

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2
3 FOR THE COUNTY OF LOS ANGELES

4
5 DEPARTMENT NO. 1 HON. JACK KOMAR, JUDGE

6 COORDINATION PROCEEDINGS
7 SPECIAL,

8
9 ANTELOPE VALLEY GROUNDWATER.) SUPERIOR COURT
JCCP4408

10
11 MONDAY, MARCH 23, 2010

12 APPEARANCES:

13 FOR PLAINTIFF: RALPH KALFAYAN
MICHAEL MCLACHLAN
ATTORNEYS AT LAW

14
15 FOR THE DEFENDANT: THOMAS BUNN, BRADLEY WEEKS,
IN PERSON JAMES DUBOIS, WARREN WELLEN,
STEPHANIE HEDLUND
ATTORNEYS AT LAW

17
18 BY COURT CALL: KEITH LEMIEUX, MICHAEL CROW,
STEPHEN SIPTROTH, ROBERT KUHS,
19 BOB JOYCE, BRADLEY HERREMA,
CHRIS SANDERS, MALISSA MCKEITH,
20 ANNA MILLER, JOHN UKKESTAD,
KARA GERMANE, JEFF DUNN,
21 MICHAEL DAVIS, EDWARD RENWICK,
RICHARD ZIMMER, RICHARD WOOD,
22 MICHAEL FIFE, JANET GOLDSMITH,
SUSAN TRAGER, TAQMMY JONES,
23 WILLIAM SLOAN, SCOTT KUNEY.
ATTORNEYS AT LAW

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26 CHARLES KUHN, CSR# 7810
OFFICIAL REPORTER
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CASE NAME: ANTELOPE VALLEY GROUDWATER
CASE NUMBER JCCP4408
LOS ANGELES, CA MONDAY, MARCH 23, 2010
DEPARTMENT NO. 1 JACK KOMAR, JUDGE
COURT REPORTER: CHARLES KUHN, CSR 7810
APPEARANCES: (AS NOTED ON TITLE PAGE.)

THE COURT: GOOD MORNING, EVERYBODY, THIS IS
THE TIME SET FOR A FURTHER CASE MANAGEMENT CONFERENCE.
WITH REGARD TO THE TRIAL SETTING OF THIS
MATTER, IT WAS SET FOR TRIAL ON SEPTEMBER 27TH. THERE
WAS AN ESTIMATE OF TIME OF APPROXIMATELY TEN DAYS. I
READ SOME CASE MANAGEMENT STATEMENTS THAT SAY IT'S
LONGER THAN THAT. WE CAN ACCOMMODATE WHATEVER TIME IS
NEEDED GIVEN A START DATE OF SEPTEMBER 27TH.

THERE IS A QUESTION IN MY MIND, THERE HAS
BEEN A LOT OF DISCUSSION CONCERNING WHETHER OR NOT ALL
THE PARTIES WHO NEED TO BE PARTIES IN THIS MATTER HAVE
BEEN SERVED. AND THERE ARE SOME INDICATIONS THAT THERE
HAVE BEEN SOME OTHER PARTIES WHO MAY HAVE ACQUIRED
INTEREST IN LAND THAT WOULD REQUIRE THAT THEY BE
SERVED, ALTHOUGH, I'M NOT CERTAIN THAT IS THE CASE.

THE QUESTION THAT I WANT TO ASK IS FIRST,
MR. DUNN, HAVE YOU FILED A PROOF OF SERVICE AS TO ALL
THE PARTIES THAT HAVE BEEN SERVED? AND I'M NOT TALKING
ABOUT THE CLASS MEMBERS WHO HAVE BEEN SERVED, VERY
OFTEN IN TWO WAYS, ONE BY PUBLICATION; AND SECONDLY,

1 BECAUSE THERE WAS A NOTICE PUBLISHED AS WELL BY MAIL.

2 MR. DUNN: THIS IS MR. DUNN. OVER THE COURSE
3 OF THESE MANY YEARS OF SERVICE OF PROCESS, WE HAVE BEEN
4 FILING DOCUMENTS WITH THE COURT FROM TIME TO TIME
5 SHOWING THE PARTIES COMING IN AS DOE AMENDMENTS FOR A
6 PARTICULAR DOE AMENDMENT. I DON'T KNOW IN THIS CASE IF
7 THERE HAS BEEN A SINGLE PROOF OF SERVICE FILED AND AS I
8 SIT HERE TODAY I'M NOT SURE HOW MANY PROOFS OF SERVICE
9 HAVE BEEN FILED IN THIS CASE.

10 IF WE ARE LOOKING FOR SOME TYPE OF
11 OVERALL PROOF OF SERVICE THAT WE CAN PROVIDE, I DO KNOW
12 THAT OVER TIME WE PROVIDED DECLARATIONS TO THE COURT,
13 THE COURT'S REQUEST REGARDING THE STATUS OF
14 SERVICE.

15 THE COURT: WELL, I HAVE RECEIVED THAT. I ALSO
16 RECEIVED A RECENT PROOF OF SERVICE OR AFFIDAVIT
17 DECLARATION SIGNED BY YOU OR SOMEBODY IN YOUR OFFICE
18 INDICATING WHO HAS BEEN SERVED AND WHO HAS NOT AND YOU
19 HAVE GIVEN ME SOME NUMBERS.

20 HERE IS WHAT I'M CONCERNED ABOUT,
21 MR. DUNN, I'M CONCERNED THAT WHEN THE COURT ULTIMATELY
22 RENDERS A JUDGMENT, WHATEVER THAT JUDGMENT MAY BE, THAT
23 THE PARTIES WHO HAVE BEEN SERVED, THERE IS EVIDENCE
24 THAT THEY HAVE BEEN SERVED AND THAT THE SUMMONS HAS
25 BEEN RETURNED, ESSENTIALLY.

26 AND CERTAINLY WITH THOSE PARTIES WHO HAVE
27 FILED AN ANSWER, THAT IS NOT A PROBLEM. WITH THOSE
28 PARTIES WHO HAVE FILED THE COURT FORM INDICATING THAT

1 THEY HAVE CHOSEN NOT TO PARTICIPATE AND WILL ADVISE THE
2 COURT IF THEY CHANGE THEIR MIND, BOTH PARTIES ARE
3 OBVIOUSLY WITHIN THE JURISDICTION OF THE COURT.

4 SO IF THERE ARE ANY WHO HAVE NOT ANSWERED
5 WHO HAVE BEEN SERVED AGAINST WHOM YOU WISH TO TAKE A
6 DEFAULT THEN I THINK THAT THERE HAS TO BE PROOF OF
7 SERVICE AS TO THOSE PARTIES.

8 MR. DUNN: THIS IS MR. DUNN. YES, YOUR HONOR,
9 WE WILL PREPARE AN OVERALL PROOF OF SERVICE AND SUBMIT
10 THAT TO THE COURT BY THE END OF THIS WEEK.

11 THE COURT: THERE ARE MANY PARTIES WHO HAVE
12 AGREED TO STANDBY. AND OBVIOUSLY, THEY HAVE FILED A
13 PAPER AND THOSE PAPERS CONFER JURISDICTION ON THE
14 COURT.

15 IN ANY EVENT, THEY ARE NOT THE CLASS
16 MEMBERS I'M NOT WORRIED ABOUT. I AM CONCERNED ABOUT
17 ANYONE WHO HAS NOT ANSWERED OR OTHERWISE RESPONDED AND
18 THEN WE HAVE A COUPLE HUNDRED OF THOSE PEOPLE THAT, I
19 THINK IT'S A COUPLE HUNDRED, I'M NOT SURE NOW, WHO ARE
20 BEING SERVED BY PUBLICATION AFTER THEY HAVE OPTED OUT
21 OF THE CLASSES. AND HE HAS NOT BEEN ABLE TO FIND THEM
22 WITH THOSE AND WE NEED A PROOF OF SERVICE.

23 MR. DUNN: YES, YOUR HONOR.

24 THE COURT: OKAY.

25 MR. KUNEY: YOUR HONOR, IF I MAY, THIS IS SCOTT
26 KUNEY. MAY I SPEAK TO THIS ISSUE OF SERVICE OF
27 PROCESS?

28 THE COURT: YOU MAY.

1 MR. KUNEY: AND I CERTAINLY APPRECIATE YOUR
2 OBSERVATION THAT THIS IS A VITAL ELEMENT OF US GOING
3 FORWARD. YOU HAVE SAID SEVERAL TIMES THAT BEFORE WE GO
4 FORWARD TO THE NEXT PHASE OF TRIAL WE HAVE TO HAVE ALL
5 OF THOSE WATER RIGHT CLAIMANTS THAT WOULD BE ADJUDGED
6 BEFORE THE COURT AND WE CHARACTERIZE THEM, I THINK
7 PROPERLY, AS UNDEFENSIBLE PARTIES IN THIS ACTION.

8 THIS FRIDAY WHEN WE RECEIVED MR. DUNN'S
9 MOST RECENT DECLARATION, HE SAID IN THE SECOND
10 PARAGRAPH THAT SERVICE IS INCOMPLETE. I HAD MY
11 PARALEGAL SPEND A LITTLE TIME ON THIS EARLY AND LATE IN
12 THE AFTERNOON AND IN THE COURSE OF THAT WE CAME UP
13 WITH, JUST AS AN EXAMPLE OF WHAT WE KNOW TO BE THE
14 CASE, JUST BROADLY, AND THESE ARE EXAMPLES IN KERN
15 COUNTY ONLY AND THAT IS WHERE WE ARE RESIDENTS AND THAT
16 IS WHERE WE CAN EASILY GET ACCESS.

17 SO I HAVE THEM ON MY DESK HERE THIS
18 MORNING AND THERE ARE SEVERAL DEEDS THAT INDICATE THAT
19 IN FACT WHAT WE HAVE GOING HERE IS THIS PROBLEM OF
20 SUCCESSIVE OWNERSHIP. AND THAT WE HAVE MULTIPLE
21 OWNERS, LAND MANAGERS HOLDING WATER RIGHTS THAT ARE NOT
22 BEFORE THE COURT. AND I'LL GIVE YOU AN EXAMPLE THAT I
23 HAVE HERE THIS MORNING.

24 THIS IS A DEED THAT WAS RECORDED ON THE
25 27TH OF OCTOBER, 2009, IN FAVOR OF A NEW ENTITY CALLED
26 SGF ANTELOPE VALLEY DEVELOPMENT, LLC., AND IN THIS ONE
27 DOCUMENT THEY WERE ABLE TO CONVEY FORTY-EIGHT PARCELS
28 IN THE ANTELOPE VALLEY AND INTERESTING IN THE DEED, ONE

1 OF THE RECITALS WHICH IS TYPICAL SAYS THEY ARE
2 CONVEYING ALL RIGHTS AND PRIVILEGES APPERTINENT TO THE
3 LAND INCLUDED BUT NOT LIMITED TO ALL DEVELOPMENT
4 RIGHTS, AIR RIGHTS, AND WATER RIGHTS TO THE LAND.

5 THIS IS AN EXAMPLE, AND I HAVE YET
6 ANOTHER, A PACKAGE OF NINETEEN DEEDS CONVEYED TO A
7 COMPANY CALLED GASTEL SUN POWER, LLC., IN WHICH THEY
8 WERE CONVEYING MULTIPLE PARCELS.

9 THE COURT: LET'S ME ASK YOU A QUESTION, MR.
10 KUNEY, ARE THOSE WITHIN THE BOUNDS OF THE WATER
11 DISTRICT?

12 MR. KUNEY: I DON'T BELIEVE SO. THESE ARE IN,
13 YOUR HONOR, YOU KNOW THE BASEMENT ROUGHLY IS DISSECTED
14 BETWEEN THE TWO COUNTIES. TWO OF THESE I'M REFERRING
15 TO ARE IN KERN COUNTY. I DON'T BELIEVE THERE IS ANY
16 WATER DISTRICT UP IN THAT REGION. THERE IS THE
17 GROSSMAN COMMUNITY SERVICE DISTRICT BUT THAT IS NOT A
18 WATER DISTRICT.

19 THE COURT: OKAY, WHAT I'M ASKING YOU, ARE
20 THESE PARCELS SERVED BY A WATER COMPANY, A WATER
21 DISTRICT, A MUNICIPALITY OR ANY OTHER ENTITY THAT WOULD
22 PRECLUDE THEIR -- I SHOULD SAY, WHERE THEY WOULD BE
23 WITHIN THE BOUNDS OF THOSE PARTIES THAT ARE SERVICED
24 THAT NOBODY EXPECTS TO PARTICIPATE ACTIVELY.

25 MR. KUNEY: YOUR HONOR, I WISH I COULD FORMALLY
26 ANSWER. I DON'T BELIEVE SO. BUT I HAVE NOT
27 INVESTIGATED THAT AND I DO NOT BELIEVE SO GIVEN THE
28 AREA.

1 THE COURT: WELL, LET ME JUST TELL YOU WHAT MY
2 VIEW IS WITH REGARD TO OBTAINING SERVICE ON ALL THE
3 PARTIES WHO NEED TO BE INVOLVED IN THIS ADJUDICATION,
4 TO THE EXTENT THAT ANYBODY WHO HAS KNOWLEDGE OF ANYBODY
5 WHO SHOULD BE INVOLVED FOR A NUMBER OF REASONS WHO IS
6 NOT AND HAS NOT BEEN SERVED, YOU NEED TO BRING THAT
7 FORMALLY TO THE ATTENTION OF THE COURT AND TO THE
8 PARTIES WHO ARE OBLIGATED TO MAKE THAT SERVICE.

9 IT'S ONE THING TO OBJECT AND SAY WELL, WE
10 DON'T HAVE EVERYBODY HERE AND I KNOW OF SOME PEOPLE WHO
11 ARE TRANSFEREES WHO ARE SUCCESSIVE OWNERS OR WHATEVER,
12 BUT, YOU KNOW, THAT IS NOT HELPFUL TO THE COURT AND IT
13 DOESN'T HELP US TO LOCK DOWN ON WHO NEEDS TO BE
14 INVOLVED IN THIS ADJUDICATION.

15 THE PEOPLE THAT YOU HAVE JUST REFERRED TO
16 MAY OR MAY NOT NEED TO BE INVOLVED, I DON'T KNOW. AND I
17 CERTAINLY CAN'T TELL FROM THE INFORMATION THAT YOU HAVE
18 GIVEN ME. I THINK YOU DO NEED, HOWEVER, TO EITHER FILE
19 THE DOCUMENT WITH THE COURT OR NOTIFY THE PARTIES WHO
20 YOU ARE PROCEEDING AGAINST SO THEY CAN EFFECT
21 SERVICE.

22 MR. KUNEY: WELL, I CERTAINLY AGREE IT IS A
23 PROBLEM. I JUST KNOW THIS BY VIRTUE OF THE BUSINESS
24 I'M IN. I HAVE NOT DONE THESE CASES TO FIGURE OUT WHAT
25 THEY OWN OR NOT OTHER THAN, AGAIN, I DIRECTED
26 PARALEGALS AND IN ABOUT TWO HOURS ON FRIDAY AFTERNOON
27 AND THIS IS WHAT I WAS ABLE TO UNCOVER IN THAT AMOUNT
28 OF TIME, WE CAN'T AS A DEFENDANT DO THE RESEARCH THAT

1 THE PLAINTIFF NEEDS TO DO.

2 IT IS THEIR BURDEN TO BRING IN PEOPLE. I
3 AM BRINGING IT TO YOUR ATTENTION, YOUR HONOR, BECAUSE I
4 AM VERY CONCERNED THAT OUR CLIENTS ARE INVESTING BOTH
5 IN A LAWSUIT TO WHICH WE ARE SPENDING SIGNIFICANT MONEY
6 AND WE ALL SHARE, THE COURT AND ALL THE PARTIES OF
7 COURSE SHARE THE GOAL OF HAVING A JUDGMENT THAT WILL BE
8 EFFECTIVE AND ENFORCEABLE. AND I'M CONCERNED THAT WE
9 ARE MARCHING TO TRIAL WHEN POSSIBLY WE ARE GOING TO
10 HAVE A FUNDAMENTAL DEFECT IN OUR PROCESS.

11 THE COURT: LET ME INTERRUPT YOU FOR A MINUTE
12 AND JUST TELL YOU THAT I UNDERSTAND YOUR FEAR BUT YOU
13 HAVE TO PUT THAT IN THE FORM OF EITHER AN OBJECTION
14 WITH EVIDENCE TO SUPPORT YOUR OBJECTION, OR YOU NEED TO
15 TELL THE PARTIES YOU NEED TO SERVE SO THEY CAN TAKE
16 ACTION.

17 I CAN'T DO ANYTHING ON WHAT IS NOTHING
18 MORE THAN A HEARSAY STATEMENT THAT THERE MAY BE
19 SOMEBODY OUT THERE WHO NEEDS TO BE SERVED. I DON'T KNOW
20 THAT THEY NEED TO BE SERVED MERELY BECAUSE THEY HAVE
21 TRANSFERRED PROPERTY. I DON'T KNOW THAT BECAUSE I DON'T
22 KNOW WHAT CATEGORY THEY FIT INTO.

23 I DON'T KNOW IF THEY NEED TO BE INVOLVED
24 IN THE ADJUDICATION OR NOT. I DON'T KNOW IF THEY ARE
25 WITHIN A WATER DISTRICT OR A MUNICIPALITY OR A WATER
26 DISTRICT OR WHATEVER. AND I CERTAINLY CAN'T TELL THAT
27 FROM THE STATEMENT THAT YOU JUST MADE, ALTHOUGH, I WILL
28 TELL YOU THAT I THANK YOU FOR MAKING IT AND I THINK MR.

1 DUNN NEEDS TO LOOK INTO THAT TO INSURE THAT WE HAVE
2 VIRTUALLY EVERYBODY INVOLVED WHO NEEDS TO BE INVOLVED.

3 REMEMBER, A COMPREHENSIVE ADJUDICATION
4 DOES NOT MEAN THAT EVERY HUMAN BEING WHO MIGHT OWN A
5 PIECE OF PROPERTY IN THE BASIN NEEDS TO BE INVOLVED
6 DIRECTLY. MOST DO, BUT NOT EVERYBODY. AND WE HAVE
7 ALREADY DECIDED, THE COURT HAS DECIDED THAT THE PARTIES
8 WHO ARE INVOLVED IN THE LOWLANDS WHO ARE WITHIN THE
9 CONFINES OF THE CITY THAT IS PROVIDING THE WATER THEY
10 NEED TO BE APPRISED OF THE ADJUDICATION BUT THEY DON'T
11 NECESSARILY NEED TO BE INVOLVED AS A PARTY IN THE
12 LITIGATION UNLESS THEY CHOOSE TO DO SO AND THEY HAVE A
13 RIGHT TO DO SO IF THEY CHOOSE TO DO SO.

14 SO HAVING SAID THAT, IF YOU OR ANYBODY
15 ELSE HAS INFORMATION OF PARTIES WHO HAVE NOT BEEN
16 SERVED AND YOU THINK THEY SHOULD HAVE BEEN SERVED, TELL
17 MR. DUNN. TELL ONE OF THE WATER PRODUCERS WHO ARE THE
18 PLAINTIFFS IN THE PROCEEDING THAT WE ARE STARTING WITH
19 ON THE 27TH.

20 MR. JOYCE: YOUR HONOR, BOB JOYCE, AS THE COURT
21 WILL RECALL AT THE LAST CMC WE HAD, WE HAD BROUGHT TO
22 THE ATTENTION OF THE COURT AND MR. DUNN THAT IN BOTH
23 KERN COUNTY AND LOS ANGELES COUNTY, UPON THE TRANSFER
24 OF TITLE TO REAL PROPERTY THERE IS A REQUIRED PROCEDURE
25 WHEREBY THERE HAS TO BE FILED WITH THE ASSESSORS OFFICE
26 AND WITH THE COUNTY RECORDER CONCURRENTLY A PRELIMINARY
27 CHANGE OF OWNERSHIP FORM. I WOULD SIMPLY ASK THE COURT
28 TO DIRECT MR. DUNN TO GO TO BOTH OF THESE COUNTY

1 RECORDS AND ASSESS THOSE PRELIMINARY CHANGE OF
2 OWNERSHIP FORMS FOR THE LAST THREE TO FOUR YEARS.

3 THE COURT: WELL, MR. JOYCE, YOU ARE TALKING
4 ABOUT SOMETHING THAT MR. DUNN AGREED TO DO LAST WEEK.

5 MR. JOYCE: I SEE NOTIFICATION THAT IS DESIGNED
6 TO THWART THE OBJECTIVE. MY SUGGESTION OR POINT IS
7 SIMPLY, IF THAT IS SOMETHING THAT THE COURT HAS
8 UNDERTAKEN, I SUSPECT THAT THE DEEDS THAT MR. KUNEY HAS
9 DISCOVERED WOULD HAVE BEEN DISCOVERED BY MR. DUNN AND
10 WE WOULDN'T BE HAVING THIS CONVERSATION BECAUSE THERE
11 WOULD BE NO NEED FOR IT TO DEAL WITH PROBLEMS THAT MAY
12 HAVE BEEN DETERMINED AS TO WHETHER OR NOT THEY WERE
13 WITHIN OR WITHOUT THE PROVIDED DISTRICT OR SERVICE AREA
14 AND WOULD EITHER HAVE SERVED THEM OR TAKEN STEPS TO
15 ADDRESS THEM BY PUBLICATION OR OTHERWISE.

16 THE COURT: MR. DUNN, DO YOU WANT TO RESPOND TO
17 THAT, PLEASE?

18 MR. DUNN: YES, I WOULD, YOUR HONOR.

19 IN THIS ADJUDICATION PROCEEDING THIS
20 ISSUE OF TRANSFEREE HAS COME UP SEVERAL TIMES OVER THE
21 COURSE OF THE YEARS AND THERE IS ON RECORD SOMEWHERE IN
22 THE COURT'S PROCEEDINGS A DIRECTION OR ORDER FROM THE
23 COURT NOTIFYING ALL THE PARTIES IN THE CASE THAT IF
24 THERE IS GOING TO BE TRANSFER OF OWNERSHIP, THE WAY WE
25 WERE GONG TO DEAL WITH IT IS WE WILL HAVE THAT TRANSFER
26 OF OWNERSHIP BE POSTED AND NOTIFIED TO THE COURT AND
27 ALL THE PARTIES. NOW THAT HAS BEEN WHAT THE COURT HAS
28 ASKED THE PARTIES TO DO.

1 WHAT MR. JOYCE HAS SUGGESTED AGAIN IS A
2 PROCESS WHICH IS DESIGNED TO FURTHER DELAY THIS CASE
3 AND TO NEVER GET THIS CASE TO A JURY TRIAL BECAUSE WE
4 CONTINUALLY HAVE A PROCESS WHERE WE HAVE A CONTINUAL
5 ROTATION OF PARTIES AS LAND OWNERS HAVE CHANGED OUT.

6 SOMEHOW, THE PUBLIC WATER SUPPLY IS GOING
7 TO HAVE TO CHECK PUBLIC RECORDS EVERY WEEK OR EVERY
8 MONTH OR EVERY YEAR AND THEN SUBSTITUTE IN AND
9 SUBSTITUTE OUT PARTIES. WE ARE NEVER GOING TO GET THIS
10 CASE TO TRIAL.

11 THE COURT: MR. DUNN, I DON'T THINK THAT IS
12 NECESSARY AND I THINK THAT EACH PARTY WHO TRANSFERS
13 PROPERTY HAS AN OBLIGATION TO NOTIFY THEIR SUCCESSOR
14 THAT TRANSFERS ARE SUBJECT TO WHATEVER THE ADJUDICATION
15 RESULT IS HERE.

16 SO IT'S WELL AND GOOD, AND MR. JOYCE, I
17 UNDERSTAND YOUR BELIEF THAT THE ADJUDICATION SHOULD BE
18 IN ROUND AND IT'S NOT. IT IS DEALING IN PERSONA WITH
19 PEOPLE WHO OWN THEIR PROPERTY AND THAT IS WHAT WE ARE
20 DOING HERE.

21 I DON'T THINK THERE IS ANY FURTHER ORDER
22 THAT I NEED TO MAKE AT THIS TIME AND I DON'T INTEND TO
23 MAKE ANY WITH REGARD TO THAT ISSUE.

24 TO THE EXTENT THAT YOU THINK SOMEBODY
25 NEEDS TO BE INVOLVED IN THIS ADJUDICATION OR NOT, I
26 WOULD ASK THAT YOU DO THE SAME. I TOLD MR. KUNEY TO
27 REQUEST THAT AND TO NOTIFY THE WATER PRODUCERS COUNSEL
28 SO THEY CAN ACT ACCORDINGLY.

1 MR. KUNEY: YES, YOUR HONOR, THIS IS SCOTT
2 KUNEY, IF I CAN FINISH UP THIS POINT WITH YOU, WE HAVE
3 TRIED TO MAKE THIS OBJECTION AND I WILL RENEW THE
4 OBJECTION AGAIN FOR THE RECORD SO WE ARE ALL CLEAR THAT
5 I WILL NOTIFY MR. DUNN OF WHAT I DISCOVERED FRIDAY
6 AFTERNOON AND LET HIM TAKE ACTION AS HE DEEMS
7 APPROPRIATE.

8 IN RESPONSE TO YOUR REQUEST WE HAD
9 FORMALLY SUGGESTED RECOMMENDATIONS TO ADDRESS THIS
10 ISSUE. THIS WAS GIVEN IN A SPECIFIC PROPOSAL OF
11 ALTERNATIVE PROCEDURES THAT WE LAID OUT IN OUR CAS
12 MANAGEMENT CONFERENCE STATEMENT AT PAGES SIX AND SEVEN.
13 IS THE COURT DENYING THAT REQUEST OR WHERE ARE WE ON
14 OUR SUGGESTION?

15 THE COURT: WELL, THE COURT MADE A PREVIOUS
16 ORDER AS TO HOW TO DEAL WITH THIS ISSUE. I DON'T HAVE
17 THAT IN FRONT OF ME. I DON'T KNOW THE EXACT LANGUAGE
18 OF IT. I DON'T INTEND TO MAKE ANOTHER ORDER.

19 MR. JOYCE: YOUR HONOR, THIS IS MR. JOYCE. I
20 JUST WANT TO CLARIFY THAT MR. DUNN DID NOT ACCURATELY
21 REFLECT WHAT THE COURT'S PRIOR ORDER WAS.

22 MY MEMORY WAS CLEAR THAT THE COURT ISSUED
23 AN ORDER FOR DEFENSE ABOUT TWO YEARS AGO. THE
24 SUBSTANCE OF THE ORDER WAS IF YOU TRANSFER PROPERTY
25 TELL THE TRANSFEREE ABOUT THE PENDING LITIGATION AND
26 THAT WAS IT. THE COURT REQUIRED NOTHING MORE AT THAT
27 TIME AND THERE HAS BEEN NO ORDER SINCE THEN.

28 THE COURT: MY RECOLLECTION OF THE ORDER WAS

1 THAT THE TRANSFEROR SHOULD NOTIFY THE TRANSFEREE THAT
2 THE ADJUDICATION IS OCCURRING AND THAT THE PROPERTY AND
3 THE RIGHTS OF THE WATER WILL BE SUBJECT TO THE ULTIMATE
4 DETERMINATION OF THE ADJUDICATION.

5 MR. DUNN: TO THAT AFFECT, THERE WAS NOTHING
6 THAT REQUIRED ME TO NOTIFY THE COURT.

7 THE COURT: I DON'T RECALL THAT SPECIFICALLY,
8 BUT THE ORDER THAT I MADE IS THE ORDER THAT I INTENDED,
9 AND TO THE EXTENT THAT I HAVE REITERATED IT, I SUPPOSE
10 I SHOULD SAY I MEAN IT. ALL RIGHT.

11 MR. ZIMMER: RICHARD ZIMMER, IS IT SUFFICIENT
12 THAT THE COUNTY DO A GLOBAL PROOF OF SERVICE? IT SEEMS
13 THERE HAD BEEN A PROOF OF SERVICE ON INDIVIDUALS OTHER
14 THAN INDIVIDUALS WHO COULD LATER COME BACK AND SAY WE
15 DIDN'T KNOW ABOUT THAT OR THEY ARE NOT NOTED IN THAT
16 PROOF OF SERVICE.

17 THE COURT: WELL, LET ME CLARIFY WHAT I SAID,
18 IF A PARTY HAS RESPONDED AND FILED AN ANSWER OR IF THEY
19 HAVE FILED A COURT FORM THAT SAYS THEY INTEND NOT TO
20 PARTICIPATE BUT MERELY TO STAND BY, AND THEY ARE MAKING
21 A GENERAL DENIAL, THE COURT HAS JURISDICTION OVER EACH
22 ONE OF THOSE PEOPLE.

23 ANYBODY WHO HAS FILED AN ANSWER, THE
24 COURT HAS JURISDICTION OVER THEM. ANYBODY WHO HAS
25 FILED A CROSS-COMPLAINT, THE COURT HAS JURISDICTION
26 OVER THEM. TO THE EXTENT THAT A PARTY IS A MEMBER OF A
27 CLASS, THE COURT HAS JURISDICTION OVER THOSE PEOPLE.

28 SO THE ONLY PROOFS OF SERVICE THAT REALLY

1 NEED TO BE FILED ARE THOSE PEOPLE WHO HAVE NOT
2 RESPONDED TO SERVICE OF PROCESS TO WHICH THE MOVING
3 PARTY, WHOEVER SERVES THEM, SHOULD BE REQUESTING A
4 DEFAULT JUDGMENT. THAT REQUIRES A PROOF OF SERVICE TO
5 BE FILED SPECIFICALLY AS TO THOSE INDIVIDUALS.

6 THERE ARE A NUMBER OF PEOPLE WHO OPTED
7 OUT OF THE CLASSES, THEY HAVE OPTED OUT IN WRITING AND
8 WHEN THEY OPTED OUT IN ORDER TO BRING THEM INTO THE
9 PROCEEDINGS THEY HAVE TO BE PERSONALITY SERVED.

10 TO THE EXTENT THAT A NUMBER OF THOSE
11 PEOPLE ARE NO LONGER AVAILABLE AND CANNOT BE FOUND,
12 THERE MUST BE SERVICE OF PROCESS BY PUBLICATION. I
13 SIGNED SUCH AN ORDER. AND UPON THE COMPLETION OF THE
14 PERIOD FOR THEM TO RESPOND, I ASSUME THERE WILL BE A
15 PROOF OF SERVICE FILED AND A REQUEST FOR ENTRY OF
16 DEFAULT.

17 MR. JOYCE: THANK YOU FOR THAT CLARIFICATION,
18 YOUR HONOR. I HAVE ONE OTHER QUESTION. MR. DUNN KIND
19 OF SIDE-STEPPED THE ISSUE OF INQUIRY ABOUT WHETHER HE
20 HAD DONE SOMETHING AND YOU SAID THAT HE HAD NOT ORDERED
21 THAT AT THE LAST HEARING AND THEN MR. DUNN RESPONDED
22 THAT HE NEVER ANSWERED THE QUESTION THAT HE HAD NEVER
23 DONE WHAT THE COURT --

24 THE COURT: I ASKED HIM, I THOUGHT, TO
25 ASCERTAIN WHETHER OR NOT THERE HAD BEEN CHANGES OF
26 OWNERSHIP WHERE PEOPLE SHOULD HAVE BEEN NOTIFIED AND TO
27 THE EXTENT THAT HE IS ABLE TO DO THAT HE SHOULD DO
28 THAT.

1 MR. ZIMMER: THANK YOU, YOUR HONOR.

2 THE LAST THING, THE QUESTION I HAVE WAS
3 THAT THE COURT PREVIOUSLY SAID THAT THE NEXT TRIAL DATE
4 WILL BE A TEN-DAY SEGMENT AND WILL START ON THE 27TH OF
5 SEPTEMBER. I ADVISED THE COURT THAT I HAVE AN EXPERT
6 PROBLEM. I DID GET THAT WORKED OUT, ASSUMING THAT IT
7 WAS ONLY A TEN-DAY SEGMENT. AND THE COURT PREVIOUSLY
8 INDICATED, I THINK MR. DUNN BROUGHT IT UP IN SOME
9 PAPERWORK, HE THOUGHT IT MIGHT TAKE LONGER, BUT I HAD
10 SCHEDULED IT AS IF THE COURT SAID IT IS ON A TEN DAY
11 SEGMENT ON THE 27TH.

12 THE COURT: THAT WAS ALWAYS MY INTENT, MR.
13 ZIMMER, AND THAT IS WHAT I INTEND TO DO. AND I
14 INDICATED IF SOMEBODY HAD SOME PROBLEM THAT REQUIRES OR
15 THEY BELIEVE WILL REQUIRE MORE TIME THAN THOSE TEN
16 DAYS, WE WILL MAKE WHATEVER ACCOMMODATIONS WE HAVE TO,
17 BUT IT MAY NOT BE DIRECTLY FOLLOWING THOSE TEN DAYS.

18 MR. DUNN: THAT IS WHAT I WANT TO FIND OUT. IF
19 WE NEED TO GO FORWARD YOU WILL SET US UP WITH
20 ADDITIONAL TIME?

21 THE COURT: IN FACT, ONE OF THE THINGS THAT I'M
22 THINKING IS THAT WE MIGHT WANT TO DO A FOUR DAY A WEEK
23 TRIAL TO BENEFIT THE LAWYERS SO THEY HAVE TIME TO
24 PREPARE AND DO OTHER THINGS.

25 SO I THINK PERHAPS MONDAY THROUGH
26 THURSDAY.

27 MR. DUNN: AND THEN TAKE A BREAK AND SEE IF
28 SOMEBODY NEEDS SOME TIME.

1 THE COURT: YES, AND TO THE EXTENT THAT THERE
2 ARE SERIOUS WITNESS ISSUES THAT CANNOT BE RESOLVED, WE
3 WILL FIGURE OUT A WAY TO DO IT.

4 MR. DUNN: THANK YOU, YOUR HONOR.

5 THE COURT: ALL RIGHT.

6 MR. MCLACHLAN: YOUR HONOR, I THINK ALSO THAT
7 CLASS COUNSEL WHO ESSENTIALLY IS INVOLVED IN THAT CASE
8 NEEDS TO OFFER A DECLARATION AND NECESSARY DOCUMENTS TO
9 BE ABLE TO TELL THE CLASS HOW SERVICE IS CONDUCTED, WHO
10 HAS BEEN SERVED, AND WHO IS IN THE CLASS SO EVERYBODY
11 KNOWS WHO IS IN THE CLASS AND WHO ISN'T.

12 THAT IS A STANDARD PROCEDURE AND I THINK
13 THAT NEEDS TO BE DONE AT SOME POINT IN THE NEXT MONTH
14 OR TWO.

15 THE COURT: ALL RIGHT. WHAT I WOULD LIKE TO DO
16 IS MAKE SURE THAT WE UNDERSTAND TWO THINGS. ONE, WHAT
17 THE ISSUES ARE THAT WE ARE GOING TO TRY; AND SECONDLY,
18 TO SET SOME TIME LINES. WE SET A COUPLE OF TIME LINES
19 FOR EXPERTS AND I THINK THERE WAS SOME CONFUSION AS TO
20 WHAT THOSE WERE.

21 MY NOTES INDICATE A RATHER BRIEF TIME FOR
22 EXPERT DEPOSITIONS. I THOUGHT IT WAS STATED ON THE
23 RECORD. SOMEBODY INDICATED THAT AS LONG AS I ISSUED A
24 CORRECTIVE ORDER GIVING UNTIL THE END OF AUGUST TO
25 COMPLETE EXPERT DISCOVERY, BUT LET'S TALK ABOUT FIRST
26 OF ALL WHAT THE ISSUES ARE.

27 I THOUGHT I MADE THIS VERY CLEAR, THE
28 COURT'S CONCERN AT THIS POINT IS WITH WHETHER OR NOT

1 THE BASIN AS A WHOLE OR PARTS, THEREOF, ARE IN
2 OVERDRAFT. TO THE EXTENT THAT THE COURT MIGHT BE
3 CALLED UPON TO EXERCISE EQUITABLE JURISDICTION AND
4 POWERS TO MANAGE THE BASIN AND THE DEFINITION OF
5 OVERDRAFT TO MAKE IT A SAFE DEAL ARE CLEARLY SET FORTH
6 IN A NUMBER OF JUDICIAL DECISIONS FROM OUR SUPREME
7 COURT AND THE COURT OF APPEAL.

8 THEY HAVE BEEN QUOTED AND CITED BY EVERY
9 COUNSEL TO THIS. I DON'T THINK THERE IS ANY CONFUSION
10 EXCEPT TO THE FACT THAT THE COURT HAS NOT MADE IT
11 CLEAR, AND I WANT TO HEAR WHAT THE MEGA SAFE YIELD IS
12 GIVEN THE CIRCUMSTANCES THAT EXIST IN CONNECTION WITH A
13 DEFINITION WITH WHETHER OR NOT THERE IS AN OVERDRAFT IN
14 THE BASIN AT THIS TIME.

15 SO I WILL ALSO WANT TO HEAR WHAT FOREIGN
16 WATER IS INTRODUCED INTO THE BASIN SO I WILL HAVE AN
17 IDEA AS TO WHAT THE CURRENT CONDITIONS IN THE BASIN ARE
18 AND WHETHER OR NOT THE COURT IS GOING TO HAVE TO
19 EXERCISE SOME EQUITABLE JURISDICTION IN THIS MATTER.

20 NOW, TO THE EXTENT THAT THERE ARE
21 PRESCRIPTIVE CLAIMS HERE, AND THERE CLEARLY ARE BY THE
22 PUBLIC WATER PRODUCERS WHO ARE THE APPROPRIATE PARTIES.
23 AND TO DETERMINE WHETHER OR NOT THEY HAVE ANY RIGHTS IN
24 THE BASIN, I'M NOT GOING TO MAKE THAT KIND OF A
25 DETERMINATION AT THIS NEXT PHASE OF THE TRIAL BECAUSE I
26 DON'T BELIEVE IT'S POSSIBLE TO DO IT IN A WAY THAT
27 WOULD EFFECTIVELY MAKE THE KIND OF DETERMINATIONS THAT
28 NEED TO BE MADE AND THE CONCLUSIONS THAT NEED TO BE

1 MADE.

2 AND THE REASON FOR THAT IS BECAUSE IT'S A
3 LARGE VALLEY AND THERE ARE SIGNIFICANT INFERENCES IN
4 THE HYDROLOGY OF THE VALLEY DEPENDING ON VARIOUS
5 LOCATIONS AND WHETHER PUMPING IN ONE AREA AFFECTS
6 ANOTHER AREA IS NOT CLEAR TO ME.

7 I DON'T KNOW WHEN PEOPLE STARTED THE
8 PUMPING. I DON'T KNOW HOW MUCH THEY PUMPED. I DO KNOW
9 THAT THE PUBLIC WATER PRODUCERS AMOUNT OF PUMPING HAS
10 VARIED. IT OBVIOUSLY HAS AS THE POPULATION INCREASES
11 IT WILL PROBABLY INCREASE. WHEN THAT HAPPENS, HOW IT
12 CAN HAPPENS, I DON'T KNOW. I DON'T WANT TO ADJUDICATE
13 THOSE ISSUES AT THIS PHASE.

14 IF THE BASIN IS NOT CURRENTLY IN
15 OVERDRAFT AND THERE ARE NO MORE PARTS IN OVERDRAFT, THE
16 PUBLIC WATER PRODUCERS MIGHT WANT TO RE-EVALUATE THEIR
17 CLAIMS OF PRESCRIPTION. IF THEY NEED AN OVERDRAFT THEN
18 THEY ARE GOING TO HAVE TO DECIDE HOW THEY WISH TO
19 PROCEED ON THOSE CLAIMS, THE CLAIM OF PRESCRIPTION TO
20 WATER.

21 I'M NOT MAKING A FINDING OF FACT OR
22 CONCLUSION OF LAW HERE, I'M MERELY OPINING TO WHAT
23 ISSUES I WANT TO HEAR. THE QUESTION OF PRESCRIPTION
24 HAS TO BE PROVED GENERALLY BY CLEAR AND CONVINCING
25 EVIDENCE, IT'S A SUBSTANTIAL BURDEN. AND THE PARTY
26 CLAIMING PRESCRIPTION HAS THE BURDEN OF PROOF.

27 WHETHER WE HAVE TO GET TO THAT OR NOT, I
28 DON'T KNOW. BUT WE AREN'T GOING TO DO IT IN THIS

1 STAGE. SO NO FINDINGS THAT I'M GOING TO MAKE COULD
2 POSSIBLY AFFECT THE CLAIMS OR THE DEFENSES AGAINST
3 PRESCRIPTION BECAUSE I'M NOT GOING TO MAKE ANY FINDINGS
4 WITH REGARD TO PARTICULAR PORTIONS OF THE AQUIFER OR AS
5 TO RIGHTS OR DUTIES OF PARTICULAR PARTIES WITHIN THE
6 AQUIFER.

7 THE ONLY THING I'M CONCERNED WITH IS THE
8 CURRENT STATUS, AND THE CURRENT STATUS OF THE BASIN IN
9 TERMS OF OVERDRAFT CAN ONLY BE DETERMINED BY LOOKING
10 BACKWARD. BUT IT'S GOING TO BE LOOKING BACKWARD WITH
11 REGARD TO WHETHER OR NOT THE CURRENT CONDITION IS A
12 CONDITION THAT HAS EXISTED FOR A SUFFICIENT PERIOD OF
13 TIME AND WILL CONTINUE TO EXIST SUCH THAT WE COULD SAY
14 THAT IT IS LIKELY TO LEAD TO DEGRADATION IN THE BASIN.
15 THOSE ARE THE ISSUES THAT WE ARE GOING TO TRY IN THIS
16 PHASE. I WILL DO A WRITTEN ORDER SPECIFYING,
17 ESSENTIALLY, WHAT I JUST SAID.

18 I NEED COUNSEL TO, IF YOU CAN AGREE TO A
19 TIME LINE FOR THE CLOCK OF DISCOVERY, THE DISCLOSURE OF
20 EXPERTS HAS ALREADY BEEN DETERMINED AND I WILL ACCEPT
21 THOSE RECOMMENDATIONS FROM COUNSEL.

22 I WOULD ALSO LIKE TO HEAR FROM COUNSEL AS
23 TO WHETHER THEY WOULD LIKE TO FILE ANY IN LIMINE
24 MOTIONS AND SO FORTH, TRIAL BRIEFS, AND THE LIKE. WE
25 HAVE A LOT OF PEOPLE ON THE LINE. IF YOU WANT TO OFFER
26 SOME SUGGESTIONS, IF YOU HAVE HAD SOME MEET AND CONFER
27 AS I ASKED YOU TO DO SO THEN YOU CAN TELL ME WHAT YOU
28 AGREED TO. I WOULD LIKE TO HEAR FROM YOU. JUST TELL

1 US WHO YOU ARE WHEN YOU SPEAK. IF YOU DON'T WANT TO
2 TALK THAT IS OKAY TOO.

3 MR. ZIMMER: YOUR HONOR, THIS IS MR. ZIMMER,
4 CAN WE STEP BACK FROM THE MONETARY ISSUES?

5 THE COURT: YES.

6 MR. ZIMMER: PREVIOUSLY, AT THE LAST HEARING I
7 UNDERSTOOD THAT THE COURT WAS SAYING WE ARE GOING TO
8 TRY WHETHER THE BASIN IS IN OVERDRAFT AND THE EFFECT OF
9 PUMPING IN ONE AREA VERSUS ANOTHER. AND MAYBE THE
10 COURT SAID THIS LAST TIME AND I'M NOT TRYING TO
11 MISQUOTE THE COURT, BUT I KNOW THE COURT SAID THIS
12 MORNING THE WETTER PORTIONS OF THE BASIN ARE IN
13 OVERDRAFT.

14 THE TERM PORTIONS OF THE BASIN IN
15 OVERDRAFT CAUSES ME SOME QUESTION BECAUSE THERE IS A
16 LEGAL ISSUE UNDERPINNING ALL OF THIS AND THAT IS
17 WHETHER YOU CAN HAVE A PORTION OF THE BASIN THAT IS
18 QUOTE, IN OVERDRAFT OR NOT.

19 I THINK, CERTAINLY, THERE IS AN ISSUE OF
20 NOTICE IMBEDDED IN HERE AS TO WHETHER PUMPING IN ONE
21 AREA HAS A SUFFICIENT AFFECT ON PUMPING SOMEWHERE ELSE.
22 THAT ONE COULD HAVE BEEN NOTICED AND COULD HAVE HAD
23 ADVERSITY.

24 BUT THE CONSENT OF OVERDRAFT AND WHETHER
25 THAT CAN BE IN A SEPARATE PLACE I THINK IS A REAL
26 QUESTION IN TERMS OF WHETHER YOU CAN HAVE OVERDRAFT AND
27 DETERMINATION IF THEY ASSUMED THAT WE HAD A RELATIVELY
28 CONNECTED BASIN AS A WHOLE FROM, AT LEAST MY HYDROLOGY

1 STANDPOINT, THE QUESTION OF OVERDRAFT WOULD BE AS TO
2 THAT COMPLETE KIND OF WATER SOLUTION WITHIN THE
3 WATERSHED.

4 THERE IS A DIFFERENCE BETWEEN NOTICE AND
5 ADVERSITY, SO I'M NOT SURE WHAT THE COURT MEANS BY
6 THAT.

7 THE COURT: I DON'T KNOW. I DON'T KNOW WHAT
8 THE EXPERTS ARE GOING TO TESTIFY TO. I DO KNOW THAT I
9 MADE A FINDING THERE IS PRODUCTIVITY IN THE ENTIRE
10 BASIN, BUT THIS IS A VARIABLE THING AND I DON'T KNOW --
11 AS I HAVE INDICATED, THERE ARE DIFFERENCES IN MY
12 FINDINGS. I JUST KNOW THERE ARE DIFFERENCES IN THE
13 BASIN AS TO WHO SAID WHAT. WHO DID WHAT. I SHOULD NOT
14 SAY IT THAT WAY. I MEAN TO SAY THAT THERE ARE
15 DIFFERENCE IN THE BASIN IN TERMS OF HOW MUCH
16 PRODUCTIVITY THERE IS AND WHAT AFFECT A PORTION OF THE
17 BASIN HAS ON THE OTHER PORTIONS.

18 I'LL BE VERY INTERESTED IN HEARING IF THE
19 EXPERTS THAT EACH OF YOU ARE GOING TO CALL THINK THAT
20 THERE IS A DIFFERENCE AND THERE ARE DIFFERENT AFFECTS.

21 MR. ZIMMER: MY FEELING IS WE ARE BETTER OFF
22 STAYING WITH THE SAFETY OF OVERDRAFT ISSUE FOR A
23 MOMENT. BUT PUTTING THAT ASIDE, WHEN YOU START TALKING
24 ABOUT WHAT AREAS IN TERMS OF WHAT THE AFFECTS OF
25 PUMPING IN ONE AREA ARE AS OPPOSED TO ANOTHER AREA,
26 IT'S ALMOST IMPOSSIBLE TO TRY THAT WITHOUT KNOWING WHAT
27 THE SO-CALLED AREAS ARE. OTHERWISE, WE WILL HAVE SEVEN
28 PEOPLE TALKING ABOUT SEVEN DIFFERENT POTENTIAL AREAS

1 THAT DON'T CO-EXIST AND ARE NOT THE SAME.

2 I'M NOT SURE HOW YOU DO DISCOVERY ON
3 THAT. HOW WOULD YOU GET YOUR EXPERT TO ADDRESS IT
4 WITHOUT KNOWING WHAT AREA WITHIN THIS AREA OF
5 ADJUDICATION WE ARE TALKING ABOUT.

6 THE COURT: WELL, I'M ASSUMING THAT THE ENTIRE
7 BASIN IS A UNIT AND THAT PUMPING IN ONE PORTION WILL
8 AFFECT OTHER PORTIONS OF THE AQUIFER, BUT I DON'T KNOW
9 THAT AND I'M NOT MAKING ANY FINDINGS AT THIS POINT AS
10 TO ANYTHING. ALL I WANT TO DO IS HEAR THE EVIDENCE AS
11 TO THE CURRENT STATUS OF THE BASIN.

12 SO WHEN I MAKE REFERENCE TO IT ALL OR IN
13 PART, BY THAT I JUST THINK THAT I DON'T KNOW AND I
14 WANT TO HEAR THE EVIDENCE.

15 MR. SLOAN: YOUR HONOR, THIS IS WILLIAM SLOANE.
16 IF I COULD JUST ACTUALLY COMMENT ON WHAT MR. ZIMMER
17 WAS SAYING. MY UNDERSTANDING OF WHAT THE COURT WAS
18 JUST SAYING IS THAT YOU WILL NOT BE MAKING FINDINGS ON
19 NOTICE AND ADVERSITY AT THIS STAGE.

20 THE COURT: THAT'S CORRECT.

21 MR. SLOAN: SO, THE WAY I WAS CONCEPTUALLY
22 VIEWING THE COURT'S COMMENTS AND WE CAN CERTAINLY WAIT
23 FOR THE COURT ORDER, IS THAT, IN EFFECT, YOU ARE
24 LOOKING AT SORT OF A GROSS CONDITION OF THE BASIN. THE
25 BASIN THAT HAS BEEN OUTLINED BY THE ADJUDICATION
26 BOUNDARIES AND THAT AT LEAST AT THIS POINT HAVE BEEN
27 VIEWED AS ONE SINGLE BASIN AND THAT IS THE SECOND PHASE
28 OF TRIAL.

1 THE COURT: THAT'S RIGHT. I HOPE THAT YOU'RE
2 NOT DRAWING ANY CONCLUSIONS. I INDICATED I'M NOT GOING
3 TO BE ABLE TO DECIDE THE ISSUE OF PRESCRIPTION. I
4 THINK THAT BECAUSE OF THE VARIOUS ISSUES WITH REGARD TO
5 PUMPING, THE KIND OF PUMPING, THE CONDITION AT THE TIME
6 PUMPING STARTED, I DON'T KNOW ANY OF THOSE NUMBERS AT
7 THIS POINT. I DON'T WANT TO KNOW ANY OF THOSE NUMBERS
8 AT THIS POINT BECAUSE IT'S NOT SOMETHING THAT I AM
9 CONCERNED ABOUT. I'M CONCERNED WITH THE OVERALL
10 CONDITIONS. I WANT TO DETERMINE WHETHER OR NOT THE
11 COURT IS GOING TO EXERCISE EQUITABLE POWERS AT THIS
12 STAGE.

13 NOW, LET'S SUPPOSE THAT AT THE CONCLUSION
14 THE COURT REACHES BASED ON THE EVIDENCE IS THAT THERE
15 IS NO OVERDRAFT. WELL, THEN THERE ARE GOING TO BE
16 CERTAIN CONSEQUENCES TO THAT, AREN'T THERE? AND THERE
17 IS GOING TO HAVE TO BE A DETERMINATION MADE BY THOSE
18 PARTIES WHO CLAIM A PRESCRIPTION AS TO WHERE THEY
19 PROCEED FROM THAT POINT FORWARD.

20 IF THE COURT FINDS THERE IS AN OVERDRAFT,
21 THEN THE COURT IS GOING TO BE EVALUATING THE NEXT PHASE
22 OF THE TRIAL TO DETERMINE WHETHER OR NOT THERE ARE
23 APPROPRIATOR RIGHTS THAT HAVE BEEN ACQUIRED BY WAY OF
24 PRESCRIPTION. THAT MEANS THAT IN THAT PHASE THOSE
25 CLAIMING PRESCRIPTION WILL HAVE TO GO FORWARD WITH THE
26 EVIDENCE AND IT MAY WELL BE THAT THAT REQUIRES A JURY
27 TRIAL. I DON'T KNOW AT THIS POINT.

28 MAYBE IT REQUIRES A NUMBER OF THINGS.

1 BUT NOTHING THAT IS GOING TO HAPPEN WILL BE BASED UPON
2 ANY FINDINGS OF FACT AS TO ENTITLEMENT COMING OUT OF
3 THE THIRD PHASE OF TRIAL. I'M NOT GOING TO HEAR THAT
4 KIND OF EVIDENCE.

5 MR. SLOAN: THANK YOU, YOUR HONOR. AND JUST TO
6 CLARIFY BECAUSE WHERE I GUESS I GOT CONFUSED IS HEARING
7 MR. ZIMMER'S COMMENTS.

8 WE WILL NOT AT THIS STAGE OF TRIAL BE
9 ADDRESSING THE ISSUE OF WHETHER PUMPING IN ONE LOCATION
10 IMPACTS THE PUMPING AT ANOTHER LOCATION WITHIN THE
11 ADJUDICATION BOUNDARIES.

12 THE COURT: THAT IS FINE, MR. SLOAN, I DON'T
13 MEAN TO TELL PEOPLE WHAT EVIDENCE THEY SHOULD PRODUCE.
14 IT MAY BE THAT SOMEBODY WANTS TO PRODUCE EVIDENCE THAT
15 SHOWS THAT THEIR PORTION, THEIR LAND IS IN AN AREA
16 WHERE PUMPING HAS NO AFFECT ON ANYTHING.

17 I MEAN, I DON'T KNOW. SOMEBODY MAY WANT
18 TO ESTABLISH THERE IS A SERIOUS PROBLEM THERE, BUT THAT
19 IS GOING TO RELATE TO THE OVERALL CONDITION OF THE
20 BASIN.

21 MR. SLOAN: AGAIN, MR. SLOAN SPEAKING. AND
22 WOULD YOUR HONOR NOT BE MAKING FINDINGS AT THIS STAGE
23 OF THE TRIAL WITH RESPECT TO WHETHER PUMPING IN ONE
24 LOCATION AFFECTS PUMPING IN ANOTHER LOCATION BECAUSE I
25 DO THINK THAT THAT WOULD OBVIOUSLY QUITE DRAMATICALLY
26 CHANGE THE SCOPE OF THIS PHASE OF THE TRIAL IF THERE
27 WERE THAT CONCERN THAT THE COURT WOULD ACTUALLY ISSUE
28 FINDINGS OF FACT AS SUCH TO AN ISSUE AS THAT.

1 I UNDERSTAND THE DIFFICULTY OF SIMPLY
2 PRESENTING EVIDENCE THAT MAY BE RELEVANT TO OVERLAPPING
3 ISSUES BUT IF WE ARE GOING TO BE TRYING THE ISSUE OF
4 --

5 THE COURT: I DON'T WANT TO MAKE ANY FINDING,
6 MR. SLOAN, THAT WILL HAVE ANY IMPACT AT ALL ON ANY OF
7 THE CLAIMS THAT THE PARTIES HAVE, VIS-A-VIS, TO EACH
8 OTHER WITH REGARD TO PRESCRIPTION, OWNERSHIP, RIGHTS TO
9 PUMP, AND SO ON.

10 MR. SLOAN: OKAY, THANK YOU, YOUR HONOR.

11 MR. CUSH: YOUR HONOR, BILL CUSH.

12 THE COURT: YES, MR. CUSH.

13 MR. CUSH: I'M NOT SURE AND I DON'T WANT TO
14 START THIS BY SAYING I'M NOT CLEAR ON SOMETHING OR IT
15 NEEDS CLARIFICATION, BUT YOUR EARLIER STATEMENT OF THE
16 ISSUES CERTAINLY SUGGESTED THAT. AND WE ARE STARTING
17 OFF IN SO FAR AS I KNOW WITH THE LARGEST AREA OF
18 ADJUDICATION THAT MAY GO TO TRIAL ON THAT ISSUE SO
19 THERE ARE SIGNIFICANT DIFFERENCES REGIONALLY THROUGHOUT
20 THE ENTIRE BASIN WITHIN THE COURT'S JURISDICTION.

21 WE CERTAINLY ANTICIPATE PUTTING IN
22 EVIDENCE THAT THERE ARE SIGNIFICANT PORTIONS OF THE
23 OVERALL BASIN THAT ARE NOT IN THE CONDITION OF
24 OVERDRAFT. SO I NEED TO KNOW SO I CAN TELL MY EXPERTS
25 IF WHAT THEY ARE GOING TO SAY IS WHETHER OR NOT WE CAN
26 COME IN AND PRODUCE EVIDENCE THAT A SIGNIFICANT PORTION
27 OF THE BASIN IS NOT IN OVERDRAFT, FOR EXAMPLE, AND NOT
28 BEING SUBJECTED TO AN OBJECTION BY ONE OF THE OTHER

1 PARTIES THAT IS OUTSIDE THE SCOPE OF THE ISSUES FOR
2 THIS PHASE OF THE TRIAL.

3 I APPRECIATE THE COURT SAYING YOU ARE NOT
4 GOING TO MAKE A PARTICULAR FINDING AND THAT IS FINE,
5 BUT I DON'T WANT TO BE PRECLUDED FROM INTRODUCING
6 EVIDENCE THAT SHOWS THAT PUMPING IN ONE PORTION OF THE
7 BASIN HAS ABSOLUTELY NO AFFECT ON PUMPING IN OTHER
8 PORTIONS OF THE BASIN.

9 THE COURT: I THINK THAT MEANS YOU CAN OFFER
10 IT.

11 MR. CUSH: THAT MEANS IT WOULD BE ADMITTED AND
12 NOT SUBJECT TO AN OBJECTION THAT IS NOT IN THE SCOPE OF
13 THE PHASE THREE TRIAL.

14 THE COURT: I THINK THAT IS CORRECT.

15 MR. DUNN: WE HAVE GONE THROUGH A PHASE TWO OF
16 TRIAL IN WHICH THE COURT SET THAT PHASE FOR ANY PARTY
17 WHO HAD A CLAIM THAT THE PUMPING IN THIS AREA DID NOT
18 IMPACT ANOTHER AREA IN THE BASIN. IN OTHER WORDS, WHEN
19 THEY CLAIM TO BE IN A SEPARATE SUB BASIN.

20 WHAT WE ARE HEARING NOW IS AN ATTEMPT TO
21 RELITIGATE THE ISSUE THAT MR. CUSH WAS INVOLVED WITH IN
22 THE PHASE TWO PROCEEDING AND OTHERS. I JUST WANT TO BE
23 SURE THAT WE ARE NOT GOING TO GO BACK AND HAVE TO
24 REVIEW THE PHASE TWO TRIAL AND HAVE ONE OR MORE PARTIES
25 SHOW THAT THEIR PUMPING OR PUMPING IN THEIR AREA DOES
26 NOT IMPACT OTHER AREAS OF THE BASIN. SO TO JUSTIFY
27 THAT THEY WOULD BE EITHER IN A SEPARATE BASIN OR SUB
28 BASIN. I ASSUME WE ARE NOT GOING TO GO BACK TO DO THAT

1 EXERCISE.

2 THE COURT: WE ARE NOT GOING TO RELITIGATE WHAT
3 HAS BEEN PREVIOUSLY ADJUDICATED BUT THAT IS NOT WHAT I
4 HEARD MR. CUSH SAY THAT HE WANTS TO DO.

5 HE WANTS TO ESTABLISH THAT THERE IS NO
6 OVERDRAFT IN HIS PORTIONS OF THE BASIN AND THAT IS A
7 DIFFERENT ISSUE. AND I'M CERTAINLY WILLING TO HEAR
8 TESTIMONY CONCERNING THE ENTIRE STATUS OF THE BASIN
9 WITH REGARD TO OVERDRAFT.

10 MR. JOYCE: YOUR HONOR, I JUST WANT TO
11 INTERJECT, IF I UNDERSTOOD CORRECTLY, THE COURT AT THE
12 PHASE TWO TRIAL WITH THE FACTUAL FINDINGS THAT THERE
13 WAS WITHIN THE AREA OF THE ADJUDICATION BOUNDARIES
14 HYDRAULIC CONNECTIONS WITHIN AND AS BETWEEN ALL AREAS,
15 BUT THE COURT DID NOT PURPORT TO MAKE ANY FINDINGS OF
16 QUALIFYING AND MANIFESTED EFFECT OF THAT CONNECTION
17 BASED UPON THE CONCENTRATION OR THE AFFECTS OF PUMPING
18 IN ONE AREA AND HOW THEY WOULD MANIFEST THEMSELVES BOTH
19 IN CONTEMPORARY AS WELL AS HISTORICAL TIMES TO THE
20 OTHER AREAS.

21 THE COURT: THAT IS TRUE.

22 MR. JOYCE: THANK YOU.

23 MS. MCKEITH: GOOD MORNING, YOUR HONOR, MALISSA
24 MCKEITH. I UNDERSTAND THE COURT RULED PREVIOUSLY ABOUT
25 THERE BEING SOME PRODUCTIVITY AND I APPRECIATE THE FACT
26 THAT THE COURT HAS THIS KNOWLEDGE THAT IT DOES NOT SEEM
27 TO BE A SIGNIFICANT CONNOTATION.

28 BUT GETTING TO MR. JOYCE'S QUALIFYING OF

1 THAT, THE PUBLIC WATER AGENCIES HAVE INDICATED TO US
2 THAT THEY WOULD BE WILLING TO CONSIDER A STIPULATION
3 ABOUT HOW MUCH OUR AREA MIGHT BE CONTRIBUTING TO THE
4 OVERALL AQUIFER.

5 IF I CAN REACH A STIPULATION WITH THE
6 PUBLIC WATER ENTITIES, IS THAT GOING TO BE SUFFICIENT
7 FOR EVIDENCE FOR THE NEXT PHASE SO I DON'T HAVE TO GO
8 BACK OVER ALL OF THE TESTIMONY FROM THE LAST TIME
9 TRYING TO SHOW WHETHER IT'S NINETY EIGHT OR ONE HUNDRED
10 THAT IS TAPPING THROUGH OR RECHARGING FROM OUR PART OF
11 THE AQUIFIER TO THE REMAINDER OF THE LARGE AREA BEING
12 ADJUDICATED.

13 THE COURT: WELL, I DON'T THINK I CAN COMMENT ON
14 WHAT IS YOUR POTENTIAL STIPULATION AND WHAT THE AFFECT
15 OF THAT MIGHT BE.

16 BUT THE FINDINGS THAT THE COURT MADE IN
17 TERMS OF THE PRODUCTIVITY WERE WHAT THEY WERE AND I'M
18 NOT GOING TO REVISIT THAT. I DON'T THINK IT'S
19 APPROPRIATE TO DO SO. THOSE ARE FINDINGS THAT I MADE.

20 AS FAR AS WHETHER OR NOT YOU FEEL YOU
21 HAVE TO GO BACK INTO WHAT YOUR PUMPING IS OR IS NOT,
22 FRANKLY, THAT IS NOT PARTICULARLY RELEVANT TO THIS NEXT
23 PHASE. WHAT IS RELEVANT TO THIS NEXT PHASE IS WHETHER
24 THE BASIN IS IN DISTRESS AND WHETHER SOMETHING NEEDS TO
25 BE DONE TO DEAL THAT DISTRESS BY REGULATING INEQUITY
26 WITH A PHYSICAL SOLUTION FOR OTHERWISE THE MANAGEMENT
27 TO THE BASIN.

28 MS. MCKEITH: WITH ALL DUE RESPECT, YOUR

1 FINDINGS WERE VERY GENERIC IN THE FIRST PHASE AND THE
2 EXTENT TO WHICH WE CONTRIBUTE TO THE AREA NEAR THE
3 PUBLIC WATER AGENCIES PUMPING, THEY PUT ON EVIDENCE
4 ABOUT HOW MUCH OF THE WATER FROM THE SOUTHERN PART IS
5 ACTUALLY BEING PUMPED INTO THE LARGER BASIN TO
6 DETERMINE OVERDRAFT OR NOT. AND AT THE END OF DAY I
7 HAVE TO QUANTIFY THE SAFE YIELD. AND IN ORDER TO DO
8 THAT, THERE HAS TO BE SOME SHOWING ABOUT WHAT DIFFERENT
9 PORTIONS OF THE AQUIFIER ARE CONTRIBUTING TO THE WHOLE.

10 IF WE ARE CORRECT, AND, IN FACT, I'M JUST
11 PUTTING A NUMBER ON THE TABLE FOR CLARITY PURPOSE, IF
12 THERE ARE ONLY ONE HUNDRED ACRE FEET THAT THAT AQUIFER
13 CONTRIBUTES TO HELP THE GREATER AREA, IS THAT GOING TO
14 AFFECT WHAT THE ULTIMATE AMOUNT OF WATER IS THAT IS
15 AVAILABLE FOR PUMPING FROM THE AQUIFER? I'M NOT
16 INVITING THE IDEA OF HAVING TO GO OUT THERE, BUT ON THE
17 OTHER HAND, I DON'T WANT TO NOT PAY ATTENTION AND HAVE
18 IT UPSET MY CLIENT AND HIS POSITION.

19 THE COURT: I'M NOT SURE WHAT YOU ARE ASKING ME
20 OR IF I CAN ANSWER WHAT YOU ARE ASKING ME AT THIS
21 POINT. THE ONLY THING I CAN TELL YOU IS THAT I'M
22 INTERESTED IN THE TOTALITY OF PUMPING IN THE BASIN AND
23 I'M INTERESTED IN THE SOURCES OF THE RECHARGE AND I'M
24 INTERESTED IN INCLUDING THE RETURN FLOW SO THAT I CAN
25 DETERMINE WHETHER OR NOT THE BASIN IS IN DISTRESS.

26 MR. BUNN: YOUR HONOR, THIS IS TOM BUNN.

27 I HAVE GOT TWO COMMENTS. ONE IS THE
28 LENGTH OF TRIAL, I THINK IF I HEARD THE COURT CORRECTLY

1 THAT YOU ARE GOING TO PERMIT EVIDENCE FROM INDIVIDUAL
2 AREAS OF THE BASIN, THEN THAT AREA IS NOT IN OVERDRAFT,
3 I CAN CONTEMPLATE IT'S AT LEAST FOUR DIFFERENT AREAS
4 THAT ARE GOING TO TAKE A RUN AT THAT WITH SUBSTANTIAL
5 EVIDENCE, BUT I'M CONCERNED NOW ABOUT THE TEN DAY TRIAL
6 ESTIMATE. I DON'T THINK THE TEN DAYS IS ENOUGH. IF WE
7 ARE GOING TO HEAR THAT IN ADDITION TO THE BASIN WIDE
8 OVERDRAFT AND SAFETY ELEMENT.

9 THE COURT: WELL, YOU KNOW, THE BASIN IS MADE
10 UP OF PARTS OF THE WHOLE AND SO I'M NOT TELLING PEOPLE
11 WHAT THEY SHOULD OR SHOULD NOT PRODUCE. I WOULD RATHER
12 HEAR EVIDENCE AS TO WHETHER OR NOT THE BASIN IS IN
13 DISTRESS.

14 MR. BUNN: I UNDERSTAND THAT, YOUR HONOR, BUT
15 I'M SUGGESTING TO YOU THAT TEN DAYS WILL PROBABLY NOT
16 BE ENOUGH IF WE DO IT THAT WAY.

17 THE COURT: IF THAT IS THE CASE, THAT IS THE
18 CASE.

19 MR. BUNN: THE SECOND COMMENT THAT I HAD WAS
20 WITH RESPECT TO THE DATE THAT YOU HAD FOR US. IN
21 RESPONSE TO YOUR INVITATION, WE DID FILE A PROPOSED
22 CASE MANAGEMENT ORDER THAT HAD SUGGESTION FOUR DATES,
23 AND WE ARE THE ONLY ONES THAT DID THAT.

24 THE COURT: I THINK THAT IS CORRECT, BUT MR.
25 CUSH, DID ALSO GIVE US SOME DATES.

26 MR. BUNN: PERHAPS WE CAN START, WE BASICALLY
27 HAD TWO DAYS THAT HADN'T ALREADY BEEN ESTABLISHED. ONE
28 WAS THE DEADLINE FOR COMPLETING NON EXPERT DISCOVERY

1 WHICH WE PROPOSED FOR JUNE 30TH. I HAVE HEARD SOME
2 OTHERS SAY IT SHOULD BE LATER.

3 THE OTHER DATE WAS SEPTEMBER 15 WHICH WE
4 PROPOSED AS THE DATE FOR WITNESS LISTS, TRIAL EXHIBITS,
5 TRIAL BRIEFS AND MOTIONS IN LIMINE. I DON'T THINK THERE
6 HAS BEEN ANY OBJECTION TO THAT DATE.

7 THE COURT: WELL, LET'S HEAR IF THERE ARE.

8 MR. JOYCE: YOUR HONOR, THIS IS MR. JOYCE, AS TO
9 NON EXPERT DISCOVERY, I WOULD SUGGEST THAT WE ADHERE TO
10 THE CODE.

11 THE COURT: ALL RIGHT, DOES ANYBODY HAVE ANY
12 CONCERN ABOUT THAT? OKAY. IN LIMINE MOTIONS THE 15TH
13 OF SEPTEMBER. BRIEFS THE 15TH OF SEPTEMBER. I HAVEN'T
14 HEARD ANYBODY OBJECT TO THAT.

15 MR. CUSH: YOUR HONOR, ROBERT CUSH, LET ME GIVE
16 YOU MY PERSPECTIVE OF WHAT I THINK WE OUGHT TO LOOK AT
17 IN TERMS OF SOME TARGET DATES.

18 IN MOVING TO THE MOST PRESSING MATTERS, I
19 THINK WE NEED TO PICK A DATE EARLY ON FOR FOLKS WHO ARE
20 GOING TO GIVE NOTICE OF ELECTION ANTICIPATING THIS
21 PHASE OF TRIAL SO WE KNOW WHO IS GOING TO PRODUCE
22 EXPERTS FOR A PRETRIAL DISCOVERY ORDER ON THE RECORD.
23 AND WE SUGGESTED IN OUR PAPERS A DATE PERHAPS ON APRIL
24 15TH THE SAME DAY FOR NON EXPERT WITNESS DISCLOSURE.

25 THE COURT: WELL, OKAY, BUT I THINK THAT IF YOU
26 DISCLOSE AN EXPERT YOU ARE STATING ESSENTIALLY THAT YOU
27 ARE GOING TO PARTICIPATE, TRUE?

28 MR. MCLACHLAN: THAT IS TRUE, BUT WE DON'T HAVE

1 EXPERT DISCLOSURE UNTIL JULY 1ST WHICH LEAVES YOU NOT
2 MUCH TIME TO DEAL WITH PERCIPIENT WITNESS DISCOVERY AS
3 TO THAT PARTY. SO, THE THOUGHT WAS TO GET FOLKS TO
4 COMMIT TO THE TRIAL SO WE KNOW WHAT THE LENGTH OF THE
5 TRIAL IS GOING TO BE AND WHAT WE CAN ANTICIPATE IN
6 TERMS OF THE NUMBER OF EXPERTS AND WHAT WE CAN
7 ANTICIPATE IN TERMS OF OTHER ISSUES.

8 THE COURT: I'M A LITTLE BIT CURIOUS AS TO
9 WHETHER ANY PARTY INTENDS TO CALL LAY WITNESSES? THIS
10 REALLY IS A SUBJECT FOR EXPERT TESTIMONY, IT SEEMS TO
11 ME, AND I WOULD BE VERY SURPRISED IF LAY WITNESS
12 TESTIMONY WOULD BE VERY USEFUL.

13 MR. CROW: YOUR HONOR, THIS IS MICHAEL CROW, WE
14 DO ANTICIPATE CALLING LAY WITNESSES. I DON'T QUITE
15 KNOW IF WE HAVE DONE OUR TRIAL PREPARATION, SO WE ARE
16 STILL TRYING TO FIGURE OUT EXACTLY HOW THEY FIT IN.
17 BUT WE ANTICIPATE THAT SOME OF EXPERT TESTIMONY FROM
18 THE PUBLIC WATER PURVEYORS WILL BE BASED UPON
19 ASSUMPTIONS ABOUT FARMING PRACTICES, UNDERGROUND
20 POSITIONS, ET CETERA, THAT ARE THE APPROPRIATE SUBJECT
21 FOR LAY TESTIMONY.

22 THE COURT: WELL, LAY TESTIMONY ABOUT FARMING
23 PRACTICES IS EXPERT TESTIMONY AS OPPOSED TO PERCIPIENT
24 WITNESS TESTIMONY.

25 MR. CROW: WELL, PEOPLE WOULD BE TESTIFYING
26 ABOUT WHAT THEY DO AND WHAT THEY EXPERIENCE IN THEIR
27 MANY YEARS OF EXPERIENCE ON THE GROUND.

28 THE COURT: AS I SAID THAT IS EXPERT TESTIMONY.

1 MR. CROW: OKAY.

2 THE COURT: AND THEY NEED TO BE DISCLOSED AS
3 EXPERTS TO THE EXTENT THAT YOU'RE ASKING ABOUT LAY
4 WITNESSES WHO ARE GOING TO TESTIFY ABOUT NON EXPERT
5 PERCIPIENT OBSERVATIONS, I'M NOT SURE HOW RELEVANT THAT
6 IS.

7 MR. MCLACHLAN: YOUR HONOR, THIS IS MIKE
8 MCLACHLAN. I'M A LITTLE CONFUSED ON THE ISSUE OF
9 OVERDRAFT. IS THE COURT NOT GOING TO BE HEARING
10 EVIDENCE ABOUT THE PUMPING OF THE VARIOUS PARTIES IN
11 THE VALLEY? WE PROBABLY WILL NEED LAY WITNESSES TO
12 DIRECTLY ESTABLISH THE PUMPING OF THE VARIOUS PARTIES
13 AND THAT IS NOT GOING TO OCCUR IN PHASE THREE?

14 THE COURT: I WOULD BE SURPRISED. IT SEEMS TO
15 ME THE OVERALL CONDITION IS A HYDROLOGICAL CONDITION
16 THAT LAY WITNESSES CANNOT TESTIFY TO.

17 MR. MCLACHLAN: IS THE COURT'S POSITION THAT WE
18 CAN MAKE A DETERMINATION OF THE CURRENT CONDITION OF
19 THE BASIN IN TERMS OF WHETHER IT'S OVERDRAFTED WITHOUT
20 KNOWLEDGE OF THE PUMPING IN THE BASIN?

21 THE COURT: NO, THAT IS NOT WHAT I SAID. I SAID
22 THE HYDROLOGY IS DETERMINED BY THE AMOUNT OF PUMPING.
23 THE AMOUNT OF PUMPING IS GOING TO BE DETERMINED BY
24 EXPERT TESTIMONY AND THE CONDITION OF THE BASIN WILL BE
25 DETERMINED BY SUCH THINGS AS EXPERT TESTIMONY AS TO
26 WELL DEPTH AND THE LIKE.

27 MR. KUNEY: WITH REGARD TO PARTICIPATION IN
28 PHRASE THREE, IS IT A REQUISITE THAT A PARTY HAVE A

1 DESIGNATED EXPERT OR MAY THEY PARTICIPATE IN THE COURSE
2 OF THE TRIAL THROUGH THE EXAMINATION OF THOSE
3 DESIGNATED EXPERTS AND EXAMINATION OF WITNESSES?

4 THE COURT: ANY PARTY CAN PARTICIPATE FULLY IN
5 TRIAL WITHOUT CALLING ANY WITNESSES OF THEIR OWN,
6 WITHOUT HIRING ANY WITNESSES OR ANYBODY ELSE IF THEY
7 CHOOSE TO DO SO. THIS IS NO DIFFERENT THAN ANY OTHER
8 TRIAL.

9 MR. KUNEY: AND I JUST WANT TO HAVE THAT
10 CLARIFIED. IT WASN'T CLEAR TO ME WHETHER THERE WAS
11 GOING TO BE SOME KIND OF MEDIATION FROM THE NORMAL
12 CODE.

13 THE COURT: NO, I THINK THERE HAVE BEEN A LOT
14 FAIRLY LOOSE COMMENTS MADE IN THE PAPERS ABOUT THE
15 COURT IGNORING THE LAW, ET CETERA, THOSE ARE VERY CLOSE
16 TO THE LINE AND THOSE KINDS OF COMMENTS ARE
17 INAPPROPRIATE.

18 IF YOU THINK THE LAW IS IN A PARTICULAR
19 SENSE ONE THING OR ANOTHER, SAY THAT. THE COURT IS NOT
20 IGNORING THE LAW. THE COURT IS NOT BEING DISINGENUOUS
21 AS SOME OF THESE PAPERS SUGGEST. THE COURT IS
22 ATTEMPTING TO APPLY THE LAW AS IT UNDERSTANDS IT. AND
23 WE ARE NOT IGNORING THE LAW. SO THE CODE OF CIVIL
24 PROCEDURE IS NOT BEING IGNORED. IT'S BEING FOLLOWED TO
25 THE BEST OF THE COURT'S ABILITY TO DO THAT.

26 THIS CASE IS TAKING A VERY LONG TIME. IT
27 HAS DRAGGED ON FOR AND BEEN DELAYED FOR A NUMBER OF
28 REASONS OVER THE LAST FOUR AND-A-HALF YEARS. I HOPE WE

1 CAN MOVE FORWARD EXPEDITIOUSLY AND PROFESSIONALLY.

2 I THINK WE ARE AT THE POINT WHERE WE CAN
3 DO THAT AND I THINK THAT I WOULD LIKE TO GET TO THIS
4 NEXT PHASE AND TRY AND DETERMINE WHETHER OR NOT WE ARE
5 GOING TO FURTHER PHASES OF THE TRIAL.

6 AT THIS POINT I'LL MAKE AN ORDER AND I
7 WILL ADOPT THE RECOMMENDATION THAT THE IN LIMINE
8 MOTIONS, TRIAL BRIEFS AND SO ON BE FILED NO LATER THAN
9 SEPTEMBER 15TH. AND I WILL EXPECT EXPERT WITNESS
10 DISCLOSURES JULY THE 1ST.

11 AND TO THE EXTENT THAT ANY PARTY DOES NOT
12 INTEND TO FILE OR CALL ANY WITNESSES DURING THIS CASE,
13 THIS NEXT PHASE THAT YOU WISH TO PARTICIPATE, I WOULD
14 HOPE THAT YOU WOULD TELL US THAT. BUT ANY PARTY CAN
15 OBVIOUSLY APPEAR WHETHER OR NOT THEY CALLED A WITNESS.

16 TO THE EXTENT THAT ANY PARTY WISHES TO OR
17 ATTEMPTS TO CALL LAY WITNESSES OTHER THAN EXPERTS, I
18 WOULD LIKE A STATEMENT OF THE SAME NO LATER THAN JULY
19 THE 1ST WITH AN INDICATION OF WHO THEY ARE BY NAME AND
20 WHAT THEY INTEND TO TESTIFY TO AND THE ESTIMATED AMOUNT
21 OF TIME NEEDED FOR THEIR TESTIMONY.

22 MR. DUNN: EXPERT WITNESS TESTIMONY, THE EXPERT
23 DISCLOSURES SHALL FOLLOW THE CODE ALONG WITH ANY EXPERT
24 REPORT THAT HAS BEEN PREPARED AND SHALL BE FILED AT THE
25 SAME TIME AS THE EXPERT DISCLOSURES.

26 DOES ANYBODY WANT TO SAY SOMETHING?

27 MR. SLOAN: YES, YOUR HONOR, WILLIAM SLOAN, I
28 APPRECIATE THE SCHEDULE THAT THE COURT JUST MADE OUT,

1 BUT RETURNING QUICKLY TO THE ISSUE OF LAY WITNESSES, IT
2 SEEMS TO ME THAT THERE MAY BE A POSSIBILITY THAT LAY
3 WITNESS TESTIMONY MIGHT BE RELEVANT FOR REBUTTAL
4 PURPOSES.

5 THERE ARE EXPERT OPINIONS THAT ARE
6 PREMISED ON CERTAIN ASSUMPTIONS OR OTHER CALCULATIONS
7 AND IT MIGHT BE APPROPRIATE TO HAVE LAY WITNESSES
8 TESTIFY TO REBUT THAT. THAT IS WHY WE ARE TRYING TO
9 SEE IF AT THE VERY LEAST WE CAN ALLOW FOR THAT. I
10 DON'T KNOW IF YOU WOULD CALL THEM REBUTTAL LAY
11 WITNESSES OR PERHAPS MOVE THE LAY WITNESS DESIGNATION
12 BACK TO A STAGE FOUR WITNESS REBUTTAL DESIGNATION.

13 THE COURT: THE PARTIES ALWAYS HAVE THE RIGHT
14 TO CALL REBUTTAL WITNESSES WITHOUT HAVING PREVIOUSLY
15 DISCLOSED THEM. THAT IS ONE OF THE EXCEPTIONS FOR
16 EXPERTS, IT'S AN EXCEPTION FOR LAY WITNESSES.

17 MR. SLOAN: OKAY. THANK YOU, YOUR HONOR.

18 MR. JOYCE: DID I UNDERSTAND THAT WITH
19 REFERENCE TO NON EXPERT DISCOVERY THAT WE ARE FOLLOWING
20 THE CODE AS FAR AS THE TIME LINE?

21 THE COURT: YES.

22 MR. CUSH: DOES THE COURT HAVE A PROPOSED DATE
23 FOR BRIEFS AND OPPOSITIONS TO MOTIONS IN LIMINE?
24 PREVIOUSLY THE COURT HAD INDICATED AT THE TIME THAT
25 PRETRIAL BRIEFS WERE PREPARED BUT THE COURT ALSO WANTED
26 A LIST OF WITNESSES ALONG WITH THE ANTICIPATED SUBJECT
27 OF THE WITNESS. IS THAT STILL THE COURT'S INTENT?

28 THE COURT: IT IS. I'VE INDICATED PARTICULARLY

1 WITH REGARD TO LAY WITNESSES, IF YOU DISCLOSE AN EXPERT
2 WITNESS, THE COURT IS GOING TO ASSUME THAT THAT WITNESS
3 IS GOING TO BE CALLED AND IT MAY NOT BE BUT CERTAINLY,
4 THROUGH THE DISCOVERY PROCESS THE PARTIES WILL LEARN
5 WHETHER THAT IS GOING TO OCCUR OR NOT.

6 MR. DUNN: DO WE HAVE A SUGGESTED TIME FOR
7 OPPOSITION BRIEFS OR MOTIONS IN LIMINE?

8 THE COURT: WELL, ORDINARILY I WOULD SAY TEN
9 DAYS BUT THAT IS GOING TO PUT IT RIGHT AT THE TIME OF
10 TRIAL. AND IF THAT IS THE CASE, THAT IS THE CASE. BUT I
11 DON'T THINK I CAN INSIST ON MUCH MORE THAN THAT. I
12 WOULD LIKE THEM AS SOON AS POSSIBLE, BUT YOU HAVE UNTIL
13 TEN DAYS.

14 ANYTHING FURTHER FROM ANYBODY? OKAY,
15 NOW, THERE WAS SOME COMMUNICATION IN THE PAST THAT
16 THERE MAY BE SOME DISCOVERY ISSUES THAT NEED TO BE
17 ADDRESSED AND I WOULD LIKE TO FOLLOW THE PRACTICE THAT
18 I HAVE INSTITUTED PREVIOUSLY.

19 TO THE EXTENT THAT PARTIES HAVE SUCH A
20 DISPUTE, THEY ARE REQUIRED TO MEET AND CONFER IN PERSON
21 TO TRY TO RESOLVE THE DISPUTE. TO THE EXTENT THEY
22 CANNOT, THEY CAN MEET WITH ME AND I WOULD LIKE TO MEET
23 IN PERSON IF IT IS COMPLICATED. IF IT IS NOT
24 COMPLICATED, WE CAN DO IT ON THE TELEPHONE.

25 AND TO THE EXTENT THERE IS NO RESOLUTION,
26 YOU CAN FILE WHATEVER MOTION TO COMPEL OR MOTION FOR
27 PROTECTIVE ORDER OR WHATEVER YOU MIGHT NEED TO FILE.
28 BUT I'M AVAILABLE AND YOU CAN REACH ME BY CELL,

1 JOINTLY. AND I WOULD EXPECT TO RESPOND APPROPRIATELY
2 AND PROMPTLY.

3 MR. JOYCE: YOUR HONOR, WITH REFERENCE TO THE
4 ISSUE THIS COURT JUST ADDRESSED, COULD THE COURT MODIFY
5 THAT SLIGHTLY THAT IF WE HAVE A PROBLEM THAT WE CAN
6 MEET AND CONFER BY TELEPHONE? THE LAST TIME WE WOULD
7 MEET AND CONFER IN PERSON AT DIFFERENT LOCATIONS WITH
8 NO PARTICULAR BENEFICIAL OUTCOME. MY CLIENT IS GETTING
9 ECONOMICALLY TIRED OF THIS CASE.

10 THE COURT: WELL, YOU ARE SPREAD OUT AND I THINK
11 THAT IS APPROPRIATE. YOU CAN DO IT BY THE TELEPHONE
12 JUST DON'T DO IT THROUGH AN EXCHANGE OF LETTERS.

13 MR. JOYCE: THANK YOU, YOUR HONOR.

14 THE COURT: OKAY. ALL RIGHT. I'M AVAILABLE.
15 LET ME KNOW IF I CAN HELP IN ANY WAY. TO THE EXTENT THE
16 CLASSES ARE STILL TALKING ABOUT RESOLUTION OF THE
17 CASES, IF YOU NEED FURTHER ASSISTANCE FROM JUSTICE
18 ROBIE OR ANYONE ELSE, PLEASE LET ME KNOW. OKAY?

19 AND MAYBE IF YOU GIVE ME A STATUS REPORT
20 ON THAT.

21 MR. KALFAYAN: MR. KALFAYAN, YOUR HONOR. WE ARE
22 MAKING PROGRESS. WE HAVE NARROWED THE ISSUES AND WE
23 DID HAVE A SUGGESTION FROM THE PUBLIC WATER SUPPLIERS
24 THAT WE MAKE USE OF THE MEDIATOR FOR THIS ONE FINAL
25 ISSUE THAT WE ARE TRYING TO RESOLVE AND IF WE CANNOT
26 RESOLVE IT, I AM CONTEMPLATING BRINGING IT TO THE
27 COURT'S ATTENTION.

28 THE COURT: ALL RIGHT. MR. DUNN ARE YOU

1 CONTINUING YOUR DISCUSSIONS WITH MR. MCLACHLAN?

2 MR. DUNN: NO, ONLY BECAUSE WE RECEIVED AN
3 E-MAIL FROM MR. MCLACHLAN TELLING US THAT HE IS FILING
4 A WRIT PETITION AND UNTIL THAT WRIT PETITION IS DECIDED
5 WE WANT TO PUT OUR SETTLEMENT DISCUSSIONS ON HOLD.

6 THE COURT: OKAY, LET ME KNOW IF I CAN DO
7 ANYTHING TO HELP YOU. THANK YOU.

8 MR. LEMIEUX: YOUR HONOR, KEITH LEMIEUX. DO WE
9 HAD A MOTION TO GET RELIEVED OF COUNSEL OF OUR CLIENT
10 FOR TODAY?

11 THE COURT: I THOUGHT THAT WAS FOR THE 29TH.

12 MR. LEMIEUX: I'M CONFUSED. I THOUGHT IT WAS
13 TODAY. I'M HAPPY TO DO IT ON THE 29TH.

14 THE COURT: HAVE YOU HEARD FROM YOUR CLIENT?

15 MR. LEMIEUX: SADLY, NO.

16 THE COURT: THEY ARE A PUBLIC ENTITY.

17 MR. LEMIEUX: THIS PARTICULAR CLIENT IS A VERY
18 SMALL MUNICIPAL WATER COMPANY KIND OF LOCATED UP IN THE
19 MOUNTAINS. THEY ARE VERY ISOLATED GEOGRAPHICALLY. I
20 THINK THERE ARE ONLY A DOZEN FAMILIES INVOLVED.

21 THE COURT: IT SEEMS TO ME, I WOULD URGE YOU TO
22 TRY TO MAKE SOME PERSONAL CONTACT WITH SOMEBODY
23 CONNECTED WITH THAT ORGANIZATION TO TRY AND GET THEM
24 INVOLVED SO WE DON'T END UP WITH A FAULTY SITUATION.

25 MR. LEMIEUX: WE DID FILE AN ANSWER ON THEIR
26 BEHALF.

27 THE COURT: YOU ARE LOOKING FOR A WAIVER IS
28 YOUR PROBLEM AS I UNDERSTAND IT. THAT IS A WAIVER OF A

1 CONFLICT.

2 MR. LEMIEUX: YES.

3 THE COURT: AND IT SEEMS TO ME THAT SHOULD NOT
4 BE SOMETHING THAT WOULD BE DIFFICULT TO OBTAIN IF YOU
5 CAN ACTUALLY TALK TO A HUMAN BEING THERE.

6 MR. LEMIEUX: I WOULD LIKE TO EXPLAIN IN MORE
7 DETAIL, BUT I'M AFRAID OF ATTORNEY CLIENT PRIVILEGE.
8 DO YOU THINK IT'S POSSIBLE TO SET UP AN IN CAMERA
9 DISCUSSION?

10 THE COURT: YES, YOU MAY ON THAT ISSUE.

11 MR. LEMIEUX: OKAY. THERE IS MORE TO BE SAID ON
12 THIS, BUT I WANT TO BE CAREFUL WHAT I SAY.

13 THE COURT: WHY DON'T YOU CALL MRS. WALKER AND
14 SET UP SOMETHING.

15 MR. LEMIEUX: I WILL DO THAT, YOUR HONOR.

16 THE COURT: ANYTHING ELSE BEFORE I GO? ALL
17 RIGHT, THANK YOU.

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

DEPARTMENT NO. 1 HON. JACK KOMAR, JUDGE

COORDINATION PROCEEDING
SPECIAL,

PLAINTIFF.

VERSUS

ANTELOPE VALLEY GROUNDWATER,
DEFENDANTS.

SUPERIOR COURT
NO. JCCP4408

I, CHARLES KUHN, OFFICIAL REPORTER OF THE SUPERIOR
COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS
ANGELES DO HEREBY CERTIFY THAT THE FORGOING PAGES 1
THROUGH 39 COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT
OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER HELD ON
MARCH 22, 2010 IN DEPARTMENT 1.

DATED THIS 29TH DAY OF MARCH, 2010


CHARLES KUHN, CSR #7810
OFFICIAL REPORTER