Exhibit 21

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

ANTELOPE VALLEY GROUNDWATER CASES

JCCP Case No. 4408

Case No.: BC391869

ORDER

Hearing Date: October 27, 2009
Time: 9:00 a.m.
Department: 17C/Complex Civil

Judge: Hon. Jack Komar

On October 13, 2009, following a hearing on a noticed motion to consolidate the various coordinated cases herein, the court indicated its intent to grant the motion to consolidate and directed the parties to meet and confer on the form of the order. Immediately following the court's statement of intent to order consolidation, a motion was made pursuant to Code of Civil Procedure Section 170.6 to disqualify the undersigned judge who is the assigned coordination trial judge. The asserted ground for re-opening the right to exercise such a challenge was the court's order granting consolidation. No formal order of consolidation has yet been signed by the court. The peremptory challenge is premature and anticipatory and has been improvidently

filed. The court therefore strikes the purported challenge but does not at this time rule on the validity of a challenge that is filed beyond the period specified in Cal. Rules of Court, rule 3.516.

To assist the parties in their meet and confer, the order for consolidation should accomplish a consolidation of the causes of action which assert a claim for declaratory relief (or its equivalent) recognizing that in the present case, the court having found a single aquifer, all ground water rights, however acquired, are correlative to all other water rights in the Antelope Valley, and for a judgment to be effective as to the various interests, the judgment should be in a single judgment encompassing all water rights. All parties with water rights in the aquifer are necessary parties.

The court is informed that the parties involved in the two class actions which are coordinated herewith are hopeful that there will be a voluntary settlement in those matters and hearing dates to consider approval of such settlements are pending. The exact status of those matters will have an impact on the nature of the consolidation order. Other than establishing correlative water rights, the consolidation motion should not affect any other claims of rights or duties between parties who are not litigating against each other.

The court resets the hearing dates for the motions to approve settlements and other motions (including a hearing to discuss the form of a consolidation order) and a case management conference to February 5, 2010 at 10:00 a.m. in the Los Angeles County Superior Court.

SO ORDERED.

Dated: October 28, 2009

Honorable Jack Komar
Judge of the Superior Court

Exhibit 22

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 1 HON. JACK KOMAR, JUDGE

COORDINATION PROCEEDING SPECIAL TITLE (RULE 1550B) ANTELOPE VALLEY GROUNDWATER CASES	JUDICIAL COUNCIL COORDINATION NO. JCCP4408
PALMDALE WATER DISTRICT AND QUARTZ HILL WATER DISTRICT, CROSS-COMPLAINANTS, VS. LOS ANGELES COUNTY WATERWORKS, DISTRICT NO. 40, ET AL, CROSS-DEFENDANTS.	SANTA CLARA CASE NO. 1-05-CV-049053

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FRIDAY, APRIL 24, 2009

APPEARANCES:

(SEE APPEARANCE PAGES)

GINGER WELKER, CSR #5585
OFFICIAL REPORTER

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LANDIN V., INC. (VIA TELEPHONE)	SMILAND & CHESTER BY: THEODORE CHESTER, JR. 601 WEST FIFTH STREET SUITE 700 LOS ANGELES, CA 90071 (213) 891-1010
LA COUNTY WATERWORKS, DISTRICT NO. 40	OFFICE OF THE COUNTY COUNSEL BY: MICHAEL L. MOORE 500 WEST TEMPLE STREET LOS ANGELES, CA 90012 (213) 974-8407

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

APPEARANCES: (SEE TITLE PAGE)

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

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

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

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

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

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

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

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

AND THEN WE'LL TAKE THE MIDDLE.

MR. MCLACHLAN: MICHAEL MCLACHLAN FOR THE WOOD CLASS.

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

MS. JONES: TAMMY JONES FOR NORTHROP GRUNMAN AND ENEXCO CORP.

MR. JOYCE: BOB JOYCE ON BEHALF OF THE CRYSTAL ORGANIC AND DIAMOND FARMING COMPANY.

THE COURT: STARTING ON THE --

MR. KALFAYAN: RALPH KALFAYAN ON BEHALF OF THE WILLIS CASE.

MR. ZLOTNICK: DAVID ZLOTNICK ON BEHALF OF THE WILLIS CLASS.

MR. LEININGER: LEE LEINENGER FOR THE UNITED STATES.

MR. DUNN: JEFFREY DUNN ON BEHALF OF THE ROSAMOND COMMUNITY SERVICES DISTRICT AND LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40.

THE CLERK: YOUR HONOR, THERE ARE SEVERAL ON THE PHONE.

THE COURT: ANYONE ELSE IN THE COURTROOM?

OKAY. WILL YOU CALL THE ROLL.

THE CLERK WILL CALL ROLL OF THOSE ON THE TELEPHONE. IF YOU ARE PRESENT WHEN YOUR NAME IS CALLED, PLEASE SO INDICATE.

THE CLERK: COUNSEL, I'LL TRY THIS AGAIN.

FIRST, REBECCA DAVIS-STEIN?

MS. DAVIS-STEIN: PRESENT FOR RANDALL BLAYNEY.

THE CLERK: MICHAEL CROW?

MR. CROW: MICHAEL CROW PRESENT FOR THE STATE OF CALIFORNIA.

THE CLERK: STEPHEN SIPTROTH?

MR. SIPTROTH: PRESENT.

THE CLERK: BRADLEY HERREMA?

MR. HERREMA: BRADLEY HERREMA ON BEHALF OF THE

ANTELOPE VALLEY GROUNDWATER AGREEMENT ASSOCIATION.

THE CLERK: JOHN TOOTLE? CALIFORNIA WATER SERVICE COMPANY, IS SOMEONE HERE PRESENT FOR THEM?

NO RESPONSE.

RICHARD ZIMMER?

MR. ZIMMER: RICHARD ZIMMER PRESENT FOR BOLTHOUSE.

THE CLERK: ROBERT DOUGHERTY?

MR. DOUGHERTY: PRESENT FOR AV UNITED GROUP.

THE CLERK: CHRISTOPHER SANDERS?

MR. SANDERS: PRESENT.

THE CLERK: MARLENE HAMMARLUND?

MS. HAMMARLUND: PRESENT.

THE CLERK: JAMES DUBOIS?

MR. DUBOIS: PRESENT.

THE CLERK: JEFF GREEN? NO RESPONSE.

JOHN UKKESTAD?

MR. UKKESTAD: PRESENT.

THE CLERK: JANET GOLDSMITH?

MS. GOLDSMITH: PRESENT.

THE CLERK: ROBERT KUHS?

MR. KUHS: PRESENT.

THE CLERK: SHELDON BLUM?

MR. BLUM: SHELDON BLUM PRESENT ON BEHALF OF BLUM TRUST.

THE CLERK: MICHELLE MOORE?

MS. MOORE: PRESENT ON BEHALF OF US BORAX.

THE CLERK: TED CHESTER?

MR. CHESTER: PRESENT.

THE CLERK: BRIAN MARTIN?

MR. MARTIN: PRESENT.

THE CLERK: SUSAN TRAGER?

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

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

OKAY. THANK YOU.

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

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

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

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

BY BOTH WILLIS AND THE WOOD CLASS COUNSEL.

IS THERE FURTHER ARGUMENT TO BE HEARD?

MR. MCLACHLAN: WHERE WOULD YOU LIKE TO START?

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

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

THE COURT: YES.

MR. KALFAYAN.

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

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

MR. DUNN: NO, YOUR HONOR.

THE COURT: MR. BUNN.

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

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

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

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

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

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

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

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

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

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

I THINK OBVIOUSLY THERE ARE VARIOUS FACTORS,

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

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

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

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

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

THE COURT: IN TERMS OF SAFE FIELD AND OVERDRAFT.

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

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

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

THE COURT: MY CONCERN ABOUT THAT IS THAT I THINK

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

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

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

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

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

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

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

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

THE COURT: IN WHAT WAY IS IT NOT LIMITED?

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

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

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

THERE IS ALWAYS A PARTICULAR PARTY THAT'S BEING REPRESENTED, AND THAT PARTY -- 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.

THAT IS CLEARLY MANIFESTED AND DEMONSTRATED

HERE. RICHARD WOOD CAN'T AFFORD IT.

THE COURT: LET ME STOP YOU FOR A MINUTE.

MR. MCLACHLAN: SURE.

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.

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

AND I CAN ASSURE YOU THAT IN THE EVENT THAT

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

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

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

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

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

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

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

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

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

MR. DUNN: WELL, IF I --

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

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

BASIN.

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

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

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

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

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

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

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

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

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

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

MR. DUNN: UH-HUH.

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

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

MR. DUNN: I AGREE, YOUR HONOR.

THE COURT: WELL, IT IS YOUR CLAIM.

MR. DUNN: I UNDERSTAND.

THE COURT: THAT COMPLICATES THE CASE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THAT.

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

THE COURT: I'M NOT SUGGESTING --

MR. MARKMAN: -- A YEAR.

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

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

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

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

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

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

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

THE COURT: I UNDERSTAND.

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

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

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

THE COURT: MR. MCLACHLAN.

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

NEGOTIATIONS OVER THE LAST MONTH, AND THEY HAVE GONE NOWHERE.

I'M OPEN-MINDED BUT PROMISE AFTER PROMISE HAS BEEN MADE, AND WE CAN'T EVEN GET A MEANINGFUL

RESPONSE.

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

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

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

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

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

SO THIS IS -- WHAT I WOULD SUGGEST IS I

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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 GOING TO GRANT IT NEVERTHELESS. I THINK THERE IS GOOD CAUSE FOR IT, AND I'M GOING TO STAY IT UNTIL THE ISSUES OF OVERDRAFT AND SAFE YIELD HAVE BEEN ADJUDICATED.

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

THE COURT: I WOULD.

MR. DUNN: OKAY.

THE COURT: I WOULD TAKE YOUR RECOMMENDATIONS.

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

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

MR. MCLACHLAN: HOW IS COSTA RICA?

(LAUGHING)

MR. KUNEY: SCOTT KUNEY ON BEHALF OF VAN DAM

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PARTIES. I CERTAINLY SUPPORT THE JUDGE'S SENTIMENT, YOUR HONOR, ABOUT SETTLING THIS CASE IF AT ALL POSSIBLE. I'M JUST ASKING THE QUESTION OF WHY THE SETTLEMENT PROCESS WOULD BE LIMITED TO ONLY CERTAIN PARTIES AS COMPARED TO ALL OF THE PARTIES THAT MAY BE INTERESTED IN RESOLVING THIS MATTER.

THE COURT: WELL, THE SPECIFIC ISSUE THAT I'M INTERESTED IN ADDRESSING IS A VERY LIMITED ONE WITH REGARD TO THE SMALL PUMPER CLASS BY THE PARTIES WHO HAVE SUED THEM, ESSENTIALLY, AND ARE SEEKING NOT A NEUTRAL RESULT BUT AN INTRUSION ON THEIR RIGHTS.

AND IF WE CAN RESOLVE THAT, AND I THINK IT IS EASIER TO RESOLVE ON AN ISSUE BY ISSUE BASIS THAN IT IS TO TRY TO DO A GLOBAL RESOLUTION. BUT I'M CERTAINLY MUCH IN FAVOR OF THE GLOBAL RESOLUTION AS I THINK YOU PROBABLY KNOW AND HAVE TRIED TO ACCOMPLISH THAT IN OTHER MATTERS, SOMEWHAT SUCCESSFULLY AND SOMEWHAT NOT.

SO THAT IS THE REASON FOR THAT. AND IF YOU WANT TO TALK ABOUT A GLOBAL RESOLUTION OF ALL THE ISSUES IN THIS CASE AND IF YOU THINK THAT THERE IS ENOUGH INFORMATION THAT EVERYBODY HAS CONCERNING THAT, I AM CERTAINLY WILLING TO DO THAT, TOO.

MR FIFE: YOUR HONOR, I DON'T KNOW IF MR. KUNEY WAS REFERRING TO A GLOBAL RESOLUTION SO MUCH AS SOMETHING MR. MARKMAN HIT ON THAT ANY PROPOSED SETTLEMENT THAT DEALS WITH, SAY, WITHDRAW OF THE CLAIM OF PRESCRIPTION OR WHATEVER WITH REGARD TO THE WOOD CLASS CAN HAVE A TREMENDOUS IMPACT ON THE OTHER

LANDOWNERS. BECAUSE IT CAN BE A REALLY SIGNIFICANT AMOUNT OF WATER THAT WILL BE GOING TO CERTAIN AGRICULTURAL PUMPERS AND NOT TO OTHERS.

SO THERE HAS GOT TO BE CONSISTENCY, AND I THINK THAT PERHAPS I DON'T WANT TO PUT WORDS IN HIS MOUTH, BUT I THINK THAT IS WHAT MR. KUNEY WAS REFERRING TO THAT WE DO HAVE A VERY STRONG INTEREST IN WHATEVER HAPPENS WITH THE WOOD CLASS.

MR. MARKMAN: YOUR HONOR, JAMES MARKMAN FROM PALMDALE. IF THE PUBLIC WATER SUPPLIERS SETTLE WITH THESE CLASSES, IT DOES NOT PRECLUDE ANY OTHER PARTY FROM DEALING WITH THEM ON CORRELATIVE RIGHTS OR ANY OTHER ISSUE. IT PROBABLY WOULD MEAN AS HAPPENED IN SANTA MARIA CASE WHICH MR. FIFE IS VERY FAMILIAR WITH, CERTAIN PRESCRIPTIVE RIGHTS AGAINST PEOPLE WHOM WE WILL SETTLE, AND WE HAVE OTHER TERMS OF SETTLEMENT THAT HOPEFULLY WOULD BE INTERWOVEN INTO ANY JUDGMENT. THAT DOESN'T MEAN THAT ANY OTHER PARTY HAS WAIVED A RIGHT VERSUS US OR A RIGHT VERSUS EITHER CLASS.

THEY ARE THERE TO PROCEED. SO THAT IS ALL WE ARE SUGGESTING. AND WE ARE JUST ASKING THE COURT -- THE COURT OFFERED, AND WE ARE HAPPY TO ACCEPT THE COURT'S AID IN TRYING TO GET THIS DONE.

THE COURT: WELL, LET ME ASSURE YOU, MR. FIFE, THAT ALL SETTLEMENTS ENTERED INTO THAT AFFECT OTHER PEOPLE HAVE TO BE CONDITIONAL TO SOME EXTENT. BUT I THINK THAT IT IS NOT A BAD START TO DEAL WITH A COUPLE OF THE PARTIES HERE AND SEE IF THEY CAN RESOLVE BETWEEN

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THEMSELVES TENTATIVE ISSUES, AND WE CAN THEN OBVIOUSLY

DEAL WITH THE PEOPLE THAT ARE AFFECTED BY IT.

MR FIFE: I JUST WANT TO EMPHASIZE, AGAIN, WE ARE NOT TALKING ABOUT DEALING WITH PARTIES. WE ARE TALKING ABOUT DEALING WITH PARCELS AND WHAT WILL HAPPEN AS --

THE COURT: I UNDERSTAND THAT, MR. FIFE.

MR FIFE: -- IF THE PRESCRIPTION APPLIES TO SOME BUT NOT ALL. SOME OF MY CLIENTS WILL HAVE INDIVIDUAL PARCELS TO WHICH PRESCRIPTION DOESN'T APPLY AND OTHERS --

THE COURT: WE WILL TRY TO ACHIEVE SOME CONSISTENCY HERE. ALL I WANT TO DO IS GET STARTED ON THIS PROCESS.

MR FIFE: AND ALL WE SAID WAS WE WANT TO PARTICIPATE.

THE COURT: I APPRECIATE THAT AND THAT MAY BE APPROPRIATE.

YES, MR. KALFAYAN.

MR. KALFAYAN: YOUR HONOR, I SPOKE TO A FEW PUBLIC WATER SUPPLIERS JUST NOW, AND THEY WOULD WELCOME THIS SIMILAR SETTLEMENT CONFERENCE WITH YOU WITH THE WILLIS CLASS SEPARATELY FROM THE WOOD CLASS.

THE COURT: ALL RIGHT.

MR. MCLACHLAN: I WANT TO MAKE ONE POINT CLEAR BECAUSE I KNOW THEY'RE -- IN THE DISCUSSIONS THAT MR. O'LEARY AND MYSELF AND THE PUBLIC WATER SUPPLIER COUNSEL HAVE HAD, WE SPENT PROBABLY MAJORITY OF THE TIME TALKING ABOUT HOW WE DEAL WITH THE CONCERNS OF EVERYBODY

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ELSE HERE.

BECAUSE -- AND I THINK A LOT OF PEOPLE

HAVEN'T BEEN THROUGH THIS BEFORE. THEY DON'T UNDERSTAND THAT THERE WOULD ULTIMATELY IF THERE IS A SETTLEMENT IN THE WILLIS OR WOOD CLASS BE A FAIRNESS HEARING, AN PRELIMINARY APPROVAL HEARING, THE ABILITY FOR THE PARTIES TO OBJECT.

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

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

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

THE COURT: WELL, THAT IS MY VIEW.

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

THEY SUED AND THEN TOGETHER WITH THE UNITED STATES.

I AGREE WITH MR. MCLACHLAN. IF WE EXPAND THIS AND START LETTING PEOPLE IN THAT ARE NOT PARTIES,

IT'S GOING TO BECOME VERY --

THE COURT: THAT IS NOT AN EFFECTIVE WAY OF SETTLING A CASE OF THIS SCOPE. WE HAVE -- HOW MANY PEOPLE LIVE IN THE ANTELOPE VALLEY? HOW MANY PARTIES PER 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.

BUT I WANT TO HEAR FROM MR. LEININGER. HE, OBVIOUSLY, HAS SOME INTEREST. HE HAS BEEN STANDING UP FOR A LONG TIME.

MR. LEININGER: THANK YOU, YOUR HONOR. WE ARE CERTAINLY INTERESTED IN SETTLEMENT. IN FACT, WE HAVE ENGAGED IN SOME OF THIS PRELIMINARY DISCUSSION THAT YOU ARE HEARING AMONGST PARTIES INFORMALLY.

I GUESS MY ONLY CONCERN IS WITH REGARD TO THE SETTLEMENT CONFERENCE -- AND I APOLOGIZE BECAUSE I'M NOT THAT FAMILIAR WITH THE MECHANICS OF THE FORMAL SETTLEMENT CONFERENCE BEFORE THE COURT. BUT THERE ALSO HAVE BEEN SOME DISCUSSION OF A POTENTIAL MEDIATOR THAT WOULD ALLOW FRANK DISCUSSION AND PERHAPS MORE OPPORTUNITY TO ENGAGE IN MORE DISCUSSIONS, MORE INFORMAL DISCUSSIONS BEFORE COME TO THE COURT IN A SETTLEMENT CONFERENCE.

SO THAT IS SOMETHING ELSE THAT WE HAD BEEN

DISCUSSING AT THIS POINT AND A FEW NAMES HAVE BEEN THROWN OUT. I PUT THAT BEFORE THE COURT AS A POSSIBILITY. AND IT MAY ALLOW MORE PARTIES TO ENGAGE IN THE PROCESS.

THE COURT: LET ME JUST TELL YOU GENERALLY THE WAY I CONDUCT A SETTLEMENT CONFERENCE. IT IS VERY INFORMAL. IT IS IN CHAMBERS. IT IS NOT ON THE RECORD. NOBODY IS BOUND TO ANYTHING THAT THEY SAY UNTIL THERE IS A SETTLEMENT. IF IT IS AGREED UPON, THEN IT'S PUT ON THE RECORD. AND CERTAINLY IN A CLASS ACTION SETTLEMENT, THERE MUST BE A FAIRNESS HEARING; AND THERE MUST BE AN OPPORTUNITY TO CHECK FOR ALL PARTIES.

BUT I WOULD THINK BEFORE WE EVEN REACH THAT POINT IF WE WERE ABLE TO SETTLE SOME OF THE ISSUES IN THE CLASS MATTERS, WE WOULD THEN EXPAND THE DISCUSSIONS TO OTHER PARTIES WHO ARE AFFECTED BY IT. BECAUSE EVERYBODY IS GOING TO BE AFFECTED BY WHATEVER HAPPENS HERE.

AND THE COURT'S INTEREST IS SEEING IF I CAN MOTIVATE THE PARTIES TO COME TO AN AGREEMENT AND RESOLUTION OF SOME OF THESE VERY DIFFICULT ISSUE.

I KNOW HOW DIFFICULT IT IS TO TRY TO SETTLE A CASE LIKE THIS OF THIS SCOPE BY HAVING EVERYBODY PARTICIPATE IN THE FIRST INSTANCE. I THINK IT IS REALLY IMPORTANT THAT THE INFORMAL OFF-THE-RECORD DISCUSSIONS -- IF THE PARTIES WANT TO HIRE A MEDIATOR, THAT IS FINE. MY TIME IS PAID BY THE STATE AS YOU KNOW. SO ESSENTIALLY YOU GET MY TIME.

YOU WANT TO PAY A MEDIATOR, UNDERSTAND THEY CHARGE UPWARDS OF FIVE TO $700 AN HOUR. AND THAT IS OKAY WITH ME, TOO. SO IT IS YOUR CHOICE. BUT WE WOULD WANT YOU TO PARTICIPATE BECAUSE YOU DO HAVE AN INTEREST IN EVEN THE CLASSES.

MR. LEININGER: CERTAINLY. IF I MAY ADDRESS A FEW OF OTHER ISSUES AND PERHAPS THE PROCEDURE AND THE TIMING.

WITH REGARD TO THE PHASE III TRIAL ISSUES THAT YOU HAD IDENTIFIED WITH OVERDRAFT AND SAFE YIELD, WE THINK IT IS IMPERATIVE THIS NOTICE GO OUT AND THAT ALL THE PARTIES HAVE BEEN JOINED, THE CLASSES ARE FORMED BEFORE WE START TO LITIGATE SUCH ISSUES.

SO THE TIMING OF THE NOTICE I THINK IS IMPORTANT AT THIS POINT. THERE HAS BEEN SOME DISCUSSION OF PERHAPS DELAYING THE TIMING OF THE NOTICE SHOULD WE REACH SOME SORT OF CLASS RESOLUTION. AND IN THAT CASE PERHAPS THE RESOLUTION COULD ACTUALLY BE -- GO OUT WITH THE MAILING; BUT, OF COURSE, THAT WOULD MEAN THAT YOU HAVE TO MOVE QUITE QUICKLY, I THINK.

BUT IT WOULD AVOID, PERHAPS, TWO MAILINGS ON -- I SEE PUBLIC WATER COUNSEL SHAKING HEADS, BUT PERHAPS WOULD AVOID TWO MAILINGS AND ALLOW PARTIES TO ENGAGE IN THE FORM OF DISCUSSION, AND, PERHAPS, THAT WOULD MAKE FOR A MORE EFFICIENT PROCESS.

WITH THAT SAID, WE ARE CERTAINLY INTERESTED IN MOVING ADJUDICATION ALONG. SO NOTICE HAS TO GO OUT TO THESE PARTIES -- PARTIES HAVE TO BE JOINED. WE

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SHOULD BE SETTING DATES THAT I THINK WILL MOTIVATE THE PARTIES TO PROCEED IN GOOD FAITH AND SETTLEMENT AND TRY TO REACH A QUICK RESOLUTION.

THE COURT: MR. LEININGER, I DO WANT THE NOTICE TO GO OUT FORTHWITH. I THINK THAT ATTEMPTING TO SETTLE A CASE, AND THEN PRESENTING IT TO THE CLASS BEFORE THE

CLASS NOTICE AND THE OPT-OUT PERIOD HAS OCCURRED IS NOT A GOOD THING. AND I THINK THAT THE TIME FOR OPTING OUT IS IN THE CLASS -- THE CERTIFIED AND NOTICE AND NOT AFTER SOME SPECIFIC ACTIONS HAVE BEEN TAKEN.

MY CONCERN HERE IS THAT WE MOVE ALONG, AND I WANT -- I DON'T KNOW WHAT THE STATUS OF THE CLASSES AND THE NOTICES ARE AT THIS POINT. I THINK MR. DUNN IS GOING TO TELL US THAT IN A COUPLE OF MINUTES. BUT I WOULD LIKE TO SET A DATE TODAY WHEN WE COULD COME TOGETHER AT LEAST ON THE FIRST SETTLEMENT, AND I WOULD LIKE TO FOLLOW THAT UP WITH A SECOND SETTLEMENT INVOLVING -- OR DISCUSSION INVOLVING THE WILLIS CLASS.

MR. LEININGER: YOUR HONOR, I DO HAVE JUST ONE POINT; AND, FRANKLY, I WOULD LIKE TO HAVE THE OPPORTUNITY TO RESPOND FORMALLY TO THE COURT ON THE ISSUE OF THE UNITED STATES COMING INTO DISCUSS INFORMALLY OFF THE RECORD WITH YOU AND OTHER COUNSEL. I REALLY DON'T KNOW OUR POSITION WITH REGARD TO THE MECHANICS OF THAT, BUT I CERTAINLY COULD FIND OUT AND GET RIGHT BACK TO YOU.

IF WE WERE TO SET A DATE IN A FEW WEEKS, THEN CERTAINLY I WOULD NOT ONLY HAVE THAT ANSWER, BUT I

THINK WE COULD ALSO WORK TOWARD OBVIATING THE NEED FOR THAT. I REALLY THINK WE HAVE SOME POTENTIAL HERE TO SETTLE INFORMALLY ON OUR OWN IN A MATTER OF A FEW WEEKS.

MS. GOLDSMITH: YOUR HONOR, THIS IS JANET GOLDSMITH FOR THE CITY OF LOS ANGELES. MAY I KNOW WHO WAS JUST SPEAKING.

THE COURT: MR. LEININGER.

MS. GOLDSMITH: THANK YOU.

THE COURT: ALL RIGHT. WELL, IT IS YOUR CALL AS TO IF YOU WISH TO HAVE A SETTLEMENT CONVERSATION WITH THE COURT. I'M NOT GOING TO ORDER IT BECAUSE I AM THE TRIAL JUDGE. BUT I CAN TELL YOU THAT I DO THIS ON A REGULAR BASIS. I DON'T THINK THAT ANYBODY HAS EVER FELT THEIR INTERESTS HAVE BEEN PREJUDICED AS A RESULT OF A SETTLEMENT DISCUSSION WITH ME, AND I'M HAPPY TO DO THAT.

BUT I'M ALSO HAPPY TO HONOR YOUR OBJECTION TO IT IF THAT IS WHAT YOU WISH TO DO. SO YOU DECIDE. AND IF YOU WANT IT, FINE; IF YOU DON'T, FINE. IF YOU CAN SETTLE WITHOUT ME, THAT IS EVEN BETTER --

(LAUGHING)

THE COURT: -- BECAUSE I HAVE OTHER THINGS TO DO.

MR. LEININGER: OKAY. YOUR HONOR, WE WILL CERTAINLY -- CERTAINLY NOT OPPOSING THE ESTABLISHMENT OF THAT DATE FOR THE --

THE COURT: LET'S TALK ABOUT WHEN THAT MIGHT HAPPEN, SEE IF I CAN FIGURE IT OUT FROM MY CALENDAR

HERE. LET'S HAVE SOME RECOMMENDATIONS.

MR. DUNN: YOUR HONOR, PRELIMINARILY, HOW DOES MAY 13TH LOOK ON THE COURT'S CALENDAR?

THE COURT: I HAVE ANOTHER SETTLEMENT CONFERENCE -- ACTUALLY A CLASS ACTION SCHEDULED. I DON'T BELIEVE THAT IS GOING TO GO TO HEARING. SO I'M WILLING TO SET THIS FOR THE 13TH IN THE MORNING.

MR. LEMIEUX: I AM THINKING THE 13TH IS PROBABLY

THE CLOSEST WE ARE GOING TO GET.

THE COURT: WHY DON'T WE SET IT FOR THE 13TH AT 9:00 A.M. WHERE WOULD YOU LIKE TO DO THAT?

MR. DUNN: DOESN'T MATTER TO US, COUNSEL.

THE COURT: SHOULD WE DO IT IN SAN JOSE?

MR. MCLACHLAN: I GUESS WE SHOULD; BUT IF WE'RE GOING TO DO IT IN SAN JOSE, YOUR HONOR, IS IT POSSIBLE TO NOT DO IT QUITE AT 9:00 A.M. AND MOVE IT BACK A HALF HOUR FOR THE DISTANCE OF TRAVEL.

THE COURT: SURE. YES. 9:30, TEN O'CLOCK?

MR. MCLACHLAN: 9:30 IS FINE.

THE COURT: FEBRUARY 13TH -- I'M SORRY, MAY 13TH. LET ME -- BEFORE WE AGREE ON THAT, LET ME CALL MY CLERK AND MAKE SURE THAT IS NOT A BAD DAY.

(TELEPHONIC CONFERENCE)

THE COURT: AS IT TURNS OUT, THERE IS A COMPLEX LITIGATION CONFERENCE THAT I'M PLANNING ON ATTENDING HERE ON THE NEXT DAY WHICH IS THE 14TH. SO WE CAN DO IT

DOWN HERE.

MR. LEMIEUX: THAT WOULD BE GREAT.

THE COURT: THAT WAY I'LL BE DOWN HERE ANYWAY, SO I'LL JUST SPEND THE EVENING.

MR. LEMIEUX: 9:00 A.M?

THE COURT: IS 9 O'CLOCK A GOOD TIME HERE?

MR. DUNN: YES, YOUR HONOR.

MR. MCLACHLAN: YES, YOUR HONOR.

MR. KALFAYAN: YOUR HONOR, CAN I SUGGEST THAT FOR

THE WILLIS CLASS WE DO IT IN THE AFTERNOON OF THE 13TH AT 1:30?

MR. LEMIEUX: 14TH.

MR. KALFAYAN: 14TH.

THE COURT: I CAN'T DO IT THE 14TH, BUT THE 13TH.

MR. LEMIEUX: OH, I'M SORRY.

MR. KALFAYAN: THE 13TH IN THE AFTERNOON.

THE COURT: YOU THINK ONE MORNING IS GOING TO BE SUFFICIENT.

MR. KALFAYAN: THAT IS FINE, YOUR HONOR.

MR. MCLACHLAN: DOES IT PRESENT A PROBLEM WITH THE COURT IF WE STARTED ON THE 14TH AT 8:30 INSTEAD OF 9:00?

THE COURT: ON THE 13TH.

MR. MCLACHLAN: WE ARE TALKING ABOUT THE 14TH; RIGHT?

THE COURT: NO, 13TH. WEDNESDAY IS THE 13TH.

MR. MCLACHLAN: OH, 13TH DOWN HERE.

THE COURT: YEAH, 13TH DOWN HERE, BECAUSE I HAVE TO BE DOWN HERE ANYWAY AT THE COMMONWEALTH.

MR. MCLACHLAN: SO THAT IS FINE.

THE COURT: OKAY. 9 O'CLOCK ON THE 13TH. AND ON THE 14TH, I'LL BE HERE SO WE CAN -- WE CAN DO THE WILLIS CLASS IN THE AFTERNOON. DOES THAT SEEM ABOUT TIME-WISE OKAY?

MR. WEEKS: AFTERNOON OF THE 13TH OR 14TH?

THE COURT: MORNING OF THE 13TH AND THE AFTERNOON OF THE 13TH SO I'LL SPEND THE DAY HERE.

(THE COURT AND THE CLERK CONFER OFF THE RECORD.)

MR. LEMIEUX: JUST SO WE ARE CLEAR, IT'S THE PUBLIC ENTITIES, THE FEDERAL GOVERNMENT, AND THOSE TWO CLASS REPRESENTATIVES ONLY; CORRECT?

THE COURT: YES.

MR FIFE: THAT IS MY QUESTION. AM I TO BE EXCLUDED?

THE COURT: I'M NOT GOING TO PUT IT THAT WAY, MR. FIFE, BUT I THINK I WOULD LIKE YOU TO BE ON THE FRINGE OF IT IF YOU WANT TO BE HERE. BECAUSE I THINK THAT WHATEVER POSITIONS YOU ARE GOING TO TAKE -- AND I SUSPECT I KNOW WHAT THEY ARE, ARE GOING TO GET DEFERRED IN ANY EVENT SO WE EXPAND THE SETTLEMENT PROCESS --

MR FIFE: BUT I MAY ATTEND?

THE COURT: YES, YOU MAY.

MR. JOYCE: YOUR HONOR, BOB JOYCE REPRESENTING DIAMOND FARMING COMPANY AND CRYSTAL ORGANIC LLC. I JUST HAVE ONE ISSUE OF CONCERN, YOUR HONOR, ONE OF MY

SINCEREST CONCERNS OF THIS CASE IS THAT IT COMES TO AN END AT SOME POINT.

THERE'S NO WINNER OR LOSER IN THIS THING RIGHT NOW, BECAUSE EVERYONE IS A LOSER. BUT MORE IMPORTANTLY, I DON'T WANT TO RISK THE CASE TAKING STEPS BACKWARDS.

THE CONCERN I HAVE IS WHETHER OR NOT THE COURT'S PARTICIPATION IN THE SETTLEMENT PROCESS IF OBJECTED TO BY ANYBODY OUT THERE WHO IS NOT PARTICIPATING WHO WOULD HAVE A POTENTIAL FOR CREATING A BASIS TO AFFECT THE PROGRESS OF THE CASE AND/OR MORE

IMPORTANTLY MAYBE AFFECT ANY DECISIONS OR JUDGMENT RENDERED. I WOULD ASK IF THE COURT THINKS THAT MAY BE APPROPRIATE THAT IF ANYBODY INTENDS TO OBJECT TO THE PROCESS THAT THEY PRONOUNCE THAT FACT SO WE DON'T GET DOWN TO A POINT WHERE WE HAVE TO --

THE COURT: I APPRECIATE THAT, MR. JOYCE. I THINK THAT IS A VERY GOOD SUGGESTION BECAUSE I DO NOT WANT THIS TO BE DEEMED TO BE IMPROPER EX-PARTE COMMUNICATION WITH SOME COUNSEL.

MR. JOYCE: I THINK THE WAY THAT WE CAN DO IT, YOUR HONOR, IS SIMPLE. THE COURT CAN PROPOSE AN ORDER DIRECTING ANY ACTIVE PARTICIPANT TO LODGE A WRITTEN OBJECTION WITH AUTHORITY THAT WOULD SUBSTANTIATE THE PROPOSITION THAT WITHOUT CONSENT OF NONPARTICIPATING PARTIES IN THIS PROCESS THAT IT WOULD SOMEHOW AFFECT YOUR HONOR, BECAUSE I DON'T KNOW THE ANSWER TO THE QUESTION.

BUT MY CONCERN IS THAT NOT KNOWING THE ANSWER, I AM CONCERNED THAT WE COULD FIND OURSELVES IN A SITUATION WHERE WE START STEPPING BACKWARDS. AND ALL THAT IS GOING TO DO IS INCREASE THE COSTS TO ALL THE LITIGANTS UNNECESSARILY, IF WE CAN AVOID IT BEFORE WE CROSS THAT THRESHOLD.

THE COURT: I TOTALLY AGREE WITH YOU, MR. JOYCE. AND IF ANY PARTY WISHES HERE TO OBJECT, I WOULD LIKE YOU TO STATE THAT NOW IF YOU WOULD.

MR. ZIMMER: THIS IS MR. ZIMMER FOR BOLTHOUSE. WE DO (TELEPHONIC STATIC INTERRUPTION) -- WE DO OBJECT TO THE GRANTING OF A MOTION FOR ALL PARTIES TO PAY COSTS OF

THE CLASS EXPERTS. THERE HAS NEVER BEEN ANY MOTION THAT I'M AWARE OF THAT REQUESTED THAT OTHER LANDOWNERS PAY THE COST OF THE CLASS EXPERTS. FARMING --

THE REPORTER: I CAN'T HEAR.

MR. ZIMMER: -- THIS ACTION FIRST FILED CLOSELY THEREAFTER BY BOLTHOUSE ON A LIMITED BASIS QUIET TITLE AGAINST ONLY PURVEYORS.

I THINK IT WOULD BE COMPLETELY IMPROPER TO HAVE EITHER OF THESE PARTIES PAYING FEES FOR EXPERTS FOR PARTIES WHO MAY HAVE ADVERSE INTEREST TO OUR CLIENTS IN THIS LITIGATION.

THE COURT: OKAY. MR. ZIMMER, YOU ARE KIND OF JUMPING AHEAD A LITTLE BIT. FIRST OF ALL, THE COURT'S ORDER CONCERNING THE APPOINTMENT OF A NEUTRAL EXPERT REQUIRES THE COURT TO APPORTION THE COST OF THE EXPERT AMONG SEVERAL OF THE PARTIES. THAT IS NOT A

DETERMINATION AS TO WHO PAYS WHAT FOR HOW MUCH. THAT COMES LATER. THE COURT DOES HAVE THE DUTY TO MAKE A PROPER APPORTIONMENT OF THOSE COSTS. I WOULD DO THAT.

I WOULD EVEN POINT OUT TO YOU THAT UNDER THE WATER CODE THE COURT COULD MAKE A REFERENCE, AND THE WATER BOARD WOULD MAKE AN ALLOCATION OF THE COSTS OF THE REFERENCE AMONG THE VARIOUS PARTIES. SO I THINK IT IS A LITTLE PREMATURE AT THIS POINT, BUT WHAT I WAS INTERESTED IN WAS WHETHER THERE WAS AN OBJECTION BY ANYBODY ON THE TELEPHONE OR PRESENT HERE TO THE COURT HOLDING A SERIES OF SETTLEMENT CONFERENCES WITH SOME OF THE PARTIES NOT BEING PRESENT AT THE TIME OF ALL OF THE SETTLEMENT CONVERSATIONS.

UNIDENTIFIED ATTY: I --

THE COURT: I DON'T KNOW WHO IS TALKING.

MR. DOUGHERTY: THIS IS ROBERT DOUGHERTY. I CANNOT MAKE A DECISION RIGHT ON THE SPUR OF THE MOMENT WHETHER TO OBJECT TO THE SETTLEMENT CONFERENCE PROCEDURES. I WILL, HOWEVER, EITHER OBJECT OR NOT WITHIN THE NEXT COUPLE OF DAYS.

THE COURT: THANK YOU.

MR. ZIMMER: I WAS GOING TO MAKE THE SAME COMMENT, YOUR HONOR. I WOULD NEED TO DISCUSS THAT WITH MY CLIENT.

THE COURT: OKAY.

UNIDENTIFIED ATTY: WE --

THE REPORTER: I DIDN'T HEAR THE NAME OF THE ATTORNEY.

THE COURT: ANY PARTY THAT WANTS TO RESERVE THE RIGHT TO OBJECT, BUT I WOULD LIKE YOU TO DO IT FAIRLY PROMPTLY. BECAUSE IF YOU DO OBJECT, I'M NOT GOING TO HOLD THE SETTLEMENT CONFERENCE. IT WILL HAVE TO BE HELD BY SOMEONE ELSE.

MR. DAVIS: REBECCA --

THE REPORTER: SORRY, YOUR HONOR, BUT I CAN'T HEAR HER ON THE INTERCOM.

THE COURT: YOU NEED TO SPEAK UP.

MS. DAVIS-STEIN: MS. REBECCA DAVIS-STEIN FOR MR. BLAYNEY SPECIFICALLY. MR. BLAYNEY IS A SMALL PUMPER AND WAITING FOR THAT SMALL PUMPER CLASS. THE NOTICE IS THAT, YOU KNOW, THAT HAVE NOT COME OUT. WELL, WOULD HE BE WELCOME AT THE SETTLEMENT CONFERENCE?

THE COURT: WELL, I WOULD RATHER NOT EXPAND IT TOO FAR. IF HE WANTS TO BE HERE, THAT IS FINE; BUT I WANT COUNSEL WHO ARE -- THE PRINCIPALS WHO ARE INVOLVED IN REPRESENTING THE CLASS BECAUSE I UNDERSTAND HE IS GOING TO OPT INTO THE CLASS.

MS. DAVIS-STEIN: THAT'S CORRECT.

THE COURT: SO THERE IS REALLY NO NEED FOR HIM TO PARTICIPATE.

MR. JOYCE: YOUR HONOR, I WOULD RENEW MY SUGGESTION THAT AT THE CONCLUSION OF THE PROCEEDINGS TODAY THE COURT WOULD POST AN ORDER COMPELLING WRITTEN OBJECTIONS WITH AUTHORITY.

THE COURT: I OBVIOUSLY AM GOING TO DO THAT.

MR. JOYCE: THANK YOU, YOUR HONOR.

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MR FIFE: YOUR HONOR, JUST SINCE WE ARE DOING THIS, THE -- WE WILL NOT OBJECT; BUT THAT IS CONDITIONED UPON THE UNDERSTANDING THAT AT LEAST FOR THE WOOD DISCUSSION WE GET TO ATTEND AND BE ON THE FRINGES.

THE COURT: THAT IS WHAT I INDICATED.

MR FIFE: THANK YOU.

THE COURT: ALL RIGHT. ANYTHING ELSE ON THAT? ALL RIGHT. SO I'LL SEE -- BARRING AN OBJECTION, I'LL SEE EVERYBODY HERE ON THE 13TH AT 9 O'CLOCK.

MR. MCLACHLAN: IS THE COURT GOING TO SET ANY SORT OF TIME LIMIT ON THE OBJECTIONS.

THE COURT: YES, I WILL DO THAT. BUT -- POST NOTICE.

MR. KALFAYAN: AND BETWEEN MOTIONS, YOUR HONOR, IS FOR -- THE MOTIONS FOR EXPERTS AND THE MOTION FOR JURY

TRIAL, ARE WE POSTPONING THOSE?

THE COURT: NO. I WANT TO TALK A LITTLE BIT ABOUT THAT. I THINK -- AS FAR AS THE EXPERTS ARE CONCERNED, I'M GOING TO APPOINT NEUTRAL EXPERTS. I'M GOING TO DEFER THE REQUEST FOR A NEUTRAL EXPERT TO ASSIST YOU WITH REGARD TO OVERDRAFT AND YIELD AT THIS POINT BECAUSE -- BECAUSE I DON'T THINK I WANT TO DO THAT UNTIL I SEE WHAT HAPPENS HERE WITH THE RESOLUTION.

BUT MR. MCLACHLAN'S MOTION IS GRANTED AND STAYED.

MR. MCLACHLAN: YOUR HONOR, THE PROPOSED ORDER I'M GOING TO BE SUBMITTING PROBABLY MONDAY WILL DEFER THE ISSUE OF THE EXACT ALLOCATION OF THE EXPENSES TO A

FUTURE DATE WHEN THE ACTUAL NECESSITY OF INCURRING THOSE EXPENSES COMES ABOUT. IS THAT OKAY?

THE COURT: YES. ALL RIGHT.

MR. KALFAYAN: YOUR HONOR, CAN I GO AHEAD AND SUGGEST A DATE, NOT TODAY, TO RESET THAT MOTION IN THE EVENT WE DON'T RESOLVE THE CASE, THE WILLIS MOTION FOR EXPERTS?

THE COURT: WELL, LET ME DO THAT. I RECOGNIZE THE NEED, AND WE WILL SET IT APPROPRIATELY.

MR. MCLACHLAN: OKAY. THANK YOU.

THE COURT: LET'S TAKE UP THE NEXT ISSUE WHICH IS A MOTION FOR A PRELIMINARY INJUNCTION CONCERNING THE MEETINGS THAT HAVE BEEN HELD. I HAVE RECEIVED FROM MR. FIFE A DECLARATION. I HAVE RECEIVED FROM MR. ZLOTNICK, I THINK -- MR. KALFAYAN, I'M NOT SURE WHO SUBMITTED IT, A DECLARATION ASKING THE COURT TO DEFER

THE ISSUE WHILE SOME INVESTIGATION GOES ON.

IS THIS AN ISSUE THAT SHOULD BE HEARD THIS MORNING?

MR FIFE: YOUR HONOR, I DON'T THINK THERE IS AN ISSUE. I DON'T THINK THERE IS ANYTHING TO DEFER. I JUST DON'T THINK THERE IS AN ISSUE.

THE COURT: WELL, THERE WAS A REQUEST FOR A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION, AND I SET IT FOR HEARING ON THE REQUEST FOR A PRELIMINARY INJUNCTION WITHOUT A RESTRAINING ORDER FOR THIS MORNING. SO THERE IS SOMETHING TO BE HEARD ONE WAY OR THE OTHER.

MR FIFE: OKAY. THERE IS SOMETHING TO BE HEARD. YOU DENIED THE REQUEST FOR THE TEMPORARY RESTRAINING ORDER.

THE COURT: IT HAS NO BEARING ON THE REQUEST FOR A PRELIMINARY INJUNCTION.

MR FIFE: I DON'T SEE THERE IS ANY NEED FOR PRELIMINARY INJUNCTION.

THE COURT: I UNDERSTAND YOUR OPPOSITION, BUT LET'S HEAR FROM THE MOVING PARTIES.

(LAUGHING)

MR. MCLACHLAN: YOUR HONOR, I THINK THERE IS PROBABLY SOME MISCOMMUNICATION ON THE CALENDARING SIDE OF THINGS. BECAUSE AFTER THAT MEETING OCCURRED, I FORGET THE DATE, I GATHERED A REPORT AND EMAILED YOUR CLERK AND SAID THAT WE -- SPECIFICALLY THE WOOD CLASS

ONLY WAS TABLING THE ISSUE UNTIL SOME FUTURE DATE. AND I THINK WE ARE GOING TO LEAVE IT THAT WAY.

SO WE TOOK OUR MOTION OFF CALENDAR IN WHICH -- WHY THE COURT HAS NO BRIEFING ON IT. IF THERE ARE FUTURE PROBLEMS, WE WILL RAISE IT. BUT I THINK THAT COUNSEL HEARD THE COURT'S ADMONITIONS AND RIGHT NOW IT IS A DEAD ISSUE FOR YOU.

MR. KALFAYAN: YOUR HONOR, ALL WE DID WAS WANTED TO BE SURE THAT MR. FIFE DOESN'T MISCOMMUNICATE THINGS REGARDING THE CLASS, IF HE WAS TO DO A PRESENTATION REGARDING THE CLASS NOTICE OR COMMUNICATION WITH THE

MEMBERS OF THE CLASS.

SO WE WERE JUST CONCERNED ABOUT THAT. WE COMMUNICATED OUR CONCERN WITH MR. FIFE EXACTLY WHAT IT WAS THAT WE THOUGHT THE PARAMETERS IN WHICH COULD DISCUSS SOME OF THOSE ISSUES. AND WE LEFT IT AT THAT.

SO AS FAR AS WE ARE CONCERNED, THE MEETING WAS HELD, AND HE TOLD US WHAT HAPPENED AT THE MEETING. AND WE LEFT IT AT THAT WITH THE CAVEAT THAT -- BE CAREFUL ABOUT WHAT YOU DO AND HOW YOU COMMUNICATE, HOW AND WHO YOU COMMUNICATE TO.

THE COURT: ALL RIGHT. SO THE MOTION IS OFF CALENDAR.

THE QUESTION OF THE JURY TRIAL. I QUITE FRANKLY HAVE ALWAYS BEEN ENAMORED WITH JURY TRIALS. I THINK THAT JURORS ARE WONDERFUL PARTS OF OUR SYSTEM, AT LAW. BUT CASES OF EQUITY ARE CASES IN EQUITY, AND THEY ARE DIFFERENT. I DON'T KNOW TO WHAT EXTENT THE ISSUES OF PRESCRIPTION HERE ARE GOING TO GET ADJUDICATED OR

LITIGATED.

IF THERE IS ANY REMOTE POSSIBILITY THAT ANYBODY IS ENTITLED TO A JURY IN THIS CASE, IT IS WITH REGARD TO PRESCRIPTION. THE CASES THAT ARE CITED I DON'T THINK ARE REALLY HELPFUL IN TERMS OF PRIOR RULINGS ON EASEMENTS, PRESCRIPTIVE EASEMENTS ON LAND, OR QUALITATIVELY AND QUANTITATIVELY DIFFERENT THAN THE ADJUDICATION AND THE ALLOCATION OF WATER RIGHTS.

THE MOJAVE CASE DOESN'T STAND FOR THE PROPOSITION THAT THERE IS A RIGHT FOR A JURY FOR

DETERMINATION OF WHAT THE RIGHTS OF THE PARTIES ARE WITH REGARD TO WATER. IT JUST STANDS FOR THE PROPOSITION THAT THE COURT NEEDS TO MAKE A DETERMINATION OF WHAT THE RIGHTS OF OWNERSHIP ARE WITH REGARD TO WATER RIGHTS WHEN YOU ARE ADJUDICATING A WATER RIGHTS CASE AND ATTEMPTING TO CREATE A PHYSICAL SOLUTION TO IT.

BUT BECAUSE THE WORDS USED BY THE COURT WERE LEGAL RIGHT TO WATER FLOWING FROM THE OWNERSHIP OF THE LAND, THAT DOES NOT MEAN THAT IT IS A LEGAL CAUSE OF ACTION.

THAT'S MY READING OF IT AS I LOOK AT THE TOTALITY OF THE LAW CONCERNING THE ESTABLISHMENT OF WATER RIGHTS WHEN YOU ARE NOT TALKING ABOUT DAMAGES AND YOU ARE NOT TALKING ABOUT EJECTMENT. ALL YOU ARE TALKING ABOUT IS A DETERMINATION OF WHAT THE RIGHTS ARE IF THE COURT HAS TO IMPOSE SOME SORT OF A MANAGEMENT STRUCTURE IN EQUITY TO DETERMINE THE REASONABLE AND BENEFICIAL RIGHT TO WATER, I THINK THAT IS IN EQUITY.

NOW, THAT IS WITHOUT PREJUDICE AT THIS

POINT. I DON'T THINK I NEED TO MAKE A FINAL ORDER CONCERNING THAT. AND IT MAY WELL BE BECAUSE AS I HAVE INDICATED I'M A FIRM BELIEVER IN THE JURY TRIAL PROCESS. THE COURT CAN ALWAYS IMPANEL AN ADVISORY JURY IN EQUITY TO ASSIST IT IN MAKING DETERMINATIONS OF FACTS. I MIGHT WELL DO THAT.

I MIGHT ULTIMATELY DETERMINE THAT THERE IS A RIGHT TO A JURY AT LAW WITH REGARD TO THOSE ISSUES, BUT IT IS VERY IMPORTANT FOR THE COURT TO HAVE A

DETERMINATION OF OVERDRAFT AND SAFE YIELD IN THIS CASE AND IN ANY EVENT TO DETERMINE WHETHER OR NOT THE VALUES ENDANGER OF DEPLETING ITS WATER SUPPLY.

IN ORDER TO DO THAT, THE COURT HAS TO KNOW WHAT THE RIGHTS OF THE PARTIES ARE WITH REGARD TO THEIR REASONABLE AND BENEFICIAL USES WHETHER PRESCRIPTION IS INVOLVED IN THE CASE OR NOT.

SO I'M GOING TO CONTINUE DOWN THE PATH THAT WE HAVE GONE ON. IF WE ARE NOT ABLE TO RESOLVE THE CASE, THE COURT WILL HEAR THE ISSUES OF OVERDRAFT AND DETERMINE WHAT THE SAFE YIELD OF THE VALLEY MIGHT BE. AND I UNDERSTAND THE RESPECTIVE ARGUMENTS I HAVE HEARD CONCERNING THE RIGHT TO A JURY -- AND YOU MAY GET ONE WITH REGARD TO PRESCRIPTION AT SOME LATER TIME OR YOU MAY NOT.

BUT AT THIS POINT BECAUSE THERE ARE QUIET TITLE ACCESS SEEKING ADJUDICATION OF WATER RIGHTS IRRESPECTIVE OF PRESCRIPTION, THE COURT IS GOING TO HEAR THOSE ISSUES FIRST.

MR. JOYCE -- I'M NOT INVITING FURTHER

ARGUMENT, BY THE WAY; BUT IF YOU HAVE SOMETHING NEW, YOU MAY.

MR. JOYCE: IT'S NOT NEW, BUT IT IS WOVEN INTO THE COURT'S EXPRESSED TENTATIVE. I UNDERSTAND THE COURT TO SUGGEST THAT IT INTENDS TO PROCEED WITH A PHASE, THE SUBJECT MATTER OF WHICH WOULD BE THE ISSUE OF OVERDRAFT AND/OR YIELD.

MY ONLY CONCERN IS IF THE CASE WERE NOTHING

MORE THAN A ROUTE TOWARDS AN ULTIMATE ADJUDICATED PHYSICAL SOLUTION, I WOULD BE SITTING HERE SAYING "LET'S MOVE THAT AND DO IT QUICKLY."

HOWEVER, IF TO THE EXTENT OF THE ISSUE OF YIELD AND/OR THE FACT OR LACK OF OVERDRAFT ITSELF IS AN INTEGRAL PREDICATE TO THE CLAIM OF PRESCRIPTION, THEN THE ISSUE OF WHETHER OR NOT THAT IS SUBSUMED IN THE NECESSITY OR THE LACK OF NECESSITY FOR JURY TRIAL IS SQUARELY FRAMED. SO IT -- I DON'T KNOW WHAT -- THE COURT EXPRESS INTENT IS TO NOT YET DEFINITIVELY RULE UPON THE ISSUE, BUT AT THE SAME TIME OR APPARENTLY GOING TO PROCEED WITH A CORE ISSUE IN THE CASE THAT IS -- THAT IS SUBSUMED WITHIN WHAT A JURY TRIAL, IN MY VIEW, WOULD HAVE TO ALSO ADDRESS.

THE COURT: I UNDERSTAND THAT ARGUMENT. THAT IS NOT SOMETHING THAT PERSUADES ME THAT THE COURT SHOULD DECIDE LEGAL ISSUES OR SHOULD NOT DECIDE EQUITABLE ISSUES BECAUSE THERE ARE SEPARATE EQUITABLE CAUSES OF ACTIONS THAT HAVE NOTHING TO DO WITH PRESCRIPTION.

MR. KALFAYAN: YOUR HONOR, I HAVE TWO POINTS I WAS GOING TO MAKE. MY SECOND POINT WAS THE ADVISORY JURY

PROPOSAL THAT YOU SUGGESTED AND THE SALIENT POINT THAT YOU RAISED.

I MADE ONE POINT THAT I'LL JUST SHARE WITH YOU, AND THAT IS THE TEST, I THINK, YOU SHOULD -- THE COURT SHOULD FOCUS ON THIS AND IS WHETHER OR NOT WE HAVE A RIGHT TO A JURY TRIAL IN A CAUSE OF ACTION DOESN'T HAVE TO BE IDENTICAL TO THE CAUSE OF ACTION THAT MAY

HAVE EXISTED IN COMMON LAW BEFORE 1850, BUT IF IT IS SIMILAR. SO WITH RESPECT TO PRESCRIPTIVE EASEMENT, I SUBMIT -- I SAY WHETHER TO LAND OR WATER SIMILAR BUT MAYBE NOT IDENTICAL. BUT THE ADVISORY JURY IS A RECOMMENDATION I WAS GOING TO MAKE, ALSO.

MR. ZIMMER: YOUR HONOR, THIS IS MR. ZIMMER, JUST FOR CLARIFICATION. AS FAR AS THE COURT IS SAYING IS THAT THE -- THAT WHAT THE COURT IS GOING TO BE HEARING IS OVERDRAFT AND SAFE YIELD FROM AN EQUITABLE STANDPOINT IN TERMS OF WHETHER THERE IS A CURRENT -- A SHORTAGE IN THE BASINS; WOULD THAT BE CORRECT?

THE COURT: YES, BUT IT PROBABLY IS GOING TO GO BEYOND THAT. IF ONE STARTS GETTING INTO THE QUESTION OF SAFE YIELD, YOU ARE LOOKING AT IT OVER A PERIOD OF TIME AND NOT JUST IN ONE YEAR BECAUSE THERE IS -- THERE MUST BE A DANGER OF ULTIMATE DEPLETION IN ORDER FOR THE COURT TO MAKE AN EQUITABLE DETERMINATION THAT THERE SHOULD BE A PHYSICAL SOLUTION.

MR. ZIMMER: OKAY. PUT IT THIS WAY: IS THE COURT DETERMINING THAT THIS -- THIS PHASE THAT THE COURT INTENDS TO PROCEED ON IN TERMS OF SAFE YIELD AND OVERDRAFT IS WITHOUT PREJUDICE TO A POTENTIAL JURY ON

ANY AND ALL FINDINGS NECESSARY FOR A CLAIM OF PRESCRIPTION AT A LATER TIME?

THE COURT: ONLY TO THE EXTENT THAT THE ISSUES HAVE NOT BEEN PREVIOUSLY ADJUDICATED AND RULED UPON BY THE COURT. IN OTHER WORDS, IF THERE ARE BOTH LEGAL AND EQUITABLE ISSUES, THE COURT MAY HEAR THE EQUITABLE

ISSUES FIRST. AND IF THOSE ISSUES BECOME RES JUDICATA OR COLLATERAL ESTOPPEL, THEN THEY ARE NOT GOING TO BE RELITIGATED.

MR. ZIMMER: WHAT I'M SAYING IS IF YOU HAVE A RIGHT TO A JURY TRIAL ON PRESCRIPTION, THEY SHOULD -- THEY SHOULD NOT BE RES JUDICATA ON THE ISSUE OF PRESCRIPTION.

THE COURT: WELL, THEY CAN'T BE BECAUSE WE ARE NOT GOING TO TRY PRESCRIPTION IN THAT FIRST PHASE.

MR. ZIMMER: IN OTHER WORDS, IF THE PARTIES HAVE A RIGHT FOR JURY TRIAL FOR PRESCRIPTION. AND AS PART OF THE PRESCRIPTION CLAIM THAT PURVEYORS MAKE THE ARGUMENT THAT BECAUSE THE BASIN WASN'T OVERDRAFT THEY HAVE TO SOMEHOW PROVE PRESCRIPTION, I THINK THAT THE LANDOWNERS' FOUNDATION WOULD TAKE A POSITION THAT THAT ISSUE NEEDS TO BE TRIED TO A JURY BECAUSE IT RESULTED IN THE TAKING OF PROPERTY RIGHTS.

THE COURT: I UNDERSTAND YOUR ARGUMENT.

MR. JOYCE: YOUR HONOR, I JUST WANT TO BE CLEAR IF I UNDERSTAND THE COURT'S INTENT. IF THE COURT WERE TO PROCEED AND TRY THE NEXT PHASE ON THE TWO ISSUES THE COURT HAS IDENTIFIED, THAT IT IS THE COURT'S EXPECTATION THAT EVEN IF AT A LATER DATE IF THE COURT WERE TO

RECONSIDER ITS TENTATIVE ON THE ISSUE OF THE ENTITLEMENT FOR A JURY TRIAL AND CONCLUDE, IN FACT, THAT THE JURY TRIAL IS CONSTITUTIONALLY PROPELLED ON THIS KIND OF A CLAIM THAT IN THAT CIRCUMSTANCE THE COURT'S FINDINGS ON THE ISSUE OF OVERDRAFT AND YIELD AND ALL THE COMPONENT

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PARTS AND THE TIME FRAMES AND THE REST OF IT IS IN ESSENCE GOING TO BE CONCLUSIVE FOR THE PURPOSE OF THAT JURY TRIAL IF IT WERE TO GO FORWARD?

THE COURT: YES.

MR. JOYCE: THANK YOU.

MR. ZIMMER: I WANT TO --

THE COURT: JUST A MOMENT, MR. ZIMMER. MR. ZIMMER, WAIT FOR JUST A MOMENT.

MR. ZIMMER: SURE.

MR. LEININGER: MR. LEININGER FOR THE UNITED STATES. I HOPE I'M NOT GETTING AHEAD OF THE DISCUSSION HERE. I DON'T HAVE A COMMENT WITH REGARD TO THE SUBSTANCE OF THE ISSUES TO BE TRIED IN THE NEXT PHASE, BUT I WAS JUST GOING TO REMIND THE COURT THAT I BELIEVE IT WAS IN THE JANUARY CASE MANAGEMENT CONFERENCE WHEN VARIOUS PARTIES HAD SUBMITTED DATES TO PROCEED ON THE PHASE III TRIAL FOR SAFE YIELD AND OVERDRAFT.

THE COMMENT WAS MADE BY THE COURT AT THAT TIME THAT -- THAT WHAT WE HAD PROPOSED -- THE UNITED STATES HAD PROPOSED HAD BEEN REASONABLE.

SO I WAS GOING TO REQUEST THAT PERHAPS NEXT WE COULD TAKE UP DATES TO SET FOR THE TRIAL AND PERHAPS USE THIS AS THE MEANS TO DO SO.

THE COURT: ALL RIGHT. I THINK THAT IS A

REASONABLE REQUEST. AND SINCE WE ARE LIMITING THE TRIALS TO THOSE FIRST PHASES, I DON'T RECOLLECT THE EXACT DATES THAT YOU HAD PROPOSED, BUT TELL ME WHAT THEY ARE.

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MR. LEININGER: SURE. THERE ARE CERTAIN KEYED OFF -- THE TIMING OF THE NOTICE AND A SIDE BAR WITH MR. DUNN. HE AND -- HE WOULD SPEAK TO THIS. BUT I THINK THEY ARE INTENDING TO GET NOTICE OUT TO THE WOOD CLASS WITHIN TWO WEEKS, SO APPROXIMATELY BEGINNING OF MAY.

NOW, THE WILLIS CLASS COUNSEL HAS RECENTLY FILED FOR AN EXTENSION WITH REGARD TO THE OPT-OUT PERIOD; BECAUSE AS I UNDERSTOOD IT BECAUSE OF THE NUMBER OF RESPONSES THAT THEY ARE RECEIVING AND GIVING THE OPPORTUNITY FOR THE CLASS MEMBERS TO TAKE WHATEVER ACTION THEY WANT.

I BELIEVE THAT WAS EXTENDED TO 120 DAYS FROM THE TIME OF INITIAL NOTICE -- I'M SORRY. IF I'M INCORRECT --

MR. KALFAYAN: IT'S 90.

MR. LEININGER: SO IF NOTICE GOES OUT TO MAY 1ST AND OPT-OUT PERIOD OF THREE MONTHS --

MR. MCLACHLAN: ARE YOU TALKING ABOUT THE WOOD CLASS?

MR. LEININGER: YES.

MR. MCLACHLAN: I WOULD LIKE TO BE HEARD AT SOME POINT ON THIS ONE. I AM CLASS COUNSEL. SO IT WOULD BE NICE IF WE HAVE SOME SAY IN THIS PROCESS.

MR. LEININGER: I WOULD JUST THROW OUT SOME DATES

HERE, AND THEN, PERHAPS, WE COULD PROCEED.

THE COURT: WELL, LET'S FIND OUT WHAT COUNSEL FOR THE CLASS WANTS TO DO HERE IN REGARD TO TRIAL SETTING.

MR. MCLACHLAN: I DON'T CARE ABOUT THE TRIAL SETTING, YOUR HONOR. AS YOU CAN TELL I'M BEYOND EXASPERATED BY THE FACT THAT -- THERE IS THIS SENSE THAT THE PUBLIC WATER SUPPLIERS HAVE FILED THE CLASS ACTION; THAT THEY ARE RUNNING THIS THING.

BECAUSE FOR SIX WEEKS I HAVE BEEN ENDEAVORING THROUGH AT LEAST A HALF DOZEN EMAILS, WRITTEN CORRESPONDENCE TO BEST, BEST AND KRIEGER TO FIND OUT WHAT IS GOING ON WITH THIS LIST. BECAUSE OF THE MANIFEST PROBLEMS WE HAVE HAD WITH THE WILLIS CLASS AND NOTICE AND MY DISCUSSIONS WITH THEM IN FEBRUARY AND THEIR MEETING WITH THEIR CONSULTANT, I HAVE RECEIVED NO RESPONSES.

UNTIL I RECEIVED MR. DUNN'S DECLARATION YESTERDAY, I HAD NO INFORMATION WHATSOEVER. ALL THAT INFORMATION WAS NEWS TO ME. WHAT IS IN THAT DECLARATION GIVES ME GREAT CONCERN. AND, AGAIN, I ASK -- I THOUGHT THE COURT HAD ADMONISHED THE PUBLIC WATER SUPPLIERS TO COOPERATE WITH US. AND, APPARENTLY, THEY DON'T FEEL THEY NEED TO.

BUT BEFORE THAT NOTICE GOES OUT, I WANT TO MEET WITH THEM. I WANT TO FIND OUT WHAT EXACTLY WAS DONE ON THIS LIST. BECAUSE I HAVE -- THAT DECLARATION SAYS THAT LA COUNTY TAX ASSESSORS' RECORDS THAT THEY HAVE GOT FOR 5,000 PEOPLE DON'T HAVE MAILING ADDRESSES. WELL, THAT IS JUST PATENTLY WRONG.

I HAVE SEEN THE RAW DATA IN THE CONTEXT THAT
THEIR EXPERTS -- EXPERTS' OFFICE. AND I WILL SAY THAT

MR. WOOD OVER HERE IS ONE OF THE MANY PEOPLE THAT DIDN'T GET THE WILLIS' NOTICE BECAUSE OF THE DEFECTS IN THE PROCESS. HE RECEIVES HIS TAX BILL AND PAYS HIS TAXES AT HIS PROPERTY. THOSE DATA BASIS HAVE TWO FIELDS FOR ADDRESSES.

AND THERE -- THEY ARE WRONG THAT 5,000 PEOPLE DON'T HAVE ADDRESSES. AND I AM REALLY SERIOUSLY CONCERNED THAT THIS IS A LIST THAT IS NOT GOING TO BE PROFFERED. SO I'M HAPPY TO HAVE THE NOTICES GO OUT AT SOME POINT IN TIME, BUT NOT WITHOUT CLASS COUNSEL BEING SATISFIED THAT WHAT WAS DONE WAS APPROPRIATE. AND I THINK IT IS REALLY CRITICAL.

THE COURT: I AGREE WITH YOU. THERE IS NO DOUBT. AND THE QUESTION, MR. DUNN, IS:

WHAT IS THE STATUS OF THE LISTS, NUMBER ONE?

AND, NUMBER TWO, WHEN CAN YOU CONFER WITH MR. MCLACHLAN TO MAKE SURE THAT HE IS SATISFIED THAT HIS CLIENTS WHO ARE MEMBERS, POTENTIAL MEMBERS, WHO ARE PUNITIVE MEMBERS OF THE CLASS ARE ACCOUNTED FOR?

MR. DUNN: LET ME ADDRESS BOTH OF THOSE. I THINK SINCE WE LAST MET WITH THE COURT, I HAVE PROBABLY SPOKEN WITH MR. MCLACHLAN AT LEAST ONCE A WEEK AND SOME WEEKS ALMOST SEVERAL TIMES A WEEK, AND ON SOME DAYS MULTIPLE TIMES. AND I HAVE AT LEAST TWO FACE-TO-FACE MEETINGS WITH HIM.

AND I TAKE ISSUE TO HIS REPRESENTATIONS. WE HAD EXPLAINED TO HIM EXACTLY THE UNUSUAL PROBLEM THAT WE

28 HAVE ENCOUNTERED WITH THE MAILING LIST WITH THE WOOD

1 CLASS.
2 AND THAT IS THAT THERE WERE 5,000
3 ADDRESSES -- NOT THAT THERE AREN'T 5,000 ADDRESSES.
4 THERE ARE 5,000 ADDRESSES THAT ARE IN SOME FORM ARE NOT
5 SUFFICIENT TO SEND OUT. THERE WERE PROBLEMS WITH THOSE
6 ADDRESSES. AND THAT IS AN UNUSUALLY HIGH NUMBER GIVEN
7 THE 8,000 ADDRESSES THAT WE HAD IDENTIFIED AS BEING
8 POTENTIALLY BEING PUT WOOD CLASS MEMBERS.
9 I HAD EXPLAINED TO HIM AND VIVIDLY RECALL
10 THIS TELEPHONE CONVERSATION WITH HIM ON AT LEAST ONE
11 OCCASION THAT WE SUSPECT THAT THE REASON WHY -- WE
12 DIDN'T KNOW FOR SURE, BUT WE SUSPECTED THE REASON WHY
13 THERE WAS AN UNUSUALLY HIGH NUMBER AS TO COMPARED TO
14 WHAT HAPPENED WITH MR. KALFAYAN'S CLASS, THE WILLIS
15 CLASS, PROBABLY HAS TO DO WITH JUST THE NATURE OF THE
16 CLASS MEMBERS LIVING IN THESE AREAS THAT ARE NOT WITHIN
17 PUBLIC WATER SUPPLIERS SERVICE AREAS.
18 SO THEY ARE SOMEWHAT RURAL, IF I COULD PUT
19 IT THAT WAY, MAYBE EVEN REMOTE. IT APPEARED -- WE STILL
20 DON'T KNOW IF THIS IS EXACTLY THE CASE. BUT IT IS
21 OFTENTIMES THE CASE THAT THEY DON'T GET SOMEONE DRIVING
22 OUT IN A US POSTAL SERVICE TRUCK AND DELIVERING MAIL AT
23 THE PLACE. THERE ARE OTHER ADDRESSES ELSEWHERE.
24 BUT SETTING THAT ASIDE WHAT WE DID THEN WAS
25 TO ENGAGE IN A VERY LENGTHY AND NOW AND AGAIN EXPENSIVE
26 PROCESS OF TRYING TO COME UP WITH ADDRESSES FOR THESE
27 PEOPLE WHICH ULTIMATELY REQUIRED US TO GO BACK TO OUR
28 CLIENT, THE COUNTY, AND GO THROUGH THEIR PROCESS OF

OBTAINING YET ANOTHER CONSULTANT. THIS TIME A TITLE INSURANCE COMPANY WHO WOULD TAKE THIS ASSESSORS' PARCEL NUMBER FOR EACH OF THESE PROBLEM ADDRESSES. AND THEY WOULD RUN IT THROUGH THEIR TITLE INSURANCE COMPANY RECORDS AND GIVE US THE MOST CURRENT ADDRESS. SO WE EXPECT THAT WILL BE DONE BY APRIL 28TH.

THEN AT THAT POINT, IT IS A RATHER SIMPLE PROCESS OF JUST COPYING THE CLASS NOTICE, TAKING THE ADDRESS LIST THAT WE HAVE, AND SENDING IT TO YET ANOTHER COMPANY. AND WE WILL CREDIT AND MAIL IT.

I'M MORE THAN HAPPY AS I HAVE BEEN TO ALLOW MR. MCLACHLAN TO MEET WITH THESE CONSULTANTS. HE HAS MET WITH ONE CONSULTANT BEFORE, AND I'M MORE THAN HAPPY TO HAVE HIM HELP WITH THE PROCESS.

BUT I DO TAKE ISSUE WITH THE REPRESENTATION THAT SOMEHOW THERE HAS NOT BEEN COMMUNICATION OR WHATEVER. THAT IS JUST SIMPLY NOT THE CASE. BUT I WILL SAY THIS: I HAVE TALKED TO MR. MCLACHLAN, AND HE HAS BEEN VERY CANDID WITH THE COURT AND VERY CANDID WITH ME. HE DOESN'T WANT THAT CLASS NOTICE TO GO OUT UNTIL HIS ISSUE OF REPRESENTATION IS RESOLVED. HE HAS TOLD THE COURT THAT.

THE COURT: I THINK WE HAVE RESOLVED THAT ISSUE.

MR. DUNN: I HOPE SO. BUT THE SHORT VERSION IS THAT HE IS MORE THAN WELCOME TO MEET WITH ANYBODY WHO IS INVOLVED IN THIS PROCESS. THERE WAS NEVER ANY HINT THAT WE WOULD MAIL ANY OF THIS STUFF OUT WITHOUT GIVING HIM A CHANCE TO LOOK AT IT FIRST.

SO I'M MORE THAN HAPPY TO CONTINUE TO TALK WITH MR. MCLACHLAN ABOUT THAT.

THE COURT: SO TELL ME WHEN YOU CAN HAVE THE NOTICES OUT AND HAVE HAD AN OPPORTUNITY FROM MR. MCLACHLAN TO REVIEW WHAT IS GOING OUT.

MR. DUNN: WE BELIEVE THAT NOTICES CAN ALL BE MAILED OUT INCLUDING GIVING MR. MCLACHLAN AN OPPORTUNITY TO REVIEW WITHIN TWO WEEKS AFTER APRIL 28TH. SO WHATEVER THAT DATE IS TWO WEEKS AFTER APRIL 28TH, WE ARE SUGGESTING THAT BE THE MAILING DEADLINE.

(THE COURT AND THE CLERK CONFER OFF THE RECORD.)

THE COURT: MAY, THE 12TH.

MR. DUNN: YES.

THE COURT: THAT IS A TUESDAY. THEN A 90-DAY OPT-OUT PERIOD; IS THAT CORRECT?

MR. MCLACHLAN: I BELIEVE SO, YOUR HONOR.

THE COURT: THAT SEEMS TO ME TO BE REASONABLE. SO THAT -- BY THE MIDDLE OF AUGUST WE SHOULD KNOW WHO HAS OPTED OUT AND WHO HAS TO BE SERVED. THE DIFFICULTY IN SETTING A TRIAL BEFORE WE KNOW WHO ADDITIONALLY HAS TO BE SERVED INDIVIDUALLY IS THAT IT THEN PUTS SOMEBODY IN THE POSITION THAT THEY HAVE BEEN SERVED. THEY HAVE GOT TO FILE AN ANSWER. THEY HAVE GOT TO GET COUNSEL, AND IT DOES SEEM TO ME THAT IT MIGHT BE PREMATURE TO SET A TRIAL DATE ON THOSE FIRST ISSUES UNTIL WE HAVE CONCLUDED THE OPT-OUT PROCESS.

SO I WOULD SUGGEST THAT WE HAVE A TRIAL SETTING CONFERENCE IN AUGUST, AND I CAN SET THAT DATE. I DON'T WANT TO DO THAT RIGHT NOW. BUT IT WOULD BE SOME TIME AROUND PROBABLY THE LAST WEEK OF AUGUST.

MR. ZIMMER: MR. ZIMMER HERE, YOUR HONOR. THIS IS MR. ZIMMER. I JUST WANT TO ADD THAT I AGREE THAT THE COURT SHOULD PROBABLY NOT SET A TRIAL DATE AT THIS POINT. I WANTED TO ADD ONE ADDITIONAL ASPECT TO THAT. THE COURT, I THINK, HAS INDICATED THAT IT IS DENYING THE RIGHT TO A JURY TRIAL IN THIS FIRST PHASE WHICH WILL CONSIST OR NEXT PHASE WHICH WILL CONSIST OF OVERDRAFT AND SAFE YIELD.

THE COURT: THAT IS CORRECT.

MR. ZIMMER: BUT THE COURT HAS ALSO INDICATED THAT THE COURT WOULD CONSIDER ANY DETERMINATION OF SAFE YIELD AND OVERDRAFT AS RES JUDICATA OR COLLATERAL ESTOPPEL TO THE EXTENT IT APPLIES TO A PRESCRIPTIVE CLAIM; CORRECT?

THE COURT: AS IT APPLIES TO ANY CLAIMS THAT INVOLVE SAFE YIELD IN THIS CASE AND OVERDRAFT.

MR. ZIMMER: SO THAT REPLY PRESCRIPTION CLAIM, THE COURT COULD CONSIDER THAT COLLATERAL ESTOPPEL OR RES JUDICATA?

THE COURT: WELL, OBVIOUSLY, YOU CAN ARGUE THAT IT DOESN'T. I WOULD BE HAPPY TO HEAR YOUR ARGUMENTS. I DON'T WANT TO GIVE YOU AN ADVISORY OPINION, BUT I SUSPECT THAT IT MIGHT BE.

MR. ZIMMER: AND THE REASON I'M RAISING THIS IS BECAUSE IF -- IF THE CLAIM OF SAFE YIELD OR OVERDRAFT

COULD BE USED AS COLLATERAL ESTOPPEL OR RES JUDICATA IN

WAY OF THE PRESCRIPTION PHASE, THEN PUTTING OFF THE ABILITY OF THE CLASSES TO HAVE AN EXPERT ON THAT ISSUE WOULD SEVERELY IMPACT A CLAIM OF PRESCRIPTION AGAINST THEM.

IT MIGHT BE A GOOD IDEA TO PUT THAT ISSUE OFF FOR THE MOMENT AS TO WHEN THE CLASS WOULD BE ENTITLED TO HAVE ACCESS TO AN EXPERT UNTIL AFTER THEY DETERMINE WHETHER THEY CAN SETTLE IT.

BECAUSE IF SAFE YIELD IS THE BASIS FOR PRESCRIPTION CLAIM NOT HAVING AN EXPERT WOULD BE EXTREMELY --

THE COURT: WELL, I INDICATED THAT AS FAR AS THE DORMANT CLASS IS CONCERNED THAT WE ARE NOT GOING TO DEAL WITH THAT UNLESS WE ARE UNABLE TO RESOLVE THE CASE. AND THEN, OBVIOUSLY, WE WOULD MAKE A DIFFERENT ORDER.

MR. MCLACHLAN.

MR. MCLACHLAN: I MET AND CONFERRED WITH MR. DUNN HERE, AND WE ARE JOINTLY OKAY WITH A CLASS NOTICE SERVICE DATE OF MAY THE 15TH ASSUMING THAT NEXT WEEK MY OFFICE IS GIVEN THE OPPORTUNITY TO MEET WITH THE -- AND CONFER WITH HIS TITLE EXPERT AND/OR WHOEVER IS INVOLVED AND GIVEN ENOUGH INFORMATION.

IF THE COURT DOESN'T HEAR BACK, THEN YOU CAN ASSUME THAT MY INVESTIGATION WAS OKAY. AND IF THERE IS A PROBLEM THAT WE BELIEVE IS SIGNIFICANT, THEN WE WILL BRING IT ON AN EX-PARTE BASIS.

THE COURT: ALL RIGHT.

MR. LEMIEUX: YOUR HONOR, CAN I TALK ABOUT THE TRIAL DATE.

THE COURT: YES.

MR. LEMIEUX: I WOULD LIKE TO MAKE THE SUGGESTION THAT THE COURT SET A TRIAL DATE NOW EVEN IF IT IS FAR ENOUGH OUT THAT THE PEOPLE COME IN AUGUST CAN HAVE A CHANCE -- DON'T FEEL THEY ARE GETTING RUSHED TO TRIAL WITHOUT BEING PREPARED BECAUSE THERE ARE A LOT OF DATES RELATED TO THAT. THERE IS A LOT OF EXPERT WITNESSES PREPARATION. I THINK HAVING AN ACTUAL CONCRETE DATE PREFERABLY SOMETIME THIS YEAR THAT IS OUT THERE THAT THAT WOULD MAKE IT HELPFUL FOR US FOR PLANNING PURPOSES. AND WE ARE GOING TO HAVE TO COORDINATE A LOT OF SCHEDULES FROM A LOT OF PEOPLE TO MAKE THAT HAPPEN. AND I'M AFRAID IF WE WAIT TOO LONG, IT IS NOT GOING TO HAPPEN THIS YEAR.

THE COURT: WELL, IF WE SET A DATE FOR TRIAL SETTING IN AUGUST, WE COULD CERTAINLY SET IT BY THE END OF THE YEAR, COULDN'T WE?

MR. LEMIEUX: WELL, I WOULD HOPE SO BUT -- THERE ARE SO MANY PARTIES INVOLVED WHY NOT -- I WOULD JUST ASK WHY NOT SET ONE FOR -- IF WE ARE GOING TO PICK NOVEMBER OR DECEMBER, JUST SET IT NOW FOR NOVEMBER OR DECEMBER. AT LEAST NOW I KNOW WHEN -- YOU KNOW, THE REST OF US ARE DOING OUR CALENDARS AND SO ON. THEN WE HAVE GOT AT LEAST A TIME PERIOD BLOCKED OUT.

THE COURT: OKAY. ANYBODY ELSE SHARE THAT VIEW?

MR. WEEKS: I SHARE THAT VIEW, YOUR HONOR. JUST

FOR PURPOSE OF SETTLEMENT, ENCOURAGE THE PARTIES TO SETTLE, IT WOULD BE VERY HELPFUL TO HAVE A TRIAL DATE SET.

MR. LEMIEUX: YEAH, I WAS TRYING TO AVOID THAT, YOUR HONOR, BUT THAT IS ANOTHER CONSIDERATION.

MR. JOYCE: SET A TRIAL DATE ON PRESCRIPTION THAT MIGHT MOVE PEOPLE FORWARD.

MR. ZIMMER: YOUR HONOR, THIS IS MR. ZIMMER. JUST AS A PRACTICAL MATTER, I DON'T SEE A REAL PURPOSE FOR SETTING TRIAL DATES WHEN WE DON'T EVEN KNOW WHEN EVERYBODY IS GOING TO BE SERVED IN THE CLASS AND WHEN THAT IS ALL GOING TO BE DONE FOR SURE. AND I'M NOT EVEN SURE IF IT IS APPROPRIATE PROCEDURALLY TO SET A TRIAL DATE WHEN MATTERS ARE NOT AT ISSUE LEGALLY.

THE COURT: WELL, THAT IS ONE OF THE CONCERNS THAT I HAVE THAT CAUSES ME TO WANT TO DEFER IT, BUT I'M HAPPY TO HEAR FROM EVERYBODY CONCERNING THAT.

MR. WEEKS: THE COURT COULD SET A TENTATIVE TRIAL.

THE COURT: WELL, I DON'T LIKE TO DO THAT. IF I SET A TRIAL DATE, I WANT IT TO GO.

MR. KUHS: YOUR HONOR, ROBERT KUHS FOR TEJON RANCH CORP. I WOULD LIKE TO SEE A TRIAL DATE SET ALONG WITH AN EXPERT DISCLOSURE AND DEPOSITION SCHEDULES SO THAT WE DON'T GET BOXED INTO THE STATUTORY TIME FRAMES AND END UP SPENDING A LOT OF MONEY ON EXPEDITED DEPOSITIONS AND TRANSCRIPTS. I THINK IT MIGHT BE USEFUL TO HAVE SOME FORM OF A CASE MANAGEMENT ORDER THAT SETS THE TRIAL AND THEN SETS ADEQUATE EXPERT DISCLOSURE.

MR. LEMIEUX: MR. KUHS IS MAKING A GOOD POINT. I BELIEVE A LOT OF COUNSEL RECALL THAT THE LAST PHASE OF THE TRIAL WE TRIED TO DO AT LOT OF WORK IN A FEW WEEKS, AND THAT CAUSED A LOT OF PROBLEMS BACK AND FORTH IN

PROBLEMS. AND, I THINK, IT MAKES SENSE TO GET THIS ESTABLISHED AND TRY TO DO THIS IN AN EASIER BASIS AND MAKE SURE THAT PEOPLE ARE NOT RETAKING DEPOSITIONS AND SO ON.

THE COURT: AND --

MR. JOYCE: AND ALONG THAT LINE, YOUR HONOR, AGAIN, THIS IS MR. JOYCE ON BEHALF DIAMOND FARMING AND CRYSTAL ORGANIC. IF WE HAD ENOUGH TIME IN ADVANCE, THEN -- BECAUSE I REMEMBER THE LAST GO AROUND. I PUT, LIKE, 1300 MILES ON MY CAR GOING FROM SACRAMENTO TO ONTARIO AND BACK TO SACRAMENTO ALL IN A WEEK'S TIME. IF WE COULD SPREAD THAT OUT, WE WOULDN'T GET SO SQUEEZED INTO A SHORT WINDOW THAT IT BECOMES UNMANAGEABLE.

THE COURT: ALL RIGHT.

MR. KALFAYAN: YOUR HONOR, RALPH KALFAYAN. I DON'T WANT TO BE BOXED IN. I'M OKAY WITH EVERY TRIAL DATE SET, BUT I AM GOING TO BE RUNNING BACK HERE TO THE COURT SAYING WHEN ARE WE GOING TO APPOINT THAT NEUTRAL EXPERT.

AND SO I JUST DON'T WANT TO BE BOXED IN WITH A DATE, AND THEN THE NEUTRAL EXPERT COMES IN AND -- I JUST WANT THE COURT TO KNOW THAT I'M GOING TO BE COMING RIGHT BACK IN IF YOU SET A TRIAL ASKING FOR THAT NEUTRAL EXPERT IMMEDIATELY.

THE COURT: MR. KUNEY.

MR. KUNEY: THANK YOU, YOUR HONOR. THANK YOU, YOUR HONOR. I APPRECIATE THAT THE PEOPLE WANT TO MOVE THE CASE FORWARD, BUT I'M LOOKING AT MR. DUNN'S MOST RECENT SUBMITTAL. AND JUST WITH REGARD TO THE WILLIS

CLASS ALONE, THEY ARE IDENTIFYING 1628 CLASS MEMBERS THAT OPTED OUT THAT HAVEN'T BEEN SERVED AND THAT AREN'T BEFORE THIS COURT.

AND I QUESTION WHETHER AT THIS JUNCTURE GIVEN THAT FACT IT IS APPROPRIATE TO SET A TRIAL SETTING DATE WITH ALL THE PARTICULARS AND ALL OF THE PROCEDURAL EVENTS THAT HAVE TO OCCUR. BECAUSE IT IS OBVIOUSLY GOING TO AFFECT POTENTIALLY AT LEAST 1600 PARTIES AND MAYBE -- I DON'T KNOW HOW MANY OTHERS.

THE COURT: MR. DUNN.

MR. DUNN: I DON'T WANT TO DISAGREE WITH -- I'M NOT GETTING INVOLVED IN THIS CONVERSATION ON SETTING TRIAL NOW. I JUST WANT TO RESPOND TO MR. KUNEY'S COMMENT ABOUT THE WILLIS CLASS MEMBERS WHO HAVE OPTED OUT OF THE CLASS.

THE COURT PERHAPS WILL RECALL THERE WAS EXTENSIVE DISCUSSION PRIMARILY INITIATED BY THE UNITED STATES THAT THE OPT-OUT PORTION OR AVAILABILITY FOR THE WILLIS CLASS MEMBERS WAS NOT TO OPT OUT OF THE CLASS. IT WAS TO OPT OUT OF THE CLASS.

THE COURT DOES NOT LOSE JURISDICTION OVER THEM. THAT WAS MADE VERY CLEAR BECAUSE OF THE CONSTANT MCCARRAN CONCERNS PRESENT IN THIS CASE.

SO THEY ARE PRO PER. THEY ARE -- THEY WERE -- THE COURT HAD ACQUIRED JURISDICTION OVER THEM ONCE THE CLASS WAS CERTIFIED AND NOTICE WENT TO THEM. THEY HAVE SIMPLY NOW DECIDED TO BECOME PRO PER LITIGANTS.

WE COULD HAVE A CONVERSATION WITH THE COURT

AT SOME POINT, YOU KNOW, ABOUT WHAT IS -- WHAT MAILING WE COULD SEND TO THEM ABOUT THE NEXT CLASS -- EXCUSE ME ABOUT THE NEXT COURT HEARING AND HOW THEY ARE TO GET NOTICE, BUT THERE IS NO -- TO THINK THAT WE ARE NOW GOING TO GO THROUGH A PROCESS OF PERSONALLY SERVING PEOPLE THAT IS NOT GOING TO HAPPEN.

THE COURT: OKAY. MR. KALFAYAN.

MR. KALFAYAN: YOUR HONOR, THE COURT CERTIFIED A CLASS. THE NOTICE WENT OUT TO THE CLASS. NOW, WE HAVE A LIST OF MEMBERS IN THE WILLIS CLASS. THERE ARE INDIVIDUALS THAT HAVE OPTED OUT OF THE WILLIS CLASS. THEY ARE NO LONGER IN THE WILLIS CLASS.

AND I DON'T BELIEVE THE COURT -- THEY ARE NOT MY CLIENTS. I DON'T BELIEVE THE COURT HAS JURISDICTION OVER THEM UNTIL SOMEONE SERVES THEM. SO I THINK THEY HAVE TO BE SERVED WITH PROCESS. AND MY UNDERSTANDING IS THAT MR. DUNN WAS GOING TO SERVE THEM WITH PROCESS. SO I'M NOT SURE WHERE THAT LEAVES US.

MR. JOYCE: AGAIN, THIS IS BOB JOYCE. I REMIND THE COURT THAT AT THE HEARING ON CLASS CERTIFICATION THAT THE COURT ITSELF MADE CLEAR THAT IN THE EVENT THAT MEMBERS OF THE WILLIS CLASS WERE TO OPT OUT THAT THE

PURVEYORS WOULD OF NECESSITY BE COMPELLED TO SERVE THEM WITH THE AMENDED CROSS-COMPLAINT ASSERTING THEREIN THE CLAIM. THAT IS THE PRIMARY ISSUE IN THIS CASE AS FAR AS I'M CONCERNED.

THAT IS WHERE WE ARE NOW.

MR. DUNN: I DON'T HAVE A PROBLEM OR FORESEE A PROBLEM IN MAILING THESE INDIVIDUALS WHO HAVE OPTED OUT

A COPY OF THE RELEVANT PLEADING.

THE COURT: NOTICE OF SERVICE --

MR. JOYCE: MAILING IS NOT --

THE COURT: MR. JOYCE, JUST A MOMENT. MAILING WITH A NOTICE OF ACKNOWLEDGMENT OF SERVICE THAT THEY CAN RETURN GIVES THE COURT JURISDICTION AS EFFECTIVE SERVICE. TO THE EXTENT THAT THEY DO NOT RETURN THE NOTICE AND ACKNOWLEDGE THE SERVICE, THEN I THINK WE HAVE TO SERVE THEM PERSONALLY, UNFORTUNATELY, IN ORDER FOR THE COURT TO HAVE JURISDICTION OVER THEM.

IF THEY HAVE OPTED OUT OF THE CLASS, THEY ARE NO LONGER CLASS MEMBERS. THE COURT DOES NOT HAVE JURISDICTION OVER THEM. ALL WE SENT THEM WAS A NOTICE OF THE CLASS.

SO, UNFORTUNATELY, I UNDERSTAND THE COST AND ALL THE REST OF IT, BUT IT HAS TO BE DONE.

MR. DUNN: THANK YOU, YOUR HONOR.

MR. JOYCE: THANK YOU, YOUR HONOR.

MR. LEMIEUX: I DON'T HEAR ANY ARGUMENT THAT CAN'T BE COMPLETED ON SEVERAL MONTHS WE HAVE GOT AHEAD OF US. SO BASED ON EVERYTHING THAT I HAVE HEARD, I WOULD AGAIN

ASK THE COURT TO SET A TRIAL DATE MAYBE EVEN SOMETIME EARLY EXPERT DESIGNATION SO THAT WE CAN GET THAT PROCESS DONE.

THE COURT: I'M NOT GOING TO DO THAT. I DON'T THINK IT IS APPROPRIATE TO SET THE TRIAL DATE UNTIL THE CASE IS AT ISSUE. IT IS NOT AT ISSUE UNTIL EVERYBODY HAS BEEN SERVED AND THE CLASS HAS RESPONDED APPROPRIATELY.

AS MUCH AS I WOULD LIKE TO SET A TRIAL DATE -- BELIEVE ME, I WOULD LIKE THIS CASE TO GET TO TRIAL A LOT SOONER THAN IT IS, EVEN AS EARLY AS TWO YEARS AGO IF I HAD HAD MY WAY, BUT I DIDN'T; AND I CAN'T.

AND, THEREFORE, WE ARE GOING TO HAVE TO PLAY BY THE RULES.

MR. LEMIEUX: I UNDERSTAND THAT, YOUR HONOR. LET ME JUST SAY FINALLY ONE LAST THING, AND THAT IS THAT THE PUBLIC WATER PURVEYORS ARE GOING TO PRESENT EVIDENCE THAT IS GOING TO SHOW THE COURT THAT THERE IS A NEED FOR THE COURT TO TAKE ACTION TO PROTECT THIS BASIN.

SO I JUST WANT TO POINT OUT THAT WE ARE GOING TO HAVE TO MOVE QUICKLY AT SOME POINT. BECAUSE THERE IS A PROBLEM THAT NEEDS TO BE ADDRESSED, AND IT IS NOT BEING ADDRESSED RIGHT NOW, YOUR HONOR.

THE COURT: WELL, IF THERE IS AN INTERIM REMEDY THAT YOU ARE SEEKING, YOU NEED TO DO THAT IN THE APPROPRIATE MANNER. ONE OF THE THINGS THAT I FRANKLY HAVE BEEN THINKING ABOUT FOR A LONG TIME ABOUT THIS CASE

IS WHETHER OR NOT I SHOULD MAKE A REFERENCE TO THE RESOURCES WATER BOARD.

AND, FRANKLY, THE MORE I HEAR, THE MORE INCLINED I AM TO BELIEVE THAT IS AN APPROPRIATE REMEDY. I WON'T DO THAT WITHOUT GIVING COUNSEL AN OPPORTUNITY TO BRIEF IT AND ARGUE IT; BUT IF I MAKE THAT REFERENCE, THAT IS GOING TO DELAY THINGS, BUT IT WILL ULTIMATELY RESULT IN SOME VERY SPECIFIC FINDINGS.

MR. LEMIEUX: THAT IS FINE. THAT IS MY CONCERN

PRELIMINARILY ON THAT -- THAT, AGAIN, THAT WOULD DELAY IT CONSIDERABLY, BUT I ACCEPT YOUR SUGGESTION ABOUT SOME KIND OF PRELIMINARY REMEDY, AND THAT IS SOMETHING, FRANKLY, WE HAVE CONSIDERED AND MAYBE THAT IS SOMETHING WE COULD SCHEDULE BEFORE THE END OF THE YEAR.

THE COURT: WELL, YOU NEED TO DO THAT IF YOU ARE GOING DO IT. BUT AT THIS POINT, I'M GOING TO SET A TRIAL SETTING CONFERENCE FOR AUGUST, AND I NEED TO KNOW SOME DATES IN AUGUST.

(THE COURT AND THE CLERK CONFER OFF THE RECORD.)

THE COURT: SUPPOSE WE SET THE TRIAL SETTING FOR AUGUST THE 17TH. THAT IS A MONDAY, AUGUST 17, AT 9:00 A.M.

MR. ZIMMER: WILL IT BE IN LOS ANGELES, YOUR HONOR?

THE COURT: IT WILL BE HERE, YES.

MR. JOYCE: YOUR HONOR?

THE COURT: YES.

MR. JOYCE: THAT IS A BIT OUT IN TIME. WOULD IT MAKE ANY SENSE TO HAVE AN INTERIM CMC JUST IN CASE ISSUES HAVE ARISEN OR -- I'M JUST CONCERNED ABOUT GETTING TOO MUCH DISTANCE BETWEEN CONTACT BETWEEN US AND YOU.

THE COURT: WELL, I SHARE THAT. AND, OBVIOUSLY, WE MAY NEED SOME FURTHER CASE MANAGEMENT CONFERENCES, AND I'LL BE HAPPY TO SET THOSE ON AN AS-NEEDED BASIS. SO IT OCCURS TO ME THAT WE WILL KNOW A LITTLE BIT MORE

ABOUT THAT AFTER WE HAVE THE SETTLEMENT CONFERENCES ON THE 13TH.

MR. JOYCE: I ASSUME THAT IF THE PARTY THOUGHT IT WAS NECESSARY, THEY COULD MAKE A REQUEST TO THE COURT PER THE WEBSITE.

THE COURT: ANYTIME.

MR. JOYCE: THANK YOU, YOUR HONOR.

THE COURT: NOW, MR. ZIMMER, AT SOME POINT YOU WANTED TO START TALKING ABOUT EXPERTS AGAIN. WAS THERE SOMETHING THAT WE DIDN'T TALK ABOUT THAT YOU WANTED TO TALK ABOUT?

MR. ZIMMER: NO, YOUR HONOR. I THINK WE HAVE COVERED IT. THANK YOU.

THE COURT: MR. LEININGER, ANYTHING FURTHER ON THE ISSUE OF TRIAL SETTING?

MR. LEININGER: NO, YOUR HONOR.

THE COURT: OKAY. ALL RIGHT. ARE THERE ANY OTHER ISSUES THAT WE SHOULD TAKE UP THIS MORNING? I'M SURE

THERE ARE.

(LAUGHING)

THE COURT: OKAY. ALL RIGHT. THEN I WILL -- WE WILL BE IN RECESS. I'LL PUT OUT A MINUTE ORDER. AND I'M GOING TO EXPECT ANYBODY WHO WANTS TO OBJECT TO THE COURT ENGAGING IN EARLY SETTLEMENT DISCUSSIONS WILL ADVISE THE COURT PROMPTLY WITHIN A FEW DAYS, 48 HOURS OF THE TIME THAT YOU GET THE NOTICE, WHICH WILL BE POSTED PROBABLY TODAY.

AND IF YOU DO OBJECT TO IT, I WOULD LIKE YOU

TO PROPOSE AN ALTERNATIVE BECAUSE I REALLY -- I THINK IT IS IMPORTANT FOR THE COURT TO ASSIST THE PARTIES WITH REGARD TO TRYING TO RESOLVE THE ISSUES THAT OBVIOUSLY ARE SLOWING US DOWN. AND THOSE ARE THE ISSUES THAT I WANT TO ADDRESS WITH THE CLASS MEMBERS.

I THINK IT WILL MAKE A SIGNIFICANT DIFFERENCE IN THE ADJUDICATION PROCESS IF WE CAN GET THOSE MATTERS RESOLVED ON A TENTATIVE BASIS.

AND I WOULD JUST NOTE FOR YOU THAT ANY SETTLEMENT THAT IS REACHED, AGAIN, IS TENTATIVE, AND IT IS SUBJECT TO OBJECTIONS. PARTIES WILL HAVE THE RIGHT TO WEIGH IN ON THE APPROPRIATENESS OF THE SETTLEMENT AND THE EFFECT ON THE OTHER PARTIES TO THIS ADJUDICATION PROCESS.

I CAN ALSO TELL YOU THAT WE ARE NOT GOING TO TALK ABOUT THE ISSUES THAT WOULD NOT BE DIRECTLY INVOLVED WITH THE CLASS AND THESE VERY LIMITED ISSUES.

SO THAT TO AVOID ANY POSSIBILITY THAT THERE MIGHT BE SOME EX-PARTE COMMUNICATION, IT WILL NOT AFFECT YOU BECAUSE IT WILL NOT INVOLVE YOU OR YOUR CLIENTS. IT WILL ONLY INVOLVE THESE VERY NARROW ISSUES.

MR. LEMIEUX: YOUR HONOR, I BELIEVE -- KEITH LEMIEUX. I BELIEVE THAT THE COURT'S PARTICIPATION IS VERY IMPORTANT, BUT IF FOR SOME REASON SOME PARTY OBJECTS TO IT, I WAS RECOMMENDING TO THE PARTICIPATING PARTIES THAT WE JUST MEET ANYWAY AND TRY TO HAVE A TALK THAT DAY TO JUST KEEP THE DATE.

WE DON'T HAVE TO DO IT DOWN HERE. WE COULD DO IT AT SOMEBODY'S OFFICE.

THE COURT: ALL RIGHT. THAT IS FINE. THAT IS UP TO YOU. BUT TO THE EXTENT THAT THE COURT CAN ASSIST THE PARTIES, I'M VERY WILLING AND WOULD LIKE TO DO THAT BECAUSE I THINK THAT WE CAN ACCOMPLISH AT LEAST THE ELIMINATION OF AT LEAST SOME ISSUES.

ALL RIGHT. MR. JOYCE.

MR. JOYCE: YES, YOUR HONOR, MR. JOYCE ON BEHALF OF DIAMOND FARMING AND CRYSTAL ORGANIC. WITH RESPECT TO THE TIME IN WHICH WE RESPOND TO THE PROOF OF NOTICE, SOLICITING THE OBJECTIONS, CAN THE COURT EXTEND IT TO 72 HOURS ONLY IN THE REALIZATION THAT GETTING CLIENT INPUT AND CONSENT IS GOING TO BE NECESSARY?

THE COURT: YES.

MR. JOYCE: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. ANYTHING ELSE? ALL RIGHT. THANK YOU VERY MUCH. WE WILL BE IN RECESS. I HOPE TO

SEE SOME OF YOU.

(THE PROCEEDINGS WERE THEN CONCLUDED.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 1 HON. JACK KOMAR, JUDGE

COORDINATION PROCEEDING SPECIAL TITLE (RULE 1550B) ANTELOPE VALLEY GROUNDWATER CASES	JUDICIAL COUNCIL COORDINATION NO. JCCP4408
PALMDALE WATER DISTRICT AND QUARTZ HILL WATER DISTRICT, CROSS-COMPLAINANTS, VS. LOS ANGELES COUNTY WATERWORKS, DISTRICT NO. 40, ET AL, CROSS-DEFENDANTS.	SANTA CLARA CASE NO. 1-05-CV-049053

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

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

DATED THIS 30TH DAY OF APRIL OF 2009.

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OFFICIAL REPORTER, CSR #5585