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# I N D E X

## W I T N E S S E S

EDWARDS AIR FORCE BASE WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
JUNE A. OBERDORFER	26			
BY MR. SLOAN		65		
BY MR. JOYCE		68		
BY MR. WILLIAM KUHS		73		
BY MR. MCLACHLAN		76		
BY MR. ZIMMER		83		
BY MR. LEININGER			84	

## E X H I B I T S

BOLTHOUSE PROPERTIES	FOR I.D.	IN EVIDENCE
C5 - OBERDORFER DECLARATION	4	
C6 - REPORT (DESIGNATION)	14	
C7 - OBERDORFER AMENDMENT	58	

EDWARDS AIR FORCE BASE	FOR I.D.	IN EVIDENCE
I-1 - CV (OBERDORFER)	26	87
I-2 - SUMMARY DOCUMENT	29	87
I-3 - OBERDORFER SUMMARY	34	87
I-4 - DURBIN 1978 STUDY	35	87
I-5 - LEIGHTON & PHILLIPS ('03)	37	87
I-6 - SUMMARY EXP. COMP.	38	87
I-7 - SUMMARY EXP. COMP.	41	87
I-8 - SUMMARY EXP. COMP.	43	87
I-9 - (SCALMANINI APPENDIX F)	43	87
I-11- (SENSITIVITY ANALYSIS)	46	87
I-12- '52-'09 STORAGE CHANGE)	46	87
I-13- (PRE-DEVELOPMENT FLOW)		87
I-14- DISCHARGE AREA	49	87
I-15- WILDERMUTH MAP	50	87
I-16- FALLING WATER LEVELS	51	87
I-17- WATER LEVELS	53	87
I-18- '30-'92 SUBSIDENCE	54	87
I-21- SNEED & GALLOWAY REPORT	59	87
(EAFB EXHIBITS ADMITTED PER COURT'S STATED LIMITATIONS)		

1 CASE NUMBER: JCCP 4408  
2 CASE NAME: ANTELOPE VALLEY  
3 LOS ANGELES, CALIFORNIA, THURSDAY, FEBRUARY 17, 2011  
4 DEPARTMENT NO. 316 HON. JACK KOMAR  
5 REPORTER GINGER WELKER, CSR #5585  
6 TIME: 8:30 A.M.  
7 APPEARANCES: (SEE TITLE PAGE)  
8

9 THE COURT: GOOD MORNING, EVERYONE. WE ARE ON THE  
10 RECORD. MR. LEININGER.

11 MR. LEININGER: YES, YOUR HONOR. GOOD MORNING,  
12 YOUR HONOR. I WANT TO BEGIN JUST BY APOLOGIZING FOR MY  
13 ABSENCE FOR THE LAST FEW DAYS. IT HAS BEEN  
14 EXTRAORDINARY EVENTS RECENTLY WITH REGARD TO OUR BUDGET  
15 AND OUR TRAVEL RESTRICTIONS. SOMETHING I HAVEN'T  
16 WITNESSED SINCE SHUT DOWN OF THE GOVERNMENT IN 1995 WHEN  
17 I WAS WORKING FOR THE JUSTICE DEPARTMENT. I APOLOGIZE  
18 FOR MY ABSENCE.

19 THE COURT: I UNDERSTAND THE PROBLEM. I WORKED IN  
20 THE DEPARTMENT OF JUSTICE. I WOULD LOVE TO SAY IT  
21 PROBABLY WON'T HAPPEN AGAIN, BUT I REALLY AM NOT ABLE TO  
22 PREDICT.

23 MR. LEININGER: AND, YOUR HONOR, I -- FOR TODAY'S  
24 TESTIMONY, I DO HAVE ONE WITNESS, DR. JUNE OBERDORFER.  
25 SHE HAS TESTIFIED IN THE TWO PREVIOUS PHASES OF TRIAL IN  
26 THIS CASE. TODAY SHE IS AVAILABLE TO TESTIFY AND HAS A  
27 BRIEF DIRECT TESTIMONY WHICH I BELIEVE WE SHOULD BE ABLE  
28 TO ACCOMPLISH WITHIN AN HOUR OR A LITTLE OVER AN HOUR

1 LEAVING TIME FOR HER CROSS-EXAMINATION.

2 THE COURT: FINE. I'M HOPEFUL WE WILL BE ABLE TO  
3 COMPLETE HER TESTIMONY TODAY. THE COURT IS GOING TO  
4 HAVE TO RECESS AT 2 O'CLOCK THIS AFTERNOON. WHAT I  
5 WOULD LIKE TO DO IS START PROMPTLY AND TAKE A BRIEF  
6 MORNING RECESS, STOP FOR LUNCH AT NOON. I WOULD LIKE TO  
7 SHORTEN THE NOON HOUR TO AN HOUR SO THAT WE CAN HAVE A  
8 GOOD HOUR AFTER LUNCH AND AS MUCH TIME AS WE CAN SQUEEZE  
9 INTO THIS ASSUMING THAT WE NEED ALL THAT TIME.

10 MR. LEININGER: WITH THE COURT'S PERMISSION, THE  
11 GOVERNMENT CALLS JUNE OBERDORFER.

12 THE COURT: OKAY. GOOD MORNING, DOCTOR. SHE HAS  
13 NOT BEEN SWORN IN THIS CASE.

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

18 IF YOU AGREE, PLEASE SAY, "I DO."

19 THE WITNESS: I DO.

20 THE COURT: THANK YOU. PLEASE BE SEATED.

21 THE CLERK: WILL THE WITNESS PLEASE STATE AND  
22 SPELL YOUR LAST NAME FOR THE RECORD.

23 THE WITNESS: JUNE A. OBERDORFER,  
24 O-B-E-R-D-O-R-F-E-R.

25 THE CLERK: THANK YOU.

26 THE COURT: NOW STATE YOUR BUSINESS ADDRESS.

27 THE WITNESS: BUSINESS ADDRESS IS AECOM, ALL  
28 CAPITALS, 2101 WEBSTER STREET, SUITE 1900; OAKLAND,

1 CALIFORNIA.

2 THE COURT: THANK YOU.

3 MR. ZIMMER: YOUR HONOR?

4 THE COURT: MR. LEININGER WAS GOING TO MAKE A  
5 STATEMENT.

6 MR. LEININGER: YOUR HONOR, I APOLOGIZE. SHE DOES  
7 HAVE A POWERPOINT PRESENTATION THAT IS APPROXIMATELY 20  
8 SLIDES WHICH I HAVE HARD COPIES HERE. I FORGOT TO  
9 DISTRIBUTE THOSE WHEN WE WALKED INTO COURT. SO WITH THE  
10 COURT'S PERMISSION, I'LL HAND THESE OUT NOW.

11 THE COURT: ALL RIGHT. MR. ZIMMER, DID YOU HAVE A  
12 STATEMENT TO MAKE?

13 MR. ZIMMER: YES, YOUR HONOR. AT THE END OF THE  
14 PROCEEDINGS YESTERDAY, WE HAD REQUESTED A BRIEF REQUEST  
15 FOR AN OFFER OF PROOF GIVEN THE PREVIOUS EXPERT  
16 DECLARATION OF THE UNITED STATES, AND THE VERY NARROW  
17 ASPECT OF THAT EXPERT DECLARATION.

18 SHE WAS ORIGINALLY DESIGNATED -- THE  
19 DECLARATION SAYS, "I HAVE NOT PERFORMED MY OWN DETAILED  
20 ANALYSIS OF THE STATUS OF THE AQUIFER, BUT I HAVE  
21 REVIEWED THE SUMMARY EXPERT REPORT AND ACCOMPANYING  
22 APPENDICES OF BD, ET AL."

23 AND I WILL NOTE THAT THIS SLIDE THAT'S UP ON  
24 THE BOARD RIGHT NOW APPEARS TO INCLUDE REFERENCES THAT  
25 WERE NOT IN THE ORIGINAL SUMMARY EXPERT REPORT. BUT THE  
26 DECLARATION CONTINUES, "AND I'M IN AGREEMENT WITH THE  
27 METHODOLOGIES AND CONCLUSIONS REACHED IN THE REPORT.  
28 THESE METHODOLOGIES ARE SCIENTIFICALLY SOUND AND



1 APPROPRIATELY USED IN THE DETERMINATION OF SUSTAINABLE  
2 GROUNDWATER YIELD IN EVALUATION OF A CONDITION OF  
3 OVERDRAFT.

4 "THE METHOD AND DATA UTILIZED PROVIDES  
5 ESTIMATES OF SUSTAINABLE GROUNDWATER YIELD AND  
6 EVALUATION OF OVERDRAFT WITH A REASONABLE DEGREE OF  
7 SCIENTIFIC CERTAINTY."

8 I WOULD LIKE TO MARK AS EXHIBIT C5 A COPY OF  
9 THAT DECLARATION.

10 THE COURT: ALL RIGHT. MARKED FOR IDENTIFICATION.

11 MR. ZIMMER: FOR IDENTIFICATION, YES.

12  
13 (BOLTHOUSE PROPERTIES EXHIBIT C5  
14 MARKED.)

15  
16 MR. ZIMMER: THE DEPOSITION OF MISS OBERDORFER WAS  
17 TAKEN. AND MR. SLOAN WAS AT THAT DEPOSITION, AND I  
18 WOULD LIKE HIM TO GIVE A FEW BRIEF REFERENCE TO THE  
19 TESTIMONY GIVEN SO THAT THE COURT HAS SOME UNDERSTANDING  
20 OF WHERE WE ARE COMING FROM ON THE OPINIONS.

21 MR. SLOAN: YOUR HONOR, OUR CONCERN REALLY IS THAT  
22 THIS IS GOING TO BE JUST HEARSAY TESTIMONY ABOUT OTHER  
23 PEOPLE'S OPINIONS, AND I HAVE MARKED -- OR I WOULD LIKE  
24 TO READ INTO THE RECORD PAGE 34 OF HER DEPOSITION, PAGE  
25 34, LINE 9:

26  
27 (READING:)

28 QUESTION: THE QUESTION IS,

1 DID YOU DEVELOP YOUR OWN  
2 INDEPENDENT OPINION OF SAFE YIELD  
3 FOR THIS BASIN?

4 ANSWER: NO.

5 QUESTION: WAS YOUR WORK  
6 LIMITED TO REVIEWING THIS SUMMARY  
7 EXPERT REPORT THAT WAS PREPARED BY  
8 THE OTHER EXPERTS.

9 ANSWER: I ALSO LOOKED AT  
10 PREVIOUS INVESTIGATIONS IN THE  
11 AREA, PARTICULARLY BLOYD AND  
12 DURBIN, AND SOME OF THE OTHER USGS  
13 MODELING, THE LEIGHTON AND  
14 PHILLIPS MODELING. I HAD ALSO  
15 READ MR. SHEAHAN'S PAPERS AND THEN  
16 SOME OF THE REPORTS FROM THE  
17 PRINCIPLES.

18 QUESTION: DID YOU UNDERTAKE  
19 ANY INDEPENDENT DATA COLLECTION  
20 OTHER THAN THE DATA THAT YOU  
21 PROVIDED ON THIS DISK?

22 ANSWER: NO.

23 QUESTION: DID YOU YOURSELF  
24 USE THIS PARTICULAR DATA IN ANY  
25 WAY?

26 ANSWER: NO.

27 QUESTION: SO OTHER THAN  
28 REVIEWING THE REPORTS THAT ARE

1 LISTED AT THE END HERE AS WELL AS  
2 SOME OF THE PAPERS THAT YOU JUST  
3 DESCRIBED, IS THERE ANY OTHER WORK  
4 THAT YOU DID IN DEVELOPING YOUR  
5 OPINION FOR THIS PHASE OF TRIAL?

6 ANSWER: YOU KNOW, OTHER  
7 THAN MY GENERAL KNOWLEDGE ABOUT  
8 PROCESSES THAT EFFECT RECHARGE,  
9 NO. SPECIFICALLY FOR THAT, THAT  
10 IS WHAT I DID.

11 QUESTION: YOU DIDN'T  
12 DEVELOP ANY OF YOUR OWN MODELS?

13 ANSWER: NO.

14  
15 THEN MOVING TO PAGE 39 BEGINNING AT LINE 2.

16  
17 QUESTION: RETURNING BACK TO  
18 PAGE 2 OF YOUR REPORT UNDER THE  
19 HEADING, QUOTE, NATURAL RECHARGE,  
20 UNQUOTE, IN THE SECOND SENTENCE  
21 YOU SAY, QUOTE, BASED ON MY PEER  
22 REVIEW OF THE REPORT, THE DATA  
23 SETS UTILIZED ARE APPROPRIATE,  
24 UNQUOTE. DID YOU REVIEW ALL OF  
25 THE DATA SETS THAT WERE USED FOR  
26 THIS PHASE III REPORT?

27 ANSWER: NO, I DID NOT.  
28

MOVING ON TO PAGE 41, LINE 6:

QUESTION: YOU REFERRED TO  
YOUR WORK AS A PEER REVIEW OF THE  
COURT. IN YOUR MIND, IS A PEER  
REVIEW A SPECIFIC TASK?

ANSWER: I GUESS I'M NOT  
GETTING YOUR DISTINCTION BETWEEN  
TASK AND SPECIFIC TASK?

QUESTION: SORRY. DID YOU  
MEAN THAT YOU PERFORMED ANY  
PARTICULAR STEPS IN CONDUCTING A,  
QUOTE, UNQUOTE, PEER REVIEW?

ANSWER: I LOOKED AT THEIR  
METHODOLOGY. I LOOKED AT THE  
SOURCE OF DATA SETS THAT THEY USED  
AND SAW IF THEY WERE -- FROM  
REASONABLE AND GENERALLY USED  
SOURCES OF THOSE DATA WHETHER THE  
CALCULATIONS CAME OUT CORRECTLY.  
THOSE WERE SOME OF THE THINGS I  
DID IN MY PEER REVIEW.

QUESTION: DID YOU PROVIDE  
ANY COMMENTS TO THE AUTHORS AFTER  
REVIEWING THE REPORT?

ANSWER: NOT ON THIS REPORT,  
NO.

1                   ON PAGE 47, LINE 22:

2  
3                   QUESTION:     ARE YOU FAMILIAR  
4                   WITH WHAT DATA MR. DURBIN USED FOR  
5                   PRECIPITATION?

6                   ANSWER:    YES, FROM WHAT HE  
7                   STATES IN HIS REPORT.   SO HE USED  
8                   A NUMBER OF RAIN GAUGE STATIONS  
9                   WITHIN THE VALLEY, AND I THINK  
10                  IMMEDIATELY ADJACENT THERE MIGHT  
11                  HAVE BEEN ONE OR TWO JUST OUTSIDE  
12                  A PERIOD OF RECORD THAT THOSE  
13                  HAVE.

14                 QUESTION:   DID YOU YOURSELF  
15                 REVIEW THERE DATA?

16                 ANSWER:    NO, I DIDN'T.

17                 QUESTION:   ARE YOU SATISFIED  
18                 THAT THAT DATA WAS SUFFICIENT FOR  
19                 THE APPROACH THAT HE PERFORMED?

20                 ANSWER:    YES, I AM.

21  
22                 DROPPING DOWN TO LINE 13, PAGE 48.

23  
24                 QUESTION:   DO YOU ANTICIPATE  
25                 THAT YOU WILL REVIEW ANY  
26                 TRANSCRIPTS BEFORE THE NEXT DAYS  
27                 OF TRIAL?

28                 ANSWER:    I HAVE NO IDEA, NOT

1 AT THIS POINT.

2 QUESTION: IS THERE ANY WORK  
3 THAT YOU INTEND TO PERFORM OTHER  
4 THAN SIMPLY REFRESHING YOUR MEMORY  
5 OF WHAT YOU HAVE DONE BEFORE THE  
6 NEXT PHASE OF THE TRIAL?

7 ANSWER: NO. JUST TO REFRESH  
8 MY MEMORY; IT IS MY INTENTION AT  
9 THIS POINT.

10  
11 I WILL TRY TO BE QUICK, PAGE 61, LINE 21:

12  
13 QUESTION: WHAT IS YOUR  
14 OPINION WITH RESPECT TO WHAT THE  
15 CURRENT RATE OF PUMPING IS?

16 ANSWER: I THINK IT IS AROUND  
17 150, 155, AND THAT MAY BE FROM THE  
18 MID -- AROUND 2005, SOMETHING IN  
19 THAT RANGE.

20 QUESTION: AND HOW DID YOU  
21 COME UP WITH THAT ESTIMATE?

22 ANSWER: NUMBERS FROM THE  
23 EXPERT REPORT.

24 QUESTION: DID YOU DO ANY  
25 INDEPENDENT EVALUATION OF CURRENT  
26 PUMPING BEYOND WHAT IS IN THE  
27 EXPERT REPORT?

28 ANSWER: NO, I DIDN'T.

1 MOVING ON TO PAGE 105. THIS IS TO JUST TO  
2 ESTABLISH THAT IT IS HEARSAY. PAGE 105, LINE 10.

3  
4 QUESTION: EARLIER YOU SAID  
5 THAT YOU HAD DISCUSSIONS ABOUT  
6 WHETHER OR NOT YOU WOULD BE AN  
7 AUTHOR OF THIS PARTICULAR REPORT.

8 ANSWER: UH-HUH.

9 QUESTION: DID YOU DECIDE  
10 NOT TO BE AN AUTHOR, OR DID  
11 SOMEONE TELL YOU, YOU WOULD NOT BE  
12 AN AUTHOR?

13 ANSWER: I SAID IT WAS MY  
14 PREFERENCE NOT TO BE AN AUTHOR.  
15 AND THEN I WAS TOLD I WOULD NOT BE  
16 AN AUTHOR.

17 QUESTION: AND WHY WAS IT  
18 YOUR PREFERENCE NOT TO BE AN  
19 AUTHOR?

20 ANSWER: BECAUSE I DIDN'T  
21 REALLY WRITE ANY PARTS OF THIS  
22 REPORT. I DID REVIEW EARLIER  
23 VERSIONS, BUT I WAS NOT AN AUTHOR  
24 ON IT.

25  
26 THOSE ARE THE PORTIONS OF THE DEPOSITION.

27  
28 THE COURT: ALL RIGHT.

1 MR. ZIMMER: YOUR HONOR, BRIEFLY, OBVIOUSLY THE  
2 EXPERT DECLARATION AND THE TESTIMONY THAT SHE GAVE IN  
3 THIS CASE WERE VERY LIMITED AND VERY SUMMARY FORMAT.  
4 WHAT WE HAVE IS A -- SIMPLY A REVIEW OF WHAT SOMEONE  
5 ELSE'S WORK WAS, SOME OTHER EXPERT.

6 TO THE EXTENT THAT THIS EXPERT WOULD ATTEMPT  
7 TO TESTIFY TO WHAT SOME OTHER EXPERT SAID, CLEARLY, THAT  
8 WOULD BE INAPPROPRIATE AS ONE EXPERT REPORTING HEARSAY  
9 EXPERT OPINION OF ANOTHER EXPERT.

10 TO THE EXTENT THAT INTENDS TO BE A PEER  
11 REVIEW, THAT WOULD BE INAPPROPRIATE AS WELL AS IN  
12 INVADING THE PROVINCE OF THE COURT. BECAUSE THE COURT  
13 HAS BEEN THE PERSON THAT HAS SAT THROUGH ALL THIS TRIAL  
14 AND LISTENED TO THE TESTIMONY, AND IT WOULD BE THE COURT  
15 WHO WILL EVALUATE THE METHODS THAT WERE USED AND THE  
16 EVIDENCE CAME OUT REGARDING THOSE METHODS AND WHETHER IT  
17 WAS RELIABLE OR NOT.

18 YOU COULD HAVE A -- JUST BECAUSE YOU HAVE A  
19 PROCESS WHICH IS SOMETIMES USED DOESN'T MEAN THAT IT WAS  
20 USED CORRECTLY, DOESN'T MEAN IT HAS THE RIGHT INPUT  
21 DATA, DOESN'T MEAN THAT IT CAME TO THE RIGHT  
22 CONCLUSIONS.

23 TAKE SOMEBODY WHO HAD SUCH LIMITED  
24 INVOLVEMENT AS MR. SLOAN JUST POINTED OUT AND THEN HAVE  
25 THEM SAY, "WELL, I AGREE WITH THIS REPORT AND THE  
26 OPINIONS IN IT, AND I THINK THESE GUYS DID A GREAT JOB,  
27 AND I THINK THEY USED THE CORRECT PROCESS," IN MY VIEW  
28 IS VERY INAPPROPRIATE.



1 I THINK IF THE LANDOWNERS' SIDE WANTED TO  
2 HAVE SOMEONE COME IN AND SAY, "WELL, I WASN'T PERSONALLY  
3 INVOLVED IN THE PROCESS, BUT I CAME IN AND LOOKED AT  
4 THESE LANDOWNERS' EXPERTS, AND I THINK THEY DID A  
5 BANG-UP JOB, AND I AGREE WITH THEIR OPINIONS, AND I  
6 THINK THEY HAD A GREAT PROCESS," I THINK THAT WOULD BE  
7 INAPPROPRIATE AS WELL.

8 I'M CONCERNED -- FOLLOWING THE ORIGINAL  
9 DEPOSITION TESTIMONY OF MISS OBERDORFER, THE UNITED  
10 STATES MADE A MOTION TO EXPAND THE EXPERT OPINIONS  
11 BECAUSE THEY REALIZED THEY HAD AN ISSUE; AND, REALLY,  
12 SHE WAS NOT GIVING ANY OPINIONS THAT WERE APPROPRIATE.

13 THE COURT DENIED THAT MOTION TO EXPAND THE  
14 EXTENT OF HER EXPERT OPINIONS. THE COURT DID, HOWEVER,  
15 GIVE THE UNITED STATES THE ABILITY TO REBRING THAT  
16 MOTION WITH APPROPRIATE POINTS AND AUTHORITIES AND WITH  
17 APPROPRIATE BASIS TO EXPAND THE OPINIONS, AND THE UNITED  
18 STATES NEVER MADE THAT MOTION EVER AGAIN.

19 SO WE ARE EXACTLY WHERE WE WERE WHEN THIS  
20 MOTION WAS MADE THE FIRST TIME TO EXPAND THE TESTIMONY.

21 THE COURT: DID THAT RELATE TO EXTENSOMETERS?

22 MR. ZIMMER: THAT RELATED TO EXTENSOMETERS, WAS  
23 ONE ISSUE, AND SUBSIDENCE AS ANOTHER ISSUE. BUT I'M  
24 JUST LOOKING FOR AN OFFER OF PROOF TO SEE WHERE WE ARE  
25 GOING.

26 CLEARLY THERE IS A 352 ISSUE HERE. AND IF  
27 SHE IS GOING TO GIVE TESTIMONY BEYOND THE SCOPE OF THE  
28 EXPERT DESIGNATION, IT WOULD BE HELPFUL TO KNOW WHAT

1 THAT IS AND KNOW WHETHER IT IS COVERED WITHIN HER  
2 ORIGINAL EXPERT DESIGNATION AND/OR HER REPORT,  
3 PARTICULARLY SINCE THEY NEVER DID MOVE TO EXPAND THAT.  
4 WE HAVEN'T HAD AN OPPORTUNITY TO DEPOSE ON THAT ISSUE.

5 MR. EVERTZ: YOUR HONOR, DOUG EVERTZ FOR THE CITY  
6 OF LANCASTER AND ROSAMOND COMMUNITY SERVICE DISTRICT.

7 I HAD A QUICK OPPORTUNITY TO REVIEW THE  
8 EXHIBITS THAT MR. LEININGER DISTRIBUTED THIS MORNING.

9 THERE ARE 21 EXHIBITS MARKED FROM I-1  
10 THROUGH I-21. THE FIRST EXHIBIT IS DR. OBERDORFER'S  
11 RESUME/CV.

12 THE EXHIBITS 2 THROUGH 12 ALL REFERENCE THE  
13 SUMMARY EXPERT REPORT AND APPEAR TO BE A SUMMARY OF THE  
14 SUMMARY EXPERT REPORT.

15 AND THE EXHIBITS 13 THROUGH 21 APPEAR TO  
16 DEAL WITH THE ISSUE OF SUBSIDENCE. BUT, AGAIN, THOSE  
17 EXHIBITS REFER TO MR. WILDERMUTH'S CONTOURS, ET CETERA.  
18 AGAIN, I WOULD LIKEWISE OBJECT AS BEING CUMULATIVE.

19 THE COURT: FIRST THING, I WANT TO SEE EXHIBIT C5  
20 THAT YOU MARKED.

21 MR. JOYCE: YOUR HONOR, ONE OTHER ADDITIONAL --

22 THE COURT: JUST A MINUTE, MR. JOYCE.

23 MR. ZIMMER: WE SHOULD LIKEWISE MARK THE COPY OF  
24 THE REPORT AS WELL, THAT IS, THE COPY THAT WAS FILED  
25 WITH THE DESIGNATION. BECAUSE THE DESIGNATION INDICATES  
26 THAT THE OPINIONS SHE WOULD GIVE ARE CONTAINED WITHIN  
27 THE REPORT.

28 I WOULD MARK THAT AS C6 FOR IDENTIFICATION.

1 THE COURT: ALL RIGHT.

2  
3 (BOLTHOUSE PROPERTIES EXHIBIT C6  
4 MARKED.)

5  
6 THE COURT: MR. JOYCE?

7 MR. JOYCE: YES, YOUR HONOR. I HAVE HAD A CHANCE  
8 TO TAKE A QUICK PERUSAL OF THE EXHIBITS, AND I THINK  
9 WHAT'S ON THE WALL AT THE MOMENT IS ILLUSTRATIVE OF MY  
10 CONCERN. AND THAT IS, IT APPEARS THAT THE INTENT IS TO  
11 USE MISS OBERDORFER TO ESSENTIALLY REPAIR WHAT WOULD  
12 OTHERWISE BE INADMISSIBLE HEARSAY.

13 BUT NOT JUST FROM THE SUMMARY EXPERT REPORT.  
14 IT APPEARS THAT SHE IS GOING TO GO BEYOND THAT, AND,  
15 ESSENTIALLY, OFFER UP HEARSAY OF OTHER PEOPLE'S OPINIONS  
16 WHO HAVE NOT BEEN DEPOSED WHOSE REPORTS -- IF WE GO DOWN  
17 THE ROAD OF LOOKING AT EVERY USGS ANALYSIS THAT WAS EVER  
18 DONE OF ANYTHING, THIS IS GOING TO BE HARD TO MAKE  
19 2 O'CLOCK.

20 I MEAN IT IS HEARSAY. IT IS INADMISSIBLE,  
21 AND I THINK THAT IS WHERE WE ARE HEADED.

22 THE COURT: MR. MCLACHLAN.

23 MR. MCLACHLAN: I THINK ONE OBSERVATION I WOULD  
24 ADD, AND THE WOOD CLASS JOINS, IN THESE OBJECTIONS IS  
25 THAT THE EVIDENCE CODE 352 PROBLEM. WE REALLY HAVE THE  
26 PARROTING OF TESTIMONY FROM OTHER EXPERTS. IT WILL MAKE  
27 IT INCUMBENT UPON ALL COUNSEL HERE TO REVISIT  
28 CROSS-EXAMINATION OF WILDERMUTH, SCALMANINI AND

1 MR. DURBIN WITH THIS WITNESS.

2 AND WE -- WE HAVE PLENTY OF THAT. AND TO DO  
3 IT ALL OVER AGAIN IS A MISTAKE. SO BEFORE WE GO AND LET  
4 THE WITNESS DO THAT, THE COURT SHOULD UNDERSTAND THAT WE  
5 MAY HAVE TO GO THROUGH A LOT OF THIS STUFF AGAIN WITH  
6 THIS WITNESS.

7 THE COURT: OKAY. THANK YOU. JUST A MINUTE.

8 MR. DUNN.

9 MR. DUNN: THIS IS FROM THE TREATISE CIVIL TRIALS  
10 AND EVIDENCE:

11 "EXPERTS COMMONLY RELY ON ARTICLES, BOOKS  
12 AND REPORTS PUBLISHED IN THEIR FIELD OF EXPERTISE" --  
13 AND THEN IT IS ITALICIZED -- "INCLUDING REPORTS OF OTHER  
14 EXPERTS. IF LITIGANTS HAD TO PRESENT ADMISSIBLE  
15 EVIDENCE ON EVERY MATTER UPON WHICH THE EXPERT RELIES,  
16 THE TRIAL WOULD BE ENDLESS.

17 "EXPERT WITNESSES, THEREFORE, ARE  
18 SPECIFICALLY PERMITTED TO STATE WHAT THEY HAVE REVIEWED,  
19 CONSIDERED, AND RELIED ON INADMISSIBLE HEARSAY EVIDENCE  
20 AS THE BASIS OF THEIR"-- EXCUSE ME -- "FOR THEIR  
21 OPINION; FOR EXAMPLE, SCIENTIFIC TEXTS AND ARTICLES" --  
22 AGAIN ITALICIZED, THE FOLLOWING -- "REPORTS OF OTHER  
23 EXPERTS, TESTS BY OTHERS AND CALCULATIONS BY OTHERS," ET  
24 CETERA.

25 AND FINALLY JUST MOVING ONE PARAGRAPH UP:

26 "AN EXPERT'S OPINION MAY BE BASED ON  
27 EVIDENCE," QUOTE, "WHETHER OR NOT ADMISSIBLE. IT IS THE  
28 KIND OF INFORMATION EXPERTS REASONABLY RELY UPON IN

1 FORMING AN OPINION ON THE SUBJECT MATTER" -- EXCUSE ME  
2 -- "IF IT IS THE KIND OF INFORMATION EXPERTS REASONABLY  
3 RELY UPON INFORMING AN OPINION ON THE SUBJECT MATTER  
4 INVOLVED."

5 WE'RE SPENDING AN UNNECESSARY AMOUNT OF TIME  
6 ON OBJECTIONS THAT ARE NOT PROPERLY FOUNDED. IF -- AT  
7 THIS POINT IF THEY HAVE OBJECTIONS TO DR. OBERDORFER'S  
8 QUALIFICATIONS, THAT WOULD BE PROPER TO DO AT THIS  
9 POINT. BUT SHE -- SHE HAS BEEN OFFERED AS AN EXPERT  
10 WITNESS. SHE SHOULD BE ALLOWED TO TESTIFY, AND I'LL  
11 YIELD NOW TO MR. LEININGER.

12 THE COURT: WELL, LET ME HEAR FROM MR. WEEKS  
13 FIRST.

14 MR. WEEKS: YOUR HONOR, TO THE CALIFORNIA EVIDENCE  
15 MANUAL, "AN EXPERT CAN TESTIFY AS TO THE INFORMATION  
16 RELIED ON BY A PRIOR EXPERT WITNESS OR THE METHOD USED  
17 BY THE WITNESS."

18 I'LL ALSO SITE THE COURT TO EVIDENCE CODE  
19 1280: "EVIDENCE OF A WRITING MADE AS RECORD AS AN ACT  
20 OR EVENT IS NOT MADE INADMISSIBLE BY HEARSAY RULE, BUT  
21 MADE BY A PUBLIC EMPLOYEE" -- EVIDENCE CODE 1280,  
22 "OFFICIAL RECORDS AND OTHER OFFICIAL WRITINGS."

23 ALL THESE USGS DOCUMENTS ARE MADE BY PUBLIC  
24 EMPLOYEES.

25 THE COURT: MR. LEININGER, GO AHEAD.

26 MR. LEININGER: THANK YOU, YOUR HONOR. I WAS  
27 BASICALLY GOING TO ALSO CITE THE PROVISION THAT MR. DUNN  
28 CITED THAT EXPERTS RELY UPON WORK OF OTHER EXPERTS ALL

1 THE TIME AS LONG AS IT IS REASONABLE AND RELIABLE BY THE  
2 EXPERTS IN THAT PARTICULAR FIELD.

3 THAT IS WHAT DR. OBERDORFER HAS DONE.

4 NOW SHE HAS ESTABLISHED THROUGH TWO PHASES  
5 OF TRIAL HER EXPERTISE -- HER EXPERTISE NOT ONLY JUST AS  
6 A HYDROGEOLOGIST, BUT HER EXPERTISE AND HER KNOWLEDGE OF  
7 THE ANTELOPE VALLEY GROUNDWATER BASIN.

8 HER TESTIMONY TODAY IS -- AND IF I MAY --  
9 AND I WILL REPEAT THIS LINE FROM HER -- THAT MR. SLOAN  
10 READ FROM HER DEPOSITION:

11 (READING:)

12 QUESTION: WAS YOUR WORK  
13 LIMITED TO REVIEWING THE SUMMARY  
14 REPORT THAT WAS PREPARED BY THE  
15 OTHER EXPERTS?

16 ANSWER: I ALSO LOOKED AT  
17 PREVIOUS INVESTIGATIONS IN THE  
18 AREA, PARTICULARLY BLOYD AND  
19 DURBIN AND SOME OF THE OTHER USGS  
20 MODELING, THE LEIGHTON AND  
21 PHILLIPS MODELING.

22  
23 AND ONE OTHER LINE FROM -- I'M SORRY. I DID  
24 NOT GIVE YOU THE PAGE NUMBER. THAT WAS PAGE NUMBER 34,  
25 LINES 12 THROUGH 18. MR. SLOAN ALSO ASKED A QUESTION  
26 WITH REGARD TO DATA SETS.

27 THIS IS ON PAGE 39, LINES 11 THROUGH 17.  
28

1 (READING:)

2 QUESTION: ARE YOU REFERRING  
3 TO SPECIFIC DATA SETS WHEN YOU  
4 WROTE THIS PARTICULAR SENTENCE?

5 ANSWER: I WAS THINKING OF  
6 WATER LEVEL DATA FROM THE USGS,  
7 THE CLIMATE, THE PRECIPITATION  
8 DATA FROM WESTERN REGIONAL CLIMATE  
9 CENTER, THE CIMIS DATA, THE WELL  
10 LOGS THAT WERE OBTAINED FROM THE  
11 DEPARTMENT OF WATER RESOURCES."

12  
13 NOW I BRING THIS UP FOR TWO PURPOSES: HER  
14 TESTIMONY TODAY IS WHAT EXPERTS DO. THEY REVIEW OTHER  
15 EXPERTS' STUDIES, AND THEY FORM AN OPINION. NOW SHE HAS  
16 REVIEWED VIRTUALLY EVERY STUDY THAT HAS BEEN DONE IN THE  
17 ANTELOPE VALLEY WITH REGARD TO -- AS YOU SEE FROM THE  
18 SLIDE HERE, THE BEGINNING OF HER TESTIMONY, WITH REGARD  
19 TO NATURAL RECHARGE.

20 SHE HAS REVIEWED A NUMBER OF THESE  
21 SCIENTISTS' WORK INCLUDING THE SUMMARY EXPERT REPORT TO  
22 FORM HER OPINION, AND HER -- SHE DOES HAVE AN OPINION  
23 WITH REGARD TO BEST ESTIMATE OF NATURAL RECHARGING AND  
24 SAFE YIELD WITHIN A REASONABLE DEGREE OF SCIENTIFIC  
25 CERTAINTY.

26 SHE HAS FORMED THIS OPINION BASED UPON HER  
27 REVIEW OF ALL OF THESE STUDIES WHICH IS THE TYPICAL  
28 THING THAT EXPERTS DO ALL THE TIME AND RELIES UPON OTHER

1 EXPERT WORK.

2 WITH REGARD TO HER OWN REVIEW WITHIN THE  
3 BASIN, SHE HAS LOOKED AT -- FOR HER CONFIDENCE IN HER  
4 FORMING HER OPINION, SHE HAS LOOKED AT WATER LEVEL DATA  
5 AND WATER LEVEL CHANGES. SHE HAS LOOKED AT WELL LOGS.  
6 SHE HAS LOOKED AT GAUGE STATION DATA. SHE HAS SOME  
7 CONFIDENCE IN HER OPINIONS.

8 THE SECOND PART OF HER TESTIMONY DOES HAVE  
9 TO DO SOMEWHAT WITH EDWARDS AIR FORCE BASE. I THINK THE  
10 CHARACTERIZATION OF EVERYTHING THAT SHE IS TALKING ABOUT  
11 WITH REGARD TO EDWARDS AS SUBSIDENCE IS NOT CORRECT  
12 (SIC) AS WE WILL SEE IN HER PRESENTATION.

13 SO -- BUT GIVEN HER OPINION WITH REGARD TO  
14 SAFE YIELD AND WHETHER OR NOT THERE ARE SOME OF THESE  
15 CHARACTERISTICS OF OVERDRAFT, HOW DOES THAT AFFECT WHAT  
16 IS ESSENTIALLY A QUARTER OF THE BASIN WHICH IS EDWARDS  
17 AIR FORCE BASE, AND SHE WILL BRIEFLY TOUCH ON THAT.

18 THE COURT: MR. KUHS.

19 MR. WILLIAM KUHS: THANK YOU, YOUR HONOR. I KIND  
20 OF GO BACK TO ABOUT OCTOBER OF 2008 IN PHASE II WHERE WE  
21 HAD SOME OF THESE REPORTS BEFORE THE COURT DISCUSSED IT.  
22 AND IF WE WANT TO GO INTO ALL OF THESE DURBIN '78, THE  
23 LEIGHTON PHILLIPS 2003, I'M PREPARED TO DO THAT.

24 AND IF THIS WITNESS TESTIFIES AS TO WHAT  
25 NUMBERS CAME OUT OF THOSE, THEN, I FULLY EXPECT TO  
26 INTERROGATE THIS WITNESS IN CROSS-EXAMINATION IN THE  
27 ENTIRETY OF THESE REPORTS TO POINT OUT WHAT STUDY AREAS  
28 WERE INCLUDED.



1 I CAN REPRESENT TO THE COURT THAT I HAVE  
2 EXAMINED VIRTUALLY EVERY REPORT THAT HAS BEEN SHOWN IN  
3 THESE PROPOSED EXHIBITS. I HAVE THEM IN MY BINDER. I'M  
4 PREPARED TO CROSS-EXAMINE ON ALL THOSE REPORTS TO SHOW  
5 THE DIFFERENCE IN STUDY AREAS AND THE DIFFERENCES IN THE  
6 APPROACHES AND THE DIFFERENCE IN THE FAULTS IN THE  
7 MODELS; THE FAILURE, FOR EXAMPLE, TO RECOGNIZE THE  
8 IMPACT OF THE BEDROCK RIDGE. AND WE CAN GO INTO THAT IF  
9 YOU LIKE, YOUR HONOR.

10 BUT I CAN ASSURE YOU IF I STARTED MY  
11 CROSS-EXAMINATION AT 9 O'CLOCK, WE WOULD NOT BE FINISHED  
12 AT 2:00 ABSENT YOUR COURT TELLING ME TO SIT DOWN.

13  
14 (LAUGHTER)

15  
16 MR. LEININGER: YOUR HONOR, IF I MAY RESPOND TO  
17 THAT. IT IS FINE FOR MR. KUHS TO STATE THAT, BUT HE  
18 HASN'T SEEN THE SCOPE OF THIS TESTIMONY YET. I MEAN --  
19 I MEAN WHAT DR. OBERDORFER IS DOING IS NOT REDUNDANT OR  
20 CUMULATIVE. IT IS A REVIEW OF HER STUDIES TO ASSIST HER  
21 IN FORMING HER OPINION. I DON'T THINK YOU HAVE -- IN  
22 FACT, HAD ANY DISCUSSIONS WITH REGARD TO THE STUDIES AND  
23 METHODOLOGIES OF THESE OTHER REPORTS TO COME UP WITH  
24 THESE NATURAL RECHARGE ESTIMATES. I DON'T BELIEVE THAT  
25 HAS BEEN PRESENTED TO THIS COURT.

26 AND WHAT SHE IS INTENDING TO DO IS TO  
27 BRIEFLY GO THROUGH THESE PARTICULAR STUDIES, THEIR  
28 CONCLUSIONS AND HER OPINION AS TO THE --

1 THE COURT: WELL, THAT TO SOME EXTENT IS A  
2 CREDIBILITY ISSUE FOR THE COURT, ISN'T IT?

3 MR. LEININGER: WELL, IT GOES TOWARD HER FORMING  
4 HER OPINION WITH REGARD TO SAFE YIELD AND OVERDRAFT.

5 THE COURT: WE WILL GET TO THAT IN JUST A MINUTE.

6 MR. ZIMMER, WHAT DID YOU WANT TO SAY?

7 MR. ZIMMER: JUST A FEW COMMENTS, YOUR HONOR.  
8 CLEARLY AN EXPERT CAN RELY ON DATA, ET CETERA.

9 THE FUNDAMENTAL PROBLEM HERE IS THIS: WE  
10 OBJECTED TO THE PREVIOUS ATTEMPT BY MISS OBERDORFER TO  
11 CHANGE HER OPINIONS. IT WAS VERY CLEAR FROM WHAT  
12 MR. SLOAN READ THAT SHE REALLY HADN'T DONE ANY  
13 PARTICULAR ANALYSIS OF HER OWN OTHER THAN REVIEWING THE  
14 SUMMARY EXPERT REPORT OF OPINIONS OF OTHER EXPERTS.

15 MERELY LOOKING AT THE EXPERT DECLARATION AND  
16 THE REPORT THAT SHE WROTE ABOUT THE SUMMARY EXPERT  
17 REPORT MAKES THAT VERY CLEAR THAT SHE DID NOTHING OTHER  
18 THAN REVIEW THEIR REPORTS AND SAY THAT I AGREE WITH IT.

19 AND SHE HAD NO WAY OF KNOWING ALL THE  
20 DETAILS THAT HAVE COME OUT OF THIS COURT, NOR HAS SHE  
21 ANY WAY TO ASSESS THE CREDIBILITY OF ANY OF THE  
22 WITNESSES THAT TESTIFY BECAUSE SHE WASN'T HERE.

23 WE WERE CONCERNED ABOUT THIS BEFORE BECAUSE  
24 WE SEE THIS CONTINUALLY CHANGING COURSE OF EXPERT  
25 OPINIONS THAT WE HAVE NOT BEEN ENTITLED TO EXAMINE HER  
26 ON. SHE -- MR. LEININGER SAID TODAY SHE WILL GIVE AN  
27 OPINION ON SAFE YIELD.

28 ON PAGE 34 OF HER DEPOSITION AT LINE 9, SHE

1 WAS ASKED SPECIFICALLY:

2 (READING:)

3 QUESTION: DID YOU DEVELOP  
4 YOUR OWN INDEPENDENT OPINION OF  
5 SAFE YIELD FOR THIS BASIN?

6 ANSWER: NO.

7 BUT WHAT THE FUNDAMENTAL TO ME IS IF YOU  
8 LOOK AT THESE EXHIBITS WE HAVE REFERENCES THAT WERE NOT  
9 CITED IN HER REPORT. FOR EXAMPLE, ON LONDQUIST, I WAS  
10 JUST LOOKING THROUGH THE BIBLIOGRAPHY IN HER REPORT THAT  
11 SHE WROTE THAT WAS ATTACHED TO HER DECLARATION AS TO  
12 WHAT HER OPINIONS WOULD BE. IT IS NOT IN THERE.

13 BUT IF THE COURT -- IF THE COURT -- I DON'T  
14 HAVE AN OFFER OF PROOF, BUT I CAN LOOK -- IF YOU LOOK AT  
15 THE VERY NEXT EXHIBIT THAT THEY HAVE, IT IS A COMPARISON  
16 OF BLOYD AND THE SUMMARY EXPERT REPORT, AND IT IS  
17 HEARSAY, AND IT IS SAYING WHO SAID WHAT IN WHICH REPORT.

18 THE COURT: ALL RIGHT.

19 MR. ZIMMER: THIS WILL BE CLEARLY IMPROPER. AND  
20 ALL THE WAY THROUGH IT -- JUST TO FINISH -- IF THE COURT  
21 WENT THROUGH ALL THESE EXHIBITS, YOU WOULD SEE NOTHING  
22 MORE THAN EXHIBITS THAT EITHER PREVIOUSLY HAVE BEEN  
23 PRESENTED AND TESTIFIED TO BY OTHER EXPERTS, AND THERE  
24 IS NO REASON FOR THIS WITNESS.

25 THE COURT: ALL RIGHT, MR. ZIMMER. WE ARE GOING  
26 TO CONSIDER THE EXHIBITS AT THE TIME THEY MAY BE MARKED  
27 AND OFFERED OR AUTHORED.

28 AND HERE IS MY SENSE OF THIS: AN EXPERT CAN

1 TESTIFY AND RENDER AN OPINION WITHOUT HAVING DONE ANY  
2 INDEPENDENT FIELD WORK OR INDEPENDENT EVALUATION BY  
3 STUDYING AN AREA, BY REVIEWING WHAT OTHER PEOPLE HAVE  
4 DONE AND SAID, BY REVIEWING GOVERNMENTAL ANALYSES, AND  
5 REPORTING USGS WORK AND THE LIKE IRRESPECTIVE OF WHETHER  
6 YOU COULD DESIGNATE A PARTICULAR INDIVIDUAL AS HAVING  
7 DONE THE WORK ON BEHALF OF THE USGS OR THE DEPARTMENT OF  
8 INTERIOR OR WHOEVER MIGHT HAVE DONE IT.

9 AND THAT OPINION CAN BE EXPRESSED CONCERNING  
10 THE ISSUES ON THE CASE ASSUMING THAT THE PARTIES HAVE  
11 APPROPRIATELY BEEN DESIGNATED AS AN EXPERT AND IS  
12 QUALIFIED.

13 WHAT CANNOT HAPPEN IS READING INTO THE  
14 RECORD WHAT SOMEBODY ELSE HAS SAID. THAT IS HEARSAY.  
15 BUT SHE CAN FORM HER OWN OPINION BASED UPON WHAT THOSE  
16 THINGS ARE.

17 THE ISSUE HAS BEEN ARISEN, I THINK, MOST  
18 FREQUENTLY WITH REGARD TO JURY ISSUES WHEN JURIES HEAR  
19 DETAILS CONCERNING WHAT THE BASIS OF THE REPORT HAS  
20 BEEN; AND, PARTICULARLY, WHEN THERE HAS BEEN NO LIMITING  
21 INSTRUCTION SO THE JURY IS -- HAS NOT BEEN TOLD IN THOSE  
22 CASES TO NOT DETERMINE THAT THE MATERIAL IS OFFERED FOR  
23 THE TRUTH OF THE MATTER AS IF ASSERTED IN THE DETAILS.

24 AND I UNDERSTAND THAT HEARSAY IS ONLY THE  
25 FORMATION OF THE WITNESS'S OPINION. AND THAT OFTEN  
26 OCCURS WHEN THERE HAS BEEN NO PROPER OBJECTION TO THE  
27 DETAILS.

28 BUT THAT IS DIFFERENT THAN SAYING THE

1 WITNESS CANNOT FORM HER OWN OPINION CONCERNING WHAT THE  
2 ULTIMATE FACTS ARE THAT ARE BEING PRESENTED TO THE PRIOR  
3 FACT, COURT OR JURY.

4 SO AT THIS POINT, IT WOULD BE PREMATURE FOR  
5 ME TO PRECLUDE THIS WITNESS FROM TESTIFYING IN ANY  
6 PARTICULAR WAY, AND I'M GOING TO PERMIT HER TO TESTIFY.

7 BUT I'M GOING TO SUGGEST TO COUNSEL THAT YOU  
8 AVOID PRESENTING EVIDENCE AS TO WHAT THE SPECIFIC  
9 DETAILS WERE THAT SOMEONE ELSE MIGHT HAVE SAID. SHE CAN  
10 SAY THAT SHE BASED HER OPINION UPON WHATEVER PARTICULAR  
11 REPORTS, STUDIES, AND THIS IS HER OPINION AS TO WHAT THE  
12 NUMBERS MIGHT BE.

13 THEN THAT GOES TO THE WEIGHT OF HER OPINION,  
14 BUT NOT TO THE ADMISSIBILITY OF IT. BUT WE ARE GOING TO  
15 BE VERY CAREFUL HERE NOT TO GET INTO HEARSAY, AND I  
16 SUSPECT WE ARE PROBABLY NOT GOING TO GET INTO IT EXCEPT  
17 ON -- AS IT USUALLY OCCURS ON CROSS-EXAMINATION WHERE  
18 PEOPLE START OPENING UP THINGS THAT WERE PREVIOUSLY  
19 CLOSED. SO THAT IS THE RULING THAT I'M GOING TO MAKE.  
20 SHE CAN TESTIFY AS TO HER OWN OPINIONS.

21 SHE CAN CERTAINLY STATE WHAT HER OPINION IS  
22 BASED ON -- WITHOUT GOING INTO THE SPECIFIC DETAILS OF  
23 WHAT SOMEBODY ELSE MIGHT HAVE SAID. BUT SHE CAN  
24 CERTAINLY TESTIFY IN HER OPINION AS TO THE STUDIES THAT  
25 WERE DONE THAT RESULTED IN NUMBERS BEING PRESENTED.

26 AND THEN WE WILL SEE WHERE IT GOES FROM  
27 THERE.

28 MR. ZIMMER: THAT DOESN'T GET US TO THE SCOPE

1     ISSUE, YOUR HONOR.  SHE DID NOT GIVE AN OPINION AS A  
2     SAFE YIELD OR OVERDRAFT.  SHE DID NOT GIVE THAT OPINION  
3     EITHER IN THE -- SHE WAS NOT DISCLOSED TO GIVE THAT  
4     OPINION ON THAT, NOR WAS IT IN HER EXPERT REPORT.

5             THE COURT:  ACTUALLY, SHE WAS.  SHE WAS SUPPOSED  
6     TO GIVE THAT OPINION.  IF YOU LOOK AT THE DISCLOSURE,  
7     SHE HAS BEEN ASKED TO PROVIDE TESTIMONY FOR THE PHASE  
8     III TRIAL ON ADDRESSING STATUS OF THE AQUIFER AND THE  
9     ISSUE OF OVERDRAFT.  AND THEN IT IS SET FORTH IN HER  
10    EXPERT DISCLOSURE REPORT.  SO IT IS NOT AS LIMITED AS  
11    YOU ARE INDICATING.

12            NOW IF SHE DID SAY THAT SHE DIDN'T FORM AN  
13    INDEPENDENT -- OR WORDS TO THAT EFFECT THAT YOU USED --  
14    OR INVESTIGATION, I THINK IT WAS, OF THE NUMBERS.

15            AND SHE IS BASING IT ON WHAT SURVEYS HAVE  
16    BEEN DONE, AND THAT IS AN APPROPRIATE BASIS FOR AN  
17    EXPERT TO FORM AN OPINION.  BUT THE WEIGHT OF THE  
18    OPINION IS ANOTHER ISSUE.

19            SO THERE'S A DIFFERENCE BETWEEN  
20    ADMISSIBILITY OF THE OPINION AND THE WEIGHT TO BE GIVEN  
21    TO IT.  AND I'M GOING TO, THEREFORE, OVERRULE THE -- IF  
22    THAT IS WHAT IT WAS, YOUR OBJECTION, AND PERMIT HER TO  
23    TESTIFY AT THIS TIME SUBJECT TO INDEPENDENT OBJECTIONS  
24    THAT ARE APPROPRIATELY MADE.

25            SO, DO WE UNDERSTAND THE RULING?

26            MR. LEININGER:  YES.  THANK YOU, YOUR HONOR.

27            PLEASE STATE YOUR NAME FOR THE RECORD AGAIN.

28            THE WITNESS:  JUNE OBERDORFER.

1 JUNE A. OBERDORFER,  
2 CALLED BY THE EDWARDS AIR FORCE BASE AS A WITNESS, WAS  
3 SWORN AND TESTIFIED AS FOLLOWS:

4  
5 DIRECT EXAMINATION

6 BY MR. LEININGER:

7 Q YOU HAVE TESTIFIED AS AN EXPERT WITNESS  
8 BEFORE IN THIS CASE, HAVEN'T YOU?

9 A YES, IN BOTH PHASE I AND PHASE II.

10 THE COURT: WILL COUNSEL STIPULATE AS TO HER  
11 QUALIFICATIONS?

12 MR. ZIMMER: YES.

13 MR. JOYCE: SO STIPULATED.

14 MR. LEININGER: YOUR HONOR, MAY I APPROACH.

15 THE COURT: YES.

16 BY MR. LEININGER:

17 Q I'M HANDING AN EXHIBIT MARKED, I BELIEVE --  
18 I HOPE I HAVE OUR LETTER DESIGNATIONS CORRECT. WE ARE  
19 "I." THESE WILL ALL BE EXHIBIT I. THIS IS I-1?

20 THE COURT: I-1 IS HER CV.

21  
22 (EDWARDS AIR FORCE BASE EXHIBIT I-1  
23 MARKED.)

24  
25 MR. JOYCE: YOUR HONOR, THE ONES THAT I HAVE ARE  
26 PREMARKED, AND THEY START WITH EXHIBIT 11, AND THEY GO  
27 TO 12.

28 MR. BUNN: THAT IS AN "I."

1 MR. JOYCE: OH, YES, I SEE. THANK YOU, YOUR  
2 HONOR.

3 BY MR. LEININGER:

4 Q IS THIS A TRUE AND CORRECT COPY OF YOUR  
5 RESUME?

6 A YES.

7 Q DID YOU PRESENT YOUR RESUME AT PREVIOUS --  
8 MR. ZIMMER: STIPULATE TO ADMISSION OF HER CV.

9 THE WITNESS: YES.

10 MR. LEININGER: VERY BRIEFLY, YOUR HONOR. ALL I'M  
11 TRYING TO ESTABLISH IS IF THERE ARE ANY CHANGES TO HER  
12 RESUME SINCE THE LAST TIME SHE TESTIFIED, AND I THINK  
13 SHE ONLY HAS ONE OR TWO CHANGES.

14 Q HAS YOUR RESUME CHANGED SINCE YOUR  
15 OCTOBER 2008 TESTIMONY IN PHASE II?

16 A THERE ARE PROBABLY AN ADDITIONAL TWO OR  
17 THREE JOURNAL ARTICLES, A COUPLE OF CONFERENCE  
18 PRESENTATION ABSTRACTS AND ONE ADDITIONAL CONSULTING  
19 COMPANY RELATIONSHIP.

20 Q AND HAVE YOU EVER CONSULTED ON PROJECTS  
21 INVOLVING HYDROLOGICAL INVESTIGATIONS?

22 A YES, I HAVE.

23 Q HOW MANY OF YOUR PROJECTS OR STUDIES HAVE  
24 INVOLVED CALIFORNIA BASINS?

25 A ABOUT FOUR OR FIVE.

26 Q WHAT INVESTIGATIONS HAVE YOU DONE IN THE  
27 ANTELOPE VALLEY?

28 A IN ADDITION TO WORKING ON THIS ADJUDICATION,



1 I HAVE WORKED FOR A NUMBER OF YEARS AT EDWARDS AIR FORCE  
2 BASE. THOSE ARE PRIMARILY RELATED TO CONTAMINATE ISSUES  
3 AT THAT BASE. AND IN THE PROCESS OF STUDYING THOSE  
4 CONTAMINATION ISSUES, WE DID CHARACTERIZATION BOTH IN  
5 BEDROCK AND THE ALLUVIAL AQUIFER, DETERMINATIONS OF  
6 PERMEABILITY AND ESTIMATES OF RECHARGE. WE LOOKED AT --  
7 WE DID SOME COMPUTER SIMULATIONS.

8 Q OKAY. NOW YOU UNDERSTAND -- THE ISSUE IN  
9 THIS PHASE OF THE TRIAL IS SAFE YIELD OF THE ANTELOPE  
10 VALLEY GROUNDWATER BASIN AND WHETHER THE BASIN IS IN  
11 OVERDRAFT; IS THAT CORRECT?

12 A YES.

13 Q WHAT IS YOUR UNDERSTANDING OF THE TERM SAFE  
14 YIELD OF THE BASIN?

15 A SAFE YIELD IS THE QUANTITY OF WATER THAT CAN  
16 BE REMOVED FROM THAT BASIN ON A PROLONGED OR LONG-TERM  
17 BASIS WITHOUT CAUSING HARM WITHIN THAT BASIN.

18 Q AND HOW DOES THE TERM "SAFE YIELD" AND THE  
19 TERM "TOTAL SUSTAINABLE YIELD" COMPARE?

20 A I THINK THEY ARE ESSENTIALLY THE SAME TERM.

21 Q AND IS NATURAL RECHARGE OF A BASIN A  
22 CRITICAL COMPONENT OF SAFE YIELD?

23 A YES, IT IS.

24 MR. LEININGER: YOUR HONOR, I WOULD NOW LIKE TO  
25 TURN TO HER EXHIBIT. SHE HAS -- DR. OBERDORFER HAS A  
26 POWERPOINT PRESENTATION WHICH WE HAVE ALSO MARKED WHICH  
27 I -- I SEE THE EXHIBIT NUMBERS THAT ARE NOT MARKED ON  
28 THE PRESENTATION, BUT I'LL STATE FOR THE RECORD AS WE GO

1 THROUGH.

2  
3 (EDWARDS AIR FORCE BASE EXHIBIT I-2  
4 MARKED.)

5  
6 **BY MR. LEININGER:**

7 Q DR. OBERDORFER, IF YOU LOOK WHAT HAS BEEN  
8 MARKED AS EXHIBIT I-2 AND IS NOW PROJECTED ON THE  
9 SCREEN. WAS THIS SLIDE PREPARED BY YOU?

10 A YES, IT WAS.

11 Q WHAT IS IT?

12 A IT IS A SUMMARY OF EARLIER ESTIMATES OF  
13 NATURAL RECHARGE IN THE ANTELOPE VALLEY BY THE US  
14 GEOLOGICAL SURVEY AND THEN WHAT'S REPORTED BY THE  
15 CALIFORNIA DEPARTMENT OF WATER RESOURCES IN THE MOST  
16 RECENT VERSION OF BULLETIN 118.

17 Q ARE YOU FAMILIAR WITH THIS SUMMARY EXPERT  
18 REPORT PREPARED BY MISTERS BEEBE, DURBIN, LEFFLER,  
19 SCALMANINI, AND WILDERMUTH FOR THIS CASE?

20 A YES.

21 Q AND DO YOU KNOW WHAT THE ESTIMATES WERE FOR  
22 NATURAL RECHARGE IN THE SUMMARY EXPERT REPORT?

23 MR. ZIMMER: RELEVANCE.

24 THE COURT: IT SEEMS TO ME YOU NEED TO GET HER  
25 OPINION FIRST AS TO WHAT THE NUMBERS ARE. AND THEN YOU  
26 MAY OBTAIN THE BASIS FOR THAT WITHIN LIMITS AS I'VE  
27 INDICATED.

28 THE WITNESS: THE VALUES FOR NATURAL RECHARGE

1       THERE WAS A RANGE FROM ABOUT 55 TO ABOUT 65,000 --

2               MR. WILLIAM KUHS:   EXCUSE ME.   I UNDERSTOOD YOUR  
3       RULING WAS THAT YOU WANTED HER OPINION BEFORE SHE WENT  
4       INTO DISCUSSING ANYTHING IN THE SUMMARY EXPERT REPORT.

5               THE COURT:   HER OPINION, AND SHE CAN STATE WHAT IT  
6       IS BASED UPON.

7               MR. ZIMMER:   MOTION TO STRIKE THE ANSWER.

8               THE COURT:   ALL RIGHT.   THAT IS GRANTED.

9       BY MR. LEININGER:

10              Q           DR. OBERDORFER, ARE YOU GENERALLY FAMILIAR  
11       WITH THE METHODOLOGIES USED BY HYDROLOGISTS AND  
12       HYDROGEOLOGISTS TO DETERMINE NATURAL RECHARGE?

13              A           YES.

14              Q           ARE YOU FAMILIAR WITH PAST STUDIES IN THE  
15       ANTELOPE VALLEY TO ESTIMATE NATURAL RECHARGE?

16              A           YES.

17              Q           AND WHAT DO THE STUDIES SHOW ON YOUR SLIDE,  
18       ONE, ESTIMATE FOR THE VALUE OF NATURAL RECHARGE OF THE  
19       ANTELOPE VALLEY GROUNDWATER BASIN?

20              MR. JOYCE:   OBJECTION.   HEARSAY, YOUR HONOR.

21              MR. ZIMMER:   JOIN IN THAT OBJECTION.

22              THE COURT:   SUSTAINED.   GIVE HER OPINION AS TO  
23       WHAT NATURAL RECHARGE IS.

24       BY MR. LEININGER:

25              Q           HAVE YOU FORMED AN OPINION WITH REGARD TO  
26       NATURAL RECHARGE IN THE ANTELOPE VALLEY GROUNDWATER  
27       BASIN?

28              A           YES, I HAVE.

1 Q WHAT'S THE BASIS FOR YOUR OPINION OF NATURAL  
2 RECHARGE?

3 A THE BASIS WOULD BE MY REVIEW OF A VARIETY OF  
4 REPORTS AND MOST RECENTLY THE SUMMARY EXPERT REPORT AND  
5 DEVELOPING THIS OPINION AS TO THE REASON THE NUMBERS  
6 WERE DERIVED THERE.

7 Q AND, SPECIFICALLY, CAN YOU?

8 A THE VALUE AROUND 56,000 ACRE-FEET PER YEAR  
9 IS THE REASONABLE VALUE THAT WAS DETERMINED IN THE  
10 SUMMARY EXPERT REPORT, AND I'M IN AGREEMENT WITH THAT.

11 MR. ZIMMER: OBJECTION. YOUR HONOR.

12 MR. WILLAIM KUHS: HEARSAY.

13 MR. ZIMMER: SHE IS SIMPLY REPEATING THE EXPERT  
14 OPINION.

15 THE COURT: I WON'T STRIKE IT. I'LL LET IT STAY  
16 IN, BUT IT IS RECOGNIZED AS HEARSAY, AND THE COURT  
17 UNDERSTANDS THE DIFFERENCE BETWEEN HEARSAY AND  
18 ADMISSIBLE EVIDENCE.

19 BY MR. LEININGER:

20 Q SO YOU HAVE REVIEWED STUDIES OF -- THAT HAVE  
21 MADE DETERMINATION OF NATURAL RECHARGE IN THE ANTELOPE  
22 VALLEY GROUNDWATER BASIN; IS THAT CORRECT?

23 A YES, I HAVE REVIEWED A FAIR AMOUNT OF USGS  
24 REPORTS IN PARTICULAR.

25 Q SPECIFICALLY, CAN YOU CITE TO WHAT YOU HAVE  
26 REVIEWED?

27 A THE REPORTS THAT I PARTICULARLY REVIEWED  
28 WERE TWO EARLIER USGS REPORTS, DURBIN FROM 1978 AND THEN

1 A REPORT BY BLOYD FROM 1967. AND THESE WERE -- ACTUALLY  
2 TWO REPORTS WERE CITED IN A LATER REPORT BY LONDQUIST,  
3 ANOTHER USGS RESEARCHER WHO DID A SURVEY OR -- AN  
4 OVERVIEW OF THE VARIOUS ESTIMATES OF RECHARGE IN THE  
5 ANTELOPE VALLEY AND GAVE THE OPINION THAT THE TWO BY  
6 DURBIN AND BLOYD WERE --

7 MR. WILLAIM KUHS: OBJECT AT THAT POINT AS  
8 NONRESPONSIVE AND HEARSAY. THE QUESTION WAS WHAT  
9 DOCUMENTS OR REPORTS HAVE YOU REVIEWED.

10 MR. ZIMMER: ALSO OBJECT TO THE EXTENT THIS  
11 WITNESS IS TRYING TO SIMPLY REPEAT THE OPINION OF SOME  
12 OTHER EXPERTS WHEREIN SHE LACKS THE FOUNDATION  
13 PERSONALLY TO GIVE THE OPINION AND NOT HAVING DONE A  
14 COMPLETE ANALYSIS THAT THERE IS NO FOUNDATION FOR THAT.

15 THE COURT: OVERRULED. IF -- THAT GOES TO THE  
16 WEIGHT.

17 BY MR. LEININGER:

18 Q LET'S START WITH BLOYD'S 1967 STUDY THAT YOU  
19 JUST MENTIONED. HOW GENERALLY DID BLOYD ESTIMATE  
20 NATURAL RECHARGE IN THE ANTELOPE VALLEY GROUNDWATER  
21 BASIN?

22 MR. ZIMMER: SPECULATION. VAGUE.

23 THE COURT: OVERRULED.

24 THE WITNESS: BLOYD DEVELOPED A RELATIONSHIP  
25 BETWEEN PRECIPITATION AND RUNOFF IN MANY WAYS SIMILAR TO  
26 ONE OF THE METHODS THAT MR. DURBIN IS DOING IN THE  
27 SUMMARY EXPERT REPORT. AND IN MANY WAYS, THERE WERE A  
28 LOT OF SIMILARITIES BETWEEN THE TWO APPROACHES THAT WERE

1     TAKEN, BUT THERE WERE DIFFERENCES.

2                   THE -- BLOYD HAD A SHORTER PERIOD OF TIME.  
3     HE HAD FEWER STREAM GAUGE STATIONS. HE USED MORE SIMPLE  
4     LINEAR RELATIONSHIPS BETWEEN THE DATA FOR STREAMFLOW AND  
5     PRECIPITATION. AND SO EVALUATING THAT, I THINK THE  
6     APPROACH THAT MR. DURBIN TOOK IN THE SUMMARY EXPERT  
7     REPORT IS A MORE SOPHISTICATED APPROACH. IT  
8     INCORPORATES DATA SO IT GIVES A BETTER BASIN-WIDE  
9     EVALUATION.

10                   AND ONE OTHER SIGNIFICANT DIFFERENCE THAT  
11     BLOYD DID NOT ESTIMATE OR INCORPORATE BEDROCK SEEPAGE,  
12     AND MR. DURBIN'S APPROACH ALLOWED HIM TO DO THAT.

13           Q        I'M SORRY?

14           MR. ZIMMER: OBJECTION. RELEVANCE. TO THE  
15     DIFFERENCE BETWEEN MR. BLOYD'S WORK AND DURBIN'S WORK.  
16     BLOYD'S WORK IS NOT IN EVIDENCE. IT IS HEARSAY.

17           THE COURT: I'M GOING TO OVERRULE THAT ON THIS  
18     BASIS. SHE CAN TESTIFY AS AN EXPERT AS TO WHAT IS THE  
19     PROPER METHODOLOGY AND PROCESS FOR EVALUATING RECHARGE  
20     AMONG OTHER THINGS. SHE HAS BEEN DISCLOSED AS AN EXPERT  
21     CONCERNING THAT, AND SHE CAN DIFFERENTIATE BETWEEN  
22     PROCESSES THAT SHE UNDERSTANDS WERE USED BY VARIOUS  
23     PEOPLE SINCE SHE HAS TOLD US SHE IS BASING HER OPINION  
24     ON WHAT OTHER PEOPLE MAY HAVE CONCLUDED AS TO -- FOR  
25     EXAMPLE, RECHARGE.

26           MR. ZIMMER: I UNDERSTAND THE COURT'S COMMENT ON  
27     THAT; BUT IF MR. BLOYD'S OPINION IS NOT IN EVIDENCE,  
28     THEN HOW IS IT RELEVANT WHAT MR. BLOYD DID OR WHETHER --

1 BETTER WHAT MR. DURBIN DID.

2 THE COURT: SHE IS TALKING ABOUT THE VARIOUS  
3 METHODOLOGIES OF ASCERTAINING THOSE NUMBERS, AND I THINK  
4 SHE CAN DO THAT. AND THE COURT WILL EVALUATE HER  
5 OPINION BASED UPON WHAT THE COURT HAS ALREADY HEARD BOTH  
6 DIRECT AND CROSS ON THE EXPERTS WHO HAVE TESTIFIED HERE,  
7 BUT IT IS THE COURT'S DETERMINATION AS TO WHAT IS THE  
8 PROPER METHOD. BUT I'M INTERESTED IN HEARING WHAT  
9 EXPERT TESTIMONY MAY BE OFFERED CONCERNING THAT ASSUMING  
10 IT IS RELEVANT.

11 I WOULD LIKE YOU TO LIMIT IT AS I HAVE  
12 INDICATED.

13 BY MR. LEININGER:

14 Q I'M SORRY, DR. OBERDORFER. WHILE YOU WERE  
15 SPEAKING, YOU WERE LOOKING AT A SECOND SLIDE; IS THAT  
16 CORRECT?

17 A YES.

18 Q AND JUST FOR THE RECORD, YOUR HONOR, THIS IS  
19 EXHIBIT I-3.

20  
21 (EDWARDS AIR FORCE BASE EXHIBIT I-3  
22 MARKED.)  
23

24 THE COURT: ALL RIGHT.

25 BY MR. LEININGER:

26 Q SO, IN YOUR OPINION, WHICH APPLICATION,  
27 BLOYD'S METHODOLOGY OR SUMMARY EXPERT REPORT, WERE MORE  
28 GENERALLY ACCEPTED IN THE FIELD OF HYDROGEOLOGY?

1 MR. ZIMMER: VAGUE AS TO TIME.

2 MR. SLOAN: LACKS FOUNDATION.

3 THE COURT: OVERRULED.

4 THE WITNESS: I THINK THE CURRENT ESTIMATE BY  
5 MR. DURBIN HAS THE BENEFIT OF A LONGER PERIOD OF DATA,  
6 AND IT HAS A MORE SOPHISTICATED ANALYSIS. AND I THINK  
7 THAT WOULD MAKE IT MORE GENERALLY ACCEPTED.

8 BY MR. LEININGER:

9 Q HOW ABOUT, NOW, MR. DURBIN'S 1978 STUDY, HOW  
10 DOES THIS METHODOLOGY COMPARE?

11 A COULD WE LOOK AT THE NEXT EXHIBIT.

12 THANK YOU.

13 MR. LEININGER: YOUR HONOR, FOR THE RECORD, THIS  
14 IS EXHIBIT I-4.

15  
16 (EDWARDS AIR FORCE BASE EXHIBIT I-4  
17 MARKED.)

18  
19 THE COURT: ALL RIGHT.

20 THE WITNESS: IN MANY WAYS WHAT MR. DURBIN DID WAS  
21 TO ESTIMATE STREAMFLOW AND THEN MAKE THE ASSUMPTION.  
22 THIS IS HIS 1978. SORRY. LET ME DISTINGUISH HIS 1978  
23 REPORT, USING THOSE GAUGED DATA AND STREAMFLOW -- STREAM  
24 CHANNEL GEOMETRY. AND HE USED THAT TO ESTIMATE NATURAL  
25 RECHARGE THAT WAY. THIS IS SOMEWHAT OF AN OVERLAP WITH  
26 HIS PRECIPITATION RUNOFF YIELD METHOD AND NOT A COMPLETE  
27 OVERLAP.

28 AND, AGAIN, THE APPROACH THAT HE HAS TAKEN



1 IN 2010 IN THE SUMMARY EXPERT REPORT IS A MORE  
2 SOPHISTICATED ANALYSIS IN THAT HE WAS ABLE TO  
3 INCORPORATE A VARIETY OF PRECIPITATION RUNOFF  
4 CONDITIONS. HE WAS ABLE TO LOOK AT, I THINK, ADDITIONAL  
5 STREAMS AND DATA.

6 AND ANOTHER BIG ADVANTAGE OF HIS CURRENT  
7 ANALYSIS AND PRECIPITATION OLD METHOD WAS THAT HE DID  
8 COME UP WITH AN ESTIMATE OF THE BEDROCK CONTRIBUTION.  
9 PREVIOUSLY HE ASSUMED THAT CONTRIBUTION WAS QUITE MINOR  
10 AND ESSENTIALLY COUNTERBALANCED BY EVAPOTRANSPIRATION  
11 LOSS AT THE STREAMS.

12 Q AND WHAT'S HIS TESTIMONY OF GROUNDWATER  
13 CONTRIBUTION FROM A MOUNTAIN --

14 A IT IS A SIGNIFICANT PORTION. IT IS ABOUT  
15 35 PERCENT OF THE TOTAL RECHARGE THAT IS ESTIMATED TO  
16 BE.

17 Q IN YOUR OPINION, IS 35 PERCENT TOTAL  
18 RECHARGE REASONABLE?

19 A IT IS.

20 MR. ZIMMER: NO FOUNDATION.

21 THE WITNESS: IT IS REASONABLE.

22 THE COURT: OVERRULED.

23 THE WITNESS: IF NOT REASONABLE IF NOT MAYBE A  
24 LITTLE HIGH.

25 BY MR. LEININGER:

26 Q SO IS -- SO IN YOUR OPINION, WHICH  
27 METHODOLOGY IS BETWEEN THE DURBIN'S 1978 STUDY AND  
28 WHAT'S IN THE SUMMARY EXPERT REPORT MORE GENERALLY

1 ACCEPTED IN THE FIELD OF HYDROGEOLOGY?

2 MR. ZIMMER: VAGUE AS TO TIME. IN 1967 (SIC) OR  
3 IN 2010?

4 THE WITNESS: I THINK THAT --

5 THE COURT: OVERRULED. GO AHEAD.

6 THE WITNESS: THE SCIENCE HAS ADVANCED, AND HE'S  
7 USING A MORE CURRENT APPROACH AND MORE WIDELY USED  
8 APPROACH NOW WITH HIS CURRENT ONE, I WOULD SAY. THE  
9 CURRENT 2010 APPROACH IS MORE LIKELY ACCEPTED.  
10 BY MR. LEININGER:

11 Q HAS THERE BEEN ENOUGH OTHER PREVIOUS  
12 ATTEMPTS TO DETERMINE NATURAL RECHARGE THAT YOU ARE  
13 AWARE OF?

14 A WELL, THERE WAS ONE THAT WAS DONE BY  
15 LEIGHTON AND PHILLIPS IN 2003.

16 Q OKAY. AND IF WE MAY HAVE EXHIBIT I-5. I'M  
17 SORRY. THANK YOU.

18  
19 (EDWARDS AIR FORCE BASE EXHIBIT I-5  
20 MARKED.)  
21

22 BY MR. LEININGER:

23 Q SO THE LEIGHTON AND PHILLIPS 2003 USGS  
24 STUDY -- HOW DOES THAT METHODOLOGY COMPARE TO THE  
25 SUMMARY EXPERT REPORT?

26 A WHAT LEIGHTON AND PHILLIPS DID WAS A  
27 COMPUTER MODEL OF THE GROUNDWATER BASIN, AND INHERENT IN  
28 ANY COMPUTER MODEL IS A WATER BUDGET. SO THIS WOULD BE

1 ANALOGOUS TO WHAT MR. WELLEN DID IN HIS PORTION OF THE  
2 SUMMARY EXPERT REPORT.

3 AND CONTRAST THIS TO THE -- MR. WILDERMUTH,  
4 I THINK, BACK CALCULATED AS THE UNKNOWN WAS THE NATURAL  
5 RECHARGE PROPONENT BASED ON INPUTS FROM VARIOUS FIELD  
6 DATA OF WATER USAGE AND RETURN FLOWS AND SO ON.

7 AND THE LEIGHTON AND PHILLIPS INITIALLY  
8 ASSUMED A NATURAL RECHARGE NUMBER THAT WAS DURBIN'S FROM  
9 1978; BUT IN THE COURSE OF RUNNING THAT MODEL, THEY HAD  
10 DIFFICULTY CALIBRATING THAT MODEL PARTICULARLY IN AREAS  
11 OF THE HEAVY RECHARGE AROUND LITTLEROCK AND BIG ROCK  
12 CREEK. SO THEY ACTUALLY REDUCED THAT NATURAL RECHARGE  
13 NUMBER, AND, ESSENTIALLY, THE RECHARGE BECAME A  
14 CALIBRATION PARAMETER TO MAKE THE MODEL RUN OR CONVERGE.

15 Q DO YOU RECALL WHAT THE VALUE WAS FOR THE  
16 NATURAL RECHARGE?

17 A AROUND 30,000 ACRE-FEET PER YEAR.

18 Q WERE THERE ANY OTHER DIFFERENCES BETWEEN  
19 LEIGHTON AND PHILLIPS APPROACH AND SUMMARY EXPERT  
20 REPORT?

21 A THERE WERE A NUMBER OF THEM -- IF YOU COULD  
22 GO TO THE NEXT SLIDE.

23 MR. LEININGER: FOR THE RECORD WE ARE LOOKING AT  
24 NOW I-6.

25  
26 (EDWARDS AIR FORCE BASE EXHIBIT I-6  
27 MARKED.)  
28

1 THE WITNESS: SO THERE WERE A NUMBER OF  
2 SIMILARITIES. ONE OF THE BIG DIFFERENCE WAS IN THE  
3 SPECIFIC YIELD VALUE OR THE APPROACH TO LOOKING AT  
4 SPECIFIC YIELD; ALTHOUGH, THERE IS A CERTAIN AMOUNT OF  
5 OVERLAP IN THE NUMBERS. AGAIN, LEIGHTON AND PHILLIPS  
6 STARTED OUT WITH USING THE VALUES THAT MR. DURBIN HAD  
7 ASSUMED IN HIS 1978 MODEL RANGE OF ABOUT 0.05 TO 2.20.

8 THEY CHANGED THOSE AGAIN AS -- AS A  
9 CALIBRATION TO THE MODEL. I THINK BY CONTRAST WHAT  
10 MR. WILDERMUTH DID ACTUALLY LOOKING AT THE WELL LOGS  
11 EVALUATING THE GEOLOGY WITHIN THE INTERVAL WHERE WATER  
12 LEVEL CHANGE TOOK PLACE IS - IN DOING THAT ON A  
13 POINT-BY-POINT BASIS IS A MUCH MORE RIGOROUS APPROACH;  
14 ALTHOUGH, YOU KNOW, THE -- WHAT LEIGHTON AND PHILLIPS  
15 DID TO ASSIGN VALUES TO CERTAIN AREAS OF THE MODEL IS  
16 WHAT IS VERY FREQUENTLY DONE IN MODELING.

17 Q ANY OTHER DIFFERENCE?

18 A YEAH, THE NEXT.

19 MR. ZIMMER: YOUR HONOR, JUST TO PUT AN OBJECTION  
20 HERE. SPECULATION. SHE IS SAYING, I THINK, WHAT  
21 MR. WILDERMUTH DID. I DON'T KNOW IF THAT IS BASED ON A  
22 REPORT THAT MR. WILDERMUTH AUTHORED OR WHETHER SHE IS  
23 SPECULATING WHAT MR. WILDERMUTH DID. WE HEARD FROM  
24 MR. WILDERMUTH WHAT HE DID.

25 THE COURT: OKAY. THANK YOU.

26 THE WITNESS: PROBABLY ONE OF THE BIGGEST  
27 DIFFERENCE IS JUST COMPARING THE ESTIMATES OF CALCULATED  
28 AGRICULTURAL PUMPING, AND I COMPARE THESE FOR THE

1 PERIODS OF OVERLAP BETWEEN THE TWO REPORTS SO THEY GO  
2 FOR SLIGHTLY DIFFERENT PERIODS SO JUST COMPARE THEM FOR  
3 THE 1951 AND 1999 AND 1995 PERIOD. THEY OVERLAP.

4 AND THEN AT THAT TIME THE SUMMARY EXPERT  
5 REPORT (COUGHING) AS A PUMPING THAT IS ABOUT 28 PERCENT  
6 GREATER THAN -- THAN WHAT LEIGHTON AND PHILLIPS USED,  
7 AND THAT ACTUALLY IN TERMS OF ACRE-FEET BECAUSE PUMPING  
8 WAS HIGH DURING MUCH OF THAT PERIOD TURNED OUT TO BE A  
9 FAIRLY LARGE NUMBER OF ACRE-FEET.

10 AND I THINK IT IS PROBABLY THE BIGGEST  
11 REASON THAT THERE IS A VERY SIGNIFICANT DIFFERENCE DOWN  
12 HERE AT THE BOTTOM THAT THE SUMMARY EXPERT REPORT CAME  
13 UP WITH A NATURAL RECHARGE NUMBER THAT IS ABOUT  
14 90 PERCENT GREATER THAN LEIGHTON AND PHILLIPS DID.  
15 BY MR. LEININGER:

16 Q IN YOUR OPINION, WHICH METHODOLOGY OR  
17 DETERMINATION OF NATURAL RECHARGE IS MORE GENERALLY  
18 ACCEPTED?

19 A I GUESS -- GENERALLY ACCEPTED, I THINK BOTH  
20 METHODS ARE ACCEPTED. I THINK USUALLY WHEN YOU  
21 CONSTRUCT A NUMERICAL MODEL, IT HAS ALWAYS BEEN MY  
22 ATTEMPT TO TRY TO DETERMINE THE WATER BUDGET INDEPENDENT  
23 OF THE MODEL AND NOT -- HAVE THE MODEL, REALLY,  
24 CONSTRAIN THE WATER BUDGET. SO I AM -- WEARY OF HAVING  
25 IT BECOME -- THE RECHARGE BECOME A CALIBRATION  
26 PARAMETER.

27 Q SO IN WHICH APPLICATION -- WHICH APPLICATION  
28 IS MORE VIGOROUS?

1           A           I THINK THE SUMMARY EXPERT REPORT DID A  
2 BETTER JOB OF CALCULATING THAT WATER BUDGET IN  
3 DETERMINING WHAT THE NATURAL RECHARGE WAS AS THE  
4 UNKNOWN.

5           Q           NOW, HOW ELSE CAN YOU ESTIMATE NATURAL  
6 RECHARGE IN A GROUNDWATER BASIN?

7           A           WELL, THERE IS -- ACTUALLY A VARIETY OF  
8 TECHNIQUES. YOU COULD LOOK AT THE NEXT SLIDE.

9           MR. LEININGER: FOR THE RECORD, THIS IS EXHIBIT  
10 I-8.

11  
12                   (EDWARDS AIR FORCE BASE EXHIBIT I-8  
13 MARKED.)

14  
15           THE WITNESS: SO THIS IS JUST A SUMMARY. I SIMPLY  
16 POINTED OUT THAT THERE WERE TWO ADDITIONAL TECHNIQUES  
17 THAT WERE DONE IN THE SUMMARY EXPERT REPORT. AND THE  
18 FIRST WAS AN EVAPOTRANPIRATION TECHNIQUE WHERE THE  
19 PRIMARY DATA SETS ARE PRECIPITATION AND  
20 EVAPOTRANPIRATION.

21                   AND, AGAIN, THIS IS VERY WILDLY USED.  
22 CHLORIDE BUDGET BASED ON CHLORIDE CONCENTRATIONS IN  
23 PRECIPITATION AND IN GROUNDWATER. AGAIN, ANOTHER METHOD  
24 THAT IS VERY WIDELY USED. ALL FOUR OF THE METHODS THAT  
25 WERE USED IN THE SUMMARY EXPERT REPORT ARE COMMONLY USED  
26 TECHNIQUES FOR ESTIMATING GROUNDWATER RECHARGE.

27                   AND I THINK --

28           MR. SLOAN: YOUR HONOR, I WOULD LIKE TO OBJECT AND

1 MOVE TO STRIKE THIS AS CUMULATIVE. THIS IS ALMOST THE  
2 IDENTICAL SLIDE WE LOOKED AT WITH MR. DURBIN.

3 THE COURT: OKAY. OVERRULED.

4 THE WITNESS: I THINK WHAT IS UNUSUAL FOR MOST  
5 STUDIES IN THE GROUNDWATER BASINS IN THE ARID SOUTHWEST  
6 TYPICALLY A SINGLE APPROACH IS USED, MAYBE TWO  
7 APPROACHES. AND I THINK THE FACT THAT THEY HAVE LOOKED  
8 AT FOUR DIFFERENT INDEPENDENT APPROACHES -- I'M RELYING  
9 ON DISTINCT DATA SETS -- GIVES AN ADDITIONAL WEIGHT TO  
10 THEIR FINDINGS, AND THE SIMILARITY OF RESULTS ALSO GIVES  
11 ME GREATER CONFIDENCE THAT THEY HAVE ARRIVED AT A NUMBER  
12 THAT IS REASONABLE.

13 BY MR. LEININGER:

14 Q SO IN COMPARISON TO THESE VARIOUS STUDIES  
15 AND TECHNIQUES, IN YOUR OPINION, DOES THE SUMMARY EXPERT  
16 REPORT PROVIDE THE BEST AVAILABLE ESTIMATE OF NATURAL  
17 RECHARGE IN THE ANTELOPE VALLEY?

18 A YES, IT DOES.

19 Q ARE YOU GENERALLY FAMILIAR WITH  
20 METHODOLOGIES BY HYDROGEOLOGISTS TO DETERMINE SAFE YIELD  
21 OR TOTAL SUSTAINABLE YIELD IN THE GROUNDWATER BASIN?

22 MR. SLOAN: OBJECTION. COMPOUND.

23 THE COURT: OVERRULED.

24 THE WITNESS: YES, I AM.

25 BY MR. LEININGER:

26 Q CAN YOU GIVE A GENERAL DESCRIPTION, PLEASE.

27 A IF I COULD HAVE THE NEXT SLIDE. THIS IS A  
28 SLIDE FROM THE SUMMARY EXPERT REPORT FROM

1 MR. SCALMANINI'S APPENDIX F.

2  
3 (EDWARDS AIR FORCE BASE EXHIBIT I-9  
4 MARKED.)  
5

6 THE WITNESS: IT LOOKS AT NATURAL RECHARGE INPUTS  
7 AND THEN A VARIETY OF RETURN FLOWS BOTH FROM PUMPING OF  
8 THAT UNNATURAL RECHARGE AND THOSE BEING RETURNED TO THE  
9 AQUIFER. AND THEN ALSO IN BASINS WHERE THERE IS  
10 IMPORTED WATER, YOU LOOK AT VARIOUS RETURN FLOWS FROM  
11 THAT USE OF THAT IMPORTED WATER ON BOTH AGRICULTURAL AND  
12 MUNICIPAL AND INDUSTRIAL USES.

13 BY MR. LEININGER:

14 Q YOUR OPINION IS THIS METHODOLOGY IS  
15 GENERALLY ACCEPTED?

16 A GENERALLY ACCEPTED.

17 MR. ZIMMER: VAGUE, OVERLY BROAD, CUMULATIVE,  
18 SCALMANINI'S TESTIMONY. IT IS 352.

19 THE COURT: LET ME JUST MAKE AN OBSERVATION. IT  
20 IS CERTAINLY PERMISSIBLE FOR A PARTY TO CALL AN EXPERT  
21 TO TESTIFY ABOUT WHAT IS WRONG WITH ANOTHER EXPERT'S  
22 ANALYSIS OF ANOTHER PERSON WHO HAS ALREADY TESTIFIED.

23 AND IT SEEMS TO ME THERE HAS BEEN A VERY  
24 SUBSTANTIAL ATTACK ON CROSS-EXAMINATION, VERY EFFECTIVE  
25 IN MANY WAYS, ATTACK ON CROSS-EXAMINATION OF THE EXPERTS  
26 WHO HAVE PREVIOUSLY TESTIFIED.

27 SO IT SEEMS TO ME THAT THIS IS AN  
28 APPROPRIATE LEVEL AND LINE OF QUESTIONING IN THAT



1 REGARD, AND I'M GOING TO PERMIT IT.

2 OKAY. GO AHEAD.

3 BY MR. LEININGER:

4 Q DR. OBERDORFER, IS THERE UNCERTAINTY IN THIS  
5 METHODOLOGY FOR DETERMINATION OF SUSTAINABLE YIELD?

6 A YES, THERE ARE A NUMBER OF SOURCES OF  
7 UNCERTAINTY IN THIS NUMBER ALL THE WAY BACK TO THE  
8 ORIGINAL NATURAL RECHARGE CALCULATION AND THEN ESTIMATES  
9 OF RETURN FLOWS.

10 SO THERE WOULD BE UNCERTAINTIES THERE.  
11 THERE IS ALSO JUST THE VARIABILITY IN THE CULTURAL  
12 PRACTICES THEMSELVES: SO HOW MUCH IMPORTED WATER IS  
13 USED, HOW IT IS USED FOR VARIOUS PURPOSES, THAT WOULD  
14 ALSO LEAD TO AT LEAST A VARIABILITY IN THE ANSWER  
15 DEPENDING ON WHAT YOU ASSUMED ABOUT THOSE CULTURAL  
16 PRACTICES.

17 Q AND USING THIS METHODOLOGY, DO THESE  
18 UNCERTAINTIES MAKE THE ESTIMATE WRONG OR UNRELIABLE?

19 MR. ZIMMER: NO FOUNDATION.

20 THE COURT: OVERRULED.

21 MR. ZIMMER: I'M NOT TRYING TO ANNOY THE COURT.  
22 I'M RAISING THESE SO WE HAVE A RECORD.

23 THE COURT: YOU ARE NOT ANNOYING THE COURT.

24 MR. ZIMMER: THANK YOU, YOUR HONOR. I SEE YOU  
25 SMILING. I WILL TAKE THAT AS A SIGN YOU ARE NOT ANNOYED.

26 MR. WILLIAM KUHS: HE IS ANNOYING COUNSEL, YOUR  
27 HONOR.

28 (LAUGHTER)

1 THE WITNESS: I'M SORRY. COULD I HAVE THE  
2 QUESTION AGAIN, PLEASE.

3 BY MR. LEININGER:

4 Q DID THE UNCERTAINTIES MAKE THE ESTIMATE  
5 WRONG OR UNRELIABLE?

6 MR. SLOAN: COMPOUND.

7 THE COURT: OVERRULED.

8 THE WITNESS: IT IS STILL A BEST ESTIMATE. THE  
9 TRUE AND ACTUAL NUMBER WHICH IS VERY DIFFICULT TO KNOW,  
10 MAYBE A LOWER VALUE. IT COULD BE A HIGHER VALUE. BUT  
11 IT IS A BEST ESTIMATE BASED ON AVAILABLE DATA AND  
12 REASONABLE SCIENTIFIC ANALYSIS.

13 BY MR. LEININGER:

14 Q ARE THERE ANY WAYS TO EVALUATE  
15 UNCERTAINTIES?

16 A OVERLY STANDARD WAY AND ANALYSIS IS TO DO  
17 WHAT IS CALLED A SENSITIVITY ANALYSIS WHERE YOU WOULD  
18 TEST HOW MUCH VARIATION YOU WOULD GET IN YOUR RESULTS BY  
19 VARYING THE -- YOUR INPUT PARAMETERS. AND IN THE CASE  
20 OF THE WATER BUDGET THAT MR. WILDERMUTH DID AND  
21 MR. SCALMANINI WORK, THEY DID DO A SENSITIVITY ANALYSIS  
22 IN THE EXPERT REPORT.

23 AND THE CONCLUSION OF THAT WAS THAT FOR THE  
24 PARAMETERS THEY TESTED THERE WAS LESS THAN 10 PERCENT  
25 CHANGE IN THE SUSTAINABLE YIELD VALUE THAT WOULD BE  
26 PRODUCED.

27 MR. ZIMMER: OBJECTION. FOUNDATION. HEARSAY  
28 MOTION TO STRIKE.

1 THE COURT: OVERRULED. DENIED.

2 MR. LEININGER: FOR THE RECORD, THIS IS EXHIBIT  
3 I-11, AND I BELIEVE I-10 WAS REDACTED, YOUR HONOR.

4  
5 (EDWARDS AIR FORCE BASE EXHIBIT I-11  
6 MARKED.)

7  
8 **BY MR. LEININGER:**

9 Q I WANT TO SHIFT GEARS AND ASK YOU A FEW  
10 QUESTIONS ABOUT OVERDRAFT. WHAT IS OVERDRAFT AS YOU  
11 UNDERSTAND THE TERM?

12 A OVERDRAFT IS EXTRACTING WATER FROM THE BASIN  
13 AT A RATE IN EXCESS OF RECHARGE OVER A NUMBER OF YEARS  
14 SO THAT HARM IS CAUSED OR THERE IS NEGATIVE CONSEQUENCES  
15 OF THAT.

16 MR. ZIMMER: I ASSUME THAT IS FROM A HYDROGEOLOGIC  
17 STANDPOINT AND NOT A LEGAL OPINION.

18 THE COURT: THE COURT RECOGNIZES ITS DIFFERENCE.

19 MR. ZIMMER: OBJECT TO THE EXTENT THAT IT CALLS  
20 FOR A LEGAL OPINION.

21 THE COURT: OVERRULED.

22 **BY MR. LEININGER:**

23 Q AND WE ARE NOW SHOWING WHAT HAS BEEN LABELED  
24 AS EXHIBIT I-12.

25  
26 (EDWARDS AIR FORCE BASE EXHIBIT I-12  
27 MARKED.)

1 BY MR. LEININGER:

2 Q WHAT IS THIS?

3 A THIS IS AN EXAMINATION OF LOSS OF STORAGE  
4 AND THE FIGURE HERE IS A PLOT TAKEN FROM THE SUMMARY  
5 EXPERT REPORT, AND IT REPRESENTS CHANGE IN STORAGE FROM  
6 1951 TO 2009. THE MORE INTENSE THE ORANGE OR RED COLOR  
7 THE GREATER THE CHANGE IN STORAGE.

8 Q AND WHERE IS EDWARDS AIR FORCE BASE LOCATED  
9 ON THIS MAP?

10 A EDWARDS AIR FORCE BASE IS APPROXIMATELY  
11 HERE -- WHOOPS, NOT THAT NORTHERN PART.

12 Q HOW IS BASIN-WIDE OVERDRAFT -- YOUR  
13 CONCLUSION OF BASIN-WIDE OVERDRAFT, HOW HAS IT AFFECTED  
14 EDWARDS AIR FORCE BASE?

15 A IF WE COULD LOOK AT THE NEXT -- I JUST  
16 SWITCHED POWERPOINTS.

17 MR. ZIMMER: I MAY HAVE MISSED SOMETHING THERE. I  
18 THOUGHT MAYBE I HAD. DID SHE EXPRESS AN OPINION ON  
19 OVERDRAFT? THAT QUESTION CLEARLY INCORPORATED THAT, BUT  
20 I'M NOT SURE WITHOUT A FOUNDATION THAT SHE COULD GIVE  
21 THAT OPINION.

22 THE COURT: YES, I THINK SO. IF YOU DIDN'T, WHAT  
23 IS YOUR ANSWER TO THE QUESTION? IS IT IN OVERDRAFT?

24 MR. LEININGER: CAN WE GO BACK TO THE EXHIBIT?  
25 CAN WE GO BACK TO EXHIBIT I-12.

26 THE WITNESS: BASED ON THE SIGNIFICANT LOSS IN  
27 STORAGE SHOWN FOR THAT PERIOD FROM 1951 TO 2009, I WOULD  
28 SAY THE BASIN IS DEFINITELY IN OVERDRAFT.

1 MR. ZIMMER: OBJECTION. NO FOUNDATION. MOTION TO  
2 STRIKE.

3 THE COURT: OVERRULED.

4 MR. LEININGER: THE NEXT SLIDE.

5 Q HOW IS THIS BASE-WIDE OVERDRAFT AFFECTED  
6 EDWARDS AIR FORCE BASE?

7 A TO GET A VIEW OF THAT, YOU REALLY HAVE TO GO  
8 BACK AND LOOK AT WHAT THE SITUATION WAS IN THE BASIN  
9 PRIOR TO DEVELOPMENT OF THE GROUNDWATER RESOURCE AND  
10 WHAT IS PRESENTED HERE IS A MAP FROM DURBIN'S 1978  
11 REPORT.

12 THESE ARE THE GROUNDWATER ELEVATION  
13 CONTOURS, GROUNDWATER LEVELS FROM 1915; AND I HAVE ADDED  
14 THE ARROWS IN RED THAT SHOW THE DIRECTION OF GROUNDWATER  
15 FLOW, AND I HAVE ALSO ADDED THE APPROXIMATE LOCATION  
16 HERE OF THE CURRENT SOUTHWEST BOUNDARY OF EDWARDS AIR  
17 FORCE BASE.

18 AND FLOW AT THAT TIME PREDEVELOPMENT WAS  
19 FROM THE RECHARGE AREAS WHICH ARE GENERALLY AROUND THE  
20 MARGINS OF THE VALLEY. SO FLOW FROM THAT DIRECTION AND  
21 FLOW TOOK PLACE THEN HERE TOWARD THE MAJOR DISCHARGE  
22 AREAS WHICH WERE CENTERED HERE ON WHAT IS NOW EDWARDS  
23 AIR FORCE BASE.

24 IF WE COULD GO TO THE NEXT.

25 Q I'M SORRY BEFORE WE GO TO THE NEXT ONE, YOU  
26 LABELED THIS AS PREDEVELOPMENT FLOW.

27 WHAT DO YOU MEAN BY PREDEVELOPMENT?

28 A THERE WAS VERY LITTLE GROUNDWATER PUMPAGE AT

1 THIS TIME IN 1915.

2 Q NEXT SLIDE. NOW WE ARE LOOKING AT SLIDE  
3 LABELED EXHIBIT I-14?

4  
5 (EDWARDS AIR FORCE BASE EXHIBIT I-14  
6 MARKED.)  
7

8 THE WITNESS: THIS IS ESSENTIALLY THE SAME SLIDE  
9 JUST FOCUSSED IN ON THE DISCHARGE AREA AROUND ROSAMOND  
10 LAKE AND THE SOUTHERN END OF ROGERS LAKE HERE. AGAIN,  
11 FLOW DIRECTED TOWARD THE DISCHARGE AREA.

12 AT THAT TIME THIS WAS THE MAJOR DISCHARGE  
13 ZONE, AND THERE WAS ACTIVELY FLOWING STREAMS IN THIS  
14 AREA AND A HIGH LEVEL OF EVAPOTRANPIRATION FROM  
15 VEGETATION.

16 BY MR. LEININGER:

17 Q HAVE THE GROUNDWATER CONDITIONS CHANGED?

18 A YES, THEY HAVE.

19 Q HOW HAVE THEY CHANGED?

20 A IF WE COULD GO TO THE NEXT -- SO THIS IS  
21 LOOKING AT GROUNDWATER LEVEL CONTOUR MAP FROM 1951.

22 MR. ROBERT KUHS: DO WE HAVE AN EXHIBIT NUMBER,  
23 YOUR HONOR?

24 THE COURT: 14.

25 MR. LEININGER: I APOLOGIZE. THE LAST ONE WAS  
26 EXHIBIT 14. THIS IS EXHIBIT I-15.

27

28

1 (EDWARDS AIR FORCE BASE EXHIBIT I-15  
2 MARKED.)  
3

4 THE WITNESS: THIS MAP WAS MODIFIED FROM MR.  
5 WILDERMUTH'S EXHIBIT 20; AND, THEN, AGAIN, I HAVE ADDED  
6 THE FLOW ARROWS IN RED AND THE EDWARD AIR FORCE BASE  
7 BOUNDARY IN BLACK.

8 AND WHAT WE SEE BY 1951 IS THE FORMATION OF  
9 VERY LARGE CONE OF DEPRESSION TO THIS SOUTH OF EDWARDS  
10 CAUSED PRIMARILY BY AGRICULTURAL PUMPAGE IN THAT AREA.  
11 AND THIS LARGE CONE OF DEPRESSION ESSENTIALLY STOPPED  
12 RECHARGE THAT HAD PREVIOUSLY FROM HERE -- FROM THE MAJOR  
13 RECHARGE AREAS HERE, LITTLE ROCK AND BIG ROCK CREEK,  
14 TOWARD THIS AREA OF THE BASE.

15 AND, IN FACT, WATER NOW FROM THIS SOUTHWEST  
16 CORNER OF THE BASE WAS BEING PULLED OFF INTO THAT MAJOR  
17 PUMPING DEPRESSION.

18 MR. SLOAN: WITH RESPECT TO THIS EXHIBIT, IF I  
19 UNDERSTAND, THIS IS THE 1951 GROUNDWATER CONTOUR MAP  
20 FROM MR. WILDERMUTH THAT WAS IDENTIFIED AS AN EXHIBIT  
21 20. WE HAD BOTH AN EXHIBIT 20 AND A MODIFIED EXHIBIT  
22 20; AND IN PARTICULAR, SOME OF THE CONTOURS ACTUALLY UP  
23 IN THE EDWARDS AIR FORCE BASE DIDN'T CHANGE. IF WE  
24 COULD JUST GET CLARIFICATION AS TO WHICH ONE WE ARE  
25 LOOKING AT.

26 THE WITNESS: IT WOULD BE THE FIRST -- THE ONE HE  
27 DISTRIBUTED.  
28

1 BY MR. LEININGER:

2 Q AT HIS TRIAL?

3 A AT HIS TILE.

4 Q SO THAT IS MODIFIED? IS THAT --

5 MR. SLOAN: SO IT'S NOT THE CONTOUR MAP THAT WAS  
6 IN THE SUMMARY EXPERT REPORT?

7 THE WITNESS: NO.

8 MR. SLOAN: NO. THANK YOU.

9 BY MR. LEININGER:

10 Q OKAY. SO WHAT'S THE CURRENT SITUATION FOR  
11 INFLOWS AT EDWARDS AIR FORCE BASE?

12 A IF I COULD HAVE THE NEXT SLIDE.

13

14 (EDWARDS AIR FORCE BASE EXHIBIT I-16  
15 MARKED.)

16

17 THE WITNESS: SO THIS IS SLIDE -- AGAIN, THIS IS  
18 FROM MR. WILDERMUTH'S EXHIBIT 28 THAT WAS DISTRIBUTED  
19 THE FIRST WEEK. THESE ARE THE 2009 GROUNDWATER LEVEL  
20 CONTOURS. AND, AGAIN, I HAVE ADDED ARROWS IN THE  
21 BOUNDARY AND THE -- MAJOR AREA OF PUMPING IS SHIFTED  
22 SOMEWHAT TO THE SOUTH.

23 AT THIS POINT IN TIME, YOU CAN SEE BY THE  
24 ARROWS THAT GROUNDWATER DIVIDE EXISTS BOTH ALONG THIS  
25 SOUTHERN BOUNDARY OF THE BASE OF FLOWS OFF IN THIS  
26 DIRECTION ON THIS SIDE OF THE BOUNDARY AND THAT SIDE OF  
27 THE BOUNDARY ON THAT DIRECTION ON THAT SIDE. AND  
28 INCLUDING ON THIS WESTERN BOUNDARY, THERE IS ALSO A



1 GROUNDWATER DIVIDE IN THAT AREA.

2 SO, ESSENTIALLY, EDWARDS HAS BEEN SHUT OFF  
3 FROM ANY INFLOWS FROM NATURAL RECHARGE FROM THE MAJOR  
4 RECHARGE AREAS. AND THE CONSEQUENCE OF THIS BEING  
5 ISOLATED FROM THOSE RECHARGE AREAS IS THAT EDWARDS IS  
6 ESSENTIALLY MINING ITS GROUNDWATER AT THIS POINT.

7 BY MR. LEININGER:

8 Q WHAT DO YOU MEAN BY "MINING"?

9 MR. ZIMMER: I HAVE AN OBJECTION, YOUR HONOR,  
10 TWO-FOLD: FIRST THE WITNESS APPEARS TO BE RELYING ON  
11 EXHIBITS THAT ARE SUBJECT TO MOTION TO STRIKE IN  
12 MR. WILDERMUTH'S TESTIMONY BEING THE CHANGED OPINIONS AS  
13 TO CONTOUR LINES PRODUCED AT TRIAL.

14 SECONDLY, A RELEVANCE OBJECTION TO THIS  
15 ISSUE ABOUT BEING CUT OFF FROM WATER AND MOTION TO  
16 STRIKE ON THAT BASIS.

17 THIRD, THAT IT IS BEYOND THE SCOPE OF BOTH  
18 THE TRIAL AND THE DESIGNATION.

19 THE COURT: OVERRULED.

20 BY MR. LEININGER:

21 Q WHAT DO YOU MEAN WHEN YOU SAY "MINING" OF  
22 THE AQUIFER?

23 A IT WOULD BE A PROLONGED EXTRACTION OF WATER  
24 IN EXCESS OF RECHARGING. AND IN THIS CASE BECAUSE THERE  
25 IS VERY LITTLE LOCAL RECHARGE, AND IT HAS BEEN CUT OFF  
26 FROM THE MAJOR RECHARGE AREAS IN THE VALLEY. BUT THE  
27 MINING IS REMOVING WATER THAT IS NOT BEING REPLACED.

28 Q WHAT EVIDENCE DO YOU HAVE OF THESE CHANGED

1 CONDITIONS OR THE MINING OF THE AQUIFER UNDER EDWARDS?

2 A COULD I HAVE THE NEXT ONE. SO THIS IS --  
3 PORTIONS OF A FIGURE SORT OF A CLOSE-UP OF A FIGURE FROM  
4 THE SUMMARY EXPERT REPORT THAT PRESENTED THREE  
5 HYDROGRAPHS, AND I HAVE JUST INCLUDED THE THREE  
6 HYDROGRAPHS FROM WELLS LOCATED ON EDWARDS AIR FORCE  
7 BASE: ONE IN THE SOUTH, ONE SORT OF MIDWAY, AND ONE  
8 MORE OR LESS IN THE NORTHERN PART OF THE BASE; AND THE  
9 TIME PERIOD OF THESE HYDROGRAPHS IS FROM ABOUT 1950 UP  
10 TO THE PRESENT.

11 AND ALL THREE HYDROGRAPHS SHOW ONGOING LOSS  
12 OF STORAGE, ONGOING DECLINING WATER LEVELS BENEATH  
13 EDWARDS AIR FORCE BASE.

14 Q AND WHAT ARE THE CONSEQUENCES OF DECLINING  
15 WATER LEVELS AT EDWARDS AIR FORCE BASE?

16 MR. ZIMMER: VAGUE AND SPECULATION -- VAGUE AS TO  
17 TIME.

18 THE COURT: OVERRULED.

19 THE WITNESS: IF I COULD HAVE THE NEXT SLIDE,  
20 PLEASE.

21 MR. LEININGER: FOR THE RECORD, YOUR HONOR, THIS  
22 SLIDE IS MARKED -- I'M SORRY. THE PREVIOUS SLIDE ON  
23 FALLING WATER LEVELS AT EDWARDS AIR FORCE BASE WILL BE  
24 EXHIBIT I-17.

25  
26 (EDWARDS AIR FORCE BASE EXHIBIT I-17  
27 MARKED.)  
28

1 MR. LEININGER: AND THIS SLIDE IS MARKED HIGHWAY  
2 I-18.

3  
4 (EDWARDS AIR FORCE BASE EXHIBIT I-18  
5 MARKED.)  
6

7 THE WITNESS: WHAT THIS FIGURE SHOWS -- AND THIS  
8 IS A FIGURE FROM THE SUMMARY EXPERT REPORT, BUT THE  
9 BASIS FOR THIS FIGURE IS REALLY DATA ON A MAP AND USGS  
10 REPORT IN PHILLIPS 1994. AND, AGAIN, I HAVE ADDED SOME  
11 NOTATIONS TO THIS.

12 AND THIS IS A MAP SHOWING GRADIENTS,  
13 SUBSIDENCE THAT OCCURRED FROM 1930 TO 1992. AND FOR  
14 REFERENCE, I HAVE INDICATED THE AREAS OF THE MAJOR WELL  
15 FIELDS AT EDWARDS AIR FORCE BASE.

16 AND I WOULD SIMPLY POINT OUT THAT THERE IS  
17 REGIONAL SUBSIDENCE PROBLEM, AND SUBSIDENCES CONTINUE --  
18 OR TAKEN PLACE IN AREAS WHERE EDWARDS ITSELF IS NOT  
19 ACTIVELY PUMPING OR HASN'T PUMPED. SO SUBSIDENCE WOULD  
20 BE ONE OF THE NEGATIVE CONSEQUENCES OF THAT BASIN-WIDE  
21 OVERDRAFT.

22 Q WHAT HAS OCCURRED SINCE 1992?

23 MR. ZIMMER: EXCUSE ME? I COULDN'T HEAR.

24 MR. LEININGER: I'M SORRY.

25 Q WHAT HAS OCCURRED ON EDWARDS AIR FORCE BASE  
26 PROPERTY WITH REGARD TO SUBSIDENCE SINCE 1992?

27 MR. ZIMMER: YOUR HONOR, OBJECTION. THAT WAS  
28 BEYOND -- THAT WAS EXACTLY WHAT THEY TRIED TO GET IN, I

1 BELIEVE, ON THE EXPANDED EXPERT OPINION THAT THE COURT  
2 DENIED AND THE COURT -- A FURTHER MOTION TO GO INTO  
3 THAT, AND THAT MOTION WAS NOT GRANTED.

4 MR. WILLIAM KUHS: JOINED, YOUR HONOR.

5 MR. ROBERT KUHS: JOINED.

6 THE COURT: ARE YOU JOINING, MR. KUHS?

7 MR. WILLIAM KUHS: YES. THE OTHER KUHS JOINED FOR  
8 THE RECORD, ROBERT, AS WELL.

9 THE COURT: OKAY.

10 MR. MCLACHLAN: I WILL JOIN HIM.

11 MR. ZIMMER: WE ARE NOW HOLDING HANDS JOINED.

12

13 (LAUGHTER)

14

15 THE COURT: ALL RIGHT NOW. LET'S CONTINUE.

16 MR. LEININGER: YOUR HONOR, IN DR. OBERDORFER'S  
17 DECLARATION, HER CONCLUSION ON THE EFFECTS OF OVERDRAFT  
18 STATEMENTS, THE OVERDRAFT DEMONSTRATES THAT THE CURRENT  
19 RATE OF PUMPING IS UNSUSTAINABLE. AND IF THE WATER  
20 LEVELS CONTINUE TO DECLINE AS THEY HAVE OVER THE LAST  
21 DECADE IN MANY AREAS, SIGNIFICANT LAND SUBSIDENCE COULD  
22 BE REINITIATED AND ADDITIONAL NEGATIVE CONSEQUENCES TO  
23 THE BASIN WILL BE PRODUCED.

24 SHE DID DISCLOSE THAT THESE -- THIS GOES TO  
25 THE ULTIMATE QUESTION OF OVERDRAFT IN THE BASIN AND  
26 HARMFUL EFFECTS OF OVERDRAFT. NOW SHE IS JUST FOCUSING  
27 THE COURT'S ATTENTION HOW THESE EFFECTS HAVE BEEN FELT,  
28 PARTICULARLY AT EDWARDS AIR FORCE BASE.

1 THE COURT: AS I LOOK AT HER EXPERT REPORT DATED  
2 JULY 2010, SHE SAID IF WATER LEVELS CONTINUE TO DECLINE  
3 AS THEY HAVE OVER THE LAST DECADE IN MANY AREAS,  
4 SIGNIFICANT LAND SUBSIDENCE COULD BE REINITIATED AND AN  
5 ADDITIONAL NEGATIVE CONSEQUENCE TO THE BASIN BE  
6 PRODUCED.

7 MR. ZIMMER: I THINK WE NEED TO LOOK BEYOND THAT,  
8 YOUR HONOR. I WOULD MARK AS EXHIBIT C NEXT IN ORDER THE  
9 REQUEST TO AMEND THE DECLARATION. I CAN'T REMEMBER IF  
10 ON C --

11 THE COURT: THAT REQUEST IS DENIED.

12 MR. JOYCE: THAT IS CORRECT, YOUR HONOR, AND I  
13 WOULD NOTE --

14 MR. ZIMMER: THAT IS WHY --

15 THE COURT: BUT THIS REPORT WAS PREPARED IN  
16 ADVANCE OF HER DEPOSITION DATED JULY 2010, AND SHE  
17 CERTAINLY EXPRESSED AN OPINION ABOUT THAT, AND THAT  
18 SEEMS TO ME WHAT I'M HEARING FROM HER NOW.

19 MR. ZIMMER: WELL, TWO THINGS, YOUR HONOR:

20 ONE, THEY REQUESTED TO AMEND THE DECLARATION  
21 TO EXPAND UPON OPINIONS PROVIDED IN THE CONCLUDING  
22 PARAGRAPH OF THE DOCUMENT OF THE REPORT.

23 WITH RESPECT TO EVIDENCE OF THE IMPACTS OF  
24 OVERDRAFT, THE FOCUS OF THE DISCUSSION IS ON LAND  
25 SUBSIDENCE FOLLOWING 1992. THIS IS THE PRECISE  
26 AMENDMENT THAT THE COURT DENIED.

27 FURTHERMORE, AT THE TIME OF HER DEPOSITION,  
28 SHE WAS ASKED -- I WAS READING FROM PAGE 2 OF C NEXT IN

1 ORDER, THE FIRST PARAGRAPH, WHICH WAS A MOTION TO AMEND  
2 THE DECLARATION.

3 AT HER DEPOSITION ON PAGE 69, LINES 19  
4 THROUGH 25, SHE WAS ASKED:

5 (READING:)

6 QUESTION: IN THE WORK THAT  
7 YOU HAVE DONE AT THE AIR FORCE  
8 BASE, HAVE YOU OBSERVED ANY RECENT  
9 SUBSIDENCE?

10 ANSWER: I HAVEN'T.

11 QUESTION: SAY, WITHIN THE  
12 LAST TEN YEARS?

13 ANSWER: I HAVEN'T REALLY  
14 WORKED DOWN IN THAT AREA SO NO.

15  
16 SO IT IS CLEAR THAT SHE -- THE PRECISE  
17 ISSUE AT THE TIME OF THE MOTION WAS TO TRY TO AMEND THE  
18 DECLARATION TO GO INTO SUBSIDENCE AFTER 1992.  
19 THE COURT MAY RECALL THAT THE SUMMARY EXPERT REPORT ONLY  
20 HAD DATA REGARDING SUBSIDENCE BASED ON SATELLITES  
21 THROUGH 1992, AND THERE WAS NO DATA THAT -- EXTENSOMETER  
22 DATA THAT THIS ONE LOCATION DIDN'T EXIST.

23 THE COURT: ALL RIGHT. WILL YOU READ BACK THE  
24 QUESTION THAT WAS ASKED FOR THE LAST QUESTION CONCERNING  
25 SUBSIDENCE.

26 the reporter: YES, YOUR HONOR.

27  
28 (RECORD READ.)

1 MR. JOYCE: YOUR HONOR, IF I MAY MAKE THE  
2 OBSERVATION.

3 THE COURT: JUST A MINUTE. I'LL SUSTAIN THE  
4 OBJECTION AS TO THE LAST QUESTION, AND YOU CAN CERTAINLY  
5 ASK HER A HYPOTHETICAL.

6 MR. JOYCE: THANK YOU, YOUR HONOR.

7 MR. ZIMMER: I WAS GOING TO GIVE C7 WHICH WAS THAT  
8 AMEND- --

9 THE COURT: ALL RIGHT.

10

11 (BOLTHOUSE PROPERTIES EXHIBIT C7  
12 MARKED.)

13

14 MR. LEININGER: YOUR HONOR, IF I MAY, I UNDERSTOOD  
15 YOU STATED OBJECTION TO THAT QUESTION; BUT JUST FOR THE  
16 RECORD, THE DEPOSITION -- CITATION OF THE DEPOSITION  
17 CONTINUES ON PAGE 70 IN WHICH DR. OBERDORFER WAS ASKED:  
18 (READING:)

19

20 QUESTION: HAS ANYONE TOLD  
21 YOU THERE HAS BEEN ANY SUBSIDENCE  
22 IN THE PAST TEN YEARS?

23

24 ANSWER: NOBODY HAS TOLD ME  
25 THAT. I'M TRYING TO REMEMBER THE  
26 USGS DID A STUDY, AND THEY  
27 ACTUALLY PUT IN EXTENSOMETERS IN  
28 LATE 1990'S, EARLY 2000. I CAN  
REMEMBER THAT THERE WAS A SMALL  
AMOUNT, BUT I CAN'T REMEMBER THE

1                   QUANTITIES OR THE EXACT DATE.

2  
3           THE COURT:   WELL, THAT'S THE REASON FOR THE  
4   OBJECTION BECAUSE SHE DID NOT HAVE AN OPINION AT THAT  
5   TIME.   AND SHE MAY HAVE DONE SOME WORK AFTER THAT, BUT  
6   THAT IS NOT APPROPRIATE, BUT SHE CERTAINLY COULD TESTIFY  
7   AS TO THE EXPERT CONSEQUENCES IN HER OPINION AS TO WHAT  
8   HAPPENS WHEN THERE IS CONTINUED EXTRACTION THAT EXCEEDS  
9   RECHARGE.

10           MR. LEININGER:   VERY WELL, YOUR HONOR.

11           Q           DR. OBERDORFER, IF I COULD DIRECT YOUR  
12   ATTENTION TO WHAT IS MARKED AS EXHIBIT I-21, AND WE WILL  
13   SKIP THESE.

14  
15                   (EDWARDS AIR FORCE BASE EXHIBIT I-21  
16                   MARKED.)

17  
18           MR. JOYCE:   YOUR HONOR, I WOULD INTERPOSE AN  
19   OBJECTION THAT THE SLIDE PURPORTS TO REFERENCE A  
20   REPORT --

21           the reporter:   I'M SORRY, MR. JOYCE, I COULDN'T  
22   QUITE HEAR YOU.   "A REPORT" -- ?

23           MR. JOYCE:   -- DATED --

24           the reporter:   I'M SORRY.   I'M NOT HEARING WHAT  
25   YOU ARE SAYING?

26           MR. JOYCE:   SNEED, S-N-E-E-D.

27           the reporter:   OKAY. THANK YOU.

28           MR. JOYCE:   SNEED, ET AL. 2005, AND I DON'T KNOW



1 IF THAT IS POST-1992 OR NOT AS A PRELIMINARY QUESTION.

2 MR. ZIMMER: YOUR HONOR, JUST TO ADD TO THAT, IT  
3 IS MY UNDERSTANDING THAT THE COURT SAID SHE COULD  
4 TESTIFY TO WHAT CONSEQUENCES MAY RESULT FROM --

5 THE COURT: LET'S STOP A MINUTE. ASK YOUR  
6 QUESTION AND SEE WHAT MR. ZIMMER WANTS TO SAY ABOUT IT.

7 MR. LEININGER: AND WE ARE ALMOST DONE, YOUR  
8 HONOR. THANK YOU.

9 Q DR. OBERDORFER, WHAT CONSEQUENCES MAY RESULT  
10 FROM DECLINING WATER LEVELS AND SUBSIDENCE AT EDWARDS  
11 AIR FORCE BASE?

12 A THE TYPES OF PROBLEMS THAT MIGHT BE  
13 EXPERIENCED DUE TO SUBSIDENCE WOULD BE GROUND FISSURING  
14 FORMATION OF SINK-LIKE DEPRESSIONS, ACCELERATED EROSION.  
15 PARTICULARLY PROBLEMATIC ARE EROSION AT THE PLAYA  
16 SURFACE WHICH WOULD INTERFERE WITH THE BASE'S MISSION  
17 AND LANDING OF AIRCRAFT, SUCH AS THE SPACE SHUTTLE.

18 Q AND, DR. OBERDORFER, LET ME DIRECT YOUR  
19 ATTENTION NOW TO THIS EXHIBIT I-21. WITH REGARD TO  
20 CONSEQUENCES THAT -- AT EDWARDS AIR FORCE BASE, YOU HAVE  
21 A QUOTATION HERE FROM A PUBLICATION.

22 WHAT IS THAT PUBLICATION?

23 A IT IS A PUBLICATION BY SNEED AND GALLOWAY  
24 THE USGS 2000 THAT WAS EXAMINING LAND SUBSIDENCE AT  
25 EDWARDS AIR FORCE BASE.

26 Q WHAT WERE THE CONCLUSIONS --

27 MR. ZIMMER: OBJECTION. NO FOUNDATION. THERE'S A  
28 PHOTOGRAPH HERE. NO FOUNDATION AS TO WHEN, WHERE IT WAS

1     TAKEN, WHAT IT WAS TAKEN OF.

2                   THIS WITNESS CERTAINLY HAS NO PRECIPIENT  
3     KNOWLEDGE OF THIS AND ALSO SIMPLY A REPEAT OF OTHER  
4     OPINIONS OR TESTIMONY PREVIOUSLY GIVEN, AND IT GIVES THE  
5     IMPROPER SUGGESTION THAT THIS IS, IN FACT, HAPPENING.  
6     IT IS NOT CLEAR AT THE TIME AS WELL.

7           MR. LEININGER:  IF I MAY ASK THE COURT TO ASK A  
8     CLARIFYING QUESTION.

9           Q        DR. OBERDORFER, WHERE DID YOU GET THIS  
10    PHOTO?

11          A        I GOT THIS PHOTO FROM A USGS FACT SHEET BY  
12    SNEED AND --

13          MR. ZIMMER:  OBJECT AND --

14          MR. JOYCE:  I OBJECT AS HEARSAY AS WELL.

15          THE COURT:  MR. KUHS.

16          MR. WILLAIM KUHS:  I WAS GOING TO OBJECT, AND  
17    MAYBE IT'S A PEREMPTORY OBJECTION, BUT THERE'S HEARSAY  
18    ON THIS PARTICULAR SLIDE.  THERE'S HEARSAY WHICH IS  
19    INCONSISTENT WITH YOUR HONOR'S PRIOR RULING IF I  
20    UNDERSTAND IT.  SO I WANT TO OBJECT TO ANY STATEMENTS  
21    OUT OF THAT DOCUMENT WHICH ARE SIMPLY HEARSAY  
22    STATEMENTS.

23          THE COURT:  YEAH, I'M GOING TO LIMIT THIS  
24    TESTIMONY RECOGNIZING THAT THE COURT WILL PERMIT THE  
25    PHOTOGRAPH AS AN EXEMPLAR OF WHAT TYPE OF FISSURING  
26    THERE MAY BE WITHOUT THIS SPECIFIC REFERENCE AS TO WHERE  
27    IT MAY BE SINCE THAT GOES TO THE QUESTION OF THE MOTION  
28    THAT WAS EARLIER MADE WHICH WAS DENIED TO AMEND THE

1 EXPERT WITNESS STATEMENT.

2 MR. JOYCE: YOUR HONOR, I WOULD ASK IF MR.  
3 LEININGER IS SUGGESTING THAT THIS IS A CURRENT EVENT  
4 THAT HE LAY THAT FOUNDATION.

5 THE COURT: I JUST MADE AN ORDER --

6 MR. JOYCE: OKAY. THANK YOU, YOUR HONOR.

7 THE COURT: A RULING UPON THAT.

8 MR. ZIMMER: I AGREE WITH THE COURT'S RULING;  
9 ALTHOUGH, THE OTHER THING I WOULD NOTE, YOUR HONOR, IS  
10 THAT THE DIAGRAM -- IT HAS GOT A FISSURE TO AN ARROW TO  
11 A PARTICULAR LOCATION, AND THEN IT SAYS "SNEED."

12 THE COURT: THE COURT WILL IGNORE THAT.

13 MR. ZIMMER: BUT IT SAYS 2005 WHICH IT SHOULD BE  
14 1992 TIME FRAME.

15 MR. WEEKS: YOUR HONOR, I WOULD JUST LIKE TO  
16 COMMENT TO THAT. THE COURT THAT -- THIS WAS USED BY THE  
17 LANDOWNERS IN THEIR CROSS-EXAMINATION OF  
18 MR. SCALMANINI AND --

19 THE COURT: YES, IT WAS. I REMEMBER THAT.  
20 NEVERTHELESS AS TO THIS WITNESS, I'M LIMITING THE  
21 TESTIMONY.

22 BY MR. LEININGER:

23 Q I'M SORRY, DR. OBERDORFER, JUST TO  
24 SUMMARIZE, WHAT ARE THE CONSEQUENCES, AGAIN, OF AN  
25 OVERDRAFTED BASIN OF LOWERING GROUNDWATER LEVELS AND  
26 SUBSIDENCE?

27 MR. ZIMMER: THAT WAS ASKED AND ANSWERED. NOW HE  
28 IS ASKING "WHAT ARE," SO I WOULD SUGGEST SOME CURRENT

1 TIME FRAME. IMPROPER --

2 MR. LEININGER: YOUR HONOR, I DON'T BELIEVE WE HAD  
3 A FULL EXPLANATION DUE TO THE INTERRUPTIONS.

4 THE COURT: ASSUMING THAT THERE IS ONGOING  
5 OVERDRAFT --

6 MR. ZIMMER: -- WHAT CONDITIONS CAN'T RESOLVE.

7 THE COURT: YES.

8 THE WITNESS: ASSUMING THERE IS ONGOING OVERDRAFT,  
9 CONDITIONS THAT CAN RESULT WOULD BE THINGS SUCH AS  
10 CONTINUED FALLING WATER LEVELS, AND THAT WOULD INCREASE  
11 PUMPING AND PUMPING COSTS AND ECONOMIC CONSEQUENCES OF  
12 THAT. IN AREAS WHERE SUBSIDENCE -- THEY ARE SUBSIDENCE  
13 PRONE, CONTINUED DECLINES IN WATER LEVELS COULD PRODUCE  
14 PROBLEMS DROPPING LAND SURFACE, GROUND FISSURING; ON  
15 EDWARDS PROBLEMS SUCH AS ACCELERATED EROSION DAMAGE TO  
16 THE RUNWAYS.

17 MR. LEININGER: THANK YOU, YOUR HONOR. I HAVE NO  
18 FURTHER QUESTIONS.

19 THE COURT: CROSS-EXAMINATION TIME. I WOULD  
20 INDICATE THAT MANY OF THE ISSUES THAT -- WE WILL SEE HOW  
21 IT GOES IN THIS CASE. AFTER I HAVE HEARD THE EXPERTS  
22 FOR THE OTHER PARTIES, IT MAY JUSTIFY THE COURT DOING A  
23 VIEW OF THE VALLEY. AND I WOULD LIKE YOU TO BE THINKING  
24 ABOUT THAT.

25 IT SEEMS TO ME THAT MAY BE A VIEW OF EDWARDS  
26 AIR FORCE BASE MIGHT EVEN BE HELPFUL. SO, CERTAINLY, IF  
27 I HAD A JURY, I WOULD WANT THE JURY TO HAVE THAT  
28 OPPORTUNITY. AND SINCE I'M THE TRIER OF FACT AT THIS

1 POINT, I MIGHT WANT TO DO THAT. SO KEEP IT IN MIND.

2 MR. JOYCE: YOUR HONOR, WE HAVE DISCUSSED THAT  
3 AMONG COUNSEL, AND WE WOULD ACTUALLY URGE THE COURT TO  
4 DO A VIEW.

5 THE COURT: IF WE DO A VIEW, IT WILL HAVE TO BE A  
6 FORMAL VIEW. IN OTHER WORDS, I'M NOT GOING TO JUST GO  
7 DRIVING AROUND THE VALLEY.

8

9 (LAUGHTER)

10

11 THE COURT: SO WE WOULD HAVE TO HAVE A COURT  
12 REPORTER OR A WAIVER OF THE RECORD IN THAT REGARD, AND  
13 COUNSEL WOULD HAVE TO BE PRESENT.

14 SO, ANYWAY, IT IS CROSS-EXAMINATION TIME.

15 MR. LEININGER: I'M SORRY, YOUR HONOR?

16 THE COURT: DO YOU HAVE ANOTHER QUESTION?

17 MR. LEININGER: NO, YOUR HONOR. THANK YOU.

18 THE COURT: WHO'S GOING TO GO FIRST, MR. KUHS?

19 MR. ZIMMER: JUST AS A SUGGESTION, I DON'T KNOW  
20 WHEN THE COURT WOULD WANT TO TAKE A BREAK, BUT IT MIGHT  
21 BE HELPFUL TO GIVE US AN OPPORTUNITY TO TALK ABOUT --  
22 FIGURE OUT WHAT THE ORDER IS GOING TO BE AS TO OUR  
23 EXAMINING.

24 THE COURT: SEE HOW QUICKLY YOU CAN PROCEED  
25 THROUGH IT.

26 MR. ZIMMER: JUST TO SEE HOW WE CAN APPROACH IT  
27 AND MOVE THROUGH IT EFFECTIVELY.

28 THE COURT: I WILL ACCEPT YOUR SUGGESTION,

1 MR. ZIMMER.

2 MR. ZIMMER: THANK YOU.

3 THE COURT: WE WILL TAKE A RECESS FOR ABOUT 12  
4 MINUTES.

5

6 (A BRIEF RECESS WAS TAKEN.)

7

8 THE COURT: GO AHEAD.

9

10 CROSS-EXAMINATION

11 BY MR. SLOAN:

12 Q GOOD MORNING, DR. OBERDORFER. MY NAME IS  
13 WILLIAM SLOAN. I'M COUNSEL FOR US BORAX. WE HAVE MET  
14 BEFORE.

15 A YES.

16 Q I'LL TRY TO KEEP THIS VERY BRIEF. MY FIRST  
17 QUESTION TO YOU IS: DID YOU DEVELOP YOUR OWN  
18 INDEPENDENT OPINION OF SAFE YIELD FOR THE ANTELOPE  
19 VALLEY ADJUDICATION AREA?

20 A I --

21 MR. WEEKS: OBJECTION. THE QUESTION IS VAGUE. DO  
22 YOU MEAN DID SHE GO OUT AND DO FIELDWORK OR --

23 THE COURT: SUSTAINED. WHY DON'T YOU BE MORE  
24 SPECIFIC.

25 BY MR. SLOAN:

26 Q BEYOND REVIEWING THE REPORTS OF OTHERS, DID  
27 YOU DO ANY INDEPENDENT WORK TO DEVELOP AN OPINION OF  
28 SAFE YIELD FOR THIS BASIN?

1 A NO.

2 Q DID YOU UNDERTAKE TO -- ANY INDEPENDENT DATA  
3 COLLECTION OTHER THAN THE DATA THAT WAS PROVIDED TO YOU  
4 FROM OTHERS?

5 A NO.

6 Q DID YOU DEVELOP ANY OF YOUR OWN MODELS FOR  
7 EVALUATING THE ANTELOPE VALLEY ADJUDICATION AREA?

8 A NO.

9 Q DID YOU REVIEW ALL OF THE DATA SETS THAT  
10 WERE --

11 A ARE YOU TALKING ABOUT THE ENTIRE BASIN?  
12 BECAUSE I HAVE MODELED PARTS OF THE BASIN, BUT NOT THE  
13 ENTIRE BASIN.

14 Q OKAY. DID YOU REVIEW ALL OF THE DATA SETS  
15 THAT WERE USED FOR THIS SUMMARY EXPERT REPORT THAT YOU  
16 TESTIFIED ABOUT?

17 A DO YOU MEAN REVIEW IN DEPTH AND LOOK AT  
18 EVERY --

19 Q YES.

20 A I DID NOT LOOK AT EVERY SINGLE DATA POINT,  
21 NO.

22 Q DID YOU PROVIDE ANY COMMENTS TO THE AUTHORS  
23 OF THE SUMMARY EXPERT REPORT AFTER YOU REVIEWED THAT  
24 REPORT?

25 A NOT THIS VERSION OF THE REPORT.

26 Q I BELIEVE YOU TESTIFIED ABOUT MR. DURBIN'S  
27 USE OF DATA, AND YOU SPOKE REGARDING PRECIPITATION DATA.  
28 DID YOU YOURSELF REVIEW THAT PRECIPITATION

1 DATA?

2 A ONLY TO LOOK THROUGH WHAT HE PLOTTED UP  
3 ON -- IN THE CONTEXT OF THE REPORT. I DIDN'T LOOK AT  
4 THE -- DOWNLOAD THE DATA DIRECTLY FROM THE WESTERN  
5 REGIONAL CLIMATE CENTER.

6 Q DID YOU DO ANY INDEPENDENT EVALUATION OF  
7 CURRENT PUMPING BEYOND WHAT WAS REPORTED IN THE EXPERT  
8 REPORT FOR THE ANTELOPE VALLEY ADJUDICATION AREA?

9 A I ALSO LOOKED AT PUMPING THAT WAS REPORTED  
10 IN LEIGHTON AND PHILLIPS.

11 Q BEYOND REVIEWING THE REPORTS OF OTHERS, DID  
12 YOU DO ANY INDEPENDENT WORK?

13 A NO.

14 Q IN THE WORK THAT YOU HAVE DONE WITH THE  
15 EDWARDS AIR FORCE BASE, HAVE YOU OBSERVED ANY RECENT  
16 SUBSIDENCE WITHIN THE PAST TEN YEARS?

17 MR. DUNN: OBJECTION. BEYOND THE SCOPE OF DIRECT.

18 MR. SLOAN: I'M HAPPY TO WITHDRAW.

19 THE COURT: ALL RIGHT.

20 BY MR. SLOAN:

21 Q DID YOU WRITE ANY PARTS OF THE SUMMARY  
22 EXPERT REPORT THAT YOU TESTIFIED ABOUT?

23 A NO.

24 MR. SLOAN: I HAVE NO FURTHER QUESTIONS.

25 THANK YOU.

26 THE COURT: MR. JOYCE.

27 MR. JOYCE: THANK YOU, YOUR HONOR.

28



## CROSS-EXAMINATION

BY MR. JOYCE:

Q DR. OBERDORFER, I UNDERSTAND IT -- THE  
PRIMARY SOURCE OF YOUR OPINION IS ESSENTIALLY A REVIEW  
OF THE SUMMARY EXPERT REPORT; IS THAT CORRECT?

A ALONG WITH A REVIEW OF OTHER REPORTS THAT  
HAVE BEEN -- ESTIMATED RECHARGE.

Q AND YOU HAVE REVIEWED THE SUMMARY EXPERT  
REPORT ON AT LEAST TWO OCCASIONS?

A YES, OR MORE.

Q AND YOU PREPARED A PHASE III REPORT THAT YOU  
UNDERSTOOD WOULD BE FILED WITH THE COURT ALONG WITH THE  
EXPERT WITNESS DESIGNATION IDENTIFYING YOU AS AN EXPERT  
IN THIS MATTER?

A YES, I DID.

THE COURT: MR. JOYCE, THE EXPERT REPORT REALLY  
WASN'T BEFORE THE COURT, AND THE COURT DID NOT READ OR  
CONSIDER IT.

MR. JOYCE: I UNDERSTAND THAT.

THE COURT: ANY OF THOSE REPORTS.

MR. JOYCE: I WAS SIMPLY LAYING A FOUNDATION.

THE COURT: YES. BECAUSE TECHNICALLY IT SHOULD  
NOT HAVE BEEN FILED WITH THE COURT.

MR. JOYCE: AND I CONCUR.

Q COULD I DIRECT YOUR ATTENTION TO -- LET ME  
SEE IF I CAN GET TO THE CORRECT NUMBER. YOUR EXHIBIT  
I-8. IF WE COULD HAVE THAT UP THERE, PLEASE.

IF I UNDERSTOOD THAT, IT WAS YOUR

1 OBSERVATION THAT THE FOUR METHODS OF INVESTIGATION  
2 IDENTIFIED CAME UP WITH SUCH SIMILAR RESULTS; CORRECT?

3 A YES.

4 Q AND THAT TO YOU SUGGESTED A HIGHER LEVEL OF  
5 CONFIDENCE IN THE OUTCOMES?

6 A YES.

7 Q DO YOU EVER DO ANY WORK IN GEOSTATISTICS?

8 A I CERTAINLY USE GEOSTATISTICAL PACKAGES, BUT  
9 IT IS NOT A BIG AREA OF INTEREST OF MINE FOR PRACTICE.

10 Q YOU WOULD NOT FEEL COMFORTABLE ATTEMPTING TO  
11 EXPRESS ANY OPINION FROM A GEOSTATISTICAL PERSPECTIVE AS  
12 TO THE PROBABILITY OF THIS KIND OF A COINCIDENTAL  
13 ALIGNMENT WITHOUT SOME OTHER EXTRANEIOUS FACTOR HAVING  
14 BROUGHT THAT ABOUT?

15 MR. LEININGER: OBJECTION. VAGUE AND COMPOUND.

16 MR. JOYCE: IS IT WITHDRAWN, YOUR HONOR.

17 Q WHEN YOU FIRST ASSESSED THE SUMMARY EXPERT  
18 REPORT, ISN'T IT TRUE THAT YOU REJECTED THE CHLORIDE  
19 METHOD?

20 A YES. WHEN I LOOKED AT WHAT I UNDERSTOOD TO  
21 BE THE DRAFT, THE ORIGINAL DRAFT, AND THAT HAD LATER  
22 BEEN REVISED.

23 Q WELL, YOUR INITIAL DECLARATION -- YOUR  
24 INITIAL REPORT THAT YOU DRAFTED THAT WAS ULTIMATELY  
25 SUBMITTED TO THE COURT AS EXHIBIT B TO YOUR DESIGNATION  
26 WAS DATED JULY 10 -- EXCUSE ME -- JULY OF 2010; CORRECT?

27 A YES.

28 Q ALL RIGHT. AND IN IT YOU MAKE THE STATEMENT

1 APPEARING ON PAGE 2, "I HAVE NOT PERFORMED MY OWN  
2 DETAILED ANALYSIS OF THE STATUS OF THE AQUIFER, BUT I  
3 HAVE REVIEWED THE SUMMARY EXPERT REPORT AND ACCOMPANIED  
4 APPENDIX" -- EXCUSE ME -- "SUMMARY EXPERT REPORT (AND  
5 ACCOMPANYING APPENDICES) OF BB, ET AL. (2010) AND IN  
6 AGREEMENT WITH THE METHODOLOGIES USED AND CONCLUSIONS  
7 REACHED IN THAT REPORT," PERIOD.

8 DOES THAT SOUND FAMILIAR?

9 A YES.

10 Q SO YOU RENEWED THE REPORT DATED SOME TIME IN  
11 2010; CORRECT?

12 A YES, DRAFT VERSIONS OF IT.

13 Q OKAY. THEN YOU GO OVER TO PAGE 3; AND ABOUT  
14 TWO-THIRDS THE WAY DOWN, YOU MAKE A COMMENT ABOUT SOME  
15 OF MR. DURBIN'S WORK. AND, SPECIFICALLY, I WILL READ  
16 INTO THE RECORD YOUR STATEMENT.

17 QUOTE, "A FOURTH METHOD ESTIMATED NATURAL  
18 RECHARGE USING A CHLORIDE-MASS APPROACH (APPENDIX C.3.2)  
19 TO BE 29,000 ACRE-FEET, A VALUE THAT APPEARS TOO LOW AND  
20 PROBABLY REFLECTS THE LARGE UNCERTAINTIES IN THE INPUTS  
21 TO THE CHLORIDE METHODOLOGY," PERIOD, END QUOTE.

22 IS THAT CORRECT?

23 A YES.

24 Q AND ISN'T IT TRUE THAT WITHIN A MATTER OF  
25 WEEKS THAT THAT NUMBER WAS CHANGED BY MR. DURBIN?

26 A MR. DURBIN ISSUED A FINAL VERSION THAT HAD  
27 THAT NUMBER, AND I HAD NOT SEEN HIS REVISED APPENDIX C  
28 AT THE TIME THAT I WROTE MY DECLARATION.

1 Q OKAY. AND THEN LATER AGAIN IN JULY OF 2010  
2 YOU FILED AN AMENDMENT TO THE DECLARATION OF JUNE A.  
3 OBERDORFER; CORRECT?

4 A CORRECT.

5 Q AND IN THAT AMENDMENT, YOU CORRECTED YOUR  
6 EARLIER -- OR I SHOULDN'T SAY CORRECTED. YOU MADE THE  
7 OBSERVATION THAT THE FINAL REPORT AS TO THE C.3.2 OF  
8 THAT SUMMARY EXPERT REPORT REFLECTED THAT MR. DURBIN HAD  
9 CHANGED HIS NUMBER FROM 29,000 ACRE-FEET TO 58,000  
10 ACRE-FEET; CORRECT?

11 A CORRECT.

12 Q AND AS YOU SIT HERE TODAY, YOU HAVE NO IDEA  
13 WHAT NEW RELATIONSHIP HE CREATED OR WHAT NEW METHODOLOGY  
14 HE APPLIED TO JUSTIFY THAT CHANGE, DO YOU?

15 MR. LEININGER: OBJECTION. ARGUMENTATIVE.

16 THE COURT: OVERRULED.

17 THE WITNESS: I THINK I ANSWERED THAT AT MY  
18 DEPOSITION WHEN I EXPLAINED WHAT HE HAD CHANGED BETWEEN  
19 HIS EARLIER ESTIMATE AND THE CURRENT ESTIMATE WHEN HE  
20 WENT FROM USING, I THINK, ALL SEASONS TO JUST THE WET  
21 SEASON, DEPOSITION CHLORIDE DATA FOR PRECIPITATION.

22 Q AND IF YOU WOULD THEN GO NEXT TO -- LET'S  
23 GO, IF WE COULD, NEXT TO EXHIBIT I-13. AND IF I  
24 UNDERSTAND IT, THIS IS AN ILLUSTRATION THAT YOU -- THAT  
25 YOU MODIFIED FROM SOME GROUNDWATER ELEVATION CONTOURS  
26 TAKEN FROM MR. DURBIN 1978 ANALYSIS; IS THAT CORRECT?

27 A YES.

28 Q OKAY. YOU AGREE THAT WE ARE AT THE UPPER --

1 IN THE UPPER LEFT-HAND AREA WHERE IT SAYS COTTONWOOD AND  
2 ROSAMOND FAULT; AND THAT THAT IS COMMONLY RECOGNIZED  
3 TODAY AS THE WILLIS SPRING FAULT LINE?

4 A I THINK THAT IS THE AREA, YES.

5 Q DO YOU AGREE IN 1978 THAT MR. DURBIN  
6 EXCLUDED THE AREA NORTH OF THAT FAULT LINE FROM HIS --  
7 FROM BEING INCLUDED WITHIN THE BASIN?

8 A HE EXCLUDED IT FROM HIS MODEL OF THE BASIN.

9 Q IN 1978?

10 A IN 1978.

11 Q AND DO YOU ALSO AGREE WITH MR. WILDERMUTH'S  
12 CONCLUSION ARTICULATED IN HIS 2010 APPENDIX E REPORT  
13 THAT THE ANTELOPE VALLEY -- EXCUSE ME -- THAT THE AREA  
14 NORTH OF THE WILLIS SPRINGS FAULT LINE IS HYDROLOGICALLY  
15 ISOLATED FROM THE REST OF THE BASIN?

16 MR. BUNN: OBJECTION. BEYOND THE SCOPE.

17 THE COURT: SUSTAINED.

18 BY MR. JOYCE:

19 Q YOU DID REVIEW MR. WILDERMUTH'S REPORT, DID  
20 YOU NOT?

21 A I DID.

22 THE COURT: SUSTAINED.

23 MR. JOYCE: THANK YOU, YOUR HONOR. I HAVE NOTHING  
24 FURTHER.

25 THE COURT: THANK YOU. MR. KUHS.

26

27 ///

28 ///

## CROSS-EXAMINATION

BY MR. WILLIAM KUHS:

Q GOOD MORNING, DOCTOR?

A GOOD MORNING.

Q IT IS NICE TO SEE YOU AGAIN.

A THANK YOU.

Q I JUST HAVE A FEW QUESTIONS. I'M NOT SURE  
THAT HIS HONOR WILL ALLOW ME TO GO TO THAYER AND DURBIN  
AND TALK FOR THE NEXT THREE DAYS.

THE COURT: OR HEAR YOU TALK MORE.

(LAUGHTER)

MR. WILLIAM KUHS: COULD I HAVE I-3 -- NO, I-3 IS  
BLOYD UP AT THE TOP. THERE YOU GO.

Q DOCTOR, WITH REFERENCE TO EXHIBIT I-3 WHICH  
IS YOUR SUMMARY WHICH COMPARES SUMMARY EXPERT REPORT  
WITH BLOYD IN 1967, IS IT TRUE THAT THE STUDY AREA THAT  
BLOYD EMPLOYED WAS SMALLER IN AREA THAN THE ANTELOPE  
VALLEY AREA OF ADJUDICATION?

A NO, IT WAS A LARGER AREA.

Q DID HE SPECIFICALLY DEAL WITH THE AREA OF  
ADJUDICATION?

A NO, HE DIDN'T -- HE USED -- DEALT WITH A  
LARGER AREA, BUT IT INCLUDED THE AREA OF ADJUDICATION.

Q OKAY. IN ITS ENTIRELY AS WELL AS FREMONT  
VALLEY?

A MY RECOLLECTION IS YES.

1 Q OKAY. HOW ABOUT THE NEXT SLIDE I-4, AND I  
2 THINK MR. JOYCE TOUCHED ON THIS. WAS THE STUDY AREA OF  
3 DURBIN IN 1978 SMALLER THAN THE AREA OF ADJUDICATION?

4 A YES.

5 Q NEXT SLIDE LEIGHTON AND PHILLIPS, SAME  
6 QUESTION, SAME ANSWER?

7 A YES.

8 Q NEXT SLIDE I-6 OVER IN THE THIRD COLUMN  
9 FIRST ENTRY UNDER SPECIFIC YIELD, YOU INDICATE THAT THE  
10 AVERAGE SPECIFIC YIELD IN THE SUMMARY EXPERT REPORT WAS  
11 0.13 WHICH WOULD BE 13 PERCENT; CORRECT?

12 A RIGHT. I THINK THAT SHOULD ACTUALLY BE  
13 14 PERCENT.

14 Q SO THAT SLIDE IS IN ERROR, CORRECT, WITH  
15 RESPECT TO SPECIFIC YIELD?

16 A YES, THE AVERAGE RANGE IS CORRECT, BUT, I  
17 THINK, THE AVERAGE REPORTED IN THE REPORT WAS  
18 14 PERCENT.

19 Q OKAY. NOW, IF WE GO TO I-11 -- I HAVE  
20 IMPOSED ON MR. WEEKS TO BE THE OPERATOR, AND I  
21 APPRECIATE HIS HELP.

22 TO YOUR KNOWLEDGE, DOCTOR, DID ANYONE DO A  
23 SENSITIVITY ANALYSIS IN THE EXPERT SUMMARY REPORT  
24 INDICATING THE EFFECT OF A SPECIFIC YIELD OF LESS THAN  
25 14 PERCENT?

26 A THAT WOULDN'T HAVE BEEN THE FIRST -- FIRST,  
27 NO, THEY DIDN'T DO THAT; BUT THAT IS NOT WHAT THEY WOULD  
28 HAVE DONE BECAUSE THEY DIDN'T REALLY USE 14 PERCENT AS A

1 SPECIFIC YIELD VALUE. THEY USED THE INDIVIDUAL SPECIFIC  
2 YIELDS FOR THE INTERVAL IN WHICH THE WATER LEVEL CHANGE  
3 TOOK PLACE. SO IT WOULD MAKE NO SENSE TO DO A  
4 SENSITIVITY ANALYSIS ON THE 14 PERCENT.

5 Q WELL, IF YOU DID IT ON AN AGGREGATE BASIS  
6 JUST TO SEE WHAT THE EFFECT OF A -- FOR EXAMPLE,  
7 1 PERCENT OVER STATEMENT OF SPECIFIC YIELD, THAT COULD  
8 BE EASILY DONE, COULDN'T IT, DOCTOR?

9 A ONE COULD DO IT. IT WOULDN'T MAKE SENSE IN  
10 THE CONTENTS OF THE METHOD THAT MR. WILDERMUTH APPLIED.

11 Q WELL, IT COULD IN THIS SENSE: IF YOU WENT  
12 INTO EACH WELL BORE AND LOOKED AT THE SOIL PROFILE IN  
13 EACH WELL BORE AND DETERMINED THE WEIGHT OF AVERAGE PER  
14 CELL IN THAT WELL BORE, THEN YOU COULD TAKE THAT  
15 WEIGHTED AVERAGE AND DEDUCT 1 PERCENT OR 2 PERCENT AND  
16 RERUN AND SEE WHAT THE EQUITY WOULD BE IF ONE WANTED TO  
17 DO IT; CORRECT?

18 MR. WEEKS: OBJECT. ARGUMENTATIVE AND OUTSIDE THE  
19 SCOPE OF DIRECT.

20 THE COURT: WELL, IT IS REALLY NOT OUTSIDE THE  
21 SCOPE, SO I'LL PERMIT IT. OVERRULED.

22 THE WITNESS: I STILL THINK YOU WOULDN'T DO IT AS  
23 AN AGGREGATE BECAUSE THAT IS NOT THE WAY THEY DID THEIR  
24 INITIAL ANALYSIS.

25 Q NO. MY QUESTION --

26 A ARE YOU SAYING --

27 Q MY QUESTION IS YOU COULD DO IT CELL BY CELL?

28 A YOU COULD DO IT CELL BY CELL, YES.



1 Q AND SINCE YOU HAD THE COMPUTER PROGRAM IN  
2 PLACE, THAT WOULDN'T BE A DIFFICULT TASK IF YOU JUST GO  
3 IN AND MANIPULATE THE WEIGHT OF SPECIFIC YIELD IN EACH  
4 CELL AND RERUN IT AND SEE WHAT IT WOULD GIVE YOU;  
5 CORRECT?

6 A I THINK -- SURE, I THINK YOU WOULD.

7 Q DID YOU UNDERTAKE ANY SUCH ANALYSIS?

8 A NO, I DIDN'T.

9 MR. WILLIAM KUHS: THOSE ARE ALL THE QUESTIONS  
10 THAT I HAVE. THANK YOU, DOCTOR.

11 THE COURT: ALL RIGHT. THANK YOU.

12 ANYONE ELSE WISH TO EXAMINE THE WITNESS?

13 MR. MCLACHLAN?

14 MR. MCLACHLAN: SURE.

15 THE COURT: YOU DON'T HAVE TO.

16 MR. MCLACHLAN: I JUST HAVE A FEW QUESTIONS.

17

18 CROSS-EXAMINATION

19 BY MR. MCLACHLAN:

20 Q DR. OBERDORFER, WERE YOU MADE AWARE DURING  
21 THE COURSE OF THE TRIAL THAT THERE WAS TESTIMONY BY  
22 MR. WILDERMUTH THAT THERE WAS SOME PROBLEMS IN THE  
23 GROUNDWATER CONTOURS THAT HE HAD PRESENTED IN THE  
24 SUMMARY EXPERT REPORT AND AT TRIAL, AND THE PROBLEMS  
25 SPECIFICALLY BEING THOSE WERE INCONSISTENT IN PLACES?

26 A I UNDERSTOOD BECAUSE I WAS IN COURT THOSE  
27 FIRST FEW DAYS THAT SOME OF THE WELLS WERE ID'D  
28 INCORRECTLY AS TO BEING INTERPOLATED OR EXTRAPOLATED.

1 MY UNDERSTANDING WAS THAT THE CONTOURS HAVEN'T CHANGED  
2 SIGNIFICANTLY OR THE CONTOURS THAT WERE THE BASIS FOR  
3 HIS -- THE CONTOURS HADN'T CHANGED SIGNIFICANTLY.

4 Q NOW IF I UNDERSTAND CORRECTLY THAT SINCE THE  
5 TESTIMONY YOU DIDN'T FORM ANY INVESTIGATION OR ANALYSIS  
6 ON THAT QUESTION?

7 A NO.

8 Q DO YOU KNOW ONE WAY OR ANOTHER WHETHER THOSE  
9 INCONSISTENCIES HAVE ANY SORT OF A MEANINGFUL EFFECT ON  
10 HIS BOTTOM LINE NON-NUMBERS?

11 A I GUESS I WASN'T AWARE THAT THE CONTOUR WAS  
12 CHANGED TO A LARGE EXTENT; AND IF THEY WERE VERY MINOR  
13 CHANGES, I DON'T THINK THAT WOULD CHANGE THE CONCLUSION  
14 FOR THE -- IT WOULDN'T CHANGE THE AMOUNT OF STORAGE  
15 CHANGE THAT TOOK PLACE, AND THAT WOULD ULTIMATELY DRAW  
16 TO THE CONCLUSION ABOUT NATURAL RECHARGE.

17 Q DID YOU SPEND ANY TIME LOOKING AT ANY OF THE  
18 UNDERLYING DATA THAT WAS USED BY ANY OF THE EXPERTS THAT  
19 YOU HAVE REFERENCED IN YOUR OPINIONS? AND I MEAN THE  
20 EXPERTS IN THIS CASE: SCALMANINI, WILDERMUTH AND  
21 MR. DURBIN.

22 A I HAD IN OTHER CONTACTS LOOKED AT WATER  
23 LEVEL DATA AND STREAM-FLOW DATA. SO I'M FAMILIAR WITH  
24 THOSE DATA SETS AND SO -- BUT TO ACTUALLY -- OTHER THAN  
25 RECOGNIZING THAT THE DATA SETS WERE SIMILAR TO WHAT I  
26 HAD BEEN OBSERVED IN THE PAST, THAT WAS THE EXTENT OF  
27 WHICH I WOULD HAVE EVALUATED THAT.

28 Q DO YOU HAVE ANY CONCERNS REGARDING ANY

1 DEFICIENCIES IN THE EXISTING DATA SET THAT WERE USED TO  
2 PREPARE THE SUMMARY EXPERT REPORT AND THE VARIOUS EXPERT  
3 OPINIONS THAT HAD BEEN GIVEN IN THIS TRIAL?

4 MR. DUNN: OBJECTION AS TO DEFICIENCIES AND  
5 ARGUMENTATIVE.

6 THE COURT: WELL. OVERRULED.

7 THE WITNESS: WE ALWAYS LOVE TO HAVE MORE DATA IN  
8 DOING THESE TYPE OF ANALYSIS. I THINK THERE IS QUITE A  
9 BIT OF DATA IN THIS VALLEY, MORE THAN IN SOME OTHER  
10 AREAS WHERE I HAVE WORKED. AND SO YOU DO THE BEST YOU  
11 CAN TO WORK UP THE MOST REASONABLE ESTIMATE WITH THE  
12 DATA AVAILABLE, AND I THINK THAT'S WHAT THEY HAVE DONE.

13 SO I DON'T SEE ANY LAYERING GAPS.  
14 BY MR. LEININGER:

15 Q WHEN YOU SAID YOU THINK THAT IS WHAT THEY  
16 HAVE DONE, IS THAT SPECULATION, OR DO YOU ACTUALLY KNOW  
17 THAT IS WHAT THEY HAVE DONE?

18 A I THINK THEY USED ALL THE REASONABLE AND  
19 APPROPRIATE DATA SETS THAT ONE WOULD USE IN THIS TYPE OF  
20 ANALYSIS FROM MY READING OF THEIR REPORT.

21 Q OKAY. SO YOU READ THE TEXT OF THE REPORT.  
22 DID YOU ACTUALLY DIG IN BEHIND THE REPORT TO LOOK AT ANY  
23 OF THE UNDERLYING CALCULATIONS, OR DID YOU TAKE A LOOK  
24 OF ANY OF THE UNDERLYING DATA TO VERIFY THAT WHAT THEY  
25 DID ACTUALLY LINES UP WITH THE AVAILABLE DATA?

26 MR. LEININGER: OBJECTION. ASKED AND ANSWERED.

27 THE COURT: WELL, IT IS CROSS-EXAMINATION, AND YOU  
28 CAN ALWAYS ASK IT ONCE. OVERRULED.

1 THE WITNESS: I CERTAINLY LOOKED AT A NUMBER OF  
2 THE CALCULATIONS, PARTICULARLY THE WATER -- SOME OF THE  
3 WATER BUDGET CALCULATION NUMBERS AND VERIFIED THAT IT  
4 WAS ACTUALLY CALCULATED THE WAY THAT THEY SAID IT WAS;  
5 SO SOME OF THEM, BUT NOT ALL OF THEM.

6 BY MR. MCLACHLAN:

7 Q WERE YOU AWARE THAT MR. DURBIN HAD TO DO A  
8 SUBSTANTIAL AMOUNT OF ADJUSTMENT TO THE DATA THAT HE  
9 USED IN HIS ANALYSIS?

10 MR. DUNN: OBJECTION. VAGUE.

11 THE COURT: OVERRULED.

12 THE WITNESS: I GUESS I'M TRYING TO UNDERSTAND  
13 WHAT YOU MEAN BY ADJUSTMENT. I KNOW THAT SOME OF THE  
14 PRECIPITATION DATA, FOR INSTANCE, THERE WERE GAPS AND SO  
15 HE DID WHAT IS A -- IT IS A FAIRLY STANDARD PROCEDURE OF  
16 FILLING IN THESE GAPS BY CORRELATING WITH OTHER STATIONS  
17 THAT HAD DATA FOR THAT TIME.

18 SO IF THAT IS WHAT YOU MEAN, I THINK HE DID  
19 THAT TYPE OF ANALYSIS TO FILL IN GAPS THAT WERE PRESENT.

20 Q DID YOU DO ANY INDEPENDENT VERIFICATION OF  
21 HIS ADJUSTMENTS TO THE DATA?

22 A I LOOKED AT SOME OF -- HE PLOTTED UP SOME OF  
23 THOSE RELATIONSHIPS, AND I LOOKED AT THE PLOTS WHERE HE  
24 EVALUATED HOW REASONABLE THOSE CORRELATIONS WERE.

25 Q DID YOU FIND THAT THEY MATCHED?

26 A WITHIN A REASONABLE DEGREE. THERE IS ALWAYS  
27 GOING TO BE SOME SCATTERED. SOME OF THEM HAD GREATER  
28 SCATTER THAN OTHERS.

1           Q       NOW IN FORMING YOUR OPINIONS THAT YOU HAVE  
2       GIVEN HERE AT TRIAL WITH RESPECT TO MR. DURBIN, FOR  
3       EXAMPLE, DID YOU USE THE CONCLUSIONS THAT -- AND DATA  
4       THAT HE REFERENCED IN APPENDIX C TO THE SUMMARY EXPERT  
5       REPORT?

6           A       DID I USE IT HOW?

7           Q       HIS OPINIONS -- ARE YOU AWARE THAT HIS  
8       OPINIONS ARE REFERENCED IN EXHIBIT -- OR EXHIBIT C OF  
9       THE SUMMARY EXPERT REPORT OR ATTACHMENT C RATHER?

10          A       YES, HIS OPINIONS ARE APPENDIX C.

11          Q       IN OTHER WORDS, YOUR ANALYSIS WAS BASED UPON  
12       THE DATA THAT WAS CONTAINED THEREIN?

13          A       THE DATA AND ANALYSIS AND APPENDIX C, YES.

14          Q       ARE YOU AWARE THAT YESTERDAY MR. DURBIN  
15       TESTIFIED THAT HIS RAINFALL DATA IN THAT APPENDIX C WAS  
16       NOT ACCURATE IN CERTAIN RESPECTS AND INCONSISTENT WITH  
17       THE TRIAL TESTIMONY THAT HE GAVE?

18          A       I'M NOT AWARE OF THAT.

19          Q       OKAY. BUT YOU DIDN'T PERFORM ANY ANALYSIS  
20       OF HIS WORK TO A LEVEL IN WHICH YOU WERE ABLE TO PICK UP  
21       ANY OF THESE DEFICIENCIES?

22          A       NO, I DIDN'T.

23          Q       ANY PARTICULAR REASON WHY YOU DIDN'T DO  
24       THAT?

25          A       TO BE ON THE SCOPE, IT WOULDN'T MAKE SENSE  
26       TO DO JUST ONE ASPECT AND NOT DO THE ENTIRE DATA SET.  
27       BASICALLY, I WAS REVIEWING THEIR METHODOLOGIES AND TYPE  
28       OF DATA AND APPROPRIATENESS OF THE TYPES OF DATA NOT TO

1 THE LEVEL OF THE ACCURACY OF EVERY ENTRY.

2 Q DID MR. DURBIN USE A NUMBER OF EQUATIONS IN  
3 HIS ANALYSIS THAT HELPED HIM FILL IN FOR MISSING DATA IN  
4 THE DATA BODY; DO YOU RECALL THAT?

5 MR. WEEKS: OBJECTION. VAGUE. THERE ARE MANY  
6 EQUATIONS IN THE REPORT. HE NEEDS TO SPECIFY.

7 BY MR. MCLACHLAN:

8 Q I'LL REPHRASE IT. YOU ARE AWARE THAT  
9 MR. DURBIN USED A NUMBER OF EQUATIONS TO ASSIST HIM IN  
10 FILLING IN AREAS WHERE THERE WAS MISSING DATA, AND LET'S  
11 TALK ABOUT, FOR EXAMPLE, STREAM GAUGING DATA?

12 A YES. I KNOW THAT HE DID DO CALCULATIONS OR  
13 ESTIMATIONS OF DISCHARGE OF THE STREAMS.

14 Q THAT ONE, FOR EXAMPLE, DID YOU HAVE ANY  
15 DISCUSSIONS WITH HIM ABOUT HOW HE DID THAT WORK,  
16 PARTICULARLY HOW HE DEPLOYED THE EQUATION?

17 A THE EQUATION IS PRETTY STRAIGHT FORWARD.  
18 YOU WILL MEASURE THE WIDTH, AND THEN THERE ARE  
19 COEFFICIENTS THAT ARE SPECIFIC TO A REGION THAT WERE  
20 APPLIED TO THAT, SO I THINK THE WIDTH MEASUREMENTS.  
21 SOMEBODY FROM HIS FIRM WENT OUT IN THE FIELD AND  
22 MEASURED THE WIDTH OF THE STREAM CHANNELS.

23 Q DID YOUR CLIENT PUT ANY RESTRICTIONS ON YOU  
24 IN TERMS OF WHAT YOU COULD DO IN YOUR ANALYSIS FOR YOUR  
25 OPINIONS IN THIS CASE?

26 MR. LEININGER: OBJECTION. YOUR HONOR. I --  
27 COUNSEL, ARE YOU REFERRING TO "YOUR CLIENT" AS EDWARDS  
28 AIR FORCE BASE? IT IS VAGUE AND --

1 MR. MCLACHLAN: I'LL REPHRASE.

2 Q WERE ANY RESTRICTIONS PLACED UPON YOU IN  
3 TERMS OF WHAT SORT OF WORK YOU COULD DO IN PREPARATION  
4 FOR YOUR OPINIONS FOR THIS TRIAL?

5 A NO.

6 Q YOU ARE GENERALLY AWARE THAT THE ANALYSIS  
7 THAT HAS BEEN GIVEN THIS TRIAL STOPS AT YEAR 2005?

8 MR. DUNN: OBJECTION. MISCHARACTERIZES THE  
9 EVIDENCE.

10 THE COURT: WELL, I'M GOING TO SUSTAIN THAT  
11 OBJECTION.

12 MR. MCLACHLAN: OKAY. I'LL REPHRASE.

13 Q YOU KNOW THE TERM "BASE PERIOD"?

14 A YES.

15 Q AND THAT IS PART OF -- AND SOME OF US ARE --  
16 A PART OF THAT, AND THAT IS A STUDY PERIOD. AND IS IT  
17 YOUR UNDERSTANDING THAT MR. SCALMANINI, MR. WILDERMUTH,  
18 AND MR. DURBIN ALL USE 2005 AS THE END PERIOD FOR THEIR  
19 ANALYSIS; IS THAT RIGHT?

20 MR. DUNN: OBJECTION. MISCHARACTERIZES THE  
21 EVIDENCE.

22 THE COURT: SUSTAINED.

23 BY MR. MCLACHLAN:

24 Q DR. OBERDORFER, WHAT IS THE LAST YEAR FOR  
25 THE BASE PERIOD, YOUR UNDERSTANDING?

26 A MY UNDERSTANDING IT IS 2005.

27 Q OKAY. DO YOU HAVE AN UNDERSTANDING AS TO  
28 WHY THEY PICKED 2005?

1 MR. ZIMMER: IT IS SPECULATION.

2 THE COURT: SHE MAY ANSWER THAT. OVERRULED.

3 THE WITNESS: I THINK AT THE TIME THE INITIAL WORK  
4 WAS DONE WHICH WAS SEVERAL YEARS AGO NOW, THAT WAS THE  
5 PERIOD THROUGH WHICH DATA WAS WIDELY AVAILABLE. SO  
6 STREAMFLOW AND WATER LEVEL AND PRECIPITATION DATA.

7 MR. MCLACHLAN: NO FURTHER QUESTIONS, YOUR HONOR.

8 THE COURT: THANK YOU. ANY REDIRECT?

9 MR. ZIMMER: I HAVE JUST, LIKE, ONE QUESTION, YOUR  
10 HONOR.

11 THE COURT: OKAY. SORRY I OVERLOOKED YOU,  
12 MR. ZIMMER.

13 MR. ZIMMER: WELL, THANK YOU. THAT IS ALL RIGHT,  
14 YOUR HONOR. WHAT EXHIBIT IS THIS THAT IS UP THERE NOW?

15 THE COURT: THIS IS 11.

16

17 CROSS-EXAMINATION

18 BY MR. ZIMMER:

19 Q MR. OBERDORFER, WE HAVE EXHIBIT 11 ON THE  
20 SCREEN. IT HAS A PRECIPITATION YIELD NUMBER OF  
21 58,000 -- PRECIPITATION YIELD NUMBER OF 56,000 ON THE  
22 BOARD THERE?

23 A YES.

24 Q AS PART OF WHAT YOU RELIED ON IN YOUR  
25 EVALUATION OF THE SUMMARY EXPERT REPORT; CORRECT?

26 A YES.

27 Q YOU ARE AWARE THAT'S NOT EVEN A CORRECT  
28 NUMBER?



1           A           NO. I THOUGHT IT WAS THE CORRECT NUMBER.

2           Q           SO YOU ARE NOT AWARE THAT THE ACTUAL NUMBER  
3 OF 59,000 ACRE-FEET PER PRECIPITATION YIELD?

4           A           I WOULD HAVE TO GO BACK AND DOUBLE CHECK  
5 WHAT IT ACTUALLY SAYS IN THE SUMMARY EXPERT REPORT WHICH  
6 IS WHERE I THINK I GOT THAT NUMBER FROM.

7           Q           SO ALL YOU KNOW IS WHAT IS IN THE SUMMARY  
8 EXPERT REPORT?

9           A           YES.

10          MR. ZIMMER: NO FURTHER QUESTIONS.

11          THE COURT: YES, LET ME CORRECT THAT. IT IS NOT  
12 11.

13          MR. SLOAN: EXHIBIT 8.

14          THE COURT: YES, EXHIBIT 8. ALL RIGHT.

15                    NOW ANY REDIRECT?

16          MR. LEININGER: JUST ONE QUESTION, YOUR HONOR.

17

18                    REDIRECT EXAMINATION

19 BY MR. LEININGER:

20          Q           DR. OBERDORFER, THE QUESTION WAS REGARDING  
21 THE SIZE OF THE STUDY OF THE DURBIN 1978 STUDY AND THE  
22 LEIGHTON AND PHILLIPS 2003 STUDY. YOU HAD TESTIFIED  
23 THAT THEY WERE SMALLER THAN THE SIZE OF THE ANTELOPE  
24 VALLEY GROUNDWATER ADJUDICATION?

25          A           YES.

26          Q           DOES THAT AFFECT YOUR OPINION WITH REGARD TO  
27 THE METHODOLOGIES THAT WERE EMPLOYED AND THE  
28 RIGOROUSNESS OF THAT ANALYSIS?

1           A           NO, IT DOESN'T.

2           MR. LEININGER: I HAVE NO OTHER QUESTIONS.

3           THE COURT: ALL RIGHT. THANK YOU.

4           MR. LEININGER: YOUR HONOR, AT THIS TIME, I WOULD  
5 MOVE FOR ENTRIES OF EXHIBITS MARKED I-1 THROUGH 18 AND  
6 I-20 OF HER TESTIMONY.

7           THE COURT: NOW I UNDERSTAND THAT THERE ARE  
8 OBJECTIONS TO THE COURT ACCEPTING THE INFORMATION FOR  
9 THE TRUTH OF THE MATTERS. THAT OBJECTION HAS BEEN  
10 SUSTAINED. I'LL PERMIT THEM TO COME IN EXEMPLIFYING HER  
11 TESTIMONY WITH THE UNDERSTANDING THAT HEARSAY IS  
12 HEARSAY.

13          MR. JOYCE: WITH THAT, YOUR HONOR, I WILL WITHHOLD  
14 MY OBJECTION.

15          MR. BUNN: YOUR HONOR, A CLARIFICATION AS TO THE  
16 NUMBERS. COULD YOU GIVE THE NUMBERS AGAIN.

17          MR. LEININGER: YES, I'M SORRY. I SAID I-1  
18 THROUGH 18, BUT EXHIBIT I-10 HAD BEEN REDACTED. SO IT  
19 IS 1 THROUGH 9, 11 THROUGH 18 AND I-20.

20          MR. BUNN: 20? DO YOU MEAN 21?

21          MR. LEININGER: I'M SORRY, 21. THANK YOU.

22          MR. ZIMMER: THE ONLY COMMENT I HAVE IS, YOUR  
23 HONOR, WITH SOME OF THOSE EXHIBITS AS WE RAISED AS THEY  
24 WERE BEING PRESENTED INVOLVED EXHIBITS THAT ARE  
25 CURRENTLY SUBJECT TO A MOTION TO STRIKE. I APPRECIATE  
26 THE FACT THAT THE COURT HAS IDENTIFIED DOWN ON THE  
27 RECORD THAT THESE EXHIBITS ARE NOT ADMITTED FOR ANY --

28          THE COURT: TO ESTABLISH THE DATA -- NOT ADMITTED

1 TO ESTABLISH THE DATA.

2 MR. ZIMMER: THANK YOU, YOUR HONOR.

3 THE COURT: AND LET ME JUST OBSERVE. IRRESPECTIVE  
4 OF WHAT THE COURT'S RULING ON THE MOTION TO STRIKE  
5 EXHIBITS MIGHT BE, THAT IS -- HER TESTIMONY IS  
6 INDEPENDENT OF THE ISSUES THAT YOU RAISED IN YOUR MOTION  
7 TO STRIKE IN TERMS OF PREPARATION BECAUSE CERTAINLY  
8 SOMETHING THAT SHE HAS LOOKED AT AND CONSIDERED, AND SHE  
9 HAS OPINED ABOUT THAT.

10 AND SO BEAR THAT IN MIND WHEN YOU ARE MAKING  
11 YOUR RENEWED ARGUMENTS AS I'M SURE YOU WILL ON THE 14TH.

12 MR. ZIMMER: MY COMMENT WAS TO THE EXTENT THAT IT  
13 INCORPORATES DATA THAT IS ULTIMATELY SHOWN TO BE  
14 INCORRECT OR FALSE. IT IS --

15 THE COURT: THAT WAS NOT THE BASIS FOR THE MOTION  
16 TO STRIKE. THE MOTION TO STRIKE WAS PREDICATED UPON  
17 NONDISCLOSURE AND RELATED TYPES OF OBJECTIONS IF I  
18 REMEMBER CORRECTLY.

19 MR. ZIMMER: THAT IS TRUE, BUT I THINK WHAT THE  
20 COURT SAID WAS THAT YOU WOULD TAKE A LOOK AT IT AGAIN TO  
21 SEE IF THE CONTOUR LINES ACTUALLY MATCHED UP WITH THE  
22 DATA. SO WHAT I'M SAYING HERE IS TO THE EXTEND THAT THE  
23 CONTOUR LINES DON'T MATCH UP WITH THE DATA, NOT ONLY IS  
24 THERE A BASIS FOR STRIKING THE EXHIBITS WHICH WOULD HAVE  
25 THIS EXPERT RELYING ON SOMETHING WHICH IS NOT IN  
26 EVIDENCE AND NOT PROPERLY -- NOT A PROPER ...

27 THE COURT: WELL, SHE IS NOT BASING HER OPINION  
28 WHAT IS IN EVIDENCE. SHE IS BASING HER OPINION ON WHAT

1 HER OBSERVATIONS WERE. IT IS A TOTALLY DIFFERENT BASIS.

2 SO THEY ARE ADMITTED WITH THE LIMITATIONS  
3 THAT I HAVE EXPRESSED IN THIS -- AS PART OF HER  
4 TESTIMONY. WHETHER THEY ARE ALSO GOING TO BE ADMITTED  
5 WITH REGARD TO -- OR STRICKEN WITH REGARD THE OTHER  
6 WITNESS'S TESTIMONY IS A TOTALLY DIFFERENT ISSUE. SO --  
7 BUT YOUR COMMENTS ARE NOTED.

8 MR. ZIMMER: THANK YOU.

9 THE COURT: THEY ARE ADMITTED AS I INDICATED.

10  
11 (EDWARDS AIR FORCE BASE EXHIBITS 1-9,  
12 11-18, AND 21 RECEIVED IN EVIDENCE  
13 WITH THE COURT'S STATED LIMITATIONS.)  
14

15 THE COURT: YOU MAY STEP DOWN, DOCTOR. THANK YOU  
16 VERY MUCH FOR COMING.

17 MR. JOYCE: YOUR HONOR?

18 THE COURT: YES.

19 MR. JOYCE: BOTH MR. KUHS AND I HAD AN ISSUE THAT  
20 WE THOUGHT MAYBE IT WOULD BE APPROPRIATE TO CLEAR UP  
21 WITH THE COURT NOW SO THAT WE CAN PLAN WHAT WE ARE GOING  
22 TO BE DOING FOR THE NEXT FEW WEEKS. AS THE COURT WILL  
23 RECALL, THERE HAS BEEN A LOT OF DISCUSSION ABOUT THE  
24 SCOPE OF WHAT ISSUES WE WERE GOING TO ENTERTAIN IN THIS  
25 PHASE OF THE TRIAL. AND, SPECIFICALLY, AS IT PERTAINS  
26 TO THE EFFECTS OF PUMPING IN ONE AREA VERSUS ANOTHER  
27 AREA.

28 I THINK WE ALL HAD A LITTLE BIT OF A PREVIEW

1 YESTERDAY AS TO THE COMPLEXITIES AND THE POTENTIAL  
2 IMPLICATION OF THAT ISSUE.

3 I HAVE PREVIOUSLY DISCUSSED THIS ISSUE WITH  
4 THE COURT ON VARIOUS STATUS CONFERENCES THAT IT WOULD  
5 BE -- THAT I'M MORE THAN HAPPY TO DEFER THAT ISSUE TO  
6 THE MANAGEMENT PHASE IF THAT IS -- BECAUSE THAT IS  
7 PROBABLY WHERE IT WOULD HAVE THE MOST SIGNIFICANCE IN  
8 ANY EVENT ANYWAY.

9 BUT WE ARE CONCERNED THAT IF WE DO AND THEN  
10 THIS PHASE OF TRIAL IS CONCLUDED GIVEN THE LANGUAGE USED  
11 IN THE COURT'S ORDER THAT WE MAY BE CONFRONTED WITH AN  
12 ARGUMENT THAT WE LET THE TIME AND PLACE COME AND GO, AND  
13 THEN WE MAY BE FORECLOSED FROM OFFERING THAT UP.

14 SO IF WE COULD GET CLARIFICATION FROM THE  
15 COURT THAT IF WE DO DEFER THAT WE ARE FREE TO RAISE THE  
16 ISSUE IN A SUBSEQUENT PHASE AS AND WHERE APPROPRIATE,  
17 THEN THAT WOULD HELP US TO PLAN FOR THE NEXT RESUMPTION  
18 OF THESE PROCEEDINGS, AND IT WOULD PROBABLY SHORTEN IT  
19 AS WELL WHICH MIGHT BE AN INDUCEMENT.

20 THE COURT: NO, THAT WOULDN'T BE AN INDUCEMENT.  
21 I'M NOT SURE EXACTLY WHAT YOU ARE ASKING CONCERNING  
22 BECAUSE --

23 MR. JOYCE: WE ARE JUST WANTING CLARIFICATION THAT  
24 IF WE DO NOT OFFER EVIDENCE CONCERNING SEPARATE PUMPING  
25 EFFECTS IN SOME AREAS IN THOSE KIND OF ISSUES THAT WE  
26 ARE NOT FORECLOSED FROM RAISING THEM LATER IN THE  
27 PRESCRIPTION THING OR RAISING THEM LATER IN THE  
28 MANAGEMENT THING IN THE LATER PHASE.

1           THE COURT: I WOULD SAY THE ANSWER TO THAT IS,  
2       YES, YOU ARE NOT LIMITED. THE COURT ELECTED TO PROCEED  
3       ON -- ON THIS PHASE OF THE TRIAL TO CONSIDER WHETHER OR  
4       NOT THE COURT SHOULD EXERCISE EQUITABLE JURISDICTION  
5       BASED UPON A CONCLUSION THAT IT IS OR IS NOT -- THE  
6       AQUIFER IS OR IS NOT IN A STATE OF OVERDRAFT OR IS  
7       LIKELY TO BE IN A STATE OF OVERDRAFT SUCH THAT THE COURT  
8       NEEDS TO EXERCISE EQUITABLE JURISDICTION. OKAY. THAT'S  
9       THE BASIS FOR THIS PHASE.

10           TO THE EXTENT THAT -- AND I THINK THIS IS  
11       TRUE. TO THE EXTENT THAT VARIOUS PORTIONS OF THE  
12       AQUIFER HAVE NOMINAL CONDUCTIVITY BETWEEN OTHER PORTIONS  
13       OF THE AQUIFER, THAT WOULD ONLY MAKE SENSE THAT THEY BE  
14       MANAGED SEPARATELY WITH AN UNDERSTANDING OF THOSE  
15       DIFFERENCES.

16           BECAUSE IF THE PUMPING IN ONE AREA HAS A  
17       NOMINAL EFFECT ON ANOTHER AREA, IT MAY ULTIMATELY  
18       JUSTIFY EVEN EXCLUDING THOSE AREAS FROM THE MAIN BODY OF  
19       THE AQUIFER FOR MANAGEMENT PURPOSES. AND, POTENTIALLY,  
20       I SUPPOSE COULD EVEN EXCLUDE THEM FROM ANY MANAGEMENT AT  
21       ALL.

22           OR, IT COULD REQUIRE THERE BE SEPARATE  
23       ADMINISTRATION, SEPARATE MANAGEMENT. BUT I CAN'T  
24       EVALUATE THAT AT THIS POINT AND DON'T WANT TO EVALUATE  
25       IT AT THIS POINT. AND WE GOT HERE AS A RESULT OF THE  
26       ORIGINAL TESTIMONY CONCERNING CONDUCTIVITY AND WHETHER  
27       OR NOT WE HAD A SINGLE AQUIFER OR TOTALLY SEPARATE  
28       AQUIFERS.

1           AND THE COURT CONCLUDED IN THAT PHASE -- AND  
2           THAT WAS PHASE II -- THAT THERE WAS A SINGLE AQUIFER  
3           BASED ON THE EVIDENCE THAT I HEARD.

4           SO WE LIVE IN A CHANGING WORLD, MR. JOYCE.

5           MR. JOYCE:   AND I ALSO WANT TO MAKE SURE THAT I  
6           CAN DEFER THAT AND NOT BE AT RISK.

7           THE COURT:   I THINK OF NECESSITY IT WOULD HAVE TO  
8           BE DEFERRED, AND THAT WOULD CERTAINLY EXPAND THE NATURE  
9           OF THIS PROCEEDING, AND I DON'T WANT TO DO THAT.

10          AND I WISH MR. MILIBAND WERE HERE SO WE  
11          COULD TALK MORE ABOUT THE PHELAN INTERESTS IN THE  
12          AQUIFER AND -- EXCEPT TO THE EXTENT THAT -- AS I  
13          UNDERSTAND IT -- WELL, I BETTER NOT GET INTO THAT  
14          BECAUSE HE'S NOT HERE.   BUT I WOULD LIKE TO TAKE THAT  
15          UP, AND I WOULD LIKE SOMEBODY TO INITIATE A MOTION  
16          REGARDING THAT PORTION OF THE AQUIFER SO THAT WE CAN  
17          EVALUATE WHAT WE SHOULD BE DOING WITH IT.

18          MR. JOYCE:   I THINK SOMEONE --

19          THE COURT:   THE COURT IS NOT A SELF-STARTER AS A  
20          MATTER OF LAW SO I CAN'T INITIATE THAT.

21          MR. JOYCE:   I SUSPECT SOME OF US IN THE COURTROOM  
22          WILL MAKE SURE MR. MILIBAND IS GIVEN THE HEADS-UP.   I  
23          KNOW MR. KUHS HAS SIMILAR CONCERN.   YOU HAVE SOLVED MY  
24          CONCERNS THIS MORNING, AND I WILL THANK THE COURT AND  
25          DEFER.

26          MR. WILLAIM KUHS:   I MENTIONED, I THINK,  
27          YESTERDAY, YOUR HONOR, THE DIALOGUE THAT WE HAD AT THE  
28          LAST CASE MANAGEMENT CONFERENCE ON THIS ISSUE -- AND

1 AFTER YOUR HONOR'S ORDER CAME OUT THAT SAID IN PART  
2 SOMETHING TO THE EFFECT THAT EVIDENCE OF EXTRACTIONS OR  
3 PUMPING IN ONE PORTION OF THE AQUIFER WITH RESPECT TO  
4 IMPACTS ON A DIFFERENT PORTION OF THE AQUIFER OR WATER  
5 LEVELS, HOWEVER YOU WISH TO EXPRESS IT, THAT EVIDENCE  
6 MAY BE INTRODUCED IN PHASE III.

7 AFTER YOUR HONOR'S ORDER CAME OUT BECAUSE  
8 I'VE HAD A NUMBER OF CONVERSATIONS WITH COUNSEL ABOUT  
9 THE SCOPE OF PHASE III PRIOR TO THAT CASE MANAGEMENT  
10 CONFERENCE.

11 AND A NUMBER OF US HAD AT LEAST INFORMALLY  
12 AGREED THAT THE ISSUE OF WHAT I'LL CALL REGIONAL  
13 IMPACTS, FOR LACK OF A BETTER PHRASE, WOULD BE DEFERRED  
14 TO A LATER PHASE.

15 SO, BECAUSE THERE WAS ARGUMENTS --  
16 MR. ZIMMER AND I WERE HAVING ARGUMENTS, FOR EXAMPLE,  
17 ABOUT WHAT THE SCOPE OF PHASE III WAS, WHETHER IT WAS AN  
18 EXAMINATION OF THE ADJUDICATION AREA AS A WHOLE OR  
19 REGIONAL.

20 AFTER THE CASE MANAGEMENT ORDER IN NOVEMBER  
21 CAME OUT, I HAD A TELEPHONE CONFERENCE WITH MR. JOYCE  
22 BECAUSE I THINK THERE ARE LARGELY THREE PARTIES THAT  
23 HAVE AN INTEREST IN REGIONAL ISSUES. THAT WOULD BE  
24 MR. JOYCE'S CLIENT, WAS MY CLIENT TEJON RANCH CORP, AND  
25 IT WAS SUSAN TRAGER'S CLIENT, THE PHELAN FOLKS -- EXCUSE  
26 ME -- ANAVERDE. BUT I HAVEN'T HEARD ANYTHING FROM  
27 ANAVERDE SINCE PHASE II.

28 I TALKED TO SUSAN TRAGER AND MR. JOYCE, AND



1 WE WERE ALL CONCERNED ABOUT WHAT TO DO IN PHASE III. I  
2 WAS TOLD BY MR. JOYCE, WELL, HE WAS GOING TO DEFER  
3 HOPEFULLY TO A LATER PHASE. SUSAN AND I CONCLUDED THAT  
4 WE HAD TO PUT IT ON IN PHASE III.

5 AND I THINK I CAN'T SPEAK FOR COUNSEL  
6 YESTERDAY; BUT AT LEAST I HAD UNDERSTOOD FROM TALKING TO  
7 SUSAN TRAGER AND HER TALKING TO ME THAT BOTH OF US WERE  
8 GOING TO PUT ON OUR EVIDENCE RELATIVE TO REGIONAL ISSUES  
9 IN PHASE III. I'M PREPARED TO DEFER THAT.

10 I HAVE DR. LIST LINED UP TO TESTIFY ABOUT  
11 WATER CONDITIONS IN THAT PORTION OF THE AQUIFER WEST OF  
12 BEDROCK RIDGE. I NEED TO TELL HIM WHETHER TO PROCEED  
13 AND GET READY FOR MARCH 14TH OR SOMETIME THEREAFTER. I  
14 HAVE -- I AM NOT COMFORTABLE WITH THE STATUS OF THE  
15 RECORD.

16 IF THE COURT WOULD INDICATE SOMETHING IN  
17 THIS RECORD THAT I WILL NOT BE PRECLUDED FROM PUTTING ON  
18 THAT TESTIMONY IN A LATER PHASE, I WILL TELL MY EXPERT  
19 THAT WE WILL NOT PUT ON THAT EVIDENCE IN PHASE III.

20 THE COURT: LET ME ADOPT THE COMMENTS THAT I  
21 DIRECTED TO -- IN RESPONSE TO MR. JOYCE: YOU WILL NOT  
22 BE PRECLUDED. EXCUSE ME. IT SEEMS TO ME THAT -- AND  
23 THIS TOUCHES UPON ALL OF THESE EXCEPT FOR REGIONAL  
24 AREAS. TO THE EXTENT THAT THERE IS MORE OR LESS OF AN  
25 IMPACT ON THE BASIN AS A WHOLE --

26 the reporter: EXCUSE ME, YOUR HONOR, BUT I NEED  
27 YOU TO SPEAK UP A LITTLE LOUDER, PLEASE.

28 THE COURT: AND THAT IS REALLY RELATED TO

1 MANAGEMENT RATHER THAN ANYTHING ELSE, AND I BELIEVE THAT  
2 IT IS IMPORTANT THAT WE DETERMINE WHAT THE STATUS OF THE  
3 AQUIFER AS A WHOLE IS IN TERMS OF OVERDRAFT ASSUMING  
4 SUFFICIENT CONDUCTIVITY BETWEEN VARIOUS REGIONS THAT IT  
5 HAS SOME IMPACT OR NOT.

6 AND ONCE THE COURT HAS MADE THAT DECISION IF  
7 IT -- IF THE DECISION IS THAT IT IS IN OVERDRAFT,  
8 GENERALLY, THEN IT IS TIME TO HEAR WHAT TYPE OF  
9 MANAGEMENT NEEDS TO BE INVOLVED, PARTICULARLY WITH  
10 REGARD TO AREAS THAT MAY HAVE NOMINAL OR LIMITED IMPACT  
11 ON THE REST OF THE VALLEY.

12 SO I THINK THAT ANSWERS YOUR QUESTION; THAT  
13 YOU ARE NOT PRECLUDED. YOU ARE ENTITLED ONCE THE  
14 DETERMINATION HAS BEEN MADE IF THERE IS AN OVERDRAFT TO  
15 PRESENT EVIDENCE ON BEHALF OF YOUR CLIENT AND ANY OTHER  
16 CLIENTS WHO WERE SIMILARLY SITUATED IN TERMS OF REGIONAL  
17 EFFECT.

18 MR. WILLAIM KUHS: THANK YOU, YOUR HONOR.

19 MR. ZIMMER: I THINK THE COURT MADE IT FAIRLY  
20 CLEAR. IT SEEMS ACADEMIC THAT -- IF REGIONAL PUMPING  
21 AND THE EFFECTS OF REGIONAL PUMPING IS RELATIVE TO ANY  
22 ISSUE WE'RE GOING TO TRY HERE AND AFTER, INCLUDING  
23 PRESCRIPTION AND INCLUDING ANY WAY SOMEONE WANTS TO  
24 ARGUE, THEY CAN CERTAINLY DO THAT.

25 I THINK IT HAS BEEN MADE ABUNDANTLY CLEAR,  
26 AND I THINK THE COURT AGREES WITH THAT.

27 THE COURT: I TRIED VERY HARD.

28 MR. ZIMMER: BUT I DIDN'T STAND UP TO TALK ABOUT

1 THAT REALLY.

2 THE COURT: IT IS KIND OF LIKE ASKED AND ANSWERED.

3 MR. ZIMMER: MANY TIMES. MY QUESTION IS: HAVE  
4 THE PUBLIC SUPPLIERS NOW RESTED? AND CAN WE COUNT ON  
5 BEING ABLE TO PUT ON AN EXPERT WITNESS ON THE 14TH OF  
6 MARCH WHEN WE BEGIN AGAIN?

7 MR. DUNN: YES. BUT WE DO HAVE --

8 THE COURT: SUBJECT TO THE EXHIBITS.

9 MR. DUNN: YES, THAT IS CORRECT.

10 MR. ZIMMER: I SUPPOSE WE WILL TAKE UP THE  
11 EXHIBITS FIRST ON THE 14TH.

12 THE COURT: YES.

13 MR. BUNN: AND SUBJECT, ALSO, TO PHELAN'S  
14 CONTINUING TESTIMONY. WE ARE NOT COUNTING THAT OUT.

15 THE COURT: WELL, THEY ARE NOT ONE OF THE -- WELL,  
16 ACTUALLY, THEY ARE KIND OF ALIGNED, I SUPPOSE, BUT  
17 MODESTLY. ALL RIGHT.

18 MR. ZIMMER: I JUST NEED TO KNOW WHETHER ALL THESE  
19 PARTIES HAVE RESTED INCLUDING THE UNITED STATES.

20 MR. MILIBAND IS ATTEMPTING TO REOPEN -- TO MAKE SOME  
21 MOTION APPROPRIATELY TO DO THAT -- OR TAKE WHATEVER  
22 STEPS THE COURT THINKS ARE APPROPRIATE.

23 I JUST NEED TO KNOW RATHER AFTER THE  
24 ARGUMENTS ARE HEARD ON THE EXHIBITS THAT WE ARE THEN  
25 GOING TO START WITH OUR SIDE OF THE CASE.

26 THE COURT: I THINK THAT IS INDICATED UNLESS  
27 SOMEONE CAN SHOW ME A REASON DIFFERENTLY.

28 MR. BUNN: MAY I INQUIRE, YOUR HONOR, AS TO THE

1 ORDER OF THE LANDOWNERS' WITNESSES.

2 THE COURT: WE WILL TALK ABOUT THE WITNESSES IN  
3 JUST A SECOND.

4 MR. BUNN: OKAY.

5 THE COURT: THAT IS AN APPROPRIATE QUESTION, BUT  
6 I'M GOING TO ASK IT.

7 MR. BUNN: OKAY.

8 THE COURT: I WANT TO KNOW WHO IS GOING TO BE  
9 TESTIFYING. I WANT TO DO SOME TIME ESTIMATES HERE  
10 BECAUSE I HAVE SOME SCHEDULING TO DEAL WITH.

11 MR. ZIMMER: THE SHORT ANSWER IS, YOUR HONOR, AT  
12 LEAST FROM MY PERSPECTIVE -- AND I HAVE TALKED TO ALL  
13 THE OTHER LANDOWNERS -- AND WE DON'T KNOW AT PRESENT. I  
14 APPRECIATE THE COURT WANTS TO KNOW THAT IN ADVANCE, AND  
15 WE ARE PERFECTLY WILLING TO GIVE YOU THAT IN ADVANCE TO  
16 THE BEST THAT WE ARE ABLE TO IN TERMS OF SCHEDULING.  
17 BUT WE NEED TO LOOK VERY CLOSELY AT WHAT HAS BEEN PUT ON  
18 SO THAT SO WE CAN TAILOR OUR CASE AS EFFICIENTLY AS  
19 POSSIBLE SO WE DON'T SPEND MONEY THAT WE DON'T NEED TO  
20 SO THE COURT DOESN'T NEED TO HEAR AS MUCH REPETITION  
21 THAT WE CAN AVOID, BUT WE'RE HAPPY TO DO THAT IN  
22 ADVANCE.

23 BUT THE TRUTH OF THE MATTER IS WE DON'T KNOW  
24 AS I'M STANDING HERE RIGHT NOW AND HAVEN'T AGREED ON ALL  
25 THAT.

26 THE COURT: WELL, ARE YOU TALKING ON BEHALF OF  
27 EVERYBODY, OR ARE YOU TALKING ON BEHALF OF YOURSELF AND  
28 YOUR CLIENT?

1 MR. ZIMMER: I'M TALKING ON BEHALF OF MYSELF RIGHT  
2 NOW AND MY CLIENT. AND, YOU KNOW, THEN THERE ARE  
3 COMMENTS BY OTHER PARTIES.

4 THE COURT: IS THERE ANYONE THAT CAN TELL ME THEY  
5 ARE DEFINITELY GOING TO CALL A WITNESS?

6 MR. ZIMMER: WELL, YES, I WILL BE CALLING A  
7 WITNESS.

8 MR. JOYCE: THAT I CAN SAY.

9 MR. ZIMMER: I DIDN'T KNOW THAT WAS THE QUESTION.  
10 I WILL BE CALLING MR. SHEANAN.

11 MR. WILLAIM KUHS: WOULD IT BE APPROPRIATE, FOR  
12 EXAMPLE, TO ASK THE -- IF YOU WANT TO CALL THEM THE  
13 LANDOWNER GROUP OR AT LEAST THE FOLKS WHO HAVE NOT PUT  
14 WITNESSES ON TO TRY TO GET THEIR HEADS TOGETHER AND,  
15 PERHAPS, IN A WEEK SUBMIT A WRITTEN SUBMITTAL TO THE  
16 COURT AND COUNSEL OF WHAT WE THINK THE TIME ESTIMATES  
17 ARE AND WHO WE THINK THE WITNESSES ARE.

18 I'M NOT SURE WE WILL KNOW THE ORDER; AND IN  
19 TERMS OF FAIRNESS TO THE LANDOWNERS, WE WERE NOT GIVEN  
20 THE ORDER OF PROPOSED WITNESSES IN THE LAND -- IN THE  
21 PUBLIC WATER SUPPLIERS' CASE.

22 MR. DUNN: THAT IS NOT TRUE.

23 THE COURT: I THINK IT WAS IN THE TRIAL BRIEF.

24 MR. DUNN: IT IS ON THE COURT RECORD.

25 THE COURT: WE DID TALK ABOUT --

26 MR. WILLAIM KUHS: IN ANY EVENT, WE WEREN'T GIVEN  
27 MUCH ADVANCED NOTICE.

28 MR. DUNN: THAT IS NOT TRUE EITHER, MR. KUHS.

1 THE COURT: WE ARE AT A DIFFERENT POINT.

2 MR. WILLIAM KUHS: WELL, WITH THAT ASIDE, BUT IN  
3 LIEU OF TAKING UP THIS TIME TRYING TO SPECULATE, I WOULD  
4 THINK IT WOULD BE MORE EFFICIENT THAT WE TRY TO GET A  
5 SUBMITTAL TO THE COURT AND COUNSEL IN WRITING AS TO OUR  
6 BEST ESTIMATES.

7 THE COURT: ALL RIGHT. WELL, TODAY IS THE 17TH OF  
8 FEBRUARY, AND WE ARE GOING TO BE HERE THE 14TH OF MARCH.  
9 AND I HAVE SET ASIDE THAT WEEK AS WELL AS THE WEEK OF --  
10 ACTUALLY THE 22ND, THE WEEK STARTS ON THE 21ST, BUT WE  
11 WON'T BE IN SESSION UNTIL THE 22ND. THAT IS THE SECOND  
12 WEEK I SET ASIDE.

13 I NEED TO MAKE SOME TRAVEL ARRANGEMENTS. I  
14 HAVE TO WORRY ABOUT SCHEDULING OTHER THINGS. SO I WOULD  
15 LIKE TO KNOW WELL IN ADVANCE. THAT'S WHY I ASKED THE  
16 QUESTION TODAY OF WHAT WE ARE DOING AND WHEN WE ARE  
17 GOING TO DO IT. AND I DON'T WANT TO INCUR OBLIGATIONS  
18 THAT I DON'T HAVE TO INCUR.

19 I'M ASSUMING -- TELL ME IF I'M WRONG -- THAT  
20 YOU THINK THAT THE EVIDENCE IS GOING TO REQUIRE AT LEAST  
21 EIGHT DAYS.

22 MR. JOYCE: YOUR HONOR, I WOULD -- WE HAVE HAD A  
23 NUMBER OF CONVERSATIONS AMONGST OURSELVES. AND PART OF  
24 IT BEING FOCUSSED UPON HOW WE CAN TEAR DOWN AND MAYBE  
25 REFOCUS A BIT ON THE PRESENTATION TO SHORTEN THE TIME  
26 INVOLVED. AND I WOULD SUSPECT THAT THE ENTIRE EIGHT  
27 DAYS WOULD LIKELY BE CONSUMED UNDER ANY SCENARIO,  
28 PRIMARILY BECAUSE ALSO WITH REGARDS TO CROSS AND THEN

1 THE VARIABILITY OF WHAT HAPPENS IN TRIAL.

2 YOU NEVER GET DONE WHEN YOU THINK YOU ARE  
3 GOING TO, SO AT LEAST THE FULL EIGHT DAYS. IT IS SAFE  
4 TO SAY WE WILL CONSUME THOSE.

5 THE COURT: ALL RIGHT. WE WILL BE HERE ON THE  
6 24TH IN CONNECTION WITH THE WOOD CLASS AND WILLIS CLASS  
7 MOTION, AND THEN WE HAVE PUT OVER THE ATTORNEYS' FEE  
8 ISSUE UNTIL THE 22ND.

9 MR. JOYCE: OF WHAT MONTH?

10 THE COURT: MARCH, YES. BUT FEBRUARY, THE 24TH,  
11 WILL BE THE APPROVAL -- OF THE HEARING ON THE APPROVAL  
12 OF MOTION, AND THERE HAS BEEN A COUPLE OF OBJECTIONS  
13 THAT HAVE BEEN FILED. I EXPECT MORE.

14 IN ANY EVENT, IS IT POSSIBLE FOR YOU TO MEET  
15 AND CONFER CONCERNING THE PRESENTATION OF YOUR WITNESSES  
16 AND WHAT YOU ARE EXPECTING TO GIVE ME AN OUTLINE OF  
17 SUGGESTED TIMES FOR DIRECT EXAMINATION IN ANY EVENT?

18 MR. JOYCE: WELL, WE HAD EXPECTED THAT OVER THE  
19 NEXT THREE TO FOUR DAYS THAT WE WOULD ALL BE IN  
20 COMMUNICATION TO WORK OUT AS BEST WE CAN JUST THAT  
21 ISSUE.

22 THE COURT: WELL, IF YOU COULD POST IT ON THE  
23 23RD, THEN, I'LL HAVE IT ON THE MORNING OF THE 24TH.  
24 OKAY?

25 MR. JOYCE: THAT WOULD BE REASONABLE, YOUR HONOR.

26 THE COURT: THEN I'LL REQUEST THAT.

27 MR. JOYCE: YOUR HONOR, I PRESUME THAT WE ARE  
28 TALKING ABOUT THE CASE IN CHIEF IN DIRECT AND NOT IN

1 REBUTTAL?

2 THE COURT: I DON'T THINK YOU CAN ESTIMATE  
3 REBUTTAL FOR CROSS-EXAMINATION.

4 MR. JOYCE: JUST -- IT WAS MY INTENT, YOUR HONOR,  
5 RATHER THAN HAVE TO GROUP WITNESSES IN TWO DIFFERENT  
6 CONTEXTS IS TO HAVE ANY CRITICISMS THAT WERE INTENDED OF  
7 ANY PURVEYORS'S EXPERTS' TESTIMONY AND/OR PRESENTATION  
8 THROUGH MY EXPERT TO BE PROFFERED AS PART OF THE CASE IN  
9 CHIEF JUST TO SAVE TIME IN THE PRESENTATION.

10 THE COURT: I THINK THAT IS APPROPRIATE.

11 MR. JOYCE: AND I WILL ATTEMPT TO ALSO INCLUDE  
12 THAT IN THE ESTIMATION OF THE EXAMINATION.

13 THE COURT: OKAY.

14 MR. WEEKS: I ANTICIPATE WE WILL BE IN THIS ROOM  
15 THE REST OF THE TRIAL.

16 THE COURT: SO FAR AS I KNOW. OKAY. I DON'T  
17 KNOW.

18 MR. SLOAN: YOUR HONOR, WILL WE START AT 8:30?

19 THE COURT: WELL, THE FIRST DAY WE PROBABLY WILL  
20 NOT START AT 8:30. I NEED TIME TO FLY DOWN THAT  
21 MORNING; BUT AFTER THAT IF IT IS APPROPRIATE, WE WILL.  
22 AND WE WILL ALSO -- ON THE 24TH, THAT IS 10 O'CLOCK.

23 MR. SLOAN: THANK YOU, YOUR HONOR.

24 MR. DUNN: YOUR HONOR, ON THE 24TH, ARE WE BACK?  
25 I COULDN'T REMEMBER. ARE WE HERE?

26 THE COURT: YES. AND I HOPE WE HAVE THIS VERY  
27 SAME AND VERY, VERY EFFECTIVE AND COMPETENT STAFF.

28 THE CLERK: THANK YOU.



1 MR. JOYCE: AND, YOUR HONOR, I HOPE MR. DUNN HAS A  
2 VERY, VERY GOOD VACATION.

3 THE COURT: YES, ENJOY YOUR TRIP.

4 MR. DUNN: THANK YOU VERY MUCH. I APPRECIATE  
5 THAT.

6 THE COURT: MR. MCLACHLAN.

7 MR. MCLACHLAN: I HAD AN ISSUE TO RAISE WITH THE  
8 COURT.

9 THE COURT: NOW IS A GOOD TIME.

10 MR. MCLACHLAN: I HAD SORT OF A UNIQUE, AS THE  
11 COURT KNOWS, ONGOING ISSUE WITH THE COURT APPOINTED  
12 EXPERT AND THE -- I'M WONDERING WHETHER OR NOT THE COURT  
13 HAS -- I DON'T RECALL THE COURT INDICATING WHETHER OR  
14 NOT WE KNOW WHAT THE PHASE IV IS GOING TO BE, AND I'M  
15 WONDERING IF WE HAVE AN ABILITY TO DETERMINE THAT NOW.  
16 BECAUSE IT DEPENDS ON -- THERE ARE A NUMBER OF THINGS I  
17 HAVE TO DO IN ORDER TO KEEP ANTICIPATING THIS  
18 LITIGATION. LOOKS LIKE I AM GOING TO BE IN LITIGATION  
19 FOR SOME TIME TO COME.

20 AND UNLESS I DO THE THINGS RELATIVE TO THAT  
21 EXPERT THAT I NEED TO DO FOR CERTAIN PHASES OF THE  
22 SUBSEQUENT TRIALS, IT IS GOING TO HOLD THIS WHOLE  
23 PROCEEDING UP. AND TO BE MORE DIRECT ABOUT IT, I HAVE A  
24 MOTION TO GET THE COURT APPOINTED EXPERT WORKING ON THE  
25 WORK THE COURT HAS APPROVED BUT STAYED.

26 AND I'M CURRENTLY GOING TO PUT THAT ON  
27 CALENDAR FOR MARCH 24TH; BUT DEPENDING ON WHAT THE NEXT  
28 PHASE IS THAT THE COURT MAY WELL COME BACK AND SAY,

1 WELL, THAT IS PREMATURE AS YOU HAVE BEFORE. AND I DON'T  
2 NEED TO FILE ANOTHER MOTION AND SPEND THE TIME TO FILL  
3 UP MY TIME SHEET FOR A MOTION THAT COULD BE MADE IN SIX  
4 MONTHS.

5 THE COURT: ALL RIGHT. LET ME JUST MAKE THIS  
6 OBSERVATION: YOU HAVE ON BEHALF OF THE CLASS ENTERED  
7 INTO A WRITTEN AGREEMENT ABOUT -- WITH THE PURVEYORS  
8 THAT YOU BELIEVE IS BEING SUBMITTED FOR APPROVAL BY  
9 VARIOUS COURTS THAT HAVE TO APPROVE IT. IF THAT OCCURS,  
10 IF THOSE APPROVALS ARE DONE, THEN, THAT IS GOING TO VERY  
11 MUCH MINIMIZE YOUR FURTHER INVOLVEMENT IN ANY SUBSEQUENT  
12 PHASE OF THE TRIAL, I PRESUME.

13 MR. MCLACHLAN: I WOULD SAY THAT IS CORRECT ONCE  
14 THE -- OUR JUDGMENT -- THE JUDGMENT IN THE WOOD'S CLASS  
15 CASE IS FINAL. I HAVE A STRONG DISAGREEMENT WITH  
16 MR. KALFAYAN REGARDING THE ABILITY OF CLASS COUNSEL  
17 AFTER PRELIMINARY APPROVAL JUST TO SHUT IT DOWN AND  
18 DISAPPEAR. I'M NOT GOING TO DO THAT. I'M NOT GOING TO  
19 GO BEYOND THAT BECAUSE MR. KALFAYAN HAS DONE A VERY GOOD  
20 JOB; TO DO SO WOULD CAST SOME DOUBTS ON THAT.

21 THE COURT: WE DON'T HAVE TO WORRY ABOUT HIM AT  
22 THIS POINT. BUT IN TERMS OF YOUR INVOLVEMENT, ONCE  
23 SETTLEMENT IS ENTERED INTO, USUALLY, I BELIEVE -- SINCE  
24 THAT REALLY TAKES YOU OUT OF THE CONFLICT WITH  
25 PURVEYORS. I ASSUME THAT'S WHAT THE SETTLEMENT WOULD  
26 DO. WHAT DO YOU ANTICIPATE YOUR ROLE TO BE ASSUMING  
27 THAT IS APPROVED?

28 MR. MCLACHLAN: WELL, I THINK THEORETICALLY IF

1 THINGS PROCEED IN THE MANNER IN WHICH WE ANTICIPATE THEM  
2 ASSUMING THAT THE WATER SUPPLIERS APPROVE THE AGREEMENT,  
3 AND ALL OF THEM DO THAT -- AND IT DOES REQUIRE ALL OF  
4 THEM TO DO IT; BECAUSE IF NOT, THEN I HAVE TO FILE A  
5 MOTION FOR SUMMARY JUDGMENT AND KEEP LITIGATING, AND I  
6 DON'T REALLY HAVE A FINAL JUDGMENT IN MY CASE ABSENT  
7 DISMISSAL OF ONE OF THE PARTIES, OF COURSE, BEING THE  
8 OTHER OPTION.

9 THEN I WOULD SAY THAT I LIKE KALFAYAN -- WE  
10 DISAPPEAR IN THE BACKGROUND PRETTY MUCH PERMANENTLY.  
11 BUT I DON'T WANT TO PREJUDGE -- OUR SETTLEMENT IS A  
12 LITTLE BIT DIFFERENT, OF COURSE, BECAUSE THERE IS  
13 PUMPING -- THERE IS ACTUAL PUMPING GOING ON.

14 THE COURT: YES.

15 MR. MCLACHLAN: ONCE THE COURT HAS THE PRELIMINARY  
16 HEARING AND THESE ISSUES ARE ADDRESSED BY LANDOWNERS OR  
17 ANYONE ELSE, THEN, I CAN PROBABLY SAY THAT WE WILL  
18 DISAPPEAR. I THINK THAT IS -- I THINK THE WATER  
19 SUPPLIERS WOULD LIKE, AND THAT IS OUR INTENTION. I'M,  
20 OBVIOUSLY, NOT GOING TO BE SIGNING ON FOR BEING CLASS  
21 COUNSEL FOR THE NEXT 30 YEARS EVERY TIME A POSTJUDGMENT  
22 MOTION IS FILED. I'M NOT GOING TO BE APPEARING WHEN I'M  
23 65-YEARS OLD. MAYBE I WILL BE, BUT I DON'T THINK THAT  
24 IS THE CONTEMPLATION. SO AT SOME POINT IN TIME WE  
25 DISAPPEAR.

26 AND THE AGREEMENT DEALS WITH ALL THAT.  
27 THERE ARE PROVISIONS IN THERE THAT TALK ABOUT HOW WE  
28 DEAL WITH ALL THAT STUFF BECAUSE THE CLASS WILL BE

1 SUBJECT TO THE ULTIMATE JUDGMENT FOR PHYSICAL SOLUTION  
2 IF IT OCCURS.

3 THE COURT: I WILL NOT BE ASKING YOU WHAT YOU WILL  
4 BE DOING AT AGE 65, BUT I AM GOING TO ASK MR. DUNN TO  
5 REAFFIRM WHAT HE TOLD ME, AND THAT IS THAT THESE VARIOUS  
6 PROPOSALS OR THIS SETTLEMENT AGREEMENT IS BEFORE THE  
7 VARIOUS BOARDS. AND HE EXPECTS TO HAVE A RESPONSE FROM  
8 THEM BY THE TIME HE RETURNS FROM HIS -- HE DOESN'T LIKE  
9 ME TO USE THIS -- BUT HIS GLOBAL TRAVELS.

10  
11 (LAUGHTER)

12  
13 THE COURT: IS THAT TRUE? IS THAT STILL CORRECT?

14 MR. DUNN: YOUR HONOR, THAT IS TRUE.

15 THE COURT: AND THAT MAY SOLVE YOUR PROBLEM.

16 MR. MCLACHLAN: EXCEPT AS TO THE COUNTY. I MEAN  
17 THERE IS, OBVIOUSLY, PALMDALE WATER DISTRICT, AND  
18 MR. LEMIEUX HAS A WHOLE BUNCH OF CLIENTS AND MR. TOOTLE  
19 AND SO FORTH. SO WE -- I AM NOT IN CONTACT WITH ANY OF  
20 THEM ABOUT IT.

21 THE COURT: I EXPECT EACH ONE OF THEM TO BE  
22 EXERTING AS MUCH INFLUENCE AS THEY CAN ON THEIR  
23 RESPECTIVE CLIENTS TO GET THIS DONE SO THAT THEY DON'T  
24 EXACERBATE EITHER THE TIME OR THE ECONOMIC CONSEQUENCES  
25 OF THE FAILURE TO DO THAT.

26 MR. SLOAN: YOUR HONOR, IF I COULD OFFER ONE  
27 OBSERVATION, AND THAT IS I BELIEVE IN THE COURT -- IF IT  
28 IS NOT ESTABLISHED THAT THE BASIN IS IN OVERDRAFT, THAT

1 MAY ALSO BE A WAY THAT MR. MCLACHLAN WOULD HAVE NO  
2 FURTHER INVOLVEMENT IN THIS CASE.

3 THE COURT: THAT IS ALSO POSSIBLE.

4 MR. SLOAN: THANK YOU.

5 THE COURT: OKAY. ALL RIGHT. I WILL ASSUME WE  
6 ARE IN RECESS, THEN, FOR THE DAY UNTIL THE 24TH. WE  
7 WILL RESUME ON THE 24TH AND HEAR THE MOTION.

8 THANK YOU VERY MUCH.

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10 (THE PROCEEDINGS WERE THEN CONCLUDED.)

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

DEPARTMENT 316 HON. JACK KOMAR

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

STATE OF CALIFORNIA )  
 ) SS.  
COUNTY OF LOS ANGELES )

I, GINGER WELKER, OFFICIAL REPORTER OF THE  
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE  
COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE  
TRANSCRIPT DATED FEBRUARY 17, 2011 COMPRISES A FULL,  
TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN  
THE ABOVE ENTITLED CAUSE.

DATED THIS 17TH DAY OF 2011.

\_\_\_\_\_  
OFFICIAL REPORTER, CSR #5585