

Exhibit 9

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

COORDINATED PROCEEDING) JUDICIAL COUNCIL
SPECIAL TITLE (RULE 1550 (b)) COORDINATION NO.4408
)
)
) FOR FILING PURPOSES
) SANTA CLARA COUNTY
ANTELOPE VALLEY GROUNDWATER CASES,) CASE NO.105-CV-049053
)
AND ASSOCIATED ACTIONS,)
-----)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE JACK KOMAR, JUDGE
SANTA CLARA SUPERIOR COURT
HELD ON AUGUST 25, 2015

A P P E A R A N C E S:

LYNNE BRENNAN, ESQ.
RALPH KALFAYAN, ESQ.
MICHAEL MCLACHLAN, ESQ.
ROBERT KUHS, ESQ.
JUNE ALLIN, ESQ.
MILES HOGAN, ESQ.
JEFFERY DUNN, ESQ.

OFFICIAL COURT REPORTER: PAMELA CARDIFF, CSR
CERTIFICATE NO. 11430

1 SAN JOSE, CALIFORNIA

AUGUST 25, 2015

2 P R O C E E D I N G S

3
4 THE COURT: Good morning. Welcome to San
5 Jose. Apparently, a number of people asked to
6 participate via Court Call -- which by "participation," I
7 mean "to listen." And if you wish to participate
8 actively, you have to be in the courtroom.

9 We have two matters on here in connection
10 with the Antelope Valley Groundwater coordinated cases.
11 I would just remind counsel that when you speak, make
12 sure you identify yourself each time for the benefit of
13 the clerk and the court reporter so that we have a very
14 clear record.

15 We will proceed first with the motion by the
16 Willis Class to withdraw or to continue the trial. So
17 Mr. Kalfayan?

18 MR. KALFAYAN: Yes. Your Honor, Ms. Brennan
19 will address the -- initially the conflict issue. And
20 I'll address the chronology of the class definition.

21 THE COURT: All right. Thank you.

22 MS. BRENNAN: Good morning, Your Honor.

23 THE COURT: Good morning.

24 MS. BRENNAN: Lynne Brennan for Plaintiff
25 Willis Class. I plan to be uncharacteristically brief
26 on my prepared remarks because, as Your Honor knows,
27 we've submitted a number of papers and case law sites
28 which I will be happy to discuss with the Court. But

1 bottom line, it really comes down to something very
2 simple as we stated in our papers.

3 Up until the filing of the stipulation and
4 proposed physical solution, SPPS, there were only
5 potential conflicts of interest within the Wood Class
6 and within the -- potentially within the Willis Class.
7 Again, that will come down to what the Court sees as the
8 definition of the Willis Class.

9 However, as of March 4, 2015 -- as of that
10 day, there has been created an undeniable conflict of
11 interest within the Wood Class, and then a potential
12 actual conflict within the Willis Class, again,
13 depending on the Court's interpretation of the
14 definition of the class.

15 So starting with the Wood Class, however, it
16 is clear that there's no factual dispute to -- as to the
17 2,400 members out of the 3,400 that they are what we've
18 deemed dual parcel interest owners, so that they own
19 both pumping parcels and non-pumping parcels. And I
20 wanted to correct my math. Unfortunately, in my papers
21 I said there were 1,400 remaining class members in the
22 Wood Class who only own pumping parcels, but that number
23 should actually be 1,000. That's the math.

24 So 2,400 that own pumping and non-pumping
25 parcels in the Wood Class and 1,000 that only own
26 pumping parcels. Somebody like Richard Wood, for
27 example, is part of that 1,000.

28 So looking at that class, what you have is

1 you have Wood Class counsel stating that he can look a
2 client in the eye and tell him that as to his pumping
3 parcel, I did my job for you, I filed my fiduciary duty
4 and got you 300 feet of water that you don't have to
5 have a meter, et cetera. This is the settlement I got
6 for you on your behalf, and that was that. That's that
7 part of the conversation as to the pumping parcel.

8 But Wood Class counsel believes they have
9 the right under the law to look at that very same client
10 in the eye and tell him that, "As to your non-pumping
11 parcels, I have actively entered into an agreement which
12 takes away your right to pump, and, in a nutshell, makes
13 those properties worthless. And guess what? Don't talk
14 to me about that. Go talk to Willis Class counsel,
15 either Mr. Kalfayan or Ms. Brennan. Because guess what?
16 It's not my problem."

17 The law will not allow that to happen and
18 cannot allow that to happen. Under any interpretation
19 of the cases or the Code of Professional Conduct, that
20 is not tenable.

21 So then switching over to the Willis Class,
22 it's either one of two scenarios as we set forth in the
23 papers. That is, under the definition espoused by Wood
24 Class counsel, we represent these dual class members,
25 like Olof Landsgard and the other 2,400 who own pumping
26 parcels and also non-pumping. So under that scenario,
27 we set out in detail in our briefs why we cannot
28 ethically continue to represent both types of clients.

1 Because it's just the flip side within the Willis Class;
2 that is, we represent the interest of the non-pumpers
3 and have to go -- it's our fiduciary duty to go to the
4 mat and do everything we can to assert their rights.

5 But under the scenario painted by Wood Class
6 counsel, we have in our midst clients who also pump.

7 Now, again, March 4, 2015, it was only a
8 potential conflict of interest, but now there is an
9 actual conflict of interest, such that we are, on behalf
10 of our non-pumping clients, actively opposing -- as we
11 must, as is our duty -- actively oppose the SPPS so
12 those 2,400 clients, we have to look at them and say --
13 if they are deemed to be clients, we have to look at
14 them and say, "Well, we need to go to bat for you for
15 your non-pumping parcel, as to your pumping parcels,
16 Mr. Wood is looking out for his interest and Wood Class
17 counsel, but we have to go against that because it's in
18 our interest."

19 We cannot do that. We cannot have that
20 divided loyalty to our clients. It just cannot happen.
21 And then the other interpretation as we espoused under
22 the class definition, they were to be excluded under
23 the, for example, September 2, 2008, order which said
24 that persons who pump are excluded from the class -- you
25 know, I'm paraphrasing something obviously. But under
26 that interpretation, persons were not part of the class
27 definition -- persons who owned parcels that pump.

28 Now, the problem that has arisen with that

1 is that, as a practical matter, you have
2 Mr. SLundsgaard's declaration in evidence. And we know
3 it to be true for many others. We don't know how many.
4 But they received notice for the Willis Class in
5 addition to the Wood Class.

6 And so, as Mr. Landsgaard stated in his
7 declaration, he believed, and filled out forms that he
8 was in the Willis Class. And Best Best and Krieger, who
9 is duty bound to carry out the order -- again, and we
10 don't know the ins and outs of this because we did not
11 administer the notices and so forth, but the long and
12 short of it is that 2,400 people are listed in the
13 Willis Class. And, again, it's going to be the Court's
14 determination as to whether they are clients or not.
15 Our interpretation is they are not pursuant to the
16 September 2, 2008, order. But, again, the problem from
17 the clients' perspective is that they under
18 Mr. Landsgaard's interpretation, for example, he
19 believes he is part of the class. But then there's all
20 the conflict issues which arise with that.

21 And I think Mr. Kalfayan wants to speak to
22 that.

23 MR. KALFAYAN: Your Honor, because I've been
24 involved in this case from the -- from 2006, I kind
25 of -- I'm a little more familiar than Ms. Brennan on the
26 chronology that led up to the definition of the class.
27 And I'd like to address that and kind of show the
28 Court -- and, actually, illustrate for the Court the

1 conflict that puts us in this dilemma. If the Court was
2 to interpret that the clients are in both classes.

3 I start out with the court-approved notice
4 for the Willis Class. There are two court-approved
5 notices that went out to Willis Class members. And,
6 remember, that notice went out to the unimproved parcel
7 owners. I start out with the Willis court-approved
8 Willis Class notice. And it says "The definition of the
9 class is the class includes all private landowners
10 within the basin." It references persons and
11 landowners. All landowners in the basin that have not
12 pumped. And it has some exclusions. Same definition is
13 in both court-approved notices. It doesn't say parcels.
14 It says landowners, private owners, says persons.

15 Now we go to the orders. On September 2nd,
16 2008, before the notices were sent, the Court entered
17 two orders simultaneously regarding the Willis Class
18 definition and the Wood Class definition. Both orders
19 are dated September 2, 2008.

20 What precipitated those orders is
21 substantially the problem that Mr. McLachlan is
22 presenting today, which was the conflict between the
23 pumpers and the non-pumpers; hence, the Court's order of
24 September 2nd, 2008, which says: "The class previously
25 certified by the Court requires modification." We need
26 to modify it. Let's ask why. We need to modify it,
27 quote, "to ensure that it does not overlap with the
28 class of small pumpers." Certified by the Court on

1 August 11, 2008. Hence, the Willis Class should exclude
2 all persons or entities to the extent they own a
3 property within the basin on which they have ever
4 pumped.

5 So you have the definition and it says
6 persons, not parcels. And then we move on to -- so the
7 Court specifically made sure there is no overlap between
8 the classes and separated. And, at the same time,
9 another order was entered for the Wood Class. And it
10 says "All private persons and entities that own real
11 property within the basin and that have been pumping
12 less than 25 acre feet per year.

13 So the classes -- the definition of the
14 class, the bowl, if you will -- if I had a bowl here
15 that showed whose is in the class, that's the definition
16 of the class, which is all persons that have not pumped,
17 and in the bowl all persons that have pumped.

18 Now, from that bowl, we're going to create
19 some exclusions. We're going to take out from the bowl
20 certain people. Okay. And the Court in its order took
21 out some people. And from the bowl, it took out --
22 we're going to exclude from the Willis Class -- this is
23 the Willis Class, September 2, 2008, order -- we're
24 going to exclude -- we're going to take out of the bowl
25 all persons to the extent they own properties within the
26 basin on which they have pumped water at any time. So
27 we're going to out from the bowl -- one exclusion, we're
28 going to take out everybody who has pumped.

1 We're also going to take out --
2 paragraph 2 -- we're going to exclude all properties
3 that are listed as improved unless they opt in through a
4 declaration.

5 The reason why it said this is because when
6 Best Best and Krieger mailed out the notices. The Court
7 heard it from Mr. Wildermuth. Mr. Wildermuth created a
8 map of unimproved and a map of the improved, and then
9 went to the assessor's office and secured the names of
10 all these owners and gave that list to Best Best and
11 Krieger. So the Court excluded those persons that had
12 improved parcels from the Willis Class.

13 So the notice, the order, and the exclusions
14 bear that out.

15 Now, what Mr. McLachlan wants to do is
16 invert this. He wants the inclusion to violate the
17 Court's order, and, basically, render the definition of
18 the bowl. He wants the exclusion to dictate what's in
19 the bowl. There's no rule of construction, nor in the
20 English language, can you elevate the exclusion to
21 defeat and trump the class definition.

22 And, now, let's look at -- so we saw how the
23 notices were generated. And let's see the position of
24 Best Best and Krieger and District 40, with respect to
25 how the classes were defined. In papers that they filed
26 with the Court, they agree with our position that the
27 Willis Class does not include any persons that have
28 pumped. And I'm citing to the preliminary opposition

1 filed by District 40 on July 15th, 2015. And District
2 40 said: "A court-approved notice, the Willis Class
3 members indicated that persons or entities that pump or
4 have pumped groundwater are not members of the Willis
5 Class. For these reasons, the Willis Class does not
6 have conflict of interest because they do not represent
7 persons or entities that pump or have pumped
8 groundwater."

9 So the claims administrators and the lawyers
10 agree. Now, here's the dilemma, Judge, that this
11 creates for us if the Court interprets it the way
12 Mr. McLachlan wants us to interpret it. And the best
13 way I thought about last night to just demonstrate -- it
14 will only take me a few minutes -- is just show you a
15 diagram of the problem that we are going to have going
16 forward -- how we're going to be adverse to our own
17 clients, which Rule 3-310 forbids us ethically from
18 doing.

19 If I may -- may I approach, Your Honor?

20 THE COURT: Yes.

21 MR. KALFAYAN: Thank you.

22 Before the SPPS, there was no conflict,
23 potential or actual, with the Wood Class. It was all
24 correlative. Mr. McLachlan and I worked together in
25 defeating the claims of prescription against the public
26 water suppliers. We were never adverse to one another.
27 It wasn't until the Physical Solution was entered where
28 now we have a problem. Because before, this was the

1 world. Here's how the world looked.

2 THE COURT: I'm assuming, Mr. Kalfayan, you
3 don't want that marked as an exhibit.

4 MR. KALFAYAN: I don't, Your Honor.

5 THE COURT: Just illustrative of your
6 argument.

7 MR. KALFAYAN: That's correct.

8 THE COURT: All right.

9 MR. KALFAYAN: Before the SPPS, Your Honor,
10 here's what we had. We had total unity of interest. No
11 overlap. Pumpers were here. And non-pumpers --
12 represented by Mr. McLachlan's firm -- and the
13 non-pumpers were represented by Krause Kalfayan Benink
14 and Slavens. No overlap. And that's what the
15 September 2, 2008, order said. We will not have an
16 overlap. That was the purpose of the Court's
17 modification.

18 Mr. McLachlan wants to read it now this way.
19 Here's how he wants to read it. It's not artful, Your
20 Honor, but here's -- it points out the dilemma. What we
21 have -- what we have now is Mr. McLachlan representing
22 pumper, pumper, and then you have a non-pumper pumper,
23 non-pumper pumper, non-pumper pumper, and non-pumper,
24 non-pumper. There are three different divergent
25 interests created by this dilemma. And here they are.
26 One is right here.

27 Here's what the problem is here. The pumper
28 says, "You've got to protect my dormant non-pumping

1 parcel." Mr. Wood is not going to care about that
2 dormant parcel. But there are persons here -- if
3 there's dual representation, Mr. McLachlan represents,
4 and he's got a dormant parcel.

5 Mr. Wood -- somebody who is a pure pumper is
6 going to be adverse to that person. By the other side
7 of the coin, the same thing happens here. Mr. Estrada,
8 or the Arch Diocese would say "Protect my non-pumping
9 parcel."

10 However, if the Court deems that the
11 individuals are in both classes, then I would be
12 representing this person and I would have to take a
13 position that's against this pumper. That creates an
14 ethical problem for me. I cannot represent a person who
15 is pumping and has dormant parcels and Mr. Estrada.
16 That creates the conflict of what all these cases say
17 you cannot do without consent and waiver of everyone.
18 And I can't practically do that.

19 There's one other divergent. So this is
20 divergence of interest between the pumper and the
21 non-pumper because we are both -- under Mr. McLachlan's
22 world, we both represent these people.

23 The third divergence of interest is here.
24 Within that group there are issues. Because if I own --
25 sorry, if a landowner owns ten pumping parcels, one
26 dormant, he may favor the physical -- the Proposed
27 Physical Solution. Other side of the coin, if the
28 landowners owns ten non-pumping parcels, he's going to

1 be against this Physical Solution.

2 However, under Mr. McLachlan's definition, I
3 would have to represent him. I could not represent
4 somebody that pumps because, by definition, I would have
5 the take that same client and put him on the stand and
6 impeach him on his water use. I would have -- I'm
7 sitting in a conflict dynamite. I have no choice but to
8 withdraw if the Court sees this definition the way
9 Mr. McLachlan sees it. I have an ethical problem. And
10 I can't proceed. I can't get experts --

11 THE COURT: So tell me how you see it that
12 would not require you to withdraw.

13 MR. KALFAYAN: In my view, those individuals
14 have to be separately served. The Court has to say that
15 Mr. McLachlan represents this group. And -- and the
16 Court's not modifying anything if it does that. It's
17 consistent with the order. The modification is
18 Mr. McLachlan. Because Mr. McLachlan is saying
19 "Disregard your September 2nd, 2008, order that says no
20 overlap. Judge, you made a mistake that day." That's
21 what Mr. McLachlan is saying. He's saying there's
22 overlap, pure and simple.

23 But to stay consistent with the order and
24 the notices that went out to the class, we represent
25 this group. Mr. McLachlan represents this group. This
26 group -- and I don't know how many are in this group,
27 but Best Best and Krieger can tell you that,
28 Mr. Wildermuth could tell you that -- has to be

1 separately served and represented. That's my solution.

2 THE COURT: If they are in a separate class
3 with separate counsel, isn't that counsel also going to
4 have a conflict?

5 MR. KALFAYAN: The problem for that class,
6 Your Honor, that troubles me is there are so many
7 different interests, that third divergence of interest.
8 That every landowner has a unique interest. If somebody
9 owns one pumping parcel and right next to it is a
10 non-pumping parcel, I don't know if they're going to
11 care about which one is more important.

12 THE COURT: Let me ask you this,
13 Mr. Kalfayan. If we look at the circumstances today,
14 where, in fact, nobody in the Wood Class has objected to
15 the Wood Class settlement, one person has come forward
16 and objected to the Willis Class position that is
17 affected by the Wood Class settlement, but they are
18 perfectly happy to have their allocation of up to 3-acre
19 feet a year; right? Okay.

20 So, given that circumstance, and that party
21 has not objected to the Wood Class settlement, where's
22 the conflict?

23 MR. KALFAYAN: If you --

24 THE COURT: Where 's the conflict that
25 Mr. McLachlan has? Where is the conflict that you have?

26 MR. KALFAYAN: Do I represent people that
27 pump and non-pump? That's the dilemma. That's
28 Mr. Landsgaard.

1 THE COURT: Well, ultimately answer that
2 question.

3 MR. KALFAYAN: To answer your question, the
4 Richard Woods of the world who own one parcel and pump
5 for domestic use, did not object.

6 THE COURT: Nobody objected.

7 MR. KALFAYAN: Well --

8 THE COURT: Nobody in that class objected,
9 even though they occupied two status.

10 MR. KALFAYAN: Here's the dilemma, Your
11 Honor. There's two problems with that. And I flagged
12 it last time. First, the dual -- I'll -- dual parcel,
13 dual parcel owner -- you say nobody objected.

14 If these people are in the Willis Class
15 also, I have to object on their behalf. But why didn't
16 we get objections?

17 THE COURT: You already objected on behalf
18 of your class.

19 MR. KALFAYAN: On behalf of the -- yeah, if
20 you say.

21 THE COURT: Everybody that is a non-pumper,
22 you've objected.

23 MR. KALFAYAN: What about the Olaf
24 Landsgaard.

25 THE COURT: You've objected to the Wood
26 Class of which he is a member entering into the old
27 settlement.

28 MR. KALFAYAN: That's two-thirds of

1 Mr. McLachlan's class. That's two-thirds. But
2 there's -- so what happened to the one-third? You have
3 two-thirds that have just objected to the Wood Class
4 settlement. Okay. If they are in the class, I have no
5 choice, but they are my own clients.

6 This is another problem that happened here.
7 And Mr. McLachlan addressed it last time, but I think
8 it's raised by the cases that he cited. And that is
9 this: The notice that went out to the Wood Class
10 members flagged -- told them this, "You get up to 3-acre
11 feet, that's it." In summary. That was it.

12 Who is going to object to somebody getting
13 water up to 3-acre feet on their property?

14 THE COURT: They also were advised that if
15 they wished to pump beyond 3-acre feet, or new pumping,
16 they could not do that. Isn't that correct?

17 MR. KALFAYAN: No. The notice did not
18 include any material represent --

19 THE COURT: The agreement.

20 MR. KALFAYAN: No.

21 THE COURT: The agreement that was entered
22 into by the Wood Class precludes any -- and the global
23 settlement proposed precludes any further pumping by
24 anybody who is not currently pumping, or, who has pumped
25 up to 3-acre feet, they cannot drill a new well; they
26 are limited to what their proposed settlement provides.

27 MR. KALFAYAN: I would disagree in this
28 respect. It didn't articulate the terms in the notice

1 quite that way. But that's not the fundamental point.

2 THE COURT: The notice only tells them to
3 look at the agreement.

4 MR. KALFAYAN: But here's the fundamental
5 point -- the problem, Your Honor. You still have -- how
6 do I represent -- if you say that, look, if
7 Mr. McLachlan's correct, that there's these dual parcel
8 owners, how do I represent a group of individuals that
9 have conflicting interests? The Rules of Professional
10 Conduct say I cannot do that. And I'd be forced to do
11 that if the -- if Mr. McLachlan -- if you say that I
12 represent these non-pumpers. I cannot ethically do
13 that. And I will not do that. And I must withdraw if
14 that is how the Court interprets my class.

15 THE COURT: Well, you haven't -- okay.
16 Let's hear from somebody in opposition to your motion.

17 MR. MCLACHLAN: Thank you, Your Honor.
18 Michael McLachlan for Richard Wood, small pumper class.
19 I think I'll start with Mr. -- some of Mr. Kalfayan's
20 comments here. And the Court has touched upon -- I want
21 to say, as a threshold matter, we read the reply brief,
22 as I was reading it, I was thinking, wait a minute, did
23 I miss a motion here? This is a motion to disqualify
24 me. I don't remember that motion being filed.

25 And I think what it says and it harkens back
26 to my comments a few weeks ago, this motion is nothing
27 more than a trojan horse. And I think it's one we
28 really have to take very, very seriously. It's a motion

1 not brought for a proper purpose, but it's potentially
2 the single-most destructive motion filed in the
3 proceeding. And this is about, perhaps, not so much the
4 trial court level; this is about Court of Appeal in some
5 sense.

6 What Mr. Kalfayan would like to do, as they
7 argued in their papers -- now he's backing away from it
8 a little bit -- but it's still been their position that
9 these dormant parcels should be stuck in the Wood Class,
10 and, therefore, create an irreconcilable conflict of
11 interest inside the small pumper parcels.

12 And I'll admit, as I stated in my papers, I
13 agree with him on that fact. It's almost like a
14 Twilight Zone situation, because we all know how I got
15 here, why I'm here. I'm here to resolve that problem.
16 The Court was stuck for a better part of a year --
17 actually, over a year -- in the limbo as to how to get
18 jurisdiction over all of these -- there's 65,000
19 parcels, with somewhere around 60,000-plus individuals
20 owning those. And, initially, Mr. Kalfayan represented
21 all of them for about a period of a year. And then
22 realized that there was almost certainly a future point
23 in day going to be an actual conflict. There has always
24 been a potential conflict of interest. And for
25 Mr. Kalfayan to get up here and say that the status for
26 most of the time there's no potential conflict, it
27 strains fragility beyond breaking. Because they are
28 commonly seeking the same thing -- groundwater. But

1 they have distinct rights. As we all understand, the
2 rights to the groundwater arise from the use and the
3 land. We're not personal or individual. If Richard
4 Wood moves to Bakersfield he's not taking his 3-acre
5 feet with him. He can't do that. And I can cite many
6 other examples of that.

7 I think I'm going to go back to the order
8 that both Ms. Brennan and Mr. Kalfayan cited to, which
9 is the September 2, 2008, order. And Mr. Kalfayan's
10 rendition of that order was creative at best, but
11 clearly inaccurate.

12 The order is three -- it's Exhibit 3 to my
13 declaration in opposition to this motion. It is three
14 paragraphs. The first two paragraphs are fairly
15 important. And Mr. Kalfayan simply ignored the second
16 paragraph. And this, by the way, in the chronology is
17 the last order that the Court entered. On page 3 of
18 that order, which I believe was drafted by
19 Mr. Kalfayan's firm ironically.

20 It says in paragraph 1, quote: "The Court
21 hereby modifies it's prior class certification order in
22 the follow respects: The Willis Class shall exclude all
23 persons to the extent they own properties within the
24 basin on which they have pumped water at any time.

25 Now, Mr. Kalfayan has not addressed or
26 reviewed in his papers or here to any extent about that
27 language that says "all persons to the extent they own
28 properties." He wants the Court to just sort of ignore

1 that.

2 That language is there for a very good
3 reason. Why? Because we -- because of paragraph 2
4 which follows immediately after it, which Mr. Kalfayan
5 ignored in his arguments here.

6 That paragraphs says, quote: "Paragraph 1-D
7 of the Court's order of May 22, 2008, is hereby revised
8 to provide as follows: The class shall exclude all
9 properties that are not listed as improved by the Los
10 Angeles County or Kern County Assessor's Office, unless
11 the owners of such property declare under penalty of
12 perjury that they do not pump and have never pumped
13 water on those properties."

14 And so in that second -- and, of course,
15 the Court says that the prior orders remain binding in
16 all respects.

17 And so in that second paragraph, the Court
18 does not refer to persons. It refers to properties.
19 And it does so because it has to do so in order to
20 achieve this nonoverlapping goal. What the Court was
21 trying to do at that timeframe is to get jurisdiction
22 over all the pieces of land in the basin that had a
23 claim to water through the persons that owned those.
24 And so, in doing so, the Court has excluded from the
25 Willis Class those properties that show as improved, but
26 not those persons to the extent they own dormant
27 parcels. And that's -- that's been very clear.

28 Now, Mr. Kalfayan stated Mr. Wildermuth said

1 something interesting, which was also completely
2 specious and is totally contrary to the declarations his
3 own office filed. He has three or four paralegals file
4 declarations in support of this motion that said -- and
5 I'm paraphrasing -- that this team of paralegals took
6 the Willis Class list and the small pumper class list
7 and went through them to find matches. It lists Julie
8 Jones on dormant class list and on the small pumper
9 class list, yes, okay, that's a match.

10 And that testimony says that there are
11 roughly a couple thousand of those people that match on
12 both lists.

13 Well, when Mr. Kalfayan tells the Court that
14 the class notice that Best Best and Krieger and counsel
15 administered is consistent with his reading of things,
16 we know that's wrong. Because if it was true then there
17 would be no matches. There couldn't be. And that's not
18 what Mr. Wildermuth testified to last week in terms of
19 how he constructed these lists. So there's a very good
20 reason why some 2,000 people -- individuals -- got both
21 class notices. And that's because they own both types
22 of properties.

23 So, going from the factual to the legal,
24 Mr. Kalfayan did say at the end of his argument that all
25 the cases say you can't represent conflicting interests.

26 And I'm going to go back to his diagram
27 here.

28 The thing that counsel for the Willis Class

1 fails to acknowledge is the very thing that the Court
2 set up in 2008, which is we need two people -- two sets
3 of lawyers to vigorously represent these particular
4 interests, which we know will be at some point in time
5 conflicting. And that's what's happening.

6 Mr. Kalfayan does not represent small
7 pumpers relative to their claims to groundwater that
8 arise from their actual use of groundwater. He does
9 not. No one disagrees. And aside from Mr. Kalfayan, no
10 one has ever told me that I represent people with regard
11 to their dormant interests. And I'll argue very clearly
12 I cannot. Mr. Kalfayan and I are very much in
13 agreement. When we look at the case law --

14 THE CLERK: Excuse me, counsel.

15 THE COURT: We have finally been reached by
16 Court Call. And we're, obviously, not going to go back
17 and restart, but I'm going to authorize they be put into
18 our system now so they will be online. And let me just
19 comment to them once they are on line --

20 THE CLERK: They are going to call any
21 minute.

22 THE COURT: When they do call, I'm going to
23 interrupt and remind them that they are on a listen-only
24 mode. Okay. So, go ahead, Mr. McLachlan. Sorry to
25 interrupt you.

26 MR. MCLACHLAN: That's fine, Your Honor. I
27 was going to turn to the case law. And I printed out
28 all of the cases that have been cited by both sides.

1 And this case law is all essentially consistent --
2 California case law, federal case law from California,
3 and federal case law that is relied on by California
4 cases outside. And the common thread there is that in
5 class contexts, an attorney can represent a group of
6 people with conflicting interests against a single
7 defendant, and not in and among between them, but with
8 another represented class.

9 So if we have two classes that have --
10 amongst them, these people have potentially conflicting
11 interests, when they have two --

12 (Whereupon, Court Call connected.)

13 THE COURT: All right. Do we have everyone
14 on Court Call who is hooked up here? Let me just remind
15 you, if you are on Court Call that you are in a
16 listen-only mode. Please mute your phones so we don't
17 have background noise picked up from your phones and
18 we'll proceed.

19 Mr. McLachlan, you are addressing the Court
20 on the law applicable to the conflict of interest issue
21 that has been raised by the Willis Class.

22 MR. MCLACHLAN: Yes, Your Honor. And so, to
23 summarize the two bodies of case law cited, you have one
24 set of law which discusses the instance where a single
25 lawyer represents a group of people in a consistent
26 fashion, you don't have a conflict amongst themselves
27 and somebody else represents that same group with regard
28 to a distinct set of legal claims. And that's the

1 scenario we have here.

2 In the cases that is cited in the reply,
3 Willis cites the case of Moreno v. AutoZone and that's a
4 disqualification case where counsel was disqualified for
5 representing the two different sets of people with
6 opposing interests, this takes us back to this case to
7 the 2008 timeframe when Mr. Kalfayan represented both
8 Willis and small pumpers. And that is Moreno v.
9 AutoZone, basically says look if Mr. Kalfayan proceeded
10 like that, he would have a problem.

11 All the other cases we see here are the
12 opposite. And those are the scenarios where two
13 different counsel represent the same person with
14 conflicting interests. And there's a litany of them.
15 I'm not going to cite them to the Court because they are
16 in the case.

17 I do want to note though that the AutoZone
18 case was of interest for the Rule 2-100 argument that
19 was made initially appears to have been abandoned to
20 some extent. This is regarding an attorney
21 communicating in support, I think -- to get the exact
22 language -- Rule dash 2 -- Rule 2-100 states "A member
23 shall not communicate directly or indirectly about the
24 subject of the representation with a party the member
25 knows to be represented by another lawyer in the
26 matter."

27 And while they don't point to it, there's a
28 discussion at the end of that AutoZone case in which the

1 Court rejects the rigid interpretation of Rule 2-100 in
2 the class context. And this case is a perfect example.
3 There's no evidence, other than Mr. Kalfayan, you know,
4 contacting somebody he doesn't represent -- we know as I
5 represent -- and submitting a declaration. The only
6 actual ethical violation we see here is that instance.

7 There's no indication whatsoever there's
8 ever been a problem with the communication of counsel
9 because, as I said in my declaration, every time
10 somebody advises me that they also own dormant property,
11 I say "Okay, your lawyer is Mr. Kalfayan, here's the
12 website, here's his phone number," and go on about it.

13 I have no need to get into issues about
14 their dormant parcels because I don't represent that.
15 And the same is true of Mr. O'Leary. And as
16 Mr. Kalfayan noted, I think in one of the exhibits, when
17 he contacted me and felt I've got some concerns here
18 about this issue, particularly along the lines of
19 Mr. Olaf Landsgaard, I told him "look, I don't have any
20 problem with you talking to your clients about your
21 case, dormant properties."

22 And so, you know, in that instance, he's
23 free to talk to Mr. Olaf Landsgaard. In fact, he
24 represents to the Court that he doesn't represent
25 Mr. Olaf Landsgaard, and they make in their reply papers
26 a lot of noise about what occurred three weeks ago in
27 court. And if Mr. Kalfayan had said, "Listen, Your
28 Honor, I also represent Mr. Landsgaard," then he's free

1 to talk to him about issues impacting his representation
2 of the Willis Class. But Mr. Kalfayan doesn't take that
3 position.

4 And I have just a couple of final points
5 here. As the Court noted, we had the scenario of
6 Mr. Kalfayan laid out where a person owns one pumping
7 parcel and ten dormant parcels and he's going to have
8 allegiance to the dormant class or he's going to have an
9 internal conflict or something of that nature. We
10 actually have -- that's the one example we actually have
11 here. And that's Mr. Landsgaard.

12 If you look at his declaration, he owns a
13 litany -- I don't know the number, but something close
14 to ten dormant parcels and one pumping parcel. And he
15 stood in front of Your Honor three weeks ago in court
16 and said he does not object to the small pumper class
17 settlement, which defeats Mr. Kalfayan's argument in
18 large part, and in the Sharp v. Nixon Entertainment, the
19 Court noted that -- and this is in Footnote 9 -- that
20 defendants may not create an actual conflict of interest
21 by pointing to some unknown class member who may have
22 some disagreement with Defendant's activities.

23 I'm paraphrasing the last portion.

24 That is to say that they haven't come
25 forth -- forward with anybody that has a problem here
26 with the situation. And that's because Mr. Kalfayan has
27 capably represented the dormant class interest for
28 eight years, as have myself and Mr. O'Leary capably

1 represented the distinct interest of the small pumper
2 class.

3 So, in that context, we can fully understand
4 Your Honor's order of September 2, 2008, when it refers
5 to overlap. The overlap refers to the properties. And
6 a dormant property that has never pumped has a distinct
7 unique set of claims and rights to that of pumping
8 properties. Nobody here to my knowledge disagrees on
9 that -- and so much so, essentially, this Court decided
10 to split the Willis Class and create a separate class
11 with myself and Mr. O'Leary representing it.

12 I think at this moment in time the rest of
13 my comments are contained in my papers.

14 THE COURT: Okay. Any other counsel who
15 wish to argue in opposition to the motion by the counsel
16 for the Willis Class? I have received other papers in
17 opposition and I've read them. Okay.

18 All right. You wish to reply?

19 MS. BRENNAN: Well, I would first like to
20 point to Mr. McLachlan's calling our submission of the
21 Landsgaard declaration an ethical violation. So right
22 there, it basically wipes away all of his theoretical
23 discussion about how there's supposedly no conflict of
24 interest here. That is an absolute falsehood. Ever
25 since the submission of the SPPS on March 4, 2015, there
26 is an actual conflict of interest within the Wood Class
27 that Mr. McLachlan has now blatantly determined he is
28 going to ignore. And, again, if you take

1 Mr. McLachlan's interpretation of the class definition,
2 there is an actual conflict of interest within the
3 Willis Class as well.

4 Now, I'm going to go back for a quick moment
5 to your question to Mr. Kalfayan about notice, about the
6 issue of Mr. Landsgaard is supposedly the only one who
7 has been objecting to the Wood Class settlement. The
8 only person who owns pumping --

9 THE COURT: You don't need to use the word
10 "supposedly" objected, because he's the only one who
11 objected in any way that's been filed with the Court.

12 MS. BRENNAN: Well, Your Honor, again, this
13 is where we disagree. As Willis Class counsel, we agree
14 2,400 of the Wood Class members have objected to the
15 Wood Class settlement because it was not separated out
16 from the Proposed Physical Solution.

17 THE COURT: Where are those filed?

18 MS. BRENNAN: I'm sorry?

19 THE COURT: Where were those filed?

20 MS. BRENNAN: They are filed through Willis
21 Class counsel.

22 THE COURT: I never received any notice of
23 that.

24 MS. BRENNAN: Well, I guess we're talking
25 about a different interpretation of filings with the
26 Court then, because we in no uncertain terms were
27 objecting to the Wood Class settlement because of how it
28 treated non-pumping parcels and their owners.

1 THE COURT: But you were objecting on behalf
2 of your class.

3 MS. BRENNAN: Exactly which includes those
4 2,400 people.

5 THE COURT: Well, does it?

6 MS. BRENNAN: Well, yes, because you cannot
7 have -- there are people -- you cannot divide them in
8 half. So Mr. Landsgaard is a perfect example. The
9 perfect example. You cannot take a client and tell him
10 that "I represent you, I have a fiduciary duty to you"
11 as to his one piece of land, and then I'm going to turn
12 around and as of March 4, 2015 -- this is what's
13 happened. Before that, there was latent conflict of
14 interest, at most, a potential conflict of interest.
15 Okay. But as of March 4th, there was an actual conflict
16 of interest where Mr. McLachlan -- again, there's no
17 factual dispute here -- he's looking Mr. Landsgaard and
18 the 2,400 other absent class members -- they are absent
19 class members, Your Honor, they are absent, they do not
20 have notice. That's why the Trotsky case is relevant.

21 Let me go back to the Trotsky case. The
22 Trotsky case involved three clauses within a loan
23 document -- Clause 9, 10 and 12. And the first class
24 action dealt with all three -- 9, 10, and 12. Okay.
25 And then a second class action came to be only dealt
26 with Clause 10. So what happened in that case is the
27 second amended complaint in Trotsky took out Clause 10
28 and only 9 and 12 were litigated. However, when it came

1 time to settle, they included Clause 10 in the
2 settlement agreement, and that all claims relating to
3 Clause 10 were gone -- released. Okay.

4 So the only person who objected, much like
5 in this case, Landsgaard in this case, it was Barwig in
6 the Trotsky case. So Barwig had started a separate
7 class action relating to Clause 10. And he said "Wait a
8 minute" -- because he was in the know, just like
9 Mr. Landsgaard is an attorney, he's in the know, and he
10 knows that -- "Wait a minute, my rights are being
11 violated."

12 So he objects. Trial court says, "No
13 problem, we think Clause 10 can be included and that's
14 the judgment. The Court of Appeal said, "No, you cannot
15 do that." Clause 10, the people over in the Barwig
16 class action didn't know they weren't sufficiently
17 notified that their rights as to Clause 10 were being
18 taken away.

19 We have the same situation here, Your Honor.
20 We have the Wood Class settlement, which went far beyond
21 rights of the pumping class, and incorporated, you know,
22 supposedly, within the Proposed Physical Solution, they
23 want the non-pumping rights impacted and taken away.

24 So the notice that went out, analogous to
25 the Trotsky case, did not mention that "Your Clause 10
26 rights were being taken away." The notice did not say
27 "your non-pumping rights were being taken away."

28 Mr. Landsgaard, as an attorney, who could

1 read the 61-page agreement, reads it and realizes, "Oh,
2 my goodness, my rights are being taken away," and
3 separately objected. But as to the other 2,400, the
4 Willis Class, has unequivocally objected as to their
5 rights.

6 THE COURT: Well, did you object on behalf
7 of Mr. Landsgaard?

8 MS. BRENNAN: We did -- well --

9 THE COURT: Answer that question. Did you
10 object on behalf of Mr. Landsgaard?

11 MS. BRENNAN: That depends on the Court's
12 interpretation of whether he is our client or not.

13 THE COURT: No. You ought to know who you
14 objected on behalf of.

15 MS. BRENNAN: Well, no, Your Honor. That's
16 the problem that's arisen.

17 THE COURT: So you don't know who you
18 represent?

19 MS. BRENNAN: That's right. The 2,400 --
20 that's the dispute we're having, Your Honor.

21 THE COURT: You've been doing this for
22 five years -- more than that.

23 MS. BRENNAN: Well, Mr. Kalfayan has been
24 doing it that many years. Our position is we do not
25 represent him.

26 THE COURT: So you are not objecting on his
27 behalf?

28 MS. BRENNAN: If that's the Court's

1 interpretation.

2 THE COURT: Okay.

3 MS. BRENNAN: All right. So --

4 THE COURT: One at a time.

5 MS. BRENNAN: Sorry. Say that again? Oh,
6 were you complimenting his tie?

7 MR. KALFAYAN: No, one at a time.

8 MS. BRENNAN: Oh, one at a time.

9 MR. KALFAYAN: But my tie doesn't look bad.

10 MS. BRENNAN: Okay. In the case law, Moreno
11 v. AutoZone is directly -- directly contradicts
12 Mr. McLachlan's interpretation of the case law and our
13 duties as attorneys. I'm starting with that first White
14 v. Experian case, which distinguishes Moreno v.

15 AutoZone, because it determined that factually conflict
16 of interest was transitory and therefore, was not going
17 to lead to disqualification. That case said "the Court
18 begins with California law's emphasis on the duty of
19 loyalty. The prohibition of current representation
20 designed to ensure the attorney's duty of undivided
21 loyalty and the clients's legitimate expectation
22 thereof. Attorneys who concurrently represent more than
23 one client should not have to choose which client's
24 interest are paramount or make a choice between
25 conflicting duties."

26 Now, again, in White, the Ninth Circuit had
27 taken out of the settlement agreement the conflict of
28 interest that arose, and so when it came back down on

1 remand, the Court determined that there was no
2 continuing conflict of interest, and, therefore, the
3 attorney could continue representation.

4 So the White Court ruled that when the
5 conflict of interest is short-lived, did not pit current
6 clients against one another and did not substantially
7 affect the terms of the settlement, then class counsel
8 will not be deemed to have breached their duty of
9 loyalty of duty to absent class members.

10 THE COURT: The problem that I have here is
11 that if -- if the Court were to adopt your situation in
12 this particular case, people who both own property
13 that -- where they pump, and also who own dormant
14 property, it seems to me could never have one lawyer
15 represent them ever, because there's always going to be
16 a conflict between the right of the pumper versus the
17 right of the non-pumper every time.

18 And it seems to me that if the Court were to
19 accept your theory of you can never represent -- I
20 shouldn't say -- if the Court were to adopt your theory,
21 it would mean that no lawyer could ever represent those
22 individuals. They would each have to have a separate
23 lawyer. And that's exactly what we have here with the
24 Wood Class and the Willis Class, where you represent
25 those parties who don't pump with regard to that land,
26 and the -- and Mr. McLachlan represents the pumpers who
27 do pump. And the fact that there is that inevitable
28 conflict between their interest, whether it be latent or

1 patent, it seems to me would preclude their ever being
2 represented in this kind of a situation.

3 MS. BRENNAN: Well, I think, Your Honor has
4 touched upon the different -- you said latent or patent.

5 THE COURT: I don't think it makes a
6 difference.

7 MS. BRENNAN: It does though, Your Honor.

8 THE COURT: A conflict is a conflict.

9 MS. BRENNAN: Potential versus actual is
10 very different. It's in the case law.

11 THE COURT: It's not in my case law.

12 MS. BRENNAN: Okay. Well, the case law on
13 conflicts of interest state that if there's a potential
14 conflict of interest, especially in class action
15 context --

16 THE COURT: In this particular case, there's
17 no difference between a patent and a latent conflict of
18 interest in terms of the advice and representation that
19 counsel will give to each of their class members.

20 MS. BRENNAN: I respectfully disagree, Your
21 Honor, because --

22 THE COURT: Well, agreement or disagreement
23 is not something I'm looking for from you. All I want
24 you to do is argue your case and that's where we're
25 going.

26 MS. BRENNAN: Okay. I just want to point
27 out my position. I understand the Court's position that
28 you believe there was a conflict all the way along. But

1 to us, there was -- there were ways where there was no
2 conflict of interest, and so -- and there was an actual
3 conflict of interest.

4 THE COURT: It's irrelevant because,
5 according to you, there is a conflict of interest and
6 it's patent.

7 MS. BRENNAN: Now. As of March 4, 2015.

8 THE COURT: Well, okay, but we're talking
9 about now. We're talking about the settlement of this
10 case. We're talking about the claims that are being
11 made by you in opposition to the claims; that you are
12 characterizing the global settlement in a particular way
13 that may or may not be the way the Court ultimately
14 characterizes it and determines its applicability.

15 So these are very theoretical questions, but
16 at this point, you know, if you stick to this -- to the
17 issue and that is who do you represent and what is your
18 obligation to that party, I believe that you are
19 representing everybody who is a dormant pumper. And I
20 believe that Mr. McLachlan is representing those who
21 pump 25-acre-feet per year or less.

22 MS. BRENNAN: And the 2,400 people who own
23 both parcels, what are they to do?

24 THE COURT: They have separate interests.
25 It is a very, very difficult scenario, factually, but it
26 seems to me that you each have an obligation to
27 represent those parties who are members of your class
28 who meet that description, whether they be a dormant or

1 an actual pumper, depending on which particular interest
2 they have.

3 You know, I'd also note that every person
4 who was a pumper, small pumper, who also has a dormant
5 property interest where they don't pump, certainly has
6 the ability to withdraw from the class. They could have
7 declined. They could have opted out of the class. They
8 had plenty of opportunity to do that. They didn't do
9 that. To the extent that some did, and then opted back
10 in, they realized they were going to be on their own --
11 so that it just seems to me that this is much ado about
12 something, but that something is almost irreconcilable.

13 There is no way that you can eliminate the
14 potential of the conflict so that you, as an attorney,
15 have to represent your class' interest, which is dormant
16 pumpers, you are not representing anybody with regard to
17 their pumping. That would be a true conflict of
18 interest that you would have to withdraw from. If the
19 Court were to permit you to withdraw -- your firm to
20 withdraw in this case because you have a conflict, there
21 would be no way that that class could ever be
22 adequately -- I shouldn't say adequately -- represented
23 by counsel under any circumstances.

24 MS. BRENNAN: Okay. Just to clarify, so you
25 are agreeing with Mr. McLachlan's interpretation of the
26 class definition with the "to the extent" language.

27 THE COURT: Yes.

28 MS. BRENNAN: You must be.

1 THE COURT: I do.

2 MR. KALFAYAN: Your Honor, this presents us
3 with the ethical dilemma and this creates a problem.
4 When I was on the phone with Mr. McLachlan in the middle
5 of June, he said, "Hey, Mr. Kalfayan, I've been talking
6 to all of your clients, telling them X, Y, and Z."

7 I said "What do you mean you are talking to
8 my clients?" I said, "Well" -- he said, "Well, most of
9 the people in my class are also in your class,
10 therefore, I'm giving them legal advice."

11 I said, "How could you be talking to my
12 clients, giving them advice about your case, when they
13 are my clients?"

14 He said, "Well, they own dual parcels."

15 That's the ethical dilemma that I have here.
16 And I can't -- now, Mr. McLachlan might be the land
17 whisperer and he can go to the ground and listen and say
18 "What would you like today?" I can't do that. I
19 represented an individual. That individual has rights.
20 He can't be communicating with my individual, with my
21 client, telling him that "you don't have any rights."
22 This goes to the heart of the conflict and that's why I
23 brought this motion.

24 THE COURT: Well, Mr. Kalfayan, at this
25 point you are repeating yourself and your papers. The
26 Court has heard this argument twice now. I've read your
27 papers. I disagree that it is an irreconcilable
28 situation. I believe that each of you can represent

1 those persons who identify with your class, and that's
2 the order I'm going to make.

3 MR. KALFAYAN: Your Honor, may I just go
4 over the cases -- just two minutes, just three minutes,
5 because they don't stand for the proposition that he
6 talked about, and I'm just going to go over them very
7 quickly because he mentioned them.

8 He talked about the AutoZone case. The
9 AutoZone case is right on point, and it does talk about
10 per status qualification. It's exactly the issue that
11 we have here. An attorney cannot represent one person
12 that has a particular interest and also represent that
13 same person who has a diverse interest. I'm going to be
14 taking a position -- I'm going to put my client on the
15 stand and I'm going to be telling them, "What are you
16 using the water for? You are wasting water. You
17 shouldn't be wasting water."

18 I'm taking a position that completely
19 contradicts what the Arch Diocese says. The Arch
20 Diocese says "Mr. Wood should not get a drop of water.
21 He should not get a permanent allocation. He should be
22 metered."

23 Then I have to step to the other shoes and
24 say, "Well, Mr. Landsgaard, you know, the Arch Diocese
25 says this, but, you know -- so I have to attack you,
26 Mr. Landsgaard."

27 Mr. Landsgaard says, "No, you better protect
28 my pumping rights. You better attack the Arch Diocese."

1 I'm in a conflict that I cannot get out of.
2 So let me just go to the cases. AutoZone case.

3 THE COURT: One of the things that you can
4 do, Mr. Kalfayan, that would be very helpful is to tone
5 down your argument. You are shouting at the Court. I
6 don't appreciate that.

7 MR. KALFAYAN: I apologize. Your Honor,
8 this is just -- it's -- it has consequences for my law
9 firm. This is an ethical -- it's an ethical dilemma.
10 So I apologize, Your Honor. I should not have argued in
11 that tone.

12 The AutoZone case says -- the AutoZone case,
13 why that's distinguishable from the Kulara case, because
14 in the AutoZone case, the Court said that the lawyer had
15 an attorney-client relationship with the class that
16 supported the settlement. So there was certified class
17 with an attorney-client relationship. Very similar to
18 our case. We have a certified class. So these people,
19 our clients, and also, by the same token, that lawyer is
20 objecting to that settlement through different
21 individuals.

22 The Court said "Wait a minute. You cannot
23 do that because you represent an objector and you are
24 supporting the settlement, you cannot do that." That's
25 the AutoZone case.

26 Distinguish that from the case Mr. McLachlan
27 talked about, which is the Kulara case. In that case,
28 there was no attorney-client relationship. The class

1 action attorney did not have the case certified. So
2 there was no attorney-client relationship at that -- in
3 that case. Then he goes to White case. The White case,
4 Your Honor, also supports our position. The Court said
5 because of the incentive award, which is similar to what
6 you have here -- the SPPS -- it's cited by
7 Mr. McLachlan, and actually hurts Mr. McLachlan's case,
8 because in that case, the law firm put in their
9 settlement agreement that the individual class
10 representative has an incentive award. The Court said
11 that puts the lawyer in conflict because he's
12 representing the individual who has an interested in
13 incentive award and representing those who don't.
14 There's a clear conflict.

15 So the White case supports our position and
16 the Kulara case supports our position. Every one of the
17 cases do.

18 If Your Honor -- if Your Honor still agrees
19 that the -- you can represent a parcel -- not the
20 person, even though there's still a conflict in my mind,
21 Your Honor, I would ask for a stay so I could maybe file
22 a writ. I don't know how to proceed. Because I don't
23 know how to hire my -- tell my experts to take positions
24 that are inconsistent with my client's positions. I
25 just don't know how to do that. I have an ethical
26 dilemma.

27 THE COURT: Mr. McLachlan?

28 MR. MCLACHLAN: I just want to raise a

1 couple points. And I guess in response to
2 Mr. Kalfayan's last question, I will say that it's
3 simple. Represent your clients -- the Willis Class
4 counsel should represent their clients on the issues
5 that the Court tasked it to represent them on in the
6 class certification orders. And it's that simple.

7 And when you look at those distinct tasks
8 that class counsel has in terms of the scope of the
9 claims on which their classes were certified, and which
10 they've litigated, the case law becomes quite clear.
11 And Mr. Kalfayan can read these cases however he wants
12 to, but the factual patterns and their holdings are
13 right in the cases.

14 The one thing I would like to correct is
15 this notion -- and I think maybe some of the counsels
16 confused this Court -- that on this issue as whether
17 Olaf Landsgaard ever objected, the date to object was
18 May 15, 2015. Prior to that date, or after, Mr. Olaf
19 Landsgaard has never filed an objection -- never
20 occurred. The only thing he's ever filed through Willis
21 counsel was the July 10, 2015 declaration. And I'm not
22 going to read the entire thing. It mostly just sets
23 apart the -- the properties he owns and his question
24 about who represents him with regard to both of his
25 types of parcels.

26 Nowhere in this declaration does it say did
27 I ever advise Mr. Landsgaard about his rights he had on
28 his dormant property. It never occurred with

1 Mr. Landsgaard and never occurred with any class member
2 ever. Because I'm an officer of the court. And I know
3 this is not personal, but these notions that somehow I'm
4 violating my ethical duties here are absurd.

5 Mr. O'Leary and I have been extremely
6 careful about that. And I don't see any reason -- I've
7 never had a problem. I've never had a small pumper
8 class member raise to me these level of concerns which
9 are attorney generated. We have had no objections --
10 not even Mr. Landsgaard, who declaration contains no
11 objection to the small pumper class. It merely states
12 that he is confused, vis-à-vis, Mr. Kalfayan's statement
13 he doesn't represent him on his dormant properties. And
14 that's it.

15 And he was in court. And even in court, he
16 didn't object to the small pumper class. He said he
17 would like to have some water for his dormant parcels,
18 but that Mr. Mr. Kalfayan can deal with. And that's his
19 task.

20 Finally, I would like to note that one thing
21 that has been lost here, which is the central concept
22 that's not being stated is essentially that the small
23 pumper class can never really settle with any of the
24 other parties it's not suing -- and when -- and when
25 class counsel suggests that, by the nature of the
26 argument, that means this Court -- it almost becomes
27 impossible to adjudicate the water rights in Antelope
28 Valley for reasons the Court has discussed for many

1 years. Naming and serving 65,000 parties to get
2 jurisdiction over Edwards Airforce Base would be, for
3 all practical purposes, almost impossible. It would
4 take years. We could sit around two to three years
5 while the county spends I don't know how many millions
6 of dollars, that's not the purpose of that.

7 And, to be more specific, in 2011 I entered
8 into a settlement on behalf of the class -- Mr. O'Leary
9 and myself entered into a settlement -- wherein the
10 class got 3 acre-feet of water, the provisions were very
11 similar to the current settlement, and several
12 landowners got up and objected, and the Court said -- in
13 upholding their objections, said "We need to negotiate
14 with the larger group of people who have a claim here."

15 And the only way to do that is a
16 comprehensive global settlement in a physical solution
17 context. That's the only way you can do that, unless of
18 course you entered into a 130 individual settlement
19 agreements, and they were somehow magically all
20 consistent so the Court could enter one global order.
21 Well, you can't do that, so you have to have one
22 negotiated settlement.

23 When counsel files this motion to withdraw
24 and makes the arguments they are making here,
25 essentially, what they are saying at the core is that
26 there is no way for small pumper class counsel to settle
27 their case and achieve some water right declarations on
28 behalf of the small pumper class. And I think that the

1 Court maybe recognizes that, but it hasn't been clearly
2 vocalized. And I feel for the record, wherever this
3 goes, it needs to be vocalized because that 2011
4 settlement cannot be forgotten and it has been the
5 compass for most of what has followed afterwards.

6 And I find it a little bit bizarre now that
7 I'm -- the argument is being made that I shouldn't have
8 done that. Mr. O'Leary and I shouldn't have done that.

9 THE COURT: Well, it -- go ahead, Mr. Kuhs.

10 MR. KUHS: Yes, Your Honor.

11 THE COURT: Robert Kuhs.

12 MR. KUHS: Robert Kuhs, for Home Ranch
13 Court. I just wanted to make an observation. I
14 represent the Home Ranch and the Court has heard in
15 previous phases that the Home Ranch has approximately
16 33,000 acres of land within the adjudication area. Less
17 than 3,000 of the acres -- less than 10 percent -- is
18 actually pumped groundwater. The rest is dormant.

19 I think what we're dealing with -- at least
20 from my perspective -- is an issue of conflict, more
21 than an ethical conflict. If it was an ethical
22 conflict, I would have to tell Home to go out and get a
23 separate lawyer for their dormant land because those
24 might be entitled to -- might be best served by a
25 different settlement.

26 And so I don't know whether that helps the
27 Court or not, but I think in any groundwater
28 adjudication where you are dealing with overlying owners

1 that have multiple parcels, some of which pump, some
2 don't, you have inherent conflicts in terms of issues
3 and potential outcomes, not necessarily a legal or
4 ethical type of conflict.

5 THE COURT: Okay. The one thing that I
6 would note here is that the Willis Class entered into a
7 settlement with the public water producers, not with the
8 Wood Class. And the settlement that you have with the
9 public water suppliers leaves totally open what is to
10 happen with regard to the total adjudication of the
11 Antelope Valley. That is to say that your agreement
12 only relates to the public water producers. You did not
13 enter into a settlement with the Woods Class -- or the
14 Wood Class, with the Home Ranch, or anybody else,
15 because you did not sue them.

16 These matters were consolidated as well as
17 coordinated for purposes of being able to enter into a
18 single judgment that would bind all the parties to the
19 adjudication once the total adjudication had occurred --
20 whether it was by settlement or by trial.

21 Now, your claim is that you have an ethical
22 conflict because you are representing people who are
23 essentially non-pumpers, but you are also
24 representing -- I should say some of those people are
25 being represented by other counsel because they are
26 pumping. It does not seem to me that you have a true
27 conflict of interest. You have a theoretical conflict
28 of interest.

1 Your clients are all the people who do not
2 pump on particular land. The land that they may own
3 separately from the land that is dormant -- they are
4 pumping and they are being advised by counsel as to
5 those pumping rights. And it does not seem to me that
6 there is a basis for you to have the obligation to
7 advise the dormant pumpers about what might happen with
8 regard to land that they may own that is being pumped.
9 It does not seem to me that that's your obligation as
10 counsel so long as they know. And the class definition
11 expressly tells them that you represent them only with
12 regard to the non-pumping and no other issues.

13 So that, frankly, if the Court were to adopt
14 your theory, there could never be a settlement in this
15 case -- a global settlement. The Court would never be
16 able to adjudicate the rights of all the parties who are
17 not individually represented. And all the members of
18 the class who are both dormant and pumpers and own
19 separate land with regard to that, would be in a
20 situation where they could never have counsel; they
21 could never participate; they would have to be
22 representing themselves and trying to struggle through
23 what their respective rights are.

24 It does not seem to me that, at this
25 important stage of dealing with water law in California,
26 that that makes any sense at all to me. And I think, to
27 some extent, the law has always been -- and will always
28 be -- pragmatic when it comes to how we resolve issues

1 such as that.

2 And I really think -- I understand your
3 concern. I understand your angst, if you will, by being
4 in a situation where you represent a person and you
5 cannot represent and advise them as to issues that are
6 not directly relevant to the adjudication that you are
7 involved with -- that is, the non-pumper class -- you
8 can't advise them as to that.

9 MR. KALFAYAN: Not only can I not advise
10 them, I'm going to take a position against them.

11 THE COURT: That's understandable. And you
12 have a right to take a position with regard to that
13 property.

14 When I was in law school, we used to talk
15 about in persona, in rem, and we had a very wise
16 professor who used to talk about something called ad
17 rem. And I'm not sure I fully understood what that was
18 then, but this may be a case where we're talking about
19 cases and representation involving ad rem rights.

20 MR. KALFAYAN: Your Honor, Mr. Kuhs stood up
21 and told you exactly the dilemma we have here. He said
22 he's got a client that has dormant parcels and pumping
23 parcels. He can sit and evaluate in a Physical Solution
24 and represent that one client, and advise that one
25 client as to both parcels what's best to do for that one
26 client.

27 He doesn't have that dilemma. He doesn't
28 have that ethical conflict. Because one client, the

1 Home Ranch owns both parcels and he's telling them,
2 "Here's the best thing we can do for these two parcels."
3 That's --

4 THE COURT: Are you sure that's his
5 obligation? Isn't his obligation to ensure that his
6 interest in both the dormant and the pumping land are
7 met? And they are different.

8 MR. KALFAYAN: He's weighing that and he's
9 making a decision for the one client versus here, it's
10 not the same. You've got lawyers --

11 THE COURT: Well, you are arguing with me
12 and I don't want to argue with you. I told you what
13 my --

14 MR. KALFAYAN: There is a solution, Your
15 Honor. And they know it. There is a solution for this.
16 And the easiest solution is they can rework that
17 Physical Solution at -- 90 percent of it can be -- most
18 of it -- but it can be reworked so that the conflict is
19 not a problem.

20 THE COURT: You are assuming that there is
21 an inconsistency in your agreement and conflict. I'm
22 not persuaded that that's true. I have not heard the
23 arguments, I have not taken physical evidence concerning
24 what this resolution is going to be.

25 Your interpretation of the settlement
26 agreement that you have and the settlement agreement
27 proposed -- the global settlement -- are at odds. I'm
28 not persuaded of that at this point. It may well be

1 that's true. And if it is true, obviously, the global
2 settlement would not be approved.

3 That's not the question before me today.
4 The question before me today is whether you should be
5 relieved of counsel. And my answer to that is no.

6 I think we've really had enough of this.

7 MR. KALFAYAN: Then -- okay. Can I ask --

8 THE COURT: I understand your arguments.

9 MR. KALFAYAN: No more argument. Request
10 for a stay pending final verdict.

11 THE COURT: A stay of what?

12 MR. KALFAYAN: Just stay of the proceedings.
13 I'm having difficulty talking to witnesses and experts
14 and figuring out what to present because I'm having to
15 take positions inconsistent with my own clients and I
16 don't know how -- I don't know how to beat up my own
17 client. And so I have -- I've got a conflict and I
18 have -- that's why I'm raising this. And I need to a
19 stay -- a stay until I take this up with the Court of
20 Appeal.

21 MR. MCLACHLAN: This is Michael McLachlan
22 for the small pumper class, again, on that last point
23 Mr. Kalfayan raised. We have until September 28th until
24 the Physical Solution prove-up in full resumes. The
25 appellate remedy is to request a writ of supersedeas,
26 which tells the Appellate Court that this is an
27 important fast track issue and the Appellate Court can
28 decide whether to issue the stay or not.

1 There's no reason for this Court to stay the
2 proceedings and change the case calendar because
3 Mr. Kalfayan files this writ, later this week or next
4 week, within a short matter of time, the Court of Appeal
5 will know that it needs to weigh in on that writ of
6 supersedeas and that's typically how it's done at the
7 trial court level and that's how it should be done here.

8 THE COURT: I would just note when we were
9 in Los Angeles the earlier part of the month, we heard
10 argument about the inconsistencies between the
11 settlement -- the Willis Class settlement and the Wood
12 Class settlement, the global settlement -- and the Court
13 reserved, ultimately, the conclusion as to that, but
14 tentatively indicated to you it did not see an
15 inconsistency at that point just on the face of the
16 documents themselves. Whether there's more, I don't
17 know. But at this point, I, frankly -- if the Appellate
18 Court wishes to issue a stay, they can certainly do
19 that.

20 MS. BRENNAN: Just one thing, Your Honor. I
21 just want to let the Court know that we've thought about
22 this obviously on so many levels, and the settlement
23 agreement is just a subset of issues we're dealing with
24 as class counsel. And so, going forward, again,
25 Mr. Landsgaard and what happened on August 3rd is a
26 microcosm of what we're dealing with times 2,400.

27 So there have been factual statements by
28 Mr. McLachlan that we adamantly disagree with. We

1 wanted to speak with Mr. Landsgaard. We wanted him to
2 take a stand and object, but Mr. McLachlan
3 understandably told him "No, don't object."

4 So it is a direct adverse conflict which
5 affects us. We are the boots on the ground. This is
6 not theoretical, Your Honor. I, respectfully -- I
7 understand your position and we'll have to proceed
8 accordingly, but it impacts our daily work as attorneys
9 for our clients, and in preparing for the trial that's
10 set to start September 28th. And we will now have to
11 shift gears, file a writ. And we cannot proceed. It
12 will be an ethical violation for us to proceed to
13 prepare that case for September 28th in light of the
14 Court's ruling that those 2,400 are our clients.

15 So I want to make that clear and I
16 respectfully understand your position, but that's what
17 we will have to do as class counsel.

18 THE COURT: Okay. All right. Anybody else
19 want to be heard on this issue concerning the stay or
20 anything else?

21 MR. DUNN: Yes, Your Honor. Jeff Dunn on
22 behalf of District 40.

23 THE COURT: Why don't you step up to the
24 podium.

25 MR. DUNN: There's no basis for a stay. A
26 stay would not be appropriate here. The Willis Class,
27 by their own admission -- excuse me -- and by court
28 order, has also represented dormant property

1 landowners -- dormant landowners. Nothing has changed.
2 Today's decision -- today's argument hasn't changed
3 that. There has already been a designation by the
4 Willis Class of experts that they intend to call.
5 There's been no indication that they have not been able
6 to work with these experts, have been ready.

7 The motion is not properly before this Court
8 to stay the next phase of proceedings. This is a
9 belated request on an unfounded basis to stay these
10 comprehensive proceedings. This case needs to move
11 forward. We've been -- as the Court is aware -- we've
12 been involved with preparations for this next phase of
13 trial for some time now. Case management conference
14 order is in place.

15 Should the Willis Class decide to seek a
16 stay, they can certainly do that. But they are not
17 entitled because of their disagreement here to stay the
18 entire proceedings. It's one thing for Willis Class to
19 have their own counsel, have their own disagreement, but
20 it's quite another thing to stop all these proceedings
21 and it should not do so.

22 THE COURT: All right. Well, I'm not going
23 to grant a stay. So request for stay is denied. I
24 don't find good cause for that.

25 We do have other matters that we're going to
26 continue to hear, but between now and the 28th, the only
27 matter that is left, I think, for decision is the Phelan
28 Pinon Hills trial on their remaining causes of action

1 which is scheduled for today and the next two days. And
2 I've received trial briefs on that.

3 So I'm going to deny the motion for a stay.
4 I'm also going to deny the motion to withdraw or, in the
5 alternative, continue the proceedings.

6 All right. All right. It's 11:30. We have
7 not had a break. The reporter is entitled to one.
8 Problem is we're very close to the noon hour. Wondering
9 if we can maybe change counsel, stay on the record for a
10 few minutes, and then take our noon break.

11 MS. BRENNAN: Thank you, Your Honor.

12 MR. KALFAYAN: Thank you, Your Honor.

13 (End of requested excerpt of proceedings.)

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1 STATE OF CALIFORNIA)
 2) SS.
 3 COUNTY OF SANTA CLARA)
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 5

6 I, PAMELA CARDIFF, DO HEREBY CERTIFY THAT THE
 7 FOREGOING IS A FULL, TRUE AND CORRECT TRANSCRIPT OF THE
 8 PROCEEDINGS HAD IN THE WITHIN-ENTITLED ACTION;

9 THAT, I REPORTED THE SAME IN STENOGRAPHY BEING
 10 THE QUALIFIED AND ACTING OFFICIAL COURT REPORTER OF THE
 11 SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE
 12 COUNTY OF SANTA CLARA, APPOINTED TO SAID COURT, AND
 13 THEREAFTER HAD THE SAME TRANSCRIBED INTO TYPEWRITING AS
 14 HEREIN APPEARS.

15 DATED THIS 2nd DAY OF SEPTEMBER, 2015.
 16
 17

18 _____
 19 PAMELA CARDIFF, CSR
 20 CERTIFICATE NO. 11430
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