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

DEPARTMENT NO. 56 HON. JACK KOMAR, JUDGE

COORDINATION PROCEEDING SPECIAL TITLE (RULE 1550(B)))	
ANTELOPE VALLEY GROUNDWATER CASES)	JUDICIAL
INCLUDED ACTIONS:)	COUNCIL
)	COORDINATION
LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 V. DIAMOND FARMING CO., ET AL, LOS ANGELES COUNTY SUPERIOR COURT, CASE NO. BC325 201)	PROCEEDING NO. 4408
LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 V. DIAMOND FARMING CO., ET AL, KERN COUNTY SUPERIOR COURT, CASE NO. S-1550-CV-254-348)	CASE NO. 1-05-C-049053
WM. BOLTHOUSE FARMS, INC. V. CITY OF LANCASTER DIAMOND FARMING CO. V. CITY OF LANCASTER DIAMOND FARMING CO. V. PALMDALE WATER DIST RIVERSIDE COUNTY SUPERIOR COURT, CONSOLIDATED ACTION, CASE NOS. RIC 353 840, RIC 344 436, RIC 344 668)	
<u>AND RELATED CROSS-ACTIONS</u>)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
NOVEMBER 4 AND 5, 2014

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M A S T E R I N D E X

NOVEMBER 4, 2014; NOVEMBER 5, 2014

LEGEND:

MS. GOLDSMITH = G
MR. GOLDEN-KRASNER = GK
MR. DUNN = D
MR. KUHS = K

CHRONOLOGICAL/ALPHABETICAL INDEX OF WITNESSES

<u>PLAINTIFF'S</u>	<u>DI RECT</u>	<u>CROSS</u>	<u>REDI RECT</u>	<u>RE CROSS</u>
DONALD BARTZ	74	95-G 96-GK		
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EXHIBITS

<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
1 THROUGH 24		74
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1 CASE NUMBER: 1-05-CV-049053
2 CASE NAME: ANTELOPE VALLEY GROUNDWATER CASES
3 LOS ANGELES, CA TUESDAY, NOVEMBER 4, 2014
4 DEPARTMENT 56 HON. JACK KOMAR, JUDGE
5 REPORTER: JEANETTE COYLE, CSR NO. 12665
6 TIME: MORNING SESSION
7 APPEARANCES: (AS HERETOFORE NOTED.)
8

9 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT.)
10

11 THE COURT: GOOD MORNING. IN THE ANTELOPE
12 MATTER, WE HAVE SEVERAL THINGS ON CALENDAR FOR THIS
13 MORNING. I GUESS THE FIRST THING WE OUGHT TO TAKE UP IS
14 THE WILLIS MOTION TO SUBSTITUTE REPRESENTED BY THE
15 PLAINTIFF FOR THE CLASS.

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

18 THE COURT: GOOD MORNING. THERE HAS BEEN A
19 PARTIAL OPPOSITION. HAS THAT PROBLEM BEEN CURED?

20 MR. KALFAYAN: NOT TO MY KNOWLEDGE, YOUR HONOR.
21 NO, IT HAS NOT. IN OUR REPLY WE ADDRESSED THE ISSUES
22 THAT WERE RAISED IN THE OPPOSITION, PRIMARILY THAT THE
23 ARCHDIOCESE ITSELF NEVER APPEARED IN THE CASE. THEY MAY
24 HAVE BEEN NAMED, BUT I DON'T THINK THEY WERE ACTUALLY
25 SERVED. SO THEIR PARTICIPATION WAS -- THERE WAS ZERO
26 PARTICIPATION.

27 THE COURT: ACTUALLY, THEY DID APPEAR ON BEHALF
28 OF A PARCEL OF LAND. THEY MISNAMED THEMSELVES AS THE

1 PROPERTY. IT SEEMS TO ME THAT COULD BE CORRECTED AND
2 WITHDRAWN AND OPTED IN IF IT WISHES AS A REPRESENTATIVE
3 PLAINTIFF.

4 IS THERE ANY OBJECTION TO THAT, MR. DUNN
5 OR ANYBODY ELSE?

6 MR. DUNN: MAY I ASK FOR CLARIFICATION, YOUR
7 HONOR? IS THE COURT'S QUESTION WHETHER THERE WOULD BE
8 OPPOSITION TO HAVING THE ARCHDIOCESE OPT INTO THE CLASS?

9 THE COURT: AS A NON-PRODUCER OF WATER AND
10 OVERLYING OWNER OF LAND WITHIN IN THE ANTELOPE VALLEY,
11 IT SEEMS TO ME THAT UNDER THOSE CIRCUMSTANCES THEY WOULD
12 QUALIFY AS A CLASS MEMBER.

13 MR. DUNN: YOU KNOW, IN ALL CANDOR, I HAVE NOT
14 GIVEN THAT MUCH THOUGHT, ONLY BECAUSE THE MOTION THAT IS
15 BEFORE THE COURT IS MERELY TO DESIGNATE THE ARCHDIOCESE
16 AS A CLASS REPRESENTATIVE. IT'S NOT A MOTION TO BRING
17 THEM INTO THE CLASS. SO AS I SORT OF STAND HERE TODAY,
18 I AM NOT PREPARED TO BE ABLE TO ANALYZE THE PROPRIETY OF
19 MAKING THEM A CLASS MEMBER.

20 MY CONCERN THOUGH IS, IN A SENSE, THE
21 FINALITY THAT EXISTS TO DATE WITH THE WILLIS CLASS
22 PROCESS. AS THE COURT IS AWARE, WE WENT THROUGH A
23 PROCESS OVER SEVERAL YEARS THAT INVOLVED THE
24 CERTIFICATION OF THE CLASS AND ULTIMATELY A COURT
25 APPROVAL OF A SETTLEMENT AGREEMENT WITH THE WILLIS
26 CLASS. BUT AS PART OF THAT, THERE WAS OPPORTUNITY FOR
27 PARTIES TO OPT IN OR OPT OUT.

28 WE HAVE GONE THROUGH THAT PROCESS. WE

1 HAVE AN APPROVED FINAL SETTLEMENT AGREEMENT. AND I HAVE
2 SOME CONCERNS THAT IF WE WERE TO SORT OF UNDUE ALL OF
3 THAT TODAY FOR A PARTY THAT, CANDIDLY, I DON'T KNOW
4 WHETHER THEY QUALIFY OR NOT, I HAVE SOME QUESTIONS AS TO
5 WHETHER THEY WOULD.

6 SETTING THAT ASIDE FOR THE MOMENT, MY
7 CONCERN IS, ON SOMETHING OF THIS LEVEL OF IMPORTANCE,
8 IT'S NOT PROPERLY BEFORE US. AND I WOULD TEND TO THINK
9 THAT WE NEED A MOTION TO COME BEFORE THE COURT TO ASK
10 THAT THE ARCHDIOCESE BE BROUGHT INTO THE WILLIS CLASS.
11 AND WHETHER THAT CAN BE POSSIBLE NOW -- IT MAY BE; I
12 DON'T KNOW. BUT I HAVE SOME CONCERN GIVEN THE FINALITY
13 OF THE PROCEEDINGS WITH THE WILLIS CLASS.

14 THE COURT: WELL, THERE IS NO QUESTION THAT ANY
15 PARTY WHO OWNS LAND THAT IS NOT WATER PRODUCING BUT HAS
16 OVERLYING RIGHTS WITHIN THE JURISDICTION OF THE ANTELOPE
17 VALLEY WOULD QUALIFY AS A MEMBER OF THE CLASS.

18 WE HAVE NOT LISTED EVERY MEMBER OF THE
19 CLASS. THERE IS AN ASSUMPTION THAT IF SOMEBODY WANTED
20 TO OBJECT OR OPT OUT THEY COULD DO SO. AND OBVIOUSLY
21 THE ARCHDIOCESE DID NOT OPT OUT AS I UNDERSTAND IT.

22 MR. DUNN: IF I MAY ADDRESS THE COURT ON THAT.
23 THE ARCHDIOCESE DID NOT OPT OUT, BECAUSE THEY WERE NOT
24 IN THE CLASS. WHAT HAPPENED IS THAT THE ARCHDIOCESE WAS
25 NAMED INDIVIDUALLY AS PART OF THE WESLEY PROPERTY.

26 THEY WERE DOE, I BELIEVE, 107. MORE
27 IMPORTANTLY, I HAVE BEFORE ME A TRANSCRIPT OF A HEARING
28 ON JULY 20TH OF 2007 WHERE LEGAL COUNSEL ON BEHALF OF

1 THE LESLIE PROPERTY AND THE ARCHDIOCESE OF LOS ANGELES
2 APPEARED IN THE CASE.

3 THIS IS ON PAGE 3 OF THE TRANSCRIPT, LINE
4 7 THROUGH 10. IT STATES --

5 MR. KALFAYAN: YOUR HONOR, ALL OF THIS
6 INFORMATION IS NEW TO ME.

7 THE COURT: DON'T INTERRUPT.

8 MR. DUNN: "GOOD MORNING, YOUR HONOR. ALLEN GRAF
9 ON BEHALF OF THE LESLIE PROPERTY AND THE ARCHDIOCESE OF
10 LOS ANGELES."

11 SO WAY BACK IN JULY OF 2007 THE
12 ARCHDIOCESE WAS A PARTY NOT A MEMBER OF THE WILLIS
13 CLASS, AND THAT'S THE SITUATION TODAY. SO WHAT I WAS
14 REFERENCING JUST A MOMENT AGO IS WE DON'T HAVE BEFORE US
15 THE MOTION TO BRING THEM INTO THE CLASS.

16 INSTEAD WE HAVE A MOTION THAT ASSUMES THAT
17 THEY ARE A MEMBER OF THE CLASS WHEN, IN FACT, THEY ARE
18 NOT AND THEN ASKS JUST THE COURT TO APPOINT THEM AS A
19 CLASS REP. I DON'T THINK WE ARE IN A POSITION TO DO
20 THAT TODAY.

21 THE COURT: WHAT ABOUT ESTRADA, DAVID ESTRADA?

22 MR. DUNN: WE FILED NO OPPOSITION ON THAT.

23 MR. KALFAYAN: YOUR HONOR, THE INFORMATION, I
24 DON'T KNOW WHAT HE IS REFERRING TO. BUT THE ARCHDIOCESE
25 WAS INCLUDED IN THE LIST THAT BEST BEST AND KRIEGER PUT
26 TOGETHER FOR THE WILLIS CLASS MEMBERS. AND I PROVIDED
27 THE COURT WITH EVIDENCE THAT SHOWED THE DATABASE THAT
28 BEST BEST AND KRIEGER MAINTAINED. IT LISTED THE

1 ARCHDIOCESE AS ONE OF THE WILLIS CLASS PARTIES.

2 SO THEY DIDN'T HAVE TO OPT IN. THEY WERE
3 RECOGNIZED BY THE CLAIMS ADMINISTRATOR IN THIS CASE AS A
4 WILLIS CLASS MEMBER. AND THERE HAS BEEN NO -- I DON'T
5 EVEN THINK THE ARCHDIOCESE, AS I AM STANDING HERE TODAY,
6 WAS SERVED WITH PROCESS BY BEST BEST AND KRIEGER. THEY
7 MADE NO APPEARANCE IN THIS CASE OTHER THAN THROUGH THE
8 LESLIE PROPERTY WHICH IS NOT AN ENTITY.

9 THE COURT: IS THE LESLIE PROPERTY WATER
10 PRODUCING?

11 MR. KALFAYAN: IT IS NOT, YOUR HONOR. AND IT WAS
12 SOLD PER THE DECLARATION OF MR. DAVITT FROM THE
13 ARCHDIOCESE. THE LESLIE PROPERTY ITSELF WAS SOLD IN
14 2012. THE ARCHDIOCESE FITS DEFINITIONALLY WITH THE
15 WILLIS CLASS. AND BEST BEST AND KRIEGER DID NOT SERVE
16 THEM AND INCLUDED THEM AS A WILLIS CLASS MEMBER.

17 MR. DUNN: YOUR HONOR, IF I MAY JUST BRIEFLY
18 RESPOND TO COUNSEL'S CLAIMS. I DON'T KNOW IF THOSE ARE
19 SUBSTANTIATED BY COUNSEL OR CAN BE BECAUSE THE
20 INFORMATION WE HAVE FILED WITH THE COURT AS PART OF THIS
21 OPPOSITION SHOWS THAT THE LESLIE PROPERTY WAS IDENTIFIED
22 AS DOE 107.

23 THERE WAS AN ANSWER THAT WAS FILED. THE
24 ARCHDIOCESE WAS ALSO NAMED AS A CROSS-DEFENDANT IN THE
25 PUBLIC WATER SUPPLIER'S FIRST AMENDED CROSS-COMPLAINT.
26 THAT IS EXHIBIT E TO OUR OPPOSITION THAT WAS FILED TODAY
27 OR FOR THE HEARING TODAY, RATHER.

28 SO IT'S NOT ACCURATE FOR SOMEONE TO SAY

1 THAT THE ARCHDIOCESE WAS NOT NAMED AS A CROSS-DEFENDANT.
2 THE REASON THAT IS IMPORTANT IS THAT BY DEFINITION THE
3 WILLIS CLASS EXCLUDES ALL PARTIES WHO ARE NAMED
4 DEFENDANTS IN THE CASE.

5 SO, AGAIN, WE HAVE -- AND I AM HAPPY TO
6 SHOW THIS TO BOTH COUNSEL. I HAVE A COPY OF THE
7 REPORTER'S TRANSCRIPT OF PROCEEDINGS. IT'S DATED
8 FRIDAY, JULY 20TH, 2007. THIS IS PART OF THE APPEARANCE
9 PAGES. THE LESLIE PROPERTY APPEARS ON BEHALF OF AN
10 ATTORNEY MR. ALLEN GRAF.

11 ON PAGE 3 OF THE TRANSCRIPT JUST BEFORE
12 MR. GRAF MAKES HIS APPEARANCE ON BEHALF OF THE LESLIE
13 PROPERTY AND THE ARCHDIOCESE, WE HAVE AN APPEARANCE BY A
14 FORMER COLLEAGUE OF MR. KALFAYAN, MR. ZLOTNICK SAYING
15 THAT HE IS APPEARING ON BEHALF OF REBECCA WILLIS THE
16 FORMER FOR THE REP.

17 SO MY POINT, AGAIN, IS IT WOULD NOT BE
18 ACCURATE TO STATE THAT THE ARCHDIOCESE WAS NOT BROUGHT
19 INTO THE CASE AS A PARTY. IT WOULD NOT BE ACCURATE TO
20 STATE THAT THEY EVER MADE AN APPEARANCE AS A NAMED
21 PARTY. THEY DID, AND THEY HAVE.

22 IT WOULD NOT BE ACCURATE TO STATE THEY ARE
23 A MEMBER OF THE WILLIS CLASS. THAT IS THE PROBLEM
24 BEFORE US. WE CANNOT APPOINT AS A REPRESENTATIVE OF A
25 CLASS SOMEONE WHO IS NOT A MEMBER OF THE CLASS.

26 THE COURT: HOW MANY PARCELS OF PROPERTY DOES THE
27 ARCHDIOCESE HAVE IN THE ANTELOPE VALLEY?

28 MR. KALFAYAN: THEY HAVE 11 DIFFERENT PARCELS.

1 NONE OF THE PARCELS HAVE HAD ANY WATER PUMPED.

2 THE COURT: DO THEY STILL OWN THE LESLIE
3 PROPERTY?

4 MR. KALFAYAN: NO, YOUR HONOR.

5 THE COURT: SO IT HAS BEEN TRANSFERRED?

6 MR. KALFAYAN: YES, YOUR HONOR. AND THE COURT
7 HAS ALLOWED OPT-IN'S IN THE PAST.

8 THE COURT: WAS THERE A SUBSTITUTION OF COUNSEL
9 OR PARTIES WITH REGARD TO THE LESLIE PROPERTY OR THE
10 WESLEY PROPERTY?

11 MR. KALFAYAN: THERE HAS BEEN NO FORMAL
12 SUBSTITUTION OF COUNSEL. THEY AT ALL TIMES CONSIDERED
13 THEMSELVES PART OF THE WILLIS CLASS. WHEN THEY APPEARED
14 ON BEHALF OF THE LESLIE PROPERTY, IT WASN'T A
15 NON-ENTITY. WHEN I SAY "THEY," IT WAS MR. GRAF, NOT THE
16 ARCHDIOCESE.

17 THE COURT: HAS THE LESLIE PROPERTY BEEN SERVED
18 AS A MEMBER OF THE CLASS WHETHER THEY CONSIDER
19 THEMSELVES THAT OR NOT?

20 MR. KALFAYAN: NO, YOUR HONOR. THEY HAVE NOT.

21 THE COURT: IT IS PRETTY CLEAR, IS IT NOT? I AM
22 ASKING BOTH OF YOU THIS, THAT IN THE FUTURE IF THERE IS
23 A JUDGMENT IN THIS CASE THAT INCORPORATES AND
24 CONSOLIDATES THE WILLIS CLASS JUDGMENT WITH THE OTHER
25 JUDGMENTS IN THIS CASE THAT ALL NON-PRODUCERS, WHETHER
26 THEY ARE NAMED OR NOT BECAUSE THEY HAVE RECEIVED NOTICE,
27 WOULD BE A MEMBER OF THAT CLASS AND SUBJECT TO THE TERMS
28 OF THE JUDGMENT.

1 MR. DUNN: YES, WITH THE CLARIFICATION THAT ALL
2 NON-PRODUCERS WERE NOT NAMED AS PARTIES.

3 THE COURT: OKAY. THEY WERE NAMED AS DOE 107; IS
4 THAT CORRECT?

5 MR. KALFAYAN: NOT THE ARCHDIOCESE.

6 THE COURT: WELL, IN EFFECT, THEY APPEARED
7 HOWEVER, WHETHER THEY WERE NAMED OR NOT UNDER THE
8 FICTITIOUS NAME OF WESLEY PROPERTIES; TRUE?

9 MR. KALFAYAN: NO. IT WASN'T A FICTITIOUS NAME.
10 THE ARCHDIOCESE WAS NEVER SERVED NOR DID THEY APPEAR.
11 THE ONLY ANSWER WAS ON BEHALF OF MR. GRAF ON BEHALF OF
12 THAT LESLIE PROPERTY. IT'S NOT A FICTITIOUS NAME FOR
13 THE LEGAL ENTITY.

14 THE COURT: WHEN I SAY "FICTITIOUS," I MEAN
15 ERRONEOUSLY NAMED; TRUE?

16 MR. KALFAYAN: THERE WAS NO APPEARANCE ON BEHALF
17 OF THE ARCHDIOCESE ON BEHALF OF AN ERRONEOUSLY NAMED
18 ENTITY.

19 THE COURT: SHOULD THE COURT ENTER A JUDGMENT
20 AGAINST THE WESLEY PROPERTY AND ANYBODY ELSE THAT MIGHT
21 BE SO MISNAMED?

22 MR. KALFAYAN: IT CAN, YOUR HONOR. THE ENTITY,
23 THE ARCHDIOCESE ITSELF THOUGH WAS ALWAYS A PART OF THE
24 WILLIS CLASS. TO CURE ANY OF THAT, WE JUST DID THE
25 OPT-IN FORM.

26 THE COURT: HERE IS WHAT I AM GOING TO DO. I
27 WILL GRANT DAVID ESTRADA'S MOTION TO SUBSTITUTE. I WILL
28 DENY WITHOUT PREJUDICE THE ARCHDIOCESE. I THINK YOU

1 NEED TO JUMP THROUGH SOME HOOPS TO TAKE CARE OF THE
2 WESLEY ISSUE AS WELL AS TO OPT-IN SPECIFICALLY FOR THE
3 PROPERTIES THAT ARE CURRENTLY OWNED BY THE ARCHDIOCESE
4 IN THE ANTELOPE VALLEY.

5 I THINK WHAT YOU ALSO HAVE TO DO IS FILE
6 SOMETHING INDICATING THAT THE LESLIE PROPERTY IS NO
7 LONGER OWNED BY THE ARCHDIOCESE, AND LET THE NEW OWNERS
8 OF THAT BE AWARE OF THE STATUS OF THEIR PROPERTY.

9 MR. KALFAYAN: THAT IS FINE, YOUR HONOR. I WILL
10 DO THAT. AND THE DECLARATION THAT WE PROVIDED IN THE
11 REPLY BRIEF THOUGH, WE DID PROVIDE EVIDENCE THAT IT WAS
12 SOLD. AND WE DID PROVIDE EVIDENCE THAT THE ARCHDIOCESE
13 DID SELL THE PROPERTY.

14 THE COURT: THAT'S IN A BRIEF.

15 MR. KALFAYAN: RIGHT. SO IF THE COURT WANTS ME
16 TO FILE THE OPT-IN FORM AND FILE ANOTHER DECLARATION TO
17 SHOW THAT THE LESLIE PROPERTY WAS SOLD --

18 THE COURT: AND YOU NEED TO DISMISS THAT ANSWER.

19 MR. KALFAYAN: AND DISMISS THE ANSWER. THAT'S
20 FINE. SO SHOULD I FILE ANOTHER MOTION AND COME BACK
21 BEFORE THIS COURT IN ANOTHER MOTION OR JUST FILE THESE
22 PAPERS?

23 THE COURT: WHY DON'T WE CONTINUE THE HEARING ON
24 THIS MOTION TO ANOTHER TIME SO WE DON'T HAVE TO
25 RE-NOTICE IT. MY CONCERN IS THAT THIS CASE IS GOING TO
26 BE AROUND FOR MANY, MANY YEARS EVEN AFTER ANY POTENTIAL
27 JUDGMENT IS ENTERED. AND NONE OF US ARE GOING TO BE
28 HERE AT THAT TIME; I CAN MAKE THAT FORECAST REASONABLY.

1 MR. KALFAYAN: I AGREE WITH YOU, YOUR HONOR.

2 THE COURT: AND I THINK THE RECORD NEEDS TO BE
3 REAL CLEAR AS TO WHAT WE ARE DOING AND WHO IS DOING
4 WHAT.

5 MR. KALFAYAN: HENCE, YOUR HONOR, MY INTENT TO
6 BRING IN TWO CLASS REPS. BECAUSE MS. WILLIS DID SELL
7 HER PROPERTY. AND I AM CONCERNED THAT THE PUBLIC WATER
8 SUPPLIERS AND ASSUMED LAND OWNERS ARE GOING TO BE
9 PRESENTING YOU WITH A PROPOSED SETTLEMENT AGREEMENT THAT
10 I WILL BE FORCED TO APPEAR AND OBJECT TO. SO THE
11 IMPORTANCE OF HAVING AN INDIVIDUAL AND AN INSTITUTION AS
12 CLASS REPRESENTATIVE IS CRITICAL.

13 THE COURT: I UNDERSTAND. THIS IS A JUDGMENT IN
14 EQUITY THAT WILL BE AROUND FOR A LONG TIME. OKAY. I
15 WILL.

16 MR. KALFAYAN: I WILL FILE ANOTHER BRIEF IN THIS
17 MATTER AND FILE.

18 THE COURT: YOU CAN DETERMINE THE DATE BY FILING
19 IT. YOU WILL BE ABLE TO KNOW WHEN TO PICK A DATE WHEN
20 WE WILL DO SOMETHING ELSE HERE. AS A MATTER OF FACT,
21 YOU MIGHT CONSIDER THE 22ND OF DECEMBER, BECAUSE I KNOW
22 THERE IS A SUMMARY JUDGMENT THAT WILL BE HEARD IN
23 SAN JOSE AT NINE O'CLOCK THAT DAY.

24 MR. KALFAYAN: YOUR HONOR, JUST TO BE CLEAR THEN,
25 MR. ESTRADA IS A CLASS REPRESENTATIVE?

26 THE COURT: I GRANTED HIS REQUEST. THERE WAS NO
27 OBJECTION TO HIS APPLICATION.

28 MR. KALFAYAN: THANK YOU, YOUR HONOR.

1 THE COURT: THANK YOU.

2 ALL RIGHT. ANTELOPE VALLEY MOBILE
3 ESTATES.

4 MR. WILSON: GOOD MORNING, YOUR HONOR. WALTER
5 WILSON APPEARING FOR ANTELOPE VALLEY MOBILE ESTATES,
6 LLC.

7 THE COURT: GOOD MORNING, MR. WILSON. WHO IS
8 APPEARING IN OPPOSITION?

9 MR. DUNN: I AM, YOUR HONOR.

10 THE COURT: OKAY. THANK YOU. I HAVE READ YOUR
11 BRIEFS, BOTH THE OPENING, THE OPPOSITION AND THE REPLY.
12 IS THERE FURTHER ARGUMENT?

13 MR. WILSON: NO, YOUR HONOR. EVERYTHING IS
14 STATED IN MY BRIEFS. IT'S BEEN CLEAR THAT YOU HAVE READ
15 THINGS. EVERYTHING IS THERE.

16 THE COURT: MR. DUNN, ANYTHING FURTHER?

17 MR. DUNN: NOTHING FURTHER, YOUR HONOR.

18 THE COURT: MY CONCERN ABOUT THIS IS SOMEWHAT
19 PRAGMATIC. AND THE REASON THAT I AM CONCERNED IS THIS.
20 THERE IS NO QUESTION THAT YOUR CLIENTS ARE PUMPING
21 SOMEWHERE AROUND LESS THAN NINE ACRE-FEET A YEAR, MORE
22 THAN EIGHT AND LESS THAN NINE GENERALLY.

23 THE CLASS DEFINITION, YOU ARE CORRECT,
24 SETS THE OUTER LIMIT AT 25 ACRE-FEET A YEAR. THE
25 SETTLEMENT THAT THE PARTIES HAVE NEGOTIATED ON BEHALF OF
26 THAT CLASS IS GENERALLY TO PERMIT A MAXIMUM OF THREE
27 ACRE-FEET OR MINIMUM, I SHOULD SAY, OF THREE ACRE-FEET A
28 YEAR FOR EACH OF THE PARCELS THAT ARE OWNED BY

1 INDIVIDUALS, WHATEVER THEIR BUSINESS MIGHT BE.

2 THAT IS GOING TO BE COMING UP FOR APPROVAL
3 ON A PRELIMINARY APPROVAL ON A MOTION THAT WE WILL SET,
4 I HOPE TODAY, THAT WILL THEN APPEAR WITH A REQUEST THAT
5 THE COURT GRANT THAT MOTION.

6 THERE IS A GREAT LIKELIHOOD BASED ON WHAT
7 I KNOW ABOUT THE MEMBERS OF THE CLASS AND THEIR
8 PRODUCTION BASED UPON THE STATISTICAL ANALYSIS AND
9 OTHERS THAT HAVE BEEN DONE THAT THE COURT WILL GRANT
10 THAT MOTION. THAT'S GOING TO ESTABLISH A MINIMUM OF
11 THREE ACRE-FEET A YEAR AND WILL ENSURE THAT ALL OF THE
12 CLASS MEMBERS CAN PUMP AT LEAST THAT.

13 THERE IS ALSO GOING TO BE KIND OF A
14 MAXIMUM TO THAT. I BELIEVE IT'S GOING TO BE
15 APPROXIMATELY THREE ACRE-FEET A YEAR. YOU ARE GOING TO
16 OBJECT TO THAT. IF THE COURT APPROVES IT AS TO THOSE
17 MEMBERS WHO ARE REQUESTING APPROVAL, THEN THAT IS GOING
18 TO -- I THINK WHAT IS LIKELY TO HAPPEN IS THAT THE COURT
19 IS LIKELY TO EXCLUDE YOUR CLIENT FROM THE CLASS AS A
20 RESULT OF THEIR OPPOSITION TO THE PROPOSED SETTLEMENT.

21 THE CONSEQUENCE OF THAT WILL BE THAT YOU
22 ARE GOING TO BE BACK IN THE SAME POSITION THAT YOU ARE
23 IN TODAY THAN IN ABOUT PROBABLY THREE MONTHS.

24 MR. WILSON: I SEE WHAT YOU ARE SAYING. I DID
25 NOT SEE A THREE ACRE-FEET PER YEAR MAXIMUM IN THE
26 PARTIAL -- I AM CALLING IT A PARTIAL SETTLEMENT THAT WAS
27 DONE WITH THE WOOD CLASS.

28 I WILL CERTAINLY HAVE ARGUMENT THAT THE

1 INTERPRETATION OF THAT DOCUMENT INDICATES THAT THE
2 STIPULATING PARTIES, ONLY A FEW OF THE PUBLIC WATER
3 SUPPLIERS, WOULD REFRAIN FROM CONTESTING. AND I WOULD
4 SAY IT WAS THREE ACRE-FEET PER HOUSEHOLD. WHEN YOU LOOK
5 AT THE OPENING SENTENCE OF THAT ORDER -- AND I'M SORRY,
6 YOUR HONOR. I SAW THAT YOU WERE DISDAINED THERE AT MY
7 TALKING ABOUT THE ORDER ITSELF.

8 THE COURT: NO. YOU ARE FREE TO MAKE AN
9 ARGUMENT. I HAVEN'T READ THE PROPOSED STIPULATION. ALL
10 I KNOW IS WHAT PEOPLE TELL ME IN THEIR PAPERS.

11 MR. WILSON: I AM TALKING ABOUT THE
12 PRELIMINARY -- THE EXISTING SETTLEMENT AGREEMENT THAT
13 WAS APPROVED FOR THE WOOD CLASS THAT WAS PART OF THE
14 OPPOSITION PAPERS. I AM NOT TALKING ABOUT THE PROPOSED
15 STIPULATION TO A PHYSICAL SOLUTION THAT IS NOT SUPPOSED
16 TO BE DISCUSSED. DID I MISUNDERSTAND IT?

17 WERE YOU TALKING ABOUT THE PROPOSED
18 PHYSICAL SOLUTION?

19 THE COURT: IN EFFECT, YES. BUT THAT IS
20 REQUIRING SOME SPECULATION ON MY PART, BECAUSE I HAVEN'T
21 SEEN IT. IT HAS NOT BEEN DISCLOSED TO ME. ALL I AM
22 DOING IS READING BETWEEN THE LINES.

23 MR. WILSON: IF THAT IS WHAT WE ARE TALKING ABOUT
24 THEN I WOULD STILL REQUEST THAT MY CLIENTS BE MADE A
25 MEMBER OF THE CLASS, AND WE'LL DEAL WITH THINGS AS IT
26 COMES ALONG. IS THERE ANY DRAWBACK TO MY CLIENT BEING
27 KICKED OUT OF THE CLASS IN THE FUTURE?

28 THE COURT: WELL, I DON'T KNOW. IT'S UP TO YOU.

1 YOU CAN EVALUATE BETTER THAN I CAN.

2 MR. MCLACHLAN WANTS TO SAY SOMETHING.

3 MR. MCLACHLAN: I JUST THOUGHT I MIGHT BE ABLE TO
4 HELP CLARIFY THIS A LITTLE BIT. AND AS I AM SPEAKING, I
5 MIGHT HAND THE COURT REPORTER MY CARD SO SHE KNOWS WHO
6 IS TALKING. THIS IS MIKE MCLACHLAN ON BEHALF OF RICHARD
7 WOOD AND PUMPER CLASS.

8 WE HAVE BEEN A LITTLE FAST AND LOOSE OVER
9 THE LAST COUPLE MONTHS WITH REGARDS TO THE DISCUSSIONS
10 ABOUT THE PHYSICAL SOLUTION, INTERLOCUTORY JUDGMENT THAT
11 YOU HAVE TO BE PRESENTED HERE, YOUR HONOR. AND I AM
12 RETICENT TO RAISE ANYONE'S IRE INTO GETTING INTO DETAILS
13 THERE. I CAN TALK ABOUT WHAT YOUR HONOR HAS ALREADY
14 APPROVED A YEAR AGO IN TERMS OF THE PARTIAL SETTLEMENT
15 AND CLASS OF MR. BUNN'S CLIENT,
16 MR. MILIBAND'S CLIENT AND MR. EVERTZ' CLIENT.

17 PERHAPS THIS IS A LITTLE OF THE CONFUSION
18 THAT IS IN THE AIR RIGHT NOW IS THAT IT WOULD SET UP AT
19 THAT TIME AS 1.3 ACRE-FEET PER PARCEL OR HOUSEHOLD.
20 THERE ARE SOME PARCELS IN THE ANTELOPE VALLEY, NOT A LOT
21 OF THEM BUT A NUMBER OF THEM THAT ARE SINGLE PARCELS AND
22 HAVE MULTIPLE HOUSEHOLDS ON THERE. I WON'T GET INTO THE
23 NEGOTIATIONS.

24 ESSENTIALLY WHAT WE NEGOTIATED WAS THAT
25 EACH OF THOSE HOUSEHOLDS WAS DEEMED TO USE AN AVERAGE OF
26 1.3 ACRE-FEET OF WATER. AND ANY INDIVIDUAL COULD USE UP
27 TO A MAXIMUM OF THREE ACRE-FEET. AND THAT DEALT WITH
28 THE ISSUE AND THE PROBLEM OF ME NOT YET HAVING ANY SORT

1 OF REAL RELIABLE EXPERT ANALYSIS IN TERMS OF
2 NEGOTIATING.

3 THOSE TERMS, AS THE COURT HAS UNDERSTOOD,
4 GENERALLY CARRIED OVER INTO WHAT IS CURRENTLY JUST ABOUT
5 FINISHED TO BE PRESENTED TO YOUR COURT, YOUR HONOR. AND
6 THAT IS WHY I HAVE EXTENSIVE -- I DON'T KNOW HOW MUCH
7 TIME I HAVE SPENT ON THE PHONE WITH HIM MR. WILSON, BUT
8 IT HAS BEEN QUITE A BIT OF TIME.

9 I HAVE RUN THROUGH THE PROS AND CONS UP
10 AND DOWN. OBVIOUSLY I DON'T HAVE A DOG IN THIS FIGHT,
11 BUT HE SEEMS TO UNDERSTAND THE PROS AND CONS. THE WAY
12 THE SETTLEMENT WILL WORK IN TERMS OF HIS CLIENT IS THAT
13 I THINK THERE IS 20 SOME-ODD HOOKUPS THAT HE HAS GOT ON
14 A SINGLE PARCEL.

15 EACH OF THOSE HOUSEHOLDS THERE UNDER THE
16 TERMS OF THE SETTLEMENT WOULD HAVE THE RIGHT TO USE THAT
17 1.2 ACRE-FEET. AND THAT, AS I UNDERSTAND, SOME OF THE
18 NATURE OF THE OBJECTION IS THAT YOU ARE FITTING A SINGLE
19 PARCEL IN THERE WITH A BUNCH OF, YOU KNOW, 20-SOME ODD
20 HOUSEHOLDS.

21 I THINK THERE IS A WAY TO NEGOTIATE A
22 SOLUTION IN THE CONTEXT OF ONGOING DISCUSSIONS; THAT HAS
23 NOT OCCURRED. AND I THINK THAT IS PENDING YOUR HONOR'S
24 OUTCOME. HIS CLIENT CLEARLY MEETS THE CLASS DEFINITION.
25 AND, AGAIN, I TALKED TO MR. WILSON ON THE PHONE THIS
26 MORNING AT 7:30 OR SOME TIME LIKE THAT AGAIN TELLING HIM
27 THAT IT'S VERY LIKELY IT'S AN APPROVAL FOR ABOUT 20 OR
28 MORE HOOKUPS ON THE PROPERTY.

1 I WANTED THEM TO BE CLEAR THAT THE CLASS
2 IS GOING TO CLOSE ITSELF. WE ARE BUILDING IN PROVISIONS
3 THAT WE WILL SHUT THE SMALL PUMPER CLASS THAT WOULD
4 DEFINE A BLOCK OF PEOPLE AS OF DATE CERTAIN. I WANTED
5 TO MAKE CLEAR TO HIM THAT THOSE ADDITIONAL HOOKUPS IF
6 THEY OCCURRED WOULD NOT GET THE WATER RIGHTS THAT ARE IN
7 THE PHYSICAL SOLUTION. WE HAD THAT DISCUSSION, AND HE
8 SEEMED TO BE OKAY WITH THAT.

9 THAT IS KIND OF THE SITUATION. HE AGAIN
10 CONFIRMED TO ME THAT HIS CLIENT WAS OKAY WITH THAT. I
11 THINK IT'S PROBABLY PRETTY UNLIKELY THAT MR. WILSON ENDS
12 UP BEING AN OBJECTOR TO THIS SETTLEMENT, BECAUSE EACH OF
13 THOSE -- IT'S NOT THREE ACRE-FEET FOR 20 SOME-ODD UNITS.
14 THE WAY WE ARE CALCULATING IT, IT'S 1.2. AND THAT IS
15 THE SOURCE OF THE DISPLEASURE AMONG SOME OF THE OTHER
16 PARTIES AS I UNDERSTAND IT, THE FACT THAT IT'S NOT A
17 TYPICAL SMALL PUMPER CLASS MEMBER.

18 THE COURT: WELL, MY IMPRESSION, AND I GUESS IT
19 MAY NOT BE CORRECT, WAS THAT THE ALLOCATION OF THE
20 MINIMUM AND THE MAXIMUM TO BE PRODUCED WAS PER PUMPING
21 PARCEL AS OPPOSED TO PER INDIVIDUAL. BUT IF THAT IS NOT
22 CORRECT THEN YOUR SETTLEMENT IS WHAT YOUR SETTLEMENT IS.
23 OBVIOUSLY I DON'T HAVE A CRYSTAL BALL. I CAN'T READ IT
24 WITHOUT SEEING IT.

25 LET ME HEAR FROM THE OPPOSITION. THANK
26 YOU, MR. MCLACHLAN. THAT IS HELPFUL.

27 MR. BUNN?

28 MR. BUNN: YOUR HONOR, THOMAS BUNN, PALMDALE

1 WATER DISTRICT. MR. DUNN SAID THAT HE WAS GOING TO
2 REPRESENT THE OPPOSITION, BUT I THINK MAYBE IT'S MORE
3 APPROPRIATE FOR ME TO, BECAUSE I AM A PARTY TO THE
4 PARCEL SETTLEMENT THAT HAS BEEN APPROVED BY THE COURT.
5 I WILL TALK ABOUT THAT ONE, NOT ABOUT WHAT WE ARE
6 NEGOTIATING OR HOPEFULLY FINISHING NEGOTIATING TO
7 PRESENT TO THE COURT IN THE FUTURE.

8 IN OUR SETTLEMENT, THE THREE ACRE-FEET IS
9 A MAXIMUM THAT CAN BE PUMPED WITHOUT ASSESSMENT. A WOOD
10 CLASS MEMBER CAN PUMP MORE THAN THAT BUT WOULD BE
11 CHARGED A REPLACEMENT ASSESSMENT FOR ANY PUMPING IN
12 EXCESS OF THREE ACRE-FEET PER YEAR. IT'S THAT THREE
13 ACRE-FEET THAT WE ARE CONCERNED ABOUT, BECAUSE THERE IS
14 LANGUAGE ABOUT PER HOUSEHOLD; THAT THE PRECISE LANGUAGE
15 IN OUR SETTLEMENT AGREEMENT SAYS WHERE TWO OR MORE WOOD
16 CLASS MEMBERS RESIDE IN THE SAME HOUSEHOLD, THEY SHOULD
17 BE TREATED AS A SINGLE WOOD CLASS MEMBER FOR THE
18 PURPOSES OF DETERMINING WATER RIGHTS.

19 I THINK, FRANKLY, THAT THE THREE ACRE-FOOT
20 LIMIT WOULD APPLY TO MR. WILSON'S CLIENT AS A WHOLE, BUT
21 NEVERTHELESS WE ARE CONCERNED. HE SAID A MOMENT AGO
22 THAT HE FELT THAT IT WAS A PER-HOUSEHOLD LIMIT. WHEN
23 YOU MULTIPLY THAT BY ALL OF THE MEMBERS OF THE MOBILE
24 HOME PARK, THAT WAS FAR MORE THAN EVER CONTEMPLATED THAT
25 A MEMBER OF THE WOOD CLASS SHOULD BE ABLE TO PUMP
26 WITHOUT ASSESSMENT. SO WE HAVE THAT ISSUE, AND THAT IS
27 WHY WE ARE CONCERNED.

28 I WOULD ALSO SAY THAT THE SETTLEMENT

1 AGREEMENT THAT THE COURT APPROVED SAYS IN IT THAT THE
2 PARTIES AGREE THAT AS OF THE EFFECTIVE DATE OF THE
3 AGREEMENT THE MEMBERSHIP OF THE WOOD CLASS WOULD BE
4 FINAL. IT DOES PROVIDE THAT THE COURT CAN GRANT
5 APPROVAL FOR ADDITIONAL PARTIES TO JOIN THE WOOD CLASS,
6 BUT I WOULD SAY THAT THE COURT HAS THE DISCRETION
7 WHETHER TO DO THAT OR NOT.

8 AND IN THIS CASE THERE IS A GOOD REASON
9 NOT TO DO SO BECAUSE OF THE NATURE OF THE PERSON THAT IS
10 APPLYING FOR MEMBERSHIP IN THE WOOD CLASS. WE HAVE
11 EXPRESSED NO OPPOSITION TO SOMEONE WHO OPTED OUT OF THE
12 WOOD CLASS THEN WAS SERVED WITH THE LAWSUIT, REALIZED
13 THAT THAT WAS MORE THAN THEY BARGAINED FOR AND WANTED TO
14 OPT BACK IN. THAT WAS A NATURAL MISUNDERSTANDING, AND
15 WE HAVE NO PROBLEM WITH THAT.

16 I THINK THIS IS A WHOLE DIFFERENT ANIMAL
17 WHERE THE MOBILE HOME PARK IS ESSENTIALLY ATTEMPTING TO
18 GET MORE WATER RIGHTS BY BEING A MEMBER OF THE WOOD
19 CLASS THEN IT WOULD AS A PARTY TO THE CASE.

20 THE COURT: WELL, IN PART, THAT WILL BE
21 DETERMINED BY THE INTERPRETATION OF THE AGREEMENT THAT
22 IS ENTERED INTO BY THE CLASS MEMBERS WITH THE PUBLIC
23 WATER SUPPLIERS.

24 MR. BUNN: YES.

25 THE COURT: AND, OBVIOUSLY, I CAN'T INTERPRET
26 THAT AT THIS POINT. BUT IT DOES SEEM TO ME THAT IT'S
27 SOMEWHAT ANOMALOUS FOR ONE PARTY THAT OWNS SEVERAL ACRES
28 TO BE PROVIDING WATER FROM A SINGLE WELL OR TWO WELLS AS

1 IT WERE TO EVERYBODY THAT RESIDES WITHIN THAT PLOT
2 WITHIN THE MOBILE HOME.

3 SO I HAVE SOME GREAT CONCERNS ABOUT THAT.
4 AND I AM NOT SURE THAT GIVEN THE DEFINITIONS -- AND I AM
5 NOT TALKING ABOUT THE STARK DEFINITION OF 25 ACRE-FEET A
6 YEAR OR LESS BUT THE ACTUAL COMPOSITION OF THE MEMBERS
7 OF THAT CLASS SO FAR AS WE ARE ABLE TO LEARN THEM AT
8 THIS POINT, I AM NOT SURE THAT IS CONSISTENT FOR
9 MEMBERSHIP. IT MIGHT WELL BE THAT AT SOME POINT THE
10 COURT WILL HAVE TO INTERPRET AND MAYBE CLARIFY THE WOOD
11 CLASS DEFINITION.

12 MR. WILSON: I UNDERSTAND THAT, YOUR HONOR. AT
13 THIS POINT, ALL I CAN DO, A NEWBIE TO THE CASE, ALL I
14 CAN DO IS GO ON THE WRITTEN ORDER. AND THAT ORDER SAYS
15 THAT MY CLIENT CLEARLY QUALIFIES. I HEAR THE
16 OBJECTIONS. I HAVE READ THE PARTIAL SETTLEMENT AND
17 DON'T AGREE WITH THE INTERPRETATION. I DO HEAR THE
18 COURT VERY CLEARLY SAY THAT THERE IS A CERTAIN INEQUITY
19 TO MY CLIENT BEING AFFORDED SUBSTANTIAL WATER RIGHTS.

20 I CAN INDICATE THAT ALL WE WANT TO DO IS
21 CONTINUE OUR BUSINESS AS IT IS PRESENTLY CONSTITUTED AND
22 UNDER THE WRITTEN ORDER, WE QUALIFY AT THIS POINT. WE
23 WOULD TAKE THINGS AS THEY COME.

24 THE COURT: WELL, ONE OF THE CONCERNS THAT I HAVE
25 IS -- AND PERHAPS THE FORMAT OF THE PHYSICAL SOLUTION IS
26 GOING TO ANSWER THAT. BUT IT'S MY UNDERSTANDING THAT
27 THE PARTIES ARE GOING TO ESSENTIALLY AGREE TO THE
28 APPOINTMENT AND CREATION OF A WATER MASTER OF SOME SORT

1 THAT IS GOING TO REGULARLY MAINTAIN AND MONITOR THE
2 WATER USAGE AND ALLOCATE THE WATER, TO SOME EXTENT
3 REDUCE PUMPING OR INCREASED PUMPING AS THE CASE MAY BE,
4 DEPENDING UPON THE CIRCUMSTANCES OF TRYING TO KEEP THE
5 RECHARGE EQUAL OR BETTER THAN EXTRACTIONS TO BASICALLY
6 REHABILITATE AND PRESERVE THE BASIN.

7 YOUR CLIENT IS GOING TO BE IN THE SAME
8 POSITION IF NOT A MEMBER OF THE CLASS AS ALL OF THE
9 OTHER PARTIES WHO ARE LAND OWNERS -- OVERLYING LAND
10 OWNERS OR PUBLIC WATER PRODUCES WHO WILL BE SUBJECT TO
11 THE SAME POTENTIALS LIMITATIONS ON PUMPING WHETHER YOU
12 ARE IN THE WOOD CLASS OR NOT.

13 AND IT SEEMS TO ME THAT AT THIS POINT
14 THERE IS ENOUGH OF A DISPARITY IN YOUR WATER USAGE THAT
15 PERHAPS YOU SHOULD NOT BE PART OF THE WOOD CLASS NOW. I
16 UNDERSTAND YOUR DESIRE AND YOUR CLIENT'S DESIRE TO
17 CONTINUE TO OPERATE THEIR BUSINESS TO NOT BE SADDLED
18 WITH VERY LARGE LITIGATION COSTS; I UNDERSTAND THAT.
19 AND THAT IS A VERY NATURAL THING FOR YOU TO WANT TO DO.

20 ON THE OTHER HAND, WE ARE TRYING TO KEEP
21 INTACT A SETTLEMENT THAT IF A PARTY BECOMES A PART OF
22 THAT CLASS AND IS NOT GOING TO BE BOUND BY AT LEAST ONE
23 INTERPRETATION OF THE TERMS OF AN AGREEMENT THAT COULD
24 UPSET THE ENTIRE SETTLEMENT AND PREVENT ITS OCCURRING.

25 MR. WILSON: I DON'T BELIEVE THAT IS TRUE. I AM
26 HAPPY TO DEAL WITH THE PROPOSED SETTLEMENT WHEN THE
27 PROPOSED SETTLEMENT ARRIVES. AT THIS POINT I UNDERSTAND
28 IT'S NOT BEFORE THE COURT, SO WE ARE PREVENTED FROM

1 DISCUSSING IT, I THINK.

2 THE COURT: WELL, THE DIFFICULTY THAT I HAVE IS
3 THAT YOU HAVE ALREADY TOLD ME AND EVERYBODY ELSE HERE
4 WHAT YOUR INTERPRETATION OF THE USAGE MIGHT BE AS TO THE
5 PARTIAL. AND OBVIOUSLY IF THE SUBSEQUENT AGREEMENT THAT
6 WE MAY END UP APPROVING IS ESSENTIALLY THE SAME TYPE OF
7 LANGUAGE AND SAME TYPE OF ALLOCATION, YOUR
8 INTERPRETATION IS VERY DIFFERENT THAN WHAT I AM HEARING
9 FROM OTHER COUNSEL AS TO WHAT THEIR BELIEF IS AS TO WHAT
10 IS INTENDED BY THAT LANGUAGE.

11 MR. WILSON: SO WE SHOULD LOOK AT THE LANGUAGE.

12 THE COURT: WHAT I AM INCLINED TO DO --

13 MR. WILSON: I WOULD ASK THAT YOU PUT US INTO THE
14 CLASS NOW SO THAT WE CAN CUT OFF ATTORNEYS' FEES AND
15 SUCH. IF YOU HAVE TO BOOT US LATER, THEN YOU DO.

16 THE COURT: I THINK WHAT YOU WILL DO IS
17 EXACERBATE EVERYBODY ELSE'S ATTORNEYS' FEES IF I DO
18 THAT, BECAUSE IT WILL BE BACK TO THE DRAWING BOARD, I
19 BELIEVE, FOR THE PROPOSED SETTLEMENT. I DON'T WANT TO
20 DO THAT. I DON'T WANT TO DO ANYTHING AT THIS POINT THAT
21 WILL UPSET THIS PROPOSED SETTLEMENT.

22 WHAT I AM INCLINED TO DO IS, AGAIN, TELL
23 YOU I WILL DENY YOUR MOTION AT THIS TIME. IT WILL BE
24 WITHOUT PREJUDICE TO YOUR RENEWING THE MOTION. I WILL
25 INVITE YOU TO SIT DOWN WITH THE OTHER PARTIES. THERE IS
26 A LIAISON COMMITTEE THAT YOU MIGHT TALK TO TO SEE HOW
27 YOU CAN RESOLVE YOUR CONCERNS SO THAT YOU CAN EITHER
28 SETTLE OR NOT.

1 AT THIS POINT IN TIME I AM NOT GOING TO
2 GRANT THE MOTION. IT IS A VERY LATE APPLICATION, BY THE
3 WAY.

4 MR. WILSON: WE WERE SERVED ON JULY 15TH. WE
5 FILED OUR FIRST PLEADING AND ENTERED THIS ACTION ON
6 AUGUST THE 5TH. I THINK UNTIMELY IS UNFAIR.

7 THE COURT: WELL, YOU WERE SERVED BY NOTICE AS A
8 MEMBER OF THE CLASS IF YOU WANTED TO BE A MEMBER OF THE
9 CLASS ABOUT TWO YEARS AGO, I THINK.

10 I DON'T KNOW. MR. MCLACHLAN, WHEN WAS
11 THAT PUBLICATION, FIVE YEARS AGO?

12 MR. MCLACHLAN: 2009.

13 THE COURT: 2009. THAT'S FIVE YEARS AGO.

14 MR. MCLACHLAN: YOU'RE TALKING ABOUT THE
15 NEWSPAPER PUBLISH NOTICE?

16 THE COURT: YES.

17 MR. MCLACHLAN: AND, AGAIN, FOR THE COURT
18 COURTER, THIS IS MIKE MCLACHLAN.

19 THE COURT: THAT IS NOT THE WHOLE REASON THAT I
20 AM DENYING YOUR MOTION, BUT IT IS WITHOUT PREJUDICE. I
21 REALLY AM GOING TO URGE YOU TO SIT DOWN AND TALK WITH
22 THE LIAISON COUNSEL ABOUT HOW YOU MIGHT RESOLVE YOUR
23 ISSUE, BECAUSE I UNDERSTAND IT. OKAY?

24 MR. WILSON: THANK YOU, YOUR HONOR.

25 THE COURT: ALL RIGHT. THANK YOU, MR. WILSON.

26 THE OTHER THING WE WERE TO TAKE UP TODAY
27 IS THE PROPOSED SETTLEMENT ORDER THAT WOULD TAKE A
28 SCHEDULE FOR MOVING AHEAD. I WILL GET MY HANDS ON THOSE

1 PAPERS NOW. OF COURSE, I RECEIVED PROPOSALS FOR GROUPS
2 OF PARTIES.

3 THE LAST ONE THAT I RECEIVED WAS ON BEHALF
4 OF THE AV SOLAR RANCH. I HAVE RECEIVED ONE FROM THE
5 FEDERAL GOVERNMENT THAT WAS JOINED BY SEVERAL OF THE
6 PARTIES. AND I HAVE RECEIVED -- I AM NOT SURE FROM WHOM
7 ELSE. I RECEIVED THE PROPOSAL FROM BOLTHOUSE, WATER
8 WORKS 40, THE U. S. AND OTHERS. THERE IS A LOT OF
9 JOINDERS, ASK FOR SCHEDULING THE PRELIMINARY APPROVAL OF
10 THE WOOD CLASS SETTLEMENT FOR FEBRUARY 7TH.

11 DOES ANYONE WANT TO FURTHER DISCUSS THAT
12 PROPOSAL?

13 THE COURT: YES.

14 MR. KALFAYAN: YOUR HONOR, RALPH KALFAYAN ON
15 BEHALF OF THE WILLIS CLASS. FIRST I JUST WANTED TO BE
16 SURE THAT THE COURT RECEIVED MY PARTIAL OPPOSITION TO
17 THAT CMO.

18 THE COURT: I DID. I DON'T REMEMBER WHAT IT
19 SAID.

20 KALFAYAN: IT WAS VERY LENGTHY. BASICALLY, IF I
21 CAN SUMMARIZE IT.

22 THE COURT: YES.

23 MR. KALFAYAN: WE HAVE NO OPPOSITION TO THE
24 PROGRAM LAYED OUT FOR THE FILING OF THE PROPOSED
25 PHYSICAL SOLUTION AND THE DEADLINE FOR THE FINAL
26 APPROVAL OF THE PROPOSED PHYSICAL SOLUTION. THE ONLY
27 OPPOSITION THAT WE HAVE IS FOR THE SETTING OF AN
28 EXCHANGE DATE, DISCOVERY AND TRIAL DATE FOR

1 NON-STIPULATED PARTIES, AND THAT IS BROAD ENOUGH THAT
2 MAY HAVE ENCUMBERED THE WILLIS CLASS.

3 THE COURT: WHAT I ASKED, THE FIRST QUESTION WAS
4 SCHEDULING THE PRELIMINARY APPROVAL HEARING FOR FEBRUARY
5 THE 7TH, 2015. IS THERE ANY OBJECTION TO THAT?

6 MR. KALFAYAN: NO, YOUR HONOR.

7 MR. CASEY: YOUR HONOR, THIS IS ED CASEY
8 APPEARING ON COURT CALL ON BEHALF OF THE SOLAR POWER
9 DEFENDANTS.

10 THE COURT: YES, MR. CASEY.

11 MR. CASEY: WE WERE THE ONES THAT FILED THE
12 ALTERNATIVE SCHEDULE. AND AS WE SAID IN THE FILING, WE
13 ARE JUST TRYING TO SEE IF THERE IS ANY WAY WE CAN
14 EXPEDITE HOPEFULLY THE FINAL RESOLUTION OF THE MATTER.
15 ONE OF THE THINGS THAT WE THOUGHT WE COULD TALK ABOUT
16 TODAY IN TERMS OF EXPEDITING WAS THE PRELIMINARY HEARING
17 ON THE WOOD CLASS MOTION. WE DIDN'T UNDERSTAND,
18 FRANKLY, WHY IT SHOULD TAKE THAT LONG TO GET TO A
19 HEARING ON A FEE MOTION.

20 THE COURT: I'M NOT GOING TO ARGUE THE OPPOSITION
21 TO THAT. DOES SOMEBODY WANT TO TAKE THAT UP?

22 MR. MCLACHLAN: MR. MCLACHLAN AGAIN FOR THE
23 CLASS. YES, I WAS INVOLVED WITH A NUMBER OF THE OTHER
24 PARTIES IN SETTING THIS OUT. SINCE THIS QUESTION
25 ADDRESSES THE CLASS, I WILL GET SOME OF THE THOUGHT
26 THERE.

27 PRIMARILY IN ORDER TO BE ABLE TO FILE THAT
28 MOTION WHICH BY THIS SCHEDULE WOULD HAVE TO BE FILED ON

1 16 COURT DAYS BEFORE, THAT'S SOME POINT IN THE MIDDLE OF
2 JANUARY. PREFATORY TO DOING THAT WE WOULD NEED A SIGNED
3 AGREEMENT.

4 AS WE'VE TALKED ABOUT MANY TIMES, WITH ALL
5 THE GOVERNMENT AGENCIES HERE INCLUDING THE UNITED STATES
6 AND THE PUBLIC WATER SUPPLIERS, THERE IS AT LEAST 60
7 DAYS REQUIRED TO GET THAT COMPLETED. THAT IS REALLY THE
8 PROBLEM. I'M NOT GOING TO PRESENT TO YOUR HONOR A
9 MOTION FOR PRELIMINARY APPROVAL OF THIS SETTLEMENT WHEN
10 HALF OR MORE OF THE PARTIES HAVEN'T APPROVED IT, AND
11 THERE IS NO INDICATION THAT THEY WILL. I DON'T THINK
12 THAT IS PROPER OR APPROPRIATE TO DO THAT.

13 SO THAT IS REALLY THE REASON. FEBRUARY
14 7TH IS A SLIGHTLY AGGRESSIVE DATE. WE WOULD HOPE TO
15 HAVE THIS THING IN FRONT OF VARIOUS BOARDS VERY, VERY
16 SHORTLY. LET'S SAY BY NEXT WEEK IT GOT IN FRONT OF
17 THESE BOARDS, IT'S OPTIMISTIC TO SAY THE FIRST WEEK OF
18 JANUARY.

19 MR. LEININGER CAN SPEAK TO THE TIMING OF
20 THE U.S. GOVERNMENT. BUT I KNOW FOR THE WATER
21 SUPPLIERS, SOMETIMES IT HAS BEEN 30, 45 DAYS. SOMETIMES
22 IT HAS BEEN CLOSER TO 60 DAYS IN THE PAST. SO THAT IS
23 REALLY THE ISSUE THAT IS DRIVING IT. AND EVERYTHING
24 THAT FOLLOWS BEHIND IT THEREAFTER, YOU KNOW, THOSE DATES
25 ARE WHAT THEY ARE IN TERMS OF NEEDING DISCOVERY AND SO
26 FORTH NOR NON-STIPULATING PARTIES AND THE LIKE.

27 THE COURT: MR. CASEY, WERE YOU ABLE TO HEAR
28 THAT?

1 MR. CASEY: YES. I HEARD IT, AND I APPRECIATE
2 THE INFORMATION. WE WERE NOT AWARE OF THOSE KIND OF
3 ITEMS THAT NEED TO GO BEFORE THE FILING OF THE MOTION.
4 I APPRECIATE THE EXPLANATION.

5 THE COURT: YEAH. THAT'S BEEN AN ONGOING ISSUE
6 HERE AS THE PARTIES HAVE WORKED THROUGH TRYING TO
7 SCHEDULE DATES FOR THE SETTLEMENT. IT DOES MAKE SENSE
8 TO ME THAT WE ARE NOT ABLE TO DO THIS ANYMORE QUICKLY
9 THAN AS SCHEDULED OR PROPOSED. THIS WHOLE CASE HAS BEEN
10 A VERY SLOW MORASS IN SOME WAY.

11 MR. MILIBAND, DID YOU WANT TO SAY
12 SOMETHING?

13 MR. MILIBAND: YES, BRIEFLY. THANK YOU, YOUR
14 HONOR. WE MILIBAND APPEARING ON BEHALF OF PHELAN PINON
15 HILLS COMMUNITY SERVICES DISTRICT. WE DID ON
16 OCTOBER 30TH FILE A STATEMENT IN SUPPORT OF THIS
17 PROCESS. IN EXPLAINING THAT SUPPORT, IT ALSO GOES TO
18 OUR PRIOR REQUEST TO BE ABLE TO ENGAGE IN THAT TYPE OF
19 DISCOVERY, WHICH FRANKLY COULD JUSTIFY VACATING TODAY'S
20 TRIAL.

21 REGARDLESS OF WHETHER THIS TRIAL PROCEEDS
22 OR NOT AND REGARDLESS OF THAT RESULT, PHELAN WOULD STILL
23 HAVE UNRESOLVED CAUSES OF ACTION AND STILL BE A PARTY TO
24 THE CASE. I WANTED TO MAKE THAT POINT JUST SPOKEN ON
25 BEHALF OF PHELAN.

26 THE COURT: ALL RIGHT. BUT THE FIRST QUESTION IS
27 THE HEARING FOR THE PRELIMINARY APPROVAL. WE WILL SET
28 IT FOR FEBRUARY THE 7TH, 2015. I PRESUME THAT WILL BE

1 DOWN HERE WITH WE. WE WILL MAKE IT FOR 9:00, AND THAT
2 COULD CHANGE.

3 ALL RIGHT. SO THEN THE NEXT QUESTION IS
4 TO DETERMINE THE WOOD CLASS MEMBERSHIP CLOSING DATE
5 WHICH WILL BE SENT OUT WITH THE NOTICE OF SETTLEMENT.

6 WHAT DATE ARE WE LOOKING AT FOR THAT,
7 MR. MCLACHLAN?

8 MR. MCLACHLAN: I WILL NOTE THAT THIS WAS FILED
9 PRIOR TO SOME RECENT CHANGES THAT HAVE YET TO BE
10 CIRCULATED TO EVERYBODY IN THIS ROOM AND THE STIPULATED
11 PHYSICAL SOLUTION AND STIPULATED JUDGMENT THAT ACTUALLY
12 TRIGGER THE CLASS CLOSING DATE AS THE DATE THAT THE
13 COURT FINALLY APPROVES THE SETTLEMENT.

14 SO THAT PARAGRAPH 2-B IS ESSENTIALLY
15 ASSUMING THAT EVERYONE HAS AGREED TO THE LANGUAGE THAT
16 THE PARTIES HAVE COME UP WITH HAS BEEN RESOLVED. THE
17 DATE WE ARE TALKING ABOUT IN TERMS OF THE FINAL APPROVAL
18 DATE IS BELOW IN PARAGRAPH 2-F; THAT'S MAY 25, 2015.

19 AND THAT IS ENVISIONED ON BEING A DATE FOR
20 BOTH THE FINAL APPROVAL OF THE WOOD CLASS SETTLEMENT AS
21 WELL AS THE LARGER STIPULATED JUDGMENT OF PHYSICAL
22 SOLUTION AND SO THAT NON-STIPULATING PARTIES HAVE THE
23 OPPORTUNITY TO RAISE THEIR OBJECTIONS AT THAT POINT IN
24 TIME TO THE LARGER PHYSICAL SOLUTION.

25 MY SETTLEMENT IS REALLY JUST A SUBSET.
26 IT'S KIND OF A SIDECAR, IF YOU WILL, TO THE LARGER
27 PHYSICAL SOLUTION. AND IT JUST WILL HAVE THE STANDARD
28 CLASS ACTION LANGUAGE RELEASES, NOTICE OF THE CLASS.

1 THE COURT: IT SHOULD BE AT THE SAME DATE AS THE
2 APPROVAL OF THE STIPULATED JUDGMENT.

3 MR. MCLACHLAN: WE SET IT UP THAT WAY, BECAUSE WE
4 ANTICIPATE THAT WILL BE A RATHER EXTENSIVE PROCESS. IT
5 DOESN'T MAKE A LOT OF SENSE TO HAVE A NON-STIPULATING
6 PARTY OBJECTING AT THE PRELIMINARY APPROVAL STAGE WHICH
7 COULD BE A MULTI-DAY PROCEEDING POTENTIALLY AND THEN
8 DOING THE WHOLE THING AGAIN AT THE FINAL APPROVAL STAGE.

9 SO THE WAY WE SET THIS UP IS THAT YOUR
10 HONOR, IF YOU APPROVE THIS ORDER, WOULD ORDER THAT ALL
11 OBJECTING NON-STIPULATING PARTIES WOULD PUT ON THEIR
12 OBJECTIONS ON THAT MAY 25TH DATE TO EITHER THE WOOD
13 CLASS SETTLEMENT OR THE LARGER STIPULATED JUDGMENT AND
14 PHYSICAL SOLUTION.

15 MR. CASEY: YOUR HONOR, THIS IS MR. CASEY AGAIN.
16 IF I COULD BE HEARD.

17 THE COURT: YES.

18 MR. CASEY: I AM STILL TRYING, YOUR HONOR, TO SEE
19 IF WE CAN EXPEDITE THINGS BY A FEW WEEKS. WHILE I AGREE
20 THAT WE SHOULD HAVE THE FINAL HEARING ON THE WOOD'S
21 CLASS MOTION ON THE SAME DATE AS THE FINAL HEARING ON
22 THE PHYSICAL SOLUTION, I AM WONDERING WHEN WE CAN MOVE
23 UP THAT MAY 25TH DATE FOR BOTH OF THOSE MATTERS FOR TWO
24 REASONS.

25 ONE IS, AS I UNDERSTAND THE WOOD'S CLASS
26 PROCESS, THERE IS A PROPOSED APRIL 1 DATE FOR A DEADLINE
27 TO FILE OBJECTIONS TO THE WOOD'S CLASS SETTLEMENT. IF
28 THAT IS THE DATE, THAT MEANS THERE WOULD BE ALMOST TWO

1 MONTHS BETWEEN THAT DEADLINE AND THE HEARING WHICH SEEMS
2 TO BE A BIT LONG TO ME.

3 AND THE SECOND REASON IS -- AND THIS MAY
4 BE JUMPING AHEAD, BUT IN TERMS OF THE PROCESS TO
5 CONSIDER THE PROPOSED PHYSICAL SOLUTION, THERE SEEMS TO
6 BE, TO US, A GOOD AMOUNT OF TIME HERE FOR DISCOVERY
7 WHICH I AM NOT HEARING EXCEPT FOR MAYBE MR. MILIBAND
8 ANYBODY WHO REALLY DESIRES ENGAGING IN A LONG DISCOVERY
9 PROCESS.

10 THE COURT: ALL RIGHT. MR. DUNN?

11 MR. DUNN: YEAH. IF THIS MAY ASSIST THE COURT
12 AND THE PARTIES, THE PROPOSAL THAT WE SEE HERE IN
13 PARAGRAPH 2 HAS FOR 2-B THE HEARING OF FEBRUARY 7TH FOR
14 THE COURT TO MAKE THE DETERMINATION. I AM FINE WITH
15 WHAT COUNSEL FOR THE WOOD CLASS INDICATED THIS MORNING.
16 BUT THE WAY IT'S PRESENTED TO THE COURT IS THAT YOU
17 DON'T HAVE TO DECIDE THE DATE TODAY; THAT CAN BE DECIDED
18 ON THE 7TH.

19 BUT TO ADDRESS MR. CASEY'S CONCERN, WHEN
20 COUNSEL WORKED TOGETHER ON THIS PROPOSAL, WE TRIED TO
21 MAKE THIS AS AGGRESSIVE AS POSSIBLE TAKING INTO ACCOUNT
22 THAT IF THERE IS PRELIMINARY APPROVAL OF THE WOOD CLASS
23 SETTLEMENT ON OR ABOUT FEBRUARY 7TH, THAT WOULD THEN
24 TRIGGER THE PROCESS OF HAVING TO MAIL NOTICE TO THE
25 CLASS MEMBERS AND ALL OF THAT.

26 WHEN WE LOOKED AT THE TIME ESTIMATES TO
27 COMPLETE THAT, WE TOOK A PRETTY AGGRESSIVE SCHEDULE
28 HERE. BECAUSE, CANDIDLY, WHAT WE DISCUSSED IS IN ORDER

1 TO BE ABLE TO HOLD THAT MAY 25TH HEARING DATE FOLLOWING
2 THE FEBRUARY 7TH PRELIMINARY APPROVAL WE WOULD HAVE TO
3 BE READY RIGHT THERE ON FEBRUARY 8TH TO MAIL OUT THE
4 CLASS NOTICE.

5 SO WHAT I AM REPRESENTING TO THE COURT AND
6 TO THE PARTIES IS THAT WHEN WE PRESENTED THIS, WE TOOK
7 INTO ACCOUNT THAT IF THERE IS PRELIMINARY APPROVAL ON
8 THE 7TH, THAT WILL TRIGGER THE WHOLE PROCESS OF
9 PUBLICATION AND ALL OF THAT. AND, CANDIDLY, WE WERE
10 GOING TO BEGIN THAT PROCESS OF GETTING THAT READY IN THE
11 HOPE THAT THE SETTLEMENT AGREEMENT WOULD BE APPROVED ON
12 THE 7TH.

13 IN OTHER WORDS, WE ARE NOT PLANNING ON
14 WAITING UNTIL FEBRUARY 7TH TO BEGIN ALL OF THAT
15 PAPERWORK AND PROCESS FOR THE MAILING TO THE CLASS
16 MEMBERS. SO I HOPE THAT ASSISTS THE COURT AND THE
17 PARTIES.

18 THE COURT: ALL RIGHT.

19 MR. MCLACHLAN: YOUR HONOR, CAN I ADD ONE POINT
20 HERE THAT I THINK IS IMPORTANT?

21 THE COURT: YES.

22 MR. MCLACHLAN: AND, AGAIN, MR. MCLACHLAN FOR THE
23 WOOD CLASS. WE ALSO HAVE TO LOOK IN ANALYZING THE
24 60-DAY TIME FRAME IN PARAGRAPHS THREE, FOUR AND FIVE.
25 SO WE HAVE A DUAL TRACK ISSUE HERE. WE HAVE THE WOOD
26 CLASS, AND THEN WE ALSO HAVE THE NON-STIPULATING
27 PARTIES.

28 SO THE APPROVAL OF THE WOOD CLASS --

1 PRELIMINARY APPROVAL OF THE WOOD CLASS SETTLEMENT ON
2 FEBRUARY 7TH TRIGGERS EVENTS WITH REGARD TO
3 NON-STIPULATING PARTIES. AND WE KNOW A COUPLE THAT WILL
4 LIKELY OBJECT. THE COURT HAS MANY, MANY PARTIES THAT
5 HAVE FILED FORM ANSWERS THAT YOUR HONOR WILL ISSUE AND
6 ORDER THEM, HAILING THEM TO COURT ON A DATE CERTAIN TO
7 PROVE UP THEIR CLAIMS.

8 WE'VE SET FORTH DEADLINES HERE FOR WHICH
9 THEY CAN SUBMIT EXHIBITS. FOR EXAMPLE, THEY HAVE TO
10 COME FORWARD AND SAY WE PLAN TO PARTICIPATE IN THAT
11 TRIAL. SO THE DATE FOR THEM TO SUBMIT WITNESSES AND
12 EXHIBITS TO ALL OF THE PARTIES IS MARCH 13TH, 2015.
13 THAT LEAVES JUST A LITTLE BIT MORE THAN 60 DAYS TO
14 CONDUCT NECESSARY DISCOVERY. IT'S QUITE FEASIBLE AS THE
15 COURT HAS WITNESSED IN MANY PHASES OF TRIAL THAT THIS
16 WILL BE EXPERT HEAVY TESTIMONY POTENTIALLY.

17 60 DAYS REALLY SEEMS TO BE A BARE MINIMUM
18 FOR SOMEBODY TO NOTICE PERCIPIENT WITNESSES TO THE
19 EXTENT THEY ARE DISCLOSED AND ALSO EXPERT DEPOSITIONS.
20 THERE IS NOBODY -- AND I WILL INCLUDE COUNSEL ON THE
21 PHONE -- THAT WANTS THIS CASE OVER SOONER THAN ME. AND
22 I PUSHED FOR AN EARLIER SCHEDULE.

23 OKAY. I'LL GIVE IT TO YOU, YOUR HONOR,
24 JUDGE KOMAR MAYBE MORE THAN I. THIS IS A COMPLICATED
25 SITUATION. THERE IS A LOT OF BALLS UP IN THE AIR. AND
26 ULTIMATELY I WAS PERSUADED TO HAVE A LITTLE BIT OF A
27 LONGER SCHEDULE.

28 IF WE RUSH THIS IN TERMS OF 60 DAYS TO DO

1 DISCOVERY IS REALLY PUSHING IT. AND IF WE RUSH IT, WE
2 END UP MAKING A MESS OF THIS DOWN THE FINISH LINE A
3 LITTLE BIT TO SPEAK A LITTLE ROUGH. THAT IS WHY WE HAVE
4 THE SCHEDULE THE WAY IT IS.

5 THE COURT: ALL RIGHT. I THINK THAT THIS
6 PROPOSED SCHEDULE MAKES SENSE TO ME GIVEN EVERYTHING
7 THAT IS GOING TO HAVE TO HAPPEN IN ORDER TO ACCOMPLISH
8 THE NOTICES AND SO ON.

9 MY INCLINATION IS WITH A LOT OF REGARD TO
10 YOUR POSITION, MR. CASEY, BECAUSE I CERTAINLY AGREE WITH
11 IT. BUT I THINK THAT WE ARE GOING TO HAVE TO APPROVE
12 THE SCHEDULE THAT IS BEING PROPOSED HERE BY THE VARIOUS
13 PARTIES WHO CONFERRED IN IT. SO WHAT I WILL DO IS
14 ESSENTIALLY ADOPT THIS SCHEDULE.

15 MR. KALFAYAN: IS IT TIME, YOUR HONOR, FOR US TO
16 ASSERT OUR PARTIAL OPPOSITION TO, NOT THE SCHEDULE BUT
17 THE APPROVAL OF THE WOOD CLASS SETTLEMENT AND THE
18 PROPOSED PHYSICAL SOLUTION, ONLY PARAGRAPHS 4, 5 AND 6
19 AS TO THE NON-STIPULATING PARTIES AND THE TRIAL. I
20 THINK WE ARE EXEMPT FROM THAT.

21 I JUST WANT CONFIRMATION OF THAT FROM THIS
22 COURT WHETHER OR NOT THE WILLIS CLASS IS EXEMPT FROM A
23 TRIAL. I BELIEVE WE ARE. I JUST WANT CLARIFICATION OF
24 THAT ON THE RECORD.

25 THE COURT: WELL, I CAN'T SAY THAT I NECESSARILY
26 AGREE WITH YOU, MR. KALFAYAN, AND LET ME TELL YOU WHY.
27 YOUR SETTLEMENT WAS WITH THE PUBLIC WATER PRODUCERS.

28 MR. KALFAYAN: CORRECT.

1 THE COURT: WE HAVE A CONSOLIDATED PROCEEDING
2 HERE AS WELL AS A COORDINATED PROCEEDING. AND THE
3 SETTLEMENT WAS APPROVED BINDING THE PARTIES TO THE
4 SETTLEMENT. BUT THAT SETTLEMENT HAS NO INDEPENDENT
5 STATUS IN TERMS OF PARTIES WHO WERE NOT PARTIES TO THE
6 SETTLEMENT. THAT WAS MADE VERY CLEAR.

7 AT THE TIME THAT THE COURT APPROVED THE
8 SETTLEMENT, THERE WERE MULTIPLE OBJECTIONS TO THE
9 SETTLEMENT BY THE NON-STIPULATING PARTIES UNTIL THE
10 COURT STATED AS PART OF ITS ORDER THAT IT WAS BINDING
11 ONLY ON THE PARTIES WHO WERE STIPULATING TO IT. AND
12 NONE OTHERS COULD POSSIBLY BE BOUND BY IT.

13 MR. KALFAYAN: YOUR HONOR, LET ME JUST TELL YOU
14 WHERE THE WILLIS CLASS IS COMING FROM HERE. THERE ARE
15 CERTAIN DUE PROCESS ISSUES THAT I HAVE TO DEAL WITH. I
16 HAVE A CLASS OF 65,000 LAND OWNERS THAT OCCUPY ALMOST
17 TWO THIRDS OF THIS BASIN. AND THEY WERE JUST GIVEN
18 NOTICE AND A JUDGMENT THAT SAID EVERYTHING IS FINAL WITH
19 RESPECT TO THE PUBLIC WATER SUPPLIERS AND THE WILLIS
20 CLASS.

21 THEY DON'T KNOW ANYTHING ABOUT A TRIAL
22 WITH RESPECT TO WILLIS VIS-A-VIS ANYONE ELSE. HERE IS
23 THE DUE PROCESS ISSUE THAT I HAVE THAT I PRESENTED A
24 FOUR OR FIVE PAGE LIMITED OPPOSITION THAT I WOULD REALLY
25 ENCOURAGE YOUR HONOR TO READ.

26 THE COURT: I HAVE READ IT, MR. KALFAYAN.

27 MR. KALFAYAN: OKAY. SO THE DUE PROCESS ISSUES
28 ARE THIS: THEY DON'T KNOW WHAT THE CLAIM IS BY ANYBODY

1 ELSE IN THIS ROOM. WHETHER THE WOOD CLASS HAS A CLAIM
2 THAT IS ADVERSE TO THE WILLIS CLASS, I NEED TO KNOW
3 ABOUT IT. WE NEED THE CLASS TO KNOW ABOUT IT. IT'S A
4 FUNDAMENTAL DUE PROCESS QUESTION.

5 WHAT DOES THE CLASS KNOW? WHERE IS THE
6 PLEADING? I CAN'T WALK OUT OF THIS COURTROOM FACING A
7 TRIAL NOT KNOWING WHAT PLEADING IS BEING ASSERTED
8 AGAINST THE CLASS AND WHO IS ASSERTING THAT PLEADING.
9 THAT IS MY DILEMMA, YOUR HONOR, STANDING HERE BEFORE
10 YOU.

11 THE COURT: I HAVEN'T HEARD ANYBODY ASSERTING IT,
12 HAVE YOU?

13 MR. KALFAYAN: NO, YOUR HONOR.

14 THE COURT: HAVE YOU RECEIVED ANY PAPERS THAT
15 TELL YOU THAT SOMEBODY HAS NAMED THE WILLIS CLASS AS A
16 DEFENDANT?

17 MR. KALFAYAN: NO, YOUR HONOR. AND HENCE MY
18 DILEMMA IN NOT KNOWING WHAT AM I TRYING.

19 THE COURT: YEAH. I DON'T KNOW THAT YOU ARE
20 TRYING ANYTHING AT THIS POINT, BECAUSE NOBODY IS
21 ASSERTING A RIGHT AGAINST YOU. YOU ARE NOT ASSERTING
22 ANY RIGHTS AGAINST ANYBODY ELSE IN THIS PROCEEDING.

23 MR. KALFAYAN: THAT'S CORRECT, YOUR HONOR.

24 THE COURT: OTHER THAN THE RIGHTS THAT YOU
25 ASSERTED AGAINST THE PUBLIC WATER PRODUCERS.

26 MR. KALFAYAN: THAT'S RIGHT.

27 THE COURT: SO YOU ARE ASKING ME TO INTERPRET
28 WHAT YOUR OBLIGATION IS. I CAN'T DO THAT OTHER THAN TO

1 TELL YOU THAT YOUR -- IF THE COURT WERE TO HAVE A TRIAL
2 IN THIS PROCEEDING AND WOULD MAKE A JUDGMENT DETERMINING
3 WHAT THE RESOLUTION WOULD BE BY WAY OF A PHYSICAL
4 SOLUTION OR OTHERWISE WOULD BE BINDING ON ALL OF THE
5 PARTIES TO THE LAWSUIT, OKAY.

6 THE IMPACT ON NON-PARTIES WOULD BE PLACED
7 WITHIN THE HANDS OF A WATER MASTER.

8 MR. KALFAYAN: I AGREE WITH THAT, YOUR HONOR.
9 AND HERE IS THE PROCESS THAT I ENVISIONED THAT WHEN THE
10 WOOD CLASS AND THE BROADER PROPOSAL IS SUBMITTED, I
11 WILL -- THE WILLIS CLASS, BECAUSE OF THE TERMS THAT ARE
12 INCLUDED IN THERE IN THE SETTLEMENT, OPPOSE IT AND FILE
13 AN OPPOSITION.

14 AND AT THAT TIME THE COURT WILL EITHER
15 SUSTAIN THAT OBJECTION IN OPPOSITION OR OVERRULE IT IN
16 WHICH CASE THE FATE OF THE WILLIS CLASS WILL BE DECIDED
17 BY THE COURT, BECAUSE THE PHYSICAL SOLUTION THAT IS
18 BEING PROPOSED DOESN'T IGNORE WILLIS. IT INCLUDES
19 WILLIS, AND IT BINDS IT.

20 THE COURT: I CAN'T ADDRESS THAT WITHOUT SEEING
21 WHAT IT IS. LET ME JUST MAKE THIS OBSERVATION. WHEN
22 THE COURT HAS FOUND THAT THE WHOLE BASIN IS IN
23 OVERDRAFT, AND LET'S ASSUME FOR A MOMENT THAT THERE IS
24 GOING TO BE A WATER MASTER THAT IS GOING TO MONITOR AND
25 MAKE SUGGESTIONS TO THE COURT, RECOMMENDATIONS TO THE
26 COURT ABOUT MAINTAINING SOME BALANCE WITHIN THE BASIN,
27 THAT IS ONLY GOING TO IMPACT PEOPLE WHO ARE PUMPING.

28 IF YOU ARE NOT PUMPING THEN YOU ARE NOT

1 GOING TO BE ORDERED TO DO ANYTHING. BUT I SUSPECT THAT
2 THE WATER MASTER IS GOING TO ASK THE COURT WHEN SOMEBODY
3 WANTS TO PUMP THAT THEY MAKE AN APPLICATION AND THAT
4 THEY INDICATE WHAT THEIR PURPOSE IS AND HOW MUCH THEY
5 INTEND TO PUMP AND THAT THEY DO NOT HAVE ACCESS TO WATER
6 OTHERWISE SO THEY WISH TO PUMP ON THEIR OWN LAND. THAT
7 WILL RAISE AN ISSUE THAT THE COURT IN EQUITY IS GOING TO
8 HAVE TO DEAL WITH.

9 MR. KALFAYAN: RIGHT.

10 THE COURT: WHICH MEANS THAT SUCH A PARTY,
11 WHETHER IT'S A MEMBER OF THE WILLIS CLASS TODAY OR NOT,
12 IS GOING TO HAVE TO BECOME INVOLVED IN THE APPLICATION
13 PROCESS.

14 NOW, YOU KNOW, THERE IS AN OVERLYING AND
15 PERHAPS OVER ARCHING ISSUE WITH REGARD TO THE NEW
16 LEGISLATION THAT HAS JUST BEEN SIGNED BY THE GOVERNOR
17 THAT SPECIFICALLY EXCLUDES THE ANTELOPE VALLEY
18 ADJUDICATION AREA FROM THE IMPACT OF THAT LITIGATION.
19 AND I THINK THAT THE COURT IS GOING TO HAVE TO MAKE
20 PROVISIONS FOR PROCESSING PEOPLE SUCH AS YOUR CLIENTS
21 WHO DON'T PUMP WHO MAY WISH TO PUMP AT SOME TIME IN THE
22 FUTURE.

23 AND THE WHOLE OBJECTIVE HERE, THIS IS TO
24 ONE, PRESERVE THE VALLEY, NUMBER TWO, TO KEEP ALL OF THE
25 PARTIES WHO WERE INVOLVED IN THE LITIGATION INVOLVED IN
26 THE LITIGATION INCLUDING THE FEDERAL GOVERNMENT, BECAUSE
27 THEY ARE AN IMPORTANT PARTY AND TO ENSURE THAT WE DO
28 SOMETHING TO ADDRESS THE PROBLEMS THAT ARE CURRENTLY

1 EXISTING IN THE BASIN.

2 SO NO MATTER WHAT HAPPENS HERE, AND I
3 DON'T KNOW WHAT IS GOING TO HAPPEN IN THE PHELAN PINON
4 HILLS CASE; THAT REMAINS TO BE SEEN. BUT THEY ARE ALSO
5 IMPACTED BY WHATEVER THE ULTIMATE JUDGMENT MIGHT BE.
6 ALL I AM TALKING ABOUT ARE THOSE ISSUES.

7 HOW THOSE ISSUES GET RESOLVED, I CAN'T
8 TELL YOU AT THIS POINT.

9 MR. KALFAYAN: YOUR HONOR, I WANT TO MAKE SURE I
10 KEEP THE FOCUS ON EXACTLY WHAT THE ISSUE IS BEFORE US
11 HERE. YES, THERE WAS A SETTLEMENT AGREEMENT WITH THE
12 PUBLIC WATER SUPPLIERS THAT THE WILLIS CLASS ENTERED
13 INTO. AND IT DID PROVIDE FOR THAT.

14 IT CONTEMPLATED THAT THE WILLIS CLASS WILL
15 COME ONLINE AT SOME POINT IN THE FUTURE AND AT THAT
16 POINT THE CONTEMPLATION WAS KIND OF AN OVERLYING POOL
17 THAT THE WILLIS CLASS COULD SHARE WITH OTHER LAND
18 OWNERS. THE ONLY ISSUE THAT I AM ADDRESSING HERE IS
19 THIS CMO TO THE EXTENT THAT IT SAYS THERE IS A TRIAL FOR
20 WILLIS. AND I DON'T KNOW THAT IT DID OR DIDN'T.

21 I READ IT TO INCLUDE IS THE DUE PROCESS
22 ISSUE AND MAKE CLEAR THAT AT LEAST AND AT THIS JUNCTURE
23 THE WILLIS CLASS IS NOT LOOKING. IT DOESN'T HAVE A
24 TRIAL, BECAUSE AS THE COURT SAID, NO ONE ELSE HAS
25 ASSERTED A CLAIM AGAINST IT. AND BECAUSE OF THAT, IT
26 SHOULD BE EXEMPTED FROM THAT PORTION.

27 THE COURT: MR. KALFAYAN, YOU ARE ASSERTING A
28 CLAIM.

1 MR. KALFAYAN: NO, YOUR HONOR. WE ARE NOT.

2 THE COURT: YOU HAVEN'T FILED ANYTHING TO ASSERT
3 A CLAIM, BUT YOU ARE TELLING ME THAT YOU ARE CONCERNED
4 ABOUT YOUR CLIENT'S FUTURE PROSPECTIVE RIGHTS.

5 MR. KALFAYAN: YOUR HONOR, THE ONLY REASON WHY I
6 AM HERE, THE ONLY REASON WHY I AM HERE IS BECAUSE THE
7 PUBLIC WATER SUPPLIERS HANDED ME A DOCUMENT THAT
8 BASICALLY DECAPITATED THE WILLIS CLASS.

9 THE COURT: THE WHAT?

10 MR. KALFAYAN: I USED THE WORD -- THAT BASICALLY
11 HAS IN MY JUDGMENT TAKEN AWAY THE WILLIS CLASS RIGHTS.
12 SO I AM HERE JUST TO LET THE COURT KNOW THAT I INTEND TO
13 OPPOSE THE PROPOSED PHYSICAL SOLUTION THAT IS GOING TO
14 BE PRESENTED.

15 I DON'T HAVE ANY OBJECTION TO THE TIME
16 PERIOD WITHIN WHICH THEY PLANT THE WOOD CLASS AND THE
17 BROADER GROUP WANTS TO SUBMIT THEIR PROPOSED PHYSICAL
18 SOLUTION. I HAVE NO PROBLEM TO THAT TIMING, AND I PLAN
19 TO OBJECT AND LET THE COURT DETERMINE MY OBJECTION.

20 AND THAT WILL DETERMINE TO A GREAT EXTENT
21 WHETHER OR NOT THAT PHYSICAL SOLUTION THAT IS BEING
22 PROPOSED IS CONSISTENT WITH THE WILLIS CLASS JUDGMENT OR
23 IS NOT CONSISTENT WITH THE WILLIS CLASS JUDGMENT.

24 I THINK THE INQUIRY ENDS THERE ON MAY
25 25TH. BEYOND THAT, THERE IS REALLY NOTHING ELSE FOR
26 WILLIS TO TRY. THAT IS THE ONLY LIMITED REASON THAT I
27 AM MAKING SURE THE COURT IS AWARE. THE DUE PROCESS
28 ISSUES ARE HUGE IN THIS CASE. I HAVE GOT A CLASS THAT

1 IS SIGNIFICANT. AND I JUST WANT TO MAKE SURE THIS ORDER
2 IS CLEAR THAT AS FAR AS THE WILLIS CLASS IS CONCERNED,
3 THAT TRIAL OBLIGATION, THE DISCOVERY EXCHANGE DOES NOT
4 APPLY AS TO IT.

5 WE WILL OPPOSE THE PHYSICAL SOLUTION. AND
6 THE COURT AT THAT TIME WILL HAVE THE DOCUMENT IN FRONT
7 OF IT, AND WE'LL HAVE OUR OPPOSITION. AT THAT TIME THE
8 COURT CAN DETERMINE WHETHER OR NOT IT'S CONSISTENT WITH
9 THE WILLIS JUDGMENT OR TO MAKE WHATEVER DETERMINATION
10 THE COURT WILL MAKE WITH RESPECT TO THAT.

11 THAT IS WHERE THE INQUIRY ENDS WITH
12 RESPECT TO WILLIS. NOW WHETHER OR NOT THERE IS A TRIAL,
13 THERE IS SERIOUS DUE PROCESS ISSUES THAT I'M JUST
14 PRESENTED GOING TO COURT NOW.

15 THE COURT: OKAY. SO WHAT DO YOU WANT ME TO SAY?

16 MR. KALFAYAN: AS FAR AS PARAGRAPHS 4, 5 AND 6,
17 YOUR HONOR, WERE EXEMPT AT LEAST FROM THE TRIAL IN THE
18 WILLIS CLASS. AS TO ALL OF THE OTHER PROVISIONS, WE
19 HAVE NO OBJECTION. I DON'T KNOW IF THE OTHER SIDE
20 REALLY HAS AN OPPOSITION TO WHAT I JUST SAID, YOUR
21 HONOR. IN FACT, WHEN I ASKED THE DRAFTERS, THEY REALLY
22 WEREN'T SURE WHETHER THE WILLIS CLASS WAS INCLUDED OR
23 NOT, AND I DON'T KNOW THE ANSWER TO THAT QUESTION AS I
24 STAND HERE TODAY.

25 THE COURT: LET'S SEE IF SOMEBODY DOES HAVE AN
26 ANSWER.

27 MR. MCLACHLAN: THIS IS MIKE MCLACHLAN AGAIN FOR
28 THE WOOD CLASS. MR. KALFAYAN DID SPEAK TO ME. I WILL

1 OUTLINE MYSELF AS THE DRAFTER HE JUST REFERENCED. MY
2 POSITION ON THIS IS THAT THE WILLIS CLASS SETTLEMENT
3 AGREEMENT STATES IN IT THAT THE WILLIS CLASS WILL BE
4 SUBJECT TO A FUTURE DETERMINED PHYSICAL SOLUTION. IT
5 WOULD NOT BE INCONSISTENT WITH THE WILLIS CLASS
6 AGREEMENT. THE CLASS WILL BE GIVEN NOTICE OF THAT.

7 SO THE CLASS KNOWS THAT IT'S VERY LIKELY
8 THAT THE PHYSICAL SOLUTION HEARING IS COMING DOWN THE
9 ROAD. I THINK THERE IS SOME SEMANTICS IN USING THE TERM
10 "TRIAL." I MEAN, THE OBJECTION THAT MR. KALFAYAN
11 ALLUDES TO FILING WILL OCCUR IN THE SAME CONTEXT AS
12 POTENTIALLY EVIDENTIARY HEARINGS FOR PEOPLE THAT MAY BE
13 CLAIMING WATER OR OTHER THINGS THAT ARE SET FORTH IN
14 THIS ORDER THAT INVOLVE THE FINALIZATION AND APPROVAL OF
15 THE PHYSICAL SOLUTION.

16 BY VIRTUE OF DEFINITION, THE CLASS IS NOT
17 GOING TO PUT ON EVIDENCE OF ITS WATER USE, I PRESUME,
18 BECAUSE IT DOESN'T HAVE ANY WATER USE. I THINK THIS IS
19 IN SOME SENSE JUST AN ISSUE OF SEMANTICS. THERE WILL BE
20 A TRIAL LISTING A NUMBER OF VARIOUS THINGS SUCH AS
21 PRESCRIPTION AND OTHER ELEMENTS.

22 BUT THAT IS IN DRAFTING THIS MEANT TO
23 INCLUDE ALL OF THE VARIOUS ISSUES THAT THE COURT HAS TO
24 TIE UP FOR ALL OF THE VARIOUS PARTIES. AND IT MAY VERY
25 WELL BE THAT THE ONLY ISSUE WITH REGARD TO WILLIS IS
26 SIMPLY HEARING ON MR. KALFAYAN'S OBJECTION.

27 AND NONE OF US KNOW WHETHER MR. KALFAYAN
28 PLANS TO PUT ON EXPERT TESTIMONY OR HAVE ANY PERCIPIENT

1 WITNESSES TESTIFY IN SUPPORT OF HIS OBJECTION OR, AGAIN,
2 AS THE PHYSICAL SOLUTION. BUT TO THE EXTENT HE DOES
3 PLAN TO DO THAT, THEN HE SHOULD BE FORCED TO ADHERE WITH
4 THE SCHEDULE IF HE IS NOT GOING TO DO THAT.

5 IF THIS IS SIMPLY GOING TO BE A MATTER OF
6 LAW WHERE HE SUBMITS A BRIEF AND ARGUES IT, YOUR HONOR
7 MAKES SOME FINDING OF FACT AND CONCLUSIONS OF LAW, THEN
8 HE IS PARTICIPATING IN THAT BUT NOT IN A PURELY
9 EVIDENTIARY MANNER. THAT IS THE WAY THAT I LOOK AT IT.

10 THE COURT: WELL, THE ISSUES THAT ARE GOING TO
11 COME UP ARE WITH REGARD TO THOSE ISSUES STATED IN
12 PARAGRAPH 6 OF THIS PROPOSED BRIEF. OBVIOUSLY THE
13 QUESTION OF PRESCRIPTION, IS BY THE PUBLIC WATER
14 SUPPLIERS AGAINST THE WILLIS CLASS, IS NOT GOING TO COME
15 UP BECAUSE THAT ISSUE HAS BEEN SETTLED SO FAR AS THEY
16 ARE CONCERNED.

17 THE PROVE UP BY THE STIPULATING PARTIES IS
18 SOMETHING THAT I SUSPECT THAT MR. KALFAYAN MIGHT WANT TO
19 APPEAR AND ADDRESS. WHETHER HE NEEDS TO DO DISCOVERY OR
20 NOT, I WOULD BE SURPRISED, BUT MAYBE HE DOES. THE PROOF
21 OF THE CLAIM TO PRODUCE BY THE NON-STIPULATING PARTIES,
22 THOSE ARE THIRD PARTIES AND AT THIS POINT WHO ARE NOT
23 MEMBERS OF THE CLASS -- OF EITHER CLASS OR ONE OF THE
24 STIPULATING LAND OWNERS.

25 LIKEWISE, THE DEFAULT PROVE UPS, I DON'T
26 THINK THAT IS ANYTHING THAT MR. KALFAYAN WILL BE
27 CONCERNED ABOUT. THE PROVE UP OF THE PHYSICAL SOLUTION
28 MIGHT BE, BECAUSE THAT IS GOING TO BE SOMETHING THAT

1 COULD IMPACT ON HIS CLIENT AS WELL AS EVERYBODY ELSE
2 THAT RESIDES IN THE ANTELOPE VALLEY JURISDICTION AREA
3 AND, LIKEWISE, THE FINAL APPROVAL OF THE WOOD CLASS
4 SETTLEMENT.

5 ASIDE FROM THAT, MR. KALFAYAN, IF THE
6 COURT SIGNS THIS ORDER JUST THE WAY IT IS, YOU CAN
7 FIGURE OUT WHAT YOU NEED TO DO. I CAN'T TELL YOU WHAT
8 YOU NEED TO DO. IT'S ENTIRELY UP TO YOU.

9 MR. KALFAYAN: YOUR HONOR, I JUST WANT
10 CLARIFICATION THEN. AND AGAIN --

11 THE COURT: YOU WANT CLARIFICATION OF WHAT IS
12 WRITTEN HERE?

13 MR. KALFAYAN: WELL, YES, BECAUSE, YOUR HONOR, A
14 COUPLE OF THINGS. FIRST OF ALL, MR. MCLACHLAN MENTIONED
15 SOMETHING ABOUT THE CONSISTENCY. AND, YES, THAT IS
16 SOMETHING -- NO QUESTION FROM THE TIME THE PHYSICAL
17 SOLUTION WAS PRESENTED UNTIL MAY 25TH WHEN THE COURT
18 HEARS THE OBJECTIONS, THEY WON'T HAVE THE INFORMATION
19 FROM THE WILLIS CLASS REGARDING THE OPPOSITION. SO THEY
20 WILL HAVE WHATEVER INFORMATION THAT THEY WANT IN TERMS
21 OF THE OPPOSITION.

22 AND, FRANKLY, I STILL DON'T KNOW WHAT FORM
23 THE PHYSICAL SOLUTION IS GOING TO BE. I HAVE A DRAFT,
24 AND I THINK I KNOW, BUT I DON'T HAVE THE LATEST VERSION.
25 I DON'T KNOW WHAT IS GOING TO GET PRESENTED YET. BUT AT
26 THAT POINT FROM JANUARY TO MAY, WE WILL PRESENT OUR
27 OPPOSITION, AND THEY CAN DO WHATEVER THEY WANT TO DO
28 WITH THE OPPOSITION.

1 THE COURT WILL MAKE A DETERMINATION
2 REGARDING THAT. WHAT I WANT TO BE CLEAR IS THAT THERE
3 IS NO TRIAL, BECAUSE THERE IS DUE PROCESS ISSUES THAT I
4 HAVE TO DEAL WITH IN TERMS OF A TRIAL FOR WILLIS. I AM
5 NOT TALKING ABOUT THE PROPOSED PHYSICAL SOLUTION; THAT'S
6 GOING TO GET DETERMINED BY THE COURT THROUGH WHATEVER
7 PAPERS.

8 I AM TALKING ABOUT, IS THERE A TRIAL FOR
9 THE NON-STIPULATING PARTIES? IS THERE A TRIAL FOR
10 WILLIS? IF THERE IS, THEN WHAT ISSUES ARE GOING TO BE
11 LITIGATED? I NEED TO KNOW THAT. AND WHO IS BRINGING
12 THOSE ISSUES? I NEED TO KNOW THAT. THIS ORDER IS VAGUE
13 AS TO THAT. IT LEAVES ME WITH NO ANSWERS. I AM WALKING
14 OUT OF THIS COURTROOM NOT KNOWING WHAT IS GOING TO
15 HAPPEN ON MAY 25TH.

16 IT SAYS: PROOF OF CLAIM TO PRODUCE
17 GROUNDWATER BY NON-STIPULATING PARTIES AT A TRIAL. WHAT
18 TRIAL ON WHAT ISSUE AM I GOING TO HAVE TO PRESENT
19 EVIDENCE ON? THAT IS THE AMBIGUITY AND VAGUENESS THAT I
20 AM LOOKING.

21 NOW, AGAIN, THE COURT WILL HAVE THE
22 PHYSICAL SOLUTION IN FRONT OF IT AND THE OPPOSITION THAT
23 WE ARE GOING TO PRESENT TO IT. AND AT THAT TIME THE
24 COURT CAN MAKE A DETERMINATION AS TO WHAT IS LEFT TO BE
25 DETERMINED. I DON'T THINK THERE WILL BE ANYTHING ELSE
26 AT THAT POINT, YOUR HONOR. I DON'T KNOW. I DON'T THINK
27 THERE WILL BE ANYTHING ELSE. I JUST DON'T KNOW WHAT
28 ELSE DO I HAVE AN OBLIGATION TO DO AT THAT POINT. I

1 NEED CLARITY.

2 THE COURT: I DON'T THINK I CAN GIVE YOU THAT
3 CLARITY, MR. KALFAYAN. THIS IS AN ADVERSARIAL,
4 PROCEEDING, OKAY, MOSTLY.

5 MR. BUNN, DO YOU WANT TO TELL HIM THE
6 ANSWER?

7 MR. BUNN: WELL, IT SEEMS TO ME, YOUR HONOR --
8 THOMAS BUNN -- THAT THIS IS REALLY A NON-ISSUE. I TAKE
9 MR. KALFAYAN AT HIS WORD THAT IF THE PHYSICAL SOLUTION
10 LOOKS LIKE THE ONE THAT HE HAS SEEN HE'LL OBJECT TO IT.
11 I UNDERSTAND THAT. I THINK HE HAS A RIGHT TO DO THAT.
12 AND THESE PARAGRAPHS 4, 5 AND 6 PROVIDE THE PROCEDURE
13 FOR DOING THAT AND FOR A HEARING ON THOSE OBJECTIONS.

14 SO I THINK THAT MR. KALFAYAN'S
15 REPRESENTATIONS OF WHAT IS GOING TO HAPPEN PURSUANT TO
16 THESE PARAGRAPHS IS EXACTLY RIGHT. HE IS GOING TO
17 PRESENT HIS OBJECTIONS, AND THE COURT IS GOING TO
18 DETERMINE THEM.

19 AT THE SAME TIME, I FEEL THAT 4, 5 AND 6
20 ARE ADEQUATE AS WRITTEN. THEY DON'T PROVIDE FOR THE
21 ASSERTION FOR ANY CLAIMS AGAINST THE WILLIS CLASS THAT
22 HAVE NOT ALREADY BEEN MADE. I ASSUME THAT IF SOMEONE
23 WANTS TO MAKE A CLAIM AGAINST THE WILLIS CLASS THEY ARE
24 GOING TO HAVE TO FILE A PLEADING TO THAT EFFECT. THAT
25 CAN BE DEALT WITH WHEN AND IF IT OCCURS.

26 THE SCENARIO THAT MR. KALFAYAN POSITS OF
27 HIS HAVING A RIGHT TO OBJECT TO THE PHYSICAL SOLUTION
28 AND ACCOMPLISHING THAT IS WHAT THIS SCHEDULE PROVIDES

1 FOR.

2 THE COURT: MR. DUNN?

3 MR. DUNN: YES. IF I CAN JUST ADD THAT THE WAY
4 THAT THIS PROPOSED CASE MANAGEMENT ORDER IS DRAFTED IS
5 TO PROVIDE FLEXIBILITY TO THE COURT AND TO THE PARTIES.
6 THERE HAS BEEN QUITE A BIT OF REFERENCE MADE TO THE TERM
7 "TRIAL." A QUICK REVIEW OF PARAGRAPHS 4 AND 6 IN
8 PARTICULAR SHOW IS TRIAL OR HEARINGS.

9 THE POINT SIMPLY IS THIS: WHAT THIS
10 PROPOSED CASE MANAGEMENT ORDER ACCOMPLISHES IS DUE
11 PROCESS. IT PROVIDES NOTICE AND AN OPPORTUNITY TO BE
12 HEARD BY THOSE PARTIES THAT WISH TO OBJECT TO THE
13 PHYSICAL SOLUTION, BY THOSE PARTIES WHO HAVE STANDING TO
14 OBJECT TO THE WOOD CLASS FINAL PRELIMINARY AND FINAL
15 SETTLEMENT APPROVAL.

16 SO THIS PROPOSED SCHEDULE PROVIDES
17 OPPORTUNITIES FOR BOTH SETS OF GROUPS. SOME MAY FALL
18 INTO BOTH. IT IS A PROCESS IN PLACE BY WHICH THERE IS
19 DISCLOSURE, AN OPPORTUNITY BY AN OBJECTING PARTY. I
20 THINK IT SHOULD BE THE WILLIS CLASS TO BE ABLE TO
21 CONDUCT DISCOVERY IF IT CHOOSES TO DO SO WITH REGARDS TO
22 THE PROVE UP OF THE PHYSICAL SOLUTION.

23 I WILL CLOSE BY SIMPLY SAYING THIS: TWO
24 THINGS WILL HAVE TO HAPPEN HERE. ONE IS THAT IN ORDER
25 FOR SETTLEMENT TO BE FINALLY APPROVED BY THE COURT OR
26 THE WOOD CLASS, WE WILL NEED TO HAVE THOSE HEARINGS. IN
27 ORDER FOR THERE TO BE A PHYSICAL SOLUTION APPROVED BY
28 THE COURT WE WILL NEED TO HAVE A HEARING.

1 WHAT THIS PROPOSED CASE MANAGEMENT ORDER
2 DOES IS PROVIDE FOR BOTH WITH AN OPPORTUNITY ALONG THE
3 WAY FOR PARTIES TO BE INFORMED, FOR PARTIES TO MAKE
4 OBJECTIONS, IF NECESSARY TO DO APPROPRIATE DISCOVERY,
5 BUT ULTIMATELY TO BRING THIS TO A CONCLUSION BY HAVING A
6 HEARING ON BOTH THE WOOD CLASS FINAL SETTLEMENT APPROVAL
7 AND A FINAL APPROVAL BY THE COURT OF THE OVERALL
8 PHYSICAL SOLUTION.

9 MR. KALFAYAN: YOUR HONOR, IF THAT IS THE
10 UNDERSTANDING THAT THIS IS NOTHING MORE THAN A MECHANISM
11 BY WHICH WE CAN HAVE A HEARING ON THE PROPOSED PHYSICAL
12 SOLUTION AND THE OPPOSITION OR THE OBJECTION TO THE
13 PROPOSED PHYSICAL SOLUTION AND A HEARING ON THE PROPOSED
14 PHYSICAL SOLUTION, THEN I HAVE NO OBJECTION. I WILL BE
15 HERE.

16 WE WILL PRESENT THE OBJECTION. THE COURT
17 WILL MAKE THAT DETERMINATION. IF THAT IS THEIR
18 UNDERSTANDING, AND I SEE NODS OF THE HEADS, THEN I HAVE
19 NO OBJECTION BEYOND THAT. IF THAT IS THE SCOPE OF THIS
20 ORDER --

21 THE COURT: YOU ARE TALKING ABOUT OTHER COUNSEL
22 NODDING THEIR HEAD, NOT THE COURT?

23 MR. KALFAYAN: YOUR HONOR, THAT'S CORRECT.

24 THE COURT: I WANT TO MAKE SURE IT'S CLEAR.

25 MR. KALFAYAN: YES, YOUR HONOR. IT WAS MR. BUNN
26 WHO WAS NODDING HIS HEAD. IF THAT IS THE SCOPE OF THE
27 PROPOSED ORDER, THEN I HAVE NO OBJECTION.

28 MR. BUNN: AND I WAS NODDING MY HEAD JUST FOR MY

1 CLIENT. THAT'S MY UNDERSTANDING AND MY CLIENT'S
2 UNDERSTANDING.

3 THE COURT: THAT'S FINE, MR. BUNN.

4 WELL, MR. KALFAYAN, IT SEEMS TO ME THAT
5 THE PROPOSED ORDER PROVIDES AN OPPORTUNITY FOR EVERYBODY
6 TO BE HEARD ON THESE ISSUES. NOW, WHAT ROLE YOU WISH TO
7 PLAY WITH REGARD TO ANY OF THESE ISSUES IS ENTIRELY UP
8 TO YOU.

9 THE COURT IS SATISFIED THAT THIS IS A GOOD
10 SCHEDULE. I WANT EVERYBODY TO ADHERE TO IT, PLEASE,
11 BECAUSE THIS AT LEAST POINTS TO A JUDGMENT THAT CAN BE
12 ENTERED THAT WOULD BE INCLUSIVE. AND WHAT SOMEBODY SAID
13 IS 15 YEARS OF LITIGATION, BUT IT REALLY WON'T END IT,
14 BECAUSE EQUITY WILL ACT FOR MANY YEARS TO COME IN
15 SUPERVISING WHAT IS ULTIMATELY GOING TO HAPPEN HERE WITH
16 THIS PROCEEDING.

17 SO I WOULD LIKE COUNSEL TO PROVIDE ME WITH
18 A CLEAN COPY OF THE PROPOSED ORDER, AND I WILL SIGN THAT
19 TODAY.

20 MR. DAVIS: YOUR HONOR, THIS IS MICHAEL DAVIS
21 GRESHAM SAVAGE. MAY I ASK A QUESTION, PLEASE.

22 THE COURT: YES.

23 MR. DAVIS: THE COURT SAID 9:00 IN LOS ANGELES
24 FOR THE FEBRUARY 7TH DATE, ITEM TWO.

25 THE COURT: YES.

26 MR. DAVIS: BUT THERE IS NO TIME OR DEPARTMENT
27 FOR 2-F ON MAY 25. DOES THE COURT HAVE A TIME AND
28 LOCATION IN MIND?

1 THE COURT: OKAY.

2 MR. DAVIS: AND I MIGHT ADD THAT I SUSPECT THERE
3 WILL BE A LOT OF PEOPLE THAT WOULD LIKE TO APPEAR AT
4 THAT FINAL HEARING IN LOS ANGELES. IT WOULD PROBABLY BE
5 A GOOD LOCATION.

6 THE COURT: I WILL MAKE IT LOS ANGELES AT THIS
7 POINT. LET ME JUST TAKE A LOOK AT THIS. ARE YOU
8 TALKING ABOUT THE MAY 25 HEARING?

9 MR. DAVIS: YES, YOUR HONOR.

10 THE COURT: IF YOU WANT TO MAKE IT 9:00, I WILL
11 PUT THAT AS A TENTATIVE TIME.

12 MR. DAVIS: THANK YOU, YOUR HONOR.

13 THE COURT: OKAY.

14 MR. BLUM: YOUR HONOR, THIS IS SHELDON BLUM FOR
15 THE BLUM TRUST. IF I MAY ANSWER MY KALFAYAN'S QUESTION,
16 IT SEEMS TO ME THAT THE ONLY EVIDENCE NECESSARY TO PROVE
17 AN OVERLYING RIGHT IS EVIDENCE OF TITLE TO THE OVERLYING
18 LAND. TO ME, THAT WOULD BE HIS PRIMA FACIA CASE TO
19 ESTABLISH CORRELATIVE RIGHTS AS WELL.

20 THE COURT: YOU MIGHT WANT TO TALK TO HIM ON THE
21 TELEPHONE ABOUT THAT, MR. BLUM.

22 OKAY. ANYTHING ELSE ON THIS CASE
23 MANAGEMENT ORDER? I WILL PENCIL IN HERE 9:00 A.M. ON
24 THE 25TH. AND THE FEBRUARY 7, I WILL, LIKEWISE, PENCIL
25 IN 9:00 A.M. THAT WILL BE FILED TODAY. SO WHAT I
26 THOUGHT WAS GOING TO TAKE THE LEAST AMOUNT OF TIME
27 DIDN' T.

28 LET ME SEE WHAT ELSE WE HAVE GOT TO DO

1 HERE THIS MORNING. IS THERE ANYTHING ELSE OTHER THAN
2 THE COMMENCEMENT OF THE PHELAN PINON HILLS TRIAL?

3 MR. KUNEY: YOUR HONOR, THIS IS SCOTT KUNEY
4 APPEARING ON BEHALF OF WDS CALIFORNIA AND VAN DAM PARTY.

5 THE COURT: YES.

6 MR. KUNEY: PREVIOUSLY I HAD GIVEN THE COURT AND
7 THE PARTIES NOTIFICATION OF PARTICIPATION IN THE PHELAN
8 HILLS TRIAL. AND IN CONSIDERATION OF THE OTHER COUNSEL
9 BEING PRESENT, I AM PREPARED TO WITHDRAW THAT AND WILL
10 NOT INTEND TO PARTICIPATE AT THIS TIME.

11 DO I NEED TO FILE ANYTHING FURTHER, OR IS
12 THAT SUFFICIENT NOTICE TO THIS COURT?

13 THE COURT: THAT IS SUFFICIENT NOTICE, MR. KUNEY.
14 IT WILL BE NOTED IN THE MINUTES OF THE COURT.

15 MR. KUNEY: THANK YOU, YOUR HONOR.

16 MR. SLOAN: THIS IS WILLIAM SLOAN. I WOULD LIKE
17 TO MAKE THE SAME SUBMISSION.

18 THE COURT: THAT WILL LIKEWISE BE ACCEPTED AND
19 NOTED IN THE MINUTES.

20 ANYBODY ELSE?

21 MR. BRUNICK: YES, YOUR HONOR. BILL BRUNICK
22 APPEARING FOR AVEK. AVEK DOES NOT INTEND TO PARTICIPATE
23 IN THE PINON HILLS TRIAL.

24 THE COURT: OKAY. THANK YOU. THAT WILL ALSO BE
25 NOTED IN THE MINUTES.

26 MR. MCLACHLAN: YOUR HONOR, BEFORE WE GO ON TO
27 THAT, I APOLOGIZE FOR DOING THIS. IT HAS BEEN BROUGHT
28 TO OUR ATTENTION THAT THERE IS A FEW TYPOGRAPHICAL

1 ERRORS OF SERIOUS MAGNITUDE IN THE ORDER THAT YOU JUST
2 SIGNED.

3 FEBRUARY THE 7TH HAPPENS TO BE A SATURDAY.
4 MY INFORMATION IS THAT THE COURT IS NOT WILLING TO
5 VOLUNTEER TO WORK ON A SATURDAY NOR SHOULD YOU. WE WILL
6 HAVE TO CORRECT THAT. AND APPARENTLY -- I'M NOT SURE
7 HOW THIS OCCURRED, BUT MAY 25TH IS MEMORIAL DAY. IF I
8 HAD CHOSEN THOSE DATES AND IT WAS TRULY MY ERROR, I
9 WOULD FALL ON THE SWORD HERE, BUT I WILL NOT NAME THE
10 NAMED PARTY WHO DID IT, BUT IT WASN'T ME.

11 THE COURT: SO WHAT DATES DO YOU WISH TO REFLECT
12 AS CORRECTED DATES OF THE ORDER, AND WE WILL MAKE THOSE
13 CHANGES SINCE THE ORDER HAS NOT YET BEEN FILED? I WILL
14 DO IT BY HAND.

15 MR. LEININGER: YOUR HONOR, THIS IS
16 MR. LEININGER. IF I MAY, AND I DO APOLOGIZE. I WAS THE
17 SIGNATORY FOR THIS. IT WAS A COLLABORATIVE EFFORT. I
18 THINK WE LOST SIGHT OF THE TREES THROUGH THE FOREST.

19 THE COURT: NO APOLOGIES NECESSARY. BUT IF I AM
20 LOOKING AT THE CALENDAR FOR FEBRUARY, WHY DON'T WE MAKE
21 IT FEBRUARY THE 6TH; THAT'S A FRIDAY.

22 THE OTHER DATE THAT WE WERE CONCERNED WITH
23 WAS THE 25TH OF MAY WHICH IS MEMORIAL DAY. THAT IS A
24 LONG WEEKEND USUALLY. SO PERHAPS WE CAN MAKE THAT FOR
25 THE 29TH WHICH IS A FOLLOWING FRIDAY SO WE DON'T
26 INTERFERE WITH TIME OFF. PEOPLE MIGHT WANT TO MAKE IT
27 MAY 29.

28 MR. LEININGER. I APOLOGIZE, YOUR HONOR. I WAS

1 JUST HAVING A LITTLE SIDEBAR CONVERSATION WITH
2 MR. MCLACHLAN WITH REGARD TO THE MAY 29TH DATE IN
3 ANTICIPATION OF HOW MUCH TIME WE NEED TO ACCOMPLISH BOTH
4 THE WOOD CLASS FINAL APPROVAL HEARING AND EVERYTHING
5 THAT WE HAVE ON PARAGRAPH 6.

6 I GUESS IN ANTICIPATION THAT WE WILL NEED
7 PROBABLY SEVERAL DAYS WE HAVE NO PROBLEM WITH BEGINNING
8 THIS ON FRIDAY BUT WITH THE UNDERSTANDING THAT WE WILL
9 BE CONTINUING ON CONSECUTIVE WEEKDAYS.

10 THE COURT: YOUR POINT IS WELL TAKEN. I CAN DO
11 IT SOONER, OR I CAN DO IT LATER. WHAT IS THE CONSENSUS?

12 MR. LEININGER: WE WOULD SUGGEST BEGINNING
13 JUNE 1ST; THAT IS THE MONDAY FOLLOWING THE 29TH.

14 THE COURT: ALL RIGHT. I WILL SET THAT ASIDE.
15 JUNE 1ST.

16 MR. MCLACHLAN: YOUR HONOR, IF YOU ARE GOING TO
17 INTERLINEATE THAT ORDER, THE DATE APPEARS IN TWO PLACES,
18 PARAGRAPH 6 AND ALSO PARAGRAPH 2-F.

19 MR. DAVIS: AND 2-G.

20 MR. MCLACHLAN: THREE PLACES.

21 THE COURT: MAYBE WE CAN GET A CLEAN COPY OF
22 THIS, AND PERHAPS SOMEONE CAN DO THAT DURING THE NOON
23 HOUR.

24 MR. EVERTZ: YOUR HONOR, DOUG EVERTZ FOR THIS
25 CITY OF LANCASTER. MAY I BE HEARD?

26 THE COURT: YES.

27 MR. EVERTZ: HOW MANY DAYS ARE YOU SETTING ASIDE
28 IN JUNE FOR THAT HEARING? I HAVE A PRIOR COMMITMENT ON

1 JUNE 5TH, BUT IT SOUNDS LIKE THAT WON'T WORK ACCORDING
2 TO MY SCHEDULE SO I JUST WANT TO CONFIRM.

3 THE COURT: WELL, I THINK THAT I WOULD HOPE TO
4 FINISH IT IN FIVE DAYS.

5 MR. EVERTZ: THANK YOU, YOUR HONOR.

6 THE COURT: ALL RIGHT. CAN I GET A COMMITMENT
7 FROM SOMEBODY TO REDO THIS SCHEDULE WITH THE CORRECT
8 DATE DURING THE NOON HOUR?

9 MR. LEININGER: YES, YOUR HONOR. THIS IS
10 MR. LEININGER. WE ARE GOING TO TRY TO ACCOMPLISH THIS
11 AND GET IT PRINTED OUT HERE AND GIVE IT TO YOU NO LATER
12 THAN THIS AFTERNOON.

13 THE COURT: THAT'S FINE. THANK YOU.

14 ALL RIGHT. I WANT TO THANK COUNSEL WHO
15 PARTICIPATED WITH THE PRO AND CON IN PREPARATION OF THIS
16 ORDER. IT'S VERY HELPFUL.

17 ALL RIGHT. SO WE DO HAVE A TRIAL HERE;
18 THAT IS THE NEXT THING UP. THAT IS THE PHELAN PINON
19 HILLS CLAIM FOR THE SECOND CAUSE OF ACTION AND THE
20 SIXTH?

21 MR. MILIBAND: CORRECT, YOUR HONOR.

22 THE COURT: THERE ARE SEVERAL MOTIONS IN LIMINE
23 THAT HAVE BEEN FILED. SO WHY DON'T WE TAKE THOSE UP.

24 MR. MILIBAND, YOU HAVE MADE A MOTION. I
25 WILL CALL IT MOTION IN LIMINE NUMBER ONE TO EXCLUDE ALL
26 EVIDENCE NOT RELEVANT TO THE SECOND AND THE SIXTH CAUSES
27 OF ACTION DEALING WITH DECLARATORY RELIEF AS TO SURPLUS
28 WATER OR I SHOULD SAY AS APPROPRIATED CLAIMS AS WELL AS

1 RETURN FLOWS.

2 IT SEEMS TO ME THAT AT THIS POINT THE
3 COURT WILL EXCLUDE IRRELEVANT EVIDENCE. ALL YOU HAVE TO
4 DO IS OBJECT. I DON'T SEE THAT WE CAN MAKE TOO MUCH OF
5 A FORECAST AS TO WHAT SOMEBODY MIGHT WANT TO OFFER. I
6 DON'T KNOW. I HAVE READ THE TRIAL BRIEFS, BUT I DON'T
7 KNOW WHAT EXACT EVIDENCE MIGHT BE PRESENTED. WHY DON'T
8 WE JUST DEFER THAT MOTION NUMBER ONE.

9 MR. MILIBAND: THAT IS FINE, YOUR HONOR. THAT'S
10 FAIR ENOUGH. I JUST WANTED TO STATE THE OBVIOUS JUST
11 GIVEN SOME CONCERN SOMETHING MIGHT COME IN FOR SOME
12 OTHER CAUSE OF ACTION OR AFFIRMATIVE DEFENSE, SOMETHING
13 OUTSIDE OF THOSE TWO VERY LIMITED CAUSES OF ACTION
14 BEFORE US TODAY.

15 THE COURT: THAT IS A FAIR REQUEST. WE WILL ONLY
16 BE CONCERNED WITH THE SECOND AND SIXTH CAUSES OF ACTION.

17 THE SECOND MOTION IS TO EXCLUDE EVIDENCE
18 NOT DISCLOSED IN EXPERT DEPOSITIONS OR PRESENTED IN THE
19 DISCUSSION OF THE STIPULATED FACTS. FROM WHAT I CAN
20 GATHER, I AM NOT SURE WHAT EVIDENCE WILL BE PRESENTED IN
21 OPPOSITION TO YOUR POSITION.

22 AS I INDICATED MANY TIMES, I THINK THE
23 FACTS THEMSELVES ARE REALLY NOT MUCH IN DISPUTE. THERE
24 MAY BE EXPERT OPINIONS THAT VARY. BUT I THINK THE
25 UNDERLYING FACTS ARE PRETTY CLEAR AT THIS POINT. SO I
26 DON'T KNOW WHAT EVIDENCE IS BEING PROPOSED BY YOUR
27 OPPOSITION.

28 MR. MILIBAND: WELL, YOUR HONOR, JUST AS OF THIS

1 MORNING, I WOKE UP TO AN E-MAIL THAT DISTRICT 40 HAD
2 FILED THEIR EXHIBITS AND EXHIBIT LIST LAST NIGHT CLOSE
3 TO 11:00 P.M.

4 THE COURT: I HAVEN'T SEEN THAT.

5 MR. MILIBAND: AND NEITHER HAVE I, YOUR HONOR.
6 THE COURT HAD ORDERED THAT EXHIBITS BE FILED LAST
7 FRIDAY. THAT IS WHEN EVERYTHING WAS DUE IN TERMS OF THE
8 TRIAL DOCUMENTS. SO WE JUST NOW RECEIVED, AND I DON'T
9 EVEN HAVE A HARD COPY WITH ME, BECAUSE IT WAS SERVED
10 ELECTRONICALLY LAST LATE NIGHT. I SAW IT THIS MORNING.

11 THE COURT: WHO SERVED IT?

12 MR. MILIBAND: BEST BEST AND KRIEGER DID ON
13 BEHALF OF DISTRICT 40. THAT IS THE ONLY ADVERSARIAL SET
14 OF EXHIBITS THAT WERE FILED AS TO PHELAN FOR THIS TRIAL.
15 BUT IT WAS DONE THREE, MAYBE EVEN FOUR DAYS CALENDAR
16 WISE AFTER IT WAS DUE. SO THAT PRESENTS A WHOLE HOST OF
17 THINGS, I THINK. AS IT RELATES TO THIS MOTION IN
18 LIMINE, IT CERTAINLY CREATES A LOT OF QUESTIONS AS TO
19 WHAT SHOULD COME IN.

20 AND THE FACT OF THE MATTER IS, YOUR HONOR,
21 IF I CAN DIGRESS FROM THE MOTION FOR A MOMENT AND
22 ADDRESS THE ACTUAL EXHIBITS THAT HAVE NOW BEEN
23 DISCLOSED, IT'S JUST COMPLETELY IMPROPER AS FAR AS I'M
24 CONCERNED GIVEN THAT THE COURT HAD ORDERED THAT IT BE
25 DISCLOSED. IT WAS NOT TIMELY DISCLOSED.

26 I AM NOW JUST RECEIVING EXHIBITS THAT I
27 DON'T EVEN PHYSICALLY HAVE OR HAVE HAD THE OPPORTUNITY
28 TO REVIEW MUCH LESS GO THROUGH WITH MY CLIENT INCLUDING

1 THE EXPERT. I THINK THAT NECESSITATES THAT THERE BE
2 SOME KIND OF BREAK TO BE ABLE TO DO THAT.

3 I CAN COME UP WITH SOLUTIONS, AND WE CAN
4 FIGURE THAT OUT I THINK. BUT IT REALLY CREATES A REAL
5 PROBLEM. AND I THINK THIS MOTION INDIRECTLY AND
6 UNINTENTIONALLY AT THE TIME I DRAFTED IT SPEAKS TO IT.
7 THAT'S A REAL LIFE EXAMPLE THAT HAS NOW ARISEN.

8 MR. DUNN: I WOULD LIKE TO ADDRESS THAT, YOUR
9 HONOR.

10 THE COURT: YOU WILL HAVE THAT OPPORTUNITY RIGHT
11 NOW.

12 MR. DUNN: THANK YOU. PERHAPS COUNSEL CAN ASSIST
13 US IN IDENTIFYING THE COURT ORDER REGARDING THE POSTING
14 OF THE EXHIBITS BY FRIDAY OR WHATEVER DATE HE IS
15 REFERRING TO.

16 DO YOU HAVE THAT ORDER?

17 MR. MILIBAND: I AM SURE I DO. I HAVE WITH ME
18 ABOUT 20 DIFFERENT ORDERS GOING BACK TO FEBRUARY. AND
19 IF THE COURT WANTS ME TO, I WILL DIG THAT OUT. IT WAS
20 VERY CLEAR FROM THE SEPTEMBER 26TH HEARING THAT WE HAD
21 IN SAN JOSE THAT WHEN TODAY WAS SET, IT WAS SET -- AND I
22 THINK MR. BUNN HAD REQUESTED, AND IT WAS A GOOD REQUEST
23 THAT THERE BE A DATE SET FOR THE TRIAL BRIEF AND THOSE
24 SORTS OF THINGS.

25 SO THAT COURT HEARING THAT MR. DUNN AND I
26 WERE BOTH AT PERSONALLY, THE COURT IDENTIFIED OCTOBER
27 30TH FOR ANY RESPONSE TO THE PROPOSAL THAT WAS SUBMITTED
28 ON OCTOBER 20TH AS WELL AS OCTOBER 31ST AS BEING THE

1 DATE FOR TRIAL BRIEFS, WITNESS LISTS, EXHIBIT LISTS AND
2 SO FORTH.

3 I CAN POINT TO THE RECORD IF I NEED TO. I
4 CAN POINT TO AN ORDER IF I NEED TO. I WOULD NEED A FEW
5 MINUTES TO DIG THAT OUT, BECAUSE IT WAS WELL
6 ESTABLISHED. AND THERE WAS A TRIAL BRIEF SUBMITTED BY
7 MR. BUNN. SO THERE IS CLEARLY AN UNDERSTANDING THAT
8 FRIDAY WAS THE DAY FOR THESE THINGS TO OCCUR, NOT 11:00
9 P.M. THE NIGHT BEFORE OUR TRIAL STATS.

10 MR. DUNN: YOUR HONOR, IT'S MR. DUNN. I AM
11 HOLDING HERE THE SEPTEMBER 7TH COURT ORDER REGARDING
12 THIS PHASE OF TRIAL. IT STATES, QUOTE, PRETRIAL
13 DOCUMENTS INCLUDING BUT NOT LIMITED TO TRIAL BRIEFS,
14 MOTIONS IN LIMINE ARE DUE BY OCTOBER 31ST, 2014. AND
15 THEN IT GOES ON.

16 I AM SPEAKING SOMEWHAT OF LIMITED
17 KNOWLEDGE ONLY BECAUSE I WAS OUT OF THE COUNTY UNTIL THE
18 AFTERNOON OF NOVEMBER 1ST. BUT I DO KNOW THAT EXHIBITS
19 WERE POSTED BY PHELAN ON FRIDAY OF LAST WEEK, AND
20 EXHIBITS WERE POSTED BY DISTRICT 40 YESTERDAY, I AM
21 INFORMED, THAT FOR THE MOST PART, ARE REPETITIVE OF
22 EXHIBITS THAT WERE PROVIDED IN DEPOSITION DURING THE
23 DR. DENNIS WILLIAMS DEPOSITION.

24 IN ANY EVENT, HARD COPIES ARE PRESENT WITH
25 US THIS MORNING. THAT INCLUDES A COPY FOR COUNSEL, FOR
26 PHELAN PINON HILLS, FOR THE COURT AND FOR THE COURT
27 CLERK. I AM NOT QUITE SURE WHAT THE NATURE OF THE
28 OBJECTION WOULD BE OTHER THAN INSTEAD OF BEING POSTED ON

1 FRIDAY THEY WERE POSTED ON MONDAY.

2 THE COURT: THE OBJECTION IS THAT HE HASN'T SEEN
3 THEM OR HAD A CHANCE TO REVIEW THEM, I PRESUME. AND
4 OBVIOUSLY I AM SURE YOU DON'T HAVE HARD COPIES, BUT
5 MAYBE YOU DO.

6 MR. DUNN: I DO.

7 THE COURT: MAYBE YOU CAN PROVIDE THAT TO HIM NOW
8 AND SEE IF THERE IS SOME PREJUDICE THAT YOU ARE
9 ASSERTING AS A RESULT OF THAT.

10 MR. DUNN: I AM SOMEWHAT ONLY A LITTLE BIT
11 SYMPATHETIC JUST BECAUSE I DIDN'T SEE THEIR EXHIBITS
12 MYSELF UNTIL YESTERDAY, BUT I AM NOT MOVING TO EXCLUDE
13 THEM.

14 THE COURT: WELL, YOU ARE ALL TRIAL LAWYERS.

15 MR. MILIBAND: YOUR HONOR, IF I MAY, OURS POSTED
16 FRIDAY BEFORE THE CLOSE OF BUSINESS. SO THEY WERE UP
17 THERE, AND THEY WERE REPETITIVE FROM WHAT WE POSTED MANY
18 TIMES. SO THAT IS ENTIRELY DIFFERENT.

19 THE COURT: I HAVE TO SAY THAT WHEN COUNSEL FILE
20 PAPERS AT FOUR O'CLOCK ON FRIDAY -- WHEN I SET A TIME, I
21 USUALLY SET IT AT NOON ON FRIDAY. SO I DON'T RECALL
22 WHAT I DID IN THIS CAUSE.

23 MR. MILIBAND: I DO HAVE THE MINUTE ORDER HERE
24 FROM SEPTEMBER 26TH.

25 THE COURT: I HAVE NO DOUBT THAT YOU ARE RIGHT.
26 I AM JUST SAYING THAT ORDINARILY I WOULD SAY FILE IT BY
27 NOON. NOTHING WORSE THAN GETTING SOMETHING AT 4:45 ON A
28 FRIDAY AS YOU ARE LEAVING THE OFFICE.

1 MR. MILIBAND: UNDERSTOOD, YOUR HONOR. IT WAS
2 STILL 80 HOURS IN ADVANCE WHEN I RECEIVED THESE. I
3 ANTICIPATE THERE IS A LOT OF TECHNICAL EXHIBITS IN
4 THERE. I TRUST MR. DUNN'S REPRESENTATION THAT THERE
5 MIGHT BE SOME REDUNDANCY WITH THE EXHIBITS, BUT THERE
6 CERTAINLY WEREN'T 32 EXHIBITS AT DEPOSITION. SO THERE
7 IS GOING TO BE NEW MATERIAL.

8 MY PROPOSAL IS, LET'S GET THROUGH SOME OF
9 THE INITIAL MATERIALS THAT WE CAN IF THAT IS AGREEABLE
10 TO THE COURT INCLUDING THE STIPULATION IN WHICH, TO
11 REPORT GOOD NEWS, WE DO HAVE A STIPULATION TO A LARGE
12 EXTENT TO FACTS AND EXHIBITS SUBJECT TO RELEVANCY
13 OBJECTIONS.

14 IF WE DEALT WITH THAT AFTER THE MOTIONS,
15 MAYBE BROKE FOR THE AFTERNOON, WE ARE READY TO GO IF
16 THAT IS WHAT THE COURT TELLS US TO DO DESPITE MY
17 CONCERNS. WHAT I WOULD SUGGEST IS WE DEAL WITH THESE
18 MOTIONS, WE DEAL WITH THE STIPULATION. AND PERHAPS AT
19 THAT POINT WE CAN TAKE AN EARLIER BREAK THAN THE NORMAL
20 COURT ENDING AT 4:30 OR WHENEVER THE COURT WAS GOING TO
21 DO THAT.

22 MR. HARDER IS HERE. HE SHOULD BE GIVEN
23 THAT OPPORTUNITY TO BE ABLE TO SEE EXHIBITS WHICH I
24 WOULD HAVE DONE BETWEEN FRIDAY AND TODAY HAD I RECEIVED
25 THEM.

26 THE COURT: MY INTEREST IS ENSURING THAT WE KNOW
27 WHO IS AGREEING TO THE STIPULATED FACTS, WHO IS
28 OBJECTING TO THEM AND IF ANY PARTICULAR FACT IS OBJECTED

1 TO WE HAVE A REASON FOR IT SO THAT I WILL KNOW WHAT I
2 CAN BASE THE DECISION ON AND WHAT NOT WHICH WAS THE
3 REASON FOR ALL OF THE MEET-AND-CONFER OBLIGATIONS THAT
4 EVERYBODY HAD IN THIS CASE.

5 SO AT THIS POINT, I WANT TO MAKE SURE I
6 UNDERSTAND WHO IS ACTUALLY GOING TO PARTICIPATE HERE. I
7 KNOW THERE HAVE BEEN FILINGS. I WOULD LIKE TO KNOW,
8 COUNSEL IN THE COURTROOM, WHO WILL BE APPEARING FOR THE
9 PURPOSE OF EXAMINING WITNESSES OR PRESENTING ANY
10 EVIDENCE IN OPPOSITION TO THE POSITION THAT PHELAN HILLS
11 IS TAKING IN THE SECOND AND SIXTH CAUSES OF ACTION.

12 I KNOW THERE IS A LOT OF OPPOSITION. I
13 WANT TO KNOW WHO IS ACTUALLY GOING TO APPEAR SO THAT I
14 WILL HAVE SOME ASSEMBLANCE OF ORDER.

15 SO TELL ME.

16 MR. BUNN: MR. BUNN, YOUR HONOR.

17 THE COURT: ALL RIGHT. MR. BUNN.

18 AND, MR. DUNN?

19 MR. DUNN: YES, YOUR HONOR.

20 MS. GOLDSMITH: JANET GOLDSMITH FOR CITY OF
21 LOS ANGELES.

22 MR. GOLDEN-KRASNER: NOAH GOLDEN-KRASNER FOR THE
23 STATE OF CALIFORNIA.

24 THE COURT: MR. JOYCE, DO YOU INTEND TO EXAMINE
25 WITNESSES OR PRESENT EVIDENCE?

26 MR. JOYCE: NO, YOUR HONOR. I AM HERE AND
27 APPEARING LIMITEDLY WITH RESPECT TO THE STIPULATION.
28 THERE WAS ONE PROPOSED FACT THAT I MADE INQUIRY

1 CONCERNING ON FRIDAY. I GOT THE ANSWER THIS MORNING.
2 ONCE THOSE ANSWERS TO MY QUESTIONS ARE RECITED ON THE
3 RECORD, THEN I AM ACCEPTABLE TO THE STIPULATION, AND I
4 AM DONE.

5 THE COURT: THANK YOU, MR. JOYCE.

6 MR. CHESTER: YOUR HONOR, TED CHESTER. I FILED
7 AN OATH TO PARTICIPATION BUT DO NOT PLAN TO ASK
8 QUESTIONS OF ANY WITNESSES BUT RESERVE THE RIGHT TO FILE
9 A BRIEF IF CALLED UPON.

10 THE COURT: ALL RIGHT. THANK YOU, MR. CHESTER.

11 MR. KUHS?

12 MR. KUHS: ROBERT KUHS APPEARING FOR THE HOME
13 RANCH CORP AND GRANITE CONSTRUCTION.

14 THE COURT: DO YOU INTEND TO APPEAR AND QUESTION?

15 MR. KUHS: THERE MAY BE SOME CROSS-EXAMINATION,
16 NO DIRECT EVIDENCE.

17 THE COURT: ANYBODY ELSE IN THE COURTROOM WHO
18 INTENDS TO -- ALL RIGHT. THAT SIMPLIFIES OUR SITUATION.
19 ALL RIGHT. WE HAVE BEEN GOING FOR ALMOST TWO HOURS. I
20 WILL STOP FOR LUNCH. I WILL GIVE YOU AN OPPORTUNITY TO
21 GET YOUR PAPERS TOGETHER AND YOUR WITNESSES LINED UP,
22 AND WE WILL START. LET ME MAKE SURE I AM NOT
23 SHORTCHANGING YOU.

24 YOU ALSO WANT TO ARGUE THE EXCLUSION OF
25 DR. WILLIAMS' OPINION?

26 MR. MILIBAND: CORRECT, YOUR HONOR. WE MADE THAT
27 THIRD MOTION IN LIMINE. I DON'T HAVE ANYTHING ATTACHED
28 TO THE PAPERS UNLESS SOMETHING COMES UP WITH REGARDS TO

1 THE COURT' S QUESTIONS.

2 THE COURT: OKAY.

3 MR. MILIBAND: AND THE STIPULATION, BY THE WAY,
4 YOUR HONOR, HELPS SET THE STAGE ONCE WE DETERMINE THE
5 RELEVANCY OBJECTIONS, IF ANY, TO WHAT EXTENT I NEED TO
6 ELICIT TESTIMONY FROM MR. BARTZ, GENERAL MANAGER, FOR
7 PHELAN PINON HILLS.

8 THE COURT: I WILL TAKE THAT UNDER SUBMISSION ON
9 THAT ISSUE. I AM NOT SURE THAT IT DOESN' T HAVE SOME
10 PROBATIVE VALUE AT THIS POINT. THAT WILL BE UNDER
11 SUBMISSION.

12 MR. MILIBAND: YOUR HONOR, THAT IS ON THE THIRD
13 MOTION IN LIMINE; CORRECT?

14 THE COURT: YES.

15 MR. MILIBAND: AND THEN GOING BACK TO THE SECOND
16 ONE WITH THE EXHIBITS ISSUE, ARE WE JUST GOING TO PUT
17 THAT ASIDE UNTIL AFTER THE LUNCH BREAK?

18 THE COURT: WELL, THE PROBLEM IS THAT IT SEEMS TO
19 ME THAT THAT MAKES A REQUEST FOR AN ORDER THAT THE
20 PROBLEM IS VAGUENESS. BECAUSE WHAT YOU ARE ASKING TO
21 EXCLUDE IS EVIDENCE THAT IT WASN' T DISCLOSED DURING AN
22 EXPERT DEPOSITION OR PRESENTED IN THE DISCUSSION OF THE
23 STIPULATED FACTS.

24 I DON' T KNOW WHAT THAT DISCUSSION WAS.
25 AND I DON' T THINK IT' S PRODUCTIVE TO HAVE AN ARGUMENT
26 WITH HE SAID/HE SAID OR SHE SAID/HE SAID, AND I THINK
27 THAT SETS IT UP FOR THAT PURPOSE.

28 MR. MILIBAND: I CAN REPRESENT TO THE COURT THAT

1 WHAT I INTEND BY THAT LANGUAGE IS THE SET AND UNIVERSE
2 OF EXHIBITS THAT WE ACTUALLY HAVE IN THE STIPULATION.
3 SO THERE IS THE FINAL SET THAT IS HERE, AND THOSE ARE
4 EXHIBITS 1 THROUGH 24 OR 25.

5 THE COURT: TO THE EXTENT THAT THERE IS OTHER
6 EVIDENCE, IT SHOULD BE SUBMITTED BEFORE PRESENTED WITH A
7 WITNESS SO THAT WE KNOW THAT IT'S SOMETHING THAT IS NOT
8 NEWLY DISCOVERED OR IF IT IS THAT THERE IS GOOD REASON
9 FOR IT.

10 MR. MILIBAND: AND AS TO THOSE EXHIBITS THAT WERE
11 POSTED LAST EVENING, THAT IS WHAT I WOULD REQUEST; THAT
12 WE RESERVE UNTIL AFTER THE LUNCH BREAK.

13 THE COURT: I WILL DO THAT.

14 MR. MILIBAND: THANK YOU.

15 THE COURT: ALL RIGHT. LET'S BREAK FOR LUNCH.
16 LET'S COME BACK AT 1:30.

17 (THE NOON RECESS WAS TAKEN.)

18

19

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1 CASE NUMBER: 1-05-CV-049053
2 CASE NAME: ANTELOPE VALLEY GROUNDWATER CASES
3 LOS ANGELES, CA TUESDAY, NOVEMBER 4, 2014
4 DEPARTMENT 56 HON. JACK KOMAR, JUDGE
5 REPORTER: JEANETTE COYLE, CSR NO. 12665
6 TIME: AFTERNOON SESSION
7 APPEARANCES: (AS HERETOFORE NOTED.)
8

9 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT.)
10

11 THE COURT: MR. MILIBAND, READY TO PROCEED?

12 MR. MILIBAND: YES, YOUR HONOR. I WOULD LIKE TO
13 REVISIT THE EXHIBIT ISSUE.

14 THE COURT: OKAY.

15 MR. MILIBAND: WE DID LOOK THROUGH THE EXHIBITS
16 OVER THE LUNCH HOUR. AND IT'S VERY CLEAR TO ME THAT
17 THERE WERE A NUMBER OF NEW EXHIBITS AND MATERIAL. THERE
18 WAS SOME REDUNDANCY. THE BOTTOM LINE IS, HAD I RECEIVED
19 THOSE ON FRIDAY, I HAVE NO QUESTION IN MY MIND THAT OVER
20 THE WEEKEND AND CERTAINLY YESTERDAY I WOULD HAVE BEEN
21 CONFERRING WITH MR. HARDER AND PHELAN.

22 SO WITH THAT, MY PROPOSAL FOR THIS
23 AFTERNOON WOULD BE TO TRY TO CONTEMPLATE THAT SCENARIO
24 AS WELL AS USE GOOD, EFFICIENT TIME THAT WE HAVE FOR
25 TRIAL AND TO PROCEED WITH STARTING THE TRIAL IN TERMS OF
26 ANY KIND OF OPENING STATEMENT, DEALING WITH THE
27 STIPULATION AND ANY RELEVANCY OBJECTIONS.

28 TO THE LIMITED EXTENT THAT I THINK I NEED

1 TO CALL MR. BARTZ AS THE GENERAL MANAGER FOR TESTIMONY,
2 GET THAT DONE AND THEN BREAK FOR THE AFTERNOON AND START
3 WITH EXPERT TESTIMONY TOMORROW MORNING.

4 MR. DUNN: JEFFREY DUNN FOR DISTRICT 40. WE HAVE
5 TWO WITNESSES, MR. HARDER AND DR. WILLIAMS. THEIR
6 EXHIBITS ARE GENERALLY WHAT WE CALL DEMONSTRATIVE OR
7 MORE ACCURATELY I BELIEVE CALLED ILLUSTRATIVE. SO THE
8 ISSUE IS, IS THERE ANY NEW OPINIONS. THERE ARE NO NEW
9 OPINIONS.

10 EXPERTS CAN PREPARE ILLUSTRATIVE EXAMPLES
11 OF THEIR OPINION TESTIMONY AS THEY DEEM APPROPRIATE. I
12 THINK WE ARE KIND OF GOING DOWN A PATH THAT WE DON'T
13 NEED TO GO DOWN. WHAT I SUGGEST IS THAT WE GO FORWARD
14 WITH THE TRIAL, ALLOW THE DIRECT EXAMINATION OF
15 MR. HARDER AS IT SHOULD GO FORWARD. I DON'T THINK THERE
16 IS ANY REASON WHY THAT CANNOT TAKE PLACE TODAY.

17 MY GUESS IS THAT WE WILL PROBABLY TAKE UP
18 MUCH OF THE AFTERNOON, IN ANY EVENT, WITH JUST AND JUST
19 EVALUATE AND SEE WHERE WE GO. BUT ABSENT SOME KIND OF
20 SPECIFIC CLAIM THAT THERE IS PREJUDICE HERE, I DON'T
21 THINK THAT NOT SEEING ILLUSTRATIVE EXHIBITS UNTIL
22 SHORTLY BEFORE TRIAL IS ANY GROUNDS TO SORT OF DELAY IT.

23 THE COURT: WELL, THAT MAY GENERALLY BE TRUE. ON
24 THE OTHER HAND, I THINK IF YOU HAVE AN EXPERT, AND THE
25 OTHER SIDE HAS AN EXPERT, AND YOU WANT TO CONFER WITH
26 YOUR EXPERT ABOUT DEMONSTRATIVE EXHIBITS OR ILLUSTRATIVE
27 EXHIBITS OR WHATEVER IT MIGHT BE, YOU CERTAINLY HAVE A
28 RIGHT TO DO THAT. AND WE ARE CERTAINLY NOT GOING TO DO

1 ANYTHING TO PREVENT THAT FROM HAPPENING FOR EITHER OF
2 YOU.

3 MR. MILIBAND WANTS TO MAKE OPENING
4 STATEMENTS. I THINK THOSE OF NECESSITY NEED TO BE
5 REALLY BRIEF. I SAY "NECESSITY" BECAUSE I HAVE READ
6 YOUR TRIAL BRIEFS. I WILL BE SHOCKED IF YOU HAVE NEW
7 FACTS THAT YOU ARE GOING TO PRESENT OR TRY TO PROVE
8 BEYOND WHAT'S IN YOUR TRIAL BRIEFS, SO THEY ARE GOING TO
9 BE BRIEF.

10 WHEN WE GET DONE WITH THAT, THERE ARE A
11 SET OF STIPULATED FACTS THAT HAVE BEEN PRESENTED. THERE
12 MAY BE SOME OBJECTIONS TO SOME OF THOSE EITHER BASED ON
13 RELEVANCY OR OTHERWISE. I WOULD LIKE TO FIND OUT IF
14 THERE ARE OBJECTIONS TO ANY OF THOSE, AND THEN I WANT
15 THE WITNESSES TO START TESTIFYING.

16 HOWEVER THAT MAY BE AND TO THE EXTENT THAT
17 YOUR EXPERT BEGINS TESTIMONY AND YOU FIND THAT THIS
18 EVENING YOU SEE OTHER EXHIBITS THAT SURPRISE YOU OR HIM
19 THAT YOU WANT TO ADDRESS WITH HIM ON THE STAND, I WILL
20 CERTAINLY PERMIT YOU TO DO THAT, AND YOU WILL HAVE
21 PLENTY OF TIME TO DO THAT. LET'S JUST GET STARTED.

22 WE HAVE ALLOCATED THREE DAYS FOR THESE
23 HEARINGS THIS WEEK. I WOULD EXPECT TO FINISH THEM. I
24 WOULD HOPE TO FINISH EARLY ON THURSDAY AT THE LATEST.
25 SO LET'S GET STARTED.

26 MR. MILIBAND: YOUR HONOR, IF I CAN JUST ASK FOR
27 ONE CLARIFICATION. IS THE COURT SAYING WE WILL GO
28 THROUGH THE FULL COURT DAY EVEN IF THAT MEANS GETTING

1 INTO MR. HARDER' S TESTIMONY?

2 THE COURT: I DON' T KNOW. MAYBE.

3 MR. MILIBAND: OKAY. VERY WELL. IN TERMS OF AN
4 OPENING STATEMENT, YOUR HONOR, I HAVE NO INTENTION OF
5 GOING JUST BEYOND A COUPLE OF MINUTES. I TRUSTED THE
6 COURT WOULD SEE THE TRIAL BRIEF. OBVIOUSLY WE DON' T
7 HAVE A JURY BEFORE US.

8 TWO THINGS I JUST REALLY WANTED TO
9 HIGHLIGHT.

10 THE COURT: BREVITY IS NOT A MANDATE OTHER THAN
11 IT ALWAYS IS.

12 MR. MILIBAND: WELL, BREVITY HERE, YOUR HONOR,
13 JUST IN TERMS OF PROVIDING SOME KIND OF OPENING
14 STATEMENT IS PRESENTED WITHIN TWO SLIDES.

15 THE COURT: THAT' S FINE.

16 MR. MILIBAND: SO WHAT I' M TRYING TO DO HERE,
17 YOUR HONOR, FIRST JUST TO KIND OF SET THE TABLE AND
18 REMIND THE COURT AND THE PARTIES, BACK IN PHASE THREE
19 THE COURT MADE A VERY SPECIFIC FINDING WITHIN A
20 STATEMENT OF DECISION THAT THE FINDING OF OVERDRAFT WAS
21 GENERALIZED RECOGNIZING THAT THERE WOULD BE OR COULD BE
22 OR ARE REGIONAL DIFFERENCES WITHIN CERTAIN PORTIONS OF
23 THE AQUIFER.

24 NOW, WE AT THAT STAGE OF THE PROCEEDINGS
25 HAD NOT REALLY DIVED UNINTENDED INTO WHICH AREAS OF THE
26 AQUIFER HAVE THOSE DIFFERENCES. PHELAN PINON HILLS,
27 HOWEVER, SITS WITHIN ONE OF THOSE AREAS THAT INDEED HAS
28 HAD HISTORICAL DIFFERENCES.

1 SO WHAT WE ARE INTENDING TO DO IN
2 PRESENTING EVIDENCE THROUGH THIS TRIAL ON THE SECOND AND
3 THE SIXTH CAUSES OF ACTION IS TO ESSENTIALLY LOOK AT THE
4 HISTORY OF PHELAN AND ITS PREDECESSOR, THE BACKGROUND AND
5 FORMATION OF THE DISTRICT AND HOW THE PREDECESSOR WAS
6 SERVING WATER TO PHELAN CUSTOMERS AND HOW THERE IS A
7 PORTION OF THAT SERVICE AREA THAT DOES LIE OVER THE
8 GEOLOGICAL BASIN FOR ANTELOPE VALLEY.

9 ONCE PHELAN FORMED IN 2008, WELL 14 HAD
10 ALREADY BEEN ONLINE FOR ABOUT TWO YEARS. THE EVIDENCE
11 WILL DEMONSTRATE THAT WELL 14 HAD KIND OF TROUBLED
12 HISTORY WHEN IT FIRST STARTED. BASICALLY, WHEN PHELAN
13 FORMED AND TOOK OVER IN 2008, WELL 14'S PUMP HAD TO BE
14 REPLACED, CREATED SOME DIFFERENCES IN PRODUCTION NUMBERS
15 WHEN YOU LOOK CHRONOLOGICALLY YEAR TO YEAR.

16 AS IT RELATES TO WELL 14 SPECIFICALLY, IT
17 WAS A WELL THAT WAS CONSTRUCTED BY PHELAN'S PREDECESSOR
18 THAT EFFORTS HAD STARTED AS EARLY AS 1999 WHEN THE
19 COUNTY OF SAN BERNARDINO ACQUIRED A SURPLUS PROPERTY
20 TRANSACTION FROM LOS ANGELES COUNTY TO PARCEL IN WHICH
21 WELL 14 WAS CITED.

22 SEVERAL YEARS THEN TRANSPIRED TO THEN
23 FOLLOW THROUGH WITH THE REGULATORY REQUIREMENTS, CEQA
24 AND THE LIKE IN ORDER TO BE ABLE TO DRILL A WELL THERE.
25 IT WAS DONE THROUGH A VERY PUBLIC, VERY OPEN PROCESS
26 WHERE IN 2004 WELL 14 WAS DRILLED. 2006, IT CAME FULLY
27 OPERATIONAL FOR WATER SERVICE TO THE CUSTOMERS OF
28 PHELAN'S PREDECESSOR AT THE TIME.

1 THE COURT: WHEN WAS THAT?

2 MR. MILIBAND: IN 2006. THE BEGINNING OF 2006.
3 AND THE WATER SUPPLY OF PHELAN INCLUDING FOR WELL 14 IS
4 USED FOR MUNICIPAL SERVICES WHICH FROM TIME TO TIME DOES
5 INCLUDE PROVIDING WATER FOR FIRE FIGHTING SERVICE
6 INCLUDING WITHIN L. A. COUNTY.

7 NOW, THE EVIDENCE WILL DEMONSTRATE, YOUR
8 HONOR, THAT PART OF THE AQUIFER IN WHICH WELL 14 IS
9 LOCATED IS WHAT IS REFERRED TO AS THE BUTTES SUB-UNIT.
10 THERE HAVE BEEN DECADES WORTH OF DIFFERENT REPORTS AND
11 SCIENTIFIC STUDIES DONE BY THE USGS AND OTHERS THAT HAVE
12 DEFINED THE BOUNDARIES OF THE BUTTE SUB-UNIT.

13 WELL 14 SITS IN REALLY KIND OF THE
14 SOUTHEAST CORNER OF THAT. ALTHOUGH, THE BUTTE SUB-UNIT
15 DOES CROSS OVER OR UNDERNEATH, RATHER, THE COUNTY LINE
16 MUCH LIKE THE HYDROGEOLOGICAL BASIN DOES. IT'S REPORTED
17 EVEN WITHIN THE SUMMARY EXPERT REPORT THAT MANY OTHER
18 EXPERTS DURING PHASE THREE HAD FORMULATED AND RELIED
19 UPON, THEY WITHIN THAT REPORT, HAD INDICATED THAT SINCE
20 1951, GROUNDWATER LEVELS WITHIN THE BUTTE SUB-UNIT,
21 THEY ALSO INCLUDED THE PEARLAND SUB-UNIT WHICH IS
22 ADJACENT, HAVE REMAINED RELATIVELY STABLE.

23 THE EVIDENCE WILL ALSO SHOW THAT
24 MR. HARDER, THE DESIGNATED EXPERT FOR PHELAN PINON HILLS
25 HAS UNDERTAKEN AN EVALUATION OF THAT REPORT AS WELL AS
26 HIS OWN EVALUATIONS. HE HAS REACHED THE SAME
27 CONCLUSION.

28 AS THE COURT HAS BECOME WELL FAMILIAR WITH

1 AT THIS POINT, PART OF PHELAN' S SERVICE AREA DOES LIE
2 OVER A PORTION OF THE ANTELOPE VALLEY GROUNDWATER BASIN.
3 AS IT RELATES TO RETURN FLOW, WITHIN THAT PORTION OF THE
4 SERVICE AREA, PHELAN' S SERVICE AREA, THAT IS, THAT LIES
5 OVER THE PORTION OF THE ANTELOPE VALLEY GROUNDWATER
6 BASIN, MR. HARDER, AS ANTICIPATED WILL TESTIFY TO THE
7 ANALYSIS THAT HE UNDERTOOK IN LOOKING AT WATER
8 DISTRIBUTION, METERED SERVICE DEMANDS AND CONSUMPTION,
9 THE FACT THAT THERE IS SEPTIC SYSTEM ONLY DISPOSAL
10 WITHIN THE SERVICE AREA, INCLUDING THAT PORTION OF THE
11 SERVICE AREA AND FACTORING THROUGH ESSENTIALLY THAT
12 CYCLE OF WATER THAT COMES OUT FROM THE GROUND, GOES
13 THROUGH THE DISTRIBUTION SYSTEM AND TO THE CUSTOMERS
14 THAT THEN PERCOLATES THROUGH THE SEPTIC SYSTEM BACK TO
15 THE GROUNDWATER TABLE.

16 WITHIN THAT PORTION ALONE OF THE PHELAN
17 SERVICE AREA THAT LIES OVER THE ANTELOPE VALLEY
18 GROUNDWATER BASIN, ON AVERAGE THERE IS ABOUT 426
19 ACRE-FEET PER YEAR OF RETURN FLOW OF NATIVE WATER THAT
20 IS GENERATED BY PHELAN' S DISTRIBUTION AND CUSTOMER USE.

21 ESSENTIALLY, YOUR HONOR, THAT SPEAKS TO
22 THE TWO CAUSES OF ACTION THAT ARE AT ISSUE HERE IN THIS
23 TRIAL. HOWEVER, I ANTICIPATE THAT MR. HARDER WILL BE
24 ELABORATING UPON HIS OPINIONS THAT FEEDS INTO THESE
25 THINGS AS WELL AS SOME OTHER KIND OF SUB ISSUES AND
26 COMPONENTS TO THE RETURN FLOW AND APPROPRIATIVE RIGHT
27 AND ISSUES RELATING TO THE CONDITION OF THE BUTTE
28 SUB-UNIT. THANK YOU.

1 THE COURT: THANK YOU.

2 MR. DUNN?

3 MR. DUNN: WE WILL RESERVE OPENING STATEMENT.

4 THE COURT: IT MIGHT BE USEFUL TO EXAMINE YOUR
5 VARIOUS POSITIONS ON THE STIPULATION PROPOSED OF THE
6 FACTS IN THE CASE SO THAT TO SOME EXTENT WE MIGHT BE
7 ABLE TO ELIMINATE SOME OF THE TESTIMONY. I HAVE BEFORE
8 ME THE PROPOSED STIPULATION WHICH HAS BEEN SIGNED BY A
9 NUMBER OF PEOPLE.

10 LET ME START WITH EACH ONE OF THE PROPOSED
11 STIPULATIONS. I'LL START WITH PROBABLY SOME THINGS THAT
12 ARE INDISPUTABLE OR NOT PARTICULARLY CRUCIAL HERE.

13 ITEM NUMBER ONE, THE SPECIAL DISTRICT
14 DEPARTMENT OF SAN BERNARDINO COUNTY LINE FIVE. I THINK
15 WHAT I WOULD ASK IS, IF THOSE OBJECTING WOULD STATE YOUR
16 OBJECTIONS IF ANY AS WE GO THROUGH, IT WOULD PROBABLY
17 EXPEDITE OUR GOING THROUGH THESE. SO LET'S START WITH
18 ITEM NUMBER ONE THEN ON PAGE 2 OF THE FACTS FOR
19 STIPULATION.

20 ANY OBJECTION TO THAT? OKAY. HEARING
21 NONE, THAT WILL BE APPROVED.

22 NUMBER TWO TALKS ABOUT OVERSIGHT IN
23 MANAGEMENT IN THE SPECIAL DISTRICTS, BASICALLY
24 ADMINISTRATIVE MATTERS. ANY OBJECTION TO THAT?

25 OKAY. ITEM NUMBER TWO IS APPROVED.

26 NUMBER THREE REFERENCES TO SB COUNTY
27 REFERS TO CSA 70 IMPROVEMENT ZONE AND A RECEIPT OF TWO
28 COPIES OF REAL ESTATE APPRAISALS IN 1998.

1 MR. BUNN: OBJECTION; RELEVANCE.

2 THE COURT: I WILL LEAVE IT IN AS BACKGROUND.
3 YOU ARE NOT DISPUTING THE VALIDITY OF THE STATEMENT, I
4 TAKE IT?

5 MR. BUNN: NO, YOUR HONOR. WE ARE NOT DISPUTING
6 THE VALIDITY OF ANY OF THESE STATEMENTS, AND THE
7 OBJECTIONS WILL BE AS TO RELEVANCE.

8 THE COURT: ONLY AS TO RELEVANCE?

9 MR. BUNN: MY OBJECTIONS WILL ONLY BE AS TO
10 RELEVANCE.

11 MR. MILIBAND: THAT WAS THE UNDERSTANDING OF ALL
12 COUNSEL IN PUTTING THIS TOGETHER, YOUR HONOR.

13 THE COURT: THEN WHY DON'T YOU TELL ME WHICH ONES
14 YOU OBJECT TO ON THE GROUNDS OF RELEVANCE BESIDES NUMBER
15 THREE.

16 MR. BUNN: CERTAINLY. 3, 4, 5, 6, 7, 11, 12, 13,
17 14, 15, 16, 19, 31, 32 AND 33.

18 MR. MILIBAND: YOUR HONOR, I HAVE OBJECTIONS TO
19 PARAGRAPH 41.

20 THE COURT: WHAT IS YOUR OBJECTION TO THAT?

21 MR. MILIBAND: RELEVANCY, YOUR HONOR.

22 THE COURT: OKAY.

23 MR. MILIBAND: THE ONLY OTHER ONE IS PARAGRAPH
24 40.

25 THE COURT: 40?

26 MR. MILIBAND: YES, ALSO TO RELEVANCY.

27 THE COURT: LET ME JUST TAKE A MOMENT HERE.

28 ALL RIGHT. I WILL OVERRULE THE OBJECTIONS. THEY ARE OF

1 SOME MARGINAL RELEVANCE. SOME HAVE SOME RELEVANCE. BUT
2 FOR THE MOST PART, I AM TREATING THEM AS BACKGROUND
3 WHICH RELATES TO THE PROCESS AS MUCH AS ANYTHING AND THE
4 HISTORY. SO WITH THAT INDICATION, THEY ARE OVERRULED.

5 MR. MILIBAND: YOUR HONOR, I DO NEED TO MAKE ONE
6 CLARIFICATION TO PARAGRAPH 41 BASED UPON CONCERNS THAT A
7 COUPLE OF OTHER COUNSEL HAD. THIS IS SOMETHING THAT WE
8 RESOLVED JUST THIS MORNING. SO THE VERSION IN FRONT OF
9 THE COURT OF PARAGRAPH 40, I HAVE AN INTERLINEATED
10 COMMENT THAT WAS OFFERED AND FOUND ACCEPTABLE TO THOSE
11 THAT HAD CONCERNS WITH IT.

12 THE COURT: GO AHEAD.

13 MR. MILIBAND: I WILL JUST READ IT INTO THE
14 RECORD SO THAT WE HAVE CLARIFICATION. AND FOLLOWING
15 THIS, I WILL GET A CORRECTED COPY POSTED UP.

16 THE COURT: GO AHEAD.

17 MR. MILIBAND: THANK YOU. PARAGRAPH 40 READS:
18 THE TOTAL WATER SUPPLIES AVAILABLE TO PHELAN PINON HILLS
19 INCLUDE ITS MOJAVE ADJUDICATION RIGHTS PER PARAGRAPH 21
20 AND WELL 14 PRODUCTION, IN PARENTHESIS, EXCLUDING WATER
21 RIGHTS ASSOCIATED WITH MEADOWBROOK DAIRY REAL ESTATE,
22 LLC, END OF PARENTHESIS, IS AS FOLLOWS.

23 BY CALENDAR YEAR 2010, 3,022 ACRE-FEET;
24 2000, 2,876 ACRE-FEET; 2012, 3,021 ACRE-FEET; 2013,
25 3,069 ACRE-FEET.

26 THE COURT: ALL RIGHT. DOES COUNSEL HAVE ANY
27 OBJECTION TO THAT?

28 MR. KUHS: COUNSEL, FOR CLARIFICATION, DO THE

1 TOTALS EXCLUDE THE MEADOWBROOK DAIRY WATER RIGHT?

2 MR. MILIBAND: YES. AND THAT WAS THE LANGUAGE
3 THAT WAS INTENDED BY HAVING THAT PARENTHESIS IN THERE.

4 THE COURT: NO OBJECTION. SO ORDERED.
5 STIPULATION IS APPROVED.

6 MR. MILIBAND: AT THIS TIME THEN I WOULD LIKE TO
7 MOVE INTO EVIDENCE THE EXHIBITS REFERENCED WITHIN THE
8 STIPULATION WHICH IS EXHIBITS 1 THROUGH 24.

9 THE COURT: MR. KUHS?

10 MR. KUHS: ROBERT KUHS, YOUR HONOR.

11 TWO OF THE EXHIBITS OFFERED, EXHIBITS 5
12 AND EXHIBIT 8 WERE BY STIPULATION OF THE LIMITED
13 PURPOSES STATED IN THE STIPULATION.

14 THE COURT: YES.

15 MR. MILIBAND: THAT IS A CORRECT STATEMENT,
16 YOUR HONOR.

17 THE COURT: ALL RIGHT.

18 MR. MILIBAND: AT THE VERY END OF THE
19 STIPULATION, JUST AS A FINAL POINT OF THIS FOR ME ON THE
20 STIPULATION IS WITHIN PARAGRAPH 50 ON PAGE 8.

21 YOUR HONOR, THERE ARE REFERENCES TO THE
22 ADMISSIBILITY OF THOSE VARIOUS EXHIBITS. I DON'T HAVE
23 HARD COPIES HERE. THEY WERE PREVIOUSLY POSTED IN
24 PREPARATION OF THE PHASE FIVE TRIAL. SOME OF THOSE ARE
25 QUITE VOLUMINOUS WHERE THEY ARE THE METERED SERVICE
26 RECORDS AND THINGS OF THAT NATURE THAT MR. HARDER HAD
27 RELIED UPON AND REVIEWED.

28 SO WITH THAT, I WOULD LIKE TO ALSO BE ABLE

1 TO MOVE THOSE EXHIBITS AS SPECIFICALLY REFERENCED WITHIN
2 PARAGRAPH 50 INTO EVIDENCE.

3 THE COURT: ALL RIGHT. THE AGREEMENT OF THE
4 PARTIES IS TO STIPULATE TO THE ADMISSIBILITY SUBJECT TO
5 RELEVANCY OBJECTIONS, SO THEY WILL BE ADMITTED.

6 (EXHIBITS 1 THROUGH 24 WERE ADMITTED INTO EVIDENCE.)

7 THE COURT: CALL YOUR FIRST WITNESS.

8 MR. MILIBAND: I CAN DO THAT, YOUR HONOR. PHELAN
9 WILL CALL MR. DON BARTZ AS OUR FIRST WITNESS.

10 THE COURT: STOP RIGHT THERE, PLEASE. RAISE YOUR
11 RIGHT HAND.

12 THE CLERK: DO YOU SOLEMNLY STATE THAT THE
13 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE
14 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
15 NOTHING BUT THE TRUTH, SO HELP YOU GOD?

16 THE WITNESS: I DO.

17 THE CLERK: PLEASE BE SEATED. CAN YOU STATE AND
18 SPELL YOUR NAME FOR THE RECORD.

19 THE WITNESS: DONALD BARTZ. D-O-N-A-L-D,
20 B-A-R-T-Z.

21
22 DONALD BARTZ,
23 CALLED AS A WITNESS ON BEHALF OF THE
24 CROSS-COMPLAINANT/CROSS-DEFENDANT, HAVING BEEN DULY
25 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

26
27 DIRECT EXAMINATION

28 BY MR. MILIBAND:

1 Q GOOD AFTERNOON, MR. BARTZ.

2 MR. BARTZ, WOULD YOU PLEASE IDENTIFY WHO
3 YOU ARE EMPLOYED BY.

4 A MY EMPLOYER IS PHELAN PINON HILLS
5 COMMUNITY SERVICES DISTRICT.

6 Q AND FOR HOW LONG HAVE YOU BEEN EMPLOYED BY
7 PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT?

8 A APPROXIMATELY SIX AND A HALF YEARS.

9 Q IF I REFER TO JUST PHELAN AS SHORT FOR
10 PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT, WOULD
11 THAT WORK FOR YOU?

12 A THAT WOULD BE FINE.

13 Q AND FOR HOW LONG HAVE YOU BEEN A GENERAL
14 MANAGER FOR PHELAN?

15 A SIX AND A HALF YEARS.

16 Q DID YOU START AS THE GENERAL MANAGER FOR
17 PHELAN?

18 A YES. I STARTED AS A CONTRACT GENERAL
19 MANAGER, AND THAT TURNED INTO A FULL-TIME POSITION AS
20 GENERAL MANAGER.

21 Q WHEN DID THAT CONTRACT STATUS CONVERT TO
22 FULL-TIME STATUS?

23 A THAT CONVERTED IN EARLY 2006 -- I BELIEVE
24 OCTOBER OF 2006.

25 Q PHELAN FORMED IN 2008; IS THAT CORRECT?

26 A PHELAN WAS FORMED IN 2008 IN MARCH BY VOTE
27 OF THE PEOPLE FROM THE COMMUNITY. AND YOU ARE CORRECT,
28 I WAS HIRED IN JULY OF 2008 FOR CONTRACT AND FULL-TIME

1 IN OCTOBER.

2 Q SO EACH OF THOSE EVENTS TOOK PLACE DURING
3 2008; IS THAT CORRECT?

4 A THAT'S CORRECT.

5 Q AND WOULD YOU PLEASE BRIEFLY DESCRIBE YOUR
6 EDUCATION AND TRAINING AS IT RELATES TO WHAT YOU DO AS A
7 GENERAL MANAGER FOR PROVIDING WATER SERVICE?

8 A YEAH. MY EDUCATION AND TRAINING IN THE
9 WATER INDUSTRY GOES BACK TO HESPERIA WATER DISTRICT
10 STARTING OUT IN THE ENGINEERING DEPARTMENT FOR A NUMBER
11 OF YEARS THERE, I BELIEVE 1985 THROUGH 1990, AND THEN
12 APPROXIMATELY 13 YEARS AT BALDY MESA WATER DISTRICT
13 WHICH IS ADJACENT TO PHELAN PINON HILLS. I SPENT A
14 SHORT PERIOD OF TIME OUT AT BIGHORN DESERT VIEW WATER
15 AGENCY FOR ABOUT NINE MONTHS PRIOR TO BECOMING GENERAL
16 MANAGER AT PHELAN PINON HILLS.

17 Q HOW WOULD YOU GENERALLY DESCRIBE YOUR
18 DUTIES AS A GENERAL MANAGER?

19 A THE DUTIES AS GENERAL MANAGER ARE TO CARRY
20 OUT THE DUTIES THAT ARE ASSIGNED TO ME BY THE BOARD
21 WHICH IS OPERATION OF THE WATER SYSTEM INCLUDING
22 PRODUCTION, DISTRIBUTION, TREATMENT, EVALUATING THE
23 HEALTH OF THE SYSTEM AND WATER DELIVERY SYSTEM.

24 Q WHAT DO YOU MEAN BY THE HEALTH OF THE
25 SYSTEM?

26 A THE HEALTH OF THE SYSTEM IS TO MONITOR THE
27 WELL LEVELS, TO TAKE READINGS ON THE WELLS, EVALUATE
28 THOSE, LOOK AT WATER LEVELS, EVALUATE IF WE HAVE ENOUGH

1 PRODUCTION ALLOWANCE TO SERVE OUR CUSTOMERS AND TO KEEP
2 THE SYSTEM OPERATIONAL.

3 Q AND CAN YOU GENERALLY DESCRIBE WHAT IT IS
4 THAT PHELAN PROVIDES IN TERMS OF SERVICES?

5 A PHELAN PINON HILLS COMMUNITY SERVICES
6 DISTRICT PROVIDES WATER SERVICE TO THE CUSTOMERS, PARKS
7 AND RECREATION, STREETLIGHTING AND SOLID WASTE. ABOUT
8 97 PERCENT OF THE DISTRICT IS FOR WATER OPERATIONS.

9 Q AND WHAT ARE THE OTHER APPROXIMATE
10 3 PERCENT OF SERVICES RELEGATED TO?

11 A APPROXIMATELY 1 PERCENT STREETLIGHTING,
12 MAYBE A PERCENT AND A HALF OF PARKS AND RECREATION, AND
13 SOLID WASTE MAYBE ONE HALF OF ONE PERCENT; IT'S VERY
14 SMALL.

15 Q MR. BARTZ, I HAVE WHAT IS PROJECTED ON THE
16 SCREEN AND MARKED FOR IDENTIFICATION PURPOSES AS
17 EXHIBIT 26. IF I WERE TO DIRECT YOUR ATTENTION TO THE
18 YELLOW LINE, ARE YOU ABLE TO IDENTIFY WHAT THAT
19 ILLUSTRATES?

20 A YES. THE YELLOW LINE IS THE BOUNDARIES OF
21 PHELAN PINON HILLS CSD.

22 Q AND THE BLACK LINE RUNNING DOWN SOMEWHAT
23 CLOSE TO THE MIDDLE OF THE PAGE, IS THAT THE LOS ANGELES
24 COUNTY AND SAN BERNARDINO COUNTY LINE?

25 A THAT IS CORRECT.

26 Q AND APPROXIMATELY WHERE ON THERE WOULD YOU
27 DESCRIBE WELL 14 AS BEING LOCATED?

28 A WELL 14 IS ALMOST IN THE CENTER OF THE MAP

1 THAT LOOKS TO BE DIRECTLY ON THE BLACK LINE DELINEATING
2 THE COUNTY LINE.

3 Q WHAT ARE THOSE OTHER BLUE DOTS, SO TO
4 SPEAK, ILLUSTRATE TO YOU?

5 A THE OTHER BLUE DOTS ON THE MAP DELINEATE
6 THE PHELAN'S OTHER PRODUCTION WELLS.

7 Q AND HOW MANY OTHER PRODUCTION WELLS DOES
8 PHELAN HAVE?

9 A WE HAVE 11 PRODUCTION WELLS THAT ARE
10 ACTIVE.

11 Q DO YOU KNOW THE AGE OF THE OLDEST
12 PRODUCTION WELL?

13 A THE AGE OF THE OLD OF THE PRODUCTION WELL
14 IN SERVICE IS APPROXIMATELY 25 YEARS.

15 Q DO YOU KNOW WHERE APPROXIMATELY THAT WELL
16 WAS LOCATED?

17 A THE WELL WOULD BE LOCATED IN THE CENTER OF
18 THE SERVICE AREA JUST BELOW THE YELLOW LINE IN THE AREAS
19 OF WELLS TWO, THREE AND FOUR IN THAT VICINITY.

20 Q ON EXHIBIT 26 THERE ARE DESIGNATIONS FOR
21 ONE, TWO, THREE AND FOUR WITHIN KIND OF THAT LIGHTER TAN
22 AREA. IS THAT THE WELLS WHERE YOU ARE SPEAKING OF NOW?

23 A THAT'S CORRECT.

24 Q AS FAR AS YOU UNDERSTAND, IS WELL 14 THE
25 ONLY WELL LOCATED IN LOS ANGELES COUNTY IN TERMS OF
26 PHELAN'S PRODUCTION WELL?

27 A IN PHELAN'S PRODUCTION WELLS, WELL 14 IS
28 THE ONLY ONE IN L. A. COUNTY.

1 Q MR. BARTZ, I WANT TO DIRECT YOUR ATTENTION
2 TO WHAT HAS BEEN MARKED FOR IDENTIFICATION PURPOSES AS
3 EXHIBIT 20.

4 A OKAY.

5 Q IF YOU LIKE, SIR, THERE IS A BINDER IN
6 FRONT OF YOU THAT HAS EXHIBITS. THERE IS ONE AVAILABLE
7 TO THE COURT AS WELL.

8 MR. BARTZ, HAVE YOU SEEN AN AERIAL
9 ILLUSTRATION SUCH AS THIS ONE BEFORE?

10 A YES, I HAVE.

11 Q AND FROM LOOKING AT WHAT HAS BEEN MARKED
12 FOR IDENTIFICATION PURPOSES AS EXHIBIT 20, DO YOU
13 RECOGNIZE WHAT THIS EXHIBIT IS DEPICTING?

14 A YES. THIS EXHIBIT IS WHAT I WOULD CALL A
15 TYPICAL REPRESENTATION OF THE COMMUNITY OF PHELAN. YOU
16 CAN SEE THAT MOST OF THE LOTS ARE FAIRLY LARGE IN SIZE
17 AVERAGING TWO AND A HALF ACRES AND WITH VERY LITTLE
18 LANDSCAPING ON THESE PARCELS. MOST OF IT IS NATURAL
19 DESERT LANDSCAPING.

20 Q WHEN YOU SAY NATURAL DESERT LANDSCAPING,
21 WHAT DOES THAT MEAN TO YOU?

22 A NATURAL DESERT LANDSCAPING MEANS THAT
23 THERE'S REALLY BEEN VERY LITTLE IMPROVEMENT FOR PLANTING
24 OF GRASS IN THE AREA OR NON-NATIVE TREES. MOST OF THE
25 PEOPLE THAT ARE IN THE VICINITY OUT THERE WILL GRADE A
26 PAD, BUILD THEIR HOUSE AND LEAVE THE DESERT AS IT WAS
27 INITIALLY.

28 Q MR. BARTZ, IF I CAN DIRECT YOU TO WHAT HAS

1 BEEN MARKED FOR IDENTIFICATION PURPOSES AS EXHIBIT 21.
2 DOES THAT ILLUSTRATE WHAT YOU ARE SPEAKING TO IN TERMS
3 OF THE NATURAL DESERT LANDSCAPE?

4 A YES. YOU CAN SEE THE JOSHUA TREES ARE
5 NATIVE IN THE AREA. YOU DON'T SEE ANY GRASS IN THE
6 AREA. IT'S JUST BASICALLY A GREAT ENOUGH AREA FOR THE
7 HOUSE AND LEAVE THE REST DESERT.

8 Q AND BASED UPON YOUR TIME WITH PHELAN, I
9 ASSUME YOU HAVE DRIVEN AROUND THE DISTRICT MANY TIMES;
10 IS THAT A FAIR STATEMENT?

11 A YES.

12 Q AND IN DOING SO, HAVE YOU NOTICED THERE TO
13 BE SPRINKLERS OR OTHER TYPES OF OUTDOOR IRRIGATION
14 SYSTEMS TO IRRIGATE TO ANY OF THE LANDSCAPE?

15 A THERE ARE FEW, BUT THEY ARE VERY FEW AND
16 FAR BETWEEN. MOST PREVALENT FOR LANDSCAPING WOULD BE
17 THE PLANTING OF SOME TREES TO HELP BLOCK THE WIND BUT
18 VERY LITTLE AS FAR AS PLANTING A YARD OR ANYTHING LIKE
19 THAT ON A DRIP SYSTEM.

20 Q IT'S ALSO TRUE, ISN'T IT, THAT ALL OF THE
21 SERVICE CONNECTIONS WITHIN PHELAN ARE ROUTED TO SEPTIC
22 AS OPPOSED TO A SEWER SYSTEM; IS THAT CORRECT?

23 A YES. THERE IS NO SEWER SYSTEM IN PHELAN.

24 Q IN YOUR EXPERIENCE THAT YOU HAVE BRIEFLY
25 DESCRIBED BEFORE, HAVE YOU WORKED AROUND SEPTIC SYSTEMS?

26 A YES.

27 Q BASED UPON YOUR TRAINING AND EXPERIENCE,
28 HAVE YOU SEEN ANYTHING SIGNIFICANTLY DIFFERENT WITH

1 PHELAN' S SEPTIC SYSTEMS OR THOSE SEPTIC SYSTEMS OF
2 PHELAN CUSTOMERS AS IT RELATES TO OTHER SEPTIC SYSTEMS
3 THAT YOU HAVE COME ACROSS IN YOUR CAREER?

4 MR. DUNN: OBJECTION. LACK OF FOUNDATION.

5 THE COURT: SUSTAINED.

6 Q BY MR. MILIBAND: MR. BARTZ, CAN YOU
7 EXPLAIN FOR US A LITTLE BIT ABOUT WHAT YOUR BACKGROUND
8 IS IN WORKING WITH SEPTIC SYSTEMS?

9 A MY BACKGROUND IN WORKING WITH SEPTIC
10 SYSTEMS IS MAINLY IN WATER QUALITY ISSUES. WORKING AT
11 HESPERIA WATER DISTRICT, MUCH OF THE TOWN WAS ON SEPTIC.
12 AT BALDY MESA WHEN I WAS THERE, THE MAJORITY OF THE
13 DISTRICT WAS ON SEPTIC TANKS AND SIMILAR IN PHELAN.
14 MOST OF THOSE AREAS THE WATER PERCOLATES DOWN INTO THE
15 GROUND FROM THE SEPTIC TANKS. AND AT SOME POINT YOU CAN
16 SEE TRACES OF NITRATES IN THE WATER WHICH WOULD SHOW
17 THAT THE PERCOLATION IS ACTUALLY REACHING THE
18 GROUNDWATER.

19 Q DID YOU ALSO WORK AROUND SEPTIC SYSTEMS
20 DURING YOUR TIME WITH BIGHORN DESERT VIEW WATER AGENCY?

21 A THAT' S CORRECT.

22 Q WORKING WITH HESPERIA, BALDY MESA AND
23 BIGHORN AS IT RELATES TO SEPTIC, HAVE YOU SEEN ANY
24 DIFFERENCES FROM YOUR OPERATIONAL STANDPOINT AS IT
25 RELATES TO YOUR UNDERSTANDING OF THE SEPTIC SYSTEMS IN
26 THE PHELAN SERVICE AREA?

27 MR. KUHS: OBJECTION, YOUR HONOR. RELEVANCE.

28 MR. MILIBAND: YOUR HONOR, THIS SPEAKS TO

1 POTENTIALLY RETURN FLOW ISSUES AND THE FACT THAT SEPTIC
2 SYSTEMS ARE WHAT HELP TO RECHARGE THE AQUIFER. SO TO
3 THE EXTENT THAT THERE IS ANY KIND OF CHALLENGE TO A
4 SEPTIC SYSTEM, I THINK IT'S IMPORTANT FOR THE COURT TO
5 HEAR WHAT MR. BARTZ HAS TO SAY IN TERMS OF SEPTIC
6 SYSTEMS AS THEY RELATE TO HIS EXPERIENCE INCLUDING
7 WITHIN PHELAN PINON HILLS.

8 THE COURT: MR. KUHS?

9 MR. KUHS: YEAH. THE REASON FOR THE OBJECTION,
10 YOUR HONOR, IS BECAUSE NONE OF THE WITNESS' EXPERIENCE
11 APPEARS TO BE TAILORED TO ANTELOPE VALLEY. SO WHAT
12 OTHER COMMUNITIES AND OTHER BASINS WERE DOING WITH THE
13 SEPTIC SYSTEM THERE IS NO RELEVANCE TO THE QUESTION
14 BEFORE IT.

15 THE COURT: WELL, I'M GOING TO OVERRULE IT. THE
16 COURT HAS HEARD ENORMOUS AMOUNTS OF EVIDENCE ABOUT
17 RETURN FLOWS FROM SEPTIC SYSTEMS AND MUNICIPAL WATER
18 SYSTEM AND THE LIKE. I DON'T KNOW WHAT REAL RELEVANCE
19 THERE IS HERE OTHER THAN THE FACT THAT THEY DO HAVE
20 SEPTIC TANKS IN THIS AREA. THAT DOES NOT PROVIDE ANY
21 EVIDENCE AS TO QUANTIFICATION.

22 GO AHEAD.

23 MR. MILIBAND: THANK YOU, YOUR HONOR.

24 Q BY MR. BARTZ, I WOULD LIKE TO DIRECT YOUR
25 ATTENTION TO WHAT HAS BEEN MARKED FOR IDENTIFICATION
26 PURPOSES AS EXHIBIT 18.

27 THE COURT: 18?

28 MR. MILIBAND: YES, YOUR HONOR. THESE ARE AMONG

1 THE EXHIBITS THAT WERE ADMITTED THROUGH THE STIPULATION.

2 THE COURT: DO YOU HAVE A COPY OF THOSE EXHIBITS
3 FOR THE COURT?

4 MR. MILIBAND: YES, YOUR HONOR. THERE SHOULD BE
5 A BINDER ON THE BENCH.

6 THE COURT: THANK YOU.

7 Q BY MR. MILIBAND: MR. BARTZ, EXHIBIT 18,
8 YOU HAVE IT OPEN BEFORE YOU, A MULTI-PAGE DOCUMENT. IF
9 YOU CAN TAKE A MOMENT AND LOOK AT THAT, PLEASE, SIR.

10 HAVE YOU SEEN EXHIBIT 18 BEFORE?

11 A YES.

12 Q DESCRIBE 18.

13 A 18 IS THE ANNUAL NOTICE TO THE GROUNDWATER
14 EXTRACTION. AND WE SUBMIT THIS ON AN ANNUAL BASIS FOR
15 ALL OF OUR WELLS INCLUDING WELL 14. AND THIS IS THE
16 STATE WATER RESOURCES CONTROL BOARD SUBMITTAL.

17 Q WHEN YOU SAY THIS IS THE STATE WATER
18 RESOURCES CONTROL BOARD SUBMITTAL, ARE YOU SAYING THIS
19 IS WHAT PHELAN SUBMITTED TO THE STATE WATER RESOURCES
20 CONTROL BOARD?

21 A THIS IS WHAT PHELAN SUBMITS ANNUALLY FOR
22 OUR GROUNDWATER EXTRACTION.

23 THE COURT: IT GOES TO THE STATE WATER RESOURCES
24 BOARD?

25 THE WITNESS: YES.

26 THE COURT: IS THAT MANDATED BY ANYBODY?

27 THE WITNESS: YES.

28 THE COURT: WHO?

1 THE WITNESS: THE STATE WATER RESOURCES CONTROL
2 BOARD.

3 THE COURT: IS IT ALL CONNECTED WITH THE MOJAVE
4 LITIGATION?

5 THE WITNESS: THIS FORM IS NOT.

6 THE COURT: NO. THE MANDATE TO REPORT.

7 MR. MILIBAND: I CAN ADDRESS THAT IF YOU WOULD
8 LIKE, YOUR HONOR.

9 THE COURT: WHAT?

10 MR. MILIBAND: I AM HAPPY TO ADDRESS THAT IF YOU
11 WOULD LIKE.

12 THE COURT: I WOULD LIKE TO KNOW.

13 MR. MILIBAND: OKAY. MY UNDERSTANDING IS THAT
14 THIS IS A REQUIREMENT THAT ARISES INDEPENDENT FROM THE
15 MOJAVE ADJUDICATION. IN FACT, HAVING WELLS SUBJECT TO
16 THE MOJAVE ADJUDICATION RELIEVES THOSE WELLS FROM HAVING
17 TO BE REPORTED TO THE STATE WATER RESOURCES CONTROL
18 BOARD. SO WHAT EXHIBIT 18 IS DOING IS REPORTING TO THE
19 STATE THE WELL 14 USE.

20 THE COURT: ALL RIGHT.

21 Q BY MR. MILIBAND: THE REASON I DIRECT
22 ATTENTION TO THIS, MR. BARTZ, IS I WANT TO ASK YOU ABOUT
23 IN THE LAST COUPLE OF PAGES OF EXHIBIT 18, IT'S BATES
24 STAMPED AT THE BOTTOM PHELAN CSD-18, PAGE 13.

25 ARE YOU THERE, SIR?

26 A YES.

27 Q OKAY. YOU CAN SEE THERE IS A CLUSTER OF
28 YEARS, 2005 TO 2009. DID YOU SEE THAT, SIR?

1 A YES, I SEE THAT.

2 Q AND YOU WERE THE GENERAL MANAGER AT LEAST
3 AS OF 2008. DO YOU KNOW WHEN THIS WAS ACTUALLY
4 SUBMITTED TO THE STATE WATER RESOURCES CONTROL BOARD?

5 A I BELIEVE THIS WAS SUBMITTED IN 2009.

6 Q WOULD IT ASSIST YOU TO REFRESH YOUR MEMORY
7 LOOKING AT THE FINAL PAGE?

8 A 6/15 OF 2010 IS THE DATE WHERE THE CHECK
9 WAS SUBMITTED.

10 Q WHAT IS YOUR UNDERSTANDING AS TO WHO
11 SUBMITTED THE CHECK?

12 A THE CHECK WAS SUBMITTED BY SUSAN TRAGER'S
13 OFFICE WHO WAS OUR ATTORNEY AT THE TIME.

14 Q DID YOU COORDINATE WITH MS. TRAGER AT THAT
15 TIME THE PREPARATION AND SUBMISSION OF THESE DOCUMENTS
16 AS REFLECTED IN EXHIBIT 18?

17 A YES.

18 Q DO YOU HAVE ANY UNDERSTANDING AS TO WHY
19 2005, 2006, 2007 AND 2008 WERE BEING REPORTED DURING
20 2010?

21 A YES. WHEN THE DISTRICT WAS FORMED, WE
22 RECEIVED WHAT I WOULD DESCRIBE AS A TRICKLE OF DOCUMENTS
23 FROM THE COUNTY OF SAN BERNARDINO SPECIAL DISTRICTS. WE
24 HAD BOXES AND BOXES OF INFORMATION TO GO THROUGH.

25 IN CONVERSATIONS WITH SUSAN TRAGER IT WAS
26 DETERMINED THAT THE COUNTY HAD NOT FILED FOR THOSE
27 YEARS. AND SO WE DID GATHER THE INFORMATION FROM THE
28 LOGS THAT WE HAD FOR THE WELLS AND SUBMITTED THE

1 INFORMATION FOR THOSE DATES FROM 2005 TO 2009.

2 Q AND SO WAS IT MORE OR LESS A LITTLE
3 CATCHUP THAT WAS BEING DONE BY PHELAN BEING A NEWLY
4 FORMED DISTRICT?

5 A ABSOLUTELY. THERE WAS A LOT OF CATCHUP TO
6 DO WITH THE DISTRICT.

7 Q DESPITE THAT CATCHUP AND SPECIFICALLY WITH
8 EXHIBIT 18 UNDERTAKING AN EFFORT TO REPORT FOR THOSE
9 VARIOUS YEARS, BASED UPON YOUR EXPERIENCE AND YOUR TIME
10 WITH PHELAN, PHELAN NONETHELESS WAS STILL DISTRIBUTING
11 WATER FOR THOSE VARIOUS YEARS SPECIFICALLY 2005 THROUGH
12 2009; IS THAT CORRECT?

13 A THAT'S CORRECT.

14 Q AND IS YOUR UNDERSTANDING AS TO THE WATER
15 SERVICE THAT WAS BEING PROVIDED FOR THOSE YEARS AS YOU
16 TESTIFIED FOR HERE TODAY THAT IT WAS APPROXIMATELY
17 97 PERCENT FOR RESIDENTIAL USE?

18 A THAT'S CORRECT.

19 Q BASED UPON YOUR TRAINING AND EXPERIENCE AS
20 A GENERAL MANAGER AND A WATER INDUSTRY PROFESSIONAL
21 INCLUDING YOUR TIME AS GENERAL MANAGER WITH THIS AGENCY
22 AND OTHERS, HOW WOULD YOU CHARACTERIZE THE IMPORTANCE OF
23 WELL 14 TO PHELAN'S WATER SUPPLY?

24 MR. DUNN: OBJECTION. IT APPEARS TO BE A
25 QUESTION ASKING FOR AN OPINION FROM THIS LAY WITNESS NOT
26 DESIGNATED AS AN EXPERT.

27 MR. MILIBAND: IF I MAY, YOUR HONOR. AS GENERAL
28 MANAGER -- I CAN LAY SOME FOUNDATION IF THE COURT WOULD

1 LI KE. BUT AS GENERAL MANAGER, I THINK IT'S IMPORTANT TO
2 HEAR HOW THE GENERAL IMPACTS -- WHAT HE THINKS OF THE
3 DIFFERENT WELLS FOR DI STRI BUTI NG WATER.

4 THE COURT: WHY IS THAT IMPORTANT? WHY IS IT
5 RELEVANT?

6 MR. MI LI BAND: WELL, IT SPEAKS TO SOME OF THE
7 DIFFERENT LEGAL ISSUES WE MAY NEED TO ADDRESS YOUR
8 HONOR.

9 THE COURT: IF YOU ARE ENTITLED, YOU ARE
10 ENTITLED. IF YOU ARE NOT ENTITLED, YOU ARE NOT
11 ENTITLED. I DON'T UNDERSTAND THE RELATIVE VALUE HAVING
12 ANY LEGAL SIGNI FICANCE. MAYBE YOU CAN TELL ME WHAT THAT
13 MIGHT BE.

14 MR. MI LI BAND: IN PART, PUBLIC USE. AND THE FACT
15 THAT THE EXTENT TO WHICH THIS WELL PROVIDES FOR ANNUAL
16 WATER SUPPLY NEEDED BY PHELAN FOR DI STRI BUTI ON TO ITS
17 CUSTOMERS SPEAKS TO PUBLIC USE ISSUES.

18 THE COURT: THE SIMPLE ISSUE HERE IS RIGHT TO
19 PUMP.

20 MR. MI LI BAND: AND THIS RELATES TO THAT, THE
21 RIGHT TO PUMP AS AN APPROPRIATOR, THE RIGHT TO PUMP FOR
22 PUBLIC USE WHETHER INTERVENING OR AS AN APPROPRIATOR.
23 IT CERTAINLY BEARS UPON THOSE ISSUES.

24 THE COURT: I WILL SUSTAIN THE OBJECTION.

25 Q BY MR. MI LI BAND: MR. BARTZ, DO YOU KNOW
26 OFFHAND APPROXI MATELY HOW MUCH WATER WELL 14 PROVIDES TO
27 THE ANNUAL SUPPLY THAT IS DI STRI BUTED THROUGH THE PHELAN
28 DI STRI BUTI ON SYSTEM?

1 A WELL 14 LAST YEAR PROVIDES APPROXIMATELY
2 1,100 ACRE-FEET OF WATER TO THE PHELAN SUPPLY WHICH IS
3 ABOUT ONE THIRD OF OUR PRODUCTION.

4 Q IN YOUR DUTIES AS THE GENERAL MANAGER,
5 WHAT DO YOU LOOK FOR IN TERMS OF INSURING THAT YOU HAVE
6 THE WATER NEEDED TO MEET THE DEMANDS OF YOUR CUSTOMERS?

7 MR. KUHS: OBJECTION; RELEVANCE.

8 THE COURT: IT SEEMS TO BE THE SAME ISSUE.

9 MR. MILIBAND: I WILL HAVE THE SAME RESPONSE,
10 YOUR HONOR. SO IF THERE IS A RELEVANCY OBJECTION, MY
11 RESPONSE WOULD BE THE SAME.

12 THE COURT: SUSTAINED.

13 Q BY MR. MILIBAND: MR. BARTZ, BASED UPON
14 YOUR TRAINING AND EXPERIENCE, IN SIMPLY LOOKING AT THE
15 WELL 14 LOCATION INCLUDING AS DEPICTED IN ONE OF THESE
16 EARLIER EXHIBITS, DOES THAT LOCATION FACTOR INTO ANY OF
17 YOUR THINKING IN TERMS OF THE DECISIONS YOU MADE FOR
18 UTILIZING WELL 14 AS PART OF THE SUPPLY FOR PHELAN?

19 MR. KUHS: OBJECTION; RELEVANCE.

20 MS. GOLDSMITH: OBJECTION; VAGUE.

21 THE COURT: I AM NOT SURE I UNDERSTAND THE
22 QUESTION. WHY DON'T YOU RESTATE IT OR REPHRASE IT.

23 Q BY MR. MILIBAND: I WILL ASK IT THIS WAY,
24 YOUR HONOR. MR. BARTZ, WHEN YOU LOOK AT WELL 14' S
25 LOCATION, DOES IT MEAN ANYTHING TO YOU?

26 MS. GOLDSMITH: OBJECTION, YOUR HONOR. VAGUE.

27 THE COURT: SUSTAINED. TRY AGAIN.

28 Q BY MR. MILIBAND: WITH WELL 14' S LOCATION

1 NEAR OTHER WELLS THAT YOU IDENTIFIED ON EXHIBIT 16, DID
2 THAT FACTOR INTO ANY OF THE DECISION MAKING YOU MAKE AS
3 A GENERAL MANAGER?

4 MR. GOLDEN-KRASNER: OBJECTION; LEADING.

5 THE COURT: I'M GOING TO SUSTAIN THE OBJECTION.
6 AND I AM NOT SURE I REALLY UNDERSTAND YOUR QUESTION
7 SINCE HE WAS NOT THE PERSON WHO SELECTED THE LOCATION
8 FOR THE WELL, WAS HE? IT WAS PRIOR TO HIS COMING INTO
9 THE JOB.

10 MR. MILIBAND: RIGHT. AND I AM NOT ASKING
11 MR. BARTZ TO OFFER ANY KIND OF TESTIMONY ABOUT WHY WELL
12 14 WAS PUT THERE BUT JUST WHAT ITS LOCATION MEANS TO HIM
13 IN TERMS OF OPERATIONAL AND DECISIONS HE MAKES AS A
14 GENERAL MANAGER.

15 THE COURT: SUSTAINED.

16 Q BY MR. MILIBAND: MR. BARTZ, AS GENERAL
17 MANAGER, IS PART OF WHAT YOU DO EVALUATE THE VARIOUS
18 SUPPLY AND DEMANDS OF PHELAN CUSTOMERS FOR WATER
19 SERVICE?

20 A YES.

21 Q AND UNDERTAKING THOSE EFFORTS, DO YOU LOOK
22 AT WELL 14'S PERFORMANCE?

23 A YES.

24 Q AND WHEN LOOKING AT WELL 14'S PERFORMANCE,
25 WHAT SORT OF CRITERIA DO YOU UTILIZE?

26 MR. KUHS: ROBERT KUHS. RELEVANCE. HE SEEMS TO
27 BE GETTING BACK TO THE SAME AREA WHICH IS WHAT IS THE
28 IMPORTANCE OF THE WELL INSTEAD OF FACTS WITH REGARD TO

1 WHAT THE WELL IS PRODUCING AND WHEN IT PRODUCED.

2 THE COURT: I DON'T MEAN TO BE GIVE DIRECT
3 ANALOGY. IT'S A LITTLE BIT LIKE ASKING A THIEF WHY HE
4 STOLE THOUSANDS OF DOLLARS, WHAT HE WAS GOING TO USE IT
5 FOR, WHY WAS IT IMPORTANT TO HIM AND SO ON. I DON'T
6 MEAN TO SUGGEST TO YOU THAT I HAVE ANY CONCLUSIONS ABOUT
7 STEALING WATER.

8 MR. MILIBAND: THANK YOU. I APPRECIATE THAT,
9 YOUR HONOR.

10 THE COURT: IT SEEMS TO ME THAT SPEAKS TO THE
11 RELEVANCE ISSUE.

12 MR. MILIBAND: I FOLLOW THE COURT'S ANALOGY, AND
13 I'M GLAD THE COURT DISTINGUISES THE TWO. I'VE STATED
14 MY BASIS. I THINK THERE IS A PUBLIC USE ISSUE IN THIS
15 CASE.

16 THE COURT: I WOULD LIKE YOU TO ESTABLISH A LEGAL
17 BASIS FOR THAT OPINION WHICH YOU HAVE NOT DONE YET TO MY
18 SATISFACTION BEFORE WE GET INTO THAT AS SOMETHING WORTHY
19 OF HEARING EVIDENCE ABOUT.

20 MR. MILIBAND: IT'S PARTIALLY WITHIN THE TRIAL
21 BRIEF RELATING TO PUBLIC USE.

22 THE COURT: I HAVE READ THAT TRIAL BRIEF, AND I
23 AM WAITING TO BE PERSUADED.

24 MR. MILIBAND: UNDERSTOOD, YOUR HONOR.

25 Q BY MR. MILIBAND: MR. BARTZ, WHEN MAKING
26 DECISIONS ABOUT HOW TO MAINTAIN THE PHELAN WATER SUPPLY,
27 DO YOU FOCUS TO ANY EXTENT ON ANY PARTICULAR LOCATION OF
28 WELLS WITHIN THE PHELAN PRODUCTION WELLS SYSTEM?

1 MR. KUHS: SAME OBJECTION, YOUR HONOR.
2 RELEVANCE.

3 THE COURT: I WILL ALWAYS GIVE YOU AN OPPORTUNITY
4 TO RESPOND, MR. MILIBAND.

5 MR. MILIBAND: WELL, MY RESPONSE, YOU HONOR, IS
6 THAT THERE ARE PUBLIC USE ISSUES HERE. PART OF WHAT HAS
7 BEEN BRIEFED ARE RELATING TO THE SECOND CAUSE OF ACTION
8 FOR APPROPRIATIVE WATER RIGHTS DEALING WITH POTENTIALLY
9 THE INTERVENING PUBLIC ISSUE AS DISCUSSED IN PEABODY V.
10 VALEJO FROM 1935.

11 THAT CALIFORNIA SUPREME COURT DECISION
12 TALKS EXTENSIVELY ABOUT AN APPROPRIATIVE RIGHT AND THE
13 EXTENT TO WHICH INTERVENING PUBLIC USE BECOMES A CENTRAL
14 ISSUE. AND HERE WE ARE DEALING WITH WHAT IS POTENTIALLY
15 AN INTERVENING PUBLIC USE. AND THAT IS WHAT RELATES TO
16 THE HISTORICAL BACKGROUND THAT WAS CONTAINED WITHIN MUCH
17 OF THE STIPULATION THAT HAS NOW BECOME EVIDENCE BEFORE
18 THE COURT.

19 SO TO HEAR FROM THE GENERAL MANAGER WHO IS
20 MAKING THESE DAY-TO-DAY OR MONTHLY OR QUARTERLY OR
21 ANNUAL DECISIONS ABOUT HOW TO MAINTAIN AN ADEQUATE WATER
22 SUPPLY FOR THE CUSTOMERS, I THINK IT'S IMPORTANT FOR THE
23 COURT TO HEAR HOW THOSE DECISIONS ARE MADE AS IT RELATES
24 TO THE ONE WELL THAT IS AT ISSUE IN THIS CASE, WELL 14.

25 THE COURT: I WILL OVERRULE THE OBJECTION, BUT I
26 WANT THIS AREA TO BE COVERED VERY QUICKLY.

27 MR. MILIBAND: I WILL, YOUR HONOR. AND I THINK
28 THIS IS THE LAST AREA THAT I DO HAVE.

1 THE COURT: I AM NOT PERSUADED THAT YOUR
2 CITATIONS OF AUTHORITY WOULD JUSTIFY THIS, BUT I WILL
3 HEAR THE EVIDENCE AND MAKE A RULING.

4 MR. MILIBAND: UNDERSTOOD. THANK YOU, YOUR
5 HONOR.

6 IF I CAN CALL UPON THE REPORTER TO READ
7 THE LAST QUESTION BACK. I DON'T WANT TO REPHRASE IT IN
8 A WAY THAT GENERATES A NEW SET OF OBJECTIONS.

9 (RECORD READ AS FOLLOWS:

10 "Q BY MR. MILIBAND: MR. BARTZ, WHEN MAKING
11 DECISIONS ABOUT HOW TO MAINTAIN THE PHELAN WATER SUPPLY,
12 DO YOU FOCUS TO ANY EXTENT ON ANY PARTICULAR LOCATION OF
13 WELLS WITHIN THE PHELAN PRODUCTION WELLS SYSTEM?"

14 THE WITNESS: YES, I DO. THE LOCATION OF WELL 14
15 IS IN A KNOWN-PRODUCING AQUIFER. WE HAVE WELLS THAT ARE
16 IN THE VICINITY. WELL 14 IS A GOOD PRODUCING WELL,
17 PROBABLY OUR MOST EFFICIENT WELL AS FAR AS ELECTRICITY
18 IS CONCERNED. IT'S VERY EFFICIENT.

19 IT ALSO HAS TIES INTO OUR SYSTEM WITH OUR
20 TRANSMISSION AND DISTRIBUTION LINES THAT COME FROM THE
21 WELL. IT IS ALSO IMMEDIATELY DOWNSTREAM OF A NUMBER OF
22 RESIDENCES THAT ARE IN THE ANTELOPE VALLEY BASIN AND THE
23 BASIN FOR THE ADJUDICATION TO RECAPTURE SOME OF THE
24 EFFLUENT FROM THE SEPTIC SYSTEMS.

25 THE COURT: DO ANY OF THOSE THAT ARE DOWNSTREAM
26 HAVE THEIR OWN WELLS?

27 THE WITNESS: DO ANY?

28 THE COURT: THOSE RESIDENTS THAT YOU SERVICE OR

1 THAT ARE IN YOUR DISTRICT THAT YOU SAY ARE DOWNSTREAM
2 FROM THE WELL NUMBER 14, DO THEY HAVE THEIR OWN WELLS.

3 THE WITNESS: THERE ARE A COUPLE OF PRIVATE WELLS
4 BUT NO MAJOR PRODUCERS EXCEPT MILES DOWNSTREAM FROM
5 THESE WELLS.

6 THE COURT: SO THE PRIVATE WELLS ARE PRODUCING
7 THEIR OWN WATER?

8 THE WITNESS: YES, BUT THERE ARE VERY FEW IN THAT
9 AREA.

10 Q BY MR. MILIBAND: MR. BARTZ, IF I CAN
11 DIRECT YOUR ATTENTION TO WHAT HAS BEEN MARKED FOR
12 IDENTIFICATION PURPOSES AS EXHIBIT 39.

13 GOING ALONG TO WHAT YOU HAD JUST
14 DESCRIBED, PLEASE DESCRIBE WHAT YOU SEE HERE IN EXHIBIT
15 39.

16 A EXHIBIT 39 SHOWS THE ANTELOPE VALLEY
17 GROUNDWATER BASIN ON THE LEFT-HAND SIDE. THE YELLOW
18 LINE IS THE L. A. COUNTY LINE IN THE DISTRICT BOUNDARY.
19 THE BLACK BOXES THAT YOU SEE IN THE AREA TO THE WEST OF
20 THE EL MIRAGE GROUNDWATER BASIN ARE PARCELS THAT ARE
21 SERVED WITHIN THE PHELAN PINON HILLS AREA THAT ARE
22 METERED.

23 Q FIRST, LET'S TAKE YOUR LAST PART OF THE
24 STATEMENT THERE "THAT ARE METERED."

25 IS THERE ANY CONSUMPTION BEING DONE TO
26 YOUR KNOWLEDGE THAT IS NOT METERED WITHIN THAT PORTION
27 WHERE YOU IDENTIFIED THERE BEING PARCELS?

28 A IF THERE WERE A PRIVATE WELL IN THAT AREA

1 THAT WOULD NOT SHOW UP ON THE MAP. AGAIN, I DON'T KNOW
2 THE LOCATION OR QUANTITY, BUT THERE ARE VERY FEW IN THAT
3 AREA.

4 Q WHEN YOU SAY "VERY FEW," ARE YOU ABLE TO
5 ESTIMATE WITHOUT GUESSING OF THE NUMBER OF THOSE THAT
6 MIGHT EXIST? BY THOSE, I MEAN SPECIFICALLY PRIVATE
7 WELLS.

8 A I WOULD BE MAKING AN ESTIMATE, AND I WOULD
9 SAY LESS THAN TEN.

10 Q AND IN LOOKING AT EXHIBIT 39,
11 APPROXIMATELY WHERE IS WELL 14 LOCATED?

12 A IF I HAD A LASER POINTER I COULD SHOW YOU.
13 BUT IT IS IN THE AREA. NORTH YOU CAN SEE A LINE WHICH
14 IS THE CALIFORNIA AQUEDUCT. WELL 14 IS IN THIS
15 VICINITY.

16 Q YOU POINTED TO --

17 A THIS IS THE COUNTY LINE. THIS IS THE
18 CALIFORNIA AQUEDUCT. WELL 14 IS JUST NORTH OF THE
19 CALIFORNIA AQUEDUCT.

20 Q JUST FOR A CLEAR RECORD SINCE WE CANNOT
21 SEE IN THIS PICTURE WHERE YOU ARE POINTING, YOU WERE
22 POINTING TWO OR THREE INCHES DOWN ALONG THE YELLOW LINE
23 ROUGHLY FROM THE TOP OF THE PAGE. IS THAT RIGHT?

24 A ON THE SCREEN IT APPEARS TO BE CLOSER TO
25 EIGHT INCHES.

26 Q IF YOU WERE LOOKING AT THE HARD COPY OF
27 EXHIBIT 39 IN FRONT OF YOU?

28 A THE HARD COPY WOULD BE ABOUT TWO INCHES

1 FROM THE TOP OF THE PAGE.

2 Q IN YOUR PRIOR STATEMENT A COUPLE OF
3 MOMENTS AGO YOU SAID SOMETHING ABOUT RECAPTURING WATER.
4 WHAT DID YOU MEAN BY THAT?

5 A WHEN I TALK ABOUT RECAPTURING WATER FROM
6 WELL 14, ALL OF THOSE BLACK BOXES THAT YOU SEE ARE
7 RESIDENCES THAT ARE METERED IN OUR SYSTEM AND THAT HAVE
8 SEPTIC TANKS. EVERY ONE OF THE RESIDENCES OUT THERE HAS
9 A TANK. THERE IS NO CENTRAL SEWER SYSTEM IN THE
10 COMMUNITY AT ALL.

11 ALL OF THE BLACK BOXES FOR EVERY BOX THAT
12 YOU SEE THERE IS A SEPTIC TANK ASSOCIATED WITH THAT.
13 THE WATER WILL PERCOLATE INTO THE GROUND THROUGH THE
14 SEPTIC SYSTEM AND GENERALLY DOWNGRADIENT FLOW TO THE
15 AREA OF WELL 14 KIND OF TO THE NORTH.

16 MR. KUHS: OBJECTION, YOUR HONOR. THIS IS EXPERT
17 OPINION TESTIMONY FROM A LAY WITNESS.

18 THE COURT: OVERRULED.

19 MR. MILIBAND: THANK YOU. I HAVE NOTHING FURTHER
20 AT THIS TIME.

21 THE COURT: CROSS-EXAMINATION.

22

23 CROSS-EXAMINATION

24 BY MS. GOLDSMITH:

25 Q MR. BARTZ, MY NAME IS JAN GOLDSMITH. I
26 REPRESENT THE CITY OF LOS ANGELES. YOU STATED THAT YOU
27 HAVE BEEN GENERAL MANAGER FOR ABOUT SIX AND A HALF
28 YEARS, AND YOU HAVE SEEN DEVELOPMENT WITHIN PHELAN SINCE

1 THAT TIME?

2 A ACTUALLY, SINCE I BECAME MANAGER AT PHELAN
3 PINON HILLS, THE NUMBER OF ACTIVE SERVICES HAVE ACTUALLY
4 GONE DOWN A LITTLE BIT DUE TO THE RECESSION. THERE WERE
5 A NUMBER OF HOUSES THAT WERE IN FORECLOSURE; THEREFORE,
6 WATER CONSUMPTION DID GO DOWN.

7 OVER THE PAST YEAR WE HAVE SEEN A FEW NEW
8 CONNECTIONS, BUT FOR THE PERIOD OF 2008 THROUGH 2012, I
9 WOULD ESTIMATE BETWEEN ONE TO TWO NEW CONNECTIONS PER
10 YEAR IN THE ENTIRE 128 SQUARE-MILE DISTRICT.

11 MS. GOLDSMITH: THANK YOU.

12

13

CROSS-EXAMINATION

14 BY MR. GOLDEN-KRASNER:

15 Q GOOD AFTERNOON, MR. BARTZ. NOAH
16 GOLDEN-KRASNER FOR THE STATE OF CALIFORNIA. HOW ARE
17 YOU?

18 A GREAT. HOW YOU ARE YOU?

19 Q I ONLY HAVE ONE QUESTION. IF PHELAN PINON
20 HILLS WOULD BE ABLE TO KEEP PUMPING -- STRIKE THAT.

21 PHELAN PINON HILLS CAN KEEP USING WELL 14
22 WHETHER IT HAD TO PAY FOR THE WATER OR NOT; CORRECT?

23 MR. MILIBAND: OBJECTION; VAGUE. RELEVANCY.

24 THE COURT: IT CALLS FOR A LEGAL CONCLUSION, I
25 THINK.

26 Q BY MR. GOLDEN-KRASNER: ACTUALLY, I MEANT
27 A FUNCTIONAL QUESTION, MR. BARTZ. WOULD WELL 14 STILL
28 FUNCTION PROPERLY IF PHELAN PINON HILLS HAD TO PAY FOR

1 THE WATER THAT WAS PUMPED OUT OF THAT WELL OR NOT?

2 MR. MILIBAND: OBJECTION. LACKS FOUNDATION.
3 CALLS FOR SPECULATION.

4 THE COURT: WELL, I THINK HE CAN ANSWER IT AS THE
5 MANAGER OF THE WATER DISTRICT.

6 THE WITNESS: YES.

7 MR. GOLDEN-KRASNER: THANK YOU. NO FURTHER
8 QUESTIONS.

9 THE COURT: MR. DUNN?

10 MR. DUNN: I HAVE NO QUESTIONS. THANK YOU, YOUR
11 HONOR.

12 THE COURT: ANY OTHER COUNSEL HAVE AN
13 EXAMINATION? OKAY.

14 ANY REDIRECT?

15 MR. MILIBAND: NO, YOUR HONOR.

16 THE COURT: OKAY. YOU MAY STEP DOWN, MR. BARTZ.
17 THANK YOU VERY MUCH.

18 MR. MILIBAND: BUT I WOULD LIKE TO HAVE
19 MR. BARTZ AVAILABLE AND SUBJECT TO RECALL.

20 THE COURT: WELL, HE IS YOUR WITNESS.

21 MR. MILIBAND: JUST STATING THE OBVIOUS YET
22 AGAIN.

23 THE COURT: YES, INDEED.

24 MR. MILIBAND: SO THIS BRINGS US TO THAT ISSUE
25 AGAIN OF MOVING ON TO CALLING MR. HARDER WHERE I RENEW
26 MY PROPOSAL FROM EARLIER THAT BEFORE EVEN STARTING THAT
27 TESTIMONY, I WOULD LIKE TO BE ABLE TO MEET WITH HIM MORE
28 THAN JUST WHAT WE COULD DO DURING THE LUNCH HOUR BREAK.

1 I UNDERSTAND THAT CREATES ABOUT A TWO-HOUR LOSS OF TRIAL
2 TIME TODAY, BUT I THINK IT'S CLEAR THAT --

3 THE COURT: ARE YOU GOING TO BE ABLE TO FINISH ON
4 THURSDAY?

5 MR. MILIBAND: I DON'T SEE THIS INHIBITING THAT
6 WHATSOEVER. IN FACT, MR. DUNN AND I HAVE NOT CONSULTED
7 IN RECENT DAYS OR WEEKS ABOUT OUR ESTIMATES, BUT I AM
8 PRETTY CONFIDENT WE WILL STILL FINISH BEFORE THE END OF
9 THURSDAY.

10 THE COURT: MR. KUHS?

11 MR. KUHS: YOUR HONOR, I DON'T HAVE A DOG IN THE
12 FIGHT EXCEPT TO SAY I DON'T KNOW WHY WE COULDN'T PROCEED
13 WITH THE DIRECT EXAMINATION OF PHELAN'S WITNESS. THAT
14 CERTAINLY COULD NOT HAVE CHANGED BASED UPON WHATEVER
15 EXHIBITS MR. DUNN FILED.

16 THE COURT: WELL, IT MAY MAKE SOME DIFFERENCE IN
17 THE ORDER IN WHICH HE ASKS QUESTIONS OF HIS WITNESS.

18 MR. GOLDEN-KRASNER: YOUR HONOR, I WOULD SAY
19 WHILE WE ARE HERE WE CAN AT LEAST DO SOME BACKGROUND
20 QUESTIONS OF MR. HARDER. THERE MUST BE SOME TESTIMONY
21 WE CAN GET THROUGH.

22 THE COURT: HAVING HEARD MR. HARDER IN THE PAST I
23 THINK THOSE ARE GOING TO BE BRIEF. HE IS WELL KNOWN IN
24 THE FIELD. I THINK I'M GOING TO GIVE MR. MILIBAND THE
25 BENEFIT OF THE DOUBT HERE AND LET HIM HAVE A CHANCE TO
26 GO BACK OVER. YOU NEVER KNOW. HE MIGHT CHANGE HIS
27 OPINIONS BASED ON THE DEMONSTRATIVE EXHIBITS. ALTHOUGH,
28 I DOUBT IT.

1 LET' S GO AHEAD AND TAKE A RECESS THEN
2 UNTIL TOMORROW MORNING AT NINE O' CLOCK.

3 MR. LEININGER: AND, YOUR HONOR, THIS IS JIM WITH
4 THE QUESTION ABOUT A CLEANED COPY FOR THE PROPOSED
5 ORDER.

6 THE COURT: RIGHT.

7 MR. LEININGER: WE WERE ABLE TO PRINT OUT A CLEAN
8 COPY. ONE OF MY COLLEAGUES NOTICED THE ORIGINAL
9 PROPOSED ORDER WAS SORT OF MORE A COMBINATION OF MOTION
10 AND PROPOSED ORDER. I SUGGESTED DIFFERENT LANGUAGE IN
11 THE FIRST PARAGRAPH DESCRIBING THE ORDER. SO I SUBMIT
12 BOTH OF THESE FOR THE COURT' S CONSIDERATION.

13 THE COURT: SURE. WHY DON' T YOU HAND IT UP OR
14 BRING IT UP RATHER. THAT' S WHAT HAPPENS IN THE STATE
15 COURTS. THEY MAKE A MOTION, AND THEY WANT ME TO SAY
16 IT' S SO ORDERED.

17 MR. LEININGER: AND, YOUR HONOR, SORRY. BOTH OF
18 THOSE COPIES HAVE THE REVISED DATES THAT WE HAD
19 DISCUSSED EARLIER THIS MORNING.

20 THE COURT: THAT' S FINE. HAS EVERYBODY SEEN THIS
21 REVISED LANGUAGE? IT SAYS: THE FOLLOWING PROPOSED CASE
22 MANAGEMENT ORDER FOR SETTLEMENT APPROVAL HEARINGS
23 RELATED TO SETTLEMENT OF THE WOOD CLASS CLAIMS AND A
24 MORE GLOBAL SETTLEMENT AMONG THE MAJORITY OF PARTIES WAS
25 PROPOSED BY WATER WORKS DISTRICT 40, THE UNITED STATES,
26 BOLTHOUSE PROPERTIES, THE VAN DAM ENTITIES AND THE WOOD
27 CLASS.

28 THE PROPOSED ORDER CAME BEFORE THE COURT

1 OF THE CASE MANAGEMENT CONFERENCE ON NOVEMBER 4, 2014.
2 THE COURT BEING FULLY ADVISED ADOPTS THE FOLLOWING
3 SCHEDULE AND THEN SETS FORTH WHAT IS CONTAINED IN THE
4 OTHER ONE. ANY OBJECTION TO MY APPROVING THAT LANGUAGE?

5 MR. DUNN: NO, YOUR HONOR.

6 THE COURT: THE OTHER ONE I WILL JUST RECITE AT
7 THAT TIME, MR. MILIBAND.

8 MR. MILIBAND: NO BEACH TIME. I UNDERSTAND, YOUR
9 HONOR. WE WILL BE WORKING.

10 THE COURT: OKAY. GOOD.

11 MR. KUHS: YOUR HONOR, MAYBE I AM A BIT
12 AMBITIOUS, BUT IF THERE ARE OBJECTIONS TO DISTRICT 40'S
13 PROPOSED EXHIBITS, WOULD IT BE POSSIBLE TO GET THOSE
14 POSTED TONIGHT SO THAT WE COME IN READY TO ADDRESS THOSE
15 OBJECTIONS IN THE MORNING?

16 THE COURT: YES. GOOD IDEA. OKAY. WE ARE IN
17 RECESS.

18 MR. DUNN: YOUR HONOR, IT'S POSSIBLE WE MIGHT
19 FINISH TOMORROW. I JUST WANTED TO LET YOU KNOW IN
20 ADVANCE.

21

22 (THE PROCEEDINGS WERE ADJOURNED UNTIL
23 WEDNESDAY, NOVEMBER 5, 2014 AT 9:00 A.M.)

24

25 (THE NEXT PAGE NUMBER IS 101.)

26

27

28