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11 Los Angeles, California 90064
12 Telephone: (310) 481-2020
13 Facsimile: (310) 481-0049
14 *dan@danolearylaw.com*

15 Attorneys for Plaintiff Richard Wood and the Class

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Coordination Proceeding
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER
CASES

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

Plaintiff,

v.

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

Defendants.

Judicial Council Coordination
Proceeding No. 4408
(Honorable Jack Komar)

Lead Case No. BC 325201

Case No.: BC 391869

**SUPPLEMENTAL
DECLARATION OF DANIEL M.
O'LEARY IN SUPPORT OF
MOTION FOR AWARD OF
ATTORNEYS' FEES, COSTS AND
INCENTIVE AWARD**

Location: Dept. 1
Santa Clara Superior Court
191 N. First Street
San Jose, California

Date: April 1, 2016
Time: 1:30 p.m.

1 I declare under penalty of perjury under the laws of the State of California
2 that the foregoing is true and correct. Executed this 29th day of March 2016, at
3 Los Angeles, California.

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7 Daniel O'Leary
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Exhibit 21

Daily Journal

www.dailyjournal.com

VOL. 125 NO. 077

FRIDAY, APRIL 20, 2012

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Justices ok partial gag order on attorneys

State Supreme Court rules that orders be evaluated under a prejudice test.

By John Roemer
Daily Journal Staff Writer

California trial judges can order criminal defense lawyers not to talk to their clients about hostile witness testimony under a Thursday ruling from the state Supreme Court.

A prejudice test must be used to evaluate such gag orders, the high court voted, 7-0, in rejecting defense claims that the orders are structural flaws that automatically invalidate a trial's outcome. *People v. Hernandez*, 2012 DJDAR 4970.

Reversing the 6th District Court of Appeal, which found the gag order in an attempted murder trial was a structural error, the justices sent the case back to the lower court for an analysis of whether the order prejudiced the defendant's fair trial rights.

The decision was the first on the issue in California. The U.S. Supreme Court has held that

blanket court orders restricting attorney-client discussions violate a defendant's Sixth Amendment right to counsel and require automatic reversal. *Geders v. U.S.*, 425 U.S. 80 (1976).

Until Thursday, neither the state nor the federal high court had ruled on what should happen when the restriction is limited to a particular topic or piece of evidence.

The decision in a Norteno criminal street gang prosecution in Santa Cruz County following a shooting tried to balance the judge's fears about possible reprisals against a witness with defendant Jacob Townley Hernandez' right of full consultation with his lawyer.

Santa Cruz County Superior Court Judge John J. Almquist — at prosecutors' request — sealed a sworn statement by a co-defendant whose jailhouse safety was endangered after he took a plea deal in exchange for his testimony against Hernandez.

The jury found Hernandez guilty of attempted murder. He appealed, contending the judge's order fatally marred his trial under the Sixth Amendment's right to counsel.

But the high court disagreed. Wrote Associate Justice Kathryn M. Werdegar for the court, a violation of the right to counsel

See Page 4 — HIGH COURT

EARTH DAY SPECIAL

Fight against fracking is bubbling up

Technology is facing more scrutiny in state.

By Fiona Smith
Daily Journal Staff Writer

A controversial technology that has brought a massive boom to the natural gas industry in many parts of the country has been quietly used in California for decades.

Called hydraulic fracturing or fracking, the practice involves injecting a soup of water, sand and chemicals miles down into oil and gas wells to fracture rocks and tap previously unavailable fuel.

The practice has stoked public fear over the large amount of water it uses and the potential for contamination of drinking water. Fights over regulating fracking have raged in other states and now the issue is bubbling up in California as lawmakers and environmentalists push for oversight.

"There might be cases of pollution associated with fracking but we don't know because we don't know where fracking has occurred," said Bill Allayaud, California director of government affairs for the nonprofit Environmental Working Group. "We can't just trust the industry to say it's a clean, safe process ... We need to make sure our watchdog agency is on top of this and they have not been."

Several states have already put some type of fracking regulations



S. Todd Rogers / Daily Journal

Earl Hagstrom is a former oil industry geologist turned environmental attorney, now at Sedgwick LLP.

into place, including requiring disclosure of where it is happening and what chemicals are being used. On Wednesday, the federal Environmental Protection Agency finalized rules to curb air pollution related to

fracking and it is currently doing a study on the public health effects of the practice.

In California — the country's fourth largest oil producing state — there are more than 52,000 oil

wells scattered in 29 counties. Fracking has been done in oil wells in the state for decades but as drilling technology has improved in recent years, there is a potential for increased fracking in California.

While the state Division of Oil, Gas and Geothermal Resources, DOGGR, regulates the oil and gas drilling, it has not specifically monitored fracking and has no figures where and when it is happening.

That would change under AB 591, a bill proposed by Assemblyman Bill Wieckowski (D-Fremont), which would require the industry go forward to disclose where and when it is fracking, the amount and source of the water it used to fracture and the chemicals in the fracking fluid.

In the meantime, DOGGR officials have scheduled a listening tour this spring to get public input on potential fracking rules and in March sent a letter to energy companies requesting they voluntarily disclose where they are fracking.

"The Division is unaware of an environmental damage related to the use of hydraulic fracturing, California," wrote DOGGR spokesman Don Drysdale in an email. "Existing regulations related to water integrity have protected the health and well being of Californians as their environment. That being said, we understand that people are interested and have concerns, primarily because there isn't a mechanism in place to track the use of hydraulic fracturing."

The nonprofit Environment Working Group is sponsoring AB 591 and the oil industry is currently supporting the bill, which was amended this month to include more trade secret protection for the disclosure of chemicals in fracking fluid.

"Initially there was a sense we

See Page 6 — FIG

Case may not spell end of break suits

Plaintiffs' lawyers see options for class actions after Brinker.

By Brian Sumers
Daily Journal Staff Writer

When the state Supreme Court released its long-awaited opinion last week in a pivotal meal-and-rest break case, representatives for employers rejoiced, saying it offers a road map for how to avoid class actions.

All they must do — they say — is institute a clear policy permitting most workers to take a meal break during the first five hours of their shift and allowing two rest breaks during a six-to-ten-hour shift.

Since 2001, when California implemented a law allowing workers to recover premium pay if their bosses asked them to remain on the



In conversation a trial's highs — and lows

On March 16, the Daily Journal held a roundtable discussion with lawyers on a list of top verdicts in California for 2011. They talked about how they won the cases and offered trial tips. The panelists were Brad D. Brian of Munger, Tolles & Cason, Jennifer Keller of Keller Rackauska Jeffrey V. Dunn of Best, Best & Krieger and Todd Malynn and James Gale of Feldman, Gale. The panel was moderated by retired Superior Court Judge Terry Friedman. Los Angeles, now of JAMS. Here's an edited version of the conversation:

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The practice has stoked public fear over the large amount of water it uses and the potential for contamination of drinking water. Fights over regulating fracking have raged in other states and now the issue is bubbling up in California as lawmakers and environmentalists push for oversight.

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Since 2001, when California implemented a law allowing workers to recover premium pay if their bosses asked them to remain on the job, missed meal and rest breaks have been the focus of much litigation. Management lawyers were hoping last Thursday's decision would put an end to those meal-and-rest break class actions. *Brinker v. Superior Court*, S166350.

But that may not happen. California plaintiffs' attorneys have had a week to digest the decision, and many have

See Page 10 — PLAINTIFFS'



Matthew Righetti, of Righetti Glugoski, P.C., sees a future for meal and rest cases

In conversation: a trial's highs — and lows

On March 16, the Daily Journal held a roundtable discussion with lawyers on our list of top verdicts in California for 2011. They talked about how they won their cases and offered trial tips. The panelists were Brad D. Brian of Munger, Tolles & Olson, Jennifer Keller of Keller Rackauckas, Jeffrey V. Dunn of Best, Best & Krieger and Todd Malynn and James Gale of Feldman Gale. The panel was moderated by retired Superior Court Judge Terry Friedman of Los Angeles, now of JAMS. Here's an edited version of the conversation.

JUDGE FREIDMAN: Describe the case that was the top verdict that you were involved with. What was the outcome and pick one highlight.

GALE: We were involved in the case of *Pacesetter vs. Nervicon*. The case as set forth in the public record [is] a theft of trade secrets case. A former employee took materials from the company and left and went to China and built a competing organization. And when he did so, he wound

See Page 8 — IN CONVERSATION

MORE NEWS

Litigation Climbing to the Top



Judge John Kronstadt climbs mountains for fun while he seeks out new challenges in his career. **Judicial Profile**

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Litigation LEEDigation tsunami?



Predictions of a wave of litigation arising from the design and construction of green buildings are yet to come true. By Robert C. Barnes of Fullbright & Jaworski LLP

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Law Firm Business A Sizeable Commitment

Founders of Berkes Crane Robinson & Seal say they make sure to follow some key rules that bigger firms neglect when they expand.

Page 7

Government Not So Fast, EPA

Three recent cases might signal an end to the judicial deference traditionally afforded to the EPA. By Stephen T. Holzer of Lewitt, Hackman, Shapiro, Marshall & Harlan LLP

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Roundtable Discussion: THE TOP VERDICTS OF 2011

PLAINTIFFS' (BY AMOUNT)

Pacesetter Inc. v. Nervicon Col Ltd.

\$2.3 billion
Misappropriation of Trade Secrets
Superior Court
Los Angeles County
Judge Ruth Ann Kwan

Plaintiff's attorneys: James A. Gale and Todd M. Malynn of Feldman Gale P.A. in Miami and Los Angeles

Defendant's attorney: Squire Sanders LLP (withdrew from the case and no replacement was named)

PLAINTIFFS' (BY IMPACT)

In re: Antelope Valley Groundwater Adjudication

Groundwater Rights
Superior Court
Los Angeles County
Judge Jack C. Komar

Plaintiff's attorneys: Best Best & Krieger LLP, Jeffrey V. Dunn, Stefanie Hedlund; Los Angeles county counsel's office, Warren Wellen; Lagerlof, Senecal, Gosney & Kruse, Thomas S. Bunn III; Law Offices of Lemieux & O'Neill;

Wayne K. Lemieux, Keith Lemieux; Charlot Weeks LLP, Bradley Weeks; Department of Justice, Lee Leininger, James DuBois; California Water Service Co., John S. Tootle; Richards, Watson & Gershon, James Markman, Steve Orr

Defendant's attorneys: Clifford & Brown; LeBeau-Thelen LLP; Kuhs & Parker; Brownstein Hyatt Farberg Schreck LLP; Morrison & Foerster LLP; Law Offices of Michael D. McLachlan APC; Murphy & Evertz

DEFENSE

Mattel Inc. v. MGA Entertainment Inc.

Unfair Competition
U.S. District Court
Central District
Judge David Carter

Defendant's attorneys: Keller Rackauckas LLP, Jennifer Keller; Orrick Herrington & Sutcliffe LLP, Annette Hurst, Thomas S. McConville

Plaintiff's attorneys: Quinn Emanuel Urquhart & Sullivan LLP



Retired Superior Court Judge Terry Friedman, left, and Jeffrey Dunn and Jennifer Keller

In conversation: a trial's highs and

Continued from page 1

up taking products and information that was used to build the competing products.

I think the highlight is when a jury comes back and says we award the plaintiff \$2.3 billion. That was also a nice highlight.

JUDGE FREIDMAN: How long was the trial?

GALE: The trial was a week.

BRIAN: That's a lot of billions for a week.

JUDGE FREIDMAN: Let's move on to the top defense verdict.

KELLER: This was a re-trial of the so-called Barbie vs. Bratts case which the first time around Mattel had won and had gotten a verdict for \$100 million and the rights to the entire Bratts line of dolls. Mattel had used MGA alleging that the Bratts dolls were actually created by a Mattel employee on Mattel time using Mattel ideas and products.

By the time of our trial, they had backed off and mostly claimed that he had had the idea while he was a Mattel employee and had done some preliminary work creating the Bratts doll. So Mattel alleged copyright infringement, trade secrets and everything but the kitchen sink.

By the time of the re-trial MGA Entertainment, the makers of Bratts, had found out that Mattel had actually been stealing our company's trade secrets for many years through a department within Mattel called the market intelligence unit. [Employees would] pose as toy retailers and go to these big international toy fairs, get into areas that otherwise they wouldn't have had access to, sometimes having to sign non-disclosure agreements even, and then spy on their competitors' upcoming product lines, advertising plans, products and even the secret pricing. So we had to defend Mattel's allegations that Bratts belonged to Mattel, which they had won the first time around, and then we had our affirmative case against Mattel that

longer engage in the actions Mattel wanted him to engage in because he was afraid that it was exposing him to personal criminal liability and he was fearful that the stress that it was putting him under to engage in this kind of spying was having a bad effect on his health. So I would say that was a very nice little document to have. And the jurors audibly gasped when the document was presented.

Brian: We represented Jeffrey Gundlach who was the leading asset manager [at] Trust Company of the West, three other individuals and a company they formed called Doubleline. They were fired by Trust Company of the West in December of 2009 for a whole lot of reasons, the most important of which allegedly was the downloading of I guess millions of documents. And they were sued for trade secrets misappropriation, breach of fiduciary duty and the like. We counter sued for breach of contract for money we were owed, Gundlach was owed in his contracts and statutory wage claims. We had one major hurdle in the case and that was that in fact there was downloading of millions of pages of documents. We had to embrace it. And so we admitted it and our position was two-fold: One, it was never used so therefore it wasn't really material. And more importantly, our theory of our defense was that they had made

it supported our theme but because of the five senior people who were at the meeting for Trust Company of the Mysteriously nobody seemed to remember it. I think that resonated with the jury.

TCW was seeking \$300 million or \$400 million in actual damages plus punitives. The jury gave them nothing. They did find misappropriation, which we thought they probably would since our clients had downloaded millions of pages of documents. They found no damages, no punitive damages and then awarded us \$66.7 million on our counter-claim.

Dunn: This is a comprehensive adjudication of ground water rights up in the Antelope Valley area. It encompasses about 1,100 square miles, includes the cities of Palmdale, Lancaster and also Edwards Air Force Base. This case is unique in the sense that in California the responsibility falls upon the Courts to resolve water rights disputes including ground water rights disputes. We've traced this dispute going back to the 1940's, and in this particular area, which is very dry, it's experienced not only a lot of urban growth but a lot of agricultural growth as well. And then we have the Edwards Air Force installation, which is one of the nation's key defense in aerospace military sites.

In some ways it's the classic water rights dispute in California, which is a big part of California's history.

The highlight in the case was finally after so many decades and 12 years of litigation getting the Court to determine what that safe yield amount is and it affects the public in a great way because this now will provide the guidance to both private and public interests both now and in the future in how to do this.

JUDGE FREIDMAN: Most cases — probably all cases — have ups and downs. Even though you all ended on an up with a victory, I'm sure there must have been some

with counsel in the cases because that was the time where we sort of needed to do that. So we recorded that testimony, and we have it preserved for the record.

Brian: One for me was the plaintiff's opening statement. There was evidence that our folks had downloaded millions of pages of documents. So when you sit there and listen to a two-hour opening about how your clients allegedly stole and allegedly stole, that that's a down moment. But the lesson is that you have to stay with your theme. You cannot feel like you've got to buy into their case and play on their playing field. If you do that and you have to feel like you've got to respond to everything, you're going to lose. But it's hard to sit there and listen to some of that bad evidence. The second thing was, we had some deposition testimony on our side which — let's just say that the other side thought played well for them. And that was problematic for us because they wanted to play hours and hours of deposition testimony. I don't think a party ought to be able to play long pieces of depositions and then call the same person live. I think it's cumulative. And so we made a motion on that and I think has a positive effect. I think the judge cut back not as much as I would have hoped, but he cut back.

We made a motion for time limits on trial. We asked for 40 hours each side where each side you basically have two clocks, opening statement, direct examination and cross, not the plaintiff's case and the defense,

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— JAMES GALE

a decision to fire him six, seven, eight months earlier because of really an in-house corporate divorce kind of situation where Gundlach

Judge (from left):
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Defendant's attorney:
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Plaintiff's attorneys:

Quinn Emanuel Urquhart & Sullivan LLP

Trust Co. of the West v. Jeffrey Gundlach

Breach of Fiduciary Duty, Trade Secret Theft, Tortious Interference

Superior Court

Los Angeles County

Judge Carl J. West

Defendant's attorneys:

Munger, Tolles & Olson LLP, Brad D. Brian, Mark B. Helm, Gregory J. Weingart, Kevin S. Allred, Allison B. Stein, Jacob S. Kreilkamp, Laura D. Smolowe

Plaintiff's attorney:

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One of the high-lights for me was being able to pop up on the board a document from the head of the market intelligence department that Mattel had denied it was even a department or even existed or even had employees. And being able to pop up a letter that he had written to the general counsel of Mattel that we had only found out about in 2010 almost by accident. And the letter detailed that his manager of market intelligence, he could no

longer engage in the actions Mattel wanted him to engage in because he was afraid that it was exposing him to personal criminal liability and he was fearful that the stress that it was putting him under to engage in this kind of spying was having a bad effect on his health. So I would say that was a very nice little document to have. And the jurors audibly gasped when the document was presented.

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a decision to fire him six, seven, eight months earlier because of really an in-house corporate divorce kind of situation where Gundlach wanted to go in one direction and the management of TCW wanted to go in the other direction.

There were two highlights that go directly to that. Two months before trial, we decided to take the deposition in Paris of the Number 2 person of the French bank that owned Doubleline. The deposition was terrific because it unveiled a lot of documents, communications, between Trust Company of the West and the French parent about discussions about firing our client as early as June 2009, six months before he was in fact fired. The other highlight was we identified a document — I love handwritten notes. E-mails are great, but handwritten notes are better — handwritten notes of a key, high-level meeting at Trust Company of the West in August 2009 in which there was a discussion of what appeared to be from the face of it drafting of a press release. There was language that said fortunately we had to terminate Gundlach for cause. This became a critical document not just because

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In some ways it's the classic water rights dispute in California, which is a big part of California's history.

The highlight in the case was finally after so many decades and 12 years of litigation getting the Court to determine what that safe yield amount is and it affects the public in a great way because this now will provide the guidance to both private and public interests both now and in the future in how to do this.

JUDGE FREIDMAN: Most cases — probably all cases — have ups and downs. Even though you all ended on an up with a victory, I'm sure there must have been some down event during the course of the trial.

DUNN: Our down event was a rather tragic one. The expert that we had retained back in 1999, we found out in early December — and trial started in January 2011. We found out in December that he was diagnosed with [amyotrophic lateral sclerosis]. And it was progressing rather rapidly. And he was not physically going to be able to travel from northern California and go through a four-month trial here in Los Angeles. We worked out with the Court allowing trial testimony to be taped in Walnut Creek.

In that type of circumstance you're going to need some cooperation with counsel. And one of the things that I would share is that particularly in these cases that are long and complex, you're going to find you need to get along with opposing counsel and other counsel in the case. If you don't, it's going to be even longer and more difficult and you just don't want that sort of happening the longer these cases go. And so it was fortunate that we had a good relationship

with counsel in the cases because that was the time where we sort of needed to do that. So we recorded that testimony, and we have it preserved for the record.

Brian: One for me was the plaintiff's opening statement. There was evidence that our folks had downloaded millions of pages of documents. So when you sit there and listen to a two-hour opening, about how your clients allegedly stole and allegedly stole, that that's a down moment. But the lesson is that you have to stay with your theme. You cannot feel like you've got to buy into their case and play on their playing field. If you do that and you have to feel like you've got to respond to everything, you're going to lose. But it's hard to sit there and listen to some of that bad evidence. The second thing was, we had some deposition testimony on our side which — let's just say that the other side thought played well for them. And that was problematic for us because they wanted to play hours and hours of deposition testimony. I don't think a party ought to be able to play long pieces of depositions and then call the same person live. I think it's cumulative. And so we made a motion on that and I think has a positive effect. I think the judge cut back not as much as I would have hoped, but he cut back.

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Robert Levins / Daily Journal

Retired Superior Court Judge Terry Friedman, left, and Jeffrey Dunn and Jennifer Keller

In conversation: a trial's highs and lows

Continued from page 1

up taking products and information that was used to build the competing products.

I think the highlight is when a jury comes back and says we award the plaintiff \$2.3 billion. That was also a nice highlight.

JUDGE FREIDMAN: How long was the trial?

GALE: The trial was a week.

BRIAN: That's a lot of billions for a week.

JUDGE FREIDMAN: Let's move on to the top defense verdict.

KELLER: This was a re-trial of the so-called Barbie vs. Bratts case which the first time around Mattel had won and had gotten a verdict for \$100 million and the rights to the entire Bratts line of dolls. Mattel had used MGA alleging that the Bratts dolls were actually created by a Mattel employee on Mattel time using Mattel ideas and products.

By the time of our trial, they had backed off and mostly claimed that he had had the idea while he was a Mattel employee and had done some preliminary work creating the Bratts doll. So Mattel alleged copyright infringement, trade secrets and everything but the kitchen sink.

By the time of the re-trial MGA Entertainment, the makers of Bratts, had found out that Mattel had actually been stealing our company's trade secrets for many years through a department within Mattel called the market intelligence unit. [Employees would] pose as toy retailers and go to these big international toy fairs, get into areas that otherwise then wouldn't have had access to, sometimes having to sign non-disclosure agreements even, and then spy on their competitors' upcoming product lines, advertising plans, products and even the secret pricing. So we had to defend Mattel's allegations that Bratts belonged to Mattel, which they had won the first time around, and then we had our affirmative case against Mattel that

longer engage in the actions Mattel wanted him to engage in because he was afraid that it was exposing him to personal criminal liability and he was fearful that the stress that it was putting him under to engage in this kind of spying was having a bad effect on his health. So I would say that was a very nice little document to have. And the jurors audibly gasped when the document was presented.

Brian: We represented Jeffrey Gundlach who was the leading asset manager [at] Trust Company of the West, three other individuals and a company they formed called Doubleline. They were fired by Trust Company of the West in December of 2009 for a whole lot of reasons, the most important of which allegedly was the downloading of I guess millions of documents. And they were sued for trade secrets misappropriation, breach of fiduciary duty and the like. We counter sued for breach of contract for money we were owed, Gundlach was owed in his contracts and statutory wage claims. We had one major hurdle in the case and that was that in fact there was downloading of millions of pages of documents. We had to embrace it. And so we admitted it and our position was two-fold: One, it was never used so therefore it wasn't really material. And more importantly, our theory of our defense was that they had made

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but what you do as a lawyer. I think that it's what we ought to do in every case. I think it rewards good lawyering, it forces lawyers — and I think the Court — to focus on what really matters. In an era of budget cutbacks, I think it's essential and I think we ought to do it in every case.

KELLER: Well, let me start by saying I agree with Brad on the time limits issue and it's also helpful by protecting a client like MGA from a vastly economically more powerful opponent like Mattel who could have been in trial for two years and not minded spending the money. We also had time limits. Otherwise we'd probably still be in it.

I think my lowest moment was during the testimony of Carter Bryant, who was the former Mattel employee who had come to work for MGA and had originally designed the preliminary drawings for the Bratts dolls. He was cross examined for days on end by Mattel by a very effective cross examiner named Bill Price. Bill had — by the time he was done with Carter Bryant, he had been spun around to the point where he had ultimately agreed with almost anything Bill wanted him to say. And it really was disheartening to sit there and have to listen to this guy being kind of beaten up and capitulating. He was mentally and physically exhausted from seven years of litigation. He had been on top of the world because he was getting royalties from the Bratts. He was — he had made over \$3.2 million. His life had changed. He

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a decision to fire him six, seven, eight months earlier because of really an in-house corporate divorce kind of situation where Gundlach





Brad Brian, left, Jennifer Keller, Todd Malynn, and James Gale.



Jeffrey Dunn, left, and Brad Brian.

Continued from page 8

had become an icon. He had become the leading doll designer anywhere. Among the people who care about that kind of stuff and that industry, and he had become almost a household word. He had had a relationship with a partner that he loved and valued. He was — his life was good. Then Mattel sued him and they sued him before they sued MGA. He started to fall apart. He had lost over 60 pounds, he had become severely clinically depressed. The guy he had been in love with had taken the money and had invested it all right at the height of the real estate boom in all the wrong things, and he was unemployable because he had become radio active as a result of Mattel's lawsuit. So, again, Brad's story was one of taking lemons and making lemonade and that's what you've got to do as a trial lawyer sometimes. You have to say, "hey, he said all these things but why? What's the human story behind this." And by the time I think we were done, the jurors could see that, you know, poor Carter Bryant would have said anything just to be able to go home and leave all this behind.

The second low point we had a client who was very passionate, the CEO and owner of MGA, very passionate or emotional and had also been battered for seven years. And despite our best efforts to prepare him not to do so, he had some outbursts which were heavily covered in the press during his cross-examination. And again, that

was just something we had to deal with. There were some very unfortunate outbursts that the jurors did not care for at all. But by showing that he was an immigrant from Iran, he had come here at 17 with nothing. He had become a religious refugee because his family was Jewish and when the Ayatollah took over, they all had to flee. He had built this com-

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GALE: I have to absolutely agree with what Brad said, which is stay the course. This is your case. You wait. You've got your game plan. You stay the course. And no matter what happens, you just do what it is you planned on doing. Yes, you make modifications. Yes, you have to tap dance when the need arises, but you've got to stick to the general outline.

KELLER: Don't chase bright, shiny objects.

GALE: Or follow the rabbit trails.

JUDGE FREIDMAN: Let's follow-up on that observation which is a very good one, James. You all start off with a game plan. I'm sure in these complex cases you spend a lot of time preparing. How do you adjust that game plan. You want to stick with it but you still have to be flexible enough, if necessary, to modify it.

BRIAN: The first big case I tried and won was a criminal case about 20 years ago. And I learned a lesson and many lessons in that case, which I've tried to live with. One is being willing to re-think your approach, pre-trial. You've got to be careful in trial although you've got to be able to react. Most importantly on

the defense side, don't feel like you have to answer every single detailed allegation. That doesn't mean you ignore bad facts. It means you embrace them. We have a saying in our firm, "there's no such thing as a bad fact." They're either good facts or irrelevant facts meaning the bad facts you concede and you make them your own.

KELLER: I think rigidity during trial has probably lost more cases than anything else. It's great to have a game plan and you want to stick with your game plan, but trials are sort of living, organic things. You know, there's a gestalt to a trial. There's an atmosphere to a trial. It changes. Depending on the judge, the jurors, the way the opposing counsel behaves, how the witnesses behave and you have to be able to respond to that if you're really a trial lawyer and not just somebody who reads a script.

The feeling of my colleagues before the trial began was that we should distance ourselves from Carter Bryant and say, "hey, this guy lied to us too." Until I saw Carter Bryant testify and saw how he had changed over the years and how devastated he had become, I didn't really know whether we were going to go with that examination technique or whether we were going to go with that theme.

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DUNN: In a case like mine where you have so many years to prepare and it's expert intensive, you can pretty much put that case together in advance with your experts and it's all ready to go. But again what happened in our case and this particular expert was the key expert among a small army or a team of experts. And his testimony was so critical that it was going to go forward first but then because of his illness he wasn't allowed to do so. We had to sort of take our experts out of order. And when you have multiple experts as you know on your side of the case, some of the expert testimony is foundation to other experts. And so Jennifer is right, the rigidity can really kill you and so you have to be able to

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Robert Levin / Daily Journal

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or like your juror. There are very few professors who are on juries. There are very few physicians or lawyers who are on juries. You have to be able to relate to the common person.

JUDGE FREIDMAN: At least in the California state Courts, we're anticipating some substantial impact from the state budget crisis, particularly here in Los Angeles. What do each of you anticipate this will affect your ability to try cases or the way you try cases. Is this going to encourage more use of ADR?

BRIAN: I'm a big believer in mediation. I think it would be a sad, sad day if cutbacks and the like eliminate jury trials or reduce the use of jury trials. I think they're really important for resolving disputes.

KELLER: I see it as lengthening the process. The jury trials aren't going to go away. The right to a jury trial isn't going to go away, but what's going to happen is it's going to take longer and longer to get there.

MALYNN: You're also going to see a greater or more of a difference between how cases are tried and litigated in federal court as compared to state court. That gap or that difference is just going to widen as a result of the budget cuts.

JUDGE FREIDMAN: I want to conclude with giving each of you an opportunity to present maybe one tip, either that comes from your experience in your top verdict case or any other trial that you've engaged in, recognizing that there will be a good number of young lawyers who are interested to hear how the top lawyers have achieved their success.

GALE: Three things: Preparation, preparation and more preparation. And do it early and often. Start the minute your case is filed. Get your theory together and then just work the case.

MALYNN: I would say being likeable, working on being likeable to the jury. If they're on your side, they like you, they think you are being fair, they may even do more for you than what you asked.

KELLER: Remember that every trial is about human beings. Every story has to be a human story. And no matter how dry the subject matter is, it has to be about the people who are involved in the case. And don't forget that your jurors have the same hunger that all human beings have, to be part of something larger than themselves.

BRIAN: I'm going to say two things: One is to repeat what was said down at the other end of the table, which is preparation. And I say at the start of every case that you ought to prepare what I call litigation plan. And by that I mean you need to



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KELLER: Don't chase bright, shiny objects.

GALE: Or follow the rabbit trails.

JUDGE FREIDMAN: Let's follow-up on that observation which is a very good one, James. You all start off with a game plan. I'm sure in these complex cases you spend a lot of time preparing. How do you adjust that game plan. You want to stick with it but you still have to be flexible enough, if necessary, to modify it.

BRIAN: The first big case I tried and won was a criminal case about 20 years ago. And I learned a lesson and many lessons in that case, which I've tried to live with. One is be willing to re-think your approach, pre-trial. You've got to be careful in trial although you've got to be able to react. Most importantly on

the defense side, don't feel like you have to answer every single detailed allegation. That doesn't mean you ignore bad facts. It means you embrace them. We have a saying in our firm, "there's no such thing as a bad fact." They're either good facts or irrelevant facts meaning the bad facts you concede and you make them your own.

KELLER: I think rigidity during trial has probably lost more cases than anything else. It's great to have a game plan and you want to stick with your game plan, but trials are sort of living, organic things. You know, there's a gestalt to a trial. There's an atmosphere to a trial. It changes. Depending on the judge, the jurors, the way the opposing counsel behaves, how the witnesses behave and you have to be able to respond to that if you're really a trial lawyer and not just somebody who reads a script.

The feeling of my colleagues before the trial began was that we should distance ourselves from Carter Bryant and say, "hey, this guy lied to us too." Until I saw Carter Bryant testify and saw how he had changed over the years and how devastated he had become, I didn't really know whether we were going to go with that examination technique or whether we were going to go with that theme.

BRIAN: I think there's too much emphasis on the impact of the opening statement. All these studies always say people decide after opening. I don't believe that in big trials. I actually think big trials have momentum. There are moments that happen in trial that change the course of that trial because a witness got the appeal of the jury or a witness broke down and showed that he or she was not credible and you have to be able to seize on that moment and modify your strategy and shift the — you can just feel the tenor of the room.

DUNN: In a case like mine where you have so many years to prepare and it's expert intensive, you can pretty much put that case together in advance with your experts and it's all ready to go. But again what happened in our case and this particular expert was the key expert among a small army or a team of experts. And his testimony was so critical that it was going to go forward first but then because of his illness he wasn't allowed to do so. We had to sort of take our experts out of order. And when you have multiple experts as you know on your side of the case, some of the expert testimony is foundation to other experts. And so Jennifer is right, the rigidity can really kill you and so you have to be able to sort of adapt as we did and take the presentation of evidence in different pieces sometimes out of order.

JUDGE FREIDMAN: Jeffrey, you made a comment earlier about the importance of working with opposing counsel. What if you can't? What do you do?

DUNN: Well, you know, one of my least favorite things to do in any case is to go to a judge that's handling the case with some type of dispute, particularly discovery disputes. I like to think that with enough effort and good faith, you can resolve most disputes. However, in the larger cases, particularly we had large numbers of counsel like we had in our case, it's not always going to be the case you can get everybody to agree.

BRIAN: I think the jury expects the lawyers to act professionally and cordially regardless of whatever happened pre-trial, whatever is happening during the recesses. You cannot let your bickering play out in front of a jury. I think there's far too much contentiousness in litigation. I have filed one sanctions motion in my entire 35-year career. I actually talked to opposing counsel at the outset of

the lawsuit and said my practice is not to file sanctions motions. I would appreciate it if you'd do the same thing. Let's behave professionally. I think most people appreciate that.

KELLER: Playing nice is great and it's what we should all do, but every once in a while you do have an opponent who simply won't. All you can do in that situation is you have to be — no matter what, you have to remain the nice people. In a long trial the jury will figure it out. And the trial judge certainly will figure it out.

BRIAN: Remember jurors watch you in the courtroom. Lawyers sometimes make a mistake where the Court will call a recess and the jurors are filing out and then someone will walk up and say something mean to opposing counsel or bark at a paralegal. Those are huge mistakes. Jurors are watching you every moment to see what kind of person you really are.

KELLER: I always tell my clients the trial begins in the parking lot. If you cut somebody off for a parking spot or you give somebody the finger or you are nasty to the cashier, you may very well pay the price for that.

GALE: If they're going to approach things in a pugnacious manner all the time, there's only so much you can do in trying to maintain your cool or at least I find there's only so much I could do to maintain my cool at which point you just have to go to the Court and say, you know, Judge, enough's enough. We're aware of this document. We know it exists. We haven't gotten it. We want it. We need it. We demand it. And it's been hidden.

'We have a saying in our firm, "there's no such thing as a bad fact." They're either good facts or irrelevant facts meaning the bad facts you concede and you make them your own.'

— BRAD BRIAN

JUDGE FREIDMAN: The comment was made about how jurors are always watching you. It seems pretty evident from some of the comments we've had today that you all watch the jurors. What are you looking for? How do you do that?

KELLER: You know, that's a tough question to answer because I'm not sure it can be put in words. But it's like any relationship that you're building, you try to keep building the relationship by saying that you're credible, by showing you're not hiding the ball, by not showing half of an e-mail and grilling somebody about it when the bottom half is going to completely undermine your point.

BRIAN: I like to say on cross-examination I like to have a third eyeball because I think you've got to watch the witness, the judge and jury all at the same time. I think you can sense a moment when you've got to be watching the jury, you can see when a jury is expecting something to happen and really you can see how this juror is going to respond to the testimony you think you're going to get.

JUDGE FREIDMAN: Is that something that's come with experience or is this a quality that some of us have and some don't, to be able to read a person's non-verbal cues?

BRIAN: I think it comes from experience trying cases and life's experiences.

GALE: I think that you have to have grown up almost being able to relate to the average person who is going to be most likely your juror

or like your juror. There are very few professors who are on juries. There are very few physicians or lawyers who are on juries. You have to be able to relate to the common person.

JUDGE FREIDMAN: At least in the California state Courts, we're anticipating some substantial impact from the state budget crisis, particularly here in Los Angeles. What do each of you anticipate this will affect your ability to try cases or the way you try cases. Is this going to encourage more use of ADR?

BRIAN: I'm a big believer in mediation. I think it would be a sad, sad day if cutbacks and the like eliminate jury trials or reduce the use of jury trials. I think they're really important for resolving disputes.

KELLER: I see it as lengthening the process. The jury trials aren't going to go away. The right to a jury trial isn't going to go away, but what's going to happen is it's going to take longer and longer to get there.

MALYNN: You're also going to see a greater or more of a difference between how cases are tried and litigated in federal court as compared to state court. That gap or that difference is just going to widen as a result of the budget cuts.

JUDGE FREIDMAN: I want to conclude with giving each of you an opportunity to present maybe one tip, either that comes from your experience in your top verdict case or any other trial that you've engaged in, recognizing that there will be a good number of young lawyers who are interested to hear how the top lawyers have achieved their success.

GALE: Three things: Preparation, preparation and more preparation. And do it early and often. Start the minute your case is filed. Get your theory together and then just work the case.

MALYNN: I would say being likeable, working on being likeable to the jury. If they're on your side, they like you, they think you are being fair, they may even do more for you than what you asked.

KELLER: Remember that every trial is about human beings. Every story has to be a human story. And no matter how dry the subject matter is, it has to be about the people who are involved in the case. And don't forget that your jurors have the same hunger that all human beings have, to be part of something larger than themselves.

BRIAN: I'm going to say two things: One is to repeat what was said down at the other end of the table, which is preparation. And I say at the start of every case that you ought to prepare what I call litigation plan. And by that I mean you need to figure out right from the beginning what your themes are. And you really ought to think about really how you're going to close the case a year down the road.

But the message I would give to young lawyers is go out and try cases. There are cases to be tried out there, a lot of people who would love to have representation by good, smart, young aggressive, ambitious people. And sometimes you won't get paid for it. Sometimes it's doing pro bono work, sometimes it's doing some sort of fixed fee, minimal pay. Go out and try cases.

DUNN: I could not agree more with the comments, you know, preparation. There's a story and there is no substitute for experience. If you want to be good at trying cases, you have to try cases. It's not something you can really read in a book or watch on TV. You've got to try cases.

An unedited version of this discussion is available at www.dailyjournal.com.



Robert Lewis / Daily Journal

Exhibit 22

ramble
le contest

NEWS ■ A8

Friday

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pages, 7 sections

75¢

100th year, No. 269



local high school
Golfer of Year

SPORTS ■ C1



From Adele
to 'Star Wars'

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TODAY'S OUTLOOK



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in the low 20s.

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LOTTO: B1

YOU NEED



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Merry Christmas, water drinkers

Judge signs agreement after 16-year court battle

By ALISHA SEMCHUCK
Valley Press Staff Writer

PALMDALE — After 16 years, a court battle involving thousands of litigants — city and county governments, farmers, property owners, water agencies and others — has ended with a Superior Court judge signing the final judgment settling who has the right to pump water from Antelope Valley wells.

Santa Clara Superior Court Judge Jack Komar on Wednesday approved the agreement that is intended to save the Valley's groundwater basin from depletion. The agreement goes into effect Jan. 1.

"Getting this judgment signed before the end of the year is a wonderful Christmas gift for the Antelope Valley because it enables us to begin moving toward sustainability starting Jan. 1," said attorney Tom Bunn, with the Pasadena-based law firm of Lagerlof, Senecal, Gosney & Kruse, who represented Palmdale Water District in court. "It took 16 years for the parties to agree on



See WATER on A5



SIGNING DEAL
Santa Clara Superior Court Judge Jack Komar signs the final judgment in the Antelope Valley Groundwater Adjudication cases. The agreement goes into effect Jan. 1.
Contributed

Bethlehem

WATER

From A4

the judgment, and it was a minor miracle when it finally happened. A lot of shared pain went into this judgment, and it took intense dedication and commitment by all the settling parties."

The agreement will be administered by a five-member board called the "watermaster," which will monitor the Valley's underground water basin to make sure it's not being harmed. According to trial testimony, since the 1940s more water has been pumped out of wells than is naturally replenished from winter storms and other sources.

Of the five watermaster board members, one will represent Antelope Valley-East Kern Water Agency, which provides California Aqueduct water to much of the Antelope Valley, and another will represent Los Angeles County Waterworks District 40, the Valley's biggest water retailer that supplies more than 200,000 homes and businesses. Another seat will be filled by another public water utility and two more by landowners.

The first watermaster meeting is slated for Jan. 21 at Lancaster City Hall but the time has not been confirmed.

"We only know two of the five members for sure," said Frank Donato, an AVEK director. "I don't know who the other three people are. I don't know who each prospective group will appoint."

"It is definitely a Christmas gift to all of us — all the residents of the Antelope Valley and especially to the builders. It means now the builders can expect to get water, and the prospective water agencies will be able to calculate the amount of water available for future development."

"Now," Donato said, "AVEK will be building new water banks that will supply future development with imported water."

Any new development must pay to guarantee a source for the water it will use, said John Ukkestad, a consultant and spokesman for Antelope Valley United Mutual Group, an organization that comprises 16 mutual water companies.

"After the court hearing yesterday, life got a lot better," Ukkestad said. "We've got this adjudication taken care of."

However, Ukkestad lamented the money in attorneys' fees that litigants poured into the lawsuit throughout the 16 years.

"Millions and millions of dollars have gone out of the Valley," he said.

Groundwater Adjudication in court records, the case began Oct. 29, 1999, when Diamond Farming Co. of Bakersfield filed suit against the city of Lancaster, the Palmdale agency, Antelope Valley Water Co., Palm Ranch Irrigation District, Quartz Hill Water District, Rosamond Community Services District and Mojave Public Utility District, claiming pumping by those agencies infringed on Diamond's rights to well water.

Since then, more and more plaintiffs and defendants, and cross-plaintiffs and cross-defendants, were added onto the case — from city government agencies and county agencies to public water suppliers, mutual water companies, private landowners and other farmers.

It took some friendly persuasion on the part of the judge to convince all those parties to agree after years of delay resulting from mistrust.

Still a few litigants expressed discontent to the judge, based on court records.

Because of that, Ukkestad said, "We expect this (final decision) to be appealed, but we believe the judgment and physical solution will hold up under appeal."

Key elements of the settlement's "physical solution" to stabilize groundwater levels include:

■ A management structure organized through a watermaster and watermaster engineer.

■ A financial plan to fund the management structure and implement the physical solution.

■ Flexible management tools to enable implementation of the judgment and management of the groundwater basin.

■ Continuing court jurisdiction for enforcement and modification of provisions of the judgment.

The groundwater basin's "native safe yield," as determined by the court, is 82,300 acre-feet annually of water pumped from wells. An acre-foot equals 325,851 gallons, approximately the amount of water — pre-drought — used by a typical Antelope Valley household in a single-family home.

The native safe yield, coupled with a supplemental safe yield of 27,700 acre-feet per year from sources such as irrigation water that percolates underground, equals a total safe yield of 110,000 acre-feet annually, based on court findings.

To share your opinion on this article or any other article, write a letter to the editor and email it to editor@avpress.com or mail it to Letters to Editor, PO Box 4050, Palmdale CA 93590-4050.

LIVING NATIVITY

A Living Nativity scene with camels and goats on display for Christmas Eve at Desert Vineyard Christian Fellowship in Lancaster. The nativity lasted most of the afternoon and stretched into the early evening hours.

RON SIDDLE
Valley Press

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Exhibit 23



- Home
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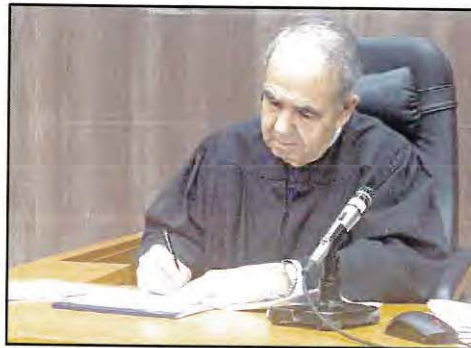
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The Valley Press

Groundwater deal AV Story of the Year

Published: 12/31/15 - Thursday - FRONT PAGE (A1)

By: Charles F. Bostwick



It certainly wasn't the most attention-grabbing occurrence in 2015 in the Antelope Valley, but over future years it will probably prove locally to be the most significant.

After 16 years, a court battle involving thousands of litigants - city and county governments, farmers, property owners, water agencies and others - has ended

with a Superior Court judge signing the final judgment settling who has the right to pump water from Antelope Valley wells.

Called the Antelope Valley Groundwater Adjudication settlement, it was the Antelope Valley Press' selection for the Antelope Valley Story of the Year. Other news stories of significance in 2015 included Northrop Grumman Corp. winning an Air Force contract to build a new bomber and settlement of a California Voting Rights Act lawsuit challenging how Palmdale conducts its election.

The Antelope Valley Newsmaker of the Year selection will appear in Friday's paper on New Year's Day.

Here are the Stories of the Year starting from the top.

1. Groundwater settlement

Signed Dec. 23 by Santa Clara Superior Court Judge Jack Komar, the agreement that is intended to save the Valley's groundwater basin from depletion takes effect Friday. The agreement undoubtedly in future years will generate many more news stories.

The legal battle began Oct. 29, 1999, when Diamond Farming Co. of Bakersfield filed suit against the city of Lancaster, the Palmdale agency,

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Antelope Valley Water Co., Palm Ranch Irrigation District, Quartz Hill Water District, Rosamond Community Services District and Mojave Public Utility District, claiming pumping by those agencies infringed on Diamond's rights to well water.

Since then, more and more plaintiffs and defendants, and cross-plaintiffs and cross-defendants, were added onto the case from city government agencies and county agencies to public water suppliers, mutual water companies, private landowners and other farmers.

The parties estimate that millions of dollars were spent on attorney fees over the years.

"Millions and millions of dollars have gone out of the Valley," John Ukkestad, a spokesman for Antelope Valley United Mutual Group, an organization of 16 mutual water companies, said after the settlement.

The agreement will be administered by a five-member board called the "watermaster," which will monitor the Valley's underground water basin to make sure it's not being harmed. According to trial testimony, since the 1940s more water has been pumped out of wells than is naturally replenished from winter storms and other sources.

Of the five watermaster board members, one will represent Antelope Valley-East Kern Water Agency, which provides California Aqueduct water to much of the Antelope Valley, and another will represent Los Angeles County Waterworks District 40, the Valley's biggest water retailer, which supplies more than 200,000 homes and businesses. Another seat will be filled by another public water utility and two more by landowners.

2. New bomber contract

The Northrop Grumman Corp. was announced on Oct. 27 as the Air Force's choice to develop the nation's next long-range bomber, a decision that will likely mean the return of major aircraft production to the Antelope Valley and 1,100 Palmdale jobs.

The Pentagon announcement offered only details on how the contract was structured and not on the still-classified aircraft itself or where it would be built. Local officials, however, said they were told the bomber will be assembled in Palmdale - where Valley aerospace workers assembled B-1B and B-2 bombers in the 1980s and 1990s.

Northrop Grumman has about 1 million square feet of production space at Plant 42 in a facility built in the 1980s to assemble the B-2 bomber fleet.

If Northrop Grumman's competitors - Boeing and Lockheed Martin - had won, they planned to assemble the bombers in Missouri, said Steve Knight, R-Palmdale.

Even if the Boeing-Lockheed Martin team had won, Lockheed Martin was expected to put more than 1,000 employees to work on the bomber in Palmdale, officials said.

Northrop Grumman is believed to have started hiring for the project, but bomber production remains short of a sure thing.

Boeing and Lockheed Martin filed a formal protest Nov. 6 over Northrop Grumman's selection. The protest was widely expected given the scope of

the contract estimated at \$80 billion and it is the only major combat aircraft production program on the horizon.

The auditing arm of Congress, the U.S. Government Accountability Office, will have until Feb. 16 to review the protest and issue a final decision.

"Boeing and Lockheed Martin concluded the selection process for the Long Range Strike Bomber was fundamentally flawed," the companies said in a joint statement. "The cost evaluation performed by the government did not properly reward the contractors' proposals to break the upward-spiraling historical cost curves of defense acquisitions, or properly evaluate the relative or comparative risk of the competitors' ability to perform, as required by the solicitation. That flawed evaluation led to the selection of Northrop Grumman over the industry-leading team of Boeing and Lockheed Martin, whose proposal offers the government and the warfighter the best possible LRS-B at a cost that uniquely defies the prohibitively expensive trends of the nation's past defense acquisitions."

In response, the Air Force issued a statement saying, "Although it is every competitor's right to file a protest, the Air Force is confident that the source selection team followed a deliberate, disciplined and impartial process to determine the best value for the warfighter and taxpayer."

3. Palmdale election change

Ending three years of legal battles, city officials agreed May 6 to a court settlement under which the four City Council seats will each be assigned to a different geographic district and will come up for election in November.

They also agreed Wednesday night to pay \$4.5 million to the opposing lawyers - including Lancaster Mayor R. Rex Parris -who brought the lawsuit alleging that Palmdale's "at-large" method of electing City Council members citywide diluted the influence of African-American and Latino voters and violated the 2001 California Voting Rights Act.

"We are very pleased with the result, not only for allowing fair and inclusive elections but because other cities will look to Palmdale as an example of what happens if they fail to comply with the California Voting Rights Act," attorney Kevin Shenkman, who along with Parris is among the attorneys who brought the suit, said after the settlement. "I hope minority residents of Palmdale are now able to secure representative city government and work to reverse the decades of the City Council's apathy toward the needs of the less wealthy, predominantly minority residents of Palmdale's east side."

In a statement issued after their closed-door discussion in which they agreed to give up court appeals, city officials criticized the state law and said it is being used by attorneys to victimize California cities, counties and school districts. Statewide, they said, they know of 25 similar cases and \$13.8 million awarded in attorney fees.

Similar voting districts were created by Lancaster School District, which was sued, and Eastside Union School District, which was threatened with a lawsuit under the law. Both districts switched to a by-trustee area system and will use those for the first time this November. Antelope Valley Union High School District and Antelope Valley College officials are also looking into establishing trustee districts.

In the new voting districts' first use in November, there was no change in the ethnic makeups of the Lancaster School District and Eastside Union School District boards because voters elected all white men. Former Lancaster school board members Keith Giles and Greg Tepe were elected under new election boundaries in the Lancaster district, and Eastside trustee Joseph Pincetich was re-elected under new boundaries in the Eastside district.

4. California's drought persists

Homeowners around the Antelope Valley ripped up their lawns or just let them turn brown as water-rate surcharges and other measures were enacted to meet Gov. Jerry Brown's statewide conservation mandates.

Five months into the governor's order for Californians to reduce their water use by 25%, customers of four of the Antelope Valley's six largest water suppliers were so far meeting the governor's mandate.

Compared to water use in 2013, consumption between June and October was down 46.9% among California Water Service Co.-Antelope Valley customers, 37.4% among Quartz Hill Water District customers, 34.8% among Los Angeles County Waterworks District 40 customers, and 31.8% among Rosamond Community Services District customers.

Palmdale Water District customers have cut back a cumulative 27.6%, but that reduction failed to meet the agency's target of 32%. California City has cut back 11.3%, far below its 36% target, state officials said.

Conservation targets for the Valley's six largest water agencies are all higher than the statewide 25% reduction announced by Brown last spring because state water officials calculated their per capita use at higher than statewide averages.

Rosamond was told to cut 28% from 2013 consumption, Palmdale and Waterworks District 40 were told to cut 32%, and Quartz Hill, California City and California Water Service were told to cut 36%.

Smaller water suppliers in the Antelope Valley and elsewhere around the state are expected to reduce consumption 25%, but they aren't required to supply monthly reports to the state government.

5. Mud and floods in a drought

Despite the drought, Oct. 15 thunderstorms - one described by the National Weather Service as a "thousand-year rainfall event" - damaged hundreds of properties from west Lancaster to Lake Hughes, caused millions of dollars in damage, shut down the California Aqueduct, drowned a west Palmdale man and left a Boron man missing.

Killed was Robert Rasmussen, whose minivan was swept off Avenue M-8 west of 60th Street West and into a catch basin. Still missing is Richard Harvell, who was knocked down by knee deep flood water as he tried to move his pickup truck from a camping spot in a canyon northwest of Rosamond.

The flash flood that killed Rasmussen was caused by rain measured at 1.63 inches in Quartz Hill and 3.38 inches in Leona Valley on the south

side of Ritter Ridge. It flooded dozens of homes down the hill from where Rasmussen drowned.

The total number of homeowners, renters and businesses who reported storm damage to Los Angeles County and the cities of Palmdale and Lancaster was more than 280, county officials said.

Damage to the California Aqueduct alone cost \$1.1 million to repair.

Weather service forecasters say the Oct. 15 storms weren't really part of the El Nio weather pattern forecast for this winter. If El Nio is coming, it hasn't shown up yet in local rainfall statistics.

The Palmdale rainfall total since Oct. 1 - when the weather service begins counting California's "rainfall year" - measured 1.81 inches as of Wednesday. Usually by this time, rainfall as measured at Air Force Plant 42 amounts to 2.38 inches, weather service records show. Last year by this time, the rainfall since Oct. 1 measured 2.57 inches.

In Lancaster, the rainfall total since Oct. 1 is 1.29 inches, down from the normal 2.08 inches by this time, weather service records show. Last year by this time, 2.92 inches fell at William J. Fox Airfield.

At Sandberg in the mountains west of Lake Hughes, rainfall since Oct. 1 measures 1.70 inches, less than half the 3.53 inches that normally falls by this time. Last year by this time the area had 4.9 inches.

The Oct. 15 thunderstorms mostly missed official rain gauges.

At Quartz Hill, the Oct. 15 flash flood elevated the total so far at a Los Angeles County Department of Public Works rain gauge to 2.65 inches, which is more than a third of the average annual total of 7.97 inches. The Department of Public Works doesn't have average-to-date statistics for its individual weather stations.

To share your opinion on this article or any other article, write a letter to the editor and email it to editor@avpress.com or mail it to Letters to Editor, PO Box 4050, Palmdale CA 93590-4050.

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NEWS RULINGS VERDICTS

Friday, January 22, 2016

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Resolution of Antelope Valley groundwater dispute concludes long battle

By Fiona Smith

It was an unusual scene in a Los Angeles courtroom recently when the largest groundwater battle in California finally resolved. Retired Santa Clara County Superior Court Judge Jack Komar, about to sign the judgment in the 16-year-old legal dispute, asked if he could snap a picture of the attorneys gathered in his courtroom.



Daily Journal photo
Eric L. Garner represented Los Angeles County Waterworks District No. 40 in a long-running dispute over the Antelope Valley aquifer that finally settled after years of litigation.

The attorneys obliged, and then one of them, Janet Goldsmith, piped up and asked Komar if she could take his picture as he signed the papers. He agreed, and soon many of the lawyers had pulled out their own smartphones to capture the quiet denouement to what had been a mammoth case. Then they stood up and burst into applause.

"I'm not sure I've seen that in a court case before we were just so proud of having got it done and of Judge Komar seeing us through it," said Thomas S. Bunn, who represented the Palmdale Water District in the case.

The resolution of the case will transform groundwater management in the arid Antelope Valley north of Los Angeles by putting an end to decades of uncontrolled pumping that has decimated the region's vast aquifer and caused land to buckle, including parts of Edwards Air Force Base. Groundwater use will be now slashed by 40 to 50 percent across the board. Antelope Valley Groundwater Cases, JCCP 4408.

The deal to manage the Antelope Valley aquifer, called an adjudication of groundwater rights, comes amid heightened scrutiny on groundwater management statewide as the four-year drought has led to feverish pumping in many basins, particularly in the Central Valley.

Until 2014, there was no statewide law limiting pumping, and while aquifers in many urban areas have long been adjudicated, there are hundreds around the state with no oversight.

"The challenge in settling this case was the same challenge we have with managing groundwater in California, which is that by and large the cheapest most secure source of water is simply dropping a well and pumping," said Eric L. Garner, who represented Los Angeles County Waterworks District No. 40 in the Antelope Valley adjudication. Managing groundwater means "people will have to pump less or pay more to pump."

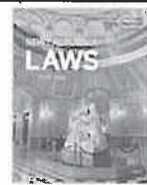
Under the new Sustainable Groundwater Management Act, users will be required to cut withdrawals from stressed basins in the coming decades.

Anticipating a potential increase in court battles over groundwater rights, and with an eye on the marathon Antelope Valley case the state Legislature took action last year to create new rules to streamline court processes in groundwater adjudications.

SPECIAL REPORT

New Laws

A list of 2015 California laws and the codes they modified. Plus analysis from leading lawyers.



Litigation

Attorneys lobby for key spots in Volkswagen emissions class action

With an overflow gallery of litigators looking on, Volkswagen AG lawyers admitted to a frustrated U.S. District Judge Charles R. Breyer that no date has been pinned down for when a fix for emissions-test cheating systems would be ready.

Alternative Dispute Resolution Real Resolutions

Mediator Floyd Siegal wants clients to feel that no stone is left unturned

Obituaries

Richards D. "Dick" Barger, 1928 - 2016

Richards D. "Dick" Barger, former state insurance commissioner and co-founder of the insurance law firm Barger & Wolen LLP, died Sunday in Pasadena at the age of 87.

Bar Associations

San Diego plaintiffs' bar group welcomes new president

Brett Schreiber, a partner at Thorsnes, Bartolotta, McGuire, has been elected president of the Consumer Attorneys of San Diego.

Corporate

SF-based data management company taps first GC

InsideView Inc., a customer data management and marketing provider, named Nicole K. Campbell as its first general counsel and corporate secretary Thursday.

Solo and Small Firms

Prime Patents

Choosing cases based on merit allows Lowenstein & Weatherwax LLP to compete with the big firms.

Litigation

State supreme court will confront if UCLA liable for near fatal classroom attack

Justices to consider if university had duty to protect chemistry student Katherine Rosen.

Discipline

Many of the attorneys recently disciplined by the State Bar have one thing in common: prior incidents of discipline.

Government
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The Antelope Valley litigation pulled in competing parties as diverse as Los Angeles County, carrot farmers, gravel producers and the U.S. military to determine how much everyone could safely withdraw from the aquifer.

Over the years, the case racked up more than 11,000 docket entries, involved more than 100 lawyers and the included two classes one consisting of roughly 3,000 small water users and another representing so-called non-pumpers, or the owners of 85,000 parcels of land who had never exercised their groundwater pumping rights.

The case became particularly complex and large because the U.S. government was appearing in state court to settle the military's claim to regional groundwater, according to attorneys. For the U.S. to get involved in the state court process, the adjudication had to include every landowner in the basin, a move not typically done in groundwater adjudications and one which ballooned the size of the case.

In the midst of the court fight, Komar, a Santa Clara County Superior Court judge assigned the case early on, retired. He nonetheless stuck with it, getting specially assigned to the case post-retirement by state Supreme Court Chief Justice Tani Cantil-Sakauye. He presided over four phases of trial, to determine among other things, how much water could be drawn from the aquifer every year without depleting it.

With the next, and possibly hardest phase of trial approaching in which parties would have to hire experts and hold hearings on hundreds of individual groundwater claims the parties became more focused on settlement, said Goldsmith, who represented the city of Los Angeles in the case.

If that trial phase had gone forward, there would have been 50 attorneys popping up to object to every question and it probably couldn't have been litigated in anyone's lifetime, said attorney W. Keith Lemieux, who is counsel for several water purveyors with groundwater claims.

Ronald B. Robie, associate justice of the 3rd District Court of Appeal, spent 10 days mediating the case and lawyers involved credit him with pushing the parties toward the ultimate settlement. The deal sets out how much water each party can pump annually and creates a court-supervised, five-person "watermaster" board to oversee aquifer management going forward. The parties have seven years to fully implement the cuts.

Once that settlement was formally hammered out, not everyone was happy, including the non-pumper class.

Komar held a hearing on objections to the agreement and ruled to impose the settlement on everyone, turning it into a final court judgment which he signed in late December.

Ralph B. Kalfayan, who represents the non-pumper class, has vowed to appeal the decision. The judgment sets up unfair barriers to landowners that may in the future want to exercise their right to pump groundwater, he said.

They are required to go through a 12-step application process after which the watermaster can accept or reject their request, according to Kalfayan.

"It's expensive and unnecessary, it's burdensome," said Kalfayan, a partner at Krause Kalfayan Benink & Slavens LLP. "It makes it extremely difficult to meet the requirements and obtain the right to be able to pump."

Even facing a potential lengthy appeals process and the task of now implementing the groundwater management plan on the ground, the judgment was a milestone, said Bunn, an attorney with Lagerlof, Senecal, Gosney & Kruse LLP.

"We're not done yet, but it's a very important place to get, and a place we didn't think we'd ever get," Bunn said.

Looking ahead, any appeal would be unlikely to stop immediate implementation of the groundwater cuts, said Garner, managing partner at Best Best & Krieger LLP. But the fact that there is a judgment in place hasn't fully sunk in yet, he said.

"I've been working on this case almost one-third of my life," Garner said.

For Goldsmith, the resolution was both a professional and personal turning point she had been putting off retirement until she could see her client through the settlement.

"It was a long, long slog," said Goldsmith, who officially retired on Dec. 31 after 39 years at Kronick Moskovitz Tiedemann & Girard. "I was not going to retire until that decree was signed."

On the cusp of a historic change in the way the L.A. County's criminal justice system deals with mentally ill offenders, one of the first tasks of the newly created L.A. County Office of Diversion and Reentry will be bringing both the clinical and legal communities to the same table.

California Supreme Court Anti-deficiency protections apply to short sales: Supreme Court

Lenders may not pursue borrowers for the outstanding amount on a mortgage loan after a short sale, the high court ruled Thursday.

Bar Associations

Former State Bar employee files claim over dismissal

Thomas Layton alleges he was wrongfully terminated for filing grievances and unfair practice charges against the bar.

Criminal

Attorney gets probation for brandishing weapon on homeless man

A Bakersfield lawyer on Wednesday was slapped with a three-year sentence of probation and anger management counseling following a jury's finding that he wrongfully brandished a gun on a homeless man.

Law Practice

Survey: law firm leaders bracing for economic slide

It's a new year, but law firm leaders aren't terribly excited about it. Managing partners responding to a survey indicated that they have a negative view of the overall economy for the first time since 2012.

Litigation

High court declines to revive conspiracy charges

The state Supreme Court on Wednesday denied a petition to bring back conspiracy charges against San Bernardino county officials and an Upland developer in one of the state's largest public corruption cases.

U.S. Supreme Court

Justices say ERISA claim is equitable, but not the remedy

The best things in life are worth waiting for, unless you are a plan fiduciary seeking reimbursement from a plan participant under ERISA. By Michelle L. Roberts

Law Practice

Returning to Cuba, 11 years later

In 2004, when I initially traveled to Cuba with the Beverly Hills Bar Association, the U.S. embargo against Cuba was still being strictly observed by OFAC. By Nancy Knupfer

Ethics/Professional Responsibility

Law firms should consider new insurance options

Law firms have an increasing number of options when it comes to purchasing legal malpractice insurance, as new insurers enter the malpractice marketplace, and all insurers continue to offer new products and expanded coverage at lower rates. By J. Randolph Evans and Shari Klevens

Letter to the Editor

Letter to the editor: Jan. 11 article highlights access-to-justice issues

We at Disability Rights California are deeply troubled amount

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