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16 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
17 **COUNTY OF LOS ANGELES**

18 Coordination Proceeding  
19 Special Title (Rule 1550(b))

20 ANTELOPE VALLEY GROUNDWATER  
21 CASES

22 RICHARD A. WOOD, an individual, on  
23 behalf of himself and all others similarly  
24 situated,

25 Plaintiff,

26 v.

27 LOS ANGELES COUNTY  
28 WATERWORKS DISTRICT NO. 40; et  
al.

Defendants.

Judicial Council Coordination  
Proceeding No. 4408

Lead Case No. BC 325201

Case No.: BC 391869

**RICHARD WOOD'S CASE  
MANAGEMENT STATEMENT**

Date: September 21, 2015

Time: 1:00 p.m.

Place: Telephonic

1           The Settling Parties have erroneously indicated that Richard Wood joined  
2 in the Joint Case Management Conference Report filed this date. While Plaintiff  
3 concurs with the need for a Second Amended Case Management Order (“CMO”),  
4 he takes issue with the proposed first paragraph of the new CMO. Specifically,  
5 the other settling parties suggest that the Court deem that all exhibits entered in  
6 the Phase 4 as “being accepted into evidence for all purposes for this phase of the  
7 trial.” (Joint Case Management Report, 3:15-16.)

8           The Phase 4 trial exhibits at issue include a large number declarations and  
9 discovery responses. The other settling parties suggest or imply that the Court  
10 admitted these documents into evidence for all purposes. (Joint Case  
11 Management Report, 2:25-3:8.) However, the relevant trial transcript appears to  
12 read to the contrary:

13           MR. SLOAN: THANK YOU, YOUR HONOR. WILLIAM SLOAN FOR U.S.  
14           BORAX.

15           I JUST WANTED TO GO BACK TO WHAT WE WERE DISCUSSING  
16           EARLIER ABOUT THE SUBMISSION OF DECLARATIONS.

17           THE COURT: YES.

18           MR. SLOAN: AND I WAS WONDERING IF THE COURT WOULD BE  
19           WILLING TO ENTERTAIN A PROPOSED ORDER, PERHAPS IN  
20           THE MORNING, THAT WOULD LIMIT THE SCOPE OF WHAT  
21           THOSE ARE ADMITTED FOR.

22           WE DISCUSSED THAT AT THE LAST HEARING.

23           THE COURT: I THOUGHT WE DID THAT. I SIGNED AN ORDER, I  
24           THOUGHT -- AND IT WAS PRESENTED BY MR. DUNN -- THAT  
25           DID EXACTLY THAT.

26           MR. SLOAN: THAT DOESN'T ADDRESS THIS ISSUE OF THE  
27           ADMISSION OF EVIDENCE OF THE DECLARATIONS.

28           YOU'LL RECALL THAT THE DECLARATIONS ENCOMPASSED  
          INFORMATION FAR BEYOND THE ISSUES THAT THE COURT  
          HAS DECIDED.

1 THE COURT: I THOUGHT THAT'S WHAT THE ORDER WAS. MAYBE  
2 I'M MISTAKEN.

3 MR. DUNN.

4 MR. DUNN: YES. THE FIFTH AMENDMENT TO THE CASE  
5 MANAGEMENT ORDER MAKES CLEAR THAT WHATEVER IS  
6 INTRODUCED, OR WHATEVER TAKES PLACE IN THIS PHASE  
7 OF TRIAL, PHASE FOUR, IS LIMITED TO THE PHASE FOUR  
8 ISSUE OF CURRENT GROUNDWATER PRODUCTION.

9 AND THEN THE AMENDED ORDER HAS LANGUAGE TO THE  
10 EFFECT THAT WHAT HAPPENS DURING THIS PHASE, AND  
11 WHATEVER FINDINGS OF FACT TAKE PLACE, WILL NOT  
12 IMPACT THE PARTIES' CLAIMED WATER RIGHT, ET CETERA.

13 I THINK WE'VE GONE OVER THIS ISSUE BEFORE.

14 THE COURT: WELL, WE HAVE. BUT WE NEED TO BE CLEAR.

15 MR. DUNN: YES.

16 THE COURT: AND I UNDERSTAND MR. SLOAN'S CONCERN. I THINK  
17 IT'S LEGITIMATE.

18 BUT LET ME ASK YOU TO TAKE A LOOK AT THE ORDER. I'M  
19 GOING TO READ IT INTO THE RECORD RIGHT NOW, BUT YOU  
20 CAN LOOK AT IT. BASICALLY IT SAYS THIS.

21 "THE COURT'S CURRENT CASE MANAGEMENT ORDER IS  
22 HEREBY AMENDED AS FOLLOWS:

23 "THE PHASE FOUR TRIAL IS ONLY FOR THE PURPOSE OF  
24 DETERMINING GROUNDWATER PUMPING DURING 2011 AND  
25 2012.

26 "THE PHASE FOUR TRIAL SHALL NOT RESULT IN ANY  
27 DETERMINATION OF ANY WATER RIGHT OR THE  
28 REASONABLENESS OF ANY PARTY'S WATER USE, OR MANNER  
OF APPLYING WATER TO THE USE.

"THE PHASE FOUR TRIAL WILL NOT PRECLUDE ANY PARTY  
FROM INTRODUCING IN A LATER TRIAL PHASE EVIDENCE TO  
SUPPORTS ITS CLAIMED WATER RIGHTS, INCLUDING,  
WITHOUT LIMITATION, EVIDENCE OF WATER USE IN YEARS

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OTHER THAN 2011 AND 2012.

"ALL PARTIES RESERVE THEIR RIGHTS TO PRODUCE ANY EVIDENCE TO SUPPORT THEIR CLAIMED WATER RIGHTS AND MAKE ANY RELATED LEGAL ARGUMENTS, INCLUDING, WITHOUT LIMITATION, ARGUMENTS BASED ON ANY APPLICABLE CONSTITUTIONAL, STATUTORY OR DECISIONAL AUTHORITY."

I THINK I SEE WHAT YOUR CONCERN IS.

**BECAUSE THERE ARE STATEMENTS MADE UNDER OATH IN THE DECLARATION RELATING TO OTHER PARTS OF THE CLAIM, THAT SHOULD BE -- THEY ARE SURPLUSAGE. AND I WOULD MAKE THAT FINDING.**

**BECAUSE NOBODY IS BOUND BY ANY STATEMENTS OTHER THAN THE CLAIMED PUMPING.**

**MR. SLOAN: AND JUST TO ADD TO THAT.**

**I THINK THE PARTICULAR CONCERN IS WHEN WE COME TO A LATER PHASE OF TRIAL, THAT PARTIES CAN'T JUST SAY, "WELL, THIS DECLARATION WAS ADMITTED INTO EVIDENCE AND WON'T BE SUBJECT TO CROSS-EXAMINATION."**

**THE COURT: YEAH. THAT'S WHAT I JUST INDICATED.**

I THINK THAT THOSE STATEMENTS IN THOSE DECLARATIONS, OTHER THAN THE AMOUNT OF PUMPING, EXCEPT INsofar AS THEY SUPPORT THE CONCLUSION AS TO WHAT THE PUMPING IS, SHOULD NOT BE USED IN THE FUTURE.

MR. SLOAN: OKAY. THANK YOU, YOUR HONOR.

MR. DUNN: THE COURT HAD ALREADY INDICATED THAT ON THE RECORD.

THE COURT: I THOUGHT I HAD.

MR. DUNN: YOU DID.

1 MR. SLOAN: I BELIEVE WE DIDN'T HAVE A COURT REPORTER  
2 THEN.

3 THE COURT: YOU'RE PROBABLY RIGHT.

4 THOUGH I THINK WE HAD A COURT REPORTER IN ALL OF OUR  
5 PROCEEDINGS, DIDN'T WE?

6 MR. SLOAN: THERE WAS A WINDOW OF TIME WHERE THE COURT  
7 REPORTER WASN'T PRESENT.

8 THE COURT: ALL RIGHT. LET'S HOPE THE RECORD IS  
9 CLEAR NOW.

10 (Joint Case Management Report, Ex. F (Trial Transcript, May 28, 2013) at 45:25-  
11 49:4 (emphasis added).)

12 Based on the transcript, it appears the Court admitted these declarations  
13 and related exhibits for a limited purpose under Evidence Code section 355: only  
14 for the 2011 and 2012 pumping quantities. The subsequent minute orders do not  
15 repeat nor contradict the Court's ruling on the record; they simply list the  
16 exhibits that were admitted.

17 Hence, as to any party – such as the Willis Class – who did not appear and  
18 object to this evidence at the Phase 4 Trial, they have waived their right to object  
19 to this evidence in subsequent proceedings. (*Foreman & Clark Corp. v. Fallon*, 3  
20 Cal.3d 875, 887-88 (absent a ruling of limited admission under Evidence Code  
21 section 355, evidence admitted in one phase of a bifurcated proceeding may be  
22 used for other purposes during subsequent phases of trial).) However, if the  
23 Court did not admit these Phase 4 Exhibits for all purposes at that earlier phase  
24 of trial, the Court should now hear any timely objections raised as to the  
25 admission of those Exhibits prior to admitting them for any other purpose during  
26 the current phase of trial. Simply deeming the Phase 4 exhibits admitted for all  
27 purposes by Court Order would not be proper if there are in fact objections to  
28 those exhibits. In any event, given the differing viewpoints on this important  
issue, it should be clarified now at the trial court level, rather than later on

1 appeal.

2 If Plaintiff is reading the transcript correctly, he suggests that the proposed  
3 Second Amended Case Management Order be modified to require any adverse  
4 parties to identify specific objections they wish to raise as to the Phase 4 exhibits  
5 by a date certain. If there are no objections to a particular exhibit, it should be  
6 admitted into evidence at the start of trial for all purposes (or admitted to  
7 whatever extent it is not objected to).

8  
9 DATED: September 16, 2015 LAW OFFICES OF MICHAEL D. McLACHLAN  
10 LAW OFFICE OF DANIEL M. O'LEARY

11  
12 By: \_\_\_\_\_  
13 Michael D. McLachlan  
14 Attorneys for Plaintiff

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