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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 MONDAY, AUGUST 20, 2007

17
18 APPEARANCES:

19 (SEE APPEARANCE PAGES)

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23 ORIGINAL

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27 CHARLOTTE NICHOLAS MOHAMED, CSR #2384
28 OFFICIAL REPORTER

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LOS ANGELES, CALIFORNIA; **MONDAY, JANUARY 14, 2008**; 9:02 A.M.

DEPARTMENT NO. 1 HON. JACK KOMAR, JUDGE

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

CASE NAME: ANTELOPE VALLEY GROUNDWATER CASES

APPEARANCES: (AS NOTED ON TITLE PAGE)

(CHARLOTTE NICHOLAS MOHAMED, CSR #2384)

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THE COURT: ALL RIGHT. GOOD MORNING.

(ALL ANSWER "GOOD MORNING, YOUR HONOR")

THE COURT: WE ARE HERE ON THE ANTELOPE VALLEY
COORDINATED CASES.

LET'S HAVE APPEARANCES FROM ALL COUNSEL WHO
INTEND TO APPEAR. AND LET ME JUST REMIND YOU THAT EACH TIME
YOU SPEAK YOU SHOULD IDENTIFY YOURSELF.

AND ON THIS FIRST GO-AROUND, STATE YOUR NAME AND
SPELL YOUR LAST NAME.

MR. DOUGHERTY: GOOD MORNING.

ROBERT DOUGHERTY, YOUR HONOR, FOR THE A V UNITED
MUTUAL GROUP.

D-O-U-G-H-E-R-T-Y.

MR. ZLOTNICK: YOUR HONOR, DAVID ZLOTNICK,
S-L-O-T-N-I-C-K, FOR REBECCA WILLIS AND THE CLASS.

MR. JOYCE: GOOD MORNING, YOUR HONOR.

BOB JOYCE APPEARING ON BEHALF OF DIAMOND FARMING
COMPANY AND CRYSTAL FARMS -- EXCUSE ME -- CRYSTAL ORGANIC LLC.

THAT IS J-O-Y-C-E.

MR. ZIMMER: GOOD MORNING, YOUR HONOR.

1 RICHARD ZIMMER, Z-I-M-M-E-R, ON BEHALF OF
2 BOLTHOUSE FARMS AND BOLTHOUSE PROPERTIES.

3 MR. MARKMAN: GOOD MORNING, YOUR HONOR.

4 JAMES MARKMAN FOR THE CITY OF PALMDALE.

5 M-A-R-K-M-A-N.

6 MR. WEINSTOCK: GOOD MORNING, YOUR HONOR.

7 HENRY WEINSTOCK, W-E-I-N-S-T-O-C-K, FOR TEJON
8 RANCH CORP.

9 MR. DUNN: GOOD MORNING, YOUR HONOR.

10 JEFFREY DUNN ON BEHALF OF ROSAMOND COMMUNITY
11 SERVICE DISTRICT AND LOS ANGELES COUNTY WATERWORKS DISTRICT
12 NUMBER 40.

13 MR. PFAEFFLE: GOOD MORNING.

14 FRED PFAEFFLE, LOS ANGELES COUNTY WATER DISTRICT
15 40.

16 MR. RENWICK: GOOD MORNING, YOUR HONOR.

17 EDWARD RENWICK FOR WAGAS LAND COMPANY.

18 AND IT IS R-E-N-W-I-C-K.

19 MR. SANDERS: GOOD MORNING, YOUR HONOR.

20 CHRIS SANDERS ON BEHALF OF THE COUNTY SANITATION
21 DISTRICT OF LOS ANGELES COUNTY NUMBERS 14 AND 20.

22 MR. FIFE: GOOD MORNING, YOUR HONOR.

23 MICHAEL FIFE, F-I-F-E, ON BEHALF OF ANTELOPE
24 VALLEY GROUNDWATER AGREEMENT ASSOCIATION.

25 MS. COLLINS: GOOD MORNING, YOUR HONOR.

26 CLAIRE HERVEY COLLINS, C-O-L-L-I-N-S, FOR
27 ANAVERDE LLC.

28 MR. BRUNICK: GOOD MORNING, YOUR HONOR.

1 BILL BRUNICK, B-R-U-N-I-C-K, APPEARING FOR
2 ANTELOPE VALLEY EAST KERN WATER AGENCY.

3 THE COURT: ANY OTHER COUNSEL IN THE COURT WHO INTEND
4 TO APPEAR?

5 [NO AUDIBLE RESPONSE]

6 THE COURT: WE HAVE SOME TELEPHONIC APPEARANCES.

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

9 GOOD MORNING.

10 MS. GOLDSMITH: GOOD MORNING, YOUR HONOR.

11 JANET GOLDSMITH, G-O-L-D-S-M-I-T-H, FOR THE CITY
12 OF LOS ANGELES.

13 MR. BLUM: GOOD MORNING, YOUR HONOR.

14 SHELDON BLUM, B-L-U-M, FOR SHELDON R. BLUM TRUST.

15 MR. HOLMES: GOOD MORNING, YOUR HONOR.

16 MIKE HOLMES, H-O-L-M-E-S, FOR DEL SUR RANCH LLC.

17 MR. BEZERRA: GOOD MORNING, YOUR HONOR.

18 RYAN BEZERRA, B-E-Z-E-R-R-A, FOR COPA DE ORO LAND
19 COMPANY.

20 MR. SLOAN: GOOD MORNING, YOUR HONOR.

21 WILLIAM SLOAN, S-L-O-A-N, ON BEHALF OF U.S.
22 BORAX.

23 MR. HERREMA: GOOD MORNING, YOUR HONOR.

24 BRAD HERREMA, H-E-R-R-E-M-A, ON BEHALF OF
25 ANTELOPE VALLEY GROUNDWATER AGREEMENT ASSOCIATION.

26 MR. LEININGER: GOOD MORNING, YOUR HONOR.

27 THIS IS LEE LEININGER, L-E-I-N-I-N-G-E-R, FOR THE
28 UNITED STATES.

1 MS. JONES: GOOD MORNING, YOUR HONOR.

2 TAMMY JONES, J-O-N-E-S, APPEARING ON BEHALF OF
3 PALMDALE HILLS PROPERTY AND NORTHROP GRUMMAN.

4 THE COURT: ANY OTHERS APPEARING ON THE TELEPHONE?

5 [NO AUDIBLE RESPONSE]

6 THE COURT: ALL RIGHT. WE ARE HERE WITH SEVERAL
7 MATTERS THIS MORNING. I'M GOING TO TAKE THE EASIEST ONE
8 FIRST.

9 THERE IS A MOTION TO WITHDRAW BY MR. HOLMES ON
10 BEHALF OF HIS FIRM IN CONNECTION WITH THE DEL SUR RANCH.

11 IS THERE ANYTHING FURTHER ON THAT, MR. HOLMES? I
12 DID RECEIVE YOUR SUBSEQUENT MEMORANDUM.

13 MR. HOLMES: YES, YOUR HONOR. UNFORTUNATELY I DON'T
14 HAVE ANYTHING NEW SINCE THAT WAS FILED LAST WEEK.

15 THE COURT: OKAY.

16 MR. HOLMES: SO THERE HAVE BEEN NO OTHER DEVELOPMENTS.

17 THE COURT: ALL RIGHT. DEL SUR RANCH IS A CORPORATION,
18 IS IT NOT?

19 MR. HOLMES: IT IS A LIMITED LIABILITY COMPANY, YES.

20 THE COURT: OKAY. THE COURT IS GOING TO GRANT THE
21 MOTION TO WITHDRAW. I'M GOING TO ORDER THAT NEW COUNSEL MAKE
22 AN APPEARANCE EITHER IN PERSON OR BY FILING NO LATER THAN
23 JANUARY 28, 2008. NO LATER THAN.

24 THAT WILL BE THE ORDER. AND YOU SHOULD PREPARE
25 THE ORDER, MR. HOLMES, AND SUBMIT IT TO THE COURT.

26 MR. HOLMES: YES, YOUR HONOR.

27 THE COURT: ALL RIGHT. THANK YOU.

28 MR. HOLMES: THANK YOU.

1 THE COURT: ALL RIGHT. NOW, THERE ARE SOME OTHER
2 MATTERS HERE. LET'S TAKE UP THE FORM OF THE NOTICE THAT WAS
3 FILED BY PLAINTIFF WILLIS. AND THERE ARE SEVERAL OBJECTIONS
4 TO IT AND THERE WAS -- ESSENTIALLY A COUNTER FORM OF NOTICE,
5 I'LL CALL IT, SUBMITTED BY MR. DUNN, I THINK.

6 MR. ZLOTNICK, WHY DON'T WE ASK YOU FIRST TO
7 ADDRESS, FIRST OF ALL, THE OBJECTIONS AS WELL AS THE PROPOSED
8 REVISIONS.

9 MR. ZLOTNICK: YES, YOUR HONOR. I'M HAPPY TO DO THAT.

10 I THINK THE PRIMARY OBJECTIONS WERE FILED BY MR.
11 FIFE ON BEHALF OF HIS CLIENT. AND AS I RECALL, HE OBJECTED
12 THAT THE NOTICE, AS PROPOSED, WASN'T CLEAR ENOUGH, THAT
13 PUMPERS WILL BE TREATED AS IF THEY WERE NONPUMPERS IF THEY
14 DON'T RETURN THE RESPONSE FORM AND MAKE IT CLEAR THAT THEY ARE
15 PUMPING.

16 THE PROPOSED NOTICE SAYS "IF YOU PUMP GROUNDWATER
17 ON YOUR" -- THIS IS IN BOLD PRINT AS WE PREPARED IT -- "IF YOU
18 PUMP GROUNDWATER ON YOUR PROPERTY AND YOU HAVE DONE SO SINCE
19 JANUARY 18, 2001, YOU ARE NOT A MEMBER OF THE CLASS." AND IN
20 CAPS IT SAYS THAT "YOU MUST STILL RETURN THE ATTACHED RESPONSE
21 FORM TELLING THE COURT THAT YOU ARE NOT A MEMBER OF THE CLASS,
22 OR ELSE THAT YOU WILL BE TREATED AS A MEMBER OF THE CLASS AND
23 YOUR RIGHTS TO USE WATER ON YOUR PROPERTY MAY BE PREJUDICED."

24 I THINK THAT IS ADEQUATE. I DON'T THINK HIS
25 ADDITIONAL LANGUAGE ADDS ANYTHING TO THAT. I DON'T HAVE ANY
26 PARTICULAR OBJECTION TO IT EXCEPT THE MORE VERBIAGE YOU PUT
27 INTO THESE THINGS THE LESS LIKELY THAT PEOPLE READ IT.

28 WE DON'T OBJECT IN PRINCIPLE. THE QUESTION IS,

1 HAVE WE ADEQUATELY EXPRESSED THIS? TO MY MIND, WE HAVE.

2 BUT LIKE I SAY, I MEAN, WE DON'T HAVE ANY
3 PRINCIPLED OBJECTION TO HIS POINT IN THAT REGARD.

4 THE OTHER POINT THAT I RECALL HE RAISES IS THE
5 DATE. IN PREPARING THE NOTICE, I MEAN, WE HAVE TO WORK WITHIN
6 THE CONFINES OF THE ORDER THAT THE COURT PREVIOUSLY ENTERED
7 CERTIFYING THE CLASS. THAT WAS THE DATE THAT WAS DECIDED
8 SEVERAL MONTHS AGO, AND I CAN'T CHANGE THAT DATE. THE COURT
9 ORDERED IT. AND IF THERE IS A MOTION TO ALTER IT, FINE, YOU
10 KNOW, WE CAN DEAL WITH THAT ISSUE, BUT THAT IS THE DATE THAT
11 THE COURT SET. AND WE HAVE TO -- TO DEFINE THE CLASS, THE
12 SCOPE OF THE CLASS, AND I HAVE TO LIVE WITH THAT. AND, YOU
13 KNOW, LIKE I SAID, IF HE WANTS TO CHANGE THAT, HE HAS TO MOVE
14 TO CHANGE THAT. AS FAR AS I'M CONCERNED, I CAN'T DO IT
15 UNILATERALLY. AND THE NOTICE HAS TO BE CONSISTENT WITH THE
16 COURT'S PRIOR ORDER.

17 AND THAT RELATES ALSO TO THE POINT THAT MR.
18 ZIMMER RAISED. THERE IS A PRIOR ORDER CERTIFYING CLASS. AND
19 THAT WAS DONE BY NOTICED MOTION AND THAT'S -- THAT IS WHAT LED
20 TO THIS NOTICE PROPOSAL. AND SO, YOU KNOW, WE ARE WORKING
21 WITHIN THAT FRAMEWORK. WE HAVE TO WORK WITHIN THAT FRAMEWORK.

22 AND AGAIN, THAT RELATES ALSO TO MR. DUNN'S POINT.
23 MR. DUNN WANTS TO EXPAND THE CLASS IN ESSENCE TO ENCOMPASS
24 PUMPERS. YOU KNOW, THIS WAS A MATTER THAT WE DISCUSSED AT
25 SOME LENGTH. I WAS GENERALLY OF THE VIEW THAT IT WAS
26 PREFERABLE TO LIMIT THE CLASS TO NONPUMPERS AND THAT THERE
27 WERE POTENTIAL CONFLICTS DOWN THE ROAD BETWEEN THE PUMPER
28 GROUP AND NONPUMPER GROUP.

1 I HAVE HAD DISCUSSIONS WITH MR. DUNN ON THAT
2 SUBJECT. I DON'T REALLY, YOU KNOW, OBJECT TO RE-VISITING THAT
3 ISSUE IF THAT IS GOING TO FORWARD THE CASE. BUT THEN AGAIN,
4 THAT WOULD HAVE TO BE DONE BY NOTICED MOTION TO EXTEND, IN
5 EFFECT EXPAND, THE CLASS OR RE-DEFINE IT. AND AT THE MOMENT I
6 THINK IF SOMEONE WANTS TO PROPOSE THAT, I'M HAPPY TO WORK WITH
7 HIM AND TO THE EXTENT APPROPRIATE, IF THAT IS GOING TO HELP
8 MOVE THIS CASE FORWARD TO A RESOLUTION. I'M HAPPY TO DO WHAT
9 I CAN TO ASSIST IN THAT REGARD WITHIN THE CONSTRAINTS THAT WE
10 ALL HAVE OF OUR ETHICAL RESPONSIBILITIES IN TERMS OF CONFLICTS
11 AND POTENTIAL CONFLICTS.

12 I DON'T THINK THE CONFLICT HERE IS -- AGAIN, WE
13 DISCUSSED THAT AT SOME LENGTH -- I THINK IT IS SOMETHING THAT
14 COULD BE WORKED WITH. AND IF SO, YOU KNOW, AGAIN I'M NOT
15 OPPOSED TOTALLY TO HIS PROPOSAL BUT AGAIN I THINK WE WOULD
16 HAVE TO HAVE A NEW MOTION AND LET EVERYONE BE HEARD ON THE
17 ISSUE. SO THAT IS BASICALLY WHERE I COME OUT.

18 THE NOTICE PROPOSAL FLOWS OUT OF THE COURT'S
19 PRIOR ORDER CERTIFYING THE NONPUMPERS CLASS. I SPENT A FAIR
20 AMOUNT OF TIME ON IT. I TALKED TO OTHER COUNSEL AT GREAT
21 LENGTH. WE HAD A MEETING IN PASADENA AT MR. BUNN'S OFFICE TO
22 TRY TO SIMPLIFY IT AND MAKE IT CLEAR AS POSSIBLE TO PEOPLE.
23 OTHERS PARTICIPATED IN THAT EFFORT. MR. WEINSTOCK HAD
24 SIGNIFICANT INPUT. I THINK IT IS A PRETTY GOOD PROPOSAL. IS
25 IT PERFECT? I'M SURE SOME THINGS COULD BE IMPROVED, BUT I
26 THINK IT IS A GOOD PROPOSAL GIVEN THE CONTOURS OF THE EXISTING
27 CLASS.

28 I DON'T KNOW WHAT ELSE TO SAY AT THIS POINT, YOUR

1 HONOR.

2 THE COURT: WELL, I THINK THAT WE HAVE GOT TO START
3 WITH THE ORDER ITSELF, CERTIFYING A CLASS. AND I WAS JUST
4 LOOKING AT THAT. AGAIN, I'M NOT SURE THAT I HAVE BEFORE ME A
5 COPY OF THE FINAL ORDER. BUT MY RECOLLECTION WAS WE HAD
6 SIGNIFICANT DISCUSSION ABOUT EVEN WHETHER OR NOT THE CLASS WAS
7 TO INCLUDE PERSONS WHO WERE -- WHO OWNED PROPERTY THAT WERE
8 ATTACHED OR WITHIN A WATER SYSTEM, PUBLIC UTILITIES AND THE
9 LIKE.

10 MR. ZLOTNICK: YEAH.

11 THE COURT: AND FRANKLY IT CONCERNS ME TO EXCLUDE THOSE
12 PEOPLE.

13 MR. DUNN WAS CONCERNED ABOUT BEING IN A POSITION
14 OF CONFLICT WITH THEM. I DON'T THINK THAT THAT CONFLICT IS
15 REAL OR ACTUAL AT THIS POINT. IT COULD IN THE FUTURE BE A
16 GENUINE CONFLICT. BUT IT SEEMS TO ME THAT ANYBODY WHO OWNS
17 LAND WHO IS NOT PUMPING HAS WATER RIGHTS, WHETHER THEY ARE
18 PUMPING OR NOT. AND THE DEGREE OF THOSE WATER RIGHTS IS WHAT
19 IS GOING TO ULTIMATELY BE AN ISSUE HERE.

20 SO I THINK EXCLUDING THEM, I'M NOT SURE; I MIGHT
21 WANT TO HEAR SOME FURTHER ARGUMENT ABOUT THAT.

22 BUT BEYOND THAT, THE ORDER ALSO PROVIDED THAT IT
23 WAS APPLICABLE TO THOSE -- I SHOULD SAY INCLUDED THOSE MEMBERS
24 OF THE CLASS WHO WERE NOT PUMPING WITHIN FIVE YEARS PRECEDING
25 JANUARY 18, 2006.

26 NOW I THINK THAT WAS THE DATE OF YOUR COMPLAINT,
27 IS THAT CORRECT? THE INITIAL COMPLAINT?

28 MR. ZLOTNICK: YOUR HONOR, I THINK THAT DATE, AS I

1 RECALL, AND THIS HAS BEEN -- I THINK THAT DATE WAS FIVE YEARS
2 FROM THE DATE THAT THE PUBLIC SUPPLIERS -- BECAUSE THE
3 PRESCRIPTIVE PERIOD IS FIVE YEARS. I THINK THAT THAT DATE WAS
4 FIVE YEARS AFTER THEY FILED THEIR COMPLAINT. BUT I'M NOT A
5 HUNDRED PERCENT CERTAIN OF THAT. I WOULD HAVE TO LOOK BACK AT
6 THE RECORD AND VERIFY HOW THAT DATE WAS ARRIVED AT, TO BE
7 HONEST.

8 THE COURT: WELL, MAYBE OTHER COUNSEL CAN HELP YOU.

9 MR. ZLOTNICK: MAYBE SOMEONE CAN. BECAUSE THAT WAS --
10 TO MY MIND IT WAS MORE IN THE PUBLIC WATER SUPPLIERS' COURT IN
11 TERMS OF THE DATE. BECAUSE IT REALLY DOES -- I THINK MR. FIFE
12 MADE THIS POINT IN HIS PAPERS -- IT REALLY DOES FLOW OUT OF
13 PRESCRIPTIVE PERIOD THAT THEY ARE CLAIMING, WERE FIGHTING --
14 THEY ARE THE ONES WHO ARE ASSERTING PRESCRIPTIVE RIGHTS. AND
15 IT IS REALLY, TO MY MIND, IN THEIR AMBIT.

16 NOW YOUR HONOR RAISED THE POINT -- I WOULD LIKE
17 TO ADDRESS BRIEFLY THE POINT ABOUT THE PEOPLE WHO ARE BEING
18 SERVICED BY THE MUNICIPAL WATER PROVIDERS. I THINK THAT --
19 AND YOUR HONOR IS CORRECT THAT IN THE ORDER THAT YOUR HONOR
20 ENTERED BACK IN SEPTEMBER, THOSE PEOPLE WERE EXCLUDED, AND THE
21 NOTICE DOES NOT, BECAUSE OF THE DISCUSSION THAT WE HAD WITH
22 THE COURT IN THE LAST TWO MONTHS ABOUT THAT ISSUE.

23 MY PERSONAL FEELING -- AND I THINK I'M IN
24 AGREEMENT BASICALLY WITH MR. DUNN ON THIS -- IS THAT PEOPLE
25 WHO LIVE IN THE CITIES, OWN LESS THAN AN ACRE, HAVE A HOUSE ON
26 THAT PROPERTY, A HALF ACRE OR WHATEVER LOT THEY HAVE, THE
27 CHANCES OF THEM GETTING THE RIGHTS TO AND PUTTING A WELL ON
28 THAT PROPERTY ARE SO MINUTE THAT I THINK THOSE PEOPLE -- AND

1 THAT'S A LARGE NUMBER OF PEOPLE. SOMEBODY ELSE WHO OWNS A
2 MORE SIGNIFICANT PROPERTY, THERE I THINK YOU HAVE TO ADDRESS
3 THEM WHETHER THEY ARE WITHIN THE SERVICE AREA OR NOT. BUT
4 SOMEBODY WHO OWNS LESS THAN AN ACRE AND LIVES IN PALMDALE OR
5 LANCASTER, I THINK THE ODDS OF THEM PUTTING IN A WELL ARE SO
6 MINUTE, AND THAT CAN BE DEALT WITH IN A VARIETY OF WAYS DOWN
7 THE ROAD.

8 SO THAT IS MY FEELING.

9 THE COURT: THAT MAY WELL BE DE MINIMUS BUT STILL IT IS
10 A RIGHT.

11 MR. ZLOTNICK: IT IS A RIGHT AND IT IS A THEORETICAL
12 POSSIBILITY. IT IS.

13 THE COURT: AS A PRACTICAL MATTER IT MAY NOT MAKE ANY
14 DIFFERENCE TO THEM, BUT SHOULD WE MAKE THAT DECISION FOR THEM
15 OR SHOULD WE GIVE THEM THE OPPORTUNITY TO MAKE THAT DECISION?

16 MR. ZLOTNICK: WELL, I THINK THAT WE ARE NOT
17 FORECLOSING THEM IF WE EXCLUDE THEM FROM THE CLASS. ALL WE
18 ARE SAYING IS THAT THE CASE IS NOT BINDING THEM. AND ASSUMING
19 THEY DO NOTHING, THEY ARE NOT -- YOU KNOW, THEY ARE NOT
20 PREJUDICED IN ANY WAY IF THEY ARE NOT INCLUDED IN THE CLASS.
21 AND IF AS A PRACTICAL MATTER THEY ARE NEVER GOING TO EXERCISE
22 THAT RIGHT, THEN NO HARM. BUT IF WE ARE CONCERNED THAT AS A
23 PRACTICAL MATTER THOSE PEOPLE MAY START PUTTING IN WELLS AND
24 THERE MAY BE ISSUES RAISED, YOU KNOW, THEN THEY PROBABLY
25 SHOULD BE INCLUDED. I DON'T THINK THERE IS, YOU KNOW, ANY
26 TIME IN THE FORESEEABLE FUTURE, ANY LIKELIHOOD OF THAT. BUT
27 FOR THOSE SMALL, REALLY SMALL PEOPLE -- LANDOWNERS, NOT PEOPLE
28 BUT LANDOWNERS, WHO LIVE IN THE CITY, I DON'T THINK THAT IS

1 GOING TO HAPPEN.

2 THE COURT: HOW ABOUT SOMEBODY WHO OWNS A HUNDRED ACRES
3 OR FIVE HUNDRED ACRES AND THEY ARE WITHIN A WATER SERVICE
4 DISTRICT?

5 MR. ZLOTNICK: THOSE, I THINK, SHOULD BE INCLUDED.

6 THE COURT: THEY ARE EXCLUDED BY THIS DEFINITION.

7 MR. ZLOTNICK: THEY ARE EXCLUDED BY THE DEFINITION IN
8 THE ORDER AS IT PRESENTLY STANDS, YOU'RE RIGHT.

9 THE COURT: AND THEY SHOULD NOT BE.

10 MR. ZLOTNICK: I THINK THEY SHOULD BE INCLUDED BECAUSE
11 THERE YOU ARE TALKING ABOUT IF THEY DON'T GET THEIR
12 DEVELOPMENT RIGHTS THEY MIGHT WIND UP USING WATER ON THE
13 PROPERTY. AND I THINK THEY NEED TO BE INCLUDED IF THEY HAVE
14 THAT KIND OF SIGNIFICANT --

15 THE COURT: IS YOUR CLIENT'S LAND WITHIN A WATER
16 SERVICE DISTRICT?

17 MR. ZLOTNICK: NO.

18 THE COURT: OKAY. I THINK I ASKED YOU THAT ONCE
19 PREVIOUSLY.

20 OKAY. I'D LIKE MR. DUNN TO ADDRESS THIS.

21 MR. ZLOTNICK: THANK YOU.

22 THE COURT: RECOGNIZING WE ARE PLOWING OVER GROUND THAT
23 HAS BEEN PLOWED BEFORE.

24 MR. DUNN: I SHOULD PROBABLY START OUT BY THANKING
25 MR. ZLOTNICK PUBLICLY FOR HIS EFFORTS TO MEET AND CONFER WITH
26 COUNSEL. IT WASN'T AN EASY TASK OVER THIS RELATIVELY SHORT
27 PERIOD OF TIME SINCE THE LAST HEARING INCLUDING THE HOLIDAY
28 SEASON. BUT HE HAS MADE HIMSELF AVAILABLE AND HAS WORKED

1 DILIGENTLY ON THE PROPOSED NOTICE.

2 I THINK THE PRIMARY POINT I WOULD LIKE TO ADDRESS
3 WITH THE COURT, IF I MAY, THIS MORNING HAS TO DO WITH WHAT MR.
4 ZLOTNICK TALKED A LITTLE BIT ABOUT ALREADY AS PART OF THAT
5 MEET-AND-CONFER PROCESS.

6 WE HAVE BEEN AWARE THAT MR. ZLOTNICK'S FIRM HAS
7 BEEN SEARCHING FOR ANOTHER PROPERTY OWNER TO BE A CLASS
8 REPRESENTATIVE FOR A GROUP OF HOMEOWNERS -- OR EXCUSE ME --
9 PROPERTY OWNERS WE COMMONLY CALL "SMALL PUMPERS." AND THOSE
10 EFFORTS HAVE BEEN ONGOING, AND THEY CONTINUE. WE HAVE TALKED
11 WITH MR. ZLOTNICK AND OTHER LEGAL COUNSEL AS OF LAST WEEK ON
12 HOW TO CONTINUE THAT PROCESS. BUT WE FIND OURSELVES HERE
13 TODAY STILL WITHOUT A CLASS REPRESENTATIVE TO SERVE IN THE
14 FUNCTION OF ANOTHER CLASS, THIS TIME BEING SMALL PUMPERS.

15 ONE OF THE THINGS THAT WE HAVE DONE IS WE HAVE
16 GONE BACK AND WE HAVE LOOKED AT CASE LAW AS IT DEALS WITH
17 CLASS CERTIFICATION FOR LIMITED ISSUES AND IN PARTICULAR WE
18 HAVE GONE BACK AND DONE A VERY THOROUGH REVIEW OF THE CASES AS
19 IT RELATES TO PURPORTED CONFLICTS OR CLAIM CONFLICTS OR
20 APPARENT CONFLICTS WITHIN THE CLASS ACTION CONTEXT. AND THE
21 SHORT VERSION OF THE RESULT OF THAT IS THAT WE ARE CONFIDENT
22 THAT WHAT THE COURT HAD ON ITS OWN SUGGESTED AT THE BEGINNING
23 OF THE LAST HEARING IS AND SHOULD -- IS POSSIBLE AND SHOULD BE
24 AGAIN CONSIDERED BY THE COURT.

25 WHAT THE COURT HAD PROPOSED OR SUGGESTED WAS THAT
26 FOR LIMITED PURPOSES ONLY, THE CLASS BE MODIFIED SO THAT IT IS
27 MORE INCLUSIVE, INCLUDING REPRESENTATION OF THE SMALL PUMPER
28 GROUP FOR AN ISSUE OR CERTAIN ISSUES THAT ARE COMMON AS TO

1 BOTH PUMPERS AND SMALL PUMPERS. IN OTHER WORDS, ISSUES THAT
2 ARE COMMON TO LANDOWNERS GENERALLY, AND THAT WOULD INCLUDE
3 CHARACTERISTICS OF THE BASIN INCLUDING THE BASIN'S YIELD; AND
4 WHETHER YOU ARE A PUMPER OR NONPUMPER, THOSE INTERESTS ARE
5 GENERALLY COMMON. THAT IS A PREDOMINANT COMMON ISSUE AS TO
6 PROPERTY OWNERS, WHETHER THEY PUMP OR NOT.

7 ALSO WHEN WE LOOK AT MR. ZLOTNICK'S PLAINTIFF'S
8 CLASS ACTION, THE FIRST AMENDED COMPLAINT THAT IS THE
9 OPERATIVE PLEADING ALSO IS A CLASS OF PROPERTY OWNERS WITH A
10 DISPUTE OVER WATER RIGHTS WITH PUBLIC WATER SUPPLIERS. IN
11 OTHER WORDS, THE ZLOTNICK -- MR. ZLOTNICK'S CLASS ACTION
12 PLEADING DOES NOT RAISE ANY ISSUE WITH ANY OTHER PROPERTY
13 OWNER. IT IS A LAWSUIT THAT IS DIRECTED AT PUBLIC WATER
14 SUPPLIERS. SO THERE IS NO -- AS FAR AS WE ARE AWARE OF IN
15 THIS CASE THERE IS NO PLEADING AGAINST THE CLASS BY OTHER
16 PROPERTY OWNERS AND THERE IS NO PLEADING BY THIS CLASS OF
17 PROPERTY OWNERS AGAINST OTHER PRIVATE PROPERTY OWNERS.

18 AND SO WHEN WE LOOK AT THIS WHOLE AREA IN TERMS
19 OF WHAT THE COURT CAN DO TO SORT OF FACILITATE GETTING THIS
20 CASE FURTHER DOWN THE ROAD TOWARDS A RESOLUTION, THE CASES
21 SEEM VERY CLEAR AND SPEAK VERY LOUDLY AT TIMES THAT THE
22 NECESSITY OF THE CLASS ACTION DEVICE REQUIRES IMPLEMENTATION
23 IN SORT OF CREATIVE WAYS, AND OFTEN THAT MEANS USING THE CLASS
24 ACTION DEVICE INITIALLY FOR LIMITED PURPOSES.

25 NOW ONE OF THE THINGS WE TALKED ABOUT WITH MR.
26 ZLOTNICK WAS THAT BECAUSE THERE ARE THESE ISSUES THAT ARE
27 COMMON TO LANDOWNERS, PARTICULARLY IN TERMS OF THE
28 CHARACTERISTICS OF THE BASIN INCLUDING YIELD, WHAT COULD

1 HAPPEN IS THAT THE CLASS COULD BE MODIFIED SO AS TO INCLUDE
2 THE REMAINING PROPERTY OWNERS. AND I'M GENERALLY TALKING
3 ABOUT PEOPLE WHO ARE NOT INDIVIDUALLY SERVED AND WOULD BE
4 BROUGHT INTO THE CASE PRESENTLY AS INDIVIDUAL PARTIES BUT
5 SMALLER LANDOWNERS WHETHER THEY PUMP OR NOT. AND THEN THE
6 NOTICE WOULD THEN GO OUT TO THAT GROUP AND WOULD BE A NOTICE
7 VERY SIMILAR TO WHAT MR. ZLOTNICK PREPARED. WE HAD ONLY
8 MODIFIED IT IN THE CONTEXT THAT IF THE COURT AT SOME POINT
9 DOWN THE ROAD MODIFIED THE EXISTING CLASS TO INCLUDE THESE
10 SMALLER LANDOWNERS WITH WELLS OR HAD WELLS, THAT OUR
11 MODIFICATION REVISION COVERS THAT. IT IS JUST A BROADER NOTICE
12 THAT GOES OUT.

13 BUT THE REASON WHY THAT IS IMPORTANT IS IN ORDER
14 FOR THE NOTICE TO HAVE LEGAL IMPACT UPON THE RECIPIENT, THAT
15 RECIPIENT PROPERTY OWNER MUST ALREADY BE PRESENT IN A CLASS.
16 THE CONCERN THAT WE HAVE IS THAT IF THE NOTICE GOES OUT TO
17 PEOPLE WHO ARE JUST IN A ZLOTNICK SLASH WILLIS CLASS OF
18 NON-PUMPING PROPERTY OWNERS, IN OTHER WORDS PEOPLE WHO DON'T
19 HAVE WELLS, THE PARTIES THEN WHO HAVE THE WELLS WHO ARE NOT
20 MEMBERS OF THAT CLASS THERE IS NO LEGAL IMPACT UPON THEM WHEN
21 THEY RECEIVE THAT NOTICE; THEY ARE NOT PART OF THAT NOTICE.

22 IT IS AS IF, AS I SAID EARLIER, THEY COULD TAKE
23 THEIR NOTICE AND JUST DISREGARD IT, THEY COULD JUST THROW IT
24 AWAY. BUT BY BEING INITIALLY INCLUDED IN THE CLASS, THE
25 NOTICE THEN HAS IMPACT UPON THEM. AND THEN THE COURT-ORDERED
26 PORTION OF THE NOTICE THAT HAS THEM RETURN THE NOTICE FILLING
27 OUT THE FORM THAT MR. ZLOTNICK HAS PROPOSED INDICATING
28 GENERALLY WHETHER OR NOT THEY PUMP AND IF THEY HAVE BASIC