

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SANTA CLARA

3 BEFORE THE HONORABLE JACK KOMAR, JUDGE

4 DEPARTMENT 19

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6 COORDINATION PROCEEDING
7 SPECIAL TITLE (RULE 1550(B))

8 ANTELOPE VALLEY GROUNDWATER)
9 CASES)

10 INCLUDED ACTIONS:)

11 LOS ANGELES COUNTY WATERWORKS)
12 DISTRICT NO. 40 V.)
13 DIAMOND FARMING CO.)
14 SUPERIOR COURT OF CALIFORNIA)
15 COUNTY OF LOS ANGELES, CASE)
16 NO. BC 325 201)

17 LOS ANGELES COUNTY WATERWORKS)
18 DISTRICT NO. 40 v.)
19 DIAMOND FARMING CO.)
20 SUPERIOR COURT OF CALIFORNIA,)
21 COUNTY OF KERN,)
22 CASE NO. S-1500-CV-254-348)

23 WM. BOLTHOUSE FARMS, INC., V.)
24 CITY OF LANCASTER)
25 DIAMOND FARMING CO. V. CITY)
26 OF LANCASTER)
27 DIAMOND FARMING CO. V.)
28 PALMDALE WATER DISTRICT)
SUPERIOR COURT OF CALIFORNIA,)
COUNTY OF RIVERSIDE,)
CONSOLIDATED ACTIONS,)
CASE NOS. RIC 353 840,)
RIC 344 436, RIC 344-668)

23 WILLIS v. LOS ANGELES COUNTY)
24 WATERWORKS DISTRICT NO. 40)
25 SUPERIOR COURT OF CALIFORNIA,)
26 COUNTY OF LOS ANGELES,)
27 CASE NO. BC 364 553)

26 WOOD v. LOS ANGELES COUNTY)
27 WATER WORKS DISTRICT NO. 40)
28 SUPERIOR COURT OF CALIFORNIA,)
COUNTY OF LOS ANGELES,)
CASE NO. BC 391869)

JUDICIAL COUNCIL
COORDINATION PROCEEDING
NO. 4408
SANTA CLARA COUNTY
CASE NO.1-05-CV-049053

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REPORTER'S TRANSCRIPT OF PROCEEDINGS
OCTOBER 13TH, 2009

A P P E A R A N C E S:

FOR THE CITY OF PALMDALE: JAMES MARKMAN
ATTORNEY AT LAW

FOR DIAMOND FARMING, ET AL: BOB JOYCE
ATTORNEY AT LAW

FOR U.S. BORAX: WILLIAM SLOAN
ATTORNEY AT LAW

FOR ANTELOPE VALLEY UNITED
GROUP: MICHAEL DAVIS
ATTORNEY AT LAW

FOR BOLTHOUSE PROPERTIES: RICHARD ZIMMER
ATTORNEY AT LAW

FOR ANTELOPE VALLEY
GROUNDWATER AGREEMENT
ASSOCIATION: MICHAEL FIFE
ATTORNEY AT LAW

FOR RICHARD WOOD: MICHAEL MCLACHLAN
ATTORNEY AT LAW

FOR REBECCA WILLIS: RALPH KALFAYAN
ATTORNEY AT LAW

FOR LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40: JEFFREY DUNN
ATTORNEY AT LAW

FOR AGWA: BRADLEY J. HERREMA
ATTORNEY AT LAW

FOR NORTHROP GRUMMAN, ET AL.: TAMMY L. JONES
(VIA COURT CALL) ATTORNEY AT LAW

FOR COPA DE ORA LAND CO.: STEPHEN M. SIPTROTH
ATTORNEY AT LAW

FOR ANTELOPE VALLEY JOINT
UNION HIGH SCHOOL DISTRICT: ANNA MILLER
(VIA COURT CALL) ATTORNEY AT LAW

FOR CAMERON PROPERTIES: CLIFF MELNICK
(VIA COURT CALL) ATTORNEY AT LAW

1	FOR MIKE FLOYD:	MIKE FLOOD
2	(VIA COURT CALL)	ATTORNEY AT LAW
3	FOR SOUTHERN CALIFORNIA	MAY M. GANTVOORT
4	EDISON COMPANY:	ATTORNEY AT LAW
5	(VIA COURT CALL)	
6	FOR UNITED STATES:	R. LEE LEININGER
7	(VIA COURT CALL)	ATTORNEY AT LAW
8	FOR VAN DAM & ANTELOPE	SCOTT K. KUNEY
9	VALLEY:	ATTORNEY AT LAW
10	(VIA COURT CALL)	
11	OFFICIAL COURT REPORTER:	ALICIA PLANCARTE
12		CSR# 12161
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SAN JOSE, CALIFORNIA

OCTOBER 13TH, 2009

P R O C E E D I N G S

THE COURT: We have a sign in-list. Let's find out by calling roll who on the Court Call list is present. As your name is called answer present or here.

THE CLERK: Tammy Jones.

MS. JONES: Present.

THE CLERK: Michael Crow, Michael Crow. Steven Siptroth.

MR. SIPTROTH: Present.

THE CLERK: Mr. Herrema is here.

John Tootle, John Tootle. Bradley Weeks. Christopher Sanders. Ana Miller.

MS. MILLER: Present.

THE CLERK: Edward Renwick, Edward Renwick. John Ukkestad, Robert Kuhs, Keith Lemieux. Malissa McKeith. Cliff Melnick.

MR. MELNICK: Present.

THE CLERK: Mike Flood.

MR. FLOOD: Present.

THE CLERK: Richard Wood, Susan Trager, Amy Gantvoort.

MS. GANTVOORT: Present.

THE CLERK: R. Lee Leininger.

MR. LEININGER: Present.

1 THE CLERK: Scott Kuney.

2 MR. KUNEY: Present.

3 THE COURT: Is there anybody on the
4 telephone whose name has not been called? All right.

5 Well, we've got principally a motion here in
6 connection to the previous motion to transfer and
7 consolidate.

8 Who is going to speak to that opposition?

9 MR. MARKMAN: James Markman for the City of
10 Palmdale for the moving party.

11 THE COURT: Who is going to speak on the
12 opposition?

13 MR. JOYCE: Bob Joyce --

14 THE COURT: I'm asking you to step forward
15 to counsel table, identify yourself at that time. And
16 try and stay where you are so that the court reporter
17 can follow.

18 MR. JOYCE: Bob Joyce on behalf of Diamond
19 Farming, Crystal Organic Enterprises Inc. and Office
20 Land Company.

21 MR. SLOAN: William Sloan on behalf of U.S.
22 Borax.

23 MR. DAVIS: Michael Davis on behalf of
24 Antelope Valley United Mutual Group, Service Rock
25 Product Corporation Enterprises Inc. and Sheet Creek
26 Water Company.

27 MR. ZIMMER: Richard Zimmer on behalf of
28 Bolthouse Properties and Bolthouse Farms.

1 MR. FIFE: Michael Fife on behalf of
2 Antelope Valley Groundwater Agreement Association.

3 MR. MCLACHLAN: Michael McLachlan on behalf
4 of the small pumper class.

5 MR. KALFAYAN: Ralph Kalfayan on behalf of
6 the Willis class.

7 MR. DUNN: Jeffrey Dunn on behalf of
8 Rosenbaum Community Services District and Los Angeles
9 County Waterworks District Number 40.

10 THE COURT: Moving party first.

11 MR. MARKMAN: Well, your Honor, this has
12 been briefed back and forth about six times. I think
13 when I sum this up as a bit of a surprise on my part
14 that any party presently in this proceeding that's seen
15 all these papers will so oppose having one trial and
16 having one judgment that manages the water rights of
17 the resources of this basin.

18 The only reason we are even having these
19 discussions is because we needed MacKaren (phonetic)
20 Act jurisdiction so two classes were created at the
21 Court's suggestions, plaintiffs classes. And in those
22 pleadings filed by those plaintiffs class attorneys who
23 are here they actually prayed for declaratory relief
24 and a declaration of all the water rights that are
25 present in the basin, including theirs, comparing
26 theirs to everybody else. Even though there were only
27 certain defendants named they ask for that kind of
28 broad relief and management of the basin. So it's more

1 interesting to me what nobody has disagreed with.
2 Number one, common issues of law and fact are pervasive
3 in this case, there's not much difference between these
4 and the Indian Wells or redevelopment plants as far as
5 we can see, or any other case, that is the, that is the
6 benchmark for consolidation. That's the substantive
7 criteria.

8 Secondly, we have procedural issues, any of
9 which I'd discuss in detail, if the Court sees fit, but
10 basically service of process, a method of serving
11 process on everybody, suggesting somehow that didn't
12 occur when we obviously served this motion in
13 accordance with the way you present motions in this
14 proceeding pursuant to the Court's coordination powers,
15 and we did so.

16 Furthermore, everyone argues that obviously
17 received notice. I don't know whose right they are
18 asserting that may not have received notice, but
19 nobody's even been drenched up to come and make that
20 claim even after this state, after two or three
21 continuances. This just seems to be simple to me than
22 it has been made out to be by some of these arguments.

23 The one argument, for example, that you
24 can't consolidate cases that have been coordinated
25 because by definition they are complex based on a Court
26 Rule that only applies to noncomplex cases doesn't make
27 sense to me. It seems to me that there's been a lot of
28 hurdles put in front of getting to a process that

1 everybody must agree with. One trial, not multiple
2 trials, one disposition of all the substantive issues
3 in this case that applies to everybody at one time
4 resulting in one judgment where everybody's rights,
5 whether they're intersaying against everybody else or
6 only against some select parties, are all there in one
7 document so that the Court and the parties subject to
8 it can see that it's administered properly. So I don't
9 want to go over the details of all these arguments.

10 THE COURT: Mr. Dunn, did you want to add
11 anything?

12 MR. DUNN: Yes, your Honor.

13 When we went back and looked at the Court
14 record to see if in fact a consolidation order had been
15 put in place the one thing that we came to understand
16 or realize is we did have that, we went back over
17 through this extensive record is that if there has not
18 been an order put in place, the proceedings, all
19 proceedings today have been conducted as if such an
20 order had been in place. All of the hearings have
21 involved both the classes and involved issues involving
22 the United States and MacKaren. There's been no
23 division by pleading or by party, instead what has
24 happened is as I look to my right and I see this
25 distinguished group of counsel, all of them have
26 voluntarily weighed in on issues involving both classes
27 that grade in on issues involving service.

28 The record will also reflect that on the

1 matters involving the two class action complaints that
2 the various landowner parties were active in this case
3 that participated in those discovery proceedings
4 including the meet and confer letters, and without, you
5 know, taking much more of the Court's time here, it
6 simply comes down to this. If there has not yet been
7 an order consolidating these cases for all purposes
8 we've had that certainly as a de facto consolidation,
9 and the reason it's been done that way is it has to be
10 done that way in a case like this to have the
11 multiplicity of proceedings as Mr. McLachlan and
12 Mr. Markman described would create such an undue burden
13 and, and the impracticality upon the Court, I really
14 can't see that.

15 So I'll close though with the comment that I
16 think there has been a consolidation for all purposes
17 today by conduct of the parties, and to the extent that
18 there's any remaining concern that somehow
19 consolidation, you know, either expands the scope of
20 the pleadings and makes people adverse or not adverse,
21 it does no such thing. It simply allows for the
22 judicial use, excuse me, the efficient use of judicial
23 resources both the courts and the parties and so we can
24 continue to move this case towards a resolution. Thank
25 you.

26 THE COURT: Thank you.

27 All right. Your position?

28 MR. JOYCE: Your Honor, I'll make just an

1 initial observation.

2 THE COURT: I just ask that you really don't
3 repeat what's in your papers because your papers have
4 been very clear as to the position of the case.

5 MR. JOYCE: I understand that, your Honor,
6 and Bob Joyce on behalf of Diamond Farms.

7 COURT CALL: Who's my driver?

8 THE CLERK: Excuse me, you're coming through
9 the court.

10 THE COURT: Go ahead, Mr. Joyce.

11 MR. JOYCE: Yes, your Honor. Bob Joyce on
12 behalf of Diamond Farming, Crystal Organic Enterprises
13 and Office Land Company.

14 My observation is, your Honor, that rules of
15 civil procedure, court rules, those are designed and
16 intended to aid both parties and the court is
17 administering our system to ultimately achieve a sound
18 and a just conclusion. Common vote is between civil
19 litigants an incorrect observation made by opposing
20 counsel is that the affect of this court order would
21 not do any of the things that we point out in our
22 opposition that it would have a tendency to do, one of
23 which is obviously it turns the situation where I am
24 neither a defendant in an action involving, in that
25 brought by the United States against my client, nor
26 have I sued the United States, suddenly I will be put
27 into a situation where I'm adverse to the interest of
28 the United States. Same situation now pertains to the

1 classes in a sense that I have not sued any member of
2 the class nor the class representative, neither have
3 they sued myself. Most significantly, your Honor, this
4 motion to consolidate is merely the flip side of the
5 same coin of the motion to dismiss for failure to join
6 indispensable parties. For the Court to deny that
7 motion the Court --

8 THE COURT: Let me ask you a question,
9 Mr. Joyce, what do you make of California Rule of Court
10 2.541(b)(1)?

11 MR. JOYCE: The Court would have to assist
12 me. I'm not -- I don't know off the top of my head --

13 THE COURT: That provides that the
14 coordination judge has the power to transfer cases from
15 one court to another within the discretion of the Court
16 for good cause.

17 MR. JOYCE: And your Honor, I think there's
18 a distinction between transferring and consolidation.

19 THE COURT: Well, isn't that a first step?

20 MR. JOYCE: Assuming the Court --

21 THE COURT: Lays a foundation for
22 consolidation under 1048 of the Code of Civil
23 Procedure.

24 MR. JOYCE: The practical outcome is that
25 assuming that you're transferring, and I'm not aware of
26 any case that's not presently pending by virtue of the
27 coordination order before this Court in any event.

28 THE COURT: Well, there's a difference

1 though between a coordination order and transfer
2 pursuant to the coordination order in terms of them
3 affixing the venue of that case. Each one of these
4 cases that were filed in separate counties, remain
5 cases within those counties even though they are being
6 adjudicated pursuant to the coordination order. Let's
7 see if I can jump ahead a little bit and move this
8 along.

9 It seems to me that there are substantial
10 issues in this case that every pleading, every pleading
11 without exception implicates. And that is the
12 declaratory relief as to the status of the rights to
13 use the groundwater within the basin.

14 The Court has previously found that there's
15 a single aquifer. That seems to me, given the nature
16 of water law in California, groundwater law, to put
17 every party who is here, whichever court they may have
18 started in, with correlative rights that are
19 essentially making them a necessary party to any
20 ultimate judgment in this case. In other words, the
21 Court cannot adjudicate the rights of a party in one
22 part of the aquifer to -- without considering the
23 rights of the parties in another part of the aquifer
24 because those rights are correlative and they are
25 subject to the consequences of one part as to the
26 other.

27 So it seems to me that perhaps not all of
28 the causes of action related to the right to use the

1 water, some of them are damage actions, some of them
2 relate to settlement, some of them relate to inverse
3 condemnation and the like, but the central core of
4 every cause of action of every pleading, of every
5 complaint really relates to the right to use water and
6 those rights are correlative and they implicate every
7 other party in this proceeding, and that's why we have
8 attempted, and the Court has encouraged the parties to
9 join together to deal with these issues. The issues
10 that have arisen, whether they are the class action
11 issues or the other issues, all fall within the same
12 basic core principal. Now I understand your
13 consternation and the concern of everybody in terms of
14 the causes of action that really are not part of the
15 question concerning declaratory relief and the request
16 that the Court find there's a physical solution.

17 All of the parties here have participated in
18 the issues that have been adjudicated thus far with
19 regard to the nature and jurisdiction of the Court, the
20 nature of the aquifer, whether it's a single aquifer or
21 not, and now we are moving into another issue that
22 still relates directly to the question of water rights
23 and whether or not the basin is in a condition of
24 overdraft, the safe field is and the like. And while I
25 understand the technical objections which you've raised
26 and frankly I don't think are valid --

27 And I intend -- I'm intending at this point
28 to overrule your objections and to do two things. One,

1 order a transfer of these proceedings from Riverside
2 and Kern County to Los Angeles County, and then take up
3 the issue of how we consolidate the various causes of
4 action, so that we don't do an injustice to anybody in
5 terms of affecting whatever rights they may have to
6 some of the causes of action, yet bringing together in
7 a single proceeding the cause of action for declaratory
8 relief, which seems to me to be the principal one that
9 we have to deal with here first in determining whether
10 or not we can have a sufficient adjudication of
11 everybody's rights, and also to comply with the
12 Maclaren Act.

13 And so that's where I'm headed and if you
14 want to address those issues I'd be happy to hear
15 whatever other argument you might have.

16 MR. JOYCE: Well, your Honor, actually
17 before the Court expressed its views I was headed to
18 some extent in the very same direction, but what I
19 really wanted the Court to both appreciate and fully
20 understand, and that was why I prefaced my comment as I
21 did, and that is as things currently stand there are
22 pending motions before the Court to allocate expert
23 witnesses' fees, costs from Mr. MacLachlan's class.
24 There's prospectively from what I've been hearing
25 settlements, there may be applications for attorney's
26 fees. Under the current posture of the case I have no
27 exposure to any of those.

28 The effect of the order of consolidation

1 that the Court is heading towards is essentially to
2 certify a cross-defendant class, i.e. presumably under
3 the purveyors' first amended cross-complaint, thus then
4 in subjecting myself and Mr. MacLachlan's people under
5 the same litigation under the same complaint, the same
6 with Mr. Kalfayan. Suddenly I'm now a party to the
7 same action, consequently theoretically exposed. That
8 is a significant shift in the posture of the case from
9 my vantage point, that is the reason I have resisted
10 consolidation primarily because -- and that's the
11 reason why I proposed a single judgment, because as it
12 currently stands the pleadings will not permit the
13 outcome that I can see coming.

14 THE COURT: Well, the Court does have
15 discretion to deal with the question of allocation of
16 fees and costs and obviously the role various parties
17 play in litigation and the extent of their causes of
18 action, the defenses will have some significant bearing
19 upon. I understand that there's been a tentative
20 settlement reached between the classes in the water
21 purveyors. I have not seen that. I don't know what
22 the terms are. I don't know what the agreement is. So
23 it's really premature for me to, as the Court to run
24 conclusions, inferences at all about that, but I would
25 not do anything with regard to consolidation that would
26 impact negatively the settlement that these parties
27 have entered into. I want to see what it is. And I
28 want to see what the agreement is and what the impact

1 of the consolidation might have on that.

2 The United States has responded to the
3 objection filed under this class, and at this point I
4 can't really decide that issue 'cause I don't know what
5 the settlement is, but it seems to me that a settlement
6 that puts that settlement into a single judgment
7 ultimately carries out the purpose of the Maclaren Act,
8 is not contrary to it and ultimately benefits all the
9 parties to this adjudication, whatever the ultimate
10 determination might be as to the status of the aquifer
11 and the rights of the parties to that water. So it's a
12 little bit premature. And I think that the form of the
13 order of consolidation is something we are going to
14 have to work on. I don't think that we are in a
15 position at all to be able to actually formulate that
16 order, but I do think that the Court can make it a
17 generalized order at this point that the parties engage
18 in a meet and confer to prepare a consolidation order
19 because I am ordering a transfer of these actions to
20 Los Angeles County.

21 MR. JOYCE: Your Honor, I just reiterate
22 that any order that would create a circumstance where I
23 am now a party to the same action as the classes raises
24 the very concern I have because the Court has
25 articulated the Court has discretion. Currently the
26 Court does not have discretion. I am not a party,
27 therefore I'm not exposed. Once the Court has the
28 discretion, in my mind, I'm significantly exposed.

1 THE COURT: Well, you may be, but the
2 ultimate effect to that is I don't know at this point.

3 MR. JOYCE: And I can't gamble on that, your
4 Honor.

5 THE COURT: All right. Mr. Dunn?

6 MR. DUNN: Your Honor, I'd like to make an
7 observation relative to the small pumper class. Some
8 of these I believe Mr. Kalfayan agrees with, but I
9 won't necessarily speak for him.

10 My concern is that -- well, let's start from
11 the foundation, which is do we have an existing
12 precedent for what we are trying to do here? No.

13 If there was a case out there in which class
14 action was consolidated into another civil litigation I
15 was not able to find it. There is one in Southern
16 District of New York that looks like it possibly might
17 have been going that way, but there's not really. I
18 couldn't find any published authority on it.

19 My concern is that in order to -- we are now
20 in the process of trying to document the settlements
21 that were reached with Justice Robie, and then we'll
22 take some time more with the various public bodies that
23 have to approve these things and so forth before it
24 reaches your desk.

25 It is ultimately that settlement in either
26 of the class cases needs to result in final judgment
27 for the class. I think we can put the classes to bed
28 once and for all and not jeopardize the MacKaren

1 jurisdiction without having to consolidate. And I
2 think that we may end up blowing the classes up if we
3 consolidate them into this litigation because there's a
4 dearth of applicable law, it's hard to really say, we
5 are in effect charting new grounds here.

6 So in that sense it makes me want to be more
7 conservative and my suggestion to the Court is that we
8 let the settlements come to the Court in their current
9 case, their current case number, and have those
10 reviewed by the Court and then at some later date if
11 for some reason they don't work or there's a problem
12 with them and the classes are still around then you can
13 consolidate into a larger proceeding. We can always do
14 that. But I think -- I don't want to -- I can't, I'm
15 not at liberty to disclose specific terms of the
16 settlement, but I think it's a possibility that the
17 classes can be put to bed and all issues resolve
18 between the class members and the public water
19 suppliers, and allow the rest of the litigation to
20 proceed and still have jurisdiction over the United
21 States because the claims of the class would have been,
22 have been resolved. And so there is no need for
23 another judgment down the road.

24 THE COURT: The difficulty as I see it, you
25 know, the difficulty for me to really express an
26 understanding 'cause I don't know what your settlement
27 is, but each member of that class has a reciprocal
28 right to water that relates to every other pumper or

1 overlying owner in the valley. So that I really don't
2 understand the surrender to a separate judgment on
3 behalf of the classes and ensure that there would be no
4 further litigation between the members of the class and
5 any of the other overlying landowners.

6 And you may settle out the purveyors, the
7 water suppliers, but you don't settle out the other
8 overlying landowners, I think. But it's premature for
9 me to draw any conclusion at all about that. But I
10 think that ultimately what is necessary in this case,
11 whatever the ultimate facts might be that you find that
12 there be a judgment that affects every party to the
13 litigation, a single judgment. How we go about
14 achieving that without consolidation seems to me to be
15 a puzzle that I don't fully understand and -- but at
16 this point I think that it's in everybody's best
17 interest that there be a single judgment.

18 Now Mr. Joyce's concern about having to pay
19 somebody else's fees, I understand that because at this
20 point in time he has no obligation whatsoever to class
21 members to compensate for Court ordered expert fees.
22 And I would say this --

23 MR. DUNN: I think he was referring to
24 attorney's fees. Were you not?

25 MR. JOYCE: I was referring to the
26 attorney's fees, but also fees respective to
27 application fees at a later date.

28 THE COURT: That may be. But the only order

1 ethically to stay in the case and continue protecting
2 those rights, whatever they may be left over for any
3 number of years, and that's a prospect that I know the
4 public water suppliers do not like because the legal
5 bills are mounting, they are getting rather high.

6 I want everybody to be on record that if we
7 don't find a way to, to -- there is a way to do it. I
8 think -- I can't, you know, divulge the terms of the
9 settlement because of the confidentiality stipulation.
10 Once that's papered we can do that. But I think that
11 should be explored first. It sounds like your Honor is
12 going to do a two phase deal where we transfer and we
13 talk about consolidation.

14 THE COURT: I'm going to order that there be
15 a meet and confer in terms of that and recognizing
16 concerns of the issues that various parties might have,
17 but it does seem to me that there's no question the
18 Court has the authority to order a transfer. If
19 anybody disagrees with that I'd be happy to hear their
20 arguments concerning that. And then we'll deal with
21 the form of -- some form of consolidation which I think
22 has to happen in order to result in a single judgment.

23 And of course, I would invite the parties to
24 propose settlements, to talk to each other about
25 potential for unifications that have been. There are
26 future claims made by other overlying landowners to the
27 extent that Mr. McLachlan was talking about having
28 future liabilities which he has to protect against. It

1 seems there are a variety of ways of dealing with that.
2 That gets to settlement discussions, and that I don't
3 want to engage in that discussion here.

4 Mr. Zimmer, you have something?

5 MR. ZIMMER: Just for clarification, your
6 Honor.

7 My understanding what the Court is saying is
8 Mr. Joyce's client and my client for that matter or any
9 of the other defendants do not have exposure to
10 attorneys' fees or expert fees from the classes because
11 the matter has not yet been consolidated?

12 THE COURT: That's correct.

13 MR. ZIMMER: I agree with that. I disagree
14 with Mr. Dunn's comments about a de facto
15 consolidation.

16 But what I'm curious about is -- is the
17 Court's intention to stay with this case after whatever
18 happens today?

19 THE COURT: Yes. You're asking about
20 whether or not the Court can take an assignment to
21 continue hearing this case. I have communicated with
22 the assignment's office and the chief justice as
23 indicated. He's doesn't mind me staying on the case
24 and I'll agree to do that. I would not want to abandon
25 this case for, pardon the expression, midstream.

26 MR. ZIMMER: My concern is this, we started
27 out with a quiet title action down in Riverside and
28 that action still exists as to Mr. Joyce's client and

1 my client. The only reason that these classes ever
2 became an issue was because of the actions that were
3 filed by Los Angeles County and Kern County and L.A.
4 County, filing a comprehensive adjudication and asking
5 for declaratory relief of all the rights of all the
6 parties in the case. My client Bolthouse never asked
7 for that. Mr. Joyce's client never asked for that. We
8 simply asked --

9 THE COURT: You are a defendant in those
10 cases?

11 MR. ZIMMER: We are a defendant in those
12 cases.

13 So what happened after that was the county
14 was unable or did not want to have to serve all the
15 people that they should serve to properly bring the
16 action for declaratory relief of all rights in that
17 water basin. So the first discussion came up about
18 having a class. Now in my view there's absolutely no
19 question that this should be a defendant class. If
20 there had been a defendant class in this matter we
21 wouldn't be having the issues that we have now because
22 there would be a defendant class with an action brought
23 against them by Los Angeles County as it should because
24 those landowners are indispensable parties.

25 Now we are in a situation where we have
26 plaintiff classes in an attempt to settle their action
27 as plaintiffs, which does absolutely nothing to resolve
28 the problem that L.A. County has to have all landowners

1 in there as defendants to resolve the claims that they
2 have pleaded.

3 And we are, we are really ending up with a
4 procedural nightmare. I'm sure the Court didn't
5 contemplate that at the outset. We are ending up with
6 a procedural nightmare here that I'm not sure we are
7 able to fix. And I don't want to come back eight years
8 from now again. We were in Riverside for five years.
9 We have now been here for five years. And I don't want
10 to come back again and have to retry this case because
11 it benefits the purveyors. It spends everybody else
12 into the ground. We've been spending money, spending
13 money, and spending money.

14 And we are simply back in a situation where
15 they can't get their reliefs they claim and where
16 there's no conformance with the MacKaren Act, that's a
17 significant problem. I understand, and it's my
18 understanding that the Court today is intending to
19 consolidate this or not consolidate it.

20 Is that correct?

21 THE COURT: Yes.

22 MR. ZIMMER: I think that's all the comments
23 I have and the rest is in the papers.

24 THE COURT: What do you see is the
25 difference between a plaintiffs class and a defendants
26 class vis-a-vis the water purveyors? The classes have
27 sued for declaratory relief among other things of the
28 water providers, and it seems to me that that creates

1 the same issue that you would have if they were being
2 sued as a defendant class.

3 MR. ZIMMER: Well, I think the answer to
4 that is obvious, the classes don't feel that way.
5 You've heard both Mr. McLachlan and Mr. Kalfayan came
6 into this court on numerous occasions saying, we have
7 limited action. We are only seeking a determination of
8 our -- there's no proscriptive rights against us. I
9 asked Mr. Dunn at the last hearing, is L.A. County
10 still making the same claims against the classes that
11 they're going to determine the classes' rights as
12 correlative rights holders? He said, yes, we are still
13 making that claim.

14 The classes still think they are getting out
15 by simply dealing with proscriptive rights. The
16 difference is huge. The differences between solely
17 being plaintiffs and the difference between being
18 defendants to a declaratory relief action is seeking to
19 declare their overlying rights. That's a huge
20 difference in my mind.

21 THE COURT: Well, it seems to me that the
22 issue is ultimately going to be assuming that the
23 aquifer is an overdraft, assuming so then it's going to
24 be a question of a physical solution, and that physical
25 solution is going to impact the class as well as every
26 other party in this action. And it seems to me that's
27 the ultimate objective, to get everybody's correlative
28 rights at issue and resolved. And I don't understand,

1 of course, I don't know what the settlement is, but I
2 don't understand that anything I've heard from the
3 purveyors or anybody else is looking to a different
4 result than that. I mean, if the basin is in overdraft
5 there's a serious issue that has been presented to the
6 Court for resolution.

7 MR. ZIMMER: I agree that in the end if
8 there is a physical solution you may end up at the same
9 point, but from a pleading standpoint, from a burden of
10 proof standpoint there are huge issues that relate to
11 the burden of proof, who is bringing the action under
12 case law, who is required to prove what, and that's the
13 critical issue.

14 Now if, if the Court consolidates you're
15 still going to have to have determinations of pleadings
16 who is suing who for what. But my view is it shouldn't
17 be consolidated. The county should name defendants,
18 they should serve those defendants and they should
19 proceed on their claims. Procedurally that -- to me
20 that's the right way to do it. We are not in that
21 context. I understand what the Court is saying about a
22 physical solution. I just disagree that procedurally
23 it's the correct way to do it.

24 THE COURT: You know, creating a defendant
25 class is a very difficult problem, unless somebody
26 steps forward and volunteers to, to represent that
27 class, an individual, and then obtaining counsel and
28 that's why I ultimately suggested that we go to a

1 plaintiffs class. I think that so far it is achieving
2 the result. There's no argument, a lot of discussion,
3 a lot of angst among a lot of people based on
4 uncertainties. We are moving along.

5 We, I think finally have jurisdiction over
6 all of the component parts of the valley that need to
7 be within the Court's jurisdiction. And now we are
8 trying to work through the adjudication process to get
9 a fair just resolve and determine what the facts are.

10 And I frankly, I think that we are charting
11 into some new ground here. I think Mr. McLachlan is
12 correct, there's not a lot of case law dealing with
13 this type of situation. But there needs to be, and
14 maybe that's what this case is going to be all about, I
15 don't know.

16 But in any event, there are other people who
17 want to argue.

18 MR. DAVIS: Your Honor, Mike Davis.

19 I'm not going to reiterate everything that's
20 in the pleadings, but I would respectfully disagree
21 with Mr. Dunn, this case has not, to this point been
22 tried as if it was consolidated. If it were we would
23 have all been able to participate in these discussions
24 with Justice Robie, we were not. We were excluded. We
25 have no clue what's happened there. And quite honestly
26 when discovery was submitted by Mr. Kalfayan and
27 others, we refused to respond because we were not
28 parties to their case, and they have not objected to

1 that because in fact they recognize that we are not
2 parties to their case.

3 I would simply like to make it clear from my
4 perspective we have never acted as if this was a de
5 facto consolidated action and the implication that it
6 is I think is significant.

7 THE COURT: Well, okay. I don't disagree
8 with you, that there's been no consolidation. But
9 there has been a joinder with regard to the
10 adjudication of the common issues that we've dealt with
11 at this point. Every party has participated or had an
12 opportunity to participate fully in the adjudication of
13 the jurisdictional bounds, the single aquifer and other
14 issues that have come up incident to those.

15 If you want to call that a de facto
16 consolidation fine, it's certainly not a technical or a
17 correct use of the phrase of art. I agree with you,
18 but that's where we are headed. And I want to make
19 sure that everybody has an opportunity to be heard with
20 regard to these issues.

21 And Mr. Davis, with regard to the settlement
22 conference that was discussed between the purveyors and
23 the two classes, I don't think that's inconsistent with
24 anything that has happened here. I think that's
25 perfectly appropriate.

26 The parties sometimes will sit down with a
27 third party, not all parties to the action are involved
28 in that discussion, to try to settle some aspect of the

1 case or their portions of the case, that happens very
2 commonly. I can't think of a large case that I've ever
3 handled where it hasn't happened. And I think it's a
4 very important thing to do. That has nothing to do
5 with the question of the ultimate adjudication of
6 rights here. Not every lawyer, not every party has a
7 right to join in discussions that several of the
8 parties may be having with a third party mediator, and
9 Justice Robie was a third party volunteer mediator. I
10 appreciated that very much. He's a very knowledgeable
11 person. I just might add that to the extent that this
12 case moves on in the manner which it is, he may well be
13 available to assist us in resolving other aspects of
14 this case and he certainly was very gracious in
15 participating -- the parties who did participate. That
16 has nothing to do with really the progress of the
17 litigation or any other aspect.

18 MR. DAVIS: Your Honor, my point simply was
19 that it is not, as Mr. Joyce was indicating, it was not
20 a significant issue if we are not parties to those
21 actions and their isolated actions, even though they've
22 been coordinated and their common issues have been
23 tried, not all of the issues in our opinion in those
24 two class cases are issues that are common to the rest
25 of the case that we are in.

26 THE COURT: Well, there's no question about
27 that.

28 MR. DAVIS: And so there's a reason that it

1 was not a big issue, but as Mr. Joyce indicated to us
2 it would be a huge issue upon the consolidation, which
3 I anticipate the Court is going to order today without
4 putting specificity as to how that's implemented. I
5 understand the Court is saying I'm going to order
6 transfer. I'm going to order consolidation. I simply
7 am not going to put the details on how that's going to
8 happen.

9 THE COURT: I can't at this point because
10 there are a multitude of causes of action some of which
11 really belong together and some of which do not, but
12 the declaratory relief actions and the quiet title is
13 really a form of that, it's an effaceable action,
14 anyway seems to me is essentially the same side of the
15 coin or different side of the same coin.

16 In any event, anybody else want to say
17 anything?

18 MR. KALFAYAN: Yes, your Honor.

19 If I had concern initially that complete
20 consolidation might somehow conflict with the
21 settlement that we have with the public water suppliers
22 in the U.S., however, earlier today I met with counsel,
23 and I believe we have worked that out so that, so that
24 that issue will no longer be there. So we just need to
25 put the settlement agreement together and put a motion
26 for you to approve that settlement.

27 THE COURT: Yeah. And I cannot and will not
28 make a final order of consolidation until I've heard

1 that motion to approve the settlement.

2 MR. DUNN: Your Honor, this is just a little
3 bit off topic, but it does -- all the things we are
4 doing here do bear upon the settlement agreement and
5 the terms that we are putting in there.

6 Down in Los Angeles, certainly I don't know
7 how the practice is going up here, but in some cases in
8 situations where parties are trying to move things
9 along we have done the preliminary approval process by
10 way of stipulation and order as opposed to scheduling a
11 hearing out 60 days. It's, actually I've done some
12 research for some of my colleagues in Central Civil
13 West it's been done a number of times this year, and I
14 was thinking about trying to do that in this case. I
15 don't know if your Honor has had any experience with
16 that, but if your Honor has some objection to that then
17 the public water suppliers, at least in my class and I
18 believe Mr. Kalfayan's class, is considering doing that
19 once we get things approved. And the concern there is
20 that if, possibly that the settlement process of the
21 few classes could hold -- continue to hold up the phase
22 three trial date.

23 And as a way to move to the -- 'cause the
24 thing that really matters is the fairness hearing, a
25 day where everybody gets to voice their objections.
26 And if we set that trial date at some point for let's
27 say the springtime Mr. Kalfayan and I are obligated to
28 -- with our firms to go to, you know, I don't know

1 50 days of expert deposition and go through all the
2 litigation, and do all the stuff that's going to happen
3 because the classes' rights have not been laid to rest.

4 So I wanted to raise the question if your
5 Honor had a strong objection to the -- at least the
6 theoretical possibility of doing the preliminary
7 approval by way of stipulation and order, then we can
8 do it the old fashioned way and set a hearing date.

9 THE COURT: Well, I would want the request
10 for preliminary approval, whether it will be by
11 stipulation or otherwise, to be set for a hearing so
12 that I can review it and determine whether or not it
13 should be preliminary approval granted, that means that
14 at least 20 days notice to do that. And I would urge
15 you to do that. I don't want to have it just an
16 in-chambers conference.

17 MR. DUNN: Well, your Honor, the hearing is
18 down in Los Angeles at the end of the month?

19 THE COURT: I think for the most part that's
20 what we would do. It is a Los Angeles case. We are
21 going to continue to use the electronic website for
22 filing orders made previously in Santa Clara County for
23 the most part in Los Angeles filing under those
24 circumstances.

25 MR. DUNN: Well -- does your Honor have a
26 plan as far as a designated date in which things can be
27 noticed? I assume you are probably going to be doing
28 some mediation or arbitration or something.

1 THE COURT: I'll be doing private work.

2 MR. DUNN: Just as a practical matter when
3 we want to set things, I understand Rowena said that we
4 will probably still be going through her. And I'm
5 curious if your Honor has in your head set particular
6 days of the week or how that would work for noticing
7 things.

8 THE COURT: Actually I have not. I think
9 that we tentatively set a hearing for November the
10 30th --

11 MR. DUNN: Yes.

12 THE COURT: -- on a couple of these matters
13 including the settlement approval I presume. That's a
14 Monday. I don't have a preference as to any particular
15 days. I think my schedule can be rather flexible until
16 it becomes inflexible. I don't know when that's going
17 to happen. You know, I would just ask you to call Mrs.
18 Walker and schedule whatever you want to schedule.
19 She'll be in touch with me and confirm it.

20 MR. KALFAYAN: Your Honor, I was told that
21 we'll need a week to complete the draft of the
22 settlement agreement. And the public supplier is going
23 to need about 45 days.

24 THE COURT: How many?

25 MR. KALFAYAN: 45 days.

26 MR. BUNN: For governing board approval.

27 MR. KALFAYAN: For governing board approval
28 and then we can set it for a hearing 20 days after

1 that.

2 THE COURT: Will not be ready -- you will
3 not be ready on November 30th.

4 MR. BUNN: I don't see that possible.

5 MR. DUNN: Not with 20 days notice. I think
6 realistically, so we are probably looking at the first
7 week of January or something or the last week of
8 December.

9 MR. SLOAN: Your Honor, William Sloan on
10 behalf of U.S. Borax. Would it be possible if we could
11 perhaps recess for five minutes just to discuss some
12 logistics and then reconvene?

13 THE COURT: Sure.

14 MR. SLOAN: Thank you.

15 THE COURT: In terms of a date for a hearing
16 on that motion I would like a firm date and schedule
17 it. And I would like to avoid repetitive trips to Los
18 Angeles as much as we can and to the extent that we
19 have to, but if we can set it for let's say the first
20 week in January, like January the 7th or 8th and do the
21 other motions at that time.

22 MR. JOYCE: Your Honor, can we hold that
23 date open.

24 THE COURT: Yes. I just want you to be
25 thinking about that date. Okay. Let's take a maybe
26 five minute recess.

27 MR. JOYCE: Ten if we could, your Honor.

28 (Whereupon, a break was taken.)

1 THE COURT: Do you have anything to report
2 to the Court?

3 MR. ZIMMER: Thank you for the chance to
4 talk among ourselves. Obviously there's several
5 different motions here on calendar here today.

6 I want to make it clear that it's our
7 understanding that the Court is granting the motion to
8 consolidate and that the Court is intending to seek
9 further details. We just want to make sure that's
10 decided one way or the other before we get into these
11 other motions.

12 THE COURT: Let me clarify where we are.

13 I am granting the motion to the extent that
14 I'm ordering transfer of the Kern, Riverside County
15 cases to the County of Los Angeles. I am indicating
16 and intend to consolidate. I want to schedule a
17 hearing on the form of that order for a date that
18 coincides with the request for preliminary approval of
19 the class settlements in the Willis cases. And
20 ordering that the parties meet and confer concerning
21 the form of the order of consolidation so that we
22 ensure that only the causes of action that should be
23 consolidated are consolidated. Some of the causes of
24 action one party may not have an interest in with
25 regard to the other causes of action. So I'm thinking,
26 for example, in terms of inverse condemnation, damages
27 caused by settlement, and the like.

28 MR. ZIMMER: I guess our question is, the

1 motion was a motion to consolidate there was no motion
2 to transfer.

3 THE COURT: I am doing that out of my own
4 motion.

5 MR. MARKMAN: That's not true, your Honor.
6 Since I drafted that it was a motion to transfer to the
7 extent a transfer hasn't already occurred and to
8 consolidate.

9 MR. ZIMMER: So the question is, is the
10 Court granting the motion to consolidate at this point?

11 THE COURT: As I have expressed it,
12 Mr. Zimmer?

13 MR. ZIMMER: The Court said it's granting a
14 motion to transfer, is the Court granting a motion to
15 consolidate?

16 THE COURT: It is my intent to sign an order
17 to consolidate once the transfer has been completed and
18 after counsel have had an opportunity to meet and
19 confer concerning the form of the order.

20 MR. ZIMMER: Is the Court intending to hear
21 the other motions that are currently scheduled today?

22 THE COURT: As I understand it the motion to
23 allocate costs was continued to November the 30th.
24 That will be continued again to the date of the
25 approval of the -- maybe in fairness here to -- 'cause
26 I don't know what's transpired with the appointment of
27 that expert at this point. The motion to dismiss the
28 first amended cross-complaint which was filed on

1 January 10th, I don't think I've seen any recent papers
2 concerning that request. The motion by Lancaster is
3 stay the case for six months, continue the trial
4 setting conference. We can take that up today if we
5 want to do that. The motion by Bolthouse to amend the
6 exhibits to its amended cross-complaint --

7 MR. ZIMMER: I put that off until the next
8 hearing.

9 THE COURT: Well, that's my point, I haven't
10 seen anything on that lately.

11 MR. ZIMMER: We can't make any decision
12 until we find out what's happening with consolidation.

13 THE COURT: The further motion to disqualify
14 the Blue (phonetic) Firm was reset to November the
15 30th, that will again be reset to a date that coincides
16 with the motion to approve, the next hearing date. I
17 think those are the only motions that were referred to
18 for today's hearing.

19 There was a request by the Willis class to
20 dismiss the Mohave Employment Utility District from the
21 second class action complaint on grounds that they
22 don't occupy any land or pump water within the Antelope
23 Valley. If there's no objection I'll grant that.

24 MR. KALFAYAN: Thank you, your Honor.

25 THE COURT: Anybody have any idea that
26 there's anything else pending?

27 MR. ZIMMER: So was the Court still
28 intending to take up anything today other than what

1 we've done so far?

2 THE COURT: We do have a case management
3 conference scheduled as we always do. I'd be happy to
4 take that and anything else that's appropriately before
5 the Court.

6 MR. ZIMMER: Can we have another five
7 minutes, your Honor.

8 THE COURT: Can you just step to the back of
9 the courtroom and see if you've got something else to
10 talk about.

11 (Whereupon, a break was taken.)

12 MR. ZIMMER: Thank you for the Court's
13 indulgence on that. I think we have nothing else
14 further to discuss, but we would request that nothing
15 further happen on the case substantively or in terms of
16 case management conference until there's a ruling on
17 the motion to consolidate.

18 THE COURT: You mean in the form of an
19 order?

20 MR. ZIMMER: I would say on the motion.
21 Unless the Court is saying that the motion is granted
22 today to consolidate, then my understanding is the
23 Court is going to look at what's going to be submitted
24 later and determine whether the Court is going to grant
25 it. If the Court is granting it today then we need to
26 know that.

27 THE COURT: Well, I think that the Court is
28 granting it today, but the exact form of that order and

1 what exactly is going to be consolidated is not clear
2 to me at this point. I want counsel to meet and confer
3 concerning that and provide the Court with some
4 proposals for how that consolidation should work. This
5 is as you know a very complicated complex case with a
6 series of pleadings that are somewhat disparate, but
7 which as I've indicated, have an accord that is common
8 to all of them. And I want to make sure that the form
9 of the order is appropriate to achieve the objectives
10 of litigation. And I can't do that without some
11 proposals.

12 So I think you understand what I think the
13 issues are with regard to that, we've had enough of a
14 discussion about that, make sure that what we do is
15 fair to all parties and that no party is prejudiced as
16 a result of what it is that we are attempting to
17 accomplish, which I think is to provide a benefit to
18 all the parties to the adjudication of the valley
19 water.

20 MR. MARKMAN: Your Honor, we have a few
21 requests when you went through your list of motions
22 pending. We would ask that you grant -- deny the
23 motion to dismiss the cross-complaint filed by Public
24 Water Suppliers and also deny the motion for a stay.

25 MR. SLOAN: Your Honor, before you even act
26 on that several of the parties have prepared a 170.6
27 challenge. We believe that upon consolidation that
28 gives us the right to exercise the 170.6. I'd like

1 permission to provide it at this time to the clerk.

2 THE COURT: You certainly may file that.

3 MR. SLOAN: I also have additional copies
4 here for everybody.

5 MR. KALFAYAN: Your Honor, we haven't seen
6 that. Can I get a copy.

7 THE COURT: Would you like to set that for a
8 hearing?

9 MR. SLOAN: We don't believe it requires a
10 hearing.

11 THE COURT: It's going to have a hearing.

12 MR. SLOAN: If your Honor would like to set
13 a date.

14 THE COURT: When would you like to have a
15 hearing?

16 MR. LEININGER: Your Honor, this is Mr.
17 Leininger. We couldn't hear Mr. Sloan's comments on
18 the motion.

19 MR. SLOAN: I indicated that several of the
20 parties are filing a 170.6.

21 MR. LEININGER: I'm still having
22 difficulty --

23 MR. SLOAN: Several of the parties are
24 filing a 170.6 preemptory challenge to disqualify the
25 judge. It's our understanding upon consolidation the
26 parties are afforded a renewed right to exercise that
27 challenge. And I believe we are now going to set a
28 hearing for that.

1 THE COURT: All right. When would you like
2 to have a hearing? We can do that do that up here.
3 Would you like to do that within ten days?

4 MR. BUNN: If we can have that on a Monday
5 or Tuesday. I'm currently in trial on Wednesdays,
6 Thursdays or Fridays.

7 MR. SLOAN: So your Honor knows, I'm not
8 available Monday or Tuesday of next week.

9 MR. BUNN: I'm sorry. Preferably a Tuesday
10 if that would please the Court.

11 THE COURT: How about October 27th?

12 MR. SLOAN: Is that two weeks from today?

13 MR. BUNN: Yes, your Honor, that's fine.

14 MR. MARKMAN: Would that be at nine or ten?

15 THE COURT: Let's make it at nine o'clock.

16 MR. EVERTS: Your Honor, we can appear by
17 court call.

18 THE COURT: Now I do want some briefing by
19 anybody who is opposed to the motion. And I'd like an
20 opposition filed by the 20th. Next Tuesday seven days.

21 MR. Defense 2: Yes, your Honor.

22 THE COURT: And response no later than --
23 let's make the opposition the 19th and have the
24 response no later than the 22nd. I should say the
25 reply. Okay.

26 MR. FIFE: Your Honor, we are hearing that
27 up here. Several of us catch a flight out of Burbank
28 that gets here just after nine. Can we set it for

1 ten o'clock.

2 THE COURT: I really don't think I can do
3 that under the circumstances. The nine o'clock has to
4 be it so if you are a few minutes late I'll understand.

5 MR. KALFAYAN: Your Honor, I've conferred
6 with the Public Water Suppliers. Should we reserve
7 January 7th or 8 for the motion?

8 THE COURT: I think that's a smart thing to
9 do.

10 MR. KALFAYAN: January 8th.

11 THE COURT: Well, that's a Friday that
12 sounds about right. January the 8th reserve it.

13 MR. KALFAYAN: Yes, your Honor.

14 MR. EVERTZ: Doug Evertz for the City of
15 Lancaster with the Court's permission we agree to have
16 our motion stayed and continued to that particular date
17 too.

18 THE COURT: Okay.

19 MR. EVERTZ: If you want argument I'd be
20 happy to do that.

21 THE COURT: All right. All pending motions
22 with exception to the hearing on the 170.6 will be
23 reset to January 8th.

24 Okay. Thank you very much.

25

26 (Whereupon, the proceedings concluded.)

27

28

1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)

3
4
5 I, Alicia Plancarte, Certified Shorthand
6 Reporter, do hereby certify:

7 That I am the reporter, duly appointed and
8 sworn, who reported the above and foregoing proceedings
9 at the time and place therein stated.

10 That I reported the said proceedings; and
11 that the foregoing pages are a full, true, complete and
12 correct transcript of my shorthand notes taken at said
13 time and place to the best of my ability.

14
15 I further certify that I have complied with
16 CCP 237 (A) (2) in that all personal juror identifying
17 information has been redacted, if applicable.

18
19 DATED: This _____ day of _____, 2009
20
21
22
23

24 _____
25 ALICIA PLANCARTE
26 CERTIFIED SHORTHAND REPORTER
27 NO. 12161
28

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT NO. 1 HON. JACK KOMAR, JUDGE

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

14
15 REPORTER'S TRANSCRIPT OF PROCEEDINGS
16 FRIDAY, FEBRUARY 5, 2010
17

18
19 APPEARANCES:
20 (SEE APPEARANCE PAGES)
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27 GINGER WELKER, CSR #5585
28 OFFICIAL REPORTER

2-5-10 ANTELOPE VALLEY FINAL CORRECTED

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AGREEMENT ASSOCIATION
(AGWA) BROWNSTEIN, HYATT, FARBER
& SCHRECK
14 BY: MICHAEL FIFE
21 EAST CARRILLO STREET
15 SANTA BARBARA, CA 93101
(805) 963-7000
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17 BOLTHOUSE PROPERTIES, INC. CLIFFORD & BROWN
18 (VIA TELEPHONE) BY: RICHARD G. ZIMMER
BANK OF AMERICA BUILDING
19 1430 TRUXTUN AVENUE
SUITE 900
20 BAKERSFIELD, CA 93301
(661) 322-6023
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22 CITY OF LOS ANGELES KRONICK, MOSKOVITZ,
TIEDEMANN & GIRARD
23 (VIA TELEPHONE) BY: JANET K. GOLDSMITH
400 CAPITOL MALL
24 27 FLOOR
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25 (916) 321-4500
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1 APPEARANCES (CONTINUED)

2

2-5-10 ANTELOPE VALLEY FINAL CORRECTED

3	TEJON RANCH CORP	KUHS & PARKER
4	(VIA TELEPHONE)	BY: ROBERT KUHS
5		1200 TRUXTUN AVENUE
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7		BAKERSFIELD, CA
8		(661) 322-4004
9	THE UNITED STATES	
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12		ENVIRONMENT & NATURAL
13		RESOURCES DIVISION
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16		(303) 844-1364
17	U.S. BORAX	
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19		BY: WILLIAM M. SLOAN
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21		SAN FRANCISCO, CA 94105
22		(415) 268-7209
23	QUARTZ HILL WATER DISTRICTS	
24		CHARLTON WEEKS
25		BY: BRADLEY T. WEEKS
26		1007 W. AVE. M-14, SUITE A
27		PALMDALE, CA 93551
28		(661)265-0969
29	HEALY ENTERPRISES, SHEEP	
30	CREEK, SERVICE ROCK	GRESHAM, SAVAGE, NOLAN
31		& TILDEN
32		BY: MARLENE L. ALLEN
33		3750 UNIVERSITY AVENUE
34		SUITE 250
35		RIVERSIDE, CA 92501-3335
36		(951) 684-2171
37	CITY OF PALMDALE	
38		RICHARDS WATSON GERSHON
39		BY: JAMES L. MARKMAN
40		1 CIVIC CENTER CIRCLE
41		POST OFFICE BOX 1059
42		BREA, CA 92822-1059
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1 APPEARANCES (CONTINUED)

2

3 RICHARD A. WOOD

OFFICES OF MICHAEL MCLACHLAN
Page 4

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4	SMALL PUMPER CLASS	BY: MICHAEL D. MCLACHLAN 523 WEST SIXTH STREET SUITE 215
5		LOS ANGELES, CA 90014
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7	CAMERON PROPERTIES, INC.	MESERVE, MUMPER & HUGHES
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10		24TH FLOOR
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12		BY: SUSAN M. TRAGER
13		19712 MAC ARTHUR BLVD.
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15	DIAMOND FARMING COMPANY	LEBEAU, THELEN, MCINTOSH &
16	AND CRYSTAL ORGANIC	CREAR
17		BY: BOB H. JOYCE
18		5001 EAST COMMERCENTER DR.
19		P.O. BOX 12092
20	BLUM TRUST AND	BAKERSFIELD, CA 93389-2092
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23		BY: SHELDON R. BLUM
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25	(VIA TELEPHONE)	SAN JOSE, CA 95124
26		(408) 377-7320
27		BARTKIEWICZ, KRONICK &
28		SHANAHAN
		BY: STEPHEN M. SIPTROTH
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1 APPEARANCES (CONTINUED)

2

3 ANTELOPE VALLEY
4 UNITED MUTUAL GROUP
(VIA TELEPHONE)

COVINGTON & CROWE, LLP
(NO ATTORNEY APPEARANCE)
CLIENT, JOHN UKKESTAD
Page 5

2-5-10 ANTELOPE VALLEY FINAL CORRECTED
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BY: SCOTT K. KUNEY
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12 STATE OF CALIFORNIA
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14

15

16

17 LA COUNTY WATERWORKS,
18 DISTRICT NO. 40

OFFICE OF THE COUNTY COUNSEL
BY: WARREN R. WELLEN
500 WEST TEMPLE STREET
LOS ANGELES, CA 90012
(213) 974-8407

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21 UNION HIGH FAGEN
22 SCHOOL DISTRICT
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FAGEN, FRIEDMAN & FULFROST
BY: ANNA J. MILLER
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25 ANAVERDE
26 (VIA TELEPHONE)

LEWIS, BRISBOIS, BISGAARD
& SMITH, LLP
BY: KARA E. GERMANE GRONOWITZ
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27

28

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1 APPEARANCES (CONTINUED)

2

3 SOUTHERN CALIFORNIA
4 EDISON

SOUTHERN CALIFORNIA
EDISON COMPANY
BY: AMY M. GANTVOORT
2244 WALNUT GROVE AVENUE
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Page 6

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(626) 302-3712

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1 CASE NUMBER: JCCP4408
2 CASE NAME: ANTELOPE VALLEY GROUNDWATER
3 LOS ANGELES, CALIFORNIA, FRIDAY, FEBRUARY 5, 2010
4 DEPARTMENT NO. 1 HON. JACK KOMAR
5 REPORTER GINGER WELKER, CSR #5585
6 TIME: 9:00 A.M.
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7 APPEARANCES: (SEE APPEARANCE PAGES)

8

9 THE COURT: THIS IS IN THE ANTELOPE VALLEY MATTER
10 COORDINATED CASES. I GUESS WHAT I'M GOING TO DO FIRST
11 IS HAVE COUNSEL WHO ARE PRESENT IN COURT WHO INTEND TO
12 MAKE AN APPEARANCE HERE PLEASE STATE YOUR APPEARANCE.
13 WE WILL START WITH COUNSEL MR. JOYCE ON MY LEFT. AND I
14 HAVE BEEN WANTING EACH COUNSEL WHETHER ON TELEPHONE OR
15 OTHERWISE PLEASE STATE YOUR APPEARANCE ANY TIME YOU
16 SPEAK EVEN THOUGH YOU DON'T HAVE TO TELL US WHO YOU ARE
17 SPEAKING FOR. ALL RIGHT.

18 MR. JOYCE: GOOD MORNING, YOUR HONOR, BOB JOYCE
19 APPEARING ON BEHALF OF THE DIAMOND FARMING COMPANY, ET
20 AL.

21 MR. FIFE: GOOD MORNING, YOUR HONOR, MICHAEL FIFE
22 ON BEHALF OF ANTELOPE GROUNDWATER AGREEMENT ASSOCIATION.

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

25 MR. BUNN: GOOD MORNING, YOUR HONOR, THOMAS BUNN
26 ON BEHALF OF PALMDALE WATER DISTRICT.

27 MR. MARKMAN: GOOD MORNING, YOUR HONOR, JAMES
28 MARKMAN REPRESENTING THE CITY OF PALMDALE.

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1 MR. WELLEN: GOOD MORNING, YOUR HONOR, WARREN
2 WELLEN LA COUNTY WATERWORKS DISTRICT 40.

3 THE COURT: FIRST ROW.

4 MR. ZLOTNICK: GOOD MORNING, YOUR HONOR, DAVID
5 ZLOTNICK FOR THE WILLIS CLASS.

6 MS. TRAGER: GOOD MORNING, YOUR HONOR, SUSAN
7 TRAGER FROM SMITH TRAGER REPRESENTING PHELAN COMMUNITY
Page 8

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8 SERVICE DISTRICT.

9 MS. ALLEN: GOOD MORNING, YOUR HONOR, MARLENE
10 ALLEN ON BEHALF OF AV UNITED SHEEP CREEK AND SERVICE
11 ROCK.

12 MR. MELNICK: GOOD MORNING, YOUR HONOR, CLIFF
13 MELNICK ON BEHALF OF CAMERON PROPERTIES INC.

14 MR. MCLACHLAN: GOOD MORNING, YOUR HONOR, MIKE
15 MCLACHLAN FOR THE SMALL PUMPER CLASS.

16 MR. LEMIEUX: YOUR HONOR, WAYNE LEMIEUX FOR
17 LITTLE ROCK CREEK, ET. AL.

18 MR. WEEKS: BRAD WEEKS FOR QUARTZ WATER DISTRICT.

19 THE COURT: OKAY. MR. BUNN, DID YOU STATE YOUR
20 APPEARANCE?

21 MR. BUNN: I DID, YOUR HONOR.

22 THE COURT: MR. MARKMAN?

23 MR. MARKMAN: YES, YOUR HONOR.

24 THE COURT: ALL RIGHT. WE HAVE EVERYBODY. THOSE
25 WHO HAVE CHECKED IN ONLINE NEED NOT RESTATE THEIR
26 APPEARANCES.

27 WE ARE HERE IN CONNECTION FOR WHAT I WILL
28 CALL A DISPUTE WITH THE FORM OF AN ORDER FOLLOWING THE

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1 HEARING ON THE MOTION TO CONSOLIDATE. I HAVE READ ALL
2 YOUR PAPERS SEVERAL TIMES. I HAVE REVIEWED THE PROPOSED
3 ORDER OR ORDERS, A COUPLE OF THEM, AND THE OBJECTIONS.

4 THE CENTRAL ISSUE HERE IT SEEMS TO ME MAY BE
5 ONE OF -- MORE SEMANTICS THAN ANYTHING ELSE. THERE IS A
6 GREAT DEAL OF LANGUAGE SPENT OBJECTING TO THE USE OF THE
7 WORD "CONSOLIDATION." LET'S GO BACK FOR A MOMENT AND
8 LOOK AT WHAT IS AT ISSUE HERE AND WHAT WE ARE CHARGED

Page 9

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9 WITH DOING AS A MATTER OF LAW.

10 THIS IS A COORDINATED PROCEEDING. ALL OF
11 THE ACTIONS HAVE BEEN DEEMED TO BE COMPLEX. IF IT IS
12 COMPLEX, THE PROCEDURES THAT ARE SET FORTH FOR
13 CONSOLIDATION ARE SAID NOT TO APPLY. TO -- THAT IS,
14 BRING CASES FROM DISPARATE DISTRICTS OR JURISDICTIONS
15 INTO ONE JURISDICTION FOR PURPOSES OF TRIAL.

16 NONCOMPLEX CASES CAN BE CONSOLIDATED BY THAT
17 PROCESS. COORDINATION ACCOMPLISHES THE SAME PURPOSE.
18 IT BRINGS THE CASES INTO A SINGLE JURISDICTION FOR
19 MANAGEMENT BY THE COURT WITH THE INTENT OF PERMITTING
20 THE COURT TO TRY COMMON ISSUES OF FACT AND LAW THAT
21 MIGHT BE APPLICABLE TO EACH OF THE COORDINATED ACTIONS
22 IN A SINGLE PROCEEDING. THAT IS WHAT THE COURT HAS
23 ATTEMPTED TO ORDER IN THIS MATTER.

24 AND IF YOU LOOK AT THE ORIGINAL NOTION
25 HERE -- AND I THINK WE HAD THIS DISCUSSION PROBABLY
26 MAYBE EVEN THE VERY FIRST TIME YOU APPEARED IN THIS
27 COURT -- THE QUESTION OF THE CONDITION OF THE AQUIFER,
28 WHETHER IT IS IN OVERDRAFT, WHETHER THERE IS A NUMBER

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1 THAT WE CAN DESIGNATE AS SAFE YIELD IS COMMON TO EACH
2 AND EVERY ACTION THAT HAS BEEN BROUGHT HERE, WHETHER IT
3 IS A CLASS ACTION OR OTHERWISE.

4 AND GENERALLY IT HAS TAKEN THE FORM OF
5 DECLARATORY RELIEF IN EACH OF THE CAUSES OF ACTION.
6 THAT IS CERTAINLY TRUE OF THE CLASS ACTIONS AS WELL AS
7 ALL OF THE OTHER ACTIONS.

8 AND SOMETHING THAT IS AKIN TO THE
9 DECLARATORY RELIEF IS QUIET TITLE TO -- TO THE WATER

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10 RIGHTS SINCE WATER RIGHTS ARE RELATIVE AND THE
11 AQUIFER -- THAT IS BASICALLY THE SAME ISSUE THAT WE HAVE
12 WITH REGARD TO THE DECLARATORY RELIEF.

13 NOW, IT SEEMS TO ME THAT THE BIGGEST POINT
14 OF CONSTERNATION HERE AMONG PARTICULARLY THE OBJECTORS
15 TO THE FORM OF THE ORDER -- FORGETTING FOR A MOMENT THAT
16 THERE IS SERIOUS OBJECTION TO THE WORD -- USE OF THE
17 WORD OF "CONSOLIDATION," AND I UNDERSTAND THAT.

18 THE BIGGEST PROBLEM IS NOBODY WANTS TO BE
19 BROUGHT IN TO A LAWSUIT INVOLVING ANOTHER PARTY THAT
20 THEY DID NOT SUE AND WHO IS NOT SUING THEM. AND THAT
21 HAS NEVER BEEN MY INTENT TO MODIFY THAT PRINCIPLE OR TO
22 CREATE AN ORDER THAT WOULD IMPOSE A LIABILITY TO A THIRD
23 PARTY WHO IS NOT A PARTY TO A LAWSUIT INVOLVING ANY
24 PARTICULAR ACTION.

25 NOW, THE SAME IS TRUE WITH REGARD TO THE
26 ISSUE THAT THE CLASS MEMBERS -- I SHOULD SAY THAT THE
27 OBJECTORS WHO DO NOT WISH TO PAY ATTORNEY FEES TO THE
28 CLASS ACTIONS LAWYERS BASED UPON THE FACT THAT THEY ARE

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1 NOT PARTIES TO THAT LAWSUIT, AND I UNDERSTAND THAT,
2 ALSO.

3 NOTHING IN THIS ORDER IS INTENDED TO CREATE
4 A SITUATION WHEREIN ANY PARTY IS LIABLE TO ANOTHER PARTY
5 WHETHER FOR ATTORNEY FEES OR ANYTHING ELSE TO THE EXTENT
6 THAT THEY HAVE NOT BROUGHT AN ACTION OR BEEN SUED BY
7 THOSE OTHER PARTIES, AND THE ORDER HAS TO MAKE THAT
8 ABUNDANTLY CLEAR.

9 THERE IS ALSO SOMEBODY'S CONCERN ABOUT THE
10 BOUNDARIES OF THE AQUIFER BECAUSE THEY WERE NOT PARTIES
Page 11

11 TO THE LAWSUIT AT THE TIME THAT THE COURT MADE THIS
12 DETERMINATION. AND I HAVE INDICATED MULTIPLE TIMES ANY
13 SUCH PARTY HAS A RIGHT TO PRESENT EVIDENCE SHOWING AT
14 SOME LATER POINT THAT THERE IS AN ERROR IN THE DRAWING
15 OF THE BOUNDARY AND THERE'S NO REASON WHY THE AQUIFER
16 SHOULD BE WHERE IT IS AND WITH REGARD TO ANY PARTICULAR
17 LINE.

18 I WOULD ALSO -- JUST TO REMIND YOU ALTHOUGH
19 I DON'T THINK I NEED TO REMIND YOU THAT THE -- THE COURT
20 OBJECTIVE HERE IS TO PROVIDE A FINAL ADJUDICATION WHICH
21 COMES DOWN THEN TO THE QUESTION OF WHETHER OR NOT THERE
22 IS TO BE A SINGLE JUDGMENT OR MULTIPLE JUDGMENTS BECAUSE
23 THE ACTIONS ARE COORDINATED.

24 IN LOOKING AT THE STATUTORY SCHEME AND RULES
25 OF COURT THAT HAVE BEEN SANCTIONED BY THE LEGISLATURE AS
26 LAW WITH REGARD TO THESE KINDS OF MATTERS, IT SEEMS TO
27 ME THAT IT IS CLEAR THAT -- I INDICATED THIS IN THE PAST
28 THAT THE COURT MUST PROVIDE A CERTIFIED COPY OF ANY

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1 JUDGMENT TO BE FILED IN ANY JURISDICTION WHERE THE
2 MATTER INDIVIDUALLY WAS VENUED IMMEDIATELY PRIOR TO THE
3 TIME OF COORDINATION AND THE ORDER OF COORDINATION.

4 THAT TO ME CONTEMPLATES THAT THERE IS GOING
5 TO BE A COORDINATED JUDGMENT. I DON'T SEE HOW YOU CAN
6 AVOID HAVING A SINGLE JUDGMENT DEALING WITH EACH OF THE
7 COORDINATED MATTERS. THAT DOES NOT MEAN THAT ANY
8 PARTICULAR ORDER WHERE JUDGMENT AS TO A DEFENDANT WHO IS
9 NOT A PARTY TO A PARTICULAR ACTION WOULD BE BOUND BY
10 SOMETHING HE OR SHE -- OR IT IS NOT A PARTY TO EITHER AS
11 A PLAINTIFF, DEFENDANT, CROSS-COMPLAINANT OR

12 CROSS-DEFENDANT.

13 NOW HAVING SAID THAT, I THINK IT IS
14 PERFECTLY APPROPRIATE TO USE THE LANGUAGE CONSOLIDATION
15 AND 1048 IN ORDER TO TRY ISSUES TOGETHER WHICH WE ARE
16 GOING TO DO HERE. AND THE ISSUES THAT WE ARE GOING TO
17 TRY AT THE VERY OUTSET ARE VERY IMPORTANT ISSUES DEALING
18 WITH THE CONDITION OF THE AQUIFER, AND THAT IS TO THE
19 EXTENT THAT THE AQUIFER IS IN OVERDRAFT.

20 AND WE HAVE A DETERMINATION OF WHAT THE SAFE
21 YIELD MIGHT BE BASED UPON WHAT THE COURT -- THE HIGHER
22 COURTS HAVE TOLD US IN THE PAST AS TO THOSE DEFINITIONS.

23 ONE OF THE ISSUES THAT WE ARE GOING TO
24 DECIDE DURING THESE PROCEEDINGS THAT I BELIEVE THAT
25 SHOULD BE IN SINGLE PROCEEDING IS WHAT EFFECT ANY
26 APPROPRIATORS WHO HAVE NO OTHER RIGHTS MIGHT BE DOING BY
27 WAY OF PUMPING THAT CAUSES THE OVERDRAFT.

28 REMEMBER, OVERDRAFT MEANS -- AND I'M USING

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1 THE VERNACULAR IN A SENSE -- THAT THE PUMPING EXCEEDS
2 RECHARGE ON AN ANNUAL BASIS SUCH THAT IT RELATES TO
3 DEGRADATION, PERMANENT DEGRADATION OF THE AQUIFER.

4 NOW TO THE EXTENT THAT INDIVIDUALS ARE
5 PUMPING WHO ARE NOT OVERLYING OWNERS AND WHO HAVE NO
6 OTHER RIGHTS AND ARE MERE APPROPRIATORS, IT SEEMS TO ME
7 THAT THE DECLARATORY RELIEF PHRASE OF THE PROCEEDING
8 DEALING WITH THE STATE OF THE AQUIFER OUGHT TO RESULT IN
9 INJUNCTIVE RELIEF IF THAT IS APPROPRIATE IN ENJOINING
10 PEOPLE FROM CREATING THE OVERDRAFT.

11 NOW, I DON'T KNOW WHETHER -- WHETHER THE --

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13 (TELEPHONIC STATIC DISRUPTION)

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15 THE COURT: SOMEONE HAS THEIR BLACKBERRY OR
16 SOMETHING ON THAT IS CAUSING INTERFERENCE ON THE
17 TELEPHONE LINE. SO WOULD YOU PLEASE TURN THOSE OFF AND
18 NOT BE USING EMAIL WHILE WE ARE IN SESSION HERE.

19 ALL RIGHT. SO HAVING SAID THAT, I WOULD
20 INVITE ANY FURTHER ARGUMENT THAT COUNSEL WISH TO MAKE,
21 AND THEN IT WOULD BE MY INTENTION TO DRAFT THE COURT'S
22 OWN ORDER CONCERNING THIS ISSUE OF SO-CALLED
23 CONSOLIDATION WORK OR COORDINATION OR WHATEVER IT MIGHT
24 BE.

25 AND I ALSO UNDERSTAND, BY THE WAY, THAT THE
26 CLASS COUNSEL ARE CONCERNED ABOUT COMPLYING WITH THE LAW
27 IF THERE IS SETTLEMENT SO THAT THE COURT CAN ENTER A
28 JUDGMENT PROVING SETTLEMENT.

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1 FIRST THING THAT HAS TO HAPPEN IS THERE HAS
2 TO BE A PRELIMINARY APPROVAL OF ANY PROPOSED SETTLEMENT.
3 I HAVEN'T SEEN ANYTHING. NO MOTION HAS BEEN FILED.

4 SO AT THIS POINT IT SEEMS TO ME THAT
5 ARGUMENT WAS -- IS NOT ELUCIDATING ANYTHING FOR ME. AND
6 I WOULD LIKE TO KNOW WHAT THE STATUS OF THAT -- OF THE
7 SETTLEMENTS ARE AND DECIDE HOW TO DEAL WITH THAT. ONCE
8 WE HAVE, THE COURT WILL MAKE THE APPROPRIATE ORDERS AS
9 TO ANY REQUEST FOR PRELIMINARY APPROVAL AS WELL AS A
10 FINAL APPROVAL OF SUCH SETTLEMENTS.

11 ALL RIGHT. SO, COUNSEL, YOU ARE FREE TO
12 ARGUE THE LAW.

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

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14 I WOULD LIKE TO COMMENT ON THE COORDINATION VERSES
15 CONSOLIDATION DISTINCTION THAT YOU STARTED OUT WITH. I
16 AGREE THAT COORDINATION ACCOMPLISHES THE SAME THING AS
17 CONSOLIDATION. I THINK THAT'S THE WAY THAT IT SHOULD
18 BE.

19 ONE OF THE REASONS WE BROUGHT THIS
20 CONSOLIDATION MOTION IN THE FIRST PLACE, HOWEVER, IS
21 THAT IT IS NOT CRYSTAL CLEAR EITHER FROM THE CASES OR
22 THE COURT THAT IS DEALING WITH COORDINATION.

23 SO I WOULD URGE THE COURT WHEN YOU ARE -- IF
24 YOU ARE DRAFTING YOUR OWN ORDER TO EITHER USE THE WORDS
25 CONSOLIDATION AND 1048 TO BRING US INTO THE SAME THING
26 OR TO EXPLICITLY SAY IN THE COURT'S VIEW COORDINATION
27 ACCOMPLISHES THE SAME THING AS CONSOLIDATION.

28 OUR GOAL IS SIMPLE HERE. WE WANT TO HAVE A

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1 SINGLE JUDGMENT RESULT AS YOUR HONOR STATED WHICH
2 DETERMINES ALL OF THE WATER RIGHTS OF ALL THE PARTIES,
3 NO MATTER WHAT ACTION THEY STARTED OUT AS. SO THAT IS
4 THE GOAL. IT IS JUST A MATTER OF HOW WE GET THERE.

5 AND I PERSONALLY THINK THERE IS NO HARM IN
6 USING THE WORD CONSOLIDATION TO MAKE IT CLEAR THAT THE
7 CASES ARE ALL COMING TOGETHER FOR THAT PURPOSE.

8 THE COURT: ALL RIGHT. IT SHOULD BE PRETTY CLEAR
9 THAT TO THE EXTENT THAT THERE ARE INDIVIDUAL CAUSES OF
10 ACTION THAT DON'T IMPLICATE EVERY OTHER PARTY, THE
11 JUDGMENT MUST BE LIMITED TO THOSE PARTICULAR CAUSES OF
12 ACTION AND THOSE PARTICULAR PARTIES AND NOT AFFECT OTHER
13 PARTIES.

14 I CAN'T IMAGINE WHY ANYBODY THOUGHT AT THE
Page 15

15 TIME OR ANYTIME SINCE WE HAD THE FIRST HEARING WHY
16 THAT'S DIFFERENT.

17 MR. BUNN: ALL I WAS TALKING ABOUT IS THE
18 DECLARATORY RELIEF AS TO WATER RIGHTS, NOT ANY OTHER
19 CAUSES OF ACTION.

20 THE COURT: ALL RIGHT.

21 MR. KALFAYAN: YOUR HONOR, RALPH KALFAYAN. I JUST
22 WANT TO BE CLEAR THAT I THINK WHAT THE COURT IS SAYING
23 IS THAT THE CASES STILL REMAIN SEPARATE. THEY ARE
24 COORDINATED WHICH ACCOMPLISHES THE OBJECTIVE OF GETTING
25 ALL THE CASES TOGETHER IN ONE COORDINATED PROCEEDING AND
26 PERHAPS CONSOLIDATED FOR TRIAL PURPOSES ONLY.

27 THE COURT: WELL, SO THAT THE COURT CAN HEAR A
28 SINGLE PROCEEDING DEALING WITH COMMON ISSUES OF FACT IN

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1 LAW, AND THAT IS PRESENT IN EACH ONE OF THE COMPLAINTS,
2 CROSS-COMPLAINTS, THAT ARE ON FILE HERE. THAT IS
3 DECLARATORY RELIEF.

4 MR. KALFAYAN: THAT IS WHY WE PROPOSED LANGUAGE IN
5 OUR LAST C & C STATEMENT THAT MADE IT CLEAR THAT
6 CONSOLIDATION DOES NOT -- IS NOT TO BE CONSTRUED TO
7 CREATE NEW CLAIMS OR DEFENSES THAT WEREN'T THERE TO
8 BEGIN WITH.

9 THE COURT: ALL RIGHT. ABSOLUTELY CORRECT.

10 MR. KALFAYAN: THANK YOU, YOUR HONOR. JUST TO
11 GIVE YOU A BRIEF STATUS OF SETTLEMENT, WE HAVE FOR FIVE
12 MONTHS NOW SINCE WE MET WITH JUSTICE ROBIE. WE HAVE
13 MANY COMMUNICATIONS WITH THE PUBLIC WATER SUPPLIERS AND
14 THE UNITED STATES. WE HAVE ALSO BEEN WORKING CLOSELY
15 TOGETHER IN THE LAST TWO MONTHS ON SOME LANGUAGE THAT

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16 WOULD BE APPROPRIATE FOR CONSOLIDATION.

17 YESTERDAY WE HAVE ALSO --

18 THE COURT: SPEAK UP A LITTLE BIT. I THINK THE
19 PEOPLE IN THE BACK ARE HAVING TROUBLE HEARING YOU BACK
20 THERE.

21 MR. KALFAYAN: SURE. THE BOTTOM LINE: WE ARE
22 STILL NOT THERE.

23 THE COURT: AS TO WHAT?

24 MR. KALFAYAN: AS TO -- I BELIEVE AFTER TODAY WE
25 MIGHT HAVE -- WE MIGHT GO MUCH FURTHER IN COMPLETING
26 THIS UP NOW THAT WE UNDERSTAND THE COURT'S FEELINGS. I
27 HOPE THAT HELPS.

28 THE COURT: IT WILL BE MOST HELPFUL IF YOU FILE A

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1 MOTION PROOF --

2 MR. KALFAYAN: WE ARE DOING OUR BEST.

3 THE COURT: I APPRECIATE THAT. ALL RIGHT.

4 MR. FIFE.

5 MR FIFE: MICHAEL FIFE. YOUR HONOR, I GUESS I'M
6 NOT SURE IF THIS IS A QUESTION OR A COMMENT, THE
7 ORIGINAL -- MR. BUNN STATED THAT THE OBJECTIVE HERE IS
8 TO DETERMINE ALL WATER RIGHTS BETWEEN ALL PARTIES, AND
9 WE AGREE WITH THAT. THAT IS MY UNDERSTANDING OF THE
10 PURPOSE OF HAVING A COMPREHENSIVE ADJUDICATION.

11 IN THE PUBLIC WATER SUPPLIERS RESPONSE TO
12 THE OBJECTIONS TO THE ORDER OF CONSOLIDATION, THEY
13 QUOTED A RATHER LENGTHY PASSAGE FROM THE PASADENA CASE
14 THAT TALKED ABOUT ADJUDICATED RIGHTS BETWEEN ALL PARTIES
15 WHETHER CLAIMS HAD BEEN RAISED BY THOSE PARTIES AGAINST
16 ONE ANOTHER OR NOT. BECAUSE THAT IS THE NATURE OF A

Page 17

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17 COMPREHENSIVE WATER ADJUDICATION IS TO DETERMINE ALL
18 WATER RIGHTS AS BETWEEN ALL PARTIES.

19 AND IF WATER RIGHTS AS BETWEEN PARTIES WHO
20 HAVE NOT BROUGHT ACTIONS AGAINST ONE ANOTHER, IF THAT IS
21 THE WAY THAT THEY GOING TO PROCEED, THEN I DO NOT
22 UNDERSTAND HOW THE WATER RIGHTS, FOR EXAMPLE, BETWEEN
23 THE LANDOWNERS WHO HAVE BEEN INDIVIDUALLY NAMED AND
24 SERVED AND THE LANDOWNERS WHO ARE IN CLASSES WILL BE
25 DETERMINED.

26 AND SINCE THE UNITED STATES IS NOT A PARTY
27 TO EITHER OF THE CLASS ACTIONS, I DON'T UNDERSTAND HOW
28 THE WATER RIGHTS AS BETWEEN THE UNITED STATES AND THE

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1 CLASSES WILL BE DETERMINED.

2 AND THE PURPOSE -- THE REASON THAT THE
3 MOTION TO DISMISS WAS ORIGINALLY BROUGHT -- AND I THINK
4 THAT IT WAS FROM THAT MOTION THAT THE ENTIRE
5 CONSOLIDATION PROCESS WAS STARTED, ET CETERA -- THAT THE
6 WHOLE REASON FOR BRINGING THAT MOTION IS THAT THE
7 LANDOWNER DEFENDANTS DID NOT SEE ANYWAY THAT WE ARE
8 GOING TO GET TO THE POINT WHERE THE WATER RIGHTS ARE
9 BETWEEN THE CLASSES AND LANDOWNERS AND CLASSES AND THE
10 UNITED STATES ARE GOING TO BE DETERMINED.

11 SO I'M NOT -- I DON'T UNDERSTAND IF WE ARE
12 SIMPLY GOING TO COORDINATE AND NOT DETERMINE ANY CLAIMS
13 THAT WEREN'T RAISED EXPLICITLY BETWEEN PARTIES, I DON'T
14 UNDERSTAND HOW WE GET TO A COMPREHENSIVE ADJUDICATION.

15 THE COURT: WELL, FIRST OF ALL, I'M NOT SURE I CAN
16 ANSWER EVERY QUESTION THAT YOU HAVE IN YOUR MIND, BUT IT
17 SEEMS TO ME THIS: WATER RIGHTS ARE CORRELATIVE. THAT

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18 IS A WORD THAT WE HAVE USED AN AWFUL LOT. YOU CANNOT
19 DETERMINE RELATIVE WATER RIGHTS WITHOUT CONSIDERING
20 WATER RIGHTS OF EVERY OTHER PARTY. IF THE BASIN IS NOT
21 IN OVERDRAFT, THE ISSUE DOESN'T COME UP. BECAUSE EACH
22 PARTY HAS THE REASONABLE BENEFICIAL USE OF THE WATER --
23 THE UNDERLYING LAND AND THE ABILITY TO USE IT TO THAT
24 EXTENT.

25 IF THE BASIN IS IN OVERDRAFT AND THERE ARE
26 APPROPRIATORS WHO ARE CAUSING IT TO BE IN OVERDRAFT AND
27 HAVE NO OTHER RIGHTS OTHER THAN AS APPROPRIATORS, AGAIN,
28 A DECLARATION ESTABLISHES THE RIGHTS OF ALL OF THE

13

1 PARTIES BY ENJOINING THOSE WHO ARE CREATING AN
2 OVERDRAFT.

3 TO THE EXTENT THAT THERE IS AN OVERDRAFT AND
4 BECAUSE PARTIES ARE PUMPING TO EXCESS AND EACH PARTY HAS
5 A RIGHT TO PUMP TO EXCESS, THEN THE COURT HAS TO MAKE A
6 DETERMINATION OF TO WHAT EXTENT IT SHOULD ENJOIN THE USE
7 OF WATER BY ANYBODY, AND THAT TAKES THE FORM SOMETIMES
8 OF A PHYSICAL SOLUTION AND SOMETIMES IT TAKES OTHER
9 FORMS.

10 BUT THE COURT AT THAT POINT HAS TO MAKE AN
11 ADJUDICATION THAT IS GOING TO AFFECT EVERY LANDOWNER IN
12 THE AQUIFER AS WELL AS ANYBODY ELSE WHO HAPPENS TO BE
13 PUMPING AS A RIGHT.

14 SO IT SEEMS TO ME THAT THAT WILL RESULT IN A
15 SINGLE JUDGMENT AFFECTING EVERY PARTY TO ONE EXTENT OR
16 ANOTHER BUT NOT VIS-A-VIS EACH OTHER PARTICULARLY. IN
17 OTHER WORDS, IF THERE IS A PARTICULAR CLAIM THAT ONE
18 PARTY HAS AGAINST ANOTHER IN TERMS OF AFFECTING THEIR

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19 WATER USAGE AND RIGHTS, THOSE ARE SEPARATELY ADJUDICATED
20 AS BETWEEN THOSE PARTIES. BUT IN THE WHOLE AND IN THE
21 ENTIRE AQUIFER, AN ADJUDICATION IS GOING TO AFFECT EVERY
22 PARTY WHO HAS A RIGHT TO WATER IN THAT BASIN.

23 I DON'T KNOW IF THAT HELPS, BUT THAT'S THE
24 BEST I CAN DO THIS MORNING.

25 MR FIFE: AND I GUESS I'M STILL LEFT WITH MY
26 CONFUSION, BUT I GUESS WE WILL SEE HOW IT WORKS OUT IN
27 THE -- ONE COMMENT I WOULD LIKE TO MAKE THAT WE HAVE
28 HEARD THE CORRELATIVE ISSUE OF CORRELATIVE RIGHTS. IN

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14

1 OUR VIEW, ONLY LANDOWNERS' RIGHTS ARE CORRELATIVE, NOT
2 ALL WATER RIGHTS, ESPECIALLY AS BETWEEN LANDOWNERS AND
3 APPROPRIATORS.

4 THE COURT: I DON'T MEAN TO SUGGEST ANYTHING BY
5 THIS RESPONSE TO THAT, BUT DO TO THE EXTENT THAT AN
6 APPROPRIATOR HAS BECOME A PRESCRIPTIVE USER, THOSE
7 RIGHTS ARE CO-EQUAL WITH ANY OTHER RIGHTS BECAUSE THEY
8 OBTAINED THEM AS A MATTER OF LAW.

9 MR FIFE: AND I WOULD DISAGREE, BUT THAT IS
10 PROBABLY FAR DOWN THE ROAD AS TO THE EFFECT OF
11 PRESCRIPTION.

12 THE COURT: AND IT MAY BE PRESCRIPTION ONLY AS TO
13 THE PARTICULAR PARTIES. I DON'T KNOW. BUT BECAUSE ALL
14 RIGHTS ARE CORRELATIVE, IT MAY NOT BE SO LIMITED, BUT
15 THOSE ARE ISSUES THAT NEED TO BE ADDRESSED. I'M
16 CERTAINLY NOT MAKING ANY FINDINGS ABOUT ANY OF THOSE
17 THINGS, AND I CERTAINLY DID NOT INTEND TO AT THIS POINT
18 TO EVEN TALK ABOUT PRESCRIPTION WHICH IS A VERY UNIQUE
19 AND VERY UNUSUAL RIGHT WHEN IT COMES TO WATER RIGHTS.

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20 MR FIFE: I AGREE, AND I DON'T MEAN TO GET INTO
21 THAT. I AGREE IT IS FAR DOWN THE ROAD EXCEPT TO THE
22 EXTENT THAT ONE OF THE ISSUES THAT WE WILL BE INTERESTED
23 IN WITH REGARD TO THE CONSOLIDATION AND THE PROPOSED
24 CLASS SETTLEMENTS IS HOW THE CORRELATIVE NATURE OF THE
25 WATER RIGHTS WILL WORK OR COULD WORK IF AN INSTANCE
26 WHERE SOME LANDOWNERS DON'T HAVE PRESCRIPTION BEING
27 ASSERTED AGAINST THEM AND SOME DO.

28 THE COURT: WELL, UNDERSTOOD, BUT IT IS MY

15

1 UNDERSTANDING, ALSO, HOWEVER, THAT BASED ON WHAT COUNSEL
2 HAS INDICATED IN PREVIOUS HEARINGS THAT THE CLASS ACTION
3 SETTLEMENTS ARE BASICALLY AMONG OTHER THINGS
4 RELINQUISHING CLAIMS OF PRESCRIPTION BY THE PUBLIC WATER
5 PROVIDERS AND PURVEYORS AGAINST THE -- BOTH CLASS
6 MEMBERS OR ALL CLASS MEMBERS AND BOTH CLASSES.

7 IT SEEMS TO ME THAT THEY CAN DO THAT WITHOUT
8 AFFECTING ANY RIGHTS THAT OTHER LANDOWNERS MIGHT HAVE
9 WITH REGARD TO THEIR OWN RIGHT TO PUMP.

10 MR FIFE: AND I THINK THAT BRINGS US FULL CIRCLE
11 THEN. BECAUSE IT IS UNCLEAR HOW AN ORDER THAT -- OR A
12 JUDGMENT THAT DOES NOT ADJUDICATE THE RIGHTS BETWEEN
13 LANDOWNERS CANNOT EFFECT THE LANDOWNERS AGAINST WHOM
14 PRESCRIPTION IS BEING ASSERTED IF OTHER LANDOWNERS ARE
15 BEING GIVEN THE RIGHT TO PUMP AS MUCH WATER AS THEY WANT
16 UP TO THE SAFE YIELD WITH ONLY A CORRELATIVE SHARING TO
17 LIMIT THEM.

18 THE COURT: WELL, I DON'T THINK THAT IS -- IS
19 ANYTHING THAT THE COURT WOULD APPROVE BECAUSE THAT WOULD
20 NOT -- THAT WOULD NOT -- THAT POSTURE WOULD AFFECT

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21 NONPARTICIPATING OR NONINVOLVED PARTIES TO THE
22 SETTLEMENT, AND I CANNOT DO THAT.

23 MR FIFE: WE AGREE. THANK YOU.

24 THE COURT: MR. MCLACHLAN.

25 MR. MCLACHLAN: A COUPLE OF COMMENTS AND
26 OBSERVATIONS: IT STRIKES ME THAT ONE OF THE -- IF NOT
27 ONE OF THE LARGER PROBLEMS, IF NOT THE LARGEST PROBLEM
28 WE ARE FACING RIGHT NOW, IS THE FACT THAT THE SETTLEMENT

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16

1 IDEA HAS BEEN GOING FOREVER. YOU KNOW, PROGRESS HAS
2 BEEN MADE, BUT IT HAS BEEN IN AN UNACCEPTABLY SLOW PACE.
3 I BELIEVE THAT HAS LARGELY BEEN BECAUSE THE WATER
4 SUPPLIERS WANTED TO FORCE THIS CONSOLIDATION ISSUE AND
5 SOUNDS LIKE IT IS BEING RESOLVED. AND, HOPEFULLY, NOW
6 WE WILL GET THE -- THE SETTLEMENT AGREEMENTS ARE
7 BASICALLY AGREED TO BUT FOR TWO OR THREE SMALL TERMS.

8 I THINK THAT A LOT OF THE HYPOTHETICALS THAT
9 MR. FIFE IS RAISING OR OTHER COUNSEL ARE RAISING IN
10 THEIR BRIEFS WHILE INTERESTING ARE NOT TERRIBLY USEFUL
11 IN ADVANCING THE CASE. I THINK IF WE CAN GET THESE
12 SETTLEMENTS OUT, DONE, AND IN FRONT OF THE COURT, THAT
13 WOULD BE -- I MIGHT SUGGEST THAT YOUR HONOR TAKE MAYBE A
14 LITTLE MORE STERN APPROACH WITH THE ATTORNEYS THAT ARE
15 INVOLVED IN THIS AND MAYBE SEND US IN A JURY ROOM TO GET
16 THIS STUFF DONE OR SET SOME REAL DEADLINES.

17 I DON'T KNOW WHAT YOUR HONOR CAN ACTUALLY DO
18 ABOUT IT, PROBABLY NOTHING REALLY HARD AND FAST. BUT IF
19 THERE WERE SOME PRESSURE APPLIED, THIS WOULD GET DONE,
20 AND IT WOULD GET DONE IN A TIMELY FASHION, AND THERE HAS
21 BEEN NO PRESSURE. THAT'S THE PROBLEM.

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22 ONCE WE GET THOSE SETTLEMENTS IN FRONT OF
23 YOUR HONOR, THEN THESE OTHER PIECES CAN BE ASSESSED.
24 THEN MR. JOYCE AND MR. FIFE AND ANYBODY ELSE CAN BRIEF
25 THE COURT AND SAY, OKAY, NOW WE KNOW WHAT THE FACTS ARE.
26 WE KNOW THE SHAPE OF THE TABLE, AND THESE ARE OUR
27 COMPLAINTS. AND THEN WE CAN KIND OF SAY, OKAY, THE REST
28 OF THE PUZZLE FITS IN LIKE THIS.

♀

17

1 I KNOW THE PIECES OF THE PUZZLE, SO I'M
2 FAIRLY CONVINCED THAT IT IS GOING TO WORK. I'M JUST
3 KIND OF -- I'M HAMSTRUNG BECAUSE I CAN'T SIT HERE AND
4 CITE ALL THE SETTLEMENT TERMS BECAUSE I HAVE AGREED TO
5 KEEP THOSE GENERALLY, YOU KNOW, CONFIDENTIAL. THE COURT
6 IS BARKING UP THE RIGHT TREE OBVIOUSLY. WE ARE NOT
7 GOING TO HAVE A SETTLEMENT WITHOUT DEALING WITH
8 PRESCRIPTIVE CLAIMS; BUT BEYOND THAT, WE WILL HAVE TO
9 WAIT UNTIL IT IS FINALIZED.

10 THE COURT: I'M NOT SURE WHAT YOU WANT ME TO DO.

11 MR. MCLACHLAN: I WOULD LIKE YOU TO ORDER MR. DUNN
12 AND ME TO GO IN THE JURY ROOM AND FINISH OUR SETTLEMENT
13 AGREEMENT TODAY.

14 THE COURT: WELL, I THOUGHT I HAVE BEEN
15 ENCOURAGING YOU TO DO THAT REGULARLY EVERY TIME WE HAVE
16 TALKED AND MET. I THOUGHT BY SENDING YOU TO JUSTICE
17 ROBIE WOULD BE PUTTING SOME PRESSURE ON YOU TO DO
18 SOMETHING.

19 MR. MCLACHLAN: WE ARE VERY CLOSE.

20 THE COURT: YOU CAN LEAD A HORSE TO WATER, BUT YOU
21 CAN'T MAKE IT DRINK. SO I CERTAINLY -- IF YOU WANT ME
22 TO ORDER YOU TO GO IN THE JURY ROOM AND TALK TO EACH

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23 OTHER, I'LL DO THAT. IN FACT, I THINK IT WOULD BE A
24 GOOD IDEA AS LONG AS YOU ARE BOTH HERE THIS MORNING.
25 AND, IN FACT, BOTH THE CLASS COUNSEL -- BOTH CLASS
26 COUNSEL ARE HERE, SO IT WOULD BE A GOOD IDEA TO DO THAT.
27 BUT WHAT I'M INTERESTED IN DOING IS -- NOT
28 PARTICULARLY STERN, BUT WHAT I'M INTERESTED IN DOING IS

18

1 SEEING IF I CAN GET THIS CASE ON THE ROAD. I HAVE BEEN
2 TRYING TO DO THAT FOR A LONG TIME. AND ONE OF THE
3 DIFFICULTIES THAT WE HAVE HAD IS GETTING SERVICE ON
4 EVERYBODY. AND, SECONDLY, GETTING CLASS ACTION
5 PROCEEDINGS HERE. AND THAT HAPPENED IN 2007.

6 SO WE ARE A COUPLE YEARS DOWN THE ROAD NOW,
7 AND WE OUGHT TO BE -- IF WE CAN SETTLE THE CLASS
8 ACTIONS, WE OUGHT TO BE IN A POSITION TO BE ABLE TO SET
9 THEM THE REST OF THIS MATTER IN A SEQUENCE THAT WILL
10 RESULT IN A DISPOSITION OF MOST OF IT OR TRIAL AS THE
11 CASE MAY BE.

12 SO WHAT I'M THINKING IS I WOULD LIKE TO SET
13 A TRIAL ON THE NEXT PHASE OF THIS TRIAL FOR JULY. AND I
14 WOULD LIKE YOU TO LOOK AT YOUR CALENDARS, AND I -- IT
15 SEEMS TO ME THAT WE ARE PROBABLY GOING TO BE TALKING
16 ABOUT A TEN-DAY TRIAL TO DETERMINE IF NOTHING ELSE THE
17 STATE OF -- IN TERMS OF IT BEING IN OVERDRAFT OR NOT AND
18 WHAT THE SAFE YIELD ARE.

19 SO THOSE ARE THE TWO PRINCIPAL ISSUES, BUT I
20 ALSO WANT INFORMATION CONCERNING PUMPING BY
21 APPROPRIATORS. SO THAT I CAN DETERMINE BEFORE WE GET TO
22 THE QUESTION OF PRESCRIPTION WHAT ROLE PUMPING BY THE
23 APPROPRIATORS HAS IN TERMS OF CREATION OF THE EXISTING

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24 CONDITIONS IN THE AQUIFER.

25 NOW THAT ALSO IMPLICATES, I THINK,
26 HISTORICAL PUMPING BY THE -- AND HISTORICAL YIELDS OVER
27 THE PERIOD OF MAYBE TEN YEARS PRIOR TO THE FILING OF
28 THIS LAWSUIT.

8
+

19

1 NOW, THAT IS NOT A HARD AND FAST ORDER, BUT
2 IT IS SOMETHING THAT I WANT YOU TO BE CONSIDERING. AND
3 WE WILL TALK FURTHER ABOUT IT AT ANOTHER CASE MANAGEMENT
4 CONFERENCE AS WE APPROACH THE TRIAL DATE.

5 AND I THINK WHAT I'M GOING TO DO IS ASK THAT
6 WE HAVE THAT CASE MANAGEMENT CONFERENCE IN ABOUT 30
7 DAYS, I HOPE. THAT BY THEN WE ARE MUCH CLOSER TO HAVING
8 A HEARING DATE FOR THE APPROVAL OF THE PRELIMINARY
9 APPROVAL OF THE CLASS SETTLEMENTS.

10 MR. MCLACHLAN: I WANT TO OFFER THIS ONE COMMENT,
11 AND MAYBE THE PUBLIC WATER SUPPLIERS MAY WANT TO COMMENT
12 ON IT, TOO. I DON'T KNOW. IF THE TRIAL WERE TO BE SET
13 IN JULY OR AUGUST IN THE SUMMER, IT IS LIKELY THAT THAT
14 WOULD REQUIRE CLASS COUNSEL TO PARTICIPATE FULLY AND ALL
15 LITIGATION LEADING UP TO THAT. BECAUSE OF THE ISSUE OF
16 THE TIMING OF APPROVAL OF THE SETTLEMENT, THEN THE
17 NOTICE TO THE CLASS, AND THEN THE FINAL APPROVAL
18 HEARING, ET CETERA, HAVING TO OCCUR IN THE INTERIM TO
19 GET UP TO THE POINT OF A JUDGMENT.

20 THAT HAS BEEN A CONCERN -- CONCERNED BY --
21 THE PUBLIC WATER SUPPLIERS. IF WE ARE GOING TO SHUT
22 THIS THING DOWN, WE DON'T WANT TO PAY YOUR LEGAL BILLS.
23 I RAISE THAT. IT IS NOT SO MUCH A CONCERN OF MINE PER
24 SE BUT ETHICALLY WE CAN'T SHUT DOWN THE REPRESENTATION

25 OF THE CLASS UNTIL THERE IS A JUDGMENT.

26 THE COURT: WELL, THAT IS CORRECT. I UNDERSTAND
27 THAT, BUT ONE OF THE THINGS THAT AS I UNDERSTAND THE
28 SETTLEMENT CONTEMPLATES IS THAT YOU ARE NOT

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20

1 PARTICIPATING ONCE THE SETTLEMENT HAS BEEN APPROVED IN
2 THE BALANCE OF ANY OF THE PROCEEDINGS UNTIL THE TIME OF
3 MODIFICATION OF THE JUDGMENT TO IMPORT IN SUBSEQUENT
4 DETERMINATIONS MADE ABOUT THE CONDITION OF THE AQUIFER;
5 IS THAT CORRECT?

6 MR. MCLACHLAN: I'M LOOKING AT MR. MARKMAN HERE
7 BECAUSE HE IS GOING TO TALK.

8 MR. MARKMAN: I'LL HAVE A CHANCE TO SPEAK FOR
9 MR. MCLACHLAN. I THOUGHT THAT WOULD NEVER HAPPEN.
10 JAMES MARKMAN FOR THE CITY OF PALMDALE.

11 YOUR HONOR, THE FIRST THING I'LL SAY IS THAT
12 THE PUBLIC WATER SUPPLIERS DON'T WANT TO ENCOURAGE
13 EXPOSURE TO ATTORNEY FEES TO CLASSES WITH WHOM WE
14 SETTLE.

15 NOW, I THINK WITH THE PRIMARY OBJECTIVE OF
16 THE PUBLIC WATER SUPPLIERS IS TO GET THIS CASE TO TRIAL
17 IN THE NEXT PHASE, TO GET A DETERMINATION OF SAFE YIELD
18 OVERDRAFT. WE WILL BE MORE THAN HAPPY TO BRING FORTH
19 EVIDENCE OF ALL THE PUMPING HISTORY OF ALL THE
20 APPROPRIATORS OF THE BASIN. THAT IS ALREADY PART OF THE
21 STUDY THAT HAS OCCURRED. IT IS ALL METERED.

22 SO, ACTUALLY, WE HAVE THE BEST RECORD OF
23 THAT COMPARED TO ANY OTHER FACTOR. SO WE WOULD LIKE TO
24 EXPEDITE BOTH OF THESE PROCEEDINGS, THE SETTLEMENT AND
25 PROCESSING THE SETTLEMENT. AND WHICH, YES, WE BELIEVE

26 WILL RELIEVE THE CLASS COUNSEL OF HAVING TO CONCERN
27 THEMSELVES WITH THOSE SORTS OF TRIALS AND ALL OF THE
28 TECHNICALITIES OF NEED FOR EXPERT WITNESSES THAT GOES

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21

1 WITH THAT KIND OF TECHNICAL PHASE.

2 AND, NEVERTHELESS, WE DON'T WANT TO GO
3 SERIATIM AND WASTE MONTHS GETTING TO THE END OF THAT
4 PROCESS FOR THE SETTLEMENT AND THEN HAVE TO START
5 DISCOVERY AND START ALL THE OTHER PREPARATIONS FOR THE
6 PHASE. WE WANT TO ACCELERATE THAT PHASE OF TRIAL.

7 THE COURT: SO HOW DO YOU INTEND TO DO THAT?

8 MR. MARKMAN: WELL, WE THINK THAT THE COURT HAS A
9 FAIR -- AS FAR AS WE ARE CONCERNED BASED ON WHAT THE
10 COURT SAID TODAY, WE ARE CLOSE. WE SHOULD BE ABLE TO
11 COMPLETE THE SETTLEMENTS AND GET THEM IN FRONT OF THE
12 COURT RAPIDLY. I DON'T THINK THERE ARE ANY SUBSTANTIVE
13 TERMS THAT ARE YET TO BE DECIDED. IT HAS ALL BEEN KIND
14 OF FACTORS THAT ARE ON TANGENTS. SO, OBVIOUSLY -- WE
15 ARE READY TO EXPEDITE ALL OF IT.

16 WE ALSO THINK THEY'LL EXPEDITE OTHER AND
17 FURTHER SETTLEMENTS.

18 THE COURT: SO ARE -- LET ME MAKE SURE I
19 UNDERSTAND WHAT YOU ARE SAYING. YOU ARE PREPARED TO
20 HAVE THE COURT SET TRIAL IN JULY AND DEAL WITH THE ISSUE
21 OF FINALITY OF THE SETTLEMENTS AND WHAT IMPACT THAT
22 MIGHT HAVE ON CLASS MEMBERS, COUNSEL, IRRESPECTIVE OF
23 THOSE CONSEQUENCES?

24 MR. MARKMAN: YES, YOUR HONOR, ABSOLUTELY.

25 THE COURT: MR. MCLACHLAN IS SMILING.

26 MR. MCLACHLAN: OH, I'M NOT -- I LIKE THIS CASE;
Page 27

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27 BUT IF IT WENT AWAY RIGHT NOW, I WOULD BE TOTALLY HAPPY.

28 I HAVE PLENTY OF WORK TO DO. WE HAVE TO DEAL WITH WHAT

22

1 HAPPENS. IF THE PUBLIC WATER SUPPLIERS ARE OKAY WITH

2 IT, THEN WE WILL DEAL WITH WHAT OCCURRED.

3 THE COURT: I DIDN'T INTEND TO MAKE IT MY CAREER

4 CASE AS A JUDGE.

5 MR. MCLACHLAN: IT'S TOO LATE NOW.

6 THE COURT: MAYBE.

7

8 (LAUGHTER)

9

10 THE COURT: MR. JOYCE.

11 MR. JOYCE: THANK YOU, YOUR HONOR. BOB JOYCE ON

12 BEHALF OF DIAMOND FARMING COMPANY, ET. AL. IT SOUNDS TO

13 ME LIKE MR. MCLACHLAN MAY HAVE GOTTEN A LITTLE IMPETUS

14 HE WAS LOOKING FOR TO MOVE THE PURVEYORS A LITTLE

15 FASTER; BUT SINCE THAT IS NOT MY FIGHT, I'LL DEFER.

16 I JUST WANT TO MAKE SURE THAT I UNDERSTOOD

17 YOUR HONOR'S COMMENTS; AND IF I UNDERSTOOD THE COURT

18 CORRECTLY, THE COURT HAS OBSERVED THE FACT THAT THE

19 CASE, IN FACT, IS COORDINATED AND HAS BEEN FOR SOME TIME

20 NOW. AND IF AND TO THE EXTENT THAT THE CONCEPT OF

21 CONSOLIDATION IS BEING EMBRACED THE FOUNDATION OF -- OF

22 COMBINATIONS OF TRIAL. AM I CORRECT, YOUR HONOR?

23 THE COURT: YES.

24 MR. JOYCE: THANK YOU, YOUR HONOR. THAT IS ALL I

25 NEEDED TO KNOW.

26 THE COURT: ALL RIGHT. AND I HOPE I HAVE NEVER

27 SAID ANYTHING CONTRARY TO THAT.

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28 MR. LEININGER: YOUR HONOR. THIS IS

23

1 MR. LEININGER.

2 THE COURT: YES, MR. LEININGER.

3 MR. LEININGER: MAY I SPEAK, PLEASE.

4 THE COURT: YES, M. LEININGER.

5 MR. LEININGER: GETTING BACK TO A COMMENT THAT
6 MR. BUNN MADE EARLIER AND IN PUTTING HIS QUESTION IN
7 CONTEXT WITH THE PROPOSED ORDER, PARAGRAPH 4 OF THE
8 PROPOSED ORDER STATES THAT COMPLETE CONSOLIDATION WILL
9 PERMIT THESE MATTERS TO PROCEED AS -- (STATIC TELEPHONIC
10 INTERRUPTION) PARTIES NEED TO FOLLOW THESE CASES OF
11 GROUNDWATER AND ANTELOPE VALLEY GROUNDWATER WATER BASIN.

12 WE FEEL THAT IS REALLY THE CRUX OF THE ISSUE
13 WITH REGARD TO THE OBJECTIVES THAT THE COURT HAS
14 ARTICULATED WHICH IS A SINGLE JUDGMENT BINDING ON ALL
15 PARTIES AND ALL HOLDERS OF WATER RIGHTS IN THE BASIN.

16 NOW WE -- WHILE THE UNITED STATES IS THE
17 LARGEST LANDOWNERS IN THIS BASIN BECAUSE OF THE AIR
18 FORCE BASE; AND, THEREFORE, WE HAVE CORRELATIVE RIGHTS,
19 ALSO. WE ARE PURSUING FEDERAL RESERVE RIGHTS IN THIS
20 MATTER. AND, THEREFORE, IT IS NOT COMPLETELY CORRECT TO
21 SAY THAT THIS IS SOLELY A DETERMINATION OF CORRELATIVE
22 RIGHTS.

23 IT IS, HOWEVER, CORRECT IN PARAGRAPH 4 TO
24 SAY THAT WE MAY PROCEED IN HEARSAY ADJUDICATION OF ALL
25 RIGHTS -- OF THE RIGHTS OF ALL PARTIES INCLUDING THE
26 FEDERAL RESERVE RIGHTS.

27 SO WE ARE ENCOURAGING THE COURT TO PROCEED
28 WITH THE CONSOLIDATION; BUT, ALSO, IT IS IMPORTANT TO

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1 MAKE THIS A COMPLETE CONSOLIDATION, NOT JUST FOR TRIAL
2 PURPOSES, BUT ALSO FOR THE RESULTING INTERSTATE
3 ADJUDICATION OF ALL RIGHTS.

4 THE COURT: WELL, IT HAS TO BE EXCEPT TO THE
5 EXTENT THAT IT CANNOT AFFECT RIGHTS ONE PARTY MIGHT HAVE
6 AGAINST ANOTHER THAT ARE INDIVIDUAL RIGHTS THAT REALLY
7 DON'T IMPACT OTHER PARTIES.

8 THE COURT DOES AN ADJUDICATION AND MAKES A
9 DECLARATION CONCERNING THE STATUS AND THE AQUIFER AS
10 WELL AS THE RIGHTS OF THE PARTIES TO THAT AQUIFER WITH
11 WHATEVER OTHER RELIEF MIGHT BE APPROPRIATE. IT SEEMS TO
12 ME THAT IS A COMPREHENSIVE JUDGMENT THAT WILL RESULT IN
13 IF -- RETAIN JURISDICTION IF APPROPRIATE TO ENFORCE THE
14 TERMS OF THAT JUDGMENT IN EQUITY.

15 SO THAT THE UNITED STATES' INTEREST WOULD BE
16 PROTECTED AND WOULD NOT HAVE TO READJUDICATE OR
17 RELITIGATE ISSUES THAT ARE RESOLVED IN THIS PROCEEDING,
18 BUT YOU ARE NOT INTERESTED, FOR EXAMPLE, IN KNOWING OR
19 INVOLVED WITH CLAIMS THAT DIAMOND MIGHT HAVE OR
20 BOLTHOUSE MIGHT HAVE AGAINST ANY OTHER PARTIES THAT ARE
21 INDIVIDUAL CLAIMS ANYMORE THAN YOU WOULD BE INTERESTED
22 IN MR. BLUM'S CLAIMS AGAINST BOLTHOUSE.

23 MR. LEININGER: YES, YOUR HONOR, WE WERE ACTIVE AS
24 IN ASSISTING IN THE DRAFTING OF WHAT, I GUESS, LATEST
25 VERSION OF THE CONSOLIDATION ORDER AND PARTICULARLY TO
26 DISTINGUISH THE LIMITED WAY OF -- OF THE UNITED STATES
27 SOVEREIGN IMMUNITY WITH REGARD TO A NUMBER OF THESE
28 CLAIMS WHICH WERE REALLY CLAIMS OF DAMAGES AND NOT AN

1 ADJUDICATION OF RIGHTS OF WATER. THAT IS CORRECT.

2 HOWEVER, AT THE END OF THE DAY, WE ARE
3 CONCERNED THAT THIS IS NOT JUST AS A COORDINATED MATTER,
4 BUT THAT WE HAVE A FINAL JUDGMENT, A SINGLE JUDGMENT. I
5 THINK WHAT WE ANTICIPATED HERE IS THAT UNDER
6 PARAGRAPH -- THE FOLLOWING WHEREBY THE COURT HEREBY
7 ORDERS THE TOP OF PAGE 3 THAT THESE PROCEEDINGS HAVE
8 BEEN TRANSFERRED AND CONSOLIDATED.

9 THE COURT: WELL, LET ME JUST TELL YOU
10 MR. LEININGER THAT I THINK THAT THERE IS NO DIFFERENCE
11 BETWEEN A COORDINATED JUDGMENT AND A CONSOLIDATED
12 JUDGMENT. IT AFFECTS EVERY PARTY TO THE JUDGMENT IN ONE
13 FORM OR ANOTHER.

14 IT MAY NOT AFFECT EVERY PARTY TO EVERY BIT
15 OF THE RELIEF SOUGHT BY PARTICULAR PARTIES, BUT EVERYONE
16 IN THE COORDINATED JUDGMENT IS BOUND BY THAT JUDGMENT,
17 AND THAT WOULD INCLUDE EVERYBODY WHO IS SUBJECT TO THE
18 CAUSES OF ACTION THAT WERE TRIED COMMONLY.

19 MR. LEININGER: I UNDERSTAND, YOUR HONOR, AND I
20 THINK THAT CAN ALSO BE ACCOMPLISHED WITHOUT FURTHER
21 CONFLICT WITH REGARD TO WHO IS BEING SUED ON WHAT CAUSES
22 OF ACTION THROUGH THE CONSOLIDATION AND THEN THE
23 DETERMINATION OF THESE INTERSTATE ISSUES WHICH IS THE
24 WAY THAT THIS PROPOSED ORDER HAS BEEN LAID OUT WITH
25 REGARD TO PROCEEDING ON OVERDRAFT AND YIELD. I THINK
26 THAT WILL ASSIST GREATLY IN TRYING TO RESOLVE ALL OF THE
27 ISSUES.

28 SO WE DO ENCOURAGE THAT THE COURT PROCEED

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1 WITH THE WAY IT IS HAS SUGGESTED WITH THE TRIAL AND THE
2 STATE OF AQUIFER.

3 THE COURT: WELL, THAT IS GOING TO HAPPEN AND
4 THE -- THAT IS THE NEXT THING, I HOPE, THAT WILL HAPPEN.
5 AND, APPARENTLY, WE ARE NOW ABLE TO PROCEED ON THAT
6 PRIOR TO THE TIME THAT THE FINAL APPROVAL OF THE CLASS
7 ACTIONS ARE DONE.

8 HOWEVER, YOU KNOW, IT IS A LITTLE BIT
9 HYPOTHETICAL TO TALK ABOUT THE FORM OF THE JUDGMENT AT
10 THIS POINT OTHER THAN TO SAY THAT WITH REGARD TO THE
11 INTEREST THAT THE FEDERAL GOVERNMENT HAS, EVERY PARTY TO
12 A LAWSUIT INCLUDING TO THE COORDINATED LAWSUITS,
13 INCLUDING THE CLASS MEMBERS, ARE GOING TO BE BOUND BY
14 THAT FINAL JUDGMENT.

15 SO I DON'T THINK THAT THE UNITED STATES HAS
16 A REAL CONCERN OR SHOULD HAVE A REAL CONCERN ABOUT THE
17 FINALITY OF THE JUDGMENT, AND I CERTAINLY AGREE WITH YOU
18 THAT THE DETERMINATION OF FEDERAL RESERVE RIGHTS IS A
19 SIGNATURE ISSUE IN THIS CASE.

20 I DON'T WANT TO GET TOO HYPOTHETICAL WITH
21 REGARD TO THE FORM OF THE JUDGMENT, BUT IT SEEMS TO ME
22 THAT THE COORDINATED JUDGMENT IS GOING TO DEAL WITH THE
23 DECLARATORY RELIEF CAUSES OF ACTION, AND IT -- IT WILL
24 ALSO INCLUDE SEPARATELY CLAIMS BETWEEN PARTICULAR
25 INDIVIDUALS THAT ARE LIMITED TO THOSE INDIVIDUALS. THAT
26 IS GOING TO BE PART OF THAT JUDGMENT, BUT IT WILL NOT
27 AFFECT EVERY OTHER PARTY.

28 MR. LEININGER: I UNDERSTAND, YOUR HONOR. ONE

1 MORE COMMENT WE HAVE WITH REGARD TO THE SETTLEMENTS. WE
2 SET OUT TO MAINTAIN THAT FOR JURISDICTION OVER THE
3 UNITED STATES ADJUDICATION OF RIGHTS TO WATER, AND IT
4 SOUNDS LIKE THAT IS STILL THE OBJECTIVE, AND WE ARE
5 STILL WORKING TOWARD THAT GOAL.

6 AT THIS POINT, THOUGH, I HAD INFORMED
7 COUNSEL YESTERDAY, COUNSEL FOR THE PUBLIC WATER
8 SUPPLIERS AND COUNSEL FOR THE CLASS THAT WHILE WE HAD
9 PARTICIPATED IN CRAFTING THE SETTLEMENT AND THE
10 STIPULATION THAT AT THIS POINT WE ARE NOT ABLE OR
11 WILLING TO BE A SIGNATORY BECAUSE THE AGREEMENT AS YOU
12 POINTED OUT IS AMONGST SETTling PARTIES AND NOT BINDING
13 ON NONPARTIES, CERTAINLY NOT AT THIS STAGE OF
14 ADJUDICATION.

15 THERE IS STILL THE HYPOTHETICAL QUESTION OF
16 HOW THAT JUDGMENT WILL BE APPLIED. SO WHILE WE HAVE
17 GOOD FAITH PARTICIPATED IN THIS MATTER, WE ARE NOT GOING
18 TO BE A SIGNATORY AT THIS TIME. BUT, NEVERTHELESS, WE
19 ARE STRUGGLING, THE -- THE SETTling PARTY TO GET THAT
20 SETTLEMENT OUT IN PUBLIC BECAUSE WE THINK IT WILL ASSIST
21 GREATLY IN MOVING THIS CASE FORWARD; THAT IT IS NOT
22 NECESSARILY THAT CONTROVERSIAL, AND THEN WITH THE TRIAL
23 WITH THE STATE OF THE AQUIFER WILL MAKE GREAT PROGRESS.

24 THE COURT: WELL, THE FEDERAL RESERVE RIGHT IS A
25 SIGNIFICANT RIGHT. IN FACT, IT IS A HUGE RIGHT IF IT
26 EXISTS. AND, OF COURSE, I HAVEN'T HEARD ANY EVIDENCE ON
27 THAT OR LOSS -- I'M NOT DEFINING ANYTHING ABOUT THAT.
28 BUT IT SEEMS TO ME THAT IF THE LAW IS FOLLOWED THAT

1 FEDERAL GOVERNMENT REALLY HAS NO CONCERNS ON THIS CASE

2-5-10 ANTELOPE VALLEY FINAL CORRECTED
2 OTHER THAN TO PARTICIPATE IN THE LITIGATION TO HELP THE
3 COURT TO ESTABLISH WHATEVER RIGHTS THERE MIGHT BE IN THE
4 FEDERAL GOVERNMENT.

5 BUT BEYOND THAT, I AM NOT SURE WHAT YOUR
6 REAL CONCERN MIGHT BE OTHER THAN YOU DON'T WANT TO GET
7 SUED A LOT. I DON'T BLAME YOU. ALL RIGHT.

8 MR. ZIMMER: THIS IS ZIMMER, YOUR HONOR, AND I --

9 THE COURT: LET MR. LEININGER FINISH.

10 MR. LEININGER: I'M DONE WITH MY COMMENTS.

11 THE COURT: MR. ZIMMER.

12 MR. ZIMMER: THIS IS ZIMMER ON BEHALF OF
13 BOLTHOUSE. GOOD MORNING. ONE THING THAT'S KIND OF ON
14 MY MIND HERE AND KIND OF KICKED IT AROUND -- AND AS I
15 UNDERSTAND IT WE HAD RAISED IN THE PAST THE IDEA THAT IT
16 IS IMPORTANT TO KNOW WHOSE DOING WHAT FOR WHAT, WHAT
17 CAUSE OF ACTION BEING BROUGHT BY ANY PARTICULAR
18 LANDOWNER OR PURVEYOR AGAINST OR FEDERAL GOVERNMENT BY
19 THAT MATTER.

20 MR. MARKMAN AND I HAVE HAD SEVERAL
21 CONVERSATIONS ABOUT THIS, AND I BELIEVE IT IS --
22 MR. MARKMAN AND I BOTH AGREE THAT -- DISAGREE
23 CONSOLIDATION HAS -- WE AGREE THAT THERE HAS BEEN --
24 COURT AGREES A COMPLETE ADJUDICATION -- OR, SAY, ALL
25 WATER RIGHTS.

26 THE SECOND POINT, AS I SEE IT, IS THAT THE
27 CLASSES HAVE NOT WANTED TO -- HAVE BEEN IN THE POSITION
28 OF BEING DEFENDANTS ON THE CROSS-COMPLAINT OF LOS

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1 ANGELES COUNTY WHICH REQUEST AN ADJUDICATION OF ALL THE
2 WATER RIGHTS AS BETWEEN ALL PARTIES IN THE CASE. AND

2-5-10 ANTELOPE VALLEY FINAL CORRECTED
3 BETWEEN ALL PARTIES IN THE CASE, I THINK THAT IS
4 PERTINENT.

5 MR. MARKMAN HAS RAISED IN THE PAST AND HAS
6 CITED IN HIS TIME WITH THE COURT THE -- IN THE PAST
7 INDICATED UPON INTERPRETING WHAT MR. MARKMAN IS SAYING
8 CORRECTLY, I BELIEVE WHAT HE IS SAYING IS THAT EVEN
9 THOUGH CLAIMS HAVE NOT BEEN ASSERTED AGAINST EACH OTHER
10 IN THE PLEADINGS THAT THOSE CLAIMS AND CAUSES OF ACTION
11 EXIST REGARDLESS OF THE -- BECAUSE OF THE COMPLETE
12 CONSOLIDATION AND BECAUSE OF THE COMPLETE ADJUDICATION
13 OF ALL WATER RIGHTS WITHIN THE MEANING OF PASADENA.

14 IN FACT, THE PASADENA CASE THAT HE CITES AND
15 THE SECTION HE CITES SAYS THAT THE RIGHTS TO THE
16 DEFENDANT INTER SE AND THE RIGHT OF EACH AND EVERY PARTY
17 AS AGAINST EACH AND EVERY OTHER PARTY. ALTHOUGH THE
18 ANSWERS OF THE RESPECTIVE DEFENDANTS DID NOT PRESENT
19 CLAIMS AGAINST THE OTHER DEFENDANTS AND WERE NOT SERVED
20 ON THEM, THE ACTION WAS TRIED ON THE THEORY THAT THESE
21 MATTERS WERE AT ISSUE.

22 NOW, IF I'M READING THAT CORRECTLY AND
23 INTERPRETING THAT CORRECTLY, MR. MARKMAN IS ASSERTING
24 THEN THAT -- TO ME THAT INDICATES THAT THERE DOES NOT
25 NEED TO BE A BRIEF REILING OF THE PLEADINGS OR
26 ALLEGATIONS IN THE PLEADINGS OF ALL RIGHTS BEING CLAIMED
27 BY ALL PARTIES AGAINST ALL INDIVIDUALS; THAT ALL OF
28 THOSE RIGHTS, ALL OF THOSE CLAIMS ARE PRESERVED AND AT

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1 ISSUE IN THE INTER SE ADJUDICATION.

2 AND IF THAT IS THE CASE, THAT TAKES CARE OF
3 WHAT MR. LEININGER WAS JUST TALKING ABOUT. I THINK TO

4 BE CLEAR TO ALL THE PARTIES BECAUSE I HEAR THE COURT
5 POSSIBLY SAYING SOMETHING DIFFERENT. THAT BEING THAT
6 ONLY CLAIMS BEING ASSERTED ARE AT ISSUE. SO I WOULD
7 LOOK FOR SOME CLARIFICATION ON THAT.

8 THE COURT: WELL, I DON'T THINK THAT IS WHAT I
9 SAID, AND I THINK THAT -- THIS COMES BACK TO THE
10 QUESTION OF CORRELATIVE RIGHTS AND NECESSARY PARTIES.
11 IF YOU ARE GOING TO HAVE AN ADJUDICATION OF RIGHTS THAT
12 RESULT FROM AN AQUIFER BEING IN OVERDRAFT, YOU HAVE TO
13 DEAL WITH THE RIGHTS OF EVERY PARTY WHO IS AN OVERLYING
14 OWNER BECAUSE THEY ARE ALL NECESSARY PARTIES.

15 AND IN THIS CASE, THE COMPLAINTS AND
16 CROSS-COMPLAINTS FOR THE DECLARATORY RELIEF SEEK AN
17 ADJUDICATION OF ALL RIGHTS, OF ALL OVERLYING OWNERS; AND
18 THAT'S WHY EVERY SIGNIFICANT OVERLYING OWNER AND PUMPER
19 HAS BEEN SUED OR HAS SUED.

20 SO IT SEEMS TO ME THAT WHEN YOU PUT ALL
21 THOSE THINGS TOGETHER YOU PROBABLY HAVE COMPREHENSIVE
22 COMPLETED ADJUDICATION OF EVERYBODY'S RIGHTS INTER SE
23 THROUGHOUT OR OTHERWISE.

24 BUT I THINK THAT -- I'LL BE INTERESTED IN
25 HEARING THE FINAL ARGUMENTS ON THAT FOLLOWING THE
26 HEARING.

27 MR. ZIMMER: YOUR HONOR, MR. ZIMMER ONE LAST
28 COMMENT. SO IT WOULD BE YOUR ANTICIPATION THAT THE

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1 PARTIES WOULD NOT NEED TO REDRAFT THE PLEADINGS THAT
2 THEY HAVE FILED TO.

3 THE COURT: I PRAY NOT.

4 MR. ZIMMER: OKAY. THANK YOU. I DIDN'T MEAN TO

2-5-10 ANTELOPE VALLEY FINAL CORRECTED
5 PUT WORDS IN YOUR MOUTH. I'M JUST TRYING TO RAISE THE
6 ISSUE IN THE CONTEXT I THOUGHT MR. MARKMAN RAISED. ONE
7 THING I WOULD PUT ON THE RECORD HERE IS THAT I
8 APPRECIATE THE COURT WANTING TO MOVE THIS ALONG AS
9 QUICKLY AS POSSIBLE.

10 AND JULY MAY BE A BIT HOPEFUL. I -- WE HAVE
11 SOME DISCOVERY ISSUES. THERE ARE MANY MAJOR DISCOVERY
12 ISSUES THAT NEED TO BE RESOLVED BY THE COURT. AND THE
13 PACE THAT THOSE ARE GOING WITH MEETINGS AND SUCH, I
14 THINK IT WOULD TAKE US UNTIL NOW TO A YEAR FROM NOW TO
15 GET THROUGH THE DISCOVERY. AND I WOULD HOPE THAT THE
16 COURT WOULD TAKE US INTO A MEET AND CONFER PROCESS
17 BEFORE YOU -- OR THOSE ISSUES COULD BE MORE QUICKLY
18 DECIDED ON AN ISSUE BASIS WHETHER LOOKING AT EACH
19 INDIVIDUAL REQUESTS. THERE HAVE BEEN SEVERAL COMMON
20 OBJECTIONS MADE BY THE CONVEYORS.

21 AND I THINK THOSE COMMON OBJECTIONS NEED TO
22 BE RULED ON BY THE COURT.

23 THE COURT: WELL, I THINK YOU UNDERSTAND THAT THE
24 COURT REQUIRES A MEET AND CONFER WITH THE COURT PRIOR TO
25 THE FILING OF THE MOTIONS TO COMPEL OR FOR CERTAIN PRIOR
26 TO A HEARING OF ANY MOTIONS TO COMPEL OR FOR DISCOVERY
27 RELIEF, SO YOU HAVE MY PHONE NUMBER. AND YOU CAN
28 CALL -- CALL MRS. WALKER, AND SHE WILL ESTABLISH A TIME

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1 FOR US TO MEET, AND I WOULD LIKE THAT TO BE IN PERSON.

2 MR. ZIMMER: YES, YOUR HONOR.

3 MR. SLOAN: YOUR HONOR, WILLIAMS SLOAN FOR U.S.

4 BORAX.

5 THE COURT: YES, MR. SLOAN.

2-5-10 ANTELOPE VALLEY FINAL CORRECTED
6 MR. SLOAN: AS I UNDERSTAND WHAT THE COURT HAS
7 DONE -- OR IS INTENDING TO DO IS TO MAINTAIN THIS ACTION
8 AS A COORDINATED PROCEEDING. AND I GUESS IT WAS MY
9 IMPRESSION THAT THAT IS WHERE WE WERE WHEN WE FILED OUR
10 MOTION TO DISMISS.

11 IT ALSO WAS MY IMPRESSION THAT THE UNITED
12 STATES AGREED THAT COORDINATION WASN'T ENOUGH. I
13 ACTUALLY HAD THE IMPRESSION THAT THE PUBLIC WATER
14 SUPPLIERS ALSO THOUGHT THAT COORDINATION WAS NOT
15 SUFFICIENT FOR THE COMPREHENSIVE ADJUDICATION THAT THE
16 LA COUNTY COMPLAINTS WAS ALLEGED.

17 SO I -- IT SEEMS TO ME WE ARE SORT OF BACK
18 TO WHERE WE WERE. ONLY NOW IT SOUNDS TO ME LIKE THE
19 COURT IS SAYING THAT ACTUALLY COORDINATION IS
20 SUFFICIENT. AND WHERE I STRUGGLE WITH THAT IS REALLY TO
21 UNDERSTAND ENFORCEABILITY OF A COORDINATED JUDGMENT.

22 I QUESTION WHETHER OR NOT, FOR EXAMPLE, MY
23 CLIENT COULD EVER SUE OR BRING A MOTION TO ENFORCE A
24 JUDGMENT THAT IS ENTERED IN AN ACTION THAT WAS NEVER
25 ANYTHING MORE THAN COORDINATED. I DON'T THINK THAT IS
26 POSSIBLE. AND THAT KIND OF STRIKES ME THAT IS ONE OF
27 THE PROBLEMS THAT CAUSES ISSUES ABOUT THE MCCARRAN ACT.

28 MAINLY, IF YOU ARE NOT A PARTY TO AN ACTION

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1 AND A JUDGMENT IS ENTERED INTO THAT ACTION, A THIRD
2 PARTY DOESN'T HAVE THE STANDING OR OTHERWISE TO ENFORCE
3 THAT JUDGMENT.

4 THE COURT: I DON'T UNDERSTAND MR. SLOAN WHY YOU
5 ARE NOT A PARTY TO THE ACTION AND WHY YOU CANNOT ENFORCE
6 THE ACTION WHEN IT IS ADJUDICATED YOUR RIGHTS.

2-5-10 ANTELOPE VALLEY FINAL CORRECTED
7 MR. SLOAN: WELL, I'M A PARTY TO THE COMPLAINT
8 THAT WAS FILED BY LA COUNTY.

9 THE COURT: NO. YOU'RE THE PARTY TO THE
10 COORDINATED ACTIONS, AND THERE IS GOING TO BE A JUDGMENT
11 IN THE COORDINATED ACTIONS THAT MIGHT CONTEMPLATE. THAT
12 WILL ADJUDICATE THE RIGHTS OF ALL PARTIES WHO ARE SUED
13 OR WHO HAVE SUED BASED ON CLAIMS TO -- TO THE AQUIFER.

14 AND I -- YOU KNOW, MR. MCLACHLAN SAID
15 SOMETHING REALLY INTERESTING IN HIS PAPERS WHEN HE
16 SAID -- NOT A LOT OF LAW ON THIS ISSUE AND NOT A LOT OF
17 CASE PRECEDENCE THAT TELLS US HOW TO PROCEED.

18 BUT IT IS VERY CLEAR TO ME THAT THE
19 LEGISLATURE CONTEMPLATES AND -- AND BY THAT I MEAN
20 INCLUDING THE RULES OF COURT WHICH ARE LEGISLATED AND
21 SANCTIONED CONTEMPLATES THAT THE COURT UTILIZING ALL OF
22 THE PROCEDURES THAT ARE WITHIN THE CODE OF CIVIL
23 PROCEDURE TO IMPLEMENT THE WHOLE PURPOSE OF
24 COORDINATION.

25 AND THAT IS TO TRY COMMON ISSUES OF FACT AND
26 LAW TOGETHER TO CONSERVE JUDICIAL RESOURCES, TO RESULT
27 IN JUDGMENTS THAT ARE ENFORCEABLE FOR ALL OF THE
28 PARTIES, AND I'M TAKING THAT QUITE LITERALLY. AND I

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1 BELIEVE THAT THE COURT CAN -- PARTICULARLY GIVEN THE
2 REFERENCE TO THE NEED TO FILE CERTIFIED COPIES OF THE
3 JUDGMENT IN OTHER COURTS AND OTHER JURISDICTIONS, I
4 BELIEVE THE COURT IS GOING TO ENTER A COORDINATED
5 JUDGMENT HERE THAT WILL IMPACT ALL THE PARTIES.

6 MR. SLOAN: WELL, I APPRECIATE THAT, YOUR HONOR,
7 AND I AM NOT -- I'M SURELY NOT ENDEARING MYSELF TO ANY

2-5-10 ANTELOPE VALLEY FINAL CORRECTED
8 OF THE PARTIES, BUT I RAISE THESE ISSUES, BUT I -- I
9 RESPECTFULLY AM NOT CONVINCED THAT IS WHAT THE LAW WILL
10 PERMIT WHEN IT COMES DOWN TO -- FOR EXAMPLE, IF THE
11 MEMBERS OF THE CLASS WERE TO START ACTING OUTSIDE OF
12 WHAT THEIR, PERHAPS, SETTLEMENT PROVIDES FOR WHETHER OR
13 NOT MY CLIENT OR WHETHER THE UNITED STATES OR SOME OTHER
14 PARTY THAT IS NOT A PARTY TO THAT ACTION COULD SIMPLY
15 MOVE TO ENFORCE THE JUDGMENT AGAINST THEM.

16 IT SOUNDS TO ME THE COURT IS SAYING THAT YOU
17 THINK WE COULD.

18 THE COURT: WELL, I DO PARTICULARLY GIVEN THE
19 NATURE OF THE SETTLEMENT THAT IS ESSENTIALLY GOING TO
20 ADOPT THE CONDITIONS OF THE AQUIFER THAT ARE LATER
21 DETERMINED AT A TRIAL.

22 MR. SLOAN: YOUR HONOR, ONE FINAL POINT THEN: IT
23 WOULD SEEM TO ME THAT THEN THE SETTLEMENTS THAT THE
24 CLASSES ARE PURSUING WOULD BE PUBLIC WATER SUPPLIERS.
25 AT THE VERY LEAST, THEY CAN IN THE -- IN ANY WAY ADDRESS
26 ISSUES THAT HAVE TO BE FOUND IN THE COMPREHENSIVE
27 ADJUDICATIONS THAT HAS BEEN PLED BY THE PUBLIC WATER
28 SUPPLIERS, FOR EXAMPLE, MY CLIENT, THE UNITED STATES,

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1 BOLTHOUSE, DIAMOND FARMS. I WOULD THINK THAT NOT A
2 SINGLE ISSUE WOULD HAVE TO BE ADDRESSED IN THAT
3 COMPREHENSIVE ADJUDICATION CAN BE DEALT WITH IN THE
4 SETTLEMENTS.

5 THE COURT: WELL, I CERTAINLY DON'T WANT TO
6 COMMENT ON THAT AT THIS POINT. I WILL LEAVE THAT TO THE
7 LAWYERS. IN TERMS OF WHAT THE LAW MEANS WITH REGARD TO
8 COORDINATION AND SINGLE JUDGMENT, OBVIOUSLY, YOU HAVE A

9 LAWYER WITH AN OPINION ABOUT THAT. I WILL NOT QUARREL
10 ABOUT THAT. YOU CAN'T MAKE THE DETERMINATION OF WHO IS
11 RIGHT AND WHO IS WRONG AND TAKE A VOTE ON THE NUMBER OF
12 LAWYERS ON EITHER SIDE OF THAT INTERPRETATION.

13 MR. SLOAN: I THINK I WOULD LOSE.

14 THE COURT: ONLY IF A MAJORITY VOTE ESTABLISHED
15 RIGHT. I THINK WE CAN PROCEED HERE. I THINK WE CAN DO
16 IT AS I HAVE INDICATED. I WILL TRY TO GET OUT AN ORDER
17 THAT EMBODIES THIS DISCUSSION AND WHAT I INITIALLY
18 DISCUSSED WITH YOU. THAT WILL INCLUDE A GREAT DEAL OF
19 WHAT IS IN THE PROPOSED ORDER THAT IS PREPARED BY THE --

20 MR. ZIMMER: YOUR HONOR, MR. ZIMMER.

21 THE COURT: MR. BUNN HAS BEEN STANDING HERE VERY
22 PATIENTLY FOR ABOUT HALF HOUR.

23 MR. SLOAN: I WOULD BE TO LET MR. BUNN TALK. I
24 WOULD BE HAPPY TO END WITH ONE FINAL REQUEST, AND THAT
25 IS THAT I DO THINK -- I FULLY UNDERSTAND WHAT THE
26 COURT'S INTENTIONS ARE IN TERMS OF MOVING FORWARD AND
27 SETTING A TRIAL DATE; AND IN MANY RESPECTS, I CAN
28 UNDERSTAND THE WISDOM OF THAT.

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1 I WOULD ONLY REQUEST THAT THE COURT CONSIDER
2 ACCOMMODATING TIME FOR WHAT I KNOW MY CLIENT WOULD BE
3 INTERESTED IN WHICH IS RENEWED BRIEFING ON THE MOTION TO
4 DISMISS PERHAPS AFTER THE COURT ISSUES ITS ORDER ON
5 COORDINATION, BECAUSE I DO THINK THAT -- THOSE ISSUES
6 ONE WAY OR ANOTHER SHOULD BE FINALLY RESOLVED IN AN
7 ORDER.

8 THE COURT: MR. SLOAN, YOU ARE FREE TO FILE A
9 MOTION ANYTIME YOU CHOOSE, SET IT FOR A HEARING,

2-5-10 ANTELOPE VALLEY FINAL CORRECTED
10 CONSISTENT WITH THE COURT'S CALENDAR AND OTHER COUNSEL.

11 I'LL BE HAPPY TO HEAR THAT.

12 MR. SLOAN: THANK YOU, YOUR HONOR.

13 THE COURT: NOW LET ME HEAR FROM MR. BUNN.

14 MR. BUNN: YOUR HONOR, THANK YOU VERY MUCH. I
15 HAVE BEEN WAITING HERE PATIENTLY. I WANTED TO SAY THAT
16 OUR POSITION IS THAT THE EFFECT OF EITHER COORDINATION
17 OR CONSOLIDATION IS TO COMBINE THE VARIOUS CAUSES OF
18 ACTION ASSERTED IN THE EXISTING PLEADINGS AS IF THEY HAD
19 ALL BEEN ASSERTED IN ONE LAWSUIT TO BEGIN WITH. I THINK
20 IT IS AS SIMPLE AS THAT.

21 IT DOESN'T ADD ANY NEW CAUSES OF ACTION. IT
22 DOESN'T MAKE PEOPLE ADVERSE ONE TO ANOTHER WHEN WE ARE
23 NOT IN THAT FORUM.

24 AT THE SAME TIME, I BELIEVE STRONGLY IN THE
25 PRINCIPAL FROM THE PASADENA CASE THAT WAS QUOTED THAT
26 THE COURT HAS THE POWER IN AN ADJUDICATION PROCEEDING TO
27 DETERMINE INTER SE THE RIGHTS OF ALL THE PARTIES
28 REGARDLESS OF WHETHER THEY HAVE ASSERTED CLAIMS AGAINST

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1 ONE ANOTHER OR NOT. SO WITH THOSE TWO PRINCIPLES IN
2 MIND, I WOULD URGE YOU --

3 THE COURT: MAYBE I WOULD IRRESPECTIVE OF THE FACT
4 THAT MAY OR MAY NOT HAVE ASSERTED CLAIMS.

5 MR. BUNN: IRRESPECTIVE, ABSOLUTELY. I THINK THAT
6 IS WHAT I AM HEARING FROM THE COURT THIS MORNING AS
7 WELL.

8 WITH THAT IN MIND, I WOULD URGE THE COURT TO
9 DO THREE THINGS: FIRST, I WOULD URGE YOU TO MAKE YOUR
10 ORDER AN ORDER FOR CONSOLIDATION. I THINK THAT THERE

11 IS -- THERE IS NO DOWNSIDE TO CALLING IT CONSOLIDATION.

12 I THINK IT ADDRESSES THE CONCERNS THAT MR. ZIMMER AND
13 MR. SLOAN HAVE COME UP.

14 I THINK THAT ANY FALLOUT FROM CALLING IT
15 CONSOLIDATION CAN BE EASILY DEALT WITH.

16 AGAIN, IT ALSO ADDRESSES SOME LACK OF CLEAR
17 LAW ON THE POINT.

18 THE SECOND THING I WOULD URGE THE COURT TO
19 DO IS TO MAKE IT A COMPLETE CONSOLIDATION AND NOT JUST A
20 CONSOLIDATION FOR TRIAL. ACCORDING TO OUR RESEARCH, THE
21 COMPLETE CONSOLIDATION THAT ALLOWS FOR THE ENTRY OF THE
22 SINGLE JUDGMENT WHICH I SAID IN MY OPENING REMARKS IS
23 OUR REAL GOAL HERE.

24 AND THE THIRD THING THAT I WOULD ASK THE
25 COURT TO DO IS TO KEEP IN SOME VERSION OF PARAGRAPH 4 OF
26 THE PROPOSED ORDER. THIS IS THE ONE THAT MR. LEININGER
27 COMMENTED ON THAT SAYS COMPLETE CONSOLIDATION WILL
28 PERMIT THESE MATTERS TO PROCEED AS AN INTER SE

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1 ADJUDICATION OF THE RIGHTS OF ALL THE PARTIES OF THESE
2 CONSOLIDATED CASES TO WITHDRAW GROUNDWATER FROM THE
3 ANTELOPE VALLEY GROUNDWATER BASIN. I AGREE WITH
4 MR. LEININGER THAT THAT IS THE KEY PROVISION IN THE
5 PROPOSED ORDER. AND WHEN THE COURT DRAFTS THE ORDER, I
6 WOULD URGE THE COURT TO HAVE SOME VERSION OF THAT
7 CONCEPT IN THERE. THANK YOU.

8 THE COURT: THANK YOU.

9 MR. ZIMMER: YOUR HONOR.

10 THE COURT: WAIT A MOMENT, PLEASE.

11 MR. ZIMMER: YES, YOUR HONOR, MR. JOYCE AGAIN ON

2-5-10 ANTELOPE VALLEY FINAL CORRECTED
12 BEHALF OF DIAMOND. THE COURT HAS INDICATED A DESIRE TO
13 HAVE A CASE MANAGEMENT CONFERENCE IN VERY SHORT ORDER.
14 I ASSUME NOT MORE THAN 30 DAYS OUT; IS THAT CORRECT?
15 THE COURT: I WOULD LIKE TO HAVE THAT AS SOON AS
16 POSSIBLE AFTER I HAVE MADE THE ORDER ON THIS ISSUE.
17 MR. JOYCE: WHAT I WAS GOING TO SUGGEST, YOUR
18 HONOR, IN ORDER TO FACILITATE CHECKING CALENDARS AND THE
19 LIKE IF THE COURT IS DESIROUS OF OBVIOUSLY SETTING THE
20 NEXT DAYS OF TRIAL. THERE IS THAT IN ANTICIPATION IS
21 BRIEFING THE PARAMETERS OF WHAT WOULD BE EMBRACED IN
22 THAT TRIAL BECAUSE I THINK THERE MAY BE SOME CONFUSION
23 OR LACK OF CLARITY AS TO THE SCOPE OF THE ISSUES THAT WE
24 WOULD BE PURSUING UNDER JUST THE CONCEPT OF OVERDRAFT
25 AND/OR YIELD.
26 SO I WOULD ASK WE HAVE THE OPPORTUNITY TO
27 ADDRESS THAT BY WAY OF BRIEFING IN ANTICIPATION OF THE
28 CMC; AND, SECONDARILY, TARGET THAT AS A TRIAL SETTING

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1 CONFERENCE TO FIX THE DATE OF THE ACTUAL PROCEEDING
2 ITSELF SO THAT PARTIES WOULD HAVE AN OPPORTUNITY TO
3 PROVIDE THE COURT A BENEFIT OF CALENDARING AND AS WELL
4 AS ANY OTHER ISSUES THAT WOULD AFFECT IT.
5 THANK YOU, YOUR HONOR.
6 THE COURT: ALL RIGHT. I THINK THAT MAKES SENSE,
7 MR. JOYCE. AND I'M GOING TO HAVE TO CHECK MY CALENDAR
8 TO SEE WHEN I CAN SET THAT CMC, AND I THINK WE WILL
9 PROBABLY -- I DON'T KNOW. I MAY HAVE TO MAKE IT
10 TELEPHONICALLY; BUT, OTHERWISE, WE WILL DO IT HERE.
11 MR. JOYCE: THANK YOU, YOUR HONOR.
12 THE COURT: IT SEEMS TO ME IT IS A GOOD IDEA TO DO

2-5-10 ANTELOPE VALLEY FINAL CORRECTED
13 THE TRIAL SETTING AT THAT TIME. SO WHAT I WOULD ASK
14 COUNSEL TO DO IS LOOK AT YOUR CALENDARS FOR JULY,
15 AUGUST, AND SEPTEMBER IN TERMS OF PICKING OUT ABOUT TEN
16 DAYS FOR TRIAL.

17 UNIDENTIFIED ATTORNEY: THIS IS --

18 THE REPORTER: I'M SORRY, YOUR HONOR. I DIDN'T
19 QUITE HEAR THE NAME.

20 THE COURT: SCOTT KUNEY.

21 THE REPORTER: THANK YOU, YOUR HONOR.

22 MR. KUNEY: THIS IS SCOTT KUNEY. BECAUSE THIS
23 NEXT PHASE OBVIOUSLY WOULD HAVE VERY SIGNIFICANT EFFECTS
24 ON ALL OF THE PARTIES AS TO THE GOING FORWARD OF THIS
25 CASE, IF THEY JUST SEEM FUNDAMENTAL THAT WE HAVE THIS
26 CASE AT ISSUE WITH ALL OF THE PARTIES PRESENT BEFORE WE
27 MAKE THESE DECISIONS ON WHAT ISSUES AND WHAT SCHEDULES.

28 WE ARE CONCERNED THAT IF WE DON'T HAVE THAT

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1 ISSUE ESTABLISHED, WE ARE GOING TO BE UNDERMINING THE
2 INTEGRITY OF THE PROCESS. SO IT SEEMS TO ME THAT THE
3 COUNTY OF LA AND AS IT WERE THE PLAINTIFFS' POSTURED
4 PARTIES NEED TO GET AN AFFIRMATION TO YOU, YOUR HONOR,
5 THAT THIS CASE IS, IN FACT, AT ISSUE.

6 AND AS YOU SPECIFIED THAT WE, IN FACT, HAVE
7 ALL OF THE SIGNIFICANT COMFORTS SUBJECT TO THIS COURT.
8 AND I DON'T BELIEVE THAT HAS BEEN REPRESENTED TO YOU
9 CURRENTLY.

10 THE COURT: I THOUGHT IT HAD BEEN. BUT IF THAT'S
11 NOT THE CASE, SOMEONE SHOULD TELL ME IT IS NOT. BUT I
12 CERTAINLY AGREE WITH YOU, MR. KUNEY.

13 ALL RIGHT. MR. LEMIEUX.

2-5-10 ANTELOPE VALLEY FINAL CORRECTED
14 MR. LEMIEUX: GOOD MORNING, YOUR HONOR. A MOMENT
15 AGO MR. BUNN SAID "WE BELIEVE," AND I DON'T WANT THAT TO
16 LEAVE YOU WITH THE IMPRESSION THAT ALL THE WATER
17 PURVEYORS BELIEVE THAT THE WORD "CONSOLIDATION" IS
18 IMPORTANT. WE ARE PERFECTLY HAPPY WITH THE FORMULATION
19 THAT YOU BEGAN THE DAY WITH.
20 THE COURT: OKAY. THANK YOU.
21 YES MR. KALFAYAN.
22 MR. KALFAYAN: ONE OTHER WORD I WANTED TO ADDRESS,
23 A WORD OF CAUTION. IF WE FOLLOW WHAT MR. BUNN IS
24 PROPOSING, I WANT TO BE CAREFUL NOT TO STEP INTO A
25 POTENTIAL DEFENDANT CLASS OR HAVING TO SEND OUT ANOTHER
26 NOTICE OF THE CLASS.
27 THE COURT: THAT IS WHAT -- WE HAVE HAD SOME
28 EARLIER DISCUSSIONS ABOUT THE DEFENDANT CLASS, AND I'M

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1 NOT SURE WHERE THAT REALLY ENDED UP. BUT WE DON'T HAVE
2 A DEFENDANT CLASS AT THIS POINT. AND, HOPEFULLY, THE
3 PLAINTIFFS' CLASS IS NOT GOING TO BE AFFECTED
4 DIRECTLY -- I SHOULD SAY WILL BE AFFECTED DIRECTLY BY
5 THE ULTIMATE DETERMINATIONS AS TO THE STATUS OF THE
6 AQUIFER.
7 ALL RIGHT. MR. JOYCE.
8 MR. JOYCE: YES, YOUR HONOR. I AM NOT SURE
9 EXACTLY WHOSE SIDE OF THE FENCE I'M ON. I AGREE WITH
10 THE COURT --
11 THE COURT: YOU MAY STRADDLE IT.
12 MR. JOYCE: MAYBE THAT IS A SAFE PLACE TO BE. THE
13 COURT ADDRESSED THE ISSUE AT THE OUTSET THIS MORNING OF
14 ACKNOWLEDGING THE REALITY OF THE CASES COORDINATED.

2-5-10 ANTELOPE VALLEY FINAL CORRECTED
15 MR. BUNN HAS SUGGESTED THE COURT INTERPOSE INSTEAD OF
16 THAT WORD INTO A PROPOSED ORDER, THE WORD
17 "CONSOLIDATED."

18 MY ONLY COMMENT AND CONCERN WOULD BE IF WE
19 ARE GOING TO USE THE WORD CONSOLIDATED, I THINK IT IS
20 INCUMBENT UPON THE COURT TO MAKE CLEAR AS TO WHETHER OR
21 NOT THAT IS CONSOLIDATION FOR TRIAL PURPOSES ONLY OR
22 CONSOLIDATION FOR ALL PURPOSES. BECAUSE THE LAW DOES
23 RECOGNIZE AND A RATHER SIGNIFICANT DISTINCTION BETWEEN
24 THE TWO.

25 THE COURT: I JUST MADE AN OBSERVATION ABOUT THAT.
26 IN ALL THOSE CASES DEALING WITH CONSOLIDATION, WHAT THE
27 CONSOLIDATION IS AND CONSOLIDATION FOR TRIAL AND
28 CONSOLIDATION FOR ALL PURPOSES, ALL AROSE PRIOR TO THE

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1 TIME THAT THE SCHEME FOR COORDINATION OCCURRED.

2 SO I'M NOT SURE HOW HELPFUL THAT TRULY IS
3 WHEN WE ARE TALKING ABOUT COORDINATION. COORDINATION IS
4 SOMETHING THAT WAS DEVELOPED FOR REASONS THAT I HAVE
5 STATED, AND IT SEEMS TO ME IT IS AN IMPORTANT CONCEPT TO
6 PERMIT THE COURT TO ADJUDICATE THESE COMPLEX CASES
7 INVOLVING MULTIPLE PARTIES AND MULTIPLE LAWSUITS THAT
8 HAVE SOMETHING IN COMMON THAT HAVE TO BE ADJUDICATED IN
9 COMMON AND THAT REALLY HAS TO RESULT IN A COMMON
10 JUDGMENT SO THAT ALL THE PARTIES TO THAT ADJUDICATION
11 ARE AFFECTED AS TO THOSE ISSUES.

12 NOW, THE -- SOMEWHERE ALONG THE LINE A COURT
13 MUCH HIGHER THAN THIS ONE IS GOING TO HAVE TO DEAL WITH
14 THIS ISSUE. I HOPE THEY DON'T HAVE TO DEAL WITH IT IN
15 THIS CASE; BUT IF THEY DO, THAT IS FINE. THAT IS WHAT

16 WE DO. I'M JUST TRYING AS BEST I CAN TO APPLY THE LAW
17 AND FACTS IN THIS CASE, AND THE LAW IS NOT CRYSTAL
18 CLEAR. I THINK THE OBJECTIVES OF THE LAW ARE CLEAR, AND
19 THAT IS WHAT I'M GOING FROM.

20 MR. ZIMMER: YOUR HONOR, I APOLOGIZE FOR THOSE. I
21 MAY HAVE TALKED OVER OR --

22 THE COURT: THE PODIUM IS EMPTY.

23 MR. ZIMMER: I HAVE JUST TWO COMMENTS: MAYBE I
24 WAS CONFUSED. I THOUGHT AT FIRST THE COURT INDICATED
25 THAT IF YOU USE COORDINATION AS SOMETHING SIMILAR TO THE
26 CONSOLIDATION, BUT THAT THE COURT INTENDED TO SIGN AN
27 ORDER SAYING THAT THE CASE IS CONSOLIDATED FOR ALL
28 PURPOSES AS HAD BEEN REQUESTED BY MR. MARKMAN AND IN

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1 THIS CASE BY MR. BUNN AND A NUMBER OTHER PARTIES THAT
2 WERE INVOLVED IN DRAFTING THAT ORDER AS WELL.

3 JUST GOING BACK HISTORICALLY WE HAVE ON FILE
4 A MOTION TO CONSOLIDATE FOR ALL PURPOSES WHICH WAS
5 GRANTED -- THE MOTION TO CONSOLIDATE WAS GRANTED. I
6 ASSUME THE COURT HAS -- IS NOT REVERSING THE ORDER
7 CONSOLIDATING THE CASES.

8 WOULD THAT BE CORRECT?

9 THE COURT: NOT EXACTLY. ORAL STATEMENTS OF
10 INTENT WITH RESPONSE TO MOTIONS ARE TENTATIVE AND ARE
11 SUBJECT TO DO A FINAL ORDER ALWAYS.

12 THE COURT MIGHT WHEN IT STATES AN INTENDED
13 ORDER MODIFY IT, CHANGE IT, OR DO A NUMBER OF THINGS
14 WITH IT SO THAT IT BECOMES MORE UNDERSTANDABLE AS TO
15 WHAT THE COURT INTENDED.

16 AND I HAVE TRIED TO MAKE IT CLEAR THAT IS

2-5-10 ANTELOPE VALLEY FINAL CORRECTED
17 ALWAYS THE CASE, AND THAT'S WHY THE COURT ASKS THE
18 PARTIES VERY OFTEN TO MEET AND CONFER CONCERNING THE
19 FORM OF THE ORDER. IT IS LIKE ANY OTHER TENTATIVE
20 DECISION.

21 AND MY OBJECTIVE HERE -- AND I'M GOING GO
22 BACK TO WHAT I STARTED OUT WITH THIS MORNING -- IS TO
23 APPLY THE LAW REGARDING COORDINATED ACTIONS SO THAT WE
24 HAVE A COMPREHENSIVE ADJUDICATION AND WHERE A SINGLE
25 JUDGMENT DEALING WITH THE ISSUES THAT ALL OF THE PARTIES
26 HAVE AN INTEREST IN.

27 THERE ARE OTHER ISSUES SOME OF THE PARTIES
28 DO NOT HAVE AN INTEREST IN. THAT CAN BE PART OF THE

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1 SAME JUDGMENT SO LONG AS IT IS CLEAR THAT IT AFFECTS
2 ONLY THOSE PARTIES WHO ARE LITIGATING THOSE ISSUES AMONG
3 THEMSELVES.

4 MR. ZIMMER: I UNDERSTAND THE COURT'S COMMENTS.
5 THIS IS A -- MAY -- I AGREE WITH MR. MARKMAN. I AGREE
6 WITH MR. LEININGER, AND I AGREE WITH MR. BUNN THAT --
7 THIS -- IT IS NOT A COMPLETE CONSOLIDATION FOR ALL
8 PURPOSES. THEN I THINK WE'VE GOT THE MCCARRAN ACTION,
9 AND I THINK WE HAVE GOT A CLEAR ADJUDICATION PROBLEM IN
10 THIS.

11 THE COURT VIEWS THOSE TWO THINGS AS BEING
12 THE SAME UNDER -- I VIEW COORDINATION AS BEING THE SAME
13 AS CONSOLIDATION FOR ALL PURPOSES. I THINK THIS
14 DIFFERENCE BETWEEN COMPLETE CONSOLIDATION AND
15 COORDINATION ONLY FOR TRIAL --

16 BUT I THINK -- I DO THINK IT IS IMPORTANT
17 THAT THE -- THAT THE ORDER THAT YOU GRANT, ONE,

2-5-10 ANTELOPE VALLEY FINAL CORRECTED
18 INDICATES SO THAT THERE'S A CLEAR RECORD WHETHER THE
19 MOTION FOR CONSOLIDATION HAS BEEN GRANTED OR NOT.
20 AND, TWO, I WOULD URGE THE COURT TO MAKE
21 SURE THAT THE ORDER DOES SAY CONSOLIDATE FOR ALL
22 PURPOSES; OTHERWISE, I THINK WE ARE GOING TO HAVE A
23 PROBLEM DOWN THE ROAD FROM THE GOVERNMENT STANDPOINT. I
24 THINK WE WILL HAVE A PROBLEM WITH OTHER PARTIES'
25 STANDPOINT AS MR. SLOAN WAS ALLUDING TO, A
26 MISUNDERSTANDING FUNDAMENTALLY.
27 WE HAVE A LOT OF LAWYERING GOING ON HERE
28 TRYING TO GET A RUN ON THE FUNDAMENTAL OF THIS

45

1 ADJUDICATION MUST BE A COMPLETED ADJUDICATION INTER SE
2 FOR ALL PURPOSES. AND WE HAVE LAWYERING GOING ON TRYING
3 TO -- PARTIES TRYING TO KEEP THEMSELVES ELSE ISOLATED
4 INTO A POCKET WHERE SOME OF THOSE ISSUES WOULD NOT BE
5 DECIDED.

6 IT DOES NOT SERVE ANYBODY'S INTEREST WHERE A
7 SITUATION WHERE ONE PARTY TAKING YOUR COMMENTS ONE WAY
8 AND ANOTHER PARTY IS TAKING YOUR COMMENTS A DIFFERENT
9 WAY. AND IT IS NOT REALLY CLEAR WHAT WOULD HAPPEN AND
10 END UP IN DISCOVERY. AND ONE PARTY THINKS ONE THING IS
11 HAPPENING, AND OTHER PARTIES THINK SOMETHING ELSE IS
12 HAPPENING.

13 IF IT'S CONSOLIDATED FOR ALL PURPOSES, I
14 THINK THERE IS LESS CHANCE OF THAT -- OF THAT HAPPENING.

15 THE COURT: MR. ZIMMER?

16 MR. ZIMMER: MR. KUNEY MAKE SURE -- LAST TIME I
17 HEARD ALL THE PARTIES HAD NOT BEEN NAMED AND SERVED.

18 THE COURT: WELL, THAT IS ANOTHER ISSUE. BUT,

19 MR. ZIMMER, DO I UNDERSTAND THAT IF THE COURT SAID THIS
20 IS CONSOLIDATED FOR ALL PURPOSES THAT YOU WOULD BE
21 HAPPY?

22 MR. ZIMMER: WE HAVE RAISED ISSUES BEFORE WHETHER
23 CONSOLIDATION WOULD BE APPROPRIATE OR NOT. BUT I
24 JUST -- I THINK IN FAIRNESS OF ALL PARTIES WE NEED TO
25 KNOW WHERE WE ARE. IF ALL ISSUES (TELEPHONIC STATIC)
26 BETWEEN ALL PARTIES THEN THAT IS WHAT WE HAVE. I AGREE
27 WITH MR. MARKMAN PRINCIPALLY WHO RAISED THE ISSUES IN
28 THE PAST THAT THIS MUST BE A COMPLETE ADJUDICATION INTER

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1 SE OF ALL ISSUES IN ALL THESE PARTIES; OTHERWISE, IT IS
2 NOT GOING TO BE ENFORCEABLE AS A SINGLE JUDGMENT, AND WE
3 ARE GOING TO HAVE CHAOS IN PEOPLE TRYING TO UNDERSTAND
4 WHAT IT MEANS AND WHAT'S AT ISSUE.

5 AND IT IS JUST, YOU KNOW, IN FAIRNESS YOU
6 KNOW ALL THE LAWYERS CAN MAKE ALL THESE ARGUMENTS OF
7 WHAT THE LANGUAGE SHOULD BE. I THINK IF THE COURT INTER
8 SE ADJUDICATION OF ALL RIGHTS OF ALL PARTIES, BUT WHAT
9 IS HAPPENING BEFORE YOU IS THAT LAWYERS ARE LAWYERING,
10 AND THEY ARE TRYING TO CARVE THEMSELVES OUT IN THIS
11 NICHE WHERE THEY THINK THEY ARE.

12 I'M NOT SURE IF THAT IS THE CASE OR NOT, BUT
13 I THINK THE ORDERS WE NEED TO BE CLEAR THAT IT IS
14 CONSOLIDATED FOR ALL PURPOSES AS THE ALL CLAIMS BETWEEN
15 ALL PARTIES AND INTER SE ADJUDICATIONS WITH THESE
16 JUDGMENTS.

17 THE COURT: ALL RIGHT. THANK YOU.

18 MR. MARKMAN.

19 MR. MARKMAN: YES, YOUR HONOR. I AM ENJOYING

2-5-10 ANTELOPE VALLEY FINAL CORRECTED
20 MR. ZIMMER AGREEING WITH ME, BUT I WANT TO BE SURE HE
21 AGREES WITH WHAT I'M REALLY THINKING AND EXPRESSED TO
22 THIS COURT IS -- THIS NEEDS TO BE INTER SE ADJUDICATION.
23 THE COURT HAS EXPRESSED THAT. WE ARE IN COMPLETE
24 AGREEMENT.
25 HOW THE COURT FEELS YOU GET THERE
26 PROCEDURALLY IN THE CONTEXT OF THE MOTION WE FILED AS
27 MODIFIED IS NOT OF CONCERN TO ME. I THINK THAT MR. BUNN
28 STATED OUR PREFERENCE. THAT IS THE WAY THAT WE FILED

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1 THE MOTION.
2 BUT AS IN PASADENA CASE, THE COURT JUST
3 ENTERED AN ORDER SAYING THIS IS GOING TO BE AN INTER SE
4 ADJUDICATION WITHOUT HAVING THE BENEFIT OR BURDEN OF
5 SAYING IT IS A CONSOLIDATION OR NOT A CONSOLIDATION.
6 THE COURT JUST DID IT AND IN THE CONTEXT OF
7 ADJUDICATION. AND WE ARE SURE THIS COURT COULD DO IT IN
8 THE CONTEXT OF ADJUDICATION COORDINATED ALREADY.
9 SO I'M NOT AS BOUND TO THE COURT USING THOSE
10 PARTICULAR WORDS WHICH WHEN THIS STARTED THE COURT SAID
11 THE COURT WASN'T PARTICULARLY SURE THE COURT WANTED TO
12 USE THOSE PARTICULAR WORDS. AS LONG AS WE GET TO THE
13 INTER SE ADJUDICATION, THAT IS WHAT WE CARE ABOUT.
14 THE COURT: WELL, SEMANTICS IS THE LIFE BLOOD OF
15 THE LAW.
16 (LAUGHTER)
17
18 THE COURT: SO I THINK LAWYERS HAVE GENERATED A
19 LOT OF BILLABLE HOURS THIS MORNING DEALING WITH
20 SEMANTICS.

21 2-5-10 ANTELOPE VALLEY FINAL CORRECTED
DOES ANYONE ELSE WANT TO SAY ANYTHING?
22 MR. MCLACHLAN, YOU ARE STANDING UP.
23 MR. MCLACHLAN: I'M DEBATING WHETHER I SHOULD OPEN
24 MY MOUTH.
25 THE COURT: YOU DON'T HAVE TO.
26
27 (LAUGHTER)
28

48

1 MR. MCLACHLAN: JUST ONE BRIEF POINT: I WOULD
2 SUGGEST THAT IF WE ARE NOT GOING TO BE CONSOLIDATING, I
3 DON'T REALLY UNDERSTAND WHY WE NEED AN ORDER REALLY MUCH
4 OF ANYTHING AT THIS POINT IN TIME BECAUSE WE ALREADY
5 HAVE COORDINATED PROCEEDING AND THE OTHER ISSUES IN
6 TERMS OF MR. MARKMAN QUESTIONS TAKING UP AT THE
7 APPROPRIATE TIME.
8 AS TO LAWYERS LAWYERING, I'LL NOTE THAT I'M
9 PRETTY SURE IF THAT ORDER DOES ISSUE AND DOES SAY
10 COMPLETE CONSOLIDATION, WE ARE GOING TO SEE ANOTHER
11 170.6 FILED. I THINK THE COURT WAS JUST BEING BATED
12 INTO THAT BY MR. ZIMMER OF WHAT'S REALLY GOING ON.
13 THEN WE ARE GOING TO BE UP ON APPEAL, AND
14 WE'RE GOING TO HAVE THIS WHOLE BIG MESS GOING ON, AND I
15 THINK THAT'S A CIRCUS THAT THE COURT SHOULD TRY TO AVOID
16 IF POSSIBLE.
17 THE COURT: OKAY.
18 MR. KALFAYAN: YOUR HONOR, JUST FOR THE RECORD,
19 THE WILLIS CLASS VIGOROUSLY OPPOSES AN ORDER THAT
20 PROVIDES FOR COMPLETE CONSOLIDATION OR ANY ORDER PER SE
21 OF ADJUDICATION.

2-5-10 ANTELOPE VALLEY FINAL CORRECTED
22 MR. JOYCE: YOUR HONOR, I ASSUME THAT THE COURT
23 WILL ADVISE THE PARTIES AS TO THE SCHEDULING FOR THE
24 CMC.
25 THE COURT: I WILL.
26 MR. JOYCE: THANK YOU.
27 MR. ZIMMER: MR. ZIMMER SPEAKING. I HAVE ONE LAST
28 COMMENT. I'M NOT SURE I WOULD LIKE TO SEE THIS DONE

49

1 COLLECTIVELY REGARDLESS OF WHAT LABEL THE COURT PUTS ON
2 THIS. IF THE COURT IS GOING TO DENY THE MOTION FOR
3 CONSOLIDATION, I THINK THAT SHOULD BE IN THE COURT'S
4 ORDER SO THAT IT IS CLEAR THAT CONSOLIDATION IS DENIED.
5 I WAS GOING TO ASK IF THERE IS SOME WAY TO DETERMINE
6 WHETHER THIS CASE IS AT ISSUE OR NOT.
7 I THINK THAT IS A CRITICAL DETERMINATION. I
8 THINK MR. KUNEY HAD SOME DISCUSSION WITH -- IF THIS
9 INDICATION IS AN ISSUE OR NOT.
10 THE COURT: MR. DUNN.
11 MR. DUNN: GOOD MORNING, YOUR HONOR. JEFFREY
12 DUNN. LET ME GIVE YOU SOME APPRECIATION FROM WHERE WE
13 HAVE BEEN AND WHERE WE ARE AND PERHAPS WHERE WE ARE
14 HEADED. WHAT YOU HAVE EXPERIENCED THIS MORNING IS SORT
15 OF WHAT I HAVE BEEN DEALING WITH NOW FOR SEVERAL MONTHS.
16 AND THAT IS IN TRYING TO PUT TOGETHER THE SETTLEMENT
17 WITH BOTH CLASSES, THERE ARE DIFFERENT VIEWS ON WHETHER
18 OR NOT THESE CASES SHOULD BE CONSOLIDATED, PARTICULARLY
19 THE TWO CLASS CASES.
20 THE REASON WHY THAT IS IMPORTANT IS THAT
21 FROM OUR PERSPECTIVE -- AND I'M TALKING NOW MY CLIENT
22 AND THE PUBLIC WATER SUPPLIERS -- THE OVERALL OBJECTIVE

23 HERE IS TO ACHIEVE SOME TYPE OF PHYSICAL SOLUTION TO THE
24 BASINS PROBLEMS.

25 AND WHEN WE LOOK AT TRYING TO GET THIS CASE
26 RESOLVED AND PARTICULARLY RESOLVED IN TWO IMPORTANT
27 GROUPS LIKE EACH OF THE TWO CLASSES, WE HAVE THAT
28 OBJECTIVE IN MIND.

♀

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1 SO IN WORKING OUT A RESOLUTION, WHATEVER THE
2 TERMS OF THOSE RESOLUTIONS OR SETTLEMENTS WILL BE, FROM
3 OUR PERSPECTIVE, IT IS VITAL. AND IT IS NECESSARY THAT
4 THOSE SETTLEMENTS BE PART OF THE OVERALL OBJECTIVE OF
5 ACHIEVING A PHYSICAL SOLUTION TO THE BASIN'S PROBLEMS.

6 NOW TO MAKE THAT WORK, THOUGH, WE NOT ONLY
7 HAVE TO HAVE THE SUBSTANTIVE TERMS OF THE SETTLEMENT
8 AGREED UPON, BUT WHAT YOU HAVE BEEN EXPERIENCING HERE
9 THIS MORNING IS THE CHALLENGE OF -- THAT YOU ARE GOING
10 TO FACE HOPEFULLY SOON IN THE HEARING ON CLASS
11 SETTLEMENT MOTION IS HOW DO WE THEN MAKE THOSE
12 SETTLEMENTS PART OF A LARGER OBJECTIVE IN THE CASE. SO
13 THAT IS THE TENSION THAT WE HAVE BEEN DEALING WITH NOW,
14 YOU KNOW, FOR SOME TIME.

15 SO I MENTION THAT BECAUSE THERE HAS BEEN A
16 LOT OF DISCUSSIONS HERE IN COURT TODAY. CANDIDLY, I
17 DON'T THINK MUCH OF IT IS NEW AND WHAT HAS BEEN BRIEFED
18 OR EVEN DISCUSSED BEFORE THE COURT BEFORE, BUT I DO
19 BRING OUT THE POINT THAT WE -- I THINK IT IS VERY
20 IMPORTANT THAT WE GET THIS ISSUE RESOLVED SOON SO THAT
21 THAT ISSUE OF HOW THESE CASES ARE PROCEDURALLY POSTURED
22 IN TERMS OF ACHIEVING THE OVERALL ADJUDICATION AND
23 RESOLUTION OF ISSUES IS NECESSARY; SO THAT WE KNOW WHAT

2-5-10 ANTELOPE VALLEY FINAL CORRECTED
24 PIECE EACH CASE SEPARATELY WHETHER IT IS ONE CLASS OR
25 BOTH CLASS ACTIONS, YOU KNOW, FIT INTO THAT OVERALL
26 SOLUTION.
27 SO WE DO NEED SOME RESOLUTION ON THAT. I
28 THINK -- AT THE END OF THE DAY, YOU HAVE TWO CHOICES

♀

51

1 BEFORE YOU. YOU CAN CERTAINLY GO DOWN TO CONSOLIDATION,
2 ROUTE OR YOU CAN USE YOUR POWERS UNDER THE SECTION 403
3 OF THE CODE OF CIVIL PROCEDURE AS A COORDINATION JUDGE
4 AS TO REACH ACROSS AND COORDINATE THE CASES AND COMMONLY
5 RESOLVE THE ISSUES.

6 I THINK ULTIMATELY IT IS UP TO THE COURT TO
7 DECIDE HOW TO DO THAT. I THINK CANDIDLY IN THE SECTION
8 403 SITUATION, THERE DOESN'T SEEM TO BE -- AND I THINK
9 THE COURT BROUGHT THIS OUT. THERE IS NO PUBLISHED
10 DECISION SOMEWHERE THAT SAYS, YOU KNOW, A 403
11 COORDINATION JUDGE CAN CONSOLIDATE CASES. AND SOMETIMES
12 WE DON'T HAVE CASES FOR WHEN THE STATUTORY LANGUAGE IS
13 CLEAR AND PARTICULARLY THE ORDER. BUT I -- THAT IS
14 POINT NUMBER ONE.

15 BECAUSE OF THAT IT HAS DELAYED SOMEWHAT --
16 PROBABLY THE PRIMARY COMPONENT IN FINISHING THE
17 RESOLUTION OF THE CLASS SETTLEMENTS AND THEN TO BRING
18 THAT BY MOTION BEFORE THE COURT. SO, AGAIN, I THINK
19 THAT IS IMPORTANT.

20 THERE HAVE BEEN RECENT REPORTS ON WHERE WE
21 ARE ON THE SERVICE OF PROCESS. AND THE SHORT VERSION IS
22 THAT THE -- WHATEVER SERVICE OF PROCESS REMAINS IS
23 DEALING WITH THE OPT-OUTS OF THE CLASSES. THESE ARE
24 FOLKS WHO -- WHO RECEIVE CLASS NOTICE.

2-5-10 ANTELOPE VALLEY FINAL CORRECTED
25 AND IN THE CLASS NOTICE, THEY HAD A RIGHT TO
26 OPT OUT. THEY EXERCISE THAT RIGHT TO OPT OUT. AND BY
27 DOING SO, THE COURT HAS INDICATED THEY SHOULD BE BROUGHT
28 IN THE CASE OF PROOF OF SERVICE. THAT HAS BEEN GOING ON

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1 FOR SOME TIME. I DON'T HAVE THOSE NUMBERS HERE TODAY.
2 ALTHOUGH, I SHARE THOSE NUMBERS I THINK IT WAS THE LAST
3 TIME. WE WERE TELEPHONICALLY TOGETHER IN COURT.

4 IT IS A RELATIVELY SMALL NUMBER.
5 ULTIMATELY, AT THE END OF THE DAY BECAUSE THERE ARE SOME
6 ADDRESS PROBLEMS WITH SOME OF THESE FOLKS, WE JUST CAN'T
7 LOCATE SOME OF THEM. WE WILL BE BEFORE THE COURT THIS
8 MONTH WITH AN ORDER. IT WILL BE AN EX-PARTE APPLICATION
9 FOR ORDER FOR PUBLICATION, AND THAT WILL BE THE
10 ANTICIPATED FINAL EVENT IN TERMS OF SERVICE OF THE
11 PARTIES.

12 THESE ARE -- AGAIN, THESE ARE OPT-OUTS. I
13 CAN'T REMEMBER IF THEY WERE OPT-OUTS WITH THE WILLIS OR
14 THE WOOD CLASS. BUT IF THEY ARE WILLIS CLASS OPT-OUTS,
15 THESE ARE PEOPLE WHO HAVE NOT PUMPED. IF THEY ARE WOOD
16 CLASS OPT-OUTS, THESE ARE PEOPLE WHO MEET THE WOOD CLASS
17 DEFINITION WHAT WE COMMONLY CALL THE SMALL PUMPERS.

18 I THINK IT IS FAIRLY SAFE TO SAY THAT WE CAN
19 GET THIS EX-PARTE APPLICATION IN THIS MONTH AND START
20 THE PUBLICATION BEFORE THE MONTH IS OVER, AND I CAN'T
21 REMEMBER EXACTLY HOW MANY WEEKS IT IS. YOU KNOW, I HAVE
22 -- JUST AS A MATTER OF INFORMATION TO THE COURT, I HAVE
23 ONE PARTNER AND ONE ASSOCIATE WHO ARE DEDICATED JUST
24 WORKING ON THIS ISSUE ON SERVICE OF PROCESS. THAT IS
25 HOW DIFFICULT IT HAS BEEN. AND SO THEY HAVE DONE A LOT

2-5-10 ANTELOPE VALLEY FINAL CORRECTED
26 OF WORK ON THAT. THEY HAVE GOOD COOPERATION WITH
27 MR. MCLACHLAN AND FROM MR. KALFAYAN ON THAT, AND WE
28 APPRECIATE THAT.

♀

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1 THE COURT: HOW MANY OPT-OUTS?

2 MR. DUNN: I COULD DEFER TO CLASS ACTION.

3 THE COURT: GIVE ME A BALLPARK NUMBER.

4 MR. KALFAYAN: I THINK FOR THE WILLIS CLASS ABOUT
5 2,000.

6 THE COURT: ALL RIGHT. ARE THOSE ALL PEOPLE
7 WITH -- WHEN THEY OPT-OUT, THEY OBVIOUSLY HAVE A RETURN
8 ADDRESS, DON'T THEY?

9 MR. KALFAYAN: I THINK A LOT OF THEM HAVE CALLED
10 AND ASKED TO REJOIN THE WILLIS CLASS, AND I DON'T KNOW
11 WHAT NUMBERS.

12 THE COURT: AS SOON AS THEY GET SERVED, THEY TEND
13 TO DO THAT.

14 (LAUGHING)

15

16 THE COURT: SO THE IMPORTANT THING TO GET THEM
17 SERVED AND SO THAT WE TRULY KNOW WHAT'S AT ISSUE.

18 MR. DUNN: AGAIN, I CAN PROVIDE A DECLARATION TO
19 THE COURT, BUT WE ARE NOT DEALING WITH THOUSANDS YET TO
20 BE SERVED. I THINK -- IN THE ONE CLASS, I THINK IT'S
21 ONLY 50, AND THAT WAS AS OF SEVERAL WEEKS AGO. SO I
22 ANTICIPATE THAT NUMBER TO BE SMALLER. BUT WE WILL BE
23 BACK WITH THE COURT WITH AN EX PARTE.

24 THE COURT: WELL, I'M CONTINUING TO GET
25 APPLICATIONS TO REJOIN THE CLASSES AND BE PERMITTED THAT
26 TO HAPPEN IN EVERY CASE.

2-5-10 ANTELOPE VALLEY FINAL CORRECTED
28 CALENDARS. WE HAVE HAD SOME DISCUSSION HERE. I DO

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1 THINK I SHOULD ADDRESS THE COURT ON THIS. I THINK THAT
2 IT IS CRITICAL THAT RATHER IT IS FOR PURPOSES OF
3 RESOLVING ONE OR BOTH OF THE CLASS SETTLEMENTS AS WELL
4 AS OTHER EFFORTS ON THE PART OF PARTIES TO RESOLVE THIS
5 CASE, IT IS CRITICAL THAT WE GET AN EARLY TRIAL DATE.

6 THIS CASE HAS JUST GONE ON TOO LONG. AND
7 JUST LIKE ANY OTHER CASE, WITHOUT A TRIAL DATE TO EITHER
8 CAUSE THE PARTIES TO RESOLVE THEIR KEY ISSUES BY --
9 THROUGH THE JUDICIAL PROCESS OR THROUGH THE SETTLEMENT
10 PROCESS, THE TRIAL DATE IS GENERALLY RECOGNIZED AS THE
11 BEST WAY TO MAKE THAT HAPPEN.

12 SO WE WOULD REQUEST THAT THE COURT DO
13 EVERYTHING WITHIN ITS POWER TO SET THIS NECESSARY PHASE
14 FOR TRIAL IN JULY IF AT ALL POSSIBLE. THANK YOU.

15 THE COURT: ONE OTHER THINGS THAT HAS PREVENTED
16 OUR DOING THIS IS BECAUSE THE MATTERS HAVE NOT BEEN
17 TOTALLY AT ISSUE WITH REGARD TO -- THEY WEREN'T FRANKLY
18 EVEN WHEN WE DID THE JURISDICTIONAL DETERMINATIONS. AND
19 I SUPPOSE COULDN'T HAVE BEEN AT THAT POINT BECAUSE WE
20 DIDN'T KNOW WHAT JURISDICTIONS AND THE PLACES WERE GOING
21 TO BE. SO IT'S A LITTLE BIT OF A CHICKEN AND AN EGG
22 PROBLEM.

23 BUT I CERTAINLY WILL TELL YOU THAT THIS
24 MATTER NEEDS TO MOVE FORWARD. WE ALL HAVE LIMITED LIFE
25 SPANS.

26 (LAUGHTER)

27

28 THE COURT: AND I WANT TO MAKE SURE THAT SOME OF

1 US ARE STILL AROUND WHEN THIS MATTER IS FINALLY
2 RESOLVED. SO -- BUT WE ARE GOING TO MOVE IT, AND I'M
3 SERIOUS WHEN I TALK ABOUT JULY, AUGUST FRAMEWORK FOR THE
4 NEXT PHASE OF THIS TRIAL.

5 MR. SLOAN: YOUR HONOR, THIS IS MR. SLOAN. DO YOU
6 HAVE AN IDEA WHEN WE MIGHT EXPECT YOUR ORDER ON THIS
7 ISSUE?

8 THE COURT: AS SOON AS I CAN POSSIBLY DO IT.

9 MR. KUHS: YOUR HONOR, ROBERT KUHS FOR TEJON
10 RANCH. WITH RESPECT TO STATUS WHAT MIGHT BE HELPFUL IN
11 TERMS OF SETTING TRIAL DATES TO ADDRESS MR. DUNN'S
12 CONCERNS IS -- IS IF WE GET SOME REPRESENTATION FOR
13 MR. DUNN'S OFFICE CASE, HIS STANDPOINT AT ISSUE, THEN I
14 THINK IT IS APPROPRIATE TO LOOK AT TRIAL DATES.

15 BUT I GUESS WHAT STRIKES ME AS -- IS PARTY
16 PUSHING FOR A JULY TRIAL DATE IS THE PARTY WHO HAS NOT
17 ACHIEVED THAT ISSUE STATUS, AND IT SEEMS TO ME THAT IS
18 PUTTING THE CART BEFORE THE HORSE.

19 OUR CLIENT AS WELL AS MOST OF THE OTHER
20 CLIENTS WOULD LIKE TO GET ON WITH THE CASE. BUT NOT AT
21 THE SAKE OF PROCEDURAL DUE PROCESS FOR THOSE FOLKS WHO
22 WERE NOT BROUGHT IN YET.

23 THE COURT: ALL RIGHT.

24 MR. ZIMMER: YOUR HONOR, THIS IS MR. ZIMMER. I'M
25 CONFUSED ABOUT MR. DUNN'S COMMENT ABOUT AN ORDER OF
26 NOTIFICATION. I'M NOT SURE WHAT THAT IS OR WHERE IT IS
27 OR WHAT IT SAYS.

28 THE COURT: WELL, LET'S NOT TAKE THAT UP TODAY.

2 POINT IN TIME.

3 THE SECOND ONE WAS THE MOTION FOR
4 ALLOCATION. AS THE COURT WILL RECALL, SOME TIME IN THE
5 PAST THE COURT ORDERED A COURT APPOINTED EXPERT TO DEAL
6 WITH -- SEVERAL ISSUES RELATING TO THE SMALL PUMPER
7 CLASS, AND THERE WAS A MOTION PENDING OR IS A MOTION
8 PENDING RATHER FOR THE ALLOCATION OF THOSE COSTS.

9 NOW THAT NEEDS TO BE CONTINUED OVER, BUT I
10 CAN'T SAY WHETHER OR NOT WE ARE GOING TO HAVE TO PROCEED
11 WITH THAT OR NOT AND HAVE DISCUSSIONS WITH MR. DUNN, BUT
12 I WANT THE COURT TO UNDERSTAND THAT HAS NOT GONE AWAY.

13 BECAUSE IF WE HAVE TRIED, IF THE CLASS
14 COUNSEL HAS TO BE INVOLVED IN THE NEXT PHASE OF THE
15 TRIAL AND THAT INVOLVES FINDING AN OVERDRAFT, IT WOULD
16 SEEM TO ME THAT THAT WOULD NECESSITATE UNDERSTANDING
17 WHAT A SMALL PUMPER CLASS IS USING IN TERMS OF WATER.

18 AND NONE OF THE EXPERTS REALLY HAVE ANY
19 SENSE OF THAT. THERE ARE BALLPARK ESTIMATES, BUT THAT
20 WOULD INDICATE THIS COURT TO APPOINT AN EXPERT. I'LL
21 TALK WITH MR. DUNN ABOUT THAT.

22 AND THEN I'M GOING TO TALK WITH MISS WALKER
23 ABOUT CALENDARING THAT, BUT I THINK AT THE NEXT HEARING
24 WE MAY NEED TO TAKE THAT ISSUE UP.

25 THE COURT: DO I HAVE ALL THE PAPERS ON THE
26 MOTIONS TO DISQUALIFY THAT HAS BEEN SUBMITTED TO THE
27 COURT?

28 MR. LEMIEUX: I BELIEVE YOU DO, YOUR HONOR, BUT I

1 THINK PERHAPS TODAY'S RULING ON COORDINATION ACTUALLY IN
2 SOME WAYS AFFECTS THE WHOLE ARGUMENT, LIKE A CHANCE TO
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2-5-10 ANTELOPE VALLEY FINAL CORRECTED

3 THINK ABOUT IT.

4 THE COURT: ALL RIGHT. DO YOU WANT TO SUBMIT
5 SOMETHING TO THE COURT?

6 MR. LEMIEUX: YEAH, PERHAPS, I SHOULD.

7 THE COURT: OBVIOUSLY, YOU POST-IT SO EVERYBODY
8 HAS IT.

9 MR. LEMIEUX: THANK YOU.

10 THE COURT: ALL RIGHT. I'LL PUT OUT AN ORDER
11 CONCERNING THIS HEARING. I WILL PUT OUT AN ORDER
12 SETTING IT FORTH TO THE NEXT CMC HEARING DATE, AND THAT
13 WILL BE WITHIN 30 DAYS. AND ALL OTHER MATTERS THAT ARE
14 SET FOR HEARING TODAY ARE RESET TO THAT DATE.

15 ANYTHING, ELSE?

16

17 (NO RESPONSE)

18

19 THE COURT: THANK YOU.

20

21 (SEVERAL COUNSEL JOIN IN THANKING THE JUDGE.)

22

23

24 (THE PROCEEDINGS WERE THEN CONCLUDED.)

25

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1 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

2 COUNTY OF LOS ANGELES

3 DEPARTMENT NO. 1

HON. JACK KOMAR, JUDGE

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2-5-10 ANTELOPE VALLEY FINAL CORRECTED

4 COORDINATION PROCEEDING)
5 SPECIAL TITLE (RULE 1550B))
6 ANTELOPE VALLEY GROUNDWATER CASES) JUDICIAL COUNCIL
COORDINATION
NO. JCCP4408
7)
8 PALMDALE WATER DISTRICT AND) SANTA CLARA CASE NO.
QUARTZ HILL WATER DISTRICT,) 1-05-CV-049053
9 CROSS-COMPLAINANTS,)
10 VS.)
11 LOS ANGELES COUNTY WATERWORKS,)
DISTRICT NO. 40, ET AL,)
12 CROSS-DEFENDANTS.)
13 _____)
14
15 STATE OF CALIFORNIA)
16 COUNTY OF LOS ANGELES) SS.
17
18 I, GINGER WELKER, OFFICIAL REPORTER OF THE
19 SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE
20 COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
21 TRANSCRIPT DATED FEBRUARY 5, 2010 COMPRISES A FULL,
22 TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN
23 THE ABOVE ENTITLED CAUSE.
24
25
26
27 _____
28 OFFICIAL REPORTER, CSR #5585

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2-5-10 ANTELOPE VALLEY FINAL CORRECTED

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