

2

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT NO. 1

HON. JACK KOMAR, JUDGE

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

6 ANTELOPE VALLEY GROUNDWATER CASES))

JUDICIAL COUNCIL
COORDINATION NO. P4408

7
8 PALMDALE WATER DISTRICT AND)
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 **TUESDAY, DECEMBER 18, 2007**

17
18 APPEARANCES:

19 (SEE APPEARANCE PAGES)

20
21
22
23 ORIGINAL

24
25
26
27 CHARLOTTE NICHOLAS MOHAMED, CSR #2384
28 OFFICIAL REPORTER

1 APPEARANCES:

2 FOR REBECCA LEE WILLIS:

KRAUSE, KALFAYAN, BENINK
& SLAVENS
BY: DAVID B. ZLOTNICK, ESQ.
625 BROADWAY, SUITE 635
SAN DIEGO, CA 92101
(619) 232-0331

6 PALMDALE WATER DISTRICT
7 QUARTZ HILL WATER DISTRICT

LAGERLOF, SENECA, GOSNEY
& KRUSE, LLP
BY: THOMAS S. BUNN, III, ESQ.
301 NORTH LAKE AVENUE
10TH FLOOR
PASADENA, CA 91101-4108
(626) 793-9400

11 ROSAMOND CSD & L.A. COUNTY
12 WATERWORKS

BEST, BEST & KRIEGER, LLP
BY: JEFFREY V. DUNN, ESQ.
5 PARK PLAZA, SUITE 1500
IRVINE, CA 92614
(949) 263-2600

15 RAYMOND G. FORTNER, JR.,
COUNTY COUNSEL
BY: FREDERICK W. PFAEFFLE,
PRINCIPAL DEPUTY
500 WEST TEMPLE STREET
LOS ANGELES, CA 90012
(213) 974-1951

19 DIAMOND FARMING COMPANY
20 (VIA TELEPHONE)

LE BEAU THELEN, LLP
BY: BOB H. JOYCE, ESQ.
5001 EAST COMMERCENTER DRIVE
P.O. BOX 12092
BAKERSFIELD, CA 93389-2092
(661) 325-8962

22 BOLTHOUSE PROPERTIES, INC.
23 (VIA TELEPHONE)

CLIFFORD & BROWN
BY: RICHARD G. ZIMMER, ESQ.
BANK OF AMERICA BUILDING
1430 TRUXTUN AVENUE, SUITE 900
BAKERSFIELD, CA 93301-5230
(661) 322-6023

26 CITY OF LANCASTER

27 STRADLING YOCCA CARLSON & RAUTH
BY: DOUGLAS J. EVERTZ, ESQ.
660 NEWPORT CENTER DRIVE
SUITE 1600
NEWPORT BEACH, CA 92660
(949) 725-4000

1 APPEARANCES (CONTINUED)

2 CITY OF LOS ANGELES

KRONICK MOSKOVITZ TIEDEMANN
& GIRARD
BY: JANET GOLDSMITH, ESQ.
400 CAPITOL MALL, 27TH FLOOR
SACRAMENTO, CA 95814-4417
(916) 321-4500

6 CITY OF PALMDALE

RICHARDS WATSON GERSON
BY: JAMES L. MARKMAN, ESQ.
1 CIVIC CENTER CIRCLE
POST OFFICE BOX 1059
BREA, CA 92822-1050
(714) 990-0901

10 ANTELOPE VALLEY GROUNDWATER
11 AGREEMENT ASSOCIATION
(AGWA)
12 (PERSONALLY PRESENT)
(VIA TELEPHONE)

HATCH & PARENT
BY: MICHAEL T. FIFE, ESQ.
BRADLEY J. HERREMA, ESQ.
21 EAST CARRILLO STREET
SANTA BARBARA, CA 93101
(805) 963-7000

15 LOS ANGELES COUNTY SANITATION
16 DISTRICTS NOS. 14 & 20
(VIA TELEPHONE)
(VIA TELEPHONE)

ELLISON SCHNEIDER & HARRIS, LLP
BY: CHRISTOPHER M. SANDERS, ESQ.
PETER J. KIEL, ESQ.
2015 H STREET
SACRAMENTO, CA 95814-3109
(916) 447-2166

19 STATE OF CALIFORNIA
20 (VIA TELEPHONE)

BILL LOCKYER, ATTORNEY GENERAL
BY: MICHAEL L. CROW, DEPUTY
1300 I STREET, SUITE 1101
POST OFFICE BOX 944255
SACRAMENTO, CA 94244-2550
(916) 327-7856

23 TEJON RANCH CORP.

24 NOSSAMAN GUTHNER KNOX ELLIOTT
25 BY: HENRY S. WEINSTOCK, ESQ.
445 SOUTH FIGUEROA STREET
31ST FLOOR
26 LOS ANGELES, CA 90071
(213) 612-7839

1 APPEARANCES (CONTINUED)

2 U.S. BORAX

MORRISON & FOERSTER, LLP
BY: WILLIAM M. SLOAN, ESQ.
425 MARKET STREET
SAN FRANCISCO, CA 94105-2482
(415) 268-7209

5 VAN DAM FARMS:
6 (VIA TELEPHONE)

YOUNG WOOLDRIDGE
BY: SCOTT K. KUNEY, ESQ.
1800 30TH STREET, 4TH FLOOR
BAKERSFIELD, CA 93301-5298
(661) 327-9661

9 AVEK:

BRUNICK, MC ELHANEY & BECKETT
BY: WILLIAM J. BRUNICK, ESQ.
1839 COMMERCENTER WEST
SAN BERNARDINO, CA 92408
(909) 889-8301

12 THE UNITED STATES:
13 (VIA TELEPHONE)

R. LEE LEININGER
U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES
DIVISION
1961 STOUT STREET, 8TH FLOOR
DENVER, CO 80294
(303) 844-1364

17 ANTELOPE VALLEY
18 MUTUAL GROUP

COVINGTON & CROWE
BY: ROBERT E. DOUGHERTY, ESQ.
1131 WEST SIXTH STREET, SUITE 300
ONTARIO, CA 91762
(909) 983-9393

21 SPC DEL SUR RANCH
22 (VIA TELEPHONE)

ALLEN MATKINS LECK GAMBLE MALLORY
& NATSIS, LLP
BY: TED FATES, ESQ.
501 W. BROADWAY, #900
SAN DIEGO, CA 92101
(619) 233-1155

25 ANAVERDE

LEWIS BRISBOIS BISGAARD & SMITH
BY: CLAIRE HERVEY COLLINS, ESQ.
221 N. FIGUEROA, SUITE 1200
LOS ANGELES, CA 90012
(213) 250-1800

1 APPEARANCES: (CONTINUED)

2 HEALY ENTERPRISES, SHEEP
3 CREEK, SERVICE ROCK

GRESHAM SAVAGE NOLAN & TILDEN
BY: MICHAEL DUANE DAVIS, ESQ.
MARLENE L. ALLEN-HAMMARLUND, ESQ.
TINA BRISTER, ESQ.
3750 UNIVERSITY AVENUE, SUITE 250
RIVERSIDE, CA 92501-3335
(951) 684-2171

7 PALMDALE HILLS PROPERTY
8 AND NORTHROP GRUMAN

WESTON BENSHOOF ROCHEFORT
RUBALCAVA MAC CUIH, LLP.
BY: TAMMY L. JONES, ESQ.
333 SOUTH HOPE STREET, 16TH FL
LOS ANGELES, CA 90071
(213) 576-1000

11 LITTLEROCK CREEK IRRIGATION
12 DISTRICT & PALM RANCH IRRIGATION
13 DISTRICT:

LEMIEUX & O'NEILL
BY: WAYNE LEMIEUX, ESQ.
2393 TOWNSGATE ROAD, SUITE 201
WESTLAKE VILLAGE, CA 91361
(805) 495-4770

16 COPO DE ORO LAND CO.
17 (VIA TELEPHONE)

BARTKIEWICZ KRONICK & SHANAHAN
BY: FELIPE MELIN, ESQ.
1011 TWENTY-SECOND STREET
SACRAMENTO, CA 95816-4907
(916) 446-4254

19 CALIFORNIA WATER SERVICE
20 COMPANY

JOHN S. TOOTLE, ESQ.
CORPORATE COUNSEL
2632 W. 237TH STREET
TORRANCE, CA 90505-5272
(310) 257-1488

23 IN PROPRIA PERSONA
24 (VIA TELEPHONE)

SHELDON R. BLUM, ESQ.
2242 CAMDEN AVENUE, SUITE 201
SAN JOSE, CA 95124
(408) 377-7320

25
26
27
28

1 LOS ANGELES, CA; **TUESDAY, DECEMBER 18, 2007; 9:00 A.M.**

2 DEPARTMENT NO. 1 HON. JACK KOMAR, JUDGE

3 **CASE NO.:** SANTA CLARA CASE NO. 1-05-CV-049053

4 **CASE NAME:** ANTELOPE VALLEY GROUNDWATER CASES

5 **APPEARANCES:** (AS NOTED ON TITLE PAGE)

6
7 (CHARLOTTE NICHOLAS MOHAMED, CSR #2384)

8 ---0---

9 THE COURT: GOOD MORNING.

10 IN THE ANTELOPE VALLEY MATTERS, THIS IS THE TIME
11 SET FOR HEARING ON THE MOTION TO AMEND AND TO CERTIFY A CLASS.
12 IT IS ALSO HERE FOR A STATUS CONFERENCE AND A CASE MANAGEMENT
13 CONFERENCE.

14 I THINK WE HAVE A LARGE NUMBER OF PEOPLE ON THE
15 TELEPHONE, AND SEVERAL COUNSEL ARE HERE. I THINK WHAT WE WILL
16 DO FIRST IS GET APPEARANCES FROM THOSE WHO ARE HERE. AND I'D
17 REMIND EACH OF YOU WHO ARE HERE AND ON THE TELEPHONE, WHEN YOU
18 SPEAK, PLEASE IDENTIFY YOURSELF EACH TIME FOR THE BENEFIT OF
19 THE COURT REPORTER.

20 ALL RIGHT. SO LET'S HAVE COUNSEL WHO ARE
21 PRESENT.

22 MR. DOUGHERTY: GOOD MORNING, YOUR HONOR.

23 ROBERT DOUGHERTY FOR ANTELOPE VALLEY UNITED
24 MUTUAL GROUP.

25 MR. WEINSTOCK: GOOD MORNING, YOUR HONOR.

26 HENRY WEINSTOCK FOR TEJON RANCH.

27 MR. LEMIEUX: GOOD MORNING, YOUR HONOR.

28 WAYNE LEMIEUX, SPECIAL APPEARANCE FOR THE

1 ANTELOPE VALLEY STATE WATER CONTRACTORS ASSOCIATES.

2 MY SON KEITH WILL BE HERE IN A MOMENT. HE IS IN
3 ANOTHER DEPARTMENT APPEARING ON BEHALF OF LITTLEROCK CREEK
4 IRRIGATION DISTRICT AND SEVERAL OTHERS FOR WHICH HE HAS
5 APPEARED IN THE PAST.

6 MR. EVERTZ: GOOD MORNING, YOUR HONOR.

7 DOUG EVERTZ FOR THE CITY OF LANCASTER.

8 MS. GOLDSMITH: GOOD MORNING, YOUR HONOR.

9 JANET GOLDSMITH FOR THE CITY OF LOS ANGELES.

10 MR. MARKMAN: GOOD MORNING, YOUR HONOR.

11 JAMES MARKMAN FOR THE CITY OF PALMDALE.

12 MR. BUNN: GOOD MORNING, YOUR HONOR.

13 THOMAS BUNN FOR PALMDALE WATER DISTRICT AND
14 QUARTZ HILL WATER DISTRICT.

15 MR. DAVIS: GOOD MORNING, YOUR HONOR.

16 MICHAEL DAVIS, MARLENE ALLEN-HAMMARLUND, AND TINA
17 BRISTER OF GRESHAM SAVAGE NOLAN AND TILDEN FOR SERVICE ROCK
18 PRODUCTS, FOR HEALY ENTERPRISES, AND FOR SHEEP CREEK WATER
19 COMPANY.

20 MR. TOOTLE: GOOD MORNING, YOUR HONOR.

21 JOHN TOOTLE FOR CALIFORNIA WATER SERVICE COMPANY.

22 MR. ZLOTNICK: GOOD MORNING, YOUR HONOR.

23 DAVID ZLOTNICK FOR PLAINTIFF WILLIS.

24 MR. BRUNICK: BILL BRUNICK FOR ANTELOPE VALLEY EAST KERN
25 WATER AGENCY.

26 MR. PFAEFFLE: GOOD MORNING.

27 FRED PFAEFFLE, L.A. COUNTY WATER WORKS DISTRICT

28 40.

1 MR. DUNN: GOOD MORNING, YOUR HONOR.

2 JEFFREY DUNN FOR L.A. COUNTY WATER WORKS DISTRICT
3 NUMBER 40 AND ROSAMOND COMMUNITY SERVICES DISTRICT.

4 MR. FIFE: GOOD MORNING, YOUR HONOR.

5 MICHAEL FIFE, ANTELOPE VALLEY GROUNDWATER
6 AGREEMENT ASSOCIATION.

7 THE COURT: ALL RIGHT. LET'S HAVE TELEPHONIC
8 APPEARANCES, PLEASE.

9 MR. CROW: GOOD MORNING, YOUR HONOR.

10 MICHAEL CROW FOR THE STATE OF CALIFORNIA.

11 MR. BLUM: GOOD MORNING, YOUR HONOR.

12 SHELDON BLUM ON BEHALF OF THE SHELDON R. BLUM
13 TRUST.

14 MR. KIEL: GOOD MORNING, YOUR HONOR.

15 PETER KIEL FOR [INTELLIGIBLE]
16 [SUBSEQUENT STATED TELEPHONE APPEARANCES UNINTELLIGIBLE]

17 THE COURT: OKAY. NOW I WANT EVERYBODY TO STOP FOR A
18 MOMENT. WE MISSED A COUPLE. ACCORDING TO THE REPORTER WE
19 MISSED ALOT OF YOU.

20 SO I'M GOING TO ASK TELEPHONIC TO START OVER
21 AGAIN, SPEAK SLOWLY, AND SPELL YOUR LAST NAME.

22 MR. CROW: MICHAEL CROW, C-R-O-W, FOR THE STATE OF
23 CALIFORNIA.

24 MR. BLUM: SHELDON BLUM FOR SHELDON R. BLUM TRUST,
25 B-L-U-M.

26 MR. KIEL: PETER KIEL, K-I-E-L, FOR COUNTY SANITATION
27 DISTRICTS.

28 MR. HERREMA: BRAD HERREMA, H-E-R-R-E-M-A, FOR ANTELOPE

1 VALLEY GROUNDWATER AGREEMENT ASSOCIATION.

2 MR. FATES: TED FATES, F-A-T-E-S, FOR DEL SUR RANCH LLC.

3 MR. LEININGER: THIS IS LEE LEININGER FOR THE UNITED
4 STATES, SPELLED L-E-I-N-I-N-G-E-R.

5 THE COURT: ALL RIGHT. ANY OTHERS?

6 MR. SANDERS: CHRIS SANDERS, S-A-N-D-E-R-S.

7 THE COURT: ALL RIGHT. ANY OTHERS ON THE TELEPHONE?

8 MR. ZIMMER: YES, YOUR HONOR.

9 RICHARD ZIMMER, Z-I-M-M-E-R, FOR BOLTHOUSE
10 PROPERTIES AND WILLIAM BOLTHOUSE FARMS.

11 MR. MELIN: AND, YOUR HONOR, THIS A FELIPE MELIN
12 REPRESENTING COPA DE ORO.

13 THE COURT: SPELL YOUR LAST NAME, COUNSEL.

14 MR. MELIN: M-E-L-I-N.

15 THE COURT: ANY OTHERS?

16 [NO AUDIBLE RESPONSE]

17 THE COURT: ALL RIGHT. WE HAVE SEVERAL MATTERS NOW TO
18 TALK ABOUT AND WE ARE GOING TO START WITH MR. ZLOTNICK,
19 REPRESENTING MISS WILLIS.

20 MR. ZLOTNICK: GOOD MORNING, YOUR HONOR..

21 THE COURT: GOOD MORNING.

22 I RECEIVED ESSENTIALLY A STATUS STATEMENT FROM
23 YOU BUT IT WAS NOT CLEAR TO ME WHAT YOU INTENDED TO DO.

24 MR. ZLOTNICK: YOUR HONOR, AS THE COURT IS AWARE, I
25 MEAN, AT THIS POINT, YOUR HONOR DID CERTIFY A CLASS AND MISS
26 WILLIS AS A REPRESENTATIVE FOR THE NON-PUMPING GROUP.

27 AT THIS POINT, DESPITE GOOD FAITH EFFORTS AND
28 OBVIOUSLY I HAD HOPED AND EXPECTED WE WOULD BE BEYOND THIS

1 STAGE BUT WE STILL DON'T HAVE EITHER A PROPOSED REPRESENTATIVE
2 OR DEFINITIVE AGREEMENT FROM COUNSEL TO REPRESENT THE GROUP OF
3 PUMPERS, SMALL PUMPERS.

4 SO I HAVE BEEN TALKING TO PEOPLE, WITHOUT TRYING
5 TO TWIST ARMS, TRYING TO USE MY PERSUASIVE EFFORTS, AND YET WE
6 HAVEN'T MADE ANY PROGRESS IN REALITY OR AT LEAST, YOU KNOW,
7 NONE THAT HAS REACHED THAT STAGE WHERE I CAN SAY THAT THERE
8 IS -- THAT WE HAVE A REPRESENTATIVE AND/OR COUNSEL.

9 SO ONE OF THE ISSUES -- AND THIS HAS BEEN A
10 STUMBLING BLOCK AND A CONCERN OF MR. MC LACHLAN WHO HAD
11 EARLIER INDICATED THAT HE WAS INTERESTED IN PROCEEDING AS
12 COUNSEL -- ONE OF THE ISSUES THAT HE HAS IS THAT HE HAS A
13 SMALL OFFICE AND IT IS HIS CONCERN THAT HE WOULD BE INUNDATED
14 WITH TELEPHONE CALLS FROM CLASS MEMBERS, AND THAT WOULD BE A
15 PROBLEM FOR HIM TO HANDLE THAT, GIVEN THE PRIOR EXPERIENCES
16 THAT HE HAS DEALING WITH SIMILAR TYPES OF CLASSES.

17 I'VE TRIED TO DISCUSS THAT WITH THEM AND COME UP
18 WITH WAYS THAT MIGHT AMELIORATE THAT PROBLEM. ONE
19 POSSIBILITY IS OBVIOUSLY IF WE WERE ABLE TO DEFER SENDING
20 NOTICE, FOR SOME PERIOD OF TIME AT LEAST, THAT WOULD OBVIOUSLY
21 ELIMINATE THAT CONCERN. HE WOULDN'T BE GETTING HUNDREDS OF,
22 WHATEVER, CALLS FROM PEOPLE. HE MAY GET A FEW BECAUSE OF
23 REPORTS FROM THE PRESS, BUT NOTHING VERY SIGNIFICANT.

24 I DID BROACH THAT IDEA WITH MR. DUNN WHO, WITHOUT
25 COMMITTING HIS CLIENT, CERTAINLY FELT THAT HIS CLIENT WOULD
26 RATHER SEND ONE NOTICE AT THE END, YOU KNOW, LATER ON IN THE
27 CASE, IF POSSIBLE, YOU KNOW, IN THE CONTEXT OF THE SETTLEMENT
28 RATHER THAN HAVE TO GO THROUGH THE EXPENSE TWICE. SO THAT IS

1 ONE POSSIBILITY.

2 I HAVE CALLS OUT THERE. SOMEBODY COULD CALL ME
3 TOMORROW AND SAY THEY ARE HAPPY TO STEP FORWARD. I'VE BEEN
4 SPEAKING TO PEOPLE AND ENCOUNTERED PEOPLE WHO INDICATED
5 INTEREST BEFORE, YOU KNOW, TURNS OUT HAVE ONE PROBLEM OR
6 ANOTHER WHEN PUSH COMES TO SHOVE.

7 SO I'M IN AN AWKWARD POSITION BECAUSE I'M NOT --
8 I CAN'T REPRESENT THEM. I AM REPRESENTING THE OTHER SUB
9 CLASS. AND I CAN'T EVEN PROMISE THEM AT THIS POINT WHO WOULD
10 BE REPRESENTING THEM.

11 SO IT HAS BEEN A FRUSTRATING PROCESS, AND I'M
12 SORRY BUT WE HAVE MADE NO REAL PROGRESS.

13 THE COURT: IN TERMS OF THE NON-PUMPING CLASS, AT THIS
14 POINT, AT THIS EARLY STAGE OF THESE PROCEEDINGS, IS THEIR
15 INTEREST DIFFERENT THAN THE SMALL PUMPER WHO MAY HAVE A WELL
16 IN THE BACKYARD OR ON THE ACRE OR TWO THAT IS OWNED BY THE
17 PARTY, SUCH THAT THERE IS A CONFLICT THAT WOULD PRECLUDE THIS
18 CASE PROCEEDING WITH THE CLASS CERTIFIED?

19 I'M LOOKING FOR A WAY TO MOVE THIS CASE ALONG TO
20 AVOID FURTHER DELAYS AND TO GET INTO SOME OF THE SUBSTANTIVE
21 ISSUES WHICH WE CANNOT DO --

22 MR. ZLOTNICK: RIGHT.

23 THE COURT: -- UNLESS THE COURT HAS JURISDICTION OVER
24 ALL THE PARTIES.

25 MR. ZLOTNICK: I UNDERSTAND, YOUR HONOR.

26 WELL, I WILL -- I MEAN, I THINK TO ANSWER YOUR
27 HONOR'S QUESTION, AT THIS STAGE I DON'T THINK THERE IS A
28 CONFLICT. I THINK WHEN YOU GET TO THE SELF-HELP ISSUE THEN

1 THERE IS A POTENTIAL CONFLICT YOU HAVE OF TRYING TO NEGOTIATE
2 A SETTLEMENT. IN THAT CONTEXT THERE IS A CONFLICT.

3 I THINK IF THERE WERE -- IF IT WERE STRUCTURED SO
4 THAT THERE WERE ONE CLASS AND MY OFFICE WAS APPOINTED AS LEAD
5 CLASS COUNSEL, AND THE CALLS WERE DIRECTED TO US, THAT
6 MR. MC LACHLAN WAS SORT OF SUB-CLASS COUNSEL FOR THE OTHER
7 PUMPING GROUP, THAT MIGHT BE ANOTHER WAY TO SOLVE THAT
8 PROBLEM. AND WE WOULD BE GETTING THE CALLS BUT DIRECT THE
9 CALLS FROM THE PUMPERS ONTO HIM TO THE EXTENT NECESSARY. I
10 MEAN, WE WOULD RESOLVE WHATEVER QUESTIONS WE COULD. SO THAT
11 MIGHT BE ANOTHER WAY TO SOLVE THE PROBLEM.

12 BECAUSE I DON'T THINK AT PRESENT, OTHER THAN THE
13 FACT OF IN THE SETTLEMENT CONTEXT -- AND QUITE FRANKLY, GIVEN
14 THE PRESENCE OF A NUMBER OF OTHER COUNSEL, VERY EXPERIENCED
15 AND CAPABLE COUNSEL -- MR. FIFE, MR. ZIMMER, MR. JOYCE --
16 REPRESENTING THE PUMPING GROUP, I'M NOT CONCERNED THAT THEIR
17 INTERESTS AS A GROUP ARE GOING TO GO UNREPRESENTED.

18 THE COURT: WELL, THE IMPORTANT OBLIGATION WE ALL HAVE
19 IS TO ENSURE THAT EVERY PARTY'S RIGHTS ARE PROTECTED AND THAT
20 DUE PROCESS IS PROVIDED TO THEM.

21 I WOULD BE INTERESTED IN HEARING FROM OTHER
22 COUNSEL CONCERNING THE SUGGESTION, THE QUESTION THAT I JUST
23 ASKED.

24 MR. DOUGHERTY: YOUR HONOR, ROBERT DOUGHERTY.

25 THE COURT: MR. DOUGHERTY, WHY DON'T YOU SPEAK BY
26 STEPPING UP TO THE PODIUM, PLEASE.

27 MR. DOUGHERTY: ROBERT DOUGHERTY.

28 YOUR HONOR, ON THE ISSUE OF THE POTENTIAL

1 CONFLICT, I UNDERSTAND THAT THERE ARE SOME PUMPERS THAT MAY
2 TAKE THE POSITION THAT THE NONPUMPERS DO NOT HAVE ANY WATER
3 RIGHTS. AND FOR THAT REASON ALONE I THINK IT WOULD BE A
4 CONFLICT OR A POTENTIAL CONFLICT.

5 THE COURT: WELL, THAT WOULD ARISE CERTAINLY AT A LATER
6 STAGE IN THE PROCEEDINGS, WOULDN'T IT?

7 MR. DOUGHERTY: I DON'T KNOW THAT IT WOULD.

8 THE COURT: IN THE FIRST INSTANCE, WHETHER ONE PARTY
9 DISPUTES ANOTHER PARTY'S RIGHTS TO PUMP OR TO HAVE A CLAIM OF
10 A RIGHT TO WATER, IT SEEMS ME IS NOT GOING TO ARISE UNTIL SUCH
11 TIME AS THE COURT HAS DETERMINED FIRST OF ALL THAT THERE IS A
12 CLAIM THAT IS SUPPORTABLE FOR PRESCRIPTIVE RIGHTS.

13 MR. DOUGHERTY: THAT IS POSSIBLE, YOUR HONOR. I FIGURE
14 IF THERE IS GOING TO BE A CONFLICT AT ANY STAGE OF THE
15 PROCEEDINGS, IT OUGHT TO BE RECOGNIZED AND AVOIDED AS SOON AS
16 POSSIBLE.

17 THE COURT: I AGREE WITH THAT PRINCIPLE, BUT THE
18 QUESTION THAT I HAVE IS WHETHER OR NOT WE CAN PHASE THE
19 SUBSTANTIVE ISSUES IN SUCH A WAY THAT THE CONFLICT DOESN'T
20 ARISE UNTIL LATER AND WE CAN DEAL WITH PROTECTING THOSE RIGHTS
21 OF OTHERS AT THAT TIME.

22 OF COURSE THE OTHER POSSIBILITY IS THAT IF THE
23 NOTICE IS SENT OUT AND A PARTY WISHES TO ASSERT THAT THEY ARE
24 NOT A MEMBER OF THE CLASS OR THAT THEIR INTERESTS DIVERGE,
25 THEY CAN CERTAINLY OPT OUT OF THE CLASS. AND THEN THEY ARE IN
26 A DIFFERENT POSITION, AREN'T THEY?

27 MR. DOUGHERTY: YES, YOUR HONOR. BUT IN THE IDEAL
28 WORLD YOU JUST WONDER HOW MANY OF THESE FOLKS DO GET SERVED.