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

DEPARTMENT NO. 1

HON. JACK KOMAR, JUDGE

COORDINATION PROCEEDING)
SPECIAL TITLE (RULE 1550B))
ANTELOPE VALLEY GROUNDWATER CASES))
_____))
PALMDALE WATER DISTRICT AND)
QUARTZ HILL WATER DISTRICT,)
)
CROSS-COMPLAINANTS,)
)
VS)
)
LOS ANGELES COUNTY WATERWORKS,)
DISTRICT NO. 40, ET AL,)
)
CROSS-DEFENDANTS.)
_____)

JUDICIAL COUNCIL
COORDINATION NO. P4408

SANTA CLARA CASE NO.
1-05-CV-049053

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, MAY 21, 2007

APPEARANCES:

(SEE APPEARANCE PAGES)

ORIGINAL

CHARLOTTE NICHOLAS MOHAMED, CSR #2384
OFFICIAL REPORTER

1 THE COURT: WELL, MR. DUNN, TO THE EXTENT THAT
2 PLAINTIFF WILLIS IS, AND HAS BROUGHT A CLASS ACTION ON BEHALF
3 OF NONPUMPERS, WHICH SEEMS TO ME TO BE THE LARGEST GROUP OF
4 PEOPLE, THERE IS PROBABLY NO NEED FOR A DEFENDANT CLASS
5 REPRESENTATIVE OF THAT CATEGORY OF SUBCLASS MEMBERS; WOULD YOU
6 AGREE?

7 MR. DUNN: I WOULD AGREE WITH THAT, YES. WE HAVE BEEN
8 FOCUSING -- AND I SHOULD HAVE MADE THIS CLEAR AT THE OUTSET --
9 OUR DISCUSSIONS OR INQUIRIES HAVE BEEN FOCUSED -- WELL, WITH
10 THE ASSUMPTION THAT WE HAVE MISS WILLIS AND COUNSEL
11 MR. ZLOTNICK TO HANDLE THE GROUP THAT THE COURT JUST
12 DESCRIBED, OUR FOCUS HAS BEEN ENTIRELY ON WHAT I WOULD
13 GENERALLY CALL "A PUMPER GROUP," THE SMALLER PUMPERS. AND
14 THERE HAS BEEN DISCUSSIONS BACK AND FORTH ON WHERE THAT
15 THRESHOLD WOULD BE DRAWN. BUT THE FOCUS IS ON CLASS
16 REPRESENTATION OR SUBCLASS FOR A PUMPER GROUP.

17 AND THAT IS WHERE WE ARE CURRENTLY. WE DON'T
18 HAVE -- AT LEAST AMONGST THE CURRENT DEFENDANTS IN THIS
19 CASE -- SOMEONE WHO HAS STEPPED FORWARD AND SAID "I WILL DO
20 IT" VOLUNTARILY.

21 AS THE COURT MAY RECALL, THIS IS -- THE DEFENDANT
22 CLASS ASPECT IS MORE UNUSUAL, SHALL WE SAY, THAN THE
23 PLAINTIFF'S CLASS. AS WE HAD EXPLAINED IN EARLIER FILINGS OR
24 POSTINGS, THAT IN SOME CASES COURTS HAVE HAD TO RESORT TO
25 ORDERING A DEFENDANT GROUP, GROUP OF DEFENDANTS. I KNOW THE
26 COURT HAS INDICATED OTHERWISE. AND FOR THAT REASON WE HAVE
27 TRIED TO ENGAGE IN DISCUSSION OR EVEN NEGOTIATION, I GUESS YOU
28 COULD CALL IT, WITH PARTIES TO TRY AND COME UP WITH SOMEONE TO

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1 YOU MAY HAVE TO GO THROUGH THE WHOLE DATA BASE.

2 THE COURT: WELL, I DON'T WANT TO TELL YOU WHAT YOU
3 SHOULD BE RECOMMENDING TO THE COURT. I WANT YOU TO RECOMMEND
4 SOMETHING TO THE COURT IN TERMS OF A DEFINITION OF SUBCLASSES
5 OR CLASSES SO THAT WE CAN MAKE AN ORDER APPROPRIATELY, PROVIDE
6 FOR NOTICE, AND RAISE THE ISSUE THAT MR. JOYCE AND OTHERS ARE
7 CONCERNED ABOUT IN TERMS OF WHETHER OR NOT YOU CAN PROVIDE
8 EVIDENCE OF ACTUAL OR CONSTRUCTIVE NOTICE. BUT WITHOUT HAVING
9 SOME DEFINITION, WE ARE JUST SPINNING OUR WHEELS.

10 MR. DUNN: WELL, ONE OF THE THINGS THAT WE HAVE TRIED
11 TO DO IN PREPARATION FOR THIS HEARING IS TO SEE WHERE WE COULD
12 GO IN THE INTERIM, AT LEAST ON THE INTERIM BASIS. AND SEVERAL
13 THINGS HAVE JUMPED OUT.

14 ONE IS WE HAVE MR. ZLOTNICK AND MISS WILLIS WHO
15 ARE WILLING CLASS REPRESENTATIVES AND CLASS COUNSEL. IT IS
16 POSSIBLE FOR THE COURT TO INITIALLY OR CONDITIONALLY CERTIFY A
17 CLASS AS PROPOSED BY MR. ZLOTNICK AND ALSO INCLUDE, AT LEAST
18 FOR CERTAIN THRESHOLD ISSUES WITHIN THAT CLASS, AND MAKE IT A
19 SINGLE CLASS. AND THEN AT A LATER POINT IN TIME, AS
20 NECESSARY, SUBCLASS THAT OUT INTO VARIOUS SUBCLASSES AS
21 APPROPRIATE.

22 BUT TO SORT OF GET RIGHT TO THE POINT, ONE OF THE
23 THINGS THAT IS POSSIBLE IS THE CLASS CAN BE CREATED OR A CLASS
24 OF THE REMAINING PROPERTY OWNERS BROUGHT BY MR. ZLOTNICK -- I
25 HAVE TO APOLOGIZE TO MR. ZLOTNICK. I CAN'T REMEMBER IF HIS
26 PROPOSED ACTION IS SIMPLY LIMITED TO NON-PUMPERS. I DON'T
27 THINK -- MR. ZLOTNICK?

28 THE COURT: I THINK IT IS.

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1 MR. ZLOTNICK: ACTUALLY IT IS NOT, YOUR HONOR. BUT
2 AGAIN, I THINK UNTIL WE HAVE OUR PLEADINGS AT ISSUE -- I MEAN,
3 THAT IS WHY I'VE DEFERRED FILING A MOTION FOR CLASS
4 CERTIFICATION UNTIL THE PLEADINGS ARE AT ISSUE.

5 THE COURT: IT WOULD BE PREMATURE TO FILE A MOTION AT
6 THIS POINT.

7 MR. ZLOTNICK: EXACTLY.

8 THE COURT: SO YOU REALLY NEED TO WAIT UNTIL IT IS AT
9 ISSUE. BUT AT THIS POINT THE QUESTION IS GOING TO BE AN
10 ADEQUATE REPRESENTATIVE OF THAT CLASS, AND THERE IS NO
11 QUESTION THAT MISS WILLIS IS NOT A PUMPER. SO THAT WHETHER
12 SHE CAN ADEQUATELY REPRESENT A CLASS OF PUMPERS IS ANOTHER
13 QUESTION THAT WILL HAVE TO BE DETERMINED. AT THIS POINT I'M
14 NOT GOING TO MAKE THAT DETERMINATION OBVIOUSLY.

15 MR. DUNN: JUST FOR CONSIDERATION PURPOSES, THERE ARE
16 ISSUES THAT ARE -- THAT WOULD BE RESOLVED THAT WE BELIEVE ARE
17 EQUALLY APPLICABLE TO PUMPERS AND NONPUMPERS. FOR EXAMPLE, WE
18 HAVE GONE THROUGH A DETERMINATION OF THE ADJUDICATION AREA.
19 AND FOR THAT REASON, FOR THAT DETERMINATION, IT REALLY DIDN'T
20 MATTER WHETHER YOU WERE A PUMPER OR NOT. THERE ARE OTHER
21 ISSUES THAT ARE OUT THERE AS WELL.

22 THERE ARE CERTAIN BASINWIDE DETERMINATIONS THAT
23 ARE GOING TO BE APPLICABLE WHETHER YOU ARE A PUMPER OR NOT.
24 THE NATIVE YIELD OF THE BASIN, FOR EXAMPLE. THE SAFE YIELD
25 DETERMINATIONS. AND THOSE ARE DETERMINATIONS THAT ARE GOING
26 TO HAVE TO BE MADE BY THE COURT, AND WE BELIEVE THOSE ARE
27 EQUALLY APPLICABLE.

28 SOME OF THE ISSUES THAT HAVE SORT OF BEEN RAISED

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1 AND SO THAT IS JUST ONE IDEA.

2 THE COURT: WELL, I THINK THAT IS A GOOD IDEA. I WOULD
3 LIKE TO HEAR OTHERS CONCERNING THAT, BUT IT DOES SEEM TO ME
4 THAT AT THIS POINT, CERTAINLY IN TERMS OF GETTING A
5 DESCRIPTION OF THE BASIN, WHETHER THERE ARE SUBBASINS, THE
6 STATE OF THE AQUIFER.

7 MR. JOYCE POINTS OUT THAT HE BELIEVES THAT THERE
8 IS EVIDENCE SHOWING OVERDRAFT IN ONE AREA AND MAY NOT SHOW
9 OVERDRAFT IN ANOTHER AREA. I DON'T HAVE ANY EVIDENCE
10 CONCERNING THAT. WE HAVE NOT MADE ANY DETERMINATIONS
11 CONCERNING THAT. AND THOSE ARE IMPORTANT ISSUES THAT HAVE TO
12 BE DECIDED.

13 I THINK WE NEED TO DECIDE WHAT THE SAFE YIELD OF
14 THE BASIN IS AND PERHAPS THERE IS MORE THAN ONE SAFE YIELD
15 DETERMINATION THAT HAS TO BE MADE, DEPENDING ON THE NATURE OF
16 THE AQUIFER.

17 SO I AGREE WITH YOU AND, YOU KNOW, I WOULD LIKE
18 TO GET THE MATTER AT ISSUE AND GET AS MANY PEOPLE ON NOTICE
19 WHO HAVE TO BE ON NOTICE. AND TO THE EXTENT THAT THE -- AND I
20 WANT TO SEE THE FINAL PLEADING THAT MR. ZLOTNICK FILES ON
21 BEHALF OF MISS WILLIS. BUT IT MAY WELL BE THAT WE CAN PROVIDE
22 ADEQUATE NOTICE OF THE PROCEEDINGS FOR THAT CLASS ONCE THE
23 MATTER IS AT ISSUE AND MAKE SOME DETERMINATIONS AS TO THE
24 STATE OF THE AQUIFER. SO THAT OBVIOUSLY IS ONE OF THE FIRST
25 ORDERS OF BUSINESS HERE.

26 SO I THINK WHAT WE HAVE TO HAVE IS THE MATTER AT
27 ISSUE. AND I DON'T KNOW IF MR. ZLOTNICK -- DO YOU INTEND TO
28 FILE AN AMENDMENT TO YOUR PLEADINGS ON INVERSE CONDEMNATION?