

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT 1

HON. JACK KOMAR, JUDGE

4 IN RE)

5)
6 ANTELOPE VALLEY GROUNDWATER CASES.)

) CASE NO. JCCP4408
7)
8)

CERTIFIED

9
10 REPORTER'S TRANSCRIPT OF PROCEEDINGS

11 TRIAL

12 FEBRUARY 10, 2014

13 **APPEARANCES:**

14 FOR PLAINTIFF UNITES
15 STATES OF AMERICA:

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL
RESOURCES DIVISION
BY: R. LEE LEININGER, ESQ.
JAMES J. DUBOIS, ESQ.

17 FOR PLAINTIFF RICHARD
18 WOOD:

LAW OFFICE OF
MICHAEL D. MC LACHLAN
BY: , ESQ.

19 PHELAN PINON HILLS
20 COMMUNITY SERVICE

ALESHIRE & WYNDER LLP
BY: WESLEY A. MILIBAND, ESQ.

21 FOR DEFENDANT BOLTHOUSE
22 PROPERTIES, LLC:

CLIFFORD & BROWN
BY: RICHARD ZIMMER, ESQ.

23 FOR DEFENDANT ANTELOPE
24 VALLEY GROUNDWATER
25 AGREEMENT ASSOC.:

BROWNSTEIN HYATT
FARBER SCHRECK
BY: MICHAEL T. FIFE, ESQ.
BRADLEY J. HERREMA, ESQ.

26 FOR CROSS-DEFENDANT
27 AVEK:

BRUNICK, MC ELHANEY & KENNEDY
BY: WILLIAM J. BRUNICK, ESQ.

28 FOR DEFENDANT L.A.
COUNTY WATERWORKS
DISTRICT NO. 40:

BEST BEST & KRIEGER
BY: JEFFREY V. DUNN, ESQ.
WENDY Y. WANG, ESQ.

(CONTINUED)

1 **APPEARANCES :**

2 (CONTINUED)

3 FOR DEFENDANT TEJON KUHS & PARKER
4 RANCH: BY: ROBERT G. KUHS, ESQ.
 (VIA COURTCALL)

5 FOR DEFENDANTS CRYSTAL LE BEAU THELEN
6 ORGANICS, DIAMOND BY: ANDREW K. SHEFFIELD, ESQ.
7 FARMING, REMRY FARMS
8 AND LAPIS LAND COMPANY:

9 FOR CROSS-DEFENDANTS GRESHAM SAVAGE
10 A.V. UNITED MUTUALS BY: MICHAEL D. DAVIS, ESQ.
11 GROUP, ADAMS BENNETT DEREK R. HOFFMAN, ESQ.
12 INV., GOLDEN SANDS,
13 SHEEP CREEK WATER CO.,
14 SERVICE ROCK PRODUCTS,
15 ST. ANDREWS ABBEY:

16 FOR STATE OF STATE OF CALIFORNIA
17 CALIFORNIA: DEPARTMENT OF JUSTICE
18 OFFICE OF THE ATTORNEY GENERAL
19 BY: MARILYN H. LEVIN
20 DEPUTY ATTORNEY GENERAL

21 FOR DEFENDANT US BORAX: MORRISON FOERSTER
22 BY: WILLIAM M. SLOAN, ESQ.

23 ALSO PRESENT: U.S. AIR FORCE
24 WESTERN REGION
25 BY: MR. EDWIN OYARZO, ESQ.

26
27
28 REPORTED BY: RHONA S. REDDIX, CSR RPR CRR RMR NO. 10807
 OFFICIAL REPORTER

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I N D E X

<u>PLAINTIFF'S WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
RAND FRANK HERBERT	54	143		
	62	163		
	(CONT)	168		

E X H I B I T S

<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
US-1	54	
10	73	
11	68	
12	77	
13	79	
14	87	
15	87	
16	94	
17	108	
18	109	
19	110	
20	113	
21	118	
22	121	
23	114	
24	96	
25	98	
26	177	
27	72	
28	81	

1	E X H I B I T S		
2	<u>NUMBER</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
3	42	85	
4	43	93	
5	47	86	
6	56	90	
7	63	105	
8	82	130	
9	83	130	
10	84	132	
11	86	136	
12	92	137	
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14	102	99	
15	103	109	
16	106	111	
17	107	113	
18	108	116	
19	109	119	
20	110	122	
21	111 AND 112	139	
22	113 AND 114	140	
23	115	141	
24	116	142	
25	142	133	
26	257	103	
27	258	123	
28	259	127	

1 CASE NUMBER: JCCP4408
2 CASE NAME: ANTELOPE VALLEY GROUNDWATER
3 LOS ANGELES, CALIFORNIA FEBRUARY 10, 2014
4 DEPARTMENT 1 HON. JACK KOMAR
5 REPORTER: RHONA S. REDDIX, CSR 10807
6 TIME: A.M. SESSIONS
7 APPEARANCES: (SEE TITLE PAGE.)
8
9

10 **THE COURT:** ALL RIGHT. LET'S TAKE UP THE MOTION
11 IN LIMINE TO EXCLUDE THE MODELING EVIDENCE OF TESTIMONY
12 BY MR. WILLIAMS.

13 SO, MR. FIFE, THAT'S YOUR MOTION.

14 **MR. FIFE:** YES. THANK YOU, YOUR HONOR.
15 MICHAEL FIFE WITH THE ANTELOPE VALLEY GROUND WATER
16 AGREEMENT ASSOCIATION.

17 THIS WAS THE SUBJECT OF AN EX PARTE A
18 COUPLE WEEKS AGO, BUT I'M NOT SURE IF THE FACTS WERE
19 COMPLETELY MADE CLEAR TO YOU AT THAT TIME. SO I CAN GO
20 THROUGH THEM A LITTLE BIT JUST SO THAT YOU'RE --

21 **THE COURT:** GO AHEAD. START AT THE BEGINNING.

22 **MR. FIFE:** ALL RIGHT. WE DEPOSED DR. WILLIAMS A
23 COUPLE WEEKS AGO, AND FOR THE FIRST TIME AT THAT
24 DEPOSITION WE DISCOVERED THAT HIS TESTIMONY IN WHOLE, SO
25 THAT -- THE TOTALITY OF HIS TESTIMONY, DEPENDS ON HIS
26 WORK WITH A GROUND WATER MODEL.

27 THE DISCOVERY ORDER FOR THIS CASE REQUIRES
28 THAT ALL MATERIALS BY A WITNESS BE PROVIDED THREE DAYS

1 BEFORE THE DEPOSITION. THAT WASN'T DONE. IT HASN'T
2 BEEN DONE FOR A LOT OF THE WITNESSES, BUT IN GENERAL
3 WE'VE BEEN ABLE TO WORK WITH THAT.

4 BUT IN THIS INSTANCE, WE REALLY WERE NOT
5 ABLE TO MEANINGFULLY DEPOSE HIM BECAUSE WE HAD NO IDEA
6 THAT THERE WAS GOING TO BE MODELING TESTIMONY UNTIL WE
7 SHOWED UP AT THE DEPOSITION.

8 THE ATTORNEYS WHO WERE AT THE DEPOSITION
9 DID THE BEST WE COULD WALKING THROUGH THE MATERIALS HE
10 HAD BECAUSE WE DID WANT TO GET SOME LEVEL OF
11 INFORMATION, BUT EVEN AT THAT DEPOSITION, WE WERE TOLD
12 THAT IT WASN'T CLEAR THAT WE WOULD BE GIVEN THE MODEL.
13 WE DIDN'T GET IT UNTIL SOME TIME AFTERWARDS.

14 THE DATES AND THE SEQUENCE ARE ARTICULATED
15 VERY CLEARLY IN THE PAPERWORK. ONCE WE GOT THE MODEL,
16 WE IMMEDIATELY SET ABOUT COPYING THE MATERIALS, AND WE
17 SENT THEM TO AN EXPERT THAT WE FOUND WHO'S CAPABLE AND
18 QUALIFIED TO RUN THE MOD FLOW MODEL. AND WE'VE STARTED
19 TO GET RESULTS BACK.

20 AND WE HAD A POSTING, A FILING LAST
21 THURSDAY WHERE WE PROVIDED THE COURT WITH THE INITIAL
22 FEEDBACK THAT WE HAD HAD FROM OUR MODELER. AND THE
23 DETAILS OF THAT AREN'T -- AREN'T CRITICALLY IMPORTANT,
24 EXCEPT TO NOTE THAT THERE ARE SOME ISSUES AND THERE ARE
25 THINGS THAT WE HAVE QUESTIONS ABOUT.

26 FOR EXAMPLE, IN THE OPPOSITION TO OUR --
27 OUR MOTION, THE WATER WORKS INDICATED THAT THE SIZE OF
28 THE FILES THAT WE WERE BEING SENT WAS 17 GIGABITS. THE

1 FILES WE RECEIVED WERE 13 GIGABITS. OKAY. MAYBE THAT
2 WAS JUST A MISUNDERSTANDING. MAYBE SOMETHING GOT LEFT
3 OUT. WE DON'T KNOW. WE'RE GOING -- WE WOULD NEED SOME
4 TIME TO WORK THROUGH THAT.

5 AS YOU KNOW, MODELS ARE VERY COMPLICATED
6 THINGS. BEING ABLE TO RUN THE MODEL, WHICH OUR EXPERT
7 APPEARS NOW TO BE ABLE TO DO AS OF LAST FRIDAY, IS JUST
8 ONE STEP IN THE PROCESS. WE NEED TO UNDERSTAND WHAT DR.
9 WILLIAMS WAS DOING, WHAT THE SIGNIFICANCE OF IT IS, AND
10 FIGURE OUT WHAT ISSUES WE MIGHT HAVE WITH IT SO THAT --
11 BEFORE WE COULD EVEN BEGIN TO ASK SOME QUESTIONS,
12 BECAUSE THIS IS GOING TO BE CRITICAL FOR THE RETURN FLOW
13 PORTION OF THE CASE.

14 WHAT HAS HAPPENED WITH THIS MODEL IS THAT
15 THERE WAS A MODEL BUILT BY THE US -- USGS, UNITED STATES
16 GEOLOGICAL SURVEY. THAT MODEL APPARENTLY WAS MADE
17 AVAILABLE TO WATER WORKS BUT TO NOBODY ELSE.

18 ALSO, APPARENTLY THAT MODEL USED A LOWER
19 RETURN FLOW NUMBER THAN THE SUMMARY EXPERT REPORT, THAN
20 DID MR. SCALMANINI'S TESTIMONY IN PHASE THREE. WATER
21 WORKS, WHEN IT GOT THAT MODEL, CHANGED THAT NUMBER.

22 AND THIS IS AN INTERESTING ISSUE THAT SORT
23 OF DOVETAILS IN WITH THE DISCUSSION THAT WE HAD WITH
24 PRIOR MOTION IN LIMINE ABOUT THE 110. IT HAD A LOWER
25 RETURN FLOW NUMBER, BUT IT HAD A HIGHER -- I'M TRYING TO
26 GET THIS RIGHT -- AND IT HAD A LOWER PUMPING NUMBER.
27 AND SO IN THEIR MODEL ONE OF THE INPUTS WAS LOWER BUT
28 ONE OF THE OUTPUTS WAS LOWER, SO IT ALL BALANCED OUT TO

1 110.

2 IF YOU -- YOU CAN CHANGE AROUND THESE
3 INTERNAL NUMBERS AND ALWAYS STAY IN 110. SO IF YOU WANT
4 TO -- IF YOU WANT A HIGHER INPUT NUMBER IN ONE PART OF
5 THE CALCULATION, YOU JUST GET A HIGHER OUTPUT NUMBER.
6 AND AS LONG AS THE INPUTS AND THE OUTPUTS BALANCE, YOU
7 CAN MIX AND MATCH THESE NUMBERS ALL OVER THE PLACE.

8 AND SO THE USGS MODEL HAD A LOWER RETURN
9 FLOW NUMBER. PURVEYORS GOT THAT MODEL, APPARENTLY, AND
10 CHANGED THAT RETURN FLOW NUMBER BY RAISING IT. THEY
11 BALANCED IT BY ALSO RAISING THE PUMPING NUMBER. OKAY.
12 AND THEN THEY USED THAT MODEL TO VALIDATE THEIR RETURN
13 FLOW NUMBER, AND THAT'S WHAT DR. WILLIAMS' TESTIMONY IS
14 GOING TO BE.

15 OKAY. SO THAT'S -- THAT'S ALL REALLY
16 INTERESTING AND VERY RELEVANT FOR THE RETURN FLOW
17 PORTION OF THIS PHASE.

18 WE JUST GOT TO START LOOKING AT THIS ON
19 FRIDAY. THEY HAVE HAD THIS MODEL FOR A YEAR AND A HALF.
20 THEY'VE BEEN WORKING ON IT FOR A YEAR AND A HALF. THEY
21 DIDN'T TELL ANYBODY. THEY DIDN'T LET ANYBODY LOOK AT
22 IT. AND NOW THEY WANT TO COME IN HERE NEXT WEEK AND
23 START TESTIFYING ABOUT IT.

24 THEY COULD HAVE PROVIDED IT MONTHS AGO, AND
25 THEY DIDN'T. THEY COULD HAVE TOLD US ABOUT IT AHEAD OF
26 THE DEPOSITION AND THEY DIDN'T. IT'S A CALCULATED
27 EFFORT TO PREVENT US FROM BEING ABLE TO LOOK AT WHAT
28 THEY DID BECAUSE IT'S POSSIBLE THAT WHAT THEY DID IS

1 KIND OF INCRIMINATING AS TO THEIR NUMBER.

2 IF THE USGS WAS USING A LOWER NUMBER, AND
3 THE MODEL STILL WORKED AND STILL BALANCED, AND STILL WAS
4 CALIBRATED AT THE 110 NUMBER, WELL, THAT'S A PRETTY GOOD
5 EVIDENCE THAT THE NUMBER MAYBE IS LOWER. AND IT'S
6 UNDERSTANDABLE THAT THEY WOULDN'T WANT US TO BE ABLE TO
7 DELVE INTO THAT AND TO HAVE TIME TO RUN THE MODEL AND
8 HAVE TIME TO REALLY EXPLORE THESE ISSUES.

9 SO A COUPLE WEEKS AGO AN EX PARTE WAS FILED
10 TO CONTINUE THAT PORTION OF THE TESTIMONY TO A FUTURE
11 TIME. THAT WAS DENIED. WE CAN'T GO AHEAD WITH THIS
12 TESTIMONY ON MONDAY. DUE PROCESS HAS NOT BEEN MET. WE
13 HAVE NOT HAD ENOUGH TIME TO LOOK AT IT. IF WE'RE NOT
14 GOING TO MOVE IT OUT, IT HAS TO BE EXCLUDED.

15 **THE COURT:** ALL RIGHT.

16 **MR. MC LACHLAN:** BRIEFLY, YOUR HONOR --

17

18 (REPORTER'S INTERRUPTION.)

19

20 **THE COURT:** EVERYBODY HAS TO STATE THEIR
21 APPEARANCES.

22 **MR. MC LACHLAN:** I'M SORRY. I APOLOGIZE.
23 MICHAEL MC LACHLAN FOR RICHARD WOOD IN THE SMALL PUMPER
24 CLASS. AGAIN, I JOINED IN MR. FIFE'S MOTION, AND I WAS
25 THE ONE THAT FILED THAT EARLIER EX PARTE ON THIS
26 PARTICULAR ISSUE.

27 I THINK BOILING IT DOWN, THE ISSUE IS A
28 LOT SIMPLER. CCP 2034, WHICH IS IN PLAY HERE, HAS NOT

1 BEEN MODIFIED EXCEPT FOR IN A FEW LIMITED AREAS SUCH AS
2 THE CASE MANAGEMENT ORDER REQUIRING EXPERT REPORTS TO BE
3 PRODUCED AT THE TIME OF THEIR DESIGNATION. IN THIS
4 CASE, THAT WOULD HAVE BEEN SEVERAL MONTHS AGO.

5 WHEN AN EXPERT SHOWS UP AT A DEPOSITION AND
6 SHOWS UP WITHOUT THEIR FILE, THERE CAN BE NO MEANINGFUL
7 EXPERT DEPOSITION. IN THIS CASE, THE LACK OF THE MODEL,
8 THE INPUT FILES, THE OUTPUT FILES, ESSENTIALLY 80 OR
9 90 PERCENT OF THE MEAT AND POTATOES OF DR. WILLIAMS'
10 TESTIMONY WAS NOT PRESENTED EITHER IN ADVANCE, AS
11 REQUIRED BY THIS COURT, OR AT THE DEPOSITION. SO AT THE
12 TIME THAT DEPOSITION WAS CONCLUDED, NONE OF THE PARTIES
13 THAT WERE THERE TAKING THAT DEPOSITION HAD THOSE
14 MATERIALS.

15 THE REMEDY IN 2034 AND THE RELATED CASE LAW
16 IS CRYSTAL CLEAR. IT'S EXCLUSION. AND SO THAT
17 TESTIMONY HAS TO BE EXCLUDED. I DON'T THINK WE REALLY
18 NEED TO GET INTO THE DETAILS ABOUT WHAT HAPPENED BECAUSE
19 IT'S TRIAL BY AMBUSH.

20 **MR. FIFE:** YOUR HONOR, I WOULD JUST LIKE TO ADD TO
21 MY COMMENTS. IT'S NOT ONLY THAT, THE LATENESS OF IT
22 THAT IT WAS GIVEN TO US, BUT AS YOU'LL SEE FROM THE
23 QUOTATIONS FROM THE TRANSCRIPT THAT WE'VE PROVIDED,
24 THIS -- THE CENTRALLY RELEVANT WORK THAT WAS DONE ON
25 THIS MODEL -- THAT IS, RAISING THE RETURN FLOW
26 NUMBERS -- WAS DONE BY MR. SCALMANINI, WHO, AS WE
27 PREVIOUSLY DISCUSSED IN AN EX PARTE, IS UNAVAILABLE TO
28 EVEN BE DEPOSED.

1 SO THE MOST IMPORTANT PART OF THIS WORK,
2 EVEN IF WE HAD MORE TIME, WE CAN'T DEPOSE HIM.

3 **THE COURT:** ALL RIGHT. MR. DUNN?

4 **MR. DUNN:** SURE. DID THE COURT RECEIVE A FILING
5 THAT WE DID ON FRIDAY AFTERNOON TO RESPOND TO A LATE
6 FILING BY THE AGWA GROUP?

7 **THE COURT:** I THINK SO, BUT LET ME JUST
8 DOUBLE-CHECK.

9 I MAY NOT HAVE COPIED IT, BUT I THINK I
10 READ IT. DO YOU HAVE ANOTHER COPY OF IT HERE?
11 REFERRING TO THE LETTER.

12 **MR. DUNN:** NO, IT WAS A FILING ON FRIDAY
13 AFTERNOON. IT APPEARS TO RESPOND TO THE -- TO THE
14 PREVIOUS THURSDAY FILING. IT APPEARS I DON'T HAVE A
15 COPY WITH ME. I CAN ATTEMPT TO -- OH, THANK YOU. YES,
16 THANK YOU.

17 MR. KUHS HAS A COPY. I CAN PRESENT IT TO
18 THE COURT --

19 **THE COURT:** SUBMIT THAT, PLEASE.

20 **MR. DUNN:** I CAN DO THAT NOW OR WHEN I FINISH.

21 **THE COURT:** GO AHEAD AND ARGUE YOUR --

22 **MR. DUNN:** ALL RIGHT.

23 **THE COURT:** I'LL WANT TO LOOK AT IT.

24 **MR. DUNN:** WE'RE TALKING ABOUT A MODEL THAT WAS
25 DEVELOPED BY THE USGS. THE MODEL'S NOT NEW TO THE CASE.
26 THE PARTIES WHO WERE PARTICIPATING IN PHASE THREE IN
27 FACT SAW REFERENCE TO THAT MODEL AND USE. WE SAW IT IN
28 FORM OF REPORTS THAT WERE USED BY THE VARIOUS EXPERTS,

1 PREPARED BY THE USGS. THEIR WORK IS DONE USING THE USGS
2 MODEL.

3 AND WITHOUT GOING OVER ALL OF THAT
4 TESTIMONY THAT WAS PRESENTED IN THE PHASE THREE TRIAL,
5 AND SPECIFICALLY THOSE EXHIBITS, THE USGS HAS BEEN
6 WORKING ON THIS MODEL, FOCUSING ON THE ANTELOPE VALLEY
7 NOW FOR A NUMBER OF YEARS.

8 GOING BACK, I'M NOT QUITE SURE HOW MANY
9 YEARS, THERE WAS A PARTNERSHIP OR A GROUP PUT TOGETHER
10 OF LOCAL GOVERNMENTAL ENTITIES IN THE ANTELOPE VALLEY,
11 WORKING WITH THE USGS TO HAVE THE USGS DO THIS MODELING
12 WORK TO STUDY THESE OVERDRAFT PROBLEMS, AND SO THIS
13 PREDATES PHASE THREE BY SOME POINT.

14 SO THE GS HAS BEEN STUDYING THIS FOR SOME
15 TIME. IT'S BEEN IN THEIR REPORTS. SOME OF THOSE
16 REPORTS WERE ADMITTED IN THE PHASE THREE. THEY'LL HAVE
17 CLEAR RECOLLECTION THAT A LOT OF THIS WAS IN THE
18 VIDEOTAPED TESTIMONY OF MR. SCALMANINI.

19 NOW, WHY AM I MENTIONING ALL THIS IS THAT
20 THE CONCEPT OF MODELING WORK HAS NOT BEEN NEW TO THIS
21 CASE. NOT AT ALL. AND IT'S NOT NEW TO THIS CASE
22 EITHER.

23 NOW, WHAT THE USGS HAS DONE IS THAT THEY
24 HAD WAITED FOR THE PHASE THREE TRIAL TO BE COMPLETED AND
25 FOR THIS COURT TO MAKE A SAFE YIELD DETERMINATION SO THE
26 USGS WOULD KNOW WHAT THE COURT-DETERMINED SAFE YIELD IS
27 IN THE BASIN.

28 ONCE THEY HAD THAT POST PHASE THREE, THEY

1 TOOK THAT 110,000-ACRE-FOOT FINDING OF SAFE YIELD USGS
2 DID AND THEN THEY RUN THE MODEL WITH THAT. THEY WENT
3 PUBLIC WITH THEIR MODELING RESULTS AT THE -- IS IT THE
4 ANNUAL OR SEMIANNUAL CONFERENCE OF THE ASSOCIATION OF
5 CALIFORNIA WATER AGENCIES, COMMONLY CALLED AGWA? IT WAS
6 IN MONTEREY.

7 I BELIEVE IT WAS TWO -- SOME OF THEM WERE
8 HERE -- TWO OR THREE YEARS AGO, AND THEY DID A
9 PRESENTATION ON THE USGS MODEL. SOME OF THE ATTORNEYS
10 WHO ARE EVEN PRESENT HERE TODAY AND ON THE PHONE WERE
11 THERE WHEN I WAS THERE. AND SO WE SAW THE USGS GO
12 PUBLICLY.

13 IT'S INTERESTING, IN THE INFORMATION BOOTH
14 THEY -- IN THE CONVENTION HALL THEY HAD A DISPLAY ON THE
15 ANTELOPE VALLEY WITH SPECIFIC REFERENCES TO THE COURT'S
16 110,000-ACRE-FOOT YIELD NUMBER.

17 THE POINT IS THAT, AS EXPLAINED THEN AND
18 HAS BEEN EXPLAINED PUBLICLY, PARTICIPANTS WORKING WITH
19 USGS ON THIS MODEL, THE LOCAL GOVERNMENT ENTITIES HAVE
20 BEEN KNOWN.

21 NOW, FAST FORWARD THIS. WE HAVE
22 RETAINED -- DISTRICT 40 HAD RETAINED DR. WILLIAMS, I
23 BELIEVE IT WAS ABOUT -- I COULD BE OFF -- ABOUT TEN
24 YEARS AGO. HE WAS NOT A PARTICIPANT IN A TECHNICAL
25 COMMITTEE.

26 WE RETAINED HIM FOR THE PURPOSE OF WE COULD
27 LOOK AHEAD IN THE CASE AND REALIZE THAT AT SOME POINT IN
28 TIME WE WOULD NEED THE USE OF THE USGS MODEL FOR --

1 PRIMARILY FOR PHYSICAL SOLUTION PURPOSES, COMING UP WITH
2 THE MANAGEMENT AREAS OF THE BASIN, WITHOUT GETTING INTO
3 INAPPROPRIATE SETTLEMENT DISCUSSIONS ABOUT -- AND SO
4 DR. WILLIAMS HAS BEEN WORKING OFF AND ON IN THIS CASE
5 FOR SOME TIME.

6 HE WAS NOT -- WE DID NOT PUT HIM ON THE
7 TECHNICAL COMMITTEE SO THAT HE COULD NOT BE PART OF THAT
8 PROCESS BUT WORK INDEPENDENTLY AND LET THE TECHNICAL
9 COMMITTEE SORT OF DEVELOP THE DATA SO THAT HE COULD AT
10 SOME POINT IN TIME LATER TAKE THE DATA THAT WAS
11 PRESENTED IN PHASE THREE AND USE THE USGS MODEL SORT OF
12 A SEPARATE WAY OF SORT OF VALIDATING WHAT THE PHASE
13 THREE EXPERTS HAD DONE.

14 ABOUT TWO, THREE YEARS AGO, WE HAD A
15 MEETING IN THIS CASE, A SETTLEMENT MEETING, WHERE WE
16 WENT PUBLIC WITH THE MODELING WORK THAT WE'VE DONE. SO
17 THE COMMENT THIS MORNING IS THAT WE HAD NO IDEA THAT
18 THERE WOULD BE MODELING TESTIMONY. THAT'S NOT AN
19 ACCURATE STATEMENT.

20 WE HAVE DISCLOSED DR. WILLIAMS NOW FOR
21 SEVERAL YEARS, THE FACT THAT HE'S BEEN DOING MODELING
22 WORK, THE FACT THAT HE'D BE USED FOR BOTH SETTLEMENT
23 PURPOSES AND AGAIN WITHIN THE CASE, PARTICULARLY FOR
24 MANAGEMENT AREAS AND TO MANAGE THE BASIN.

25 AND WE'VE ACTUALLY GONE PUBLIC WITH THAT IN
26 THE CONTEXT OF THIS CASE WHEN WE HAD A MEETING IN -- IT
27 WAS EITHER LANCASTER OR PALMDALE, AT A LARGE TOYOTA
28 DEALERSHIP BECAUSE IT WAS THE ONLY PLACE IN THE ANTELOPE

1 VALLEY WITH A ROOM BIG ENOUGH TO FIT ALL THE ATTORNEYS
2 AND ALL THEIR CLIENTS. AND WE PUT IT UP ON SCREEN AND
3 WE SORT OF TALKED ABOUT IT.

4 NOW, WHY IS THAT IMPORTANT? BECAUSE
5 THERE'S NO ELEMENT OF SURPRISE HERE. WE HAVE BEEN VERY
6 PUBLIC IN TERMS OF HOW YOU WOULD BE PUBLIC IN A CASE
7 LIKE THIS. YOU DON'T JUST SIMPLY FILE EXPERT
8 DESIGNATIONS, WHATEVER. OURS WAS TIMELY DONE. THERE'S
9 NO CLAIM THAT IT WASN'T. BUT SOMEHOW THIS CONCEPT THAT
10 THERE'S SURPRISE HERE OR WE DIDN'T KNOW THIS WAS GOING
11 TO HAPPEN IS JUST -- IT'S TOUGH. IT'S TOUGH.

12 **THE COURT:** WHEN WAS THE REPORT MADE AVAILABLE TO
13 THE --

14 **MR. DUNN:** THERE IS NO REPORT. HE DIDN'T DO A
15 REPORT. WE HAVEN'T ASKED ANY OF THE EXPERTS TO DO A
16 REPORT OTHER THAN THE TECHNICAL COMMITTEE FOLKS. SO
17 WHATEVER COMMENT WAS MADE BY COUNSEL THAT SOMEHOW HE DID
18 A REPORT AND IT WAS NOT PUBLISHED, THAT'S NOT TRUE. HE
19 DOESN'T HAVE A REPORT.

20 WHAT HE WAS ASKED TO DO WAS WHAT HE DID.
21 HE WAS DONE TO DO AN INDEPENDENT ANALYSIS OF THE DATA,
22 SEE IF THAT CORROBORATES THE PHASE THREE TRIAL TESTIMONY
23 OF MR. DURBIN, MR. WILDERMUTH, MR. SCALMANINI, AND HE
24 DID THAT. AND HIS INDEPENDENT WORK OF THAT DATA USING
25 THE USGS MODEL AND PLUS HIS OWN EXPERIENCE --

26 **THE COURT:** WELL, WHAT WAS PROVIDED TO THE OTHER
27 SIDE AT THE TIME OF THE SCHEDULING OF THE DEPOSITION?

28 **MR. DUNN:** AT THE DAY OF HIS DEPOSITION, HE WALKED

1 INTO THE DEPOSITION ROOM WITH A SMALL UTILITY TRAILER.
2 IT LOOKS -- IF I MAY APPROACH THIS, YOUR HONOR.

3 **THE COURT:** YES.

4 **MR. DUNN:** IT'S ABOUT TWICE AS WIDE AS THIS AND
5 MAYBE ABOUT 6 INCHES LONGER (INDICATING). IT WAS FILLED
6 WITH BANKERS BOXES LIKE YOU HAVE IN THE COURT HERE.
7 LITTLE BIT SMALLER THAN THIS. MY RECOLLECTION IS THAT
8 THERE WERE SIX OF THEM. MY RECOLLECTION, FURTHER, IS
9 THAT WE SPENT ABOUT 40 MINUTES WITH MR. MC LACHLAN GOING
10 OVER WITH DR. WILLIAMS, HAVING HIM DESCRIBE WITH
11 MR. MC LACHLAN, TAKING OUT EVERY SINGLE NOTEBOOK, EVERY
12 SINGLE FILE THAT WAS IN THERE, AND IDENTIFYING IT ON THE
13 RECORD.

14 THE DEPOSITION TRANSCRIPT IS LODGED WITH
15 THE COURT THIS MORNING. THIS IS THE DEPOSITION THAT
16 TOOK APPROXIMATELY SEVEN HOURS TO COMPLETE. SO THAT WAS
17 JUST -- HE SAID HE BROUGHT EVERYTHING THAT WAS HIS
18 WRITTEN FILE. HE SAID HE BROUGHT HIS ENTIRE FILE. HE
19 PUT IT ON A CD, A COMPUTER CD, AND THAT WAS PRODUCED AT
20 THE DEPOSITION AS WELL.

21 SO HE BROUGHT -- IN FACT I'VE BEEN, I
22 THINK, TO ALMOST EVERY SINGLE ONE OF THESE DEPOSITIONS,
23 I THINK, WITH THE EXCEPTION OF MAYBE TWO. HE BROUGHT
24 MORE MATERIAL WITH HIM TO HIS DEPOSITION THAN ALL THE
25 OTHER EXPERTS COMBINED, BECAUSE HE'S BEEN WORKING ON
26 THIS FOR A LONG TIME AND HE'S DONE A LOT OF WORK.

27 SO THIS CONCEPT OF SURPRISE IS JUST NOT
28 SIMPLY ACCURATE. WE HAVE -- WE HAVE BEEN TELLING PEOPLE

1 FOR A LONG TIME THAT WE WOULD BE DOING THIS.

2 NOW, LET ME JUST SAY THIS ABOUT THE RETURN
3 FLOW PART OF THIS. IT GETS A LITTLE MUDDLED IN THE
4 CONVERSATION SOMETIMES WITH COUNSEL, AND THAT'S BECAUSE
5 THE MODELING WORK REALLY DOES REQUIRE AN EXPERT TO
6 EXPLAIN IT.

7 BUT WE NEED TO KEEP IN MIND THAT THERE ARE
8 TWO RETURN FLOW COMPONENTS. THERE'S ONE FOR URBAN USE
9 AND THERE'S ONE FOR AGRICULTURAL USE. AND WHAT COUNSEL
10 FOR AGWA WAS TALKING ABOUT A LITTLE BIT EARLIER WITH HOW
11 THE USGS FIRST RAN ITS MODEL REALLY APPLIED MORE TO
12 AGRICULTURAL USE THAN IT DID TO URBAN USE.

13 WHAT THE USGS HAD DONE, IN OUR VIEW AND THE
14 VIEW OF THE EXPERTS ON A TECHNICAL COMMITTEE AND
15 DR. WILLIAMS AS WELL, IS THEY HAD UNDERESTIMATED THE
16 AMOUNT OF AGRICULTURAL PUMPING, AGRICULTURAL PUMPING IN
17 THE BASIN, WHICH HAD UNDERESTIMATED THE AMOUNT OF
18 AGRICULTURE RETURN FLOW.

19 AND SO WHAT WE WERE ABLE TO DO -- AND I
20 STILL HAVE A VIVID RECOLLECTION OF TELLING PEOPLE THIS
21 IN THE TOYOTA MEETING, THAT YOU CAN THANK US LATER, THAT
22 WE'LL TAKE THE USGS MODEL, WE'LL TAKE THE EVIDENCE THAT
23 WAS PRESENTED IN PHASE THREE, AND WE'LL INPUT THAT DATA
24 INTO THE MODEL, BECAUSE THAT WILL GET A MORE ACCURATE
25 RESULT, CANDIDLY FAR MORE BENEFICIAL FOR AGRICULTURE
26 THAN IT EVEN WOULD BE FOR THE URBAN USERS. AND THEN WE
27 WILL HAVE AN ACCURATE AND CALIBRATED MODEL.

28 SO TO MAKE A VERY LONG STORY SHORT, WE DID

1 THAT PROCESS AND MADE DR. WILLIAMS AVAILABLE FOR
2 DEPOSITION AS HE WAS NOTICED.

3 SO, AGAIN, LET'S GO TO HIS DEPOSITION. SO
4 HE BRINGS ALL THAT MATERIAL THERE. HE BRINGS IT ON A
5 CD. THE ONLY THING THAT HE REALLY DOESN'T BRING WITH
6 HIM ARE THE ACTUAL ELECTRONIC FILES, THE INPUT FILES AND
7 HIS OUTPUT FILES FOR RUNNING THE MODEL. THESE ARE
8 COMPUTER FILES.

9 AND SOMEONE SAYS, WELL, WE DIDN'T GET
10 17 GIGABYTES OF DATA. THE REPRESENTATION WAS IT WAS
11 APPROXIMATELY 17 GIGABYTES OF DATA. AND IN FURTHER
12 FOLLOWUP CONVERSATION WITH DR. WILLIAMS, FOLLOWING WHAT
13 WE READ FROM THE AGWA FOLKS, WE THINK THAT THE ATTORNEYS
14 PROBABLY DIDN'T CALCULATE THE NUMBER OF GIGABYTES
15 CORRECTLY. BUT THAT'S NEITHER HERE NOR THERE AT THIS
16 POINT. THE FACT IS THAT HE SHOWED UP.

17 YOU CAN'T -- THESE ARE JUST INPUT/OUTPUT
18 FILES. AND AS HE PATIENTLY EXPLAINED IN HIS DEPOSITION,
19 THERE'S A REFERENCE HERE IN THE AGWA FILING THAT SOMEHOW
20 WE'RE MISSING THESE CALIBRATION RUNS AND DATA. HE
21 EXPLAINED IT OVER AND OVER AGAIN THAT THERE WERE
22 HUNDREDS -- ACTUALLY IT TURNS OUT THERE WERE THOUSANDS
23 OF THESE COMPUTER CYCLE RUNS. THE COMPUTER JUST KEEPS
24 RUNNING THIS PROGRAM AND IT KEEPS CALIBRATING IT. AND
25 THEY DON'T SAVE THOSE FILES, THESE OUTPUT FILES.
26 THEY'RE NOT EVEN ROUGH DRAFTS. THEY'RE JUST THOUSANDS
27 OF CALIBRATION RUNS.

28 I DON'T EVEN KNOW HOW MUCH SPACE IN THIS

1 COURTROOM IT WOULD TAKE IF THEY SOMEHOW KEEP THAT KIND
2 OF DATA, LET ALONE PRINT IT. THEY DON'T KEEP IT. THEY
3 DON'T.

4 SO THE POINT IS THE MODEL WAS DEVELOPED BY
5 THE USGS. IT BELONGS TO THEM. SO AT HIS DEPOSITION, AS
6 WE PATIENTLY EXPLAINED TO FOLKS, I SAID, LOOK, IF YOU
7 REALLY THINK YOU NEED THE INPUT FILES, BECAUSE IF YOU
8 RUN THE INPUT, GUESS WHAT'S GOING TO HAPPEN? YOU'RE
9 GOING TO GET THE SAME OUTPUT AS DR. WILLIAMS WILL. SO
10 LET'S HOLD THAT THOUGHT FOR A MOMENT.

11 BUT IF YOU REALLY NEED IT -- THIS IS AFTER
12 HE'S EXPLAINED ALL OF HIS OPINIONS FOR SEVEN HOURS,
13 EXPLAINED EVERYTHING THAT HE DID. HE EXPLAINED HOW HE
14 DID IT. HE ANSWERED EVERY QUESTION THAT WAS PRESENTED
15 TO THEM. THE COURT CAN READ IT FOR ITSELF IN THE
16 TRANSCRIPT. HE PROVIDED ALL OF THAT.

17 ALL HE NEEDED WERE THE FILES. AND I SAID,
18 LOOK, GIVE US A LITTLE BIT OF TIME TO TALK TO THE GS AND
19 SEE IF WE CAN RELEASE THOSE FILES. THEY'RE JUST --
20 THEY'RE LIKE BITS. THEY'RE LIKE ONES AND ZEROS.
21 THEY'RE NOT PICTURES OF PDFS OR PHOTOS OR THAT. IT'S
22 JUST COMPUTER DATA. AND WHEN YOU PUT THE COMPUTER DATA
23 INTO THE USGS MODEL, YOU GET THE SAME OUTPUT.

24 AND HOW DO WE KNOW THAT? BECAUSE ON
25 THURSDAY WHEN MR. FIFE'S PERSON IN NEW MEXICO GOT -- HE
26 GOT THE FILES ON THURSDAY -- WHAT'S HE SAY IN HIS
27 DECLARATION? HE SAYS HE GOT THEM ON FEBRUARY 6TH BY
28 FEDERAL EXPRESS. THIS IS AFTER SITTING APPARENTLY FOR A

1 WEEK IN MR. FIFE'S OFFICE. BUT THAT'S -- AND ON THE
2 SAME MORNING THAT -- HE GETS IT 3:30 THAT DAY. IT
3 DOESN'T EVEN TAKE HIM HALF A DAY. HE SAYS, I'M ABLE TO
4 RUN ALL FIVE OF THE MODELS.

5 SO THERE'S ONE USGS MODEL RUN, AND THERE'S
6 FOUR THAT WAS DONE BY DR. WILLIAMS. SO IN LESS THAN
7 HALF A DAY HE RUNS ALL FIVE MODELS. AND GUESS WHAT? HE
8 GETS THE SAME RESULTS AS DR. WILLIAMS DOES.

9 I'D LOVE TO SUBPOENA THE MAN, BUT HE'S OUT
10 OF STATE, AND I CAN'T BRING HIM IN TO COURT. SO HE GETS
11 THE SAME RESULT EXCEPT, WHAT HE SAYS HERE IN THE
12 DECLARATION, EXCEPT FOR A SLIGHTLY DIFFERENT RESULT IN A
13 FEW CELLS.

14 THERE ARE 61,000 CELLS IN THIS MODEL. AND
15 IF YOU GET A SLIGHTLY DIFFERENT RESULT IN A FEW CELLS --
16 MY POINT IS IF YOU TAKE THESE FILES -- IT DOESN'T CHANGE
17 HIS OPINION. IF YOU TAKE THESE FILES AND YOU RUN THEM
18 THROUGH THE MODEL, ALL IT'S GOING TO DO IS REINFORCE THE
19 OPINION THAT HE HAS.

20 IT DOESN'T -- I UNDERSTAND THESE ATTORNEYS
21 HAVE LITTLE, IF ANY, EXPERIENCE WITH MODELING. I GET
22 THAT. AND THAT'S WHY WE SPEND HOURS AND HOURS IN THESE
23 DEPOSITIONS GOING THROUGH THESE QUESTIONS. BUT WHAT
24 THEY'RE TRYING TO DO HERE IS CREATE A SITUATION WHICH IS
25 NOT ACCURATE ON THE RECORD OF WHAT HAPPENED IN HIS
26 DEPOSITION. IT DOESN'T CHANGE HIS OPINIONS EITHER WAY.

27 AND CANDIDLY, THE ONLY ONE WHO HAS
28 APPARENTLY RUN THE MODEL WAS MR. FIFE'S PERSON. IF HE

1 HAD JUST PICKED UP THE PHONE AND SAID WE CAN'T FIND SOME
2 OUTPUT FILES, CAN YOU PROVIDE THEM FOR US, WE'D SAY,
3 SURE, OR HERE'S WHERE THEY ARE IN THE COMPUTER DATA THAT
4 WE GAVE YOU, OR WE'LL JUST GIVE IT TO YOU AGAIN,
5 WHATEVER.

6 BUT INSTEAD THEY COME FORWARD AND THEY PLAY
7 THIS GAME AND THEY SAY, WELL, DUE PROCESS WAS VIOLATED,
8 OR 2034 APPLIES HERE. THERE'S NO POSSIBLE INDICATION
9 HERE UNDER 2034. HE APPEARED AT HIS DEPOSITION. HE
10 GAVE HIS OPINIONS. HE EXPLAINED IT ALL.

11 AND WE SAID TO EVERYBODY, LOOK, IF YOU GET
12 THESE FILES AND YOU RUN THEM AND YOU WANT TO DEPOSE HIM
13 AGAIN, WE'RE HAPPY TO MAKE HIM AVAILABLE FOR DEPOSITION.
14 AND NOBODY HAS TAKEN US UP ON THAT OFFER. AND THEY CAN
15 SIT THERE AND THEY CAN ASK HIM QUESTIONS ABOUT THAT. I
16 ALREADY KNOW WHAT THE ANSWERS ARE GOING TO BE. INPUT
17 IN, OUTPUT OUT, YOU'RE GOING TO GET THE SAME RESULT.

18 SO I DON'T REALLY FEEL VERY GOOD ABOUT
19 WHERE WE'RE GOING WITH THIS. THIS APPEARS TO BE SORT OF
20 I-GOT-YOU GAME. THE PROBLEM WHEN WE PLAY THAT GAME IN
21 COURT IS THAT IT THEN HAS TO APPLY TO EVERYBODY. AND SO
22 THAT MEANS THE OTHER EXPERTS WHO DIDN'T SHOW UP WITH
23 THEIR FILES, OR WHO DIDN'T PRODUCE THEM THREE DAYS IN
24 ADVANCE, WHICH IS GOING TO BE EVERY SINGLE OTHER EXPERT,
25 WOULD BE EXCLUDED ON THE SAME GROUNDS.

26 THAT MEANS EVERY OTHER EXPERT WHO TOOK
27 THE -- WHO TESTIFIED IN THEIR DEPOSITION AND SAID, GOSH,
28 I'M NOT FINISHED WITH MY WORK, IT'S GOING TO TAKE ME

1 ANOTHER WEEK OR TWO TO DO IT, YOU'LL HAVE TO COME BACK
2 AND DEPOSE ME AGAIN, LIKE WE DID WITH A COUPLE -- AT
3 LEAST ONE OF THE KEY EXPERTS ON THE OTHER SIDE. WE HAVE
4 THAT PROBLEM TOO.

5 SO I CAN GO PAINSTAKINGLY THROUGH THE
6 CHRONOLOGY HERE, THAT HE WAS DEPOSED; THREE DAYS LATER
7 THE FILES WERE MADE AVAILABLE. NO ONE REALLY ASKED FOR
8 THEM EXCEPT FOR MR. MC LACHLAN. WE SENT THEM TO HIM,
9 AND WE HAVEN'T HEARD ANYTHING FROM HIM SINCE.

10 MR. FIFE ASKED FOR THEM ABOUT A WEEK LATER.
11 BY HIS OWN FILING, THEY SAT IN MR. FIFE'S OFFICE FOR A
12 WEEK. THEY WERE SENT OVERNIGHT MAIL TO MR. UMSTOCK
13 (PHONETIC) IN NEW MEXICO. PRESUMABLY HE GOT THEM IN THE
14 MORNING BY FEDERAL EXPRESS, OR OVERNIGHT DELIVERY. HE
15 RUNS ALL FIVE OF THE MODELS WITHOUT ANY APPARENT
16 DIFFICULTY AND GETS THE SAME RESULTS AS DR. WILLIAMS
17 DOES, AND THEN FILES THIS THING SAYING, WELL, I CAN'T
18 FIND THE CALIBRATION RESULTS.

19 WELL, DR. WILLIAMS TESTIFIED IN HIS
20 DEPOSITION IF SOMEBODY HAD BOTHERED TO SHOW IT TO
21 MR. UMSTOCK, THERE WASN'T ANY RECORD OF THE CALIBRATION
22 RUNS. THEY DON'T KEEP THE HUNDREDS, THOUSANDS OF THESE
23 CALIBRATION RUNS. HE SAID BACK IN HIS DEPOSITION,
24 THEY'RE NOT THERE.

25 IF SOMEBODY COULDN'T FIND THE FILE, YOU
26 PICK UP THE PHONE AND CALL US. BUT INSTEAD WE'RE
27 STANDING HERE THIS MORNING AND WE'RE KEEPING OUT SOME OF
28 THE MOST SIGNIFICANT WORK DONE ON THIS BASIN THAT HAS

1 EVER BEEN DONE, FIRST BY THE GS, THEN A CONSORTIUM WITH
2 THE GOVERNMENTAL ENTITIES, THEN FINALLY ONE OF THE
3 LEADING MODELERS IN THE UNITED STATES, DR. WILLIAMS.

4 AND THE TERRIBLE IRONY OF ALL THIS IS THAT
5 IF WE DIDN'T DO THIS WORK, IF WE DIDN'T DO THIS MODELING
6 WORK AND WE JUST TOOK THE USGS WORK, THERE'S A HIGH RISK
7 THAT SOMEONE -- PROBABLY THE UNITED STATES -- WOULD HAVE
8 WALKED INTO COURT AND SAID LET'S RELITIGATE THE SAFE
9 YIELD BECAUSE THE USGS SHOWS A LOWER AMOUNT OF PUMPING,
10 LOWER AMOUNT OF SAFE YIELD, LOWER RETURN FLOWS.

11 AND I GO BACK TO WHAT WE TOLD THE FOLKS,
12 THE 40, 50 PEOPLE THAT WERE PRESENT THERE, ALL THE
13 LANDOWNER PARTIES THAT COULD PARTICIPATE AND THOSE ON
14 THE PHONE, YOU CAN THANK US LATER THAT WE'RE GOING TO
15 PAY THE MONEY THAT WE DID TO DR. WILLIAMS TO SPEND ALL
16 THIS TIME AND GET THIS MODEL UP AND RUNNING SO WE COULD
17 ALL USE IT.

18 BUT THERE'S NO BASIS TO EXCLUDE HIS
19 TESTIMONY.

20 **THE COURT:** LET ME SEE THE FILING, PLEASE.

21 **MR. DUNN:** YES. (INDICATING.)

22

23 (PAUSE IN THE PROCEEDINGS.)

24

25 **THE COURT:** ALL RIGHT. THANK YOU.

26 MR. MC LACHLAN.

27 **MR. MC LACHLAN:** THANK YOU, JUDGE KOMAR. AGAIN,
28 MICHAEL MC LACHLAN FOR RICHARD WOOD IN THE SMALL PUMPER

1 CLASS.

2 AS THE NOTICING PARTY FOR DR. WILLIAMS'
3 DEPOSITION, I REQUESTED, AS I WOULD IN ANY CASE OF ANY
4 EXPERT, THE ENTIRE FILE. IT'S UNDISPUTED THAT
5 DR. WILLIAMS SHOWED UP WITH THE CORE OF HIS FILE, WHICH
6 IS THE MODEL ITSELF, THE INPUT FILES AND THE OUTPUT
7 [SIC]. THAT IS THE TOTALITY OF THE MODEL, WHICH HE DID
8 NOT SHOW UP WITH. THAT IS NOT DISPUTED. IT'S IN HIS
9 DEPOSITION. MR. FIFE HAS FILED THE EXCERPTS. THAT FACT
10 CANNOT BE DISPUTED.

11 THE FACT THAT DR. WILLIAMS SHOWED UP WITH A
12 HANDCART WITH SEVERAL BANKERS BOXES FULL OF MATERIALS
13 THAT HE TESTIFIED ON THE RECORD, ALMOST ALL OF WHICH HE
14 DIDN'T RELY ON -- MOST OF IT IS RELATED TO PHASE THREE.
15 LOTS OF IT WERE BINDERS AND BINDERS OF ARTICLES THAT BB
16 AND K HAD GIVEN HIM. HE TESTIFIED HE DIDN'T READ MOST
17 OF THAT STUFF. HE MIGHT AS WELL HAVE HAD A WHOLE CART
18 FULL OF USED AIRPLANE PARTS.

19 THE VOLUME OF MATERIAL THAT HE PUT ON A
20 CART DOES NOT EQUATE TO HAVING COMPLIED WITH 2034.
21 EVERYBODY UNDERSTANDS THE RULES. THE EXPERT SHOWS UP.
22 THEY'VE GOT TO PRODUCE THE ENTIRETY OF THEIR FILE.

23 I WOULD SAY THAT IF THIS MODEL IS SO
24 IMPORTANT TO THIS CASE AND SO IMPORTANT TO PHASE FIVE,
25 THEN WHY WASN'T IT PRODUCED LONG AGO SO PEOPLE COULD
26 PROPERLY CROSS-EXAMINE HIM?

27 THE POINT OF FACT IS THAT DR. WILLIAMS
28 TESTIFIED HE DID NO BACK-END VALIDATION WORK, AND I

1 WOULD -- I WOULD RESPOND TO MR. DUNN THAT I'VE BEEN
2 INVOLVED IN MANY CASES WITH GROUND WATER MODELING OVER
3 THE YEARS, PRIMARILY SUPERFUND CASES. BUT MODELING WORK
4 IS MODELING WORK. AND MY PRIMARY INTEREST IN HAVING
5 THAT MATERIAL WOULD BE TO HAVE AN EXPERT GO AND DO THAT
6 VALIDATION WORK TO ALTER THE RETURN FLOW PERCENTAGE AND
7 SEE WHAT HAPPENS ON THE BACK END. THAT WORK WAS NOT
8 DONE.

9 AND AS TO WHEN HE PRODUCED THE MATERIALS, I
10 BELIEVE I HEARD CORRECTLY MR. DUNN STATE THAT HE
11 PRODUCED THOSE MATERIALS TO MY OFFICE THREE DAYS AFTER
12 THE DEPOSITION. I THINK MR. DUNN IS HAVING A MOMENT OF
13 MISRECOLLECTION, BECAUSE THE POINT OF FACT IS IT WAS
14 OVER TWO WEEKS.

15 WE HAD FOUGHT TO GET MR. WILLIAMS DEPOSED
16 EARLY IN JANUARY. BEST BEST AND KRIEGER REFUSED TO DO
17 THAT. THEY PRODUCED HIM AT THE LAST MINUTE. AND SO WE
18 ENDED UP WITH ESSENTIALLY TEN DAYS WITH THESE FILES IN
19 HAND, AND I'M NOT EVEN SURE THAT ALL OF THE OUTPUT FILES
20 ARE THERE.

21 AND IT'S -- IT'S AN INSUFFICIENT AMOUNT OF
22 TIME, WHICH IS WHY I MADE THAT EX PARTE MOTION. SO TO
23 THE EXTENT THE COURT IS INCLINED NOT TO EXCLUDE THE
24 EXPERT -- AND I THINK UNDER 2034 THE COURT REALLY HAS NO
25 CHOICE BECAUSE THE LAW SAYS, LOOK, YOU'VE GOT TO DO
26 THIS. DISCOVERY REQUIRES IT; SO IT SHOULD BE EXCLUDED.

27 BUT IF IT SHOULDN'T BE EXCLUDED, THEN MY
28 EX PARTE, WHICH WAS DENIED TEN DAYS OR SO AGO, SHOULD BE

1 TAKEN UP AND APPROPRIATE TIME SHOULD BE GIVEN TO THE
2 PARTIES IN WHICH TO DO THE ANALYSIS WORK AND
3 CROSS-EXAMINE THAT OPINION FULLY BEFORE IT'S TAKEN INTO
4 CONSIDERATION HERE.

5 MY FINAL POINT IS THAT IF -- IF
6 DR. WILLIAMS' TESTIMONY IS SO IMPORTANT AT THIS
7 JUNCTURE, THEN DID WE -- DOES THAT TELL US THAT WE
8 DIDN'T ACTUALLY LITIGATE THIS ISSUE OF RETURN FLOW
9 PERCENTAGE IN PHASE THREE?

10 SO IF WE'VE IN FACT DONE THAT, WHY DID THEY
11 SPEND \$550,000 BUILDING THIS MODEL TO BRING IT IN IN
12 PHASE FIVE AND IT ONLY IS PURPORTED TO ESTABLISH THAT
13 PERCENTAGE? SO IT SEEMS LIKE BB AND K AND HIS CLIENT,
14 WATERWORKS 40, ARE TRYING TO HAVE ITS CAKE AND EAT IT
15 TOO.

16 MR. DUNN: I THINK I SHOULD BE ABLE TO RESPOND TO
17 THAT. THIS ILLUSTRATES THE PROBLEM. COMMENTS BY
18 COUNSEL JUST NOW ILLUSTRATE THE PROBLEM WE'VE BEEN
19 HAVING.

20 LET'S BREAK IT DOWN. HE SAID, WELL,
21 DR. WILLIAMS DIDN'T BRING THE MODEL WITH HIM. THE MODEL
22 IS A SOFTWARE PROGRAM. IT'S A SOFTWARE PROGRAM. IT
23 SITS ON A COMPUTER. WE DON'T BRING SOFTWARE PROGRAMS.
24 WE DON'T -- WHEN WE SHOW UP AT A DEPOSITION, WE DON'T
25 BRING A COPY OF OUTLOOK OR WORD PERFECT OR SOFTWARE
26 PROGRAMS. WE JUST BRING THE DOCUMENT THAT WAS PRINTED
27 OR THE RESULT.

28 AND THIS IS SORT OF THE FUNDAMENTAL PROBLEM

1 THAT WE STILL HAVE. WELL, IT'S A SOFTWARE PROGRAM. AS
2 THE AGWA FILING ON THIS MOTION IN LIMINE MAKES VERY
3 CLEAR, IS THEY JUST DOWNLOADED IT FROM THE USGS WEB
4 SITE. THAT'S WHAT YOU DO. AND WE PROVIDED THAT LINK TO
5 THE COURT IN OUR OPPOSITION TO THE EARLIER MOTION IN
6 LIMINE TO SHOW THAT YOU GO TO THE USGS WEB SITE AND
7 SOMEONE CAN JUST DOWNLOAD IT.

8 NOW, THERE IS NO MISTAKE ON THE CHRONOLOGY.
9 DR. WILLIAMS WAS DEPOSED ON A THURSDAY. WE SAID DURING
10 THE DEPOSITION WE'D GET BACK TO HIM AS SOON AS WE COULD
11 REGARDING THE RELEASE OF THE USGS FILES, AND THAT WE
12 WERE -- FRIDAY, THE NEXT DAY, HAPPENED. MONDAY WAS THE
13 LEGAL HOLIDAY. TUESDAY WAS THE NEXT BUSINESS DAY.

14 ON WEDNESDAY I NOTIFIED A HANDFUL OF
15 PARTIES THAT SHOWED UP AT THE DEPOSITION -- MR. ZIMMER
16 WASN'T THERE -- AND SAID THE FILES ARE AVAILABLE. ONLY
17 MR. MC LACHLAN REQUESTED THEM.

18 WE OVERNIGHT MAILED THEM EITHER THAT DAY OR
19 MAYBE THE NEXT DAY, BUT HE GOT THEM. WE STILL DON'T
20 KNOW WHAT HE'S GOING TO DO WITH THEM. BUT THE POINT IS
21 THERE'S SUCH A MISUNDERSTANDING ON COUNSELS' PART OF
22 WHAT THE MODELING WORK WAS DONE.

23 THE MODELING WORK WAS NOT DONE TO DETERMINE
24 THE RETURN FLOWS. THE MODELING WORK WAS DONE FOR
25 OVERALL MANAGEMENT OF THE BASIN, WHICH MEANS THAT THERE
26 HAS TO BE -- FOR MANAGEMENT PURPOSES AND PHYSICAL
27 SOLUTION PURPOSES, THERE HAS TO BE A DETERMINED SAFE
28 YIELD, WHICH IS WHY WE, AND THEN THE USGS, WAITED FOR

1 THE COURT DETERMINATION OF 110,000 SO WE'D KNOW WHAT
2 THAT IS.

3 AND THEN WE INPUT THE DATA FROM THE PHASE
4 THREE TRIAL THAT GOT US THE 110,000 ACRE-FOOT NUMBER,
5 WHICH IS BOTH THE URBAN AND AGRICULTURAL PRODUCTION AND
6 THEN THE RETURN FLOW COMPONENTS ON THAT.

7 AND THEN WHAT WE WANT TO DO IS WE JUST GAVE
8 IT TO DR. WILLIAMS -- AND THIS CAME OUT IN THE
9 DEPOSITION. THEY WERE SURPRISED THAT WE DIDN'T GIVE HIM
10 MORE DETAILED INSTRUCTIONS -- SAID, LOOK, TELL US IF
11 WE'VE GOT THIS RIGHT. RUN THE MODEL AS SORT OF ANOTHER
12 INDEPENDENT WAY OF LOOKING AT THIS AND SEE IF USING
13 THE -- WHAT THE USGS CALLS THE INTERNATIONAL STANDARD IN
14 GROUND WATER MODELING, THE USGS MOD -- SEE IF THE MOD
15 FLOW MODEL GETS US TO THE SAME PLACE. AND IT DID. AND
16 IT DID.

17 WE ONLY HAVE TO PUT ON DR. WILLIAMS IN THIS
18 CASE BECAUSE WE'VE GOT PEOPLE WANTING TO RELITIGATE THE
19 PHASE THREE RETURN FLOW PERCENTAGES. I CAN'T BRING BACK
20 MR. SCALMANINI. THANK HEAVENS I HAD DR. WILLIAMS
21 AVAILABLE AS AN EXPERT WHO HAD BEEN LOOKING AT THIS WORK
22 FOR SOME TIME, AND WE HAD INVESTED ALL OF THIS IN GROUND
23 WATER MANAGEMENT SO THAT HE IS ABLE, WITH THE MODEL, TO
24 COME IN AND SAY, WELL, YES, WITH MY MODELING WORK I CAN
25 CORROBORATE THE PHASE THREE WORK. I CAN DO THAT.

26 AND THAT'S WHY THEY'RE JUST SCREAMING
27 MURDER. WHERE IN THE CASE -- TELL ME A CASE THAT EXISTS
28 OUT THERE WHERE SOMEHOW A PARTY HAS TO JUST VOLUNTARILY

1 DO AN EXPERT WITNESS DISCLOSURE, I DON'T KNOW, FOUR --
2 THREE, FOUR MONTHS IN ADVANCE OR A YEAR IN ADVANCE AND
3 SAY, HEY, MY EXPERT, WHO YOU ALL KNOW ABOUT -- WE'VE
4 GONE PUBLIC WITH THIS -- HE'S GOING TO HAVE A MODELING
5 EXERCISE.

6 YOU KNOW, THE REALITY IS WE WEREN'T QUITE
7 SURE WHERE WE WERE GOING TO GO WITH THIS PHASE FIVE
8 TRIAL IN TERMS OF WHETHER OR NOT WE'RE GOING TO HAVE TO
9 RELITIGATE THE PHASE FIVE ISSUES. THAT'S WHY
10 DR. WILLIAMS IS AVAILABLE. IF WE DON'T HAVE TO
11 RELITIGATE THIS, THEN HE DOESN'T HAVE TO TESTIFY.

12 BUT BECAUSE WE JUST DIDN'T KNOW, THEN WE'VE
13 GOT TO HAVE HIM AVAILABLE. LIKE I SAID, I CAN'T HAVE
14 MR. SCALMANINI COME IN AND DO IT. I NEED SOMEONE TO
15 COME IN, TAKE THE DATA THAT'S BEEN DEVELOPED, AND
16 SOMEONE WHO'S QUALIFIED TO OFFER AN OPINION ON, SAY,
17 YEAH, THESE PHASE THREE PERCENTAGES WERE CORRECT. AND
18 THAT'S WHAT DR. WILLIAMS HAS DONE.

19 AND I'M GOING TO SAY THIS AGAIN: IF PEOPLE
20 REALLY UNDERSTAND HOW THIS MODELING PROCESS WORKS --
21 THESE ARE ELECTRONIC FILES. YOU PUT THE DATA IN, YOU
22 GET THE SAME RESULT OUT. THAT'S WHAT HAPPENED TO
23 MR. UMSTOCK. THAT'S WHAT WILL HAPPEN TO ANYBODY ELSE
24 WHO RUNS THE MODEL.

25 SO YOU CAN -- WE CAN GO THROUGH THIS
26 EXERCISE OF FINDING ALL SORTS OF PEOPLE TO PUT THE DATA
27 IN. THEY'LL GET THE SAME OUTPUT OUT. IT'S ALWAYS GOING
28 TO SAY THE SAME THING. YOU GET YOUR CALCULATOR, YOU GO

1 ONE PLUS ONE, IT'S GOING TO GIVE YOU TWO. SAME CONCEPT
2 HERE.

3 SO THEN WE'RE KIND OF LEFT WITH, OKAY, NOW
4 WHERE DO YOU PARTIES WANT TO GO WITH THAT? DO YOU NEED
5 TO ASK ANY MORE OPINIONS ABOUT ONE PLUS ONE EQUALS TWO?
6 YOU ALREADY ASKED HIM WHAT HIS OPINIONS ARE. YOU'VE
7 ALREADY ASKED HIM HOW HE GOT TO IT. NOW YOU'RE
8 COMPLAINING HE DIDN'T BRING THE COMPUTER -- I GUESS,
9 LIKE, A COMPUTER INTO THE DEPOSITION WITH SOME SOFTWARE
10 ON IT. AND WHAT WERE YOU GOING TO DO WITH THAT?

11 **THE COURT:** OKAY. I UNDERSTAND YOUR POINT.

12 **MR. DUNN:** IT'S JUST --

13 **THE COURT:** MR. KUHS.

14 **MR. KUHS:** YES. I HADN'T PLANNED ON ADDRESSING
15 THIS ISSUE, YOUR HONOR, BUT SOME OF THE THINGS THE COURT
16 SAID THIS MORNING I THINK SORT OF SIMPLIFIED THE ISSUE
17 FOR EVERYBODY. AND THAT IS THE COURT'S MADE IT CLEAR
18 IT'S NOT GOING TO RELITIGATE THE SAFE YIELD NUMBER. AND
19 AS I UNDERSTAND IT, MR. WILLIAMS, HIS ONLY PURPOSE IN
20 THIS PHASE OF THE TRIAL IS SIMPLY TO VALIDATE WHAT THE
21 OTHER THREE EXPERTS HAVE ALREADY TESTIFIED TO.

22 AND SO I THINK, ONE, IT'S PROBABLY
23 IRRELEVANT GIVEN THE COURT'S RULINGS, AND, TWO,
24 CERTAINLY UNDER 352 IT WOULD BE AN UNDUE CONSUMPTION OF
25 TIME.

26 NOW, THEY MAY HAVE A REASON TO CALL
27 MR. WILLIAMS IN REBUTTAL, BUT IF ALL HE'S GOING TO DO ON
28 DIRECT IS SAY, YEAH, MR. SCALMANINI GOT IT RIGHT, WE

1 DON'T NEED TO GO THERE.

2 **THE COURT:** MR. ZIMMER.

3 **MR. ZIMMER:** THANK YOU, YOUR HONOR. FIRST LET ME
4 ADDRESS THE COMMENT OF MR. DUNN THAT THIS MODEL WAS NOT
5 NEW TO THE CASE. THAT'S SIMPLY INACCURATE, AND GROSSLY
6 INACCURATE. MR. DUNN GENERALLY DOES NOT LIKE TO TALK
7 ABOUT THE SETTLEMENT MEETING, BUT I WAS AT THAT MEETING.

8 AND AT THAT MEETING, IT WAS AT A TOYOTA
9 DEALERSHIP, AND THEY SAID THAT THE USGS HAD DONE THIS
10 MODEL AND WE SHOULD ALL LOOK AT THIS MODEL. AND WE
11 ASKED FOR A COPY OF THE MODEL, AND THEY REFUSED TO
12 PROVIDE US WITH A COPY OF THAT MODEL.

13 THE FACT OF THE MATTER IS THAT THAT MODEL
14 CHANGED BY MR. WILLIAMS WAS NEVER PRODUCED TILL AFTER
15 THE DEPOSITION AND CERTAINLY WASN'T PRODUCED AT THE
16 DEPOSITION, BASED ON THE COMMENTS OF THE PEOPLE THAT
17 WERE THERE.

18 BUT YOU DON'T -- WHEN THEY SAY THIS GUY --
19 THE USGS IS WORKING ON A MODEL, THEY REFUSE TO PRODUCE
20 THE MODEL, THAT MODEL WAS NOT PART OF THE CASE. IT'S
21 NEVER BEEN PART OF THE CASE.

22 AND FROM WHAT WE HEARD, THE MODEL DIDN'T
23 CALIBRATE. IT DIDN'T WORK. THEY HAD TO DO IT -- IT
24 SOUNDS LIKE NOW WHAT THEY DID WAS THEY TOOK WILLIAMS AND
25 ADJUSTED NUMBERS IN THE USGS MODEL TO IN FACT CHANGE IT
26 FROM WHAT IT WAS.

27 AND IT'S -- THE DEPOSITION -- THE EXPERT
28 DESIGNATION CAME OUT. THE EXPERT DESIGNATION SAID

1 NOTHING ABOUT THIS GENTLEMAN DOING A MODEL. I LOOKED AT
2 THE EXPERT DESIGNATION. I SAID, OKAY, THEY'RE RELYING
3 ON WHAT THEY WERE RELYING ON FROM THE LAST PHASE.
4 THEY'RE JUST HAVING WILLIAMS COME IN AND RESTATE WHAT
5 SCALMANINI HAD DONE AND SOMEBODY ELSE, HAVE HIM GIVE AN
6 OPINION ON THAT. NO MENTION OF A MODEL WHATSOEVER.

7 THEY DID NOT COMPLY WITH THE CODE. I MEAN,
8 YOU'RE TELLING ME THAT -- THEY SET THE DEPOSITION AT THE
9 VERY LAST MOMENT -- MR. MC LACHLAN IS CORRECT, AT THE
10 VERY LAST MOMENT -- SO THAT THERE WOULD BE THE LEAST
11 AMOUNT OF TIME TO LOOK AT THAT MODEL. THEY DON'T
12 MENTION IT IN THE DESIGNATION. THEY DON'T FILE A
13 REPORT.

14 YOU'RE TELLING ME THE GUY DID A MODEL AND
15 PREPARED NO REPORT WHATSOEVER ON A COMPLICATED MODEL?
16 AND IT WAS CLEARLY, IT WAS CLEARLY DONE SO THAT NOBODY
17 COULD TAKE A LOOK AT THE MODEL.

18 THIS COURT KNOWS FROM SANTA MARIA THAT
19 THERE WAS A MODEL THAT SOMEBODY TRIED TO PRODUCE AT THE
20 LAST MOMENT. THE COURT KNOWS THAT THEY WENT THROUGH ALL
21 SORTS OF EXAMINATIONS OF THE MODEL, AND THE COURT KNOWS
22 HOW COMPLICATED THAT WAS. THE COURT KNOWS THAT THE
23 PARTIES HAD TO BE ABLE TO LOOK AT THAT MODEL CRITICALLY
24 WITH AN EXPERT TO EVALUATE WHETHER THE MODEL WAS
25 ACCURATE OR SOMETHING THAT SHOULD BE RELIED ON BY THE
26 COURT.

27 MR. DUNN JUST SAID THAT THE MODEL WASN'T
28 DONE FOR -- TO DETERMINE RETURN FLOWS. IT WAS DONE FOR

1 MANAGEMENT. IF IT WAS DONE FOR MANAGEMENT, THAT CAN
2 WAIT UNTIL THE MANAGEMENT PHASE, AND WE CAN ALL GET A
3 CHANCE TO DEPOSE THIS INDIVIDUAL ON THAT MODEL AS TO
4 MANAGEMENT.

5 BUT THE BOTTOM LINE HERE IS THERE -- IT
6 WASN'T PART OF THE CASE. IT WAS NEVER PART OF THE CASE.
7 IT WASN'T PRODUCED UNTIL A WEEK AFTER THE DEPOSITION OR
8 SO. THERE WASN'T COMPLIANCE WITH THE CODE OF CIVIL
9 PROCEDURE IN TERMS OF PROVIDING ANY REPORTS OR WRITINGS.

10 AND IF THEY INTENTIONALLY TOLD YOU NOT TO
11 PREPARE ANY REPORTS AND WRITINGS -- AND THE MODEL ITSELF
12 SHOULD HAVE BEEN PRODUCED AS A REPORT OR WRITING UNDER
13 2025. AND THEN THEY DIDN'T EVEN COMPLY WITH THE COURT'S
14 ORDER ON THAT. AND THEY DIDN'T COMPLY WITH THE COURT'S
15 ORDER AGAIN THREE DAYS IN ADVANCE.

16 **THE COURT:** WELL, THE MODEL IS SOFTWARE.

17 **MR. ZIMMER:** THE MODEL IS SOFTWARE.

18 **THE COURT:** IT'S ELECTRONIC.

19 **MR. ZIMMER:** BUT YOU CAN'T RUN IT IF YOU DON'T
20 HAVE IT.

21 **THE COURT:** WELL, HE BROUGHT THE CDS, DIDN'T HE?

22 **MR. MC LACHLAN:** NO, NO. OKAY. SO THERE'S SOME
23 CONFUSION HERE. THE MODEL IS COMPRISED OF A MOD FLOW
24 SOFTWARE. IT'S A STANDARD SOFTWARE USGS USES, AND IT
25 COULD BE USED BASIN TO BASIN. OKAY. IT'S LIKE ANY
26 PIECE OF SOFTWARE. WORD -- MICROSOFT WORD; RIGHT? YOU
27 OPEN MICROSOFT WORD. THERE'S NOTHING IN THERE IN TERMS
28 OF CONTENT.

1 THE ACTUAL MODEL FOR THIS BASIN IS A LARGE
2 SET OF DATA. THAT DATA GOES INTO THE BASE MODEL MOD
3 FLOW SOFTWARE. SO YOU'VE GOT TO HAVE THOSE DATA INPUT
4 FILES IN ORDER TO ACTUALLY RUN THE MODEL FOR THE
5 ANTELOPE VALLEY, AND THAT GIVES YOU THE OUTPUT FILES.

6 **THE COURT:** WELL, I UNDERSTAND THAT --

7 **MR. MC LACHLAN:** RIGHT.

8 **THE COURT:** BUT -- I UNDERSTAND WHAT THE MOD FLOW
9 MODEL IS GENERALLY. I'VE HEARD TESTIMONY ABOUT IT IN
10 THE PAST, BUT I'M WONDERING WHAT IT WAS THAT YOU WANTED
11 HIM TO BRING, PHYSICALLY TO BRING AT THE TIME OF THE
12 DEPOSITION.

13 **MR. MC LACHLAN:** THE INPUT AND OUTPUT FILES WHICH
14 ARE UNIQUE TO THE ANTELOPE VALLEY, AND THOSE HAD BEEN
15 PROPRIETARY --

16 **THE COURT:** WELL, WHAT DATA HE USED, IS THAT WHAT
17 YOU'RE SAYING?

18 **MR. MC LACHLAN:** RIGHT, EXACTLY. THE INPUT FILES.
19 AND THE OUTPUT FILES.

20 **THE COURT:** OKAY. NOW, THAT ULTIMATELY WENT TO
21 MR. UMSTOCK?

22 **MR. MC LACHLAN:** I DON'T KNOW. I -- HE'S NOT MY
23 EXPERT.

24 **THE COURT:** IS THAT RIGHT?

25 **MR. FIFE:** YES, YOUR HONOR. WE DID RECEIVE THIS
26 EVENTUALLY. AND, YOU KNOW, MR. DUNN COMMENTS ON THE
27 CHRONOLOGY THERE. THE E-MAIL EXCHANGE IS INCLUDED AS
28 EXHIBIT 5 TO THEIR OPPOSITION. YOU COULD SEE --

1 **THE COURT:** WHAT DOES HE NEED BEYOND WHAT HE GOT?

2 **MR. FIFE:** WELL, I DON'T KNOW. THAT'S ONE OF THE
3 POINTS, IS THAT HE GOT IT. HE EVENTUALLY GOT THE MODEL.
4 WE GOT IT TO HIM LATE LAST WEEK. THE -- WHAT WE GOT HAS
5 4 GIGABITS OF DATA LESS THAN WHAT THEY SAY THEY HAVE.
6 SO WE FIRST NEED TO WORK THAT OUT. AND YOU'VE HEARD
7 COMMENTARY ON THAT, THAT, OH, WE THINK THEY
8 MISCALCULATED OR SOMETHING LIKE THAT. WE NEED TO FIGURE
9 OUT WHAT THEY HAVE FIRST, FIND OUT WHETHER WE'VE GOT
10 EVERYTHING, AND THEN START LOOKING AT IT.

11 SO IT'S -- IT'S A PROCESS OF ANALYSIS.
12 IT'S NOT JUST YOU'VE GOT IT, NOW YOU'RE READY.

13 **THE COURT:** IT'S NOT GOING TO DO YOU ANY GOOD.
14 IT'S GOING TO DO YOUR EXPERT SOME GOOD.

15 **MR. FIFE:** CORRECT.

16 **THE COURT:** I MEAN, YOU'RE NOT A COMPUTER EXPERT
17 IN THAT REGARD; RIGHT?

18 **MR. FIFE:** NOT EVEN CLOSE.

19 **THE COURT:** NOR AM I. SO THE QUESTION THAT I HAVE
20 IS THIS: IT'S BEEN HOW LONG SINCE HE'S HAD THIS
21 INFORMATION?

22 **MR. FIFE:** ONE WORKING DAY.

23 **MR. DUNN:** HE HAD IT THURSDAY.

24 **MR. FIFE:** WELL, HE GOT IT ON THURSDAY. OKAY, TWO
25 WORKING DAYS.

26 **THE COURT:** WELL, WHEN DID YOU GET IT?

27 **MR. FIFE:** I GOT IT FRIDAY BEFORE LAST. AND WE
28 HAD OUR --

1 **THE COURT:** SO WHEN WAS THAT, THE 31ST?

2 **MR. FIFE:** YES, I THINK THE 31ST. WE GOT IT
3 FRIDAY.

4 **THE COURT:** SO ABOUT TEN DAYS AGO.

5 **MR. FIFE:** THE FOLLOWING MONDAY WE HAD OUR I.T.
6 PEOPLE DEAL WITH IT. THEY HAD TO COPY IT.

7 YOU KNOW, IT'S AN INTERESTING THING ABOUT
8 THE SEQUENCE. THEY JUSTIFY NOT BRINGING IT TO THE
9 DEPOSITION BECAUSE IT'S SO DIFFICULT TO COPY AND MANAGE,
10 BUT THEN WHEN THEY GIVE IT TO ME ON A FRIDAY, IF IT
11 TAKES FOUR BUSINESS DAYS TO GET IT TO NEW MEXICO, WELL,
12 THAT'S COMPLETELY UNREASONABLE. YOU KNOW, IT'S --

13 **THE COURT:** MR. FIFE, NOTHING'S EASY IN THIS
14 WORLD.

15 **MR. FIFE:** OKAY. I JUST WANT TO MAKE ONE POINT,
16 THOUGH.

17 **THE COURT:** WELL, BEFORE YOU MAKE YOUR POINT, LET
18 ME ASK THIS: WHAT HAVE YOU DONE, SINCE MR. UMSTOCK GOT
19 IT AND MADE THE REQUEST THAT HE NEEDED MORE INFORMATION,
20 TO GET THAT INFORMATION FOR HIM?

21 **MR. FIFE:** WELL, IT'S IN THE WEEKEND. WE -- WE
22 DID NOT DO ANYTHING ON SATURDAY AND SUNDAY.

23 **THE COURT:** OKAY. WHAT ARE YOU GOING TO DO TODAY
24 TO GET THAT INFORMATION? BECAUSE CLEARLY YOU WANT IT.

25 **MR. FIFE:** YES.

26 **THE COURT:** RIGHT?

27 **MR. FIFE:** SO I'D LIKE TO -- I'D LIKE TO GET AN
28 ANSWER FROM THEM AS TO WHAT I WAS SUPPOSED TO HAVE

1 RECEIVED. IF I ONLY GOT 13 AND A HALF GIGABITS OF
2 INFORMATION, IT SOUNDS LIKE THEY THINK MAYBE I DIDN'T
3 GET SOMETHING.

4 **THE COURT:** IT SOUNDS LIKE DR. WILLIAMS IS
5 PROBABLY THE PERSON THAT CAN ANSWER THAT QUESTION.

6 **MR. FIFE:** AND THAT'S THE -- AND THAT'S THE
7 QUESTION, THOUGH. YOU SEE FROM THE PAPERS WE FILED, OUR
8 RESPONSE TO THEIR OPPOSITION, WHERE WE PROVIDED PARTS OF
9 THE TRANSCRIPT, IT WAS MR. SCALMANINI THAT DID THE WORK
10 THAT'S MOST RELEVANT; SO I DON'T EVEN KNOW THAT IT'S
11 DR. WILLIAMS I NEED TO TALK TO.

12 **THE COURT:** IT IS DR. WILLIAMS YOU NEED TO TALK TO
13 BECAUSE IT'S HIS OPINION THAT IS BEING EXPRESSED AS A
14 RESULT OF HIS UTILIZATION AND DATA INTO THE MACHINE.

15 **MR. FIFE:** BUT AS HE TESTIFIED, HE DIDN'T DO
16 ANYTHING WITH THAT DATA. MR. SCALMANINI DID SOMETHING
17 AND GAVE IT TO HIM, AND HE DIDN'T QUESTION IT. HE
18 DIDN'T EVEN LOOK AT IT. HE JUST USED IT.

19 **THE COURT:** HE HAS A RIGHT TO DO THAT, I SUPPOSE.

20 HERE'S WHAT I AM THINKING: FIRST OF ALL,
21 IF I UNDERSTAND CORRECTLY, MR. DUNN, YOUR UTILIZATION IS
22 BASICALLY DEFENSIVE OF DR. WILLIAMS.

23 **MR. DUNN:** THAT'S CORRECT, YOUR HONOR.

24 **THE COURT:** OKAY. SO YOU DON'T NEED IT IN THE
25 FIRST INSTANCE.

26 **MR. DUNN:** THAT'S CORRECT. OUR -- OUR EXPECTATION
27 HAS BEEN THAT IN THIS PHASE FIVE TRIAL ON RETURN FLOWS
28 WE WOULD DETERMINE THE RIGHT TO RETURN FLOWS, NOT REDO

1 THE EVIDENCE THAT WAS DONE IN PHASE THREE AS TO THE
2 AMOUNT. THAT'S OUR POSITION.

3 **THE COURT:** AND YOU'RE ASKING THE COURT TO
4 CONSIDER THE DETERMINATION THAT WAS MADE AS TO RETURN
5 FLOW PERCENTAGES THAT THE COURT HEARD IN THE FIRST -- IN
6 THE THIRD PHASE OF THE TRIAL.

7 **MR. DUNN:** YES, YOUR HONOR.

8 **THE COURT:** ALL RIGHT. ALL RIGHT. THAT MEANS
9 YOU'RE GOING TO GO FORWARD WITH THE EVIDENCE. AS I'VE
10 INDICATED, YOU HAVE THE BURDEN OF PROOF. YOU'RE GOING
11 TO PRESENT THAT EVIDENCE --

12 **MR. DUNN:** YES.

13 **THE COURT:** -- WHEN WE REACH THAT POINT, AND I
14 PRESUME THAT'S GOING TO BE NEXT TUESDAY.

15 **MR. DUNN:** YES, YOUR HONOR.

16 **THE COURT:** HOPEFULLY WE'LL GET THERE.

17 IN THE MEANTIME, MR. FIFE AND
18 MR. MC LACHLAN, I WANT YOU TO ADVISE MR. DUNN OF
19 SPECIFICALLY WHAT YOU WANT -- AND THAT GOES FOR YOU TOO,
20 MR. ZIMMER -- WHAT YOU WANT WITH REGARD TO DR. WILLIAMS
21 IN THE EVENT HE IS CALLED TO TESTIFY. HE MAY OR MAY NOT
22 BE CALLED TO TESTIFY. I DON'T KNOW AT THIS POINT.

23 BUT I'M NOT GOING TO MAKE AN ORDER THAT HE
24 BE EXCLUDED. IT SOUNDS LIKE HE MAY BE A REBUTTAL
25 TESTIMONY WITNESS AT THIS POINT, AND WE'LL EVALUATE THAT
26 WHEN WE REACH THAT POINT. I'M GOING TO TAKE YOUR
27 REQUEST TO STRIKE HIS TESTIMONY OR TO EXCLUDE IT UNDER
28 SUBMISSION.

1 SO AT THIS POINT, MR. DUNN, YOU NEED TO BE
2 RESPONSIVE TO REQUESTS THAT THEY MAY MAKE FOR WHATEVER
3 DATA THAT THEY NEED TO HAVE IN ORDER TO GIVE IT TO THEIR
4 EXPERTS IN ORDER TO GET THEM PREPARED.

5 AND IN THE EVENT, FOR EXAMPLE, THAT YOU
6 DECIDE THAT YOU WANT TO CALL HIM IN REBUTTAL, AND
7 ASSUMING FOR A MOMENT THAT THE COURT'S GOING TO PERMIT
8 YOU TO DO THAT, IT MAY WELL BE THAT WE'RE GOING TO HAVE
9 TO PUT OVER HIS CROSS-EXAMINATION AND/OR OTHER WITNESSES
10 IN OPPOSITION TO HIS TESTIMONY TO ANOTHER DAY.

11 **MR. DUNN:** OF COURSE.

12 **THE COURT:** BUT I DON'T WANT TO STOP THIS PROCESS.
13 I WANT TO GO FORWARD AS WE'RE GOING. WE'LL HEAR THE
14 FEDERAL RESERVE RIGHT ISSUES, WE'RE GOING TO HEAR SOME
15 OTHER ISSUES CONCERNING RETURN FLOWS FROM OTHER PARTIES,
16 AND WE'RE GOING TO HEAR THE RETURN FLOW CLAIMS FROM THE
17 PUBLIC WATER COMMISSIONERS. AND PHELAN, LIKEWISE,
18 ISSUES WILL BE HEARD. SO THAT'S THE ORDER THAT I'M
19 GOING TO MAKE AT THIS POINT.

20 IT'S BEEN TWO HOURS NOW. I THINK WE SHOULD
21 TAKE A BREAK AT SOME POINT.

22 **MR. ZIMMER:** JUST AS A MATTER OF HOUSEKEEPING,
23 YOUR HONOR, I THINK MR. DUNN PROVIDED SOMETHING TO MADAM
24 CLERK IN TERMS OF THE PORTIONS OF TESTIMONY THEY WANT TO
25 RELY ON.

26 MR. DUNN, CAN WE GET A COPY OF THAT,
27 PLEASE?

28 **THE COURT:** WHAT HE JUST HANDED TO THE CLERK, AND

1 WHICH I SAW, IS WHAT HE POSTED ON FRIDAY. AND YOU'RE
2 WELCOME TO TAKE A LOOK AT THAT, BUT IT IS POSTED.

3 MR. DUNN: RIGHT.

4 THE COURT: IT'S MR. KUHS'S, ACTUALLY.

5 MR. KUHS: I THINK MR. ZIMMER, YOUR HONOR, IS
6 REFERRING TO THE BINDER OF EXHIBITS.

7 THE CLERK: (SPOKE SOTTO VOCE.)

8 THE COURT: WHAT'S THIS?

9 MR. DUNN: THAT'S AS ORDERED PREVIOUSLY BY THE
10 COURT.

11 THE COURT: THIS IS THE EARLIER TESTIMONY.

12 MR. DUNN: THE PRINTOUT.

13 THE COURT: I WAS LOOKING FOR THAT.

14 MR. ZIMMER: I THINK THAT WAS WHAT MR. KUHS AND I
15 WERE REQUESTING A COPY OF.

16 MR. KUHS: YES. WE'D LIKE, I GUESS, AT LEAST ONE
17 COPY FOR THE LANDOWNER GROUP SO THAT WE KNOW WHAT HAS
18 BEEN SUBMITTED TO THE COURT AND WE'VE GOTTEN THE CORRECT
19 COPY.

20 THE COURT: WELL, IT'S IDENTIFIED IN HIS PREVIOUS
21 REQUEST FOR JUDICIAL NOTICE THAT WAS FIRST FILED IN
22 MARCH, I THINK.

23 MR. DUNN: SOMETIME LAST YEAR, YES.

24 THE COURT: AND THEN THERE WAS -- IT WAS A
25 REITERATION OF THAT FILED IN JANUARY?

26 MR. ZIMMER: IT WAS A REQUEST AND SUPPLEMENTAL
27 REQUEST. I THINK IF WE COULD JUST BORROW THAT AND TAKE
28 IT TO KINKOS AND COPY IT. WE'RE NOT GOING TO ALTER IT,

1 MR. DUNN.

2 THE COURT: YOU MAY.

3 MR. DUNN: THAT'S FINE.

4 MR. ZIMMER: THAT WOULD BE EASY.

5 MR. DUNN: JUST SO THE COURT KNOWS, THE REASON WHY
6 WE DIDN'T BRING MULTIPLE COPIES IS, BECAUSE OF THE
7 COLOR, IT COST \$2,500 JUST FOR ONE SET.

8 THE COURT: WELL, HOPEFULLY KINKOS CAN DO IT
9 CHEAPER.

10 MR. DUNN: I HOPE.

11 THE COURT: ALL RIGHT. NOW, COULD I TAKE A
12 RECESS? OKAY. LET'S TAKE ABOUT A 15-MINUTE RECESS AND
13 WE WILL RESUME.

14

15 (RECESS.)

16

17 THE COURT: ALL RIGHT. I THINK THERE WAS ONE
18 ADDITIONAL MOTION IN LIMINE WE DIDN'T DO. THAT'S
19 MR. ZIMMER'S MOTION TO EXCLUDE --

20 MR. ZIMMER: ARE WE BACK ON THE RECORD, YOUR
21 HONOR?

22 THE COURT: YES -- TO EXCLUDE HEARSAY PERTAINING
23 TO ONE OF THE EXPERTS.

24 MR. ZIMMER: ACTUALLY THERE WERE TWO, BUT JUST ON
25 THAT ONE, YOUR HONOR, I SUGGEST WE DEFER THAT TO THE
26 TIME OF ACTUAL TESTIMONY. MR. DUNN CITED THE COLEMAN
27 CASE, WHICH STANDS FOR THE SAME PROPOSITION AS THE
28 CONTINENTAL CASE. BOTH CASES STAND FOR THE PROPOSITION

1 THAT AN EXPERT MAY RELY ON INADMISSIBLE HEARSAY BUT IT
2 MAY NOT INTRODUCE THE INADMISSIBLE HEARSAY. SO I
3 SUGGEST WE JUST WAIT AND SEE WHAT --

4 **THE COURT:** I THINK THAT THAT'S WHAT WE'VE BEEN
5 RULING ON THE LAST FIVE YEARS AT LEAST. IS THAT YOUR
6 RECOLLECTION?

7 **MR. ZIMMER:** I THINK SO. SINCE WE'RE IN A NEW
8 PHASE OF TRIAL, WE RENEWED IT. BUT THERE WAS ONE OTHER
9 MOTION, YOUR HONOR. I'M NOT SURE HOW I GET TO BE
10 SPOKESMAN ON THIS. THIS IS A PHELAN ISSUE.

11 **THE COURT:** WELL, YOU EXPRESSED IT AS AN OBJECTION
12 TO INTRODUCTION OF EVIDENCE ON AN UNSUPPORTED LEGAL
13 THEORY.

14
15 (REPORTER'S INTERRUPTION.)

16
17 **THE COURT:** ALL RIGHT. WANT TO USE THE PODIUM?
18 IT FEELS LIKE WE'RE IN FEDERAL COURT HERE.

19 **MR. ZIMMER:** I'LL MAKE THIS BRIEF, YOUR HONOR. I
20 DON'T KNOW HOW I GOT TO BE THE SPOKESPERSON ON THIS
21 ISSUE OTHER THAN THE FACT THAT MR. MILIBAND AND I HAVE
22 DISCUSSED IT.

23 I THINK THE CONCEPT WAS TO TRY AND GET IT
24 TEED UP IN FRONT OF THE COURT ON A LEGAL BASIS, NOT TO
25 DO A MOTION FOR SUMMARY JUDGMENT. I THINK THERE'S NO
26 DISPUTE ON WHAT THE FACTS ARE. THE FACTS ARE THAT WE
27 DETERMINED AN AREA OF ADJUDICATION ON THE EAST SIDE OF
28 THE BASIN. THAT ADJUDICATION LINE ESSENTIALLY GOES

1 STRAIGHT DOWN ON THE BORDER OF SAN BERNARDINO COUNTY.

2 AND THE -- THE BASIN, ACCORDING TO D.W.R.,
3 EXTENDS TO THE EAST BEYOND OUR AREA OF ADJUDICATION
4 BOUNDARY, SAYING THAT THAT'S THE SAME BASIN. PHELAN HAS
5 ONE WELL, WELL 14, WHICH IS ON THE WEST SIDE OF THE
6 COUNTY LINE, AND THEY PUMP WATER OUT OF THAT WELL TO THE
7 EAST SIDE OF THE COUNTY LINE. THEY USE THAT WATER OVER
8 THE SAME GROUND WATER BASIN THAT UNDERLIES THE AREA OF
9 ADJUDICATION.

10 SO AS I UNDERSTAND THE LEGAL QUESTION, THE
11 LEGAL QUESTION IS WHETHER YOU CAN PUMP NATIVE WATER AND
12 SOMEHOW OBTAIN A GROUND WATER RIGHT AS A RESULT OF
13 PUMPING THAT NATIVE WATER. AND I'M NOT AWARE OF ANY
14 LEGAL AUTHORITY THAT STANDS FOR A PROPOSITION THAT THAT
15 GIVES YOU SOME KIND OF A GROUND WATER RIGHT OR RIGHT TO
16 PUMP.

17 WE SERVED DISCOVERY. I'M JUST TRYING TO
18 FIND OUT WHETHER WE'RE MISSING SOMETHING ON THAT ISSUE,
19 WHETHER THERE IS SOME CASE LAW OUT THERE THAT INDICATED
20 THAT. NO OTHER PARTY OTHER THAN PHELAN INDICATED THAT
21 THEY WERE CLAIMING A RIGHT TO RETURN FLOW FROM NATIVE
22 WATER.

23 NOW, I AGREE THAT RETURN FLOWS ARE TAKEN
24 INTO CONSIDERATION, OR SHOULD BE, IN THE DETERMINATION
25 OF SAFE YIELD BECAUSE THEY AFFECT WHAT THE SAFE YIELD
26 IS, BUT WE HAVEN'T SEEN ANY LAW THAT INDICATES THAT THAT
27 SOMEHOW CREATES A GROUND WATER, RATHER, RIGHT, BUT I
28 LEAVE THAT TO MR. MILIBAND. AND WE'VE DISTINGUISHED THE

1 CASES THAT HE CITED.

2 **THE COURT:** ALL RIGHT.

3 **MR. MILIBAND:** GOOD MORNING, YOUR HONOR.

4 WES MILIBAND, APPEARING FOR PHELAN PINON HILLS COMMUNITY
5 SERVICES DISTRICT. JUST AS A MATTER OF FILINGS, I HAD
6 SUBMITTED A SURREPLY ON FRIDAY AFTERNOON. I DO HAVE
7 HARD COPIES AVAILABLE IF YOUR HONOR DID NOT SEE THAT.

8 **THE COURT:** I'VE READ IT.

9 **MR. MILIBAND:** BUT YOUR HONOR DID --

10 **THE COURT:** I DON'T HAVE A COPY OF IT BUT I DID
11 READ IT.

12 **MR. MILIBAND:** THANK YOU, YOUR HONOR. I DO HAVE A
13 COPY IF THE COURT WOULD LIKE ONE. JUST PROCEDURALLY, AS
14 I MENTIONED IN THE OPPOSITION, JUST A MOTION IN LIMINE
15 ITSELF IS NOT APPROPRIATE. MR. ZIMMER AND I HAVE
16 DISCUSSED THAT.

17 HE'S HAD AMPLE OPPORTUNITY TO ADDRESS THIS
18 THROUGH A MOTION FOR SUMMARY ADJUDICATION OR A SIMILAR
19 PROPER MEANS. WITHOUT WAIVING THAT PROCEDURAL DEFECT,
20 TO ENGAGE IN SOME OF THE SUBSTANTIVE TALK AND THE
21 MERITS, WE'RE NOT CONTENDING THAT THIS IS A GROUND
22 WATERWAY. THERE IS WELL-SETTLED LAW UNDER CALIFORNIA
23 LAW AS TO WHAT IS A GROUND WATERWAY. WHETHER IT'S
24 OVERLYING, APPROPRIATIVE, PRESCRIPTIVE, PUEBLO RIGHT,
25 THAT'S BEEN SETTLED.

26 WHAT'S ALSO SETTLED IS THE 1928
27 CONSTITUTIONAL AMENDMENT ABOUT WHAT THIS COURT IS WELL
28 AWARE OF FOR TRYING TO FASHION A PHYSICAL SOLUTION THAT

1 LOOKS AT SPECIFIC FACTS AND CIRCUMSTANCES TO COME UP
2 WITH WHAT IS, IN THE COURT'S OPINION, APPROPRIATE.

3 AND AS THE COURT HAS RECOGNIZED BEFORE AS
4 IT RELATES TO PHELAN, TO SOME EXTENT THERE IS A
5 UNIQUENESS, OR MIGHT BE A UNIQUENESS. THAT'S WHAT WE'RE
6 TRYING TO BRING TO LIGHT NOW. AND IT ALL STARTED WITH
7 OUR CROSS-COMPLAINT FILED BY MY PREDECESSOR SUSAN TRAGER
8 OVER FIVE YEARS AGO, INDICATING THROUGH THE SIXTH CAUSE
9 OF ACTION THE RIGHT OR REALLY DECLARATORY RELIEF CAUSE
10 OF ACTION SEEKING THE RIGHT TO RECAPTURE RETURN FLOW.

11 IRONICALLY BOLTHOUSE HAS PLED THE SAME
12 THING ALSO THROUGH THE SIXTH CAUSE OF ACTION, BUT IT'S
13 MORE OF AN ASIDE NOTE, BUT THE FACT IS WE HAVE PUT THIS
14 OUT THERE FOR FIVE YEARS NOW, LOOKING FOR THE TIME TO DO
15 IT. THE COURT INDICATED PHASE FIVE WOULD BE THAT
16 OPPORTUNITY. AND NOW WE'RE HAVING TO DEAL WITH THE
17 LEGAL ISSUE THAT BOLTHOUSE HAS JUST NOW DECIDED TO TRY
18 TO BRING UP BEFORE THE COURT.

19 SO WE HAVE FILED AND LAUNCHED WITH THE
20 COURT SOME KEY CASE AUTHORITIES THAT DO ADDRESS THIS.
21 AND BECAUSE OF THE COURT'S DISCRETIONARY POWERS AS A
22 COURT OF EQUITY AND SOME OF THE AUTHORITIES THAT I CITED
23 WITHIN THE OPPOSITION, THE COURT CAN LOOK TO THOSE
24 AUTHORITIES, STARTING WITH THE U.S. SUPREME COURT CASE
25 FROM THREE YEARS AGO, THE STATE OF MONTANA V. THE STATE
26 OF WYOMING.

27 THAT HAS CALIFORNIA'S FINGERPRINTS WRITTEN
28 ALL OVER IT, WITH NOT ONLY THE SPECIAL MASTER BEING A

1 STANFORD LAW PROFESSOR, BUT THE COURT ALSO CITED TO
2 MR. WIEL'S MATERIALS. AND MR. WIEL'S, W-I-E-L, IS ONE
3 OF THE FOREMOST TREATISES IN CALIFORNIA.

4 WHAT WAS SAID IN THAT CASE IS THAT THE LAW
5 OF RECAPTURE OR THE DOCTRINE OF RECAPTURE, PARTICULARLY
6 FOR APPROPRIATORS, IS UNCLEAR. THIS IS THAT TIME AND
7 THIS IS THAT OPPORTUNITY, WITH THE UNIQUE PARTY IN THIS
8 CASE, TO ADDRESS THAT. AND THERE ARE OTHER AUTHORITIES
9 FOR IT.

10 MOJAVE SOMEWHAT KNOCKED ON THE DOOR OF THE
11 ISSUE BUT NEVER REALLY HAD TO DEAL WITH IT FULLY BECAUSE
12 THERE'S STIPULATED JUDGMENT. SO OUR UNIQUENESS ARISES
13 FROM DIFFERENT, REALLY, POTENTIAL FORMS OF LIABILITY.

14 THERE ARE PARTIES IN THIS CASE THAT HAVE
15 ALLEGED TAKINGS OR INVERSE CONDEMNATION AGAINST MY
16 CLIENT. AS A RESULT OF THAT, WHAT THIS RETURN FLOW
17 RIGHT WOULD DO IS HELP OFFSET ANY LIABILITY THAT ARISES
18 FROM THAT, OR EVEN TO THE POTENTIAL EXPORT PROVISION
19 THAT WOULD LIKELY BE IN A PHYSICAL SOLUTION OR IN -- IN
20 THE JUDGMENT.

21 **THE COURT:** YES. WELL, MR. MILIBAND, I'M
22 OBVIOUSLY NOT GOING TO DECIDE THE ISSUE ON A MOTION IN
23 LIMINE. AND TO THE EXTENT THAT A PARTY OBJECTS TO THE
24 OFFER OF EVIDENCE, I'LL RULE ON THE OBJECTION. BUT I
25 THINK THAT THERE IS A VERY INTERESTING LEGAL ISSUE THAT
26 ARISES AS A RESULT OF THE PUMPING THAT YOUR CLIENT DOES.

27 IT'S PARTICULARLY INTERESTING BECAUSE THE
28 BASIN EXTENDS INTO MOJAVE COUNTY. AND MOJAVE COUNTY HAD

1 ITS OWN ADJUDICATION. AND ONE OF THE REASONS WHY I SET
2 THE BOUNDARY WHERE I DID FOR JURISDICTIONAL BASES WAS
3 BECAUSE I DIDN'T WANT TO INTRUDE ON THE JUDGMENT IN
4 MOJAVE, WHICH IS -- IS EXTANT AS A JUDGMENT IN EQUITY,
5 AS I UNDERSTAND IT. AND SO I WANTED TO MAKE SURE THAT I
6 DIDN'T CONFLICT WITH MOJAVE AND THE COURT IN THAT CASE.

7 SO I'M NOT SURE WHERE THIS IS GOING TO GO.
8 I KNOW THAT YOU'RE PUMPING IN THE ANTELOPE VALLEY, IN
9 APPARENTLY LOS ANGELES COUNTY, AND YOU ARE TAKING THE
10 WATER INTO MOJAVE COUNTY, SO THAT THE WATER IS THEN
11 LEAVING THE JURISDICTION, SO TO SPEAK. AND I'M NOT SURE
12 WHAT THE EFFECT OF THAT IS.

13 THERE ARE LOTS OF LEGAL ISSUES HERE THAT
14 ARE GOING TO HAVE TO BE DECIDED, AND I PROMISE YOU I
15 WILL DECIDE THEM, BUT NOT TILL I HEAR THE EVIDENCE.

16 **MR. MILIBAND:** THANK YOU, YOUR HONOR.

17 **THE COURT:** AND MORE.

18 **MR. MILIBAND:** I APPRECIATE THAT. AND JUST FOR
19 CLARITY OF RECORD, THEN, IS THAT THE COURT'S RULING OF
20 DENYING THE MOTION IN LIMINE AT THIS POINT?

21 **THE COURT:** YES. AND IF YOU'D LIKE TO HAND UP
22 YOUR COPY OF YOUR FILING, I'M HAPPY TO HAVE THAT TOO.

23 **MR. MILIBAND:** WELL, THEN, MAY I APPROACH, YOUR
24 HONOR?

25 **THE COURT:** YES.

26 **MR. MILIBAND:** THANK YOU.

27 **MR. ZIMMER:** YOUR HONOR, THAT'S SUBJECT TO MAKING
28 A MOTION TO EXCLUDE THE TESTIMONY AT THE TIME OF TRIAL?

1 **THE COURT:** YES. OBVIOUSLY WHATEVER MOTIONS
2 ANYONE WISHES TO MAKE AT THE CONCLUSION OR ANY OTHER
3 TIME DURING THE CASE, I'LL HEAR IT.

4 **MR. MILIBAND:** (INDICATING.)

5 **THE COURT:** THANK YOU.

6 ALL RIGHT. I THINK THAT TAKES CARE OF THE
7 MOTIONS IN LIMINE, WHICH MEANS THAT IT'S TIME FOR
8 HEARING ON THE FEDERAL RESERVE RIGHT CLAIMS. SO HOW DO
9 YOU WISH TO PROCEED?

10 **MR. LEININGER:** GOOD MORNING, YOUR HONOR.
11 LEE LEININGER FOR THE UNITED STATES. YOU MENTIONED
12 EARLIER POTENTIAL FOR OPENING -- AT LEAST OPENING
13 PRESENTATIONS, OPENING ARGUMENTS. AND I DIDN'T KNOW IF
14 YOU WANTED US TO PROCEED ALONG THOSE LINES OR JUMP RIGHT
15 TO PRESENTING WITNESSES. I JUST HAVE A FEW POINTS TO
16 MAKE IN MY OPENING.

17 **THE COURT:** WELL, IF YOU WISH TO MAKE AN OPENING
18 STATEMENT, YOU MAY. THAT'S ALL I WAS INDICATING. I WAS
19 NOT GOING TO PRECLUDE THAT. I THINK THAT THE ISSUES ARE
20 PRETTY OBVIOUS, GIVEN THE PRIOR MOTIONS THAT I'VE HEARD
21 IN THIS CASE. AND I THINK I KNOW WHERE YOU'RE ALL
22 GOING. BUT I'M ALWAYS INTERESTED IN LAWYERS' ARGUMENTS.

23 **MR. LEININGER:** WELL, THANK YOU, YOUR HONOR.
24 THEN -- AND I DON'T KNOW IF OPPOSING COUNSEL ALSO WISHES
25 TO MAKE AN OPENING STATEMENT OR HAS ANY OBJECTION TO MY
26 MAKING COMMENTS.

27 **MR. FIFE:** YOUR HONOR, OF COURSE NO OBJECTION.
28 BEFORE WE GET INTO ALL THIS, WE WANT TO ALERT YOU TO A

1 WITNESS ISSUE WITH REGARD TO THE UNITED STATES
2 WITNESSES. THEY HAD DESIGNATED MS. JUNE OBERDORFER AS
3 AN EXPERT WITNESS. ON FRIDAY THEY REVISED THEIR WITNESS
4 LIST AND REMOVED HER. SHE WAS DEPOSED, ALL THAT KIND OF
5 STUFF. SO IT IS -- IT WILL BE OUR INTENTION TO SUBPOENA
6 HER.

7 NOW, WE DIDN'T FIND OUT ABOUT THIS UNTIL
8 FRIDAY; SO WE HAVEN'T HAD TIME TO ISSUE THE SUBPOENA
9 YET. SO I DOUBT IF WE'RE GOING TO BE ABLE TO GET HER IN
10 HERE BY TOMORROW. SO WE WANTED TO RAISE THIS ISSUE
11 BEFORE YOU.

12 **THE COURT:** DO YOUR BEST.

13 **MR. LEININGER:** YOUR HONOR, IF I MAY ADDRESS THAT
14 ISSUE FOR ONE MOMENT. DR. OBERDORFER HAS TESTIFIED IN
15 PREVIOUS PHASES OF THE TRIAL HERE AS AN EXPERT IN
16 HYDROGEOLOGY, AND THAT IS NOT HOW WE HAD RETAINED HER
17 FOR THIS PHASE OF TRIAL. SHE WAS RETAINED AND SHE WAS
18 IDENTIFIED AS AN EXPERT FOR THIS PHASE OF TRIAL
19 BASICALLY ON HER EXPERTISE IN REMOTE SENSING.

20 SO SHE WAS TASKED WITH EXAMINING PHOTOS TO
21 EXAMINE THE AMOUNT OF AGRICULTURAL PUMPAGE AND USAGE
22 THAT WAS TAKEN OUT OF PRODUCTION AS EDWARDS AIR FORCE
23 BASE AND PLANT 42 WERE FORMED. THAT'S THE EXTENT AND
24 THE SCOPE OF HER TESTIMONY HERE.

25 WE RECEIVED A PRETRIAL BRIEF -- I BELIEVE
26 IT WAS MR. KUHS'S PRETRIAL BRIEF -- WHICH REFERENCED A
27 NUMBER OF CONCLUSIONS THAT DR. OBERDORFER HAD MADE
28 EARLIER WITH REGARD TO GROUND WATER FLOW. WE'RE NOT

1 PRODUCING HER FOR THAT REASON. WE'RE NOT PRODUCING
2 HER -- AND SHE WAS NEVER IDENTIFIED FOR THAT REASON,
3 EVEN IN OUR CASE IN CHIEF.

4 WE HAVE NOW MADE THE DECISION TO TRY TO
5 STREAMLINE THIS CASE AND JUST HAVE HER AVAILABLE FOR
6 REBUTTAL TESTIMONY, BUT WE WILL OBJECT TO THEM CALLING
7 OUR EXPERT FOR PURPOSES THAT SHE WAS NOT IDENTIFIED
8 FOR -- IN THEIR CASE IN CHIEF.

9 SO, YOUR HONOR, WITH THAT I THINK I WOULD
10 JUST LIKE TO BEGIN BY IDENTIFYING OUR TRIAL TEAM, WITH
11 THE COURT'S PERMISSION.

12 **THE COURT:** YES.

13 **MR. LEININGER:** WE HAVE MR. DUBOIS, ALSO FROM THE
14 DEPARTMENT OF JUSTICE. MR. ED OYARZO IS AIR FORCE
15 COUNSEL, AND MR. OYARZO WILL BE HELPING WITH
16 LOGISTICALLY TAKING EXHIBITS, PRESENTING THEM TO THE
17 COURT FOR MARKING, AND THEN PRESENTING THEM ALSO TO THE
18 WITNESS FOR THE WITNESS'S EXAMINATION.

19 YOU HAVE IN FRONT OF YOU -- I BELIEVE IT'S
20 THAT BLUE BINDER RIGHT THERE. YOU HAVE A THREE-RING
21 BINDER OF EXHIBITS THAT WE WILL BE PRESENTING HERE.
22 THOSE EXHIBITS ARE IN ORDER THAT THEY WERE IDENTIFIED ON
23 THE COURT'S WEB PAGE IN WHICH WE HAD FILED OUR EXHIBIT
24 LIST.

25 WE'RE ACTUALLY GOING TO BE GOING OUT OF
26 ORDER AND WE ARE NOT -- FOR ALL COUNSEL, WE'RE NOT GOING
27 TO BE PRESENTING INTO THE RECORD ALL THE EXHIBITS THAT
28 HAVE BEEN IDENTIFIED. WE DECIDED TO TRY TO STREAMLINE

1 THIS PRESENTATION. SO WE'LL BE IDENTIFYING THE EXHIBITS
2 AS WE GO ALONG.

3 AND THEN THE ORDER OF PRESENTATION, YOUR
4 HONOR, WILL BE -- THERE WILL BE SIX WITNESSES. WE'RE
5 GOING TO START WITH HISTORIES OF BOTH EDWARDS AIR FORCE
6 BASE AND PLANT 42. WE HAVE TWO HISTORIANS HERE,
7 MR. HERBERT AND DR. HALLION, AND WE'LL BEGIN WITH THEIR
8 TESTIMONY, THEN WILL BE FOLLOWED BY GENERAL BREWER, WHO
9 IS THE COMMANDER OF EDWARDS AIR FORCE BASE.

10 AND MR. JUDKINS IS A CIVIL ENGINEER AT
11 EDWARDS AIR FORCE BASE. THAT WILL CONCLUDE EDWARDS AIR
12 FORCE BASE. AND WE'RE GOING TO PROCEED WITH LIEUTENANT
13 COLONEL CUMMINS AT -- HE'S COMMANDER WHO'S IN CHARGE AT
14 AIR FORCE PLANT 42. AND THEN WE'LL END WITH MR. SCOTT,
15 AND HE'S THE ENGINEER AT -- AT LEAST COVERING AIR FORCE
16 PLANT 42.

17 **THE COURT:** I WOULD JUST HAVE A QUESTION FOR YOU.
18 A LOT OF THE FACTS THAT YOU'RE GOING TO PRESENT
19 TESTIMONY CONCERNING ARE REALLY NOT IN DISPUTE YET OR
20 NOT SUBJECT TO DISPUTE BECAUSE THEY'RE FACTUAL, SUCH AS
21 EXECUTIVE ORDERS AND THE LIKE.

22 HAVE YOU HAD AN OPPORTUNITY TO DISCUSS
23 POTENTIAL STIPULATIONS AS TO THOSE UNDISPUTED FACTS?
24 I -- DURING THE HEARING ON THE MOTIONS, THERE REALLY
25 WERE NO DISPUTED FACTS.

26 **MR. LEININGER:** SURE.

27 **THE COURT:** EXCEPT FOR THE NUMBER OF EXECUTIVE
28 ORDERS THAT THEY RECALL AS THEIR DEBATE.

1 **MR. LEININGER:** YOUR HONOR, THESE DOCUMENTS -- NOT
2 ONLY ARE THERE NO DISPUTED FACTS. THESE DOCUMENTS
3 PRETTY MUCH SPEAK FOR THEMSELVES. BUT THEIR
4 INTERPRETATION IS IN DISPUTE.

5 WE HAD -- WE HAD APPROACHED OPPOSING
6 COUNSEL WITH REGARD TO STIPULATIONS. WE SAW THEIR
7 MOTIONS IN LIMINE AND THEIR OPENING BRIEFS AND PRETRIAL
8 BRIEFS AND DECIDED THAT WE NEED TO CREATE THIS RECORD.
9 WE NEED TO MAKE SURE EVERYTHING IS IN THE RECORD, AND WE
10 NEED TO HAVE OUR WITNESSES ADDRESS ALL OF THESE FACTUAL
11 DOCUMENTS.

12 I DON'T THINK IT WILL BE A LABORIOUS
13 PROCESS. I THINK WE CAN DO THIS FAIRLY QUICKLY. WE
14 JUST WANT TO HAVE A COMPLETE RECORD, YOUR HONOR.

15 **THE COURT:** ALL RIGHT.

16 **MR. LEININGER:** THANK YOU. SO WITH THE COURT'S
17 PERMISSION, I'LL JUST MAKE A COUPLE OF STATEMENTS IN
18 OPENING AND ONLY TWO POINTS, YOUR HONOR, AS WE GO
19 THROUGH THIS TRIAL, TWO LEGAL POINTS AND ONE FACTUAL
20 POINT.

21 BEYOND WHAT WAS ADDRESSED IN BOTH OUR
22 RESPONSES TO MOTION IN LIMINE AND PRETRIAL BRIEF, THE
23 LEGAL POINT WE HAD MADE IN THIS BRIEFING IS THAT UNLIKE
24 A FEDERAL RESERVE BOND RATE FOR A NATURAL FOREST, SAY,
25 WHICH IS THE U.S. V. NEW MEXICO CASE WHERE, IN THAT
26 CASE, THE UNITED STATES SUPREME COURT LOOKED TO THE
27 UNDERLYING ORGANIC DOCUMENTS TO MAKE A DECISION OF WHAT
28 IS THE SCOPE OF THE FEDERAL RESERVE WATER RIGHT.

1 THE ISSUE IN THAT CASE WAS COULD THE UNITED
2 STATES HAVE A FEDERAL RESERVE WATER RIGHT FOR STOCK
3 WATERING AND OTHER MINOR PURPOSES ON -- ON THE FOREST
4 LANDS? AND THE DECISION IN THAT CASE WAS THE SUPREME
5 COURT LOOKED AT THE ORGANIC UNDERLYING DOCUMENTS, THE
6 LEGISLATION, AND DETERMINED THAT, NO, THEY SAY NOTHING
7 ABOUT STOCK WATERING HERE.

8 SO THE PURPOSES FOR THE NATIONAL FOREST WAS
9 TO CREATE A FAVORABLE FLOW OF WATER TO BASICALLY SUPPORT
10 THE FOREST, THE TREES, AND TO ALSO GET THAT WATER DOWN
11 TO MUNICIPALITIES WHERE THEY COULD USE IT OUTSIDE THE
12 FOREST.

13 IT DIDN'T INCLUDE STOCK WATERING. AND
14 THAT'S WHERE THE TERM "SECONDARY PURPOSES" CAME FROM.
15 SO THE DISTINCTION HERE IS -- THE DIFFERENCE HERE IS WE
16 DON'T HAVE THAT DISTINCTION.

17 FOR MILITARY PURPOSES, YOUR HONOR, IT'S --
18 IT NEEDS TO BE BROADLY INTERPRETED. WE'RE GOING TO GO
19 THROUGH BOTH THE VARIOUS USES OF TERMS RELATING TO
20 MILITARY PURPOSES TO MAKE THE ARGUMENT THAT THERE IS NO
21 DISTINCTION, THAT WHAT THESE LANDS WERE RESERVED FOR,
22 WHAT THESE LANDS WERE USED FOR, WHAT THESE LANDS WILL BE
23 USED FOR IN THE FUTURE ARE MILITARY PURPOSES.

24 SO THAT'S THE ONE LEGAL POINT. THE
25 OTHER -- THE SECOND LEGAL POINT IS, I BELIEVE IT WAS
26 MR. KUHS THAT RAISED CALIFORNIA V. UNITED STATES WITH
27 REGARD TO RIPARIAN RIGHTS. THIS ISN'T A TRIAL ABOUT
28 RIPARIAN RIGHTS, YOUR HONOR. THIS IS A TRIAL ABOUT OUR

1 FEDERAL RESERVE WATER RIGHT. AND IT'S DISTINCT. SO
2 WE'RE NOT GOING TO BE GIVING EVIDENCE WITH REGARD TO OUR
3 OVERLYING RIPARIAN INTEREST, EVEN THOUGH WE ARE, I
4 BELIEVE, THE LARGEST LANDOWNER OUT THERE, 300,000 ACRES.

5 THE LAST POINT, YOUR HONOR, IS A FACTUAL
6 ONE. FOR QUANTIFYING A FEDERAL RESERVE WATER RIGHT,
7 THAT WATER RIGHT -- AND THAT'S -- THIS IS KEY. THIS IS
8 CRITICAL IN THIS ANALYSIS, YOUR HONOR, IS TO TRY TO
9 DETERMINE HOW MUCH WATER IS GOING TO BE NECESSARY IN THE
10 FUTURE FOR MILITARY PURPOSES.

11 SO WE'RE GOING TO PRESENT TODAY HOW EDWARDS
12 AIR FORCE BASE HAS CHANGED, HOW IT HAS EVOLVED. WE'RE
13 GOING TO PRESENT THE UNIQUE CHARACTERISTICS OF EDWARDS
14 AIR FORCE BASE. AND BASED UPON THOSE IS OUR CONCLUSION
15 OF A REASONABLE PROGNOSTICATION OF HOW MUCH WATER THIS
16 FACILITY IS GOING TO NEED IN THE FUTURE. NOT TEN YEARS
17 IN THE FUTURE, NOT FIFTY YEARS IN THE FUTURE. THIS IS
18 DETERMINED -- THEIR WATER RIGHTS IN PERPETUITY.

19 SO WITH THOSE POINTS, YOUR HONOR, I'LL CALL
20 MY FIRST WITNESS.

21 **THE COURT:** ALL RIGHT. YOU MAY.

22 **MR. KUHS:** YOUR HONOR, IF I WOULD BE ALLOWED.

23 **THE COURT:** WOULD YOU LIKE TO MAKE IT NOW?

24 **MR. KUHS:** BRIEFLY, YOUR HONOR.

25 **THE COURT:** SURE.

26 **MR. KUHS:** I'LL ADDRESS THE LAST POINT, WHICH IS
27 QUANTIFICATION OF THE RIGHT. AND I THINK YOUR HONOR IS
28 GOING TO HEAR A PRETTY REMARKABLE REQUEST FOR WATER FROM

1 AN AGENCY WHICH HASN'T BEEN USING ANYWHERE NEAR THE
2 QUANTITY OF WATER THAT THEY'RE ASKING THIS COURT TO
3 AWARD, ON THE MAGNITUDE OF 400 PERCENT GREATER THAN
4 THEIR CURRENT DEMAND IN AN OVERDRAFT BASIN.

5 PLANT 42 AT AN AVERAGE WATER USE, ACCORDING
6 TO THE RECORDS, AND YOU'LL HEAR EVIDENCE OF THIS, IN '11
7 AND '12, 253 ACRE-FEET OF WATER. EDWARDS AIR FORCE BASE
8 HAD AN AVERAGE FOR '11 AND '12 OF 2,700 ACRE-FEET OF
9 WATER.

10 WHAT THEY'RE ASKING THIS COURT FOR TODAY IS
11 AN AWARD FOR EDWARDS AIR FORCE BASE OF 10,717 ACRE-FEET
12 OF WATER. THAT'S A 400 PERCENT INCREASE OVER THEIR
13 CURRENT USE. AS TO PLANT 42, THEY'RE ASKING THIS COURT
14 TO AWARD THEM 966 ACRE-FEET OF WATER, AN INCREASE OF
15 ABOUT 400 PERCENT OVER THEIR CURRENT USE.

16 HOW DOES EDWARDS AIR FORCE BASE GET TO THAT
17 NUMBER? THE NUMBER HAS TWO COMPONENTS. ONE IS THEIR
18 CURRENT WATER USE AVERAGED OVER A PERIOD OF TIME OF TEN
19 YEARS, TWELVE YEARS MULTIPLIED BY 30 PERCENT BECAUSE OF
20 ENGINEERING JUDGMENT.

21 AND THEN THE SECOND COMPONENT OF THAT, IT
22 IS WHAT I CALL A FICTIONAL FUTURE FIGHTING SQUADRON.
23 THEY HYPOTHECATED THAT AT SOME TIME IN THE FUTURE THERE
24 WAS ENOUGH CAPACITY IN THIS BASE TO WARRANT ANOTHER
25 SQUADRON OF 72 AIRCRAFT, AND THAT IF THOSE AIRCRAFT WERE
26 ASSIGNED, THEY WOULD HAVE DEMAND OF ROUGHLY 5,000
27 ACRE-FEET OF WATER FROM THIS BASIN.

28 THE EXPERTS THAT THEY IDENTIFY THAT WERE

1 DEPOSED SAID THERE WAS NO CONCRETE PLANS, THERE WERE NO
2 APPROPRIATIONS. THIS WAS SIMPLY AN IDEA OF HOW TO, IN
3 ESSENCE, SUBSTANTIALLY INCREASE THEIR DEMAND FOR WATER
4 IN THE BASIN ABSENT THEIR CURRENT REASONABLE BENEFICIAL
5 USE. I'D LIKE YOU TO KEEP THOSE FACTS AND FIGURES IN
6 MIND AS YOU HEAR THE EVIDENCE TODAY.

7 THE SECOND COMPONENT OBVIOUSLY RELATES TO,
8 SIMPLY, MY CLIENT TEJON. WE SUBMITTED A BRIEF ON THAT
9 ISSUE. THE SUM AND SUBSTANCE OF IT IS WE'RE ENTITLED
10 PER DATES IN U.S. TITLE TO THESE LANDS. WE HAVE
11 DISTRICT COURT OPINION WHICH WAS FINAL AS BETWEEN TEJON
12 AND THE UNITED STATES. SO WHATEVER THEIR RIGHTS MIGHT
13 BE IN THE BASIN, THEY CAN'T INFRINGE ON, THEY CAN'T
14 SUBORDINATE, THEY CAN'T IMPAIR THE RIGHTS OF TEJON
15 RANCH.

16 **THE COURT:** ALL RIGHT. I'LL JUST REMIND COUNSEL
17 AT ANY TIME THAT YOU OBJECT OR MAKE ANY PRESENTATION,
18 MAKE CERTAIN TO IDENTIFY YOURSELF FOR THE COURT REPORTER
19 ON EACH OCCASION. OKAY?

20 ALL RIGHT. GO AHEAD. CALL YOUR WITNESS.

21 **MR. LEININGER:** THANK YOU, YOUR HONOR. UNITED
22 STATES CALLS RAND F. HERBERT.

23 **THE COURT:** THE CLERK WILL SWEAR THE WITNESS.

24 **THE CLERK:** PLEASE RAISE YOUR RIGHT HAND.

25 YOU DO SOLEMNLY STATE THAT THE TESTIMONY
26 YOU ARE ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE
27 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
28 NOTHING BUT THE TRUTH, SO HELP YOU GOD?

1 **THE WITNESS:** I DO.

2 **THE CLERK:** THANK YOU.

3 **THE COURT:** SPEAK INTO THE MICROPHONE, SIR. STATE
4 YOUR FULL NAME AND SPELL IT, AND YOUR BUSINESS ADDRESS.

5 **THE WITNESS:** RAND FRANK HERBERT. R-A-N-D IS THE
6 FIRST NAME. FRANK, F-R-A-N-K, HERBERT, H-E-R-B-E-R-T.
7 MY BUSINESS ADDRESS -- PARDON ME -- IS 2850 SPAFFORD
8 STREET, S-P-A-F-F-O-R-D, DAVIS, CALIFORNIA, 95618.

9 **THE COURT:** PROCEED.

10 **MR. LEININGER:** YOUR HONOR, MAY MR. OYARZO
11 APPROACH, MARK IN THE FIRST EXHIBIT?

12 **THE COURT:** YES.

13 **MR. LEININGER:** AND, YOUR HONOR, I REFER TO
14 EXHIBIT 1 ON YOUR -- IN YOUR BINDER.

15 **THE COURT:** ALL RIGHT.

16 **MR. LEININGER:** MY UNDERSTANDING, YOUR HONOR, IS
17 THE COURT CLERK IS SATISFIED WITH OUR EXHIBIT NUMBER
18 MARKING. AND I'M TRYING TO KEEP THESE EXHIBIT --

19 **THE CLERK:** THAT'S FINE. I'LL HAVE TAGS AT THE
20 BREAK, AND I'LL TAG THEM WITH AN ITEM TAG.

21 **MR. LEININGER:** GREAT. THANK YOU. AND WE ALSO
22 HAVE A CHART AND WE WILL KEEP TRACK IF YOU WISH --

23 **THE CLERK:** OKAY.

24 **THE COURT:** SO, MR. LEININGER, WE'RE GOING TO STAY
25 WITH YOUR NUMBERING?

26 **MR. LEININGER:** THAT'S MY UNDERSTANDING.

27 **THE COURT:** ALL RIGHT. BUT THEY WILL NOT BE
28 SEQUENTIAL BECAUSE YOU'RE NOT GOING TO OFFER EACH ONE OF

1 THESE; IS THAT RIGHT?

2 **MR. LEININGER:** THAT'S CORRECT.

3 **THE COURT:** SO IT WILL BE U.S. 1.

4

5 **DIRECT EXAMINATION**

6 **BY MR. LEININGER:**

7 **Q** SO MR. HERBERT, YOU'VE BEEN APPROACHED AND
8 HANDED A DOCUMENT. WHAT IS THAT DOCUMENT?

9 **A** THIS IS MY MOST RECENT CURRICULUM VITAE.

10

11 (EXHIBIT U.S. 1, IDENTIFIED:

12 CURRICULUM VITAE OF RAND FRANK

13 HERBERT.)

14

15 **BY MR. LEININGER:**

16 **Q** OKAY. AND SO YOU'RE FAMILIAR WITH THAT
17 DOCUMENT?

18 **A** YES. I PREPARED IT.

19 **Q** AND LET'S BEGIN BY JUST GOING THROUGH THAT
20 DOCUMENT AND ESTABLISHING YOUR QUALIFICATIONS.

21 WHAT IS YOUR FORMAL EDUCATION?

22 **A** I RECEIVED A BACHELOR'S DEGREE FROM THE
23 UNIVERSITY OF CALIFORNIA AT BERKELEY IN 1973 AND A
24 MASTER'S OF ARTS IN TEACHING HISTORY AT THE UNIVERSITY
25 OF CALIFORNIA, DAVIS, IN 1977.

26 **Q** DO YOU BELONG NOW TO ANY PROFESSIONAL
27 ORGANIZATIONS IN THE STATE OF CALIFORNIA?

28 **A** I BELONG TO A NUMBER OF HISTORICAL

1 SOCIETIES, LOCAL HISTORICAL SOCIETIES; ALSO, THE
2 CALIFORNIA COUNCIL FOR THE PROMOTION OF HISTORY, THE
3 NATIONAL COUNCIL FOR PUBLIC HISTORY, NINTH CIRCUIT COURT
4 HISTORICAL SOCIETY, WESTERN MINING HISTORY ASSOCIATION.
5 I DON'T KNOW.

6 Q HAVE YOU RECEIVED ANY AWARDS ASSOCIATED
7 WITH YOUR PROFESSION?

8 A I RECEIVED A SUSTAINED LIFETIME ACHIEVEMENT
9 AWARD FROM THE CALIFORNIA COUNCIL FOR THE PROMOTION OF
10 HISTORY SORT OF AS A GENERAL PAT ON THE BACK TYPE OF
11 AWARD. THEY GIVE IT ANNUALLY. AND JRP, RECEIVED FOR A
12 PROJECT I RAN FOR THE COMPANY IN CONJUNCTION WITH SOME
13 OTHER FEDERAL AGENCIES AND OTHER PRIVATE FIRMS. THE
14 GOVERNOR'S AWARD FOR HISTORIC PRESERVATION. IT WAS IN
15 THE YEAR 2000, AND IT WAS FOR A STATEWIDE STUDY OF
16 MILITARY INSTALLATIONS IN CALIFORNIA.

17 Q SO YOU MENTIONED JRP HISTORICAL. WHAT IS
18 THAT?

19 YOU'RE PRINCIPAL OF JRP HISTORICAL; IS THAT
20 CORRECT?

21 A THAT'S RIGHT. I'M ONE OF THE FOUNDERS.
22 IT'S A COMPANY THAT'S BEEN IN OPERATION SINCE 1981. I'M
23 A VICE PRESIDENT. IT'S A HISTORICAL CONSULTING FIRM.
24 AND WE TAKE ON CASES OR PROJECTS AS REQUIRED. SO A
25 NUMBER OF OUR PROJECTS DURING A YEAR MIGHT BE RELATED TO
26 CULTURAL RESOURCES SUCH AS HISTORIC BUILDING SURVEYS,
27 INVENTORIES AND SO FORTH.

28 WE'VE DONE A LARGE NUMBER OF THOSE ON

1 MILITARY BASES. AND WE ALSO UNDERTAKE EXPERT WITNESS
2 SERVICES FOR CASES OR ADJUDICATIONS THAT REQUIRE
3 HISTORIC RESEARCH. SO THOSE MIGHT BE LAND USE HISTORIES
4 FOR, LIKE, POTENTIAL RESPONSIBLE PARTIES IN A TOXICS
5 CASE, WATER RIGHTS RELATED CLAIM AND USE, INFORMATION
6 FOR PRE 1914 WATER RIGHT, OR OTHER LAND USE TYPE CASES.

7 WE'VE ALSO UNDERTAKEN FLOOD DAMAGE CASES,
8 MOSTLY FOR THE -- ON BEHALF OF THE STATE OF CALIFORNIA,
9 THE LEVY FAILURES FROM THE SACRAMENTO, SAN JOAQUIN
10 DELTA.

11 Q ANY OF YOUR PROJECTS INVOLVE EDWARDS AIR
12 FORCE BASE?

13 A OUR CULTURAL RESOURCES WORK. WE HAVE DONE
14 CULTURAL RESOURCES WORK AT EDWARDS AIR FORCE BASE, AND,
15 OF COURSE, THIS CASE.

16 Q HOW MANY TIMES HAVE YOU TESTIFIED?

17 A IT'S IN MY RESUME. I BELIEVE IT WAS --
18 IT'S EIGHT TIMES. AND I'VE BEEN DEPOSED THE SAME NUMBER
19 OF TIMES, THOUGH NOT ALWAYS DEPOSED AND TESTIFIED.
20 SOMETIMES TESTIFIED BUT NOT DEPOSED.

21 Q HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT?

22 A YES, IN THOSE CASES THAT I'VE LISTED.

23 Q AS A HISTORIAN?

24 A YES, AS A HISTORIAN.

25 Q WHAT WERE YOU ASKED TO DO IN THIS CASE?

26 A IN THIS CASE, WE WERE ASKED TO COLLECT
27 INFORMATION RELATED TO HOW EDWARDS AIR FORCE BASE AND
28 AIR FORCE PLANT 42 WERE ESTABLISHED AND THEN GREW OVER

1 TIME. SO -- AND ALONG WITH THAT, TO GET A SENSE OF THE
2 ACTIVITIES THAT WERE INVOLVED AND WERE ONGOING AT THE
3 BASE. OR -- AND AT PLANT 42.

4 WE ALSO COLLECTED INFORMATION RELATED TO
5 TOTAL POPULATION ON THE FACILITIES, AND WE COLLECTED
6 WATER USE WHERE WE COULD FIND IT. YOU KNOW, STATISTICS
7 ON WATER USE ON THE BASE OVER TIME.

8 Q YOU KEEP REFERRING TO "WE." WHO IS -- OR
9 WHO IS WE?

10 A I APOLOGIZE. FOR THE PURPOSES OF THIS
11 PROJECT, I AND A TEAM OF RESEARCHERS UNDERTOOK THE
12 RESEARCH. SO I HAD AN ASSISTANT, DR. SCOTT
13 MILTENBURGER, WHO RECEIVED HIS PH.D. FROM THE UNIVERSITY
14 OF CALIFORNIA AT DAVIS, AS ONE OF MY PRINCIPAL
15 ASSISTANTS; AND HEATHER NORBY, THAT'S N-O-R-B-Y, WHO
16 RECEIVED HER MASTER'S DEGREE FROM THE UNIVERSITY OF
17 CALIFORNIA AT BERKELEY. BOTH IN HISTORY.

18 THEY WERE MY PRINCIPAL ASSISTANTS. THEY
19 AND I WENT TO A LARGE NUMBER OF REPOSITORIES OF
20 INFORMATION TO COLLECT DATA FOR THIS PROJECT.

21 Q CAN YOU SPECIFY WHERE YOU COLLECTED THIS
22 DATA?

23 A YES. PRIMARILY -- WELL, WE STARTED OFF BY
24 GOING FIRST TO EDWARDS AIR FORCE BASE. EDWARDS AIR
25 FORCE BASE HAS AN OFFICE OF HISTORY. IT ALSO HAS A
26 CULTURAL RESOURCES FACILITY. IT HAS A BASE HISTORIAN.
27 SO THEY HAVE COLLECTED INFORMATION OVER THE YEARS.

28 WE WENT THROUGH THAT LOOKING FOR THE ISSUE,

1 MATERIAL, WHAT I DESCRIBED EARLIER. WE THEN WENT TO THE
2 NATIONAL ARCHIVES, BOTH IN SAN BRUNO -- BRANCHES OF THE
3 NATIONAL ARCHIVE. SO WE WENT TO SAN BRUNO AND TO THE
4 BRANCH IN RIVERSIDE.

5 AND IN THOSE LOCATIONS WE COLLECTED
6 INFORMATION RELATED TO THE COURT CASES ON CONDEMNATIONS
7 ON THE FACILITY. SO AS LAND IS CONDEMNED, WE WERE
8 COLLECTING EXAMPLES OF THEIR -- OF THE PLEADINGS, THE
9 DECLARATIONS OF TAKINGS AND OTHER COURT DOCUMENTS,
10 DECISIONS, JUDGMENTS, AND SO FORTH.

11 AT RIVERSIDE WE ALSO COLLECTED SOME
12 INFORMATION ABOUT CONSTRUCTION ON EDWARDS AIR FORCE
13 BASE. AS YOU MIGHT UNDERSTAND, WHEN YOU UNDERTAKE ONE
14 OF THESE, YOU CAST A RELATIVELY WIDE NET; SO WE
15 COLLECTED A LOT OF INFORMATION OVER THE COURSE OF OUR
16 INVESTIGATION, ONLY SOME OF WHICH IS IN YOUR BINDERS OR
17 IN THE COURT BINDER.

18 WE ALSO WENT TO THE NATIONAL ARCHIVES IN
19 WASHINGTON, D.C., IN -- IT'S ACTUALLY IN COLLEGE PARK,
20 MARYLAND, NOW. AND IN THAT INSTANCE WE EXAMINED RECORDS
21 OF THE OFFICE OF THE SECRETARY OF THE AIR FORCE, I
22 BELIEVE THE AIR CORPS QUARTERMASTER GENERAL, THE ARMY
23 AIR CORPS, A NUMBER OF AGENCIES THAT HAD SOME -- BUREAU
24 OF THE BUDGET, FOR THAT MATTER -- THAT HAD SOME ROLE TO
25 PLAY IN THE -- EITHER THE WITHDRAWAL OR ACQUISITION OF
26 LANDS AT EDWARDS AND PLANT 42.

27 WE ALSO UNDERTOOK RESEARCH OF CALIFORNIA
28 STATE ARCHIVES TO FIND OUT WHAT WE COULD LEARN THERE

1 ABOUT THE ISSUE OF A -- OF EXCLUSIVE JURISDICTION AND
2 WHAT THE FEDERAL GOVERNMENT AND THE STATE GOVERNMENT,
3 WHAT CORRESPONDENCE THERE MIGHT HAVE BEEN BETWEEN THE
4 FEDERAL GOVERNMENT AND, SAY, THE GOVERNOR'S OFFICE ON
5 THAT ISSUE. AND WE ALSO USED STANDARD UNIVERSITY
6 LIBRARIES, KERN COUNTY RECORDER, OTHER LOCATIONS LIKE
7 THAT.

8 **MR. LEININGER:** AND, I'M SORRY, LET ME PAUSE FOR
9 ONE MOMENT AND JUST POINT OUT FOR EVERYONE ELSE WE'RE
10 PROJECTING EXHIBITS ON THE SCREEN HERE. WE ALSO HAVE
11 ONE BINDER FOR OPPOSITION COUNSEL, HARD COPIES. BUT
12 WE'RE GOING TO BE PROJECTING THE EXHIBITS AS THEY'RE
13 PRESENTED. SO THIS IS MR. HERBERT'S C.V. I HOPE I --

14 **THE WITNESS:** THAT'S JUST THE FIRST PAGE BUT --

15 **MR. LEININGER:** SORRY. YES, THE FIRST PAGE OF
16 MR. HERBERT'S C.V.

17 **BY MR. LEININGER:**

18 **Q** SO LET'S START. I'M GOING TO WALK YOU
19 THROUGH THE HISTORIES HERE. LAND ACQUISITION HISTORIES
20 OF PLANT 42 -- OF EDWARDS AIR FORCE BASE AND PLANT 42.
21 WE'RE GOING TO TALK ABOUT THE GEOGRAPHICAL GROWTH AND
22 THE MILITARY USES OF THESE FACILITIES. THEN WE'RE GOING
23 TO END UP WITH JUST YOUR HISTORICAL KNOWLEDGE OF THE
24 WATER USE.

25 **A** OKAY. YOU READY?

26 **A** YES.

27 **Q** ALL RIGHT.

28 **THE COURT:** YOU KNOW, I THINK BEFORE WE GET

1 STARTED, IT'S ABOUT TWO MINUTES TO 12 BY THAT CLOCK,
2 WHICH IS ABOUT RIGHT; SO MAYBE WE OUGHT TO JUST TAKE OUR
3 NOON RECESS. WE CAN START A WHOLE LITANY OF QUESTIONS.

4 **MR. ZIMMER:** YOUR HONOR, THIS IS A MATTER OF
5 HOUSEKEEPING.

6 IF WE'RE GOING THROUGH THE EXHIBITS,
7 MR. LEININGER, AND YOU INTEND TO INTRODUCE ONE OF THOSE,
8 CAN WE KNOW THAT NOW SO WE CAN HAVE DISCUSSION ON THAT
9 RATHER THAN WAIT TILL THE END AND TRY AND GO BACK TO ALL
10 THESE EXHIBITS?

11 **THE COURT:** I'M NOT SURE I UNDERSTAND WHAT YOU
12 WANT.

13 **MR. ZIMMER:** WELL, IF HE'S GOING TO INTRODUCE AN
14 EXHIBIT, I'D LIKE TO HAVE THEM DO THAT NOW SO WE CAN
15 HAVE DISCUSSION ABOUT HEARSAY ISSUES IN PARTICULAR
16 DOCUMENTS RATHER THAN WAITING UNTIL WE HAVE TO GO BACK
17 AND REFRESH OUR MEMORY ON WHAT WAS THERE AND ARGUE ABOUT
18 IT LATER.

19 **THE COURT:** SURE.

20 **MR. ZIMMER:** THANK YOU, YOUR HONOR.

21 **MR. DAVIS:** YOUR HONOR, MICHAEL DAVIS. SOME
22 HOUSEKEEPING ISSUES.

23 **THE COURT:** YES.

24 **MR. DAVIS:** THERE ARE A NUMBER OF PARTIES WHO ARE
25 NOT GOING TO BE PARTICIPATING IN THE FEDERAL RESERVE
26 RIGHT ISSUES AND WILL BE RETURNING WHEN THE RETURN FLOW
27 ISSUES COME UP.

28 WOULD IT BE POSSIBLE TO ASK THE COURT TO

1 POST ON THE COURT'S WEB SITE WHETHER OR NOT ON THE 18TH
2 THERE WILL BE A RESUMPTION OF FEDERAL RESERVE RIGHT
3 TESTIMONY ON THAT PORTION OF THE TRIAL OR WHETHER WE'RE
4 GOING TO BE READY TO START ON THE RETURN FLOW SO WE KNOW
5 WHEN TO SHOW UP?

6 **THE COURT:** WE WILL BY THE CLOSE OF BUSINESS
7 TOMORROW KNOW WHAT'S GOING TO BE HAPPENING ON THE 18TH.
8 AND I EXPECT WE'D BE ABLE TO GET SOME NOTES TO YOU.

9 **MR. DAVIS:** THANK YOU VERY MUCH, YOUR HONOR. THAT
10 IS A REQUEST --

11 **THE COURT:** I DON'T HAVE ROWENA HERE, OKAY, WHICH
12 MAKES IT A LITTLE DIFFICULT. IF YOU WANT TO GO TO
13 SAN JOSE FOR THIS TRIAL, WE CAN DO THAT TOO. IN FACT, I
14 MAY MAKE THAT OFFER TO YOU AT SOME POINT.

15 ALL RIGHT. LET'S --

16 **MR. DAVIS:** THANK YOU, YOUR HONOR.

17 **THE COURT:** -- AT THIS POINT GO TAKE OUR RECESS
18 AND BE BACK AT 1:30.

19
20 (NOON RECESS WAS TAKEN UNTIL
21 1:30 P.M.)
22
23
24
25
26
27
28

1 CASE NUMBER: JCCP4408
2 CASE NAME: ANTELOPE VALLEY GROUNDWATER
3 LOS ANGELES, CALIFORNIA FEBRUARY 10, 2014
4 DEPARTMENT 3 HON. JACK KOMAR
5 REPORTER: RHONA S. REDDIX, CSR 10807
6 TIME: P.M. SESSIONS
7 APPEARANCES: (SEE TITLE PAGE.)
8
9

10 **THE COURT:** BE SEATED, PLEASE. OKAY. READY TO
11 PROCEED? THE WITNESS WILL RETURN TO THE STAND.

12 YOU'RE STILL UNDER OATH.

13 **MR. LEININGER:** SORRY. I'M MISSING MY GLASSES.
14

15 **DIRECT EXAMINATION (CONTINUED)**

16 **BY MR. LEININGER:**

17 **Q** SO, MR. HERBERT, RIGHT BEFORE OUR BREAK WE
18 WERE GOING TO BEGIN YOUR TESTIMONY REGARDING HISTORICAL
19 AND -- HISTORICAL ACQUISITIONS AND WERE GOING TO START
20 WITH EDWARDS AIR FORCE BASE. DO YOU RECALL?

21 **A** YES.

22 **Q** OKAY. SO LET'S START WITH EDWARDS. IT
23 WASN'T ALWAYS CALLED EDWARDS AIR FORCE BASE, WAS IT?

24 **A** NO, IT WAS NOT. IT WAS CALLED ORIGINALLY
25 MUROC BOMBING AND GUNNERY RANGE AND THEN WENT THROUGH
26 SOME PERMUTATIONS OF NAMES.

27 **THE COURT:** DO YOU HAVE AN OBJECTION?

28 **MR. KUHS:** YEAH, YOUR HONOR. I DON'T BELIEVE THE

1 WITNESS HAS BEEN ACCEPTED AS AN EXPERT, AND I DON'T
2 BELIEVE HIS AREA OF EXPERTISE HAS BEEN ARTICULATED.

3 **THE COURT:** YOU'RE OFFERING THE WITNESS AS AN
4 EXPERT, AND STATE SPECIFICALLY WHAT YOUR OFFERING IS.

5 **MR. LEININGER:** YES, YOUR HONOR, OF COURSE. MY
6 APOLOGIES, YOUR HONOR. WE'RE PROFFERING THIS WITNESS AS
7 A EXPERT -- HISTORIAN EXPERT. HE WILL BE TESTIFYING
8 WITH REGARD TO THE HISTORICAL LAND ACQUISITIONS, LAND
9 RESERVATIONS, IN FACT, THE ACTIVITIES ON THE FEDERAL
10 PARCELS AND HISTORIC WATER USE.

11 **THE COURT:** IS THERE ANY VOIR DIRE?

12 **MR. KUHS:** NOT AT THIS TIME, YOUR HONOR, NO.

13 **THE COURT:** ANY OBJECTION? THE WITNESS IS -- YES.

14

15 (REPORTER'S INTERRUPTION.)

16

17 **THE COURT:** STATE YOUR APPEARANCE.

18 **MR. SHEFFIELD:** ANDREW SHEFFIELD ON BEHALF OF
19 CRYSTAL ORGANICS, DIAMOND FARMING, REMRY FARMS AND LAPIS
20 LAND COMPANY. AND I'VE RAISED AN OBJECTION. WHEN
21 THEY'RE TALKING ABOUT HISTORICAL WATER CONSUMPTION, WE
22 HAVE AN EXPERT DESIGNATION PRESENTED IN THIS CASE, AND
23 IT DOES NOT MENTION THAT.

24 I HAVE A BRIEF ON THE ISSUE. IT'S --
25 2034.260 REQUIRES THAT HE ONLY BE ALLOWED TO TESTIFY TO
26 WHAT THEY'VE DESIGNATED HIM AS AN EXPERT, HIS EXPERT
27 DESIGNATION. HISTORICAL WATER CONSUMPTION IS NOT PART
28 OF THAT. ON THAT BASIS HE SHOULDN'T BE ALLOWED TO

1 TESTIFY TO HISTORIC WATER CONSUMPTION AT THE BASE OR
2 PLANT 42.

3 **MR. LEININGER:** HE WAS IDENTIFIED, YOUR HONOR, FOR
4 PURPOSES OF ACTIVITIES ON THE MILITARY BASE. WHEN HIS
5 DEPOSITION WAS TAKEN -- HIS DEPOSITION, WHICH WAS TAKEN,
6 I BELIEVE, BY MR. KUHS, DID ASK QUESTIONS AND DID GET
7 INTO THESE ISSUES WITH REGARD TO HISTORIC WATER
8 CONSUMPTION. IT IS --

9 **THE COURT:** HE DID TESTIFY AT DEPOSITION
10 CONCERNING WATER USE?

11 **MR. LEININGER:** YES.

12 **MR. SHEFFIELD:** YOUR HONOR, ON THAT ISSUE WITH
13 REGARD TO SPECIFICALLY PLANT 42, MR. HERBERT TESTIFIED
14 THAT HE HAS VERY LITTLE INFORMATION, IF ANY, ON PLANT 42
15 ON THE WATER CONSUMPTION.

16 AND THEN THE WATER CONSUMPTION ON EDWARDS
17 AIR FORCE BASE, HE SAID ALL HE CAN TESTIFY TO IS WHAT
18 REPORTS SHOWED, THAT WERE REPORTED ANNUALLY. THAT
19 DOESN'T HAVE ANYTHING TO DO WITH HOW IT WAS MEASURED OR
20 ANYTHING ABOUT HISTORIC USES OR MEASUREMENTS OR ANYTHING
21 IN THAT REGARD. IT WOULD JUST BE REPEATING WHAT'S IN
22 DOCUMENTS. IT'S NOT, THEREFORE, EXPERT OPINION IN THAT
23 REGARD.

24 **MR. LEININGER:** YOUR HONOR, I WOULD GLADLY
25 ESTABLISH THAT HISTORIANS USE THAT TYPE OF INFORMATION
26 TO DEVELOP THEIR TESTIMONY. IT IS COMMONLY RELIED UPON,
27 AND MR. HERBERT CAN TESTIFY TO THAT FACT.

28 **THE COURT:** THERE'S NO DOUBT IN MY MIND THAT THERE

1 ARE A WEALTH OF DOCUMENTS THAT DO DESCRIBE WATER USAGE
2 AND OTHER AFFAIRS THAT OCCUR ON THE MILITARY BASE. AN
3 EXPERT HISTORIAN CAN TESTIFY AND SUMMARIZE HIS OPINION.
4 JUST TO SAVE TIME. OKAY? OVERRULED.

5 YOU MAY ANSWER THE QUESTION.

6 **BY MR. LEININGER:**

7 **Q** AND LET ME REPEAT THE QUESTION. SO YOU'RE
8 TELLING US THAT EDWARDS AIR FORCE BASE WAS NOT ALWAYS
9 CALLED EDWARDS AIR FORCE BASE?

10 **A** THAT'S RIGHT. IT STARTED OFF AS MUROC
11 BOMBING AND GUNNERY RANGE, AND THEN IT WENT THROUGH A
12 NUMBER OF NAME CHANGES, MUROC ARMY AIRFIELD, ARMY AIR
13 BASE --

14 **THE COURT:** LET ME JUST STATE THIS ON THE RECORD,
15 SINCE I DIDN'T GET A CHANCE TO DO THAT, THAT THE WITNESS
16 IS QUALIFIED AND MAY SO TESTIFY AS PROFFERED.

17 **MR. LEININGER:** THANK YOU, YOUR HONOR.

18 **BY MR. LEININGER:**

19 **Q** OKAY. SO WHAT WAS THE -- THIS AREA THAT'S
20 NOW EDWARDS AIR FORCE BASE, WHEN WAS IT FIRST USED FOR
21 AERONAUTICAL PURPOSES?

22 **A** IT WAS PRIOR TO THE EARLY 1930S. AND THERE
23 WERE PRIVATE PLANES THAT LANDED ON THE -- ON THE LAKE
24 BED. THERE'S ALSO AUTO RACING AND OTHER TYPES OF THINGS
25 GOING ON THERE.

26 **THE COURT:** WOULD YOU KEEP YOUR VOICE UP, PLEASE?

27 **THE WITNESS:** OH, I'M SORRY. IT'S HARD TO KNOW
28 WHERE THE MICROPHONE IS.

1 **MR. ZIMMER:** OBJECTION. VAGUE AS TO AERONAUTICAL.
2 IS THAT MILITARY AERONAUTICAL OR ...

3 **MR. LEININGER:** I'M SORRY. I WILL CLARIFY. ANY
4 AERONAUTICAL USE, BUT PERHAPS THE WITNESS COULD CLARIFY
5 WHETHER THAT WAS FOR MILITARY PURPOSE, WHICH YOU WERE
6 REFERRING TO.

7 **THE WITNESS:** PRIOR TO THE WITHDRAWALS TOWARD THE
8 MILITARY USE, THE LAKE WAS USED BY PRIVATE AIRCRAFT.

9 **BY MR. LEININGER:**

10 **Q** OKAY. SO WHEN WAS IT FIRST USED FOR -- BY
11 THE GOVERNMENT FOR MILITARY PURPOSES IN THIS AREA NOW
12 CALLED EDWARDS AIR FORCE BASE?

13 **A** THE HISTORICAL RECORD SHOWS THAT THE ARMY
14 AIR CORPS USED IT INFORMALLY PRIOR TO THE WITHDRAWAL.
15 THEN IT WAS SORT OF SCOUTED OUT BY HAP ARNOLD, WHO WAS
16 THE HEAD OF MARCH AIRFIELD, COMMANDER OF MARCH AIRFIELD,
17 BECAUSE HE WAS LOOKING FOR AN ARMY AND GUNNERY RANGE.

18 **Q** AND I'M SORRY. MARCH AIRFIELD?

19 **A** OH, I'M SORRY. MARCH AIRFIELD IS IN
20 RIVERSIDE COUNTY. THEY HAD BEEN USING THE OCEAN FOR
21 BOMBING AND GUNNERY, AND THAT WAS A PROBLEM FOR THEM.
22 SO THEY WERE LOOKING FOR A REMOTE AREA THAT THEY COULD
23 UNDERTAKE RANGE ACTIVITIES, AND THEY SCOUTED OUT THIS
24 AREA AND THEN ASKED THAT IT BE SET ASIDE THROUGH THE
25 FEDERAL PROCESS.

26 **MR. LEININGER:** SO, YOUR HONOR, RIGHT -- OR DURING
27 THE BREAK, WE HAD MARKED ALL THE EXHIBITS, AND THE
28 WITNESS NOW HAS ALL THE EXHIBITS MARKED IN FRONT OF HIM.

1 SO JUST TO TRY TO SAVE A LITTLE TIME, WE'RE GOING TO
2 JUST ASK HIM TO REFER TO EACH EXHIBIT.

3 **THE COURT:** YOU SAY THEY WERE MARKED. WERE THEY
4 MARKED ON THE RECORD?

5 **MR. LEININGER:** I BELIEVE -- NO.

6 **THE CLERK:** NO, JUST MARKED THERE. THEY STILL
7 HAVE TO MARK IT ON THE RECORD.

8 **THE COURT:** SO THEY HAVE TABS ON THEM; IS THAT
9 RIGHT?

10 **MR. LEININGER:** THAT'S MY UNDERSTANDING.

11 **THE COURT:** ALL RIGHT. THEN JUST REFER TO THEM BY
12 NUMBER. AND UNLESS THERE'S AN OBJECTION, THEY'LL BE
13 DEEMED ADMITTED.

14 **MR. LEININGER:** OKAY. AND IF WE COULD HAVE A
15 SLIDE UP HERE, PLEASE. LET'S START WITH EXHIBIT 11,
16 WHAT'S MARKED AS U.S.A.F. EXHIBIT 11.

17 **THE WITNESS:** THIS IS THE EXECUTIVE ORDER SIGNED
18 BY FRANKLIN ROOSEVELT ON FEBRUARY 6TH, 1934, WHICH CALLS
19 OUT THE WITHDRAWAL OF SPECIFIC LANDS IN AND AROUND
20 ROGERS DRY LAKE BED.

21 AND YOU CAN SEE AT THE TOP IT SAYS THAT IT
22 IS -- "IT IS HEREBY ORDERED THAT ALL PUBLIC LANDS IN THE
23 AREAS HEREINAFTER DESCRIBED BE AND ARE THEREBY -- HEREBY
24 WITHDRAWN FROM SETTLEMENT, LOCATION, SALE, ENTRY, AND
25 ALL FORMS OF APPROPRIATION SUBJECT TO VALID EXISTING
26 RIGHTS, FOR THE USE OF THE WAR DEPARTMENT AS A BOMBING
27 AND GUNNERY RANGE." AND THEN IT LISTS THE SPECIFIC
28 PARCELS.

1
2 (EXHIBIT 11, IDENTIFIED: EXECUTIVE
3 ORDER, FEBRUARY 6, 1934.)
4

5 **MR. LEININGER:** OKAY. COULD WE NOW HAVE
6 EXHIBIT 95, PLEASE? AND EXHIBIT -- OKAY, YOUR HONOR,
7 THESE --

8 **MR. MC LACHLAN:** MR. LEININGER, COULD WE ALSO HAVE
9 THE BATES NUMBERS ON THESE? BECAUSE THE DOCUMENTS YOU
10 PRODUCED ARE NOT THE SAME AS THE EXHIBIT NUMBERS.

11 **MR. LEININGER:** OKAY. AND I APOLOGIZE. WHEN
12 THESE WERE PRODUCED, IT WAS A INDEX THAT WAS PROVIDED.
13 BUT, SURE, I'LL PUT THAT IN.

14 **THE COURT:** YOU'RE REFERRING TO WHAT EXHIBIT NOW?

15 **MR. LEININGER:** THIS IS GOING BACK TO EXHIBIT 11,
16 YOUR HONOR. IT'S BATES NUMBER U.S.A.F. 001653. THIS
17 COMES FROM -- THE BATES NUMBERS ARE ENTIRE REPOSITORY OF
18 DISCOVER --

19 **MR. KUHS:** EXCUSE ME, YOUR HONOR. YOUR HONOR, I'D
20 OBJECT TO ANY EXAMINATION AS FAR AS THIS DOCUMENT. THIS
21 DOCUMENT WAS NOT PRODUCED DURING DISCOVERY AS FAR AS I'M
22 AWARE. I RAISED THIS ISSUE WITH COUNSEL BEFORE WE GOT
23 STARTED.

24 BUT IF I UNDERSTAND THE RECORD, WE HAD THE
25 FEDERAL RESERVE RIGHTS TEED UP IN PHASE 4. AND YOU'LL
26 RECALL THAT THE COURT ENTERED A DISCOVERY ORDER
27 DIRECTING THE FEDS TO PRODUCE ALL THEIR RELEVANT DATA,
28 AND THEY DID INITIAL DISCLOSURE AND SUBSEQUENT

1 DISCLOSURE. THAT SUBSEQUENT DISCLOSURE YIELDED
2 DOCUMENTS UP THROUGH 43,820. SO THE FIRST TIME I SAW
3 THIS DOCUMENT WAS WHEN IT WAS POSTED TO THE FEDERAL
4 GOVERNMENT'S EXHIBIT LIST IN PREPARATION FOR THIS TRIAL.

5 NOW, I HAD AN AGREEMENT AND UNDERSTANDING
6 WITH MR. LEININGER AND THE UNITED STATES THAT THEIR
7 EXPERTS HAD NOT DONE ANY ADDITIONAL WORK SINCE PHASE 4
8 AND WERE NOT PREPARED TO OFFER ANY NEW OR ADDITIONAL
9 TESTIMONY SINCE PHASE 4, AND ON THAT BASIS WE FOREWENT
10 TAKING THE DEPOSITION AT THE TIME BECAUSE WE UNDERSTOOD
11 THERE WAS GOING TO BE NO CHANGE.

12 BUT I DON'T -- I'VE NEVER SEEN THIS
13 DOCUMENT, AND I DON'T KNOW WHO PREPARED IT. I DON'T
14 KNOW WHAT THE FOUNDATION IS.

15 **THE COURT:** WELL, IT'S NOT EXHIBIT 11. IT'S SOME
16 OTHER EXHIBIT, AT LEAST IN MY BOOK. I CAN'T FIND THAT
17 DOCUMENT.

18 **MR. LEININGER:** OH, I'M SORRY. WE'RE REFERRING TO
19 THIS. I APOLOGIZE. BECAUSE THE EXECUTIVE ORDER WAS
20 STILL ON THE SCREEN, SO I WAS THINKING IT WAS
21 REFERENCING THE HISTORICAL DOCUMENT.

22 AND I WAS ABOUT TO EXPLAIN THESE ARE FOR
23 ILLUSTRATIVE PURPOSES, YOUR HONOR. I'LL HAVE THE
24 WITNESS EXPLAIN HOW HE CREATED THESE. BUT THEY'RE
25 BASICALLY DEMONSTRATIVE OF THESE LANDS THAT WE SET ASIDE
26 OR ACQUIRED. YOU WANT ME TO JUST TAKE YOU THROUGH --
27 CHRONOLOGICALLY THROUGH --

28 **THE COURT:** SO THAT'S NOT AN EXHIBIT?

1 **MR. LEININGER:** IT'S -- IT WAS PROFFERED AS
2 EXHIBIT 95.

3 **THE COURT:** 95.

4 **MR. LEININGER:** I'M SORRY. 95, YES.

5 **THE COURT:** ALL RIGHT. IT WON'T BE ADMITTED INTO
6 EVIDENCE. IT IS EXEMPLARY. YOUR OBJECTION IS
7 SUSTAINED.

8 **MR. KUHS:** THANK YOU, YOUR HONOR.

9 **BY MR. LEININGER:**

10 **Q** AND SO, MR. HERBERT, YOU WERE TESTIFYING, I
11 BELIEVE, THAT THIS IS A DEMONSTRATION OF THE LANDS THAT
12 WERE RESERVED UNDER EXECUTIVE ORDER 6658, I BELIEVE.

13 **MR. LEININGER:** AND TO ORIENT THE COURT, COULD --
14 SORRY, YOUR HONOR. MAY I REORIENT THE PICTURE SO IT'S
15 ON THE SCREEN?

16 **THE COURT:** DO YOU HAVE A LASER POINTER? USE IT.

17 **MR. LEININGER:** (INDICATING.)

18 SO I'LL LET THE WITNESS EXPLAIN HIS
19 ILLUSTRATIVE DIAGRAM.

20 **THE WITNESS:** ALL RIGHT. THIS IS A DOCUMENT THAT
21 I HAD MY G.I.S. PERSON, MY GRAPHICS PERSON AT THE
22 OFFICE, PREPARE BASED ON THE LANDS DESCRIBED IN THE
23 EXECUTIVE ORDER ON A BASE PROVIDED BY THE EDWARDS AIR
24 FORCE BASE TO SHOW THE EXTERIOR BOUNDARIES OF THE
25 CURRENT FACILITY, AND THEN TO LAY IN (INDICATING) THE
26 CURRENT ROADWAY AND DEVELOPMENT WITHIN THE FACILITY.

27 SO WHAT THIS SHOWS IS THE LANDS WITHDRAWN
28 ON FEBRUARY 6TH, 1934. THIS IS THE ROGERS DRY LAKE BED

1 AREA HERE. THIS IS ROSAMOND LAKE AREA. THIS IS THE
2 MAIN BUILT-UP PORTION OF THE FACILITY. PORTIONS OVER
3 HERE RELATE TO THE ROCKET TESTING AREA AND SO FORTH.

4 **BY MR. LEININGER:**

5 **Q** SO THIS IS 1934. WHAT WERE THE MILITARY
6 ACTIVITIES AT THAT TIME?

7 **A** WELL, FOLLOWING ESTABLISHMENT OF THE
8 FACILITY, THE ARMY AIR CORPS ESTABLISHED A CAMP ON THE
9 DRY LAKE BED IN THIS -- OVER IN THIS AREA. IT WAS
10 CONSISTING OF TENTS BUT ALSO A PERMANENT BARRACKS AND
11 MESS HALL, AMMUNITION STORAGE, FUEL STORAGE AND SO
12 FORTH. AND THE ARMY AIRCRAFT WOULD FLY IN, USE THE AREA
13 FOR THEIR TACTICAL TRAINING, AND THEN LAND AT THE CAMP,
14 STAY AT THE CAMP FOR THE DURATION OF THEIR PRACTICE.

15 **Q** DO YOU HAVE AN EXHIBIT THAT MAY DEMONSTRATE
16 TO US THAT EXHIBIT?

17 **A** YES. IT'S EXHIBIT 34, WHICH YOU WANT TO
18 TURN SIDEWAYS.

19 **Q** AND IT'S A LITTLE DIFFICULT TO SEE.

20 I HOPE THE PRINTED VERSION IS A LITTLE BIT
21 BETTER, YOUR HONOR.

22 BUT, SO CAN YOU EXPLAIN THIS PHOTO? IS IT
23 AN AERIAL PHOTO?

24 **A** RIGHT. THIS IS AN AERIAL PHOTOGRAPH FROM
25 THE COLLECTION OF THE U.S. ARMY AIR FORCE, PRE-1954,
26 OFFICIAL STILL PHOTOGRAPHY COLLECTION, THE NATIONAL
27 ARCHIVES IN WASHINGTON, D.C. AND IT'S AN OBLIQUE AERIAL
28 PHOTOGRAPH TAKEN MARCH 12TH, 1936.

(EXHIBIT 34, IDENTIFIED: AERIAL
PHOTO TAKEN 3/12/1936.)

THE WITNESS: YOU CAN SEE THE DATE HERE
(INDICATING).

AND IT SHOWS THE -- IT'S VERY HARD TO SEE
ON THE SCREEN. BUT IT SHOWS THE BIGGEST PORTION OF THE
TENT CAMP AREA PLUS PARKED AIRCRAFT. YOU CAN SEE SMALL
AIRCRAFT PARKED HERE, LARGER AIRCRAFT PARKED HERE. I
DID A ROUGH COUNT. I THINK THERE'S ABOUT 40 OF THEM.

THESE ARE ALL TENTS. THE MESS HALL,
BARRACKS AREA IS OFF TO THE SIDE OF THIS PHOTOGRAPH.
UNFORTUNATELY, IT'S NOT IN THIS PHOTOGRAPH. AND THIS IS
THE LOCATION OF THE WELL THAT WAS DUG AT THE SITE IN, I
THINK, 1935.

Q HOW DID THEY GET WATER?

A AT FIRST, THEY DROVE ACROSS --

MR. SHEFFIELD: OBJECTION. CALLS FOR SPECULATION.

THE COURT: OVERRULED.

THE WITNESS: AT FIRST, THEY DROVE ACROSS ROGERS
DRY LAKE BED TO THE TOWN OF MUROC, WHICH, IF WE HAD THE
OTHER MAP BACK UP, I COULD SHOW YOU WHERE THAT IS. GOT
WATER THERE, BUT IT WAS SOME MILES AWAY, AND SO THEY
BEGAN TO LOOK FOR ANOTHER SOURCE OF WATER.

THERE WAS A WELL ON THIS SIDE OF THE
LAKE -- THIS IS THE EAST SIDE OF THE LAKE -- BUT IT WAS
USED FOR CATTLE, AND SO THEY USED -- THEY -- THE ARMY

1 AIR CORPS REQUESTED AND RECEIVED MONEY TO DRILL A WELL
2 AT THIS LOCATION, WHICH THEY SAID WAS ON GOVERNMENT
3 LAND, OWNED BY THE GOVERNMENT.

4 **MR. LEININGER:** COULD YOU NOW SHOW US EXHIBIT 10,
5 PLEASE?

6 **THE WITNESS:** THAT'S NOT EVEN IN FOCUS.

7 **BY MR. LEININGER:**

8 **Q** WELL, UNFORTUNATELY, THE PRINT VERSION'S A
9 LITTLE DIFFICULT TO READ. BUT DO YOU RECALL WHAT THIS
10 DOCUMENT IS?

11 **A** YES. THIS IS A COLLECTION OF
12 CORRESPONDENCE TAKEN FROM -- AS YOU CAN SEE FROM THE
13 FINAL PAGE, THAT IT'S TAKEN FROM THE CENTRAL DECIMAL
14 FILES OF THE ARMY AIR FORCES, RECORD GROUP 18, AND IT
15 RELATES TO THE ACTIVITIES AND CONSTRUCTION ON THE MUROC
16 FIELD.

17
18 (EXHIBIT 10, IDENTIFIED:
19 CORRESPONDENCE, ARMY AIR FORCES
20 CENTRAL DECIMAL FILE, RECORD
21 GROUP 18.)
22

23 **THE WITNESS:** YOU CAN SEE, UNFORTUNATELY NOT VERY
24 WELL ON THE SCREEN, BUT THIS PARAGRAPH, YOUR HONOR,
25 RIGHT THERE, "BECAUSE THE ONLY SOURCE OF WATER AVAILABLE
26 IS FROM A SMALL, PRIVATE WELL IN THE GENERAL STORE OF
27 MUROC, FIVE MILES DISTANT FROM THE TEMPORARY CAMP,
28 SUPPLY FROM THIS WELL WAS LIMITED AND INSUFFICIENT," AND

1 SO FORTH. SO THEY DETERMINED THAT THEY WOULD BE BEST
2 TO -- BEST OFF TO DRILL THEIR OWN WELL CLOSE TO THE
3 CAMP.

4 **BY MR. LEININGER:**

5 Q WILL YOU JUST READ INTO THE RECORD, PLEASE,
6 THE FIRST SENTENCE, IF POSSIBLE?

7 A THE FIRST SENTENCE OF THE ENTIRE DOCUMENT?

8 Q NO, OF THE FIRST PAGE.

9 A "IT IS REQUESTED THAT FUNDS IN THE AMOUNT
10 OF \$1,200 BE ALLOTTED MARCH FIELD FOR THE PURPOSES OF
11 DIGGING A WELL AND INSTALLING TANK AND PUMP ON THE MUROC
12 BOMBING RANGE."

13 Q AND NOW, THIS EXHIBIT CONTAINS A NUMBER OF
14 CORRESPONDENCES. SO LET'S JUST JUMP TO BATES LABEL
15 NUMBER U.S.A.F. 022910 IN THAT PACKET OF CORRESPONDENCE.
16 AND THIS CORRESPONDENCE IS ALL CONTEMPORARY? THEY WERE
17 ALL --

18 A YEAH. IT MIGHT HELP TO EXPLAIN A LITTLE
19 WHAT HAPPENS HERE. THE FIRST LETTER IS CALLED THE "BASE
20 LETTER" OR THE "FIRST LETTER," THE -- AND THEN FOLLOWING
21 ON IT ARE A SERIES OF WHAT ARE CALLED "ENDORSEMENTS."
22 AND EACH SUCCESSIVE OFFICER, AS IT MOVED UP AND DOWN THE
23 CHAIN OF COMMAND, WOULD PREPARE AN ENDORSEMENT.

24 THESE WERE PHOTOGRAPHS THAT WE TOOK AT THE
25 NATIONAL ARCHIVES. THE CURRENT POLICY OF THE NATIONAL
26 ARCHIVES IS THAT THEY WOULD LIKE RESEARCHERS TO USE
27 DIGITAL CAMERAS BECAUSE IT'S MUCH EASIER ON THE STORED
28 RECORDS, AND YOU ONLY HAVE TO SLAP THEM ON A XEROX

1 MACHINE, PRESS THEM ON THE GLASS AND SO FORTH.

2 SO WHAT YOU'RE SEEING HERE IS THE IMAGE
3 QUALITY THAT THE RESEARCHER SEES. THIS FIRST PAGE IS A
4 CARBON COPY, AND YOU JUST HAVE TO DO THE BEST YOU CAN
5 WITH WHAT'S AVAILABLE.

6 Q OKAY. SO WE NOW TURN TO PAGE -- AND I'LL
7 JUST GIVE THE LAST THREE DIGITS -- 910.

8 A YES, I HAVE IT.

9 Q AND WILL YOU READ THE LAST CORRESPONDENCE
10 HERE? WHO IS THAT FROM?

11 A THAT'S FROM BRIGADIER GENERAL HAP ARNOLD,
12 H.H. ARNOLD, WHO'S THE COMMANDER OF THE AIR FORCE WING
13 AT MARCH FIELD.

14 Q AND WILL YOU JUST READ INTO THE RECORD THE
15 LAST SENTENCE THERE, PLEASE?

16 A "THE LAND ON WHICH THE WELL IS TO BE
17 LOCATED IS NOW OWNED BY THE FEDERAL GOVERNMENT AND IS
18 FREE OF ANY VALID RIGHTS."

19 Q LET'S NOW MOVE TO EXHIBIT 15, PLEASE.

20 MR. ZIMMER: OBJECTION TO THE LEGAL OPINION THAT
21 MAY BE --

22 THE COURT: IT SAYS WHAT IT SAYS.

23 MR. ZIMMER: YEAH. I AGREE IT SAYS WHAT IT SAYS.
24 I'M JUST OBJECTING TO THE EXTENT THAT IT WOULD BE USED
25 AS SOME LEGAL CONCLUSION THAT THERE WERE NO OTHER
26 EXISTING RIGHTS.

27 THE COURT: I'M JUST ACCEPTING THE DOCUMENT FOR
28 WHAT IT IS. I'LL MAKE THE DECISION WITHOUT LEGAL

1 IMPEDIMENTS.

2 **MR. ZIMMER:** AND IN TERMS OF ACCEPTING THE
3 DOCUMENTS, IS THE COURT ACCEPTING ONLY PORTIONS THAT THE
4 WITNESS IS RELYING ON, ALTHOUGH THERE'S A LOT OF OTHER
5 HEARSAY IN THE DOCUMENTS?

6 **THE COURT:** WELL, IT'S A SERIES OF APPROVALS
7 MOVING IT FORWARD, THE REQUEST FOR \$1,200, WHATEVER THAT
8 VALUE MIGHT BE FOR DRILLING A WELL.

9 **MR. ZIMMER:** THE REASON I'M RAISING IT, YOUR
10 HONOR, IS THAT THIS IS WHAT HAPPENS SOMETIMES WITH
11 SIMPLY ACCEPTING A GREAT DEAL OF HEARSAY: SOMEBODY
12 COMES BACK LATER AND ARGUES THAT SOMETHING ELSE IN THE
13 DOCUMENT IS SOMEHOW RELEVANT.

14 MY UNDERSTANDING IS THAT THE DOCUMENT
15 ITSELF IS HEARSAY. THE WITNESS HAS TESTIFIED TO THE
16 EXTENT TO WHICH HE'S RELIED UPON IT TO DRILL THIS \$1,200
17 WELL. AND IF IT'S LIMITED TO THAT, THAT'S -- THAT'S ...

18 **THE COURT:** WELL, ONE OF THE QUESTIONS THAT I
19 ASKED OF YOU WAS TO DETERMINE WHICH DOCUMENTS WERE GOING
20 TO BE OBJECTED TO ON THE BASIS OF AUTHENTICITY. THESE
21 ARE OFFICIAL RECORDS, APPARENTLY. THE SIGNIFICANCE OF
22 THEM IS YET TO BE DETERMINED. BUT APPARENTLY THE AUTHOR
23 IS TO ESTABLISH THE HISTORIC EVOLUTION OF THE
24 DEVELOPMENT OF EDWARDS AIR FORCE BASE, AND THAT'S WHAT
25 THIS IS DOING.

26 NOW, THERE ARE LOTS OF STATEMENTS IN HERE
27 THAT ARE NOT REALLY RELEVANT TO THAT ULTIMATE GOAL, AND
28 SO THEY'RE BEING ACCEPTED ONLY FOR THE PURPOSE FOR WHICH

1 THEY'RE BEING OFFERED AND TO EXEMPLIFY HIS TESTIMONY.
2 BUT THEY ARE OFFICIAL DOCUMENTS. OFFICIAL DOCUMENTS
3 HAVE LOTS OF HEARSAY IN THEM --

4 **MR. ZIMMER:** I UNDERSTAND.

5 **THE COURT:** -- AND THEY HAVE CONCLUSIONS IN THEM.

6 **MR. ZIMMER:** CORRECT. SO WHAT MY UNDERSTANDING
7 IS, THAT THEY'RE BEING ADMITTED SOLELY TO -- AS THEY
8 BEAR ON WHAT THE WITNESS TESTIFIED TO.

9 **THE COURT:** YES.

10 **MR. ZIMMER:** THANK YOU.

11 **BY MR. LEININGER:**

12 **Q** TURNING NOW TO EXHIBIT 15. WHAT IS THIS
13 DOCUMENT?

14 **A** THIS IS THE NEXT EXECUTIVE ORDER IN ORDER.

15 **Q** AND THAT'S FINE. WHAT'S THE DATE, PLEASE?

16 **A** THE DATE IS SEPTEMBER 11TH, 1937. IT'S
17 EXECUTIVE ORDER 7707.

18
19 (EXHIBIT 15, IDENTIFIED: EXECUTIVE
20 ORDER 7707.)

21

22 **BY MR. LEININGER:**

23 **Q** WHAT'S THE STATED PURPOSE OF 7707?

24 **A** AS STATED --

25 **MR. KUHS:** I'M SORRY, COUNSEL. I DIDN'T GET AN
26 EXHIBIT NUMBER.

27 **MR. LEININGER:** I'M SORRY. IT IS EXHIBIT 15, AND
28 IT IS BATES LABEL NUMBER U.S.A.F. 001650.

1 **THE WITNESS:** 56.

2 **MR. LEININGER:** YEAH. I'M SORRY. 1656.

3 **BY MR. LEININGER:**

4 **Q** SO, AGAIN, WHAT IS THE STATED PURPOSE OF
5 THIS?

6 **A** STATED AT THE VERY TOP, "WITHDRAWAL OF
7 PUBLIC LANDS FOR THE USE OF THE WAR DEPARTMENT FOR
8 MILITARY PURPOSES." THAT APPEARS AGAIN IN SECTION 2,
9 WHERE IT SAYS, AFTER LISTING THE LANDS WITHDRAWN,
10 "SUBJECT TO THE CONDITIONS EXPRESSED IN THE
11 ABOVE-MENTIONED ACTS AND TO ALL VALID EXISTING RIGHTS,
12 THE TRACTS OF LAND HEREIN DESCRIBED IN SECTION 1 OF THIS
13 ORDER ARE HEREBY TEMPORARILY WITHDRAWN FROM SETTLEMENT,
14 LOCATION, SALE, OR ENTRY, AND RESERVED FOR USE -- "

15 **THE COURT:** SLOW DOWN A LITTLE BIT. YOU'RE
16 READING FOR THE BENEFIT OF THE REPORTER. SHE WANTS TO
17 KEEP UP WITH YOU.

18 **THE WITNESS:** I'M SORRY. "... AND RESERVED FOR
19 THE USE OF THE WAR DEPARTMENT FOR MILITARY PURPOSES."

20 **MR. LEININGER:** CAN WE HAVE -- PLEASE SHOW
21 EXHIBIT 96.

22 **THE WITNESS:** YES. THIS EXHIBIT IS LIKE THE FIRST
23 ONE. IT BUILDS ON THE FIRST ONE. AND IF YOU NOTICE THE
24 DIFFERENT COLORS, THE DARKER BLUE, WHICH YOU CAN SEE
25 BETTER ON THE PAPER, IS THE LANDS DESCRIBED -- ARE THE
26 LANDS DESCRIBED IN EXECUTIVE ORDER 7077. THE LIGHTER
27 COLORS ARE THE ONES FROM EXECUTIVE ORDER 6580.

28 **MR. KUHS:** YOUR HONOR, WE HAVE THE SAME OBJECTION

1 TO THIS EXHIBIT AS WE DID TO EXHIBIT 95.

2 **THE COURT:** ALL RIGHT. SAME RULING.

3 **MR. LEININGER:** AND, YOUR HONOR, I SHOULD EXPLAIN
4 THERE WILL BE A NUMBER OF THESE BASED ON -- FOR LESSER
5 PURPOSES, BASED ON THE G.I.S. DATABASE AS WE BUILD
6 EDWARDS AIR FORCE BASE.

7 **BY MR. LEININGER:**

8 **Q** LET'S QUICKLY GO THROUGH THESE. LET'S GO
9 TO EXECUTIVE ORDER 7740, EXHIBIT 16.

10 **A** YES. THAT'S -- THAT IS THE NEXT EXECUTIVE
11 ORDER, 7740, SIGNED BY FRANKLIN ROOSEVELT,
12 NOVEMBER 15TH, 1937.

13
14 (EXHIBIT 16, IDENTIFIED: EXECUTIVE
15 ORDER 7740.)
16

17 **THE WITNESS:** AND LIKE THE PREVIOUS ONE, IT CULLS
18 OUT THE LAND RESERVE FOR THE USE OF THE WAR DEPARTMENT
19 FOR MILITARY PURPOSES.

20 **BY MR. LEININGER:**

21 **Q** AND DO YOU HAVE AN ILLUSTRATIVE EXAMPLE OF
22 THAT LAND?

23 **A** YES. AND IF YOU GO TO EXHIBIT 97, YOU CAN
24 SEE IT WAS NOT A LARGE WITHDRAWAL. IT'S THIS PIECE
25 (INDICATING).

26 **Q** OKAY. LET'S GO AHEAD. LET'S MOVE ON HERE.
27 SO YOU WERE TESTIFYING EARLIER, I BELIEVE,
28 THAT THE MILITARY ACTIVITIES AT THIS TIME CONSISTED OF A

1 RANGE, WHICH PLANES WERE LANDING. THERE WAS A
2 CANTAINMENT -- CANTONMENT, EXCUSE ME, AREA. THERE WAS A
3 WELL DRILLED. AND THEY WERE ACTIVELY ENGAGED IN
4 LANDING, TAKING OFF, AND PRACTICING THEIR TRAINING; IS
5 THAT CORRECT?

6 **A** THAT'S RIGHT.

7 **Q** OKAY. SO THE MILITARY'S DROPPING BOMBS.
8 WERE THEY DROPPING BOMBS OUT HERE ON PRIVATE LANDS, TOO?

9 **A** THEY WERE TRYING NOT TO. I THINK THE --
10 BUT THE -- IF YOU REFER TO THE -- OR THINK BACK TO THOSE
11 MAPS, YOU'LL REALIZE THAT IT'S A PATCHWORK OF -- OR A
12 CHECKERBOARD OF PRIVATE AND PUBLIC LANDS; PUBLIC LANDS
13 BEING WITHDRAWN, PRIVATE LANDS STILL IN PRIVATE HANDS.
14 SO THEY WERE TRYING TO USE THE PUBLIC LAND BUT
15 RECOGNIZED VERY EARLY ON THAT IT WAS SORT OF AN
16 UNTENABLE SITUATION.

17 **Q** CAN WE GO TO EXHIBIT 38, PLEASE?

18 **A** I HAVE THAT.

19 **Q** SORRY, YOUR HONOR.

20 CAN YOU JUST BRIEFLY EXPLAIN WHAT IS
21 EXHIBIT 38? LET'S BEGIN WITH THE DATES ON THIS PACKET,
22 LETTERS.

23 **A** THE DATES RUN FROM -- FIND IT HERE.

24 **MR. MC LACHLAN:** MR. LEININGER, WHAT'S THE BATES
25 NUMBER ON THAT ONE?

26 **MR. LEININGER:** I'M SORRY. THE BEGINNING BATES
27 NUMBER IS 35 -- 35356 THROUGH 35370.

28 **THE WITNESS:** THE BASIC LETTER IS DATED

1 AUGUST 22ND, 1936, AND THE LAST ENDORSEMENT IS DATED
2 JUNE 15TH, 1937.

3

4 (EXHIBIT 38, IDENTIFIED: [AS
5 DESCRIBED HEREIN.])

6

7 **BY MR. LEININGER:**

8 **Q** CAN YOU GO TO BATES LABEL NUMBER -- I THINK
9 IT'S THE FOURTH PAGE IN THIS DESCRIPTION FROM -- AND I'M
10 SORRY. WILL YOU PLEASE EXPLAIN A LITTLE BIT FURTHER ON
11 THE FIRST PAGE, WHAT'S THE ORIGIN OF THIS LETTER?

12 **A** THIS LETTER IS ENTITLED EXTENSION OF THE --
13 PARDON ME -- "EXTENSION OF MUROC BOMBING AND GUNNERY
14 RANGE," AND IT'S ADDRESSED TO THE COMMANDING GENERAL OF
15 THE G.H.Q. OF THE AIR FORCE, LANGLEY FIELD, HAMPTON,
16 VIRGINIA.

17 AND IT IS -- IF YOU REFER TO THE BATES PAGE
18 U.S.A.F. 035360, IT'S SIGNED BY BRIGADIER GENERAL
19 DELOS C. EMMONS, WHO AT THAT TIME WAS THE COMMANDING
20 GENERAL OF THE AIR CORPS.

21 **Q** OKAY. AND, AGAIN, I'M SORRY, IN GENERAL
22 WHAT IS -- WHAT'S THE GOAL? WHAT'S THE OBJECTIVE OF
23 THIS?

24 **A** IF YOU READ THROUGH THE LETTER, YOU SEE
25 THAT THEY ARE DELINEATING LANDS THAT THEY WOULD LIKE TO
26 ACQUIRE TO FLESH OUT AND CONSOLIDATE THEIR HOLDINGS AT
27 THE GUNNERY RANGE, THE MUROC GUNNERY RANGE.

28 **Q** AND COULD YOU TURN NOW TO 35359,

1 PARAGRAPH E, AND JUST READ THAT FIRST SENTENCE, PLEASE.

2 A YES. PARAGRAPH E DID YOU SAY?

3 Q E, YES.

4 A THAT'S AT THE VERY TOP OF THE PAGE.

5 GENERAL EMMONS STATES, "IT IS DESIRED TO ESTABLISH THE
6 PERMANENT CAMPSITE, WHEN APPROPRIATIONS FOR THIS BECOME
7 AVAILABLE, ON THE WEST SIDE OF THE LAKE BED NEAR THE
8 TOWN OF MUROC."

9 Q SO WHAT -- SO THERE WAS NOT -- THIS
10 CAMPSITE THEY WERE SHOWING WAS NOT AT THAT TIME ON THE
11 WEST SIDE?

12 A NO. IT WAS ON THE EAST SIDE OF THE LAKE,
13 YEAH.

14 Q SO WHY WERE THEY WISHING TO MOVE TO THE
15 WEST SIDE? IS THAT -- WELL, I WON'T ASK MY QUESTION.
16 GO AHEAD.

17 A WELL, IT'S STATED IN THE LETTER. HE'S
18 SAYING THAT THE LOCATION OFFERS BETTER RAIL AND ROAD
19 COMMUNICATION, A BETTER WATER SUPPLY, A BETTER CAMPSITE,
20 A BETTER LOCATION FOR A LANDING FIELD -- I'M JUST
21 PARAPHRASING -- SINCE THE PREVAILING WIND IS FROM THE
22 NORTHWEST AND SO ON. IT'S JUST A BETTER SPOT FOR THE
23 PERMANENT CAMPSITE.

24 Q AND WILL YOU READ THE FIRST SENTENCE OF
25 PARAGRAPH G ON THAT SAME PAGE, PLEASE?

26 A YES. IN THAT INSTANCE HE'S TALKING ABOUT
27 THE REASONS FOR IT AGAIN, ADDITIONAL REASONS. HE
28 STATES, "THE ACQUISITION OF THE ADDITIONAL LAND WILL

1 PROVIDE AN AREA SUITABLE FOR THE CONCENTRATION OF THE
2 G.H.Q. AIR FORCE FOR OPERATION INVOLVING BOMBING AND
3 GUNNERY. ITS EXTENT WILL ENABLE THE VARIOUS UNITS TO
4 OPERATE AGAINST DIFFERENT TARGETS SIMULTANEOUSLY, THUS
5 PERMITTING THE PLANNING, COORDINATION, AND EXECUTION OF
6 MASS ATTACKS AND THE EMPLOYMENT OF THE VARIOUS CLASSES
7 OF COMBAT AVIATION IN THEIR PROPER ROLE. IT WILL ALSO
8 FURNISH AN IDEAL LOCATION WHERE COMBINED OPERATIONS WITH
9 OTHER BRANCHES CAN BE CONDUCTED TO GREAT ADVANTAGE."

10 Q SO THE MILITARY NOW HAS EXPRESSED INTEREST
11 IN ACQUIRING THESE NONPUBLIC DOMAIN LANDS. HOW DO THEY
12 GO ABOUT DOING THAT?

13 A THEY WENT ABOUT IT THROUGH A PROCESS,
14 EITHER DIRECT PURCHASE, JUST A PURCHASE AGREEMENT WITH
15 THE LANDOWNER WHO IS A WILLING SELLER, OR THROUGH
16 CONDEMNATION AND THROUGH THE COURTS.

17 Q OKAY. COULD WE GO TO NOW EXHIBIT 17?

18 A I HAVE IT.

19 Q AND WHAT IS THAT?

20 A EXHIBIT 17 IS A DEED DATED MARCH 23RD,
21 1938, BETWEEN THE SOUTHERN PACIFIC LAND COMPANY AND THE
22 UNITED STATES OF AMERICA, AND CONVEYS FOR \$133,694.06
23 ABOUT 60,000 ACRES OF LAND WITHIN THIS AREA.

24

25 (EXHIBIT 17, IDENTIFIED: DEED,
26 MARCH 23, 1938.)

27

28

1 **BY MR. LEININGER:**

2 **Q** I'M SORRY. DID YOU GIVE ME THE DATE OF
3 THIS?

4 **A** YES. MARCH 23RD, 1938.

5 **Q** COULD YOU TURN TO THE SECOND PAGE OF THIS
6 DEED AND READ FROM THE SECOND FULL PARAGRAPH THE LAST
7 TWO LINES?

8 **A** YES. IT SAYS FINISHES THE PROPERTY
9 DESCRIPTION AND THEN ADDS, "TOGETHER WITH ALL RIGHTS,
10 PRIVILEGES, AND APPURTENANCES THEREUNTO BELONGING OR IN
11 ANY WISE APPERTAINING."

12 **Q** CAN WE NOW SHOW THIS LAND MASS, PLEASE, ON
13 YOUR NEXT EXHIBIT?

14 **A** THAT'S EXHIBIT 98. AND, AGAIN, WE HAVE
15 BUILT ON THE ORIGINAL BASE. THE BLUE PARCELS ARE THOSE
16 WITHDRAWN AND THE RED HATCH PARCELS ARE THOSE SOLD BY
17 THE SOUTHERN PACIFIC LAND COMPANY. SO YOU CAN SEE THAT
18 IN ONE PURCHASE THEY FILLED IN A LARGE AREA OF THE
19 FACILITY.

20 AND JUST FOR CLARIFICATION, FROM THIS POINT
21 ON CROSSHATCHED LAND IS PRIVATE LAND, OR ACQUIRED FROM
22 PRIVATE PARTIES I SHOULD SAY.

23 **MR. KUHS:** YOUR HONOR, SAME OBJECTION AS
24 PREVIOUSLY TO THIS DOCUMENT.

25 **THE COURT:** ALL RIGHT. SUSTAINED.

26 **BY MR. LEININGER:**

27 **Q** OKAY. SO LET'S JUST GO TO EXHIBIT 42,
28 PLEASE. I BELIEVE THAT'S THE NEXT EXHIBIT.

1 **A** I HAVE THAT.

2 **Q** AND THAT'S VERY DIFFICULT TO SEE, TOO. CAN
3 YOU EXPLAIN TO US, PLEASE, WHAT THIS IS?

4 **A** THIS IS A LETTER FROM THE COLLECTION
5 R.G. 107, RECORD GROUP 107, THE SECRETARY OF WAR,
6 GENERAL CORRESPONDENCE. IT'S FROM THE NATIONAL ARCHIVES
7 IN WASHINGTON, D.C. IT'S DATED NOVEMBER 8TH, 1939. IT
8 IS FROM HARRY W. [SIC] WOODRING, SECRETARY OF WAR, TO
9 THE ATTORNEY GENERAL OF THE UNITED STATES.

10

11 (EXHIBIT 42, IDENTIFIED: LETTER,
12 NOVEMBER 8, 1939, SECRETARY OF WAR
13 TO U.S. ATTORNEY GENERAL.)
14

15 **BY MR. LEININGER:**

16 **Q** THANK YOU. AND I'M SORRY. LET ME JUST GO
17 AHEAD AND READ THE BATES NUMBER INTO THE RECORD. THIS
18 FIRST PAGE IS U.S.A.F. 035724.

19 WILL YOU READ FROM THE FIRST SENTENCE OF
20 THE SECOND PARAGRAPH, PLEASE?

21 **A** YES. HE STATES, "YOU ARE ADVISED THAT IT
22 IS NECESSARY THAT IMMEDIATE POSSESSION OF CERTAIN
23 PARCELS OF LAND INCLUDED IN THE ABOVE REFERRED TO
24 PROCEEDINGS BE SECURED FOR MILITARY PURPOSES AT THE
25 EARLIEST PRACTICABLE DATE."

26 **Q** AND AGAIN, FOR THE RECORD, THE DATE THIS IS
27 SIGNED?

28 **A** NOVEMBER 8TH, 1939.

1 **Q** SO THIS IS ESSENTIALLY AUTHORIZATION TO
2 BEGIN A PROCESS OF ACQUIRING THESE LANDS THROUGH
3 CONDEMNATION; IS THAT --

4 **MR. KUHS:** OBJECTION. CALLS FOR LEGAL OPINION.

5 **THE COURT:** I THINK IT STATES THAT IN THE RECORD,
6 IN THE LETTER.

7 **MR. KUHS:** DOCUMENT SPEAKS FOR ITSELF.

8 **THE COURT:** IT DOES. SO HE'S JUST PARAPHRASING.

9 **BY MR. LEININGER:**

10 **Q** LET'S GO UNDER EXHIBIT 47. AND EXHIBIT 47
11 BEGINS WITH BATES NUMBER -- I'LL JUST READ THE LAST FOUR
12 DIGITS. IT'S 2669. SO WHAT IS THIS AN EXAMPLE -- WHAT
13 IS THIS DOCUMENT?

14 **A** THIS IS A COMPLAINT IN CONDEMNATION.

15
16 (EXHIBIT 47, IDENTIFIED: COMPLAINT
17 IN CONDEMNATION.)
18

19 **THE WITNESS:** IT'S A DOCUMENT FILED IN THE
20 SOUTHERN DISTRICT OF THE UNITED STATES DISTRICT COURT,
21 NORTHERN DIVISION. IT WAS FILED IN MARCH -- MARCH 11TH,
22 1952. IT'S NUMBER 1147-N.D. CIVIL. AND IT IS A
23 CONDEMNATION COMPLAINT AGAINST A SPECIFIED PIECE OF
24 PROPERTY.

25 **BY MR. LEININGER:**

26 **Q** AND, AGAIN, BECAUSE IT'S A LITTLE DIFFICULT
27 TO READ, WILL YOU READ FROM PARAGRAPH 2, PLEASE,
28 REGARDING AUTHORITY?

1 **A** YES. PARAGRAPH 2 LISTS THE ACTS OF
2 CONGRESS THAT PROVIDE THE AUTHORITY FOR THE ACQUISITION.
3 YOU'LL NOTICE THAT MIDWAY ON THAT PARAGRAPH IT STATES,
4 "... WHICH ACTS AUTHORIZE THE ACQUISITION OF LAND FOR
5 MILITARY PURPOSES."

6 AND THEN ANOTHER ACT -- I CAN'T READ THE
7 DATE HERE.

8 **Q** I BELIEVE IT'S 1935.

9 **A** I'M SORRY. AUGUST 12TH, 1935. AND NOW I'M
10 QUOTING, "... WHICH ACT AUTHORIZES THE ACQUISITION OF
11 LAND FOR AIR CORPS STATIONS AND DEPOTS."

12 **Q** WOULD YOU NOW TURN TO THE NEXT PAGE,
13 PARAGRAPH 3. AND JUST READ THAT LINE, PLEASE.

14 **A** THAT'S A STATEMENT. I'M QUOTING, "THE USE
15 FOR WHICH THE PROPERTY IS TO BE TAKEN IS FOR MILITARY
16 PURPOSES."

17 **Q** LET'S GO TO THE NEXT EXECUTIVE ORDER, AND
18 THAT'S EXHIBIT 18, BATES LABEL 1658.

19 **A** I HAVE THAT.

20 **Q** WHAT IS THIS?

21 **A** THIS IS EXECUTIVE ORDER NUMBER 8450, AND IT
22 IS A WITHDRAWAL OF PUBLIC LANDS FOR THE USE OF THE WAR
23 DEPARTMENT AS A BOMBING AND GUNNERY RANGE.

24

25 (EXHIBIT 18, IDENTIFIED: EXECUTIVE
26 ORDER NUMBER 8450.)

27

28

1 **BY MR. LEININGER:**

2 **Q** OKAY. AND CAN YOU READ THE PURPOSES OF --
3 STATED PURPOSE ON THIS?

4 **A** WOULD YOU LIKE ME TO READ THE FULL
5 PARAGRAPH OR JUST THE LAST PART OF IT?

6 **Q** NO. I'M SORRY. THE "SUPERSEDES" LANGUAGE,
7 PLEASE.

8 **A** "THIS ORDER SUPERSEDES EXECUTIVE ORDERS
9 NUMBERS -- NUMBER 6588, OF FEBRUARY 6, 1934;
10 NUMBER 7707, OF SEPTEMBER 11TH, 1937; AND NUMBER 7740,
11 OF NOVEMBER 15TH, 1937."

12 **Q** SO LET ME STOP YOU RIGHT THERE. SO THOSE
13 ARE THE PREVIOUS EXECUTIVE ORDERS THAT WE'VE JUST BEEN
14 EXAMINING?

15 **A** THAT'S RIGHT.

16 **THE COURT:** WHAT EXHIBIT NUMBER ARE YOU LOOKING
17 AT?

18 **MR. LEININGER:** OH, I'M SORRY. THAT'S EXHIBIT 18.

19 **THE COURT:** 18.

20 **MR. LEININGER:** 18.

21 **THE WITNESS:** (INDICATING.)

22

23 (PAUSE IN THE PROCEEDINGS.)

24

25 **BY MR. LEININGER:**

26 **Q** OKAY. WILL YOU FINISH THAT SENTENCE,
27 PLEASE?

28 **A** I'M SORRY?

1 Q YOU -- AND I DIDN'T MEAN TO INTERRUPT YOU,
2 BUT YOU WERE COMPLETING THAT SENTENCE, PLEASE.

3 A I THINK I WAS DONE.

4 Q OH. IS THERE A STATED PURPOSE FOR THE
5 SUPERSEDING? AND I REFER YOU TO THE LAST SENTENCE UNDER
6 "CALIFORNIA" PARAGRAPH.

7 A OH, I'M LOST AS TO WHERE YOU ARE. "THIS
8 ORDER SHALL CONTINUE IN FORCE UNTIL REVOKED BY THE
9 PRESIDENT OR BY ACT OF CONGRESS"?

10 Q NO. I'M SORRY. RIGHT -- ON THE SECOND
11 FULL PARAGRAPH RIGHT UNDER --

12 A OH, I'M SORRY. I'M SORRY. YOU'RE TALKING
13 ABOUT THE SUBJECT OF VALID EXISTING RIGHTS FOR THE USE
14 OF THE WAR DEPARTMENT AS A BOMBING AND GUNNERY RANGE.

15 Q RIGHT. THANK YOU. SO THIS LETTER IS DATED
16 19 WHAT?

17 A THIS EXECUTIVE ORDER IS JUNE 22ND, 1940.

18 Q 1940. AND WHAT WERE THE ACTIVITIES ON
19 MUROC AT THAT TIME?

20 A THEY WERE A CONTINUATION OF THE TRAINING
21 AND OTHER ACTIVITIES ON THE FACILITIES; SO PLANES WERE
22 FLYING IN, UNITS WERE LANDING, TAKING OFF, BOMBING,
23 PRACTICING, DOING THE SORT OF AIR CORPS TACTICAL
24 TRAINING.

25 Q COULD YOU SHOW ME NOW EXHIBIT 99?

26 A YES. 99 IS A REPRESENTATION OF THE LAND
27 COVERED BY EXECUTIVE ORDER 8450;

28

1 (EXHIBIT 99, IDENTIFIED: LAND
2 COVERED BY EXECUTIVE ORDER 8450.)
3

4 **THE WITNESS:** SO IT'S PRETTY SIMILAR TO THE ONE
5 THAT WE SAW RELATED TO THE ACQUISITION, SOUTHERN PACIFIC
6 RAILROAD.

7 BUT ALL OF THE -- AGAIN, USING OUR COLOR
8 SCHEME, ALL OF THE DARK BLUE LAND (INDICATING) IN HERE
9 ARE THE LANDS THAT ARE COVERED BY THE EXECUTIVE ORDER.
10 THEY OVERLAP THE OTHER EXECUTIVE ORDERS.

11 **Q** OKAY. SO ALL THIS WAS WITHDRAWN AND
12 RESERVED FOR THESE PURPOSES AS OF 1940. CAN YOU GO TO
13 EXHIBIT --

14 **MR. KUHS:** YOUR HONOR, SAME OBJECTION.

15 **THE COURT:** ALL RIGHT. SUSTAINED.

16 **BY MR. LEININGER:**

17 **Q** EXHIBIT 56, PLEASE.

18 **A** YES, I HAVE THAT.

19 **Q** WHAT IS THIS?

20 **A** THIS IS A MEMORANDUM AND SERIES LIKE THE
21 OTHER. IT'S LONG SERIES OF A BASE LETTER AND
22 ENDORSEMENTS. AGAIN, IT IS FROM THE -- IT'S FROM RECORD
23 GROUP 18, ARMY AIR FORCES PROJECT FILES. AND THIS ONE
24 CONTAINS MUROC LAKE.

25
26 (EXHIBIT 56, IDENTIFIED:
27 MEMORANDUM, BASE LETTER, AND
28 ENDORSEMENTS.)

1
2 **THE WITNESS:** WHAT -- THIS IS A MEMORANDUM ON THE
3 CONSTRUCTION, IS THE TITLE ON THE FIRST PAGE OF THE BASE
4 LETTER -- CONSTRUCTION ON PERMANENT SITE OF MUROC
5 BOMBING FIELD.

6 THIS LETTER GOES THROUGH A DESCRIPTION OF
7 THE DESIRED DEVELOPMENT AND -- NOT ONLY THE DESIRED
8 DEVELOPMENT, THE CURRENT DEVELOPMENT AND THEN THE
9 DESIRED DEVELOPMENT OF THE AIR CORPS FACILITY THERE.

10 **BY MR. LEININGER:**

11 **Q** IF YOU LOOK ON PARAGRAPH -- THE FIRST
12 PAGE -- AND I'M SORRY. THE BATES LABEL IS 35701. IF
13 YOU LOOK AT -- ON THE FIRST PAGE, PARAGRAPH 3, AT THE
14 BOTTOM --

15 **A** YES.

16 **Q** -- THERE'S A MENTION OF TEMPORARY HOUSING.

17 **A** THAT'S RIGHT. AND, IN FACT, THERE'S A
18 COUPLE OF INSTANCES WHERE THERE WERE TEMPORARY NATURE OF
19 THE PRESENT HOUSING AND TEMPORARY HOUSING AND TEMPORARY
20 TYPE CONSTRUCTION.

21 TEMPORARY CONSTRUCTION AT THIS TIME --
22 WELL, MILITARY CONSTRUCTION WAS DIVIDED INTO THREE
23 CATEGORIES: TEMPORARY, SEMIPERMANENT AND PERMANENT. SO
24 ALMOST ALL THE WORLD WAR II ERA, JUST IMMEDIATELY
25 FOLLOWING THIS, ALL THAT CONSTRUCTION WAS CONSIDERED --
26 IT'S CLASSIFIED AS TEMPORARY CONSTRUCTION. IT'S
27 CLASSIFIED AS TEMPORARY CONSTRUCTION TODAY.

28 SO BUILDINGS ON, SAY, CAMP PENDLETON -- THE

1 CAMP PENDLETON'S HEADQUARTER BUILDING IS CLASSED AS A
2 TEMPORARY BUILDING. SO IT'S JUST SIMPLY A
3 CLASSIFICATION OF THE LEVEL OF CONSTRUCTION THAT THEY'RE
4 ASKING FOR.

5 PERMANENT BUILDINGS TENDED TO BE THE BIG
6 HOSPITALS, THE CONCRETE BUILDINGS, MAJOR CONSTRUCTION.
7 SEMIPERMANENT TENDED TO BE THOSE TEMPORARY BUILDINGS
8 THAT HAD BEEN UPGRADED SUFFICIENTLY; SO THEY'RE CARRIED
9 ON THE BUILDING INVENTORIES AS TEMP -- AS NO LONGER
10 TEMPORARY. BUT WE HAVE 70 YEAR OLD TEMPORARY BUILDINGS
11 ON MILITARY BASES TODAY.

12 Q SO I JUST WANTED THAT CLARIFICATION. SO
13 SOME OF THESE BUILDINGS THAT WERE BUILT ON A TEMPORARY
14 STATUS IN THE WORLD WAR II ERA ARE STILL AROUND ON THESE
15 MILITARY INSTALLATIONS TODAY?

16 A RIGHT. IF YOU'RE FAMILIAR WITH, SAY,
17 FORT ORD, ANYONE DRIVING PAST FORT ORD SEES ALL THOSE
18 WORLD WAR II BARRACKS. THOSE WERE ALL TEMPORARY
19 BARRACKS.

20 Q CAN WE GO TO EXHIBIT 43, PLEASE?

21 THE COURT: YOU SAY 43?

22 MR. LEININGER: YES. I'M SORRY, YOUR HONOR. 43,
23 AND IT'S BATES LABEL 35743.

24 BY MR. LEININGER:

25 Q SO WHAT ELSE IS GOING ON OUT THERE?

26 A WELL, OTHER THAN THE ACTIVITIES OF THE AIR
27 FORCE ITSELF, AVIATION COMPANIES, AERONAUTICAL COMPANIES
28 IN THIS INSTANCE -- WE KNOW OF THIS ONE IN PARTICULAR --

1 USED OR ASKED TO USE THE FACILITY FOR TEST PURPOSES.

2 THIS IS A LETTER FROM JOHN K. NORTHROP,
3 PRESIDENT OF NORTHROP AVIATION, DATED APRIL 17TH, 1940,
4 AND HE'S ASKING PERMISSION TO USE THE FACILITY TO TEST A
5 SPECIFIC DESIGN.

6

7 (EXHIBIT 43, IDENTIFIED: JOHN K.
8 NORTHROP LETTER DATED 4/17/1940.)

9

10 **THE WITNESS:** AND HE SAYS ON THE FIRST PARAGRAPH,
11 "BETWEEN MAY 15TH AND JUNE 1ST, 1940, NORTHROP AIRCRAFT,
12 INC., WILL HAVE READY FOR TEST FLIGHT A, QUOTE, FLYING
13 MOCKUP OF AN AIRPLANE OF RATHER RADICAL DESIGN, WHICH
14 THIS COMPANY HAS UNDER DEVELOPMENT."

15 SO THEY'RE LOOKING FOR A PLACE TO TEST FLY
16 A RADICAL -- A NEW RADICAL DESIGN.

17 **BY MR. LEININGER:**

18 **Q** AND THAT RADICAL DESIGN ACTUALLY HAD A NAME
19 THAT REGISTERS TODAY. I ASSUME YOU RECALL THOSE.

20 **A** IT'S MY UNDERSTANDING THEY'RE REFERRING TO
21 THE FLYING WING --

22 **Q** LET'S GO TO EXHIBIT --

23 **A** -- A VERSION OF THE FLYING WING.

24 **Q** LET'S GO TO EXHIBIT 19.

25 **A** I'M GOING TO ADD THAT THERE'S A NOTE ON
26 THIS LETTER TO MR. NORTHROP FROM HAP ARNOLD, SAYING THAT
27 THEY WERE VITALLY INTERESTED IN THIS DESIGN AND URGING
28 THAT THEY ALLOW THEM TO MAKE THAT PLANE.

1 I'M SORRY. GO TO 19?

2 Q 19, PLEASE. IT IS BATES LABELED ...

3 A IT'S BATES 19535.

4 Q THANK YOU. WHAT DO WE HAVE HERE?

5 A THIS IS FROM -- THIS IS FROM A FILE AT THE
6 AERO -- AT THE EDWARDS AIR FORCE BASE HISTORY CENTER
7 BUILDING, AND IT WAS A -- IN A FILE ENTITLED "MUROC
8 A.A.F. WORLD -- WW II, 1940," AS THE BOX TITLE, AND THEN
9 THE FILE TITLE WAS "78 TITLE EDWARDS MUROC A.A.B.,
10 GENERAL CORRESPONDENCE." THIS WAS MATERIAL WE COLLECTED
11 AT THE EDWARDS HISTORY LOGS.

12 Q AND WHAT'S THE TITLE?

13 A THE TITLE IS "CONSTRUCTION PROGRAM AT AIR
14 CORPS STATIONS."

15

16 (EXHIBIT 19, IDENTIFIED:

17 CONSTRUCTION PROGRAM AT AIR CORPS
18 STATIONS.)

19

20 **THE WITNESS:** AND IT LISTS -- THIS IS DATED
21 JUNE 30TH, 1941. IT WAS PRIOR TO PEARL HARBOR, SIX
22 MONTHS BEFORE PEARL HARBOR. AND IT LISTS THE MUROC
23 BOMBING RANGE AS NUMBER 4 IN THE CONSTRUCTION PROGRAM AT
24 AIR CORPS STATIONS.

25 **BY MR. LEININGER:**

26 Q SO WHAT WAS BEING BUILT HERE?

27 A WELL, IF YOU LOOK AT PARAGRAPH NUMBER 1,
28 THE DESCRIPTION OF THE PROJECT IS, "CONSTRUCTION OF

1 TEMPORARY HOUSING FACILITIES, UTILITIES, AND TECHNICAL
2 FACILITIES FOR BOMBING RANGE AT MUROC DRY LAKE,
3 CALIFORNIA."

4 THE STATUS OF CONSTRUCTION IS LISTED IN
5 PARAGRAPH 3 -- WELL, EXCUSE ME. LET'S LOOK AT
6 PARAGRAPH 2, THOUGH. PARAGRAPH 2 DESCRIBES THE
7 AUTHORIZED CONSTRUCTION AS OF THE FALL OF 1940, AND THEN
8 ADDITIONAL NEW THINGS THAT ARE TO BE ISSUED.

9 STATUS OF CONSTRUCTION SAYS, "CONSTRUCTION
10 OF BARRACKS, DISPENSARY, RAILROAD, MAGAZINES, FENCING
11 AND APPURTENANT WORK. ENTIRE PROJECT (ORIGINALLY
12 AUTHORIZED WORK) APPROXIMATELY 98 PERCENT COMPLETE.
13 RIGHT-OF-WAY AVAILABLE. CONSTRUCTION OF ORDNANCE
14 FACILITIES, TARGET INSTALLATIONS, AND RUNWAYS HAVE BEEN
15 AUTHORIZED, BUT NO WORK IS UNDERWAY." SO IT'S A PROGRAM
16 TO DEVELOP THE FACILITIES ON THE BASE.

17 Q AND WHAT'S THAT BASE STILL BEING CALLED?

18 A THEY'RE STILL CALLING IT THE MUROC BOMBING
19 RANGE.

20 Q OKAY. LET'S SWITCH GEARS HERE AND -- ABOUT
21 EXCLUSIVE JURISDICTION. WHEN DID THE UNITED STATES
22 ESTABLISH EXCLUSIVE JURISDICTION WHERE WE ARE?

23 MR. MC LACHLAN: OBJECTION. CALLS FOR LEGAL
24 OPINION.

25 MR. ZIMMER: JOIN.

26 BY MR. LEININGER:

27 Q ALL RIGHT. LET'S GO TO EXHIBIT --

28 THE COURT: SUSTAINED.

1 **MR. LEININGER:** LET'S GO TO EXHIBIT 28.

2 **THE COURT:** 48?

3 **MR. LEININGER:** I'M SORRY TO INTERRUPT, YOUR
4 HONOR. THIS IS EXHIBIT 28.

5 **THE COURT:** 28.

6 **BY MR. LEININGER:**

7 **Q** 28. AND THE BATES LABEL -- I'M SORRY, IT'S
8 TOO SMALL FOR MY EYES.

9 **A** 12651.

10 **Q** THANK YOU.

11 **A** WAIT A MINUTE. I HAVE -- ARE WE ON 28?

12 **Q** YES.

13 **A** 28. ALL RIGHT.

14 **Q** WILL YOU READ -- LET'S HAVE A GENERAL
15 DESCRIPTION -- WELL, LET'S HAVE A SPECIFIC DESCRIPTION
16 OF THIS LETTER FIRST, PLEASE.

17 **A** THIS IS A LETTER THAT WE COLLECTED AT THE
18 CALIFORNIA STATE ARCHIVES, IN THE RECORDS OF THE
19 GOVERNOR'S PAPERS. IT'S A -- IF I CAN FIND THE FILE
20 FOLDER -- IT'S IN THE COLLECTION OF
21 GOVERNOR EARL WARREN'S FEDERAL LAND FILES. AND THE
22 FOLDER THAT IT IS LOCATED IN IS CALLED "JURISDICTION OF
23 LANDS." IT IS A LETTER DATED APRIL 16TH, 1943, FROM
24 HENRY L. STIMSON, SECRETARY OF WAR, TO GOVERNOR EARL
25 WARREN, STATE OF CALIFORNIA.

26

27 (EXHIBIT 28, IDENTIFIED: HENRY L.

28 STIMSON 4/16/1943 LETTER .)

1
2 **BY MR. LEININGER:**

3 **Q** AND WILL YOU READ FROM PARAGRAPH 3, PLEASE?

4 **A** THE THIRD FULL PARAGRAPH STATES,
5 "ACCORDINGLY, NOTICE IS HEREBY GIVEN THAT THE UNITED
6 STATES ACCEPTS EXCLUSIVE JURISDICTION OVER ALL LANDS
7 ACQUIRED BY IT FOR MILITARY PURPOSES WITHIN THE STATE OF
8 CALIFORNIA, TITLE TO WHICH HAS HERETOFORE VESTED IN THE
9 UNITED STATES AND OVER WHICH EXCLUSIVE JURISDICTION HAS
10 NOT HERETOFORE BEEN OBTAINED."

11 **Q** YOU ALSO HAVE A SERIES OF OTHER LETTERS
12 THAT I TAKE IT ALSO CAME OUT OF THE SAME FILE IN THIS --
13 AND I BELIEVE THEY'RE CHRONOLOGICAL. WHAT'S THE
14 SEQUENCE OF LETTERS HERE?

15 **A** THAT'S RIGHT. THIS IS A COLLECTION OF
16 LETTERS THAT ALL PERTAIN TO THIS TOPIC, AND WHERE IT WAS
17 SPECIFIC TO MUROC, WE LISTED MUROC OR WE MADE A SPECIAL
18 COLLECTION FOR THAT.

19 BUT THE NEXT LETTER IS FROM ROBERT KENNY,
20 THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, TO
21 EARL WARREN, DATED APRIL 28TH, 1943. AND HE HAS -- HE
22 IS ANSWERING A QUESTION THAT THE GOVERNOR HAS ASKED
23 ABOUT HENRY STIMSON'S LETTER, WHICH WE JUST DESCRIBED.

24 **Q** OKAY. NOW LET'S TURN TO EXHIBIT 29,
25 PLEASE. THIS IS BATES LABEL -- I CAN'T QUITE READ THAT
26 EITHER. ONE, TWO --

27 **A** I'M SORRY. IT'S 012651.

28 **Q** ALL RIGHT. CAN YOU DESCRIBE THIS LETTER?

1 **A** THIS IS A SECOND LETTER FROM SECRETARY OF
2 WAR STIMSON TO GOVERNOR WARREN. IT'S DATED MAY 23RD,
3 1945.

4
5 (EXHIBIT 29, IDENTIFIED: SECRETARY
6 OF WAR STIMSON LETTER DATED
7 5/23/1945 TO GOVERNOR WARREN.)
8

9 **THE WITNESS:** IT RESTATES IN THE THIRD PARAGRAPH,
10 I THINK, SUBSTANTIALLY THE SAME LANGUAGE THAT I READ
11 FROM HIS 1943 LETTER, REGARDING NOTICE IS HEREBY GIVEN
12 THE UNITED STATES ACCEPTS EXCLUSIVE JURISDICTION AND SO
13 FORTH.

14 **BY MR. LEININGER:**

15 **Q** AND I'M SORRY. WE MISSED AN IMPORTANT
16 POINT ON THAT LAST SET OF EXHIBITS; SO IF YOU COULD
17 PLEASE GO BACK TO EXHIBIT 28 FOR ONE MOMENT.

18 **A** SURE.

19 **Q** AND TURN IN THAT STACK OF CORRESPONDENCE
20 TO -- (SPOKE SOTTO VOCE) -- BATES LABEL 12643.

21 **A** YES, I HAVE THAT.

22 **Q** ALL RIGHT. AND YOU DESCRIBE THIS AS A
23 LETTER WHICH PROVIDED THE COMMUNICATION REGARDING THIS
24 TOPIC OF EXCLUSIVE JURISDICTION.

25 IS MUROC AIRFIELD ON THAT DOCUMENT?

26 **MR. ZIMMER:** YOUR HONOR, WHICH EXHIBIT IS THIS?

27 **MR. LEININGER:** I'M SORRY. IT'S EXHIBIT 28.

28 **MR. ZIMMER:** THANK YOU.

1 **THE WITNESS:** ARE YOU ASKING ON 12642? IS THAT
2 THE ONE YOU'RE ASKING ME?

3 **BY MR. LEININGER:**

4 **Q** NO. IT'S THE LIST OF DOCUMENTS THERE AT
5 THE END OF THE --

6 **A** ALL RIGHT. THE UNITED STATES PROVIDED A
7 LIST FOR THE STATE OF CALIFORNIA, IN RESPONSE TO THE --
8 A REQUEST BY THE GOVERNOR, OF THE SPECIFIC FACILITIES HE
9 WAS ASKING FOR EXCLUSIVE JURISDICTION OVER. AND IT'S AN
10 ALPHABETICAL LIST. YOU CAN SEE IT STARTS WITH THE
11 ALAMEDA TRANSIT DEPOT. AND IF YOU MOVE DOWN -- ONE,
12 TWO, THREE -- ON THE FOURTH PAGE OF THE LETTER -- OR THE
13 LIST, YOU SEE IT LISTS MUROC ARMY AIRFIELD IN
14 SAN BERNARDINO, KERN, AND LOS ANGELES COUNTIES.

15 **Q** CAN YOU GIVE THE BATES PAGE, PAGE NUMBER?

16 **A** I'M SORRY. IT IS 012645.

17 **Q** WE NOW GO TO EXHIBIT 102.

18 **A** OKAY.

19 **Q** AND, AGAIN, THIS IS A EXHIBIT YOU CREATED
20 OR YOUR OFFICE CREATED; IS THAT CORRECT?

21 **A** THAT'S RIGHT. THIS -- WE PUT THIS EXHIBIT
22 TOGETHER ON THE BASE THAT WE WERE -- THE BASE MAP THAT
23 WE WERE USING FOR ALL THE OTHERS, JUST TO KEEP A
24 CONTINUITY OF COMPARISON.

25

26 (EXHIBIT 102, IDENTIFIED: MAP OF
27 MILITARY BASE.)

28

1 **BY MR. LEININGER:**

2 **Q** SO THIS IS A DEMONSTRATION OF WHAT?

3 **A** THIS IS -- WE TOOK A -- AN ORIGINAL MAP
4 PROVIDED BY EDWARDS AIR FORCE BASE THAT DEPICTED THIS
5 AREA AND PUT IT ON OUR BASE.

6 **Q** DO YOU RECALL THE SOURCE? WAS IT EDWARDS
7 OR WAS IT THE ARMY CORPS OF ENGINEERS?

8 **A** THE MAP WAS PROVIDED BY EDWARDS. THE MAP
9 WAS PREPARED BY THE CORPS OF ENGINEERS.

10 **Q** OKAY. SO, AND DO YOU RECALL THE DATE OF
11 THAT MAP?

12 **A** YES. IT WAS JANUARY 28TH, 1958.

13 **Q** AND WHAT DID THAT DEPICT AND YOU HAVE
14 REPRESENTED HERE?

15 **A** THAT IS THE LAND THAT THEY DEPICTED ON THE
16 MAP AS FEDERAL JURISDICTION.

17 **Q** AND LET'S GO TO THE NEXT EXHIBIT, PLEASE.

18 **MR. KUHS:** YOUR HONOR, COULD WE HAVE CLARIFICATION
19 AS TO WHETHER IT'S THE CROSSHATCHED LANDS OR SOME OTHER
20 LANDS ALLEGED TO BE UNDER THE EXCLUSIVE JURISDICTION?

21 THE QUESTION IS VAGUE BECAUSE IT SIMPLY
22 ASKS, WAS THIS AN ACCURATE DEPICTION OF THE LANDS
23 SUBJECT TO FEDERAL JURISDICTION? I CAN'T TELL, AT LEAST
24 FROM THE EXHIBIT, WHICH LAND HE'S PURPORTING TO SHOW.

25 **THE COURT:** DO WE HAVE AN EXHIBIT THAT DOESN'T
26 SPEAK FOR ITSELF?

27 **BY MR. LEININGER:**

28 **Q** DO YOU KNOW WITHIN -- OR I GUESS SORT OF

1 THE PATCHWORK AROUND THOSE HATCHED EXHIBITS, DO YOU KNOW
2 WHAT THOSE WHITE SECTIONS OF LAND ARE?

3 A I THINK THE BEST THING TO DO IS JUST LOOK
4 AT THE LEGEND THAT'S ON THE MAP, IF THE CROSSHATCH LAND
5 SAYS AREA UNDER FEDERAL JURISDICTION AS PER REVISED
6 SUMMARY OF JANUARY 8 -- 28 JANUARY, 1958.

7 Q AND THE AREAS THAT ARE WITHIN THAT
8 CROSSHATCHED AREA, THE SQUARES, DO YOU RECALL EXACTLY
9 WHETHER OR NOT THAT IS FEDERAL LAND, WHETHER OR NOT THAT
10 WAS RESERVED FROM THE PUBLIC DOMAIN?

11 A THE LANDS THAT ARE SHOWN AS BLANK, WHITE,
12 THESE GUYS (INDICATING), THOSE OVERLAP WITH THE
13 WITHDRAWN LANDS. NOT PERFECTLY, BECAUSE SOME OF THIS
14 LAND WAS ACQUIRED LATER, AFTER 1958. BUT BY AND LARGE,
15 THIS IS THE WITHDRAWN AREAS FROM THE PREVIOUS EXECUTIVE
16 ORDERS.

17 Q LET'S GO TO THE NEXT EXHIBIT.

18 THIS IS EXHIBIT, YOUR HONOR, 257.

19 THE COURT: SAY THAT AGAIN.

20 MR. LEININGER: I'M SORRY. 257.

21 MR. MC LACHLAN: WHAT'S THE BATES NUMBER,
22 MR. LEININGER?

23 THE COURT: I DON'T HAVE A 257. I HAVE 256 AND
24 258.

25 MR. LEININGER: WE'LL GET YOU A -- I'LL BRING 257.
26 MAY I APPROACH?

27 THE COURT: YES, YOU MAY.

28 MR. LEININGER: (INDICATING.) SO --

1 **MR. KUHS:** DO YOU HAVE ANOTHER COPY?

2

3 (COUNSEL SPOKE SOTTO VOCE.)

4

5 **MR. LEININGER:** I'M SORRY, WE DON'T, BUT WE'LL
6 PROVIDE A COPY TONIGHT OR TOMORROW.

7 **BY MR. LEININGER:**

8 **Q** SO WHAT'S DEPICTED IN THE DARKENED AREA
9 HERE?

10 **A** THE DARKENED AREA IS DEPICTED -- IT'S GREEN
11 ON THIS MAP, EXCLUSIVE FEDERAL JURISDICTION PARCELS.

12 **Q** OKAY. SO, AND WHAT'S THE DATE OF THIS?

13 **A** THIS WAS -- IT SAYS "CURRENT AS OF
14 MARCH 2010."

15 **Q** SO IS IT FAIR THAT -- JUST STATING THE
16 FACTS, BECAUSE I KNOW YOU CAN'T DRAW LEGAL CONCLUSIONS.
17 BUT IS IT FAIR TO SAY THAT THIS IS MORE RECENT
18 INTERPRETATION OF -- BY THE AIR FORCE OF ITS EXCLUSIVE
19 JURISDICTION?

20 **MR. KUHS:** LACKS FOUNDATION.

21 **MR. LEININGER:** I'LL --

22 **THE COURT:** WHERE DID THIS DOCUMENT COME FROM?

23 **MR. LEININGER:** YOUR HONOR, I'LL DOUBLE-CHECK.
24 THANK YOU.

25 **BY MR. LEININGER:**

26 **Q** WHERE DID YOU RECEIVE THIS DOCUMENT FROM?

27 **A** I RECEIVED THIS DOCUMENT FROM EDWARDS AIR
28 FORCE BASE.

1 **Q** AND, AGAIN, THE CAPTION AT THE BOTTOM, WHAT
2 IS THAT?

3 **A** THE CAPTION ON THE LOWER LEFT SAYS,
4 "EDWARDS AIR FORCE BASE. EXCLUSIVE FEDERAL JURISDICTION
5 AREAS WITH MAJOR ROADS AND COUNTY LINES. CURRENT AS OF
6 MARCH 2010."

7
8 (EXHIBIT 257, IDENTIFIED: EDWARDS
9 AIR FORCE BASE. EXCLUSIVE FEDERAL
10 JURISDICTION AREAS WITH MAJOR ROADS
11 AND COUNTY LINES. CURRENT AS OF
12 MARCH 2010.)

13
14 **BY MR. LEININGER:**

15 **Q** OKAY. NOW LET'S GO BACK -- LET'S GO BACK
16 TO OUR TIME LINE NOW. LET'S GO BACK TO WORLD WAR II.

17 SO YOU GAVE US THE LETTERS WHICH WERE
18 CONTEMPORANEOUS WITH WORLD WAR II, 1943, 1945, WITH
19 REGARD TO EXCLUSIVE JURISDICTION. SO WHAT WAS HAPPENING
20 IN MUROC -- IT WAS STILL CALLED MUROC; RIGHT?

21 **A** MUROC ARMY AIRFIELD BY THAT TIME.

22 **Q** OKAY. SO WHAT WAS -- WHAT HAPPENED AFTER
23 WORLD WAR II?

24 LET ME BACK UP A LITTLE BIT. YOU DESCRIBED
25 THIS CONSTRUCTION PROGRAM. SO JUST BRIEFLY, WHAT WAS
26 MUROC USED FOR DURING WORLD WAR II?

27 **A** WELL, IT WAS USED FOR A COMBINATION OF
28 THINGS. IT WAS USED FOR TRAINING OF AIR CREWS FOR

1 FLIGHT TRAINING, FOR GUNNERY AND BOMBING AND SO FORTH,
2 BUT IT WAS ALSO -- DURING THE WAR, BEGAN TO BE USED FOR
3 TESTING OF MORE ADVANCED AND EXOTIC AIRCRAFT.

4 Q OKAY. AND THEN WHAT HAPPENED AFTER WORLD
5 WAR II?

6 A AFTER WORLD WAR II, THE AIR FORCE -- ARMY
7 AIR CORPS STILL AT THAT TIME, STILL -- OR CONTINUED ITS
8 PROGRAM OF LAND ACQUISITIONS, EITHER THROUGH EXECUTIVE
9 ORDERS -- BECAME KNOWN AS PUBLIC LAND ORDERS -- OR
10 PURCHASE OR CONDEMNATION.

11 Q SO IT WASN'T DECLARED SURPLUS?

12 A NO, IT WAS NOT.

13 Q SO IT WAS RETAINED -- LET'S GO TO
14 EXHIBIT 63.

15 A ALL RIGHT.

16 Q ALL RIGHT. AND SORRY, THIS IS BATES LABEL
17 NUMBER -- THERE WE GO -- 36293.

18 A I HAVE 036291.

19 Q OH.

20 A THAT'S THE START OF THE DOCUMENT.

21 Q YES. AND IF YOU GO TO PAGE 4 OF THE --
22 WELL, LET'S DESCRIBE THESE DOCUMENTS FIRST.

23 A ALL RIGHT. THIS IS A -- IT'S IN THE BACK
24 WHERE I HAVE MY CITATION. THIS IS A SET OF MEMORANDUM,
25 BASE LETTER, AND SO FORTH, FROM OUR RECORD GROUP 18,
26 ARMY AIR FORCES, AIR ADJUTANT GENERAL, UNCLASSIFIED
27 RECORDS SECTION DECIMAL FIVE, 1947. IT'S FROM THE
28 NATIONAL ARCHIVES IN WASHINGTON, D.C.

(EXHIBIT 63, IDENTIFIED: [AS
DESCRIBED HEREIN.])

BY MR. LEININGER:

Q AND ON PAGE 4 OF THIS DOCUMENT, THE BATES
STAMP 36294 --

A YES.

Q -- WHAT ARE THEY LISTING HERE?

A THIS IS A LISTING OF THE ADDITIONAL AREAS
THAT THE ARMY AIR FORCES WANT TO ACQUIRE TO EXPAND THE
FACILITY AND FURTHER THEIR BASIC MISSION OF TRAINING AND
TESTING. AND SO IT LISTS OFF SPECIFIC PARCELS IN
SPECIFIC AREAS.

Q ALL RIGHT. AND WHAT DO THEY COMMENCE TO
DO?

A THEY BEGAN PURCHASING LAND AND CONDEMNING
LAND FOR ACQUISITION.

Q OKAY. CAN WE SHOW -- CAN WE SEE
EXHIBIT 101, PLEASE?

A YES. THIS MAP, AGAIN, OVERLAY -- ITS
COLORS ARE OVERLAID ON THE BASE THAT WE'VE BEEN USING TO
REPRESENT EDWARDS, DEPICTS THE -- AND ON THE PAPER COPY,
THIS IS YELLOW AND THIS IS GREEN (INDICATING). IT
DEPICTS THE AREA OF THE FACILITY AS OF 1948 AND THE
LANDS DESCRIBED FOR ACQUISITION IN THAT PROGRAM OF
EXPANSION. YOU CAN SEE IT'S BECOMING MUCH MORE LIKE
WHAT WE THINK OF AS EDWARDS AIR FORCE BASE.

1 **Q** AND YOU HAVE A BLOCK QUOTATION THERE AT THE
2 TOP. WHAT IS -- CAN YOU ZOOM IN ON THAT, PLEASE?

3 **A** WOW. IT -- YEAH. IT SAYS, "ACQUISITION OF
4 THE ABOVE REAL ESTATE SHADED YELLOW IS ESSENTIAL TO
5 PREVENT A BREAKDOWN OF FUNCTIONS AT THE STATION FOR
6 FLIGHT TEST PURPOSES AND IS CONSIDERED ESSENTIAL FOR
7 MASTER PLAN CRITERIA AND FUTURE DEVELOPMENT."

8 **Q** WHAT IS THE SOURCE OF THAT QUOTATION?

9 **A** THAT WAS A LETTER BY LIEUTENANT COLONEL
10 STANLEY SMITH, DATED OCTOBER 1ST, 1946.

11 **MR. KUHS:** YOUR HONOR, I HAVE THE SAME OBJECTION
12 AS I HAD TO THE EARLIER EXHIBITS. THEY WEREN'T PROVIDED
13 IN DISCOVERY AND THEY LACK FOUNDATION. I DON'T KNOW THE
14 SOURCE OF WHO CREATED THE MAP OR WHERE THE NOTE COMES
15 FROM.

16 **THE COURT:** WELL, FIRST OF ALL, DO YOU AGREE THESE
17 WERE NOT PROVIDED IN DISCOVERY?

18 **MR. LEININGER:** THESE -- WELL, THE MAPS
19 THEMSELVES, YOUR HONOR, WERE CREATED FOR PURPOSES OF
20 THIS TESTIMONY. THEY WERE INTENDED TO BE DEMONSTRATIVE
21 AND ILLUSTRATIVE AS THE LANDS WERE RESERVED OR ACQUIRED.

22 **THE COURT:** WELL, YOU'RE OFFERING THIS, HOWEVER,
23 TO ESTABLISH THAT THIS WAS THE DESIRE OF THE AIR FORCE
24 TO ACQUIRE THIS LAND; IS THAT RIGHT?

25 **MR. LEININGER:** WELL, IT'S --

26 **THE COURT:** BECAUSE IT CLEARLY AT THE TIME WAS NOT
27 ACQUIRED --

28 **MR. LEININGER:** THAT'S CORRECT.

1 **THE COURT:** -- IF I UNDERSTAND YOU. SO IT REALLY
2 IS KIND OF AN INCREMENTAL MOVEMENT TOWARD YOUR
3 ATTEMPTING TO ESTABLISH WHAT ALL THE LAND IS THAT'S
4 SUBJECT TO MILITARY JURISDICTION.

5 **MR. LEININGER:** YES. BUT, YOUR HONOR, I SHOULD
6 CORRECT THAT. WHAT WE'RE ESTABLISHING HERE IS THESE
7 LANDS THAT -- 40 PERCENT OF THE LAND, WHICH IS NOT
8 SPECIFIC TO EXCLUSIVE JURISDICTION, WAS SUBSEQUENTLY
9 DESIGNATED, ACQUIRED, OR RESERVED FOR EDWARDS AIR FORCE
10 BASE AFTER WORLD WAR II. SO THIS IS AN ILLUSTRATION OF
11 THE FIRST INTENTION TO ACQUIRE ALL THIS ADDITIONAL LAND
12 FOR MILITARY PURPOSES.

13 **THE COURT:** WAS THIS WITNESS DEPOSED?

14 **MR. LEININGER:** YES.

15 **MR. KUHS:** HE WAS DEPOSED, YOUR HONOR, BUT HE
16 DIDN'T HAVE THE EXHIBITS WITH HIM IN HIS DEPOSITION.

17 **THE COURT:** DID HE TESTIFY AS TO THE PROGRESS OF
18 THE ACQUISITION OF THE LANDS PRIOR TO THE MILITARY AT
19 THE DEPOSITION?

20 **MR. KUHS:** MR. SHEFFIELD MIGHT KNOW THE ANSWER TO
21 THAT.

22 **MR. SHEFFIELD:** I WOULD TEND TO SAY NOT
23 SPECIFICALLY AS WE ARE TODAY, 'CAUSE ONE OF THE
24 QUESTIONS WERE ASKED ABOUT CAN YOU TELL US --

25 **THE COURT:** PLEASE STAND UP SO I CAN HEAR YOU.

26 **MR. SHEFFIELD:** NOT AS SPECIFICALLY AS WE HAVE
27 TODAY, BECAUSE WHEN HE WAS ASKED ABOUT, COULD YOU TELL
28 US THIS, HE SAID, "I HAVE TO GO TO THE RECORDS; I DON'T

1 KNOW IT OFF THE TOP OF MY HEAD."

2 **THE COURT:** ALL RIGHT. HERE'S WHAT I'M GOING TO
3 DO: I'M GOING TO OVERRULE THE OBJECTION. I'M GOING TO
4 LET THIS COME IN FOR WHATEVER VALUE IT MAY HAVE. IT'S
5 REFLECTIVE OF HIS OPINION OF THE EVOLUTION OF THE
6 ACQUISITION OF THE LAND.

7 I'M EXPECTING YOU TO TIE IT IN AT SOME
8 POINT TO SHOW THAT THIS IS ALL OF THE LAND ULTIMATELY
9 ACQUIRED SUBJECT TO A MOTION TO STRIKE, THEN, IF YOU
10 DON'T TIE IT UP.

11 **BY MR. LEININGER:**

12 **Q** SO LET'S GO --

13 **THE COURT:** FOR WHATEVER IT MAY --

14 **BY MR. LEININGER:**

15 **Q** LET'S GET BEYOND THIS AND TALK ABOUT
16 ADDITIONAL ACQUISITIONS, OF WHAT YOU HAD SHOWN AS THE
17 YELLOW SHADED AREA. LET'S GO TO EXHIBIT 21.

18 **A** ALL RIGHT.

19 **Q** AND BATES NUMBER FOR 21 IS 23436. SO WHAT
20 IS THIS?

21 **A** THIS IS A PUBLIC LAND ORDER WITHDRAWING
22 PUBLIC LANDS FOR MUROC STATION, MUROC AIRFIELD.

23
24 (EXHIBIT 21, IDENTIFIED: PUBLIC
25 LAND ORDER 480, DATED 6/2/1948.)
26

27 **BY MR. LEININGER:**

28 **Q** DOES IT STATE THE PURPOSE FOR THE

1 WITHDRAWAL?

2 **A** YES. IT IS DATED JUNE 11TH, 19 -- OR
3 JUNE 2ND, 1948. AND IT STATES, "RESERVED FOR THE USE OF
4 THE DEPARTMENT OF THE ARMY FOR MILITARY PURPOSES."

5 **Q** OKAY. CAN YOU SHOW ME EXHIBIT 103?

6 **A** AND, AGAIN, FOLLOWING OUR COLOR SCHEME, YOU
7 CAN SEE THE CROSSHATCH. PRIVATE LANDS LIGHTER COLORED.
8 BLUE LANDS, THIS IS THE SMALL PIECE OF LAND WITHDRAWN
9 UNDER THE CIRCUMSTANCES.

10

11 (EXHIBIT 103, IDENTIFIED: MAP.)

12

13 **BY MR. LEININGER:**

14 **Q** CORRECTION FOR THE RECORD: THE
15 CROSSHATCHED LANDS ARE NO LONGER PRIVATE; ARE THEY?

16 **A** WELL, I'M SORRY. YES, THAT'S RIGHT. THEY
17 DERIVED -- THEY'RE DERIVED FROM A PUBLIC -- OR A PRIVATE
18 PURCHASE OR CONDEMNATION.

19 **Q** NEXT EXHIBIT, 22.

20 **A** THIS IS A COPY OF PUBLIC LAND ORDER 613.
21 IT IS A WITHDRAWAL OF PUBLIC LANDS FOR USE OF THE
22 DEPARTMENT OF THE AIR FORCE. IT'S DATED OCTOBER 19TH,
23 1949. AND IT SAYS THAT IT IS RESERVED FOR THE USE OF
24 THE DEPARTMENT OF THE AIR FORCE IN CONNECTION WITH AN
25 AIR FORCE BASE.

26

27 (EXHIBIT 22, IDENTIFIED: PUBLIC
28 LAND ORDER 613.)

1
2 **BY MR. LEININGER:**

3 **Q** COULD YOU SHOW ME EXHIBIT 104, PLEASE?

4 **A** AND, AGAIN, IT'S A SMALL ONE. IT'S THIS
5 PIECE AND THIS SMALL PIECE HERE (INDICATING).

6 **Q** LET'S KEEP GOING. EXHIBIT 23.

7 **MR. LEININGER:** AND I'M SORRY, YOUR HONOR. I HAD
8 NOT MENTIONED THE BATES NUMBERS. BATES NUMBER 1661.

9 **THE WITNESS:** ALL RIGHT. THIS IS PUBLIC LAND
10 ORDER 646. IT IS A WITHDRAWAL OF LAND RESERVED -- I'M
11 QUOTING -- "RESERVED FOR THE USE OF THE DEPARTMENT OF
12 THE AIR FORCE AS AN AIR FORCE BASE." IT LISTS OFF SOME
13 20,901 ACRES BY SECTION IN -- TOWNSHIP RANGE AND
14 SECTION.

15
16 (EXHIBIT 23, IDENTIFIED: PUBLIC
17 LAND ORDER 646, DATED 5/10/1950.)
18

19 **BY MR. LEININGER:**

20 **Q** WHAT'S THE DATE OF THIS DOCUMENT?

21 **A** MAY 10TH, 1950.

22 **MR. LEININGER:** AND LET'S SHOW THE NEXT EXHIBIT,
23 PLEASE. BATES LABELED 50782.

24 **THE COURT:** THIS IS PART OF WHAT EXHIBIT?

25 **MR. LEININGER:** OH, I'M SORRY, YOUR HONOR. THIS
26 IS EXHIBIT 105.

27 **THE WITNESS:** AND THIS IS AGAIN USING THE COLOR
28 SCHEME, THE DARKER PARCELS BEING THOSE SUBJECT TO THIS

1 PUBLIC LAND ORDER, AND YOU CAN SEE IT'S A MUCH LARGER
2 ONE THAN THE TWO OR THREE PREVIOUS.

3 **BY MR. LEININGER:**

4 **Q** SO BEFORE WE MOVE ON TO THE NEXT EXHIBIT,
5 THEN, AFTER WORLD WAR II WE'VE HAD A NUMBER -- LET'S
6 JUST RECAP. YOU GOT A NUMBER OF WITHDRAWALS, PUBLIC
7 LAND ORDERS, AND THEY HAD MENTIONED THEM VARIOUSLY. CAN
8 YOU SUMMARIZE?

9 **A** MILITARY PURPOSES FOR USE AS AN AIR BASE OR
10 FOR THE USE OF THE AIR FORCE.

11 **Q** OKAY. LET'S MOVE ON TO THE NEXT EXHIBIT,
12 PLEASE, EXHIBIT 106. THIS IS BATES NUMBER 50783.

13 **A** YES. THIS IS A DEPICTION -- AND WE'RE
14 USING THE COLOR GREEN FOR THIS PURPOSE -- OF LANDS
15 PURCHASED OR ACQUIRED BETWEEN 1947 AND 1952.

16
17 (EXHIBIT 106, IDENTIFIED: DEPICTION
18 OF LANDS PURCHASED OR ACQUIRED
19 BETWEEN 1947 AND 1952.)

20
21 **THE WITNESS:** AND YOU CAN SEE THEY'RE FILLED IN,
22 THIS AREAS, AND THEN A SCATTERING OF PARCELS AROUND
23 THE -- THIS IS THE BUILT UP AREA OF THE BASE RIGHT HERE,
24 THAT MAIN SECTION OF THE BASE.

25 THIS IS THE DRY LAKE BED, THE ROGERS DRY
26 LAKE BED AREA. THIS IS THE ROSAMOND DRY LAKE BED AREA.
27 SO THEY'RE FILLING IN AND MOVING -- ESSENTIALLY SORT OF
28 MOVING WEST.

1 **BY MR. LEININGER:**

2 **Q** YOU SEE THE DATE RANGE ON HERE. IS
3 THAT ...

4 **A** THAT'S RIGHT. WE HAD LOTS OF ACQUISITIONS
5 BY CONDEMNATION OR PURCHASE. SO IN ORDER TO JUST MASS
6 THEM ON THE ONE MAP, WE PUT THEM ALL ONTO THIS ONE AND
7 DEPICTED A RANGE OF FIVE YEARS.

8 THIS QUOTATION UP HERE IS FROM ONE OF THE
9 CONDEMNATION SUITS, AND IT'S THE STATEMENT -- PURPOSE OF
10 THE CONDEMNATION.

11 **MR. LEININGER:** CAN YOU MOVE THAT OVER, THAT
12 BLOCK?

13 **BY MR. LEININGER:**

14 **Q** SO FROM THESE CONDEMNATION SUITS YOU
15 EXTRACTED THESE QUOTATIONS. CAN YOU JUST READ THEM,
16 PLEASE?

17 **A** YES. THE FIRST IS FROM NUMBER 889-N.D.
18 CIVIL, DECEMBER 30TH, 1949. IT STATES, "FOR USE IN
19 CONNECTION WITH THE MUROC AIR FORCE BASE, MUROC,
20 CALIFORNIA, BY THE DEPARTMENT OF THE AIR FORCE, FOR AN
21 ALL ALTITUDE SPEED COURSE AND FOR SUCH OTHER USES AS MAY
22 BE AUTHORIZED BY CONGRESS OR BY EXECUTIVE ORDER."

23 THE SECOND, JUST FROM NUMBER 1147-N.D.,
24 CIVIL -- IT'S A FEDERAL COURT RECORD -- STATES IT IS,
25 QUOTE, "THE USE FOR WHICH THE PROPERTY IS TO BE TAKEN IS
26 FOR MILITARY PURPOSE."

27 **Q** LET'S MOVE ON TO THE NEXT EXHIBIT, 24.

28 **A** RIGHT. THIS IS ANOTHER PUBLIC LAND ORDER.

1 IT IS NUMBER 1126. IT IS DATED APRIL 15TH, 1955.

2

3 (EXHIBIT 24, IDENTIFIED: PUBLIC
4 LAND ORDER 1126, DATED 4/14/1955.)
5

6 **THE WITNESS:** IT STATES THAT THE LAND IS, QUOTING,
7 "RESERVED FOR THE USE OF THE DEPARTMENT OF THE AIR FORCE
8 FOR MILITARY PURPOSES IN CONNECTION WITH EDWARDS AIR
9 FORCE BASE."

10 **BY MR. LEININGER:**

11 **Q** AND DO YOU HAVE THAT DEPICTED ON THE MAP,
12 ON YOUR G.I.S. MAP?

13 **A** YES, THE SAME BASE AS THE OTHERS.

14 **Q** YES. BATES NUMBER FOR THIS PARTICULAR
15 DOCUMENT IS 1666.

16 AND IF YOU CAN GO TO THE NEXT EXHIBIT,
17 PLEASE.

18 **A** AND THIS LITTLE, TINY PARCEL HERE IS THE
19 PIECE TAKEN BY THAT PUBLIC LAND ORDER.

20 **Q** AND THIS IS EXHIBIT 107; IS THAT CORRECT?

21 **A** YES, 107.

22 **MR. LEININGER:** BATES LABELED 50784, YOUR HONOR.
23

24 (EXHIBIT 107, IDENTIFIED: PARCEL OF
25 LAND TAKEN BY PUBLIC LAND ORDER
26 1126.)
27
28

1 **BY MR. LEININGER:**

2 **Q** DID THESE -- SO YOU'VE GOT THE OUTLINES OF
3 EDWARDS AIR FORCE BASE. AND AS OF 1955, YOU MADE THIS
4 P.L.O. DID THESE ACQUISITIONS THEN CONTINUE INTO THE
5 1950S?

6 **A** YES, THEY DID.

7 **Q** CAN WE SHOW EXHIBIT 27, PLEASE?

8 **A** THIS IS A DECLARATION OF TAKING BY THE
9 UNITED STATES VERSUS 2183.44 ACRES OF LAND. IT IS CIVIL
10 NUMBER 16661-W.B., AND IT'S AN EXAMPLE OF A DECLARATION
11 OF TAKING IN A CONDEMNATION SUIT.

12
13 (EXHIBIT 27, IDENTIFIED:

14 DECLARATION OF TAKING NUMBER
15 16661-W.B.)
16

17 **BY MR. LEININGER:**

18 **Q** LET'S GO TO PAGE 2, PLEASE, OF THIS
19 PARTICULAR EXHIBIT. AND IT'S BATES LABELED 3331,
20 LINE 10. COULD YOU READ THAT PARAGRAPH?

21 **A** YES. PARAGRAPH B, AND I'M QUOTING, "THE
22 PUBLIC USES FOR WHICH SAID LANDS ARE TAKEN ARE AS
23 FOLLOWS: THE SAID LANDS ARE NECESSARY ADEQUATELY TO
24 PROVIDE FOR EXPANDING NEEDS AND REQUIREMENTS OF THE
25 DEPARTMENT OF THE AIR FORCE AND OTHER MILITARY USES
26 INCIDENT THERETO."

27 **Q** AND I HAVE LOST MY PLACE MARKER, BUT
28 THERE'S A STATEMENT I BELIEVE IN HERE ABOUT SUBJECT

1 TO -- CAN YOU RECALL WHERE THAT IS?

2 **A** OH, YES. IF YOU LOOK AT PARAGRAPH 3, IT
3 SAYS, "THE ESTATE HEREBY TAKEN FOR SAID PUBLIC USES IS
4 THE FEE SIMPLE TITLE SUBJECT, HOWEVER, TO EXISTING
5 EASEMENTS FOR PUBLIC ROADS AND HIGHWAYS, PUBLIC
6 UTILITIES, RAILROADS, AND PIPELINES."

7 **Q** LET'S TALK ABOUT THIS "SUBJECT TO" LANGUAGE
8 THAT HAS APPEARED IN THESE DOCUMENTS. IS THAT FAIRLY
9 TYPICAL FOR EXPRESSION OF WHAT THESE ACQUISITIONS ARE
10 SUBJECT TO?

11 **A** YES.

12 **MR. KUHS:** VAGUE. CALLS FOR A LEGAL CONCLUSION.

13 **MR. SHEFFIELD:** JOIN.

14 **THE COURT:** SUSTAINED.

15

16 (REPORTER'S INTERRUPTION.)

17

18 **BY MR. LEININGER:**

19 **Q** MR. HERBERT, I'M GOING TO ASK YOU FOR A
20 LEGAL CONCLUSION. IN REVIEWING THESE DOCUMENTS, YOU
21 STATED THAT YOU HAVE REVIEWED HUNDREDS OF THESE
22 CONDEMNATION LAWSUITS; IS THAT CORRECT?

23 **A** YES. WELL, ME AND MY STAFF BOTH; RIGHT.

24 **Q** AND SO YOU'RE FAMILIAR WITH THE LANGUAGE
25 THAT APPEARED IN THESE DOCUMENTS; IS THAT CORRECT?

26 **A** THAT'S RIGHT.

27 **Q** AND SO THE QUESTION IS, THE LANGUAGE THAT
28 YOU JUST READ, "SUBJECT TO" LANGUAGE, IN YOUR

1 EXPERIENCE, HAVING READ THROUGH HUNDREDS OF THE
2 ORDERS -- YOU AND YOUR STAFF, HUNDREDS OF THESE, IS THAT
3 FAIRLY TYPICAL LANGUAGE THAT APPEARS WHEN YOU'RE
4 DISCUSSING SUBJECT TO?

5 **A** I CAN'T SAY THAT THEY'RE ALL THE SAME,
6 EXACT PHRASE, BUT THERE IS TYPICALLY A PHRASE LIKE THAT.
7 IT'S LIKE THE RAILROAD DEED HAD SUBJECT TO CERTAIN
8 RIGHTS. IT'S PRETTY COMMON.

9 **Q** SO IT IS SUBJECT TO EASEMENTS, RAILROADS,
10 AND THOSE SUBJECT TO LANGUAGES, THEN, ARE THESE
11 APPURTENANCES ON THOSE TRACTS?

12 **MR. ZIMMER:** OBJECTION. VAGUE.

13 **MR. KUHS:** OVERBROAD, VAGUE, CALLS FOR A LEGAL
14 OPINION.

15 **MR. LEININGER:** I'LL MOVE ON, YOUR HONOR.

16 CAN WE SEE EXHIBIT 108, PLEASE?

17 **BY MR. LEININGER:**

18 **Q** WHAT IS THIS?

19 **A** WELL, THIS IS A CONTINUATION OF THE -- IT'S
20 A CONTINUATION OF OUR -- THE MAP SERIES WE DID TO GET
21 OUR HEAD AROUND HOW EDWARDS WAS EXPANDED THROUGH
22 RESERVATIONS AND PURCHASES AND CONDEMNATIONS. SO THIS
23 REPRESENTS THE PERIOD 1953 TO 1958.

24
25 (EXHIBIT 108, IDENTIFIED: MAP
26 SERIES REPRESENTING PERIOD 1953 TO
27 1958.)
28

1 **THE WITNESS:** THIS YELLOW AREA IS KIND OF HARD TO
2 SEE AMONG ALL THE COLORS, BUT THAT'S THE GENERAL AREA OF
3 PARCELS, A FEW UP HERE AMONG THE RAILROAD, THAT WERE
4 ACQUIRED THROUGH PURCHASE OR CONDEMNATION DURING THE
5 PERIOD 1953 TO 1958.

6 **MR. LEININGER:** AND, AGAIN, PLEASE MOVE IN ON THE
7 QUOTED BLOCK, PLEASE.

8 **THE WITNESS:** YES. TAKING IT -- WELL, IT'S THE
9 LANGUAGE -- THIS IS THE LANGUAGE I JUST CITED FROM
10 16661-W.B. CIVIL. IT SAYS, "THE SAID LANDS ARE
11 NECESSARY ADEQUATELY TO PROVIDE FOR EXPANDING NEEDS AND
12 REQUIREMENTS FOR THE DEPARTMENT OF THE AIR FORCE AND
13 OTHER MILITARY USES INCIDENT THERETO. THE LANDS HAVE
14 BEEN SELECTED -- " AND THEN THERE'S AN ELLIPSES TO MAKE
15 IT SHORTER -- "FOR USE IN CONNECTION WITH EDWARDS AIR
16 FORCE BASE, CALIFORNIA, AND FOR OTHER SUCH USES AS MAY
17 BE AUTHORIZED BY CONGRESS OR BY EXECUTIVE ORDER."

18 THE FULL TEXT IS IN THE PREVIOUS EXHIBIT.

19 **BY MR. LEININGER:**

20 **Q** THAT'S FINE. LET'S MOVE ON.

21 **THE COURT:** LET'S WAIT FOR A MOMENT. LET'S TAKE A
22 RECESS. IT'S ABOUT AN HOUR AND A HALF SINCE WE STARTED;
23 SO WE'LL GIVE EVERYBODY A BREAK FOR 15 MINUTES. THANK
24 YOU.

25

26 (RECESS.)

27

28 **THE COURT:** ALL RIGHT. LET'S RESUME.

1 **BY MR. LEININGER;**

2 **Q** MR. HERBERT, I BELIEVE THERE'S TWO OTHER
3 WITHDRAWALS OF RESERVATIONS. SO LET'S GO TO EXHIBIT 25,
4 PLEASE.

5 **A** I'VE GOT IT. IF YOU WOULD LOOK AT THE
6 SECOND PAGE OF THAT EXHIBIT, THE MIDDLE OF THE PAGE --

7 **Q** AND I'M SORRY. WHAT IS THIS EXHIBIT?

8 **A** I'M SORRY. IT'S A COPY OF THE *FEDERAL*
9 *REGISTER*. IT'S A PUBLICATION OF THE PUBLIC LAND ORDER
10 NUMBER 2270, WITHDRAWING LANDS FOR USE OF THE DEPARTMENT
11 OF THE AIR FORCE FOR MILITARY PURPOSES, PARENS, EDWARDS
12 AIR FORCE BASE. IT'S DATED FEBRUARY 21ST, 1961. IT'S
13 FOR 230 ACRES.

14
15 (EXHIBIT 25, IDENTIFIED: *FEDERAL*
16 *REGISTER* PUBLICATION OF PUBLIC LAND
17 ORDER 2270.)

18
19 **MR. ZIMMER:** I'M SORRY, YOUR HONOR. WHAT EXHIBIT
20 WAS THIS?

21 **MR. LEININGER:** EXHIBIT 25.

22 IF WE COULD ZOOM IN ON THE BATES NUMBER,
23 I'LL READ THAT INTO THE RECORD. IT'S 23438.

24 **BY MR. LEININGER:**

25 **Q** AND I MAY HAVE MISSED IT, BUT, AGAIN, WHAT
26 IS THE PURPOSE OF THIS?

27 **A** IT STATES THAT IT IS LAND RESERVED FOR THE
28 USE OF THE DEPARTMENT OF THE AIR FORCE FOR MILITARY

1 PURPOSES IN CONNECTION WITH EDWARDS AIR FORCE BASE.

2 Q LET'S GO TO EXHIBIT 109. AND I'LL READ THE
3 BATES NUMBER. IT IS 50786.

4

5 (EXHIBIT 109, IDENTIFIED: MAP,
6 BATES NO. 50786.)

7

8 MR. LEININGER: AND BEFORE WE DISCUSS THIS, YOUR
9 HONOR, DURING THE BREAK, WE HAD THE OPPORTUNITY TO
10 REVIEW THE DEPOSITION DOCUMENTS THAT WERE BROUGHT TO
11 MR. HERBERT'S DEPOSITION AND TO REVIEW THE TRANSCRIPT OF
12 THAT DEPOSITION.

13 AND THESE DOCUMENTS, ALL OF THESE G.I.S.
14 BASED DOCUMENTS WERE PROVIDED AT HIS DEPOSITION IN DRAFT
15 FORM, ALL OF THEM, I THINK -- I BELIEVE WITH THE
16 EXCEPTION OF THE ONE THAT HAD BEEN SUPPLIED BY --
17 DIRECTLY FROM EDWARDS AIR FORCE BASE. SO WHEN YOUR
18 HONOR CONSIDERS WHETHER OR NOT THESE ARE ADMISSIBLE INTO
19 EVIDENCE, I WOULD HOPE THAT THE COURT TAKES THAT UNDER
20 CONSIDERATION.

21 THE COURT: ALL RIGHT. MR. KUHS.

22 MR. KUHS: YOUR HONOR, I'LL REVIEW THAT AT THE
23 BREAK BEFORE THE EXHIBITS COME IN, BUT I HAVE --
24 REITERATE WHAT I SAID EARLIER, WHICH I HAVE NEVER SEEN
25 THESE DOCUMENTS BEFORE. I'VE NOT HAD A CHANCE TO
26 PREPARE THE LEGAL DESCRIPTIONS IN THE RESERVATIONS
27 AGAINST THE LEGAL DESCRIPTIONS ON THE MAP.

28 THE COURT: WELL, IF THEY WERE PRESENTED AT THE

1 DEPOSITION, THEN OBVIOUSLY THEY'RE GOING TO BE
2 ADMISSIBLE, AREN'T THEY?

3 **MR. KUHS:** IF THEY WERE PRESENTED IN THIS FORMAT
4 AT THE DEPOSITION. BUT I DON'T HAVE ANY -- ANYWAY, I
5 WANT TO CHECK BEFORE I MAKE ANY FURTHER REPRESENTATIONS
6 TO THE COURT.

7 **THE COURT:** YOU DON'T WANT TO CONCEDE YET?

8 **MR. KUHS:** NO, SIR.

9 **THE COURT:** OKAY. LET ME KNOW WHEN YOU'RE READY.

10 **MR. LEININGER:** YOUR HONOR, FOR BENEFIT OF
11 COUNSEL, IT IS PAGE 135, LINE 11. AND WE HAVE THE
12 ORIGINAL DEPOSITION TRANSCRIPT HERE.

13 "QUESTION: IN THE MAPS THAT YOU HAVE
14 PREPARED THAT DEPICT THE
15 CONSTRUCTION OVER TIME OF ALL THE
16 ACQUISITION PARCELS, DO YOU KNOW
17 WHETHER OR NOT THOSE MAPS REFLECT
18 THE ACQUISITION HISTORY OF ..."
19 AND THEN YOU SPECIFICALLY TALK ABOUT
20 SECTION 16 AND SECTION 34.

21 **THE COURT:** WELL, WE'LL LET MR. KUHS TAKE A LOOK
22 AT IT, AND HE'LL TELL US WHEN HE'S READY. LET'S GO
23 AHEAD.

24 **BY MR. LEININGER:**

25 **Q** OKAY. LET'S GO TO, THEN, EXHIBIT 26.

26 **MESSENGER:** YOUR HONOR, I HAVE SOME DOCUMENTS THAT
27 SHOULD BE FILED HERE.

28

1 (A DISCUSSION WAS HELD,
2 NOT REPORTED.)
3

4 **THE COURT:** GO AHEAD.

5 **BY MR. LEININGER:**

6 **Q** MR. HERBERT, WHAT IS THIS DOCUMENT?

7 **A** THIS IS, I BELIEVE, OUR LAST PUBLIC LAND
8 ORDER. AND IT IS A -- IT'S DIFFERENT BECAUSE IT REVOKES
9 PARTIALLY SOME LAND PREVIOUSLY RESERVED BY THE FEDERAL
10 GOVERNMENT FOR THE AIR FORCE. IT'S DATED JULY 17TH,
11 1962. IT'S ABOUT 268 ACRES OF LAND, PRIMARILY ON THE
12 NORTHERN BOUNDARY OF THE BASE, NEAR THE HIGHWAY. AND I
13 BELIEVE THESE ARE ACROSS THE HIGHWAY, NORTH OF THE
14 HIGHWAY FROM THE FACILITY.
15

16 (EXHIBIT 26, IDENTIFIED: PUBLIC
17 LAND ORDER, JULY 17, 1962.)
18

19 **MR. LEININGER:** IF WE COULD GO TO THE NEXT
20 EXHIBIT, THEN. THIS IS EXHIBIT, YOUR HONOR, 110, AND
21 IT'S BATES LABELED 50787.

22 **THE WITNESS:** AND SO IT'S THESE LITTLE PIECES.
23 NOW, THIS IS THE HIGHWAY (INDICATING). AND THE OLD RAIL
24 LINE THAT HAD RUN ACROSS ROGERS DRY LAKE BED, IN THAT
25 SORT OF PATTERN, WAS REROUTED TO FOLLOW THE HIGHWAY AND
26 STAY OFF THE DRY LAKE BED, OUT OF THE WAY.
27
28

(EXHIBIT 110, IDENTIFIED: MAP.)

BY MR. LEININGER:

Q SO WITH THE ELIMINATION OF THOSE TWO SMALL PARCELS, WE HAVE THE CONTIGUOUS AND THE BOUNDARIES OF EDWARDS AIR FORCE BASE AS THEY EXIST TODAY?

A THAT'S AS I UNDERSTAND THEM TO BE TODAY, YES.

Q SO YOU JUST DEPICTED THIS HISTORY OF ACQUISITIONS, WITHDRAWALS, PURCHASES?

A YES.

Q NOW LET'S MOVE THEN TO WATER. WHAT EVIDENCE OF HISTORIC WATER USE DID YOU COLLECT DURING YOUR RESEARCH?

A WE COLLECTED A VARIETY OF SOURCES. THEY WERE U.S.G.S. REPORTS, U.S. GEOLOGICAL SURVEY REPORTS, STATE -- SOME OF THE REPORTS FROM THE STATE OF CALIFORNIA -- WELL, RECORDS FROM THE BASE.

WHEN THE FACILITY WOULD BUY A PIECE OF PROPERTY, THEY WOULD ISSUE A VOUCHER FOR THE PURCHASE, AND THAT VOUCHER OFTEN SHOWED WHETHER OR NOT THE LAND HAD A WELL; SO WE WOULD TAKE NOTE OF THAT. SOME OF THE VALUATION REPORTS MENTIONED WELLS. SO WE HAD A VARIETY OF REFERENCES TO WELLS.

Q COULD YOU SHOW US EXHIBIT 258, PLEASE?

A THIS MAP IS ONE THAT WE PREPARED USING THE SAME BASE TO SHOW THE FACILITY.

1 (EXHIBIT 258, IDENTIFIED: MAP.)

2

3 **THE WITNESS:** THERE'S THE OLD RAILROAD LINE, BUILT
4 UP PORTION OF THE FACILITY TODAY, DRY LAKE BED AREA,
5 ROGERS DRY LAKE BED AREA, AND ROSAMOND DRY LAKE BED
6 AREA, JUST FOR ORIENTATION.

7 THIS MAP DEPICTS -- AND I'M JUST -- I HAVE
8 TO RECALL -- SOMEWHERE AROUND 380 WELLS. AND YOU CAN
9 SEE THEM HERE, YOUR HONOR. THEY'RE -- IT'S KIND OF HARD
10 TO READ, BUT THEY'RE PURPLE ON THAT THING. THEY'RE
11 LITTLE PURPLE DOTS.

12 **THE COURT:** OKAY.

13 **THE WITNESS:** THOSE WERE WELLS THAT WERE MENTIONED
14 EITHER BY THE U.S.G.S. REPORTS OR BY EDWARDS IN THEIR
15 DATA, THE PURPLE DOTS.

16 THEN IF YOU NOTICE THERE ARE OTHER
17 NOTATIONS HERE LIKE THIS (INDICATING) -- CAN YOU BLOW
18 UP, LIKE, THIS ONE RIGHT THERE?

19 SO IF YOU TAKE, FOR EXAMPLE, THIS PARCEL --
20 WELL, THAT'S A BAD ONE. THIS PARCEL. SEE, IT HAS A TWO
21 IN IT AND IT ALSO HAS THE TWO DOTS. THE TWO IS THE WELL
22 COUNT LISTED IN THAT PARCEL ON THE LAND ACQUISITION
23 VOUCHERS, BUT THEY -- THOSE LAND ACQUISITION VOUCHERS
24 DON'T GIVE YOU AN EXACT LOCATION. SO WE JUST PUT A TWO
25 IN THERE. IT MAY BE THAT IT REPEATS THOSE TWO. JUST NO
26 WAY FOR US TO BE SURE. WE'RE JUST COMPILING INFORMATION
27 ABOUT WHERE THESE WELLS ARE LOCATED.

28 AND THEN IF YOU COULD GO BACK TO THE MAIN

1 VIEW, OVER IN HERE. LIKE THAT ONE.

2 **TECHNICAL ASSISTANT:** (INDICATING.)

3 **THE WITNESS:** THESE WELLS -- THESE NUMBERS THAT
4 ARE CIRCLED REPRESENT THE NUMBER OF WELLS MENTIONED IN
5 THE 1938 VALUATION STUDY DONE BY ELMER KARPE, K-A-R-P-E.

6 **BY MR. LEININGER:**

7 **Q** AND I BELIEVE THAT'S THE FIRST TIME YOU'VE
8 MENTIONED THIS VALUATION STUDY.

9 **A** UH-HUH.

10 **Q** WHAT WAS THAT?

11 **A** WELL, DURING THAT TIME WHEN THE -- ABOUT
12 THE SAME TIME THAT THE RAILROAD PURCHASE WAS MADE, THAT
13 WAS THE TIME WHEN THE AIR FORCE WAS -- OR THE AIR CORPS,
14 I SHOULD SAY AT THAT TIME -- WAS CONSOLIDATING LANDS
15 WITHIN THE ORIGINAL -- SORT OF THIS AREA (INDICATING).
16 THEY WERE LOOKING TO ACQUIRE THE LANDS THAT WERE
17 PRIVATE.

18 AND SO THEY HAD A REAL ESTATE VALUATOR COME
19 OUT AND STUDY THE PARCELS TO BE ACQUIRED. AND HE WROTE
20 A TWO VOLUME -- I THINK IT'S SOMEWHERE AROUND 450-PAGE
21 REPORT THAT DESCRIBES EACH OF THE -- WELL, THAT'S NOT
22 COMPLETE. I DON'T BELIEVE IT HAS ALL PARCELS, BUT THE
23 PARCELS THAT HE STUDIED, HE MENTIONS WHETHER OR NOT THEY
24 HAD WELLS, WHAT THEY WERE DOING, THE QUALITY OF THE LAND
25 AND SO FORTH. SO HE CAME UP WITH AN ESTIMATION OF THEIR
26 VALUE FOR THE PURPOSES OF CONDEMNATION --

27 **Q** SO --

28 **A** -- FOR THE ACQUISITION.

1 **Q** SO WHETHER OR NOT THEY HAD A WELL WAS
2 IMPORTANT IN THAT VALUATION?

3 **A** YES.

4 **MR. KUHS:** OBJECTION, CALLS FOR SPECULATION.

5 **BY MR. LEININGER:**

6 **Q** COULD YOU CORRELATE THE VALUES, READING
7 THAT REPORT, TO WHETHER OR NOT THERE WAS A WELL?

8 **MR. ZIMMER:** LACKS FOUNDATION AS AN APPRAISAL.

9 **THE COURT:** SUSTAINED.

10 **MR. LEININGER:** YOUR HONOR, THIS PARTICULAR
11 EXHIBIT BY KARPE WAS PROVIDED AS AN EXHIBIT. WE HAVEN'T
12 USED IT HERE BECAUSE IT'S VOLUMINOUS.

13 **THE COURT:** WELL, IT'S STILL HIS OPINION YOU'RE
14 ASKING FOR, AND IT GOES BEYOND HIS KNOWLEDGE, BASED UPON
15 SPECULATION AS TO WHAT WAS IN THE MINDS OF THE PEOPLE
16 THAT ARE MAKING THE STUDIES. SO IT IS WHAT IT IS.

17 **MR. LEININGER:** SURE.

18 **BY MR. LEININGER:**

19 **Q** SO THIS MAP DEPICTING WELLS -- YOU
20 MENTIONED THE KARPE REPORT IN 1938. ARE THESE ALL
21 HISTORIC WELL LOCATIONS?

22 **A** I'M NOT SURE WHAT YOU MEAN BY "HISTORIC."
23 THESE ARE ALL -- ALL OF THESE WELLS ARE -- DATE FROM THE
24 PERIOD WHERE WE -- THE PERIOD THAT WE STUDIED. SO WE
25 DIDN'T GET INTO, YOU KNOW, WELLS -- THE CURRENT WELLS.
26 WE HAVEN'T MARKED CURRENT WELLS ON THIS MAP.

27 **Q** SO THESE ARE WELLS WITHIN THE BOUNDARIES OF
28 EDWARDS AIR FORCE BASE. AND DO YOU HAVE AN APPROXIMATE

1 NUMBER OF HOW MANY WELLS, IF YOU COULD, ON THIS MAP?

2 **A** THE U.S.G.S. REPORTS LIST I THINK, LIKE,
3 20. I THINK CURRENTLY THERE'S SOMETHING -- I'VE HEARD
4 THERE'S, LIKE, 15.

5 **Q** WELL, NO. I MEAN ON YOUR MAP HERE.

6 **A** OH, ON THIS MAP HOW MANY WELLS?

7 **Q** YES.

8 **A** WELL, THERE'S ABOUT 380, GIVE OR TAKE, OF
9 THE LITTLE PURPLE DOTS. THEN THERE ARE SMALLER NUMBERS,
10 I THINK SOMEWHERE AROUND 50 OF THE KARPE WELLS AND, I
11 DON'T KNOW, 100 OR SO OF THE NUMBERED WELLS, WHERE
12 THEY'RE JUST APPROXIMATE LOCATIONS.

13 **Q** SO THERE'S APPROXIMATELY 500 WELLS THAT
14 WERE --

15 **A** IF -- IF THERE IS NO -- IF THERE IS NO
16 INSTANCE WHERE THE SAME WELLS ARE COUNTED TWICE.

17 **Q** AND DO YOU KNOW HOW MANY WELLS ARE IN
18 EDWARDS AIR FORCE BASE NOW?

19 **A** CURRENTLY ACTIVE WELLS?

20 **Q** YES.

21 **A** TO MY UNDERSTANDING, THERE'S 15 OR 16.

22 **Q** LET'S MOVE ON TO EXHIBIT 259. AND WHAT IS
23 THIS?

24 **A** THIS IS A SPREADSHEET THAT WE PREPARED
25 RELATIVELY EARLY ON IN THE INVESTIGATION, EARLIER IN OUR
26 RESEARCH PROJECT, TRYING TO GET A HANDLE ON A NUMBER OF
27 THINGS, A NUMBER OF ITEMS OF INFORMATION.

28

1 (EXHIBIT 259, IDENTIFIED:
2 SPREADSHEET.)
3

4 **THE WITNESS:** ONE WAS THE TOTAL NUMBER OF PEOPLE
5 ON THE FACILITY, THE STATED AMOUNT OF WATER USED BY THE
6 FACILITY, THE NUMBER OF WELLS ON THE FACILITY, AND THEN
7 IF THERE WERE ANY MAJOR BUILDING CAMPAIGNS AND SO FORTH.

8 WE HAVE SHORTENED THIS A LITTLE TO MAKE IT
9 FIT ON A PAGE. IT USED TO HAVE THE DAY AND MONTH AND
10 SOME ODD COLUMNS ON THEM, BUT THIS IS -- THESE ARE
11 PRIMARILY THE COLUMNS THAT WE USED.

12 AND WE USED THIS TO TRY TO BETTER
13 UNDERSTAND THE SORT OF SEQUENCE OF DEVELOPMENT. SO YOU
14 CAN SEE THERE'S LOTS OF REFERENCES TO SPECIFIC YEARS. I
15 MEAN, LIKE, 1953 MAY HAVE TEN REFERENCES BECAUSE IT'S
16 DIFFERENT INFORMATION FROM DIFFERENT -- FROM DIFFERENT
17 SOURCES. BUT IT'S -- THERE'S A LOT OF INFORMATION, A
18 LOT OF DIFFERENT NUMBERS FOR THESE STATISTICS, AND SO
19 WE'RE JUST TRYING TO ORGANIZE OUR THOUGHTS THAT WAY.

20 **Q** OKAY. SO LET'S TALK JUST ABOUT THE -- IF
21 YOU DON'T MIND, START WITH THE LEFT-HAND COLUMN. WHAT
22 IS THE LEFT-HAND COLUMN?

23 **A** THE LEFT-HAND COLUMN GIVES THE CITATION FOR
24 THE REPORT OR OTHER INFORMATION THAT THE NUMBERS ARE
25 DRAWN FROM.

26 SO IF YOU TAKE THE VERY FIRST ONE,
27 GEORGE W. WYMORE, HISTORY OF MUROC ARMY AIRFIELD,
28 1 JANUARY, 1947 TO 30 JUNE, 1947, PAGE 40. AND THEN ON

1 THE FAR RIGHT SIDE IS THE PHYSICAL LOCATION OF THAT
2 DOCUMENT. SO IN THAT INSTANCE IT'S AT EDWARDS AIR FORCE
3 BASE, IN THE HISTORY OFFICE, BUILDING 1405.

4 Q SO IS IT FAIR TO SAY THAT THIS COMPILATION
5 THAT YOU'VE CREATED FROM THESE VARIOUS SOURCES DEPICTS
6 GENERALLY POPULATION ON MUROC AT THAT TIME, OR EDWARDS
7 AIR FORCE BASE, AND WHERE YOU WERE ABLE TO DECIPHER THE
8 INFORMATION FROM VARIOUS SOURCES, THE WATER USE?

9 A YES. AND IT'S --

10 Q CAN WE GO TO --

11 A -- IT'S STRICTLY WHAT WAS STATED IN THE
12 DOCUMENT.

13 Q SO CAN YOU NOW GO TO BATES LABEL -- LET'S
14 GO DIRECTLY TO BATES LABEL 51941. THAT'S ABOUT THE
15 TENTH PAGE OF THE PRINTOUT.

16 A OKAY.

17 Q SO IT LOOKS LIKE ON THE SIXTH COLUMN OVER
18 YOU HAVE VALUES FOR WATER USAGE, ANNUAL WATER USAGE.

19 A THAT'S RIGHT.

20 Q SO BEGINNING IN 1962 AND CONTINUING FOR THE
21 NEXT EIGHT YEARS, WHERE AVAILABLE, WILL YOU JUST READ
22 INTO THE RECORD WHAT THOSE VALUES ARE?

23 A YES. THE -- IN 1962, ACCORDING TO
24 J.E. WEIR, JR., GROUND WATER INVENTORY FOR 1962, EDWARDS
25 AIR FORCE BASE, CALIFORNIA, PUBLICATION DATE 1963,
26 PAGE 5, IT READS 5,640 ACRE FEET.

27 FOR 1963, J.E. WEIR, JR., GROUND WATER
28 INVENTORY FOR 1963, EDWARDS AIR FORCE BASE, CALIFORNIA,

1 MARCH 1ST, 1965 PUBLICATION DATE, PAGE 6, LISTS
2 5,830 FEET.

3 1964, F.W. GIESSNER, G-I-E-S-S-N-E-R, AND
4 S.G. ROBSON GROUND WATER INVENTORY FOR 1964, EDWARDS AIR
5 FORCE BASE, CALIFORNIA, PUBLICATION DATE 1965, PAGE 6,
6 STATES 7,720 ACRE FEET.

7 1965, F.W. GIESSNER AND J.A. WESTPHAL,
8 W-E-S-T-P-H-A-L, GROUND WATER INVENTORY FOR 1965,
9 EDWARDS AIR FORCE BASE, CALIFORNIA, PUBLICATION DATE
10 1966, PAGE 6, SAYS 7,480 ACRE FEET.

11 1966, THE NEXT PAGE, S.J. TYLEY, T-Y-L-E-Y,
12 GROUND WATER INVENTORY FOR 1966, EDWARDS AIR FORCE BASE,
13 CALIFORNIA, 1967, FOR THE YEAR 1966, PAGE 1, SAYS 6,280
14 ACRE FEET.

15 Q THAT'S SUFFICIENT. LET'S -- IF YOU DON'T
16 MIND, I BELIEVE YOU MAY HAVE STATED A FIGURE
17 INCORRECTLY. JUST TO RESTATE FOR THE RECORD, CAN YOU
18 RECITE THE FIGURE FOR 1964?

19 A 7,220 ACRE FEET.

20 Q OKAY. AND THE NEXT VALUE IN '65, THAT'S
21 74 --

22 A 7,480 ACRE FEET.

23 Q OKAY. LET'S GO TO THE NEXT EXHIBIT,
24 EXHIBIT 83.

25 A RIGHT. I HAVE THAT.

26 Q WHAT IS THIS?

27 A THIS IS A COPY OF THE GROUND WATER
28 INVENTORY THAT I WAS CITING FROM FOR 1965 BY GIESSNER

1 AND WESTPHAL.

2

3 (EXHIBIT 83, IDENTIFIED: GROUND
4 WATER INVENTORY BY GIESSNER AND
5 WESTPHAL, 1965.)

6

7 BY MR. LEININGER:

8 Q AND -- AND I -- YOU KNOW, I APOLOGIZE. I
9 THINK I'VE GOTTEN THESE OUT OF ORDER. IS THERE AN
10 EXHIBIT 82 BEFORE YOU? WE'LL JUST GO CHRONOLOGICALLY.
11 DO YOU HAVE EXHIBIT 82?

12 A THAT'S FINE. THIS WAS THE ONE I CITED FOR
13 FOR 1965, GIESSNER AND ROBSON. IT'S A U.S.G.S. GROUND
14 WATER INVENTORY FOR 1964.

15

16 (EXHIBIT 82, IDENTIFIED: U.S.G.S.
17 GROUND WATER INVENTORY FOR 1964.)

18

19 BY MR. LEININGER:

20 Q WILL YOU TURN TO PAGE 14. I BELIEVE IT'S
21 BATES LABEL 50752.

22 A YES. 14?

23 Q PAGE 14.

24 A YES. THAT HAS A REPORTED PUMPAGE FROM BASE
25 SUPPLY WELLS FOR THE CALENDAR YEAR 1964.

26 Q SO THIS IS THE -- THIS FIGURE HERE, 7220,
27 IS THE FIGURE YOU JUST READ INTO THE RECORD?

28 A THAT'S RIGHT.

1 Q THIS IS THE SOURCE OF INFORMATION?

2 A THAT'S CORRECT.

3 Q NOW LET'S CONTINUE. AGAIN, PAGE 14,
4 PLEASE. AND PAGE 14 IS BATES LABELED 51918.

5 A THAT'S RIGHT. THIS IS THE GIESSNER AND
6 WESTPHAL REPORT FOR 1965, AND IT GIVES A ANNUAL PUMPING
7 PER BASE SUPPLY WELLS OF 7,480 ACRE FEET.

8 Q AND DO YOU RECALL, IS THAT -- FROM YOUR
9 RESEARCH AND THESE SOURCES OF INVENTORY RECORDS, IS THAT
10 THE MAXIMUM WATER PUMPAGE FIGURE THAT YOU SAW FOR YOUR
11 SPAN OF THE HISTORICAL RESEARCH?

12 A YES, IT IS. DURING THE TIME THAT WE -- THE
13 PERIOD THAT WE RESEARCHED, THAT'S THE HIGHEST NUMBER
14 THAT WE RESEARCHED.

15 Q WHAT IS THAT PERIOD THAT YOU RESEARCHED?

16 A IT WAS THROUGH -- WELL, OUR RESEARCH REALLY
17 ENDED IN ABOUT 1980. WE HAD SOME SCATTERED DOCUMENTS
18 BEYOND THEN. BUT IN THE 1980S.

19 Q SO THAT THE -- SO THE HIGHEST VALUE THERE
20 WAS THE 19 ...

21 A 1965, THAT I'VE SEEN.

22 Q THANK YOU. LET'S GO TO THE NEXT DOCUMENT,
23 DOCUMENT NUMBER -- I'M SORRY -- EXHIBIT NUMBER 84.

24 A OKAY. CAN YOU JUST HOLD ON FOR A MOMENT?
25 I THINK I'VE GOT THESE OUT OF ORDER NOW.

26 Q CERTAINLY. IT'S THE 1966 GROUND WATER
27 INVENTORY FOR EDWARDS AIR FORCE BASE.

28

(EXHIBIT 84, IDENTIFIED: 1966
GROUND WATER INVENTORY FOR EDWARDS
AIR FORCE BASE..)

THE WITNESS: SEE, WHAT I'VE --

MR. LEININGER: YOUR HONOR, MAY MR. OYARZO --

THE COURT: YES.

MR. LEININGER: -- APPROACH? THANK YOU.

THE WITNESS: THERE'S A -- OKAY. ALL RIGHT. I
HAVE 82 NOW.

MR. OYARZO: (SPOKE SOTTO VOCE.)

THE WITNESS: OH, I'M SORRY. 84.

MR. LEININGER: 84.

THE WITNESS: OKAY. NOW I HAVE IT.

BY MR. LEININGER:

Q OKAY. AND WILL YOU TURN -- I DON'T -- IT
IS PAGE 5. THESE ARE MARKED AT THE TOP. AND IT'S BATES
LABELED 37999.

A YES, SIR.

Q AND THE TOTAL PUMPAGE IN EDWARDS AIR FORCE
BASE AT THAT TIME?

A IT'S THE TABLE 2, PUMPAGE FROM BASE SUPPLY
WELLS FOR CALENDAR YEAR 1966, IN THE S.J. TYLEY GROUND
WATER INVENTORY, 6,277 ACRE FEET.

Q OKAY. THANK YOU, YOUR HONOR -- THANK YOU,
MR. HERBERT.

LET'S MOVE ON NOW TO AIR FORCE PLANT 42.
WHERE IS THAT LOCATED?

1 **A** IT'S IN PALMDALE, CALIFORNIA.

2 **Q** DO YOU HAVE EXHIBIT 142, PLEASE?

3 **A** I HAVE IT.

4 **Q** AND WHAT DOES THIS SHOW?

5 **A** THIS SHOWS THE LOCATION OF PALMDALE, THE
6 HIGHWAYS, AND THE LOCATION OF AIR FORCE PLANT 42
7 OUTLINE.

8
9 (EXHIBIT 142, IDENTIFIED: MAP OF
10 PALMDALE, HIGHWAYS, AND LOCATION OF
11 AIR FORCE PLANT 42 OUTLINE.)
12

13 **BY MR. LEININGER:**

14 **Q** OKAY. SO HOW DOES THIS ACQUISITION OF LAND
15 FOR AIR FORCE PLANT 42 -- I'M SORRY. DO YOU KNOW THE
16 APPROXIMATE NUMBER OF ACRES FOR AIR FORCE PLANT 42?

17 **A** IT'S MORE THAN 4,000. I'M NOT FOR SURE OF
18 THE EXACT NUMBER.

19 **Q** OKAY.

20 **A** 4,000 SOMETHING.

21 **Q** AND HOW DOES THIS COMPARE WITH LAND
22 ACQUISITION FOR EDWARDS AIR FORCE BASE?

23 **A** WELL, ITS MAJOR DIFFERENCE IS THAT ALL THE
24 LAND FOR AIR FORCE PLANT 42 WAS ACQUIRED EITHER BY
25 PURCHASE OR CONDEMNATION.

26 **Q** SO NOTHING RESERVED FROM THE PUBLIC DOMAIN;
27 IT WAS ALL ACQUIRED FROM PRIVATE PARTIES?

28 **A** THAT'S RIGHT. IT ALL HAD BEEN PREVIOUSLY

1 ACQUIRED OUT OF THE PUBLIC DOMAIN.

2 Q CAN WE HAVE EXHIBIT 86?

3 A YES.

4 Q RATHER THAN SPEAK FROM THIS EXHIBIT RIGHT
5 NOW, WHY DON'T YOU -- CAN YOU JUST BRIEFLY EXPLAIN, SORT
6 OF IN A CAPSULE, THE AERONAUTICAL HISTORY OF AIR FORCE
7 PLANT 42?

8 A YEAH. THE AIR FORCE PLANT 42 STARTED OFF
9 AS A CIVIL AVIATION, STANDARD GENERAL AVIATION FACILITY
10 IN THE 1930S. IT WAS A PUBLIC AIRPORT. AND IT'S MY
11 UNDERSTANDING THE LAND WAS OWNED BY THE PALMDALE
12 IRRIGATION DISTRICT.

13 DURING WORLD WAR II, IT WAS TAKEN BY THE
14 AIR CORPS AS A TRAINING FACILITY. AND THE AIR CORPS AT
15 THAT TIME HAD, I BELIEVE, 900 SOME ODD ACRES, 980 I
16 BELIEVE, THAT IT ACQUIRED FOR THE PURPOSES OF HAVING
17 PALMDALE AIR BASE, AIRFIELD. AND THEY -- I BELIEVE IT
18 WAS BOMBER TRAINING AND SOME OTHER TRAINING FUNCTIONS AT
19 THE FACILITY.

20 THEN IT WAS GIVEN BACK TO -- IT WAS
21 DECLARED A SURPLUS AND GIVEN BACK TO -- SOLD BASICALLY
22 TO LOS ANGELES COUNTY. LOS ANGELES COUNTY WAS
23 CONSIDERING BUILDING A NEW AIRPORT, AND SO THE COUNTY
24 TOOK IT.

25 WITH THE BEGINNING OF THE KOREAN WAR, THE
26 AIR FORCE NEEDED IT BACK. PLUS, DURING THE LATE '40S
27 AND EARLY '50S, THE AERONAUTICS AND AVIATION COMPANIES
28 IN SOUTHERN CALIFORNIA HAD BEEN TESTING MOST OF THEIR

1 PLANES IN AND AROUND BURBANK AND IN THE LOS ANGELES
2 BASIN. SO THEY WERE RUNNING UP THESE BIG JET ENGINES.
3 THEY WERE TAKING OFF AT ALL TIMES, DAY AND NIGHT. IT
4 WAS NOISY. IT WAS CONGESTED AREA.

5 FOR PURPOSES OF PUBLIC HARMONY AND ALSO
6 SAFETY, THEY WANTED TO HAVE -- AND SECURITY, THEY WANTED
7 TO HAVE A LOCATION THAT WAS AWAY FROM PRYING EYES BUT
8 ALSO WHERE THERE WAS GOOD FLIGHT LINES, GOOD WEATHER,
9 AND MUCH, MUCH FEWER PEOPLE SO THAT THEY WOULDN'T BE
10 BOTHERING THE PUBLIC WITH ALL OF THE ACTIVITIES.

11 SO THE COUNTY OF LOS ANGELES AND AVIATION
12 COMPANIES BEGAN CONSIDERING WHETHER THEY WOULD ESTABLISH
13 A SORT OF A FACILITY AT AIR FORCE PLANT 42. AND THEN
14 WHEN THE AIR FORCE CAME IN, IT OPERATED IT AS A
15 GOVERNMENT OWNED FACILITY AND AIR FORCE FACILITY ON
16 WHICH THESE AVIATION COMPANIES COULD OPERATE.

17 Q SO LET'S NOW TURN TO EXHIBIT 86, PLEASE.

18 A RIGHT.

19 Q AND COULD YOU JUST READ -- WELL, LET'S
20 DESCRIBE THIS DOCUMENT FIRST AND THE DATE OF THE
21 DOCUMENT.

22 A NOW, THE DATE OF THIS DOCUMENT IS
23 PROBLEMATIC BECAUSE IT -- IN ITS LOCATION AT THE
24 NATIONAL ARCHIVES IN -- THIS IS IN -- FROM THE NATIONAL
25 ARCHIVES IN RIVERSIDE, I BELIEVE. IT'S IN A FOLDER. IT
26 DOES NOT HAVE A DATE. IT HAS ONLY A DESIGNATION
27 FY-52-1.

28 THE COURT: WHAT EXHIBIT NUMBER ARE YOU LOOKING

1 AT?

2 **MR. LEININGER:** I'M SORRY. THIS IS EXHIBIT 86,
3 YOUR HONOR, AND IT IS BATES LABELED 23762.

4
5 (EXHIBIT 86, IDENTIFIED: NATIONAL
6 ARCHIVE DOCUMENT DESIGNATED
7 FY-52-1, BATES LABELED 23762.)

8
9 (PAUSE IN THE PROCEEDINGS.)

10
11 **BY MR. LEININGER:**

12 **Q** OKAY. CAN YOU READ, PLEASE, JUST THE FIRST
13 SENTENCE OF THE FIRST -- I'M SORRY. YOU WERE EXPLAINING
14 THE AGE OF THIS DOCUMENT.

15 **A** WELL, JUST THAT IT DOESN'T HAVE A SPECIFIC
16 DATE AFFIXED TO IT, BUT IT IS LISTING A PROJECT IN
17 FISCAL YEAR '52, AND FROM THE DATES MENTIONED IN THE
18 TEXT, IT WOULD HAVE TO BE AFTER 1949; SO WE JUST GAVE IT
19 A GENERAL DATE OF 1952.

20 **Q** OKAY. COULD YOU READ THE FIRST SENTENCE OF
21 THIS DOCUMENT, PLEASE?

22 **A** ALL RIGHT. IT SAYS, AND I'M QUOTING, "IT
23 IS PROPOSED TO ACQUIRE THE PALMDALE AIRPORT, DESIGNATE
24 IT AS AN INDUSTRIAL FACILITY, AND UTILIZE IT FOR THE
25 FINAL ASSEMBLY AND FLIGHT TESTING OF JET FIGHTER TYPE
26 AIRCRAFT NOW BEING PRODUCED BY SEVERAL WEST COAST
27 AIRCRAFT MANUFACTURERS FOR THE UNITED STATES -- " OR FOR
28 THE -- EXCUSE ME -- "FOR THE AIR FORCE."

1 **Q** LET'S MOVE ON. LET'S GO TO THE NEXT
2 EXHIBIT. 92 IS THE NEXT EXHIBIT. THIS DOCUMENT I
3 BELIEVE IS DATED.

4 **A** YES. THIS IS A LETTER, AND IT'S A LONG --
5 A LONG LETTER. THIS IS ALSO FROM THE NATIONAL ARCHIVES.
6 IT'S -- YES, I BELIEVE THAT'S RIVERSIDE, THE NATIONAL
7 ARCHIVES IN RIVERSIDE. IT'S DATED APRIL 15TH, 1953.

8 AND IT'S A LETTER FROM BURT C. MONOSMITH,
9 VICE PRESIDENT, GENERAL MANAGER OF -- OF -- I BELIEVE
10 IT'S LOCKHEED. IT'S A LETTER TO GENERAL -- BRIGADIER
11 GENERAL K.D. METZGER, AT WRIGHT-PATTERSON AIR FORCE BASE
12 IN OHIO.

13
14 (EXHIBIT 92, IDENTIFIED: BURT
15 MONOSMITH'S 4/15/53 LETTER TO K.D.
16 METZGER.)

17
18 **THE WITNESS:** AND HE BASICALLY IS LAYING OUT THE
19 ARGUMENT FOR WHY AIR FORCE PLANT 42 SHOULD BE
20 ESTABLISHED AT PALMDALE AS OPPOSED TO ONTARIO. WHAT
21 IT'S GOOD FOR IS A -- IT'S A NICE CAPSULE SUMMARY OF ALL
22 OF THE REASONS WHY PALMDALE IS A DESIRABLE LOCATION.

23 **Q** AND I BELIEVE YOU WERE JUST GIVING A
24 SUMMARY OF YOUR -- IN YOUR ENCAPSULATION. BUT IF YOU
25 COULD READ FROM THE THIRD SENTENCE THAT STARTS WITH "THE
26 BASIS."

27 **A** OH, I'M SORRY. YES, IT'S THE THIRD
28 PARAGRAPH. THE --

1 **Q** THIRD SENTENCE OR THIRD -- READ THE THIRD
2 PARAGRAPH.

3 **A** OH, NO. I'M SORRY. THIS AREA.

4 "THE BASIS FOR THIS MASTER PLAN WAS TO
5 CREATE A FACILITY WHICH WOULD MEET THE REQUIREMENTS OF
6 FULL WAR MOBILIZATION AND WOULD AUGMENT THE INDUSTRIAL
7 PRODUCTION OF ESTABLISHED AIRCRAFT PLANTS IN THE
8 LOS ANGELES AREA."

9 **Q** THEN IF YOU COULD READ THE SECOND FULL
10 PARAGRAPH, PLEASE.

11 **A** "THE BASIS FOR THE PLAN ALSO REQUIRED THE
12 AREA BE ESTABLISHED FOR AN AIR DEFENSE UNIT WITH PROPER
13 SITE FOR BASIN INSTALLATION, UTILITIES, AND FLIGHT
14 ACTIVITIES."

15 **Q** LET'S GO TO EXHIBIT 111.

16 **A** RIGHT.

17 **THE COURT:** IS THAT -- WHICH ONE?

18 **MR. LEININGER:** I'M SORRY. 111, AND IT IS
19 BATES -- I CAN'T READ IT.

20 (SPOKE SOTTO VOCE.)

21 **THE WITNESS:** 050788.

22 **BY MR. LEININGER:**

23 **Q** WHAT DOES THIS DEPICT?

24 **A** WE PREPARED THIS MAP TO DEPICT THE AREA OF
25 THE ORIGINAL ACQUISITION OF AIR FORCE PLANT 42 TO SHOW
26 THAT NONE OF IT WAS FROM THE PUBLIC DOMAIN.

27

28

(EXHIBIT 111, IDENTIFIED: MAP.)

BY MR. LEININGER:

Q AND WHAT'S THE BLOCK QUOTE THAT YOU HAVE?

A THIS IS A QUOTE FROM BRIGADIER GENERAL
TROUP MILLER OF THE U.S. AIR FORCE, NOVEMBER 1ST, 1952.
"IT IS THE POSITION OF THIS DIRECTOR THAT THE
ACQUISITION OF PALMDALE AIRPORT BY PURCHASE IS IN THE
BEST INTEREST OF THE GOVERNMENT."

Q LET'S GO TO EXHIBIT 112.

A 112 IS A MAP THAT WE PREPARED SHOWING
EXHIBITS BY PURCHASE OR CONDEMNATION BETWEEN 1953 AND
1958. THERE'S OTHER ONES FROM THIS PERIOD -- OR ONE IN
PARTICULAR, BUT WE WANTED TO DO THIS TO SHOW THESE SMALL
ACQUISITIONS BETWEEN 1953 AND 1958.

(EXHIBIT 112, IDENTIFIED: MAP,
PURCHASES OR CONDEMNATIONS,
1953-58.)

BY MR. LEININGER:

Q OKAY. LET'S CONTINUE. 113. EXHIBIT 113.

A EXHIBIT 113 IS THE ONE I JUST REFERENCED
THAT SHOWS THE MAJOR ACQUISITION, WHICH WAS TRACT A-100,
LISTED AS TRACT A-100, AND PURCHASED FROM LOS ANGELES
COUNTY FEBRUARY 2ND, 1954. AND YOU CAN SEE IT'S MOST OF
THE MAIN FACILITY.

1 (EXHIBIT 113, IDENTIFIED: MAP OF
2 TRACT A-100.)

3

4 **BY MR. LEININGER:**

5 **Q** COULD YOU READ FROM THE BLOCK QUOTE,
6 PLEASE?

7 **A** YES. AND I'M QUOTING HERE. THIS IS FROM
8 THAT -- THE FISCAL YEAR REPORT I REFERENCED EARLIER.

9 "IT IS THE INTENT OF THE AIR FORCE TO MAKE
10 SUBSTANTIAL IMPROVEMENTS TO THIS PROPERTY AND TO RETAIN
11 IT AS A PERMANENT INSTALLATION."

12 **Q** LET'S NOW GO TO EXHIBIT 114. 114.

13 **A** THIS IS A CONTINUATION OF THE MAPPING
14 EFFORT, SHOWING ACQUISITIONS FROM 1956 TO 1958.

15

16 (EXHIBIT 114, IDENTIFIED: MAP OF
17 ACQUISITIONS, 1956-58.)

18

19 **THE WITNESS:** THIS IS A -- YOU SEE HERE, YOUR
20 HONOR, THIS RED AREA (INDICATING), THIS PART? THAT WAS
21 ACQUIRED AS A SAFETY MEASURE, SO THAT IT WAS CLEARING A
22 APPROACH OR TAKEOFF AREA. THE --

23 **BY MR. LEININGER:**

24 **Q** SO THE --

25 **A** IT WAS CONDEMNED. IT WAS PARTIALLY --
26 PARTIAL PURCHASES AND PARTIAL CONDEMNATIONS.

27 **Q** SO THERE WAS A RUNWAY, THAT ORIENTATION?

28 **A** ON THE BASE?

1 Q ON THE PLANT.

2 A YEAH. I -- I BELIEVE THIS AREA, THIS IS
3 THE HIGHWAY (INDICATING); SO THE ACTIVE RUNWAYS ARE IN
4 THERE. THIS IS JUST CLEARED FOR SAFETY PURPOSES.

5 Q AND WHAT IS YOUR BLOCK QUOTE HERE?

6 A IT SAYS -- AND THIS IS FROM A CONDEMNATION
7 JUDGMENT -- "THE PUBLIC USE FOR WHICH SAID LANDS AND
8 PREMISES WERE TAKEN AND CONDEMNED HEREIN, AS AFORESAID,
9 ARE TO PROVIDE FOR THE EXPANDING NEEDS AND REQUIREMENTS
10 OF THE DEPARTMENT OF THE AIR FORCE IN CONNECTION WITH
11 AIR FORCE PLANT NUMBER 42 AND ANY MILITARY USES INCIDENT
12 THERETO AND FOR OTHER SUCH USES AS MAY BE AUTHORIZED BY
13 CONGRESS OR BY EXECUTIVE ORDER."

14 Q I'M SORRY. WHAT'S THE SOURCE OF THAT?

15 A THAT'S THE JUDGMENT IN A CONDEMNATION
16 LAWSUIT, CIVIL NUMBER 762-57-VH, JANUARY 15TH, 1959.

17 Q AND LET'S GO TO THE LAST -- I'M SORRY.
18 SECOND TO THE LAST EXHIBIT, 115.

19 A YES. AGAIN, THIS IS A CONTINUATION OF THE
20 PURCHASES. IT'S THIS LITTLE PIECE RIGHT HERE
21 (INDICATING). SO BY 1958 THIS MAP IS DEPICTING THE
22 EXTENT OF AIR FORCE PLANT 52 -- 42. EXCUSE ME.

23

24 (EXHIBIT 115, IDENTIFIED: MAP, AIR
25 FORCE PLANT 42, 1958.)

26

27 BY MR. LEININGER:

28 Q AND THEN FINALLY YOUR EXHIBIT 116.

1 **A** RIGHT. THESE ARE ACQUISITIONS BETWEEN 1958
2 AND 1962, AND IT IS (INDICATING) THIS LOCATION HERE AND
3 SURROUNDING OUT THE FACILITY.

4
5 (EXHIBIT 116, IDENTIFIED: MAP, AIR
6 FORCE PLANT 42, 1958 TO 1962.)

7
8 **BY MR. LEININGER:**

9 **Q** SO EVERYTHING WITHIN THESE SOLID LINES NOW
10 DEPICTS THE CURRENT BOUNDARIES OF AIR FORCE PLANT 42?

11 **A** WELL, THE BOUNDARIES AS OF 1950 -- 1963.

12 **Q** AS OF 1963.

13 **A** SO THAT (INDICATING).

14 **MR. LEININGER:** YOUR HONOR, THAT CONCLUDES
15 MR. HERBERT'S TESTIMONY.

16 **THE COURT:** OKAY. ON DIRECT.

17 **MR. LEININGER:** ON DIRECT, YES. THANK YOU, YOUR
18 HONOR.

19 YOUR HONOR, I GUESS -- SHALL I MOVE NOW FOR
20 SUBMISSION OF THESE EXHIBITS OR AFTER CROSS-EXAMINATION?

21 **THE COURT:** WELL, WHY DON'T WE HAVE
22 CROSS-EXAMINATION AND THEN SEE WHAT HAPPENS.

23 WHO WANTS TO INITIATE CROSS-EXAMINATION?

24 **MR. SHEFFIELD:** GOOD AFTERNOON. ANDREW SHEFFIELD,
25 ON BEHALF OF GREEN WAY, CRYSTAL ORGANIC, DIAMOND
26 FARMING, AND LAPIS LAND COMPANY.

27
28

CROSS-EXAMINATION**BY MR. SHEFFIELD:**

Q GOOD AFTERNOON, MR. HERBERT.

IN THE TESTIMONY YOU JUST GAVE YOU DIDN'T
PROVIDE ANY WATER HISTORY FOR PLANT 42; IS THAT CORRECT?

A NO.

Q DID YOU PROVIDE ANY NUMBERS OF THE WATER
PRODUCTION FROM PLANT 42?

A NO.

Q AND THAT'S BECAUSE YOU DON'T HAVE ANY
INFORMATION REGARDING THE WATER PRODUCTION FROM
PLANT 42?

A NO.

Q THAT'S CORRECT?

A THAT'S CORRECT, YES.

Q AND DID YOU FIND ANY DOCUMENTS IN YOUR
SEARCHING REGARDING PLANT 42 THAT WAS SUBJECT TO ANY
FEDERAL RESERVATION, THAT WAS ACQUIRED THROUGH ANY
RESERVATION?

A NO.

Q AND DID YOU FIND ANY DOCUMENTS ASSERTING
ANY EXCLUSIVE JURISDICTION OVER THE PLANT 42 PROPERTY?

A NO.

Q AND DO YOU KNOW -- ARE YOU AWARE OF WHAT
THE ADJUDICATED BOUNDARIES ARE IN THIS LAWSUIT, OF THE
WATER BASIN?

A I'VE SEEN A MAP. I DIDN'T INTERNALIZE IT.

Q DO YOU KNOW WHAT PARTS OF EDWARDS AIR FORCE

1 BASE SIT WITHIN THAT ADJUDICATION BOUNDARY?

2 A IF I REMEMBER CORRECTLY, ALMOST ALL OF IT.
3 I DON'T KNOW THAT ALL OF IT IS.

4 Q AND WITHIN YOUR TESTIMONY REGARDING EDWARDS
5 AIR FORCE BASE, DO YOU KNOW HOW MANY OF THE WELLS THAT
6 YOU IDENTIFIED IN THERE SIT WITHIN THE ADJUDICATION
7 BOUNDARIES?

8 A IF I REFER TO THAT MAP, I'D HAVE TO COMPARE
9 IT TO THE ADJUDICATION BOUNDARIES. OFFHAND, I DON'T
10 THINK THERE'S ANY, BUT I DON'T -- I'D HAVE TO PUT THE
11 ADJUDICATION BOUNDARY ON MY WELL MAP.

12 Q AND YOU'VE NEVER DONE THAT?

13 A NO.

14 Q AND DO YOU KNOW, WITHIN YOUR MAP, WHERE THE
15 SAN BERNARDINO COUNTY LINE RUNS WITH REGARDS TO THE AIR
16 FORCE BASE ON THE MAP?

17 A I BELIEVE SO.

18 Q WHERE IS THAT?

19 A ON THE EASTERN SIDE.

20 Q AND APPROXIMATELY --

21 A I MEAN THE EASTERN EDGE OF THE BASE.

22 Q APPROXIMATELY, HOW MUCH OF THE BASE IS ON
23 THE SAN BERNARDINO COUNTY SIDE OF THE COUNTY LINE?

24 A ON THE SAN BERNARDINO SIDE?

25 Q CORRECT.

26 A IT'S A PORTION OF THE BASE. I DON'T KNOW
27 THAT I COULD GIVE YOU A SPECIFIC NUMBER OR PERCENTAGE.

28 Q CAN YOU GIVE AN ESTIMATION BASED ON WHAT

1 YOU'VE REVIEWED?

2 A WELL, I WOULD THINK NO MORE THAN
3 10 PERCENT.

4 Q AND IN LOOKING AT THE WATER HISTORIES
5 REGARDING EDWARDS AIR FORCE BASE, DID YOU HAVE ANY
6 DIFFERENTIATION ABOUT HOW MUCH WATER WAS BEING USED ON
7 THE SAN BERNARDINO COUNTY SIDE OF THE COUNTY LINE?

8 A NO.

9 Q AND NONE OF THE DOCUMENTS YOU SAW WOULD
10 TELL YOU THAT AMOUNT, WOULD IT?

11 A NOT THAT I RECALL.

12 Q IN RUNNING DOWN A WATER HISTORY FOR EDWARDS
13 AIR FORCE BASE, DID YOU HAVE ANY NUMBERS FOR THE WATER
14 USAGE AFTER 1967?

15 A IF I DO, THEY'RE ON THAT TABLE.

16 Q WELL, I'M -- DO YOU?

17 A YEAH, IF THEY'RE ON THE TABLE. I BELIEVE
18 SO.

19 Q OKAY. YOU CAN LOOK AT YOUR TABLE.

20 A DO YOU REMEMBER THE NUMBER?

21 Q I BELIEVE IN MY -- IT WAS EXHIBIT 259.
22 MIGHT BE EXHIBIT -- YEAH, 259 IS THE ONE I THINK THAT
23 HAD YOUR LIST.

24 A HOLD ON. EXCUSE ME FOR A MOMENT.

25

26 (PAUSE IN THE PROCEEDINGS.)

27

28

1 **MR. SHEFFIELD:** ALL RIGHT.

2 **MR. LEININGER:** COUNSEL, WOULD IT BE OKAY IF WE
3 PROJECT?

4 **MR. SHEFFIELD:** ABSOLUTELY. THAT WOULD BE
5 HELPFUL.

6 **MR. LEININGER:** 259?

7 **MR. SHEFFIELD:** YES, I BELIEVE THAT'S THE ONE.

8 (INDISCERNIBLE: MUMBLING.)

9 **THE WITNESS:** YEAH. THE LAST I HAVE IS 1967.

10 **BY MR. SHEFFIELD:**

11 **Q** SO AS OF 1967, HAD THE WATER USAGE AT
12 EDWARDS AIR FORCE BASE BEGUN TO DECREASE?

13 **A** IT WAS LOWER THAN PREVIOUS YEARS.

14 **Q** AND IN LOOKING AT YOUR HISTORY OF THE
15 DOCUMENTS YOU REVIEWED, YOU DIDN'T GATHER AN ENTIRE
16 HISTORY TO KNOW WHAT WAS GOING ON IN THE WATER USAGE
17 THROUGH THE LIFE OF THE BASE UP TO 1980, DID YOU?

18 **A** NO.

19 **Q** AND THAT INFORMATION WASN'T AVAILABLE?

20 **A** IT WAS MORE THE CASE THAT THERE WERE OTHER
21 WITNESSES WHO WERE BETTER QUALIFIED THAN I TO COLLECT
22 THAT INFORMATION.

23 **Q** IN THE DOCUMENTS YOU LOOKED AT, WAS THE
24 INFORMATION AVAILABLE?

25 **A** IN THE HISTORICAL RECORD, RIGHT.

26 **Q** SO IT WAS AVAILABLE AND YOU JUST DON'T HAVE
27 IT IN YOUR DOCUMENTS; CORRECT?

28 **A** THE INFORMATION THAT'S IN THE TABLE IS

1 INFORMATION I HAVE.

2 Q AND SO THE INFORMATION WHERE THERE'S
3 BLANKS -- IF YOU LOOK AT 1947 ON UP TO 1948, ABOVE 1948,
4 IT'S ALL BLANK; CORRECT?

5 A OH, THAT'S WHERE OUR TABLE STARTED. WE
6 STARTED THIS TABLE VERY EARLY IN THE PROCESS.

7 Q I UNDERSTAND. BUT WHERE IT'S BLANK IN THE
8 1947, THE COLUMN FOR WATER USAGE, AND IT'S BLANK ALL THE
9 WAY DOWN TO 1948, WAS THAT INFORMATION AVAILABLE TO YOU?

10 A IF WE HAD HAD THOSE SOURCES, HAD HAD
11 WHAT -- REFERENCE TO AN ANNUAL WATER NUMBER, IT WOULD
12 HAVE BEEN IN THE COLUMN.

13 Q SO IT'S --

14 A IT WASN'T NECESSARILY THE INFORMATION'S NOT
15 AVAILABLE TO ME. IT'S JUST NOT IN THOSE SOURCES.

16 Q SO IF IT'S BLANK, YOU DIDN'T FIND THE
17 INFORMATION OR HAVE ACCESS -- OR DIDN'T FIND IT IN YOUR
18 SEARCH; CORRECT?

19 A IF IT'S BLANK, IT'S NOT IN THOSE DOCUMENTS.

20 Q AND ANY SOURCES THAT YOU DID LOOK AT, NOT
21 THE SOURCES YOU HAVE LISTED THERE, WAS THAT INFORMATION
22 AVAILABLE TO YOU?

23 A I THINK YOU'RE MISUNDERSTANDING THE PURPOSE
24 OF THIS TABLE.

25 Q OKAY. WELL, YOU HAVE A TABLE UP THERE, AND
26 YOU WENT THROUGH -- ON DIRECT EXAMINATION, YOU READ
27 SPECIFIC ENTRIES IN 1960S, TALKING ABOUT WHAT THE WATER
28 PRODUCTION WAS AND TELLING US THAT THAT'S THE HISTORICAL

1 WATER PRODUCTION FOR THAT YEAR; CORRECT?

2 A THAT'S RIGHT.

3 Q AND SO THE AREAS THAT ARE BLANK, YOU DIDN'T
4 TELL US THAT NUMBER, DID YOU?

5 A THERE WAS NO NUMBER REPORTED IN THAT
6 REPORT.

7 Q CORRECT. SO THEN DID YOU EXAMINE ANY
8 SOURCES THAT HAD THAT NUMBER?

9 A WE MAY HAVE, BUT THEY DIDN'T MAKE THEIR WAY
10 ONTO THIS SPREADSHEET.

11 Q OKAY. AND SO WHERE IT'S BLANK, THEN, YOU
12 CAN'T TELL US WHAT THE NUMBER WAS FOR THAT YEAR, IF I
13 WERE TO ASK YOU ON THE FIRST COLUMN, 1947, WHAT WAS THE
14 WATER USAGE AT THE AREA THAT COMPRISES EDWARDS AIR FORCE
15 BASE?

16 A OH, SITTING HERE RIGHT NOW, NO.

17 Q AND IN DOING YOUR HISTORICAL WATER USAGE,
18 THE AREAS THAT NOW CURRENTLY COMPRISE EDWARDS AIR FORCE
19 BASE BUT WERE NOT PART OF IT BACK IN, SAY, 1947, DID YOU
20 LOOK AT ANY OF THE HISTORY OF THOSE AREAS ON THE WATER
21 USAGE BEFORE THEY BECAME PART OF EDWARDS AIR FORCE BASE?

22 A RUN -- I'M SORRY. RUN THROUGH THAT ONE
23 AGAIN.

24 Q SURE. THERE'S AREAS THAT WERE ACQUIRED BY
25 RESERVATION, AND THERE'S AREAS THAT WERE PURCHASED AND
26 CONDEMNED.

27 A RIGHT.

28 Q AND YOU JUST WENT THROUGH A PROCESS OF

1 SHOWING HOW THAT ALL EVOLVED.

2 **A** RIGHT.

3 **Q** IN DOING THE AREAS, LOOKING AT THESE ITEMS,
4 DID YOU GO BACK AT THE HISTORY OF THE WATER USAGE? DID
5 YOU LOOK AT ANY OF THE AREAS BEFORE THEY BECAME PART OF
6 EDWARDS AIR FORCE BASE?

7 **A** ONLY TO THE EXTENT THAT THERE WERE
8 REFERENCES IN THE COURT RECORDS AS TO USE OF THE LAND,
9 WHETHER IT HAD A WELL, THAT SORT OF THING. BUT THOSE
10 ALMOST NEVER -- WELL, I TAKE IT BACK. THEY NEVER SAID
11 HOW MUCH WAS PRODUCED.

12 **Q** OKAY. SO --

13 **A** THEY MIGHT SAY DEPTH TO WATER. THEY MIGHT
14 SAY SIZE OF THE WELL. THEY MIGHT SAY HORSEPOWER OF THE
15 PUMP.

16 **Q** SORRY.

17 **A** THEY DON'T GIVE YOU A USAGE NUMBER.

18 **Q** OKAY. SO YOU DON'T HAVE THE HISTORIC
19 NUMBERS, THEN, FOR THE AREAS PRIOR TO OR AT THE TIME
20 THEY WERE ACQUIRED BY EDWARDS BY PURCHASE OR
21 CONDEMNATION?

22 **A** NO, I DON'T HAVE ANY STATISTICS ON THAT.

23 **Q** IN THE NUMBERS THAT YOU'VE GIVEN US HERE ON
24 THE WATER USAGE WHERE -- TAKE AN EXAMPLE, 1948, IT SAYS
25 670 ACRE FEET. DO YOU HAVE ANY IDEA OF THE SOURCE OF
26 THAT WATER?

27 **A** THAT'S JUST WHAT WAS REPORTED BY THE
28 U.S.G.S.

1 Q AND SO ON THE REPORTS YOU HAD IT DOESN'T
2 DISTINGUISH ABOUT WHETHER THAT WAS PUMPED GROUND WATER,
3 TOP FLOWING WATER, OR ANY OTHER KIND OF WATER?

4 A OH, I'D HAVE TO LOOK AT IT. I DON'T
5 REMEMBER THAT SPECIFIC ONE.

6 Q DO YOU REMEMBER ON ANY OF THEM?

7 A WELL, NO, I BELIEVE THESE ARE ALL GROUND
8 WATER STATISTICS.

9 Q AND DOES IT TELL YOU -- WHEN YOU SEE THE
10 670 ACRE FEET ON THE DOCUMENTS YOU LOOKED AT, DID IT
11 TELL YOU WHAT WELL THIS WAS COMING OUT OF?

12 A OFFHAND, I DON'T RECALL.

13 Q AND SO YOU CAN'T SAY IF THIS WELL WAS ON
14 THE SAN BERNARDINO SIDE OF THE COUNTY LINE AS OPPOSED TO
15 BEING ON THE KERN COUNTY SIDE OF THE COUNTY LINE?

16 A WELL, IF IT'S IN 1948 AND IT HAS TO DO WITH
17 EDWARDS, IT'S LISTED ON EDWARDS AIR FORCE BASE. IT
18 DOESN'T NECESSARILY DIFFERENTIATE.

19 Q I UNDERSTAND. BUT IN LOOKING AT THE
20 HISTORICAL DOCUMENTS, THERE WAS A COUNTY LINE THAT
21 EXISTED AT THAT TIME; CORRECT?

22 A SURE.

23 Q AND CAN YOU TELL FROM THE DOCUMENTS YOU
24 LOOKED AT WHAT SIDE, EITHER/OR, IF YOU CAN TELL IF IT
25 WAS ON THE SAN BERNARDINO COUNTY SIDE THAT IT WAS BEING
26 PUMPED OR THE KERN COUNTY SIDE?

27 A THERE ARE IN THESE REPORTS SPECIFIC
28 REFERENCES TO SPECIFIC WELLS. THEY DO NOT ALWAYS --

1 EACH REPORT DOES NOT ALWAYS LIST EVERY WELL, AND THEY --
2 THEY'RE MORE GIVEN AS EXAMPLES. SO I CAN'T TELL YOU FOR
3 SURE IN ANY GIVEN REPORT WHETHER THERE IS A SPECIFIC --
4 A LIST OF ALL WELLS.

5 THERE IS A MAP THAT DEPICTS WELLS. AND
6 YOU'D HAVE TO -- WE'D HAVE TO REVIEW THE MAP TO SEE
7 WHETHER THERE'S ANY IN THE AREA YOU'RE TALKING ABOUT.

8 Q ON EXHIBIT 258, YOU WERE IDENTIFYING PURPLE
9 DOTS THAT WOULD IDENTIFY WELLS AND THEN SOME CIRCLED
10 NUMBERS. DO YOU RECALL THAT?

11 A YEAH. LET ME FIND THAT.

12 Q SURE.

13

14 (PAUSE IN THE PROCEEDINGS.)

15

16 THE WITNESS: WELL, LET'S GO FROM THE MAP. HERE I
17 CAN SEE.

18 BY MR. SHEFFIELD:

19 Q SURE. AND I JUST HAVE A GENERALIZED
20 QUESTION. WHEN YOU WERE GETTING INFORMATION THAT
21 PLOTTED THESE DOTS OUT, WERE YOU ABLE TO ASCERTAIN
22 WHETHER OR NOT THESE ARE ACTIVE PUMPING WELLS AT THE
23 TIME THAT YOU FOUND INFORMATION ABOUT THEM?

24 A THE INFORMATION SIMPLY STATES THERE WAS A
25 WELL. AND THE VOUCHERS WOULD SAY THE DEPTH TO WATER,
26 SOMETIMES THE SIZE OF THE WELL, THE SIZE OF THE PUMP,
27 BUT THEY DON'T SPECIFY AMOUNTS PUMPED.

28 Q RIGHT. I THINK YOU'RE MISUNDERSTANDING MY

1 QUESTION. AS FAR AS BEING AN ACTIVE WELL -- BECAUSE YOU
2 CAN HAVE A WELL THAT IS A CLOSEOUT WELL AND IT WILL
3 STILL SHOW UP ON A MAP AND IT'S NOT AN ACTIVE WELL.
4 MAYBE SOMEBODY'S PUMPING WATER OUT OF IT.

5 DID YOU HAVE ANY DISTINCTION BETWEEN WHAT
6 YOU WERE SEEING IN THE PLOT OF THESE DOTS, WHETHER THESE
7 WERE ACTIVELY PUMPING WELLS?

8 A IT'S SUCH A COMPILATION. THEY COME FROM SO
9 MANY SOURCES, I COULDN'T TELL YOU FROM, YOU KNOW,
10 WELL -- WELL TO WELL TO WELL. IN GENERAL, THEY DEPICT
11 THE WELLS THAT WERE IN THE REPORTS OR ON THE VOUCHERS.
12 SOME OF THEM MAY HAVE BEEN CAPPED, STATED AS CAPPED.
13 SOME OF THEM MAY BE STATED AS A WELL --

14 Q AND --

15 A -- SO I DON'T THINK I CAN ANSWER YOUR
16 QUESTION.

17 Q IN PUTTING THIS INFORMATION ON THIS MAP,
18 DID YOU DISTINGUISH BETWEEN WHAT WOULD BE IDENTIFIED AS
19 A CAPPED WELL OR A PUMPING WELL?

20 A NO.

21 Q AND IN LOOKING AT THE RECORDS RELATING TO
22 THE HISTORY OF THE WATER USE AT EDWARDS AIR FORCE BASE,
23 DID YOU EXAMINE ANY RECORDS DEALING WITH THE ABANDONMENT
24 OF ANY WELLS?

25 A IT'S NOT A TOPIC WE WOULD HAVE SEARCHED FOR
26 SPECIFICALLY. SO WE WOULD HAVE -- WE WOULD HAVE
27 SEARCHED FOR INFORMATION RELATED TO WELLS IN GENERAL.
28 IF THERE IS INFORMATION IN THERE ABOUT ABANDONMENT OF

1 WELLS OR INSTALLATION OF NEW WELLS, THAT'S WHAT WE WOULD
2 HAVE FOUND ALONG THE WAY. SO --

3 Q OKAY.

4 A -- THE ANSWER IS MAYBE.

5 Q OKAY. AND SO WITHIN THIS DIAGRAM THERE'S
6 APPROXIMATELY 500 WELLS, GIVEN ALL THE VARIATIONS OF THE
7 CIRCLES AND THE DOTS, AND SINCE THE TIME WHEN THESE WERE
8 MAPPED, AND NOW THERE'S CURRENTLY ONLY 50 TO 60 ACTIVE
9 WELLS ON EDWARDS AIR FORCE BASE?

10 A I DON'T BELIEVE I KNOW THE ACTIVE NUMBER OF
11 WELLS. I THINK IT'S FIFTEEN OR SIXTEEN, SOMETHING LIKE
12 THAT.

13 Q FIFTEEN OR SIXTEEN?

14 A THAT'S WHAT I UNDERSTAND.

15 Q OH. AND THAT'S DOWN FROM THE 500 THAT WERE
16 PUT ON THIS MAP; CORRECT?

17 A VERY MUCH SO, YEAH.

18 Q AND OF THE FIFTEEN OR SIXTEEN WELLS, DO YOU
19 HAVE ANY IDEA WHETHER THOSE WERE -- WHAT SIDE OF THE
20 COUNTY LINE THOSE WERE ON, SAN BERNARDINO OR KERN?

21 A THE ACTIVE WELLS?

22 Q CORRECT.

23 A I HAVEN'T SEEN A MAP SHOWING ME ALL OF THE
24 ACTIVE WELLS.

25 Q YOU HAD TESTIFIED EARLIER THAT ONE OF THE
26 ITEMS THAT YOU RELIED ON FOR THE HISTORIC WATER USE WERE
27 REPORTS FROM THE STATE OF CALIFORNIA. CAN YOU IDENTIFY
28 WHAT REPORTS THOSE WERE?

1 **A** THERE WERE SOME GENERAL WATER STUDIES OF
2 THE ANTELOPE VALLEY DONE BY THE WATER RESOURCES CENTER,
3 UNIVERSITY OF CALIFORNIA. THIS IS ALL JUST VERY DEEP --
4 DEEP MEMORY NOW, BUT I BELIEVE THAT'S RIGHT.

5 **Q** AND ANY OTHER REPORTS FROM THE STATE OF --

6 **A** THERE WAS A COUPLE OTHERS. THE NAMES OF
7 THEM DON'T COME TO MY MIND, AND THEY DIDN'T TURN OUT TO
8 BE PARTICULARLY HELPFUL.

9 **Q** DO YOU KNOW THE YEAR ON THE STATE OF
10 CALIFORNIA REPORT THAT YOU DID IDENTIFY JUST A MOMENT
11 AGO?

12 **A** IT WAS THE 1950S.

13 **Q** NOW, YOU WENT THROUGH A SERIES OF
14 IDENTIFYING RESERVATIONS AS EXECUTIVE ORDERS AND THEN AS
15 PUBLIC LAND ORDERS. DO YOU RECALL THAT?

16 **A** SURE.

17 **Q** AND DID THOSE EXECUTIVE ORDERS AND PUBLIC
18 LAND ORDERS HAVE EXCEPTIONS IN THEM?

19 **A** WHAT DO YOU MEAN BY EXCEPTIONS? GIVE ME AN
20 EXAMPLE.

21 **Q** THAT THEY WERE SUBJECT TO THE EXISTING
22 RIGHTS OR THEN EXISTING RIGHTS.

23 **A** IN SOME INSTANCES, YES.

24 **Q** CAN YOU IDENTIFY ONE THAT DID NOT HAVE
25 THAT?

26 **A** I'LL HAVE TO GO THROUGH THEM. I DIDN'T
27 MEMORIZE THEM ALL.

28 **Q** WELL, DO YOU HAVE IN YOUR MIND A

1 SPECIFIC -- WELL, LET'S START WITH --

2 A START WITH NUMBER 1.

3 Q I BELIEVE IT'S EXHIBIT 11, THE FIRST --

4 A FIRST ONE.

5 Q -- THAT WE DISCUSSED, EXECUTIVE ORDER 6588.

6 A YES.

7 Q DID THAT STATE THAT IT WAS SUBJECT TO THE
8 VALID EXISTING RIGHTS AT THE TIME?

9 A YES.

10 Q AND THEN EXECUTIVE ORDER 7707, WHICH I
11 DON'T THINK WAS ON YOUR LIST. DO YOU RECALL SEEING
12 EXECUTIVE ORDER 7707?

13 A YES. THAT'S FOR SOME, I THINK, MILLIONS OF
14 ACRES OF LAND. YES.

15 Q AND DID YOU CONSIDER THAT EXECUTIVE ORDER
16 IN YOUR ANALYSIS THAT YOU TESTIFIED TO TODAY?

17 A IT CAME UP IN OUR RESEARCH.

18 Q AND THAT WASN'T INCLUDED AS ONE THAT YOU
19 TALKED ABOUT TODAY?

20 A NO.

21 Q DID IT ALSO SAY THAT IT WAS SUBJECT TO
22 VALID AND ALL EXISTING RIGHTS?

23 A I DON'T RECALL.

24 Q AND EXECUTIVE ORDER 7740, DID YOU SEE THAT
25 ONE?

26 A I BELIEVE SO.

27 Q AND WAS THAT ONE SUBJECT TO ALL VALID
28 EXISTING RIGHTS?

1 IF YOU'RE LOOKING -- I DON'T BELIEVE YOU
2 SPOKE ABOUT THAT ONE TODAY. I THINK IT'S ONE THAT --

3 A 7740. YEAH, I DON'T THINK I HAVE THAT.

4 Q OKAY. CAN YOU GO TO EXHIBIT 21 THEN,
5 PLEASE?

6 A HOLD ON.

7 ALL RIGHT.

8 Q AND THAT'S PUBLIC LAND ORDER 480; CORRECT?

9 A YES.

10 Q AND WAS THAT SUBJECT TO ALL VALID AND
11 EXISTING RIGHTS?

12 A YES.

13 Q OKAY. AND THEN EXHIBIT 18 WAS EXECUTIVE
14 ORDER 8450.

15 A 18. HOLD ON.

16

17 (PAUSE IN THE PROCEEDINGS.)

18

19 THE WITNESS: YES. GO AHEAD.

20 BY MR. SHEFFIELD:

21 Q WAS THAT EXECUTIVE ORDER SUBJECT TO ALL
22 VALID EXISTING RIGHTS AT THE TIME OF THE ORDER?

23 A SUBJECT TO VALID EXISTING RIGHTS.

24 Q AND THIS EXECUTIVE ORDER SUPERSEDED THE
25 PRIOR EXECUTIVE ORDERS WE'RE DISCUSSING, 6588, 7707, AND
26 7740; IS THAT CORRECT?

27 A THAT'S WHAT IT SAYS.

28 Q AND ARE YOU AWARE OF WHETHER -- OR DID YOU

1 FIND ANY DOCUMENTS WHEREIN EXECUTIVE ORDER 8450 WAS
2 MODIFIED AFTER IT WAS ISSUED?

3 A I DON'T BELIEVE SO.

4 Q COULD YOU GO TO EXHIBIT 22, PLEASE?

5

6 (PAUSE IN THE PROCEEDINGS.)

7

8 THE WITNESS: ALL RIGHT.

9 BY MR. SHEFFIELD:

10 Q AND IS THAT PUBLIC LAND ORDER 613?

11 A 613, YES.

12 Q AND WAS THAT SUBJECT TO VALID EXISTING
13 RIGHTS?

14 A YES.

15 Q IF YOU COULD GO TO EXHIBIT 23.

16 A ALL RIGHT.

17 Q AND THAT'S PUBLIC LAND ORDER 646?

18 A YES, IT IS.

19 Q AND WAS THAT SUBJECT TO ALL VALID EXISTING
20 RIGHTS?

21 A IT'S SUBJECT TO VALID EXISTING RIGHTS.

22 Q IF YOU CAN GO TO EXHIBIT 24.

23 THE COURT: COUNSEL, LET ME ASK YOU IF THERE MIGHT
24 BE A MORE EFFICIENT WAY OF DEALING WITH THIS. THIS IS
25 REALLY YOUR ARGUMENT RATHER THAN PRESENTATION OF
26 EVIDENCE. IF THESE DOCUMENTS ARE IN EVIDENCE AND I'VE
27 NOT HEARD OBJECTIONS TO THEM, THEN IT SEEMS TO ME THAT
28 THAT'S SOMETHING THAT YOU COULD SAY FOR ARGUMENT AS TO

1 THE EFFECT OF THAT LANGUAGE.

2 MR. SHEFFIELD: I UNDERSTAND, YOUR HONOR. I WAS
3 TRYING TO CUT TO THE CHASE BY ASKING IF THEY SAID IT,
4 AND HE SAID HE --

5 THE COURT: WELL --

6 MR. SHEFFIELD: IT GOES TO ANOTHER QUESTION I'M
7 TRYING TO GET TO.

8 THE COURT: WELL, I THINK MOST OF THEM DO SAY IT.
9 I THINK IT'S BEEN CONCEDED FROM THE BEGINNING THAT THAT
10 LANGUAGE IS IN THE EXECUTIVE ORDERS, MANY OF THEM. SO
11 GIVEN THAT FACT, WHY DON'T YOU GO TO YOUR NEXT QUESTION,
12 WHATEVER THAT MIGHT BE, REGARDING IT.

13 MR. SHEFFIELD: WILL DO, YOUR HONOR.

14 BY MR. SHEFFIELD:

15 Q WITH REGARD TO THE VALID EXISTING RIGHTS
16 THAT EXISTED IN THESE AREAS PRIOR TO THE PUBLIC LAND
17 ORDERS OR EXECUTIVE ORDERS, DID YOU DO ANY RESEARCH INTO
18 WHAT THOSE RIGHTS MAY HAVE BEEN?

19 THE COURT: THAT CALLS FOR A LEGAL CONCLUSION.

20 MR. LEININGER: OBJECTION, CALLS FOR A LEGAL
21 CONCLUSION.

22 THE COURT: CALLS FOR A LEGAL CONCLUSION.

23 MR. SHEFFIELD: MAY I BE HEARD ON THAT, YOUR
24 HONOR? I'M ASKING IF HE RESEARCHED WHAT RIGHTS EXISTED.
25 IT'S --

26 THE COURT: HE'S NOT A LAWYER.

27 MR. SHEFFIELD: WELL, IT -- IT'S NOT -- IT'S NOT A
28 CONCLUSION. I'M NOT ASKING HIM DID HE DETERMINE WHAT

1 THEY ARE. HE'S RESEARCHED WATER RIGHTS AND WATER USAGE
2 AND HE'S DONE ACQUISITIONS SO --

3 **THE COURT:** WHY IS IT RELEVANT AS TO WHAT HE MAY
4 HAVE RESEARCHED IN TERMS OF THE LAW?

5 **MR. SHEFFIELD:** I DIDN'T ASK, HAVE YOU RESEARCHED
6 THE LAW? HE REVIEWED -- IN HIS DEPO TESTIMONY HE TALKED
7 ABOUT LOOKING AT DEEDS AND FOLLOWING CHAINS OF TITLE AND
8 THOSE THINGS; SO IN THE SEARCH OF THAT HE WOULD -- I'M
9 ASKING IF HE DID LOOK AT ANYTHING PREEXISTING EDWARDS
10 AIR FORCE BASE TAKING OVER -- THE GOVERNMENT TAKING OVER
11 THESE PARCELS OF LAND.

12 **THE COURT:** YEAH. I'M GOING TO SUSTAIN THE
13 OBJECTION.

14 **BY MR. SHEFFIELD:**

15 **Q** DID YOU PERFORM ANY CHAIN OF TITLE SEARCHES
16 ON ANY OF THE LANDS ACQUIRED FOR EDWARDS AIR FORCE BASE?

17 **A** BY "CHAIN OF TITLE," DO YOU MEAN A FULL
18 TITLE CHAIN FROM PATENT TO CURRENT OWNER?

19 **Q** OR ANY PART THEREOF. WELL, LET ME -- DID
20 YOU DO ANY CHAIN OF TITLE PRIOR TO THE GOVERNMENT
21 ACQUIRING THE PROPERTY?

22 **A** NO. WE DIDN'T DO PATENT TO TRANSACTION
23 WITH THE GOVERNMENT.

24 **Q** DID YOU DO ANYTHING PRIOR TO THE GOVERNMENT
25 ACQUIRING A PROPERTY? DID YOU CHECK ANY OF THE TITLE
26 PRIOR TO THE GOVERNMENT COMING INTO TITLE OF THE
27 PROPERTY?

28 **A** OH, NO, NO.

1 Q AND IN DOING THE WELL PLOTTING THAT YOU
2 DID, DID YOU EVER DO A MAP THAT SHOWED WHETHER THE WELLS
3 WERE SITTING ON RESERVE LAND OR NOT?

4 A NO, I DIDN'T PREPARE A MAP LIKE THAT.

5 Q OKAY. SO AS YOU SIT HERE TODAY, YOU DON'T
6 KNOW WHETHER THE WELLS WERE ON RESERVE LAND VERSUS LAND
7 ACQUIRED THROUGH PURCHASE OR CONDEMNATION?

8 A BASED ON WHERE THE INFORMATION COMES FROM,
9 MOST OF THEM WOULD HAVE BEEN ON PRIVATE LAND, BECAUSE
10 THE WAY THAT THEY'RE RECORDED WAS THROUGH THE PURCHASE
11 AND SO FORTH.

12 Q YOU TESTIFIED EARLIER, USING EXHIBIT 43,
13 THAT AERONAUTICAL COMPANIES WERE WANTING TO USE PARTS OF
14 EDWARDS AIR FORCE BASE. AND THAT WAS THE -- 43 WAS THE
15 LETTER FROM NORTHROP.

16 A OKAY.

17 Q DO YOU RECALL THAT?

18 A YES.

19 Q AND IN YOUR COMMENT YOU HAD SAID
20 AERONAUTICAL COMPANIES. WHAT OTHER COMPANIES WERE
21 WANTING TO USE THE PROPERTY AT THAT TIME OTHER THAN
22 NORTHROP?

23 A OH, THIS IS THE EXAMPLE I KNOW OF. YES. I
24 HAVE UNDERSTOOD -- I DON'T HAVE EXAMPLES, BUT I HAVE
25 UNDERSTOOD FROM JUST GENERAL READING THAT THAT WAS THE
26 CASE. THIS WAS AN EXAMPLE OF IT. I HAVEN'T SEEN OTHER
27 EXAMPLES, BUT THAT'S WHAT I HAD UNDERSTOOD TO BE THE
28 CASE.

1 Q AND SO YOU HAVE NO DOCUMENTARY EVIDENCE OF
2 ANY OTHER COMPANIES OTHER THAN NORTHROP?

3 A NO.

4 Q OKAY. YOU HAD ALSO -- I BELIEVE IT WAS
5 EXHIBIT 28 AND 29, DEALING WITH THE EXCLUSIVE
6 JURISDICTION.

7 A UH-HUH.

8 Q AND THEY ESTABLISHED THE EXCLUSIVE
9 JURISDICTION ABOUT 1945, BASED ON YOUR TESTIMONY; IS
10 THAT CORRECT?

11 A BETWEEN '43 AND '45.

12 Q AND DID YOU FIND ANY DOCUMENTS AFTER THAT
13 DATE THAT DEALT WITH ANY EXCLUSIVE JURISDICTION OVER ANY
14 OTHER PARTS OF THE EDWARDS AIR FORCE BASE OTHER THAN
15 WHAT WAS LAID OUT IN THOSE TWO EXHIBITS?

16 A THERE WERE RECORDS FROM THE STATE LANDS
17 COMMISSION RELATED TO ITS JURISDICTION, BUT I DID NOT --
18 I DIDN'T STUDY THOSE. COLLECTED THEM UP AND TRANSMITTED
19 THEM ON.

20 Q AND THEY WEREN'T PART OF YOUR TESTIMONY
21 TODAY?

22 A NO. THIS WAS THE MAIN -- THE MAIN THING WE
23 WERE LOOKING AT.

24 Q AND BASED ON EXHIBIT 28 OR 29, WERE YOU
25 ABLE TO TELL HOW MUCH OF THE EDWARDS AIR FORCE BASE WAS
26 SUBJECT TO EXCLUSIVE JURISDICTION?

27 **MR. ZIMMER:** YOUR HONOR, IS THAT QUESTION WHAT IT
28 SAYS ON THE DOCUMENT?

1 **THE COURT:** I'M SORRY. I CAN'T HEAR YOU. SPEAK
2 UP.

3 **MR. ZIMMER:** THERE WAS A PREVIOUSLY SUSTAINED
4 OBJECTION TO THIS WITNESS DETERMINING ANYTHING WITH
5 REFERENCE TO EXCLUSIVE JURISDICTION.

6 **THE COURT:** YES.

7 **MR. ZIMMER:** THE QUESTION, I SUPPOSE, IS WHAT THE
8 DOCUMENT SAYS, THOSE WORDS ON THERE.

9 **MR. SHEFFIELD:** THE QUESTION IS THE AMOUNT OF
10 LAND. THERE'S AMOUNT OF LAND THAT'S NOT SHOWN IN THERE,
11 AND I WANT TO KNOW THE PERCENTAGE OF THE LAND THAT
12 WAS -- EDWARDS AIR FORCE BASE WAS SUBJECT TO THE
13 EXCLUSIVE JURISDICTION, BASICALLY.

14 **THE COURT:** SEE IF YOU CAN ANSWER THE QUESTION.

15 **THE WITNESS:** I UNDERSTOOD IT TO BE THE LAND
16 CONTROLLED BY THE AIR FORCE AT THE TIME -- OR THE AIR
17 CORPS, ARMY AIR CORPS, AT THE TIME THAT THIS EXCLUSIVE
18 JURISDICTION WAS GRANTED.

19 **THE COURT:** OKAY.

20 **MR. SHEFFIELD:** THANK YOU.

21 I DON'T HAVE ANY FURTHER QUESTIONS, YOUR
22 HONOR.

23 **THE COURT:** WHO ELSE WOULD LIKE TO EXAMINE THE
24 WITNESS?

25 **MR. ZIMMER:** I HAVE A FEW QUESTIONS, YOUR HONOR.
26 I'LL NOT REPEAT.

27 **THE COURT:** SEE IF WE CAN DO THEM IN FIVE MINUTES.

28 **MR. ZIMMER:** WE'LL SEE WHAT WE CAN DO IN FIVE

1 MINUTES.

2

3

RECROSS-EXAMINATION

4

BY MR. ZIMMER:

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Q IS THERE A DIAGRAM, SIR, THAT SHOWS WHAT LANDS WERE ACQUIRED? IS THERE JUST ONE DOCUMENT THAT SHOWS THE LANDS THAT WERE ACQUIRED, IN OTHER WORDS, HOW MANY ACRES OR WHICH PARCELS? WE HAVE A LOT OF THOSE MAPS. I'M JUST TRYING TO FIGURE OUT WHICH ONES WERE -- I'M SORRY. LET ME REPHRASE IT.

WHICH PROPERTIES WERE RESERVED? I JUST WANT TO KNOW THE TOTAL NUMBER OF ACRES OR PROPERTIES THAT WERE RESERVED, CONTRASTED WITH CONDEMNED OR ACQUIRED.

A I THINK IF YOU LOOK AT THE LAST OF THE MAPS THAT HAS -- BESIDES THE ONE THAT TAKES THE --

THE COURT: COULD YOU KEEP YOUR VOICE UP, PLEASE?

THE WITNESS: OH, I'M SORRY. I THINK IF YOU LOOK AT THE SECOND TO THE LAST OF THE EDWARDS MAPS, IT HAS THE MOST COMPLETE FILLING. AND AT THAT POINT THE RESERVE LANDS WOULD BE SOLID BLUE. THE REST WOULD BE ACQUIRED.

MR. ZIMMER: MR. LEININGER, DO YOU KNOW WHAT EXHIBIT THAT IS?

MR. LEININGER: (SPOKE SOTTO VOCE.)

BY MR. ZIMMER:

Q WHILE THEY'RE LOOKING FOR THAT, SIR, DO YOU KNOW IN TERMS OF ACREAGE WHAT THE TOTAL NUMBER OF

1 RESERVED ACRES IS THAT WE'RE DEALING WITH?

2 A I HAVE NOT DONE THAT CALCULATION. OUR
3 G.I.S. PERSON COULD PROBABLY DO IT, BUT I HAVEN'T ASKED
4 HER TO DO THAT.

5 Q BUT IT WOULD SHOW ON THAT EXHIBIT?

6 A WELL, IN A GRAPHIC FORM, YEAH.

7 Q HAS ANYONE TO YOUR KNOWLEDGE DONE ANY
8 EVALUATION OF EXISTING RIGHTS DURING ANY TIME FRAME?

9 A WHAT RIGHTS?

10 Q OF EXISTING RIGHTS. THERE'S -- WE TALKED
11 ABOUT THE RESERVATION BEING SUBJECT TO EXISTING RIGHTS.
12 DO YOU KNOW OF ANYONE ON BEHALF OF THE UNITED STATES
13 THAT HAS DONE THAT ANALYSIS AS TO WHAT EXISTING RIGHTS
14 EXISTED AT THE TIME OF ANY OF THE RESERVATIONS?

15 MR. LEININGER: OBJECTION, VAGUE.

16 THE COURT: WELL, I THINK I UNDERSTAND THE
17 QUESTION.

18 DID YOU ANSWER IT? DO YOU UNDERSTAND THE
19 QUESTION?

20 THE WITNESS: I'M NOT SURE THAT I DO.

21 THE COURT: WHY DON'T YOU REPHRASE IT.

22 BY MR. ZIMMER:

23 Q YOU'RE ON THE UNITED STATES GOVERNMENT
24 TEAM. I'M TRYING TO FIND OUT WHETHER YOU ARE AWARE OF
25 WHETHER ANYBODY -- I UNDERSTAND YOU'RE NOT A TITLE GUY
26 AND YOU'RE NOT GIVING THAT OPINION. BUT HAS ANYBODY TO
27 YOUR KNOWLEDGE ON THE UNITED STATES TEAM DONE ANY
28 ANALYSIS OF WHAT RIGHTS EXISTED AT ANY GIVEN TIME?

1 **A** I'VE SEEN REFERENCES IN THE HISTORIC
2 RECORDS TO PEOPLE TALKING ABOUT A CERTAIN PARCEL HAVING
3 RIGHTS, YOU KNOW, LIKE A MINING RIGHT OR THE NEED TO
4 EXTINGUISH MINING CLAIMS SO THAT THEY CAN CLEAR UP
5 WHO -- YOU KNOW, COMPENSATION FOR TAKINGS, THINGS LIKE
6 THAT. BUT I HAVEN'T SEEN A DISCUSSION LIKE THAT, NOT
7 THAT I REMEMBER.

8 **Q** THE PHOTOGRAPHS WE LOOKED AT WITH THE TENTS
9 ON THE BASE, THAT WAS SOMEWHERE IN 1938?

10 **A** IT WAS 1936, MARCH OF 1936, AS I RECALL.

11 **Q** SO DID YOU HAVE ANY OTHER PHOTOGRAPHS AFTER
12 '36 OR IS THAT WHAT WE'RE LIMITED TO, SEEING WHAT WAS
13 THERE IN '36?

14 **A** THAT'S AN EXAMPLE. I HAVE OTHER
15 PHOTOGRAPHS THAT I COLLECTED.

16 **Q** YOU HAVEN'T SUBMITTED ANY?

17 **A** WE DIDN'T SUBMIT EVERYTHING THAT WE
18 COLLECTED.

19 **MR. ZIMMER:** MR. OYARZO, DID YOU FIND THAT OR ARE
20 YOU STILL LOOKING?

21 **MR. OYARZO:** I THINK THIS IS THE --

22 **BY MR. ZIMMER:**

23 **Q** OKAY. THIS IS EXHIBIT WHAT?

24 **A** IT'S 109.

25 **Q** OKAY. SO ON EXHIBIT 109 IS WHAT YOU'RE
26 SAYING THAT ALL THE FILLED-IN SQUARES, THE NONCROSSHATCH
27 SECTIONS -- THAT IS THE ONLY LAND THAT WAS RESERVED?

28 **A** THE BLUE AND DARK BLUE ARE THE LANDS

1 WITHDRAWN BY EXECUTIVE ORDER OR PUBLIC LAND ORDERS.

2 Q AND I CAN'T SEE BLUE OR DARK BLUE ON THIS
3 IN PARTICULAR. IT'S ALL THE NONCROSSHATCHED GROUND;
4 CORRECT?

5 A YES. I'M SORRY FOR THAT. YOU MIGHT WANT
6 TO LOOK AT THE PAPER.

7 Q BUT WOULD IT BE TRUE THAT IT'S ALL THE LAND
8 DEPICTED THAT'S NOT CROSSHATCHED?

9 A YES. BUT ON PAPER SOME OF THESE ARE SHOWN
10 AS JUST SOLID YELLOW. I DON'T KNOW WHY THE
11 CROSSHATCHING DOESN'T APPEAR ON THIS LIKE IT SHOULD.
12 IT'S SORT OF FADED. BUT IT'S THE BLUE AND DARK BLUE
13 SQUARES.

14 Q THAT ARE THE RESERVE LANDS?

15 A THEY'RE EITHER EXECUTIVE ORDER OR PUBLIC
16 LAND ORDER.

17 Q YOU HAD A CHART UP THAT SHOWED 500 WELLS
18 PERHAPS?

19 A THAT WAS THE MAP?

20 Q THE MAP, RIGHT.

21 A THE DOTS. THAT'S RIGHT.

22 Q WITHOUT PULLING THAT BACK UP, WAS THAT A
23 MAP THAT WAS PREPARED OVER A PERIOD OF TIME, SHOWING ALL
24 WELLS YOU COULD FIND DURING ANY GIVEN PERIOD OF TIME?

25 A NO. WHAT IT WAS WAS A MAP THAT I ASKED MY
26 ASSISTANT AND MY G.I.S. PERSON TO PRODUCE BASED ON THE
27 COLLECTION OF THE VOUCHER DATA, THE U.S.G.S. AND OTHER
28 RECORDS THAT WE GOT, SOME OTHER INFORMATION. IT'S ALL

1 REFERENCED ON THE EXHIBIT, AND THE KARPE REPORT. I JUST
2 WANTED TO HAVE AN IDEA OF WHERE WERE THEIR WELLS.

3 Q AT ANY TIME?

4 A AT ANY TIME.

5 Q SO THAT MAP SHOWS WHERE WELLS WERE AT ANY
6 GIVEN TIME?

7 A YES. IT DOESN'T -- IT'S NOT BROKEN UP BY
8 DATE.

9 Q AND IT'S NOT INTENDED TO REPRESENT THAT ALL
10 THOSE WELLS WERE IN EXISTENCE AT ONE TIME OR PUMPING AT
11 ANY GIVEN TIME?

12 A OH, NO.

13 Q CORRECT?

14 A THAT'S RIGHT.

15 Q THANK YOU. THERE WAS SOME INFORMATION YOU
16 PUT UP IN TERMS OF THE WATER USE. YOU CALLED IT A WATER
17 INVENTORY FOR GIVEN YEARS. YOU WENT THROUGH 1966.

18 A UH-HUH.

19 Q IS IT CORRECT THAT YOU DID NO ANALYSIS
20 AFTER THAT?

21 A THAT TABLE WAS PRODUCED, AS I SAID, QUITE
22 EARLY ON, NOT ADDED ONTO; RIGHT? SO WE PRODUCED IT HERE
23 TO PROVIDE AN EASY WAY TO LOOK AT A LOT OF DIFFERENT
24 DATA.

25 Q MY QUESTION, THOUGH -- I DON'T MEAN TO CUT
26 YOU OFF. BECAUSE I WANT TO FIND OUT DID YOU DO -- HAS
27 ANYBODY TO YOUR KNOWLEDGE, ON BEHALF OF THE UNITED
28 STATES, DONE ANY ANALYSIS OF THE WATER USE AFTER 1966?

1 **A** OH, I DON'T KNOW ABOUT ANYBODY ELSE.

2 **Q** OKAY. DO YOU KNOW -- DID YOU DO ANY
3 ANALYSIS AS TO WHY, FROM 1965 TO 1966, THE WATER USE
4 WENT DOWN FROM 7,480 TO 6,280?

5 **A** MY UNDERSTANDING IS THAT THE WATER USE WENT
6 UP AND DOWN PRIMARILY BECAUSE OF THE TYPES OF TESTING
7 THAT WAS GOING ON AT THE BASE.

8 **Q** BUT YOU DID NO ANALYSIS OF PARTICULARLY
9 WHY?

10 **A** NO, NOT IN PARTICULAR.

11 **MR. ZIMMER:** THANK YOU, SIR. I HAVE NO FURTHER
12 QUESTIONS.

13 **THE COURT:** MR. KUHS?

14 **MR. KUHS:** YES, YOUR HONOR.

15

16 **FURTHER RECROSS-EXAMINATION**

17 **BY MR. KUHS:**

18 **Q** GOOD AFTERNOON, MR. HERBERT. MY NAME IS
19 ROBERT KUHS. I'M APPEARING FOR TEJON RANCH CORP. IN
20 THIS PROCEEDING.

21 IN TERMS OF THE EXCLUSIVE JURISDICTION
22 ISSUE, WHAT IS THE LAST INSTANCE IN WHICH THE UNITED
23 STATES ACCEPTED EXCLUSIVE JURISDICTION OF ANY PROPERTY
24 AT EDWARDS AIR FORCE BASE?

25 **A** THE LAST THAT I RECALL IS THE ONE THAT'S IN
26 THE DOCUMENT I PROVIDED.

27 **Q** WELL, AS I RECALL, THERE WERE TWO LETTERS.
28 THERE WAS SORT OF A BANTER GOING BACK AND FORTH BETWEEN

1 THE GOVERNOR OF CALIFORNIA AND THE SECRETARY OF WAR;
2 CORRECT?

3 A THAT'S RIGHT.

4 Q AND AS I RECALL THE SUBSTANCE OF THOSE
5 LETTERS, THERE WAS AN ACCEPTANCE IN 1943 BY THE FEDERAL
6 GOVERNMENT; CORRECT?

7 A THAT'S MY RECOLLECTION, YEP.

8 Q AND THEN FOLLOWING THAT, THERE WAS A LETTER
9 FROM THE GOVERNOR SAYING WE DON'T UNDERSTAND WHICH LAND
10 YOU'RE REFERRING TO; COULD YOU CLEAR THAT UP FOR US --

11 A RIGHT.

12 Q -- IN ESSENCE; CORRECT?

13 A THAT'S CORRECT.

14 Q DID YOU FIND IN YOUR INVESTIGATION ANY
15 LETTER OR RESPONSE FROM THE FEDERAL GOVERNMENT
16 PURPORTING TO CLEAR UP THE AMBIGUITY THAT THE GOVERNOR
17 OF CALIFORNIA WAS CONCERNED ABOUT?

18 A THE -- NOT IN THAT FILE. AND WE HAD NOT --
19 WE HAD ALREADY BEEN TO THE NATIONAL ARCHIVES FOR THAT
20 KIND OF RESEARCH; SO WE DIDN'T -- WE DIDN'T GO BACK
21 LOOKING FOR THAT PARTICULAR LETTER. WE WOULD HAVE HAD
22 TO GO BACK TO THE RECORDS OF THE SECRETARY OF WAR AND
23 THE NATIONAL ARCHIVES TO LOOK FOR HIS CORRESPONDENCE
24 FILE RELATED TO THAT.

25 WE DIDN'T LOOK FOR THAT INITIALLY WHEN WE
26 WERE THERE. GIVEN THE FACT THAT THERE WAS THE
27 ACCEPTANCE BY THE GOVERNOR OF THE LIST, WE DIDN'T THINK
28 IT WAS NECESSARY.

1 **Q** SO IN YOUR MIND, IT'S THE OPERATIVE DATE --
2 IF YOU HAVE IT, IS THE OPERATIVE DATE FOR THE LAST
3 ACCEPTANCE OF JURISDICTION BY THE UNITED STATES 1943 OR
4 1945?

5 **A** THE LAST LETTER THAT WE HAVE ACCEPTING
6 JURISDICTION IS 1945. I DON'T KNOW IF THAT ANSWERS YOUR
7 QUESTION.

8 **Q** ALL RIGHT. AND YOU HAVEN'T RENDERED AN
9 OPINION AS TO WHETHER THE 1943 OR 1945 LETTER IS THE
10 LAST OPERATIVE DOCUMENT IN TERMS OF ACCEPTANCE OF
11 JURISDICTION?

12 **MR. LEININGER:** OBJECT. THAT CALLS FOR A LEGAL
13 CONCLUSION.

14 **MR. KUHS:** YES. I'LL MOVE ON.

15 **THE COURT:** ALL RIGHT.

16 **BY MR. KUHS:**

17 **Q** HOW MANY CITIES DID YOU GO TO IN SEARCH OF
18 RECORDS FOR YOUR TESTIMONY IN THIS PROCEEDING?

19 **A** HOW MANY CITIES?

20 **Q** YES.

21 **A** OH, LET'S SEE. WELL, FIRST OF ALL, HOW DO
22 YOU DEFINE A CITY? IS PALMDALE -- I GUESS PALMDALE
23 WOULD BE A CITY, BAKERSFIELD. TEN?

24 **Q** YOU WENT AS FAR AS WASHINGTON, D.C.?

25 **A** OH, YES, ABSOLUTELY.

26 **Q** AND AS CLOSE AS YOUR OWN BACKYARD?

27 **A** DAVIS, CALIFORNIA. THAT'S RIGHT.

28 RIVERSIDE, SACRAMENTO, BAKERSFIELD.

1 **Q** OKAY. AND IN YOUR RESEARCH DID YOU FIND
2 ANY DOCUMENTS EXPLAINING OR PURPORTING TO EXPLAIN WHAT
3 PRESIDENT ROOSEVELT MEANT WHEN HE SAID SUBJECT TO VALID
4 EXISTING RIGHTS IN THE EXECUTIVE ORDERS THAT YOU'VE
5 TESTIFIED HERE TODAY?

6 **A** THE ONLY THING THAT I HAVE SEEN FROM
7 FRANKLIN ROOSEVELT WAS A COPY OF A NOTE THAT HE SENT TO
8 THE BUREAU OF THE BUDGET, BECAUSE THE BUREAU OF THE
9 BUDGET HAD SOME JURISDICTION OVER THESE EXECUTIVE ORDERS
10 AND LAND WITHDRAWALS, AS I UNDERSTAND IT, ASKING IS
11 THERE GOING TO BE -- HOW IS THIS GOING TO AFFECT PEOPLE
12 LIVING IN THE AREA? WORDS TO THAT EFFECT. THAT'S IN
13 OUR COLLECTION OF MATERIALS THAT WE'VE PROVIDED.

14 THE -- THERE IS NOTHING ELSE IN THAT FILE.
15 THAT WOULD HAVE BEEN NICE TO --

16 **Q** YOU WERE NOT ABLE TO UNCOVER ANY EVIDENCE
17 AS TO WHAT PRESIDENT ROOSEVELT MEANT WHEN HE USED THE
18 PHRASE "VALID EXISTING RIGHTS" IN HIS EXECUTIVE ORDER?

19 **A** NO.

20 **Q** OKAY. AND THE SAME WITH RESPECT TO THE
21 PUBLIC LANDOWNERS -- OR, EXCUSE ME, OF THE PUBLIC LAND
22 ORDERS ISSUED BY THE SECRETARY OF THE INTERIOR, DID YOU
23 FIND IN YOUR INVESTIGATION ANY EVIDENCE OF AN ATTEMPT OF
24 THE SECRETARY OR ASSISTANT SECRETARY OF THE INTERIOR AS
25 TO WHAT HE OR SHE MEANT BY THE PHRASE "VALID EXISTING
26 RIGHTS"?

27 **A** I HAVE NOT SEEN AN OFFICIAL EXPLANATION OF
28 WHAT VALID EXISTING RIGHTS IS ACCORDING TO THOSE PEOPLE.

1 **Q** AND IN ALL OF YOUR RESEARCH HAVE YOU SEEN
2 ANY INSTANCE IN WHICH IT APPEARED TO BE THE INTENT
3 EITHER OF -- OF THE FEDERAL GOVERNMENT TO TAKE PRIVATE
4 PROPERTY RIGHTS WITHOUT COMPENSATION?

5 **A** I'M NOT SURE I UNDERSTAND WHAT YOU MEAN.

6 **Q** WELL, YOU'VE TESTIFIED THAT YOU
7 INVESTIGATED A NUMBER OF CONDEMNATION FUNDS.

8 **A** CORRECT.

9 **Q** AND YOU UNDERSTAND THAT THE PURPOSE OF
10 CONDEMNATION IS THAT WHEN THE GOVERNMENT COMES IN AND
11 TAKES PRIVATE PROPERTY, THEY HAVE AN OBLIGATION TO PAY
12 JUST COMPENSATION; CORRECT?

13 **A** THAT'S RIGHT.

14 **Q** AND SO DID IT APPEAR TO YOU FROM YOUR
15 INVESTIGATION THAT THE -- WHENEVER THE GOVERNMENT WAS
16 TAKING PRIVATE PROPERTY IN THE ANTELOPE VALLEY FOR
17 EDWARDS AIR FORCE BASE, THAT IT WAS EITHER DOING IT BY
18 WAY OF CONDEMNATION OR BY WAY OF PURCHASE?

19 **A** WELL, THAT'S RIGHT. I HAVEN'T SEEN
20 ANYTHING ELSE.

21 **Q** YOU MENTIONED IN TWO REPORTS THAT THERE WAS
22 EVIDENCE OF HIGH WATER USE AT EDWARDS, 1965 AND 1966, AS
23 I RECALL. WERE YOU ABLE TO CORRELATE THE ACTIVITIES
24 GOING ON AT THE BASE AT THAT TIME WITH THAT HIGH DEMAND
25 FOR WATER?

26 **A** ONLY IN GENERAL.

27 **Q** WHAT WAS --

28 **A** THE -- SORRY. GO AHEAD.

1 **Q** WHAT WAS YOUR GENERAL CONCLUSION?

2 **A** JUST THAT THERE WAS THE HIGH ACTIVITY
3 DURING THE VIETNAM WAR, AND THERE WAS ROCKET TESTING
4 GOING ON ON THE FACILITY THAT REQUIRED WATER. THAT'S --
5 IT'S ONLY THE MOST -- THAT'S A GENERAL UNDERSTANDING.

6 **Q** WAS THERE ANY CONSTRUCTION GOING ON AT THE
7 BASE IN 1965 TO 1966?

8 **A** I'M SURE THERE WAS SOME. THAT'S NOT
9 SOMETHING WE RESEARCHED.

10 **Q** YOU'RE UNABLE TO EXPLAIN WHAT THE HIGH
11 DEMAND FOR WATER WAS IN 1965 AND 1966?

12 **A** NOT WITH ANY CERTAINTY.

13 **Q** YOU'RE FAMILIAR WITH PLANT 42?

14 **A** GENERALLY.

15 **Q** OKAY. AND WHAT WAS THE ENDING DATE FOR
16 YOUR INVESTIGATION OF PLANT 42?

17 **A** PRETTY MUCH THE END OF ACQUISITIONS OF
18 LAND; SO THAT WOULD HAVE BEEN EARLY '60S.

19 **Q** YOU'RE AWARE THAT NASA HAS A PRESENCE ON
20 EDWARDS AIR FORCE BASE?

21 **A** YES.

22 **Q** WHEN DID THAT PRESENCE START?

23 **A** WELL, IT STARTED WITH THE IMMEDIATE POST
24 WORLD WAR II PERIOD. I DON'T BELIEVE IT WAS NASA AT THE
25 TIME. IT WAS SOMETHING ELSE. NACA, I THINK. BUT I'M
26 NOT SURE EXACTLY WHEN THEY STARTED THEIR ACTIVITIES.

27 **Q** ARE YOU AWARE THAT NASA IS A CIVILIAN
28 ORGANIZATION?

1 **A** YEAH. IT'S AN ARM OF THE FEDERAL
2 GOVERNMENT.

3 **Q** BUT IT'S NOT UNDER THE DEPARTMENT OF
4 DEFENSE; CORRECT?

5 **A** I DON'T -- I DON'T KNOW THAT FOR A FACT.

6 **Q** ARE YOU AWARE THAT THE FAA HAS A PRESENCE
7 AT EDWARDS AIR FORCE BASE?

8 **A** I WAS NOT AWARE OF THAT.

9 **Q** ALL RIGHT. ARE YOU AWARE THAT MUROC SCHOOL
10 DISTRICT HAS A PRESENCE AT EDWARDS AIR FORCE BASE?

11 **A** YES. I UNDERSTOOD THERE WAS A SCHOOL.

12 **Q** YOU UNDERSTAND THAT THE SCHOOL DISTRICT IS
13 NOT A DEPARTMENT OF DEFENSE; CORRECT?

14 **A** YES. IT'S THERE TO SERVE THE DEPENDENTS OF
15 THE AIR FORCE.

16 **Q** OKAY. ARE YOU AWARE OF ANY OTHER
17 FACILITIES AT EDWARDS THAT ARE NOT UNDER THE DEPARTMENT
18 OF DEFENSE JURISDICTION?

19 **A** I HAVEN'T STUDIED THAT. I HAVEN'T -- I
20 HAVEN'T LOOKED AT THAT KIND OF RESEARCH.

21 **Q** IN YOUR RESEARCH ON WATER USE AT THE BASE,
22 DID YOU UNCOVER ANY RESEARCH AS TO HOW MUCH WATER IS
23 USED BY THE GOLF COURSE AT EDWARDS?

24 **A** NO. THERE MAY BE REFERENCES TO
25 INSTALLATION OF THE GOLF COURSE IN OUR DOCUMENTS.
26 THAT'S NOT SOMETHING I LOOKED FOR.

27 **Q** DO YOU KNOW WHEN THE GOLF COURSE WAS
28 INSTALLED?

1 **A** NOT OFFHAND.

2 **Q** ARE YOU AWARE THERE'S A RECREATIONAL POND
3 AT EDWARDS AIR FORCE BASE?

4 **A** I JUST HEARD THAT THE OTHER DAY.

5 **Q** YOU DIDN'T UNCOVER THAT IN YOUR STUDIES?

6 **A** DID NOT STUDY IT.

7 **Q** LAST QUESTION. WE HEARD YOU TALK ABOUT THE
8 VARIOUS INSTRUMENTS BY WHICH THE FEDERAL GOVERNMENT TOOK
9 TITLE TO THESE LANDS. AND SO THE RECORD IS CLEAR, IN
10 YOUR INVESTIGATION, YOU DIDN'T MAKE ANY DETERMINATION IN
11 REVIEWING THOSE RECORDS AS TO THE QUALITY OR CHARACTER
12 OF TITLE THAT THE FEDERAL GOVERNMENT ACQUIRED, DID YOU?

13 **A** OH, NO, NO. I SIMPLY WAS GATHERING THE
14 DATA TO SEE -- PARTICULARLY TO SEE WHETHER THERE WERE
15 STATED PURPOSES FOR ACQUIRING LAND.

16 **Q** THANK YOU, MR. HERBERT.

17 **THE COURT:** ALL RIGHT. MR. HERBERT, YOU CAN STEP
18 DOWN. WE'RE GOING TO TAKE -- OR LEAVE YOU IN RECESS AT
19 THIS TIME.

20 **MR. LEININGER:** YOUR HONOR, MAY I HAVE A FEW
21 QUESTIONS ON REDIRECT?

22 **THE COURT:** HOW MANY TIME-WISE?

23 **MR. LEININGER:** FIVE MINUTES.

24 **THE COURT:** OKAY. RELUCTANTLY, NO MORE THAN FIVE
25 MINUTES.

26 **MR. LEININGER:** THANK YOU, YOUR HONOR.

27

28

REDIRECT EXAMINATION

BY MR. LEININGER:

Q MAY I HAVE EXHIBIT -- WHATEVER IS NEXT.

THE COURT: YOU CAN ALWAYS COME BACK IN THE MORNING IF YOU HAVE FURTHER AMMUNITION.

MR. LEININGER: IT REALLY IS VERY LIMITED, YOUR HONOR.

THE COURT: THE DANGER IS ONE QUESTION LEADS TO ANOTHER. GO AHEAD.

THE WITNESS: 43 IS THE NORTHROP ONE, NORTHROP LETTER. IS THAT IT?

MR. LEININGER: NO, 33.

THE WITNESS: OH, I'M SORRY.

MR. LEININGER: CAN YOU ENLARGE THAT EASTERN SECTION, PLEASE?

BY MR. LEININGER:

Q CAN YOU READ -- DO YOU HAVE YOUR POINTER STILL?

A YES. WHAT PART?

Q SO YOU RECOGNIZE THE WRITING THERE AT THE BOTTOM, SORT OF GOING NORTH-SOUTH? MAY HAVE TO BLOW THAT UP A LITTLE MORE.

A ARE YOU TALKING ABOUT THE COUNTY LINE?

Q YES.

A YES, I SEE IT.

Q SO ON THE LEFT IT'S LOS ANGELES COUNTY, ON THE RIGHT IT'S SAN BERNARDINO COUNTY; IS THAT CORRECT?

A THAT'S RIGHT.

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(EXHIBIT 33, IDENTIFIED: MAP.)

BY MR. LEININGER:

Q OKAY.

CAN WE JUST HAVE THE FULL SIZE OF THAT,
PLEASE?

AND COULD YOU JUST POINT THAT OUT AGAIN
WITH YOUR LASER POINTER.

A (INDICATING.)

MR. LEININGER: OKAY. AND NOW COULD WE PLEASE PUT
UP 258, EXHIBIT 258?

Q CAN YOU SHOW APPROXIMATELY WHERE THAT
COUNTY LINE IS?

A I BELIEVE IT'S RIGHT IN HERE.

Q AND WHAT DOES THIS MAP DEPICT?

A IT SHOWS THE WELLS FOR WHICH WE COLLECTED
THE INFORMATION THAT WE DISCUSSED.

Q OKAY. LAST QUESTION. I BELIEVE YOU
SAID -- WITH REGARD TO PHOTOS, YOU SAID WE SUBMITTED
EVERYTHING YOU COLLECTED. AND BY REFERENCING SUBMITTING
EVERYTHING YOU COLLECTED, IT WAS A QUESTION ON EARLY
PHOTOS OF THE INSTALLATION.

A THAT'S RIGHT.

Q SO WHEN YOU SAY SUBMIT EVERYTHING YOU
COLLECTED, YOU MEAN AS AN EXHIBIT OR DO YOU MEAN YOU'VE
COLLECTED EVERYTHING AND IT WAS SUBMITTED FOR PURPOSES
OF DISCOVERY?

1 **A** WELL, IT'S EVERYTHING THAT I SUBMITTED TO
2 BOTH YOUR OFFICE AND BROUGHT TO MY DEPOSITION. SO THERE
3 ARE PHOTOGRAPHS IN BOTH OF THOSE. I'M NOT SURE THE
4 PROPER TERMINOLOGY.

5 **Q** RIGHT. SO EVERYTHING WAS SUBMITTED;
6 HOWEVER, NOT EVERYTHING ENDED UP AS -- NECESSARILY AS AN
7 EXHIBIT?

8 **A** NO. WE'D BE HERE A LONG TIME.

9 **Q** RIGHT. SO YOU SELECTED YOUR PHOTO BECAUSE
10 IT WAS -- WHY? BECAUSE IT WAS REPRESENTATIVE?

11 **A** IT WAS A NICE DEMONSTRATIVE PHOTOGRAPH AND
12 SHOWED A LARGE AREA. WE DID HAVE PHOTOGRAPHS FROM THE
13 GROUND THAT SHOWED THE BARRACKS BUILDING AND SOME OTHER
14 STRUCTURES, BUT THAT PHOTOGRAPH WAS NICE BECAUSE IT
15 SHOWED BOTH WHERE THEY WERE PARKING THE AIRCRAFT, THE
16 TENTS, THE WELL, SOME OF THE MAJOR FEATURES OF THAT VERY
17 EARLY CAMP.

18 **Q** THANK YOU.

19 **MR. LEININGER:** I HAVE NO FURTHER QUESTIONS, YOUR
20 HONOR.

21 **THE COURT:** ALL RIGHT. YOU MAY STEP DOWN, SIR.
22 THANK YOU.

23 **THE WITNESS:** THANK YOU.

24 **THE COURT:** IS THERE GOING TO BE ANY EXAMINATION
25 OF THE WITNESS TOMORROW?

26 OKAY. THE WITNESS IS EXCUSED. THANK YOU.

27 ALL RIGHT. LET'S TALK ABOUT TOMORROW. HOW
28 MANY ADDITIONAL WITNESSES ARE YOU GOING TO BE PRESENTING

1 TOMORROW? AND TELL ME BASICALLY WHAT THEY ARE.

2 **MR. LEININGER:** OKAY, YOUR HONOR. WE'LL BEGIN
3 TOMORROW WITH DR. HALLION. DR. HALLION HAS SOME --
4 AGAIN, HE'S THE FORMER AIR FORCE HISTORIAN, AND HE HAS
5 LIMITED AMOUNT OF TESTIMONY WHICH IS GOING TO
6 DEMONSTRATE MILITARY USES AND MILITARY PURPOSES ON
7 EDWARDS THROUGH TIME. HE HAD ACTUALLY BEEN STATIONED AT
8 EDWARDS AIR FORCE BASE FOR A NUMBER OF YEARS.

9 WE'RE THEN GOING TO PUT IN -- PUT UP
10 GENERAL BREWER. GENERAL BREWER IS GOING TO BE TALKING
11 ABOUT THE MISSION, AND HE'LL BE ABLE TO ESTABLISH SOME
12 OF THE UNIQUE CHARACTERISTICS WHICH ARE VERY IMPORTANT
13 IN OUR QUALIFICATION FOR FUTURE PURPOSES.

14 WE'RE THEN GOING TO PUT ON CIVIL ENGINEER,
15 JUDKINS.

16 **THE COURT:** WHO?

17 **MR. LEININGER:** CIVIL ENGINEER JUDKINS, JAMES
18 JUDKINS. AND HE WILL TALK ABOUT WATER CONSUMPTIVE
19 NEEDS, AND HE WILL QUANTIFY -- PROVIDE THE VALUES FOR
20 THE QUANTIFICATION FOR THE FEDERAL RESERVE WATER RIGHT.
21 THAT WILL BE IT FOR EDWARDS AIR FORCE BASE.

22 **THE COURT:** WHEN YOU SAY WATER RIGHTS, YOU'RE
23 TALKING ABOUT THE EXISTING PUMPING OR YOU'RE TALKING
24 ABOUT FUTURE USES?

25 **MR. LEININGER:** BOTH. YES, YOUR HONOR --

26 **THE COURT:** OKAY.

27 **MR. LEININGER:** -- PRESENT AND FUTURE.

28 **THE COURT:** ALL RIGHT.

1 **MR. LEININGER:** AND THAT WILL CONCLUDE TESTIMONY
2 WITH REGARD TO EDWARDS AIR FORCE BASE AND FEDERAL
3 RESERVE WATER RIGHTS FOR EDWARDS AIR FORCE BASE.

4 THEN WE HAVE TWO WITNESSES FOR AIR FORCE
5 PLANT 42. WE HAVE THE COMMANDING OFFICER THERE, AND WE
6 HAVE THE CIVIL ENGINEER IN CHARGE OF THAT FACILITY.

7 SO WITH REGARD TO LENGTH OF TESTIMONY, I
8 THINK MR. HALLION SHOULD GO FAIRLY QUICKLY. GENERAL
9 BREWER, PERHAPS AN HOUR OF DIRECT, AND THEN MR. JUDKINS,
10 PERHAPS AN HOUR OF DIRECT.

11 **THE COURT:** OKAY. ASIDE FROM CROSS-EXAMINATION,
12 DO ANY OF THE OTHER PARTIES INTEND TO CALL WITNESSES FOR
13 THIS PHASE IN REGARD TO THE FEDERAL RESERVE RIGHT?

14 **MR. KUHS:** YOUR HONOR, I HAD ONE WITNESS LISTED,
15 AND THAT WAS ONE OF THE LAND PEOPLE AT TEJON, SIMPLY TO
16 ESTABLISH TITLE TO THE RANCHO LANDS. IF WE CAN GET,
17 EITHER BY JUDICIAL NOTICE OR STIPULATION, THAT FACT
18 ESTABLISHED FOR THIS PHASE, I DON'T NEED TO --

19 **THE COURT:** COURT TOOK JUDICIAL NOTICE OF THE
20 PATENT AND THE DECISION OF THE COURT.

21 **MR. KUHS:** I THINK THAT'S PROBABLY ALL WE NEED FOR
22 THIS WITNESS.

23 **THE COURT:** MR. FIFE.

24 **MR. FIFE:** YOUR HONOR, WE STILL HAVE THE ISSUE OF
25 MS. OBERDORFER, THAT I MENTIONED AT THE BEGINNING.
26 WE'VE PROPOSED TO THE U.S. ATTORNEYS THAT PERHAPS WE
27 COULD JUST READ A PORTION OF HER DEPOSITION TRANSCRIPT
28 OR SOMETHING OF THAT NATURE IN ORDER TO SPEED THINGS UP.

1 WE HAVEN'T RESOLVED THAT YET. BUT SHE'S AN ISSUE IN
2 THIS.

3 **THE COURT:** MAYBE YOU CAN WORK ON THAT THIS
4 EVENING.

5 MR. ZIMMER.

6 **MR. ZIMMER:** RICHARD ZIMMER, BOLTHOUSE. TWO
7 ITEMS: ONE, WE'RE JUST DEALING WITH THE FEDERAL RESERVE
8 RIGHT ISSUE, NOT WHAT RIGHTS THE FEDERAL GOVERNMENT MAY
9 HAVE AS AN OVERLYING LANDOWNER.

10 **THE COURT:** THOSE ARE GOING TO BE LEGAL ISSUES.

11 **MR. ZIMMER:** RIGHT. WE'RE ONLY DEALING WITH THE
12 FEDERAL RESERVE RIGHT, NOT OVERLYING LANDOWNER RIGHTS.

13 **THE COURT:** THAT'S RIGHT.

14 **MR. ZIMMER:** OKAY. THE ONLY OTHER COMMENT I HAD
15 WAS THAT I INHERITED MR. HALLION FROM MR. JOYCE. I
16 WOULD -- I THINK THAT THE TESTIMONY IS FAIRLY LIMITED.
17 GIVEN THE TESTIMONY OF THIS WITNESS TODAY, I'M NOT SURE
18 HOW MUCH IT IS NECESSARY. BUT I WOULD OFFER TO
19 STIPULATE WITH MR. LEININGER CERTAIN PORTIONS OF THIS.
20 IF WE CAN GET ANY PORTIONS WE WANT --

21 **THE COURT:** WHY DON'T YOU TALK ABOUT THAT. WHAT
22 I'M TRYING TO DO IS DETERMINE WHAT WE'RE GOING TO BE
23 DOING TOMORROW AND FOR HOW LONG, BECAUSE I'M THINKING
24 WE'RE PROBABLY GOING TO HAVE TO RECESS TOMORROW AROUND
25 2:30; SO I'D LIKE TO PICK UP THE PACE A LITTLE BIT.

26 AND I DON'T WANT TO SHORTCHANGE ANYBODY OR
27 EXCLUDE ANY APPROPRIATE TESTIMONY OR EVIDENCE, BUT I
28 WANT YOU TO KIND OF BEAR THAT IN MIND, BECAUSE IF WE

1 DON'T FINISH WITH THE TESTIMONY TOMORROW, THEN WE'LL
2 HAVE TO COME BACK ON TUESDAY TO FINISH IT, AND THAT WILL
3 EAT INTO THE RETURN FLOW PORTIONS OF TRIAL, AND WE'LL
4 HAVE TO SLOW PEOPLE DOWN THERE. ALL RIGHT. JUST BEAR
5 THAT IN MIND.

6 HAVE A PLEASANT EVENING, AND I WILL SEE YOU
7 TOMORROW MORNING AT 9:00 O'CLOCK.

8 **COUNSEL:** "THANK YOU, YOUR HONOR."

9 **THE COURT:** AND YOU CAN LEAVE YOUR PAPERS. THE
10 COURTROOM WILL BE LOCKED. AND YOU'LL HAVE TO LEAVE AND
11 GET OUT OF HERE SO THAT MY CLERK AND STAFF CAN LEAVE,
12 OKAY?

13
14 (THE PROCEEDINGS WERE ADJOURNED
15 UNTIL FEBRUARY 11, 2014, AT 9:00
16 A.M.)

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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT 3

IN RE

4
5 IN RE

6 ANTELOPE VALLEY GROUNDWATER CASES.

)
)
)
) REPORTER'S
) CERTIFICATE

9) CASE JCCP4408
)
10 _____
11

12 I, RHONA S. REDDIX, OFFICIAL REPORTER OF
13 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE
14 COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
15 FOREGOING PAGES, 1 THROUGH 182, COMPRISE A FULL, TRUE
16 AND CORRECT TRANSCRIPT OF THE PROCEEDINGS TAKEN IN THE
17 ABOVE ENTITLED CAUSE ON FEBRUARY 10, 2014.

18 DATED THIS 18TH OF FEBRUARY, 2014.
19
20
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23 Rhona S. Reddix
24

CSR, RPR, RMR, CRR #10807
25 OFFICIAL REPORTER
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