

# **EXHIBIT 21**

March 26, 2015

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

ROOM 222

HON. JACK KOMAR, JUDGE

IN RE: )  
)  
ANTELOPE VALLEY GROUNDWATER CASES )  
)  
) JCCP CASE NO. 4408  
)  
)  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, MARCH 26, 2015

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1 CASE NUMBER: JCCP4408  
2 CASE NAME: ANTELOPE VALLEY GROUNDWATER  
3 LOS ANGELES, CALIFORNIA THURSDAY, MARCH 26, 2015  
4 APPEARANCES: (AS HERETOFORE NOTED.)  
5 ROOM 222 HON. JACK KOMAR  
6 REPORTER: CANDICE MYERS, CSR NO. 13086  
7 TIME: 10:03 A.M.  
8  
9

10 THE COURT: GOOD MORNING. THIS IS THE ANTELOPE  
11 VALLEY MATTER, COORDINATED CASES. LET ME REMIND COUNSEL  
12 ON COURTCALL THAT IF YOU SPEAK, YOU MUST IDENTIFY  
13 YOURSELF. AND, OBVIOUSLY, THE SAME IS TRUE AS TO ANY  
14 COUNSEL WHO WISH TO ARGUE ANY OF THE ISSUES THAT ARE GOING  
15 TO BE PRESENTED HERE THIS MORNING.

16 WE HAVE FOUR MAJOR THINGS TO CONSIDER, AND  
17 I'M GOING TO TAKE THEM UP IN THE ORDER THAT I THINK WILL  
18 CONSUME THE GREATEST AMOUNT OF TIME. SO WE'LL START WITH  
19 THE MOTION BY THE WOODS CLASS, WOOD CLASS FOR PRELIMINARY  
20 APPROVAL OF THE CLASS ACTION SETTLEMENT. MR. MCLACHLAN.

21 MR. MCLACHLAN: YOUR HONOR, I'LL OFFER JUST A FEW  
22 PRELIMINARY COMMENTS.

23 THE COURT: OKAY. ONE OF THE THINGS I'M GOING TO  
24 ASK YOU TO DO IS PLEASE SPEAK UP.

25 MR. MCLACHLAN: OKAY. I WILL KEEP MY VOICE UP.

26 THE COURT: THANK YOU.

27 MR. MCLACHLAN: I'M GOING TO OFFER A FEW  
28 PRELIMINARY COMMENTS, AND THEN WE WILL TAKE COMMENTS FROM

1 THE COURT IF THE COURT HAS THEM. I'D LIKE TO FIRST NOTE  
2 THAT WE HAVE TWO PRIMARY OPPOSITIONS THAT WERE FILED, ONE  
3 BY THE WILLIS CLASS AND ONE BY PHELAN PINON HILLS, AND I  
4 BELIEVE AN OBJECTION -- A PROCEDURAL OBJECTION WAS LODGED  
5 YESTERDAY BY ANOTHER SMALLER NONSIGNATORY.

6 I'M GOING TO ADDRESS BRIEFLY THE WILLIS  
7 FILING. AND NOT IN SUBSTANCE BECAUSE I THINK THAT THE  
8 MOST IMPORTANT POINT HERE THAT WAS RAISED IN THE  
9 OPPOSITION IS THIS IS A MOTION FOR PRELIMINARY APPROVAL.  
10 THE COURT HAS ENTERED A CASE MANAGEMENT ORDER IN THIS CASE  
11 THAT SETS FORTH THE SCHEDULE IN THIS CASE FOR OBJECTIONS  
12 TO THE GLOBAL SETTLEMENT TO BE HEARD IN AUGUST.

13 IN EFFECT, WILLIS WOULD LIKE TO CUT THE LINE  
14 AHEAD OF THE SMALL PUMPER CLASS MEMBERS BECAUSE ONE THING  
15 EVERYONE HERE HAS AGREED UPON IS THAT ALL AFFECTED PARTIES  
16 IN THE BASIN SHOULD HAVE THE ABILITY TO BE HEARD ON THIS  
17 PHYSICAL SOLUTION THAT WILL LAST LONGER THAN ALL OF OUR  
18 NATURAL LIVES.

19 THAT INCLUDES THE SMALL PUMPER CLASS, WHICH  
20 HAS MANY THOUSANDS OF MEMBERS, AND IT IS PREMATURE RIGHT  
21 NOW TO LOOK AT THE GLOBAL SETTLEMENT IN ANY MEANINGFUL  
22 DETAIL, PARTICULARLY IN THE ABSENCE OF FACTUAL  
23 PRESENTATIONS THAT WILL OCCUR IN AUGUST, THE EXPERT  
24 TESTIMONY, THE ARGUMENT, AND THE BRIEFING. RIGHT NOW.

25 BECAUSE, HYPOTHETICALLY, IF THE COURT WERE  
26 TO TAKE MR. KALFAYAN AND THE WILLIS CLASS UP ON ITS  
27 POSITION, THEN THE SMALL PUMPER CLASS NEVER GETS NOTICE  
28 AND NEVER GETS HEARD AND REALLY THAT'S WHY THE COURT HAS

1 SET ITS CASE MANAGEMENT ORDER UP IN THE WAY IT DID, WHICH  
2 IS TO CONSIDER THE QUESTION TODAY OF IS THIS SETTLEMENT IN  
3 THE PORTION THAT RELATES TO THE WILLIS CLASS FAIR IN A  
4 HIGH-LEVEL, LOOK, IS IT FAIR TO THE CLASS, FAIR ENOUGH  
5 THAT IT WOULD MERIT THE COURT ORDERING ME TO DISSEMINATE  
6 NOTICE TO THE CLASS OF THE SETTLEMENT THEREBY TRIGGERING  
7 THE CLASS MEMBER'S KNOWLEDGE OF THE SETTLEMENT AND  
8 OPPORTUNITY TO OBJECT IF THEY SO DESIRED.

9 AND SO ON THE POINTS THAT REALLY SHOULD BE  
10 CONSIDERED IN THIS MOTION RIGHT NOW, THE TERMS OF THE  
11 SMALL PUMPER CLASS SETTLEMENT HAVE NOT BEEN OBJECTED TO BY  
12 ANY OF THESE PARTIES HERE. NO ONE HAS SAID, WELL, THIS IS  
13 AN UNFAIR DEAL TO THE CLASS. IT'S A DEAL I HAVE WORKED ON  
14 IN SETTLEMENT FOR IN EXCESS OF SIX YEARS AND IN VERY  
15 EARNEST FOR THREE YEARS ON ESSENTIALLY THESE SAME TERMS.

16 VARIOUS PARTIES' DEAL THAT WAS MEMORIALIZED  
17 WITH THREE OF THE PUBLIC WATER SUPPLIERS IN 2013  
18 ESSENTIALLY THE EXACT SAME TERMS, AND IT BALANCES THE  
19 NEEDS FOR THE CLASS TO HAVE DOMESTIC RESIDENTIAL PUMPING.  
20 AND WE KNOW NOW AFTER SPEAKING TO MANY, MANY HUNDREDS OF  
21 THEM ISSUING SURVEYS, HAVING PEOPLE CONTACT THESE PEOPLE,  
22 WE HAVE A PRETTY GOOD SENSE OF THE GENERAL MAKEUP OF THE  
23 CLASS.

24 AND IT IS BY AND LARGE VERY PREDOMINANTLY A  
25 RESIDENTIAL. AND, IN FACT, THERE'S ONLY TO DATE ONE OR  
26 TWO PROPERTIES, A CAMPGROUND AND ONE OTHER, A SMALL  
27 AIRPORT, THAT DO NOT HAVE A STRICTLY RESIDENTIAL USE ON  
28 THE PROPERTY. AND SO THIS SETTLEMENT PROTECTS THE RIGHTS

1 OF THOSE PEOPLE TO USE FOR DOMESTIC PURPOSES IN PERPETUITY  
2 AND IT DOES SO AT A VERY REASONABLE LEVEL.

3 WE USE THE NUMBER OF 1.2-ACRE FEET PER  
4 HOUSEHOLD, WHICH IS IN LINE WITH WHAT MR. SCALMANINI PUT  
5 INTO EVIDENCE IN THE PHASE THREE TRIAL IN TERMS OF THE  
6 SUMMARY EXPERT CALCULATIONS THAT THEY DID. IT'S RIGHT ON  
7 LINE WITH THAT. AND IT DOES ALLOW FOR SOME OF THOSE WHO  
8 HAVE BIGGER HOUSEHOLDS, BIGGER USES, TO USE MORE THAN THAT  
9 WITHOUT PAYING AN ASSESSMENT.

10 AND I THINK THE BEST EVIDENCE THAT THE  
11 SETTLEMENT IS FAIR TO THE CLASS IS THE CLASS'S RESPONSE TO  
12 THESE EXACT SAME TERMS AT THE END OF 2013. THEY ALL GOT  
13 NOTICE OF THIS SETTLEMENT WITH PHELAN AND QUARTZ HILL AND  
14 PALMDALE WATER DISTRICT, AND WE DIDN'T GET A SINGLE  
15 OBJECTION TO THESE TERMS. SO NORMALLY IT'S A LITTLE  
16 DIFFICULT FOR ME AS CLASS COUNSEL TO ARGUE HYPOTHETICALLY  
17 ABOUT HOW THE CLASS WOULD BEHAVE, BUT IN THIS INSTANCE,  
18 WE'VE SEEN IT, THE SUBSTANTIVE TERMS ARE IDENTICAL.  
19 GRANTED, IT'S A LARGER PHYSICAL SOLUTION.

20 SO THE FACT THAT THE CLASS HAS NOT OBJECTED  
21 TO THESE TERMS BEFORE AND THEY'RE REALLY SORT OF SIMILAR  
22 TO THE SETTLEMENT THAT WAS SCUTTLED I THINK IN 2011. SO  
23 ON THAT POINT I WOULD SAY THAT THE SETTLEMENT IS FAIR TO  
24 THE CLASS, THE COURT SHOULD ORDER NOTICE, AND THAT THE  
25 CLASS SHOULD BE GIVEN AN OPPORTUNITY TO OBJECT AND THAT  
26 ALL THE PARTIES, PHELAN AND WILLIS AND ANYONE ELSE WHO  
27 WISHES TO OBJECT, SHOULD DO SO IN AUGUST AFTER DISCOVERY  
28 AND AFTER THE EXPERTS HAVE BEEN DEPOSED WITH THE EVIDENCE

1 AND SO ON AND SO FORTH. AND WITH THAT, I'LL --

2 THE COURT: GREAT. THANK YOU. LET'S HEAR  
3 OPPOSITION.

4 MR. KALFAYAN: YES, YOUR HONOR. THANK YOU. WHAT  
5 MR. MCLACHLAN FORGETS, YOUR HONOR, IS THIS SETTLEMENT IS A  
6 THREE-PRONG SETTLEMENT.

7 THE COURT: YOUR VOICE.

8 MR. KALFAYAN: IT'S A THREE-PRONG SETTLEMENT, AND  
9 THE COURT IS INVOLVED IN THE SETTLEMENT. LET ME ADDRESS  
10 FIRST THE ARGUMENT THAT WAS MADE REGARDING WHETHER IT'S  
11 PREMATURE TO HEAR THE ARGUMENTS THIS MORNING.

12 AND THE QUESTION THAT'S POSED IS IS THE  
13 COURT'S CONSIDERATION OF THE OPPOSITION, THE WILLIS  
14 OPPOSITION, ON THE MERITS PREMATURE. THE ANSWER TO THAT  
15 QUESTION, YOUR HONOR, IS NO. IT'S NOT PREMATURE BECAUSE  
16 THIS IS THE VERY -- THE MERITS OF THE OPPOSITION IS THE  
17 VERY PURPOSE OF THIS HEARING TODAY.

18 THE STANDARD FOR PRELIMINARY APPROVAL THAT'S  
19 ADVOCATED BY THE WOOD CLASS IS AS FOLLOWS: THE COURT MUST  
20 REVIEW THE PROPOSED SETTLEMENT AND MAKE AN INITIAL  
21 DETERMINATION AS TO WHETHER THE TERMS ARE FAIR, ADEQUATE,  
22 AND REASONABLE. I'M CITING THE MANUAL FOR COMPLEX  
23 LITIGATION, FOURTH, SECTION 21.632. THAT LANGUAGE IS  
24 SPECIFICALLY IN THEIR PROPOSED ORDER.

25 THE COURT BASICALLY TODAY HAS TO MAKE A  
26 DETERMINATION ON FAIRNESS, ADEQUACY, AND REASONABLENESS  
27 INITIALLY. SHOULD IT TENTATIVELY APPROVE THIS SETTLEMENT  
28 FOR THE PARTIES? THAT'S AN INQUIRY FOR THE COURT TO MAKE.

1 DOES THE AGREEMENT HAVE SOME OBVIOUS DEFICIENCIES? IS  
2 IT -- THE NOMENCLATURE THAT WE USE IN CLASS ACTION, IS IT  
3 WITHIN THE BALLPARK? SHOULD THE COURT APPROVE IT? IS IT  
4 WITHIN THE BALLPARK? IS IT INITIALLY FAIR, ADEQUATE, AND  
5 REASONABLE? THIS LANGUAGE COMES OUT OF THE MANUAL FOR  
6 COMPLEX LITIGATION.

7                   HERE THE WOOD CLASS STIPULATION FAILS TO  
8 TEST AS A MATTER OF LAW. IT'S NOT IN THE BALLPARK AS A  
9 MATTER OF LAW. AND THAT'S BECAUSE IT DOESN'T GRANT OR  
10 CONFER THE CORRELATIVE RIGHTS, DOESN'T RESPECT THE  
11 CORRELATIVE RIGHTS OF THE WILLIS CLASS. IT VIOLATES THIS  
12 COURT'S RULE AGAINST SETTLEMENT, PREJUDICING THE RIGHTS OF  
13 OTHER PARTIES.

14                   THE COURT HAS ALREADY DENIED THIS EXACT SAME  
15 MOTION FOR PRELIMINARY APPROVAL WITH RESPECT TO THE WOOD  
16 CLASS AND THE PUBLIC WATER SUPPLIERS BECAUSE TWO PARTIES  
17 CANNOT IMPACT THE RIGHTS OF A THIRD PARTY IN A SETTLEMENT.  
18 THE COURT CORRECTLY DENIED IT BACK IN -- CORRECTLY DENIED  
19 THE PERMANENT ALLOCATION OF THREE-ACRE FEET TO THE WOOD  
20 CLASS BACK IN 2012 AND THE COURT MUST DO THE SAME TODAY.

21                   ON JANUARY 22ND, YOUR HONOR, 2015, THIS  
22 COURT CORRECTLY STATED AND INFORMED THE PARTIES THAT THIS  
23 COURT WOULD NOT APPROVE A SETTLEMENT AGREEMENT THAT GAVE  
24 THE WOOD CLASS A PERMANENT ALLOCATION OF ACRE FEET. IT  
25 SAID YOU CANNOT DO THAT.

26                   THE PARTIES SHOULD NOT INCUR THE COSTS OF  
27 NOTICE AND BEFORE THE COURT DECIDES THIS ISSUE, IT IS RIPE  
28 TODAY. THE COURT HAS BOTH AGREEMENTS IN FRONT OF IT. THE

1 PREJUDICE IS CLEAR AND THE INCONSISTENCY IS CLEAR. THE  
2 WILLIS RIGHTS HAVE BEEN ABROGATED.

3 ON MARCH 4, 2014 THE PUBLIC WATER SUPPLIERS  
4 VIOLATED THE WILLIS SETTLEMENT. ON MARCH 20, 2014 THEY  
5 BREACHED THE AGREEMENT THEY HAD WITH WILLIS. OVER THE  
6 NEXT 120 DAYS WE'RE GOING TO BE FORCED TO WORK AND OPPOSE  
7 A PHYSICAL SOLUTION AND OPPOSE THE ENTRY OF A JUDGMENT AND  
8 PUT ON A TRIAL WHEN THEY AGREED, THE PUBLIC WATER  
9 SUPPLIERS, THAT WE SHOULD NOT DO THAT.

10 FOR FIVE YEARS WE WERE PROTECTED BY THIS  
11 JUDGMENT AND NOW IT'S BEEN VIOLATED. THE LAW DOES NOT  
12 ALLOW TWO PARTIES, YOUR HONOR, TO DICTATE THE TERMS OF A  
13 CASE JUST BECAUSE THEY SAY IT IS. I WANT TO TURN TO  
14 THE -- BRIEFLY TO THE MERITS OF THE OPPOSITION, AND I PUT  
15 THEM IN THREE DIFFERENT BASKETS, YOUR HONOR. THERE ARE  
16 THREE PRIMARY REASONS WHY THESE STIPULATIONS FOR  
17 SETTLEMENT FOR THE WOOD CLASS SHOULD FAIL, AND I THROW  
18 THEM IN THREE DIFFERENT BASKETS.

19 THE FIRST ONE IS THE OBVIOUS CONFLICT WITH  
20 THE WILLIS JUDGMENT. THE SECOND ONE IS THE LEGALITY AND  
21 THE SUPREME COURT DECISIONS THAT HAVE DISCUSSED THIS  
22 PARTICULAR ISSUE. THE THIRD IS THE FAIRNESS ARGUMENT.  
23 I'LL BRIEFLY TOUCH ON EACH ONE.

24 FIRST, THE CONFLICT WITH THE JUDGMENT. THE  
25 STIPULATION PERMANENTLY ALLOCATES THE NATIVE SAFE YIELD TO  
26 THE STIPULATING PARTIES BUT EXCLUDES THE WILLIS CLASS  
27 ENTIRELY FROM THE NATIVE SAFE YIELD. IT ABROGATES THEIR  
28 OVERLINE CORRELATIVE RIGHTS TO THE NATIVE SAFE YIELD FOR

1 THEIR REASONABLE AND BENEFICIAL USE.

2 IT PREDETERMINES THAT THEIR USE IS  
3 REASONABLE AND THE WILLIS CLASS'S USE IS UNREASONABLE.  
4 THAT DETERMINATION, YOUR HONOR, IS A FACTUAL DETERMINATION  
5 THAT THE COURT AND THE CITY OF BARSTOW SAID THE LEGAL  
6 MECHANISM --

7 THE COURT: EXCUSE ME. COUNSEL ON COURTCALL, WILL  
8 YOU PLEASE MUTE YOUR PHONES. THANK YOU. GO AHEAD.

9 MR. KALFAYAN: THE LEGAL MECHANISM BY WHICH THE  
10 COURT CAN SUBORDINATE THE RIGHTS OF THE WILLIS CLASS  
11 NECESSARILY DEPENDS UPON A REASONABLE AND BENEFICIAL USE,  
12 AND WHAT THEY'RE SAYING IN THE SETTLEMENT IS THEIR USE IS  
13 REASONABLE BUT THE WILLIS CLASS'S USE IS UNREASONABLE.

14 IT SUBORDINATES THE WILLIS CLASS. EVEN  
15 THEIR DOMESTIC USE IT SUBORDINATES. AND IT FAVORS THE  
16 WOOD CLASS. IN THE SETTLEMENT THE WOOD CLASS HAS A  
17 PREFERENCE UNDER WATER CODE 106, SPECIFICALLY FOR DOMESTIC  
18 USE. THEY'RE DOING EXACTLY WHAT THEY PROMISED THEY WOULD  
19 NOT DO AND THEY VIOLATED THE CORRELATIVE RIGHTS.

20 WHEN WE EXECUTED THE WILLIS SETTLEMENT  
21 AGREEMENT, YOUR HONOR, WE WERE IN THE OFFICE DISCUSSING IT  
22 OF BEST, BEST & KRIEGER WITH ALL THE PUBLIC WATER  
23 SUPPLIERS. AND TO CONVINCING US TO SIGN THE AGREEMENT, ONE  
24 OF THE PUBLIC WATER SUPPLIERS STOOD UP AND SAID,  
25 MR. KALFAYAN, YOU SHOULD SIGN THIS BECAUSE IF YOU SIGN  
26 THIS, IF ANYBODY CHALLENGES IT, YOUR CORRELATIVE RIGHTS,  
27 WE'RE GOING TO BE STANDING RIGHT NEXT TO YOU TO MAKE SURE  
28 THEY DON'T TAKE IT AWAY. NOW THEY'RE SITTING ON THE OTHER



1 SIDE OF THE TABLE TAKING AWAY EXACTLY WHAT THEY PROMISED  
2 THEY WERE NOT GOING TO TAKE AWAY.

3 MR. DUNN: OBJECTION, YOUR HONOR. MISCHARACTERIZES  
4 SETTLEMENT DISCUSSIONS. IMPROPER. I MOVE IT TO BE  
5 STRICKEN FROM THE COURT RECORD.

6 THE COURT: ALL RIGHT. I'LL GRANT THAT ONE.

7 MR. KALFAYAN: FINE, YOUR HONOR. IT'S ILLEGAL. IT  
8 EXTINGUISHES THE CORRELATIVE RIGHTS OF THE WILLIS CLASS.  
9 THERE ARE FOUR DECISIONS THAT I HAVE TO TALK ABOUT AND THE  
10 FIRST ONE IS TULARE.

11 TULARE, YOUR HONOR, THE STATUTE THAT THE  
12 SUPREME COURT DISCUSSED WAS THE STATUTE THAT FORFEITED  
13 THAT -- THAT SAID IF YOU DON'T USE YOUR WATER RIGHTS IN 10  
14 YEARS, YOU'VE ABANDONED IT. THERE'S A FORFEITURE. THAT  
15 WAS THE TULARE CASE. AND IN THE TULARE CASE, YOUR HONOR,  
16 IT STANDS FOR ONE IMPORTANT PROPOSITION. AND THAT IS A  
17 RIPARIAN OR AN OVERLINE OWNER'S UNEXERCISED RIGHT TO  
18 FUTURE WATER IS CONSTITUTIONALLY PROTECTED AND IT CANNOT  
19 PROPERLY BE LIMITED, FIXED, QUANTIFIED, OR SUBORDINATED  
20 UNTIL THE NEED FOR IT ARISES.

21 IF WE MOVE TO THE CITY OF BARSTOW DECISION,  
22 THE COURT SAID CLEARLY, YOU CANNOT CHANGE PRIORITIES. THE  
23 COURT CANNOT CHANGE PRIORITIES OR CHANGE VESTED RIGHTS  
24 WITHOUT FIRST CONSIDERING THEM IN RELATION TO THE  
25 REASONABLE AND BENEFICIAL USE DOCTRINE. AGAIN, IT'S THE  
26 LEGAL MECHANISM BY WHICH RIGHTS ARE DETERMINED.

27 IN THE CITY OF PASADENA, WHICH IS EXPRESSLY  
28 INCLUDED IN THE SETTLEMENT -- IN THE SETTLEMENT AGREEMENT,

1 WHICH TALKS ABOUT THIS -- HOW IT IS A BASIS TO MODIFY THE  
2 WILLIS CLASS'S RIGHT, THE CITY OF PASADENA IS NOT  
3 APPLICABLE. MUTUAL PRESCRIPTION IN THAT CASE, YOUR HONOR,  
4 WAS DONE TO ACCOMMODATE A JUNIOR APPROPRIATOR INTO THE  
5 MIX. IT WASN'T TO EXCLUDE AN APPROPRIATOR.

6 IN FACT, THE COURT SAID THE APPROPRIATOR  
7 WOULD HAVE TO INCUR A SIGNIFICANT AMOUNT OF COST IF WE  
8 WERE TO SAY HE DOESN'T HAVE ANY WATER RIGHTS. THE CITY OF  
9 PASADENA ACCOMMODATED A JUNIOR APPROPRIATOR TO BE PART OF  
10 THE ALLOCATION. SO THEY PUT CITY OF PASADENA ON ITS HEAD  
11 BY SAYING WE'RE GOING TO USE IT TO SAY WILLIS HAS NO  
12 RIGHTS OR WE'RE GOING TO MODIFY THEIR RIGHTS.

13 THE LAST CASE THAT THEY MENTION IN THE  
14 SETTLEMENT IS THE LONG VALLEY DECISION. I'VE ANALYZED  
15 THIS CASE TO DEATH. AND, YOUR HONOR, HERE'S WHAT'S GOING  
16 ON IN THE RIGHT -- IN THE LONG VALLEY CASE: FIRST, THE  
17 RIGHT -- IN THE LONG VALLEY, IT WAS A SURFACE WATER  
18 ADJUDICATION, NOT A GROUNDWATER ADJUDICATION.

19 WRIGHT VERSUS GOLETA, CALIFORNIA COURT OF  
20 APPEAL DECISION, CAME RIGHT AFTER IT AND SAID YOU CANNOT  
21 APPLY THE LONG VALLEY PRINCIPLES TO GROUNDWATER  
22 ADJUDICATION. THE PARTIES IN LONG VALLEY HAD NOTICE THAT  
23 THEIR RIGHTS ARE GOING TO BE DETERMINED. THE MAJORITY IN  
24 LONG VALLEY SAID YOU MIGHT LIMIT THEIR SURFACE WATER  
25 RIGHTS, YOU CAN QUANTIFY -- QUANTIFY OR SUBORDINATE.

26 THERE WERE TWO DISSENTS, HOWEVER, AND THE  
27 DISSENT, OBVIOUSLY, SAID -- WELL, ONE SAID YOU CAN'T  
28 DETERMINE THE AMOUNT AND SO YOU, BASICALLY, HAVE TO

1 PROTECT THEIR INTEREST GOING FORWARD. THE SECOND DISSENT  
2 SAID, WELL, IF YOU CAN PUT AN EXPERT THAT CAN QUANTIFY  
3 THEIR RIGHTS, THEN LET'S DO THAT.

4 BUT THE IMPORTANT POINT IN LONG VALLEY IS  
5 THIS, YOUR HONOR: MR. RAMELLI, WHO WAS THE APPELLANT IN  
6 THAT CASE, HAD EXERCISED RIGHTS FOR 89 ACRES. HE HAD  
7 DORMANT RIPARIAN RIGHT CLAIMS TO 2,884 ACRES. THE TOTAL  
8 IRRIGATED LAND IN LONG VALLEY STREAM SYSTEM WAS 4,130  
9 ACRES.

10 MR. RAMELLI CAME TO COURT AND ASKED -- HE  
11 WAS CURRENTLY USING TWO PERCENT OF HIS POTENTIAL WATER  
12 USE, BUT HE CAME TO COURT AND SAID NOT ONLY DO I WANT TO  
13 USE MY TWO PERCENT, BUT I WANT AN ALLOCATION OF AN  
14 ADDITIONAL 72 PERCENT OF ALL THE WATER RIGHTS. THAT WAS  
15 OVERREACHING. THAT WAS UNREASONABLE. AND THE COURT  
16 STRUGGLED AND SAID WE HAVE TO ACCOMMODATE PLAYERS, BUT WE  
17 CAN'T ACCOMMODATE SOMEBODY WHO WANTS TO TAKE 80 PERCENT OF  
18 THE RIPARIAN RIGHTS.

19 THE LAST POINT I WANT TO MAKE IS ON  
20 FAIRNESS. WHETHER OR NOT THE SETTLEMENT IS FAIR. THE  
21 COST OF THIS PHYSICAL SOLUTION, IN MY JUDGMENT, IS IMPOSED  
22 ON THE WILLIS CLASS.

23 THE COURT: IS WHAT?

24 MR. KALFAYAN: IS IMPOSED ON THE WILLIS CLASS. AND  
25 THE FAIRNESS ARGUMENT, YOUR HONOR, IS THE WILLIS CLASS DID  
26 NOT CAUSE THE PROBLEM OF THE OVERDRAFT. REALLY, THE  
27 PUMPERS HAVE. SO FROM AN EQUITY POINT OF VIEW, WHO  
28 SHOULD -- WHERE SHOULD THE BURDEN BE IMPOSED ON THE PARTY

1 THAT CREATED THE OVERDRAFT? ON THE PARTY THAT SAT ON THE  
2 SIDELINES AND DIDN'T PUMP AND CHOSE NOT TO PUMP, THAT'S  
3 OUR -- THAT, I THINK, IS THE POINT OF THE EQUITY ARGUMENT.

4 THIS IS -- THE SETTLEMENT, YOUR HONOR, IS  
5 PURE DISTINGUISHMENT AND AS A MATTER OF LAW IT VIOLATES  
6 YOUR JUDGMENT. IF THERE'S ANY OTHER QUESTIONS, YOUR  
7 HONOR, I'M HAPPY TO ADDRESS THEM.

8 THE COURT: OKAY. THANK YOU. WHO ELSE WANTS TO  
9 ARGUE IN OPPOSITION? MR. MILIBAND.

10 MR. MILIBAND: YES. THANK YOU, YOUR HONOR. WES  
11 MILIBAND FOR PHELAN PINON HILLS. I ONLY HAVE ABOUT 60  
12 PERCENT OF MY VOICE, SO I'LL TRY TO SPEAK LOUDLY. I'LL BE  
13 BRIEF.

14 BUT, ESSENTIALLY, THE REPLY BRIEFS FILED BY  
15 MR. MCLACHLAN ON BEHALF OF THE CLASS AND THE REPLY BRIEF  
16 ON BEHALF OF PUBLIC WATER SUPPLIERS ESSENTIALLY CONCEDES  
17 THAT THIS PROPOSED PHYSICAL SOLUTION IS INCONSISTENT WITH  
18 THE WOOD CLASS AGREEMENT TO WHICH AS THE COURT WELL KNOWS.  
19 PHELAN WAS A PART OF IT DURING THE 2013 SETTLEMENT. SO  
20 REALLY ALMOST THAT CONCESSION BEING MADE --

21 THE COURT: THAT'S NOT THE WAY I READ THEIR REPLY.

22 MR. MILIBAND: WELL, THEIR REPLY, REALLY, THE  
23 ESSENCE OF IT IS THERE WASN'T COMPETENT EVIDENCE PRESENTED  
24 BY PHELAN. AND BY WAY OF THE 2014 WOOD CLASS AGREEMENT,  
25 THE 1,053-ACRE FOOT ALLOCATION THAT WAS RECOGNIZED BY THE  
26 CLASS FOR PHELAN TO HAVE, THEY ARE CONTENDING, WAS  
27 CONTINGENT UPON COMPETENT EVIDENCE BEING DEEMED ADMISSIBLE  
28 BY THE COURT AND ENTERED INTO A FINAL JUDGMENT. AND SO

1 WITH -- WITH THAT SAID, THE COMPETENT EVIDENCE WAS  
2 ADMITTED INTO EVIDENCE BY THE COURT.

3 THE COURT: BUT IT DIDN'T ESTABLISH AN  
4 APPROPRIATIVE RIGHT.

5 MR. MILIBAND: BUT IT ESTABLISHED AN ALLOCATION.  
6 THERE'S NOTHING IN THAT AGREEMENT THAT REQUIRED THAT  
7 PHELAN PROVE ANY OF ITS CAUSES OF ACTION OR THAT IF IT  
8 PROCEEDED TO TRIAL ON ANY OF ITS CAUSES OF ACTION THAT IT  
9 WOULD NOT BE A VALID AGREEMENT. THERE'S NOTHING IN THERE.

10 THE COURT: THAT CALLS INTO QUESTION THE  
11 INTERPRETATION OF THE LANGUAGE IN THE STIPULATION, DOESN'T  
12 IT?

13 MR. MILIBAND: I DON'T THINK IT DOES. THERE'S  
14 NOTHING --

15 THE COURT: YOU DON'T THINK REASONABLE PEOPLE COULD  
16 ARGUE THAT IT MEANS SOMETHING OTHER THAN WHAT YOU'RE  
17 SUGGESTING?

18 MR. MILIBAND: WELL, YOUR HONOR, BROADLY,  
19 REASONABLE MINDS CAN DISAGREE ON MANY THINGS. BUT HERE  
20 SPECIFICALLY THERE'S AN AGREEMENT.

21 THE COURT: THERE'S A DIFFERENCE BETWEEN PEOPLE  
22 DISAGREEING AND REASONABLY DISAGREEING. BUT I SEE IT -- I  
23 UNDERSTAND YOUR POINT. AND I THINK THAT I AM NOT GOING TO  
24 DECIDE THAT POINT TODAY. I CAN TELL YOU THAT CERTAINLY.  
25 BUT I THINK THAT THERE PROBABLY NEEDS TO BE MORE BRIEFING  
26 ABOUT THE USE OF THAT LANGUAGE IN THE STIPULATION IN ORDER  
27 FOR THIS COURT OR ANY OTHER COURT TO RESOLVE THAT  
28 INTERPRETATION ISSUE.

1 BUT I THINK VERY CLEARLY IT'S AN  
2 INTERPRETATION AS TO WHAT WAS INTENDED BY THAT  
3 STIPULATION, WHAT WAS MEANT BY IT. AND IT MAY BE THAT  
4 THERE ARE DIFFERENCES OF OPINION. I CERTAINLY SEE THAT  
5 AS -- AS AN ISSUE RAISED BY THE REPLY BRIEF.

6 MR. MILIBAND: WELL, IF IT'S A MATTER OF  
7 INTERPRETATION, YOUR HONOR, I SUPPOSE I WOULD INQUIRE OF  
8 THE COURT WHEN THE COURT WOULD ANTICIPATE THAT IT WOULD  
9 MAKE THE DECISION ON THAT INTERPRETATION?

10 THE COURT: WHEN WOULD I MAKE THAT DECISION?

11 MR. MILIBAND: YES, SIR.

12 THE COURT: AT THE TIME OF THE APPROVAL OF THE --  
13 THE FINAL APPROVAL ON THE FAIRNESS HEARING, WHICH IS GOING  
14 TO FALL ON AUGUST THE 3RD.

15 MR. MILIBAND: AND THE ONE OTHER COMMENT I WOULD  
16 MAKE ALONG THOSE LINES, YOUR HONOR, IS FOLLOWING THE LOGIC  
17 OF THE REPLY BRIEFS WOULD ESSENTIALLY TURN ON ITS HEAD ANY  
18 SETTLEMENTS DONE IN MULTI-PARTY LITIGATION WHERE SOME  
19 PARTIES HAVE SETTLED AND OTHERS HAVE NOT. SO IT DEFIES  
20 REASON. THAT'S WHY I DON'T THINK THERE'S REALLY THAT  
21 REASONABLE INTERPRETATION.

22 THE COURT: IT'S A VERY COMPLEX SITUATION WHEN I AM  
23 TRYING TO EVALUATE THE RELATIONSHIP BETWEEN VARIOUS  
24 STIPULATIONS OF PARTIES, INCLUDING THE INITIAL STIPULATION  
25 BY THE WILLIS CLASS RESULTING IN JUDGMENT IN FAVOR OF THE  
26 STIPULATION. AND AS I EXPRESSED AT THAT TIME, OBVIOUSLY,  
27 THAT RELATED TO THOSE PARTIES ONLY. IT COULD HAVE NO  
28 IMPACT ON PARTIES WHO WERE NOT PARTIES TO THE STIPULATION.

1 AND NOW WE'RE DOING THIS PIECEMEAL AND I  
2 THINK THAT THAT'S PROBABLY THE RIGHT WAY TO DO IT UNDER  
3 THE CIRCUMSTANCES. I DON'T KNOW HOW ELSE YOU WOULD DO IT.  
4 BUT NOW WE'RE DEALING WITH WHAT THE IMPACT IS GOING TO BE  
5 OF VARIOUS STIPULATIONS THAT HAVE BEEN ENTERED INTO BY  
6 VARIOUS OF THE PARTIES.

7 AND THE WOOD CLASS MOTION IS COMPLICATED BY  
8 THE FACT THAT THERE ARE OTHER STIPULATIONS THAT HAVE TO BE  
9 ACCOMMODATED ONE WAY OR THE OTHER, AND IT INCORPORATES A  
10 PROPOSED SETTLEMENT, LET'S CALL IT A PROPOSED GLOBAL  
11 SETTLEMENT, QUASI-GLOBAL OR WHATEVER IT MIGHT BE, THAT  
12 ALSO IS NOT BEING ADDRESSED AT ALL ON ITS MERITS IN TERMS  
13 OF THE COURT'S CONSIDERATION OF IT, ASIDE FROM THE FACT  
14 THAT THE WOOD CLASS CHOOSES TO JOIN IN WITH THAT  
15 STIPULATION.

16 SO EVERYTHING IN ITS TIME AND PLACE. AND I  
17 THINK THAT MY SENSE OF WHERE WE ARE TODAY IS DOES THE  
18 PROPOSED WOOD CLASS SETTLEMENT DESERVE TO HAVE A HEARING  
19 ON THE MERITS WITH BOTH IN TERMS OF THE PARTIES WHO ARE  
20 DIRECTLY AFFECTED BY IT AS WELL AS A CONSIDERATION OF  
21 WHETHER IT AFFECTS ANYBODY ELSE IN ANY WAY THAT IS NOT A  
22 PARTY TO IT SO THAT THEY WOULD BE SOMEHOW FORECLOSED BY A  
23 JUDGMENT OR BOUND BY A JUDGMENT. AND I JUST DON'T THINK  
24 THAT THE INITIAL PRELIMINARY APPROVAL OF THE CLASS ACTION  
25 GIVES US THE OPPORTUNITY TO DELVE INTO THOSE ISSUES.

26 SO I MEAN, FRANKLY, THERE'S NO QUESTION IN  
27 MY MIND THIS HAS BEEN AN ARM'S-LENGTH NEGOTIATION. THAT'S  
28 AN IMPORTANT FACTOR HERE. THERE'S NO QUESTION THAT THERE

1 ARE BENEFITS, POTENTIALLY, WITHIN THE BALLPARK OF THE  
2 AMOUNT OF USAGE THAT THE CLASS MEMBERS HAVE BEEN CLAIMING  
3 BASED UPON THE TESTIMONY THE COURT HAS HEARD THROUGH,  
4 WHAT, FIVE PHASES OF TRIAL OVER A PERIOD OF 10 YEARS.  
5 SOME OF WHICH I REMEMBER. NOT ALL OF WHICH.

6 SO, YOU KNOW, AT THIS POINT I THINK YOUR  
7 OBJECTION IS -- I DON'T WANT TO CALL IT PREMATURE. I  
8 THINK IT'S A LEGITIMATE THING FOR YOU TO DO. BUT I -- I  
9 THINK I AM GOING TO OVERRULE THAT OBJECTION AND SAY THIS  
10 MATTER IS GOING TO BE HEARD IN A FULL FAIRNESS HEARING  
11 THAT IS GOING TO BE DONE IN CONJUNCTION WITH THE  
12 INCORPORATED SETTLEMENT AGREEMENT, INCIDENTALY BOTH OF  
13 WHICH I HAVE READ, AND I SEE POTENTIAL GOOD AND I SEE  
14 ISSUES THAT NEED TO BE ADDRESSED, AND THAT I AM SURE WILL  
15 BE ADDRESSED.

16 SO -- SO I APPRECIATE YOUR ARGUMENT, BUT I  
17 DON'T THINK THAT AT THIS POINT THAT IT'S GOING TO PERSUADE  
18 ME THAT I SHOULD NOT GIVE PRELIMINARY APPROVAL OF THE WOOD  
19 CLASS SETTLEMENT. AND, OBVIOUSLY, THE MATTER IS NOT  
20 SUBMITTED YET. I'D LIKE TO HEAR FROM ANYBODY ELSE THAT  
21 MIGHT OBJECT OR EVEN A REPLY FROM MR. MCLACHLAN.

22 BUT I DID WANT TO MENTION ONE THING TO YOU,  
23 NOT DIRECTLY RELATED TO THIS. I KNOW THAT YOU HAVE  
24 PETITIONED THE SECOND DISTRICT FOR A WRIT. AND I JUST  
25 WANT TO REMIND YOU THAT THE ORDER SIGNING THE  
26 COORDINATION, THE TRIAL JUDGE, ALSO PROVIDED FOR  
27 DESIGNATION OF THE COURT OF APPEAL FOURTH DISTRICT,  
28 DIVISION TWO, AS THE REVIEWING COURT FOR APPELLATE AND



1 WRIT JURISDICTION.

2 MR. MILIBAND: YEAH. WE LEARNED THAT THE HARD WAY,  
3 YOUR HONOR. THERE IS NOTHING ON THE COURT'S WEB SITE THAT  
4 PROVIDED CHIEF JUSTICE'S 2005 LETTER. SO WHAT HAPPENED  
5 WAS WHEN OUR SERVICE DELIVERED ALL OF THE DOCUMENTS TO THE  
6 COURT OF APPEAL HERE IN THE SECOND DISTRICT, THE CLERK LET  
7 US KNOW THEY SENT OVER THAT LETTER. AND BECAUSE THAT WAS  
8 A 2005 LETTER, I THINK ISSUED AROUND JULY OR AUGUST, THE  
9 ONLINE SYSTEM FOR SANTA CLARA COUNTY --

10 THE COURT: SEPTEMBER 2ND IT WAS FILED AND IT IS ON  
11 OUR WEB SITE.

12 MR. MILIBAND: I'M SORRY?

13 THE COURT: IT IS ON THE COURT'S WEB SITE.

14 MR. MILIBAND: WE CHECKED. WE DID NOT SEE THAT  
15 LETTER ANYWHERE ON THE COURT'S WEB SITE.

16 THE COURT: WELL, MR. WALKER PULLED IT UP AND SENT  
17 ME A COPY TO REMIND ME.

18 MR. MILIBAND: REALLY?

19 THE COURT: IN ANY EVENT, I'M NOT CRITICIZING YOU,  
20 I JUST WANTED TO REMIND YOU IF YOU ARE SEEKING REVIEW,  
21 THAT'S THE PLACE TO SEEK IT.

22 MR. MILIBAND: THANK YOU, YOUR HONOR. WE DID. SO,  
23 AS I SAY, WE DID LEARN THAT THE HARD WAY BECAUSE WE DID  
24 LOOK BUT DID NOT SEE ANYTHING INDICATING THAT, BUT WE DID  
25 GET CONFIRMATION IT WAS DEEMED FILED YESTERDAY. SO THANK  
26 YOU, YOUR HONOR.

27 THE COURT: OKAY. IS THERE ANY FURTHER ARGUMENT IN  
28 OPPOSITION TO THIS MOTION?

1 MR. RUDDEROW: JUST BRIEFLY, YOUR HONOR. DANIEL  
2 RUDDEROW, WHO FILED THE OBJECTION YESTERDAY ON BEHALF OF  
3 THE NONSIGNATORY PARTY.

4 THE COURT: ON BEHALF OF WHOM?

5 MR. RUDDEROW: MILANA, WHICH WAS A NONSIGNATORY  
6 PARTY. WE FILED AN OBJECTION JUST FOR THE MOTION TODAY.  
7 I UNDERSTAND THIS CASE HAS BEEN GOING ON FOR SEVEN YEARS.  
8 REAL BRIEFLY.

9 THE COURT: TEN.

10 MR. RUDDEROW: I UNDERSTAND THERE'S 9,600 DOCUMENTS  
11 ON THE DOCKET, AND I UNDERSTAND THE COURT WANTS TO IN OUR  
12 LIFETIME KEEP MOVING THIS CASE FORWARD. BUT IF THE COURT  
13 IS INCLINED TO GRANT THE MOTION, I WOULD JUST THEN LIKE  
14 THE COURT TO CONSIDER SOME OF THESE DEADLINES, SUCH AS THE  
15 APRIL 1ST DEADLINE THAT'S COMING UP THAT FOR THOSE PARTIES  
16 THAT HAVE JUST APPEARED IN THE CASE, SUCH AS MY CLIENT,  
17 SIX MONTHS AGO, GOING THROUGH 9,600 COURT DOCUMENTS, THAT  
18 I WOULD PREFER THAT THIS MOTION BE CONTINUED TODAY AS WE  
19 SAID IN OUR OBJECTION YESTERDAY.

20 BUT IF THAT'S NOT POSSIBLE, THEN AT LEAST  
21 SOME OF US WHO WERE REALLY TRYING TO CATCH UP, IF WE COULD  
22 MOVE SOME OF THESE DEADLINES DOWN A LITTLE BIT ESPECIALLY,  
23 THE APRIL 1ST DEADLINE. THANK YOU, YOUR HONOR.

24 THE COURT: ALL RIGHT. THANK YOU. YESTERDAY I DID  
25 NOT SEE YOUR OBJECTION OR OPPOSITION BRIEF. WHEN WAS THAT  
26 FILED?

27 MR. RUDDEROW: YESTERDAY.

28 THE COURT: OKAY. ALL RIGHT. AND I UNDERSTAND

1 YOU'RE PLAYING CATCH UP.

2 MR. RUDDEROW: THAT'S, BASICALLY, WHAT IT SAID.

3 THE COURT: ALL RIGHT. ALL RIGHT. MR. MCLACHLAN.

4 MR. MCLACHLAN: MICHAEL MCLACHLAN FOR THE SMALL  
5 PUMPER CLASS AGAIN. I DID SEE THAT LATE-FILED OBJECTION  
6 AND THAT PARTY HAS BEEN IN THE LAWSUIT FOR SIX MONTHS.  
7 THESE ORDERS THAT COUNSEL IS TALKING ABOUT WERE -- FIRST  
8 ONE -- ORIGINAL ONE WAS FILED LAST YEAR AND THE AMENDED  
9 ONE, WHICH DIDN'T REALLY CHANGE THE DATES MUCH, MOVED THEM  
10 BACK A LITTLE BIT, HAS BEEN ON FILE FOR OVER 60 DAYS NOW.

11 SO A PARTY HAS AN OBLIGATION WHEN IT'S GOT  
12 COUNSEL TO READ THE NOTICES AS THEY COME IN. AND I DON'T  
13 THINK WE CAN GO HAVE THE TAIL AT THIS LATE DATE WAG THE  
14 ENTIRE DOG AND UPSET THE ENTIRE COURT. SOME ACCOMMODATION  
15 CAN BE MADE AMONG THE PARTIES IF COUNSEL NEEDS A LITTLE  
16 EXTRA TIME TO DESIGNATE HIS EXHIBITS OR SOMETHING LIKE  
17 THAT. WE HAVEN'T DISCUSSED IT. I DON'T HAVE ANY  
18 AUTHORITY ON BEHALF OF ANY SETTLING PARTIES, BUT WE'VE  
19 ALWAYS BEEN FAIRLY ACCOMMODATING IN THAT REGARD.

20 I'D LIKE TO MAKE TWO BRIEF POINTS IN  
21 RESPONSE. THE FIRST ONE IS THAT WHAT THE SETTLING PARTIES  
22 ARE TRYING TO DO HERE PRIMARILY IS TO ENTER A PHYSICAL  
23 SOLUTION, AND THAT HAS BEEN THE ULTIMATE GOAL OF THIS  
24 PROCEEDING FOR MANY OF THE PARTIES FOR A LONG TIME.

25 AND MR. KALFAYAN AND MYSELF, ALTHOUGH IT  
26 HASN'T BEEN OUR PRIMARY CAUSE OF ACTION, HAVE BOTH PLED  
27 CLAIMS FOR PHYSICAL SOLUTION. THE COURT UNDERSTANDS BY  
28 ITS VERY NATURE THAT A PHYSICAL SOLUTION IN THIS

1 DEFINITION INVOLVES A -- A GLOBAL SCENARIO TO MANAGE THE  
2 ISSUE IN QUESTION.

3 WHEN MR. MILIBAND GETS UP HERE AND SAYS THAT  
4 THE PRIOR SETTLEMENT FOR THE WOOD CLASS PREVENTS THE  
5 CURRENT SETTLEMENT BY THE SMALL PUMPER CLASS, HE'S  
6 ESSENTIALLY TELLING YOUR HONOR THAT YOUR HONOR CAN'T ENTER  
7 A PHYSICAL SOLUTION THAT INVOLVES A SMALL PUMPER CLASS IN  
8 THIS FASHION, AND, IN TURN, THEN, OF COURSE, BY MCCARRAN  
9 JURISDICTION WE LOSE THE UNITED STATES AND THE WHOLE BALL  
10 OF WAX FALLS APART BEFORE OUR EYES.

11 THAT IS EXACTLY WHY THE LANGUAGE THAT I  
12 QUOTED IN MY REPLY BRIEF, IT SAYS THAT THE PHELAN RIGHT  
13 HAS TO BE INCORPORATED BY THE COURT IN THE FINAL JUDGMENT,  
14 IS THERE BECAUSE YOUR HONOR HAS BEEN VERY CLEAR ALL ALONG  
15 WITH THESE SETTLEMENTS AND NUMEROUS POINTS IN THE RECORD.

16 DURING MY FIRST ATTEMPT AT A SETTLEMENT YOU  
17 SAID TO ME, I'M PARAPHRASING, THAT YOU CAN'T -- WE CAN'T  
18 BIND THE COURT'S FUTURE ABILITY TO ENTER A PHYSICAL  
19 SOLUTION. YOU'VE SAID THAT MULTIPLE TIMES ALMOST AT EVERY  
20 STAGE OF THE GAME, AND THAT'S WHY THE LANGUAGE IS IN HERE  
21 BECAUSE I DON'T THINK YOUR HONOR WOULD HAVE APPROVED AN  
22 AGREEMENT THAT GAVE PHELAN PINON HILLS A VESTED WATER  
23 RIGHT. AND NOBODY ELSE WOULD HAVE EVER AGREED TO IT  
24 BECAUSE IT'S BEEN COMMONLY UNDERSTOOD THAT EVERYONE IS  
25 AWARE WHAT PHELAN'S LEGAL POSITION IS.

26 AND THERE'S A REASON PHELAN FILED A WRIT  
27 YESTERDAY, BECAUSE IT UNDERSTANDS THAT THE COURT DID NOT  
28 TAKE UP ITS EVIDENCE AND DID NOT SAY YES YOU'RE GETTING A

1 WATER RIGHT THAT'S GOING TO BE INCORPORATED INTO THIS AT  
2 THIS TIME. THERE'S STILL FUTURE PROCEEDINGS TO BE HELD.

3 BUT THERE'S NOTHING IMPROPER ABOUT OUR  
4 SETTLEMENT RIGHT NOW. IT DOESN'T -- CLEARLY DOES NOT  
5 VIOLATE THE AGREEMENT. I WOULD HAVE NEVER ENTERED INTO AN  
6 AGREEMENT THAT WOULD HAVE PREVENTED MY CLASS FROM SETTLING  
7 WITH THE DEFENDANTS IN MY CASE THAT REMAIN OR ANYBODY ELSE  
8 BECAUSE WE ALL HAVE SEEN THE WRITING ON THE WALL. WE KNEW  
9 WHERE THIS WAS GOING.

10 IT'S ULTIMATELY GOING TOWARDS A PHYSICAL  
11 SOLUTION IF -- IF BY TRIAL OR BY SETTLEMENT. AND IF WE  
12 DON'T SETTLE IT, WELL, THE COURT IS GOING TO GO IN THE  
13 SAME DIRECTION AND ALMOST CERTAINLY END UP WITH A PHYSICAL  
14 SOLUTION AT TRIAL EXCEPT ALL THESE ISSUES THAT ARE  
15 RESOLVED IN THE SETTLEMENT WILL THEORETICALLY AND PROBABLY  
16 PRACTICALLY HAVE TO BE TRIED.

17 WHEN THE COURT HAS -- VERY BRIEFLY WITH  
18 REGARD TO WILLIS, THE COURT I KNOW IS GOING TO GO THROUGH  
19 THIS DOCUMENT, SOME 60-ODD PAGES VERY CAREFULLY, AND I  
20 WOULD URGE YOUR HONOR TO THINK VERY CAREFULLY ABOUT THE  
21 POSITION THAT WILLIS HAS TAKEN, THAT THEIR RIGHT HAS BEEN  
22 COMPLETELY SUBJUGATED.

23 PARAGRAPHS LIKE 18.5.18.2 WHICH, IN FACT,  
24 GIVES WILLIS CLASS MEMBERS IN THE FUTURE THE ABILITY TO  
25 PUMP FOR DOMESTIC USE JUST AS THE SMALL PUMPER CLASS HAS,  
26 EXCEPT THEY DON'T HAVE TO PAY A REPLACEMENT ASSESSMENT IF  
27 THE WATER MASTER DEEMS IT TO BE DE MINIMIS.

28 AND SO IT SAYS THE WILLIS CLASS RIGHTS HAVE

1 BEEN COMPLETELY SUBORDINATED. ABSOLUTELY, POSITIVELY  
2 WRONG. THEY'RE NOT BEING KICKED OFF THE BASIN AT ALL.  
3 THEY'RE BEING TREATED JUST AS EVERYBODY ELSE, THE ALL-NEW  
4 PRODUCTION. THE MYTH THAT MR. KALFAYAN IS SELLING THE  
5 COURT IS THAT THEY HAVE A USE. THEY DO NOT HAVE A USE BY  
6 DEFINITION. BECAUSE IF MR. ESTRADA SUNK A WELL ON HIS  
7 PROPERTY, HE WOULD BE BY DEFINITION IN THE SMALL PUMPER  
8 CLASS.

9 AND SO THAT'S PART OF THE PROBLEM THAT  
10 MR. KALFAYAN IS WRESTLING WITH HERE AND WE HAVE NOT GONE  
11 AND TAKEN THE DOMESTIC -- THE DORMANT USERS AND SAID  
12 YOU'RE OFF THE BASIN, YOU CAN'T PUMP, YOU CAN'T DO  
13 ANYTHING. YOU WILL NOT FIND THAT LANGUAGE IN HERE.

14 THE COURT: OKAY. MR. DUNN.

15 MR. DUNN: JEFFREY DUNN FOR LOS ANGELES COUNTY  
16 WATER WORKS, DISTRICT NUMBER 40. I'M ADDRESSING THE COURT  
17 BECAUSE MY CLIENT DISTRICT 40 IS ONE OF THE SETTLING  
18 PARTIES THAT'S SUBJECT TO THIS MOTION THAT'S PRESENTLY  
19 BEFORE THE COURT, THE MOTION BEING THE WOOD CLASS MOTION  
20 FOR PRELIMINARY APPROVAL.

21 SO, AGAIN, MY CLIENT DISTRICT 40 IS PART OF  
22 THIS PROPOSED SETTLEMENT THAT COMES BEFORE THE COURT  
23 TODAY. I WOULD LIKE TO JUST ADDRESS SOME ASPECTS OF THIS  
24 MOTION THAT'S BEFORE THE COURT. WE'RE BEFORE THE COURT  
25 NOW ON A MOTION FOR PRELIMINARY APPROVAL OF THIS AGREEMENT  
26 BETWEEN THE WOOD CLASS AND CERTAIN PUBLIC WATER SUPPLIERS.

27 THE COURT, I'M SURE, IS MINDFUL THAT  
28 THROUGHOUT THIS LENGTHY LITIGATION PROCESS, AND IN

1 PARTICULAR WITH REGARD TO THE WOOD CLASS IN MORE RECENT  
2 YEARS, THERE HAS BEEN APPROPRIATE CONSIDERATION BY THE  
3 COURT AND ENCOURAGEMENT, IF I CAN USE THAT WORD, FOR THE  
4 PARTIES THAT ARE SUBJECT TO THE WOOD CLASS LAWSUIT TO TRY  
5 TO RESOLVE THEIR DIFFERENCES. IN OTHER WORDS, TO TRY TO  
6 SETTLE THEIR CASE.

7 THE COURT IS AWARE THAT THERE WAS AN EARLIER  
8 EFFORT TO DO THAT. FOR A VARIETY OF REASONS IT DID NOT  
9 PROVE TO BE ULTIMATELY SUCCESSFUL, BUT WE DID NOT QUIT.  
10 WE KEPT AT THAT PROCESS. BUT MORE IMPORTANTLY, AS PART OF  
11 THAT PROCESS WE RECOGNIZE THAT ULTIMATELY AT SOME POINT IN  
12 THE PROCEEDINGS, ALL OF THE PARTIES, WHETHER IN THE WOOD  
13 CLASS OR THE WILLIS CLASS OR MY CLIENT OR ANY OF THE  
14 PARTIES THAT ARE IN THIS CASE, WILL ULTIMATELY BE BEFORE  
15 THE COURT AT SOME POINT ON A HEARING FOR A DECISION BY THE  
16 COURT TO APPROVE A PHYSICAL SOLUTION FOR THIS BASIN.

17 WE KNOW THAT THAT HEARING HAS NOT YET TAKEN  
18 PLACE. IT'S SCHEDULED FOR AUGUST 3RD. WE KNOW THAT THE  
19 COURT HAS PROVIDED THROUGH ITS CASE MANAGEMENT ORDERS AN  
20 OPPORTUNITY FOR ALL PARTIES IN THIS CASE TO BE ABLE TO  
21 COME BEFORE THE COURT ON AUGUST 3RD AFTER HAVING RECEIVED  
22 AN APPROPRIATE OPPORTUNITY TO DO DISCOVERY, TO MARSHAL  
23 WHATEVER EVIDENCE, TO GATHER WITNESSES, TO RETAIN EXPERTS,  
24 WHATEVER ANY PARTICULAR PARTY OR GROUP OF PARTIES FEEL  
25 APPROPRIATE, BUT TO COME PREPARED ON AUGUST 3RD TO HAVE  
26 BEFORE THE COURT THE OPPORTUNITY TO WEIGH IN ON THE  
27 APPROPRIATE PHYSICAL SOLUTION FOR THIS CASE.

28 I WILL SAY THAT IN THIS PARTICULAR MOTION,

1 WE'RE HERE FOR THE PRELIMINARY APPROVAL. IT IS NOT A  
2 HEARING TO FINALLY APPROVE A PHYSICAL SOLUTION. THAT WILL  
3 BE DONE ON AUGUST 3RD BY THIS COURT. ULTIMATELY, IT WILL  
4 BE UP TO THE COURT TO DECIDE THE PHYSICAL SOLUTION FOR  
5 THIS CASE.

6 HOWEVER, WHAT HAS BEEN RECOGNIZED BY  
7 PARTIES, AND MY CLIENT NOW HAS BEEN INVOLVED IN ONE  
8 SETTLEMENT WITH THE WILLIS CLASS AND NOW HOPEFULLY HERE A  
9 SETTLEMENT WITH THE WOOD CLASS, IS THE RECOGNITION, THE  
10 EXPRESSED RECOGNITION IN THIS SETTLEMENT, PROPOSED  
11 SETTLEMENT BEFORE THE COURT AS THERE IS ON CLEAR  
12 UNEQUIVOCAL LANGUAGE IN THE COURT APPROVED WILLIS CLASS,  
13 THAT WHATEVER AGREEMENTS THAT ARE ENTERED INTO, ULTIMATELY  
14 THEY WILL BE SUBJECT TO A PHYSICAL SOLUTION TO BE APPROVED  
15 BY THE COURT AT SOME LATER DATE.

16 WHAT IS DIFFERENT TODAY WITH THE WOOD CLASS  
17 IS THAT WE KNOW WHEN THAT DATE IS. IT IS AUGUST 3RD. WE  
18 KNOW WHAT THE PROCEDURE IS THAT HAS BEEN PUT IN PLACE FOR  
19 THAT. AND SO THE WORD "PREMATURE" HAS COME UP IN THIS  
20 HEARING ALREADY. IN MY VIEW IT WOULD BE VERY PREMATURE TO  
21 CONSIDER TODAY A DECISION ON A PROPOSED PHYSICAL SOLUTION  
22 THAT IS GOING TO BE DECIDED ON AUGUST 3RD.

23 WHAT I THINK, THOUGH, IS HELPFUL AS PART OF  
24 THE WOOD CLASS MOTION FOR PRELIMINARY APPROVAL IS NOT ONLY  
25 DOES IT RECOGNIZE THAT IT WILL BE SUBJECT TO AN ULTIMATE  
26 PHYSICAL SOLUTION, BUT IT DEMONSTRATES THE PART OF THE  
27 WOOD CLASS TOGETHER WITH THE OTHER SETTLING PARTIES IN  
28 THAT PROPOSED SETTLEMENT AGREEMENT THAT IT IS MORE THAN



1 JUST A CONCEPT.

2 IT IS -- THERE HAS BEEN MEANINGFUL EFFORT,  
3 AS THIS COURT IS AWARE, GOING BACK NOW FOR PROBABLY MORE  
4 THAN A DECADE, EVEN BEFORE THE COORDINATION AND  
5 CONSOLIDATION WITH CASES, GOING BACK TO THE EARLIEST  
6 FILINGS OR ORIGINS OF THIS CASE, YEARS OF EFFORT EVEN  
7 THEN, BUT IT -- BUT THE POINT IS THAT WE ARE ON A COURT  
8 ORDERED SCHEDULE WITH A -- WITH AN OPPORTUNITY FOR THE  
9 PARTIES. BUT TO SOMEHOW REACH OR EVEN ADDRESS THE MERITS  
10 OF THAT TODAY I THINK IS TERRIBLY PREJUDICIAL TO THE  
11 PARTIES IN THIS CASE WHO ARE SUBJECT TO THIS ORDER.

12 WHAT THE COURT IS AWARE IS WE HAVE IN PLACE  
13 A PROPOSED PHYSICAL SOLUTION THAT HAS BEEN APPROVED BY  
14 OVER 140 PARTIES. FOR EXAMPLE, IT INCLUDES THE UNITED  
15 STATES AND IT'S GONE THROUGH THE PROCESS -- JUST TALKING  
16 PROCEDURALLY HERE FOR A MOMENT. IT'S GONE THROUGH THE  
17 PROCESS THE UNITED STATES HAS IN PLACE TO APPROVE AN  
18 AGREEMENT. I'M NOT GOING TO ARGUE THE MERITS OF THIS.  
19 THE SAME HAS GONE THROUGH FOR THE OTHER GOVERNMENTAL  
20 ENTITIES. THE SAME IS TRUE FOR THE PRIVATE PARTIES, BOTH  
21 LARGE AND SMALL.

22 AND AS PART OF THAT PROCESS, ONE OF THE  
23 IMPORTANT FIRST STEPS IS THE WOOD CLASS HAS TO BRING  
24 THE -- ITS MOTION BEFORE THE COURT FOR A PRELIMINARY  
25 APPROVAL. WE'RE NOT HERE FOR FINAL APPROVAL OF THE WOOD  
26 CLASS SETTLEMENT AGREEMENT AND WE'RE CERTAINLY NOT HERE  
27 TODAY ON A DECISION BY THE COURT ON A PHYSICAL SOLUTION  
28 FOR THE BASIN.

1 ALL WE'RE ABLE TO DO IS COME BEFORE THE  
2 COURT FOR THE PRELIMINARY APPROVAL WITH A SHOWING THAT  
3 THERE IS GOOD CAUSE HERE TO ESTABLISH THE COURT'S  
4 PRELIMINARY APPROVAL AND PROVIDE AN OPPORTUNITY, NOT JUST  
5 FOR THE PARTIES WHO ARE SUBJECT TO THIS CASE MANAGEMENT  
6 ORDER TO COME BACK ON AUGUST 3RD AND WILL HAVE THAT  
7 HEARING, BUT TO PROVIDE AN OPPORTUNITY FOR MEMBERS OF THE  
8 WOOD CLASS TO GET NOTICE AND AN OPPORTUNITY TO REVIEW THIS  
9 SO THEY CAN AT LEAST NOW PRELIMINARILY LOOK AT THIS AS  
10 WOOD CLASS MEMBERS.

11 AND SO I JUST WANT TO SAY THIS IN CLOSING:  
12 WHATEVER DISAGREEMENTS WE'RE GOING TO HAVE TO RESOLVE IN  
13 THE FUTURE IN REGARDING WHAT NOW THE WILLIS CLASS IS  
14 MAKING OR PHELAN OR ANYONE ELSE FOR THAT MATTER,  
15 ULTIMATELY WHAT WILL HAVE TO BE DECIDED IS A PHYSICAL  
16 SOLUTION BY THE COURT THAT PROTECTS THE BASIN FOR ALL  
17 USERS.

18 AND I WILL SAY THIS: THAT THE PHYSICAL  
19 SOLUTION THAT -- THAT HAS BEEN NEGOTIATED NOW OVER THE  
20 COURSE OF MANY YEARS AND NOW IS SUBJECT TO POTENTIAL  
21 APPROVAL AS PRESENTED BY MANY PARTIES REPRESENTING THE  
22 VAST MAJORITY OF THE PARTIES AND THE PUMPING OR HOWEVER  
23 YOU WANT TO CHARACTERIZE IT, FUNDAMENTALLY WHAT IT DOES IS  
24 IT PROPOSES A PHYSICAL SOLUTION FOR THE BASIN'S  
25 LONGSTANDING OVERDRAFT PROBLEM.

26 AND I'LL CONCLUDE BY STATING BY DOING SO, BY  
27 DOING THAT IMPORTANT TASK, IT BENEFITS EVERYONE THAT PUMPS  
28 FROM THE BASIN BOTH NOW AND IN THE FUTURE. AND

1       FUNDAMENTALLY THAT'S WHAT THE PHYSICAL SOLUTION MUST DO.  
2       NOW, WE CAN ARGUE ABOUT THESE OBJECTOR ISSUES LATER AND WE  
3       CAN ARGUE EVEN FOR A LATER DAY WHETHER THIS PROPOSED  
4       PHYSICAL SOLUTION DOES THAT.

5                       BUT MY POINT IS IF, IN FACT, THE PHYSICAL  
6       SOLUTION THAT WE'RE PRESENTING TO THE COURT FOR APPROVAL  
7       ON AUGUST 3RD, IT WOULD AT A MINIMUM REQUIRE, IN MY VIEW,  
8       THAT THERE BE A PROTECTION OF THE BASIN.   AND BY DOING SO,  
9       IT PROTECTS EVERY BASIN USER BOTH NOW AND IN THE FUTURE.

10                      AND IF THAT'S THE CASE, THEN I WILL SAY  
11       THIS:   THEN THERE IS A BENEFIT TO ALL PARTIES WHO HAVE NOT  
12       YET PUMPED AND WHO WILL PUMP IN THE FUTURE.   BECAUSE  
13       WITHOUT A PROTECTED BASIN,   THERE'S NOT GOING TO BE AN  
14       ABILITY ON THE PART OF SOMEONE TO EXERCISE AN OVERLYING  
15       RIGHT OR AN APPROPRIATE RIGHT OR EVEN A FEDERAL RESERVE  
16       RIGHT OR WHATEVER THE RIGHT MAY BE.

17                      THE FUNDAMENTAL OBJECTIVE IS TO PROTECT THAT  
18       BASIN, AND THAT'S WHY THIS WOOD CLASS MOTION AND THE  
19       SETTLEMENT THAT HAS BEEN BROUGHT BEFORE THE COURT HAS THAT  
20       PROVISION THAT SAYS THEY'RE GOING TO BE SUBJECT TO  
21       ULTIMATELY THE COURT'S PHYSICAL SOLUTION.   THAT'S WHY THE  
22       COURT'S FINAL APPROVAL IN THE WILLIS CLASS AGREEMENT HAD  
23       THAT PROVISION IN IT BECAUSE THAT'S THE WAY IT HAS TO BE  
24       WHEN YOU REVIEW THIS CASE.

25                      THE COURT:   ALL RIGHT.   IS THERE ANYBODY ELSE THAT  
26       WANTS TO SPEAK IN OPPOSITION TO MR. KALFAYAN'S OBJECTION?  
27       OKAY.   ALL RIGHT.

28                      MR. KALFAYAN:   I THINK IT'S COMMENDABLE AND I THINK

1 WE SHOULD PRESERVE THIS BASIN. BUT TO ALLOCATE THE  
2 WATER --

3 THE COURT: IT'S NOT COMMENDABLE. IT'S NECESSARY.

4 MR. KALFAYAN: IT'S NECESSARY. IT IS NECESSARY.

5 BUT TO ALLOCATE CERTAIN PARTIES AND NOT GIVE AN ALLOCATION  
6 TO SOMEBODY ELSE IS NOT -- DOESN'T PRESERVE THE BASIN.  
7 YOUR HONOR, LET ME JUST SAY THIS: THIS IS PREJUDICIAL TO  
8 THE WILLIS CLASS. IT'S A PERMANENT ALLOCATION TO THE WOOD  
9 CLASS. IT INCLUDES A PHYSICAL SOLUTION, INCORPORATES A  
10 PHYSICAL SOLUTION, AND IT TELLS THE WILLIS CLASS THAT YOU  
11 GET NOTHING.

12 HERE IS THE PROBLEM WE'RE GOING TO HAVE ON  
13 AUGUST 3RD. I'LL GET TO THE HEART OF THIS. I CANNOT  
14 PROCEED IF THIS IS APPROVED.

15 THE COURT: YOU GOT TO SPEAK UP.

16 MR. KALFAYAN: I WILL NOT BE ABLE TO PROCEED. THIS  
17 SETTLEMENT MODIFIES THE RIGHTS OF THE WILLIS CLASS AND  
18 65,000 LAND OWNERS HAVE NO IDEA THAT THIS PROCEEDING IS  
19 GOING TO HAPPEN ON AUGUST 3RD. AND YOU CAN PUT -- YOU CAN  
20 BRING DOWN THE GAVEL ON AUGUST 3RD AND YOU MAY ENTER  
21 JUDGMENT ON AUGUST 3RD, BUT RIGHT NOW 65,000 LAND OWNERS  
22 HAVE BEEN TOLD THAT THEY HAVE CORRELATIVE RIGHTS TO THE  
23 NATIVE SAFE YIELD.

24 I WILL NOT BE ABLE TO GO FORWARD, I CAN'T GO  
25 FORWARD, WITHOUT SOMEONE TELLING THE CLASS HOW THEIR  
26 RIGHTS ARE GOING TO GET MODIFIED AND LET THEM COME IN AND  
27 BRING THEIR LAWYERS AND COME IN AND ARGUE THAT THEY --  
28 THAT RIGHTS SHOULD NOT BE MODIFIED, NOR CAN WE DO IT

1 WITHOUT A COURT-APPOINTED EXPERT. I CANNOT DO THAT. IT  
2 WILL NOT HAPPEN AND I WOULD BE STANDING HERE IN FRONT OF  
3 YOU COMMITTING A PROBLEM. SO --

4 THE COURT: WELL, MR. KALFAYAN, DON'T YOU AGREE  
5 THAT AT THE TIME THE WILLIS CLASS SETTLEMENT WAS AGREED  
6 TO, STIPULATED, AND BECAME A JUDGMENT, THAT IT ONLY  
7 AFFECTED SEVERAL OF THE PARTIES WITH WHOM IT HAD BROUGHT  
8 AN ACTION AGAINST AND HAD NO BEARING WHATSOEVER, COULD NOT  
9 AFFECT ANYBODY ELSE THAT WAS PUMPING WATER OR NOT PUMPING  
10 WATER IN THE VALLEY? ISN'T THAT TRUE?

11 MR. KALFAYAN: THAT IS COMPLETELY TRUE, YOUR HONOR.  
12 HOWEVER --

13 THE COURT: THEN LET ME ASK YOU THIS: HOW IS THAT  
14 A VESTED RIGHT?

15 MR. KALFAYAN: WHOSE VESTED RIGHT, YOUR HONOR?  
16 OURS? WILLIS?

17 THE COURT: IT'S NOT A VESTED RIGHT BECAUSE WHAT  
18 YOU'VE GOT IS ONE GROUP OF PARTIES WHO HAVE AGREED NOT TO  
19 OPPOSE PUMPING AS TO 85 PERCENT OF THE CORRELATIVE RIGHTS  
20 WITHIN THE BASIN.

21 MR. KALFAYAN: I BEG TO DIFFER. THAT SETTLEMENT,  
22 YOUR HONOR, SAYS WE GET -- WE GET 85 PERCENT OF THE NATIVE  
23 SAFE YIELD, YOU DO NOT. IT'S A MODIFICATION OF RIGHT.

24 AND TO GO BACK TO THE POINT THAT YOU MADE  
25 ABOUT -- ABOUT YOU -- IT WAS AN AGREEMENT BETWEEN US AND  
26 THE PUBLIC WATER SUPPLIERS, IT WAS. AND THE COMPLAINT WAS  
27 DISMISSED AND A JUDGMENT WAS ENTERED RESOLVING ALL THE  
28 CLAIMS BETWEEN THE PUBLIC WATER SUPPLIERS AND THE WILLIS

1 CLASS. AND NOT A SINGLE LAND OWNER HERE BROUGHT A CLAIM  
2 AGAINST THE WILLIS CLASS. THIS ISN'T ONE INDIVIDUAL, YOUR  
3 HONOR.

4 THE COURT: WILLIS CLASS WAS A PLAINTIFF, NOT A  
5 DEFENDANT CLASS.

6 MR. KALFAYAN: IT WAS. AND IT WAS DISMISSED VIA  
7 JUDGMENT. SO NOW THE CLASS HAS BEEN TOLD THAT WE HAVE  
8 CORRELATIVE RIGHTS TO 85 PERCENT OF THE NATIVE SAFE YIELD.  
9 IT'S PROBLEMATIC.

10 THE COURT: MR. KALFAYAN, I'M NOT GOING TO ARGUE  
11 THE ISSUES AND I'M CERTAINLY NOT GOING TO DECIDE THE  
12 ISSUES. BUT I THINK THAT YOU ARE GOING BEYOND, AS YOU  
13 DESCRIBED THE RIGHTS OF THE WILLIS CLASS PARTIES, BEYOND  
14 WHAT THE STIPULATED JUDGMENT PROVIDES.

15 MR. KALFAYAN: WHICH STIPULATED JUDGMENT? THE  
16 WILLIS OR THE WOOD?

17 THE COURT: THE WILLIS CLASS.

18 MR. KALFAYAN: YOUR HONOR, I HAVE IT HERE IN FRONT  
19 OF ME, AND I COULD READ IT TO YOU. "IF PRESERVED" --

20 THE COURT: YOU MAY ASSUME THAT THE COURT READ IT  
21 BOTH PRIOR TO APPROVING IT AND IN CONJUNCTION WITH THESE  
22 PROCEEDINGS TODAY.

23 MR. KALFAYAN: WE DID AGREE TO A PHYSICAL SOLUTION,  
24 AND WE WANT TO BE PART OF A PHYSICAL SOLUTION. BUT THE  
25 PHYSICAL SOLUTION MUST BE CONSISTENT IF IT'S NOT --

26 THE COURT: DON'T YOU AGREE -- DON'T YOU AGREE THAT  
27 THE WHOLE POINT OF THIS SERIES OF CASES THAT HAVE BEEN  
28 BROUGHT INTO THIS COORDINATED ACTION IS DESIGNED TO

1 ULTIMATELY PROVIDE FOR A PHYSICAL SOLUTION TO A PROBLEM  
2 THAT EVERYBODY RECOGNIZES EXISTS? DON'T YOU AGREE TO  
3 THAT?

4 MR. KALFAYAN: YES.

5 THE COURT: AND THE PROBLEM THAT EXISTS IS THAT  
6 PUMPING EXCEEDS RECHARGE ON A LONG-TERM BASIS WHICH HAS  
7 CAUSED AND WILL CONTINUE TO CAUSE, UNLESS REMEDIED,  
8 DETRIMENT TO THE WATER SUPPLY AND THE -- THE ENTIRE ACT.

9 MR. KALFAYAN: YES, YOUR HONOR.

10 THE COURT: OKAY. SO THAT IN ORDER TO OBTAIN A  
11 PHYSICAL SOLUTION THAT IS GOING TO WORK, ISN'T IT  
12 IMPORTANT THAT WE RECOGNIZE HOW MUCH PEOPLE ARE PUMPING  
13 AND HOW TO REDUCE IT SO THAT IT FALLS WITHIN A BALANCE?  
14 ISN'T THAT THE WHOLE PURPOSE?

15 MR. KALFAYAN: I TOTALLY AGREE, YOUR HONOR.

16 THE COURT: AND YOU THINK THAT PEOPLE CAN ENTER  
17 INTO AN AGREEMENT BETWEEN THEMSELVES, SEVERAL OF THE  
18 PARTIES, AS TO HOW MUCH PUMPING THEY EACH ARE GOING TO  
19 HAVE THAT WOULD OVERCOME THE COURT'S OBLIGATION TO CREATE  
20 A PHYSICAL SOLUTION THAT ULTIMATELY WILL PUT THE VALLEY IN  
21 BALANCE?

22 MR. KALFAYAN: THIS PHYSICAL SOLUTION, YOUR HONOR,  
23 IS PERMANENT ALLOCATION. IT GIVES THEM ALL THE WATER  
24 RIGHTS.

25 THE COURT: THE COURT HAS NOT APPROVED A PHYSICAL  
26 SOLUTION. IT IS A PROPOSED -- IT IS A PROPOSED PHYSICAL  
27 SOLUTION.

28 MR. KALFAYAN: THE PROPOSED PHYSICAL SOLUTION IS

1 INCORPORATED INTO THE WOOD CLASS SETTLEMENT AND EVEN THE  
2 WOOD CLASS ALLOCATION IS A PERMANENT ALLOCATION THAT  
3 DEPRIVES THE WILLIS CLASS.

4 THE COURT: IT CANNOT BE.

5 MR. KALFAYAN: IT IS, YOUR HONOR.

6 THE COURT: IT'S IMPOSSIBLE.

7 MR. KALFAYAN: MAY I READ IT TO YOU, YOUR HONOR?

8 THE COURT: NO.

9 MR. KALFAYAN: OKAY. THEN HERE IS THE PICTURE THAT  
10 I WANT TO LEAVE YOU WITH. OKAY? MY HANDS ARE HANDCUFFED  
11 IN THREE DIFFERENT WAYS. OKAY? ONE IS THE CLASS HAS NO  
12 IDEA THAT THEIR RIGHTS ARE GOING TO BE MODIFIED BY THIS  
13 JUDGMENT. THAT'S ONE.

14 THE COURT: THEIR RIGHTS ARE NOT GOING TO BE  
15 MODIFIED BY THIS JUDGMENT.

16 MR. KALFAYAN: OKAY. TWO --

17 THE COURT: CAN'T BE. UNTIL THE COURT MAKES A  
18 DETERMINATION AS TO WHAT THEIR RIGHTS ARE AND WHAT THEY  
19 SHOULD BE IN TERMS OF EVERYBODY ELSE'S CORRELATIVE RIGHTS.

20 MR. KALFAYAN: AND WHEN IS THE WILLIS CLASS --

21 THE COURT: I'M ARGUING WITH YOU, AND I DON'T WANT  
22 TO DO THAT, MR. KALFAYAN.

23 MR. KALFAYAN: BUT, YOUR HONOR, LET ME GO, THEN, TO  
24 MY POINT. I'M HANDCUFFED.

25 THE COURT: ALL RIGHT. YOU'RE HANDCUFFED. ALL  
26 RIGHT.

27 MR. KALFAYAN: IN SEVERAL WAYS. AND ONE OF IT IS  
28 NOTICE. THEY DON'T KNOW. AND PROCEDURALLY THERE'S A DUE



1 PROCESS PROBLEM. TWO, EXPERTS. AND, THREE, IT'S JUST  
2 INCONSISTENT. SO I'VE GOT -- I HAVE A DUTY TO 65,000 LAND  
3 OWNERS AND I CANNOT ABROGATE THOSE DUTIES. I JUST CAN'T.  
4 SO --

5 THE COURT: THERE'S NO SUGGESTION THAT YOU ABROGATE  
6 ANY DUTIES THAT YOU HAVE, MR. KALFAYAN. AND I APPRECIATE  
7 THE FERVOR FOR WHICH YOU ARGUE ON BEHALF OF YOUR CLIENTS.  
8 ALL RIGHT. ANYTHING ELSE ON THIS?

9 OKAY. WE ALL ACKNOWLEDGE, AND I'LL SAY THIS  
10 FOR THE RECORD, THAT THERE CANNOT BE A RESOLUTION OF THIS  
11 LAWSUIT WITHOUT THE COURT CREATING AND ADOPTING A PHYSICAL  
12 SOLUTION, WHETHER THAT COMES FROM AGREEMENT OF THE PARTIES  
13 OR -- OR AFTER FULL LITIGATION AND ADJUDICATION.

14 AND AT THIS POINT I'M GOING TO GRANT  
15 PRELIMINARY APPROVAL OF THE PROPOSED WOOD CLASS RESOLUTION  
16 AND I'M GOING TO SET A TIME FOR A HEARING AND IT'S GOING  
17 TO REMAIN AUGUST THE 3RD AT THIS POINT. THAT MAY END UP  
18 BEING CHANGED. BUT AUGUST THE 3RD FOR FAIRNESS FINAL  
19 APPROVAL HEARING WITH REGARD TO THAT PROPOSED CLASS  
20 SETTLEMENT. OKAY?

21 NOW, WE'VE GOT SOME OTHER -- YES,  
22 MR. MCLACHLAN.

23 MR. MCLACHLAN: YOUR HONOR, BRIEFLY ON THAT LAST  
24 POINT YOUR HONOR MADE. IF THE COURT IS CONTEMPLATING  
25 MOVING THAT HEARING, REMEMBER THAT WE -- I'VE GOT TO VERY  
26 SHORTLY SEND OUT NOTICE TO ALL THE CLASS MEMBERS OF WHEN  
27 THAT HEARING IS GOING TO OCCUR. SO IF THE COURT IS  
28 CONTEMPLATING --

1 THE COURT: THE INITIAL HEARING WILL BE ON AUGUST  
2 THE 3RD. BUT IT MAY REQUIRE A RESETTING OF DATES FOR  
3 TAKING OF EVIDENCE AND THE LIKE AND AUGUST -- IT MIGHT  
4 TURN OUT TO BE SOMEWHAT PROBLEMATIC AFTER THE 3RD.

5 MR. MCLACHLAN: OKAY. SO I WILL GIVE NOTICE FOR  
6 THE 3RD AND THEN WE'LL SEE WHAT COMES.

7 THE COURT: WELL, I THINK IT'S RATHER COMMON IN MY  
8 EXPERIENCE TO SET A HEARING DATE AND AT THE TIME OF THE  
9 HEARING IF THERE'S GOING TO BE FURTHER EVIDENCE, IT CANNOT  
10 BE HEARD ON THAT DATE, THEN WE LOOK FOR OTHER DATES WHEN  
11 EVERYBODY CAN BE AVAILABLE.

12 MR. MCLACHLAN: I'LL REMIND THE COURT THAT THE  
13 COURT HAS BLOCKED OUT CURRENTLY TWO WEEKS IN AUGUST FOR  
14 THAT SERIES OF HEARINGS, AS HAVE ALL THE PARTIES. AND SO  
15 I KNOW FROM OUR MEETINGS THAT THE PARTIES ARE PLANNING ON  
16 PUTTING ON THE VARIOUS PHASES OF THE NECESSARY TRIAL, THE  
17 PRESCRIPTION CASE, ET CETERA, IN THAT TWO-WEEK WINDOW OF  
18 TIME.

19 THE COURT: I HAVE TO TAKE A LOOK. I UNDERSTAND  
20 THAT YOU PICKED THOSE DATES AND I UNDERSTAND THAT I HAVE  
21 TO LOOK AT MY CALENDAR AND MY OTHER OBLIGATIONS IN ORDER  
22 TO DETERMINE WHETHER OR NOT I CAN DO IT THAT WITHIN THE  
23 NEXT TWO WEEKS FOLLOWING THE 3RD. IT MIGHT HAVE TO BE  
24 RESET.

25 IF SO, I'LL BE ABLE TO GIVE YOU THAT  
26 INFORMATION AND REQUEST YOUR PARTICIPATION IN DECIDING THE  
27 HEARING DATES FOR THE TAKING OF EVIDENCE. BUT I BELIEVE  
28 THAT THOSE DATES -- THE TWO WEEKS FOLLOWING THE 3RD ARE

1 PROBABLY NOT GOING TO WORK FOR THE COURT.

2 MR. MCLACHLAN: AND DOES YOUR HONOR ANTICIPATE A  
3 TIME FRAME WHEN WE'LL BE ABLE TO CLARIFY THE SCHEDULE? I  
4 ASK BECAUSE I HAVE A FIVE-YEAR STATUTE CLASS CASE THAT IS  
5 VERY LARGE THAT IS UP AGAINST THE FIVE-YEAR STATUTE SET  
6 FOR TRIAL IN SEPTEMBER AND OCTOBER THAT CANNOT BE MOVED  
7 WITHOUT 10,000 PHYSICIANS IN THE STATE OF CALIFORNIA  
8 LOSING ALL THEIR LEGAL RIGHTS. SO IT CONCERNS ME THAT  
9 THIS ROLLS OVER INTO THAT PERIOD BECAUSE OF THAT. SO I  
10 AM --

11 THE COURT: WELL --

12 MR. MCLACHLAN: I GUESS WHAT I AM SAYING IS THE  
13 SOONER WE CAN MAKE A DETERMINATION ON THE SCHEDULE, THE  
14 BETTER FOR ALL.

15 THE COURT: I THINK IT'S GOING TO HAVE TO BE AT THE  
16 END OF AUGUST. NOW, WHAT DATE IS YOUR --

17 MR. MCLACHLAN: IT'S THE --

18 THE COURT: -- ACTION PENDING?

19 MR. MCLACHLAN: THE CASE STARTS IN CENTRAL CIVIL  
20 WEST IN THE FIRST WEEK OF SEPTEMBER AND IT'S A -- THE  
21 FIRST PHASE IS A BENCH TRIAL, WHICH GOES OVER THROUGH THE  
22 REST OF THAT MONTH, AND THEN THE JURY TRIAL PHASE IS  
23 SUPPOSED TO OCCUR IN OCTOBER ON A DATE YET TO BE  
24 DETERMINED.

25 THE COURT: OKAY.

26 MR. MCLACHLAN: BUT I GUESS WE'LL FIGURE THAT OUT.

27 THE COURT: I WILL TRY TO GIVE YOU SOME  
28 CLARIFICATION ON THE DATES LATER ON THIS WEEK OR NEXT.

1 MR. MCLACHLAN: THANK YOU, YOUR HONOR.

2 THE COURT: ALL RIGHT.

3 MR. DUNN: YOUR HONOR, WITH REGARD TO THE OTHER  
4 DEADLINES THAT ARE IN THE PROPOSED MOTION, LIKE APRIL 1ST.

5 THE COURT: YEAH. I'M GOING TO LEAVE THE MAILING  
6 OF CLASS NOTICE ON FOR APRIL THE 1ST THAT WE'LL SPECIFY IN  
7 A CASE MANAGEMENT ORDER. AND I'M HAVING A LITTLE TROUBLE  
8 UNDERSTANDING WHY MAY THE 15TH NEEDS TO BE RESET.

9 MR. DUNN: WELL, APRIL 1 IS ALSO A DATE FOR  
10 OBJECTIONS AND ASSERTING OF CLAIMS.

11 THE COURT: THE OBJECTIONS TO THE SMALL PUMPER  
12 CLASS IS TO BE MAY 15.

13 MR. DUNN: THERE'S ALSO AN OBJECTION, A DEADLINE  
14 OF --

15 THE COURT: I'M SORRY, I CANNOT HEAR YOU.

16 MR. DUNN: I'M SORRY. THERE'S AN OBJECTION -- LAST  
17 DAY TO OBJECT AND TO ASSERT THE CLAIMS ON APRIL 1ST.

18 THE COURT: OH, I SEE.

19 MR. KALFAYAN: WE'LL NEED MORE TIME FOR THAT AS  
20 WELL.

21 MR. DUNN: I READ IT, YOUR HONOR, FOR DUE DATE FOR  
22 WRITTEN STATEMENT OF OBJECTION TO THE PROPOSED STIPULATED  
23 JUDGMENT OF THE --

24 THE COURT: YEAH. I'M LOOKING AT THE SECOND --  
25 THIRD PAGE OF THE ORDER. I THINK APRIL THE 1ST MIGHT BE A  
26 LITTLE BIT SHORT FOR THAT.

27 MR. MCLACHLAN: IT ALSO WILL BE FOR THE CLASS  
28 NOTICE. THIS HEARING ORIGINALLY WAS SUPPOSED TO OCCUR

1 EARLIER THAN NOW AND MOVED BACK. SO I'M HOPEFUL BY NEXT  
2 FRIDAY THE NOTICE SHOULD BE ABLE TO GO OUT BY --  
3 OBVIOUSLY, APRIL 1ST IS ONLY A COUPLE OF BUSINESS DAYS.

4 THE COURT: WELL, IF NOTICE WOULD GO OUT NEXT  
5 FRIDAY, THAT'S THE 30TH, ISN'T IT?

6 MR. MCLACHLAN: I DON'T HAVE A CALENDAR ON ME. I'M  
7 NOT SEEING ONE HERE.

8 THE COURT: NO, IT'S NOT. I'M SORRY. THAT'S THE  
9 3RD OF APRIL.

10 MR. MCLACHLAN: I THINK THE 30TH IS MONDAY.

11 THE COURT: WHAT DAY DO YOU WANT?

12 MR. MCLACHLAN: I BELIEVE WE CAN SEND OUT NOTICE BY  
13 NEXT FRIDAY, WHICH IS THE, I BELIEVE, APRIL 3RD.

14 THE COURT: THAT'S APRIL 3RD. THAT'S GOOD FRIDAY.

15 MR. MCLACHLAN: THEN PERHAPS TO BE PRUDENT WE  
16 SHOULD MAKE IT THE FOLLOWING MONDAY. I DON'T --

17 THE COURT: 6TH. APRIL 6TH?

18 MR. MCLACHLAN: YES.

19 THE COURT: OKAY. ALL RIGHT. I'LL MODIFY THAT  
20 DEADLINE. THAT'S IN PARAGRAPH 2(C) OF THE EXISTING CASE  
21 MANAGEMENT ORDER AS TO THE WRITTEN STATEMENT OF  
22 OBJECTIONS. WHAT'S A GOOD APPROPRIATE DATE FOR THAT?

23 MR. DUNN: TWO WEEKS OUT, APRIL 15TH.

24 MR. BUNN: YOUR HONOR, MAY I BE HEARD ON THAT?

25 THE COURT: MR. BUNN.

26 MR. BUNN: THOMAS BUNN FOR THE PALMDALE WATER  
27 DISTRICT. I JUST POINT OUT TO THE COURT THAT THERE ARE  
28 OTHER DATES THAT DEPEND ON -- FIRST OF ALL, THAT THIS DATE

1 WAS NOT JUST ESTABLISHED IN THE MOTION, IT'S BEEN IN A  
2 CASE MANAGEMENT ORDER FOR SOMETIME. BUT ALSO THERE'S A  
3 DEADLINE FOR SUBMITTING WITNESSES AND EVIDENCE AT THE END  
4 OF APRIL. THAT WILL BE IN RESPONSE TO THE OBJECTIONS THAT  
5 ARE RECEIVED ON APRIL 1ST. SO THERE ARE -- WE HAVE  
6 CASCADING DEADLINES GOING ALL THE WAY UP TO -- TO AUGUST  
7 HERE AND I -- THAT NEEDS TO BE TAKEN INTO CONSIDERATION BY  
8 THE COURT.

9 THE COURT: OKAY. WELL, THIS IS WHAT HAPPENS WHEN  
10 YOU START CHANGING THINGS. IN LOOKING AT THE ORDER, WE  
11 PROVIDED THAT STATEMENTS OF OBJECTIONS TO THE STIPULATED  
12 JUDGMENT AND PHYSICAL SOLUTION, NOW THAT'S THE GLOBAL --

13 MR. BUNN: YES.

14 THE COURT: -- SOLUTION, WILLFUL AGREEMENT, WERE TO  
15 BE FILED BY APRIL THE 1ST. THAT'S GOING TO BE VERY  
16 HELPFUL TO THE COURT TO HAVE THOSE FILED BECAUSE IT WILL  
17 TELL US WHAT OTHER PARTIES ARE EITHER GOING TO PARTICIPATE  
18 IN THE SETTLEMENT OR ARE GOING TO SEEK TO LITIGATE THEIR  
19 RIGHTS OUTSIDE OF THE SETTLEMENT.

20 SO IT SEEMS TO ME AT THIS POINT IN THE  
21 PROCEEDINGS THAT EVEN IF YOU JUST GOT INTO THIS CASE SIX  
22 MONTHS AGO, YOU'VE HAD THE GLOBAL SETTLEMENT FOR HOW LONG?  
23 HOW LONG HAS THAT BEEN FILED?

24 MR. BUNN: MARCH 4TH.

25 THE COURT: IT SEEMS TO ME THAT'S A SUFFICIENT  
26 PERIOD OF TIME FOR YOU TO KNOW WHETHER YOU'RE GOING TO  
27 WANT TO LITIGATE OR OTHERWISE. I CAN MODIFY THAT BY  
28 GIVING YOU A WEEK FROM APRIL THE 1ST. THAT'S APRIL 7TH.

1 MR. DUNN: THAT'S FINE, YOUR HONOR. WE'LL TAKE  
2 APRIL 7TH.

3 MR. KALFAYAN: DOES THAT APPLY TO THE WILLIS CLASS,  
4 YOUR HONOR?

5 THE COURT: YES.

6 MR. BUNN: AND, AGAIN, AS MR. MCLACHLAN SAID, IF  
7 THERE IS A -- I AGREE THAT THAT'S A REASONABLE DAY TO  
8 STATE AN OBJECTION AND STATEMENT OF CLAIMS. THE NEXT  
9 DEADLINE AFTER THAT IS IDENTIFICATION OF WITNESSES AND  
10 EVIDENCE. IF THERE'S A PROBLEM HERE WITH DOING THAT FOR  
11 HIM BY THE 27TH, WE CAN NO DOUBT ACCOMMODATE HIM. MY

12 CONCERN IS JUST AS THE COURT IS WE NEED TO FIND OUT WHO'S  
13 ON THE TRAIN AND WHO'S NOT.

14 THE COURT: WELL, THAT'S GOING TO TELL US THE  
15 ANSWER TO THAT, ISN'T IT?

16 MR. BUNN: YES.

17 THE COURT: AND I'M GOING TO LEAVE THE OTHER DATES  
18 AS THEY ARE AND WE'LL DEAL WITH THE DATE FOR THE  
19 EVIDENTIARY MATTERS THAT HAVE TO BE HEARD. I AM CONCERNED  
20 ABOUT THAT BECAUSE I WANT TO MAKE SURE WE HAVE ENOUGH TIME  
21 FOR IT. AND THAT'S GOING TO BE -- APART FROM THE CLAIMS  
22 OF THOSE PARTIES WHO ARE NOT GOING TO PARTICIPATE IN THE  
23 GLOBAL SETTLEMENT.

24 SO WE'LL HAVE ENOUGH TIME TO DEAL WITH THOSE  
25 IRRESPECTIVE OF WHAT HAPPENS WITH REGARD TO THE GLOBAL  
26 SETTLEMENT. ASSUMING THE GLOBAL SETTLEMENT IS APPROVED, A  
27 PROPOSED JUDGMENT IS READY TO BE ENTERED. THAT'S NOT  
28 GOING TO BE THE FINAL JUDGMENT IN THE CASE BECAUSE WE

1 STILL HAVE TO DEAL WITH THE PEOPLE WHO WANT TO LITIGATE  
2 THEIR RIGHTS OUTSIDE THE SETTLEMENT. AND SO THAT CAN  
3 OCCUR AT A TIME CONVENIENT FOR EVERYBODY, SO I'M GOING TO  
4 LEAVE ALL THESE OTHER DATES AS THEY ARE.

5 MR. BUNN: THANK YOU, YOUR HONOR.

6 THE COURT: YES, MR. MILIBAND?

7 MR. MILIBAND: THANK YOU, YOUR HONOR.

8 THE COURT: ASSUMING THAT THE FOURTH DISTRICT  
9 DOESN'T STAY US.

10 MR. MILIBAND: YOU SURPRISED ME THERE. THANK YOU,  
11 YOUR HONOR. SO TWO QUICK THINGS. THERE'S THE APRIL 7TH  
12 DATE.

13 IS THAT APPLICABLE TO ANY NONSTIPULATING  
14 PARTY AS FAR AS FILING THE OBJECTIONS?

15 THE COURT: YES.

16 MR. MILIBAND: THANK YOU. AND THE SECOND THING, WE  
17 HAVE IN THE FIRST AMENDED CMO THE APRIL 27TH DATE FOR  
18 DISCLOSURE OF WITNESSES. ONE THING THAT SEEMS A LITTLE  
19 UNCLEAR, AT LEAST TO ME, IS WHETHER THAT INCLUDES EXPERT  
20 WITNESS DISCLOSURES AS WELL OR ARE WE DOING THAT PER CODE?

21 THE COURT: YES.

22 MR. MILIBAND: WHICH WOULD BE MID JUNE.

23 THE COURT: IT DOES.

24 MR. MILIBAND: THE APRIL 27TH EXCLUDES EXPERT  
25 WITNESS DISCLOSURES?

26 THE COURT: YES.

27 MR. MILIBAND: SO COULD THAT BE REFLECTED IN THE  
28 COURT'S MINUTE ORDER?



1 THE COURT: THE ONLY DATE I CHANGED IS THE DATE  
2 FROM APRIL THE 1ST TO THE 7TH.

3 MR. MILIBAND: UNDERSTOOD.

4 THE COURT: WHICH IS ON PAGE THREE.

5 MR. MILIBAND: AND JUST SO WE DON'T RUN INTO SOME  
6 KIND OF MISUNDERSTANDING AMONG COUNSEL DOWN THE ROAD, IF  
7 THE COURT'S MINUTE ORDER FOR TODAY --

8 THE COURT: IT WILL BE INCLUDED IN THE MINUTE  
9 ORDER.

10 MR. MILIBAND: THANK YOU.

11 THE COURT: AND, MR. MCLACHLAN, I WOULD LIKE YOU TO  
12 PREPARE, IF YOU WOULD, THE ORDER ON YOUR MOTION FOR  
13 PRELIMINARY APPROVAL AND SUBMIT IT TO THE COURT IF YOU  
14 HAVEN'T ALREADY.

15 MR. MCLACHLAN: YEAH. IT'S ATTACHED TO MY MOTION.  
16 BUT WHAT I CAN DO, AND I CAN FORWARD IT TO MS. WALKER IN  
17 WORD FORM, I GUESS, OR BOTH FORMS.

18 THE COURT: THAT WOULD BE FINE. YES.

19 MR. MCLACHLAN: IT WILL HAVE TO BE AMENDED TO  
20 REFLECT THE CHANGED NOTICE DATE, IN ANY EVENT.

21 THE COURT: OKAY. ALL RIGHT. NOW, THERE ARE THREE  
22 OTHER THINGS SPECIFICALLY FOR US TO DEAL WITH. MOTION BY  
23 THE WILLIS CLASS TO ADD THE ARCHDIOCESE OF LOS ANGELES AS  
24 THE PLAINTIFF. IF THAT HASN'T BEEN BRIEFED TO DEATH, I  
25 DON'T KNOW WHAT HAS.

26 MS. BRENNAN: ON THAT NOTE, YOUR HONOR, I'LL KEEP  
27 IT BRIEF. LYNNE BRENNAN FOR THE WILLIS CLASS. TO  
28 SUMMARIZE, THIS WAS FILED SIX MONTHS AGO AND ORIGINALLY

1 THE PUBLIC WATER SUPPLIERS OBJECTED TO US ADDING THE  
2 ARCHDIOCESE BECAUSE WE ARGUED THE ARCHDIOCESE WASN'T A  
3 MEMBER OF THE WILLIS CLASS. I BELIEVE THE COURT IS IN  
4 AGREEMENT WE ARE PAST THAT. IF NOT, PLEASE LET US KNOW, I  
5 WILL ADDRESS IT.

6 THE COURT: I THINK WE'VE RESOLVED THAT.

7 MR. KALFAYAN: OKAY.

8 MS. BRENNAN: OKAY. THANK YOU.

9 THE COURT: AT LEAST AS SOME OF THE PROPERTIES.  
10 I'M NOT SURE I KNOW ALL OF THE PROPERTIES THAT ARE OWNED  
11 BY THE ARCHDIOCESE.

12 MS. BRENNAN: OKAY. IN A DECLARATION FILED  
13 NOVEMBER 21ST OF 2014, YOU FIND ALL 11 PARCELS LISTED EVEN  
14 BY ASSESSMENT PROPERTY NUMBER.

15 THE COURT: THERE ARE NO OTHERS.

16 MS. BRENNAN: I'M SORRY?

17 THE COURT: THERE ARE NO OTHERS.

18 MS. BRENNAN: CORRECT.

19 THE COURT: AND THEY'RE ALL CONNECTED TO WATER  
20 SUPPLY; IS THAT CORRECT?

21 MS. BRENNAN: NO, THEY ARE NOT. THEY ARE NOT  
22 CONNECTED. THEY HAVE NOT PUMPED. MAYBE I'M  
23 MISUNDERSTANDING.

24 THE COURT: WHERE DO THEY GET THEIR WATER?

25 MS. BRENNAN: THEY HAVE NOT. THEY HAVE NOT  
26 DEVELOPED, JUST LIKE THE OTHER 64,998.

27 THE COURT: HOW MUCH CHURCHES ARE THERE THAT ARE  
28 FUNCTIONING? THERE ARE THREE CHURCHES AND FOUR SCHOOLS.

1 MS. BRENNAN: ARE YOU TALKING WITHIN THE CITY  
2 LIMITS OR --

3 THE COURT: I AM JUST READING THE PAPERS.

4 MS. BRENNAN: OKAY. WELL, YOUR HONOR, THE WILLIS  
5 CLASS ARE NOT PUMPERS AND SO THE OTHER PROPERTIES THAT  
6 WERE MENTIONED BY, I BELIEVE, DISTRICT 40 HAVE TO DO WITH  
7 OTHER PROPERTIES THAT HAVE WATER. THEY ARE NOT PART OF  
8 THE WILLIS CLASS. JUST AS ANY OF THE OTHER 65,000 WILLIS  
9 CLASS MEMBERS COULD OWN AND, IN FACT, DO OWN CERTAINLY  
10 OTHER PARCELS. THOSE ARE NOT AT ISSUE.

11 THE COURT: SO THERE ARE 11 PARCELS THAT ARE  
12 UNAPPROVED?

13 MS. BRENNAN: CORRECT.

14 THE COURT: AND NOT CONNECTED WITH WATER SUPPLY?

15 MS. BRENNAN: CORRECT. OKAY. SO -- AND THOSE ARE  
16 THE PARCELS AT ISSUE AND THOSE ARE THE ONES THAT MAKE THE  
17 ARCHDIOCESE A MEMBER OF THE WILLIS CLASS. AGAIN, JUST AS  
18 THE OTHER 64,998 MEMBERS ARE FOR THAT SAME REASON.

19 THE COURT: I UNDERSTAND THAT ARGUMENT.

20 MS. BRENNAN: RIGHT.

21 THE COURT: I DO HAVE SOME CONCERNS, LINGERING  
22 CONCERNS, ABOUT THE ARCHDIOCESE AND ITS MOTIVATIONS AND  
23 ITS REASONS FOR WANTING TO STEP INTO THIS BECAUSE IT --  
24 APPARENTLY, THEY DO WISH TO DEVELOP AND START PUMPING  
25 AND/OR ACQUIRING WATER FOR THEIR SITES. AND IT SEEMS TO  
26 ME THAT THEY MAY HAVE SOME CONFLICTS. I DON'T KNOW AT  
27 THIS POINT.

28 MS. BRENNAN: OKAY. LET ME ADDRESS THAT, YOUR

1 HONOR. AS LAND OWNERS, THEY HAVE EVERY RIGHT TO USE THE  
2 GROUNDWATER UNDERNEATH THEIR PROPERTY. AS RICHARD WOOD IN  
3 HIS COMPLAINT SAID, IT WAS A FUNDAMENTAL REASON THAT HE  
4 BOUGHT THAT PROPERTY WAS TO HAVE ACCESS TO THAT  
5 GROUNDWATER. WITHOUT THAT GROUNDWATER, THE PROPERTY IS  
6 WORTHLESS. SO TO ARGUE THAT ANY WILLIS CLASS MEMBER HAS  
7 ULTERIOR MOTIVES TO WANT TO PUMP WATER IS TO SAY THAT THEY  
8 DON'T HAVE LANDOWNER RIGHTS, WHICH, OF COURSE, THEY DO.

9 THE COURT: THAT'S NOT WHAT I WAS SUGGESTING.

10 MS. BRENNAN: OKAY. THEN I GUESS I AM NOT  
11 UNDERSTANDING WHAT THE INTENT OF THE ARCHDIOCESE IS IN  
12 WANTING TO USE THE WATER THAT IT HAS EVERY RIGHT TO  
13 UNDERNEATH THE LAND IT HAS PURCHASED.

14 THE COURT: ONE OF THE THINGS THAT IS GOING TO  
15 HAPPEN HERE IN THIS PROCEEDING, BECAUSE THE VALLEY HAS  
16 BEEN EXEMPTED AS A RESULT OF THIS LITIGATION FROM THE  
17 LARGER STATE OF CALIFORNIA WATER PLANT, AND THE -- SO  
18 WE'RE GOING TO BE IN THE POSITION, ME OR SOME SUCCESSOR  
19 JUDGE WHO'S GOING TO BE RULING ON WATER MASTER DECISIONS  
20 AND DECIDING WHO IS GOING TO BE ABLE TO PUMP WHAT, WHAT  
21 TYPES OF ASSESSMENTS THERE MAY BE, ASSUMING THE COURT  
22 ADOPTS THAT MODEL FOR THE WATER MASTER.

23 AND THERE ARE POTENTIALLY, I SUPPOSE, OTHER  
24 MODELS THAT COULD BE ADOPTED. SO EVERY OTHER LAND OWNER  
25 WHO'S NOT PUMPING IS IN THE SAME POSITION THAT THE DIOCESE  
26 IS IN.

27 MS. BRENNAN: CORRECT.

28 THE COURT: AND WILL CONTINUE TO BE. AND IT'S

1 GOING TO BE SUBJECT TO, BASICALLY, EQUITY AND THE COURT  
2 ORDERS CONCERNING PUMPING AND PRESERVATION OF THE VALLEY.  
3 AND SO IT'S OUR JOB TO MAKE SURE THAT THE LEADERSHIP ON  
4 BEHALF OF A PARTICULAR CLASS GROUP OR INDIVIDUAL IS,  
5 ESPECIALLY IN A CLASS ACTION, IS CONCERNED WITH THE  
6 MEMBERS OF THE CLASS MORE THAN WITH ITSELF. AND SO I AM  
7 NOT SURE WHERE THIS LEAVES ME, FRANKLY.

8 MS. BRENNAN: WELL, YOUR HONOR, WHAT I WOULD SAY IS  
9 ACTUALLY THE CASE LAW PROVIDES THAT YOU NEED A CLASS  
10 REPRESENTATIVE THAT IS MOTIVATED TO ASSERT NOT ONLY ITS  
11 RIGHTS BUT THE RIGHTS OF OTHERS, AND THAT'S EXACTLY WHAT  
12 THE ARCHDIOCESE IS. IN FACT, IT IS A -- YOU COULD NOT  
13 FIND MORE OF A PILLAR, IF YOU WILL, OF THE COMMUNITY THAN  
14 AN INSTITUTION THAT HAS PARISHIONERS THAT IT WOULD BE  
15 CONCERNED ABOUT, NUMBER ONE.

16 THE COURT: WHY IS IT SUDDENLY CONCERNED WITH IT  
17 SEVEN YEARS AFTER THE WILLIS CLASS WAS -- I THINK SEVEN  
18 YEARS AFTER THE WILLIS CLASS WAS INITIATED?

19 MS. BRENNAN: WELL, WHEN YOU SAY "SUDDENLY" --

20 THE COURT: WHERE HAS IT BEEN FOR SEVEN YEARS?

21 MS. BRENNAN: WELL, OKAY. SUDDENLY -- WELL,  
22 REBECCA WILLIS, AS YOU KNOW, IS BASICALLY INELIGIBLE TO  
23 PUT IT IN TERMS --

24 THE COURT: THAT'S WHY YOU HAVE MR. ESTRADA.

25 MS. BRENNAN: WHAT'S THAT?

26 THE COURT: WE HAVE MR. ESTRADA.

27 MS. BRENNAN: THAT'S RIGHT. AND IN A NORMAL CLASS  
28 ACTION, YOUR HONOR, THAT WOULD BE SUFFICIENT. OKAY? BUT

1 THIS IS A UNIQUE -- THERE HAS NEVER IN THE HISTORY OF THE  
2 UNITED STATES BEEN A CLASS ACTION BROUGHT IN THE CONTEXT  
3 OF A GROUNDWATER ADJUDICATION. SO YOUR HONOR HAS  
4 CORRECTLY POINTED OUT THAT THIS CASE WILL GO ON IN EQUITY  
5 FOR DECADES TO COME. OTHER CLASS ACTIONS DO NOT HAVE THAT  
6 SITUATION. ALL RIGHT?

7 AND SO YOU HAD A DISCUSSION BACK ON NOVEMBER  
8 4TH OF 2014 WITH MR. KALFAYAN IN WHICH YOUR HONOR  
9 CORRECTLY SAW THAT THIS CASE IS GOING TO OUTLIVE US. ALL  
10 RIGHT? SO THIS IS UNIQUELY A CASE THAT NEEDS AN  
11 INSTITUTIONAL CLASS REPRESENTATIVE IN ADDITION TO  
12 MR. ESTRADA. ALL RIGHT? MR. ESTRADA, A FINE GENTLEMAN,  
13 HE'S A LITTLE BIT OLDER, HE WILL NOT BE ABLE TO SEE THIS  
14 PHYSICAL SOLUTION INTO THE FUTURE AS AN INSTITUTIONAL  
15 PLAINTIFF.

16 AND, YOUR HONOR, YOU AGREED BACK ON NOVEMBER  
17 4TH WITH MR. KALFAYAN WHEN HE SAID SO THE IMPORTANCE OF  
18 HAVING AN INDIVIDUAL AND AN INSTITUTION AS CLASS  
19 REPRESENTATIVE IS CRITICAL AND YOUR HONOR SAID, "I  
20 UNDERSTAND." THIS IS A JUDGMENT IN EQUITY THAT WILL BE  
21 AROUND FOR A LONG TIME.

22 AND SO THERE -- AND THERE'S NO REASON IN THE  
23 CASE LAW TO REJECT A CORPORATION AS OPPOSED TO AN  
24 INDIVIDUAL. CLASS ACTIONS ALL THE TIME HAVE -- NOT EVERY  
25 SINGLE CLASS ACTION, BUT MANY, THOUSANDS, ACROSS THE  
26 COUNTRY, HAVE CORPORATIONS AS THE CLASS REPRESENTATIVE.  
27 AND SO YOU CAN ALWAYS SAY THAT, WELL, A CORPORATION ONLY  
28 ACTS IN ITS OWN INTEREST, BUT TO SAY THAT IS TO SAY THAT A

1 CORPORATION CAN NEVER BE A CLASS REPRESENTATIVE.

2 AND THAT IS NOT THE LAW AND THAT IS NOT WHAT  
3 SHOULD APPLY HERE. THERE IS NO LEGALLY COGNIZABLE  
4 CONFLICT OF INTEREST THAT HAS BEEN RAISED BY THE  
5 DEFENDANTS OR THE WOOD CLASS OR THE PUBLIC WATER  
6 SUPPLIERS. THEY HAVE, YOU KNOW, FLOATED REASONS LIKE THE  
7 HOWARD GUNTNY CASE, WHICH IS CLEARLY -- I WOULD HOPE THE  
8 COURT HAS ACKNOWLEDGED IS NOT APPLICABLE HERE BY ANY  
9 MEANS. THIS IS NOT, YOU KNOW, MR. KALFAYAN RUN AMOK IN  
10 WANTING TO HAVE THE ARCHDIOCESE LEND ITS NAMES.

11 THE COURT: I WAS JUST THINKING OF CITIZENS UNITED.

12 MS. BRENNAN: THE OPPOSITE WOOD CLASS CAME IN. WE  
13 ARGUE IT WAS PROCEDURALLY IMPROPER. BUT EVEN IF YOU  
14 ACCEPT THE WOOD CLASS'S ARGUMENT THAT THE ARCHDIOCESE IS  
15 TRYING TO HIJACK THE WILLIS CLASS, THAT IS AN ABSURD  
16 ALLEGATION. IT'S GOT NO EVIDENCE, NO PROOF, AND THE FACT  
17 THAT A CORPORATION WANTS TO DEFEND ITS RIGHTS IS NO REASON  
18 TO REJECT THEM AS A CLASS REPRESENTATIVE.

19 IN FACT, AGAIN, UNDER THE LAW, YOU NEED  
20 BIGGER REPRESENTATION BECAUSE THERE ARE 64,999 CURRENTLY  
21 UNREPRESENTED CLASS MEMBERS AND IT'S OUR FIDUCIARY DUTY TO  
22 CARRY FORTH THEIR RIGHTS AS IT IS THE COURT'S.

23 THE COURT: OKAY. THANK YOU.

24 MS. BRENNAN: OKAY. THANK YOU.

25 THE COURT: THANK YOU.

26 MR. MCLACHLAN: YOUR HONOR, MICHAEL MCLACHLAN AGAIN  
27 FOR SMALL PUMPER CLASS. I'D LIKE TO RAISE A COUPLE OF  
28 POINTS, ONE WHICH IS THERE'S BEEN NO SHOWING AS TO WHY

1 MR. ESTRADA IS INADEQUATE. THE NOTION THAT YOU -- COUNSEL  
2 IS ESSENTIALLY SAYING IN THIS TYPE OF CASE YOU HAVE TO  
3 HAVE A CORPORATE ENTITY.

4 WE ALL KNOW THAT CORPORATIONS -- THE CHURCH  
5 HAS BEEN AROUND FOR A WHILE AND THEY'RE PROBABLY GOING TO  
6 BE HERE FOR A WHILE. SO ABSENT OTHER CORPORATIONS THAT  
7 COME AND GO, I'LL GIVE HER THAT. BUT THAT SUGGESTION  
8 SUGGESTS THAT MR. WOOD IS AN IMPROPER CLASS  
9 REPRESENTATIVE. IT ALSO SUGGESTS THAT REBECCA WILLIS AND  
10 MR. ESTRADA ARE. AND THAT IS NOT SUPPORTED IN THE LAW.

11 THE QUESTION ON THE CONFLICT OF INTEREST, I  
12 THINK, IS VERY CRITICAL. AND THE REASON IT COMES UP  
13 POTENTIALLY -- AND I ARGUED THIS A COUPLE OF MONTHS AGO  
14 BEFORE WE HAD THE SETTLEMENT AGREEMENT AND I TRIED TO DO  
15 IT IN A HYPOTHETICAL SENSE KNOWING SOME OF THE PROVISIONS  
16 THAT WERE GOING TO COME DOWN THE PIPE.

17 WHEN WE LOOK AT THE PROPOSED PHYSICAL  
18 SOLUTION ITSELF AND WE THINK ABOUT WHY IS THE ARCHDIOCESE  
19 COMING FORWARD NOW, WELL, THEY'RE COMING FORWARD TO TRY TO  
20 DEFEAT THAT PHYSICAL SOLUTION. AND THE PROBLEM, POTENTIAL  
21 PROBLEM, THE COURT HAS HERE AND TO CONSIDER VERY SERIOUSLY  
22 IN TERMS OF THE CONFLICT OF INTEREST, IS, FOR EXAMPLE, THE  
23 PROVISION I CITED IN SECTION 810, THE FINDING OF NO  
24 MATERIAL INJURY SECTION, AND A DE MINIMIS SINGLE FAMILY  
25 HOUSEHOLD EXEMPTION WOULD BENEFIT POTENTIALLY NEARLY ALL  
26 OF THE WILLIS CLASS MEMBERS. THE CHURCH'S FILINGS CLEARLY  
27 INDICATE THAT ITS INTEREST ARE NOT IN THAT VEIN.

28 AND SO, HYPOTHETICALLY, IF ANOTHER WILLIS



1 CLASS MEMBER WERE TO COME FORWARD AND SAY, WELL, LOOK,  
2 THIS PROVISION AND SOME OTHER PROVISIONS IN THIS JUDGMENT  
3 SALVAGED THE VALUE OF MY PROPERTY, POTENTIALLY ALLOWED ME  
4 TO INSTALL A HOUSE AND INSTALL A WELL IN THE FUTURE AND  
5 VIOLATED THE ARCHDIOCESE WITH MR. KALFAYAN RIDING NEXT TO  
6 IT, TRYING TO WRECK THOSE RIGHTS. RIGHTS THAT,  
7 POTENTIALLY, THOSE CLASS MEMBERS COULD NOT GET AT ALL.

8 NOW, I SAY POTENTIALLY BECAUSE YOUR HONOR IS  
9 GOING TO HAVE TO MAKE SOME RULINGS ON SOME ISSUES THAT ARE  
10 GRAY AREA IN CALIFORNIA LAW AND POTENTIALLY COURT OF  
11 APPEAL. WHEN YOU SET A SITUATION UP WHERE YOU HAVE TWO  
12 CLASS MEMBERS, MR. ESTRADA AND THE CHURCH POTENTIALLY HAVE  
13 ADVERSE INTEREST, VIS-A-VIS THIS JUDGMENT, WE OPEN A CAN  
14 OF WORMS THAT IS VERY DANGEROUS BOTH TO THE TRIAL COURT  
15 LEVEL AND THEN BEYOND THAT WHEN AN OBJECTOR GOES UP --  
16 THIS WHOLE MESS IS VERY, VERY LIKELY TO GO UP ON APPEAL.  
17 I DON'T THINK ANYONE HERE IS -- IS THINKING OTHERWISE.

18 AND HAVING A THIRD PARTY THAT'S NOT HERE IN  
19 THE ROOM, ANOTHER WILLIS CLASS MEMBER OBJECTING BECAUSE  
20 THEY THINK THAT THESE CLASS REPRESENTATIVES HAVE A  
21 CONFLICT, SUCH AS A CHURCH, IS REALLY -- IS A PROBLEM WE  
22 DON'T NEED TO ADD TO THE MIX. AND IF MR. ESTRADA IS  
23 CAPABLE OF FILLING MS. WILLIS'S SHOES, WHY IN THE WORLD  
24 WOULD WE INTRODUCE THE CHURCH RIGHT NOW?

25 AND YOUR HONOR'S QUESTION, IT WAS VERY  
26 APROPOS. WHY IS THE CHURCH HERE RIGHT NOW AND WHY CAN'T  
27 MR. ESTRADA DO THIS? I MEAN, THERE'S 65,000 OF THESE  
28 PEOPLE. THAT LAND IS NOT GOING TO DISAPPEAR. SO IN 10 OR

1 20 YEARS CERTAINLY IF -- I QUESTION, THE CLASSES WILL NOT  
2 GO ON IN PERPETUITY. THEY CANNOT. THERE IS NO MECHANISM  
3 FOR THAT. AND IN MY SETTLEMENT AGREEMENT I SET FORTH A  
4 MECHANISM FOR THAT. THE WILLIS CLASS IS NOT GOING TO  
5 EXIST IN PERPETUITY, NOR CAN IT. BUT IF IT WAS, WELL, YOU  
6 CAN ALWAYS FIND ANOTHER CLASS REPRESENTATIVE.

7 THE COURT: MR. DUNN.

8 MR. DUNN: YEAH. JEFFREY DUNN FOR WATER WORKS  
9 DISTRICT NUMBER 40. THE COURT MADE AN INQUIRY AS TO THE  
10 NATURE OF THE ARCHDIOCESE HOLDINGS WITHIN THE ADJUDICATION  
11 AREA AS INDICATED IN THE PUBLIC WATER SUPPLIER DISTRICT 40  
12 OPPOSITION TO THIS MOTION TO ADD THE ARCHDIOCESE AS A  
13 CLASS REPRESENTATIVE.

14 WE HAVE IDENTIFIED IN THE SEVEN HOLDINGS BY  
15 THE ARCHDIOCESE WITHIN THE ADJUDICATION AREA AND WITHIN  
16 PUBLIC WATER SUPPLIER BOUNDARIES THEY INCLUDE THREE  
17 CHURCHES, TWO IN LANCASTER, ONE IN PALMDALE; FOUR SCHOOLS,  
18 THREE IN LANCASTER, ONE IN PALMDALE, INCLUDING A HIGH  
19 SCHOOL. SO THERE ARE TWO SCHOOLS, ELEMENTARY SCHOOLS, ONE  
20 HIGH SCHOOL. I'M SURE THE COURT POTENTIALLY, SUBJECT TO  
21 JUDICIAL NOTICE, THE SCHOOLS HAVE PLAYING FIELDS AND  
22 PLAYING FIELDS, OF COURSE, ARE WATER IN ANTELOPE VALLEY.

23 SO THE POINT IS THIS -- THIS ADDITIONAL  
24 CLASS REP IS ANYTHING BUT UNREPRESENTED. IT IS, BY ALL  
25 CHARACTERIZATIONS OF COUNSEL, IT IS UNIQUE. IT'S UNIQUE  
26 IN TERMS OF WHO IT IS AS AN INSTITUTION. IT'S NOT A  
27 TYPICAL CORPORATION AS COUNSEL WOULD SUGGEST THAT  
28 SOMETIMES WE DO SEE IN CLASS ACTION MATTERS.

1                   THIS IS RATHER UNIQUE, NOT ONLY IN THAT  
2                   THERE'S A CONFLICT BETWEEN THE PROPERTIES THAT IT OWNS  
3                   THAT RECEIVE WATER SUPPLIER SERVICE VERSUS WHATEVER  
4                   DORMANT WATER SUPPLIERS ARE OUT THERE TO LATER BE  
5                   DEVELOPED AND POTENTIALLY ALSO TO COME WITHIN WATER  
6                   SUPPLIER SERVICE, WHICH IS CHARACTERISTIC OF THE  
7                   DEVELOPMENT.

8                   BUT THERE IS ALSO THE UNANSWERED ISSUE IN  
9                   TERMS OF WITH REGARDS TO THE FOUR -- EXCUSE ME, THE THREE  
10                  CHURCHES THAT HAVE BEEN LISTED HERE, TWO IN LANCASTER, ONE  
11                  IN PALMDALE. THERE ARE MEMBERS OF THOSE CHURCHES WHO  
12                  CERTAINLY RESIDE WITHIN PUBLIC WATER SUPPLIERS SERVICE  
13                  AREAS WITHIN THE CITY OF LANCASTER AND PALMDALE AND WITHIN  
14                  THE UNINCORPORATED AREA OF THE COUNTY SERVED BY MY CLIENT  
15                  DISTRICT 40.

16                  THE POINT IS IT'S DIFFICULT PERHAPS TO COME  
17                  UP WITH A MORE CONFLICTED PROPOSED CLASS REPRESENTATIVE AS  
18                  COUNSEL HAS DONE HERE. NO QUESTION THAT THEY OWN  
19                  PROPERTIES THAT ARE CONNECTED TO PUBLIC WATER SUPPLIER  
20                  SERVICE. THEY ARE UNIQUE IN THE SENSE THAT THEY HAVE  
21                  MEMBERSHIP IN THE CHURCH THAT EXTENDS THROUGHOUT THE URBAN  
22                  AREAS OF THE ANTELOPE VALLEY, ALL OF WHOM WOULD BE  
23                  COMPLETELY DEPENDENT UPON PUBLIC WATER SUPPLIERS FOR THEIR  
24                  WATER SERVICE.

25                  FINALLY, I SHARE THE COMMENTS MADE BY THE  
26                  WOOD CLASS COUNSEL. IT'S SOMEWHAT MYSTIFYING TO US THAT  
27                  AFTER ALL THESE MANY YEARS OF LITIGATION INVOLVING BOTH  
28                  CLASSES, EACH CLASS HAVING BEEN ABLY REPRESENTED BY AN

1 INDIVIDUAL, WHY THE CURRENT WILLIS CLASS INDIVIDUAL CLASS  
2 REPRESENTATIVE IS SOMEHOW NOT CAPABLE OF DOING THIS.  
3 CERTAINLY THERE'S BEEN NO CLAIM ON THE PART OF COUNSEL  
4 THAT HE'S INCAPABLE OF DOING IT. AND, THEREFORE, I THINK  
5 WE -- WE SAFELY AVOID THE CONFLICT ISSUES BY LETTING  
6 MR. ESTRADA CONTINUE TO REPRESENT THE WILLIS CLASS. THANK  
7 YOU.

8 THE COURT: ALL RIGHT. VERY BRIEFLY, PLEASE.

9 MS. BRENNAN: YES. FIRST OF ALL, THIS NOTION THAT  
10 A CAN OF WORMS WILL BE OPENED UP IF THE ARCHDIOCESE COMES  
11 IN, AGAIN, THE USE OF THE WILLIS CLASS MEMBERS WAS NEVER  
12 PART OF THE CLASS DEFINITION. SO IF WE WANT TO OPEN UP A  
13 CAN OF WORMS, THEN THAT LEADS TO DECERTIFICATION OF THE  
14 CLASS. ALL RIGHT?

15 IF WE'RE GOING TO START SAYING THAT, YOU  
16 MUST BE A DOMESTIC USER TO BE IN THE WILLIS CLASS, THEN  
17 YOU ARE TALKING OVER 18,000 PARCEL OWNERS WITH MORE THAN  
18 FIVE ACRES OF LAND WHO MOST LIKELY, AND WE DON'T KNOW  
19 BECAUSE AN EXPERT HAS NEVER ADDRESSED THIS ISSUE, BUT IT  
20 IS VERY LIKELY THAT 18,000 OR MORE WILLIS CLASS MEMBERS  
21 WILL LOOK FOR USES IN THE ULTIMATE PHYSICAL SOLUTION THAT  
22 ARE NOT DOMESTIC.

23 SO TO SAY THAT THE ARCHDIOCESE HAS A  
24 CONFLICT WITH THE ABSENT CLASS MEMBERS IS PATENTLY FALSE.  
25 AND IF IT WERE TO BE PROVEN THAT THAT IS A CONFLICT, THEN,  
26 AGAIN, THAT'S A REASON TO DECERTIFY THE CLASS, NOT A  
27 REASON TO NOT APPOINT THE ARCHDIOCESE. NOW, AS TO THIS  
28 NOTION THAT THERE'S A CONFLICT BECAUSE MEMBERS OF EITHER

1 THE CHURCH -- OR LET ME BACK UP.

2 AS FAR AS THE ARCHDIOCESE HAVING HAD  
3 PROPERTIES THAT ALSO GET WATER, FIRST OF ALL, AGAIN, THE  
4 WILLIS CLASS IS NOT CHALLENGING THE 15 PERCENT THAT IT  
5 AGREED TO IN ITS SETTLEMENT AND THEN JUDGMENT THAT THE  
6 PUBLIC WATER SUPPLIERS WILL ULTIMATELY AND IN PHYSICAL  
7 SOLUTION GET 15 PERCENT OF THE NATIVE SAFE YIELD. THAT IS  
8 NOT BEING OBJECTED TO BY THE WILLIS CLASS. THE WILLIS  
9 CLASS JUST WANTS ITS OWN RIGHTS AND OWN ABILITY UNDER THE  
10 LAW. ALL RIGHT?

11 AND THEN FINALLY THIS NOTION THAT MEMBERS OF  
12 THE CHURCH ARE -- RECEIVE WATER FROM THE PUBLIC WATER  
13 SUPPLIERS WITH EQUAL MEASURE, THERE ARE I'M SURE WILLIS  
14 CLASS MEMBERS SITTING IN THE CHURCH PEWS. NONE OF THAT IS  
15 RELEVANT. NONE OF THAT IS A LEGALLY COGNIZABLE CONFLICT  
16 OF INTEREST UNDER DART INDUSTRIES. THE CALIFORNIA SUPREME  
17 COURT HAS SAID AND WARNED THAT DISSENSION CANNOT BE  
18 CREATED BY OPPONENTS TO A CLASS BY TRYING TO CONJURE UP  
19 CONFLICTS OF INTEREST THAT DO NOT EXIST.

20 THE COURT: ALL RIGHT. THANK YOU.

21 MS. BRENNAN: THANK YOU, YOUR HONOR.

22 THE COURT: ALL RIGHT. I WILL TELL YOU I DON'T  
23 THINK THE CORPORATION OR THE CHURCH, HOWEVER YOU WANT TO  
24 DESCRIBE IT, HAS A LEGAL CONFLICT OF INTEREST WITH REGARD  
25 TO ITS MEMBERS' WATER USAGE. IT SEEMS TO BE THAT'S BEYOND  
26 THE PALE, IF YOU WILL. SO I DON'T THINK THERE'S A  
27 CONFLICT.

28 BUT I DO THINK THAT THERE'S NO JUSTIFICATION

1 AT THIS POINT FOR ADDING ANOTHER CLASS REPRESENTATIVE  
2 BESIDES MR. ESTRADA. THE -- I DO NOT SEE JUSTIFICATION  
3 FOR HAVING TWO CLASS REPRESENTATIVES IN THIS CASE AT THIS  
4 TIME. THAT COULD CHANGE.

5 BUT I'M ALSO NOT SO SURE AS TO HOW LONG THE  
6 CLASS ITSELF IS GOING TO BE A VIABLE ENTITY. ONCE A  
7 PHYSICAL SOLUTION IS ENTERED THAT WILL APPLY TO THOSE  
8 PARTIES WHO RESIDE OR PUMP IN THE VALLEY OR WHO PROVIDE  
9 WATER IN THE VALLEY, IT SEEMS TO ME THAT EACH ONE OF THOSE  
10 PEOPLE WILL STAND ALONE IN MANY WAYS AND BE SUBJECT TO THE  
11 NEEDS OF THE BASIN, WHATEVER THEIR AGREEMENTS MAY BE  
12 BETWEEN THEMSELVES.

13 SO AT THIS POINT I AM GOING TO DENY THE  
14 MOTION. IT'S IN A SENSE WITHOUT PREJUDICE BECAUSE I THINK  
15 THAT CIRCUMSTANCES COULD CHANGE AND AT THIS TIME A SINGLE  
16 REPRESENTATIVE IS SUFFICIENT FOR THE CLASS.

17 MS. BRENNAN: SORRY, YOUR HONOR, CAN I JUST CLARIFY  
18 ONE THING YOU SAID? THAT THEY WILL STAND ALONE? JUST IF  
19 YOU COULD CLARIFY THAT.

20 THE COURT: THAT WAS OVER DICTUM.

21 MS. BRENNAN: THANK YOU.

22 THE COURT: ALL RIGHT. WE ALSO HAVE A MOTION FOR  
23 APPOINTMENT OF AN EXPERT.

24 DO WE NEED MORE ARGUMENT ON THAT?

25 MR. KALFAYAN: WELL, THE ONLY THING I WAS GOING TO  
26 HIGHLIGHT FOR THE COURT, YOUR HONOR, IN THE MOTION IS THE  
27 PURPOSE AND NEED OF A COURT-APPOINTED EXPERT, AND I  
28 OUTLINE THOSE ON PAGE THREE AND FOUR OF THE MOTION AND THE

1 EXACT SPECIFIC REASON WHY WE NEED THEM.

2 AND, BASICALLY, THE COURT PUT A CASE  
3 MANAGEMENT CONFERENCE ORDER -- SIGNED A CASE MANAGEMENT  
4 CONFERENCE ORDER THAT PUT THE CLASS IN THE POSITION OF  
5 HAVING A PHYSICAL SOLUTION TRIAL AND AN OPPOSITION TO THE  
6 PHYSICAL SOLUTION ON AUGUST 3RD AND AN AGREEMENT THAT  
7 SUBORDINATES THE RIGHTS OF THE CLASS. AND THAT'S THE  
8 NECESSARY -- THAT REQUIRES --

9 THE COURT: FIRST OF ALL, THE RIGHTS TO THE CLASS  
10 ARE NOT SUBORDINATED BY ANY ORDERS THAT THIS COURT HAS  
11 MADE, NOR ANY JUDGMENT THAT HAS BEEN ENTERED, NOR ANY  
12 TENTATIVE APPROVAL OF A SETTLEMENT. THAT'S NOT WHAT HAS  
13 HAPPENED HERE.

14 THE SECOND THING IS THAT THERE'S NO  
15 PROVISION IN THE LAW FOR THE COURT TO APPOINT AN EXPERT  
16 FOR A PARTY. PERIOD. THERE ARE PROVISIONS IN A CRIMINAL  
17 CASE. THERE ARE NONE UNDER THE CIVIL LAW. AND I AM NOT  
18 GOING TO APPOINT AN EXPERT FOR A PARTY. IF THE COURT  
19 NEEDS AN EXPERT, AS THE COURT DID WITH REGARD TO THE WOOD  
20 CLASS, THAT IS A TOTALLY DIFFERENT ISSUE, AS YOU KNOW.

21 AND THERE'S A LOT OF PRECEDENT FOR THE COURT  
22 TO APPOINT ITS OWN EXPERT TO ADVISE IT AND TO TESTIFY, IF  
23 APPROPRIATE, AS TO FACTS THAT REQUIRE AN EXPERT WHEN THE  
24 FACTS ARE NOT SUFFICIENTLY PROVIDED BY THE PARTIES OR THE  
25 EXPERT OPINION IS NOT PROVIDED BY THE PARTIES.

26 SO THE WOOD CLASS UNDERSTANDS THAT.  
27 MR. MCLACHLAN UNDERSTANDS THAT. WE HAVE HAD MANY  
28 DISCUSSIONS ABOUT THAT OVER SEVERAL YEARS NOW. EVERYBODY

1       HERE HAS PROBABLY HEARD THOSE DISCUSSIONS. SO I AM GOING  
2       TO DENY YOUR REQUEST FOR APPOINTMENT OF AN EXPERT.

3               MR. KALFAYAN: ON AUGUST 3RD, YOUR HONOR, THE  
4       OPPOSITION TO THE PHYSICAL -- THE OPPOSITION TO THE  
5       PHYSICAL SOLUTION, I WILL NOT HAVE ANY EVIDENCE TO OPPOSE  
6       THE REASONABLE BENEFICIALNESS OF THE PARTY.

7               THE COURT: THE ISSUE WAS NOT RAISED BY YOUR MOTION  
8       HERE.

9               MR. KALFAYAN: OKAY.

10              THE COURT: NOW, YOU CERTAINLY KNOW THE LANGUAGE  
11       AND THIS IS AN OBSERVATION IN THE AGREEMENT THAT YOU  
12       ENTERED INTO. YOU KNOW WHAT IT MEANS OR YOU THINK -- YOU  
13       HAVE AN OPINION ABOUT WHAT IT MEANS. YOU ALSO HAVE AN  
14       OPINION ABOUT WHAT YOU BELIEVE THE GLOBAL SETTLEMENT  
15       MEANS, WHAT THE WOOD CLASS SETTLEMENT MEANS, AND YOU'RE A  
16       VERY ABLED LAWYER, AND I EXPECT YOU TO ARGUE YOUR CLIENT'S  
17       POSITION ABLY, AS YOU HAVE EVERYTHING ELSE YOU'VE DONE IN  
18       THIS CASE.

19              MR. KALFAYAN: I WILL NOT BE AS EFFECTIVE, YOUR  
20       HONOR. I CANNOT BE AS EFFECTIVE AND IT'S GOING TO BE  
21       PROBLEMATIC AND I WILL BE FILING A MOTION TO --

22              THE COURT: OKAY.

23              MR. KALFAYAN: -- WITHDRAW AND DECERTIFY.

24              THE COURT: YOU'RE ALSO GOING TO BE UNHAPPY ABOUT  
25       THE NEXT RULING DEALING WITH ATTORNEY'S FEES.

26              MR. KALFAYAN: I MIGHT AS WELL STAND UP HERE, THEN.

27              THE COURT: MIGHT AS WELL STAND UP THERE AND TAKE  
28       THE PUNCHING BAG.



1 MR. KALFAYAN: I'M ALREADY BLACK AND BLUE AND I'VE  
2 BEEN TIED BY MY HANDS. WHAT MORE CAN YOU DO TO ME? I'M  
3 DOWN.

4 THE COURT: THE COURT DOES NOT RENDER ADVISORY  
5 OPINIONS, NOTWITHSTANDING SOME OF THE THINGS I'VE SAID  
6 HERE OVER THE YEARS. AND ONE OF THE THINGS THAT YOU'RE  
7 ASKING FOR IS TO -- THE COURT TO AUTHORIZE YOU TO GO OUT  
8 AND SPEND ATTORNEY'S FEES. YOU HAVE AN AGREEMENT THAT  
9 PROVIDES AS TO WHAT ATTORNEY'S FEES YOU MIGHT SEEK TO  
10 RECOVER FROM YOUR ADVERSE PARTY, BUT THAT DOES NOT  
11 AUTHORIZE THE COURT TO RENDER AN OPINION AS TO THE  
12 VALIDITY OF YOUR SPENDING PARTICULAR TIME ON PARTICULAR  
13 PURSUITS AND THEN RECOVERING FROM SOME OTHER PARTY.

14 MR. KALFAYAN: SO I BEG TO DIFFER, YOUR HONOR.  
15 THAT WAS AN AGREEMENT THAT WE HAD WITH THE PUBLIC WATER  
16 SUPPLIERS. AND THE AGREEMENT WAS BEFORE WE DO THE WORK,  
17 WE COME INTO COURT AND WE ASK THE COURT FOR A COURT ORDER.

18 THE COURT: IT'S NOT IN THE AGREEMENT.

19 MR. KALFAYAN: IT'S IN PARAGRAPH 8(D)(C). YOUR  
20 HONOR, IF --

21 THE COURT: IT DOES NOT SO PROVIDE THAT YOU COME TO  
22 THE COURT AND ASK. BUT EVEN IF IT DID, THE COURT IS NOT  
23 GOING TO AUTHORIZE THE EXPENDITURE OF ATTORNEY'S FEES AND  
24 COSTS IN ADVANCE.

25 MR. KALFAYAN: WE'RE NOT ASKING FOR AUTHORIZATION.  
26 ALL WE'RE ASKING FOR IS PERMISSION TO COME BACK TO COURT  
27 AND ASK. WE'RE NOT ASKING YOU TO AUTHORIZE.

28 THE COURT: YOU COULD ALWAYS COME BACK TO COURT AND

1 ASK.

2 MR. KALFAYAN: THEY'RE GOING TO STAND UP AND ARGUE,  
3 YOUR HONOR, THAT THEY -- THAT WE'RE PREVENTED FROM GETTING  
4 ATTORNEY'S FEES UNDER THAT PROVISION IF WE DON'T COME INTO  
5 COURT AND ASK FOR PERMISSION TO ASK. THEY WILL OPPOSE ON  
6 THAT GROUND AND --

7 THE COURT: I HAVE NOT HEARD THAT. I HAVE NOT READ  
8 ANYTHING.

9 MR. KALFAYAN: IT'S IN THEIR PAPERS. IT'S IN THEIR  
10 OPPOSITION.

11 THE COURT: THAT'S NOT WHAT THEY SAY.

12 MR. KALFAYAN: THEY SAID THAT THE MOTION IS -- DOES  
13 NOT FIT WITHIN ANY OF THE EXCEPTIONS ON THE SETTLEMENT  
14 AGREEMENT.

15 THE COURT: THAT'S DIFFERENT THAN WHAT YOU JUST  
16 SAID.

17 MR. KALFAYAN: AND ONE OF THE EXCEPTIONS IS FOR --  
18 UNDER THE AGREEMENT IS FOR COUNSEL TO COME INTO COURT, TO  
19 COURT, AND ASK FOR PERMISSION BEFORE THE WORK IS DONE TO  
20 SEEK PERMISSION IN THE FUTURE TO ASK FOR FEES BECAUSE, IF  
21 NOT, THEN COUNSEL IS LIMITED IN THEIR ABILITY TO SEEK  
22 FEES. THAT'S IN THE AGREEMENT.

23 THE COURT: LET ME HEAR FROM THE PUBLIC WATER  
24 SUPPLIERS ON THAT ISSUE.

25 MR. DUNN: YOUR HONOR, WE FILED A VERY SHORT  
26 OPPOSITION. I DON'T INTEND TO GO OVER THAT. THEY JUST  
27 SIMPLY DON'T FIT WITHIN ANY EXCEPTION TO GETTING  
28 PRE-AUTHORIZATION FOR ATTORNEY'S FEES HERE. I MEAN, TO

1 GET RIGHT TO THE HEART OF THE MATTER, EVERY ARGUMENT, FOR  
2 EXAMPLE, WE HEARD THIS MORNING FROM WILLIS CLASS COUNSEL,  
3 WAS NOT BASED ON ANYTHING HAVING TO DO WITH AN EXPERT OR  
4 ANYTHING ELSE.

5 IT'S AN ARGUMENT THAT THEY'RE ADVANCING  
6 BASED ON THE TERMS OF AN AGREEMENT THAT THEY HAD WITH  
7 CERTAIN PARTIES AND -- AND AS MORE FULLY DEVELOPED, THE  
8 ARGUMENT HAS TO DO WITH THEIR INTERPRETATION OR THEIR VIEW  
9 OF THE LAW. WE DON'T NEED AN EXPERT FOR THAT. SO THERE  
10 HASN'T COME BEFORE THE COURT A SUFFICIENT BASIS FOR THE  
11 COURT TO APPOINT AN EXPERT FOR ITSELF OR PRE-AUTHORIZED  
12 FOR THEM.

13 THE COURT: WE'RE TALKING ABOUT ATTORNEY'S FEES AT  
14 THIS POINT.

15 MR. DUNN: RIGHT. THAT'S TRUE. BUT I GUESS MY  
16 POINT BETTER STATED IS THEY -- THEY SEEM TO BE ABLE TO  
17 ADVANCE THEIR ARGUMENTS AND HAVE ADVANCED THEIR ARGUMENTS  
18 WITHOUT ANY PRIOR AUTHORIZATION FOR ATTORNEY'S FEES. THEY  
19 DON'T FIT WITH ANY OF THE EXCEPTIONS THAT WOULD APPLY TO  
20 GET ATTORNEY'S FEES HERE. AND FINALLY -- I'M SORRY, YOUR  
21 HONOR.

22 THE COURT: ONE OF THE PROVISIONS IN THE AGREEMENT  
23 IS THAT THEY MAY SEEK ATTORNEY'S FEES AS NEEDED FOR  
24 ENFORCEMENT OF THE WILLIS CLASS AGREEMENT, RIGHT?

25 MR. DUNN: YES.

26 THE COURT: OKAY. NOW, WHAT'S YOUR UNDERSTANDING  
27 OF YOUR AGREEMENT? ARE THEY SUPPOSED TO COME TO THE COURT  
28 FIRST AND SAY CAN WE SEEK TO ENFORCE AND RECOVER

1 ATTORNEY'S FEES? DID THEY GO TO YOU FIRST? WHAT HAPPENS?

2 MR. DUNN: WELL, I THINK THAT THE ANSWER TO THAT  
3 QUESTION IS GENERALLY WHAT ANY PARTY WOULD DO WHO HAS A  
4 COURT-APPROVED SETTLEMENT AGREEMENT AND BELIEVES THAT IT  
5 NEEDS TO ENFORCE IT, AND I HAVEN'T SEEN THAT.

6 THE COURT: WELL, THE SETTLEMENT AGREEMENT WAS  
7 APPROVED --

8 MR. DUNN: YES.

9 THE COURT: -- AS PART OF THE JUDGMENT. AND SO TO  
10 THE EXTENT THAT THEY ARE ENTITLED TO ATTORNEY'S FEES,  
11 THEY'RE ENTITLED TO ATTORNEY'S FEES FOR THAT PURPOSE IF  
12 THAT'S A LEGITIMATE PURPOSE AND REASONABLY CARRIED OUT.

13 MR. DUNN: I THINK THAT'S CORRECT, BUT I AM -- I  
14 DON'T THINK THEY'RE THERE YET. I AM SORRY, CERTAINLY  
15 THERE'S NO MOTION BEFORE THIS COURT ATTEMPTING TO ENFORCE  
16 THE SETTLEMENT AGREEMENT OR THERE'S NO -- THERE'S NO  
17 INDICATION FOR THE COURT THAT THE SETTLEMENT AGREEMENT IS  
18 IN BREACH OR ANYTHING ELSE.

19 THE COURT: WELL, ISN'T OBJECTING TO APPROVAL OF AN  
20 AGREEMENT THAT THEY FEEL VIOLATES THE RIGHTS PROVIDED FOR  
21 IN THE SETTLEMENT AGREEMENT ENFORCEMENT?

22 MR. DUNN: NO. NOT IN THIS PARTICULAR CASE TODAY.  
23 WHAT THEY'VE DONE IS THEY'VE SIMPLY TRIED TO STOP THE  
24 PROCESS AS IT RELATES TO THE WOOD CLASS AGREEMENT, WHICH  
25 DOESN'T -- THEY'RE NOT A PARTY TO.

26 THE COURT: WELL, THEY'RE CONTENDING YOU'RE IN  
27 VIOLATION WITH YOUR SETTLEMENT AGREEMENT WITH THE WILLIS  
28 CLASS BY ENTERING INTO THIS AGREEMENT WITH THE WOOD CLASS,

1 WHICH IS GOING TO, THEY ALLEGE, LIMIT THEIR RIGHT TO PUMP  
2 MORE THAN IT WILL LIMIT OR MORE THAN -- IT WILL PREVENT  
3 THEM FROM PUMPING WHAT THEY'RE ENTITLED TO IN ACCORDANCE  
4 WITH THEIR AGREEMENT.

5 MR. DUNN: WELL, THAT'S THEIR ARGUMENT, BUT I  
6 BELIEVE THE COURT HAS BEEN VERY CLEAR WITH COUNSEL TODAY  
7 REGARDING HOW FAR PARTIES CAN GO WITH THEIR INDIVIDUAL  
8 AGREEMENTS TO IMPACT OTHER PARTIES.

9 THE COURT: WELL, I'M NOT REALLY ADDRESSING THAT.  
10 I'M JUST ADDRESSING THE THEORETICAL THAT THAT RELATES TO  
11 ENFORCEMENT. BUT I DON'T UNDERSTAND THAT THE -- EITHER  
12 THE AGREEMENT OR THE LAW AUTHORIZES THE COURT TO  
13 PREAPPROVE ATTORNEY'S FEES IN A SITUATION LIKE THIS.

14 I MEAN, IT MAY WELL BE THAT AT SOME POINT,  
15 DEPENDING ON WHAT HAPPENS WITH THIS PROCESS, THAT  
16 MR. KALFAYAN IS GOING TO COME BACK TO THE COURT AND SAY WE  
17 SOUGHT TO ENFORCE OUR CLIENT'S RIGHTS, WE HAD TO DO THAT,  
18 IT WAS REASONABLE UNDER THE CIRCUMSTANCES, WE'RE ENTITLED  
19 TO BE COMPENSATED FOR THAT IN ACCORDANCE WITH THE  
20 AGREEMENT. THAT'S A DIFFERENT ISSUE.

21 MR. DUNN: IT'S A DIFFERENT ISSUE. IT'S CERTAINLY  
22 NOT BEFORE US TODAY. AND, AGAIN, AS I WOULD AGREE, I  
23 DON'T THINK -- I CERTAINLY COULD NOT STOP, AS MUCH AS I  
24 PROBABLY WOULD LIKE TO, THAT MOTION FROM COMING THROUGH.

25 BUT, NO, IN ALL SERIOUSNESS, THAT'S HOW --  
26 THIS CONCEPT OF PRE-AUTHORIZATION, IT'S NOT -- THERE'S A  
27 WAY TO DEAL WITH THIS. I DON'T PARTICULARLY WANT TO STAND  
28 HERE AND EDUCATE COUNSEL ON THIS ISSUE, BUT I CAN SAFELY

1 SAY THAT THIS IS NOT THE TIME OR PLACE TO GET A  
2 PRE-AUTHORIZATION. THANK YOU.

3 THE COURT: OKAY. WELL, I AGREE AT THIS POINT.  
4 BUT I -- I AM CERTAINLY NOT DENYING IT WITH PREJUDICE.

5 MR. DUNN: I UNDERSTAND.

6 THE COURT: I'M JUST DENYING IT.

7 MR. DUNN: THANK YOU, YOUR HONOR.

8 THE COURT: AND ALL OF THESE ISSUES -- YOU CAN GO  
9 AHEAD AND SIT DOWN. ALL OF THESE ISSUES THAT WE'VE BEEN  
10 TALKING ABOUT ARE SOMEWHAT INCHOATE, AS THE SAYING GOES,  
11 INCLUDING SUCH THINGS AS THE RIGHTS THAT A PARTICULAR  
12 PARTY MIGHT HAVE TO PUMP WATER. I'M THINKING IN TERMS OF  
13 FAILING.

14 AND WHEN THAT CASE -- I MEAN, IF WE END UP  
15 WITH A PHYSICAL SOLUTION, THE PHYSICAL SOLUTION IS GOING  
16 TO DETERMINE THE RIGHTS TO PUMP. AND AS I INDICATED IN  
17 PHASE THREE, THERE ARE DIFFERENCES IN THE VALLEY AND IN  
18 TERMS OF WHETHER YOU'RE HARMING THE VALLEY OR NOT, WHETHER  
19 YOU SHOULD BE ENTITLED TO PRESCRIPTION, WHETHER YOU'RE  
20 SUBJECT TO PRESCRIPTION, WHETHER YOU CAN PUMP WITHOUT  
21 INJURING THE VALLEY, AND SO ON.

22 WHICH LEADS ME TO THE QUESTION THAT I WANT  
23 TO ASK REGARDING THE CASE MANAGEMENT CONFERENCE THAT WE  
24 HAVE RIGHT NOW. HOW MANY PARTIES CAN YOU ESTIMATE ARE NOT  
25 PART OF THE GLOBAL SETTLEMENT THAT ARE GOING TO SEEK TO  
26 PROTECT THEIR RIGHTS TO PUMP IN THE VALLEY? ANYBODY KNOW?

27 MR. DUNN: YOUR HONOR, JEFFREY DUNN FOR WATER  
28 DISTRICT NUMBER 40. WE -- I'M LOOKING AT MR. MCLACHLAN

1 BECAUSE HE'S BEEN DIRECTLY INVOLVED IN KEEPING THE PARTIES  
2 IDENTIFIED. AT THIS POINT WE THINK MAYBE A HANDFUL. AND  
3 SO THAT WOULD POTENTIALLY BE THE WILLIS CLASS AND PHELAN.  
4 I THINK IT'S SAFE FOR US TO SAY -- I KNOW MR. BLUM IS NOT  
5 ON THE CALL, BUT I BELIEVE WE HAVE AN AGREEMENT NOW WITH  
6 MR. BLUM. WE'VE RESOLVED HIS PART OF THIS.

7 MR. MCLACHLAN: THERE ARE TWO OTHERS THAT ARE  
8 KNOWN, I BELIEVE, MAYBE THREE. SO IT'S SOMEWHERE IN THE  
9 RANGE OF IF WE HAD TO GUESS, FOUR TO MAYBE SIX OR SEVEN.  
10 WE'LL, OBVIOUSLY, FIND OUT IN A COUPLE OF WEEKS WHEN THE  
11 OBJECTIONS ARE FILED. NEXT WEEK.

12 THE COURT: WELL, WE -- I MEAN, YOU KNOW WHO HAS  
13 SIGNED AND WE DON'T KNOW WHO HASN'T SIGNED, I GUESS, IS  
14 THE REAL POINT HERE. SO WHAT I AM -- WHAT I AM REALLY  
15 INTERESTED IN IS HOW ARE WE GOING TO HANDLE THOSE PARTIES  
16 WHO HAVE NOT AGREED AND DON'T WISH TO AGREE IN TERMS OF  
17 ADJUDICATING THEIR RIGHTS, WHAT'S GOING TO BE INVOLVED IN  
18 THAT, BECAUSE WE ARE GOING TO HAVE TO MAKE SOME ORDERS  
19 REGARDING DISCOVERY AND OTHER PROCEDURAL ISSUES THAT WILL  
20 NEED TO BE ADDRESSED DURING THE COURSE OF THIS PROCESS.

21 AND, OBVIOUSLY, I AM HOPEFUL, AS I ALWAYS  
22 AM, THAT ULTIMATELY COUNSEL ARE GOING TO TALK WITH THOSE  
23 PARTIES WHO ARE NOT PART OF THE AGREEMENT TO SEE IF  
24 THERE'S SOME RESOLUTION THAT CAN BRING THEM INTO THE  
25 AGREEMENT. BECAUSE, ULTIMATELY, THE ULTIMATE SOLUTION  
26 THAT WE'RE GOING TO TRY TO CREATE HERE, WHATEVER THAT FORM  
27 IS, IS GOING TO BIND EVERYBODY ONE WAY OR THE OTHER. AND  
28 IT SEEMS TO ME IT'S LIKE ANY OTHER LAWSUIT; PARTIES WHO

1 COME TO AN AGREEMENT ARE USUALLY FAR BETTER OFF THAN THEY  
2 WOULD BE BY ROLLING THE DICE TO SEE WHAT'S GOING TO  
3 HAPPEN.

4 SO WE'LL -- WITH THAT THOUGHT, I WOULD ASK  
5 THAT ANY PARTIES, ANY COUNSEL WHO ARE PRESENT EITHER HERE  
6 PERSONALLY OR ON THE PHONE WHO ARE NOT SIGNATOR TO THE  
7 AGREEMENT AND DON'T INTEND TO BE SIGNATOR TO THE  
8 AGREEMENT, TO ADVISE THE COURT AS TO THE DESIRE TO  
9 SEPARATELY ADJUDICATE THEIR CLAIMS BECAUSE THE ULTIMATE  
10 JUDGMENT, ASSUMING THE COURT APPROVES ANY PART OF THE  
11 PHYSICAL SOLUTION THAT'S PROPOSED, IS GOING TO WAIT FOR  
12 EFFECT UNTIL AFTER EVERYBODY ELSE'S RIGHTS WHO ARE NOT  
13 PARTIES HAVE BEEN ADJUDICATED SO THAT YOU HAVE A SINGLE  
14 JUDGMENT.

15 SO THAT DOESN'T MEAN WE CAN'T GET STARTED,  
16 BUT IT CERTAINLY IS SOMETHING TO KEEP IN MIND AND CONSIDER  
17 HOW VALUABLE THOSE RIGHTS ARE.

18 MR. KALFAYAN: YOUR HONOR, MAY I JUST ASK ONE  
19 QUESTION TO FOLLOW UP ON THAT?

20 THE COURT: YES.

21 MR. KALFAYAN: SO ON AUGUST 3RD CAN THE COURT COME  
22 UP WITH A PHYSICAL SOLUTION THAT'S DIFFERENT THAN THE  
23 PHYSICAL SOLUTION PRESENTLY CONTAINED IN THIS SETTLEMENT?

24 THE COURT: YES AND NO. THE COURT CAN DECLINE TO  
25 APPROVE THE PROPOSED PHYSICAL SOLUTION AS NOT BEING  
26 CONSISTENT WITH THE BEST INTERESTS OF THE VALLEY, THE  
27 AQUIFER, AND THE PARTIES TO THIS LAWSUIT.

28 MR. KALFAYAN: AND AFTER THAT WE'LL HAVE A PHYSICAL



1 SOLUTION TRIAL?

2 THE COURT: THAT DEPENDS ON THE PARTIES.

3 MR. KALFAYAN: SO BUT AT SOME POINT BEYOND AUGUST  
4 3RD?

5 THE COURT: AT SOME POINT THERE'S GOING TO BE  
6 ADJUDICATION OF EVERYBODY'S RIGHT TO PUMP WATER. OKAY?  
7 NOW, IF YOU'RE A NON-PUMPER IT'S GOING TO BE A GENERALIZED  
8 STATEMENT OF THE REASONABLE AND BENEFICIAL USE OF THE  
9 WATER, IT SEEMS TO ME. AND THOSE WHO HAVE A SPECIFIC  
10 CLAIM, THERE WOULD HAVE TO BE AN ADJUDICATION OF THE  
11 AMOUNT THEY'RE ENTITLED TO PUMP. OKAY?

12 WE KNOW THAT EVERYBODY CAN'T CONTINUE TO  
13 PUMP AT THEIR PRESENT RATE WITHOUT CAUSING A VERY BAD  
14 EFFECT ON THE AQUIFER. WE KNOW THAT. OKAY? THOSE WERE  
15 THE FINDINGS THE COURT HAS MADE. SO IF PARTIES WANT TO  
16 CLAIM THAT THEY HAVE AN UNLIMITED RIGHT TO PUMP, THEY'RE  
17 GOING TO BE FACED WITH AN ADJUDICATION AND THE COURT  
18 MAKING A DETERMINATION THAT THEY DON'T HAVE THAT RIGHT  
19 BECAUSE IT'S IMPOSSIBLE TO HAVE THAT RIGHT AND STILL LET  
20 THE VALLEY DETERIORATE.

21 MR. KALFAYAN: I APPRECIATE THAT. BUT ON AUGUST  
22 3RD WHEN YOU -- IF YOU DECIDE THAT THERE'S BEEN -- IF YOU  
23 FINALLY APPROVE THE WOOD CLASS SETTLEMENT, WHICH  
24 INCORPORATES THE RIGHTS OF 140 PUMPING PARTIES, WILL THAT  
25 BE A DETERMINATION AND A JUDGMENT ENTERED THAT DETERMINES  
26 THE --

27 THE COURT: THAT WILL BE AN APPROVAL OF THEIR  
28 AGREEMENT AS TO THEMSELVES THAT CANNOT IMPACT PARTIES WHO

1 ARE NOT PARTY TO THE AGREEMENT.

2 MR. KALFAYAN: I'M JUST --

3 THE COURT: DO YOU UNDERSTAND THAT?

4 MR. KALFAYAN: I DO EXCEPT THE --

5 THE COURT: I'VE BEEN SAYING THAT FOR A LOT OF  
6 YEARS NOW.

7 MR. KALFAYAN: EXCEPT THE PHYSICAL SOLUTION HAS --

8 THE COURT: RELATES ONLY TO THOSE PARTIES WHO ARE  
9 IN AGREEMENT. AND I HAVE TO MAKE A DETERMINATION AS TO  
10 WHAT THE EFFECT IS GOING TO BE ON THE PARTIES WHO ARE NOT  
11 PARTY TO THE AGREEMENT.

12 MR. KALFAYAN: SO THE AGREEMENT BETWEEN THEMSELVES  
13 CAN'T BIND THE WILLIS CLASS, AS I UNDERSTAND IT.

14 THE COURT: I SHOULDN'T BE HAVING THIS CONVERSATION  
15 WITH YOU.

16 MR. KALFAYAN: YOUR HONOR, IT CLARIFIES WHAT MY  
17 UNDERSTANDING IS GOING TO BE -- BECAUSE THERE'S A LOT OF  
18 THINGS THAT ARE GOING TO HAPPEN, CASCADING OF EVENTS GOING  
19 FORWARD UP UNTIL AUGUST 3RD, AND I AM -- I NEED TO  
20 UNDERSTAND HOW THINGS ARE GOING TO GET PRESENTED ON AUGUST  
21 3RD. SO FORGIVE ME IF I AM BEING REDUNDANT, BUT I NEED  
22 THE CLARIFICATION.

23 THE COURT: I UNDERSTAND YOUR NEED FOR  
24 CLARIFICATION. I JUST DON'T THINK I AM THE PERSON TO  
25 PROVIDE IT.

26 MR. KALFAYAN: JUST LAST COMMENT, YOUR HONOR.  
27 THEIR AGREEMENT, THEIR PHYSICAL SOLUTION, CONTAINS  
28 LANGUAGE THAT SUBORDINATES AND LIMITS WILLIS CLASS.

1 THE COURT: IT MAY WELL BE THAT THEY'RE PROPOSING  
2 SOMETHING THAT IS GOING TO GET APPROVED AND WILL BE  
3 ULTIMATELY EXTENDED ONCE THE RIGHTS OF THE OTHER PARTIES  
4 WHO ARE NONSIGNATORS ARE DOCUMENTED, TO APPLY TO THEM TO.  
5 I DON'T KNOW THAT.

6 I KNOW THAT WE DID -- IN ONE CASE THAT I  
7 HANDLED WE HAD A MAJORITY OF THE PARTIES ENTER INTO AN  
8 AGREEMENT WHICH REQUIRED CERTAIN PROCESSES TO OCCUR TO  
9 MONITOR AND ENSURE THE APPROPRIATE MANAGEMENT OF THE  
10 VALLEY. THERE WERE PARTIES WHO DIDN'T AGREE AND  
11 ULTIMATELY, AFTER HEARING THE EVIDENCE, THE COURT APPLIED  
12 THOSE SAME PROCESSES, NOT BECAUSE IT WAS PART OF THE  
13 AGREEMENT, BECAUSE IT WAS AN INDEPENDENT DETERMINATION BY  
14 THE COURT.

15 MR. KALFAYAN: SO THERE'S GOING TO BE AN  
16 INDEPENDENT DETERMINATION FOR THE WILLIS CLASS AT SOME  
17 POINT IN THE FUTURE?

18 THE COURT: THE COURT IS GOING TO MAKE AN  
19 INDEPENDENT DETERMINATION AS TO ALL NONSIGNATORS THROUGH  
20 THE ADJUDICATION PROCESS.

21 MR. KALFAYAN: AND THAT WOULD BE AT SOME POINT  
22 AFTER AUGUST 3RD, I'M ASSUMING?

23 THE COURT: I DON'T KNOW WHEN THAT'S GOING TO BE,  
24 MR. KALFAYAN.

25 MR. KALFAYAN: OKAY. THANK YOU.

26 THE COURT: I'M SAYING FAR MORE THAN I INTENDED TO  
27 SAY.

28 MR. MILIBAND: YOUR HONOR, WE MILIBAND FOR PHELAN

1 PINON HILLS. I JUST WANT TO RESPOND TO THE COURT'S  
2 INVITATION A FEW MINUTES AGO TO COUNSEL TO ALERT THE COURT  
3 AND OTHER COUNSEL OF INTENDING TO BE A NONSIGNATORY. SO I  
4 THINK IT'S PRETTY CLEAR WE'RE IN THAT CATEGORY, AS  
5 MR. DUNN CONFIRMED A FEW MINUTES AGO, THE NON-SETTLING  
6 PARTY. WE CERTAINLY ARE AMENABLE TO AND AGREEABLE TO  
7 CONVERSATION AND DISCUSSIONS. SO IF WE CAN HAVE THOSE,  
8 GREAT. IF NOT, JUST TO BE CLEAR, WE'RE FORCED TO BE ON  
9 THIS CONTINUED TRACK.

10 THE COURT: I URGE YOU TO HAVE THOSE CONVERSATIONS.

11 MR. MILIBAND: SURE. IT'S SOMETHING THAT I THINK  
12 EVERYONE SHOULD ALWAYS BE OPEN TO. IT JUST REQUIRES THAT  
13 KIND OF CONSENSUS. BUT ABSENT THAT, WE'LL CONTINUE ON  
14 THIS TRACK.

15 THE COURT: THINGS ARE VERY OFTEN EVER SO CLEAR AS  
16 THEY SEEM TO BE WHEN THEY AREN'T.

17 MR. MILIBAND: CASE IN POINT, YOUR HONOR. THANK  
18 YOU.

19 MR. BUNN: VERY BRIEFLY, YOUR HONOR. THOMAS BUNN.  
20 I WANTED TO GO BACK TO THE COURT'S EARLIER QUESTION. THE  
21 PARTIES HAVE BEEN SPENDING A LOT OF TIME FIGURING OUT HOW  
22 TO DEAL WITH STIPULATING PARTIES AND HOW TO DEAL WITH  
23 NON-STIPULATING PARTIES. WE ARE AWARE, CERTAINLY, OF THE  
24 WILLIS CLASS AND OF THE PHELAN PINON HILLS. AS COUNSEL  
25 MENTIONED, THERE ARE A COUPLE OF OTHER PARTIES WHO HAVE  
26 PARTICIPATED TO ONE EXTENT OR THE OTHER IN THE LAWSUIT WHO  
27 AREN'T IN THE PROCESS AND WE ARE GOING TO ATTEMPT TO DEAL  
28 WITH THOSE PARTIES AS WE GO ALONG. CERTAINLY OPEN TO

1 DIALOGUE WITH THEM.

2 AND THEN WE ARE -- THERE ARE A WHOLE LOT OF  
3 PARTIES WHO FILED ANSWERS AND SOMETIMES THEY EVEN WENT  
4 FURTHER AND FILED A STATEMENT OF INTENTION NOT TO  
5 PARTICIPATE IN THE LAWSUIT. AND WE WANT TO MAKE SURE THAT  
6 WE HAVE THOSE PEOPLE COVERED. AND THAT, TO MY MIND, IS  
7 THE FUNCTION OF THE APRIL 7TH DEADLINE. THAT THEY NEED TO  
8 STEP UP, AND IF THEY'RE GOING TO CONTEST WHAT'S GOING ON,  
9 THEY SAY SO, AND THEN WE'LL HAVE A MUCH BETTER IDEA WHERE  
10 WE GO.

11 AT THIS POINT WE HAVE NO REASON TO EXPECT  
12 ANYONE OTHER THAN THOSE COUPLE THAT WE KNOW ABOUT, BUT  
13 IT'S A BIG UNKNOWN OUT THERE AND WE'LL KNOW A LOT BETTER  
14 AFTER -- AFTER APRIL 7TH.

15 THE COURT: I'M GOING TO ASK MRS. WALKER TO  
16 REPUBLISH THE WHOLE CASE MANAGEMENT ORDER SO THAT  
17 EVERYBODY IS REMINDED OF THESE DEADLINES AND WE CAN EXPECT  
18 TO HEAR THEIR POSITIONS ON APRIL 7TH.

19 MR. BUNN: THANK YOU, YOUR HONOR.

20 THE COURT: OKAY. ALL RIGHT. ANYTHING ELSE?

21 MR. ZIMMER: YOUR HONOR, MR. ZIMMER FOR BOLTHOUSE.  
22 JUST FOLLOWING UP ON MR. BUNN'S COMMENTS, I THINK THE  
23 COURT IS INTENDING TO PUT THAT IN THE ORDER THAT ANY PARTY  
24 INTENDING TO CONTEST THAT HEARING NOTIFY THE COURT AND ALL  
25 COUNSEL BY THE SAME DEADLINE AS THE DEADLINE TO OBJECT.

26 THE COURT: LET ME SEE. I THINK THAT'S ALREADY IN  
27 THE ORDER, ISN'T IT? IT IS. PARAGRAPH THREE ON PAGE  
28 THREE, "SUBJECT TO THE PRIOR ORDERS OF THE COURT, WRITTEN

1 STATEMENTS OF OBJECTIONS TO THE PROPOSED STIPULATED  
2 JUDGMENT AND PHYSICAL SOLUTION AND ANY ASSERTION OF CLAIMS  
3 OR RIGHTS TO PRODUCE GROUNDWATER FROM THE BASIN BY A  
4 NON-STIPULATING PARTY SHALL BE DUE NO LATER THAN," AND  
5 IT'S GOING TO BE APRIL 7TH, 2015.

6 DOESN'T THAT REALLY ADDRESS THE ISSUE?

7 MR. ZIMMER: I BELIEVE IT DOES, YOUR HONOR. THANK  
8 YOU FOR CLARIFYING.

9 THE COURT: OKAY. ALL RIGHT. NOTHING ELSE? OKAY.  
10 HAVE A GOOD AFTERNOON.

11  
12 (THE PROCEEDINGS CONCLUDED AT 11:58 A.M.)  
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ROOM 222

HON. JACK KOMAR, JUDGE

IN RE:	)	
	)	
	)	NO. JCCP4408
ANTELOPE VALLEY GROUNDWATER CASES	)	REPORTER'S
	)	CERTIFICATE
	)	
	)	
_____	)	

I, CANDICE MYERS, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES, 1 THROUGH 70, COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY TAKEN IN THE ABOVE-ENTITLED CAUSE ON THURSDAY, MARCH 26, 2015.

DATED THIS 9TH DAY OF APRIL, 2015.

*Candice Myers*  
 \_\_\_\_\_  
 OFFICIAL REPORTER



, CSR No. 13086

March 26, 2015

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