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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

**RICHARD WOOD'S JOINT REPLY
IN SUPPORT OF MOTION FOR
ORDER AUTHORIZING COURT-
APPOINTED EXPERT WITNESS
WORK AND MOTION TO
DECERTIFY CLASS;
DECLARATION OF MICHAEL D.
MCLACHLAN**

Date: July 9, 2012
Time: 9:00 a.m.
Dept.: 316 (Room 1515)

**RICHARD WOOD'S JOINT REPLY IN SUPPORT OF MOTION FOR ORDER
AUTHORIZING COURT-APPOINTED EXPERT WITNESS WORK AND
MOTION TO DECERTIFY CLASS**

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I. THE COURT APPOINTED EXPERT MOTION SHOULD BE PERMITTED TO COMPLETE THE WORK THE COURT RETAINED HIM TO CONDUCT

As is clear by the title and text of the Motion to Lift the Stay, this is not a motion to seeking approval of the appointment of an expert witness for the Court. Nevertheless, the water suppliers have directed much of their opposition at issues not before the Court, i.e. arguing the Court should not appoint the expert that the Court has already appointed.

1 The relevant portions of the April 24, 2009 transcript are as follows:

2 **THE COURT:** Well, I indicated to you that I think it is appropriate
3 for the court to appoint an expert to deal with those issues at the appropriate
4 time. Now you know if you want the court to make an order and stay it until
5 it becomes necessary, I don't have any difficulty in doing that because I agree
6 with you. I would not want to see you commit malpractice by not being able
7 to be adequately prepared to represent your clients' interest.

8 I think what you have done here is admirable. And in the -- as far as I'm
9 concerned in the highest standards of the profession stepping forward as the same
10 with Mr. Kalfayan and Mr. Zlotnick representing these people who would
11 otherwise have to be served individually and subject to employing their own
12 lawyers, and to what end.

13 * * *

14 **THE COURT:** Well, my interest is in seeing how many issues can get
15 resolved by agreement; and, hopefully, I would like to see all the issues resolved
16 by agreement. That may not happen. But, certainly, the issues relating to the
17 pumper class and the nonpumper -- or dormant class are things that I think can be
18 resolved. All right. Mr. Fife.

19 * * *

20 **MR. DUNN:** Just to sort of come back to what the Court suggested on the
21 settlement process, what I would like to suggest to the court for its consideration is
22 that fairly soon the Court would meet with counsel for the Wood Class together
23 with counsel for public water suppliers that have filed prescriptive claims against
24 Wood Class and also invite the United States to participate because of the
25 McCarran issues and concerns.

26 And that's how I sort of envision sort of the best way of sort of moving
27 forward with this. I can tell you we are prepared to do this on a fairly short order.
28 It probably makes sense to do that, because we are prepared to go either way.
Should the court want to send out the notice to the wood class, we are prepared to
do that, you know, fairly quickly.

THE COURT: I want that notice to go out promptly.

MR. DUNN: Then Mr. McLachlan has his concerns that once that notice
goes out, then I leave it up to the Court.

THE COURT: Well, I have indicated to Mr. McLachlan that I am
going to grant his request and understanding Mr. Fife's concern about it, I'm

1 going to grant it nevertheless. I think there is good cause for it, and I'm going
2 to stay it until the issues of overdraft and safe yield have been adjudicated.

3 MR. DUNN: I agree with Mr. McLachlan on that. We would request that
4 at least initially it would be Mr. McLachlan's -- his class, and then Mr. Kalfayan
5 on a similar or identical approach, but involving the parties they sued and then
together with the united states.

6 I agree with Mr. McLachlan. If we expand this and start letting people in
7 that are not parties, it's going to become very --

8 THE COURT: That is not an effective way of settling a case of this scope.
9 We have -- how many people live in the antelope valley? How many parties per
10 thousand square miles? I really think that we need to look at various leaves of the
lettuce and sections of the union -- or slices of the order -- onion, or whatever it
may be separately.

11
12 (Exhibit 7 (Transcript of April 24, 2009), 21:13-30:11 (emphasis added).)

13 **B. It Is Time For the Court's Expert to Commence Work**

14 In reviewing the moving papers on the motion to appoint the expert, the hearing
15 transcript, the subsequent order granting the motion, and the Stipulation and Order
16 following shortly thereafter, there is no dispute that the Court appointed Mr. Thompson
17 to assess the water use of the Class if and when this case proceeded to a trial on the
18 parties' water rights. The Court has stated very emphatically that on July 9, 2012, the
19 Court will set the trial date for the next phase of trial. That trial will necessarily involve
20 determining water rights of the parties. Since the court-appointed expert has done no
21 work to date, he must be allowed to proceed without further delay, as it will likely take
22 many months for him to gather the necessary evidence and complete his work.

23 The United States' brief adds little to the debate, other than underscoring the need
24 for the court-appointed expert. That brief asserts that the small pumper class water use
25 has been "estimated by various parties" at "roughly 5-10% of the pumping of the native
26 safe yield of 82,300." (Federal Deft.'s Response, 3:5-6.) Although this safe yield

1 number has not been adopted by the Court, if that comes to pass, the current estimates of
2 the Class' water use range between 4,115 and 8,230 acre-feet per year, according to the
3 United States. There is indeed at least a 100-200% difference between the lowest and
4 highest 'back of the envelope' estimates. (McLachlan Decl., ¶ 4.) This is a substantial
5 amount of water to the Class, and virtually proves the point that the court-appointed
6 expert is essential if the Class is to proceed to the next phase of trial.

7 The Court should take note of what is missing from the record on this Motion:
8 any evidence or testimony that any credible evaluation of the water use of the small
9 pumper class has been conducted to date. No party asserts this for the simple reason that
10 it has not been done. And so, the water suppliers want this Court march the Class off to
11 the next phase of trial, staked out like the proverbial goat in the sun, facing their
12 prescription claims with no means of defending them and having the water suppliers own
13 paid experts set the Class' water use at whatever number they choose. Avoiding this very
14 scenario was why the Court-appointed the expert in the first place.

15 **II. ALTERNATIVELY, IF THE COURT CHOOSES TO RESCIND ITS**
16 **PRIOR ORDER, THE SMALL PUMPER CLASS MUST BE**
17 **DECERTIFIED.**

18 The Court made a very clear agreement with the Class and its counsel prior to
19 class notice being served in 2009. That agreement led class counsel to spend an
20 incredible amount of time and money representing the Class (nearly 3,000 hours of time
21 and approximately \$50,000). It would be a great blow to private attorney general actions
22 for public benefit if the Court here were to renege on that agreement on a stage of this
23 size. But if the Court does end up breaking its promise, then it must release class counsel
24 and decertify the Class.

1 **A. The Motion is Timely**

2 In their opposition to the Motion to Decertify, the water suppliers raise a few
3 baseless arguments that Plaintiff will briefly address. In their leading argument, the
4 water suppliers argue that the Motion is not timely because this case has been decided on
5 the merits. If this is the case, and some of the Class’ claims have been resolved, then the
6 water suppliers will no doubt have no objection to the Class submitting a motion for
7 attorneys’ fees. In truth, all parties are aware that no claims have been resolved on the
8 merits, other than those by the Willis class. Further, the cases the defendants cite do not
9 support their position either. *Danzig v. Jack Grynberg & Associates* involved a post-
10 judgment attack on class certification. ((1984) 161 Cal.App.3d 1128, 1136; *Occidental*
11 *Land, Inc.* (1976) 18 Cal.3d 355, 360 (motion to decertify 18 months after certification is
12 timely). Similarly, *Green v. Obledo* arose out of a post-summary judgment challenge to
13 class certification. ((1981) 29 Cal.3d 126, 145.) Here, there has been no judgment
14 entered on any class claims, so the timeless argument is meritless.¹

15 **B. The “Irreconcilable Conflict” Argument Is Irrelevant**

16 Next, completely ignoring the authority presented in the Motion to Decertify
17 regarding the adequacy of representation issue, the water suppliers argue that the Motion
18 must be denied because the Class has not established “any irreconcilable conflict amongst
19 the members of the Wood Class.” This issue is completely irrelevant to the Motion and
20 the question about whether the Class meets the adequacy requirement when the case
21

22 ¹ The water suppliers do not dispute the fact that a class can and should be
23 decertified if the class representative cannot adequately prosecute the action on behalf of
24 the class. (*Key v. Gillette Co.* (1st Cir. 1986) 782 F.2d 5, 6-7 (decertifying class because
25 due process rights of absent class members are implicated when class representative
26 cannot adequately represent class’ interests); *Holloway v. Full Spectrum Lending* (2008)
27 2008 WL 4184648 at *4 (decertifying class because class representative “will probably
not be able to fairly and adequately protect the interests of the class.”))

1 arrives at a Phase 4 trial of water rights. With the appointment of the expert prior to class
2 notice, the Class was properly certified. But this was only true because the Court agreed
3 to allow the expert to assess the Class' water use after safe yield and overdraft were
4 determined. If the Court changes its mind and rescinds its order of April 24, 2009, then
5 the Class does not meet the necessary standards to be certified and must be decertified.²

6 **C. The Remaining Arguments are Utterly Frivolous**

7 The water suppliers then argue that the Class should “establish their groundwater
8 requirements” by some means “other than by an expert witness.” (Opp. Decertify, 2:12-
9 13.) Is Class counsel to force absent class members to appear at trial by the hundreds or
10 thousands and have them try to opine on something that is well-beyond the ken of lay
11 persons? Obviously this cannot be done. The very suggestion is utterly cynical,
12 especially in light of the fact that the water suppliers have seen the class questionnaire
13 forms and know that very few of the Class members know how much water they use, or
14 are capable of conducting that calculation. (McLachlan Decl., ¶ 3.)

15 But the arguments only go further downhill from there, concluding with
16 accusations that class counsel made false represented to the Court about their abilities to
17 represent the Class. (Opp. to Decertify, 3:8-12.) This argument so grossly misrepresents
18 the record that the Court should consider sanctioning defense counsel for even offering it.
19 The Court and all parties are fully aware that class counsel came to the Court in May of
20 2008, and expressly predicated their willingness and ability to proceed with this case on
21 the issue of a court-appointed expert, and told the Court that this issue was likely a bar to
22 class representation. (Exhibit 4, Letter of May 14, 2008 to Hon. Jack Komar; Hearing
23

24
25 ² In their Opposition, the water suppliers do not even mention the words due
26 process, which appear throughout the Motion to Decertify and form the central basis for
27 the Motion. While it is abundantly clear the public waters suppliers – government

Transcript of May 22, 2008.)

The water suppliers do not dispute that the holding of *Olson v. Automobile Club of Southern California* (2008) 42 Cal.4th 1142, 1150-51 ties class counsel's hands with regard to retaining an expert and recovering those costs. They do not even bother to mention the case in their papers.

Instead, they have the temerity, and simultaneous lack of recognition of the significance of the Motion to Decertify, to suggest that "the court should consider establishing further proceedings and to determine the appropriateness of continued representation by the currently-appointed Wood Class Counsel." (Opp. to Decertify, 3:8-12.) The motion they now oppose may in fact resolve this issue. At which point, the public water suppliers will – in an effort to save themselves \$50,000 to \$80,000 – be forced to spend in excess of a million dollars to individually name and serve 5,000 class members in order to re-establish a comprehensive adjudication.³

Finally, it should be noted that the water suppliers have had ample opportunity to resolve the Small Pumpers Class on essentially the same terms as the Willis settlement, but have refused to do so. This was the only other option to resolving the problems raised by these motions. Having failed to explain why they have not resolved this case, the water suppliers should not be heard to complain about the issuance of the relief on either of the two motions now before the Court. (McLachlan Decl., ¶ 5.)

agencies no less – do not care about the Class getting a fair shake, this Court has said time and again that it is concerned with issues of fundamental fairness.

³ It bears reminding that the only parties who require the United States to be party to this case are a few (and not even all) of the water suppliers. No other party has sued the United States. There is no rule that requires the United States to be party to this action, but the quest for satisfying the Counties desire for jurisdiction over the United States – for reasons unknown – has cost all of the other parties massive amounts of time and money. So it is hard to understand how the County argues that the Classes and the court-appointed expert somehow benefit anyone other than themselves, and perhaps the Classes.

1 **III. CONCLUSION**

2 Historically, and presumptively still, the water suppliers have supported the Class,
3 but only when convenient to their interest in obtaining a comprehensive adjudication and
4 saving huge sums of money serving the small pumpers with summons and complaint.
5 They have rallied for the Classes to be formed, but then argued that they be starved of the
6 necessary resources to be adequately represented. They cannot have it both ways.

7 More importantly, given all that has come before, the water suppliers certainly
8 should not be suggesting to the Court that it abandon the promises and orders made
9 prefatory to Class notice. For more than three years now, Class counsel has expressly
10 relied on that order. (McLachlan Decl., ¶ 6.) It would be a profound disgrace not to
11 follow through on those agreements, not to mention the substantial disruption that would
12 be caused to future progress of this adjudication.

13
14 DATED: July 1, 2012

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

15
16 By: //s// Michael D. McLachlan
17 Michael D. McLachlan
18 Attorneys for Plaintiff
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1 **DECLARATION OF MICHAEL D. MCLACHLAN**

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. I attach as Exhibit 7 true and correct copies of the cited portions of the
8 hearing transcript of April 24, 2009.

9 3. During the process of giving class notice, we served questionnaires on the
10 Class members asking for basic information on their pumping. A very few class
11 members were able to provide any meaningful response as to their annual water use, or to
12 specific information that might lead to calculation of same.

13 4. To date there has been no investigation or analysis conducted of the actual
14 water use of the Class members. Some back of the envelope estimates have been made
15 by using data from other contexts. These estimates have ranged from as low as 3,000
16 acre-feet per year to as much as 10,000 afy.

17 5. After the Court denied the small pumper class settlement on June 16, 2009,
18 class counsel and Richard Wood met with counsel for County Waterworks, Jeffrey Dunn
19 and Warren Wellen (the former of whom has always acted as lead settlement negotiator
20 on behalf of the water suppliers). Consisted with the Court's comments on the record
21 that day and agreement by Mr. Dunn and Mr. Wellen to proceed with a revised
22 settlement, we drafted a revised agreement. For reason unknown, the water suppliers
23 dropped those settlement efforts in the fall of 2011, and they have remained dormant
24 since that time.

6. In agreeing to file this action, and subsequently as a condition of allowing class notice to be sent to the class members, I relied on the Court's statements and Orders regarding the court-appointed expert in agreeing to pursue this action. The same is true of Mr. O'Leary. Without a neutral expert to properly assess the Class' water usage it is my considered opinion that we cannot adequately represent the interests of the Class at any future phase of trial involving determination of water rights.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 1st day of July, 2012, at Los Angeles, California.

//s// Michael D. McLachlan
Michael D. McLachlan

Exhibit 7

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT NO. 1 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,)
DISTRICT NO. 40, ET AL,)
12 CROSS-DEFENDANTS.)
13

14

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 FRIDAY, APRIL 24, 2009

17

18

APPEARANCES:

19

(SEE APPEARANCE PAGES)

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27 GINGER WELKER, CSR #5585
OFFICIAL REPORTER

28

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.

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

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

1 ELSE HERE.

2 BECAUSE -- AND I THINK A LOT OF PEOPLE
3 HAVEN'T BEEN THROUGH THIS BEFORE. THEY DON'T UNDERSTAND
4 THAT THERE WOULD ULTIMATELY IF THERE IS A SETTLEMENT IN
5 THE WILLIS OR WOOD CLASS BE A FAIRNESS HEARING, AN
6 PRELIMINARY APPROVAL HEARING, THE ABILITY FOR THE
7 PARTIES TO OBJECT.

8 AND SO I THINK THAT -- IT WAS ALWAYS MY
9 PERSONAL APPROACH THAT ANY SETTLEMENT THAT WAS BROKERED
10 AMONGST MY CLASS AND THE PURVEYORS WOULD BE SUBMITTED TO
11 MR. KUNEY'S GROUP AND WHOEVER ELSE IS OUT THERE FOR
12 THEIR INPUT.

13 WE MAY NOT NECESSARILY AGREE, BUT I THINK
14 THAT MOST OF THE CONCERNS CAN BE DEALT WITH IN A --
15 THERE ARE NOT MANY MOVING PARTS IN OUR CLASS. THERE ARE
16 NOT A LOT OF MOVING PARTS IN HIS CLASS. SO I THINK IT
17 IS A VERY GOOD PLACE TO START IF YOU ARE GOING TO TRY TO
18 PRECIPITATE GLOBAL SETTLEMENT.

19 LIKE WE HAVE BEEN DOING A YEAR NOW -- I'M
20 NOT GOING TO GET INTO DETAILS, BUT THE COURT IS AWARE
21 THAT WE HAVE BEEN TRYING TO WORK ON SETTLEMENT. IT IS
22 NOT GOING ANYWHERE. THE ONION IS TOO BIG, AND WE NEED
23 TO TRY TO WORK ON LITTLE PIECES OVER IT.

24 THE COURT: WELL, THAT IS MY VIEW.

25 MR. DUNN: I AGREE WITH MR. MCLACHLAN ON THAT. WE
26 WOULD REQUEST THAT AT LEAST INITIALLY IT WOULD BE MR.
27 MCLACHLAN'S -- HIS CLASS, AND THEN MR. KALFAYAN ON A
28 SIMILAR OR IDENTICAL APPROACH, BUT INVOLVING THE PARTIES

1 THEY SUED AND THEN TOGETHER WITH THE UNITED STATES.

2 I AGREE WITH MR. MCLACHLAN. IF WE EXPAND

3 THIS AND START LETTING PEOPLE IN THAT ARE NOT PARTIES,

4 IT'S GOING TO BECOME VERY --

5 THE COURT: THAT IS NOT AN EFFECTIVE WAY OF

6 SETTling A CASE OF THIS SCOPE. WE HAVE -- HOW MANY

7 PEOPLE LIVE IN THE ANTELOPE VALLEY? HOW MANY PARTIES

8 PER THOUSAND SQUARE MILES? I REALLY THINK THAT WE NEED

9 TO LOOK AT VARIOUS LEAVES OF THE LETTUCE AND SECTIONS OF

10 THE UNION -- OR SLICES OF THE ORDER -- ONION, OR

11 WHATEVER IT MAY BE SEPARATELY.

12 BUT I WANT TO HEAR FROM MR. LEININGER. HE,

13 OBVIOUSLY, HAS SOME INTEREST. HE HAS BEEN STANDING UP

14 FOR A LONG TIME.

15 MR. LEININGER: THANK YOU, YOUR HONOR. WE ARE

16 CERTAINLY INTERESTED IN SETTLEMENT. IN FACT, WE HAVE

17 ENGAGED IN SOME OF THIS PRELIMINARY DISCUSSION THAT YOU

18 ARE HEARING AMONGST PARTIES INFORMALLY.

19 I GUESS MY ONLY CONCERN IS WITH REGARD TO

20 THE SETTLEMENT CONFERENCE -- AND I APOLOGIZE BECAUSE I'M

21 NOT THAT FAMILIAR WITH THE MECHANICS OF THE FORMAL

22 SETTLEMENT CONFERENCE BEFORE THE COURT, BUT THERE ALSO

23 HAVE BEEN SOME DISCUSSION OF A POTENTIAL MEDIATOR THAT

24 WOULD ALLOW FRANK DISCUSSION AND PERHAPS MORE

25 OPPORTUNITY TO ENGAGE IN MORE DISCUSSIONS, MORE INFORMAL

26 DISCUSSIONS BEFORE COME TO THE COURT IN A SETTLEMENT

27 CONFERENCE.

28 SO THAT IS SOMETHING ELSE THAT WE HAD BEEN

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) JUDICIAL COUNCIL
8 ANTELOPE VALLEY GROUNDWATER CASES) COORDINATION
9) NO. JCCP4408
10)
11 PALMDALE WATER DISTRICT AND) SANTA CLARA CASE NO.
12 QUARTZ HILL WATER DISTRICT,) 1-05-CV-049053
13)
14 CROSS-COMPLAINANTS,)
15)
16 VS.)
17)
18 LOS ANGELES COUNTY WATERWORKS,)
19 DISTRICT NO. 40, ET AL,)
20)
21 CROSS-DEFENDANTS.)
22)
23)
24)
25)
26)
27)
28)

16 STATE OF CALIFORNIA)
17) SS.
18 COUNTY OF LOS ANGELES)

19 I, GINGER WELKER, OFFICIAL REPORTER OF THE
20 SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE
21 COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
22 TRANSCRIPT DATED APRIL 24, 2009 COMPRISES A FULL, TRUE,
23 AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE
24 ABOVE ENTITLED CAUSE.

25 DATED THIS 30TH DAY OF APRIL OF 2009.

26
27
28 OFFICIAL REPORTER, CSR #5585