

# EXHIBIT "F"

5-28-13 Trial Transcript

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

DEPARTMENT 322

HON. JACK KOMAR, JUDGE

COORDINATION PROCEEDING  
SPECIAL TITLE (RULE 1550(B)

) JUDICIAL COUNCIL  
) COORDINATION NO.  
) JCCP4408

ANTELOPE VALLEY GROUNDWATER CASES

) SANTA CLARA CASE NO.  
) 1-05-CV-049053

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PALMDALE WATER DISTRICT AND QUARTZ  
HILL WATER DISTRICT,

CROSS-COMPLAINANTS,

VS.

LOS ANGELES COUNTY WATERWORKS  
DISTRICT NO. 40, ET AL.,

CROSS-DEFENDANTS.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, MAY 28, 2013

APPEARANCES:

FOR LOS ANGELES  
COUNTY WATERWORKS  
DISTRICT 40:

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ET AL.:

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(APPEARANCES CONTINUED ON NEXT PAGE.)

FOR BOLTHOUSE

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**ALSO PRESENT: EDWIN OYARZO**

**SANDRA GECO, CSR NO. 3806**  
**OFFICIAL REPORTER**

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

**DEPARTMENT 322** **HON. JACK KOMAR, JUDGE**

**COORDINATION PROCEEDING** **) JUDICIAL COUNCIL**  
**SPECIAL TITLE (RULE 1550(B))** **) COORDINATION NO.**  
**) JCCP4408**  
**ANTELOPE VALLEY GROUNDWATER CASES** **)**  
**) SANTA CLARA CASE NO.**

PALMDALE WATER DISTRICT AND QUARTZ  
HILL WATER DISTRICT,

CROSS-COMPLAINANTS,

VS.

LOS ANGELES COUNTY WATERWORKS  
DISTRICT NO. 40, ET AL.,

CROSS-DEFENDANTS.

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA            )  
  ) SS  
COUNTY OF LOS ANGELES        )

I, SANDRA GECO, OFFICIAL REPORTER OF THE  
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY  
OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING  
PAGES, 1 THROUGH 63, INCLUSIVE, COMPRISE A FULL, TRUE AND  
CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE  
ABOVE-ENTITLED MATTER, REPORTED BY ME ON TUESDAY, MAY 28,  
2013.

DATED THIS 6TH DAY OF JULY, 2015.

\_\_\_\_\_, CSR NO. 3806  
OFFICIAL REPORTER

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1

- 1 CASE NUMBER: JCCP4408
- 2 CASE NAME: COORDINATION PROCEEDING SPECIAL
- 3 TITLE (RULE 1550(B))
- 4 ANTELOPE VALLEY GROUNDWATER CASES
- 5 LOS ANGELES, CA; TUESDAY, MAY 28, 2013
- 6 DEPARTMENT NO. 322 HON. JACK KOMAR, JUDGE
- 7 REPORTER: SANDRA GECO, CSR NO. 3806
- 8 TIME: 1:00 P.M.

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9 APPEARANCES: (AS NOTED ON TITLE PAGE.)

10

11 (THE FOLLOWING PROCEEDINGS WERE HELD  
12 IN OPEN COURT:)

13

14 THE COURT: GOOD AFTERNOON. THIS IS IN THE  
15 ANTELOPE VALLEY SERIES OF CASES, COORDINATED CASES.

16 THIS IS THE TIME SET FOR THE PHASE FOUR OF  
17 TRIAL.

18 WE'RE GOING TO BE DEALING WITH THE ISSUES  
19 OF CURRENT AND RECENT PUMPING AND WATER PRODUCTION.

20 THERE HAVE BEEN A LOT OF PAPERS FILED.  
21 MOST OF THEM HAVE BEEN POSTED.

22 I HAVE NOT SEEN THEM. NOR DO I HAVE COPIES  
23 OF THEM.

24 IT'S MY UNDERSTANDING THAT THERE HAVE BEEN  
25 A NUMBER OF STIPULATIONS AND AGREEMENTS THAT HAVE BEEN  
26 ENTERED INTO. I SUPPOSE THAT'S ONE OF THE PLACES WE  
27 OUGHT TO FIRST START.

28 I UNDERSTAND THERE WAS ALSO A REQUEST FOR

♀

2

1 AN EX PARTE HEARING THAT WAS NOTICED.

2 WHO FILED THAT, MR. DUNN?

3 MR. DUNN: JEFFREY DUNN FOR WATERWORKS DISTRICT  
4 NO. 40.

5 THE COURT: AS WE START, LET ME REMIND EVERYBODY  
6 WHEN YOU SPEAK, PLEASE, COUNSEL, MAKE SURE THAT YOU  
7 IDENTIFY YOURSELF AND YOUR CLIENT FOR THE BENEFIT OF THE  
8 COURT REPORTER AND THE RECORD.

9 THE COURT REPORTER, BECAUSE WE DON'T HAVE A  
10 MICROPHONE, WOULD LIKE YOU TO STAND IN FRONT OF THE

11 TABLE, IF YOU WOULD.

12 MR. DUNN: IN FRONT OF THIS TABLE?

13 THE COURT: YES. IN THE WELL OF THE COURT SO TO  
14 SPEAK.

15 MR. DUNN: YES.

16 THE COURT: ALL RIGHT.

17 MR. DUNN: YES, YOUR HONOR.

18 THE COURT: SO TELL ME ABOUT YOUR MOTION.

19 MR. DUNN: IT RELATES TO A SUBPOENA FOR ATTENDANCE  
20 AT TRIAL OF A WITNESS.

21 IF I MAY SUGGEST TO THE COURT, IT MAY BE  
22 BETTER TO TAKE THAT UP AFTER THIS AFTERNOON'S  
23 PROCEEDINGS. SOME OF IT MAY HAVE WORKED ITSELF OUT. WE  
24 PROBABLY WILL HAVE A BETTER UNDERSTANDING OF THAT AFTER  
25 WE DO THAT.

26 THE COURT: ALL RIGHT. I PRESUME THAT YOU HAVE A  
27 COPY OF THE PAPERS FOR ME?

28 MR. DUNN: I HAVE A COPY THAT I CAN GIVE TO THE

1 COURT, YES.

2 THE COURT: AT THE APPROPRIATE TIME.

3 MR. DUNN: YES.

4 THE COURT: OKAY. THANK YOU.

5 ALL RIGHT. SO LET ME GO BACK TO THE REAL  
6 QUESTION THAT I ASKED, AND THAT, IS CONCERNING THE NUMBER  
7 OF PARTIES WHO HAVE STIPULATED, AND THE OPPOSITE, THOSE  
8 WHO HAVE NOT STIPULATED, SO THAT WE'RE GOING TO HAVE A  
9 PRESENTATION OF EVIDENCE.

10 I THINK THAT THE FIRST THING WE SHOULD DO  
11 IS GO THROUGH THE MATRIX THAT HAS BEEN PREPARED AND SEE  
12 WHERE WE STAND.

13 NOW, I HAVE ONE THAT WAS FILED ON THE 23RD

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14 OF MAY. I BELIEVE THERE HAS BEEN ADDITIONS TO THAT SINCE  
15 THAT TIME; IS THAT CORRECT?

16 MR. DUNN: YES, YOUR HONOR.

17 THE COURT: YOU WANT TO TELL ME ABOUT THEM?

18 MR. DUNN: OKAY. SO THAT I DON'T HAVE MY BACK TO  
19 COUNSEL, MAYBE I COULD STAND OFF CENTER.

20 I HAVE WITH ME A STIPULATION THAT WAS  
21 UPDATED AS OF FRIDAY. SINCE THEN, THERE HAVE BEEN MORE  
22 STIPULATIONS AND AGREEMENTS.

23 I'M NOT SURE HOW THE COURT WOULD LIKE TO  
24 PROCEED.

25 I CAN STATE GENERALLY AS --

26 THE COURT: WHAT I'M REALLY INTERESTED IN, HAS  
27 ANYBODY BEEN TOTALLY AGREED TO? HAS THE AMOUNT OF  
28 PUMPING OF ANY PARTY BEEN AGREED TO BY EVERYBODY THAT IS

4

1 INVOLVED IN THIS LITIGATION SUCH THAT WE DO NOT HAVE TO  
2 HAVE PROOF BEYOND DECLARATIONS?

3 MR. DUNN: LET ME START WITH THE PUBLIC WATER  
4 SUPPLIERS FIRST.

5 THE COURT: ALL RIGHT.

6 MR. DUNN: AND MY CLIENT FIRST, DISTRICT 40.

7 I BELIEVE WE HAVE STIPULATIONS IN PLACE,  
8 AND OTHER AGREEMENTS AND STIPULATIONS YET TO FILE, WITH  
9 ALL PARTIES IN THE CASE EXCEPT FOR POTENTIALLY TWO.

10 THAT WOULD BE POTENTIALLY MR. ZIMMER'S  
11 CLIENTS. AND POTENTIALLY THE WOOD CLASS.

12 AND I MENTIONED THE WOOD CLASS NOW BECAUSE  
13 I'M NOT SURE THERE ARE ANY -- OH, THERE'S  
14 MR. MC LACHLAN. I'M NOT SURE WHAT AGREEMENTS ARE IN  
15 PLACE FOR THE WOOD CLASS GENERALLY.



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AND THEN MY SITUATION, DISTRICT 40, IS

16  
17 PRETTY MUCH THE SAME SITUATION FOR ALL THE PUBLIC WATER  
18 SUPPLIERS WITH SOME MINOR EXCEPTIONS.

19 THE COURT: ALL RIGHT. LET ME MAKE SURE I  
20 UNDERSTAND --

21 MR. DUNN: I'M SORRY. ONE OTHER, GRANITE  
22 CONSTRUCTION, IS ALSO NOT YET AGREED UPON.

23 THE COURT: ALL RIGHT. LET ME MAKE SURE I  
24 UNDERSTAND WHAT YOU'RE TELLING ME.

25 YOU HAVE PROPOSED YOUR PUMPING, AS WELL AS  
26 ALL OF THE OTHER WATER PRODUCERS -- PUBLIC WATER  
27 PRODUCERS HAVE DONE THE SAME. AND THOSE NUMBERS HAVE  
28 BEEN AGREED TO BY VIRTUALLY EVERYBODY EXCEPT MR. ZIMMER'S

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1 CLIENTS. AND I THINK THAT'S BOLTHOUSE. AND GRANITE  
2 CONSTRUCTION. AND THE WOOD'S CLASS?

3 MR. DUNN: YES. AND POTENTIALLY, I WOULD SAY, TO  
4 THOSE THREE BECAUSE I DON'T KNOW IF WE HAVE A DEFINITIVE  
5 ANSWER YET BACK FROM THEM.

6 THE COURT: OKAY. BUT YOUR NUMBERS ARE OUT THERE.

7 MR. DUNN: CORRECT.

8 THE COURT: OKAY.

9 MR. BUNN: YOUR HONOR, THOMAS BUNN FOR PALMDALE  
10 WATER DISTRICT.

11 THAT'S TRUE. BUT IN ADDITION, THE WATER  
12 SUPPLIERS HAVE STIPULATED TO THE OTHER PARTIES' NUMBERS.

13 SO ALL THE PARTIES EXCEPT THOSE THREE THAT  
14 MR. DUNN MENTIONED, WE HAVE ACCEPTED THEIR NUMBERS AND  
15 THEY HAVE ACCEPTED OURS.

16 THE COURT: OKAY.

17 MR. JOYCE: YOUR HONOR, BOB JOYCE ON BEHALF OF  
18 DIAMOND FARMING COMPANY, ET AL.

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19 IT IS MY UNDERSTANDING THAT AFTER HAVING  
20 CONVERSATIONS WITH THE PUBLIC WATER SUPPLIERS ON FRIDAY,  
21 THAT WE HAVE RESOLVED THE ONE ISSUE THAT AFFECTED THEIR  
22 WILLINGNESS TO ACCEPT MR. CARL VOSS' METERED RECORDED --  
23 REPORTED PUMPING FOR 2011, 2012.

24 THAT ISSUE IS SIMPLY THIS. I DON'T KNOW IF  
25 IT MAKES A DIFFERENCE IN THIS PHASE.

26 WITH RESPECT TO THE TWO RANCHES WE OWN, ONE  
27 OF THEM IS GENERICALLY REFERRED TO AS THE KOTCHIAN RANCH.  
28 IT'S SITUATED IN THE CENTRAL PART OF THE VALLEY.

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1 CONTIGUOUS TO IT IS A 40-ACRE PARCEL WHICH  
2 IS LEASED BY MY CLIENT FROM A WILLIS CLASS MEMBER. AND  
3 THAT ACREAGE IS FARMED AS A SINGLE UNIT WITH ACRES THAT  
4 WE OWN IN FEE. AND ALL THE WATER USED TO FARM THE  
5 ENTIRETY OF THE OPERATION IS GENERATED FROM WELLS ON OUR  
6 PROPERTY.

7 SO IT DOESN'T AFFECT THE NUMBER OF ACRES --  
8 THE COURT: ONE OF THE PROBLEMS THAT I'M SEEING  
9 HERE IS THAT NOBODY ELSE COULD HEAR YOU.

10 AND I THINK THAT WHAT WE'RE GOING TO HAVE  
11 TO DO IS MOVE YOU OVER HERE NEXT TO MR. DUNN. AND ASK  
12 YOU TO REALLY KEEP YOUR VOICE UP SO THAT OTHER COUNSEL  
13 CAN HEAR YOU.

14 MR. JOYCE: AND I WILL ENDEAVOR TO DO THAT.

15 IT IS MY UNDERSTANDING -- AND I HAVE  
16 MR. VOSS' ORIGINAL DECLARATION TO BE SUBMITTED IN LIEU OF  
17 TESTIMONY WITH ME -- THAT WITH THAT ACKNOWLEDGEMENT AS TO  
18 THE EXISTENCE OF THAT CONTIGUOUS ACREAGE THAT IS LEASED,  
19 AND TO WHICH WATER WE PUMP FROM OUR WELLS AND OUR  
20 PROPERTY IS USED TO IRRIGATE THE CROPS AS PART OF THE

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21 OVERALL OPERATION, THAT WITH THAT NOTED FACTUAL REALITY,  
22 THAT THEY WILL ACCEPT THE NUMBERS OTHERWISE.

23 THE COURT: AND THIS IS ON BEHALF OF YOUR CLIENT?

24 MR. JOYCE: DIAMOND FARMING COMPANY.

25 THE COURT: DIAMOND FARMING.

26 MR. JOYCE: DIAMOND FARMING, CRYSTAL ORGANIC,  
27 LAPIS AND GRIMMWAY.

28 TWO OF THOSE HAVE PROPERTY THAT IS NOT

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1 FARMED. THERE IS NO WATER PUMPED FROM IT.

2 ONLY TWO OF THEM ARE ACTIVELY FARMING WITH  
3 WELLS THAT PUMP WATER. THAT WOULD BE CRYSTAL ORGANIC AND  
4 DIAMOND FARMING.

5 YOUR HONOR, IF I COULD, I CAN GIVE THE  
6 COURT THE DECLARATION. I'LL MARK IT AS THE FIRST EXHIBIT  
7 IN ORDER AND SUBMIT TO THE CLERK.

8 THE COURT: LET'S SEE IF WE HAVE AGREEMENT FIRST  
9 BEFORE WE DO ANYTHING.

10 MR. JOYCE: CERTAINLY. I HAVE MULTIPLE COPIES.  
11 IF ANYBODY WANTS ONE, SPEAK UP AND I'LL GIVE IT TO YOU  
12 NOW.

13 THE COURT: OKAY.

14 MR. JOYCE: I THINK, YOUR HONOR, THERE IS NO  
15 OBJECTION TO THAT EVIDENCE AT THIS POINT BY ANYBODY. BUT  
16 WHO KNOWS, I COULD BE WRONG.

17 THE COURT: ALL RIGHT.

18 MR. LEMIEUX: KEITH LEMIEUX.

19 AND WHAT MR. JOYCE IS SAYING IS CORRECT,  
20 BUT I JUST WANT TO MAKE IT CLEAR THAT WHEN WE'RE TRYING  
21 TO IDENTIFY NUMBERS FOR PARTIES, WE WERE LOOKING AT IT  
22 FROM THE PROSPECTIVE OF WATER THAT'S USED ON PROPERTY  
23 OWNED BY THE PARTY.

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24 MR. JOYCE HAS INDICATED THAT SOME OF THE  
25 WATER IS USED ON PROPERTY THAT HIS CLIENT DOESN'T OWN.  
26 AND IN STIPULATION, WE'VE AGREED TO THOSE FACTS. WE JUST  
27 DON'T KNOW WHAT THE LEGAL EFFECT OF THOSE FACTS ARE FOR  
28 PURPOSES OF YOUR ACCOUNTING.

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1 THE COURT: YOU'RE TALKING ABOUT LEASED PROPERTY  
2 THAT MAY OR MAY NOT BE ADJACENT?

3 MR. JOYCE: IT IS, YOUR HONOR. IT'S EXACTLY  
4 CONTIGUOUS.

5 MR. LEMIEUX: IT'S JUST THAT THEY DON'T OWN IT.  
6 SO FROM SORT OF AN ACCOUNTING STANDPOINT FOR FIGURING OUT  
7 THE TOTAL PUMPING, WE WANT TO MAKE SURE THAT THAT WATER  
8 IS NOT SOMEHOW DOUBLE COUNTED BY THE OWNER OF THE  
9 PROPERTY.

10 OTHER THAN THAT, WE'RE FINE.

11 THE COURT: YOU'RE FINE WITH WHAT?

12 MR. LEMIEUX: WITH THE NUMBERS.

13 THE COURT: WITH MR. JOYCE'S NUMBERS.

14 MR. LEMIEUX: CORRECT.

15 THE COURT: OKAY. GO HEAD, MR. DUNN.

16 MR. DUNN: AGAIN, I SAY POTENTIALLY. SO WE HAVE A  
17 DECLARATION TO SUBMIT NOW AT TRIAL FOR WATERWORKS  
18 DISTRICT 40, AS I ASSUME ALL PARTIES HAVE THEIR  
19 RESPECTIVE DECLARATIONS.

20 WE HAVE WORKED OUT THE DEAL, FOR EXAMPLE,  
21 WITH MR. JOYCE'S CLIENTS THAT HE'S DESCRIBED.

22 WE HAVE SIMILAR AGREEMENTS AND/OR  
23 STIPULATIONS IN PLACE, I BELIEVE, WITH EVERYBODY EXCEPT  
24 FOR POTENTIALLY MR. ZIMMER'S CLIENTS. AND ONE OF  
25 MR. KUHS' CLIENTS, GRANITE CONSTRUCTION.

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26 AND WE ARE WORKING OUT FINAL DETAILS ON  
27 ANOTHER MUTUAL WATER COMPANY, WHICH I BELIEVE WE'LL HAVE.  
28 AND DID I MISS SOMEONE?

9

1 BUT WE HAVE -- I'M SORRY. WE HAVEN'T SEEN  
2 ANYTHING YET FROM THE WOOD CLASS TO EVALUATE IT EITHER  
3 WAY.

4 BUT WE DID WORK OUT AN AGREEMENT WITH THE  
5 AGWA GROUP OVER THE WEEKEND. THAT WAS A SIZABLE GROUP.  
6 AND WITH THE COOPERATION OF COUNSEL, WE WERE ABLE TO  
7 ACCOMPLISH THAT TASK OVER THE WEEKEND, WHICH HAS REALLY  
8 LEFT, FROM OUR PERSPECTIVE, ONLY MAYBE TWO OR THREE  
9 PARTIES LEFT TO SEE IF WE AGREE TO IT.

10 AND BECAUSE OUR DECLARATIONS STATES THAT  
11 OUR PRODUCTION IS METERED, AND IT'S REPORTED, IT'S A  
12 LITTLE HARD TO --

13 THE COURT: LET ME ASK YOU THIS. I WANT TO MAKE  
14 SURE I UNDERSTAND.

15 YOU HAVE AGREED TO ALL OF THE PUMPING  
16 FIGURES WITH ALL THE OTHER PARTIES --

17 MR. DUNN: YES.

18 THE COURT: -- EXCEPT MR. ZIMMER?

19 MR. DUNN: I DON'T --

20 THE COURT: GRANITE CONSTRUCTION?

21 MR. DUNN: WE WOULD BE WILLING TO WORK OUT A  
22 MUTUAL AGREEMENT, THEIR NUMBERS AS TO OURS. I THINK WE  
23 COULD GET THIS RESOLVED.

24 I DON'T KNOW IF THEY HAVE ANY -- THEIR  
25 PRODUCTION IS METERED IN A CERTAIN WAY. OURS IS METERED  
26 IN A WAY BY PUBLIC WATER SYSTEMS.

27 SO IT'S A LITTLE -- CANDIDLY, IT'S A LITTLE  
28 HARD TO, I THINK, DISPUTE EITHER SET OF NUMBERS.

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1 THE COURT: WELL, YOU'RE TALKING ABOUT A  
2 RECIPROCAL AGREEMENT HERE.  
3 MR. DUNN: THAT'S CORRECT.  
4 THE COURT: IN TERMS OF WHAT THE EVIDENCE WOULD  
5 PRESENT OR SHOW.  
6 MR. DUNN: YES.  
7 THE COURT: MR. KUHS, YOU REPRESENT GRANITE  
8 CONSTRUCTION; IS THAT RIGHT?  
9 MR. KUHS: THAT'S CORRECT, YOUR HONOR.  
10 THE COURT: WHAT IS YOUR POSITION WITH REGARD TO  
11 THE OTHER WATER PRODUCERS?  
12 MR. KUHS: WE'RE TRYING TO GET SOME ADDITIONAL  
13 INFORMATION TO MR. BUNN. GRANITE'S OPERATIONS,  
14 UNFORTUNATELY, OUR PUMPS ARE NOT METERED.  
15 THEY ARE NOT RUN BY DIESEL. THEY ARE NOT  
16 CONNECTED TO A SEPARATE POWER METER. AND SO WE HAVE NO  
17 WAY TO BACK IN TO PRODUCTION THROUGH THAT METHOD.  
18 SO ONE OF OUR REGIONAL MANAGERS, WHO'S ALSO  
19 A CIVIL ENGINEER, CAME UP WITH AN ANALYSIS INVOLVING  
20 WATER LOST THROUGH THE PRODUCTION PROCESS, EVAPORATION  
21 FROM OUR PUMP, SEEPAGE CALCULATIONS.  
22 AND I'VE SHARED THAT WITH MR. BUNN AND --  
23 THE COURT: IS THIS AT A QUARRY?  
24 MR. KUHS: YES. AND OUR NUMBERS THAT WE PROPOSED  
25 ARE IN LINE WITH THE OTHER QUARRY OPERATORS.  
26 BUT I THINK FROM MR. BUNN'S STANDPOINT, HE  
27 WANTS SOME MORE CORROBORATION. SO WE'RE WORKING AS FAST  
28 AS WE CAN TO GET HIM THAT INFORMATION.

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1 THE COURT: HAVE YOU GIVEN ANY THOUGHT TO THE

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2 FUTURE IN TERMS OF BEING ABLE TO PROVE BY METERING?

3 MR. KUHS: YES. THAT WAS THE CONVERSATION, QUITE  
4 FRANKLY, I HAD WITH THE CLIENTS LAST WEEK, WAS GIVEN  
5 WHERE THIS WAS HEADED, IT'S HIGH TIME TO PUT SOME METERS  
6 ON THE PUMPS AND FIND SOME ACCURATE NUMBERS.

7 AND THAT MAY BE WHERE THIS ENDS UP SO THAT  
8 NOT JUST OUR CLIENTS, BUT EVERYBODY ELSE INVOLVED IN THE  
9 CASE HAS A HIGH DEGREE OF CONFIDENCE IN THE AMOUNT OF  
10 WATER THAT WE USED.

11 THE COURT: OKAY. ALL RIGHT.

12 AND THEN MR. ZIMMER ON BEHALF OF BOLTHOUSE.

13 MR. ZIMMER: GOOD MORNING YOUR HONOR.

14 THE COURT: GOOD AFTERNOON.

15 MR. ZIMMER: GOOD AFTERNOON.

16 QUITE FRANKLY, I HAVEN'T HAD A CHANCE TO  
17 TALK TO MR. DUNN ABOUT THIS. I'VE BEEN, OVER A PERIOD OF  
18 SEVERAL WEEKS, TRYING TO GET SOME KIND OF RESPONSE FROM  
19 THE COUNTY AS TO THE PROBLEMS WITH OUR NUMBERS.

20 I TALKED TO MR. WEEKS ABOUT IT AT LENGTH.  
21 AND HE INDICATED THERE WAS SIGNIFICANT PROBLEMS WITH THE  
22 NUMBERS.

23 SO WE WENT BACK AND LOOKED AT THE OTHER  
24 DECLARATIONS THAT WERE BEING FILED. LOOKED AT THE CROP  
25 DUTY. TOOK THE CROP DUTY FROM THE SUMMARY EXPERT REPORT,  
26 WHICH WE ASSUMED THAT THE COUNTY WOULD NOT DISAGREE WITH;  
27 APPLIED THE CROP DUTY, AND WE HAD NUMBERS FOR '11 AND  
28 '12.

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12

1 BUT MR. WEEKS CAME TO ME THIS MORNING AND  
2 SAID, "WE CAN NOW STIPULATE." SO WE HAVEN'T HAD A CHANCE  
3 TO TALK --

4 THE COURT: SAID WHAT?

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5 MR. ZIMMER: MR. WEEKS APPROACHED ME THIS MORNING  
6 AND SAID, "WE CAN NOW STIPULATE." BUT WE HAVEN'T HAD A  
7 CHANCE TO TALK ABOUT IT. SO IT WOULD BE HELPFUL TO HAVE  
8 SOME --

9 THE COURT: IT GOES BOTH WAYS. DO YOU HAVE ANY  
10 ISSUE CONCERNING THE PUBLIC WATER PRODUCERS' NUMBERS?

11 MR. ZIMMER: I DON'T THINK SO, IF THEY DON'T HAVE  
12 A PROBLEM WITH OURS. I WOULD LIKE TO TALK TO MR. DUNN  
13 ABOUT IT.

14 THE COURT: OKAY.

15 MR. WEEKS: YOUR HONOR, BRAD WEEKS.

16 I DID TAKE THE DEPOSITIONS OF BOLTHOUSE  
17 WITNESSES.

18 AND I WOULD STIPULATE -- SPEAKING FOR  
19 MYSELF, I WOULD STIPULATE TO THE NUMBERS THEY TESTIFIED  
20 TO IN THEIR DEPOSITION.

21 THE COURT: OKAY. ALL RIGHT.

22 MR. MC LACHLAN.

23 MR. MC LACHLAN: MICHAEL MC LACHLAN. GOOD  
24 AFTERNOON, YOUR HONOR.

25 THE COURT: GOOD AFTERNOON. CAN YOU TELL US WHERE  
26 YOU STAND ON THIS MATTER?

27 MR. MC LACHLAN: WELL, I HAVE -- I THINK I'VE BEEN  
28 APPROACHED BY THREE PARTIES FOR STIPULATIONS. AND WE'VE

13

1 AGREED TO ALL THREE OF THOSE.

2 THAT WOULD BE MR. BUNN'S CLIENT, PHELAN  
3 PINON HILLS.

4 AND THE OTHER ONE IS ESCAPING ME RIGHT NOW.

5 I HAVEN'T BEEN APPROACHED BY MR. DUNN OR  
6 ANY OTHER WATER SUPPLIERS.



7 THE COURT: YOU'RE TALKING FROM THE WATER  
8 PRODUCERS' STANDPOINT?

9 MR. MC LACHLAN: RIGHT. OR ANYBODY ELSE.

10 THE COURT: OKAY.

11 MR. MC LACHLAN: IN TERMS OF STIPULATIONS.

12 I WILL SAY THAT IN TERMS OF DEALS THAT HAVE  
13 BEEN REACHED RECENTLY, OVER THE WEEKEND, AND SO FORTH, I  
14 WOULDN'T BE IN A POSITION TO STIPULATE TO ANY SORT OF  
15 DEAL I HAVEN'T BEEN ABLE TO REVIEW, TERMS OF WHICH I  
16 WOULD NEED TO REVIEW SOMETHING.

17 LET'S SAY THE AGWA STIPULATION, FOR  
18 EXAMPLE, THAT WAS ENTERED INTO OVER THE WEEKEND, I NEED  
19 TO HAVE THAT REVIEWED.

20 AS I INDICATED LAST WEEK, I WOULD STIPULATE  
21 TO WATERWORKS, HAVING TAKEN THOSE DEPOSITIONS.

22 THE COURT: OKAY. AND WHAT ABOUT YOUR PUMPING?

23 MR. MC LACHLAN: WELL --

24 THE COURT: HAVE YOU PROPOSED A STIPULATION TO ANY  
25 OF THE OTHER PARTIES REGARDING YOUR PUMPING?

26 MR. MC LACHLAN: WELL, I HAVE IN A SENSE.

27 WHAT WE ENDED UP DOING IS WE ENDED UP  
28 SETTLING AND ADOPTING ON -- AND THIS IS NOT DIVULGING ANY

14

1 NEGOTIATION. FOR NEGOTIATION PURPOSES, WE ENDED UP  
2 SETTLING UPON THE NUMBERS THAT WERE CONTAINED IN THE  
3 PUBLIC WATER SUPPLIERS' VOLUMINOUS REPORT THE LAST PHASE  
4 OF TRIAL, WHICH WAS 1.3 ACRE FOOT PER HOUSEHOLD. AND WE  
5 TWEAKED THAT AND MODIFIED IT A LITTLE BIT, BUT THAT'S THE  
6 BASE NUMBER.

7 I'VE WORKED TIRELESSLY TO TRY TO RESOLVE  
8 THE CASE AND GET AGREEMENT ON THAT AND, UNFORTUNATELY,  
9 CANNOT GET ANY TRACTION. THAT'S WHY I FILED THAT SECOND

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10 CLASS ACTION SUIT AGAINST THE LANDOWNERS, WITH THE HOPE  
11 OF PROMPTING THEM TO MOVE FORWARD.

12 I DON'T KNOW OF ANYONE -- I'VE SPOKEN TO  
13 MOST ALL OF THE LARGE PLAYERS. AND I MEAN ESSENTIALLY  
14 ALL OF THEM. AND I DON'T KNOW OF NO ONE THAT OBJECTS TO  
15 OUR CURRENT DEMAND AT ALL.

16 I HAVEN'T HEARD ANY OBJECTION IN THE LAST  
17 YEAR PLUS.

18 THE COURT: WHEN YOU SAY "DEMAND," YOU MEAN YOUR  
19 STATEMENT AS --

20 MR. MC LACHLAN: OUR POSITION.

21 THE COURT: -- AS TO PUMPING.

22 MR. MC LACHLAN: RIGHT. OUR POSITION.

23 THE COURT: CLASS PUMPING.

24 MR. MC LACHLAN: RIGHT. AND SO ALL I REALLY KNOW  
25 TO DO IS TO COME HERE, SHOW UP, AND WE'LL HAVE TO WAIT  
26 FOR SOME -- I DON'T KNOW HOW LONG IT'S GOING TO BE BEFORE  
27 THE COURT-APPOINTED EXPERT HAS COMPLETED HIS WORK ON THIS  
28 ISSUE.

15

1 BUT EVENTUALLY THAT WILL BE DONE. AND THEN  
2 THERE WILL BE ANOTHER ANALYSIS IN ADDITION TO THE WORK  
3 THAT WAS DONE BY THE WATER SUPPLIERS A COUPLE YEARS AGO.

4 BUT --

5 THE COURT: WELL, BASED ON WHAT YOU KNOW SO FAR IN  
6 TERMS OF WORKING WITH YOUR EXPERT, IS THERE SOME  
7 CORRELATION BETWEEN THE TESTIMONY WE HEARD IN PHASE THREE  
8 AND HIS OPINION?

9 MR. MC LACHLAN: WELL, NOT TO QUIBBLE WITH YOUR  
10 HONOR, BUT HE'S YOUR EXPERT, NOT MINE.

11 THE COURT: YOU'RE RIGHT.

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12

MR. MC LACHLAN: AND --

13

THE COURT: I'M GLAD TO HEAR YOU SAY THAT BY THE

14 WAY.

15

MR. MC LACHLAN: I DON'T WANT TO GET IN TROUBLE

16 LATER.

17

AND I DON'T KNOW THE ANSWER TO THE QUESTION

18

BECAUSE THAT OPINION HASN'T BEEN FINISHED YET. IT'S

19

STILL IN PROGRESS.

20

IN THE LAST PHASE OF TRIAL, THERE WASN'T

21

REALLY AN OPINION GIVEN ON THAT TOPIC. THERE WAS SOME

22

BACK-OF-THE-ENVELOPE ESTIMATES DONE BY MR. SCALMANINI'S

23

FIRM JUST IN A REALLY ROUGH GLOBAL SENSE.

24

THE COURT: IT WAS, YES.

25

MR. MC LACHLAN: SO I DON'T KNOW THE ANSWER TO

26 THAT.

27

ALL I KNOW IS THAT NOT A SINGLE PERSON --

28

AND I'VE PUBLISHED THESE NUMBERS AND DISCUSSED THEM WITH

16

1

ESSENTIALLY EVERYONE IN THIS ROOM. NO ONE HAS RAISED

2

THEIR HANDS AND SAY, "HEY, WE HAVE A PROBLEM WITH THAT."

3

NOT A SINGLE PARTY.

4

SO THAT'S ALL I KNOW.

5

THE COURT: HAVE YOU PLACED THAT IN THE FORM OF A

6

PROPOSED STIPULATION FOR PEOPLE TO AGREE TO OR DISAGREE

7

WITH?

8

MR. MC LACHLAN: NOT IN TERMS OF WHAT SOME COUNSEL

9

HOLD IN THEIR HANDS. BUT I COULD DO THAT, I GUESS, AND

10

SEE WHAT HAPPENS.

11

THE COURT: IT MIGHT BE A GOOD START TO SEE IF

12

ANYBODY WANTS TO SALUTE IT.

13

MR. MC LACHLAN: I COULD DO THAT BY TOMORROW

14

MORNING, I GUESS.

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15 THE COURT: ALL RIGHT. OKAY.

16 YES.

17 MR. HERREMA: YOUR HONOR, BRAD HERREMA ON BEHALF  
18 OF THE ANTELOPE VALLEY GROUNDWATER AGREEMENT ASSOCIATION.

19 JUST RESPONDING TO ONE STATEMENT THAT

20 MR. MC LACHLAN MADE AND TIE IT INTO SOMETHING THAT

21 MR. DUNN SAID.

22 WE DID REACH STIPULATIONS AS TO ALL OF OUR  
23 NUMBERS WITH THE PUBLIC WATER SUPPLIERS WHEN WE WRAPPED  
24 THAT UP YESTERDAY.

25 THE COURT: TWO-WAY STIPULATION.

26 MR. HERREMA: YES. THE ONE THING I WANTED TO  
27 POINT OUT IS WE'VE ONLY STIPULATED AMONG OUR CLIENTS AND  
28 THE PUBLIC WATER SUPPLIERS. BECAUSE THE PUBLIC WATER

17

1 SUPPLIERS ARE THE ONLY FOLKS WHO OBJECTED TO THE  
2 DECLARATIONS THAT WE FILED.

3 SO WHEN MR. MC LACHLAN SAID HE HASN'T HAD A  
4 CHANCE TO REVIEW THAT STIPULATION, IT'S NOT PROPOSED TO  
5 BE A STIPULATION AMONGST ALL OF THE PARTIES, BUT JUST  
6 AMONG THE PARTIES TO WHOM WE HAD OBJECTED AND WHO HAD  
7 OBJECTED TO OUR PARTIES.

8 THE COURT: OKAY.

9 MR. JOYCE: YOUR HONOR, I SHOULD ADVISE THE COURT  
10 THAT I AM IN THE SAME POSITION MR. MC LACHLAN IS IN. I  
11 MYSELF WOULD NOT AGREE TO ANY AGREEMENT THAT I HAVE NOT  
12 SEEN OR REVIEWED.

13 THE COURT: I CAN'T HEAR YOU.

14 MR. JOYCE: I CANNOT AGREE TO ANY AGREEMENT  
15 BETWEEN ANYBODY THAT I MYSELF HAVE NOT SEEN AND HAD THE  
16 ABILITY TO EVALUATE.

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17 MR. HERREMA: AS I SAID, THE STIPULATIONS ARE ONLY  
18 AMONG THE PARTIES WITH WHOM WE HAD RECOGNIZED ANY  
19 DISAGREEMENT. AND THEY HAVE ALL BEEN POSTED TO THE  
20 COURT'S WEB SITE AT THIS POINT.

21 THE COURT: WHAT WE ARE TRYING TO DO IS TO  
22 DETERMINE WHAT CLAIMS OF CURRENT PUMPING ARE DISPUTED SO  
23 THAT WE CAN HAVE A PRODUCTION OF EVIDENCE SO THE COURT  
24 CAN MAKE AN ADJUDICATION AS TO THE VALIDITY OF THE  
25 CLAIMS.

26 MR. HERREMA: AND IN MY OPINION, YOUR HONOR, THERE  
27 SHOULD BE NO DISPUTE BECAUSE NO OTHER PARTY, OTHER THAN  
28 THE PUBLIC WATER SUPPLIERS, TIMELY OBJECTED TO OUR

18

♀  
1 DECLARATIONS. AND WE'VE NOW RESOLVED ANY DISPUTES IN  
2 THAT REGARD.

3 THE COURT: I WAS HOPING YOU WOULD SAY THAT.

4 MR. HERREMA: THANK YOU.

5 THE COURT: OKAY. MR. LEININGER.

6 MR. LEININGER: THANK YOU, YOUR HONOR. LEE  
7 LEININGER FOR THE UNITED STATES.

8 I BELIEVE MY COLLEAGUE, DURING THE LAST  
9 SESSION, JIM DUBOIS, HAD OFFERED TO MAKE A COMPILATION OF  
10 THE VARIOUS STIPULATIONS THAT HAVE BEEN POSTED TO DATE  
11 WITH THE STIPULATED NUMBERS FOR 2011, 2012.

12 AND HE'S WORKED DILIGENTLY VERY HARD OVER  
13 THE LAST WEEK OR SO TO ACTUALLY CONSTRUCT SUCH A  
14 STIPULATION.

15 THE STIPULATION HAS NOW BEEN CIRCULATED  
16 AMONG THE PARTIES INFORMALLY. HASN'T BEEN POSTED ON  
17 LINE, BUT CIRCULATED INFORMALLY.

18 AND IT'S A VERY SIMPLE TABULATION OF WHAT  
19 WE BELIEVE ARE -- IT'S THE TABULATIONS OF 49 PARTIES --

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20 OF WHAT WE BELIEVE IS THE STIPULATED PUMPING FIGURES FOR  
21 2011, 2012; AND INCLUDES A NUMBER OF SIGNATURE PAGES,  
22 SIGNATURE SHEETS.

23 WHEN I ARRIVED HERE TODAY, A NUMBER OF THE  
24 PARTIES HAVE ALREADY PRINTED THIS OUT AND SIGNED THE  
25 STIPULATION.

26 AT LEAST TO THE EXTENT THAT YOU'RE  
27 ATTEMPTING TO IDENTIFY WHAT IS STILL AT ISSUE, WE'RE  
28 HOPING THAT THIS WILL SIMPLIFY EXACTLY WHAT EVERYONE --

19

1 OR AT LEAST FOR THESE 49 PARTIES -- IS STIPULATING TO.

2 AND YOUR HONOR, I GUESS AT SOME POINT,  
3 EITHER AT THE END OF THIS SESSION OR EARLY THIS WEEK, I  
4 WILL CONTINUE TO ACCUMULATE THE SIGNATURES AND HOPEFULLY  
5 HAVE ALL PARTIES STIPULATING ON ONE DOCUMENT FOR THE  
6 COURT'S CONVENIENCE.

7 THE COURT: YOU HAVE A FORM THAT I PRESUME IS  
8 SIMILAR TO THE FORM THAT -- I THINK MR. DUBOIS PROPOSED  
9 THIS AT A PRIOR HEARING. THAT'S BASICALLY THE FORMAT  
10 YOU'RE USING?

11 MR. LEININGER: YES, YOUR HONOR.

12 THE COURT: OKAY. SO IF WERE TO LOCK THE DOORS TO  
13 THE COURTROOM RIGHT NOW AND CIRCULATE THAT, WE MIGHT HAVE  
14 SOME LEVEL OF AGREEMENT? AT LEAST FIND OUT WHO  
15 DISAGREES?

16 MR. LEININGER: I THINK THAT WOULD BE A VERY GOOD  
17 USE OF OUR TIME, YOUR HONOR.

18 THE COURT: FIRE MARSHAL MAY OBJECT.

19 MR. WEEKS: BRAD WEEKS. I'M SORRY, I SIGNED A LOT  
20 OF STIPULATIONS YESTERDAY, AND I DIDN'T KEEP A LIST OF  
21 WHAT WE AGREED TO WITH EACH ONE.

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22 I MEAN, I HAVE THEM ALL HERE AT THE DESK,  
23 BUT I HADN'T MEMORIZED EACH ONE. SO I WOULDN'T KNOW IF  
24 THIS --

25 THE COURT: WELL, THERE ARE MANY, MANY PARTIES  
26 HERE, AND I CAN UNDERSTAND THAT, MR. WEEKS.

27 BUT AT SOME POINT, YOU HAVE TO KNOW WHETHER  
28 YOU AGREE OR DISAGREE WITH SOMEBODY'S NUMBERS SO THAT WE

20

1 CAN CALL WITNESSES OR NOT.

2 MR. WEEKS: WE DO. WE SIGNED STIPULATIONS.  
3 THERE'S JUST LIKE 50 OF THEM, SO . . .

4 MR. LEININGER: YOUR HONOR, WE HAD GENERATED THIS  
5 PLEADING AND HAD PUT A TABLE IN -- AS MR. DUBOIS IS  
6 SHOWING YOU THEM -- WITH THE NUMBERS AS WE UNDERSTAND  
7 THEM AS OF TODAY. BECAUSE THERE WERE SOME CHANGES OVER  
8 THE WEEKEND.

9 SO TO THE EXTENT THAT WE NEED TO  
10 INTERLINEATE, I WOULD SUGGEST THAT PERHAPS WE HAVE THE  
11 OPPORTUNITY TO DO THAT.

12 WE ALSO HAVE BLANK LINES IN HERE FOR  
13 PARTIES THAT HAVE YET TO STIPULATE.

14 BOLTHOUSE FARMS, MR. ZIMMER'S CLIENTS, MAY  
15 WANT TO JOIN IN THIS STIPULATION.

16 I DON'T KNOW ABOUT THE WOOD CLASS. THAT  
17 MAY STILL BE OUTSTANDING.

18 THE COURT: OKAY. MR. DAVIS.

19 MR. DAVIS: GOOD AFTERNOON, YOUR HONOR. MICHAEL  
20 DAVIS ON BEHALF OF THE ANTELOPE VALLEY UNITED MUTUAL  
21 GROUP, ADAMS BENNETT, GOLDEN SANDS, WHICH IS MIRACLE  
22 IMPROVEMENT CORPORATION; SERVICE ROCK PRODUCTS, SAINT  
23 ANDREW'S ABBEY AND SHEEP CREEK WATER COMPANY.

24 I'M AWARE OF THE STIPULATION THAT

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25 MR. DUBOIS HAD BEEN CIRCULATING. IT WAS MY UNDERSTANDING  
26 THAT HE WAS GOING TO BE PICKING UP THOSE THAT HAD ALREADY  
27 BEEN POSTED.

28 APPARENTLY THAT HASN'T HAPPENED.

21

1 THERE ARE A NUMBER THAT HAVE BEEN ENTERED  
2 INTO BETWEEN VARIOUS OF MY CLIENTS AND THE PUBLIC WATER  
3 SUPPLIERS THAT WERE POSTED BACK ON THE 15TH, I BELIEVE.  
4 SO WE WILL ADD THOSE.

5 AND THEN AS TO THE 16 MUTUALS, WE HAVE  
6 AGREEMENT ON 15.

7 WE ARE WORKING ON THE LAST ONE OF THOSE.  
8 AND THAT ONE IS PROBLEMATIC, I THINK, FROM A LOGISTICAL  
9 REASON. THERE ARE TWO HALVES OF THAT MUTUAL, THE COUNTY  
10 SIDE AND THE CITY SIDE.

11 THEY ARE ALL METERED. THEY ARE ALL  
12 CUSTOMER METERED. ONE SIDE IS IN GALLONS. THE OTHER  
13 SIDE IS IN CUBIC FEET. AND IT'S CREATED SOME CONFUSION.

14 SO ONE OF THE PEOPLE IN MY OFFICE, MARLENE  
15 ALLEN-HAMMARLUND, IS WORKING WITH STEFANIE MORRIS OF  
16 MR. DUNN'S OFFICE AT THIS POINT TRYING TO GET THAT ONE  
17 RECONCILED.

18 THAT WOULD BE THE LAST. BUT WE WOULD HAVE  
19 21 THAT NEEDED TO BE ADDED TO THAT AS WELL.

20 AND IT'S MY HONEST IMPRESSION AT THIS POINT  
21 THAT WE'RE NOT GOING TO NOT HAVE AN AGREEMENT WITH THE  
22 PUBLIC WATER SUPPLIERS ON THE LAST ONE. WE SIMPLY HAVE  
23 TO GET THROUGH CLARIFYING THE LOGISTICAL ISSUES  
24 ASSOCIATED WITH THE LAST MUTUAL.

25 SO THERE WOULD BE 21 MORE THAT WOULD BE  
26 NEEDED TO BE ADDED TO THAT LIST.



27

THE COURT: OKAY. MS. GOLDSMITH.

28

MS. GOLDSMITH: JANET GOLDSMITH FOR CITY OF LOS

22

1 ANGELES.

2

WE FILED DECLARATIONS. THEY WERE OBJECTED

3 TO.

4

THE DECLARATION OF VIVIAN HOWELL WAS

5 OBJECTED TO IN PART BY THE AGWA GROUP.

6

I HAVE REDACTED THAT TO THE PART THAT THEY

7 DID NOT OBJECT TO, AND HAVE FILED A MOTION IN LIMINE,

8 WHICH YOUR HONOR HAS, AS TO OWNERSHIP.

9

IN TERMS OF GROUNDWATER PRODUCTION, I'VE

10 SPOKEN WITH EVERY PARTY THAT HAS FILED AN OBJECTION TO

11 THE DECLARATION OF BOB WAGNER, WHO IS THE EXPERT WHO PUT

12 FORTH HIS OPINION ON THE AMOUNT OF WATER PUMPED.

13

I HAVE A STIPULATION THAT'S SIGNED BY THREE

14 OUT OF, I GUESS, THE SEVEN PUBLIC WATER SUPPLIERS. AND

15 MY UNDERSTANDING IS THAT THEY ALL AGREE, ALTHOUGH I DON'T

16 HAVE SIGNATURES ON DOTTED LINES.

17

AND THERE IS ONE LINGERING QUESTION THAT

18 NEEDS TO BE RESOLVED.

19

THERE WAS A GROUP OF FIVE LANDOWNER PARTIES

20 THAT FILED AN OBJECTION TO THE WAGNER DECLARATION.

21

AND I HAVE SPOKEN WITH FOUR OF THEM AND

22 THEY ARE AGREEABLE TO IT. I'M TRYING TO WORK OUT A

23 DETAIL WITH THE LAST OBJECTOR ON THAT ONE DETAIL. AND I

24 EXPECT THAT WE'LL BE ABLE TO REACH AN AGREEMENT.

25

NOW, IN TERMS OF NOT HAVING SIGNATURES ON

26 DOTTED LINES, I THINK THAT THE PROCESS IS GOING TO HAVE

27 TO BE TO OFFER THE DECLARATIONS INTO EVIDENCE.

28

THE COURT: WELL, I THINK THAT'S PROBABLY RIGHT,

23

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1 AND DETERMINE WHETHER OR NOT THERE ARE OBJECTIONS TO IT  
2 IN THAT FASHION.

3 BECAUSE, OTHERWISE, WE SEEM TO BE DOING A  
4 KIND OF SCATTER SHOT APPROACH HERE.

5 MS. GOLDSMITH: WELL, I SENT OUT A STIPULATION TO  
6 EVERYONE WHO OBJECTED. AND I HAVEN'T GOTTEN -- EXCEPT  
7 FOR THE PUBLIC WATER SUPPLIERS -- STIPULATIONS BACK.

8 THE COURT: ALL RIGHT. WELL, IT DOES SEEM TO ME  
9 THAT IN ORDER TO DETERMINE WHAT WE HAVE TO LITIGATE, WE  
10 HAVE TO KNOW WHO IS OBJECTING TO WHAT.

11 AND IT SOUNDS AS THOUGH THOSE ARE GOING TO  
12 BE VERY FEW FROM WHAT I'M HEARING.

13 MS. GOLDSMITH: I BELIEVE SO. BUT I THINK WE MAY  
14 HAVE TO GO TO THE EXERCISE OF OFFERING DECLARATIONS TO  
15 GET THERE.

16 THE COURT: I THINK YOU'RE RIGHT.

17 MR. HERREMA: YOUR HONOR, BRAD HERREMA ON BEHALF  
18 OF ANTELOPE VALLEY GROUNDWATER AGREEMENT ASSOCIATION IN  
19 REGARD TO MS. GOLDSMITH'S COMMENTS.

20 WE'VE NOT FILED AN OPPOSITION TO HER MOTION  
21 IN LIMINE. I BELIEVE THAT THE MANNER IN WHICH THE COURT  
22 HAS CIRCUMSCRIBED THE TRIAL FOCUS, THAT THE OBJECTIONS  
23 THAT WE HAVE ARE NO LONGER APPLICABLE.

24 AS TO WHETHER THE ISSUE OF CROP WATER  
25 DUTIES, AND WHETHER THE CROP WATER DUTIES USED BY VARIOUS  
26 PARTIES IN THEIR ESTIMATES IS APPROPRIATE, WE DON'T THINK  
27 THAT THAT NEEDS TO BE ADDRESSED ANY LONGER.

28 WHILE WE THINK PERHAPS SOME OF THOSE

24

1 NUMBERS ARE LOWER THAN THEY MAYBE COULD HAVE BEEN, WE ARE  
2 CONTENT WITH THE NUMBERS THAT ARE STIPULATED TO AMONG THE

3 OTHER PARTIES AND HAVE NO OBJECTION.

4 THE COURT: OKAY. MR. KUHS.

5 MR. KUHS: YOUR HONOR, ROBERT KUHS FOR GRANITE AND  
6 TEJON. LET ME MAKE A SUGGESTION TO THE COURT. MAYBE GET  
7 THE PROCESS STARTED.

8 I SPENT SOME TIME ON SATURDAY OR SUNDAY ON  
9 THE PHONE WITH JIM DUBOIS, UNITED STATES, COMPARING MY  
10 SPREADSHEET WITH HIS SPREADSHEET TO SEE IF WE HAD THE  
11 RIGHT NUMBERS.

12 AND WE WERE ABLE TO RECONCILE THOSE.

13 THE DIFFERENCE BETWEEN OUR TWO SPREADSHEETS  
14 IS HE WAS TRACKING STIPULATED NUMBERS AND I WAS TRACKING  
15 EVERYBODY IN THE CASE.

16 THE COURT: YOU WERE TRACKING WHAT?

17 MR. KUHS: ALL OF THE PARTIES PARTICIPATING IN THE  
18 PHASE FOUR.

19 THE COURT: OKAY.

20 MR. KUHS: SO I STARTED WITH THE PREMISE OF WHAT  
21 WAS THEIR LAST STATED PRODUCTIONS UNDER OATH BY WAY OF  
22 DECLARATION OR STIPULATION.

23 AND I HAVE A COLUMN IN THAT SPREADSHEET AS  
24 TO WHETHER THAT PARTY HAS A STIPULATION WITH AN ADVERSE  
25 PARTY.

26 ONE SUGGESTION WOULD BE TO MAKE SOME COPIES  
27 OF THIS SPREADSHEET -- IT'S IN ALPHABETICAL FORM -- AND  
28 HAVE SORT OF A ROLL CALL VOTE FROM THE BENCH AND ASK

25

1 WHETHER ANYBODY HAS AN OBJECTION TO PARTY A'S NUMBER.

2 AND JUST GO THROUGH THE LIST.

3 THE COURT: I THINK IN CONJUNCTION WITH HAVING AN  
4 OFFER INTO EVIDENCE OF THE DECLARATION THAT SUPPORTS THE  
5 NUMBERS, THAT'S WORKABLE.

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6 MR. KUHS: AND THEN IF THERE'S SOME THAT ARE  
7 CALLED OUT WHERE MAYBE WE'VE GOT LATE-FILED DECLARATIONS,  
8 IF SOMEBODY WANTS TO HAVE A PLACE HOLDER AND SAY, "I'D  
9 LIKE TO CONFIRM THAT DATA," THEN WE CAN HAVE A RECESS  
10 WHERE THE PARTIES CAN MEET AND CONFER. AND SEE IF WE CAN  
11 RESOLVE ANY OF THE PARTIES WHOSE NUMBERS ARE FLAGGED IN  
12 THE PROCESS.

13 THE COURT: AT THE END OF THE ROLL CALL IF YOU  
14 WILL.

15 MR. KUHS: YES.

16 THE COURT: OKAY. THAT MAKES SOME SENSE TO ME IF  
17 YOU WILL.

18 OKAY. ANYBODY ELSE WANT TO OFFER ANYTHING?

19 MR. MC LACHLAN.

20 MR. MC LACHLAN: YES, YOUR HONOR. MICHAEL  
21 MC LACHLAN FOR THE WOOD CLASS.

22 I HAVE NOT SEEN THE STIPULATION THAT  
23 MR. LEININGER MENTIONED A FEW MOMENTS AGO. AND I'VE BEEN  
24 INFORMED BY HIM THAT WE'RE NOT INCLUDED IN THAT.

25 WITH REGARD TO THAT, AS WELL AS  
26 MR. HERREMA'S COMMENTS TWO ROUNDS AGO REGARDING HIS  
27 LIMITED STIPULATION, IT'S GOING TO BE MY POSITION THAT  
28 MR. HERREMA'S CLIENTS WILL NEED TO PUT ON THEIR EVIDENCE.

26

1 I'M GOING TO OBJECT IF I DON'T HAVE AN AGREEMENT WITH  
2 THEM.

3 THE WOOD CLASS IS OBVIOUSLY IN A UNIQUE  
4 POSITION COMPARED TO THE REST OF THE FOLKS IN THIS ROOM.

5 THERE IS ANOTHER OPTION THAT MR. DUNN  
6 PROPOSED. AND I DON'T KNOW WHETHER IT'S WORKABLE OR NOT.  
7 IT MAY NOT BE. BUT THAT IS TO CARVE THE WOOD CLASS OUT

8 OR PUT THE WOOD CLASS OFF FOR SOME PERIOD OF TIME UNTIL  
9 SUCH TIME AS THE EXPERT IS DONE WITH HIS WORK. OR  
10 PERHAPS WHEN THE CASE IS SETTLED. SOMETHING ELSE ALONG  
11 THOSE LINES.

12 I'M NOT REALLY SURE WHAT TO DO WITH IT.

13 I'LL PREPARE A STIPULATION FOR TOMORROW  
14 MORNING AND SEE WHAT COMES OF IT.

15 BUT THERE SHOULD BE NO SURPRISE BY ANYBODY  
16 THAT I'M NOT GOING TO ENTER INTO A SLEW OF ONE-SIDED  
17 STIPULATIONS. I DON'T THINK IT'S GOOD PRACTICE.

18 I MEAN, I'M NOT SURE IT'S SO FAIR.

19 THE COURT: OKAY. MR. HERREMA.

20 MR. HERREMA: JUST A COMMENT IN RESPONSE TO  
21 MR. MC LACHLAN'S COMMENT.

22 I'M NOT SURE WHAT THE BASIS FOR REQUIRING  
23 ANY OF MY CLIENTS TO PUT ON ANY EVIDENCE WOULD BE AT THIS  
24 POINT, GIVEN THAT THE ONLY PARTIES WHO TIMELY OBJECTED  
25 PURSUANT TO THE CASE MANAGEMENT ORDERS THIS COURT HAS  
26 ISSUED HAVE RESOLVED THOSE OBJECTIONS VIA STIPULATION.

27 THE COURT: WELL, IF YOU OFFER A DECLARATION, AS  
28 WE GO THROUGH THE STIPULATIONS THAT EACH OF YOU HAVE

27

1 ENTERED INTO, AND SOMEBODY STANDS UP AND OBJECTS, THEN  
2 IT'S GOING TO RAISE THE ISSUE OF WHAT EVIDENCE, IF ANY,  
3 NEEDS TO BE PRODUCED IN ORDER TO SUPPORT THE  
4 DECLARATIONS.

5 OR WHETHER THEY ARE GOING TO HAVE TO GO  
6 FORWARD WITH CONTRARY EVIDENCE TO DISPUTE YOUR NUMBERS.

7 MR. HERREMA: IN MY MIND, YOUR HONOR, WE'VE GONE  
8 THROUGH THAT PROCESS ALREADY.

9 THE COURT: I UNDERSTAND WHAT YOUR POSITION IS AS  
10 TO THAT. THANK YOU.

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11 ALL RIGHT. MR. LEININGER, DO YOU HAVE YOUR  
12 PROPOSED STIPULATION?

13 MR. LEININGER: IT'S IN MR. KUHS' HANDS RIGHT NOW.  
14 YES.

15 THE COURT: OKAY. I'D REALLY LIKE TO START MOVING  
16 THIS PROCESS ALONG.

17 IT SEEMS TO ME THAT IF EVERY PARTY IS  
18 CONTAINED ON THAT LIST, THEN WE SHOULD PROCEED IN THAT  
19 FASHION.

20 AND IF PARTIES ARE NOT CONTAINED ON THAT  
21 LIST, THEY CAN BE ADDED AS WE REACH THAT POINT WHERE WE  
22 HAVE A STIPULATION.

23 YES, COUNSEL.

24 MR. MAGUIRE: GOOD AFTERNOON, YOUR HONOR. NEAL  
25 MAGUIRE.

26 I JUST WANTED TO ADDRESS THAT POINT. I  
27 THINK YOUR HONOR ADDRESSED MY POINT.

28 I HAVE SOME PARTIES WHO REACHED

28

1 STIPULATIONS WITH THE PUBLIC WATER SUPPLIERS A FEW MONTHS  
2 AGO. BUT WHEN I LOOKED AT THE THOROUGH LIST THIS  
3 AFTERNOON, WE'RE NOT ON THERE.

4 BUT THERE'S A PROCESS TO ADD THEM. AND I  
5 THINK THAT WILL ADDRESS THAT.

6 THE COURT: OKAY.

7 MR. MAGUIRE: THANK YOU.

8 THE COURT: ALL RIGHT. SO, AGAIN, IS THAT LIST IN  
9 ORDER FOR US TO PROCEED?

10 WE HAVE THE WHOLE WEEK. WE DON'T HAVE TO  
11 TAKE IT UNLESS WE NEED TO.

12 MR. LEININGER: YOUR HONOR, WE DO HAVE PRINTED

13 SIGNATURE PAGES HERE.

14 IT APPEARS MOST COUNSEL FOR ALL PARTIES ARE  
15 PRESENT. SO PERHAPS 20 MINUTES?

16 THE COURT: WHY DON'T YOU -- YOU WANT 20 MINUTES?

17 MR. LEININGER: YES, YOUR HONOR.

18 THE COURT: OKAY. ALL RIGHT.

19 AS LONG AS WE KEEP MOVING FORWARD, NOT  
20 BACKWARD.

21 MR. JOYCE: YOUR HONOR.

22 THE COURT: YES.

23 MR. JOYCE: I HAD A CONVERSATION WITH MR. WEEKS.  
24 IF WE COULD HAVE 30 MINUTES, I CAN RESOLVE HIS ISSUE. I  
25 NEED TO GET SOME NUMBERS.

26 THE COURT: YES. YOU CAN HAVE 30 MINUTES.

27 MR. JOYCE: THANK YOU, YOUR HONOR.

28 THE COURT: THIRTY MINUTES.

♀

29

1 (RECESS.)

2

3 THE COURT: ALL RIGHT. SO WHAT CAN YOU TELL ME,  
4 ANYBODY?

5 MR. LEININGER: YOUR HONOR, LEE LEININGER FOR THE  
6 UNITED STATES.

7 THANK YOU FOR THE COURT'S PATIENCE.

8 WHAT WE ACCOMPLISHED WAS OF THESE 49

9 IDENTIFIED PARTIES, WE HAD ACTUALLY ADDED APPROXIMATELY  
10 THREE DOZEN ADDITIONAL PARTIES WHICH HAVE PUMPED IN THE  
11 2011, 2012 PERIOD.

12 SO WE BELIEVE WE HAVE A GLOBAL STIPULATION  
13 WITH THE EXCEPTION OF A FEW OUTSTANDING -- A FEW PARTIES  
14 THAT WE UNDERSTAND THAT THERE MAY STILL BE OUTSTANDING  
15 ISSUES.

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16 SO, YOUR HONOR, WHAT I'VE SUGGESTED TO THE  
17 PARTIES WAS WE HAVE A SHEET THAT'S HANDWRITTEN AND  
18 INTERLINEATED, AGREED TO BY ALL THE STIPULATING PARTIES,  
19 BUT NOT QUITE LEGIBLE. SO I WAS GOING TO TAKE IT AND  
20 TYPE IT ALL UP FOR THE COURT'S BENEFIT.

21 WE ALSO HAVE SIGNATURE PAGES WITH REGARD TO  
22 ALL OF THESE NUMBERS AND PARTIES.

23 SO WITH THE COURT'S INDULGENCE, WE WOULD DO  
24 THAT OVER THE NEXT COUPLE OF DAYS AND THEN SUBMIT IT TO  
25 THE COURT FOR THE COURT'S CONSIDERATION AS A STIPULATION  
26 AMONGST ALMOST ALL OF THE NAMED PARTIES.

27 NOW, THE EXCEPTIONS ARE -- AND THESE WERE  
28 DUE TO EITHER -- UNWILLINGNESS TO STIPULATE OR BECAUSE

30

1 THERE WERE OBJECTIONS TO THAT PARTY'S NUMBERS.

2 WE HAVE BOLTHOUSE AND BOLTHOUSE ENTITIES.

3 WE HAVE GRANITE CONSTRUCTION COMPANY.

4 WE HAVE WHITE FENCE FARMS.

5 AND THEN WE HAVE BURROWS/300 -- AND I CAN'T  
6 QUITE MAKE IT OUT.

7 MR. JOYCE: H, LLC.

8 MR. LEININGER: H, SOMETHING, LLC.

9 MR. OYARZO: IT'S BURROWS/300 A 40 H, LLC.

10 MR. LEININGER: AND THEN WE HAVE THE WOOD CLASS  
11 OUTSTANDING.

12 THE COURT: OKAY.

13 MR. LEININGER: THERE WAS A SUGGESTION -- AND I'LL  
14 LET MR. DUNN ADDRESS THIS SUGGESTION -- WITH REGARD TO  
15 THE FACT THAT WE HAVE STIPULATING PARTIES, WHETHER OR NOT  
16 WE SHOULD ALSO SUBMIT INTO EVIDENCE FOR THE COURT'S  
17 CONSIDERATION THE DECLARATIONS THAT ARE THE FOUNDATION



18 FOR THIS EVIDENCE.

19 THE COURT: I THINK THAT'S NECESSARY FOR A RECORD  
20 HERE.

21 BECAUSE WITHOUT THAT, THE COURT IS NOT ABLE  
22 TO MAKE FINDINGS OF FACTS. AND I HAVE TO MAKE FINDINGS  
23 OF FACT. AND I HAVE TO BE ABLE TO BASE THAT ON EVIDENCE.

24 SO I THINK THAT EACH OF THE DECLARATIONS,  
25 WITH SUPPORTING DOCUMENTS, SHOULD BE MARKED AS A SINGLE  
26 EXHIBIT, AND OFFERED.

27 AND I WOULD LIKE TO GIVE THOSE WHO ARE NOT  
28 AGREEING TO THE NUMBERS THAT ARE CONTAINED WITHIN THE

31

1 STIPULATION AND DECLARATION TO, ON THE RECORD, STATE  
2 THEIR OBJECTIONS. AND THEN WE'LL DETERMINE WHO IS GOING  
3 TO GO FORWARD WITH EVIDENCE BEYOND WHAT'S IN THE  
4 DECLARATION.

5 I THINK IT'S IMPORTANT TO HAVE A  
6 DECLARATION THAT IS BASED UPON BUSINESS RECORDS, BECAUSE  
7 THERE ARE EXCEPTIONS TO THE HEARSAY RULE.

8 MR. CHESTER: YOUR HONOR, MAY I APPROACH?

9 THE COURT: YES.

10 MR. CHESTER: YOUR HONOR, MY NAME IS TED CHESTER  
11 ON BEHALF OF BURROWS AND HIS LLC.

12 AND THERE WAS ONE OBJECTION TO THE BURROWS  
13 NUMBERS BY MR. JOYCE. AND MR. JOYCE AND I HAVE AGREED  
14 THAT WE WILL TALK SOME MORE.

15 SO IF IT PLEASURES THE COURT, IF YOU CAN  
16 ALLOW US A DAY OR SO TO -- A DAY -- TO SEE IF WE CAN WORK  
17 THIS OUT, WE'D VERY MUCH APPRECIATE THAT.

18 THE COURT: WELL, I THINK IT'S IMPORTANT TO DO  
19 THAT.

20 I THINK TO THE EXTENT THAT ANYBODY CAN COME  
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21 TO AN AGREEMENT, IT'S OF BENEFIT TO EVERYBODY IN SO  
22 DOING.

23 SO I'M WILLING TO LET YOU HAVE THE TIME TO  
24 DO IT. BUT I ALSO DO NOT WANT TO WASTE THE TIME THAT I'M  
25 DOWN HERE.

26 AND THAT MEANS THAT -- I'VE ALLOCATED THIS  
27 TIME. IT'S NOT CHEAP. ALTHOUGH I'M NOT EXPENSIVE IN  
28 TERMS OF MY HOUSING AND SO ON.

32

1 SO I WANT TO BE BUSY.

2 IN OTHER WORDS, I WANT TO DO WHAT WE CAME  
3 HERE TO DO. AND TO ARRIVE AT A POINT WHERE I CAN SAY  
4 THAT I'M ABLE TO MAKE FINDINGS OF FACT AND A STATEMENT OF  
5 DECISION THAT WILL LEAD US TO THE NEXT PHASE OF THIS  
6 TRIAL.

7 SO WE HAVE SET ASIDE THIS WEEK, AND THEN  
8 SOME.

9 SO I WANT TO KNOW WHAT WE'RE GOING TO BE  
10 DOING WHILE YOU'RE TALKING TO MR. JOYCE.

11 MR. CHESTER: THANK YOU, YOUR HONOR.

12 THE COURT: AND MAYBE MR. BUNN IS GOING TO TELL  
13 ME.

14 MR. BUNN: WELL, PERHAPS.

15 DO I UNDERSTAND THE COURT TO BE SOLICITING  
16 THE OBJECTIONS NOW? BECAUSE I CAN TELL YOU WHO THE  
17 PUBLIC WATER SUPPLIERS OBJECT TO. AND THAT MAY BE OF  
18 SOME HELP.

19 THE COURT: WELL, I THINK IT WOULD BE HELPFUL TO  
20 HAVE THAT ON THE RECORD.

21 MR. BUNN: ALL RIGHT. VERY WELL.

22 THE PUBLIC WATER SUPPLIERS OBJECT TO THE

23 TWO BOLTHOUSE ENTITIES.

24 ALTHOUGH I'LL POINT OUT, YOUR HONOR,  
25 THAT -- AND I JUST CONFIRMED THIS WITH ALL THE PUBLIC  
26 WATER SUPPLIERS -- WE'RE WILLING TO STIPULATE TO THE  
27 NUMBERS IN THE BOLTHOUSE DECLARATIONS AND THAT WERE  
28 TESTIFIED TO AT THEIR DEPOSITIONS.

33

1 SO FROM OUR STANDPOINT, WE'LL STIPULATE TO  
2 THAT.

3 WE ALSO OBJECT TO TWO OTHERS THAT ARE IN  
4 THE PROCESS OF BEING HOPEFULLY WORKED OUT.

5 MORE INFORMATION IS BEING PROVIDED. AND I  
6 WOULD --

7 THE COURT: LET ME MAKE SURE I UNDERSTAND THE  
8 FIRST PART OF WHAT YOU SAID.

9 MR. BUNN: YES.

10 THE COURT: YOU'RE WILLING TO STIPULATE TO THE  
11 NUMBERS THAT WERE TESTIFIED TO IN THE DEPOSITIONS BY THE  
12 BOLTHOUSE --

13 MR. BUNN: YES. AND THAT WERE ALSO CONTAINED IN  
14 THE DECLARATIONS FILED WITH THE COURT EARLIER.

15 THE COURT: OKAY. AND WHAT'S PREVENTED YOU FROM  
16 DOING THAT?

17 MR. BUNN: MR. ZIMMER WON'T AGREE TO THAT.

18 THE COURT: THEY'RE HIS NUMBERS.

19 MR. BUNN: I UNDERSTAND THAT, YOUR HONOR.

20 MR. ZIMMER: I CAN ADDRESS THAT WHEN YOU WANT,  
21 YOUR HONOR.

22 THE COURT: NOW WOULD BE A GOOD TIME.

23 MR. BUNN: HE'S NOW ASKING FOR NUMBERS THAT ARE  
24 HIGHER THAT I UNDERSTAND TO BE BASED UPON CROP DUTIES  
25 RATHER THAN HIS EARLIER NUMBERS, WHICH WERE --

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26 THE COURT: LET ME HEAR FROM MR. ZIMMER.

27 MR. ZIMMER: THE SITUATION IS THIS, YOUR HONOR.

28 INITIALLY, THE COURT SET THE PHASE OF TRIAL 34

1 FOR CURRENT PUMPING. AND WE KNEW THAT THERE WAS SOME  
2 ANOMALY, SOME PROBLEM WITH THE NUMBERS FOR '11 AND '12,  
3 BECAUSE THEY WERE FAR TOO LOW FROM WHAT WE KNOW WE USE.

4 WE DID AN ANALYSIS GOING WAY BACK TO 2001  
5 BASED ON THE COURT'S INDICATION THAT WE COULD PUT ON  
6 EVIDENCE IF THERE WAS -- IF 2011, 2012 WAS NOT  
7 REPRESENTATIVE, THAT WE COULD PUT ON THE NUMBERS FROM THE  
8 OTHER YEARS TO SHOW THAT THAT NUMBER IS NOT  
9 REPRESENTATIVE.

10 SO WE DID AN ANALYSIS FROM 2001 -- WE SPENT  
11 A GREAT DEAL OF TIME DOING THAT -- THROUGH 2012.

12 AND THE 12-YEAR AVERAGE WAS 20,000 ACRE  
13 FEET PER YEAR.

14 THE COURT: AS OPPOSED TO?

15 MR. ZIMMER: AS OPPOSED TO -- ONE OF THE MOST  
16 RECENT YEARS WAS 11,000 ACRE FEET.

17 AND THE OTHER YEAR WAS LIKE 15,000 ACRE  
18 FEET.

19 SO THE PUBLIC WATER SUPPLIERS DID NOT AGREE  
20 TO THE ANALYSIS AND PUT US TO THE TASK -- AS YOU RECALL,  
21 AS OF THE LAST CASE MANAGEMENT CONFERENCE A WEEK AGO, I  
22 ASKED WHAT THE BASIS FOR THE CHALLENGE WAS. AND  
23 MR. DUNN SAID HE DIDN'T KNOW. AND MR. WEEKS SAID, "I  
24 KNOW WHAT IT IS, BUT I CAN'T TELL YOU." SO WE'VE BEEN  
25 THE LAST PERSON THEY HAVE TALKED TO ON THIS ISSUE.

26 BUT THE BOTTOM LINE IS AFTER THEY REFUSED  
27 TO GO ALONG WITH THE NUMBERS THAT WE HAD THE LAST WEEK

28 AND THE WEEK BEFORE, WE ANALYZED IT BASED UPON A CROP

35

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1 DUTY ANALYSIS.

2 AND WE SIMPLY TOOK THE CROP DUTIES FOR THE  
3 CROPS WE WERE GROWING AT THE TIME, WE TOOK THE CROP  
4 DUTIES FROM THE SUMMARY EXPERT REPORT THAT THE PURVEYORS  
5 HAVE BEEN RELYING UPON, AND FIGURED THEY WOULDN'T OBJECT  
6 TO THAT.

7 AND WE LOOKED AT THE IRRIGATED ACRES --  
8 BECAUSE THERE IS REALLY NO QUESTION THAT THE IRRIGATED  
9 ACRES ARE ACCURATE -- AND WE SIMPLY MULTIPLIED THE  
10 IRRIGATED ACRES BY THE CROP DUTY, WHICH, BY THE WAY, IS  
11 WHAT AGWA HAS DONE AND AVEK HAS DONE, AND VARIOUS OTHER  
12 PARTIES HAVE DONE.

13 AND WE CAME UP WITH NUMBERS THAT ARE ABOUT  
14 16,000 AVERAGE. ABOUT 15,000 -- I CAN TELL YOU EXACTLY.  
15 IT'S 15,799 FOR 2012. AND 16,639 FOR 2011.

16 THE COURT: LET ME ASK YOU THIS QUESTION.

17 WHAT WERE THE EARLIER NUMBERS BASED ON?

18 MR. ZIMMER: THE EARLIER NUMBERS, THEY WERE DOING  
19 CALCULATIONS AND TRYING TO ESTIMATE THE RUN HOURS FOR THE  
20 PUMPS TIMES THE EFFICIENCY OF THE PUMPS, AND COME UP WITH  
21 A NUMBER.

22 AND THOSE WERE THE NUMBERS THAT WERE  
23 CHALLENGED BY MR. WEEKS, WHO INDICATED THEY WERE NOT  
24 ACCURATE FOR ONE REASON OR ANOTHER.

25 THE COURT: THOSE ARE THE LOW NUMBERS YOU'RE  
26 TALKING ABOUT.

27 MR. ZIMMER: WELL, JUST FOR THE LAST TWO YEARS.

28 THE ENTIRE SPECTRUM OF 2001 TO 2012 --

36

♀

1 THE COURT: NO. I'M JUST TALKING ABOUT '11 AND  
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2 '12, BECAUSE THOSE ARE THE SUBJECTS OF THE PROPOSED  
3 STIPULATIONS AS I UNDERSTAND IT.

4 MR. ZIMMER: CORRECT.

5 THE COURT: OKAY. NOW, OBVIOUSLY, THESE NUMBERS  
6 DON'T MEAN ANYTHING TO ME.

7 THIS ISN'T EVIDENCE. THIS BASICALLY IS  
8 ARGUMENT.

9 THE QUESTION THAT I WOULD HAVE IS THIS.

10 YOU BELIEVE THAT THE '11 AND '12 NUMBERS  
11 WERE ANOMALIES; IS THAT RIGHT?

12 MR. ZIMMER: YES. SOME PROBLEM THERE THAT WE  
13 HAVEN'T --

14 THE COURT: IN TERMS OF USAGE OR IN TERMS OF  
15 COMPUTATION?

16 MR. ZIMMER: IN TERMS OF USAGE.

17 IF YOU DO THE CALCULATIONS BASED UPON  
18 IRRIGATED ACRES FOR '11 AND '12, BASED ON THOSE NUMBERS,  
19 YOU WOULD COME OUT TO ABOUT TWO ACRE FEET. AND THERE'S  
20 NOT ANY CROP YOU CAN GROW IN TWO ACRE FEET.

21 THE COURT: OKAY. SO AT THIS POINT NOW, YOU DON'T  
22 HAVE A STIPULATION.

23 MR. ZIMMER: CORRECT.

24 THE COURT: AND I WOULD EXPECT THAT AT THIS POINT  
25 THEN, YOU WOULD FILE YOUR DECLARATION, CURRENT  
26 DECLARATION, WITH EXHIBITS, TO SHOW WHAT YOUR OFFER OF  
27 EVIDENCE IS. AND I PRESUME YOU'RE GOING TO USE BUSINESS  
28 RECORDS OR WHATEVER TO OFFER THAT.

37

1 THE PUBLIC WATER PRODUCERS ARE GOING TO  
2 OBJECT. SO YOU'RE GOING TO THEN HAVE TO PRODUCE WHATEVER  
3 EVIDENCE YOU HAVE. AND THEY WILL COUNTER WITH WHATEVER

4 EVIDENCE THEY HAVE.

5 NOW, IS THIS SOMETHING THAT WE CAN DO  
6 TOMORROW?

7 MR. ZIMMER: WE CAN'T PUT ON EVIDENCE TOMORROW.

8 THE COURT: WHY?

9 MR. ZIMMER: BECAUSE I HAVE ONE WITNESS THAT'S OUT  
10 OF THE COUNTRY.

11 AND BECAUSE WE SET UP OUR WITNESSES FOR  
12 NEXT MONDAY BASED UPON THE REPRESENTATION BY MR. JOYCE  
13 THAT HE WANTED TO GO FIRST, AND THE FEDERAL GOVERNMENT,  
14 WHO HAS INDICATED THEY WANTED TO GO FIRST.

15 THE COURT: OKAY. WELL, WHAT I WANT TO DO IS TO  
16 TAKE WHATEVER EVIDENCE NEEDS TO BE PRODUCED IN AS  
17 EFFICIENT AND EXPEDITIOUS A MANNER AS POSSIBLE.

18 I WANT TO GET WHATEVER STIPULATIONS AND  
19 AGREEMENTS THERE ARE.

20 FOR EXAMPLE, DO YOU OBJECT TO THE PUBLIC  
21 WATER PRODUCERS' NUMBERS?

22 MR. ZIMMER: I DON'T KNOW AT THIS POINT, GIVEN THE  
23 FACT THERE'S NOT A RECIPROCAL STIPULATION. I'M GOING TO  
24 HAVE TO TALK TO MY CLIENT.

25 THE COURT: WELL, I WANT TO KNOW, WHEN THEY OFFER  
26 EVIDENCE AS TO WHAT THOSE NUMBERS ARE, WHETHER YOU'RE  
27 GOING TO OBJECT OR NOT?

28 MR. ZIMMER: THE NUMBERS JUST WENT UP -- AND THIS

38

1 IS TRUE FOR SEVERAL PARTIES -- THE NUMBERS JUST WENT UP.  
2 I HAVEN'T HAD A CHANCE TO LOOK AT THOSE NUMBERS.

3 FIRST NOTICE I HAD THE NUMBERS HAD GONE UP  
4 WAS TODAY. I DON'T KNOW WHAT THE BASIS FOR THAT IS.

5 THE COURT: OKAY. THIS IS THE WEEK WE'RE DOING  
6 THIS. SO I WANT YOU TO DO WHAT YOU NEED TO DO TO BE ABLE

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7 TO DETERMINE WHETHER YOU OBJECT OR NOT.

8 IF YOU TELL ME THAT YOU DON'T KNOW IF YOU  
9 CAN OBJECT OR NOT, THEY'RE GOING TO PRESENT THEIR  
10 EVIDENCE, AND THE COURT WILL MAKE FINDINGS BASED UPON  
11 WHATEVER THE EVIDENCE IS.

12 I'M NOT PUSHING ANYBODY TO DO A RECIPROCAL  
13 STIPULATION.

14 IF YOU CAN, I WANT YOU TO DO IT. IF YOU  
15 CANNOT, THEN I WANT TO HEAR EVIDENCE SO THAT I CAN MAKE A  
16 DETERMINATION BASED UPON THE EVIDENCE AS TO WHAT CURRENT  
17 PUMPING IS FOR EACH PARTY.

18 BECAUSE THAT'S THE ONLY WAY WE'RE GOING TO  
19 GET TO THE NEXT PHASE. AND THAT HAS TO HAPPEN IN THIS  
20 PHASE. AND THIS PHASE, OF COURSE, IS SET FOR A LONG  
21 TIME.

22 AND I APPRECIATE THE FACT THAT EVERYBODY --  
23 YOU INCLUDED -- HAVE WORKED VERY HARD TO TRY TO COME TO  
24 AS MANY AGREEMENTS AS YOU POSSIBLY CAN. I CERTAINLY  
25 COMMEND ALL COUNSEL FOR WORKING VERY HARD AND EFFICIENTLY  
26 TO DO THAT.

27 BUT THERE COMES A TIME WHEN IF PARTIES  
28 CANNOT AGREE, THE COURT HAS TO MAKE FINDINGS. AND THAT

♀  
1 WILL BE BASED ON EVIDENCE.

2 SO I GUESS WHAT I'M LOOKING TO DO IS TO  
3 FIGURE OUT HOW WE'RE GOING TO, IN AN ORDERLY FASHION,  
4 TAKE CARE OF THE REST OF THE DAYS THAT WE HAVE FOR THIS  
5 TRIAL.

6 AND YOU'RE RIGHT. I MEAN, WE HAVE SET  
7 ASIDE TWO WEEKS. BUT WHEN STIPULATIONS ARE ENTERED INTO,  
8 IT CAN SHORTEN IT SIGNIFICANTLY.



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9 MR. ZIMMER: I UNDERSTAND THAT, YOUR HONOR. I  
10 DON'T HAVE ANY INTEREST IN DISPUTING WHAT WE DON'T NEED  
11 TO DISPUTE, EVEN AMONG THE PUBLIC WATER SUPPLIERS'  
12 NUMBERS.

13 BUT WHEN I'VE BEEN ASKING FOR WEEKS,  
14 LITERALLY, FOR SOME DIALOGUE WITH THE PURVEYORS ON OUR  
15 NUMBERS, AND THEY LITERALLY LEFT US FOR LAST, AND IT  
16 WASN'T UNTIL THIS MORNING THAT I HEARD ANY INDICATION  
17 FROM THEM -- AND THEY WOULDN'T EVEN TELL ME AS OF FRIDAY.  
18 I COULDN'T GET ANYTHING FROM MR. WEEKS. MR. DUNN GAVE ME  
19 NOTHING. AND AS I TOLD YOU THE LAST TIME WE WERE HERE,  
20 WE HAD A PARAGRAPH THIS BIG ON --

21 THE COURT: WELL, YOU'RE ALL HERE NOW. OKAY?

22 AND IF THERE'S EVER GOING TO BE A TIME  
23 WHERE YOU'RE GOING TO HAVE THOSE PRODUCTIVE TALKS, IT'S  
24 GOING TO BE HERE AND NOW.

25 AND I PRESUME THAT'S WHAT'S BEEN GOING ON  
26 HERE DURING THIS EXTENDED RECESS.

27 AND I THINK YOU'VE ACCOMPLISHED A LOT, BUT  
28 NOT EVERYTHING.

♀

40

1 ALL RIGHT. SO I UNDERSTAND YOUR SITUATION.

2 MR. ZIMMER: I WOULD STILL LIKE TO WORK OUT A  
3 STIPULATION IF WE CAN DO THAT.

4 THE COURT: WELL, I THINK YOU NEED TO CONTINUE TO  
5 TRY. YOU DON'T STOP TALKING.

6 YOU WANT TO OFFER SOMETHING ON THIS,  
7 MR. BUNN?

8 MR. BUNN: YES. WELL, IN TERMS OF TRIAL  
9 SCHEDULING, IT WAS OUR THOUGHT THAT PERHAPS WE COULD GO  
10 FIRST WITH THE BOLTHOUSE ENTITIES. ALTHOUGH I HEARD WHAT  
11 MR. ZIMMER SAID ABOUT HIS WITNESSES JUST NOW.

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12                   THERE IS AN ADDITIONAL ISSUE THAT WE HAD  
13 WITH BOLTHOUSE.

14                   AND THAT IS THAT SOME OF THE WATER THAT  
15 THEY PUMPED IS USED ON PROPERTIES THAT THEY DON'T OWN.  
16 THAT WAS RAISED EARLIER IN THE DAY.

17                   AND AS LONG AS THAT IS NOTED IN THE RECORD,  
18 THAT'S ACCEPTABLE TO US.

19                   THE COURT: I DON'T THINK THAT WE'RE MAKING A  
20 DETERMINATION OF PUMPING AS OF RIGHT. WHAT WE'RE DOING  
21 IS DETERMINING HOW MUCH IS BEING PUMPED.

22                   MR. BUNN: OKAY.

23                   THE COURT: AND, OBVIOUSLY, AT SOME POINT -- AND  
24 MAYBE IT'S GOING TO HAPPEN AT THE TIME THAT WE'RE DEALING  
25 WITH REDUCTIONS IN PUMPING -- THERE'S GOING TO BE A  
26 DETERMINATION MADE OF WHAT IS A REASONABLE USE FOR  
27 BENEFICIAL PURPOSES ON THE LAND.

28                   AND TO THE EXTENT THAT PUMPING IS NOT

41

♀  
1 REASONABLE OR NOT FOR THE BENEFICIAL USE OF THE LAND, OR  
2 BOTH OF THOSE THINGS, THEN THAT'S GOING TO IMPACT THE  
3 AMOUNT OF PUMPING, ISN'T IT, THAT'S PERMITTED.

4                   MR. BUNN: YES.

5                   THE COURT: AND HOW MUCH IS GOING TO BE REDUCED.  
6 REDUCED FROM WHAT IS THE QUESTION.

7                   MR. BUNN: YES.

8                   THE COURT: SO THIS IS A STEP THAT NEEDS TO BE  
9 TAKEN.

10                   I WANT TO DO THIS STEP. AND I WANT TO  
11 FOLLOW IT, I BELIEVE, WITH A PRESCRIPTION TRIAL, WHICH  
12 WILL THEN LEAD US TO DETERMINE ENTITLEMENTS BASED UPON  
13 WHAT THE MAXIMUM PUMPING IS, WHAT THE SAFE YIELD IS, WHAT

14 THE RECHARGE IS. AND HOW MUCH NEEDS TO BE REDUCED, AND  
15 BY WHOM.

16 AND THAT'S GOING TO BE A VERY TECHNICAL --  
17 LEGALLY TECHNICAL AS WELL AS HYDROLOGICALLY TECHNICAL  
18 EXERCISE.

19 AND I HESITATE TO USE THE WORD "EXERCISE,"  
20 BUT I THINK THE WORD IS "EXERCISE."

21 MR. ZIMMER: JUST TO ALLAY MR. BUNN'S CONCERNS.

22 MR. BUNN, MY UNDERSTANDING IS THAT THE  
23 ISSUE -- THERE ARE PARCELS THAT ARE -- WE HAVE A FEW THAT  
24 ARE CONTIGUOUS TO OUR FARMING, OUR RANCH. AND SOMETIMES  
25 THOSE ARE USED. PUMPS FROM OUR WELLS. I THINK MR. JOYCE  
26 HAS THE SAME ISSUE. AND THERE ARE SOME OTHER PARTIES  
27 THAT HAVE THAT ISSUE.

28 BUT MY UNDERSTANDING HAS ALWAYS BEEN,

42

♀  
1 MR. BUNN, THAT THAT ISSUE IS NOT BEING LITIGATED HERE  
2 NOW. AND WE'RE NOT ASKING YOU TO CONCEDE THAT ARGUMENT  
3 NOW.

4 MR. BUNN: THAT'S I UNDERSTOOD THE COURT TO SAY  
5 JUST NOW.

6 AND THAT'S FINE, AS LONG AS IT'S NOTED THAT  
7 THAT SITUATION EXISTS.

8 THE COURT: WELL, IT'S NOT PRESENTED TO ME AS A  
9 LEGAL ISSUE TO DECIDE TODAY. I'M OFFERING YOU AN OFFHAND  
10 OPINION.

11 MR. BUNN: THAT BEING SAID, YOUR HONOR, THERE WERE  
12 TWO OTHER PARTIES THAT I WANTED TO MENTION WHEN YOU'RE  
13 TALKING ABOUT HOW TO DO THE TRIAL.

14 THE COURT: YES.

15 MR. BUNN: THOSE ARE WHITE FENCE FARMS. IT'S A  
16 MUTUAL WATER COMPANY.

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17                   THEY ARE GOING TO -- AS YOU HEARD THIS  
18 MORNING, THEY ARE GOING TO PROVIDE US ADDITIONAL  
19 INFORMATION.

20                   I'M REASONABLY CONFIDENT THAT WE CAN WORK  
21 SOMETHING OUT. SO I GUESS I WOULD ASK, ALONG WITH  
22 MR. CHESTER, THAT MAYBE THAT ONE BE PUT TOWARD THE END.

23                   THE OTHER ONE IS GRANITE CONSTRUCTION  
24 COMPANY. THERE IS, AS OF NOW, A GOOD FAITH DISPUTE  
25 BETWEEN THE TWO PARTIES.

26                   ALTHOUGH AS MR. KUHS SAID THIS MORNING, HE  
27 IS ALSO GOING TO PROVIDE US SOME MORE INFORMATION. I  
28 DON'T KNOW WHETHER THAT ONE IS GOING TO GET WORKED OUT OR

43

♀  
1 NOT.

2                   AND FINALLY, JUST FOR THE SAKE OF  
3 COMPLETENESS, IS THE WOOD CLASS, WHICH WE DID DISCUSS  
4 THIS MORNING.

5                   THE COURT: OKAY. WHAT'S IT GOING TO TAKE IN  
6 TERMS OF WHITE FENCE FARMS AND GRANITE CONSTRUCTION  
7 COMPANY TO GET RESOLVED?

8                   MR. BUNN: I CAN'T SPEAK TO WHITE FENCE FARMS. I  
9 CAN SPEAK TO GRANITE CONSTRUCTION.

10                   THERE IS A DIFFERENCE OF OPINION AS TO ONE  
11 PARTICULAR ASPECT OF THEIR WATER USE. BUT IT'S A  
12 SIGNIFICANT ASPECT.

13                   AND MR. KUHS HAS OFFERED TO COME UP WITH A  
14 DIFFERENT WAY OF CALCULATING IT THAT MAY GIVE US MORE  
15 COMFORT.

16                   IS THAT FAIR TO SAY?

17                   MR. KUHS: YOUR HONOR, ROBERT KUHS FOR GRANITE  
18 CONSTRUCTION.

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AND IN ORDER TO GIVE PUBLIC WATER SUPPLIERS

19  
20 SOME ASSURANCE ABOUT OUR NUMBERS, I'VE ASKED OUR PLANT  
21 PEOPLE TO GO BACK AND IDENTIFY THE TYPE OF PUMPING  
22 EQUIPMENT THEY ARE USING, THE SPECIFICATIONS FOR THAT  
23 EQUIPMENT, ESTIMATE THE HOURS OF OPERATION, AND THEN  
24 ESTIMATE WATER USAGE IN THAT FASHION TO SEE IF IT  
25 CORRELATES SOMEWHAT WITH THE ANALYSIS THAT WE'VE OFFERED  
26 TO MR. BUNN.

27 THE COURT: WHEN ARE YOU GOING TO BE ABLE TO  
28 PRESENT THAT?

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♀

1 MR. KUHS: TO MR. BUNN, I'M HOPEFUL WE CAN DO THAT  
2 TOMORROW.

3 I'M GOING TO HAVE SOME CONVERSATIONS WITH  
4 THE PLANT OPERATIONS PEOPLE JUST AS SOON AS I GET OUT OF  
5 COURT TODAY.

6 THE COURT: IN OTHER WORDS, YOU CAN GET THE  
7 INFORMATION THIS AFTERNOON OR EVENING AND COMMUNICATE IT  
8 IN THE MORNING.

9 MR. KUHS: YES. AND THEN FOLD IT INTO A  
10 DECLARATION.

11 TOM HAD ASKED FOR A DECLARATION IN LIEU OF  
12 TESTIMONY.

13 SO THAT'S WHAT WE INTEND TO DO.

14 THE COURT: OKAY.

15 MR. DAVIS: AND YOUR HONOR HAD ASKED ABOUT WHITE  
16 FENCE FARMS. THAT SIMPLY IS THE LAST OF THE 16 MUTUALS.

17 AND CANDIDLY, I'M INFORMED THAT WE JUST RAN  
18 OUT OF TIME TO FINISH THE PROCESS PRIOR TO THE  
19 COMMENCEMENT OF TRIAL.

20 THERE ARE TWO ATTORNEYS IN MY OFFICE TODAY  
21 THAT ARE WORKING WITH STEFANIE MORRIS OF MR. DUNN'S

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22 OFFICE AS WE SPEAK, PROVIDING INFORMATION AND ENGAGED IN  
23 DISCUSSIONS AND TRYING TO CLARIFY.

24 THE COURT WILL RECALL THAT I INDICATED THAT  
25 THAT IS MUTUAL, BUT IS SPLIT. HALF OF IT IS ON THE  
26 COUNTY SIDE. HALF OF IT IS ON THE CITY SIDE.

27 THEY USE DIFFERENT MEASURING METHODOLOGIES  
28 BECAUSE THE METERS ARE DIFFERENT. ONE METER MEASURES IN

45

♀  
1 CUBIC FEET. ONE METER MEASURES IN GALLONS.

2 AND WE'VE RECENTLY RETRANSMITTED THE  
3 CUSTOMER SALES RECORDS IN DETAIL.

4 I THINK THERE ARE FOUR BANKERS BOXES OF  
5 THOSE THAT ARE GOING TO BE DELIVERED TOMORROW IF WE HAVE  
6 TO GO FORWARD.

7 BUT I HONESTLY BELIEVE AT THIS POINT IT'S  
8 SIMPLY -- IT'S AN IN-PROCESS THING. AND IT'S JUST GOING  
9 TO TAKE MORE TIME FOR THOSE THREE ATTORNEYS THAT ARE  
10 WORKING ON IT TO GET THROUGH ALL OF THE NUMBERS.

11 I ANTICIPATE THAT BEING RESOLVED. MAYBE  
12 MR. DUNN HAS A DIFFERENT PERCEPTION. BUT I BELIEVE THAT  
13 THAT IS SIMPLY A MATTER OF WE WERE LAST IN THE SEQUENCE,  
14 AND THE PROCESS IS NOT YET COMPLETE.

15 THE COURT: OKAY. LET'S SEE.

16 OKAY. AND MR. JOYCE, YOUR ISSUES ARE ALL  
17 RESOLVED?

18 MR. JOYCE: I BELIEVE SO, YOUR HONOR. EXCEPT FOR  
19 I HAVE OBJECTIONS TO MR. BURROWS.

20 THE COURT: YES. ALL RIGHT.

21 ARE YOU GOING TO BE ABLE TO RESOLVE THOSE?

22 MR. JOYCE: I'M NOT HOPEFUL, BUT I WILL MAKE AN  
23 EFFORT.

24 THE COURT: OKAY. MR. SLOAN.  
25 MR. SLOAN: THANK YOU, YOUR HONOR. WILLIAM SLOAN  
26 FOR U.S. BORAX.  
27 I JUST WANTED TO GO BACK TO WHAT WE WERE  
28 DISCUSSING EARLIER ABOUT THE SUBMISSION OF DECLARATIONS.

46

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1 THE COURT: YES.  
2 MR. SLOAN: AND I WAS WONDERING IF THE COURT WOULD  
3 BE WILLING TO ENTERTAIN A PROPOSED ORDER, PERHAPS IN THE  
4 MORNING, THAT WOULD LIMIT THE SCOPE OF WHAT THOSE ARE  
5 ADMITTED FOR.  
6 WE DISCUSSED THAT AT THE LAST HEARING.  
7 THE COURT: I THOUGHT WE DID THAT. I SIGNED AN  
8 ORDER, I THOUGHT -- AND IT WAS PRESENTED BY MR. DUNN --  
9 THAT DID EXACTLY THAT.  
10 MR. SLOAN: THAT DOESN'T ADDRESS THIS ISSUE OF THE  
11 ADMISSION OF EVIDENCE OF THE DECLARATIONS.  
12 YOU'LL RECALL THAT THE DECLARATIONS  
13 ENCOMPASSED INFORMATION FAR BEYOND THE ISSUES THAT THE  
14 COURT HAS DECIDED.  
15 THE COURT: I THOUGHT THAT'S WHAT THE ORDER WAS.  
16 MAYBE I'M MISTAKEN.  
17 MR. DUNN.  
18 MR. DUNN: YES. THE FIFTH AMENDMENT TO THE CASE  
19 MANAGEMENT ORDER MAKES CLEAR THAT WHATEVER IS INTRODUCED,  
20 OR WHATEVER TAKES PLACE IN THIS PHASE OF TRIAL, PHASE  
21 FOUR, IS LIMITED TO THE PHASE FOUR ISSUE OF CURRENT  
22 GROUNDWATER PRODUCTION.  
23 AND THEN THE AMENDED ORDER HAS LANGUAGE TO  
24 THE EFFECT THAT WHAT HAPPENS DURING THIS PHASE, AND  
25 WHATEVER FINDINGS OF FACT TAKE PLACE, WILL NOT IMPACT THE  
26 PARTIES' CLAIMED WATER RIGHT, ET CETERA.

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27 I THINK WE'VE GONE OVER THIS ISSUE BEFORE.

28 THE COURT: WELL, WE HAVE. BUT WE NEED TO BE

47

1 CLEAR.

2 MR. DUNN: YES.

3 THE COURT: AND I UNDERSTAND MR. SLOAN'S CONCERN.

4 I THINK IT'S LEGITIMATE.

5 BUT LET ME ASK YOU TO TAKE A LOOK AT THE  
6 ORDER. I'M GOING TO READ IT INTO THE RECORD RIGHT NOW,  
7 BUT YOU CAN LOOK AT IT. BASICALLY IT SAYS THIS.

8 "THE COURT'S CURRENT CASE  
9 MANAGEMENT ORDER IS HEREBY AMENDED AS FOLLOWS:

10 "THE PHASE FOUR TRIAL IS ONLY FOR  
11 THE PURPOSE OF DETERMINING GROUNDWATER PUMPING  
12 DURING 2011 AND 2012.

13 "THE PHASE FOUR TRIAL SHALL NOT  
14 RESULT IN ANY DETERMINATION OF ANY WATER RIGHT  
15 OR THE REASONABLENESS OF ANY PARTY'S WATER USE,  
16 OR MANNER OF APPLYING WATER TO THE USE.

17 "THE PHASE FOUR TRIAL WILL NOT  
18 PRECLUDE ANY PARTY FROM INTRODUCING IN A LATER  
19 TRIAL PHASE EVIDENCE TO SUPPORTS ITS CLAIMED  
20 WATER RIGHTS, INCLUDING, WITHOUT LIMITATION,  
21 EVIDENCE OF WATER USE IN YEARS OTHER THAN 2011  
22 AND 2012.

23 "ALL PARTIES RESERVE THEIR RIGHTS  
24 TO PRODUCE ANY EVIDENCE TO SUPPORT THEIR  
25 CLAIMED WATER RIGHTS AND MAKE ANY RELATED LEGAL  
26 ARGUMENTS, INCLUDING, WITHOUT LIMITATION,  
27 ARGUMENTS BASED ON ANY APPLICABLE  
28 CONSTITUTIONAL, STATUTORY OR DECISIONAL

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1 AUTHORITY."

2 I THINK I SEE WHAT YOUR CONCERN IS.

3 BECAUSE THERE ARE STATEMENTS MADE UNDER  
4 OATH IN THE DECLARATION RELATING TO OTHER PARTS OF THE  
5 CLAIM, THAT SHOULD BE -- THEY ARE SURPLUSAGE. AND I  
6 WOULD MAKE THAT FINDING.

7 BECAUSE NOBODY IS BOUND BY ANY STATEMENTS  
8 OTHER THAN THE CLAIMED PUMPING.

9 MR. SLOAN: AND JUST TO ADD TO THAT.

10 I THINK THE PARTICULAR CONCERN IS WHEN WE  
11 COME TO A LATER PHASE OF TRIAL, THAT PARTIES CAN'T JUST  
12 SAY, "WELL, THIS DECLARATION WAS ADMITTED INTO EVIDENCE  
13 AND WON'T BE SUBJECT TO CROSS-EXAMINATION."

14 THE COURT: YEAH. THAT'S WHAT I JUST INDICATED.

15 I THINK THAT THOSE STATEMENTS IN THOSE  
16 DECLARATIONS, OTHER THAN THE AMOUNT OF PUMPING, EXCEPT  
17 INSOFAR AS THEY SUPPORT THE CONCLUSION AS TO WHAT THE  
18 PUMPING IS, SHOULD NOT BE USED IN THE FUTURE.

19 MR. SLOAN: OKAY. THANK YOU, YOUR HONOR.

20 MR. DUNN: THE COURT HAD ALREADY INDICATED THAT ON  
21 THE RECORD.

22 THE COURT: I THOUGHT I HAD.

23 MR. DUNN: YOU DID.

24 MR. SLOAN: I BELIEVE WE DIDN'T HAVE A COURT  
25 REPORTER THEN.

26 THE COURT: YOU'RE PROBABLY RIGHT.

27 THOUGH I THINK WE HAD A COURT REPORTER IN  
28 ALL OF OUR PROCEEDINGS, DIDN'T WE?

1 MR. SLOAN: THERE WAS A WINDOW OF TIME WHERE THE  
2 COURT REPORTER WASN'T PRESENT.

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3 THE COURT: ALL RIGHT. LET'S HOPE THE RECORD IS  
4 CLEAR NOW.

5 MR. SLOAN: THANK YOU, YOUR HONOR.

6 THE COURT: OKAY. MR. BUNN.

7 MR. BUNN: SO I GUESS WHAT THERE IS LEFT TO DO  
8 NOW, YOUR HONOR, IS TO TALK ABOUT SCHEDULING OF THE TRIAL  
9 AND PRESENTATION OF WITNESSES.

10 AND ALSO, HOW YOU WANT TO RECEIVE THESE  
11 DECLARATIONS.

12 I HAVE MINE. I'M SURE THAT EVERYONE IN THE  
13 ROOM HAS THEIRS WITH THEM. HOW DO WE DO THAT PHYSICALLY?

14 THE COURT: WHAT I ENVISION -- AND I'M WILLING TO  
15 HEAR SUGGESTIONS FROM COUNSEL. BUT WHAT I ENVISION IS  
16 THAT EACH COUNSEL REPRESENTING A PARTY WITH A CLAIMED  
17 PUMPING NUMBER WILL STAND AND SUBMIT THE STIPULATION.

18 ATTACHED TO IT SHOULD BE THE DECLARATION.

19 AS WELL AS THE SUPPORTING DOCUMENTS THAT  
20 ARE EXHIBITS TO THE DECLARATION SHOULD BE MARKED AS AN  
21 EXHIBIT. SHOULD BE OFFERED IN EVIDENCE.

22 IF SOMEBODY OBJECTS TO IT, IT WILL COME  
23 INTO EVIDENCE, FINDING ONLY THE PARTIES THAT HAVE  
24 STIPULATED.

25 THE PARTY WHO IS OBJECTING TO IT WILL --  
26 AND WE'LL DEAL WITH HOW TO PROCEED AT THAT POINT IN TERMS  
27 OF THE BURDEN OF PROOF.

28 BUT WE'RE GOING TO GO FORWARD WITH THE

♀  
1 EVIDENCE.

2 MR. JOYCE: YOUR HONOR, MR. JOYCE ON BEHALF OF  
3 DIAMOND FARMING, CRYSTAL ORGANIC, LAPIS AND GRIMMWAY  
4 ENTERPRISES.

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5 THE COURT: I THINK YOU BETTER COME UP A LITTLE  
6 CLOSER.

7 MR. JOYCE: WHEN DOES THE COURT INTEND TO COMMENCE  
8 THE PROCESS OF HAVING THE PARTIES PROFFER THE  
9 DECLARATIONS?

10 THE COURT: TOMORROW MORNING.

11 MR. JOYCE: THANK YOU. THAT'S ALL I REALLY WANTED  
12 TO KNOW. THANK YOU. I APPRECIATE THAT.

13 THE COURT: YES. MR. ZIMMER.

14 MR. ZIMMER: JUST ON THE ISSUE OF THE  
15 DECLARATIONS, YOUR HONOR.

16 WE'VE PREVIOUSLY HAD FILED A PROPHYLACTIC  
17 OBJECTION TO THE MANNER IN WHICH THESE DECLARATIONS ARE  
18 BEING USED.

19 BUT PUTTING THAT ASIDE FOR THE MOMENT, THE  
20 COURT'S LAST C.M., CASE MANAGEMENT ORDER, CLEARLY  
21 ARTICULATES THAT THESE DECLARATIONS WILL NOT BE USED TO  
22 DETERMINE ANY PARTIES' WATER RIGHTS.

23 AND AT THE LAST CMO -- ALTHOUGH I THINK WE  
24 WERE OFF THE RECORD -- THE COURT INDICATED THAT THIS  
25 EVIDENCE ALSO CANNOT BE USED IN ANY INTERSTATE TRIAL  
26 AGAINST OTHER PARTIES TO TRY AND DECREASE THEIR WATER  
27 RIGHTS.

28 SO --

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1 THE COURT: WELL, WHATEVER THE RECORD IS, THE  
2 RECORD IS. BUT I THINK THAT THAT'S PROBABLY  
3 SUBSTANTIALLY CORRECT.

4 I THINK THAT -- AS I'VE INDICATED, WHAT I'M  
5 INTERESTED IN IS WHAT THE CURRENT PUMPING IS.

6 I THINK IT'S GOING TO BE MORE THAN WHAT THE  
7 SAFE YIELD IS.

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8 MAYBE NOT. BUT I THINK IT IS. BASED UPON  
9 THE EVIDENCE THAT WE HEARD IN THE PHASE THREE TRIAL.

10 AND THEN I BELIEVE THE NEXT PHASE SHOULD  
11 INVOLVE PRESCRIPTIVE CLAIMS BY PEOPLE WHO ARE NOT  
12 OVERLYING LANDOWNERS TO DETERMINE WHAT PORTION OF THEIR  
13 PUMPING, IF ANY, IS APPROPRIATE.

14 NOT APPROPRIATED, BUT APPROPRIATE.

15 AND AT THAT POINT, WE WILL THEN BE ABLE TO  
16 MOVE INTO THE QUESTION OF HOW DO WE GET THE BASIN IN  
17 BALANCE.

18 MR. ZIMMER: I THINK THAT'S CORRECT. AND I THINK  
19 WHAT THE COURT SAID BEFORE WAS THAT THE NUMBERS THAT ARE  
20 BEING SUBMITTED IN THIS PHASE WOULD NOT BE USED IN A  
21 LATER PHASE IF WE WERE DETERMINING WHETHER PARTIES HAD TO  
22 REDUCE THEIR PUMPING.

23 THE COURT: WELL, YES AND NO. EXCEPT TO THE  
24 EXTENT THAT IF PEOPLE ARE PUMPING, AND THERE'S A CLAIM OF  
25 RIGHT TO PUMP WHAT THEY ARE PUMPING NOW, THEN THAT  
26 CERTAINLY IS GOING TO BE EVIDENCE THAT THE COURT IS GOING  
27 TO BE VIEWING TO DETERMINE WHETHER OR NOT THEIR PUMPING  
28 COULD BE REDUCED. AND ON WHAT BASIS.

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1 AS YOU SAID -- AND WE ALL AGREED SO MANY  
2 TIMES -- WE'RE DEALING WITH CORRELATIVE RIGHTS WITHIN THE  
3 BASIN.

4 THE BASIN IS NOT EQUAL IN ITS LEVELS OF  
5 OVERDRAFT. OR NOT.

6 SO EACH INDIVIDUAL WHO IS PUMPING IS GOING  
7 TO BE PUT TO THE TEST OF HOW MUCH SHOULD THAT PUMPING BE  
8 REDUCED.

9 I THINK WE'VE TALKED AN AWFUL LOT ABOUT

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10 WATER MASTERS MAKING FINDINGS OF FACT AND RECOMMENDATIONS  
11 TO THE COURT.

12 THE COURT IS GOING TO HAVE TO MAKE THE  
13 DECISION AS TO WHAT IS APPROPRIATE AND WHAT IS NOT  
14 APPROPRIATE.

15 YOU CANNOT TAKE SOMEBODY'S WATER AWAY  
16 WITHOUT A FINDING, FIRST OF ALL, AS TO WHAT THEY ARE  
17 ENTITLED TO. AND HOW MUCH IT SHOULD BE REDUCED.

18 MR. ZIMMER: IT'S MY UNDERSTANDING THE AMOUNT THEY  
19 WILL BE ENTITLED TO, AND HOW MUCH SHOULD BE REDUCED, WILL  
20 BE DETERMINED AT A SUBSEQUENT PHASE.

21 THE COURT: YES.

22 MR. ZIMMER: THANK YOU, YOUR HONOR.

23 THE COURT: BUT WE ALWAYS START WITH WHAT SOMEBODY  
24 IS PUMPING.

25 MR. ZIMMER: ALL RIGHT. I'M NOT SURE WHAT THAT  
26 MEANS. FOR A SUBSEQUENT PHASE, WE ARE NOT --

27 THE COURT: THAT MEANS THAT IF SOMEBODY IS PUMPING  
28 A CERTAIN NUMBER OF ACRE FEET A YEAR, AND THAT IS CLAIMED

53

1 AS OF RIGHT, THEN THAT'S THE BEGINNING POINT TO DETERMINE  
2 ANY REDUCTIONS. BECAUSE THAT'S REASONABLE, PRESUMABLY,  
3 FOR THE BENEFICIAL USE OF THE PROPERTY.

4 NOW, I'M NOT MAKING ANY STATEMENTS OF LAW  
5 RIGHT NOW. I'M NOT MAKING FINDINGS OF ANY KIND. AND  
6 THIS IS PROBABLY A DISCUSSION THAT HAS GONE BEYOND WHAT  
7 OUR DISCUSSION SHOULD BE IN TERMS OF THIS PHASE OF THE  
8 TRIAL.

9 YOU'RE ASKING THE COURT HYPOTHETICAL  
10 QUESTIONS IN A WAY. AND I JUST DON'T THINK THAT'S WHAT I  
11 SHOULD BE ANSWERING AT THIS POINT.

12 MR. ZIMMER: I'M NOT TRYING TO ASK HYPOTHETICAL

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13 QUESTIONS.

14 THE COURT: NO. I KNOW YOU'RE NOT. BUT THAT'S  
15 WHAT IT TURNS OUT TO BE, MR. ZIMMER.

16 MR. ZIMMER: I'M JUST TRYING TO DETERMINE WHETHER  
17 THE AMOUNTS THAT ARE BEING INTRODUCED NOW WILL, IN FACT,  
18 BE EVIDENCE OF THOSE NUMBERS IN SOME FUTURE PHASE IF WE  
19 END UP HAVING THAT QUESTION ABOUT WHAT CURRENT PUMPING IS  
20 AND HOW MUCH IT WILL BE REDUCED.

21 THE COURT: WELL, IT CERTAINLY IS GOING TO BE  
22 EVIDENCE OF WHAT YOU WERE PUMPING IN 2011, 2012, WHATEVER  
23 THOSE FINDINGS ARE.

24 NOW, MAYBE THE YEAR 2011, YOU'RE PUMPING  
25 THREE TIMES AS MUCH AS YOU WOULD ORDINARILY BE PUMPING  
26 FOR SOME OTHER ANOMALOUS REASON. OR YOU'RE PUMPING  
27 SIGNIFICANTLY LESS THAN YOU WOULD -- I DON'T MEAN YOU,  
28 BUT I MEAN ANY INDIVIDUAL PARTY.

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1 BUT I FEEL SOMEWHAT UNCOMFORTABLE IN THIS  
2 DISCUSSION AT THIS POINT OTHER THAN TO SAY THAT THE  
3 FINDINGS THAT WE'RE MAKING HERE ARE THE FINDINGS AS TO  
4 WHAT IS BEING PUMPED NOW.

5 MR. ZIMMER: THAT MAKES ME UNCOMFORTABLE, TOO.

6 AND ALL I CAN SAY IS WE ARE NOT CURRENTLY  
7 VIEWING US AS ADVERSE TO ANY OTHER LANDOWNERS CURRENTLY.  
8 MR. MC LACHLAN HAS FILED A COMPLAINT THAT MIGHT END UP  
9 DOING THAT.

10 WE ARE NOT OBJECTING TO CERTAIN PARTIES'  
11 CLAIMS AS TO CURRENT PUMPING SOLELY FOR THE PURPOSE OF  
12 THIS TRIAL.

13 AND SOLELY -- AND SO THAT THE COURT CAN  
14 HAVE A TOTAL PUMPING NUMBER AT SOME POINT IN THE FUTURE

15 SO IT CAN MOVE ON TO PRESCRIPTION. BUT WE ARE NOT  
16 AGREEING TO ANY PARTICULAR PUMPING.

17 THE COURT: I'M OF THE OPINION THAT WE'VE SET THIS  
18 PHASE OF TRIAL TO DETERMINE WHAT EACH OF THE PARTIES HERE  
19 HAS BEEN PUMPING IN 2011, 2012 SO THAT WE CAN MOVE ON TO  
20 THE NEXT PHASE OF TRIAL, WHICH WOULD BE PRESCRIPTION.

21 I THINK THAT'S ALL I SHOULD SAY ABOUT THAT.

22 MR. DUNN.

23 MR. DUNN: YES. TO THE EXTENT AN OBJECTION IS  
24 APPROPRIATE OR EVEN REQUIRED AT THIS POINT, I PLACE THAT  
25 OBJECTION ON THE RECORD AT THIS POINT.

26 THIS TYPE OF DISCUSSION THAT COUNSEL IS  
27 HAVING WITH THE COURT SEEMS -- AT LEAST TO ME -- TO STRAY  
28 FAR BEYOND WHAT APPROPRIATELY SHOULD BE UNDER DISCUSSION

55

1 AT THIS POINT. AND I OBJECT TO IT.

2 THE COURT: YEAH. I THINK THAT -- I THINK OUR  
3 DISCUSSION HERE HAS GONE BEYOND WHERE IT SHOULD HAVE GONE  
4 IN TERMS OF DEALING WITH ISSUES THAT ARE NOT REALLY  
5 BEFORE US TODAY.

6 THE ISSUE BEFORE US TODAY IS WHAT IS  
7 CURRENT PUMPING.

8 WHAT THE IMPACT OF THAT MIGHT BE IN THE  
9 FUTURE WILL BE DETERMINED IN A FUTURE PROCEEDING.

10 AND IF IT'S SOMEHOW RATHER INAPPROPRIATE,  
11 THEN THERE WILL BE PLENTY OF OPPORTUNITY FOR ANY COUNSEL  
12 TO RAISE OBJECTIONS TO THAT.

13 MR. ZIMMER: WELL, I WAS COMFORTABLE WITH THE CASE  
14 MANAGEMENT ORDER THE WAY THAT IT WAS WRITTEN. THE  
15 DISCUSSION WE'VE HAD HERE TODAY MAKES ME CONCERNED ABOUT  
16 IT. BUT IF WE'RE RELYING ON THE CASE MANAGEMENT ORDER  
17 THE WAY THAT IT IS FRAMED --

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18 THE COURT: YOU'RE NOT GOING TO GET ME TO SAY THAT  
19 IT'S NOT WHAT IT IS.

20 IT IS WHAT IT IS. I MADE THE ORDER. I  
21 MEANT IT WHEN I SAID IT. I MEAN IT NOW.

22 AND WHATEVER INTERPRETATION OTHER COUNSEL  
23 MIGHT WANT TO PLACE UPON THOSE WORDS, THEY HAVE A PERFECT  
24 RIGHT TO DO AND TO ASSERT WHATEVER THEIR VIEW IS OF WHAT  
25 THOSE WORDS MEAN.

26 I THINK I KNOW WHAT THEY MEAN. BUT THEY  
27 ARE WHAT THEY ARE. AND I THINK THEY ARE IN PRETTY PLAIN  
28 ENGLISH.

56

1 MR. ZIMMER: THANK YOU, YOUR HONOR.

2 THE COURT: SO I THINK THAT THE ONLY OTHER PERSON  
3 I WANT TO TALK TO, OR HEAR FROM HERE, BEFORE WE RECESS  
4 UNTIL THE MORNING, IS MR. MC LACHLAN.

5 BECAUSE I WANT TO HAVE SOME SENSE OF A  
6 TIMELINE THAT I CAN CONSIDER IN EVALUATING THE WOOD'S  
7 CLASS CLAIM.

8 I JUST WOULD HEARKENED BACK TO THE PROPOSED  
9 SETTLEMENT THAT WAS BEFORE THE COURT FOR THE WOOD'S  
10 CLASS. BY NOW, I GUESS, IT WAS A COUPLE YEARS AGO.

11 MR. MC LACHLAN: I'M SORRY, YOUR HONOR.  
12 MIKE MC LACHLAN FOR RICHARD WOOD AND THE SMALL PUMPER  
13 CLASS.

14 I'M NOT CLEAR ON EXACTLY WHAT THE QUESTION  
15 IS.

16 THE COURT: I WANT TO KNOW WHAT WE'RE GOING TO DO  
17 WITH THE ISSUES THAT ARISE FROM THE WOOD'S CLASS CLAIMS  
18 THAT WERE FILED.

19 AND I'M NOT TALKING ABOUT YOUR NEW



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20 COMPLAINT, BUT THE ORIGINAL COMPLAINT. AND HOW WE'RE  
21 GOING TO DEAL WITH THE ISSUE OF CURRENT PUMPING TODAY.

22 I'M CONCERNED THAT YOU DON'T HAVE YOUR  
23 EXPERT'S REPORT YET -- MY EXPERT'S REPORT YET.

24 THE COURT NEEDS THAT IN ORDER TO DETERMINE,  
25 I SUPPOSE, ABSENT SOME OTHER PROOF, OF WHAT THE PUMPING  
26 IS.

27 AND IT MAY WELL BE THAT DURING THIS PHASE  
28 OF THE TRIAL, I'M GOING TO CALL THAT WITNESS TO TESTIFY

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1 SO THAT I HAVE SOME SENSE OF WHAT HE'S ABOUT.

2 I THINK I'M ENTITLED TO KNOW THAT. THE  
3 COURT IS ENTITLED TO KNOW THAT.

4 AND AT THIS POINT, I HAVE NO KNOWLEDGE AT  
5 ALL OTHER THAN HE'S NOT DONE.

6 MR. MC LACHLAN: ALL RIGHT. WELL --

7 THE COURT: I DON'T KNOW WHAT HE'S GOT DONE. I  
8 DON'T KNOW WHAT HIS TENTATIVE OPINIONS ARE. I DON'T KNOW  
9 IF HE HAS TENTATIVE OPINIONS.

10 MR. MC LACHLAN: HE DOES. HE'S STILL WAITING FOR  
11 A SIGNIFICANT NUMBER OF CLASS NUMBERS TO AGREE TO SIGN  
12 OFF AND TO PARTICIPATE WITH HIM, WHICH IS SOMETHING WE'VE  
13 BEEN WORKING ON.

14 AND FOR THE BETTER PART OF FOUR YEARS, I  
15 ASKED YOUR HONOR FOR THIS EXPERT. I SAID IT WAS  
16 NECESSARY. YOUR HONOR PUSHED IT OFF AND PUSHED IT OFF  
17 AND PUSHED IT OFF UNTIL DECEMBER.

18 THE COURT: MR. MC LACHLAN, I'M GOING TO TELL YOU  
19 THAT I DID NOT PUSH OFF THE REQUEST. THAT'S AN  
20 INAPPROPRIATE CHARACTERIZATION.

21 WHAT I TOLD YOU WAS THAT IT WAS NOT  
22 SOMETHING THAT THE COURT COULD ORDER AT THAT POINT

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23 BECAUSE IT WAS NOT RIGHT. IT BECAME RIGHT AT A LATER  
24 TIME. AND THAT'S WHEN I ORDERED THE APPOINTMENT OF THE  
25 COURT EXPERT.

26 AND AT THAT POINT, YOU INDICATED, I THINK,  
27 THAT THERE WOULD BE A REPORT WITHIN SEVERAL MONTHS.

28 MR. MC LACHLAN: I NEVER SAID THAT.

58

1 THE COURT: WELL, THAT WAS CERTAINLY THE  
2 IMPRESSION I HAD.

3 MR. MC LACHLAN: MY STATEMENTS WERE ALWAYS TO THE  
4 CONTRARY, YOUR HONOR, BOTH IN THE WRITTEN FILINGS AND ON  
5 THE RECORD, THAT I KNEW THAT IT WOULD TAKE QUITE SOME  
6 LENGTH OF TIME. I'M NOT AN ENGINEER, BUT I KNOW WHAT  
7 GENERALLY THEY ARE GOING TO HAVE TO DO. AND IT'S NOT AN  
8 EASY PROCESS.

9 SO BEYOND THAT, I DON'T KNOW WHAT TO SAY,  
10 YOUR HONOR.

11 BUT HAD THIS BEEN DONE A YEAR AGO,  
12 CERTAINLY THERE WOULD BE A REPORT FROM AN EXPERT.  
13 SOMEONE TO PROFFER THIS INFORMATION.

14 BUT WHEN THE TRIAL WAS SET, YOUR HONOR DID  
15 SAY, "LOOK, I UNDERSTAND --" AND I'M PARAPHRASING YOUR  
16 STATEMENTS ON THE RECORD, NOT QUOTING THEM. THAT YOU  
17 UNDERSTOOD THIS PROBLEM, AND THAT WE WOULD BE AT SOME  
18 POINT AT THE BACK OF THE BUS.

19 AND BEYOND THAT --

20 THE COURT: OKAY. ONE OF THE DIFFICULTIES THAT  
21 WE'VE ALWAYS HAD HERE WAS THAT THE MOTIONS THAT YOU FILED  
22 WERE ALWAYS A REQUEST FOR THE COURT TO APPOINT AN EXPERT  
23 FOR YOU. AND I WAS NOT ABLE TO DO THAT.

24 FINALLY, WE WERE ABLE TO AGREE THAT THE

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25 COURT DOES NEED AN EXPERT SINCE YOU WERE NOT ABLE TO  
26 PROFFER ONE. AND THAT'S WHY WE APPOINTED THE EXPERT THE  
27 SECOND TIME AS WELL AS THE FIRST TIME.

28 BUT IT'S THE COURT'S EXPERT. YOU SAID THAT 59

1 MANY TIMES. AND IT'S CORRECT.

2 WHATEVER THE HISTORY WAS, WE DO HAVE AN  
3 EXPERT.

4 AND I THINK THAT TO THE EXTENT THAT HE HAS  
5 DIFFICULTIES IN GETTING CLASS MEMBERS TO COOPERATE WITH  
6 HIM, IT MAY WELL BE THAT HE'S GOT TO START RENDERING  
7 OPINIONS BASED ON THE INFORMATION THAT HE DOES HAVE.

8 I MEAN, HE MAY NOT BE ABLE TO GET A HUNDRED  
9 PERCENT OF THE CLASS MEMBERS TO COOPERATE.

10 I DON'T KNOW, BUT --

11 MR. MC LACHLAN: WE'RE NOT SEEKING FOR A HUNDRED  
12 PERCENT.

13 THE COURT: I'M SORRY?

14 MR. MC LACHLAN: WE'RE NOT LOOKING FOR A HUNDRED  
15 PERCENT, YOUR HONOR.

16 THE COURT-APPOINTED EXPERT WAS APPOINTED  
17 ALMOST THREE YEARS AGO. BUT HIS WORK WAS STAYED FOR THAT  
18 ENTIRE TIME UNTIL VERY END OF DECEMBER.

19 AND THAT'S A TIMELINE THAT THE COURT SET.

20 IT WAS NOT MY CHOOSING. I WAS NOT HAPPY  
21 ABOUT IT.

22 I'M NOT HAPPY TO BE SITTING HERE RIGHT IN  
23 THIS POSITION, BECAUSE I'VE BEEN DEAD IN THE WATER. AND  
24 IT'S VERY DIFFICULT TO NEGOTIATE WITHOUT THIS.

25 MY AGREEING TO SIGN UP IN THIS CASE FIVE  
26 YEARS AGO WAS DEPENDENT UPON YOUR HONOR TELLING ME THAT  
27 THIS SITUATION WAS GOING TO BE RESOLVED.

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28

THIS CASE HAS BEEN A DISASTER FOR MY

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1 PRACTICE PERSONALLY. IT'S VERY DIFFICULT FOR MR. WOOD.  
2 AND I'M DOING THIS CASE WITH TWO HANDS TIED BEHIND MY  
3 BACK.

4 SO I DON'T REALLY KNOW WHAT YOUR HONOR  
5 WANTS OF ME.

6 BUT THIS IS NOTHING TO DO WITH ABOUT MY  
7 REPRESENTATION OF THE WOOD CLASS. THIS IS WHAT IT IS.  
8 WE CAN ONLY GO SO FAST. AND WE CAN PUSH THIS FORWARD.

9 BUT I CAN'T MAKE MAGIC HAPPEN. ALL I COULD  
10 DO WAS FILE THAT MOTION AGAIN AND AGAIN AND AGAIN AND  
11 AGAIN.

12 AND I DID.

13 AND IT WAS DENIED AGAIN AND AGAIN AND  
14 AGAIN.

15 AND --

16 THE COURT: LET'S BE CLEAR WHAT WAS DENIED.

17 IT WAS DENIED BECAUSE YOU REQUEST FOR THE  
18 COURT TO APPOINT AN EXPERT FOR YOU.

19 MR. MC LACHLAN: FOUR YEARS AGO, TRUE.

20 THREE YEARS AGO, IT WAS THE COURT'S EXPERT  
21 THAT WAS APPOINTED AND THE WORK WAS STAYED. THAT'S WHAT  
22 HAPPENED, YOUR HONOR.

23 THE COURT: OKAY. I'M NOT IN THE HABIT OF ARGUING  
24 WITH YOU, MR. MC LACHLAN. I'M NOT INTERESTED IN DOING  
25 THAT.

26 WHAT I'M INTERESTED IN DOING IS GETTING  
27 SOME INFORMATION FROM YOUR EXPERT AS BEST HE CAN GIVE ME  
28 TODAY, OR TOMORROW, OR SOME TIME THIS WEEK, AS TO WHAT

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1 THE STATUS OF HIS INVESTIGATION AND ANALYSIS IS.

2 MR. MC LACHLAN: I DON'T HAVE AN EXPERT, YOUR  
3 HONOR.

4 THE COURT: I KNOW THAT. I'M NOT TALKING ABOUT  
5 YOUR EXPERT. I'M TALKING ABOUT THE COURT'S EXPERT.

6 ARE YOU IN COMMUNICATION WITH HIM?

7 MR. MC LACHLAN: WE EMAIL PERIODICALLY.

8 THE COURT: OKAY. WHERE IS HIS OFFICE?

9 MR. MC LACHLAN: SANTA BARBARA.

10 THE COURT: OKAY. IS THERE ANY REASON WHY WE  
11 COULD NOT HAVE HIM COME DOWN HERE THIS WEEK?

12 MR. MC LACHLAN: THE RESPONSE IS GOING TO BE HE  
13 HAS NOTHING TO TELL YOU, YOUR HONOR, BECAUSE HE DOESN'T  
14 HAVE A BULLETIN INFORMATION.

15 HE COULD ESTIMATE FOR YOU WHAT RICHARD  
16 WOOD'S PUMPING IS. BUT THAT'S OF NOT A LOT OF USE.

17 THE COURT: IS THAT ALL HE'S DONE?

18 MR. MC LACHLAN: WELL, I HAVEN'T BEEN IN  
19 COMMUNICATION WITH HIM FOR A MONTH. BUT I'M PRETTY SURE  
20 HE HASN'T.

21 THE COURT: WELL, I'D LIKE TO KNOW WHAT HE'S DONE  
22 AND WHAT HE EXPECTS TO DO. AND WHAT HIS TIMELINE IS FOR  
23 BEING ABLE TO REPORT BACK.

24 HIS TESTIMONY IS OBVIOUSLY IMPORTANT.

25 TO THE EXTENT THAT HE IS NOT COMFORTABLE  
26 WITH THE STATE OF YOUR OWN KNOWLEDGE, AND MR. WOOD'S  
27 KNOWLEDGE, OF HOW MUCH PUMPING IS BEING DONE BY THE CLASS  
28 OR INDIVIDUALS, THEN I THINK TO THAT EXTENT, WE NEED TO

1 HAVE SOMETHING FROM HIM.

2 WELL, LET'S SEE WHAT OUR SCHEDULE IS GOING  
3 TO BE HERE, BECAUSE I'M GOING TO SUGGEST THAT WE HAVE HIM

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4 COME DOWN AND GIVE ME SOME PRELIMINARY TESTIMONY AS TO  
5 WHAT HE'S DOING.

6 MR. MC LACHLAN: WHAT I SUGGEST, YOUR HONOR, IS  
7 THAT I FIRST CONTACT AND EMAIL HIM RATHER THAN HAVING HIM  
8 WASTE AN ENTIRE DAY TO COME DOWN HERE, AND TELL YOU WHAT  
9 I'VE -- I'LL CONFIRM WITH HIM WHERE HE STANDS.

10 BUT I'M FAIRLY CERTAIN WHERE HE STANDS IS  
11 WHERE I'VE TOLD YOU. HE'S STILL GOT SOME TIME LEFT.  
12 BECAUSE HE'S RELYING ON US TO GATHER THESE PEOPLE, GET  
13 THE INFORMATION, AND HAND IT OVER TO HIM.

14 THE COURT: WELL, I THINK I'D LIKE SOMETHING A  
15 LITTLE MORE SPECIFIC.

16 SO CAN YOU REPORT BACK TO ME TOMORROW AND  
17 LET ME KNOW?

18 MR. MC LACHLAN: I'LL SEND AN EMAIL TO HIM LATER  
19 TONIGHT.

20 THE COURT: OKAY. THANK YOU.

21 ALL RIGHT. I THINK AT THIS POINT, WHAT  
22 WE'RE GOING TO DO IS RECESS FOR THE EVENING.

23 I'D LIKE TO RESUME TOMORROW MORNING AT NINE  
24 O'CLOCK.

25 I'D LIKE COUNSEL TO AGREE AMONG THEMSELVES  
26 AS TO WHO WANTS TO START PRESENTING DECLARATIONS. I  
27 DON'T CARE IF IT'S ALPHABETICAL OR HOWEVER IT IS. BUT I  
28 DO WANT TO DO THAT IN AN ORDERLY FASHION.

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1 I THINK THAT MR. LEININGER HAS PROVIDED A  
2 FORMAT FOR THAT. AND I THINK THAT'S WHERE WE'LL START IN  
3 THE MORNING.

4 MR. LEMIEUX: KEITH LEMIEUX.

5 CAN WE LEAVE OUR MATERIALS IN THE

5-28-13 Trial Transcript

6 COURTROOM?

7 THE COURT: YES.

8 MR. LEMIEUX: THANK YOU.

9 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

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(AT 4:15 P.M. THESE PROCEEDINGS WERE  
ADJOURNED TO WEDNESDAY, MAY 28, 2013,  
AT 9:00 A.M.)

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5-28-13 Trial Transcript

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