlement itself.

15 So that if you're to essentially bifurcate it and
16 provide for adjudication of the Wood's settlement attorney
17 fee issue on a totally separate basis so that it was
18 subject to appellate review because it seems to me there
19 are some pretty clear factual disputes that -- I shouldn't
20 say factual disputes -- legal consequence disputes that
21 need to get resolved. And the Court's going to have to
22 ultimately decide that, and it will decide that whether you
23 have settlement or not.

24 And so that the -- if we were to go through the entire
25 adjudication process and the Court were to then hear and
26 decide the rights of the Wood Class, the Court is still
27 going to have to decide who is responsible for the attorney
28 fees and to what extent. So that it seems to me that if

1 you can settle the other issues, reserving those rights as
2 a separate issue and preserving the right to appeal those
3 non-settled issues, that seems to me is probably going to
4 be a lot less expensive and time consuming than having to
5 go through the litigation process for all of the remaining
6 issues.

7 So I just ask counsel to think about it. It really
8 doesn't behoove the Court to involve itself in the
9 settlement discussions. But that's just an observation
10 however you might want to take it.

11 Okay. I think that's all we have.

12 Anything else, Mr. Dunn?

13 MR. DUNN: May I inquire whether the Court would
14 want a further report at some point regarding the status of
15 the settlement discussions?

16 THE COURT: Yes, I would. October 1st would be a
17 great time to have a report. We can do it by conference
18 call if you wish.

19 MR. DUNN: October 1st would be next week; is
20 that correct?

21 THE COURT: Yes.

22 MR. DUNN: Okay. May I suggest for the Court's
23 consideration to move that to October 7th?

24 THE COURT: Yes.

25 MR. DUNN: And to hold that the same time as the
26 1:30 p.m. CourtCall on the Phelan matter. There is a
27 CourtCall that we set today for Phelan on October 7th at
28 1:30 p.m.

1 THE COURT: Yes.

2 MR. DUNN: I'm just concerned that October 1st
3 might not give us enough time to keep working.

4 THE COURT: October 7th.

5 MR. DUNN: All right.

6 THE COURT: 1:30. Okay.

7 MR. O'LEARY: Your Honor, this is Dan O'Leary.

8 I had on my calendar that there was a hearing at 9:00
9 on September 29th. Being new to this case, can counsel or
10 the Court tell me what that's about and whether it is still
11 on?

12 THE COURT: I don't know about it. I think we
13 did tentatively set one and then moved it to today. I
14 think we advanced it.

15 MR. O'LEARY: Okay.

16 THE COURT: There was some discussion about the
17 29th, but I think that we ultimately settled on today
18 because I certainly don't have it in my notes or on my
19 calendar.

20 MR. O'LEARY: Thank you, Your Honor.

21 THE COURT: Okay. All right.

22 MR. KUHS: Your Honor, Robert Kuhs.

23 Can I inquire if there is a court reporter present
24 today?

25 THE COURT: Yes, there is.

26 MR. KUHS: And what is her name please -- or his
27 name?

28 THE COURT REPORTER: Lisa Brown.

1 MR. KUHS: Thank you.

2 THE COURT: Okay. I think that concludes our
3 hearing. We'll be in recess then until the next time.

4 MR. MILIBAND: Thank you, Your Honor.

5 MR. DUNN: Thank you, Your Honor.

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7 (At 11:13 a.m., court adjourned in the
8 matter.)

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1 STATE OF CALIFORNIA)
 2 COUNTY OF SANTA CLARA) ss.

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I HEREBY CERTIFY: That I was the duly appointed, qualified, and acting official shorthand reporter of said court in the above-entitled action taken on the above-entitled date; that I reported the same in machine shorthand and thereafter had the same transcribed into typewriting as herein appears; and that the foregoing typewritten pages contain a true and correct transcript of the proceedings had in said matter at said time and place, to the best of my ability.

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: October 2, 2014

 LISA L. BROWN, CSR #13148

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LISA L. BROWN, CSR

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