

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 10

HON. WILLIAM F. HIGHBERGER, JUDGE

- - -

SANTA BARBARA CHANNELKEEPER, a)
California non-profit corporation,)
)
Plaintiff,)
)
vs.) Case No. 19STCP01176
)
STATE WATER RESOURCES CONTROL BOARD,)
etc., et al.,)
)
Defendants.)
)

AND RELATED CROSS-ACTION.)

)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, DECEMBER 9, 2021

IN-PERSON APPEARANCES OF COUNSEL:

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TRANSCRIPT OF PROCEEDINGS

December 09, 2021

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TRANSCRIPT OF PROCEEDINGS

December 09, 2021

1	REMOTE LA COURTCONNECT APPEARANCES OF COUNSEL (CONTINUED):	
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25	VENTURA RIVER COUNTY WATER DISTRICT:	HERUM CRABTREE SUNTAG BY: JEANNE M. ZOLEZZI, ESQUIRE
26	ST. JOSEPH'S ASSOCIATES OF OJAI CALIFORNIA, INC.:	LANGERLOF LLP BY: THOMAS S. BUNN, III, ESQUIRE
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I N D E X

THURSDAY, DECEMBER 9, 2021

W I T N E S S E S

(NONE)

E X H I B I T S

(NONE)

1 CASE NUMBER: 19STCP01176
2 CASE NAME: SANTA BARBARA CHANNELKEEPER
3 vs. STATE WATER RESOURCES
4 CONTROL BOARD, et al.
5 LOS ANGELES, CA THURSDAY, DECEMBER 9, 2021
6 DEPARTMENT 10 HON. WILLIAM F. HIGHBERGER, JUDGE
7 TIME: 2:30 P.M.
8 REPORTER: TIMOTHY J. McCOY, CSR NO. 4745
9 APPEARANCES: (AS HERETOFORE NOTED)

10 * * *

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12

13 (The proceedings commenced in open court, with
14 various parties appearing remotely, as follows:)

15

16 THE COURT: Remain seated.

17 We're on the record in 19STCP01176,

18 Does the court reporter have the benefit of the
19 lineup of people in the courtroom?

20 THE REPORTER: Yes, your Honor.

21 THE COURT: Okay. Let me see if I've got it right.

22 Is Mr. Carter standing?

23 MR. CARTER: Yes, your Honor.

24 THE COURT: Ms. Jacobson at the corner?

25 MS. JACOBSON: Yes, your Honor.

26 THE COURT: Mr. Jungreis is in the middle?

27 MR. JUNGREIS: That's right.

28 THE COURT: Mr. Melnick?

1 MR. MELNICK: Yes, your Honor.

2 THE COURT: Mr. Hagerty I recognize.

3 MR. HAGERTY: Yes.

4 THE COURT: Mr. Pisano I recognize.

5 Mr. Slater is at the corner but not at the end.

6 And Mr. Herrema at the end.

7 MR. HERREMA: Yes, your Honor.

8 THE COURT: Okay.

9 It's pointed out in the Notice of Ruling and
10 in the status conference report that it's believed, at
11 least by City of Ventura, which I will use routinely as
12 an alternative to the more technical legal name of City
13 of is Santa Buenaventura, that the minute order of November
14 23 on the first page of three is erroneous in the last
15 line when there's a reference to the discovery cutoff
16 modified to December -- excuse me, February 10 of 2022.

17 Correct, Mr. Hagerty?

18 MR. HAGERTY: That's right, your Honor.

19 You had earlier done that and then later you
20 changed that. And so just to make sure the record is clear,
21 we're asking for that.

22 I think there's some issues that others may want
23 to address, Mr. Melnick has an issue about that cutoff,
24 but for our specific purposes --

25 THE COURT: The first question is what I did on November
26 23 --

27 MR. HAGERTY: Correct, your Honor.

28 THE COURT: -- not what I ought to do on December 9.

1 MR. HAGERTY: Yes.

2 MR. MELNICK: Correct, your Honor.

3 MR. HAGERTY: And you originally were going to move
4 it and then you later went back to the original date. And
5 we just want to be clear on that.

6 THE COURT: And in your view, Mr. Hagerty, we simply
7 delete the sentence and that makes it correct?

8 MR. HAGERTY: That's correct.

9 THE COURT: Mr. Melnick, any reason why we shouldn't
10 delete the sentence to make it a correct reflection of
11 the proceedings of November 23?

12 MR. MELNICK: No, your Honor.

13 I have a new request that relates to that.

14 THE COURT: I want to get to that later when we talk
15 about, quote, the status conference.

16 MR. MELNICK: That's fine, your Honor.

17 THE COURT: That will be sometime from now.

18 So the Court authorizes a nunc of the last sentence
19 at Page 1 of 3 of the minute order of November 23 to delete
20 the full sentence.

21 MR. HAGERTY: Thank you, your Honor.

22 THE COURT: When you're done today, City of Ventura is
23 to give notice.

24 MR. HAGERTY: Yes, your Honor.

25 THE COURT: So you got a tentative. While I was
26 wandering my way across country from Union Station
27 in Chicago, and now I have the benefit of the Ojai's
28 supplemental brief, which prompts me to raise a couple

1 of questions, one which came to me even before I read the
2 brief but it does tie into some points made in the brief,
3 and I put these out here as essentially a supplemental
4 tentative, and these are questions much more than they
5 are conclusions.

6 One moment. I'm just printing one more document
7 I need to have in hand.

8 So the question is, prior to the enactment of
9 the Comprehensive Groundwater Adjudication statute, when
10 the parties I guess were proceeding under the Code of Civil
11 Procedure generally and common law, how did the courts
12 obtain in rem jurisdiction, if ever, over groundwater, or
13 was there some other process by which all interested owners
14 of fee simples overlying the groundwater were named,
15 properly served, and eventually brought before the court
16 to obtain jurisdiction?

17 I don't want an immediate answer, just back to
18 your statements more generally.

19 Second observation based on the supplemental
20 Ojai brief: There is discussion of what is the correct
21 analysis of California American Water v. City of Seaside
22 and whether the Ojai Basin Groundwater Management Agency has
23 functionally preemptive powers over this court's purported
24 jurisdiction to adjudicate groundwater in the area
25 coterminus with the area under the charge of such agency.

26 And that then leads me to have several questions.
27 One is: Who represents that agency, and have they appeared
28 before the court, and/or was that agency named in the City

1 of Ventura's cross-complaint.

2 Second, whether or not that agency was named
3 in the cross-complaint, why didn't some of the answering
4 cross-defendants, such as City of Ojai, demur on the grounds
5 that the complaint under this theory was wholly defective
6 legally because suing in Superior Court to adjudicate
7 rights and/or the management of such water was subject to
8 the primary jurisdiction of this other agency and the case
9 didn't belong in this court.

10 And the final related question, although I had
11 it in my list of issues to be decided today as Issue Four:
12 Is there some reason for due process or other reasons why
13 further briefing on this apparently important question
14 should be allowed before I decide it? Because if I'm going
15 to decide that the Court's throwing some or all of this case
16 out for lack of jurisdiction, that does seem to be fairly
17 momentous.

18 MR. HAGERTY: Your Honor, can I just address that
19 general point because I --

20 THE COURT: Briefing? Or something else?

21 MR. HAGERTY: Well, it's specific to all of your
22 questions, and also your new questions, and what we can
23 accomplish today and what we can't.

24 THE COURT: Okay.

25 MR. HAGERTY: And so we're prepared and --

26 THE COURT: So Musick Peeler generally represents who?

27 MR. CARTER: Your Honor, the East Ojai Group.

28 THE COURT: Fine.

1 MR. CARTER: William Carter. Thank you.

2 THE COURT: Fine.

3 Proceed, Mr. Hagerty.

4 MR. HAGERTY: Thank you, your Honor.

5 Items 1 and 2 on your list are absolutely teed
6 up for your action today, pending objections and hearing
7 those objections. We're prepared to march through all
8 of the other issues you've raised, and we have arguments
9 and we're prepared to argue as much as you wish to on
10 them.

11 We do think that a lot of the issues that are
12 presented are either part of the motion that the City
13 of Ojai intends to bring in January and are proper if
14 raised by anyone through other means than at a status
15 conference.

16 And so we wanted to just get that out on the
17 table and your question there prompted that.

18 You know, we think that you can march through
19 all these issues and we can have a debate and discussion
20 about it, but --

21 THE COURT: Well, feel free to tell me when we get
22 to the issue that: Essentially you can't at a status
23 conference, Judge, adjudicate this. Due process gives
24 us the right to a noticed motion and you can't do it
25 today.

26 MR. HAGERTY: We're happy to do that, your Honor.
27 Thank you.

28 THE COURT: Mr. Carter, you had some thought in mind?

1 MR. CARTER: If I may speak from the lectern, your
2 Honor?

3 THE COURT: Please. Always a good idea.
4 You were trained old school.

5 MR. CARTER: Thank you, your Honor.

6 Yes, your Honor, William Carter on behalf of
7 East Ojai Group.

8 And I think we're in agreement, to some extent,
9 with the City, with Mr. Hagerty. And I apologize for my
10 confusion.

11 There were certain matters, I believe certainly
12 Items or Issues 1 through -- and 2 and 3 perhaps, I can't
13 speak for others, but at least for East Ojai Group, I
14 think 1, 2 and 3 can certainly be resolved today.

15 But as to Questions 4, 5, 6 7 and others, I did
16 not and certainly my client did not perceive that this was
17 going to be a full-blown hearing or a hearing at all on
18 those other issues, and we did contemplate there would be
19 further briefing on that matter, on those matters, for all
20 the issues that you've raised. Including the new issue.
21 So that's how we perceived it today.

22 Certainly we're prepared to discuss those issues
23 generally and maybe get more granular about how those
24 issues will proceed, but -- and I can't speak for others,
25 but certainly for the East Ojai Group, we're not prepared
26 to have a full hearing until we believe there's been a full
27 briefing and we could set a schedule for that, whether it's
28 coexistent with I believe the anticipated motion that Ojai

1 is going to file, I think it's the motion for judgment on
2 the pleadings with a hearing sometime in mid-January, the
3 17th or 18th.

4 That's our position, and I'd defer to others.
5 Thank you.

6 THE COURT: So let me get back to control of my agenda,
7 if I may.

8 I'm going to turn to the first issue, which is
9 the issue of the boundaries. I've seen Ojai's position
10 that certain language in the proposed order at the end
11 of a certain paragraph is objectionable because it presumes
12 and anoints the Court's jurisdiction, which obviously if
13 it's going to be contested, for reasons we've discussed
14 for the last several minutes, I shouldn't be casually
15 suggesting I have jurisdiction.

16 Is City of Ventura willing to tolerate that word
17 edit to the proposed order?

18 MR. HAGERTY: We are willing to tolerate it, your Honor.

19 THE COURT: Okay.

20 Anybody else object to City of Ojai's proposed
21 word edit to the proposed order with regard to the
22 determinations of the boundaries?

23 This includes anybody on the phone.

24 MR. GARRISON: Your Honor, this is Gregg Garrison.

25 THE COURT: Go ahead, Mr. Garrison.

26 MR. GARRISON: Thank you, your Honor.

27 In terms of the boundaries, I met and conferred
28 with counsel for the City of Ventura, and there are two

1 watersheds that are being adjudicated in this matter.
2 We have Ventura River watershed and we have properties
3 and cross-defendants in the Santa Clara River watershed.

4 So those are the two watersheds that need to be
5 included, and there are five basins that are subject to
6 this current water adjudication. There are the four
7 identified basins in the Ventura watershed, but there's
8 an additional fifth basin which is identified by Santa
9 Clara Valley East subbasin, and that is No. 4-4.07.

10 So to make it clear to the Court and the
11 participants, we need to address in Exhibit 1 in the
12 proposed order for the adjudication of the boundaries
13 that there are two watersheds and five basins.

14 THE COURT: Did you have a chance to communicate
15 this to other counsel in any fashion, in writing or
16 otherwise, before today, Mr. Garrison?

17 MR. GARRISON: Yes, your Honor. I directed an e-mail
18 to Mr. Chris Pisano and Mr. Shawn Hagerty. We had a
19 telephone conference and we did meet and confer.

20 I also spoke with Mr. Greg Patterson, Ms. Holly
21 Jacobson, Brandon Hansen, Andy Whitman, the Baggerlys and
22 others on this issue, discussing that, indeed, the area
23 of the Upper Ojai Basin, as identified by the Ventura River
24 watershed, straddles the two watersheds, and to correctly
25 adjudicate this matter we need to address the proposed
26 order and Exhibit 1.

27 THE COURT: So bear with me one moment, Mr. Garrison.

28 I have previously been told that the Upper Ojai

1 water basin did apparently extend over some dividing line
2 where the land reaches a ridge and descends to a second
3 water basin -- or watershed, excuse me -- on account
4 of which the water basin both underlay the headwaters
5 of the Ventura River and underlay certain headwaters of
6 what I guess is the Santa Clara River. That's old news.

7 Do you dispute the correctness in the proposed
8 order of the geographic metes and bounds of the Ventura
9 watershed as such, Mr. Garrison?

10 MR. GARRISON: Not as such as to the Ventura River
11 watershed. But there are four, a minimum of four
12 cross-defendants that don't overlie the Ventura River
13 watershed that are exclusively in the Santa Clara River
14 watershed.

15 And just to be exact, I don't think we want
16 to burden, as parties and the Court, with an order saying
17 that there are not two watersheds that are being adjudicated
18 simultaneously with five basins as described earlier.

19 THE COURT: Well, that's an interesting point.

20 What part of the language of the proposed order
21 predetermines that I'm only adjudicating one watershed,
22 Mr. Garrison?

23 MR. GARRISON: In Exhibit 1, it identifies the
24 watershed to be in the proposed order, and it only
25 lists Ventura River watershed.

26 By e-mail this morning, I wrote Mr. Pisano and
27 Mr. Hagerty and asked them to include the Santa Clara
28 River watershed as a second watershed to remedy that

1 defect.

2 THE COURT: Thank you.

3 A different question, Mr. Garrison. Do you
4 dispute the correctness in the proposed order of the
5 current boundaries, the metes and bounds that is, of
6 the four watersheds shown therein, to wit, the Lower
7 Ventura River subbasin, the Upper Ventura River subbasin,
8 which collectively I assume those two subbasins define
9 what otherwise would conceptually be the Ventura River
10 water basin in its totality, and then separately the
11 Ojai Valley water basin, and finally the Upper Ojai
12 Valley basin, do you dispute the correctness of the
13 metes and bounds in the proposed order of any of that?

14 MR. GARRISON: Yes, I do. The water basin for the
15 Upper Ojai Valley groundwater basin has two designations
16 pursuant to Bulletin 118. And to be more correct we
17 should also include, as I had requested with City of
18 Ventura, to include and provided them Figure 3.8 of the
19 groundwater basins within the region, that they include
20 groundwater basin 4-4.07 of the Santa Clara Valley East
21 basin, in which there are cross-defendants that overlie
22 that basin.

23 THE COURT: At the moment are there any
24 cross-defendants who are in the case only on account
25 of having land in this fifth water basin to which you
26 make reference, Mr. Garrison?

27 MR. GARRISON: Yes. I've identified four.

28 THE COURT: Now, is that because they own land that

1 is both on top of the Upper Ojai Valley water basin
2 as well as this fifth water basin, or were they somehow
3 erroneously given notice of this suit when they have
4 no land rights in the Upper Ojai Valley basin?

5 MR. GARRISON: The procedural history, your Honor,
6 as how these four cross-defendants have been named is
7 known to the City of Ventura.

8 What we do know is, looking at the Santa
9 Clara River watershed and its basin, is that these
10 four cross-defendants exist entirely in the Santa Clara
11 Valley East subbasin, groundwater basin 4-4.07, and
12 do not overlie the 4-001 Upper Ojai Valley groundwater
13 basin.

14 THE COURT: Now, did these four property owners get
15 something by certified mail with a summary description
16 of the lawsuit and the processes used for groundwater
17 fee simple owners as opposed to the way riparian owners
18 were named and served?

19 MR. GARRISON: Yes, your Honor.

20 We have Mr. Andrew Whitman, who is on the line,
21 and he can speak to his client who overlies the Santa
22 Clara Valley East subbasin, specifically how they were
23 served and how they were named and how they were brought
24 into this water adjudication.

25 THE COURT: So bear with me.

26 If I hear you right, Mr. Garrison, if your
27 description of the facts and the history is correct,
28 it would seem to indicate that somebody in generating

1 the mailing list to get notice somehow went beyond
2 the physical boundaries of the Upper Ojai Basin in terms
3 of which parcels ought to get notice and somehow grabbed
4 a little too much land and then went too far east or
5 north and put on the mailing list some fee simple owners
6 who really had no connection to the Upper Ojai Valley
7 basin?

8 Is that your assertion, Mr. Garrison?

9 MR. GARRISON: That is correct. And moreover, they
10 are specifically in the Santa Clara watershed. And --

11 THE COURT: It's not the watershed that I care about.
12 It's not the watershed I care about. I've known for a
13 long time that somewhere in the Upper Ojai Valley basin
14 was a natural land divide so that it was two watersheds.

15 My only concern is about the water basins.

16 Do you understand me, Mr. Garrison?

17 MR. GARRISON: I do, your Honor. And yes, to
18 answer your question, they overlies the water basin that
19 is identified by the Santa Clara Valley East subbasin.

20 THE COURT: So theoretically, other than the fact
21 that they found themselves caught up in a lawsuit because
22 they got notice that apparently involved them, if you're
23 correct, then in theory the lawsuit has no ability to
24 bite them. True?

25 MR. GARRISON: Well, that is partly true, your Honor.

26 Many of the lay people when they were first
27 served this package, they were given options of three:
28 To stipulate, to file a form answer, or other, and many

1 did not understand that a demurrer was within their
2 capability at that point in time when they were under
3 the gun to file their responsive pleading.

4 So what many of the overlies to the subbasin
5 in this Santa Clara River watershed, I don't know their
6 process but I know there was confusion, and I've heard
7 that from at least one of the cross-defendants.

8 THE COURT: Thank you, Mr. Garrison.

9 Mr. Hagerty, has any of this been presented to
10 you previously or is this all news?

11 MR. HAGERTY: Well, we had a conversation this morning,
12 as Mr. Garrison said, but I don't hear anything that he's
13 saying that is good cause for the Court not to go forward
14 with the Order to Show Cause.

15 If it's true that there are parties who joined
16 the lawsuit but are outside of the Upper Ojai Basin,
17 then we will dismiss them, because we're not dealing
18 with anything other than folks within the watershed
19 and within the basins.

20 THE COURT: Well, it's a different kind of dismissing,
21 because given that you were allowed to use the alternative
22 mode of trying to attach jurisdiction that didn't involve
23 naming them on the face of the cross-complaint, did not
24 involve serving them with a summons, but rather included
25 putting them on a mailing list where the other people
26 getting the same package were unknown to the recipients,
27 they simply got a piece of mail with a notice of the
28 pendency of a lawsuit and then a court-approved summary

1 of the lawsuit and a court-approved suggested answer
2 and I believe some other paperwork, possibly the full
3 text of the cross-complaint, so they got all that, but
4 if they're sitting there ten yards east of the Upper Ojai
5 Valley basin sitting on top of a different groundwater
6 basin but they get a piece of mail, they're going to
7 assume just by the fact of receipt of the mail that it's
8 the City of Ventura's position that they do own something
9 that overlies the Upper Ojai Valley basin.

10 MR. HAGERTY: Your Honor, I really don't think we
11 need to take the Court's time with this issue. I mean,
12 the whole point of this exercise is to clarify the
13 watershed boundaries and the four basin boundaries.

14 If there are people who joined the lawsuit
15 inadvertently because they thought they were part of
16 the basin and they're not --

17 THE COURT: Well, in fairness, saying they joined
18 it inadvertently misses the fact that whoever figured
19 out your mailing list might have drawn the line in the
20 wrong place --

21 MR. HAGERTY: Your Honor, that presumes that --
22 I mean, I don't know the specific issues, and I've said
23 multiple times throughout the 10, 15 status conferences
24 we've had that if anyone has this issue, we will work
25 with them. And we've worked with multiple parties.

26 If you're truly not part of our case, we don't
27 want you in the case. And so I'm not sure --

28 THE COURT: And just we're sorry we sent it to you,

1 we shouldn't have, but we did. But so sorry.

2 MR. HAGERTY: Well, there were 12,000 plus, you know,
3 parcels. And so if we got it wrong we'll admit it and
4 we'll move on.

5 But the action before you today is to fix the
6 Ventura River watershed boundaries. We are not asking
7 to deal with any other watershed.

8 So, you know, if Mr. Garrison --

9 THE COURT: And likewise, no more groundwater basins
10 than the four identified.

11 MR. HAGERTY: That's correct. And so those are the
12 only things we're asking you to do. And I don't believe
13 there's any error, and no one other than Mr. Garrison
14 is asserting any error, with anything here. So we would
15 urge you to approve the Order to Show Cause.

16 And we're happy to work with Mr. Garrison,
17 and I've offered to Mr. Whitman to deal with this issue
18 previously. They just need to contact us. We'll draw
19 the lines, we'll figure out where people are. And if
20 they're really out, we don't want them in.

21 So, this is a nonissue from our perspective.

22 THE COURT: Well, bear with me.

23 MR. HAGERTY: Yeah.

24 THE COURT: Mr. Garrison, the notice of the Order
25 to Show Cause which you've received attempts to describe
26 with sufficient particularity and by reference I believe
27 to certain more detailed maps available on the internet
28 exactly where this line's laying, whether it's on this

1 side or that side of the street or whatever, so that
2 you can absolutely determine whether a given fee simple
3 is or is not inside the groundwater basin.

4 Correct?

5 MR. GARRISON: That's correct, your Honor.

6 THE COURT: And insofar as you say that you are
7 in your own capacity as a landowner or as an advocate on
8 behalf of others in representing people whose fee simples
9 fall outside of the Upper Ojai Valley basin, is that
10 because you accept the map that's presented to the Court
11 and just say that the sending of the mail of notice of the
12 suit to this groundwater basin was not factually consistent
13 with where the line lands, or is it because you disagree
14 with how the proposed order defines how the line is,
15 defining the edge of the Upper Ojai Valley basin?

16 MR. GARRISON: Yes, your Honor, I understand your
17 issue.

18 The answer is, the map identified as 4-001-Ojai
19 Valley to reference the Upper Ojai Valley basin is
20 incorrect. It shows basins in its totality as it
21 strides both watersheds.

22 There's no demarcation on the map as presented
23 by the City of Ventura to show that there are properties
24 that have been named and cross-defendants that have
25 appeared that are outside the jurisdiction that they
26 are now saying they no longer will include them.

27 But the map itself that's part of the proposed
28 order is incorrect because it doesn't identify the two

1 watersheds.

2 THE COURT: So bear with me.

3 I understand that the map of groundwater basins
4 may not have chosen to show the separation of watersheds
5 that happens to fall inside that groundwater basin, but
6 insofar as it is a map of the boundary of the groundwater
7 basin itself, do you claim that there's any error to the
8 map?

9 MR. GARRISON: Yes. The map is in error and the
10 summary of the groundwater Ojai Upper Valley description
11 is wrong.

12 MR. HAGERTY: Your Honor, those are the DWR-defined
13 Bulletin 118 basins. Everyone here agrees with them.
14 I don't know what to say. I mean, unless Mr. Garrison
15 wants to petition DWR to change those, those are the
16 things you have to use.

17 And to be clear, I think Mr. Garrison may have
18 misinterpreted what I was saying. We believe that everyone
19 in the basin is properly in the case, even those people
20 that are outside of the watershed, because our position
21 is those people affect the watershed.

22 We are not asserting that -- if to the extent
23 they affect the other watershed, we don't care. But we
24 believe that pumping in the basin, even if it's outside
25 where the surface water split is, has an effect on
26 groundwater.

27 So, the DWR maps are the maps. We don't have
28 any other thing to use.

1 I'm happy to work with Mr. Garrison and, you
2 know, show where the watershed map is and the basin,
3 but that's not going to change anything in front of
4 the Court.

5 His original point was that we named people
6 in different basins. And if that's true, we'll deal
7 with that. But anyone within the basins that are
8 defined by DWR and are before the Court, maps that
9 we can't change unless you refer someone to DWR, and
10 in the watershed, that's what we're asking to Court
11 to approve.

12 And there are lots of things that will happen
13 and, you know, Ms. Jacobson has some issues that may
14 or may not mean that this is relevant. But for purposes
15 of today and this OSC, these are I think undisputable
16 and indisputable in terms of what the boundaries are.

17 THE COURT: Different question, Mr. Hagerty.

18 To your understanding, does the map of the
19 Upper Valley -- excuse me, Upper Ojai Valley groundwater
20 basin make any reference to the watershed divide?

21 MR. HAGERTY: I'm not sure the map does, let me pull
22 it up, but the description that is in the DWR reports,
23 and those are part of the motion -- or the OSC papers,
24 your Honor, those clearly recognize that there is this
25 watershed divide.

26 I'm checking to see specifically if it's --

27 THE COURT: The summary does refer to the fact that
28 the valley in question, quote, is drained westward by

1 Lion Canyon into San Antonio Creek and eastward by Sisar,
2 S-i-s-a-r, Creek to Santa Paula Creek, period, end quote,
3 which given the connection of Santa Paula Creek to the
4 Santa Clara watershed is an acknowledge of that.

5 MR. HAGERTY: Yes. And the underlying report is a
6 lot more specific as to that, your Honor.

7 MR. GARRISON: Your Honor, this is Gregg Garrison.

8 Again, with the Upper Ojai Valley, I do not see
9 the significant coordinates that are referenced for the
10 Ojai Valley in 4-002 in the same exhibit, and that may
11 have led to a further confusion.

12 But what it does, your Honor, it really exposes
13 that a water adjudication should be a basin by basin by
14 basin process. When you sue 12,500 people at once in
15 two watersheds, this is the type of confusion that occurs.
16 It's just not a manageable process for the cross-defendants
17 or for the Court.

18 And that's why we should look at this basin
19 by basin by basin, if indeed a water adjudication is
20 the correct remedy for the City of Ventura's loss to
21 the Santa Barbara Channelkeeper in the underlying matter.

22 THE COURT: Are there others who wish to object to
23 the adoption of the proposed order at this time?

24 As I read the procedural history, the notice of
25 order of this Order to Show Cause set it for today and
26 did not require any advance filings.

27 Mr. Hagerty, do you have any sentiments to the
28 contrary?

1 MR. HAGERTY: That's correct, your Honor.

2 THE COURT: Okay. Is there anybody else who wishes
3 to be heard to object to the correctness of the proposed
4 order in regard to the boundaries of the four basins
5 and/or subbasins and/or the watershed of the Ventura
6 River as such?

7 MS. JACOBSON: Your Honor, if I may?

8 THE COURT: Mr. Whitman, did you want to be heard?
9 Ms. Jacobson?

10 MS. JACOBSON: Yeah, I just want to clarify a few
11 things because I had a hard time following whether we're
12 talking about the watershed boundary versus the groundwater
13 basin boundaries.

14 THE COURT: My discussion with Mr. Garrison was
15 intended to be a discussion of the groundwater basin
16 boundaries only.

17 MS. JACOBSON: As I understood Mr. Garrison, he was
18 saying that the watershed boundaries identified by Ventura
19 under the HUC number, lengthy number, actually go into
20 another watershed to capture the full Upper Ojai groundwater
21 basin. And he's saying that's incorrect, that their
22 boundary exceeds the Ventura River watershed going into
23 the Santa Clara watershed.

24 I don't know whether that's accurate or not.
25 But if it is, then that's something that should be
26 discussed.

27 THE COURT: Well, it he not what I thought I heard.
28 I thought I heard Mr. Garrison --

1 MS. JACOBSON: Then I may have misheard him.

2 THE COURT: I thought I heard Mr. Garrison acknowledge,
3 I don't know that the word "concede" is fairly used, but
4 to acknowledge that the Upper Ojai Valley groundwater
5 basin sits beneath two adjoining watersheds.

6 And then I tried to focus the discussion on
7 whether or not the proposed metes and bounds of the edge
8 of the Upper Ojai Valley groundwater basin as proposed
9 in the order are correct or not. And then we have this
10 confusion -- I guess I will at least as a neutral use the
11 word "confusion," there may be no confusion in fact, but
12 why four certain homeowners or landowners got notice that
13 this suit could impact them if per chance their property
14 actually was beyond the boundaries of the Upper Ojai
15 Valley groundwater basin, in which case it's a shame that
16 they got scared by notice of the suit, but if it turns out
17 to be a suit that involves the house across the street but
18 not theirs, then presumably, sort of like Saturday Night
19 Live, you just say "never mind."

20 MS. JACOBSON: Well, I think if the order simply says
21 that the boundaries of the Ventura watershed, according to
22 this description, are these lines, then I would think that
23 would not be a problem. And I just wanted to --

24 THE COURT: Did you use the word "watershed" or "water
25 basin," ma'am?

26 MS. JACOBSON: Watershed.

27 MR. HAGERTY: That's what it says, your Honor.

28 MS. JACOBSON: And that should resolve the issue.

1 THE COURT: Overall, I think we have less of an issue
2 of watershed, except that Mr. Garrison would like us to
3 allude to the existence of a second watershed which is
4 otherwise in Mr. Hagerty's view not part of what we're
5 fighting about.

6 MR. HAGERTY: Right. I mean --

7 THE COURT: We'll let all the surface water drain
8 off on the Santa Clara River that nature is going to
9 let land on that part of the Upper Ojai Valley groundwater
10 basin. We're not trying to limit what happens with
11 the surface flows that flow to the Santa Clara River.

12 Correct, Mr. Hagerty?

13 MR. HAGERTY: That's correct.

14 THE COURT: That's one thing we don't care about.

15 MR. HAGERTY: Right. We're limiting it to what we
16 care about and ignoring what we don't care about.

17 THE COURT: Does that clarify anything, Ms. Jacobson,
18 from your point of view?

19 MS. JACOBSON: I think so. As long as it's clear
20 to everybody.

21 I just wanted to make sure that we're not
22 changing the boundary.

23 MR. HAGERTY: No.

24 THE COURT: Not yet.

25 MR. HAGERTY: I mean, that's exactly how it's been
26 and circulated for about a month, your Honor.

27 THE COURT: Now, you have a continuing objection
28 to the adoption of the order. Correct, Mr. Garrison?

1 MR. GARRISON: I did. And I renew my objection
2 that in the exhibit on the basin boundaries descriptions
3 there is no metes and bounds description. There are
4 no coordinates.

5 THE COURT: Yeah, you've got to dive into a webpage
6 to find how it's currently presented on a webpage, as
7 I understand it.

8 MR. GARRISON: No. No. Because you can go to Basin
9 No. 2 and the metes and bounds are printed there in the
10 Exhibit.

11 MR. HAGERTY: Some of them have metes and bounds,
12 your Honor, and some of them don't. This is what DWR
13 does. We're stuck with what this is.

14 There's no -- we can't argue this issue. This
15 is a matter that everyone should stipulate to.

16 THE COURT: Well, they can argue it, and if I'm going
17 to determine rights and we don't know what the metes and
18 bounds are, then I'm doing a pretty sloppy legal job.
19 And if we're going to adjudicate those rights, somebody's
20 got to do what the state agency hasn't yet done.

21 MR. HAGERTY: Well, you can order Mr. Garrison to
22 petition DWR to change the boundaries. That's what you
23 can do.

24 THE COURT: No. Fix the boundaries.

25 MR. HAGERTY: Well, the boundaries are fixed. They
26 are described in this bulletin. And the law says this
27 is what you need to use.

28 THE COURT: Are there coordinates in the way that,

1 you know, you could send George Washington as a surveyor
2 out there and he could figure this out?

3 MR. GARRISON: No, there are not, your Honor. There
4 are no coordinates.

5 MR. HAGERTY: What's before you is what the bulletin
6 is. And as you see, there's the higher priority one,
7 so the Ojai Valley basin, and the mid-priority ones, the
8 Upper Ventura River basin, do have more coordinates like.
9 There's not a true legal description like you would see
10 in a property case, but they're definitely more specific.

11 But this is how the process works, your Honor.
12 This is what we're stuck with in terms of this process.

13 MR. GARRISON: And your Honor, I respectfully
14 disagree because --

15 THE COURT: Who is trying to talk? Garrison or
16 somebody else?

17 MR. GARRISON: This is Gregg Garrison respectfully
18 disagreeing with Mr. Haggerty, because once this becomes
19 an order, this is what we live with as we move forward.

20 And this doesn't rise to the level of specificity
21 that we need, as cross-defendants, to identify who's in
22 and who's out.

23 This is bad legal work and it has created a
24 discord as to what you said earlier: Who's been wrongly
25 sued?

26 THE COURT: Thank you.

27 MR. GARRISON: And I think a group of --

28 THE COURT: Thank you.

1 Mr. Melnick, do you represent the agency that
2 developed these quasi-metes and bounds?

3 MR. MELNICK: No, I don't, your Honor.

4 THE COURT: Is there something else you wanted to
5 share with the Court, Mr. Melnick?

6 MR. MELNICK: I just want to focus us on the statute
7 that applies to this issue.

8 THE COURT: Now, are we talking about the Streamlined
9 Comprehensive Statute --

10 MR. MELNICK: Yes.

11 THE COURT: -- or the Sustainable Groundwater statute?

12 MR. MELNICK: The Streamlined Comprehensive Adjudication
13 statute.

14 THE COURT: I happen to have that handy, so go ahead
15 and tell me which part I'm looking at.

16 MR. MELNICK: Section 841. We're looking at 841 and
17 832.

18 So 841 says: Except as otherwise provided in
19 this section, the boundaries of the area subject to a
20 comprehensive adjudication shall be consistent with the
21 boundaries of a basin. Period.

22 And it goes on to say that if someone doesn't
23 like that, including your Honor, you need to send someone
24 to the Department of Water Resources to get them to
25 change it.

26 Then we go to --

27 THE COURT: Where exactly does it say if the court
28 doesn't like it?

1 I see if the department changes things we can
2 sort of pick up their change.

3 MR. MELNICK: Right. So subsection (c) says: Upon a
4 showing that a revision of the boundary basins would further
5 a fair and effective determination of water rights, that's
6 what Mr. Garrison is suggesting, the court may direct
7 any of the following to submit a request to the department,
8 that's the Department of Water Resources, pursuant to the
9 Water Code, to revise the boundaries.

10 And the people you can direct are any party. You
11 can direct my client, you could direct a special master
12 but we don't have one yet.

13 THE COURT: But in other words, if Mr. Garrison is
14 saying that the current boundaries are too imprecise,
15 in theory, he, as a party to this case, could then ask
16 the Department of Water Resources to make their map
17 more particular.

18 MR. MELNICK: Yes. They have a process. They have
19 a whole slew of regulations.

20 THE COURT: And that's a different question of
21 whether or not Mr. Hagerty, after more careful review
22 of such maps as he can review, may determine that they
23 overnoticed the case somewhere along the eastern boundary
24 or the northeastern boundary of the basin, and on further
25 thought, this or that property owner may actually
26 essentially be just beyond the boundary and therefore
27 is outside the scope of the case notwithstanding the
28 original service list?

1 MR. MELNICK: I think that's a completely separate
2 issue, your Honor. That actually raises a whole bunch
3 of alarm bells for me, if that's really the case.

4 THE COURT: It could happen, though.

5 MR. MELNICK: But it could happen. there's 12,000
6 people.

7 THE COURT: If we have a nonprecise map and they're
8 trying to make their best effort to figure out who's
9 inside and who's not, it's without it really being human
10 error, it's just an exercise of judgment could perhaps --
11 and frankly, you would tend to overnotice. At least if
12 I were in Mr. Haggerty's shoes or Best Best & Krieger's
13 shoes, I would, if in doubt of a boundary, throw my notice
14 a little -- you know, across the street if there's any
15 question.

16 MR. MELNICK: I think a four out of 12,000 error
17 rate is pretty good. I think we could all accept that.
18 So --

19 THE COURT: Well, no. If you're one of the four,
20 you're not going to accept it.

21 MR. MELNICK: No, of course not.

22 But as far as the Court and the rest of the
23 parties, they're going to -- I mean, nobody's perfect.
24 I'm sure I could find a typo in everybody's brief. Right?
25 Nobody's perfect. There are errors. And Mr. Haggerty's
26 open to fixing them. I think there have been other people
27 that have been dismissed.

28 MR. HAGERTY: There have been lots of people who think

1 they're not in and they actually are, too. And that may
2 be the case here. I don't know the four. I've offered
3 to deal with Mr. Whitman and Mr. Garrison, I --

4 THE COURT: It just came up this morning.

5 MR. HAGERTY: Yeah. I mean, call me separately,
6 give me the names, let's look at a map. If there's
7 a problem, we'll deal with it. But why it's being
8 addressed here at the status conference and taking,
9 I don't know, almost 40 minutes already or something,
10 is beyond me, your Honor, because we --

11 THE COURT: Well, it's not beyond me. It's the
12 first issue, and if there's any question about the
13 correctness of what's going to pass as a map, this
14 is the first time. But if it's not objected to now,
15 then it would be waived.

16 Mr. Whitman, are you with us this afternoon?

17 MR. WHITMAN: I am, your Honor.

18 THE COURT: Do you have concerns similar to
19 Mr. Garrison? If so, elaborate.

20 MR. WHITMAN: I've talked to Mr. Garrison and I'm
21 in agreement with everything that he's had to say, at
22 least that the property that I represent is within
23 what's described as the groundwater basin, the Upper
24 Ojai groundwater basin, but it's in a section of the
25 basin that Bulletin 118 says "groundwater in the eastern
26 part of the basin eastward towards Sisar Creek," and
27 flows out to the -- it doesn't say this, but it flows
28 to the Santa Clara River.

1 So to what end are we making these definitions
2 if it has no bearing on who could potentially contribute
3 to the City's extension of the trout population?

4 THE COURT: Thank you.

5 Mr. Hagerty, I see that "basin" for purposes
6 of the comprehensive statute is defined in 833 by
7 reference to the Water Code.

8 I don't have the Water Code in front of me, but
9 as a scholar in this area, which you appear to be, can
10 I deduce that that reference to the word "basin" as a
11 defined term, then takes us to the Department of Water
12 Resources and their map-drawing duties?

13 MR. HAGERTY: Yes, your Honor. It specifically
14 refers to and integrates Bulletin 118 as it currently
15 exists. And we've briefed that in our brief and
16 Ms. Jacobson's briefed it in her brief, and so their
17 citations are in front of you.

18 THE COURT: Okay. This is an important proceeding,
19 and I've heard objection by Mr. Whitman and his clients
20 and by Mr. Garrison for himself and his clients.

21 Is there anybody else who wants to object to
22 the correctness of the proposed boundary of the Ventura
23 River watershed and/or the boundary of any of the four
24 groundwater basins as noticed up in the Order to Show
25 Cause?

26 If so, please state that you're here and wish
27 to object at this time.

28 MR. BAGGERLY: Your Honor, this is Claude Baggerly.

1 THE COURT: Go ahead, Mr. Claude Baggerly.

2 MR. BAGGERLY: Thank you very much, your Honor.

3 I support Gregg Garrison's proposition that
4 he proffered today, and also Mr. Whitman's property that
5 is clearly outside of the watershed of the Ventura River
6 and within the area that drains toward Santa Paula to
7 the east.

8 Thank you.

9 THE COURT: Do you claim that the property that
10 you own yourself, Mr. Baggerly -- because you represent
11 yourself, you're not a licensed lawyer, so you're just
12 here for yourself; correct?

13 MR. BAGGERLY: That's correct.

14 THE COURT: Do you claim that the property that you
15 own has the similar characterization as Mr. Garrison's?

16 MR. BAGGERLY: No, your Honor.

17 THE COURT: Thank you.

18 MR. BAGGERLY: Not whatsoever.

19 THE COURT: Thank you.

20 MR. BAGGERLY: I am an overliar.

21 THE COURT: Thank you.

22 Is there anybody else who wishes to object to
23 the proposed boundaries of the Ventura River watershed
24 and/or any of these four groundwater basins, beyond
25 Mr. Garrison and Mr. Whitman?

26 Okay. The Court is not going to adopt the
27 definition of the Upper Ojai Valley groundwater basin
28 at this time due to the dispute raised by Mr. Whitman

1 and Mr. Garrison. I will trail that to December 13 and
2 see if you can work out the question of whether they
3 are properly noticed up to be part of the proceeding
4 or not, Mr. Hagerty.

5 It appears, Mr. Garrison and Mr. Hagerty, that
6 if you don't like the current vague boundaries given to
7 us by the Department of Water Resources, it does appear
8 that the remedy may not exist in front of me but, rather,
9 that you may have to take the steps contemplated by
10 California Code of Civil Procedure Section 841 subsection
11 (c)(1), and then it becomes your burden and opportunity
12 to try to nudge the state bureaucracy to clarify the
13 drawing of the boundary and/or, insofar as they've
14 included your land erroneously, to get them to draw a
15 line that's clear enough to show that your land is
16 outside the boundary.

17 I am not making any determination that the
18 assertion that certain fee simples that overlie the Santa
19 Clara watershed portion of the Upper Ojai Valley groundwater
20 basin should not be included in the basin. This is more
21 just a correctness of the line, a question in the short
22 run.

23 But hopefully you can either persuade these
24 landowners that the line is exclusive of their property,
25 or if they persuade you that your notice was in error
26 and they are actually outside of what's intended to be
27 the boundary of the groundwater basin, you can let them
28 go in peace and presumably that will make them happy

1 enough.

2 Understood, Mr. Haggerty?

3 MR. HAGERTY: I believe so.

4 Will the Court entertain the rest of the Order
5 to Show Cause?

6 THE COURT: I'm inclined otherwise, notwithstanding
7 any objection, to adopt the Order to Show Cause order
8 in regard to the boundaries of the Ventura River
9 watershed.

10 I would add, however, the additional words that
11 this is without prejudice to any party arguing that the
12 Court needs to consider the adjacent Santa Clara River
13 watershed before any final determination is made in
14 this matter, or some words to that effect.

15 But in terms of just drawing the metes and
16 bounds, I haven't heard anybody suggest that the metes
17 and bounds of the Ventura River watershed are wrong.

18 I've heard nothing in dispute on the correctness
19 of the Ojai Valley groundwater basin, and nothing
20 disputing the correctness of the two Ventura River
21 subbasins. So I would adopt as to all of those points.

22 MR. HAGERTY: Great. Thank you, your Honor.

23 And we'll be happy to work with Mr. Garrison
24 and talk to him about the --

25 THE COURT: And Mr. Whitman.

26 MR. HAGERTY: And Mr. Whitman, yes.

27 THE COURT: But prepare a revised order that is
28 inclusive with those points, with the further provision

1 that by defining the boundaries of the Ventura River
2 watershed I am not making any determinations about
3 their relevance or irrelevance of the adjacent Santa
4 Clara River watershed, Mr. Hagerty.

5 MR. HAGERTY: Yes.

6 And we'll include Ms. Jacobson's motion to
7 strike out the language that she proposed.

8 THE COURT: Oh, yeah. Yes, indeed.

9 MR. HAGERTY: Yes.

10 THE COURT: Okay. Making some progress.

11 So, that took care of Nos. 1 and 2.

12 Do I have anybody here for the oil company,
13 via phone or otherwise?

14 MR. DUCHESNEAU: Your Honor, Peter Duchesneau
15 appearing for Aera Energy.

16 THE COURT: Bear with me. Somebody else I guess
17 registered for you, because the computer tells me
18 you're -- oh, you're Peter Duchesneau?

19 MR. DUCHESNEAU: Duchesneau, yes, sir.

20 THE COURT: Okay. No, it's got it right. You are
21 who you seem to be.

22 Go ahead, sir.

23 MR. DUCHESNEAU: Your Honor, maybe one point of
24 clarification as to the order that you've just adopted.

25 The footnote to the order, Footnote 1, provided
26 that the order that was being adopted was not going to
27 address the Aera issues that have been raised, which I
28 can address in a moment.

1 Essentially, Aera contends that its oil and gas
2 operations, which involve extracting and injecting saline
3 water, are in formations that are not part of the Lower
4 Ventura River basin, they are substantially deeper than
5 that.

6 And we've had some discussion today about the
7 Department of Water Resources' regulations, and indeed,
8 those regulations, they define a basin to include a
9 definable bottom. And then they reference -- or defer
10 to Bulletin 118.

11 And Bulletin 118 for the Lower Ventura River
12 basin essentially defines the bottom of a hundred feet
13 below the ground surface. And Aera's oil and gas
14 operations are thousands and thousands of feet below.
15 But --

16 THE COURT: Bear with me. Can I put on you hold for
17 a second?

18 Have you and City of Ventura been able to reach
19 some stipulation, or is this a long way of saying that
20 you didn't reach a stipulation or don't need to reach a
21 stipulation?

22 Because I had this promise that it was almost
23 maybe there, I read this footnote as contemplating that
24 there'd be such a stipulation, but now I'm hearing a
25 discourse that doesn't tell me whether it's war or peace.

26 MR. DUCHESNEAU: Fair enough, your Honor. Let me
27 cut to the chase.

28 I have been meeting and conferring with

1 Mr. Hagerty, and also Mr. Melnick, and with Mr. Hagerty
2 we have agreed that we would defer this issue to a later
3 phase of the trial if at that point we haven't reached a
4 stipulation that would resolve it without burdening the
5 court. And that's also the effect of the footnote that's
6 in the recently-adopted order.

7 THE COURT: So if we leave Footnote 1 in to the order
8 that I actually signed, and recognizing that it won't yet
9 address the Upper Ojai Valley basin, but your operations
10 are quite removed from the Upper Ojai Valley groundwater
11 basin, you're okay with that.

12 MR. DUCHESNEAU: That's correct, your Honor.

13 THE COURT: And do you intend to enter into a more
14 elaborate written stipulation with City of Ventura and/or
15 the State, or do these statements in court on the record
16 today suffice?

17 MR. DUCHESNEAU: From my standpoint, they suffice
18 with regard to deferring the issue with regard to the --
19 the Aera issues with regard to the the deep oil and gas
20 wells to a different phase of the trial.

21 We still have some work to do to resolve the
22 issue as to how it's actually going to be handled,
23 if it needs to be addressed by a future phase or not.

24 But again, the intention is that we'll attempt
25 to keep working together and maybe come up with a
26 resolution without having to do a trial or some other --

27 THE COURT: Meaning that life is short and we can
28 get through it today without worrying about it further;

1 correct?

2 MR. DUCHESNEAU: That's correct.

3 THE COURT: Thank you.

4 Do you concur, Mr. Hagerty?

5 MR. HAGERTY: Yes, your Honor.

6 THE COURT: Mr. Melnick?

7 MR. MELNICK: I concur, your Honor.

8 THE COURT: Okay. So No. 3 is done. We're up to
9 No. 4.

10 This is the first thing where it appears
11 premature to try to make any final rulings today,
12 at least from your point of view, Mr. Hagerty.

13 MR. HAGERTY: Yes. But we do have some comments
14 we would like to make to address the issue because
15 we think it's a fairly simple issue.

16 THE COURT: Bear with me.

17 Ms. Jacobson, this is your issue; true?

18 MS. JACOBSON: One of the issues, yes.

19 THE COURT: Yeah. But specifically you are the
20 proponent on this one.

21 MS. JACOBSON: Phrased slightly differently, but
22 yes. THE COURT: Well, you're in the negative, you say
23 we don't have jurisdiction.

24 MS. JACOBSON: Yes.

25 THE COURT: So in that sense your position is no,
26 you know, we're not here.

27 Do you concur with the ultimate suggestion of
28 Mr. Hagerty, that I shouldn't decide it today and allow

1 more elaborate briefing?

2 MS. JACOBSON: Right. Today we are here on an OSC
3 and a status conference, so there's no noticed motion
4 before the Court.

5 THE COURT: I agree.

6 MS. JACOBSON: And these issues I believe will be
7 addressed in the motion for judgment on the pleadings.

8 THE COURT: Fair enough.

9 So I'll come back to you, Mr. Hagerty, but I'll
10 ask Ms. Jacobson this first, my prior question: Who
11 would represent this particular agency? Any of the
12 lawyers already before the Court?

13 MS. JACOBSON: Not that I'm aware of.

14 THE COURT: Is it its own legal political subdivision
15 of the great state of California, or is it a part of
16 the County of Ventura, or has it got some other legal
17 character?

18 MS. JACOBSON: I believe Mr. Jungreis would have
19 more information on that, but my knowledge is that it's
20 a separate entity created by statute.

21 MR. JUNGREIS: That's correct. And various
22 governmental agencies have representation on that agency.
23 But the agency itself, to my understanding, is not part
24 of the litigation at this time.

25 THE COURT: But they have either in-house, paid
26 government employee counsel or they have outside contract
27 counsel or they proceed without lawyers in some magical
28 way?

1 MR. JUNGREIS: I don't know, your Honor.

2 MR. HAGERTY: Your Honor, I can address those
3 questions because we're required under the statute
4 to give notice to this organization. We've been in
5 communication with their counsel. I believe they've
6 considered whether they need to intervene or not, and
7 have not yet intervened.

8 We're not obligated to name them because they're,
9 in our view, a part of what we think is the issue. But
10 we have certainly followed the statutory procedures, and
11 they are aware of the issue.

12 THE COURT: So do they use outside, paid counsel,
13 similar to how you from Best, Best & Krieger represent
14 the City of Ventura, or do they have in-house counsel,
15 or they have no counsel?

16 MR. HAGERTY: I believe they have paid counsel that
17 is -- you know, it's a joint powers kind of a situation.
18 That's not technically correct. But I mean, it's a group
19 of other entities that kind of get together under the
20 auspices of the Act. I don't believe they have significant
21 staff. I think they have an executive officer.

22 Mr. Slater knows a lot about it because he's
23 previously been involved with it.

24 MR. SLATER: Your Honor, if I might?

25 I was one of the two principal authors of this
26 legislation in 1991.

27 THE COURT: Principal what? Authors?

28 MR. SLATER: Authors.

1 THE COURT: Were you in the Legislature at the time?

2 MR. SLATER: Me and a lawyer named George Basye, who
3 was the counsel for the Ojai Valley Water Conservation
4 District, got together at the end of the 19 --

5 THE COURT: Remind me, today you represent who,
6 Mr. Slater?

7 MR. SLATER: The Taylor Ranch, which is the
8 Wood-Claeysens Trust.

9 THE COURT: Continue.

10 MR. SLATER: At the end of the drought in '88 to
11 1990, which was one of the most devastating droughts
12 in the central coast, more than 500 million dollars in
13 economic damages occurred, and one of the hot spots for
14 the drought was the Ojai Basin.

15 The principal domestic deliverer of water in
16 the area was a company called Southern California Water
17 Company. I represented them in the formation of this
18 entity.

19 It is a Special Act agency, so we have both
20 General Act and Special Act agencies under the California
21 Water Code. They are found in the appendices.

22 This was the second of this type of Special
23 Act agencies to be pulled into California, and it was
24 the second instance in history in which a private sector
25 company actually had a position on the board.

26 The entity was precluded from having staff at
27 a certain level. They have a limited budget. They borrow
28 counsel from the County Counsel, in history from the City,

1 they borrowed counsel from other public agencies in order
2 to complete their function, they have a general manager
3 and a very limited budget, because at the time it was
4 concerned that this was going to be duplicative of Casitas,
5 additional charges, and so there was an effort to keep
6 the fees low on the people who were governed by the agency.

7 So, Special Act agency, very limited powers as
8 circumscribed by the Legislature and by the Act. And
9 then I would say it absolutely preserved and protected
10 the rights of all parties bound or within the agency's
11 boundaries to litigate, protect their rights, and to
12 expressly pursue an adjudication.

13 And moreover, for the avoidance of doubt, one
14 of the things that led up to this action was a conflict
15 between the Casitas Municipal Water District and the
16 California Public Utilities Commission, because Casitas
17 ordered Southern California Water Company to ration,
18 and they objected, and the California Public Utilities
19 Commission ultimately fined Southern California Water
20 Company for agreeing to the rationing because they
21 didn't believe that it was essential and that their
22 rights were better.

23 I drafted the provision in 403 which
24 preserves to all parties under this act the right to
25 pursue a adjudication in any litigation to protect
26 their rights.

27 THE COURT: Walk me back to what happened with the
28 private water company in rationing.

1 You said Casitas asked them to ration, they
2 refused, and then they got fined because they rationed
3 them?

4 MR. SLATER: Yeah, initially they refused. They
5 were convinced to go along with it because of political
6 pressure, remembering that the politics of the area
7 are not contiguous -- or sorry, not congruent with rate
8 payers.

9 So the intention was to -- they first objected,
10 they went along with the direction, along with everybody
11 else in the watershed, to ration. The California Public
12 Utilities Commission disagreed with that, fined the
13 company, and this legislation and the package that came
14 was designed to get control and knowledge, information
15 over all groundwater extraction in the Ojai Basin.

16 And so it for the first time required people
17 to have a direct report, local reporting relationship
18 and the potential for control of groundwater extraction.

19 THE COURT: So why weren't they able to solve all this
20 problem before it landed on the docket in San Francisco
21 years before it landed on my docket?

22 MR. SLATER: Well, your Honor, this is one area, and
23 ultimately Southern California Water Company became Golden
24 State Water Company, and within the last several years
25 Casitas has actually acquired it. So it's no longer on
26 this board of directors.

27 There have been I would say -- well, they were
28 able to get along, your Honor, without the need to pursue

1 a comprehensive adjudication.

2 THE COURT: And maybe the non-governmental plaintiff
3 in the case hadn't yet tested the sufficiency of the summer
4 flows in the main river.

5 MR. SLATER: Well, I think another day, another time,
6 another client. The Golden State Water Company, and we can
7 look this up, they're in many of the 23 adjudicated basins,
8 your Honor, that proceeded the statute. Golden State Water
9 Company, Southern California Water Company and its various
10 subsidiaries do know how to participate, do protect their
11 rights.

12 I think the best answer is: No adjudication
13 followed because the people in the Ojai area were able
14 to respect each other's positions and to accommodate
15 each other.

16 THE COURT: Interesting.

17 Mr. Jungreis, you're Casitas today; right?

18 MR. JUNGREIS: I am indeed, your Honor.

19 THE COURT: Continue, sir.

20 MR. JUNGREIS: I don't have a lot to add, your Honor.
21 I mean, OBGMA is -- is the Court's concern the --

22 THE COURT: OBGMA is what?

23 MR. SLATER: It's the agency, your Honor. The Ojai
24 Basin Groundwater Management Authority.

25 THE COURT: Thank you.

26 MR. JUNGREIS: Yes, your Honor. Watch my acronyms.

27 In any event, the agency is not -- is the Court's
28 concern that looking at this issue of separate legislation

1 for the OBGMA, that they're not represented here and the
2 Court is concerned about taking action in their absence?

3 THE COURT: No, not necessarily. But if in
4 Ms. Jacobson's view, on behalf of her client, this agency
5 should be doing what I've been asked to do, it's passing
6 curious that in a case that's been pending for six, eight,
7 lord knows, maybe ten years, whatever the age of this case
8 is, including its time in San Francisco and the Court
9 of Appeals and all, that they've not gotten themselves
10 involved.

11 It's also curious that after the cross-complaint
12 was filed I didn't see any demurrers. Because this theory
13 would seem to be eminently suitable for a demurrer in lieu
14 of somebody filing an answer. But your client apparently
15 answered and Ms. Jacobson's client's answered.

16 That doesn't mean you can't do it on judgment
17 on the pleadings. You can. I understand that. But
18 it's just odd that it comes up now and not sooner.

19 Because if they're really supposed to be the
20 ones who could fix everything, I would have thought they
21 would come in with the normal, you know, bureaucratic
22 turf instincts and say: Hey, this is my toy to play with,
23 don't you do it, Judge.

24 MR. JUNGREIS: Well, your Honor, I don't represent
25 them, I don't pretend to speak for them.

26 What I do know is they've -- at least my
27 understanding is they've recently completed a groundwater
28 sustainability plan, and it will address some of the same

1 issues, but, you know, what they did or didn't do sooner
2 to address some of the issues before the Court, I can't
3 really speak to that.

4 THE COURT: So it sounds like, the way I heard
5 Mr. Slater describe it, they got a little bit of everybody
6 in this geographic area on their board, and they may
7 have some of the same want-to-be-loved-by-everybody and
8 don't-do-anything-to-get-anyone-mad characteristics that
9 define your client's board, Mr. Jungreis, where Casitas
10 says so many users and board members that Casitas wants
11 to sort of stay above the fight in this agency --

12 MR. JUNGREIS: Your Honor, this is a little different,
13 though. They're regulatory in nature. And so they're,
14 unlike a lot of the parties that are before you --

15 THE COURT: If they're regulatory, they control the
16 use of water. That's exactly what this lawsuit's about.

17 MS. JACOBSON: If I may?

18 THE COURT: No, I'm going to finish this. But you'll
19 get time, Ms. Jacobson.

20 I'll let Jungreis finish.

21 MR. JUNGREIS: I'm finished, your Honor.

22 MR. SLATER: Your Honor, I think there is a -- well,
23 the textual history of how these agencies developed
24 throughout California is pretty interesting.

25 There are 33 adjudicated basins, groundwater
26 basins in California, all proceeded to conclusion before
27 the statute was adopted. The statute was adopted to bring
28 some congruence between the rules applicable to surface

1 water and the groundwater.

2 And the true history of these groundwater
3 adjudications is they not only take, in a contested process,
4 maybe a decade to complete, and then your Honor is --
5 as we've said before, there's a continuing jurisdiction
6 element, which means it's forever.

7 I've been a watermaster counsel for 21 years in
8 the Chino Basin. That is -- that's --

9 THE COURT: That's a good client.

10 MR. SLATER: Your Honor, the rapport -- yes, your Honor,
11 it's a rewarding good client to have.

12 THE COURT: Congratulations.

13 MR. SLATER: The experience of the Special Act agencies
14 was really to provide -- now, this is before SGMA; right?
15 -- to provide a vehicle to local agencies to be able to
16 manage groundwater, with many of the similar authorities
17 that would be held by a court. And the key -- there are
18 many great Bar Review articles that have been written,
19 there was one by a Professor Sax from Berkeley called
20 "California, We Don't Do Groundwater," and it was about
21 sort of the absence of the SGMA style authority to be
22 able to regulate groundwater on a comprehensive basis.

23 So what the Special Act agencies did beginning
24 with the Fox Canyon Groundwater Management Agency, which
25 is a stone's throw from Ojai, was to basically empower a
26 population representing municipal uses, different types
27 of agricultural and disinterested stakeholders from the
28 standpoint of not consumptive users, to populate that

1 board of directors and then empower them with a key point:
2 Empower them with the authority to regulate and control
3 but not to be in a business that was competitive where
4 you would own projects, that being left to entities like
5 Casitas or the City who could physically raise money, go
6 off and do it, and not try to be an enterprise unto itself
7 where you develop this massive government bureaucracy.

8 So Fox Canyon comes along --

9 THE COURT: Like the humble little Metropolitan Water
10 District.

11 MR. SLATER: The largest wholesale water entity in the
12 United States, now with 21 million people within its service
13 territory. So -- and not competitive.

14 And at the time there were no bills like this
15 that were being approved in the Legislature unless they
16 were consensual. So there were no water districts that
17 were going to openly authorize competition, spinning off
18 customers. But I digress.

19 They did have authority. It was never preclusive
20 of the rights to seek judicial relief to protect property
21 rights or to adjudicate, it was offered as an alternative:
22 Proceed in this fashion, work together, collaborate, and
23 you won't need what Marc Reisnewr called "The Cadillac War."

24 THE COURT: Who's that?

25 MS. JACOBSON: Author.

26 MR. SLATER: A noted author of "The Cadillac Desert."

27 THE COURT: Okay. I've read that book.

28 MR. SLATER: The notion being that these long cases

1 go on, even though the result is what everyone wants, the
2 process is a grind, so let's try to do something which is
3 a shortcut. And so you had other ones like the Monterey
4 Peninsula Water Management District, the Seaside case.

5 You know, we put that negotiation together, with
6 them in the background. They intervened in that case,
7 and that case goes to conclusion. The court rules: Hey,
8 separation of powers. I'm the judge, I've got Physical
9 Solution powers; you can do what you want, it just can't
10 interfere with what I'm doing here.

11 Same basic idea: You know, Peninsula District,
12 Fox Canyon, you've got Ojai: Authority to monitor,
13 regulate, study, make recommendations, talk to Casitas,
14 talk to Golden State Water Company, encourage them to
15 do the right thing, instead of having everybody to get
16 lawyers, and move on.

17 THE COURT: Thank you.

18 MR. SLATER: So complementary, not preemptive.

19 THE COURT: Thank you.

20 Ms. Jacobson, you've got at least 15 minutes of
21 equal time from Mr. Slater.

22 MS. JACOBSON: Thank you. I don't know that I'm going
23 to use all that, but -- because I actually agree with much
24 of what he said.

25 This OBGMA, I'm not going to speculate as to why
26 they haven't done certain things. I think it makes sense,
27 if they're a very small agency with a limited budget, why
28 they wouldn't want to maybe participate in something that

1 they felt had no grounds or basis, especially if they're
2 not a named party. That's important.

3 But this agency is governed by its statute with
4 its authorities that he mentioned. And you asked why
5 they didn't come up with a solution earlier. It's really
6 important to understand, the Ojai Basin over which the
7 Ojai Basin Groundwater Management Agency has authority,
8 doesn't have a problem. The landowners in the Ojai Basin
9 are not fighting with one another. Nobody's claiming
10 in the Ojai Basin that my rights are senior to yours.

11 So OBGMA and the Ojai Basin landowners have not
12 instituted a groundwater adjudication. That's why.

13 THE COURT: Because in good years and bad we get along,
14 and whatever dribbles down to the Ventura River dribbles
15 down, but amongst us we're happy.

16 MS. JACOBSON: Exactly. There's no need to adjudicate
17 the groundwater basin under the Groundwater Adjudication
18 statute which adjudicates a basin.

19 THE COURT: But if the Ventura City comes up and
20 says you ought to be more conservative or not use the
21 Robles Diversion or whatever because we need more water
22 in the main river, then you've got a problem.

23 MS. JACOBSON: Well, that's a completely separate
24 issue. And that goes to the heart of this case. Ventura
25 has been sued for their surface water diversions. Surface
26 water. They have tried to cast a wide net over the entire
27 watershed, claiming that everybody in the whole watershed
28 has to basically help spread the pain for Ventura. Right?

1 And because you're in our watershed, you're included.

2 But that doesn't make sense, for many reasons
3 that we've already gone over.

4 And so they have, as one of many things, pled the
5 Groundwater Adjudication statute to adjudicate a basin.
6 But noticeably absent is the fact that they are not in our
7 basin.

8 So you have an outsider, a foreigner, coming into
9 our basin saying adjudicate the rights of this basin,
10 which in and of itself just didn't make sense; right?

11 Now, that's supported by the OBGMA special statute,
12 enacting statute, that says our authority to regulate,
13 including telling people that they have to stop pumping,
14 by the way, doesn't preclude an action, an adjudication
15 action of this basin by these landowners in this basin.
16 Right?

17 So that's an important distinction.

18 And so we can go into this further, as we intend
19 to in our judgment on the pleadings, but we're mixing a
20 lot of different things here, it's getting jumbled and
21 it's getting confusing. And it doesn't need to be.

22 THE COURT: Let me back you up on one thing.

23 I believe you said that the original suit by
24 Channelkeepers related to diversions from the surface
25 flow.

26 I thought it related to pumping in the general
27 vicinity of a subsurface dam that is intended to enhance
28 the functionality of the pumping.

1 So does that lead you to the conclusion that
2 that this is surface diversion, even though a pump is
3 used in the process?

4 MS. JACOBSON: Well, it depends. And the reason is,
5 this is outside of the Ojai Basin.

6 So, there are situations where groundwater, if
7 you're pumping groundwater that is actually connected to
8 surface water, then that pumping activity could affect
9 the surface water.

10 So in that area and that particular allegation,
11 I'm not going to speak on behalf of Channelkeeper, but
12 that was the original lawsuit that did not include the
13 Ojai Basin. That's the point.

14 And so when you asked why wasn't Ojai or why
15 wasn't OBGMA involved, why didn't they solve this six
16 to eight years ago, we weren't involved.

17 THE COURT: But they didn't show up on the
18 cross-complaint either.

19 I can understand your theory that the way that
20 the plaintiff framed it, Ojai Valley was irrelevant, the
21 original trial court ruling kept it irrelevant, and it had
22 to go to the Court of Appeals to get a reversal, it gets
23 reversed, it comes down here, there's a little delay in
24 getting the wheels turning, but eventually when it picks
25 up post Court of Appeals now there's a cross-complaint
26 that's going to reach out much more broadly geographically,
27 that's only like two years, maybe with Covid it's been
28 three years -- no two years. Our docket number is from

1 2019.

2 But in that whole time, until you submitted your
3 status report, I really hadn't heard anything about this
4 agency as having any significance to the case, which is
5 to say they've been, you know, leaving us alone even
6 though we're tromping on their jurisdiction, to your
7 perception.

8 MS. JACOBSON: They're not a party to this action and
9 I can't speak on their behalf.

10 THE COURT: Well, given that they're small and have
11 a constrained budget, that may in the real world explain
12 some things.

13 Obviously, in your view you want to bring your
14 motion for judgment on the pleadings, it will be fully
15 briefed, I'll be interested in seeing whether Mr. Slater
16 wants to give us a brief or become a legal historian,
17 maybe you'll get to depose him or whatever.

18 MS. JACOBSON: That could be fun.

19 THE COURT: But anything more you want to say today,
20 Ms. Jacobson?

21 MS. JACOBSON: On this point, no.

22 THE COURT: Thank you.

23 MS. JACOBSON: Thank you.

24 THE COURT: So to stay with the issue, though, is the
25 main point now figuring out a briefing schedule and getting
26 a hearing date for a motion for judgment on the pleadings on
27 this issue and anything else that's going to get thrown into
28 the kitchen sink?

1 MR. HAGERTY: She already already has a hearing date,
2 so we're good there.

3 THE COURT: Come again?

4 MR. HAGERTY: Ms. Jacobson already has a hearing date,
5 so we're good there. It's January 18th I believe.

6 THE COURT: One moment. Off the record.

7

8 (Discussion held between the Court and Court Clerk)

9

10 THE COURT: Okay. We're back on the record.

11 The Court confirms now that I will find time
12 to see you on January 18 at 1:30 p.m.

13 There are two public holidays in the run up to
14 that. If you did it on minimum notice, to my calculation
15 I think that means you have to file by next Wednesday.

16 Is that your understanding, or do you have
17 some different date in mind?

18 MS. JACOBSON: So, I rely on a calendaring program,
19 thankfully. But my memory was something more like the
20 third week of December.

21 But I will do it per code.

22 THE COURT: Well, bear with me. Yeah, I may have
23 miscounted. Let me double-check.

24 We also have M.L. King. Yeah, M.L. King plus
25 Christmas plus New Years. So. . .

26 MR. MELNICK: Your Honor, I don't know if the court
27 is closed on New Year's Eve and Christmas Eve. But if
28 it is, that affects it.

1 THE COURT: The 24th and the 31st are taken as the
2 public holidays in lieu of Saturday the 25th and Saturday
3 the 1st.

4 MR. MELNICK: Yeah. So I think the date is the 20th.

5 MS. JACOBSON: Yeah.

6 THE COURT: I would agree that, to my calculation, it
7 would have to be e-served on the 20th and filed that day.

8 Any objection to proceeding in that fashion,
9 Ms. Jacobson?

10 MS. JACOBSON: I don't think so, as long as it's
11 per code, because that's what I already calendared.

12 THE COURT: That's per code. I'm telling you that
13 when the judge calculates it, it's December 20th, so
14 that's probably more reliable than your software.

15 MS. JACOBSON: Your Honor, since I'm here, and
16 because there are a number of issues, I would like --

17 THE COURT: Extra pages?

18 MS. JACOBSON: Yes, please.

19 THE COURT: Sure. How many do you want?

20 50?

21 MS. JACOBSON: 50?

22 THE COURT: You don't have to take them.

23 40?

24 MS. JACOBSON: Sure, give me 50.

25 THE COURT: Okay. You can have 50.

26 And will there be a joint opposition, or do you
27 think they will be separate, Mr. Hagerty?

28 MR. HAGERTY: Well, we'll file, and there may be some

1 joinders. That's probably more likely.

2 MR. MELNICK: Your Honor, I know that we'll file
3 something separately, but I don't think we'll need extra.

4 THE COURT: Well, you can have 50 pages, Mr. Hagerty.
5 For anybody else who joins it with you other people who
6 have briefs, their brief size is per code.

7 MR. HAGERTY: Thank you, your Honor.

8 THE COURT: Okay. You're giving notice of that, though,
9 Mr. Hagerty, when we're done.

10 MR. HAGERTY: Yes, your Honor.

11 THE COURT: Okay. We touched on Issue 4 but we didn't
12 decide Issue 4.

13 MR. HAGERTY: Yeah. And may I just have one last word
14 on that? I wasn't able to speak on Issue 4 so I --

15 THE COURT: Oh. Go ahead.

16 MR. HAGERTY: And I will be brief.

17 I want to point out one thing that's --

18 THE COURT: Mr. Slater sort of stole your thunder, I
19 guess.

20 MR. HAGERTY: Well, and it was good discussion.

21 But I want to point out one thing that's going
22 to govern a lot of my other comments, and Ms. Jacobson's
23 comments about the origin of the case reflected this.

24 I mean, we all need to go back and read the
25 Court of Appeal decision in this case because it is
26 the law of the case, and it expressly says the City is
27 entitled and the Court must consider all of the other
28 water users in the watershed, including groundwater

1 pumpers. And that is why we're doing what we're doing.
2 We've already fought this fight, been up to the Court
3 of Appeal and back.

4 Now, Ms. Jacobson certainly can bring her
5 motion and make the arguments, and she can say she wasn't
6 bound by that because they weren't a party to it at that
7 time. But the Court of Appeal has said that we have the
8 right to do this, because it's not appropriate to look at
9 only our rights, you need to look at all the rights in
10 the basins and other surface water users.

11 So that's our position.

12 THE COURT: Let's see, when you sued and failed on
13 demurrer, who had you name at that time?

14 MR. HAGERTY: We didn't fail on demurrer, your Honor.
15 We -- Channelkeeper filed their complaint, we filed a
16 cross-complaint, Channelkeeper filed a motion to strike,
17 and the court in San Francisco granted on the basis --

18 THE COURT: Did you add anybody, or was it just right
19 against Channelkeepers only?

20 MR. HAGERTY: No, no, we didn't cross-complain against
21 Channelkeeper, we cross-complained against Casitas, Taylor
22 Ranch. I think at that point in time -- initially there
23 were nine named.

24 THE COURT: So you broadened the fight, but you didn't
25 include the City of Ojai.

26 MR. HAGERTY: They were not expressly named at that
27 point in time.

28 THE COURT: Well, with Casitas you certainly got

1 somebody who touched a lot of geography.

2 MR. HAGERTY: Yes, your Honor. And, you know, we
3 knew we would expand it because we had to figure out
4 everything that was going on. So we had, you know,
5 obviously Roes, a significant amount of Roes, which
6 became an issue in the Court of Appeal --

7 THE COURT: A significant amount of what, sir?

8 MR. HAGERTY: Roes. Cross-defendants. Roes.

9 THE COURT: Oh.

10 MR. HAGERTY: Yeah. We knew we would be adding people,
11 but we started with Casitas and other bigger users.

12 And so, anyway, I just -- I encourage the Court
13 to take a look at that case again, because from our
14 perspective it sets the path for what we're on.

15 And here, you know, the Court has jurisdiction
16 even though the Act is in place. It's in the Act, it's
17 consistent with the Seaside case.

18 Now, I do think there's an important issue that
19 the parties should be discussing, which is, how can OBGMA,
20 the agency, how can it be a part of the overall watershed
21 solution.

22 And another important point that we're going
23 to make repeatedly if we have time today, your Honor, is,
24 contrary to the allegation that Ms. Jacobson has made
25 repeatedly, we're not asking this court to look at Taylor
26 Ranch's rights down in the Lower Ventura River and compare
27 them against the East Ojai Group's rights up in the
28 Ojai Basin.

1 If we got to the point where we're actually
2 adjudicating individualized rights, it will very
3 specifically be basin by basin.

4 I mean, we don't disagree with the idea that
5 we're not going to compare rights across basins.

6 But the problem with this situation, the problem
7 with this case, the problem with this watershed, is if
8 you look at only the little pieces, you don't get to the
9 full answer to the question that's posed. And this case,
10 our case, poses the full question.

11 And, you know, unfortunately for the Court, it's
12 come to you and you're going to have to help us answer
13 those questions.

14 But unequivocally, without doubt, this is settled
15 law that you have jurisdiction. And OBGMA may play an
16 important role in implementing any court order, if there
17 is one, and that's to be encouraged, and we hope to discuss
18 that further, but the fact that they exist doesn't mean
19 that the case can't go forward.

20 THE COURT: Ms. Jacobson, you're standing?

21 MS. JACOBSON: Yeah. I just wanted to respond as to
22 the Court of Appeal decision.

23 I do think it's worth reading, and noting that
24 the question before the court was: Is Ventura allowed
25 to plead an alleged thing, and in the state of California
26 we have a very liberal pleading rule.

27 So the Court of Appeal did not say their
28 allegations have merit. The Court of Appeal did not rule

1 on jurisdiction. The Court of Appeal did not rule on who
2 are the appropriate parties of the case. All it said was
3 they can go ahead and make allegations. That's what the
4 Court of Appeal said.

5 THE COURT: You're basically going to make an
6 affirmative defense of lack of jurisdiction, which is
7 a different question of whether somebody's allowed to
8 make a pleading.

9 MS. JACOBSON: Exactly.

10 MR. HAGERTY: And our position is the Court of Appeal
11 has answered that question, your Honor.

12 But we'll fight that out in the motion.

13 THE COURT: Okay.

14 So, I thought I would have decided Question 4
15 before I turned to Question 5, and it's not clear I should
16 try to touch on 5, 6, 7, 8 or 9, but you seem to give
17 dramatic foreshadowing there's lots more stuff we ought
18 to be covering other than the haggle about your discovery
19 in status conference report. I mean, maybe it is the haggle
20 about Dr. Archer's report.

21 What else do you think we can use usefully do
22 this afternoon other than turn to the status conference,
23 Mr. Hagerty?

24 MR. HAGERTY: Your Honor, I'm happy to either talk
25 about those other issues or defer them. I mean, I think
26 realistically, deferring would be better because it really
27 should be heard by a noticed motion.

28 But if the Court wishes to hear our position and

1 why we think that, you know, the answer is yes on those
2 items, then we're happy to do that, but we're going to
3 run -- I mean, just touching the surface of Issue 5 will
4 take more than an hour.

5 So maybe turning to any other issues the parties
6 have of a procedural nature might be a better use of the
7 parties' time.

8 THE COURT: Well, bear with me.

9 Ms. Jacobson, your motion for judgment of the
10 pleadings is going to take up the jurisdictional question
11 in No. 4, and are there other issues either on my tentative
12 or not on my tentative that are going to be added to your
13 motion for judgment on the pleadings, Ms. Jacobson?

14 MS. JACOBSON: I think the motion for judgment on the
15 pleadings is going to directly or indirectly answer all
16 your questions.

17 THE COURT: So by way of example, do you have some
18 way of presenting the question of whether I need to make
19 the finding under 833(c) referenced in Question No. 7?

20 MS. JACOBSON: I don't believe you can make a finding
21 today on that.

22 THE COURT: No. Would your motion for judgment on
23 the pleadings attempt to tee up that issue?

24 MS. JACOBSON: I think the motion for judgment on
25 the pleadings will render that issue irrelevant if we
26 are correct.

27 THE COURT: If I don't have jurisdiction, at least
28 as to your part of the turf, from your point of view

1 it's over. I might still have some denuded case involving
2 less geography.

3 MS. JACOBSON: Exactly.

4 THE COURT: But if it doesn't involved your geography,
5 you're happy, you're out of here, and the City Council gives
6 you the okay.

7 MS. JACOBSON: Exactly.

8 Essentially I think the way the original proposal
9 was for the scope of Phase I, as it was attached in our
10 legal brief, was to determine the boundary issues, which
11 seems to have been done today, and then ask questions of
12 jurisdiction, you know, decide the issues of jurisdiction
13 and scope.

14 You know, we've previously referred to this as
15 who's in and who's out. And assuming that the Ojai Basin
16 is still in, if the Court can adjudicate the Ojai Basin
17 in this proceeding, then the question turns to 833.

18 But it's actually in the reverse, your Honor.
19 833 says -- you know, the whole Groundwater Adjudication
20 statute's about groundwater. And in a groundwater
21 adjudication there may be instances where a groundwater
22 adjudication can pull in surface water. Not the reverse.

23 But it was brought up previously because the
24 thing is that they sued, they brought a claim under the
25 Groundwater Adjudication statute, and therefore those rules
26 apply. So there needs to be some sort of factual showing,
27 and the burden of proof is on them to show a connection
28 if they're going to make it past these other obstacles.

1 THE COURT: So bear with me.

2 A few moments ago, but as part of what you were
3 saying, I thought you said your motion for judgment on the
4 pleadings was going to in some fashion resolve my Issues 4
5 through 7 if not also 4 through 9.

6 Did I hear you right?

7 MS. JACOBSON: Yes. Because again, if the Court doesn't
8 have jurisdiction, then 833 is irrelevant.

9 THE COURT: Well, actually if I don't have jurisdiction
10 as to part of the geography, it's conceivable that
11 Mr. Hagerty's client, through counsel, might want to proceed
12 as to the other parts of the geography, and while you're
13 happy and done and hopefully get your bouquet, there
14 would still be something to fight about, I think.

15 Right, Mr. Haggerty?

16 MR. HAGERTY: Yeah. And this is just -- I mean, the
17 motion, as I understand it, only applies to one cause of
18 action. So, we have nine causes of action, and as I've said
19 before, at least as I understand the framing of the motion,
20 it doesn't resolve the issues entirely and we're still going
21 to have to try Phase I, because we absolutely have the right
22 to argue reasonable use and public trust and the other
23 issues.

24 THE COURT: And anybody riparian in the headwaters of
25 the Ventura River, from your point of view, is just as
26 much properly part of the case with or without some kind
27 of specialized agency to deal with the groundwater.

28 MR. HAGERTY: Correct. That's right.

1 THE COURT: Now, to digress slightly, can somebody
2 explain to me, whether it's Mr. Slater, our legal historian,
3 or Mr. Hagerty or Ms. Jacobson, how jurisdiction did
4 attach in days of yore over the matter of groundwater?

5 Does anybody believe they know?

6 MR. HAGERTY: I think Mr. Slater can tackle that.

7 MS. JACOBSON: I would say that it's actually pretty
8 fully briefed that there was a way to do this before
9 the groundwater statute. But one of the purposes of
10 the groundwater statute was to avoid the situations
11 that this state saw happening repeatedly, where you have
12 adjudications going on for eight, 10, 15 years. And that
13 was when those adjudications were, as I understand it,
14 less complicated.

15 THE COURT: But how did jurisdiction attach? Do you
16 want me to hear from Slater or do you want to tell me?

17 MS. JACOBSON: I'm happy to sit.

18 THE COURT: I mean, would you hypothetically just put
19 an ad in the Ventura Star or --

20 MR. SLATER: Here's what we did, your Honor.

21 The first adjudication happened in -- the
22 Supreme Court opinion is in 1949, it's a case called
23 Pasadena vs. Alhambra. And the history here is, the
24 courts refer to it as a quasi-in rem proceeding -- not
25 in rem as you're thinking about it, not in the terms of
26 the service by publication. But really what's going on
27 is there is a res. The res is water.

28 And if you'll allow me, I do have a book on this,

1 but -- a two-volume treatise.

2 THE COURT: You're the author?

3 MR. HAGERTY: Yes, I am, your Honor.

4 THE COURT: Do you still get royalties?

5 MR. SLATER: I do, your Honor.

6 THE COURT: Too esoteric, though.

7 MR. SLATER: Yes. But I'll try to be very pragmatic.

8 So the lawsuit -- there are 33 of these. And
9 they're vastly different. Each one is unique to its own
10 circumstances. There are several that arise here in
11 Los Angeles involving the L.A. River, and San Diego, lots
12 of places where these principles have been applied. Big
13 geography, small geography.

14 There is a -- you know, the State would be great
15 on this point. There is no right to the corpus of water
16 in the state of California. The body of the water is owned
17 by the people. And what we have are water rights which
18 are use oppress, and they are right to use, and they are
19 essentially a priority system: who gets to drink first.

20 The existence of one right does not extinguish
21 another. And the question is: What is the share grace
22 that is involved? And the share grace is water, not the
23 land.

24 The land gives origin to a claim which may be
25 overlying right, it may be a riparian right. We also have
26 the Pueblo right, which devolves from, allegedly, a treaty,
27 the Treaty of Guadalupe Hidalgo. We also have rights that
28 are accrued by use. And those are appropriate rights. And

1 then adverse use becomes prescriptive. And they all are
2 tethered to the common res.

3 So how we did it is, you basically -- you would
4 use a narrative, and you would draw a line that approximated
5 what the geography was, and you pled and named all known
6 parties who were using water or who had land that was in
7 theory overlying or contiguous and adjacent to the stream.

8 THE COURT: But you'd name them.

9 MR. SLATER: You named them.

10 THE COURT: So joy of joys, if we didn't have the
11 benefit of the statute, Mr. Hagerty in theory would
12 have named all the 10,000 plus fee simple owners --

13 MR. HAGERTY: 12,800, but who's counting

14 THE COURT: You'd name them all.

15 MR. SLATER: You would. And in fact, we did. We
16 named them. And inevitably we missed. Right?

17 And the Court's continuing jurisdiction is always
18 available as the clean sweep. Right? We would learn
19 through time that a basin boundary might be off by a street,
20 it might be -- there might be a fault that was subsequently
21 discovered, and the Court has the continuing jurisdiction
22 to do justice down the road, to address change in
23 circumstances, change in law, change in technology,
24 change in science. That continuing jurisdiction is there.

25 THE COURT: We might even get an earthquake that
26 would change the character of the basin.

27 MR. SLATER: I've never run into that, your Honor,
28 but science is improving every day, and we know more

1 about things than we did previously. So this is --

2 THE COURT: But as onerous as trying to literally
3 identify every fee simple owner, put them in the caption,
4 put them in the body of the complaint, put them in the
5 summons and send your process server out --

6 MR. SLATER: Yes, your Honor.

7 THE COURT: -- to see the whites of their eyes.

8 MR. SLATER: Yes, your Honor.

9 So you would name anybody who had a colorable
10 claim to the water.

11 THE COURT: Even if they had no well.

12 MR. SLATER: Even if they had no well.

13 And parenthetically, again, we're going to
14 spend a lot of time with you, your Honor, and you'll see
15 how the -- the original of this statute was designed to
16 get to cost, there's also a substantive element in it.
17 We can discuss that at a later time. There's only
18 one really substantive point that shifted the law on
19 groundwater.

20 THE COURT: And what is that? Because I had the
21 impression there was nothing substantive.

22 MR. SLATER: Well, there's one. There was a case
23 that -- one of my very first cases, in 1985, it's called
24 Wright vs. Goleta Water District. And the Court of Appeal
25 in Wright vs. Goleta said that in a groundwater adjudication
26 that is not done pursuant to the state board statute, you
27 may not subordinate the rights of a nonusing or a dormant
28 overlying landowner. I had them in that case.

1 So a senior appropriator could not subordinate
2 a dormant landowner, a farmer who had not irrigated all
3 of his acreage.

4 THE COURT: If you want to drill a well for the first
5 time, go at it.

6 MR. SLATER: You have no prejudice. There is a common
7 law pathway for that landowner to protect their rights.
8 And along comes the adjudication statute and it says we're
9 making one change to the substantive law: a trial court,
10 not must, but may, may consider applying the principles
11 of a subordination case, a Supreme Court case called
12 In Re Waters of Long Valley. And that allows, under
13 certain circumstances and findings and equities and so
14 on that goes down the list.

15 And we're not advocating that here. We're just
16 saying to you, your Honor, that the only substantive
17 difference is that you are empowered to consider doing
18 that if the facts and equities warrant it.

19 THE COURT: So if Ojai Valley Inn doesn't have any
20 wells, and we want to tell them you'll never be able to
21 drill a well to irrigate the golf course, we might be
22 able to do that.

23 MR. SLATER: If the factual and equity predicates were
24 there, made to your Honor as a part of -- in particular,
25 as a part of a Physical Solution, yes.

26 But I want to finish on my point.

27 THE COURT: Whereas the prior state of the law, in
28 theory, under a common law adjudication, the court would

1 have been powerless to try to do that.

2 MR. SLATER: The court -- Unless -- unless, this is
3 also represented in the Supreme Court case of the City of
4 Barstow vs. the Mojave Water Agency. Right? That case
5 was not a case that involved prescription. Typically the
6 way that landowners were subordinated with dormant rights
7 is the municipal users who held appropriate rights had
8 to prove by clear and convincing evidence that they had
9 prescriptive rights.

10 Now, maybe it's not clear and prescriptive anymore,
11 we don't know, there's a couple of cases going both ways.

12 But you have to prove prescription. Other than
13 that, they have no way to subordinate those overlying
14 rights.

15 THE COURT: The prescription is what?

16 MR. SLATER: Open, notorious, all of the factors, and
17 we could get into the detail of proof on each one far beyond
18 what we're -- but again, you asked --

19 THE COURT: It's kind of like how my fence takes my
20 neighbor's land?

21 MR. SLATER: Yes. Yes, your Honor. With unique
22 characteristics for water.

23 The point being, your constitutional duty derives
24 from Article 10 Section 2. The City and the moving parties
25 have pled, or suggested, that there's a Physical Solution.
26 Your jurisdiction follows the water.

27 So you have the people and their column of rights
28 and priorities that pertain -- not in the abstract, but to

1 the water, to the res. And your constitutional authority
2 is not only to determine those rights, but what we're here
3 doing is deciding whether or not there's a physical solution
4 that will solve a problem, stretch the water and meet all
5 demands without requiring a curtailment of any right, can
6 they work together to provide water to fish, to meet their
7 needs, and if not, then how do we address it.

8 THE COURT: Thank you.

9 To try to use the remaining time efficiently,
10 Ms. Jacobson, when I decide your motion, I'm going to
11 determine whether or not I have jurisdiction.

12 I'm not actually going to address Questions 5,
13 6 and 7. True?

14 MS. JACOBSON: If you can give me a moment just to
15 pull those up.

16 MR. MELNICK: I think, your Honor, the motion is
17 supposed to address No. 5.

18 THE COURT: It certainly addresses No. 4.

19 MS. JACOBSON: Well, a motion for judgment on the
20 pleadings can attack a pleading on its face based on
21 jurisdiction or failure to state a claim.

22 THE COURT: I see Question 5 is a legal question. So
23 Question 5 is whether or not Mr. Hagerty's desire to put
24 four basins and/or two basins and two subbasins into one
25 lawsuit is permissible.

26 Will that be included in your motion for judgment
27 on the pleadings?

28 MS. JACOBSON: Yes.

1 THE COURT: Okay. So you'll get me to both 4 and 5.

2 MS. JACOBSON: Yes.

3 THE COURT: But that's where it stops; true?

4 MS. JACOBSON: I suppose, your Honor, No. 6 assumes
5 that the motion for judgment on the pleadings would be
6 denied.

7 So in that case, 6 follows that decision.

8 THE COURT: But in a separate matter, because they
9 have to start grubbing around with facts.

10 I'm not going to do that on January 18; true?

11 MS. JACOBSON: Correct.

12 THE COURT: Do you concur, Mr. Hagerty?

13 MR. HAGERTY: Yes. I think, your Honor.

14 Again, we need to see the motion, and as I
15 understand it it only addresses the one cause of action.
16 But we'll see.

17 THE COURT: But basically I've got to rub my nose in
18 the facts in order to get to the answer to Question 6, and
19 her legal motion isn't going to rub my nose in any facts.

20 MR. HAGERTY: Well, I think it can't. Yes.

21 THE COURT: I understand. That's why I assume it won't.

22 MR. HAGERTY: Yes. That's right. That's right.

23 THE COURT: Okay.

24 So, a different subject. When I was in Hawaii
25 with ABTL, somebody at JAMS, and I forget who, but it was
26 the mediator who was appointed to try to bring peace to
27 the East Ventura water dispute involving the drainage in
28 the general vicinity of Camarillo, as I understand it,

1 sort of the other Ventura County water dispute. And
2 he apparently was busying himself as the mediator.

3 We don't have a mediator in this case. We've
4 now got competing expert reports out there, we're many
5 months into legal fees.

6 Is the time right, if not already overdue, to
7 see if structured compromise efforts with a paid neutral
8 have any value?

9 MR. HAGERTY: Well, we have had a mediator, it was
10 a while ago, and it did --

11 THE COURT: Even while you were in front of me?

12 MR. HAGERTY: I believe it was as it was being
13 transferred to you, your Honor. And I think you spoke
14 to Judge Komar, who was our mediator for two sessions.

15 THE COURT: I have talked to Komar, and I know that
16 he's making a living out of Antelope Valley even while
17 he's a paid neutral, he's got this special permit to both
18 be an assigned judge and be a rent-a-judge, which is unique
19 prerogatives.

20 MR. HAGERTY: Yes. And, you know, he --

21 THE COURT: But nothing about that discussion gave me
22 hope that he was going to be able to bring peace to this
23 discord.

24 MR. HAGERTY: Well, I think there were some positives
25 that came out of that mediation, your Honor, and set
26 a certain course that, at least from our perspective,
27 legally we're still pursuing. And the City is always --

28 THE COURT: Should we reenergize with Komar?

1 MR. HAGERTY: We don't know that that would be the
2 right thing to do, your Honor.

3 But I mean, again, we are always open to talk.
4 The City of Ojai knows that, Casitas knows that.

5 So, you know, we've come to the conclusion, though,
6 just to be clear, your Honor, that these issues that are
7 presented in Phase I, if we're successful in our position
8 and get past them, we think that a solution is pretty clear
9 and should be pursued.

10 But we're not sure that the other parties are
11 willing to truly engage in mediation given these issues.

12 If they are --

13 THE COURT: Do you think a ruling in your favor on
14 January 18 would then create the right mood for mediation?

15 MR. HAGERTY: I think every step we take toward the
16 trial successfully, and the fact and the reality is we do
17 need a Physical Solution in this case, is going to help push
18 the parties forward, yes.

19 THE COURT: Ms. Jacobson?

20 MR. PATTERSON: Your Honor?

21 THE COURT: I want to hear from Ms. Jacobson first.

22 MS. JACOBSON: I actually think a ruling in Ojai's
23 favor on January 18th will help focus this matter to the
24 major parties who would otherwise still remain and maybe
25 force mediation among them.

26 THE COURT: Because would it certainly reduce the
27 number of players who have to talk about a deal.

28 MS. JACOBSON: Exactly. And the number of overly

1 complicated issues involved with that.

2 You know, it's my understanding there have been
3 discussions, but we've hit a wall. And I'll just leave
4 it at that.

5 THE COURT: Okay.

6 Who was trying to talk on the phone? Mr. Garrison?

7 MR. PATTERSON: Mr. Patterson?

8 THE COURT: You're East Ojai; right, Mr. Patterson?

9 MR. PATTERSON: I'm vertical today, your Honor. Thank
10 God.

11 THE COURT: No. How do represent? East Ojai; right?

12 MR. PATTERSON: I represent the East Ojai Group
13 along with Mr. Carter. And just a couple of points.

14 I am personally involved in the Las Posas Basin
15 litigation, in which the mediator, Patrick Walsh, former
16 judge Patrick Walsh was involved.

17 THE COURT: Oh, yeah. He was next to me on the plane.

18 Yeah. Okay.

19 MR. PATTERSON: So you had a discussion with him.

20 He's been very effective in resolving a lot of
21 the issues relating to the Las Posas litigation and the
22 adjudication in that case, which is really a true water
23 adjudication.

24 But just, you know, I have two points to make
25 really quickly. One is that, you know, this case is not
26 a water rights adjudication. It's an effort by the City
27 to make everybody pay to improve the fishery habitat
28 within these basins.

1 And from our perspective, if they're going to do
2 that, they have to show that our parties' use of water
3 within the Ojai Basin harms the fishery. It's not just
4 a matter of connectivity, but it also goes beyond that.

5 Because, you know, otherwise, why are we in this
6 if we're not doing anything to harm the habitat or the
7 fishery. And they have some sort of collective, you know,
8 everybody's-in-the-same-bucket kind of theory here that
9 we don't agree with.

10 I think the second issue is, while I very much
11 appreciate, and I think the Court's on the right path
12 here, the status conferences and the strong and vigorous
13 discussions that we've had, that I think are helpful to
14 everybody, is this: From my perspective, the issues that
15 have been raised by the Court, 4, 5, 6, 7, 8 and 9, really
16 need to be dealt with in a properly-noticed motion to all
17 the parties, that allows them to brief it and allows for
18 the proper argument on those issues.

19 And it just seems to me that we're kind of
20 getting into the material issues related to this, that
21 may affect the Court's decisions on this, and that's
22 a little bit concerning to me, frankly, although I very
23 much appreciate, again, the Court's effort to really try
24 to figure all of this out. It's very complicated, it's
25 new, it's not been done before, and we're all trying to
26 struggle to find the right pathway here to some sort of
27 resolution.

28 Anyway, those are my comments on behalf of the

1 East Ojai Group.

2 THE COURT: Well, when you're a judge you're a
3 generalist generally, although you may have some special
4 skills from your practice or even your judging experience
5 from the kind of cases you've had.

6 The insurance coverage bar are a bunch of
7 theologians who get into the words and the meaning
8 of words to the enth degree and get to litigate about
9 matters of great value so they can bill their clients
10 for many hours and days and months of philosophical
11 debate.

12 But I got a sense just from listening to
13 Mr. Slater for 20 minutes that what a bunch of theologians
14 the career water lawyers are, albeit it's a different
15 biblical text that you're working with.

16 But you do have to understand that I am the
17 layman or the nonbeliever, and just like they have little
18 tableaus at Notre Dame to try to explain Christianity to
19 the illiterate, you've got to understand that for purposes
20 of water law, I'm an illiterate. Reading Cadillac Desert
21 does not substitute for really understanding the history
22 of California decided water law.

23 MR. PATTERSON: No, I completely understand that,
24 your Honor. And I do appreciate the Court's efforts
25 to try to become -- you know, to understand all these
26 issues.

27 Again, I just had a little bit of a concern that
28 some of these issues I think, for due process reasons,

1 do require an appropriate noticed motion.

2 If the Court wants to prompt those up, that's
3 fine.

4 THE COURT: The good news is, for lack of time we're
5 not going to go much further with those today and we just
6 have to figure out how to get them on calendar either on
7 February 14th, if not sooner, or to do something between
8 January 18th and February 14th, which is a precious, small,
9 little gap of time, particularly for something that has
10 to be noticed up.

11 It may well be that it will just have to be job
12 one on February 14.

13 MR. HAGERTY: Or, or decided after the -- because a
14 lot of the -- I mean, in our view, a lot of the --

15 THE COURT: You keep being an optimist that I should
16 not decide the four basins question.

17 MR. HAGERTY: Well, we do think that there's relevant
18 information the Court needs to hear to fully make that
19 decision. That's our position. So. . .

20 THE COURT: It might be. I mean, there are some
21 aspects, by way of example, and this is only an analogy,
22 but one is told as a judge: Don't decide about the
23 admissibility of extrinsic evidence, otherwise known as
24 parole evidence, when it comes to the interpretation of
25 written contracts until you've actually sort of had it
26 presented to you. And if you just summarily say, oh,
27 that's impossible, the contract can't mean that, I don't
28 want to hear some negotiator tell me X means Q, I won't

1 even hear it, well, now you have the reverse for that.

2 So you put the witness on the stand, they tell
3 you that X means Q, and then eventually you say, no,
4 it's not possible, and then you get affirmed.

5 But you have to sort of show that you spent time
6 with the evidence before you said it can't possible work.

7 MR. HAGERTY: And your Honor, having been delayed,
8 you know, between, what 2015 and 2019 because of a ruling
9 that wasn't based on a factual record, we're very sensitive
10 to that.

11 I mean, and you know, you have the authority to
12 hear whatever motions that are going to be brought. But
13 I mean, our position is this is ripe for the Court to hear
14 Phase I --

15 THE COURT: Let's turn to the status conference.

16 MR. HAGERTY: Yes.

17 MR. MELNICK: Your Honor, can I say one thing about the
18 mediation issue?

19 THE COURT: Yeah.

20 MR. MELNICK: I think once we do Phase I, I think that
21 is a good time for us to talk to a mediator. Because I
22 think we'll have settled some things and the parties can
23 then talk.

24 And I think that this mediation doesn't need
25 to be all 12,000 parties. I think we know who the major
26 water users are, and the major water users can have a
27 substantive conversation to see how far we can get with
28 the mediator.

1 THE COURT: Okay. Thank you.

2 MR. MELNICK: So, I have one procedural issue on the
3 status conference, so I just want to make sure we get
4 to that. I'm happy to do it in whatever order you want,
5 your Honor, but --

6 THE COURT: I'm happy to turn to you, but Ms. Jacobson
7 is standing, implying she wants to be heard.

8 MS. JACOBSON: No, no. I'll wait.

9 THE COURT: Go ahead, Mr. Melnick.

10 MR. MELNICK: So Mr. Jungreis, who had to leave, he
11 and I have been talking about something, which is that he
12 designated a new expert last Friday, and my client wishes
13 to take that deposition. But Mr. Jungreis and I agreed
14 that it should happen after the expert cutoff.

15 And so I just want to ask the Court to --

16 THE COURT: Remind me, the expert cutoff for those
17 matters which aren't the one late report that's being
18 allowed is otherwise what date, sir?

19 MR. MELNICK: It's January 14th, your Honor.

20 THE COURT: And you and Mr. Jungreis are agreeable
21 to taking that one expert after January 14th.

22 MR. MELNICK: Correct.

23 THE COURT: The name of that person is?

24 MR. MELNICK: Dr. McCord.

25 THE COURT: Designated by Casitas?

26 MR. MELNICK: Correct.

27 THE COURT: What do you want to be your new cutoff date?

28 MR. MELNICK: I would say February 1st.

1 THE COURT: And that would be the commencement of the
2 deposition, because that's how cutoffs work.

3 MR. MELNICK: Right.

4 THE COURT: Not necessarily the completion.

5 MR. MELNICK: Correct.

6 THE COURT: Anybody object to setting a special cutoff
7 for the deposition of Dr. McCord, a new Casitas expert,
8 on February 1 of 2022? If so, speak up.

9 Hearing no objection, the Court will adopt that
10 as the new deadline specifically for Dr. McCord, with City
11 of Ventura to give notice as part of the plenary notice
12 of ruling.

13 MR. HAGERTY: Yes, your Honor.

14 MR. MELNICK: Thank you, your Honor.

15 THE COURT: Okay. So Dr. Archer has offered expert
16 testimony. Apparently there's some kind of a model embedded
17 in the analysis that leads to the conclusions publicly
18 stated so far in discovery by Dr. Archer. But Dr. Archer
19 has not yet volunteered to produce the model that helped
20 produce the outcome.

21 Correct, Ms. Jacobson?

22 MS. JACOBSON: Correct, your Honor.

23 THE COURT: Am I misstating your problem?

24 MS. JACOBSON: No. I would just add to it, that after
25 filing that with the Court, Ventura has reached out to
26 discuss this issue.

27 THE COURT: Mr. Pisano or Mr. Hagerty, is peace breaking
28 out?

1 MR. PISANO: Peace is in the offing, your Honor. As
2 Ms. Jacobson has --

3 THE COURT: Why wouldn't a forensic expert's work
4 product be discoverable?

5 MR. PISANO: Well, her expert work product is
6 discoverable. There are just two issues where I want
7 to make sure that when the computer model -- and this
8 is a computer program, not necessarily the facts and
9 the data that went into the program. They want the
10 program itself so that they can run the model on different
11 scenarios, presumably which they're going to use to try
12 to cross-examine Dr. Archer or perhaps support their own
13 expert opinions.

14 THE COURT: Did Archer license it from a third party
15 provider?

16 MR. PISANO: No, she did not. However --

17 THE COURT: It's his own software?

18 MR. PISANO: It's publicly available software, and
19 you have to input data, and it's layers upon layers upon
20 layers of data. I can't even produce it in a link. It's
21 going to be something that's going to have to be produced
22 on an external hard drive or something along those lines.

23 THE COURT: So, in other words, the modeling software
24 is publicly available and you can just point somebody to
25 the website.

26 MR. PISANO: Correct.

27 THE COURT: But you've got to populate it with
28 Dr. Archer's data that led to her conclusions.

1 MR. PISANO: Correct.

2 THE COURT: And then if Ojai wants to modify this
3 or that assumption, you still have to struggle with the
4 totality of Dr. Archer's inputs.

5 MR. PISANO: Correct.

6 THE COURT: But with time and a hard drive you can
7 furnish that to Ms. Jacobson before New Years?

8 MR. PISANO: That is the goal. Yes, I believe we can
9 do that. And I met and conferred with Mr. Patterson and
10 Ms. Jacobson.

11 The issue we have, your Honor, is, I would like to
12 take the Superior Court's model stip and protective order
13 and do a framework along those lines, so that Ms. Jacobson
14 and her expert and Mr. Patterson and his expert will agree
15 that it's only going to be used for litigation, so, you
16 know, it's not going to end up in the press and something
17 that's outside of this process, and that at the end of
18 the process they're going to give it back.

19 And I'm trying to work that framework out with
20 Ms. Jacobson and Mr. Patterson. It is my hope that peace
21 will break out. I don't know if --

22 THE COURT: So Ms. Jacobson, has this olive branch been
23 presented earlier than this status conference, or is this
24 all new news?

25 MS. JACOBSON: We briefly discussed the issues. We
26 have not come to any final agreement. I think we can work
27 it out.

28 But the point is that, as I understand it, and I'm

1 involved in other litigation, including federal litigation
2 where we get modeling from the Feds, and that's why I
3 suggested the external hard drive, because that's just
4 how it's done.

5 And my concern is that if we're not going to get
6 this until the holidays -- and by the way, I'm on vacation
7 over the holidays --

8 THE COURT: Well, hopefully sooner, but with a February
9 14th trial date and a January 18th motion hearing date --

10 MS. JACOBSON: Exactly.

11 THE COURT: -- I would assume that you may have to
12 comprise some of the private time you hope to have over
13 the holidays because you've got a hard-nosed judge who
14 used to be in a two-thousand-plus-hour-a-year kind of
15 law practice and just expects you to have to sometimes
16 put personal pleasure aside and work.

17 MS. JACOBSON: And I am happy to do that, your Honor.
18 But it's not just about me, it's about our expert and
19 it's about having time to --

20 THE COURT: Well, a forensic expert has to do the same
21 thing if he wants to take your money.

22 MS. JACOBSON: Right. But realistically --

23 THE COURT: You can quote me if that helps.

24 MS. JACOBSON: But realistically, even if there were
25 no holidays, there's a serious concern here. And the
26 concern is that it's going to take time to review the
27 modeling and prepare for the rebuttal testimony deadline
28 that's coming up, and that's a concern, is these deadlines

1 we've already set are going to be impacted potentially by
2 this model. That's my concern.

3 THE COURT: Well, certainly until you get the model,
4 if you need to supplement a supplemental report after you
5 get the benefit of the modeling and have an opportunity
6 to tweak it, that would seem to be good cause to make
7 a further supplementation of a supplemental report.

8 MS. JACOBSON: And I'm bringing these concerns to you
9 and to this court just because the upcoming trial date and
10 all the current deadlines on calendar are questionable at
11 this point.

12 THE COURT: Well, I'm here on Monday and Tuesday.
13 Should I just have a status conference maybe
14 Tuesday morning and see whether you've made some progress?

15 MR. HAGERTY: Your Honor, I'd just like to note, I
16 think you trailed a portion of the OSC to December 13th,
17 is what I heard. So I --

18 THE COURT: I did, thinking there was something else
19 on calendar for this case. But I guess that was -- there's
20 no foundation that there's anything else.

21 MR. HAGERTY: No, we originally were going to have
22 a different date for this OSC and I think it was moved.

23 THE COURT: But the 13th works for me.

24 What time of day did we pick, Aldwin?

25 THE CLERK: You didn't give a time on that, your Honor.

26 MR. HAGERTY: No time was given.

27 THE COURT: Do you want to pick a time, Mr. Hagerty?

28 MR. PISANO: 1:30?

1 MR. HAGERTY: Yeah.

2 MR. PISANO: 1:30 or 2:00. The afternoon is good for
3 me that day, your Honor.

4 MS. JACOBSON: Did we say the 15th?

5 MR. PISANO: I think the Court said the 13th.

6 THE COURT: The 13th.

7 MS. JACOBSON: Okay. Yeah, I was going to say, because
8 we have that deposition.

9 THE COURT: So this is when, in theory, it would be
10 a good time to sort things out with Mr. Garrison and
11 Mr. Whitman, in particular, to see if peace breaks out
12 on that front.

13 MR. HAGERTY: Correct, your Honor.

14 THE COURT: Okay.

15 MR. PISANO: And your Honor, while I'm hesitant to say
16 peace will break out, because I think the court's standard
17 form stip and protective order is a good one and we can use
18 it and, no pun intended, model it appropriately for this
19 case, what concerns me is -- or let me back up.

20 While I can work out a deal with Ms. Jacobson
21 and Mr. Patterson, if everybody else now says, well, I want
22 to see the model too and I want to have runs with it, we're
23 going to have to figure out some way to keep control, via a
24 custodian or something, so that this thing doesn't end up
25 getting misused in the court of public opinion, where the
26 local press in Ventura is all over this, and I can just
27 foresee problems and misuses of the model.

28 THE COURT: Well, if anybody else wants the same

1 model that Ms. Jacobson does for cross-defendant City of
2 Ojai, they're to give notice via the bulletin board on
3 File & ServeXpress by close of business tomorrow at 4:30
4 p.m. that they too want access, so that Mr. Pisano and
5 Mr. Hagerty know who they have to negotiate with.

6 MR. PATTERSON: Your Honor, this is Greg Patterson,
7 really quickly on behalf of the East Ojai Group.

8 I've been involved with these discussions with
9 Ms. Jacobson and Mr. Pisano. And in fact, we've been
10 trying to get ahold of this model for months.

11 And, you know, it's our position that it should
12 have been turned over with an initial disclosure. We're
13 trying to work it out. But I want to make sure that,
14 you know, my clients are in the bucket of getting the
15 model.

16 THE COURT: Can you share the one that Ms. Jacobson
17 gets, or do you need delivery of your own data base,
18 Mr. Patterson?

19 MR. PATTERSON: Well, the question is if there would be
20 a separate hard drive delivered to each of us, and we would
21 be happy to return it to Mr. Pisano at the conclusion of
22 the litigation.

23 We certainly don't have any problem with, you know,
24 not spreading it out to the Ojai Times and everybody else
25 who may have an interest in it. That's not our interest.
26 Our interest is, as my expert says --

27 THE COURT: Thank you. Thank you.

28 So duly noted that East Ojai Group wants it in

1 addition to City of Ojai.

2 Mr. Carter, you're co-counsel for the same clients?

3 MR. CARTER: Yes, your Honor. I agree with Ms. Jacobson
4 and Mr. Patterson. I would just add one point.

5 As to timing, I heard Mr. Pisano say January 1st.
6 We think we should receive that --

7 THE COURT: I had made a passing suggestion of at the
8 end of the holidays, but it may well be that an earlier
9 deadline is quite in order.

10 MR. CARTER: Yes, your Honor. And the reason is, we've
11 already pushed one deposition that was supposed to be this
12 week on Monday that was scheduled, we have to continue that
13 because we believe the model is relevant to her testimony
14 as an expert.

15 Mr. Pisano actually suggested you don't need the
16 model until you depose Dr. Archer. Well, Dr. Archer will be
17 deposed on January 6th currently. And what we're hearing,
18 and my colleague Mr. Patterson can correct me, our experts
19 are telling us they need at least a week, maybe ten days
20 or more to analyze this model.

21 THE COURT: So this question of the discovery will be
22 dealt with again on Monday, the 13th of December at 4:00
23 p.m. because I've got a very full calendar that day. And
24 that's also the time that the OSC about the questions of
25 the boundary of the Upper Ojai Basin will be dealt with
26 further, with the City of Ventura to give notice.

27 MR. HAGERTY: Thank you, your Honor.

28 MR. PISANO: Thank you, your Honor.

1 THE COURT: Something else in mind, Mr. Pisano, since
2 you're standing?

3 MR. PISANO: No.

4 THE COURT: Okay.

5 So what other status conference issues do I need
6 to address at this time?

7 MR. WHITMAN: Your Honor? This is Mr. Whitman.

8 THE COURT: Go ahead. Who's speaking?

9 MR. WHITMAN: Andrew Whitman.

10 THE COURT: Go ahead, Mr. Whitman.

11 MR. WHITMAN: Yeah, you've got me on Page 3, No. 1
12 of your second list of topics.

13 So first thing I would say is, I represent two
14 sets of properties, and in neither case was the material
15 received from the City in the form of option to do
16 anything but stipulate or file the court-approved answer.
17 There was no other. And my understanding at that point
18 is that the Court was not entertaining any type of law
19 and motion until some type of case management.

20 But anyway --

21 THE COURT: No problem. Whether you could have
22 demurred or not, you can bring a motion for judgment on
23 the pleadings.

24 So how soon do you want to file your motion for
25 judgment on the pleadings, Mr. Whitman?

26 You're a licensed lawyer, as I recollect?

27 MR. WHITMAN: Yes.

28 What I was going to ask, it sounds like the hearing

1 on January 18th is going to be pretty heavily argued and
2 highly contested. I think that some of my issues are going
3 to overlap a little bit with what the City may end up
4 arguing.

5 But if your Honor wants to hear both of those on
6 the 18th, I'll get my brief on file by the 20th of December.

7 THE COURT: That makes sense to me.

8 Ms. Jacobson?

9 MR. WHITMAN: And --

10 THE COURT: Thank you, Mr. Whitman.

11 Ms. Jacobson, any reason we shouldn't have their
12 challenge to standing heard on the 18th of January?

13 MS. JACOBSON: No objection.

14 THE COURT: Okay.

15 So the anticipated motion for judgment on the
16 pleadings by Mr. Whitman on behalf of himself and the
17 clients he represents will be set for hearing on January
18 18 in this courtroom at 1:30 p.m. with briefing per code,
19 which to my understanding means that the opening papers
20 have to be served and filed by December 20th.

21 Something else, Mr. Whitman?

22 MR. WHITMAN: No, that's it.

23 THE COURT: Mr. Garrison, do you want to make some kind
24 of a motion for judgment on the pleadings or otherwise on
25 your theories on January 18th?

26 MR. GARRISON: Yes, your Honor. I would like to adopt
27 per code the hearing on January 18th and a submittal to the
28 judgment on the pleadings on December 20th per the prior

1 agreements with the City of Ojai and Mr. Whitman.

2 THE COURT: Ms. Jacobson?

3 MS. JACOBSON: No objection.

4 THE COURT: Okay.

5 Then the motion for judgment on the pleadings
6 by Mr. Garrison on his own behalf and the rest of his
7 clients as to theories of eminent domain and necessity
8 to proceed under CEQA will be heard on January 18th
9 at 1:30 p.m., with City of Ventura to give notice.

10 MR. HAGERTY: Thank you, your Honor.

11 THE COURT: Anybody else wish to be heard now at this
12 status conference for anything?

13 MR. PATTERSON: Your Honor, Greg Patterson.

14 Real quickly, the East Ojai Group will likely
15 either be joining or filing their own motion for judgment
16 on the pleadings consistent with the schedule you've set.

17 THE COURT: Which of the several theories do you intend
18 to join in?

19 MR. PATTERSON: It will be the jurisdiction issue and
20 the standing issue.

21 THE COURT: Fine. Okay.

22 Anything you do by way of joinder or motion
23 practice do it with the same schedule.

24 Did you hear that, Mr. Patterson?

25 MR. PATTERSON: Yes, I did.

26 MR. CARTER: Your Honor, on behalf of East Ojai group,
27 we heard it in court.

28 THE COURT: Okay. Fair enough.

1 All right. So any motions or joinders by East
2 Ojai are to be served with the same schedule to be heard
3 on January 18 at 1:30 p.m.

4 You're going to keep me busy, folks. That's fine.
5 Other issues to take up at this time?

6 MR. WHITMAN: Your Honor, I've got one issue.

7 THE COURT: Who is this?

8 MR. WHITMAN: This is Whitman. I'm sorry.

9 THE COURT: Go ahead.

10 MR. WHITMAN: I do have one issue.

11 As I understand it, every property owner who
12 overlies any of the groundwater districts that are at
13 issue here, in fact I guess anybody in the watershed
14 should be involved, but for some reason residents of
15 the City of Ventura have been left out, and I don't
16 understand that.

17 I would think that if we're going to adjudicate
18 the rights of everybody, then they need to be in this.

19 So, if the City is not going to enjoin them, I
20 think we should get a listing of who they are so that we
21 can cross-complain against them.

22 THE COURT: Well, this is my understanding as a neutral
23 and a relative rookie about what defines who's in and who's
24 out.

25 If you are a fee simple owner of non-riparian land
26 in the watershed, you are not necessarily the subject of
27 interest to the lawsuit. You also need to be a fee simple
28 owner whose fee simple sits on top of the one of the four

1 groundwater basins.

2 And as I look at the maps, it appears that the
3 Lower Ventura River Water Basin is relatively skinny
4 and narrow and doesn't spread sideways to be under what
5 otherwise would be considered much of the City of Ventura,
6 and the Upper Ventura River Water Basin appears to be fairly
7 skinny and is probably too far north to be adjacent to the
8 city limits of the City of Ventura.

9 Correct, Mr. Hagerty?

10 MR. HAGERTY: Correct.

11 And to short circuit the discussion, we sent notice
12 to everyone. We didn't look at jurisdictional boundaries,
13 we looked at the basin boundaries and we sent the notice.
14 So. . .

15 THE COURT: But if they're in the basin.

16 MR. HAGERTY: Correct. Yeah.

17 THE COURT: But if you are, say, somewhere a mile
18 east of the historic mission church in the City of San
19 Buenaventura and are not sitting on top of the Lower
20 Ventura River Water Basin, even though you may be within
21 the Ventura River watershed, you wouldn't get notice; true?

22 MR. HAGERTY: Right. We noticed the basin folks and
23 we served riparians.

24 THE COURT: But that person wouldn't be riparian under
25 my hypothetical.

26 MR. HAGERTY: Right. But I'm trying to --

27 THE COURT: But I'm trying to explain to Mr. Whitman --

28 MR. HAGERTY: Okay. Got it.

1 THE COURT: -- why there could be a lot of voters in
2 the City of Ventura who have not been bothered by being told
3 about lawsuits; whereas, pretty much everybody who's got an
4 Ojai zip code has gotten notice that there's a lawsuit they
5 have to worry about.

6 MR. HAGERTY: Yeah, there were a lot of people in the
7 City of Ventura that received notice or who were served that
8 were involved. And we didn't -- we didn't segregate on
9 jurisdictional lines.

10 THE COURT: But I'm just trying to explain to
11 Mr. Whitman that because you don't sue everybody who
12 just has a fee simple in the watershed, there's a second
13 condition precedent to suing them, and that is, it
14 really isn't whether they're in the watershed -- witness
15 the fact that we have these people who are in the Santa
16 Clara watershed who found themselves given notice of the
17 suit, and they got notice of the suit on account of the
18 being in the City of Ventura's view and apparently the
19 State Water Resources Board's view -- pardon me, the
20 State Department of --

21 MR. MELNICK: Department of Water Resources.

22 THE COURT: -- Water Resources' view that their land
23 sits on top of the Upper Ojai Basin.

24 So you're either on top of the basin or you're
25 riparian, but if you're neither of those, this lawsuit
26 hasn't involved you so far, and that could well be many
27 people who have a City of Ventura zip code.

28 MR. HAGERTY: Yes, your Honor.

1 THE COURT: Does that explain anything to your
2 satisfaction, Mr. Whitman? Or would that necessarily
3 seem fair?

4 MR. WHITMAN: I understand the property location that
5 you described, your Honor. I don't think it puts an end
6 to the issue, but this isn't the time to address it, so
7 if I need to address it I'll address it later.

8 But I will say, your Honor, that the courts
9 talk about the circumstances where you take water from a
10 groundwater basin with a purpose of using it over other
11 properties, and that would seem to apply to every resident
12 in the City of Ventura who takes water from the Casitas
13 Municipal Water District. And they should be in
14 consideration here as well as everybody else.

15 THE COURT: Well, if you think you've got a well-taken
16 further cross-complaint, even if you've answered, just, you
17 know, seek leave to file a cross-complaint and name who you
18 think ought to be named and we're off to the races. We've
19 got a lot of litigants in the case already. The computer
20 runs slowly, but it can run more slowly, I'm sure.

21 MR. GARRISON: Your Honor, this is Gregg Garrison.

22 THE COURT: Yes, Mr. Garrison.

23 MR. GARRISON: I had one other item.

24 I had been working with the City of Ventura on
25 four stipulations, for Weissman, Rockhold, Jillian and
26 Fee (phonetics), and I just wanted to get an idea of when
27 we would get those stipulations for motions to set aside
28 the default judgment so we can put an answer on file?

1 MR. HAGERTY: I don't know the specifics, but I know
2 we're working with lots of parties. I'm happy to talk
3 to Mr. Garrison separately.

4 THE COURT: I was gone for three business days at a
5 conference in New York City yesterday and travel associated
6 with it, and I now have a lot of stuff in my work queue,
7 so it's conceivable that it's gotten that far and is
8 waiting for me to act also, Mr. Garrison.

9 MR. GARRISON: Thank you, your Honor. Thank you.

10 THE COURT: Okay. We're past time and we've run the
11 court reporter ragged to a fairly well.

12 Is there anybody else who insists that there's
13 something else we need to take up?

14 Hearing nothing, court's in recess.

15 City of Ventura to give notice.

16 I'll talk to you on Monday.

17 Monday's proceedings, if you prefer not to come
18 in person, I can understand, but you're welcome to come
19 in person if you wish.

20 I would like the court reporter ideally in person.

21 MR. HAGERTY: Yes, your Honor.

22 COUNSEL RESPONSE: Thank you, your Honor.

23

24 (At 4:45 p.m., the proceedings were adjourned)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

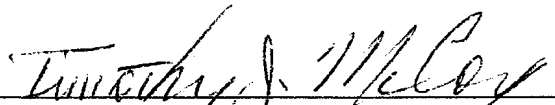
DEPARTMENT 10 HON. WILLIAM F. HIGHBERGER, JUDGE

- - -

SANTA BARBARA CHANNELKEEPER, a)	
California non-profit corporation,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 19STCP01176
)	
STATE WATER RESOURCES CONTROL BOARD,)	
etc., et al.,)	
)	
Defendants.)	
)	
AND RELATED CROSS-ACTION.)	
)	

I, TIMOTHY J. McCOY, CSR No. 4745, Official Reporter Pro Tempore of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing pages, 1 through 94, inclusive, comprise a full, true and correct transcript of the proceedings held in the above-entitled matter on Thursday, December 9, 2021.

DATED THIS 17TH DAY OF DECEMBER 2021.



TIMOTHY J. McCOY, CSR NO. 4745
OFFICIAL REPORTER PRO TEMPORE
LOS ANGELES SUPERIOR COURT

TRANSCRIPT OF PROCEEDINGS

December 09, 2021

(14 80:12	1st 58:3 82:28 90:5	3	4:30 89:3
(c) 31:3	14th 80:7,8 82:19, 21 86:9	2	3 7:19 11:12,14 41:8 91:11	4:45 98:24
(c)(1) 36:11	15 19:23 52:20 67:12	2 10:5 11:12,14 28:9 38:11 72:24	3.8 15:18	5
1	15th 88:4	20 79:13	31st 58:1	5 11:15 63:15, 16 64:3 73:12,17,22, 23 74:1 78:15
1 7:19 10:5 11:12,14 13:11,26 14:23 38:11, 25 40:7 83:8 91:11 99:17	17th 12:3 99:21	2015 81:8	33 49:25 68:8	50 58:20,21,24, 25 59:4
10 5:6 6:16 19:23 67:12 72:24 99:3	18 57:12 74:10 76:14 92:18 94:3	2019 56:1 81:8	4	500 44:12
10,000 69:12	18th 12:3 57:5 76:23 80:8 86:9 92:1,6, 12,25,27 93:8	2021 5:5 99:19,21	4 11:15 41:9 59:11,12,14 63:14 64:11 66:4,5 73:18 74:1 78:15	6
118 15:16 22:13 33:25 34:14 39:10,11	19 44:4	2022 6:16 83:8	4-001 16:12	6 11:15 63:16 73:13 74:4,7, 18 78:15
12,000 20:2 32:5,16 81:25	1949 67:22	20th 58:4,7,13 92:6,20,28	4-001-ojai 21:18	6th 90:17
12,500 24:14	1985 70:23	21 50:7 51:12	4-002 24:10	7
12,800 69:13	1990 44:11	23 6:14,26 7:11, 19 47:7	4-4.07 13:9 15:20 16:11	7 11:15 63:16 64:19 66:5 73:13 78:15
13 36:1	1991 43:26	24th 58:1	40 33:9 58:23	8
13th 87:16,23 88:5,6 90:22	19STCP01176 5:1,17 99:8	25th 58:2	403 45:23	8 63:16 78:15
	1:30 57:12 87:28 88:2 92:18 93:9 94:3	2:00 88:2	4745 5:8 99:14,24	832 30:17
		2:30 5:7	4:00 90:22	

<p>833 34:6 65:17,19 66:8</p> <p>833(c) 64:19</p> <p>841 30:16,18 36:10</p> <p>88 44:10</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 5:5 6:28 63:16 66:5 78:15 99:19</p> <p>94 99:17</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>ability 17:23</p> <p>above-entitled 99:19</p> <p>absence 48:2 50:21</p> <p>absent 54:6</p> <p>absolutely 10:5 21:2 45:9 66:21</p> <p>abstract 72:28</p> <p>ABTL 74:25</p>	<p>accept 21:10 32:17, 20</p> <p>access 89:4</p> <p>accommodate 47:14</p> <p>accomplish 9:23</p> <p>account 14:3 15:24 96:17</p> <p>accrued 68:28</p> <p>accurate 25:24</p> <p>acknowledge 24:4 26:2,4</p> <p>acquired 46:25</p> <p>acreage 71:3</p> <p>acronyms 47:26</p> <p>act 43:20 44:19, 20,23 45:7,8, 24 50:13,23 61:16 98:8</p> <p>action 10:6 20:5 45:14 48:2 54:14,15 56:8 66:18 74:15</p> <p>activity 55:8</p>	<p>ad 67:19</p> <p>add 37:10 47:20 60:18 83:24 90:4</p> <p>added 64:12</p> <p>adding 61:10</p> <p>addition 90:1</p> <p>additional 13:8 37:10 45:5</p> <p>address 6:23 9:18 13:11,25 38:27,28 40:9 41:14 43:2 48:28 49:2 69:22 73:7, 12,17 91:6 97:6,7</p> <p>addressed 33:8 40:23 42:7</p> <p>addresses 73:18 74:15</p> <p>adjacent 37:12 38:3 69:7 95:7</p> <p>adjoining 26:5</p> <p>adjourned 98:24</p> <p>adjudicate 8:24 9:6 10:23 13:25</p>	<p>28:19 51:21 53:16 54:5,9 65:16 94:17</p> <p>adjudicated 13:1 14:17 47:7 49:25</p> <p>adjudicates 53:18</p> <p>adjudicating 14:21 62:2</p> <p>adjudication 8:9 13:6,12 16:24 24:13, 19 30:12,20 45:12,25 47:1,12 53:12,17 54:5,14 65:19,21,22, 25 67:21 70:25 71:8,28 77:22,23,26</p> <p>adjudications 50:3 67:12,13</p> <p>admissibility 80:23</p> <p>admit 20:3</p> <p>adopt 35:26 37:7,21 83:9 92:26</p> <p>adopted 38:24,26 49:27</p> <p>adoption 24:23 27:28</p> <p>advance 24:26</p>	<p>adverse 69:1</p> <p>advocate 21:7</p> <p>advocating 71:15</p> <p>Aera 38:15,27 39:1 40:19</p> <p>Aera's 39:13</p> <p>affect 22:21,23 55:8 78:21</p> <p>affects 57:28</p> <p>affirmative 63:6</p> <p>affirmed 81:4</p> <p>afternoon 33:16 63:22 88:2</p> <p>age 48:7</p> <p>agencies 42:22 44:20, 23 45:1 49:23 50:13,15,23</p> <p>agency 8:22,25,27,28 9:2,8 28:20 30:1 42:11, 22,23 44:19 45:6,7 47:23, 27 48:4 49:11 50:24 52:27 53:3,7 56:4 61:20 66:27</p>
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72:4	87:24	Andy 13:21	appears 36:5 41:10 95:2,6	35:6 44:16 46:6,22 47:13 49:6 55:10
agency's 45:10	Alhambra 67:23	Angeles 5:5 68:11 99:2,16,25	appendices 44:21	argue 10:9 28:14,16 66:22
agenda 12:6	allegation 55:10 61:24	anoints 12:12	applicable 49:28	argued 92:1
agree 42:5 52:23 58:6 78:9 85:14 90:3	allegations 62:28 63:3	answering 9:3	applied 68:12	arguing 37:11 92:4
agreeable 82:20	allegedly 68:26	Antelope 75:16	applies 30:7 66:17	argument 78:18
agreed 40:2 82:13	allowed 9:14 18:21 62:24 63:7 82:18	anticipated 11:28 92:15	apply 65:26 97:11	arguments 10:8 60:5
agreeing 45:20	allude 27:3	Antonio 24:1	applying 71:10	arise 68:10
agreement 11:8 33:21 85:26	alternative 6:12 18:21 51:21	anymore 72:10	appointed 74:26	Article 72:24
agreements 93:1	American 8:21	apologize 11:9	appropriately 88:18	articles 50:18
agrees 22:13	amount 61:5,7	apparently 9:13 14:1 17:22 48:14 75:2 83:16 96:18	appropriator 71:1	aspects 80:21
agricultural 50:27	analogy 80:21	Appeal 59:25 60:3,7 61:6 62:22, 27,28 63:1,4, 10 70:24	approve 20:15 23:11	asserting 20:14 22:22
ahead 12:25 30:14 35:1 38:22 59:15 63:3 82:9 91:8,10 94:9	analysis 8:21 83:17	Appeals 48:9 55:22,25	approved 51:15	assertion 17:8 36:18
ahold 89:10	analyze 90:20	APPEARANC ES 5:9	approximated 69:4	assigned 75:18
alarm 32:3	and/or 8:28 9:7 25:5 34:23 35:24 36:13 40:14 73:24	appeared 8:27 21:25	Archer 83:15,18 84:12,14 90:16	assume 15:8 19:7 74:21 86:11
albeit 79:14	Andrew 16:20 91:9	appearing 5:14 38:15	Archer's 63:20 84:28 85:4	assumes 74:4
Aldwin			area 8:24,25 13:22 30:19 34:9	assuming 65:15
				assumption 85:3

attach 18:22 67:4,15	7:4 8:17 12:6 42:9 45:27 54:22 57:10 59:24 60:3 85:18 88:19	4,9,11,13 17:2,7,13,18 18:16 19:5,6, 9,13,16 21:3, 9,12,15,19 22:5,7,19,24 23:2,20 24:13,14,18, 19 25:13,15, 21 26:5,8,15, 25 27:10 28:2,8 29:7,8 30:21 31:24 33:23,24,25, 26 34:5,10 35:27 36:20, 27 37:19 39:4,8,12 40:9,11 44:14 46:15 47:24 50:8 53:6,7,8, 10,11,17,18 54:5,7,9,15 55:5,13 61:28 62:3 65:15,16 69:19,26 77:14 78:3 90:25 95:3,6, 13,15,20,22 96:23,24 97:10	basis 50:22 53:1 60:17 Basye 44:2 bear 13:27 16:25 20:22 22:2 38:16 39:16 41:16 57:22 64:8 66:1 bearing 34:2 beginning 50:23 behalf 11:6 21:8 48:4 55:11 56:9 78:28 89:7 92:16 93:6,26 believed 6:10 bells 32:3 belong 9:9 beneath 26:5 benefit 5:18 7:27 69:11 87:5 Berkeley 50:19 biblical 79:15 Big 68:12	bigger 61:11 bill 79:9 bills 51:14 bit 49:5 78:22 79:27 92:3 bite 17:24 board 5:4 44:25 46:26 49:6,9, 10 51:1 70:26 89:2 99:9 Board's 96:19 body 68:16 70:4 book 51:27 67:28 borrow 44:27 borrowed 45:1 bothered 96:2 bottom 39:9,12 bound 45:10 60:6 boundaries 12:9,22,27 13:12 15:5 17:2 19:13 20:6 23:16 25:4,13,16,18
attached 65:9	background 52:6			
attack 73:20	bad 29:23 53:13			
attempt 40:24 64:23	Baggerly 34:28 35:1,2, 10,13,16,18, 20			
attempts 20:25	Baggerlys 13:21			
auspices 43:20	bar 50:18 79:6			
author 51:25,26 68:2	Barbara 5:2 24:21 99:6			
authorities 50:16 53:4	Barstow 72:4			
authority 47:24 50:21 51:2,19 52:12 53:7 54:12 73:1 81:11	base 89:17			
authorize 51:17	based 8:19 73:20 81:9			
authorizes 7:18	basic 52:11	basins 13:5,7,13 14:18 15:19 17:15 18:19 20:9 21:20 22:3,13 23:6, 7 25:4 31:4 34:24 35:24 47:7 49:25,26 60:10 62:5 73:24 77:28 80:16 95:1		
authors 43:25,27,28	basically 50:25 53:28 63:5 69:3 74:17			
avoid 67:10	basin 8:22 13:8,23 14:1,3,4 15:10,11,12, 14,15,20,21, 22,25 16:1,2,			
avoidance 45:13				
aware 42:13 43:11				
<hr/> B <hr/>				
back				

26:14,21 28:2,22,24,25 30:19,21 31:9,14 35:23 36:6 37:8 38:1 45:11 95:12,13	briefly 85:25 briefs 59:6 bring 10:13 49:27 56:13 60:4 74:26 75:22 91:22 bringing 87:8 broadened 60:24 broadly 55:26 brought 8:15 16:23 65:23,24 81:12 bucket 89:14 budget 44:27 45:3 52:27 56:11 Buenaventura 6:13 95:19 bulletin 15:16 22:13 28:26 29:5 33:25 34:14 39:10,11 89:2 bunch 32:2 79:6,13 burden 14:16 36:11 65:27 burdening 40:4	bureaucracy 36:12 51:7 bureaucratic 48:21 business 51:3 89:3 98:4 busy 94:4 busyng 75:2 <hr/> C <hr/> CA 5:5 Cadillac 51:23,26 79:20 calculates 58:13 calculation 57:14 58:6 calendar 80:6 87:10,19 90:23 calendared 58:11 calendaring 57:18 California 8:21 36:10 42:15 44:16, 20,23 45:16, 17,18,19 46:11,23 47:9 49:24,26 50:20 62:25 68:16 79:22	99:1,6,16 call 33:5 called 44:16 50:19 51:23 67:22 70:23 71:11 Camarillo 74:28 Canyon 24:1 50:24 51:8 52:12 capability 18:2 capacity 21:7 caption 70:3 capture 25:20 care 17:11,12 22:23 27:14, 16 38:11 career 79:14 careful 31:21 Carter 5:22,23 9:27 10:1,28 11:1, 5,6 77:13 90:2,3,10 93:26 case 5:1,2 9:8,15 15:24 19:26, 27 22:19	26:15 29:10 31:15,23,27 32:3 33:2 47:3 48:6,7 52:4,6,7 53:24 56:4 59:23,25,26 61:13,17 62:7,9,10,19 63:2 65:1 66:26 67:22 70:22,28 71:11 72:3,4, 5 74:7 75:3 76:17 77:22, 25 87:19 88:19 91:14, 19 97:19 99:8 cases 51:28 70:23 72:11 79:5 Casitas 45:4,15,16 46:1,25 47:17 49:9,10 51:5 52:13 60:21, 28 61:11 76:4 82:25 83:7 97:12 cast 53:26 casually 12:14 caught 17:21 central 44:12 CEQA 93:8 certified
---	---	---	---	--

16:15 certify 99:16 challenge 92:12 chance 13:14 26:13 change 22:15 23:3,9 28:22 30:25 31:2 69:22, 23,24,26 71:9 changed 6:20 changing 27:22 Channelkeeper 5:2 24:21 55:11 60:15, 16,21 99:6 Channelkeepers 54:24 60:19 character 42:17 69:26 characteristics 49:8 72:22 characterization 35:15 charge 8:25 charges 45:5 chase 39:27	checking 23:26 Chicago 7:27 Chino 50:8 chosen 22:4 Chris 13:18 Christianity 79:18 Christmas 57:25,27 church 95:18 circuit 95:11 circulated 27:26 circumscribed 45:8 circumstances 68:10 69:23 71:13 97:9 citations 34:17 city 6:11,12 7:22 8:21,28 9:4 10:12 11:9 12:16,20,28 15:17 16:7 19:8 21:23 24:20 39:18 40:14 43:14	44:28 51:5 53:19 59:26 60:25 65:5 72:3,24 75:27 76:4 77:26 83:10 89:1 90:1,26 91:15 92:3 93:1,9 94:15,19 95:5,8,18 96:2,7,18,27 97:12,24 98:5,15 City's 34:3 Civil 8:10 36:10 claim 22:7 35:9,14 65:24 68:24 70:10 73:21 claiming 53:9,27 Clara 13:3,9 14:6, 13,27 15:20 16:9,10,22 17:10,19 18:5 24:4 25:23 27:8,11 33:28 36:19 37:12 38:4 96:16 clarification 38:24 clarify 19:12 25:10 27:17 36:12 Claude 34:28 35:1	clean 69:18 clear 6:20 7:5 13:10 22:17 27:19 36:15 63:15 72:8,10 76:6,8 Clerk 57:8 87:25 client 11:16 16:21 31:11 47:6 48:4,14 50:9, 11 66:11 82:12 client's 48:15 49:9 clients 34:19,20 79:9 89:14 90:2 92:17 93:7 close 89:3 closed 57:27 co-counsel 90:2 coast 44:12 code 8:10 31:9 34:7,8 36:10 44:21 57:21 58:11,12 59:6 92:18,27 96:4,27 coexistent 11:28	collaborate 51:22 colleague 90:18 collective 78:7 collectively 15:8 colorable 70:9 column 72:27 commenced 5:13 commencement 83:1 comments 41:13 59:22, 23 78:28 Commission 45:16,19 46:12 common 8:11 69:2 71:6,28 communicate 13:14 communication 43:5 company 38:12 44:16, 17,25 45:17, 20,28 46:13, 23,24 47:6,9 52:14
---	--	---	---	---

compare 61:26 62:5	concede 26:3	conferences 19:23 78:12	97:14	80:25
competing 75:4	conceivable 66:10 98:7	conferred 12:27 85:9	considered 43:6 95:5	contrary 24:28 61:24
competition 51:17	conceptually 15:9	conferring 39:28	consistent 21:12 30:20 61:17 93:16	contribute 34:2
competitive 51:3,13	concern 17:15 47:21, 28 79:27 86:5,25,26,28 87:2	confirms 57:11	constitutional 72:23 73:1	control 5:4 12:6 46:14,18 49:15 51:2 88:23 99:9
complaint 9:5 60:15 70:4	concerned 45:4 48:2	conflict 45:14	constrained 56:11	conversation 18:11 81:27
complementa ry 52:18	concerns 33:18 87:8 88:19	confusing 54:21	consumptive 50:28	convinced 46:5
complete 45:2 50:4	conclusion 49:26 52:7 55:1 76:5 89:21	confusion 11:10 18:6 24:11,15 26:10,11	contact 20:18	convincing 72:8
completed 48:27	conclusions 8:5 83:17 84:28	Congratulatio ns 50:12	contemplate 11:18	coordinates 24:9 28:4,28 29:4,8
completely 32:1 53:23 79:23	concur 41:4,7,27 74:12	Congruence 49:28	contemplated 36:9	corner 5:24 6:5
completion 83:4	condition 96:13	congruent 46:7	contemplatin g 39:23	corporation 99:6
complicated 67:14 77:1 78:24	confer 13:19	connected 55:7	contends 39:1	corpus 68:15
comprehensi ve 8:9 30:9,12, 20 34:6 47:1 50:22	conference 6:10 7:15 10:15,23 13:19 33:8 42:3 63:19,22 81:15 82:3 85:23 87:13 91:5 93:12 98:5	connection 17:6 24:3 65:27	contested 12:13 50:3 92:2	correct 6:17,27 7:2,7, 8,10 8:20 15:16 16:27 17:9,23 20:11 21:4,5 24:20 25:1 26:9 27:12,13,28 35:12,13 40:12 41:1,2 42:21 43:18 64:26 66:28 74:11 82:22, 26 83:5,21,22
comprise 86:12 99:17		connectivity 78:4	contiguous 46:7 69:7	
compromise 75:7		consensual 51:16	continue 44:9 47:19 90:12	
computer 38:17 84:7,8 97:19		Conservation 44:3	continuing 27:27 50:5 69:17,21,24	
		conservative 53:20	contract 42:26 80:27	
		consideration	contracts	

TRANSCRIPT OF PROCEEDINGS

December 09, 2021

84:26 85:1,5 88:13 90:18 95:9,10,16 99:18 correctly 13:24 correctness 14:7 15:4,12 25:3 33:13 34:22 36:21 37:18,20 cost 70:16 coterminus 8:25 Council 65:5 counsel 12:28 13:15 42:26,27 43:5,12,14, 15,16 44:3,28 45:1 50:7 66:11 98:22 counting 69:13 country 7:26 County 42:16 44:28 75:1 99:2,16 couple 7:28 72:11 77:13 court 5:13,16,18, 21,24,26,28 6:2,4,8,25,28 7:6,9,14,17,	18,22,25 8:15,28 9:6,9, 20,24,26,28 10:2,21,28 11:3 12:6,19, 25 13:10,14, 27 14:16,19 15:2,23,28 16:14,25 17:11,20 18:8,13,20 19:17,28 20:9,22,24 21:6,10 22:2 23:4,8,10,17, 27 24:17,22 25:2,8,14,27 26:2,24 27:1, 7,14,17,24,27 28:5,16,24,28 29:15,26,28 30:4,5,8,11, 14,27 31:6, 13,20 32:4,7, 19,22 33:4, 11,18 34:4,18 35:1,9,14,17, 19,21,26 37:4,6,12,25, 27 38:8,10, 16,20 39:16 40:5,7,13,15, 27 41:3,6,8, 16,19,22,25 42:4,5,8,12, 14,25 43:12, 27 44:1,5,9 45:27 46:19 47:2,16,19, 22,25 48:2,3, 8 49:2,4,15, 18 50:9,12,17 51:9,24,27 52:7,17,19	53:13,19 54:22 55:17, 21,22,25 56:10,19,22, 24 57:3,6,8, 10,11,22,26 58:1,6,12,17, 19,22,25 59:4,8,11,15, 18,25,27 60:2,7,12,17, 18,24,28 61:6,7,9,12, 15,25 62:11, 16,20,22,24, 27,28 63:1,4, 5,10,13,28 64:8,17,22,27 65:4,16 66:1, 7,9,24 67:1, 15,18,22 68:2,4,6 69:8, 10,14,21,25 70:2,7,11,20, 24 71:4,9,11, 19,27,28 72:2,3,15,19 73:8,18,22 74:1,3,8,12, 17,21,23 75:11,15,21, 28 76:13,19, 21,26 77:5,8, 11,17 78:15 79:2 80:2,4, 15,18,20 81:13,15,19 82:1,6,9,15, 16,20,23,25, 27 83:1,4,6,9, 15,23,25,27 84:3,14,17, 23,27 85:2,6, 22 86:8,11,	20,23 87:3,9, 12,18,23,27 88:5,6,9,14, 25,28 89:16, 27 90:7,21 91:1,4,8,10, 18,21 92:7, 10,14,23 93:2,4,11,17, 21,27,28 94:7,9,22 95:15,17,24, 27 96:1,10,22 97:1,15,22 98:4,10,11,20 99:1,15,25 court's 8:23 9:15 12:12 19:11 47:21,27 69:17 78:11, 21,23 79:24 85:12 88:16 98:14 court- approved 18:28 19:1 91:16 courtroom 5:19 92:18 courts 8:11 67:24 97:8 coverage 79:6 covering 63:18 Covid 55:27 create	76:14 created 29:23 42:20 Creek 24:1,2,3 33:26 CROSS- ACTION 99:12 cross- complain 60:20 94:21 cross- complained 60:21 cross- complaint 9:1,3 18:23 19:3 48:11 55:18,25 60:16 97:16, 17 cross- defendant 89:1 cross- defendants 9:4 13:3 14:12 15:21, 24 16:6,10 18:7 21:24 24:16 29:21 61:8 cross- examine 84:12 CSR 5:8 99:14,24 curious
---	--	---	---	--

48:6,11	day	9:11 63:14	defines	denied
current	47:5 58:7	79:22 80:13	21:14 39:12	74:6
13:6 15:5	69:28 87:24	deciding	94:23	denuded
31:14 36:6	88:3 90:23	73:3	defining	65:1
87:10	99:21	decision	21:15 38:1	department
curtailment	days	59:25 62:22	definition	5:6 30:24
73:5	67:4 79:10	74:7 80:19	35:27	31:1,7,8,16
custodian	90:19 98:4	decisions	definitions	34:11 36:7
88:24	deadline	78:21	34:1	39:7 96:20,21
customers	83:10 86:27	deduce	degree	99:3
51:18	90:9	34:10	79:8	depends
cut	deadlines	deep	delay	55:4
39:27	86:28 87:10	40:19	55:23	depose
cutoff	deal	deeper	delayed	56:17 90:16
6:15,23	20:7,17 23:6	39:4	81:7	deposed
82:14,16,27	33:3,7 66:27	default	delete	90:17
83:6	76:27 88:20	97:28	7:7,10,19	deposition
cutoffs	dealing	defect	delivered	82:13 83:2,7
83:2	18:17	15:1	89:20	88:8 90:11
<hr/>	dealt	defective	deliverer	derives
D	78:16 90:22,	9:5	44:15	72:23
<hr/>	25	Defendants	delivery	descends
dam	debate	99:11	89:17	14:2
54:27	10:19 79:11	defense	demands	describe
damages	decade	63:6	73:5	20:25 49:5
44:13	50:4	defer	demarcation	description
Dame	December	12:4 39:9	21:22	16:15,27
79:18	5:5 6:16,28	40:2 63:25	demur	22:10 23:22
data	36:1 57:20	deferring	9:4	26:22 28:3
84:9,19,20,28	58:13 87:16	40:18 63:26	demurred	29:9
89:17	90:22 92:6,	definable	91:22	descriptions
date	20,28 99:19,	39:9	demurrer	28:2
7:4 56:26	21	define	18:1 48:13	Desert
57:1,4,17	decide	15:8 39:8	60:13,14	51:26 79:20
58:4 82:18,27	9:14,15 41:28	49:9	demurrers	designated
86:9 87:9,22	59:12 65:12	defined	48:12	82:12,25
DATED	73:10 80:16,	23:8 34:6,11	denied	designations
99:21	22		74:6	15:15
	decided			

designed 46:14 70:15	directed 13:17	8:20 10:19 25:14,15 26:6 39:6 57:8 59:20 75:21 77:19 95:11	25	dramatic 63:17
desire 73:23	direction 46:10	discussions 77:3 78:13 89:8	dividing 14:1	draw 20:18 36:14 69:4
detail 72:17	directly 64:15	disinterested 50:27	docket 46:20,21 55:28	drawing 36:13 37:15
detailed 20:27	directors 46:26 51:1	dismiss 18:17	document 8:6	drawn 19:19
determination 31:5 36:17 37:13	disagree 21:13 29:14 62:4	dismissed 32:27	dollars 44:12	dribbles 53:14
determination s 12:22 38:2	disagreed 46:12	dismissing 18:20	domain 93:7	drill 71:4,21
determine 21:2 28:17 31:22 65:10 73:2,11	disagreeing 29:18	dispute 14:7 15:4,12 35:28 37:18 74:27 75:1	domestic 44:15	drink 68:19
devastating 44:11	disclosure 89:12	disputing 37:20	don't-do-anything-to-get-anyone-mad 49:8	drive 84:22 85:6 86:3 89:20
develop 51:7	discord 29:24 75:23	distinction 54:17	dormant 70:27 71:2 72:6	drought 44:10,14
developed 30:2 49:23	discourse 39:25	District 44:4 45:15 51:10 52:4,11 70:24 97:13	double-check 57:23	droughts 44:11
devolves 68:26	discoverable 84:4,6	districts 51:16 94:12	doubt 32:13 45:13 62:14	Duchesneau 38:14,18,19, 23 39:26 40:12,17 41:2
Diego 68:11	discovered 69:21	dive 28:5	drafted 45:23	due 9:12 10:23 35:28 79:28
difference 71:17	discovery 6:15 63:18 83:18 90:21	diversion 53:21 55:2	drain 27:7	duly 89:28
differently 41:21	discuss 11:22 62:17 70:17 83:26	diversions 53:25 54:24	drainage 74:27	duplicative 45:4
digress 51:18 67:1	discussed 12:13 25:26 85:25	divide 17:14 23:20,	drained 23:28	duties 34:12
direct 31:6,10,11 46:17	discussing 13:22 61:19		drains 35:6	duty 72:23
	discussion			

DWR 22:15,27 23:8,9,22 28:12,22	edit 12:17,21	encouraged 62:17	52:21	78:8
DWR- DEFINED 22:12	effect 22:25 37:14 40:5	end 6:5,6 12:10 24:2 34:1 44:4,10 85:16,17 88:24 90:8 92:3 97:5	equities 71:13,18	evidence 72:8 80:23,24 81:6
E	effective 31:5 77:20	Energy 38:15	equity 71:23	exact 14:15
e-mail 13:17 14:26	efficiently 73:9	engage 76:11	erroneous 6:14	exceeds 25:22
e-served 58:7	effort 32:8 45:5 77:26 78:23	enhance 54:27	erroneously 16:3 36:14	exclusive 36:24
earlier 6:19 14:18 29:24 53:5 85:23 90:8	efforts 75:7 79:24	enjoin 94:19	error 20:13,14 22:7,9 32:10, 16 36:25	exclusively 14:13
earthquake 69:25	elaborate 33:19 40:14 42:1	enter 40:13	errors 32:25	excuse 6:16 14:3 23:19
east 9:27 11:7,13, 25 13:9 15:20 16:11,22 17:4,19 19:4 35:7 61:27 74:27 77:8, 11,12 79:1 89:7,28 93:14,26 94:1 95:18	element 50:6 70:16	enterprise 51:6	esoteric 68:6	executive 43:21
eastward 24:1 33:26	embedded 83:16	entertain 37:4	essential 45:21	exercise 19:12 32:10
economic 44:13	eminent 93:7	entertaining 91:18	essentially 8:3 10:22 31:26 39:1,12 65:8 68:19	exhibit 13:11,26 14:23 24:10 28:2,10
edge 21:15 26:7	eminently 48:13	enth 79:8	et al 5:4 99:10	exist 16:10 36:8 62:18
	employee 42:26	entire 53:26	Eve 57:27	existence 27:3 68:20
	empower 50:25 51:1,2	entities 43:19 51:4	event 47:27	exists 34:15
	empowered 71:17	entitled 59:27	eventually 8:15 55:24 81:3	expand 61:3
	enacting 54:12	entity 42:20 44:18, 26 51:11	everybody's 32:24	expects 86:15
	enactment 8:8	equal	everybody's- in-the-same- bucket	experience 50:13 79:4
	encourage 52:14 61:12			expert

75:4 82:12, 14,16,21 83:7,15 84:5, 13 85:14 86:18,20 89:26 90:14	eyes 70:7	fairness 19:17	fight 49:11 60:2,24 63:12 66:14	findings 71:13
expert's 84:3	<hr/> F <hr/>	fall 21:9 22:5	fighting 27:5 53:9	fine 7:16 9:28 10:2 80:3 93:21 94:4
experts 90:18	face 18:23 73:20	farmer 71:2	figure 15:18 20:19 29:2 32:8 61:3 78:24 80:6 88:23	fined 45:19 46:2,12
explain 56:11 67:2 79:18 95:27 96:10 97:1	fact 17:20 19:7,18 23:27 26:11 54:6 62:18 69:15 76:16 89:9 94:13 96:15	fashion 13:15 51:22 58:8 66:4	figured 19:18	finish 49:18,20 71:26
exposes 24:12	factors 72:16	fault 69:20	figuring 56:25	finished 49:21
expressly 45:12 59:26 60:26	facts 16:27 71:18 74:9,18,19 84:8	favor 76:13,23	file 12:1 17:28 18:3 57:15 58:28 59:2 89:3 91:16,24 92:6 97:17,28	fish 73:6
extend 14:1	factual 65:26 71:23 81:9	February 6:16 80:7,8, 12 82:28 83:8 86:8	filed 48:12 58:7 60:15,16 92:20	fishery 77:27 78:3,7
extension 34:3	factually 21:12	federal 86:1	filing 48:14 83:25 93:15	fix 20:5 28:24 48:20
extent 11:8 22:22	fail 60:14	Feds 86:2	filings 24:26	fixed 28:25
external 84:22 86:3	failed 60:12	fee 8:14 16:17 17:5 21:2,8 36:18 69:12 70:3 94:25, 27,28 96:12 97:26	final 9:10 37:13 41:11 85:26	fixing 32:26
extinguish 68:20	failure 73:21	fees 45:6 75:5	finally 15:11	flow 27:11 54:25
extra 58:17 59:3	fair 31:5 39:26 42:8 93:28 97:3	feel 10:21	find 28:6 32:24 57:11 78:26	flows 27:11 33:27 47:4
extracting 39:2	fairly 9:16 26:3 41:15 95:6 98:11	feet 39:12,14	finding 64:19,20	focus 26:6 30:6 76:23
extraction 46:15,18		felt 53:1		folks 18:18 94:4 95:22
extrinsic 80:23		fence 72:19		footnote 38:25 39:23 40:5,7

force 76:25	framed 55:20	furnish 85:7	45:2 54:26 74:28	52:14
foregoing 99:17	framework 85:13,19	future 40:23	generalist 79:3	Goleta 70:24,25
foreigner 54:8	framing 66:19	<hr/> G <hr/>	generally 8:11,18 9:26 11:23 79:3	golf 71:21
forensic 84:3 86:20	Francisco 46:20 48:8 60:17	gap 80:9	generating 16:28	good 11:3 18:13 32:17 50:9,11 53:13 57:2,5 59:20 80:4 81:21 87:6 88:2,10,17
foresee 88:27	frankly 32:11 78:22	Garrison 12:24,25,26 13:16,17,27 14:9,10,22,23 15:3,14,26,27 16:5,19,26 17:8,9,16,17, 25 18:8,12 20:8,13,16,24 21:5,16 22:9, 14,17 23:1 24:7 25:14, 17,28 26:2 27:2,28 28:1, 8,21 29:3,13, 15,17,27 31:6,13 33:3, 19,20 34:20 35:25 36:1,5 37:23 77:6 88:10 92:23, 26 93:6 97:21,22,23 98:3,8,9	geographic 14:8 49:6	
foreshadowin g 63:17	free 10:21		geographical y 55:26	govern 59:22
forever 50:6	Friday 82:12		geography 61:1 65:2,4 66:10,12 68:13 69:5	governed 45:6 53:3
forget 74:25	front 23:3 34:8,17 36:8 75:11 88:12		George 29:1 44:2	government 42:26 51:7
form 17:28 88:17 91:15	full 7:20 11:26 19:2 25:20 62:9,10 90:23 99:18		get along 46:28 53:13	governmental 42:22
formation 44:17	full-blown 11:17		give 7:23 33:6 43:4 56:16 58:24 63:16 73:14 83:11 85:18 87:25 89:2 90:26 93:9 98:15	grabbed 17:3
formations 39:3	fully 56:14 67:8 80:18	Garrison's 35:3,15	giving 59:8	grace 68:21,22
forward 18:13 29:19 62:19 76:18	fun 56:18	gas 39:1,13 40:19	goal 85:8	granted 60:17
fought 60:2	function 45:2	gave 75:21	God 77:10	granular 11:23
found 17:21 44:21 96:16	functionality 54:28	general 9:19 44:20	Golden 46:23 47:6,8	great 37:22 42:15 50:18 68:14 79:9
foundation 87:20	functionally 8:23			Greg 13:20 89:6 93:13
Fox 50:24 51:8 52:12				Gregg 12:24 24:7 29:17 35:3

97:21	grubbing	13,16,20	32:4,5 82:14	18 49:4 56:3
grind	74:9	60:14,20,26	happened	63:27 82:7
52:2	Guadalupe	61:2,8,10	45:27 67:21	87:17 90:5
ground	68:27	63:10,23,24	happening	92:12 93:8,
39:13	guess	66:16,28	67:11	11,27 94:2
grounds	8:10 14:6	67:3,6 68:3	happy	hearing
9:4 53:1	26:10 38:16	69:11,13	10:26 20:16	10:6 11:17,26
groundwater	59:19 87:19	74:12,13,20,	23:1 36:28	12:2 39:24
8:9,12,14,22,	94:13	22 75:9,12,	37:23 53:15	56:26 57:1,4
24 15:15,19,	gun	20,24 76:1,15	63:24 64:2	83:9 86:9
20 16:11,12,	18:3	80:13,17	65:5 66:13	90:17 91:28
16 19:5 20:9	<hr/>	81:7,16	67:17 82:4,6	92:17,27
21:3,12 22:3,	H	83:13,27	86:17 89:21	98:14
5,6,10,26	<hr/>	87:15,21,26,	98:2	heart
23:19 25:12,	habitat	27 88:1,13	hard	53:24
15,20 26:4,8,	77:27 78:6	89:5 90:27	25:11 84:22	heavily
15 27:9 30:11	Hagerty	93:10 95:9,	85:6 86:3	92:1
33:23,24,25	6:2,3,17,18,	10,16,22,26,	89:20	held
34:24 35:24,	27 7:1,3,6,8,	28 96:6,28	hard-nosed	50:17 57:8
27 36:19,27	21,24 9:18,	98:1,21	86:13	72:7 99:18
37:19 40:10	21,25 10:3,4,	Hagerty's	harm	helped
46:15,18	26 11:9 12:18	27:4 32:25	78:6	83:19
47:24 48:27	13:18 14:27	66:11 73:23	harms	helpful
49:25 50:1,2,	18:9,11	Haggerty	78:3	78:13
16,20,22,24	19:10,21	29:18 37:2	Hawaii	helps
53:7,12,17	20:2,11,23	66:15	74:24	86:23
54:5 55:6,7	22:12 23:17,	Haggerty's	headwaters	HERETOFOR
59:28 65:19,	21 24:5,27	32:12	14:4,5 66:24	E
20,21,25	25:1 26:27	haggle	hear	5:9
66:27 67:4,9,	27:6,12,13,	63:18,19	16:26 18:12	Herrema
10 70:19,25	15,23,25	hand	63:28 66:6	6:6,7
94:12 95:1	28:11,21,25	8:7	67:16 76:21	hesitant
97:10	29:5 31:21	handled	80:18,28	88:15
group	32:28 33:5	40:22	81:1,12,13	Hey
9:27 11:7,13,	34:5,13 36:4,	handy	92:5 93:24	48:22 52:7
25 29:27	5 37:3,22,26	30:14	heard	Hidalgo
43:18 77:12	38:4,5,9 40:1	Hansen	18:6 25:3,8,	68:27
79:1 89:7,28	41:4,5,12,13,	13:21	27,28 26:2	
93:14,26	28 42:9 43:2,	happen	34:19 37:16,	
Group's	16 57:1,4	23:12 30:14		
61:27	58:27,28			
	59:4,7,9,10,			

HIGHBERGE	17:17,25	hope	identifies	37:6
R	19:10,21	62:17 75:22	14:23	include
5:6 99:3	21:5,16 22:12	85:20 86:12	identify	14:27 15:17,
higher	23:24 24:6,7,	hot	21:28 29:21	18,19 21:26
29:6	12 25:1,7	44:13	70:3	38:6 39:8
highly	26:27 27:26	hour	ignoring	55:12 60:25
92:2	28:12 29:3,	64:4	27:16	included
historian	11,13 30:3,23	hours	illiterate	13:5 18:24
56:16 67:2	32:2 33:10,17	79:10	79:19,20	36:14,20 54:1
historic	34:13,28	house	impact	73:26
95:18	35:2,16 37:22	26:17	26:13	includes
history	38:14,23	HUC	impacted	12:23
16:5,27 24:24	39:26 40:12	25:19	87:1	including
44:24,28	41:5,7 43:1,2,	human	implementing	11:20 30:23
49:23 50:2	24 46:22,28	32:9	62:16	48:8 54:13
67:23 79:21	47:8,18,20,	humble	implying	59:28 86:1
hit	23,26 48:24	51:9	82:7	inclusive
77:3	49:12,21,22	hundred	important	37:28 99:17
hold	50:4,10 57:26	39:12	9:13 34:18	incorrect
39:16	58:15 59:2,7,	hypothetical	53:2,6 54:17	21:20,28
holidays	10 60:14	95:25	61:18,22	25:21
57:13 58:2	61:2,23	hypotheticall	62:16	indirectly
86:6,7,13,25	63:11,24	y	impossible	64:15
90:8	65:18 67:20	67:18	80:27	indisputable
Holly	68:3,5 69:27		imprecise	23:16
13:20	70:6,8,14	I	31:14	individualized
homeowners	71:16,24		impression	62:2
26:12	72:21 73:16	idea	70:21	inevitably
HON	74:4,13	11:3 52:11	improve	69:16
5:6 99:3	75:13,25	62:4 97:26	77:27	information
Honor	76:2,6,20	ideally	improving	42:19 46:14
5:20,23,25	77:9 79:24	98:20	69:28	80:18
6:1,7,18,27	81:7,17 82:5,	identified	in-house	initial
7:2,12,16,21,	19 83:13,14,	13:7,8,23	42:25 43:14	89:12
24 9:18,27	22 84:1 85:11	15:27 17:19	inadvertently	initially
10:4,26 11:2,	86:17 87:15,	20:10 21:18	19:15,18	46:4 60:22
5,6 12:18,24,	25 88:3,13,15	25:18	inclined	injecting
26 13:17	89:6 90:3,10,			39:2
16:5,19	27,28 91:7			
	92:5,26			
	93:10,13,26			
	94:6 96:28			
	97:5,8,21			
	98:9,21,22			

Inn 71:19	8:13 56:15	issue 6:23 9:11	10:5 11:12 64:2	74:25
input 84:19	interesting 14:19 47:16 49:24	10:22 11:20 12:8,9 13:22 19:11,24	<hr/> J <hr/>	January 10:13 57:5,12 74:10 76:14, 23 80:8
inputs 85:4	interfere 52:10	20:17 21:17 26:28 27:1	Jacobson 5:24,25 13:21 23:13 25:7,9, 10,17 26:1, 20,26,28	82:19,21 86:9 90:5,17 92:1, 12,17,25,27 93:8 94:3
inside 21:3 22:5 32:9	internet 20:27	28:14 30:7 32:2 33:12 40:2,18,22	27:17,19 41:17,18,21, 24 42:2,6,10, 13,18 49:17, 19 51:25	Jillian 97:25
insists 98:12	interpretation 80:24	41:14,15,17 43:9,11 47:28	52:20,22 53:16,23 55:4 56:8,18,20, 21,23 57:4,18	job 28:18 80:11
instance 44:24	intervene 43:6	53:24 56:24, 27 59:11,12, 14 61:6,18	58:5,9,10,15, 18,21,24 60:4 61:24 62:20, 21 63:9 64:9, 13,14,20,24	join 93:18
instances 65:21	intervened 43:7 52:6	64:3,23,25 78:10 81:18	65:3,7 66:7 67:3,7,17 73:10,14,19, 28 74:2,4,11	joinder 93:22
instincts 48:22	involve 18:22,24 39:2	82:2 83:26 85:11 93:19, 20 94:6,10,13 97:6	76:19,21,22, 28 82:6,8 83:21,22,24 84:2 85:7,10, 13,20,22,25	joinders 59:1 94:1
instituted 53:12	involved 17:22 43:23 48:10 55:15, 16 65:4 68:22	issues 6:22 9:11 10:8,11,19 11:12,18,20, 22,24 19:22	86:10,17,22, 24 87:8 88:4, 7,20 89:1,9, 16 90:3 92:8, 11,13 93:2,3	joined 18:15 19:14, 17
insurance 79:6	72:5 77:1,14, 16 86:1 89:8 94:14 96:8,26	22,24 19:22 23:13 38:27 40:19 41:18 42:6 49:1,2 58:16 63:25 64:5,11 65:10,12 66:4,20,23 76:6,11 77:1, 21 78:14,18, 20 79:26,28 84:6 85:25 91:5 92:2 94:5	Jacobson's 34:16 38:6 48:4,15 59:22	joining 93:15
integrates 34:14	involves 26:17	involving 65:1 68:11 74:27	JAMS	joins 59:5
intend 40:13 54:18 93:17	involving 65:1 68:11 74:27	irrelevance 38:3		joint 43:17 58:26
intended 25:15 36:26 54:27 88:18	irrelevant 55:20,21 64:25 66:8	irrelevant 55:20,21 64:25 66:8		joy 69:10
intends 10:13	irrigate 71:21	irrigated 71:2		joys 69:10
intention 40:24 46:9	irrigated 71:2	item 97:23		judge 5:6 10:23 48:23 52:8 58:13 75:14, 18 77:16 79:2 80:22 86:13
interest 89:25,26 94:27	irrigated 71:2	items		
interested				

<p>99:3</p> <p>judging 79:4</p> <p>judgment 12:1 32:10 42:7 48:16 54:19 56:14, 26 64:9,13, 14,22,24 66:3 73:19,26 74:5 91:22,25 92:15,24,28 93:5,15 97:28</p> <p>judicial 51:20</p> <p>jumbled 54:20</p> <p>Jungreis 5:26,27 42:18,21 43:1 47:17,18,20, 26 48:24 49:9,12,20,21 82:10,13,20</p> <p>jurisdiction 8:12,16,24 9:8,16 12:12, 15 18:22 21:25 41:23 50:5 56:6 61:15 62:15 63:1,6 64:27 65:12 66:8,9 67:3,15 69:17,21,24 72:26 73:11, 21 93:19</p> <p>jurisdictional 64:10 95:12 96:9</p>	<p>justice 69:22</p> <hr/> <p>K</p> <hr/> <p>key 50:17 51:1</p> <p>kind 18:20 43:17, 19 66:26 72:19 78:8,19 79:5 83:16 86:14 92:23</p> <p>King 57:24</p> <p>kitchen 56:28</p> <p>knew 61:3,10</p> <p>knowledge 42:19 46:14</p> <p>Komar 75:14,15,28</p> <p>Krieger 43:13</p> <p>Krieger's 32:12</p> <hr/> <p>L</p> <hr/> <p>L.A. 68:11</p> <p>lack 9:16 63:6 80:4</p> <p>land 14:2 15:25,28 16:4 17:4,14 27:9 36:14,15</p>	<p>68:23,24 69:6 72:20 94:25 96:22</p> <p>landed 46:20,21</p> <p>landowner 21:7 70:28 71:2,7</p> <p>landowners 26:12 36:24 53:8,11 54:15 72:6</p> <p>lands 21:13</p> <p>language 12:10 14:20 38:7</p> <p>largest 51:11</p> <p>Las 77:14,21</p> <p>late 82:17</p> <p>law 8:11 28:26 59:26 62:15 69:23 70:18 71:7,9,27,28 79:20,22 86:15 91:18</p> <p>lawsuit 16:16 17:21, 23 18:16,28 19:1,14 55:12 68:8 73:25 94:27 96:4,25</p> <p>lawsuit's 49:16</p>	<p>lawsuits 96:3</p> <p>lawyer 35:11 44:2 91:26</p> <p>lawyers 42:12,27 52:16 79:14</p> <p>lay 17:26</p> <p>layers 84:19,20</p> <p>laying 20:28</p> <p>layman 79:17</p> <p>lead 55:1</p> <p>leads 8:26 83:17</p> <p>learn 69:18</p> <p>leave 40:7 77:3 82:10 97:17</p> <p>leaving 56:5</p> <p>lectern 11:1</p> <p>led 24:11 45:14 84:28</p> <p>left 51:4 94:15</p> <p>legal 6:12 28:18 29:9,23</p>	<p>42:14,16 56:16 65:10 67:2 73:22 74:19 75:5</p> <p>legally 9:6 75:27</p> <p>legislation 43:26 46:13 47:28</p> <p>Legislature 44:1 45:8 51:15</p> <p>lengthy 25:19</p> <p>let all 27:7</p> <p>level 29:20 44:27</p> <p>liberal 62:26</p> <p>license 84:14</p> <p>licensed 35:11 91:26</p> <p>lieu 48:13 58:2</p> <p>life 40:27</p> <p>likewise 20:9</p> <p>limit 27:10</p> <p>limited 44:27 45:3,7 52:27</p> <p>limiting 27:15</p>
--	---	---	--	--

limits 95:8	living 75:16	M	making 34:1 36:17 38:2,10 71:9 75:16	11:19 13:1,25 24:21 28:15 37:14 67:4 74:8 76:23 78:4 99:19
line's 20:28	local 46:17 50:15 88:26	M.L. 57:24	manage 50:16	matters 11:11,19 79:9 82:17
lines 20:19 26:22 84:22 85:13 96:9	location 97:4	made 8:2 37:13 61:24 71:24 87:14 90:7	manageable 24:16	Mccord 82:24 83:7,10
lineup 5:19	long 17:13 27:19 39:19 51:28 58:10 71:12	magical 42:27	management 8:22 9:7 47:24 50:24 52:4 53:7 91:19	Mccoy 5:8 99:14,24
link 84:20	longer 21:26 46:25	mail 16:15 18:27 19:6,7 21:11	manager 45:2	meaning 40:27 79:7
Lion 24:1	looked 95:13	mailing 17:1,5 18:25 19:19	map 21:10,18,22, 27 22:3,6,8,9 23:2,18,21 31:16 32:7 33:6,13	means 10:14 50:6 57:15 80:28 81:3 92:19
list 9:11 10:5 17:1,5 18:25 19:19 31:28 71:14 91:12	lord 48:7	main 47:4 53:22 56:25	map-drawing 34:12	mediation 75:25 76:11, 14,25 81:18, 24
listening 79:12	Los 5:5 68:11 99:2,16,25	major 76:24 81:25, 26	maps 20:27 22:27 23:8 31:22 95:2	mediator 74:26 75:2,3, 9,14 77:15 81:21,28
listing 94:20	loss 24:20	make 6:20 7:10 13:10 15:26 23:20 27:21 31:16 32:8 36:28 41:11, 14 52:13 54:2,10 60:5 61:23 63:3,5, 8 64:18,20 65:28 77:24, 27 80:18 82:3 84:7 87:6 89:13 92:23	meet 13:19 73:6	meet all 73:4
lists 14:25	lot 10:11 24:6 43:22 47:20 49:14 54:20 59:22 61:1 70:14 77:20 80:14 96:1,6 97:19 98:6	march 10:7,18	meeting 39:28	Melnick 5:28 6:1,23 7:2,9,12,16 30:1,3,5,6,10, 12,16 31:3,18 32:1,5,16,21 40:1 41:6,7
literally 70:2	lots 23:12 32:28 63:17 68:11 98:2	massive 51:7	master 31:11	
litigants 97:19	low 45:6	material 78:20 91:14	matter	
litigate 45:11 79:8	Lower 15:6 39:3,11 61:26 95:3,19	makes 7:7 52:26 92:7		
litigation 42:24 45:25 77:15,21 85:15 86:1 89:22				
live 26:19 29:19				

TRANSCRIPT OF PROCEEDINGS

December 09, 2021

57:26 58:4 59:2 73:16 81:17,20 82:2,9,10,19, 22,24,26,28 83:3,5,14 96:21	minimum 14:11 57:14	modeling 84:23 86:2,27 87:5	33:4 87:14	21:24 23:5 44:2 53:2 60:23,26 69:5,9,12,16 97:18
members 49:10	minute 6:13 7:19	modified 6:16	motion 10:12,24 11:28 12:1 23:23 38:6 42:3,7 56:14, 26 60:5,16 63:12,27 64:9,13,14, 22,24 66:3, 17,19 73:10, 16,19,26 74:5,14,19 78:16 80:1 86:9 91:19, 22,24 92:15, 24 93:5,15,22	names 33:6
memory 57:19	minutes 12:14 33:9 52:20 79:13	modify 85:2	Mojave 72:4	naming 18:23
mentioned 53:4	miscounted 57:23	Mojave 72:4	moment 8:6 13:27 15:23 38:28 57:6 73:14	narrative 69:4
merit 62:28	misheard 26:1	momentous 9:17	moments 66:2	narrow 95:4
met 12:27 85:9	misinterpreted 22:18	Monday 87:12 90:12, 22 98:16	Monday's 98:17	natural 17:14
metes 14:8 15:5,13 26:7 28:3,9, 11,17 37:15, 16	missed 69:16	Monday's 98:17	money 51:5 86:21	nature 27:8 49:13 64:6
Metropolitan 51:9	misses 19:18	Monday's 98:17	monitor 52:12	necessarily 48:3 83:4 84:8 94:26 97:2
mid-january 12:2	mission 95:18	Monday's 98:17	money 51:5 86:21	necessity 93:7
mid-priority 29:7	misstating 83:23	Monday's 98:17	moving 72:24	negative 41:22
middle 5:26	misused 88:25	Monday's 98:17	multiple 19:23,25	negotiate 89:5
mile 95:17	misuses 88:27	Monday's 98:17	municipal 45:15 50:26 72:7 97:13	negotiation 52:5
million 44:12 51:12	mixing 54:19	Monday's 98:17	Musick 9:26	negotiator 80:28
mind 10:28 26:19 57:17 91:1	mode 18:22	Monday's 98:17	Musick 9:26	neighbor's 72:20
	model 83:16,19 84:7,10 85:12 87:2,3 88:18, 22,27 89:1, 10,15 90:13, 16,20	month 27:26	N	net 53:26
	modeling 84:23 86:2,27 87:5	months 75:5 79:10 89:10	named 8:14,28 9:2 16:6,18,23	neutral
	modified 6:16	mood 76:14		
	modify 85:2	morning 14:26 18:11		

26:10 75:7,17 94:22	noted 5:9 51:26 89:28	number 5:1 25:19 55:28 58:16 76:27,28	occurred 44:13	14,20 60:25 61:27,28 65:15,16 71:19 76:4 77:8,11,12 78:3 79:1 85:2 89:2,7, 24,28 90:1,25 93:1,14,26 94:2 96:4,23
news 14:6 18:10 80:4 85:24	notice 6:9 7:23 16:3 17:1,3,22 18:27 20:24 21:11 24:24	nunc 7:18	occurs 24:15	
Night 26:18			odd 48:18	
nobody's 32:23,25 53:9	26:12,16 32:13 36:25 43:4 57:14 59:8 83:11 89:2 90:26 93:9 95:11, 13,21 96:4,7, 16,17 98:15	<hr/> O <hr/>	offered 20:17 33:2 51:21 83:15	
non- governmental 47:2		OBGMA 47:21,22 48:1 52:25 53:11 54:11 55:15 61:19 62:15	officer 43:21	Ojai's 7:27 12:9,20 76:22
non-profit 99:6		object 12:20 24:22 25:3 34:21,27 35:22 83:6	Official 99:14,25	olive 85:22
non-riparian 94:25	noticeably 54:6	objected 33:14 45:18 46:9	offing 84:1	onerous 70:2
nonbeliever 79:17	noticed 10:24 34:24 36:3 42:3 63:27 80:1,10 95:22	objection 27:27 28:1 34:19 37:7 58:8 83:9 92:13 93:3	oil 38:12 39:1,13 40:19	open 5:13 32:26 72:16 76:3
nonissue 20:21		objectionable 12:11	Ojai 8:20,22 9:4, 27 10:13 11:7,13,25,28 13:23,28 15:11,15 16:1,4,12 17:2,6,13 18:16 19:4,9 21:9,15,19 22:10 23:19 24:8,10 25:20 26:4,8,14 27:9 29:7 33:24 35:27 36:19 37:19 40:9,10 44:3, 14 46:15 47:13,23 50:25 52:12 53:6,7,8,10, 11 55:5,13,	opening 92:19
nonprecise 32:7	noting 62:23	objections 10:6,7		openly 51:17
nonusing 70:27	notion 51:28	obligated 43:8		operations 39:2,14 40:9
normal 48:21	notorious 72:16	observation 8:19		opinion 67:22 88:25
north 17:5 95:7	Notre 79:18	obstacles 65:28		opinions 84:13
northeastern 31:24	notwithstandi ng 31:27 37:6	obtain 8:12,16		opportunity 36:11 87:5
Nos 38:11	November 6:13,25 7:11, 19			opposed 16:17
nose 74:17,19	nudge 36:12			opposition 58:26
note 87:15				oppress 68:18

optimist 80:15	90:24	owners 8:13 16:14,17 17:5 69:12	10:12 14:20 19:15,26 21:27 23:23 27:4,9 30:15 33:26 36:3 39:3 42:15,23 43:9 61:20 64:28 66:2, 10,26 71:24, 25 83:11	pass 33:13
option 91:15	other's 47:14			passing 48:5 90:7
options 17:27	outcome 83:20	P		past 65:28 76:8 98:10
order 6:13 7:19 12:10,17,21 13:12,26 14:8,16,20,24 15:4,13 18:14 20:15,24 21:14,28 24:23,25 25:4 26:9,20 27:28 28:21 29:19 34:24 37:4,7, 27 38:24,25, 26 40:6,7 45:1 62:16 74:18 82:4 85:12 88:17 90:9	outsider 54:8	p.m. 5:7 57:12 89:4 90:23 92:18 93:9 94:3 98:24	participants 13:11	path 61:14 78:11
ordered 45:17	overdue 75:6	package 17:27 18:26 46:13	participate 47:10 52:28	pathway 71:7 78:26
organization 43:4	overlap 92:3	pages 58:17 59:4 99:17	particularity 20:26	Patrick 77:15,16
origin 59:23 68:24	overlie 14:12 15:21 16:12 17:18 36:18	paid 42:25 43:12, 16 75:7,17	parties 5:14 8:10 14:16 18:15 19:25 32:23 45:10,24 49:14 61:19 63:2 64:5 69:6 72:24 76:10,18,24 78:17 81:22, 25 98:2	Patterson 13:20 76:20 77:7,8,9,12, 19 79:23 85:9,14,20 88:21 89:6, 18,19 90:4,18 93:13,19,24, 25
original 7:4 23:5 31:28 54:23 55:12,21 65:8 70:15	overlier 35:20	pain 53:28	parties' 64:7 78:2	Paula 24:2,3 35:6
originally 7:3 87:21	overliers 18:4	papers 23:23 92:19	partly 17:25	pay 77:27
OSC 23:15,23 42:2 87:16,22	overlies 16:21 19:9 94:12	paperwork 19:2	parts 66:12	payers 46:8
	overly 76:28	paragraph 12:11	party 31:10,15 37:11 53:2 56:8 60:6 84:14	peace 36:28 39:25 74:26 75:22 83:27 84:1 85:20 88:11, 16
	overlying 8:14 68:25 69:7 70:28 72:13	parcels 17:3 20:3	Pasadena 67:23	Peeler 9:26
	overnote 32:11	pardon 96:19		pendency 18:28
	overnoticed 31:23	parentheticall y 70:13		
	owned 68:16	parol 80:24		
	owner 31:25 70:3 94:11,25,28	part		

<p>pending 10:6 48:6</p> <p>Peninsula 52:4,11</p> <p>people 5:19 17:26 18:25 19:14 20:19 21:8 22:19,21 23:5 24:14 31:10 32:6,26,28 45:6 46:16 47:13 51:12 54:13 59:5 61:10 68:17 72:27 96:6, 15,27</p> <p>perceive 11:16</p> <p>perceived 11:21</p> <p>perception 56:7</p> <p>perfect 32:23,25</p> <p>period 24:2 30:21</p> <p>permissible 73:25</p> <p>permit 75:17</p> <p>person 82:23 95:24 98:18,19,20</p> <p>personal 86:16</p> <p>personally 77:14</p>	<p>perspective 20:21 61:14 75:26 78:1,14</p> <p>persuade 36:23,25</p> <p>pertain 72:28</p> <p>Peter 38:14,18</p> <p>petition 22:15 28:22</p> <p>phase 40:3,20,23 65:9 66:21 76:7 81:14,20</p> <p>philosophical 79:10</p> <p>phone 12:23 38:13 77:6</p> <p>phonetics 97:26</p> <p>Phrased 41:21</p> <p>physical 17:2 52:8 71:25 72:25 73:3 76:17</p> <p>physically 51:5</p> <p>pick 31:2 87:24,27</p> <p>picks 55:24</p> <p>piece 18:27 19:6</p> <p>pieces</p>	<p>62:8</p> <p>Pisano 6:4 13:18 14:26 83:27 84:1,5,16,18, 26 85:1,5,8 87:28 88:2,5, 15 89:4,9,21 90:5,15,28 91:1,3</p> <p>place 19:20 61:16</p> <p>places 68:12</p> <p>plaintiff 47:2 55:20 99:7</p> <p>plan 48:28</p> <p>plane 77:17</p> <p>play 48:22 62:15</p> <p>players 76:27</p> <p>plead 62:25</p> <p>pleading 18:3 62:26 63:8 73:20</p> <p>pleadings 12:2 42:7 48:17 54:19 56:14,26 64:10,13,15, 23,25 66:4 73:20,27 74:5 91:23,25 92:16,24,28</p>	<p>93:5,16</p> <p>pleasure 86:16</p> <p>pled 54:4 69:5 72:25</p> <p>plenary 83:11</p> <p>point 9:19 14:19 18:2 19:12 23:5 27:18 38:23 40:3 41:12 51:1 55:13 56:21, 25 59:17,21 60:22,27 61:22 62:1 64:28 66:25 68:15 70:18 71:26 72:23 84:24 85:28 87:11 90:4 91:17</p> <p>pointed 6:9</p> <p>points 8:2 37:21,28 77:13,24</p> <p>political 42:14 46:5</p> <p>politics 46:6</p> <p>populate 50:28 84:27</p> <p>population 34:3 50:26</p> <p>portion 36:19 87:16</p>	<p>Posas 77:14,21</p> <p>posed 62:9</p> <p>poses 62:10</p> <p>position 12:4,9 19:8 22:20 41:25 44:25 60:11 63:10,28 76:7 80:19 81:13 89:11</p> <p>positions 47:14</p> <p>positives 75:24</p> <p>possibly 19:2</p> <p>post 55:25</p> <p>potential 46:18</p> <p>potentially 34:2 87:1</p> <p>powerless 72:1</p> <p>powers 8:23 43:17 45:7 52:8,9</p> <p>practice 79:4 86:15 93:23</p> <p>pragmatic 68:7</p> <p>precedent 96:13</p>
---	---	---	--	---

precious 80:8	presenting 64:18	priorities 72:28	process 8:13 9:12 10:23 18:6 24:14,16 29:11,12 31:18 50:3 52:2 55:3 70:5 79:28 85:17,18	proof 65:27 72:17
preclude 54:14	preserved 45:9	priority 29:6 68:19		proper 10:13 78:18
precluded 44:26	preserves 45:24	private 44:24 45:28 86:12		properly 8:15 22:19 36:3 66:26
preclusive 51:19	press 85:16 88:26	Pro 99:15,25		properly- noticed 78:16
predetermine s 14:21	pressure 46:6	problem 26:23 33:7 46:20 53:8,22 62:6,7 73:4 83:23 89:23 91:21	processes 16:16	properties 13:2 21:23 91:14 97:11
predicates 71:23	presumes 12:11 19:21		produce 83:19,20 84:20	property 16:14 26:13 29:10 31:25 33:22 35:4,9, 14 36:24 51:20 94:11 97:4
preemptive 8:23 52:18	pretend 48:25	problems 88:27	produced 84:21	
prefer 98:17	pretty 28:18 32:17 49:24 67:7 76:8 92:1 96:3	procedural 16:5 24:24 64:6 82:2	product 84:4,5	
prejudice 37:11 71:6	previously 13:28 18:10 20:18 43:23 65:14,23 70:1	Procedure 8:11 36:10	Professor 50:19	
premature 41:11	primary 9:8	Procedures 43:10	proffered 35:4	proponent 41:20
prepare 37:27 86:27	principal 43:25,27 44:15	proceed 10:3 11:24 42:27 51:22 66:11 93:8	program 57:18 84:8,9, 10	proposal 65:8
prepared 9:25 10:7,9 11:22,25	principles 68:12 71:10	proceeded 47:8 49:26	progress 38:10 87:14	proposed 12:10,17,20, 21 13:12,25 14:7,20,24 15:4,13 21:14,27 24:23 25:3 26:7,8 34:22 35:23 38:7
prerogatives 75:19	printed 28:9	proceeding 8:10 34:18 36:3 58:8 65:17 67:24	projects 51:4	
prescription 72:5,12,15	printing 8:6	proceedings 5:13 7:11 98:17,24 99:18	promise 39:22	
prescriptive 69:1 72:9,10	prior 8:8 42:10 71:27 92:28		prompt 80:2	
presented 10:12 18:9 21:10,22 28:6 76:7 80:26 85:23			prompted 10:17	proposition 35:3
			prompts 7:28	protect 45:11,25 47:10 51:20 71:7

protected 45:9	22:24 54:13, 26,28 55:7,8	Q	R	8:1 24:24 39:23 51:27 59:24
protective 85:12 88:17	pun 88:18	quasi-in 67:24	races 97:18	reading 62:23 79:20
prove 72:8,12	purported 8:23	quasi-metes 30:2	ragged 98:11	real 56:11 93:14
provide 50:14,15 73:6	purpose 97:10	question 6:25 8:8 9:10, 13 10:17 15:3 17:18 23:17, 28 31:20 32:15 33:12 36:2,21 42:10 62:9,10,24 63:7,11,14,15 64:10,18,19 65:17 68:21 73:22,23 74:18 80:16 89:19 90:21	raise 7:28 51:5	realistically 63:26 86:22, 24
provided 15:18 30:18 38:25	purposes 6:24 23:14 34:5 67:9 79:19	questionable 87:10	raised 10:8,14 11:20 35:28 38:27 78:15	reality 76:16
provider 84:15	pursuant 15:16 31:8 70:26	questions 8:1,4,26 9:22 11:15 43:3 62:13 64:16 65:11 73:12 90:24	raises 32:2	reason 7:9 9:12 55:4 90:10 92:11 94:14
provision 37:28 45:23	pursue 45:12,25 46:28	queue 98:6	Ranch 44:7 60:22	reasonable 66:22
public 45:1,16,18 46:11 57:13 58:2 66:22 88:25	pursued 76:9	quickly 77:25 89:7 93:14	Ranch's 61:26	reasons 9:12 12:13 54:2 79:28
publication 67:26	pursuing 75:27	quote 7:15 23:28 24:2 86:23	rapport 50:10	rebuttal 86:27
publicly 83:17 84:18, 24	push 76:17		rate 32:17 46:7	receipt 19:7
Pueblo 68:26	pushed 90:11		ration 45:17 46:1,11	receive 90:6
pull 23:21 65:22 73:15	put 8:3 17:5 39:16 52:5 67:18 70:3,4 73:23 81:2 86:16 97:28		rationed 46:2	received 20:25 91:15 96:7
pulled 44:23	puts 97:5		rationing 45:20,28	recently 48:27
pump 55:2	putting 18:25		reach 39:18,20 55:26	recently-adopted 40:6
pumpers 60:1			reached 40:3 83:25	recess 98:14
pumping			reaches 14:2	
			read	

recipients 18:26	46:2,4	rely 57:18	reporting 46:17	resolution 40:26 78:27
recognize 6:2,4 23:24	regard 12:21 25:4 37:8 40:18,19	rem 8:12 67:24,25	reports 23:22 75:4	resolve 26:28 40:4,21 66:4,20
recognizing 40:8	region 15:19	remain 5:16 76:24	represent 30:1 33:22 35:10 42:11 43:13 44:5 48:24 77:11, 12 91:13	resolved 11:14
recollect 91:26	registered 38:17	remaining 73:9	representation 42:22	resolving 77:20
recommendations 52:13	regulate 50:22 51:2 52:13 54:12	remedy 14:28 24:20 36:8	represented 44:17 48:1 72:3	Resources 5:3 30:24 31:8,16 34:12 36:7 96:19,21 99:9
record 5:17 6:20 40:15 57:6,10 81:9	regulations 31:19 39:7,8	remembering 46:6	representing 21:8 50:26	Resources' 39:7 96:22
reduce 76:26	regulatory 49:13,15	Remind 44:5 82:16	represents 8:27 9:26 92:17	respect 47:14
reenergize 75:28	Reisnewr 51:23	remotely 5:14	request 7:13 31:7	respectfully 29:13,17
refer 23:9,27 67:24	related 9:10 54:24,26 78:20 99:12	removed 40:10	requested 15:17	respond 62:21
reference 6:15 15:26 20:26 21:19 23:20 34:7,10 39:9	relates 7:13	render 64:25	require 24:26 80:1	RESPONSE 98:22
referenced 24:9 64:19	relating 77:21	renew 28:1	required 43:3 46:16	responsive 18:3
referred 65:14	relationship 46:17	rent-a-judge 75:18	requiring 73:5	rest 32:22 37:4 93:6
refers 34:14	relative 94:23	repeatedly 61:23,25 67:11	res 67:27 69:2 73:1	result 52:1
reflected 59:23	relevance 38:3	report 6:10 24:5 46:17 56:3 63:19,20 82:17 87:4,7	resident 97:11	return 89:21
reflection 7:10	relevant 23:14 80:17 90:13	reporter 5:8,18,20 98:11,20 99:15,25	residents 94:14	reversal 55:22
refused	reliable 58:14			reverse 65:18,22 81:1
	relief 51:20			

<p>reversed 55:23</p> <p>review 31:21,22 50:18 86:26</p> <p>revise 31:9</p> <p>revised 37:27</p> <p>revision 31:4</p> <p>rewarding 50:11</p> <p>ridge 14:2</p> <p>rights 9:7 16:4 28:17,19 31:5 45:10,11,22, 26 47:11 51:20,21 53:10 54:9 60:9 61:26,27 62:2,5 68:17, 27,28 70:27 71:7 72:6,7,9, 14,27 73:2 77:26 94:18</p> <p>riparian 16:17 66:24 68:25 95:24 96:25</p> <p>riparians 95:23</p> <p>ripe 81:13</p> <p>rise 29:20</p>	<p>river 13:2,3,23 14:5,6,10,12, 13,25,28 15:7,9 16:9 18:5 20:6 25:6,22 27:8, 11 29:8 33:28 34:23 35:5,23 37:8,12,17,20 38:1,4 39:4, 11 47:4 53:14,22 61:26 66:25 68:11 95:3,6, 20,21</p> <p>road 69:22</p> <p>Robles 53:21</p> <p>Rockhold 97:25</p> <p>Roes 61:5,8</p> <p>role 62:16</p> <p>rookie 94:23</p> <p>routinely 6:11</p> <p>royalties 68:4</p> <p>rub 74:17,19</p> <p>rule 62:26,28 63:1</p> <p>rules 49:28 52:7 65:25</p>	<p>ruling 6:9 55:21 76:13,22 81:8 83:12</p> <p>rulings 41:11</p> <p>run 36:22 57:13 64:3 69:27 84:10 97:20 98:10</p> <p>runs 88:22 97:20</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S-I-S-A-R 24:2</p> <p>saline 39:2</p> <p>San 24:1 46:20 48:8 60:17 68:11 95:18</p> <p>Santa 5:2 6:13 13:3, 8 14:6,13,27 15:20 16:8, 10,21 17:10, 19 18:5 24:2, 3,4,21 25:23 27:8,11 33:28 35:6 36:18 37:12 38:3 96:15 99:6</p> <p>satisfaction 97:2</p> <p>Saturday 26:18 58:2</p>	<p>Sax 50:19</p> <p>scared 26:16</p> <p>scenarios 84:11</p> <p>schedule 11:27 56:25 93:16,23 94:2</p> <p>scheduled 90:12</p> <p>scholar 34:9</p> <p>school 11:4</p> <p>science 69:24,28</p> <p>scope 31:27 65:9,13</p> <p>Seaside 8:21 52:4 61:17</p> <p>seated 5:16</p> <p>section 30:16,19 33:24 36:10 72:24</p> <p>sector 44:24</p> <p>seek 51:20 97:17</p> <p>segregate 96:8</p> <p>send 29:1 30:23 70:5</p>	<p>sending 21:11</p> <p>senior 53:10 71:1</p> <p>sense 41:25 52:26 54:2,10 79:12 92:7</p> <p>sensitive 81:9</p> <p>sentence 7:7,10,18,20</p> <p>sentiments 24:27</p> <p>separate 32:1 42:20 47:28 53:23 58:27 74:8 89:20</p> <p>separately 15:10 33:5 59:3 98:3</p> <p>separation 22:4 52:8</p> <p>served 8:15 16:18,23 17:27 92:20 94:2 95:23 96:7</p> <p>server 70:5</p> <p>Servexpress 89:3</p> <p>service 31:28 51:12 67:26</p> <p>serving 18:24</p>
--	--	--	--	--

sessions 75:14	81:5	sir 38:19,22 47:19 61:7 82:18	31:19	speak 11:1,13,24 16:21 48:25 49:3 55:11 56:9 59:14 83:8
set 11:27 24:25 75:25 87:1 92:17 93:16 97:27	showing 31:4 65:26	Sisar 24:1 33:26	slightly 41:21 67:1	speaking 91:8
sets 61:14 91:14	shown 15:6	sit 67:17	sloppy 28:18	special 31:11 44:19, 20,22 45:7 50:13,23 54:11 75:17 79:3 83:6
setting 83:6	shows 21:20	sits 26:5 94:28 96:23	slowly 97:20	specialized 66:27
settled 62:14 81:22	side 21:1	sitting 19:4,5 95:19	small 52:27 56:10 68:13 80:8	specific 6:24 9:21 19:22 24:6 29:10
SGMA 50:14,21	sideways 95:4	situation 43:17 62:6	software 58:14 84:17, 18,23	specifically 16:22 17:10 23:26 34:13 41:19 62:3 83:10
shame 26:15	signed 40:8	situations 55:6 67:10	solution 52:9 53:5 61:21 71:25 72:25 73:3 76:8,17	specificity 29:20
share 30:5 68:21,22 89:16	significance 56:4	size 59:6	solve 46:19 55:15 73:4	specifics 98:1
Shawn 13:18	significant 24:9 43:20 61:5,7	skills 79:4	somebody's 28:19 63:7	speculate 52:25
shifted 70:18	similar 33:18 35:15 43:13 50:16	skinny 95:3,7	sooner 48:18 49:1 80:7 86:8	spend 70:14
shoes 32:12,13	simple 16:17 17:5 21:2 41:15 69:12 70:3 94:25,27,28 96:12	Slater 6:5 43:22,24, 28 44:2,6,7, 10 46:4,22 47:5,23 49:5, 22 50:10,13 51:11,26,28 52:18,21 56:15 59:18 67:2,6,16,20 68:5,7 69:9, 15,27 70:6,8, 12,22 71:6,23 72:2,16,21 79:13	sort 26:18 31:2 49:11 50:21 59:18 65:26 75:1 78:7,26 80:25 81:5 88:10	spent 81:5
short 36:21 40:27 95:11	simples 8:14 21:8 36:18	slew	sounds 49:4 91:28	spinning 51:17
shortcut 52:3	simply 7:6 18:27 26:20		Southern 44:16 45:17, 19 46:23 47:9	split 22:25
show 18:14 20:15, 25 21:23 22:4 23:2 24:25 34:24 36:15 37:5,7 55:17 65:27 78:2	simultaneous ly 14:18			
	sink 56:28			

spoke 13:20 75:13	99:1,9,15	stip 85:12 88:17	struggle 78:26 85:3	31:3 36:10
spots 44:13	stated 83:18	stipulate 17:28 28:15 91:16	stuck 28:13 29:12	subsequently 69:20
spread 53:28 95:4	statements 8:18 40:15	stipulation 39:19,20,21, 24 40:4,14	study 52:13	subsidiaries 47:10
spreading 89:24	States 51:12	stipulations 97:25,27	stuff 63:17 98:6	substantially 39:4
staff 43:21 44:26	Station 7:26	stole 59:18	style 50:21	substantive 70:16,18,21 71:9,16 81:27
stakeholders 50:27	status 6:10 7:15 10:14,22 19:23 33:8 42:3 56:3 63:19,22 78:12 81:15 82:3 85:23 87:13 91:5 93:12	stone's 50:25	subbasin 13:9 15:7 16:11,22 17:19 18:4	substitute 79:21
stand 81:2	statute 8:9 30:6,9,11, 13 34:6 42:20 43:3 47:8 49:27 53:3,18 54:5,11,12 65:25 67:9,10 69:11 70:15, 26 71:8	stop 54:13	subbasins 15:8 25:5 37:21 73:24	subsurface 54:27
standard 88:16	statute's 65:20	stops 74:3	subdivision 42:14	successful 76:7
standing 5:22 62:20 82:7 91:2 92:12 93:20	statutory 43:10	straddles 13:24	subject 9:7 13:5 30:19 74:24 94:26	successfully 76:16
standpoint 40:17 50:28	stay 49:11 56:24	stream 69:7	submit 31:7	sue 24:14 96:11
Star 67:19	step 76:15	Streamlined 30:8,12	submittal 92:27	sued 29:25 53:25 60:12 65:24
start 74:9	steps 36:9	street 21:1 26:17 32:14 69:19	submitted 56:2	suffice 40:16,17
started 61:11		stretch 73:4	subordinate 70:27 71:1 72:13	sufficiency 47:3
state 5:3 28:20 34:26 36:12 40:15 42:15 46:24 47:6,8 52:14 62:25 67:11 68:14, 16 70:26 71:27 73:21 96:19,20		strides 21:21	subordinated 72:6	sufficient 20:26
		strike 38:7 60:16	subordination 71:11	suggest 37:16
		strong 78:12	subsection	suggested 19:1 72:25 86:3 90:15
		structured 75:7		suggesting 12:15 31:6

suggestion 41:27 90:7	48:19 73:17 90:11	7:14 29:15 37:24 52:13, 14 63:24 76:3,27 77:6 81:21,23 97:9 98:2,16	tentative 7:25 8:4 64:11,12	thing 22:28 27:14 41:10 52:15 54:22 59:17, 21 62:25 65:24 76:2 81:17 86:21 88:24 91:13
suing 9:6 96:13	Supreme 67:22 71:11 72:3		term 34:11	
suit 16:3 21:12 26:13,16,17 54:23 96:17	surface 22:25 27:7,11 39:13 49:28 53:25 54:24 55:2,8,9 60:10 64:3 65:22	talked 33:20 75:15	terms 12:27 17:2 23:16 29:12 37:15 67:25	
suitable 48:13		talking 25:12 30:8 82:11	territory 51:13	things 20:12 22:16 23:12 25:11 31:1 45:14 52:26 54:4,20 56:12 70:1 81:22 88:10
summarily 80:26	surveyor 29:1	Taylor 44:7 60:21 61:25	tested 47:3	
summary 16:15 18:28 22:10 23:27	sustainability 48:28	technical 6:12	testimony 83:16 86:27 90:13	thinking 67:25 87:18
summer 47:3	Sustainable 30:11	technically 43:18	tethered 69:2	thought 10:28 19:15 25:27,28 26:2 31:25 48:20 54:26 63:14 66:3
summons 18:24 70:5	sweep 69:18	technology 69:23	text 19:3 79:15	
Superior 9:6 85:12 99:1,15,25	system 68:19	tee 64:23	textual 49:23	thousands 39:14
supplement 87:4	<hr/> T <hr/>	teed 10:5	thankfully 57:19	throw 32:13 50:25
supplemental 7:28 8:3,19 87:4,7	table 10:17	telephone 13:19	theologians 79:7,13	throwing 9:15
supplementat ion 87:7	tableaus 79:18	telling 54:13 58:12 90:19	theoretically 17:20	thrown 56:27
support 35:3 84:12	tackle 67:6	tells 38:17	theories 92:25 93:7,17	thunder 59:18
supported 54:11	takes 34:11 72:19 97:12	Tempore 99:15,25	theory 9:5 17:23 31:15 48:12 55:19 69:7,11 71:28 78:8 88:9	Thursday 5:5 99:19
suppose 74:4	taking 33:8 48:2 82:21	ten 19:4 48:7 90:19	there'd 39:24	tie 8:2
supposed	talk	tend 32:11		time 5:7 17:13

18:2 19:11 24:23 25:11 33:14 34:27 35:28 42:24 44:1 45:3 46:16 47:5 48:8 49:19 51:14 52:21 56:2 57:11 60:7,13,22,27 61:23 64:7 69:19 70:14, 17 71:5 73:9 75:6 80:4,9 81:5,21 85:6 86:12,19,26 87:24,25,26, 27 88:10 90:24 91:6 94:5 97:6 98:10	13:28 80:22 96:2 tolerate 12:16,18 tomorrow 89:3 top 16:1 19:5 94:28 95:19 96:23,24 topics 91:12 totality 15:10 21:20 85:4 touch 63:16 touched 59:11 61:1 touching 64:3 toy 48:22 trail 36:1 trailed 87:16 trained 11:4 transcript 99:18 transferred 75:13 travel 98:5 treatise 68:1	treaty 68:26,27 trial 40:3,20,26 55:21 71:9 76:16 86:9 87:9 tromping 56:6 trout 34:3 true 17:24,25 18:15 23:6 29:9 41:17 50:2 73:13 74:3,10 77:22 95:21 99:18 trust 44:8 66:22 Tuesday 87:12,14 turf 48:22 64:28 turn 12:8 63:22 81:15 82:6 turned 63:15 89:12 turning 55:24 64:5 turns 26:16 65:17 tweak 87:6	two- thousand- plus-hour-a- year 86:14 two-volume 68:1 type 24:15 44:22 91:18,19 types 50:26 Typically 72:5 typo 32:24 <hr/> U <hr/> ultimate 41:27 ultimately 45:19 46:23 underlay 14:4,5 underlying 24:5,21 understand 17:16 18:1 21:16 22:3 28:7 48:17 53:6 55:19 66:17,19 67:13 74:15, 21,28 79:16, 19,23,25 85:28 94:11, 16 97:4 98:18	understandin g 23:18 42:23 48:27 57:16 77:2 79:21 91:17 92:19 94:22 understood 25:17 37:2 undisputable 23:15 unequivocally 62:14 Union 7:26 unique 68:9 72:21 75:18 United 51:12 unknown 18:26 unlike 49:14 upcoming 87:9 Upper 13:23,28 15:7,11,15 16:1,4,12 17:2,6,13 18:16 19:4,9 21:9,15,19 22:10 23:19 24:8 25:20 26:4,8,14 27:9 29:8 33:23 35:27 36:19 40:9,10
--	--	---	--	--

90:25 95:6 96:23 urge 20:15 usefully 63:21 users 49:10 50:28 59:28 60:10 61:11 72:7 81:26 Utilities 45:16,18 46:12	Ventura 6:11 7:22 12:16,28 13:2,7,23 14:5,8,10,12, 25 15:7,9,18 16:7 20:6 21:23 25:5, 18,22 26:21 29:8 34:22 35:5,23 37:8, 17,20 38:1 39:4,11,18 40:14 42:16 43:14 53:14, 19,24,28 61:26 62:24 66:25 67:19 74:27 75:1 83:11,25 88:26 90:26 93:9 94:15 95:3,5,6,8,20, 21 96:2,7,27 97:12,24 98:15 Ventura's 9:1 19:8 24:20 96:18 versus 25:12 vertical 77:9 vicinity 54:27 74:28 view 7:6 27:4,18 41:12 43:9 48:4 56:13 64:28 66:25 80:14 96:18,	19,22 vigorous 78:12 volunteered 83:19 voters 96:1 <hr/> W <hr/> wait 82:8 waiting 98:8 waived 33:15 Walk 45:27 wall 77:3 Walsh 77:15,16 wandering 7:26 want-to-be-loved-by-everybody 49:7 wanted 10:16 26:23 27:21 30:4 62:21 97:26 war 39:25 51:23 warrant 71:18 Washington	29:1 Watch 47:26 water 5:3 8:21 9:7 13:6 14:1,3,4 15:10,11,14, 25 16:1,2,24 17:15,18 22:25 24:13, 19 26:24 27:7 30:24 31:5,8, 9,16 34:7,8, 11 36:7 39:3, 7 44:3,15,16, 21 45:15,17, 19,28 46:23, 24 47:6,8,9 49:16 50:1 51:9,11,16 52:4,14 53:21,25,26 55:8,9 59:28 60:10 65:22 67:27 68:15, 16,17,22 69:6 70:10,24 72:4,22,26 73:1,4,6 74:27 75:1 77:22,26 78:2 79:14,20,22 81:26 95:3,6, 20 96:19,21, 22 97:9,12,13 99:9 watermaster 50:7 Waters 71:12 watershed	13:2,3,7,24 14:3,9,11,13, 14,21,24,25, 28 16:9 17:10,11,12 18:5,18 19:13 20:6,7 22:20, 21,23 23:2, 10,20,25 24:4 25:5,12,18, 20,22,23 26:21,24,26 27:2,3 34:23 35:5,23 36:19 37:9,13,17 38:2,4 46:11 53:27 54:1 59:28 61:20 62:7 94:13,26 95:21 96:12, 14,16 watersheds 13:1,4,13,24 14:17 15:6 17:14 21:21 22:1,4 24:15 26:5 ways 72:11 webpage 28:5,6 website 84:25 Wednesday 57:15 week 57:20 90:12, 19 Weissman 97:25
<hr/> V <hr/> vacation 86:6 vague 36:6 valley 13:9 15:11, 12,15,20 16:1,4,11,12, 22 17:6,13,19 19:5,9 21:9, 15,19 22:10 23:19,28 24:8,10 26:4, 8,15 27:9 29:7 35:27 36:19 37:19 40:9,10 44:3 55:20 71:12, 19 75:16 vastly 68:9 vehicle 50:15				

<p>well-taken 97:15</p> <p>wells 40:20 71:20</p> <p>westward 23:28</p> <p>whatsoever 35:18</p> <p>wheels 55:24</p> <p>whites 70:7</p> <p>Whitman 13:21 16:20 20:17 25:8 33:3,16,17,20 34:19 35:25, 28 37:25,26 88:11 91:7,9, 10,11,25,27 92:9,10,16, 21,22 93:1 94:6,8,10 95:27 96:11 97:2,4</p> <p>Whitman's 35:4</p> <p>wholesale 51:11</p> <p>wholly 9:5</p> <p>wide 53:26</p> <p>William 5:6 10:1 11:6 99:3</p> <p>wishes 25:2 35:22 63:28 82:12</p>	<p>wit 15:6</p> <p>Wood-claeyssens 44:8</p> <p>word 12:16,21 26:3,11,24 34:10 59:13</p> <p>words 31:13 37:10, 14 79:7,8 84:23</p> <p>work 19:24 20:16 23:1 29:23 36:2 37:23 40:21 51:22 73:6 81:6 83:2 84:3,5 85:19,26 86:16 88:20 89:13 98:6</p> <p>worked 19:25</p> <p>working 40:25 79:15 97:24 98:2</p> <p>works 29:11 87:23</p> <p>world 56:11</p> <p>worry 96:5</p> <p>worrying 40:28</p> <p>worth 62:23</p>	<p>Wright 70:24,25</p> <p>writing 13:15</p> <p>written 40:14 50:18 80:25</p> <p>wrong 19:20 20:3 22:11 37:17</p> <p>wrongly 29:24</p> <p>wrote 14:26</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>yards 19:4</p> <p>Year's 57:27</p> <p>years 46:21,24 48:7 50:7 53:13 55:16,27,28 57:25 67:12 85:7</p> <p>yesterday 98:5</p> <p>yore 67:4</p> <p>York 98:5</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zip 96:4,27</p>
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