

6 THIS IS A MOTION TO HAVE THE COURT APPOINT AN EXPERT
7 FOR THE COURT.

8 MR. KALFAYAN: THAT'S CORRECT, YOUR HONOR.

9 THIS IS OUR SECOND MOTION TO HAVE A COURT-APPOINTED
10 EXPERT, AND IN FACT IF I CAN IDENTIFY, MR. HARTER IS
11 HERE PRESENT IN COURT. HE WAS ON A TRIP TO EUROPE AND
12 HE JUST ARRIVED SO HE IS A LITTLE JET LAGGED BUT IF I
13 COULD INTRODUCE HIM TO THE COURT WOULD I LIKE TO DO
14 THAT.

15 MR. HARTER: GOOD MORNING.

16 THE COURT: GOOD MORNING.

17 MR. KALFAYAN: THIS IS THOMAS HARTER FROM
18 UC DAVIS. WE ATTACHED HIS QUALIFICATIONS AS PART OF
19 OUR MOTION. AND HE GAVE US -- HE WAS KIND ENOUGH TO
20 GIVE US AN OVERALL BUDGET SOLELY BASED ON THE WORK OF
21 SOME OF THE EXPERTS THAT HAVE THUS FAR BEEN COMPLETED.
22 AND I -- AS OUR PAPERS, OUR MOVING PAPERS ARTICULATED,
23 WE WOULD LIKE TO HAVE HIM START TO DO THE WORK FOR THE
24 COURT. HE WOULD BE A COURT-APPOINTED EXPERT, HE IS
25 IMPARTIAL. I HAVE HAD VERY LIMITED COMMUNICATION WITH
26 MR. HARTER AND -- AND HE -- HE HASN'T DONE ANY -- ANY
27 WORK ON THE -- ON THE PROJECT. BUT HE'S EMINENTLY
28 QUALIFIED AND I WOULD LIKE -- I WAS HOPING WE COULD SET

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1 SOME EXPERT EXCHANGE DATE SO THAT ALL THE EXPERTS CAN
2 BE IDENTIFIED AND SUBMIT TO THE COURT AND THEN HE COULD
3 START THE WORK IN REVIEWING THOSE REPORTS AND ASSIST
4 THE COURT IN ARRIVING AT AN OPINION FOR SAFE YIELD.

5 THE COURT: WELL, YOU KNOW, THE -- I GUESS I
6 SHOULD HEAR FROM THE OPPOSITION.

7 I DO HAVE SOME THOUGHTS. I WILL SAVE THEM UNTIL

8 AFTER I HAVE HEARD FROM THE OPPOSITION.

9 MR. BUNN: THOMAS BUNN FOR PALMDALE WATER
10 DISTRICT. I THINK OUR POSITION IN RESPONSE TO THAT IS
11 SIMPLE. THERE DOES APPEAR TO BE A DISPUTE ABOUT THE
12 AMOUNT OF THE SAFE YIELD. BOTH SIDES ARE ADEQUATELY
13 REPRESENTED AND HAVE COMPETENT EXPERTS AND WE FEEL THAT
14 THE JUDGE IS -- THE COURT IS ADEQUATELY EQUIPPED TO
15 MAKE THAT DECISION WITHOUT HIRING A NEUTRAL EXPERT TO
16 ASSIST YOU. OBVIOUSLY IT IS UP TO YOU TO FEEL WHAT
17 ASSISTANCE YOU NEED, BUT THIS IS GOING TO BE THE
18 ADVERSARY SYSTEM AT WORK AND I AM CONFIDENT BOTH SIDES
19 WILL BE PRESENTED WELL AND THE COURT WILL COME TO A
20 DECISION ON THE SAFE YIELD. SO I AM NOT SURE WE NEED
21 TO PAY FOR ANOTHER NEUTRAL EXPERT.

22 THE COURT: OKAY. ANYBODY ELSE IN
23 OPPOSITION?

24 MS. GOLDSMITH: JAN GOLDSMITH FOR THE CITY OF
25 LOS ANGELES.

26 THE COURT: GO AHEAD, MS. GOLDSMITH.

27 MS. GOLDSMITH: THERE WAS A -- PRETTY MUCH A
28 JOINT EFFORT OF MANY OF THE PARTIES TO TRY AND DO THE

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1 VERY SAME THING IN A TECHNICAL COMMITTEE SETTING. AND
2 THE CITY OF LOS ANGELES AS AN OVERLIER PARTICIPATED TO
3 THE TUNE OF SEVERAL HUNDRED THOUSAND DOLLARS, AND
4 BECAUSE THAT EFFORT WAS NOT -- WAS NOT REALLY PARTISAN,
5 I THINK THE CITY WOULD BE OPPOSED TO PAYING FOR
6 ESSENTIALLY A DUPLICATION OF THAT EFFORT.

7 THE COURT: OKAY.

8 MR. WEEKS: BRADLEY WEEKS.

9 THE PARTY HASN'T GIVEN THIS COURT EVIDENCE OR --
10 THAT MR. SCALAMINI OR MR. SHEEHAN OR ANY OF THE OTHER

11 PROPOSED EXPERTS HAVE COME TO THE WRONG CONCLUSION AND,
12 THEREFORE, THE COURT NEEDS YET ANOTHER EXPERT. AND WE
13 KNOW THAT IF THIS EXPERT COMES TO WHATEVER CONCLUSION
14 HE COMES TO IT WILL NOT BE THE CONCLUSION SUPPORTED BY
15 SOME OF THE PARTIES, SO AT THAT POINT THIS INDEPENDENT
16 EXPERT WILL THEN BECOME ANOTHER ADVERSARY IN THIS CASE
17 AND -- AND HE WILL WANT TO BE DEPOSED AND ALL THE OTHER
18 PROBLEMS THAT WOULD ATTEND THAT.

19 SO WE OPPOSE THIS ADDITIONAL EXPERT SINCE IT IS
20 UNNECESSARY AND IT WILL JUST ADD AN ELEMENT OF -- ADD
21 ANOTHER ADVERSARY TO THE CASE THAT DOESN'T NEED TO.

22 THE COURT: OKAY.

23 MR. KALFAYAN: IF I MIGHT RESPOND.

24 THE COURT: YES.

25 MR. KALFAYAN: KALFAYAN: WHAT THE WILLIS
26 CLASS IS LOOKING FOR IS A LEVEL PLAYING FIELD SO THAT
27 WHEN THE PUBLIC WATER SUPPLIERS PUT ON THE STAND ALL OF
28 THEIR TEAM OF EXPERTS WHO STUDIED THE YIELD, WE'RE NOT

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1 LEFT, THE CLASSES AREN'T LEFT SITTING HERE TWIDDLING
2 THEIR THUMBS UNABLE TO ASK THE QUESTIONS OR HAVE AN
3 EXPERT ON THEIR SIDE TO HELP CROSS-EXAMINE AND SUPPORT
4 THE YIELD. SO -- AND WE'VE MINIMIZED THE BURDEN ON THE
5 PUBLIC WATER SUPPLIERS BY MAKING SURE THAT THE COURT-
6 APPOINTED -- BY SUGGESTING THAT THE COURT-APPOINTED
7 EXPERT DOESN'T REINVENT THE WHEEL AND START FROM
8 SCRATCH BUT, IN FACT, LOOKS AT EVERYBODY'S REPORTS AND
9 ARRIVES AT A CONCLUSION.

10 THAT PROTECTS THE CLASS AND GIVES US A LEVEL
11 PLAYING FIELD.

12 AND THE ISSUE IS -- IS A LITTLE BIT -- IS

13 CHALLENGING HERE BECAUSE THE SAFE YIELD NUMBERS ARE
14 VERY -- ARE -- FROM ONE PERSPECTIVE TO ANOTHER, THEY
15 ARE VERY CLOSE.

16 IF THE COURT FINDS THE SAFE YIELD MOVES JUST A
17 LITTLE BIT OFF OF MR. SCALAMINI'S NUMBERS, AND I PUT
18 TOGETHER A SPREADSHEET THAT SHOWS THE PUMPING
19 INFORMATION, THAT IS WHAT MR. SCALAMINI HAS, ALL THE
20 PUMPING IN THE BASIN, AND IF THE SAFE YIELD MOVES A
21 LITTLE BIT THERE MIGHT BE -- THERE MIGHT BE -- THERE
22 MIGHT NOT BE AN OVERDRAFT. SO THE ISSUE IS A VERY
23 IMPORTANT ISSUE AND THE CLASSES HAVE -- DON'T HAVE AN
24 EXPERT TO -- TO PARTICIPATE IN THE SAFE YIELD TRIAL.

25 THE COURT: WELL, YOU KNOW, YOU'RE TALKING
26 ABOUT TWO THINGS. YOU ARE TALKING ABOUT SOMEBODY TO
27 HELP COUNSEL FOR THE CLASS. THAT'S ONE THING. AND
28 THAT'S NOT AN AUTHORIZED -- AS I UNDERSTAND THE

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1 STATUTE -- AN AUTHORIZED PURPOSE FOR THE APPOINTMENT OF
2 AN EXPERT.

3 THE COURT APPOINTS AN EXPERT IF THE COURT FINDS
4 THAT THERE IS A NEED FOR EXPERT TESTIMONY THAT IS NOT
5 OTHERWISE BEING PRESENTED TO THE COURT SO THAT THE
6 COURT UNDERSTANDS THE FACTUAL ISSUE AND IS ABLE TO
7 RESOLVE IT.

8 THE COURT HAS HEARD EXPERTS BEFORE THE IN
9 CONFLICT. AND THE COURT HAS BEEN ABLE TO DECIDE AND
10 MAKE FINDINGS OF FACT BASED UPON THE EVIDENCE AS
11 PRESENTED AS IT DOES WITH ANY OTHER TYPE OF WITNESS
12 THAT MIGHT BE CALLED TO TESTIFY AS LONG AS THERE IS A
13 SUFFICIENT EXPLICATION OF THE UNDERLYING TECHNICAL
14 PRINCIPLES SO THAT THE COURT CAN JUDGE THE CREDIBILITY
15 OF THE WITNESSES AND EVALUATE THE STRENGTH AND

16 WEAKNESSES OF THEIR -- STRENGTHS AND WEAKNESSES OF
17 THEIR TESTIMONY.

18 AT THIS POINT I DON'T HAVE A BASIS FOR SAYING
19 THAT I CAN'T DO THAT BASED UPON THE EVIDENCE THAT THE
20 PARTIES WOULD BE INTENDING TO PRESENT, THE EVIDENCE
21 THAT THEY WOULD BE INTENDING TO PRESENT IN THIS CASE.
22 SO I REALLY DON'T THINK THAT WE'RE IN A POSITION WHERE
23 THE COURT CAN DECIDE ACTUALLY ONE WAY OR THE OTHER
24 WHETHER IT NEEDS ADDITIONAL EXPERT TESTIMONY WITH
25 REGARD TO THE ULTIMATE QUESTION OF WHAT IS THE SAFE
26 YIELD.

27 I HAVE HEARD EXPERTS TESTIFY AS TO SAFE YIELD AND
28 OVERDRAFT IN OTHER CASES WHEN THE EVIDENCE HAS BEEN IN

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1 CLEAR CONFLICT, AND THE COURT HAS MADE A DECISION BASED
2 UPON ITS CONCLUSIONS.

3 I WOULD BE INCLINED TO SAY I AM GOING TO DO THE
4 SAME THING IN THIS CASE, WHATEVER THOSE CONCLUSIONS
5 MIGHT BE BASED ON WHAT THE EVIDENCE IS. BUT WITHOUT
6 HEARING WHAT EVIDENCE THE PARTIES ARE GOING TO PRESENT,
7 I CAN'T MAKE THAT KIND OF A DECISION AS TO WHETHER THE
8 COURT NEEDS TO HAVE THAT ADDITIONAL EXPERT TESTIMONY.

9 MR. KALFAYAN: YOUR HONOR, WE ARE NOT LOOKING
10 FOR EXPERTS. WE HAVE GONE THROUGH THIS. WE DON'T --
11 BY THIS MOTION I AM NOT LOOKING TO HAVE AN EXPERT
12 APPOINTED FOR THE CLASSES. I'M JUST LOOKING TO LEVEL
13 THE PLAYING FIELD SO THAT THE CLASSES AREN'T LEFT
14 WITHOUT ANY EXPERT HELP. SO IF THE ONLY WAY AROUND
15 THAT IS TO HAVE A COURT-APPOINTED EXPERT THAT COULD
16 AMELIORATE THE PROBLEM, IF YOU WILL, BY THE CLASSES NOT
17 HAVING -- NOT BEING ABLE TO PARTICIPATE, IF YOU WILL,

18 IN A SAME FIELD TRIAL.

19 THE COURT: WHAT YOU ARE ASKING FOR IS AN
20 APPOINTMENT OF AN EXPERT TO EVALUATE WHAT THE OTHER
21 EXPERTS HAVE SAID.

22 MR. KALFAYAN: YES.

23 THE COURT: AND THAT GOES TO CREDIBILITY.
24 THAT REALLY DOES NOT GO TO THE ULTIMATE ISSUE.

25 NOW, IN TERMS OF THE EXPERT THAT THE COURT
26 AUTHORIZED IN THE WOODS CLASS, THAT IS TO PROVIDE THE
27 COURT WITH INFORMATION CONCERNING THE MAKEUP OF THAT
28 CLASS, AND THAT'S A -- BECAUSE OF THE -- THERE ARE A

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1 NUMBER OF STATISTICAL ISSUES THAT NEED TO BE PRESENTED
2 TO THE COURT IN ORDER FOR THE COURT TO -- TO HAVE THE
3 EVIDENCE CONCERNING WHAT THAT CLASS IS, WHO IS IN THE
4 CLASS AND SO ON. THAT IS A DIFFERENT ISSUE.

5 WHAT YOU'RE ASKING THE COURT TO DO IS TO APPOINT
6 SOMEBODY TO TELL THE COURT WHO THE NEUTRAL EXPERT
7 THINKS IS THE MOST CREDIBLE. I DON'T THINK I CAN DO
8 THAT. I DON'T THINK I WANT TO DO THAT. I WOULD RATHER
9 HEAR THE EVIDENCE, AND IF THE COURT FINDS ITSELF
10 CONFUSED I WILL BE VERY HAPPY AT THAT POINT TO SAY I
11 NEED SOMEBODY ELSE TO TESTIFY IN THIS CASE. AND IT MAY
12 BE THAT AT THAT POINT -- AND THIS CASE IS GETTING VERY
13 LONG IN THE TOOTH, BY THE WAY, AND IT IS PROBABLY GOING
14 TO GET A LOT LONGER IN THE TOOTH BEFORE WE GET IT
15 RESOLVED -- THE COURT MIGHT GO TO THE WATER RESOURCES
16 BOARD AND SAY I NEED YOUR ASSISTANCE AND THAT IS AN
17 OPTION THE COURT HAS HAD IN THIS CASE. I HAVE NOT
18 THOUGHT IT NECESSARY TO THIS POINT.

19 MR. KALFAYAN: ALL I AM SUGGESTING, YOUR
20 HONOR, THE CLASSES WON'T HAVE AN EXPERT THE AT TRIAL.

21 THE COURT: I WANT TO ENSURE THE COURT'S
22 DECISION IN THIS CASE IS RESPECTFUL OF EVERYBODY'S
23 RIGHTS AND INTEREST IN A FAIR RESOLUTION OF THIS CASE.
24 AND LET ME ALSO SUGGEST TO YOU THAT ONE OF THE
25 THINGS I'M HOPING YOU ARE GOING TO BE ABLE TO DO IS TO
26 DEAL WITH YOUR ADVERSARIES BY SOME SORT OF AGREEMENT.
27 I AM HOPING THAT WILL COME OUT OF YOUR MEETING WITH
28 JUSTICE ROBIE.

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1 YES, MR. ZIMMER.

2 MR. ZIMMER: MR. ZIMMER FOR BOLTHOUSE, YOUR
3 HONOR.

4 I THINK IT'S IMPORTANT THAT SOME NOTION BE
5 DISPELLED HERE THAT THE PURVEYORS ARE -- AT EVERY
6 MOMENT -- CLEARLY TRYING TO WISH FOR A SAFE YIELD
7 TRIAL, AND THE REASON IS BECAUSE THEY HAVE A
8 CONGLOMERATION OF EXPERTS THAT HAVE BEEN DEALING WITH
9 EACH OTHER, DEALING WITH MR. SCALAMINI'S WORK.

10 I WAS ONE OF THE ATTORNEYS PRIMARILY RESPONSIBLE
11 FOR RETAINING MR. SHEEHAN. MR. SHEEHAN WAS NOT
12 RETAINED IN THE RIVERSIDE ACTION TO EVALUATE SAFE
13 YIELD. AND I SUSPECT THAT IT IS GOING TO TAKE A NUMBER
14 OF EXPERTS ON THE DEFENSE SIDE TO PROPERLY AND ANALYZE
15 SAFE YIELD AND LOOK AT THE BASIS UPON WHICH THE
16 PURVEYOR EXPERTS ARE EVALUATING SAFE YIELD.

17 I MEAN, IT'S A VERY IMPORTANT ISSUE, AND I THINK
18 IT'S -- I THINK THERE IS AN ATTEMPT TO RAMROD THAT SAFE
19 YIELD TRIAL WITHOUT EXPERTS ON THEIR SIDE -- I CAN I
20 TELL YOU MR. SHEEHAN HAS NOT COME TO CONCLUSIONS ON THE
21 SAFE YIELD RIGHT NOW. WE HAVEN'T COMPLETED DISCOVERY
22 YET FOR THE PURVEYORS TO GET THE FOUNDATIONAL BASIS --

23 I MEAN, THEY HAVE A REPORT -- BUT THERE'S A WHOLE HOST
24 OF FOUNDATIONAL ISSUES IN TERMS OF EVIDENCE THAT IS
25 BEING RELIED UPON. SO I WANT TO DISPEL THAT NOTION.

26 NOW, IT IS IMPORTANT, PUTTING ASIDE HOW THE COURT
27 RULES ON THE MOTION FOR THE EXPERT, IT IS IMPORTANT
28 THAT THE PARTIES ON THE OTHER SIDE OF THIS CASE,

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1 PARTICULARLY THE NEW PARTIES, THE CLASSES, HAVE THE
2 OPPORTUNITY TO HAVE AN EXPERT AND TO BE A PART OF THE
3 PROCESS OF EVALUATING SAFE YIELD. I THINK IT WOULD BE
4 WRONG TO ALLOW THESE PARTIES WHO HAVE BEEN WORKING
5 TOGETHER ON SAFE YIELD THROUGH THEIR EXPERTS TO SIMPLY
6 RAMROD THIS THROUGH, AND I CAN TELL YOU MR. SHEEHAN HAS
7 NOT COME TO CONCLUSIONS ON THAT AND IT NEEDS TO BE
8 PROPERLY AND ANALYZED AND IT NEEDS TO BE DONE WITH
9 APPROPRIATE DISCOVERY, WHICH HASN'T BEEN ACCOMPLISHED,
10 AND IT ALSO NEEDS TO BE DONE IN THE CONTEXT OF
11 PLEADINGS. BUT THAT -- I AM JUST THROWING THAT IN
12 BECAUSE IT DOES BEAR TO SOME EXTENT.

13 I CAN UNDERSTAND THEIR CONCERN ABOUT HAVING THIS
14 LEVEL PLAYING FIELD, AS MR. KALFAYAN DESCRIBES IT --

15 THE COURT: I AM NOT DENYING THIS WITH
16 PREJUDICE. WE DON'T KNOW EXACTLY WHAT IS GOING TO BE
17 NEEDED AS WE PROCEED THROUGH THIS CASE. AT THIS POINT
18 HAVE WE HAD DISCLOSURE OF EXPERTS? HAVE WE HAD
19 EXCHANGE OF EXPERT REPORTS FORMALLY SO WE KNOW WHO IS A
20 CONSULTANT AND WHO ISN'T AS OPPOSED TO WHO IS AN EXPERT
21 THAT IS GOING TO TESTIFY?

22 THERE ARE A NUMBER OF THINGS THAT HAVE TO OCCUR
23 IN THIS CASE AND TO BE DIRECT ABOUT THIS, I BELIEVE THE
24 VERY FIRST THING THAT HAS TO HAPPEN IS WE HAVE TO ALIGN
25 THE PARTIES AND GET EVERYBODY INVOLVED IN THE CASE SO

26 THAT THE COURT HAS JURISDICTION TO BE ABLE TO MAKE A
27 DECISION TO RENDER A JUDGMENT THAT IS COMPREHENSIVE AND
28 INVOLVES EVERYBODY WHO IS PARTICIPATING HERE, OR NOT.

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1 IF WE CAN'T DO THAT, THEN SOMETHING ELSE IS GOING TO
2 HAPPEN TO THIS CASE

3 MR. ZIMMER: I HEAR THAT, YOUR HONOR. THANK
4 YOU.

5 MR. KALFAYAN: YOUR HONOR, SHOULD I CONSIDER
6 THE MOTION DENIED WITHOUT PREJUDICE?

7 THE COURT: YES.

8 MR. KALFAYAN: THANK YOU.

9 MR. MC LACHLAN: YOUR HONOR, I FEEL COMPELLED
10 TO ADD A COUPLE SENTENCES. THIS NOTION THAT THE
11 SEVERAL MILLIONS OF DOLLARS THAT HAVE BEEN SPENT ON
12 THIS SIDE OF THE TABLE CREATING MASSIVE OPINIONS, IT
13 HAS NOT COME TO A POINT OF ANY ADVOCACY, IS SILLY. WE
14 UNDERSTAND WHEN EXPERTS ARE HIRED BY ADVERSE LITIGANTS
15 THEIR OPINIONS ARE GENERALLY COLORED BY WHO THEY
16 REPRESENT.

17 THE FUNDAMENTAL PROBLEM WITH BOTH THE CLASSES,
18 THERE IS NOBODY ON THE EXPERTS' SPECTRUM THAT IS EVEN
19 REMOTELY SIMILARLY ALIGNED, AND SOMEBODY NEUTRAL,
20 SOMEBODY IN THE MIDDLE, IS BETTER THAN NOTHING AT ALL.
21 AND I THINK WHEN YOU HAVE 60,000 PEOPLE OVER HERE, AND
22 5, 6, 7, 8,000 SMALL PUMPERS, THEIR INTERESTS ARE
23 NOT -- THEIR INTERESTS ARE ADVERSE TO THE GIANT REPORT
24 MR. SCALAMINI, ET AL., ARE GOING TO INTRODUCE AND THAT
25 IS BASICALLY GOING TO BE IMPEACHED SOLELY BY QUESTIONS
26 BY COUNSEL. THERE WILL NOT AT THIS POINT BE ANY EXPERT
27 TESTIMONY.

28 AND THAT IS A SERIOUS CONCERN AND SHOULD BE A

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1 CONCERN TO THE COURT. AND I THINK THAT THE EVIDENCE
2 CODE DOES ALLOW FOR THAT. SO IF WE GET TO THE POINT IN
3 TIME WHERE WE HAVE THAT SAFE YIELD TRIAL, I THINK THERE
4 REALLY NEEDS TO BE SOME SORT OF PROVISION WHEREBY WHEN
5 THAT TESTIMONY COMES IN AND IS DIGESTED THAT CLASS
6 COUNSEL IS ALLOWED TO RENEW THIS MOTION WHEN THAT
7 TESTIMONY HAS COME OUT AND RETAIN THAT EXPERT, IF
8 NECESSARY, TO GIVE AN OPINION. BECAUSE IT IS VERY
9 DIFFICULT GIVEN THE TECHNICAL NATURE OF WHAT IS BEING
10 ASSEMBLED FOR COUNSEL ALONE TO POKE HOLES AND IMPEACH
11 AND DO THINGS WE NEED TO BE ABLE TO PUT A WITNESS ON TO
12 GET CERTAIN POINTS ACROSS AND THERE IS NO VEHICLE FOR
13 IT OVER HERE.

14 THE COURT: I UNDERSTAND THAT, MR. MC LACHLAN.

15 MR. BUNN: YOUR HONOR, THIS IS TOM BUNN.

16 I WOULD LIKE TO MAKE A COUPLE POINTS IN
17 RESPONSE. I WILL TRY TO BE BRIEF. I FEEL IT IS
18 NECESSARY TO SAY THIS.

19 AS FAR AS THE INTERESTS OF THE PARTIES IN
20 DETERMINING THE SAFE YIELD, I THINK WE ALL HAVE AN
21 INTEREST IN GETTING TO AN ACCURATE SAFE YIELD. BEYOND
22 THAT IT IS IN EVERYBODY'S INTEREST TO HAVE THE SAFE
23 YIELD BE AS HIGH AS POSSIBLE BECAUSE WE CAN SATISFY
24 MORE OF OUR NEEDS FROM LESS EXPENSIVE GROUNDWATER AND
25 FEWER FROM EXPENSIVE IMPORTED WATER.

26 NOW, ONE COULD SAY THAT THERE IS AN INTEREST IN
27 THE PUBLIC WATER SUPPLIERS IN SHOWING AN OVERDRAFT ON
28 BEHALF OF THE OVERLYING OWNERS, SHOWING THAT THERE IS

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1 NO OVERDRAFT FOR PURPOSES OF THE PRESCRIPTIVE RIGHTS.

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2 BUT THAT OVERLYING LANDOWNER NO-OVERDRAFT-POSITION AS
3 MS. GOLDSMITH MENTIONED ON THE PHONE A FEW MINUTES AGO,
4 WE HAVE HAD THIS TECHNICAL COMMITTEE PROCESS AND BOTH
5 SIDES OF THE TABLE PARTICIPATED EXTENSIVELY IN THAT
6 PROCESS. MR. ZIMMER HAD A PARTICIPANT IN THAT
7 PROCESS. MR. JOYCE HAD A PARTICIPANT IN THAT PROCESS.
8 MR. KUHS HAS A COUPLE OF PARTICIPANTS IN THAT PROCESS.

9 SO I AGREE THE CLASSES DID NOT HAVE THEIR OWN
10 REPRESENTATION AT THAT TIME BECAUSE THEY WEREN'T IN THE
11 ACTION. BUT THE FACT IS THAT THERE'S BEEN AMPLE
12 OPPORTUNITY TO PARTICIPATE IN THIS WHOLE THING.
13 EVERYBODY'S CONCLUSIONS WAS OPEN TO EVERYBODY ELSE.

14 SO I WANTED TO MAKE SURE THAT THE RECORD WAS
15 CLEAR ON THAT.

16 I UNDERSTAND AND APPRECIATE THE COURT'S PUTTING
17 OFF A DETERMINATION OF WHETHER TO GET AN ADDITIONAL
18 EXPERT AND I THINK THAT'S THE RIGHT DECISION, BUT I
19 THINK SOME OF THE STATEMENTS THAT WERE MADE HERE ARE
20 NOT COMPLETELY ACCURATE.

21 THE COURT: WELL, BUT COUNSEL IS NOT AN
22 EXPERT. SO COUNSEL WHO DOES NOT HAVE HIS OR HER OWN
23 EXPERT MAY BE SOMEWHAT DEPRIVED OF THE ABILITY TO FORM
24 AN OPINION ON BEHALF OF THEIR CLIENTS --

25 MR. BUNN: ABSOLUTELY.

26 THE COURT: -- AS TO, FIRST OF ALL, HOW TO
27 QUESTION THE WITNESS, HOW TO FORM THE OPINION AS TO
28 WHAT THE SAFE YIELD IS, WHETHER THE PARTIES ARE

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1 TRULY -- HAVE THE SAME INTEREST. SO THERE ARE A NUMBER
2 OF FACTORS TO BE CONCERNED ABOUT THERE.

3 AND I DON'T WANT TO PREJUDGE THAT ISSUE AT THIS

4 POINT. BUT IT DOES SEEM TO ME THAT IF I WERE
5 REPRESENTING SOMEBODY IN CONNECTION WITH A TECHNICAL
6 LAWSUIT, I WOULD WANT TO KNOW THROUGH THE ASSISTANCE OF
7 AN EXPERT AS MUCH INFORMATION AS I COULD TO CHALLENGE
8 OR TO CORROBORATE THE OPINION OF THE EXPERT TESTIFYING.

9 MR. BUNN: I UNDERSTAND THAT AND I BELIEVE
10 THAT IS TRUE. FOR THOSE PARTIES WHO CANNOT AFFORD
11 THEIR OWN EXPERT, HOWEVER, I AM SUGGESTING THAT THERE
12 ARE EXPERTS REPRESENTING THE SAME POINTS OF VIEW THAT
13 THEY HAVE --

14 THE COURT: WELL, THAT MAY BE. THAT MAY BE.
15 BUT TO MY KNOWLEDGE THERE IS NOBODY REPRESENTING THE
16 PEOPLE WHO ARE NOT PUMPING AT ALL IN TERMS OF
17 EXPRESSING EXPERT OPINIONS ABOUT FUTURE SAFE YIELD AND
18 PAST SAFE YIELD BECAUSE THERE IS A QUESTION THAT STILL
19 REMAINS, AT LEAST FOR NOW, REGARDING PRESCRIPTION. WE
20 WILL HAVE PLENTY OF TIME TO TALK ABOUT THOSE THINGS.

21 MR. BUNN: OKAY.

22 MR. KALFAYAN: YOUR HONOR, I ALSO -- I WANT TO
23 POINT OUT THE CLASSES HAVEN'T PARTICIPATED IN THE
24 TECHNICAL COMMITTEE WORKUP THAT HAVE GONE ON FOR YEARS
25 AND I UNDERSTAND MILLIONS OF DOLLARS -- I DON'T KNOW
26 HOW MUCH BUT IT IS SEVEN-FIGURE MONEY -- HAS BEEN SPENT
27 REGARDING THE WORK THAT HAS BEEN DONE, BUT THE CLASSES
28 HAVE NEVER PARTICIPATED.

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1 THE COURT: I UNDERSTAND.

2 MR. KALFAYAN: AND THE MAGNITUDE OF THE
3 CLASSES I JUST CAME UP WITH REPRESENT ALMOST -- THE
4 WILLIS CLASS, OUT OF ALMOST 900,000 ACRES IN THIS
5 BASIN, COMPRISES APPROXIMATELY 550,000 OF THOSE ACRES,
6 AND THERE'S OVER 70,000 LANDOWNERS WITH PARCELS RANGING

7 FROM TWO AND A HALF ACRES ALL THE WAY TO OVER
8 100 ACRES. SO THE SIZE OF THE CLASS IS REALLY
9 SIGNIFICANT. AND -- AND THE REASON WHY THE EXPERT, AT
10 LEAST THE NEUTRAL EXPERT, BECOMES REALLY CRITICAL IS
11 BECAUSE THE PUBLIC WATER SUPPLIERS ARE SEEKING
12 PRESCRIPTION AGAINST THE CLASSES. AND THEY ARE SEEKING
13 RIGHTS THAT ARE SUPERIOR. SO IT BECOMES A LITTLE
14 ATTENUATED.

15 THE COURT: I UNDERSTAND THAT, MR. KALFAYAN,
16 AND I WILL ADD TO WHAT YOU HAVE SAID, "SO FAR" AND
17 THERE IS A LONG WAY TO GO HERE BUT THAT IS SO FAR.

18 AND YOU'RE HERE FOR ONE REASON ONLY, I BELIEVE,
19 AND THAT IS BECAUSE THE FEDERAL GOVERNMENT WANTS TO
20 HAVE A COMPREHENSIVE ADJUDICATION OF THIS MATTER, AS
21 THEY HAVE A RIGHT TO, AND THAT'S WHY THE NONPUMPERS,
22 THE DORMANT CLASS, IF YOU WILL, ARE PRESENT, AND IT'S
23 PROBABLY ALSO WHY THE SMALL PUMPERS CLASS IS PRESENT.
24 OTHERWISE THE -- LET'S CALL THEM THE BIG BOYS, OKAY,
25 WOULD BE WORKING THIS OUT AND ADJUDICATING, GETTING
26 ADJUDICATION AMONG THEMSELVES WITHOUT ANY IMPACT ON YOU
27 OR THE SMALL PUMPER CLASS.

28 SO, BEARING THAT IN MIND, THE MOTION IS DENIED.

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1 IT IS WITHOUT PREJUDICE.

2 MR. KALFAYAN: THAT'S FINE, YOUR HONOR.

3 THE COURT: AND I THINK WE'VE HEARD ENOUGH
4 ABOUT THAT.

5 MR. FIFE, DID YOU WANT TO SAY SOMETHING?

6 YOU DON'T HAVE TO.

7 MR. FIFE: FIFE. I REALLY DIDN'T WANT TO.

8 AND I WILL BE SHORT -- I JUST STOOD UP TO INDICATE

9 THERE IS VERY DEEP DISAGREEMENT WITH MR. BUNN'S
10 CHARACTERIZATION OF THE TECHNICAL COMMITTEE.

11 THE COURT: I DON'T KNOW WHY THAT DOESN'T
12 SURPRISE ME. ALL RIGHT.

13 NOW, LET'S TALK ABOUT THE REST OF THESE MOTIONS
14 THAT WE HAVE HERE.

15 THE MOTION TO DISMISS THE PUBLIC WATER SUPPLIERS'
16 FIRST AMENDED COMPLAINT WHICH WAS FILED IN 2007 HAS
17 BEEN CONTINUED ON HERE FOR MULTIPLE HEARINGS. IT'S
18 GOING TO GET CONTINUED AGAIN TO THE 13TH OF OCTOBER.
19 WE'RE JUST NOT READY TO HEAR THAT UNTIL WE HAVE HEARD
20 THE CONSOLIDATION PROCEEDINGS.

21 THERE'S A MOTION TO STAY THIS CASE FOR SIX
22 MONTHS. THAT'S DENIED. I AM NOT GOING TO STAY THESE
23 PROCEEDINGS.

24 COUNSEL?

25 MR. EVERTZ: YES, YOUR HONOR. DOUG EVERTZ FOR
26 THE CITY OF LANCASTER. I GOT THAT IMPRESSION FROM YOUR
27 EARLIER COMMENTS. THE ONLY THING I WOULD LIKE TO
28 MENTION TO THE COURT IS THE PRINCIPAL PROCESS REALLY IS

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1 GAINING MOMENTUM. THE PRINCIPALS HAVE COMMITTED TO
2 MEETING EVERY TWO WEEKS TO TRY TO COME UP WITH A
3 PHYSICAL SOLUTION AND HAVE ACTUALLY COME UP WITH A
4 WORKING PLAN OF WHEN THEY WANT TO MEET CERTAIN GOALS
5 AND TIMELINES. I KNOW YOUR TENTATIVE IS TO SCHEDULE A
6 CMC IN OCTOBER AND MAYBE SET A TRIAL DATE.

7 THE PRINCIPALS HAVE SET A GOAL OF ACTUALLY HAVING
8 A PROPOSED STIPULATED JUDGMENT TO THE COURT READY IN
9 MARCH OF NEXT YEAR. SO I WOULD LIKE TO REALLY PLANT
10 THAT SEED WITH THE COURT AS WE TALK ABOUT TRIAL DATES.
11 IN THE PERFECT WORLD WE'D HAVE A TRIAL DATE AFTER