

# Exhibit 34

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 FOR THE COUNTY OF LOS ANGELES  
3 DEPARTMENT NO. 1 HON. JACK KOMAR, JUDGE  
4 COORDINATION PROCEEDING )  
5 SPECIAL TITLE (RULE 1550B) )  
6 ANTELOPE VALLEY GROUNDWATER CASES ) JUDICIAL COUNCIL  
7 ) COORDINATION  
8 ) NO. JCCP4408  
9 )  
10 )  
11 ) PALMDALE WATER DISTRICT AND ) SANTA CLARA CASE NO.  
12 ) QUARTZ HILL WATER DISTRICT, ) 1-05-CV-049053  
13 ) CROSS-COMPLAINANTS, )  
14 )  
15 ) VS. )  
16 )  
17 ) LOS ANGELES COUNTY WATERWORKS, )  
18 ) DISTRICT NO. 40, ET AL, )  
19 ) CROSS-DEFENDANTS. )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, MARCH 8, 2010

APPEARANCES:

(SEE APPEARANCE PAGES)

GINGER WELKER, CSR #5585  
OFFICIAL REPORTER

1 APPEARANCES:

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3 ROSAMOND CSD & L.A. COUNTY BEST, BEST & KRIEGER, LLP  
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8 PALMDALE WATER DISTRICT LAGERLOF, SENEAL, GOSNEY  
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13 ANTELOPE VALLEY GROUNDWATER  
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1 CASE NUMBER: JCCP4408  
2 CASE NAME: ANTELOPE VALLEY  
3 LOS ANGELES, CALIFORNIA, MONDAY, MARCH 8, 2010  
4 DEPARTMENT NO. 1 HON. JACK KOMAR  
5 REPORTER GINGER WELKER, CSR #5585  
6 TIME: 9:00 A.M.  
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7 APPEARANCES: (SEE TITLE PAGE)

8

9 THE COURT: WE HAVE IDENTIFIED EVERYONE ON THE  
10 TELEPHONE. WE HAVE A RECORD. I WILL ASK COUNSEL WHO  
11 ARE IN ATTENDANCE HERE THIS MORNING TO IDENTIFY  
12 THEMSELVES AT THIS TIME AND INDICATE WHO YOU ARE  
13 REPRESENTING VERY BRIEFLY. AND THEN AS WE GO THROUGH  
14 THE HEARINGS IN THIS MATTER, I WOULD LIKE YOU TO  
15 IDENTIFY YOURSELVES ONLY BY NAME EACH TIME YOU SPEAK FOR  
16 THE BENEFIT OF THE REPORTER AND THE RECORD. YOU DON'T  
17 HAVE TO TELL US WHO YOU REPRESENT EACH TIME. ALL RIGHT.

18 SO WE WILL START OVER HERE WITH MR. ZIMMER  
19 HERE ON THE LEFT.

20 MR. ZIMMER: GOOD MORNING, YOUR HONOR, RICHARD  
21 ZIMMER FOR BOLTHOUSE PROPERTIES, INC.

22 MR. SLOAN: GOOD MORNING, YOUR HONOR, WILLIAM  
23 SLOAN FOR U.S. BORAX.

24 MR. FIFE: GOOD MORNING, YOUR HONOR, MICHAEL FIFE  
25 FOR THE ANTELOPE VALLEY GROUNDWATER AGREEMENT  
26 ASSOCIATION.

27 MR. BUNN: GOOD MORNING, YOUR HONOR, THOMAS BUNN  
28 FOR PALMDALE WATER DISTRICT.

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2

1 MR. MARKMAN: GOOD MORNING, YOUR HONOR, JAMES  
2 MARKMAN FOR THE CITY OF PALMDALE.

3 MR. DUNN: GOOD MORNING, YOUR HONOR, JEFFREY DUNN  
4 FOR ROSAMOND COMMUNITY SERVICES DISTRICT AND LOS ANGELES  
5 COUNTY WATERWORKS DISTRICT NO. 40.

6 MR. WELLEN: GOOD MORNING, YOUR HONOR, WARREN  
7 WELLEN WITH THE COUNTY COUNSEL'S OFFICE FOR LOS ANGELES

8 COUNTY WATERWORKS DISTRICT NO. 40.

9 MR. LEMIEUX: GOOD MORNING, KEITH LEMIEUX,  
10 L-E-M-I-E-U-X, ON BEHALF OF THE LITTLEROCK CREEK  
11 IRRIGATION DISTRICT, ET AL.

12 THE COURT: MR. JOYCE.

13 MR. JOYCE: GOOD MORNING, YOUR HONOR, BOB JOYCE ON  
14 BEHALF OF THE DIAMOND FARMING COMPANY, ET AL.

15 MR. KALFAYAN: GOOD MORNING, YOUR HONOR, RALPH  
16 KALFAYAN ON BEHALF OF THE WILLIS CLASS.

17 MS. TRAGER: GOOD MORNING, YOUR HONOR, SUSAN  
18 TRAGER ON BEHALF OF THE PHELAN PINON HILLS COMMUNITY  
19 SERVICES --

20 MR. RENWICK: EDWARD RENWICK --

21 THE COURT: NO, LET'S KEEP GOING ACROSS ON THAT  
22 ROW.

23 MS. ALLEN: GOOD MORNING, YOUR HONOR. MARLENE  
24 ALLEN FROM GRESHAM SAVAGE ON BEHALF OF AV UNITED GROUP,  
25 SHEEP CREEK, AND SERVICE ROCK.

26 MR. RENWICK: EDWARD RENWICK, YOUR HONOR, ON  
27 BEHALF OF WAGAS LAND COMPANY.

28 MR. EVERTZ: GOOD MORNING, YOUR HONOR, DOUG EVERTZ

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3

1 ON BEHALF OF THE CITY OF LANCASTER.

2 MR. TOOTLE: GOOD MORNING, JOHN TOOTLE --

3 THE REPORTER: I'M SORRY. I DIDN'T QUITE HEAR  
4 YOU.

5 MR. TOOTLE: JOHN TOOTLE ON BEHALF OF CALIFORNIA  
6 WATER SERVICE COMPANY.

7 THE REPORTER: THANK YOU.

8 MR. WEEKS: BRAD WEEKS FOR QUARTZ HILLS WATER  
Page 9

9 DISTRICT.

10 MS. MILLER: ANNA MILLER FOR ANTELOPE VALLEY JOINT  
11 UNION HIGH SCHOOL DISTRICT.

12 MR. CHESTER: TED CHESTER ON BEHALF OF LANDINV.

13 MR. O'LEARY: GOOD MORNING, YOUR HONOR, DAN  
14 O'LEARY FOR THE WOOD CLASS.

15 THE COURT: ALL RIGHT. WE HAVE A NUMBER OF  
16 MATTERS ON THIS MORNING, AND THE FIRST MATTER I WANT TO  
17 ADDRESS AND HEAR FURTHER ARGUMENTS ON IS THE MOTION  
18 PURSUANT TO 170.6. I ASK THE MOVING PARTY IF THEY HAVE  
19 ANYTHING FURTHER THEY WISH TO ADDRESS.

20 MR. FIFE?

21 MR. FIFE: NO, WE HAVE ADDRESSED EVERYTHING IN OUR  
22 PAPERS.

23 THE COURT: ANYTHING FURTHER IN THE OPPOSITION?

24 MR. MARKMAN: NO, YOUR HONOR. WE THINK THE PAPERS  
25 STATE OUR POSITION.

26 THE COURT: I HAVE READ YOUR PAPERS FROM THIS  
27 MOTION, AND THE TRIAL TIME -- IT WAS MOVED. AND THE  
28 COURT HAS ALSO READ THE CASES THAT YOU CITED. I THINK

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1 THE TRANSCRIPT OF THE HEARING AT THE TIME IN THIS MATTER  
2 WAS ORDERED COORDINATED.

3 I HAVE ALSO LOOKED BACK AT A NUMBER OF THE  
4 PAPERS THAT HAVE BEEN FILED BY VARIOUS PARTIES  
5 THROUGHOUT THIS COURSE OF THIS LITIGATION. AND IT SEEMS  
6 TO ME THAT WHEN YOU TAKE THE TOTALITY OF THOSE PREVIOUS  
7 HEARINGS, WHAT THE PARTIES HAVE HAD TO SAY ABOUT THESE  
8 PROCEEDINGS, IT SEEMS TO ME THAT THERE IS REALLY NOTHING  
9 NEW THAT HAS BEEN CREATED BY THE CONSOLIDATION IN THE

10 FIRST PLACE.

11 THE NISSAN CASE, I DON'T THINK IS ON POINT  
12 HERE WHERE THE CHALLENGES WERE TO TWO NEW CASES BROUGHT  
13 BEFORE JUDGE ROSS.

14 AND I THINK SOMETHING THAT WAS SAID BY  
15 ACTUALLY MOVING PARTIES IN THIS CASE BACK LAST YEAR  
16 EARLY ON IS SIGNIFICANT WITH REGARD TO WHERE WE ARE AND  
17 WHERE WE ARE GOING IN THIS CASE.

18 AND I'M GOING TO QUOTE FROM SOME PAPERS THAT  
19 WERE FILED ON APRIL 13 LAST YEAR BY THE BROWNSTEIN FIRM.  
20 "THE PURPOSE OF THIS ADJUDICATION IS TO INITIATE A  
21 PROCESS OF MANAGEMENT OF THE WATER RESOURCES OF THE  
22 ANTELOPE VALLEY."

23 THAT IN MY VIEW HAS ALWAYS BEEN THE FOCUS OF  
24 THIS CASE, AND IT HAS OF NECESSITY ALWAYS INVOLVED ALL  
25 THE PARTIES WHO OWN LAND OR WHO ARE APPROPRIATORS IN  
26 THIS VALLEY.

27 AND IT SEEMS TO ME THAT NOTHING HAS CHANGED  
28 FROM THE TIME THAT THIS MATTER WAS ORDERED COORDINATED

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1 UNTIL NOW. ALL OF THE PARTIES WHO ARE HERE WHO WERE  
2 NAMED AS PARTIES OF ANY OF THE ACTIONS WERE ASSIGNED TO  
3 THIS COURT INVOLVING THE PARTICULAR ISSUE OF THE  
4 ADJUDICATION OF THE MANAGEMENT OF THE WATER RESOURCES OF  
5 THIS VALLEY.

6 THE FACT THAT THERE ARE ADD-ON CASES DOES  
7 NOTHING TO CHANGE IT. IT SEEMS TO ME THAT THE RULES OF  
8 COURT UNDER 170.6 ARE REAL CLEAR AS TO THAT. SO THAT I  
9 AM GOING TO FIND THAT THIS CHALLENGE IS UNTIMELY, AND  
10 I'M GOING TO ORDER IT STRICKEN.

11                   NOW, I HAVE BEEN WRONG BEFORE, AND WHO KNOWS  
12 WHAT THE ULTIMATE DETERMINATION OF THIS RULING WILL BE;  
13 BUT THAT IS GOING TO BE MY RULING WITH REGARD TO THIS  
14 CASE. AND I WOULD LIKE TO MOVE FORWARD NOW. I WILL  
15 GIVE YOU A WRITTEN ORDER WITHIN THE NEXT COUPLE OF DAYS  
16 ESSENTIALLY SAYING WHAT I JUST SAID, BUT WE WILL  
17 FORMALIZE IT. OKAY.

18                   ALL RIGHT. NOW, LET'S PROCEED TO THE  
19 SEVERAL OTHER MOTIONS THAT WE HAVE HERE AND SEVERAL  
20 OTHER ITEMS THAT WE HAVE. AND THE FIRST THING I WANT TO  
21 TAKE UP IS THE ORDER OF PUBLICATION THAT I SIGNED LAST  
22 WEEK. AND I UNDERSTAND THAT THERE IS AN OBJECTION TO  
23 THAT. IT HAS BEEN FILED.

24                   AND THERE IS A REQUEST THAT THERE BE  
25 PUBLICATION IN AN ADDITIONAL LOCAL NEWSPAPER, AND I  
26 WOULD LIKE TO HAVE THE PROPONENTS OF THE ORDER  
27 PUBLICATION ADDRESS THAT, IF YOU HAVE HAD A CHANCE TO  
28 REVIEW THAT. BECAUSE I SUSPECT THAT THE PUBLICATION HAS

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1 NOT COMMENCED AT THIS POINT. AND IT DOES SEEM TO ME  
2 THAT OUR OBJECTIVE IS TO ENSURE AS MUCH AS POSSIBLE THAT  
3 EVERYBODY GETS NOTICES.

4                   MR. DUNN: I HAVE SEEN ONE OF THE OBJECTIONS.  
5 THIS IS JEFFREY DUNN FOR ROSAMOND COMMUNITY SERVICES  
6 DISTRICT AND COUNTY WATERWORKS DISTRICT NO. 40. I HAVE  
7 SEEN THE ONE FILED BY -- I THINK IT IS MR. FIFE'S  
8 OFFICE.

9                   THE COURT: THAT IS THE ONLY ONE THAT I'M AWARE OF  
10 AT THIS POINT.

11                   MR. DUNN: IF I RECALL IT CORRECTLY, I THINK THE

12 OBJECTION IS TO INCLUDE THE ANTELOPE VALLEY PRESS. JUST  
13 AS A BRIEF BACKGROUND, THE PROPOSED ORDER THAT WAS  
14 PRESENTED TO THE COURT WAS THE SAME ORDER THAT WAS  
15 PRESENTED EARLIER TO THE COURT FOR THE PUBLICATION OF  
16 SERVICE OF PROCESS FOR INDIVIDUALS WHO WERE NAMED  
17 PARTIES TO THE CASE.

18           THESE WERE INDIVIDUALS THAT PREDATE THE  
19 CLASS. FOR THAT PARTICULAR ORDER, THOSE TWO NEWSPAPERS,  
20 THE LOS ANGELES TIMES AND THE BAKERSVILLE -- THE  
21 CALIFORNIA PUBLICATION WERE THE TWO PAPERS ORDERED FOR  
22 THAT PREVIOUS PUBLICATION.

23           THERE WAS, HOWEVER, SINCE THAT ORDER THERE  
24 WAS -- THERE HAVE BEEN PROCEEDINGS INVOLVING TWO CLASSES  
25 OF COURSE, AND THERE HAS BEEN ORDERS RELATING TO CLASS  
26 NOTICE THAT INVOLVED OTHER PUBLICATION. I'M WORKING  
27 FROM MEMORY HERE. IF I HAVE MADE A MISTAKE HERE, EITHER  
28 MR. KALFAYAN OR MR. MCLACHLAN CAN CORRECT ME. IF I AM

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1 NOT MISTAKEN, I THINK THEY DID INCLUDE THE ANTELOPE  
2 VALLEY PRESS. SO I AM NOT TERRIBLY OPPOSED TO ADDING  
3 THE ANTELOPE VALLEY PRESS PUBLICATION. I JUST DON'T  
4 WANT TO SLOW THINGS DOWN.

5           THE COURT: WELL, THIS CASE THAT'S GONE SO  
6 SLOWLY -- IT IS DISAPPOINTING. BUT I DON'T THINK THAT  
7 HAS BEEN SLOWING THEM DOWN. I AM GOING TO APPROVE THE  
8 MODIFICATION OF THE ORDER RIGHT NOW TO ADD TO THE  
9 NEWSPAPER PROPOSED WHICH IS THE ANTELOPE VALLEY PRESS.

10           MR. DUNN: ALL RIGHT. THANK YOU, YOUR HONOR.

11           THE COURT: AND YOU CAN ACT UPON THAT ORAL ORDER  
12 RIGHT NOW.

13 MR. DUNN: THANK YOU.

14 THE COURT: PLEASE, MR. FIFE, CAN YOU PREPARE A  
15 MODIFICATION OR AN ORDER MODIFYING THE PUBLICATION AND  
16 SUBMIT IT TO ME FOR SIGNATURE?

17 MR. FIFE: YES.

18 MS. GOLDSMITH: YOUR HONOR, THIS IS JAN GOLDSMITH  
19 FOR THE CITY OF LOS ANGELES ON THE TELEPHONE. JUST TO  
20 LET YOU KNOW THAT THE PHONE IS SORT OF CUTTING IN AND  
21 OUT. PARTICULARLY, IT IS DIFFICULT TO HEAR LOWER  
22 SPEAKING VOICES. SO IF PEOPLE COULD SPEAK UP, IT WOULD  
23 CERTAINLY HELP ME.

24 THE COURT: I GUESS IT WAS JERRY SEINFELD WHO  
25 FIRST USED THE WORDS LOW SPEAKER OR LOW TALKER.

26

27 (LAUGHTER)

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8

1 MS. GOLDSMITH: MR. DUNN IS A LOW TALKER.

2 THE COURT: OKAY. WHAT I'M GOING TO ASK COUNSEL  
3 TO DO IS SPEAK AS LOUDLY AS YOU CAN AND MOVE TO THE  
4 MICROPHONE TO ENSURE THAT EVERYONE CAN HEAR YOU.

5 MS. GOLDSMITH: THANK YOU, YOUR HONOR.

6 THE COURT: THANK YOU. ALL RIGHT. LET'S MOVE ON  
7 TO THE MOTION BY THE NEW FIRM TO WITHDRAW FROM A  
8 PARTICULAR CLIENT -- ONE OF THE WATER COMPANIES. ALL  
9 RIGHT.

10 MR. LEMIEUX: GOOD MORNING, YOUR HONOR, KEITH  
11 LEMIEUX FOR LITTLEROCK CREEK. WE HAVE HAD PROBLEMS  
12 COMMUNICATING. THEY ACTUALLY ESSENTIALLY HAVE GONE DARK  
13 TO US, THIS CLIENT, FOR A WHILE. I DON'T WANT TO SAY

14 ANYMORE THAN THAT BECAUSE OF ATTORNEY-CLIENT CONFIDENCE.

15 THE COURT: WE ARE HERE TO SET IT FOR -- FOR  
16 HEARING IF THAT'S YOUR REQUEST.

17 MR. LEMIEUX: YES, PLEASE.

18 THE COURT: ALL RIGHT. AND I'LL SET IT FOR A  
19 TELEPHONIC HEARING RATHER THAN APPEARANCE HERE;  
20 ALTHOUGH, IT WILL BE FOCUSED OUT OF THIS DEPARTMENT.

21 WHEN WOULD YOU LIKE TO DO THAT?

22 MR. LEMIEUX: WHATEVER WORKS FOR THE COURT'S  
23 CALENDAR, YOUR HONOR.

24 THE COURT: LET ME SEE IF I CAN FIGURE IT OUT.

25 MR. LEMIEUX: PERHAPS, WE COULD DO IT WHENEVER THE  
26 NEXT STATUS CONFERENCE WOULD BE.

27 THE COURT: WELL, I THINK WE SHOULD DO IT BEFORE  
28 THAT.

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1 MR. LEMIEUX: OKAY.

2 THE COURT: BECAUSE I THINK THERE IS GOING TO BE  
3 SOME ACTIVITIES MAYBE.

4 WHY DON'T WE SET IT FOR MARCH, THE 29TH, AT  
5 9:00 A.M.

6 MR. LEMIEUX: BY TELEPHONE?

7 THE COURT: YES.

8 MR. LEMIEUX: THANK YOU, YOUR HONOR.

9 THE COURT: ALL RIGHT. LET'S SEE WHAT WE NEED TO  
10 DO NEXT.

11 MR. LEMIEUX, WITH REGARD TO YOUR OTHER  
12 MOTION WHICH IS THE MOTION TO DISQUALIFY WAS ACTUALLY  
13 CONTINUED AND RESET TO THIS DATE, HAVE YOU FILED WAIVERS  
14 FROM EACH OF YOUR CLIENTS IN THAT REGARD?



15 MR. LEMIEUX: THAT IS CORRECT, YOUR HONOR.

16 THE COURT: OKAY.

17 MR. LEMIEUX: IT IS A LITTLE BIT OF A MYSTERY --  
18 MYSTERY-WISE IT'S CONTINUING THIS MOTION. MY  
19 UNDERSTANDING IS THAT YOU HAVE RULED THAT NO PARTY IN  
20 THIS CASE -- THE MOTION IS BASED ON THE NOTION THAT OUR  
21 PARTIES ARE SUING EACH OTHER. YOUR HONOR HAS AFFIRMED  
22 MANY TIMES THAT NO PARTY IN THIS CASE IS SUING EACH  
23 OTHER AGAINST THEIR WILL, AND YOU HAVE INDICATED THAT  
24 THERE IS NO ACTUAL CONFLICT. BUT DESPITE THAT, WE HAVE  
25 FILED DECLARATIONS AS REQUESTED. IT SEEMS THIS SHOULD  
26 BE OVER, IN MY MIND.

27 THE COURT: I HAVE NEVER RULED ON THE MOTION PER  
28 SE. I HAVE INDICATED FROM THE EVIDENCE THAT HAS BEEN

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1 PRESENTED TO THE COURT THAT THERE WAS -- THERE IS  
2 ACTUALLY INADVERTENT CONFLICT -- SEEMING CONFLICT  
3 CREATED BY PARTIES BY FILING CROSS-COMPLAINTS AND  
4 ANSWERS TO CROSS-COMPLAINTS AS WELL AS POSITIVE  
5 POSITIONS.

6 IF THE WAIVERS ARE ON FILE, I PRESUME THAT  
7 THOSE ARE UNDER SEAL, ARE THEY?

8 MR. LEMIEUX: THAT WOULD BE -- YES, YOUR HONOR,  
9 THAT WOULD BE MY HOPE ANYWAY.

10 THE COURT: BECAUSE I HAVE NOT PERSONALLY SEEN  
11 THEM. DOES ANYONE WISH TO ADDRESS THAT?

12 ALL RIGHT. YES, COUNSEL.

13 MR. O'LEARY: DAN O'LEARY FOR THE WOOD CLASS. IT  
14 IS OUR MOTION -- I DON'T DOUBT THAT THE WAIVERS HAVE  
15 BEEN FILED UNDER SEAL TO THE COURT. THEY WERE

16 CIRCULATED TO US SOME TIME AGO. FAIR ENOUGH. OUR  
17 CONCERN WITH THE MOTION AND WHY IT HAS NOT BEEN TAKEN  
18 OFF CALENDAR IS, YOU KNOW -- INADVERTENTLY OR NOT, THE  
19 FIRM WAS REPRESENTING PARTIES ON BOTH SIDES OF THE  
20 PURVEYORS' FIRST AMENDED CROSS-COMPLAINT.

21 WHAT WE WANT TO AVOID IS ONE OF THOSE  
22 PARTIES -- TWO OF THOSE PARTIES, WHATEVER, POPPING UP  
23 DOWN THE ROAD AND SAYING, YOU KNOW, WE DIDN'T KNOW THIS  
24 WAS HAPPENING. AND PRIVILEGE INFORMATION OF OURS LEAKED  
25 TO ADVERSE PARTIES. WE DIDN'T GET A FAIR SHAKE AT IT.  
26 SO ALL THE PARTIES IN THE LITIGATION ARE NOW SUBJECT TO  
27 THAT POTENTIAL.

28 I THINK IF THE COURT WERE TO DENY THE

11

1 MOTION -- AND AT LEAST THERE IS A COURT ORDER. BUT IN  
2 TERMS OF WHY IT WAS -- MR. LEMIEUX -- MR. MCLACHLAN  
3 DISCUSSED IT AT THE TIME, BUT I THINK THAT IS THE  
4 CURRENT STATUS.

5 THE COURT: WELL, I CERTAINLY DON'T INTEND TO LET  
6 THE MOTION GO UNRULED UPON. I JUST WANT TO BE SURE THAT  
7 THE LAST WORD HAS BEEN HEARD BY ANYBODY THAT HAS  
8 ANYTHING TO SAY ABOUT IT. BUT IT IS MY INTENT TO DENY  
9 THE MOTION EXCEPT AS TO THE -- THE CLIENT WHO HAS NOT  
10 RESPONDED WITH REGARD TO THE WAIVER. I DON'T KNOW WHAT  
11 THEIR POSITION IS, OR THEY MAY HAVE SOMETHING ELSE TO  
12 SAY ABOUT IT. AND SO THAT -- THAT IS ON FOR A HEARING  
13 ON A MOTION TO WITHDRAW IT. IT IS DENIED AS TO ALL  
14 OTHERS.

15 MR. LEMIEUX: THANK YOU, YOUR HONOR.

16 THE COURT: LET'S DEAL WITH THE MOTION FOR EXPERT  
Page 17

17 FEES FILED BY MR. MCLACHLAN.

18 MR. O'LEARY: DAN O'LEARY, YOUR HONOR, FOR THE  
19 WOOD CLASS. I DON'T HAVE ANYTHING TO ADD TO THE -- TO  
20 THE ORIGINAL MOTION AND THE SEVERAL SUPPLEMENTAL FILES  
21 WE HAVE HAD ON THE EXPERT FEES. I THINK THE ISSUE  
22 CERTAINLY COMES TO A HEAD IF WE ARE GOING TO SET A TRIAL  
23 DATE FOR PHASE III TRIAL.

24 THE COURT: WELL, FIRST OF ALL, THE WITNESS FEES  
25 ARE FOR AN EXPERT WHO HAS BEING DESIGNATED AS A COURT  
26 EXPERT.

27 MR. O'LEARY: CORRECT.

28 THE COURT: LET'S BE SURE THAT IS CLEAR ON THE

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12

1 RECORD, AND THIS IS NOT AN EXPERT WHO HAS BEEN ENGAGED  
2 FOR ANY PARTICULAR PARTY, BUT IT IS WITH REGARD TO  
3 PARTICULAR FACTS THAT NEED TO BE ESTABLISHED FOR THE  
4 BENEFIT OF THE COURT FOR THE CLASS OR CLASSES IN EFFECT  
5 IN TERMS OF PUMPING SO THAT THE COURT IS INFORMED AS TO  
6 THAT INFORMATION THAT IT WOULD NOT OTHERWISE BE INFORMED  
7 ABOUT. AND THAT IS THE REASON FOR THE DESIGNATION OF  
8 THE COURT APPOINTED EXPERT.

9 IT IS MY UNDERSTANDING THAT THERE IS A  
10 SETTLEMENT IN THE WORKS BETWEEN THE WOODS AND WILLIS  
11 CLASS AND THE PURVEYORS INTER SE THEMSELVES AND INTER SE  
12 ONLY THEMSELVES. IT IS MY THOUGHT THAT THE  
13 DETERMINATION OF THE -- OF COSTS THAT ARE CREATED AS A  
14 RESULT OF LITIGATION THAT HAS BEEN CREATED HERE OR  
15 INITIATED HERE, THOSE COSTS OUGHT TO BE DEALT WITH --  
16 WITH REGARD TO THE SETTLEMENT.

17 NOW, IS THAT NOT CORRECT?

18 MR. O'LEARY: I'M NOT SURE I FOLLOWED YOUR HONOR.  
19 THE COURT: HAVE YOU PROVIDED FOR PAYMENT OF COSTS  
20 AND FEES IN THE SETTLEMENT PROPOSED SETTLEMENT?  
21 MR. O'LEARY: WE SPECIFICALLY HAVE NOT PROVIDED  
22 FOR PAYMENT OF FEES. I MEAN THAT'S SUBJECT TO COURT  
23 DETERMINATION, AND I DON'T KNOW THAT -- I DON'T THINK  
24 COSTS ARE IN THERE, AND LET ME NOTE TWO THINGS THAT ARE  
25 SLIGHTLY TANGENTIAL. ONE IS THAT THERE IS AN EXISTING  
26 BILL FROM THE COURT APPOINTED EXPERT OF SOME \$4,500.  
27 NUMBER TWO, HE IS ACTUALLY ON COURT CALL.  
28 TODAY WE MADE HIM AVAILABLE IN CASE THERE ARE SOME

13

1 QUESTIONS ABOUT THE SCOPE OR THERE -- OR WHAT HAVE YOU.  
2 THE COURT: WELL, I'M SATISFIED WITH THE WORK THAT  
3 HAS BEEN DONE TO THIS POINT. THERE HAS BEEN REASONABLE  
4 AND NECESSARY -- BUT THE COURT HASN'T SEEN, REALLY, THE  
5 EVIDENCE OF WHAT HAS BEEN DONE, JUST HAD A DESCRIPTION  
6 OF WHAT HAS BEEN DONE. I ALSO DON'T HAVE THE  
7 INFORMATION, AND I DON'T NEED THE INFORMATION AT THIS  
8 POINT TO THE EXTENT THAT THE PARTIES ARE GOING TO BE  
9 RESOLVING THE CLASS ACTIONS.  
10 I MIGHT NEED IT AT SOME LATER TIME IF THIS  
11 MATTER GOES FORWARD FULLY IRRESPECTIVE OF THE SETTLEMENT  
12 OF THE SMALL PUMPER CLASS. BECAUSE I THINK THAT -- THAT  
13 INFORMATION IS GOING TO BE RELEVANT TO THE DETERMINATION  
14 THAT THE COURT MAKES LATER ON.  
15 SO THAT ULTIMATELY I'M GOING TO APPROVE THE  
16 PAYMENT OF THOSE FEES THAT HAVE BEEN INCURRED TO DATE.  
17 I'M NOT GOING TO AUTHORIZE ANY FUTURE FEES AT THIS POINT  
18 TO BE EXPENDED BY THE EXPERT. BECAUSE I DON'T KNOW TO

19 WHAT EXTENT THAT INFORMATION IS GOING TO BE NECESSARY,  
20 AND IT WILL BE DETERMINED BY WHETHER OR NOT THE  
21 SETTLEMENTS ARE MADE AND PROVEN BY THE COURT IN PART,  
22 BUT NOT COMPLETELY.

23 SO THAT IF -- AT THIS POINT, THE FEES ARE  
24 REASONABLE. IT SEEMS TO ME THAT THE LITIGATION THAT WAS  
25 INITIATED HERE BY THE PUBLIC WATER SUPPLIERS IS WHAT HAS  
26 RESULTED IN THE REQUIREMENT THAT THE COURT ORDER THOSE  
27 EXPERT FEES. AND I'M GOING TO ORDER THAT THEY BE PAID  
28 BY THE PUBLIC WATER SUPPLIERS IN THIS CASE WHO HAVE

14

1 INITIATED THAT PROCEEDING.

2 MR. O'LEARY: ALL RIGHT. I GUESS THE ONLY COMMENT  
3 ON THAT, YOUR HONOR, IS -- I KNOW THE PHASE III TRIAL  
4 HAS NOT BEEN SET, BUT THERE IS SOME ADVOCATION FOR A  
5 VERY EARLY DATE. THE COURT INDICATED AT THE LAST  
6 HEARING WE ARE LOOKING AT JULY OR AUGUST.

7 IF THE CLASS SETTLEMENT PROCEDURES AND THE  
8 PHASE III PRETRIAL WORK ARE PRECEDING AT THE SAME TIME,  
9 IT PUTS THE CLASS REPRESENTATIVES IN A BIT OF A CATCH 22  
10 WHERE WE DON'T HAVE THE ABILITY TO GET INFORMATION IN  
11 TERMS OF CURRENT AND HISTORICAL PUMPING BY THE SMALL  
12 PUMPERS IN THE AREA OF THE ADJUDICATION WHICH WOULD  
13 BE -- YOU KNOW, IF SETTLEMENT DOESN'T GO THROUGH AND WE  
14 END UP REPRESENTING THE CLASS INTEREST OF THAT PHASE III  
15 TRIAL, THERE ARE ISSUES THAT AFFECT THE CLASS IN A MOST  
16 DEFINITE WAY.

17 THE COURT: WELL, I UNDERSTAND THAT IN THE WILLIS  
18 CLASS THAT THERE'S A HOPE, MAYBE AN EXPECTATION, THAT  
19 THERE WILL BE A HEARING ON THE SETTLEMENTS SOMETIME IN

20 APRIL.

21 IS THAT RIGHT, MR. KALFAYAN?

22 MR. KALFAYAN: RALPH KALFAYAN, YOUR HONOR. I  
23 BELIEVE -- THE PUBLIC WATER SUPPLIERS COULD CORRECT ME  
24 IF I'M WRONG, BUT I BELIEVE WE ARE VERY CLOSE TO  
25 FINALIZING A SETTLEMENT THAT THE LAWYERS COULD THEN  
26 PRESENT TO THEIR RESPECTIVE BOARDS.

27 AND I INTEND TO TALK TO THE PUBLIC WATER  
28 SUPPLIERS TODAY AFTER THE HEARING TO FINE TUNE THOSE FEW

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15

1 POINTS AND THEN CONCLUDE THEM. IF I CAN'T, I WILL LET  
2 THE COURT KNOW.

3 THE COURT: IT IS MY UNDERSTANDING THAT THE  
4 PARTIES ONCE YOU HAVE REACHED THAT AGREEMENT ASSUMING  
5 THAT YOU HAVE, YOU ARE GOING TO BE RECOMMENDING APPROVAL  
6 TO THE RESPECTIVE BOARDS.

7 MR. KALFAYAN: THAT IS RIGHT. SO I EXPECT AN  
8 EXECUTED AGREEMENT WITH OUR MOTION SOMETIME THE END OF  
9 APRIL UNLESS THINGS CAN GET DONE A LITTLE BIT SOONER  
10 FROM THE PUBLIC WATER SUPPLIERS' SIDE. THAT IS STILL 30  
11 DAYS, MAYBE FOUR WEEKS TO SIX WEEKS; BUT PERHAPS 30 DAYS  
12 THEY COULD GET THE DOCUMENT EXECUTED BY THEN.

13 THE COURT: YEAH. WELL, ONE OF THE THINGS THAT  
14 TROUBLES ME A LITTLE BIT IN THIS CASE, PARTICULARLY  
15 GIVEN THE CURRENT POSTURE OF THE CASE WHERE WE ARE  
16 TRYING TO USE SOME COMMON ADJUDICATION OF THE BASINS  
17 INVOLVING ALL THE PARTIES HERE SO THAT WE CAN DETERMINE  
18 THE STATUS IS THE SECRECY THAT IS OCCURRING HERE. I  
19 DON'T THINK IT IS VERY PRODUCTIVE, AND I CERTAINLY DON'T  
20 THINK IT IS NECESSARY.

21 I CAN UNDERSTAND IN A NORMAL CASE THE  
22 PARTIES MAY NOT WISH TO DISCLOSE THE NATURE OF THEIR  
23 SETTLEMENTS TO THE OUTSIDE WORLD. BUT IN THIS CASE, ALL  
24 THE LAWYERS ON THIS CASE ARE ESSENTIALLY IN THIS CASE  
25 TOGETHER. THERE IS NOBODY THAT I HAVE HEARD FROM WHO  
26 THINKS THAT THIS IS ANYTHING OTHER THAN A GROUNDWATER  
27 ADJUDICATION OF THE GROUNDWATER BASIN.

28 WE WILL TALK A LITTLE BIT MORE ABOUT WHAT IS

16

1 GOING TO BE INVOLVED IN THE NEXT PHASE OF THE TRIAL, BUT  
2 IT DOES SEEM TO ME THAT PERHAPS ONCE YOU HAVE  
3 PARTICULARLY FINALIZED WHAT YOU ARE GOING TO BE  
4 RECOMMENDING TO YOUR RESPECTIVE CLIENTS THAT YOU CAN  
5 PROVIDE COUNSELING IN THIS CASE WITH A CONFIDENTIAL  
6 MEMORANDUM SETTING FORTH ESSENTIALLY THE TERMS OF THAT  
7 SETTLEMENT SO THEY WILL KNOW HOW TO RESPOND.

8 I CAN UNDERSTAND THEIR CONCERN ABOUT THE  
9 PURVEYORS ENTERING INTO SOME AGREEMENT THAT IS GOING TO  
10 DISADVANTAGE THE OTHER LANDLORD PARTIES BECAUSE THE  
11 CLASSES ARE OF PEOPLE WHO ARE LANDOWNERS. SO IT SEEMS  
12 TO ME THAT I WOULD ENCOURAGE YOU. I CAN'T ORDER YOU TO  
13 DO IT, BUT I WOULD ENCOURAGE YOU TO GET YOUR HEADS  
14 TOGETHER AND COME UP WITH SOME SORT OF A MEMORANDUM SO  
15 THAT THE PARTIES UNDERSTAND WHAT IT IS THAT YOU ARE  
16 TALKING ABOUT SO THAT THEY CAN BE PREPARED AS WE  
17 PROGRESS WITH THE REST OF THIS ADJUDICATION TO EITHER  
18 OBJECT OR TO UNDERSTAND AT LEAST WHAT IT IS THAT YOU ARE  
19 AGREEING TO.

20 I HAVE SAID MANY TIMES -- I DON'T THINK  
21 THERE IS ANYTHING THAT THE PARTIES WHO SETTLE THE --

22 THEIR INDIVIDUAL CLASS ACTIONS CAN DO THAT IS GOING TO  
23 IN ANY WAY IMPACT ON THE RIGHTS OF ANY OF THE OTHER  
24 LANDOWNERS WHO ARE OVERLYING LANDOWNERS.

25 MR. KALFAYAN: YOUR HONOR, I THINK WE INTEND TO --  
26 I WOULD LIKE TO FINALIZE SOME OF THE OPEN TERMS SO THAT  
27 THERE ARE NOT CHALLENGES ON THINGS THAT HAVEN'T BEEN  
28 AGREED UPON. BUT I THINK WE ARE GOING TO BE FILING A

17

1 MOTION, AND EVERYBODY IN THE GROUNDWATER ADJUDICATION  
2 WILL HAVE A CHANCE TO SEE WHAT WE HAVE -- WHAT THE  
3 AGREEMENT HAS AND WILL HAVE AN OPPORTUNITY TO OBJECT TO  
4 THE SETTLEMENT AND WHATEVER TERMS CONTAINED THEREIN.

5 THE ONLY RESERVATION I HAVE IS THE PREMATURE  
6 CHALLENGE TO SOMETHING THAT IS NOT FINAL GIVEN WHAT  
7 MIGHT COME BACK FROM THE BOARD. BUT WITH THOSE COMMENTS  
8 THE --

9 THE COURT: WELL, I THINK WHAT I'M TALKING ABOUT  
10 IS THE ESSENCE OF WHAT YOU ARE ATTEMPTING TO DO. AND,  
11 FRANKLY, I -- PROBABLY NOT A LAWYER HERE THAT CAN'T  
12 GUESS WHAT THAT SETTLEMENT IS GOING TO LOOK LIKE. AND  
13 SO THAT -- IT SEEMS TO ME THAT YOU COULD ASSUAGE A LOT  
14 OF CONCERN AND ANXIETY MAYBE PARTICULARLY AMONG SOME OF  
15 THE LAY PEOPLE WHO ARE VERY INTERESTED LEGITIMATELY IN  
16 WHAT'S GOING ON HERE. SO THAT -- I WOULD JUST ENCOURAGE  
17 YOU TO TAKE SOME STEPS.

18 OBVIOUSLY, WHEN YOU FILE YOUR MOTION, IT IS  
19 GOING TO BE A PUBLIC MOTION, AND EVERYONE IS GOING TO  
20 GET IT. BUT IN ANTICIPATION OF THAT, I WOULD LIKE TO  
21 SEE YOU DO SOMETHING SOONER.

22 MR. KALFAYAN: THE CLASS WILL CONSIDER THAT, YOUR  
Page 23



23 HONOR.

24 THE COURT: MR. BUNN.

25 MR. BUNN: GOOD MORNING, YOUR HONOR, THOMAS BUNN.

26 WE WILL -- THE PUBLIC WATER SUPPLIERS WILL TALK WITH THE  
27 WOOD CLASS ABOUT THE COSTS INCURRED TO DATE. IN TERMS  
28 OF THE FUTURE COSTS, YOUR HONOR INDICATED THAT YOU ARE

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18

1 NOT GOING TO BE AUTHORIZING FUTURE COSTS RIGHT NOW, AND  
2 I APPRECIATE THAT. IT HAS ALWAYS BEEN OUR POSITION THAT  
3 THESE COSTS, IF INCURRED, SHOULD BE APPORTIONED TO ALL  
4 THE PARTIES IN THE CASE OR AT LEAST ALL THE SIGNIFICANT  
5 PARTIES IN THE CASE.

6 AGAIN, WE CAN DEAL WITH THE COSTS THAT HAVE  
7 BEEN INCURRED SO FAR, BUT I JUST WANTED TO MAKE SURE  
8 THAT YOUR HONOR'S RULING AS FAR AS APPORTIONING THOSE TO  
9 THE PUBLIC WATER SUPPLIERS WON'T NECESSARILY APPLY TO  
10 ANY FUTURE COSTS IF FOR SOME REASON THE SETTLEMENT IS  
11 NOT APPROVED.

12 THE COURT: WELL, I THINK CERTAINLY THAT IS --  
13 THAT IS MY INTENT. I'M NOT MAKING ANY DECISION ABOUT  
14 FUTURE COSTS IN THIS MATTER. ORDINARILY, COSTS INCURRED  
15 WILL GO TO THE PARTY WHO PREVAILS AND AGAINST WHO MAY  
16 PREVAIL. AND SO THAT, YOU KNOW, I'M NOT GOING TO MAKE  
17 ANY DETERMINATION AT THIS POINT.

18 BUT IT SEEMS TO ME THAT GIVEN THE POSTURE OF  
19 THIS CASE TODAY THAT THIS EXPERT HAS PROVIDED FUNDING ON  
20 HIS OWN, BASICALLY, HIS OWN TIME AND SHOULD BE  
21 COMPENSATED FOR THE TIME THAT IS FOR THE BENEFIT OF THE  
22 COURT.

23 THAT ULTIMATELY COULD BECOME A COST BILL

24 ITEM IF IT IS ADVANCED BY THE PUBLIC WATER PURVEYORS  
25 PURSUANT TO THE COURT ORDER --

26 THE REPORTER: I'M SORRY, YOUR HONOR, BUT THE LAST  
27 PART FADED OUT.

28 THE COURT: ADVANCED BY THE PURVEYORS PURSUANT TO

□

19

1 THE COURT ORDER. AND I AM NOT MAKING ANY ORDERS OR  
2 DETERMINATION AS TO FUTURE COSTS OBVIOUSLY.

3 MR. BUNN: OKAY. THANK YOU.

4 MR. FIFE: YOUR HONOR, MICHAEL FIFE. I THINK THAT  
5 THE EXCHANGE THAT JUST WENT ON HIGHLIGHTS WHAT WE  
6 STARTED OUT THIS HEARING WITH; THAT THERE HAS BEEN A  
7 CHANGE, AND THERE IS SOMETHING NEW NOW. THE  
8 LANDOWNERS --

9 THE COURT: ARE WE REARGUING?

10 MR. FIFE: I'M NOT. I'M ADDRESSING -- WHAT IS  
11 HAPPENING HERE THAT THE LANDOWNERS ARE NOW GOING INTO A  
12 PHASE III TRIAL AND HAVE BEEN PUT AT -- IN AN ADVERSE  
13 POSITION WITH A LARGE GROUP OF LANDOWNERS. BUT IF WE  
14 EXPRESS ANY OF THAT ADVERSITY AND IF WE TRY TO PUT  
15 FORWARD OUR POSITION VIS-A-VIS PARTICULARLY NONPUMPING  
16 CLASS WE WILL BE LIABLE OR POTENTIALLY LIABLE FOR LARGE  
17 COSTS THAT ARE BEYOND OUR ABILITY TO BEAR WHICH MEANS  
18 THAT IN EFFECT WE CANNOT ARGUE OUR CASE AGAINST PEOPLE  
19 WHO WE HAVE NOW BEEN CONSOLIDATED INTO A CASE WITH.

20 THE COURT: I DON'T UNDERSTAND YOUR ARGUMENT. IT  
21 SEEMS TO ME I HAVE INDICATED I'M NOT MAKING ANY ORDER  
22 CONCERNING FUTURE COSTS. COST BILLS ARE DETERMINED AS  
23 TO PREVAILING PARTIES. I DON'T KNOW WHO THE PREVAILING  
24 PARTIES ARE GOING TO BE HERE. THE -- IT SEEMS TO ME

25 THAT IN SOME WAYS YOU ARE IN NO DIFFERENT POSTURE THAN  
26 THE SMALL PUMPER CLASS OR THE WOODS CLASS OR WILLIS  
27 CLASS.

28 AS A LANDOWNER PARTY -- AND AS I LOOK AT

20

1 YOUR CLIENTS, YOUR CLIENTS ARE MULTIPLE. YOU DON'T HAVE  
2 JUST ONE CLIENT HERE. AND TO SOME EXTENT, THERE MAY  
3 EVEN BE CONFLICTS BETWEEN VARIOUS MEMBERS OF YOUR  
4 ASSOCIATION SINCE THEY ARE ALL INDIVIDUAL LANDOWNERS, AS  
5 I UNDERSTAND IT. AND THAT CREATES TO SOME EXTENT SOME  
6 POTENTIAL FOR CONFLICT AND SOME -- I'M NOT CONCERNED  
7 ABOUT THAT AT THIS POINT. IT IS JUST A RECOGNITION THAT  
8 EVERY LANDOWNER -- EVERY OVERLYING LANDOWNER HAS A RIGHT  
9 AND AN INTEREST IN REASONABLE BENEFICIAL USE OF THE  
10 WATER UNDERLYING YOUR LAND.

11 BUT I DON'T UNDERSTAND THAT -- I HAVE MADE  
12 THIS STATEMENT BEFORE THAT OVERLYING LANDOWNERS HAVE  
13 CORRELATIVE RIGHTS. AND TO SOME EXTENT APPROPRIATORS IF  
14 THEY HAVE ACQUIRED RIGHTS BEYOND -- YOUR APPROPRIATORS  
15 ALSO HAVE SOME RIGHTS, IF THEY HAVE. THAT'S NOTHING I  
16 CAN DETERMINE AT THIS POINT.

17 BUT IF YOU ARE -- I STILL DON'T QUITE  
18 UNDERSTAND WHAT YOUR POINT IS WITH REGARD TO THIS  
19 PROCEDURE AT THIS POINT. THERE HAVE BEEN NO ORDERS THAT  
20 AFFECT YOUR CLIENTS, AND I HAVE NO IDEA WHAT ORDERS  
21 MIGHT BE MADE IN THE FUTURE. IT DEPENDS ON A RAFT OF  
22 THINGS THAT ARE NOT PRESENT HERE RIGHT NOW OR KNOWN TO  
23 ME AT THIS POINT.

24 MR. FIFE: AND OUR ONLY POINT IS THAT THERE IS NOW  
25 A POTENTIAL LIABILITY THAT MAY ARISE FOR US IN THE

26 FUTURE THAT WAS NOT PRESENT PRIOR TO THE CONSOLIDATION.  
27 THE COURT: I DON'T THINK THAT I AGREE WITH YOU  
28 THAT IT WAS NOT PRESENT. I THINK THE MINUTE THAT THE

21

1 ADJUDICATION OCCURRED AND WAS ORDERED COORDINATED, THERE  
2 WERE POTENTIAL FOR ALL KINDS OF LIABILITIES THAT DID NOT  
3 EXIST PRIOR TO THE TIME THAT LAWSUITS WERE FILED.

4 ALL RIGHT. MR. JOYCE.

5 MR. JOYCE: GOOD MORNING, YOUR HONOR, BOB JOYCE ON  
6 BEHALF OF THE DIAMOND FARMING, ET AL. I ECHO TO SOME  
7 EXTENT MR. FIFE'S COMMENTS. I'M NOT GOING TO ELABORATE;  
8 BUT CLEARLY BASED UPON THE COMMENTS MADE BY THE  
9 PURVEYORS, WE KNOW WHAT THEIR INTENTION ARE GOING  
10 FORWARD. AND I DO BELIEVE UNDER THE CIRCUMSTANCES THAT  
11 CURRENTLY EXIST THAT A POTENTIAL EXPUNGER HAS BEEN  
12 CREATED THAT DID NOT EXIST BEFORE.

13 I DID NOT SUE MR. KALFAYAN'S CLIENT. HE DID  
14 NOT SUE MY CLIENT. AND WITH THAT THE ONLY OTHER  
15 OBSERVATION THAT I WOULD MAKE, YOUR HONOR, THAT I THINK  
16 NEEDS TO BE ADDRESSED AT SOME POINT. AND PROBABLY NOW  
17 IS AS GOOD AS ANY IS WE HAVE A STANDING ORDER CERTIFYING  
18 A DEFENDANT CLASS UNDER THE FIRST AMENDED  
19 CROSS-COMPLAINT FILED BY THE PURVEYORS. NO FURTHER  
20 ACTIONS HAVE BEEN TAKEN ON THAT STANDING ORDER.

21 FOR CLARIFICATION PURPOSES, I WOULD PERCEIVE  
22 OR UNDERSTAND AT LEAST BASED ON SOME OF THE COMMENTS  
23 THAT THE COURT MADE THIS MORNING THAT FOR ALL INTENSE  
24 AND PURPOSES BOTH MR. KALFAYAN AND MR. MCLACHLAN ARE THE  
25 ATTORNEYS REPRESENTING THOSE DEFENDANT CLASSES AS  
26 CERTIFIED IN THAT PRIOR ORDER. AND IF NOT THEN THE

27 COURT NEEDS TO ADDRESS AND DECERTIFY THAT DEFENDANT  
28 CLASS SO THAT WE HAVE A CLEAR RECORD.

22

1 THE COURT: ANYBODY WANT TO ADDRESS THAT?

2 MR. KALFAYAN, DO YOU WANT TO ADDRESS THAT?

3 I THINK IT WAS DIRECTED AT YOU, MAYBE NOT THE COURT.

4 MR. KALFAYAN: I DON'T RECALL THE COURT EVER

5 APPOINTING OUR FIRM DEFENSE COUNSEL FOR THE CLASS.

6 THE COURT: NEVER HAPPENED.

7 MR. KALFAYAN: THAT HAS NOT HAPPENED YET. WE HOPE  
8 TO CONCLUDE A SETTLEMENT WITH THE PUBLIC WATER SUPPLIERS  
9 THAT WILL REDUCE AND SUBSTANTIALLY ELIMINATE THE  
10 PARTICIPATION OF THE WILLIS CLASS. IF WE CAN'T GET A  
11 SETTLEMENT AND IF WE ARE UNABLE TO GET A SETTLEMENT, I  
12 DON'T KNOW WHERE THAT LEAVES US, AND I'LL BE BACK HERE  
13 TALKING TO THE COURT ABOUT WHAT OUR OPTIONS ARE.

14 HOWEVER, I'M CONFIDENT THAT WE CAN GET A  
15 SETTLEMENT WHICH CASE IT OBTVIATES WHAT MR. JOYCE HAS  
16 JUST TOLD THE COURT.

17 THE COURT: WELL, I DON'T HAVE A PENDING MOTION  
18 WITH REGARD TO WHAT MR. JOYCE JUST COMMENTED ON. SO I'M  
19 NOT GOING TO TAKE ANY ACTION AT THIS POINT.

20 ONE THING IS THAT I'M CONCERNED ABOUT,  
21 HOWEVER, IS MAKING SURE THAT THIS CASE IS TRULY AT  
22 ISSUE. BECAUSE I DO WANT TO GET THE MATTER PROCEEDING  
23 TO THE NEXT PHASE, AND I THINK I NEED SOMETHING FROM THE  
24 PURVEYORS WITH REGARD TO THAT. I JUST SIGNED AN ORDER  
25 OF PUBLICATION. AND I NEED TO KNOW IF THAT IS GOING TO  
26 ESTABLISH THAT WE HAVE JURISDICTION OVER ALL THE  
27 PARTIES. MR. DUNN.

28 MR. DUNN: YOUR HONOR, IF I COULD JUST TAKE A

23

1 MOMENT OF THE COURT'S TIME AND ADDRESS THE STATUS OF  
2 SERVICE OF PROCESS. AND I WILL TELL THE COURT THAT LATE  
3 FRIDAY AFTERNOON IN ANTICIPATING THIS ISSUE MIGHT COME  
4 UP IN SOME FORM OR FASHION, OUR STAFF AND I PUT TOGETHER  
5 A DECLARATION.

6 THE COURT: WOULD YOU SPEAK UP.

7 MR. DUNN: YES, YOUR HONOR. I'M SORRY. I CAN  
8 POST THAT DECLARATION WITH THE COURT LATER TODAY. BUT  
9 IN TERMS OF THE CONTENT OF THE DECLARATION OR THE REPORT  
10 ON THE STATUS OF THE SERVICE, IT MIGHT BE HELPFUL TO  
11 PROVIDE THAT TO THE COURT AT THIS TIME. BY BACKGROUND  
12 WE HAVE TWO CLASSES: WE HAVE BOTH THE WILLIS CLASS AND  
13 THE WOOD CLASS.

14 THE WILLIS CLASS, OF COURSE, CONSISTS OF THE  
15 DORMANT OVERLYING LANDOWNERS AND CLASS -- AND FOLLOWING  
16 CLASS CERTIFICATION.

17 THE COURT ORDER CLASS NOTICE FOR THAT --  
18 THAT PARTICULAR CLASS WAS MAILED TO OVER 63,000 PROPERTY  
19 OWNERS IN 2008.

20 SIMILARLY, WITH THE WOOD CLASS WITH AN  
21 ESTIMATED 5,000 MEMBERS, CLASS NOTICE WAS MAILED AS WELL  
22 PURSUANT TO THE COURT ORDER. BOTH OF THOSE CLASS  
23 NOTICES HAVE BEEN COMPLETED NOW FOR SOME TIME.

24 TYPICAL WITH A CLASS, CLASS MEMBERS HAVE THE  
25 RIGHT TO EXERCISE AN OPT-OUT. THAT OCCURRED FOR BOTH OF  
26 THESE CLASSES. AND BY SO DOING -- BY OPTING OUT THOSE  
27 CLASS MEMBERS SUBJECTED THEMSELVES TO PARTY STATUS AND  
28 ARE REQUIRED TO PARTICIPATE AS SUCH IN THE LITIGATION.

1                   WHAT WAS INTERESTING OR UNIQUE, PERHAPS, IN  
2 THIS CASE WAS THAT ON THEIR BEING INFORMED OF THEIR  
3 OBLIGATION TO REMAIN IN THE CASE AS OPT-OUT CLASS  
4 MEMBERS BECOMING INDIVIDUAL LITIGANTS, THE MAJORITY OF  
5 THOSE INITIAL OPT-OUT CLASS MEMBERS SUBSEQUENTLY DECIDED  
6 TO OPT BACK INTO ONE OF THE CLASSES.

7                   SO THERE WAS SOME TIME WITH COURT'S  
8 PERMISSION PROVIDED FOR THE OPT-OUTS TO OPT BACK IN, AND  
9 MANY OF THEM -- THE MAJORITY OF THEM DID.

10                   AS TO THOSE INDIVIDUALS WHO OPTED OUT AND  
11 DID NOT OPT BACK IN, THERE WERE APPROXIMATELY 666 OF  
12 THOSE OPT-OUTS THAT NEEDED PERSONAL SERVICE. THERE WERE  
13 77, I BELIEVE -- I MAY HAVE THESE NUMBERS A LITTLE --  
14 I'LL CLARIFY THESE FOR THE DECLARATION. THERE WERE  
15 77 -- ULTIMATELY, THERE WERE 666 WILLIS OPT-OUTS THAT  
16 REQUIRED PERSONAL SERVICE, AND 77 OPT-OUTS TO PERSONALLY  
17 SERVE. WE CAN MAYBE TAKE A MOMENT TO LOOK -- AT  
18 MR. KALFAYAN AND MR. MCLACHLAN CAN COMMENT ON THAT IF I  
19 HAVE THOSE NUMBERS WRONG.

20                   PERSONAL SERVICE FOR TOTAL FOR THAT, THE  
21 OPT-OUT -- 743 INDIVIDUALS. IT WAS COMPLETED. PERSONAL  
22 SERVICE HAS NOW BEEN COMPLETED ON ALL OF THEM EXCEPT FOR  
23 APPROXIMATELY 90 OF THESE LANDOWNERS, AND IT IS FOR  
24 THESE APPROXIMATELY 90 LANDOWNERS THAT THE COURT HAS  
25 RECENTLY APPROVED THEIR SERVICE BY PUBLICATION ALONG  
26 WITH THE 124 LANDOWNERS FROM THE FIRST COURT APPROVED  
27 REQUEST FOR PUBLICATION.

28                   WE ARE PREPARED TO START SERVICE BY

1 PUBLICATION THIS WEEK, AND WE ARE PREPARED TO HAVE THAT  
2 COMPLETED. IT GOES ONCE A WEEK FOR FOUR CONSECUTIVE  
3 WEEKS. WE ANTICIPATE THAT WILL BE COMPLETED ON OR ABOUT  
4 APRIL 15TH OF THIS YEAR.

5 THE COURT: THEN THERE ARE 30 DAYS FOR THEM TO  
6 FILE AN ANSWER OR OTHERWISE APPEAR?

7 MR. DUNN: THAT IS CORRECT, YOUR HONOR. SO THE  
8 INFORMATION THAT I HAVE JUST PROVIDED TO THE COURT IS IN  
9 DECLARATION FORM. I'LL SIGN IT. I'LL POST IT TODAY.

10 THE COURT: ALL RIGHT. THANK YOU.

11 MR. DUNN: THANK YOU, YOUR HONOR.

12 THE COURT: WITH THAT EXCEPTION, ARE YOU AWARE OF  
13 ANY PARTIES WHO HAVE NOT RESPONDED TO SERVICE?

14 MR. DUNN: LET ME SEE IF I CAN ANSWER YOUR  
15 QUESTION THIS WAY: I'LL ANSWER IT DIRECTLY, OF COURSE.  
16 I WANT TO BE SURE THAT WE HAVE DEFAULTED -- I'M NOT SURE  
17 IF WE DEFAULTED ALL THE NONAPPEARING PARTIES. THAT IS  
18 THE ONLY REASON FOR MY HESITATION. IF THE COURT'S  
19 QUESTION IS CHANGED TO IS THERE ANY OTHER PARTY OUT  
20 THERE THAT IS NOT SUBJECT TO THE SERVICE THAT I HAVE  
21 DESCRIBED, THE ANSWER TO THAT IS NO.

22 SO THERE MAY BE INDIVIDUALS THAT WE HAVE  
23 SERVED AND WHO HAVE NOT TIMELY RESPONDED FOR WHICH WE  
24 WILL NEED TO FILE A REQUEST TO ENTER DEFAULT.

25 THE COURT: AND THEN THE NEXT QUESTION IS -- IF I  
26 RECOLLECT CORRECTLY, I MADE AN ORDER THAT ANY -- EVERY  
27 PARTY WAS TO BE NOTIFIED; THAT IF THEY SOLD THEIR  
28 PROPERTY, THEY WOULD NOTIFY THE COURT.



1 DO YOU HAVE A RECOLLECTION OF THAT?

2 MR. DUNN: I HAVE A GENERAL RECOLLECTION OF THAT,  
3 YES, YOUR HONOR.

4 THE COURT: AND HAVE YOU RECEIVED ANY NOTIFICATION  
5 FROM PARTIES WHO MAY HAVE SOLD THEIR PROPERTY?

6 MR. DUNN: I PERSONALLY HAVE NOT, AND I -- I HAVE  
7 NOT CHECKED WITH MY OFFICE STAFF WHO IS HANDLING THIS.  
8 BUT I HAVE NOT RECEIVED ANY INFORMATION FROM OFFICE --  
9 FROM MY OFFICE STAFF OF ANYONE WHO HAS NOTIFIED US OF A  
10 CHANGE IN OWNERSHIP, SO I'M UNAWARE OF ANY. THANK YOU.

11 THE COURT: OKAY. MR. BUNN.

12 MR. BUNN: MAY I HAVE JUST A MINUTE, YOUR HONOR.

13

14 (A DISCUSSION WAS HELD OFF THE RECORD.)

15

16 MR. DUNN: YOUR HONOR, IF I COULD ADDRESS THE  
17 COURT AGAIN. MR. BUNN REMINDED ME THAT -- AGAIN, I'M  
18 WORKING FROM RECOLLECTION HERE -- THAT THE COURT HAD  
19 DIRECTED THE PUBLIC WATER SUPPLIERS NOT TO TAKE ANY  
20 ENTRY OR REQUEST ANY ENTRY OF DEFAULT PENDING --

21 MR. BUNN: RIGHT.

22 MR. DUNN: -- PENDING THE COMPLETION OF THIS  
23 PROCESS. SO THAT MAY BE THE REASON. AND I APOLOGIZE.  
24 I DON'T HAVE AN ABSOLUTE RECOLLECTION OF ALL THE EVENTS,  
25 BUT THAT MAY BE THE REASON THAT WE HAVE NOT FILED A  
26 REQUEST FOR ENTRY OF DEFAULT TODAY.

27 THANK YOU, MR. BUNN.

28 THE COURT: LET'S TALK ABOUT --

1 MR. JOYCE: YOUR HONOR, IF I COULD BE HEARD FOR A  
2 SECOND.

3 THE COURT: YES, MR. JOYCE.

4 MR. JOYCE: JUST FOR CLARIFICATION, YOUR HONOR, MY  
5 MEMORY OF THE COURT'S ORDER ON THE ISSUE OF TRANSFERS  
6 OCCURRED ABOUT TWO YEARS AGO AT OR ABOUT THE TIME WE  
7 WERE DISCUSSING METHODS OF ADDRESSING THE -- POSSIBLY OF  
8 USING A LIS PENDENS OR NOT USING A LIS PENDENS.

9 MY MEMORY WAS THAT THE COURT ORDERED THE  
10 PARTIES AT THE TIME THAT THEY WERE TO TRANSFER THE  
11 PROPERTY IF THEY WERE SUPPOSED TO GIVE NOTICE TO THE  
12 TRANSFEREE OF THE PENDENCY OF THIS LITIGATION. THAT'S  
13 THE EXTENT OF MY MEMORY AS TO WHAT WAS ORDERED.

14 I WANT TO MAKE SURE THE RECORD IS CLEAR AT  
15 LEAST FROM MY VANTAGE POINT AT WHAT I ASSUMED THE  
16 OBLIGATIONS WERE OF A PARTICIPANT IF THEY WERE, IN FACT,  
17 TRANSFERRING TITLE.

18 THE COURT: ALL RIGHT. THANK YOU.

19 MR. ZIMMER: THIS IS ZIMMER ON BEHALF OF THE  
20 BOLTHOUSE. I DON'T RECALL THE ORDER THE COURT IS  
21 TALKING ABOUT IF THERE WAS ONE. I THINK THAT COULD DO  
22 WITH SOME CLARIFICATION TO DEFINE THAT ORDER. I DON'T  
23 RECALL THAT OCCURRING. I REMEMBER DISCUSSION ABOUT IT  
24 POSSIBLY HAPPENING, BUT I DON'T RECALL IT HAPPENING.

25 FROM A VERY BASIC STANDPOINT, CAN THE  
26 PURVEYORS TELL US HOW MANY PROPERTY OWNERS THERE ARE IN  
27 THE ANTELOPE VALLEY AND HOW MANY OF THOSE PEOPLE HAVE  
28 BEEN SERVED AND WHETHER THERE HAS BEEN ANY ATTEMPT TO

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28

1 FOLLOW-UP TO SEE IF ANY OF THOSE PARTIES HAVE

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2 TRANSFERRED PROPERTY?

3 I'M CONCERNED. BECAUSE IF WE END UP WITH  
4 JUST PUBLICATION ON 90 PROPERTY OWNERS, WE MAY VERY WELL  
5 MAY NOT HAVE ALL THE PARTIES.

6 THE COURT: THOSE ARE OPT-OUT PEOPLE WHO OPERATED  
7 OUT OF THE CLASSES. AND AS I UNDERSTAND, IT IS ONLY  
8 THOSE. SO WE ARE NOT TALKING ABOUT PUBLICATION ON THE  
9 PARTIES AT THIS POINT.

10 MR. JOYCE: DO WE KNOW HOW MANY PEOPLE THERE  
11 ARE -- LANDOWNERS THERE ARE IN ANTELOPE VALLEY AND HOW  
12 MANY HAVE BEEN SERVED?

13 THE COURT: MR. DUNN, I DON'T KNOW IF WE HAVE THAT  
14 INFORMATION TODAY OR NOT.

15 MR. DUNN: NO. AS I INDICATED EARLIER, THAT'S THE  
16 ONE BIT OF INFORMATION I DON'T HAVE HERE EXCEPT THAT WE  
17 DO HAVE THAT INFORMATION, THE -- THE IDENTIFICATION OF  
18 THE INDIVIDUAL PARTIES HAS BEEN POSTED, YOU KNOW, AS WE  
19 HAVE GONE ALONG IN THE CASE AS PARTIES ARE DOE'ED OR  
20 ROE'ED IN (PHONETIC) AT APPROPRIATELY.

21 AND IN TERMS OF THEIR SERVICE, I'M TRYING TO  
22 THINK WHAT WE HAVE POSTED, BUT WE DO HAVE THAT  
23 INFORMATION. I WOULD BE HAPPY TO INCLUDE THAT  
24 INFORMATION IN THE DECLARATION THIS AFTERNOON.

25 THE COURT: I THINK THAT IS APPROPRIATE.

26 MR. DUNN: OKAY.

27 THE COURT: LET'S TALK ABOUT THE NEXT PHASE OF THE  
28 TRIAL BOTH IN TERMS OF WHAT ISSUES NEED TO BE ADDRESSED

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29

1 IN THAT TRIAL AND HOW THEY ARE GOING TO BE ADDRESSED AS  
2 WELL AS SETTING UP A TIME LINE FOR DISCLOSURE OF

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3 WITNESSES AND COMPLETION OF DISCOVERY AND THE LIKE. MY  
4 DESIRE TO HAVE THIS MATTER HEARD AS EARLY AS POSSIBLE --  
5 I MAY HAVE BEEN OVERLY OPTIMISTIC AS TO WHAT WE COULD  
6 ACCOMPLISH BETWEEN NOW AND JULY WHEN I LAST SPOKE TO YOU  
7 OR -- AT OUR LAST HEARING.

8 IT SEEMS TO ME AS I'M LOOKING AT WHAT IS IN  
9 PLAY HERE THE ISSUES HAVE TO BE NARROWED FOR THAT PHASE  
10 OF THAT TRIAL, NUMBER ONE.

11 AND, NUMBER TWO, I THINK THAT IN ORDER TO  
12 ACCOMPLISH PREPARATION IT REALLY CAN'T BE ACCOMPLISHED  
13 PRIOR TO THE END OF SEPTEMBER, SO I'M REALLY THINKING  
14 THIS TRIAL SHOULD OCCUR IN THE FALL ASSUMING THAT  
15 EVERYTHING PROCEEDS AS I HOPE IT WILL.

16 AND I WOULD LIKE TO TALK ABOUT THE ISSUES TO  
17 BE ADJUDICATED IN THAT NEXT PHASE OF THE TRIAL. IT  
18 SEEMS TO ME THAT IT HAS GOT TO EVOLVE AROUND THE  
19 QUESTION OF OVERDRAFT. CERTAINLY IF THE CURRENT  
20 CONDITIONS -- BECAUSE IF WE ARE TALKING ABOUT ISSUES  
21 RELATED TO THE MANAGEMENT OF THE AQUIFER, WE NEED TO  
22 DETERMINE WHAT ITS PRESENT CONDITIONS ARE.

23 IF THERE IS NO OVERDRAFT -- AND THAT IS  
24 POSSIBLE AND I DON'T KNOW WHAT THE EVIDENCE IS IN THIS  
25 CASE -- THAT IS GOING TO END THAT INQUIRY.

26 THEN IT'S GOING TO BE UP TO THE INDIVIDUAL  
27 DISPUTANTS AMONG THEMSELVES TO DETERMINE WHETHER OR NOT  
28 THEY HAVE ANY CLAIMS THAT THEY WISH TO PURSUE AGAINST

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30

1 EACH OTHER. AND THAT IS NOT GOING TO INVOLVE EVERYBODY  
2 IN THIS CASE. THAT IS GOING TO INVOLVE THE PEOPLE WHO  
3 ARE PARTIES TO THE INDIVIDUAL ACTIONS THAT HAVE BEEN

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4 WORK -- COORDINATED HERE AND OBVIOUSLY TO SOME EXTENT

5 THERE MAY BE SOME COMMON ISSUES, BUT MOSTLY NOT, I  
6 THINK. THOSE ARE SEPARATE ISSUES.

7 ONE OF THE PROBLEMS THAT I FORESEE HERE IS  
8 THAT VARIOUS PURVEYORS HAVE STARTED PUMPING AT VARIOUS  
9 TIMES. EVEN THOUGH WE HAVE A SINGLE AQUIFER, THERE ARE  
10 OBVIOUSLY DIFFERENCES IN VARIOUS PORTIONS OF THE AQUIFER  
11 AS TO THE EFFECT OF PUMPING.

12 AT THE TIME THAT I MADE THE DECISION  
13 CONCERNING A SINGLE AQUIFER, I INDICATED THAT THERE WERE  
14 DISPARITIES AND DIFFERENCES IN THE VARIOUS PORTIONS OF  
15 THE AQUIFER IN TERMS OF THE EFFECT OF THE -- THE AMOUNT  
16 OF CONNECTIVITY OR CONDUCTIVITY OR -- WITHOUT AN  
17 UNDERSTANDING BECAUSE WE DIDN'T HAVE SUFFICIENT  
18 EVIDENCE, AND IT REALLY HASN'T -- HAD NOT BEEN ADDRESSED  
19 AT THAT POINT, WITHOUT AN UNDERSTANDING OF WHAT THE  
20 EFFECT OF THE DIFFERENCES WERE IN CONNECTIVITY.

21 FOR EXAMPLE, IN CERTAIN PARTS OF THE  
22 AQUIFER, THERE WAS FAIRLY NOMINAL CONNECTIVITY. AND  
23 WHAT THE EFFECT OF THAT SHOULD BE IN TERMS OF MANAGEMENT  
24 OF THE BASIN DEPENDS ON WHAT THE EFFECT IS ON PUMPING IN  
25 THAT AREA, OR EVEN IF THERE WAS NO SIGNIFICANT EFFECT  
26 WHAT THE CONSEQUENCES WERE OF THE PRECIPITATION OCCURRED  
27 IN THAT PART OF THE VALLEY IN TERMS OF FEEDING INTO THE  
28 AQUIFER.

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31

1 IT SEEMS TO ME THAT BEFORE WE GET INTO THE  
2 QUESTION OF -- AND I WOULD LIKE COUNSEL TO ADDRESS THIS.  
3 BUT BEFORE WE GET INTO THE QUESTION OF WHAT EACH  
4 INDIVIDUAL PORTION OF THE VALLEY LOOKS LIKE, WE NEED TO

5 KNOW GENERALLY WHETHER THERE IS AN OVERDRAFT THAT  
6 PERTAINS TO THE ENTIRE AQUIFER.  
7 AND THAT IS GOING TO REQUIRE SOME EVIDENCE  
8 AS TO RECHARGE SO THE COURT CAN DETERMINE WHAT THE  
9 SAFETY OF IT IS. AND SO MY INCLINATION IS TO SAY THE  
10 NEXT PHASE OF THE TRIAL SHOULD INVOLVE THE QUESTION OF  
11 WHAT THE CONDITION OF THE AQUIFER IS IN ITS ENTIRETY  
12 TODAY WITHOUT ATTEMPTING TO DETERMINE WHAT ELSE MIGHT BE  
13 INVOLVED IN TERMS OF PRIOR HISTORY, IN TERMS OF WHEN,  
14 FOR EXAMPLE, A PARTICULAR WATER PURVEYOR STARTED  
15 PUMPING, WHAT THE MUTUAL WATER COMPANIES DID IN TERMS OF  
16 PUMPING, WHEN THEY WERE FORMED, AND SO ON.

17 THOSE ARE ISSUES THAT MAY NOT BE APPLICABLE  
18 TO ALL PARTIES AND SO THAT I -- I THINK THAT ATTEMPTING  
19 TO DO THAT ALL IN ONE SINGLE PROCEEDING IS NOT WISE AND  
20 MAY NOT EVEN BE NECESSARY DEPENDING ON WHAT THE OUTCOME  
21 IS AS TO THE STATUS. I WOULD LIKE TO KNOW WHAT THAT IS.

22 RECOGNIZING THAT THIS TO SOME EXTENT CREATES  
23 A RATHER LONG DRAWN-OUT PROCEEDING AND SERIES OF  
24 PROCEEDINGS THAT THE WISEST COURSE -- AND, AGAIN, I WANT  
25 COUNSEL TO ADDRESS THIS -- MIGHT WELL BE TO DO A HEARING  
26 ON THE CURRENT STATUS OF THE AQUIFER, THE AMOUNT OF --  
27 ASSUMING FOR A MINUTE -- AND I CERTAINLY AM NOT DECIDING  
28 THIS. BUT ASSUMING FOR A MINUTE THAT THERE MAY BE AN

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32

1 OVERDRAFT, WHETHER OR NOT THAT OVERDRAFT REALLY PERTAINS  
2 TO THE ENTIRE AQUIFER OR NOT.

3 WE CERTAINLY HAVE HAD SOME ARGUMENTS THAT IT  
4 MAY NOT BE. I WOULD LIKE TO HAVE THE EVIDENCE ON THAT.  
5 ALL RIGHT. SO I AM THINKING AT THIS POINT -- AND IT IS

6 A. VERY TENTATIVE THOUGHT -- THAT I WOULD LIKE TO LIMIT  
7 THE NEXT PHASE TO THE CURRENT CONDITIONS IN THE VALLEY.  
8 AND I WOULD LIKE TO HAVE THAT HEARING PROBABLY AT THE  
9 END OF SEPTEMBER OR EARLY OCTOBER, AND I'LL SET SOME  
10 DATES IF THAT OCCURS FOR DISCLOSURE OF EXPERTS,  
11 DEPOSITIONS AND THE LIKE.

12 MR. MARKMAN: JAMES MARKMAN FOR THE CITY OF  
13 PALMDALE. THAT WOULD BE A STARTING POINT AS FAR AS WE  
14 ARE CONCERNED ON THE PUBLIC WATER SUPPLIERS' SIDE.

15 WE NEED TO ESTABLISH THAT SAFE YIELD NUMBER  
16 AND ALL THE FACTORS THAT CAUSE THAT NUMBER TO BE OPINED  
17 ON BY -- AT THE TRIAL. IT MAY BE THAT WE HAVE TO DO A  
18 DO-OVER ON SOME OF IT IF IT IS NECESSARY TO GO BACK  
19 HISTORICALLY WHEN YOU GET TO THE ISSUE OF WHETHER THERE  
20 HAS BEEN A PRESCRIPTIVE PERIOD.

21 BUT, NEVERTHELESS, YOUR HONOR IS CORRECT.  
22 YOU HAVE TO START WITH SAFE YIELD AND THE PRESENT  
23 SITUATION AND THE BASIN WHICH IS RELEVANT TO MANAGEMENT  
24 OF IT.

25 SO THAT IS A GOOD STARTING POINT. WE THINK  
26 WE WOULD BE A LITTLE MORE AMBITIOUS IF IT WERE OUR  
27 CHOICE, BUT I THINK YOUR HONOR HAS HIT THE CORE OF WHAT  
28 YOU HAVE TO DO BEFORE YOU GO INTO MANAGEMENT OR BACK

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33

1 INTO SOME TERMINATION OF PRESCRIPTIVE RIGHTS. SO  
2 LIMITED TO THIS, THIS IS THE CORRECT STARTING POINT.

3 THE COURT: WELL, MY INTEREST RIGHT NOW IS  
4 DETERMINING WHETHER OR NOT THE COURT IS GOING TO HAVE TO  
5 BE INVOLVED IN THE MANAGEMENT OF THIS BASIN, TOTALLY  
6 APART FROM WHAT THE RIGHTS INTER SE MAY BE BETWEEN THE

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7 VARIOUS COMPLAINANTS AGAINST EACH OTHER IN TERMS OF  
8 PRESCRIPTIVE RIGHTS OR APPROPRIATED RIGHTS AND THE LIKE.  
9 AND SO I -- I MEAN THAT IS WHERE I'M KIND OF  
10 HEADED. I REALLY DIDN'T WANT TO MAKE THIS MY LIFETIME  
11 CASE.

12

13 (LAUGHTER)

14

15 THE COURT: THAT WAS NEVER MY INTENT. AND I  
16 ASSURE YOU THAT I'M NOT TAKING ANY STEPS IN TRYING TO  
17 STAY IN THIS CASE. I'M DOING SOMETHING THAT I FEEL IS A  
18 DUTY. I HAVE OTHER THINGS THAT I COULD BE DOING RIGHT  
19 NOW.

20 MR. MARKMAN: WELL, YOUR HONOR, ONE OF THE  
21 BENEFITS OF STARTING WHERE THE COURT IS STARTING IS GET  
22 THE SCIENTIFIC CONCLUSIONS IN FRONT OF THE COURT AND THE  
23 COURT MAKE A JUDICIAL DETERMINATION ON WHAT IS THE  
24 SUPPLY AND WHAT IS THE SAFE YIELD AND ELIMINATING  
25 RAINFALL FACTORS, WHAT'S THE CONDITION OF THE BASIN  
26 TODAY, AND ON A GO-FORWARD BASIS SO THAT YOU CAN DECIDE  
27 WHETHER YOU HAVE TO MANAGE IT.

28 ALSO, IT MAY TURN A LIGHT ON FOR EVERYBODY

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34

1 AS TO THE -- WHEN THE COURT MAKES THAT STOP AND THAT  
2 DETERMINATION, PEOPLE WILL UNDERSTAND THEIR POSITION IS  
3 A WHOLE LOT BETTER INSOFAR AS GENERATING MEANINGFUL  
4 SETTLEMENT DISCUSSIONS EITHER WAY. WE THINK IT SERVES  
5 MORE THAN ONE PURPOSE.

6 THE COURT: OKAY.

7 UNIDENTIFIED ATTORNEY: YOUR HONOR --



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8 THE REPORTER: YOUR HONOR, I DIDN'T HEAR A NAME.

9 THE COURT: STOP FOR JUST A MOMENT. THE REPORTER  
10 HAS GOT TO BE ABLE TO HEAR YOU. AND STATE YOUR NAME  
11 BEFORE YOU SPEAK.

12 MS. MCKEITH: OH, OKAY. SORRY. MALISSA MCKEITH  
13 FROM ANAVERDE, LLC.

14 THE COURT: TURN UP THE SPEAKER.

15 THE REPORTER: THANK YOU.

16 THE COURT: GO AHEAD, MISS MCKEITH.

17 MS. MCKEITH: GOOD MORNING, YOUR HONOR, MALISSA  
18 MCKEITH FOR ANAVERDE LLC. I APPRECIATE THE COURT  
19 RECOGNIZING THAT THERE HAS BEEN QUITE A BIT OF RESOURCES  
20 EXPANDED TO CERTAIN AREAS OF THE AQUIFER WHERE THERE MAY  
21 OR MAY NOT BE OVERDRAFT DO TO THE -- TO THE LIMIT IS --  
22 ITS CONDUCTIVITY.

23 AND I WOULD APPRECIATE FOR OUR CLIENT SOME  
24 DIRECTION FROM THE COURT AS TO THE OVERDRAFT ISSUE  
25 RELATIVE TO THE AREA THAT WE ARE BEING -- THE LINE  
26 PROPERTY OWNER IS ON. I APPRECIATE THAT THERE WAS NOT  
27 OVERALL CONSENSUS ABOUT US HAVING A SEPARATE AQUIFER,  
28 BUT AT LEAST AS TO THE WATER BENEATH OUR SITE -- IT IS

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35

1 NOT AN OVERDRAFT.

2 AND I'M NOT CERTAIN HOW THE COURT INTENDS TO  
3 TREAT THE PARTIES WHO HAVE BEEN THROUGH THE LAST PHASE  
4 RELATIVE TO THE BROADER OVERDRAFT ISSUE, THE QUANTITY OF  
5 WATER UNDER OUR SITE EVEN THOUGH THERE WAS NOT  
6 SIGNIFICANT EVIDENCE THAT A GREAT PERCENTAGE OF THAT  
7 WATER MIGRATED BEYOND THE FAULT OR NOT.

8 AND THE REASON I RAISE THIS, YOUR HONOR, IS

9 BECAUSE LIKE IN MANY REAL ESTATE DEVELOPERS IT IS A VERY  
10 DIFFICULT TIME FOR OUR CLIENTS FINANCIALLY, AND BEING  
11 ABLE TO NOT EXPEND ATTORNEY FEES UNNECESSARILY IS ALWAYS  
12 AN IMPORTANT PRIORITY.

13 THE COURT: WELL, I'M NOT SURE WHAT TYPE OF  
14 RESPONSE I CAN GIVE YOU ABOUT THAT, MISS MCKEITH. I  
15 MEAN, I REMEMBER THE EVIDENCE AS TO ANAVERDE, AND I  
16 REMEMBER YOUR ARGUMENTS. AND THE FACT THAT THERE WAS  
17 CONDUCTIVITY -- AND I DON'T KNOW WHAT THE FULL  
18 CONSEQUENCE OF THAT CONDUCTIVITY IS -- MEANS THAT I NEED  
19 TO HEAR SOME EVIDENCE ABOUT IT.

20 I DON'T KNOW AT THIS POINT TO WHAT THE  
21 SIGNIFICANCE -- EVEN RECHARGE IS FROM THAT AREA THAT  
22 GOES INTO THE AQUIFER ITSELF WHETHER BY THE MOVEMENT OF  
23 UNDERGROUND WATER OR NOT.

24 UNIDENTIFIED ATTORNEY: RIGHT.

25 THE COURT: PARDON?

26 MS. MCKEITH: I DIDN'T SAY ANYTHING. SOMEONE ELSE  
27 WAS WEIGHING IN, YOUR HONOR.

28 THE COURT: I KNOW. I'M TRYING TO FIGURE OUT WHO.

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36

1 IN ANY EVENT, I'M TRYING TO TELL YOU WHAT DIRECTION TO  
2 GIVE YOU IF I COULD, BUT I WANT TO HEAR WHATEVER  
3 EVIDENCE THERE IS THAT ESTABLISHES WHATEVER CONDITIONS  
4 OF THE ENTIRE AQUIFER MIGHT BE. AND IF I RECOLLECT  
5 CORRECTLY, ONE OF THE THINGS THAT I WAS CONCERNED ABOUT  
6 WAS THE AMOUNT OF RECHARGE CONTRIBUTION FROM THE  
7 ANAVERDE AREA INTO THE AQUIFER ITSELF BECAUSE OF  
8 PRECIPITATION AND STREAMS.

9 BUT AT THIS POINT, I CAN'T REALLY GO BEYOND

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10 THAT, AND I CERTAINLY SYMPATHIZE WITH YOUR CLIENT'S  
11 DESIRES NOT TO SPEND A LOT OF MONEY.

12 MS. MCKEITH: WELL, THESE ARE, AS YOU KNOW,  
13 MULTI-PARTIES LONG-TERM COMPLICATED CASES, AND WE LOOK  
14 FORWARD TO PUTTING ON THE EVIDENCE AGAIN IN SEPTEMBER.  
15 BUT TO THE EXTENT THAT THE COURT PROVIDES SOME  
16 DIRECTIONS TO THE PARTIES IN TERMS OF PRESENTATION --  
17 AND I KNOW THAT YOU MAY NOT BE PREPARED TO DO THAT  
18 TODAY. PERHAPS, THAT WILL TAKE SOME EFFORTS AMONGST THE  
19 ATTORNEYS.

20 THE ISSUE OF OVERDRAFTS IN THE BASIN IS A  
21 VERY BROAD ISSUE, AND IT COULD TAKE MONTHS TO TRY. AND  
22 AS MUCH AS I WOULD ENJOY SPENDING MONTHS IN COURT WITH  
23 EVERYONE, THAT IS A VERY DIFFICULT CHALLENGE FOR  
24 NONPUBLIC ENTITIES AND PROBABLY MANY OF THE PARTIES IN  
25 THIS CASE THAT ARE NOT REPRESENTING LARGE ENTITIES.

26 THE COURT: WELL, I DON'T INTEND TO SPEND MONTHS  
27 DEALING WITH THE QUESTION OF THE BASIN CONDITION. I AM  
28 GOING TO SET IT TEN DAYS, TEN COURT DAYS. MY EXPERIENCE

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37

1 TELLS ME THAT IS SUFFICIENT IF THE PARTIES ACT  
2 EFFICIENTLY WITH REGARD TO THEIR WITNESSES.

3 SO, MR. BUNN, YOU WANTED TO SPEAK?

4 MR. BUNN: JUST ON YOUR LAST POINT, YOUR HONOR --  
5 THOMAS BUNN -- OR ALMOST LAST. IT WAS MY RECOLLECTION  
6 WITH RESPECT TO ANAVERDE THAT THERE WAS VIRTUALLY NO  
7 DISPUTE AS TO THE AMOUNT OF RECHARGE THAT CAME FROM  
8 ANAVERDE OVER THE FAULT.

9 SO I CAN'T TELL HOW -- MISS MCKEITH HOW TO  
10 PRESENT HER CASE, BUT IT SEEMS TO ME THAT HER ISSUES ARE

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11 MOSTLY FOR WHAT YOU HAVE RESERVED TO LATER PHASES.

12 THE COURT: WELL, I THINK YOU NEED TO TALK TO HER  
13 ABOUT THAT.

14 MS. MCKEITH: WELL, I AGREE WITH MR. BUNN. I JUST  
15 DID NOT GET A SPECIFIC FINDING ON THAT PARTICULAR ISSUE.  
16 AND TO THE EXTENT I CAN GET A STIPULATION AS TO THE  
17 AMOUNT OF WATER THAT ANAVERDE AREA WAS CONTRIBUTING TO  
18 THE REMAINING AQUIFER, I WOULD BE HAPPY TO CONSIDER THAT  
19 BECAUSE I DO THINK THAT THERE WERE GENERAL CONSENSUS  
20 THAT IT WAS A PRETTY SMALL PERCENTAGE OF --

21 MR. BUNN: WE CAN. I'M SORRY.

22 THE COURT: I'M SURE COUNSEL WILL ALL TALK WITH  
23 EACH OTHER AFTER THE PROCEEDING, I HOPE.

24 MR. KUNEY: YOUR HONOR, SCOTT KUNEY, IF I MAY. I  
25 APPRECIATE THE COURT'S SUGGESTION FOR THE NEXT PHASE  
26 ISSUE. I THINK THAT'S THE CORRECT ONE, THE CURRENT  
27 STATUS OF THE BASIN AND ITS ASSOCIATED SAFE YIELD. I  
28 THINK THAT IS THE CORRECT INCREMENT. AND THE PROPOSED

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1 SCHEDULE OF MAYBE LATE SEPTEMBER OR OCTOBER IS PERHAPS  
2 VIABLE. BUT BEFORE THAT AS A PREDICATE TO THAT, I'M  
3 INTERESTED IN UNDERSTANDING WHAT ORDER THE COURT IS  
4 GOING TO ISSUE SO THAT WE CAN BE CERTAIN THAT WE HAVE  
5 ALL THE WATER RIGHT CLAIMANTS SUBJECT TO THE COURT'S  
6 JURISDICTION BEFORE WE GO THROUGH THE PROSES OF THE  
7 DISCOVERY AND THE TRIAL. THERE IS NOT CURRENTLY ON  
8 THIS -- I KNOW THERE ARE NOT -- ALL OF THE CLAIMANTS ARE  
9 NOT SUBJECT TO THE COURT'S JURISDICTION.

10 THE COURT: WHO MIGHT NOT BE SUBJECT TO THE  
11 COURT'S JURISDICTION?

12 MR. KUNEY: WELL, I KNOW IN MY OWN BUSINESS  
13 DEALINGS THERE ARE SEVERAL ENERGY COMPANIES WITH WHICH  
14 WE DON'T REPRESENT BUT THAT HAVE ACQUIRED HUNDREDS IF  
15 NOT THOUSANDS OF ACRES OF LAND IN THE BASIN IN THE LAST  
16 YEAR. AND THERE VERY WELL MAY BE OTHERS THAT I'M NOT  
17 KNOWLEDGEABLE OF; BUT IN MY OWN DEALINGS, I KNOW THAT IS  
18 THE CASE.

19 I ALSO KNOW THAT THERE IS -- IT'S NOT A  
20 MECHANISM THAT THE PLAINTIFFS OR THE CROSS-COMPLAINANTS  
21 HAVE TO CAPTURE ALL THOSE TRANSACTIONS. I DON'T THINK  
22 THEY HAVE A MECHANISM AT ALL FOR THAT.

23 THE COURT: ALL I CAN DO IS TAKE WHAT COUNSEL  
24 REPRESENTS TO ME TO BE THE FACTS CONCERNING WHO IS A  
25 PARTY AND WHO IS NOT A PARTY AND WHO HAS BEEN SERVED AND  
26 WHO SHOULD BE SERVED. I'M RELYING ON COUNSEL. AND IF I  
27 CAN'T RELY ON COUNSEL, I HAVE NO -- I DON'T HAVE  
28 INDEPENDENT INVESTIGATIVE BODY TO DEAL WITH THESE

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39

1 ISSUES.

2 MR. LEMIEUX.

3 MR. LEMIEUX: I JUST HAVE A COUPLE OF QUESTIONS TO  
4 MAKE IT CLEAR TO ME WHAT WE ARE TALKING ABOUT FOR THE  
5 NEXT PHASE. I UNDERSTAND THAT YOU'RE TALKING ABOUT THE  
6 CURRENT SAFE YIELD AND WHETHER OR NOT THE OVERDRAFTING  
7 EXISTS. MY UNDERSTANDING IS THAT IN ORDER TO PRESENT  
8 EVIDENCE OF THAT, THERE WILL BE EVIDENCE, I BELIEVE,  
9 PRESENTED ABOUT HISTORICAL TRENDS AND SO ON.

10 IS IT YOUR INTENTION TO ALLOW THAT EVIDENCE  
11 IN?

12 THE COURT: I OBVIOUSLY -- I HAVE TO HEAR WHATEVER

13 EVIDENCE THE EXPERT MAY BASE HIS OR HER OPINION ON, BUT  
14 THE ONLY FINDING OF FACT THAT I INTEND TO MAKE IS WITH  
15 REGARD TO THE CURRENT STATUS OF THE AQUIFER, NOT ANY  
16 HISTORICAL EVIDENCE BECAUSE THAT IS GOING TO VARY FROM,  
17 I THINK, AREA TO AREA WITHIN THE AQUIFER. AND IT IS  
18 GOING TO VARY WITH REGARD TO VARIOUS PERIODS OF TIME AS  
19 TO WHEN VARIOUS PARTIES MAY HAVE STARTED PUMPING.

20 AND SO THAT -- I THINK IT WOULD BE  
21 IMPOSSIBLE FOR THE COURT TO MAKE THAT KIND OF A  
22 DETERMINATION WITHOUT HEARING A TRIAL THAT WOULD TAKE  
23 FOR THAT PHASE MONTHS AS MISS MCKEITH ALLUDED TO. AND I  
24 THINK SHE IS CORRECT. IT WOULD TAKE MONTHS TO DO THAT,  
25 AND I DON'T THINK THAT IS NECESSARY AT THIS POINT.

26 BECAUSE MY CONCERN WITH REGARD TO THE CENTER  
27 POINT OF THIS CASE IS, DOES THE COURT HAVE TO INVOLVE  
28 ITSELF IN THE MANAGEMENT OF THE BASINS SINCE THAT EVEN

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1 AS MR. FIFE ASKED TO DO IS THE BASIC CORE OF THIS CASE.  
2 AND THEN THAT IS TOTALLY APART FROM ANY INDIVIDUAL  
3 CLAIMS THAT PARTIES MAY HAVE VIS-A-VIS EACH OTHER  
4 WHETHER IT BE PUBLIC WATER PROVIDERS OR LANDOWNERS OR  
5 WHOEVER IT MIGHT BE. ALL RIGHT.

6 MR. LEMIEUX: THE SECOND QUESTION I HAVE -- I  
7 UNDERSTAND THAT ANSWER. THE SECOND QUESTION I HAD ALONG  
8 THOSE LINES YOU SAID THAT WE -- YOU ARE NOT GOING TO  
9 MAKE ANY DETERMINATION OF INDIVIDUAL RIGHTS, AND YOU  
10 DON'T WANT TO KNOW ABOUT INDIVIDUAL PUMPING AND HISTORY  
11 AND SO ON, WHICH I UNDERSTAND.

12 BUT I ALSO UNDERSTAND THAT THAT PUMPING, FOR  
13 EXAMPLE, IN THE AGGREGATE WILL GO INTO THE QUESTION OF

14 WHETHER OR NOT THERE IS AN OVERDRAFT TODAY. SO JUST TO  
15 MAKE IT CLEAR SO YOU -- YOU ARE PREPARED TO HEAR  
16 AGGREGATE EVIDENCE ABOUT THOSE THINGS EVEN IF YOU ARE  
17 NOT GOING TO MAKE A PARTICULAR DETERMINATION AT THE END  
18 OF THE TRIAL.

19 THE COURT: WELL, I WANT TO HEAR AGGREGATE, BUT I  
20 ALSO WANT TO HEAR INDIVIDUAL AREAS AS TO THE BASIN AND  
21 WHAT'S HAPPENING IN THOSE PARTICULAR AREAS IN TERMS OF  
22 WHAT THE IMPACT IS. I KNOW THERE IS CONDUCTIVITY AND  
23 CONNECTIVITY, BUT I WANT TO KNOW THE EXTENT OF IT WITH  
24 REGARD TO THE VARIOUS PORTIONS OF IT IN THE VALLEY NOW.

25 MR. LEMIEUX: OKAY. THAT IS CLEAR TO ME, YOUR  
26 HONOR. THANK YOU.

27 THE COURT: OKAY. ALL RIGHT.

28 MR. WILLIAM KUHS: YOUR HONOR, WILLIAM KUHS ON

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1 BEHALF OF TEJON RANCH CORP.

2 THE COURT: YES, MR. KUHS.

3 MR. WILLIAM KUHS: HOW ARE OUR EXPERTS GOING TO  
4 HANDLE THE CLAIMS TO RETURN FLOW OR -- OR IMPORTED  
5 WATER?

6 THE COURT: IN TERMS OF WHAT, MR. KUHS?

7 MR. WILLIAM KUHS: IN TERMS OF THERE ARE VARIOUS  
8 PUBLIC WATER PURVEYORS, IF I RECALL THE PLEADINGS, ARE  
9 CLAIMING RETURN FLOWS FROM IMPORTED WATER SUPPLIES.

10 THE COURT: WELL, THAT CERTAINLY IS PART OF THE  
11 EVIDENCE AS TO WHETHER OR NOT THERE IS AN OVERDRAFT,  
12 ISN'T IT?

13 MR. WILLIAM KUHS: WELL, IT DEPENDS ON WHETHER OR  
14 NOT THEIR CLAIMS ARE LEGITIMATE OR WHETHER THOSE WATERS

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15 HAVE BEEN ABANDONED TO THE BASIN.

16 THE COURT: WELL, THAT IS A LEGAL QUESTION THE  
17 COURT WILL HAVE TO DECIDE BASED UPON THE EVIDENCE THAT  
18 IS PRESENTED.

19 MR. WILLIAM KUHS: WELL, MY QUESTION IS WILL THAT  
20 BE PART OF THE NEXT PHASE OF THE TRIAL?

21 THE COURT: AS IT RELATES TO WHETHER OR NOT THE  
22 BASIN IS IN OVERDRAFT, THE ANSWER IS YES.

23 MR. WILLIAM KUHS: OKAY. SO THE CLAIMANTS OF  
24 THOSE RETURN FLOWS WILL NEED TO PRESENT EVIDENCE TO --  
25 IF THERE ARE CLAIMS, IS THAT ACCURATE?

26 THE COURT: YES. AND THE MOVING PARTIES HERE --  
27 THE PARTIES ARE GOING FORWARD. THE PARTIES WHO HAVE THE  
28 BURDEN OF PROOF IN THIS CASE ARE THE PURVEYORS WHO BY

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42

1 THEIR CROSS-COMPLAINT HAVE SET UP THE ISSUE OF OVERDRAFT  
2 AND A NEED FOR THE COURT TO PROVIDE A PHYSICAL SOLUTION  
3 TO AN OVERDRAFT. IF THERE IS NO OVERDRAFT, THERE IS NO  
4 PHYSICAL SOLUTION.

5 ALL RIGHT. MR. ZIMMER.

6 MR. ZIMMER: MR. ZIMMER ON BEHALF OF BOLTHOUSE. I  
7 APPLAUD THE COURT FOR TAKING A DEEP BREATH ON THIS CASE.  
8 AND CONSIDERING SOME OF THESE ISSUES THAT ARE, I THINK,  
9 ARE IMPORTANT TO EVERYBODY.

10 I THINK IT IS FUNDAMENTAL THAT EVERYBODY  
11 NEEDS TO BE IN THE CASE. I UNDERSTAND THE COURT'S  
12 POSITION REGARDING THAT YOU CAN'T BE THE POLICEMAN AS  
13 FAR AS KNOWING EXACTLY WHO HAS BEEN SERVED, BUT I THINK  
14 NONETHELESS MAYBE WITH MR. DUNN'S FILING IT, IT IS GOING  
15 TO BE A LITTLE MORE APPARENT THAT ALL THE LANDOWNERS OUT



16 THERE HAVE BEEN SERVED, SO I THINK THAT IS IMPORTANT.

17 THE NEXT THING I WOULD LIKE TO DISCUSS IS I  
18 THINK IT IS A GOOD IDEA TO -- NOTWITHSTANDING HOW LONG  
19 WE HAVE BEEN IN THIS CASE, I STILL THINK WE NEED TO BE  
20 CAREFUL ABOUT PROCEEDING AND DOING IT CORRECTLY. BUT I  
21 THINK THAT WE ARE GOING TO NEED SOME FURTHER DISCUSSION,  
22 MAYBE SOME BRIEFING IN MORE DETAIL, ON EXACTLY WHAT  
23 ISSUES EVERYBODY UNDERSTANDS ARE GOING TO BE TRIED IN  
24 THIS NEXT PHASE.

25 THE COURT GAVE US AN INDICATION OF WHAT YOU  
26 ARE THINKING IN TERMS OF THE NEXT PHASE, AND I TAKE THAT  
27 AS A GENERAL IDEA OF WHAT IS GOING TO BE TRIED. BUT  
28 MR. KUHS' RESPONSE ON THE TELEPHONE KIND OF GIVES ONE

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1 EXAMPLE OF MANY EXAMPLES OF DIFFERENT THINGS THAT WE --  
2 THAT MIGHT BE BEING TRIED OR NOT BEING TRIED, AND I  
3 THINK IT IS IMPORTANT THAT EVERYBODY UNDERSTANDS WHAT IS  
4 BEING TRIED AND WHAT EVIDENCE WE ARE GOING TO BE  
5 ADMITTING FOR WHAT PURPOSES RATHER THAN HAVE A BUNCH OF  
6 EVIDENCE COME IN AND NOT KNOWING WHETHER IT IS GOING TO  
7 BE USED IN THIS PHASE OR THE NEXT PHASE OR WHATEVER.

8 IN A ADDITION TO THAT, THERE ARE  
9 DEFINITIONAL ISSUES THAT I DON'T THINK EVEN THE PARTIES  
10 IN THE ROOM WOULD ALL AGREE TO IN TERMS OF WHAT DOES  
11 OVERDRAFT MEAN, WHAT'S THE DEFINITION WE ARE GOING TO BE  
12 OPERATING UNDER, AND THOSE SORT OF THINGS THAT I THINK  
13 MAY NEED TO BE BRIEFED.

14 AND I THINK THAT IT WOULD BE HELPFUL TO BOTH  
15 THE COURT AND THE COUNSEL TO KNOW WHAT DEFINITIONS WE'RE  
16 USING AND WHAT CASE LAW WE ARE RELYING ON AND EXACTLY

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17 HOW FAR OUT THIS -- THIS ADJUDICATION IS MEANT TO COVER.

18 THE COURT: WELL, LET ME TALK ABOUT DEFINITIONS  
19 FIRST. I DON'T THINK THAT EVERYBODY IS GOING TO AGREE  
20 ON WHAT EVERY WORD AND PHRASE MEANS.

21 MY EXPERIENCE IN HEARING GROUNDWATER CASES  
22 TELLS ME THAT VARIOUS EXPERTS HAVE SLIGHTLY VARYING  
23 DEFINITIONS AS TO WHAT OVERDRAFT IS. THE LAW, I THINK,  
24 IS PRETTY CLEAR AS TO WHAT IT IS. AND THAT -- THE  
25 DEFINITIONAL ISSUE THAT THE COURT WILL DECIDE WILL BE  
26 BASED UPON THE EVIDENCE, AND I DON'T THINK I AM PREPARED  
27 AT THIS POINT TO TELL YOU THAT ANY PARTICULAR LANGUAGE  
28 MEANS ANY PARTICULAR THING.

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1 BUT I DO EXPECT TRIAL BRIEFS, AND I EXPECT  
2 PARTIES TO PRESENT THEIR POSITIONS WITH REGARD TO WHAT  
3 CONSTITUTES OVERDRAFT IF THERE IS GOING TO BE ANY  
4 DIFFERENCE OF OPINION. VARIOUS EXPERTS THAT I HAVE  
5 HEARD TESTIFY IN THESE MATTERS IN THE PAST -- AND THAT  
6 HAS NOTHING TO DO WITH WHAT THE ULTIMATE DECISIONS ARE  
7 GOING TO BE IN THIS CASE -- BUT WHAT I HAVE HEARD IN THE  
8 PAST, THERE IS A LOT OF VARIABILITY AS TO WHEN PARTIES  
9 THINK THAT SOMETHING IS IN OVERDRAFT AND WHAT THAT  
10 OVERDRAFT MEANS AND WHAT SAFE YIELD IS AND THE LIKE.

11 THE CASE LAW IS FAIRLY CLEAR WITH REGARD TO  
12 PARTICULAR CASES. BUT, REMEMBER, YOU KNOW, IN MY  
13 OPINION EVERY CASE STANDS ON ITS OWN, AND I CAN'T MAKE  
14 ANY DETERMINATION AHEAD OF TIME AS TO WHAT IS GOING TO  
15 CONSTITUTE OVERDRAFT OR SAFE YIELD OR ANYTHING ELSE  
16 OTHER THAN THE CONCLUSION THAT IT IS IN OVERDRAFT IF  
17 RECHARGE DOESN'T EQUAL PRODUCTION THAT LEADS TO AN

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18 ULTIMATE DEGRADATION OF THE AQUIFER ON A PERMANENT  
19 BASIS.

20 AND THAT IS STATING IT ALMOST IN LAY TERMS  
21 AND NOT IN TERMS OF PRECISE LANGUAGE THAT THE VARIOUS  
22 DECISIONS HAVE USED. SO AT THIS POINT I UNDERSTAND YOUR  
23 CONCERN, BUT I THINK THAT -- THAT IS GOING TO GET SHAKEN  
24 OUT DURING THE COURSE OF THE PREPARATION, DURING THE  
25 COURSE OF THE DEPOSITIONS. AND I CERTAINLY EXPECT  
26 ARGUMENT FIRST IN TRIAL BRIEFS AND ULTIMATELY AT THE  
27 TIME OF TRIAL.

28 MR. ZIMMER: I GUESS WHAT I MIGHT SUGGEST THAT WE

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1 SHAKE SOME OF THAT OUT EARLIER RATHER THAN BEFORE WE GET  
2 TO THE EXPERT DEPOSITION PHASE. I KNOW IN THE LAST  
3 TRIAL WE ENDED UP IN A BIG FLURRY AT THE END. AND  
4 EVERYBODY HAD A DIFFERENT IDEA WHAT WE WERE TRYING, AND  
5 I WOULD LIKE TO SEE, I GUESS, IS SOME KIND OF PRETRIAL  
6 ORDER THAT ISSUES FAIRLY EARLY ON WITH SOME COMMENT BY  
7 ALL COUNSEL AS TO WHAT WE THINK WE ARE TRYING, AND THEN  
8 WE COULD COME UP WITH A PRETRIAL ORDER AS TO WHAT WE --  
9 AN ACCOUNTING BY ALL AS TO WHAT WE WILL BE TRYING.

10 A PRETRIAL ORDER I WOULD VISION ISSUING FROM  
11 THAT AS TO WHAT WE ARE TRYING, AND THEN WE CAN DO THE  
12 DEPOSITIONS AND DISCOVERY, WHATEVER IS GOING TO BE DONE  
13 AND --

14 THE COURT: I'M CERTAINLY NOT ADVERSE TO THAT, AND  
15 I WOULD EXPECT COUNSEL TO MAKE PROPOSALS AS TO THAT.  
16 AND WE CAN TAKE THAT UP VERY EARLY ON IN TERMS OF A CASE  
17 MANAGEMENT CONFERENCE AS WE GET SET FOR TRIAL. SO WE  
18 WILL TALK ABOUT THOSE PROPOSALS.

19 MR. ZIMMER: THE LAST ITEM I WANTED TO DISCUSS  
20 WITH THE COURT IS JUST TO MAKE SURE THAT WE HAVE  
21 FLEXIBILITY ON THE TRIAL DATE TO MAKE SURE OUR EXPERTS  
22 ARE AVAILABLE. MY EXPERT WAS ONE THAT GOT EXCLUDED LAST  
23 TIME. AND I JUST WANT TO BE SURE IF HE'S NOT AVAILABLE  
24 IN OCTOBER AND I HAVE A VACATION ONE WEEK IN THE  
25 BEGINNING OF NOVEMBER, BUT I -- SO I WOULD LIKE SOME  
26 ACCOMMODATION ON OUR EXPERTS IF WE CAN GET THAT.  
27 THE COURT: HERE IS WHAT I WOULD LIKE TO DO: I  
28 WOULD LIKE TO SET A TENTATIVE TRIAL DATE, AND I -- THEN

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1 WE WILL BACK UP FROM THAT IN TERMS OF EXPERT DISCLOSURES  
2 AND OTHER THINGS.

3 AND I WAS THINKING THAT -- IF I COULD GET MY  
4 CALENDAR HERE. BEAR WITH ME FOR JUST A MOMENT. I WAS  
5 THINKING COMMENCING SEPTEMBER THE 27TH WHICH IS A MONDAY  
6 AND SETTING ASIDE THE NEXT TEN DAYS FOR THE PRESENTATION  
7 OF EVIDENCE.

8 MR. ZIMMER: I'M SCHEDULED FOR VACATION ON THE 5TH  
9 OF NOVEMBER.

10 THE COURT: I JUST THOUGHT ABOUT SEPTEMBER OR  
11 OCTOBER.

12 MR. ZIMMER: I'M SORRY, OCTOBER. TEN DAYS?

13 THE COURT: TEN COURT DAYS. THAT WOULD PUT US TO  
14 OCTOBER, THE 8TH.

15 MR. ZIMMER: I THINK THAT MR. SHEENAN (PHONETIC)  
16 IS NOT AVAILABLE IN OCTOBER.

17 THE COURT: HE MAY HAVE TO APPEAR EARLIER ON.

18 MR. MCKEITH: YOUR HONOR, MALISSA MCKEITH. WE DID  
19 A LOT OF EXTRA WORK IN ACCOMMODATING MR. SHEENAN'S

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20 SCHEDULE DURING THE LAST PHASE. I'M SURE BOTH  
21 MR. ZIMMER AND I FEEL EQUALLY THAT HIS NONAPPEARANCE AT  
22 TRIAL CAUSED PROBLEMS WITH RESPECT TO THE (TELEPHONIC  
23 STATIC). WE ARE LOOKING AT A DATE SIX MONTHS IN  
24 ADVANCE. AND I THINK IF WE ARE TRYING TO ACCOMMODATE  
25 EVERY LAWYER AND EVERY EXPERT'S SCHEDULE, IT GETS PRETTY  
26 COMPLICATED.  
27 THE COURT: MORE COMPLICATED THAN I CAN FIGURE  
28 OUT. I THINK I WILL SET IT FOR THE DATES THAT I HAVE

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1 JUST INDICATED AND ASSUME THAT WE ARE GOING TO SPEND UP  
2 TO TEN COURT DAYS IN SUCCESSION. AND TO THE EXTENT THAT  
3 THERE ARE PEOPLE WHO HAVE TO ADJUST SCHEDULES IN ORDER  
4 TO ACCOMPLISH THAT, I'M GOING TO ASK YOU TO DO IT  
5 BECAUSE GIVEN THE VOLUME OF LAWYERING THAT IS INVOLVED  
6 HERE AND THE NUMBER OF EXPERTS -- ALTHOUGH, I'M NOT SURE  
7 HOW MANY EXPERTS WE ARE GOING TO HAVE TESTIFY AT THIS  
8 POINT, BUT WE WILL FIND OUT.

9 MR. ZIMMER: I WOULD BE HAPPY TO CHECK THAT WITH  
10 HIS SCHEDULE TO GET IT A LITTLE MORE --

11 THE COURT: LET HIM KNOW HOW IMPORTANT IT IS THAT  
12 HE TESTIFY DURING THAT TIME FRAME.

13 MR. ZIMMER: I WILL DO THAT, YOUR HONOR. AND I  
14 WILL BE NAILING IT DOWN A LITTLE MORE PRECISELY. THAT  
15 WAY WE WILL HAVE A DATE. MR. JOYCE DID REQUEST IF WE  
16 COULD HAVE A FEW MINUTES TO DISCUSS A COUPLE OF ISSUES  
17 ON A BREAK.

18 THE COURT: I WILL DO THAT. BUT LET'S TALK ABOUT  
19 A COUPLE OF OTHER THINGS BEFORE WE TAKE THAT BREAK,  
20 BECAUSE YOU MAY WANT TO TALK ABOUT THIS AS WELL. WE

21 NEED TO HAVE A DATE FOR COMPLETION OF DISCOVERY AND  
22 DISCLOSURE OF EXPERTS, AND I WANT THE STANDARD FORM OF  
23 DISCLOSURE TO OCCUR SO THAT YOU CAN PROVIDE A WRITTEN  
24 STATEMENT AS TO WHAT IT IS THAT THAT EXPERT IS GOING TO  
25 TESTIFY TO.

26 IF THERE ARE GOING TO BE ANY WITNESSES OTHER  
27 THAN EXPERT WITNESSES, I WANT THEM TO BE DESIGNATED WITH  
28 AN INDICATION OF WHAT THEIR TESTIMONY IS GOING TO BE AND

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1 HOW LONG YOU EXPECT ON DIRECT EXAMINATION AS TO ANY LAY  
2 WITNESSES. AND I WOULD LIKE SOMEONE TO MAKE A  
3 SUGGESTION AS TO WHAT A REASONABLE DATE FOR DISCLOSURE  
4 OF EXPERTS AND COMPLETION OF DISCOVERY OF EXPERT  
5 WITNESSES MIGHT BE.

6 MS. MCKEITH: ARE WE GOING TO BE ALLOWED TO TAKE  
7 PRE-EXPERT REGULAR DISCOVERY BEFORE THAT DATE OCCURS?

8 THE COURT: OF COURSE.

9 MS. MCKEITH: UNDER THE CODE?

10 THE COURT: YOU CAN TAKE DISCOVERY ANY TIME THAT  
11 YOU WISH TO TAKE AS FAR AS THERE IS A CUTOFF OF  
12 NONEXPERTS.

13 UNIDENTIFIED ATTORNEY: PERHAPS --

14 THE COURT: IS THIS MISS MCKEITH?

15 MS. MCKEITH: PERHAPS WE CAN ENTERTAIN THE  
16 ACCEPTANCE OF THE CASE MANAGEMENT ORDER AMONG PARTIES SO  
17 THAT THERE IS NOT UNWIELDILY DEADLINES. NOT A LOT OF  
18 ACTIVITY HAS OCCURRED IN THE CASE BECAUSE OF SOME OF THE  
19 PROCEDURAL ISSUES, YOUR HONOR, INCLUDING THE --

20 THE COURT: WE NEED YOU TO IDENTIFY YOURSELF.

21 MS. MCKEITH: -- OF A WRIT ON THE 170.6. WE ARE

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22 NOT INVOLVED IN THAT, BUT I DO THINK A CASE MANAGEMENT  
23 ORDER MIGHT BE SOMETHING THAT WOULD HELP ALL OF US  
24 MOVING FORWARD.

25 THE COURT: WELL, I CERTAINLY AGREE WITH THAT, BUT  
26 ONE OF THE THINGS THAT -- I THINK I RECOGNIZE THE VOICES  
27 NOW, BUT ARE YOU MISS MCKEITH?

28 MR. MCKEITH: I APOLOGIZE, YOUR HONOR.

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1 THE COURT: BUT AM I CORRECT?

2

3 (NO AUDIBLE RESPONSE)

4

5 THE COURT: NO RESPONSE. I THINK SO. WE ARE  
6 GOING TO DO A CASE MANAGEMENT, BUT THAT IS WHY I'M  
7 ASKING FOR INPUT WITH REGARD TO THESE DATES.

8 YES, MR. LEMIEUX.

9 MR. LEMIEUX: YOUR HONOR, I SEEM TO RECALL FROM  
10 THE LAST DAYS OF TRIAL WITH LESS PARTIES AND PROBABLY  
11 LESS COMPLICATED ISSUES THAT WE RAN OUT OF TIME. WE  
12 TRIED TO JAM TOO MANY EXPERTS INTO THE TIME WE HAD. I  
13 THINK WE HAD 30 OR 45 DAYS FOR THAT, AND WE WERE GOING  
14 ALL OVER THE PLACE. I THINK WE PROBABLY NEED MORE THAN  
15 30 DAYS REALISTICALLY.

16 THE COURT: 30 DAYS FOR WHAT?

17 MR. LEMIEUX: FROM THE DATE OF TRIAL TO START THE  
18 DEPOSITIONS OF THE --

19 THE COURT: OH, FROM THE DATE OF TRIAL -- BETWEEN  
20 THE DISCLOSURE AND THE DATE OF TRIAL?

21 MR. LEMIEUX: YEAH. I'M THINKING MAYBE SOMETHING  
22 LIKE -- MAYBE WE ARE LOOKING LATE JULY IS WHAT I --

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23 THE COURT: WE WILL FIGURE THAT OUT. AND MAYBE  
24 WHAT WE SHOULD BE DOING IS LETTING COUNSEL TALK WITH  
25 EACH OTHER ABOUT SOME OF THESE DATES. THAT IS GOING TO  
26 NOT BE POSSIBLE FOR PEOPLE ON THE LINE, BUT THEY CAN  
27 GIVE US THEIR INPUT AFTERWARDS.  
28 SO WHAT MAYBE I OUGHT TO DO IS TAKE A RECESS

50

1 FOR ABOUT 15 MINUTES. LET COUNSEL TALK ABOUT A SCHEDULE  
2 AND FOR DISCLOSURE DISCOVERY CUTOFF AND EXPERT  
3 DISCLOSURES -- OR EXPERT DEPOSITIONS, AND THEN WE CAN  
4 RECONVENE AND -- BUT I WOULD LIKE YOU TO DO THIS WITHIN  
5 15 MINUTES IF YOU CAN.

6 MS. GOLDSMITH: THIS IS JANET GOLDSMITH. SINCE I  
7 WON'T GET TO POWWAW WITH YOU FOLKS, ONE OF THE  
8 SUGGESTIONS THAT WAS MADE IN CASE MANAGEMENT STATEMENT  
9 MADE WAS SUGGESTED THAT WHEN DISCLOSURE OF EXPERT  
10 OCCURRED THAT IT BE -- THAT THE PARTIES BE REQUIRED TO  
11 FILE THEIR EXPERTS REPORTS AT THAT TIME, NOT JUST AS TO  
12 SOME VAGUE DESCRIPTION OF THE FACT THAT THEY WERE GOING  
13 TO TESTIFY AS TO OVERDRAFT. AND I WOULD LIKE THE  
14 PARTIES IN THE COURT TO CONSIDER THAT SINCE I'M NOT  
15 THERE.

16 THE COURT: OKAY. THANK YOU. ALL RIGHT. WE ARE  
17 GOING TO TAKE A 15-MINUTE RECESS, AND I'M GOING TO HOLD  
18 YOU TO 15 MINUTES SO THAT WE CAN CONCLUDE THIS.

19

20 (A RECESS WAS TAKEN.)

21

22 THE COURT ASSISTANT: BACK IN SESSION.

23 THE COURT: ALL RIGHT. CAN SOMEONE REPORT TO THE



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24 COURT THE RESULTS OF YOUR DELIBERATIONS.

25 MR. ZIMMER: I'M STANDING HERE SO -- MR. ZIMMER  
26 FOR BOLTHOUSE. WE ARE TALKING ABOUT A JULY 1ST EXPERT  
27 DESIGNATION WITH THE PARTIES ANTICIPATING THAT EXPERT  
28 DEPOSITIONS WILL GO FORWARD BETWEEN JULY 15TH AND AUGUST

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1 30TH. IT IS OUR UNDERSTANDING FROM THE PURVEYOR COUNSEL  
2 THAT MR. SCALMANINI AT LEAST WHO SEEMS TO BE ONE OF THE  
3 MAIN WITNESSES WILL BE AVAILABLE BEFORE -- WITHIN THAT  
4 TIME IN JULY SO THAT WE CAN TAKE HIS DEPOSITION.

5 I KNOW THERE WAS SOME DISCUSSION ABOUT HIM  
6 BEING ABSENT IN THE MONTH OF AUGUST. IT IS CONTEMPLATED  
7 THAT THERE WOULD BE A REBUTTAL DESIGNATION ON JULY 21ST.

8 THE COURT: JULY 21?

9 MR. ZIMMER: YES, YOUR HONOR.

10 THE COURT: OKAY.

11 MR. ZIMMER: AND I THINK THAT WAS THE MAIN PART OF  
12 THE DISCUSSIONS AT LEAST FROM MY STANDPOINT. IF WE  
13 COULD GET SOME SUBMISSIONS TO THE COURT WITHIN THE NEXT  
14 COUPLE OF WEEKS ON THE SCOPE OF THE NEXT TRIAL SO THAT  
15 THE COURT COULD IMPLEMENT THAT INTO A CASE MANAGEMENT  
16 ORDER, I THINK THAT WOULD BE HELPFUL AS WELL.

17 I THINK MR. JOYCE HAS SOMETHING.

18 THE COURT: CAN YOU -- CAN WE SET A CMC DATE THEN  
19 OF -- FOR CONSIDERATION OF THE PROPOSED ORDER?

20 MR. ZIMMER: THAT IS A GOOD IDEA. IF WE HAD TWO  
21 WEEKS TO DO THE SUBMITTALS WOULD BE LIKE THREE WEEKS  
22 OUT.

23 THE COURT: OKAY. LET'S SEE.

24 MR. ZIMMER: OR A WEEK TO DO SUBMITTALS AND TWO

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25 WEEKS OUT FOR THE HEARING, WHATEVER WORKS FOR THE  
26 COURT'S CALENDAR.  
27 THE COURT: TODAY'S THE 8TH. JUST A SECOND. CAN  
28 WE DO A CMC, CASE MANAGEMENT CONFERENCE, ON THE 22ND, OR

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1 IS THAT TOO SOON?  
2 MR. FIFE: THAT IS GOOD.  
3 MR. ZIMMER: THAT IS FINE.  
4 THE COURT: 22ND OF MARCH. SO YOUR SUBMISSIONS  
5 SHOULD BE TO THE COURT THE WEEK PREVIOUSLY -- THE  
6 PROPOSALS FOR DEFINITIONS BY THE 15TH. ALL RIGHT.  
7 SUBMISSIONS FOR DEFINITIONS WILL BE MARCH 15TH. THE CMC  
8 WILL BE CENTERED IN THIS COURTROOM, BUT IT WILL BE  
9 TELEPHONIC ON THE 22ND AT 9:00 A.M.  
10 MR. ZIMMER: THANK YOU, YOUR HONOR.  
11 MS. GOLDSMITH: THIS IS JAN GOLDSMITH. CAN I ASK  
12 YOU WHAT YOU MEAN BY DEFINITIONS.  
13 THE COURT: WELL, DEFINITIONS FOR THE NEXT PHASE  
14 OF THE TRIAL. IN OTHER WORDS --  
15 MS. GOLDSMITH: DO YOU MEAN SCOPE OF ISSUES?  
16 THE COURT: YES.  
17 MS. GOLDSMITH: NOT DEFINITION OF OVERDRAFT OR --  
18 THE COURT: NO, NO, NO.  
19 MS. GOLDSMITH: THANK YOU.  
20 THE COURT: I EXPECT THAT IN THE TRIAL BRIEF.  
21 MS. GOLDSMITH: YES, THAT'S WHAT I THOUGHT. THANK  
22 YOU, YOUR HONOR.  
23 MR. KUNEY: YOUR HONOR, THIS IS SCOTT KUNEY AGAIN.  
24 CAN WE INCLUDE IN THIS ORDER A DATE CERTAIN IN WHICH THE  
25 PLAINTIFFS, CROSS-COMPLAINANTS WOULD MAKE A WRITTEN

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26 SUBMITTAL VERIFYING TO THE COURT AND PARTIES THAT THEY  
27 HAVE, IN FACT, SERVED ALL OF THE WATER RIGHTS CLAIMANTS  
28 IN THIS CASE?

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1 THE COURT: I THINK THAT IS APPROPRIATE, BUT I  
2 THINK THAT IS A PROPOSAL. SO WHY DON'T YOU MAKE THAT  
3 PROPOSAL, AND OTHER COUNSEL CAN RESPOND TO IT. IN OTHER  
4 WORDS, WHAT I'M ASKING FOR ARE PROPOSALS FOR THE CASE  
5 MANAGEMENT ORDER THAT WILL SET FORTH THE TERMS AND  
6 CONDITIONS OF THE TRIAL AND ANYTHING ELSE THAT WE NEED  
7 TO DO.

8 MR. KUNEY: THE PROPOSAL WOULD BE THAT THE  
9 PLAINTIFF, CROSS-COMPLAINANT WOULD MAKE A SUBMITTAL TO  
10 THE COURT AND THE PARTIES VERIFYING THAT THEY HAVE, IN  
11 FACT, SERVED FULL WATER RIGHT CLAIMANTS, THE SUBJECT OF  
12 THIS GROUNDWATER ADJUDICATION.

13 THE COURT: ALL RIGHT. MR. JOYCE.

14 MR. JOYCE: THANK YOU, YOUR HONOR, MR. JOYCE.  
15 FOLLOWING UP ON WHAT MR. KUNEY JUST OBSERVED -- OR  
16 STATED, I WOULD MAKE THE OBSERVATION THAT IN CALIFORNIA  
17 WHEN YOU -- WHEN TITLE PROPERTY IS BEING TRANSFERRED,  
18 TYPICALLY A REQUIRED FORM CALLED A PRELIMINARY CHANGE OF  
19 OWNERSHIP FORM THAT HAS TO BE FILED WITH THE ASSESSORS'  
20 OFFICE AS PART OF THE PROCESS.

21 AND A SIMPLE CHECK TO THE LOS ANGELES COUNTY  
22 AND THE KERN COUNTY ASSESSORS' OFFICE FOR THE AREA WOULD  
23 CLEARLY INDICATE IF THERE HAS BEEN INTERIM LITIGATION  
24 TRANSFERS, BUT THAT WAS NOT THE PURPOSE OF MY WANTING TO  
25 BE HERE TO COMMENT. I WAS JUST FOLLOWING UP TO WHAT  
26 MR. KUNEY OBSERVED.

27

28 DECLARATION AS TO WHETHER OR NOT THAT EFFORT HAS BEEN

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1 UNDERTAKEN.

2 BUT IN ANY EVENT, WHAT I WANTED TO ADDRESS  
3 WAS ON THE COURT'S COMMENTS. AS I UNDERSTAND IT, THE  
4 COURT IS FOCUSING THE NEXT PHASE OF TRIAL UPON THE  
5 CURRENT CONDITIONS WITHIN THE ADJUDICATION BOUNDARY OF  
6 PRIMARILY DIRECTED TO THE ULTIMATE QUESTION, AND THAT IS  
7 WHETHER OR NOT THE EQUITABLE POWERS OF THE COURT ARE  
8 NECESSITATED TO ADDRESS AND/OR SOLVE PROBLEMS IN THE  
9 FORM OF A PHYSICAL SOLUTION.

10 WITH THAT OBSERVATION, IT WOULD BE MY  
11 PERCEPTION, THEN, THAT WE ARE PROCEEDING IN THIS NEXT  
12 PHASE FOR PURPOSE OF THE EQUITABLE REMEDY AS OPPOSED TO  
13 A LEGAL REMEDY INVOLVING RIGHTS.

14 THE COURT: THAT IS RIGHT.

15 MR. JOYCE: AND CONSEQUENTLY THAT I WOULD ASSUME  
16 THAT ANY RIGHTS WE WOULD HAVE TO INSIST UPON A JURY  
17 TRIAL ON ISSUE OF PRESCRIPTION WOULD BE PRESERVED?

18 THE COURT: THAT IS CORRECT.

19 MR. JOYCE: THANK YOU, YOUR HONOR.

20 THE COURT: AND, INCIDENTALY, MR. JOYCE, I DON'T  
21 DISAGREE WITH YOU -- THAT IS A VERY SERIOUS RIGHT, A  
22 RIGHT TO JURY TRIAL AND NOT SOMETHING THAT THE PARTIES  
23 SHOULD BE EASILY DEPRIVED OF IF YOU ARE TAKING SOMETHING  
24 AWAY FROM THAT PARTY.

25 AND PRESCRIPTION -- WITHOUT GOING TOO FAR  
26 DOWN THAT ROAD, PRESCRIPTION IS A VERY DIFFICULT AREA IN  
27 THIS CASE IN PARTICULAR GIVEN THE NUMBER OF PARTIES AND

1 VARIOUS TIME FRAMES THAT ARE INVOLVED, AND THE NOTICE  
2 REQUIREMENTS.

3 SO, YOU KNOW, I DON'T -- IT IS NOT AN EASY  
4 CASE.

5 MR. JOYCE: I APPRECIATE THAT, YOUR HONOR, BUT I  
6 WANTED TO ENSURE THAT MY OPTION TO INSIST ON A JURY IS  
7 PRESERVED DESPITE THE NEXT PHASE OF THE TRIAL.

8 THE COURT: IT IS.

9 MR. JOYCE: THANK YOU.

10 MR. WEEKS: GOOD MORNING, YOUR HONOR, BRAD WEEKS  
11 FOR QUARTZ WATER DISTRICT. DID THE COURT WISH TO GIVE A  
12 DATE FOR GIVING NOTICE OF LAY WITNESSES?

13 THE COURT: I WOULD LIKE PROPOSALS FOR THAT SO WE  
14 CAN DEAL WITH THE CASE MANAGEMENT CONFERENCE JUST AS WE  
15 HAVE DEALT WITH THE QUESTION OF EXPERTS HERE. RIGHT NOW  
16 YOU CAN DEPOSE ANY -- A WITNESS -- LAY WITNESSES THAT  
17 YOU WISH TO DEPOSE, BUT I WOULD LIKE TO AT SOME POINT A  
18 DISCLOSURE OF LAY WITNESSES THAT ARE TO BE CALLED.

19 AND I WOULD LIKE YOU TO SEE IF YOU CAN AGREE  
20 TO THAT. AND IF YOU CANNOT AGREE, INCLUDE IT IN THE  
21 PROPOSALS FOR TAKING IT UP ON THE 22ND.

22 MR. WEEKS: THANK YOU, YOUR HONOR.

23 MR. WILLIAM KUHS: WILLIAM KUHS ON BEHALF OF TEJON  
24 RANCH CORP. IF I UNDERSTAND THE DISCUSSION TODAY THAT  
25 THE PURVEYORS HAVE THE BURDEN WITH RESPECT TO OVERDRAFT,  
26 WE HAD AN ISSUE THAT AROSE IN THE PHASE II TRIAL AS TO  
27 WHO HAD THE BURDEN. THAT IS TO SAY WHO HAD TO HAVE  
28 EXPERT DISCLOSURE REPORTS.

1                   FIRST, BECAUSE IT HAPPENED IN THE PHASE II  
2 TRIAL OF THE PUBLIC WATER PURVEYORS FOR THE MOST PART  
3 DID NOT FILE EXPERT WITNESS REPORTS. THEY CLAIMED THAT  
4 THOSE WERE REBUTTAL WITNESSES. AND SO WE REALLY DIDN'T  
5 GET MUCH IN THE WAY OF EXPERT REPORTS WITH RESPECT TO  
6 PROPOSED REBUTTAL WITNESSES.

7                   IT SEEMS TO ME THAT WE NEED TWO DISCLOSURE  
8 DATES FOR EXPERTS: ONE, AN EARLY DISCLOSURE OR AT LEAST  
9 A FIRST DISCLOSURE BY THOSE WHO ASSERT OR PROPOSE TO  
10 ASSERT OVERDRAFT IN THE BASIN. BECAUSE THOSE OF US WHO  
11 MAY TAKE THE POSITION THAT THERE IS NO OVERDRAFT THERE'S  
12 NOTHING FOR OUR EXPERTS TO REPORT ON UNTIL WE WILL SEE  
13 THOSE REPORTS.

14                  THE COURT: WELL, I DON'T DISAGREE WITH YOU, AND  
15 THE PARTY WHO HAS THE BURDEN OF PROOF -- AND THAT IS THE  
16 PURVEYORS -- WITH REGARD TO OVERDRAFT ARE GOING TO HAVE  
17 TO DO THEIR FIRST DISCLOSURES.

18                   AND THERE IS A DATE SET FOR REBUTTAL  
19 DISCLOSURE OF EXPERTS WHICH WAS THE 21ST IF I RECALL,  
20 JULY 21.

21                   DOES THAT RESPOND TO YOUR CONCERN?

22                  MR. WILLIAM KUHS: SORRY. IT DIDN'T COME ACROSS  
23 ON THE PHONE. SO IF THAT IS -- IF HIS PROPOSAL INCLUDED  
24 TWO DISCLOSURE DATES, THERE NEEDS TO BE ENOUGH  
25 SEPARATION BETWEEN THOSE DATES SO THAT THE EXPERTS CAN  
26 DO THEIR WORK.

27                  MR. MARKMAN: JAMES MARKMAN. A REBUTTAL  
28 DISCLOSURE DISCLOSES AN EXPERT WHO'S GOING TO REBUT, BUT

1 EVERYBODY HAS TO DISCLOSE THEIR PRIMARY EXPERT ON THE  
2 FIRST DAY AND --

3 THE COURT: IF YOU HAVE A POSITION TO TAKE, YOU  
4 SHOULD DISCLOSE YOUR EXPERT. AND IF THERE IS A  
5 REBUTTAL, THEN THAT IS TO BE ONE WEEK LATER, AS I  
6 UNDERSTAND IT.

7 MR. MARKMAN: AND ONE ASSUMES THE REBUTTAL IS IN  
8 RESPONSE TO SOMETHING; FOR EXAMPLE, TRIALS ARE -- IT'S  
9 ELICITED IN THE DIRECT TESTIMONY. SO I -- WE ARE NOT  
10 TRYING TO MAKE THIS WHERE WE DISCLOSE, HERE IS OURS, AND  
11 THEN THEIR WITNESS WHO IS GOING TO HAVE ANOTHER  
12 POSITION.

13 THE COURT: THERE SHOULD BE SIMULTANEOUS  
14 DISCLOSURE. THAT'S WHAT THE LAW REQUIRES.

15 MR. MARKMAN: YES, THANK YOU.

16 MR. WILLIAM KUHS: I DON'T HAVE A QUARREL WITH  
17 THAT. I'M FOCUSING ON THE REPORTS.

18 THE COURT: ALL RIGHT. AND I THINK THAT THERE  
19 SHOULD BE DISCLOSURE REPORTS IN THIS CASE. IT IS  
20 COMPLICATED ENOUGH AS IT IS WITHOUT MAKING IT MORE  
21 COMPLICATED. THAT WILL BE IN THE FINAL ORDER. BUT I DO  
22 WANT TO HAVE A CASE MANAGEMENT CONFERENCE TO DEAL WITH  
23 THE -- WITH THE FORMALITY OF THE ORDER, AND THAT WOULD  
24 BE AS I HAVE INDICATED ON THE MARCH 22ND TELEPHONICALLY.

25 MR. MCLACHLAN: CAN I BE HEARD BRIEFLY?

26 THE COURT: YES, MR. MCLACHLAN.

27 MR. MCLACHLAN: SORRY. I MISSED THE BEGINNING OF  
28 THE PROCEEDING. I HAD ANOTHER HEARING. THE -- IF I

1 UNDERSTAND CORRECTLY -- AND I HAVE BEEN HERE FOR MOST OF  
2 THIS DISCUSSION OR ALL OF IT ON THE TRIAL DATE -- WE ARE  
3 GOING TO BE GOING AT THE CURRENT CONDITIONS IN THE BASIN  
4 AND DETERMINING OR HOPING THAT THE COURT WILL ULTIMATELY  
5 DETERMINE THE CURRENT SAFE YIELD OF THE BASIN AND  
6 WHETHER OR NOT THE BASIN IS IN A STATE OF OVERDRAFT  
7 CURRENTLY; IS THAT CORRECT?

8 THE COURT: YES.

9 MR. MCLACHLAN: SO IT SOUNDS LIKE IN DOING SO  
10 WE'RE GOING TO HAVE TO PRESENT PRINCIPAL EVIDENCE IN  
11 THAT ENDEAVOR TO DISCUSS THE PUMPING THAT IS GOING ON IN  
12 THE BASIN BECAUSE WE OBVIOUSLY CAN'T FIGURE OUT WHERE  
13 THE BASIN'S OVERDRAFT --

14 THE COURT: THE TOTALITY OF THE PUMPING, YES.

15 MR. MCLACHLAN: SO THE PROBLEM I HAVE SPECIFIC TO  
16 OUR CLIENTS IS THERE HAS BEEN NO ASSESSMENT DONE BY  
17 ANYBODY TO THIS POINT ON THE PUMPING OF THE SMALL PUMPER  
18 CLASS WHICH COULD BE SUBSTANTIAL, COULD BE ANYWHERE  
19 BETWEEN FIVE OR 15,000 ACRE FEET. WE DON'T KNOW.

20 AND I'M WONDERING HOW THE COURT IS GOING TO  
21 MAKE THOSE DETERMINATIONS AND RULINGS WITHOUT EVIDENCE  
22 AS TO WHAT THE SMALL PUMPER CLASS IS PUMPING.

23 THE COURT: I DON'T INTEND TO MAKE IT WITHOUT  
24 EVIDENCE OF WHAT THE SMALL PUMPER -- PUMPER CLASS IS  
25 PUMPING. THAT IS PART OF THE TOTALITY OF THE PUMPING,  
26 AND I EXPECT TO HEAR EVIDENCE ON THAT FROM THE  
27 PROPONENTS OF OVERDRAFT. I MEAN, THEY HAVE THE BURDEN  
28 OF ESTABLISHING WHAT THE PUMPING IS AS WELL AS THE



2 TO HEAR EVIDENCE CONCERNING THAT.

3 I UNDERSTAND THAT WITH REGARD TO YOUR  
4 CLIENTS, YOU'RE VIRTUALLY IN A POSTURE OF HAVING TO  
5 SETTLE YOUR CLAIMS VIS-A-VIS YOURSELVES, AND THAT SHOULD  
6 ELIMINATE ANY CONCERNS THAT YOU HAVE WITH REGARD TO  
7 THEIR CLAIMS AGAINST YOU.

8 MR. MCLACHLAN: THERE IS NO SETTLEMENT FOR THE  
9 SMALL PUMPERS CLASS THAT I'M AWARE OF, AND I DON'T THINK  
10 THERE WOULD COULD BE ONE WITHOUT MY BEING AWARE OF IT.

11 THE COURT: I DON'T KNOW WHAT YOU ARE TALKING  
12 ABOUT NOW BECAUSE THAT IS CONTRARY TO EVERYTHING THAT I  
13 HAVE HEARD ABOUT PROCESS THE SETTLEMENT BETWEEN BOTH THE  
14 WOODS AND THE WILLIS CLASS.

15 MR. MCLACHLAN: WELL, I BELIEVE THERE IS A  
16 POTENTIAL SETTLEMENT FOR THE WILLIS CLASS. THAT'S WHAT  
17 I HAVE HEARD, BUT THERE IS NOT A POTENTIAL SETTLEMENT  
18 CURRENTLY FOR THE WOOD CLASS FOR A LOT OF REASONS WE  
19 DON'T NEED TO GET INTO RIGHT NOW, BUT JUST -- IT DOESN'T  
20 EXIST CURRENTLY.

21 AND EVEN IF IT DID EXIST, THE TIMING OF  
22 THINGS WHERE WE SET THIS TRIAL WHERE IT IS -- THESE  
23 ISSUES ARE STILL GOING TO COME UP. WE HAVE A  
24 FUNDAMENTAL PROBLEM REPRESENTING THE CLASS AT THAT PHASE  
25 III TRIAL HAVING TO RELY ON MR. SCALMANINI TO TELL US  
26 WHAT THE SMALL PUMPER CLASS IS PUMPING, AND THAT'S  
27 JUST -- IT IS UNFAIR.

28 AND I REALLY THINK THE COURT SHOULD AT SOME

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1 POINT IN TIME RECONSIDER THAT DECISION BECAUSE I THINK  
2 IT IS GOING TO BE VERY PROBLEMATIC. I WANT TO SAY THAT

3 NOW BECAUSE I THINK WE ARE NOT ON A -- WE ARE NOT ON A  
4 GOOD PATH, AND I'LL LEAVE IT AT THAT.

5 THE COURT: MR. DUNN OR SOMEBODY ON THE PURVEYORS'  
6 SIDE -- OR MAYBE I SHOULD SAY ANYBODY ON THE PURVEYORS'  
7 SIDE, COULD YOU ADDRESS WHAT MR. MCLACHLAN JUST SAID.

8 MR. BUNN: YOUR HONOR, THOMAS BUNN. THAT IS NEWS  
9 TO US WHAT MR. MCLACHLAN SAID. WE HAD UNDERSTOOD THAT  
10 WE WERE PURSUING A SETTLEMENT. THERE WERE SOME LAST  
11 MINUTE ISSUES THAT WERE STILL BEING WORKED ON, BUT WE  
12 THOUGHT WE WERE ON OUR WAY THERE.

13 THE COURT: WELL, THAT'S WHAT I HEARD FROM  
14 EVERYBODY ON YOUR SIDE, AND THAT'S WHAT I HEARD FROM  
15 MR. MCLACHLAN IN THE PAST, AND THAT IS WHY I'M SOMEWHAT  
16 PUZZLED BY THAT STATEMENT.

17 MR. MCLACHLAN: I'LL BE LESS CRYPTIC. THE COURT'S  
18 CONSOLIDATION ORDER, I THINK, WHILE WELL-INTENTIONED HAS  
19 SOME IMPACTS ON THE CLASSES THAT I THINK THE CLASS  
20 COUNSEL -- AND I'M NOT GOING TO SPEAK FOR MR. KALFAYAN.  
21 I'M JUST GOING TO SPEAK FOR MR. O'LEARY AND MYSELF ARE  
22 HIGHLY PROBLEMATIC.

23 OUR HANDS HAVE BEEN SORT OF FORCED ON IT. I  
24 AGREE WITH THE LANDOWNERS OVER HERE THAT THINGS HAVE  
25 CHANGED. NOTICE WAS GIVEN TO THE SMALL PUMPERS CLASS  
26 AND TO THE WILLIS CLASS ABOUT A PARTICULAR LAWSUIT  
27 AGAINST PUBLIC WATER SUPPLIERS. AND NOW THEIR DEC.  
28 RELIEF CLAIMS HAVE BEEN OSTENSIBLY AND ACTUALLY

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1 CONSOLIDATED WITH THE DEC. RELIEF CLAIMS OF EVERYBODY  
2 ELSE. THE CLASS MEMBERS HAVE BEEN GIVEN NO NOTICE OF  
3 THAT WHATSOEVER.

4 I DON'T INTEND TO REPRESENT THEM VOLUNTARILY  
5 AT ANY RATE AT THE PHASE III TRIAL WITHOUT THE BASIC  
6 TENANTS OF DUE PROCESS HAVING BEEN SATISFIED, AND I  
7 DON'T THINK I CAN DO THAT ETHICALLY.

8 AND I THINK AT A MINIMUM NOTICES HAVE TO BE  
9 GIVEN TO THESE CLASSES SAYING -- AND IF MR. KALFAYAN  
10 SETTLES THE WILLIS CLASS, OBVIOUSLY THEY CAN GIVE NOTICE  
11 THAT CURES THAT THAT SAYS, HEY, BY THE WAY, THE PRIOR  
12 NOTICE TALKED ABOUT LIMITED ACTION OVER HERE, AND NOW  
13 THEY'RE GOING TO CHANGE SOME THINGS AND THINGS ARE  
14 CONSOLIDATED -- OR LITIGATING CLAIMS AGAINST EVERYONE  
15 ELSE IN THE BASIN, AND THAT SOLVES THAT PROBLEM.

16 BUT THAT'S NOT SOLVED IN TERMS OF THE SMALL  
17 PUMPERS CLASS. AND I DID NOT SIGN ON TO LITIGATE  
18 AGAINST THESE GENTLEMEN'S CLIENTS.

19 THE COURT: WELL, MR. MCLACHLAN, LET ME ASK YOU  
20 THIS QUESTION: YOU FILED A ACTION FOR DECLARATORY  
21 RELIEF AMONG OTHER THINGS, DID YOU NOT?

22 MR. MCLACHLAN: TRUE. IT'S A VERY CLEARLY  
23 DESIGNED CAUSE OF ACTION FOR DECLARATORY RELIEF.

24 THE COURT: I THINK I RECOLLECT THE PLEADING. AND  
25 IN THAT PLEADING, YOU WANT THE COURT TO DECLARE WHAT  
26 YOUR RIGHTS ARE VIS-A-VIS ANYONE ELSE THAT MAY HAVE A  
27 CLAIM TO WATER THAT YOUR CLIENTS HAVE A RIGHT TO --

28 MR. MCLACHLAN: NO, THAT'S NOT TRUE. I WANT A

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1 DECLARATION OF THE RIGHTS RELATIVE TO THE -- OF THE  
2 PUBLIC WATER SUPPLIERS AND PRESCRIPTION CLAIMS. WE  
3 DIDN'T SEEK A PHYSICAL SOLUTION. WE DIDN'T SEEK A  
4 BASIN-WIDE ADJUDICATION. WE DIDN'T SUE THE UNITED  
Page 66

5 STATES. I DIDN'T SUE BOLTHOUSE.

6 THE COURT: WELL, BUT IT IS IMPOSSIBLE FOR THE  
7 COURT TO MAKE THE KIND OF DETERMINATION THAT YOU REQUEST  
8 WITHOUT CONSIDERING THE CLAIMS OF ALL PARTIES TO WATER  
9 WITHIN THE BASIN. IT IS IMPOSSIBLE. AND YOU CAN'T JUST  
10 DO IT ON AN ISOLATED BASIS. AND THAT'S WHY, YOU KNOW, I  
11 HAVE SAID THIS -- AND I THINK YOU HAVE CONCURRED --  
12 WATER RIGHTS ARE RELATIVE. AND IF THE -- IF THE ENTIRE  
13 BASIN AND AN AQUIFER ARE -- IS IN OVERDRAFT OR NOT, THAT  
14 IS GOING TO HAVE AN IMPACT ON THE CLAIMS THAT ARE  
15 INVOLVED ON BEHALF OF YOUR CLIENTS.

16 MR. MCLACHLAN: IT COULD POTENTIALLY BEING --

17 THE COURT: BUT ISN'T THAT ALWAYS PRESENT?

18 MR. MCLACHLAN: THEORETICALLY, YES. BUT THERE IS  
19 A DISTINCTION IN THE PROCEDURE HERE. WE ARE USING A  
20 CLASS VEHICLE, AND THAT'S THE PROBLEM THAT I HAVE WITH  
21 THIS. WE HAVE A DISCREET SET OF CLAIMS. AND IF YOU  
22 RESOLVE THOSE CLAIMS WHETHER IT BE BY SETTLEMENT OR  
23 LITIGATION FOR EITHER OF THE TWO CLASSES, IT PUTS TO BED  
24 A SET OF CLAIMS THAT ARISE BETWEEN THE WATER SUPPLIERS  
25 AND THE SMALL PUMPERS OR THE WILLIS CLASS ONLY.

26 NOW, THE RIGHTS THAT THE -- LET'S SAY THE  
27 WILLIS CLASS THAT PUMP IN THE BASIN, AND THEY HAVE TO BE  
28 DETERMINED RELATIVE TO THESE FOLKS OVER HERE, BUT IT

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1 DOESN'T MEAN THAT THEY HAVE TO SUE THEM ACTUALLY IN  
2 COURT AND LITIGATE AGAINST THEM.

3 THE COURT: WELL, I DON'T THINK YOU ARE --  
4 EVERYBODY LITIGATING AGAINST EVERYBODY ELSE IN THIS CASE  
5 FROM THE BEGINNING, AND I -- I MEAN, THERE HAS NEVER

6 BEEN A MOTION WITH REGARD TO ANYONE OF THE, QUOTE,  
7 SEPARATE ACTIONS IF THERE ARE -- WHERE EVERYBODY HAS NOT  
8 WEIGHED IN ON THEM AND AS IF IT HAD IMPACT ON THEM.

9           AND I SAID THAT WITHOUT EXCEPTION, WHETHER  
10 IT BE A MOTION TO DETERMINE PROPER SERVICE OR WHAT THE  
11 JURISDICTIONAL BOUNDS OF THE AREA MAY BE AND THE  
12 CERTIFICATION OF A DEFENDANT CLASS, A CERTIFICATION OF  
13 THE PLAINTIFFS' CLASS, DEFINITION OF EACH OF THOSE  
14 CLASSES -- EVERYTHING THAT HAS HAPPENED IN THIS CASE HAS  
15 INVOLVED EVERY PARTY WEIGHING IN ON IT BECAUSE IT IS  
16 IMPORTANT TO THEM.

17           AND THERE IS A RECOGNITION THAT EVERYTHING  
18 THAT HAPPENS WITH REGARD TO ANY PARTICULAR PARTY AFFECTS  
19 EVERY OTHER PARTY.

20           AND THAT IS ESSENTIALLY -- THE ONLY THING  
21 THAT HAS BEEN CONSOLIDATED HERE IS THE STATUS OF THE  
22 BASIN, NOTHING ELSE. THE CLAIMS THAT THE PURVEYORS  
23 MIGHT HAVE AGAINST SOME INDIVIDUAL LANDOWNER IS NOT  
24 CONSOLIDATED OTHER THAN IN TERMS OF THE DECLARATORY  
25 RELIEF AS TO WHETHER OR NOT THIS COURT HAS TO MANAGE THE  
26 BASIN OR NOT.

27           IF THE COURT CONCLUDES, FOR EXAMPLE, IF THIS  
28 BASIN IS NOT IN OVERDRAFT, THEN THERE ARE GOING TO BE

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1 INDIVIDUAL ACTIONS THAT ARE GOING TO -- THAT WILL  
2 PROCEED THAT MAY OR MAY NOT BE COMBINED WITH OTHER  
3 INDIVIDUAL ACTIONS. TO THE EXTENT THAT THE COURT FINDS  
4 THAT THERE IS AN OVERDRAFT HERE AND THE DEALING WITH THE  
5 MANAGEMENT OF THE BASIN, THAT IS GOING TO TAKE PLACE  
6 SEPARATELY FROM THE CLAIMS VIS-A-VIS EACH OTHER AS TO

7 WHETHER OR NOT THERE IS A CLAIM -- A RIGHT OF  
8 PRESCRIPTION OR SOME OF THESE APPROPRIATORS SHOULD BE  
9 ENJOINED FROM FURTHER PUMPING WITH REGARD TO THAT  
10 PARTICULAR PORTION OF THE AQUIFER OR NOT.

11 BUT I -- YOU KNOW, I THINK THAT -- MAYBE  
12 THERE'S A LACK OF CLARITY HERE IN TERMS OF WHAT THE  
13 COURT HAS INTENDED, BUT WHAT YOU HAVE DESCRIBED IS NOT  
14 WHAT THE COURT HAS INTENDED BY ANY ORDER THAT I HAVE  
15 MADE IN THIS CASE. AND SO I THINK THAT -- WHAT IS  
16 HAPPENING HERE IS FAILURE TO RECOGNIZE IT IN A  
17 COORDINATED ACTION.

18 THE REASON FOR COORDINATION IS TO AVOID  
19 DUPLICATION OF PRESENTATION OF EVIDENCE AND CONFLICTING  
20 ISSUES OF LAW. YOU -- AND DETERMINATIONS OF LAW.

21 AND YOU CAN'T DO THAT UNLESS YOU HAVE THE  
22 ABILITY TO RELATE THE JUDGMENT AS TO ONE PART OF THE  
23 CASE TO ANOTHER. IT REALLY HAS TO COME DOWN AS A SINGLE  
24 JUDGMENT EVEN THOUGH EVERYBODY IS NOT INVOLVED IN  
25 EVERYBODY ELSE'S FIGHT, BUT THERE IS ONE FIGHT THAT  
26 EVERYBODY IS INVOLVED IN. AND THAT IS WHAT IS THE  
27 STATUS OF THIS BASIN IN TERMS OF THE NEED FOR THE COURT  
28 TO EXERCISE MANAGEMENT IN EQUITY.

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1 AND THAT IS -- THAT'S WHERE WE ARE GOING  
2 TODAY, AND THAT IS WHAT I EXPECT THE TRIAL TO ENCOMPASS  
3 ON THE 27TH OF SEPTEMBER ASSUMING THAT I'M STILL THE  
4 JUDGE ASSIGNED TO THIS CASE. THAT IS WHAT IS GOING TO  
5 HAPPEN.

6 MR. MCLACHLAN: I UNDERSTAND THAT. AND YOUR HONOR  
7 JUST SAID WE ARE ALL HERE TO LITIGATE ONE THING WHICH IS

8 ULTIMATELY THE STATUS OF THE BASIN, AND THAT IS WHERE I  
9 THINK THAT PART OF OUR MISUNDERSTANDING ARISES. I WOULD  
10 NOT HAVE SIGNED UP TO DO THIS JOB TWO YEARS AGO. WHEN I  
11 SENT YOU THE LETTER, THE VERY FIRST THING I SENT AFTER  
12 SPENDING TIME HERE ASSESSING THINGS IN THE LETTER NOTING  
13 THE PROBLEM WITH THE EXPERT ISSUE -- AND I COULD NOT IN  
14 GOOD CONSCIENCE SIGN UP TO LITIGATE THE ISSUE THE COURT  
15 JUST OUTLINED WITHOUT MYSELF EITHER HIRING PROPER  
16 EXPERTS TO DO SO OR HAVING A COURT APPOINTED EXPERT.

17 SO UNDERSTANDING THE SCOPE OF THE PLEADINGS  
18 AS I FILED THEM AND AS MR. O'LEARY FILED THEM, THEY WERE  
19 MUCH NARROWER THAN THAT. AND THAT IS THE PROBLEM. THEY  
20 HAVE BEEN IN A SENSE EXPANDED. I'M GOING TO GO TO THIS  
21 PHASE III TRIAL WITHOUT EVEN ANYBODY TO NEUTRALLY  
22 TESTIFY RELATIVE -- ON ONE OF THE KEY ISSUES WHICH IS  
23 HOW MUCH WATER THE SMALL PUMPERS ARE USING.

24 I DON'T THINK THERE IS ANYONE ON THE PUBLIC  
25 WATER SUPPLIERS' SIDE WHO IS GOING TO STAND UP AND SAY  
26 IF THERE HAS BEEN ANY REPORT DONE ON THAT AT ALL.

27 THE COURT: OKAY. LET ME JUST MAKE THIS  
28 OBSERVATION. IN THE EVENT THAT THERE'S NOT GOING TO BE

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1 ANY EVIDENCE FROM THE PURVEYORS AS TO THAT GROUP OF  
2 PEOPLE PUMPING, THE COURT IS GOING TO WANT TO HEAR  
3 EVIDENCE ABOUT IT. IF THAT MEANS THAT I HAVE TO EXTEND  
4 THE DESIGNATION OF THE COURT APPOINTED EXPERTS FOR THE  
5 BENEFIT OF THE COURT, I'LL DO THAT. BUT THAT IS  
6 EVIDENCE THAT I HAVE TO HEAR.

7 AND I CERTAINLY UNDERSTAND THAT COUNSEL  
8 WOULD NOT BE INTERESTED IN REPRESENTING A PARTY TO A  
Page 70

9 LAWSUIT WHERE YOU CAN'T PRESENT EVIDENCE.

10 MR. MCLACHLAN: ALL RIGHT. I JUST -- AS AN  
11 ADVOCATE, I DON'T LIKE TO CROSS-EXAMINE MR. SCALMANINI.  
12 WITHOUT SOMEONE ELSE WHO KNOWS. HE'S A BIASED EXPERT OF  
13 THE PARTY OVER HERE THAT HAS A VESTED INTEREST IN THIS  
14 LITIGATION, AND EVERYONE WHO HAS DONE LITIGATION  
15 UNDERSTANDS THAT WHEN WE GET OPPOSING EXPERTS, THEY  
16 SLANT THEIR OPINIONS TO SERVE THEIR MASTERS. THAT IS  
17 PART OF THE ADVERSARIAL PROCESS.

18 ON THIS PARTICULAR FUNDAMENTAL ISSUE, THE  
19 SMALL PUMPER CLASS, WHAT I UNDERSTAND THE COURT TO SAY  
20 IS THAT THE EVIDENCE WILL COME FROM SOME EXPERT ON THIS  
21 SIDE OF THE ROOM WHICH HAS BEEN HIRED BY THE PUBLIC  
22 WATER SUPPLIERS, AND I DON'T THINK THAT IS A FAIR. AND  
23 I DON'T THINK IT'S IN THE BEST INTEREST.

24 THE COURT: I DON'T EITHER, MR. MCLACHLAN, AND I  
25 WOULDN'T HAVE IT LIMITED TO THAT.

26 MR. MCLACHLAN: OKAY. I HAVE TAKEN ENOUGH TIME  
27 ALREADY.

28 THE COURT: THE COURT IS GOING TO HAVE ITS OWN

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1 EXPERT TO REPRESENT -- TO PROVIDE THE COURT WITH  
2 INFORMATION AND EVIDENCE CONCERNING THE -- A MORE  
3 NEUTRAL POSITION WITH REGARD TO THE PUMPING THAT'S  
4 OCCURRING HERE TO THE EXTENT THAT THERE IS NOT EVIDENCE  
5 THAT THE COURT CAN RELY ON AS BEING TRULY NEUTRAL.

6 MR. MCLACHLAN: THANK YOU, YOUR HONOR.

7 THE COURT: ALL RIGHT. WHAT ELSE IS THERE THAT WE  
8 NEED TO DO HERE? DO YOU ALL KNOW WHERE YOU ARE GOING  
9 WITH REGARD TO THE NEED TO HAVE A PROPOSAL FOR THE COURT



10 FOR A CASE MANAGEMENT ORDER THAT WILL SET THE CASE FOR  
11 SEPTEMBER 27TH? IS THERE ANYTHING ELSE THAT ANYONE  
12 WANTS TO RAISE AT THIS POINT OR ANY MOTIONS THAT ARE  
13 PENDING THAT WE HAVE NOT DECIDED?

14

15 (NO RESPONSE)

16

17 THE COURT: OKAY. SO TRIAL IS SET FOR THE 27TH,  
18 AND WE EXPECT IT TO BE COMPLETED IN TEN DAYS, AND IT MAY  
19 NOT BE, BUT WE WILL TRY.

20 MR. BUNN: THANK YOU, YOUR HONOR.

21 MR. ZIMMER: THANK YOU, YOUR HONOR.

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24 (THE PROCEEDINGS WERE THEN CONCLUDED.)

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1	SUPERIOR COURT FOR THE STATE OF CALIFORNIA	
2	COUNTY OF LOS ANGELES	
3	DEPARTMENT NO. 1	HON. JACK KOMAR, JUDGE
4		
5	COORDINATION PROCEEDING )	
6	SPECIAL TITLE (RULE 1550B) )	
7	ANTELOPE VALLEY GROUNDWATER CASES )	JUDICIAL COUNCIL
8	_____ )	COORDINATION
9	PALMDALE WATER DISTRICT AND )	NO. JCCP4408
10	QUARTZ HILL WATER DISTRICT, )	
	CROSS-COMPLAINANTS, )	SANTA CLARA CASE NO.
	VS. )	1-05-CV-049053

11 LOS ANGELES COUNTY WATERWORKS, )  
12 DISTRICT NO. 40, ET AL, )  
13 CROSS-DEFENDANTS. )

14 STATE OF CALIFORNIA )  
15 ) SS.  
16 COUNTY OF LOS ANGELES )

17 I, GINGER WELKER, OFFICIAL REPORTER OF THE  
18 SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE  
19 COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE  
20 TRANSCRIPT DATED MARCH 8, 2010 COMPRISES A FULL, TRUE,  
21 AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE  
22 ABOVE-ENTITLED CAUSE.

23 DATED THIS 13TH DAY OF MARCH, 2010.

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OFFICIAL REPORTER, CSR #5585

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# Exhibit 35

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER  
CASES**

Lead Case No. BC 325 201  
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Included Consolidated Actions:

**ORDER DENYING THE  
CHALLENGING PARTIES'  
PEREMPTORY CHALLENGE  
PURSUANT TO CCP § 170.6**

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

Hearing Date(s): March 8, 2010  
Time: 9:00 a.m.  
Location: Department 1, LASC

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

Judge: Honorable Jack Komar

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

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

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

4 Immediately following the Court's Order granting a Motion to Consolidate the various  
5 coordinated actions herein, all of which involve a determination, *inter alia*, of the rights of the  
6 parties to use the groundwater within the Antelope Valley Groundwater Basin, a group of  
7 parties including U.S. Borax, Inc., Bolthouse Properties, LLC, WM. Bolthouse Farms, Inc.,  
8 Diamond Farming Company, Crystal Organic Farms, Grimmway Enterprises, Inc., Lapis Land  
9 Company, LLC, Service Rock Products Corp., Sheep Creek Water Company, Inc., A.V. United  
10 Mutual Group, and Antelope Valley Groundwater Agreement Association (collectively, the  
11 "Challenging Parties") brought a peremptory challenge to the Court pursuant to Code of Civil  
12 Procedure section 170.6.

13 The Court requested briefing from the various parties, specifically with regard to the  
14 provisions of California Rule of Court 3.516, and set the matter for hearing on March 8, 2010.

15 The Court having read and considered the written and oral arguments of the parties, and  
16 good cause appearing, the Court strikes the challenge as not being timely.

17 This coordinated action is already almost five years old (major included actions were  
18 already old when the matters were coordinated) and it is clear that the time for making a  
19 challenge pursuant to Code of Civil Procedure section 170.6 and the California Rules of Court  
20 has passed. The matter was ordered coordinated in 2005 and the undersigned judge was  
21 assigned as the coordination trial judge at that time.

22 All the cases and all the causes of action in each such matter have been before this Court  
23 from the time of assignment by the Chair of the Judicial Council (with the exception of several  
24 add-on cases which are governed by California Rule of Court 3.532(d)). All of the actions that  
25 were consolidated by this Court's February 19, 2010 order were already assigned to this judge  
26 long before the consolidation order was made. Moreover, although the actions have now been  
27 consolidated, the effect of the consolidation is merely to allow the Court to enter one binding  
28 judgment as to all of the parties with regard to the declaratory relief causes of action that are

1 present in each of the pleadings and which relate to the major question of whether or not the  
2 aquifer is in overdraft and in need of judicial management by way of a physical solution or  
3 other remedy.

4         If the aquifer is in overdraft, a declaration of the rights of the parties as to that cause of  
5 action in each case would necessarily require the Court “to look at the totality of pumping by all  
6 parties, evaluate the rights of all parties who are producing water from the aquifer, determine  
7 whether injunctive relief was required, and determine what solution equity and statutory law  
8 required (including a potential physical solution).” (Order Transferring and Consolidating  
9 Actions for All Purposes, p. 3:8-11.)

10         Over the course of this litigation, even the parties now filing the challenge have of  
11 necessity repeatedly involved themselves in the coordinated actions to which they were not  
12 named as parties, and have briefed all issues presented to the court, and have variously  
13 objected, concurred, and entered into stipulations involving all the parties. It is noteworthy that  
14 these same parties have referred to the necessity of ensuring that all overlying owners in the  
15 basin participate in the adjudication as necessary parties and have referred (accurately) to the  
16 litigation as the “Antelope Valley Groundwater Adjudication” and have noted in one form or  
17 other that the purpose of adjudication is to initiate a process of managing the limited resources  
18 of the basin. The Court’s Order concerning consolidation does nothing more than provide some  
19 assurance that the ultimate determination that is the product of all parties participating in the  
20 adjudication will be binding on all parties.

21         With regard to all other causes of action, whether disputes between overlying land  
22 owners and appropriators, or otherwise, the Court’s order makes clear that: “All other causes of  
23 action could only result in remedies involving the parties who were parties to the particular  
24 causes of action. Costs and fees could only be assessed for or against parties who were  
25 involved in particular actions.” (*Id.* at p. 3:11-14.) Consequently, while this is now a  
26 consolidated action as to the overall groundwater adjudication, there has been no real change in  
27 parties or causes of action; the consolidation order may be considered a “continuation” of the  
28 coordinated actions and does not alter the fact that the cases remain coordinated.

1 It is clear that the timing of challenges pursuant to Code of Civil Procedure Section 170.6  
2 in this case is governed by California Rule of Court 3.516, which states:

3  
4 A party making a peremptory challenge by motion or affidavit of prejudice  
5 regarding an assigned judge must submit it in writing to the assigned judge within  
6 20 days after service of the order assigning the judge to the coordination  
7 proceeding. All plaintiffs or similar parties in the included or coordinated actions  
8 constitute a side and all defendants or similar parties in such actions constitute a  
9 side for purposes of applying Code of Civil Procedure section 170.6.

10  
11 And while there are “add-on” cases (which have not joined in the challenge), cases  
12 “added” to the coordination proceeding after the 20 day period are subject to California Rule of  
13 Court 3.532(d) which limits the exercise of CCP 170.6 challenges to the time limits established  
14 in Rule 3.516.

15 The reasoning of the court in the case of *Industrial Indemnity Co. v. Superior Court*  
16 (1989) 214 Cal.App.3d 259 with regard to “add-on” cases resonates here. The court stated: “We  
17 conclude that the authority given to the Judicial Council over coordinated actions is broad  
18 enough to empower the Judicial Council to exclude parties from the right to exercise a section  
19 170.6 challenge.” (*Id.* at p. 263.) The court explained further:

20  
21 Not to accord add-on parties the right to challenge the coordination trial judge  
22 was reasonable. The council could well have concluded that add-on cases were  
23 peculiarly subject to abuse of the peremptory challenge since the coordination  
24 trial judge may, as in this case, have participated in the case for years and the  
25 nature and the extent of his rulings could be well known. This presents an unusual  
26 opportunity to challenge for reasons unrelated to bias or prejudice. It also presents  
27 the possibility that by use of the challenge, the add-on party can effectively thwart  
28

1 the add-on procedure and prevent the benefits the Legislature sought to achieve  
2 by the add-on process.

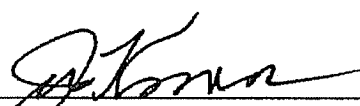
3  
4 (*Industrial Indemnity Co. v. Superior Court, supra*, 214 Cal.App.3d at p. 264.)  
5

6 Similarly, this Court has been assigned to preside over this very complex action since  
7 2005. The case is exceptionally complex. The Court has had to innovate in order to create a  
8 sufficiently comprehensive adjudication so that a meaningful judgment could be entered.  
9 Because a judgment potentially (if not actually) involves thousands of small landowners in this  
10 very large valley cutting across at least two counties, the court encouraged the creation of two  
11 separate class actions which were added to the litigation to ensure that virtually all landowners  
12 with groundwater rights would be subject to the jurisdiction of the court. Without such a  
13 comprehensive adjudication, the Federal Government (the largest land owner within the  
14 Antelope Valley) would not be able to subject itself to the jurisdiction of the Court under the  
15 provisions of the McCarran Act.

16 The consolidation of the coordinated actions in this matter is necessary to result in a  
17 judgment that will bind all parties to a determination of the status of the valley and a  
18 determination whether judicial management is necessary to protect the valuable water resource  
19 within the valley and permit this Court to enter one binding judgment as to the declaratory relief  
20 cause of action, which already involves all of the overlying owner parties through their  
21 correlative rights, and which requires a determination of what rights appropriators may have, if  
22 any.

23 Accordingly, the court concludes that the challenge pursuant to Code of Civil Procedure  
24 Section 170.6 is untimely and it is ordered stricken.

25  
26 Dated:     MAR 09 2010    

27   
28 Hon. Jack Komar  
Judge of the Superior Court



# Exhibit 36

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
CENTRAL DISTRICT  
111 NORTH HILL STREET  
LOS ANGELES, CALIFORNIA 90012**

TO: FILE COPY

RE: **ANTELOPE VALLEY GROUNDWATER CASES (JCCP 4408)**  
CASE NUMBER: **BC 325 201 (LEAD CASE)**

**ORDER AND NOTICE TO ALL COUNSEL REGARDING  
PHASE 3 TRIAL ON STATUS OF AQUIFER AND ISSUE OF OVERDRAFT**

The Court has scheduled Phase 3 Trial on the Status of the Aquifer and the Issue of Overdraft commencing on **Monday, September 27, 2010 at 9:00 a.m. in Department 1**, Los Angeles County Superior Court.

The Court will hold a Case Management Conference on **March 22, 2010 at 9:00 a.m. in Department 1**, Los Angeles County Superior Court, to discuss and determine case management orders regarding Phase 3 Trial. Submissions for the case management orders as to the trial issues are due by March 15, 2010.

Counsel met and conferred on March 8, 2010 and stipulated to the following expert witness deadlines: Expert Disclosures are due by July 1, 2010; Depositions of Experts are to be taken between July 15, 2010 and July 30, 2010; Rebuttals are to be disclosed by July 21, 2010.

If you have any questions, please do not hesitate to contact the Complex Civil Litigation Department, (408) 882-2286.

Date: March 10, 2010

Hon. Jack Komar  
Judge of the Superior Court

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If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line, (408) 882-2690 or the Voice/TDD California Relay Service, (800) 735-2922.