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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 OPPOSITION  
TO MARK RITTER'S MOTION TO  
SET ASIDE JUDGMENT;  
DECLARATION OF MICHAEL D.  
MCLACHLAN**

Date: January 21, 2016  
Time: 1:30 p.m.  
Place: Telephonic (Courtcall)

1           **I.     INTRODUCTION**

2           The Ritter Trust has been a party to this litigation since 2005, when the  
3 several individual cases transitioned to the coordinated proceeding. For  
4 approximately 15 years, both Paula Ritter, the original trustee The Ritter Trust,  
5 as well as Mark Ritter, the successor trustee after her passing, have been fully  
6 aware of the litigation and that it could impact their water rights. Yet, they took  
7 no actions to protect their interests.

8           Further, through its counsel of record, the Ritter Trust and Paula Ritter,  
9 filed well in excess of 100 pleadings in these actions over a more than seven  
10 years. On December 14, 2012, in response to orders of this Court, the Ritter  
11 Trust filed its Notice of Intent to Participate in the Phase 4 Trial. However, the  
12 Ritter Trust did not appear at the Phase 4 trial to establish its current  
13 groundwater production (nor did it file the Court-ordered discovery required for  
14 Phase 4).

15           The Ritter Trust has continued to be Party to this litigation, but chose to  
16 ignore this Court’s Case Management Orders for the most recent phase of trial,  
17 often referred to as Phase 6. The Ritter Trust did not file a Notice of Claim,  
18 failed to participate in discovery, and otherwise ignored all of this Court’s Orders  
19 leading up to the Phase 6 Trial. The Ritter Trust made no application for relief  
20 from the Case Management Order, nor did it file any formal motion to be  
21 severed. In support of its Motion to Set Aside the Judgment, Ritter now claims  
22 that the Court stated that Ritter could have its claims severed. (Brumfield Decl.,  
23 ¶ 6.) Yet, there is no order to that effect, nor even a Court transcript supporting  
24 this fictional event.

25           The current motion should be denied on the narrow grounds asserted by  
26 Ritter because there is no record to support any severance (and it in fact runs  
27 counter to the Court having entered judgment against the Ritter Trust). The  
28 motion should also be denied because the Ritter Trust has a long and troubling

1 history of not being diligent in prosecuting its claim, including the most recent  
2 failure to take any steps whatsoever to protect its interests in conjunction with  
3 the prove-up trial in 2015.

## 4 **II. FACTAUL BACKGROUND**

### 5 **A. The Ritter Trust Was Fully Aware of this Adjudication and** 6 **Intentionally Chose Not to Act.**

7 The land at issue in the Ritter Trust claim has been owned by the Trust at  
8 all relevant times, until Mark Ritter transferred it to his own trust in late 2015.  
9 (McLachlan Decl., Ex. 18 (Deposition Transcript of Mark Ritter, January 27,  
10 2016) at 11:2-7.) Paula Ritter passed away in 2010, and upon her passing, Mark  
11 Ritter became the successor trustee of the Ritter Trust. (*Id.* at 10:5-6; 12:7-12.)

12 The Ritter Trust has known about this litigation for 15 years, but has  
13 consciously chosen not to retain counsel or to take any other steps to protect its  
14 interests. (*Id.*, 6:17-7:15; 9:18-10:2; 40:7-20; 44:6-23; 45:3-7.) The Ritters'  
15 were presented with the opportunity to join AGWA at the start of the litigation,  
16 but declined to do so because they did not want to pay attorneys. (*Id.* at 16:25-  
17 17:18; 24:21-25:4; 25:20-26:1; 26:20-27:4; 27:2-28:20.) Mark Ritter was aware  
18 that this groundwater adjudication could impact his water rights. (*Id.* at 39:3-  
19 14.) Nevertheless, he waited until late 2015 to take any steps to seek counsel.  
20 (*Id.* at 46:3-47:22.)

21 During the entirety of the litigation, Mark Ritter has lived and worked in  
22 the Antelope Valley, at the farm in question. (*Id.* at 8:7-22.)

### 23 **B. The Ritters and the Ritter Trust Were Named in 2005 and** 24 **Answered Through Counsel.**

25 On November 2, 2005, Los Angeles County Waterworks District No. 40  
26 (“District 40”) filed its first sizeable Doe amendment, naming numerous  
27 landowner parties, including Edgar C. Ritter, Paula E. Ritter, and Paula E. Ritter  
28 (collectively, “The Ritters”). (McLachlan Decl., Ex. 1 (“Amendment to

1 Complaint,” filed November 2, 2005.) It appears that the Ritter’s first appeared  
2 in the action through counsel on November 28, 2005. On that date, attorneys  
3 Michael Fife and Bradley Herrema, then at the firm of Hatch & Parent, filed a  
4 Case Management Conference Statement listing the Ritters as members of the  
5 Antelope Valley Ground Water Agreement Association (“AGWA”). (Ex. 2.) The  
6 Ritter’s continued to be listed among AGWA’s members for approximately seven  
7 and one-half years, formally participating in phases one through four of the trial  
8 proceedings.<sup>1</sup> (McLachlan Decl., ¶ 5.)

9 **C. The Ritters Litigated Their Claims Through Counsel for**  
10 **Over Seven Years, Then Disappeared.**

11 On January 18, 2006, the public water suppliers filed their initial Cross-  
12 Complaint, naming a number of larger landowners as cross-defendants,  
13 including Edgar C. Ritter, Paula E. Ritter, and Paula E. Ritter, as trustee of the  
14 Ritter Family Trust. (Ex. 3, (“Cross-Complaint of Municipal Purveyors For  
15 Declaratory and Injunctive Relief and Adjudication of Water Rights”), 6:1-3  
16 [Dkt. No. 134].)<sup>2</sup> On January 2, 2007, the Ritters filed their Answer. (Ex. 4  
17 (“Answer to All Cross-Complaints”) [Dkt. No. 411].) On that same date, the  
18 Ritter’s filed a Cross-Complaint which remains pending to this date.  
19 (McLachlan Decl., Ex. 5 [Dkt. No. 412].)

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21 <sup>1</sup> Mark Ritter testified at deposition that he did not believe his mother ever  
22 formally retained Mr. Fife as counsel. Given the passing of Paula Ritter, there is  
23 no way to inquire of her as to the specifics. Nevertheless, it is Plaintiff’s position  
24 that the other parties to the litigation are entitled to rely on the representation of  
25 the Ritter Trust by Mr. Fife’s law firms, including the filing of an answer and the  
26 various important pleadings listed herein. But the result of this Motion likely  
27 may not turn on these facts, but may instead be ruled upon and denied based  
28 upon the Ritter’s lack of diligence in the past, as well as his present failure to  
timely seek relief or present his claim prior to trial.

<sup>2</sup> The Ritter parties were named as defendants in at least one earlier Cross  
Complaint. (*See, e.g.*, Cross-Complaint of City of Palmdale, filed December 1,  
2005 [Dkt. 66].)

1           On September 9, 2008, the Court issued its “Case Management Order For  
2 Phase 2 Trial,” requiring parties to file a notice of intent to participate in that  
3 phase of trial. [Dkt. 1929, at ¶ 9.] The Ritters complied with that Order by filing  
4 such notice. (Ex. 6 [Dkt. No. 1978].) The Ritters continued as active litigants –  
5 continuously represented by the Brownstein Hyatt firm – and again four years  
6 later, pursuant to Court order, they filed a notice of intent to participate in the  
7 Phase 4 trial. (McLachlan Decl., Ex. 7, (“AGWA’s Notice of Intent to Participate  
8 in Phase Four Trial”), filed December 14, 2012 [Dkt. No. 5413].)<sup>3</sup> Phase 4 was  
9 the portion of these trial proceedings designated for parties to establish current  
10 groundwater pumping.

11           The Brownstein Hyatt firm continued to represent the Ritters on filings  
12 with this Court through the end of February of 2013, but after that time, they  
13 disappeared from the pleadings and do not re-surface. (McLachlan Decl., ¶ 5; Ex.  
14 10 (“Notice of Ex Parte Application for Approval of Stipulation [of Facts for  
15 Phase IV trial], filed March 15, 2013 [Dkt. No. 6189].) There appears to be no  
16 record of the filing of a substitution of counsel, a motion to withdraw, any other  
17 written notice to the Court, nor any mention of the Ritters at the ensuing Phase 4  
18 trial, which occurred two months later. The Ritters simply disappeared until  
19 September of 2015. (McLachlan Decl., ¶ 14.)

20           **D.     The Ritter Trust Re-Surfaces in September of 2015**

21           On March 27, 2015, the Court signed the Second Amended Case  
22 Management Order for what has become to be known as the Phase 6 trial, i.e.

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23  
24           <sup>3</sup>The Phase 4 Case Management Orders required parties to provide  
25 detailed discovery disclosures under penalty of perjury by January 31, 2013.  
26 (McLachlan Decl., Exs. 8 & 9.) The Brownstein Hyatt firm filed  
27 approximately 25 separate declarations on behalf of its various AGWA  
28 group clients on January 30 and 31, 2013, but nothing was filed for the  
Ritters. (McLachlan Decl., ¶ 12.)

1 the prove-up of the “global” stipulated settlement. (Ex. 11.) That Order set forth,  
2 among others, the following deadlines: (1) non-stipulating parties to file and  
3 serve a Notice of Claim by April 7, 2015 (*id.* at ¶ 3); (2) all parties to disclose  
4 witnesses and exhibits by April 27, 2015 (¶ 4); and (3) completion of discovery  
5 by July 17, 2015. The Ritters complied with none of these deadlines, and indeed,  
6 to this date, have not filed a notice of claim or any discovery-related documents  
7 in response to any of the Court’s various Orders over the years. (McLachlan  
8 Decl., ¶ 15.)

9 On September 3, 2015, attorney Robert Brumfield filed a Case  
10 Management Conference Statement on behalf of the Ritter Family Trust, which  
11 appears to be the first filing by the Ritters in over two years. (McLachlan Decl.,  
12 Ex. 12. [Dkt. No. 10,388].) In that filing, Mr. Brumfield states that on August 14,  
13 2015, he met with Mark Ritter, the son of Edgar and Paula Ritter, and successor  
14 trustee to the Ritter Family Trust about the Trusts potential claim to  
15 groundwater. (Ex. 12, 2:5-16.) Mr. Brumfield also stated that he would take  
16 steps to have the Brownstein Hyatt firm execute the necessary Substitution of  
17 Attorney form because that firm was still counsel of record for the Ritters. (*Id.*  
18 at 2:8-10, 2:23-25.) Mr. Fife did not formally substitute out of his  
19 representation or the Ritter Family Trust until November 3, 2015. [D.E. 10928]<sup>4</sup>

20 Finally, although Paula Ritter died on November 30, 2010,<sup>5</sup> it appears that  
21 she was fully aware of the pendency of this litigation because she signed a Notice  
22

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23 <sup>4</sup> It must be true that no attorney-client relationship could have been  
24 formed with Edgar Ritter because he died in February of 1992, approximately  
25 seven years prior to the filing of the initial Complaints in this action:  
26 [http://articles.latimes.com/1992-02-25/local/me-2623\\_1\\_ritter-s-name](http://articles.latimes.com/1992-02-25/local/me-2623_1_ritter-s-name)  
(Ex. 14.)

27 <sup>5</sup> Paula E. Ritter’s *Antelope Valley Press* obituary notice:  
28 <http://www.avpress.com/obit-archive.php?obit=31026851>  
(Ex. 15.)

1 of Acknowledgement of Receipt for the public water suppliers' First Amended  
2 Cross-Complaint. (Ex. 13; Ex. 18 (Mark Ritter Depo. Transcript), 30:11-25.)

3 **E. Mark Ritter Erroneously Asserts that the Court Severed**  
4 **His Claim.**

5 In the prior filings regarding the Ritter claim, Plaintiff has raised very  
6 pointed questions about why Mark Ritter took no steps to comply with the  
7 Court's Phase 4 and Phase 6 Case Management Orders, among a litany of other  
8 questions relevant to the Motion to Set Aside, which is premised solely on an  
9 assertion of mistake and excusable neglect under C.C.P. section 473(b).

10 (Motion, 4:16-25.) In this Motion, Ritter has asserted the false claim that the  
11 Court had severed his claim a on September 21, 2015, and hence he did nothing  
12 to present evidence prior to the close of trial. (Motion, 3:5-9.) This assertion is  
13 predicated solely on two bogus declarations of Ritter's counsel. (Brumfield  
14 Decl., ¶ 6; Fife Decl., ¶ 2.)<sup>6</sup> The account given by these counsel are false.  
15 (McLachlan Decl. ¶ 25.)

16 The September 21, 2015 hearing was not reported, and so there is no  
17 transcript of that hearing. But the minute order for that hearing, which is quite  
18 detailed in its narrative, states nothing about any severance. Indeed, it does not  
19 even mention Ritter. (McLachlan Decl., Ex. 16.) The docket does not reflect any  
20 Ritter-filed motion or ex parte application on that date either. Contrast this with  
21 the prior hearing of September 4, 2015, at which time the Robar severance was  
22 actually discussed and memorialized in a written order.

23 The minute order for September 4, 2015 expressly addresses the Ex Parte  
24 Application filed by Robar et al., which was granted the motion. (McLachlan  
25

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26  
27 <sup>6</sup> Aside from the conflicting evidence, the Court should consider the  
28 motives of Ritter's counsel, both of whom may have serious concerns about  
professional liability in the handling of the Ritter claim.

1 Decl., Ex. 17.) The Court noted in that minute order that “matters that are late  
2 served will ‘trail’ the case while they gather their evidence of pumping and try to  
3 enter into the proposed settlement.”<sup>7</sup> The September 4 order, which Ritter does  
4 not cite in his Motion, makes no reference to Ritter obtaining any relief. Mr.  
5 Brumfield attended that hearing, and so must have understood that his client  
6 had not been severed, yet he chose not to file an appropriate motion or ex parte  
7 application in the manner that Robar did. (Ex. 17 (Courtcall Attendance List, p.  
8 5.)

9 After the Court issued its September 21, 2015 minute order on that same  
10 date, Ritter made no attempts to correct that minute order to otherwise voice  
11 any concern that it did not mention the severance of his claim. On October 23,  
12 2015, this Court issued an order that any other parties wishing to present  
13 evidence at trial do so by identifying that evidence by October 30, 2015 and  
14 appearing at the status conference on that date. (McLachlan Decl., Ex. 19.)  
15 Again, Ritter appeared on October 30, 2015, through counsel, and failed to  
16 identify any evidence he wished to submit on his claim, stated that he planned to  
17 present evidence, or to raise the issue of the lack of any severance order. (Ex.  
18 20.)

19 On November 3, 2015, the date set for closing arguments, Ritter filed an  
20 untimely request for present his claim. (Ex. 21.) In that request, Ritter admitted  
21 that his claim had not been severed. (Ex. 21, 3:9-14.)

### 22 **III. ARGUMENT**

23 The Motion to Set Aside the Judgment is solely premised on Ritter’s  
24 purported belief that his claim had been severed. (Ex. 18, p. 3.) Ritter  
25

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26  
27 <sup>7</sup> Although this order does not name any other parties, the Ritter Trust  
28 cannot fall within the scope of “late” served, having been a party for more than a  
decade. (See Section II.A, above.)



1 apparently believes that by framing the Motion in this fashion, the more than  
2 five years of prior history as successor trustee become totally irrelevant to the  
3 question of Mark Ritter’s diligence, and hence to his entitlement to relief under  
4 Section 473. The Motion cites to the mandatory relief provisions of Section  
5 473(b) – i.e. attorney fault – but also quotes law under the discretionary  
6 provisions of that section relating to client mistake or neglect. (*cf.* Motion, 4:16-  
7 22 and 5:13-7:18.) As such, the basis for the Motion is at best unclear.

8           However, whichever basis for relief under Section 473 Ritter is relying  
9 upon, his entire course of conduct as successor Trustee, and indeed the history  
10 of the Ritter Trust as a party to this action, is relevant to the question of whether  
11 the Ritter Trust is entitled to relief under Section 473. As Ritter notes in this  
12 Motion, for “[n]eglect to be the basis for relief under Section 473, [it] must have  
13 been an act or omission of a reasonably prudent person under the same  
14 circumstances.” (*Beeman v. Burling* (1990) 216 Cal.App.3d 1586, 1602-03.)  
15 The lack of a declaration by Mr. Ritter leaves us to wonder about the nature of  
16 his mistake or neglect. Conversely, the presence of two attorney declarations  
17 without a client declaration suggests that Ritter may in fact be relying on the  
18 mandatory relief provisions occurring when the mistake, inadvertence, or  
19 neglect was solely by counsel. But even if that is the case, Ritter cannot obtain  
20 mandatory relief from the judgment based upon his attorneys’ neglect if he also  
21 “contribute[d] to the conduct which caused the default or dismissal.” (*Lang v.*  
22 *Hochman* (2000) 77 Cal.App.4<sup>th</sup> 1225, 1248.) In short, Ritter’s own conduct  
23 during his more than five years as successor trustee of the Ritter Trust is entirely  
24 relevant to the Motion.

25           Put in a factual context, the Ritter Trust never gets to the “four-alarm fire”  
26 stage with this claim if it appears and presents the required evidence of current  
27 pumping at the Phase 4 trial, or if the Trust participates in discovery and timely  
28 presents a claim at the Phase 6 trial. If Mr. Ritter and the Ritter Trust had

1 diligently pursued the claim, he never has to seek a severance of his claim. And  
2 on that last point, Ritter – unlike the Robar parties – never filed a formal motion  
3 for severance or any motion for relief from the Court’s Phase 4 or Phase 6 orders  
4 until after judgment was entered against him. And Ritter had two months  
5 advance warning that he would be subject to the Request for Judgment, but just  
6 continued to sit on his hands.

7 Finally, the fact cannot be overlooked that Paula Ritter was duly served,  
8 the Ritter Trust answered the cross-complaint, and litigated the case for over  
9 seven years. The other parties to this matter are certainly entitled to rely on this  
10 representation and these filings. For all of these reasons, Ritter’s motion lacks  
11 merit.

#### 12 **IV. CONCLUSION**

13 For the foregoing reasons, Plaintiff requests that the Court deny Ritter’s  
14 Motion to Set Aside the Judgment.

15 DATED: February 1, 2016

LAW OFFICES OF MICHAEL D. McLACHLAN  
LAW OFFICE OF DANIEL M. O’LEARY

16  
17  
18  
19 By: \_\_\_\_\_  
20 Michael D. McLachlan  
21 Attorneys for Plaintiff Richard Wood  
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28

1 **DECLARATION OF MICHAEL D. MCLACHLAN**

2

3 I, Michael D. McLachlan, declare:

4 1. I make this declaration of my own personal knowledge, except where  
5 stated on information and belief, and if called to testify in Court on these matters,  
6 I could do so competently.

7 2. I am co-counsel of record of record for Plaintiff Richard Wood and  
8 the Small Pumper Class, and am duly licensed to practice law in California.

9 3. Attached as **Exhibit 1** is a true and correct copy of the relevant  
10 pages of District 40's "Amendment to Complaint," filed November 2, 2005.

11 4. Attached as **Exhibit 2** is a true and correct copy of the November  
12 28, 2005 Case Management Conference Statement filed by attorneys Michael  
13 Fife and Bradley Herrema, then at the firm of Hatch & Parent, listing the Ritters  
14 as members of the Antelope Valley Ground Water Agreement Association  
15 ("AGWA").

16 5. My staff and I have undertaken to review the AGWA filings in this  
17 matter. The Ritter's were consistently listed among AGWA's members for  
18 approximately seven and one-half years (until March of 2013). The Ritters do  
19 not appear on the AGWA filings thereafter. We have not counted the total  
20 number of filings made by the Ritters through AGWA, but they are well in excess  
21 of 100 and likely more than 200 in total.

22 6. Attached as **Exhibit 3** is a true and correct copy of the public water  
23 suppliers' initial Cross-Complaint, naming a number of larger landowners as  
24 cross-defendants, including Edgar C. Ritter, Paula E. Ritter, and Paula E. Ritter,  
25 as trustee of the Ritter Family Trust.

26 7. On January 2, 2007, the Ritters filed their Answer, a true and  
27 correct copy of which is attached as **Exhibit 4**.

28

1           8.       Attached as **Exhibit 5** is a true and correct copy of the  
2 AGWA/Ritter Cross-Complaint, which remains pending to this date.

3           9.       Attached as **Exhibit 6** is a true and correct copy of the AGWA  
4 Notice of Intent for Phase 2.

5           10.      Attached as **Exhibit 7** is a true and correct copy of “AGWA’s Notice  
6 of Intent to Participate in Phase Four Trial,” filed December 14, 2012 [Dkt. No.  
7 5413].) Phase 4 was the portion of these trial proceedings designated for parties  
8 to establish current groundwater pumping.

9           11.      Attached as **Exhibit 8** and **Exhibit 9** are true and correct copies of  
10 The Phase 4 Case Management Orders requiring parties to provide detailed  
11 discovery disclosures under penalty of perjury by January 31, 2013.

12           12.      The Santa Clara Superior Court docket for this matter shows that the  
13 Brownstein Hyatt firm filed approximately 25 separate declarations on behalf of  
14 its various AGWA group clients on January 30 and 31, 2013, but nothing was  
15 filed for the Ritters.

16           13.      I have reviewed the Brownstein Hyatt firm filings in 2012 and early  
17 2013. That firm continued to represent the Ritters on filings with this Court  
18 through the end of February of 2013, but after that time, they disappeared from  
19 the pleadings and do not re-surface. The first pleading in which the Ritters  
20 appear to have been dropped was the “Notice of Ex Parte Application for  
21 Approval of Stipulation [of Facts for Phase IV trial], filed March 15, 2013 [Dkt.  
22 No. 6189].) Attached as **Exhibit 10** is a true and correct copy of that filing.

23           14.      I can find no record on the Court docket of the filing of a  
24 substitution of counsel, a motion to withdraw, any other written notice to the  
25 Court, nor any mention of the Ritters at the ensuing Phase 4 trial, which  
26 occurred two months later. The Ritters simply disappeared until September of  
27 2015.

28

1           15.     On March 27, 2015, the Court signed the Second Amended Case  
2 Management Order for what has become to be known as the Phase 6 trial, i.e.  
3 the prove-up of the “global” stipulated settlement, a true and correct copy of  
4 which is attached as **Exhibit 11**. That Order set forth, among others, the  
5 following deadlines: (1) non-stipulating parties to file and serve a Notice of  
6 Claim by April 7, 2015 (*id.* at ¶ 3); (2) all parties to disclose witnesses and  
7 exhibits by April 27, 2015 (¶ 4); and (3) completion of discovery by July 17, 2015.  
8 I find not record that the Ritters complied with any of these deadlines, and  
9 indeed, to this date, they have not filed a notice of claim or any discovery-related  
10 documents in response to any of the Court’s various Orders over the years.

11           16.     Attached as **Exhibit 12** is a true and correct copy of the September  
12 3, 2015, Case Management Conference Statement filed by attorney Robert  
13 Brumfield.

14           19.     Attached as **Exhibit 13** is a true and correct copy of the Notice of  
15 Acknowledgement of Receipt signed by Paula Ritter.

16           20.     Attached as **Exhibit 14** is a true and correct copy of the obituary for  
17 Edgar Ritter.

18           21.     Attached as **Exhibit 15** is a true and correct copy of the obituary for  
19 Paula Ritter.

20           22.     The stipulating parties negotiated extensively from late 2013  
21 through early 2015 to arrive at the “global” stipulated settlement. A major part  
22 of those negotiations were allocation of water rights. Over the past two years,  
23 until recently, I have not heard of any mention by counsel for AGWA of the  
24 Ritter Trust or their claim.

25           23.     The September 21, 2015 hearing was not reported, and so there is  
26 not transcript of that hearing. A true and correct copy of the Minute Order for  
27 that hearing is attached as **Exhibit 16**.

28

