

EXHIBIT E

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 1 HON. JACK KOMAR, JUDGE
4 COORDINATION PROCEEDING) JUDICIAL COUNCIL
5 SPECIAL TITLE (RULE 1550(B)) COORDINATION NO.
6 ANTELOPE VALLEY GROUNDWATER CASES) JCCP4408
7) SANTA CLARA CASE NO.
8) 1-05-CV-049053
9)
10)
11)
12)
13)
14)

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS
16 FRIDAY, NOVEMBER 9, 2012
17

18 APPEARANCES:

19 FOR LOS ANGELES LEMIEUX & O'NEILL
COUNTY WATERWORKS BY: WAYNE LEMIEUX, ESQ.
20 DISTRICT 40, 4165 E. THOUSAND OAKS BLVD, SUITE 350
ET. AL. WESTLAKE VILLAGE, CALIFORNIA 91362
21 (805) 495-4770
22 FOR CITY OF RICHARDS WATSON & GERSHON
PALMDALE: BY: STEVEN R. ORR, ESQ.
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LOS ANGELES, CALIFORNIA 90071-3101
24 (213) 626-8484
25 FOR ANTELOPE BROWNSTEIN HYATT FARBER SCHRECK
VALLEY BY: MICHAEL FIFE, ESQ.
26 GROUNDWATER 21 EAST CARRILLO STREET
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27 (805) 882-1453

28 (APPEARANCES CONTINUED ON NEXT PAGE.)

12-11-09 Hearing Transcript.txt
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2 10490 SANTA MONICA BOULEVARD
3 LOS ANGELES, CALIFORNIA 90025
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4 FOR LOS ANGELES BEST BEST & KRIEGER
COUNTY WATERWORKS BY: JEFFREY V. DUNN, ESQ.
5 DISTRICT 40: 5 PARK PLAZA, SUITE 1500
6 IRVINE, CA 92614
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7 FOR ROSAMOND LAW OFFICES OF FRANK SATALINO
RANCH; ELIAS BY: FRANK SATALINO, ESQ.
8 SHOKRIAN; SHIRLEY 19 VELARDE COURT
SHOKRIAN: RANCHO SANTA MARGARITA, CA. 92688
9 (949) 735-7604
10 FOR UNITED U.S. DEPARTMENT OF JUSTICE
STATES: ENVIRONMENT AND NATURAL
11 RESOURCES DIVISION
12 BY: R. LEE LEININGER, ESQ.
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DENVER, CO 80202
(303) 844-1364

14 APPEARANCES BY TELEPHONE:

15 SHELDON BLUM
16 WILLIAM BRUNICK
MARLENE ALLEN
17 THEODORE CHESTER
JANET GOLDSMITH
18 KATRINA GONZALEZ
STEFANIE HEDLUND
19 BRAD HERREMA
JOSEPH HUGHES
20 BOB JOYCE
RALPH KALFAYAN
ROBERT KUHS
21 SCOTT KUNEY
JAMES LEWIS
22 ANTHONY LEGGIO
EMILY MADUENO
23 WESLEY MILLIBAND
MANUEL RIVAS
CHRISTOPHER SANDERS
24 WILLIAM SLOAN
JENNIFER SPALETTA
25 JOHN TOOTLE
JOHN UKKESTAD
26 JAMES WORTH
RICHARD ZIMMER
27

28 SANDRA GECO, CSR NO. 3806
OFFICIAL REPORTER

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT 1

HON. JACK KOMAR, JUDGE

4 COORDINATION PROCEEDING) JUDICIAL COUNCIL
 SPECIAL TITLE (RULE 1550(B)) COORDINATION NO.
 5) JCCP4408
 ANTELOPE VALLEY GROUNDWATER CASES)
 6) SANTA CLARA CASE NO.
) 1-05-CV-049053
 7 _____)
 8 PALMDALE WATER DISTRICT AND QUARTZ)
 HILL WATER DISTRICT,)
 9)
 CROSS-COMPLAINANTS,)
 10)
 VS.)
 11)
 LOS ANGELES COUNTY WATERWORKS)
 12 DISTRICT NO. 40, ET AL.,)
)
 CROSS-DEFENDANTS.)
 13)
 14 _____)

15 REPORTER'S CERTIFICATE

16
 17 STATE OF CALIFORNIA)
) SS
 18 COUNTY OF LOS ANGELES)
 19 I, SANDRA GECO, OFFICIAL REPORTER OF THE
 20 SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY
 21 OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING
 22 PAGES, 1 THROUGH 57, INCLUSIVE, COMPRISE A FULL, TRUE AND
 23 CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE
 24 ABOVE-ENTITLED MATTER, REPORTED BY ME ON FRIDAY, NOVEMBER
 25 9, 2012.

26 DATED THIS 12TH DAY OF NOVEMBER, 2012.

27 _____, CSR NO. 3806
 28 OFFICIAL REPORTER

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; FRIDAY, NOVEMBER 9, 2012

6 DEPARTMENT NO. 1 HON. JACK KOMAR, JUDGE
7 REPORTER: SANDRA GECO, CSR NO. 3806
8 TIME: 09:00 A.M.
9 APPEARANCES: (AS NOTED ON TITLE PAGE.)

10

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

13

14 THE COURT: GOOD MORNING. THIS IS THE CASE, I
15 BELIEVE, CALLED THE ANTELOPE VALLEY COORDINATED CASES.
16 ALSO CONSOLIDATED.

17 OKAY. I UNDERSTAND THAT ROLL CALL HAS BEEN
18 MADE OF THOSE ON THE TELEPHONE.

19 I WOULD JUST REMIND YOU, IF YOU'RE ON THE
20 TELEPHONE AND YOU WISH TO BE HEARD, BE SURE EACH TIME YOU
21 IDENTIFY YOURSELF BY NAME SO THE REPORTER WILL BE ABLE TO
22 KEEP TRACK OF WHO'S TALKING, AS WILL I.

23 THOSE IN THE COURTROOM, I WOULD EXPECT YOU
24 TO IDENTIFY YOURSELVES EACH TIME YOU SPEAK FOR THE
25 BENEFIT OF THE COURT REPORTER. AND THAT WAY WE'LL HAVE A
26 CLEAR RECORD.

27 MR. BLUM: YOUR HONOR, IF I MAY SAY. THIS IS
28 SHELDON BLUM. I WAS NOT PRESENT WHEN ROLL CALL WAS MADE,

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1 BUT I AM CURRENTLY ON THE PHONE.

2 THE COURT: ALL RIGHT. THANK YOU, MR. BLUM.

3 MR. TOOTLE: YOUR HONOR, THIS IS JOHN TOOTLE. AND
4 I WAS NOT ON THE PHONE WHEN ROLL CALL WAS CALLED. AND I
5 AM PRESENT AS WELL.

6 THANK YOU, YOUR HONOR.

7 THE COURT: THANK YOU.

8 MS. GOLDSMITH: YOUR HONOR, THIS IS JAN GOLDSMITH

9 FOR THE CITY OF LOS ANGELES. I'M NOT SURE ROLL CALL WAS
10 DONE. BUT I AM PRESENT.

11 MR. KUNEY: YES, YOUR HONOR. THIS IS SCOTT KUNEY.
12 I DON'T BELIEVE ROLL CALL WAS DONE AS IT HAS IN THE PAST.

13 THE COURT: WELL, IF YOU CHECKED IN SO THAT WE
14 KNOW WHO IS PRESENT.

15 MS. GONZALEZ: YOUR HONOR, THIS IS KATRINA
16 GONZALEZ FOR COPA DE ORO LAND COMPANY. I ALSO WAS NOT
17 PRESENT DURING THE ROLL CALL.

18 THE COURT: ALL RIGHT.

19 MR. LEWIS: YOUR HONOR, THIS IS JAMES LEWIS ON
20 BEHALF OF LITTLE ROCK SAND AND GRAVEL AND SEVERAL OTHER
21 ENTITIES.

22 THE COURT: ALL RIGHT.

23 MS. SPALETTA: YOUR HONOR, THIS IS JENNIFER
24 SPALETTA.

25 MS. ALLEN: MARLENE ALLEN IS HERE FOR OUR
26 DIFFERENT CLIENTS.

27 THE COURT: OKAY. LET ME ASK YOU TO PAUSE FOR
28 JUST A MINUTE TO TAKE CARE OF SOME BUSINESS HERE.

3

1 THE CLERK: OKAY. COUNSEL ON THE PHONE, I'M GOING
2 TO -- THIS IS THE CLERK FOR DEPARTMENT 1. I WILL TAKE A
3 QUICK ROLL CALL.

4 JENNIFER SPALETTA.

5 MS. SPALETTA: HERE.

6 THE CLERK: THANK YOU.

7 JAMES LEWIS.

8 MR. LEWIS: HERE.

9 THE CLERK: THANK YOU.

10 MR. BLUM, I KNOW YOU'RE HERE.

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MR. SLOAN: YES. PRESENT.
THE CLERK: THANK YOU.
MANUEL RIVAS.
MR. RIVAS: PRESENT.
THE CLERK: THANK YOU.
MR. KALFAYAN
MR. KALFAYAN: HERE. PRESENT.
THE CLERK: THANK YOU.
MR. UKKESTAD?
MR. UKKESTAD: PRESENT.
THE CLERK: THANK YOU.
JAMES WORTH.
MR. RAYTIS: GOOD MORNING. MY NAME IS DAN RAYTIS,
APPEARING IN PLACE OF JAMES WORTH.
THE CLERK: THANK YOU.
MR. LEGGIO?
MR. LEGGIO: PRESENT.

THE CLERK: THANK YOU.
MR. KUNEY?
MR. KUNEY: YES.
THE CLERK: THANK YOU.
MS. MADUENO.
MS. MADUENO: HERE.
THE CLERK: THANK YOU.
MR. BRUNICK?
MR. BRUNICK: HERE.
THE CLERK: THANK YOU.
KATRINA GONZALEZ?
MS. GONZALEZ: HERE.
THE CLERK: THANK YOU.

14 CHRISTOPHER SANDERS?
15 MR. SANDERS: PRESENT.
16 THE CLERK: THANK YOU.
17 WESLEY MILIBAND?
18 MR. MILIBAND: PRESENT.
19 THE CLERK: THANK YOU.
20 MARLENE ALLEN?
21 MS. ALLEN: PRESENT.
22 THE CLERK: THANK YOU.
23 MR. CHESTER, YOU'RE HERE? THANK YOU.
24 MR. TOOTLE?
25 MR. TOOTLE: HERE.
26 THE CLERK: THANK YOU.
27 MR. KUHS?
28 MR. KUHS: HERE.

5

1 THE CLERK: THANK YOU. MR. ZIMMER.
2 MR. ZIMMER: PRESENT.
3 THE CLERK: THANK YOU.
4 MR. JOYCE? BOB JOYCE? NO ANSWER.
5 MR. HUGHES?
6 MR. HUGHES: PRESENT.
7 THE CLERK: THANK YOU.
8 MR. HERREMA?
9 MR. HERREMA: BRAD HERREMA. PRESENT.
10 THE CLERK: THANK YOU. MS. GOLDSMITH?
11 MS. GOLDSMITH: PRESENT.
12 THE CLERK: THANK YOU.
13 MS. HEDLUND?
14 MS. HEDLUND: PRESENT.
15 THE CLERK: THANK YOU.

16
17 NOT CALL?

18 THE CLERK: THAT TAKES CARE OF THAT.

19 THANK YOU, COUNSEL.

20 THE COURT: THANK YOU VERY MUCH.

21 ALL RIGHT. WE HAVE SEVERAL THINGS TO TAKE
22 CARE OF THIS MORNING.

23 AND I WILL TELL YOU THAT I SPOKE WITH
24 JUSTICE ROBIE YESTERDAY BY TELEPHONE. I THINK AFTER YOU
25 HAD COMPLETED YOUR MEDIATION SESSIONS.

26 AND HE INDICATED THAT THERE WAS GOING TO BE
27 A FURTHER TWO-DAY CONFERENCE, THE 28TH AND THE 29TH, I
28 BELIEVE, OF THIS MONTH.

6

1 AND HE IS AS OPTIMISTIC AS I AM THAT THE
2 MATTER IS GOING TO GET RESOLVED IN THE MAIN. BUT
3 CERTAINLY NOT IN ITS TOTALITY.

4 AND WE STILL HAVE A LOT OF WORK TO DO HERE.

5 AND I'M GOING TO MAKE AN ASSUMPTION THAT
6 THERE'S NOT GOING TO BE A RESOLUTION OF EVERY ISSUE BY
7 EVERY PARTY. AND WE ARE GOING TO STICK VERY CLOSELY TO
8 THE SCHEDULED TRIAL DATE FOR THE NEXT PHASE, WHICH WILL
9 BE FEBRUARY THE 11TH. IT'S BEEN SET NOW FOR SOMETIME.

10 AND WE'RE GOING TO UTILIZE THAT TWO-WEEK
11 PERIOD ONE WAY OR ANOTHER TO MOVE THIS CASE ALONG TO,
12 HOPEFULLY, A GOOD, COMPREHENSIVE RESOLUTION OF THE ISSUES
13 IN THIS CASE.

14 ONE OF THE THINGS THAT I HAVE ON THIS
15 MORNING IS A MOTION BY MR. LEMIEUX TO WITHDRAW AS
16 COUNSEL.

17 I HAVE NOT RECEIVED A SUFFICIENT BASIS FOR
18 THE COURT TO GRANT THAT MOTION AT THIS POINT.

19 DID YOU HAVE SOMETHING ELSE YOU WISHED TO
20 OFFER?

21 MR. LEMIEUX: WELL, IT WAS OUR INTENTION TO
22 PROVIDE THAT --

23 THE COURT: WOULD YOU STAND UP WHEN YOU TALK SO
24 THAT THE REPORTER CAN HEAR YOU?

25 MR. LEMIEUX: SURE.

26 THE COURT: AND I CAN HEAR YOU?

27 I'D ASK ALL COUNSEL TO STAND WHEN YOU
28 ADDRESS THE COURT FOR THE BENEFIT OF THE COURT REPORTER.

7

1 WHEN YOU STAND, YOU SPEAK MORE CLEARLY.

2 MR. LEMIEUX: KEITH LEMIEUX.

3 YOUR HONOR, IT WAS OUR INTENTION TO PROVIDE
4 THE BASIS FOR THE MOTION IN CAMERA IF WE COULD. I
5 UNDERSTAND WE DON'T HAVE THE FACILITIES TO DO THAT HERE.

6 STARTING OVER AGAIN.

7 WHEN WE FILED THE MOTION, IT WAS OUR
8 INTENT, SO AS NOT TO PREJUDICE THE CLIENT, TO PROVIDE THE
9 BASIS FOR THE MOTION IN CAMERA IF WE COULD PURSUANT TO
10 THE COURT RULES THAT WE CITED.

11 I DON'T KNOW IF WE CAN DO THAT HERE. WE
12 COULD DO IT THROUGH A SEPARATE --

13 THE COURT: WELL, DO YOU HAVE SOMETHING IN WRITING
14 THAT YOU CAN PROVIDE TO THE COURT FOR A REVIEW IN CAMERA?

15 MR. LEMIEUX: TODAY?

16 THE COURT: YES.

17 MR. LEMIEUX: NO.

18 THE COURT: TODAY IS THE HEARING ON THE MOTION.

19 MR. LEMIEUX: NO. I DON'T HAVE ANYTHING IN
20 WRITING TODAY.

21 THE COURT: SO WHAT DO YOU WANT ME TO DO?

22 MR. LEMIEUX: WELL, I WAS HOPING MAYBE -- I THINK
23 LAST TIME THIS CAME UP, WE SET UP A PHONE CONFERENCE.
24 AND YOU HAD THE CLIENT COME ON THE PHONE -- PRIVATE PHONE
25 CONFERENCE.

26 THAT'S SORT OF WHAT I WAS EXPECTING, YOUR
27 HONOR.

28 THE COURT: WELL, IF YOU WANT TO DO THAT, THEN I

8

1 SUGGEST THAT YOU CALL MRS. WALKER, WHEN YOU'RE THROUGH
2 HERE, AND SEE IF YOU CAN SCHEDULE A TIME FOR THAT TO
3 OCCUR.

4 MR. LEMIEUX: OKAY. AND THEN WE'LL --

5 THE COURT: MAKING SURE THAT YOUR CLIENT
6 UNDERSTANDS THAT THEY MUST BE REPRESENTED BY COUNSEL.

7 MR. LEMIEUX: RIGHT.

8 THE COURT: AND IF THEY ARE NOT REPRESENTED BY
9 COUNSEL WITHIN A PERIOD OF TIME THAT I WILL SET, A
10 DEFAULT WILL BE ENTERED AGAINST THEM.

11 MR. LEMIEUX: RIGHT. THEY HAVE BEEN ADVISED THAT,
12 YOUR HONOR.

13 THE COURT: ALL RIGHT. DO THEY CARE?

14 MR. LEMIEUX: I DON'T WANT TO GO INTO THE DETAILS.
15 IT'S A LONG STORY.

16 THE COURT: ALL RIGHT.

17 MR. LEMIEUX: BUT I'LL SET UP THE PHONE
18 CONFERENCE, YOUR HONOR.

19 THE COURT: OKAY. THANK YOU.

20 OKAY. NOW, I RECEIVED A NUMBER OF
21 SUGGESTIONS FROM VARIOUS PARTIES AS TO HOW WE SHOULD
22 PROCEED IN TERMS OF UTILIZATION OF PHASE FOUR, IF YOU
23 WILL, THE NEXT PHASE OF TRIAL, FEBRUARY THE 11TH, IN THE

24 EVENT THAT ALL MATTERS HAVE TO BE -- THERE ARE NO EVEN
25 PARTIAL SETTLEMENTS.

26 AND I'VE REVIEWED THOSE SUGGESTIONS. AND
27 FRANKLY, THERE'S A LOT OF COMMONALITY TO THE VARIOUS
28 PROPOSALS.

9

1 AND IT DOES SEEM TO ME THAT ONE OF THE
2 THINGS THAT WILL HELP US TO HAVE A TRIAL DURING THAT
3 PERIOD OF TIME THAT WILL BE EFFECTIVE TO RESOLVE A NUMBER
4 OF THE ISSUES WILL BE IF THE COURT MAKES AN ORDER FOR
5 SOME FORM DISCOVERY, AS I INDICATED THE LAST TIME WE WERE
6 IN SESSION.

7 AND I HAD ASKED THAT SOME OF THE
8 ADVERSARIES TO MEET AND CONFER. WE TOOK A BRIEF RECESS.
9 AND WHEN I TOOK THE BENCH AGAIN FOLLOWING THE RECESS, I
10 WAS TOLD THAT THERE WAS NO AGREEMENT AND THERE COULDN'T
11 BE.

12 SO AT THIS POINT, I THINK I'M GOING TO HAVE
13 TO MAKE SOME SPECIFIC ORDERS CONCERNING WHAT THAT
14 DISCOVERY OUGHT TO BE.

15 AND I'M PREPARED TO DO THAT.

16 AND I WILL TELL YOU THAT I THINK IN THAT
17 PHASE OF TRIAL, I WILL BE INTERESTED IN KNOWING WHAT
18 PRODUCTION OF WATER IS CLAIMED BY EACH PARTY --
19 IRRESPECTIVE OF CLAIMS OF PRESCRIPTION, IRRESPECTIVE OF
20 WHETHER PARTIES ARE APPROPRIATORS OR OVERLYING
21 LANDOWNERS, WHETHER THEY ARE GOVERNMENTAL ENTITIES, OR
22 FARMERS, OR SOUP COMPANIES OR ANYTHING ELSE -- SO THAT
23 I'M GOING TO EXPECT THAT WE HAVE ENOUGH INFORMATION SO
24 THAT PARTIES CAN DECIDE WHETHER OR NOT THEY WISH TO
25 DISPUTE ANY OF THE PARTICULAR CLAIMS.

26 AND I'M GOING TO DIRECT COUNSEL TO PREPARE
27 AN ORDER FOR THE COURT TO SIGN SPECIFYING EXACTLY WHAT
28 I'VE JUST INDICATED. OKAY?

10

1 AND YOU CAN MEET AND CONFER WITH EACH
2 OTHER. BUT I EXPECT SOME LEVEL OF AGREEMENT BY COUNSEL
3 AS TO THAT, IN PARTICULAR WITH REGARD TO TIMING.

4 THIS IS A VERY OLD CASE. IT GOES BACK TO
5 2005 FOR OUR INVOLVEMENT AS A COORDINATED CASE.

6 AND IT EXCEEDS THAT BY A NUMBER OF YEARS.
7 AS I UNDERSTAND IT, SOMETHING LIKE 13 YEARS.

8 SO THE PARTIES HAVE TO KNOW AND UNDERSTAND
9 WHAT'S AT ISSUE HERE.

10 THIS IS NOT NEWS. IT'S NOT A NEW CREATION
11 OF AN ISSUE. THESE ARE ISSUES THAT HAVE EXISTED FOR A
12 LONG PERIOD OF TIME.

13 AND I EXPECT THAT MOST OF THE INFORMATION
14 THAT WE'RE ASKING YOU TO PROVIDE IN RESPONSE TO THE FORM
15 INTERROGATORIES IS KNOWN TO YOU. OR MOST OF YOU.

16 SO THAT IS SOMETHING THAT HAS TO OCCUR.

17 AND I WOULD LIKE TO HEAR FROM COUNSEL SOME
18 SUGGESTIONS AS TO WHAT THE SPECIFIC LANGUAGE OUGHT TO BE
19 WITH REGARD TO THAT FORM DISCOVERY.

20 AND I'M INTERESTED IN HEARING FROM COUNSEL
21 EITHER ON THE PHONE OR WHO ARE PRESENT IN THE COURTROOM.

22 LET ME START WITH YOU, MR. ZIMMER. WHAT'S
23 YOUR RECOMMENDATION?

24 MR. ZIMMER: YES, YOUR HONOR. MR. ZIMMER FOR
25 BOLTHOUSE.

26 THE SETTLEMENT DISCUSSIONS WE'VE BEEN
27 HAVING DEALT WITH A PERIOD OF TIME FROM 2000 TO 2004. I
28 THINK THAT'S IN THE TIME THAT WE HAVE A RATIONAL PERIOD,

1 IF WE'RE GOING TO DO THIS, TO HAVE PARTIES ARTICULATE
2 THEIR PRODUCTION.

3 I THINK MOST OF THE PARTIES HAVE DONE
4 THAT -- IN THE PROCESS WITH JUSTICE ROBIE -- ARTICULATED
5 THOSE NUMBERS.

6 AND I'M HAPPY TO -- WE CAN ARTICULATE THAT
7 AGAIN. AND I THINK THAT WOULD BE A RATIONAL PERIOD FOR
8 PARTIES TO DO IT SINCE IT BEARS A RATIONAL RELATIONSHIP
9 TO THE TIME FRAME -- THE FIVE-YEAR PERIOD JUST PRIOR TO
10 THE COMPREHENSIVE ADJUDICATION BEING FILED BY -- HAVING
11 BEEN FILED DISTRICT 40 AND OTHER PURVEYORS.

12 THE COURT: MR. ZIMMER, IT SEEMS TO ME THAT THAT'S
13 AN IMPORTANT PERIOD OF TIME TO PROVIDE THE INFORMATION.

14 BUT I THINK THAT CURRENT PUMPING IS ALSO
15 EXTREMELY IMPORTANT.

16 BECAUSE IN THE EVENT THAT -- AND I THINK
17 IT'S INEVITABLE -- THAT THE COURT ATTEMPT TO CREATE A
18 PHYSICAL SOLUTION OF THE OVERDRAFT, CURRENT PUMPING IS
19 VERY IMPORTANT.

20 AND I THINK THAT THOSE NUMBERS, AS WELL AS
21 WHAT THE USE OF THAT WATER MIGHT BE, IS VERY IMPORTANT TO
22 AN EVALUATION OF HOW WE'RE GOING TO MAKE ORDERS FOR THE
23 PHYSICAL SOLUTION, AS WELL AS TO GIVE THE PARTIES AN
24 OPPORTUNITY TO FOCUS ON HOW THEY MIGHT SETTLE AMONG
25 THEMSELVES IN THAT REGARD.

26 SO I'M GOING TO ASK THAT NOT ONLY THERE BE
27 THE HISTORICAL PUMPING INFORMATION, WHICH THE PARTIES
28 HAVE, BUT ALSO CURRENT PUMPING.

1 MR. ZIMMER: BY HISTORICAL, YOUR HONOR, YOU MEAN

2 2000 TO 2004?

3 THE COURT: YES. WELL, I THINK --

4 MR. ZIMMER: WELL, CURRENT, WE'RE GOING TO BE
5 TALKING ABOUT THE PAST YEAR OR --

6 THE COURT: WELL, I THINK THAT -- TO THE EXTENT
7 THAT THERE ARE CURRENT PUMPING RECORDS FOR 2012, THAT'S
8 USEFUL.

9 WE'RE ALMOST AT THE END OF THE YEAR. AND I
10 THINK THAT IT WOULD BE HELPFUL TO KNOW THE ANSWER TO THAT
11 QUESTION.

12 MR. ZIMMER: SO YOU'LL BE LOOKING AT THE 2011 TO
13 2012 TIME PERIOD?

14 THE COURT: YES. RIGHT.

15 I MEAN, I --

16 MR. ZIMMER: AND -- I'M SORRY, YOUR HONOR. GO
17 AHEAD.

18 THE COURT: I WAS GOING TO SAY, I DON'T KNOW HOW
19 THE PARTIES MAINTAIN THEIR RECORDS. WHETHER THEY'RE
20 USING THE FISCAL YEAR OR CALENDAR YEAR OR WHATEVER. BUT
21 SOMETHING THAT INDICATES GENERALLY WHAT THE PUMPING HAS
22 BEEN, WHAT THE USE OF THE WATER HAS BEEN WITHIN THIS LAST
23 YEAR.

24 MR. ZIMMER: OKAY. I WOULD SUGGEST, YOUR HONOR,
25 THAT IF WE'RE FOLLOWING THAT APPROACH, THAT THE
26 PURVEYORS -- I KNOW THEY HAVE CLAIMED PRESCRIPTION OVER A
27 65-YEAR TIME FRAME -- THAT AT LEAST THEY PROVIDE WHAT
28 THEIR PRESCRIPTIVE CLAIMS ARE FOR THE 2000 TO 2004 TIME

13

1 FRAME, AS WELL AS THE -- THE LAST YEAR, I GUESS.

2 THE COURT: WE'LL GET TO THAT DISCUSSION ABOUT
3 PRESCRIPTION AND RETURN FLOWS AND SO ON BEFORE WE'RE DONE
4 HERE THIS MORNING.

5 BUT I WANT TO START OUT WITH AT LEAST
6 GETTING THIS INITIAL INFORMATION AND HAVING AN
7 UNDERSTANDING OF WHAT IT IS THAT THE COURT IS ASKING THE
8 PARTIES TO DO. AND THAT INCLUDES EACH PARTY WHO IS
9 INVOLVED IN THESE PROCEEDINGS.

10 MR. ORR: YOUR HONOR, STEVEN ORR FOR THE CITY OF
11 PALMDALE, AND I THINK FOR THE PUBLIC WATER SUPPLIERS AS
12 WELL.

13 GIVEN THE NOTICE ISSUES AND THE
14 PRESCRIPTION CLAIMS, WE BELIEVE THAT PRODUCTION RECORDS
15 OUGHT TO GO BACK TO 1945 BECAUSE WE'RE PLANNING -- THERE
16 ARE VARIOUS PERIODS IN WHICH THERE WAS OVERDRAFT AND
17 PRESCRIPTION IS BEING CLAIMED. AND THAT IS AT THE CORE
18 OF OUR PRESCRIPTION CASE.

19 THE NOTICE, AND CERTAINLY THE PRODUCTION
20 DURING THAT TIME, HAS BEARING ON THAT.

21 THE COURT: WELL, I UNDERSTAND THAT, MR. ORR. BUT
22 I DON'T THINK THAT WE'RE GOING TO ADJUDICATE THE
23 PRESCRIPTION CLAIMS IN THIS NEXT PHASE OF TRIAL.

24 I THINK THAT THOSE ARE ISSUES THAT NEED TO
25 BE TRIED, I THINK -- TO THE EXTENT THE PARTIES REQUEST A
26 JURY -- TO A JURY.

27 AND I THINK IT WOULD BE VERY CONFUSING TO
28 TRY AND GET TOO DEEPLY INVOLVED IN PRESCRIPTION CLAIMS IN
14

1 THIS NEXT PHASE.

2 WHAT I'M INTERESTED IN KNOWING IS WHAT THE
3 PUMPING IS THAT HAS BEEN, WHAT THE PARTIES CAN AGREE TO
4 PUMPING HAS BEEN, WHAT THEY DISPUTE IN TERMS OF WHAT
5 PUMPING HAS BEEN, AND WHAT THE REASONABLE AND BENEFICIAL
6 USES MIGHT BE.

7 THOSE ARE ISSUES THAT WE CAN TRY, AND TRY
8 NEATLY, AND I THINK GET SOME RESOLUTION OF THOSE ISSUES.

9 SO WHAT I'M REALLY CONCERNED ABOUT IS THE
10 SPECIFIC LANGUAGE THAT'S GOING TO BE PLACED IN THIS
11 ORDER.

12 AND I WANT COUNSEL TO FOCUS ON THAT AND
13 WORK ON IT.

14 AND I THINK THAT IT WILL GO A LONG WAY
15 TOWARD HELPING US TO PREPARE FOR TRIAL.

16 MR. ORR: SO IN ADDITION --

17 MR. KUNEY: YOUR HONOR, THIS IS SCOTT KUNEY.

18 I WANT TO MAKE CERTAIN THAT WE'RE DIRECTLY
19 RESPONSIVE TO THE INFORMATION YOU'RE ASKING FOR.

20 AM I UNDERSTANDING THAT WE'RE LOOKING AT
21 THE INITIAL PERIOD OF 2000 THROUGH 2004, PLUS, LET'S SAY,
22 2011 AND '12 TO SHOW THE CURRENT PUMPING?

23 THE COURT: YES.

24 MR. KUNEY: THANK YOU, YOUR HONOR.

25 MR. ORR: AND BOTH FACTS AND DOCUMENTS, I PRESUME?
26 THAT THE PARTY WOULD STATE THEIR CLAIMED AMOUNT AND THEN
27 PROVIDE EVIDENCE IN SUPPORT OF THAT CLAIMED AMOUNT.

28 THE COURT: TO THE EXTENT THAT THAT IS POSSIBLE TO

15

1 DO, YES.

2 AND TO THE EXTENT THAT -- THERE'S BEEN A
3 LOT OF DISCUSSION, I KNOW, IN YOUR SETTLEMENT
4 DISCUSSIONS. AND I DON'T THINK THERE ARE ANY REAL
5 SURPRISES AS TO WHAT THE PRIMARY CLAIMANTS' POSITIONS ARE
6 WITH REGARD TO PUMPING. AND EVEN TO THE EXTENT OF RETURN
7 FLOWS.

8 THE COURT DID HEAR A LOT OF EVIDENCE ABOUT
9 RETURN FLOWS DURING THE PHASE THREE PROCEEDING WHEN WE

10 WERE ATTEMPTING TO DETERMINE WHAT THE SAFE YIELD WAS.

11 AND I THINK AT LEAST ONE OF THE PARTIES HAS
12 SUGGESTED THAT EVIDENCE IS REALLY NOT IN GREAT DISPUTE.
13 AND TO THE EXTENT THAT IT'S NOT IN GREAT DISPUTE, THE
14 PARTIES OUGHT TO BE ABLE TO AGREE AS TO WHAT THOSE
15 NUMBERS ARE, DEPENDING UPON WHAT PARTICULAR USES WHERE
16 THE WATER THAT -- WHERE IT CAME FROM OBVIOUSLY IS
17 IMPORTANT.

18 MR. ORR: WE AGREE. I CERTAINLY THINK THAT WE
19 WOULD LIKE TO GET BEHIND SOME OF THE NUMBERS OF SOME OF
20 THE PARTIES. I THINK WE DON'T HAVE QUESTION AS TO MANY.
21 BUT AS TO SOME, THAT'S IMPORTANT THAT WE BE ABLE TO DO
22 THAT.

23 THE COURT: OKAY. THEN I'LL INCLUDE THAT IN THE
24 ORDER.

25 THE OTHER THING THAT I'M GOING TO ASK IS
26 THERE BE A STATEMENT BY THE FEDERAL GOVERNMENT AS TO ITS
27 FEDERAL RESERVED RIGHTS AND THE BASIS FOR THOSE RIGHTS.

28 RECOGNIZING THAT THE FEDERAL GOVERNMENT

16

1 PLAYS AN IMPORTANT ROLE HERE, WE WOULD NOT HAVE A
2 COMPREHENSIVE ADJUDICATION OF THE ANTELOPE VALLEY WITHOUT
3 THE FEDERAL GOVERNMENT'S PARTICIPATION.

4 THAT'S WHY THEY WERE SERVED. AND I EXPECT
5 THAT WE WILL HAVE A SUFFICIENT -- ULTIMATE JUDGMENT OF
6 ADJUDICATION IN THIS CASE THAT WILL SATISFY THE MC CARRAN
7 ACT REQUIREMENTS.

8 MS. GOLDSMITH: YOUR HONOR, THIS IS JAN GOLDSMITH
9 FOR CITY OF LOS ANGELES.

10 I'M ASSUMING INCLUDED IN THE STATEMENT THAT
11 YOU WERE REQUESTING WOULD BE DOCUMENTS SUPPORTING THAT

12 CLAIM. AM I CORRECT?

13 THE COURT: AT LEAST PRIMA FACIE DOCUMENTS. I
14 MEAN, I'M NOT SURE THAT I EXPECT PEOPLE TO PROVIDE
15 TRUCKLOADS OF DOCUMENTS IN SUPPORT OF THEIR CLAIMS. I
16 THINK THAT MIGHT BE COUNTERPRODUCTIVE AT THIS POINT.

17 BUT TO THE EXTENT THAT THERE IS
18 DOCUMENTATION TO SUPPORT IT, YOU SHOULD PROVIDE THAT.

19 AND I THINK THAT THE NEXT IMPORTANT THING
20 IS TO MAKE SURE THAT IF IT'S CHALLENGED, YOU CAN JUSTIFY
21 IT.

22 MR. LEMIEUX: YOUR HONOR, KEITH LEMIEUX. CAN I
23 SPEAK?

24 THE COURT: YES, MR. LEMIEUX.

25 MR. LEMIEUX: GOING TOWARDS THIS DISCOVERY -- SO I
26 CAN BETTER UNDERSTAND THE NEXT PHASE OF TRIAL -- WHAT I
27 THINK I'M HEARING IS THAT WE'RE TRYING THE NUMERICAL
28 AMOUNTS CLAIMED AND THE SORT OF FACTUAL BASIS FOR THAT

17

1 NUMERIC AMOUNT.

2 BUT I HEARD YOU SAY THAT WE'RE NOT LOOKING
3 AT THE LEGAL UNDERPINNINGS OF PRESCRIPTION.

4 IS THE PURPOSE OF THE PHASE OF TRIAL TO
5 EXAMINE THE SORT OF LEGAL -- FOR EXAMPLE, WITH THE
6 FEDERAL GOVERNMENT, IS THE PURPOSE TO EXAMINE THEIR
7 NUMERIC CLAIM OR DO A LEGAL ANALYSIS OR A LEGAL RULING
8 ABOUT THEIR FEDERAL RESERVED RIGHT?

9 YOU UNDERSTAND THE DISTINCTION I'M MAKING?

10 THE COURT: YES. I'VE ASKED THEM TO PROVIDE US
11 THE BASIS FOR THEIR CLAIM, WHICH WOULD OBVIOUSLY GIVE
12 RISE TO A DISPUTE IF THERE IS ANY.

13 MR. LEMIEUX: OKAY.

14 THE COURT: AND IN LOOKING AT SOME OF THE CASE

15 MANAGEMENT STATEMENTS, I SEE THERE'S A POTENTIAL FOR SOME
16 DISPUTED CLAIMS AS TO THE FEDERAL RESERVED RIGHT.

17 BUT THAT'S SOMETHING THAT IS BOTH A FACTUAL
18 AND A LEGAL ISSUE.

19 MR. LEMIEUX: CORRECT. IS THERE ANY OTHER
20 BESIDES -- I ASSUME BUILT INTO THE NUMERIC AMOUNT OF
21 PUMPING, THERE'S A BUILT-IN ISSUE ABOUT THE
22 REASONABLENESS OF THE USE OF THE WATER AND SO ON.

23 I ASSUME THAT'S PART OF THE TRIAL AS WELL?

24 THE COURT: WELL, I'M NOT SURE.

25 BUT I THINK TO SOME EXTENT, IT'S INEVITABLE
26 THAT BE ADDRESSED AT THE TRIAL, JUST AS -- ONE OF THE
27 THINGS THAT NEEDS TO BE PRESENTED IS THE PUBLIC WATER
28 SUPPLIERS' CLAIM OF IMPORTED WATER THAT GIVES RISE TO

18

1 RETURN FLOWS.

2 THESE ARE ALL INTERTWINED.

3 MR. LEMIEUX: RIGHT. BUT, AGAIN, THAT'S THE
4 NUMERIC AMOUNT OF THE IMPORTED WATER, NOT THE LEGAL ISSUE
5 ABOUT RETURN FLOWS OR THE LEGAL ISSUES ABOUT
6 PRESCRIPTION.

7 WELL, PRESCRIPTION DOESN'T HAVE ANYTHING TO
8 DO WITH THAT, BUT --

9 THE COURT: OKAY. PRESCRIPTION IS A SPECIFIC
10 CAUSE OF ACTION THAT'S BEEN FILED, AS I UNDERSTAND IT,
11 ONLY BY THE PUBLIC WATER SUPPLIERS. AND NOT ALL OF THEM.
12 BUT SOME OF THEM.

13 THE BURDEN OF PROOF IS ON THE PUBLIC WATER
14 SUPPLIERS WHO MAKE THAT CLAIM TO PROVE THEIR CLAIM.

15 MR. LEMIEUX: RIGHT.

16 THE COURT: AND THEIR ABILITY TO DO THAT IS

17 GREATER OR LESSER DEPENDING UPON HOW DISPUTABLE THEIR
18 CLAIMS ARE.

19 THERE ARE LEGAL ISSUES. THERE HAVE BEEN,
20 IN THE PAST, CONCERNS THAT IT'S INAPPROPRIATE FOR THE
21 GOVERNMENT TO OBTAIN RIGHTS AS A RESULT OF PRESCRIPTION.

22 THERE ARE A NUMBER OF CLAIMS THAT THAT
23 SHOULD BE, AT THE VERY LEAST, INVERSE CONDEMNATION, OR
24 EXPRESS CONDEMNATION.

25 AND I'M NOT RULING ON THOSE THINGS. BUT
26 THOSE ARE LEGAL ISSUES THAT ULTIMATELY ARE GOING TO HAVE
27 TO BE DECIDED IF THEY'RE RAISED.

28 AND AT THIS POINT IN TIME, I'M TELLING YOU 19

1 THAT I'M NOT GOING TO CONSIDER THOSE IN THE NEXT PHASE OF
2 THE TRIAL.

3 MR. LEMIEUX: OKAY.

4 THE COURT: WE'RE GOING TO TRY AND CONSIDER
5 EVERYTHING ELSE OTHER THAN THAT. AND THEN WE'LL PROBABLY
6 HAVE TO -- IF THE PARTIES REQUIRE IT -- IMPANEL A JURY TO
7 DEAL WITH PRESCRIPTION CLAIMS.

8 MR. LEMIEUX: OKAY. THANK YOU, YOUR HONOR.

9 MR. MILIBAND: YOUR HONOR, THIS IS WEST MILIBAND
10 FOR PHELAN PINON HILLS CSD.

11 THE COURT: YES.

12 MR. MILIBAND: GOING BACK TO THE HISTORICAL PERIOD
13 OF 2000 TO 2004, WE BECAME A PARTY AT THE END OF 2008.
14 SO I'D REQUEST THAT THE COURT ALLOW HISTORICAL PRODUCTION
15 OF INFORMATION TO INCLUDE THE PERIOD AFTER 2004. IN
16 OTHER WORDS, FROM 2005 TO 2011.

17 THE COURT: WELL, I'LL MAKE THAT DECISION AT THE
18 APPROPRIATE TIME.

19 IF YOU HAVE THE INFORMATION THAT YOU WISH
Page 20

20 TO PROVIDE, YOU SHOULD DO SO.

21 AND I'M NOT SURE THAT IT'S GOING TO MAKE A
22 LOT OF DIFFERENCE.

23 OBVIOUSLY, THIS MAY HAVE TO BE BRIEFED AT
24 AN APPROPRIATE TIME. BUT IT DOES OCCUR TO ME THAT -- THE
25 CLAIM OF PRESCRIPTION IS BASICALLY A CLAIM OF ADVERSE
26 POSSESSION. AND THE TIME FOR THE PERIOD TO RUN COMMENCES
27 AT THE TIME WHEN THERE IS OVERDRAFT, WHENEVER THAT WAS.
28 AND THE PERIOD OF THE STATUTE OF LIMITATIONS DETERMINES

20

1 WHEN THE RIGHT ACCRUES.

2 I'M NOT MAKING AN ORDER CONCERNING THAT.

3 I'M NOT MAKING A DECISION. I'M OPINING.

4 GENERALLY, I WILL EXPECT THE PARTIES TO
5 PROVIDE ME WITH BRIEFING AT THE APPROPRIATE TIME
6 CONCERNING WHAT THE PERIOD OF THE STATUTE OF LIMITATIONS
7 MIGHT BE. BUT IT'S NOT AS IF YOU TAKE THE TIME OF THE
8 FILING OF THE COMPLAINT AND THEN GO BACK FIVE YEARS.

9 THAT IS NOT THE WAY ADVERSE POSSESSION IS
10 ESTABLISHED AS I UNDERSTAND THE LAW, NOR IS IT THE WAY
11 PRESCRIPTION IS ESTABLISHED AS I UNDERSTAND THE LAW.

12 BASICALLY, PRESCRIPTION AND ADVERSE
13 POSSESSION ARE NOTHING MORE THAN A PERIOD WHERE THE
14 STATUTE OF LIMITATIONS ON A CLAIM IS RUN.

15 NOW, THERE ARE PROBABLY SOME EXCEPTIONS TO
16 THAT. AND CERTAINLY WHEN THE RIGHT IS ESTABLISHED MAY BE
17 AT ISSUE, AS IT CLEARLY WILL BE IN THIS CASE.

18 IT'S NOT TOTALLY CLEAR AS TO WHAT FORM THE
19 PRESCRIPTION CLAIM TRIAL WILL TAKE AT THIS POINT.

20 MR. FIFE, YOU'RE STANDING THERE PATIENTLY.

21 MR. MILIBAND: YOUR HONOR, MAY I JUST PROVIDE A

22 QUICK RESPONSE? WEST MILIBAND FOR PHELAN CSD.

23 THE COURT: YES.

24 MR. MILIBAND: I UNDERSTAND EVERYTHING THE COURT
25 IS SAYING. AND IT'S PRECISELY FOR THOSE REASONS THAT I
26 JUST WANTED TO MAKE IT CLEAR, OR ASK FOR CLARIFICATION,
27 THAT A PARTY SUCH AS MY CLIENT IS NOT PRECLUDED FROM
28 PROVIDING ADDITIONAL INFORMATION BEYOND THE 2004 PERIOD

21

1 ARTICULATED BY THE COURT.

2 THE COURT: MR. MILIBAND, THAT'S TRUE. AND YOU'RE
3 CERTAINLY ENTITLED TO PROVIDE AS MUCH INFORMATION AS YOU
4 CAN, RECOGNIZING THAT THERE ARE SOME, I THINK, HAZY
5 ISSUES CONCERNING THE LOCATION OF YOUR PRODUCTION IN THAT
6 PORTION OF THE VALLEY, GIVEN THE MOJAVE LITIGATION, WHICH
7 IS ADJACENT TO IT.

8 ALL RIGHT. NOW, MR. FIFE.

9 MR. FIFE: GOOD MORNING, YOUR HONOR. MICHAEL FIFE
10 FOR THE ANTELOPE VALLEY GROUNDWATER AGREEMENT
11 ASSOCIATION.

12 TWO ISSUES. ONE ON RETURN FLOWS AND ONE ON
13 THE FEDERAL RIGHTS.

14 THE RETURN FLOWS WERE ACTUALLY VERY
15 CONTESTED IN PHASE THREE. SO I JUST WANT TO CORRECT
16 THAT. THERE WAS A LOT OF CROSS-EXAMINATION ON THAT.

17 BUT MORE --

18 THE COURT: CROSS-EXAMINATION DOESN'T NECESSARILY
19 ESTABLISH CONFLICT OR DISPUTE. IT MAY BE AN ATTEMPT.

20 MR. FIFE: I'LL SIMPLY STATE, THERE WAS -- WE
21 DISPUTE THEM.

22 BUT MORE IMPORTANTLY, THE CALCULATIONS THAT
23 WERE DONE IN PHASE THREE WERE DONE ON A GROSS BASIS. SO
24 SIMPLY LOOKING AT THE GROSS TOTAL OF WATER THAT WAS

25 IMPORTED AND APPLYING A PERCENTAGE TO IT.

26 WHAT WE WOULD NEED TO BE ABLE TO EVALUATE
27 THEIR CLAIMS IN THE WAY THAT THEY WILL BE EVALUATING OURS
28 IS TO KNOW SPECIFIC INFORMATION: WHICH PURVEYOR IMPORTED

22

1 WHICH WATER, WHERE THE RETURN FLOWS WENT INTO THE GROUND,
2 WHO WAS PUMPING WHAT DURING THE PERIOD OF 2002.

3 THAT KIND OF SPECIFIC INFORMATION THE WAY
4 WE'RE PROVIDING SPECIFIC INFORMATION ALSO.

5 THE COURT: I AGREE COMPLETELY WITH THAT
6 STATEMENT.

7 AND I EXPECT EACH OF THE PURVEYORS TO
8 PROVIDE THAT INFORMATION.

9 AND I EXPECT YOU TO CONFER WITH THEM IN
10 TERMS OF THE FORM OF THE ORDER SO THAT WE MAKE CERTAIN
11 THAT WE HAVE THE INFORMATION THAT WE NEED.

12 MR. FIFE: THANK YOU.

13 AND THEN ON FEDERAL RIGHTS, I JUST WANTED
14 TO MAKE CLEAR THAT THEIR ISSUE IS A LITTLE BIT DIFFERENT
15 THAN EVERYBODY ELSE'S, BECAUSE THEIR RIGHTS AREN'T BASED
16 ON HISTORICAL PRODUCTION. IT'S BASED ON -- AND I DON'T
17 KNOW EVERY -- I FORGET THE EXACT LANGUAGE, BUT SOMETHING
18 LIKE "REASONABLY ANTICIPATED NEEDS," OR SOMETHING LIKE
19 THAT.

20 SO TO BE ABLE TO EVALUATE THEIR CLAIMS,
21 IT'S NOT HISTORICAL PRODUCTION INFORMATION THAT WE NEED
22 FROM THEM. IT'S RATHER --

23 THE COURT: THE CREATION OF THE RIGHT.

24 MR. FIFE: -- DOCUMENTS AND SUCH ABOUT WHAT THEY
25 ANTICIPATE NEEDING.

26 THE COURT: WELL, THAT'S WHY I EXPECT COUNSEL TO

27 MEET AND CONFER, AND DO IT PROMPTLY, IN TERMS OF
28 PROVIDING THE COURT WITH AN ORDER I CAN SIGN THAT CARRIES 23

1 OUT OUR PURPOSES.

2 MR. FIFE: THANK YOU. I JUST WANT TO BE CLEAR.

3 THE COURT: THANK YOU.

4 MR. JOYCE: YOUR HONOR?

5 THE COURT: YES.

6 MR. JOYCE: THIS IS BOB JOYCE. I JUST WANTED TO
7 LET THE COURT KNOW THAT I'M MAKING MY APPEARANCE. I WAS
8 TIED UP IN COURT. BUT I DID JOIN THIS CALL AT ABOUT
9 9:12.

10 THE COURT: THANK YOU, MR. JOYCE. NICE TO HAVE
11 YOU ON BOARD.

12 MR. JOYCE: THANK YOU, YOUR HONOR.

13 THE COURT: ALL RIGHT. MR. MC LACHLAN.

14 MR. MC LACHLAN: GOOD MORNING, YOUR HONOR.
15 MICHAEL MC LACHLAN FOR RICHARD WOOD AND THE SMALL PUMPER
16 CLASS. I HAD A COUPLE COMMENTS.

17 IN LISTENING TO YOUR HONOR DESCRIBE THIS
18 NEXT PHASE, IT SOUNDS TO ME LARGELY TO BE A FACTUAL
19 HEARING.

20 AND MY CONCERN IS REALLY MORE, AS A TRIAL
21 LAWYER, NOT HAVING A MOVING TARGET. SO I'M ALL IN FAVOR
22 OF DETERMINING RIGHT NOW WHAT EXACTLY WE'RE GOING TO BE
23 TRYING.

24 THERE WAS A FEW OTHER COUNSEL THAT WERE
25 ASKING, WELL, ARE WE GOING TO HAVE THIS LEGAL ISSUE AND
26 THIS LEGAL ISSUE?

27 I THINK IT'S IMPORTANT, GIVEN THAT THERE'S
28 ONLY THREE MONTHS LEFT -- AND REALLY WITH THE CHRISTMAS

24

1 AND NEW YEAR'S HOLIDAYS, YOU COULD PROBABLY ARGUE THERE'S
2 ABOUT TWO-AND-A-HALF MONTHS LEFT OF REAL PREPARATION
3 TIME -- I THINK WE NEED TO SET THE FOUR CORNERS OF WHAT
4 WE'RE GOING TO BE DOING SO THAT COUNSEL CAN PREPARE.

5 AND IF IT'S JUST GOING TO BE FACTUAL
6 ISSUES, THEN WE CAN DO THAT. IF THERE'S GOING TO BE
7 LEGAL ISSUES THAT ARE GOING TO RESULT AND SO FORTH, I
8 THINK WE NEED TO KNOW THAT FAIRLY SOON. BECAUSE AS YOUR
9 HONOR WELL KNOWS, THE FACTS DERIVE FROM THE LAW THAT'S AT
10 ISSUE IN TRIAL.

11 SO I MADE MY COMMENT ON THAT.

12 OBVIOUSLY, THERE'S MY UNIQUE ISSUE, WHICH
13 YOUR HONOR IS AWARE OF, RELATIVE TO THE COURT-APPOINTED
14 EXPERT.

15 AND MY PREVIOUSLY EXPRESSED SERIOUS DOUBTS
16 THAT IN A TWO-AND-A-HALF MONTH PERIOD -- LET'S ASSUME
17 YOUR HONOR IS GOING TO CARRY FORWARD WITH WHAT YOU SAID
18 AT THE LAST HEARING AND ORDER THE COURT-APPOINTED EXPERT.
19 I THINK IT'S PRETTY IFFY -- I DON'T KNOW FOR CERTAIN, BUT
20 I AM PRETTY DOUBTFUL THAT THAT WORK IS GOING TO BE DONE,
21 PUT INTO A REPORT, IN TIME -- IN TWO-AND-A-HALF MONTHS'
22 TIME. IT'S A LOT OF WORK.

23 SO I DON'T KNOW WHAT WE CAN DO ABOUT THAT.
24 AND I DON'T KNOW IF I CAN SHOW UP READY IN MID-FEBRUARY
25 TO PRESENT THE WATER USE OF THE CLASS.

26 THE COURT: OKAY. THANK YOU.

27 MR. DUNN.

28 MR. DUNN: JEFFREY DUNN.

25

1 JUST BRIEFLY IN RESPONDING TO COUNSEL'S
2 CONCERNS ABOUT THE LIMITED TIME FOR THE WOOD CLASS.

3 IT MAY BE THAT BECAUSE THE NEXT PHASE IS
4 FACTUAL DETERMINATIONS OF PARTIES PUMPING -- AND WE
5 HAVEN'T HAD A CHANCE TO TALK ABOUT THIS -- IT MIGHT BE
6 POSSIBLE, FOR SOME LIMITED PERIOD OF TIME, SEVER THE WOOD
7 CLASS DETERMINATION TO ALLOW THE OTHER DETERMINATIONS TO
8 GO FORWARD FIRST.

9 OBVIOUSLY, THERE'S GOING TO HAVE TO BE A
10 PRESENTATION OF EVIDENCE. AND MAYBE THEY CAN GO LAST OR
11 THERE'S SOME KIND OF MECHANISM -- PROCEDURAL MECHANISM IN
12 PLAY THAT ALLOWS SUFFICIENT TIME FOR THE WOOD CLASS
13 PERHAPS, IN A VACUUM, TO DO IT.

14 I DON'T THINK THERE'S ANY PARTICULAR
15 URGENCY TO HAVE THEM DO IT UP-FRONT OR IN THE MIDDLE OR
16 WHATEVER. THERE'S JUST OVERALL A NEED TO DO IT.

17 I THINK THERE'S A WAY TO ACCOMMODATE
18 PROCEDURALLY TO ALLOW THAT TO HAPPEN.

19 THE COURT: WELL, I THINK THERE MUST BE.

20 BUT ONE OF THE THINGS THAT OCCURS TO ME, IN
21 PARTICULAR WITH REGARD TO THE WOOD CLASS, IS THERE WAS AT
22 ONE TIME A PROPOSED RESOLUTION BY THE PARTIES THAT, AS
23 BETWEEN THE PARTIES THEMSELVES, STRUCK ME AS A REASONABLE
24 AND FAIR RESOLUTION AT THAT TIME.

25 THE PROBLEM WITH THAT SETTLEMENT PROPOSAL
26 WAS -- AND WHY THE COURT HAD NOT PRELIMINARILY APPROVED
27 THAT SETTLEMENT -- WAS BECAUSE IT IMPACTED OTHER PEOPLE
28 WHO WERE NOT PARTIES TO THE SETTLEMENT IN A WAY THAT

26

1 WOULD HAVE MADE ADVERSE FINDINGS AS TO THE OTHER PARTIES.

2 AND THAT'S ESSENTIALLY WHY -- MY
3 RECOLLECTION IS ANYWAY -- THAT THE COURT DECLINED TO
4 APPROVE THAT SETTLEMENT. BUT WHAT I DON'T UNDERSTAND IS
5 WHY NOTHING EVER HAPPENED AFTER THAT BY PARTIES WHO

6 REALLY WANTED TO SETTLE THE CASE.

7 SO WITHOUT ASKING YOU TO TELL ME WHY
8 NOTHING EVER HAPPENED, I JUST WANT TO SUGGEST TO YOU THAT
9 IT WOULD BE USEFUL IF COUNSEL WOULD TALK TO EACH OTHER
10 ABOUT SUCH THINGS, ESPECIALLY NOW, WHEN EVERYBODY IS
11 INVOLVED IN A GLOBAL DISCUSSION OF SETTLEMENT OF THE
12 CASE. OKAY?

13 THAT'S MY COMMENT. OKAY.

14 MR. KUHS: YOUR HONOR, ROBERT KUHS FOR TEJON AND
15 GRANITE.

16 THE COURT: YES, MR. KUHS.

17 MR. KUHS: WHAT SPECIFIC FACTUAL FINDINGS IS THE
18 COURT GOING TO MAKE AND HOW ARE THOSE FINDINGS GOING TO
19 BE BINDING ON THE PARTIES AS TO THE ISSUES RAISED IN THE
20 PLEADINGS?

21 THE COURT: I'M NOT SURE I UNDERSTAND YOUR
22 QUESTION.

23 MR. KUHS: WELL, IT SEEMS TO ME THAT WE'RE GOING
24 TO HAVE, IF I UNDERSTAND THE COURT, A TRIAL ON CURRENT
25 PUMPING. AND CURRENT PUMPING IS RELEVANT LARGELY TO THE
26 ISSUE OF A PHYSICAL SOLUTION. AND WE HAVEN'T YET
27 DETERMINED WHO HAS A RIGHT TO PUMP GOING FORWARD.

28 SO IN MY MIND, AT LEAST, IT'S A BIT OF

27

1 PUTTING THE CART BEFORE THE HORSE.

2 AND SO, I GUESS -- FOR EXAMPLE, WHAT'S THE
3 SIGNIFICANCE OF LOOKING AT THE PUMPING HISTORY FOR 2000
4 THROUGH 2004 OTHER THAN IT SIMPLY DOVETAILS WITH OUR
5 SETTLEMENT PROCESS.

6 THE COURT: WELL, I THINK THERE'S SOME VALUE IN
7 THAT.

8 BUT IT ALSO SEEMS TO ME THAT IF THE PARTIES
9 ARE -- AND WHAT WE'RE REALLY TALKING ABOUT IS
10 ADJUDICATING A COUPLE OF CLAIMS HERE.

11 ONE, THE ORIGINAL LANDOWNER LAWSUITS REALLY
12 WERE ESSENTIALLY FOR QUIET TITLE TO THEIR PROPERTY AND
13 THE WATER THAT UNDERLIES IT AND THE REASONABLE BOUNDARIES
14 FOR THESE.

15 THE CROSS-COMPLAINT BY THE WATER PURVEYORS,
16 PRODUCERS, ESSENTIALLY DIDN'T DISPUTE QUIET TITLE AND THE
17 RIGHT TO PUMP, BUT SAID THAT THEY HAVE SOME ADDITIONAL
18 RIGHTS THAT AROSE AS A RESULT OF PRESCRIPTION RIGHTS.

19 SO IF YOU LOOK AT THE ISSUES THAT I'M
20 SUGGESTING THAT WE TRY IN THIS NEXT PHASE, IT REALLY
21 RELATES TO BOTH THE QUIET TITLE ACTION AND LAYS A
22 FOUNDATION FOR THE CROSS-COMPLAINANTS TO RAISE THEIR
23 CLAIMS IN A SECOND PHASE.

24 BUT YOU CAN'T DO THAT IN THE ABSTRACT.
25 THAT'S WHY YOU HAVE TO KNOW WHAT THE HISTORICAL PUMPING
26 HAS BEEN, AS WELL AS WHAT THE CURRENT PUMPING HAS BEEN,
27 IN TERMS OF BEING ABLE TO ADJUDICATE A PHYSICAL SOLUTION.

28 SO IT SEEMS TO ME THAT THE HORSE AND THE

28

1 CART ARE EXACTLY WHERE THEY NEED TO BE IN ORDER.

2 SO THAT MAY BE WRONG. BUT THAT'S MY
3 IMPRESSION AT THIS POINT.

4 IN TERMS OF THE FEDERAL CLAIM, THAT HAS TO
5 BE ADJUDICATED, BOTH FACTUALLY AND LEGALLY, IN ORDER FOR
6 THE COURT TO DETERMINE WHAT THE BALANCE OF THE RIGHTS
7 MIGHT BE WITH A PHYSICAL SOLUTION.

8 MR. KUHS: SO ARE WE GOING TO -- ALL ISSUES
9 RELATING TO THE FEDERAL RESERVED RIGHT ARE GOING TO BE
10 ADJUDICATED IN FEBRUARY.

11 THE COURT: THAT'S RIGHT. AND THAT'S WHY I NEED
12 TO KNOW THE CLAIMS AND WHICH CLAIM.

13 MR. ZIMMER: YOUR HONOR.

14 THE COURT: YES, MR. ZIMMER.

15 MR. ZIMMER: MR. ZIMMER FOR BOLTHOUSE.

16 I'D LIKE TO ADDRESS SOME COMMENTS MADE BY
17 MR. ORR, MR. LEMIEUX, MR. DUNN AND THEN THE FOLLOW-UP BY
18 MR. KUHS.

19 MR. ORR WAS TALKING ABOUT PROOF OF
20 LANDOWNER PUMPING. AND MR. LEMIEUX THEN BUILT ON THAT
21 AND SAID SOMETHING ABOUT A TRIAL ON PUMPING. THEN
22 MR. DUNN DESCRIBED THAT AS A FACTUAL DETERMINATION OF
23 PARTY PUMPING.

24 WHAT I WANT TO MAKE SURE THAT WE DON'T DO
25 IS REVERSE THE BURDEN OF PRODUCTION OR THE BURDEN OF
26 PROOF ON THE CLAIMS THAT ARE ASSERTED.

27 THE COURT MAKES SOME QUIET TITLE CLAIM THAT
28 WAS FILED MANY YEARS AGO -- 1999 -- BY MR. JOYCE'S

29

1 CLIENT. THAT WAS A LIMITED QUIET TITLE ACTION AGAINST A
2 FEW PURVEYORS. THAT WAS NOT FILED AGAINST ALL PARTIES.
3 IT WAS IN THE BASIN. IT WAS FILED AGAINST ONLY LIMITED
4 PARTIES.

5 IN MY MIND, THAT HAS BEEN SUBSUMED BY THE
6 CROSS-COMPLAINT FILED BY L. A. -- OR DISTRICT 40 IN L. A.
7 COUNTY AND KERN COUNTY, THEN LATER CONSOLIDATED.

8 SO, TO ME, THAT'S THE OPERATIVE PLEADING,
9 IS THE CLAIM BY THE PURVEYORS CLAIMING THAT THERE WAS AN
10 OVERDRAFT AND REQUESTING AN INJUNCTION TO PREVENT OTHER
11 PARTIES FROM PUMPING.

12 IT SEEMS TO ME THAT GIVEN THAT PROCEDURAL

13 CONTEXT, THE PURVEYORS THAT FILED THAT COMPLAINT AND/OR
14 SEEKING THE INJUNCTION HAVE THE BURDEN OF PROVING
15 WHATEVER CLAIMS THEY HAVE TO THE SAFE YIELD, WHETHER IT'S
16 RETURN FLOWS OR OTHERWISE -- PRESCRIPTION -- OR ANYBODY
17 ELSE'S PRIORITY RIGHTS TO THAT CLAIM.

18 AND WHATEVER IS LEFT OVER IS THE AMOUNT
19 THAT IS THE NATIVE SUPPLY THAT IS SUBJECT TO THE
20 CORRELATIVE USE OF ALL OVERLYING LANDOWNERS.

21 ONE OF THE PROBLEMS WITH HAVING SOME KIND
22 OF A TRIAL TO, IN THEORY, QUANTIFY THE WATER RIGHTS OF AN
23 INDIVIDUAL LANDOWNER IS THAT YOU ARE THEN SAYING THAT
24 THEY HAVE SOME QUANTIFIED RIGHT AS OPPOSED TO A FLEXIBLE
25 RIGHT.

26 THE CASE LAW IS VERY CLEAR THAT YOU HAVE A
27 FLEXIBLE RIGHT TO USE WHAT'S NECESSARY IN THE FARMING
28 OPERATIONS. NOTHING MORE THAN WHAT'S NECESSARY TO DO

30

1 THAT.

2 BUT THAT RIGHT IS FLEXIBLE AND IT CHANGES
3 OVER TIME.

4 THE COURT: BUT YOU HAVE TO HAVE A STARTING POINT,
5 MR. ZIMMER. YOU HAVE TO HAVE ESSENTIALLY --

6 MR. ZIMMER: I AGREE THAT AT SOME POINT, YOUR
7 HONOR, THE PUMPING OF THE LANDOWNERS MAY BE RELEVANT.

8 I THINK THAT POINT IN TIME IS ONCE YOU KNOW
9 WHAT THE CORRELATIVE SUPPLY IS, THEN THE CORRELATIVE
10 PARTIES HAVE THE RIGHT TO THE REMAINING BALANCE AFTER YOU
11 TAKE OUT RETURN FLOWS, AFTER YOU TAKE OUT PRESCRIPTION
12 CLAIMS, AFTER YOU TAKE OUT THE FEDERAL RESERVED RIGHT, IF
13 THERE IS ONE.

14 THEN YOU WOULD HAVE TO KNOW WHAT THE
15 PUMPING AMOUNTS WERE, IF THERE'S INSUFFICIENT WATER, SO

16 THAT THERE'S SOME KIND OF EQUITABLE ALLOCATION BETWEEN
17 OVERLYING LANDOWNERS IF THEY CAN'T AGREE THEMSELVES ON
18 HOW TO ALLOCATE THAT.

19 BUT WHAT I'M CONCERNED ABOUT HAPPENING
20 IS -- AND MR. ORR AND MR. LEMIEUX AND MR. DUNN ARE ALL
21 PUSHING THAT, AND PUSHED IT IN THE BRIEFS -- THERE'S SOME
22 KIND OF FLIPPING OF THE BURDEN OF PRODUCTION ONTO
23 LANDOWNERS TO PROVE WHAT THEIR PUMPING WAS AND WHETHER IT
24 WAS REASONABLE AND NECESSARY OR NOT.

25 ALTHOUGH REASONABLE AND NECESSARY MAY BE AN
26 ISSUE IN THAT CORRELATIVE RIGHTS TRIAL BETWEEN THE
27 LANDOWNERS IN THE FIRST INSTANCE, THE PURVEYORS STILL
28 HAVE TO PROVE, UNDER TULARE, WHAT THEIR PUMPING WAS --

31

1 WHAT THEIR REASONABLE PUMPING WAS AND WHAT THEIR RIGHTS
2 ARE TO RETURN FLOWS.

3 AND SPEAKING OF INJUNCTION, THEY HAVE TO
4 PROVE HOW MUCH WATER IS LEFT. AND THAT PARTIES BE SHUT
5 DOWN BECAUSE THERE'S INSUFFICIENT WATER.

6 BUT WHAT I'M CONCERNED ABOUT IS I DON'T
7 THINK THERE SHOULD BE A FLIPPING OF THAT BURDEN OF PROOF.

8 WHEN WE'RE TALKING ABOUT THE CURRENT TIME
9 FRAME -- AND I AGREE THAT THAT INFORMATION IS HELPFUL TO
10 THE SETTLEMENT PROCESS BECAUSE WE'VE BEEN DISCUSSING IT.

11 WHEN YOU GO BACK 65 YEARS TO A CLAIM BY THE
12 PURVEYORS THAT THEY REFUSED TO NARROW, WHAT THEY ARE
13 REALLY TRYING TO DO HERE IS PUSH THE LANDOWNERS INTO THE
14 POSITION WHERE THE LANDOWNERS, IN THEORY, HAVE TO PROVE
15 WHAT THEIR PUMPING WAS 65 YEARS AGO, WHICH WOULD BE A
16 VERY DAUNTING TASK. AND, THEREFORE, THE BURDEN OF
17 PRODUCTION OF EVIDENCE AND THE BURDEN OF PROOF ON THAT

18 ISSUE ARE VERY IMPORTANT. AND THAT'S WHY THEY'RE TRYING
19 TO PUSH IT OFF ON THE LANDOWNERS.

20 BUT I THINK IN THE FIRST INSTANCE, BEFORE
21 YOU CAN GET TO A PHYSICAL SOLUTION BEFORE THERE IS AN
22 ISSUE OF HOW LANDOWNERS ARE GOING TO DIVIDE THE
23 CORRELATIVE SUPPLY, THEY STILL HAVE THE BURDEN OF PROVING
24 EVERYTHING THEY NEED TO PROVE IN THEIR CASE IN CHIEF
25 BASED UPON THE CROSS-COMPLAINT, BASED UPON THEIR RETURN
26 FLOWS, BASED UPON THE PRESCRIPTION, AND/OR IN SEEKING AN
27 INJUNCTION TO STOP OTHER PARTIES FROM PUMPING.

28 SO I UNDERSTAND THAT THIS INFORMATION IS

32

1 HELPFUL TO THE COURT. IT MAY BE HELPFUL. BUT I JUST
2 WANT TO MAKE SURE THAT WE DO NOT GET OURSELVES INTO A
3 SITUATION WHERE WE HAVE SOMEHOW AGREED THAT WE HAVE THE
4 BURDEN OF PROOF SOMEHOW.

5 MY UNDERSTANDING, BASED ON THE COURT'S
6 ORDER, IS THAT WE WILL PROVIDE HOW MUCH WE WERE PUMPING
7 DURING THOSE TIME FRAMES AND WHAT WE WERE USING IT FOR.

8 BUT THAT'S NOT TO SAY THAT SOMEHOW, THAT
9 PLACES THE BURDEN OF PROOF ON US, OR THAT THAT'S THE ONLY
10 PROOF THAT'S GOING TO BE ALLOWED ON THOSE ISSUES IF AND
11 WHEN IT IS RELEVANT.

12 THE COURT: WELL, I THINK I'VE BEEN CLEAR FROM THE
13 VERY BEGINNING AS TO WHO HAS THE BURDEN OF PROOF HERE.
14 AND WE'RE NOT DOING ANYTHING TO ALTER THAT CONCEPT.

15 IF A CLAIM OF PRESCRIPTION IS MADE -- AND
16 THAT'S REALLY THE ESSENCE OF THE CROSS-COMPLAINT -- AS
17 WELL AS A REQUEST FOR THE COURT TO RECOGNIZE THAT THERE
18 IS AN OVERDRAFT SITUATION, THAT THE PUMPING EXCEEDS THE
19 SAFE YIELD, AND THERE IS INSUFFICIENT RECHARGE IN THE

20 VALLEY, THOSE ARE THINGS THAT I BELIEVE HAVE BEEN PART OF
21 THE BURDEN OF PROOF OF THE PURVEYORS, THE PUBLIC WATER
22 PRODUCERS, FROM THE BEGINNING.

23 THAT BURDEN OF PROOF WAS MANDATED DURING
24 THE PHASE ONE, TWO AND THREE OF THE TRIAL IN THIS CASE.
25 AND NOTHING HAS CHANGED.

26 SO I'M NOT DISAGREEING WITH YOU,
27 MR. ZIMMER. I'M JUST TELLING YOU THAT NOTHING HAS
28 CHANGED. THAT THAT BURDEN REMAINS THE SAME.

33

1 BUT I THINK THAT IT'S PRETTY CLEAR THAT
2 THERE IS AN OVERDRAFT SITUATION THE COURT HAS FOUND TO
3 EXIST.

4 THE COURT HAS DEFINED AND DETERMINED THE
5 SAFE YIELD. AND THAT HAS BEEN, TO SOME EXTENT, YOU CAN
6 DESCRIBE AS PART OF THE BURDEN OF PROOF THAT HAS BEEN
7 SATISFIED BY THE PUBLIC WATER PRODUCERS SINCE THAT WAS
8 ESSENTIALLY THEIR CONTENTION AND ONE OF THE ELEMENTS OF
9 THIS CASE.

10 MR. TOOTLE: YOUR HONOR, JOHN TOOTLE FOR
11 CALIFORNIA WATER SERVICE COMPANY.

12 THE COURT: YES, MR. TOOTLE.

13 MR. TOOTLE: I JUST WANT TO GET A CLARIFICATION
14 AND MAYBE A REQUEST THAT WOULD MAKE THE NUMBERS HELPFUL
15 IN THE NEXT PHASE OF TRIAL. AND THAT IS TO KNOW ACTUALLY
16 WHERE THE PUMPING OCCURRED FOR THOSE PARTICULAR YEARS AS
17 WELL AS WHAT IT WAS USED FOR.

18 THE COURT: I AGREE THAT OUGHT TO BE IN THE ORDER.
19 AND COUNSEL ARE GOING TO JOINTLY PREPARE
20 THAT ORDER.

21 YES, MR. MC LACHLAN.

22 MR. MC LACHLAN: IT'S LITTLE BIT OUT OF ORDER, BUT

23 I WANTED TO GO BACK AND AGREE WITH MR. DUNN'S COMMENT ON
24 THE SMALL PUMPER CLASS RELATIVE TO, YOU KNOW, IF THIS IS
25 JUST GOING TO BE A FACTUAL HEARING, I DON'T SEE WHY WE
26 COULDN'T END UP BEING THE CABOOSE AND BE DEFERRED TO SOME
27 POINT IN TIME IN WHICH THE EXPERT IS FINISHED WITH THE
28 ANALYSIS.

34

1 OBVIOUSLY, THE EXPERT CAN BE PUSHED ALONG
2 AT WHATEVER FASTEST PACE THEY CAN GO. BUT I'M OKAY WITH
3 THAT. THIS IS, IN FACT, WHAT IT APPEARS, TO BE A FACTUAL
4 HEARING.

5 THE SECOND POINT I HAD IS I DON'T KNOW THE
6 EXTENT TO WHICH EXPERTS WILL BE CALLED IN HERE TO PROVIDE
7 EVIDENCE USING EXTRAPOLATION AND OTHER METHODS THAT WE'VE
8 SEEN EXPERTS TESTIFY IN THESE TYPE OF CASES.

9 I DO KNOW THAT TO THE EXTENT THE SMALL
10 PUMPER CLASS IS INVOLVED, OBVIOUSLY THE COURT'S EXPERT
11 WILL HAVE TO TESTIFY, AND THAT RAISES THE QUESTION OF
12 SETTING AN EXPERT DESIGNATION TIME SCHEDULE. IF WE DID
13 IT UNDER THE CODE, THEN WE'RE TALKING ABOUT DESIGNATING
14 SOME TIME IN ABOUT FOUR, FIVE WEEKS, I THINK. PRETTY
15 SOON.

16 SO THERE'S THAT ISSUE. AND I'M NOT SURE
17 HOW TO DEAL WITH THAT. BUT IT SHOULD BE DEALT WITH.

18 THE COURT: WELL, I THINK THE COURT'S EXPERT IS
19 OUTSIDE OF THE NORMAL DISCLOSURE REQUIREMENTS FOR
20 EXPERTS.

21 TO THE EXTENT THAT A PARTY IS GOING TO USE
22 AN EXPERT -- AND I DON'T THINK ANYBODY KNOWS, TO THE
23 EXTENT THAT YOU ARE OR ARE NOT GOING TO USE OTHER
24 EXPERTS, UNTIL YOU LOOK AT THE NUMBERS THAT ARE BEING

25 PRESENTED BY THE VARIOUS PARTIES, AS TO WHETHER OR NOT
26 THEY CAN BE VALIDATED. TO THE EXTENT THEY'RE NOT
27 DISPUTED, THEY'RE NOT DISPUTED.

28 AND THE COURT WILL WANT TO HEAR SOME

35

1 EVIDENCE, I SUPPOSE, AT SOME POINT HERE AS TO THE VALUES
2 THAT ARE PRESENTED.

3 BUT TO THE EXTENT THAT THIS IS AN
4 ADVERSARIAL PROCEEDING, THE COURT IS ENTITLED TO MAKE
5 FINDINGS BASED UPON THE EVIDENCE PRESENTED.

6 MR. MC LACHLAN: THAT'S FINE. MY CONCERN IS THAT
7 IF THERE IS GOING TO BE ANY EXPERT TESTIMONY UNDER THE
8 CCP, THE PARTIES ARE ENTITLED TO A DEPOSITION OF THAT
9 PERSON BEFORE THEY TESTIFY.

10 AND I THINK THAT IF A LOT OF THE RECORDS
11 AND SO FORTH ARE GOING TO BE PUT FORTH THROUGH PERCIPIENT
12 PARTIES, THAT INFORMATION SHOULD BE EXCHANGED AS WELL.

13 IN OTHER WORDS, SOME INTERROGATORY LIST OF
14 WHO YOU'RE GOING TO PUT THIS TESTIMONY ON SO THAT ONE
15 PARTY CAN NOTICE THE DEPOSITION OF THAT PERSON, IF THEY
16 NEED BE, TO INQUIRE ABOUT THE TESTIMONY RATHER THAN JUST
17 SHOWING UP ON FEBRUARY 1 COLD AND WINGING IT.

18 THE COURT: I AGREE WITH THAT.

19 AND ONE OF THE THINGS THAT I WANT TO TAKE
20 UP WITH YOU THIS MORNING IS A FOLLOW-UP CASE MANAGEMENT
21 CONFERENCE IN ABOUT A MONTH.

22 I'M THINKING SOMEWHERE AROUND THE FIRST
23 WEEK OF DECEMBER, ABOUT 30 DAYS AWAY, SO THAT THE COURT
24 CAN MAKE FURTHER ORDERS CONCERNING EXPERT DISCLOSURES TO
25 THE EXTENT THAT'S NECESSARY. AND OTHER PREPARATION
26 RULES, SUCH AS TRIAL BRIEFS, STATEMENT OF POSITIONS,
27 WITNESS LISTS, EXHIBIT LISTS, AND THE LIKE, WHICH MUST BE

28 EXCHANGED WELL IN ADVANCE OF THE TRIAL. THIS IS AN

36

1 ADVERSARIAL PROCEEDING.

2 MR. SLOAN: YOUR HONOR, MAY I BE HEARD? THIS IS
3 WILLIAM SLOAN FOR U.S. BORAX.

4 THE COURT: YES, MR. SLOAN.

5 MR. SLOAN: ON A COUPLE OF INSTANCES, THE COURT
6 HAS REFERENCED THAT THIS IS AN ADVERSARIAL PROCEEDING.

7 AND I GUESS ONE OF THE QUESTIONS THAT I
8 HAVE IS WHETHER OR NOT AT THIS POINT, WE WOULD BE LIMITED
9 TO A DISCOVERY THAT THE COURT ORDERS, OR IS THIS GOING TO
10 BECOME A SITUATION WHERE SUDDENLY EVERYBODY ENGAGES IN
11 DISCOVERY AND DEPOSITION NOTICES.

12 BECAUSE, OBVIOUSLY, I THINK THAT COULD
13 SUBSTANTIALLY HINDER OUR ABILITY TO HAVE THE SETTLEMENT
14 MEETINGS AND SUCH.

15 THE COURT: YEAH. I WANT TO, BETWEEN NOW AND THE
16 NEXT HEARING DATE, LIMIT THE DISCOVERY TO THE
17 COURT-ORDERED DISCOVERY.

18 I'M GOING TO TRY TO STICK WITH OUR FEBRUARY
19 11 DATE. THAT DOESN'T MEAN THAT AT SOME POINT, I MAY
20 HAVE TO MODIFY THAT ORDER.

21 I DON'T KNOW AT THIS POINT.

22 BUT I DO THINK THAT THE ISSUES CONCERNING
23 THE VALIDITY OF THE STATEMENTS AND THE CLAIMS BY THE
24 VARIOUS PARTIES, INCLUDING THE FEDERAL GOVERNMENT, ARE
25 GOING TO BE SUBJECT TO DISPUTE AND CONTROVERSY TO THE
26 EXTENT THAT YOU DON'T AGREE WITH THEM.

27 AND TO THE EXTENT THAT YOU WISH TO
28 CHALLENGE, IT MAY REQUIRE, AT THAT POINT, SOME FURTHER

37

1 DISCOVERY PROCEDURE, WHETHER IT BE REQUESTS FOR
2 ADMISSIONS, DEPOSITIONS, OR FURTHER REQUESTS FOR
3 INFORMATION BY WAY OF PRODUCTION OF DOCUMENTS OR
4 INTERROGATORIES.

5 BUT I DON'T THINK IT WOULD BE HELPFUL AT
6 THIS POINT FOR YOU TO ENGAGE IN THAT TYPE OF DISCOVERY
7 UNTIL WE SEE WHETHER OR NOT YOU'RE GOING TO DISPUTE THE
8 CLAIMS OR THE NUMBERS.

9 MR. SLOAN: THANK YOU.

10 MR. SATALINO: YES, YOUR HONOR.

11 FRANK SATALINO, YOUR HONOR, FOR ROSAMOND
12 RANCH.

13 TO FOLLOW UP ON THE DISCOVERY ISSUE THAT
14 WAS JUST BROUGHT UP, AS FAR AS THE STAY AND THE OTHER
15 DISCOVERY, AT THE LAST HEARING, WE TALKED ABOUT THAT YOUR
16 HONOR WANTS US TO BE ABLE TO PROVE UP OUR CLAIM. AND
17 SOME OF THE PARTIES HAVE TO DO DISCOVERY TO GET THE
18 DOCUMENTATION TO PROVE THAT.

19 I SENT SOME DISCOVERY OUT. I GOT SOME
20 RESPONSES. BUT THERE ARE A FEW SUBPOENAS I NEED TO SEND
21 TO, LIKE THE ELECTRIC COMPANY, AND TO THE PRIOR OWNER OF
22 THE PROPERTY.

23 AND I WOULD JUST ASK THE COURT TO CONSIDER,
24 IF YOU'RE TALKING ABOUT A FULL STAY ON DISCOVERY, BECAUSE
25 THERE ARE SOME ITEMS -- AND I'M NOT TALKING ABOUT SETTING
26 DEPOSITIONS, BUT EVEN WRITTEN DISCOVERY FOR DOCUMENTS --
27 THAT I WOULD LIKE TO STILL BE ABLE TO DO.

28 NOT TO BURDEN ANYONE, BUT TO GET THE

38

1 DOCUMENTS THAT I NEED BECAUSE THERE SEEMS TO BE AN
2 ASSUMPTION THAT THE CLAIMANTS HAVE ALL THE DOCUMENTS, BUT
3 IT'S OTHER PARTIES THAT HAVE THE RECORDS THAT WE WOULD

4 NEED TO SHOW OUR COMPANY.

5 THE COURT: YOU'RE TALKING ABOUT THIRD PARTY
6 DISCOVERY?

7 MR. SATALINO: IN SOME INSTANCES. BUT THERE'S A
8 FEW PARTIES THAT ARE IN THE CASE. FOR EXAMPLE, I BELIEVE
9 THE ELECTRIC COMPANY IS IN THE CASE. AND THEY MAY HAVE
10 POWER RECORDS SHOWING HOW MUCH POWER WAS USED FOR THE
11 PUMPS.

12 THE COURT: WHICH ELECTRICAL COMPANY?

13 MR. SATALINO: I THINK IT'S EDISON, BUT I'M NOT
14 SURE.

15 THE COURT: WHO?

16 MR. SATALINO: EDISON.

17 THERE'S ONE POWER COMPANY THAT ACTUALLY
18 CONTACTED ME. I BELIEVE THEY ARE A PARTY TO THE CASE.

19 THE COURT: YOU KNOW, I DON'T KNOW THE ANSWER TO
20 THAT. BUT, ESSENTIALLY, I THINK YOU'RE TALKING ABOUT
21 THIRD PARTY DISCOVERY.

22 MR. SATALINO: ESSENTIALLY, YES.

23 THE COURT: I DON'T HAVE A PROBLEM WITH YOU GOING
24 AFTER RECORDS OF THIRD PARTIES THAT YOU NEED. ESPECIALLY
25 YOU GOT INTO THE CASE LATE AND THERE WAS APPARENTLY A
26 TRANSFER OF PROPERTY.

27 SO IN ORDER FOR YOU TO BE PREPARED, YOU
28 HAVE TO DO WHAT YOU HAVE TO DO.

39

1 MR. SATALINO: THANK YOU.

2 AND, YOUR HONOR, ONE OTHER THING I WANTED
3 TO ASK YOU.

4 AS FAR AS CURRENT PUMPING, AND THE ISSUE
5 ABOUT CURRENT PUMPING. JUST SO I CAN UNDERSTAND AND GET

6 THE COURT'S UNDERSTANDING OF WHAT WE'RE GOING TO BE
7 TRYING. WHAT ABOUT THE SITUATION WHERE -- WE'VE ALWAYS
8 BEEN TALKING ABOUT PUMPING OVER THE FIVE-YEAR TIME
9 PERIOD. WHAT ABOUT THE SITUATION WHERE A PARTY HAS
10 UNILATERALLY DECIDED IN THE LAST YEAR TO CUT DOWN ON ITS
11 PUMPING FOR WHATEVER REASON? HOW WOULD THAT ISSUE BE
12 TRIED WITH THE COURT? WHEN IS THE COURT GOING TO HEAR
13 THAT?

14 THE COURT: WELL, THAT'S GOING TO BE AN
15 EVIDENTIARY HEARING. AND THERE ARE LEGAL CONSEQUENCES.

16 I'M NOT GOING TO OFFER DECISIONS ON THOSE
17 THINGS AT THIS HEARING. BUT I CAN ASSURE YOU THAT WHEN
18 PRESENTED WITH A LEGAL ISSUE, I WILL DEAL WITH IT.

19 MR. SATALINO: THANK YOU, YOUR HONOR.

20 THE COURT: WITH THE HELP OF COUNSEL, OBVIOUSLY.

21 MR. SATALINO: THANK YOU.

22 THE COURT: AS ALWAYS. ALL RIGHT.

23 MS. GOLDSMITH: YOUR HONOR, THIS IS JAN GOLDSMITH
24 FOR THE CITY OF LOS ANGELES.

25 THE COURT: YES.

26 MS. GOLDSMITH: IN TALKING ABOUT RECORDS THAT
27 OTHER FOLKS HAVE, THERE ARE SITUATIONS WHERE THERE HAVE
28 BEEN LESSEES WHO HAVE FILED PUMPING RECORDS WHO ALSO

40

1 HAPPEN TO BE PARTIES.

2 AND I WOULD LIKE THE ABILITY TO DIRECT --
3 VERY, VERY FOCUSED MANNER -- DIRECT INTERROGATORIES AND
4 RECORD REQUESTS TO THOSE PARTIES FOR WHATEVER RECORDS
5 THEY HAVE SUPPORTING THEIR CLAIMS -- OR THE RECORDATION
6 THAT THEY MADE FOR PUMPING ON, FOR EXAMPLE, THE CITY OF
7 LOS ANGELES' LAND.

8 THE COURT: I'M NOT SURE WHAT IT IS THAT YOU'RE

9 ASKING AND HOW SOON YOU NEED THAT INFORMATION.

10 BUT I'M GOING TO SUGGEST THAT YOU KEEP IT
11 TO A MINIMUM SO AS TO NOT IMPACT THE SETTLEMENT
12 DISCUSSIONS THAT ARE GOING ON UNTIL THE NEXT HEARING.

13 MS. GOLDSMITH: MAY I SUGGEST SOMETHING?

14 THE COURT: YES.

15 MS. GOLDSMITH: MAY I SUGGEST THAT I PRESENT
16 WHATEVER I MAY NEED TO THE COURT, OR TO THE PARTIES, IN
17 THE NEXT CMC SO YOU CAN EITHER SAY YES, THAT'S FINE, OR
18 NO?

19 THE COURT: YES.

20 MS. GOLDSMITH: THANK YOU.

21 MR. SLOAN: YOUR HONOR, THIS IS MR. SLOAN AGAIN.

22 I WOULD THINK THAT WOULD BE A SENSIBLE
23 APPROACH FOR ANY PARTY THAT WISHES TO ENGAGE IN DISCOVERY
24 BEYOND WHAT THE COURT IS ORDERING.

25 WHY DON'T THEY MAKE A SPECIFIC REQUEST TO
26 THE COURT AT THE NEXT CMC SO THAT WE DON'T HAVE ANYBODY
27 WITH A MISUNDERSTANDING THAT SOMETHING IS PERMISSIBLE OR
28 IS NOT PERMISSIBLE.

41

1 THE COURT: WELL, I THINK THAT'S APPROPRIATE.

2 THE DIFFICULTY IS THAT SOME OF THE PARTIES
3 ARE FAIRLY RECENT PARTIES IN THIS LAWSUIT, HAVING
4 ACQUIRED PROPERTY DURING THE PENDENCY OF THE LAWSUIT.
5 AND THEY'RE TRYING TO PUT TOGETHER THEIR UNDERSTANDING OF
6 THE RIGHTS THAT MAY BE PERTINENT TO THE LAND.

7 AND IF IT'S A THIRD PARTY WHO IS NOT A
8 PARTY TO THIS LAWSUIT, THEN I THINK THAT THEY SHOULD HAVE
9 A FREE GO AT THEM FOR RECORD DISCOVERY AS LONG AS IT'S
10 NOT GOING TO BE DISRUPTING WHAT'S HAPPENING HERE.

11 MR. SLOAN: THAT MAKES SENSE. THANK YOU.

12 THE COURT: ALL RIGHT. MR. LEININGER.

13 MR. LEININGER: GOOD MORNING, YOUR HONOR. LEE
14 LEININGER FOR THE UNITED STATES.

15 JUST A CLARIFICATION ON OUR ROLE IN THE
16 THIS PHASE OF TRIAL.

17 EDWARDS AIR FORCE BASE, OF COURSE, IS THE
18 LARGEST LANDOWNER OUT THERE IN THE ENTIRE BASIN. AND WE
19 HAVE --

20 THE COURT: I KNOW THAT.

21 MR. LEININGER: I THINK I SAY THAT EVERY TIME I
22 STAND UP HERE.

23 BUT WE ALSO HAVE THESE OVERLYING
24 CORRELATIVE RIGHTS IN ADDITION. AND WE ARE GROUNDWATER
25 PUMPERS.

26 SO MY UNDERSTANDING, AT LEAST FOR THIS
27 PURPOSE OF PRODUCTION, WE WILL ALSO BE PROVIDING THOSE
28 RECORDS.

42

1 THAT'S OUR STATE LAW BASIS FOR WATER RIGHTS
2 IN CALIFORNIA.

3 FEDERAL RESERVED BASIS IS BASED, OF COURSE,
4 ON FEDERAL LAW. AND I UNDERSTAND THE COURT TO REQUEST
5 THAT WE PROVIDE A STATEMENT PROVIDING THE BASIS UNDER LAW
6 AND FACTS AS TO WHY WE THINK WE'RE ENTITLED TO A FEDERAL
7 RESERVED WATER RIGHT AND THE AMOUNT WE'RE CLAIMING UNDER
8 THE FEDERAL RESERVED WATER RIGHTS.

9 A NUMBER OF PARTIES -- I SHOULDN'T SAY A
10 NUMBER OF PARTIES. THREE PARTIES, I BELIEVE, HAVE
11 QUESTIONED OUR ENTITLEMENT TO A FEDERAL RESERVED WATER
12 RIGHT, THE LEGAL BASIS.

13 MR. FIFE HAS A MOTION FOR SUMMARY JUDGMENT,
Page 41

14 WHICH HE HAD FILED LAST SPRING.

15 MR. ZIMMER JUST RAISED THE POINT OF FEDERAL
16 RESERVED WATER RIGHT, IF ANY.

17 SO IT APPEARS HE MAY BE WILLING TO
18 CHALLENGE OUR ENTITLEMENT.

19 AND MR. KUHS HAD FILED A CASE MANAGEMENT
20 STATEMENT IN WHICH HE HAD RAISED AN ISSUE WHICH I -- A
21 LEGAL ISSUE, APPARENTLY, THAT I HAD NEVER HEARD BEFORE IN
22 WHETHER OR NOT WE ARE ENTITLED TO A FEDERAL RESERVED
23 WATER RIGHT.

24 THE COURT: THE SPANISH CLAIM RIGHT UNDER THE
25 GUADALUPE?

26 MR. LEININGER: WELL, THAT'S MY PROBLEM. I DON'T
27 QUITE UNDERSTAND THE THEORY THAT HE WILL BE PROPOUNDING
28 HERE.

43

1 SO I GUESS WHAT I'M SUGGESTING IS THAT WE
2 WILL PROVIDE THIS STATEMENT. AND THEN THIS QUESTION OF
3 LEGAL ENTITLEMENT WILL HAVE BEARING ON NOT ONLY WHETHER
4 OR NOT WE HAVE A FEDERAL RESERVED WATER RIGHT, BUT ALSO
5 THE FACTS THAT MAY NECESSARILY IMPINGED UPON THAT FEDERAL
6 RESERVED WATER RIGHT.

7 SO JUST FOR PURPOSES OF NEXT FEBRUARY, YOUR
8 HONOR, I GUESS IF WE COULD PROCEED WITH UNITED STATES
9 PROVIDING THIS STATEMENT, PARTIES THAT WISH TO RAISE
10 UNDER SOME -- ESPECIALLY A NOVEL LEGAL THEORY COULD THEN,
11 HOPEFULLY, REFILE OR PROCEED UNDER SOME SORT OF MOTION
12 PROCEDURE. AND WE CAN SEE WHAT WE THEN ARE FACING WITH
13 REGARD TO THE FEBRUARY TRIAL DATE.

14 THE COURT: THAT'S A FAIR REQUEST, IT SEEMS TO ME.

15 AND I THINK WE SHOULD TALK ABOUT THAT A

16 LITTLE BIT MORE IN TERMS OF THE PRETRIAL PREPARATION AND
17 TRIAL BRIEFS AND CONTENTIONS AT THE NEXT HEARING SO THAT
18 EVERYBODY IS APPRISED OF WHAT ISSUES ARE ACTUALLY GOING
19 TO BE ADJUDICATED.

20 AND AT THIS POINT, ALL WE'RE REALLY ASKING
21 IS A STATEMENT OF CLAIMED RIGHT, WHETHER IT BE UNDER THE
22 FEDERAL RESERVED RIGHT, STATE CLAIMED RIGHTS, STATE LAW
23 OR OTHERWISE SO THAT WE DON'T HAVE ANY AMBUSHES.

24 MR. LEININGER: AND WE INTEND TO FILE A STATEMENT
25 ON BOTH, YOUR HONOR.

26 THE COURT: I'M SURE.

27 MR. LEININGER: THE ONLY OTHER POINT I WISH TO
28 MAKE IS WITH ALL THIS INFORMATION THAT'S COMING IN WITH

44

1 REGARD TO PRODUCTION OF RECORDS, AND HOPEFULLY SUPPORT
2 FOR THE PRODUCTION OF RECORDS, WHETHER THE COURT WOULD
3 WANT US TO CREATE SOME SORT OF REPOSITORY OF THIS
4 INFORMATION TO MAKE IT MORE EASILY ACCESSIBLE FOR ALL THE
5 PARTIES.

6 IN OTHER WORDS, IN THIS COURT ORDER, IF
7 PARTIES PROVIDE THIS INFORMATION ELECTRONICALLY, WHETHER
8 THAT MEANS SCANNING YOUR HISTORIC INFORMATION OR
9 PROVIDING IT IN A PDF FORMAT OR NOT, IT SEEMS WE'RE GOING
10 TO HAVE A HUGE VOLUME OF INFORMATION THAT THE PARTIES
11 WILL NEED TO ACCESS EASILY.

12 THE COURT: WELL, OBVIOUSLY, MUCH OF IT IS GOING
13 TO BE FILED ELECTRONICALLY, IF NOT ALL. AND THAT IS
14 ALWAYS GOING TO BE AVAILABLE ON THE ANTELOPE WEB SITE.

15 BUT IF YOU'RE TALKING ABOUT SEQUESTRATION
16 INTO A PARTICULAR FILE SO THAT IT'S ALPHABETIZED AND
17 AVAILABLE FOR PARTY DISCLOSURE, I THINK THAT'S A GOOD
18 IDEA.

19 AND WHAT I WOULD SUGGEST IS THAT YOU PUT
20 THAT IN THE ORDER, IF YOU CAN AGREE, AND THEN TALK WITH
21 MRS. WALKER ABOUT HOW TO FORMULATE THAT.

22 MR. LEININGER: VERY GOOD. THANK YOU.

23 THE COURT: I THINK THAT WOULD BE VERY HELPFUL.

24 MR. KUHS: YOUR HONOR, ROBERT KUHS FOR TEJON AND
25 GRANITE.

26 THE COURT: YES, MR. KUHS.

27 MR. KUHS: IT OCCURS TO ME THAT ONE OF THE LEGAL
28 ISSUES WE HAD RAISED WITH RESPECT TO THE FEDERAL RESERVED 45

1 RIGHT DEALS WITH -- AS I UNDERSTAND THE AUTHORITY -- THAT
2 THE FEDERAL GOVERNMENT, TO THE EXTENT THERE IS A RESERVED
3 RIGHT, TAKES SUBJECT TO PRIOR EXISTING RIGHTS, PRIOR
4 VESTED RIGHTS.

5 AND SO TO REACH THAT ISSUE, WE WOULD HAVE
6 TO KNOW ESSENTIALLY WHEN THE FEDERAL RESERVED RIGHT WAS
7 CREATED AND WHAT THE CONDITION WAS IN THE BASIN AT THAT
8 TIME. THAT REALLY INVOLVES AN ANALYSIS OF WHETHER THE
9 BASIN WAS IN OVERDRAFT IN THE 1930'S. A QUESTION THAT
10 WE'RE NOT GOING TO REACH IN THIS PHASE OF THE TRIAL.

11 SO I WOULD SUGGEST THAT THAT ISSUE BE
12 RESERVED UNTIL WE HEAR EVIDENCE IN THE PRESCRIPTION PHASE
13 AS TO WHAT THE CONDITION OF THE BASIN WAS BACK IN THOSE
14 EARLY YEARS.

15 THE COURT: WELL, WE'RE GOING TO HEAR WHAT THE
16 CONTENTIONS ARE FROM THE FEDERAL GOVERNMENT IN THEIR
17 STATEMENT IN RESPONSE TO THE COURT'S ORDER.

18 AND FROM THERE, IF THERE ARE OTHER ISSUES
19 THAT NEED TO BE TAKEN UP AT ANOTHER TIME, WE WILL DO
20 THAT.

21 ALL RIGHT. PARTIES GOING TO AGREE THEN TO
22 SIT DOWN AND DEVELOP THIS ORDER, RIGHT?

23 MR. LEININGER: YES, YOUR HONOR.

24 THE COURT: OKAY. AND THEN YOU CAN SEND WITH ANY
25 COMMENTS ABOUT CONFLICT, YOU CAN FORWARD THAT AND POST IT
26 AND THE COURT WILL LOOK AT IT AND DETERMINE WHAT THE FORM
27 OF THE ORDER OUGHT TO BE.

28 NOW, LET'S TAKE UP MR. MC LACHLAN'S REQUEST 46

1 FOR THE COURT TO APPOINT AN EXPERT.

2 MR. DUNN: I'M SORRY TO INTERRUPT, YOUR HONOR.
3 CAN WE HAVE A DEADLINE FROM THE COURT TO THAT? AND COULD
4 IT BE ONE WEEK FROM TODAY?

5 THE COURT: IS THAT MAYBE TOO SOON?

6 MR. DUNN: NO. I DON'T THINK SO.

7 THE COURT: WELL, YOU SUBMIT IT TO ME.

8 YES.

9 TODAY IS THE 9TH. SO YOU WANT TO HAVE A
10 FORM OF ORDER SUBMITTED TO THE COURT BY THE --

11 MR. DUNN: 16TH.

12 THE COURT: 16TH. YES.

13 MR. ORR: YOUR HONOR, STEVEN ORR FOR THE CITY OF
14 PALMDALE.

15 I WAS GOING TO VOLUNTEER, ALONG WITH
16 MR. FIFE, TO BE THE TWO COORDINATING ATTORNEYS TO TRY TO
17 GET THE TWO SIDES TOGETHER.

18 THE COURT: THANK YOU.

19 MR. FIFE: AND IF I COULD JUST INQUIRE WITH
20 MR. DUNN SINCE HE SUGGESTED THAT WE -- WE DO HAVE THE
21 MEETING NEXT THURSDAY AT TOM'S OFFICE.

22 COULD WE USE THAT TO DISCUSS ANY ISSUES?
23 THAT WOULD MEET OUR DEADLINE OF SUBMITTING IT.

24 MR. DUNN: MAY I RESPOND, YOUR HONOR?

25 MY THOUGHT ON THAT, MR. FIFE, IS THAT WE
26 COULD HOPEFULLY COME TO A RESOLUTION, OR AT LEAST AN
27 AGREEMENT, ON WHAT TO SUBMIT TO THE COURT. BUT IT SEEMS
28 TO ME THAT EVEN IF WE COULD TALK -- AS WE DID HERE

47

1 TODAY -- AND SET SOMETHING UP BEFORE THURSDAY, I DON'T
2 THINK IT WILL TAKE A TERRIBLE AMOUNT OF TIME. I THINK
3 IT'S SOMETHING WE COULD PROBABLY DO ON A CONFERENCE CALL.

4 THE DISADVANTAGES TO EVEN TRY TO DO IT
5 TODAY IS WE DON'T HAVE EVERYBODY HERE.

6 MY SUGGESTION IS LET'S MAKE A CALL AND
7 FINISH IT ON THURSDAY.

8 MR. FIFE: YOUR HONOR, I AGREE A WEEK.

9 THE COURT: ALL RIGHT. NOW, MR. MC LACHLAN, YOU
10 HAVE YOUR REQUEST FOR AN EXPERT.

11 YOU BELIEVE THAT THE COURT SHOULD ENGAGE
12 ITS EXPERT NOW TO GET A REPORT AS SOON AS POSSIBLE; IS
13 THAT FAIR?

14 MR. MC LACHLAN: YES. TO THE EXTENT THAT THE WOOD
15 CLASS IS ORDERED TO PRESENT EVIDENCE IN THIS NEXT PHASE
16 OF TRIAL OR AT SOME FACTUAL HEARING, I THINK IT'S
17 CERTAINLY NECESSARY. AND IF WE'RE GOING TO TRY TO SETTLE
18 THE WOOD CLASS OUT AND GET THEM PUT TO BED, THEN I THINK
19 WE NEED IT ANYWAY. PERHAPS.

20 I DON'T KNOW IF EVERYONE WILL AGREE ON THE
21 NUMBERS. I DON'T THINK THERE'S A LOT OF RESISTANCE
22 BECAUSE THE NUMBERS HAVE DROPPED A LITTLE BIT FURTHER.

23 I MEAN, TO THE EXTENT PEOPLE ARE GOING TO
24 DISAGREE, THEN THE COURT WOULD PROBABLY WANT TO HEAR FROM
25 AN EXPERT AND SAY YEA OR NAY, AND HAVE SOME EVIDENCE

26 SUPPORTING IT FOR THE APPELLATE COURT.

27 THE COURT: SHOULD I DEFER RULING ON THIS UNTIL

28 THE NEXT HEARING?

48

1 MR. MC LACHLAN: NO. I DON'T THINK THAT'S A WISE

2 IDEA. I MEAN, IT JUST GUARANTEES ONE, THAT WE'RE NOT

3 GOING TO PROBABLY GET ANY CLOSER TO GETTING THE WOOD

4 CLASS SETTLED.

5 AND TWO, IT CERTAINLY GUARANTEES THE WOOD

6 CLASS WON'T BE PARTICIPATING IN THAT NEXT TWO-WEEK BLOCK

7 OF TIME.

8 SO THOSE ARE MY CONCERNS. BUT OBVIOUSLY,

9 YOUR HONOR IS SETTING A SCHEDULE.

10 THE COURT: WHAT I'M CONCERNED ABOUT IS IN THE

11 EVENT THAT YOU COULD COME TO AN AGREEMENT, WHICH YOU WERE

12 SO CLOSE TO COMING TO, I DON'T WANT TO UNNECESSARILY

13 EXPEND PARTIES' RESOURCES. ECONOMIC RESOURCES. MONEY.

14 MR. MC LACHLAN: I'LL SAY THIS ON THAT POINT.

15 I HAVE SPENT LITERALLY -- I THINK IT WAS

16 JUNE OF 2011 THAT WE HAD THE ORIGINAL SETTLEMENT.

17 ROUGHLY JUNE OR JULY. SINCE THAT TIME FRAME, I HAVE

18 SPENT HUNDREDS AND HUNDREDS OF HOURS DRAFTING A STRIPPED

19 DOWN WILLIS-LIKE CLASS AGREEMENT, WHICH WAS TOSSED TO THE

20 WAYSIDE.

21 AND I BROUGHT IT UP AGAIN AND AGAIN AND

22 AGAIN.

23 I'VE ENDEAVORED TO NEGOTIATE WITH THE

24 LANDOWNERS. TOLD THE LANDOWNERS THAT FAIRLY SOON, WE'RE

25 PROBABLY GOING TO SUE THEM ON A CLASS-WIDE BASIS SINCE --

26 WE'VE CREATED THIS ADVERSITY. WE MIGHT AS WELL

27 ADJUDICATE THE CLAIMS.

28 IT'S GOTTEN US NOWHERE. THIS CASE IS NOT

1 GOING TO SETTLE.

2 WE'RE BEING HELD HOSTAGE ON ONE SIDE BY THE

3 LANDOWNERS. AND I DON'T REALLY FAULT THE PUBLIC WATER

4 SUPPLIERS BECAUSE IN SOME SENSE, AS LONG AS THE

5 LANDOWNERS WANT TO USE US AS A HOSTAGE, PUBLIC WATER

6 SUPPLIERS ARE A LITTLE BIT STUCK.

7 AND THE PUBLIC WATER SUPPLIERS COULD ENTER

8 INTO THAT STRIPPED DOWN AGREEMENT WITHOUT THE WATER

9 RIGHTS, BUT THEN YOU STILL HAVE A PROBLEM OF NOT

10 ADJUDICATING THE WATER USING GROUP. WE REPRESENT THE

11 LARGEST NUMBER OF WELLS IN THE VALLEY. NOW, IT'S NOT THE

12 LARGEST CLAIM, BUT IT'S STILL SUBSTANTIAL ENOUGH THAT I

13 THINK IT HAS TO BE ADJUDICATED.

14 SO I THINK WE REALLY NEED TO GET THE

15 COURT-APPOINTED EXPERT MOVING. IT COMPLETELY TIES MY

16 HANDS. I'M DEAD IN THE WATER AND I CAN'T DO ANYTHING.

17 AND THIS CASE IS NOT GOING TO SETTLE.

18 IF I THOUGHT IT WAS GOING TO SETTLE, I'D BE

19 STRAIGHT WITH YOU, YOUR HONOR. BUT IT'S NOT.

20 THE COURT: OKAY. AND YOUR VIEW IS THAT THE

21 DIFFICULTY IS THE LANDOWNER GROUP?

22 MR. MC LACHLAN: YEAH. I THINK SO. I'VE BROACHED

23 THE LEAD COUNSEL THE IDEA OF LOOK, YOU KNOW OUR NUMBER.

24 LET'S JUST AGREE TO IT AND GET US OUT.

25 AND THERE'S ESSENTIALLY VERY LITTLE

26 INTEREST IN IT.

27 AND IF I HAVE THE COURT-APPOINTED EXPERT --

28 TO BE BLUNT, I'M PROBABLY GOING TO THREATEN TO FILE A

1 CLASS CASE AGAINST THEM IN ORDER TO GET IT ACCOMPLISHED,

2 BECAUSE THAT'S WHAT IT'S GOING TO TAKE.

3 AND I THINK IT'S UNFORTUNATE, BUT THAT'S

4 WHERE WE ARE.

5 THE COURT: RIGHT NOW, YOUR COMPLAINTS AND THE
6 CLASS COMPLAINT IS AGAINST THE PUBLIC WATER SUPPLIERS; IS
7 THAT TRUE?

8 MR. MC LACHLAN: THAT'S RIGHT. ONLY THEM.

9 THE COURT: ONLY THEM.

10 MR. MC LACHLAN: RIGHT.

11 THE COURT: AND I UNDERSTAND HOW THAT CAME ABOUT
12 AND IT WAS A VERY SENSIBLE THING TO DO.

13 AND AS A MATTER OF FACT, THE COURT
14 APPRECIATES YOU HAVING DONE THAT.

15 WELL, I AM GOING TO NEED EITHER A
16 STIPULATION OF AGREEMENT BETWEEN THE PARTIES. I ASKED
17 YOU WHAT THE WOOD CLASS PUMPING IS AND HAS BEEN; OR I'M
18 GOING TO NEED AN EXPERT TO TESTIFY TO IT.

19 AND IF THERE'S NOT GOING TO BE AN
20 AGREEMENT, THEN I'M TAKING THAT AT FACE VALUE.

21 THEN I'M GOING TO MAKE THE APPOINTMENT OF
22 MR. THOMPSON AS HE HAS REQUESTED -- YOU HAVE REQUESTED, I
23 SHOULD SAY -- AND PROVIDED HIS PROPOSAL.

24 AND I THINK THAT THE TOP DOLLAR THAT HE IS
25 GOING TO BE ENTITLED TO, BY HIS OFFER, IS ABOUT \$80,000.

26 THAT HAS TO BE PAID.

27 THE COURT'S EXPERT, I'M GOING TO APPOINT
28 HIM AND HIS FIRM. ENTRIX, I BELIEVE, IS THE FIRM.

51

1 AND I'M GOING TO ORDER THAT THE PUBLIC
2 WATER PROVIDERS WHO HAVE PRESCRIPTIVE CLAIMS BE
3 RESPONSIBLE AMONG THEMSELVES FOR THE REIMBURSEMENT OR
4 PAYMENT OF THAT AMOUNT OF \$80,000.

5 THAT IS GOING TO BE A TAXABLE AMOUNT, SO
6 THAT IT COULD BECOME A COST THAT IS ALLOCATED TO OTHER
7 PARTIES IN THIS LAWSUIT DEPENDING UPON THE OUTCOME OF
8 THIS LAWSUIT.

9 BUT THE \$80,000 WILL BE ADVANCED BY THE
10 PUBLIC WATER PROVIDERS.

11 THAT'S THE ORDER.

12 MR. MC LACHLAN: YOUR HONOR IS REFERRING TO
13 EXHIBIT 5 IN THE MOTION, WHICH IS THE TWO PAGE RIGHT DOWN
14 BY ENTRIX.

15 THE COURT: AND I WANT YOU TO PREPARE AN ORDER FOR
16 THE COURT TO SIGN AS I'VE INDICATED.

17 MR. MC LACHLAN: THERE'S ONE OTHER -- I GOT A --
18 MR. THOMPSON CHECKS THE DOCKET PERIODICALLY AND IS AWARE
19 THAT THIS IS GOING ON.

20 I GOT A VOICE MAIL FROM HIM IN THE LAST --
21 I THINK TWO DAYS AGO, INDICATING THAT HIS FIRM, ON THE
22 FRONT END, I GUESS, NEVER GOT -- THEIR CUSTOM AND
23 PRACTICE IS TO GET A CONTRACT WHEN THEY DO THIS SORT OF
24 WORK. AND I'M NOT SURE WHO SHOULD SIGN THAT CONTRACT.

25 I HAVEN'T SEEN THE CONTRACT. BUT WHAT I
26 PLANNED TO DO WHEN I GO BACK IS TO SEND AN EMAIL TO HIM,
27 AND OBVIOUSLY COPY MR. DUNN.

28 AND I THINK MR. FIFE CAN AGREE AT SOME

52

1 POINT TO BE THE LANDOWNER'S LIAISON AND SAY, "CAN YOU
2 SEND US THE CONTRACT IF YOUR FIRM REQUIRES IT?"

3 THE COURT: WELL, YOU KNOW, THE COURT DOESN'T
4 ORDINARILY ENTER INTO CONTRACTS WITH THE PARTIES.

5 MR. MC LACHLAN: RIGHT.

6 THE COURT: WHAT THE COURT DOES IS ORDERS THAT

7 THINGS OCCUR.

8 MR. MC LACHLAN: MAYBE ORDER -- CAN I SIGN IT? OR
9 MR. DUNN?

10 THE COURT: I THINK I'D LIKE TO HAVE MR. DUNN SIGN
11 IT AND TO HAVE YOU SIGN IT AS WELL.

12 MR. MC LACHLAN: THAT'S FINE.

13 THE COURT: AND MAYBE WE OUGHT TO HAVE ALL THE
14 WATER PROVIDERS WHO ARE BEING SUED HERE, AND WHO HAVE
15 SUED, FOR PRESCRIPTIVE CLAIMS SIGN IT AS WELL.

16 BUT I WANT THAT TO OCCUR.

17 AND I'M SORRY THAT WE HAVE TO DO THIS. BUT
18 THE COURT HAS TO BE INFORMED IN ORDER TO COMPLETE
19 COMMUNICATION IN THIS CASE. AND IF THAT'S THE ONLY WAY I
20 CAN BE INFORMED, THEN I HAVE TO HAVE THAT EXPERT TESTIFY.

21 AND I JUST WANT YOU TO INSURE THAT HE
22 UNDERSTANDS -- THAT ENTRIX UNDERSTANDS THAT THEY ARE
23 COURT EXPERT, AND THEY ARE TO COMPORT THEMSELVES
24 ACCORDINGLY WITHOUT CHOOSING UP SIDES.

25 MR. MC LACHLAN: WE UNDERSTAND. I'LL TALK TO
26 MR. DUNN AND ANYONE ELSE THAT'S INTERESTED. I'LL PUT
27 SOME LANGUAGE IN THE ORDER RELATIVE TO -- WELL, I'M
28 OBVIOUSLY GOING TO HAVE TO COMMUNICATE WITH ENTRIX

53

1 BECAUSE THEY'RE GOING TO HAVE TO GET IN TOUCH WITH CLASS
2 MEMBERS.

3 SO I THINK I'VE GOT A WAY IN WHICH WE CAN
4 DO THAT THROUGH EMAIL. AND WE CAN FILE THIS STUFF WITH
5 THE COURT SO IT'S PUBLIC.

6 THE COURT: OKAY. LET ME MAKE ONE OTHER
7 OBSERVATION HERE THAT I'VE BEEN THINKING ABOUT. AND I'M
8 NOT SURE -- THIS IS NOT RELATED TO THE WOOD CLASS
9 PARTICULARLY. I'M NOT SURE IF IT'S POSSIBLE TO DO THIS.

10 BUT THIS PRESCRIPTION CLAIM IS A CLAIM THAT
11 IS IN MANY WAYS A VERY COMPLEX CLAIM; IN OTHER WAYS A
12 SIMPLE CLAIM.

13 MR. DUNN THINK IT'S A SIMPLE CLAIM AND
14 EASILY PROVEN, BECAUSE EVERYBODY KNOWS WHAT WAS GOING ON
15 IN THE VALLEY AMONG OTHER THINGS.

16 I'M WONDERING IF THERE ISN'T SOME WAY OF
17 DOING A SUMMARY ADJUDICATION OF ISSUES TO SEE IF
18 MR. DUNN'S VIEW IS REALLY CORRECT IN ADVANCE OF A TRIAL.
19 JUST TRYING TO SAVE A LOT OF RESOURCES FOR THE PARTIES
20 AS WELL AS THE COURT.

21 BECAUSE IF IT COULD BE A SUMMARY
22 ADJUDICATION -- AND I'M TALKING ABOUT A FILING BY THE
23 LANDOWNER PARTIES, I SUPPOSE, AND NOT BY THE PUBLIC WATER
24 PROVIDERS. BECAUSE I DON'T THINK IT'S POSSIBLE TO SAY
25 THERE ARE NO ISSUES OF FACT FROM THE PUBLIC WATER
26 PROVIDERS' STANDPOINT. AND MAYBE THERE IS NO WAY OF
27 SAYING IT FROM THE LANDOWNERS' STANDPOINT. I DON'T KNOW.

28 BUT I THINK THAT IT WOULD BE WORTHWHILE FOR 54

1 COUNSEL TO AT LEAST TALK ABOUT THAT AS A WAY OF PERHAPS
2 TRYING TO RESOLVE THAT ISSUE.

3 THAT'S JUST AN OBSERVATION. YOU'RE NOT
4 REQUIRED TO DO ANYTHING, ANYTHING YOU DON'T WANT TO DO.
5 BUT I THINK YOU OUGHT TO CONSIDER IT.

6 MR. TOOTLE: YOUR HONOR, JOHN TOOTLE ON BEHALF OF
7 CALIFORNIA WATER SERVICE COMPANY.

8 THE COURT: YES.

9 MR. TOOTLE: SORT OF GOING BACK TO YOUR REQUEST
10 FOR PUMPING SPECIFIC TIME PERIODS, WOULD IT BE HELPFUL TO
11 HAVE THE PUMPING PRIOR TO THE IMPORTATION OF WATER INTO

12 THE VALLEY?

13 WE ALL KNOW HOW -- THROUGH THE PREVIOUS
14 TRIALS HOW THAT HAS CHANGED HABITS AND ALSO CHANGED THE
15 BASIN ITSELF. AND THAT WAS IN THE MID-SEVENTIES.

16 THE COURT: I DON'T KNOW THE ANSWER TO THAT. BUT
17 IT'S CERTAINLY SOMETHING THAT COUNSEL SHOULD TALK ABOUT.

18 WHAT I DO WANT TO TALK ABOUT VERY BRIEFLY
19 IS OUR NEXT HEARING DATE FOR A FURTHER CASE MANAGEMENT
20 CONFERENCE STATUS.

21 LET ME LOOK AT MY ROBOT HERE.

22 SO DECEMBER, I WILL TELL YOU THAT AN
23 EARLIER PART OF THE WEEK IS BETTER THAN FRIDAY FOR ME IN
24 TERMS OF TRAVELING. AND MY ANDROID AGREES.

25 SO WHAT ABOUT THE 11TH, WHICH IS A TUESDAY?

26 MR. MC LACHLAN: I'M IN TRIAL, YOUR HONOR, THAT
27 WHOLE WEEK. CAN WE LOOK AT THE FIRST WEEK OF DECEMBER?

28 (DISCUSSION HELD OFF THE RECORD.)

55

1 MR. ZIMMER: YOUR HONOR, THIS IS ZIMMER.

2 I THINK THAT MAY BE A LITTLE EARLY SINCE WE
3 WILL HAVE JUST MET WITH JUSTICE ROBIE. AND I THINK WE
4 MAY WANT TO PROVIDE SOME FURTHER INFORMATION REGARDING
5 ISSUES TO THE COURT AS WELL.

6 THE COURT: YOU'RE GOING TO MEET WITH HIM ON THE
7 28TH AND 29TH?

8 MR. ZIMMER: I THINK THE 29TH AND 30TH.

9 THE COURT: OKAY. 29TH AND 30TH, THURSDAY AND
10 FRIDAY.

11 WELL, I CAN DO IT THE 7TH, I GUESS. THAT'S
12 FRIDAY.

13

14 (DISCUSSION HELD OFF THE RECORD.)

15

16 THE COURT: WHY DON'T WE TRY FOR THE 11TH.

17 OKAY. SO THAT WILL BE THE ORDER. NINE

18 O'CLOCK.

19 I'LL BE HERE.

20 MR. ZIMMER: YOUR HONOR, MR. ZIMMER. JUST A FEW

21 QUICK COMMENTS.

22 I KNOW MR. TOOTLE KIND OF CAME IN THERE AT

23 THE END ON THE IDEA THAT WE WOULD GO BACK TO THE

24 SEVENTIES. THAT WOULD BE A MAMMOTH UNDERTAKING AT THE

25 MOMENT TO DO THAT IN THE MIDDLE OF SETTLEMENT

26 NEGOTIATIONS.

27 WE'LL HAVE PLENTY TO DO. WE'VE GOT TWO

28 DRAFTING COMMITTEE MEETINGS OVER THE NEXT TWO WEEKS. AND 56

1 THEN JUSTICE ROBIE.

2 I THINK THAT THE COURT'S INITIAL THOUGHT

3 PROCESSES, THERE'S PLENTY TO BITE OFF FOR THAT NEXT

4 HEARING. THAT BEING THE 2000 TO 2004, PLUS 2011, 2012

5 TIME FRAME.

6 THE COURT: OKAY. WELL, TALK IT OVER, AND IF YOU

7 CAN AGREE, FINE. IF YOU CAN'T, YOU CAN'T.

8 MR. ZIMMER: THE OTHER COMMENT I WANTED TO MAKE,

9 YOUR HONOR.

10 MR. ZIMMER AGAIN FOR BOLTHOUSE.

11 I DON'T AGREE WITH MR. MC LACHLAN'S

12 CHARACTERIZATION OF HOW HE'S AGREEING OR NOT. I THINK IT

13 WOULD BE HELPFUL TO HAVE MR. MC LACHLAN PRESENT WHEN

14 WE'RE DISCUSSING THESE ISSUES.

15 WE SPENT A LONG TIME YESTERDAY TALKING

16 ABOUT MR. MC LACHLAN'S GROUP AND THERE ARE PROBABLY FOUR

17 OR FIVE ISSUES THAT RELATE TO HIS GROUP.

18 I THINK IT'S KIND OF UNFAIR JUST TO SIT ON
19 THE SIDELINES AND TO JUST SAY IT HAS TO BE MY WAY OR THE
20 HIGHWAY.

21 I THINK HE NEEDS TO COME AND DISCUSS THOSE
22 ISSUES WITH THE GROUP, AND WITH JUSTICE ROBIE IF
23 NECESSARY, SO WE CAN WORK SOMETHING OUT.

24 I THINK WE'RE CLOSE TO SETTLEMENT. I THINK
25 WE CAN GET HIS GROUP SETTLED SO A LOT OF THIS BECOMES
26 UNNECESSARY.

27 BUT IT WOULD BE HELPFUL TO BE ABLE TO
28 DISCUSS THAT WITH HIM ACTUALLY IF HE'S ACTUALLY THERE.

57

1 THE COURT: WELL, AS YOU KNOW, I ENCOURAGE ALL
2 COUNSEL TO TALK AS MUCH AS POSSIBLE TO RESOLVE THIS
3 MATTER.

4 AND SO THAT REMAINS.

5 ALL RIGHT. I WILL SEE EVERYBODY ON
6 DECEMBER THE 11TH AT 9:00 A.M. OR SOONER.

7 WE'RE IN RECESS.

8 THANK YOU VERY MUCH, EVERYBODY.

9 ALL COUNSEL: THANK YOU, YOUR HONOR.

10

11 (THE ABOVE PROCEEDINGS WERE CONCLUDED.)

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