

Exhibit F

1 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
2 **FOR THE COUNTY OF LOS ANGELES**

3 **DEPARTMENT NO. 56**

HON. JACK KOMAR, JUDGE

5 **COORDINATION PROCEEDING**
6 **SPECIAL TITLE (RULE 1550(B))**

7 **ANTELOPE VALLEY GROUNDWATER CASES**

8 **INCLUDED ACTIONS:**

9 **LOS ANGELES COUNTY WATERWORKS DISTRICT**
10 **NO. 40 V. DIAMOND FARMING CO., ET AL,**
 LOS ANGELES COUNTY SUPERIOR COURT,
 CASE NO. BC325 201

JUDICIAL
 COUNCIL
 COORDINATION

PROCEEDING
 NO. 4408

11 **LOS ANGELES COUNTY WATERWORKS DISTRICT**
12 **NO. 40 V. DIAMOND FARMING CO., ET AL,**
13 **KERN COUNTY SUPERIOR COURT, CASE NO.**
 S-1550-CV-254-348

CASE NO.
 1-05-C-049053

14 **WM. BOLTHOUSE FARMS, INC. V. CITY OF**
15 **LANCASTER**
16 **DIAMOND FARMING CO. V. CITY OF LANCASTER**
17 **DIAMOND FARMING CO. V. PALMDALE WATER DIST**
 RIVERSIDE COUNTY SUPERIOR COURT,
 CONSOLIDATED ACTION, CASE NOS. RIC 353
 840, RIC 344 436, RIC 344 668
 AND RELATED CROSS-ACTIONS

18 **REPORTER'S TRANSCRIPT OF PROCEEDINGS**

19 **NOVEMBER 4, 2014**

20
21 **APPEARANCES:**

22 **FOR CROSS-COMPLAINANT/**
23 **CROSS-DEFENDANT:**

ALESHIRE & WYNDER LLP
 BY: WESLEY A. MILIBAND, ESQ.
 18881 VON KARMAN AVENUE, SUITE 1700
 IRVINE, CALIFORNIA 92612

24
25
26 **(APPEARANCES CONTINUE ON NEXT PAGE.)**

27
28 **JEANETTE COYLE, CSR #12665**
 OFFICIAL REPORTER PRO TEMPORE

1 THE COURT: WE HAVE A CONSOLIDATED PROCEEDING
2 HERE AS WELL AS A COORDINATED PROCEEDING. AND THE
3 SETTLEMENT WAS APPROVED BINDING THE PARTIES TO THE
4 SETTLEMENT. BUT THAT SETTLEMENT HAS NO INDEPENDENT
5 STATUS IN TERMS OF PARTIES WHO WERE NOT PARTIES TO THE
6 SETTLEMENT. THAT WAS MADE VERY CLEAR.

7 AT THE TIME THAT THE COURT APPROVED THE
8 SETTLEMENT, THERE WERE MULTIPLE OBJECTIONS TO THE
9 SETTLEMENT BY THE NON-STIPULATING PARTIES UNTIL THE
10 COURT STATED AS PART OF ITS ORDER THAT IT WAS BINDING
11 ONLY ON THE PARTIES WHO WERE STIPULATING TO IT. AND
12 NONE OTHERS COULD POSSIBLY BE BOUND BY IT.

13 MR. KALFAYAN: YOUR HONOR, LET ME JUST TELL YOU
14 WHERE THE WILLIS CLASS IS COMING FROM HERE. THERE ARE
15 CERTAIN DUE PROCESS ISSUES THAT I HAVE TO DEAL WITH. I
16 HAVE A CLASS OF 65,000 LAND OWNERS THAT OCCUPY ALMOST
17 TWO THIRDS OF THIS BASIN. AND THEY WERE JUST GIVEN
18 NOTICE AND A JUDGMENT THAT SAID EVERYTHING IS FINAL WITH
19 RESPECT TO THE PUBLIC WATER SUPPLIERS AND THE WILLIS
20 CLASS.

21 THEY DON'T KNOW ANYTHING ABOUT A TRIAL
22 WITH RESPECT TO WILLIS VIS-A-VIS ANYONE ELSE. HERE IS
23 THE DUE PROCESS ISSUE THAT I HAVE THAT I PRESENTED A
24 FOUR OR FIVE PAGE LIMITED OPPOSITION THAT I WOULD REALLY
25 ENCOURAGE YOUR HONOR TO READ.

26 THE COURT: I HAVE READ IT, MR. KALFAYAN.

27 MR. KALFAYAN: OKAY. SO THE DUE PROCESS ISSUES
28 ARE THIS: THEY DON'T KNOW WHAT THE CLAIM IS BY ANYBODY

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF LOS ANGELES CENTRAL DISTRICT

3 HONORABLE JACK KOMAR, JUDGE

4 ----oOo----

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6 Coordination Proceeding) Judicial Council
7 Special Title (Rule 1550(b))) Coordination Proceeding
8 ANTELOPE VALLEY GROUNDWATER) No. 4408
9 CASES) Lead Case No. BC 325 201
10 RICHARD A. WOOD, an individual)
11 on behalf of himself and all) Case No. BC391869
12 others similarly situated.)
13 vs. Plaintiff,) PROPOSED JOINT AMENDED
14) SCHEDULE FOR PHASE FOUR
15) TRIAL
16 LOS ANGELES COUNTY) Date: January 16, 2013
17 WATERWORKS DISTRICT NO. 40;) Time: 9:00 a.m.
18 et al.) Place: Department 1
19 Defendants.) (San Jose)
20)
21)
22)
23)
24)
25)
26)
27)
28)

29 ----oOo----

30 REPORTER'S TRANSCRIPT OF PROCEEDINGS

31 A P P E A R A N C E S :

32 FOR PLAINTIFF RICHARD WOOD:
33 Michael D. McLachlan, Attorney at Law
34 Daniel M. O'Leary, Attorney at Law

35 FOR PLAINTIFF REBECCA WILLIS:
36 Ralph B. Kalfayan, Attorney at Law

37 FOR ANTELOPE VALLEY GROUNDWATER AGREEMENT ASSOCIATION:
38 Michael Fife, Attorney at Law

39 FOR DEFENDANT CITY OF LOS ANGELES, LAWA:
40 Janet K. Goldsmith, Attorney at Law

41 FOR CROSS-DEFENDANT ANTELOPE VALLEY STORAGE:
42 Jennifer L. Spaletta, Attorney at Law

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1 that may take care of it. But either way I think it takes
2 care of due process, it's a reasonable time frame, and it
3 allows the parties all to see the other claims, assuming we
4 get declarations on the return flows and on the Federal
5 Reserve rights.

6 MR. ORR: Steven Orr for the City of Palmdale.

7 The Court should remain clear that any settlement
8 put before the Court is a settlement among a number of
9 parties to which the Public Water Suppliers are not a party
10 and it would remain an issue. The parties may agree among
11 themselves as to what their right is, but that's still
12 subject to challenge, and will remain subject to challenge
13 by the Public Water Suppliers.

14 THE COURT: That's clear.

15 Yes, Mr. Leininger?

16 MR. LEININGER: Good morning, Your Honor. Lee
17 Leininger for the United States.

18 Your Honor, I was also involved in these sessions at
19 the liaison committee where we came up with this proposed
20 schedule. And I would just like to give you our
21 perspective on the reason for these dates and the dates
22 proposed.

23 The idea of having one month in which parties could
24 then file this declaration and perhaps agree in a
25 stipulation is really that that will then be posted so that
26 all parties can review the declaration/stipulation, so that
27 we have proper notice of what parties are agreeing to here.
28 And that would then lead to a period of approximately one

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT 1

HON. JACK KOMAR, JUDGE

4

COORDINATION PROCEEDING
SPECIAL TITLE (RULE 1550(B))

) JUDICIAL COUNCIL
) COORDINATION NO.
) JCCP4408

6 ANTELOPE VALLEY GROUNDWATER CASES

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

7

8

PALMDALE WATER DISTRICT AND QUARTZ
HILL WATER DISTRICT,

10

CROSS-COMPLAINANTS,

11

VS.

12

LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40, ET AL.,

13

CROSS-DEFENDANTS.

14

15

REPORTER'S TRANSCRIPT OF PROCEEDINGS

16

FRIDAY, NOVEMBER 9, 2012

17

18 APPEARANCES:

19

FOR LOS ANGELES
COUNTY WATERWORKS
DISTRICT 40,
ET. AL.

LEMIEUX & O'NEILL
BY: WAYNE LEMIEUX, ESQ.
4165 E. THOUSAND OAKS BLVD, SUITE 350
WESTLAKE VILLAGE, CALIFORNIA 91362
(805) 495-4770

21

22

**FOR CITY OF
PALMDALE:**

**RICHARDS WATSON & GERSHON
BY: STEVEN R. ORR, ESQ.
355 SOUTH GRAND AVENUE, 40TH FL.
LOS ANGELES, CALIFORNIA 90071-3101**

2 IT MAY BE THAT BECAUSE THE NEXT PHASE IS
3 FACTUAL DETERMINATIONS OF PARTIES PUMPING — AND WE
4 HAVEN'T HAD A CHANCE TO TALK ABOUT THIS -- IT MIGHT BE
5 POSSIBLE, FOR SOME LIMITED PERIOD OF TIME, SEVER THE WOOD
6 CLASS DETERMINATION TO ALLOW THE OTHER DETERMINATIONS TO
7 GO FORWARD FIRST.

8 OBVIOUSLY, THERE'S GOING TO HAVE TO BE A
9 PRESENTATION OF EVIDENCE. AND MAYBE THEY CAN GO LAST OR
10 THERE'S SOME KIND OF MECHANISM -- PROCEDURAL MECHANISM IN
11 PLAY THAT ALLOWS SUFFICIENT TIME FOR THE WOOD CLASS
12 PERHAPS, IN A VACUUM, TO DO IT.

13 I DON'T THINK THERE'S ANY PARTICULAR
14 URGENCY TO HAVE THEM DO IT UP-FRONT OR IN THE MIDDLE OR
15 WHATEVER. THERE'S JUST OVERALL A NEED TO DO IT.

16 I THINK THERE'S A WAY TO ACCOMMODATE
17 PROCEDURALLY TO ALLOW THAT TO HAPPEN.

18 THE COURT: WELL, I THINK THERE MUST BE.

19 BUT ONE OF THE THINGS THAT OCCURS TO ME, IN
20 PARTICULAR WITH REGARD TO THE WOOD CLASS, IS THERE WAS AT
21 ONE TIME A PROPOSED RESOLUTION BY THE PARTIES THAT, AS
22 BETWEEN THE PARTIES THEMSELVES, STRUCK ME AS A REASONABLE
23 AND FAIR RESOLUTION AT THAT TIME.

24 THE PROBLEM WITH THAT SETTLEMENT PROPOSAL
25 WAS -- AND WHY THE COURT HAD NOT PRELIMINARILY APPROVED
26 THAT SETTLEMENT -- WAS BECAUSE IT IMPACTED OTHER PEOPLE

27 WHO WERE NOT PARTIES TO THE SETTLEMENT IN A WAY THAT
28 WOULD HAVE MADE ADVERSE FINDINGS AS TO THE OTHER PARTIES.

26

1 AND THAT'S ESSENTIALLY WHY -- MY
2 RECOLLECTION IS ANYWAY -- THAT THE COURT DECLINED TO
3 APPROVE THAT SETTLEMENT. BUT WHAT I DON'T UNDERSTOOD IS
4 WHY NOTHING EVER HAPPENED AFTER THAT BY PARTIES WHO
5 REALLY WANTED TO SETTLE THE CASE.

6 SO WITHOUT ASKING YOU TO TELL ME WHY
7 NOTHING EVER HAPPENED, I JUST WANT TO SUGGEST TO YOU THAT
8 IT WOULD BE USEFUL IF COUNSEL WOULD TALK TO EACH OTHER
9 ABOUT SUCH THINGS, ESPECIALLY NOW, WHEN EVERYBODY IS
10 INVOLVED IN A GLOBAL DISCUSSION OF SETTLEMENT OF THE
11 CASE. OKAY?

12 THAT'S MY COMMENT. OKAY.

13 MR. KUHS: YOUR HONOR, ROBERT KUHS FOR TEJON AND
14 GRANITE.

15 THE COURT: YES, MR. KUHS.

16 MR. KUHS: WHAT SPECIFIC FACTUAL FINDINGS IS THE
17 COURT GOING TO MAKE AND HOW ARE THOSE FINDINGS GOING TO
18 BE BINDING ON THE PARTIES AS TO THE ISSUES RAISED IN THE
19 PLEADINGS?

20 THE COURT: I'M NOT SURE I UNDERSTAND YOUR
21 QUESTION.

22 MR. KUHS: WELL, IT SEEMS TO ME THAT WE'RE GOING

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT NO. 316

HON. JACK KOMAR, JUDGE

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

6 ANTELOPE VALLEY GROUNDWATER CASES)

JUDICIAL COUNCIL
COORDINATION
NO. JCCP4408

7 PALMDALE WATER DISTRICT AND)
8 QUARTZ HILL WATER DISTRICT,)

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

9 CROSS-COMPLAINANTS,)

10 VS.)

11 LOS ANGELES COUNTY WATERWORKS,)
12 DISTRICT NO. 40, ET AL,)

13 CROSS-DEFENDANTS.)
14

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 TUESDAY, AUGUST 30, 2011

17
18 APPEARANCES:

19 (SEE APPEARANCE PAGES)
20
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27 GINGER WELKER, CSR #5585
28 OFFICIAL REPORTER

1 YOU TO THINK ABOUT HOW WE MIGHT PROCEED HERE IN ORDER TO
2 MOVE THIS CASE OFF -- THE WOODS CASE OFF FIRST BASE
3 AND -- OR HOME PLATE WHERE HE STILL SITS.

4 SO IF YOU WOULD ADDRESS THAT, PLEASE.

5 MR. DUNN: I WOULD BE HAPPY TOO, YOUR HONOR.
6 WITHOUT DIVULGING PARTIES' POSITIONS IN THE MEDIATION
7 WHAT WE ARE CURRENTLY INVOLVED WITH IS AN ALLOCATION OF
8 THE TOTAL SAFE YIELD. AND SO WHAT WE ARE INVOLVED WITH
9 IS COMING UP WITH NUMBERS FOR EACH OF THE PARTIES.

10 AND SO THE WAY THIS INVOLVES THE WOOD CLASS
11 IS THAT ALTHOUGH WE WERE PREVIOUSLY BEFORE THE COURT
12 WITH A SETTLEMENT AGREEMENT, THE COURT IDENTIFIED
13 CERTAIN ISSUES WHICH WOULD -- WHICH WERE APPROPRIATE AT
14 THE TIME IN TERMS OF -- THE SUM AND SUBSTANCE OF THOSE
15 COMMENTS WERE THAT IT WAS AN AGREEMENT BETWEEN THE WOOD
16 CLASS AND PUBLIC WATER SUPPLIERS. AND AS SUCH IT CAN
17 ONLY GO SO FAR.

18 THE COURT: CAN ONLY BIND THE PARTIES' AGREEMENT?

19 MR. DUNN: CORRECT. CORRECT. AND WHAT I'M TRYING
20 TO EXPLAIN TO THE COURT IS THAT IN THE CURRENT MEDIATION
21 PROCESS WHAT WE ARE TRYING TO ACCOMPLISH -- ALL THE
22 PARTIES THAT ARE PARTICIPATING -- AND THERE ARE A LARGE
23 NUMBER. IN FACT, PROBABLY EVERYBODY THAT IS ON COURT
24 CALL TODAY IS PROBABLY IN SACRAMENTO OR ON THEIR WAY TO
25 SACRAMENTO TODAY.

26 BUT IT IS A COMPREHENSIVE SOLUTION AND
27 SETTLEMENT WHICH WOULD INCLUDE THE WOOD CLASS AND A
28 NUMBER FOR THE WOOD CLASS.

1 (LAUGHTER)

2
3 MR. DUNN: IN ANY EVENT, I THINK THE COURT
4 APPROVES WHAT WE ARE TRYING TO DO HERE.

5 THE COURT: WELL, I UNDERSTAND YOUR POSITION, AND
6 IT MAKES SOME SENSE. AND THE -- ON THE OTHER HAND, IT
7 SEEMS TO ME THAT IF I'M A LAWYER AND I'M REPRESENTING
8 3800 PEOPLE IN A CLASS OF PEOPLE THAT I HAVE AN
9 OBLIGATION TO HAVE AS MUCH VALID INFORMATION AS I CAN
10 GIVEN THE CURRENT STATUS OF THINGS IN ORDER TO ENTER
11 INTO NEGOTIATIONS TO REALLY TRY TO RESOLVE THE MORE
12 GLOBAL ISSUES.

13 BECAUSE YOUR AGREEMENT WITH THE WOOD CLASS
14 OR COUNTY AGREEMENT WITH WOOD CLASS, IT SEEMS TO ME AS
15 WE HAVE SAID MANY TIMES CAN ONLY BIND THE PARTIES TO THE
16 AGREEMENT. AND IF YOU ARE TRYING TO FOLD IN EVERYBODY
17 ELSE, THERE HAS GOT TO BE SOME BASIS FOR DOING THAT.
18 AND KNOWING WHAT THE ACTUAL PUMPING MIGHT BE -- AND WE
19 KNOW THAT IS PROBABLY GOING TO BE AN ESTIMATE NO MATTER
20 WHAT HAPPENS ABSENT PUTTING A MONITOR ON EACH WELL,
21 WHICH IS NOT LIKELY TO HAPPEN RIGHT NOW.

22 IT DOES SEEM TO ME THAT THE REASONABLE
23 EXPENDITURE OF SOME FUNDS IN ORDER TO GET AN OPINION AND
24 AN ESTIMATE THAT MR. MCLACHLAN CAN RELY ON WOULD BE VERY
25 HELPFUL. AND I -- MY ONLY REAL CONCERN HERE IS THE
26 ALLOCATION OF THESE FEES.

27 AND, FRANKLY, THERE ARE SEVERAL WAYS OF
28 DOING IT: ONE IS TO DIRECT THAT MR. MCLACHLAN INCUR THE

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT NO. 4

HON. JACK KOMAR, JUDGE

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

6 ANTELOPE VALLEY GROUNDWATER CASES))

JUDICIAL COUNCIL
COORDINATION
NO. JCCP4408

7 PALMDALE WATER DISTRICT AND)
8 QUARTZ HILL WATER DISTRICT,)

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

9 CROSS-COMPLAINANTS,)

10 VS.)

11 LOS ANGELES COUNTY WATERWORKS,)
12 DISTRICT NO. 40, ET AL,)

13 CROSS-DEFENDANTS.)
14

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 THURSDAY, JUNE 16, 2011

17
18 APPEARANCES:

19 (SEE APPEARANCE PAGES)
20
21
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23
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25
26

27 GINGER WELKER, CSR #5585
28 OFFICIAL REPORTER

1 CASE NUMBER: JCCP 4408
2 CASE NAME: ANTELOPE VALLEY
3 LOS ANGELES, CALIFORNIA, THURSDAY, JUNE 16, 2011
4 DEPARTMENT NO. 2D HON. ELIA WEINBACH
5 REPORTER GINGER WELKER, CSR #5585
6 TIME: 8:38 A.M.
7 APPEARANCES: (SEE TITLE PAGE)
8

9 THE COURT: WE HAVE A NUMBER OF PEOPLE WHO ARE ON
10 COURT CALL. HAVE THEY BEEN IDENTIFIED?

11 THE CLERK: YES, THEY HAVE, YOUR HONOR.

12 THE COURT: IF ANYBODY ON COURT CALL WISHES TO
13 ARGUE, COMMENT, OR ADDRESS THE COURT, MAKE SURE YOU
14 STATE YOUR NAME EACH TIME YOU SPEAK SO THAT THE REPORTER
15 AND I WILL KNOW WHO YOU ARE.

16 WE HAVE SEVERAL ACTIONS AND MATTERS TO TAKE
17 CARE OF THIS MORNING. THE PRIMARY ONE IS THE MOTION FOR
18 PRELIMINARY APPROVAL OF THE WOOD'S CLASS SETTLEMENT
19 PROPOSED. AND THE COURT HAS READ AND CONSIDERED THAT
20 APPLICATION AS WELL AS A NUMBER OF PARTIES WHO HAVE
21 FILED WRITTEN OPPOSITION TO THAT.

22 I WILL TELL YOU I HAVE SOME CONCERNS. AND I
23 THINK WE NEED TO ADDRESS THOSE HERE THIS MORNING.
24 BEFORE I DO THAT, IS THERE SOMETHING AS MOVING PARTY,
25 MR. MCLACHLAN, THAT YOU WANT TO STATE?

26 MR. MCLACHLAN: NO. I THINK MAYBE THE TIME IS
27 BEST SPENT ADDRESSING WHATEVER CONCERNS THE COURT IS
28 ALLUDING TO.

1 THE COURT: ALL RIGHT. THE FIRST CONCERN I HAVE
2 RELATES TO THE ESTABLISHMENT OF THE RIGHTS OF THE CLASS
3 MEMBERS AND THE DEFINITION THAT THE ALLOCATION FOR EACH
4 MEMBER WILL BE AS TO PER HOUSEHOLD RATHER THAN TO THE
5 CLASS MEMBERS AS THEY WERE DEFINED IN THE ORDER
6 ESTABLISHING THE CLASS.

7 IT SEEMS TO ME THAT THERE IS POTENTIAL HERE
8 FOR SOME CONTRADICTIONS IN TERMS. FOR EXAMPLE, A
9 HOUSEHOLD MAY OWN SEPARATE PARCELS. EACH PARCEL OF
10 WHICH WOULD HAVE OVERLYING RIGHTS. THAT IS MY FIRST
11 CONCERN BECAUSE IT IS INCONSISTENT WITH THE DEFINITION
12 OF THE CLASS.

13 AND AS I UNDERSTAND IT -- AND WE WILL TALK
14 ABOUT THIS IN A FEW MOMENTS -- PART OF THE REASON FOR
15 THAT IS TO ESTABLISH DOMESTIC USE. AND THAT IS ALSO NOT
16 PART OF THE CLASS DESCRIPTION. AND IT IS NOT A
17 LIMITATION OF THE CLASS DESCRIPTION. SO IT IS A
18 NARROWER DESCRIPTION, IT SEEMS TO ME, THAN THE CLASS
19 DESCRIPTION.

20 AND I GUESS WHAT I CAN DO IS JUST GO THROUGH
21 THESE AND TELL YOU WHAT MY CONCERNS ARE, AND WE CAN
22 START ADDRESSING THEM SERIATIM.

23 ON PAGE 11 OF THE AGREEMENT STARTING AT LINE
24 FOUR, "THE SETTling PARTIES AGREE THAT THE WOOD CLASS
25 MEMBERS MAY EACH PUMP UP TO 3 ACRE-FeET PER HOUSEHOLD
26 FOR REASONABLE AND BENEFICIAL USE ON THEIR OVERLYING
27 LAND," ET CETERA, ET CETERA. AND THAT IF THE COURT DOES
28 NOT APPROVE THIS PROVISION, THIS AGREEMENT IS VOID.

1 THE PROBLEM THAT I HAVE WITH THAT IS NOT
2 THAT THE PARTIES WHO ARE SETTling THE CASE CANNOT AGREE
3 AMONG THEMSELVES. THE DIFFICULTY IS THAT WHAT YOU ARE
4 DOING IS ATTEMPTING TO ESTABLISH, AS I READ THIS
5 AGREEMENT, THE 3 ACRE-FEET PER YEAR ALLOCATION AS A --
6 AS A STANDARD THAT IS GOING TO BIND ALL THE NONSETTLING
7 PARTIES. AND I DON'T THINK YOU CAN DO THAT.

8 YOU HAVE TO ACKNOWLEDGE THE FACT THAT AS TO
9 OTHER PARTIES THE COURT HAS TO MAKE FINDINGS BASED UPON
10 EVIDENCE. I CAN'T DO THAT BASED UPON AN AGREEMENT OF
11 SOME OF THE PARTIES, BUT NOT ALL OF THE PARTIES.

12 AND I UNDERSTAND THAT THE CONCERN THAT YOU
13 HAVE IS THAT YOU CAN'T SETTLE THIS CASE WITHOUT THAT
14 KIND OF A FINDING BINDING EVERYBODY, BUT I CAN'T MAKE
15 THAT KIND OF A FINDING WITHOUT EVIDENCE AND AN
16 OPPORTUNITY FOR THE PARTIES TO DISPUTE IT. IT MAY WELL
17 BE REASONABLE, BUT I HAVE NO WAY OF KNOWING THAT AT THIS
18 POINT.

19 LET ME JUST GO THROUGH HERE: YOU ARE
20 ATTEMPTING TO BIND A WATER MASTER AND A WATER MASTER
21 DECISION AND DETERMINATION OF ALLOCATION OF WATER RIGHTS
22 AND PREVENTING THE COURT AND THE WATER MASTER FROM DOING
23 ANYTHING OTHER THAN WHAT YOU HAVE AGREED AMONG
24 YOURSELVES.

25 WELL, AS TO YOURSELVES, THAT IS FINE. AND
26 IF YOU WANT TO AGREE THAT THE WATER PRODUCERS, PURVEYORS
27 HERE, WILL NOT TAKE A POSITION THAT YOU ARE NOT ENTITLED
28 TO A 3 ACRE-FEET PER YEAR, THAT IS FINE. THEY CAN DO

1 THAT, BUT YOU CAN'T BIND THE OTHER PARTIES. THE
2 ALLOCATION CANNOT BIND NONSETTLING PARTIES.

3 MR. MCLACHLIN: YOUR HONOR, THAT LAST COMMENT, IS
4 THAT DIRECTED TO A PARTICULAR PORTION OF THE AGREEMENT?

5 THE COURT: YES, IT IS -- IT IS ACTUALLY DIRECTED
6 TO WHERE I JUST POINTED TO.

7 MR. MCLACHLIN: PAGE 11?

8 THE COURT: YEAH, PAGE 11, STARTING AT LINE 4; BUT
9 IT THREADS ITS WAY THROUGH THE ENTIRE AGREEMENT SO THAT
10 THE COURT BINDS ITSELF DEPENDING UPON YOUR AGREEMENT AND
11 NOT WHAT THE EVIDENCE MIGHT ESTABLISH UPON FURTHER
12 PRESENTATION OR DETERMINATION BY THE WATER MASTER.

13 I THINK WHAT YOU ARE ATTEMPTING TO
14 ACCOMPLISH CAN BE ACCOMPLISHED BY AGREEMENT, BUT I DON'T
15 THINK YOU CAN DO IT IN THIS FASHION WHERE YOU ARE
16 BINDING OTHER PARTIES.

17 STARTING ON LINE 16 ON THAT SAME PAGE, "IF
18 THE WATER MASTER'S ASSESSMENT DETERMINES THAT
19 COLLECTIVELY THAT THE WOOD CLASS IS USING LESS THAN AN
20 AVERAGE OF 3 ACRE-FEET PER YEAR, THEN ANY UNUSED PORTION
21 IN ANY GIVEN YEAR WILL BE REALLOCATED FOR USE BY OTHER
22 OVERLYING OWNERS AS PART OF THEIR RIGHT TO USE THEIR
23 CORRELATIVE SHARES OF THE BASE OF THE 85 PERCENT OF THE
24 BASIN'S FEDERALLY ADJUSTED RATE OF SAFE YIELD; HOWEVER,
25 SUCH REALLOCATION SHALL IN NO WAY DIMINISH ANY CLASS
26 MEMBERS FOR -- FOR A REASONABLE AND BENEFICIAL USE."

27 WELL, YOU ARE BINDING THE COURT WITHOUT
28 HAVING PRESENTED ANY EVIDENCE OF THE PROPRIETY OF THAT

1 DETERMINATION.

2 THE -- LINE 26, "THE WOOD CLASS MEMBERS
3 PUMPING IN EXCESS OF 3 ACRE-FEET PER YEAR SHALL NOT BE
4 SINGLED OUT BY THE WATER MASTER FOR REDUCTION OF PUMPING
5 OR ASSESSMENT." WHAT YOU ARE ATTEMPTING TO DO IS
6 ESTABLISH AN EXEMPTION THAT PREVENTS THE WATER MASTER
7 FROM MAKING A DETERMINATION AS TO THE APPROPRIATE
8 ALLOCATION OF WATER TO THE CLASS MEMBERS.

9 AND YOU CAN, I BELIEVE, ENTER INTO AN
10 AGREEMENT THAT THE WATER PURVEYORS WILL NOT CONTEST
11 THAT, BUT YOU CAN'T BIND NONSETTLING PARTIES TO THAT
12 KIND OF A DETERMINATION.

13 YET YOU ARE DOING THE SAME THING ON PAGE 12,
14 STARTING AT LINE 6. YOU ARE TAKING AWAY FROM THE COURT
15 THE ABILITY AND THE WATER MASTER THE ABILITY TO MAKE
16 DETERMINATIONS BASED UPON FACTS. AND, AGAIN, AS BETWEEN
17 YOU AND THE WATER PURVEYORS IF THEY WISH TO AGREE NOT TO
18 CONTEST YOUR POSITION WITH REGARD TO THAT, THEY
19 CERTAINLY MAY DO THAT.

20 AND TO THE EXTENT THAT ALL THE OTHER PARTIES
21 IN THIS LAWSUIT WERE TO ENTER INTO THAT AGREEMENT AS
22 WELL, THAT WOULD BE FINE. BUT THAT IS NOT WHAT WE ARE
23 DEALING WITH HERE. WE ARE DEALING WITH SOME OF THE
24 PARTIES, AND YOU CANNOT BIND NONSETTLING PARTIES.

25 AGAIN, ON LINE 23 THROUGH 27, YOU ARE MAKING
26 FINDINGS FOR THE COURT THAT BINDS THIRD PARTIES. AND
27 YOU CAN'T DO THAT TO MAKE A DETERMINATION AS TO DOMESTIC
28 USE WITHOUT EVIDENCE TO SUPPORT THAT AND AN OPPORTUNITY

1 FOR NONSETTLING PARTIES TO CONTEST IT.

2 MR. MCLACHLIN: YOUR HONOR, AT SOME POINT HERE, I
3 REALLY WOULD LIKE TO MAKE A COMMENT TO SOME OF THIS
4 STUFF, PARTICULARLY THIS NOTION OF PRESENTATION OF
5 EVIDENCE. BECAUSE IT SEEMS TO BE A -- RUNNING THROUGH A
6 NUMBER OF THE COURT'S OBSERVATIONS ON THESE PAGES 11 AND
7 12.

8 THE COURT: WOULDN'T YOU LIKE TO HEAR THE REST OF
9 MY COMMENTS?

10 MR. MCLACHLIN: YES, YOUR HONOR, I WOULD. I WILL
11 HOLD MY THOUGHTS. CONTINUE.

12 THE COURT: I UNDERSTAND YOU ARE NOT HAPPY, BUT I
13 THINK IT IS IMPORTANT THAT WE HAVE A FULL HEARING ON
14 THESE ISSUES. YOU'RE ON PAGE 14, PARAGRAPH 2, STARTING
15 AT LINE 4, "THE SETTLING PARTIES AGREE THAT THE PRIMARY
16 MEANS FOR ENFORCING THE TERMS OF THE AGREEMENT AND
17 MONITORING THE GROUNDWATER USE WILL NOT INCLUDE METERING
18 OF WELLS."

19 AND, AGAIN, YOU'RE ELIMINATING THE COURT'S
20 DISCRETION WITH REGARD TO THIS ENTIRE BASIN. IT MAY
21 WELL BE -- AND I DON'T KNOW IF THIS IS THE CASE -- THAT
22 METERING WOULD BE APPROPRIATE.

23 AS TO THIS AGREEMENT IF THE PURVEYORS WANT
24 TO AGREE WITH YOU THAT THEY WILL NOT ASSERT A RIGHT TO
25 HAVE METERING, THEY CAN CERTAINLY DO THAT, BUT THEY
26 CAN'T BIND NONSETTLING PARTIES. THE SAME IS TRUE WITH
27 THE PROVISIONS REGARDING THE REPLACEMENT WATER.

28 I GUESS THAT I CAN SIMPLIFY MY CONCERNS BY

1 TELLING YOU THAT TOO MANY OF THE PROVISIONS IN HERE DO
2 ATTEMPT TO BIND THIRD PARTIES, TIE THE COURT'S HANDS
3 WITH REGARD TO DECISIONS THAT IT WILL MAKE BASED UPON
4 THE EVIDENCE, AND I WOULD LIKE TO HAVE YOU ADDRESS THOSE
5 ISSUES.

6 MR. MCLACHLIN: THANK YOU, YOUR HONOR. I THINK
7 THAT THE FIRST COMMENT I'LL START WITH WAS THE COURT'S
8 COMMENT RELATIVE TO -- LET ME TAKE A SPECIFIC EXAMPLE.
9 LET'S SAY THE 3 ACRE-FOOT CONCEPT AND THE LACK OF
10 EVIDENCE, THE AGREEMENT IS -- WAS STRUCTURED IN THAT
11 FASHION BECAUSE OF THE COURT'S PRIOR RULINGS
12 REFLECTINGLY TIEING THE CLASS COUNSEL'S HANDS IN TERMS
13 OF THE COURT APPOINTED EXPERT. OVER A YEAR AND A HALF
14 AGO, THE COURT APPOINTED A COURT APPOINTED EXPERT THAT
15 WAS TASKED WITH THIS VARIOUS ISSUE.

16 AND -- BUT WE HAVE BEEN PROHIBITED FROM
17 USING THAT EXPERT TO ACTUALLY DO THE WORK TO ASSESS THE
18 CLASS'S WATER USE. AND UNDER APPLICABLE LAW -- BEFORE I
19 AGREED -- THIS IS GOING BACK A LITTLE BIT IN TIME, BUT I
20 THINK THERE NEEDS TO BE A LITTLE BIT OF AN UNDERSTANDING
21 OF WHAT IS GOING ON HERE.

22 BEFORE -- WHEN I WAS INITIALLY APPROACHED TO
23 TAKE THIS CASE, I REFUSED FOR A LOT OF DIFFERENT
24 REASONS. WHEN I DECIDED TO RECONSIDER IT, YOUR HONOR
25 WILL REMEMBER IN MAY OF 2008 THERE WAS A HEARING. I
26 SENT YOU A LETTER AND LAID OUT THE CONCERNS REGARDING
27 THE EXPERT FOR THE CLASS AND THE APPLICABLE LAW IN
28 CALIFORNIA THAT, UNFORTUNATELY, HAS A HOLE IN IT.

1 IT DOESN'T ALLOW -- EVEN IF I WANTED TO
2 ADVANCE THOSE COSTS, IT DOESN'T ALLOW THOSE TO BE
3 RECOVERED. WOOD'S CLASS COUNSEL IS IN A VERY DIFFICULT
4 SITUATION.

5 THE AGREEMENT IS STRUCTURED TO DEAL WITH
6 THAT IN TERMS OF WE STAY IT -- IT IS NOT A 3 ACRE-FOOT.
7 IT IS VERY CLEAR THAT ANY PARTICULAR CLASS MEMBER --
8 LET'S JUST TAKE MR. WOOD WHO HAPPENS TO BE IN THE
9 COURTROOM FOR AN EXAMPLE.

10 HE IS NOT GETTING A GUARANTEED 3 ACRE-FEET.
11 WHAT HE IS GETTING IS THE RIGHT TO PUMP FOR A REASONABLE
12 BENEFICIAL -- BENEFICIAL USES FOR RESIDENTIAL PURPOSES
13 ON HIS LAND, AND THE OTHER 3800 PEOPLE WOULD BE
14 EFFECTIVELY IN THE STATE BOAT. YOU CANNOT OBVIOUSLY
15 TREAT CLASS MEMBERS DIFFERENTLY.

16 AND THOSE WHO WOULD PUMP, LET'S SAY, MORE
17 THAN 10 ACRE-FEET AND HAVE SOME LIGHT AGRICULTURAL, THEY
18 COULD, OF COURSE, OPT-OUT AND HAVE THEIR OWN
19 REPRESENTATION AND PROVE UP THEIR SELF-HELP. AND THE
20 COURT COULD SAY, WELL, YOU KNOW, YOU GET X ACRE-FEET OF
21 WATER OR YOU DON'T AT SOME FUTURE POINT IN TIME.

22 THERE IS NO WAY FOR CLASS COUNSEL TO DEAL
23 WITH THOSE VARIATIONS. WE DO KNOW -- I KNOW OF NONE OF
24 THESE PROPERTIES OTHER THAN ONE, A CAMP, A CHILDREN'S
25 CAMP, THAT DOESN'T HAVE A RESIDENTIAL USE.

26 THAT IS THE ONLY REASONABLE WAY TO STRUCTURE
27 THIS. THE AGREEMENT ALLOWS THE WATER MASTER, ASSUMING
28 ONE COMES AROUND SOME DAY, TO MAKE AN ASSESSMENT OF THE

1 CLASSES' WATER USE ON A WHOLE AND SET THAT. THIS IS
2 EFFECTIVELY THE SURROGATE FOR THE COURT APPOINTED
3 EXPERT.

4 AND THE WATER MASTER CAN MAKE THAT
5 ASSESSMENT AND SAY, LOOK, THE CLASS IS ONLY COLLECTIVELY
6 USING ABOUT 6,000 ACRE-FEET. SO WE ARE GOING TO TAKE
7 THAT ACCESS AND PUT IT BACK IN THE OVERLYING POOL, AND
8 IT CAN BE ALLOCATED IN WHATEVER MANNER THE COURT
9 DETERMINES IN THE FUTURE.

10 BUT I DISAGREE WITH THE NOTION THAT THERE
11 IS -- SOME OF THE COMMENTS ARE THAT THE -- THAT THE
12 AGREEMENT IS TRYING TO BIND THIRD PARTIES. IN SOME OF
13 THOSE, I WOULD AGREE WITH. BUT THE COURT HAS THE POWER
14 ULTIMATELY TO DECIDE ALL OF THESE ISSUES. AND RELATIVE
15 TO THE CLASS, THESE DECISIONS WILL HAVE TO BE MADE AT
16 SOME POINT IN TIME, AND THERE ARE -- I SEE NOTHING IN
17 HERE THAT -- OTHER THAN THE NOTION THAT THE CLASS IS
18 USING IT FOR DOMESTIC PURPOSES THAT SETS EVERYTHING IN
19 STONE AND TIES THE COURT'S HANDS IN THE FUTURE.

20 THE COURT: WELL, WHAT ABOUT THE LANGUAGE THAT
21 ALLOCATES THE COST -- THAT LIMITS, I SHOULD SAY, THE
22 EXEMPTION THE COURT CANNOT DO ANYTHING ABOUT? THE THREE
23 ACRE-FEET PER YEAR, FOR EXAMPLE, AS A STANDARD AND
24 THAT -- BUT IT IS NOT EVEN SO MUCH THAT AS IT IS THAT IT
25 BINDS A WHOLE LOT OF OTHER PARTIES HERE WHO HAVE -- WHO
26 ARE NOT PART OF THIS AGREEMENT.

27 MR. MCLACHLIN: THE COURT CLEARLY, I THINK, COULD
28 DO THAT BECAUSE THE LAW SAYS IN CALIFORNIA THAT DOMESTIC

1 USE -- WELL, LET ME STRIKE THAT.

2 THE AGREEMENT REFERS TO DOMESTIC USE FOR
3 REASONABLE BENEFICIAL PURPOSES ON THESE PARCELS. SO TO
4 THE EXTENT, LET'S SAY, THAT MR. WOOD OR SOME OTHER CLASS
5 MEMBER DECIDES TO -- OR IS ACTUALLY USING WATER THAT
6 DOES NOT COMPLY WITH THOSE STANDARDS, CLEARLY THE COURT,
7 AND IF IT DELEGATES ITS RESPONSIBILITY TO A WATER
8 MASTER, WOULD HAVE THE ABILITY TO CURTAIL THAT PERSON'S
9 WATER USE AND, THEORETICALLY, DOWN TO ZERO ON AN
10 INDIVIDUAL BASIS.

11 REMEMBER, WE ARE DEALING WITH 3800 PARCELS
12 HERE. THERE IS NO WAY IN A CLASS CONTEXT TO DO THAT.
13 IT CAN'T BE DONE. IT IS PHYSICALLY IMPOSSIBLE. BECAUSE
14 IF THAT IS THE -- IF THAT IS WHAT WE ARE REALLY DRIVING
15 AT, THEN THE CLASS VEHICLE IS THE WRONG VEHICLE TO BE
16 USING. ALL THESE PEOPLE SHOULD HAVE BEEN INDIVIDUALLY
17 NAMED AND SERVED AND MADE TO COME IN AS I THINK
18 BOLTHOUSE MAY HAVE STATED IN THEIR PAPERS AND PROVE UP
19 THEIR INDIVIDUAL WATER RIGHT.

20 OKAY. THAT IS WHY MR. GARNER'S DECLARATION
21 DELINEATES THE HISTORY AND THE USAGE OF THE DE MINIMUS
22 EXEMPTION. BECAUSE IF WE USE THINGS LIKE -- IF WE
23 HAVE -- LET'S SAY WE SPEND \$1,500 PER PARCEL TO PUT
24 METERS ON ALL THESE PARCELS AND THEN WE HAVE TO SPEND,
25 WHAT, THREE OR 400 OR \$500,000 A YEAR AT LEAST TO HAVE A
26 COUPLE OF PEOPLE GO READ THOSE MEETINGS.

27 WE START ADDING UP ALL THE COSTS OF THIS AND
28 WE LOOK AT THE OPTIONS, OF COURSE, OF AERIAL ENFORCEMENT

1 WHICH IS -- A LOT OF THE WORK HAS BEEN DONE IN THIS
2 CASE, THE DATABASE ALREADY EXISTS. AND WE LOOK AT THE
3 COST BENEFIT ANALYSIS, I REALLY THINK -- AND I BELIEVE
4 MR. DUNN AND THE OTHER WATER SUPPLIER COUNSEL ALL AGREE
5 THAT IF PENNY WISE AND POUND FOOLISH WE END UP SPENDING
6 A SMALL FORTUNE TO MONITOR WHAT IS A VERY SMALL AMOUNT
7 OF WATER --

8 THE COURT: MR. MCLACHLAN, I DON'T DISAGREE WITH
9 YOU. I DON'T DISAGREE AT ALL WITH THAT CONCLUSION. THE
10 PROBLEM IS HOW DO WE GET TO THERE. AND WE CAN'T GET TO
11 THERE IN A LITIGATION AND IN AN ADJUDICATION THAT
12 ENCOMPASSES ALL OF THE WATER USERS WITHIN THE VALLEY, BY
13 AGREEMENT OF SOME OF THEM. THAT IS THE PROBLEM THAT I'M
14 HAVING.

15 SEE, I DON'T HAVE ANY PROBLEM WITH YOU AND
16 THE WATER PURVEYORS AGREEING THAT THEY ARE NOT GOING TO
17 CONTEST UP TO 3 ACRE-FEET PER YEAR THAT EACH ONE OF THE
18 MEMBERS OF THIS CLASS HAVE THE RIGHT TO PUMP. OKAY?

19 AND IT MAY WELL BE THAT WHEN ALL IS SAID AND
20 DONE IF THAT IS THE AGREEMENT AND THE COURT THEN IS IN
21 THE POSITION OF CREATING A PHYSICAL SOLUTION -- AND I
22 DON'T KNOW WHAT THAT FORM IS GOING TO BE -- THAT THAT
23 ENCOMPASSES YOUR AGREEMENT AND EVERYBODY ELSE IS GOING
24 TO BE BOUND BY THAT. BUT YOU CAN'T DO THAT AT THIS
25 POINT. THAT IS THE PROBLEM.

26 AND WHAT YOU HAVE DONE IS, YOU HAVE ALSO PUT
27 IN LIMITATIONS ON THE COURT'S ABILITY TO CREATE A
28 PHYSICAL SOLUTION HERE. I HAVE NO IDEA WHAT THAT

1 PHYSICAL SOLUTION IS GOING TO BE. I DOUBT SERIOUSLY AT
2 THIS POINT THAT ANYBODY DOES.

3 WE DON'T EVEN HAVE THE STATEMENT OF DECISION
4 YET. I HAVE GIVEN A TENTATIVE DECISION. I HAVE A
5 PROPOSAL FROM THE PURVEYORS AS TO WHAT THAT STATEMENT OF
6 DECISION SHOULD BE. AND IT MOSTLY FOLLOWS THE TENTATIVE
7 DECISION THAT I RENDERED WITH A COUPLE OF EXCEPTIONS.

8 I HAVE ESSENTIALLY INTERROGATORIES FROM SOME
9 OF THE PARTIES ASKING THE COURT TO MAKE DETAILED
10 RESPONSES AS PART OF THE STATEMENT OF DECISION. WE WILL
11 TALK ABOUT THAT ANOTHER TIME. BUT AT THIS POINT, WHAT
12 YOUR AGREEMENT DOES IS IT TIES THE COURT'S HANDS, AND IT
13 CREATES A PROCESS THAT BINDS OTHER PARTIES WHO ARE NOT
14 PARTIES TO THE SETTLEMENT PLAN. AND I JUST DON'T THINK
15 I CAN DO THAT.

16 I DO THINK THAT THE NUB OF YOUR SETTLEMENT
17 AGREEMENT IS SOMETHING THAT IF MODIFIED CAN BE APPROVED;
18 BUT AT THIS POINT, I CAN'T APPROVE THE AGREEMENT AS IT
19 STANDS FOR THE REASONS THAT I HAVE INDICATED.

20 AND IF YOU READ THROUGH THE AGREEMENT, I
21 THINK THAT YOU WILL UNDERSTAND WHY I CAN'T DO THAT. I
22 HAVEN'T HEARD FROM MR. DUNN.

23 MR. DUNN: WELL, I HAVE BEEN LISTENING TO THE
24 COURT'S COMMENTS, AND IT SEEMS TO ME GIVEN WHAT THE
25 COURT HAS INDICATED, AND I HAVE LISTENED TO COUNSEL'S
26 COMMENTS AS WELL, I -- WHAT I WOULD SUGGEST IS THAT WE
27 BE ALLOWED TO AFTER THIS HEARING, YOU KNOW, GO BACK AND
28 SEE WHAT WE CAN DO TO -- I'M LOOKING FOR THE RIGHT

1 WORD -- TO REVIEW, REVISE, EDIT, WHATEVER, THE AGREEMENT
2 TAKING INTO ACCOUNT THE COURT'S CONCERNS.

3 THE COURT: WELL, I DO THINK THAT IT IS A WORKABLE
4 AGREEMENT BETWEEN THE SETTLING PARTIES, AND IT MAY WELL
5 BE IF IT IS A REASONABLE AGREEMENT THAT OTHER PARTIES
6 ARE GOING TO BUY INTO IT AND BE BOUND. BUT I CAN'T MAKE
7 THEM DO THAT. YOU HAVE TO MAKE THEM DO THAT.

8 AND WHAT I -- I'M -- YOU KNOW, I HATE TO DO
9 THIS TO YOU, MR. MCLACHLIN, BECAUSE I KNOW HOW HARD YOU
10 HAVE WORKED ON THIS CASE, AND I KNOW HOW SINCERELY YOU
11 HAVE ATTEMPTED TO REPRESENT YOUR CLIENTS EFFECTIVELY,
12 AND I THINK YOU HAVE DONE A GOOD JOB.

13 THE PROBLEM IS THAT THIS AGREEMENT IS
14 INCONSISTENT WITH THE ABILITY FOR THE COURT TO APPROVE
15 IT AT THIS POINT. SO I'M SORRY. I TRULY AM SORRY THAT
16 I COULDN'T APPROVE IT.

17 NOW, THERE ARE A COUPLE OF OTHER THINGS. I
18 HAVEN'T HEARD FROM ANYBODY ON THE TELEPHONE. DOES
19 ANYONE WISH TO MAKE ANY COMMENTS OR ARGUMENT? ARE YOU
20 STILL ON THE LINE?

21
22 (SEVERAL ATTORNEYS RESPOND, "YES, YOUR HONOR.")

23
24 THE COURT: OKAY. ALL RIGHT.

25 MR. SLOAN: YOUR HONOR, THIS IS WILLIAM SLOAN FOR
26 U.S. BORAX.

27 THE COURT: YES.

28 MR. SLOAN: I WOULD LIKE TO TAKE AN OPPORTUNITY --