

4th Civil No.

**IN THE
COURT OF APPEAL
STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO**

RICHARD WOOD, ON BEHALF OF HIMSELF AND OTHERS
SIMILARLY SITUATED
Petitioner and Plaintiff,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
Respondent,

*City of Palmdale, Rosamond Community Services District, Los Angeles County
Waterworks District No. 40, Littlerock Creek Irrigation District, Palm Ranch
Irrigation District, North Edwards Water District, Desert Lake Community
Services District, California Water Service Company, Quartz Hill Water District,
the City of Lancaster, the Palmdale Water District, and Phelan Pinon Hills
Community Services District,
Real Parties in Interest and Defendants.*

THE HONORABLE JACK KOMAR (RET.), JUDGE
SUPERIOR COURT OF SANTA CLARA COUNTY
[Sitting by order of the Judicial Council of California]
No. BC391869 (included in JCCP 4408)

**PETITION FOR WRIT OF MANDATE IN THE FIRST INSTANCE,
PROHIBITION OR OTHER APPROPRIATE RELIEF
EXHIBITS (VOLUME 2 OF 2)**

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Attorneys for Petitioner and Plaintiff Richard Wood

Exhibit Tab	Document Title
1.	Order of Coordination dated June 17, 2005
2	Plaintiff Richard Wood's First Amended Class Action Complaint, dated June 20, 2008
3	Order Certifying Small Pumpers' Class Action, dated September 2, 2008
4	First Amended Cross Complaint of Public Water Suppliers for Declaratory and Injunctive Relief and Adjudication of Water Rights, dated March 13, 2007
5	Minute Order from March 12, 2007 [certifying defense class on Public Water Suppliers' Cross-Complaint]
6	Order Approving Revised Class Notice for Small Pumper Class Action, dated March 13, 2009
7	Notice of Motion and Motion to Transfer and to Consolidate for All Purposes; Memorandum of Points and Authorities; Declaration of Whitney G. McDonald, dated July 15, 2009
8	Richard Wood's Opposition to Motion to Consolidate, dated August 3, 2009
9	Rebecca Willis' and the Class' Opposition to Motion to Consolidate, Dated August 3, 2009
10	Cross-Defendants' Opposition to Motion to Consolidate for All Purposes, dated August 3, 2009
11	Federal Defendants' Response to Motion to Transfer and Consolidate, Dated August 3, 2009
12	Reply Memorandum of Points and Authorities in Support of Motion to Transfer and Consolidate for All Purposes, dated August 7, 2009
13	Sheep Creek Water Co., Service Rock Products and AV United Mutual Group's Joinder in AGWA Case Management Statement, Bolthouse Opposition to Motion to Consolidate, etc., dated August 13, 2009

14	Supplemental Memorandum of Points and Authorities in Support of Motion to Transfer and to Consolidate for All Purposes; Declaration of Whitney G. McDonald, dated September 8, 2009
15	Renewed Objection to Hearing on Motion to Transfer and to Consolidate for All Purposes, dated September 18, 2009
16	Cross-Defendants' Supplemental Opposition to Purveyors' Motion to Transfer and To Consolidate For All Purposes, dated September 18, 2009
17	Reply Memorandum in Support of Motion to Transfer and Consolidate for All Purposes, dated September 23, 2009
18	Los Angeles County Waterworks District No. 40 and Rosamond Community Services District's Joinder in the Public Water Suppliers' Reply and Separate Reply in Support of Motion to Consolidate Cases for All Purposes, dated September 23, 2009
19	Order Transferring and Consolidating for All Purposes, dated February 19, 2010
20	Hearing transcript from August 17, 2009
21	Hearing transcript from October 13, 2009
22	Hearing transcript from February 5, 2010

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**EXEMPT FROM FILING FEES UNDER
GOVERNMENT CODE § 6103**

5 Attorneys for Defendant and Cross-Complainant,
Palmdale Water District
6
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**
10

11 Coordination Proceeding
12 Special Title (Rule 1550 (b))
13 **ANTELOPE VALLEY GROUNDWATER**
14 **CASES**
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Judicial Council Coordination
Proceeding No. 4408
[Assigned to The Honorable Jack Komar, Judge
Santa Clara County Superior Court, Dept. 17]
Santa Clara Court Case No. 1-05-CV-049053
**REPLY MEMORANDUM IN SUPPORT OF
MOTION TO TRANSFER AND
CONSOLIDATE FOR ALL PURPOSES**
Date: October 13, 2009
Time: 10:00 a.m.
Dept.: 17, San Jose

21 The city of Palmdale, city of Lancaster, California Water Service Co., Palmdale Water District,
22 Quartz Hill Water District, Littlerock Creek Irrigation District and Palm Ranch Irrigation District
23 respectfully submit this reply memorandum in support of their motion for transfer and complete
24 consolidation. It appears that all parties agree on the desirability of a single judgment in these
25 coordinated cases. It would set forth all the parties' water rights in one place; it would allow for efficient
26 administration of a physical solution; and it would help satisfy the comprehensiveness requirement of
27 the McCarran Amendment. Nobody asserts that the subject cases and pleadings do not concern common
28 questions of law and fact. Nobody is asking for separate trials of the coordinated cases. Nobody has

1 asserted that any harm will come from consolidation. The only question is whether the Court has the
2 authority to order complete consolidation to achieve these desirable goals.

3 The original moving papers demonstrated that the Court has this authority under Code of Civil
4 Procedure sections 1048 and 128(a)(3) and Rule 3.541(b), California Rules of Court. In response to the
5 Court's request, the Public Water Suppliers filed (a) a matrix listing all complaints and cross-complaints
6 proposed to be consolidated; (b) a chart depicting the causes of action asserted by and against the
7 parties; and (c) a suggested alignment of the parties if consolidation is granted.

8
9 **I. The Classes' Declaratory Relief Cause of Action Puts Their Water Rights At Issue.**

10
11 A number of landowner parties filed a supplemental opposition, restating earlier legal arguments
12 and also stating that the proposed alignment of parties did nothing to alter the status quo of the
13 pleadings. The landowners concluded by arguing that the Public Water Suppliers should add the existing
14 classes as cross-defendants to the Public Water Suppliers' cross complaint, or alternatively certify a new
15 defendant class. (See Supplemental Opposition filed Sept. 18, 2009 at p. 7 and Ex. B.) This argument
16 ignores the central point of the Public Water Suppliers' earlier reply memorandum: The classes, by
17 suing for declaratory relief, put their water rights at issue, as much as if they had been named as cross-
18 defendants. The Court, in response to the declaratory relief cause of action, has the authority to give
19 complete relief, including both a comprehensive *inter se* adjudication of water rights and a physical
20 solution. (See Reply Memorandum filed Aug. 7, 2009 at pp. 6 – 8.)

21 In reality, no change in the existing pleadings is necessary.
22

23 **II. The Court Has Authority To Order Complete Consolidation of These Complex**
24 **Consolidated Actions.**

25
26 The landowners' supplemental opposition reiterated two arguments against consolidation,
27 arguing that complex cases may never be consolidated and that complete consolidation is only allowed
28 when parties are identical. (See Supplemental Opposition filed Sept. 18, 2009 at pp. 3 – 5.) These

1 arguments were refuted in the Public Water Suppliers' moving papers and earlier reply memorandum.
2 The landowners attempted to distinguish one of the cases cited by the Public Water Suppliers,
3 *Committee for Responsible Planning v. City of Indian Wells* (1990) 225 Cal.App.3d 191. They said that
4 that case involved only a consolidation for trial, not a complete consolidation. They quoted the trial
5 court's order requiring separate findings and judgments. (*Id.* at 194.)

6 The landowners are correct that the *trial court* consolidated the cases only for trial. However, the
7 court of appeal held that this was *improper*, because the various parties' contentions were not
8 independent, but all related to the same fundamental issue: the validity of the defendant's actions.
9 Therefore, the cases were required to be consolidated for all purposes, including entry of judgment. (*Id.*
10 at 198.) The court of appeal dismissed the appeal for this reason. (*Id.* at 199.)

11 Similarly, here, the various parties' contentions are not independent, but all relate to the
12 comprehensive determination of water rights. As in *Indian Wells*, identity of parties is not required in
13 such a situation. (See also *Paduano v. Paduano* (1989) 215 Cal.App.3d 346, 351 (consolidation
14 appropriate "because the primary subject matter, and the object of both proceedings, was the same".))

15 In addition, as pointed out in the moving papers, Code of Civil Procedure section 1048 does not
16 require identity of parties, and applies by its terms to all cases, complex or not. The only requirement is
17 that there be a common question of law or fact, which has already been found for these coordinated
18 cases.

19 20 **III. Consolidation Will Not Prejudice Settlement With The Classes.**

21
22 Rebecca Willis filed an opposition asserting that consolidation would jeopardize the proposed
23 settlement between the Public Water Suppliers, the federal government, and the two classes. The only
24 reason given for this assertion is that any such settlement could likely not be finalized until the claims of
25 all the other landowners had been determined. That is incorrect. The consolidation would not expand or
26 restrict the claims made in the existing pleadings. It would still be possible for the classes' claims
27 against the Public Water Suppliers to be settled separately, subject to appropriate notice and court
28

1 approval requirements. The only difference would be that the settlement would ultimately be part of the
2 single judgment entered by the Court following consolidation.

3
4 **IV. The Motion Was Served In Compliance With The Court's Electronic Service Order.**

5
6 There is no dispute that this motion was served in full compliance with the Court's electronic
7 filing and service standing order, dated August 28, 2006. The court rules do not call for service that is
8 any more extensive than that for any other motion.

9 It should be noted that many cross-defendants filed the model answer approved by the Court.
10 The model answer expressly provides that the answering party "do[es] not intend to participate at trial or
11 other proceedings unless ordered by the Court to do so...." It appears that the Court's service list reflects
12 this, and does not include parties filing the model answer on the service list.

13
14 **V. Conclusion.**

15
16 The proposed alignment of parties suggested by the Public Water Suppliers represents a
17 workable way to manage the consolidated cases, without requiring any changes in the existing
18 pleadings. The Court has the authority to and should grant the motion for transfer and consolidation.
19 Granting the motion now will enable the case to move forward.

20
21 Dated: September 23, 2009

LAGERLOF, SENEAL, GOSNEY & KRUSE, LLP

22
23 By: _____
24 Thomas S. Bunn III
25 Attorneys for Defendant and Cross-Complainant
26 Palmdale Water District
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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES – CENTRAL DISTRICT
16

17 **ANTELOPE VALLEY GROUNDWATER
18 CASES**

19 Included Actions:
20 Los Angeles County Waterworks District No.
40 v. Diamond Farming Co., Superior Court of
21 California, County of Los Angeles, Case No.
BC 325201;
22 Los Angeles County Waterworks District No.
40 v. Diamond Farming Co., Superior Court of
23 California, County of Kern, Case No. S-1500-
CV-254-348;
24 Wm. Bolthouse Farms, Inc. v. City of
25 Lancaster, Diamond Farming Co. v. City of
Lancaster, Diamond Farming Co. v. Palmdale
26 Water Dist., Superior Court of California,
County of Riverside, Case Nos. RIC 353 840,
27 RIC 344 436, RIC 344 668

RELATED CASE TO JUDICIAL
COUNCIL COORDINATION
PROCEEDING NO. 4408

**LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40
AND ROSAMOND COMMUNITY
SERVICES DISTRICT'S JOINDER IN
THE PUBLIC WATER SUPPLIERS'
REPLY AND SEPARATE REPLY IN
SUPPORT OF MOTION TO
CONSOLIDATE CASES FOR ALL
PURPOSES**

Date: October 13, 2009
Time: 10:00 a.m.
Dept. 17C

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I.

INTRODUCTION

Los Angeles County Water Works District No. 40 and Rosamond Community Services District join in the Reply filed by the other Public Water Suppliers and offer this separate Reply in support of the Public Water Suppliers' Motion to Transfer and Consolidate for all Purposes. These coordinated cases should be consolidated for all purposes so that a single judgment can be entered that resolves the water rights stemming from the single groundwater basin at issue in all of these cases. Various parties have opposed such consolidation. Some have objected to procedural aspects of the motion itself, raising issues of sufficiency of the list of parties to the case and the method of service of the motion. Others have added to those procedural objections arguments on the substance of the motion, claiming that this Court lacks power to consolidate these cases. No one, however, has opposed the merits of consolidating these cases. It stands undisputed that there are in all of these cases common questions of law and fact; thus, the matters should be consolidated for all purposes. As for the procedural and substantive roadblocks the opposing parties have attempted to set up, none of them are valid cause to deny consolidation of these matters.

II.

ANALYSIS

A. The Motion for Consolidation is Procedurally Adequate

Numerous parties have argued (and in one case, objected to the Court even hearing the Motion) that the Motion for Consolidation is procedurally deficient for not complying with the requirements for such a motion under the Rules of Court. They assert (1) that the Motion does not list all of the named parties in the various cases sought to be consolidated, (2) that it fails to list the captions of all of the cases sought to be consolidated, with the earliest case number listed first, and (3) that the Motion was not properly served on all parties to this case. The parties raising these objections and arguments in opposition are wrong.

1 Exhibit "A" to the Public Water Suppliers' Supplemental Memorandum of Points and
2 Authorities in Support of the Motion to Consolidate, filed September 8, 2009, lists in 77 pages of
3 detail all of the parties to each of the actions sought to be consolidated on this Motion. That
4 exhibit also contains the information from the caption for each of those actions, including the
5 names of all parties and the case number for each case with the court the matter was initially filed
6 in. The Motion, and the Supplemental Points and Authorities, also were validly served on all
7 parties to these cases. The Proof of Service attached to each document indicates that it was
8 served pursuant to this Court's web site in this matter pursuant to the Court's electronic-filing
9 procedures.¹ The Motion complies with the procedural requirements under Rule of Court 3.350.
10

11 **B. Consolidation of These Already-Coordinated Cases is Substantively Appropriate**

12 Aside from the alleged procedural deficiencies discussed above, the opposing parties also
13 raise three substantive grounds for why they believe these coordinated cases cannot be
14 consolidated for all purposes. They contend that the cases cannot be consolidated (1) because
15 they are "complex," (2) because they were originally filed in different courts, and (3) because the
16 parties and the causes of action are not identical in all of the cases. None of these bases support
17 denial of consolidation of these cases for all purposes.
18

19 **1. Consolidation Under Section 1048 of the Code of Civil Procedure is not**
20 **Forbidden for "Complex" Cases**

21 The opposing parties first argue that the Court cannot order these actions consolidated
22 because consolidation is not available for "complex" cases. This argument is a red herring
23 because it is based on the wrong statutory authority for consolidation. The authorities cited in
24 support of that argument show, however, that such an argument is based on the requirement in
25

26 ¹ As such, the documents were served in an identical manner to the Notice of Motion and
27 Motion to Dismiss the Public Water Suppliers' Cross-Complaint, filed by all of the parties that
28 object to the manner of service of the Motion for Consolidation. See Proof of Service attached to
Notice of Mot. and Mot. to Dismiss Public Water Suppliers' Cross-Compl., filed May 28, 2009,
Docket No. 2759. If such service is grounds for denial of the Motion to Consolidate, it identically
would require denial of the Motion to Dismiss.

1 Section 403 of the Code of Civil Procedure that the cases to be transferred and consolidated under
2 that section must not be complex. That point is irrelevant here because the Public Water
3 Suppliers do not move for transfer and consolidation under Section 403, but instead seek
4 consolidation for all purposes under Section 1048 of the Code of Civil Procedure. In fact, the
5 original moving papers are explicit that the Motion is not brought under Section 403. See Mem.
6 P. & A., filed July 15, 2009 (Docket No. 2976) at 9, n. 1.
7

8 Section 403 is an alternative procedure that provides a shortcut to achieve a transfer and
9 consolidation of non-complex cases in different courts without first having to seek coordination
10 of those cases. The very authority that the opposing parties offer in support of their argument on
11 this point establishes that the argument does not apply to this Motion. It states that "[c]omplex
12 cases still must be coordinated through the cumbersome procedure described above (i.e.
13 appointment of a coordination judge by the Judicial Council, etc.) but any judge in any court may
14 order a 'noncomplex' case pending in another court transferred and consolidated with a case
15 pending in that judge's court." Weil & Brown, California Civ. P. Before Trial (T.R.G. 2009), ¶
16 12:405.1. This authority does not support any proposition that complex cases cannot be
17 consolidated, as the opposing parties here argue. Rather, it merely provides that the Section 403
18 shortcut of transfer and consolidation can only be used in noncomplex cases – for complex cases,
19 the "cumbersome" procedure of coordination must be employed.
20

21 These cases have already gone through that process and have already been coordinated.
22 See Ex. "1" to the July 15, 2009 Motion to Consolidate. Section 403 is not applicable here, and it
23 is not necessary. The Public Water Suppliers seek consolidation under Section 1048 of the Code
24 of Civil Procedure, which does not limit itself to non-complex cases the way Section 403 does.
25 The opposing parties have offered no authority for the proposition that Section 1048 does not
26 apply to complex cases. Accordingly their argument that these cases cannot be consolidated
27 because they are complex fails as a ground for denying consolidation. Because the matters
28 involve common questions of law and fact, consolidation for all purposes is appropriate.

1 **2. The Cases Sought to be Consolidated are Pending Before the Same Court**

2 The opposing parties also argue that consolidation is not possible here because the cases
3 sought to be consolidated were filed in three different courts (Los Angeles, Kern, and Riverside
4 Superior Courts). The requirement for consolidation under Section 1048, however, is that the
5 cases be "pending before the court" consolidating them. Code of Civil Procedure 1048 (emphasis
6 added). Pursuant to the Order coordinating these cases (Exhibit "1" to the moving papers), the
7 cases are now pending before this Court. Accordingly, this Court may order them consolidated
8 for all purposes under Section 1048 so long as they "involve[e] a common question of law or fact
9" Since there is no dispute on that issue, consolidation for all purposes is appropriate.
10

11 **3. The Cases Can be Consolidated for All Purposes Even Where the Parties and**
12 **Causes of Action in All Cases are not Identical**

13 Finally, the opposing parties argue that these cases cannot be consolidated for all purposes
14 because the parties and the causes of action in the various actions are not identical. This issue is
15 addressed in the Public Water Suppliers' original moving papers, the original reply, and in the
16 supplemental Memorandum of Points and Authorities. The opposing parties' attempt in their
17 supplemental opposition to distinguish Committee for Responsible Planning v. City of Indian
18 Wells, 225 Cal. App. 3d 191 (1990) is addressed in the Public Water Supplier's Reply to those
19 papers and requires no further analysis. These various actions, all of which seek in one way or
20 another the determination of the parties' respective rights to groundwater in the Antelope Valley
21 Basin, may, and should, be consolidated for all purposes.
22

23 **C. The McCarran Amendment Issue Weighs in Favor of Consolidation for All Purposes**

24 The opposing parties have also sought to address the McCarran Amendment in their
25 opposition papers. Such discussion adds nothing to their opposition to the consolidation of these
26 matters for all purposes. On the question of whether the cases should be consolidated, their
27 arguments about the McCarran Amendment merely assume their own conclusion that
28 consolidation is unavailable, and therefore will not solve the McCarran Amendment problem.

1 Regardless, the Federal Defendant has filed papers in support of consolidating these matters for
2 all purposes in order to resolve the McCarran Amendment issue. See Federal Defendant's
3 Response to Mot. to Transfer and Consol., filed August 3, 2009, Docket No. 3022. Consolidation
4 not only is appropriate because these various cases involve common questions of law and fact,
5 but it is vitally important to this Court's jurisdiction over these matters.

6
7 **D. The Proposed Settlement of the Class Actions Does not Weigh Against Consolidation**
8 **of these Cases for All Purposes**

9 Finally, counsel for one of the classes has filed supplemental papers in opposition to
10 consolidation of these matters for all purposes on the ground that such a consolidation would
11 jeopardize the settlement reached at a recent mediation with Justice Robie. Initially, it should be
12 noted that the settlement with the classes does not lessen the common questions of law and fact
13 existing between the cases sought to be consolidated here, and therefore does not diminish the
14 propriety of consolidating these matters. Moreover, and contrary to the Willis Class's position,
15 the proposed settlement with that class does not obviate the need for consolidation of these
16 matters because that settlement must be part of a unified (albeit consensual) judgment binding on
17 all landowners in order for this Court to maintain jurisdiction over these cases. Finally,
18 consolidation will not threaten the prospects for final approval of that settlement, for reasons
19 stated in the Public Water Suppliers' Supplemental Reply. Accordingly, the pending settlement
20 with the classes plays no role in the determination of whether these cases should be consolidated.

21
22 **III.**

23 **CONCLUSION**

24 None of the arguments raised in the various opposition papers merits denying the Public
25 Water Suppliers' Motion to Consolidate these already-coordinated cases for all purposes. The
26 Motion is procedurally proper; it lists the parties to each of the cases proposed to be consolidated,
27 contains the caption information for each of those matters, and was properly served on all parties
28 to these coordinated cases through the Court's electronic filing and service procedures.

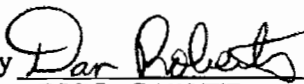
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1 Substantively, the fact that these cases involve common questions of fact and law is undisputed.
2 The fact that these cases are complex does not disqualify them from being consolidated under
3 Section 1048 of the Code of Civil Procedure. It is immaterial that these cases were initially filed
4 before different courts – they are now all pending before this Court, and therefore this Court has
5 authority under Section 1048 to consolidate them for all purposes. As for the classes, the
6 requested consolidation will not harm the proposed settlement with them. Consolidation for all
7 purposes is important in this matter so that a single judgment can be rendered determining the
8 water rights of all parties claiming such rights, and is necessary for this Court to maintain
9 jurisdiction to make that determination in light of the presence of the United States as a party
10 (who supports consolidation). For all of these reasons, Los Angeles County Waterworks District
11 No. 40 and the Rosamond Community Services District respectfully request the Court grant the
12 pending Motion for Consolidation.

13 Dated: September 23, 2009

Respectfully submitted,

BEST BEST & KRIEGER LLP

14
15
16 By 

17 ERIC L. GARNER
18 JEFFREY V. DUNN
19 DANIEL S. ROBERTS
20 STEFANIE D. HEDLUND
21 Attorneys for Defendant
22 LOS ANGELES COUNTY
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24 ROSAMOND COMMUNITY SERVICES
25 DISTRICT
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PROOF OF SERVICE

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California 92614. On September 23, 2009, I served the within document(s):

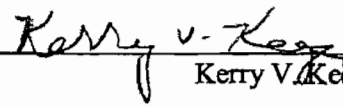
LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 AND ROSAMOND COMMUNITY SERVICES DISTRICT'S JOINDER IN THE PUBLIC WATER SUPPLIERS' REPLY AND SEPARATE REPLY IN SUPPORT OF MOTION TO CONSOLIDATE CASES FOR ALL PURPOSES

- by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 23, 2009, at Irvine, California.


Kerry V. Keefe

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

Coordination Proceeding
Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No. 4408

**ANTELOPE VALLEY GROUNDWATER
CASES**

**ORDER TRANSFERRING AND
CONSOLIDATING ACTIONS FOR
ALL PURPOSES**

Included Actions:

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

Hearing Date(s): February 5, 2010
October 13, 2009
August 17, 2009
Time: 9:00 a.m.

Location: Department 1, LASC

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348

Judge: Honorable Jack Komar

Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of
Riverside, consolidated actions, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los

*Antelope Valley Groundwater Litigation (JCCP 4408)
Los Angeles County Superior Court, Case No. BC 325 201
Order Transferring and Consolidating Actions for All Purposes*

3 The City of Palmdale, Rosamond Community Services District, Los Angeles County
4 Waterworks District No. 40, Littlerock Creek Irrigation District, Palm Ranch Irrigation District,
5 California Water Service Company, Quartz hill District, City of Lancaster, and Palmdale Water
6 District (collectively, "Public Water Suppliers") filed Motions to consolidate all of the
7 coordinated matter presently pending before the Court. The motions were heard on August 17,
8 2009 and, at the conclusion of the hearing, the Court orally stated its intent to grant the motions
9 and directed the parties to meet and confer concerning a form of order and to present to the
10 Court a proposed order granting the motion. Subsequently, proposed orders and written
11 arguments were filed and a hearing on the form of the order was held on February 5, 2010.

12 All of the included actions are complex and were ordered coordinated under the
13 provisions of Code of Civil Procedure Section 401.1. To the extent the actions were filed, or
14 were being heard in courts other than this Court, the Order of Coordination required the transfer
15 of the cases to this court for all purposes.

16 The Complaints and Cross-Complaints all include, in one form or other, declaratory
17 relief causes of action seeking determinations of the right to draw ground water from the
18 Antelope Valley basin. These claims are central to every action pending before the Court. In a
19 single aquifer, all water rights are said to be correlative to all other water rights in the aquifer.
20 A determination of an individual party's water rights (whether by an action to quiet title or one
21 for declaratory relief) cannot be decided in the abstract but must also take into consideration all
22 other water rights within a single aquifer.¹ All actions pending, therefore, of necessity involve
23 common issues of law and fact relating to the determination of the relative rights to withdraw
24 water from the Antelope Valley Groundwater Basin in the Antelope Valley and all parties to
25 the litigation claiming water rights are necessary parties to the Court adjudicating a binding
26 determination of those rights. Thus, it appears to the Court that consolidation is not only
27

28 ¹ In an earlier phase of the proceedings, the court found as a matter of fact that the area within the jurisdictional
boundaries of the valley constituted a single aquifer.

1 necessary but desirable. Entering separate judgments would not permit the court to enforce the
2 judgments once they are entered without transferring each case back to this Court.

3 It is argued by several parties that consolidating the cases will require litigating against
4 parties they did not sue and would subject them to potential costs and fees in actions to which
5 they were not parties. However, the only cause of action that would affect all parties to the
6 consolidation are the declaratory relief causes of action which seek a declaration of water rights
7 (by definition, correlative rights). If the basin is in overdraft (a fact still to be established), the
8 Court in each declaratory relief proceeding would of necessity have to look at the totality of
9 pumping by all parties, evaluate the rights of all parties who are producing water from the
10 aquifer, determine whether injunctive relief was required, and determine what solution equity
11 and statutory law required (including a potential physical solution). All other causes of action
12 could only result in remedies involving the parties who were parties to the causes of action.
13 Costs and fees could only be assessed for or against parties who were involved in particular
14 actions.

15 Consolidation will allow for the entry of single statements of decision in subsequent
16 phases specifying the identity of the parties who are subject to the particular provisions and a
17 single judgment resulting in a comprehensive adjudication of rights to water from the Antelope
18 Valley Groundwater Basin which, among other things, is intended to satisfy the requirements
19 of the McCarran Amendment, 43 U.S.C. § 666.

20 The United States is the largest land owner in the Antelope Valley and claims reserved
21 water rights under federal law. The United States was made a party defendant in this action so
22 that the declaratory relief actions could result in a complete adjudication. No party objected to
23 the participation of the United States in these coordinated actions. There is jurisdiction over the
24 United States only if authorized by Congress. The McCarran Amendment provides a limited
25 waiver of immunity for joinder in *comprehensive* adjudications of all rights to a given water
26 source. In order for there to be a *comprehensive* adjudication all parties who have a water
27 rights claim must be joined in the action and the judgment must bind all the parties. Without
28 consolidation there is risk that the United States might attempt to withdraw from the

1 proceedings for lack of a comprehensive judgment. It may be that coordination itself might
2 permit a single comprehensive judgment but consolidation would eliminate any risk of
3 uncertainty. Consolidation of the water rights claims will result in a comprehensive
4 adjudication and a judgment that will affect all the parties. Complete consolidation will permit
5 these matters to proceed as an *inter se* adjudication of the rights of all the parties to these
6 consolidated cases to withdraw groundwater from the Antelope Valley Groundwater Basin.

7 While there is a dearth of case law on the issue of consolidation in coordinated cases, it
8 does seem that Code of Civil Procedure Section 1048 applies in these cases and authorizes a
9 consolidation that will result in a final judgment. The California Rules of Court 3.451 requires
10 active management by the coordination trial judge and specifically provides for separate and
11 joint trials of causes of action and issues, as the court in its discretion might order.

12 Pursuant to Rule 3.545(d) of the Rules of Court, certified copies of the judgments
13 bearing the original case numbers of the cases must be entered in the courts where the cases
14 were being heard immediately prior to coordination and unless the coordination judge orders
15 otherwise, the judgments are enforced in those original jurisdictions. However, Rule 3.545(d)
16 empowers the court to provide for the court in which post judgment proceedings will occur and
17 to provide for the court in which any ancillary proceedings will be heard. In this case, that court
18 should be the coordination court in order to ensure proper enforcement of the judgment or
19 judgments.

20 This order of consolidation will not preclude any parties from settling any or all claims
21 between or among them, as long as any such settlement expressly provides for the Court to
22 retain jurisdiction over the settling parties for purposes of entering a judgment resolving all
23 claims to the rights to withdraw groundwater from the Antelope Valley Groundwater Basin as
24 well as the creation of a physical solution if such is required upon a proper finding by the
25 Court. Upon appropriate motion and the opportunity for all parties in interest to be heard, the
26 Court may enter a final judgment approving any settlements, including the *Willis and Wood*
27 class settlements, that finally determine all cognizable claims for relief among the settling
28 parties for purposes of incorporating and merging the settlements into a comprehensive single

1 judgment containing such a declaration of water rights and a physical solution. Any such
2 settlement can only affect the parties to the settlement and cannot have any affect on the rights
3 and duties of any party who is not a party to any such settlement. Complete consolidation shall
4 not preclude or impair any class' right to seek the entry of a final judgment after settlement.

5 Therefore it is ordered as follows:

6 Except as otherwise stated below the motion to transfer and to consolidate for all
7 purposes is **GRANTED**.

- 8 1. To the extent not previously transferred as a result of the Judicial Council's
9 order of coordination, all matter presently pending under the Judicial Council
10 Coordination Proceeding No. 4408 are ordered transferred from the Riverside
11 County Superior Court and Kern County Superior Court to the Los Angeles
12 County Superior Court, the Honorable Jack Komar, judge presiding by special
13 assignment.
- 14 2. The following actions are consolidated for all purposes because declaratory
15 relief concerning rights to the ground water in the single aquifer is central to
16 each proceeding:
 - 17 a. *Wm. Bolthouse Farms, Inc. v. City of Lancaster, et al.*, Riverside County
18 Superior Court, Case No. RIC 353840;
 - 19 b. *Diamond Farming Co., et al. v. City of Lancaster, et al.*, Riverside County
20 Superior Court, Case No. RIC 3444436;
 - 21 c. *Diamond Farming Co. v. Palmdale Water District, et al.*, Riverside County
22 Superior Court, Case No. RIC 344668;
 - 23 d. *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., et*
24 *al.*, Kern County Superior Court, Case No. S-1500-CV-254-348;
 - 25 e. *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., et*
26 *al.*, Los Angeles County Superior Court, Case No. BC 325201;
 - 27 f. *Rebecca Lee Willis, et al. v. Los Angeles County Waterworks District No. 40,*
28 *et al.*, Los Angeles County Superior Court, Case No. BC 364553;

1 g. *Richard A. Wood, et al. v. Los Angeles County Waterworks District No. 40, et*
2 *al.*, Los Angeles County Superior Court, Case No. BC 391869; and

3 h. And all cross-complaints filed in any of the above-referenced actions.

4 3. The action entitled *Sheldon R. Blum, Trustee for the Sheldon R. Blum Trust v.*
5 *Wm. Bolthouse Farms, Inc.*, Los Angeles County Superior Court, Case No. 1-
6 05-CV-049053, is not consolidated, but shall remain related and coordinated
7 with the actions and cross-actions referenced in paragraph 3 above.

8 4. The Court has ordered a Case Management Conference at which it will hear
9 arguments concerning the order in which common issues will be heard and to
10 set the matter for further trial. It is the Court's present intent to first schedule
11 trial on the common issues relating to declaratory relief which will include the
12 determination of overall condition of groundwater basin:

- 13 1. Safe Yield
- 14 2. Overdraft

15 5. The determination of rights to withdraw groundwater, and claims to
16 prescription, issues affecting appropriation, municipal/domestic priority, rights
17 to imported water/storage rights, return flow rights, reasonable and beneficial
18 use of water, recycled water, quiet title, export of water, determination of
19 federal reserved right to water and physical solution may follow.

20 6. The following described causes of action for damages and other declaratory
21 relief will proceed after the determination of the issues identified in paragraphs
22 4 and 5 above. Any waiver of immunity by the United States under the
23 McCarran Amendment does not extend to these claims; jurisdiction over the
24 United States does not attach to these claims or causes of action alleging these
25 claims, and any determination on these claims shall not bind or otherwise
26 adversely affect the rights of the United States:

- 27 a) Conversion
- 28 b) Nuisance

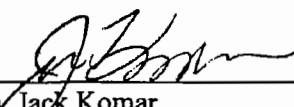
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- c) 42 U.S.C. § 1983
- d) Takings/Inverse Condemnation
- e) Trespass

7. Any claim to declaratory relief regarding basin boundaries has been determined by the Court by Order dated November 6, 2008. To the extent any current party was not a party at the time of the determination of this issue, that party may seek to reopen or, consistent with the order, move to amend the basin boundary.

SO ORDERED.

Dated: FEB 19 2010



Hon. Jack Komar
Judge of the Superior Court

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2

3

COUNTY OF LOS ANGELES

4

5

6 IN RE:

7 ANTELOPE VALLEY GROUNDWATER
8 CASES.

)
)
) JUDICIAL COUNCIL
) COORDINATION NO. 4408
)
) SANTA CLARA COUNTY CASE
) NO. 1-05-CV-049053
) (FOR COURT'S USE ONLY)

10 _____

11

12

13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14

BEFORE THE HONORABLE JACK KOMAR

15

JUDGE OF THE SUPERIOR COURT

16

17

AUGUST 17, 2009

18

19

MOTIONS
(SEE FOLLOWING PAGE)

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1 MOTIONS:

2 1. MOTION BY THE PUBLIC WATER SUPPLIERS TO TRANSFER

2009 8 17 antelope-e (2)

3 AND TO CONSOLIDATE CASES FOR ALL PURPOSES ALL MATTERS
4 PRESENTLY PENDING UNDER JUDICIAL COUNCIL PROCEEDING
5 NO. 4408 FROM THE SUPERIOR COURTS OF RIVERSIDE COUNTY,
6 LOS ANGELES COUNTY AND KERN COUNTY, SPECIALLY ASSIGNED
7 TO THE HONORABLE JACK KOMAR.

8

9 2. CONTINUED HEARING ON MOTION BY PLAINTIFF RICHARD
10 WOOD FOR ORDER ALLOCATING COSTS OF COURT-APPOINTED
11 EXPERT WITNESS.

12

13 3. MOTION BY PLAINTIFF REBECCA WILLIS FOR APPOINTMENT
14 OF EXPERT WITNESS.

15

16 4A. CONTINUED HEARING ON THE MOTION BY DEFENDANTS TO
17 DISMISS THE PUBLIC WATER SUPPLIERS' FIRST AMENDED
18 CROSS-COMPLAINT FILED ON JANUARY 10, 2007; AND (4B)
19 JOINDER BY CROSS-DEFENDANT ANTELOPE VALLEY JOINT UNION
20 HIGH SCHOOL DISTRICT.

21

22 5. MOTION BY CITY OF LANCASTER, ET AL., TO STAY
23 PROCEEDINGS FOR SIX MONTHS, OR ALTERNATIVELY, CONTINUE
24 TRIAL SETTING CONFERENCE.

25

26 6. CONTINUED HEARING ON REQUEST BY BOLTHOUSE TO AMEND
27 THE EXHIBITS TO ITS AMENDED CROSS-COMPLAINT.

28

29 7. CONTINUED HEARING ON MOTION BY CALIFORNIA WATER
30 SERVICE COMPANY FOR LIMITED RELIEF FROM NOTICE
31 REQUIREMENTS.

32

33

34

35

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APPEARANCES:

41 ATTORNEYS:

42 IN COURT:

43 DOUGLAS EVERTZ
44 JEFFREY DUNN

2009 8 17 antelope-e (2)

5 DANIEL O'LEARY
MICHAEL MC LACHLAN
6 BRADLEY WEEKS
WHITNEY MC DONALD
7 FRANCIS LOGAN
WILLIAM SLOAN
8 ROBERT KUHS
MICHAEL FIFE
9 MICHAEL MOORE
SCOTT KUNEY
10 RALPH KALFAYAN
SHELDON BLUM
11 THOMAS BUNN
JAMES DUBOIS
12 R. LEE LEININGER
BOB JOYCE
13 RICHARD ZIMMER

14

15 TELEPHONIC APPEARANCES:

16 TAMMY L. JONES
REBECCA DAVIS-STEIN
17 MICHAEL L. CROW
STEPHEN M. SIPTROTH
18 BRADLEY J. HERREMA
STEVEN K. BECKETT
19 JOHN S. TOOTLE
CHRISTOPHER M. SANDERS
20 ANNA MILLER
MARLENE A. ALLEN
21 MICHAEL D. DAVIS
EDWARD S. RENWICK
22 JOHN UKKESTAD
JANET K. GOLDSMITH
23 CLIFF MELNICK
BRIAN MARTIN
24 RICHARD A. WOOD
CHRISTINE CARSON

25

26 OFFICIAL COURT REPORTER:

27 HEATHER J. GORLEY,
CRR CSR #9195

28

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4

1 SAN JOSE, CALIFORNIA AUGUST 17, 2009

2 P R O C E E D I N G S

3 THE COURT: GOOD MORNING.

4 THIS IS IN THE ANTELOPE MATTER. WE HAVE A LOT OF
5 PEOPLE HERE AND A NUMBER OF PEOPLE ON THE TELEPHONE.

6 WHY DON'T WE ASK YOU TO IDENTIFY YOURSELF, FOR WHOM YOU
7 ARE APPEARING AS YOU SPEAK. I TAKE IT YOU HAVE ALL

Page 3

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8 CHECKED IN WITH THE CLERK; IS THAT RIGHT?

9 MS. GOLDSMITH: NO. JAN GOLDSMITH WITH THE
10 CITY OF LOS ANGELES.

11 THE COURT: I KNOW THE TELEPHONIC PEOPLE
12 HAVEN'T. I AM REFERRING TO THE PEOPLE IN THE
13 COURTROOM. LET'S FIND OUT WHO IS IN THE COURTROOM AND
14 THE CLERK WILL CALL ROLL AS TO THOSE PEOPLE.

15 THE CLERK: TAMMY JONES.

16 MS. JONES: PRESENT.

17 THE CLERK: REBECCA DAVIS-STEIN.

18 MS. DAVIS-STEIN: PRESENT.

19 THE CLERK: MICHAEL CROW.

20 MR. CROW: PRESENT.

21 THE CLERK: STEVEN SIPTROTH.

22 MR. SIPTROTH: PRESENT.

23 THE CLERK: BRADLEY HERREMA.

24 MR. HERREMA: PRESENT.

25 THE CLERK: STEVEN BECKETT.

26 MR. BECKETT: PRESENT.

27 THE CLERK: WILLIAM BRUNICK.

28 JOHN TOOTLE.

♀

5

1 MR. TOOTLE: PRESENT.

2 THE CLERK: CHRISTOPHER SANDERS.

3 MR. SANDERS: PRESENT.

4 THE CLERK: ANNA MILLER.

5 MS. MILLER: PRESENT.

6 THE CLERK: MARLENE A. ALLEN.

7 MS. ALLEN: PRESENT.

8 THE CLERK: MICHAEL DAVIS.

9 MR. DAVIS: PRESENT.

10 THE CLERK: EDWARD RENWICK.
11 MR. RENWICK: PRESENT.
12 THE CLERK: JEFF GREEN.
13 JOHN UKKESTAD.
14 MR. UKKESTAD: PRESENT.
15 THE CLERK: JANET GOLDSMITH.
16 MS. GOLDSMITH: PRESENT.
17 THE CLERK: MALISSA MC KEITH.
18 CLIFF MELNICK.
19 MR. MELNICK: PRESENT.
20 THE CLERK: BRIAN MARTIN.
21 MR. MARTIN: PRESENT.
22 THE CLERK: RICHARD WOOD.
23 MR. WOOD: PRESENT.
24 THE CLERK: CHRISTINE CARSON.
25 MS. CARSON: PRESENT.
26 THE COURT: ALL RIGHT. IS THERE ANYBODY ON
27 THE TELEPHONE WHOSE NAME HAS NOT BEEN CALLED?
28 ALL RIGHT. I WILL JUST REMIND YOU IF YOU'RE ON

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6

1 THE TELEPHONE, CELL PHONES ARE NOT ACCEPTABLE.
2 ALL RIGHT. WE HAVE A NUMBER OF MATTERS TO TAKE
3 UP AT THIS TIME AND I'M GOING TO START WITH THE MOTION
4 TO TRANSFER AND CONSOLIDATE THAT WAS FILED BY THE
5 PUBLIC WATER SUPPLIERS. IF COUNSEL ARE GOING TO APPEAR
6 ON THAT, WOULD YOU STEP FORWARD, PLEASE.
7 I WANT ALL OF YOU WHO ARE GOING TO APPEAR ON THIS
8 MATTER TO STEP FORWARD AND STATION YOURSELF AND I AM
9 GOING TO ASK YOU TO IDENTIFY YOURSELVES AND FOR WHOM
10 YOU ARE APPEARING. AND THEN I WOULD FURTHER ASK YOU
11 NOT TO SHIFT YOUR POSITION SO THAT THE REPORTER WILL
12 KNOW WHO YOU ARE. AND IF YOU WOULD GET INTO A SINGLE

13 LINE OVER THERE. COUNSEL.

14 THE COURT: WE WILL START WITH MR. ZIMMER.

15 MR. ZIMMER: MR. ZIMMER FOR BOLTHOUSE FARMS
16 AND BOLTHOUSE PROPERTIES.

17 MR. SLOAN: WILLIAM SLOAN FOR U.S. BORAX.

18 MR. KALFAYAN: RALPH KALFAYAN FOR THE WILLIS
19 CLASS.

20 MR. MC LACHLAN: MIKE MC LACHLAN FOR THE SMALL
21 PUMPER CLASS.

22 MR. JOYCE: BOB JOYCE FOR DIAMOND FARMING
23 COMPANY, ET AL.

24 MR. MC DONALD: WHITNEY MC DONALD FOR THE CITY
25 OF PALMDALE.

26 MR. DUNN: JEFFREY DUNN FOR ROSAMUND COMMUNITY
27 SERVICES DISTRICT AND LOS ANGELES COUNTY WATERWORKS
28 DISTRICT NUMBER 40.

♀

7

1 MR. BUNN: THOMAS BUNN FOR PALMDALE WATER
2 DISTRICT.

3 MR. WEEKS: BRAD WEEKS FOR QUARTIL WATER
4 DISTRICT.

5 MR. LOGAN: FRANCIS LOGAN FOR PHELON PINON
6 HILLS COMMUNITY SERVICES DISTRICT.

7 MR. DUBOIS: JAMES DUBOIS FOR THE UNITED
8 STATES.

9 MR. LEININGER: LEE LEININGER FOR THE UNITED
10 STATES.

11 THE COURT: ALL RIGHT. I HAVE READ THE
12 MOTION. THE MOTION IS ESSENTIALLY TO TRANSFER AND
13 CONSOLIDATE THE VARIOUS MATTERS INTO A SINGLE
14 PROCEEDING WITHIN THE COORDINATED CASE ASSIGNMENT THAT

15 I HAVE HERE.

16 MY ONLY CONCERN ABOUT THIS -- AND I'M GOING TO
17 PERMIT FURTHER ARGUMENT IF YOU WISH TO MAKE IT IN
18 OPPOSITION, MY ONLY CONCERN IS THAT I DO NOT HAVE A
19 HANDLE ON ALL OF THE PLEADINGS THAT HAVE BEEN FILED IN
20 THIS MATTER.

21 I WILL MAKE AN OBSERVATION AND THAT IS THAT IT
22 SEEMS TO ME THAT BECAUSE WE'RE DEALING WITH CORRELATIVE
23 WATER RIGHTS, THE COURT HAS FOUND THIS TO BE A SINGLE
24 AQUIFER, THAT THE CORRELATIVE RIGHTS THAT HAVE BEEN
25 RAISED IN THE VARIOUS PROCEEDINGS WOULD MILITATE IN
26 FAVOR OF A SINGLE CONSOLIDATED AND TRANSFERRED MATTER.
27 BUT IF ANYBODY -- AND MY CONCERN IS NOT HAVING THE
28 MATRIX THAT WE'VE BEEN TALKING ABOUT FOR A LONG TIME,

♀

8

1 IT MAKES IT VERY DIFFICULT FOR THE COURT TO MAKE A
2 FINDING OF FACT THAT WOULD JUSTIFY THE CONSOLIDATION
3 AND THE TRANSFER OF THESE VARIOUS PROCEEDINGS TO THIS
4 COORDINATED ACTION.

5 COUNSEL WHO WISH TO SPEAK IN OPPOSITION BEYOND
6 WHAT'S IN YOUR PAPERS, I WOULD BE HAPPY TO HEAR YOUR
7 ARGUMENTS.

8 MR. JOYCE: YOUR HONOR, MAYBE I CAN SPEAK
9 FIRST BECAUSE AS THE COURT IS AWARE WE FILED A FORMAL
10 OBJECTION TO EVEN HEARING THE MOTION PREMISED UPON THE
11 DEFECTS WHICH WERE NOTED IN THE MEMORANDUM OF POINTS
12 AND AUTHORITIES IN SUPPORT OF THE OBJECTION. AND I
13 THINK THE OBJECTION AND THE COURT'S OBSERVATION GO TO
14 THE HEART OF AND THE DEFICIENCY OF THE MOTION IN THE
15 FIRST INSTANCE, AND THAT IS THE ABSENCE OF THE VERY
16 MATRIX THAT THE COURT FEELS THE NECESSITY TO HAVE AND
17 WHICH, IN FACT, THE RULES OF COURT WOULD OTHERWISE

18 COMPEL THEM TO PROVIDE TO THE COURT AS A PART OF THE
19 MOVING PAPERS THEMSELVES.

20 SO IT IS THE FUNDAMENTAL DEFECT IN THE MOTION
21 ITSELF WHICH DEPRIVES THE COURT OF THE VERY INFORMATION
22 THE COURT FEELS THE NECESSITY TO HAVE BEFORE IT IN
23 ORDER TO PROPERLY RULE UPON THE MOTION IN THE FIRST
24 INSTANCE.

25 THE ONLY REMEDY AT THIS POINT WOULD BE A
26 CONTINUATION. LET THEM REFILE IT, LET THEM DO IT
27 CORRECTLY, LET THEM GIVE YOU THE MATRIX YOU NEED SO THE
28 COURT CAN PROPERLY EVALUATE THE CASE, ALL OF THE

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9

1 PLEADINGS, ALL THE COMPETING CAUSES OF ACTIONS AND WHO,
2 IN FACT, IS PARTIES TO WHAT ACTION AND WHO IS NOT
3 PARTIES TO OTHERS.

4 BECAUSE WHAT THE COURT IS SUGGESTING IS THAT
5 YOU'RE GOING TO MAKE EVERYBODY ESSENTIALLY CROSS-
6 DEFENDANTS, WILLINGLY OR OTHERWISE, UNDER THE FIRST
7 AMENDED CROSS-COMPLAINT BROUGHT BY THE WATER
8 PURVEYORS. AND THAT RAISES A NUMBER OF PROCEDURAL
9 ISSUES SEPARATE AND APART FROM THE MOTION TO
10 CONSOLIDATE I WILL REFER TO CLASS COUNSEL TO ADDRESS
11 BECAUSE THAT'S SEPARATE.

12 THE COURT: WELL, IT SEEMS TO ME THAT ONE OF
13 THE THINGS THAT IS HAPPENING IS THERE ARE SOME
14 DISCUSSIONS GOING ON WITH JUSTICE ROBIE ON THE 2ND OF
15 SEPTEMBER, I BELIEVE, BETWEEN THE PUBLIC WATER
16 SUPPLIERS AND THE CLASS COUNSEL THAT MAY HAVE SOME
17 IMPACT ON THE ISSUES THAT YOU'RE TALKING ABOUT AT THIS
18 POINT, THE SUBSEQUENT 308 ISSUE IN PARTICULAR.

19 IT WAS NOT MY INTENT TO GRANT THE MOTION TODAY.

20 IT IS, HOWEVER, MY INTENT TO CONTINUE IT, NOT THAT IT
21 SHOULD BE REFILED. I DON'T THINK THAT'S NECESSARY, BUT
22 CONTINUED FOR SUPPLEMENTAL BRIEFING BY THE MOVING PARTY
23 AND THE PRESENTATION OF SUFFICIENT EVIDENCE SO THE
24 COURT CAN MAKE A DECISION BASED UPON THE FACTS RATHER
25 THAN JUST BASED ON OUR SPECULATION ABOUT WHAT'S
26 INVOLVED HERE.

27 BUT THERE'S NO QUESTION WE'RE TALKING ABOUT
28 CORRELATIVE WATER RIGHTS THROUGHOUT THE AQUIFER, BASED

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10

1 UPON THE FINDING THE COURT HAS MADE THAT THERE'S A
2 SINGLE BASIN HERE. HOW THIS IS GOING TO IMPLICATE THE
3 TWO CLASSES THAT WE HAVE, I THINK WE NEED SOME FURTHER
4 BRIEFING ON THAT, AND I KNOW THAT I HAVE RECEIVED
5 SUFFICIENT OPPOSITION SO THAT I UNDERSTAND THE
6 POSITIONS THE PARTIES ARE TAKING IN OPPOSITION, SO --

7 MR. JOYCE: YOUR HONOR, THE ONLY OTHER POINT I
8 WOULD RAISE IS THE REASON I WAS SUGGESTING THEY BE
9 ORDERED TO REFILE THE MOTION IS I THINK UNDER THE
10 RULINGS OF THE COURT, AND I THINK UNDER THE FUNDAMENTAL
11 CONCEPTS OF DUE PROCESS, THE MOTION NEEDS TO BE
12 RESERVED AS WELL. THE COURT NEED ONLY LOOK AT THE
13 COURT WEB SITE LIST OF PARTIES WHO ARE REGISTERED, AND
14 WHO RECEIVE NOTICE IN THAT FORM, AS TO THE TOTALITY OF
15 THE NUMBER OF PARTIES THAT ARE IN THE ACTION TO REALIZE
16 THIS ACTION WAS NOT SERVED ON EVERYONE WHOSE INTEREST
17 THEN HAS A RIGHT TO BE HEARD.

18 THE COURT: WELL, OBVIOUSLY THE PAPERS NEED TO
19 BE SERVED ON EVERYBODY WHO IS A PARTY TO THIS LAWSUIT
20 BECAUSE THEY ARE ALL AFFECTED, BUT I DON'T KNOW WHO THE
21 PARTIES ARE AT THIS POINT AND SO THAT MAKES IT A LITTLE
22 BIT DIFFICULT.

23 AND THE SECOND CONCERN I HAVE IS -- IT IS NOT
24 REALLY A CONCERN -- I KNOW THE MOVING PARTY OR PARTIES
25 WILL, IN FACT, SERVE ALL THE SUPPLEMENTAL PAPERS AS
26 WELL TO EVERYBODY ELSE, BUT I AM NOT GOING TO ORDER IT
27 BE REFILED. I THINK THAT THE -- HOWEVER, IF MOVING
28 PARTIES WOULD LIKE TO ADDRESS THE COURT ON THIS ISSUE I

‡

11

1 WOULD BE HAPPY TO HEAR THAT.

2 MS. MC DONALD: WE WOULD, YOUR HONOR.

3 AGAIN, WHITNEY MC DONALD FOR THE CITY OF
4 PALMDALE.

5 I THINK THAT THE DUE PROCESS CONCERNS THAT
6 MR. JOYCE HAD MENTIONED REALLY AREN'T IN ISSUE HERE
7 BECAUSE THERE'S NO QUESTION ABOUT WHO MAY OR MAY NOT BE
8 JOINED IN THE MOTION TO CONSOLIDATE. WE WISH TO HAVE
9 EVERY PLEADING AND EVERY CAUSE OF ACTION, EVERY PARTY A
10 PARTY TO THE CONSOLIDATED ACTION. GOING THROUGH THE
11 EXERCISE OF LISTING WHO EACH PARTY IS, OF COURSE WE
12 WILL DO THAT IF YOUR HONOR WISHES.

13 THE COURT: IT IS MORE THAN AN EXERCISE,
14 COUNSEL. IT'S A DESCRIPTION OF ALL THE PARTIES THAT
15 ARE GOING TO BE CONSOLIDATED INTO THIS PROCEEDING SO
16 THAT THE COURT CAN THEN ALIGN THE PLEADINGS
17 APPROPRIATELY. IT'S NOT AN EXERCISE. IT DOES GO TO
18 THE SUBSTANCE OF THE MOTION.

19 MR. MC DONALD: I UNDERSTAND, YOUR HONOR. AND
20 THAT DOES MAKE SENSE GOING TOWARD THE ISSUE OF
21 ALIGNMENT AS OPPOSED TO GOING TO THE ISSUE OF WHETHER
22 OR NOT CONSOLIDATION WILL BE ORDERED AT ALL.

23 AND IN TERMS OF SERVING THE MOTION ON ALL
24 PARTIES, IT IS OUR UNDERSTANDING AND BELIEF THAT BY

25 POSTING THE MOTION ON THE WEB SITE THAT THAT

26 ACCOMPLISHES THAT GOAL.

27 THE COURT: THAT'S PART OF THE COURT'S ORDER

28 IN THIS MATTER.

♀

12

1 MS. MC DONALD: CORRECT. AND SO TO THE EXTENT

2 THAT THE PARTIES IN OPPOSITION WISH US TO ACTUALLY

3 SERVE PAPER COPIES TO PARTIES WHO HAVE NOT YET

4 APPEARED, THAT'S REALLY AN ATTACK ON THE ELECTRONIC

5 SERVICE ORDER SO --

6 THE COURT: WELL, AS TO PARTIES WHO HAVEN'T

7 APPEARED, IF THEY HAVE BEEN PREVIOUSLY SERVED THEY ARE

8 SUBJECT TO THE COURT'S ORDER OF ELECTRONIC FILING.

9 MS. MC DONALD: THAT IS OUR UNDERSTANDING AS

10 WELL, YOUR HONOR. SO IN TERMS OF -- IF -- IN ORDER TO

11 HAVE EVERYTHING CONSOLIDATED WE WILL, OF COURSE,

12 PROVIDE THE COURT WITH THE INFORMATION THAT IT REQUESTS

13 IN ORDER TO ALIGN THE PARTIES ON WHICH SIDE, AND THAT

14 MAKES COMPLETE SENSE. IN TERMS OF WHETHER OR NOT IT

15 ACTUALLY IS CONSOLIDATED, WE WHOLEHEARTEDLY AGREE THIS

16 IS AN ACTION TO DETERMINE CORRELATIVE RIGHTS WHICH

17 INVOLVES DETERMINING EVERYBODY'S RIGHTS IN COMPARISON

18 TO THE OTHER PARTIES. SO ONE JUDGMENT AND ONE

19 CONSOLIDATED ACTION MAKES COMPLETE SENSE.

20 THE COURT: WELL, YOU KNOW, I HAVE LOOKED AT

21 MOST OF THE PLEADINGS SOMEWHERE ALONG THE LINE HERE.

22 AND MY RECOLLECTION IS THAT IN VIRTUALLY ALL OF THEM,

23 IF NOT ALL OF THEM, THERE IS A CAUSE OF ACTION FOR

24 DECLARATORY RELIEF, AND THAT IS FOR DECLARATORY RELIEF

25 AS TO THE RIGHTS TO THE WATER WITHIN THE AQUIFER. SO

26 THAT IT DOES SEEM TO ME THERE IS CERTAINLY SOME

27 COMMONALTY TO ALL OF THESE ACTIONS, BUT LET'S GET THEM

Page 11

28 SET FORTH SO WE KNOW EXACTLY WHO THEY ARE, WHO COUNSEL
♀

13

1 ARE REPRESENTING THEM AND SO ON.

2 MS. MC DONALD: THAT MAKES SENSE, YOUR HONOR.

3 I HAVE ONE PROPOSAL. IF IT MAKES SENSE TO YOU,
4 WHAT WE CAN DO IS LODGE A PROPOSED ORDER THAT LISTS ALL
5 OF THAT INFORMATION FOR YOU AND, OF COURSE, THE PARTIES
6 IN OPPOSITION MAY COMMENT ON THAT, IF THAT'S ONE WAY
7 THAT WOULD MAKE SENSE TO YOU.

8 THE COURT: I'M JUST INTERESTED IN HAVING THE
9 EVIDENCE PRESENTED TO THE COURT THAT WOULD JUSTIFY THE
10 CONSOLIDATION OF THE PROCEEDINGS SO THAT THE PARTIES
11 CAN THEN SPECIFICALLY OBJECT RATHER THAN -- I'VE GOT A
12 NUMBER OF GENERALIZED OBJECTIONS THAT REALLY DON'T GO
13 TO THE HEART OF THE ISSUES AND DON'T PERMIT ME TO HAVE
14 A FULL UNDERSTANDING, ANYMORE THAN THE MOTION ITSELF
15 PERMITS THE COURT TO HAVE A FULL UNDERSTANDING OF -- OF
16 WHAT WE'RE ABOUT TO DO HERE. SO IT SEEMS TO ME IT
17 NEEDS TO BE IN PROPER FORM SUBJECT TO A DECLARATION AND
18 PERHAPS EVEN A REQUEST TO TAKE JUDICIAL NOTICE. AND
19 THAT, OF COURSE, REQUIRES YOU TO SET OUT WHAT IT IS
20 THAT YOU WANT THE COURT TO NOTICE AND THE BASIS FOR IT.

21 MS. MC DONALD: OKAY. I UNDERSTAND, YOUR
22 HONOR.

23 THE COURT: SO I'M NOT TELLING YOU HOW TO DO
24 IT. I AM TELLING YOU WHAT I NEED TO HAVE --

25 MS. MC DONALD: OKAY. I UNDERSTAND.

26 THE COURT: -- TO EVALUATE THE MOTION.

27 MS. MC DONALD: SO IT'S A -- ESSENTIALLY WHAT
28 ALL THE OPERATIVE PLEADINGS ARE, THE PARTIES TO THOSE

♀

14

1 PLEADINGS AND --

2 THE COURT: YES.

3 MS. MC DONALD: OKAY. I UNDERSTAND.

4 MR. JOYCE: YOUR HONOR, ONE LAST COMMENT ON
5 THE ISSUE. AND I WOULD ASK THE COURT TO TAKE JUDICIAL
6 NOTICE OF ITS OWN WEB SITE AND MORE SPECIFICALLY THE
7 PERSONAL SERVICES THAT HAVE BEEN POSTED PERIODICALLY BY
8 LOS ANGELES WATER DISTRICT 40. A QUICK SCAN WILL MAKE
9 READILY APPARENT TO THE COURT NONE OF THOSE PROOFS OF
10 SERVICE HAVE ANY REFERENCE TO OR MENTION THE COURT'S
11 ELECTRONIC POSTING OR SERVICE ORDER AS HAVING BEEN PART
12 OF THE PACKAGE OF DOCUMENTATION SERVED. AND AS I
13 OBSERVED IN THE OBJECTION, IT'S ABUNDANTLY CLEAR THAT
14 THE GROSS NUMBER OF PARTIES THAT ARE CURRENTLY
15 REGISTERED WITH THE COURT'S ELECTRONIC SERVICE AND
16 POSTING VEHICLE, AS CONTRASTED TO THE GROSS NUMBER OF
17 PARTIES WHO HAVE ALLEGEDLY BEEN SERVED AND ALSO WHO
18 HAVE FILED APPEARANCES, IS MONUMENTALLY DISPARATE.

19 AND THE PROOF OF SERVICE FILED IN CONNECTION WITH
20 THE MOTION HAS NO SUPPORT NOR WOULD JUSTIFY THE COURT
21 IN CONCLUDING THAT ALL PARTIES AFFECTED BY THE MOTION
22 HAVE BEEN PROPERLY SERVED WITH THE MOTION.

23 THE COURT: WELL, I THINK YOU ARE JUMPING THE
24 GUN. YOU ARE A LITTLE BIT AHEAD OF YOURSELF ON THIS.

25 LET ME SEE THE MOTION THAT HAS BEEN FILED WITH
26 THE APPROPRIATE ATTACHMENTS AND REFERENCES AND REQUESTS
27 FOR JUDICIAL NOTICE SO I CAN EVALUATE WHAT IT IS YOU
28 JUST SAID. OKAY.

♀

15

1 MR. SLOAN: WILLIAM SLOAN FOR U.S. BORAX.
2 FIRST, I WOULD APPRECIATE IT IF WE COULD HAVE A LITTLE
3 MORE CLARITY IN TERMS OF WHAT THE DECLARATIONS WOULD

4 SAY. AND WILL WE ACTUALLY GET A DECLARATION FROM EACH
5 PUBLIC WATER SUPPLIER AS A PARTY TO THE FIRST AMENDED
6 CROSS-COMPLAINT?

7 THE COURT: YOU'RE ASKING THE WRONG PERSON.

8 MR. SLOAN: I WOULD LIKE TO PUT ON THE RECORD
9 I WOULD LIKE TO ALSO RESERVE THE ISSUE THAT WE HAD
10 RAISED RECENTLY IN OUR PAPERS, IN OUR CASE MANAGEMENT
11 CONFERENCE STATEMENT. AND I KNOW THAT IS NOT THE
12 PROPER VEHICLE BUT WE RECENTLY HAD SOME PARTIES
13 DISMISSED WITH PREJUDICE FROM THE FIRST AMENDED CROSS-
14 COMPLAINT, AT LEAST AS TO SOME CROSS-COMPLAINANTS. AND
15 SO I WOULD JUST LIKE TO CONFIRM WITH THE COURT THAT THE
16 MOTION TO DISMISS WILL BE STAYED UNTIL WE HAVE THESE
17 LATEST BRIEFINGS.

18 THE COURT: YOU ARE TALKING ABOUT YOUR MOTION
19 TO DISMISS THE CROSS-COMPLAINT.

20 MR. SLOAN: YES, YOUR HONOR.

21 THE COURT: I THINK THAT OBVIOUSLY HAS TO BE
22 DEFERRED UNTIL WE GET THIS MOTION BECAUSE IT KIND OF
23 PARTAKES OF THE SAME ISSUE.

24 MR. SLOAN: YES.

25 THE COURT: AND, IN ANY EVENT, SO YES.

26 NOW, BEFORE I ASK FOR A DATE FOR A HEARING ON
27 THIS, I WANT TO KNOW IF ANYBODY ELSE HAS ANY FURTHER
28 ARGUMENT.

♀

16

1 MR. MC LACHLAN: MICHAEL MC LACHLAN FOR
2 THE SMALL PUMPER CLASS.

3 YOUR HONOR, FROM OUR PERSPECTIVE, WE WOULD LIKE
4 TO SEE SOMETHING THAT GOES A LITTLE BEYOND JUST A -- IT
5 WILL BE A RATHER LENGTHY SUMMARY OF THE PLEADINGS

6 BETWEEN THE PARTIES BUT I THINK WE ALSO NEED TO KNOW
7 WHAT THIS ANIMAL IS GOING TO LOOK LIKE. THEY ARE
8 PROPOSING CONSOLIDATION BUT THEY GIVE NO, WHATSOEVER,
9 NO SENSE OF WHAT IT'S GOING TO LOOK LIKE WHEN IT COMES
10 OUT THE BACK END OF THE PIPE. AND SPECIFICALLY WHO'S
11 GOING TO BE A PLAINTIFF IN THIS NEW CONSOLIDATED
12 PROCEEDING AND WHO IS GOING TO BE A DEFENDANT, BECAUSE
13 OBVIOUSLY IN BOTH OF THE CLASSES WE HAVE THE SAME 12 TO
14 14 PUBLIC WATER SUPPLIERS AS DEFENDANTS WHO ARE, IN A
15 SENSE, IN THE MAIN ACTION PLAINTIFFS.

16 SO IF IT'S GOING TO BE -- THE MOTION ASKS FOR
17 COMPLETE CONSOLIDATION AND I ASSUME THAT IS WHAT WE'RE
18 TALKING ABOUT HERE, BECAUSE THAT'S THE ONLY THING THAT
19 REALLY GETS US TO THE POINT OF A SINGLE JUDGMENT. SO
20 ASSUMING THAT TO BE THE CASE, WHAT IS THE -- WHAT'S
21 GOING TO BE THE CASE NUMBER, WHAT'S GOING TO BE THE
22 COUNTY, WHO WILL BE THE PLAINTIFFS, THE CROSS-
23 DEFENDANTS. AND THERE SHOULD BE LIKE A MAJOR SPIDER
24 WEB OF SORTS OF WHERE THE CROSS-COMPLAINTS TIE IN AND
25 SO FORTH, AND THAT WAY EVERYBODY IS ON THE SAME PAGE
26 AND PEOPLE CAN SAY, HEY, THIS DOESN'T WORK AND THIS
27 WORKS.

28 ONE SUGGESTION THAT MIGHT WORK -- AND I AM

‡

17

1 RESERVING ALL RIGHTS TO -- WE DON'T BELIEVE IT IS
2 PROCEDURALLY PROPER -- BUT IN TRYING TO HELP THE COURT
3 MOVING TOWARD A RULING ON THIS, IS POSSIBLY YOU MIGHT,
4 SOMEONE MIGHT CONSIDER THE CLASSES AS BEING SORT OF THE
5 HEAD OF THE DOG AND THEN HAVING THE CROSS-COMPLAINANT
6 WATER PURVEYORS, ALL THE DEFENDANTS MORE OR LESS, I
7 THINK ALL OF THEM ARE DEFENDANTS IN BOTH CLASSES, BE
8 DEFENDANTS AND THEN THEIR CROSS-COMPLAINT COULD SORT OF

9 BRANCH OFF OF THAT. I DON'T KNOW IF THAT WOULD
10 ACTUALLY WORK BUT I JUST THROW IT OUT AS A SUGGESTION.

11 THE COURT: WELL, I THINK THAT'S A VERY
12 LEGITIMATE REQUEST THAT SHOULD BE INCLUDED IN THE
13 MOTION, BECAUSE ONE OF THE QUESTIONS I HAD AS I WAS
14 READING THESE PAPERS WAS HOW IT IS THAT WE'RE GOING TO
15 PUT TOGETHER OPPOSITES WITH REGARD TO THE DECLARATORY
16 RELIEF CAUSES OF ACTION THAT I BELIEVE ARE PRESENT IN
17 EACH ONE OF THE COMPLAINTS AND CROSS-COMPLAINTS. AND I
18 SUPPOSE THERE'S SOME MERIT TO LOOKING AT THE CLASS
19 BECAUSE I THINK IT'S GOING TO BE VERY DIFFICULT TO MAKE
20 THE CLASS OR CLASSES, IF YOU WILL, DEFENDANTS IN THIS
21 CASE. I THINK THAT WE EXPLORED THAT A LONG TIME AGO
22 AND FOUND SOME GREAT DIFFICULTIES IN STRUCTURING THE
23 DEFENDANT CLASSES, EVEN THOUGH IT'S BEEN SUGGESTED BY
24 SOME OF THE SCHOLARS THAT THAT'S AN APPROPRIATE THING
25 TO DO.

26 BUT IN THE REAL WORLD IT SEEMS TO ME THAT THE
27 POSTURE OF THE CLASSES RIGHT NOW AS PLAINTIFFS IS A
28 VERY WORKABLE PROCESS THAT WE SEEM TO BE ABLE TO MOVE

♀

18

1 FORWARD ON. AND I'M GOING TO SUGGEST TO YOU THAT, AS
2 WITH ALL THESE OTHER ISSUES WHERE WE HAVE THE STEADY
3 PARTIES INVOLVED AND THIS MUCH OF A CONFLICT, THAT IT
4 WOULD BE VERY USEFUL FOR THE LAWYERS TO TALK TO EACH
5 OTHER ABOUT HOW TO STRUCTURE THIS MOTION, ASSUMING IT
6 WERE TO BE GRANTED. AND I WILL TELL YOU THAT I AM
7 INCLINED TO BELIEVE -- AND I THINK I GAVE THIS -- MY
8 INSTINCT THE LAST TIME WE TALKED ABOUT THIS IS WE CAN
9 DO IT AND IT PROBABLY HAS TO BE DONE IN ORDER TO
10 CONCLUDE THIS AS A COMPREHENSIVE ADJUDICATION AND TO

11 KEEP THE FEDERAL GOVERNMENT INVOLVED AND EDWARDS AIR
12 FORCE BASE INVOLVED IN IT. SO I'M HOPEFUL WE WILL BE
13 ABLE TO ACCOMPLISH IT. I DON'T KNOW IF WE CAN OR NOT.
14 SO THAT I WOULD ASK COUNSEL TO TALK TO EACH OTHER
15 ABOUT THE FORM THAT THE CONSOLIDATED ACTION OUGHT TO
16 TAKE. AND IT DOES SEEM TO ME IT OUGHT TO BE IN
17 LOS ANGELES WHERE THE COORDINATED ACTION IS VENUED, AND
18 THAT WOULD SAVE AN ENORMOUS AMOUNT OF MECHANICAL
19 DIFFICULTIES THAT MIGHT OTHERWISE APPEAR.

20 BUT BEARING IN MIND THAT THE CENTRAL QUESTION IN
21 ALL OF THESE PROCEEDINGS SEEMS TO ME IS DECLARATORY
22 RELIEF. AND WE'VE ACTED ON THAT ASSUMPTION IN
23 DETERMINING -- WELL, AS A RESULT OF THE DETERMINATION
24 THAT THERE'S A SINGLE AQUIFER HERE.

25 SO WITH THAT IN MIND, MR. KALFAYAN.

26 MR. KALFAYAN: YOUR HONOR, YES, THE COURT
27 EXPRESSED THE CONCERN I HAD IN MY MIND WHICH WAS THE
28 CLASSES ARE REALLY PLAINTIFF CLASSES. AND IF THERE IS

♀

19

1 A MOTION TO CONSOLIDATE, THAT MOTION TO CONSOLIDATE, WE
2 NEED TO KNOW WHAT THE CLAIMS ARE AND IF THERE ARE ANY
3 CLAIMS AGAINST THE CLASSES. AS THE STATEMENT OF THE
4 PLEADINGS NOW, THERE ARE NO CLAIMS AGAINST THE CLASSES
5 SO I WOULD BE CONCERNED. I WOULD WANT TO SEE -- I
6 WOULD WANT A CHANCE TO REPLY AFTER THEY PUT TOGETHER
7 WHATEVER PAPERS THEY PUT TOGETHER TO MAKE SURE THAT THE
8 CLASSES ARE NOT IN ANY -- HAVE -- HAVE NO CLAIMS THAT
9 ARE ASSERTED AGAINST THEM. BECAUSE IF THERE ARE CLAIMS
10 THAT ARE GOING TO BE ASSERTED AGAINST THE CLASSES, I
11 WOULD NEED TO KNOW WHAT THEY ARE AND I WOULD NEED TO --
12 TO MAKE SURE THEY ARE SERVED AND I WOULD NEED TO
13 COMMUNICATE THAT TO THE CLASSES.

14 THE COURT: WELL, THE WOODS AND WILLIS CLASSES
15 HAVE MAIN CAUSES OF ACTION FOR DECLARATORY RELIEF.
16 THERE ARE A NUMBER OF ANCILLARY OTHER CAUSES OF ACTION
17 THAT ARE THERE, SOME OF WHICH HAVE ESSENTIALLY BEEN
18 STAYED OR SEVERED OR WHATEVER. AND IT DOES SEEM TO ME
19 YOU ARE SEEKING DECLARATORY RELIEF. YOU HAVE RAISED
20 THAT ISSUE WITH EACH ONE OF THE PUBLIC WATER
21 PURVEYORS. YOU HAVE NOT RAISED IT WITH REGARD TO THE
22 LANDOWNER PRODUCERS, SO THAT IF ALL OF THE DECLARATORY
23 RELIEF CAUSES OF ACTION ARE RAISED, THE LANDOWNERS
24 OBVIOUSLY ARE SEEKING DECLARATORY RELIEF AS WELL, I
25 BELIEVE. IT SEEMS TO ME YOU'RE JUST AT OPPOSITE ENDS
26 OF THE SAME SPECTRUM AND LOOKING FOR THE SAME
27 DETERMINATION, EACH OF YOUR OWN INTEREST.

28 SO IT SEEMS TO ME VERY WORKABLE TO STRUCTURE THE

♀

20

1 PROCEEDINGS IN THAT FASHION BUT I WILL BE VERY
2 INTERESTED IN SEEING YOUR COMPLETE PAPERS ON THIS.

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

4 MR. SLOAN: ONE OTHER THING, YOUR HONOR.

5 WILLIAM SLOAN FOR U.S. BORAX.

6 WHEN YOU MENTIONED DECLARATORY RELIEF AS BEING
7 RAISED IN ALL OF THE ACTIONS, DO YOU ENVISION THE
8 PRESCRIPTIVE RIGHTS CLAIMS BEING WITHIN THOSE CAUSES OF
9 ACTION?

10 THE COURT: I DO.

11 MR. SLOAN: THANK YOU.

12 THE COURT: THEY MUST BE.

13 MS. MC DONALD: YOUR HONOR, IF I MAY JUST
14 ADDRESS A FEW POINTS SORT OF IN REVERSE ORDER.

15 AS YOU MENTIONED --

16 THE COURT: YOU ALWAYS HAVE TO TELL US WHO YOU
17 ARE WHEN YOU SPEAK.

18 MS. MC DONALD: WHITNEY MC DONALD FOR THE CITY
19 OF PALMDALE.

20 THE CLASS COMPLAINANTS, AS YOU MENTIONED, DO SEEK
21 DECLARATORY RELIEF AND IN DETERMINING THEIR RIGHTS IT
22 INEVITABLY INVOLVES THE RIGHTS OF ALL OTHER LANDOWNERS
23 AND PRODUCERS WITHIN THE BASIN. AND SO REGARDLESS OF
24 WHETHER THE CLASSES ARE NAMED OR HAVE CLAIMS
25 SPECIFICALLY ASSERTED AGAINST THEM AS DEFENDANTS, THE
26 CLAIMS THAT THEY HAVE ASSERTED THEMSELVES REQUIRE THAT
27 DETERMINATION OF THEIR RIGHTS AS OPPOSED TO THE RIGHTS
28 OF OTHER PARTIES WITHIN THE ADJUDICATION.

♀

21

1 AND AS OUR REPLY BRIEF POINTS OUT, THEIR PRAYER
2 FOR RELIEF DOES ASK FOR -- I WILL JUST READ IT VERY
3 BRIEFLY:

4 THAT OVERLYING RIGHTS TO USE WATER
5 FROM THE BASIN ARE SUPERIOR AND HAVE
6 PRIORITY VIS-A-VIS ALL NON-OVERLYING
7 USERS AND APPROPRIATORS.

8 SO EVEN IF THEY HAVE NOT SUED ALL THE LANDOWNERS,
9 THEY ARE SEEKING THAT EXACT RELIEF IN ADDITION TO A
10 POSSIBLE PHYSICAL SOLUTION BECAUSE THEY ALSO ASK FOR
11 AN APPORTIONING OF WATER RIGHTS FROM
12 THE BASIN IN A FAIR AND EQUITABLE
13 MANNER.

14 SO IN THE END I BELIEVE THAT -- I UNDERSTAND
15 THEIR CONCERNS BUT I BELIEVE IT ALL CAN BE ADDRESSED IN
16 THE CONSOLIDATED ACTION WITHOUT NEEDING TO ACTUALLY
17 NAME THEM AS DEFENDANTS.

18 THE COURT: WELL, I'M SURE THAT -- I DON'T
Page 19

19 WANT TO GET US STARTED ON AN ARGUMENT AT THIS POINT
20 ABOUT WHETHER IT SHOULD BE OR SHOULD NOT BE
21 CONSOLIDATED.

22 I WANT THE MOTION TO BE PUT INTO THE FORM THAT I
23 CAN RULE ON IT APPROPRIATELY. AND I NEED TO KNOW -- I
24 WANT TO LET EVERYBODY HAVE AN OPPORTUNITY TO SPEAK --
25 BUT I NEED TO KNOW WHEN WE'RE GOING TO DO THIS.

26 MS. MC DONALD: I HAVE ONE OTHER POINT THAT
27 GOES TO THAT ISSUE, WHICH IS I UNDERSTAND FROM YOUR
28 HONOR THAT THE PUBLIC WATER SUPPLIERS ARE TO SORT OF

♀

22

1 TAKE THE INITIAL STEP OF PROPOSING THE ALIGNMENT OF THE
2 PARTIES. MY ONLY CONCERN -- AND I'M GLAD YOU RAISED
3 IT -- THAT THE ATTORNEYS DO NEED TO COOPERATE.

4 THE COURT: IT IS CALLED MEET AND CONFER.

5 MS. MC DONALD: CORRECT.

6 I JUST WANTED TO VOICE OUR CONCERN THAT -- OF
7 COURSE, WE WILL TRY OUR BEST TO MAKE THAT PROCESS
8 HAPPEN, BUT GIVEN THE LARGE NUMBER OF PARTIES I THINK
9 ALL WE CAN DO IS PROPOSE OUR BEST COURSE OF ACTION FROM
10 OUR PERSPECTIVE. IT WILL BE A LITTLE BIT DIFFICULT FOR
11 US TO DECIDE WHERE EACH PARTY SHOULD GO. MY CONCERN
12 ALSO IS THAT THIS WILL SORT OF GENERATE A WHOLE NOTHER
13 SERIES OF MOTIONS AND OPPOSITIONS AND VARIOUS PLEADINGS
14 BEFORE THE COURT THAT WILL DELAY THIS DECISION FOR
15 MONTHS AND MONTHS, BECAUSE IT JUST DOES SEEM WE HAVE
16 BEEN TALKING ABOUT THIS FOR A LONG TIME AND OUR CONCERN
17 IS THAT IT JUST NEEDS TO BE WORKED OUT IN A -- IN A
18 QUICK -- QUICKER FASHION THAN IT COULD HAPPEN.

19 THE COURT: WHAT I WOULD SUGGEST TO YOU, AND
20 IT IS MERELY A SUGGESTION, IS ONCE YOU HAVE DECIDED WHO

21 ALL THE PARTIES ARE AND YOU'VE TAKEN A LOOK AT HOW YOU
22 THINK THE PARTIES SHOULD BE ALIGNED, THAT IN ADDITION
23 TO WHATEVER PAPERS YOU'RE FILING AND SERVING THAT YOU
24 SEND OUT A LETTER LAYING OUT WHAT YOU THINK WOULD BE A
25 PROPER ALIGNMENT OF THE PARTIES AND THE ACTIONS SO THAT
26 OTHER LAWYERS WILL HAVE A CHANCE TO LOOK AT IT AND THEN
27 SET UP A TELEPHONE CONFERENCE, IF YOU CAN'T MEET IN
28 PERSON TO TALK ABOUT IT, AND SEE IF YOU CAN COME TO

♀

23

1 SOME UNDERSTANDING.

2 NOW, I DON'T EXPECT YOU TO HAVE AN AGREEMENT,
3 OKAY. BUT I WANT EVERYBODY TO KNOW WHAT THE PROPOSALS
4 ARE SO THAT WHEN WE COME HERE TO ARGUE ABOUT WHAT IT
5 SHOULD BE, ASSUMING THERE'S GOING TO BE A
6 CONSOLIDATION, THEN EVERYBODY WILL BE IN A POSITION TO
7 BE ABLE TO STATE HOW THEY FEEL ABOUT IT, WHAT THEY
8 THINK ABOUT IT AND WHAT THEY THINK OUGHT TO HAPPEN SO
9 IT BECOMES LESS YOU'RE HEARING SOMETHING FOR THE FIRST
10 TIME WHILE YOU'RE STANDING IN THE COURTROOM.

11 MS. MC DONALD: I UNDERSTAND, YOUR HONOR.
12 THANK YOU.

13 MR. KALFAYAN: YOUR HONOR, I AM OPTIMISTIC IF
14 WE MEET AND CONFER WE CAN WORK SOME OF THE ISSUES OUT.
15 ONE THING I WANT TO CHECK FROM WHAT COUNSEL ARTICULATED
16 IS THAT THE CLASS -- WE MAY HAVE ASKED IN OUR COMPLAINT
17 FOR THE TAJ MAHAL BUT WE CAN'T GET IT IF WE ONLY SUED
18 THE PUBLIC WATER SUPPLIERS.

19 THE COURT: I THINK THAT THAT'S ONE OF THOSE
20 THINGS THAT GOES WITHOUT SAYING.

21 MR. KALFAYAN: THANK YOU.

22 MR. ZIMMER: RICHARD ZIMMER FOR BOLTHOUSE
23 PROPERTIES.

24 IN ORDER TO THINK ABOUT IT CORRECTLY, I THINK THE
25 COURT IS SAYING THAT REGARDLESS HOW THIS ALL TURNS OUT,
26 BECAUSE OF THE DECLARATORY RELIEF CAUSES OF ACTION ALL
27 CLAIMS BY ALL PARTIES AGAINST ALL PARTIES IN THE CASE
28 NEED TO BE MADE. IS THAT -- IN THIS ACTION --

♀

24

1 THE COURT: WELL, I THINK SO. EVERYBODY HAS
2 TO BE SEEKING A DETERMINATION OF THEIR WATER RIGHTS
3 VIS-A-VIS EVERYBODY ELSE BECAUSE THERE IS A SINGLE
4 AQUIFER. EVERYBODY'S RIGHTS ARE CORRELATIVE TO
5 EVERYBODY ELSE'S RIGHTS, SO HOW CAN YOU DO DECLARATORY
6 RELIEF, AND GET A DECLARATION AS TO WHAT THE RIGHTS OF
7 ONE PARTY ARE IF YOU DON'T HAVE BEFORE THE COURT THE
8 RIGHTS OF EVERY OTHER PARTY WHO HAS RIGHTS WITHIN THE
9 BASIN.

10 MR. ZIMMER: AND AS I UNDERSTAND IT --

11 THE COURT: IF THAT MAKES SENSE.

12 MR. ZIMMER: THAT MAKES SENSE TO ME. I THINK
13 THAT IS CORRECT, THAT CAN HAPPEN EXACTLY THE WAY YOU
14 SAID.

15 I ASSUME THE COUNTY, L.A. COUNTY, HAS NOT CHANGED
16 WHAT IT WAS CLAIMING IN ITS ORIGINAL COMPLAINT, ITS
17 CROSS-COMPLAINT, AS WE STAND HERE TODAY.

18 THE COURT: AS TO?

19 MR. ZIMMER: WELL, THE COUNTY REQUESTED A
20 BASIN-WIDE ADJUDICATION AND REQUESTED A BUSINESS
21 SOLUTION, YOU KNOW, BASICALLY A DETERMINATION OF ALL
22 RIGHTS, AND ALL THE PARTIES, WATER USERS IN THE BASIN.

23 THE COURT: I THINK THAT IS CENTRAL TO THEIR
24 COMPLAINT AS I READ IT OR THE CROSS-COMPLAINT.

25 MR. ZIMMER: THEN --

26 THE COURT: IS THAT RIGHT?

27 MR. DUNN: I'M PRETTY SURE THAT'S THE CASE,
28 YOUR HONOR.

♀

25

1 THE COURT: IT'S BEEN THREE YEARS, NOW, PLUS.
2 SO I GUESS WE'RE ALL ON THAT SAME PAGE.

3 MR. JOYCE: YOUR HONOR, ONE LAST --

4 THE COURT: ALMOST ALL OF US.

5 MR. JOYCE: PARDON ME?

6 THE COURT: I SAID ALMOST ALL OF US.
7 GO AHEAD, MR. JOYCE.

8 MR. JOYCE: AM I BECOMING THE PROVERBIAL
9 DISSENTER --

10 THE COURT: NOT AT ALL, MR. JOYCE. IT'S
11 ALWAYS A PLEASURE TO SPEAK WITH YOU.

12 MR. JOYCE: THE ONLY OBSERVATION I WOULD LIKE
13 TO MAKE IS CURRENTLY THE UNITED STATES GOVERNMENT IS
14 A -- WAS ORIGINALLY IDENTIFIED AS A DEFENDANT BUT IS
15 NOW BY WAY OF ANSWER A PARTY IN THIS PROCEEDING AS A
16 CROSS-DEFENDANT AS TO LOS ANGELES -- AS TO THE
17 PURVEYORS' ORIGINAL CROSS-COMPLAINT AND THEN LATER, OF
18 COURSE, THE AMENDED CROSS-COMPLAINT. THEY HAVE BEEN
19 NAMED BUT THEY HAVE NOT YET APPEARED IN THAT ACTION.

20 THE ACTION I'M MOST APTLY CONCERNED ABOUT,
21 BECAUSE THIS IS APTLY THE TAIL THAT IS WAGGING THIS
22 DOG, AND THAT IS TO ASSURE THAT UNDER WHATEVER PLEADING
23 THIS HAPPENS OR HOWEVER IT IS GOING TO BE STRUCTURED
24 THAT IN ESSENCE THE U.S. GOVERNMENT'S RIGHTS VIS-A-VIS
25 ALL THE PARTIES IS GOING TO BE FRAMED IN A PLEADING
26 CONTEXT SO WE KNOW WHERE WE'RE GOING. BECAUSE RIGHT
27 NOW THE CLASSES HAVE NOT SUED THE U.S. THE U.S. HAVE
28 NOT SUED THE CLASSES. THE END PRODUCT OF WHAT THE

♀

1 COURT IS SUGGESTING IS SUDDENLY WE ARE GOING TO MAKE
2 THOSE CLASSES ADVERSE TO U.S. AND VICE VERSA. I DON'T
3 KNOW UNDER WHAT PLEADING THAT IS GOING TO HAPPEN BUT
4 THAT IS SOMETHING THAT SHOULD BE ADDRESSED AND
5 SOMETHING SUBMITTED TO THE COURT BY THE PURVEYORS.

6 THE COURT: DO YOU WANT ME TO SAY SOMETHING?

7 MR. JOYCE: NO, YOUR HONOR. IT IS A AN
8 OBSERVATION. IT IS A MAKING THE-RECORD-CLEAR.

9 THE COURT: I THINK I WILL LET THE FEDERAL
10 GOVERNMENT SPEAK FOR THEMSELF, AND THEIR PLEADINGS
11 SPEAK FOR THEMSELVES.

12 MY UNDERSTANDING IS THE FEDERAL GOVERNMENT IS AS
13 INTERESTED IN GETTING A COMPREHENSIVE ADJUDICATION SO
14 EVERYBODY'S RIGHTS ARE CLEAR WITHIN THE BASIN ONCE AND
15 FOR ALL SO THAT ONCE THIS LITIGATION HAS BEEN CONCLUDED
16 THERE WON'T BE ANY FURTHER LITIGATION.

17 AND THAT'S PROBABLY A FAINT HOPE BUT THAT'S THE
18 HOPE. ALL RIGHT.

19 ANYTHING ELSE ON THIS?

20 ALL RIGHT. I WILL HEAR FROM MR. LEININGER.

21 MR. LEININGER: THANK YOU, YOUR HONOR.

22 LEE LEININGER FOR THE UNITED STATES.

23 AND I DIDN'T STEP UP HERE ACTUALLY TO ADDRESS
24 MR. JOYCE'S COMMENT BUT, RATHER, ASK THE COURT TO SET
25 SOME DEADLINES FOR THE PLEADING, DECLARATION AND MAYBE
26 MORE APPROPRIATE AFTER DISCUSSION ON POTENTIAL TRIAL
27 DATES FOR PHASE 3. BUT AT SOME POINT WE THINK TO MOVE
28 THIS PROCESS ALONG IF WE HAD FIRM DATES AND WE HAD

♀

1 BETTER -- WE COULD HAVE THE MEET AND CONFER -- IT WOULD

2 BENEFIT ALL THE PARTIES.

3 THE COURT: YES. I AGREE WITH YOU,
4 MR. LEININGER, AND OBVIOUSLY I AM GOING TO TELL YOU
5 RIGHT NOW I AM NOT GOING TO SET THIS MATTER FOR TRIAL
6 UNTIL THE CONSOLIDATION MOTION HAS BEEN HEARD AND RULED
7 UPON BECAUSE I THINK IT'S REALLY A SIGNIFICANT PART OF
8 BEING ABLE TO PROCEED THE IN THAT PHASE, IN THAT NEXT
9 PHASE.

10 BUT I DO WANT TO SET SOME DATES AND SOME TIME
11 LINES ON THE MOTION, FOR HEARING ON THE MOTION, AND
12 WE'RE GOING TO TALK ABOUT THAT IN JUST A MOMENT.

13 BUT I WANTED TO GIVE EVERYBODY AN OPPORTUNITY TO
14 SAY WHATEVER THEY WANTED TO SAY ABOUT THE MOTION ITSELF
15 BEFORE I DO THAT.

16 ANYBODY ELSE?

17 EVERYBODY ELSE HAPPY?

18 LET'S TALK ABOUT WHEN THIS MOTION CAN BE FILED,
19 THE SUPPLEMENTAL MATERIALS, I SHOULD SAY, AND SERVED.

20 MS. MC DONALD: YOUR HONOR, GIVEN THE LARGE
21 AMOUNT OF INFORMATION THAT WILL NEED TO BE COMPILED AS
22 WELL AS THE MEET AND CONFER PROCESS THAT NEEDS TO OCCUR
23 BEFORE THAT CAN HAPPEN, I BELIEVE IT WILL TAKE AT LEAST
24 ONE OR TWO MONTHS TO PULL ALL THAT TOGETHER.

25 FORGIVE ME. MR. DUNN SAYS WE CAN DO THAT
26 QUICKER.

27 THE COURT: I SUSPECT THERE IS SOME WORK THAT
28 HAS BEEN DONE ON THIS ISSUE.

♀

28

1 MS. MC DONALD: I THINK ALSO THE MEET AND
2 CONFER PROCESS AND THE SENDING OF LETTERS AND
3 TELECONFERENCES, I ALSO HAD THAT IN MIND WITH THAT.

4 THE COURT: YES.

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5 MS. MC DONALD: SO PERHAPS ONE MONTH WOULD
6 MAKE SURE THAT WE COULD GET ALL OF THAT DONE AND THAT
7 WE WOULD HAVE THE BEST POSSIBLE PROPOSED SOLUTION
8 BEFORE THE COURT.

9 THE COURT: OKAY. MR. DUNN, HOW FAR ALONG ARE
10 YOU IN YOUR PREPARATION FOR THIS?

11 THE CLERK: EXCUSE ME.

12 THE COURT: YOU KNOW, IF YOU'RE ON THE
13 TELEPHONE, WE CAN HEAR YOU. IF YOU ARE HAVING A
14 PRIVATE CONVERSATION. IT IS NOT VERY PRIVATE.

15 UNIDENTIFIED TELEPHONIC SPEAKER: OH.

16 THE COURT: ALL RIGHT. I AM LOOKING AT THE
17 CALENDAR. TODAY IS THE 17TH. CAN YOU FILE YOUR MOTION
18 BY THE 17TH OF SEPTEMBER? THE SUPPLEMENTAL MATERIALS,
19 I SHOULD SAY.

20 MR. DUNN: JEFFREY DUNN. I WAS ACTUALLY, YOUR
21 HONOR, THINKING OF A SHORTER TIME PERIOD. IN MY MIND,
22 I WAS THINKING WE COULD GET THIS DONE BY A WEEK FROM
23 FRIDAY.

24 THE COURT: OKAY. THAT WOULD BE THE 28TH --

25 MR. DUNN: YES.

26 THE COURT: -- OF AUGUST. OKAY. NOW, AS PART
27 OF THAT ARE YOU GOING TO HAVE SOME PROPOSALS AS TO THE
28 MANNER IN WHICH THIS SHOULD BE CONSOLIDATED AND

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29

1 ALIGNED?

2 MR. DUNN: YES, YOUR HONOR. I PAID PARTICULAR
3 INTEREST TO MR. MC LACHLAN'S COMMENTS. IT IS AN
4 INTERESTING SUGGESTION. I WOULD LIKE TO LOOK AT THAT
5 AND I WOULD CERTAINLY LIKE TO TALK TO MR. MC LACHLAN
6 ABOUT THAT. BUT GENERALLY THERE'S BEEN A FAIR AMOUNT

7 OF WORK ALREADY DONE ON THIS. I THINK GIVEN THE
8 COURT'S GUIDANCE THIS MORNING, WITH THAT GUIDANCE I
9 THINK IN FAIRLY SHORT ORDER WE SHOULD BE ABLE TO COME
10 UP WITH A PROPOSED PLEADING OR DOCUMENT FOR ALL THE
11 PARTIES TO REVIEW AND HAVE THAT ON FILE BY THE 28TH.

12 THE COURT: ALL RIGHT. SO I'M GOING TO MAKE
13 AN ORDER THAT THE SUPPLEMENTAL MATERIALS BE FILED AND
14 SERVED NO LATER THAN THE 28TH OF AUGUST AT 5:00 P.M.

15 MR. DUNN: YES, YOUR HONOR.

16 THE COURT: NOW, WHAT ABOUT THE LETTERS THAT
17 ARE GOING TO GO OUT SETTING FORTH YOUR PROPOSALS TO
18 OTHER COUNSEL.

19 WHEN CAN THAT BE DONE?

20 MR. DUNN: WELL, OBVIOUSLY THAT WILL HAVE TO
21 BE DONE BEFORE THE 28TH. SO I WOULD THINK MONDAY OR
22 TUESDAY OF THE FOLLOWING WEEK. TUESDAY.

23 THE COURT: OF?

24 MR. DUNN: THAT WOULD BE THE 25TH.

25 THE COURT: OKAY. AND OBVIOUSLY THAT CAN BE
26 POSTED.

27 MR. DUNN: YES, YOUR HONOR.

28 THE COURT: I THINK EVERYBODY IS FAMILIAR WITH

♀

30

1 THAT NOW.

2 OPPOSITION. SUPPLEMENTAL OPPOSITION.

3 MR. MC LACHLAN: MC LACHLAN: TWO WEEKS, YOUR
4 HONOR, I THINK, FROM THE 28TH.

5 MR. JOYCE: I AM GOING TO WANT THE OPPORTUNITY
6 TO VET THE MATRIX THAT THEY ARE GOING TO PROVIDE THE
7 COURT AS WELL AS TO VET THE PROOF OF SERVICE

8 ACCOMPANYING THE SUPPLEMENTAL MATERIAL. BECAUSE OF THE
9 NUMBER OF PARTIES IN THE CASE, I DON'T THINK THEY ARE

10 GOING TO SATISFY THE SERVICE REQUIREMENT UNDER THE
11 RULES OF COURT.

12 THE COURT: WELL, MAYBE. WE WILL PUT AN
13 OPPOSITION DATE FOR SEPTEMBER THE 11TH. OPPOSITIONS,
14 SEPTEMBER 11TH.

15 NOW, ONE OF THE OTHER MOTIONS HAS BEEN CONTINUED
16 TO THE 14TH. THAT'S NOT GOING TO GIVE THE COURT VERY
17 MUCH TIME TO REVIEW THE PAPERS PRIOR TO THE HEARING, IS
18 IT, IF WE WERE TO SET IT FOR THAT SAME DATE.

19 SO WHAT I THINK I WOULD LIKE TO DO -- LET'S
20 SEE -- I'M GOING TO BE GONE FOR A COUPLE OF WEEKS
21 STARTING THE 21ST OF SEPTEMBER. I WOULD BE WILLING TO
22 HEAR THIS ON THE 18TH AT 9:00 O'CLOCK.

23 MS. MC DONALD: YOUR HONOR, WHITNEY MC DONALD
24 FOR THE CITY OF PALMDALE. WILL THE PUBLIC WATER
25 SUPPLIERS HAVE AN OPPORTUNITY TO FILE ANY KIND OF
26 RESPONSE TO THE OPPOSITION BRIEFS?

27 THE COURT: YES. FILE OPPOSITION BY NOON ON
28 THE 17TH.

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31

1 MS. MC DONALD: YES, YOUR HONOR. THANK YOU.

2 THE COURT: ALL RIGHT. WE WILL HAVE THE
3 HEARING THE 18TH.

4 MR. BUNN: WHERE WILL THAT BE, YOUR HONOR?

5 THE COURT: WE WILL DO IT HERE. THIS IS ALL
6 MOTION PRACTICE AND THERE ARE SEVERAL OTHER MOTIONS
7 THAT WE NEED TO ADDRESS. WE'LL TAKE THOSE UP IN A
8 MOMENT. SO THOSE WILL BE THE DATES THEN THAT YOU WILL
9 BE BOUND TO.

10 AND WE'LL ALSO DO A -- A CMC -- TRIAL SETTING ON
11 THE 18TH OF SEPTEMBER

12 ALL RIGHT. ANYTHING ELSE ON THOSE ISSUES?

13 MR. SLOAN: YES, YOUR HONOR, WILLIAM SLOAN FOR
14 U.S. BORAX. I WOULD JUST LIKE TO PUT IN THE REQUEST
15 NOW THE COURT CONSIDER SETTING SOME BRIEFING DEADLINES
16 FOR DISPOSITIVE MOTIONS AFTER MAKING A DETERMINATION ON
17 THE MOTION TO CONSOLIDATE.

18 THE COURT: I WILL DO THAT AND I'LL -- I'LL BE
19 INTERESTED IN YOUR PROPOSALS ON THAT DATE BECAUSE WE
20 WILL -- IT WILL BE A CASE MANAGEMENT CONFERENCE AS WELL
21 AS TRIAL SETTING AND HEARING ON THAT MOTION AND OTHER
22 MOTIONS THAT HAVE TO BE SET FOR THAT DATE.

23 MR. SLOAN: OKAY. THANK YOU.

24 THE COURT: ALL RIGHT. ANYTHING ELSE ON THE
25 CONSOLIDATION AND TRANSFER ISSUES?

26 MR. LOGAN: FRANCIS LOGAN.

27 YOUR HONOR, ONE FINAL POINT. IF THE SUPPLEMENTAL
28 MATERIALS ARE BEING FILED BY 8-28 AND THE LETTER

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32

1 PROPOSING THE MEET AND CONFER IS GOING OUT ON THE --

2 MR. MC LACHLAN: 25TH.

3 MR. LOGAN: -- 25TH, IT SEEMS UNLIKELY THE
4 SUPPLEMENTAL MATERIALS WILL CONTAIN THE RESULTS --

5 THE COURT: THEY MAY NOT BUT THEY WILL GIVE
6 YOU AN OPPORTUNITY TO DECIDE WHAT EXTENT THEY AGREE OR
7 DISAGREE, AND IF YOU CALL SOMEBODY YOU MIGHT HAVE
8 FURTHER CONVERSATIONS OR MAYBE REVISIONS AGREED TO OR
9 NOT BETWEEN THE PARTIES. IT IS A RATHER HURRIED
10 RESPONSE. AND IF I CAN -- THE DIFFICULTY IS THAT IF WE
11 WERE TO SET THE HEARING ON THE MOTION AFTER THE 18TH,
12 IT WOULD NOT BE UNTIL SOMETIME IN OCTOBER BECAUSE I'LL
13 BE GONE UNTIL THE 6TH OF OCTOBER. SO -- WE CAN DO THAT
14 IF EVERYBODY FEELS THE NEED TO DO IT BUT IF YOU CAN

15 ACCOMPLISH IT WITHIN THE PERIOD OF TIME THAT HAS BEEN
16 SUGGESTED, I WOULD PREFER TO DO THAT.

17 MR. MC LACHLAN: I WOULD MAKE ONE SUGGESTION
18 ALONG THOSE LINES. THE SMALL PUMPER CLASS IS THE
19 CABOOSE FOR THIS MORE OR LESS RIGHT NOW, HAS BEEN FOR
20 SOME TIME. THE -- AS THE COURT IS AWARE, THE CLASS
21 NOTICE, THE INITIAL ROUND WENT OUT IN JUNE AND SO THE
22 PROCESS OF CLASS NOTICE IS ONGOING. GIVEN THE
23 SITUATION THAT EXISTS RIGHT NOW WITH THE SMALL PUMPER
24 CLASS, THIS CLASS WILL NOT BE AT ISSUE ALMOST -- I
25 DON'T THINK THERE IS ANY WAY IT WILL BE AT ISSUE IN
26 NOVEMBER, MAYBE DECEMBER. SO IF THAT MATTERS -- AND
27 THERE IS NOTHING THAT CAN BE DONE TO SPEED THAT UP
28 BECAUSE THERE IS A MANDATORY 60-DAY WINDOW, A WHOLE

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33

1 OTHER MAILING THAT HAS TO GO OUT AT SOME POINT. AND
2 NONE OF THE WORK APPARENTLY HAS BEEN DONE ON THAT, A
3 LOT OF OPT OUTS THAT WILL HAVE TO BE SERVED AND THERE
4 IS UNFORTUNATELY A SEQUENCE OF MONTHS THAT ARE
5 PREORDAINED AND THAT WILL TAKE US WELL INTO THE
6 HOLIDAYS.

7 THE COURT: WHAT ARE YOU SUGGESTING?

8 MR. MC LACHLAN: I DON'T UNDERSTAND WHAT
9 EXACTLY WE ARE RUSHING TO --

10 THE COURT: YOU THINK MAYBE WE OUGHT TO DO
11 THIS MOTION IN OCTOBER?

12 MR. MC LACHLAN: I AGREE -- SINCE YOUR HONOR
13 IS SUGGESTING THAT, I DON'T SEE THE HURRY. I MEAN, I
14 WOULD LIKE TO MOVE THE SMALL PUMPER CLASS AS FAST AS I
15 POSSIBLY CAN BUT I DON'T CONTROL ALL THE VARIABLES SO I
16 JUST DON'T SEE THE RUSH.

17 THE COURT: WELL, THAT'S -- LET ME HEAR FROM
18 OTHER COUNSEL ABOUT THAT. MR. DUNN.

19 MR. DUNN: YEAH. JEFFREY DUNN. I GUESS I
20 WOULD TAKE SOME ISSUE WITH THE COMMENT THAT THERE'S NOT
21 BEEN WORK DONE ON THE COMPLETION OF THE MAILING OR
22 SERVICE OF PROCESS FOR THE CLASS. THERE HAS BEEN
23 EXTENSIVE WORK DONE TO DATE. IN OUR CASE MANAGEMENT
24 CONFERENCE STATEMENT WE DID PROPOSE A TIME SCHEDULE, A
25 TIMELINE FOR COMPLETION OF THAT AND WE WOULD -- WE
26 WOULD LIKE TO ADHERE TO THAT.

27 I THINK MY OVERALL COMMENT IS THIS: THAT IT'S
28 BECOMING INCREASINGLY NECESSARY FOR THE PARTIES TO SORT

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1 OF COME TOGETHER AND EITHER THROUGH SETTLEMENT AND/OR
2 THROUGH THIS PROCESS TRY TO GET AT LEAST SOME OF THE
3 ISSUES RESOLVED. BECAUSE AS WE SORT OF CONTINUE TO
4 PUSH HEARINGS OFF FOR EVEN 30 OR 60 OR 90 DAYS, THERE
5 ARE UNFORTUNATE AND SOMETIMES UNINTENDED CONSEQUENCES
6 THAT FOLLOW, AND TO THE EXTENT WE CAN HOLD HEARINGS IN
7 SEPTEMBER AND GET THINGS DONE SOONER I THINK IT
8 BENEFITS ALL PARTIES, EVEN IF IT REQUIRES SOME EXTRA
9 EFFORT ON ALL OF OUR PARTS. AND I KNOW THAT WE'VE HAD
10 TO ADD PEOPLE TO HELP OUT ON SOME OF THIS VOLUMINOUS,
11 YOU KNOW, THE MAILING REQUIREMENTS, SO BE IT.

12 BUT IT IS IMPORTANT I THINK THAT THIS GETS DONE.
13 THERE IS A -- THERE IS A TARGET THAT EACH PARTY SORT OF
14 HAS, A GOAL OR OBJECTIVE IN THIS CASE, BUT ULTIMATELY
15 WE NEED TO GET THIS RESOLVED AS SOON AS POSSIBLE FOR
16 THE BENEFIT OF ALL USERS IN THE BASIN. SO I WOULD VERY
17 MUCH LIKE TO HOLD ON TO AT LEAST THE SEPTEMBER HEARING
18 DATE AND THEN DO ALL THAT WE CAN IN TERMS OF WORKING
19 WITH MR. MC LACHLAN AND OTHERS FOR THE PLEADINGS AND

20 MAILING AND SERVICE OF PROCESS.

21 THE COURT: OKAY.

22 MS. MC DONALD: IF I MAY, YOUR HONOR, WHITNEY
23 MC DONALD FOR CITY OF TOM PALMDALE. THE OTHER ISSUE IS
24 THERE HAS BEEN A LOT OF DISCUSSION AND ISSUES RAISED
25 REGARDING THE STATUS OF THE PLEADINGS IN THESE CASES,
26 AND THIS MOTION TO CONSOLIDATE WILL HOPEFULLY RESOLVE
27 ALL THOSE ISSUES AND WE WOULD LIKE TO STOP ANY FURTHER
28 MOTION PRACTICE AND DISCUSSIONS ABOUT THIS AS SOON AS

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35

1 WE CAN SO THAT WE CAN MOVE ON WITH THE ACTUAL, YOU
2 KNOW, MEAT OF THE CASE AND THE ISSUES THAT WILL GO
3 FORWARD AT TRIAL. SO THAT WAS MY ONE EXTRA COMMENT.

4 MR. ZIMMER: MR. ZIMMER, BRIEFLY, YOUR HONOR,
5 FOR BOLTHOUSE. I'VE GOT TO SIDE WITH MR. MC LACHLAN.
6 IF THEY CAN'T GET THIS SERVED ANYWAY, IT REALLY DOESN'T
7 DO ANY GOOD FOR ALL THE LAWYERS TO TRY AND JAM THIS
8 INTO A PERIOD OF TIME WHEN IT PROBABLY IS NOT GOING TO
9 BE DONE. I KNOW MR. JOYCE'S FIRM FAIRLY WELL AND IT
10 WILL PROBABLY TAKE HIM SOME PERIOD OF TIME TO GET
11 THROUGH THE PLEADINGS AND SERVICE AND LOOKING AT ALL
12 THE LAWYERS ON BOARD -- LOOKING AT THE PLEADINGS -- IT
13 NEEDS TO BE DONE RIGHT -- I AM A PERSON IN THE PAST WHO
14 HAS SAID WE NEED TO MOVE FORWARD EXPEDITIOUSLY AND I
15 STILL FEEL THAT WAY. BUT THIS ISSUE IS IMPORTANT
16 ENOUGH, I THINK THE PLEADINGS NEED TO BE DONE PROPERLY
17 AND IF HE IS NOT GOING TO BE ABLE TO SERVE IT IN THAT
18 TIME, THERE IS NO REASON TO RUSH IT.

19 MR. JOYCE: YOUR HONOR -- I'M SORRY.

20 THE COURT: MY VIEW IS THIS MAY WELL BE ONE OF
21 THE MOST CRUCIAL MOTIONS THAT'S GOING TO BE HEARD AND

22 THE RESULT IS GOING TO HAVE GREAT SIGNIFICANCE FOR THE
23 REST OF THE CASE. SO THAT WHILE I SHARE MR. DUNN'S
24 FEELINGS ABOUT TRYING TO GET THIS DONE PROMPTLY AND
25 EFFECTIVELY AND EFFICIENTLY, I THINK, AS I REFLECT ON
26 IT, THAT WE MIGHT BE BETTER OFF DOING IT THAT FIRST --
27 OCTOBER 9TH, HEARING THAT MOTION.

28 I WANT IT TO BE DONE. I WANT TO BE ABLE TO MAKE

♀

36

1 AN ORDER THAT I'M SATISFIED WITH AND A DECISION I'M
2 SATISFIED WITH AND I WANT THIS MATTER HOPEFULLY TO BE
3 PUT INTO A POSITION WHERE WE CAN THEN PRETTY PROMPTLY
4 MOVE AHEAD WITH A TRIAL OF THE NEXT PHASE AS SOON AS
5 THE MATTER IS TRULY AT ISSUE WITH REGARD TO ALL THE
6 CLASS MEMBERS. AND I THINK THAT MR. MC LACHLAN IS
7 CORRECT. I THINK MR. DUNN IS CORRECT. I THINK THEY
8 BOTH HAVE THE SAME OBJECTIVE IN MIND AND THAT IS TO
9 HAVE AN ADJUDICATION THAT RESOLVES THESE ISSUES.

10 SO LET'S TALK ABOUT SOME DATES, THEN, LEADING UP
11 TO THAT FOR THE EXCHANGE, THE MEET AND CONFER LETTER SO
12 IT BECOMES A LITTLE MORE RATIONAL.

13 MR. DUNN: YOUR HONOR, MAY I COMMENT OR ASK
14 THE COURT TO CONSIDER THE DATE, I THINK THE 9TH IS A
15 FRIDAY.

16 THE COURT: IT IS.

17 MR. DUNN: I AM IN TRIAL IN NORTHERN
18 CALIFORNIA THAT DATE. THE COURT IS DARK ON MONDAYS AND
19 TUESDAYS AND WE JUST DO TRIALS ON WEDNESDAY, THURSDAYS
20 AND FRIDAYS, IF -- I REALIZE ALL COUNSEL HAVE
21 SCHEDULING ISSUES BUT IF WE COULD SCHEDULE THAT ON A
22 MONDAY OR TUESDAY --

23 THE COURT: HOW ABOUT THE 12TH?

24 MR. DUNN: THAT WOULD BE FINE, YOUR HONOR.

25 THANK YOU.

26 THE COURT: IT IS A MONDAY.

27 OKAY. SO WHEN -- ARE YOU STILL PREPARED TO FILE
28 THE LETTER SETTING FORTH THE PROPOSED BREAKDOWN, HOW

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37

1 THE CONSOLIDATION MIGHT WORK, BY THE DATE THE 25TH?

2 MR. WEEKS: MY CALENDAR SHOWS OCTOBER 12TH IS
3 COLUMBUS DAY.

4 THE COURT: THE 13TH.

5 MR. WEEKS: THE 13TH.

6 THE COURT: IT IS MY UNDERSTANDING THERE IS
7 SOME CRITICISM OF IT, BUT BE THAT AS IT MAY LET'S MAKE
8 IT FOR THE 13TH.

9 BUT WHAT ABOUT THE LETTER. YOU OUGHT TO BE ABLE
10 TO SEND OUT THAT LETTER BY THE 25TH OF AUGUST AND THAT
11 WILL GIVE EVERYBODY AN OPPORTUNITY TO REVIEW IT,
12 CONSIDER IT, SO THAT WHEN THEY FILE THEIR OPPOSITION
13 THEY WILL BE IN A POSITION AND PERHAPS WHEN YOU FILE
14 YOUR MOTION YOU WILL BE IN A POSITION TO BE ABLE TO
15 TAKE INTO ACCOUNT WHAT YOU HEAR BACK FROM OTHER PEOPLE
16 SO THAT IT WILL GIVE YOU A LATER TIME TO FILE AS
17 OPPOSED TO THE 28TH.

18 MR. DUNN: THAT'S FINE, YOUR HONOR.

19 THE COURT: ALL RIGHT. SO CAN YOU FILE YOUR
20 MOTION, THEN, LET'S SAY BY THE 7TH OF SEPTEMBER.

21 MR. BUNN: THAT, I BELIEVE, IS LABOR DAY, YOUR
22 HONOR.

23 THE COURT: 8TH. LETTER ON THE 25TH OF
24 AUGUST.

25 THE MOTION FILED ON SEPTEMBER THE 8TH.

26 LET'S SEE. HOW ABOUT OPPOSITION BY THE 18TH.

27

IS THAT SUFFICIENT TIME FOR YOU?

28

MR. JOYCE: YOUR HONOR, ACTUALLY I'VE DONE A

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38

1 LOT OF LEG WORK IN ADVANCE. I HAVE AN -- AN 83-PAGE
2 ROUGH DRAFT OF A MATRIX THAT MAY BE COMPLETED IN THE
3 NEXT THREE WEEKS SO I WILL BE IN POSITION.

4 THE COURT: OKAY. SO THE 18TH THEN FOR
5 OPPOSITION.

6 AND WE'LL HEAR IT ON THE 13TH OF OCTOBER.

7 MR. WEEKS: THE TIME?

8 THE COURT: 9:00 A.M. -- DO YOU WANT TO MAKE
9 IT 10:00?

10 MR. WEEKS: THE REPLY TO THE OPPOSITION?

11 THE COURT: FIVE DAYS AFTER THE 18TH.

12 MS. GOLDSMITH: THIS IS JAN GOLDSMITH. WILL
13 THAT BE IN SAN JOSE?

14 THE COURT: YES.

15 MS. GOLDSMITH: THANK YOU.

16 MR. WEEKS: DID YOU SETTLE ON 9:00 A.M. OR
17 10:00 A.M.?

18 THE COURT: 10:00 A.M. SO PEOPLE DON'T HAVE TO
19 COME UP THE NIGHT BEFORE.

20 MR. ZIMMER: THE 23RD ON THE REPLY, YOUR
21 HONOR. IS IT FIVE DAYS?

22 THE COURT: YES. OKAY. ALL RIGHT.

23 AND I'M SURE THAT, MR. DUNN, YOU AND
24 MR. MC LACHLAN WILL CONTINUE TO COOPERATE IN GETTING
25 THE CLASS SERVED SO WE CAN GET THIS MATTER AT ISSUE.

26 MR. DUNN: YES, YOUR HONOR.

27 MR. MC LACHLAN: I HOPE SO.

28 THE COURT: BE AN OPTIMIST, MR. MC LACHLAN.

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39

1 MR. MC LACHLAN: I AM TRYING.

2 THE COURT: OKAY. NOW, YOUR MOTION,

3 MR. MC LACHLAN, WAS CONTINUED BY YOU AT YOUR REQUEST TO
4 SEPTEMBER THE 14TH.

5 MR. MC LACHLAN: THAT'S TRUE, YOUR HONOR.

6 THE COURT: IS THERE ANY REASON WHY WE SHOULD
7 NOT HEAR THAT AT THE SAME TIME AS THE CONSOLIDATION
8 MOTION?

9 MR. MC LACHLAN: THIS IS THE MOTION FOR
10 ALLOCATION OF THE EXPERT EXPENSES.

11 THE COURT: YES.

12 MR. MC LACHLAN: THE REASON WOULD BE, IS
13 BECAUSE THERE STILL REMAINS SOME RATHER SIGNIFICANT
14 FUNDAMENTAL PROBLEMS IN THE SMALL PUMPER CLASS AND IN
15 MY STATEMENT I ALLUDED TO A FEW OF THOSE, ONE OF THEM
16 BEING WE HAVE AN ESTIMATE FROM DISTRICT 40'S EXPERT
17 THAT WE HAVE -- MANY OF THE THOUSAND DISTRICT 40
18 CUSTOMERS WHO RECEIVED A NOTICE ARE NOW CLASS MEMBERS
19 BUT WE DON'T KNOW WHO ANY OF THEM ARE EXCEPT FOR THE
20 THOSE WHO SENT IN CLASS RESPONSE FORMS. AND I COULD GO
21 ON WITH THE OTHER FOUR OR FIVE ISSUES WE SPOTTED. AND
22 WE ARE GOING TO NEED SOME EXPERT ASSISTANCE. SO IF WE
23 DEFER, IT IS OKAY WITH ME, BUT EVERYBODY HAS TO KNOW IF
24 WE DEFER THAT, QUICK IT OUT TO OCTOBER, COME OCTOBER-
25 NOVEMBER WE ARE STILL GOING TO HAVE SIGNIFICANT
26 PROBLEMS WITH THE SMALL PUMPERS CLASS BECAUSE IT WILL
27 NOT BE IN ANY SHAPE THAT WOULD BE FUNCTIONAL.

28 THE COURT: OKAY. YOU UNDERSTAND THE COURT'S

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40

1 POSITION IS THAT IN TERMS OF THE EXPERT IT IS THE
2 COURT'S EXPERT.

3 MR. MC LACHLAN: YES, YOUR HONOR, I UNDERSTAND
4 THAT.

5 THE COURT: AND THAT EVERYBODY HAS ACCESS TO
6 THAT EXPERT.

7 MR. MC LACHLAN: TRUE. I HAVE -- TO THE
8 EXTENT THERE HAVE BEEN E-MAILS TO THAT EXPERT, WHICH
9 HAVE BEEN LIMITED, I HAVE COPIED TO THE WATER PURVEYORS
10 AND MR. FIFE IS A LIAISON TO THE OVERLIERS AND HE IS
11 COPIED ON THOSE E-MAILS.

12 THE COURT: I THINK YOU SHOULD POST THOSE
13 COMMUNICATIONS SO EVERYBODY HAS ACCESS TO THEM.

14 MR. MC LACHLAN: THAT'S FINE. SO IF WE CAN --
15 I WANTED TO MAKE A DISCLOSURE. I MOVED THE HEARING
16 LARGELY BECAUSE MR. DUNN HAS BEEN ON HOLIDAY FOR THE
17 LAST THREE WEEKS AND WE COULDN'T COMMUNICATE ON ISSUES
18 THAT CAME UP RECENTLY, AND I WANT TO CONFER WITH HIM ON
19 WHAT THE EXPERT SHOULD VERSUS WHAT HIS EXPERT SHOULD BE
20 DOING. SO WE CAN CONTINUE IT OVER --

21 THE COURT: I THINK I AM GOING TO DO THAT, PUT
22 IT ON THE SAME DATE AS THE HEARING ON THE MOTION.

23 MR. MC LACHLAN: AND THERE IS ALSO -- AND ONE
24 OTHER MOTION, DISQUALIFICATION MOTION. WILL THAT ALSO
25 BE CONTINUED?

26 THE COURT: YES. THAT'S THE LEMIEUX ISSUE.
27 THEY COULD NOT BE HERE. THERE WAS A DEATH IN THEIR
28 FAMILY AND THAT IS WHY THAT MATTER WAS CONTINUED. SO

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1 THAT WAS CONTINUED TO THE 14TH. I AM GOING TO PUT IT
2 OVER TO THE SAME DATE AS THE HEARING OF THE
3 CONSOLIDATION MOTION. THE 13TH OF OCTOBER AT
4 10:00 A.M.

5 THE -- THERE IS A MOTION BY THE WILLIS CLASS.

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

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

15 MR. HARTER: GOOD MORNING.

16 THE COURT: GOOD MORNING.

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

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42

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

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

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

8 AFTER I HAVE HEARD FROM THE OPPOSITION.

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

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

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

26 THE COURT: GO AHEAD, MS. GOLDSMITH.

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

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43

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

7 THE COURT: OKAY.

8 MR. WEEKS: BRADLEY WEEKS.

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

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

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

22 THE COURT: OKAY.

23 MR. KALFAYAN: IF I MIGHT RESPOND.

24 THE COURT: YES.

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

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

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

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

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

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

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

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45

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

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

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

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

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

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

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

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

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

18 IN A SAME FIELD TRIAL.

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

22 MR. KALFAYAN: YES.

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

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

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

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

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

21 THE COURT: I WANT TO ENSURE THE COURT'S
22 DECISION IN THIS CASE IS RESPECTFUL OF EVERYBODY'S
23 RIGHTS AND INTEREST IN A FAIR RESOLUTION OF THIS CASE.

24 AND LET ME ALSO SUGGEST TO YOU THAT ONE OF THE
25 THINGS I'M HOPING YOU ARE GOING TO BE ABLE TO DO IS TO
26 DEAL WITH YOUR ADVERSARIES BY SOME SORT OF AGREEMENT.
27 I AM HOPING THAT WILL COME OUT OF YOUR MEETING WITH
28 JUSTICE ROBIE.

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48

1 YES, MR. ZIMMER.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 THE COURT: YES.

8 MR. KALFAYAN: THANK YOU.

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

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

28 AND THAT IS A SERIOUS CONCERN AND SHOULD BE A

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

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

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

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

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

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

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1 NO OVERDRAFT FOR PURPOSES OF THE PRESCRIPTIVE RIGHTS.

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

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

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

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

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

25 MR. BUNN: ABSOLUTELY.

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

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

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

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

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

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

21 MR. BUNN: OKAY.

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

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1 THE COURT: I UNDERSTAND.

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

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

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

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

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

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1 IT IS WITHOUT PREJUDICE.

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

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

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

6 YOU DON'T HAVE TO.

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

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

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

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

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

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

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

24 COUNSEL?

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

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

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

12 THAT.

13 THE COURT: I AM EVER HOPEFUL BUT I DON'T
14 BELIEVE STAYING THIS CASE IS THE RIGHT THING TO DO AT
15 THIS POINT. I THINK THAT GETTING THE PLEADINGS IN
16 SHAPE IS PROBABLY THE FIRST THING THAT I WOULD LIKE TO
17 ACCOMPLISH, MAYBE THE ONLY THING I EVER ACCOMPLISH IN
18 THIS CASE BUT --

19 MR. EVERTZ: I AGREE A HUNDRED PERCENT. YOU
20 NEED THAT DONE EVEN IF WE HAVE A STIPULATED JUDGMENT.
21 I WANTED TO LET YOU KNOW WHAT OUR TIMELINE IS AND I
22 WANTED YOU TO BE AWARE WE ARE THINKING ABOUT PRESENTING
23 A STIPULATED JUDGMENT TO THE COURT, AND IF THAT'S
24 POSSIBLE AND WE ARE STILL ON TRACK IN OCTOBER MAYBE WE
25 CAN FACTOR THAT IN FOR THE TIME FOR THE TRIAL DATE.

26 THE COURT: WELL, I CERTAINLY WILL. AND, YOU
27 KNOW, I AM BY NATURE AN OPTIMIST, OKAY.

28 MR. EVERTZ: I AM TOO, YOUR HONOR.

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1 THE COURT: I HAVE ALWAYS BELIEVED THIS CASE
2 WOULD SETTLE BUT I THINK THAT ABOUT EVERY CASE. SO,
3 YOU KNOW, IT MAY OR MAY NOT. BUT I'M HOPEFUL AND I
4 BELIEVE IT WILL.

5 MR. EVERTZ: I DO WANT TO LET YOU KNOW THERE
6 REALLY IS A DIVERSE CROSS SECTION OF PARTIES
7 PARTICIPATING IN THIS PROCESS, AND I WON'T BORE YOU
8 WITH THE DETAILS BUT WE HAVE COME UP WITH A CONCEPT TO
9 ALLOW CLASS COUNSEL PARTICIPATE AND RESOLVE --

10 THE COURT: YOU KNOW, I DON'T THINK THAT YOU
11 CAN EVER HAVE A SETTLEMENT IN THIS CASE WITHOUT CLASS
12 COUNSEL BEING INVOLVED, SO I THINK YOU NEED TO HAVE
13 THEM INVOLVED SOONER RATHER THAN LATER.

14 MR. EVERTZ: WE INTEND TO DO THAT, YOUR

15 HONOR. THANK YOU.

16 THE COURT: OKAY.

17 THERE IS A MOTION BY BOLTHOUSE TO AMEND THE
18 EXHIBITS. I PRESUME THAT YOU ARE NOT READY TO DO THAT.

19 MR. ZIMMER: WELL, I THOUGHT I SAID AT LAST
20 HEARING, YOUR HONOR, WHAT I WOULD DO IS DEFER THAT. I
21 NEED TO SEE WHAT THE PLEADINGS ARE GOING TO LOOK LIKE
22 BEFORE WE SPEND THE MONEY TO CHANGE IT ALL AROUND.
23 ONCE THE PLEADINGS ARE SQUARED AROUND WE WILL TAKE CARE
24 OF THAT.

25 THE COURT: OCTOBER 13TH?

26 MR. ZIMMER: THAT'S FINE. IT WILL PROBABLY BE
27 AFTER THAT BECAUSE OCTOBER 13TH WILL PROBABLY
28 DETERMINE --

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1 THE COURT: THAT WILL JUST GIVE US AN
2 OPPORTUNITY TO MONITOR IT.

3 MR. ZIMMER: OKAY. THAT WOULD BE FINE.

4 THE COURT: OKAY.

5 AND I GUESS, MR. EVERTZ, WHAT I AM REALLY DOING
6 IS RATHER THAN DENYING YOUR MOTION FOR A STAY,
7 RESETTING IT FOR THE 13TH. WE WILL TALK ABOUT THAT
8 TOO. HOPEFULLY YOU WILL HAVE SOME REALLY GOOD NEWS.

9 MR. EVERTZ: THANK YOU. I APPRECIATE THAT,
10 YOUR HONOR.

11 THE COURT: THANK YOU.

12 THERE IS A MOTION BY CALIFORNIA WATER SERVICE FOR
13 RELIEF FROM THE NOTICE REQUIREMENT. THEY DON'T WANT TO
14 SERVE -- WHO IS APPEARING ON THAT?

15 MR. TOOTLE: YOUR HONOR, THIS IS JOHN TOOTLE.

16 JOHN TOOTLE WITH CALIFORNIA WATER SERVICE COMPANY. WE
Page 53

17 HAD PREVIOUSLY CONTACTED THE COURT. IT WAS OUR
18 UNDERSTANDING THE MOTION WOULD BE TAKEN OFF CALENDAR.

19 THE COURT: IT IS. THANK YOU.

20 AND THE MOTION TO DISQUALIFY THE LEMIEUX FIRM IS
21 CONTINUED TO OCTOBER THE 13TH AT 10:00 A.M.

22 I THINK THAT IS ALL THERE IS BY WAY OF MOTIONS.

23 AND GIVEN THE POSTURE OF THE CASE, THE CMC IS, AS
24 I'VE INDICATED PREVIOUSLY, CONTINUED TO THE 13TH.

25 MR. JOYCE: YOUR HONOR.

26 THE COURT: YES.

27 MR. JOYCE: WITH REFERENCE TO THE CMC, IN
28 ANTICIPATION OF THE SUPPLEMENTAL PLEADINGS IN RESPONSE

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1 TO THIS MOTION TO CONSOLIDATE, I TASKED A PARALEGAL IN
2 MY OFFICE TO ATTEMPT -- I USE THAT WORD CAUTIOUSLY --
3 TO CREATE OR AT LEAST SEE IF SHE COULD FORMULATE A
4 MATRIX OF HOW MANY ACTIONS THERE WERE, WHO IS IN THEM,
5 WHO HAS APPEARED, WHO HAS BEEN SERVED AND THE LIKE. IT
6 IS AN ONGOING PROCESS. SHE HAS BEEN AT IT FOR THREE
7 WEEKS AND SHE GIVES ME AN ESTIMATE OF ANOTHER THREE
8 WEEKS BEFORE SHE CAN GIVE ME ANYTHING SHE HAS ANY
9 CONFIDENCE IN.

10 BUT WHAT WE HAVE OBSERVED IN THE EFFORT TO DATE IS
11 THAT THERE APPEARS TO BE, AT LEAST IF WE ACCEPT THE
12 POSTINGS BY THE WATERWORKS 40 ON THE COURT'S WEB SITE
13 CONCERNING SERVICE OF PROCESS, ABOUT 2200 PARTIES THAT
14 APPEAR TO HAVE BEEN SERVED OR WHO THEY CLAIM TO HAVE
15 BEEN SERVED, THAT THERE IS NO APPEARANCE BY THOSE
16 PARTIES. AND THE ISSUE WE'RE CONFRONTED WITH IS SOME
17 TIME BACK THE COURT ISSUED AN ORDER PRECLUDING TAKING
18 OF DEFAULTS WITHOUT PRIOR AUTHORIZATION OF THE COURT.

19 I THINK WHAT WOULD BE HELPFUL TO ALL THE
20 PARTICIPANTS AND HELP THE COURT AS WELL AS PART OF THE
21 MATRIXING PROCESS THE PARTIES WILL BE DOING IN
22 CONNECTION WITH THE MOTION TO CONSOLIDATE, WHICH WOULD
23 ALSO TAKE IT TO THE NEXT STEP AND GIVE THE COURT A
24 DEFINITIVE REPORT ON THE STATUS OF SERVICE OF PROCESS,
25 WHO HAS BEEN SERVED, IN WHAT MANNER THEY HAVE BEEN
26 SERVED AND WHETHER OR NOT THEY HAVE APPEARED. AND THEN
27 WE CAN ADDRESS RELIEVING THE ORDER ON DEFAULTS AND
28 GETTING THIS THING PUT AT ISSUE.

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60

1 ONE OF THE CONCERNS I HAVE IS THAT IT APPEARS A
2 LOT OF THE SERVICE IS BEING ATTEMPTED INITIALLY BY
3 CORRESPONDENCE WITH RETURN AND RECEIPT ACKNOWLEDGEMENT
4 AND THEN FOLLOW IT UP WITH PERSONAL SERVICE. THAT MAY
5 EXPLAIN PART OF THE TIME LAG IN GETTING PEOPLE TO
6 APPEAR. THE LONG AND SHORT OF IT RIGHT NOW IS WE HAVE
7 A LOT OF PEOPLE WHO HAVE NOT DONE ANYTHING IN RESPONSE
8 TO ANY SERVICE.

9 THE COURT: MR. DUNN.

10 MR. DUNN: WELL, A COUPLE OF COMMENTS. ONE IS
11 IT'S -- IT WILL BE SOMETHING WE'LL NEED TO DISCUSS WITH
12 THE COURT IN TERMS OF WHAT TO DO WITH THE PARTIES WHO
13 HAVE BEEN SERVED WHO FAIL TO APPEAR. I SUSPECT THAT IS
14 NOT THE DRIVING ISSUE IN THE CASE RIGHT NOW. THAT IS
15 SOMETHING WE CAN DEAL WITH.

16 THE SECOND POINT, THOUGH, IS I APPRECIATE
17 MR. JOYCE'S EFFORTS TO UNDERTAKE SOME WORK THAT COULD
18 BE PERHAPS OF SOME BENEFIT IN THIS CASE, AND IF I
19 UNDERSTOOD HIM CORRECTLY IN ABOUT THREE WEEKS TIME HIS
20 OFFICE WILL HAVE THAT MATRIX COMPLETED. WHAT I WOULD
21 SUGGEST IS THAT IN THAT -- AFTER THAT THREE WEEKS HAS

22 LAPSED THAT MR. JOYCE POST THAT SO ALL THE PARTIES CAN
23 EVALUATE THAT SO WE'RE NOT SORT OF BACK HERE WITH A
24 HIDE-THE-BALL KIND OF SITUATION. PRESUMABLY THIS
25 EFFORT IS BEING DONE TO ADVANCE THE INTERESTS OF
26 EVERYONE IN THE CASE, SO I GUESS WHAT I'M SAYING IS HOW
27 ABOUT IN THREE WEEKS TIME WE GET THIS MATRIX POSTED BY
28 MR. JOYCE AND WE CAN ALL EVALUATE IT AND THEN WHEN WE

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61

1 COME BACK IN OCTOBER FOR A STATUS CONFERENCE, WE WILL
2 REPORT -- WE WILL FILE SOMETHING THAT REPORTS ON THE
3 STATUS OF SERVICE AT THAT TIME.

4 THE COURT: WELL, LET ME ASK YOU THIS. DO YOU
5 KNOW -- DOES YOUR OFFICE KNOW WHO HAS BEEN SERVED AND
6 HAS NOT RESPONDED IN ANY WAY?

7 MR. DUNN: YES.

8 THE COURT: AND THAT'S DIFFERENT THAN PEOPLE
9 WHO HAVE AGREED TO USE THE COURT'S, OR THE AGREED-UPON
10 FORM OF APPEARANCE THAT DOESN'T REQUIRE LAWYERS OR
11 ANYTHING OTHER THAN THEY AGREE TO BE BOUND BY WHATEVER
12 THE DECISION OF THE COURT IS.

13 MR. DUNN: I THINK THAT'S CORRECT, YES.

14 THE COURT: OKAY. AND DO YOU THINK THAT
15 NUMBER IS ABOUT 2200?

16 MR. DUNN: I DON'T KNOW WHAT THE NUMBER IS.

17 THE COURT: YOU DON'T KNOW.

18 WELL, THE MATRIX MR. JOYCE IS TALKING ABOUT -- I
19 AM A LITTLE CONFUSED HERE -- IS CONCERNING THE
20 PLEADINGS, NOT THE SERVICE ISSUE; IS THAT RIGHT?

21 MR. JOYCE: IT IS A COMBINATION OF BOTH, YOUR
22 HONOR.

23 THE COURT: WELL --

24 MR. JOYCE: WHAT IT IS, IS THE EFFORT WAS MADE
25 TO IDENTIFY ALL COMPLAINTS, ALL CROSS-COMPLAINTS, ALL
26 PARTIES NAMED AND THEN TO ALSO IDENTIFY ALL PARTIES
27 THAT ALLEGEDLY HAD BEEN SERVED AS EITHER A DOE OR A
28 ROE, AND THEN THE PROCESS THAT IS UNDER -- BEING
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62

1 UNDERTAKEN IS TO IDENTIFY ALL THOSE THAT HAVE ACTUALLY
2 MADE AN APPEARANCE BY WAY OF ANSWER OR OTHERWISE.

3 THE COURT: WELL, YOU KNOW, IT SEEMS TO ME
4 THAT THE ONE GROUP THAT I'M CONCERNED ABOUT IS THE
5 GROUP WHO HAS BEEN SERVED WHO HAS NOT ANSWERED OR
6 OTHERWISE APPEARED. I AM NOT CONCERNED ABOUT THE REST
7 OF THEM WHO HAVE BEEN SERVED WHO HAVE EITHER RESPONDED
8 THROUGH THEIR LAWYER OR HAVE RESPONDED BY FILING A FORM
9 APPEARANCE. SO THE PEOPLE WHO HAVE NOT RESPONDED, WE
10 NEED TO KNOW WHO THEY ARE.

11 AND IT MAY WELL BE THAT YOU ARE GOING TO HAVE TO
12 SEND A LETTER TO THEM AND TELL THEM IF THEY DON'T
13 RESPOND YOU ARE GOING TO REQUEST A DEFAULT.

14 MR. DUNN: IF MY MEMORY IS CORRECT, SOMEONE
15 CAN CORRECT IT HERE, I THINK WE HAVE SENT A LETTER OUT
16 LIKE THAT TO SOME OF THESE PARTIES WHO HAVE BEEN SERVED
17 PERSONALLY.

18 THE COURT: SO WHAT WILL HAPPEN IS, ASSUMING
19 THAT WE HAVE A TRIAL, THERE WILL BE ESSENTIALLY A
20 PROVEUP AS TO THOSE PEOPLE. TO THE EXTENT THERE IS A
21 SETTLEMENT AND THE SETTLEMENT IS SOMETHING THE COURT
22 THINKS IS REASONABLE AND IS APPROVED WITHIN THE
23 JURISDICTION OF THE COURT'S ORDER AS TO NONAGREEING
24 PARTIES ON A DEFAULT PROVEUP, THAT MAY WELL BE THE
25 ORDERS THAT ARE MADE. SO --

26 MR. DUNN: THAT'S CORRECT. WE WILL NEED THAT

27 LIST OF DEFAULTED PARTIES, YOU KNOW, FOR THE PORTION OF
28 THE JUDGMENT THAT DEALS WITH THEM.

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63

1 THE COURT: I THINK IT WOULD BE A GOOD IDEA IF
2 YOU COULD JUST SCAN THAT AND HAVE IT POSTED.

3 MR. DUNN: WE CAN DO THAT, YOUR HONOR.

4 THE COURT: SO WE KNOW EXACTLY -- THE RECORD
5 WILL SHOW EXACTLY WHO HAS NOT APPEARED, AND THAT WAY
6 WHEN IT COMES TIME FOR -- FOR A DEFAULT, IF THAT'S WHAT
7 IT IS GOING TO BE, YOU WILL BE ABLE TO ACT ON THAT
8 LIST.

9 MR. DUNN: I LIKE THAT IDEA ALSO BECAUSE IF
10 THERE IS ANYONE WITH INFORMATION TO THE CONTRARY, WE
11 CAN MEET AND CONFER AND CLARIFY THAT SO IT'S ACCURATE.

12 THE COURT: YES.

13 MR. DUNN: THANK YOU.

14 THE COURT: ALL RIGHT.

15 MR. ZIMMER: BEFORE MR. DUNN GETS AWAY, YOUR
16 HONOR, IT IS MR. ZIMMER. ON PAGE 2 OF THE L.A. COUNTY
17 CASE MANAGEMENT CONFERENCE STATEMENT, THEY MAKE A
18 STATEMENT THAT THE COUNTY WAS NOT SERVING LANDOWNERS
19 PUMPING LESS THAN 25 ACRE FEET OR ONLY LESS THAN
20 100 ACRES.

21 THAT WAS NOT MY UNDERSTANDING THAT -- I THOUGHT --
22 I THOUGHT EVERYBODY WAS GOING TO BE SERVED. I DON'T
23 THINK THE COURT EVER RULED THAT ANY PARTY UNDER A
24 HUNDRED ACRE FEET DIDN'T NEED TO BE SERVED, OR A
25 HUNDRED -- LESS THAN A HUNDRED ACRES NEEDS TO BE
26 SERVED.

27 MR. DUNN: YEAH. I AM NOT SURE EXACTLY WHAT
28 MR. ZIMMER IS REFERRING TO BUT IN TERMS OF SERVICE OF

‡

1 PROCESS, THE COURT HAS ISSUED ORDERS ESSENTIALLY, YOU
2 KNOW, GENERALLY STATING EVERYONE WITHIN THE
3 ADJUDICATION AREA IS TO BE BROUGHT INTO THE CASE EXCEPT
4 THOSE PARTIES WHO ARE PUBLIC WATER SUPPLIER CUSTOMERS
5 WHO DO NOT PUMP GROUNDWATER. EVERYONE ELSE IS TO BE
6 EITHER IN A CLASS OR IS TO BE SERVED ON AN INDIVIDUAL
7 BASIS OR THROUGH PUBLICATION AND WHATNOT. BUT --

8 THE COURT: I THINK THAT'S CORRECT.

9 MR. DUNN: I WILL GO BACK AND LOOK AT THE CASE
10 MANAGEMENT CONFERENCE STATEMENT. THAT IS HOW WE ARE
11 PROCEEDING.

12 THE COURT: ALL RIGHT. YOU MIGHT TALK WITH
13 MR. ZIMMER ABOUT THAT.

14 MR. DUNN: SURE.

15 MR. WEEKS: BRAD WEEKS. A GROUP OF US MET AND
16 CONFERRED OVER ANSWERS TO THE VARIOUS COMPLAINTS,
17 CROSS-COMPLAINTS THAT HAVE BEEN FILED.

18 THERE IS A COURT ORDER IN DEEMED ANSWERS WE
19 THOUGHT IT WOULD HELP US TODAY OR IN OCTOBER FOR
20 CLARITY WHEN WE HAVE TO ANSWER, WHAT THAT DEEMED ANSWER
21 WOULD BE.

22 OUR SUGGESTION, NOT THE GROUP, BUT MINE AND A
23 COUPLE OTHER PEOPLE'S SUGGESTION WAS THAT ALL
24 ANSWERS -- ALL COMPLAINTS OR CROSS-COMPLAINTS HAVE A
25 DEEMED ANSWER, THAT IS, A GENERAL DENIAL AND ALL
26 APPROPRIATE AFFIRMATIVE DEFENSES, UNLESS THE PARTY
27 WANTED TO OPT OUT OF THAT.

28 THAT WAS SORT OF WHAT WE TALKED ABOUT AND IT

‡

1 RELATES TO THESE OTHER ISSUES THAT ARE COMING IN
2 OCTOBER, BUT THIS ISSUE REALLY NEEDS TO BE ADDRESSED SO

3 WE KNOW WHO TO DEFAULT, WHO NOT TO DEFAULT, WHO IS
4 ANSWERING AND WHO IS NOT. THAT TYPE OF ISSUE.

5 THE COURT: THAT'S CORRECT. YOU NEED THAT
6 RESOLVED.

7 MR. WEEKS: WOULD IT BE THE COURT'S
8 INCLINATION TO HAVE AN ORDER DEEMING ALL COMPLAINTS AND
9 CROSS-COMPLAINTS ANSWERED IN THAT FORM OR --

10 THE COURT: I DON'T THINK I CAN DO THAT. I
11 MEAN, I THINK I CAN AUTHORIZE THE FILING IN LIEU OF
12 APPEARANCE OR A STANDARD FORM OF ANSWER THAT CAN BE
13 FILED BY PARTIES WHO DON'T WANT -- WISH TO ACTIVELY
14 PARTICIPATE BUT THAT WILL PERMIT THEM TO BE NAMED AS A
15 PARTY AND THEY ARE GOING TO -- IF THEY DON'T
16 PARTICIPATE, THE COURT HAS A TRIAL AND THE COURT WILL
17 MAKE DECISIONS ABOUT THAT. THERE ARE A NUMBER OF OTHER
18 OPTIONS I CAN THINK ABOUT --

19 MR. WEEKS: AND THOSE PARTIES WHO HAVE APPEARED
20 IN THE CASE COULD FILE ANOTHER ANSWER AND THAT WOULD
21 TAKE CARE OF --

22 THE COURT: IT SEEMS TO ME IF SOMEONE HAS
23 APPEARED IN THE CASE AND THERE ARE NO NEW ISSUES BEING
24 RAISED BY FURTHER CROSS-COMPLAINTS OR OTHER ANSWERS
25 FILED, IF THEY WANT TO STIPULATE THAT THEIR ANSWER TO
26 THE FIRST PLEADING SHOULD APPLY TO EACH AND EVERY OTHER
27 PLEADING THAT IS SERVED UPON THEM, THERE'S NO REASON
28 THAT CAN'T OCCUR AS WELL.

♀

66

1 MR. WEEKS: WELL, HOW ABOUT ABSENT THAT
2 STIPULATION?

3 THE COURT: ABSENT THAT TYPE OF STIPULATION
4 THEY ARE VULNERABLE, AREN'T THEY.

5 MR. WEEKS: WELL, I THINK THERE IS AN ORDER
6 FROM THE COURT NOW PROHIBITING DEFAULT BEING TAKEN.

7 THE COURT: WELL, THERE IS, UNTIL -- UNTIL WE
8 GET THE CASE IN A POSITION WHERE WE KNOW WHAT WE'RE
9 GOING TO BE DOING WITH THESE PEOPLE.

10 MR. WEEKS: WELL, FOR EXAMPLE --

11 THE COURT: THAT WAS AT THE REQUEST OF THE
12 PARTIES. I DIDN'T MAKE THAT ORDER OUT OF THE BLUE. IT
13 WAS REQUESTED AND ESSENTIALLY AGREED TO BY EVERYBODY.

14 MR. WEEKS: VERY WELL, YOUR HONOR. THERE HAVE
15 BEEN SOME CROSS-COMPLAINTS AND COMPLAINTS FILED AND A
16 LOT OF US WANT TO KNOW IF WE NEED TO ANSWER THEM OR NO.
17 YOU KNOW, IF WE CAN FILE ONE ANSWER THAT WOULD JUST
18 TAKE CARE OF ALL OF THEM WITHOUT A STIPULATION JUST BY
19 FILING THE ANSWER.

20 MR. JOYCE: YOUR HONOR, I SOMEBODY IF
21 MR. WEEKS WERE TO PICK UP THE PHONE AND CALL THE
22 ATTORNEY REPRESENTING THE CROSS COMPLAINANT HE WOULD
23 GET THE ANSWER.

24 THE COURT: WELL, THAT MIGHT OR MIGHT NOT
25 HAPPEN. I DON'T KNOW.

26 WELL, HOW DO YOU WANT TO PROCEED, MR. WEEKS?

27 MR. WEEKS: WELL, WHAT WE WERE PROPOSING IS WE
28 COULD FILE ONE ANSWER THAT WOULD BE A GENERAL DENIAL

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67

1 AND ALL APPROPRIATE AFFIRMATIVE DEFENSES THAT WOULD
2 COVER ALL COMPLAINTS AND CROSS-COMPLAINTS.

3 THE COURT: AS LONG AS YOU PUT EVERYBODY'S
4 NUMBER ON IT OR PUT THE COORDINATION NUMBER ON IT, IT
5 SEEMS TO ME THAT IS GOING TO BE SUFFICIENT.

6 MR. WEEKS: THANK YOU, YOUR HONOR.

7 MR. LOGAN: GOOD AFTERNOON -- MORNING STILL,
Page 61

8 YOUR HONOR, FRANCIS LOGAN.

9 BRIEFLY GOING BACK TO THE MOTION BY CALIFORNIA
10 WATER SERVICE COMPANY FOR LIMITED RELIEF FROM THE
11 NOTICE REQUIREMENTS, PHELON CAME INTO THE CASE AFTER
12 THAT BRIEFING HAD OCCURRED ON PROVIDING NOTICE, AND
13 PARTIES, INCLUDING THE COURT, TEND TO USE THE WORD
14 "PUBLIC WATER SUPPLIER" BROADLY TO INCLUDE PHELON BUT
15 WE'RE NOT ACTUALLY A PLAINTIFF ON THE PUBLIC WATER
16 SUPPLIER COMPLAINT.

17 SO I AM REQUESTING SOME CLARIFICATION THAT
18 NOTICE -- THAT -- THAT THIS PARTICULAR OBLIGATION DOES
19 NOT APPLY TO MY CLIENT BECAUSE THEY WERE NEVER ACTUALLY
20 A PARTY TO THAT MOTION, OR IF BY BEING DEEMED ALIGNED
21 WITH THE OTHER PUBLIC WATER SUPPLIERS YOU WANT US TO GO
22 FORWARD WITH PROVIDING THAT NOTICE.

23 THE COURT: NOTICE TO WHOM?

24 MR. LOGAN: APPARENTLY TO OUR RATE PAYERS,
25 NONE OF WHOM LIVE IN LOS ANGELES COUNTY BY DEFINITION.

26 THE COURT: THAT MOTION WAS FILED BY WHOM?

27 MR. MC LACHLAN: I AM NOT SURE WE WILL EVER
28 KNOW, YOUR HONOR.

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68

1 IT CAME OUT OF A HEARING IN EARLY JUNE, I
2 BELIEVE. AND TO JUST GET TO THE BOTTOM LINE, I
3 RECEIVED AN E-MAIL I BELIEVE IT WAS FROM MR. BUNN A FEW
4 WEEKS BACK TO MY OFFICE SAYING THAT WE -- HIS CLIENT
5 AND SOME OF THE OTHER PUBLIC WATER SUPPLIERS BELIEVE
6 THEY NO LONGER HAVE TO DO THAT.

7 AND IF IT'S NOT -- IT WAS THE BILL STUFFER ISSUE
8 YOUR HONOR MENTIONED, AND FRANKLY AT LEAST SPEAKING FOR
9 THE SMALL PUMPER CLASS WE DIDN'T REALLY CARE ONE WAY OR

10 THE OTHER WHETHER THAT WENT OUT. I AM REAL FOCUSED ON
11 THE ACTUAL NOTICE TO THE CLASS MEMBERS. SO IF THE
12 COURT WASN'T ADAMANT THAT BILL STUFFER LANGUAGE OCCUR
13 AND THE WATER SUPPLIERS CLEARLY DON'T WANT TO DO IT,
14 THEN IT WASN'T SOMETHING I WAS GOING TO MAKE AN ISSUE
15 OF AND NEVER HAVE.

16 THE COURT: WELL, I THOUGHT -- MR. TOOTLE, ARE
17 YOU STILL ON THE LINE?

18 MR. TOOTLE: YES, YOUR HONOR.

19 THE COURT: YOU HAD PROPOSED A MOTION FOR
20 RELIEF OF THE NOTICE REQUIREMENTS; IS THAT CORRECT?

21 MR. TOOTLE: I HAD, I GUESS WITH THE
22 MISUNDERSTANDING WE WERE DIRECTED TO NOTICE OUR
23 CUSTOMERS.

24 THE COURT: AND YOU WANTED RELIEF FROM THAT
25 REQUIREMENT.

26 MR. TOOTLE: YES.

27 THE COURT: AS FAR AS THE COURT IS CONCERNED,
28 UNLESS THERE IS OPPOSITION TO THAT, I AM INCLINED TO

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1 GRANT THAT RELIEF AND THAT WOULD BE ON BEHALF OF ANY
2 PARTY WHO IS A WATER PROVIDER WHO DOES NOT WISH TO
3 SERVE ITS OWN MEMBERS.

4 MR. LOGAN: THANK YOU, YOUR HONOR.

5 MR. TOOTLE: THANK YOU, YOUR HONOR.

6 THE COURT: NOW, THERE IS A MOTION FILED BY
7 MR. DAVIS CONCERNING THE WATER COMPANIES, THE MUTUAL
8 WATER COMPANIES, ASKING FOR RELIEF FROM SERVING THE
9 SHAREHOLDERS WHO ARE ALSO RECIPIENTS OF THE WATER FROM
10 THE MUTUAL WATER COMPANIES BECAUSE IT WAS CLAIMED THERE
11 WAS A TRANSFER OF THOSE WATER RIGHTS.

12 AND MR. DOUGHERTY, I GUESS HE'S WITHDRAWN, FILED
Page 63

13 AN OPPOSITION THAT WAS AN OPPOSITION FOR THE CONCEPT
14 THAT YOU COULD SEPARATE WATER RIGHTS FROM THE LAND.
15 AND THAT REALLY IS BESIDE THE POINT. IF THE REQUEST IS
16 FOR RELIEF, THEN IT SEEMS TO ME THAT OUGHT TO BE
17 GRANTED AND THAT THE SHAREHOLDERS OF THE MUTUAL WATER
18 COMPANY WHO ARE RECEIVING WATER DO NOT NEED TO BE
19 SERVED SINCE THE WATER COMPANY ITSELF, WHICH HAS
20 ACTUALLY ACTED ON BEHALF OF THOSE PEOPLE, IS RESPONDING
21 APPROPRIATELY TO PROTECT THEIR INTERESTS. SO I DON'T
22 THINK THERE IS A NEED TO SERVE THEM. THEIR WATER
23 RIGHTS ARE BEING PROTECTED AND THIS ADJUDICATION WILL
24 BE BINDING UPON THEM.

25 YES, MR. ZIMMER.

26 MR. ZIMMER: MR. ZIMMER FOR BOLTHOUSE. TO
27 CLARIFY. I DID MEET AND CONFER WITH MR. DUNN. I THINK
28 THE COMMENT IN MR. DUNN'S CASE MANAGEMENT CONFERENCE

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70

1 THAT THEY WERE NOT SERVING THOSE WITH OWNING -- THEY
2 WERE ONLY SERVING THOSE WITH OVER 100 ACRES OF LAND WAS
3 A CARRYOVER FROM THEIR INITIAL SERVICE ATTEMPT. IT IS
4 MY UNDERSTANDING CURRENTLY THAT THE L.A. COUNTY IS
5 SERVING EVERYONE WHO OWNS LAND IN THE BASIN, WITH THE
6 EXCEPTION OF THE TWO CLASSES AND RATE PAYERS IN THEIR
7 SERVICE AREAS WHO ARE NOT PUMPING.

8 MR. DUNN: YEAH. I HAVE HAD A CHANCE TO CHAT
9 WITH MR. ZIMMER ABOUT THIS. THE CASE MANAGEMENT
10 CONFERENCE STATEMENT DOES NOT STATE THAT THE PEOPLE ARE
11 NOT BEING SERVED. INSTEAD, WHAT IT DOES STATE IS, IN
12 ESSENCE IT GOES THROUGH GENERALLY THE HISTORY OF THE
13 SERVICE IN THE DIFFERENT TYPES OF GROUPS THAT HAVE
14 TAKEN PLACE. THE COURT MAY CALL THAT INITIALLY THE

15 FIRST EFFORTS IN SERVICE IN THIS CASE WERE DIRECTED AT
16 THE LARGER LAND OWNER PARTIES. THE THINKING AT THE
17 TIME WAS THAT THE -- THE BIG BOYS, AS THE COURT HAS
18 USED THE TERM TODAY, SHOULD BE INVOLVED IN THIS CASE --
19 THE COURT: I SHOULD HAVE SAID BIG BOYS AND
20 GIRLS. I'M SORRY.

21 MR. DUNN: YES. UNDERSTOOD. THAT IS WHAT IT
22 IS REFERRING TO --

23 MR. ZIMMER: THAT CAN GET YOU IN TROUBLE, TOO,
24 THOUGH.

25 THE COURT: WELL, I KNOW.

26 MR. DUNN: JUST SO WE ARE CLEAR, IT DOES NOT
27 STATE PEOPLE ARE NOT BEING SERVED. IT INDICATES AS TO
28 THE COURT'S EARLIER ORDER ON THAT SERVICE THAT IS WHAT
♀

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1 WAS ACCOMPLISHED. THANK YOU. I APPRECIATE MR. ZIMMER
2 RAISING THAT.

3 MR. ZIMMER: THE ONLY THING I HAD, REGARDLESS
4 OF WHAT THE COURT IS DOING IN TERMS OF THE NOTICE
5 REQUIRED THAT ANY ISSUES RELATING TO INDISPENSABLE
6 PARTIES WILL BE DEFERRED UNTIL THE MOTION TO DISMISS IS
7 HEARD.

8 THE COURT: YES.

9 IS MR. DAVIS PRESENT?

10 MR. DAVIS: YES, YOUR HONOR.

11 THE COURT: MR. DAVIS, YOU SUBSTITUTED IN FOR
12 MR. DOUGHERTY; IS THAT CORRECT?

13 MR. DAVIS: THAT IS CORRECT, YOUR HONOR.

14 THE COURT: HOW IS MR. DOUGHERTY?

15 MR. DAVIS: I UNDERSTAND MR. DOUGHERTY IS NOT
16 REALLY WELL. HE IS IN THE PROCESS OF ESTABLISHING HIS
17 OWN PRACTICE AND HAS LEFT COVINGTON & BURLING AND

18 BEYOND THAT I DO NOT KNOW. I AM IN THE PROCESS OF
19 GETTING ALL THE PLEADINGS AND FILES FROM
20 MR. DOUGHERTY'S OFFICE.

21 THE COURT: AND YOU HAVE ASSUMED THE
22 REPRESENTATION, THEN, OF THE MUTUAL WATER COMPANIES
23 FROM HIM; IS THAT CORRECT?

24 MR. DAVIS: YES, YOUR HONOR, AS TO THOSE
25 MUTUAL WATER COMPANIES MR. DOUGHERTY REPRESENTED.

26 THE COURT: YES. ALL RIGHT. SHOULD YOU SEE
27 MR. DOUGHERTY, EXPRESS MY CONCERN FOR HIM. AND BEST
28 WISHES FOR HIM.

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1 MR. DAVIS: I WILL DO THAT, YOUR HONOR.

2 THE COURT: ANYTHING ELSE WE NEED TO DO HERE
3 THIS MORNING?

4 MR. KUHS: ROBERT KUHS FOR HOME RANCH CORP.

5 I AM NOT REALLY CLEAR ON THE COURT'S ORDER WITH
6 RESPECT TO MR. TOOTLE'S MOTION. I UNDERSTOOD IT HAD
7 BEEN TAKEN OFF CALENDAR BY MR. TOOTLE BUT HAD BEEN
8 GRANTED NONETHELESS?

9 THE COURT: I THINK THAT WHAT I WAS SAYING WAS
10 THAT WE WERE NOT -- IT IS OFF CALENDAR. THERE IS NO
11 ORDER IN THAT MATTER.

12 MR. KUHS: OKAY. THANK YOU, YOUR HONOR.

13 THE COURT: ANYTHING ELSE?

14 ALL RIGHT. THANK YOU VERY MUCH, COUNSEL.

15 ALL COUNSEL: THANK YOU, YOUR HONOR.

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I, HEATHER J. GORLEY, DO HEREBY CERTIFY THAT SAID MATTER WAS TAKEN DOWN BY AT THE TIME AND PLACE THEREIN NAMED AND WAS THEREAFTER TRANSCRIBED BY MEANS OF COMPUTER-AIDED TRANSCRIPTION; AND THE SAME IS A TRUE, CORRECT AND COMPLETE TRANSCRIPT OF THE SAID PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NOT OF COUNSEL OR

73

ATTORNEY FOR ANY OF THE PARTIES HERETO, OR IN ANY WAY INTERESTED IN THE EVENTS OF THIS CASE, AND THAT I AM NOT RELATED TO ANY PARTY HERETO,

I FURTHER CERTIFY THAT I HAVE COMPLIED WITH CCP 237 (A)(2) IN THAT ALL PERSONAL JUROR IDENTIFYING INFORMATION HAS BEEN REDACTED IF APPLICABLE,

DATED, THIS 22ND DAY OF AUGUST, 2009.

HEATHER J. GORLEY
CRR CSR #9195

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