

EXHIBIT B

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT NO. 316

HON. JACK KOMAR, JUDGE

4 COORDINATION PROCEEDING)
5 SPECIAL TITLE (RULE 1550B))

6 ANTELOPE VALLEY GROUNDWATER CASES))

JUDICIAL COUNCIL
COORDINATION
NO. JCCP4408

7 PALMDALE WATER DISTRICT AND)
8 QUARTZ HILL WATER DISTRICT,)

SANTA CLARA CASE NO.
1-05-CV-049053

9 CROSS-COMPLAINANTS,)

10 VS.)

11 LOS ANGELES COUNTY WATERWORKS,)
12 DISTRICT NO. 40, ET AL,)

13 CROSS-DEFENDANTS.)
14 _____)

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 MONDAY, FEBRUARY 14, 2011

17
18 APPEARANCES:

19 (SEE APPEARANCE PAGES)
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25

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27 GINGER WELKER, CSR #5585
28 OFFICIAL REPORTER

1 CASE NUMBER: JCCP 4408
2 CASE NAME: ANTELOPE VALLEY
3 LOS ANGELES, CALIFORNIA, MONDAY, FEBRUARY 14, 2011
4 DEPARTMENT NO. 316 HON. JACK KOMAR
5 REPORTER GINGER WELKER, CSR #5585
6 TIME: 1:30 P.M.
7 APPEARANCES: (SEE TITLE PAGE)
8

9 THE COURT: ALL RIGHT. GOOD AFTERNOON. THIS IS
10 THE TIME THAT WE WERE GOING THE HEAR OBJECTIONS TO
11 EVIDENCE AND EXHIBITS, I PRESUME, WITH REGARD TO
12 MR. SCALMANINI'S TRIAL TESTIMONY.

13 WHO WANTS TO START ON THAT? MR. ZIMMER?

14 MR. ZIMMER: GOOD AFTERNOON, YOUR HONOR.

15 THE COURT: GOOD AFTERNOON. BEFORE YOU START, LET
16 ME ASK, HAVE YOU CONFERRED AT ALL WITH COUNSEL ON YOUR
17 SIDE OF THE CASE WITH THE OBJECTIONS SO WE DON'T HAVE
18 REPETITION?

19 MR. ZIMMER: NO -- JUST KIDDING, YES, I HAVE.
20

21 (LAUGHTER)
22

23 MR. ZIMMER: I'M SURE THEY WILL HAVE A FEW
24 COMMENTS.

25 THE COURT: NO DOUBT.

26 MR. ZIMMER: I HAVE THREE PARTS THAT I'LL BE
27 DISCUSSING YOUR HONOR:

28 THE FIRST PART IS THE FACTUAL AND PROCEDURAL

1 THE COURT: JUST DESCRIBE THEM.

2 MR. ZIMMER: THE FIRST THING THAT IS INCLUDED IS
3 PAGE 7 WHICH COMES OUT OF THE EXPERT DESIGNATION BY THE
4 PURVEYORS. IT DISCUSSES WHAT MR. LEFFLER WILL GIVE
5 TESTIMONY ON.

6 THE COURT: LET ME SEE THAT, MARTY.

7 MR. ZIMMER: THAT IS THE FIRST PAGE OF WHAT IS
8 MARKED AS C3, PARAGRAPH 12. MR. LEFFLER WAS RETAINED
9 FOR TESTIMONY REGARDING THE CHARACTERISTICS OF BEDROCK
10 SURROUNDING ANTELOPE VALLEY AND POTENTIAL FLOWS OF
11 GROUNDWATER THROUGH THOSE MATERIALS INTO THE BASIN.

12 MR. LEFFLER WILL ALSO OFFER REBUTTAL
13 TESTIMONY REGARDING OTHER EXPERTS ANALYSIS REGARDING
14 CHARACTERISTICS OF BEDROCK SURROUNDING ANTELOPE VALLEY
15 AND POTENTIAL FLOWS OF GROUNDWATER THROUGH THOSE
16 MATERIALS INTO BASIN.

17 THE NEXT DOCUMENT THE COURT WILL SEE IN THAT
18 PACKAGE IS AN OBJECTION BY CHRIS SANDERS, THE LOS
19 ANGELES COUNTY SANITATION ATTORNEY. AND ON PAGE 2 OF
20 THAT DOCUMENT, LINES 3 THROUGH 9, MR. SANDERS OBJECTED
21 TO THE DEPOSITION NOTICE OF MR. LEFFLER ON THE GROUND
22 THAT IT CALLED FOR INFORMATION OUTSIDE THE SCOPE OF THE
23 EXPERT DESIGNATIONS; THAT HE WAS DESIGNATED BY THE
24 PUBLIC WATER SUPPLIERS FOR THE LIMITED PURPOSE OF
25 PROVIDING EXPERT'S TESTIMONY AND REBUTTAL TESTIMONY
26 REGARDING THE CHARACTERISTICS OF BEDROCK CONCERNING THE
27 ANTELOPE VALLEY, ET CETERA.

28 THE NEXT DOCUMENT AFTER THAT IS --

1 THE COURT: HOLD ON JUST A MINUTE. THAT WAS
2 PAGE 2, LINES --

3 MR. WEEKS: IF COUNSEL IS GOING TO OBJECT TO A
4 PARTICULAR PAGE, LINE AND PAGE OF TESTIMONY, I'M
5 PREPARED TO DEAL WITH THAT. I THOUGHT HE WAS GOING TO
6 OBJECT TO SOME PORTION OF MR. SCALMANINI'S DEPOSITION ON
7 SUBSIDENCE, AND NOW WE ARE TALKING ABOUT MR. LEFFLER.

8 THE COURT: ONE OBJECTION AT A TIME. SO LET'S
9 HEAR WHAT HE HAS TO SAY. SO THE FIRST OBJECTION THAT
10 YOU ARE MAKING HERE REGARDS TO MR. LEFFLER; IS THAT
11 CORRECT.

12 MR. ZIMMER: THIS BEARS ON MR. SCALMANINI'S
13 OPINIONS. WHAT I DID IS I SPENT SEVERAL HOURS LAST
14 NIGHT GOING THROUGH AND TRYING TO SYNTHESIZE THE
15 OBJECTIONS, AND THIS IS FOUNDATIONAL TO THE OBJECTIONS
16 WHICH WILL FOLLOW. I HAVE GREATLY REDUCED THE NUMBER OF
17 OBJECTIONS, FOR EXAMPLE, THAT I MADE AT TRIAL TO A
18 CERTAIN NUMBER OF OBJECTIONS THAT BEAR ON THE ISSUES
19 THAT WE ARE DISCUSSING NOW.

20 FOR EXAMPLE, MR. LEFFLER PROVIDED ALL THE
21 RECYCLED WATER ANALYSIS. IT IS RECYCLED WATER ANALYSIS
22 THAT THEY ARE NOW ATTEMPTING TO O USE THROUGH
23 MR. SCALMANINI. SO THIS IS THE FOUNDATION FOR THAT
24 OBJECTION.

25 THE COURT: ALL RIGHT. DO YOU HAVE A COPY OF THE
26 DISCLOSURE FROM MR. SCALMANINI?

27 MR. ZIMMER: I DO, YOUR HONOR.

28 THE COURT: IT IS NOT INCLUDED IN THIS?

1 MR. ZIMMER: I CAN PROVIDE A COPY TO THE COURT. I
2 DON'T HAVE AN EXTRA COPY RIGHT AT THE MOMENT, BUT I
3 WOULD BE HAPPY TO PROVIDE THE ENTIRE --

4 THE COURT: IT WOULD BE HELPFUL FOR ME TO READ IT.

5 MR. ZIMMER: MARK THIS AS NEXT IN ORDER.

6 THE COURT: YES, HAND IT TO THE COURT. WHILE HE
7 IS GONE -- YES, YOU MAY.

8 DO YOU WANT IT MARKED NEXT IN ORDER?

9 MR. ZIMMER: THAT WOULD FINE.

10 THE COURT: THE LAST ONE WAS.

11 MR. ZIMMER: C3 -- SO THIS WOULD BE C4.

12 THE COURT: MAKE THIS C4.

13

14 (BOLTHOUSE PROPERTIES EXHIBIT C4
15 MARKED.)

16

17 THE CLERK: YOUR EXHIBITS WERE C?

18 MR. ZIMMER: MINE WERE C, AND I BELIEVE WE WERE AT
19 THREE.

20 THE COURT: ALL RIGHT. GO AHEAD, MR. ZIMMER.

21 MR. ZIMMER: WHAT THE COURT WILL SEE NEXT IN THE
22 PACKAGE IS SIMPLY ANOTHER OBJECTION BY MR. SANDERS WHEN
23 THE DEPOSITION WAS RESET. BUT FOLLOWING THAT IS A
24 DEPOSITION FROM BEST, BEST AND KRIEGER WITH BEST, BEST
25 AND KRIEGER ON THE TOP LEFT CORNER.

26 THE COURT: ALL RIGHT.

27 MR. ZIMMER: ENTITLED "OBJECTIONS TO BOLTHOUSE
28 NOTICE OF DEPOSITION OF EXPERT PETER LEFFLER." IF THE

1 COURT WILL TURN TO PAGE 2 OF THAT DOCUMENT, LINES 13
2 THROUGH 17, I WON'T READ THE WHOLE SECTION THERE, BUT IT
3 SAYS, "MR. LEFFLER HAS BEEN DESIGNATED BY THE PUBLIC
4 WATER SUPPLIERS FOR A LIMITED PURPOSE OF PROVIDING
5 EXPERT TESTIMONY AND REBUTTAL TESTIMONY REGARDING
6 CHARACTERISTICS OF BEDROCK SURROUNDING THE ANTELOPE
7 VALLEY AND POTENTIAL FLOWS OF GROUNDWATER THROUGH
8 MATERIALS INTO THE BASIN."

9 WHAT FOLLOWS AFTER THAT IS SIMPLY ANOTHER
10 OBJECTION BY LA COUNTY.

11 THE COURT: I'M NOT FINDING THAT IN THIS DOCUMENT.

12 MR. ZIMMER: SHOULD BE PAGE --

13 THE COURT: ARE YOU TALKING ABOUT PAGE 7 OF THE
14 DISCLOSURES?

15 MR. ZIMMER: NO. THIS IS AN OBJECTION FILED BY
16 BEST, BEST AND KRIEGER. IT HAS BEST, BEST AND KRIEGER
17 LETTERHEAD UP HERE ON THE LEFT SIDE, AND IT IS ENTITLED
18 "OBJECTIONS." IT SHOULD BE JUST AFTER MR. SANDERS'
19 OBJECTIONS ON BEHALF OF LA COUNTY.

20 THE COURT: I SEE AN OBJECTION TO THE TAKING OF
21 THE BOLTHOUSE --

22 MR. ZIMMER: BEST, BEST, KRIEGER, YOUR HONOR?

23 THE COURT: NO, IT IS ELLIS, SCHNEIDER AND --

24 MR. ZIMMER: NO, KEEP GOING DOWN. IT SHOULD BE
25 THE NEXT ONE.

26 THE COURT: OKAY.

27 MR. ZIMMER: IF YOU LOOK ON PAGE 2 OF THAT
28 DOCUMENT, 11 THROUGH 16 OR 17, THAT IS THE LANGUAGE THAT

1 I JUST READ.

2 THE CLERK: IF I MAY C3 WILL BE FINE FOR THAT.

3 THE COURT: C3. TELL ME AGAIN WHAT YOUR POSITION
4 WITH REGARDS TO MR. LEFFLER?

5 MR. ZIMMER: OUR POSITION REGARDING MR. LEFFLER IS
6 THAT MR. SCALMANINI IS ATTEMPTING TO GET INTO EVIDENCE
7 INFORMATION ON RECYCLED WATER IN A VERY BROAD CONTEXT,
8 MANY DIFFERENT ISSUES, AND ATTEMPTING TO GET THAT BEFORE
9 THE COURT WHEN WE WERE DENIED THE ABILITY TO DEPOSE
10 MR. LEFFLER ON THAT ISSUE AND I WILL GET TO THE
11 DEPOSITION HERE I'VE GOT ATTACHED ON EXHIBIT C3 AS WELL.

12 THE COURT: WELL, WHAT I'M LOOKING AT HERE ON
13 ELEVEN, TWO, SIXTEEN (SIC) SAYS -- AN ATTEMPT TO DOUBLE
14 SET MR. LEFFLER, AND THAT WAS THE OBJECTION.

15 MR. ZIMMER: THE OBJECTION FROM BEST, BEST, AND
16 KRIEGER?

17 THE COURT: YES.

18 MR. ZIMMER: IT MUST BE ON THE WRONG LINE. LET'S
19 SEE.

20 THE COURT: LINE 15 TELLS YOU WHETHER HE WAS
21 DESIGNATED AS ... BEDROCK AND FLOWS THROUGH THE
22 BEDROCK.

23 MR. ZIMMER: RIGHT, BUT ON THE ACTUAL OBJECTION --

24 THE COURT: GROUNDWATER, I SHOULD SAY.

25 MR. ZIMMER: THE OBJECTION THAT LOS ANGELES COUNTY
26 FILED THROUGH BEST, BEST, AND KRIEGER ON PAGE 2 OF THE
27 OBJECTION, LINES 13 THROUGH 17, THEY OBJECT ESSENTIALLY
28 ON THE SAME GROUNDS THAT LA COUNTY SANITATION OBJECTED.

1 AND THAT WAS THEY HAVE BEEN DESIGNATED FOR THE SOLE
2 PURPOSE OF PROVIDING TESTIMONY ON BEDROCK INFILTRATION
3 AND REBUTTAL ON BEDROCK INFILTRATION.

4 THE COURT: DID YOU TAKE MR. LEFFLER'S DEPOSITION?

5 MR. ZIMMER: NO, WE WEREN'T ALLOWED TO TAKE HIS
6 DEPOSITION ON RECYCLED WATER.

7 THE COURT: WAS THERE AN ORDER THAT NOT BE TAKEN?

8 MR. ZIMMER: A STIPULATION.

9 THE COURT: WELL --

10 MR. ZIMMER: WE TOOK HIS DEPOSITION ON BEDROCK
11 INFILTRATION. WE BY STIPULATION DID NOT TAKE HIS
12 DEPOSITION ON RECYCLED WATER BECAUSE OF THE OBJECTION
13 AND BECAUSE OF THE STIPULATION OF COUNSEL THAT THERE
14 WOULD BE NO TESTIMONY ABOUT RECYCLED WATER.

15 THE COURT: THAT WAS AN AGREED TO STIPULATION?

16 MR. ZIMMER: YES. I'M GETTING DOWN TO THAT. I
17 WAS JUST KIND OF GIVING YOUR HONOR THE HISTORY.

18 THE COURT: ALL RIGHT. GO AHEAD.

19 MR. ZIMMER: ALSO, CONTAINED IN THAT PACKAGE IS A
20 JANUARY 14TH DOWN A WAYS -- IT IS PROBABLY FROM THE
21 BOTTOM IS -- EIGHT SHEETS FROM THE BOTTOM IS AN EMAIL
22 BETWEEN MR. SANDERS AND MYSELF DISCUSSING THIS ISSUE.
23 AND IN THE LAST DOCUMENT, PROBABLY MOST IMPORTANT IN
24 THAT PACKAGE IS FOUR PAGES UP FROM THE BOTTOM --
25 ACTUALLY SIX PAGES FROM THE BOTTOM IS THE EMAIL.

26 THE COURT: YEAH, I'M LOOKING. THE FINAL DOCUMENT
27 ATTACHED FOUR PAGES UP FROM THE BOTTOM IS PAGE 29 OF THE
28 BEGINNING OF THE DEPOSITION OF MR. LEFFLER. AND ON

1 LINES 9 THROUGH 16, WE HAD A DISCUSSION ABOUT RECYCLED
2 WATER. SHALL WE DEAL THIS ISSUE?

3 MR. ZIMMER: I THINK THE MOST EFFICIENT WAY TO
4 HANDLE WOULD BE TO DISCUSS IT IN THE CONTEXT OF --

5 THE COURT: YOUR CONCERN IS MR. SCALMANINI'S
6 TESTIMONY RELIED UPON MR. LEFFLER, THAT'S WHAT --

7 MR. ZIMMER: RIGHT. ATTEMPTING TO GET IN THROUGH
8 MR. SCALMANINI -- LEFFLER TESTIMONY RECYCLED WATER. IT
9 WILL BE EASIER TO DISCUSS IT IN THE CONTEXT OF TESTIMONY
10 AND EXHIBITS.

11 THE COURT: ALL RIGHT.

12 MR. DUNN: MAY I BE HEARD BRIEFLY?

13 THE COURT: YES.

14 MR. DUNN: IT MIGHT BE A MORE EFFICIENTLY WAY
15 DEALING WITH THIS BY DEALING WITH THESE BROAD BASED -- I
16 THINK WHAT COUNSEL CALLS FOUNDATIONAL ISSUES FIRST
17 BEFORE WE START WADING INTO THE DETAIL. BECAUSE
18 DEPENDING ON HOW THE COURT DECIDES TO HANDLE SOME OF
19 THESE CLAIMS. I MEAN, WE MAY NOT HAVE TO GET INTO THE
20 DETAIL.

21 THE COURT: WELL, IT SEEMS TO ME THAT --
22 MR. SCALMANINI'S TESTIMONY REGARDING THE WASTE WATER AND
23 RECYCLED WATER, AND I DON'T HAVE IT -- A SPECIFIC
24 RECOLLECTION OF IT. IT IS THE ISSUE THAT MR. ZIMMER
25 REALLY IS CONCERNED ABOUT, SO LET'S HEAR WHAT HE HAS TO
26 SAY.

27 MR. ZIMMER: THE NEXT THING I NOTE, YOUR HONOR, IS
28 THAT MANY OF THESE OBJECTIONS BOTH IN TERMS OF THE

1 TESTIMONY AT TRIAL AND THE EXHIBITS DEALS WITH THE ISSUE
2 OF WHEN AN EXPERT MAY TESTIFY TO MATTERS THAT ARE
3 OTHERWISE ADMISSIBLE AS HEARSAY TO THE EXTENT TO WHICH
4 AN EXPERT CAN SIMPLY REPEAT ANOTHER EXPERT'S EXPERT
5 OPINION, AND THERE IS A WHOLE BUNCH OF STUFF INVOLVING
6 USGS INFORMATION THAT I THINK WILL BEAR ON THAT LATER.

7 THE CONTINENTAL AIRLINES CASE 216
8 CAL.APP. 3RD 388, THE COURT STATES "WHILE AN EXPERT MAY
9 STATE ON DIRECT EXAMINATION MATTERS ON WHICH HE RELIED
10 ON IN FORMING HIS OPINION, HE MAY NOT TESTIFY AS TO THE
11 DETAILS OF SUCH MATTERS IF THEY ARE OTHERWISE
12 INADMISSIBLE."

13 THE RULE RESTS ON THE RATIONALE THAT WHILE
14 AN EXPERT MAY GIVE REASONS ON DIRECT EXAMINATION FOR HIS
15 OPINIONS INCLUDING MATTERS HE CONSIDERED IN FORMING
16 THEM, HE MAY NOT UNDER THE GUISE OF REASONS BRING BEFORE
17 THE JURY INCOMPETENT HEARSAY EVIDENCE OPINION.

18 WELL, AN EXPERT MAY RELY ON ADMISSIBLE
19 HEARSAY INFORMING HIS OR HER OPINION AND MAY STATE ON
20 DIRECT EXAMINATION THE MATTERS ON WHICH HE OR SHE
21 RELIED, THE EXPERT MAY NOT TESTIFY AS TO THE DETAILS OF
22 THOSE MATTERS IF THEY ARE OTHERWISE INADMISSIBLE.

23 FOLLOWING THE CONTINENTAL AIRLINE CASE WITH
24 THE CASE OF PEOPLE VS. CAMPOS WHICH IS IN A SLIGHT
25 DIFFERENT CONTEXT IN TERMS OF A DOCTOR, BUT IT FAIRLY
26 STATES THE RULES AS I UNDERSTAND IT. AND THAT IS THAT
27 IT IS ERROR TO PERMIT AN EXPERT TO TESTIFY AS TO
28 EVALUATIONS OR OPINIONS OF ANOTHER DOCTOR AS THE BASIS

1 FOR THAT EXPERT'S OPINION.

2 THE RULE WAS NOT INTENDED TO BE A CHANNEL BY
3 WHICH A TESTIFYING DOCTOR CAN PLACE THE OPINION OF
4 INNUMERABLE OUT-OF-COURT DOCTORS BEFORE THE JURY. AND
5 THE IMPORTANCE OF THAT, I THINK, WILL COME UP WITH THE
6 USGS AND THE EXTENT TO WHICH WE HAD IN MY VIEW A VERY
7 BROAD CULMINATION OF EVENTS THAT ENDED UP IN A WHOLE LOT
8 OF INADMISSIBLE OPINIONS.

9 WE STARTED OUT WITH MR. SCALMANINI AT THE
10 TIME OF HIS DEPOSITION EXPRESSING NO OPINION ON
11 SUBSIDENCE. HE WASN'T DESIGNATED FOR THAT. 4 O'CLOCK
12 P.M HE COMES WITH HIS EXTENSOMETER DATA.

13 THE CODE REQUIRES THAT WE HAVE THE ABILITY
14 TO MEANINGFULLY TO DEPOSE THE EXPERT ON ALL OPINIONS
15 THEY INTEND TO GIVE AT TRIAL. IT WAS NOT UNTIL LATER
16 THAT THERE WAS FOR THE FIRST TIME THAT THERE WERE ANY
17 CHARTS WITH THE EXTENSOMETER DATA ON IT.

18 AND LET ME SAY THAT I THINK THIS
19 EXTENSOMETER DATA WE ARE TALKING ABOUT, ONE SITE, THE
20 HOLLY SITE -- ONE SITE IN THE BASIN. NOW, I THINK IT IS
21 DRAWN US OFF TRACT SUBSTANTIALLY IN TERMS OF OPINIONS AS
22 WELL AS DRAWN US OFF TRACT PROCEDURALLY IN TERMS OF HOW
23 THINGS SHOULD WORK.

24 THE OPINIONS IN THIS CASE HAVE CHANGED EVERY
25 STEP ALONG THE WAY FROM THE DEPOSITION TO THE TRIAL TO
26 THE TRIAL TESTIMONY. AND WE HAD NEW OPINIONS ON
27 REDIRECT EXAMINATION THAT WERE NEVER GIVEN ON DIRECT
28 EXAMINATION. I'LL HAVE SPECIFIC LINE REFERENCES WHEN WE

1 GET THERE.

2 LET ME TURN TO THE TESTIMONY -- THE TRIAL
3 TESTIMONY. I WILL SAY THIS, I -- THERE WERE A LOT OF
4 OBJECTIONS WE COULD ARGUE FOR A LONG TIME ABOUT IN TERMS
5 OF DIRECT. I QUITE FRANKLY DON'T WANT TO SPEND THE TIME
6 TO DO THAT.

7 THE THRUST OF MY CONCERNS AT THIS POINT IS
8 TO THE REDIRECT EXAMINATION BECAUSE I THINK THAT IS
9 WHERE THE LARGEST PROBLEM-WISE.

10 ON -- THE COURT MAY RECALL FROM THE
11 TESTIMONY THAT THERE WERE A LARGE NUMBER OF QUESTIONS
12 THAT DEALT WITH USGS REPORTS.

13 THE COURT: WHY DON'T YOU GIVE ME THE PAGE AND
14 LINE, IF YOU WILL, AND THE DATE OF THAT TESTIMONY.

15 MR. ZIMMER: WE ARE IN REDIRECT TESTIMONY BY
16 MR. DUNN ON PAGE 1326, VOLUME 11.

17 THE COURT: PAGE?

18 MR. GRANT: 1326. THAT PAGE 1326, SPECIFICALLY
19 LINES 2 THROUGH 8, MR. DUNN WAS ASKING MR. SCALMANINI
20 ABOUT THE USGS REPORTS, ABSTRACTS FROM THE USGS, AND
21 MR. SCALMANINI WAS ASKED THIS QUESTION BY MR. DUNN:

22 (READING:)

23 QUESTION: HAVE YOU READ THE
24 PORTIONS THAT DEAL WITH THE
25 ANTELOPE VALLEY?

26
27 DID THE COURT FIND THAT PLACE?

28 THE COURT: YES.

1 (READING:)

2 QUESTION: HAVE YOU READ THE
3 PORTIONS THAT DEAL WITH THE
4 ANTELOPE VALLEY?

5 ANSWER: I THINK SO NOW, YES.
6 I HADN'T AT THE TIME I WAS ASKED
7 ABOUT IT IN CROSS-EXAMINATION. I
8 DON'T NORMALLY RELY ON ABSTRACTS,
9 YOU KNOW. I DON'T KNOW THE SOURCE
10 OF -- I DON'T KNOW INPUT TO
11 CALCULATION, THINGS OF THAT TYPE.
12

13 TAKE THE COURT TO PAGE 1333.
14

15 THE COURT: BEFORE YOU DO THAT, LET ME BACK UP A
16 LITTLE BIT AND LET ME READ WHAT PRECEDED THAT EXCHANGE.
17 1333?

18 MR. ZIMMER: GO TO 1333, LINES 16 THROUGH
19 PAGE 1334, LINE 7. IN THIS PARTICULAR SECTION OF
20 TESTIMONY, MR. DUNN IS ASKING ABOUT BEING ASKED ON
21 CROSS-EXAMINATION ABOUT SUBSIDENCE AND RESIDUAL
22 COMPACTION.

23 ON LINE 21, MR. DUNN SAID:

24 (READING:)

25 QUESTION: YOU WERE ASKED
26 DURING YOUR CROSS-EXAMINATION UPON
27 A READING OF THAT SENTENCE WHETHER
28 YOU HAD AN OPINION IN THAT REGARD.

1 AND COULDN'T PUT ON EVIDENCE OF SPECIFIC PUMPING.

2 THE COURT TOLD ALL PARTIES THAT I WILL NOT
3 BE ACCEPTING SPECIFIC PUMPING BY ANY PARTY TO BE PUMPING
4 AS TO THAT PARTY. WHAT I'M DOING IN THIS PHASE WILL BE
5 SAFE YIELD, OVERDRAFT, WHETHER THE COURT NEEDS TO
6 EXERCISE EQUITABLE JURISDICTION. THOSE ARE THE FINDINGS
7 THAT WE ARE MAKING, AND EVERYTHING ELSE WILL BE SIMPLY
8 HEARSAY THAT THE EXPERT RELIED UPON TO FORM HIS OPINION
9 IF IT IS PROPERLY USED IN THAT MANNER.

10 THE COURT: WELL, ISN'T THAT A PROPER BASES FOR AN
11 EXPERT TO OPINE?

12 MR. ZIMMER: WELL, THE INQUIRY IN MY MIND IS: IS
13 IT THE TYPE OF HEARSAY THAT AN EXPERT WOULD NORMALLY
14 RELY ON? FOR EXAMPLE, IF I CITED MR. JOYCE ON
15 SUBSIDENCE, THAT PROBABLY WOULDN'T BE A PROPER BASIS FOR
16 SUBSIDENCE. NO OFFENSE, MR. JOYCE.

17 THE COURT: I SUPPOSE THAT DEPENDS ON WHAT HE IS
18 SUBSIDING. THAT AS IT MAY.

19

20 (LAUGHTER)

21 .

22 MR. ZIMMER: THE SECOND ISSUE IS HOW IT IS BEING
23 USED. TYPICALLY, IT IS NOT -- IT CANNOT BE ADMITTED FOR
24 THE TRUTH OF THE MATTER; IT IS BEING ADMITTED SOLELY TO
25 THE EXTENT THAT THE COURT DOES ADMIT IT IF IT IS THE
26 KIND OF HEARSAY THAT THE EXPERT WOULD NORMALLY RELY ON.

27 THE DETAILS ON IT AS I READ FROM THE ONE
28 CASE, THE CONTINENTAL CASE, I BELIEVE IT WAS, THE

1 DETAILS OF IT ARE RELEVANT. SO WE HAVE A NUMBER OF
2 THESE EXHIBITS THAT HAVE ALL MANNER OF SUPPOSED PUMPING,
3 AGRICULTURAL PUMPING, THOSE ACTUAL NUMBERS WERE NOT
4 VERIFIED BY MR. SCALMANINI IN ANY WAY.

5 NOW, HE MAY BE RELYING ON THAT AND MAYBE
6 SOMETHING AN EXPERT NORMALLY RELIES ON; BUT TRULY FROM A
7 FINANCIAL STANDPOINT, HE DIDN'T VERIFY ANY OF THOSE
8 NUMBERS. SO THE POTENTIAL PROBLEM IN ADMITTING SOME OF
9 THESE EXHIBITS AS IT SUGGESTS THAT THAT IS ACTUAL DATA
10 AS OPPOSED TO SOMETHING THAT THE EXPERT MERELY RELIED
11 ON. TO THE EXTENT THAT IT IS SOMETHING THAT THE EXPERT
12 MERELY RELIED ON, THE DETAILS OF IT, AS THE CONTINENTAL
13 CASE POINTED OUT ARE INADMISSIBLE.

14 THE COURT: I THINK YOU ARE OVERREADING THE
15 CONTINENTAL CASE.

16 MR. ZIMMER: THE SECOND ASPECT OF THIS IS
17 IMPORTANT, AND I'LL GET INTO IT IN A MINUTE WITH SOME OF
18 THESE OTHER EXHIBITS IS THE ISSUE OF RECYCLED WATER.
19 AND I'LL POINT TO A FEW EXHIBITS WHERE WE HAVE GOT THE
20 RECYCLED WATER.

21 SO IT IS MY UNDERSTANDING AS TO ANY OF THESE
22 EXHIBITS WHETHER THE COURT INTRODUCES THEM OR NOT TO THE
23 EXTENT THEY HAVE ANY PUMPING DATA ON THEM, IT'S NOT
24 OFFERED FOR THE TRUTH OF THE MATTER, BUT MERELY AS SOME
25 INDICATION OF WHAT THE EXPERT WAS RELYING ON.

26 THE COURT: TO SHOW THE BASIS OF THE EXPERT'S
27 ESTIMATE OF PUMPING AND RECHARGE.

28 MR. ZIMMER: ON A GROSS BASIS?

1 THE COURT: YES.

2 MR. ZIMMER: IN THAT CASE, YOUR HONOR, I WOULD
3 MOVE TO EXHIBIT 68 WHICH IS, I THINK, OUR FIRST
4 INDICATION OF THIS THREE-CYCLE WATER ISSUE. IF YOU LOOK
5 AT ABOUT TWO-THIRDS ACROSS THE PAGE GOING FROM LEFT TO
6 RIGHT, TOP COLUMN, WE HAVE "WRP'S RECYCLED WATER
7 FOLLOWED BY TOTAL SURFACE AND RECYCLED WATER."

8 ONCE, AGAIN, WE WERE PROHIBITED FROM
9 DISCUSSING ANY RECYCLED WATER ISSUES WITH THE EXPERT WHO
10 DID THAT ANALYSIS. AND ALL OF THESE NUMBERS ARE
11 IMPROPERLY -- AN IMPROPER ATTEMPT TO ADMIT THOSE THROUGH
12 THIS EXPERT, AND IT NEED TO BE CLEAR THAT WE WERE NOT
13 GIVEN AN OPPORTUNITY TO CHALLENGE ANY OF THOSE NUMBERS.

14 EXHIBIT 71, AND WE HAVE TALKED ABOUT THAT
15 ENOUGH. LIKEWISE, ON RECYCLED WATER, EXHIBIT 74,
16 THERE'S ANOTHER DEPICTION OF RECYCLED WATER. NONE OF
17 THIS WAS MR. SCALMANINI'S ANALYSIS. WE WERE PRECLUDED
18 FROM EXAMINING MR. LEFFLER ON ANY OF THESE ISSUES WITH
19 REGARD TO RECYCLED WATER. IT WAS ALL BASED ON HIS
20 EXAMINATION. THE SAME WOULD BE TRUE FOR EXHIBIT 75
21 WHICH DEALS WITH HISTORICAL RECYCLED WATER.

22 76 ALSO INCORPORATES RECYCLED WATER.
23 EXHIBIT 77 INCORPORATES RECYCLED WATER.

24 DID THE COURT GET THE LAST ONE, EXHIBIT 77?

25 THE COURT: YES.

26 MR. ZIMMER: MOVING ON TO EXHIBIT 78, THE COURT
27 STATED PREVIOUSLY THAT THE COURT IS GOING TO DETERMINE
28 PROPER DEFINITIONS FOR SAFE YIELD. THE COURT WILL NOTE

1 FROM THE CROSS-EXAMINATION OF MR. SCALMANINI THAT HE
2 DIDN'T DO A SAFE YIELD ANALYSIS INVOLVING THE MAXIMUM
3 AMOUNT OF WATER WITHDRAWN FROM A GROUNDWATER BASIN.

4 HERE IN EXHIBIT 78, THERE IS AN ATTEMPT TO
5 SPLIT OUT NATIVE SUSTAINABLE YIELD, SOMETHING CALLED
6 NATIVE SUSTAINABLE YIELD, WHICH SAN FERNANDO DOESN'T
7 DISCUSS AT ALL.

8 AND ON EXHIBIT 79 THERE IS A NATIVE AND
9 SUPPLEMENTAL SUSTAINABLE YIELD. THESE ARE NOT SAFE
10 YIELD -- IS NOT A SAFE YIELD ANALYSIS. AND I MAKE THE
11 SAME COMMENTS ON A PREVIOUSLY -- MISCONSTRUES WHAT THE
12 LAW IS ON SAFE YIELD.

13 IN TERMS OF -- THERE ARE NUMEROUS OTHER
14 EXHIBITS THAT FOLLOW THAT -- THAT HAVE IN MY VIEW THE
15 SAME PROBLEM. THE PROBLEM FROM THE PRACTITIONER'S
16 STANDPOINT IS THAT LATER ON REVIEW IF SOMEONE WERE TO
17 REVIEW IN COURT THINKS THAT SOMEHOW THIS WAS SAFE YIELD
18 OR SOMEHOW RELIED UPON BY THE COURT AS, QUOTE, SAFE
19 YIELD, THEN THERE'S GOING TO BE A SIGNIFICANT PROBLEM IN
20 TERMS OF WHAT THE ACTUAL DEFINITION WAS.

21 BUT I THANK THE COURT FOR CLARIFYING THAT
22 YOU ARE GOING TO DETERMINE SAFE YIELD; AND THAT THERE
23 WILL BE A DETERMINATION OF THAT AS OPPOSED TO THE
24 POTENTIAL PROBLEMS WE HAVE HERE IN TERMS OF DEFINITIONS.

25 I THINK THOSE, YOUR HONOR, GENERALLY, ARE MY
26 COMMENTS ON THOSE TOPICS. I -- MAYBE SOME OTHER
27 COMMENTS BY OTHER COUNSEL, BUT THAT GENERALLY SPEAKING
28 IS WHAT I HAD TO SAY. THANK YOU.

1 THE COURT: THANK YOU. IN THE NEXT THREE MINUTES,
2 DOES ANYBODY WANT TO TELL ME WHAT THEY WANT TO TELL ME?

3 MR. ZIMMER: OH, YOUR HONOR, EXHIBIT 104 IS A
4 COMPLETE COPY OF THE REPORT, OBVIOUSLY, ALL SORT OF
5 HEARSAY IN THAT.

6 EXHIBIT 105, THE SAME THING, IT IS COMPLETE
7 REPORT.

8 the reporter: DID YOU SAY "INCOMPLETE"?

9 MR. ZIMMER: A COMPLETE REPORT. EXHIBIT -- I
10 THINK THAT WAS IT. MR. JOYCE IS ADDING THAT 106 AND 107
11 AND 108 ARE LIKEWISE COMPLETE REPORTS CONTAINING
12 OBJECTIONABLE HEARSAY.

13 THE COURT: THANK YOU.

14 MR. ROBERT KUHS: YOUR HONOR, ROBERT KUHS FOR
15 TEJON RANCH CORP. JUST SO THE RECORD IS CLEAR, WE WOULD
16 OBJECT TO EXHIBITS 62, 63, 64, 68, 73, 75, 76, 77.

17 AS MR. ZIMMER INDICATED ALL OF THOSE
18 EXHIBITS HAVE INFORMATION RELATING TO INDIVIDUALIZED
19 PUMPING AND INDIVIDUALIZED SERVICE DELIVERIES AND
20 INDIVIDUAL CALCULATIONS OF RECYCLED WATER.

21 UNDER THE CONTINENTAL CASE, I THINK IT IS
22 CLEAR THAT THE DETAILS DON'T COME IN; BUT IF THEY COME
23 IN, I WOULD ASK THE COURT TO MAKE IT CLEAR THAT THEY ARE
24 COMING IN NOT FOR THE TRUTH OF THE MATTER ASSERTED.

25 THE COURT: THEY ARE SO FAR COMING IN AS THE BASIS
26 FOR MR. SCALMANINI'S OPINION. HE HAS AN OPINION. AND
27 THE VALIDITY OF HIS OPINION DETERMINES THE WEIGHT OF THE
28 EVIDENCE THAT UPON WHICH HE BASIS IT. THAT IS SOMETHING