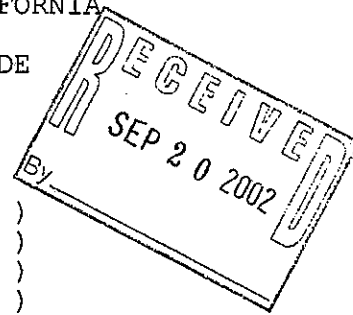


(DR)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE



DIAMOND FARMING COMPANY, a California
corporation, and WM. BOLTHOUSE FARMS,
INC., a Michigan corporation,

Plaintiffs,

vs.

Case No. RIC-344668

CITY OF LANCASTER, ANTELOPE VALLEY
WATER COMPANY, PALMDALE WATER DISTRICT,
PALM RANCH IRRIGATION DISTRICT, QUARTZ
HILL WATER DISTRICT, ROSAMOND COMMUNITY
SERVICE DISTRICT, MOJAVE PUBLIC UTILITY,
DOES 1 through 200, Inclusive.

Defendants.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE JOAN F. ETTINGER, COMMISSIONER

DEPARTMENT 10

AUGUST 5 & 6, 2002

APPEARANCES:

For the Plaintiff/
Diamond Farming:

LEBEAU THELEN, LLP
BY: BOB H. JOYCE
5001 E. Commerce Center Drive, #300
Bakersfield, California 93309

For the Plaintiff/
Bolthouse Farms:

CLIFFORD & BROWN
BY: RICHARD ZIMMER
1430 Truxtun, Suite 900
Bakersfield, California 93301

APPEARANCES CON'T.

Reported by:

CHRISTINA M. ARAGON, CSR No. 11982
Court Reporter Pro Tem
Riverside County Superior Court

COPY

APPEARANCES CON'T:

For the Defendant/
Palmdale & Quartz
Hill Water Districts:

LAGERLOF, SENEAL, BRADLEY, GOSNEY
& KRUSE
BY: THOMAS S. BUNN III
301 North Lake Avenue, 10th Floor
Pasadena, California 91101

For the Defendant/
Rosamond Comm.
Services District:

BEST, BEST & KRIEGER
BY: JEFFREY V. DUNN
3750 University Avenue
Riverside, California 92502

For the Defendant/
L.A. County
Waterworks Districts:

REDWINE & SHERRILL
BY: STEVEN B. ABBOTT
1950 Market Street
Riverside, California 92501

For the Defendant/
Antelope Valley
Water Company:

CALIFORNIA WATER SERVICE COMPANY
BY: JOHN TOOTLE
3625 Del Amo Blvd., # 350
Torrance, Ca 90503

For the Defendant/
Rosamond Community
Services District:

BEST, BEST & KRIEGER
BY: THERESA E. FUENTES
3750 University Avenue
Riverside, Ca 92502

For the Defendant/
Bolthouse Farms:

STEWART JOHNSTON
Attorney at Law
1363 West Main Street

For the Defendant/
Littlerock & Palm
Ranch:

LEMIEUX & O'NEILL
BY: JEFFREY L. MARCUS
2393 Townsgate Road, Suite 201
Westlake Village, Ca 91361

For the Defendant/
City of Lancaster:

STRADLING, YOCCA, CARLSON & RAUTH
BY: LIAM A. CONNEL
660 Newport Center Drive, #1600
Newport Beach, Ca 92660

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1 MONDAY, AUGUST 5, 2002; RIVERSIDE, CALIFORNIA
2 COMMISSIONER JOAN F. ETTINGER; DEPARTMENT 10

3 -oo0oo-

4 THE COURT: Good morning. We have a pretty full
5 courtroom today. Let's start by getting appearances.

6 MR. JOYCE: Bob Joyce appearing on behalf of the
7 plaintiff Diamond Farming Company.

8 MR. ZIMMER: Richard Zimmer, attorney for Bolthouse
9 Farms, plaintiff.

10 MR. JOHNSTON: Stewart Johnston on behalf of
11 Bolthouse and Diamond Farming.

12 MR. DUNN: Jeffrey Dunn on behalf of Rosamond
13 Community Services District.

14 MR. BUNN: Good morning, your Honor. Thomas Bunn
15 on behalf of Palmdale Water District and Quartz Hill Water
16 District.

17 MR. ABBOTT: Steven Abbott on behalf of the
18 defendants, Los Angeles County Waterworks District, No.'s 37
19 and 40.

20 MR. TOOTLE: John Tootle on behalf of the Antelope
21 Valley Water Company.

22 MR. MARCUS: Jeffrey Marcus on behalf of Littlerock
23 Creek Irrigation and Palm Ranch Irrigation, and we have reached
24 a settlement with the plaintiffs. The attorneys have signed
25 the agreement. I just wanted to make the Court acknowledge the
26 settlement and excuse my clients.

27 MR. JOYCE: That is true, your Honor. We have
28 concluded the settlement.

1 THE COURT: Anyone from the defendants feel any
2 reason they should not be excused? Then you're excused.

3 MR. MARCUS: Okay. Thank you, your Honor.

4 MR. CONNEL: Liam Connel for the City of Lancaster.

5 MS. FUENTES: Theresa Fuentes on behalf of
6 defendant Rosamond Community Services District.

7 THE COURT: Anyone else? That's all the attorneys.

8 Well, apparently, we don't have enough room for a
9 few of you.

10 Ms. Fuentes, you can probably move forward at least
11 and get in the first row, and we'll try to make this as
12 convenient for everyone as possible.

13 Now, I saw a witness list with three witnesses; is
14 that what we're talking about?

15 MR. ZIMMER: I believe that's correct, your Honor.

16 THE COURT: Which witness do we have for today?

17 MR. JOYCE: That would be, I presume given the
18 Court's allocation, the burden of proof on Mr. Scalmanini.

19 MR. DUNN: We have Mr. Scalmanini to testify today
20 as the first witness.

21 THE COURT: How long do we expect the testimony for
22 each witness, including direct, and then all of our cross?

23 MR. DUNN: I would estimate that Mr. Scalmanini's
24 direct would take the remainder of the morning, assuming we
25 break at noon, and spill over for about an hour after the lunch
26 break.

27 THE COURT: All right. And then --

28 MR. JOYCE: I anticipate --

1 THE COURT: -- probably the rest of the day for --

2 MR. JOYCE: That's very likely, your Honor. I
3 anticipated that we should be able to complete all witnesses by
4 the conclusion of the day on Wednesday at the latest.

5 THE COURT: I was going to tell everyone.
6 Wednesday I have a construction defect case that I reserved
7 that day because it was going to be a very long trial. We're
8 down to one last party. So we have any day but Wednesday. So
9 I take it we'll be in trial today, Tuesday, Thursday.

10 Are we needing to then go over to Monday of the
11 next week?

12 MR. JOYCE: It is my great expectation and hope,
13 no.

14 MR. ZIMMER: Hopefully we can finish this week.

15 MR. JOYCE: I think three trial days would be more
16 than sufficient. That's my expectation.

17 MR. DUNN: I think one witness a day would be fine.

18 THE COURT: How are we handling direct? Do we have
19 a lead among all of our defense?

20 MR. DUNN: On the defense side, we've organized
21 both the direct and cross-examination so that on the direct
22 there is just one attorney who will be doing the direct. That
23 happens to be me by the way.

24 THE COURT: All right. You're the lucky one, and
25 you're going to be doing direct on all?

26 MR. DUNN: No. Just Mr. Scalmanini. He's the only
27 witness on the defendant's side.

28 THE COURT: Just so we know how everyone's

1 expecting this -- you will do direct, then we will go over to
2 plaintiffs for cross, correct?

3 MR. ZIMMER: Correct.

4 MR. JOYCE: That's correct, your Honor.

5 THE COURT: And then we will go back for redirect
6 again for you?

7 MR. DUNN: That has not been decided on redirect.
8 I think with the very nature of the redirect, it may be,
9 perhaps, one other person may conduct that.

10 Do you need to know?

11 THE COURT: Probably not.

12 MR. DUNN: It's a little hard to anticipate
13 redirect at this point.

14 THE COURT: All right. And then as far as
15 objections, we're going to allow each attorney to lodge and
16 make whatever objections they feel is necessary.

17 MR. ZIMMER: Sounds fine.

18 MR. BUNN: I would think so.

19 MR. JOYCE: I think practically and maybe legally
20 that would have to be.

21 THE COURT: I think it would have to be because we
22 don't have joint representation. We have different clients. I
23 was just trying to see.

24 I don't think you had any agreement that one of the
25 lucky of you would make all the objections, correct?

26 MR. DUNN: No.

27 MR. JOYCE: I don't think that we have attempted to
28 limit it that way, your Honor. I suspect you'll have to take

1 them all as they come.

2 THE COURT: All right. Now, as far as opening, do
3 we need a bit of time by each side for opening, I would think?

4 MR. BUNN: Yes, your Honor. I'm going to do that
5 for the defense side. I'm Tom Bunn. I expect 20 minutes.

6 THE COURT: All right.

7 MR. JOYCE: Your Honor, technically speaking, in
8 many, many respects we are completely aligned. I suspect, for
9 purposes of aspects of the focus, that we both probably have
10 our own comments on opening, and I don't expect my opening
11 would last more than 15, 20 minutes, maximum.

12 MR. ZIMMER: I agree with that, your Honor.

13 THE COURT: All right. Then that will be fine.
14 And then when you're finished -- I mean, you are going to make
15 an opening -- sort of joint opening on behalf of everyone?

16 MR. BUNN: Yes.

17 THE COURT: All right. Let me make sure my live
18 notes -- something has happened to my computer out here since
19 I've been gone. Hold on. I lost the mouse. Here we are.

20 Then, are we ready?

21 MR. ZIMMER: Your Honor, there was one other issue,
22 and that is in the defense side in terms of the preparation of
23 evidence, how are we doing the direct examination of
24 Mr. Sheahan? We anticipate I will go first from the
25 plaintiff's side of the case, and Mr. Joyce will be doing
26 Dr. Gorelick. And I'm not anticipating starting Mr. Sheahan
27 until tomorrow. I think the defense indicated one day per
28 witness which works out about right.

1 THE COURT: I think that's fine, because there
2 would be no need to bring him over and then end up paying two
3 days if we're only talking a little bit of time at the end of
4 the day.

5 MR. ZIMMER: The issues are somewhat complex in
6 areas. It might be easier to ingest it in pieces.

7 THE COURT: All right. I see the map. That's not
8 the one that came to all the hearings. Where's the one that
9 came to all the hearings?

10 MR. BUNN: It's here, your Honor.

11 MR. JOYCE: One of many.

12 THE COURT: Well, I think -- Mr. Bunn?

13 MR. BUNN: Yes. Rosamond Community Services
14 District, your Honor, did file a Motion in Limine. Did you
15 want to dispose of that before we got started?

16 THE COURT: Probably should. Unfortunately, after
17 three weeks, I usually read these ahead of time. This,
18 apparently, deals with an expert witness report that someone is
19 wishing to exclude.

20 MS. FUENTES: Yes, your Honor. Rosamond Community
21 Services District has moved to exclude the exhibit witness
22 report and all expert witness testimony by Mr. Sheahan, one of
23 the experts by plaintiffs, based on the fact that Mr. Sheahan's
24 expert witness report was submitted to all the defendants less
25 than 24 hours prior to the deposition, and I apologize for my
26 voice.

27 THE COURT: Mr. Sheahan is an engineer?

28 MS. FUENTES: Yes.

1 THE COURT: He was deposed? The deposition went
2 forward?

3 MS. FUENTES: He was deposed, yes, your Honor.

4 THE COURT: How long was the deposition?

5 MS. FUENTES: The deposition lasted one day. We
6 had the option to continue it, but to do so would have been
7 futile.

8 THE COURT: Where is his report?

9 MS. FUENTES: We submitted it, yes, your Honor.
10 It's submitted as an exhibit --

11 THE COURT: To your declaration?

12 MS. FUENTES: -- with the exclusion of his large
13 map, which we can present.

14 THE COURT: Isn't the case law pretty much standard
15 for exclusion. Wouldn't it be somewhat of a harsh remedy in a
16 circumstance where someone's been fully deposed? The report,
17 although should have been there sooner, certainly has been
18 fully digested by all our learned attorneys here.

19 MS. FUENTES: First of all, Code of Civil Procedure
20 Section 2034 requires that any expert witness' testimony or
21 expert witness' report submitted late, that the corresponding
22 testimony of the expert be excluded if it was not disclosed at
23 the time set for the designation of the expert witnesses.

24 THE COURT: Not sure it truly allows for exclusion
25 of the witness based upon a late received report. Exclusion is
26 typically reserved for very limited circumstances. In other
27 words, where an expert never shows up, never testifies, doesn't
28 give deposition and shows up on the day of trial. I think

1 that's an easy call.

2 But when they show up, they're deposed, they're
3 asked questions about the report, exclusion would be a very
4 drastic remedy under the circumstance, would it not?

5 MS. FUENTES: It would, your Honor. However, we
6 were provided with the report less than 24 hours before his
7 deposition. Our expert was not able to review it. The report
8 was provided to us less than two and a half weeks prior to
9 trial.

10 We did not continue his deposition for three main
11 reasons. The first being that the suggested continued dates
12 were yesterday and the day before. The second being that
13 continuing his deposition would have been futile in that it was
14 very difficult to get any meaningful testimony out of him at
15 his initial deposition. Defendants would have been forced to
16 bring a Motion to Compel meaningful deposition testimony. But
17 even more importantly, in the two weeks that remained between
18 the time of his initial deposition and preparation and this
19 trial date, defendants decided to spend the time preparing for
20 trial. That was about all the time they had.

21 THE COURT: But exclusion, I think, under 2034 is
22 allowed only under Subsection J, correct?

23 MR. JOYCE: Your Honor, if I could --

24 THE COURT: And then it says if you don't list
25 them, or if you don't submit an expert witness declaration at
26 all, or if you don't produce reports in writings. I don't
27 think that's referring to a late produced report or if you do
28 not make that expert available.

1 How can we broaden "J" to allow exclusion in a
2 circumstance where the reports produced, albeit, perhaps, not
3 as timely as it should be, and the expert is deposed.

4 MS. FUENTES: Your Honor, the problem with the late
5 submission of this report, it goes beyond his initial
6 designation of his testimony, and that's also another reason
7 for exclusion. Not only was the report produced on the eve of
8 his deposition, his deposition and his report go beyond his
9 designation.

10 Yes, the defendant had the opportunity to examine
11 him at his deposition. They spent 20 minutes preparing to do
12 so, and it would have been malpractice if they hadn't attempted
13 to depose him at that time. As can be seen from his deposition
14 transcript, there were times when the defendants were at a loss
15 for how to frame the next question or what even to propose next
16 because they had only seen this report that morning.

17 THE COURT: Let me ask, as far as the other
18 attorneys, is there anyone who has an argument or can give me
19 some case or statutory authority that would say exclusion is an
20 appropriate remedy in this case?

21 MS. FUENTES: Your Honor, if I may, it was a joint
22 brief to the pretrial.

23 THE COURT: I don't think exclusion would be
24 allowed in this particular case, because I think it would be
25 too harsh of a remedy, and -- I mean, they submitted their
26 list. They submitted their expert witness declaration. They
27 produced the report, and they made him available.

28 The question then, I think, would turn onto whether

1 some area of his testimony that has not been gone into, whether
2 that should be prohibited and/or whether you would have a right
3 to possibly voir dire him before he actually gives his
4 testimony if there's any other areas that you think you did not
5 get full and complete answers to.

6 But I'm going to deny the request for exclusion,
7 because I don't think that's supported by the statute.

8 MS. FUENTES: Your Honor, as far as the area goes,
9 may I state that the area that we would want to exclude is his
10 proposal of any boundaries besides those proposed by
11 Mr. Scalmanini our expert. Mr. Sheahan's expert witness
12 declaration stated that he would testify regarding criticism
13 and critiques of Mr. Scalmanini's boundaries. Mr. Sheahan went
14 beyond that designation by proposing all alternative
15 boundaries. That would be the extent to which we would
16 exclude.

17 THE COURT: Since the whole testimony deals with
18 boundaries, I think that is, in essence, excluding what is
19 meant to be the focus of his opinion, is it not? Isn't the
20 whole purpose of this to establish the boundary? If he can't
21 testify as to what he believes the boundaries are, there's not
22 going to be a whole lot that he's going to say to be helpful.

23 Who is he?

24 MS. FUENTES: Mr. Sheahan.

25 THE COURT: Now, what day was he going to testify?
26 Tomorrow?

27 MR. JOYCE: That -- in all likelihood that will be
28 correct, your Honor.

1 THE COURT: Let's do this: I'd like to -- I'd like
2 to read what you have in your brief. I'd like to take a look
3 at the designation and whatever performance of the deposition
4 you've given me, and I'll do that over the lunch hour. And
5 then we'll take this up at the end of the day when I'll be a
6 little more familiar with everything. We can take a look at
7 what we're looking at.

8 MS. FUENTES: Your Honor, if I may, I didn't submit
9 to you the entire deposition transcript. If you'd like, I can
10 do that right now.

11 THE COURT: Why don't you. A certified copy is
12 fine.

13 MS. FUENTES: I don't think I have a certified
14 copy.

15 THE COURT: Probably a copy is okay.

16 MR. JOYCE: If she represents it's a true and
17 correct copy, that's fine with me.

18 MS. FUENTES: If I may, your Honor. I'm going to
19 submit a copy of the case that I would read to you, so if you
20 want to take a look later.

21 THE COURT: I think that it's dealing with a
22 different set of circumstances than what we have here. I don't
23 know exactly if it's deposition. It seems like it was somewhat
24 lengthy. He certainly gave some opinions. I'm not sure what
25 there was about that report that might have altered or changed
26 any of his opinions, or whether it was simply that you needed
27 more time because you didn't have the report in time, so you
28 needed more time to delve into his opinions, or really what

1 we're talking about.

2 MS. FUENTES: As your Honor will see from our
3 papers and from the transcript, not only did we need more time,
4 we needed more cooperation from the witness.

5 THE COURT: Well --

6 MR. ZIMMER: Your Honor, I suppose we're going to
7 discuss issues later. I want to make sure the record is clear
8 that the demand for report and writings in an occasion such as
9 this from an expert is different from a medical case where
10 you're required to provide a report within a certain period of
11 time. Under either scenario, there is no -- as the Court
12 correctly points out -- remedy of exclusion of witnesses'
13 testimony in this case.

14 There's a demand for reports and writings that
15 exist as of the time of the demand. Because of the timing, we
16 had to wait for Mr. Scalmanini's deposition to be completed.
17 Because of that timing, the report could not be completed until
18 after that. The report was provided immediately when it was
19 prepared.

20 They are misapplying the law. There is no right to
21 report and writings. It does not exist at the time the demand
22 is made.

23 MS. FUENTES: Your Honor, if defendant had known it
24 was coming, they would have had time to prepare. They didn't
25 know it was coming until it was received less than 24 hours
26 before the deposition.

27 THE COURT: All right. We'll take a look at that.
28 I take it -- was there any type of interrogatory or request for

1 introduction of documents prior to the deposition, or when the
2 deposition was noticed, and did that include the request for
3 production?

4 MS. FUENTES: Yes.

5 MR. JOYCE: Yes, your Honor.

6 THE COURT: And I think what I'm gathering from
7 plaintiff's testimony is this gentleman wanted to hear the
8 testimony of another witness, and then he made his report.

9 MR. ZIMMER: That's correct.

10 MR. JOYCE: That's correct.

11 THE COURT: All right. And we're probably talking
12 about a week --

13 MR. ZIMMER: A couple weeks.

14 THE COURT: -- between all that.

15 MR. JOYCE: About ten days, your Honor.

16 THE COURT: And then his report was delivered how
17 soon before his deposition?

18 MR. ZIMMER: I think it was at least 24 hours, and
19 it was made available as soon as it was provided.

20 THE COURT: And what date was his deposition?

21 MS. FUENTES: His deposition was on July 18th, and
22 we received the report late in the day, July 17th. I don't
23 know when the other defendant's counsel received it. Our
24 expert did not receive it until approximately July 23rd.

25 MR. ZIMMER: The point of the matter is there is no
26 obligation to prepare a report. He could not have prepared a
27 report. The only thing that the demand for production gives
28 you is the right to have --

1 THE COURT: It's not an IME report or anything like
2 that that you have an absolute obligation for. I'm assuming,
3 and maybe erroneously, that there was some type of a production
4 demand in connection with the deposition.

5 MS. FUENTES: Yes.

6 MR. ZIMMER: That's correct.

7 THE COURT: So what would be the basis then? If
8 they're saying it was given 24 hours before, what is the legal
9 authority that they would have had to provide it any sooner
10 than 24 hours?

11 MS. FUENTES: I suppose a sense of fairness, your
12 Honor.

13 THE COURT: All right.

14 MR. BUNN: If I could make one more comment, your
15 Honor? Representation has been made that this report couldn't
16 have been prepared earlier because the expert wanted to hear
17 the testimony of another witness. That other witness, however,
18 had prepared his own written report. The plaintiffs had it for
19 five months before coming up with their own critique of that
20 report. So this "we couldn't do it before" is really a red
21 herring.

22 THE COURT: I think the ultimate problem, though,
23 is the reports in and of themselves are hearsay. Absent an
24 agreement by all of you that either all the reports come in,
25 typically, there's very little in the reports that would come
26 in. It would be the testimony of the witness. To the extent
27 the reports are illustrative, and maybe I'm a little generous,
28 I'd like to find them illustrative, they often help. Maybe not

1 so much in engineering, but there's diagrams or scales or
2 whatever there is in there. But really the body of the report
3 is going to be hearsay documents that, hopefully, he's going to
4 testify to.

5 So as far as the other two witnesses, who was the
6 first deposed?

7 MR. ZIMMER: Mr. Scalmanini.

8 MR. JOYCE: The other two witnesses would be
9 Mr. Sheahan and Mr. Gorelick. Mr. Sheahan was deposed first,
10 and Dr. Gorelick was deposed the day after.

11 THE COURT: And Mr. -- is it Scalmanini?

12 MR. ZIMMER: Scalmanini, S-c-a-l-m-a-n-i-n-i.

13 THE COURT: His report was provided when?

14 MS. FUENTES: At the time set for exchange,
15 February 15th.

16 MR. ZIMMER: Mr. Scalmanini's so-called report is
17 really not a report. It is simply a restatement of what other
18 people have said. It was extremely difficult, if not
19 impossible, to understand what his opinions were by reading
20 that so-called report.

21 THE COURT: And then --

22 MR. ZIMMER: That's part of the reason why it was
23 necessary to take his deposition.

24 THE COURT: And then Dr. Gorelick. When was his
25 report provided?

26 MR. JOYCE: He did not prepare a written report,
27 but he did appear and produced the various maps and diagrams
28 that were asked for, and as well as others that they didn't ask

1 for, and offered themselves up. And they spent the whole day
2 and offered to bring him back a second time.

3 THE COURT: Is it Mr. or Dr. Sheahan?

4 MR. ZIMMER: Mr. Sheahan. He's not an engineer.
5 He's a hydrogeologist and geologist.

6 THE COURT: He did not have a report prepared at
7 the time of the exchange?

8 MR. ZIMMER: That's correct.

9 THE COURT: His report was then given 24 hours
10 before the deposition, and how long after it was prepared was
11 it given up?

12 MR. JOYCE: The day after.

13 MR. ZIMMER: We got it and turned it over.

14 MS. FUENTES: It was being edited three days before
15 his deposition.

16 THE COURT: I'll take a look at it over the lunch
17 hour. We'll deal with this at the end of the day.

18 MR. JOYCE: Your Honor --

19 MR. ZIMMER: The other thing, your Honor, is
20 that -- you do have a copy -- we received the motion regarding
21 Mr. Sheahan's testimony either late Thursday or Friday morning,
22 and we have filed with the Court our opposition to that motion.
23 And I just want to make sure the Court has that in its
24 possession.

25 THE COURT: That was filed this morning; is that
26 correct?

27 MR. ZIMMER: That's correct. And served on all
28 counsel this morning as well.

1 THE COURT: Do you have an opposition? Here it is,
2 a taxed copy.

3 MR. ZIMMER: Yes, your Honor.

4 THE COURT: I have that.

5 MR. JOYCE: One more issue, your Honor. On behalf
6 of the plaintiff and I presume plaintiffs, I have an oral
7 Motion in Limine, and that would go to limiting
8 Mr. Scalmanini's testimony here to the opinions expressed by
9 him during his deposition, and to exclude from any testimony
10 here today any opinions he has proffered or formulated since
11 the time of his deposition.

12 And the reason I am motivated to make this motion
13 is that I received Friday morning the defenses joint
14 designation of exhibits. And in looking through it, I did
15 ascertain that there's about nine exhibits that were not
16 provided at the time of Mr. Scalmanini's deposition. In fact,
17 one of them is a revised Phase 1, which is the area delineated
18 in his report, which is the area that he originally propounded
19 as being the appropriate area at the time of his deposition.

20 In looking at the designation, I can assume,
21 because I have not yet seen this document, that even that
22 document has now been modified or changed because it's labeled
23 "revised." And there's a whole slew of other exhibits listed
24 that were not produced at the time of the deposition, and we
25 were very meticulous in making sure that we looked at every
26 single piece of paper that he brought with him to his
27 deposition in which he testified that he revised.

28 THE COURT: The problem with this type of motion is

1 this: Originally, we're governed by what is in the expert
2 witness designation as far as the areas that an expert's going
3 to testify to. If there was no deposition, it would be limited
4 to those areas. Once, however, they are deposed, then I think
5 the general rule is they're limited to the areas and the
6 opinions they offer at the time of the deposition with the
7 admonition that questions have to be asked.

8 In other words, there's a lot of different opinions
9 you can have in a general area. If someone hasn't asked a
10 specific question, then you may or may not, depending on really
11 what the other questions are, be limited. I will have no idea
12 until I hear what questions are being asked and someone makes
13 an objection that that was not covered, and then I take a look
14 at your designation and the deposition and what was asked and
15 gone into.

16 I mean, it's the same rule that would apply to all
17 experts, so essentially, I think to the extent anyone has that
18 type of objection, in a case that simply has three experts
19 testifying, you need to just raise it at the time the question
20 is asked.

21 MR. JOYCE: I assume then, your Honor, as to the
22 new documentation and/or writings now being proffered up that
23 were not produced during the course of his deposition and
24 apparently not even at that time relied upon by him, that I
25 would be entitled to take him on voir dire, establish that
26 fact, and renew my objection.

27 THE COURT: You could at the time.

28 MR. JOYCE: Thank you, your Honor.

1 THE COURT: Sometimes a document that shows up at
2 trial that nowhere was discussed in a deposition, might be
3 improper, but sometimes it might be probative. There's just
4 too many things. I don't know. We'll do it as it comes up.

5 MR. JOYCE: Then I will reserve those issues until
6 they present themselves. But if and to the extent part of the
7 pitch being made by the defendants is surprise or lack of
8 opportunity to prepare, I suspect with respect to all this new
9 material, if anyone's lacking an opportunity, I'm standing here
10 at trial. I haven't seen this stuff yet. I'm lacking the
11 opportunity.

12 MR. ZIMMER: I think what Mr. Joyce is primarily
13 directing himself to is that Mr. Scalmanini came up with what
14 he felt the boundary was for purposes of this litigation. In
15 the exhibit list there is a completely new depiction of the
16 boundary that we have not seen yet. It wasn't attached.

17 THE COURT: I suppose the question is, is it new in
18 the sense that it is different in how you describe a boundary?
19 I don't think it's latitude and longitude, but it's probably
20 some mechanism. Or is it new in that it's just a different
21 depiction of the same that was testified to? I don't know.

22 MR. BUNN: It's the latter, your Honor.

23 MR. ZIMMER: One thing I think would help is if the
24 defense would give us a copy of those exhibits which we have
25 not to this minute seen.

26 THE COURT: We'll do opening statements, and then
27 we'll take a 15-minute recess, and I'll let you make sure
28 you've exchanged your documents and everyone knows, other than

1 if we have impeachment. I don't expect we're going to have too
2 much of that this morning. That might short cut some of this.

3 MR. ZIMMER: That's fine.

4 MR. JOYCE: Your Honor, it might take a little
5 longer than 15 minutes. Because, for instance, in the case of
6 Mr. Scalmanini, he probably has 25 or 30 maps and/or source
7 materials that he would or could reference on various issues,
8 and some of which he did not. And they were there at the time
9 of the deposition. They just didn't ask for a copy.

10 THE COURT: Do we have everything marked?

11 MR. ZIMMER: Not that I'm aware of, your Honor.

12 THE COURT: Let's finish our opening statements,
13 and we'll see how long we actually need. But whatever -- it's
14 going to save time. Ultimately, whatever exhibits are going to
15 be used in this, I direct that we get them marked ahead of time
16 and shared. So rather than just doing it one after another,
17 it's going to be a delay. So let's take a recess and try to
18 get that done. All right.

19 MR. JOYCE: Did you want to recess now, your Honor?

20 THE COURT: No, I want to get openings done. I
21 think we can do that. So, Mr. Bunn.

22 MR. BUNN: Thank you, your Honor.

23 MR. ZIMMER: Your Honor, it's difficult for me to
24 see you and/or counsel. Would it be acceptable to the Court if
25 I move in the jury box during his opening statement?

26 THE COURT: You may.

27 MR. ZIMMER: Thank you.

28 MR. BUNN: Your Honor, before I start, I'd like to

1 move to exclude the witnesses from the courtroom under Evidence
2 Code 777.

3 THE COURT: All right. Who do we have here today?

4 MR. BUNN: All three expert witnesses are here
5 today.

6 THE COURT: Oh, we do have the experts.

7 MR. JOYCE: Your Honor, I'm not sure if he wants to
8 exclude them for purposes of opening argument, but as to --
9 I'll speak initially to Professor Gorelick. His primary
10 purpose is to hear, assess, and critique the science behind
11 Mr. Scalmanini's proposed line, and therefore, his --
12 Mr. Scalmanini's testimony in support of that line, and that
13 makes it difficult if he's now asked to leave the courtroom and
14 not given the benefit to hear what new -- if anything new is
15 offered up.

16 THE COURT: I think the Court has great latitude in
17 determining exclusion of experts. I mean, certainly, the
18 exclusion of factual witnesses who may be influenced by their
19 recollection of what they saw if they hear someone else
20 testifying is one thing. But I think there's even some
21 authority that suggests experts -- we always lump them into a
22 typical trial. But I think they are not necessarily subject to
23 the rules of exclusion for various reasons, but one, being
24 these witnesses who are supposed to be rendering their own
25 opinions, they should not be influenced by what they hear other
26 than their -- I would suggest each expert's probably going to
27 critique the other experts.

28 I think in the overall scheme of things we're going

1 to save a great deal of time and money by everyone to allow the
2 experts to remain, so they don't have to sit there and read the
3 transcripts. They can hear it. We don't have to worry about
4 getting expedited transcripts which cannot happen in a matter
5 of one day. She's not going to be up all night. Even if she
6 was, by the time she gets it to you the next morning, it's not
7 going to be enough time for your expert to digest it.

8 I need to make an educated decision based on what I
9 hear as to what the boundaries of this basin are, and I think
10 it's going to be facilitated by letting all of the experts hear
11 anything additional that maybe was not quite gone into the same
12 way at the deposition, so that if you're going to have a chance
13 for rebuttal and all that, you can bring them back and comment,
14 or to the extent the plaintiffs have to.

15 I'm going to deny that. I'm going to allow all the
16 experts to remain.

17 MR. JOYCE: Thank you, your Honor.

18 MR. BUNN: Your Honor, if I may? I certainly agree
19 that the Court has latitude in the matter, but I would like to
20 point out that there is specific case in support for excluding
21 expert witnesses, and I can cite that case to the Court if
22 you'd like.

23 THE COURT: Give me the case. I'll take a look at
24 it, but --

25 MR. BUNN: People versus Valdez, V-a-l-d-e-z; 1986
26 case; 177 CAL AP 3rd 680 at page 686.

27 THE COURT: All right. Now, does anyone wish them
28 to be excluded during the opening statements?

1 MR. BUNN: We would so move.

2 THE COURT: For opening statements, I will exclude
3 them since that is not anything that they should be commenting
4 on. So I will ask them to step out for opening statements.

5 MR. JOYCE: No objection, your Honor.

6 THE COURT: Then that will give me a chance -- I
7 can look at that case briefly while we're recessing. I'm
8 still -- unless there's something in it that tells me I have no
9 discretion, which I believe is not the case with experts, I
10 think I do have discretion with experts, my ruling would be to
11 allow them to remain during the testimony. But for opening
12 statements, we won't clutter their mind anymore than it needs
13 to be. We'll ask them to step out. All right.

14 MR. BUNN: Thank you, your Honor.

15 We're here to determine the boundaries of the area
16 within which the plaintiffs and the defendants have water
17 rights to produce ground water. In their complaints, the
18 plaintiffs call this area the aquifer. But they say they're
19 unaware of its nature or extent.

20 Last year the Court granted the defendant's motion
21 to bifurcate and try the basin boundary issues first. And then
22 after that, if your Honor will recall, in response to an
23 ex-parte application by Bolthouse, your Honor ordered us to
24 meet and confer with respect to the Phase 1 issues, and agreed.
25 And in response to that, we did meet and confer. And we came
26 up with a one-paragraph stipulation which we have been calling
27 the Phase 1 stipulation.

28 That stipulation provides that the area to be

1 considered will be a single area. That the area defined in
2 Phase 1 will be the basis for including or excluding properties
3 from the lawsuit. That the area defined in Phase 1 will be
4 deemed -- well, it will be deemed that pumping from within the
5 area has no legally adverse effects. In other words, are the
6 words the stipulation uses on the water outside the ground area
7 and vice versa.

8 And finally, and this is what we spent the most
9 time on in our negotiations, the internal boundaries of sub
10 basins within the basin are not being determined in Phase 1.
11 That is an issue reserved for Phase 2. Phase 1 determines the
12 external boundaries of the basin and the question of the
13 interaction, if any, between sub areas is reserved for Phase 2.

14 As far as the defendants are concerned, that
15 stipulation, while somewhat awkwardly worded due to the
16 committee drafting effort that went into it, that stipulation
17 adequately described the legal effects of the basin boundary
18 that we were going to try in Phase 1. As a matter of fact, we
19 felt that it would be fairly easy to agree upon the boundary
20 after which we would get on to phase 2, and as everyone agrees,
21 the meat of the lawsuit. By the time we got to the point where
22 this stipulation was entered into, Mr. Scalmanini's proposed
23 boundary line had been out for four months. And we felt it was
24 a matter of getting comments on that line.

25 And to tell you the truth, I'm a little bit
26 surprised to be in here today at all. A little over two weeks
27 ago the plaintiffs sent us their expert's report which showed a
28 much larger boundary than Mr. Scalmanini's that encompassed not

1 only the Antelope Valley, but also the neighboring Fremont and
2 Leona Valley, and used, not ground water boundaries, but water
3 shed boundaries to come to that determination.

4 I'll get to the difference between the two
5 boundaries in a minute.

6 THE COURT: Let me ask: Does either side have an
7 overlay that shows one on top of the other that would easily
8 show the difference of the boundaries?

9 MR. JOYCE: Yes, your Honor.

10 THE COURT: I don't need it now, but I'd like
11 something to see that early on. So at the break you can get
12 that.

13 MR. BUNN: I was going to kind of show with my
14 finger on this map over here if they have an overlay.

15 MR. JOYCE: We have an overlay that contrasts the
16 two lines.

17 THE COURT: Then why don't we let counsel use that
18 for opening?

19 MR. ZIMMER: The problem, your Honor, it needs to
20 be set up with a projector, this map here, or one of the maps,
21 I think, for purposes of what the Court is trying to figure
22 out.

23 MR. JOYCE: Actually, your Honor, we have a hard
24 copy.

25 THE COURT: Is it small?

26 MR. JOYCE: Because we can use it on the Elmo and
27 probably project it up.

28 MR. JOYCE: Can I step out for just a moment?

1 MR. ZIMMER: I'll take care of it, your Honor.

2 THE COURT: Sure.

3 MR. JOYCE: It may make it a lot easier if you can
4 see the contrast.

5 THE COURT: Visuals are very helpful in this type
6 of case in testimony. I think in the four and a half years
7 I've been here, you win the prize of being in trial with the
8 most lawyers. We have had more on construction defect cases,
9 but they haven't actually started trial, though. They usually
10 settle.

11 MR. BUNN: With one exception, we only have one
12 lawyer per party, and actually, we have lawyers representing
13 multiple parties, so --

14 MR. JOYCE: It could be worse.

15 Your Honor, if I can be of some assistance to the
16 Court. What you see on this overlay, the bold red line on the
17 perimeter, is a water shed line in large part proposed by
18 Mr. Sheahan. And as you go internally, you will see a black,
19 red, and then an internally dotted black line. Those are two
20 alternative lines suggested by Mr. Scalmanini, if that's of any
21 help.

22 MR. ZIMMER: In simplistic terms, the outer red
23 line is Mr. Sheahan, and the internal lines are lines of
24 Mr. Scalmanini.

25 THE COURT: All right. Mr. Bunn, you wish to
26 continue?

27 MR. BUNN: Yes, I do.

28 I'd like to address a couple of representations

1 that were made in the plaintiff's trial brief. One of them was
2 that the parties agreed that there was no case law from which
3 one could define a ground water basin. That is absolutely
4 disagreed with by the defendants, and, in fact, we have cited
5 considerable case law in our own trial brief regarding the
6 determination of the basin boundaries.

7 The second representation is that it was agreed
8 that the purpose of the Phase 1 trial would be procedural only.
9 Again, that is emphatically disagreed with by the defendants.
10 As a matter of fact, that was proposed repeatedly by the
11 plaintiffs in our Phase 1 stipulation and repeatedly disagreed
12 with by the defendants. So it's a little surprising that they
13 say it was agreed to at this point.

14 And finally, this is a little bit off the topic,
15 but their trial brief speaks of the events that led to this
16 lawsuit and refer to a plan for water rights that was
17 circulated to the plaintiffs. And I'd like to say for the
18 record that I've never seen any such plan; that as far as I'm
19 concerned, there's no evidence to support this assertion
20 they're making now. I don't think they're going to be putting
21 on any in the trial.

22 A ground water basin can be analogized to a bucket
23 filled with wet sand. It's not a bucket full of water.
24 Basically, it's -- what holds it up is the sand. But there is
25 water in there that can be extracted for use by farmers and by
26 municipal water agencies. This ground water basin is made up
27 of one or more aquifers containing permeable material, and by
28 "permeable" I mean just capable of storing or transmitting

1 water.

2 A ground water basin is typically bounded by
3 boundaries which are relatively impermeable. And these can
4 include bed rock contacts between the -- I'm going to
5 abbreviate the permeable as sand because that's how I think of
6 it myself, but of course, it can be different densities,
7 different coarseness and fineness of materials, but it all
8 holds the water in there. It's the boundary between the sand
9 and hard rock. Bed rock can be a basin boundary. And another
10 type of basin boundary is a fault which prevents the movement
11 of ground water or impedes the movement of ground water
12 underground.

13 Mr. Scalmanini, our expert witness, will testify
14 that nothing in nature is completely impermeable. Nothing
15 completely halts the movement of water underground. But there
16 can be a relative difference between the very permeable
17 material of the ground water basin and the very impermeable
18 material of the rock surrounding the basin or the other basin
19 boundaries.

20 A water shed by contrast has to do with surface
21 drainage the way the precipitation drains. And the analogy
22 that I was using for myself was a pitched roof. If water falls
23 on one side of the roof, it drains in one direction. If it
24 falls on the other side of the roof, it drains in the other
25 direction, and that's the water shed boundary.

26 When the water does drain off, there are a number
27 of things that can happen to it. It can evaporate, it can be
28 used by vegetation on the side of the mountain, or it can find

1 a way into the ground water basin. So in shorthand, the water
2 shed is where the water comes from.

3 The ground water basin is where it goes to and is
4 stored. As we demonstrate in our trial brief, ground water
5 cases uniformly use the basin and not the water shed as unit
6 for defining water rights.

7 There are numerous adjudicated basins in
8 California. Mr. Scalmanini will testify about some of those.
9 And frequently, there's a situation where they're -- as in the
10 Antelope Valley, there's more than one basin within a single
11 water shed. And courts treat those basins separately for
12 purposes of determining water rights. And the water rights
13 within each basin are compared. The different rights' holders
14 within each basin are the ones that are compared for purposes
15 of priorities of rights.

16 Sometimes there is an issue with respect to basin
17 boundaries in ground water basins. And the form that it has
18 usually taken in the case law is that the issue is whether two
19 areas are to be considered for legal purposes a single ground
20 water basin or multiple basins. And what the courts look to in
21 that situation is the degree of connection between the two
22 basins, and that's what you're going to be hearing about a
23 little bit during this trial.

24 The supreme court has said for two areas to be part
25 of the same basin, pumping in one area must significantly and
26 materially affect ground water levels in the other.

27 Now, we thought -- if your Honor will remember some
28 of the discussions that we had at the motion to bifurcate, we

1 thought that might be an issue in this case. The Antelope
2 Ground Water Basin has been divided into sub areas by different
3 researchers, and we raised the question, you'll recall, whether
4 those sub areas constituted different ground water basins.
5 But, when Mr. Scalmanini looked at the evidence, he concluded
6 that the sub areas should not be treated as separate basins,
7 but the whole Antelope Basin be treated as one unit.

8 So now, I'd like to point the Court to the map a
9 little bit. And if I can get more of it on the screen. No.
10 So we'll go wide on this.

11 On this map, this area down here is the San Gabriel
12 Mountains. North is toward the top of the map. Over here are
13 the Tehachapi Mountains, the town of Tehachapi, and the road
14 going toward Bakersfield. Then this up toward the top is the
15 Sierra Nevadas. All this triangular area that's colored white
16 is the Mojave Desert.

17 Mr. Scalmanini drew a line which maps out the
18 Antelope Valley Ground Water Basin. And it goes along the base
19 of the mountains here north of the San Andreas Fault. And of
20 course, he's going to testify to this in more detail. I'm just
21 giving you the overview. Then along a fault line, couple of
22 fault lines on the western side, and then up on this red line,
23 if the Court can see that, up to the east of the town of
24 Mojave, and then back down. That's Mr. Scalmanini's barrier
25 based on ground water basin boundaries.

26 Mr. Sheahan's line, by contrast, is based on water
27 shed boundaries, so it goes up to Mount Penpaul (phonetic
28 spelling) here at the top of the water shed 10,000 feet up and

1 along the peaks of the mountains, and then up into the Sierra
2 Nevadas around north of Redrock Canyon and back down. This is
3 a much larger area, of course. And I don't think it shows on
4 this overlay, but it does show on the map on the easel there.
5 And if I may just real quick?

6 THE COURT: You may.

7 MR. BUNN: This line right here, which I can't see
8 on the other map, is the division between the Antelope Valley
9 and the Fremont Valley. It's a water shed division. It's
10 based on the surface drainage down there. This area down here
11 is the Leona Valley, and by including this large area as his
12 designated area, Mr. Sheahan brings in these two additional
13 valleys, the Fremont Valley and the Leona Valley, which the
14 plaintiffs want to consider in Phase 1.

15 So the issue in this trial is going to be whether
16 to use the smaller boundaries of the Antelope Valley Ground
17 Water Basin or the larger boundaries in the area, encompassing
18 the Fremont Valley and Leona Valley water sheds. Now, neither
19 plaintiff owns any property in the Fremont Valley or Leona
20 Valley. All of their property is in the Antelope Valley.

21 Now, Mr. Scalmanini, our witness, will testify that
22 the Antelope Valley Ground Water Basin has been defined and its
23 boundaries established from researchers from the U.S.
24 Geological Survey starting with a man named Bloyd, B-l-o-y-d,
25 in 1967. And continuing and later studies have used the same
26 features as the boundaries, but these features have been more
27 precisely located, and that's the reason for the difference
28 that you see in some of the boundary lines on Mr. Scalmanini's

1 map.

2 For example, if the boundary is a bedrock contact,
3 that in later work has been mapped more precisely underground,
4 so the surface line has changed a little, but it's still
5 intended to map the same bedrock contact that it always was.

6 Mr. Scalmanini will testify that the boundaries of
7 the basin consist of these bedrock contacts, also of faults
8 which impede the movement of ground water and a ground water
9 divide. A ground water divide is when the sub surface
10 elevations of water table come to a little peak, not unlike the
11 water shed, so that the ground water underground will flow in
12 one direction on one side of the divide and in another
13 direction on the other side of the divide. And that's what he
14 uses for the boundary in the south eastern part of the basin
15 down in this neighborhood.

16 Then Mr. Scalmanini will testify that ground water
17 pumping on one side of his boundary does not have a significant
18 material effect on ground water levels on the other side. How
19 can he tell this? It's underground after all. He can tell
20 from the characteristics of the sub surface materials and from
21 the direction and magnitude of ground water flow as mapped by
22 the prior researchers.

23 Now, this is something that the plaintiff's experts
24 have not considered at all. Instead, what they say is that if
25 the underground material at the boundary line is such that it
26 can conduct ground water, then there's potential ground water
27 flow across the boundary, and it shouldn't be used as a
28 boundary line at all. They have not looked at the direction

1 and magnitude of actual ground water flow to determine whether
2 water flows across that boundary or not.

3 The evidence is going to further show in this case
4 that the Antelope Valley Ground Water Basin, a smaller area,
5 has been extensively studied, and the water shed has not.
6 Water shed includes not only the Fremont Water Valley Basin and
7 the Antelope Valley, but it includes all of this area in the
8 mountains going up, as I said, to nearly 10,000 feet. That
9 boundary is quite close to the edge of the desert here, but it
10 goes right up to the ridge line, up the San Gabriel Mountains
11 to the Tehachapis and Sierra Nevadas.

12 So when we get to Phase 2 of the trial, this
13 extensive study of the Antelope Valley Ground Water Basin is
14 going to be useful in defining the plaintiffs' rights and the
15 defendants' prescriptive rights, if any.

16 And finally, the evidence will show that including
17 the Fremont Valley and Leona Valley in the lawsuit will not
18 necessarily complicate the lawsuit, because there are numerous
19 parties pumping ground water in that area that will have to be
20 added and to no good purpose. The plaintiffs don't have any
21 properties in those valleys. The water rights that they seek
22 are the overlying rights to the water within the Antelope
23 Valley Water Basin, and that's the reason we should limit the
24 area adjudicated to the Antelope Valley Water Basin. No more
25 and no less.

26 And we submit that that should be the boundaries of
27 the basin, and they should be as defined by the U.S. Geological
28 Survey and as to which Mr. Scalmanini will testify.

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Thank you.

THE COURT: Thank you.

You know, I think we better actually at this time take our recess, because I think you had at least 15 minutes or more.

MR. JOYCE: Thank you, your Honor.

MR. ZIMMER: Thank you, your Honor.

THE COURT: Let's just take a ten-minute recess, and then we'll come back out and finish up.

MR. ZIMMER: Thank you, your Honor.

MR. JOYCE: Thank you, your Honor.

(Recess was taken at this time.)

THE COURT: Where is everyone? Are we ready for plaintiffs?

MR. ZIMMER: Yes, your Honor. Good morning.

Your Honor, I think it's important that we first understand what the legal issue is -- legal and factual issues that are presented to the Court. The plaintiffs brought this action specifically as a quiet title action. And the reason we brought a quiet title action is because we received information that the defendants were or could be claiming prescriptive rights to water which could impede or impair our water rights as overlying landowners. It doesn't matter whether it came about because of a plan or discussions that were held between the various parties preceding this lawsuit.

The bottom line is there is a potential prescriptive claim by some of our -- of these defendants which needs to be litigated. It's very important in our mind that

1 the focus is kept where it should be, and that is on what the
2 really legal issues are and factual issues that are presented
3 to the Court. And the reason for that is that there are all
4 sorts of case law, all sorts of cases that deal with water
5 rights, and those cases approach the question of how you deal
6 with those water rights from different angles with different
7 stipulations with different assumptions depending upon the
8 focus of what is trying to be accomplished from a legal
9 standpoint, either legally or factually.

10 So I'd like to draw a little diagram because for me
11 it's kind of conceptual. The plaintiffs in their complaint
12 have identified various different properties that they're
13 asking to have title -- quiet title to their water rights as
14 overlying landowners, and of course -- can the Court still see
15 that?

16 THE COURT: Yes.

17 MR. ZIMMER: So for simplistic terms we have
18 identified various parcels and claimed an ownership interest in
19 those. I'm going to put down "two" on those. There's
20 multiple. We'd asked -- come to the Court saying these
21 defendants claimed or -- they claimed prescriptive rights
22 against these specifically identified parcels.

23 Now, the defendants are appropriators, pumps
24 municipalities for the most part. And let's say these are the
25 municipalities that we have named in this lawsuit. The precise
26 legal question before the Court is whether these specific
27 appropriators have obtained prescriptive rights as against the
28 overlying water rights of these specific parcels. And to show

1 an adverse for a prescriptive right, they're going to have to
2 show open, notorious, hostile, adverse, wrongful taking of this
3 water right under claim of right continuously for five years.

4 The only reason that basin boundaries, water shed
5 boundaries, the area, or any of these terms has any
6 significance in this case is because of and to the extent that
7 it helps us to determine whether there is, in fact, any open,
8 notorious, hostile, and adverse taking of water rights by these
9 pumpers against these specific parcels.

10 Now, you're going to hear testimony from all of the
11 experts, and in particular, the plaintiff's expert,
12 Dr. Scalmanini, is a professor of Stanford, and he's going to
13 talk to you about all the definitions of what a boundary basin
14 is, what a water shed basin is, or what the area of dispute is.
15 And you'll find this is an ill-defined term. The reason it's
16 ill-defined, because it's not -- it depends on what the scope
17 of your inquiry is how you define it. Sometimes the courts use
18 critical boundaries as part of that boundary. Sometimes the
19 courts use adjudicated boundaries. Sometimes the courts use
20 water shed boundaries.

21 One of the statements that was made by the defense
22 lawyer was that they're all done based on this basin boundary.
23 Now, there's a lot of difference in what that means, but the
24 most recent case on the decision of Barstow versus Mojave was
25 actually dealing with water shed boundaries. But the
26 classification of this area is not so significant as to why you
27 were drawing this line or determining this area. You have --
28 whatever this area is, we're going to determine in this

1 lawsuit.

2 You may recall that the defendants in the case
3 brought their motion to bifurcate indicating that we needed to
4 know what the area was as one of reasons to include or exclude
5 properties. And that's one of the things that will be
6 accomplished.

7 Now, Mr. Bunn stated to the Court that while we
8 can't consider other areas, Fremont Valley or Leona Valley on
9 the south, because if we did, then we would have to add all
10 these other parties, but that's not the case. Because even in
11 the area -- even in the confined line drawn by Mr. Scalmanini,
12 even in this line here, there are hundreds, thousands probably,
13 of parties that are not before this Court who have property in
14 those areas. So that really has nothing to do with this case
15 at all.

16 The parties have agreed what parties are going to
17 be in this lawsuit. We have sued the parties that we felt were
18 the primary parties which might claim a prescriptive right
19 against our parcel that would interfere with our overlying
20 right. So the question is, what is this area that we're going
21 to delineate?

22 Now, I think the Court has probably figured out
23 that there is a significant difference between how the
24 plaintiffs look at the case and how the defense looks at the
25 case. And that is why we raised the issue with the Court
26 initially because we realize that what they are talking about
27 in terms of a what Mr. Bunn calls a basin boundary was
28 different in all these cases, and that we felt there should be

1 more direction in terms of what the area was of the Phase 1
2 lawsuit. And what, in addition to that, would be reserved to
3 the Phase 2 lawsuit.

4 And Mr. Bunn and I and all the parties had numerous
5 different discussions on this. And I believe that the
6 stipulation that was reached protects what both parties want to
7 argue.

8 The stipulation is that Phase 1 will determine the
9 area within which ground water rights will be adjudicated in
10 this lawsuit. Now, the precise reason for using the term "the
11 area" in this as opposed to the ground water basin is because
12 in your mind from the plaintiff's standpoint, and I think the
13 literature will support and the testimony will support, is a
14 very ill-defined term. And it is critical to determine what
15 the focus is of your lawsuit and why you're trying to determine
16 the areas.

17 So we used the term "area," and that's why we
18 agreed to using that term. That will include and exclude
19 properties. Potentially, it would include or exclude
20 properties.

21 The bottom line of the stipulation was that
22 wherever this area is that we define, it needs to be an area
23 that at the conclusion of Phase 1 the Court can rule as a
24 matter of law that pumping outside this line does not affect,
25 to any significant degree, pumping inside of the area.

26 You will hear a plethora of discussions about
27 hydrology and hydraulic conductivity and permeable materials,
28 but it's really all pretty simple. It's not -- it's not a pail

1 like Mr. Bunn described. I agree with the analogy in terms of
2 sand, being it's not like an underground river of water or
3 underground complete body of water under the ground. It's like
4 sand. It's permeable material where water is stored. It's not
5 a pail, because nature doesn't have steel and porcelain like in
6 bathtubs. Everything is permeable.

7 So the question is, what is the extent of that
8 permeability? In other words, can we define an area, a line
9 within which we can say that pumping outside is not going to
10 affect pumping inside. Now, once you get inside the line, in
11 Phase 2, we will have to look very carefully at whether pumping
12 on one particular parcel where the defendants are pumping
13 affects and to what degree. In other words, whether it's open,
14 notorious, hostile, adverse et cetera to this parcel owned by
15 the plaintiff or this parcel owned by the plaintiff.

16 But to begin with, we need to define an area where
17 there is no water that's going to affect the pumping inside. I
18 think it's significant that even the plaintiffs's expert,
19 Mr. Scalmanini, will testify that the pail analogy is not a
20 correct analogy because Mr. Scalmanini will admit and has
21 admitted in his deposition that this line he has drawn is not
22 impermeable. He's testified specifically that there's
23 substantial flow, significant flow on the north side of the
24 line, on the south side of the line, and there's permeabilities
25 around the entire perimeter of that entire line. It's just a
26 question of how much.

27 The point that the plaintiffs are making is that in
28 order to properly evaluate whether pumping here by the

1 defendants is affecting the water rights of the plaintiffs and
2 whether they prove -- what they need to prove -- to prove their
3 prescriptive rights depends upon the hydraulic characteristics
4 of this entire area, however you define it. If the hydraulic
5 characteristics of the area are affected by what's happening
6 here -- if the hydraulic characteristics happening here are
7 affected by what's outside, then you need to move your line out
8 so you're including the hydraulic characteristics of the entire
9 area that could affect what's happening based on these other
10 properties; in other words, whether it's noticed or not.

11 You can't just say, well, I have a bathtub or pail,
12 and because I have a bathtub or pail, if we're all in the pail,
13 we're taking water out of it. It doesn't work that way in
14 nature. You will hear testimony from the experts that you have
15 water that comes into this Antelope Valley by way of runoff, by
16 way of ground water flow. And if you have -- if you have
17 ground water flow coming into and out of this area, if this is
18 the Scalmanini line and you're having ground water flow into
19 and out of it, along with runoff into and out of it, then you
20 cannot -- unless you go out to an area where there's no
21 potential affect of ground water movement or runoff coming into
22 this area, then you cannot properly evaluate the hydraulic
23 characteristics of the water as these being the pumpers who
24 claim their prescriptive rights, and parcel owners who are
25 trying to show that they had no notice. There was no open,
26 notorious taking. There was no hostile and adverse taking.

27 And although there is a body of case law that talks
28 about ground water basins, water shed basins, areas of

1 litigation, they all talk about ill-defined, this term. And in
2 each case you have to look at what the scope of what the
3 Court's analysis was to determine what the proper line should
4 be.

5 You're going to hear testimony about the line as
6 Mr. Scalmanini describes it. What Mr. Scalmanini did was
7 recapitulate some other things other people have done. You
8 will hear testimony that there are numerous mistakes in
9 Mr. Scalmanini's analysis of what others have done, and I'm
10 going to leave that to Mr. Joyce to go into some of those
11 things and discuss more of the detail, scientific opinions
12 involved in this case. But you will hear of significant
13 mistakes that Mr. Scalmanini has made in his analysis of an
14 interpretation of what other people have done, and in terms of
15 where he's placed his lines on the diagram, in addition, to
16 what I've talked about in terms of him agreeing that even the
17 line he drew has ground water flow across it.

18 In terms of the comment by Mr. Bunn that
19 Mr. Scalmanini is going to testify that there was no
20 significant and legal effect to ground water flow outside of
21 his line, across his line, I think you will find that that
22 opinion was never testified to at his deposition. In fact, he
23 testified at his deposition, when I was questioning him, that
24 he admitted that there was ground water flow across the line,
25 and he also admitted that he had not analyzed in any way the
26 amount of ground water flow across that line, and admitted it
27 could be a moderate amount or substantial amount of water flow
28 across that line that was entirely new, and that was not

1 expressed at the time of his deposition.

2 The stipulation sets forth nicely the delineation
3 of what occurs in Phase 1 versus Phase 2, and I think it's
4 important to not only realize what's being tried in Phase 1,
5 but what's being tried in Phase 2. Because in Phase 1, all we
6 are dealing with is what this area needs to be to properly
7 assess hydrology in the Antelope Valley for the purpose of
8 determining whether there are prescriptive claims that have
9 been obtained by one party versus the other party.

10 In Phase 2, all of the issues dealing with whether
11 this pumping by defendant, No. 1, was open, notorious, hostile,
12 adverse, or No. 2, the elements of all of those issues and how
13 the water acts inside of whatever the line is, and how pumping
14 in one area affects pumping in another. All of that is
15 reserved to Phase 2 of the lawsuit.

16 So the area within which the litigation needs to be
17 looked at needs to, No. 1, look at the legal question presented
18 to the Court, prescriptive rights claim. No. 2, be extensive
19 enough to include the entire hydrology of the Antelope Valley
20 to determine whether prescriptive claims have been made by
21 putting the defendant on notice and making open, notorious,
22 hostile, et cetera. And No. 3, reserving all of the other
23 issues in terms of the actual pump, noting what effects it had,
24 whether it raised levels or levels went down or went up, and
25 all these issues are for Phase 2.

26 I think that's all I have at this time, your Honor.
27 Thank you.

28 THE COURT: All right. Thank you.

1 Mr. Joyce.

2 MR. JOYCE: Thank you, your Honor.

3 Your Honor, I'm not a hydrologist. I've learned
4 more about the subject in the last 12 months than I care to
5 know. I'm hoping after next April I can forget 99 percent of
6 that. In any event, there's been over simplification this
7 morning.

8 I think I'd like to start with the first, and that
9 is a bucket filled with sand. I don't think there's going to
10 be any single expert that's going to take the witness stand and
11 is going to testify that the -- that any hydrologic unit in
12 mother nature functions that way. The very fact that you have
13 conceded underground ground water flows indicates that you have
14 water moving in and out of the system. The real issue in this
15 case is what water are we talking about? But in order to aid
16 the Court -- and I'll resort to a little bit of simplicity
17 myself in that regard, and I'll use the diagram as well.

18 Your Honor, this is Mr. Bunn's bucket. This is his
19 ground water basin. And if we accept his proposition, then
20 rainfall falls in the bucket and everything outside the bucket
21 goes somewhere else. And if we accept his analogy, if you
22 start extracting water in one or more places, it all drops
23 equally. And that is a gross over simplification because it
24 doesn't happen in any way close to that in mother nature, and
25 that's what Professor Gorelick will explain to you; that's what
26 Mr. Sheahan will explain to you; and that's, in fact, what
27 Mr. Scalmanini will admit if he doesn't offer it up on direct
28 examination.

1 But if you're trying to see water that's going to
2 be here and what we're really concerned about, then need we not
3 take the example of where you put a siphon, or excuse me, a
4 funnel into the bucket, and that funnel is trapping water. And
5 you will notice that when you look at the funnel, that you have
6 a downsloping gradient, and now the precipitation is being plot
7 across the full width of the funnel, full circumference of the
8 funnel. If the defendant punches a hole in the funnel there
9 outside the boundary of the bucket, this water that crosses
10 that hole is lost, and it's lost to the person drawing water
11 from the bucket.

12 And that's the issue in this case. Should we use
13 the bucket or should we use the boundary of the funnel?
14 Because there's going to be no dispute that there are
15 defendants who have ground water wells upgradient from
16 Mr. Scalmanini's line. They're not going to be in dispute that
17 his client has properties upgradient from Mr. Scalmanini's
18 line. So then the issue is, can it be said that that ground
19 water pumping upgrade and outside of Mr. Scalmanini's line has
20 no affect on what would otherwise be available ground water
21 within the line. And that's one of the serious issues that's
22 going to have to get tested from a scientific perspective, not
23 from political, not from perspective of convenience, but
24 scientifically.

25 What I'm suggesting is, and what I think the
26 evidence will demonstrate is this: Is that no expert will tell
27 you that any of those boundaries are impermeable. All experts
28 will not heed to experts, that's true. Mr. Scalmanini did

1 testify in his deposition that -- at least at that point
2 attempted in any way to quantify the magnitude or degree of
3 underflow across those barriers. Primarily, the fault barriers
4 is where the most significant underflow occurs.

5 But yet at the same time, if you read carefully the
6 Phase 1 stipulation at the end of this trial and once the Court
7 opts to adopt or formulate its own line or whatever the case
8 may be, it has real long-term significance. And that is this:
9 Is that it would raise the spector that some of the
10 appropriator defendants would get by default, what they could
11 not get by an affirmative claim of prescription, and that is a
12 determination that their upgradient ground water pumping has no
13 legal adverse effect on the overlying ground water pumpers
14 within the valley floor.

15 The reason the water shed is the most appropriate
16 line, because the water shed is the easily surveyed, identified
17 line that is at the crest of the mountains, which clearly is
18 the line of demarcation because all precipitation is going to
19 go one way or the other. The precipitation will be either
20 surface flow, and most cases eventually become under ground
21 water flow by way of example.

22 Professor Gorelick will testify in this area there
23 are creeks that cross over Mr. Scalmanini's line, and those
24 creeks are demonstrable surface flow entering into the area
25 from outside the area. If there is, likewise, ground water
26 production up at the head areas where the streams originate,
27 that increases ground water storage capacity at those
28 locations, thus lessening surface water runoff that would

1 otherwise reach the basin and become ground water. That's one
2 example of why you have to be very careful in where you pick
3 the line.

4 The only way Mr. Scalmanini's line could be
5 justified is if the Court were to reach the conclusion that a
6 given line is, in fact, a virtually impermeable barrier, and if
7 not a virtually impermeable barrier, that there is no ground
8 water production upgradient from it. That will not be
9 supported by the evidence, and therefore, you have to move
10 further out to reach a point where you can safely say that no
11 ground water production is going to take a source of water
12 which would otherwise find its way into the basin and become
13 ground water, which is ultimately in dispute in this
14 litigation.

15 Now, Counsel has made much of the fact that the
16 word or term "ground water basin" is presumably the preferred
17 or accepted way of adjudicating these rights. The Court should
18 be aware of the fact that Professor Gorelick will testify --
19 and I believe even to that extent Mr. Scalmanini will likewise
20 concede -- that there is no such thing as an accepted
21 definition of what a ground water basin is within the
22 discipline of hydrology.

23 More importantly, I have had an opportunity to
24 review plaintiff's trial brief -- excuse me -- the defendant's
25 trial brief and cannot find a judicially declared definition of
26 what a ground water basin is, because none exists. In fact,
27 Mr. Scalmanini in his report relied upon a legal publication
28 entitled Ground Water Rights in California background and

1 issues, and it's a staff paper written for the State Water
2 Resources Control Board. The author is Ms. Slater in 1977, and
3 she observes in her glossary of terms "ground water basin."
4 There is no single widely accepted definition.

5 Mr. Scalmanini in his lists of references and
6 reference materials with his report also cited to an author by
7 the name of Todd who wrote a text. And Todd says in practice
8 the term "ground water basin" is loosely defined. However, it
9 implies an area containing a ground water reservoir capable of
10 furnishing a substantial water supply, and that's as good as it
11 gets.

12 Then Professor Gorelick will testify that he's
13 reviewed some 30-odd text in the area of hydrokollag and come
14 up with maybe some varying definitions of what a ground water
15 basin is. Some of which define it as the area where there is
16 recharge or outflow. Well, if you're talking about recharge, I
17 think even Mr. Scalmanini would agree that you are by
18 definition talking about the water shed area because recharge
19 is the quantity of water finding its way back into the quote
20 unquote "bucket" over a period of accepted study of time.

21 Likewise, one of the cases that they rely upon was
22 the City of Los Angeles versus San Fernando, California Supreme
23 Court opinion. It's interesting to note that in that case the
24 trial court in rendering relief to the City of Los Angeles
25 framed the relief for the city as follows, and I quote:

26 "Plaintiff has a Playboy right to all ground water
27 in the San Fernando Basin derived by plaintiff" -- excuse me --
28 "derived from precipitation within the U.L.A.R.A," comma, "in

1 so far as plaintiff uses such water to satisfy its
2 municipalities and the needs of its inhabitants."

3 And then the supreme court in reversing the trial
4 court gave the following instruction for remand, quote:

5 "On remand, the basin's safe yield should be
6 apportioned between amounts attributable to, No. 1, native
7 waters produced by precipitation within the ULARA, and No. 2,
8 water imported from outside the ULARA".

9 Well, both the trial court and the supreme court
10 felt it necessary to define the rights in the water tied to
11 precipitation, and precipitation within the ULARA Well, what
12 is the ULARA? It is the Upper Los Angeles River Area.

13 But the Court didn't stop there. It tells exactly
14 what it is. And what the Court says is, quote:

15 "The ULARA is bounded by the crests of mountain
16 ranges. The Santa Susanna and San Gabriel on the north. And
17 San Gabriel -- excuse me -- yeah, the San Gabriel Mountains,
18 San Rafael Hills and Repeto (phonetic spelling) Hills on the
19 east. Aleutian (phonetic spelling) Hills and the Santa Monica
20 Mountains on the south, and Semi Hills on the west.

21 And then it goes on to discuss the valley floor and
22 the sub area called the San Fernando Basin. But the area
23 within which the quantity of water that was an issue was being
24 assessed was the water shed area known as a ULARA .

25 Finally, defense counsel attached to their trial
26 brief as Exhibit D a portion of a recent treatise entitled
27 "California Water Law and Policy," Volume 1, by Scott S.
28 Slater, and I believe the publication date is 2001. And on

1 page 3 -- page 33 of that text, under the heading of Continue
2 Unit Requirement for Overlying Rights, he says the following:

3 "The overlying rights" -- excuse me -- "the
4 overlying right attaches to any land overlying a ground water
5 basin. The owner of the land has the right to take water from
6 the ground underneath for use on his or her land within the
7 basin or water shed." This implies that at least some portions
8 of the land must be wet; ie, overlie the basin as with riparian
9 rights. The overlying owner would then be entitled to use the
10 water extracted from the basin on any single legal parcel
11 within the water shed. No appellate court has clearly defined
12 whether the limit on the overlying right is the water shed or
13 the basin if the two boundaries are not contiguous.

14 My analogy to the cases construes riparian rights
15 the limit to be the drainage area of the water shed for the
16 simple reason that the judicial rationale for priority is the
17 same in both cases. Use within the water shed will foster
18 reuse because the supply is not lost to the area by
19 appropriation for export.

20 So, your Honor, the test of the evidence really
21 devolves into scientific sense to this question -- can
22 Mr. Scalmanini testify that upgradient ground water pumping has
23 no effect on the ground water supply within his line? If he
24 cannot testify such, then the Court has to, in the interest of
25 caution, defer to the outer line because then you, at least,
26 leave to the Phase 2, the quantification of the effect, which
27 is where Phase 2 is supposed to go. If we find out at that
28 point that quantification is low, it makes no difference. Then

1 the question's what if there's no adverse affect, and
2 therefore, it's easily resolved.

3 If, today, you exclude the area and later find
4 that, in fact, the upgradient from the valley floor is taking
5 water that would otherwise resupply the area, you don't get to
6 go backwards. You don't get to go back, "Whoops we made a
7 mistake. Bring that property back in." So the interest is an
8 issue of qualification, but more importantly, an issue of
9 science.

10 Finally, Mr. Scalmanini applied to Bloyd. In fact,
11 he says as competing lines as historian Bloyd is his preferred
12 line. With that, I'd like to read to you what Mr. Bloyd had
13 to say about the issue. One of the concerns of the defendant
14 is that by using the water shed boundary that we are including
15 within the area, that we're going to attempt to quantify the
16 total volume of water by becoming recharged, what is referred
17 to the Fremont Valley area to the north.

18 What Bloyd says -- and Bloyd is one of the original
19 investigators -- is as follows, quote: "Because the Antelope
20 Valley and Fremont Valley Basins are hydrologically connected
21 at at least two places along their common boundary, the right
22 of any user to pump from either basin, if the water supply is
23 insufficient, might be limited legally to his correlative share
24 of the total supply available. Water rights is not determined
25 only by the courts. And the consideration of water rights is
26 beyond the scope of this report.

27 However, in planning for the ultimate development
28 of the area, water rights eventually must be considered, and

1 the program finally selected should be compatible with the
2 legal rights to use -- to the use of the water."

3 Your Honor, even Bloyd recognizes that there is an
4 interconnection, and that he was not attempting to address or
5 solve that reality, and that he was recognizing that,
6 apparently, somebody was going to do it some day, and now is
7 the day. Thank you, your Honor.

8 THE COURT: All right. Thank you. I first want to
9 address -- I think it was the Valdez case. I looked at that.
10 I think that actually supports, somewhat, what my ruling was,
11 in that there's broad discretion by the courts, and that there
12 is case law and some authority for allowing experts to remain.

13 Now, we're not dealing with constitutional rights
14 or the need of an expert to assist the defense in preparation
15 of trial, but I think even though this phase is brief probably,
16 compared to the other phase, what we're doing here is we're
17 building the foundation. If we build a faulty foundation, and
18 it goes all the way to judgment, then we haven't done anyone a
19 service.

20 I would like to have the experts be able to hear
21 what is being said firsthand in trial. I think it's
22 beneficial. I don't think there's any probability or
23 possibility that they are going to give altered or different
24 testimony based on what they hear. I mean, the worse case
25 would be them change the opinion and they agree with the other
26 side. Well, chances of that happening in this particular
27 case, I think, is very slim. But I don't see the typical
28 things we worry about for why we exclude experts.

1 So I'm going to stand with my original ruling. I'm
2 going to allow them to remain in. We're going to need to
3 recess to mark exhibits.

4 Has anyone marked anything? That's a "no."

5 All right. We first need to mark, just for
6 identification purposes so we have a clear record, our diagrams
7 on opening statement.

8 So -- well, I guess Mr. Zimmer's will be
9 Plaintiff's 1 and Mr. Joyce's Plaintiff's 2.

10 MR. JOYCE: That's fine.

11 THE COURT: They will be satisfied for quite a
12 while.

13 MR. ZIMMER: Mr. Bunn did have the hard copy of
14 what's on the Elmo up.

15 THE COURT: What I'm going to do -- neither side
16 has more than a hundred exhibits, correct?

17 MR. ZIMMER: Correct.

18 THE COURT: So plaintiff will have 1 through 99, or
19 actually 1 through 100. And defense will start with 101. So
20 what do we want to mark because we have this -- this is
21 actually a Plaintiff exhibit, is it not?

22 MR. BUNN: Yes.

23 THE COURT: So the diagram that we have been
24 referring to on the Elmo, should we just mark it Plaintiff's 3?

25 MR. JOYCE: That would be fine, your Honor.

26 MR. BUNN: That's fine.

27 MR. ZIMMER: That's fine.

28 THE COURT: And then from there we can mark the

1 other ones. Now, before we recess and start marking, we are
2 already a bit delayed. These types of cases never go on time.
3 If we need Monday, I'd rather everyone take Monday. It doesn't
4 do any good to rush through the testimony, because I think this
5 determination is vital to hopefully an appropriate
6 determination on the remainder of the trial.

7 But to summarize, perhaps, using the terms you've
8 used, I think plaintiff's boundary is the funnel in the bucket,
9 and defenses boundary is the bucket.

10 MR. JOYCE: My analogy, that's correct, your Honor.

11 THE COURT: What I think I heard from defense, and
12 really plaintiff talked about also, is the ultimate
13 determination for the quiet title rights. Even though we're
14 using hostile, open, notorious, is it still not a material and
15 significant affect -- the pumping, whether defendants' pumping
16 has a material and significant affect on plaintiff?

17 MR. JOYCE: That's true, your Honor, to some extent
18 because I'm certain that the defense would argue that there was
19 a manifested effect from their pumping revealing itself somehow
20 in the wells operated by one of our clients. That's the notice
21 issue.

22 For Phase 2 there's a constitutional issue that we
23 have asserted. They are aware of two. It is my position that
24 given that all but one of the defendants appropriators are
25 government entities, that they have to take more than just
26 pumping to give us the notice. That they have to take
27 affirmative steps reasonably calculated that they intend to
28 take our property right in order to meet the --

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THE COURT: That's another issue.

MR. JOYCE: That's a second issue.

THE COURT: But I think what you're saying is to define the boundaries, we kind of throw out what terms we're using. But you've defined it, I believe, by what your expert is going to say about the water shed of this area.

MR. JOYCE: That's correct.

THE COURT: And you do that because you don't want to do the quantitative analysis at this point? You don't believe that is what is necessary for defining the boundary.

MR. JOYCE: It hasn't been done by either side.

THE COURT: Okay. What defendant is saying is, I think, some of this you've used a basin approach. It's been defined by geological studies, and you didn't really touch on too much about the quantitative analysis, other than -- it seemed what you were saying is, although there's other issues, part of the ultimate determination is whatever we call this boundary or basin. If we pump in it, is that the area that would have some appreciable, material, significant effect versus what we pump outside of it?

But is your expert going to be commenting on that area in between your boundary and plaintiff's boundary to be saying whether or not pumping in that area would have a material and significant effect?

MR. BUNN: Yes, absolutely. Let me make one clarification first. The issue here in Phase 1 is not going to be whether the defendants' pumping has an effect on the plaintiffs' wells.

1 THE COURT: Right, it's not. It's to come up with
2 a boundary.

3 MR. BUNN: Right. And what we're doing that
4 boundary for is to determine what water the plaintiffs have
5 overlying rights to. They keep trying to change that issue,
6 and part of this was the burden of proof discussion that we had
7 before. But the fact is that they have overlying rights to
8 something which they describe as aquifer, and we're trying to
9 find out what the aquifer is.

10 And the second point that I wanted to make is that
11 Mr. Scalmanini will testify that in evaluations of ground water
12 basins, you take recharge and discharge into account. You
13 consider all the water that's coming into the basin and all the
14 water that's going out. So we will be doing a quantitative
15 analysis, eventually, that will deal with that, and it will
16 account for all the water coming in and going out.

17 Now, there's a very important, I think,
18 misstatement that Mr. Joyce made that I -- perhaps, it will
19 help the Court to have its eye on at the beginning. The water
20 flowing into the basin is surface water. It comes. It falls
21 on the mountain. It runs off. The mountain is impermeable.
22 It doesn't soak into the mountain, and it's surface water.

23 And Mr. Joyce talked about pumping upgradient
24 affecting the flow of the stream, maybe so. But we're not
25 dealing with surface water in this lawsuit at all. So that
26 pumping is beyond the reach of the lawsuit, in it affects the
27 flow of a surface stream that has no relation to plaintiffs'
28 rights in the ground water in the ground water basin.

1 So okay. I don't know if I answered your question
2 or not.

3 THE COURT: Well, I think so.

4 MR. JOYCE: I'll defer comment as to the last
5 objection to the actual evidence.

6 MR. ZIMMER: Your Honor, I think your question was,
7 do you agree that there's no material or significant effect?
8 Really the material or significant effect by the nature of the
9 stipulation has to be determined in Phase 2. What we're really
10 saying now is that there's really no effect to pumping outside,
11 whether it's material or significant or substantial. To
12 determine that, you're going to have to actually look at the
13 particular properties involved to determine that.

14 MR. BUNN: I'd just say they're ignoring the
15 California Supreme Court. We cited that test in our brief.
16 The test has always been. The defendant's stipulation hasn't
17 changed that.

18 THE COURT: I guess I'm just surprised that with
19 all the water law decisions, there's not some generalized
20 agreement on what is, at least, the definitional criteria --

21 MR. BUNN: There is.

22 THE COURT: -- of the basin, because it seems like
23 everyone's saying there isn't.

24 MR. BUNN: It's absolute agreement except for this
25 case. It's in the trial brief. We listed all the cases.

26 MR. JOYCE: What he's suggesting, your Honor, the
27 other law indicates the parties agreed by stipulation to define
28 the area they want to argue about. They're upset because we

1 won't stipulate.

2 THE COURT: Is there a judicial decision that
3 defines basin that I think there wasn't?

4 MR. BUNN: Yes, your Honor.

5 MR. JOYCE: If they can find it, be my guest.

6 THE COURT: Say what it is because I want to look
7 at it.

8 MR. BUNN: City of Los Angeles versus City of
9 San Fernando. If you can look at it over the noon recess,
10 you're a better person than I, because it encompasses over a
11 hundred.

12 MR. DUNN: That's why we need to identify.

13 MR. BUNN: We have done that in the trial brief.

14 THE COURT: I'll pull that out and find the cite.
15 That's the case you're relying on for the definitional criteria
16 for the basin?

17 MR. BUNN: Yes.

18 THE COURT: With that, I think it's known. You can
19 meet and confer over the lunch hour, and we'll start at 1:30.

20 MR. DUNN: Do you have some exhibit tabs you want
21 us to use?

22 THE COURT: Yes.

23 MR. DUNN: Other than simply marking them, are you
24 looking for some other type of agreement or narrowing?

25 THE COURT: Not at this point. Just make sure you
26 exchange them so everyone knows what they are, and we'll deal
27 with objections as they come up. I think it's the best way.

28 Thank you, everyone, and have a good lunch.

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MR. ZIMMER: Thank you, your Honor

(Lunch recess taken at this time.)

THE COURT: Good afternoon. All right. Are we ready? I spent a little bit of time over the lunch looking at that case, City of Los Angeles versus City of San Fernando. It doesn't help a lot because it wasn't a case -- as far as I can tell -- I mean, I didn't read all of it. I read the areas I thought we were focusing on. It wasn't a case where they were determining a basin. And they seem to say -- they use the initials, but it was the Upper Los Angeles River Area. And at one point they talk about it in terms of water shed, but then when they go on, they talk about in terms of basin.

Let me tell you my question, and I'll give both sides a chance to answer. It looks like from plaintiffs' standpoint we have the water shed. From defenses' standpoint we have the basin. Now, ultimately, do I not -- when I make the final determinations, I think I make it based upon pumping that's taking place in the basin, because the water shed is not the basin. I mean, they're two distinct things. The water shed is -- and I'm probably -- if our experts are in here, they're going to cringe -- I think it's the boundary of that area from where that point on the water rolls into the basin.

MR. DUNN: Yes.

THE COURT: All right. Now, if you were -- and the water shed is much greater in this case than the basin, especially to the north?

MR. DUNN: Yes.

THE COURT: I'm not sure, perhaps, because of the

1 mountain area or the way the geography is, I don't know, but if
2 you were to go around the perimeter and dig directly down, you
3 wouldn't hit a basin.

4 MR. JOYCE: Well, your Honor --

5 THE COURT: At least not the basin that the
6 pumping's taking place in this particular case, correct?

7 MR. JOYCE: No. May I elaborate a bit, your Honor?

8 THE COURT: Let me go on. What I don't know, if
9 plaintiffs' experts going to say -- if this is the water shed
10 and this is the perimeter of the water shed, I don't know what
11 his opinion is with respect to the basin. I don't know if it's
12 generally agreed among the experts that there is an aquifer
13 that is comprised of some -- one basin or more basins or
14 whatever. Because I think, originally, the defenses' problem
15 was they thought they were separate basins within one aquifer.
16 I think they somewhat conceded on that point. Whether they are
17 or aren't, they are sort of all intermingled.

18 I'm wondering if we're fighting over different
19 things. Because I mean, if I make a determination as to what
20 the water shed perimeters are at the time I make the ultimate
21 findings, am I not really relating to the basin, and do we
22 really have a dispute over what comprises the actual basin? I
23 don't know. I mean, a lot of this is somewhat new to me, and I
24 think it really links on what plaintiffs' expert's opinion is.

25 But if he's going to concede that water shed and
26 basin are different things, which I think everybody would agree
27 to that, based on his feeling of what the water shed is, that
28 there is a basin or an aquifer. And then I'm kind of curious

1 as to what he feels that area is. Because if he's in general
2 agreement with defense experts on that, and we're really just
3 sort of fighting over how much land should we include --
4 because ultimately, I'm not sure it matters where it is on top
5 of the earth. I think it matters where the pumping takes
6 place.

7 MR. DUNN: And if I could add, what ultimately
8 matters is what's the safe amount of pumping that can take
9 place, and within a ground water basin, that safe amount of
10 pumping would include all that water coming into the basin from
11 the water shed. So from my own personal perspective, it's very
12 difficult to see why we're disputing this over the next two to
13 four days.

14 THE COURT: We might be talking different terms.
15 Sometimes if experts all get together and you have some
16 agreement, that it's mediation and nothing can be held against
17 them, that type of thing, you get a generalized agreement. I'm
18 not sure if this is not that kind of case. But I tell you,
19 first day back after three weeks, and I'm looking at this, and
20 I'm thinking, well, I think we're talking about the same
21 things. Because what you're talking about is simply -- you
22 used the term "the funnel," but the funnel isn't where the
23 water collects. The water still does collect in the bucket
24 even on your picture.

25 So what I'm really curious is what your expert says
26 the bucket is. If he's in general agreement as to that, I
27 mean, give or take -- I guess, there is always some room for
28 disagreement, even among the different surveys that are done --

1 but if they're in general agreement, then maybe we aren't
2 really having to dispute this. Because I'm trying to
3 determine, if I make any determination of the water shed, how
4 does that help on the ultimate findings? I'm not sure. So --

5 MR. BUNN: I think you've put your finger on the
6 issue, and that's what I was trying to elude to without being
7 argumentative in my opening statement; that we are really
8 talking about two completely different units. We're talking
9 about the ground water basin. They're talking about the water
10 shed. We'll certainly stipulate that the water shed is where
11 Mr. Sheahan drew his line. We just don't think that's the
12 appropriate unit to use in determining overlying water rights.

13 THE COURT: Even your case used the term water shed
14 at one location, but then when they were talking about
15 everything else, they're talking in terms of the basin.

16 MR. BUNN: If I may clarify that?

17 THE COURT: I think the basin is always smaller
18 than the water shed.

19 MR. BUNN: And I think where we went at fault is
20 not giving specific page cites, as I mentioned, in the
21 hundred-page long opinion.

22 THE COURT: I found a couple.

23 MR. BUNN: 14 CAL 3rd, at pages 249, I would say,
24 to 251 is where the Court found that the Upper Los Angeles
25 River Area, which is a water shed containing four separate
26 ground water basins.

27 THE COURT: That was the part I was reading, I
28 think.

1 MR. BUNN: And the water rights in each basin were
2 determined separate here. They were not determined on water
3 shed wide basis; although, the City of LA clearly wanted them
4 to be. They were determined basin by basin.

5 THE COURT: I think I focused in on that part. The
6 water shed was a little bit before. I'm not sure they wanted
7 anything determined on the water shed. I think that's just the
8 general area. I'm not sure plaintiffs here, when it comes
9 ultimately to what is really important in this case, cares
10 about what the water shed is and what's the ultimate
11 determination made with the basin and the pumping and the
12 rights there.

13 So you know --

14 MR. ABBOTT: If I can expand on Mr. Bunn's
15 discussion just to give a clue. At issue was the City of LA's
16 Pueblo Rights in the Los Angeles River. The City of LA took
17 the position that any drop of water falling within ULARA, the
18 Upper L.A. River Area water shed, was theirs, because in a
19 state of nature would have somehow gotten down to the city.
20 The old Pueblo Rights are surface water rights.

21 THE COURT: That's not what we have here.

22 MR. ABBOTT: And the supreme court had historically
23 treated the San Fernando basin as being part of the LA River in
24 terms of water rights. So what they were fighting over is do
25 you extend that into other ground water basins in that water
26 shed? And the supreme court answered the question, no. You
27 treat them as separate basins.

28 THE COURT: I think here what we're looking at is

1 the -- whether it's one basin or several basins, whatever --
2 and I'm still not clear how we distinguish basin from aquifer.
3 I think aquifer is bigger than several basins. I don't know.

4 MR. BUNN: It's the other way around.

5 THE COURT: All right. But anyway --

6 MR. BUNN: We would agree with the way the Court is
7 stating the issue as far as determining what the basin is
8 ultimately, even though the contribution comes from the water
9 shed. So we think that you have it right on the money.

10 THE COURT: And again, correct me if I am wrong,
11 but the water -- not all the water that flows down the water
12 shed gets to the basin.

13 MR. BUNN: Correct.

14 THE COURT: There's various things that happen to
15 it. A certain amount do. What I think plaintiffs -- and I
16 don't think plaintiffs care too much about that either. What
17 you're concerned about is what your prescriptive claims might
18 be in connection with the basin, correct?

19 MR. JOYCE: Well, in part that's correct, your
20 Honor.

21 THE COURT: And the overlying land?

22 MR. ZIMMER: Well, let me --

23 MR. JOYCE: You or me first?

24 THE COURT: Tell me why the water shed is anything
25 we need to determine, and if we have a general agreement that
26 this is the water shed -- and it doesn't look like there's a
27 big dispute at this point because I think it's pretty well
28 conceded that whether it's one basin or aquifer or several,

1 it's all together in this. That's where the big dispute was
2 originally, I thought.

3 MR. JOYCE: Your Honor, what we're really fighting
4 about, to the extent you want to call it a fight, is water.
5 And when you look at it from that perspective, you can even see
6 why in the case that you referred to, the City of Los Angeles
7 San Fernando case, that they talk about precipitation because
8 that's the source of the water. If the -- the issue then
9 becomes where are people pumping? If people are pumping
10 upgradient in the valley, that means that they're extracting
11 ground water either through fractured rock extraction or
12 through shallow water -- but nonetheless, aluminum or water
13 bearing deposits -- that ground water pumping upgradient from
14 the valley floor is taking water that otherwise in the state of
15 nature would have made its way through underflow into the
16 basin. You exclude that at this point.

17 Then later on, as Mr. Dunn aptly pointed out, you
18 start talking about the issue of safety yield or how much water
19 can you pump. You're suddenly taking water out of the equation
20 because you exclude the water upgradient.

21 THE COURT: You're using terms I'm not a hundred
22 percent clear with. So I think what you're saying is that
23 they're pumping -- they're getting water that's still in the
24 water shed, and not reached the basin.

25 MR. JOYCE: That's correct. It's a stream
26 riparian. Send it up stream and divert the water away. It
27 never gets to the riparian down stream.

28 THE COURT: I'm not convinced they're not saying

1 that that can't be considered by me, are you?

2 MR. BUNN: No.

3 MR. JOYCE: Well, what --

4 THE COURT: In other words --

5 MR. JOYCE: What they're saying is you can't
6 consider whether or not those defendants who, in fact, are
7 pumping outside of Mr. Scalmanini's line upgradient are doing
8 so adversely to our rights down in the floor. That's the
9 issue. Are they taking water that would otherwise get there?

10 THE COURT: I guess I'm not sure what upgradient,
11 or whatever that term is, means. But when they're pumping it,
12 is the idea to go down to where the basin is? You don't go up
13 in the mountain and drill down a couple feet?

14 MR. JOYCE: Then the simple answer is let's find
15 out where the outer most wells are upgradient and draw a line
16 around that that would account for all pumps, and go to
17 Phase 2.

18 THE COURT: I guess the question -- if we were to
19 go with the parameters of the water shed that you've set forth,
20 are there any cities or municipalities or anyone like that
21 that's not included in this lawsuit?

22 MR. ZIMMER: Leona Valley, County of Los Angeles,
23 Fremont Valley.

24 THE COURT: I guess -- because then my question is,
25 is anyone saying that those municipalities or cities are
26 involved? In other words, pumping from where you think there's
27 a problem.

28 MR. ZIMMER: Absolutely.

1 MR. JOYCE: But they're sitting at this table.

2 MR. ZIMMER: Your Honor, this is kind of the -- I
3 wonder what you're asking -- you're saying if you have the
4 water shed over here, which is this collection vehicle, and you
5 have the defendants over here saying this is the basin where
6 the water is, looking at it in terms of where the water is, is
7 kind of -- it will take you down the wrong path. This is the
8 reason why we're not talking about where the water is in pools
9 on the ground. You're talking about water being in sand or
10 water being in impermeable materials. That's why this
11 definition of basin boundary is so loose. You're talking about
12 any number of underground water bearing surfaces that are
13 connected hydraulically in some way.

14 So there are, in fact, wells that are drilled in
15 mountains. There are mountain springs that flow from
16 mountains, because it is not a correct statement -- I disagree
17 with Mr. Bunn, it is not a correct statement that the mountain
18 is permeable -- impermeable. You, in fact, have water that
19 makes its way through rain fall, and it goes down gradient.
20 You can drill wells. In Leona Valley, they are. They have
21 wells in Leona Valley. They're pumping water out of wells.
22 These are upgradient, in Mr. Joyce's terms, from what they're
23 defining as basins.

24 It just depends on how you define basin. If you
25 define basin the way it's classically defined when you're
26 trying to do the scope correctly, you're going to have to get
27 all hydraulically connected areas within that area. What
28 they're saying, and I agree with the aspect -- the question in

1 terms of water rights is whether you have two people or two
2 parties who are in the same area pumping which could have an
3 effect on the other party. That means they're in dispute,
4 because his pump in Leona Valley could affect our pump over
5 here. And the reason it could have an effect is because
6 they're hydraulically connected. It's not a big pool of water.
7 It's like a big pool of water that permeates and goes out all
8 sorts of different directions.

9 THE COURT: Do the experts generally agree that --
10 and I think they do -- that the water shed is, as your expert
11 set forth, is the water shed that contributes to this basin?
12 And does your expert have a general agreement as far as if
13 we -- maybe it's how we define basin as to where a water
14 ultimately collects?

15 MR. ZIMMER: I would say, yes, on the first
16 question. I think all the experts would pretty much agree what
17 we describe are water shed boundaries. As to the second
18 question, the answer would be, no. Because what Scalmanini has
19 drawn is a less inclusive line which cuts out significant
20 pumping by Leona Valley and the County of Los Angeles and other
21 areas that are pumping from this same, if you will, common
22 water supply, because it's all hydraulically connected.

23 If Mr. Tootle is coming upgradient in Leona Valley
24 and that water is hydraulically connected with the Antelope
25 Valley, which we contend it is, he's taking water that would
26 otherwise be the Antelope Valley. He's taking part of that --
27 our supply.

28 THE COURT: In other words, he's taking it before

1 it makes its way to the basin?

2 MR. JOYCE: That's correct.

3 MR. ZIMMER: I'm saying --

4 MR. TOOTLE: I have a right to take that water.

5 MR. ZIMMER: Because I think it is part -- when
6 it's connected hydraulically, it's part of the basin described
7 correctly for purposes of this lawsuit with the legal issue we
8 have here. If it's hydraulically connected, then it is part of
9 the basin under all definitions that I'm aware of that define
10 basin. There's an agreement on the water shed. It goes back
11 to what Mr. Joyce said. You cannot go back. The second phase
12 in determining the line to be the water shed does not preclude
13 these folks -- I talked to Mr. Dunn about it earlier -- from
14 arguing everything they want to argue about the basin.

15 They wanted to argue about where the water is, how
16 it permeates, whether its pump is affecting us or not, or
17 whether Mr. Abbott's pump is affecting us or not. That can be
18 done in Phase 2. The basin -- this idea of this basin is not
19 critical as to water, where it is and whether their pumping is
20 meeting the elements of prescription against our clients.

21 THE COURT: In hindsight, had I thought, I would
22 have sustained that original demur and made you plead simply
23 the water shed.

24 MR. JOYCE: Your Honor, in hindsight, had you not
25 bifurcated, this all could get done where each element makes
26 sense against each other.

27 THE COURT: I think the bifurcation was in response
28 to not sustaining the demur and letting you plead in more

1 general terms. We get wiser sometimes. Maybe. I don't know.
2 I'm not seeing a lot of help in some of these cases.

3 MR. JOYCE: Your Honor -- and frankly, the Court
4 hit upon a significant issue, and the Court by its comment is
5 almost inviting what happens too many times in these cases.
6 I'm not a water law expert. I don't do this stuff day in day
7 out.

8 What I see happening is lawyers and/or the experts
9 getting together and entering into stipulations, and those
10 stipulations then get embraced and become part and parcel of
11 the opinion of the appellate court, and ultimately, the supreme
12 court. And then we have a term being bantered about in legal
13 literature called "ground water basin." That's why you start
14 going back out and talk to Professor Gorelick or Mr. Sheahan,
15 because we don't have a readily accepted and readily defined
16 meaning in the discipline that's in issue.

17 So when we boil it all down, we're really fighting
18 about water. The reason the water shed is -- that's the outer
19 most safest line, so you're talking about all of the water, and
20 you start coming in from that. Then you have to be careful
21 because you got -- I use the term upgradient. What I mean is,
22 you're coming up off the valley floor. If you're pumping up
23 there, that is water in the state of nature that would
24 naturally make its way to the valley floor and become part of
25 the ground supply. Once you exclude that pump, now you're
26 talking about quantities of water.

27 THE COURT: They're shaking their head. Isn't that
28 the ultimate determination in Phase 2?

1 MR. BUNN: No.

2 THE COURT: Okay. Why not?

3 MR. BUNN: Certainly, Phase 2 is to take into
4 account the water that flows into the basin.

5 THE COURT: I am not saying there aren't other
6 things we have to determine in Phase 2.

7 MR. BUNN: Certainly we have to do that in Phase 2,
8 but the fact of the matter is that plaintiffs -- they're trying
9 to rewrite California ground water law. They do not have
10 rights in Leona Valley. They do not have rights in Fremont
11 Valley. We're defining the area in which they have overlying
12 rights. That's the purpose of Phase 1. They left out things
13 that we discussed about Leona Valley that made it seem as if
14 all water flowed underground in Antelope Valley. That's not
15 true. Leona Valley is separated from Antelope Valley by a
16 fault, which does not permit ground water movement across it in
17 any significant way.

18 What does happen is there is a river that flows
19 across the fault. It's called Amaragosa Creek. That's the
20 only communication between Leona Valley and Antelope Valley is
21 that creek. That creek is surface water and is accounted for
22 under surface water law, and their ground water rights do not
23 reach up to that valley. It's as simple as that. So what
24 we're talking about is the area within which they have
25 overlying rights.

26 MR. JOYCE: And --

27 MR. BUNN: And it's vitally important to determine
28 that in Phase 1, and not say, well, we're just being cautious

1 and include the whole water shed, because you will have made a
2 finding that they have water rights that extend beyond the
3 actual basin within which they have water rights.

4 THE COURT: But, see, then what we're really -- I'm
5 getting back to what we're determining. We're really not
6 determining a quote unquote "basin," correct? Because
7 wouldn't -- aren't you even saying that they might have
8 overlying rights on an area that extends outside of what the
9 parameters of the basin are?

10 MR. BUNN: No, I'm not. Their overlying rights are
11 limited to the ground water basin, and we say that -- again,
12 I'd refer you to our trial brief. We make that pretty clear.

13 MR. TOOTLE: Your Honor, their complaint is the
14 aquifer.

15 THE COURT: Well, no. Their complaint is the
16 aquifer.

17 MR. JOYCE: Your Honor, if you look at the
18 plaintiffs' joint trial brief and their Exhibit D they append
19 to it, an excerpt from Scott Slater 2001, and it's a portion I
20 read to you in my opening statement where he confirms that it
21 has not yet been adjudicated in California, whether or not the
22 overlying right extends to the water shed or merely the outer
23 most limits of the ground water basin in those cases where the
24 two are not contiguous lines. Maybe this is when we have to do
25 that. I don't know.

26 But all I'm suggesting to you, and I think it's
27 really important, is this: You can't draw a line that dissects
28 down the middle, ground water pump on one side and ground water

1 on the other side, unless you can concurrently say that as a
2 matter of science -- not law, not stipulations, not artificial
3 political lines drawn on a map -- but that as a matter of
4 science, that the pumping on one side has no effect on the
5 pumping on the other. If you can't do that, you can't use that
6 line, and that's why we're here.

7 THE COURT: Well, then we can probably save
8 testimony though as far as plaintiff's expert if we all agree
9 that what he shows is the water shed, and everyone agrees
10 that's the water shed. Or do we not all agree that?

11 MR. DUNN: That's fine. So stipulated on my
12 client.

13 MR. BUNN: Just with one slight clarification. He
14 shows three water sheds -- the Antelope Water Shed, Leona
15 Valley Water Shed, and the Fremont Water Shed.

16 MR. ZIMMER: Mr. Dunn said the red's fine. That's
17 conclusive.

18 MR. BUNN: We'll stipulate, yes.

19 MR. TOOTLE: Your Honor, on the east side, he did
20 not use the water shed.

21 MR. JOYCE: And I was just getting ready to address
22 that.

23 MR. TOOTLE: So they have made this argument all
24 the time about using the water shed when, in fact, they don't
25 use the water shed.

26 THE COURT: That's a straight line into a county
27 line.

28 MR. TOOTLE: The reason why is because that's

1 already an adjudicated basin.

2 MR. ZIMMER: We don't need to deal with that.

3 THE COURT: We do have a court reporter, and she
4 still can only take down one person at a time. See, this can
5 be exciting.

6 MR. TOOTLE: Clearly, they have inconsistency in
7 argument. They want to use the water shed, but now, where
8 there is an adjudicated basin, they want to cut it off there.
9 Where there aren't adjudicated basins, they're not willing to
10 cut it off. And there are other buckets up there.

11 MR. JOYCE: Your Honor --

12 MR. TOOTLE: And that -- we can have people testify
13 to that.

14 THE COURT: I think the biggest problem we have
15 is -- maybe we'll all agree on this -- this could possibly be a
16 case of first impression in the sense that no one can find a
17 case where we adjudicated the basin in a bifurcated trial.

18 MR. DUNN: No report in the appellate case.

19 MR. BUNN: In a bifurcated --

20 MR. DUNN: I don't think that's correct, but I'm
21 not sure.

22 THE COURT: I think we looked for that before.
23 We're having a hard time finding it. That's the case I want to
24 read where they did that, because I want to see -- I mean, they
25 obviously would have had to have a standard.

26 Where is that case?

27 MR. BUNN: Well, accept for the bifurcated trial, I
28 still think the Los Angeles versus San Fernando case is that

1 case, because it specifically delineated four basins within the
2 ULARA Water Shed.

3 THE COURT: But didn't they agree, here's the water
4 shed and here's the basin in the water shed?

5 MR. ABBOTT: They did not agree.

6 MR. BUNN: That was contested.

7 THE COURT: What was contested? Not the water
8 shed, but the actual -- the actual -- it seems like there were
9 four basins and not all of them ended up --

10 MR. BUNN: No, ma'am. With respect, the City of
11 Los Angeles first claimed rights to the entire water shed, but
12 when they said, no, you're limited to the ground water basin,
13 they said, very well. It's all one big basin. That's what
14 they said.

15 THE COURT: From my quick review of it, I did not
16 get that.

17 MR. BUNN: They did say that. They said all the
18 basins were connected, and they tried to establish that in a
19 state of nature before the pumping had got going from the flow
20 from one basin to another, and the supreme court said we don't
21 look at merely hydraulic connection between the basins.

22 THE COURT: I saw that. Maybe. I was under the
23 impression, though, that the four basins were less than the
24 water shed.

25 MR. BUNN: Yes, they are.

26 MR. TOOTLE: That's correct.

27 MR. BUNN: If I may, I represent one of the parties
28 in that area, so I'm pretty familiar with how it is. The

1 San Fernando Basin is by far the biggest. It's the
2 San Fernando Valley. Then to the north of that is a smaller
3 basin, the Sylmar basin. And to the east is the Verdugo Basin,
4 and then the Eagle Rock Basin is beneath the city of Eagle
5 Rock. All of that together is in this upper L.A. river area
6 water shed, and it all comes down to a point at the bottom of
7 it where all the water from the ground flows into the
8 Los Angeles River right by downtown Los Angeles.

9 THE COURT: But then don't they have a water shed
10 and basin? And that's what I thought here. We have a water
11 shed almost, with a little missing portion, and we have some
12 basin area.

13 MR. BUNN: Of course they do.

14 THE COURT: And ultimately, what I thought is when
15 I make the ultimate determinations, we're focusing on the
16 basin. And then what I thought plaintiffs were saying is
17 there's a gray area there between the water shed and the basin
18 that you would still have water rights to. Am I incorrect
19 there --

20 MR. BUNN: You are incorrect. I'm sorry.

21 THE COURT: -- from what you're saying, that you
22 have water rights in the area in between water shed and basin?

23 MR. ZIMMER: First of all, I think we have to go
24 back to the scope of what the Court is deciding. This is not a
25 pueblo water rights under Mexican law, not a question of the
26 rights of a complete body of water, but rather a specific
27 lawsuit as to the water rights. The right of an overlying
28 landowner to reasonably use water on his property.

1 So the San Fernando case is inapplicable to that
2 extent. The question ultimately will not be, in my estimation,
3 whether the parties are in the same basin. The question will
4 be whether the defendants have proved prescriptively that they
5 have made claims against these particular properties. It's
6 not -- this whole basin thing doesn't really mean anything.

7 I said this before when we were trying to do this
8 bifurcation, this whole basin concept doesn't mean a whole lot
9 of anything in terms of the decision the Court has to make.
10 The Court has to look at pumping here and determine whether
11 they proved prescriptively -- to prove, to show what they have
12 the water rights of the plaintiff. And it can be -- the
13 question is whether the water is hydraulically connected, and
14 whether they are taking water that is hydraulically connected
15 to us. If they are, and they're taking sufficient quantities
16 of that, they're to put us on notice, and do so for a given
17 period of time.

18 THE COURT: Is all of the plaintiffs
19 collectively -- all the land within the area that defendants
20 say is the basin?

21 MR. ZIMMER: No. We have our Bolthouse property
22 outside that area. Mr. Tootle's client has property in the
23 Leona Valley that's outside that area.

24 MR. TOOTLE: And Fremont.

25 MR. ZIMMER: Mr. Abbott has one of the districts in
26 the County of Los Angeles.

27 MR. ABBOTT: Actually, District No. 37. Whether
28 you use the water shed line or basin, it will go outside of

1 this case.

2 MR. JOYCE: It's entirely out of either line?

3 MR. ABBOTT: Yeah.

4 MR. JOYCE: Then guess what? That goes bye-bye.

5 MR. BUNN: It's only taken a year and a half to get
6 to that point.

7 MR. ZIMMER: That's not a problem.

8 MR. TOOTLE: But they don't have any properties in
9 the Leona Valley or the Fremont Valley.

10 MR. ZIMMER: That's correct. And as far as the
11 offer of proof, Mr. Tootle is going to be just fine and dandy
12 if it turns out in Phase 2 that he's not hydraulically
13 connected with our properties. He could disclaim right now any
14 prescriptive claims against our properties, and he's out of
15 this lawsuit if he indicates that.

16 MR. TOOTLE: No, because I have another system in
17 Lancaster.

18 MR. ZIMMER: Aside from that, from your Leona
19 property and Fremont Valley.

20 MR. JOYCE: If you want to disclaim in Leona, we'll
21 accept your disclaimer and eliminate Leona. But your Honor,
22 they answered the claim and said prescriptive right. Does that
23 mean you have prescriptive rights? If they're saying no and
24 disclaim it, I don't want to keep them in the lawsuit.

25 MR. TOOTLE: Your Honor, their complaint said the
26 aquifer.

27 THE COURT: They plead there's an aquifer, and
28 prescriptive rights were --

1 MR. TOOTLE: Based on the aquifer. The aquifer is
2 not under Leona Valley. And the aquifer, we can show this is
3 not under Fremont Valley. The aquifer is under, basically, the
4 ground water basin, which our expert will testify to.

5 MR. ZIMMER: Well, there's several aquifers --
6 defined aquifers, different and different places. All that
7 doesn't make a difference. The question is whether your client
8 is claiming prescriptive claims against our right to pump on
9 our own property.

10 MR. TOOTLE: All we're going to claim for is that
11 aquifer under what our expert is testifying to.

12 MR. ZIMMER: So if it's contention that the aquifer
13 is only in this one place, not on your property and our
14 property, you can claim any prescriptive property against our
15 property.

16 MR. TOOTLE: Then we need to look vertically at the
17 aquifer.

18 MR. ZIMMER: You can do that. Look all you want.
19 However, on the aquifer, if you're disclaiming all rights
20 within our property, we're good to go.

21 THE COURT: In the law do we go vertically? It
22 seems like we're wanting to draw out from --

23 MR. BUNN: Under the law, it's clear it's ground
24 water basin. I'd like to say one thing about this claimer.
25 What we're doing is establishing the limits of plaintiffs'
26 overlying rights. If you establish that those overlying rights
27 don't extend to the Leona Valley, then he can -- he doesn't
28 need to disclaim. The plaintiffs do not have any rights

1 against him.

2 And that's what we've been saying from the
3 beginning. They have to show that which they have rights to.
4 And they don't have rights in the Leona Valley.

5 MR. JOYCE: And your Honor, that's exactly why
6 their Exhibit D to their trial brief, the commentary by
7 Mr. Scott Slater, is pertinent. He says no appellate court has
8 clearly defined whether the limit on the overlying right is the
9 water shed or the basin if the two boundaries are not
10 contiguous.

11 MR. BUNN: Mr. Joyce leaves out that he goes on to
12 conclude that a property does have to overlie the basin as
13 opposed to the water shed, despite saying that no court has
14 definitively established that. And I think, frankly --

15 MR. JOYCE: What he's saying, your Honor --

16 MR. BUNN: -- Professor Scott Slater was wrong.

17 MR. JOYCE: Professor Slater --

18 THE COURT: Wait. One at a time. Let's hear from
19 Mr. Joyce.

20 MR. JOYCE: What he's saying is -- the reason he's
21 talking about the water shed is because he's recognizing the
22 same reality that the appellate court and the trial court and
23 the supreme court recognize in Los Angeles versus San Fernando,
24 and that is, the water shed is important because that is the
25 source -- the outer most source of all the water that's in
26 dispute.

27 When you try to quantify over a sufficiently long
28 geologically period of time how much water is available to

1 fight about, you got to do that with reference to the water
2 shed, and that's why the Court emphasized that the City of
3 Los Angeles had a right in the San Fernando, quote unquote,
4 "basin" to all of the water resulting from precipitation -- not
5 in the basin, but precipitation in the water shed. When you
6 start trying to divide that up and start talking about limiting
7 it to the basin, you eliminate that other factor, which is the
8 ground of water.

9 THE COURT: All the plaintiffs' property is within
10 the water shed?

11 MR. ZIMMER: That's correct.

12 MR. JOYCE: All the water that ends up in the basin
13 doesn't come from within the boundaries of the water basin.
14 They're proposing it comes from the water shed.

15 MR. BUNN: I'd be willing to stipulate that
16 plaintiffs' right in the Antelope Ground Water Basin extend to
17 all the water that's there because of precipitation of the
18 water shed, just as what's done.

19 MR. JOYCE: I will accept that stipulation if they
20 include the volume of water pumping from -- by upgradient from
21 the valley.

22 THE COURT: They say in overlying it --

23 MR. JOYCE: It will land within the natural water
24 shed of the basin or area of land in which precipitation grains
25 into the water source.

26 THE COURT: Who says that? Your guy? What's his
27 name, Slater?

28 MR. JOYCE: Scott Slater.

1 THE COURT: That's what it goes on to say in No. 5.

2 MR. TOOTLE: Your Honor, there's been a whole
3 history of basin adjudications, and we own water rights in many
4 of these adjudications. Water flows from the San Gabriel Basin
5 to the Central Basin to the West Basin to the ocean. Under
6 Mr. Joyce's theory there, this would all be one basin.
7 Clearly --

8 THE COURT: That's a problem.

9 MR. TOOTLE: -- it is not the case, and it has
10 historically not been the case, and these have been adjudicated
11 since the 50s. They have recognized the property owners for
12 which my company came out of, of which the Dominguez family,
13 Rancho San Pedro owned most of the land on top of what is today
14 the West Basin. They did not receive a right in the San
15 Gabriel Basin. They did not receive any rights beyond what
16 their land overlayed in the Central Basin. They only received
17 a right as to what their land overlayed in the West Basin.

18 MR. JOYCE: Well --

19 MR. TOOTLE: So now --

20 MR. JOYCE: That's not completely accurate, because
21 as you know, Mr. Tootle, the Court in those cases indicated a
22 certain amount of flow in basin-to-basin, and confirmed the
23 other basin in that water, and that flow all comes from within
24 the same water shed.

25 MR. TOOTLE: And he is right. They do have an
26 amount of flow, and we will be very -- if he wants to take the
27 amount of flow that comes from the Leona Valley down to the
28 Antelope Valley and the amount from the Antelope Valley that

1 goes down to the Fremont Valley -- because there's water that
2 flows from the Antelope Valley down to the Fremont Valley -- if
3 they're willing to forget all this water together, then I'd be
4 willing to stipulate too.

5 MR. ZIMMER: It seems to me we're making it an
6 awful lot more complicated than it needs to be. I disagree
7 with Mr. Bunn's argument that we are trying to determine the
8 extent of our water rights geographically. We are trying by
9 this lawsuit to confirm that these defendants do not have
10 prescriptive claims against our pumping, reasonably, on our
11 property. All we're trying to do is drill. Carrots we got.
12 We grow carrots.

13 We want to try -- and all we want to do by this
14 lawsuit is confirm they don't have prescriptive claims. You do
15 not need to determine the extent of how far out your water
16 reaches to determine that. All you have to determine is that
17 they haven't -- either they're disclaiming that they have
18 prescriptive rights, or they fail to prove that they have
19 proved a requisite requirement of prescriptive rights claim.
20 It's as simple as that. And all the rest of the stuff --

21 THE COURT: Some of the elements of the
22 prescriptive rights go hand and hand with the basin?

23 MR. BUNN: Yes.

24 THE COURT: Let's go back to the question of the
25 basin. And I mean, we're going to hear from plaintiffs' expert
26 in a day or so, but he's set forth the water shed. And basin
27 has some general understanding in these terms. Is he in big
28 disagreement that the basin that they have set forth is the

1 basin this water shed flows into?

2 MR. ZIMMER: Yes, because as I was trying to point
3 out earlier, the ground water basin that they are describing is
4 less inclusive. The question is hydraulic conductivity. It's
5 our experts' contention that this entire area defined as
6 underlying hydraulically connected aquifers extend out in
7 various different areas much farther than Mr. Scalmanini has on
8 his map. For example, in the Leona Valley, and for example, on
9 the north end.

10 THE COURT: He's not saying the basin is the same
11 as the water shed.

12 MR. TOOTLE: Yes, he is. That's exactly what he
13 just got done saying.

14 MR. JOYCE: Well, what Mr. Gorelick and Mr. Sheahan
15 will testify to is that the term "ground water basin" within
16 their discipline is more often than not a term of convenience.
17 It's more often than not an angus in what's referred to study
18 areas.

19 In fact, we have one map that will show all the
20 Edwards Air Force area, USGA. They define ground water basin
21 as being square around Edwards Air Force Base. They call it
22 the ground water basin because the term is utilized as a term
23 of convenience. And then all of a sudden, it's taken on legal
24 significance, in part, due to stipulations over the years
25 between litigants to avoid having to do what we're trying to do
26 here, which is put scientific reality behind the concept. So
27 the term doesn't have within the discipline a readily accepted
28 definition.

1 In fact, Mr. Scalmanini points out in his own
2 report that Todd, as well as others, have referred to the fact
3 that often times political boundaries are used as a matter of
4 convenience as basin boundaries. That may work for the
5 purposes of making life easier for everybody to get forward and
6 move on with management and issues of that nature, if that's
7 the objective. But that doesn't mean it's a scientific reality
8 that there is no hydraulic connection where they draw that
9 political line, and the property on the outside of the line.
10 And if the issue that we're trying to determine is whether or
11 not one person's pumping affects another person's pumping, you
12 can't use lines that are drawn for convenience. You have to
13 look at where that pumping is occurring.

14 The point I was trying to make, if they want to
15 extend the line out far enough to encompass all the well and
16 not go to the crest of the mountain, that's fine, but at least
17 get the wells inside the line so that we know whose pumping
18 we're talking about. Then, if in Phase 2, the hydrology
19 demonstrates that there is no sufficient connection between one
20 well and another and that there's no adverse effect resulting
21 from extractions in one location as compared to another, then
22 resolve the problem.

23 But until we get there, we don't know the answer to
24 that. If you exclude that pumping upgradient right now, we
25 don't get to go back and revisit it. They don't have to prove
26 prescription because you will give them a judgment today or
27 tomorrow when we finish Phase 1 saying that that pumping is not
28 legally adverse, hostile etc. That's res judicata, and we're

1 finished as to that pump.

2 MR. ZIMMER: That's specifically why, your Honor,
3 we drafted the stipulation. We're not talking about ground
4 water basin in Phase 1. That's why we drafted in terms of an
5 area, specifically, to avoid this problem. They can still
6 argue everything they want to argue in Phase 2 that has to do
7 with a basin, and what it means is what it is.

8 MR. JOYCE: If it's legal significance.

9 MR. ZIMMER: All we're determining is what the area
10 is in terms of litigation. I agree with Mr. Joyce. If you
11 want to run the line out to beyond the wells and still consider
12 the rain fall and ground water flow and runoff, that's not a
13 problem for purposes of area of litigation.

14 THE COURT: Would it be of any benefit at this
15 point for you to meet and confer for about 15 minutes?

16 MR. DUNN: Yeah, I'd like to talk.

17 THE COURT: Because it's a little fuzzy here. I
18 think I understand where you're coming from. I'm not so
19 convinced we're all that far apart. I think it's a matter of
20 semantics.

21 MR. BUNN: Unfortunately, we've thought that all
22 along, but we've been working at this for a year and a half,
23 your Honor. We've gotten together many times. I'm certainly
24 willing to spend another 15 minutes, but there is a fundamental
25 difference in approach between the plaintiffs and the
26 defendants that is going to be hard to bridge.

27 THE COURT: All right. Well take a few minutes
28 just to see if you can narrow any of the issues. If you need a

1 few more than that, you can have them.

2 MR. TOOTLE: Can we make it 20?

3 MR. JOYCE: Your Honor, while we're at this, I
4 would like to make a suggestion to the Court. The Court
5 indicated that on Wednesday the Court was going to have to
6 defer, and therefore we're going to be dark that day and maybe
7 go Thursday. Would it be possible to go down on Thursday
8 afternoon and be off for any time at all and kick over and go
9 to Monday? Otherwise, I'm back up and back down. In
10 addition --

11 THE COURT: We might be able to do that. Let's see
12 what we can do. Meet and confer. We'll take that up at the
13 end of day.

14 MR. JOYCE: Thank you, your Honor.

15 (Recess was taken at this time.)

16 THE COURT: Long 20 minutes.

17 MR. DUNN: Lots of lawyers talking.

18 MR. JOYCE: Long 20 minutes.

19 THE COURT: All right.

20 MR. ZIMMER: Your Honor, we have --

21 THE COURT: Somebody's missing. I need my seating
22 chart.

23 MR. ZIMMER: We have all discussed this matter, and
24 we have provided to the defendants a copy of the settlement
25 agreement that we have reached with two of the other defendants
26 in the action.

27 MR. JOYCE: Which track, closely, the same terms of
28 the settlement reached with the third earlier on.

1 THE COURT: All right.

2 MR. ZIMMER: Correct. And my impression is that
3 we're very close to settlement. And if the Court needs to
4 become involved in ironing out any of the details, I don't have
5 a problem with that so long as no one will move to disqualify
6 the Court at a later time.

7 THE COURT: I'd have to get a stipulation on the
8 record from every party involved.

9 With that, the staff leaves at 4:30, so I need to
10 let the staff out. So the courtroom is basically going to be
11 locked up.

12 Where are we as far as how much more time you think
13 you need? Is it a matter of talking to your clients? Is it a
14 matter of talking to the experts? Is there anyone who thinks
15 they're simply not going to settle, and we will be doing this
16 phase?

17 MR. ABBOTT: In terms of talking to the clients,
18 the people I need to talk to are on vacation for the next two
19 weeks so I have nobody I can talk to.

20 THE COURT: They didn't give you their private
21 number?

22 MR. ZIMMER: We're willing to settle with any or
23 all of the defendants, but quite frankly -- no offense to
24 Mr. Abbott, because I know it's not his issue -- Mr. Abbott and
25 I have discussed this in the past. He hasn't been able to get
26 any word out of his clients for months. I'm not going to hold
27 my breath, and I'm not going to continue on with the clients
28 just to make sure -- wait for them to get their act together.

1 No offense to you, Steve.

2 THE COURT: We can go forward tomorrow morning. If
3 someone thinks they're close to settling, what do they need to
4 do to get that resolved? Empty up a few more chairs so we can
5 fit everyone at counsel table. No takers?

6 MR. DUNN: I'm in a similar situation. My client's
7 on vacation; that's why my client is not here this week, but
8 there has been a lot of meaningful discussion in the last
9 couple hours. It's my senses it would take a fair amount of
10 additional discussion to sort of reach some closure on some or
11 all of these issues.

12 THE COURT: Would it be beneficial? You're all
13 here. Whoever came from a distance has their room.

14 MR. ZIMMER: We've got our rooms. We're here.
15 We've got our experts.

16 THE COURT: Come back tomorrow. You can talk some
17 more tonight. Go out to dinner, have some wine, couple glasses
18 of water.

19 MR. JOYCE: The wine might do more good than the
20 water.

21 THE COURT: And then come back tomorrow at 9:30.
22 I'll give you some additional time to talk, and we can see.
23 And then if by noon we're not pretty much either -- you know,
24 someone knows they're going to settle or not going to settle,
25 then we can talk about what we need to do with respect to the
26 trial.

27 Do you think that's going to work?

28 MR. ZIMMER: As long as we aren't prejudicing

1 ourselves to continue with this trial. We've been concerned
2 about getting this to the Court.

3 THE COURT: The way I see it, if you're not going
4 to settle, then we're going to complete this phase of the
5 trial. I'm not going to put this over. And whatever is set
6 for Monday will simply trail, and I can utilize next week as
7 much as I need to to get this done. I'm not going to rush you
8 through it either, so you're going to have the amount of time
9 you need to get this done. I think, then, to rush you through
10 it is not going to be benefit to anyone.

11 If you can come to a meeting of the minds even to
12 some of the defendants, that is going to be helpful too. And
13 if you can even narrow some of the issues we have to deal with
14 in this phase of the trial, that might be helpful. Other than
15 that, I don't know what to do other than to send you off with
16 that wine.

17 MR. ZIMMER: I think it's a fair approach.

18 THE COURT: Come back tomorrow, and we can see
19 where we're at.

20 MR. JOYCE: We appreciate that, your Honor. I
21 think that is probably sage advice and will be likely followed.

22 THE COURT: All right.

23 MR. BUNN: At least as to the wine part.

24 MR. JOYCE: 9:30 then tomorrow.

25 MR. JOYCE: Thank you, your Honor.

26 THE COURT: 9:30.

27 MR. DUNN: Do you have a problem with us leaving
28 some of the trial material?

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THE COURT: No. The deputy will instruct you as to where to put it.

MR. DUNN: Thank you.

THE COURT: Thank you, everyone.

(PROCEEDINGS CONCLUDED.)

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1 TUESDAY, AUGUST 6, 2002; RIVERSIDE, CALIFORNIA

2 COMMISSIONER JOAN F. ETTINGER; DEPARTMENT 10

3 -oo0oo-

4 THE COURT: Good morning. We're ready for our
5 first witness?

6 MR. BUNN: Yes.

7 MR. DUNN: Yes, your Honor. Defendants call
8 Mr. Joseph Scalmanini.

9 THE CLERK: You do solemnly state that the evidence
10 you shall give in this matter shall be the truth, the whole
11 truth, and nothing but the truth, so help you God.

12 THE WITNESS: I do.

13 THE CLERK: Thank you. Please have a seat. Will
14 you please state your name and spell it for the record.

15 THE WITNESS: Joseph C. Scalmanini;
16 S-c-a-l-m-a-n-i-n-i.

17 THE COURT: You may inquire.

18 MR. DUNN: Thank you, your Honor.

19 Mr. Scalmanini, could you do me a favor and take
20 that microphone that's in front of you and swing it a little
21 bit closer to you.

22 THE WITNESS: How's that?

23 MR. DUNN: That's much better. Believe it or not,
24 there's a fair amount of background noise from the equipment.
25 It's hard to hear you even from the short distance.

26 JOSEPH C. SCALMANINI,

27 called as a witness by and on behalf of the
28 Defense, was duly sworn and testified as

1 follows:

2 DIRECT EXAMINATION

3 BY MR. DUNN:

4 Q. Mr. Scalmanini, have you been called as an
5 expert witness on behalf of the defendants?

6 A. Yes.

7 Q. Now, before we have you give your expert
8 opinions in this case, what I would like to do is establish
9 your educational background and your work experience which had
10 an impact on the opinions that you'll give this morning.

11 Can we do that?

12 A. Yes.

13 Q. Let's start with your work experience first.
14 Are you employed?

15 A. Yes, I am.

16 Q. What do you do for a living?

17 A. Strictly speaking, I'm a civil engineer.

18 Q. Do you have a particular emphasis in the civil
19 engineering that you do?

20 A. Yes. The practice -- I have a consulting
21 engineering firm, and the practice, which has been in existence
22 since 1980, focuses almost exclusively on groundwater
23 resources, groundwater hydrology, groundwater supply -- such
24 that expand slightly -- what I'll call, maybe the nuts and
25 bolts of water supply systems, stores, tanks, distributions
26 systems. We also do that type of work. My practice is -- I
27 kind of think of globally as with regard to water resources,
28 with a particular focus on groundwater and water supply aspects

1 thereof.

2 Q. What's the name of this civil engineering firm?

3 A. Lou, Doorman (phonetic spellings) & Scalmanini.

4 Q. You are one of the principals of that firm; is
5 that correct?

6 A. Yes, that's correct.

7 Q. You've been involved with that firm for the
8 last approximately 22 years?

9 A. That's correct.

10 Q. I'll come back to some of your work experience
11 in a moment. Let's go to educational background.

12 Where did you attend college?

13 A. Undergraduate at the University of Santa Clara
14 in Northern California.

15 Q. Did you do graduate work?

16 A. Yes.

17 Q. Where was that?

18 A. I did graduate work at the University of
19 California Davis, and received a Master of Engineer -- of Civil
20 Engineer from UC Davis.

21 Q. As part of your educational background, did you
22 take any courses or involved in any studies that involved
23 hydrology or geology?

24 A. Yes.

25 Q. Would you describe that briefly, or generally
26 summarize that for us, please?

27 A. Well, the entire scope for all practical
28 purposes of my graduate work was water, and specifically,

1 groundwater related. When I went back to graduate school, it
2 so happened that in -- I'll say -- well, I should back up and
3 say that I worked in industry for six years after finishing my
4 undergraduate work, and then went back to graduate school.

5 And then in exploring opportunities and
6 interviewing at campus, there was an emphasis by the faculty
7 that you should have some support while you were there, and I
8 had sort of planned to do this on my own. To cut the story
9 kind of short, I ended up studying under and working for the
10 professor of what was then known as Water Science and
11 Engineering Department, which was sort -- actually related to
12 the College of Engineering at Davis, who was the groundwater
13 professor, if you can call him that.

14 Q. What was his name?

15 A. Vern Scott. He's long since retired and lives
16 in Colorado now. Anyway, so I did, again, the working part for
17 him, worked full-time doing applied work researching
18 groundwater while I went to school part-time in that graduate
19 work. So I was there for a total of six years; did course work
20 for the first two and worked, and then continued to do what I
21 call applied work, and did teaching as well.

22 Q. What time period?

23 A. The time period between 1973 and 1979.

24 Q. Before you started the consulting firm in
25 1980; is that correct?

26 A. Well, we started to form the consulting firm in
27 1979. We set up the shop -- for all practical purposes, we set
28 up work officially on the first of January 1980.

1 Q. I don't know if this is a fair question to ask,
2 but I'm going to ask you anyway. Can you tell me, since 1980,
3 how many groundwater basins in California you've been asked to
4 look at in any way in your professional capacity?

5 A. You're right. That's not a very fair question.

6 Q. Can you give me --

7 MR. ZIMMER: Objection. Vague as to groundwater
8 basin.

9 THE COURT: Overruled.

10 THE WITNESS: You know countless would be a pretty
11 vague answer, but I'll certainly say dozens. I don't know if
12 I'd go so far as to say hundreds. There are in California,
13 mapped by the state of California Department of Water
14 Resources, some 450 groundwater basins. We've worked in a lot
15 of them. I can probably start on the coast and work my way
16 inland and, you know, rattle off a lot of them from Encino
17 County to San Diego, for example, to the Court.

18 I've done something on groundwater, and that has to
19 do with either the supply, the legal classification of
20 groundwater, and maybe we would design, and groundwater
21 development. Mendocino, San Mateo, Santa Cruz, Monterey, San
22 Banites (phonetic spelling), San Luis Obispo, Santa Barbara,
23 Ventura, Los Angeles, Orange and San Diego County. And you can
24 do a similar thing from Shasta to Kern County and the inland
25 basin, San Bernardino County and the basins associated
26 therewith, and you can go into the Sierra in the greater
27 Truckee area, the mountains there. And continuing down the
28 east side of the Sierra in the Mona lakes, as far as Inio

1 (phonetic spelling) County area down as far as Yondrylack bed
2 (phonetic spelling).

3 We've worked in all those places in some capacity
4 or another in the last 20 years. That's not a numerical
5 answer.

6 BY MR. DUNN:

7 Q. Let me see if I can get a more focused question
8 to you. Are you now or have you ever been involved in a
9 groundwater adjudication or groundwater dispute --

10 A. Yes.

11 Q. -- that's ended up in court?

12 A. Yes.

13 Q. Can you describe those?

14 A. Well, three come to mind fairly quickly. Two
15 much more significantly than the third, so I'll just mention
16 the third and get off it. I'm doing some work at the very
17 beginning level in the so-called Central Basin of Los Angeles
18 County, which is an adjudicated basin. And there's some
19 question arisen -- in the general area or vicinity of where
20 Century City is today, but I don't think Century City existed
21 when the basin was adjudicated. There's question as to some of
22 the basin was probably excluded, which is -- it was from the
23 judgment at the time. So I just started to look at that
24 question.

25 The two, in my -- I'm most involved -- one was or
26 is being adjudicated, and one is adjudicated, and let's start
27 with the one that has been adjudicated. That would be the
28 Chino Basin.

1 Q. Where is that located?

2 A. For all practical purposes it's all in San
3 Bernardino County. It was adjudicated in superior court in San
4 Bernardino County.

5 Q. What was your involvement in that matter?

6 A. Well, in terms of past tense, when it was
7 adjudicated, which was in the 1970s, I was in graduate school.
8 I had no involvement in the actual adjudication. The Cordion
9 (phonetic spelling) Judgment was issued in 1978 and a water
10 master was established, so I guess you'd say implement. And I
11 think -- well, I guess you say the court retains jurisdiction.
12 But the water master was implementing a so-called physical
13 solution to preserve the water supply in the basin.

14 And the water supply issues at the time of the
15 judgment were a depletion of the supply. There had been a
16 substantial decline in groundwater level in storage in the
17 preceding twenty years prior to the judgment, which caused the
18 parties in the basin to file an adjudication and resolve who
19 had a right to what.

20 MR. ZIMMER: Objection to the extent this brings
21 into issue other groundwater adjudications that may or may not
22 be relevant here. I assume the fact that he's been involved in
23 this other case is being used primarily or solely for --

24 MR. JOYCE: Qualification.

25 THE COURT: I'm going to consider it to the extent
26 that it relates to physical qualifications as an expert, but
27 not for any specifics that he's testifying to.

28 MR. JOYCE: Thank you, your Honor.

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MR. ZIMMER: Thank you.

THE WITNESS: So the Court retained jurisdiction, and in the late 1990s, nominally, 20 years after the judgment, there were issues that hadn't been successfully resolved as far as physically fixing the basin. So I don't know all the details of how it got to this point, but the Court ended up appointing a new water master and appointed a special referee.

So I'd work with the water master and be, in effect, the legal interpreter for the Court assigned to this. And the courts also assigned a so-called technical expert to work with the referee in that regard. I'm not that person.

BY MR. DUNN:

Q. You were the court technical expert?

A. Yes, and still am.

Q. You perform that function today?

A. That's correct, for about four years, but '98 is when we started and have had ongoing interaction with both the water master and staff and consultants that work for water master developments of basin management plan. And then -- if I can be casual, then I, in effect, work for somebody just like her and report to, in this case, him on a regular basis about technical aspects of what's going on in the basin and the success of what's today called the Optimum Management Program, which can be updated to the physical solution that's been evolving over the last 20-something years.

MR. ZIMMER: Your Honor, again, I think a lot of this is beyond his experience and move to strike the aspects of this that don't relate to the fact that he's a technical master

1 for the court, court-appointed technician, if you will.

2 THE COURT: That is limit to his expertise. The
3 specific facts, I'm not going to give any weight to as far as
4 any application in this case.

5 MR. ZIMMER: Thank you, your Honor.

6 BY MR. DUNN:

7 Q. And I believe you said there was one other
8 groundwater dispute that you're currently involved in. What is
9 that?

10 A. That is not yet adjudicated. That would be
11 Santa Maria Groundwater Basin on the coast in Santa Barbara and
12 part of San Luis Obispo County.

13 Q. What has been your involvement in that matter?

14 A. Well, for about, I guess, six years I have been
15 the, I don't know, the consulting engineer slash hydrologist
16 for the Santa Maria Valley Water Conservation District, which,
17 I think, the original plaintiff is filing the adjudication in
18 that basin. And I continue to be, well, in that, the
19 engineer/hydrologist on the quantitative aspects of water
20 supply, including in regard to the subjects that we talked
21 about here today, definition of what the hydrologic unit is on
22 groundwater basin in that case for adjudication of rights to
23 groundwater.

24 MR. ZIMMER: Same objection. Motion to strike as
25 to what is happening in this case. No bearing.

26 THE COURT: I'm going to deny the motion to strike.
27 I need to hear his involvement to the extent it relates to
28 expertise, but again, the only relevance goes to his experience

1 as he is an expert.

2 BY MR. DUNN:

3 Q. Did you testify as an expert witness in that
4 case?

5 A. In the only part that's been in court so far.

6 Q. What part of that did you testify?

7 A. That was determining boundaries of the basin.

8 Q. Was that, for lack of a better description,
9 designated as Phase 1 trial?

10 MR. ZIMMER: Same objection. Has no bearing on
11 this case.

12 THE COURT: I'll sustain that objection.

13 BY MR. DUNN:

14 Q. Did you testify in San Jose -- in Santa Clara
15 County Superior Court?

16 A. Yes, I did.

17 Q. And you still are retained to perform services
18 in that matter?

19 A. Yes, I am.

20 Q. And you were retained by Santa Maria Valley --

21 A. Water Conservation District.

22 Q. Is that correct?

23 A. Yes.

24 Q. Is it true that I also -- my firm represents a
25 client in this matter?

26 A. Yes.

27 Q. I represent the City of Santa Maria; is that
28 correct?

1 A. That's what I understand.

2 Q. The relevance is your client is adverse to my
3 client; isn't that correct?

4 A. That's correct.

5 MR. ZIMMER: Leading. Argumentative.

6 THE COURT: It's leading.

7 MR. JOYCE: Interesting, but not terribly relevant.

8 THE COURT: It has some bearing to bias. I'll
9 allow that leading question.

10 MR. DUNN: Is there an issue with leading
11 questions?

12 THE COURT: Typically, for foundation, I don't have
13 a problem when it goes to the opinion.

14 MR. DUNN: Right.

15 THE COURT: I know there's a big dispute over every
16 judge in California. I like to have their opinion stated in a
17 nonleading fashion.

18 MR. DUNN: We will do that.

19 THE COURT: For foundational information, it's
20 fine. I think this falls into somewhat foundational.

21 MR. DUNN: All right. Thank you.

22 BY MR. DUNN:

23 Q. Are you familiar with other groundwater
24 adjudications in California?

25 A. Yes, I am.

26 Q. What other groundwater adjudications are you
27 familiar with?

28 MR. JOYCE: Objection.

1 MR. ZIMMER: Relevance.

2 THE COURT: I'll let him just state what he's aware
3 of without going into any facts. The few facts that would
4 probably come out aren't going to really be of any significance
5 to what we have to decide here anyway, so plaintiffs are
6 somewhat concerned. I don't think you need to be. Just
7 state -- perhaps describe the Court therein, and the entities
8 they involve.

9 THE WITNESS: Okay. I made a list which you can
10 project or --

11 MR. JOYCE: Your Honor, before we -- this gets a
12 wee bit into the issue I raised earlier. This is information
13 that is new and not -- was not proffered either with his report
14 or at the time of any one of the three sessions of his
15 depositions, nor was the document he's now proffering utilized.

16 If this is strictly for the purposes of
17 qualifications, then I can understand where the Court might
18 want to take a look at it, but if it's being offered for a
19 different reason, then I would be objecting. It exceeds during
20 the course of his deposition.

21 THE COURT: Any other water cases, unless it's an
22 accomplished opinion, is not going to have any bearing on this
23 Court's decision. Now, to the extent he has knowledge of some
24 of these, I suppose the only relevance is if, in fact, he had
25 some involvement or some work or something to that extent.

26 MR. JOYCE: Then --

27 THE COURT: Which is what I think we're getting to.

28 MR. JOYCE: I think, your Honor, then I would ask

1 the opportunity to voir dire. I can establish he had no
2 participation and no involvement in any of these appearing on
3 this list, and therefore, I'm significantly concerned about
4 what it's being offered for for relevancy purposes, because it
5 can't go to expertise.

6 THE COURT: Mr. Bunn.

7 MR. DUNN: You mean, Mr. Dunn.

8 THE COURT: If I mix up my cards -- Mr. Dunn.

9 MR. DUNN: That's okay.

10 THE COURT: Do you have an offer of proof as to
11 whether he has any involvement in these?

12 MR. DUNN: Yes, I do, in fact, that Mr. Scalmanini
13 has taken a look at material from each of these basin
14 adjudications and has information concerning them, and that he
15 influences opinion in this case.

16 MR. ZIMMER: Your Honor --

17 MR. DUNN: Wait. I'm not done. I would dispute
18 whether somebody specifically asked him any type of question if
19 he's done this type of work.

20 THE COURT: Well, to get to the original objection
21 I'd have to see where in the depo something like this was
22 asked, and it not testified to. Because again, this is sort of
23 a foundational question. And then the next question is -- I
24 mean, experts can rely on a multitude of things. And to the
25 extent they relied upon it, they can state what they have
26 relied upon, but that does not mean that material then becomes
27 proof of the material.

28 MR. JOYCE: I appreciate --

1 THE COURT: So I mean, it's a bigger problem when
2 there's a jury, because I think they have a hard time once they
3 hear it. So understand, really, what we're trying to tell
4 them, to the extent he wants to see what his knowledge is of
5 these and/or whether or not he relied upon them, which we
6 probably need to establish first, and what it is he relied upon
7 and what his involvement was, I can listen to that. But any
8 specific factual information there is not going to become
9 independent proof.

10 MR. DUNN: It's not offered for the truth of the
11 matter asserted therein. It just goes to his doing his work in
12 preparing to testify to after an opinion on basin boundaries.

13 THE COURT: I think it has relevance to his overall
14 experience, skill, and understanding of it. So why don't you
15 first ask a general question as to whether or not he either had
16 some -- did some work on some of these so there's some
17 experience, or whether he just reviewed it and relied upon it,
18 so we know what we're talking about then.

19 Do you have -- is there a point you can show me in
20 the depo where this was asked?

21 MR. ZIMMER: Your Honor, I can show the Court where
22 we asked him both for his opinions and what he relied on in his
23 opinions. And he, in fact, stated in his report that all of
24 his supporting -- all of his opinions were based on the data
25 provided in his report.

26 What is happening here is a subtle attempt by
27 Mr. Dunn and not -- I understand he's a good lawyer. What's
28 happening here, he has told us from the witness stand that he

1 worked on three adjudications.

2 Now we have a list of groundwater adjudications on
3 the board, which Mr. Dunn asked him if he looked at, and
4 Mr. Dunn -- looks like they're boot strapping their way into
5 looking at these, formulating an opinion to base in which to
6 apply in this case. That's wrong. That wasn't offered for the
7 base of his opinion at the time of the deposition. We have no
8 opportunity to cross-examine him on those issues. It's not
9 relevant what happened in other areas because of all the
10 problems, I think, we've brought to the Court's attention.

11 THE COURT: Where is it in the deposition? Does
12 someone have a copy?

13 MR. ZIMMER: Well, your Honor, initially if the
14 Court were to look at Volume III of his deposition --

15 THE COURT: I don't have any volumes.

16 MR. JOYCE: Commencing --

17 MR. ZIMMER: It's on page 177 of the deposition at
18 line 7 through 10, and I have a copy here. I don't know who
19 took the original to lodge with the Court.

20 MR. JOYCE: In fact, I would ask at this time that
21 the original with the exhibits to Mr. Scalmanini's deposition
22 be lodged with the Court so we can facilitate this issue.

23 THE COURT: Does someone have an original?

24 MR. DUNN: I think we have the original.

25 MR. JOYCE: They do.

26 MR. DUNN: And we agree to produce that.

27 THE COURT: For the time being, I'll look at a
28 copy.

1 MR. ZIMMER: I can give this to the Court, if I can
2 approach.

3 MR. JOYCE: What I would ask is that we have the
4 original and all of the exhibits, because that's going to be
5 relevant as we go down the road.

6 THE COURT: We might as well get those.

7 MR. ZIMMER: There's two questions consecutively
8 there, your Honor. It's Volume II.

9 THE COURT: Okay. The one question says, "Does
10 this report cover the opinions that you've been asked to
11 express?" This question, however, by Mr. Dunn does not relate
12 to opinions.

13 MR. DUNN: We're not asking about opinions.

14 THE COURT: The next question.

15 MR. ZIMMER: The next question.

16 THE COURT: "All the information that you have
17 reviewed for purposes of coming to the conclusions, are those
18 fully described in the list of references?" And the answer is,
19 "Yes."

20 MR. ZIMMER: Those are the references in his
21 report.

22 MR. JOYCE: And then, your Honor, if we go --

23 THE COURT: Where's the report?

24 MR. ZIMMER: I have a copy of the report also, your
25 Honor.

26 MR. JOYCE: Your Honor, I would only add to that
27 the following notation from his deposition, Volume II,
28 page 139, and continuing on for about 13 and a half to 14

1 pages. And that is, is that Mr. Zimmer and myself exhaustively
2 went through all the writings that Mr. Scalmanini brought to
3 his deposition and identified all of them on the record and had
4 the ones that we did not have already available to us appended
5 as exhibits to the deposition. And none of this information
6 was included in any of those writings.

7 THE COURT: Well, I think defense will agree that
8 nowhere in the report --

9 MR. DUNN: These aren't writings. That's the whole
10 point.

11 MR. JOYCE: This looked like a --

12 THE COURT: The question doesn't request for the
13 writings. It says, "All of the information that you have
14 reviewed for purposes of coming to the conclusions and
15 opinions, are those fully described?" But then you went on to
16 say "in the list of references," but still, I think it's asking
17 for everything you've looked at to arrive at your opinion
18 listed.

19 MR. JOYCE: Exactly. In other words, is it
20 identified in a way that we can go see it too? And none of
21 these issues presently being proffered were at that time or at
22 any time until yesterday made available to us, and yesterday,
23 made available to us at 1:29.

24 So my concern -- your Honor, part of my job as
25 litigator is to anticipate, and I see us on the top of the
26 slippery slope. And what we're going to do here is -- I notice
27 in looking at the document that the water basin has been
28 emphasized in each and every one of these. The slippery slope

1 is obviously the dispute; and that is, is there such a thing
2 that's recognized in the trade or industry or science as a
3 readily reproducible term called "groundwater basin?"

4 And what this is is one more effort going back to
5 that issue with material that was not proffered up either in
6 his report or at the time of his deposition. It's a new
7 matter.

8 THE COURT: Well, I think what a basin is is, one,
9 a question of law, obviously, for the Court. I think it also
10 is a question that these experts commonly deal with. But
11 there's a difference in -- based on their experience, and what
12 they deal with, and how they arrive at the definition of a
13 basin, and their testimony relates to that, there's a
14 difference in that versus what other courts had come to and how
15 they have taken the information and processed it and come to
16 their findings.

17 I would be concerned to the extent we go through
18 this list, and we're getting, basically, findings by other
19 courts because that won't actually be interesting, but if
20 they're not an accomplished decision, it's not going to help
21 me.

22 MR. JOYCE: And --

23 THE COURT: So where, Mr. Dunn, are we going
24 because I do agree? I think you know we can always fight over
25 these questions. We always ask them -- we can always ask them
26 more artfully at the time of trial, but I think that question
27 pretty much says is everything you reviewed or relied upon set
28 forth in your report? So this does seem to be something new

1 that seems to have some significance.

2 MR. DUNN: Fair enough. Let me approach it this
3 way. One of the things an expert witness can do is he or she
4 can, as part of their opinion, comment on why they discounted
5 other expert's opinions in the case. Now, let's assume for the
6 moment that, in fact, the plaintiffs' counsel had asked
7 Mr. Scalmanini during his deposition to state all the basis for
8 his opinion, and let's assume, hypothetically, that he did
9 that. What you heard yesterday happened is that there wasn't
10 really the true exchange of expert witnesses as you would
11 typically see in this case.

12 What happened in this case is defendants produced
13 Mr. Scalmanini, and gave a report. And he gave a deposition,
14 and then it was sometime thereafter that we got a report and a
15 deposition on the part of the experts. In other words, their
16 experts were hired to critique Mr. Scalmanini.

17 And so what we have in this case is I put him on
18 the stand. I'm going to have him give his expert opinion and
19 explain that. At some part of this case, whether it's today or
20 in rebuttal, he gets to comment on what the other folks
21 criticized him on.

22 The problem I have is, it's Tuesday, and I
23 appreciate we had the time yesterday to engage in meaningful
24 settlement discussions, but he's gone on Monday of next week.
25 So I only have an opportunity to put him on the stand today and
26 Thursday. And I'm more than happy to divide this up. I'll
27 have him give his opinion and all the basis for it, but at some
28 point in time he gets to come back and comment on the experts

1 who testified.

2 See how this works. We have the last shot at
3 discovery. He gets to comment on that at some point. I'm more
4 than happy to let him do that after they take their pot shots
5 at Mr. Scalmanini, but I just need to make sure at some point
6 he gets a chance to explain it. And as an offer of proof on
7 this, what he would testify is -- you look at these basins and
8 nowhere does anybody use the kind of interesting analysis as
9 the plaintiffs' expert has done in this case. That's the offer
10 of proof. But we can wait on that until we hear from the
11 plaintiffs' experts. I just need to make sure.

12 However, having said that, it's fair game for him
13 now to comment on events that took place clearly after he was
14 deposed, so it's a little --

15 THE COURT: My --

16 MR. DUNN: Let me finish. I want the record to
17 reflect this. I find it terribly disconcerting to have
18 plaintiffs take the position that they can make their experts
19 and their reports available only after he testifies, and then
20 he can't comment on their experts criticism as to him.

21 MR. JOYCE: Your Honor, in response to what
22 Mr. Dunn has proffered up, what I now understand to be the case
23 is -- is that he's now attempting to elicit from Mr. Scalmanini
24 what would otherwise be rebuttal testimony before the Court's
25 had the benefit of hearing that to which he's proffering
26 rebuttal.

27 I would suggest that we defer until there is
28 relevance. That relevance is by definition based on Mr. Dunn's

1 response premature, because there's nothing yet to rebut. My
2 concern is --

3 THE COURT: Well --

4 MR. JOYCE: I think the Court needs to hear and
5 appreciate the opinion as originally proffered. Then if the
6 Court wants to look, and he now has additional work offered up
7 through rebuttal, to bolster it, put it in the appropriate
8 respective.

9 THE COURT: We'll get his original opinion first.

10 MR. DUNN: Okay.

11 THE COURT: But if for some reason come Thursday
12 plaintiffs' expert is not done and we need to preserve his
13 testimony because he's going to be gone, I'll give you a chance
14 to go through it, and we'll listen to whatever objections there
15 might be.

16 MR. DUNN: That's fine.

17 MR. JOYCE: And frankly, in fairness and given the
18 scheduling issue, I would concur with that approach. I think
19 it's only fair and important to make sure that his testimony is
20 not mixed on the offering.

21 MR. ZIMMER: I think as to both the original
22 opinion as well as the rebuttal, that we keep this part of the
23 examination clear to those opinions that he expressed during
24 his deposition and reflected in his report, and only go into
25 rebuttal when it's necessary to do so for scheduling.

26 THE COURT: That's fine. We can do that.

27 MR. ZIMMER: I want to make a point that there was
28 no irregularity in the experts or the reports. There was

1 nothing improper whatsoever about the way the reports were
2 disclosed. There were no reports missing. There couldn't have
3 been. There was no requirement.

4 THE COURT: Let's hold on. I still have that
5 Motion in Limine to rule on. I would have to say my
6 preliminary thought is that I'm not seeing where he would have
7 had to make a report and produce it if one is not made. I
8 don't see that requirement. But let's hold off. I want to get
9 to some opinions here.

10 MR. DUNN: Let's do it right now.

11 MR. JOYCE: Can I ask that the illustration be
12 removed?

13 MR. DUNN: Absolutely.

14 MR. JOYCE: It has no evidentiary significance at
15 this point.

16 MR. DUNN: That's fine.

17 THE COURT: We couldn't see it that far away.

18 BY MR. DUNN:

19 Q. Mr. Scalmanini, let's go to your engineering.
20 What's the appropriate hydrologic unit for a determination in
21 this action?

22 A. I think --

23 MR. JOYCE: Well, to the extent that's asking for a
24 legal conclusion, I would interpose an objection. If the
25 question's intended to elicit from a structural engineering
26 perspective, I'll withdraw.

27 THE COURT: I'm going to take all questions from
28 engineering versus legal.

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MR. ZIMMER: In his opinion?

THE COURT: His opinion, yes.

MR. DUNN: If it's the plaintiffs' -- let me say this just to get this out now. If it's the plaintiffs' contention that it's a legal issue, whether or not we use a water shed versus a groundwater basin in this case, fine. We can have the Court decide that legal issue. That's what Court's do.

But to the extent it's a factual issue, then it's appropriate for Mr. Scalmanini to offer an opinion.

MR. JOYCE: All I was trying to do is make sure your original question is factual. I wasn't sure by the tone and tinner of the question where you were going.

THE COURT: I'm taking all of these factual opinions based upon what engineers and scientists do.

MR. JOYCE: Thank you, your Honor.

BY MR. DUNN:

Q. You're not a lawyer, Mr. Scalmanini?

A. No, I'm not.

Q. You don't play one in court; is that correct?

A. Not to the best of my knowledge.

Q. Can you answer the question what the appropriate hydraulic unit is for this current action?

A. I think I can, yes.

Q. What's that?

A. Antelope Groundwater Basin?

Q. Correct.

A. I probably list three or four reasons why.

1 First, the groundwater basin is recognized as that geographic
2 and vertical volume that contains all the interrelated and
3 interconnected materials which contain and yield water in
4 sufficient quantity to be a significant water supply.

5 The groundwater basin is basically all those same
6 materials from which all significant groundwater pumping takes
7 place.

8 Q. Have you ever heard the phrase --

9 A. Let me --

10 Q. I'm sorry. Go ahead. I didn't mean to
11 interrupt you?

12 A. You know, a third reason why I think that the
13 groundwater basin is the hydrologic unit, that historically has
14 been used in essentially all cases adjudicating rights to
15 groundwater.

16 MR. ZIMMER: Objection, your Honor. Motion to
17 strike as to what's been done on other cases only as to that
18 last sentence.

19 THE COURT: Sustained.

20 THE WITNESS: Okay. Can I say something in regards
21 to what's relied on?

22 THE COURT: Well, we have to have a question --

23 THE WITNESS: Okay.

24 THE COURT: -- before you can just offer
25 information.

26 MR. DUNN:

27 BY MR. DUNN:

28 Q. Let's move off this area.

1 Do you have another reason?

2 A. Yeah, I do. But the guys argue about how I
3 answer a question about things I rely on. What
4 frustrates it --

5 MR. ZIMMER: No question pending.

6 THE WITNESS: -- is --

7 MR. ZIMMER: Your Honor, this is nonresponsive. No
8 question pending. Argumentative.

9 THE COURT: Let me tell the witness and all our
10 other witnesses. Lawyers are going to make objections, and it
11 sounds like they're arguing. They probably are. I think what
12 they're trying to do is preserve the record and protect their
13 client's position. Don't get involved in that. Don't worry
14 about what they're saying and the objections they're making.

15 What I need from you and from our other experts is
16 to just listen to the question and give me your opinions and
17 the factual basis for your opinions, and not worry about having
18 to explain or defend your position based on the objections.
19 The objections are made for a specific purpose.

20 Sometimes people that aren't lawyers don't quite
21 understand it. They take it as a personal thing. Don't worry
22 about it. All right?

23 THE WITNESS: Yes.

24 MR. DUNN: Thank you.

25 BY MR. DUNN:

26 Q. Are there any other reasons?

27 A. Yes.

28 Q. What are those other reasons?

1 A. That the groundwater basin is the unit -- the
2 hydrologic unit that's historically been used in analyzing
3 available groundwater supplies as part of adjudicating basins
4 throughout California, but primarily Southern California.

5 MR. ZIMMER: Same objection. Motion to strike.

6 THE COURT: Sustained.

7 BY MR. DUNN:

8 Q. Forgetting for the moment the court aspect of
9 your answer --

10 A. Okay.

11 Q. -- historically, as it relates to you
12 personally, what has your experience been with a groundwater
13 basin within the hydrogeologic unit for resolution of
14 groundwater disputes that you've been involved in, either in or
15 out of court?

16 MR. ZIMMER: Your Honor, it's irrelevant as to this
17 case what he's done in other cases. That's two differences.
18 Two kinds of action. It was --

19 THE COURT: I'm going to overrule that. I think it
20 has relevance. You may answer.

21 THE WITNESS: Disregarding any aspect of court, the
22 groundwater basin is the traditional hydrogeologic unit that is
23 used for analysis of the availability of a groundwater supply
24 in totaling an amount of water that can be pumped on an average
25 annual basis or fluctuations of that as a function of a
26 different meaning.

27 MR. ZIMMER: Objection to the term "traditional
28 unit." Otherwise move to strike those terms.

1 THE COURT: I'll strike just that phrase
2 "traditional unit."

3 THE WITNESS: It is --

4 MR. DUNN: Please continue.

5 THE WITNESS: -- the area and vertical limits of
6 which are the boundaries within which the groundwater supply is
7 quantitatively analyzed in any specific area.

8 BY MR. DUNN:

9 Q. Okay. As it relates to boundaries?

10 MR. ZIMMER: Objection as to any specific area.
11 I'm not sure what that means, but if he's saying in any area
12 elsewhere, then it's irrelevant to this action.

13 THE COURT: Overruled.

14 BY MR. DUNN:

15 Q. As it relates to issues of basin boundaries,
16 why is the groundwater basin the appropriate hydrogeologic
17 unit?

18 A. I think, primarily, for reasons that I said.

19 Q. In this case?

20 A. In this case or speaking of others. That it
21 accounts for the earth materials that will store and yield all
22 the significant groundwater supply.

23 MR. ZIMMER: Motion to strike to the term "others."

24 MR. DUNN: May I be heard briefly on that, your
25 Honor. The witness has laid a foundation regarding his work
26 over a period of approximately 22 years and countless number of
27 groundwater basins throughout the state of California. Some of
28 these, as he's already testified, have been involved in court

1 proceedings where's he's been personally involved.

2 He's still personally involved because of work, and
3 the sum and substance of his testimony is what he's trying to
4 get out through his objections. The groundwater basin is the
5 hydrogeologic unit used in deciding these types of boundary
6 disputes.

7 THE COURT: I'm going to overrule the objection.
8 But why don't we do this -- because the ultimate question of
9 whether I'm determining these boundaries based on the basin or
10 water shed is going to be a question of law, why don't we focus
11 in. One, maybe get a definition -- his definition of a basin,
12 of a water shed, and a little explanation of how that all
13 works. And then on a map -- because I can't tell from that one
14 I saw. There were a lot of little lines -- get him to outline
15 his basin.

16 MR. DUNN: Let me do exactly that. Let me ask him
17 about what he understands groundwater basin to be, and then
18 I'll have him show groundwater basin in Antelope Valley.

19 BY MR. DUNN:

20 Q. So Mr. Scalmanini, the term "groundwater
21 basin," is that defined?

22 A. Yes, it is.

23 Q. How is it?

24 A. The two places -- it's not defined in every
25 last textbook on the subject of groundwater, but the two places
26 where I found definitions and used them in practice are in what
27 some people call the seminal text on groundwater, which is a
28 book called "Groundwater Hydrology" by David Keith Todd, now a

1 professor of emeritus at the University of California Berkeley,
2 who was first published in 1959, and the second edition was
3 published in 1980. And there's a definition included therein.

4 Q. And just for housekeeping matters,
5 Mr. Scalmanini, you have in front of you premarked exhibits,
6 and so we're going to just let you pick those out, and just let
7 us know which one you're referring to.

8 A. This would be Exhibit 106.

9 Q. Okay. And it's entitled?

10 A. Groundwater Basin.

11 Q. Okay.

12 A. The first definition, which I was describing
13 it --

14 Q. Just give us a moment, and we'll get it up
15 here.

16 Can you tell me what Exhibit No. 106 is?

17 A. Can I hand her a readable copy?

18 Q. Sure.

19 THE COURT: It's in a better location for the
20 jurors.

21 BY MR. DUNN:

22 Q. All right. Tell us what is Exhibit No. 106?

23 A. It includes two definitions, and I just started
24 to describe the first, which is extracted from Todd's book
25 called "Groundwater, 2nd edition." Quote, "groundwater basin
26 may be defined as hydrogeologic units containing one large
27 aquifer or several connected and interrelated aquifers. Such a
28 basin may or may not coincide with hydrogeologic units."

1 Q. And then there's another paragraph below that.
2 What is that?

3 A. That's extracted from -- I'll call it a
4 teaching syllabus originally prepared by the State Defense of
5 Water and Resources, and subsequently prepared and used in
6 teaching of a course through the University of California
7 Davis, "Concepts of Groundwater Management." And I was
8 coordinator of that course; that would be originally in 1974,
9 and then it was taught several times thereafter while I was
10 still on campus, and for a short period of time going into
11 consulting practice. But I haven't done it in the last 15 or
12 more years.

13 Anyway, the Department of Water Resources -- in it
14 is what some people might call the heyday of groundwater.
15 Meaning, doing lots of groundwater statutes and countless
16 bulletins published by the Department on groundwater in
17 California in results of studies and analysis of various basins
18 in California.

19 MR. ZIMMER: Your Honor, nonresponsive, and he's
20 trying to put in before the Court what he shouldn't try to get
21 before the Court.

22 THE COURT: I'm going to simply ask for objections
23 relating to it. It's nonresponsive at this point, so why don't
24 we -- I think what you're asking him for is the second
25 definition. Repeat the question.

26 BY MR. DUNN:

27 Q. Where does the second definition come from?

28 MR. ZIMMER: Motion to strike the information and

1 the response that was related to whether it was.

2 THE COURT: I'll strike anything that didn't relate
3 to the definition. I'm already past the screen so I can't give
4 you the specifics.

5 MR. DUNN: Let me ask the question this way.

6 BY MR. DUNN:

7 Q. Where does that second definition come from?

8 A. The second definition comes from the teaching
9 syllabus on groundwater originally prepared by the State
10 Department of Groundwater Resource, and subsequently, slightly
11 updated and utilized in teaching a course on groundwater
12 through the University of California Davis.

13 Q. All right. Thank you.

14 A. And the definition that's up there, if you need
15 me to read it --

16 Q. Is that a true and correct copy of the
17 definitions? Let's strike that. Back up.

18 Did you prepare Exhibit 106?

19 A. Yes.

20 Q. The two definitions that are listed there, are
21 those true and correct copies of the definitions and literature
22 that you just described?

23 A. Yes.

24 Q. Mr. Scalmanini, what is groundwater basin as
25 you understand?

26 MR. JOYCE: Your Honor, before we move on, can I
27 ask what I was given? My understanding was 106 was not being
28 utilized. I'm trying to figure out where I can get a copy.

1 MR. ZIMMER: I think he attached that in those new
2 exhibits.

3 THE COURT: Do we have a copy?

4 MR. JOYCE: I haven't gotten this yet.

5 MR. ZIMMER: You should have.

6 THE COURT: Does anyone have an extra copy?

7 MR. DUNN: You can have mine.

8 MR. JOYCE: Thank you.

9 BY MR. DUNN:

10 Q. Moving along. Mr. Scalmanini, what do you
11 understand a groundwater basin to be?

12 A. I understand it to be exactly what those
13 definitions are.

14 Q. Have you ever seen or are you aware of any
15 schematic illustrations of groundwater?

16 A. Yes.

17 Q. What are those?

18 A. Well, I prepared an illustration of those
19 schematics.

20 Q. Okay.

21 A. Do you have them with you now?

22 Q. Yes, I do. Would now be a good time to show
23 those?

24 A. I can show them, or I can draw them from
25 scratch. Your choice.

26 Q. I'll leave it up to you at this point. Which
27 would you prefer?

28 A. Showing them is a lot quicker.

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Q. You have to help us out and identify --

A. Well, prenumbered exhibit would be 107.

Q. And can you identify that for us? I mean, from its first page. In other words, what's the title on the top?

A. The title is "Free Body Diagrams for Hydrologic Balance."

Q. We'll stop you for a moment.

MR. ZIMMER: The copies we were provided do not have any exhibit numbers as far as I can tell.

MR. JOYCE: Is this -- what number is this?

THE COURT: This is 107.

MR. ZIMMER: Mr. Scalmanini, can you hold that up and point toward us.

MR. DUNN: It's on the screen.

MR. JOYCE: I would only interpose an objection to this extent, your Honor: This is another new document not introduced at the time of his deposition, nor commented upon, nor the subject matter of being examined at deposition, because the first time we saw it was yesterday as 1:29.

THE COURT: I think this would be the same as him coming here at time of trial and drawing it. If he draws it ahead of time, I don't have a big dispute with that.

MR. JOYCE: That was for no other reason than the record.

MR. DUNN: Let's get the record clear.

BY MR. DUNN:

Q. Mr. Scalmanini, take a look at Exhibit 107. Is it your testimony that the first time this came up is in this

1 case or earlier?

2 MR. ZIMMER: Calls for legal --

3 THE COURT: I will overrule that if he knows if he
4 produced it or showed it.

5 THE WITNESS: It was in the file that I copied at
6 the end of the second deposition session when Mr. Zimmer stood
7 over my shoulder and looked page by page.

8 MR. JOYCE: In that case I withdraw and apologize.

9 THE COURT: Everyone, let's have a time out. We
10 need to get to the crux of the testimony, and we haven't gotten
11 to too much of that. A lot of what's happening is we're having
12 back and forth and bantering. We need to stop that.

13 If you have a legal objection, all you need to do
14 is state the legal basis. Let's not get too worried about
15 whether or not it was produced before. Even if it wasn't, I
16 was going to allow it. That's not going to make a difference
17 in how I decide this case.

18 MR. JOYCE: I do apologize. I didn't realize it
19 was. I thought I had not seen it. Maybe it's my fault, not
20 his. I apology to that extent.

21 THE COURT: I'm going to tell you this: On some of
22 these documents, to the extent if they were not produced
23 before, I'm going to give you some latitude, so we don't have
24 an objection every second. And if there -- because maybe after
25 the testimony's out, it's not going to be any big deal. If
26 it's something that's not critical, wait, and then if you think
27 there's a problem, at a break I'll let you bring it up. I can
28 strike it.

1 MR. JOYCE: Thank you, your Honor.

2 THE COURT: If I do, I can disregard it. I know
3 how to do that. I'm not concerned about that. But I think
4 that might help expedite in getting through this, because if
5 we're going to have these objections every time over --
6 sometimes it's important documents, and you have to do it, but
7 on some of these I don't think it's going to be terribly
8 damaging one way or the other.

9 MR. JOYCE: Thank you, your Honor.

10 THE COURT: All right.

11 BY MR. DUNN:

12 Q. Mr. Scalmanini, what is Exhibit No. 107?

13 A. It's a schematic illustration of what is
14 commonly used in hydrogeologic units or superficial units in
15 the overall study of surface water and groundwater.

16 MR. ZIMMER: Objection as "commonly used."

17 THE COURT: Overruled.

18 BY MR. DUNN:

19 Q. Please continue.

20 A. That illustrated, subsequently, from top to
21 bottom schematically a water shed, a groundwater basin, and a
22 groundwater body. Ultimately, these schematics were prepared
23 to illustrate units, which -- excuse me -- within what I'll
24 call analysts, like engineers and hydrologists, would pick
25 boundaries for analyzing the extent and quantity, and I'll say,
26 yield of surface water or groundwater resources.

27 MR. ZIMMER: Objection as to what other
28 hydrologists or other engineers would use or what they would

1 do. Motion to strike that performance. The testimony is
2 hearsay and speculative.

3 MR. DUNN: I'm prepared to lay the foundation, your
4 Honor.

5 THE COURT: I'm going to allow you to lay the
6 foundation because if he has some personal knowledge of it
7 working in the industry as to what the common practice is, I
8 believe that is fair testimony.

9 MR. DUNN: All right.

10 BY MR. DUNN:

11 Q. Mr. Scalmanini, take a look at Exhibit No. 107,
12 if you would please. Based upon your 22 years of experience in
13 hydrology in the state of California, is it fair to say that
14 the Exhibit No. 107 not only describes what you understand to
15 be a water shed versus a groundwater basin versus a groundwater
16 boundary as indicated here, but also based upon your experience
17 with other hydrologists and geologists over the last 22 years
18 that that appears to be your understanding as well?

19 MR. ZIMMER: Objection to what other people's
20 understanding is. It seems to me he can testify to what his
21 understanding is based on his experience.

22 THE COURT: I'll let him answer that question "yes"
23 or "no," but then you have to lay a foundation as to how he
24 would know that that would be the foundation, not just whether
25 or not he believes this is what the others think.

26 So you can answer this question first.

27 THE WITNESS: Yes.

28 BY MR. DUNN:

1 Q. How do you know that?

2 A. Well, in simple summary, this set of schematics
3 is extracted from the same syllabus of teaching that I referred
4 to earlier. And recognizing, as I think I was allowed to say,
5 that people who practice in this arena learn a certain amount
6 in school. You don't find some stuff in too many textbooks.
7 Although, there's generally discussion of the subject, but such
8 as there is, what I'll call, on-the-job education within the
9 Department of Water Resources once upon a time or the
10 continuation of that beyond WDR's ability with its budget's
11 constraint to continue in-house training. And they, in effect,
12 offered the course to us at Davis, and we continued to make it
13 available to people out of WDR.

14 This is a schematic illustration of how people were
15 taught to practically, I'll call it, do groundwater study. And
16 the basis for my knowledge of the subject is this: I've seen
17 it taught to others. I've taught it myself. And to slightly
18 correct you, it's not limited to 22 years, because I originally
19 started practicing in general in 1967. That's 35 years ago.
20 And I started doing focus work on groundwater at Davis. I did
21 work in subsurface fluids which had to do more with oil and gas
22 in the six years between 1967 and '73, but I started doing
23 focus work and groundwater in '73. So, nominally, coming up on
24 35 years. That's the answer to your question of how I know.

25 MR. ZIMMER: I'd like to be heard on that.

26 No. 1 --

27 MR. DUNN: Wait. Is there an objection or motion
28 to strike?

1 MR. ZIMMER: The objection is it calls for
2 speculation as to what other people would do. It's not
3 relevant. It's bringing in before this Court alleged opinions
4 of other people who are not in front of this Court to
5 cross-examine. This is a diagram that is made by this
6 individual. I find it hard to believe this is so recognized
7 and everybody accepts this definition that he hasn't come in
8 with a diagram from somebody else. He can't sit here and say
9 what he is assuming. He hasn't showed this to the hydrologist.

10 THE COURT: I'm going to cut you short. He's
11 testified that this was something that was used in the teaching
12 program. It was generally accepted teaching.

13 MR. ZIMMER: Where he taught.

14 THE COURT: I believe he can give that as a
15 foundational basis for his opinion. I'll allow you to
16 cross-examine him on it at that point, but as far as for the
17 opinion coming out, I'm going to allow it. I'd like to
18 actually get to the opinion, because I look at these three
19 things, and they look virtually identical to me.

20 MR. DUNN: Before we get to his opinion, what does
21 he understand the differences to be between the water shed and
22 groundwater? Because obviously, that's the big dispute here.
23 I think he should offer an opinion.

24 THE COURT: Well, the diagrams are not that helpful
25 to me because it looks the same. Maybe you can get an
26 explanation as to what is supposed to be shown in these
27 illustrations. As to the difference, I only see different
28 little squiggles here or there, but it looks pretty much the

1 same.

2 MR. ZIMMER: Your Honor, I have no objection to him
3 testifying what is his understanding, what he thought. It's
4 trying to get before the Court --

5 MR. DUNN: Your Honor, there's no objection.

6 THE COURT: What?

7 MR. ZIMMER: -- what other people have done or
8 people think before this Court without our ability to examine.
9 And I think it's improper to do that. I don't have a problem
10 with his opinion or what it's based on as long it's as to how
11 he taught or how they taught at his school.

12 THE COURT: Again, let's get our answer to this
13 question.

14 MR. DUNN: Before we do that, please, I ask on
15 behalf of all of our clients that there be some type of decorum
16 here. If they have an objection, let's have an objection.

17 THE COURT: I've asked before.

18 MR. DUNN: The speaking objections have gone too
19 far. They can cross-examine.

20 THE COURT: I'm going to ask all attorneys to abide
21 by and state objections on the legal basis.

22 MR. DUNN: All right.

23 BY MR. DUNN:

24 Q. Mr. Scalmanini, attempting to continue with
25 your testimony this morning. What do you understand the
26 difference to be between a water shed and groundwater basin as
27 illustrated here on Exhibit No. 107?

28 A. Well, Judge, since you saw some charts, I'll

1 try to take it from top to bottom. You might refer to the
2 figure close by that ultimately -- in my analysis of water
3 resources there's a recognition that the original source of
4 water in the unit comes from precipitation of some form, and
5 when precipitation falls on the ground, it has a tendency to
6 drain in some direction, and a line can be drawn around some
7 parameter. And within that, all precipitation would drain,
8 I'll call it, to the inside of that line; usually, toward some
9 outlet. The outlet might be a river or multiple rivers, or the
10 outlet might be a superficial lake, which is the case in the
11 Antelope Valley area.

12 So the lines, the three semantics are purposely
13 intending to -- in general, all lines look the same, but the
14 vertical lines at, I'll call it, the crest of what are
15 schematically intended to be hills on the two sides of the
16 vertical lines are hills, to the extent of the water shed and
17 just by simple examining.

18 You can imagine that any precipitation that falls
19 on the ground surface inside those lines would tend to run off
20 or drain toward the inside of those lines, and any
21 precipitation that fell outside those two vertical lines would
22 tend to drain in some other direction away from the internal
23 part.

24 Then continuing down the hill, so to speak,
25 recognizing that a fair part of mountainous terrain in
26 California is consolidated, generally reported to be nonwater
27 bearing type materials. Then there is a place somewhere down
28 the sides of the hills where there's a contact between that.

1 For right now, let's just call it nonwater bearing material
2 with more readily water bearing materials. And the vertical
3 lines then that are drawn, to the extent of those terms, which
4 are, in effect, as the ground surface is the extent of the
5 ground basin water -- excuse me -- beneath the lands within
6 those vertical lines, there is probably encountered earth
7 materials that are sufficiently water bearing; that if water is
8 present in them, they can yield water in sufficient quantities
9 to be a water supply, which gets back to the original
10 definition of groundwater basin. For that matter, it's the
11 definition of aquifer -- the earth material that will store and
12 yield water in sufficient quantity to be a significant water
13 supply.

14 And then lastly, recognizing that in a state of
15 nature, meaning before man had an ability to extract water from
16 the subsurface, that rain fell on the ground, and groundwater
17 basins filled and overflowed because there was nothing to drain
18 them out down below, whatever the drainage point is. But
19 subsequently, meaning, over about the last hundred years, man's
20 had an ability to extract groundwater from wells or other
21 devices of the subsurface, and he has lowered the groundwater
22 surface so the basin doesn't necessarily fill all the way to
23 its limits. And for some purposes, some analysis studies will
24 look just at the groundwater body itself -- how much of
25 subsurface actually contains water versus materials that could
26 probably contain water, but don't for whatever reason. That
27 might result, for example, from their geographic location, or
28 the fact that man's extracted the water out.

1 Those are the subtle differences. While the three
2 schematics look the same, for purposes of limits of a water
3 shed, as you said yesterday, you know, extend out to where
4 water will physically drain on the surface on an internal point
5 of the groundwater basin.

6 The definition, as I said earlier, and the use of
7 that practice is a small unit which contains significant
8 groundwater bearing and yielding materials. And then lastly,
9 there's the groundwater body itself which is how much of those
10 earth materials that I just described actually have water in
11 them at any given time.

12 Q. Now, as you understand the term "groundwater,"
13 and as you described it here on Exhibit No. 107, has that term
14 been applied and used consistently in the literature that
15 you're familiar with?

16 A. The term "groundwater"?

17 Q. Yes.

18 A. Yes.

19 Q. How do you know that to be true?

20 A. Well, I'll just say that wherever I've seen it
21 discussed in the literature textbooks, reports, et cetera, the
22 term "groundwater" has always referred to water that occurs in
23 the subsurface; meaning, below the surface of the ground,
24 whether that be in a saturated or unsaturated condition;
25 meaning -- what's a good illustration? "Unsaturated" would be
26 an illustration -- in your yard or in your flower pots that
27 it's not saturated with water where it drains out so the soil
28 has moisture. And that would typically be the case near the

1 ground surface and within some sort of long distance in some
2 places below the ground surface, and then ultimately, there
3 would be a place where water accumulates in sufficient
4 quantities that the earth materials are fully saturated.

5 A reasonable lay illustration of that would be that
6 if you went to the beach and you dug down in the beach, you go
7 from, I'll say, warm, dry sand at the surface to moist sand,
8 which would be the unsaturated, not fully saturated condition.
9 And ultimately, if you dig down far enough, you create a little
10 pool. Probably lots of you did that as children. The point is
11 you ultimately reach a fully saturated condition, and that
12 would be the illustrations of the last two. The moisture would
13 be groundwater and the saturated condition would be
14 groundwater.

15 Q. Are you familiar with the Department of Water
16 Resources Bulletin No. 118?

17 A. Yes.

18 Q. Have you read it?

19 A. Fair to say I've read it, yes.

20 Q. Have you used it as part of your analysis in
21 this case?

22 A. I'll say very generally.

23 Q. All right.

24 A. I said half an hour ago that the State has
25 mapped and accomplished a report, that's Bulletin 118, which
26 I'll call California's groundwater to map groundwater basins in
27 California. I made a reproduction of the page that includes
28 the mapping of this groundwater basin, meaning, Antelope

1 Valley, and that might be useful to put up. The reason --
2 sorry.

3 Q. If you could help us out by identifying that by
4 it's exhibit number.

5 A. 109.

6 MR. ZIMMER: Your Honor, can I request that --
7 because we just saw these documents last night -- that they
8 identify which ones are contained in the reference list in his
9 report as opposed to which ones are not. Some of them may not
10 be worthy as making objections about. This one has terms he's
11 used before on that basis. I don't have an objection unless we
12 know what new documents they're trying to get before the Court.
13 It's difficult.

14 MR. JOYCE: I'm hesitant, your Honor. I don't
15 think I've seen this before. If Mr. Scalmanini could qualify
16 or help us out to whether or not it was produced at the
17 deposition. I don't think it was.

18 THE COURT: I don't see this on the reference page,
19 but we need to take about a ten-minute break for the court
20 reporter. So why don't we take our break and give you a chance
21 to show the document to everyone, and then when we come back,
22 we'll see if there's an objection.

23 Sir, you may step down, and we'll start in ten
24 minutes.

25 (Recess was taken at this time.)

26 MR. JOYCE: Your Honor, with respect to what has
27 been proffered in Exhibit 10, I will advise the Court, it was a
28 new document. It was not produced at the time of the

1 deposition. I have no objection to it being offered to the
2 case in chief. I do not want my latitude to be construed as
3 latitude to other documents.

4 THE COURT: That's fine. It won't be. What did we
5 call 109, that bulletin?

6 MR. ZIMMER: That's the Department of Water
7 Resources Bulletin 118. I believe the 1975 version.

8 MR. DUNN: We'll ask the expert.

9 MR. DUNN: All right. Mr. Scalmanini -- I'm
10 sorry, your Honor.

11 THE COURT: Go ahead.

12 MR. DUNN: Thanks.

13 BY MR. DUNN:

14 Q. Mr. Scalmanini, take a look at what's now been
15 marked as Exhibit No. 109, and can you tell us what that is?

16 A. Yes. That's a reproduction of a page from the
17 Department of Water Resources Bulletin 118, which includes in
18 the lower left-hand corner the Antelope groundwater Valley
19 Basin. And as I said, you know, in response to the question
20 you asked before we broke, "Did you rely on this?" The answer
21 is "no." I knew it existed and looked at it, but I didn't
22 really rely on it per se for edification. The reason I didn't
23 rely on it, as you can see, that it is very --

24 MR. ZIMMER: Objection. Relevance.

25 MR. DUNN: Well --

26 THE COURT: Unless you want that answer.

27 MR. DUNN: Yes, I do.

28 THE COURT: I'm going to overrule the objection.

1 THE WITNESS: It is almost schematic in nature. It
2 illustrates with yellow, and on some of the documents you can
3 also see a shade that I might call brown. That new smaller
4 place, that so-called younger and older alluvium, which is a
5 description for type earth material that's unconsolidated and
6 makes up what WDR did for mapping purposes and for multiple,
7 so-called, large hydrologic areas of the State. Then in order
8 to get it manageable on a piece of paper it is printed in eight
9 and a half by eleven form -- the list of groundwater basins.

10 If it's okay, I'll put one in front of the judge so
11 she can see the numbering system that's on this illustration.

12 MR. DUNN: Please identify in advance what you're
13 putting up.

14 THE COURT: I think it's a copy of 109.

15 THE WITNESS: It's 109, paper copy. If you look
16 closely, you will see a number of -- just numbers. If you're
17 looking in the lower left-hand corner, you'll see where the
18 City of Lancaster is located. And just above that is No. 6,
19 batch 44. And then the subsequent label or book in this
20 publication is one line in a table summary of what 6 batch 44
21 is, the Antelope groundwater Valley Basin, and what's known
22 about it or what's lacking in knowledge. And I think there's
23 mention of problems noted in the basin at the time of this
24 publication.

25 While it shows schematically the extent of what
26 your common, significant aquifer material is -- meaning,
27 alluvium in this case -- it's not specific enough on which to
28 rely to extract specific basin boundaries, so I didn't rely on

1 it for that reason.

2 Q. Mr. Scalmanini --

3 MR. JOYCE: Your Honor, could I ask that whatever
4 it was that was handed to the Court be identified as 109 sub A,
5 so we have a complete record.

6 THE COURT: I believe it's identical.

7 MR. ZIMMER: It's exactly the same. No changes.
8 No highlights. Nothing.

9 THE WITNESS: I made multiple copies of each of
10 these.

11 MR. JOYCE: I withdraw my request. I was unaware.

12 MR. DUNN: All right. May I continue, your Honor.

13 THE COURT: You may.

14 MR. DUNN: Thank you.

15 BY MR. DUNN:

16 Q. Mr. Scalmanini, now tell us what methodology
17 you used in coming up with your opinion in this case? In other
18 words, how did you come up with the groundwater basin?

19 A. Well, I started with what I understood to be
20 the question in general which had to do with rights to pump
21 groundwater. And based on experience, you know, I landed on --
22 without doing any work -- this is the answer to myself -- that
23 we were probably talking about Antelope Valley groundwater
24 Basin or whatever it might be called in that particular area.

25 So I -- I guess you could say I asked myself, do I
26 need to invent the wheel from scratch; meaning, to find
27 something like that, or has it already been done? In looking
28 at -- now, I got to back up half a step. I really did this for

1 the first time in the Santa Maria Basin a few months ago. And
2 so at that time a group of experts in the case, commonly known
3 as technical advisory committee, worked independent of the
4 court and lawyers to attempt to define the groundwater basin,
5 which would be the same, quote unquote, hydraulic unit.

6 MR. JOYCE: Your Honor, I impose an objection as to
7 what was done by him or anyone else in the Santa Maria case.

8 THE COURT: Again, just state legal basis which, I
9 believe, is relevance.

10 MR. ZIMMER: Relevance. Hearsay.

11 MR. DUNN: May I be heard? Nobody cares in this
12 case what the basin boundaries are in the Santa Maria
13 adjudication. Nobody cares in this case. All I'm concerned
14 about is how he created or how he determined the groundwater
15 boundaries in this case, and what methodology was involved with
16 that, and what influenced him, and what experience or education
17 or training.

18 THE COURT: I'll allow it for that purpose.

19 MR. DUNN: Continue, Mr. Scalmanini.

20 THE WITNESS: All I was trying to describe from the
21 methodology was the definition of groundwater basin to the
22 specific application of definition in this particular case, and
23 the reason I mention Santa Maria at all is I just happened to
24 do the work from scratch there a few months earlier. So I
25 repeated the exercise here. The definitions we had up here,
26 whether taken from today or from the WDR slash UC Davis
27 publication, it's an 18-chapter syllabus. The specific author
28 is a man named Richter. In the definitions -- the definitions

1 are general, generic.

2 So to get from those general definitions, how do I
3 draw lines around to put boundaries around both spacially --
4 meaning, on the ground surface -- and vertically, below the
5 ground surface, since the groundwater system aquifer system,
6 groundwater basin has both spacial and vertical limits to get
7 to that. Then I researched the literature further to say,
8 then, how do you -- what do you apply in the way, I'll call it,
9 technical slash scientific criteria in order to create a space
10 spacially and vertically that fits that definition?

11 So it so happens that the only place I've ever seen
12 an organized set of criteria that you would apply to the
13 physical conditions in any setting is also included in this
14 teaching syllabus that was originally authored by Richter in
15 his chapter, which is, as I tried to describe it earlier, part
16 of what I'll call on-the-job training for people who do this,
17 starting 30-something years ago and continuing forward.

18 And in my report -- and then also I prepared a
19 similar list, you know, for purposes of making an exhibit out
20 of it. But in Exhibit 110, then, is a summary of criteria that
21 one would take into, I don't know, consideration or account in
22 trying to, I'll call it --

23 MR. DUNN: Can I hold you for just a minute,
24 Mr. Scalmanini, because we need to locate this for counsel?

25 THE COURT: What number is this?

26 MR. DUNN: No. 110. I'm sorry. Go ahead. May we
27 continue?

28 THE COURT: You may.

1 MR. DUNN: Thank you. I'm sorry, Mr. Scalmanini.
2 Please continue.

3 THE WITNESS: So I used these various criteria to,
4 I'll say, in effect, interpret or apply the general definitions
5 to what, I'll say in this case, is a so-called real world case
6 of what is -- well, the question you asked me at the outset --
7 the hydrogeologic unit that would be applicable? How do you
8 get to that? Whether you get to it by quantifying the water
9 supply or quantifying rights is academic. How do you get to
10 it? So you apply these criteria.

11 And what's summarized on Exhibit 110 are three
12 subdivisions. The first three of potential boundaries that
13 relate to the lateral or facial extent on the ground surface,
14 so to speak. And the last one is a subdivision of
15 vertically -- how you would apply criteria to determine how far
16 this basin extends or doesn't extend.

17 In having considered those -- and I'll go back to
18 chronology of investigation -- I asked myself the fundamental
19 question, has somebody already done this or do we need to do it
20 from scratch, which is what I said a few minutes ago? So it
21 turns out that there was apparently some work in the '40s
22 and '50s in the Antelope Valley area. Notably, there was, I'll
23 call it, an economist publication, also from Davis as it turns
24 out, that described and discussed the economic impacts of what
25 had been going on in the Antelope valley, and the significant
26 changes in groundwater conditions out there at that point in
27 time. That was published in the 1950s. But that did not get
28 into the technical details of what the basin was. It just

1 recognized the fact that the water levels would have been
2 dramatically going down by the '60s.

3 I think in response to the fact there was notable
4 declines in the groundwater in that valley, then the U.S.
5 geological survey began. What one might call a sequence of
6 studies to look at the groundwater basin, groundwater
7 condition, and explored various things as to how it works; how
8 much yield there is; how it's replenished; what potential there
9 is to store water in it; and things of that type.

10 Most recently, I think at least the last thing I've
11 seen published is to protect any future stresses in the basin
12 that are expected to be, and what impacts those might have to
13 the available water supply given that expected growth in that
14 valley. So I looked at that series of literature. So the
15 answer to my question to myself of whether this has already
16 been done or whether it needs to be done from scratch was it's
17 already been done. Okay.

18 And the first investigation that I saw that
19 undertook that effort was ultimately documented in a report
20 accomplished by the U.S. geological survey by -- authored by
21 the name of Bloyd, and it's been commonly referred to in such
22 deposition transcripts as Bloyd report. And that was
23 accomplished in 1967. And Bloyd undertook an investigation of
24 study of the area, specifically, the so-called Antelope Valley
25 East Kern area, which is the area where the so-called Antelope
26 East Kern Water Agency has today a contract for imported
27 supplemental water from the State water project to do something
28 about these declining groundwater conditions that had been

1 occurring several decades ago and continued into the 1950, 60s
2 and 70s.

3 Among other things as part of his purpose and
4 scope, Bloyd had within his scope the delineation and
5 description of physical structure boundaries and subdivisions
6 of the groundwater basin and subunits in that overall Antelope
7 Valley East Kern Area. And what Bloyd then mapped and
8 described in his report -- I've put the map on this easel in
9 some photo-enlarged form, and I have smaller versions of same
10 for passing out.

11 THE COURT: What's that marked, the Bloyd map?

12 THE WITNESS: Yes. And I'll hand you one in just a
13 second.

14 MR. DUNN: I believe it's 113.

15 THE WITNESS: And that is -- you already said
16 Exhibit 113?

17 MR. DUNN: Yes .

18 THE WITNESS: That's not an exact reproduction of
19 what is figure ten in the Bloyd report. Which of the maps
20 depicts the extent of the Antelope Valley groundwater Basin or
21 what's interpreted as Antelope Valley groundwater Basin, and I
22 need to explain the difference.

23 BY MR. DUNN:

24 Q. Can you explain the difference?

25 A. Sure.

26 Q. Please do so.

27 A. Bloyd undertook an effort to look at geologic
28 and hydrologic conditions in the overall area out to, as I

1 said, the Antelope Valley, Kern Valley area. He identified a
2 total -- I think, it's 14 of the so-called subbasins. Some of
3 which he, ultimately, identified to be in the Fremont Valley
4 Basin and some of which he identified to be in the Antelope
5 Valley Basin. I think that eight of the basins ended up in the
6 Antelope Valley, six in Fremont. If you want to be for exact
7 sure from my memory, we should stop and I'll check. And he
8 described each of the individual basins or subbasins and its
9 boundaries in sufficient detail in the text of his report.
10 That as far as I was concerned, one could conclude that they
11 didn't specifically say I went to Richter's criteria and
12 applied them. He effectively did.

13 He used boundaries that were for the most part
14 around this basin, and I can walk around it in an few minutes
15 if you'd like. The edge of the unconsolidated materials going
16 back to exhibit --

17 MR. JOYCE: 107.

18 THE WITNESS: 107. That he basically described and
19 mapped contacts between the water bearing materials or alluvial
20 and undated materials. The edge of those were the Abutt
21 (phonetic spelling) Rocks of the Foothill, and ultimately,
22 mountainous areas. And he described these materials, the rock
23 materials, to be for all practical purposes non water bearing.
24 And I didn't get his exact words out if that's useful. And
25 then the extent of these materials, he mapped and described as
26 being within the groundwater basin or as within each of the
27 collective individual subdivisions that he described.

28 He also recognized it takes a little bit of a

1 collection -- if we could go back to the Richter criteria --
2 which were exhibit --

3 MR. JOYCE: 110.

4 THE WITNESS: That he also applied some of those
5 criteria in recognizing that as almost always happens in
6 nature. Nature doesn't deposit these materials in such a way
7 that we always get nice, clean impermeable bedrock-type
8 material surrounding the significant water bearing materials.
9 So there are other criteria here. In this case, faults that
10 are located around and in some cases through this basin. In
11 looking at available water level information at that time, I'll
12 attribute it to him, because in his report you described
13 significant water level differences across the fault.

14 In some cases hundreds of faults which are still
15 present today to be evidence of the fact that the fault in
16 subsurface, in effect, acts as a dam and separates water on one
17 side at a very, very, high elevation; meaning, below the ground
18 surface, but relative to the water level on the inside of the
19 basin side; much lower elevation that the faults acted, in
20 effect, as dams, so they provided a boundary across which no
21 significant flow is taking place.

22 Combination, I think, in general terms of bedrock
23 contacts; meaning, the contact between significant water
24 bearing materials and materials that were reported to be for
25 all practical purposes nonwater bearing, not totally
26 impermeable, but practical nonwater bearing and/or the
27 interpretation of faults that would, in effect, act as
28 sufficient dams across which flow could not significantly take

1 place.

2 He utilized that collection of, in effect,
3 Richter-type criteria. Applied them to this basin and mapped.
4 When you add up all that, he described and drew a line; he
5 mapped the groundwater basin that was the first evidence.
6 That's a long-winded answer to your question. That was the
7 first evidence to me somebody had done it, and done it in a way
8 that's consistent with how you would do it if you're doing it
9 from scratch.

10 Q. Is that the reason you didn't reinvent the
11 wheel in this case?

12 A. Actually, it's not the only reason, but it's
13 collective. The wheel -- they're all the same, just name
14 change in time. If you come forward in time -- hang on one
15 second. I'll save that for later. If you come forward in
16 time, I don't know if I'll get all the chronology exactly
17 correct from memory, but subsequently, Bloyd's initial work.

18 Then another investigator by Durbin, Tim Durbin,
19 did this mathematical modeling of the groundwater flow system
20 in the Antelope Valley. And he doesn't discuss defining the
21 basin per se from scratch, because Bloyd had done that, but he
22 utilized the same basin boundaries for what I'll call the same
23 reasons. And he, ultimately, in his modeling efforts
24 considered the boundaries that we just talked about generically
25 to be no flow boundaries.

26 Q. What do you mean by "no flow boundaries"?

27 A. That means, in looking at -- going back to the
28 schematic of the water shed -- it would be good to put it up,

1 the groundwater basin.

2 Q. This is Exhibit 107?

3 A. Yes. That model is ultimately in this case
4 looking at all the inflow and outflow to that lower most
5 schematic, which is the body of water that accumulates in the
6 subsurface. So for example, rain falls on the ground surface
7 or permeates the ground. Some of that water ultimately
8 depercolates down, and that's a term of what we call to the
9 ground basin. Man pumps from the groundwater basin, so that
10 extracted water can potentially flow in from the sides.

11 So in this case -- so in this schematic or in that
12 world setting, water can flow. It can flow across the
13 boundary, out the hard rock, so-called non water bearing
14 materials, into the water bearing materials, based on an
15 interpretation of water level data and water level differences,
16 which one can see mapped by Bloyd and see mapped by subsequent
17 investigators, that the groundwater flow direction along these
18 boundaries is not perpendicular to the ground. In other words,
19 water is not flowing across the boundaries from left to right
20 or right to left on that schematic, but rather is flowing in
21 the basin parallel to the boundaries. So there's no flow
22 that's mappable based on how the groundwater is behaving.

23 Q. Can you go up to the diagram on the Elmo and
24 just illustrate with your hand, maybe pointing with a finger,
25 exactly what you're talking about?

26 A. In accounting for all the flows, what I
27 described was -- for example, this is an inch, intended to be a
28 schematic of a well head. I think the well would extend down

1 in here and a pump would lift water from this saturated body up
2 to the surface, and man would use it. Rain could fall on this
3 ground surface or supplied from water source from irrigation,
4 from imported water supply. Some of that would infiltrate and
5 ultimately permeate to where it's recharged to this underground
6 water body -- saturated water body.

7 A stream could flow across the ground surface here,
8 and if the stream had water in it and water leaked out of the
9 stream, it also could be flowed into the subsurface and
10 infiltrate and depercolate down. So as I said, a model is
11 accounting for these various components that flow in and flow
12 out, and one of the potential flow components is flow that
13 would come into this -- this aquifer system, this basin from
14 its side. And similarly, one potential outflow would be
15 flowing out the sides, going someplace else.

16 Bloyd described all of these boundaries, including
17 those where there were faults, that is on the outside, so to
18 speak, whether it is just for the earth materials to run up
19 against bedrock mapped or impermeable or reporting to be
20 nonwater bearing, or whether it runs up against a fault that's
21 on the other side of the fault. There was the same
22 consolidated rock material that was mapped to be nonwater
23 bearing.

24 So with the exception of two localized places in
25 the basin, Bloyd had reported all of this to be nonwater
26 bearing, so the "no flow boundary" concept is that water is
27 intending to flow in this direction in this schematic, and
28 there is no flow component going across these boundaries either

1 in or out, with two exceptions which are probably worth
2 mentioning of but are not of much consequence.

3 Q. Would it be helpful at this time to actually
4 take out the map that you have that shows the boundaries of the
5 basin, in particular, those that should be mapped by Bloyd?

6 A. Well, those mapped by Bloyd are on this.

7 Q. That's fine. Let's work with this then.

8 A. I think -- again, I know that I'm making
9 long-winded answers to your questions.

10 Q. That's fine.

11 A. But you asked me how I got there, so how I got
12 there was to start here. This was the first.

13 Q. You're doing fine. I'm not trying to short cut
14 this in any way. Do you want to keep going then, please?

15 A. Sure. But I prepared -- and I'll put it up
16 here in just a second. I'll pull out a small copy. I
17 mentioned Durbin as the next investigator, so Exhibit 114.

18 Q. Okay.

19 A. Okay.

20 Q. Hold on just one second. When we identify the
21 exhibit, we've got to give everybody a moment to look for it
22 and pull it out.

23 A. That's okay. I need to put it up.

24 Q. If it helps, Mr. Scalmanini, you can stay up
25 there or remain seated at your pleasure.

26 A. I'll stay here. That's fine. This is a little
27 more jagged, because it was ultimately used for numerical
28 modeling purposes. So modelers don't deal with some, what I'll

1 call, smooth curvatures of real world boundaries.

2 Q. Is that because mathematical equations tend to
3 produce straight lines?

4 A. It's the way we divide this basin into smaller
5 pieces, into cells, they're called for purposes of this
6 discussion. Anyway, that they have some, I'll call it, usually
7 rectangular or straight line type shape to see them.
8 Ultimately, this whole basin is covered with a grid, and then
9 the flow equations are solved by cell by cell or segment by
10 segment.

11 But what Durbin described in his text and what's
12 illustrated here is the same boundaries as Bloyd had mapped
13 previously, so -- and in looking at his report, he also
14 perpetuated this concept of these boundaries for the most part
15 being no flow. I mentioned, when I was up here a couple
16 minutes ago, the fact that there are a couple of gaps in this
17 overall system. You recognize that there can be some flow from
18 one basin to the other.

19 I probably should back up because that's documented
20 in Bloyd. If you read my deposition transcript, I was asked
21 about that. I knew I read it. I couldn't remember exactly
22 where I was. I know I fumbled over that. I subsequently found
23 it.

24 Q. I hope no one will fault you for that. Please
25 continue.

26 A. There are two places -- what's the previous
27 exhibits?

28 THE COURT: 113.

1 THE WITNESS: Put that back up. Bloyd recognized
2 that while -- for all practical purposes, I'll draw with a
3 finger here. I'll work my way around. We'll, ultimately, pay
4 some attention to this extreme southeast corner.

5 Bloyd didn't close the loops. He described the
6 potential boundary, but he didn't map it. At any rate, the
7 basin extends along either faults or bedrock contacts.
8 Meaning, consider the -- what's reported by him to be nonwater
9 bearing materials. And the case of faults at other sides of
10 the materials are reported to be nonwater bearing, basically,
11 all the way around this basin. And the Fremont Valley portion
12 is up here.

13 And so coming across the fault system here, you
14 have the community of Rosamond, and then ultimately up to
15 Capter (phonetic spelling), where Edwards base is and Meriac
16 (phonetic spelling) and up around a small basin called Peerless
17 (phonetic spelling). And then extending along the eastern
18 bedrock contact. Right here there's a small gash where it's
19 not abutted by either a fault or something else that could be
20 considered to be permeable or relatively impermeable that
21 there's potential of flow across this boundary. And there's a
22 small gap right here. I think it's, basically, the extreme
23 eastern, I'll call it, point on the northern boundary of what's
24 known as Noak (phonetic spelling) or Nonotch (phonetic
25 spelling) subbasin between the Tropical Hill area and the -- I
26 think it's called Rosamond Hill area.

27 This particular gap is reported to be about a half
28 mile wide, and at the time of Bloyd's work, the flow through

1 this gap was estimated to be 300 to 700-acre feet a year. To
2 put that in context, all the work that's been done on analyzing
3 how many quote unquote "recharge," that's the future issue, but
4 the recharge is generally reported to be in the range of
5 somewhere between 30 and 60,000-acre feet. So we have 300 and
6 700 acres right here.

7 He also recognized this is not perfect, what could
8 be considered permeable or no flow boundary. I don't remember.
9 You called it. You know the narrowest eluviated part or flow
10 of this gap is slightly more than a mile wide, and the flow --
11 which in this case is from wells -- is always from a higher
12 head or lower head. The flow in this case is out of the
13 Antelope Valley Basin inflow. Rosamond Basin is estimated to
14 be between 100 and 500 a year.

15 Q. Mr. Scalmanini, I think -- why don't we have
16 you put up as the next exhibit the map that shows your basin
17 boundaries together, that shows some of these other colored
18 lines from Bloyd and others. I think that will be more easy to
19 see. Can you do that for us?

20 MR. JOYCE: Which two maps are you referring to
21 now? The original at the deposition or one since the
22 deposition?

23 MR. DUNN: This will be one since the deposition.

24 MR. JOYCE: Then I would ask -- this is the one we
25 saw for the first time yesterday at 1:29. I suspect there's
26 going to be foundational questions before we get to it because
27 it's a new map.

28 MR. DUNN: I think the best way to resolve this is

1 to ask the difference between the two maps.

2 THE COURT: Why don't we get that first.

3 MR. DUNN: Let's put them up and show.

4 THE WITNESS: Well, I'm going to take a half a
5 step, put one more map up on the way to that. It ultimately
6 leads to the answer you're asking for.

7 One more subsequent investigation by the name of
8 Duell, or D-u-e-l-l. I'm not sure about the proper
9 pronunciation. He looked at U.S. geological survey and was
10 ultimately focused on developing a groundwater quality
11 monitoring network.

12 Q. You need to identify, if you would, please.

13 A. I will. I want to do some housekeeping.

14 Q. I believe this is Exhibit No. 115.

15 A. All the same details, same boundaries as
16 previously reported. Among are the things he included in more
17 detail on both sides of some of these boundaries, groundwater
18 flow direction. And you can see from an interpretation of
19 these that in the areas where these -- a fault-type boundary as
20 compared to bedrock boundary, even at the perimeter of bedrock
21 boundaries, that the flow directions do not support any flow
22 coming across the boundary, but rather just flow within the
23 basin.

24 In this depiction by the USGS, I should note, that
25 the more or less lengthy south westerly boundary of the overall
26 basin is written in Bloyd, and ultimately, written in my report
27 to be unnamed fault associated with the San Andreas fault.
28 Interestingly, when Duell mapped this, he labelled it San

1 Andreas fault. He didn't say unnamed fault. But all the
2 writings refer to unnamed fault, because the San Andreas fault
3 is recognized to be a little farther to the south than that
4 particular location. The only difference between the map
5 that's in our report and the map here today is that we left off
6 the words unnamed fault associated with the San Andreas fault
7 zone, and in our original map this says San Andreas fault zone,
8 just like Duell did. But what it should say is "unnamed fault
9 associated with San Andreas fault.

10 The boundary was developed from an interpretation
11 of the fact that there was significant water level differences
12 across fault stone. Everything else as far as boundary lines,
13 all the text that describes them, remains unchanged, but added
14 the words to be precise, "unnamed fault associated with" and
15 the rest remains the same.

16 The reason I changed it, I must have seen 25
17 references to the fact that I had the San Andreas fault located
18 in the wrong place. But if you read the text, the intent was
19 to show the unnamed fault. Now, that gets us to our map.

20 Q. Let's see it.

21 MR. JOYCE: Which map?

22 MR. DUNN: This will be Exhibit No. --

23 MR. JOYCE: For purposes of clarification on the
24 record, is this what was appended at one point to his report at
25 the time of his deposition offered? Is this the new one?

26 MR. DUNN: This is the one with the correction that
27 he just described, and it's Exhibit No. --

28 THE WITNESS: 126, I think; is that right?

1 BY MR. DUNN:

2 Q. And just so that we're all clear on what was
3 changed, we just labeled the fault; is that correct? Is that
4 fair to say?

5 A. It always labeled it. I had incomplete words
6 to describe it. In the text of the report I refer to this part
7 of the boundary, which I'll call a lengthy portion. The
8 southwest of the basin had been originally mapped by Bloyd, and
9 subsequently, adopted by other investigators referring to that
10 as the unnamed fault associated with the San Andreas fault
11 zone.

12 Q. Let me stop you. Do you have an extra copy for
13 the Court?

14 A. I brought that, but I gave it to them
15 yesterday.

16 Q. That's fine.

17 A. This is hopefully big enough and colorful
18 enough that you can follow. So when we describe it in text we
19 describe it the way I just said. When we labeled it on the
20 map, we left off these words "unnamed fault associated with,"
21 and the original version in the report says "the San Andreas
22 fault zone." I'll acknowledge that on the second of two that,
23 as far as I've seen, have miss labeled that.

24 Q. Okay. Generally, what are we looking at here
25 in Exhibit 120? What is it?

26 A. It's an attempt to try to reduce to one map the
27 sequence of events that I've just described with one more
28 detail added that I haven't described thus far. There was one

1 further mapping by others before I looked at it that intended
2 to shrink these boundaries in a couple places. And I can talk
3 about that in a couple minutes, but basically, what's outlined
4 in this reddish color is extracted from what Bloyd mapped
5 originally in 1967.

6 Q. So just so the record is clear, on Exhibit
7 No. 120 -- I'm sorry -- 126. Thank you. There is on that
8 exhibit a red line that is in sort of a strange, unusual shape,
9 but -- and is that the red line you're referring to by Bloyd?

10 A. That's correct.

11 Q. All right. Continue, please.

12 A. And it reflects with some text-type references
13 the nature of the boundary that Bloyd was describing as in
14 effect the contact between the significant groundwater bearing
15 materials inside the red line and the materials described by
16 him and others as nonwater bearing outside the line, whether
17 the line be formed by fault boundary or the line be formed by
18 the fact that the undated materials up -- up against just plain
19 rock with no fault there. It also reflects that contact
20 between the Antelope Valley Basin and Fremont Valley Water
21 Basin, the faulting that support a significant water level
22 difference. As I said 6 -- about 300 feet the water flow from
23 the base is 300 feet higher at this point than it is at this
24 basin.

25 Q. What does that mean in terms of flow or no
26 flow?

27 A. In groundwater terms there are plenty of jokes
28 you need to know. Basically, water flows from high elevation

1 to low elevation. It does it on the ground surface. It does
2 it underground as well. If we have very high groundwater
3 levels, I'll say, on one side of some feature or in some
4 direction relative to lower groundwater levels in some other
5 direction, then the potential is in all cases for there to be
6 flow across in that downhill direction, so to speak. That's
7 what's known as grading. We had discussion about that
8 yesterday. Basically, terms that people like me use to
9 describe the rate of water level declining; meaning, the slope
10 of water level surface.

11 So if we have high head on one side and a low head
12 on the other, then there's a potential for flow to take place
13 across the boundary. In groundwater terms in, for practical
14 purposes, all cases, the grading is pretty flat. The fact that
15 water is moving there -- it's a porous median. It's -- the sand
16 kind of slows it down, so not like a river. And so typically
17 we see gradients smoothed out when we run up against something
18 like this, a fault that will support hundreds of feet.

19 Q. We're talking earthquake fault; is that
20 correct?

21 A. That's correct. That will support hundreds of
22 feet of water level difference, and basically, when the earth
23 blocks movement --

24 Q. Some type of displacement lateral or vertical
25 here?

26 A. That's correct. And there's effects on the
27 earth that are such that now water can't readily move across
28 that boundary; otherwise, we wouldn't have 300 feet of

1 difference. So recognizing that -- as a first clue, that this
2 is a legitimate boundary, and then the reason I wanted to go
3 through the rest of those maps is that you can see mappings of
4 actual groundwater levels by other investigators in the past.
5 And interpreting those matchings of groundwater levels, one can
6 see that the flow on the north side of this boundary is
7 basically to the east, and the flow on the south side of the
8 boundary is basically to the east. It's not from north to
9 south. It's not going across this boundary.

10 Now, to stand here and say that there is
11 absolutely, positively zero flow? Probably not. There's
12 probably some seepage. It's hard to imagine an earth feature
13 that will spur water across it and not have leakage. Is there
14 a responsible flow, measurable flow? Probably not. Very, very
15 small.

16 So Bloyd described it, basically, being no flow
17 with the exception of a half mile gap by Rosamond. And all
18 subsequent investigations, including analysis of flow system,
19 have all acknowledged that these boundaries on the south and on
20 the north are basically no flow boundaries on the west too.

21 So continuing, the red line extends around these
22 contacts and along this fault system, and ultimately, along the
23 edge of the contact between, again, these consolidated water
24 bearing deposits and consolidated, in this case, Rosamond Hill
25 and (inaudible) Hill, depends on those redrock contacts, up to
26 this mile-wide gap that happens to be in the vicinity of
27 California City where there's some contact in a small amount of
28 flow a few acres a year that flows out of Antelope to Fremont

1 and continues around to, basically, redrock contacts or faults,
2 with redrock on the outside all the way down around the buttes,
3 et cetera, on the east side of the basin.

4 And then lastly, we could spend a lot of minutes
5 focusing on this southeast corner. He didn't close the map
6 until he described the end of the basin then with the hard
7 units. But basically, that's the answer you asked. What does
8 it show? There are a couple other features that are shown on
9 here.

10 As I said at the outset, in his original work Bloyd
11 really described at first a collection of groundwater subunits
12 or subbasins. In other words, he looked at features within the
13 overall basin that would tend to subdivide it into smaller
14 units. For whatever purpose there are features that would
15 impact the current movement of groundwater. So as I said, from
16 memory I think there were eight -- Perlous, North Meriac,
17 Lanbuttes, Pernlind or Parlind, Nonotch, Fingbutte, and West
18 Antelope (all phonetic spellings). I think that adds up to
19 eight.

20 So I've perpetuated the mapping of those subunits,
21 but subsequent investigators and, what I'd say, water level
22 data all suggest that subbasin boundaries might have an
23 influence on the movement of water. In other words, there
24 might be impedece to flow, but there is flow across them.
25 They do not stop to say that part of this basin should be
26 further divided to what might be called basins so boundaries
27 are perpetuated here.

28 There has been some subsequent work by

1 investigators at the U.S. Geological Survey about two or three
2 years later, '90s to the year 2000, that reports in very, very
3 brief text description of the fact that the historical
4 boundaries have been modified for their study purposes to
5 reflect the fact that subsequent subsurface -- surface and
6 subsurface investigation by others had shown that in the
7 subsurface, particularly up in the vicinity of Rogers dry lake
8 bed and up in the vicinity of the so-called North Meriac
9 subbasin, that exploration had shown to the extent that the
10 unconsolidated material wasn't as big as what had originally
11 been geologically mapped.

12 Those investigators, and that's Karlson and others,
13 showed smaller boundaries, and I reflected those. We still
14 left off the details of the far south eastern corner which I
15 can go into if you'd like. That's all on this map with more
16 addition. That's the purple line that extends, basically, from
17 northeast to southwest, which is the location of a so-called
18 geologic cross section.

19 I mentioned some time ago this morning that when
20 you look at the extent of groundwater basin, it has spacial
21 limits, and it has vertical limits. To illustrate the vertical
22 limits every investigator that's acknowledged this, starting
23 with Bloyd, has indicated that something in the subsurface
24 would ultimately run out of unconsolidated material and into
25 consolidated material. And when you do that, you've reached
26 the extent of the groundwater basin.

27 MR. ZIMMER: Objection as to what every other
28 investigator has done. Speculation.

1 THE COURT: I'll sustain that.

2 THE WITNESS: Let me rephrase it. The ones to
3 which I've referred to have acknowledged that vertical limit of
4 the groundwater basin, and in our report -- and I'm prepared to
5 show that section which is extracted from some of the USGS's
6 work -- this is the location of that section which would
7 illustrate the type of basin underground in that location. So
8 let's take a deep breath.

9 BY MR. DUNN:

10 Q. Just so we're all clear as to our
11 understanding, your opinion as to whether the basin boundary is
12 located is delineated by which line?

13 A. For purposes of this investigation, I would
14 pick Bloyd's line. And that's what I ultimately answered, I
15 think, when I was asked that in my last --

16 Q. And Bloyd's line is the red line?

17 A. Bloyd's line is the red line. In the strictest
18 sense, if we had what I'll call, detailed knowledge of what was
19 encountered in the subsurface, which is what Karlson and others
20 described the boundaries a couple years ago for their purposes,
21 then we would be able to, I'll call it, map the fact that
22 between this Karlson dash line and the Bloyd line, there truly
23 was unconsolidated water bearing material. It's discussed in
24 some brevity. I don't doubt it. I just don't know the
25 specifics to be able to do this.

26 So since Bloyd aligns with mapped geology on the
27 ground surface at the time, then I'd pick that extent of the
28 basin, the extent of water bearing materials that constitute a

1 significant groundwater supply.

2 Q. And I didn't ask you this question earlier, but
3 I'll ask it now to avoid further questions, perhaps. But Bloyd
4 and the other reports that you testified to this morning, I
5 guess, a little bit this afternoon, are these the type of
6 reports that are reasonably relied upon by experts in the field
7 of hydrology to make the determination of a basin boundary?

8 MR. ZIMMER: Speculation as to "basin boundary."
9 "Reasonably relied upon," I have no objection to that.

10 THE COURT: Overruled. You may answer.

11 THE WITNESS: Yes.

12 BY MR. DUNN:

13 Q. Now, there's all sorts of interesting activity
14 in that southeast --

15 THE COURT: We do have to take a lunch break. I'm
16 afraid if we start on that, it would be a while. We'll recess
17 and start up at 1:30.

18 You may step down.

19 MR. ZIMMER: First of all, housekeeping. We talked
20 about the scheduling for the rest of the week. I need to make
21 a determination to take stuff out of the hotel.

22 THE COURT: The only problem I heard is rebuttal.
23 He's not available on Monday. Does that mean he's leaving
24 Monday?

25 THE WITNESS: Yes. Next week is the last week of
26 summer for my family because of school. I'll be gone all next
27 week.

28 THE COURT: All right.

1 MR. ZIMMER: That leaves us the conclusion that
2 we'll be going Thursday and Friday.

3 THE COURT: We usually don't do too much on
4 Fridays, but we're going to have to go Thursday.

5 Why don't you print up Friday's calendar, and I can
6 see.

7 I usually schedule my short cause trials on Friday.
8 If I don't have too much, we can try to put this over to
9 Friday.

10 MR. JOYCE: We would appreciate whatever we can get
11 done this week.

12 THE COURT: We'll see if we can't do that.

13 MR. ZIMMER: One other thing, your Honor, I just
14 want to bring to the Court's attention in the hopes of trying
15 to move this matter along more quickly. We have kind of
16 allowed a long narrative and testimony, I did want to at least
17 get on the record the testimony that Mr. Scalmanini is giving
18 regarding differential head, head difference on one side of the
19 line versus the other is testimony that was not given at the
20 time of his deposition. At the time of his deposition he
21 testified there was flow across the boundary in various areas.
22 He had no idea what the flow was, how much, whether it was
23 substantial, unsubstantial, and that is new testimony.

24 I suspect that he might try and use that in
25 rebuttal, and that's why we did not make an objection at the
26 time. But I do want to put the Court -- I don't want to see
27 him argue now, and technically, it is beyond the scope of his
28 deposition.

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MR. DUNN: Mr. Scalmanini -- he disagrees with that. I think it's fairness. That's not an issue.

MR. JOYCE: Your Honor --

MR. DUNN: But to conclusively say it did or did not happen --

MR. JOYCE: We can go to lunch, and I'll take it up on cross.

THE COURT: Show me the parts of the deposition or show him.

MR. JOYCE: On cross I will show that.

THE COURT: That sounds like a quicker way to deal with it.

MR. ZIMMER: The quickest way for me to deal is not to object now, recognizing that could come up in rebuttal.

THE COURT: You can do that. Thank you.

MR. ABBOTT: I just want to confirm that we will not be in session in this trial tomorrow.

THE COURT: That's correct.

MR. ZIMMER: Thank you, your Honor.

(LUNCH BREAK WAS TAKEN AT THIS TIME.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

DATED: Riverside, California, August 28, 2002.



CHRISTINA M. ARAGON, CSR NO. 11982