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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 4

HON. JACK KOMAR, JUDGE

COORDINATION PROCEEDING)
SPECIAL TITLE (RULE 1550B))

ANTELOPE VALLEY GROUNDWATER CASES)

JUDICIAL COUNCIL
COORDINATION
NO. JCCP4408

PALMDALE WATER DISTRICT AND)
QUARTZ HILL WATER DISTRICT,)

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

CROSS-COMPLAINANTS,)

VS.)

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

CROSS-DEFENDANTS.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, JULY 11, 2011

APPEARANCES:

(SEE APPEARANCE PAGES)

GINGER WELKER, CSR #5585
OFFICIAL REPORTER

1 CASE NUMBER: JCCP 4408
2 CASE NAME: ANTELOPE VALLEY
3 LOS ANGELES, CALIFORNIA, MONDAY, JULY 11, 2011
4 DEPARTMENT NO. 316 HON. JACK KOMAR
5 REPORTER GINGER WELKER, CSR #5585
6 TIME: 11:00 A.M.
7 APPEARANCES: (SEE TITLE PAGE)
8

9 THE COURT: GOOD MORNING. HAVE WE TAKEN ROLL CALL
10 ON THE APPEARANCES BY PHONE ALREADY?

11 THE CLERK: YES, YOUR HONOR, ON COURT CALL.

12 THE COURT: ALL RIGHT. LET'S JUST HAVE COUNSEL
13 WHO ARE PRESENT IN THE COURTROOM STATE THEIR
14 APPEARANCES.

15 MR. WEEKS: GOOD MORNING, YOUR HONOR, BRAD WEEKS
16 FOR QUARTZ HILL.

17 MR. ORR: GOOD MORNING, YOUR HONOR, STEVEN ORR FOR
18 THE CITY OF PALMDALE.

19 MR. DUNN: GOOD MORNING, YOUR HONOR, JEFFREY DUNN
20 FOR LA COUNTY WATERWORKS DISTRICT NO. 40.

21 MR. BUNN: GOOD MORNING, YOUR HONOR, THOMAS BUNN
22 FOR PALMDALE WATER DISTRICT.

23 MR. WELLEN: GOOD MORNING, YOUR HONOR, WARREN
24 WELLEN ON BEHALF OF THE LOS ANGELES WATER DISTRICT NO.
25 40.

26 MR FIFE: GOOD MORNING, YOUR HONOR, MICHAEL FIFE
27 FOR ANTELOPE VALLEY GROUNDWATER AGREEMENT ASSOCIATION.

28 MR. ZIMMER: GOOD MORNING, YOUR HONOR, RICHARD

1 YOUR HONOR. THAT DESCRIBED SAFE YIELD AND OVERDRAFT.
2 TO GO BACK NOW AND ADD IN THINGS THAT WE WERE NOT TRYING
3 RAISES BOTH LEGAL ISSUES IN TERMS OF THE PROPRIETY OF
4 THE TERMS NATIVE AND SAFE YIELD, SUPPLEMENTAL SAFE
5 YIELD, RETURN FLOWS, AND INTRODUCES NEW ISSUE INTO THE
6 CASE WHICH WE WERE NOT TRYING. ALTHOUGH ITS DIFFERENT
7 TERMS SUCH AS NATIVE RECHARGE MAY HAVE BEEN TALKED ABOUT
8 IN TERMS OF ULTIMATE NUMBER OF OVERDRAFT OR SAFE YIELD,
9 CERTAINLY WE WERE NOT TRYING THESE OTHER TERMS
10 SUPPLEMENTAL SAFE YIELD, ET CETERA.

11 SO TO -- SINCE WE HAD THE ISSUES CLEARLY
12 DEFINED BEFORE WE WENT TO TRIAL, I THINK THOSE ARE THE
13 ISSUES THAT THE COURT SHOULD BE DECIDING AND IN WHICH
14 THE COURT DID PROPERLY DECIDE IN THE PROPOSED -- OR IN
15 THE TENTATIVE STATEMENT OF DECISION.

16 THE OTHER THING IS THAT I THINK SOME OF
17 THESE OTHER ISSUES THAT ARE BEING RAISED AND -- OR WERE
18 RAISED IN TERMS OF RETURN FLOWS AND WHAT OTHERS MAY
19 ARGUE IN TERMS OF NATIVE RECHARGE, THE LEGAL RIGHT TO
20 RETURN FLOWS, THE AMOUNT OF RETURN FLOWS, IF THERE'S A
21 LEGAL RIGHT TO IT, THOSE ARE ALL THINGS THAT I THINK WE
22 CAN PROPERLY TACKLE IN A RIGHTS PHASE OF THE TRIAL WHEN
23 PARTICULAR PARTIES ARE CLAIMING RIGHTS, FOR EXAMPLE,
24 IMPORTED WATER OR TO OTHER ASPECTS OF THE SAFE YIELD.

25 THE BOTTOM LINE IS WE TRIED SAFE YIELD FOR
26 PURPOSES OF OVERDRAFT, AND THAT WAS IT. AND THE COURT
27 HAS MADE A DECISION ON THAT.

28 AND I THINK THAT THESE OTHER ISSUES -- I

1 AGREE WITH MR. DUNN THAT THESE OTHER ISSUES WILL BE --
2 AND ARE BEING DISCUSSED IN TERMS OF SETTLEMENT
3 NEGOTIATIONS WHICH I THINK ARE PROCEEDING BETTER THAN
4 EXPECTED. AND I THINK THAT THE COURT'S DECISION AS IT
5 STANDS ON OVERDRAFT AND SAFE YIELD IS WHAT IT IS, BUT I
6 WOULDN'T WANT TO INJECT OTHER ISSUES INTO IT AFTER THE
7 FACT SINCE VARIOUS PARTIES ON OUR SIDE OF IT CERTAINLY
8 DID NOT INTEND TO -- TRYING THOSE ISSUES AND TRIED TO
9 MAKE IT VERY CLEAR WHAT WE WERE TRYING.

10 THE COURT: MR. FIFE.

11 MR FIFE: I WOULD BE AGREEABLE TO WHAT MR. ZIMMER
12 SAID. THE ISSUE OF THE SPECIFIC NUMBER OR EVEN THE
13 SPECIFIC PERCENTAGE THAT ONE WOULD PUT ON THE RETURN
14 FLOWS, PARTICULARLY FROM IMPORTED WATER, THAT IS
15 SOMETHING THAT CAN BE DETERMINED EXPERIMENTALLY BY THE
16 WATER MASTER GOING FORWARD. IT WAS AN ISSUE THAT WAS
17 CONTESTED IN THE PHASE III TRIAL.

18 THE EXPERTS GAVE DIFFERENT NUMBERS FOR ALL
19 OF THOSE. AND IT REALLY ONLY HAS BEARING IN AN
20 ALLOCATION PHASE. AND I WOULD PERSONALLY THINK THAT IT
21 WOULD INTERFERE WITH THE SETTLEMENT DISCUSSIONS THAT ARE
22 UNDER WAY BECAUSE IT WOULD LOCK THINGS IN PLACE WHEN
23 WE'RE CURRENTLY NEGOTIATING AND INAPPROPRIATE TO PUT
24 INTO A STATEMENT OF DECISION.

25 MR. ZIMMER: ONE LAST POINT I WOULD MAKE, YOUR
26 HONOR, IS THE REASON THAT DURING THE TRIAL WE OBJECTED
27 ON HEARSAY GROUNDS TO A LOT OF THE INFORMATION THAT WAS
28 BEING EMPLOYED BY THE EXPERTS FOR PRECISELY THIS REASON.

1 AND THE COURT, I BELIEVE, ON SEVERAL OCCASIONS SAID THAT
2 THE -- ALL THIS INFORMATION AND DATA WAS BEING OFFERED
3 NOT FOR THE TRUTH OF THE MATTER ASSERTED, BUT FOR SIMPLY
4 AS A BASIS FOR AN EXPERT'S OPINION AS TO SAFE YIELD OR
5 OVERDRAFT.

6 THE COURT: ALL RIGHT.

7 MR. BUNN: JUST BRIEFLY IN RESPONSE, YOUR HONOR,
8 MR. ZIMMER TALKED ABOUT THE USE OF THE DEFINITIONS IN
9 THE CASE LAW AND HOW WE WERE ONLY USING THE DEFINITIONS
10 OF SAFE YIELD AND OVERDRAFT AS PROVIDED IN THE CASE LAW.
11 AND THEN IN HIS WRITTEN OPPOSITION, HE WENT FURTHER AND
12 SAID SAN FERNANDO CASE NEVER USED THE TERMS OF NATIVE
13 SAFE YIELD AND SUPPLEMENTAL SAFE YIELD.

14 YOUR HONOR, I JUST WANT TO POINT OUT THAT
15 THE SAN FERNANDO CASE DID IN FACT USE THOSE CONCEPTS AND
16 ORDERED THE TRIAL COURT TO USE THOSE CONCEPTS. JUST TO
17 READ ONE QUICK SENTENCE FROM THE SAN FERNANDO CASE ON
18 PAGE 288, "ON REMAND THE BASE SAFE YIELD SHOULD BE
19 APPORTIONED BETWEEN AMOUNTS ATTRIBUTABLE TO (1) NATIVE
20 WATERS PRODUCED BY PRECIPITATION WITHIN THE ULARA."
21 THAT IS THE UPPER LA RIVER THAT -- IN ISSUE IN THAT CASE
22 AND IN (2) WATER IMPORTED FROM OUTSIDE THE ULARA.

23 THE REPORTER: ARE YOU SAYING ULARA?

24 MR. BUNN: U-L-A-R-A.

25 THE REPORTER: THANK YOU.

26 THE COURT: ALL RIGHT. THANK YOU.

27 MR. BEZERRA: YOUR HONOR, RYAN BEZERRA FOR COPA DE
28 ORO.

1 THE COURT: GO AHEAD.

2 MR. BEZERRA: I BELIEVE WHAT YOU HAVE HERE ARE TWO
3 SEPARATE ISSUES: ONE IS THAT THE CALCULATION OF THE
4 SAFE YIELD INCLUDED SOME CALCULATION OF RECHARGE FROM
5 IMPORTS APPLIED OVER THE BASE PERIOD. WHAT YOU HAVE
6 HERE, HOWEVER, IS THE STATEMENT -- THE PROPOSED
7 STATEMENT THAT THE COURT DECLARED THAT THE CURRENT
8 AMOUNT OF RECHARGE FROM IMPORTS APPLIED IS A DESIGNATED
9 NUMBER IS A DIFFERENT ISSUE.

10 IF THE INTENTION OF THE STATE IS THAT THE
11 COURT HAS TO HAVE FOUND SOME AMOUNT OF RECHARGE IMPORT
12 APPLIES IN ORDER TO BE ABLE TO DETERMINE A SAFE YIELD,
13 IT SHOULD SAY THAT, AND IT SHOULD NOT SAY THAT THE COURT
14 FINDS THAT THE SAFE YIELD -- OR THAT THE YIELD FROM
15 IMPORT SUPPLIES IS A PARTICULAR NUMBER WHICH IS AN
16 AMOUNT THAT WOULD CARRY FORWARD.

17 THE AMOUNT SHOULD NOT CARRY FORTH. IT
18 SHOULD BE COMPLETELY RETROSPECTIVE AS TO WHAT THE COURT
19 FOUND AS PART OF ITS CALCULATION OF THE SAFE YIELD AS
20 STATED IN THE STATEMENT OF DECISION.

21 THE COURT: ALL RIGHT. MR. MCLACHLAN, DID YOU
22 WANT TO SAY SOMETHING?

23 MR. MCLACHLAN: YES, YOUR HONOR, MICHAEL MCLACHLAN
24 FOR THE WOOD CLASS. I JUST WANTED TO ADD ONE POINT
25 RELATIVE TO THIS QUESTION OF RETURN FLOWS, AND I THINK
26 IT IS IMPORTANT IN THIS CONTEXT BECAUSE THIS IS A RATHER
27 UNUSUAL PROCEEDING WHEREIN WE ARE NOT HAVING A TRIAL OF
28 ALL THE CAUSES OF ACTION.

1. IN FACT, THE LAST TRIAL DIDN'T REALLY
2. RESOLVE ANY PARTICULAR CAUSE OF ACTION. IT JUST
3. RESOLVED AN ISSUE TO MANY OF THE VARIOUS CAUSES OF
4. ACTION.

5. BECAUSE OF THAT, I THINK THAT THE ISSUE OF
6. NOTICE IN ADVANCE OF, LET'S SAY, THE PHASE III TRIAL AND
7. ANY FUTURE PHASES REALLY HAS TO BE PRETTY CLEAR. AND I
8. DON'T THINK THERE IS MUCH ARGUMENT THAT IN THOSE NOTICES
9. THERE WAS NO REFERENCE TO DETERMINATION SPECIFICALLY BY
10. THE COURT IN THIS PHASE III OF THE RETURN FLOWS. AND
11. WITHOUT THE NOTICE, THEN YOU HAVE LIMITATIONS IN
12. DISCOVERY AND THE ABSENT PARTIES AND ON AND ON.

13. AND I THINK THAT IS A BIT PROBLEMATIC, AND I
14. THINK IT PERHAPS UNNECESSARILY INVITES AN APPEALABLE
15. ISSUE WHEN, IN FACT, WE DON'T NEED TO REACH THAT POINT
16. UNTIL A SUBSEQUENT PHASE.

17. THE COURT: ALL RIGHT. THANK YOU.

18. LET ME MAKE AN OBSERVATION. I'M GOING TO
19. GIVE YOU A WRITTEN STATEMENT OF DECISION THAT WILL
20. ENCOMPASS MY FINAL RULINGS ON THESE OBJECTIONS. BUT I
21. THINK THAT IS IT IS IMPORTANT TO NOTE THAT THE PHASE III
22. TRIAL -- THE PURPOSE WAS TO DETERMINE WHETHER OR NOT
23. THERE WAS A STATUS OF OVERDRAFT WITHIN THE BASIN AND THE
24. ADJUDICATION AREA SUCH THAT IT WAS NECESSARY FOR THE
25. COURT TO SEEK A PHYSICAL SOLUTION TO THAT PROBLEM.

26. SO THE PRINCIPAL ISSUE WAS OVERDRAFT. YOU
27. CANNOT DETERMINE OVERDRAFT WITHOUT AT LEAST AN ESTIMATE
28. OF THE AMOUNT OF RECHARGE FROM ALL SOURCES THAT ARE PUT

1 INTO THE AQUIFER.

2 AND IN THIS CASE, OBVIOUSLY, THE COURT FOUND
3 BASED UPON THE OPINIONS OF EXPERTS THAT AS I INDICATED
4 IN THE TENTATIVE DECISION THE AMOUNT OF RECHARGE WAS
5 EXCEEDED BY THE AMOUNT OF PUMPING OVER A LONG PERIOD OF
6 TIME. IT DOESN'T MEAN EVERY YEAR, BUT OVER A LONG
7 PERIOD OF TIME USING THE TIMELINE OF 50 YEARS, WHICH I
8 THOUGHT WAS THE APPROPRIATE ONE BECAUSE IT MANIFESTED
9 ALL CYCLES OF PRECIPITATION, DROUGHT AND THE LIKE.

10 THAT IS TO MY MIND THE MOST IMPORTANT THING
11 THAT WE DECIDED IN PHASE III.

12 I DID NOT MAKE AND COULD NOT MAKE INDIVIDUAL
13 DETERMINATIONS AS TO PUMPING IN VARIOUS AREAS, TOTAL
14 SOURCES OF WATER THAT WENT INTO VARIOUS PORTIONS OF THE
15 AQUIFER, THE AMOUNT OF SUBSIDENCE IN VARIANCE AREAS OR
16 LACK THEREOF.

17 NONE OF THOSE THINGS WERE ADJUDICATED. IT
18 WAS ADJUDICATED ON A VERY GENERAL BASIS WITH THE INTENT
19 OF DETERMINING WHETHER OR NOT THERE WAS A SUFFICIENT
20 OVERDRAFT PROBLEM IN THE ADJUDICATION AREA SUCH THAT THE
21 COURT WOULD BE IN THE POSITION OF MAKING DETERMINATIONS
22 CONCERNING PHYSICAL SOLUTIONS AND HOW THAT MIGHT BE
23 BROUGHT ABOUT.

24 SO THAT WHEN -- WHEN YOU ARE ASKING FOR A
25 LOT OF DETAILED FINDINGS, I DON'T THINK YOU ARE ENTITLED
26 TO THEM. AND I DON'T THINK YOU ARE ENTITLED TO
27 FINDINGS -- AND I WOULDN'T BE COMFORTABLE MAKING
28 FINDINGS AS TO WHAT FOR EXAMPLE PUBLIC WATER --

1 CALIFORNIA WATER PROJECT WATER IS GENERATED AND PRODUCED
2 INTO THE AQUIFER. I CAN'T MAKE THAT DETERMINATION.

3 I CAN TELL YOU WHAT IT MIGHT HAVE BEEN IN
4 ONE YEAR OR TWO YEARS BASED UPON THE TESTIMONY THAT WAS
5 PROVIDED. BUT THAT CERTAINLY IS NOT A SUFFICIENT BASIS
6 FOR MAKING A FINDING WHICH WOULD GIVE CERTAIN RIGHTS TO
7 PARTIES WHO PRODUCED -- OBTAINED THAT WATER. THAT'S
8 BEYOND THE SCOPE OF THIS THIRD PHASE OF THE TRIAL.

9 SO I'M NOT INCLINED TO DO THAT. AND I THINK
10 THAT THERE IS A POSSIBILITY FOR A GREAT DEAL OF ARGUMENT
11 AND DISCUSSION CONCERNING WATER THAT IS INTRODUCED INTO
12 THE VALLEY FROM OTHER AREAS AS WELL AS WITH THE RETURN
13 FLOWS MIGHT BE FOR AGRICULTURAL AND FOR MUNICIPAL AND
14 INDUSTRIAL, FOR SALVAGED WATER FOR ANY NUMBER OF OTHER
15 SOURCES OF WATER OR WHATEVER THEY MAY BE.

16 SO, ESSENTIALLY, WHAT I'M SAYING IS I'M
17 GOING TO SUSTAIN THE OBJECTION. AND WHAT I'M ULTIMATELY
18 GOING TO DO HERE WITH REGARD TO EACH ONE OF THESE ISSUES
19 IS DEAL WITH IT IN TERMS OF THE STATEMENT OF DECISION,
20 AND I'LL DRAFT IT MYSELF. ALL RIGHT.

21 ALL RIGHT. LET'S GO ONTO BOLTHOUSE'S MORE
22 SPECIFIC OBJECTION. IS THERE AN OBJECTION FINDING THERE
23 HAS BEEN A 50-YEAR OLD OVERDRAFT WITHIN THE VALLEY? I
24 DON'T THINK THAT IS WHAT I INTENDED BY MY TENTATIVE
25 DECISION. VERY CLEARLY THERE WERE YEARS WHERE THE
26 INFLOW WAS SUBSTANTIALLY EQUAL TO OUTFLOW. BUT YOU
27 CAN'T DECIDE OVERDRAFT ON THE BASIS OF ONE YEAR OR TWO
28 YEARS. IT HAS GOT TO BE DECIDED ON A LONG-TERM BASIS.