

Exhibit 6

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT NO. 1 HON. JACK KOMAR, JUDGE
4 COORDINATION PROCEEDING)
5 SPECIAL TITLE (RULE 1550B))
6 ANTELOPE VALLEY GROUNDWATER CASES) JUDICIAL COUNCIL
7) COORDINATION
8) NO. JCCP4408
9)
10)
11) PALMDALE WATER DISTRICT AND) SANTA CLARA CASE NO.
12) QUARTZ HILL WATER DISTRICT,) 1-05-CV-049053
13) CROSS-COMPLAINANTS,)
14)
15) VS.)
16)
17) LOS ANGELES COUNTY WATERWORKS,)
18) DISTRICT NO. 40, ET AL,)
19) CROSS-DEFENDANTS.)
20)

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27 REPORTER'S TRANSCRIPT OF PROCEEDINGS
28 FRIDAY, APRIL 24, 2009

APPEARANCES:
(SEE APPEARANCE PAGES)

GINGER WELKER, CSR #5585
OFFICIAL REPORTER

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1 CASE NUMBER: JCCP4408
2 CASE NAME: ANTELOPE VALLEY GROUNDWATER
3 LOS ANGELES, CALIFORNIA, FRIDAY, APRIL 24, 2009
4 DEPARTMENT NO. 1 HON. JACK KOMAR
5 REPORTER GINGER WELKER, CSR #5585
6 TIME: 9:00 A.M.
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7 APPEARANCES: (SEE TITLE PAGE)

8

9 THE COURT: ALL RIGHT. GOOD MORNING. THIS IS THE
10 ANTELOPE VALLEY CASES. FIRST THING WE WILL DO IS SEEK
11 APPEARANCES FOR ALL COUNSEL WHO INTEND TO APPEAR. AND
12 IF THERE IS ANY INDIVIDUAL WHO IS A PARTY TO THE LAWSUIT
13 AND REPRESENTING THEMSELVES, I WANT YOU TO STATE YOUR
14 APPEARANCES AS WELL.

15 MR. LEMIEUX: GOOD MORNING, YOUR HONOR, KEITH
16 LEMIEUX, L-E-M-I-E-U-X, FOR LITTLEROCK CREEK IRRIGATION
17 DISTRICT, ET AL.

18 MR. EVERTZ: DOUG EVERTZ FOR THE CITY OF
19 LANCASTER.

20 MR. MARKMAN: JAMES MARKMAN FOR THE CITY OF
21 PALMDALE.

22 MR. WEEKS: BRADLEY WEEKS FOR QUARTZ HILL WATER
23 DISTRICT.

24 MR. BUNN: THOMAS BUNN FOR PALMDALE WATER DISTRICT
25 AND QUARTZ HILL WATER DISTRICT.

26 MR. KUNEY: SCOTT KUNEY ON BEHALF OF VAN DAMN
27 PARTIES.

28 THE COURT: JUST A MINUTE. WE'LL TAKE ONE SIDE,

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1 AND THEN WE'LL TAKE THE MIDDLE.

2 MR. MCLACHLAN: MICHAEL MCLACHLAN FOR THE WOOD
3 CLASS.

4 MR FIFE: MICHAEL FIFE FOR THE ANTELOPE
5 GROUNDWATER AGREEMENT ASSOCIATION.

6 MS. JONES: TAMMY JONES FOR NORTHROP GRUNMAN AND
7 ENEXCO CORP.

8 MR. JOYCE: BOB JOYCE ON BEHALF OF THE CRYSTAL
9 ORGANIC AND DIAMOND FARMING COMPANY.

10 THE COURT: STARTING ON THE --

11 MR. KALFAYAN: RALPH KALFAYAN ON BEHALF OF THE
12 WILLIS CASE.

13 MR. ZLOTNICK: DAVID ZLOTNICK ON BEHALF OF THE
14 WILLIS CLASS.

15 MR. LEININGER: LEE LEININGER FOR THE UNITED
16 STATES.

17 MR. DUNN: JEFFREY DUNN ON BEHALF OF THE ROSAMOND
18 COMMUNITY SERVICES DISTRICT AND LOS ANGELES COUNTY
19 WATERWORKS DISTRICT NO. 40.

20 THE CLERK: YOUR HONOR, THERE ARE SEVERAL ON THE
21 PHONE.

22 THE COURT: ANYONE ELSE IN THE COURTROOM?

23 OKAY. WILL YOU CALL THE ROLL.

24 THE CLERK WILL CALL ROLL OF THOSE ON THE
25 TELEPHONE. IF YOU ARE PRESENT WHEN YOUR NAME IS CALLED,
26 PLEASE SO INDICATE.

27 THE CLERK: COUNSEL, I'LL TRY THIS AGAIN.

28 FIRST, REBECCA DAVIS-STEIN?

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1 MS. DAVIS-STEIN: PRESENT FOR RANDALL BLAYNEY.

2 THE CLERK: MICHAEL CROW?

3 MR. CROW: MICHAEL CROW PRESENT FOR THE STATE OF
4 CALIFORNIA.

5 THE CLERK: STEPHEN SIPTROTH?

6 MR. SIPTROTH: PRESENT.

7 THE CLERK: BRADLEY HERREMA?

8 MR. HERREMA: BRADLEY HERREMA ON BEHALF OF THE
Page 9

9 ANTELOPE VALLEY GROUNDWATER AGREEMENT ASSOCIATION.
10 THE CLERK: JOHN TOOTLE? CALIFORNIA WATER SERVICE
11 COMPANY, IS SOMEONE HERE PRESENT FOR THEM?
12 NO RESPONSE.
13 RICHARD ZIMMER?
14 MR. ZIMMER: RICHARD ZIMMER PRESENT FOR BOLTHOUSE.
15 THE CLERK: ROBERT DOUGHERTY?
16 MR. DOUGHERTY: PRESENT FOR AV UNITED GROUP.
17 THE CLERK: CHRISTOPHER SANDERS?
18 MR. SANDERS: PRESENT.
19 THE CLERK: MARLENE HAMMARLUND?
20 MS. HAMMARLUND: PRESENT.
21 THE CLERK: JAMES DUBOIS?
22 MR. DUBOIS: PRESENT.
23 THE CLERK: JEFF GREEN? NO RESPONSE.
24 JOHN UKKESTAD?
25 MR. UKKESTAD: PRESENT.
26 THE CLERK: JANET GOLDSMITH?
27 MS. GOLDSMITH: PRESENT.
28 THE CLERK: ROBERT KUHS?

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4

1 MR. KUHS: PRESENT.
2 THE CLERK: SHELDON BLUM?
3 MR. BLUM: SHELDON BLUM PRESENT ON BEHALF OF BLUM
4 TRUST.
5 THE CLERK: MICHELLE MOORE?
6 MS. MOORE: PRESENT ON BEHALF OF US BORAX.
7 THE CLERK: TED CHESTER?
8 MR. CHESTER: PRESENT.
9 THE CLERK: BRIAN MARTIN?

10 MR. MARTIN: PRESENT.

11 THE CLERK: SUSAN TRAGER?

12 MS. TRAGER: SUSAN TRAGER ON BEHALF OF PHELAN
13 PINON HILLS COMMUNITY SERVICES DISTRICT.

14 THE CLERK: IS THERE ANYONE THAT I HAVE NOT CALLED
15 THE NAME OF THAT I DON'T HAVE LISTED? NO RESPONSE.

16 OKAY. THANK YOU.

17 THE COURT: THANK YOU. EACH COUNSEL IF YOU ARE TO
18 BE HEARD PLEASE BEGIN -- IDENTIFY YOURSELF AS YOU SPEAK.
19 LET'S TAKE UP THE MATTERS NOW. WE HAVE SEVERAL ISSUES
20 TO CONSIDER THIS MORNING.

21 THE FIRST ISSUE THAT I THINK WE SHOULD TALK
22 ABOUT IF THERE IS ANY ISSUE CONCERNING IT IS THERE WAS A
23 REQUEST BY THE WILLIS CLASS TO EXTEND THE OPT-OUT PERIOD
24 FROM MARCH 1 TO APRIL 1 WHICH HAS NOW EXPIRED.

25 IS THERE ANY OPPOSITION TO THAT REQUEST?

26 (NO RESPONSE) ALL RIGHT. THAT MOTION IS GRANTED.

27 THE SECOND ISSUE THAT I THINK I WOULD LIKE
28 TO TAKE UP IS THE APPLICATION FOR APPOINTMENT OF EXPERTS

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5

1 BY BOTH WILLIS AND THE WOOD CLASS COUNSEL.

2 IS THERE FURTHER ARGUMENT TO BE HEARD?

3 MR. MCLACHLAN: WHERE WOULD YOU LIKE TO START?

4 THE COURT: YES, YOU ARE THE MOVING PARTY. IS
5 THERE ANYTHING ELSE THAT YOU WANT TO TELL ME THAT IS NOT
6 IN YOUR PAPERS?

7 MR. MCLACHLAN: NO, YOUR HONOR. I THINK I'LL JUST
8 ADDRESS ANY QUESTIONS THAT YOU MIGHT HAVE. I HAVE
9 ARGUED IT IN FRONT OF YOU BEFORE, AND IT HASN'T CHANGED
10 A LOT, AND THE SCOPE HAS NARROWED.

11 THE COURT: YES.

12 MR. KALFAYAN.

13 MR. KALFAYAN: YOUR HONOR, WE HAVE HAD DIFFERENT
14 EXPERTS AS YOU KNOW FROM OUR MOTION. THE ONLY THING I
15 WANT TO HIGHLIGHT TO THE COURT IN ADDITION TO WHAT WE
16 SUBMITTED IN THE PAPERS IS THAT WE WOULD BE OBVIOUSLY
17 MUCH MORE EFFECTIVE WITH OUR OWN EXPERT, BUT WE DEFER TO
18 THE COURT. I THINK THE COURT SHOULD APPOINT THE EXPERT
19 THAT WE PROPOSED.

20 THE COURT: OKAY. ANYTHING TO BE HEARD IN
21 OPPOSITION BEYOND WHAT IS IN THE PAPERS?

22 MR. DUNN: NO, YOUR HONOR.

23 THE COURT: MR. BUNN.

24 MR. BUNN: YES, YOUR HONOR, I WOULD JUST LIKE TO
25 SPEAK TO THE WILLIS MOTION SOMEWHAT BECAUSE THAT HAS
26 BEEN CHANGED IN THE REPLY BRIEF. THE WILLIS CLASS NOW
27 PROPOSES THAT ITS EXPERT BE DESIGNATED AS A NEUTRAL
28 EXPERT TO ASSIST THE COURT IN THE AREA OF SAFE YIELD.

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1 AND THE GROUNDS ARE THAT -- THAT THEY FEEL
2 THE DETERMINATION IS HIGHLY TECHNICAL AND THAT THE COURT
3 REQUIRES THIS EXPERT ASSISTANCE IN ORDER TO EVALUATE
4 THAT EXPERT TESTIMONY.

5 I -- WE DISAGREE WITH THAT. WHILE THE
6 DETERMINATION OF SAFE YIELD IS, IN FACT, A TECHNICAL
7 ONE, I BELIEVE THAT BOTH SIDES WILL BE ABLE TO PRESENT
8 THROUGH THEIR EXPERTS THE EVIDENCE IN SUCH A WAY THAT
9 THE COURT WILL BE ABLE TO UNDERSTAND THE ISSUES AND THE
10 EVIDENCE AND BE ABLE TO COME TO A CONCLUSION ON ITS OWN
11 WITHOUT THE ASSISTANCE OF AN ADDITIONAL EXPERT.

12 I BELIEVE THAT THE ADDITIONAL EXPERT WILL
13 ADD COSTS, AND IT WILL ADD TIME; AND IT WILL NOT REALLY
14 ADD ANYTHING TO THE PROCEEDING.

15 I WOULD ALSO LIKE TO COMMENT THAT IN THEIR
16 PAPERWORK THE WILLIS CLASS SAYS THAT THIS IS EXACTLY THE
17 TYPE OF CASE THAT CALLS FOR THE APPOINTMENT OF A NEUTRAL
18 EXPERT, AND IT CITES THREE AUTHORITIES FOR THAT.

19 ONE OF THEM IS A FEDERAL CASE WHICH DIDN'T
20 TALK ABOUT THE STANDARDS FOR APPOINTING AN EXPERT AT
21 ALL. IT TALKED ABOUT THE DIFFERENCE BETWEEN A NEUTRAL
22 EXPERT WITNESS ON THE ONE HAND AND A TECHNICAL ADVISOR
23 ON THE OTHER IN THE FEDERAL COURTS. I DON'T THINK THAT
24 IS RELEVANT.

25 THE OTHER CASE THEY CITED IS A STATE COURT
26 CASE WHICH, AGAIN, DOESN'T TALK ABOUT THE STANDARDS FOR
27 APPOINTING NEUTRAL EXPERTS. IT TALKS ABOUT THE
28 DIFFERENCE BETWEEN A NEUTRAL EXPERT WITNESS ON THE ONE

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1 HAND AND A COURT APPOINTED PHYSICIAN TO EXAMINE A
2 PERSONAL INDUSTRY CLAIM ON THE OTHER.

3 THE THIRD AUTHORITY THAT IT CITES IS THE
4 MANUAL FOR COMPLEX LITIGATION, AGAIN, A FEDERAL MATTER;
5 AND THAT DOES TALK ABOUT THE STANDARDS FOR APPOINTING
6 EXPERTS, BUT IT SETS FORTH A NUMBER OF CRITERIA PRO AND
7 CON, NONE OF WHICH ARE DISCUSSED IN THE PAPERWORK.

8 I NOTE THAT ONE OF THE CONS IS THAT THE
9 COURT DOESN'T NORMALLY APPOINT A NEUTRAL EXPERT WHERE
10 ONE OF THE PARTIES IS INDIGENT BECAUSE OF THE UNFAIRNESS
11 OF APPORTIONING THE ENTIRE COST TO THE OTHER PARTY.

12 I THINK OBVIOUSLY THERE ARE VARIOUS FACTORS,
Page 13

13 PRO AND CON, AND I DO BELIEVE THAT THE COURT HAS
14 DISCRETION TO APPOINT A NEUTRAL EXPERT UNDER THE CODE.
15 BUT FOR THE REASONS THAT I STATED, I DON'T THINK THAT IS
16 APPROPRIATE IN THIS CASE.

17 THE COURT: WELL, IF THERE IS A CONFLICT BETWEEN
18 THE POSITIONS OF THE EXPERTS ON EITHER SIDE, YOU THINK
19 THERE IS ANY VALUE IN HAVING A NEUTRAL THIRD EXPERT
20 APPOINTED BY THE COURT WHO ESSENTIALLY HAS NO OX TO
21 GORE.

22 MR. BUNN: I THINK THERE CAN BE, YES. WE HAVEN'T
23 GOTTEN TO THE JURY TRIAL ISSUE YET, BUT I THINK THAT
24 MIGHT BE ESPECIALLY VALUABLE IN A JURY TRIAL SETTING.

25 BUT IN THIS PARTICULAR CASE, I BELIEVE THAT
26 THIS COURT HAS ALREADY SHOWN THAT ALTHOUGH THE ISSUES
27 ARE DIFFICULT THEY ARE SOMETHING THAT THE COURT CAN MAKE
28 SENSE OF. AND, AGAIN, I BELIEVE THAT BOTH SIDES ARE

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1 GOING TO BE ABLE TO PRESENT THEIR EVIDENCE IN SUCH A WAY
2 THAT IT IS GOING TO BE UNDERSTANDABLE TO THE COURT, AND
3 THE COURT CAN MAKE A DECISION.

4 THE COURT: IN TERMS OF SAFE FIELD AND OVERDRAFT.

5 MR. BUNN: YES. THAT IS THE ONLY AREA IN WHICH
6 THE WILLIS CLASS IS NOW REQUESTING AN EXPERT.

7 THE COURT: OKAY. THE WOOD CLASS IS INTERESTED IN
8 SOMETHING BEYOND THAT?

9 MR. BUNN: THAT IS RIGHT. I HAVE NOTHING TO ADD
10 IN THE PAPERWORK THERE. THE WOOD CLASS MOTION IS THE
11 SAME AS I -- AS FAR AS I CAN TELL THE ONE THAT THEY
12 RAISED BEFORE AND THE COURT DENIED.

13 THE COURT: MY CONCERN ABOUT THAT IS THAT I THINK

14 COUNSEL VERY OFTEN REALLY DOES NEED ASSISTANCE IN
15 REPRESENTING ITS CLIENT, HIS OR HER CLIENT, AS THE CASE
16 MAY BE, WITH REGARD TO TECHNICAL ISSUES AND SHOULD NOT
17 HAVE TO MAKE AN ELECTION AS TO WHICH OF THE OTHER
18 PARTIES EXPERTS THEY WISH TO AGREE WITH OR DISAGREE WITH
19 WITHOUT HAVING SOME ASSISTANCE THEMSELVES.

20 THE DIFFICULTY I HAVE HERE IS THAT 730 OF
21 THE EVIDENCE CODE IN TERMS OF CIVIL CASES DOES NOT, IN
22 MY OPINION, AUTHORIZE THE APPOINTMENT OF A CONSULTANT AT
23 THE EXPENSE OF ANY OF THE OTHER PARTIES. IT DOES
24 AUTHORIZE THE APPOINTMENT OF AN EXPERT WHO IS A NEUTRAL
25 EXPERT WHO WOULD BE THE COURT'S EXPERT WHO THEN HAS --
26 IS AVAILABLE TO ALL PARTIES, CAN BE CALLED BY ANY PARTY
27 INCLUDING THE COURT.

28 SO I'M -- THAT IS A GREAT CONCERN,

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1 MR. MCLACHLAN. I UNDERSTAND YOUR NEEDS, BUT I DON'T
2 THINK UNDER THESE CIRCUMSTANCES THAT BASED ON WHAT I
3 HAVE SEEN TO THIS POINT THAT THE COURT HAS THE ABILITY
4 TO SAY WE ARE GOING TO HIRE A CONSULTANT FOR YOU AND YOU
5 ARE GOING TO ASSESS THE CHARGE TO ONE OF THE OTHER
6 PARTIES WHO IS NOT EVEN THE FIRST PARTY TO FILE THIS
7 LAWSUIT. THERE ARE OTHER PARTIES THAT HAVE FILED THIS
8 LAWSUIT AS WELL.

9 SO IF YOU WOULD LIKE TO ADDRESS THAT, I
10 WOULD APPRECIATE IT.

11 MR. MCLACHLAN: I WOULD. AND AS I BELIEVE I SAID
12 UP IN SAN JOSE WHEN WE ARGUED THE FIRST PART OF THIS
13 MOTION, I THINK WE MADE VERY CLEAR IN OUR PAPERWORK. WE
14 ARE NOT -- WE HAVE NOT ASKED THE COURT TO APPOINT A

15 CONSULTANT FOR THE SMALL PUMPERS CLASS. WE HAVE ASKED
16 THE COURT TO APPOINT A NEUTRAL EXPERT ON THE ISSUE OF
17 SELF-HELP IN THIS SITUATION.

18 AND I THINK, OBVIOUSLY, OUR POSITION IS THAT
19 WE -- AS COUNSEL CAN GO FORTH AND REPRESENT THIS CLASS.
20 I THINK THAT THE PURPOSE OF THAT EVIDENCE CODE
21 SECTION -- AND IT DOES NOT HAVE -- STATE ANYWHERE IN
22 THERE WHAT YOUR HONOR HAS STATED NOR DO ANY OF THE
23 CASES. IT IS NOT SO LIMITED. IF THE LEGISLATURE WANTED
24 TO LIMIT IT, IT WOULD BE SAY FAMILY LAW, CRIMINAL, AND
25 THESE PARTICULAR SITUATIONS --

26 THE COURT: IN WHAT WAY IS IT NOT LIMITED?

27 MR. MCLACHLAN: IT IS NOT LIMITED IN THE FACT --
28 WHAT WE ARE ASKING IS FOR THE COURT TO APPOINT AN EXPERT

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1 THAT WOULD COME IN AND TESTIFY ON THE ISSUE OF SELF-HELP
2 FOR THE COURT. AND, OBVIOUSLY, THAT ISSUE IS ONE THAT
3 IS ONLY GERMANE LARGELY TO THE SMALL PUMPERS.

4 BUT IN ANY OTHER CONTEXT, THE COURT APPOINTS
5 A PSYCHIATRIC EXPERT IN A CRIMINAL MATTER, FOR EXAMPLE.
6 THAT EXPERT IS TESTIFYING ABOUT A SINGLE PARTY, THE
7 DEFENDANT, TYPICALLY. OR IN A FAMILY LAW PROCEEDING,
8 THE COURT IS FAMILIAR WITH THE NUMEROUS WAYS IN WHICH
9 EXPERTS ARE APPOINTED THERE.

10 THERE IS ALWAYS A PARTICULAR PARTY THAT'S
11 BEING REPRESENTED, AND THAT PARTY -- THE KEY THING THAT
12 CROSSES THOSE PARTIES AND UNDERLIES THAT -- THAT CODE
13 IS -- THAT THE FACT THAT THAT PARTY DOES NOT HAVE THE
14 ABILITY TO RETAIN ITS OWN EXPERT.

15 THAT IS CLEARLY MANIFESTED AND DEMONSTRATED

16 HERE. RICHARD WOOD CAN'T AFFORD IT.

17 THE COURT: LET ME STOP YOU FOR A MINUTE.

18 MR. MCLACHLAN: SURE.

19 THE COURT: I DON'T DISAGREE WITH ANYTHING THAT
20 YOU HAVE SAID TO THIS POINT. THAT IS A LITTLE DIFFERENT
21 THAN WHAT WE ORIGINALLY TALKED ABOUT IN SANTA CLARA
22 COUNTY.

23 BUT BEYOND THAT, I NEED SOME INDICATIONS
24 THAT I THOUGHT THE REQUEST WAS PREMATURE UNTIL SUCH TIME
25 AS WE ESTABLISHED THAT THERE WAS, IN FACT, AN OVERDRAFT
26 BASED UPON THE YIELD AND THE PUMPING IN VARIOUS -- TOTAL
27 PUMPING WITHIN THE ANTELOPE VALLEY.

28 AND I CAN ASSURE YOU THAT IN THE EVENT THAT

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1 IT IS DETERMINED THAT THERE IS OVERDRAFT IN THIS CASE
2 AND THAT THERE IS A CONTENTION OF PRESCRIPTION AGAINST
3 THE SMALL PUMPERS, THEN CERTAINLY I WOULD AGREE WITH
4 YOU. YOU ARE ENTITLED TO A NEUTRAL -- AND THE COURT
5 WOULD BE WANTING TO HEAR A NEUTRAL EXPERT DEALING WITH
6 THOSE ISSUES.

7 I INDICATED EARLIER THAT MY INCLINATION WAS
8 TO BIFURCATE THESE ISSUES AND TO TRY SAFE YIELD AND
9 OVERDRAFT AS A SEPARATE PHASE OF THE TRIAL. THAT IS
10 STILL MY INCLINATION. SO I'M NOT -- I INDICATED I WAS
11 NOT DENYING YOUR MOTION WITH PREJUDICE. IT WAS WITHOUT
12 PREJUDICE, BUT I THOUGHT IT WAS PREMATURE TO START
13 DEALING WITH THAT ISSUE AT THIS POINT.

14 AND THAT LEAVES ME TO SOMETHING ELSE. IN
15 LOOKING AT THE NATURE OF -- AND PERHAPS I'M GETTING
16 AHEAD OF US ALL ON THIS, BUT LOOKING AHEAD AT THE NATURE

17 OF THE SMALL PUMPING CLASS WHICH REALLY INVOLVES A VERY
18 SMALL AMOUNT OF PUMPING -- AND I THINK A FAIRLY SMALL
19 PERCENTAGE OF THE TOTAL PUMPING THAT OCCURS WITHIN THE
20 ANTELOPE VALLEY -- I'M JUST WONDERING IF THE PARTIES
21 THAT ARE CLAIMING PRESCRIPTION REALLY WANT TO CLAIM
22 PRESCRIPTION AGAINST THE PERSON WHO IS PUMPING ON HIS
23 OWN RESIDENCE FOR HIS OWN USES.

24 OF COURSE, THAT IS AN ISSUE THAT I THINK
25 MR. DUNN AND OTHERS HAVE TO ADDRESS. BUT, I MEAN, ARE
26 YOU SERIOUS THAT YOU WANT TO CUT DOWN IN THE PUMPING
27 THAT SOMEBODY DOES IN THEIR OWN BACKYARD WHEN THEY ARE
28 PUMPING FOR THEIR OWN NEEDS?

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12

1 I GUESS THAT IS ADDRESSED TO YOU, MR. DUNN,
2 AND OTHERS.

3 MR. DUNN: MR. DUNN FOR THE ROSAMOND COMMUNITY
4 SERVICES AND WATER DISTRICT NO. 40.

5 I THINK THE BEST THING THAT I CAN TELL YOU
6 AT THIS POINT IS THAT MR. MCLACHLAN AND I HAVE HAD
7 EXTENSIVE CONVERSATION OVER EXACTLY THAT ISSUE, AND I
8 DON'T KNOW IF IT WOULD BE APPROPRIATE FOR ME TO GO ANY
9 FURTHER ON THAT WITHOUT --

10 THE COURT: WELL, YOU KNOW, YOU COULD CERTAINLY
11 MAKE WHATEVER REPRESENTATIONS TO THE COURT THAT YOU WANT
12 CONCERNING THAT ISSUE. BUT I'M REALLY ASKING YOU THE
13 QUESTION: DO YOU REALLY WANT TO PRESCRIBE AGAINST THE
14 SMALL PUMPING WHO IS PUMPING IN HIS BACKYARD TO TAKE
15 CARE OF HIS OWN WATER NEEDS WHEN HE IS OUTSIDE THE AREA
16 OF ANY OF THE PURVEYORS?

17 MR. DUNN: WELL, IF I --

18 THE COURT: IF THAT WERE THE CASE, THAT WOULD
19 CERTAINLY ELIMINATE A REAL CONCERN HERE ON BEHALF OF
20 THAT CLASS. THAT IS NOT TO SAY THAT IF THE COURT FINDS
21 THERE IS OVERDRAFT THAT THERE MIGHT BE SOME IN TERMS OF
22 THE CASE MANAGEMENT OR WATER MANAGEMENT PLAN THE NEED TO
23 REDUCE PUMPING THROUGHOUT, BUT THAT WOULD HAVE NOTHING
24 TO DO WITH THE QUESTION OF PRESCRIPTION.

25 MR. DUNN: I THINK, YOUR HONOR, WHAT WE HAVE BEEN
26 TALKING, MR. MCLACHLAN AND I, IS SOME KIND OF
27 ARRANGEMENT THAT WOULD ACCOMMODATE HIS CLASS MEMBERS
28 WHILE AT THE SAME TIME PROTECT THE OVERALL HEALTH OF THE

13

1 BASIN.

2 AND THAT IS SORT OF A COMPETING INTEREST, IF
3 I CAN PUT IT THAT WAY, THAT WE RECOGNIZE ON ONE HAND
4 THAT WITHIN HIS CLASS YOU ARE GOING TO HAVE SMALL
5 DOMESTIC USERS. THESE ARE SMALL HOMEOWNERS WHO ARE NOT
6 CONNECTED TO A PUBLIC WATER SUPPLIERS SERVICE AREA,
7 GENERALLY BECAUSE THEY ARE OUT IN A RURAL AREA. AND
8 THEY NEED WATER FOR DOMESTIC PURPOSES. WE ACKNOWLEDGE
9 THAT.

10 THE CONCERN THAT ALL OF US -- MANY OF US
11 HAVE IN THIS CASE IS THAT, LIKE, ANY BASIN IT IS A ZERO
12 SUM GAIN. SO WHEN YOU START ALLOCATING WATER TO ONE
13 GROUP OF INDIVIDUALS, THAT MAY NECESSARILY REQUIRE THAT
14 THERE ARE OTHER INDIVIDUALS WHO MAY HAVE TO GO WITHOUT.

15 AND WE CAN -- I DON'T THINK IT'S APPROPRIATE
16 FOR ANY OF US TO SORT OF BRING TO YOU RIGHT NOW SORT OF
17 AN ISSUE DOWN THE ROAD IN TERMS OF HOW MUCH WATER IS
18 REALLY AVAILABLE. BUT I THINK IT IS SAFE TO SAY THAT

19 THERE IS A STRONG DEBATE THAT HAS BEEN GOING ON FOR SOME
20 TIME BOTH AS TO HOW MUCH WATER IS AVAILABLE TO DIVIDE
21 AND THEN HOW TO DIVIDE THAT.

22 SO THESE DISCUSSIONS ON WHAT YOU HAVE
23 ADDRESSED SORT OF HAVE TO BE RESOLVED IN SORT OF A
24 LARGER SCHEME'S OF THINGS. THE UNITED STATES ALSO HAS
25 AN INTEREST IN THE QUESTIONS THAT YOU PROPOSE BECAUSE
26 UNDER THE MCCARRAN AMENDMENT -- YOU KNOW, THE
27 COMPREHENSIVENESS OF THE ADJUDICATION AND THE
28 QUANTIFICATION OF RIGHTS AND HEALTH AND BASIN. AGAIN, I

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14

1 DON'T WANT TO SPEAK FOR THE UNITED STATES, BUT THEY ALSO
2 HAVE A CONCERN ON THIS.

3 BUT, ULTIMATELY, IT COMES BACK TO WHAT CAN
4 WE DO IN TERMS OF ACCOMMODATING THE NEEDS THAT ARE OUT
5 THERE WITHIN THE PARAMETERS THAT WE HAVE THAT WE KNOW TO
6 BE THE WATER AVAILABLE. AND THAT IS A DIFFICULT
7 CHALLENGE. IF IT WEREN'T, I DON'T THINK WE WOULD BE IN
8 FRONT OF YOU THESE MANY MONTHS AND NOW YEARS IF IT WAS
9 JUST SORT OF THAT SIMPLE.

10 SO I UNDERSTAND YOUR QUESTION, BUT I DON'T
11 THINK I CAN GIVE YOU THE -- A SIMPLE ANSWER AT THIS
12 POINT.

13 THE COURT: WELL, UNDERSTAND THAT ULTIMATELY IF
14 THE COURT FINDS THAT THERE IS AN OVERDRAFT HERE, WHETHER
15 THERE IS PRESCRIPTION OR NOT, THE COURT IS GOING TO HAVE
16 TO DETERMINE WHAT THE PUMPING RIGHTS ARE OF EACH OF THE
17 PARTIES. AND WE WILL DO THAT BASED UPON THE EVIDENCE AS
18 PRESENTED BY MOTION OF THE PARTIES OR BY SOME OTHER
19 METHOD.

20 BUT, ULTIMATELY, IF THERE IS OVERDRAFT AND
21 THERE IS A WATER MANAGEMENT ORDERED THAT IS A PHYSICAL
22 SOLUTION TO THE PROBLEM, THAT IS GOING TO AFFECT
23 EVERYBODY WHETHER THEY HAVE BEEN PRESCRIBED AGAINST OR
24 NOT.

25 MR. DUNN: UH-HUH.

26 THE COURT: WHEN YOU ARE TALKING ABOUT THE SMALL
27 BACKYARD PUMPER, IT JUST SEEMS TO ME THAT THE CASE WOULD
28 BE MUCH SIMPLIFIED -- AND I DON'T THINK IT AFFECTS THE

□

15

1 COMPREHENSIVENESS OF THE ADJUDICATION BECAUSE, IN FACT,
2 THE COURT WILL BE ADJUDICATING THE RIGHTS OF ALL
3 PARTIES.

4 MR. DUNN: I AGREE, YOUR HONOR.

5 THE COURT: WELL, IT IS YOUR CLAIM.

6 MR. DUNN: I UNDERSTAND.

7 THE COURT: THAT COMPLICATES THE CASE.

8 MR. DUNN: IT DOES AND IT DOESN'T. BECAUSE I
9 THINK AS THE COURT HAS JUST POINTED OUT IN THE ABSENCE
10 OF PRESCRIPTIVE RIGHTS CLAIM, WE STILL HAVE THESE
11 ISSUES. SO WE STILL CONFRONT THESE ISSUES NO MATTER
12 WHAT.

13 THE COURT: WELL, YOU DON'T GET INTO THE QUESTION
14 OF SELF-HELP, DO YOU? YOU DON'T GET INTO THE QUESTION
15 OF WHEN IF -- IF THERE IS A CURRENT OVERDRAFT CONCERN
16 WHEN THAT STARTED. THOSE ARE PRESCRIPTIVE RIGHTS
17 CLAIMS. AND I AM NOT SUGGESTING TO YOU THAT YOU DON'T
18 HAVE A RIGHT TO ADJUDICATE OR LITIGATE AND HAVE
19 ADJUDICATED THOSE ISSUES. OBVIOUSLY, YOU DO. AND THIS
20 COURT HAS DONE THAT BEFORE IN OTHER MATTERS.

21 BUT WHAT I AM CONCERNED ABOUT IS THE EFFECT
22 ON THIS ADJUDICATION OF THE SMALL PUMPER CLASS TO THE
23 EXTENT THAT -- IS THAT SOMETHING THAT YOU REALLY WANT TO
24 DO? AND YOU DON'T HAVE TO ANSWER THAT QUESTION TODAY,
25 BUT I WANT YOU TO THINK ABOUT IT.

26 MR. DUNN: WELL, I'LL YIELD TO MY COLLEAGUE HERE
27 MR. MARKMAN, BUT I CAN CERTAINLY STAND BEFORE YOU AND
28 REPRESENT TO YOU UNEQUIVOCALLY THAT PRECISE ISSUE THAT

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16

1 YOU HAVE BROUGHT FRONT AND CENTER HERE HAS BEEN
2 DISCUSSED EXTENSIVELY WITH CLASS COUNSEL, AND I'LL YIELD
3 NOW, BUT I WILL SIMPLY SAY I CAN GIVE YOU RIGHT NOW MY
4 VERSION OF HOW THAT COULD WORK. THERE IS A WAY TO MAKE
5 THIS WORK.

6 THE COURT: WELL, LET ME -- BEFORE YOU DO THAT, I
7 DON'T WANT YOU TO COMMIT YOURSELF TO ANYTHING.

8 MR. DUNN: NO, I'M NOT GOING TO EITHER.

9 THE COURT: I WOULDN'T THINK SO. BUT IT DOES
10 OCCUR TO ME THAT PERHAPS WITH THE ASSISTANCE OF THE
11 COURT A SETTLEMENT CONFERENCE MIGHT BE ENGAGED IN TO SEE
12 IF THERE CAN BE SOME RESOLUTION AT LEAST OF THAT SMALL
13 ISSUE.

14 MR. DUNN: I TALKED TO MR. MCLACHLAN ABOUT THAT,
15 BUT I THINK WE WOULD BE INTERESTED IN THAT. THANK YOU.

16 MR. MARKMAN: JAMES MARKMAN FOR THE CITY OF
17 PALMDALE. JUST SOME THOUGHTS ON THIS, YOUR HONOR.

18 FIRST OFF ALL, WE WOULD HAVE BEEN DELIGHTED
19 TO PURSUE -- TO NOT PURSUE AT ALL THE SMALL PUMPERS AS
20 BEING DE MINIMUS OR MINIMAL PARTIES AS HAS BEEN THE
21 USUAL CASE IN THESE ADJUDICATIONS. BECAUSE THE COST OF

22 DEALING WITH THEM FAR EXCEEDS THE VALUE THAT YOU ARE
23 GOING TO RECEIVE FROM CONTROLLING THEIR PRODUCTION OR
24 CAUSING THEM TO CONTRIBUTE TO THE SOLUTION.

25 AND THERE ARE LOTS OF CASES, PASADENA VS.
26 ALHAMBRA, THE CLASSIC THAT SAYS WE CAN DO THAT. BUT IN
27 THE CONTEXT OF THE UNITED STATES POSITION IN THE
28 MCCARRAN AMENDMENT, WE DIDN'T HAVE THAT LUXURY. SO WE

17

1 HAVE TO PROCEED, AND THAT'S WHY WE HAVE CLASSES.

2 WE HAVE BEEN -- SOME OF THE PUBLIC WATER
3 SUPPLIERS HAVE BEEN WORKING VERY HARD AT FORMULATING
4 SETTLEMENT PROPOSALS WHICH WE WILL -- WILL WISH TO AND
5 WILL DISCUSS WITH BOTH CLASSES TO TRY TO DEAL WITH THIS
6 WITHOUT HAVING 8,000 SELF-HELP CLAIMS PUT BEFORE THE
7 COURT APPROVED OR HAVE TO BE APPROVED.

8 THE LAST THING I WOULD LIKE TO SAY IS, I
9 DON'T THINK ANY OF US CONCEIVE OF A PHYSICAL SOLUTION OR
10 A COURT ORDER THAT WE WOULD SEEK WHICH WOULD CUT BACK
11 SOMEBODY PUMPING 1 ACRE A FOOT TO HALF AN ACRE A FOOT OR
12 3-ACRE FEET TO 2-ACRE FEET TO MEET THEIR INDIVIDUAL
13 NEEDS.

14 THE QUESTION BECOMES IS THERE SOME WAY OF
15 HAVING THEM CONTRIBUTE TO THE COST OF THE SOLUTION. IN
16 OTHER CASES, WE HAVE TRIED TO EQUATE THE COST OF THE
17 SINGLE FAMILY HOMEOWNER'S WATER. BUT THAT PERCENTAGE OF
18 THE WATER BILL THAT CONTRIBUTES TO THE SOLUTION ON AN
19 ANNUAL OR MONTHLY BASIS AND COMPARE IT -- AND ALLOCATE A
20 SIMILAR COST TO A MINIMAL PRODUCER.

21 AND THERE ARE WAYS THAT HAVE BEEN DONE. BUT
22 AS FAR AS PUMPING CUTBACKS ARE CONCERNED, WE ALL HOPING

23 TO COME OUT OF THIS PROCESS WITHOUT ANYONE HAVING A
24 PUMPING CUTBACK LET ALONE A SMALL PUMPER.

25 THE COURT: WELL, MY CONCERN AT THIS POINT IS THE
26 ADJUDICATION PROCESS AND NOT SO MUCH WHAT THE ULTIMATE
27 MANAGEMENT AND PHYSICAL SOLUTION MIGHT BE. AND THERE
28 ARE A MULTITUDE OF CONCLUSIONS ONE COULD REACH ABOUT

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18

1 THAT.

2 MR. MARKMAN: YOUR HONOR, BUT I PRESUME -- I SEE
3 MR. FIFE AND SOME OF THESE OVERLIERS THAT ARE NOT
4 GIGANTIC PUMPERS, BUT THEY ARE SUBSTANTIAL PUMPERS MAY
5 NOT WANT TO HAVE THEIR SHARE DILUTED OR CUTBACK OR THEIR
6 COST INCREASED BECAUSE SIX TO 8,000 SMALL PUMPERS WERE
7 DISMISSED, AND IT -- IF -- THAT COULD BE ANYWHERE FROM
8 8,000 TO 30,000 ACRES --

9 THE COURT: I'M NOT SUGGESTING --

10 MR. MARKMAN: -- A YEAR.

11 THE COURT: I'M NOT SUGGESTING ANYONE BE
12 DISMISSED. THAT IS NOT THE FOCUS OF MY COMMENT. MY
13 COMMENT WAS TO WHAT EXTENT DOES THERE HAVE TO BE
14 LITIGATION CONCERNING THOSE PARTIES AT THIS TIME.
15 BECAUSE IF THERE IS GOING TO BE ANY CASE MANAGEMENT --
16 OR I SHOULD SAY PHYSICAL SOLUTION TO A WATER MANAGEMENT
17 SYSTEM THAT IS SET UP AS A PHYSICAL SOLUTION, THEY WILL
18 BE PART OF IT. THEY HAVE TO BE. BECAUSE THEY ARE
19 PUMPING WITHIN THE VALLEY.

20 AND SO IT'S NOT A MATTER OF DISMISSAL; IT IS
21 A QUESTION OF WHAT ISSUES NEED TO BE LITIGATED AND
22 ULTIMATELY ADJUDICATED WITH REGARD TO THEIR PRESENCE.

23 MR. MARKMAN: WE COMPLETELY CONCUR -- AND I WILL

24 REITERATE AND REPRESENT TO COUNSEL -- THAT WE HAVE BEEN
25 HAVING SOME MEETINGS, SOME OF US, TO TRY TO FORMULATE
26 PROPOSALS WHICH FROM OUR POINT OF VIEW WE WOULD MAKE TO
27 THE CLASSES TO RESOLVE ANY ISSUES WITH THEM AS BETWEEN
28 US AND THEM WHICH WOULD MEAN, YOU KNOW, THEIR SELF-HELP

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19

1 OR SHOULD IT GO FORWARD WITH ONLY BETWEEN THEM AND OTHER
2 OVERLIERS, AND WE CAN'T SPEAK FOR THE OTHER OVERLIERS.

3 THE COURT: NO, BUT YOU HAVE A SPECIFIC CLAIM OF
4 PRESCRIPTION, AND THAT IS A -- IT IS QUALITATIVELY
5 DIFFERENT THAN THE POSITIONS OF THE OTHER OVERLIERS.

6 MR. MARKMAN: WE UNDERSTAND, YOUR HONOR. AND,
7 AGAIN, WE ARE VERY CLOSE TO PROCEEDING FORWARD WITH A
8 PROPOSAL AS SOON AS WE, YOU KNOW, HURDLE A FEW POLITICAL
9 HURDLES THAT ARE ALWAYS IN THE WAY OF THE PUBLIC
10 ENTITIES.

11 THE COURT: I UNDERSTAND.

12 MR. MARKMAN: I THINK WE ARE WAY DOWN THE ROAD TO
13 DOING SOMETHING THAT I HOPE WILL WORK FOR BOTH CLASSES.

14 THE COURT: WILL IT BE ANY VALUE TO THE PRODUCERS
15 AND COUNSEL FOR THE CLASS TO HAVE A SETTLEMENT
16 CONFERENCE, AND WOULD THE PARTIES BE WILLING TO
17 PARTICIPATE IN THAT?

18 MR. MARKMAN: WE ARE MORE THAN HAPPY TO
19 PARTICIPATE AND WE DO THINK THAT WOULD BE PRODUCTIVE.

20 THE COURT: MR. MCLACHLAN.

21 MR. MCLACHLAN: NOT TO LET SOME AIR OUT OF THE
22 BALLON, I THINK AS TO THE CLASSES THEMSELVES, NO, WE
23 HAVE SPENT -- AS ALREADY BEEN DISCUSSED WE SPENT A LOT
24 OF TIME, MR. O'LEARY AND MYSELF, IN SETTLEMENT

25 NEGOTIATIONS OVER THE LAST MONTH, AND THEY HAVE GONE
26 NOWHERE.

27 I'M OPEN-MINDED BUT PROMISE AFTER PROMISE
28 HAS BEEN MADE, AND WE CAN'T EVEN GET A MEANINGFUL

□

20

1 RESPONSE.

2 THE COURT: THE QUESTION I ASKED YOU,
3 MR. MCLACHLAN, IS ARE YOU WILLING TO PARTICIPATE IN THIS
4 SETTLEMENT CONFERENCE WITH THE COURT?

5 MR. MCLACHLAN: UNDER CERTAIN CIRCUMSTANCES, YES.
6 YEAH, IF CERTAIN CIRCUMSTANCES THAT, I GUESS, I COULD
7 ADDRESS RIGHT NOW ARE TAKEN CARE OF, YEAH, SO LONG AS
8 THAT IS NOT GOING ON WHILE THE CLASS NOTICE IS GOING
9 OUT.

10 IF THE CLASS NOTICE IS PUT OFF FOR SOME
11 SHORT PERIOD OF TIME WHILE THIS PROCESS IS HAPPENING,
12 I'M FINE WITH IT. BUT MR. O'LEARY AND MYSELF ARE
13 GRAVELY CONCERNED ABOUT BECOMING LOCKED INTO THIS CASE,
14 AND I BELIEVE THAT LEGALLY OCCURS WHEN THAT NOTICE GOES
15 OUT.

16 I FEEL FOR MY FRIENDS, MR. KALFAYAN AND
17 MR. ZLOTNICK HERE, BUT THEY ARE LOCKED IN THIS CASE, AND
18 THERE IS NOT MUCH THEY CAN DO ABOUT IT. AND I SEE A
19 REAL POSSIBILITY DOWN THE ROAD OF BEING PUT TO THE
20 CHOICE POTENTIALLY -- AND I'M NOT SAYING YOUR HONOR IS
21 OUT TO DO THIS -- BUT POTENTIALLY BEING PUT TO THE
22 CHOICE OF EITHER COMMITTING MALPRACTICE ON BEHALF OF
23 SMALL PUMPERS CLASS BY GOING FORWARD WITHOUT AN EXPERT
24 TO PUT FORTH THEIR CRITICAL DEFENSE, OR HAVING TO GO
25 INTO MY OWN POCKET, MR. O'LEARY'S OWN POCKET, TO THE

26 TUNE OF \$100,000 WHICH WE CANNOT RECOVER AT ANY POINT IN
27 TIME. THAT IS JUST NOT A CHOICE WE CAN MAKE.
28 SO THIS IS -- WHAT I WOULD SUGGEST IS I

0

21

1 UNDERSTAND THE COURT'S POSITION ABOUT, LOOK, WE MAY NOT
2 EVEN NEED THIS IF WE GET DOWN TO THE ISSUE OF SAFE YIELD
3 AND OVERDRAFT, AND THOSE ARE MOOTED.

4 IF THE COURT WERE TO SAY THE SMALL PUMPERS
5 CLASS MOTION FOR THIS EXPERT IS GRANTED TODAY, BUT
6 DOLLAR ONE CANNOT BE SPENT IF AND UNTIL THE -- THAT NEXT
7 STAGE OF THE TRIAL OCCURS AND THOSE PREDICATE ISSUES TO
8 THE SAFE YIELD AND OVERDRAFT ARE DEALT WITH AND ARE
9 RESOLVED ADVERSELY TO THE CLASS, THEN I THINK IT
10 RESOLVES THE PROBLEM. THEN WE DON'T HAVE TO FILE OUR
11 MOTION TO WITHDRAW MONDAY OR TUESDAY WHICH I DON'T THINK
12 WE HAVE A CHOICE.

13 THE COURT: WELL, I INDICATED TO YOU THAT I THINK
14 IT IS APPROPRIATE FOR THE COURT TO APPOINT AN EXPERT TO
15 DEAL WITH THOSE ISSUES AT THE APPROPRIATE TIME. NOW YOU
16 KNOW IF YOU WANT THE COURT TO MAKE AN ORDER AND STAY IT
17 UNTIL IT BECOMES NECESSARY, I DON'T HAVE ANY DIFFICULTY
18 IN DOING THAT BECAUSE I AGREE WITH YOU. I WOULD NOT
19 WANT TO SEE YOU COMMIT MALPRACTICE BY NOT BEING ABLE TO
20 BE ADEQUATELY PREPARED TO REPRESENT YOUR CLIENTS'
21 INTEREST.

22 I THINK WHAT YOU HAVE DONE HERE IS
23 ADMIRABLE. AND IN THE -- AS FAR AS I'M CONCERNED IN THE
24 HIGHEST STANDARDS OF THE PROFESSION STEPPING FORWARD AS
25 THE SAME WITH MR. KALFAYAN AND MR. ZLOTNICK REPRESENTING
26 THESE PEOPLE WHO WOULD OTHERWISE HAVE TO BE SERVED

27 INDIVIDUALLY AND SUBJECT TO EMPLOYING THEIR OWN LAWYERS,
28 AND TO WHAT END.

□

22

1 SO, YOU KNOW, I COMMEND YOU FOR THAT. I
2 THINK THAT IS THE RIGHT THING TO DO. AND I AM INCLINED
3 TO APPOINT -- AND I WILL APPORTION THE COST OF THAT
4 AMONG ALL THE PARTIES BECAUSE THAT IS THE APPROPRIATE
5 DIRECTION FROM THE STATUTE.

6 BUT I WOULD STAY THAT UNTIL IT BECOMES
7 NECESSARY FOR YOU TO DO IT AND TO HAVE IT. IT MAY NOT
8 NEVER BE NECESSARY. I DON'T KNOW. I SUSPECT, HOWEVER,
9 ABSENT A SETTLEMENT AT SOME POINT THERE IS GOING TO HAVE
10 TO BE A DETERMINATION MADE OF WHAT THE REASONABLE AND
11 BENEFICIAL USE IS OF EACH PARTY WHO IS INVOLVED IN THIS
12 LAWSUIT.

13 AND THAT, OF COURSE, IS THE ULTIMATE
14 DETERMINATION THAT IS GOING TO DETERMINE WHAT THE RIGHTS
15 OF THE PARTIES MIGHT BE.

16 MR. MCLACHLAN: THAT IS FINE. IF THERE IS GOING
17 TO BE THE COURT'S ORDER, THEN THAT RELIEVES THE PRIMARY
18 CONCERN OF MR. O'LEARY'S FIRM AND MY FIRM. AND THEN,
19 YOU KNOW, WE ARE OPEN TO PARTICIPATE IN WHATEVER PROCESS
20 THE COURT FEELS IS DISCUSSED.

21 THE COURT: WELL, MY INTEREST IS IN SEEING HOW
22 MANY ISSUES CAN GET RESOLVED BY AGREEMENT; AND,
23 HOPEFULLY, I WOULD LIKE TO SEE ALL THE ISSUES RESOLVED
24 BY AGREEMENT. THAT MAY NOT HAPPEN. BUT, CERTAINLY, THE
25 ISSUES RELATING TO THE PUMPER CLASS AND THE NONPUMPER --
26 OR DORMANT CLASS ARE THINGS THAT I THINK CAN BE
27 RESOLVED. ALL RIGHT. MR. FIFE.

28 MR FIFE: YOUR HONOR, I THINK THAT WE NEED TO

23

1 CLARIFY FACTUALLY THE NATURE OF THE WOOD CLASS, BECAUSE
2 IT HAS COME UP IN THE PAPERS, AND IT SEEMS TO BE THE
3 ASSUMPTION THAT THE COURT IS GOING ON THAT THE WOOD
4 CLASS IS MADE UP OF SMALL, AS YOU SAID, BACKYARD PUMPERS
5 FOR RESIDENTIAL PURPOSES.

6 BUT THE WOOD CLASS IS DEFINED AS PEOPLE WHO
7 PUMP LESS THAN 25-ACRE FEET PER PARCEL. THERE IS NO WAY
8 THAT A SMALL DOMESTIC PUMPER IS PUMPING 24 OR 20 OR TEN
9 OR EVEN 5-ACRE FEET.

10 THE SMALL DOMESTIC PUMPERS ARE GOING TO BE
11 PUMPING SOMETHING LIKE HALF AN ACRE FOOT TO AN ACRE
12 FOOT. AND SO EVERYONE BETWEEN ONE AND 25, THOSE AREN'T
13 PEOPLE WHO ARE -- WHO FIT INTO THIS DESCRIPTION THAT IS
14 BEING GIVEN TO THE CLASS.

15 THERE ARE PEOPLE WHO ARE -- MY CLIENT'S
16 RIGHT NOW WHO WILL BE IN THE SMALL PUMPERS CLASS BECAUSE
17 THEY HAVE DISCREET PARCELS ON WHICH THEY PUMP 20-ACRE
18 FEET, YOU KNOW, 15-ACRE FEET.

19 AND SO THERE IS THAT THAT I THINK WE NEED TO
20 UNDERSTAND OR WE ARE MISS-DEFINING OR MISS-TALKING ABOUT
21 WHO IS IN THIS CLASS: BUT FURTHER NOW IF AN EXPERT IS
22 GOING TO BE GIVEN TO THIS CLASS -- AND AS YOU SAY THE
23 COST IS GOING TO BE APPORTIONED AMONGST ALL PARTIES --
24 THAT MEANS NOT ONLY ARE THERE PARTIES IN THIS CASE THAT
25 ARE FUNCTIONALLY NO DIFFERENT THAN MY CLIENTS WHO ARE
26 GOING TO GET SUBSIDIZED EXPERT ASSISTANCE. AND NOW MY
27 CLIENTS HAVE TO PAY FOR THAT IN ADDITION TO PAYING FOR
28 OUR OWN EXPERT AND THOSE PARTIES -- SINCE MR. MCLACHLAN

1 HAS BEEN CLEAR, HE'S NOT GOING TO HAVE AN EXPERT. HE
2 HAS NO INTENTION OF HIRING AN EXPERT ON THE ISSUES OF
3 SAFE YIELD AND OVERDRAFT. WE HAVE TO PICK UP HELPING
4 HIM OUT AND HIS CLIENTS OUT TO DEFEND THAT PART OF THE
5 CASE.

6 SO A HUGE BURDEN IS BEING PUT ON SOME SMALL
7 PUMPERS AND NOT OTHERS, AND I REALLY DON'T SEE ANY
8 REASON FOR THE DISTINCTION.

9 THE COURT: WELL, I THINK YOU ARE AHEAD OF
10 YOURSELF, FRANKLY, MR. FIFE. WE DON'T HAVE NOTICES THAT
11 HAVE GONE OUT TO THE CLASS. WE HAVE NOT DEFINED THE
12 CLASS. WE ARE FINITELY -- IN A FINITE WAY. WE WILL --
13 I THINK YOU ARE PREMATURE IN YOUR CONCERNS, BUT I
14 UNDERSTAND THEM. AND I WILL DEAL WITH THEM AT THE
15 APPROPRIATE TIME. AT THIS POINT, HOWEVER -- GO AHEAD,
16 MR. DUNN.

17 MR. DUNN: JUST TO SORT OF COME BACK TO WHAT THE
18 COURT SUGGESTED ON THE SETTLEMENT PROCESS, WHAT I WOULD
19 LIKE TO SUGGEST TO THE COURT FOR ITS CONSIDERATION IS
20 THAT FAIRLY SOON THE COURT WOULD MEET WITH COUNSEL FOR
21 THE WOOD CLASS TOGETHER WITH COUNSEL FOR PUBLIC WATER
22 SUPPLIERS THAT HAVE FILED PRESCRIPTIVE CLAIMS AGAINST
23 WOOD CLASS AND ALSO INVITE THE UNITED STATES TO
24 PARTICIPATE BECAUSE OF THE MCCARRAN ISSUES AND CONCERNS.

25 AND THAT'S HOW I SORT OF ENVISION SORT OF
26 THE BEST WAY OF SORT OF MOVING FORWARD WITH THIS. I CAN
27 TELL YOU WE ARE PREPARED TO DO THIS ON A FAIRLY SHORT
28 ORDER. IT PROBABLY MAKES SENSE TO DO THAT, BECAUSE WE

1 ARE PREPARED TO GO EITHER WAY. SHOULD THE COURT WANT TO
2 SEND OUT THE NOTICE TO THE WOOD CLASS, WE ARE PREPARED
3 TO DO THAT, YOU KNOW, FAIRLY QUICKLY.

4 THE COURT: I WANT THAT NOTICE TO GO OUT PROMPTLY.

5 MR. DUNN: THEN MR. MCLACHLAN HAS HIS CONCERNS
6 THAT ONCE THAT NOTICE GOES OUT, THEN I LEAVE IT UP TO
7 THE COURT.

8 THE COURT: WELL, I HAVE INDICATED TO
9 MR. MCLACHLAN THAT I AM GOING TO GRANT HIS REQUEST AND
10 UNDERSTANDING MR. FIFE'S CONCERN ABOUT IT, I'M GOING TO
11 GRANT IT NEVERTHELESS. I THINK THERE IS GOOD CAUSE FOR
12 IT, AND I'M GOING TO STAY IT UNTIL THE ISSUES OF
13 OVERDRAFT AND SAFE YIELD HAVE BEEN ADJUDICATED.

14 MR. DUNN: WOULD THE COURT BE INTERESTED IN
15 PICKING OR SELECTING A DATE AT THIS POINT FOR THAT SINCE
16 WE ARE ALTOGETHER?

17 THE COURT: I WOULD.

18 MR. DUNN: OKAY.

19 THE COURT: I WOULD TAKE YOUR RECOMMENDATIONS.

20 MR. MCLACHLAN: YOUR HONOR, WOULD THIS BE
21 OCCURRING IN SAN JOSE?

22 THE COURT: THAT IS MY PREFERENCE, BUT I WOULD
23 TRAVEL ANYWHERE TO SETTLE A CASE.

24 MR. MCLACHLAN: HOW IS COSTA RICA?

25

26 (LAUGHING)

27

28 MR. KUNEY: SCOTT KUNEY ON BEHALF OF VAN DAM

1 PARTIES. I CERTAINLY SUPPORT THE JUDGE'S SENTIMENT,
2 YOUR HONOR, ABOUT SETTLING THIS CASE IF AT ALL POSSIBLE.
3 I'M JUST ASKING THE QUESTION OF WHY THE SETTLEMENT
4 PROCESS WOULD BE LIMITED TO ONLY CERTAIN PARTIES AS
5 COMPARED TO ALL OF THE PARTIES THAT MAY BE INTERESTED IN
6 RESOLVING THIS MATTER.

7 THE COURT: WELL, THE SPECIFIC ISSUE THAT I'M
8 INTERESTED IN ADDRESSING IS A VERY LIMITED ONE WITH
9 REGARD TO THE SMALL PUMPER CLASS BY THE PARTIES WHO HAVE
10 SUED THEM, ESSENTIALLY, AND ARE SEEKING NOT A NEUTRAL
11 RESULT BUT AN INTRUSION ON THEIR RIGHTS.

12 AND IF WE CAN RESOLVE THAT, AND I THINK IT
13 IS EASIER TO RESOLVE ON AN ISSUE BY ISSUE BASIS THAN IT
14 IS TO TRY TO DO A GLOBAL RESOLUTION. BUT I'M CERTAINLY
15 MUCH IN FAVOR OF THE GLOBAL RESOLUTION AS I THINK YOU
16 PROBABLY KNOW AND HAVE TRIED TO ACCOMPLISH THAT IN OTHER
17 MATTERS, SOMEWHAT SUCCESSFULLY AND SOMEWHAT NOT.

18 SO THAT IS THE REASON FOR THAT. AND IF YOU
19 WANT TO TALK ABOUT A GLOBAL RESOLUTION OF ALL THE ISSUES
20 IN THIS CASE AND IF YOU THINK THAT THERE IS ENOUGH
21 INFORMATION THAT EVERYBODY HAS CONCERNING THAT, I AM
22 CERTAINLY WILLING TO DO THAT, TOO.

23 MR FIFE: YOUR HONOR, I DON'T KNOW IF MR. KUNEY
24 WAS REFERRING TO A GLOBAL RESOLUTION SO MUCH AS
25 SOMETHING MR. MARKMAN HIT ON THAT ANY PROPOSED
26 SETTLEMENT THAT DEALS WITH, SAY, WITHDRAW OF THE CLAIM
27 OF PRESCRIPTION OR WHATEVER WITH REGARD TO THE WOOD
28 CLASS CAN HAVE A TREMENDOUS IMPACT ON THE OTHER

1 LANDOWNERS. BECAUSE IT CAN BE A REALLY SIGNIFICANT
2 AMOUNT OF WATER THAT WILL BE GOING TO CERTAIN
3 AGRICULTURAL PUMPERS AND NOT TO OTHERS.

4 SO THERE HAS GOT TO BE CONSISTENCY, AND I
5 THINK THAT PERHAPS I DON'T WANT TO PUT WORDS IN HIS
6 MOUTH, BUT I THINK THAT IS WHAT MR. KUNEY WAS REFERRING
7 TO THAT WE DO HAVE A VERY STRONG INTEREST IN WHATEVER
8 HAPPENS WITH THE WOOD CLASS.

9 MR. MARKMAN: YOUR HONOR, JAMES MARKMAN FROM
10 PALMDALE. IF THE PUBLIC WATER SUPPLIERS SETTLE WITH
11 THESE CLASSES, IT DOES NOT PRECLUDE ANY OTHER PARTY FROM
12 DEALING WITH THEM ON CORRELATIVE RIGHTS OR ANY OTHER
13 ISSUE. IT PROBABLY WOULD MEAN AS HAPPENED IN SANTA
14 MARIA CASE WHICH MR. FIFE IS VERY FAMILIAR WITH, CERTAIN
15 PRESCRIPTIVE RIGHTS AGAINST PEOPLE WHOM WE WILL SETTLE,
16 AND WE HAVE OTHER TERMS OF SETTLEMENT THAT HOPEFULLY
17 WOULD BE INTERWOVEN INTO ANY JUDGMENT. THAT DOESN'T
18 MEAN THAT ANY OTHER PARTY HAS WAIVED A RIGHT VERSUS US
19 OR A RIGHT VERSUS EITHER CLASS.

20 THEY ARE THERE TO PROCEED. SO THAT IS ALL
21 WE ARE SUGGESTING. AND WE ARE JUST ASKING THE COURT --
22 THE COURT OFFERED, AND WE ARE HAPPY TO ACCEPT THE
23 COURT'S AID IN TRYING TO GET THIS DONE.

24 THE COURT: WELL, LET ME ASSURE YOU, MR. FIFE,
25 THAT ALL SETTLEMENTS ENTERED INTO THAT AFFECT OTHER
26 PEOPLE HAVE TO BE CONDITIONAL TO SOME EXTENT. BUT I
27 THINK THAT IT IS NOT A BAD START TO DEAL WITH A COUPLE
28 OF THE PARTIES HERE AND SEE IF THEY CAN RESOLVE BETWEEN

□

28

1 THEMSELVES TENTATIVE ISSUES, AND WE CAN THEN OBVIOUSLY

2 DEAL WITH THE PEOPLE THAT ARE AFFECTED BY IT.

3 MR FIFE: I JUST WANT TO EMPHASIZE, AGAIN, WE ARE
4 NOT TALKING ABOUT DEALING WITH PARTIES. WE ARE TALKING
5 ABOUT DEALING WITH PARCELS AND WHAT WILL HAPPEN AS --

6 THE COURT: I UNDERSTAND THAT, MR. FIFE.

7 MR FIFE: -- IF THE PRESCRIPTION APPLIES TO SOME
8 BUT NOT ALL. SOME OF MY CLIENTS WILL HAVE INDIVIDUAL
9 PARCELS TO WHICH PRESCRIPTION DOESN'T APPLY AND
10 OTHERS --

11 THE COURT: WE WILL TRY TO ACHIEVE SOME
12 CONSISTENCY HERE. ALL I WANT TO DO IS GET STARTED ON
13 THIS PROCESS.

14 MR FIFE: AND ALL WE SAID WAS WE WANT TO
15 PARTICIPATE.

16 THE COURT: I APPRECIATE THAT AND THAT MAY BE
17 APPROPRIATE.

18 YES, MR. KALFAYAN.

19 MR. KALFAYAN: YOUR HONOR, I SPOKE TO A FEW PUBLIC
20 WATER SUPPLIERS JUST NOW, AND THEY WOULD WELCOME THIS
21 SIMILAR SETTLEMENT CONFERENCE WITH YOU WITH THE WILLIS
22 CLASS SEPARATELY FROM THE WOOD CLASS.

23 THE COURT: ALL RIGHT.

24 MR. MCLACHLAN: I WANT TO MAKE ONE POINT CLEAR
25 BECAUSE I KNOW THEY'RE -- IN THE DISCUSSIONS THAT
26 MR. O'LEARY AND MYSELF AND THE PUBLIC WATER SUPPLIER
27 COUNSEL HAVE HAD, WE SPENT PROBABLY MAJORITY OF THE TIME
28 TALKING ABOUT HOW WE DEAL WITH THE CONCERNS OF EVERYBODY

□

29

1 ELSE HERE.

2 BECAUSE -- AND I THINK A LOT OF PEOPLE

3 HAVEN'T BEEN THROUGH THIS BEFORE. THEY DON'T UNDERSTAND
4 THAT THERE WOULD ULTIMATELY IF THERE IS A SETTLEMENT IN
5 THE WILLIS OR WOOD CLASS BE A FAIRNESS HEARING, AN
6 PRELIMINARY APPROVAL HEARING, THE ABILITY FOR THE
7 PARTIES TO OBJECT.

8 AND SO I THINK THAT -- IT WAS ALWAYS MY
9 PERSONAL APPROACH THAT ANY SETTLEMENT THAT WAS BROKERED
10 AMONGST MY CLASS AND THE PURVEYORS WOULD BE SUBMITTED TO
11 MR. KUNEY'S GROUP AND WHOEVER ELSE IS OUT THERE FOR
12 THEIR INPUT.

13 WE MAY NOT NECESSARILY AGREE, BUT I THINK
14 THAT MOST OF THE CONCERNS CAN BE DEALT WITH IN A --
15 THERE ARE NOT MANY MOVING PARTS IN OUR CLASS. THERE ARE
16 NOT A LOT OF MOVING PARTS IN HIS CLASS. SO I THINK IT
17 IS A VERY GOOD PLACE TO START IF YOU ARE GOING TO TRY TO
18 PRECIPITATE GLOBAL SETTLEMENT.

19 LIKE WE HAVE BEEN DOING A YEAR NOW -- I'M
20 NOT GOING TO GET INTO DETAILS, BUT THE COURT IS AWARE
21 THAT WE HAVE BEEN TRYING TO WORK ON SETTLEMENT. IT IS
22 NOT GOING ANYWHERE. THE ONION IS TOO BIG, AND WE NEED
23 TO TRY TO WORK ON LITTLE PIECES OVER IT.

24 THE COURT: WELL, THAT IS MY VIEW.

25 MR. DUNN: I AGREE WITH MR. MCLACHLAN ON THAT. WE
26 WOULD REQUEST THAT AT LEAST INITIALLY IT WOULD BE MR.
27 MCLACHLAN'S -- HIS CLASS, AND THEN MR. KALFAYAN ON A
28 SIMILAR OR IDENTICAL APPROACH, BUT INVOLVING THE PARTIES

□

30

1 THEY SUED AND THEN TOGETHER WITH THE UNITED STATES.

2 I AGREE WITH MR. MCLACHLAN. IF WE EXPAND
3 THIS AND START LETTING PEOPLE IN THAT ARE NOT PARTIES,

4 IT'S GOING TO BECOME VERY --

5 THE COURT: THAT IS NOT AN EFFECTIVE WAY OF
6 SETTling A CASE OF THIS SCOPE. WE HAVE -- HOW MANY
7 PEOPLE LIVE IN THE ANTELOPE VALLEY? HOW MANY PARTIES
8 PER THOUSAND SQUARE MILES? I REALLY THINK THAT WE NEED
9 TO LOOK AT VARIOUS LEAVES OF THE LETTUCE AND SECTIONS OF
10 THE UNION -- OR SLICES OF THE ORDER -- ONION, OR
11 WHATEVER IT MAY BE SEPARATELY.

12 BUT I WANT TO HEAR FROM MR. LEININGER. HE,
13 OBVIOUSLY, HAS SOME INTEREST. HE HAS BEEN STANDING UP
14 FOR A LONG TIME.

15 MR. LEININGER: THANK YOU, YOUR HONOR. WE ARE
16 CERTAINLY INTERESTED IN SETTLEMENT. IN FACT, WE HAVE
17 ENGAGED IN SOME OF THIS PRELIMINARY DISCUSSION THAT YOU
18 ARE HEARING AMONGST PARTIES INFORMALLY.

19 I GUESS MY ONLY CONCERN IS WITH REGARD TO
20 THE SETTLEMENT CONFERENCE -- AND I APOLOGIZE BECAUSE I'M
21 NOT THAT FAMILIAR WITH THE MECHANICS OF THE FORMAL
22 SETTLEMENT CONFERENCE BEFORE THE COURT. BUT THERE ALSO
23 HAVE BEEN SOME DISCUSSION OF A POTENTIAL MEDIATOR THAT
24 WOULD ALLOW FRANK DISCUSSION AND PERHAPS MORE
25 OPPORTUNITY TO ENGAGE IN MORE DISCUSSIONS, MORE INFORMAL
26 DISCUSSIONS BEFORE COME TO THE COURT IN A SETTLEMENT
27 CONFERENCE.

28 SO THAT IS SOMETHING ELSE THAT WE HAD BEEN

□

31

1 DISCUSSING AT THIS POINT AND A FEW NAMES HAVE BEEN
2 THROWN OUT. I PUT THAT BEFORE THE COURT AS A
3 POSSIBILITY. AND IT MAY ALLOW MORE PARTIES TO ENGAGE IN
4 THE PROCESS.

5 THE COURT: LET ME JUST TELL YOU GENERALLY THE WAY
6 I CONDUCT A SETTLEMENT CONFERENCE. IT IS VERY INFORMAL.
7 IT IS IN CHAMBERS. IT IS NOT ON THE RECORD. NOBODY IS
8 BOUND TO ANYTHING THAT THEY SAY UNTIL THERE IS A
9 SETTLEMENT. IF IT IS AGREED UPON, THEN IT'S PUT ON THE
10 RECORD. AND CERTAINLY IN A CLASS ACTION SETTLEMENT,
11 THERE MUST BE A FAIRNESS HEARING; AND THERE MUST BE AN
12 OPPORTUNITY TO CHECK FOR ALL PARTIES.

13 BUT I WOULD THINK BEFORE WE EVEN REACH THAT
14 POINT IF WE WERE ABLE TO SETTLE SOME OF THE ISSUES IN
15 THE CLASS MATTERS, WE WOULD THEN EXPAND THE DISCUSSIONS
16 TO OTHER PARTIES WHO ARE AFFECTED BY IT. BECAUSE
17 EVERYBODY IS GOING TO BE AFFECTED BY WHATEVER HAPPENS
18 HERE.

19 AND THE COURT'S INTEREST IS SEEING IF I CAN
20 MOTIVATE THE PARTIES TO COME TO AN AGREEMENT AND
21 RESOLUTION OF SOME OF THESE VERY DIFFICULT ISSUE.

22 I KNOW HOW DIFFICULT IT IS TO TRY TO SETTLE
23 A CASE LIKE THIS OF THIS SCOPE BY HAVING EVERYBODY
24 PARTICIPATE IN THE FIRST INSTANCE. I THINK IT IS REALLY
25 IMPORTANT THAT THE INFORMAL OFF-THE-RECORD
26 DISCUSSIONS -- IF THE PARTIES WANT TO HIRE A MEDIATOR,
27 THAT IS FINE. MY TIME IS PAID BY THE STATE AS YOU KNOW.
28 SO ESSENTIALLY YOU GET MY TIME.

□

32

1 YOU WANT TO PAY A MEDIATOR, UNDERSTAND THEY
2 CHARGE UPWARDS OF FIVE TO \$700 AN HOUR. AND THAT IS
3 OKAY WITH ME, TOO. SO IT IS YOUR CHOICE. BUT WE WOULD
4 WANT YOU TO PARTICIPATE BECAUSE YOU DO HAVE AN INTEREST
5 IN EVEN THE CLASSES.

6 MR. LEININGER: CERTAINLY. IF I MAY ADDRESS A FEW
7 OF OTHER ISSUES AND PERHAPS THE PROCEDURE AND THE
8 TIMING.

9 WITH REGARD TO THE PHASE III TRIAL ISSUES
10 THAT YOU HAD IDENTIFIED WITH OVERDRAFT AND SAFE YIELD,
11 WE THINK IT IS IMPERATIVE THIS NOTICE GO OUT AND THAT
12 ALL THE PARTIES HAVE BEEN JOINED, THE CLASSES ARE FORMED
13 BEFORE WE START TO LITIGATE SUCH ISSUES.

14 SO THE TIMING OF THE NOTICE I THINK IS
15 IMPORTANT AT THIS POINT. THERE HAS BEEN SOME DISCUSSION
16 OF PERHAPS DELAYING THE TIMING OF THE NOTICE SHOULD WE
17 REACH SOME SORT OF CLASS RESOLUTION. AND IN THAT CASE
18 PERHAPS THE RESOLUTION COULD ACTUALLY BE -- GO OUT WITH
19 THE MAILING; BUT, OF COURSE, THAT WOULD MEAN THAT YOU
20 HAVE TO MOVE QUITE QUICKLY, I THINK.

21 BUT IT WOULD AVOID, PERHAPS, TWO MAILINGS
22 ON -- I SEE PUBLIC WATER COUNSEL SHAKING HEADS, BUT
23 PERHAPS WOULD AVOID TWO MAILINGS AND ALLOW PARTIES TO
24 ENGAGE IN THE FORM OF DISCUSSION, AND, PERHAPS, THAT
25 WOULD MAKE FOR A MORE EFFICIENT PROCESS.

26 WITH THAT SAID, WE ARE CERTAINLY INTERESTED
27 IN MOVING ADJUDICATION ALONG. SO NOTICE HAS TO GO OUT
28 TO THESE PARTIES -- PARTIES HAVE TO BE JOINED. WE

□

33

1 SHOULD BE SETTING DATES THAT I THINK WILL MOTIVATE THE
2 PARTIES TO PROCEED IN GOOD FAITH AND SETTLEMENT AND TRY
3 TO REACH A QUICK RESOLUTION.

4 THE COURT: MR. LEININGER, I DO WANT THE NOTICE TO
5 GO OUT FORTHWITH. I THINK THAT ATTEMPTING TO SETTLE A
6 CASE, AND THEN PRESENTING IT TO THE CLASS BEFORE THE

7 CLASS NOTICE AND THE OPT-OUT PERIOD HAS OCCURRED IS NOT
8 A GOOD THING. AND I THINK THAT THE TIME FOR OPTING OUT
9 IS IN THE CLASS -- THE CERTIFIED AND NOTICE AND NOT
10 AFTER SOME SPECIFIC ACTIONS HAVE BEEN TAKEN.

11 MY CONCERN HERE IS THAT WE MOVE ALONG, AND I
12 WANT -- I DON'T KNOW WHAT THE STATUS OF THE CLASSES AND
13 THE NOTICES ARE AT THIS POINT. I THINK MR. DUNN IS
14 GOING TO TELL US THAT IN A COUPLE OF MINUTES. BUT I
15 WOULD LIKE TO SET A DATE TODAY WHEN WE COULD COME
16 TOGETHER AT LEAST ON THE FIRST SETTLEMENT, AND I WOULD
17 LIKE TO FOLLOW THAT UP WITH A SECOND SETTLEMENT
18 INVOLVING -- OR DISCUSSION INVOLVING THE WILLIS CLASS.

19 MR. LEININGER: YOUR HONOR, I DO HAVE JUST ONE
20 POINT; AND, FRANKLY, I WOULD LIKE TO HAVE THE
21 OPPORTUNITY TO RESPOND FORMALLY TO THE COURT ON THE
22 ISSUE OF THE UNITED STATES COMING INTO DISCUSS
23 INFORMALLY OFF THE RECORD WITH YOU AND OTHER COUNSEL. I
24 REALLY DON'T KNOW OUR POSITION WITH REGARD TO THE
25 MECHANICS OF THAT, BUT I CERTAINLY COULD FIND OUT AND
26 GET RIGHT BACK TO YOU.

27 IF WE WERE TO SET A DATE IN A FEW WEEKS,
28 THEN CERTAINLY I WOULD NOT ONLY HAVE THAT ANSWER, BUT I

□

34

1 THINK WE COULD ALSO WORK TOWARD OBTAINING THE NEED FOR
2 THAT. I REALLY THINK WE HAVE SOME POTENTIAL HERE TO
3 SETTLE INFORMALLY ON OUR OWN IN A MATTER OF A FEW WEEKS.

4 MS. GOLDSMITH: YOUR HONOR, THIS IS JANET
5 GOLDSMITH FOR THE CITY OF LOS ANGELES. MAY I KNOW WHO
6 WAS JUST SPEAKING.

7 THE COURT: MR. LEININGER.

8 MS. GOLDSMITH: THANK YOU.

9 THE COURT: ALL RIGHT. WELL, IT IS YOUR CALL AS
10 TO IF YOU WISH TO HAVE A SETTLEMENT CONVERSATION WITH
11 THE COURT. I'M NOT GOING TO ORDER IT BECAUSE I AM THE
12 TRIAL JUDGE. BUT I CAN TELL YOU THAT I DO THIS ON A
13 REGULAR BASIS. I DON'T THINK THAT ANYBODY HAS EVER FELT
14 THEIR INTERESTS HAVE BEEN PREJUDICED AS A RESULT OF A
15 SETTLEMENT DISCUSSION WITH ME, AND I'M HAPPY TO DO THAT.

16 BUT I'M ALSO HAPPY TO HONOR YOUR OBJECTION
17 TO IT IF THAT IS WHAT YOU WISH TO DO. SO YOU DECIDE.
18 AND IF YOU WANT IT, FINE; IF YOU DON'T, FINE. IF YOU
19 CAN SETTLE WITHOUT ME, THAT IS EVEN BETTER --

20

21 (LAUGHING)

22

23 THE COURT: -- BECAUSE I HAVE OTHER THINGS TO DO.

24 MR. LEININGER: OKAY. YOUR HONOR, WE WILL
25 CERTAINLY -- CERTAINLY NOT OPPOSING THE ESTABLISHMENT OF
26 THAT DATE FOR THE --

27 THE COURT: LET'S TALK ABOUT WHEN THAT MIGHT
28 HAPPEN, SEE IF I CAN FIGURE IT OUT FROM MY CALENDAR

□

35

1 HERE. LET'S HAVE SOME RECOMMENDATIONS.

2 MR. DUNN: YOUR HONOR, PRELIMINARILY, HOW DOES MAY
3 13TH LOOK ON THE COURT'S CALENDAR?

4 THE COURT: I HAVE ANOTHER SETTLEMENT
5 CONFERENCE -- ACTUALLY A CLASS ACTION SCHEDULED. I
6 DON'T BELIEVE THAT IS GOING TO GO TO HEARING. SO I'M
7 WILLING TO SET THIS FOR THE 13TH IN THE MORNING.

8 MR. LEMIEUX: I AM THINKING THE 13TH IS PROBABLY

9 THE CLOSEST WE ARE GOING TO GET.

10 THE COURT: WHY DON'T WE SET IT FOR THE 13TH AT
11 9:00 A.M. WHERE WOULD YOU LIKE TO DO THAT?

12 MR. DUNN: DOESN'T MATTER TO US, COUNSEL.

13 THE COURT: SHOULD WE DO IT IN SAN JOSE?

14 MR. MCLACHLAN: I GUESS WE SHOULD; BUT IF WE'RE
15 GOING TO DO IT IN SAN JOSE, YOUR HONOR, IS IT POSSIBLE
16 TO NOT DO IT QUITE AT 9:00 A.M. AND MOVE IT BACK A HALF
17 HOUR FOR THE DISTANCE OF TRAVEL.

18 THE COURT: SURE. YES. 9:30, TEN O'CLOCK?

19 MR. MCLACHLAN: 9:30 IS FINE.

20 THE COURT: FEBRUARY 13TH -- I'M SORRY, MAY 13TH.
21 LET ME -- BEFORE WE AGREE ON THAT, LET ME CALL MY CLERK
22 AND MAKE SURE THAT IS NOT A BAD DAY.

23

24 (TELEPHONIC CONFERENCE)

25

26 THE COURT: AS IT TURNS OUT, THERE IS A COMPLEX
27 LITIGATION CONFERENCE THAT I'M PLANNING ON ATTENDING
28 HERE ON THE NEXT DAY WHICH IS THE 14TH. SO WE CAN DO IT

□

36

1 DOWN HERE.

2 MR. LEMIEUX: THAT WOULD BE GREAT.

3 THE COURT: THAT WAY I'LL BE DOWN HERE ANYWAY, SO
4 I'LL JUST SPEND THE EVENING.

5 MR. LEMIEUX: 9:00 A.M.?

6 THE COURT: IS 9 O'CLOCK A GOOD TIME HERE?

7 MR. DUNN: YES, YOUR HONOR.

8 MR. MCLACHLAN: YES, YOUR HONOR.

9 MR. KALFAYAN: YOUR HONOR, CAN I SUGGEST THAT FOR

10 THE WILLIS CLASS WE DO IT IN THE AFTERNOON OF THE 13TH
11 AT 1:30?

12 MR. LEMIEUX: 14TH.

13 MR. KALFAYAN: 14TH.

14 THE COURT: I CAN'T DO IT THE 14TH, BUT THE 13TH.

15 MR. LEMIEUX: OH, I'M SORRY.

16 MR. KALFAYAN: THE 13TH IN THE AFTERNOON.

17 THE COURT: YOU THINK ONE MORNING IS GOING TO BE
18 SUFFICIENT.

19 MR. KALFAYAN: THAT IS FINE, YOUR HONOR.

20 MR. MCLACHLAN: DOES IT PRESENT A PROBLEM WITH THE
21 COURT IF WE STARTED ON THE 14TH AT 8:30 INSTEAD OF 9:00?

22 THE COURT: ON THE 13TH.

23 MR. MCLACHLAN: WE ARE TALKING ABOUT THE 14TH;
24 RIGHT?

25 THE COURT: NO, 13TH. WEDNESDAY IS THE 13TH.

26 MR. MCLACHLAN: OH, 13TH DOWN HERE.

27 THE COURT: YEAH, 13TH DOWN HERE, BECAUSE I HAVE
28 TO BE DOWN HERE ANYWAY AT THE COMMONWEALTH.

□

37

1 MR. MCLACHLAN: SO THAT IS FINE.

2 THE COURT: OKAY. 9 O'CLOCK ON THE 13TH. AND ON
3 THE 14TH, I'LL BE HERE SO WE CAN -- WE CAN DO THE WILLIS
4 CLASS IN THE AFTERNOON. DOES THAT SEEM ABOUT TIME-WISE
5 OKAY?

6 MR. WEEKS: AFTERNOON OF THE 13TH OR 14TH?

7 THE COURT: MORNING OF THE 13TH AND THE AFTERNOON
8 OF THE 13TH SO I'LL SPEND THE DAY HERE.

9

10 (THE COURT AND THE CLERK CONFER OFF THE RECORD.)

11

12 MR. LEMIEUX: JUST SO WE ARE CLEAR, IT'S THE
13 PUBLIC ENTITIES, THE FEDERAL GOVERNMENT, AND THOSE TWO
14 CLASS REPRESENTATIVES ONLY; CORRECT?

15 THE COURT: YES.

16 MR FIFE: THAT IS MY QUESTION. AM I TO BE
17 EXCLUDED?

18 THE COURT: I'M NOT GOING TO PUT IT THAT WAY,
19 MR. FIFE, BUT I THINK I WOULD LIKE YOU TO BE ON THE
20 FRINGE OF IT IF YOU WANT TO BE HERE. BECAUSE I THINK
21 THAT WHATEVER POSITIONS YOU ARE GOING TO TAKE -- AND I
22 SUSPECT I KNOW WHAT THEY ARE, ARE GOING TO GET DEFERRED
23 IN ANY EVENT SO WE EXPAND THE SETTLEMENT PROCESS --

24 MR FIFE: BUT I MAY ATTEND?

25 THE COURT: YES, YOU MAY.

26 MR. JOYCE: YOUR HONOR, BOB JOYCE REPRESENTING
27 DIAMOND FARMING COMPANY AND CRYSTAL ORGANIC LLC. I JUST
28 HAVE ONE ISSUE OF CONCERN, YOUR HONOR, ONE OF MY

□

38

1 SINCEREST CONCERNS OF THIS CASE IS THAT IT COMES TO AN
2 END AT SOME POINT.

3 THERE'S NO WINNER OR LOSER IN THIS THING
4 RIGHT NOW, BECAUSE EVERYONE IS A LOSER. BUT MORE
5 IMPORTANTLY, I DON'T WANT TO RISK THE CASE TAKING STEPS
6 BACKWARDS.

7 THE CONCERN I HAVE IS WHETHER OR NOT THE
8 COURT'S PARTICIPATION IN THE SETTLEMENT PROCESS IF
9 OBJECTED TO BY ANYBODY OUT THERE WHO IS NOT
10 PARTICIPATING WHO WOULD HAVE A POTENTIAL FOR CREATING A
11 BASIS TO AFFECT THE PROGRESS OF THE CASE AND/OR MORE

12 IMPORTANTLY MAYBE AFFECT ANY DECISIONS OR JUDGMENT
13 RENDERED. I WOULD ASK IF THE COURT THINKS THAT MAY BE
14 APPROPRIATE THAT IF ANYBODY INTENDS TO OBJECT TO THE
15 PROCESS THAT THEY PRONOUNCE THAT FACT SO WE DON'T GET
16 DOWN TO A POINT WHERE WE HAVE TO --
17 THE COURT: I APPRECIATE THAT, MR. JOYCE. I THINK
18 THAT IS A VERY GOOD SUGGESTION BECAUSE I DO NOT WANT
19 THIS TO BE DEEMED TO BE IMPROPER EX-PARTE COMMUNICATION
20 WITH SOME COUNSEL.
21 MR. JOYCE: I THINK THE WAY THAT WE CAN DO IT,
22 YOUR HONOR, IS SIMPLE. THE COURT CAN PROPOSE AN ORDER
23 DIRECTING ANY ACTIVE PARTICIPANT TO LODGE A WRITTEN
24 OBJECTION WITH AUTHORITY THAT WOULD SUBSTANTIATE THE
25 PROPOSITION THAT WITHOUT CONSENT OF NONPARTICIPATING
26 PARTIES IN THIS PROCESS THAT IT WOULD SOMEHOW AFFECT
27 YOUR HONOR, BECAUSE I DON'T KNOW THE ANSWER TO THE
28 QUESTION.

□

39

1 BUT MY CONCERN IS THAT NOT KNOWING THE
2 ANSWER, I AM CONCERNED THAT WE COULD FIND OURSELVES IN A
3 SITUATION WHERE WE START STEPPING BACKWARDS. AND ALL
4 THAT IS GOING TO DO IS INCREASE THE COSTS TO ALL THE
5 LITIGANTS UNNECESSARILY, IF WE CAN AVOID IT BEFORE WE
6 CROSS THAT THRESHOLD.
7 THE COURT: I TOTALLY AGREE WITH YOU, MR. JOYCE.
8 AND IF ANY PARTY WISHES HERE TO OBJECT, I WOULD LIKE YOU
9 TO STATE THAT NOW IF YOU WOULD.
10 MR. ZIMMER: THIS IS MR. ZIMMER FOR BOLTHOUSE. WE
11 DO (TELEPHONIC STATIC INTERRUPTION) -- WE DO OBJECT TO
12 THE GRANTING OF A MOTION FOR ALL PARTIES TO PAY COSTS OF

13 THE CLASS EXPERTS. THERE HAS NEVER BEEN ANY MOTION THAT
14 I'M AWARE OF THAT REQUESTED THAT OTHER LANDOWNERS PAY
15 THE COST OF THE CLASS EXPERTS. FARMING --

16 THE REPORTER: I CAN'T HEAR.

17 MR. ZIMMER: -- THIS ACTION FIRST FILED CLOSELY
18 THEREAFTER BY BOLTHOUSE ON A LIMITED BASIS QUIET TITLE
19 AGAINST ONLY PURVEYORS.

20 I THINK IT WOULD BE COMPLETELY IMPROPER TO
21 HAVE EITHER OF THESE PARTIES PAYING FEES FOR EXPERTS FOR
22 PARTIES WHO MAY HAVE ADVERSE INTEREST TO OUR CLIENTS IN
23 THIS LITIGATION.

24 THE COURT: OKAY. MR. ZIMMER, YOU ARE KIND OF
25 JUMPING AHEAD A LITTLE BIT. FIRST OF ALL, THE COURT'S
26 ORDER CONCERNING THE APPOINTMENT OF A NEUTRAL EXPERT
27 REQUIRES THE COURT TO APPORTION THE COST OF THE EXPERT
28 AMONG SEVERAL OF THE PARTIES. THAT IS NOT A

□

40

1 DETERMINATION AS TO WHO PAYS WHAT FOR HOW MUCH. THAT
2 COMES LATER. THE COURT DOES HAVE THE DUTY TO MAKE A
3 PROPER APPORTIONMENT OF THOSE COSTS. I WOULD DO THAT.

4 I WOULD EVEN POINT OUT TO YOU THAT UNDER THE
5 WATER CODE THE COURT COULD MAKE A REFERENCE, AND THE
6 WATER BOARD WOULD MAKE AN ALLOCATION OF THE COSTS OF THE
7 REFERENCE AMONG THE VARIOUS PARTIES. SO I THINK IT IS A
8 LITTLE PREMATURE AT THIS POINT, BUT WHAT I WAS
9 INTERESTED IN WAS WHETHER THERE WAS AN OBJECTION BY
10 ANYBODY ON THE TELEPHONE OR PRESENT HERE TO THE COURT
11 HOLDING A SERIES OF SETTLEMENT CONFERENCES WITH SOME OF
12 THE PARTIES NOT BEING PRESENT AT THE TIME OF ALL OF THE
13 SETTLEMENT CONVERSATIONS.

14 UNIDENTIFIED ATTY: I --
15 THE COURT: I DON'T KNOW WHO IS TALKING.
16 MR. DOUGHERTY: THIS IS ROBERT DOUGHERTY. I
17 CANNOT MAKE A DECISION RIGHT ON THE SPUR OF THE MOMENT
18 WHETHER TO OBJECT TO THE SETTLEMENT CONFERENCE
19 PROCEDURES. I WILL, HOWEVER, EITHER OBJECT OR NOT
20 WITHIN THE NEXT COUPLE OF DAYS.
21 THE COURT: THANK YOU.
22 MR. ZIMMER: I WAS GOING TO MAKE THE SAME COMMENT,
23 YOUR HONOR. I WOULD NEED TO DISCUSS THAT WITH MY
24 CLIENT.
25 THE COURT: OKAY.
26 UNIDENTIFIED ATTY: WE --
27 THE REPORTER: I DIDN'T HEAR THE NAME OF THE
28 ATTORNEY.

□

41

1 THE COURT: ANY PARTY THAT WANTS TO RESERVE THE
2 RIGHT TO OBJECT, BUT I WOULD LIKE YOU TO DO IT FAIRLY
3 PROMPTLY. BECAUSE IF YOU DO OBJECT, I'M NOT GOING TO
4 HOLD THE SETTLEMENT CONFERENCE. IT WILL HAVE TO BE HELD
5 BY SOMEONE ELSE.
6 MR. DAVIS: REBECCA --
7 THE REPORTER: SORRY, YOUR HONOR, BUT I CAN'T HEAR
8 HER ON THE INTERCOM.
9 THE COURT: YOU NEED TO SPEAK UP.
10 MS. DAVIS-STEIN: MS. REBECCA DAVIS-STEIN FOR MR.
11 BLAYNEY SPECIFICALLY. MR. BLAYNEY IS A SMALL PUMPER AND
12 WAITING FOR THAT SMALL PUMPER CLASS. THE NOTICE IS
13 THAT, YOU KNOW, THAT HAVE NOT COME OUT. WELL, WOULD HE
14 BE WELCOME AT THE SETTLEMENT CONFERENCE?

15 THE COURT: WELL, I WOULD RATHER NOT EXPAND IT TOO
16 FAR. IF HE WANTS TO BE HERE, THAT IS FINE; BUT I WANT
17 COUNSEL WHO ARE -- THE PRINCIPALS WHO ARE INVOLVED IN
18 REPRESENTING THE CLASS BECAUSE I UNDERSTAND HE IS GOING
19 TO OPT INTO THE CLASS.

20 MS. DAVIS-STEIN: THAT'S CORRECT.

21 THE COURT: SO THERE IS REALLY NO NEED FOR HIM TO
22 PARTICIPATE.

23 MR. JOYCE: YOUR HONOR, I WOULD RENEW MY
24 SUGGESTION THAT AT THE CONCLUSION OF THE PROCEEDINGS
25 TODAY THE COURT WOULD POST AN ORDER COMPELLING WRITTEN
26 OBJECTIONS WITH AUTHORITY.

27 THE COURT: I OBVIOUSLY AM GOING TO DO THAT.

28 MR. JOYCE: THANK YOU, YOUR HONOR.

□

42

1 MR FIFE: YOUR HONOR, JUST SINCE WE ARE DOING
2 THIS, THE -- WE WILL NOT OBJECT; BUT THAT IS CONDITIONED
3 UPON THE UNDERSTANDING THAT AT LEAST FOR THE WOOD
4 DISCUSSION WE GET TO ATTEND AND BE ON THE FRINGES.

5 THE COURT: THAT IS WHAT I INDICATED.

6 MR FIFE: THANK YOU.

7 THE COURT: ALL RIGHT. ANYTHING ELSE ON THAT?
8 ALL RIGHT. SO I'LL SEE -- BARRING AN OBJECTION, I'LL
9 SEE EVERYBODY HERE ON THE 13TH AT 9 O'CLOCK.

10 MR. MCLACHLAN: IS THE COURT GOING TO SET ANY SORT
11 OF TIME LIMIT ON THE OBJECTIONS.

12 THE COURT: YES, I WILL DO THAT. BUT -- POST
13 NOTICE.

14 MR. KALFAYAN: AND BETWEEN MOTIONS, YOUR HONOR, IS
15 FOR -- THE MOTIONS FOR EXPERTS AND THE MOTION FOR JURY

16 TRIAL, ARE WE POSTPONING THOSE?

17 THE COURT: NO. I WANT TO TALK A LITTLE BIT ABOUT
18 THAT. I THINK -- AS FAR AS THE EXPERTS ARE CONCERNED,
19 I'M GOING TO APPOINT NEUTRAL EXPERTS. I'M GOING TO
20 DEFER THE REQUEST FOR A NEUTRAL EXPERT TO ASSIST YOU
21 WITH REGARD TO OVERDRAFT AND YIELD AT THIS POINT
22 BECAUSE -- BECAUSE I DON'T THINK I WANT TO DO THAT UNTIL
23 I SEE WHAT HAPPENS HERE WITH THE RESOLUTION.

24 BUT MR. MCLACHLAN'S MOTION IS GRANTED AND
25 STAYED.

26 MR. MCLACHLAN: YOUR HONOR, THE PROPOSED ORDER I'M
27 GOING TO BE SUBMITTING PROBABLY MONDAY WILL DEFER THE
28 ISSUE OF THE EXACT ALLOCATION OF THE EXPENSES TO A

□

43

1 FUTURE DATE WHEN THE ACTUAL NECESSITY OF INCURRING THOSE
2 EXPENSES COMES ABOUT. IS THAT OKAY?

3 THE COURT: YES. ALL RIGHT.

4 MR. KALFAYAN: YOUR HONOR, CAN I GO AHEAD AND
5 SUGGEST A DATE, NOT TODAY, TO RESET THAT MOTION IN THE
6 EVENT WE DON'T RESOLVE THE CASE, THE WILLIS MOTION FOR
7 EXPERTS?

8 THE COURT: WELL, LET ME DO THAT. I RECOGNIZE THE
9 NEED, AND WE WILL SET IT APPROPRIATELY.

10 MR. MCLACHLAN: OKAY. THANK YOU.

11 THE COURT: LET'S TAKE UP THE NEXT ISSUE WHICH IS
12 A MOTION FOR A PRELIMINARY INJUNCTION CONCERNING THE
13 MEETINGS THAT HAVE BEEN HELD. I HAVE RECEIVED FROM
14 MR. FIFE A DECLARATION. I HAVE RECEIVED FROM
15 MR. ZLOTNICK, I THINK -- MR. KALFAYAN, I'M NOT SURE WHO
16 SUBMITTED IT, A DECLARATION ASKING THE COURT TO DEFER

17 THE ISSUE WHILE SOME INVESTIGATION GOES ON.

18 IS THIS AN ISSUE THAT SHOULD BE HEARD THIS
19 MORNING?

20 MR FIFE: YOUR HONOR, I DON'T THINK THERE IS AN
21 ISSUE. I DON'T THINK THERE IS ANYTHING TO DEFER. I
22 JUST DON'T THINK THERE IS AN ISSUE.

23 THE COURT: WELL, THERE WAS A REQUEST FOR A
24 TEMPORARY RESTRAINING ORDER AND A PRELIMINARY
25 INJUNCTION, AND I SET IT FOR HEARING ON THE REQUEST FOR
26 A PRELIMINARY INJUNCTION WITHOUT A RESTRAINING ORDER FOR
27 THIS MORNING. SO THERE IS SOMETHING TO BE HEARD ONE WAY
28 OR THE OTHER.

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1 MR FIFE: OKAY. THERE IS SOMETHING TO BE HEARD.
2 YOU DENIED THE REQUEST FOR THE TEMPORARY RESTRAINING
3 ORDER.

4 THE COURT: IT HAS NO BEARING ON THE REQUEST FOR A
5 PRELIMINARY INJUNCTION.

6 MR FIFE: I DON'T SEE THERE IS ANY NEED FOR
7 PRELIMINARY INJUNCTION.

8 THE COURT: I UNDERSTAND YOUR OPPOSITION, BUT
9 LET'S HEAR FROM THE MOVING PARTIES.

10

11 (LAUGHING)

12

13 MR. MCLACHLAN: YOUR HONOR, I THINK THERE IS
14 PROBABLY SOME MISCOMMUNICATION ON THE CALENDARING SIDE
15 OF THINGS. BECAUSE AFTER THAT MEETING OCCURRED, I
16 FORGET THE DATE, I GATHERED A REPORT AND EMAILED YOUR
17 CLERK AND SAID THAT WE -- SPECIFICALLY THE WOOD CLASS

18 ONLY WAS TABLING THE ISSUE UNTIL SOME FUTURE DATE. AND
19 I THINK WE ARE GOING TO LEAVE IT THAT WAY.

20 SO WE TOOK OUR MOTION OFF CALENDAR IN
21 WHICH -- WHY THE COURT HAS NO BRIEFING ON IT. IF THERE
22 ARE FUTURE PROBLEMS, WE WILL RAISE IT. BUT I THINK THAT
23 COUNSEL HEARD THE COURT'S ADMONITIONS AND RIGHT NOW IT
24 IS A DEAD ISSUE FOR YOU.

25 MR. KALFAYAN: YOUR HONOR, ALL WE DID WAS WANTED
26 TO BE SURE THAT MR. FIFE DOESN'T MISCOMMUNICATE THINGS
27 REGARDING THE CLASS, IF HE WAS TO DO A PRESENTATION
28 REGARDING THE CLASS NOTICE OR COMMUNICATION WITH THE

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45

1 MEMBERS OF THE CLASS.

2 SO WE WERE JUST CONCERNED ABOUT THAT. WE
3 COMMUNICATED OUR CONCERN WITH MR. FIFE EXACTLY WHAT IT
4 WAS THAT WE THOUGHT THE PARAMETERS IN WHICH COULD
5 DISCUSS SOME OF THOSE ISSUES. AND WE LEFT IT AT THAT.

6 SO AS FAR AS WE ARE CONCERNED, THE MEETING
7 WAS HELD, AND HE TOLD US WHAT HAPPENED AT THE MEETING.
8 AND WE LEFT IT AT THAT WITH THE CAVEAT THAT -- BE
9 CAREFUL ABOUT WHAT YOU DO AND HOW YOU COMMUNICATE, HOW
10 AND WHO YOU COMMUNICATE TO.

11 THE COURT: ALL RIGHT. SO THE MOTION IS OFF
12 CALENDAR.

13 THE QUESTION OF THE JURY TRIAL. I QUITE
14 FRANKLY HAVE ALWAYS BEEN ENAMORED WITH JURY TRIALS. I
15 THINK THAT JURORS ARE WONDERFUL PARTS OF OUR SYSTEM, AT
16 LAW. BUT CASES OF EQUITY ARE CASES IN EQUITY, AND THEY
17 ARE DIFFERENT. I DON'T KNOW TO WHAT EXTENT THE ISSUES
18 OF PRESCRIPTION HERE ARE GOING TO GET ADJUDICATED OR

19 LITIGATED.

20 IF THERE IS ANY REMOTE POSSIBILITY THAT
21 ANYBODY IS ENTITLED TO A JURY IN THIS CASE, IT IS WITH
22 REGARD TO PRESCRIPTION. THE CASES THAT ARE CITED I
23 DON'T THINK ARE REALLY HELPFUL IN TERMS OF PRIOR RULINGS
24 ON EASEMENTS, PRESCRIPTIVE EASEMENTS ON LAND, OR
25 QUALITATIVELY AND QUANTITATIVELY DIFFERENT THAN THE
26 ADJUDICATION AND THE ALLOCATION OF WATER RIGHTS.
27 THE MOJAVE CASE DOESN'T STAND FOR THE
28 PROPOSITION THAT THERE IS A RIGHT FOR A JURY FOR

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46

1 DETERMINATION OF WHAT THE RIGHTS OF THE PARTIES ARE WITH
2 REGARD TO WATER. IT JUST STANDS FOR THE PROPOSITION
3 THAT THE COURT NEEDS TO MAKE A DETERMINATION OF WHAT THE
4 RIGHTS OF OWNERSHIP ARE WITH REGARD TO WATER RIGHTS WHEN
5 YOU ARE ADJUDICATING A WATER RIGHTS CASE AND ATTEMPTING
6 TO CREATE A PHYSICAL SOLUTION TO IT.

7 BUT BECAUSE THE WORDS USED BY THE COURT WERE
8 LEGAL RIGHT TO WATER FLOWING FROM THE OWNERSHIP OF THE
9 LAND, THAT DOES NOT MEAN THAT IT IS A LEGAL CAUSE OF
10 ACTION.

11 THAT'S MY READING OF IT AS I LOOK AT THE
12 TOTALITY OF THE LAW CONCERNING THE ESTABLISHMENT OF
13 WATER RIGHTS WHEN YOU ARE NOT TALKING ABOUT DAMAGES AND
14 YOU ARE NOT TALKING ABOUT EJECTMENT. ALL YOU ARE
15 TALKING ABOUT IS A DETERMINATION OF WHAT THE RIGHTS ARE
16 IF THE COURT HAS TO IMPOSE SOME SORT OF A MANAGEMENT
17 STRUCTURE IN EQUITY TO DETERMINE THE REASONABLE AND
18 BENEFICIAL RIGHT TO WATER, I THINK THAT IS IN EQUITY.

19 NOW, THAT IS WITHOUT PREJUDICE AT THIS

20 POINT. I DON'T THINK I NEED TO MAKE A FINAL ORDER
21 CONCERNING THAT. AND IT MAY WELL BE BECAUSE AS I HAVE
22 INDICATED I'M A FIRM BELIEVER IN THE JURY TRIAL PROCESS.
23 THE COURT CAN ALWAYS IMPANEL AN ADVISORY JURY IN EQUITY
24 TO ASSIST IT IN MAKING DETERMINATIONS OF FACTS. I MIGHT
25 WELL DO THAT.

26 I MIGHT ULTIMATELY DETERMINE THAT THERE IS A
27 RIGHT TO A JURY AT LAW WITH REGARD TO THOSE ISSUES, BUT
28 IT IS VERY IMPORTANT FOR THE COURT TO HAVE A

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1 DETERMINATION OF OVERDRAFT AND SAFE YIELD IN THIS CASE
2 AND IN ANY EVENT TO DETERMINE WHETHER OR NOT THE VALUES
3 ENDANGER OF DEPLETING ITS WATER SUPPLY.

4 IN ORDER TO DO THAT, THE COURT HAS TO KNOW
5 WHAT THE RIGHTS OF THE PARTIES ARE WITH REGARD TO THEIR
6 REASONABLE AND BENEFICIAL USES WHETHER PRESCRIPTION IS
7 INVOLVED IN THE CASE OR NOT.

8 SO I'M GOING TO CONTINUE DOWN THE PATH THAT
9 WE HAVE GONE ON. IF WE ARE NOT ABLE TO RESOLVE THE
10 CASE, THE COURT WILL HEAR THE ISSUES OF OVERDRAFT AND
11 DETERMINE WHAT THE SAFE YIELD OF THE VALLEY MIGHT BE.
12 AND I UNDERSTAND THE RESPECTIVE ARGUMENTS I HAVE HEARD
13 CONCERNING THE RIGHT TO A JURY -- AND YOU MAY GET ONE
14 WITH REGARD TO PRESCRIPTION AT SOME LATER TIME OR YOU
15 MAY NOT.

16 BUT AT THIS POINT BECAUSE THERE ARE QUIET
17 TITLE ACCESS SEEKING ADJUDICATION OF WATER RIGHTS
18 IRRESPECTIVE OF PRESCRIPTION, THE COURT IS GOING TO HEAR
19 THOSE ISSUES FIRST.

20 MR. JOYCE -- I'M NOT INVITING FURTHER

21 ARGUMENT, BY THE WAY; BUT IF YOU HAVE SOMETHING NEW, YOU
22 MAY.

23 MR. JOYCE: IT'S NOT NEW, BUT IT IS WOVEN INTO THE
24 COURT'S EXPRESSED TENTATIVE. I UNDERSTAND THE COURT TO
25 SUGGEST THAT IT INTENDS TO PROCEED WITH A PHASE, THE
26 SUBJECT MATTER OF WHICH WOULD BE THE ISSUE OF OVERDRAFT
27 AND/OR YIELD.

28 MY ONLY CONCERN IS IF THE CASE WERE NOTHING

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1 MORE THAN A ROUTE TOWARDS AN ULTIMATE ADJUDICATED
2 PHYSICAL SOLUTION, I WOULD BE SITTING HERE SAYING "LET'S
3 MOVE THAT AND DO IT QUICKLY."

4 HOWEVER, IF TO THE EXTENT OF THE ISSUE OF
5 YIELD AND/OR THE FACT OR LACK OF OVERDRAFT ITSELF IS AN
6 INTEGRAL PREDICATE TO THE CLAIM OF PRESCRIPTION, THEN
7 THE ISSUE OF WHETHER OR NOT THAT IS SUBSUMED IN THE
8 NECESSITY OR THE LACK OF NECESSITY FOR JURY TRIAL IS
9 SQUARELY FRAMED. SO IT -- I DON'T KNOW WHAT -- THE
10 COURT EXPRESS INTENT IS TO NOT YET DEFINITELY RULE
11 UPON THE ISSUE, BUT AT THE SAME TIME OR APPARENTLY GOING
12 TO PROCEED WITH A CORE ISSUE IN THE CASE THAT IS -- THAT
13 IS SUBSUMED WITHIN WHAT A JURY TRIAL, IN MY VIEW, WOULD
14 HAVE TO ALSO ADDRESS.

15 THE COURT: I UNDERSTAND THAT ARGUMENT. THAT IS
16 NOT SOMETHING THAT PERSUADES ME THAT THE COURT SHOULD
17 DECIDE LEGAL ISSUES OR SHOULD NOT DECIDE EQUITABLE
18 ISSUES BECAUSE THERE ARE SEPARATE EQUITABLE CAUSES OF
19 ACTIONS THAT HAVE NOTHING TO DO WITH PRESCRIPTION.

20 MR. KALFAYAN: YOUR HONOR, I HAVE TWO POINTS I WAS
21 GOING TO MAKE. MY SECOND POINT WAS THE ADVISORY JURY

22 PROPOSAL THAT YOU SUGGESTED AND THE SALIENT POINT THAT
23 YOU RAISED.

24 I MADE ONE POINT THAT I'LL JUST SHARE WITH
25 YOU, AND THAT IS THE TEST, I THINK, YOU SHOULD -- THE
26 COURT SHOULD FOCUS ON THIS AND IS WHETHER OR NOT WE HAVE
27 A RIGHT TO A JURY TRIAL IN A CAUSE OF ACTION DOESN'T
28 HAVE TO BE IDENTICAL TO THE CAUSE OF ACTION THAT MAY

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1 HAVE EXISTED IN COMMON LAW BEFORE 1850, BUT IF IT IS
2 SIMILAR. SO WITH RESPECT TO PRESCRIPTIVE EASEMENT, I
3 SUBMIT -- I SAY WHETHER TO LAND OR WATER SIMILAR BUT
4 MAYBE NOT IDENTICAL. BUT THE ADVISORY JURY IS A
5 RECOMMENDATION I WAS GOING TO MAKE, ALSO.

6 MR. ZIMMER: YOUR HONOR, THIS IS MR. ZIMMER, JUST
7 FOR CLARIFICATION. AS FAR AS THE COURT IS SAYING IS
8 THAT THE -- THAT WHAT THE COURT IS GOING TO BE HEARING
9 IS OVERDRAFT AND SAFE YIELD FROM AN EQUITABLE STANDPOINT
10 IN TERMS OF WHETHER THERE IS A CURRENT -- A SHORTAGE IN
11 THE BASINS; WOULD THAT BE CORRECT?

12 THE COURT: YES, BUT IT PROBABLY IS GOING TO GO
13 BEYOND THAT. IF ONE STARTS GETTING INTO THE QUESTION OF
14 SAFE YIELD, YOU ARE LOOKING AT IT OVER A PERIOD OF TIME
15 AND NOT JUST IN ONE YEAR BECAUSE THERE IS -- THERE MUST
16 BE A DANGER OF ULTIMATE DEPLETION IN ORDER FOR THE COURT
17 TO MAKE AN EQUITABLE DETERMINATION THAT THERE SHOULD BE
18 A PHYSICAL SOLUTION.

19 MR. ZIMMER: OKAY. PUT IT THIS WAY: IS THE COURT
20 DETERMINING THAT THIS -- THIS PHASE THAT THE COURT
21 INTENDS TO PROCEED ON IN TERMS OF SAFE YIELD AND
22 OVERDRAFT IS WITHOUT PREJUDICE TO A POTENTIAL JURY ON

23 ANY AND ALL FINDINGS NECESSARY FOR A CLAIM OF
24 PRESCRIPTION AT A LATER TIME?

25 THE COURT: ONLY TO THE EXTENT THAT THE ISSUES
26 HAVE NOT BEEN PREVIOUSLY ADJUDICATED AND RULED UPON BY
27 THE COURT. IN OTHER WORDS, IF THERE ARE BOTH LEGAL AND
28 EQUITABLE ISSUES, THE COURT MAY HEAR THE EQUITABLE

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1 ISSUES FIRST. AND IF THOSE ISSUES BECOME RES JUDICATA
2 OR COLLATERAL ESTOPPEL, THEN THEY ARE NOT GOING TO BE
3 RELITIGATED.

4 MR. ZIMMER: WHAT I'M SAYING IS IF YOU HAVE A
5 RIGHT TO A JURY TRIAL ON PRESCRIPTION, THEY SHOULD --
6 THEY SHOULD NOT BE RES JUDICATA ON THE ISSUE OF
7 PRESCRIPTION.

8 THE COURT: WELL, THEY CAN'T BE BECAUSE WE ARE NOT
9 GOING TO TRY PRESCRIPTION IN THAT FIRST PHASE.

10 MR. ZIMMER: IN OTHER WORDS, IF THE PARTIES HAVE A
11 RIGHT FOR JURY TRIAL FOR PRESCRIPTION. AND AS PART OF
12 THE PRESCRIPTION CLAIM THAT PURVEYORS MAKE THE ARGUMENT
13 THAT BECAUSE THE BASIN WASN'T OVERDRAFT THEY HAVE TO
14 SOMEHOW PROVE PRESCRIPTION, I THINK THAT THE LANDOWNERS'
15 FOUNDATION WOULD TAKE A POSITION THAT THAT ISSUE NEEDS
16 TO BE TRIED TO A JURY BECAUSE IT RESULTED IN THE TAKING
17 OF PROPERTY RIGHTS.

18 THE COURT: I UNDERSTAND YOUR ARGUMENT.

19 MR. JOYCE: YOUR HONOR, I JUST WANT TO BE CLEAR IF
20 I UNDERSTAND THE COURT'S INTENT. IF THE COURT WERE TO
21 PROCEED AND TRY THE NEXT PHASE ON THE TWO ISSUES THE
22 COURT HAS IDENTIFIED, THAT IT IS THE COURT'S EXPECTATION
23 THAT EVEN IF AT A LATER DATE IF THE COURT WERE TO

24 RECONSIDER ITS TENTATIVE ON THE ISSUE OF THE ENTITLEMENT
25 FOR A JURY TRIAL AND CONCLUDE, IN FACT, THAT THE JURY
26 TRIAL IS CONSTITUTIONALLY PROPELLED ON THIS KIND OF A
27 CLAIM THAT IN THAT CIRCUMSTANCE THE COURT'S FINDINGS ON
28 THE ISSUE OF OVERDRAFT AND YIELD AND ALL THE COMPONENT

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1 PARTS AND THE TIME FRAMES AND THE REST OF IT IS IN
2 ESSENCE GOING TO BE CONCLUSIVE FOR THE PURPOSE OF THAT
3 JURY TRIAL IF IT WERE TO GO FORWARD?

4 THE COURT: YES.

5 MR. JOYCE: THANK YOU.

6 MR. ZIMMER: I WANT TO --

7 THE COURT: JUST A MOMENT, MR. ZIMMER.

8 MR. ZIMMER, WAIT FOR JUST A MOMENT.

9 MR. ZIMMER: SURE.

10 MR. LEININGER: MR. LEININGER FOR THE UNITED
11 STATES. I HOPE I'M NOT GETTING AHEAD OF THE DISCUSSION
12 HERE. I DON'T HAVE A COMMENT WITH REGARD TO THE
13 SUBSTANCE OF THE ISSUES TO BE TRIED IN THE NEXT PHASE,
14 BUT I WAS JUST GOING TO REMIND THE COURT THAT I BELIEVE
15 IT WAS IN THE JANUARY CASE MANAGEMENT CONFERENCE WHEN
16 VARIOUS PARTIES HAD SUBMITTED DATES TO PROCEED ON THE
17 PHASE III TRIAL FOR SAFE YIELD AND OVERDRAFT.

18 THE COMMENT WAS MADE BY THE COURT AT THAT
19 TIME THAT -- THAT WHAT WE HAD PROPOSED -- THE UNITED
20 STATES HAD PROPOSED HAD BEEN REASONABLE.

21 SO I WAS GOING TO REQUEST THAT PERHAPS NEXT
22 WE COULD TAKE UP DATES TO SET FOR THE TRIAL AND PERHAPS
23 USE THIS AS THE MEANS TO DO SO.

24 THE COURT: ALL RIGHT. I THINK THAT IS A

25 REASONABLE REQUEST. AND SINCE WE ARE LIMITING THE
26 TRIALS TO THOSE FIRST PHASES, I DON'T RECOLLECT THE
27 EXACT DATES THAT YOU HAD PROPOSED, BUT TELL ME WHAT THEY
28 ARE.

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1 MR. LEININGER: SURE. THERE ARE CERTAIN KEYED
2 OFF -- THE TIMING OF THE NOTICE AND A SIDE BAR WITH
3 MR. DUNN. HE AND -- HE WOULD SPEAK TO THIS. BUT I
4 THINK THEY ARE INTENDING TO GET NOTICE OUT TO THE WOOD
5 CLASS WITHIN TWO WEEKS, SO APPROXIMATELY BEGINNING OF
6 MAY.

7 NOW, THE WILLIS CLASS COUNSEL HAS RECENTLY
8 FILED FOR AN EXTENSION WITH REGARD TO THE OPT-OUT
9 PERIOD; BECAUSE AS I UNDERSTOOD IT BECAUSE OF THE NUMBER
10 OF RESPONSES THAT THEY ARE RECEIVING AND GIVING THE
11 OPPORTUNITY FOR THE CLASS MEMBERS TO TAKE WHATEVER
12 ACTION THEY WANT.

13 I BELIEVE THAT WAS EXTENDED TO 120 DAYS FROM
14 THE TIME OF INITIAL NOTICE -- I'M SORRY. IF I'M
15 INCORRECT --

16 MR. KALFAYAN: IT'S 90.

17 MR. LEININGER: SO IF NOTICE GOES OUT TO MAY 1ST
18 AND OPT-OUT PERIOD OF THREE MONTHS --

19 MR. MCLACHLAN: ARE YOU TALKING ABOUT THE WOOD
20 CLASS?

21 MR. LEININGER: YES.

22 MR. MCLACHLAN: I WOULD LIKE TO BE HEARD AT SOME
23 POINT ON THIS ONE. I AM CLASS COUNSEL. SO IT WOULD BE
24 NICE IF WE HAVE SOME SAY IN THIS PROCESS.

25 MR. LEININGER: I WOULD JUST THROW OUT SOME DATES

26 HERE, AND THEN, PERHAPS, WE COULD PROCEED.

27 THE COURT: WELL, LET'S FIND OUT WHAT COUNSEL FOR
28 THE CLASS WANTS TO DO HERE IN REGARD TO TRIAL SETTING.

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1 MR. MCLACHLAN: I DON'T CARE ABOUT THE TRIAL
2 SETTING, YOUR HONOR. AS YOU CAN TELL I'M BEYOND
3 EXASPERATED BY THE FACT THAT -- THERE IS THIS SENSE THAT
4 THE PUBLIC WATER SUPPLIERS HAVE FILED THE CLASS ACTION;
5 THAT THEY ARE RUNNING THIS THING.

6 BECAUSE FOR SIX WEEKS I HAVE BEEN
7 ENDEAVORING THROUGH AT LEAST A HALF DOZEN EMAILS,
8 WRITTEN CORRESPONDENCE TO BEST, BEST AND KRIEGER TO FIND
9 OUT WHAT IS GOING ON WITH THIS LIST. BECAUSE OF THE
10 MANIFEST PROBLEMS WE HAVE HAD WITH THE WILLIS CLASS AND
11 NOTICE AND MY DISCUSSIONS WITH THEM IN FEBRUARY AND
12 THEIR MEETING WITH THEIR CONSULTANT, I HAVE RECEIVED NO
13 RESPONSES.

14 UNTIL I RECEIVED MR. DUNN'S DECLARATION
15 YESTERDAY, I HAD NO INFORMATION WHATSOEVER. ALL THAT
16 INFORMATION WAS NEWS TO ME. WHAT IS IN THAT DECLARATION
17 GIVES ME GREAT CONCERN. AND, AGAIN, I ASK -- I THOUGHT
18 THE COURT HAD ADMONISHED THE PUBLIC WATER SUPPLIERS TO
19 COOPERATE WITH US. AND, APPARENTLY, THEY DON'T FEEL
20 THEY NEED TO.

21 BUT BEFORE THAT NOTICE GOES OUT, I WANT TO
22 MEET WITH THEM. I WANT TO FIND OUT WHAT EXACTLY WAS
23 DONE ON THIS LIST. BECAUSE I HAVE -- THAT DECLARATION
24 SAYS THAT LA COUNTY TAX ASSESSORS' RECORDS THAT THEY
25 HAVE GOT FOR 5,000 PEOPLE DON'T HAVE MAILING ADDRESSES.
26 WELL, THAT IS JUST PATENTLY WRONG.

27 I HAVE SEEN THE RAW DATA IN THE CONTEXT THAT
28 THEIR EXPERTS -- EXPERTS' OFFICE. AND I WILL SAY THAT

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1 MR. WOOD OVER HERE IS ONE OF THE MANY PEOPLE THAT DIDN'T
2 GET THE WILLIS' NOTICE BECAUSE OF THE DEFECTS IN THE
3 PROCESS. HE RECEIVES HIS TAX BILL AND PAYS HIS TAXES AT
4 HIS PROPERTY. THOSE DATA BASIS HAVE TWO FIELDS FOR
5 ADDRESSES.

6 AND THERE -- THEY ARE WRONG THAT 5,000
7 PEOPLE DON'T HAVE ADDRESSES. AND I AM REALLY SERIOUSLY
8 CONCERNED THAT THIS IS A LIST THAT IS NOT GOING TO BE
9 PROFFERED. SO I'M HAPPY TO HAVE THE NOTICES GO OUT AT
10 SOME POINT IN TIME, BUT NOT WITHOUT CLASS COUNSEL BEING
11 SATISFIED THAT WHAT WAS DONE WAS APPROPRIATE. AND I
12 THINK IT IS REALLY CRITICAL.

13 THE COURT: I AGREE WITH YOU. THERE IS NO DOUBT.
14 AND THE QUESTION, MR. DUNN, IS:

15 WHAT IS THE STATUS OF THE LISTS, NUMBER ONE?

16 AND, NUMBER TWO, WHEN CAN YOU CONFER WITH
17 MR. MCLACHLAN TO MAKE SURE THAT HE IS SATISFIED THAT HIS
18 CLIENTS WHO ARE MEMBERS, POTENTIAL MEMBERS, WHO ARE
19 PUNITIVE MEMBERS OF THE CLASS ARE ACCOUNTED FOR?

20 MR. DUNN: LET ME ADDRESS BOTH OF THOSE. I THINK
21 SINCE WE LAST MET WITH THE COURT, I HAVE PROBABLY SPOKEN
22 WITH MR. MCLACHLAN AT LEAST ONCE A WEEK AND SOME WEEKS
23 ALMOST SEVERAL TIMES A WEEK, AND ON SOME DAYS MULTIPLE
24 TIMES. AND I HAVE AT LEAST TWO FACE--TO--FACE MEETINGS
25 WITH HIM.

26 AND I TAKE ISSUE TO HIS REPRESENTATIONS. WE
27 HAD EXPLAINED TO HIM EXACTLY THE UNUSUAL PROBLEM THAT WE

28 HAVE ENCOUNTERED WITH THE MAILING LIST WITH THE WOOD

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1 CLASS.

2 AND THAT IS THAT THERE WERE 5,000
3 ADDRESSES -- NOT THAT THERE AREN'T 5,000 ADDRESSES.
4 THERE ARE 5,000 ADDRESSES THAT ARE IN SOME FORM ARE NOT
5 SUFFICIENT TO SEND OUT. THERE WERE PROBLEMS WITH THOSE
6 ADDRESSES. AND THAT IS AN UNUSUALLY HIGH NUMBER GIVEN
7 THE 8,000 ADDRESSES THAT WE HAD IDENTIFIED AS BEING
8 POTENTIALLY BEING PUT WOOD CLASS MEMBERS.

9 I HAD EXPLAINED TO HIM AND VIVIDLY RECALL
10 THIS TELEPHONE CONVERSATION WITH HIM ON AT LEAST ONE
11 OCCASION THAT WE SUSPECT THAT THE REASON WHY -- WE
12 DIDN'T KNOW FOR SURE, BUT WE SUSPECTED THE REASON WHY
13 THERE WAS AN UNUSUALLY HIGH NUMBER AS TO COMPARED TO
14 WHAT HAPPENED WITH MR. KALFAYAN'S CLASS, THE WILLIS
15 CLASS, PROBABLY HAS TO DO WITH JUST THE NATURE OF THE
16 CLASS MEMBERS LIVING IN THESE AREAS THAT ARE NOT WITHIN
17 PUBLIC WATER SUPPLIERS SERVICE AREAS.

18 SO THEY ARE SOMEWHAT RURAL, IF I COULD PUT
19 IT THAT WAY, MAYBE EVEN REMOTE. IT APPEARED -- WE STILL
20 DON'T KNOW IF THIS IS EXACTLY THE CASE. BUT IT IS
21 OFTENTIMES THE CASE THAT THEY DON'T GET SOMEONE DRIVING
22 OUT IN A US POSTAL SERVICE TRUCK AND DELIVERING MAIL AT
23 THE PLACE. THERE ARE OTHER ADDRESSES ELSEWHERE.

24 BUT SETTING THAT ASIDE WHAT WE DID THEN WAS
25 TO ENGAGE IN A VERY LENGTHY AND NOW AND AGAIN EXPENSIVE
26 PROCESS OF TRYING TO COME UP WITH ADDRESSES FOR THESE
27 PEOPLE WHICH ULTIMATELY REQUIRED US TO GO BACK TO OUR
28 CLIENT, THE COUNTY, AND GO THROUGH THEIR PROCESS OF

□

1 OBTAINING YET ANOTHER CONSULTANT. THIS TIME A TITLE
2 INSURANCE COMPANY WHO WOULD TAKE THIS ASSESSORS' PARCEL
3 NUMBER FOR EACH OF THESE PROBLEM ADDRESSES. AND THEY
4 WOULD RUN IT THROUGH THEIR TITLE INSURANCE COMPANY
5 RECORDS AND GIVE US THE MOST CURRENT ADDRESS. SO WE
6 EXPECT THAT WILL BE DONE BY APRIL 28TH.

7 THEN AT THAT POINT, IT IS A RATHER SIMPLE
8 PROCESS OF JUST COPYING THE CLASS NOTICE, TAKING THE
9 ADDRESS LIST THAT WE HAVE, AND SENDING IT TO YET ANOTHER
10 COMPANY. AND WE WILL CREDIT AND MAIL IT.

11 I'M MORE THAN HAPPY AS I HAVE BEEN TO ALLOW
12 MR. MCLACHLAN TO MEET WITH THESE CONSULTANTS. HE HAS
13 MET WITH ONE CONSULTANT BEFORE, AND I'M MORE THAN HAPPY
14 TO HAVE HIM HELP WITH THE PROCESS.

15 BUT I DO TAKE ISSUE WITH THE REPRESENTATION
16 THAT SOMEHOW THERE HAS NOT BEEN COMMUNICATION OR
17 WHATEVER. THAT IS JUST SIMPLY NOT THE CASE. BUT I WILL
18 SAY THIS: I HAVE TALKED TO MR. MCLACHLAN, AND HE HAS
19 BEEN VERY CANDID WITH THE COURT AND VERY CANDID WITH ME.
20 HE DOESN'T WANT THAT CLASS NOTICE TO GO OUT UNTIL HIS
21 ISSUE OF REPRESENTATION IS RESOLVED. HE HAS TOLD THE
22 COURT THAT.

23 THE COURT: I THINK WE HAVE RESOLVED THAT ISSUE.

24 MR. DUNN: I HOPE SO. BUT THE SHORT VERSION IS
25 THAT HE IS MORE THAN WELCOME TO MEET WITH ANYBODY WHO IS
26 INVOLVED IN THIS PROCESS. THERE WAS NEVER ANY HINT THAT
27 WE WOULD MAIL ANY OF THIS STUFF OUT WITHOUT GIVING HIM A
28 CHANCE TO LOOK AT IT FIRST.

1 SO I'M MORE THAN HAPPY TO CONTINUE TO TALK
2 WITH MR. MCLACHLAN ABOUT THAT.

3 THE COURT: SO TELL ME WHEN YOU CAN HAVE THE
4 NOTICES OUT AND HAVE HAD AN OPPORTUNITY FROM
5 MR. MCLACHLAN TO REVIEW WHAT IS GOING OUT.

6 MR. DUNN: WE BELIEVE THAT NOTICES CAN ALL BE
7 MAILED OUT INCLUDING GIVING MR. MCLACHLAN AN OPPORTUNITY
8 TO REVIEW WITHIN TWO WEEKS AFTER APRIL 28TH. SO
9 WHATEVER THAT DATE IS TWO WEEKS AFTER APRIL 28TH, WE ARE
10 SUGGESTING THAT BE THE MAILING DEADLINE.

11

12 (THE COURT AND THE CLERK CONFER OFF THE RECORD.)

13

14 THE COURT: MAY, THE 12TH.

15 MR. DUNN: YES.

16 THE COURT: THAT IS A TUESDAY. THEN A 90-DAY
17 OPT-OUT PERIOD; IS THAT CORRECT?

18 MR. MCLACHLAN: I BELIEVE SO, YOUR HONOR.

19 THE COURT: THAT SEEMS TO ME TO BE REASONABLE. SO
20 THAT -- BY THE MIDDLE OF AUGUST WE SHOULD KNOW WHO HAS
21 OPTED OUT AND WHO HAS TO BE SERVED. THE DIFFICULTY IN
22 SETTING A TRIAL BEFORE WE KNOW WHO ADDITIONALLY HAS TO
23 BE SERVED INDIVIDUALLY IS THAT IT THEN PUTS SOMEBODY IN
24 THE POSITION THAT THEY HAVE BEEN SERVED. THEY HAVE GOT
25 TO FILE AN ANSWER. THEY HAVE GOT TO GET COUNSEL, AND IT
26 DOES SEEM TO ME THAT IT MIGHT BE PREMATURE TO SET A
27 TRIAL DATE ON THOSE FIRST ISSUES UNTIL WE HAVE CONCLUDED
28 THE OPT-OUT PROCESS.

1 SO I WOULD SUGGEST THAT WE HAVE A TRIAL
2 SETTING CONFERENCE IN AUGUST, AND I CAN SET THAT DATE.
3 I DON'T WANT TO DO THAT RIGHT NOW. BUT IT WOULD BE SOME
4 TIME AROUND PROBABLY THE LAST WEEK OF AUGUST.

5 MR. ZIMMER: MR. ZIMMER HERE, YOUR HONOR. THIS IS
6 MR. ZIMMER. I JUST WANT TO ADD THAT I AGREE THAT THE
7 COURT SHOULD PROBABLY NOT SET A TRIAL DATE AT THIS
8 POINT. I WANTED TO ADD ONE ADDITIONAL ASPECT TO THAT.
9 THE COURT, I THINK, HAS INDICATED THAT IT IS DENYING THE
10 RIGHT TO A JURY TRIAL IN THIS FIRST PHASE WHICH WILL
11 CONSIST OR NEXT PHASE WHICH WILL CONSIST OF OVERDRAFT
12 AND SAFE YIELD.

13 THE COURT: THAT IS CORRECT.

14 MR. ZIMMER: BUT THE COURT HAS ALSO INDICATED THAT
15 THE COURT WOULD CONSIDER ANY DETERMINATION OF SAFE YIELD
16 AND OVERDRAFT AS RES JUDICATA OR COLLATERAL ESTOPPEL TO
17 THE EXTENT IT APPLIES TO A PRESCRIPTIVE CLAIM; CORRECT?

18 THE COURT: AS IT APPLIES TO ANY CLAIMS THAT
19 INVOLVE SAFE YIELD IN THIS CASE AND OVERDRAFT.

20 MR. ZIMMER: SO THAT REPLY PRESCRIPTION CLAIM, THE
21 COURT COULD CONSIDER THAT COLLATERAL ESTOPPEL OR RES
22 JUDICATA?

23 THE COURT: WELL, OBVIOUSLY, YOU CAN ARGUE THAT IT
24 DOESN'T. I WOULD BE HAPPY TO HEAR YOUR ARGUMENTS. I
25 DON'T WANT TO GIVE YOU AN ADVISORY OPINION, BUT I
26 SUSPECT THAT IT MIGHT BE.

27 MR. ZIMMER: AND THE REASON I'M RAISING THIS IS
28 BECAUSE IF -- IF THE CLAIM OF SAFE YIELD OR OVERDRAFT

2 WAY OF THE PRESCRIPTION PHASE, THEN PUTTING OFF THE
3 ABILITY OF THE CLASSES TO HAVE AN EXPERT ON THAT ISSUE
4 WOULD SEVERELY IMPACT A CLAIM OF PRESCRIPTION AGAINST
5 THEM.

6 IT MIGHT BE A GOOD IDEA TO PUT THAT ISSUE
7 OFF FOR THE MOMENT AS TO WHEN THE CLASS WOULD BE
8 ENTITLED TO HAVE ACCESS TO AN EXPERT UNTIL AFTER THEY
9 DETERMINE WHETHER THEY CAN SETTLE IT.

10 BECAUSE IF SAFE YIELD IS THE BASIS FOR
11 PRESCRIPTION CLAIM NOT HAVING AN EXPERT WOULD BE
12 EXTREMELY --

13 THE COURT: WELL, I INDICATED THAT AS FAR AS THE
14 DORMANT CLASS IS CONCERNED THAT WE ARE NOT GOING TO DEAL
15 WITH THAT UNLESS WE ARE UNABLE TO RESOLVE THE CASE. AND
16 THEN, OBVIOUSLY, WE WOULD MAKE A DIFFERENT ORDER.

17 MR. MCLACHLAN.

18 MR. MCLACHLAN: I MET AND CONFERRED WITH MR. DUNN
19 HERE, AND WE ARE JOINTLY OKAY WITH A CLASS NOTICE
20 SERVICE DATE OF MAY THE 15TH ASSUMING THAT NEXT WEEK MY
21 OFFICE IS GIVEN THE OPPORTUNITY TO MEET WITH THE -- AND
22 CONFER WITH HIS TITLE EXPERT AND/OR WHOEVER IS INVOLVED
23 AND GIVEN ENOUGH INFORMATION.

24 IF THE COURT DOESN'T HEAR BACK, THEN YOU CAN
25 ASSUME THAT MY INVESTIGATION WAS OKAY. AND IF THERE IS
26 A PROBLEM THAT WE BELIEVE IS SIGNIFICANT, THEN WE WILL
27 BRING IT ON AN EX-PARTE BASIS.

28 THE COURT: ALL RIGHT.

□

60

1 MR. LEMIEUX: YOUR HONOR, CAN I TALK ABOUT THE
2 TRIAL DATE.

3 THE COURT: YES.

4 MR. LEMIEUX: I WOULD LIKE TO MAKE THE SUGGESTION
5 THAT THE COURT SET A TRIAL DATE NOW EVEN IF IT IS FAR
6 ENOUGH OUT THAT THE PEOPLE COME IN AUGUST CAN HAVE A
7 CHANCE -- DON'T FEEL THEY ARE GETTING RUSHED TO TRIAL
8 WITHOUT BEING PREPARED BECAUSE THERE ARE A LOT OF DATES
9 RELATED TO THAT. THERE IS A LOT OF EXPERT WITNESSES
10 PREPARATION. I THINK HAVING AN ACTUAL CONCRETE DATE
11 PREFERABLY SOMETIME THIS YEAR THAT IS OUT THERE THAT
12 THAT WOULD MAKE IT HELPFUL FOR US FOR PLANNING PURPOSES.
13 AND WE ARE GOING TO HAVE TO COORDINATE A LOT OF
14 SCHEDULES FROM A LOT OF PEOPLE TO MAKE THAT HAPPEN. AND
15 I'M AFRAID IF WE WAIT TOO LONG, IT IS NOT GOING TO
16 HAPPEN THIS YEAR.

17 THE COURT: WELL, IF WE SET A DATE FOR TRIAL
18 SETTING IN AUGUST, WE COULD CERTAINLY SET IT BY THE END
19 OF THE YEAR, COULDN'T WE?

20 MR. LEMIEUX: WELL, I WOULD HOPE SO BUT -- THERE
21 ARE SO MANY PARTIES INVOLVED WHY NOT -- I WOULD JUST ASK
22 WHY NOT SET ONE FOR -- IF WE ARE GOING TO PICK NOVEMBER
23 OR DECEMBER, JUST SET IT NOW FOR NOVEMBER OR DECEMBER.
24 AT LEAST NOW I KNOW WHEN -- YOU KNOW, THE REST OF US ARE
25 DOING OUR CALENDARS AND SO ON. THEN WE HAVE GOT AT
26 LEAST A TIME PERIOD BLOCKED OUT.

27 THE COURT: OKAY. ANYBODY ELSE SHARE THAT VIEW?

28 MR. WEEKS: I SHARE THAT VIEW, YOUR HONOR. JUST

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61

1 FOR PURPOSE OF SETTLEMENT, ENCOURAGE THE PARTIES TO
2 SETTLE, IT WOULD BE VERY HELPFUL TO HAVE A TRIAL DATE
3 SET.

4 MR. LEMIEUX: YEAH, I WAS TRYING TO AVOID THAT,
5 YOUR HONOR, BUT THAT IS ANOTHER CONSIDERATION.

6 MR. JOYCE: SET A TRIAL DATE ON PRESCRIPTION THAT
7 MIGHT MOVE PEOPLE FORWARD.

8 MR. ZIMMER: YOUR HONOR, THIS IS MR. ZIMMER. JUST
9 AS A PRACTICAL MATTER, I DON'T SEE A REAL PURPOSE FOR
10 SETTING TRIAL DATES WHEN WE DON'T EVEN KNOW WHEN
11 EVERYBODY IS GOING TO BE SERVED IN THE CLASS AND WHEN
12 THAT IS ALL GOING TO BE DONE FOR SURE. AND I'M NOT EVEN
13 SURE IF IT IS APPROPRIATE PROCEDURALLY TO SET A TRIAL
14 DATE WHEN MATTERS ARE NOT AT ISSUE LEGALLY.

15 THE COURT: WELL, THAT IS ONE OF THE CONCERNS THAT
16 I HAVE THAT CAUSES ME TO WANT TO DEFER IT, BUT I'M HAPPY
17 TO HEAR FROM EVERYBODY CONCERNING THAT.

18 MR. WEEKS: THE COURT COULD SET A TENTATIVE TRIAL.

19 THE COURT: WELL, I DON'T LIKE TO DO THAT. IF I
20 SET A TRIAL DATE, I WANT IT TO GO.

21 MR. KUHS: YOUR HONOR, ROBERT KUHS FOR TEJON RANCH
22 CORP. I WOULD LIKE TO SEE A TRIAL DATE SET ALONG WITH
23 AN EXPERT DISCLOSURE AND DEPOSITION SCHEDULES SO THAT WE
24 DON'T GET BOXED INTO THE STATUTORY TIME FRAMES AND END
25 UP SPENDING A LOT OF MONEY ON EXPEDITED DEPOSITIONS AND
26 TRANSCRIPTS. I THINK IT MIGHT BE USEFUL TO HAVE SOME
27 FORM OF A CASE MANAGEMENT ORDER THAT SETS THE TRIAL AND
28 THEN SETS ADEQUATE EXPERT DISCLOSURE.

□

1 MR. LEMIEUX: MR. KUHS IS MAKING A GOOD POINT. I
2 BELIEVE A LOT OF COUNSEL RECALL THAT THE LAST PHASE OF
3 THE TRIAL WE TRIED TO DO AT LOT OF WORK IN A FEW WEEKS,
4 AND THAT CAUSED A LOT OF PROBLEMS BACK AND FORTH IN

5 PROBLEMS. AND, I THINK, IT MAKES SENSE TO GET THIS
6 ESTABLISHED AND TRY TO DO THIS IN AN EASIER BASIS AND
7 MAKE SURE THAT PEOPLE ARE NOT RETAKING DEPOSITIONS AND
8 SO ON.

9 THE COURT: AND --

10 MR. JOYCE: AND ALONG THAT LINE, YOUR HONOR,
11 AGAIN, THIS IS MR. JOYCE ON BEHALF DIAMOND FARMING AND
12 CRYSTAL ORGANIC. IF WE HAD ENOUGH TIME IN ADVANCE, THEN
13 -- BECAUSE I REMEMBER THE LAST GO AROUND. I PUT, LIKE,
14 1300 MILES ON MY CAR GOING FROM SACRAMENTO TO ONTARIO
15 AND BACK TO SACRAMENTO ALL IN A WEEK'S TIME. IF WE
16 COULD SPREAD THAT OUT, WE WOULDN'T GET SO SQUEEZED INTO
17 A SHORT WINDOW THAT IT BECOMES UNMANAGEABLE.

18 THE COURT: ALL RIGHT.

19 MR. KALFAYAN: YOUR HONOR, RALPH KALFAYAN. I
20 DON'T WANT TO BE BOXED IN. I'M OKAY WITH EVERY TRIAL
21 DATE SET, BUT I AM GOING TO BE RUNNING BACK HERE TO THE
22 COURT SAYING WHEN ARE WE GOING TO APPOINT THAT NEUTRAL
23 EXPERT.

24 AND SO I JUST DON'T WANT TO BE BOXED IN WITH
25 A DATE, AND THEN THE NEUTRAL EXPERT COMES IN AND -- I
26 JUST WANT THE COURT TO KNOW THAT I'M GOING TO BE COMING
27 RIGHT BACK IN IF YOU SET A TRIAL ASKING FOR THAT NEUTRAL
28 EXPERT IMMEDIATELY.

□

63

1 THE COURT: MR. KUNEY.

2 MR. KUNEY: THANK YOU, YOUR HONOR. THANK YOU,
3 YOUR HONOR. I APPRECIATE THAT THE PEOPLE WANT TO MOVE
4 THE CASE FORWARD, BUT I'M LOOKING AT MR. DUNN'S MOST
5 RECENT SUBMITTAL. AND JUST WITH REGARD TO THE WILLIS

6 CLASS ALONE, THEY ARE IDENTIFYING 1628 CLASS MEMBERS
7 THAT OPTED OUT THAT HAVEN'T BEEN SERVED AND THAT AREN'T
8 BEFORE THIS COURT.

9 AND I QUESTION WHETHER AT THIS JUNCTURE
10 GIVEN THAT FACT IT IS APPROPRIATE TO SET A TRIAL SETTING
11 DATE WITH ALL THE PARTICULARS AND ALL OF THE PROCEDURAL
12 EVENTS THAT HAVE TO OCCUR. BECAUSE IT IS OBVIOUSLY
13 GOING TO AFFECT POTENTIALLY AT LEAST 1600 PARTIES AND
14 MAYBE -- I DON'T KNOW HOW MANY OTHERS.

15 THE COURT: MR. DUNN.

16 MR. DUNN: I DON'T WANT TO DISAGREE WITH -- I'M
17 NOT GETTING INVOLVED IN THIS CONVERSATION ON SETTING
18 TRIAL NOW. I JUST WANT TO RESPOND TO MR. KUNEY'S
19 COMMENT ABOUT THE WILLIS CLASS MEMBERS WHO HAVE OPTED
20 OUT OF THE CLASS.

21 THE COURT PERHAPS WILL RECALL THERE WAS
22 EXTENSIVE DISCUSSION PRIMARILY INITIATED BY THE UNITED
23 STATES THAT THE OPT-OUT PORTION OR AVAILABILITY FOR THE
24 WILLIS CLASS MEMBERS WAS NOT TO OPT OUT OF THE CLASS.
25 IT WAS TO OPT OUT OF THE CLASS.

26 THE COURT DOES NOT LOSE JURISDICTION OVER
27 THEM. THAT WAS MADE VERY CLEAR BECAUSE OF THE CONSTANT
28 MCCARRAN CONCERNS PRESENT IN THIS CASE.

□

64

1 SO THEY ARE PRO PER. THEY ARE -- THEY
2 WERE -- THE COURT HAD ACQUIRED JURISDICTION OVER THEM
3 ONCE THE CLASS WAS CERTIFIED AND NOTICE WENT TO THEM.
4 THEY HAVE SIMPLY NOW DECIDED TO BECOME PRO PER
5 LITIGANTS.

6 WE COULD HAVE A CONVERSATION WITH THE COURT
Page 68

7 AT SOME POINT, YOU KNOW, ABOUT WHAT IS -- WHAT MAILING
8 WE COULD SEND TO THEM ABOUT THE NEXT CLASS -- EXCUSE ME
9 ABOUT THE NEXT COURT HEARING AND HOW THEY ARE TO GET
10 NOTICE, BUT THERE IS NO -- TO THINK THAT WE ARE NOW
11 GOING TO GO THROUGH A PROCESS OF PERSONALLY SERVING
12 PEOPLE THAT IS NOT GOING TO HAPPEN.

13 THE COURT: OKAY. MR. KALFAYAN.

14 MR. KALFAYAN: YOUR HONOR, THE COURT CERTIFIED A
15 CLASS. THE NOTICE WENT OUT TO THE CLASS. NOW, WE HAVE
16 A LIST OF MEMBERS IN THE WILLIS CLASS. THERE ARE
17 INDIVIDUALS THAT HAVE OPTED OUT OF THE WILLIS CLASS.
18 THEY ARE NO LONGER IN THE WILLIS CLASS.

19 AND I DON'T BELIEVE THE COURT -- THEY ARE
20 NOT MY CLIENTS. I DON'T BELIEVE THE COURT HAS
21 JURISDICTION OVER THEM UNTIL SOMEONE SERVES THEM. SO I
22 THINK THEY HAVE TO BE SERVED WITH PROCESS. AND MY
23 UNDERSTANDING IS THAT MR. DUNN WAS GOING TO SERVE THEM
24 WITH PROCESS. SO I'M NOT SURE WHERE THAT LEAVES US.

25 MR. JOYCE: AGAIN, THIS IS BOB JOYCE. I REMIND
26 THE COURT THAT AT THE HEARING ON CLASS CERTIFICATION
27 THAT THE COURT ITSELF MADE CLEAR THAT IN THE EVENT THAT
28 MEMBERS OF THE WILLIS CLASS WERE TO OPT OUT THAT THE

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65

1 PURVEYORS WOULD OF NECESSITY BE COMPELLED TO SERVE THEM
2 WITH THE AMENDED CROSS-COMPLAINT ASSERTING THEREIN THE
3 CLAIM. THAT IS THE PRIMARY ISSUE IN THIS CASE AS FAR AS
4 I'M CONCERNED.

5 THAT IS WHERE WE ARE NOW.

6 MR. DUNN: I DON'T HAVE A PROBLEM OR FORESEE A
7 PROBLEM IN MAILING THESE INDIVIDUALS WHO HAVE OPTED OUT

8 A COPY OF THE RELEVANT PLEADING.

9 THE COURT: NOTICE OF SERVICE --

10 MR. JOYCE: MAILING IS NOT --

11 THE COURT: MR. JOYCE, JUST A MOMENT. MAILING
12 WITH A NOTICE OF ACKNOWLEDGMENT OF SERVICE THAT THEY CAN
13 RETURN GIVES THE COURT JURISDICTION AS EFFECTIVE
14 SERVICE. TO THE EXTENT THAT THEY DO NOT RETURN THE
15 NOTICE AND ACKNOWLEDGE THE SERVICE, THEN I THINK WE HAVE
16 TO SERVE THEM PERSONALLY, UNFORTUNATELY, IN ORDER FOR
17 THE COURT TO HAVE JURISDICTION OVER THEM.

18 IF THEY HAVE OPTED OUT OF THE CLASS, THEY
19 ARE NO LONGER CLASS MEMBERS. THE COURT DOES NOT HAVE
20 JURISDICTION OVER THEM. ALL WE SENT THEM WAS A NOTICE
21 OF THE CLASS.

22 SO, UNFORTUNATELY, I UNDERSTAND THE COST AND
23 ALL THE REST OF IT, BUT IT HAS TO BE DONE.

24 MR. DUNN: THANK YOU, YOUR HONOR.

25 MR. JOYCE: THANK YOU, YOUR HONOR.

26 MR. LEMIEUX: I DON'T HEAR ANY ARGUMENT THAT CAN'T
27 BE COMPLETED ON SEVERAL MONTHS WE HAVE GOT AHEAD OF US.
28 SO BASED ON EVERYTHING THAT I HAVE HEARD, I WOULD AGAIN

□

66

1 ASK THE COURT TO SET A TRIAL DATE MAYBE EVEN SOMETIME
2 EARLY EXPERT DESIGNATION SO THAT WE CAN GET THAT PROCESS
3 DONE.

4 THE COURT: I'M NOT GOING TO DO THAT. I DON'T
5 THINK IT IS APPROPRIATE TO SET THE TRIAL DATE UNTIL THE
6 CASE IS AT ISSUE. IT IS NOT AT ISSUE UNTIL EVERYBODY
7 HAS BEEN SERVED AND THE CLASS HAS RESPONDED
8 APPROPRIATELY.

9 AS MUCH AS I WOULD LIKE TO SET A TRIAL
10 DATE -- BELIEVE ME, I WOULD LIKE THIS CASE TO GET TO
11 TRIAL A LOT SOONER THAN IT IS, EVEN AS EARLY AS TWO
12 YEARS AGO IF I HAD HAD MY WAY, BUT I DIDN'T; AND I
13 CAN'T.

14 AND, THEREFORE, WE ARE GOING TO HAVE TO PLAY
15 BY THE RULES.

16 MR. LEMIEUX: I UNDERSTAND THAT, YOUR HONOR. LET
17 ME JUST SAY FINALLY ONE LAST THING, AND THAT IS THAT THE
18 PUBLIC WATER PURVEYORS ARE GOING TO PRESENT EVIDENCE
19 THAT IS GOING TO SHOW THE COURT THAT THERE IS A NEED FOR
20 THE COURT TO TAKE ACTION TO PROTECT THIS BASIN.

21 SO I JUST WANT TO POINT OUT THAT WE ARE
22 GOING TO HAVE TO MOVE QUICKLY AT SOME POINT. BECAUSE
23 THERE IS A PROBLEM THAT NEEDS TO BE ADDRESSED, AND IT IS
24 NOT BEING ADDRESSED RIGHT NOW, YOUR HONOR.

25 THE COURT: WELL, IF THERE IS AN INTERIM REMEDY
26 THAT YOU ARE SEEKING, YOU NEED TO DO THAT IN THE
27 APPROPRIATE MANNER. ONE OF THE THINGS THAT I FRANKLY
28 HAVE BEEN THINKING ABOUT FOR A LONG TIME ABOUT THIS CASE

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67

1 IS WHETHER OR NOT I SHOULD MAKE A REFERENCE TO THE
2 RESOURCES WATER BOARD.

3 AND, FRANKLY, THE MORE I HEAR, THE MORE
4 INCLINED I AM TO BELIEVE THAT IS AN APPROPRIATE REMEDY.
5 I WON'T DO THAT WITHOUT GIVING COUNSEL AN OPPORTUNITY TO
6 BRIEF IT AND ARGUE IT; BUT IF I MAKE THAT REFERENCE,
7 THAT IS GOING TO DELAY THINGS, BUT IT WILL ULTIMATELY
8 RESULT IN SOME VERY SPECIFIC FINDINGS.

9 MR. LEMIEUX: THAT IS FINE. THAT IS MY CONCERN
Page 71

10 PRELIMINARILY ON THAT -- THAT, AGAIN, THAT WOULD DELAY
11 IT CONSIDERABLY, BUT I ACCEPT YOUR SUGGESTION ABOUT SOME
12 KIND OF PRELIMINARY REMEDY, AND THAT IS SOMETHING,
13 FRANKLY, WE HAVE CONSIDERED AND MAYBE THAT IS SOMETHING
14 WE COULD SCHEDULE BEFORE THE END OF THE YEAR.

15 THE COURT: WELL, YOU NEED TO DO THAT IF YOU ARE
16 GOING DO IT. BUT AT THIS POINT, I'M GOING TO SET A
17 TRIAL SETTING CONFERENCE FOR AUGUST, AND I NEED TO KNOW
18 SOME DATES IN AUGUST.

19

20 (THE COURT AND THE CLERK CONFER OFF THE RECORD.)

21

22 THE COURT: SUPPOSE WE SET THE TRIAL SETTING FOR
23 AUGUST THE 17TH. THAT IS A MONDAY, AUGUST 17, AT
24 9:00 A.M.

25 MR. ZIMMER: WILL IT BE IN LOS ANGELES, YOUR
26 HONOR?

27 THE COURT: IT WILL BE HERE, YES.

28 MR. JOYCE: YOUR HONOR?

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68

1 THE COURT: YES.

2 MR. JOYCE: THAT IS A BIT OUT IN TIME. WOULD IT
3 MAKE ANY SENSE TO HAVE AN INTERIM CMC JUST IN CASE
4 ISSUES HAVE ARISEN OR -- I'M JUST CONCERNED ABOUT
5 GETTING TOO MUCH DISTANCE BETWEEN CONTACT BETWEEN US AND
6 YOU.

7 THE COURT: WELL, I SHARE THAT. AND, OBVIOUSLY,
8 WE MAY NEED SOME FURTHER CASE MANAGEMENT CONFERENCES,
9 AND I'LL BE HAPPY TO SET THOSE ON AN AS-NEEDED BASIS.
10 SO IT OCCURS TO ME THAT WE WILL KNOW A LITTLE BIT MORE

11 ABOUT THAT AFTER WE HAVE THE SETTLEMENT CONFERENCES ON
12 THE 13TH.

13 MR. JOYCE: I ASSUME THAT IF THE PARTY THOUGHT IT
14 WAS NECESSARY, THEY COULD MAKE A REQUEST TO THE COURT
15 PER THE WEBSITE.

16 THE COURT: ANYTIME.

17 MR. JOYCE: THANK YOU, YOUR HONOR.

18 THE COURT: NOW, MR. ZIMMER, AT SOME POINT YOU
19 WANTED TO START TALKING ABOUT EXPERTS AGAIN. WAS THERE
20 SOMETHING THAT WE DIDN'T TALK ABOUT THAT YOU WANTED TO
21 TALK ABOUT?

22 MR. ZIMMER: NO, YOUR HONOR. I THINK WE HAVE
23 COVERED IT. THANK YOU.

24 THE COURT: MR. LEININGER, ANYTHING FURTHER ON THE
25 ISSUE OF TRIAL SETTING?

26 MR. LEININGER: NO, YOUR HONOR.

27 THE COURT: OKAY. ALL RIGHT. ARE THERE ANY OTHER
28 ISSUES THAT WE SHOULD TAKE UP THIS MORNING? I'M SURE

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69

1 THERE ARE.

2 (LAUGHING)

3

4 THE COURT: OKAY. ALL RIGHT. THEN I WILL -- WE
5 WILL BE IN RECESS. I'LL PUT OUT A MINUTE ORDER. AND
6 I'M GOING TO EXPECT ANYBODY WHO WANTS TO OBJECT TO THE
7 COURT ENGAGING IN EARLY SETTLEMENT DISCUSSIONS WILL
8 ADVISE THE COURT PROMPTLY WITHIN A FEW DAYS, 48 HOURS OF
9 THE TIME THAT YOU GET THE NOTICE, WHICH WILL BE POSTED
10 PROBABLY TODAY.

11 AND IF YOU DO OBJECT TO IT, I WOULD LIKE YOU
Page 73

12 TO PROPOSE AN ALTERNATIVE BECAUSE I REALLY -- I THINK IT
13 IS IMPORTANT FOR THE COURT TO ASSIST THE PARTIES WITH
14 REGARD TO TRYING TO RESOLVE THE ISSUES THAT OBVIOUSLY
15 ARE SLOWING US DOWN. AND THOSE ARE THE ISSUES THAT I
16 WANT TO ADDRESS WITH THE CLASS MEMBERS.

17 I THINK IT WILL MAKE A SIGNIFICANT
18 DIFFERENCE IN THE ADJUDICATION PROCESS IF WE CAN GET
19 THOSE MATTERS RESOLVED ON A TENTATIVE BASIS.

20 AND I WOULD JUST NOTE FOR YOU THAT ANY
21 SETTLEMENT THAT IS REACHED, AGAIN, IS TENTATIVE, AND IT
22 IS SUBJECT TO OBJECTIONS. PARTIES WILL HAVE THE RIGHT
23 TO WEIGH IN ON THE APPROPRIATENESS OF THE SETTLEMENT AND
24 THE EFFECT ON THE OTHER PARTIES TO THIS ADJUDICATION
25 PROCESS.

26 I CAN ALSO TELL YOU THAT WE ARE NOT GOING TO
27 TALK ABOUT THE ISSUES THAT WOULD NOT BE DIRECTLY
28 INVOLVED WITH THE CLASS AND THESE VERY LIMITED ISSUES.

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70

1 SO THAT TO AVOID ANY POSSIBILITY THAT THERE MIGHT BE
2 SOME EX-PARTE COMMUNICATION, IT WILL NOT AFFECT YOU
3 BECAUSE IT WILL NOT INVOLVE YOU OR YOUR CLIENTS. IT
4 WILL ONLY INVOLVE THESE VERY NARROW ISSUES.

5 MR. LEMIEUX: YOUR HONOR, I BELIEVE -- KEITH
6 LEMIEUX. I BELIEVE THAT THE COURT'S PARTICIPATION IS
7 VERY IMPORTANT, BUT IF FOR SOME REASON SOME PARTY
8 OBJECTS TO IT, I WAS RECOMMENDING TO THE PARTICIPATING
9 PARTIES THAT WE JUST MEET ANYWAY AND TRY TO HAVE A TALK
10 THAT DAY TO JUST KEEP THE DATE.

11 WE DON'T HAVE TO DO IT DOWN HERE. WE COULD
12 DO IT AT SOMEBODY'S OFFICE.

13 THE COURT: ALL RIGHT. THAT IS FINE. THAT IS UP
14 TO YOU. BUT TO THE EXTENT THAT THE COURT CAN ASSIST THE
15 PARTIES, I'M VERY WILLING AND WOULD LIKE TO DO THAT
16 BECAUSE I THINK THAT WE CAN ACCOMPLISH AT LEAST THE
17 ELIMINATION OF AT LEAST SOME ISSUES.

18 ALL RIGHT. MR. JOYCE.

19 MR. JOYCE: YES, YOUR HONOR, MR. JOYCE ON BEHALF
20 OF DIAMOND FARMING AND CRYSTAL ORGANIC. WITH RESPECT TO
21 THE TIME IN WHICH WE RESPOND TO THE PROOF OF NOTICE,
22 SOLICITING THE OBJECTIONS, CAN THE COURT EXTEND IT TO 72
23 HOURS ONLY IN THE REALIZATION THAT GETTING CLIENT INPUT
24 AND CONSENT IS GOING TO BE NECESSARY?

25 THE COURT: YES.

26 MR. JOYCE: THANK YOU, YOUR HONOR.

27 THE COURT: ALL RIGHT. ANYTHING ELSE? ALL RIGHT.
28 THANK YOU VERY MUCH. WE WILL BE IN RECESS. I HOPE TO

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1 SEE SOME OF YOU.

2

3 (THE PROCEEDINGS WERE THEN CONCLUDED.)

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1	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
2	FOR THE COUNTY OF LOS ANGELES	
3	DEPARTMENT NO. 1	HON. JACK KOMAR, JUDGE
4	COORDINATION PROCEEDING)
5	SPECIAL TITLE (RULE 1550B)	
6	ANTELOPE VALLEY GROUNDWATER CASES	) JUDICIAL COUNCIL COORDINATION NO. JCCP4408
7	_____	
8	PALMDALE WATER DISTRICT AND QUARTZ HILL WATER DISTRICT,	) SANTA CLARA CASE NO. 1-05-CV-049053
9	CROSS-COMPLAINANTS,	
10	VS.)
11	LOS ANGELES COUNTY WATERWORKS, DISTRICT NO. 40, ET AL,) _____
12	CROSS-DEFENDANTS.	
13	_____)
14		

15

16 STATE OF CALIFORNIA)
17 COUNTY OF LOS ANGELES) SS.

18

19 I, GINGER WELKER, OFFICIAL REPORTER OF THE
20 SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE
21 COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
22 TRANSCRIPT DATED APRIL 24, 2009 COMPRISES A FULL, TRUE,
23 AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE
24 ABOVE ENTITLED CAUSE.

25 DATED THIS 30TH DAY OF APRIL OF 2009.

26

27

28

OFFICIAL REPORTER, CSR #5585

□

Exhibit 7

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EXEMPT FROM FILING FEES
GOVERNMENT CODE SECTION 6103

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

Coordination Proceeding)
Special Title (Rule 1550(b)))
)
ANTELOPE VALLEY GROUNDWATER CASES)
)
Included actions:)
)
Los Angeles County Waterworks District No. 40 v.)
Diamond Farming Co., et al.)
Los Angeles County Superior Court, Case No. BC 325)
201)
)
Los Angeles County Waterworks District No. 40 v.)
Diamond Farming Co., et al.)
Kern County Superior Court, Case No. S-1500-CV-)
254-348)
)
Wm. Bolthouse Farms, Inc. v. City of Lancaster)
Diamond Farming Co. v. City of Lancaster)
Diamond Farming Co. v. Palmdale Water District)
Riverside County Superior Court, Consolidated Action,)
Case nos. RIC 353 840, RIC 344 436, RIC 344 668)
)
AND RELATED CROSS ACTIONS)
)

Judicial Council Coordination
Proceeding No. 4408

FEDERAL DEFENDANTS' REPLY
TO LANDOWNER DEFENDANTS'
MOTION TO DISMISS PUBLIC
WATER SUPPLIERS' CROSS-
COMPLAINT AND RESPONSES
THERETO.

1 The United States respectfully submits its response to the [Landowner]
2 Defendants' Motion to Dismiss Public Water Suppliers' Cross-Complaint (hereinafter the
3 "Defendants' Motion") and the responses and replies filed thereto. The movants, a group
4 of over 60 landowners in the Antelope Valley named and joined as Cross-Defendants to
5 the Public Water Suppliers' (PWS) First-Amended Cross-Complaint, allege that joinder of
6 all parties with rights to groundwater in this adjudication is not feasible and therefore the
7 PWS suit should be dismissed. They argue that because the claimants comprising the
8 Willis (dormant landowners) and Wood (small pumpers) Classes are not cross-defendants
9 to the Public Water Suppliers' complaint a comprehensive adjudication of all rights to
10 water is not possible.

11 The PWS responded with three points: 1) the coordination of the complex
12 proceedings including the original actions filed in Kern and Los Angeles Counties, the
13 PWS Cross-Complaint, and the Willis and Wood Class actions constitute a general
14 adjudication; 2) alternatively, the PWS may promptly bring a motion to consolidate all
15 proceedings to allow for entry of a single judgment; or 3) alternatively, the PWS could
16 name the Willis and Wood Classes as cross-defendants to their first amended
17 Cross-Complaint.

18 The Willis and Wood Classes replied noting that the Classes were certified as
19 Plaintiff Classes. Serving and joining the Classes as cross-defendants, they argue, will
20 require a motion for re-certification and new notices to the Class members advising them
21 that they are being sued. Counsel for the Willis Class further argues that filing the PWS
22 Cross-Complaint against the Classes is unwarranted at this stage of the litigation. Rather,
23 Willis asserts that the next phase of trial on overdraft and yield may and should proceed
24 under the current coordinated proceedings without creating "significant new procedural
25 hurdles." Rebecca Willis' and the Class' Memorandum of Points and Authorities with
26 Respect to the Landowners' Motion to Dismiss Public Water Suppliers' Cross-Complaint
27 ("Willis Response"), filed June 16, 2009, at 2.

28 The Landowner Defendants replied to the PWS and the Wood responsive

1 briefing^{1/} stating that coordination of the Class actions is not sufficient because it has not
2 resulted in the joinder of indispensable parties to the general adjudication. Further, they
3 argue that the Court may not consolidate these actions because they are pending in the
4 Superior Courts of different counties and are not eligible for consolidation. The solution,
5 according to the Landowner Defendants, is the PWS alternative suggestion of serving the
6 Classes as cross-defendants in the PWS lawsuit. Failure to promptly join the Classes as
7 cross-defendants, they argue, requires the Court to dismiss the PWS lawsuit.

8 **1. Mere coordination is insufficient to support a general adjudication that will**
9 **be mutually binding on all water users.**

10 The United States agrees with the Landowner Defendants that a coordinated action
11 does not satisfy the McCarran Amendment requirement of a comprehensive adjudication.
12 In enacting the amendment, Congress was concerned that the United States not be
13 subjected to piecemeal, private water rights litigation. *Colorado River Water*
14 *Conservation Dist. v. United States*, 424 U.S. 800, 819 (1976). In accordance with this
15 policy, the courts have ruled that federal sovereign immunity is waived to allow
16 determination of water rights of the federal government only in a comprehensive
17 adjudication. *Id.* at 819-20; see also *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545,
18 569 (1983).

19 The coordinated cases in the Antelope Valley Groundwater Adjudication remain
20 entirely separate lawsuits. Cal. R. Ct. 3.545(c). They are bound together for litigation of
21 common issues in order to avoid inconsistent determinations on those issues. However,
22 beyond the limited overlapping issues, the cases remain separate actions and the claims
23 raised by plaintiffs in the various actions are, and remain, piecemeal. For instance while
24 safe yield and overdraft are necessary prerequisite issues to prescription in the Class
25 actions, the claims in those cases do not contemplate the definition of individual rights to
26 withdraw water that is binding upon all other ground water users from the same source,
27 nor would the Class actions bind those land owners to the decrees adjudicating others'

28 ^{1/} It appears the Landowner Defendants did not receive the Willis responsive brief in time to
reply.

1 water rights. The limitation of coordination as a means to achieve a mutually binding
2 adjudication of all of the correlative rights is illustrated by the problems inherent in
3 enforcement of the separate decrees.

4 Even assuming uniform decrees were entered identically in each case the United
5 States is not a party to the Class actions, and would not have recourse to enforce a decree
6 to which it is a stranger. As the Court noted at the May 6, 2009 hearing, should the Willis
7 and Wood Classes settle their claims against the PWS, the United States and any other
8 party not named to their suits will not be bound. Coordination does not make the results
9 of those actions binding on a non-party. Moreover, should the Class actions be resolved
10 by stipulation and decree without the joinder of the Class members to the comprehensive
11 adjudication of rights (including state correlative rights and federal reserved rights), the
12 Class members would not be bound to any decree entered for the rights of the United
13 States, thus allowing them the opportunity to challenge such decrees at a later date. The
14 entire purpose of the McCarran Amendment may be frustrated "because unless all of the
15 parties owning or in the process of acquiring water rights on a particular stream can be
16 joined as parties defendant, any subsequent decree would be of little value." *United States*
17 *v. Dist. Court In and For Eagle County, Colo.*, 401 U.S. 520, 525 (1971), quoting S. Rep.
18 No. 82-755, at 9.

19 Therefore, coordination that leads to separate and non-mutually binding
20 determinations of rights and interests entered in separate decrees has the potential to
21 produce only piecemeal adjudication of limited rights that are neither binding on all users
22 or enforceable by all users. Such an amalgam of decrees would not effect a general
23 adjudication of the rights to water in the Antelope Valley aquifer. Consequently, this
24 adjudication for the determination of the rights to all water in the Antelope Valley
25 groundwater basin must be unified in a single or consolidated proceeding.

26 **2. Consolidation of coordinated complex actions may not be possible.**

27 The United States agrees with the Landowner Defendants that the consolidation of
28 these cases lodged in different courts and jurisdictions appears to be untenable. The

1 various actions are pending before courts of differing jurisdiction (Kern and Los Angeles
2 Counties) and, therefore, consolidation is not authorized. *See* Cal. Civ. Proc. Code §
3 1048(a). Furthermore, transfer and consolidation of the disparate actions to one court is
4 not possible because the cases are designated complex. *See* Cal. Civ. Proc. Code § 403.
5 Accordingly, if consolidation of the coordinated actions is not proper, the only option for
6 a mutually binding determination of all parties' rights to water within the basin, including
7 the dormant landowners and small pumpers comprising the Willis and Wood Classes, is
8 joinder as party defendants.

9 **3. The Wood and Willis Classes should be served with the PWS
10 Cross-Complaint as soon as possible.**

11 The Willis Class suggests that the Court proceed with the Phase III trial on safe
12 yield and overdraft based on the current alignment of parties, i.e., maintaining Wood and
13 Willis as Plaintiff Classes. The Class argues that a finding that the basin is in a state of
14 overdraft will dictate the appropriate course of future proceedings. If the basin is not in
15 overdraft, Willis correctly points out, the prescriptive claims of the PWS fail and the
16 correlative rights of all landowners and small pumpers are confirmed. The Willis
17 suggestion has some appeal. Pursuant to the standards for coordination, this course of
18 action has the advantage of producing one consistent ruling regarding safe yield and
19 overdraft that is binding on all claimants. Cal. Civ. Proc. Code § 404.1 (Cases are
20 coordinated to overcome the "disadvantages of duplicative and inconsistent rulings, orders
21 or judgments")

22 However, the Court must also consider the ongoing Class settlement efforts.
23 Settlement, and the need for a "fairness hearing", may require immediate joinder. A
24 settlement on the rights of the (numerical) majority of Class claimants in the basin will
25 necessarily impact all other claimants, and affect their correlative interests. Should either
26 Class settle prior to the Phase III trial and seek a fairness hearing on the proposed
27 settlement, the Classes would need to be joined as party defendants to the general stream
28 adjudication prior to any such hearing. *See* Willis Response at 3 ("But no one - least of
all the Classes - could settle this case to the prejudice of another party without a full

1 fairness and good faith hearing that examined everyone's rights.")

2 Therefore, the United States suggests that the most expedient course is for the
3 Court to order the joinder of the Wood and Willis Classes to the Cross-Complaint
4 proceedings for the general adjudication of all rights to water in the Antelope Valley as
5 soon as possible, and prior to a fairness hearing on any proposed settlement of the Class
6 lawsuits.

7 Respectfully submitted this 18th day of June, 2009.

8

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10

/s/

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Exhibit 8

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9
10 [See Next Page For Additional Counsel]

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SANTA CLARA**

13
14
15 **ANTELOPE VALLEY GROUNDWATER**
CASES

Judicial Council Coordination
Proceeding No. 4408

16 **NOTICE OF MOTION AND**
17 **MOTION TO TRANSFER AND TO**
18 **CONSOLIDATE FOR ALL**
19 **PURPOSES; MEMORANDUM OF**
20 **POINTS AND AUTHORITIES;**
21 **DECLARATION OF WHITNEY G.**
22 **MCDONALD**

Date: August 17, 2009
Time: 9:00 a.m.
Dept.: 17C

(Hon. Jack Komar)

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TO ALL PARTIES HERETO AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 17, 2009, at 9:00 a.m., or as soon thereafter as the matter may be heard, in Department 17C of the above-entitled court located at 191 North First Street, San Jose, California, the City of Palmdale, Rosamond Community Services District, Los Angeles County Waterworks District No. 40, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, California Water Service Company, Quartz Hill Water District, City of Lancaster, and Palmdale Water District (collectively "Public Water Suppliers") will and do hereby move pursuant to Rules of Court 3.504, 3.541(b) and 3.543(a), to the extent *not* previously transferred as a result of the Judicial Council's order of coordination, for an order transferring all matters presently pending under Judicial Council Coordination Proceeding No. 4408 from the Riverside County Superior Court and Kern County Superior Court to the Los Angeles County Superior Court, the Honorable Jack Komar, judge presiding by special assignment. The Public Water Suppliers will and do hereby further move pursuant to CCP section 1048 for an order consolidating the previously or presently transferred actions and cross-actions, as well as any as subsequent complaints or cross-complaints filed in this Judicial Council Coordination Proceeding.

This motion is made on the following grounds:

1. These proceedings began as quiet title actions pending in the Riverside County Superior Court, followed by two additional declaratory and injunctive relief actions filed in the Los Angeles and Kern County Superior Courts. The differing venues of those actions resulted in a petition to the Judicial Council for an order of coordination. That petition was granted on June 17, 2005 (Exh. 1).

2. On July 11, 2005, the Judicial Council, acting through the Chief Justice, ordered those coordinated proceedings to be venued in the Los Angeles County Superior Court, where, by special assignment, they came to be pending before the Honorable Jack Komar (Exh. 2).

1 3. Following coordination and assignment, numerous other complaints and
2 cross-complaints were filed, including two class actions. As of the filing of this motion,
3 the actions and cross-actions identified in Exhibit 3 are pending in these coordinated
4 complex proceedings commonly known as the Antelope Valley Groundwater
5 Adjudication.

6 4. Rules of Court 3.504, 3.541(b), and 3.543 authorize the Court, on its own
7 motion, or on the motion of a party, to order coordinated cases to be transferred for all
8 purposes.

9 5. Because the United States of America (“United States”) has been named as
10 a cross-defendant by the Public Water Suppliers, a special jurisdictional requirement
11 attaches, viz. compliance with 43 U.S.C. § 666, commonly known as the McCarran
12 Amendment. Through 43 U.S.C. § 666, the United States consents to jurisdiction by a
13 state court over the comprehensive adjudication of water rights.

14 6. To the extent not already accomplished, the Public Water Suppliers believe
15 that an order transferring and consolidating for all purposes is appropriate herein. First,
16 the complaints and cross-complaints concern common issues of law and fact. Second,
17 consolidation will allow for the entry of single statements of decision in subsequent
18 phases and a single judgment, which has numerous positive procedural implications both
19 in the trial court and in subsequent appeals, if any are taken. Third, complete
20 consolidation will further permit the Court to handle these already coordinated and
21 complex proceedings as a single action.

22 7. Pursuant to Code of Civil Procedure section 1048(a), “[w]hen actions
23 involving a common question of law or fact are pending before the court, it may order a
24 joint hearing or trial of any or all the matters in issue in the actions; it may order all the
25 actions consolidated and it may make such orders concerning proceedings therein as may
26 tend to avoid unnecessary costs or delay.”

27 8. For these reasons, and those set forth in the accompanying memorandum of
28 points and authorities and declaration of Whitney G. McDonald, the Court should order

1 all complaints and cross-complaints presently pending in Judicial Council Coordination
2 Proceeding No. 4408, as well as any subsequently filed complaints or cross-complaints,
3 transferred and consolidated for all purposes, with the service and filing procedures
4 created through prior Court orders to remain the same.

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This motion is based upon this notice, the accompanying memorandum of points and authorities and declaration of Whitney G. McDonald, the pleadings and other documents on file in this action, and upon such other oral and written evidence as the Court may accept at the time of hearing this motion.

Dated: July 15, 2009

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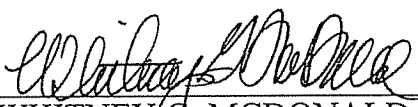
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 The Public Water Suppliers respectfully submit this memorandum of points and
4 authorities in support of their motion for transfer and complete consolidation.
5

6 **I. OVERVIEW**

7 In response to U. S. Borax, *et al.*'s recent motion to dismiss the Public Water
8 Suppliers' first amended cross-complaint for failing to name allegedly indispensable
9 parties, the Public Water Suppliers agreed to bring the instant motion to transfer and
10 consolidate.

11 Orders of transfer and consolidation would cure the perceived ills complained of
12 by many parties herein, including the United States' concerns that the procedural posture
13 of these proceedings result in the comprehensive adjudication of groundwater rights in
14 the Antelope Valley Groundwater Basin ("Basin") so as to satisfy the requirements of the
15 McCarran Amendment (43 U.S.C. § 666).

16 Questions have been raised as to whether the Judicial Council's prior orders in
17 these proceedings operate to transfer all coordinated actions to the Los Angeles County
18 Superior Court. To the extent that such transfer has not already taken place, the Court is
19 specifically authorized by Rules of Court 3.504, 3.541(b), and 3.543 to order such
20 transfers, and should do so herein.

21 Code of Civil Procedure ("CCP") § 1048(a) vests broad discretion in the Court to
22 order these previously coordinated and complex actions to be consolidated for all
23 purposes. Consolidation for all purposes should be ordered for the following reasons:

24 First, apart from the unique cross-claims of the Sheldon Blum Trust against the
25 Bolthouse entities concerning rights and obligations under a lease between them, the
26 various complaints and cross-complaints all raise common questions of law and fact
27 concerning Basin groundwater, including safe yield, prescription, rights priority, and
28 whether a physical solution should be imposed, among other issues common to any

1 California groundwater adjudication. These numerous claims have been ordered
2 coordinated and deemed complex.

3 Second, as a matter of efficiency for the Court and clarity to the parties and any
4 subsequently reviewing court, complete consolidation would result in the entry of a
5 single judgment, rather than a multitude of separate judgments. All concerned would
6 benefit from single statements of decision in subsequent phases of these proceedings, and
7 from a single judgment adjudicating the respective rights of the parties to extract or use
8 groundwater from the Basin, whose boundaries were determined in an earlier phase of
9 these coordinated proceedings, and imported and recycled water, and the physical
10 solution to be imposed to assure the long term health and viability of the Basin.

11 Third, complete consolidation of these presently coordinated complex proceedings
12 will further streamline the process of resolving the groundwater rights of the numerous
13 parties, which will result in saving time and attorney's fees to the parties, conserving
14 judicial resources, promoting settlement where possible, facilitating orderly discovery,
15 enabling equitable cost allocation, and simplifying subsequent appellate review.

16 Fourth, complete consolidation should resolve the concerns of the United States
17 (and others) that these proceedings satisfy the requirements of the McCarran Amendment
18 by avoiding piecemeal litigation.

19 The Court should accordingly order all complaints and cross-complaints presently
20 pending in Judicial Council Coordination Proceeding No. 4408, as well as any complaints
21 or cross-complaints hereinafter filed in or added onto the proceeding, transferred to the
22 Los Angeles County Superior Court and consolidated for all purposes.

23
24 **II. TO THE EXTENT NOT PREVIOUSLY ACCOMPLISHED, THE COURT**
25 **SHOULD ORDER ALL ACTIONS TRANSFERRED**

26 Pursuant to Rule of Court 3.541(b)(1), “[t]he judge may, for the purpose of
27 coordination and to serve the ends of justice ... [o]rder any coordinated action transferred
28 to another court under rule 3.543.” That rule, in turn, provides: “The coordination trial

1 judge may order any coordinated action or severable claim in that action transferred from
2 the court in which it is pending to another court for a specified purpose or for all
3 purposes. Transfer may be made by the court on its own motion or on the motion of any
4 party to any coordinated action.” Rule of Court 3.543(a).¹

5 Even absent these provisions, the trial court is vested with broad discretion to
6 regulate these coordinated complex proceedings. Rule of Court 3.504 thus provides:

7 (b) To the extent that the rules in this chapter conflict with provisions of
8 law applicable to civil actions generally, the rules in this chapter prevail, as
9 provided by Code of Civil Procedure section 404.7.

10 (c) If the manner of proceeding is not prescribed by chapter 3
11 (commencing with section 404) of title 4 of part 2 of the Code of Civil Procedure
12 or by the rules in this chapter, or if the prescribed manner of proceeding cannot,
13 with reasonable diligence, be followed in a particular coordination proceeding, the
14 assigned judge may prescribe any suitable manner of proceeding that appears most
15 consistent with those statutes and rules.”

16 *See also McGhan Med. Corp. v. Superior Court* (1992) 11 Cal.App.4th 804, 812 (“... it
17 is the intent of the Judicial Council to vest in the coordinating judge whatever great
18 breadth of discretion may be necessary and appropriate to ease the transition through the
19 judicial system of the logjam of cases which gives rise to coordination.”).

20 Thus to the extent not already transferred, the Court is authorized to order
21 whatever transfers are deemed necessary to allow for complete consolidation.

22 23 **III. THE COURT SHOULD ORDER COMPLETE CONSOLIDATION OF THE** 24 **CASES**

25 Pursuant to Code of Civil Procedure section 1048(a), “[w]hen actions involving a
26 common question of law or fact are pending before the court, it may order a joint hearing

27 ¹ These provisions are entirely separate from the statutory provisions concerning
28 transfer of non-complex matters (CCP § 403).

1 or trial of any or all the matters in issue in the actions; it may order all the actions
 2 consolidated and it may make such orders concerning proceedings therein as may tend to
 3 avoid unnecessary costs or delay.” A noticed motion may obtain the order of
 4 consolidation. *See, Sanchez v. Superior Court* (1988) 203 Cal.App.3d 1391 (noticed
 5 motion to consolidate two actions arising from same accident involving same parties;
 6 witnesses, evidence, discovery, and questions of law and fact were common to both
 7 cases).

8 “The purpose of consolidation is merely to promote trial convenience and
 9 economy.” *Mueller v. J. C. Penny Co.* (1985) 173 Cal.App.3d 713, 722. “A
 10 consolidation of actions does not affect the rights of the parties.” *Wouldridge v. Burns*
 11 (1968) 265 Cal.App.2d 82, 86. Trial convenience and economy are promoted “by
 12 avoiding duplication of procedure, particularly in the proof of issues common to both
 13 actions.” *Id.*

14 Consolidation may be “complete” or “for trial only.” Under complete
 15 consolidation, the pleadings are treated as merged and the court issues one set of findings
 16 and one judgment. *Hamilton v. Asbestos Corp. Ltd.* (2000) 22 Cal.4th 1127, 1147-1148.
 17 By comparison, consolidation for trial only keeps all pleadings, findings, and judgments
 18 separate and merely allows trial of the actions to occur together for the sake of
 19 convenience. *Sanchez*, 203 Cal.App.3d at 1395-1399.

20 Consolidation is entirely appropriate here where the various cases comprising
 21 these coordinated actions involve the same questions of law and fact, namely determining
 22 rights to groundwater, imported and recycled water within the Basin, based upon the
 23 familiar law and facts applicable in any groundwater adjudication, including safe yield,
 24 overdraft, prescription, rights priority, and the physical solution. *See, City of Barstow v.*
 25 *Mojave Water Agency* (2000) 23 Cal.4th 1224; *City of Los Angeles v. City of San*
 26 *Fernando* (1975) 14 Cal.3d 199; *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d
 27 908.

28

1 The prior unchallenged order of coordination, moreover, establishes that these
 2 cases necessarily involve predominating or significant common questions of law or fact.
 3 CCP § 404.1.

4 Complete consolidation is warranted because all of the coordinated cases relate to
 5 the same common and fundamental issue, *viz.* adjudicating the water rights of the parties
 6 within the Basin, and generally involve the same parties. Although the identical parties
 7 are not named in each of the respective complaints and cross-complaints, each shares the
 8 same primary subject matter and will result in the same outcome. *See Jud Whitehead*
 9 *Heater Co. v. Obler* (1952) 111 Cal.App.2d 861, 867 (consolidation appropriate even
 10 where all parties were not the same); *see also Paduano v. Paduano* (1989) 215
 11 Cal.App.3d 346, 350-51 (separate findings issued in two consolidated actions
 12 inappropriate where “primary subject matter” was the same); *see also Committee for*
 13 *Responsible Planning v. City of Indian Wells* (1990) 225 Cal.App.3d 191, 197, 198
 14 (court may look to nature of the underlying action and the propriety of issuing a single
 15 judgment when ordering complete consolidation). By completely consolidating these
 16 already coordinated actions, the Court will be able to enter a single judgment that would
 17 unquestionably satisfy the requirements of the McCarran Amendment.

18 In addition, the single judgment that would result from complete consolidation of
 19 these matters will greatly benefit the parties and the Court in administering a physical
 20 solution. With only one judgment to govern the terms of the physical solution as to all
 21 parties, those parties, the Court, and the Watermaster will be able to refer to one single
 22 document for guidance. Therefore, post-trial practicalities also militate in favor of
 23 complete consolidation.

24 Even absent this motion, the Court may order complete consolidation *sua sponte*.
 25 The Rules of Court governing complex actions indicate that “it is the intent of the
 26 Judicial Council to vest in the coordinating judge whatever great breadth of discretion
 27 may be necessary and appropriate to ease the transition through the judicial system of the
 28 logjam of cases which gives rise to coordination.” *McGhan*, 11 Cal.App.4th at 812.

1 Thus, the court in complex coordinated actions has wide latitude in making orders to
2 satisfy its duty to “assume an active role in managing all steps of the pretrial, discovery,
3 and trial proceedings to expedite the just determination of the coordinated actions without
4 delay.” Rule of Court 3.541(b). *See also* CCP § 128(a)(3) (codifying the inherent
5 authority “[t]o provide for the orderly conduct of proceedings before it, or its officers.”).

6 Inasmuch as the circumstances calling for consolidation are so variable, and the
7 advantages and disadvantages of consolidated proceedings are so dependent on the facts
8 of each case, the trial court enjoys broad discretion in granting or denying consolidation.
9 *See, e.g., Todd-Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976,
10 978-979 (trial court’s decision whether to consolidate actions involving common
11 questions of law or fact will not be disturbed on appeal absent clear showing of abuse of
12 discretion); *City of Los Angeles v. Klinker* (1933) 219 Cal. 198, 211.

13
14 **IV. COMPLETE CONSOLIDATION WILL SATISFY THE REQUIREMENTS**
15 **OF THE MCCARRAN AMENDMENT THAT THESE PROCEEDINGS**
16 **RESULT IN A COMPREHENSIVE ADJUDICATION OF**
17 **GROUNDWATER RIGHTS**

18 The United States Congress was specific in providing for a limited waiver of the
19 sovereign immunity of the United States from suit in the state courts. The legislative
20 history demonstrates that the McCarran Amendment’s waiver is available only for the
21 comprehensive adjudication of all water rights in a stream system. Only if the required
22 conditions are met is there a waiver of sovereign immunity enabling the exercise of
23 jurisdiction over the United States and the adjudication of federal water rights. In the
24 United States Senate Report on the McCarran Amendment, the character of the water
25 adjudications for which sovereign immunity shall be waived was described as follows:

26 “All claimants are required to appear and prove their claims; no one can refuse
27 without forfeiting his claim, and all have the same relations to the proceeding. It
28 is intended to be universal and to result in a complete ascertainment of all existing

1 rights ...”
2 S. Rep. No. 82-755, at 5 (1951) (quoting *Pacific Livestock Co. v. Oregon Water Board*,
3 (1916) 241 U.S. 441, 447-448). The United States Senate Report further described the
4 comprehensive character required adjudications that satisfy the requirements of the
5 McCarran Amendment by specifically incorporating a letter from Senator McCarran,
6 sponsor of the legislation and Chairman of the Committee reporting the Bill, in reply to
7 Senator Magnuson:

8 “S. 18 is not intended . . . to be used for any other purpose than to allow the United
9 States to be joined in a suit wherein it is necessary to adjudicate all of the rights of
10 various owners on a given stream. This is so because unless all of the parties
11 owning or in the process of acquiring water rights on a particular stream can be
12 joined as parties defendant, any subsequent decree would be of little value.”

13 *United States v. Dist. Court in and for Eagle County, Colo.* (1971) 401 U.S. 520, 525,
14 quoting S. Rep. No. 82-755, at 9.

15 The subsequent case law is likewise clear that the McCarran Amendment waiver is
16 only available for the comprehensive adjudication of all water rights in a stream system.
17 As the United States Supreme Court explained, the “clear federal policy” underlying the
18 consent to jurisdiction provided for under the McCarran Amendment is “the avoidance of
19 piecemeal adjudication” of water rights. *Colorado River Water Conservation Dist. v.*
20 *United States* (1976) 424 U.S. 800, 819. In accordance with this policy, the courts have
21 ruled that federal sovereign immunity is waived to allow determination of water rights of
22 the federal government only in a comprehensive adjudication. *Id.* at 819-20; *see also*
23 *Arizona v. San Carlos Apache Tribe* (1983) 463 U.S. 545, 569. A comprehensive or
24 general adjudication must involve all of the claimants to water rights along a given
25 stream system. *Dugan v. Rank* (1963) 372 U.S. 609, 618-619; *Miller v. Jennings* (5th
26 Cir. 1957) 243 F.2d 157, 159; *In re Snake River Basin Water System* (Idaho 1988) 764
27 P.2d 78, 83 (1988).
28

1 The United States Supreme Court explained that McCarran adjudications must be
2 all inclusive because “the allocation of water essentially involve the disposition of
3 property and are best conducted in unified proceedings.” *Colorado River Water*
4 *Conservation Dist.*, 424 U.S. at 819. The adjudication of rights to the use of water of a
5 river system “has no exceptions and . . . includes appropriate rights, riparian rights, and
6 reserved rights.” *Dist. Court in and for Eagle County, Colo.* 401 U.S. at 524.

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V. CONCLUSION

For these reasons, the Court should accordingly order a transfer to the Los Angeles County Superior Court and a complete consolidation of all cases previously coordinated.

Dated: July 15, 2009

BEST, BEST & KRIEGER LLP
ERIC L. GARNER
JEFFREY V. DUNN
STEFANIE D. HEDLUND

OFFICE OF COUNTY COUNSEL
County of Los Angeles
JOHN KRATTLI
Senior Assistant County Counsel
MICHAEL L. MOORE
Senior Deputy County Counsel

LUCE, FORWARD, HAMILTON & SCRIPPS LLP
DOUGLAS J. EVERTZ

LEMIEUX & O'NEILL
WAYNE K. LEMIEUX
W. KEITH LEMIEUX

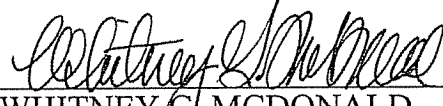
CALIFORNIA WATER SERVICE COMPANY
JOHN TOOTLE

CHARLTON WEEKS, LLP
BRADLEY T. WEEKS

LAGERLOF SENEAL GOSNEY & KRUSE
THOMAS BUNN III

WM. MATTHEW DITZHAZY
City Attorney
City of Palmdale

RICHARDS, WATSON & GERSHON
A Professional Corporation
JAMES L. MARKMAN
STEVEN R. ORR
WHITNEY G. MCDONALD

By: 
WHITNEY G. MCDONALD
Attorneys for Defendant, Cross-
Complainant, and Cross-Defendant
CITY OF PALMDALE

DECLARATION OF WHITNEY G. MCDONALD

1
2 1. I am an attorney at law duly licensed to practice law before all of the courts
3 of the State of California, and am associated with Richards, Watson & Gershon, a
4 Professional Corporation. I am one of the attorneys responsible for representing cross-
5 complainant, defendant and cross-defendant City of Palmdale in these proceedings, and
6 make this declaration on personal knowledge. If called as a witness, I could and would
7 testify competently to the matters set forth herein.

8 2. Attached as Exhibit 1 is a true and correct copy of the Order Granting
9 Petition for Coordination filed in the Orange County Superior Court on June 17, 2005.

10 3. Attached as Exhibit 2 is a true and correct copy of the Amended Order
11 Assigning Coordination Trial Judge, entered by the Chair of the Judicial Council of
12 California, the Honorable Chief Justice Ronald George, and filed in the Santa Clara
13 County Superior Court on September 2, 2005.

14 4. Attached as Exhibit 3 is a list of the complaints coordinated under Judicial
15 Council Coordination Proceeding (“JCCP”) No. 4408. Such proceedings have become
16 commonly as the “Antelope Valley Groundwater Cases.” Through this motion, the
17 Public Water Suppliers seek to transfer the operative complaints, and all related cross-
18 complaints, to the Los Angeles County Superior Court, and thereafter to consolidate
19 those complaints and cross-complaints for all purposes.

20 5. I have reviewed the complaints and cross-complaints on file in these
21 proceedings.

22 6. There are numerous operative cross-complaints filed in the Antelope Valley
23 Groundwater Cases. Some of those cross-complaints were filed in response to specific
24 complaints, and many others in response to the cross-complaint of the Public Water
25 Suppliers. Other cross-complaints, such as the City of Palmdale’s cross-complaints filed
26 in *Los Angeles County Waterworks District No. 40 vs. Diamond Farming Co., et al.*,
27 Kern County Superior Court Case No. S-1500-CV 254-348 and *Los Angeles County*
28 *Waterworks District No. 40 vs. Diamond Farming Co., et al.*, Los Angeles County

1 Superior Court Case No. BC 325201, have been superceded by the first amended cross-
2 complaint on the Public Water Suppliers in JCCP No. 4408, and are no longer operative.

3 7. The Antelope Valley Groundwater Cases collectively seek to adjudicate the
4 rights to groundwater, imported water and recycled water in the Antelope Valley
5 Groundwater Basin, the jurisdictional boundaries of which were determined in the Phase
6 1 proceedings (“Basin”) on a comprehensive basis.

7 8. The parties to the Antelope Valley Groundwater Cases variously assert a
8 wide variety of claims and forms of relief. Many parties seek to quiet title, declaratory
9 and injunctive relief as to the right to extract and use Basin groundwater, a determination
10 of the safe yield of the Basin, that rights have been acquired or lost by prescription, that
11 certain rights enjoy priority over other rights, that money damages should be paid if
12 rights have been lost to public entities through prescription, and assert myriad other
13 types of claims typically associated with comprehensive groundwater adjudications in
14 California.

15 9. The trials to be conducted in these phased proceedings will concern
16 common questions and issues of law and fact, and will rely heavily on expert witness
17 testimony. For example, determining the safe yield of the Basin will impact resolution of
18 the claims and cross-claims of nearly every party. Whether production rights have been
19 acquired or lost by prescription, similarly, is an issue of concern to all parties. The form
20 of the physical solution to be imposed, if one were to be imposed, would, likewise, affect
21 the conduct of every party to these proceedings.

22 10. The Public Water Suppliers respectfully suggest that judicial economy is
23 served well by enabling the Court to enter a single judgment at the conclusion of these
24 proceedings, and that it should not be required to prepare a separate judgment to be
25 entered on each complaint and cross-complaint.

26 11. The Public Water Suppliers further wish to address the concerns of the
27 United States of America that the requirements of the McCarran Amendment (43 U.S.C.
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§ 666) are satisfied, and believe that the comprehensive relief sought herein should accomplish that goal.

12. As the Court is thoroughly familiar with the parties and claims at issue herein, the Public Water Suppliers will dispense with a further, more thorough explanation of the underlying facts and claims. Should any party so desire, the Public Water Suppliers will supplement this declaration on reply.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 15th day of July, 2009.



Whitney G. McDonald

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUN 17 2005

ALAN SLATER, Clerk of the Court

C. Carr
BY C. CARR

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

Coordination Proceeding)	
Special Title (Rule 1550(b)))	
)	
ANTELOPE VALLEY)	
GROUNDWATER CASES	)	JUDICIAL COUNCIL COORDINATION
	)	PROCEEDING NO. 4408
Included actions:)	
)	
Los Angeles County Waterworks	)	Superior Court of California
District No. 40 v. Diamond	)	County of Los Angeles
Farming Co.	)	BC 325 201
)	
Los Angeles County Waterworks	)	Superior Court of California
District No. 40 v. Diamond	)	County of Kern
Farming Co.	)	S-1500-CV 254-348
)	
Wm. Bolthouse Farms, Inc. v.	)	Superior Court of California
	)	County of Riverside - Consolidated
City of Lancaster	)	Actions
	)	(RIC 353 840
)	
Diamond Farming Co. v.	)	RIC 344 436
City of Lancaster)	
)	
Diamond Farming Co. v.	)	RIC 344 668)
Palmdale Water District)	
)	
)	

ORDER GRANTING PETITION FOR COORDINATION

Exhibit 1

The actions filed in Los Angeles and Kern County entitled *Los Angeles County Waterworks District No 40 vs Diamond Farming*, case no. BC 325201 and Kern County Superior Court case no. S-1500-CV 254348 are deemed complex pursuant to CRC 1800.

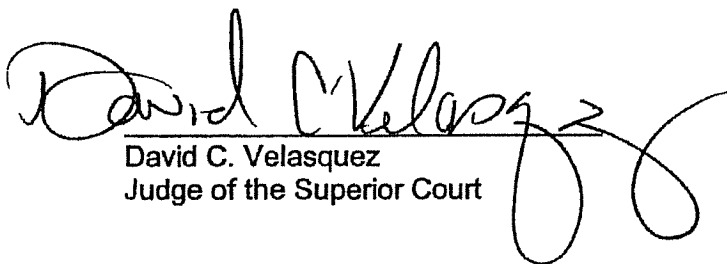
Good cause appearing that the coordination of the included actions is appropriate under the standards specified in CCP §§ 404 and 404.1, it is hereby ordered that the petition of Los Angeles County Waterworks District No. 40 for coordination of the included actions is granted; except, however, that the Riverside Superior Court retain jurisdiction over the consolidated case of *Wm. Bolthouse Farms, Inc. v. City of Lancaster*, et al., RCSC case no. RIC 344436 (the lead action); *Diamond Farming Co. v. City of Lancaster*, case no. RIC 344668; and *Diamond Farming Co. v. Palmdale Water District*, case no. RIC 353840, currently in trial, solely for the purpose of granting a motion for mistrial and for hearing and determining issues related to sanctions, costs of suit and fees resulting from that mistrial. In all other respects, that consolidated action is coordinated pursuant to this order.

The court orders coordination of *Los Angeles County Waterworks District No. 40 v. Diamond Farming Company et al.*, LASC case no. BC 32501; *Los Angeles County Waterworks District No. 40 v. Diamond Farming Company et al.*, KCSC case no. S-1500-CV-25438; and the consolidated action of *Wm. Bolthouse Farms, Inc. v. City of Lancaster*, et al., RCSC case no. RIC 344436, *Diamond Farming Co. v. City of Lancaster*, case no. RIC 344668 and *Diamond Farming Co. v. Palmdale Water District*, case no. RIC 353840. The Court of Appeal, 4th Appellate District, Div. 2 (Riverside) is designated as the reviewing court with appellate jurisdiction for any petition for relief relating to any order in this proceeding.

This court recommends that the coordinated action be assigned to the Superior Court, County of Los Angeles, Complex Litigation. However, this court recommends that the Judicial Council appoint a judge from a neutral court (i.e., a sitting judge neither from Los Angeles County Superior Court nor Kern County Superior Court), or in the alternative, a retired judge to sit on assignment, to preside over this coordinated action as the coordination trial judge.

The clerk is directed to serve a copy of this order on the chair of the Judicial Council; the presiding judges of the Superior Courts of Los Angeles County, Kern County, Riverside County, and on counsel for all parties.

June 17, 2005


David C. Velasquez
Judge of the Superior Court

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUN 17 2005

ALAN SLATER, Clerk of the Court

C. Carr
BY C. CARR

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

ANTELOPE VALLEY GROUNDWATER CASES Plaintiff(s)	CASE NUMBER JCCP 4408 CERTIFICATE OF SERVICE BY MAIL of ORDER GRANTING PETITION FOR COORDINATION dated 6-17-05
---	---

I, ALAN SLATER, Executive Officer and Clerk of the Superior Court, in and for the County of Orange, State of California, hereby certify; that I am not a party to the within action or proceeding; that on, 6-20-05 I served the ORDER GRANTING PETITION FOR COORDINATION, dated 6-17-05, on each of the parties herein named by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service mail box at Santa Ana, California addressed as follows:

Judicial Council of California
Administrative Office of the Courts
Attn: Carlotta Tillman
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Los Angeles County Superior Court
Executive Officer/Clerk, John A. Clarke
111 North Hill Street
Los Angeles, CA 90012

Riverside County Superior Court
Executive Officer/Clerk, Jose Octavio
Guillen
4100 Main Street
Riverside, CA 92501

Kern County Superior Court
Court Executive Officer, Terry McNally
1415 Truxton Ave.
Bakersfield, CA 93301-4172

Mr. Erick L. Garner
Best, Best & Krieger, LLP
5 Park Plaza, Suite 1500
Irvine, CA 92614

County Counsel
Frederick W. Pfaefle
Senior Deputy County Counsel
Office of County Counsel, County of Los
Angeles, 500 West Temple St.
Los Angeles, CA 90012

Bob H. Joyce
LeBeau Thelen, LLP
P. O. Box 12092
Bakersfield, CA 93389-1127

James Markman, City Attorney, City of Palmdale,
Legal Department, 38300 North Sierra Highway,
Palmdale, Ca 93550

Michael Fife, Law Offices of Hatch &
Parent, 21 E. Carrillo Street, P.O. Drawer
720, Santa Barbara, Ca 93102-0720

Richard Zimmer, Law Offices of Clifford
& Brown, Bank of America Building, 1430
Truxtun Ave., Suite 900, Bakersfield, Ca
93301-5230

Julie A. Conboy, Deputy City Attorney,
Rockard J. Delgadillo City Attorney, 111
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Room 340, Los Angeles, Ca 90051

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2393 Townsgate Road, Suite 201,
Westlake Village, ca 91361

Douglas Evertz, Law Offices Stradling
Yocca Carlson & Rauth, 660 Newport
Center Drive, Suite 1600, Newport Beach,
Ca 92660

Thomas Bunn, Law Offices of Lagerlof,
Senecal, Bradley, Gosney & Kruse, 301
North Lake Ave., 10th Floor, Pasadena, Ca
91101-4108

John Tootle, California Water Service Co.,
2625 Del Amo Blvd., Suite 350, Torrance,
Ca 90503

John Slezak, Law Offices of Iverson,
Yoakum, Papiano & Hatch, 624 South
Grand Ave., 27th Floor, Los Angeles, Ca
90017

Henry Weinstock, Nossman, Guthner,
Knox, Elliott, 445 South Figueroa St., 31 st
Floor, Los Angeles, Ca 90071

ALAN SLATER,
Executive Officer and Clerk of the Superior Court
In and for the County of Orange

DATED: 6-20-05

By: *Christine Carr*
Christine Carr, Deputy Clerk

CHAIR, JUDICIAL COUNCIL OF CALIFORNIA
 455 Golden Gate Avenue, San Francisco, CA 94102-3688

FILED

SEP 02 2005

Coordination Proceeding)
 Special Title (Rule 1550(b)))
)
)
ANTELOPE VALLEY)
GROUNDWATER CASES)
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)

KIRI TORRE
 Chief Executive Officer/Clerk
 Superior Court of California, County of Santa Clara
 BY *[Signature]*
 ROWENA A. WALKER, DEPUTY

JUDICIAL COUNCIL
 COORDINATION PROCEEDING
 NO. 4408

**AMENDED ORDER ASSIGNING
 COORDINATION TRIAL JUDGE**

The order heretofore made authorizing the Presiding Judge of the Superior Court of California, County of Los Angeles to assign this matter to a judge of the court to sit as coordination trial judge is hereby terminated.

THE HONORABLE JACK KOMAR of the Superior Court of California, County of Santa Clara, is hereby assigned pursuant to Code of Civil Procedure section 404.3 and rule 1540 of the California Rules of Court to sit as coordination trial judge to hear and determine the coordinated actions listed below, at the site or sites he finds appropriate. Immediately upon assignment, the coordination trial judge may exercise all the powers over each coordinated action of a judge of the court in which that action is pending.

COORDINATED ACTIONS

<u>COURT</u>	<u>NUMBER</u>	<u>SHORT TITLE</u>
Superior Court of California County of Los Angeles	BC 325 201	Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.

<u>COURT</u>	<u>NUMBER</u>	<u>SHORT TITLE</u>
Superior Court of California County of Kern	S-1500-CV 254 348	Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.
Superior Court of California County of Riverside (Consolidated Actions)	(RIC 353 840 ((RIC 344 436 ((RIC 344 668 (	(Wm. Bolthouse Farms, Inc. (v. City of Lancaster (Diamond Farming Co. v. (City of Lancaster (Diamond Farming Co. v. (Palmdale Water District

The coordination motion judge has designated the Court of Appeal, Fourth Appellate District, Division two as the reviewing court with appellate and writ jurisdiction. (Code of Civ. Proc., §404.2; rule 1505(a)).

Pursuant to rules 1501(17) and 1540, every paper filed in a coordinated action must be accompanied by proof of submission of a copy thereof to the coordination trial judge at the following address:


Hon. Jack Komar
Judge of the Superior Court
of California, County of Santa Clara
191 North First Street
San Jose, CA 95113

Pursuant to rule 1511, a copy of every paper required to be transmitted to the Chair of the Judicial Council must be sent to the following address:

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordination)
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Petitioner is directed to serve a copy of this order on (1) all parties to the included coordinated actions, and (2) the clerk of each court for filing in each included action, pursuant to rule 1540.

Dated: August 31, 2005



Chief Justice of California and
Chair of the Judicial Council

CHAIR, JUDICIAL COUNCIL OF CALIFORNIA

PROOF OF SERVICE BY MAIL

JUDICIAL COUNCIL COORDINATION NUMBER: 4408	CASE NUMBER:
--	--------------

1. I am over the age of 18 and not a party to this legal action.
2. I am employed in the City and County of San Francisco and my business address is

**455 Golden Gate Avenue
San Francisco, CA 94102-3688**

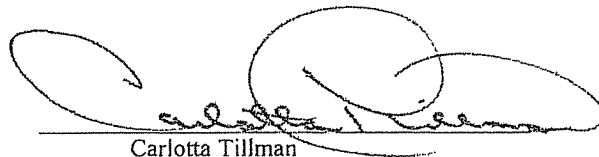
3. On August 31, 2005, I served a copy of the following documents:

- ORDER ASSIGNING COORDINATION MOTION JUDGE
- ORDER ASSIGNING COORDINATION TRIAL JUDGE
- ORDER ASSIGNING COORDINATION MOTION JUDGE
AND SETTING DATE FOR HEARING
- AMENDED ORDER ASSIGNING COORDINATION MOTION JUDGE
- AMENDED ORDER ASSIGNING COORDINATION TRIAL JUDGE
- OTHER

on the interested parties listed on the attached mailing list by placing a true copy enclosed in a sealed envelope with postage fully prepaid in the outgoing mailbox in my office, in accordance with ordinary business practices for deposit with the United States Postal Service in San Francisco, California. I am readily familiar with my office's business practice for collection of and processing of correspondence for mailing, and under that practice the above document is being deposited with the United States Postal Service this date in San Francisco, California, in the ordinary course of business.

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 31, 2005


Carlotta Tillman

MAILING LIST

JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408

Mr. Erick L. Garner
Mr. Jeffrey V. Dunn
Mr. Marc S. Ehrlich
BEST, BEST & KRIEGER, LLP
5 Park Plaza, Suite 1500
Irvine, CA 92614

Raymond G. Fortner, Jr.
County Counsel
Frederick W. Pfaeffle
Senior Deputy County Counsel
OFFICE OF COUNTY COUNSEL
COUNTY OF LOS ANGELES
500 West Temple Street
Los Angeles, CA 90012

Exhibit 3

OPERATIVE COMPLAINTS

Wm Bolthouse Farms, Inc. vs. City of Lancaster, et al., Riverside County Superior Court Case No. RIC 353840;

Diamond Farming Co., et al. vs. City of Lancaster, et al., Riverside County Superior Court Case No. RIC 344436;

Diamond Farming Co. vs. Palmdale Water District, et al., Riverside County Superior Court Case No. RIC 344668;

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

Los Angeles County Waterworks District No. 40 vs. Diamond Farming Co., et al., Los Angeles County Superior Court Case No. BC 325201

Rebecca Lee Willis, etc. vs. Los Angeles County Waterworks District No. 40, et al., Los Angeles County Superior Court Case No. BC 364553;

Richard A. Wood, etc. vs. Los Angeles County Waterworks District No. 40, et al., Los Angeles County Superior Court Case No. BC 391869; and,

And all cross-complaints filed in the above-actions or in these coordinated proceedings.

1 **PROOF OF SERVICE**

2 I, Kelley Herrington, declare:

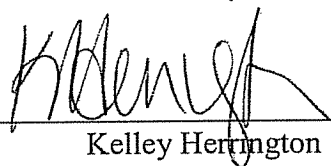
3 I am a resident of the State of California and over the age of eighteen years, and
4 not a party to the within action; my business address is Richards, Watson & Gershon, 355 South
5 Grand Avenue, 40th Floor, Los Angeles, California 90071. On July 15, 2009, I served the within
6 documents:

7 **NOTICE OF MOTION AND MOTION TO TRANSFER AND TO
8 CONSOLIDATE FOR ALL PURPOSES; MEMORANDUM OF POINTS AND
9 AUTHORITIES; DECLARATION OF WHITNEY G. MCDONALD**

- 10 by causing facsimile transmission of the document(s) listed above from (213)
11 626-0078 to the person(s) and facsimile number(s) set forth below on this date
12 before 5:00 P.M. This transmission was reported as complete and without error.
13 A copy of the transmission report(s), which was properly issued by the
14 transmitting facsimile machine, is attached. Service by facsimile has been made
15 pursuant to a prior written agreement between the parties.
- 16 by posting the document(s) listed above to the Santa Clara County Superior Court
17 website in regard to the Antelope Valley Groundwater matter.
- 18 by placing the document(s) listed above in a sealed envelope and affixing a pre-
19 paid air bill, and causing the envelope to be delivered to an agent for delivery, or
20 deposited in a box or other facility regularly maintained by , in an envelope or
21 package designated by the express service carrier, with delivery fees paid or
22 provided for, addressed to the person(s) at the address(es) set forth below.
- 23 by personally delivering the document(s) listed above to the person(s) at the
24 address(es) set forth below.
- 25 by causing personal delivery by First Legal Support Services, 1511 West Beverly
26 Boulevard, Los Angeles, California 90026 of the document(s) listed above to the
27 person(s) at the address(es) set forth below.

28 I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

Executed on July 15, 2009.



Kelley Herrington