

Michael D. McLachlan (State Bar No. 181705)
LAW OFFICES OF MICHAEL D. McLACHLAN, APC
10490 Santa Monica Boulevard
Los Angeles, California 90025
Telephone: (310) 954-8270
Facsimile: (310) 954-8271
mike@mclachlanlaw.com

Daniel M. O'Leary (State Bar No. 175128)
LAW OFFICE OF DANIEL M. O'LEARY
10490 Santa Monica Boulevard
Los Angeles, California 90025
Telephone: (310) 481-2020
Facsimile: (310) 481-0049
dan@danolearylaw.com

Attorneys for Plaintiff

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

(Santa Clara Case No. 1-05-CV-049053,
Honorable Jack Komar)

Case No.: BC 391869

**DECLARATION OF MICHAEL D.
MCLACHLAN IN SUPPORT OF
MOTION TO DECERTIFY SMALL
PUMPER CLASS**

[filed concurrently with Motion to
Decertify Small Pumper Class]

Date: July 9, 2012

Time: 9:00 a.m.

Dept.: 316 (Room 1515)

1 **DECLARATION OF MICHAEL D. MCLACHAN**

2 I, Michael D. McLachlan, declare:

3 1. I am one of the appointed class counsel for the Small Pumper Class, and am
4 duly licensed to practice law in California. I make this declaration of my own personal
5 knowledge, except where stated on information and belief, and if called to testify in Court
6 on these matters, I could do so competently.

7 2. The initial Class Complaint was filed on June 2, 2008. The Court certified
8 the Small Pumper Class on September 2, 2008. The Class is defined as currently consists
9 of approximately 3,800 parcels.

10 3. On February 9, 2009, Plaintiff filed his initial Motion for Appointment of
11 Expert, which included a scope of work attached to the Declaration of Timothy
12 Thompson. I attach as Exhibit 1 a true and correct copy of that Declaration (leaving out
13 the resume).

14 4. On April 24, 2009, the Court granted Plaintiff's motion for a court-
15 appointed expert, thereby designating Timothy Thompson of Entrix to perform expert
16 services relative to the assessment of water use of the Small Pumpers' class. I attach as
17 Exhibit 2 true and correct copy of the Minute Order of April 24, 2009.

18 5. On April 24, 2009, the Court stayed the order pending determination of the
19 issues of overdraft and safe yield, as reflected in the transcript as follows:

20 MR. MCLACHLAN: It is not limited in the fact -- what we are asking is for the
21 court to appoint an expert that would come in and testify on the issue of self-help
22 for the court. And, obviously, that issue is one that is only germane largely to the
 small pumpers. . .

23 There is always a particular party that's being represented, and that party --
24 the key thing that crosses those parties and underlies that -- that code is -- that the
 fact that that party does not have the ability to retain its own expert.

25 That is clearly manifested and demonstrated here. Richard wood can't
 afford it.

26 THE COURT: let me stop you for a minute.

27 MR. MCLACHLAN: Sure.

28 THE COURT: I don't disagree with anything that you have said to this point.
 That is a little different than what we originally talked about in Santa Clara
 County.

1 But beyond that, I need some indications that I thought the request was
2 premature until such time as we established that there was, in fact, an overdraft
3 based upon the yield and the pumping in various -- total pumping within the
4 antelope valley.

5 And I can assure you that in the event that it is determined that there is
6 overdraft in this case and that there is a contention of prescription against the small
7 pumpers, then certainly I would agree with you. You are entitled to a neutral --
8 and the court would be wanting to hear a neutral expert dealing with those issues.

9 * * *

10 THE COURT: Well, I have indicated to Mr. McLachlan that I am going to grant
11 his request and understanding Mr. Fife's concern about it, I'm going to grant it
12 nevertheless. I think there is good cause for it, and I'm going to stay it until the
13 issues of overdraft and safe yield have been adjudicated.

14 I attach as Exhibit 3 a true and correct copy of the relevant portions of the Hearing
15 Transcript of April 24, 2009.

16 6. Mr. Thompson has conducted limited preliminary work involving review of
17 other expert reports and file materials necessary to familiarize himself with the
18 background and technical issues of this case and the adjudicated basin. Entrix has been
19 paid for that work -- by order of this Court allocating that to the water supplies in equal
20 shares -- but has not commenced the substantive work regarding the quantification of the
21 class members' water use. I attach as Exhibit 4 a true and correct copy of the Court's
22 May 25, 2010 Order.

23 7. In May of 2009, the water suppliers stipulated to the lifting of the stay on
24 the court-appointed expert work, and the Court signed this order, which stated that the
25 Court-appointed expert would "formulate reliable estimates of the water use of the
26 Class." I attach as Exhibit 5 a true and correct copy of the Court's May 6, 2009 Order.

27 8. I attach as Exhibit 6 a true and correct copy of the relevant portions of the
28 Hearing Transcript of June 16, 2011, 2009.

9. After the June 16, 2009 hearing, at the behest of Mr. Dunn, I redrafted the
settlement agreement to remove the portions found objectionable by the Court (in part
removing specific allocation of Class water rights), thereby creating an agreement that

1 mirrored the earlier settlement of the Willis Class. For reasons that are unclear, the water
2 suppliers' decided not to resolve the Small Pumper Class on similar terms used in the
3 Willis case. The water suppliers have continued to shown no interest of revising and re-
4 submitting the Wood Class Settlement, leaving the prescription claims hanging over the
5 Class members' proverbial heads.

6 10. The lack of a report from the court-appointed expert has put class counsel
7 in a very difficult negotiating position with respect to proper and fair allocation of the
8 available water for overlying use. Settlement discussions with the overlying landowners
9 have gone very poorly. Indeed, in the most recent draft of the proposed judgment, my
10 substantive comments were completely removed. I have been told by counsel for one of
11 the overlying landowners that a number of parties believe the Small Pumper class should
12 be left out of this judgment.

13 11. On July 13, 2011, the Court issued its Statement of Decision for the Phase
14 Three Trial, in which the Court found that the basin has been in a state of overdraft since
15 1951. I attach as Exhibit 7 a true and correct copy of the Statement of Decision.

16 12. On July 12, 2011, I filed a motion to authorize the court-appointed expert
17 work (D.E. 4521.), which was heard on August 30, 2011. The Court took the Motion
18 under submission pending further settlement discussions. I attach as Exhibit 8 a true and
19 correct copy of this Order. No ruling was issued.

20 13. On January 18, 2012, after further settlement discussions and the prospect
21 of the Court setting the next phase of trial regarding water rights, I re-filed the motion to
22 authorize the court-appointed expert to assess the water use of the Class. (D.E. 4761.)
23 This Motion was heard on February 14, 2012, and continued to March 14, 2012. (D.E.
24 4881.) The Motion was later continued to April 17, 2012, at which time the Court stated
25 that it should be re-noticed for the date of trial setting. (D.E. 4926) I attach as Exhibit 9
26 a true and correct copy of the relevant portions of the transcript of April 17, 2012
27 Hearing.
28

14. I attach as Exhibit 10 true and correct copy of my May 14, 2008 letter to Judge Jack Komar.

15. The initial scope of work for the court appointed expert was revised in early 2010, and submitted to the Court. That remains the current scope of work. I attach as Exhibit 11 a true and correct copy of that scope of work.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 13th day of June, 2012, at Los Angeles, California.

//s// Michael D. McLachlan

Michael D. McLachlan

Exhibit 1

1 Michael D. McLachlan (State Bar No. 181705)
2 **LAW OFFICES OF MICHAEL D. McLACHLAN, APC**
3 523 West Sixth Street, Suite 215
4 Los Angeles, California 90014
5 Telephone: (213) 630-2884
6 Facsimile: (213) 630-2886
7 mike@mclachlanlaw.com

8 Daniel M. O'Leary (State Bar No. 175128)
9 **LAW OFFICE OF DANIEL M. O'LEARY**
10 523 West Sixth Street, Suite 215
11 Los Angeles, California 90014
12 Telephone: (213) 630-2880
13 Facsimile: (213) 630-2886
14 dan@danolearylaw.com

15 Attorneys for Plaintiff

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

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

Judicial Council Coordination
Proceeding No. 4408

20 ANTELOPE VALLEY GROUNDWATER
21 CASES

(Santa Clara Case No. 1-05-CV-049053,
Honorable Jack Komar)

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

Case No.: BC 391869

25 Plaintiff,

**DECLARAION OF TIMOTHY J.
THOMPSON IN SUPPORT OF
MOTION FOR APPOINTMENT OF
EXPERT**

26 v.

**Date: March 5, 2009
Time: 9:00 a.m.
Dept.: 17**

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

Defendants.

**DECLARATION OF TIMOTHY J. THOMPSON IN SUPPORT OF MOTION FOR
APPOINTMENT OF EXPERT**

1 I, Timothy J. Thompson, declare:

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

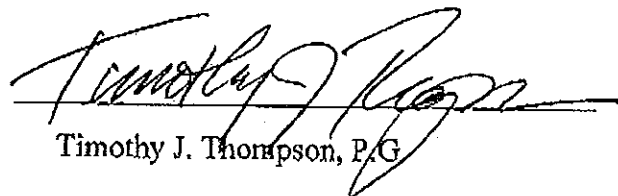
5 2. I am a Vice President at Entrix, and a certified hydrogeologist in the State
6 of California with extensive experience in consulting on public water supply issues. My
7 background and experience are discussed at more length in my curriculum vitae, a true
8 and correct copy of which is attached as Exhibit 1 to this declaration.

9 3. Pending successful resolution of this Motion, I have agreed to serve as an
10 expert consultant in this case, on various matters relevant to the members of the Small
11 Pumpers' Class, including developing evidence to support claims of "beneficial use" and
12 the "self-help", as well as general consulting on areas of expert opinion on the subjects of
13 safe yield and overdraft. A copy of my proposal for presently anticipated consulting
14 services is attached as Exhibit 2.

15 4. My time is currently billed at \$275 per hour for general consulting work,
16 and at \$412 per hour for deposition and trial testimony. I anticipate a number of Entrix
17 staff members will be called on to work on this project, and the billing rates for the
18 various classes of Entrix staff members are generally consistent with the billing rates for
19 similar firms in California, many of whom are actively engaged in this litigation.

20 I declare under penalty of perjury under the laws of California and the United
21 States of America that the foregoing is true and correct. Executed this 9th day of
22 February, 2009, at Santa Barbara, California.

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Timothy J. Thompson, P.G.

2
DECLARATION OF TIMOTHY J. THOMPSON IN SUPPORT OF MOTION FOR
APPOINTMENT OF EXPERT



ENTRIX, Inc.
201 N. Calle Cesar Chavez., Suite 203
Santa Barbara, CA 93103
(805) 962-7679
FAX (805) 963-0412

MEMORANDUM

Date: March 26, 2009

To: Mike McLachlan, Law Offices of Michael D. McLachlan, APC
Dan O'Leary, Law Office of Daniel M. O'Leary

From: Timothy J. Thompson, Vice President and Senior Consultant

Re: Technical Support Services re: Small Pumpers Class, Antelope Valley Groundwater Adjudication

Task 1. Self Help Defense / Reasonable and Beneficial Use of Groundwater

Services associated with this task will include:

- (a) Documentation of historical water use, including amounts and historical use periods for representative members of the Class. Work products will include summary memoranda, maps, charts, databases and other technical products.
- (b) Preparation of questionnaire to be circulated to Class members to collect detailed information on historical groundwater use. Information to be requested to be determined by counsel and/or the Court, but will likely include number of wells, years of groundwater pumping, availability of definitive groundwater-usage documentation (including but not limited to electrical usage records, well repair records, flow meter records, written logs of well operations, etc.), water level records, and well deepening or improvements related to changing water levels. Additional data requests may also be included in the questionnaire, or in follow-up communications with Class members.
- (c) Provide deposition and trial testimony as necessary.

Estimated Budget for Initial Phase:

Self Help Defense / Beneficial Use	\$110,000
	TOTAL BUDGET
\$110,000	

This estimated budget includes time for principals and staff.

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action. My business address is 523 West Sixth Street, Suite 215, Los Angeles, California 90014.

On February 9, 2008, I caused the foregoing document(s) described as **DECLARATION OF TIMOTHY J. THOMPSON IN SUPPORT OF MOTION FOR APPOINTMENT OF EXPERT** to be served on the parties in this action, as follows:

- (X) (BY ELECTRONIC SERVICE) by posting the document(s) listed above to the Santa Clara County Superior Court website: www.scefiling.org regarding the Antelope Valley Groundwater matter.
- () (BY U.S. MAIL) I am readily familiar with the firm's practice of collection and processing of documents for mailing. Under that practice, the above-referenced document(s) were placed in sealed envelope(s) addressed to the parties as noted above, with postage thereon fully prepaid and deposited such envelope(s) with the United States Postal Service on the same date at Los Angeles, California, addressed to:
- () (BY FEDERAL EXPRESS) I served a true and correct copy by Federal Express or other overnight delivery service, for delivery on the next business day. Each copy was enclosed in an envelope or package designed by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying service list.
- () (BY FACSIMILE TRANSMISSION) I am readily familiar with the firm's practice of facsimile transmission of documents. It is transmitted to the recipient on the same day in the ordinary course of business.
- (X) (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- () (FEDERAL) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Carol Delgado

Exhibit 2

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 04/24/09

HONORABLE Jack Komar

JUDGE M. GODDERZ

DEPT. 1

HONORABLE
1.

JUDGE PRO TEM

DEPUTY CLERK

ELECTRONIC RECORDING MONITOR

C. WRIGHT

Deputy Sheriff

GINGER WELKER, CT. RPTR.

Reporter

9:00 am JCCP4408

Plaintiff	JAMES L. MARKMAN	(x)
Counsel	RALPH B. KALFAYAN	(x)
	DAVID B. ZLOTNICK	(x)
Defendant	W. KEITH LEMIEUX	(x)
Counsel	JEFFREY V. DUNN	(x)

ANTELOPE VALLEY GROUNDWATER CAS
*ASSIGNED TO JUDGE JACK KOMAR
IN SANTA CLARA COUNTY (8/31/05)

NATURE OF PROCEEDINGS:

MOTION OF PLAINTIFF AND THE CLASS FOR APPOINTMENT OF
EXPERT WITNESSES

CASE MANAGEMENT CONFERENCE RE ISSUE OF RIGHT TO
JURY TRIAL

Additional counsel appearing in court on this date:

BOB H. JOYCE (x)	MICHAEL FIFE (x)
WILLIAM J. BRUNICK (x)	BRADLEY T. WEEKS (x)
SCOTT K. KUNEY (x)	MICHAEL D. McLACHLAN (x)
DANIEL M. O'LEARY (x)	TAMMY L. JONES (x)
CLIFF MELNICK (x)	THOMAS S. BUNN III (x)
DOUGLAS J. EVERTZ (x)	R. LEE LEINIGER (x)
MICHAEL L. MOORE (x)	

Additional counsel appearing via telephone
conference call:

Rebecca Davis-Stein	Janet K. Goldsmith
Michael L. Crow	Robert G. Kuhs
Stephen M. Siptroth	Sheldon Blum
Bradley J. Herrema	Michelle L. Moore
Richard G. Zimmer	Brian Martin
Robert E. Dougherty	Theodore Chester, Jr.
Christopher M. Sanders	Susan M. Trager
Marlene A. Hammarlund	James J. Dubois

The above matters are called and the Court makes the
following rulings;

- Request for extension of time to Opt Out of Willis
class is granted and extended to May 1, 2009.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 04/24/09

DEPT. 1

HONORABLE Jack Komar

JUDGE M. GODDERZ

DEPUTY CLERK

HONORABLE
1.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

C. WRIGHT

Deputy Sheriff

GINGER WELKER, CT. RPTR.

Reporter

9:00 am

JCCP4408

Plaintiff

JAMES L.

MARKMAN

(x)

Counsel

RALPH B.

KALFAYAN

(x)

Coordination Proceeding Special
Title Rule (1550(b))

Defendant

DAVID B.

ZLOTNICK

(x)

Counsel

W. KEITH

LEMIEUX

(x)

JEFFREY V. DUNN

(x)

ANTELOPE VALLEY GROUNDWATER CAS
*ASSIGNED TO JUDGE JACK KOMAR
IN SANTA CLARA COUNTY (8/31/05)

NATURE OF PROCEEDINGS:

Motion of Plaintiff Wood for Appointment of Expert is granted and stayed until certain issues have been adjudicated.

Motion of Plaintiff Willis for Appointment of Expert Witnesses is taken off calendar to be re-scheduled at a later date, if necessary.

Motion for Preliminary Injunction is taken off calendar by the Moving party this date.

As to the Case Management Conference, Court and counsel confer Re issue of right to jury trial, class notice and scheduling.

The Court schedules a Settlement Conference for May 13, 2009 at 9:00 a.m., in Los Angeles Superior Court (LASC) Department One. The Woods parties are to report at 9:00 a.m. The Willis parties are to report at 1:30 p.m.

Any objections to the Settlement Conference are to be filed within 2 days of the Court notice from Santa Clara Superior Court Department 17.

Additionally, the Trial Setting Conference is scheduled for August 17, 2009 at 9:00 a.m., in LASC Department One.

Notice of these proceedings is deemed waived.

Exhibit 3

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT NO. 1 HON. JACK KOMAR, JUDGE
4
5 COORDINATION PROCEEDING)
6 SPECIAL TITLE (RULE 1550B))
7 ANTELOPE VALLEY GROUNDWATER CASES)
8 PALMDALE WATER DISTRICT AND JUDICIAL COUNCIL
9 QUARTZ HILL WATER DISTRICT, COORDINATION
10 CROSS-COMPLAINANTS, NO. JCCP4408
11 VS. SANTA CLARA CASE NO.
12 LOS ANGELES COUNTY WATERWORKS, 1-05-CV-049053
13 DISTRICT NO. 40, ET AL,
14 CROSS-DEFENDANTS.
15
16 REPORTER'S TRANSCRIPT OF PROCEEDINGS
17 FRIDAY, APRIL 24, 2009
18
19 APPEARANCES:
20 (SEE APPEARANCE PAGES)
21
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25
26
27 GINGER WELKER, CSR #5585
28 OFFICIAL REPORTER

4-24-09_ANTELOPE VALLEY FINAL

1 APPEARANCES:

2

3 ROSAMOND CSD & L.A. COUNTY
4 WATERWORKS

BEST, BEST & KRIEGER, LLP
BY: JEFFREY V. DUNN
5 5 PARK PLAZA, SUITE 1500
IRVINE, CA 92614
(949) 263-2600

6

7

8 PALMDALE WATER DISTRICT &
QUARTZ HILL WATER DISTRICT

LAGERLOF, SENEAL, GOSNEY
& KRUSE, LLP
BY: THOMAS S. BUNN, III
301 NORTH LAKE AVENUE
10TH FLOOR
PASADENA, CA 91101-4108
(626) 793-9400

10

11

12

13 LOS ANGELES COUNTY SANITATION
14 DISTRICTS NOS. 14 & 20

ELLISON, SCHNEIDER &
HARRIS
BY: CHRISTOPHER M. SANDERS
2015 H STREET
SACRAMENTO, CA 95811-3109
(916) 447-2166

15 (VIA TELEPHONE)

16

17

18 ANTELOPE VALLEY EAST
KERN WATER AGENCY
(AVEK)

BRUNICK, MCELHANEY &
BECKETT
BY: WILLIAM J. BRUNICK
1839 COMMERCENTER WEST
SAN BERNARDINO, CA 92408
(909) 889-8301

19

20

21

22

23 CITY OF LANCASTER

LUCE, FORWARD, HAMILTON &
SCRIPPS, LLP
BY: DOUGLAS EVERTZ
2050 MAIN STREET
SUITE 600
IRVINE, CA 92614
(949) 732-3716

24

25

26

27

28

8

1 APPEARANCES (CONTINUED)

4-24-09_ANTELOPE VALLEY FINAL

2
3 LITTLEROCK CREEK IRRIGATION
DISTRICT & PALM RANCH IRRIGATION
4 DISTRICT: LEMIEUX & O'NEILL
BY: W. KEITH LEMIEUX
5 2393 TOWNSGATE ROAD
SUITE 201
6 WESTLAKE VILLAGE, CA 91361
(805) 495-4770
7
8
9 FOR REBECCA LEE WILLIS: KRAUSE, KALFAYAN, BENINK
& SLAVENS
10 BY: RALPH B. KALFAYAN
DAVID B. ZLOTNICK
11 625 BROADWAY, SUITE 635
SAN DIEGO, CA 92101
12 (619) 232-0331
13
14 ANTELOPE VALLEY GROUNDWATER
AGREEMENT ASSOCIATION
(AGWA) BROWNSTEIN, HYATT, FARBER
& SCHRECK
15 BY: MICHAEL FIFE
21 EAST CARRILLO STREET
16 SANTA BARBARA, CA 93101
(805) 963-7000
17
18
19 BOLTHOUSE PROPERTIES, INC. CLIFFORD & BROWN
BY: RICHARD G. ZIMMER
20 (VIA TELEPHONE) BANK OF AMERICA BUILDING
1430 TRUXTUN AVENUE
21 SUITE 900
BAKERSFIELD, CA 93301
22 (661) 322-6023
23
24 CITY OF LOS ANGELES KRONICK, MOSKOVITZ,
TIEDEMANN & GIRARD
25 (VIA TELEPHONE) BY: JANET GOLDSMITH
400 CAPITOL MALL
27 FLOOR
26 SACRAMENTO, CA 95814-4417
(916) 321-4500
27
28

1 APPEARANCES (CONTINUED)

2 TEJON RANCH CORP

KUHS & PARKER
Page 3

4-24-09_ANTELOPE VALLEY FINAL

3 (VIA TELEPHONE) BY: ROBERT KUHS
1200 TRUXTUN AVENUE
4 SUITE 200
BAKERSFIELD, CA
5 (661) 322-4004

6
7 THE UNITED STATES R. LEE LEININGER
(PERSONALLY PRESENT)
8 (VIA TELEPHONE) JAMES J. DUBOIS
U.S. DEPARTMENT OF JUSTICE
9 ENVIRONMENT & NATURAL
RESOURCES DIVISION
10 1961 STOUT STREET, 8TH FLOOR
DENVER, CO 80294
11 (303) 844-1364

12

13 U.S. BORAX MORRISON & FOERSTER, LLP
BY: MICHELLE L. MOORE
14 425 MARKET STREET
SAN FRANCISCO, CA 94105
15 (415) 268-7209

16

17 QUARTZ HILL WATER DISTRICTS CHARLTON WEEKS
18 BY: BRADLEY T. WEEKS
1007 W. AVE. M-14, SUITE A
19 PALMDALE, CA 93551
(661)265-0969

20

21 HEALY ENTERPRISES, SHEEP GRESHAM, SAVAGE, NOLAN
CREEK, SERVICE ROCK & TILDEN
22 BY: MARLENE A. HAMMARLUND
(VIA TELEPHONE) 3750 UNIVERSITY AVENUE
23 SUITE 250
RIVERSIDE, CA 92501-3335
24 (951) 684-2171

25

26 CITY OF PALMDALE RICHARDS WATSON GERSHON
BY: JAMES L. MARKMAN
27 1 CIVIC CENTER CIRCLE
POST OFFICE BOX 1059
28 BREA, CA 92822-1059
(714) 990-0901

1 APPEARANCES (CONTINUED)

2

3 RICHARD A. WOOD

OFFICES OF MICHAEL MCLACHLAN
Page 4

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PILLSBURY, WINTHROP, SHAW,
PITTMAN, LLP
BY: BRIAN MARTIN
Page 5

4-24-09_ANTELOPE VALLEY FINAL

5		501 WEST BROADWAY
6		SUITE 1100
		SAN DIEGO, CA 92101
		(619) 544-3204
7		
8		
9	NORTHROP GRUNMAN AND	ALSTON & BIRD LLP
	ENEXCO CORP	BY: TAMMY L. JONES
10	(VIA TELEPHONE)	333 SOUTH HOPE STREET
		16TH FLOOR
11		LOS ANGELES, CA 90071
		(213) 576-1000
12		
13	RANDALL Y. BLAYNEY	ANDREW D. STEIN & ASSOCIATES
14	(VIA TELEPHONE)	BY: REBECCA DAVIS-STEIN
		470 S. SAN VICENTE BLVD.
15		2ND FLOOR
		LOS ANGELES, CA 90048
16		(323) 852-1507
17	COPA DE ORO LAND CO.	BARTKIEWICZ, KRONICK &
		SHANAHAN
18	(VIA TELEPHONE)	BY: STEPHEN M. SIPTROTH
		1011 TWENTY-SECOND STREET
19		SACRAMENTO, CA 95816-4907
		(916) 446-4254
20		
21	ANTELOPE VALLEY GROUNDWATER	
	AGREEMENT ASSOCIATION	BROWNSTEIN, HYATT, FARBER
22	(AGWA)	& SCHRECK
	(VIA TELEPHONE)	BY: BRADLEY J. HERREMA
23		21 EAST CARRILLO STREET
		SANTA BARBARA, CA 93101
24		(805) 963-7000
25		
26	ANTELOPE VALLEY	COVINGTON & CROWE, LLP
	UNITED MUTUAL GROUP	BY: ROBERT E. DOUGHERTY
27		1131 WEST SIXTH STREET
	(VIA TELEPHONE)	SUITE 300
28		ONTARIO, CA 91762
		(909) 983-9393

8

1	APPEARANCES (CONTINUED)	
2	VAN DAM FARMS	YOUNG WOOLDRIDGE
		BY: SCOTT K. KUNEY
3		1800 30TH STREET
		4TH FLOOR
4		BAKERSFIELD, CA 93301-5298
		(661) 327-9661
5		

4-24-09_ANTELOPE VALLEY FINAL

6 STATE OF CALIFORNIA BILL LOCKYER
(VIA TELEPHONE) ATTORNEY GENERAL DEPUTY
7 BY: MICHAEL L. CROW
1300 I STREET, SUITE 1101
8 POST OFFICE BOX 944255
SACRAMENTO, CA 94244-2550
9 (916) 327-7856
10
11 LANDIN V., INC. SMILAND & CHESTER
(VIA TELEPHONE) BY: THEODORE CHESTER, JR.
601 WEST FIFTH STREET
13 SUITE 700
LOS ANGELES, CA 90071
14 (213) 891-1010
15
16 LA COUNTY WATERWORKS, OFFICE OF THE COUNTY COUNSEL
DISTRICT NO. 40 BY: MICHAEL L. MOORE
17 500 WEST TEMPLE STREET
LOS ANGELES, CA 90012
18 (213) 974-8407
19
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22 * * *
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1

1 CASE NUMBER: JCCP4408
2 CASE NAME: ANTELOPE VALLEY GROUNDWATER
3 LOS ANGELES, CALIFORNIA, FRIDAY, APRIL 24, 2009
4 DEPARTMENT NO. 1 HON. JACK KOMAR
5 REPORTER GINGER WELKER, CSR #5585
6 TIME: 9:00 A.M.
Page 7

7 APPEARANCES: (SEE TITLE PAGE)

8

9 THE COURT: ALL RIGHT. GOOD MORNING. THIS IS THE
10 ANTELOPE VALLEY CASES. FIRST THING WE WILL DO IS SEEK
11 APPEARANCES FOR ALL COUNSEL WHO INTEND TO APPEAR. AND
12 IF THERE IS ANY INDIVIDUAL WHO IS A PARTY TO THE LAWSUIT
13 AND REPRESENTING THEMSELVES, I WANT YOU TO STATE YOUR
14 APPEARANCES AS WELL.

15 MR. LEMIEUX: GOOD MORNING, YOUR HONOR, KEITH
16 LEMIEUX, L-E-M-I-E-U-X, FOR LITTLEROCK CREEK IRRIGATION
17 DISTRICT, ET AL.

18 MR. EVERTZ: DOUG EVERTZ FOR THE CITY OF
19 LANCASTER.

20 MR. MARKMAN: JAMES MARKMAN FOR THE CITY OF
21 PALMDALE.

22 MR. WEEKS: BRADLEY WEEKS FOR QUARTZ HILL WATER
23 DISTRICT.

24 MR. BUNN: THOMAS BUNN FOR PALMDALE WATER DISTRICT
25 AND QUARTZ HILL WATER DISTRICT.

26 MR. KUNEY: SCOTT KUNEY ON BEHALF OF VAN DAMN
27 PARTIES.

28 THE COURT: JUST A MINUTE. WE'LL TAKE ONE SIDE,

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2

1 AND THEN WE'LL TAKE THE MIDDLE.

2 MR. MCLACHLAN: MICHAEL MCLACHLAN FOR THE WOOD
3 CLASS.

4 MR FIFE: MICHAEL FIFE FOR THE ANTELOPE
5 GROUNDWATER AGREEMENT ASSOCIATION.

6 MS. JONES: TAMMY JONES FOR NORTHRUP GRUNMAN AND
7 ENEXCO CORP.

10 MR. MARTIN: PRESENT.

11 THE CLERK: SUSAN TRAGER?

12 MS. TRAGER: SUSAN TRAGER ON BEHALF OF PHELAN
13 PINON HILLS COMMUNITY SERVICES DISTRICT.

14 THE CLERK: IS THERE ANYONE THAT I HAVE NOT CALLED
15 THE NAME OF THAT I DON'T HAVE LISTED? NO RESPONSE.

16 OKAY. THANK YOU.

17 THE COURT: THANK YOU. EACH COUNSEL IF YOU ARE TO
18 BE HEARD PLEASE BEGIN -- IDENTIFY YOURSELF AS YOU SPEAK.
19 LET'S TAKE UP THE MATTERS NOW. WE HAVE SEVERAL ISSUES
20 TO CONSIDER THIS MORNING.

21 THE FIRST ISSUE THAT I THINK WE SHOULD TALK
22 ABOUT IF THERE IS ANY ISSUE CONCERNING IT IS THERE WAS A
23 REQUEST BY THE WILLIS CLASS TO EXTEND THE OPT-OUT PERIOD
24 FROM MARCH 1 TO APRIL 1 WHICH HAS NOW EXPIRED.

25 IS THERE ANY OPPOSITION TO THAT REQUEST?
26 (NO RESPONSE) ALL RIGHT. THAT MOTION IS GRANTED.

27 THE SECOND ISSUE THAT I THINK I WOULD LIKE
28 TO TAKE UP IS THE APPLICATION FOR APPOINTMENT OF EXPERTS

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5

1 BY BOTH WILLIS AND THE WOOD CLASS COUNSEL.

2 IS THERE FURTHER ARGUMENT TO BE HEARD?

3 MR. MCLACHLAN: WHERE WOULD YOU LIKE TO START?

4 THE COURT: YES, YOU ARE THE MOVING PARTY. IS
5 THERE ANYTHING ELSE THAT YOU WANT TO TELL ME THAT IS NOT
6 IN YOUR PAPERS?

7 MR. MCLACHLAN: NO, YOUR HONOR. I THINK I'LL JUST
8 ADDRESS ANY QUESTIONS THAT YOU MIGHT HAVE. I HAVE
9 ARGUED IT IN FRONT OF YOU BEFORE, AND IT HASN'T CHANGED
10 A LOT, AND THE SCOPE HAS NARROWED.

11 THE COURT: YES.

12 MR. KALFAYAN.

13 MR. KALFAYAN: YOUR HONOR, WE HAVE HAD DIFFERENT
14 EXPERTS AS YOU KNOW FROM OUR MOTION. THE ONLY THING I
15 WANT TO HIGHLIGHT TO THE COURT IN ADDITION TO WHAT WE
16 SUBMITTED IN THE PAPERS IS THAT WE WOULD BE OBVIOUSLY
17 MUCH MORE EFFECTIVE WITH OUR OWN EXPERT, BUT WE DEFER TO
18 THE COURT. I THINK THE COURT SHOULD APPOINT THE EXPERT
19 THAT WE PROPOSED.

20 THE COURT: OKAY. ANYTHING TO BE HEARD IN
21 OPPOSITION BEYOND WHAT IS IN THE PAPERS?

22 MR. DUNN: NO, YOUR HONOR.

23 THE COURT: MR. BUNN.

24 MR. BUNN: YES, YOUR HONOR, I WOULD JUST LIKE TO
25 SPEAK TO THE WILLIS MOTION SOMEWHAT BECAUSE THAT HAS
26 BEEN CHANGED IN THE REPLY BRIEF. THE WILLIS CLASS NOW
27 PROPOSES THAT ITS EXPERT BE DESIGNATED AS A NEUTRAL
28 EXPERT TO ASSIST THE COURT IN THE AREA OF SAFE YIELD.

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6

1 AND THE GROUNDS ARE THAT -- THAT THEY FEEL
2 THE DETERMINATION IS HIGHLY TECHNICAL AND THAT THE COURT
3 REQUIRES THIS EXPERT ASSISTANCE IN ORDER TO EVALUATE
4 THAT EXPERT TESTIMONY.

5 I -- WE DISAGREE WITH THAT. WHILE THE
6 DETERMINATION OF SAFE YIELD IS, IN FACT, A TECHNICAL
7 ONE, I BELIEVE THAT BOTH SIDES WILL BE ABLE TO PRESENT
8 THROUGH THEIR EXPERTS THE EVIDENCE IN SUCH A WAY THAT
9 THE COURT WILL BE ABLE TO UNDERSTAND THE ISSUES AND THE
10 EVIDENCE AND BE ABLE TO COME TO A CONCLUSION ON ITS OWN
11 WITHOUT THE ASSISTANCE OF AN ADDITIONAL EXPERT.

12 I BELIEVE THAT THE ADDITIONAL EXPERT WILL
13 ADD COSTS, AND IT WILL ADD TIME; AND IT WILL NOT REALLY
14 ADD ANYTHING TO THE PROCEEDING.

15 I WOULD ALSO LIKE TO COMMENT THAT IN THEIR
16 PAPERWORK THE WILLIS CLASS SAYS THAT THIS IS EXACTLY THE
17 TYPE OF CASE THAT CALLS FOR THE APPOINTMENT OF A NEUTRAL
18 EXPERT, AND IT CITES THREE AUTHORITIES FOR THAT.

19 ONE OF THEM IS A FEDERAL CASE WHICH DIDN'T
20 TALK ABOUT THE STANDARDS FOR APPOINTING AN EXPERT AT
21 ALL. IT TALKED ABOUT THE DIFFERENCE BETWEEN A NEUTRAL
22 EXPERT WITNESS ON THE ONE HAND AND A TECHNICAL ADVISOR
23 ON THE OTHER IN THE FEDERAL COURTS. I DON'T THINK THAT
24 IS RELEVANT.

25 THE OTHER CASE THEY CITED IS A STATE COURT
26 CASE WHICH, AGAIN, DOESN'T TALK ABOUT THE STANDARDS FOR
27 APPOINTING NEUTRAL EXPERTS. IT TALKS ABOUT THE
28 DIFFERENCE BETWEEN A NEUTRAL EXPERT WITNESS ON THE ONE

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7

1 HAND AND A COURT APPOINTED PHYSICIAN TO EXAMINE A
2 PERSONAL INDUSTRY CLAIM ON THE OTHER.

3 THE THIRD AUTHORITY THAT IT CITES IS THE
4 MANUAL FOR COMPLEX LITIGATION, AGAIN, A FEDERAL MATTER;
5 AND THAT DOES TALK ABOUT THE STANDARDS FOR APPOINTING
6 EXPERTS, BUT IT SETS FORTH A NUMBER OF CRITERIA PRO AND
7 CON, NONE OF WHICH ARE DISCUSSED IN THE PAPERWORK.

8 I NOTE THAT ONE OF THE CONS IS THAT THE
9 COURT DOESN'T NORMALLY APPOINT A NEUTRAL EXPERT WHERE
10 ONE OF THE PARTIES IS INDIGENT BECAUSE OF THE UNFAIRNESS
11 OF APPORTIONING THE ENTIRE COST TO THE OTHER PARTY.

12 I THINK OBVIOUSLY THERE ARE VARIOUS FACTORS,
Page 13

13 PRO AND CON, AND I DO BELIEVE THAT THE COURT HAS
14 DISCRETION TO APPOINT A NEUTRAL EXPERT UNDER THE CODE.
15 BUT FOR THE REASONS THAT I STATED, I DON'T THINK THAT IS
16 APPROPRIATE IN THIS CASE.

17 THE COURT: WELL, IF THERE IS A CONFLICT BETWEEN
18 THE POSITIONS OF THE EXPERTS ON EITHER SIDE, YOU THINK
19 THERE IS ANY VALUE IN HAVING A NEUTRAL THIRD EXPERT
20 APPOINTED BY THE COURT WHO ESSENTIALLY HAS NO OX TO
21 GORE.

22 MR. BUNN: I THINK THERE CAN BE, YES. WE HAVEN'T
23 GOTTEN TO THE JURY TRIAL ISSUE YET, BUT I THINK THAT
24 MIGHT BE ESPECIALLY VALUABLE IN A JURY TRIAL SETTING.

25 BUT IN THIS PARTICULAR CASE, I BELIEVE THAT
26 THIS COURT HAS ALREADY SHOWN THAT ALTHOUGH THE ISSUES
27 ARE DIFFICULT THEY ARE SOMETHING THAT THE COURT CAN MAKE
28 SENSE OF. AND, AGAIN, I BELIEVE THAT BOTH SIDES ARE

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8

1 GOING TO BE ABLE TO PRESENT THEIR EVIDENCE IN SUCH A WAY
2 THAT IT IS GOING TO BE UNDERSTANDABLE TO THE COURT, AND
3 THE COURT CAN MAKE A DECISION.

4 THE COURT: IN TERMS OF SAFE FIELD AND OVERDRAFT.

5 MR. BUNN: YES. THAT IS THE ONLY AREA IN WHICH
6 THE WILLIS CLASS IS NOW REQUESTING AN EXPERT.

7 THE COURT: OKAY. THE WOOD CLASS IS INTERESTED IN
8 SOMETHING BEYOND THAT?

9 MR. BUNN: THAT IS RIGHT. I HAVE NOTHING TO ADD
10 IN THE PAPERWORK THERE. THE WOOD CLASS MOTION IS THE
11 SAME AS I -- AS FAR AS I CAN TELL THE ONE THAT THEY
12 RAISED BEFORE AND THE COURT DENIED.

13 THE COURT: MY CONCERN ABOUT THAT IS THAT I THINK
Page 14

14 COUNSEL VERY OFTEN REALLY DOES NEED ASSISTANCE IN
15 REPRESENTING ITS CLIENT, HIS OR HER CLIENT, AS THE CASE
16 MAY BE, WITH REGARD TO TECHNICAL ISSUES AND SHOULD NOT
17 HAVE TO MAKE AN ELECTION AS TO WHICH OF THE OTHER
18 PARTIES EXPERTS THEY WISH TO AGREE WITH OR DISAGREE WITH
19 WITHOUT HAVING SOME ASSISTANCE THEMSELVES.

20 THE DIFFICULTY I HAVE HERE IS THAT 730 OF
21 THE EVIDENCE CODE IN TERMS OF CIVIL CASES DOES NOT, IN
22 MY OPINION, AUTHORIZE THE APPOINTMENT OF A CONSULTANT AT
23 THE EXPENSE OF ANY OF THE OTHER PARTIES. IT DOES
24 AUTHORIZE THE APPOINTMENT OF AN EXPERT WHO IS A NEUTRAL
25 EXPERT WHO WOULD BE THE COURT'S EXPERT WHO THEN HAS --
26 IS AVAILABLE TO ALL PARTIES, CAN BE CALLED BY ANY PARTY
27 INCLUDING THE COURT.

28 SO I'M -- THAT IS A GREAT CONCERN,

8

9

1 MR. MCLACHLAN. I UNDERSTAND YOUR NEEDS, BUT I DON'T
2 THINK UNDER THESE CIRCUMSTANCES THAT BASED ON WHAT I
3 HAVE SEEN TO THIS POINT THAT THE COURT HAS THE ABILITY
4 TO SAY WE ARE GOING TO HIRE A CONSULTANT FOR YOU AND YOU
5 ARE GOING TO ASSESS THE CHARGE TO ONE OF THE OTHER
6 PARTIES WHO IS NOT EVEN THE FIRST PARTY TO FILE THIS
7 LAWSUIT. THERE ARE OTHER PARTIES THAT HAVE FILED THIS
8 LAWSUIT AS WELL.

9 SO IF YOU WOULD LIKE TO ADDRESS THAT, I
10 WOULD APPRECIATE IT.

11 MR. MCLACHLAN: I WOULD. AND AS I BELIEVE I SAID
12 UP IN SAN JOSE WHEN WE ARGUED THE FIRST PART OF THIS
13 MOTION, I THINK WE MADE VERY CLEAR IN OUR PAPERWORK. WE
14 ARE NOT -- WE HAVE NOT ASKED THE COURT TO APPOINT A

15 CONSULTANT FOR THE SMALL PUMPERS CLASS. WE HAVE ASKED
16 THE COURT TO APPOINT A NEUTRAL EXPERT ON THE ISSUE OF
17 SELF-HELP IN THIS SITUATION.

18 AND I THINK, OBVIOUSLY, OUR POSITION IS THAT
19 WE -- AS COUNSEL CAN GO FORTH AND REPRESENT THIS CLASS.
20 I THINK THAT THE PURPOSE OF THAT EVIDENCE CODE
21 SECTION -- AND IT DOES NOT HAVE -- STATE ANYWHERE IN
22 THERE WHAT YOUR HONOR HAS STATED NOR DO ANY OF THE
23 CASES. IT IS NOT SO LIMITED. IF THE LEGISLATURE WANTED
24 TO LIMIT IT, IT WOULD BE SAY FAMILY LAW, CRIMINAL, AND
25 THESE PARTICULAR SITUATIONS --

26 THE COURT: IN WHAT WAY IS IT NOT LIMITED?

27 MR. MCLACHLAN: IT IS NOT LIMITED IN THE FACT --
28 WHAT WE ARE ASKING IS FOR THE COURT TO APPOINT AN EXPERT

8

10

1 THAT WOULD COME IN AND TESTIFY ON THE ISSUE OF SELF-HELP
2 FOR THE COURT. AND, OBVIOUSLY, THAT ISSUE IS ONE THAT
3 IS ONLY GERMANE LARGELY TO THE SMALL PUMPERS.

4 BUT IN ANY OTHER CONTEXT, THE COURT APPOINTS
5 A PSYCHIATRIC EXPERT IN A CRIMINAL MATTER, FOR EXAMPLE.
6 THAT EXPERT IS TESTIFYING ABOUT A SINGLE PARTY, THE
7 DEFENDANT, TYPICALLY. OR IN A FAMILY LAW PROCEEDING,
8 THE COURT IS FAMILIAR WITH THE NUMEROUS WAYS IN WHICH
9 EXPERTS ARE APPOINTED THERE.

10 THERE IS ALWAYS A PARTICULAR PARTY THAT'S
11 BEING REPRESENTED, AND THAT PARTY -- THE KEY THING THAT
12 CROSSES THOSE PARTIES AND UNDERLIES THAT -- THAT CODE
13 IS -- THAT THE FACT THAT THAT PARTY DOES NOT HAVE THE
14 ABILITY TO RETAIN ITS OWN EXPERT.

15 THAT IS CLEARLY MANIFESTED AND DEMONSTRATED
Page 16

16 HERE. RICHARD WOOD CAN'T AFFORD IT.

17 THE COURT: LET ME STOP YOU FOR A MINUTE.

18 MR. MCLACHLAN: SURE.

19 THE COURT: I DON'T DISAGREE WITH ANYTHING THAT
20 YOU HAVE SAID TO THIS POINT. THAT IS A LITTLE DIFFERENT
21 THAN WHAT WE ORIGINALLY TALKED ABOUT IN SANTA CLARA
22 COUNTY.

23 BUT BEYOND THAT, I NEED SOME INDICATIONS
24 THAT I THOUGHT THE REQUEST WAS PREMATURE UNTIL SUCH TIME
25 AS WE ESTABLISHED THAT THERE WAS, IN FACT, AN OVERDRAFT
26 BASED UPON THE YIELD AND THE PUMPING IN VARIOUS -- TOTAL
27 PUMPING WITHIN THE ANTELOPE VALLEY.

28 AND I CAN ASSURE YOU THAT IN THE EVENT THAT

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11

1 IT IS DETERMINED THAT THERE IS OVERDRAFT IN THIS CASE
2 AND THAT THERE IS A CONTENTION OF PRESCRIPTION AGAINST
3 THE SMALL PUMPERS, THEN CERTAINLY I WOULD AGREE WITH
4 YOU. YOU ARE ENTITLED TO A NEUTRAL -- AND THE COURT
5 WOULD BE WANTING TO HEAR A NEUTRAL EXPERT DEALING WITH
6 THOSE ISSUES.

7 I INDICATED EARLIER THAT MY INCLINATION WAS
8 TO BIFURCATE THESE ISSUES AND TO TRY SAFE YIELD AND
9 OVERDRAFT AS A SEPARATE PHASE OF THE TRIAL. THAT IS
10 STILL MY INCLINATION. SO I'M NOT -- I INDICATED I WAS
11 NOT DENYING YOUR MOTION WITH PREJUDICE. IT WAS WITHOUT
12 PREJUDICE, BUT I THOUGHT IT WAS PREMATURE TO START
13 DEALING WITH THAT ISSUE AT THIS POINT.

14 AND THAT LEAVES ME TO SOMETHING ELSE. IN
15 LOOKING AT THE NATURE OF -- AND PERHAPS I'M GETTING
16 AHEAD OF US ALL ON THIS, BUT LOOKING AHEAD AT THE NATURE

17 OF THE SMALL PUMPING CLASS WHICH REALLY INVOLVES A VERY
18 SMALL AMOUNT OF PUMPING -- AND I THINK A FAIRLY SMALL
19 PERCENTAGE OF THE TOTAL PUMPING THAT OCCURS WITHIN THE
20 ANTELOPE VALLEY -- I'M JUST WONDERING IF THE PARTIES
21 THAT ARE CLAIMING PRESCRIPTION REALLY WANT TO CLAIM
22 PRESCRIPTION AGAINST THE PERSON WHO IS PUMPING ON HIS
23 OWN RESIDENCE FOR HIS OWN USES.

24 OF COURSE, THAT IS AN ISSUE THAT I THINK
25 MR. DUNN AND OTHERS HAVE TO ADDRESS. BUT, I MEAN, ARE
26 YOU SERIOUS THAT YOU WANT TO CUT DOWN IN THE PUMPING
27 THAT SOMEBODY DOES IN THEIR OWN BACKYARD WHEN THEY ARE
28 PUMPING FOR THEIR OWN NEEDS?

♀

12

1 I GUESS THAT IS ADDRESSED TO YOU, MR. DUNN,
2 AND OTHERS.

3 MR. DUNN: MR. DUNN FOR THE ROSAMOND COMMUNITY
4 SERVICES AND WATER DISTRICT NO. 40.

5 I THINK THE BEST THING THAT I CAN TELL YOU
6 AT THIS POINT IS THAT MR. MCLACHLAN AND I HAVE HAD
7 EXTENSIVE CONVERSATION OVER EXACTLY THAT ISSUE, AND I
8 DON'T KNOW IF IT WOULD BE APPROPRIATE FOR ME TO GO ANY
9 FURTHER ON THAT WITHOUT --

10 THE COURT: WELL, YOU KNOW, YOU COULD CERTAINLY
11 MAKE WHATEVER REPRESENTATIONS TO THE COURT THAT YOU WANT
12 CONCERNING THAT ISSUE. BUT I'M REALLY ASKING YOU THE
13 QUESTION: DO YOU REALLY WANT TO PRESCRIBE AGAINST THE
14 SMALL PUMPING WHO IS PUMPING IN HIS BACKYARD TO TAKE
15 CARE OF HIS OWN WATER NEEDS WHEN HE IS OUTSIDE THE AREA
16 OF ANY OF THE PURVEYORS?

17 MR. DUNN: WELL, IF I --

18 THE COURT: IF THAT WERE THE CASE, THAT WOULD
19 CERTAINLY ELIMINATE A REAL CONCERN HERE ON BEHALF OF
20 THAT CLASS. THAT IS NOT TO SAY THAT IF THE COURT FINDS
21 THERE IS OVERDRAFT THAT THERE MIGHT BE SOME IN TERMS OF
22 THE CASE MANAGEMENT OR WATER MANAGEMENT PLAN THE NEED TO
23 REDUCE PUMPING THROUGHOUT, BUT THAT WOULD HAVE NOTHING
24 TO DO WITH THE QUESTION OF PRESCRIPTION.

25 MR. DUNN: I THINK, YOUR HONOR, WHAT WE HAVE BEEN
26 TALKING, MR. MCLACHLAN AND I, IS SOME KIND OF
27 ARRANGEMENT THAT WOULD ACCOMMODATE HIS CLASS MEMBERS
28 WHILE AT THE SAME TIME PROTECT THE OVERALL HEALTH OF THE

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13

1 BASIN.

2 AND THAT IS SORT OF A COMPETING INTEREST, IF
3 I CAN PUT IT THAT WAY, THAT WE RECOGNIZE ON ONE HAND
4 THAT WITHIN HIS CLASS YOU ARE GOING TO HAVE SMALL
5 DOMESTIC USERS. THESE ARE SMALL HOMEOWNERS WHO ARE NOT
6 CONNECTED TO A PUBLIC WATER SUPPLIERS SERVICE AREA,
7 GENERALLY BECAUSE THEY ARE OUT IN A RURAL AREA. AND
8 THEY NEED WATER FOR DOMESTIC PURPOSES. WE ACKNOWLEDGE
9 THAT.

10 THE CONCERN THAT ALL OF US -- MANY OF US
11 HAVE IN THIS CASE IS THAT, LIKE, ANY BASIN IT IS A ZERO
12 SUM GAIN. SO WHEN YOU START ALLOCATING WATER TO ONE
13 GROUP OF INDIVIDUALS, THAT MAY NECESSARILY REQUIRE THAT
14 THERE ARE OTHER INDIVIDUALS WHO MAY HAVE TO GO WITHOUT.

15 AND WE CAN -- I DON'T THINK IT'S APPROPRIATE
16 FOR ANY OF US TO SORT OF BRING TO YOU RIGHT NOW SORT OF
17 AN ISSUE DOWN THE ROAD IN TERMS OF HOW MUCH WATER IS
18 REALLY AVAILABLE. BUT I THINK IT IS SAFE TO SAY THAT

19 THERE IS A STRONG DEBATE THAT HAS BEEN GOING ON FOR SOME
20 TIME BOTH AS TO HOW MUCH WATER IS AVAILABLE TO DIVIDE
21 AND THEN HOW TO DIVIDE THAT.

22 SO THESE DISCUSSIONS ON WHAT YOU HAVE
23 ADDRESSED SORT OF HAVE TO BE RESOLVED IN SORT OF A
24 LARGER SCHEME'S OF THINGS. THE UNITED STATES ALSO HAS
25 AN INTEREST IN THE QUESTIONS THAT YOU PROPOSE BECAUSE
26 UNDER THE MCCARRAN AMENDMENT -- YOU KNOW, THE
27 COMPREHENSIVENESS OF THE ADJUDICATION AND THE
28 QUANTIFICATION OF RIGHTS AND HEALTH AND BASIN. AGAIN, I

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14

1 DON'T WANT TO SPEAK FOR THE UNITED STATES, BUT THEY ALSO
2 HAVE A CONCERN ON THIS.

3 BUT, ULTIMATELY, IT COMES BACK TO WHAT CAN
4 WE DO IN TERMS OF ACCOMMODATING THE NEEDS THAT ARE OUT
5 THERE WITHIN THE PARAMETERS THAT WE HAVE THAT WE KNOW TO
6 BE THE WATER AVAILABLE. AND THAT IS A DIFFICULT
7 CHALLENGE. IF IT WEREN'T, I DON'T THINK WE WOULD BE IN
8 FRONT OF YOU THESE MANY MONTHS AND NOW YEARS IF IT WAS
9 JUST SORT OF THAT SIMPLE.

10 SO I UNDERSTAND YOUR QUESTION, BUT I DON'T
11 THINK I CAN GIVE YOU THE -- A SIMPLE ANSWER AT THIS
12 POINT.

13 THE COURT: WELL, UNDERSTAND THAT ULTIMATELY IF
14 THE COURT FINDS THAT THERE IS AN OVERDRAFT HERE, WHETHER
15 THERE IS PRESCRIPTION OR NOT, THE COURT IS GOING TO HAVE
16 TO DETERMINE WHAT THE PUMPING RIGHTS ARE OF EACH OF THE
17 PARTIES. AND WE WILL DO THAT BASED UPON THE EVIDENCE AS
18 PRESENTED BY MOTION OF THE PARTIES OR BY SOME OTHER
19 METHOD.

20 BUT, ULTIMATELY, IF THERE IS OVERDRAFT AND
21 THERE IS A WATER MANAGEMENT ORDERED THAT IS A PHYSICAL
22 SOLUTION TO THE PROBLEM, THAT IS GOING TO AFFECT
23 EVERYBODY WHETHER THEY HAVE BEEN PRESCRIBED AGAINST OR
24 NOT.

25 MR. DUNN: UH-HUH.

26 THE COURT: WHEN YOU ARE TALKING ABOUT THE SMALL
27 BACKYARD PUMPER, IT JUST SEEMS TO ME THAT THE CASE WOULD
28 BE MUCH SIMPLIFIED -- AND I DON'T THINK IT AFFECTS THE

7

15

1 COMPREHENSIVENESS OF THE ADJUDICATION BECAUSE, IN FACT,
2 THE COURT WILL BE ADJUDICATING THE RIGHTS OF ALL
3 PARTIES.

4 MR. DUNN: I AGREE, YOUR HONOR.

5 THE COURT: WELL, IT IS YOUR CLAIM.

6 MR. DUNN: I UNDERSTAND.

7 THE COURT: THAT COMPLICATES THE CASE.

8 MR. DUNN: IT DOES AND IT DOESN'T. BECAUSE I
9 THINK AS THE COURT HAS JUST POINTED OUT IN THE ABSENCE
10 OF PRESCRIPTIVE RIGHTS CLAIM, WE STILL HAVE THESE
11 ISSUES. SO WE STILL CONFRONT THESE ISSUES NO MATTER
12 WHAT.

13 THE COURT: WELL, YOU DON'T GET INTO THE QUESTION
14 OF SELF-HELP, DO YOU? YOU DON'T GET INTO THE QUESTION
15 OF WHEN IF -- IF THERE IS A CURRENT OVERDRAFT CONCERN
16 WHEN THAT STARTED. THOSE ARE PRESCRIPTIVE RIGHTS
17 CLAIMS. AND I AM NOT SUGGESTING TO YOU THAT YOU DON'T
18 HAVE A RIGHT TO ADJUDICATE OR LITIGATE AND HAVE
19 ADJUDICATED THOSE ISSUES. OBVIOUSLY, YOU DO. AND THIS
20 COURT HAS DONE THAT BEFORE IN OTHER MATTERS.

21 BUT WHAT I AM CONCERNED ABOUT IS THE EFFECT
22 ON THIS ADJUDICATION OF THE SMALL PUMPER CLASS TO THE
23 EXTENT THAT -- IS THAT SOMETHING THAT YOU REALLY WANT TO
24 DO? AND YOU DON'T HAVE TO ANSWER THAT QUESTION TODAY,
25 BUT I WANT YOU TO THINK ABOUT IT.

26 MR. DUNN: WELL, I'LL YIELD TO MY COLLEAGUE HERE
27 MR. MARKMAN, BUT I CAN CERTAINLY STAND BEFORE YOU AND
28 REPRESENT TO YOU UNEQUIVOCALLY THAT PRECISE ISSUE THAT

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16

1 YOU HAVE BROUGHT FRONT AND CENTER HERE HAS BEEN
2 DISCUSSED EXTENSIVELY WITH CLASS COUNSEL, AND I'LL YIELD
3 NOW, BUT I WILL SIMPLY SAY I CAN GIVE YOU RIGHT NOW MY
4 VERSION OF HOW THAT COULD WORK. THERE IS A WAY TO MAKE
5 THIS WORK.

6 THE COURT: WELL, LET ME -- BEFORE YOU DO THAT, I
7 DON'T WANT YOU TO COMMIT YOURSELF TO ANYTHING.

8 MR. DUNN: NO, I'M NOT GOING TO EITHER.

9 THE COURT: I WOULDN'T THINK SO. BUT IT DOES
10 OCCUR TO ME THAT PERHAPS WITH THE ASSISTANCE OF THE
11 COURT A SETTLEMENT CONFERENCE MIGHT BE ENGAGED IN TO SEE
12 IF THERE CAN BE SOME RESOLUTION AT LEAST OF THAT SMALL
13 ISSUE.

14 MR. DUNN: I TALKED TO MR. MCLACHLAN ABOUT THAT,
15 BUT I THINK WE WOULD BE INTERESTED IN THAT. THANK YOU.

16 MR. MARKMAN: JAMES MARKMAN FOR THE CITY OF
17 PALMDALE. JUST SOME THOUGHTS ON THIS, YOUR HONOR.

18 FIRST OFF ALL, WE WOULD HAVE BEEN DELIGHTED
19 TO PURSUE -- TO NOT PURSUE AT ALL THE SMALL PUMPERS AS
20 BEING DE MINIMUS OR MINIMAL PARTIES AS HAS BEEN THE
21 USUAL CASE IN THESE ADJUDICATIONS. BECAUSE THE COST OF

22 DEALING WITH THEM FAR EXCEEDS THE VALUE THAT YOU ARE
23 GOING TO RECEIVE FROM CONTROLLING THEIR PRODUCTION OR
24 CAUSING THEM TO CONTRIBUTE TO THE SOLUTION.

25 AND THERE ARE LOTS OF CASES, PASADENA VS.
26 ALHAMBRA, THE CLASSIC THAT SAYS WE CAN DO THAT. BUT IN
27 THE CONTEXT OF THE UNITED STATES POSITION IN THE
28 MCCARRAN AMENDMENT, WE DIDN'T HAVE THAT LUXURY. SO WE

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17

1 HAVE TO PROCEED, AND THAT'S WHY WE HAVE CLASSES.

2 WE HAVE BEEN -- SOME OF THE PUBLIC WATER
3 SUPPLIERS HAVE BEEN WORKING VERY HARD AT FORMULATING
4 SETTLEMENT PROPOSALS WHICH WE WILL -- WILL WISH TO AND
5 WILL DISCUSS WITH BOTH CLASSES TO TRY TO DEAL WITH THIS
6 WITHOUT HAVING 8,000 SELF-HELP CLAIMS PUT BEFORE THE
7 COURT APPROVED OR HAVE TO BE APPROVED.

8 THE LAST THING I WOULD LIKE TO SAY IS, I
9 DON'T THINK ANY OF US CONCEIVE OF A PHYSICAL SOLUTION OR
10 A COURT ORDER THAT WE WOULD SEEK WHICH WOULD CUT BACK
11 SOMEBODY PUMPING 1 ACRE A FOOT TO HALF AN ACRE A FOOT OR
12 3-ACRE FEET TO 2-ACRE FEET TO MEET THEIR INDIVIDUAL
13 NEEDS.

14 THE QUESTION BECOMES IS THERE SOME WAY OF
15 HAVING THEM CONTRIBUTE TO THE COST OF THE SOLUTION. IN
16 OTHER CASES, WE HAVE TRIED TO EQUATE THE COST OF THE
17 SINGLE FAMILY HOMEOWNER'S WATER. BUT THAT PERCENTAGE OF
18 THE WATER BILL THAT CONTRIBUTES TO THE SOLUTION ON AN
19 ANNUAL OR MONTHLY BASIS AND COMPARE IT -- AND ALLOCATE A
20 SIMILAR COST TO A MINIMAL PRODUCER.

21 AND THERE ARE WAYS THAT HAVE BEEN DONE. BUT
22 AS FAR AS PUMPING CUTBACKS ARE CONCERNED, WE ALL HOPING

23 TO COME OUT OF THIS PROCESS WITHOUT ANYONE HAVING A
24 PUMPING CUTBACK LET ALONE A SMALL PUMPER.

25 THE COURT: WELL, MY CONCERN AT THIS POINT IS THE
26 ADJUDICATION PROCESS AND NOT SO MUCH WHAT THE ULTIMATE
27 MANAGEMENT AND PHYSICAL SOLUTION MIGHT BE. AND THERE
28 ARE A MULTITUDE OF CONCLUSIONS ONE COULD REACH ABOUT

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18

1 THAT.

2 MR. MARKMAN: YOUR HONOR, BUT I PRESUME -- I SEE
3 MR. FIFE AND SOME OF THESE OVERLIERS THAT ARE NOT
4 GIGANTIC PUMPERS, BUT THEY ARE SUBSTANTIAL PUMPERS MAY
5 NOT WANT TO HAVE THEIR SHARE DILUTED OR CUTBACK OR THEIR
6 COST INCREASED BECAUSE SIX TO 8,000 SMALL PUMPERS WERE
7 DISMISSED, AND IT -- IF -- THAT COULD BE ANYWHERE FROM
8 8,000 TO 30,000 ACRES --

9 THE COURT: I'M NOT SUGGESTING --

10 MR. MARKMAN: -- A YEAR.

11 THE COURT: I'M NOT SUGGESTING ANYONE BE
12 DISMISSED. THAT IS NOT THE FOCUS OF MY COMMENT. MY
13 COMMENT WAS TO WHAT EXTENT DOES THERE HAVE TO BE
14 LITIGATION CONCERNING THOSE PARTIES AT THIS TIME.
15 BECAUSE IF THERE IS GOING TO BE ANY CASE MANAGEMENT --
16 OR I SHOULD SAY PHYSICAL SOLUTION TO A WATER MANAGEMENT
17 SYSTEM THAT IS SET UP AS A PHYSICAL SOLUTION, THEY WILL
18 BE PART OF IT. THEY HAVE TO BE. BECAUSE THEY ARE
19 PUMPING WITHIN THE VALLEY.

20 AND SO IT'S NOT A MATTER OF DISMISSAL; IT IS
21 A QUESTION OF WHAT ISSUES NEED TO BE LITIGATED AND
22 ULTIMATELY ADJUDICATED WITH REGARD TO THEIR PRESENCE.

23 MR. MARKMAN: WE COMPLETELY CONCUR -- AND I WILL

24 REITERATE AND REPRESENT TO COUNSEL -- THAT WE HAVE BEEN
25 HAVING SOME MEETINGS, SOME OF US, TO TRY TO FORMULATE
26 PROPOSALS WHICH FROM OUR POINT OF VIEW WE WOULD MAKE TO
27 THE CLASSES TO RESOLVE ANY ISSUES WITH THEM AS BETWEEN
28 US AND THEM WHICH WOULD MEAN, YOU KNOW, THEIR SELF-HELP

7

19

1 OR SHOULD IT GO FORWARD WITH ONLY BETWEEN THEM AND OTHER
2 OVERLIERS, AND WE CAN'T SPEAK FOR THE OTHER OVERLIERS.

3 THE COURT: NO, BUT YOU HAVE A SPECIFIC CLAIM OF
4 PRESCRIPTION, AND THAT IS A -- IT IS QUALITATIVELY
5 DIFFERENT THAN THE POSITIONS OF THE OTHER OVERLIERS.

6 MR. MARKMAN: WE UNDERSTAND, YOUR HONOR. AND,
7 AGAIN, WE ARE VERY CLOSE TO PROCEEDING FORWARD WITH A
8 PROPOSAL AS SOON AS WE, YOU KNOW, HURDLE A FEW POLITICAL
9 HURDLES THAT ARE ALWAYS IN THE WAY OF THE PUBLIC
10 ENTITIES.

11 THE COURT: I UNDERSTAND.

12 MR. MARKMAN: I THINK WE ARE WAY DOWN THE ROAD TO
13 DOING SOMETHING THAT I HOPE WILL WORK FOR BOTH CLASSES.

14 THE COURT: WILL IT BE ANY VALUE TO THE PRODUCERS
15 AND COUNSEL FOR THE CLASS TO HAVE A SETTLEMENT
16 CONFERENCE, AND WOULD THE PARTIES BE WILLING TO
17 PARTICIPATE IN THAT?

18 MR. MARKMAN: WE ARE MORE THAN HAPPY TO
19 PARTICIPATE AND WE DO THINK THAT WOULD BE PRODUCTIVE.

20 THE COURT: MR. MCLACHLAN.

21 MR. MCLACHLAN: NOT TO LET SOME AIR OUT OF THE
22 BALLON, I THINK AS TO THE CLASSES THEMSELVES, NO, WE
23 HAVE SPENT -- AS ALREADY BEEN DISCUSSED WE SPENT A LOT
24 OF TIME, MR. O'LEARY AND MYSELF, IN SETTLEMENT

25 NEGOTIATIONS OVER THE LAST MONTH, AND THEY HAVE GONE
26 NOWHERE.
27 I'M OPEN-MINDED BUT PROMISE AFTER PROMISE
28 HAS BEEN MADE, AND WE CAN'T EVEN GET A MEANINGFUL

9

20

1 RESPONSE.

2 THE COURT: THE QUESTION I ASKED YOU,
3 MR. MCLACHLAN, IS ARE YOU WILLING TO PARTICIPATE IN THIS
4 SETTLEMENT CONFERENCE WITH THE COURT?

5 MR. MCLACHLAN: UNDER CERTAIN CIRCUMSTANCES, YES.
6 YEAH, IF CERTAIN CIRCUMSTANCES THAT, I GUESS, I COULD
7 ADDRESS RIGHT NOW ARE TAKEN CARE OF, YEAH, SO LONG AS
8 THAT IS NOT GOING ON WHILE THE CLASS NOTICE IS GOING
9 OUT.

10 IF THE CLASS NOTICE IS PUT OFF FOR SOME
11 SHORT PERIOD OF TIME WHILE THIS PROCESS IS HAPPENING,
12 I'M FINE WITH IT. BUT MR. O'LEARY AND MYSELF ARE
13 GRAVELY CONCERNED ABOUT BECOMING LOCKED INTO THIS CASE,
14 AND I BELIEVE THAT LEGALLY OCCURS WHEN THAT NOTICE GOES
15 OUT.

16 I FEEL FOR MY FRIENDS, MR. KALFAYAN AND
17 MR. ZLOTNICK HERE, BUT THEY ARE LOCKED IN THIS CASE, AND
18 THERE IS NOT MUCH THEY CAN DO ABOUT IT. AND I SEE A
19 REAL POSSIBILITY DOWN THE ROAD OF BEING PUT TO THE
20 CHOICE POTENTIALLY -- AND I'M NOT SAYING YOUR HONOR IS
21 OUT TO DO THIS -- BUT POTENTIALLY BEING PUT TO THE
22 CHOICE OF EITHER COMMITTING MALPRACTICE ON BEHALF OF
23 SMALL PUMPERS CLASS BY GOING FORWARD WITHOUT AN EXPERT
24 TO PUT FORTH THEIR CRITICAL DEFENSE, OR HAVING TO GO
25 INTO MY OWN POCKET, MR. O'LEARY'S OWN POCKET, TO THE

26 TUNE OF \$100,000 WHICH WE CANNOT RECOVER AT ANY POINT IN
27 TIME. THAT IS JUST NOT A CHOICE WE CAN MAKE.

28 SO THIS IS -- WHAT I WOULD SUGGEST IS I

7

21

1 UNDERSTAND THE COURT'S POSITION ABOUT, LOOK, WE MAY NOT
2 EVEN NEED THIS IF WE GET DOWN TO THE ISSUE OF SAFE YIELD
3 AND OVERDRAFT, AND THOSE ARE MOOTED.

4 IF THE COURT WERE TO SAY THE SMALL PUMPERS
5 CLASS MOTION FOR THIS EXPERT IS GRANTED TODAY, BUT
6 DOLLAR ONE CANNOT BE SPENT IF AND UNTIL THE -- THAT NEXT
7 STAGE OF THE TRIAL OCCURS AND THOSE PREDICATE ISSUES TO
8 THE SAFE YIELD AND OVERDRAFT ARE DEALT WITH AND ARE
9 RESOLVED ADVERSELY TO THE CLASS, THEN I THINK IT
10 RESOLVES THE PROBLEM. THEN WE DON'T HAVE TO FILE OUR
11 MOTION TO WITHDRAW MONDAY OR TUESDAY WHICH I DON'T THINK
12 WE HAVE A CHOICE.

13 THE COURT: WELL, I INDICATED TO YOU THAT I THINK
14 IT IS APPROPRIATE FOR THE COURT TO APPOINT AN EXPERT TO
15 DEAL WITH THOSE ISSUES AT THE APPROPRIATE TIME. NOW YOU
16 KNOW IF YOU WANT THE COURT TO MAKE AN ORDER AND STAY IT
17 UNTIL IT BECOMES NECESSARY, I DON'T HAVE ANY DIFFICULTY
18 IN DOING THAT BECAUSE I AGREE WITH YOU. I WOULD NOT
19 WANT TO SEE YOU COMMIT MALPRACTICE BY NOT BEING ABLE TO
20 BE ADEQUATELY PREPARED TO REPRESENT YOUR CLIENTS'
21 INTEREST.

22 I THINK WHAT YOU HAVE DONE HERE IS
23 ADMIRABLE. AND IN THE -- AS FAR AS I'M CONCERNED IN THE
24 HIGHEST STANDARDS OF THE PROFESSION STEPPING FORWARD AS
25 THE SAME WITH MR. KALFAYAN AND MR. ZLOTNICK REPRESENTING
26 THESE PEOPLE WHO WOULD OTHERWISE HAVE TO BE SERVED

27 INDIVIDUALLY AND SUBJECT TO EMPLOYING THEIR OWN LAWYERS,
28 AND TO WHAT END.

9

22

1 SO, YOU KNOW, I COMMEND YOU FOR THAT. I
2 THINK THAT IS THE RIGHT THING TO DO. AND I AM INCLINED
3 TO APPOINT -- AND I WILL APPORTION THE COST OF THAT
4 AMONG ALL THE PARTIES BECAUSE THAT IS THE APPROPRIATE
5 DIRECTION FROM THE STATUTE.

6 BUT I WOULD STAY THAT UNTIL IT BECOMES
7 NECESSARY FOR YOU TO DO IT AND TO HAVE IT. IT MAY NOT
8 NEVER BE NECESSARY. I DON'T KNOW. I SUSPECT, HOWEVER,
9 ABSENT A SETTLEMENT AT SOME POINT THERE IS GOING TO HAVE
10 TO BE A DETERMINATION MADE OF WHAT THE REASONABLE AND
11 BENEFICIAL USE IS OF EACH PARTY WHO IS INVOLVED IN THIS
12 LAWSUIT.

13 AND THAT, OF COURSE, IS THE ULTIMATE
14 DETERMINATION THAT IS GOING TO DETERMINE WHAT THE RIGHTS
15 OF THE PARTIES MIGHT BE.

16 MR. MCLACHLAN: THAT IS FINE. IF THERE IS GOING
17 TO BE THE COURT'S ORDER, THEN THAT RELIEVES THE PRIMARY
18 CONCERN OF MR. O'LEARY'S FIRM AND MY FIRM. AND THEN,
19 YOU KNOW, WE ARE OPEN TO PARTICIPATE IN WHATEVER PROCESS
20 THE COURT FEELS IS DISCUSSED.

21 THE COURT: WELL, MY INTEREST IS IN SEEING HOW
22 MANY ISSUES CAN GET RESOLVED BY AGREEMENT; AND,
23 HOPEFULLY, I WOULD LIKE TO SEE ALL THE ISSUES RESOLVED
24 BY AGREEMENT. THAT MAY NOT HAPPEN. BUT, CERTAINLY, THE
25 ISSUES RELATING TO THE PUMPER CLASS AND THE NONPUMPER --
26 OR DORMANT CLASS ARE THINGS THAT I THINK CAN BE
27 RESOLVED. ALL RIGHT. MR. FIFE.

28 MR FIFE: YOUR HONOR, I THINK THAT WE NEED TO

♀

23

1 CLARIFY FACTUALLY THE NATURE OF THE WOOD CLASS, BECAUSE
2 IT HAS COME UP IN THE PAPERS, AND IT SEEMS TO BE THE
3 ASSUMPTION THAT THE COURT IS GOING ON THAT THE WOOD
4 CLASS IS MADE UP OF SMALL, AS YOU SAID, BACKYARD PUMPERS
5 FOR RESIDENTIAL PURPOSES.

6 BUT THE WOOD CLASS IS DEFINED AS PEOPLE WHO
7 PUMP LESS THAN 25-ACRE FEET PER PARCEL. THERE IS NO WAY
8 THAT A SMALL DOMESTIC PUMPER IS PUMPING 24 OR 20 OR TEN
9 OR EVEN 5-ACRE FEET.

10 THE SMALL DOMESTIC PUMPERS ARE GOING TO BE
11 PUMPING SOMETHING LIKE HALF AN ACRE FOOT TO AN ACRE
12 FOOT. AND SO EVERYONE BETWEEN ONE AND 25, THOSE AREN'T
13 PEOPLE WHO ARE -- WHO FIT INTO THIS DESCRIPTION THAT IS
14 BEING GIVEN TO THE CLASS.

15 THERE ARE PEOPLE WHO ARE -- MY CLIENT'S
16 RIGHT NOW WHO WILL BE IN THE SMALL PUMPERS CLASS BECAUSE
17 THEY HAVE DISCREET PARCELS ON WHICH THEY PUMP 20-ACRE
18 FEET, YOU KNOW, 15-ACRE FEET.

19 AND SO THERE IS THAT THAT I THINK WE NEED TO
20 UNDERSTAND OR WE ARE MISS-DEFINING OR MISS-TALKING ABOUT
21 WHO IS IN THIS CLASS: BUT FURTHER NOW IF AN EXPERT IS
22 GOING TO BE GIVEN TO THIS CLASS -- AND AS YOU SAY THE
23 COST IS GOING TO BE APPORTIONED AMONGST ALL PARTIES --
24 THAT MEANS NOT ONLY ARE THERE PARTIES IN THIS CASE THAT
25 ARE FUNCTIONALLY NO DIFFERENT THAN MY CLIENTS WHO ARE
26 GOING TO GET SUBSIDIZED EXPERT ASSISTANCE. AND NOW MY
27 CLIENTS HAVE TO PAY FOR THAT IN ADDITION TO PAYING FOR
28 OUR OWN EXPERT AND THOSE PARTIES -- SINCE MR. MCLACHLAN

1 HAS BEEN CLEAR, HE'S NOT GOING TO HAVE AN EXPERT. HE
2 HAS NO INTENTION OF HIRING AN EXPERT ON THE ISSUES OF
3 SAFE YIELD AND OVERDRAFT. WE HAVE TO PICK UP HELPING
4 HIM OUT AND HIS CLIENTS OUT TO DEFEND THAT PART OF THE
5 CASE.

6 SO A HUGE BURDEN IS BEING PUT ON SOME SMALL
7 PUMPERS AND NOT OTHERS, AND I REALLY DON'T SEE ANY
8 REASON FOR THE DISTINCTION.

9 THE COURT: WELL, I THINK YOU ARE AHEAD OF
10 YOURSELF, FRANKLY, MR. FIFE. WE DON'T HAVE NOTICES THAT
11 HAVE GONE OUT TO THE CLASS. WE HAVE NOT DEFINED THE
12 CLASS. WE ARE FINITELY -- IN A FINITE WAY. WE WILL --
13 I THINK YOU ARE PREMATURE IN YOUR CONCERNS, BUT I
14 UNDERSTAND THEM. AND I WILL DEAL WITH THEM AT THE
15 APPROPRIATE TIME. AT THIS POINT, HOWEVER -- GO AHEAD,
16 MR. DUNN.

17 MR. DUNN: JUST TO SORT OF COME BACK TO WHAT THE
18 COURT SUGGESTED ON THE SETTLEMENT PROCESS, WHAT I WOULD
19 LIKE TO SUGGEST TO THE COURT FOR ITS CONSIDERATION IS
20 THAT FAIRLY SOON THE COURT WOULD MEET WITH COUNSEL FOR
21 THE WOOD CLASS TOGETHER WITH COUNSEL FOR PUBLIC WATER
22 SUPPLIERS THAT HAVE FILED PRESCRIPTIVE CLAIMS AGAINST
23 WOOD CLASS AND ALSO INVITE THE UNITED STATES TO
24 PARTICIPATE BECAUSE OF THE MCCARRAN ISSUES AND CONCERNS.

25 AND THAT'S HOW I SORT OF ENVISION SORT OF
26 THE BEST WAY OF SORT OF MOVING FORWARD WITH THIS. I CAN
27 TELL YOU WE ARE PREPARED TO DO THIS ON A FAIRLY SHORT
28 ORDER. IT PROBABLY MAKES SENSE TO DO THAT, BECAUSE WE

1 ARE PREPARED TO GO EITHER WAY. SHOULD THE COURT WANT TO
2 SEND OUT THE NOTICE TO THE WOOD CLASS, WE ARE PREPARED
3 TO DO THAT, YOU KNOW, FAIRLY QUICKLY.

4 THE COURT: I WANT THAT NOTICE TO GO OUT PROMPTLY.

5 MR. DUNN: THEN MR. MCLACHLAN HAS HIS CONCERNS
6 THAT ONCE THAT NOTICE GOES OUT, THEN I LEAVE IT UP TO
7 THE COURT.

8 THE COURT: WELL, I HAVE INDICATED TO
9 MR. MCLACHLAN THAT I AM GOING TO GRANT HIS REQUEST AND
10 UNDERSTANDING MR. FIFE'S CONCERN ABOUT IT, I'M GOING TO
11 GRANT IT NEVERTHELESS. I THINK THERE IS GOOD CAUSE FOR
12 IT, AND I'M GOING TO STAY IT UNTIL THE ISSUES OF
13 OVERDRAFT AND SAFE YIELD HAVE BEEN ADJUDICATED.

14 MR. DUNN: WOULD THE COURT BE INTERESTED IN
15 PICKING OR SELECTING A DATE AT THIS POINT FOR THAT SINCE
16 WE ARE ALTOGETHER?

17 THE COURT: I WOULD.

18 MR. DUNN: OKAY.

19 THE COURT: I WOULD TAKE YOUR RECOMMENDATIONS.

20 MR. MCLACHLAN: YOUR HONOR, WOULD THIS BE
21 OCCURRING IN SAN JOSE?

22 THE COURT: THAT IS MY PREFERENCE, BUT I WOULD
23 TRAVEL ANYWHERE TO SETTLE A CASE.

24 MR. MCLACHLAN: HOW IS COSTA RICA?

25

26 (LAUGHING)

27

28 MR. KUNEY: SCOTT KUNEY ON BEHALF OF VAN DAM

7

Exhibit 4

JUN 01 2010

John A. Clark, Clerk of the Court

By PAUL SANUZZI

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

Included Consolidated Actions:

Lead Case No. BC 325 201

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

**ORDER AFTER CASE
MANAGEMENT CONFERENCE
ON MAY 6, 2010**

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348

Hearing Date(s): May 6, 2010
Time: 9:00 a.m.
Location: Department 1, LASC

Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of
Riverside, consolidated actions, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Judge: Honorable Jack Komar

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los

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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES
10

11 ANTELOPE VALLEY GROUNDWATER
12 CASES

Judicial Council Coordination
Proceeding No. 4408

13 Included Consolidated Actions:

Lead Case No. BC 325 201

14 Los Angeles County Waterworks District No.
15 40 v. Diamond Farming Co.
16 Superior Court of California
17 County of Los Angeles, Case No. BC 325 201

**ORDER AFTER CASE
MANAGEMENT CONFERENCE
ON MAY 6, 2010**

18 Los Angeles County Waterworks District No.
19 40 v. Diamond Farming Co.
20 Superior Court of California, County of Kern,
21 Case No. S-1500-CV-254-348

Hearing Date(s): May 6, 2010
Time: 9:00 a.m.
Location: Department 1, LASC

22 Wm. Bolthouse Farms, Inc. v. City of Lancaster
23 Diamond Farming Co. v. City of Lancaster
24 Diamond Farming Co. v. Palmdale Water Dist.
25 Superior Court of California, County of
26 Riverside, consolidated actions, Case Nos.
27 RIC 353 840, RIC 344 436, RIC 344 668

Judge: Honorable Jack Komar

28 Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los

3 The matter came on as a regularly scheduled telephonic Case Management Conference
4 on May 6, 2010 in Department One in the above entitled Court. All parties appeared by
5 telephone. Those parties appearing are listed in the minutes of the Court prepared by the Clerk
6 of Court.

7 The parties having briefed and argued the issues, good cause appearing, the Court makes
8 the following Case Management order:

9 **ORDERS AMENDING THE MARCH 22, 2010 ORDER AFTER CASE**
10 **MANAGEMENT CONFERENCE**

11 The Third Phase of Trial remains scheduled for September 27, 2010 at 9:00 a.m. in
12 Department One of this Court. The time of trial remains estimated at 10 court days. The Court
13 will be in session for trial Monday through Thursday of each week. If additional days of trial are
14 required, the Court will schedule such after conferring with the parties.

15 The Request of Grimmway Enterprises, Inc., Lapis Land Company, LLC, Crystal
16 Organics, LLC and Diamond Farming Company to Modify the March 22, 2010 Case
17 Management Order, posted on April 30, 2010, is granted as follows: the time for parties to
18 comply with the provisions of Code of Civil Procedure Section 2034.210 and engage in a
19 simultaneous disclosure and exchange of expert information, including any reports prepared by
20 such experts, is extended from July 1, 2010 to **July 15, 2010**. The time for any supplemental
21 disclosures and exchange of information is extended from July 15, 2010 to **July 29, 2010**. The
22 time for expert depositions to be conducted is amended to **between July 29, 2010 and**
23 **September 13, 2010**.

24 On July 15, 2010, any party who intends to call non-expert witnesses to provide
25 percipient testimony shall file a statement listing such witness, the subject matter of their
26 testimony, and an estimate of the amount of time required for their testimony on direct.

27 All discovery shall be completed in compliance with the Code of Civil Procedure 30
28 days before trial and all motions shall be heard no later than 15 days before trial.

1 Trial briefs and motions in limine shall be filed no later than September 15, 2010 and
2 any responses or opposition shall be filed no later than September 24, 2010.

3 The public water provider parties have essentially alleged that the basin is in overdraft,
4 that extraction of water on an annual basis exceeds recharge, and that the basin will suffer
5 serious degradation and damage unless the Court exercises its equitable jurisdiction. In this third
6 phase of trial, the Court will hear evidence to determine whether the basin, as previously defined
7 by the Court in trial phases one and two, is in such overdraft and to determine whether there is
8 a basis for the Court to exercise its equitable jurisdiction, including the implementation of a
9 "physical solution," as prayed for by the public water provider parties. The public water
10 providers have the burden of proof.

11 The Court will not hear any evidence concerning prescription claims nor does it expect
12 to hear evidence of individual pumping of water by any party within the basin; rather, it expects
13 to hear evidence concerning total pumping and total recharge from all sources, with a further
14 breakdown showing the amount of imported water on an annual basis.

15 **WOOD PLAINTIFFS' MOTION TO DISQUALIFY**

16 The Motion by the Wood Plaintiffs to Disqualify the Law Firm of Lemieux & O'Neill is
17 denied based upon the information provided to the Court.

18 **WOOD PLAINTIFFS' MOTION FOR ALLOCATION OF EXPERT WITNESS**

19 **FEES**

20 On March 25, 2010, the Wood Plaintiffs submitted a Proposed Order re Motion for
21 Allocation of Expert Witness Fees, providing that the twelve named "Public Water Suppliers"
22 equally share the costs of Entrix in the amount of \$4,784.68. Objections thereto were filed by
23 the Cities of Lancaster and Palmdale. After considering the pleadings filed by all parties, the
24 Court finds the fees incurred to date by Entrix, in the amount of \$4,784.68 are reasonable, but
25 modifies the order to exclude the Cities of Lancaster and Palmdale from obligation as neither of
26 those parties are making claims against the these landowners.

27 The Court hereby orders the following public water suppliers to pay this bill directly to
28 Entrix within fourteen days (14) of this order. The following ten public water suppliers are

1 ordered to pay this bill, in equal shares: Rosamond Community Services District, Los Angeles
2 County Waterworks District No. 40, Littlerock Creek Irrigation District, Palm Ranch Irrigation
3 District, North Edwards Water District, Desert Lake Community Services District, California
4 Water Service Company, Quartz Hill Water District, Palmdale Water District and Phelan Pinon
5 Hills Community Services District.

6 Further, the request of Richard Wood to authorize the court-appointed expert to
7 commence the work outlined in the proposal from Entrix, which was attached to the moving
8 papers, is denied without prejudice based on the decision that no evidence of individual
9 pumping will be heard at the Phase III trial, as set forth in the Court's March 22, 2010 Order.

10 **TRANSFeree/TRANSFEROR OBLIGATION**

11 Regarding the Proposed Order submitted by Tejon Ranchcorp on January 4, 2008 re
12 Jurisdiction over Transferees of Property, previously granted by the Court in open hearings, the
13 Court hereby confirms that it will defer signing said Order until further briefing and hearing of
14 the issues by the parties. The Court requests that the proponent of this transfer document file by
15 May 24, 2010, a formal motion to modify it and apply it appropriately; briefing deadlines shall
16 be per Code of Civil Procedure; the hearing date is set for **June 14, 2010 at 9:00 a.m. in**
17 **Department 1, Los Angeles County Superior Court.**

18
19 SO ORDERED.

20 Dated: May 25, 2010

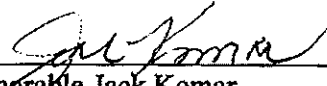
21 
22 Honorable Jack Komar
23 Judge of the Superior Court
24
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27
28

Exhibit 5

1 Michael D. McLachlan (State Bar No. 181705)
2 **LAW OFFICES OF MICHAEL D. McLACHLAN, APC**
3 523 West Sixth Street, Suite 215
4 Los Angeles, California 90014
5 Telephone: (213) 630-2884
6 Facsimile: (213) 630-2886
7 mike@mclachlanlaw.com

8 Daniel M. O'Leary (State Bar No. 175128)
9 **LAW OFFICE OF DANIEL M. O'LEARY**
10 523 West Sixth Street, Suite 215
11 Los Angeles, California 90014
12 Telephone: (213) 630-2880
13 Facsimile: (213) 630-2886
14 dan@danolearylaw.com

15 Attorneys for Plaintiff

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

FILED 08 2009

John A. Clarke, Executive Officer/Clerk
By Jalon Taylor Deputy

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Coordination Proceeding
Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No. 4408

ANTELOPE VALLEY GROUNDWATER
CASES

(Santa Clara Case No. 1-05-CV-049053,
Honorable Jack Komar)

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

Case No.: BC 391869

Plaintiff,

**STIPULATION AND ~~PROPOSED~~
ORDER RE: SMALL PUMPER
CLASS NOTICE ISSUES**

v.

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

Defendants.

After meeting and conferring, stipulating parties agree that substantial problems likely exist with the portion of the Small Pumper Class (the "Class") mailing list covering parcels inside the public water supplier service areas. The parties believe that many of the parcels on this portion of the proposed Class list do not in fact meet the Class

STIPULATION AND ORDER RE: SMALL PUMPER CLASS NOTICE ISSUES

1 definition.

2 The stipulating parties further acknowledge that it is important that the Class is
3 formed in such a manner as to include, as best as is practicable, properties that conform to
4 the Class definition.

5 Based on the foregoing, the parties stipulate as follows:

- 6 1. With regard to putative Class members inside the public water supplier service
7 areas, the parties will: (a) obtain shareholder lists from the mutual water
8 companies that are party to this suit, within 15 days of this order, and will
9 remove any such names from the database; (b) meet and confer on additional
10 names that should not be on the list, including review of water supplier records
11 and further expert analysis as needed;
- 12 2. That as to the remaining parcels identified as located inside the public water
13 supplier service areas, a second notice shall be submitted to the Court for
14 approval, within 5 court days of the execution of this Order, which will be an
15 "opt-in" notice, meaning that only those property owners who affirmatively
16 respond with written response form or via the Class website will be included in
17 the Class;
- 18 3. That the questionnaire to be included in the notice will be expanded to request
19 further data to be used by the parties, Entrix, and the water supplier experts to
20 assess the actual pumping of the Class members using statistically significant
21 sampling sizes;
- 22 4. That as to the putative Class members outside the service areas, the Class
23 notice will remain an "opt-out" notice, and those Class members will receive
24 the existing Class notice, to be modified with additional water usage questions;
- 25 5. That as to the putative Class members outside the service areas, the Court-
26 appointed expert will conduct a statistically significant assessment as to the
27 percentage of the Class members actually satisfy the Class definition, and if
28 this analysis reveals an improperly high number of improper Class members,

1 further efforts will be taken to identify and remove improper Class members
2 from the Class.

3 6. That the Court-appointed expert, and existing experts of the public water
4 suppliers, shall use the data generated by the Class notice response forms,
5 supplemented as needed by further field-work, to formulate reliable estimates
6 of the water usage of the Class.

7 7. The stay as to the Court appointed expert, Timothy Thompson, will be lifted
8 and his firm will conduct such work as necessary and consistent with this
9 order, and to the extent practicable, data gathering and field work will be
10 conducted by cost-effective means, potentially including use of less expensive
11 independent contractors.

12 DATED: May 5, 2009

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

14 By: _____ //s//

15 Michael D. McLachlan
16 Attorneys for Plaintiff

17 DATED: May 5, 2009

BEST, BEST & KRIEGER LLP

19 By: _____ //s//

20 Jeffrey V. Dunn
21 Attorneys for Defendants Los Angeles County
22 Waterworks District No. 40 and Rosamond
23 Community Services District

24 IT IS SO ORDERED.

25 DATED:

26 5-6-09

27 By: _____

JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA

JACK KOMAR

Exhibit 6

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT NO. 4

HON. JACK KOMAR, JUDGE

4 COORDINATION PROCEEDING)

5 SPECIAL TITLE (RULE 1550B))

6 ANTELOPE VALLEY GROUNDWATER CASES))

JUDICIAL COUNCIL

COORDINATION

NO. JCCP4408

7 PALMDALE WATER DISTRICT AND)

8 QUARTZ HILL WATER DISTRICT,)

SANTA CLARA CASE NO.

1-05-CV-049053

9 CROSS-COMPLAINANTS,)

10 VS.)

11 LOS ANGELES COUNTY WATERWORKS,)

12 DISTRICT NO. 40, ET AL,)

13 CROSS-DEFENDANTS.)

14
15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 THURSDAY, JUNE 16, 2011

17
18 APPEARANCES:

19 (SEE APPEARANCE PAGES)

20
21
22
23
24
25
26
27 GINGER WELKER, CSR #5585
28 OFFICIAL REPORTER

1 APPEARANCES:

2
3 RICHARD A. WOOD
4 (MR. WOOD PRESENT)
5 SMALL PUMPER CLASS

OFFICES OF MICHAEL MCLACHLAN
BY: MICHAEL D. MCLACHLAN
10490 SANTA MONICA BLVD.
LOS ANGELES, CA 90025
(310) 954-8270

6
7 L.A. COUNTY WATERWORKS
8 DISTRICT NO. 40
9 (VIA TELEPHONE)

BEST, BEST & KRIEGER, LLP
BY: JEFFREY V. DUNN
STEFANIE HEDLUND
5 PARK PLAZA, SUITE 1500
IRVINE, CA 92614
(949) 263-2600

10
11 L.A. COUNTY WATERWORKS
12 DISTRICT NO. 40

OFFICE OF THE COUNTY
COUNSEL, COUNTY OF L.A.
BY: WARREN R. WELLEN
500 WEST TEMPLE STREET
6TH FLOOR
LOS ANGELES, CA 90012
(213) 974-9668

13
14
15 LOS ANGELES COUNTY SANITATION
16 DISTRICTS NOS. 14 & 20
17 (VIA TELEPHONE)

ELLISON, SCHNEIDER &
HARRIS
BY: CHRISTOPHER M. SANDERS
2015 H STREET
SACRAMENTO, CA 95811-3109
(916) 447-2166

18
19
20 CITY OF LANCASTER &
21 ROSAMOND CSD
22 (VIA TELEPHONE)

MURPHY & EVERTZ
BY: DOUGLAS J. EVERTZ
650 TOWN CENTER DRIVE
SUITE 550
COSTA MESA, CA 92626
(714) 277-1700

23
24 LITTLEROCK CREEK IRRIGATION
25 DISTRICT & PALM RANCH IRRIGATION
26 DISTRICT:

27 (VIA TELEPHONE)

LEMIEUX & O'NEILL
BY: W. KEITH LEMIEUX
2393 TOWNSGATE ROAD
SUITE 201
WESTLAKE VILLAGE, CA 91361
(805) 495-4770

1 APPEARANCES (CONTINUED)

2

3 BOLTHOUSE PROPERTIES, INC.

4 (VIA TELEPHONE)

5

6

7

8 CITY OF LOS ANGELES

9

10 (VIA TELEPHONE)

11

12

13 THE UNITED STATES

14 (VIA TELEPHONE)

15

16

17

18 U.S. BORAX

19 (VIA TELEPHONE)

20

21

22 QUARTZ HILL WATER DISTRICTS

23 (VIA TELEPHONE)

24

25

26 DIAMOND FARMING COMPANY
AND CRYSTAL ORGANIC

27

28 (VIA TELEPHONE)

29

30

31

CLIFFORD & BROWN

BY: RICHARD G. ZIMMER
BANK OF AMERICA BUILDING
1430 TRUXTUN AVENUE
SUITE 900
BAKERSFIELD, CA 93301
(661) 322-6023

LOS ANGELES CITY ATTORNEY

BY: JULIE RILEY
111 NORTH HOPE
LOS ANGELES, CA 90051
(213) 367-4513

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL
RESOURCES DIVISION

BY: R. LEE LEININGER
1961 STOUT STREET, 8TH FLOOR
DENVER, CO 80294
(303) 844-1364

MORRISON & FOERSTER, LLP

BY: WILLIAM M. SLOAN
425 MARKET STREET
SAN FRANCISCO, CA 94105
(415) 268-7209

CHARLTON WEEKS

BY: BRADLEY T. WEEKS
1007 W. AVE. M-14, SUITE A
PALMDALE, CA 93551
(661) 265-0969

LEBEAU, THELEN, MCINTOSH &
CREAR

BY: BOB H. JOYCE
5001 EAST COMMERCENTER DR.
P.O. BOX 12092
BAKERSFIELD, CA 93389-2092
(661) 325-8962

1	<u>APPEARANCES (CONTINUED)</u>	
2	PHELAN PINON HILLS, CSD	ALESHIRE & WYNDER, LLP
3	(VIA TELEPHONE)	BY: WESLEY A. MILIBAND
4		18881 VON KARMAN AVENUE
5		SUITE 400
		IRVINE, CA 92612
		(949) 223-1170
6	CALIFORNIA WATER SERVICES	JOHN S. TOOTLE
7	COMPANY	CORPORATE COUNSEL
8	(VIA TELEPHONE)	2632 W. 237TH STREET
		TORRANCE, CA 90505-5272
		(310) 257-1488
9	TEJON RANCH CORP	KUHS & PARKER
10	(VIA TELEPHONE)	BY: ROBERT G. KUHS
11		1200 TRUXTUN AVENUE
12		SUITE 200
		BAKERSFIELD, CA 93301
		(661) 322-4004
13	CITY OF PALMDALE	RICHARDS WATSON GERSHON
14	(VIA TELEPHONE)	BY: JAMES L. MARKMAN
15		1 CIVIC CENTER CIRCLE
16		POST OFFICE BOX 1059
		BREA, CA 92822-1059
		(714) 990-0901
17	ANTELOPE VALLEY GROUNDWATER	BROWNSTEIN, HYATT, FARBER
18	AGREEMENT ASSOCIATION	& SCHRECK
19	(AGWA)	BY: BRADLEY J. HERREMA
20	(VIA TELEPHONE)	21 EAST CARRILLO STREET
		SANTA BARBARA, CA 93101
		(805) 963-7000
21	VAN DAM FARMS	YOUNG WOOLDRIDGE
22	(VIA TELEPHONE)	BY: SCOTT K. KUNEY
23		1800 30TH STREET
		4TH FLOOR
		BAKERSFIELD, CA 93301-5298
		(661) 327-9661
24	SOUTHERN CALIFORNIA	AMY M. GANTVOORT,
25	EDISON COMPANY	ATTORNEY AT LAW
26	(VIA TELEPHONE)	(NO ADDRESS GIVEN)
27	NORTHROP, GRUMAN &	ALSTON & BIRD, LLP
28	SEMPRA	BY: NEAL P. MAGUIRE
	(VIA TELEPHONE)	(NO ADDRESS GIVEN)

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- 28

COVINGTON & CROWE, LLP
(NO ATTORNEY APPEARANCE)
CLIENT, JOHN UKKESTAD
1131 WEST SIXTH STREET
SUITE 300
ONTARIO, CA 91762
(909) 983-9393

HANNA AND MORTON, LLP
BY: EDWARD S. RENWICK
444 S. FLOWER STREET
SUITE 1500
LOS ANGELES, CA 90071
(213) 628-7132, EXT. 516

BARTKIEWICZ, KRONICK &
SHANAHAN
BY: RYAN BEZERRA

GRESHAM, SAVAGE, NOLAN &
TILDEN
BY: MARLENE L. ALLEN

— 000 —

1 CASE NUMBER: JCCP 4408
2 CASE NAME: ANTELOPE VALLEY
3 LOS ANGELES, CALIFORNIA, THURSDAY, JUNE 16, 2011
4 DEPARTMENT NO. 2D HON. ELIA WEINBACH
5 REPORTER GINGER WELKER, CSR #5585
6 TIME: 8:38 A.M.
7 APPEARANCES: (SEE TITLE PAGE)
8

9 THE COURT: WE HAVE A NUMBER OF PEOPLE WHO ARE ON
10 COURT CALL. HAVE THEY BEEN IDENTIFIED?

11 THE CLERK: YES, THEY HAVE, YOUR HONOR.

12 THE COURT: IF ANYBODY ON COURT CALL WISHES TO
13 ARGUE, COMMENT, OR ADDRESS THE COURT, MAKE SURE YOU
14 STATE YOUR NAME EACH TIME YOU SPEAK SO THAT THE REPORTER
15 AND I WILL KNOW WHO YOU ARE.

16 WE HAVE SEVERAL ACTIONS AND MATTERS TO TAKE
17 CARE OF THIS MORNING. THE PRIMARY ONE IS THE MOTION FOR
18 PRELIMINARY APPROVAL OF THE WOOD'S CLASS SETTLEMENT
19 PROPOSED. AND THE COURT HAS READ AND CONSIDERED THAT
20 APPLICATION AS WELL AS A NUMBER OF PARTIES WHO HAVE
21 FILED WRITTEN OPPOSITION TO THAT.

22 I WILL TELL YOU I HAVE SOME CONCERNS. AND I
23 THINK WE NEED TO ADDRESS THOSE HERE THIS MORNING.
24 BEFORE I DO THAT, IS THERE SOMETHING AS MOVING PARTY,
25 MR. MCLACHLAN, THAT YOU WANT TO STATE?

26 MR. MCLACHLAN: NO. I THINK MAYBE THE TIME IS
27 BEST SPENT ADDRESSING WHATEVER CONCERNS THE COURT IS
28 ALLUDING TO.

1 THE COURT: ALL RIGHT. THE FIRST CONCERN I HAVE
2 RELATES TO THE ESTABLISHMENT OF THE RIGHTS OF THE CLASS
3 MEMBERS AND THE DEFINITION THAT THE ALLOCATION FOR EACH
4 MEMBER WILL BE AS TO PER HOUSEHOLD RATHER THAN TO THE
5 CLASS MEMBERS AS THEY WERE DEFINED IN THE ORDER
6 ESTABLISHING THE CLASS.

7 IT SEEMS TO ME THAT THERE IS POTENTIAL HERE
8 FOR SOME CONTRADICTIONS IN TERMS. FOR EXAMPLE, A
9 HOUSEHOLD MAY OWN SEPARATE PARCELS. EACH PARCEL OF
10 WHICH WOULD HAVE OVERLYING RIGHTS. THAT IS MY FIRST
11 CONCERN BECAUSE IT IS INCONSISTENT WITH THE DEFINITION
12 OF THE CLASS.

13 AND AS I UNDERSTAND IT -- AND WE WILL TALK
14 ABOUT THIS IN A FEW MOMENTS -- PART OF THE REASON FOR
15 THAT IS TO ESTABLISH DOMESTIC USE. AND THAT IS ALSO NOT
16 PART OF THE CLASS DESCRIPTION. AND IT IS NOT A
17 LIMITATION OF THE CLASS DESCRIPTION. SO IT IS A
18 NARROWER DESCRIPTION, IT SEEMS TO ME, THAN THE CLASS
19 DESCRIPTION.

20 AND I GUESS WHAT I CAN DO IS JUST GO THROUGH
21 THESE AND TELL YOU WHAT MY CONCERNS ARE, AND WE CAN
22 START ADDRESSING THEM SERIATIM.

23 ON PAGE 11 OF THE AGREEMENT STARTING AT LINE
24 FOUR, "THE SETTLING PARTIES AGREE THAT THE WOOD CLASS
25 MEMBERS MAY EACH PUMP UP TO 3 ACRE-FEET PER HOUSEHOLD
26 FOR REASONABLE AND BENEFICIAL USE ON THEIR OVERLYING
27 LAND," ET CETERA, ET CETERA. AND THAT IF THE COURT DOES
28 NOT APPROVE THIS PROVISION, THIS AGREEMENT IS VOID.

1 THE PROBLEM THAT I HAVE WITH THAT IS NOT
2 THAT THE PARTIES WHO ARE SETTling THE CASE CANNOT AGREE
3 AMONG THEMSELVES. THE DIFFICULTY IS THAT WHAT YOU ARE
4 DOING IS ATTEMPTING TO ESTABLISH, AS I READ THIS
5 AGREEMENT, THE 3 ACRE-FEET PER YEAR ALLOCATION AS A --
6 AS A STANDARD THAT IS GOING TO BIND ALL THE NONSETTLING
7 PARTIES. AND I DON'T THINK YOU CAN DO THAT.

8 YOU HAVE TO ACKNOWLEDGE THE FACT THAT AS TO
9 OTHER PARTIES THE COURT HAS TO MAKE FINDINGS BASED UPON
10 EVIDENCE. I CAN'T DO THAT BASED UPON AN AGREEMENT OF
11 SOME OF THE PARTIES, BUT NOT ALL OF THE PARTIES.

12 AND I UNDERSTAND THAT THE CONCERN THAT YOU
13 HAVE IS THAT YOU CAN'T SETTLE THIS CASE WITHOUT THAT
14 KIND OF A FINDING BINDING EVERYBODY, BUT I CAN'T MAKE
15 THAT KIND OF A FINDING WITHOUT EVIDENCE AND AN
16 OPPORTUNITY FOR THE PARTIES TO DISPUTE IT. IT MAY WELL
17 BE REASONABLE, BUT I HAVE NO WAY OF KNOWING THAT AT THIS
18 POINT.

19 LET ME JUST GO THROUGH HERE: YOU ARE
20 ATTEMPTING TO BIND A WATER MASTER AND A WATER MASTER
21 DECISION AND DETERMINATION OF ALLOCATION OF WATER RIGHTS
22 AND PREVENTING THE COURT AND THE WATER MASTER FROM DOING
23 ANYTHING OTHER THAN WHAT YOU HAVE AGREED AMONG
24 YOURSELVES.

25 WELL, AS TO YOURSELVES, THAT IS FINE. AND
26 IF YOU WANT TO AGREE THAT THE WATER PRODUCERS, PURVEYORS
27 HERE, WILL NOT TAKE A POSITION THAT YOU ARE NOT ENTITLED
28 TO A 3 ACRE-FEET PER YEAR, THAT IS FINE. THEY CAN DO

1 WHICH IS -- A LOT OF THE WORK HAS BEEN DONE IN THIS
2 CASE, THE DATABASE ALREADY EXISTS. AND WE LOOK AT THE
3 COST BENEFIT ANALYSIS, I REALLY THINK -- AND I BELIEVE
4 MR. DUNN AND THE OTHER WATER SUPPLIER COUNSEL ALL AGREE
5 THAT IF PENNY WISE AND POUND FOOLISH WE END UP SPENDING
6 A SMALL FORTUNE TO MONITOR WHAT IS A VERY SMALL AMOUNT
7 OF WATER --

8 THE COURT: MR. MCLACHLAN, I DON'T DISAGREE WITH
9 YOU. I DON'T DISAGREE AT ALL WITH THAT CONCLUSION. THE
10 PROBLEM IS HOW DO WE GET TO THERE. AND WE CAN'T GET TO
11 THERE IN A LITIGATION AND IN AN ADJUDICATION THAT
12 ENCOMPASSES ALL OF THE WATER USERS WITHIN THE VALLEY, BY
13 AGREEMENT OF SOME OF THEM. THAT IS THE PROBLEM THAT I'M
14 HAVING.

15 SEE, I DON'T HAVE ANY PROBLEM WITH YOU AND
16 THE WATER PURVEYORS AGREEING THAT THEY ARE NOT GOING TO
17 CONTEST UP TO 3 ACRE-FEET PER YEAR THAT EACH ONE OF THE
18 MEMBERS OF THIS CLASS HAVE THE RIGHT TO PUMP. OKAY?

19 AND IT MAY WELL BE THAT WHEN ALL IS SAID AND
20 DONE IF THAT IS THE AGREEMENT AND THE COURT THEN IS IN
21 THE POSITION OF CREATING A PHYSICAL SOLUTION -- AND I
22 DON'T KNOW WHAT THAT FORM IS GOING TO BE -- THAT THAT
23 ENCOMPASSES YOUR AGREEMENT AND EVERYBODY ELSE IS GOING
24 TO BE BOUND BY THAT. BUT YOU CAN'T DO THAT AT THIS
25 POINT. THAT IS THE PROBLEM.

26 AND WHAT YOU HAVE DONE IS, YOU HAVE ALSO PUT
27 IN LIMITATIONS ON THE COURT'S ABILITY TO CREATE A
28 PHYSICAL SOLUTION HERE. I HAVE NO IDEA WHAT THAT

1 PHYSICAL SOLUTION IS GOING TO BE. I DOUBT SERIOUSLY AT
2 THIS POINT THAT ANYBODY DOES.

3 WE DON'T EVEN HAVE THE STATEMENT OF DECISION
4 YET. I HAVE GIVEN A TENTATIVE DECISION. I HAVE A
5 PROPOSAL FROM THE PURVEYORS AS TO WHAT THAT STATEMENT OF
6 DECISION SHOULD BE. AND IT MOSTLY FOLLOWS THE TENTATIVE
7 DECISION THAT I RENDERED WITH A COUPLE OF EXCEPTIONS.

8 I HAVE ESSENTIALLY INTERROGATORIES FROM SOME
9 OF THE PARTIES ASKING THE COURT TO MAKE DETAILED
10 RESPONSES AS PART OF THE STATEMENT OF DECISION. WE WILL
11 TALK ABOUT THAT ANOTHER TIME. BUT AT THIS POINT, WHAT
12 YOUR AGREEMENT DOES IS IT TIES THE COURT'S HANDS, AND IT
13 CREATES A PROCESS THAT BINDS OTHER PARTIES WHO ARE NOT
14 PARTIES TO THE SETTLEMENT PLAN. AND I JUST DON'T THINK
15 I CAN DO THAT.

16 I DO THINK THAT THE NUB OF YOUR SETTLEMENT
17 AGREEMENT IS SOMETHING THAT IF MODIFIED CAN BE APPROVED;
18 BUT AT THIS POINT, I CAN'T APPROVE THE AGREEMENT AS IT
19 STANDS FOR THE REASONS THAT I HAVE INDICATED.

20 AND IF YOU READ THROUGH THE AGREEMENT, I
21 THINK THAT YOU WILL UNDERSTAND WHY I CAN'T DO THAT. I
22 HAVEN'T HEARD FROM MR. DUNN.

23 MR. DUNN: WELL, I HAVE BEEN LISTENING TO THE
24 COURT'S COMMENTS, AND IT SEEMS TO ME GIVEN WHAT THE
25 COURT HAS INDICATED, AND I HAVE LISTENED TO COUNSEL'S
26 COMMENTS AS WELL, I -- WHAT I WOULD SUGGEST IS THAT WE
27 BE ALLOWED TO AFTER THIS HEARING, YOU KNOW, GO BACK AND
28 SEE WHAT WE CAN DO TO -- I'M LOOKING FOR THE RIGHT

1 WORD -- TO REVIEW, REVISE, EDIT, WHATEVER, THE AGREEMENT
2 TAKING INTO ACCOUNT THE COURT'S CONCERNS.

3 THE COURT: WELL, I DO THINK THAT IT IS A WORKABLE
4 AGREEMENT BETWEEN THE SETTLING PARTIES, AND IT MAY WELL
5 BE IF IT IS A REASONABLE AGREEMENT THAT OTHER PARTIES
6 ARE GOING TO BUY INTO IT AND BE BOUND. BUT I CAN'T MAKE
7 THEM DO THAT. YOU HAVE TO MAKE THEM DO THAT.

8 AND WHAT I -- I'M -- YOU KNOW, I HATE TO DO
9 THIS TO YOU, MR. MCLACHLIN, BECAUSE I KNOW HOW HARD YOU
10 HAVE WORKED ON THIS CASE, AND I KNOW HOW SINCERELY YOU
11 HAVE ATTEMPTED TO REPRESENT YOUR CLIENTS EFFECTIVELY,
12 AND I THINK YOU HAVE DONE A GOOD JOB.

13 THE PROBLEM IS THAT THIS AGREEMENT IS
14 INCONSISTENT WITH THE ABILITY FOR THE COURT TO APPROVE
15 IT AT THIS POINT. SO I'M SORRY. I TRULY AM SORRY THAT
16 I COULDN'T APPROVE IT.

17 NOW, THERE ARE A COUPLE OF OTHER THINGS. I
18 HAVEN'T HEARD FROM ANYBODY ON THE TELEPHONE. DOES
19 ANYONE WISH TO MAKE ANY COMMENTS OR ARGUMENT? ARE YOU
20 STILL ON THE LINE?

21
22 (SEVERAL ATTORNEYS RESPOND, "YES, YOUR HONOR.")

23
24 THE COURT: OKAY. ALL RIGHT.

25 MR. SLOAN: YOUR HONOR, THIS IS WILLIAM SLOAN FOR
26 U.S. BORAX.

27 THE COURT: YES.

28 MR. SLOAN: I WOULD LIKE TO TAKE AN OPPORTUNITY --

1 THE COURT: YES, MR. MCLACHLAN.

2 MR. MCLACHLAN: I APOLOGIZE. I HAVE ONE MORE
3 QUICK QUESTION AS I'M SITTING HERE THINKING THROUGH
4 VARIOUS OPTIONS -- AND GRANTED I NEED A LITTLE MORE TIME
5 TO THINK THINGS OVER AND DISCUSS IT OVER WITH MY
6 CO-COUNSEL AND WATER SUPPLIER COUNSEL.

7 AT THE END OF THE PHASE III TRIAL, I RAISED
8 WHAT HAS BEEN THE SORT OF ONGOING PROBLEM WITH MY CLASS
9 SINCE THE BEGINNING, THE ISSUE OF BEING ABLE TO
10 EFFECTIVELY REPRESENT THE CLASS AND ESTABLISH ANY SORT
11 OF PROOF THAT WAS NEEDED IN THE FUTURE PHASES VIS-A-VIS
12 THIS COURT APPOINTED EXPERT.

13 AND WE HAD THOUGHT ABOUT REFILING THAT
14 MOTION AGAIN; AND I RAISED WITH YOUR HONOR, IF YOU
15 RECALL, ON THAT LAST DAY AFTER THE CLOSING ARGUMENTS
16 THESE ISSUES NOT WANTING TO FILE AN UNNECESSARY MOTION
17 AGAIN. BECAUSE I DON'T KNOW -- IT IS PROBABLY FOUR OR
18 FIVE TIMES WE FILED THESE VARIOUS MOTIONS FOR THE EXPERT
19 IN AND -- BUT I AM GETTING THE FEELING FROM THE COURT'S
20 COMMENTS THAT IF CLASS COUNSEL FEELS LIKE THEY CAN STILL
21 STAY IN THIS LITIGATION -- AND I'M NOT SO SURE THAT'S
22 THE CASE.

23 BUT IF THAT IS POSSIBLE, WE MAY HAVE TO
24 REVIEW THAT MOTION, AND THE COURT -- I'M NOT ASKING FOR
25 AN ADVISORY OPINION IN ADVANCE, BUT IT SEEMS TO ME THAT
26 MAYBE THAT MOTION HAS GOT TO BE REFILED AGAIN, AND THIS
27 EXPERT HAS TO START DOING SOMETHING IN TERMS OF
28 ASSESSING THE CLASS'S WATER USE.

1 THE COURT: WELL, YOU KNOW, I CAN'T -- I CAN'T
2 TELL YOU WHAT YOU SHOULD DO. I CAN TELL YOU THAT I
3 THINK THAT YOU SHOULD PARTICIPATE IN THE DISCUSSIONS TO
4 SEE IF THERE CAN BE A GLOBAL SETTLEMENT OF THIS CASE.

5 IT SEEMS TO ME THAT -- THE CASE IS REALLY ON
6 THE VERGE OF A GLOBAL SETTLEMENT, AND I THINK THAT -- IN
7 PARTICULAR AS I LISTEN TO AND READ THE OBJECTIONS THAT
8 WERE MADE BY THE NONSETTLING PARTIES TO THE LANGUAGE IN
9 THE SETTLEMENT AGREEMENT, I REALLY THINK THAT IF YOU ALL
10 WORK AT IT YOU CAN ACCOMPLISH THAT SETTLEMENT AND
11 PROTECT THE RIGHTS OF YOUR CLIENTS IN THAT CLASS.

12 MR. MCLACHLIN: THE QUESTION I WAS DRIVING AT IS,
13 I THINK THAT DECISION DEPENDS UPON WHAT IS TO COME IN
14 TERMS OF THE NEXT PHASE, AND I WAS WONDERING ABOUT WHEN
15 WE ARE GOING TO MAKE A DECISION AS TO WHAT THE NEXT
16 PHASE IS GOING TO BE AND WHEN THAT IS GOING TO OCCUR.

17 WILL THAT OCCUR AT SOME POINT IN THE NEAR
18 FUTURE, A DECISION?

19 THE COURT: WE HAVE A HEARING SCHEDULED FOR THE
20 15TH OF JULY AT 9 O'CLOCK. AND THAT IS A CASE
21 MANAGEMENT CONFERENCE. THAT IS WHAT IT WAS SCHEDULED
22 FOR. I'M GOING TO EXPAND THAT TO PERMIT ARGUMENTS ON
23 THE PROPOSED STATEMENT OF DECISION THAT WAS PROPOUNDED
24 IN RESPONSE TO THE COURT'S REQUEST, AND WE WILL CONSIDER
25 AS WELL AS THE -- ANY OBJECTIONS THAT ARE MADE TO THAT
26 STATEMENT OF DECISION AND REASONS FOR THEM ON THE 15TH.

27 AND SO WHAT I WOULD LIKE TO DO IS JUST
28 ESSENTIALLY BE ABLE TO SET ASIDE THAT ENTIRE DAY AND --

1 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

2 COUNTY OF LOS ANGELES

3 DEPARTMENT NO. 316

HON. JACK KOMAR,

4 COORDINATION PROCEEDING)

5 SPECIAL TITLE (RULE 1550B))

6 ANTELOPE VALLEY GROUNDWATER CASES))

JUDICIAL COUNCIL
COORDINATION
NO. JCCP4408

7 PALMDALE WATER DISTRICT AND)

8 QUARTZ HILL WATER DISTRICT,)

SANTA CLARA CASE NO.
1-05-CV-049053

9 CROSS-COMPLAINANTS,)

10 VS.)

11 LOS ANGELES COUNTY WATERWORKS,)

12 DISTRICT NO. 40, ET AL,)

13 CROSS-DEFENDANTS.)

14
15 STATE OF CALIFORNIA)

) SS.

16 COUNTY OF LOS ANGELES)

17
18 I, GINGER WELKER, OFFICIAL REPORTER OF THE
19 SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE
20 COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
21 TRANSCRIPT DATED JUNE 16, 2011 COMPRISES A FULL, TRUE,
22 AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE
23 ABOVE ENTITLED CAUSE.

24 DATED THIS 5TH DAY OF JULY, 2011.

25
26
27
28

OFFICIAL REPORTER, CSR #5585

Exhibit 7

1
2
3
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5
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7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES
10

11 **ANTELOPE VALLEY GROUNDWATER**
12 **CASES**

13 Included Consolidated Actions:

14 Los Angeles County Waterworks District No.
15 40 v. Diamond Farming Co.
16 Superior Court of California
17 County of Los Angeles, Case No. BC 325 201

18 Los Angeles County Waterworks District No.
19 40 v. Diamond Farming Co.
20 Superior Court of California, County of Kern,
21 Case No. S-1500-CV-254-348

22 Wm. Bolthouse Farms, Inc. v. City of Lancaster
23 Diamond Farming Co. v. City of Lancaster
24 Diamond Farming Co. v. Palmdale Water Dist.
25 Superior Court of California, County of
26 Riverside, consolidated actions, Case Nos.
27 RIC 353 840, RIC 344 436, RIC 344 668

28 Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los

Judicial Council Coordination
Proceeding No. 4408

Lead Case No. BC 325 201

STATEMENT OF DECISION
PHASE THREE TRIAL

Judge: Honorable Jack Komar

2
3 The standard for a statement of decision as set forth in Code of Civil Procedure section
4 632 requires a court to explain "... the legal and factual basis for its decision as to each of the
5 principal controverted issues at trial...." Case law is clear that a court must provide the factual
6 and legal basis for the decision on those issues only closely related to the ultimate issues on the
7 case. (See *People v. Casa Blanca Convalescent Homes* (1984) 159 Cal. App. 3d 509, 523-524.)
8 It is also clear that a court need not respond to requests that are in the nature of "interrogatories."
9 (See *id.* at pp. 525-526.)

10 The only issues at this phase of the trial were simply to determine whether the
11 adjudication area aquifer is in a current state of overdraft and as part of that adjudication to
12 determine the safe yield. This Statement of Decision focuses solely on those issues.

13 Cross-complainants Los Angeles County Waterworks District No. 40, City of Palmdale,
14 Palmdale Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District,
15 Quartz Hill Water District, California Water Service Company, Rosamond Community Service
16 District, Phelan Piñon Hills Community Services District, Desert Lake Community Services
17 District, North Edwards Water District (collectively, the "Public Water Producers")¹ brought an
18 action for, *inter alia*, declaratory relief, alleging that the Antelope Valley adjudication area
19 groundwater aquifer was in a state of overdraft and required judicial intervention to provide for
20 management of the water resources within the aquifer to prevent depletion of the aquifer and
21 damage to the Antelope Valley basin.

22 Several of the cross-defendant parties (collectively, the "Land Owner Group") also
23 sought declaratory relief in their various independent (now coordinated and consolidated)
24 actions.

25
26
27 ¹ The United States and the City of Los Angeles, though not water suppliers in the Antelope Valley adjudication
28 area, joined with the Public Water Producers. Rosamond Community Services District joined with the Land Owner
Group.

1 The first issues to be decided in the declaratory relief cause of action are the issues of
2 overdraft and safe yield. The remaining causes of action and issues are to be tried in a
3 subsequent phase or phases.

4 This Phase Three trial commenced on January 4, 2011 and continued thereafter on
5 various days based upon the needs of the various parties and the Court's availability.
6 Appearances of counsel are noted in the minutes of the Court.

7 At the conclusion of the evidence, the Court offered counsel the opportunity to provide
8 written final arguments and the invitation was declined by all counsel. On April 13, 2011, the
9 Court heard oral argument and the matter was ordered submitted.

10 The Public Water Producers (and others) have alleged that the basin is in a condition of
11 overdraft and have requested that the Court determine a safe yield and consider imposition of a
12 physical solution or other remedy to prevent further depletion of the water resource and
13 degradation of the condition of the aquifer.

14 Several parties in opposition to the request of the Public Water Producers have
15 contended that while there may have been overdraft in the past, currently the aquifer has
16 recovered and is not in overdraft. These same parties contend that it is not possible to establish
17 a single value for safe yield; instead they have requested that the Court determine a range of
18 values for safe yield.

19 The Court concludes that the Public Water Producers have the burden of proof and that
20 the burden must be satisfied for this phase and purpose by a preponderance of the evidence.
21 This burden of proof may or may not be appropriate to other phases of this trial. And since the
22 findings here have no application to other phases, such as prescription or rights of appropriators,
23 and the parties have not briefed those or other issues, the Court makes no conclusions as to what
24 standard of proof might be applicable to such other issues or phases of trial.

25 The law defines overdraft as extractions in excess of the "safe yield" of water from an
26 aquifer, which over time will lead to a depletion of the water supply within a groundwater basin
27 as well as other detrimental effects, if the imbalance between pumping and extraction
28 continues. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal. 3d 199; *City of*

1 *Pasadena v. City of Alhambra* (1949) 33 Cal. 2d 908, 929; *Orange County Water District v.*
2 *City of Riverside* (1959) 173 Cal. App. 2d 137.) "Safe yield" is the amount of annual
3 extractions of water from the aquifer over time equal to the amount of water needed to recharge
4 the groundwater aquifer and maintain it in equilibrium, plus any temporary surplus. Temporary
5 surplus is defined as that amount of water that may be pumped from an aquifer to make room to
6 store future water that would otherwise be wasted and unavailable for use.

7 Determination of safe yield and overdraft requires the expert opinions of hydrologists and
8 geologists.² Experts in the field of hydrogeology routinely base their opinions and conclusions
9 concerning groundwater basin overdraft on evidence of long-term lowering of groundwater
10 levels, loss of groundwater storage, declining water quality, seawater intrusion (not an issue in
11 this case), land subsidence, and the like. Experts also conduct a sophisticated analysis of
12 precipitation and its runoff, stream flow, and infiltration into the aquifer, including such things as
13 evapotranspiration, water from other sources introduced into the aquifer (artificial recharge), as
14 well as the nature and quantity of extractions from the aquifer and return flows therefrom.

15
16 Generally, neither overdraft nor safe yield can be determined by looking at a
17 groundwater basin in a single year but must be determined by evaluating the basin conditions
18 over a sufficient period of time to determine whether pumping rates have or will lead to
19 eventual permanent lowering of the water level in the aquifer and ultimately depletion of the
20 water supply or other harm. Recharge must equal discharge over the long term. (*City of Los*
21 *Angeles v. City of San Fernando, supra*, 14 Cal. 3d at pp. 278-279.) But having heard
22 evidence about the aquifer as a whole, the Court is not making historical findings that would be
23 applicable to specific areas of the aquifer or that could be used in a specific way to determine
24 water rights in particular areas of the aquifer.

25
26
27
28 ² All the experts offer estimates. The American Heritage College Dictionary, Third Edition, defines an "estimate"
as, *inter alia*, "[a] rough calculation, as of size" or "[a] judgment based on one's impressions; an opinion."

1 The location of the Antelope Valley adjudication area boundaries was the subject of the
2 Phase One and Two trials in this matter. The Court defined the boundaries of the valley aquifer
3 based upon evidence of hydro-connection within the aquifer. If there was no hydro-connectivity
4 with the aquifer, an area was excluded from the adjudication. The degree of hydro-connectivity
5 within the Antelope Valley adjudication area varies from area to area. Some areas seemingly
6 have fairly small or nominal hydro-connectivity but must be included in this phase of the
7 adjudication unless the connection is *de minimis*.³ Pumping in those parts of the aquifer may be
8 shown to have *de minimis* effect on other parts of the aquifer while pumping in other areas
9 within the basin appear to have material impacts on adjacent parts of the basin. All areas were
10 included within the adjudication area because they all have some level of hydro-connection,
11 some more and some less. How to deal with those differences is ultimately a basin management
12 decision that is well beyond the scope of this phase of trial.
13

14 Overdraft

15

16
17 The preponderance of the evidence presented establishes that the adjudication area
18 aquifer is in a state of overdraft. Reliable estimates of the long-term extractions from the basin
19 have exceeded reliable estimates of the basin's recharge by significant margins, and empirical
20 evidence of overdraft in the basin corroborates that conclusion. Portions of the aquifer have
21 sustained a significant loss of groundwater storage since 1951. While pumping in recent years
22 has reduced and moderated, the margin between pumping and recharge as cultural conditions
23 have changed and precipitation has increased (with the appearance of wetter parts of the
24 historical cycle), pumping in some areas of the aquifer is continuing to cause harm to the basin.
25 The evidence is persuasive that current extractions exceed recharge and therefore that the basin is
26

27 ³ The court may exclude truly *de minimis* connectivity areas based upon evidence in later phases of the trial if
28 shown to have virtually no impact on the aquifer.

1 in a state of overdraft. Since 1951⁴ there is evidence of periods of substantial pumping
2 (principally agricultural in the early years of the period) coinciding with periods of drought, with
3 almost continuous lowering of water levels and severe subsidence in some areas extending to the
4 present time, with intervals of slight rises in water levels in some areas.

5 Areas of increased pumping, with concomitant lowering of water levels, can have a
6 serious effect on water rights in other areas, caused by cones of depression, which alter natural
7 water flow gradients, causing the lowering of water levels in adjacent areas, with resulting
8 subsidence and loss of aquifer storage capacity. Given population growth, and agricultural and
9 industrial changes, the valley is at risk of being in an even more serious continuing overdraft in
10 the future unless pumping is controlled.

11 While the lowering of current water levels has slowed, and some levels in wells in some
12 areas have risen in recent years, significant areas within the aquifer continue to show declining
13 levels, some slightly so, but many with material lowering of water levels.

14 Thus, the Antelope Valley adjudication area is in a state of overdraft based on estimates
15 of extraction and recharge, corroborated by physical evidence of conditions in the basin, and
16 while the annual amount of overdraft has lessened in recent years with increased precipitation
17 and recharge, the effects of overdraft remain and are in danger of being exacerbated with
18 increased pumping and the prospective cyclical precipitation fluctuations shown by the historical
19 record. The physical evidence establishes that there was significant subsidence occurring in
20 parts of the adjudication area ranging from two to six feet or more in certain areas of the valley
21 caused by such pumping and that measurable water levels fell in a substantial part of the valley.
22 While some of the ongoing subsidence may be attributable to residual subsidence (from earlier
23 periods of shortfall) that would not seem to be an explanation for the extent of continued
24 subsidence. The evidence establishes that ground water extractions in excess of recharge are a
25 cause as well.
26
27

28 ⁴ Precipitation and well records prior to that year are too sketchy to be relied upon.

1 Safe Yield

2
3 A calculation of safe yield is necessary to manage the basin or create a physical solution
4 to a potential or actual continuing overdraft. A determination of safe yield requires an initial
5 determination of average annual natural or native recharge to the aquifer from all sources. The
6 only source of natural or native recharge for the Antelope Valley is precipitation that recharges
7 the aquifer and it is therefore necessary to ascertain average annual precipitation. The
8 calculation of annual average precipitation can only be determined by using a baseline study
9 period that covers precipitation in periods of drought and periods of abundant precipitation over
10 a sufficient period of time that a reliable estimate of average future recharge based on
11 precipitation can be made.

12
13 It has been suggested that safe yield could be based on using shorter base periods or more
14 than one base period, (the total time span of which was considerably less than the 50 year period
15 the Court believes is more credible). If the purpose of selecting a base period is to determine
16 average recharge over time based on precipitation, choosing two consecutive periods of time
17 with two different average numbers would not serve that purpose and would preclude estimating
18 a single safe yield. Likewise, selecting a base period that does not have completely representative
19 precipitation cycles over time would not provide an accurate evaluation of conditions in the
20 valley. A base period that calculates average precipitation over a representative period of time
21 permits reliable predictions about future natural recharge based on regular recurring precipitation
22 cycles. A period of precipitation fluctuations from 1951 to 2005 satisfies that standard. Shorter
23 periods do not.

24 The Court finds that current extraction of water from the aquifer by all pumping ranges
25 from 130,000 to 150,000 acre feet a year, but in any event, is in excess of average annual
26 recharge. The major area of dispute between the parties is the average amount of natural
27 recharge, which also involves disputes concerning return flows, the amount of native vegetation
28 water needs, evapotranspiration, stream flow, runoff, groundwater infiltration, specific yield, lag

1 time, bedrock infiltration, agricultural crop needs, and the like. Other sources of recharge to the
2 basin, including artificial recharge-water pumped into the aquifer from external sources are not
3 in dispute.

4 Evidence established that during the entire historical period presented, populations
5 increased within the valley and water use changed in a variety of ways. There has been a shift in
6 some areas to urban uses and away from agriculture although in recent years agricultural
7 pumping has also increased. The nature of agricultural duties has changed as well. The type of
8 irrigation used by farmers has become more efficient and less water is needed per acre
9 (depending on the crops grown) with more efficient uses of water. But there has also been an
10 increase as well as a change in the nature of the type of agriculture in the valley in material
11 quantities in recent years. More of such changes may occur and it is important to both current
12 and future generations to ensure that the water resources within the basin are managed prudently.

14 The Court heard from a very large number of experts, some of whom have provided
15 opinion testimony of what constitutes safe yield. All the experts testifying acknowledged that
16 changes in the selection of a base study period, lag time, agricultural water duties,
17 evapotranspiration, specific yield, runoff quantities, well level contours, bedrock infiltration,
18 return flows, playa evaporation relating to run off and bedrock infiltration, chloride
19 measurements, satellite imaging, and agricultural and municipal pumping estimates, among
20 others, would affect the ultimate opinion of natural recharge and return flows.

21 The opinions of all the experts are estimates, based upon their professional opinion. All
22 of the opinions were critiqued by other experts who often had different opinions. The Court
23 recognizes the imprecision of the various estimates and the fact that an estimate by definition is
24 imprecise. But the fact that estimates lack precision does not mean that the Court cannot rely
25 upon such estimates. The scientific community relies upon such estimates in the field of
26 hydrogeology and the Court must do the same.

27 Reasonable experts can differ as to reasonable estimates of natural recharge and
28 virtually all other components of water budgets, computations of change of storage, and the

1 like, all the while using the same formulae and scientific principles to reach their conclusion.
2 For example, all the experts could agree on the definition of "Darcy's Law" and the physics
3 principle of "conservation of mass" but still reach different conclusions.

4 Some of the experts opined that the basin was not in overdraft and that recharge was in
5 excess of or in balance with extractions so that there was a surplus in the aquifer. One expert
6 opined that loss of storage was merely space for temporary storage. Observable conditions in the
7 valley are inconsistent with those conclusions. If there were a surplus, even in the shortened
8 base periods used by the some experts, there should not be subsidence of land, nor the need to
9 drill for water at deeper and deeper levels in those parts of the aquifer most affected by the
10 overdraft. The physical condition of the valley is inconsistent with those estimates that there is
11 and has been a surplus of water in the aquifer.

12
13 The selection of a safe yield number for an aquifer the size of the Antelope Valley is
14 made difficult because of not only its size but because of the complexity of its geology. As
15 reflected above, hydro-connectivity and conductivity varies considerably between various parts
16 of the aquifer. The hydro-connectivity between some portions of the adjudication area aquifer
17 and others is so slight as to be almost (apparently) nonexistent. Pumping in those areas may
18 have little or no effect on other areas of the aquifer. The Antelope Valley basin is not like a
19 bathtub where lowering and raising of water levels is equal in all parts of the "tub."

20 Therefore, assigning a safe yield number (what quantity of pumping from the basin will
21 maintain equilibrium in the aquifer) may require different numbers for different parts of the
22 aquifer (and clearly may also provide for some level of separate management). No attempt has
23 been made in this phase of trial to define geological differences in the valley that would justify
24 different safe yield numbers for different parts of the valley in light of the decision in Phase Two
25 regarding connectivity (the Phase Two trial focused on hydro-connectivity for purposes of
26 determining necessary parties to the action).

27 Weighing the various opinions of the experts, however, the Court finds by a
28 preponderance of the evidence that conservatively setting a safe yield at 110,000 acre feet a

1 year will permit management of the valley in such a way as to preserve the rights of all parties
2 in accordance with the Constitution and laws of the State of California. Some portions of the
3 aquifer receive more recharge than others and pumping requirements vary. These differences
4 require management decisions that respect the differences in both the geology and the cultural
5 needs of the diverse parts of the valley.

6 It should not be assumed that the safe yield management number may not change as
7 climate circumstances and pumping may change, or as the empirical evidence based on
8 experience in managing the basin suggests it is either too high or too low.
9

10
11 Dated: JUL 13 2011


12 
13 Hon. Jack Komar
14 Judge of the Superior Court
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Exhibit 8

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/30/11

DEPT. 316

HONORABLE Jack Komar

JUDGE

D. MCCULLOUGH

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

G. WELKER

Reporter

8:00 am

JCCP4408

Plaintiff

R. KALFAYAN (X)

Counsel

J. DUNN (X)

Coordination Proceeding Special
Title Rule (1550(b))

Defendant

D. ZLOTNICK (X)

ANTELOPE VALLEY

Counsel

G. JAMES (X)

GROUNDWATER CASES

M. McLACHLAN (X)

*ASSIGNED TO JUDGE JACK KOMAR

IN SANTA CLARA COUNTY (8/31/05)

NATURE OF PROCEEDINGS:

1) Motion by Plaintiff Rebecca Willis and the Willis
Class for a Supplemental Award of Attorneys' Fees;(2) Motion by Plaintiff Richard Wood for Order
Authorizing Court-Appointed Expert Witness Work;

(3) Motion by Plaintiff Willis for Writ of Mandate;

(4) Further CMC

Appearances via CourtCall: J. RILEY, E. RENWICK, J.
GOLDMAN, W. SLOAN, M. LUESEBRINK, B. WEEKS, J.
UKKESTAD, S. KUNEY, W. BRUNICK, C. SANDERS, W.
MILBAND, M. DAVIS, M. LEVINE, J. DUBOIS, T. BUNN, R.
KUHS, R. ZIMMER, B. JOYCE, J. LEWIS, R. WOOD, D.
EVERTZ, J. MARKMAN, K. LEMIEUX, N. MAGUIRE, M. FIFE,
S. HEDLUND, J. HOROWITZ

Matters are called for hearing.

1) Plaintiff Willis and the Willis class motion for
Supplemental award of attorneys' fees is argued and
taken under submission.2) Plaintiff Wood motion for order authorizing
court-appointed expert witness work is argued and
taken under submission pending further hearing after

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/30/11

DEPT. 316

HONORABLE Jack Komar

JUDGE

D. McCULLOUGH

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

G. WELKER

Reporter

8:00 am

JCCP4408

Plaintiff

R. KALFAYAN (X)

Counsel

J. DUNN (X)

Coordination Proceeding Special
Title Rule (1550(b))

Defendant

D. ZLOTNICK (X)

ANTELOPE VALLEY

Counsel

G. JAMES (X)

GROUNDWATER CASES

M. McLACHLAN (X)

*ASSIGNED TO JUDGE JACK KOMAR

IN SANTA CLARA COUNTY (8/31/05)

NATURE OF PROCEEDINGS:

conclusion of settlement discussions.

3) Motion of plaintiff Willis for Writ of Mandate is denied without prejudice. Attorney Dunn may file ex parte request for amended judgment including attorney fees.

4) Case Management Conference is held. Counsel are to submit declarations, via posting, re their final position with regard to setting case for trial on the next phase. Court sets a telephonic case management conference for October 12, 2011 at 10:00 a.m. Location to be determined.

All rulings and orders of the court are as stated in open court and as fully reflected in the notes of the court reporter and incorporated herein by reference.

Exhibit 9

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1 WHICH THAT'S BEEN APPLIED IN BASIN-WIDE WATER
2 ADJUDICATIONS, AND THAT IS ONE OPTION WHICH THE COURT
3 DID NOT FEEL LIKE TAKING UP AT THAT POINT IN TIME. BUT
4 ONE THING MR. O'LEARY AND I ARE NOT GOING TO DO IS SPEND
5 50 TO \$100,000 AND THEN HAVE MR. DUNN AND HIS CLIENT
6 SAY, LOOK, YOUR HONOR, AT 1033.5 WE DON'T TO HAVE PAY
7 THESE AT THE END OF THE CASE.

8 I'M NOT INTO -- YOU KNOW, I'VE ALREADY PUT
9 FOUR YEARS AND OVER 2000 HOURS OF TIME IN. THIS CASE IS
10 BANKRUPTING MY PRACTICE LITERALLY, AND THE LAST THING
11 I'M GOING TO DO IS GO SPEND THAT MONEY IN A SITUATION.

12 NOW, UNFORTUNATELY LEGISLATURE HASN'T FIXED
13 THIS YET. AT SOME POINT IN THE NEXT YEAR OR SO WE
14 BELIEVE THAT GOVERNOR BROWN WILL FIX THIS PROBLEM, BUT
15 IT STILL EXISTS AND IT'S A REAL PROBLEM. AND THAT'S
16 EXACTLY WHY IN THE CIVIL CONTEXT YOU CAN USE A
17 COURT-APPOINTED EXPERT IN THIS SITUATION, AND WITHOUT IT
18 I WOULD PUT TO YOUR HONOR THAT WE DON'T HAVE A
19 COMPREHENSIVE ADJUDICATION.

20 SO I APPRECIATE YOUR HONOR'S TIME AND
21 INDULGENCE.

22 THE COURT: WELL, MR. MCLACHLAN, I DON'T DISAGREE
23 WITH YOU IN TERMS OF THE NECESSITY OF HAVING AN EXPERT
24 EVIDENCE CONCERNING THAT ISSUE IF THE PARTIES CANNOT
25 COME TO A AGREEMENT THAT IS FACT BASED. AND I HAVE
26 EVERY INTENTION OF INSURING THAT THE COURT IS FULLY
27 APPRISED SO THAT THIS IS A COMPREHENSIVE ADJUDICATION
28 DEALING WITH EVERYBODY'S INTERESTS IN IT.

1 AND I CAN TELL YOU I ALSO APPRECIATE THE
2 FACT THAT YOU'RE NOT WILLING TO YOURSELF SPEND \$100,000
3 OR WHATEVER THE PROPOSAL MIGHT BE IN ORDER TO BRING THIS
4 MATTER TO FRUITION.

5 WHETHER THAT BECOMES NECESSARY OR WHETHER
6 IT BECOMES AN IMPEDIMENT, AT THIS POINT I CAN'T TELL
7 YOU, BUT I'M CERTAINLY WILLING AND I'VE INDICATED THAT I
8 WILL WANT SOME TESTIMONY FROM AN EXPERT, A COURT EXPERT,
9 IF THAT'S THE ONLY SOURCE THAT I HAVE, AT THE TIME THAT
10 WE'RE HAVING AN EVIDENTIARY HEARING TO DETERMINE THE
11 VARIOUS ALLOCABLE RIGHTS IN THE VALLEY.

12 AND I THINK THAT THAT SPECIFIC
13 APPOINTMENT -- AND I THINK IT MIGHT BE SOMEWHAT
14 DIFFERENT THAN WAS ORIGINALLY PROPOSED BY MR. THOMPSON,
15 DEPENDING UPON WHAT FORM THE PROPOSED SETTLEMENT AMONG
16 THE VARIOUS PARTIES TAKES.

17 I DON'T WANT TO GET TOO FAR INTO WHAT THE
18 CONTINGENCIES ARE IN REGARD TO THAT AND THAT PHASE OF
19 THE TRIAL BECAUSE I DON'T EXACTLY KNOW WHAT THE
20 SETTLEMENT PROPOSALS ARE BETWEEN THE PARTIES, BUT WE'LL
21 TAKE THAT UP WHEN WE REACH THAT POINT.

22 SO WHETHER I'M GOING TO CONTINUE THE
23 HEARING ON THE MOTION OR DENY IT WITHOUT PREJUDICE, AT
24 THIS POINT I DON'T THINK IT MAKES A WHOLE LOT OF
25 DIFFERENCE, BUT I THINK THAT RATHER THAN DENYING IT
26 WITHOUT PREJUDICE, I WILL RESET IT FOR HEARING AT THE
27 TIME THAT WE DO THE ACTUAL TRIAL SETTING OR EVIDENTIARY
28 HEARING SETTING, THE NEXT PHASE OF THE TRIAL.

1 SO THAT WILL BE THE ORDER.

2 MR. MCLACHLAN: WE'LL JUST THEN RE-NOTICE IT --
3 SINCE THAT DATE IS UNKNOWN -- WELL, DO WE EXPECT TO KNOW
4 THAT DATE TODAY?

5 THE COURT: I HOPE TO KNOW THE DATE THAT WE'RE
6 GOING TO BE ABLE TO DO THAT BEFORE WE'RE DONE HERE, AND
7 I'M GOING TO PASS THIS ISSUE CONCERNING THE COURT-SEALED
8 DISTRICT REQUEST UNTIL AFTER WE'VE FIGURED OUT WHAT THE
9 DATE IS GOING TO BE.

10 SO LET'S TAKE UP THE CASE MANAGEMENT
11 CONFERENCE.

12 I'VE RECEIVED A VARIETY OF CASE MANAGEMENT
13 CONFERENCE STATEMENTS FROM COUNSEL, AND I THINK THAT
14 WHAT I'D LIKE TO DO IS TALK TO YOU ABOUT -- OR HAVE
15 SOMEBODY TELL ME, IF YOU CAN, BASICALLY WHAT THE STATUS
16 OF THE SETTLEMENT NEGOTIATIONS ARE, WHAT YOU EXPECT TO
17 ACCOMPLISH IN GENERAL TERMS, WITHOUT GETTING INTO THE
18 SPECIFICS, SO THAT I CAN EVALUATE WHAT OUR NEXT HEARING
19 DATE SHOULD BE.

20 MR. ZIMMER: I CAN PROBABLY ADDRESS THAT, YOUR
21 HONOR. RICHARD ZIMMER ON BEHALF OF BOLTHOUSE PROPERTIES
22 AND BOLTHOUSE FARMS.

23 THE COURT: YOU'RE GOING TO REALLY HAVE TO SPEAK
24 UP.

25 MR. ZIMMER: RICHARD ZIMMER, YOUR HONOR, ON BEHALF
26 OF BOATHOUSE FARMS AND BOATHOUSE PROPERTIES.

27 GENERALLY SPEAKING, WE HAVE HAD DISCUSSIONS
28 WITH JUSTICE ROBIE. THE DISCUSSIONS HAVE BEEN TWO-FOLD

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

3 DEPARTMENT CCW 316

HON. JACK KOMAR, JUDGE

4
5 ANTELOPE VALLEY)
GROUNDWATER CASES)

6) NO. JCCP4408
7) REPORTER'S
8) CERTIFICATE
9)
10)

11 I, LYNNE M. FRANKO, OFFICIAL REPORTER OF THE
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE
13 COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT I DID
14 CORRECTLY REPORT THE PROCEEDINGS CONTAINED HEREIN AND
15 THAT THE FOREGOING PAGES 1 THROUGH 41, INCLUSIVE,
16 COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE
17 PROCEEDINGS AND TESTIMONY TAKEN IN THE MATTER OF THE
18 ABOVE-ENTITLED CAUSE ON APRIL 17TH, 2012.
19

20 DATED THIS 15TH DAY OF MAY, 2012
21
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25 _____
26 LYNNE FRANKO, CSR NO. 7403
27 OFFICIAL REPORTER
28

Exhibit 10

LAW OFFICES OF MICHAEL D. McLACHLAN

A PROFESSIONAL CORPORATION

523 WEST SIXTH STREET, SUITE 215

LOS ANGELES, CA 90014

PHONE 213-630-2884 FAX 213-630-2886

E-MAIL mike@mclachlanlaw.com

May 14, 2008

VIA U.S. MAIL & E-FILING

Hon. Jack Komar
Santa Clara County Superior Court
Department D-17
161 N. First Street
San Jose, CA 95113

Re: *Antelope Valley Groundwater Litigation*
Case No.: 1-05-CV-049053

Dear Judge Komar:

This letter pertains to the further status conference in this matter set on May 22, at 9:00 a.m. in LASC, Department 1, and more specifically, my potential representation of a class we have loosely referred to as the "small pumper" class.

I write to address what I believe is a potential hurdle to the representation of this class, with the hope that it might be resolved at hearing next week. Last week I discussed this issue with Jeffrey Dunn, who I asked to discuss the matter with his colleagues in anticipation of this letter. If the water purveyors, or other interested parties wish to comment, it is my hope that they will do so now so that this matter can be fully addressed next week.

The proposed pumping class would consist of at least 7,500 members, according to Mr. Dunn. I have heard higher estimates, but even using 7,500, this is a rather sizeable group of people (and entities) with collectively and individually large stakes in this litigation. As the Court has recognized, these people as a group have interests that are at odds with the interests of other groups of stakeholders in this litigation.

I am informed that the primary vehicle for the conduct of this adjudication will be a rather sizeable report soon to be issued by a group of engineers and water experts, many or all of whom will ultimately testify in this case on behalf of their clients. I also understand that much or all of the information in this report has been assembled by a Technical

Hon. Jack Komar

May 14, 2008

Page 2

Committee comprised of a number of these experts. While there are apparently some landowner interests on this Committee, this group appears to be largely dominated by the water companies, and a few large landowners (including the Federal Government). These larger stakeholders obviously have the financial means to undertake such costly and complex analysis, and by virtue of that, are in control of this process.

I have serious reservations about representing this group of pumpers relying solely on the expert analysis of this group experts retained by large stakeholders with differing interests. My concern is born in large part from my years of experience in complex groundwater litigation. While the underlying data in such cases is generally fixed, the actual expert analysis is general subject to substantial subjective components that can vary significantly based on assumptions. It is no secret that experts have, from time to time, been known to angle their subjective decisions in a direction favoring the parties they represent.

I believe the interests of the small pumpers would be best served with an independent expert, and that the appearance of fairness in this adjudication would be enhanced through the appointment of such an expert under Evidence Code section 730, which provides in relevant part:

When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required. The court may fix the compensation for these services, if any, rendered by any person appointed under this section, in addition to any service as a witness, at the amount as seems reasonable to the court.

(See also Witkin, Cal. Evidence 4th, Opinion Evidence § 81.)

I propose that the Court appoint an expert to represent the interests of this group. Such an expert would not be commissioned to re-invent the wheel, but would instead undertake a satisfactory analysis of the work done to date. I have contacted Stetson Engineers, a reputable and qualified firm in this field, and they are willing to serve in this role. While the numbers are very rough, they estimate generally a cost of \$100,000-150,000 for the initial workup (year 1), and then considerably smaller costs if the case were to continue for successive years. If necessary, Stetson could assemble a more detailed proposal, but for the time being, I would suggest an order that simply caps the total costs on an annual basis.

Hon. Jack Komar
May 14, 2008
Page 3

Under section 731, the Court may apportion the costs for such an expert to those parties it deems proper. In this case, I suggest that the costs of such an expert should be born by the public water supplier entities, as this is a matter of general public benefit.

While my office is will to venture legal time and standard costs on a contingency basis, I will not assume the burden of paying for this expert. In the event the water companies are inclined to object to this proposal, I offer a back of envelope estimate of the costs of proceeding in the alternative, i.e. having to individually name and serve these parties. Using 7,500 as the number of small pumpers, and conservative cost of \$100 to identify and serve each pumper, a court order requiring the service off all these parties would cost at least \$750,000, and quite likely much more. So I suggest that it is more economical to proceed with a class action and an expert than in the alternative.

Finally, I have interviewed Mr. Richard Wood, the proposed class representative for this class (see letter to the Court, April 22, 2008, Docket #1286). I believe Mr. Wood will serve as a more than capable representative for the vast majority if not all of members of this class (reserving of course the possibility that some small number of members of this yet-to-be-defined class may have interests not fully in line with his). He understands the obligations of that role, and is willing to serve as representative. So, if we can resolve the concerns raised above, I believe the proposed class makes sense and can proceed.

If any of the attorneys for the interested parties would like to discuss this matter with me, please feel free to call me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'MDM', followed by a long horizontal flourish line.

Michael D. McLachlan

Exhibit 11

MEMORANDUM

Date: February 25, 2010

To: Mike McLachlan, Law Office of Michael D. McLachlan, APC
Dan O'Leary, Law Office of Daniel M. O'Leary

From: Timothy J. Thompson, Vice President and Senior Consultant

Re: Scope of Technical Support Services for Small Pumper Class,
Antelope Valley Groundwater Adjudication

Task 1. Quantification of Small Pumper Class Water Usage

Services will include:

- A. Review responses to initial questionnaire sent to Small Pumper Class. Apply a set of evaluation criteria to identify responses that are representative and useful for the determination of actual water use of the Class, and which can be used directly or are candidates for follow-up requests for additional information or investigation. Criteria will include evaluations of completeness of response, geographic distribution of parcels, annual volume of reported use, range of property sizes, types of reported land use and other data that may be identified and determined to be relevant and useful. Utilization of the GIS database as prepared by other consultants for this case will be beneficial for this component of the Small Pumper Class water use evaluation. Methodology for selection of responses, reasoning in support of need for verification and other considerations will be provided in summary report.
- B. Conduct follow-up communications with selected Class members to verify existing data or request additional data. Additional beneficial data may include electrical usage records, well pump capacity information, water level measurement records, well repair records, flow meter records, well deepening or other improvements related to changing water levels, written logs of well operations and other data that may be identified and determined to be relevant and useful. Selected site visits may be conducted as necessary and relevant. Any information to be requested will be determined and approved in advance by counsel and/or the Court.
- C. Acquire data from other agencies to support calculation of actual pumping of Class members. Data to be collected may include electrical use records, historical land use information, groundwater water level depths as established by other technical studies, and other data that may be identified and determined to be relevant and useful. Any information to be requested will be determined and approved in advance by counsel and/or the Court. The result of these initial steps ("A" through "C") will be to identify a



- statistically significant pool of responses which are representative of the Small Pumper Class actual water use.
- D. Compile and evaluate the selected responses and data to determine the range of current water use amounts, including annual volumes and historical use periods for representative members of the Class. Work products will include summary report, maps, charts, databases and other technical products.
 - E. Provide professional opinion regarding typical groundwater use of Small Pumper Class during deposition and/or trial testimony.

Estimated Range of Costs

Task A: \$14,000-\$16,000

Task B: \$19,000-\$21,000

Task C: \$17,000-\$19,000

Task D: \$22,000-\$24,000

Task E: \$ 9,000-\$11,000

Total: \$81,000-\$91,000

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On June 13, 2012, I caused the foregoing document(s) described as **DECLARATION OF MICHAEL D. MCLACHLAN IN SUPPORT OF MOTION TO DECERTIFY SMALL PUMPER CLASS** to be served on the parties in this action, as follows:

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Michael McLachlan