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

DEPARTMENT NO. 1 HON. JACK KOMAR, JUDGE

IN RE THE ANTELOPE VALLEY)
GROUNDWATER CASES)
)
)
)
)
)



NO. JCCP4408

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, AUGUST 11, 2014

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1 I TOOK THE DEPOSITIONS ON BEHALF OF MANY
2 LANDOWNERS AS TO THE PHELAN CLAIM. AT THAT TIME, THE
3 PHELAN CLAIM WAS A CLAIM TO RETURN FLOW RIGHTS AS A
4 RESULT OF PUMPING NATIVE WATER, AS THE COURT CORRECTLY
5 POINTED OUT. I DON'T THINK THERE IS ANY WATER LAWYER IN
6 THE ROOM WHO THINKS YOU HAVE A CLAIM RETURN FLOWS FROM
7 PUMPING NATIVE WATER. IF WE DID, WE WOULD ALL BE THE
8 BENEFICIARY OF A HUGE RETURN FLOW CLAIM.

9 SO THAT'S A LEGAL ISSUE THAT NEEDS TO BE
10 DECIDED. AND I THINK THAT RATHER THAN REFERRING IT TO
11 THE LIAISON COMMITTEE, I THINK WHAT THE COURT SHOULD DO
12 IS HAVE THAT DECIDED TODAY.

13 AS TO THE ISSUE OF STIPULATION, THE REASON
14 THAT THAT BECAME AN ISSUE IS -- I'M PERFECTLY WILLING
15 NOW, AND I WAS PERFECTLY WILLING THEN, AND I THINK OTHER
16 COUNSEL ARE AS WELL TO STIPULATE TO THE FACTS UPON WHICH
17 THIS RETURN FLOW CLAIM IS BASED. I KNOW WHAT THEY ARE
18 BECAUSE WE TOOK THE DEPOSITIONS. AND I STILL STAND BY
19 THAT; I DON'T HAVE ANY PROBLEM WITH STIPULATING THOSE
20 FACTS.

21 BUT WHAT'S HAPPENED MORE RECENTLY IS THAT
22 MR. MILIBAND HAS RUN THESE FACTS OF THE RETURN FLOW
23 CLAIM BY OTHER COUNSEL AND NOBODY IS PICKING UP ON THIS
24 IDEA; NOBODY AGREES THAT THAT GIVES YOU A RETURN FLOW
25 RIGHT. SO WHAT HAS HAPPENED IS PHELAN HAS NOW EXPANDED
26 THEIR ARGUMENT, SCRAMBLING TRYING TO FIND SOME WAY TO
27 CLAIM AN OVERLAYING GROUNDWATER RIGHT. AND THERE HAVE
28 BEEN RECENT CLAIMS FOR PRESCRIPTION, PUBLIC USE, AND

1 PRESCRIPTION CLAIM. BUT APPARENTLY THERE IS A
2 PRESCRIPTION CLAIM IN THE PLEADING. SO I DON'T KNOW
3 WHETHER THAT'S AT ISSUE OR NOT. THE REASON THAT FOLKS
4 GOT SIDWAYS WITH PHELAN WAS BECAUSE PHELAN WAS
5 ORIGINALLY SAYING, "WE HAVE GOT RETURN FLOW RIGHTS,"
6 THEN SUDDENLY SAID, "WE WANT YOU TO STIPULATE TO THAT,"
7 AND IN THE SAME BREATH SAID, "ANYBODY THAT OPPOSES ME,
8 I'M GOING TO MAKE SOME KIND OF CLAIM AGAINST THEM." AND
9 THOSE CLAIMS WERE AMORPHOUS; NOBODY KNEW WHAT THEY WERE.
10 THERE WAS THE SENSE THAT MR. MILIBAND WAS USING THAT AS
11 SOME KIND OF A CLUB TO TRY TO SAY, "IF YOU OPPOSE ME I'M
12 GOING TO MAKE SOME KIND OF UNSTATED CLAIM AGAINST YOU."
13 AND THAT'S WHEN -- AND HE SAID, "I'M GOING TO OPPOSE
14 BOLTHOUSE." HE USED THAT AS THE EXAMPLE. AND I MADE
15 THE STATEMENT AT THAT TIME: "IF YOU'RE GOING TO OPPOSE
16 WE WANT TO KNOW WHAT IT IS BECAUSE IF YOU'RE GOING TO
17 OPPOSE US, WE'RE GOING TO OPPOSE YOU."

18 BUT IT DOESN'T CHANGE THE FACT THAT AS I
19 SIT HERE RIGHT NOW, WE WILL STIPULATE TO THE FACTS ON
20 RETURN FLOWS. I THINK THOSE FACTS ARE VERY WELL-KNOWN;
21 I ACTUALLY KNOW WHAT THEY ARE; OTHER PARTIES WILL BE IN
22 AGREEMENT TO WHAT THOSE FACTS ARE, AND WE CAN CERTAINLY
23 TRY THAT ISSUE. BUT IF THERE ARE SOME OTHER CLAIMS THAT
24 PHELAN HAS OUT THERE, WE CERTAINLY NEED TO KNOW WHAT
25 THEY ARE. THIS CLAIM ABOUT THE SURPLUS CLAIM NEEDS TO
26 BE DEALT WITH. IF THEY'RE NOT CLAIMING PRESCRIPTION,
27 THAT NEEDS TO BE ADMITTED ON THE RECORD, AND HE NEEDS TO
28 TELL US THAT HE'S NOT CLAIMING PRESCRIPTION.

1 BECAUSE ANY PUMPING THAT PHELAN PINON HILLS DID WAS AT A
2 TIME WHEN THERE WAS NO SURPLUS IN THE BASIN; THE COURT
3 HAS DETERMINED IT TO BE AN OVERDRAFT. AND YOU CAN ONLY
4 ACQUIRE AN APPROPRIATE RIGHT WHEN THERE IS A SURPLUS IN
5 THE BASIN.

6 I'M RECITING ALL OF THIS BECAUSE I THINK
7 THAT THE FOCUS NOW SHOULD BE ON HOW TO EFFICIENTLY TRY
8 PHELAN PINON HILLS' CLAIMS TO WATER. I BELIEVE THAT
9 THAT CAN BE DONE WITHIN A SHORT PERIOD OF TIME BECAUSE I
10 BELIEVE THAT IT DOES RAISE PURELY LEGAL ISSUES, THE ONE
11 THAT THE COURT IDENTIFIED ABOUT THE RETURN FLOWS, AND
12 THE OTHER QUESTION ABOUT WHETHER ONE CAN APPROPRIATE
13 WATER IF THERE IS NO SURPLUS IN THE BASIN.

14 SO I WANTED TO ADDRESS THOUGH
15 MR. MILIBAND'S PROPOSAL --

16 THERE IS ONE OTHER THING. MR. MILIBAND HAS
17 INDICATED THAT IF THERE IS NOT A COMPLETE SETTLEMENT AS
18 TO HIS CLIENT, THERE IS NOT A SETTLEMENT ON ANYTHING.
19 HE WANTS TO RESERVE THE RIGHT TO CHALLENGE OTHER PEOPLE
20 WATER RIGHTS, AND THAT'S HIS RIGHT TO DO SO. IT'S OUR
21 THOUGHT THOUGH THAT THE MOST EFFICIENT WAY TO GO ABOUT
22 THIS IS TO DETERMINE WHAT PHELAN PINON HILLS' WATER
23 RIGHTS ARE FIRST AND WHETHER THEY HAVE ANY WATER RIGHTS.
24 BECAUSE IF THEY DON'T, THEN THEY DON'T HAVE ANY ABILITY
25 TO CHALLENGE WHAT THE OTHER PEOPLE'S WATER RIGHTS ARE.

26 SO OUR SUGGESTION MADE TO HIM WAS THAT WE
27 ALLOW HIM TO PUT ON HIS CASE AS TO WHATEVER HIS WATER
28 RIGHTS ARE, AND THAT WOULD BE CONTESTED. AND THEN ONLY

1 IF THE COURT DETERMINED PHELAN PINON HILLS HAD ANY WATER
2 RIGHTS WOULD WE GO ON TO HIS CHALLENGE OF OTHER PEOPLE'S
3 WATER RIGHTS.

4 MR. MILIBAND, AS YOU SAW IN HIS CASE
5 MANAGEMENT STATEMENT, ACCEPTED SOME OF THAT AND IS
6 WILLING TO BIFURCATE THE CLAIMS. BUT WHAT CONCERNS ME
7 IS THAT HE WANTS TO POSTPONE THE QUESTION OF WHETHER
8 THERE IS ANY SURPLUS. HE HAS A THEORY THAT HE CAN
9 EXPLAIN TO THE COURT BETTER THAN I ABOUT WHETHER
10 THERE -- THAT THERE IS A -- WHAT I'M GOING TO CALL "THE
11 LOCAL SURPLUS." I DON'T KNOW IF YOU WOULD CALL THAT AN
12 ACCURATE CHARACTERIZATION. IT'S OUR POSITION THAT
13 BASIN-WIDE -- THERE IS ONLY ONE BASIN, AS THE COURT
14 SAID, AND THAT'S AN OVERDRAFT. THERE IS NO SUCH THING
15 AS LOW-FLOW SURPLUS FROM WHICH HE CAN PUMP. THAT ISSUE
16 NEEDS TO BE TRIED. IT'S OUR BELIEF THAT IT CAN BE TRIED
17 QUICKLY. I'M WARY OF GETTING INTO THE TRAP OF -- AS I
18 VIEW IT -- THAT MR. ZIMMER SAID WE HAVE TO KNOW EXACTLY
19 WHAT PHELAN PINON HILLS IS CLAIMING. I FEEL LIKE WE DO
20 HAVE A GOOD IDEA WE KNOW WHAT HE'S CLAIMING; HE DID FILE
21 PAPERS THAT BASICALLY SAYING WHAT HIS CLAIMS ARE. WE
22 KNOW THAT. I THINK THAT FURTHER MEET AND CONFERRING IS
23 NOT LIKELY TO BE PRODUCTIVE. WHERE WE OUGHT TO FOCUS
24 NOW IS HOW TO EFFICIENTLY RESOLVE THOSE CLAIMS. AND
25 IT'S MY POSITION THAT THOSE CAN BE DONE QUICKLY, WITHIN
26 THE 60 DAYS THAT WAS SUGGESTED BY THE PUBLIC WATER
27 SUPPLIERS, AND THAT THE COURT CAN SCHEDULE A TRIAL ON
28 THOSE ISSUES IN OCTOBER, IF THAT'S THE PLEASURE OF THE

1 REQUEST THAT EVEN THOUGH THERE HAVE BEEN A NUMBER OF
2 ISSUES RAISED IN DISCUSSION INVOLVING PHELAN PINON
3 HILLS, MR. BUNN'S POINT IS WELL-TAKEN; THAT IS, THERE IS
4 A FUNDAMENTAL ISSUE TO BE QUICKLY AND READILY DECIDED BY
5 THE COURT. AND THAT IS AS AN APPROPRIATOR IS THERE A
6 RIGHT THAT PHELAN PINON HILLS CAN EXERCISE? IN OTHER
7 WORDS, CAN THEY SIMPLY TAKE THE WATER OUT OF THE BASIN
8 AS AN APPROPRIATOR. AND THE FACTS ARE NOT IN DISPUTE.
9 WE KNOW WHO PHELAN PINON HILLS IS; THEY'RE A LOCAL
10 GOVERNMENTAL ENTITY. WE KNOW HOW MUCH THEY'VE PUMPED;
11 WE KNOW WHEN THEY PUMPED IT; AND WE KNOW WHERE THEY
12 PUMPED IT.

13 SO THAT ISSUE IN TERMS OF CAN THEY TAKE THE
14 WATER OUT OF THE GROUND AS AN APPROPRIATIVE RIGHT IS
15 READY NOW FOR THE COURT TO DECIDE. AND THIS IS CRITICAL
16 FOR US TO RESOLVE SOONER INSTEAD OF LATER, AS THE COURT
17 POINTED OUT. WE HAVE PROPOSED A SCHEDULE FOR THE COURT
18 TO CONSIDER THAT WOULD HAVE THIS ISSUE DECIDED
19 APPROXIMATELY IN MID-OCTOBER, ROUGHLY 60 DAYS. THERE IS
20 NO QUESTION THAT IN THE MANY YEARS OF BOTH SETTLEMENT
21 DISCUSSION AND LITIGATION, THAT THE PARTIES' POSITIONS
22 ARE KNOWN. THERE HAS BEEN DISCOVERY; THERE HAVE BEEN
23 EXPERTS DESIGNATED; THERE HAVE BEEN DEPOSITIONS.
24 WHATEVER ELSE IS NEEDED, TO THE EXTENT THAT SOME OTHER
25 FACTUAL PRESENTATION STILL NEEDS TO BE DEVELOPED FOR
26 THIS SINGLE-FOCUSED ISSUE, CAN EASILY BE DONE IN THE
27 NEXT 30 TO 40 DAYS. THERE IS NO REASON WHY THIS ISSUE
28 SHOULD LINGER ANY LONGER. IF THERE ARE AFTER THAT OTHER

1 ISSUES INVOLVING PHELAN PINON HILLS IN TERMS OF INVERSE
2 AND ALL THAT, THAT CAN BE DECIDED LATER.

3 BUT FOR PURPOSES OF GETTING OUR SETTLEMENT
4 AGREEMENT DONE AND PRESENTED TO THE COURT, THIS CORE
5 ISSUE OF DO THEY HAVE A RIGHT AS AN APPROPRIATOR TO TAKE
6 WATER OUT OF THIS ADJUDICATION AREA IS READY FOR THE
7 COURT TO DETERMINE. AND I'M HERE ON BEHALF OF DISTRICT
8 40 AND OTHER PARTIES IN THE CASE TO RESPECTFULLY REQUEST
9 THAT AS TO THAT ISSUE WE WANT TO -- WE WOULD LIKE TO GET
10 THAT ISSUE RESOLVED AS SOON AS POSSIBLE. WE THINK 60
11 DAYS IS AMPLE TIME TO GET THAT DONE.

12 THE COURT: YOU'RE ASKING FOR OCTOBER 7?

13 MR. DUNN: YES, I'M SORRY. I DON'T HAVE MY COPY
14 HERE. MY CO-COUNSEL HAS THE SCHEDULE.

15 THE COURT: THE PHASE 6 SCHEDULE THAT YOU HAVE
16 INDICATED IS THREE-DAY COURT TRIAL ON OCTOBER 7.

17 MR. DUNN: YES, AS TO PHELAN PINON HILLS. YES.

18 THE COURT: ALL RIGHT.

19 MR. DUNN: AND WE WOULD ENGAGE COUNSEL FOR PHELAN
20 IN A PROCESS OF DEVELOPING STIPULATED FACTS,
21 PRESENTATION OF THE CASE, WORKING OUT THE TIMING, AND
22 ALL THE ISSUES THAT WE HAVE AMPLE EXPERIENCE BEFORE THIS
23 COURT IN PRESENTING EVIDENCE. CONFIDENT WE CAN DO THAT.

24 THE COURT: ALL RIGHT. ONE OF THE THINGS THAT I
25 THINK I WOULD LIKE YOU TO DO IS -- IF YOU CAN -- IS
26 ENTER INTO A STIPULATION FOR THE COURT TODAY, SETTING
27 FORTH THE ISSUES, SPECIFIC ISSUES TO BE TRIED IN THAT
28 BIFURCATED TRIAL, WITH THE BALANCE OF THE ISSUES TO BE

1 RESERVED. AND I THINK OCTOBER 7 FOR THREE DAYS WOULD
2 WORK FOR THE COURT.

3 MR. DUNN: YES, YOUR HONOR. WE WILL DO THAT.

4 THE COURT: NOW, WE ALSO HAVE THE BLUM TRUST
5 ISSUES THAT HAVE TO BE SIMILARLY STATED SO THAT WE CAN
6 TRY THOSE ISSUES, TO THE EXTENT THAT THEY NEED TO BE
7 TRIED; TO THE EXTENT THAT TRIAL IS NECESSARY.

8 AND LET ME ASK THIS FIRST OF ALL WITH
9 REGARD TO THE PHELAN PINON HILLS CASE: IS THERE A NEED
10 FOR FURTHER DISCOVERY OF ANY KIND?

11 MR. DUNN: NO, YOUR HONOR. NOT IN MY VIEW.

12 THE COURT: ON THE PORTION THAT'S GOING TO BE
13 BIFURCATED?

14 MR. MILIBAND: YOUR HONOR, IF I MAY BRIEFLY.

15 THE COURT: YOU MAY.

16 MR. DUNN: LET ME JUST FINISH THIS ONE QUESTION.
17 THERE MAY BE -- MAY BE A NEED TO UPDATE THE DEPOSITION
18 OF THE PHELAN EXPERT. BUT ABSENT THAT -- AND MAYBE A
19 DEPOSITION OF ONE OF OUR EXPERTS. BUT VERY LIMITED
20 FOCUS, GIVEN THAT THOSE EXPERTS HAVE BEEN DEPOSED.

21 SO WITH THAT EXCEPTION, I DON'T REALLY SEE
22 MUCH TO DO TO GET READY FOR THAT.

23 THANK YOU.

24 THE COURT: MR. MILIBAND.

25 MR. MILIBAND: WES MILIBAND, YOUR HONOR.

26 GENERALLY, I THINK IF WE CAN STIPULATE TO
27 THINGS, WHICH AGAIN I'M AGREEABLE TO TRY TO DO THAT ON
28 WHAT REALLY SEEMS SHOULD BE SUBJECT TO STIPULATION, I

1 THINK THAT STREAMLINES IT; I THINK THAT COULD REMOVE
2 THAT NEED FOR SOME OTHER TYPE OF BRIEFING, AND THE ONLY
3 OTHER VEHICLE I COULD THINK OF WAS THE DISPOSITIVE
4 MOTION. DISCOVERY-WISE, I REALLY -- ESPECIALLY BEING
5 ONE PARTY AGAINST POTENTIALLY 30 TO 50 IN THIS ROOM OR
6 THIS CASE, NEED TO KNOW WHO IS CHALLENGING US. IT'S NOT
7 ENOUGH JUST TO KNOW GENERICALLY. I NEED TO KNOW, OKAY,
8 IT MIGHT BE PARTY "X," BUT DOES PARTY "X" HAVE A WITNESS
9 THAT'S GOING TO CHALLENGE? BUT IT COMES BACK HAVE WE
10 STIPULATED OR NOT.

11 SO I THINK IF WE CAN REALLY SIT DOWN AND
12 FIGURE OUT THAT STIPULATION, NUMBER ONE, AS TO THE
13 FOUR -- AS I PROPOSED IT EXPLICITLY IN WRITING -- IF
14 IT'S DONE THAT WAY WITH THE SURPLUS AND THOSE OTHER
15 ISSUES BIFURCATED, WE HAVE OUR PLAYING FIELD SET. NOW
16 IF WE CAN DETERMINE THOSE FACTS, I THINK WE'RE LOOKING
17 AT MORE OR LESS A BRIEFING SCHEDULE. BUT WHATEVER WE
18 CAN'T STIPULATE, I FEEL FORCED TO KNOW WHO IS
19 CHALLENGING AND DO YOU HAVE A WITNESS BECAUSE I WOULD
20 WANT TO POTENTIALLY DEPOSE THAT WITNESS.

21 THE COURT: WELL, IF THE FACTS ARE STIPULATED OR
22 AGREED TO, IT KIND OF ENDS THAT INQUIRY.

23 MR. MILIBAND: IT DOES, YOUR HONOR.

24 THE COURT: THAT'S YOUR FIRST CHORE.

25 MR. MILIBAND: WILL DO.

26 THE COURT: MR. DUNN.

27 MR. DUNN: YES, YOUR HONOR.

28 IN THE MEET-AND-CONFERENCE THAT WE'VE HAD

1 RECENTLY WITH PHELAN PINON HILLS, THIS ISSUE HAS
2 SURFACED, THE ISSUE RAISED BY PHELAN AS TO IT NEEDS TO
3 KNOW FROM THE PARTIES -- ALL THE PARTIES, OR WHICH GROUP
4 OF PARTIES, OR A PARTY THAT'S CHALLENGING; WE CAN DO
5 THAT PRETTY QUICKLY. I WOULD SAY BY THIS AFTERNOON.
6 BUT CERTAINLY BY THE END OF THE WEEK, PROBABLY BY
7 TOMORROW.

8 BUT THE POINT IS, WE HAVE IN THIS CASE
9 PURSUANT TO COURT ORDER AS PARTIES BEEN DIRECTED TO MAKE
10 THOSE TYPES OF REPRESENTATIONS. I KNOW AS ONE OF THE
11 PUBLIC WATER SUPPLIERS, WE HAVE HAD AT LEAST ONE,
12 POSSIBLY TWO COURT ORDERS, DIRECTING US IN THE PAST TO
13 MAKE KNOWN WHAT OUR POSITIONS ARE; WHO WE'RE ADVERSE
14 AGAINST. I SEE THIS IS AN EVEN MORE SIMPLE TASK, A
15 QUICK TASK.

16 BUT WITHOUT GETTING TOO FAR AHEAD HERE, AS
17 THE COURT MIGHT IMAGINE, GIVEN THE LENGTH OF TIME THAT
18 WE HAVE BEEN INVOLVED IN THESE SETTLEMENT DISCUSSIONS,
19 I'M COMFORTABLE IN SAYING THAT AT LEAST AMONGST THE
20 PARTIES WHO ARE INVOLVED IN THE SETTLEMENT AGREEMENT
21 THAT'S IN PLACE IN WRITING, YET TO BE APPROVED, THOSE
22 PARTIES WILL NOT AGREE WITH THE PHELAN CLAIM.

23 SO I DON'T MEAN TO TAKE UP MUCH TIME HERE,
24 BUT MY POINT IS THIS SHOULD NOT BE AN ISSUE TO HOLD UP
25 THE RESOLUTION. THIS IS SOMETHING WE CAN QUICKLY DO,
26 AND WE CAN GET THAT INFORMATION TO PHELAN.

27 THE COURT: WELL, NOT AGREEING TO THE CLAIM IS
28 DIFFERENT THAN AFFIRMATIVELY PRESENTING EVIDENCE TO

1 MR. DUNN: OCTOBER 7 IS A TUESDAY, YES.

2 MR. MILIBAND: IS THERE ANY WAY WE COULD DO THE
3 FOLLOWING WEEK, YOUR HONOR?

4 THE COURT: OCTOBER 14?

5 MR. ZIMMER: THAT'S MORE PROBLEMATIC FOR ME, AND
6 MR. DUNN HAS GOT AN ISSUE. PLUS WE DON'T HAVE ANY OF
7 THE OTHER PARTIES HERE.

8 THE COURT: LET ME DO THIS: I'M GOING TO SET IT
9 FOR THE 7TH AT NINE O'CLOCK, HERE. AND WE WILL TALK
10 ABOUT IT MORE ON THE --

11 MR. ZIMMER: MIGHT I SUGGEST, YOUR HONOR, MIGHT WE
12 DO IT EARLIER RATHER THAN LATER, AT THE COURT'S
13 PLEASURE, SOMETIME THE WEEK OF THE 25TH, 26TH, 27TH,
14 28TH? MR. DUNN INDICATES THAT'S --

15 THE COURT: OF SEPTEMBER?

16 MR. ZIMMER: OF AUGUST.

17 MR. DUNN: FOR THE STATUS CONFERENCE.

18 THE COURT: I CAN DO IT -- YES, I CAN DO IT THE
19 FOLLOWING WEEK.

20 MR. ZIMMER: WE'RE THINKING THAT SAME WEEK; 25TH
21 IS A MONDAY. ANY TIME AFTER MONDAY THAT WEEK: 26TH,
22 27TH, 28TH --

23 THE COURT: THAT'S FINE. STATUS CONFERENCE 8/26.

24 MR. DUNN: MAY WE HAVE ONE MOMENT, YOUR HONOR?

25 THE COURT: YES.

26 MR. ZIMMER: MR. DUNN AND I WERE DISCUSSING WE
27 WILL BE IN SAN JOSE ON THE 29TH. WE COULD DO IT THEN,
28 OR THE 26TH, 27TH, 28TH.

1 AS TO WHICH ISSUES ARE GOING TO BE TRIED, CERTAINLY NO
2 LATER THAN THE 29TH OF AUGUST.

3 MR. MILIBAND: THAT CAUSES ME EVEN GREATER CONCERN
4 IF THERE IS A TRIAL FIVE WEEKS AFTER THAT.

5 THE COURT: I'LL BE HAPPY TO TALK WITH YOU ALL
6 SOONER.

7 MR. MILIBAND: I CAN'T JUST STATE IT ENOUGH, YOUR
8 HONOR. THIS ISN'T GIVING PHELAN THE ABILITY WHAT MAY
9 HAVE TO BE DONE TO THE EXTENT A STIPULATION CANNOT BE
10 REACHED. I UNDERSTAND WE NEED TO TRY FOR THAT, BUT THE
11 OCTOBER 7 TRIAL DATE BEING SET POSES REAL --

12 THE COURT: IF THERE IS NOT GOING TO BE A
13 PRODUCTION OF EVIDENCE BEYOND THE STIPULATION, I DON'T
14 UNDERSTAND THE NEED FOR ADDITIONAL TIME.

15 MR. MILIBAND: AGREED. THAT'S WHAT I WAS
16 INDICATING THIS MORNING. IF WE CAN STIPULATE TO
17 EVERYTHING THAT NEEDS TO BE STIPULATED TO. GREAT. THE
18 PROBLEM IS -- AND WHAT OUR MEET-AND-CONFER DEMONSTRATED
19 FROM JUST TODAY -- IS WE DON'T AGREE WHETHER SURPLUS
20 NEEDS TO BE A PART OF THIS UPCOMING TRIAL OR NOT. MY
21 POSITION IS IT DOES NOT NEED TO BE A PART OF THIS
22 UPCOMING TRIAL. OTHER COUNSEL ARE OF THE OPINION IT
23 SHOULD BE.

24 SO IT BECOMES CIRCULAR, BUT IT'S WHAT HELPS
25 DEFINE THE SCOPE.

26 THE COURT: I DON'T UNDERSTAND MAYBE WHAT YOUR
27 ARGUMENT IS IN TERMS OF SURPLUS. WHY -- WHERE DO YOU
28 THINK SURPLUS FITS INTO THIS?

