

**EXHIBIT LL**

1 AGRICULTURAL USE. IF THOSE PERCENTAGES GO DOWN,  
2 MATHEMATICALLY SPEAKING, THE TOTAL SAFE YIELD MUST ALSO  
3 GO DOWN.

4 THE COURT: YOU LET YOUR VOICE DROP.

5 MR. WEEKS: IF THE URBAN RETURN FLOW USE IS NOT  
6 39.1 PERCENT, THE TOTAL SAFE YIELD MUST GO DOWN  
7 MATHEMATICALLY SPEAKING.

8 THE COURT: LET ME STOP YOU FOR JUST A MINUTE.  
9 I'M NOT GOING TO REHEAR THE ISSUE OF THE SAFE YIELD  
10 ABSENT SOME JUSTIFICATION FOR REOPENING THE CASE AND  
11 SETTING ASIDE THE PREVIOUS DECISION, AND I'VE HEARD  
12 NOTHING THAT TELLS ME I SHOULD DO THAT. THAT'S A  
13 DIFFERENT ISSUE THAN THE ISSUE OF WHAT THE PARTIES CLAIM  
14 THE RIGHTS MIGHT BE.

15 AND BECAUSE THERE ARE VARIABLES, YOU CAN  
16 TALK ABOUT 39.1 PERCENT. YOU CAN TALK ABOUT ANY TYPE OF  
17 PERCENTAGES. THOSE ARE AVERAGES, AND THEY DO NOT TAKE  
18 INTO CONSIDERATION PARTICULAR FACETS OF AN INDIVIDUAL'S  
19 USE OF WATER AND HOW IT IS USED AND WHAT FACTORS MIGHT  
20 BE PRESENT THAT WOULD IMPACT DIFFERENTLY THE RIGHT TO  
21 CLAIM A PERCENTAGE OF RETURN FLOWS. I'M NOT GOING TO  
22 PRECLUDE THAT, BUT I'M NOT GOING TO MODIFY THE ORIGINAL  
23 DECISION AS TO WHAT CONSTITUTES SAFE YIELD UNLESS THERE  
24 IS A LEGAL BASIS FOR THE COURT TO SET THAT ASIDE, AND  
25 I'VE HEARD NONE AT THIS POINT.

26 MR. DUNN: YOUR HONOR, MAY I BE HEARD JUST ON THAT  
27 LAST POINT.

28 THE COURT: YES.

1 MR. DUNN: THE LEGAL BASIS THAT WE'RE TALKING  
2 ABOUT HERE IS THE SAFE YIELD. SAFE YIELD, AS A MATTER  
3 OF LAW, REQUIRES THE DETERMINATION OF THE RETURN FLOW  
4 COMPONENT AMOUNT AND THE NATIVE SUPPLY AMOUNT FOR THE  
5 BASIN. I UNDERSTAND WHAT THE COURT'S CONCERN IS, AS  
6 EXPRESSED THIS MORNING, ABOUT WHAT A PARTICULAR PARTY  
7 MIGHT CLAIM OF THAT AMOUNT. BUT WE CANNOT RELITIGATE  
8 THE OVERALL AMOUNT OF SAFE YIELD IN THE BASIN --

9 THE COURT: I HAVE NO INTENTION OF DOING THAT.

10 MR. DUNN: BUT I THINK -- WELL, IF WE GO FORWARD  
11 AND WE ALLOW PARTIES TO COME BEFORE THE COURT AND  
12 PRESENT TO YOU DIFFERENT RECHARGE AMOUNTS FOR THE STATE  
13 PROJECT WATER, IT -- IT NECESSARILY REQUIRES THE COURT  
14 TO REDETERMINE THE SAFE YIELD COMPONENT.

15 THE COURT: I DON'T FOLLOW THAT AT ALL. WHAT I AM  
16 CONCERNED ABOUT IS WHAT EACH INDIVIDUAL'S CLAIM WITH  
17 REGARD TO RETURN FLOWS MIGHT BE, AND THAT VARIES FROM  
18 PARCEL TO PARCEL, I PRESUME, FROM CITY TO CITY. AND  
19 THOSE ARE THE FACTORS THAT I'M CONCERNED ABOUT. NOW,  
20 WHETHER THE COURT ACCEPTS TESTIMONY THAT THE PERCENTAGES  
21 ARE DIFFERENT, THAT'S ANOTHER QUESTION.

22 MR. DUNN: IF I CAN --

23 THE COURT: IT'S A DIFFERENT QUESTION.

24 MR. DUNN: IF I CAN APPROACH THIS IN A DIFFERENT  
25 WAY, IN MAKING THE SAFE YIELD DETERMINATION, THE COURT  
26 TOOK AN AVERAGE OF DIFFERENT TYPES OF RECHARGE BY  
27 DIFFERENT TYPES OF WATER USERS. AND BASED ON THE  
28 TESTIMONY THAT CAME BEFORE THE COURT IN THE PHASE 3

1 LANDOWNERS PERSUADE -- PRESENT EVIDENCE THAT RETURN FLOW  
2 FOR URBAN USE IS 15 PERCENT. THEY ARE LOWERING THE  
3 RETURN FLOW OF NATIVE WATER, AND THEY'RE LOWERING THE  
4 RETURN FLOW OF IMPORTED WATER, WHICH IS WHAT WE OPPOSE,  
5 WHICH IS A WHOLESALE RESTATEMENT OF THE TOTAL SAFE  
6 YIELD.

7 THE COURT: THE AMOUNT OF RETURN FLOWS THAT WAS  
8 TESTIFIED TO IN THE PHASE 3 TRIAL WAS TAKEN AS GENERALLY  
9 ACCEPTED NUMBERS FROM THE LITERATURE TESTIFIED TO BY THE  
10 EXPERTS. AND I DO NOT RECALL THAT THERE WAS ANY REAL  
11 DISPUTE AS TO WHAT THE PERCENTAGES WERE DEPENDING UPON  
12 WHAT THE USES WERE, WHETHER IT WAS MUNICIPAL, WHETHER IT  
13 WAS INDUSTRIAL, WHETHER IT WAS AGRICULTURAL, WHETHER IT  
14 WAS A RESIDENCE WITH A SEPTIC TANK OR CONNECTED TO A  
15 SEWER, OR WHATEVER IT MIGHT BE.

16 AND MY RECOLLECTION IS NOT PERFECT AS TO  
17 WHAT THE TESTIMONY WAS AT THIS POINT. THAT WAS SOME  
18 TIME AGO. I'D HAVE TO GO BACK AND READ THE TESTIMONY  
19 ITSELF IN ORDER TO REFRESH MY MEMORY. THAT TESTIMONY  
20 WAS ESSENTIALLY UNCONTRADICTED, IF I REMEMBER CORRECTLY,  
21 AND I WOULD NOT EXPECT TO HEAR ANY EVIDENCE THAT THOSE  
22 NUMBERS WERE WRONG.

23 MR. WEEKS: YOU WILL.

24 THE COURT: WELL, MAYBE. MAYBE I WILL.

25 MR. WEEKS: WELL, I HOPE YOU DON'T BUT --

26 THE COURT: AT THIS POINT -- OKAY? -- I AM  
27 CONCERNED THAT A PARTY ESTABLISH WHAT RETURN FLOW  
28 NUMBERS THEY HAVE BASED UPON WHAT THEIR PUMPING IS AND

1    BASED UPON -- I'M SORRY -- BASED UPON THE WATER THAT  
2    THEY RECEIVE FROM THE STATE WATER PROJECT OR SOME OTHER  
3    SOURCE THAT IS EXPORTED OR IMPORTED FROM OUTSIDE THE  
4    AREA AND THEN WHAT THEIR USES MIGHT BE THAT WOULD  
5    REFLECT WHAT THE AMOUNT OF THEIR RETURN FLOWS MIGHT BE.  
6            THAT'S WHAT I'M CONCERNED ABOUT HEARING.  
7    THAT'S WHAT I THINK I'M GOING TO HEAR, AND WE'LL SEE IF  
8    SOMEBODY OFFERS OTHER TYPES OF EVIDENCE.  
9            MR. WEEKS:  WELL, IF THE COURT --  
10           THE COURT:  I'M NOT RULING ON THE ADMISSIBILITY OF  
11   EVIDENCE TODAY.  OKAY?  THAT'S NOT WHAT I'M DOING.  WHAT  
12   I'M TRYING TO DO IS TO FOCUS ON A CASE MANAGEMENT ORDER  
13   THAT WILL PERMIT US TO PREPARE FOR TRIAL IN THE NEXT  
14   PHASE IN AN ORDERLY FASHION.  
15           MR. MCLACHLAN?  
16           MR. TOOTLE:  YOUR HONOR, JOHN TOOTLE FOR CAL  
17   WATER.  CAN I BE HEARD, PLEASE.  
18           THE COURT:  AFTER MR. MCLACHLAN.  
19           MR. TOOTLE:  THANK YOU.  
20           MR. MCLACHLAN:  I'D LIKE TO SIMPLIFY THIS A LITTLE  
21   BIT BECAUSE WHAT WE'RE TALKING ABOUT IS ESSENTIALLY A  
22   VERY BASIC, GENERALIZED ARITHMETIC EQUATION.  A PLUS B  
23   EQUALS C, C BEING THE TOTAL SAFE YIELD NUMBER THAT  
24   YOUR HONOR ESTABLISHED IN PHASE 3.  NOBODY IS TRYING TO  
25   CHALLENGE THAT, BUT YOUR HONOR DID NOT SET A AND B,  
26   WHICH ARE THE NATIVE RECHARGE -- OTHERWISE SOMETIMES  
27   REFERRED TO AS THE NATIVE SAFE YIELD -- AND, IN THIS  
28   CASE, THE RETURN FLOWS.

1 IF THE RETURN FLOWS ARE HIGHER, THEN  
2 OBVIOUSLY WE KNOW THAT A IN THIS EQUATION, THE NATIVE  
3 SAFE YIELD, DECREASES. BUT AT SOME POINT IN THIS  
4 PROCEEDING YOUR HONOR DOES HAVE TO ESTABLISH A AND B,  
5 BUT THOSE PHASES OF TRIAL HAVEN'T OCCURRED YET. AND THE  
6 NOTION THAT THE 110,000 TOTAL SAFE YIELD NUMBER HAS TO  
7 GO UP OR DOWN, IF RETURN FLOWS AREN'T STATIC, IS WRONG  
8 BECAUSE WHAT HAPPENS IN THE EQUATION IS THAT WE THEN  
9 KNOW, IF THE COURT SETS THE TOTAL RETURN FLOW NUMBER AT  
10 X PERCENT, THAT THE NATIVE SAFE YIELD IS THEN DETERMINED  
11 BECAUSE THERE'S ONLY THREE VARIABLES IN THIS EQUATION.

12 SO IT DOESN'T SEEM VERY COMPLICATED, AND WE  
13 KNOW THAT THE COURT HAS MADE NO FINDINGS OF FACT ON  
14 EITHER THE NATIVE SAFE YIELD OR THE RETURN FLOWS.

15 THE COURT: WELL, OBVIOUSLY, THEY WERE SORT OF  
16 IMPLIED FINDINGS, I THINK, WITH REGARD TO THE RETURN  
17 FLOW NUMBERS, THE PERCENTAGES THAT THE COURT WAS GIVEN,  
18 TESTIFIED TO, AND ACCEPTED BY THE COURT. THOSE NUMBERS  
19 ARE NOT LIKELY TO CHANGE.

20 THE -- BUT AT THIS POINT I'M NOT RULING ON  
21 OBJECTIONS TO EVIDENCE. I'M TRYING TO FOCUS ON A CASE  
22 MANAGEMENT ORDER.

23 MR. DUNN: AND FOCUSING ON THE CASE MANAGEMENT  
24 ORDER, THE DISPUTE THAT HAS ARISEN BETWEEN THE PARTIES  
25 IS ARE WE GOING TO PUT ON A CASE FOR RETURN FLOWS THAT  
26 SHOWS HOW MUCH A PARTY CLAIMS, RETURN FLOW AMOUNT, BY  
27 SHOWING HOW MUCH STATE PROJECT WATER IS PURCHASED AND  
28 THEN TAKING A PERCENTAGE AMOUNT OF THAT AND ESTABLISHING