

1 INFORMATION ABOUT THAT, THAT INFORMATION CAN THEN BE GATHERED
2 AND IT CAN BE PUT TOGETHER IN A WAY SO THAT WE CAN AT A LATER
3 POINT IN TIME IF WE NEED TO SUBDIVIDE THAT CLASS FOR ISSUES
4 THAT -- FURTHER DOWN THE ROAD.

5 THE COURT: SHOULD THE CLASS BE AFFECTED BY THE
6 OBJECTIVES OF THE LITIGATION AND CAN WE SEGMENT THE OBJECTIVES
7 OF THE LITIGANTS?

8 MR. DUNN: YES.

9 THE COURT: SO THAT THE CLASS COULD BE DESIGNATED FOR
10 PURPOSES OF DETERMINING THE CHARACTERISTICS, THE SAFE YIELD,
11 AND PERHAPS I'M NOT SURE WHAT ELSE BUT CERTAINLY THOSE THINGS?

12 MR. DUNN: YES. THE ANSWER IS CLEARLY YES.

13 THE COURT: AND THAT WOULD REQUIRE A MODIFICATION OF
14 THE ORDER, WOULD IT NOT?

15 MR. DUNN: IT WOULD. AND WE HAVE TALKED WITH MR.
16 ZLOTNICK ABOUT SPECIFICALLY DOING THAT. AND WE THOUGHT THAT
17 WHAT WE COULD DO IS WE WOULD PROPOSE TO THE COURT, IF THE
18 COURT WOULD ALLOW US TO DO THIS, IS WE WOULD FILE AN AMENDED
19 MOTION NO LATER THAN A WEEK FROM FRIDAY. IT WOULD AMEND THE
20 EXISTING -- IT WOULD EXPAND OR MODIFY THE EXISTING CLASS TO
21 INCLUDE GENERALLY THE REMAINING PROPERTY OWNERS. SO THAT FOR
22 LIMITED PURPOSES ONLY, AND THAT WOULD BE CHARACTERISTICS OF
23 THE BASIN INCLUDING YIELD DETERMINATION. AND WE WOULD ALSO
24 PROPOSE THAT THAT WOULD BE THE NEXT PHASE OR A FIRST PHASE OF
25 COURT DETERMINATION OR TRIAL, AND FOR THAT LIMITED PURPOSE.

26 WE ALSO THINK THAT IF THE COURT WERE THEN TO
27 PHASE THE PROCEEDINGS SO THAT THERE WOULD BE CHARACTERISTICS
28 OF THE BASIN INCLUDING YIELD TO BE FOLLOWED BY THE CLAIMS OF

1 THE PUBLIC WATER SUPPLIERS, THEN IT SHOULD BE POSSIBLE TO
2 MAINTAIN THAT EXISTING MODIFIED CLASS STRUCTURE UP TO AND
3 INCLUDING THAT POINT AS WELL.

4 BUT THAT PROVIDES US WITH A LOT OF TIME, QUITE
5 FRANKLY, TO GATHER INFORMATION, TO GET JURISDICTION OVER
6 PROPERTY OWNERS, AND TO WORK OUT MORE CREATIVE SOLUTIONS
7 INCLUDING SUBDIVIDING THE CLASS AT A LATER POINT IN TIME.

8 SO OUR THOUGHT WAS THAT WE COULD, TOGETHER WITH
9 OTHER PARTIES THAT SUPPORT MOVING THIS CASE ALONG, GET THAT
10 MOTION ON FILE WITH THE COURT NO LATER THAN A WEEK FROM
11 FRIDAY, HAVE THE HEARING 28 DAYS LATER. THAT GIVES AN
12 OPPORTUNITY FOR ALL THE PEOPLE WHO OBJECT TO THE CLASS
13 MECHANISM AND FOR WHATEVER OTHER REASON, TO GO FORWARD. THEY
14 CAN FILE THEIR OPPOSITION. THE COURT CAN HOLD A HEARING ON
15 THAT. IF THE COURT IS INCLINED TO GRANT THE CLASS AS MODIFIED
16 OR AS REQUESTED, THEN NOTICE SHOULD BE ABLE TO GO OUT IN THE
17 FORM THAT HAS BEEN PROPOSED BY MR. ZLOTNICK.

18 JUST ONE QUICK COMMENT ON THAT FORM BY MR.
19 ZLOTNICK. IT DOES REPRESENT A LOT OF COLLABORATION WITH
20 COUNSEL. IT IS NOT JUST MR. ZLOTNICK'S FORM. IT WAS A LOT OF
21 EFFORT THAT WENT INTO IT. AND WE WOULD -- I WOULD BE VERY
22 CAREFUL ABOUT CHANGING THAT VERY MUCH JUST BECAUSE THERE HAS
23 BEEN A LOT OF INPUT IN THAT.

24 BUT THE NOTICE COULD THEN GO OUT, INCLUDING WITH
25 THE COURT'S DIRECTION AS PART OF THAT NOTICE, THAT THE FORM BE
26 RETURNED BY ALL THE RECIPIENTS IN THE CLASS AND THAT IT BE
27 RETURNED WITHIN A CERTAIN PERIOD OF TIME. AND THAT WE COULD
28 PROBABLY HAVE THIS NOTICE GO OUT WE THINK WITHIN SIXTY DAYS

1 AFTER THE COURT'S ORDER IF THE COURT WERE INCLINED TO MODIFY
2 THE CLASS.

3 AND SO THAT WOULD SORT OF PUT US INTO THE EARLY
4 APRIL TIME PERIOD PERHAPS. AND IT IS STILL POSSIBLE --
5 THERE'S BEEN A LOT OF DISCUSSION ABOUT PHASING AMONG SOME OF
6 THE COUNSEL -- WE STILL THINK IT IS POSSIBLE BY THE END OF
7 JUNE TO HAVE A FIRST PHASE OF TRIAL IN THIS CASE ON THE BASIN
8 CHARACTERISTICS INCLUDING YIELD, AND THAT WOULD ALLOW US TO
9 GET THE NOTICE OUT AND PEOPLE TO RESPOND.

10 THE COURT: WHEN YOU ARE TALKING ABOUT YIELD YOU ARE
11 TALKING ABOUT PRESENT SAFE YIELD?

12 MR. DUNN: YES.

13 THE COURT: NOTHING HISTORICAL?

14 MR. DUNN: I THINK YOU COULD LOOK AT A HISTORICAL
15 LOOK-BACK AS WELL.

16 THE COURT: WELL, YOU COULD LOOK AT IT BUT I DON'T
17 THINK IT WOULD BE APPROPRIATE TO BIND THE CLASS BECAUSE THAT
18 IS WHERE THE CONFLICT STARTS, IT SEEMS TO ME, ON YOUR
19 PROPOSAL.

20 MR. DUNN: YEAH, I WANTED TO AVOID, IF I COULD, THIS
21 MORNING, SORT OF THE ISSUES THAT WERE RAISED BY SOME COUNSEL
22 LAST WEEK ABOUT THIS CLAIMED CONFLICT. I THINK WHAT I CAN
23 REPRESENT IS, WITHOUT GETTING TOO DEEP INTO THIS, INTO THE
24 CASES, IS THAT I THINK THE COURT IS CORRECT. THERE MAY BE
25 DOWN THE ROAD AN ACTUAL CONFLICT THAT MAY ARISE BETWEEN
26 MEMBERS OF A CLASS, BUT TO THE EXTENT THAT THE COURTS CAN
27 IMPLEMENT THE CLASS ACTION DEVICE INITIALLY SO THAT THAT
28 CONFLICT IS NOT PRESENTLY BEFORE THE COURT AND THE CLASS

1 MEMBERS, THEN THE CLASS ACTION DEVICE IS ACCEPTABLE.

2 THERE WAS SOME COMMENT MADE THAT PERHAPS DURING
3 THE COURSE OF SETTLEMENT DISCUSSIONS THAT A CONFLICT MIGHT
4 ARISE BETWEEN PEOPLE WHO PUMP AND PEOPLE WHO DON'T PUMP AND
5 THAT WOULD SOMEHOW CREATE A CONFLICT WITHIN A CLASS. THE
6 SHORT ANSWER ON THAT IS THAT IS WRONG, IT DOESN'T. THAT IS
7 NOT THE WAY IT WORKS IN A CLASS ACTION DEVICE. BECAUSE THE
8 COURT HAS TO APPROVE ULTIMATELY ANY SETTLEMENT THAT INVOLVES
9 THIS CLASS, IT WOULD BE UP TO THE COURT TO DECIDE WHETHER THE
10 INTEREST OF THE CLASS MEMBERS HAD BEEN REPRESENTED OR
11 ADVOCATED DURING THE COURSE OF THE SETTLEMENT DISCUSSIONS.

12 THE SHORT VERSION ON THIS IS THAT THERE ARE
13 ALREADY IN THIS CASE AND ACTIVE IN THIS CASE PROPERTY OWNERS
14 WITH WELLS WHO PUMP AND THE ISSUE THAT ONE LEGAL COUNSEL
15 IDENTIFIED LAST TIME THAT PERHAPS THE PROPERTY OWNERS THAT
16 PUMP ARE GOING TO BE ADVERSE TO THE PEOPLE WHO DON'T PUMP,
17 THAT IS ALL GOING TO PLAY ITSELF OUT WITH THE EXISTING PUMPING
18 LANDOWNERS AND IT HAS ALREADY BEEN RAISED BY THEM IN THIS
19 HEARING.

20 SO THERE ARE COUNSEL IN THIS CASE WHO ARE GOING
21 TO RAISE THAT ISSUE AS PUMPER COUNSEL. THAT ISSUE WILL BE
22 CERTAINLY INVOLVED.

23 SO I DIDN'T MEAN TO TAKE A LOT OF THE COURT'S
24 TIME ON THIS, BUT THE SHORT VERSION IS I THINK WE CAN GET THIS
25 CASE MOVING ALONG.

26 AND LAST COMMENT IS THAT WE TALKED WITH MR.
27 ZLOTNICK AND THE OTHER COUNSEL. WE STILL BELIEVE AT SOME
28 POINT THAT ONE OR MORE PROPERTY OWNERS WITH WELLS WILL STEP

1 FORWARD AND SAY THEY WANT TO BE A CLASS REPRESENTATIVE. AND I
2 THINK THE MODIFICATION OF THE CLASS AND GETTING THIS CLASS
3 NOTICE OUT WILL FACILITATE THAT. THERE ARE GOING TO BE PEOPLE
4 WHO GET THIS CLASS NOTICE, AND WE WILL HAVE A RECORD OF THEM,
5 ONE OR MORE OF THEM MAY DECIDE TO SERVE THEN AS A PUMPER
6 REPRESENTATIVE.

7 THE COURT: THANK YOU.

8 MR. DUNN: THANK YOU FOR YOUR TIME, YOUR HONOR.

9 THE COURT: MR. DOUGHERTY, YOU LOOK LIKE YOU ARE
10 GETTING READY TO STAND UP.

11 MR. DOUGHERTY: YES. REARING TO GO, YOUR HONOR.

12 ROBERT DOUGHERTY FOR THE A V UNITED MUTUAL GROUP.

13 YOUR HONOR, IT IS REALLY HARD TO KNOW WHERE TO
14 BEGIN BUT I THINK WE CAN BEGIN BY RECOGNIZING THAT MOST CLASS
15 ACTION CASES THAT PEOPLE DEALT WITH IN THE PAST HAVE BEEN,
16 WELL, SOMEBODY HASN'T GOTTEN A REFUND OF TEN DOLLARS WHEN THEY
17 SHOULD HAVE AND THERE IS A WHOLE BUNCH OF OTHER PEOPLE OUT
18 THERE THAT SHOULD, AND EVERYONE'S IN THE SAME BOAT. AND
19 INSTEAD OF ALL OF THEM LITIGATING THIS INDIVIDUALLY, THEY GET
20 TOGETHER AND THEY HAVE A CLASS REPRESENTATIVE. AND THEY GET
21 THE MONEY AND THEY DISTRIBUTE IT.

22 HERE, THEY ARE ASKING ESSENTIALLY FOR INJUNCTIVE
23 RELIEF. AND IF WE GO BACK TO THE FEDERAL RULES -- WE RAISED
24 THIS BACK IN APRIL OF LAST YEAR -- ESSENTIALLY CLASS ACTIONS,
25 AT LEAST UNDER THE FEDERAL RULES, SHOULD NOT BE USED FOR
26 INJUNCTIVE RELIEF.

27 NOW GETTING TO THIS ISSUE OF CONFLICTS, I DON'T
28 KNOW WHERE WE ARE GETTING TO. WE SAY "WELL, THERE MAY NOT BE

1 A CONFLICT TO START BUT THERE MAY BE ONE THAT COMES UP." I
2 THINK IF THERE IS ANY POSSIBILITY OF A CONFLICT COMING UP,
3 THAT ISSUE HAS TO BE ADDRESSED AT THE BEGINNING. HOW CAN YOU
4 SAY "WELL, I DON'T HAVE A CONFLICT NOW BUT SOONER OR LATER,
5 MAYBE FIVE MONTHS DOWN THE LINE, I'M GOING TO HAVE A SITUATION
6 ARISE WHERE I CAN'T CONTINUE TO REPRESENT ONE OR MORE OF THE
7 PEOPLE THAT I REPRESENT"? I'M CERTAINLY NOT GOING TO GET
8 INVOLVED IN THAT KIND OF A SITUATION AS AN ATTORNEY. AND HERE
9 WE DO HAVE A VERY DEFINITE POSSIBILITY.

10 I HAVE HEARD THAT THERE ARE A NUMBER OF PUMPERS,
11 I WON'T SAY WHO THEY ARE, THAT ARE GOING TO TAKE THE POSITION
12 THAT NONPUMPERS HAVE ESSENTIALLY NO WATER RIGHTS. WELL, AS WE
13 KNOW, THAT IS NOT CURRENTLY THE LAW IN CALIFORNIA BUT THEY
14 WOULD LIKE IT TO BE.

15 ALSO, NOW GETTING BACK TO WHAT MR. DUNN
16 PROPOSES, THIS SORT OF DUAL CLASS, OR WHATEVER, I DON'T SEE
17 ANY COMPLAINT THAT IS ON FILE THAT WOULD ASK THAT. ARE THEY
18 GOING TO FILE AN AMENDED CROSS-COMPLAINT OF THEIR OWN? ARE
19 THEY GOING TO ASK MISS WILLIS TO FILE AN AMENDED COMPLAINT? I
20 DON'T KNOW.

21 AND ALSO -- AND HERE IS ONE THING I DISLIKE ABOUT
22 THIS WHOLE IDEA OF THE NOTICE OF CLASS ACTION. WHO IS THE
23 ENEMY? RIGHT HERE IT SAYS THE ENEMY IS MISS WILLIS, THAT SHE
24 IS THE ONE THAT IS SUING ALL OF THESE GOOD PEOPLE. WE KNOW
25 THAT THAT'S NOT THE CASE. THE REAL ENEMY, THE ONES THAT ARE
26 TRYING TO ACQUIRE PRESCRIPTIVE RIGHTS, ARE THE WHAT THEY CALL
27 THEMSELVES THE "PUBLIC WATER SUPPLIERS." I THINK "PURVEYORS"
28 IS PROBABLY MORE ACCURATE.

1 BUT ALSO I HAVE A CONCERN WITH -- WELL, WITH MR.
2 ZLOTNICK'S DESCRIPTION OF WHAT THIS CASE IS ABOUT. ON THE
3 SECOND PAGE OF -- WELL, ACTUALLY I'M READING FROM THE RED LINE
4 VERSION FROM MR. DUNN'S GROUP. BUT IT WASN'T CHANGED. IT
5 SAYS, "UNDER CALIFORNIA LAW, PROPERTY OWNERS HAVE A RIGHT TO
6 PUMP AND USE GROUNDWATER ON THEIR LAND. IN THIS CASE HOWEVER
7 THE NATIONALLY AVAILABLE SUPPLY OF WATER IN THE BASIN IS NOT
8 ADEQUATE TO SUPPLY OR TO SATISFY EVERYONE WHO WANTS TO USE
9 THAT WATER."

10 WELL, WHEN HAS THAT EVER BEEN DETERMINED? THAT
11 IS ONE OF THE WHOLE OBJECTS OF THIS EXERCISE, IS TO DETERMINE
12 HOW MUCH WATER IS AVAILABLE. BUT HERE THEY ARE CONCEDING
13 RIGHT UPFRONT THERE IS NOT ENOUGH WATER. AND THAT WOULD SEEM
14 TO BE THEIR POSITION AS WELL AS THE WILLIS POSITION.

15 THE COURT: WHO ARE YOU POINTING AT WHEN YOU SAY "THEIR
16 POSITION"?

17 MR. DOUGHERTY: I'M SORRY?

18 THE COURT: YOU WERE POINTING. YOU SAID "THEIR
19 POSITION."

20 MR. DOUGHERTY: I'M SORRY. I MEANT THE PUBLIC WATER
21 SUPPLIER'S POSITION AS WELL AS THE WILLIS POSITION.

22 THE COURT: ALL RIGHT.

23 MR. DOUGHERTY: SO AGAIN, I HAVE TO REITERATE THE
24 POSITION OF OUR GROUP IS THAT THE CLASS ACTION PEOPLE, IT IS
25 NOT APPROPRIATE. BUT CERTAINLY IT WOULD NOT BE APPROPRIATE TO
26 COMBINE PUMPERS AND NONPUMPERS INTO A CLASS UNDER ANY
27 CIRCUMSTANCES AND HOPE THAT SOMEHOW IT SHAKES ITSELF OUT ALONG
28 THE LINE.

1 THE COURT: DO YOU THINK IT IS POSSIBLE THAT THERE IS A
2 COMMON INTEREST IN KNOWING WHAT THE CHARACTER OF THE VALLEY
3 IS?

4 MR. DOUGHERTY: WELL, THERE MAY BE A COMMON INTEREST IN
5 KNOWING CERTAIN FACTS, BUT IF THE ISSUE, THE CHARACTERISTIC
6 INCLUDES THE ISSUE OF IS THERE AN OVERDRAFT OR IS THERE NOT, I
7 THINK THAT CERTAIN PEOPLE, IN FACT MY GROUP, LEANS TOWARDS
8 THERE IS NO OVERDRAFT. AND I THINK THE EVIDENCE WILL STRONGLY
9 SUPPORT THAT. OTHER GROUPS, I THINK, ARE GOING TO SAY "YEAH,
10 THERE IS AN OVERDRAFT AND THAT --

11 THE COURT: THAT IS A DIFFERENT ISSUE. THE
12 CHARACTERISTICS OF THE BASIN, WHETHER IT IS A SINGLE BASIN,
13 WHETHER THERE ARE SECTIONS, IT SEEMS TO ME EVERYBODY REALLY
14 HAS A COMMON INTEREST IN KNOWING. AND I'M ASSUMING THAT THERE
15 MAY BE SOME FACTS CONCERNING THAT THAT ARE REALLY NOT IN
16 DISPUTE.

17 MR. DOUGHERTY: WELL, THERE MAY BE, YOUR HONOR. AND I
18 GUESS THE WAY TO FLUSH THAT OUT IS IN DISCOVERY AND IN
19 REQUESTS FOR ADMISSIONS. BUT THE CONCERN IS SOME PEOPLE MAY
20 SAY "YEAH, WE SHOULD HAVE SUB-BASINS BECAUSE I'M IN THIS ONE
21 OVER HERE, NOBODY AFFECTS ME," OR SOME OTHERS WILL SAY, "YEAH,
22 WE WANT TO HAVE IT ALL IN ONE BIG BASIN BECAUSE" -- I DON'T
23 SEE ANYTHING THAT CAN BE JUST SEPARATED SO EVERYONE IS GOING
24 TO AGREE ON ANY GIVEN FACT. I GUESS PEOPLE HAVE AGREED ON THE
25 BOUNDARIES PRETTY MUCH.

26 THE COURT: MR. DOUGHERTY, AS TO THAT FACT, AS TO
27 WHETHER THERE ARE SUBBASINS OR WHETHER IT IS ONE SINGLE BASIN,
28 DON'T YOU THINK THAT THERE MAY BE SOME CONSENSUS AMONG

1 SCIENTISTS, NOT PARTICULARLY WHAT THE OVERLYING OWNERS MIGHT
2 WANT, BUT RATHER IN TERMS OF WHAT IT IS GEOLOGICALLY?

3 MR. DOUGHERTY: I WOULD HAVE TO SEE THE EVIDENCE
4 PRESENTED BY THE SCIENTISTS. I JUST DO NOT WANT TO CONCEDE
5 THAT THEY ARE ALL GOING TO COME UP WITH THE SAME CONCLUSION.
6 AND I DON'T WANT TO INDICATE WHAT I HAVE HEARD, THAT THEY MAY
7 NOT BE COMING UP --

8 THE COURT: OKAY. BUT HERE IS MY QUESTION REALLY THAT
9 UNDERLIES THAT: CAN'T WE HAVE, AT THE OUTSET, A CLASS THAT
10 WOULD PERMIT PEOPLE TO OPT OUT, NUMBER ONE, AND NUMBER TWO,
11 WHICH REACHES THE POINT OF CONFLICT THAT THE COURT CAN EITHER
12 DE-CERTIFY OR MODIFY THE CLASS? IT IS A VERY COMMON PRACTICE
13 WITH CLASS ACTIONS. AND WE ARE NOT JUST TALKING ABOUT
14 DECLARATORY RELIEF HERE, WE ARE TALKING ABOUT CONSIDERABLY
15 MORE THAN THAT. WE ARE TALKING ABOUT OWNERSHIP AND USE AND
16 RESTRICTIONS ON USE POTENTIALLY. AND I DON'T HAVE AN OPINION
17 AT THIS POINT AS TO WHETHER THERE IS AN OVERDRAFT OR NOT AN
18 OVERDRAFT, WHETHER THERE IS A SINGLE BASIN, WHETHER THERE ARE
19 SUBBASINS, OR EVEN WHAT THE CONFIGURATION OF WHAT THE
20 SUB-SOILS MIGHT BE.

21 BUT IT SEEMS TO ME THAT AT SOME POINT WE HAVE GOT
22 TO REACH THE POINT WHERE WE CAN START HEARING EVIDENCE
23 CONCERNING THOSE THINGS AND I CAN'T DO THAT UNTIL WE HAVE
24 JURISDICTION OVER VIRTUALLY EVERYBODY THAT IS WITHIN THE
25 ANTELOPE VALLEY AS WE HAVE SO FAR DEFINED IT. AND IT SEEMS TO
26 ME THAT WE HAVE GOT TO GET TO THAT POINT OR WE WILL NEVER GET
27 THERE.

28 MR. DOUGHERTY: WELL, YOUR HONOR, THAT'S TRUE, WE DO

1 HAVE TO GET TO IT. THE QUESTION IS, HOW DO WE GET TO IT? DO
2 WE CONTINUE TO TRY TO FIND WAYS TO SHORTCUT WHAT SHOULD BE
3 DONE? I THINK WHAT SHOULD BE DONE IS IF YOU SUE SOMEBODY, YOU
4 HAVE GOT TO SERVE, PARTICULARLY WHEN YOU HAVE RIGHTS OF THE
5 NATURE WE ARE TALKING ABOUT INVOLVED.

6 IF THE PUBLIC WORKS SUPPLIERS WANT TO ASSERT
7 PRESCRIPTIVE RIGHTS -- AND WE WOULDN'T BE HERE UNLESS THAT
8 WAS THE CASE -- THEN THEY OUGHT TO SERVE THEIR
9 CROSS-COMPLAINTS ON EVERYBODY AND AT THAT POINT WE ARE GOING
10 TO KNOW WHO IS GOING TO STEP UP AND SAY "I SURRENDER" OR "I'M
11 GOING TO FIGHT YOU." AND I THINK IT OUGHT TO BE ACCOMPANIED
12 WITH LIS PENDENS AND QUIET TITLE TYPE ACTIONS IF WE ARE GOING
13 TO COMBINE PROPERTIES AS OPPOSED TO INDIVIDUALS. THAT WAY WE
14 WOULDN'T HAVE TO, YOU KNOW, CONCERN OURSELVES WITH THIS
15 TRANSFEREE/TRANSFEROR NOTICE WHICH I CAN'T SEE HOW THAT WOULD
16 GIVE JURISDICTION OVER THE TRANSFEREE UNTIL SUCH TIME AS IF
17 THEY DON'T RESPOND, AND I BELIEVE THE ORDER WOULD INDICATE
18 THEY WOULD HAVE TO BE SERVED AT THAT POINT WITH THE PUBLIC
19 PURVEYORS CROSS-COMPLAINT.

20 THE COURT: HOW MANY PEOPLE LIVE IN THE ANTELOPE
21 VALLEY?

22 MR. DOUGHERTY: I HAVE NO IDEA BUT THERE IS A WHOLE
23 BUNCH. I'M SURE THERE MUST BE PROBABLY OVER A HUNDRED AND 50
24 THOUSAND AT LEAST AMONG THE TWO CITIES. I'M SURE THAT THERE
25 ARE SOME FOLKS HERE WHO COULD CERTAINLY GIVE AN APPROXIMATION
26 BETTER THAN ME.

27 BUT IT IS NOT SO MUCH THE NUMBER OF PEOPLE THAT
28 LIVE THERE, IT IS THE PARCELS THAT ARE THERE, THE LAND THAT IS

1 GOING TO BE AFFECTED BY ALL THIS.

2 THE COURT: WELL, SOME PEOPLE OWN MORE THAN ONE PARCEL
3 BY DEFINITION.

4 MR. DOUGHERTY: VERY TRUE.

5 THE COURT: BUT THE NUMBER OF PEOPLE THAT HAVE TO BE
6 SERVED I'M SURE WOULD BE OVER A HUNDRED AND 50 THOUSAND BASED
7 ON WHAT I UNDERSTAND ABOUT THE CHARACTER OF THE VALLEY.

8 AND WE ARE INTERESTED IN A PRACTICAL SOLUTION
9 HERE, WE ARE NOT LOOKING FOR SHORTCUTS, MR. DOUGHERTY. THE
10 COURT IS INTERESTED IN A PRACTICAL WAY OF OBTAINING
11 JURISDICTION OVER THE OWNERS OF LAND WITHIN THE VALLEY SO THAT
12 WE CAN GO THROUGH A NORMAL PROGRESSION OF LITIGATION. WE CAN
13 GET A DEFINITION OF THE VALLEY, CHARACTERISTICS. WE CAN
14 DETERMINE WHAT THE YIELD IS. WE CAN PUT THE PARTIES IN A
15 POSITION WHERE THEY CAN EITHER SEEK AN ADJUDICATION OR TRY TO
16 SETTLE THE CASE AMONG THEMSELVES.

17 AND IT SEEMS TO ME THERE ARE LARGE COMMON
18 INTERESTS AMONG THE NONPUMPERS AS WELL AS THE SMALL PUMPERS,
19 AND THE LARGE PUMPERS AS OPPOSED TO THOSE WHO ARE SUPPLYING,
20 OR "PURVEYING," AS YOU PUT IT, WATER. WHETHER THEY ARE A
21 MUNICIPALITY OR A PRIVATE WATER COMPANY OR WHATEVER.

22 MR. DOUGHERTY: YOUR HONOR, I GUESS I REALLY SHOULD
23 APOLOGIZE FOR USING THE WORD "SHORTCUT." I DIDN'T MEAN IT IN
24 THE SENSE THAT IT SOUNDS. WHAT I WAS TRYING TO GET ACROSS IS
25 IT WOULD BE A SHAME TO GO THROUGH WHATEVER WE GO THROUGH AND
26 THEN FIND OUT LATER ON THAT WHAT HAS BEEN DONE IS NOT AN
27 APPROPRIATE WAY OF OBTAINING JURISDICTION OVER EVERYONE THAT
28 WE THOUGHT WE MIGHT BE DOING. AND THAT IS THE REASON I SAY

1 THE SAFEST WAY OBVIOUSLY WOULD BE TO SERVE THEM ALL. WELL,
2 UNFORTUNATELY --

3 THE COURT: BUT, MR. DOUGHERTY, THAT MAKES EVERYBODY A
4 DEFENDANT, AND I DON'T THINK THAT IS NECESSARY OR INTENDED OR
5 APPROPRIATE. IT CERTAINLY IS APPROPRIATE TO HAVE A CLASS OF
6 PLAINTIFFS WHO HAVE A COMMON INTEREST. THERE IS ABSOLUTELY NO
7 QUESTION IN MY MIND THAT NONPUMPERS ARE AN APPROPRIATE CLASS
8 OF PLAINTIFFS. THEY HAVE A COMMON INTEREST. THEY HAVE NOT
9 PUMPED. THEY MAY WANT TO PUMP IN THE FUTURE, AND TO THAT
10 EXTENT I THINK IT IS AN APPROPRIATE CLASS.

11 NOW THE QUESTION IS CAN WE JOIN PEOPLE WHO ARE
12 SMALL PUMPERS, INDIVIDUAL WELL OWNERS, WHO ARE NOT CONNECTED
13 TO A SERVICE DISTRICT, SO FAR AS SEEKING TO FIND OUT WHAT THE
14 CHARACTERISTICS OF THE BASIN MIGHT BE AND WHAT THE AVERAGE
15 YIELD, SAFE YIELD, IF YOU WILL, MIGHT BE. IS THERE A CONFLICT
16 AT THAT POINT? THERE CERTAINLY COULD BE LATER ON.

17 MR. DOUGHERTY: YOUR HONOR, I THINK THAT WHEN WE LOOK
18 AT WHAT WE ARE TRYING TO FIND OUT, THERE IS NO -- WOULD BE NO
19 CONFLICT; THAT WE ALL WANT TO HAVE THIS DETERMINED. BUT WHAT
20 WE WANT TO SEE AS A FACT TO BE DETERMINED IS WHERE THERE MIGHT
21 BE A CONFLICT.

22 AGAIN, SOME PEOPLE ARE GOING TO SAY "WE WANT AN
23 OVERDRAFT," OTHERS, "WE DON'T WANT AN OVERDRAFT." AND I DON'T
24 SEE, AT LEAST I DON'T SEE ME, AS AN ATTORNEY, WHERE I WOULD BE
25 AT ALL COMFORTABLE TAKING A CLASS REPRESENTATION WHERE I MIGHT
26 SOMEHOW WIND UP WITH A CONFLICT OF INTEREST IN THE FUTURE.

27 ACTUALLY I, IN MY OWN MIND, THINK THERE IS A
28 POTENTIAL NOW THAT HAS TO BE ADDRESSED, AND FOR THAT REASON I

1 WOULDNT TAKE IT ON MY OWN.

2 BUT, ANYWAY, THAT IS ALL I WOULD SAY.

3 THE COURT: ONE OF THE DIFFICULTIES THAT I'M HAVING
4 WITH THIS SITUATION IS THAT EVERYBODY THAT IS IN THIS ROOM AND
5 EVERYBODY WHO HAS OWNERSHIP OF LAND IN THE ANTELOPE VALLEY
6 WOULD LIKE TO HAVE THIS MATTER RESOLVED ONE WAY OR ANOTHER.
7 AND THAT IS GOING TO REQUIRE ALL COUNSEL TO PUT THEIR HEADS
8 TOGETHER TO COME UP WITH A METHOD FOR DOING THAT; RATHER THAN
9 DIVIDING YOURSELVES AMONG THOSE WHO WANT TO DO CLASS ACTIONS,
10 THOSE WHO WANT TO BASICALLY OBJECT. BECAUSE WE ARE NOT
11 GETTING ANYWHERE THAT WAY.

12 AND IT SEEMS TO ME THAT WITH THIS LITIGATION,
13 COUNSEL REALLY NEED TO WORK TOGETHER TO AT LEAST TEE-UP THE
14 ISSUES, SO TO SPEAK, SO THAT THE COURT WILL HAVE AN
15 OPPORTUNITY TO HEAR THE EVIDENCE AND TO MAKE SOME SORT OF AN
16 ADJUDICATION, STEP-BY-STEP, SO THAT WE CAN GET THESE MATTERS
17 RESOLVED. OTHERWISE, IT GOES NOWHERE.

18 IT HAS BEEN A LONG TIME PENDING. IT STARTED OUT
19 WITH A COUPLE OF FARMS OR RANCHES, IF YOU WILL, SEEKING TO
20 PROTECT THEIR WATER RIGHTS. IT HAS BEEN PARLAYED INTO A MASS
21 OF LITIGATION.

22 I'VE SAID THIS BEFORE IN OTHER CASES. THIS
23 REALLY REQUIRES A POLITICAL SOLUTION. THE COURTS ARE PROBABLY
24 THE LEAST EFFECTIVE MANNER OF ARRIVING AT A POLITICAL
25 SOLUTION. AND THIS CASE MAY WELL BE A GOOD EXAMPLE OF THAT.

26 BUT WE HAVE THE CASE. I'VE BEEN ASSIGNED THE
27 CASE. I WANT TO PROCEED TO PROVIDE A PROPER ADJUDICATION OF
28 THE CASE, BUT I NEED COUNSEL TO COOPERATE AND PARTICIPATE IN

1 HELPING THE COURT TO ARRIVE AT A SOLUTION SO THAT WE HAVE
2 JURISDICTION OVER ALL THE PARTIES THAT NEED TO BE INVOLVED IN
3 THIS CASE AND WE CAN HAVE A FINAL ADJUDICATION.

4 AT THE LAST HEARING I SUGGESTED THAT WE HAVE A
5 FORM OF NOTICE THAT GOES OUT IN CONFORMITY TO THE
6 CERTIFICATION ORDER THAT I MADE, THAT WOULD BE SERVED ON
7 VIRTUALLY EVERY PERSON IN THE VALLEY. AND THOSE PEOPLE WOULD,
8 BECAUSE THEY ARE PRESUMPTIVELY NONPUMPERS BECAUSE WE DON'T
9 KNOW ABOUT THEM, HAVE AN OPPORTUNITY TO TELL THE COURT WHETHER
10 THEY ARE OR ARE NOT PUMPERS. IF THEY ARE PUMPERS, THAT THEY
11 HAVE A RIGHT TO ESSENTIALLY OPT OUT OF THE CLASS ITSELF. IF
12 THEY ARE NONPUMPERS AND THEY WANT TO OPT OUT OF THE CLASS,
13 THEY MAY ALSO DO THAT.

14 THE FORM OF THE NOTICE THAT MR. ZLOTNICK PREPARED
15 I THOUGHT WAS PRETTY REASONABLE IN ADDRESSING THOSE ISSUES
16 BECAUSE IT WOULD GIVE EVERYBODY AN OPPORTUNITY TO OPT OUT IF
17 THEY CHOSE TO OR TO TELL US THAT THEY ARE PUMPERS AND THAT
18 THEY WISHED TO BE EXCLUDED FROM THIS CLASS, AT WHICH POINT
19 THEY WERE ADVISED THEY WOULD BE SERVED AND THEY COULD BECOME
20 AN INDIVIDUAL DEFENDANT. THAT SEEMED TO ME TO BE A REASONABLE
21 WAY OF APPROACHING IT.

22 THE PROBLEM IS IF IT IS A SINGLE CLASS OF
23 NONPUMPERS, AND YOU HAVE SERVED SOMEBODY, AND THEY ARE NOT A
24 PUMPER -- I'M SORRY -- THEY ARE NOT A NONPUMPER, THEY ARE A
25 PUMPER, THEY CAN IGNORE YOU AS MR. -- I THINK MR. DUNN SAID.
26 AND I THINK HE IS RIGHT. I THINK THEY COULD. AND THEY COULD
27 DO IT WITH IMPUNITY.

28 SO IF WE INCLUDE IN THE NOTICE THE CLASS -- AND

1 FRANKLY I THINK MAYBE IT HAS GOT TO BE A SUBCLASS, BUT I THINK
2 WE WILL HAVE TO FILE A MOTION AS HE REQUESTED. AND THIS IS
3 SUBJECT TO HEARING FROM OTHER COUNSEL HERE THIS MORNING, BUT
4 IT SEEMS TO ME THAT IT IS POSSIBLE FOR MR. ZLOTNICK TO
5 REPRESENT NONPUMPERS AND SMALL PUMPERS UP TO A POINT. AND AT
6 THE POINT WHERE THE INTERESTS DIVERGE, WE CAN SEEK OTHER
7 COUNSEL TO CARRY ON REPRESENTING THE SMALL PUMPERS. NOW THAT
8 MAY BE ONE APPROACH TO IT.

9 AND I UNDERSTAND THAT FROM COUNSELS' STANDPOINT
10 YOU WOULD BE NERVOUS ABOUT NOW REPRESENTING ONE AGAINST THE
11 OTHER, ASSUMING THAT THAT IS THE CASE. BUT DIVERGENCE IS NOT
12 NECESSARILY CONFLICT.

13 MR. DOUGHERTY: WELL, THAT IS TRUE, YOUR HONOR. BUT
14 I'VE BASICALLY HAD MY SAY, SO I'LL --

15 THE COURT: ALL RIGHT. WELL, I APPRECIATE THAT VERY
16 MUCH, MR. DOUGHERTY.

17 I THINK MR. FIFE WOULD LIKE TO ADDRESS US ON
18 THIS.

19 MR. FIFE: GOOD MORNING.

20 MICHAEL FIFE, ANTELOPE VALLEY GROUNDWATER
21 AGREEMENT ASSOCIATION.

22 I AGREE WITH MR. DOUGHERTY THAT IT IS DIFFICULT
23 TO KNOW WHERE TO START. WE HAVE THIS SAME DISCUSSION EVERY
24 TIME WE COME HERE. I THINK WE HAVE HAD IT NOW FOUR OR FIVE
25 TIMES.

26 WE WANT THIS CASE TO MOVE FORWARD. THE ONLY
27 WAY -- AND YOU ARE RIGHT -- THE ONLY WAY THIS CASE IS GOING TO
28 END IS THROUGH SETTLEMENT; THIS CASE CAN'T GO TO TRIAL. AND