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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 1

HON. JACK KOMAR, JUDGE

IN RE

ANTELOPE VALLEY GROUNDWATER CASES.

CASE NO. JCCP4408

CERTIFIED

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIAL

FEBRUARY 10, 2014

APPEARANCES:

FOR PLAINTIFF UNITES
STATES OF AMERICA:

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL
RESOURCES DIVISION
BY: R. LEE LEININGER, ESQ.
JAMES J. DUBOIS, ESQ.

FOR PLAINTIFF RICHARD
WOOD:

LAW OFFICE OF
MICHAEL D. MC LACHLAN
BY: , ESQ.

PHELAN PINON HILLS
COMMUNITY SERVICE

ALESHIRE & WYNDER LLP
BY: WESLEY A. MILIBAND, ESQ.

FOR DEFENDANT BOLTHOUSE
PROPERTIES, LLC:

CLIFFORD & BROWN
BY: RICHARD ZIMMER, ESQ.

FOR DEFENDANT ANTELOPE
VALLEY GROUNDWATER
AGREEMENT ASSOC.:

BROWNSTEIN HYATT
FARBER SCHRECK
BY: MICHAEL T. FIFE, ESQ.
BRADLEY J. HERREMA, ESQ.

FOR CROSS-DEFENDANT
AVEK:

BRUNICK, MC ELHANEY & KENNEDY
BY: WILLIAM J. BRUNICK, ESQ.

FOR DEFENDANT L.A.
COUNTY WATERWORKS
DISTRICT NO. 40:

BEST BEST & KRIEGER
BY: JEFFREY V. DUNN, ESQ.
WENDY Y. WANG, ESQ.

(CONTINUED)

1 **APPEARANCES:**

2 (CONTINUED)

3 FOR DEFENDANT TEJON KUHS & PARKER
4 RANCH: BY: ROBERT G. KUHS, ESQ.
(VIA COURTCALL)

5 FOR DEFENDANTS CRYSTAL LE BEAU THELEN
6 ORGANICS, DIAMOND BY: ANDREW K. SHEFFIELD, ESQ.
7 FARMING, REMRY FARMS
AND LAPIS LAND COMPANY:

8 FOR CROSS-DEFENDANTS GRESHAM SAVAGE
9 A.V. UNITED MUTUALS BY: MICHAEL D. DAVIS, ESQ.
10 GROUP, ADAMS BENNETT DEREK R. HOFFMAN, ESQ.
11 INV., GOLDEN SANDS,
12 SHEEP CREEK WATER CO.,
13 SERVICE ROCK PRODUCTS,
ST. ANDREWS ABBEY:

14 FOR STATE OF STATE OF CALIFORNIA
15 CALIFORNIA: DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
16 BY: MARILYN H. LEVIN
17 DEPUTY ATTORNEY GENERAL

18 FOR DEFENDANT US BORAX: MORRISON FOERSTER
19 BY: WILLIAM M. SLOAN, ESQ.

20 ALSO PRESENT: U.S. AIR FORCE
21 WESTERN REGION
22 BY: MR. EDWIN OYARZO, ESQ.

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28 REPORTED BY: RHONA S. REDDIX, CSR RPR CRR RMR NO. 10807
OFFICIAL REPORTER

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I N D E X

<u>PLAINTIFF'S WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
RAND FRANK HERBERT	54 62 (CONT)	143 163 168		

E X H I B I T S

<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
US-1	54	
10 10	73	
11 11	68	
12 15	77	
13 16	79	
14 17	87	
15 18	87	
16 19	94	
17 21	108	
18 22	109	
19 23	110	
20 24	113	
21 25	118	
22 26	121	
23 27	114	
24 28	96	
25 29	98	
26 33	177	
27 34	72	
28 38	81	

	E X H I B I T S		
	<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
1			
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3	42	85	
4	43	93	
5	47	86	
6	56	90	
7	63	105	
8	82	130	
9	83	130	
10	84	132	
11	86	136	
12	92	137	
13	99	90	
14	102	99	
15	103	109	
16	106	111	
17	107	113	
18	108	116	
19	109	119	
20	110	122	
21	111 AND 112	139	
22	113 AND 114	140	
23	115	141	
24	116	142	
25	142	133	
26	257	103	
27	258	123	
28	259	127	

1 CASE NUMBER: JCCP4408
2 CASE NAME: ANTELOPE VALLEY GROUNDWATER
3 LOS ANGELES, CALIFORNIA FEBRUARY 10, 2014
4 DEPARTMENT 3 HON. JACK KOMAR
5 REPORTER: RHONA S. REDDIX, CSR 10807
6 TIME: A.M. SESSIONS
7 APPEARANCES: (SEE TITLE PAGE.)
8
9

10 **THE COURT:** ALL RIGHT. LET'S TAKE UP THE MOTION
11 IN LIMINE TO EXCLUDE THE MODELING EVIDENCE OF TESTIMONY
12 BY MR. WILLIAMS.

13 SO, MR. FIFE, THAT'S YOUR MOTION.

14 **MR. FIFE:** YES. THANK YOU, YOUR HONOR.
15 MICHAEL FIFE WITH THE ANTELOPE VALLEY GROUND WATER
16 AGREEMENT ASSOCIATION.

17 THIS WAS THE SUBJECT OF AN EX PARTE A
18 COUPLE WEEKS AGO, BUT I'M NOT SURE IF THE FACTS WERE
19 COMPLETELY MADE CLEAR TO YOU AT THAT TIME. SO I CAN GO
20 THROUGH THEM A LITTLE BIT JUST SO THAT YOU'RE --

21 **THE COURT:** GO AHEAD. START AT THE BEGINNING.

22 **MR. FIFE:** ALL RIGHT. WE DEPOSED DR. WILLIAMS A
23 COUPLE WEEKS AGO, AND FOR THE FIRST TIME AT THAT
24 DEPOSITION WE DISCOVERED THAT HIS TESTIMONY IN WHOLE, SO
25 THAT -- THE TOTALITY OF HIS TESTIMONY, DEPENDS ON HIS
26 WORK WITH A GROUND WATER MODEL.

27 THE DISCOVERY ORDER FOR THIS CASE REQUIRES
28 THAT ALL MATERIALS BY A WITNESS BE PROVIDED THREE DAYS

1 BEFORE THE DEPOSITION. THAT WASN'T DONE. IT HASN'T
2 BEEN DONE FOR A LOT OF THE WITNESSES, BUT IN GENERAL
3 WE'VE BEEN ABLE TO WORK WITH THAT.

4 BUT IN THIS INSTANCE, WE REALLY WERE NOT
5 ABLE TO MEANINGFULLY DEPOSE HIM BECAUSE WE HAD NO IDEA
6 THAT THERE WAS GOING TO BE MODELING TESTIMONY UNTIL WE
7 SHOWED UP AT THE DEPOSITION.

8 THE ATTORNEYS WHO WERE AT THE DEPOSITION
9 DID THE BEST WE COULD WALKING THROUGH THE MATERIALS HE
10 HAD BECAUSE WE DID WANT TO GET SOME LEVEL OF
11 INFORMATION, BUT EVEN AT THAT DEPOSITION, WE WERE TOLD
12 THAT IT WASN'T CLEAR THAT WE WOULD BE GIVEN THE MODEL.
13 WE DIDN'T GET IT UNTIL SOME TIME AFTERWARDS.

14 THE DATES AND THE SEQUENCE ARE ARTICULATED
15 VERY CLEARLY IN THE PAPERWORK. ONCE WE GOT THE MODEL,
16 WE IMMEDIATELY SET ABOUT COPYING THE MATERIALS, AND WE
17 SENT THEM TO AN EXPERT THAT WE FOUND WHO'S CAPABLE AND
18 QUALIFIED TO RUN THE MOD FLOW MODEL. AND WE'VE STARTED
19 TO GET RESULTS BACK.

20 AND WE HAD A POSTING, A FILING LAST
21 THURSDAY WHERE WE PROVIDED THE COURT WITH THE INITIAL
22 FEEDBACK THAT WE HAD HAD FROM OUR MODELER. AND THE
23 DETAILS OF THAT AREN'T -- AREN'T CRITICALLY IMPORTANT,
24 EXCEPT TO NOTE THAT THERE ARE SOME ISSUES AND THERE ARE
25 THINGS THAT WE HAVE QUESTIONS ABOUT.

26 FOR EXAMPLE, IN THE OPPOSITION TO OUR --
27 OUR MOTION, THE WATER WORKS INDICATED THAT THE SIZE OF
28 THE FILES THAT WE WERE BEING SENT WAS 17 GIGABITS. THE

1 FILES WE RECEIVED WERE 13 GIGABITS. OKAY. MAYBE THAT
2 WAS JUST A MISUNDERSTANDING. MAYBE SOMETHING GOT LEFT
3 OUT. WE DON'T KNOW. WE'RE GOING -- WE WOULD NEED SOME
4 TIME TO WORK THROUGH THAT.

5 AS YOU KNOW, MODELS ARE VERY COMPLICATED
6 THINGS. BEING ABLE TO RUN THE MODEL, WHICH OUR EXPERT
7 APPEARS NOW TO BE ABLE TO DO AS OF LAST FRIDAY, IS JUST
8 ONE STEP IN THE PROCESS. WE NEED TO UNDERSTAND WHAT DR.
9 WILLIAMS WAS DOING, WHAT THE SIGNIFICANCE OF IT IS, AND
10 FIGURE OUT WHAT ISSUES WE MIGHT HAVE WITH IT SO THAT --
11 BEFORE WE COULD EVEN BEGIN TO ASK SOME QUESTIONS,
12 BECAUSE THIS IS GOING TO BE CRITICAL FOR THE RETURN FLOW
13 PORTION OF THE CASE.

14 WHAT HAS HAPPENED WITH THIS MODEL IS THAT
15 THERE WAS A MODEL BUILT BY THE US -- USGS, UNITED STATES
16 GEOLOGICAL SURVEY. THAT MODEL APPARENTLY WAS MADE
17 AVAILABLE TO WATER WORKS BUT TO NOBODY ELSE.

18 ALSO, APPARENTLY THAT MODEL USED A LOWER
19 RETURN FLOW NUMBER THAN THE SUMMARY EXPERT REPORT, THAN
20 DID MR. SCALMANINI'S TESTIMONY IN PHASE THREE. WATER
21 WORKS, WHEN IT GOT THAT MODEL, CHANGED THAT NUMBER.

22 AND THIS IS AN INTERESTING ISSUE THAT SORT
23 OF DOVETAILS IN WITH THE DISCUSSION THAT WE HAD WITH
24 PRIOR MOTION IN LIMINE ABOUT THE 110. IT HAD A LOWER
25 RETURN FLOW NUMBER, BUT IT HAD A HIGHER -- I'M TRYING TO
26 GET THIS RIGHT -- AND IT HAD A LOWER PUMPING NUMBER.
27 AND SO IN THEIR MODEL ONE OF THE INPUTS WAS LOWER BUT
28 ONE OF THE OUTPUTS WAS LOWER, SO IT ALL BALANCED OUT TO

1 110.

2 IF YOU -- YOU CAN CHANGE AROUND THESE
3 INTERNAL NUMBERS AND ALWAYS STAY IN 110. SO IF YOU WANT
4 TO -- IF YOU WANT A HIGHER INPUT NUMBER IN ONE PART OF
5 THE CALCULATION, YOU JUST GET A HIGHER OUTPUT NUMBER.
6 AND AS LONG AS THE INPUTS AND THE OUTPUTS BALANCE, YOU
7 CAN MIX AND MATCH THESE NUMBERS ALL OVER THE PLACE.

8 AND SO THE USGS MODEL HAD A LOWER RETURN
9 FLOW NUMBER. PURVEYORS GOT THAT MODEL, APPARENTLY, AND
10 CHANGED THAT RETURN FLOW NUMBER BY RAISING IT. THEY
11 BALANCED IT BY ALSO RAISING THE PUMPING NUMBER. OKAY.
12 AND THEN THEY USED THAT MODEL TO VALIDATE THEIR RETURN
13 FLOW NUMBER, AND THAT'S WHAT DR. WILLIAMS' TESTIMONY IS
14 GOING TO BE.

15 OKAY. SO THAT'S -- THAT'S ALL REALLY
16 INTERESTING AND VERY RELEVANT FOR THE RETURN FLOW
17 PORTION OF THIS PHASE.

18 WE JUST GOT TO START LOOKING AT THIS ON
19 FRIDAY. THEY HAVE HAD THIS MODEL FOR A YEAR AND A HALF.
20 THEY'VE BEEN WORKING ON IT FOR A YEAR AND A HALF. THEY
21 DIDN'T TELL ANYBODY. THEY DIDN'T LET ANYBODY LOOK AT
22 IT. AND NOW THEY WANT TO COME IN HERE NEXT WEEK AND
23 START TESTIFYING ABOUT IT.

24 THEY COULD HAVE PROVIDED IT MONTHS AGO, AND
25 THEY DIDN'T. THEY COULD HAVE TOLD US ABOUT IT AHEAD OF
26 THE DEPOSITION AND THEY DIDN'T. IT'S A CALCULATED
27 EFFORT TO PREVENT US FROM BEING ABLE TO LOOK AT WHAT
28 THEY DID BECAUSE IT'S POSSIBLE THAT WHAT THEY DID IS

1 KIND OF INCRIMINATING AS TO THEIR NUMBER.

2 IF THE USGS WAS USING A LOWER NUMBER, AND
3 THE MODEL STILL WORKED AND STILL BALANCED, AND STILL WAS
4 CALIBRATED AT THE 110 NUMBER, WELL, THAT'S A PRETTY GOOD
5 EVIDENCE THAT THE NUMBER MAYBE IS LOWER. AND IT'S
6 UNDERSTANDABLE THAT THEY WOULDN'T WANT US TO BE ABLE TO
7 DELVE INTO THAT AND TO HAVE TIME TO RUN THE MODEL AND
8 HAVE TIME TO REALLY EXPLORE THESE ISSUES.

9 SO A COUPLE WEEKS AGO AN EX PARTE WAS FILED
10 TO CONTINUE THAT PORTION OF THE TESTIMONY TO A FUTURE
11 TIME. THAT WAS DENIED. WE CAN'T GO AHEAD WITH THIS
12 TESTIMONY ON MONDAY. DUE PROCESS HAS NOT BEEN MET. WE
13 HAVE NOT HAD ENOUGH TIME TO LOOK AT IT. IF WE'RE NOT
14 GOING TO MOVE IT OUT, IT HAS TO BE EXCLUDED.

15 **THE COURT:** ALL RIGHT.

16 **MR. MC LACHLAN:** BRIEFLY, YOUR HONOR --

17

18 (REPORTER'S INTERRUPTION.)

19

20 **THE COURT:** EVERYBODY HAS TO STATE THEIR
21 APPEARANCES.

22 **MR. MC LACHLAN:** I'M SORRY. I APOLOGIZE.

23 MICHAEL MC LACHLAN FOR RICHARD WOOD IN THE SMALL PUMPER
24 CLASS. AGAIN, I JOINED IN MR. FIFE'S MOTION, AND I WAS
25 THE ONE THAT FILED THAT EARLIER EX PARTE ON THIS
26 PARTICULAR ISSUE.

27 I THINK BOILING IT DOWN, THE ISSUE IS A
28 LOT SIMPLER. CCP 2034, WHICH IS IN PLAY HERE, HAS NOT

1 BEEN MODIFIED EXCEPT FOR IN A FEW LIMITED AREAS SUCH AS
2 THE CASE MANAGEMENT ORDER REQUIRING EXPERT REPORTS TO BE
3 PRODUCED AT THE TIME OF THEIR DESIGNATION. IN THIS
4 CASE, THAT WOULD HAVE BEEN SEVERAL MONTHS AGO.

5 WHEN AN EXPERT SHOWS UP AT A DEPOSITION AND
6 SHOWS UP WITHOUT THEIR FILE, THERE CAN BE NO MEANINGFUL
7 EXPERT DEPOSITION. IN THIS CASE, THE LACK OF THE MODEL,
8 THE INPUT FILES, THE OUTPUT FILES, ESSENTIALLY 80 OR
9 90 PERCENT OF THE MEAT AND POTATOES OF DR. WILLIAMS'
10 TESTIMONY WAS NOT PRESENTED EITHER IN ADVANCE, AS
11 REQUIRED BY THIS COURT, OR AT THE DEPOSITION. SO AT THE
12 TIME THAT DEPOSITION WAS CONCLUDED, NONE OF THE PARTIES
13 THAT WERE THERE TAKING THAT DEPOSITION HAD THOSE
14 MATERIALS.

15 THE REMEDY IN 2034 AND THE RELATED CASE LAW
16 IS CRYSTAL CLEAR. IT'S EXCLUSION. AND SO THAT
17 TESTIMONY HAS TO BE EXCLUDED. I DON'T THINK WE REALLY
18 NEED TO GET INTO THE DETAILS ABOUT WHAT HAPPENED BECAUSE
19 IT'S TRIAL BY AMBUSH.

20 **MR. FIFE:** YOUR HONOR, I WOULD JUST LIKE TO ADD TO
21 MY COMMENTS. IT'S NOT ONLY THAT, THE LATENESS OF IT
22 THAT IT WAS GIVEN TO US, BUT AS YOU'LL SEE FROM THE
23 QUOTATIONS FROM THE TRANSCRIPT THAT WE'VE PROVIDED,
24 THIS -- THE CENTRALLY RELEVANT WORK THAT WAS DONE ON
25 THIS MODEL -- THAT IS, RAISING THE RETURN FLOW
26 NUMBERS -- WAS DONE BY MR. SCALMANINI, WHO, AS WE
27 PREVIOUSLY DISCUSSED IN AN EX PARTE, IS UNAVAILABLE TO
28 EVEN BE DEPOSED.

1 SO THE MOST IMPORTANT PART OF THIS WORK,
2 EVEN IF WE HAD MORE TIME, WE CAN'T DEPOSE HIM.

3 **THE COURT:** ALL RIGHT. MR. DUNN?

4 **MR. DUNN:** SURE. DID THE COURT RECEIVE A FILING
5 THAT WE DID ON FRIDAY AFTERNOON TO RESPOND TO A LATE
6 FILING BY THE AGWA GROUP?

7 **THE COURT:** I THINK SO, BUT LET ME JUST
8 DOUBLE-CHECK.

9 I MAY NOT HAVE COPIED IT, BUT I THINK I
10 READ IT. DO YOU HAVE ANOTHER COPY OF IT HERE?
11 REFERRING TO THE LETTER.

12 **MR. DUNN:** NO, IT WAS A FILING ON FRIDAY
13 AFTERNOON. IT APPEARS TO RESPOND TO THE -- TO THE
14 PREVIOUS THURSDAY FILING. IT APPEARS I DON'T HAVE A
15 COPY WITH ME. I CAN ATTEMPT TO -- OH, THANK YOU. YES,
16 THANK YOU.

17 MR. KUHS HAS A COPY. I CAN PRESENT IT TO
18 THE COURT --

19 **THE COURT:** SUBMIT THAT, PLEASE.

20 **MR. DUNN:** I CAN DO THAT NOW OR WHEN I FINISH.

21 **THE COURT:** GO AHEAD AND ARGUE YOUR --

22 **MR. DUNN:** ALL RIGHT.

23 **THE COURT:** I'LL WANT TO LOOK AT IT.

24 **MR. DUNN:** WE'RE TALKING ABOUT A MODEL THAT WAS
25 DEVELOPED BY THE USGS. THE MODEL'S NOT NEW TO THE CASE.
26 THE PARTIES WHO WERE PARTICIPATING IN PHASE THREE IN
27 FACT SAW REFERENCE TO THAT MODEL AND USE. WE SAW IT IN
28 FORM OF REPORTS THAT WERE USED BY THE VARIOUS EXPERTS,

1 PREPARED BY THE USGS. THEIR WORK IS DONE USING THE USGS
2 MODEL.

3 AND WITHOUT GOING OVER ALL OF THAT
4 TESTIMONY THAT WAS PRESENTED IN THE PHASE THREE TRIAL,
5 AND SPECIFICALLY THOSE EXHIBITS, THE USGS HAS BEEN
6 WORKING ON THIS MODEL, FOCUSING ON THE ANTELOPE VALLEY
7 NOW FOR A NUMBER OF YEARS.

8 GOING BACK, I'M NOT QUITE SURE HOW MANY
9 YEARS, THERE WAS A PARTNERSHIP OR A GROUP PUT TOGETHER
10 OF LOCAL GOVERNMENTAL ENTITIES IN THE ANTELOPE VALLEY,
11 WORKING WITH THE USGS TO HAVE THE USGS DO THIS MODELING
12 WORK TO STUDY THESE OVERDRAFT PROBLEMS, AND SO THIS
13 PREDATES PHASE THREE BY SOME POINT.

14 SO THE GS HAS BEEN STUDYING THIS FOR SOME
15 TIME. IT'S BEEN IN THEIR REPORTS. SOME OF THOSE
16 REPORTS WERE ADMITTED IN THE PHASE THREE. THEY'LL HAVE
17 CLEAR RECOLLECTION THAT A LOT OF THIS WAS IN THE
18 VIDEOTAPED TESTIMONY OF MR. SCALMANINI.

19 NOW, WHY AM I MENTIONING ALL THIS IS THAT
20 THE CONCEPT OF MODELING WORK HAS NOT BEEN NEW TO THIS
21 CASE. NOT AT ALL. AND IT'S NOT NEW TO THIS CASE
22 EITHER.

23 NOW, WHAT THE USGS HAS DONE IS THAT THEY
24 HAD WAITED FOR THE PHASE THREE TRIAL TO BE COMPLETED AND
25 FOR THIS COURT TO MAKE A SAFE YIELD DETERMINATION SO THE
26 USGS WOULD KNOW WHAT THE COURT-DETERMINED SAFE YIELD IS
27 IN THE BASIN.

28 ONCE THEY HAD THAT POST PHASE THREE, THEY

1 TOOK THAT 110,000-ACRE-FOOT FINDING OF SAFE YIELD USGS
2 DID AND THEN THEY RUN THE MODEL WITH THAT. THEY WENT
3 PUBLIC WITH THEIR MODELING RESULTS AT THE -- IS IT THE
4 ANNUAL OR SEMIANNUAL CONFERENCE OF THE ASSOCIATION OF
5 CALIFORNIA WATER AGENCIES, COMMONLY CALLED AGWA? IT WAS
6 IN MONTEREY.

7 I BELIEVE IT WAS TWO -- SOME OF THEM WERE
8 HERE -- TWO OR THREE YEARS AGO, AND THEY DID A
9 PRESENTATION ON THE USGS MODEL. SOME OF THE ATTORNEYS
10 WHO ARE EVEN PRESENT HERE TODAY AND ON THE PHONE WERE
11 THERE WHEN I WAS THERE. AND SO WE SAW THE USGS GO
12 PUBLICLY.

13 IT'S INTERESTING, IN THE INFORMATION BOOTH
14 THEY -- IN THE CONVENTION HALL THEY HAD A DISPLAY ON THE
15 ANTELOPE VALLEY WITH SPECIFIC REFERENCES TO THE COURT'S
16 110,000-ACRE-FOOT YIELD NUMBER.

17 THE POINT IS THAT, AS EXPLAINED THEN AND
18 HAS BEEN EXPLAINED PUBLICLY, PARTICIPANTS WORKING WITH
19 USGS ON THIS MODEL, THE LOCAL GOVERNMENT ENTITIES HAVE
20 BEEN KNOWN.

21 NOW, FAST FORWARD THIS. WE HAVE
22 RETAINED -- DISTRICT 40 HAD RETAINED DR. WILLIAMS, I
23 BELIEVE IT WAS ABOUT -- I COULD BE OFF -- ABOUT TEN
24 YEARS AGO. HE WAS NOT A PARTICIPANT IN A TECHNICAL
25 COMMITTEE.

26 WE RETAINED HIM FOR THE PURPOSE OF WE COULD
27 LOOK AHEAD IN THE CASE AND REALIZE THAT AT SOME POINT IN
28 TIME WE WOULD NEED THE USE OF THE USGS MODEL FOR --

1 PRIMARYLY FOR PHYSICAL SOLUTION PURPOSES, COMING UP WITH
2 THE MANAGEMENT AREAS OF THE BASIN, WITHOUT GETTING INTO
3 INAPPROPRIATE SETTLEMENT DISCUSSIONS ABOUT -- AND SO
4 DR. WILLIAMS HAS BEEN WORKING OFF AND ON IN THIS CASE
5 FOR SOME TIME.

6 HE WAS NOT -- WE DID NOT PUT HIM ON THE
7 TECHNICAL COMMITTEE SO THAT HE COULD NOT BE PART OF THAT
8 PROCESS BUT WORK INDEPENDENTLY AND LET THE TECHNICAL
9 COMMITTEE SORT OF DEVELOP THE DATA SO THAT HE COULD AT
10 SOME POINT IN TIME LATER TAKE THE DATA THAT WAS
11 PRESENTED IN PHASE THREE AND USE THE USGS MODEL SORT OF
12 A SEPARATE WAY OF SORT OF VALIDATING WHAT THE PHASE
13 THREE EXPERTS HAD DONE.

14 ABOUT TWO, THREE YEARS AGO, WE HAD A
15 MEETING IN THIS CASE, A SETTLEMENT MEETING, WHERE WE
16 WENT PUBLIC WITH THE MODELING WORK THAT WE'VE DONE. SO
17 THE COMMENT THIS MORNING IS THAT WE HAD NO IDEA THAT
18 THERE WOULD BE MODELING TESTIMONY. THAT'S NOT AN
19 ACCURATE STATEMENT.

20 WE HAVE DISCLOSED DR. WILLIAMS NOW FOR
21 SEVERAL YEARS, THE FACT THAT HE'S BEEN DOING MODELING
22 WORK, THE FACT THAT HE'D BE USED FOR BOTH SETTLEMENT
23 PURPOSES AND AGAIN WITHIN THE CASE, PARTICULARLY FOR
24 MANAGEMENT AREAS AND TO MANAGE THE BASIN.

25 AND WE'VE ACTUALLY GONE PUBLIC WITH THAT IN
26 THE CONTEXT OF THIS CASE WHEN WE HAD A MEETING IN -- IT
27 WAS EITHER LANCASTER OR PALMDALE, AT A LARGE TOYOTA
28 DEALERSHIP BECAUSE IT WAS THE ONLY PLACE IN THE ANTELOPE

1 VALLEY WITH A ROOM BIG ENOUGH TO FIT ALL THE ATTORNEYS
2 AND ALL THEIR CLIENTS. AND WE PUT IT UP ON SCREEN AND
3 WE SORT OF TALKED ABOUT IT.

4 NOW, WHY IS THAT IMPORTANT? BECAUSE
5 THERE'S NO ELEMENT OF SURPRISE HERE. WE HAVE BEEN VERY
6 PUBLIC IN TERMS OF HOW YOU WOULD BE PUBLIC IN A CASE
7 LIKE THIS. YOU DON'T JUST SIMPLY FILE EXPERT
8 DESIGNATIONS, WHATEVER. OURS WAS TIMELY DONE. THERE'S
9 NO CLAIM THAT IT WASN'T. BUT SOMEHOW THIS CONCEPT THAT
10 THERE'S SURPRISE HERE OR WE DIDN'T KNOW THIS WAS GOING
11 TO HAPPEN IS JUST -- IT'S TOUGH. IT'S TOUGH.

12 THE COURT: WHEN WAS THE REPORT MADE AVAILABLE TO
13 THE --

14 MR. DUNN: THERE IS NO REPORT. HE DIDN'T DO A
15 REPORT. WE HAVEN'T ASKED ANY OF THE EXPERTS TO DO A
16 REPORT OTHER THAN THE TECHNICAL COMMITTEE FOLKS. SO
17 WHATEVER COMMENT WAS MADE BY COUNSEL THAT SOMEHOW HE DID
18 A REPORT AND IT WAS NOT PUBLISHED, THAT'S NOT TRUE. HE
19 DOESN'T HAVE A REPORT.

20 WHAT HE WAS ASKED TO DO WAS WHAT HE DID.
21 HE WAS DONE TO DO AN INDEPENDENT ANALYSIS OF THE DATA,
22 SEE IF THAT CORROBORATES THE PHASE THREE TRIAL TESTIMONY
23 OF MR. DURBIN, MR. WILDERMUTH, MR. SCALMANINI, AND HE
24 DID THAT. AND HIS INDEPENDENT WORK OF THAT DATA USING
25 THE USGS MODEL AND PLUS HIS OWN EXPERIENCE --

26 THE COURT: WELL, WHAT WAS PROVIDED TO THE OTHER
27 SIDE AT THE TIME OF THE SCHEDULING OF THE DEPOSITION?

28 MR. DUNN: AT THE DAY OF HIS DEPOSITION, HE WALKED

1 INTO THE DEPOSITION ROOM WITH A SMALL UTILITY TRAILER.
2 IT LOOKS -- IF I MAY APPROACH THIS, YOUR HONOR.

3 THE COURT: YES.

4 MR. DUNN: IT'S ABOUT TWICE AS WIDE AS THIS AND
5 MAYBE ABOUT 6 INCHES LONGER (INDICATING). IT WAS FILLED
6 WITH BANKERS BOXES LIKE YOU HAVE IN THE COURT HERE.
7 LITTLE BIT SMALLER THAN THIS. MY RECOLLECTION IS THAT
8 THERE WERE SIX OF THEM. MY RECOLLECTION, FURTHER, IS
9 THAT WE SPENT ABOUT 40 MINUTES WITH MR. MC LACHLAN GOING
10 OVER WITH DR. WILLIAMS, HAVING HIM DESCRIBE WITH
11 MR. MC LACHLAN, TAKING OUT EVERY SINGLE NOTEBOOK, EVERY
12 SINGLE FILE THAT WAS IN THERE, AND IDENTIFYING IT ON THE
13 RECORD.

14 THE DEPOSITION TRANSCRIPT IS LODGED WITH
15 THE COURT THIS MORNING. THIS IS THE DEPOSITION THAT
16 TOOK APPROXIMATELY SEVEN HOURS TO COMPLETE. SO THAT WAS
17 JUST -- HE SAID HE BROUGHT EVERYTHING THAT WAS HIS
18 WRITTEN FILE. HE SAID HE BROUGHT HIS ENTIRE FILE. HE
19 PUT IT ON A CD, A COMPUTER CD, AND THAT WAS PRODUCED AT
20 THE DEPOSITION AS WELL.

21 SO HE BROUGHT -- IN FACT I'VE BEEN, I
22 THINK, TO ALMOST EVERY SINGLE ONE OF THESE DEPOSITIONS,
23 I THINK, WITH THE EXCEPTION OF MAYBE TWO. HE BROUGHT
24 MORE MATERIAL WITH HIM TO HIS DEPOSITION THAN ALL THE
25 OTHER EXPERTS COMBINED, BECAUSE HE'S BEEN WORKING ON
26 THIS FOR A LONG TIME AND HE'S DONE A LOT OF WORK.

27 SO THIS CONCEPT OF SURPRISE IS JUST NOT
28 SIMPLY ACCURATE. WE HAVE -- WE HAVE BEEN TELLING PEOPLE

1 FOR A LONG TIME THAT WE WOULD BE DOING THIS.

2 NOW, LET ME JUST SAY THIS ABOUT THE RETURN
3 FLOW PART OF THIS. IT GETS A LITTLE MUDDLED IN THE
4 CONVERSATION SOMETIMES WITH COUNSEL, AND THAT'S BECAUSE
5 THE MODELING WORK REALLY DOES REQUIRE AN EXPERT TO
6 EXPLAIN IT.

7 BUT WE NEED TO KEEP IN MIND THAT THERE ARE
8 TWO RETURN FLOW COMPONENTS. THERE'S ONE FOR URBAN USE
9 AND THERE'S ONE FOR AGRICULTURAL USE. AND WHAT COUNSEL
10 FOR AGWA WAS TALKING ABOUT A LITTLE BIT EARLIER WITH HOW
11 THE USGS FIRST RAN ITS MODEL REALLY APPLIED MORE TO
12 AGRICULTURAL USE THAN IT DID TO URBAN USE.

13 WHAT THE USGS HAD DONE, IN OUR VIEW AND THE
14 VIEW OF THE EXPERTS ON A TECHNICAL COMMITTEE AND
15 DR. WILLIAMS AS WELL, IS THEY HAD UNDERESTIMATED THE
16 AMOUNT OF AGRICULTURAL PUMPING, AGRICULTURAL PUMPING IN
17 THE BASIN, WHICH HAD UNDERESTIMATED THE AMOUNT OF
18 AGRICULTURE RETURN FLOW.

19 AND SO WHAT WE WERE ABLE TO DO -- AND I
20 STILL HAVE A VIVID RECOLLECTION OF TELLING PEOPLE THIS
21 IN THE TOYOTA MEETING, THAT YOU CAN THANK US LATER, THAT
22 WE'LL TAKE THE USGS MODEL, WE'LL TAKE THE EVIDENCE THAT
23 WAS PRESENTED IN PHASE THREE, AND WE'LL INPUT THAT DATA
24 INTO THE MODEL, BECAUSE THAT WILL GET A MORE ACCURATE
25 RESULT, CANDIDLY FAR MORE BENEFICIAL FOR AGRICULTURE
26 THAN IT EVEN WOULD BE FOR THE URBAN USERS. AND THEN WE
27 WILL HAVE AN ACCURATE AND CALIBRATED MODEL.

28 SO TO MAKE A VERY LONG STORY SHORT, WE DID

1 THAT PROCESS AND MADE DR. WILLIAMS AVAILABLE FOR
2 DEPOSITION AS HE WAS NOTICED.

3 SO, AGAIN, LET'S GO TO HIS DEPOSITION. SO
4 HE BRINGS ALL THAT MATERIAL THERE. HE BRINGS IT ON A
5 CD. THE ONLY THING THAT HE REALLY DOESN'T BRING WITH
6 HIM ARE THE ACTUAL ELECTRONIC FILES, THE INPUT FILES AND
7 HIS OUTPUT FILES FOR RUNNING THE MODEL. THESE ARE
8 COMPUTER FILES.

9 AND SOMEONE SAYS, WELL, WE DIDN'T GET
10 17 GIGABYTES OF DATA. THE REPRESENTATION WAS IT WAS
11 APPROXIMATELY 17 GIGABYTES OF DATA. AND IN FURTHER
12 FOLLOWUP CONVERSATION WITH DR. WILLIAMS, FOLLOWING WHAT
13 WE READ FROM THE AGWA FOLKS, WE THINK THAT THE ATTORNEYS
14 PROBABLY DIDN'T CALCULATE THE NUMBER OF GIGABYTES
15 CORRECTLY. BUT THAT'S NEITHER HERE NOR THERE AT THIS
16 POINT. THE FACT IS THAT HE SHOWED UP.

17 YOU CAN'T -- THESE ARE JUST INPUT/OUTPUT
18 FILES. AND AS HE PATIENTLY EXPLAINED IN HIS DEPOSITION,
19 THERE'S A REFERENCE HERE IN THE AGWA FILING THAT SOMEHOW
20 WE'RE MISSING THESE CALIBRATION RUNS AND DATA. HE
21 EXPLAINED IT OVER AND OVER AGAIN THAT THERE WERE
22 HUNDREDS -- ACTUALLY IT TURNS OUT THERE WERE THOUSANDS
23 OF THESE COMPUTER CYCLE RUNS. THE COMPUTER JUST KEEPS
24 RUNNING THIS PROGRAM AND IT KEEPS CALIBRATING IT. AND
25 THEY DON'T SAVE THOSE FILES, THESE OUTPUT FILES.
26 THEY'RE NOT EVEN ROUGH DRAFTS. THEY'RE JUST THOUSANDS
27 OF CALIBRATION RUNS.

28 I DON'T EVEN KNOW HOW MUCH SPACE IN THIS

1 COURTROOM IT WOULD TAKE IF THEY SOMEHOW KEEP THAT KIND
2 OF DATA, LET ALONE PRINT IT. THEY DON'T KEEP IT. THEY
3 DON'T.

4 SO THE POINT IS THE MODEL WAS DEVELOPED BY
5 THE USGS. IT BELONGS TO THEM. SO AT HIS DEPOSITION, AS
6 WE PATIENTLY EXPLAINED TO FOLKS, I SAID, LOOK, IF YOU
7 REALLY THINK YOU NEED THE INPUT FILES, BECAUSE IF YOU
8 RUN THE INPUT, GUESS WHAT'S GOING TO HAPPEN? YOU'RE
9 GOING TO GET THE SAME OUTPUT AS DR. WILLIAMS WILL. SO
10 LET'S HOLD THAT THOUGHT FOR A MOMENT.

11 BUT IF YOU REALLY NEED IT -- THIS IS AFTER
12 HE'S EXPLAINED ALL OF HIS OPINIONS FOR SEVEN HOURS,
13 EXPLAINED EVERYTHING THAT HE DID. HE EXPLAINED HOW HE
14 DID IT. HE ANSWERED EVERY QUESTION THAT WAS PRESENTED
15 TO THEM. THE COURT CAN READ IT FOR ITSELF IN THE
16 TRANSCRIPT. HE PROVIDED ALL OF THAT.

17 ALL HE NEEDED WERE THE FILES. AND I SAID,
18 LOOK, GIVE US A LITTLE BIT OF TIME TO TALK TO THE GS AND
19 SEE IF WE CAN RELEASE THOSE FILES. THEY'RE JUST --
20 THEY'RE LIKE BITS. THEY'RE LIKE ONES AND ZEROS.
21 THEY'RE NOT PICTURES OF PDFS OR PHOTOS OR THAT. IT'S
22 JUST COMPUTER DATA. AND WHEN YOU PUT THE COMPUTER DATA
23 INTO THE USGS MODEL, YOU GET THE SAME OUTPUT.

24 AND HOW DO WE KNOW THAT? BECAUSE ON
25 THURSDAY WHEN MR. FIFE'S PERSON IN NEW MEXICO GOT -- HE
26 GOT THE FILES ON THURSDAY -- WHAT'S HE SAY IN HIS
27 DECLARATION? HE SAYS HE GOT THEM ON FEBRUARY 6TH BY
28 FEDERAL EXPRESS. THIS IS AFTER SITTING APPARENTLY FOR A

1 WEEK IN MR. FIFE'S OFFICE. BUT THAT'S -- AND ON THE
2 SAME MORNING THAT -- HE GETS IT 3:30 THAT DAY. IT
3 DOESN'T EVEN TAKE HIM HALF A DAY. HE SAYS, I'M ABLE TO
4 RUN ALL FIVE OF THE MODELS.

5 SO THERE'S ONE USGS MODEL RUN, AND THERE'S
6 FOUR THAT WAS DONE BY DR. WILLIAMS. SO IN LESS THAN
7 HALF A DAY HE RUNS ALL FIVE MODELS. AND GUESS WHAT? HE
8 GETS THE SAME RESULTS AS DR. WILLIAMS DOES.

9 I'D LOVE TO SUBPOENA THE MAN, BUT HE'S OUT
10 OF STATE, AND I CAN'T BRING HIM IN TO COURT. SO HE GETS
11 THE SAME RESULT EXCEPT, WHAT HE SAYS HERE IN THE
12 DECLARATION, EXCEPT FOR A SLIGHTLY DIFFERENT RESULT IN A
13 FEW CELLS.

14 THERE ARE 61,000 CELLS IN THIS MODEL. AND
15 IF YOU GET A SLIGHTLY DIFFERENT RESULT IN A FEW CELLS --
16 MY POINT IS IF YOU TAKE THESE FILES -- IT DOESN'T CHANGE
17 HIS OPINION. IF YOU TAKE THESE FILES AND YOU RUN THEM
18 THROUGH THE MODEL, ALL IT'S GOING TO DO IS REINFORCE THE
19 OPINION THAT HE HAS.

20 IT DOESN'T -- I UNDERSTAND THESE ATTORNEYS
21 HAVE LITTLE, IF ANY, EXPERIENCE WITH MODELING. I GET
22 THAT. AND THAT'S WHY WE SPEND HOURS AND HOURS IN THESE
23 DEPOSITIONS GOING THROUGH THESE QUESTIONS. BUT WHAT
24 THEY'RE TRYING TO DO HERE IS CREATE A SITUATION WHICH IS
25 NOT ACCURATE ON THE RECORD OF WHAT HAPPENED IN HIS
26 DEPOSITION. IT DOESN'T CHANGE HIS OPINIONS EITHER WAY.

27 AND CANDIDLY, THE ONLY ONE WHO HAS
28 APPARENTLY RUN THE MODEL WAS MR. FIFE'S PERSON. IF HE

1 HAD JUST PICKED UP THE PHONE AND SAID WE CAN'T FIND SOME
2 OUTPUT FILES, CAN YOU PROVIDE THEM FOR US, WE'D SAY,
3 SURE, OR HERE'S WHERE THEY ARE IN THE COMPUTER DATA THAT
4 WE GAVE YOU, OR WE'LL JUST GIVE IT TO YOU AGAIN,
5 WHATEVER.

6 BUT INSTEAD THEY COME FORWARD AND THEY PLAY
7 THIS GAME AND THEY SAY, WELL, DUE PROCESS WAS VIOLATED,
8 OR 2034 APPLIES HERE. THERE'S NO POSSIBLE INDICATION
9 HERE UNDER 2034. HE APPEARED AT HIS DEPOSITION. HE
10 GAVE HIS OPINIONS. HE EXPLAINED IT ALL.

11 AND WE SAID TO EVERYBODY, LOOK, IF YOU GET
12 THESE FILES AND YOU RUN THEM AND YOU WANT TO DEPOSE HIM
13 AGAIN, WE'RE HAPPY TO MAKE HIM AVAILABLE FOR DEPOSITION.
14 AND NOBODY HAS TAKEN US UP ON THAT OFFER. AND THEY CAN
15 SIT THERE AND THEY CAN ASK HIM QUESTIONS ABOUT THAT. I
16 ALREADY KNOW WHAT THE ANSWERS ARE GOING TO BE. INPUT
17 IN, OUTPUT OUT, YOU'RE GOING TO GET THE SAME RESULT.

18 SO I DON'T REALLY FEEL VERY GOOD ABOUT
19 WHERE WE'RE GOING WITH THIS. THIS APPEARS TO BE SORT OF
20 I-GOT-YOU GAME. THE PROBLEM WHEN WE PLAY THAT GAME IN
21 COURT IS THAT IT THEN HAS TO APPLY TO EVERYBODY. AND SO
22 THAT MEANS THE OTHER EXPERTS WHO DIDN'T SHOW UP WITH
23 THEIR FILES, OR WHO DIDN'T PRODUCE THEM THREE DAYS IN
24 ADVANCE, WHICH IS GOING TO BE EVERY SINGLE OTHER EXPERT,
25 WOULD BE EXCLUDED ON THE SAME GROUNDS.

26 THAT MEANS EVERY OTHER EXPERT WHO TOOK
27 THE -- WHO TESTIFIED IN THEIR DEPOSITION AND SAID, GOSH,
28 I'M NOT FINISHED WITH MY WORK, IT'S GOING TO TAKE ME

1 ANOTHER WEEK OR TWO TO DO IT, YOU'LL HAVE TO COME BACK
2 AND DEPOSE ME AGAIN, LIKE WE DID WITH A COUPLE -- AT
3 LEAST ONE OF THE KEY EXPERTS ON THE OTHER SIDE. WE HAVE
4 THAT PROBLEM TOO.

5 SO I CAN GO PAINSTAKINGLY THROUGH THE
6 CHRONOLOGY HERE, THAT HE WAS DEPOSED; THREE DAYS LATER
7 THE FILES WERE MADE AVAILABLE. NO ONE REALLY ASKED FOR
8 THEM EXCEPT FOR MR. MC LACHLAN. WE SENT THEM TO HIM,
9 AND WE HAVEN'T HEARD ANYTHING FROM HIM SINCE.

10 MR. FIFE ASKED FOR THEM ABOUT A WEEK LATER.
11 BY HIS OWN FILING, THEY SAT IN MR. FIFE'S OFFICE FOR A
12 WEEK. THEY WERE SENT OVERNIGHT MAIL TO MR. UMSTOCK
13 (PHONETIC) IN NEW MEXICO. PRESUMABLY HE GOT THEM IN THE
14 MORNING BY FEDERAL EXPRESS, OR OVERNIGHT DELIVERY. HE
15 RUNS ALL FIVE OF THE MODELS WITHOUT ANY APPARENT
16 DIFFICULTY AND GETS THE SAME RESULTS AS DR. WILLIAMS
17 DOES, AND THEN FILES THIS THING SAYING, WELL, I CAN'T
18 FIND THE CALIBRATION RESULTS.

19 WELL, DR. WILLIAMS TESTIFIED IN HIS
20 DEPOSITION IF SOMEBODY HAD BOTHERED TO SHOW IT TO
21 MR. UMSTOCK, THERE WASN'T ANY RECORD OF THE CALIBRATION
22 RUNS. THEY DON'T KEEP THE HUNDREDS, THOUSANDS OF THESE
23 CALIBRATION RUNS. HE SAID BACK IN HIS DEPOSITION,
24 THEY'RE NOT THERE.

25 IF SOMEBODY COULDN'T FIND THE FILE, YOU
26 PICK UP THE PHONE AND CALL US. BUT INSTEAD WE'RE
27 STANDING HERE THIS MORNING AND WE'RE KEEPING OUT SOME OF
28 THE MOST SIGNIFICANT WORK DONE ON THIS BASIN THAT HAS

1 EVER BEEN DONE, FIRST BY THE GS, THEN A CONSORTIUM WITH
2 THE GOVERNMENTAL ENTITIES, THEN FINALLY ONE OF THE
3 LEADING MODELERS IN THE UNITED STATES, DR. WILLIAMS.

4 AND THE TERRIBLE IRONY OF ALL THIS IS THAT
5 IF WE DIDN'T DO THIS WORK, IF WE DIDN'T DO THIS MODELING
6 WORK AND WE JUST TOOK THE USGS WORK, THERE'S A HIGH RISK
7 THAT SOMEONE -- PROBABLY THE UNITED STATES -- WOULD HAVE
8 WALKED INTO COURT AND SAID LET'S RELITIGATE THE SAFE
9 YIELD BECAUSE THE USGS SHOWS A LOWER AMOUNT OF PUMPING,
10 LOWER AMOUNT OF SAFE YIELD, LOWER RETURN FLOWS.

11 AND I GO BACK TO WHAT WE TOLD THE FOLKS,
12 THE 40, 50 PEOPLE THAT WERE PRESENT THERE, ALL THE
13 LANDOWNER PARTIES THAT COULD PARTICIPATE AND THOSE ON
14 THE PHONE, YOU CAN THANK US LATER THAT WE'RE GOING TO
15 PAY THE MONEY THAT WE DID TO DR. WILLIAMS TO SPEND ALL
16 THIS TIME AND GET THIS MODEL UP AND RUNNING SO WE COULD
17 ALL USE IT.

18 BUT THERE'S NO BASIS TO EXCLUDE HIS
19 TESTIMONY.

20 **THE COURT:** LET ME SEE THE FILING, PLEASE.

21 **MR. DUNN:** YES. (INDICATING.)

22

23 (PAUSE IN THE PROCEEDINGS.)

24

25 **THE COURT:** ALL RIGHT. THANK YOU.

26 **MR. MC LACHLAN.**

27 **MR. MC LACHLAN:** THANK YOU, JUDGE KOMAR. AGAIN,
28 MICHAEL MC LACHLAN FOR RICHARD WOOD IN THE SMALL PUMPER

1 CLASS.

2 AS THE NOTICING PARTY FOR DR. WILLIAMS'
3 DEPOSITION, I REQUESTED, AS I WOULD IN ANY CASE OF ANY
4 EXPERT, THE ENTIRE FILE. IT'S UNDISPUTED THAT
5 DR. WILLIAMS SHOWED UP WITH THE CORE OF HIS FILE, WHICH
6 IS THE MODEL ITSELF, THE INPUT FILES AND THE OUTPUT
7 [SIC]. THAT IS THE TOTALITY OF THE MODEL, WHICH HE DID
8 NOT SHOW UP WITH. THAT IS NOT DISPUTED. IT'S IN HIS
9 DEPOSITION. MR. FIFE HAS FILED THE EXCERPTS. THAT FACT
10 CANNOT BE DISPUTED.

11 THE FACT THAT DR. WILLIAMS SHOWED UP WITH A
12 HANDCART WITH SEVERAL BANKERS BOXES FULL OF MATERIALS
13 THAT HE TESTIFIED ON THE RECORD, ALMOST ALL OF WHICH HE
14 DIDN'T RELY ON -- MOST OF IT IS RELATED TO PHASE THREE.
15 LOTS OF IT WERE BINDERS AND BINDERS OF ARTICLES THAT BB
16 AND K HAD GIVEN HIM. HE TESTIFIED HE DIDN'T READ MOST
17 OF THAT STUFF. HE MIGHT AS WELL HAVE HAD A WHOLE CART
18 FULL OF USED AIRPLANE PARTS.

19 THE VOLUME OF MATERIAL THAT HE PUT ON A
20 CART DOES NOT EQUATE TO HAVING COMPLIED WITH 2034.
21 EVERYBODY UNDERSTANDS THE RULES. THE EXPERT SHOWS UP.
22 THEY'VE GOT TO PRODUCE THE ENTIRETY OF THEIR FILE.

23 I WOULD SAY THAT IF THIS MODEL IS SO
24 IMPORTANT TO THIS CASE AND SO IMPORTANT TO PHASE FIVE,
25 THEN WHY WASN'T IT PRODUCED LONG AGO SO PEOPLE COULD
26 PROPERLY CROSS-EXAMINE HIM?

27 THE POINT OF FACT IS THAT DR. WILLIAMS
28 TESTIFIED HE DID NO BACK-END VALIDATION WORK, AND I

1 WOULD -- I WOULD RESPOND TO MR. DUNN THAT I'VE BEEN
2 INVOLVED IN MANY CASES WITH GROUND WATER MODELING OVER
3 THE YEARS, PRIMARILY SUPERFUND CASES. BUT MODELING WORK
4 IS MODELING WORK. AND MY PRIMARY INTEREST IN HAVING
5 THAT MATERIAL WOULD BE TO HAVE AN EXPERT GO AND DO THAT
6 VALIDATION WORK TO ALTER THE RETURN FLOW PERCENTAGE AND
7 SEE WHAT HAPPENS ON THE BACK END. THAT WORK WAS NOT
8 DONE.

9 AND AS TO WHEN HE PRODUCED THE MATERIALS, I
10 BELIEVE I HEARD CORRECTLY MR. DUNN STATE THAT HE
11 PRODUCED THOSE MATERIALS TO MY OFFICE THREE DAYS AFTER
12 THE DEPOSITION. I THINK MR. DUNN IS HAVING A MOMENT OF
13 MISRECOLLECTION, BECAUSE THE POINT OF FACT IS IT WAS
14 OVER TWO WEEKS.

15 WE HAD FOUGHT TO GET MR. WILLIAMS DEPOSED
16 EARLY IN JANUARY. BEST BEST AND KRIEGER REFUSED TO DO
17 THAT. THEY PRODUCED HIM AT THE LAST MINUTE. AND SO WE
18 ENDED UP WITH ESSENTIALLY TEN DAYS WITH THESE FILES IN
19 HAND, AND I'M NOT EVEN SURE THAT ALL OF THE OUTPUT FILES
20 ARE THERE.

21 AND IT'S -- IT'S AN INSUFFICIENT AMOUNT OF
22 TIME, WHICH IS WHY I MADE THAT EX PARTE MOTION. SO TO
23 THE EXTENT THE COURT IS INCLINED NOT TO EXCLUDE THE
24 EXPERT -- AND I THINK UNDER 2034 THE COURT REALLY HAS NO
25 CHOICE BECAUSE THE LAW SAYS, LOOK, YOU'VE GOT TO DO
26 THIS. DISCOVERY REQUIRES IT; SO IT SHOULD BE EXCLUDED.

27 BUT IF IT SHOULDN'T BE EXCLUDED, THEN MY
28 EX PARTE, WHICH WAS DENIED TEN DAYS OR SO AGO, SHOULD BE

1 TAKEN UP AND APPROPRIATE TIME SHOULD BE GIVEN TO THE
2 PARTIES IN WHICH TO DO THE ANALYSIS WORK AND
3 CROSS-EXAMINE THAT OPINION FULLY BEFORE IT'S TAKEN INTO
4 CONSIDERATION HERE.

5 MY FINAL POINT IS THAT IF -- IF
6 DR. WILLIAMS' TESTIMONY IS SO IMPORTANT AT THIS
7 JUNCTURE, THEN DID WE -- DOES THAT TELL US THAT WE
8 DIDN'T ACTUALLY LITIGATE THIS ISSUE OF RETURN FLOW
9 PERCENTAGE IN PHASE THREE?

10 SO IF WE'VE IN FACT DONE THAT, WHY DID THEY
11 SPEND \$550,000 BUILDING THIS MODEL TO BRING IT IN IN
12 PHASE FIVE AND IT ONLY IS PURPORTED TO ESTABLISH THAT
13 PERCENTAGE? SO IT SEEMS LIKE BB AND K AND HIS CLIENT,
14 WATERWORKS 40, ARE TRYING TO HAVE ITS CAKE AND EAT IT
15 TOO.

16 MR. DUNN: I THINK I SHOULD BE ABLE TO RESPOND TO
17 THAT. THIS ILLUSTRATES THE PROBLEM. COMMENTS BY
18 COUNSEL JUST NOW ILLUSTRATE THE PROBLEM WE'VE BEEN
19 HAVING.

20 LET'S BREAK IT DOWN. HE SAID, WELL,
21 DR. WILLIAMS DIDN'T BRING THE MODEL WITH HIM. THE MODEL
22 IS A SOFTWARE PROGRAM. IT'S A SOFTWARE PROGRAM. IT
23 SITS ON A COMPUTER. WE DON'T BRING SOFTWARE PROGRAMS.
24 WE DON'T -- WHEN WE SHOW UP AT A DEPOSITION, WE DON'T
25 BRING A COPY OF OUTLOOK OR WORD PERFECT OR SOFTWARE
26 PROGRAMS. WE JUST BRING THE DOCUMENT THAT WAS PRINTED
27 OR THE RESULT.

28 AND THIS IS SORT OF THE FUNDAMENTAL PROBLEM

1 THAT WE STILL HAVE. WELL, IT'S A SOFTWARE PROGRAM. AS
2 THE AGWA FILING ON THIS MOTION IN LIMINE MAKES VERY
3 CLEAR, IS THEY JUST DOWNLOADED IT FROM THE USGS WEB
4 SITE. THAT'S WHAT YOU DO. AND WE PROVIDED THAT LINK TO
5 THE COURT IN OUR OPPOSITION TO THE EARLIER MOTION IN
6 LIMINE TO SHOW THAT YOU GO TO THE USGS WEB SITE AND
7 SOMEONE CAN JUST DOWNLOAD IT.

8 NOW, THERE IS NO MISTAKE ON THE CHRONOLOGY.
9 DR. WILLIAMS WAS DEPOSED ON A THURSDAY. WE SAID DURING
10 THE DEPOSITION WE'D GET BACK TO HIM AS SOON AS WE COULD
11 REGARDING THE RELEASE OF THE USGS FILES, AND THAT WE
12 WERE -- FRIDAY, THE NEXT DAY, HAPPENED. MONDAY WAS THE
13 LEGAL HOLIDAY. TUESDAY WAS THE NEXT BUSINESS DAY.

14 ON WEDNESDAY I NOTIFIED A HANDFUL OF
15 PARTIES THAT SHOWED UP AT THE DEPOSITION -- MR. ZIMMER
16 WASN'T THERE -- AND SAID THE FILES ARE AVAILABLE. ONLY
17 MR. MC LACHLAN REQUESTED THEM.

18 WE OVERNIGHT MAILED THEM EITHER THAT DAY OR
19 MAYBE THE NEXT DAY, BUT HE GOT THEM. WE STILL DON'T
20 KNOW WHAT HE'S GOING TO DO WITH THEM. BUT THE POINT IS
21 THERE'S SUCH A MISUNDERSTANDING ON COUNSELS' PART OF
22 WHAT THE MODELING WORK WAS DONE.

23 THE MODELING WORK WAS NOT DONE TO DETERMINE
24 THE RETURN FLOWS. THE MODELING WORK WAS DONE FOR
25 OVERALL MANAGEMENT OF THE BASIN, WHICH MEANS THAT THERE
26 HAS TO BE -- FOR MANAGEMENT PURPOSES AND PHYSICAL
27 SOLUTION PURPOSES, THERE HAS TO BE A DETERMINED SAFE
28 YIELD, WHICH IS WHY WE, AND THEN THE USGS, WAITED FOR

1 THE COURT DETERMINATION OF 110,000 SO WE'D KNOW WHAT
2 THAT IS.

3 AND THEN WE INPUT THE DATA FROM THE PHASE
4 THREE TRIAL THAT GOT US THE 110,000 ACRE-FOOT NUMBER,
5 WHICH IS BOTH THE URBAN AND AGRICULTURAL PRODUCTION AND
6 THEN THE RETURN FLOW COMPONENTS ON THAT.

7 AND THEN WHAT WE WANT TO DO IS WE JUST GAVE
8 IT TO DR. WILLIAMS -- AND THIS CAME OUT IN THE
9 DEPOSITION. THEY WERE SURPRISED THAT WE DIDN'T GIVE HIM
10 MORE DETAILED INSTRUCTIONS -- SAID, LOOK, TELL US IF
11 WE'VE GOT THIS RIGHT. RUN THE MODEL AS SORT OF ANOTHER
12 INDEPENDENT WAY OF LOOKING AT THIS AND SEE IF USING
13 THE -- WHAT THE USGS CALLS THE INTERNATIONAL STANDARD IN
14 GROUND WATER MODELING, THE USGS MOD -- SEE IF THE MOD
15 FLOW MODEL GETS US TO THE SAME PLACE. AND IT DID. AND
16 IT DID.

17 WE ONLY HAVE TO PUT ON DR. WILLIAMS IN THIS
18 CASE BECAUSE WE'VE GOT PEOPLE WANTING TO RELITIGATE THE
19 PHASE THREE RETURN FLOW PERCENTAGES. I CAN'T BRING BACK
20 MR. SCALMANINI. THANK HEAVENS I HAD DR. WILLIAMS
21 AVAILABLE AS AN EXPERT WHO HAD BEEN LOOKING AT THIS WORK
22 FOR SOME TIME, AND WE HAD INVESTED ALL OF THIS IN GROUND
23 WATER MANAGEMENT SO THAT HE IS ABLE, WITH THE MODEL, TO
24 COME IN AND SAY, WELL, YES, WITH MY MODELING WORK I CAN
25 CORROBORATE THE PHASE THREE WORK. I CAN DO THAT.

26 AND THAT'S WHY THEY'RE JUST SCREAMING
27 MURDER. WHERE IN THE CASE -- TELL ME A CASE THAT EXISTS
28 OUT THERE WHERE SOMEHOW A PARTY HAS TO JUST VOLUNTARILY

1 DO AN EXPERT WITNESS DISCLOSURE, I DON'T KNOW, FOUR --
2 THREE, FOUR MONTHS IN ADVANCE OR A YEAR IN ADVANCE AND
3 SAY, HEY, MY EXPERT, WHO YOU ALL KNOW ABOUT -- WE'VE
4 GONE PUBLIC WITH THIS -- HE'S GOING TO HAVE A MODELING
5 EXERCISE.

6 YOU KNOW, THE REALITY IS WE WEREN'T QUITE
7 SURE WHERE WE WERE GOING TO GO WITH THIS PHASE FIVE
8 TRIAL IN TERMS OF WHETHER OR NOT WE'RE GOING TO HAVE TO
9 RELITIGATE THE PHASE FIVE ISSUES. THAT'S WHY
10 DR. WILLIAMS IS AVAILABLE. IF WE DON'T HAVE TO
11 RELITIGATE THIS, THEN HE DOESN'T HAVE TO TESTIFY.

12 BUT BECAUSE WE JUST DIDN'T KNOW, THEN WE'VE
13 GOT TO HAVE HIM AVAILABLE. LIKE I SAID, I CAN'T HAVE
14 MR. SCALMANINI COME IN AND DO IT. I NEED SOMEONE TO
15 COME IN, TAKE THE DATA THAT'S BEEN DEVELOPED, AND
16 SOMEONE WHO'S QUALIFIED TO OFFER AN OPINION ON, SAY,
17 YEAH, THESE PHASE THREE PERCENTAGES WERE CORRECT. AND
18 THAT'S WHAT DR. WILLIAMS HAS DONE.

19 AND I'M GOING TO SAY THIS AGAIN: IF PEOPLE
20 REALLY UNDERSTAND HOW THIS MODELING PROCESS WORKS --
21 THESE ARE ELECTRONIC FILES. YOU PUT THE DATA IN, YOU
22 GET THE SAME RESULT OUT. THAT'S WHAT HAPPENED TO
23 MR. UMSTOCK. THAT'S WHAT WILL HAPPEN TO ANYBODY ELSE
24 WHO RUNS THE MODEL.

25 SO YOU CAN -- WE CAN GO THROUGH THIS
26 EXERCISE OF FINDING ALL SORTS OF PEOPLE TO PUT THE DATA
27 IN. THEY'LL GET THE SAME OUTPUT OUT. IT'S ALWAYS GOING
28 TO SAY THE SAME THING. YOU GET YOUR CALCULATOR, YOU GO

1 ONE PLUS ONE, IT'S GOING TO GIVE YOU TWO. SAME CONCEPT
2 HERE.

3 SO THEN WE'RE KIND OF LEFT WITH, OKAY, NOW
4 WHERE DO YOU PARTIES WANT TO GO WITH THAT? DO YOU NEED
5 TO ASK ANY MORE OPINIONS ABOUT ONE PLUS ONE EQUALS TWO?
6 YOU ALREADY ASKED HIM WHAT HIS OPINIONS ARE. YOU'VE
7 ALREADY ASKED HIM HOW HE GOT TO IT. NOW YOU'RE
8 COMPLAINING HE DIDN'T BRING THE COMPUTER -- I GUESS,
9 LIKE, A COMPUTER INTO THE DEPOSITION WITH SOME SOFTWARE
10 ON IT. AND WHAT WERE YOU GOING TO DO WITH THAT?

11 THE COURT: OKAY. I UNDERSTAND YOUR POINT.

12 MR. DUNN: IT'S JUST --

13 THE COURT: MR. KUHS.

14 MR. KUHS: YES. I HADN'T PLANNED ON ADDRESSING
15 THIS ISSUE, YOUR HONOR, BUT SOME OF THE THINGS THE COURT
16 SAID THIS MORNING I THINK SORT OF SIMPLIFIED THE ISSUE
17 FOR EVERYBODY. AND THAT IS THE COURT'S MADE IT CLEAR
18 IT'S NOT GOING TO RELITIGATE THE SAFE YIELD NUMBER. AND
19 AS I UNDERSTAND IT, MR. WILLIAMS, HIS ONLY PURPOSE IN
20 THIS PHASE OF THE TRIAL IS SIMPLY TO VALIDATE WHAT THE
21 OTHER THREE EXPERTS HAVE ALREADY TESTIFIED TO.

22 AND SO I THINK, ONE, IT'S PROBABLY
23 IRRELEVANT GIVEN THE COURT'S RULINGS, AND, TWO,
24 CERTAINLY UNDER 352 IT WOULD BE AN UNDUE CONSUMPTION OF
25 TIME.

26 NOW, THEY MAY HAVE A REASON TO CALL
27 MR. WILLIAMS IN REBUTTAL, BUT IF ALL HE'S GOING TO DO ON
28 DIRECT IS SAY, YEAH, MR. SCALMANINI GOT IT RIGHT, WE

1 DON'T NEED TO GO THERE.

2 THE COURT: MR. ZIMMER.

3 MR. ZIMMER: THANK YOU, YOUR HONOR. FIRST LET ME
4 ADDRESS THE COMMENT OF MR. DUNN THAT THIS MODEL WAS NOT
5 NEW TO THE CASE. THAT'S SIMPLY INACCURATE, AND GROSSLY
6 INACCURATE. MR. DUNN GENERALLY DOES NOT LIKE TO TALK
7 ABOUT THE SETTLEMENT MEETING, BUT I WAS AT THAT MEETING.

8 AND AT THAT MEETING, IT WAS AT A TOYOTA
9 DEALERSHIP, AND THEY SAID THAT THE USGS HAD DONE THIS
10 MODEL AND WE SHOULD ALL LOOK AT THIS MODEL. AND WE
11 ASKED FOR A COPY OF THE MODEL, AND THEY REFUSED TO
12 PROVIDE US WITH A COPY OF THAT MODEL.

13 THE FACT OF THE MATTER IS THAT THAT MODEL
14 CHANGED BY MR. WILLIAMS WAS NEVER PRODUCED TILL AFTER
15 THE DEPOSITION AND CERTAINLY WASN'T PRODUCED AT THE
16 DEPOSITION, BASED ON THE COMMENTS OF THE PEOPLE THAT
17 WERE THERE.

18 BUT YOU DON'T -- WHEN THEY SAY THIS GUY --
19 THE USGS IS WORKING ON A MODEL, THEY REFUSE TO PRODUCE
20 THE MODEL, THAT MODEL WAS NOT PART OF THE CASE. IT'S
21 NEVER BEEN PART OF THE CASE.

22 AND FROM WHAT WE HEARD, THE MODEL DIDN'T
23 CALIBRATE. IT DIDN'T WORK. THEY HAD TO DO IT -- IT
24 SOUNDS LIKE NOW WHAT THEY DID WAS THEY TOOK WILLIAMS AND
25 ADJUSTED NUMBERS IN THE USGS MODEL TO IN FACT CHANGE IT
26 FROM WHAT IT WAS.

27 AND IT'S -- THE DEPOSITION -- THE EXPERT
28 DESIGNATION CAME OUT. THE EXPERT DESIGNATION SAID

1 NOTHING ABOUT THIS GENTLEMAN DOING A MODEL. I LOOKED AT
2 THE EXPERT DESIGNATION. I SAID, OKAY, THEY'RE RELYING
3 ON WHAT THEY WERE RELYING ON FROM THE LAST PHASE.
4 THEY'RE JUST HAVING WILLIAMS COME IN AND RESTATE WHAT
5 SCALMANINI HAD DONE AND SOMEBODY ELSE, HAVE HIM GIVE AN
6 OPINION ON THAT. NO MENTION OF A MODEL WHATSOEVER.

7 THEY DID NOT COMPLY WITH THE CODE. I MEAN,
8 YOU'RE TELLING ME THAT -- THEY SET THE DEPOSITION AT THE
9 VERY LAST MOMENT -- MR. MC LACHLAN IS CORRECT, AT THE
10 VERY LAST MOMENT -- SO THAT THERE WOULD BE THE LEAST
11 AMOUNT OF TIME TO LOOK AT THAT MODEL. THEY DON'T
12 MENTION IT IN THE DESIGNATION. THEY DON'T FILE A
13 REPORT.

14 YOU'RE TELLING ME THE GUY DID A MODEL AND
15 PREPARED NO REPORT WHATSOEVER ON A COMPLICATED MODEL?
16 AND IT WAS CLEARLY, IT WAS CLEARLY DONE SO THAT NOBODY
17 COULD TAKE A LOOK AT THE MODEL.

18 THIS COURT KNOWS FROM SANTA MARIA THAT
19 THERE WAS A MODEL THAT SOMEBODY TRIED TO PRODUCE AT THE
20 LAST MOMENT. THE COURT KNOWS THAT THEY WENT THROUGH ALL
21 SORTS OF EXAMINATIONS OF THE MODEL, AND THE COURT KNOWS
22 HOW COMPLICATED THAT WAS. THE COURT KNOWS THAT THE
23 PARTIES HAD TO BE ABLE TO LOOK AT THAT MODEL CRITICALLY
24 WITH AN EXPERT TO EVALUATE WHETHER THE MODEL WAS
25 ACCURATE OR SOMETHING THAT SHOULD BE RELIED ON BY THE
26 COURT.

27 MR. DUNN JUST SAID THAT THE MODEL WASN'T
28 DONE FOR -- TO DETERMINE RETURN FLOWS. IT WAS DONE FOR

1 MANAGEMENT. IF IT WAS DONE FOR MANAGEMENT, THAT CAN
2 WAIT UNTIL THE MANAGEMENT PHASE, AND WE CAN ALL GET A
3 CHANCE TO DEPOSE THIS INDIVIDUAL ON THAT MODEL AS TO
4 MANAGEMENT.

5 BUT THE BOTTOM LINE HERE IS THERE -- IT
6 WASN'T PART OF THE CASE. IT WAS NEVER PART OF THE CASE.
7 IT WASN'T PRODUCED UNTIL A WEEK AFTER THE DEPOSITION OR
8 SO. THERE WASN'T COMPLIANCE WITH THE CODE OF CIVIL
9 PROCEDURE IN TERMS OF PROVIDING ANY REPORTS OR WRITINGS.

10 AND IF THEY INTENTIONALLY TOLD YOU NOT TO
11 PREPARE ANY REPORTS AND WRITINGS -- AND THE MODEL ITSELF
12 SHOULD HAVE BEEN PRODUCED AS A REPORT OR WRITING UNDER
13 2025. AND THEN THEY DIDN'T EVEN COMPLY WITH THE COURT'S
14 ORDER ON THAT. AND THEY DIDN'T COMPLY WITH THE COURT'S
15 ORDER AGAIN THREE DAYS IN ADVANCE.

16 THE COURT: WELL, THE MODEL IS SOFTWARE.

17 MR. ZIMMER: THE MODEL IS SOFTWARE.

18 THE COURT: IT'S ELECTRONIC.

19 MR. ZIMMER: BUT YOU CAN'T RUN IT IF YOU DON'T
20 HAVE IT.

21 THE COURT: WELL, HE BROUGHT THE CDS, DIDN'T HE?

22 MR. MC LACHLAN: NO, NO. OKAY. SO THERE'S SOME
23 CONFUSION HERE. THE MODEL IS COMPRISED OF A MOD FLOW
24 SOFTWARE. IT'S A STANDARD SOFTWARE USGS USES, AND IT
25 COULD BE USED BASIN TO BASIN. OKAY. IT'S LIKE ANY
26 PIECE OF SOFTWARE. WORD -- MICROSOFT WORD; RIGHT? YOU
27 OPEN MICROSOFT WORD. THERE'S NOTHING IN THERE IN TERMS
28 OF CONTENT.

1 THE ACTUAL MODEL FOR THIS BASIN IS A LARGE
2 SET OF DATA. THAT DATA GOES INTO THE BASE MODEL MOD
3 FLOW SOFTWARE. SO YOU'VE GOT TO HAVE THOSE DATA INPUT
4 FILES IN ORDER TO ACTUALLY RUN THE MODEL FOR THE
5 ANTELOPE VALLEY, AND THAT GIVES YOU THE OUTPUT FILES.

6 **THE COURT:** WELL, I UNDERSTAND THAT --

7 **MR. MC LACHLAN:** RIGHT.

8 **THE COURT:** BUT -- I UNDERSTAND WHAT THE MOD FLOW
9 MODEL IS GENERALLY. I'VE HEARD TESTIMONY ABOUT IT IN
10 THE PAST, BUT I'M WONDERING WHAT IT WAS THAT YOU WANTED
11 HIM TO BRING, PHYSICALLY TO BRING AT THE TIME OF THE
12 DEPOSITION.

13 **MR. MC LACHLAN:** THE INPUT AND OUTPUT FILES WHICH
14 ARE UNIQUE TO THE ANTELOPE VALLEY, AND THOSE HAD BEEN
15 PROPRIETARY --

16 **THE COURT:** WELL, WHAT DATA HE USED, IS THAT WHAT
17 YOU'RE SAYING?

18 **MR. MC LACHLAN:** RIGHT, EXACTLY. THE INPUT FILES.
19 AND THE OUTPUT FILES.

20 **THE COURT:** OKAY. NOW, THAT ULTIMATELY WENT TO
21 MR. UMSTOCK?

22 **MR. MC LACHLAN:** I DON'T KNOW. I -- HE'S NOT MY
23 EXPERT.

24 **THE COURT:** IS THAT RIGHT?

25 **MR. FIFE:** YES, YOUR HONOR. WE DID RECEIVE THIS
26 EVENTUALLY. AND, YOU KNOW, MR. DUNN COMMENTS ON THE
27 CHRONOLOGY THERE. THE E-MAIL EXCHANGE IS INCLUDED AS
28 EXHIBIT 5 TO THEIR OPPOSITION. YOU COULD SEE --

1 **THE COURT:** WHAT DOES HE NEED BEYOND WHAT HE GOT?

2 **MR. FIFE:** WELL, I DON'T KNOW. THAT'S ONE OF THE
3 POINTS, IS THAT HE GOT IT. HE EVENTUALLY GOT THE MODEL.
4 WE GOT IT TO HIM LATE LAST WEEK. THE -- WHAT WE GOT HAS
5 4 GIGABITS OF DATA LESS THAN WHAT THEY SAY THEY HAVE.
6 SO WE FIRST NEED TO WORK THAT OUT. AND YOU'VE HEARD
7 COMMENTARY ON THAT, THAT, OH, WE THINK THEY
8 MISCALCULATED OR SOMETHING LIKE THAT. WE NEED TO FIGURE
9 OUT WHAT THEY HAVE FIRST, FIND OUT WHETHER WE'VE GOT
10 EVERYTHING, AND THEN START LOOKING AT IT.

11 SO IT'S -- IT'S A PROCESS OF ANALYSIS.
12 IT'S NOT JUST YOU'VE GOT IT, NOW YOU'RE READY.

13 **THE COURT:** IT'S NOT GOING TO DO YOU ANY GOOD.
14 IT'S GOING TO DO YOUR EXPERT SOME GOOD.

15 **MR. FIFE:** CORRECT.

16 **THE COURT:** I MEAN, YOU'RE NOT A COMPUTER EXPERT
17 IN THAT REGARD; RIGHT?

18 **MR. FIFE:** NOT EVEN CLOSE.

19 **THE COURT:** NOR AM I. SO THE QUESTION THAT I HAVE
20 IS THIS: IT'S BEEN HOW LONG SINCE HE'S HAD THIS
21 INFORMATION?

22 **MR. FIFE:** ONE WORKING DAY.

23 **MR. DUNN:** HE HAD IT THURSDAY.

24 **MR. FIFE:** WELL, HE GOT IT ON THURSDAY. OKAY, TWO
25 WORKING DAYS.

26 **THE COURT:** WELL, WHEN DID YOU GET IT?

27 **MR. FIFE:** I GOT IT FRIDAY BEFORE LAST. AND WE
28 HAD OUR --

1 **THE COURT:** SO WHEN WAS THAT, THE 31ST?

2 **MR. FIFE:** YES, I THINK THE 31ST. WE GOT IT
3 FRIDAY.

4 **THE COURT:** SO ABOUT TEN DAYS AGO.

5 **MR. FIFE:** THE FOLLOWING MONDAY WE HAD OUR I.T.
6 PEOPLE DEAL WITH IT. THEY HAD TO COPY IT.

7 YOU KNOW, IT'S AN INTERESTING THING ABOUT
8 THE SEQUENCE. THEY JUSTIFY NOT BRINGING IT TO THE
9 DEPOSITION BECAUSE IT'S SO DIFFICULT TO COPY AND MANAGE,
10 BUT THEN WHEN THEY GIVE IT TO ME ON A FRIDAY, IF IT
11 TAKES FOUR BUSINESS DAYS TO GET IT TO NEW MEXICO, WELL,
12 THAT'S COMPLETELY UNREASONABLE. YOU KNOW, IT'S --

13 **THE COURT:** MR. FIFE, NOTHING'S EASY IN THIS
14 WORLD.

15 **MR. FIFE:** OKAY. I JUST WANT TO MAKE ONE POINT,
16 THOUGH.

17 **THE COURT:** WELL, BEFORE YOU MAKE YOUR POINT, LET
18 ME ASK THIS: WHAT HAVE YOU DONE, SINCE MR. UMSTOCK GOT
19 IT AND MADE THE REQUEST THAT HE NEEDED MORE INFORMATION,
20 TO GET THAT INFORMATION FOR HIM?

21 **MR. FIFE:** WELL, IT'S IN THE WEEKEND. WE -- WE
22 DID NOT DO ANYTHING ON SATURDAY AND SUNDAY.

23 **THE COURT:** OKAY. WHAT ARE YOU GOING TO DO TODAY
24 TO GET THAT INFORMATION? BECAUSE CLEARLY YOU WANT IT.

25 **MR. FIFE:** YES.

26 **THE COURT:** RIGHT?

27 **MR. FIFE:** SO I'D LIKE TO -- I'D LIKE TO GET AN
28 ANSWER FROM THEM AS TO WHAT I WAS SUPPOSED TO HAVE

1 RECEIVED. IF I ONLY GOT 13 AND A HALF GIGABITS OF
2 INFORMATION, IT SOUNDS LIKE THEY THINK MAYBE I DIDN'T
3 GET SOMETHING.

4 **THE COURT:** IT SOUNDS LIKE DR. WILLIAMS IS
5 PROBABLY THE PERSON THAT CAN ANSWER THAT QUESTION.

6 **MR. FIFE:** AND THAT'S THE -- AND THAT'S THE
7 QUESTION, THOUGH. YOU SEE FROM THE PAPERS WE FILED, OUR
8 RESPONSE TO THEIR OPPOSITION, WHERE WE PROVIDED PARTS OF
9 THE TRANSCRIPT, IT WAS MR. SCALMANINI THAT DID THE WORK
10 THAT'S MOST RELEVANT; SO I DON'T EVEN KNOW THAT IT'S
11 DR. WILLIAMS I NEED TO TALK TO.

12 **THE COURT:** IT IS DR. WILLIAMS YOU NEED TO TALK TO
13 BECAUSE IT'S HIS OPINION THAT IS BEING EXPRESSED AS A
14 RESULT OF HIS UTILIZATION AND DATA INTO THE MACHINE.

15 **MR. FIFE:** BUT AS HE TESTIFIED, HE DIDN'T DO
16 ANYTHING WITH THAT DATA. MR. SCALMANINI DID SOMETHING
17 AND GAVE IT TO HIM, AND HE DIDN'T QUESTION IT. HE
18 DIDN'T EVEN LOOK AT IT. HE JUST USED IT.

19 **THE COURT:** HE HAS A RIGHT TO DO THAT, I SUPPOSE.

20 HERE'S WHAT I AM THINKING: FIRST OF ALL,
21 IF I UNDERSTAND CORRECTLY, MR. DUNN, YOUR UTILIZATION IS
22 BASICALLY DEFENSIVE OF DR. WILLIAMS.

23 **MR. DUNN:** THAT'S CORRECT, YOUR HONOR.

24 **THE COURT:** OKAY. SO YOU DON'T NEED IT IN THE
25 FIRST INSTANCE.

26 **MR. DUNN:** THAT'S CORRECT. OUR -- OUR EXPECTATION
27 HAS BEEN THAT IN THIS PHASE FIVE TRIAL ON RETURN FLOWS
28 WE WOULD DETERMINE THE RIGHT TO RETURN FLOWS, NOT REDO

1 THE EVIDENCE THAT WAS DONE IN PHASE THREE AS TO THE
2 AMOUNT. THAT'S OUR POSITION.

3 **THE COURT:** AND YOU'RE ASKING THE COURT TO
4 CONSIDER THE DETERMINATION THAT WAS MADE AS TO RETURN
5 FLOW PERCENTAGES THAT THE COURT HEARD IN THE FIRST -- IN
6 THE THIRD PHASE OF THE TRIAL.

7 **MR. DUNN:** YES, YOUR HONOR.

8 **THE COURT:** ALL RIGHT. ALL RIGHT. THAT MEANS
9 YOU'RE GOING TO GO FORWARD WITH THE EVIDENCE. AS I'VE
10 INDICATED, YOU HAVE THE BURDEN OF PROOF. YOU'RE GOING
11 TO PRESENT THAT EVIDENCE --

12 **MR. DUNN:** YES.

13 **THE COURT:** -- WHEN WE REACH THAT POINT, AND I
14 PRESUME THAT'S GOING TO BE NEXT TUESDAY.

15 **MR. DUNN:** YES, YOUR HONOR.

16 **THE COURT:** HOPEFULLY WE'LL GET THERE.

17 IN THE MEANTIME, MR. FIFE AND
18 MR. MC LACHLAN, I WANT YOU TO ADVISE MR. DUNN OF
19 SPECIFICALLY WHAT YOU WANT -- AND THAT GOES FOR YOU TOO,
20 MR. ZIMMER -- WHAT YOU WANT WITH REGARD TO DR. WILLIAMS
21 IN THE EVENT HE IS CALLED TO TESTIFY. HE MAY OR MAY NOT
22 BE CALLED TO TESTIFY. I DON'T KNOW AT THIS POINT.

23 BUT I'M NOT GOING TO MAKE AN ORDER THAT HE
24 BE EXCLUDED. IT SOUNDS LIKE HE MAY BE A REBUTTAL
25 TESTIMONY WITNESS AT THIS POINT, AND WE'LL EVALUATE THAT
26 WHEN WE REACH THAT POINT. I'M GOING TO TAKE YOUR
27 REQUEST TO STRIKE HIS TESTIMONY OR TO EXCLUDE IT UNDER
28 SUBMISSION.

1 SO AT THIS POINT, MR. DUNN, YOU NEED TO BE
2 RESPONSIVE TO REQUESTS THAT THEY MAY MAKE FOR WHATEVER
3 DATA THAT THEY NEED TO HAVE IN ORDER TO GIVE IT TO THEIR
4 EXPERTS IN ORDER TO GET THEM PREPARED.

5 AND IN THE EVENT, FOR EXAMPLE, THAT YOU
6 DECIDE THAT YOU WANT TO CALL HIM IN REBUTTAL, AND
7 ASSUMING FOR A MOMENT THAT THE COURT'S GOING TO PERMIT
8 YOU TO DO THAT, IT MAY WELL BE THAT WE'RE GOING TO HAVE
9 TO PUT OVER HIS CROSS-EXAMINATION AND/OR OTHER WITNESSES
10 IN OPPOSITION TO HIS TESTIMONY TO ANOTHER DAY.

11 **MR. DUNN:** OF COURSE.

12 **THE COURT:** BUT I DON'T WANT TO STOP THIS PROCESS.
13 I WANT TO GO FORWARD AS WE'RE GOING. WE'LL HEAR THE
14 FEDERAL RESERVE RIGHT ISSUES, WE'RE GOING TO HEAR SOME
15 OTHER ISSUES CONCERNING RETURN FLOWS FROM OTHER PARTIES,
16 AND WE'RE GOING TO HEAR THE RETURN FLOW CLAIMS FROM THE
17 PUBLIC WATER COMMISSIONERS. AND PHELAN, LIKEWISE,
18 ISSUES WILL BE HEARD. SO THAT'S THE ORDER THAT I'M
19 GOING TO MAKE AT THIS POINT.

20 IT'S BEEN TWO HOURS NOW. I THINK WE SHOULD
21 TAKE A BREAK AT SOME POINT.

22 **MR. ZIMMER:** JUST AS A MATTER OF HOUSEKEEPING,
23 YOUR HONOR, I THINK MR. DUNN PROVIDED SOMETHING TO MADAM
24 CLERK IN TERMS OF THE PORTIONS OF TESTIMONY THEY WANT TO
25 RELY ON.

26 MR. DUNN, CAN WE GET A COPY OF THAT,
27 PLEASE?

28 **THE COURT:** WHAT HE JUST HANDED TO THE CLERK, AND

1 WHICH I SAW, IS WHAT HE POSTED ON FRIDAY. AND YOU'RE
2 WELCOME TO TAKE A LOOK AT THAT, BUT IT IS POSTED.

3 MR. DUNN: RIGHT.

4 THE COURT: IT'S MR. KUHS'S, ACTUALLY.

5 MR. KUHS: I THINK MR. ZIMMER, YOUR HONOR, IS
6 REFERRING TO THE BINDER OF EXHIBITS.

7 THE CLERK: (SPOKE SOTTO VOCE.)

8 THE COURT: WHAT'S THIS?

9 MR. DUNN: THAT'S AS ORDERED PREVIOUSLY BY THE
10 COURT.

11 THE COURT: THIS IS THE EARLIER TESTIMONY.

12 MR. DUNN: THE PRINTOUT.

13 THE COURT: I WAS LOOKING FOR THAT.

14 MR. ZIMMER: I THINK THAT WAS WHAT MR. KUHS AND I
15 WERE REQUESTING A COPY OF.

16 MR. KUHS: YES. WE'D LIKE, I GUESS, AT LEAST ONE
17 COPY FOR THE LANDOWNER GROUP SO THAT WE KNOW WHAT HAS
18 BEEN SUBMITTED TO THE COURT AND WE'VE GOTTEN THE CORRECT
19 COPY.

20 THE COURT: WELL, IT'S IDENTIFIED IN HIS PREVIOUS
21 REQUEST FOR JUDICIAL NOTICE THAT WAS FIRST FILED IN
22 MARCH, I THINK.

23 MR. DUNN: SOMETIME LAST YEAR, YES.

24 THE COURT: AND THEN THERE WAS -- IT WAS A
25 REITERATION OF THAT FILED IN JANUARY?

26 MR. ZIMMER: IT WAS A REQUEST AND SUPPLEMENTAL
27 REQUEST. I THINK IF WE COULD JUST BORROW THAT AND TAKE
28 IT TO KINKOS AND COPY IT. WE'RE NOT GOING TO ALTER IT,