

1 should exercise its inherent authority under the Code to seek expert assistance in connection with
2 the complex hydrogeological issues that will be decided at the upcoming trial. This
3 determination is a critical aspect of this trial, which will affect the rights of the Willis Class and
4 the public at large for years to come, including many parties and unrepresented persons who
5 cannot meaningfully obtain expert advice. There is every reason for the Court to use all
6 available resources to come to the right decision.

7 **ARGUMENT**

8 The various parties raise three basic issues which we address below.

9 1. This Motion Is Not Precluded By CCP Section 1008.

10 Willis' Motion is not precluded by Section 1008 of the Code of Civil Procedure.

11 Although Willis filed a similar motion last year, the relief sought in that motion was the
12 appointment of three experts to assist the Willis Class. Willis only sought a Court appointed
13 expert as an alternative form of relief. In any event, given that the Motion was expressly denied
14 without prejudice and that the Phase III trial is now around the corner, there is good cause for the
15 Court to reconsider this issue.

16 2. There Is Good Cause For an Independent Expert.

17 Contrary to the arguments that various parties have made, there is good cause for the
18 Court to appoint an independent expert. This trial is not simply a contest between a handful of
19 private parties; rather, the determination of the Basin's yield is likely to radically affect the
20 Antelope Valley's future. Thousands of existing and potential future jobs are at stake along with
21 the property interests of over approximately 75,000 persons. The Court should use all available
22 means to come to as accurate a decision as possible.

23 Moreover, as we have previously observed, the parties' experts appear to have reached
24 dramatically varying estimates of the Basin's yield. The Public Water Suppliers' ("Suppliers")
25 experts have apparently found that the Basin's yield is much lower than historical pumping
26 (which, of course, supports one element of the Suppliers' prescription claim). The overlying
27 landowners' experts have apparently found that the Basin's yield is substantially higher (which
28 would defeat or limit the prescription claims). The one thing that is indisputable is that the very

1 large size of this Basin, coupled with the limited available data, means that any expert will
2 necessarily render an opinion based in substantial part on his or her judgment. *In the absence of*
3 *a neutral expert, not only will be Court necessarily struggle to reconcile these divergent views,*
4 *but there may well not be any probative evidence in the record to support a reasonable middle*
5 *ground.* This critical issue should not be decided solely based on expert testimony propounded
6 by the Suppliers and large landholding interests. Rather, the Court should appoint its own
7 expert to review the findings and opinions of the parties' experts and counsel the Court with
8 respect thereto.

9 3. The Costs Should Be Allocated in a Fair Manner.

10 Willis suggested in her motion that the costs of a Court-appointed expert be shared by
11 those parties presenting expert testimony at the Phase III trial, but we are happy for the Court to
12 allocate such costs in any fair manner. The simple fact is that the employment of a Court-
13 appointed expert will help focus the issues and likely save all parties participating in the Phase
14 III trial considerable time and expense. The Court should allocate the costs as it deems
15 appropriate.

16 **CONCLUSION**

17 For the reasons stated above, the Court should exercise its authority under Section 730 of
18 the Evidence Code and appoint an independent expert to assist it in determining the Basin's
19 yield.

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