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TRANSCRIPT OF PROCEEDINGS

October 18, 2021

1 CASE NUMBER: 19STCP01176
2 CASE NAME: SANTA BARBARA CHANNELKEEPER V.
3 STATE WATER RESOURCES CONTROL
BOARD
4 LOS ANGELES, CA MONDAY, OCTOBER 18, 2021
5 DEPARTMENT SSC-10 HON. WILLIAM F. HIGHBERGER, JUDGE
6 APPEARANCES: (AS HERETOFORE NOTED.)
7 REPORTER: RONALD L. COOK, CSR NO. 13928
8 TIME: 1:37 P.M.
9

10 THE COURT: WE'RE ON THE RECORD IN 19STCP01176,
11 SANTA BARBARA CHANNELKEEPERS.

12 I'LL BE AVAILABLE TO YOU ALL, COUNSEL AND
13 PARTIES, UNTIL 2:50 P.M. THIS AFTERNOON, WHEN I NEED TO
14 RECESS FOR A MEDICAL APPOINTMENT. HOPE WE CAN GET OUR
15 WORK DONE.

16 OUR NEXT DATE AFTER TODAY IS THE AFTERNOON
17 OF MONDAY, NOVEMBER 15. THAT LOOKS FINE ON CALENDAR.
18 WE ALSO HAVE RESERVED MONDAY, DECEMBER 20TH. I WILL BE
19 DARK THAT DAY AND WILL NEED TO RESET YOU FOR THE
20 WEDNESDAY FOLLOWING OR PERHAPS THE THURSDAY FOLLOWING,
21 DECEMBER 22 OR 23. ALTERNATIVELY, I'M AVAILABLE ON
22 DECEMBER 13TH OR 14TH, BUT NOT THE 15TH THROUGH THE
23 17TH. WE CAN COME BACK TO THAT LATER.

24 I HAVE ON THE CALENDAR TODAY THE CONTINUED
25 HEARING ON THE MOTION OF MR. BAGGERLY FOR AN ORDER TO
26 APPOINT AN INDEPENDENT SCIENTIFIC ADVISOR. I'D NOTE
27 WITH INTEREST THAT THE CITY OF OJAI HAS NOW DESIGNATED
28 AS ITS CHOSEN EXPERT THE SAME SCIENCE ADVISOR THAT

1 MR. BAGGERLY RECOMMENDED TO THE COURT. IT WAS POINTED
2 OUT BY VARIOUS OF THE PARTIES IN THE RECENT FILINGS
3 THAT HAVE SUGGESTED THAT THERE APPEARS TO BE NO
4 PRESSING NEED AT THE MOMENT TO GET THE BENEFIT OF THIS
5 EXPERT'S OPINION, SINCE HE IS GOING TO BE PART OF THE
6 EXERCISE.

7 THERE ARE SOME SQUABBLES IN THE PAPERS I'VE
8 GOTTEN TODAY ABOUT WHETHER OR NOT CERTAIN EXPERTS
9 DESIGNATED BY THE CITY OF VENTURA AND PERHAPS ONE OR
10 MORE OF THE STATE AGENCIES ARE LEGITIMATE EXPERTS FOR
11 THE PURPOSES OF THE PHASE 1 TRIAL.

12 THROUGH THE MAGIC OF FILE & SERVEEXPRESS,
13 I'VE SPENT A LITTLE BIT OF TIME BARELY SCRATCHING THE
14 SURFACE OF THE EXPERT DISCLOSURES, BUT THAT GAVE ME A
15 CHANCE TO FIND MY WAY TO THE CITY OF VENTURA'S EXPERT
16 DISCLOSURES, INCLUDING THAT OF A CERTAIN HISTORIAN,
17 AND, AS I UNDERSTAND IT, ONE OF THE THINGS THE
18 HISTORIAN WOULD TELL US IS THAT AFTER A SEVERE DROUGHT
19 IN THE LATE 1940S, THERE WAS ENOUGH POLITICAL PRESSURE
20 BROUGHT TO BEAR ON FEDERAL REPRESENTATIVES, INCLUDING
21 MEMBERS OF THE HOUSE OF REPRESENTATIVES, ABOUT WHAT
22 MIGHT BE DONE ABOUT THE PROBLEM FOR THE FARMERS AND
23 RANCHERS IN THE VICINITY OF OJAI SUCH THAT CERTAIN
24 PHYSICAL IMPROVEMENTS WERE BUILT, AT LEAST ACCORDING TO
25 THE HISTORIAN, TO MOVE WATER FROM THE HEADWATERS OF THE
26 VENTURA RIVER TO SOME VERSION OF THE SPREADING GROUNDS
27 CREATED TO HELP RECHARGE THE OJAI VALLEY GROUNDWATER
28 BASIN. NOTABLY, WHEN I WENT TO THAT PORTION OF THE --

1 I GUESS IT'S THE STATE WATER RESOURCES CONTROL BOARD,
2 BULLETIN 118, THAT SPEAKS TO THE OJAI VALLEY
3 GROUNDWATER BASIN. IN THE SECOND PARAGRAPH OF TEXT
4 THERE IS -- IT'S RIGHT UNDER THE HEADING "RECHARGE
5 AREAS" -- A REFERENCE THAT SOME ADDITIONAL RECHARGE IS
6 PROVIDED --

7 OH, NO. IT'S IN THE FIRST SENTENCE.

8 "RECHARGE TO THE BASIN IS FROM INFILTRATION
9 OF PRECIPITATION ON THE VALLEY FLOOR, AND PERCOLATION
10 OF SURFACE WATERS THROUGH ALLUVIAL CHANNELS, AND WATER
11 DIVERTED INTO THE OJAI SPREADING GROUNDS (CSWRB 1953)."

12 SO PERCHANCE THE HISTORIAN IS GOING TO BE
13 OFFERED INSOFAR AS THERE HAVE BEEN MAN-MADE
14 IMPROVEMENTS THAT HAVE CHANGED THE NORMAL COURSE OF THE
15 WATER FROM PRECIPITATION TO HITTING THE SURFACE TO
16 GOING TO THE GROUND AND EVENTUALLY FINDING WHATEVER
17 DESTINATION THE WATER IS GOING TO FIND, WHETHER IT'S
18 INTO THE OCEAN OR PERCOLATION INTO THE GROUNDWATER
19 EVAPORATION THROUGH THE GROWING OF PLANTS OR OTHERWISE.

20 I HAVE NOT ATTEMPTED, BY ANY STRETCH OF THE
21 IMAGINATION, TO FAMILIARIZE MYSELF WITH THE CONTENTS OF
22 ALL THE REPORTS. I DID TAKE A BRIEF LOOK AT THE REPORT
23 OF THE EXPERT NOW DESIGNATED BY THE CITY OF OJAI,
24 WHICH, AS I UNDERSTAND IT, FAVORS THE POSITION OF THE
25 EAST OJAI GROUP AND THE CITY OF OJAI THAT THERE'S NOT A
26 CONNECTEDNESS OF THE GROUNDWATER BASINS UNDER THE OJAI
27 VALLEY AREA AND THE UPPER OJAI VALLEY AREA AS COMPARED
28 TO THE FLOWS IN THE VENTURA RIVER TRIBUTARIES. THAT'S

1 OBVIOUSLY INCONSISTENT WITH THE OPINIONS EXPRESSED BY
2 THE CITY OF VENTURA'S EXPERTS AND SOME OF THE STATE
3 EXPERTS.

4 I WILL DEFINITELY, AT THE TIME OF TRIAL, BE
5 SURE I'M FULLY FAMILIAR WITH ALL THE REPORTS THAT ARE
6 BEING OFFERED IN EVIDENCE.

7 IT'S VERY DENSE. I HAVE A GOOD EDUCATION,
8 EVEN LEARNER LATIN AS WELL AS FRENCH, BUT MY SCIENCE
9 EDUCATION WAS RELATIVELY LIMITED, ALTHOUGH IT WAS A
10 STRICT ACADEMIC SETTING IN AN EASTERN BOARDING SCHOOL,
11 BUT I ONLY TOOK BIOLOGY, CHEMISTRY AND PHYSICS; I NEVER
12 TOOK GEOLOGY THERE OR AT ANY TIME THEREAFTER. SO I'M
13 TOTALLY UNTUTORED INTO GEOLOGY.

14 I'VE HAD THE BENEFIT OF BEING ABLE TO
15 TRAVEL A LOT BY CAR AND TRAIN AROUND THE UNITED STATES
16 AND OTHER REGIONS, SO I'M FAMILIAR WITH THE DIFFERENT
17 WAYS IN WHICH OUR MOUNTAINS ARE FORMED AND PRESENT
18 THEMSELVES NOWADAYS, BUT THAT'S TOTALLY DIFFERENT FROM
19 UNDERSTANDING THE IMPORTANCE OF CLAY LAYERS AND
20 FRACTURING OF THE EARTH AND THE REST, AND I'M GIVEN TO
21 WONDER WHETHER OR NOT, BEFORE WE REALLY HAVE THE
22 PHASE 1 TRIAL, IF THERE'S ANY POSSIBILITY THAT THE
23 COUNSEL COULD BE SUFFICIENTLY HIGH-MINDED THAT THEY
24 COULD GIVE ME THE BENEFIT OF WHAT IN OUR DRUG MASS TORT
25 CASES IS CALLED SCIENCE DAY.

26 IN THE MASS TORT CASES, TO HELP THOSE OF US
27 WHO ARE WELL TUTORED IN THE LAW BUT NOT NECESSARILY IN
28 SCIENTIFIC CONCEPTS, UNDERSTAND THE BACKGROUND AGAINST

1 WHICH THE FACTUAL ARGUMENTS ARE BEING MADE. IT'S OFTEN
2 DONE IN A NONADVERSARIAL FASHION, TYPICALLY OFF THE
3 RECORD, PRESENTED BY THE LAWYERS AND NOT BY THE CHIEF
4 SCIENTISTS.

5 THE VIRTUE OF THAT IS THE LAWYERS HAVE TO
6 KNOW HOW TO DUMB IT DOWN TO COMMUNICATE WITH SOMEBODY
7 LIKE MYSELF, BECAUSE THEY ARE THEMSELVES TYPICALLY NOT
8 TECHNICAL EXPERTS BUT THEY ALSO ARE, THEREFORE, IN A
9 BETTER SITUATION TO TRY TO EDUCATE THE JUDGE, LIKE ANY
10 OTHER LAYMAN, WITH RESPECT TO THE CONCEPTS, AND THE
11 PURPOSE WOULD BE TO PRESENT IT IN A DENATURED ENOUGH
12 WAY THAT BOTH SIDES COULD BASICALLY AGREE ON THE
13 CONTENT OF THE SCIENCE DAY SINCE IT'S NOT SUPPOSED TO
14 BE ARGUMENTATIVE.

15 I'M JUST TOSSING THIS IDEA OUT TO YOU FOR
16 THE FIRST TIME, AND I WOULDN'T EXPECT YOU TO MAKE ANY
17 SUBSTANTIVE RESPONSES, BUT I WOULD INVITE THE
18 REPRESENTATIVES OF THE CITY OF OJAI AND EAST OJAI GROUP
19 AND THOSE WHO FEEL THEMSELVES ALIGNED WITH THAT SET OF
20 LITIGANTS, POSSIBLY ALSO INCLUDING CASITAS WATER
21 DISTRICT, WHOSE PETITION REMAINS A LITTLE UNCERTAIN TO
22 THE COURT, WITH THOSE SUCH AS THE CITY OF VENTURA, WHO
23 CLEARLY, AT THE OTHER END OF THE DISPUTE, AND THE
24 PARTIES WHO HAVE ALIGNED THEMSELVES WITH THE CITY OF
25 VENTURA TO SEE IF YOU LIKE THE IDEA.

26 AT THE MOMENT, SUBJECT TO HEARING FROM
27 MR. BAGGERLY, I'M INCLINED TO DENY THE REQUEST FOR AN
28 INDEPENDENT SCIENTIFIC EXPERT WITHOUT PREJUDICE, FOR

1 THE VERY FACT THAT THE CITY OF OJAI HAS SCOOPED UP AND
2 IS GOING TO TAKE ADVANTAGE OF THE VERY EXPERT WHO WAS
3 PROPOSED FOR THESE PURPOSES.

4 MR. BAGGERLY, ARE YOU WITH US THIS
5 AFTERNOON?

6 MR. BAGGERLY: I AM PLUGGING ALONG, YOUR HONOR.

7 THE COURT: YOU'VE GOT THE FLOOR.

8 MR. BAGGERLY: WELL, IF YOU'VE ALREADY DENIED
9 THE MOTION WITHOUT PREJUDICE, YOU MAY NEED IT LATER.
10 YOU HAVE RAISED YOURSELF A NUMBER OF INTERESTING
11 QUESTIONS ON THE MESSAGE BOARD. SOME OF THEM I'M
12 FAMILIAR WITH AND EVEN KNOW THE ANSWER TO, BUT IT'S
13 TAKEN ME 20 YEARS TO GET THERE.

14 I THINK YOU'LL NEED AN ADVISOR ONE OF THESE
15 DAYS, SO I'M GLAD THAT YOU DIDN'T PRECLUDE THAT
16 POSSIBILITY, YOUR HONOR.

17 THE COURT: WELL, IN SOME WAYS MY REQUEST FOR A
18 SCIENCE DAY THAT'S SUPPOSED TO BE DENATURED AND
19 NONARGUMENTATIVE IS ARGUABLY A SUBSTITUTE FOR IT, BUT,
20 AGAIN, I DO EXPECT COUNSEL TO FALL BACK AND SCRATCH
21 THEIR HEADS AND THINK ABOUT WHETHER THEY LIKE THIS OR
22 HATE THIS.

23 I THINK IT WORKED TO GOOD ADVANTAGE IN SOME
24 OF THE OTHER CASES I'VE HAD, PARTICULARLY THE
25 COORDINATED PROCEEDING ORIGINALLY STYLED AS BYETTA
26 CASES, NOW RETITLED AS INCRETIN THERAPY CASES. AND I
27 BELIEVE I WAS SHOWN SOMETHING TO THAT EFFECT IN REGARD
28 TO RISPERDAL BUT MY MEMORY MAY FAIL ME. I KNOW FOR

1 SURE I HAD IT AS TO THE INCRETIN THERAPY CASES AND
2 POSSIBLY IN A THIRD SITUATION.

3 ANYTHING MORE, MR. BAGGERLY?

4 MR. BAGGERLY: NO, YOUR HONOR. THANK YOU FOR
5 YOUR TIME.

6 THE COURT: ANYBODY ELSE IN REGARD TO
7 MR. BAGGERLY'S POSITION WANT TO BE HEARD FURTHER BEFORE
8 I INTEND TO DENY THAT MOTION WITHOUT PREJUDICE?

9 OKAY. HEARING NOTHING FURTHER, THE MOTION
10 ABOUT THE APPOINTMENT OF AN INDEPENDENT EXPERT IS
11 DENIED WITHOUT PREJUDICE, WITH DEFENDANT CITY OF
12 VENTURA TO GIVE NOTICE.

13 SO MR. HAGERTY, WHAT'S THE MOST IMPORTANT
14 THING WE SHOULD TALK ABOUT?

15 MR. HAGERTY: WELL, YOUR HONOR, WE HAVE SOME
16 PROCEDURAL ISSUES THAT ARE PRETTY STRAIGHTFORWARD THAT
17 MAYBE WE WANT TO DEAL WITH, AND THEN TO THE EXTENT THE
18 COURT WANTS TO ENGAGE IN --

19 MR. GARRISON: YOUR HONOR --

20 THE COURT: WHO IS INTERJECTING?

21 MR. GARRISON: YES. THIS IS GREGG GARRISON. I
22 COULD NOT GET ON IN TIME TO SAY THAT I WANT TO FOLLOW
23 UP MR. BAGGERLY'S COMMENTS.

24 THE COURT: OKAY. I'LL ALLOW THAT,
25 MR. GARRISON. HERE YOU ARE NOW.

26 REMIND ME WHO YOU REPRESENT.

27 MR. GARRISON: I REPRESENT ROSANNA GARRISON.

28 THE COURT: AND YOURSELF, PERCHANCE?

1 MR. GARRISON: AND THE UPPER OJAI VALLEY.

2 THE COURT: AND YOU REPRESENT YOURSELF ALSO,
3 MR. GARRISON?

4 MR. GARRISON: I DO.

5 THE COURT: FINE.

6 AND YOU ARE A LICENSED LAWYER?

7 MR. GARRISON: I AM.

8 THE COURT: FINE. PROCEED.

9 MR. GARRISON: ONE OF THE INCIDENCES THAT I
10 THOUGHT WAS MOST PIVOTAL IN YOUR SCIENCE DAY CONCEPT IS
11 THE IDEA THAT WE ARE TRYING TO DO A STREAMLINED
12 GROUNDWATER ADJUDICATION WITH FOUR BASINS. THAT'S
13 UNPRECEDENTED, AND IT'S UNWIELDY, AND IT'S
14 UNMANAGEABLE.

15 AND I THINK WITH THE INDEPENDENT EXPERT
16 WITH THE COURT, WE COULD LOOK AT THE SCOPE OF WHAT THE
17 CITY OF VENTURA IS TRYING TO DO. NOT ONLY ARE THEY
18 CONFLATING FOUR GROUNDWATER BASINS INTO ONE STREAMLINED
19 WATER ADJUDICATION; THEY ARE MIXING SURFACE WATERS WITH
20 GROUNDWATERS WITH THE PROPOSED SOLUTION.

21 I THINK THOSE ARE BOTH FALSE STARTERS FOR
22 THE COURT, AND I THINK THEY'RE GOING TO CONFUSE THE
23 PROCESS.

24 AND I AGREE WITH YOU ON SCIENCE DAY, BUT I
25 THINK ALSO IF WE COULD TAKE A STEP BACK AND LOOK AT
26 THESE FUNDAMENTAL ISSUES OF HOW THE CITY OF VENTURA IS
27 FATALLY FLAWED IN PLEADINGS, THAT IT'S JUST GOING TO
28 GET MORE CONFUSING. AS RUSS BAGGERLY JUST SAID, IT

1 TOOK HIM 20 YEARS TO FIGURE OUT WHAT'S GOING ON HERE,
2 AND THIS COURT, WITH THESE COMPETING EXPERTS, WILL NOT
3 BE ABLE TO ASCERTAIN WHAT'S ADVOCACY, WHAT'S SCIENCE,
4 AND WHAT'S JUNK SCIENCE, AND WE SHOULD DEFER BACK TO
5 THE BENCH BOOK AND AGREE WITH THEM THAT WE SHOULD GET A
6 COURT-APPOINTED MUTUAL, NOT ONLY ON THE ISSUES OF
7 LOOKING AT THE REPORT SO THAT THEY CAN DISCUSS WITH THE
8 JUDGE WHAT THE INFORMATION IS, BUT ALSO THE PROCESS OF
9 THE ADJUDICATION. SO --

10 AND THERE'S ONE OTHER ISSUE THAT CAME UP IN
11 CONFERENCES THIS LAST MONTH. WE HAVE CREATED A VIDEO,
12 AND THAT VIDEO HAS BEEN PREPARED, AND THAT'S JUST THE
13 TYPE OF THING THAT WE DON'T TO MAKE IT AS EVIDENCE BUT
14 IT'S SOMETHING THAT WE COULD PRESENT TO THE COURT
15 NEUTRAL AND NOT THE JUDGE, BY WAY OF DISSEMINATING
16 INFORMATION TO GET AT THE TRUTH OF THE MATTER, AGAIN,
17 UNDERLYING THE PUBLIC TRUST DOCTRINE OF FINDING A FAIR
18 AND EQUITABLE USE OF THIS LAW.

19 ONE OTHER ISSUE THAT NEEDS TO BE LOOKED AT
20 AT THE PHASE 1 TRIAL, IS THE USE AND THE INCREASED USE
21 ON THE WATERSHED BY THE CITY OF VENTURA REASONABLE AND
22 JUSTIFIED PURSUANT TO THE CONSTITUTION. THEY HAVE
23 UNLIMITED GROWTH IN THEIR OWN PROPOSITIONS WITH THE
24 CITY COUNCIL, AND THAT NEEDS TO BE LOOKED AT AS WELL
25 THROUGH AN INDEPENDENT COURT NEUTRAL.

26 THAT'S IT, YOUR HONOR. THANK YOU.

27 THE COURT: THANK YOU.

28 OKAY. THE RULING TO DENY THE MOTION AS TO

1 THE INDEPENDENT EXPERT IS STILL DENIED WITHOUT
2 PREJUDICE.

3 BACK TO YOU, MR. HAGERTY.

4 MR. HAGERTY: THANK YOU, YOUR HONOR.

5 AGAIN, WE COULD START WITH SOME PROCEDURAL
6 ISSUES AND KNOCK THOSE OUT --

7 THE COURT: PLEASE.

8 MR. HAGERTY: -- AND MR. PISANO IS PREPARED TO
9 DO THAT, AND THEN WITH REGARD TO THE COURT'S QUESTIONS,
10 AS WE INDICATED IN OUR RESPONSE, WE'RE PREPARED TO TALK
11 ABOUT THOSE. WE ALSO THINK THAT THOSE WOULD BE BETTER
12 PRESENTED WITH A FULL BRIEFING OF ALL THE ISSUES, AND
13 WE -- AND WE CAN GET BACK TO THIS, BUT MAYBE WE CAN
14 COMBINE THAT CONCEPT OF A FULL BRIEFING WITH THE IDEA
15 OF A SCIENCE DAY.

16 I WOULD SUGGEST THAT IT BE MODIFIED
17 SLIGHTLY, YOUR HONOR, BECAUSE, IF YOU RECALL, BACK IN
18 EARLY 2020 WE WERE WORKING ON SCIENCE DAY, AND IT JUST
19 BECAME TOO DIFFICULT TO GET TO A POINT WHERE WE COULD
20 PRESENT A NEUTRAL PRESENTATION.

21 AND SINCE THIS IS A BENCH TRIAL, IT WILL, I
22 MEAN, EFFECTIVELY BE WHAT WE WILL PRESENT, SO I THINK
23 WE CAN DO A MODIFIED PROCESS WHERE THE PARTIES -- AND
24 WE'LL ORGANIZE THIS THROUGH A MEET AND CONFER -- WILL
25 AGREE TO SOME FORM OF A BRIEFING SCHEDULE --

26 THE COURT: AT A MINIMUM, YOU'VE GOT TO
27 UNDERSTAND THE "KEEP IT SIMPLE, STUPID" RULE, EVEN WITH
28 A JUDGE WHO WENT TO COLUMBIA LAW REVIEW, BY REALLY

1 SPOONFEEDING IT TO ME WITHOUT FEARING THAT YOU'RE GOING
2 TO BE INSULTING.

3 ONE OF THESE EXPERTS HAD A PRETTY LITTLE
4 CHART THAT MIGHT OR MIGHT NOT HAVE BEEN THE LOWER
5 REACHES OF THE VENTURA RIVER BECAUSE IT SHOWED A WATER
6 FLOW AND SOME CLIFFS AND LEVELS AND THIS AND AN OCEAN,
7 BUT BASICALLY SHOWING THE DIFFERENT ELEMENTS OF WHAT'S
8 INVOLVED IN HOW THE WATER CAN PERCOLATE UNTIL IT HITS
9 THE CLAY BARRIER, BUT THEN MIGHT GET THROUGH A CRACK OR
10 OTHERWISE PERCOLATE UP THE OTHER DIRECTION THROUGH SOME
11 KIND OF FAULTY MECHANISM. JUST A LITTLE BIT OF A TOUR
12 OF THE HORIZON THAT COULD BE THE LOWER REACHES OF THE
13 VENTURA RIVER, COULD BE THE SANTA ANA RIVER BY BIG
14 BEAR, IN THE SENSE THAT IT'S A COMMON GEOLOGICAL
15 CHARACTERISTIC OF YOUNG MOUNTAINS, WHICH IS TRUE OF
16 BASICALLY ALL THIS AREA, AND THE THINGS WE COME ACROSS,
17 AND THEN (INAUDIBLE) TALKING ABOUT HOW MUCH CLAY IS
18 BLOCKING THE CONNECTIVITY OF THE WATER IN THE UPPER
19 OJAI BASIN OR THE OJAI BASIN, WHICH IS REALLY WHERE THE
20 RUBBER MEETS THE ROAD AND TEST THE FACTS.

21 MR. HAGERTY: AGREED, YOUR HONOR. DESPITE THE
22 COMMENTS ABOUT HOW COMPLICATED THIS IS AND HOW
23 DIFFICULT THIS IS, WHEN WE PRESENT IT TO YOU IN THE WAY
24 THE EXPERT REPORTS HAVE PLAYED OUT, THE ISSUES ARE VERY
25 SPECIFIC AND FAIRLY STRAIGHTFORWARD. I THINK WE CAN
26 COLLECTIVELY PRESENT TO THE COURT --

27 THE COURT: IT'S A LOT EASIER TO UNDERSTAND THE
28 HISTORIAN'S REPORT THAN THE GEOLOGIST'S REPORT --

1 HYDROLOGIST'S REPORTS. AND I KNOW IT JUST BARELY
2 SCRATCHED THE SURFACE, BUT HE GETS PRETTY QUICK INTO
3 TALKING ABOUT ALLUVIUM AND CLAY LAYERS AND FAULTING
4 AND --

5 MR. HAGERTY: WELL, THOSE ARE THE ISSUES THAT I
6 THINK ARE -- I MEAN, JUST THE DEFINITIONS AND THE --
7 KIND OF THE BASICS FOR THE COURT, WE CAN EXPLAIN THAT
8 TO YOU. THERE IS A DIFFERENCE OF OPINION AS TO CERTAIN
9 ACTIVITIES WITHIN THE WATERSHED AND HOW WATER MOVES,
10 BUT THERE'S A LOT THAT THERE'S AGREEMENT ON, AND WE CAN
11 PRESENT THAT TO YOU, I THINK, IN A VERY CLEAR FASHION
12 AND FOCUS THE COURT ON THE KEY ISSUES, AND THEN ADD TO
13 THAT THE LEGAL STRUCTURE. WE'RE HAPPY TO TOUCH ON THAT
14 TODAY, BUT, YOU KNOW, THERE WAS -- THERE ARE ANSWERS TO
15 ALL THE QUESTIONS THAT YOU'VE PRESENTED.

16 THE COURT: WE'VE GOT 55 MINUTES. LET'S HEAR
17 FROM MR. PISANO ON THE PROCEDURAL ISSUES THAT APPEAR TO
18 BE UNCONTESTED.

19 MR. HAGERTY: GREAT. THANK YOU, YOUR HONOR.

20 MR. PISANO: YOUR HONOR, ON THE ISSUE OF THE
21 SUPPLEMENTAL EXPERT DISCLOSURE --

22 THE COURT: ADVANCE IT FROM DECEMBER 10 TO
23 DECEMBER 3?

24 MR. PISANO: YES, YOUR HONOR.

25 THE COURT: ANYBODY OBJECT?

26 HEARING NO OBJECTION, SO ORDERED.

27 PLAINTIFF -- EXCUSE ME. CITY OF VENTURA, AS DEFENDANT
28 CROSS-COMPLAINANT, GIVE NOTICE.

1 MR. PISANO: WILL DO, YOUR HONOR.

2 AND THEN VERY BRIEFLY, WE'VE PUT IN OUR
3 STATUS REPORT WE WOULD GIVE AN UPDATE ON THE DRONE
4 VIDEO. THE DRONE VIDEO HAS BEEN -- HAS BEEN PREPARED.
5 WE HAD A MEET AND CONFER -- WE'VE HAD TWO MEET AND
6 CONFERS. WE HAVE ONE MORE SCHEDULED FOR THURSDAY. THE
7 GOAL --

8 THE COURT: I ASSUME THAT'S WHAT MR. GARRISON
9 WAS REFERRING TO.

10 MR. PISANO: YES, YOUR HONOR.

11 THE GOAL, YOUR HONOR, IS THE NEXT TIME WE
12 MEET TO EITHER DISCUSS HOW THE COURT WANTS TO RECEIVE
13 THE VIDEO, DO YOU WANT TO PLAY IT IN COURT IN YOUR
14 CHAMBERS OR WHAT HAVE YOU, OR SECOND SCENARIO, WHICH
15 RIGHT NOW APPEARS TO BE THE MORE LIKELY, IS WE'RE GOING
16 TO HAVE A STIPULATION THAT A GROUP OF PARTIES AND
17 ATTORNEYS HAVE AGREED TO, AND THEN YOU'RE GOING TO HAVE
18 SOME OBJECTIONS FROM SOME OTHER PARTIES. THERE ARE
19 SOME PARTIES WHO ARE OBJECTING TO SHOWING IT IN ANY
20 FORM. AND SO WE WOULD NEED TO RESOLVE THOSE ISSUES
21 BEFORE BRINGING THE VIDEO TO COURT.

22 WE'LL BE PREPARED TO DISCUSS THAT AT THE
23 NEXT STATUS CONFERENCE, YOUR HONOR.

24 THE COURT: DO YOU THINK WE NEED ONE BEFORE
25 NOVEMBER 15TH?

26 I'LL CERTAINLY FIND THE TIME TO ADD ONE.
27 THIS IS A VERY IMPORTANT CASE, AND MY TIME, ALTHOUGH
28 LIMITED TODAY, IS BASICALLY MY TIME IS YOUR TIME TO

1 GIVE THIS CASE THE ATTENTION IT DESERVES.

2 MR. PISANO: I DON'T BELIEVE SO, YOUR HONOR.
3 AND WE'RE GOING TO NEED TIME TO WORK OUT THE
4 STIPULATION AND GET A SENSE OF EXACTLY WHAT THE
5 OBJECTIONS ARE SO THAT WE CAN --

6 THE COURT: ARE THE OBJECTIONS FROM EAST OJAI
7 AND CITY OF OJAI OR IS IT ALIGNED IN SOME OTHER WAY?

8 MR. PISANO: I THINK IT WAS ALIGNED IN SOME
9 OTHER WAY, AND I'M TRYING TO REMEMBER NOW WHO THE
10 PARTIES WERE ON THE CALL WHO SAID THAT THEY WERE GOING
11 TO OBJECT IN ANY WAY, SHAPE OR FORM TO THE VIDEO BEING
12 SHOWN. BUT THERE WERE -- THERE WAS AT LEAST ONE AND
13 THERE MAY HAVE BEEN MORE THAN ONE WHO ARE JUST
14 OBJECTING TO THE VIDEO THAT HAS BEEN PREPARED IN ITS
15 ENTIRETY.

16 THE COURT: IS THERE SOMEBODY WITH ME THIS
17 AFTERNOON WHO WANTS TO GIVE ME A PRECIS OF WHY THIS
18 VIDEO IS NOT COMPETENT EVIDENCE AND SHOULDN'T BE
19 CONSIDERED BY THE COURT?

20 MR. BAGGERLY: YES, YOUR HONOR. THIS IS CLAUDE
21 BAGGERLY.

22 THE COURT: GO AHEAD, SIR.

23 MR. BAGGERLY: THANK YOU, YOUR HONOR.

24 THE VIDEO WAS DONE BY PEOPLE IN GOOD FAITH,
25 I BELIEVE, BUT THEY ARE NOT PRIVY TO THIS AREA AT ALL.

26 AND I UNDERSTAND YOU'VE DRIVEN HIGHWAY 33
27 ON YOUR MOTORCYCLE MANY TIMES, BUT FROM THE AIR IT
28 LOOKS A LOT DIFFERENT, YOUR HONOR. AND THERE WERE

1 MANY, MANY MISTAKES ON THIS GEOGRAPHY THAT THEY FILMED.
2 AND I THINK IT WOULD BE CONFUSING TO THE COURT FOR YOU
3 TO VIEW THAT AND TRY TO MAKE SENSE OF IT.

4 THAT'S ALL I HAVE TO SAY, YOUR HONOR.

5 THE COURT: THANK YOU.

6 ANYBODY ELSE?

7 GO AHEAD.

8 MS. JACOBSON: THIS IS HOLLY JACOBSON, CITY OF
9 OJAI.

10 THE COURT: YES, MA'AM.

11 MS. JACOBSON: I ONLY WANT TO CLARIFY THAT I
12 BELIEVE ALL PARTIES AGREED THIS WOULD NOT BE OFFERED TO
13 THE COURT AS EVIDENCE. IT IS NOT SOMETHING TO BE
14 WEIGHED AND CONSIDERED AS EVIDENCE.

15 THE PURPOSE OF THE DRONE VIDEO WAS TO BE A
16 SUBSTITUTE FOR THE ON-SITE VISIT THAT WAS ORIGINALLY
17 PROPOSED TO HELP THE COURT UNDERSTAND THE VAST SCOPE OF
18 THIS ENTIRE WATERSHED AND WHAT ALL IS INVOLVED IN THE
19 CROSS-COMPLAINT.

20 AND I THINK THE PARTIES ARE TRYING TO WORK
21 OUT A STIPULATION WHEN THEY PRESENT THE VIDEO TO YOU,
22 IF THEY PRESENT IT TO YOU, AS TO WHAT EXACTLY WE ARE
23 PRESENTING THIS VIDEO FOR, WHAT'S THE PURPOSE OF THE
24 VIDEO. AND AS I UNDERSTOOD OUR MEET AND CONFER, IT WAS
25 TO COME UP WITH A STIPULATION AS TO THIS IS LITERALLY
26 ONLY TO SHOW YOU A 30,000-FOOT VIEW OF THE WATERSHED.

27 AND, YOU KNOW, THE TERMS MAY DIFFER BUT
28 THAT'S ESSENTIALLY WHAT IT IS.

1 THE COURT: AND I DON'T QUARREL WITH IT COMING
2 BEFORE ME IF IT'S LABELED AS NOT EVIDENCE. THE SAME
3 THING WOULD BE TRUE OF A SCIENCE DAY, BECAUSE A SCIENCE
4 DAY IS EMPHATICALLY, IF IT'S GOING TO WORK, TREATED AS
5 NOT EVIDENCE. THAT'S ONE REASON IT'S UNSWORN,
6 TYPICALLY OFF THE RECORD, TYPICALLY OUT OF THE MOUTHS
7 OF LAWYERS, NOT EXPERTS, SO YOU CAN'T GO BACK AND ASK
8 THAT SAME EXPERT, WELL, DIDN'T YOU TELL HIGHBERGER BACK
9 IN FEBRUARY OF AUGHTY-AUGHT THAT SUCH AND SUCH WAS
10 TRUE, AND WHY ARE YOU NOW TESTIFYING TO THE OPPOSITE,
11 BECAUSE YOU DON'T HAVE THAT EXPERT PUT AT RISK. YOU
12 HAVE SOMEONE LIKE MS. JACOBSON OR MR. PISANO TRYING TO
13 TELL ME, YOU KNOW, HOW THE EARTH WAS PUT TOGETHER AND
14 WHY THE WATER GOES WHERE IT GOES.

15 THE GENTLEMAN STANDING IS?

16 MR. JUNGREIS: MR. JUNGREIS, ON BEHALF OF
17 CASITAS MUNICIPAL WATER DISTRICT, YOUR HONOR.

18 THE COURT: YES, MR. JUNGREIS.

19 MR. JUNGREIS: YES. I JUST WANTED TO ECHO THE
20 STATEMENT MADE BY MS. JACOBSON. I THINK -- THERE WAS
21 AGREEMENT ON CERTAIN ASPECTS OF THE DRONE VIDEO. I
22 THINK THE REAL CONCERN, PARTICULARLY FOR CASITAS,
23 WHICH -- WHICH A LOT OF THE FACILITIES THAT ARE SHOWN,
24 ALL THE AREAS OR THE LANDS OWNED BY CASITAS ARE
25 FACILITIES THAT CASITAS OPERATES.

26 I THINK OUR MAIN CONCERN IS JUST TO BE
27 ACCURATE, AND SO UNDERSTOOD IT'S NOT BEING INTRODUCED
28 AS EVIDENCE, IT'S BEING INTRODUCED FOR DEMONSTRATIVE

1 PURPOSES, LIKE SCIENCE DAY, TO HELP THE COURT KIND OF
2 HAVE A BETTER ORIENTATION AS TO WHAT'S HAPPENING. WE
3 UNDERSTAND THAT.

4 I THINK THE REASON -- AND I THINK -- I
5 DON'T KNOW THERE'S EVEN NECESSARILY DISAGREEMENT AMONG
6 MOST OF US. IT'S REALLY JUST A QUESTION OF GETTING IT
7 TO THE POINT WHERE THE PARTIES FEEL THAT IT'S GOING TO
8 ACTUALLY HELP THE COURT RATHER THAN CONFUSE THE COURT.
9 SO I THINK THAT'S WHERE WE ARE RIGHT NOW, AND WE'RE
10 MEETING AND CONFERRING AND TRYING TO GET TO THE POINT
11 WHERE WE HAVE A PRODUCT THAT'S APPROPRIATE.

12 THE COURT: OKAY.

13 BACK TO YOU, MR. PISANO.

14 MR. PISANO: THANK YOU, YOUR HONOR.

15 AND I WILL SAY THAT THE VERY FIRST SENTENCE
16 OF THE STIPULATION I'M WRITING ON -- I'M WRITING SAYS
17 THIS IS NOT EVIDENCE. SO I --

18 YOU KNOW, HAD A VERY PRODUCTIVE MEET AND
19 CONFER. WE SHOULD BE ABLE TO COME UP WITH, YOUR HONOR,
20 I THINK A STIPULATION THAT THE VAST MAJORITY OF COUNSEL
21 WILL BE ABLE TO AGREE TO AND BUY INTO, AND THEN AT THE
22 NEXT STATUS CONFERENCE WE CAN ADDRESS WHATEVER
23 OBJECTIONS REMAIN.

24 THE LAST PROCEDURAL ISSUE, YOUR HONOR, AND,
25 AGAIN, THIS IS MORE JUST GIVING THE COURT AN UPDATE
26 THAN ASKING FOR ANY KIND OF A RULING, AND THAT IS THAT
27 COUNSEL THAT HAVE DESIGNATED EXPERTS THUS FAR, WE MET
28 AND CONFERRED, AND WE ACTUALLY HAVE SET A DEPOSITION

1 SCHEDULE, WHICH WE'LL BE SETTING OUT, THAT CALLS FOR
2 DEPOSITIONS STARTING ON DECEMBER 6. THAT WAS THE
3 REASON WE WANTED TO ADVANCE THE DATE FOR SUPPLEMENTALS,
4 AND RIGHT NOW ENDING ON -- I THINK JANUARY 12TH WAS THE
5 LAST DATE, WHICH STILL GIVES US SOME TIME ON THE BACK
6 END TO PLUG IN ANY SUPPLEMENTALS THAT NEED TO BE
7 PLUGGED IN. BUT --

8 THE COURT: HAVE YOU BEEN ABLE TO AGREE ON THE
9 NICETIES OF ZOOM VERSUS IN PERSON?

10 MR. PISANO: WE'RE STILL WORKING THAT OUT, YOUR
11 HONOR. AND SOME OF IT IS EXPERT SPECIFIC. WE HAVE ONE
12 EXPERT IN PARTICULAR WHO IS UNCOMFORTABLE WITH TRAVEL
13 AND WOULD PREFER ZOOM, AND I THINK WE HAVE AGREED TO DO
14 HIS BY ZOOM. I THINK THERE'S A PREFERENCE TO TRY TO DO
15 IT LIVE. WE'RE ALL -- YOU KNOW, WE ALL LIKE LIVE
16 DEPOSITIONS, BUT RECOGNIZING THAT IT'S GOING TO BE
17 DIFFICULT AND IMPOSSIBLE TO ACCOMMODATE EVERYBODY.

18 SO AT A MINIMUM WE WOULD HAVE IT LIVE FOR
19 SOME, BUT ALSO THE WITNESS WITH A SCREEN IN FRONT OF
20 HIM OR HER THAT IS THEN BROADCAST VIA ZOOM TO
21 EVERYBODY.

22 THE COURT: THE LEGISLATURE'S PASSED A STATUTE
23 THAT, AS I UNDERSTAND IT, IS GOING TO MAKE IT MANDATORY
24 THAT EXPERTS BE ALLOWED TO TESTIFY REMOTELY EVEN IF
25 EVERYBODY ELSE IS IN THE COURTROOM: JURY, LITIGANTS,
26 ADVOCATES, JUDGE AND JURY. SO WE HAVE TO BE READY FOR
27 THE IDEA THAT OUR EXPERTS WILL ON OCCASION BE
28 TESTIFYING REMOTELY FOR THE NEXT COUPLE OF YEARS.

1 MR. PISANO: YEAH.

2 THE COURT: IF NOT FOREVER.

3 MR. PISANO: SO THAT'S -- YEAH, WE ARE WELL
4 ALONG IN WORKING THOSE ISSUES OUT, AND WE'LL BE LETTING
5 EVERYBODY KNOW THAT -- THAT SPECIFIC SCHEDULE AND WHEN
6 THOSE DEPOSITIONS ARE SET. AND AS SOON AS WE CAN --
7 WE'LL HAVE A MEET AND CONFER AND TALK ABOUT IN PERSON
8 VERSUS ZOOM.

9 THE COURT: ANYTHING ELSE BEFORE YOU HAND IT
10 BACK TO MR. HAGERTY?

11 MR. PISANO: YOUR HONOR, THE ONLY OTHER POINT I
12 WOULD LIKE TO MAKE IS I KNOW THE COURT INDICATED THAT
13 IT WENT ON FILE & SERVEXPRESS AND LOOKED AT THE EXPERT
14 REPORTS.

15 THE COURT: BRIEFLY AND --

16 MR. PISANO: VERY BRIEFLY. AND I JUST WANTED
17 TO -- I MEAN, NOT NECESSARILY RAISE AN OBJECTION, BUT
18 ONE THING I DISCUSSED AT THE LAST STATUS CONFERENCE IS
19 EXPERT REPORTS ARE HEARSAY, AND I HAVE CONFIDENCE IN
20 THE COURT, AS I'M SURE EVERYONE DOES, THAT THE COURT
21 KNOWS THE ROLE THAT IT PLAYS WEARING TWO DIFFERENT
22 HATS. ONE IS TRIER OF LAW AND ONE IS TRIER OF FACT.
23 AND SO I DON'T THINK ANYTHING MORE NEEDS TO BE SAID
24 ABOUT THAT EXCEPT THAT I WANTED TO RAISE THAT BECAUSE I
25 DO KNOW EXPERT REPORTS ARE HEARSAY.

26 THE COURT: I'M MOSTLY TRYING TO COMPREHEND WHY
27 OBJECTIONS ARE BEING MADE AND THEY SORT OF, YOU KNOW,
28 SAY, WELL, ON A CASE ABOUT WHERE THE WATER IS, WHY DO

1 YOU HAVE A HISTORIAN?

2 I SEE A REPORT THAT SAYS, WELL, THEY BUILT
3 A CONDUIT, WHICH IS AN AQUEDUCT BY ANOTHER NAME, AND
4 CONVERTED THE WATER FROM THE VENTURA RIVER SPREADING
5 GROUNDS TO RECHARGE THE OJAI GROUNDWATER BASIN, AND AT
6 LEAST TO MY IGNORANT VIEW OF THINGS, THAT SEEMS TO HAVE
7 HAD SOME RELEVANCE TO WHETHER THE OTHER PORTION OF THE
8 VENTURA RIVER SURFACE FLOW HAS ANY CONNECTEDNESS TO THE
9 GROUNDWATER IN THE OJAI BASIN, WHICH I THINK IS
10 PROBABLY WHY YOU HIRED AN EXPERT.

11 MR. PISANO: YES, YOUR HONOR. AND I --

12 THE COURT: NOW, THAT DOESN'T MEAN ULTIMATELY
13 THAT IT JUST, OH, YOU WON, BUT AT LEAST FROM THE
14 RELEVANCE OF -- YOU KNOW, IT'S SORT OF LIKE, WELL, THEY
15 BROUGHT IN A MUSICIAN TO TALK ABOUT HAYDN. WHY ARE WE
16 HEARING ABOUT THIS IN THE MIDDLE OF THIS LAWSUIT?

17 MR. PISANO: UNDERSTOOD, YOUR HONOR.

18 THE COURT: NOW I UNDERSTAND. AT LEAST AT THAT
19 LEVEL OF ANALYSIS.

20 MR. PISANO: UNDERSTOOD, YOUR HONOR. THANK YOU.

21 I'LL TURN IT OVER TO MR. HAGERTY FOR
22 SUBSTANCE.

23 MR. HAGERTY: YOUR HONOR, THERE ARE TWO
24 SUBSTANTIVE AREAS WE COULD TALK ABOUT. MAYBE IT MIGHT
25 BE BEST, WITHOUT -- HOPEFULLY NOT TAKING THE REST OF
26 THE TIME ON THIS ISSUE. COUNSEL FOR CASITAS AND
27 COUNSEL FOR THE CITY OF OJAI, AS THE COURT IS AWARE,
28 FILED SEPARATE STATUS CONFERENCE REPORTS, AND WE

1 ACKNOWLEDGED IN OUR STATUS CONFERENCE REPORT THAT WE
2 HAD BEEN CONTACTED WITH QUESTIONS ABOUT THE SCOPE OF
3 PHASE 1.

4 AND WE'VE EXPLAINED AT LEAST OUR POSITION
5 TO THE PARTIES WHO WE'VE SPOKEN WITH, AND WE MET AND
6 CONFERRED WITH MS. JACOBSON AND MR. JUNGREIS, SO IT MAY
7 BE HELPFUL FOR ALL THE PARTIES TO HEAR WHAT WE BELIEVE
8 THE SCOPE OF PHASE 1 IS BASED UPON THE COURT'S GRANTING
9 OF OUR MOTION TO BIFURCATE, IF THAT WOULD BE
10 BENEFICIAL.

11 THE COURT: IT TOOK A LOT OF WORDS ON PAGE 4 AND
12 5 OF THE JOINT REPORT THAT YOU HONCHOED, BUT AS I READ
13 IT, IT SEEMED LIKE YOU WERE READY TO SAY, OH, YEAH, WE
14 CAN MODIFY IT AND INCLUDE THESE CONSIDERATIONS. IT
15 TOOK A LOT OF WORDS TO GET THERE, BUT THAT SEEMED TO BE
16 YOUR BOTTOM LINE, THAT, OH, YEAH, THIS IS SORT OF A
17 FAIR EDITORIAL REVISION OF WHAT HAS BEEN THE PREVIOUS
18 STATEMENT OF THE ISSUES. AM I MISTAKING WHAT YOU'RE
19 TRYING TO SAY ON --

20 MR. HAGERTY: ONLY SLIGHTLY, YOUR HONOR, BECAUSE
21 I WOULDN'T -- WE'RE NOT -- WE DON'T BELIEVE
22 MODIFICATION IS APPROPRIATE. WE BELIEVE THAT THOSE
23 ISSUES -- THE TWO ISSUES THAT THE CITY OF OJAI AND
24 OTHERS HAVE RAISED WERE A PART OF THE COURT'S
25 DETERMINATION OF WHAT THE SCOPE OF PHASE 1 IS.

26 THE COURT: BUT THAT ALSO MEANS THAT ARGUMENT
27 AND EVIDENCE THAT SEEMS TO TIE DIRECTLY TO THE WAY OJAI
28 WANTS TO STATE IT WOULD BE APPROPRIATE IN PHASE 1,

1 TRUE?

2 MR. HAGERTY: WE BELIEVE THAT THE CITY OF OJAI'S
3 TWO ARGUMENTS THAT THEY'VE RAISED, ONE BEING A LEGAL
4 QUESTION OF WHETHER THE ADJUDICATION STATUTE CAN BE
5 USED IN THIS WAY -- RIGHT? THAT'S ONE. AND THEN THE
6 SECOND ONE DEALS WITH 833(C). WE BELIEVE THAT THOSE
7 HAVE ALWAYS BEEN PART OF THE ISSUES THAT THE COURT
8 WOULD DETERMINE IN PHASE 1.

9 THE COURT: SO AFTER MS. JACOBSON SERVICED THE
10 ISSUE, IT'S BASICALLY YOUR LONG-WINDED WAY OF SAYING,
11 YEAH, THAT'S GOING TO BE FAIR TO ARGUE ABOUT IN THE
12 PHASE 1 TRIAL.

13 MR. HAGERTY: AND WE'VE TOLD MS. JACOBSON
14 THAT --

15 THE COURT: IT TOOK A LOT OF WORDS, BUT THAT'S
16 SORT OF WHAT YOU SAID.

17 MR. HAGERTY: THAT'S WHAT WE SAID, YES.

18 THE REASON WHY WE COULDN'T ADOPT
19 MS. JACOBSON'S PHRASING WHOLE CLOTH WAS WE DO HAVE
20 ISSUES WITH HOW SHE PHRASES CERTAIN OF THE ISSUES. BUT
21 THAT'S WHY WE THOUGHT IT WOULD BE BENEFICIAL TO TRY TO
22 CLARIFY FOR ALL PARTIES AT THE STATUS CONFERENCE --

23 THE COURT: THIS SEEMS LIKE THEOLOGIANS ARGUING
24 AFTER TOO MANY HOURS OF THE REAL NICETIES OF HIGH-END
25 THEOLOGICAL DEBATE BETWEEN YOU AND MS. JACOBSON ABOUT
26 THE TWO DIFFERENT WAYS TO SAY THE SAME THING.

27 MR. HAGERTY: COULD BE, YOUR HONOR, BUT I THINK
28 WE'VE BOILED IT DOWN TO SOMETHING VERY SPECIFIC, SO IF

1 I MIGHT, I COULD --

2 THE COURT: IS IT SOMETHING I NEED TO DECIDE?

3 MR. HAGERTY: NO.

4 THE COURT: I DIDN'T THINK SO. SO WHY ARE WE
5 TALKING ABOUT IT?

6 MR. HAGERTY: THEN I'M GOOD. I THINK WE'RE
7 TALKING ABOUT --

8 THE COURT: BEAR WITH ME.

9 MS. JACOBSON, IS THERE SOMETHING WE STILL
10 NEED --

11 MS. JACOBSON: YES.

12 THE COURT: -- TO TALK ABOUT ON THESE ISSUES?
13 BECAUSE IT SEEMED TO ME THEY ULTIMATELY SAID, YEAH, YOU
14 CAN ARGUE ABOUT THAT.

15 MS. JACOBSON: YEAH, THE ISSUE IS THE SCOPE. SO
16 AS I UNDERSTOOD IT -- AND WE DID HAVE A REALLY GREAT
17 MEET AND CONFER WITH MR. HAGERTY, AND I BETTER
18 UNDERSTAND THEIR POSITION NOW, BUT ESSENTIALLY MY
19 CONCERN IS AT ALL TIMES THE DISCUSSION HAS BEEN A MORE
20 NARROW SCOPE FOR PHASE 1, AND I UNDERSTOOD VENTURA'S
21 BRIEFING AS EXPANDING THE SCOPE, AND SO I TOOK -- I
22 EXPLAINED MY POSITION TO MR. HAGERTY THAT THE SCOPE
23 IS -- BECAUSE THIS IS THE WHOLE REASON WE ARE HERE, IS
24 PROCEDURAL ISSUES IN QUESTIONS OF WHETHER OR NOT -- AND
25 THIS IS OUR POSITION, AND MR. HAGERTY WILL DISAGREE
26 WITH ME -- WHETHER OR NOT THE COURT CAN LEGALLY, AS A
27 LEGAL MATTER, ADJUDICATE FOUR SEPARATE BASINS AS
28 DEFINED IN BULLETIN 118 UNDER THE GROUNDWATER STATUTES.

1 AND THE REASON WE WANTED TO DISCUSS THIS
2 ISSUE FIRST IS IT WOULD, YOU KNOW -- UNDER OUR
3 POSITION, THE QUESTION WOULD BE ANSWERED, AND A
4 SIGNIFICANT NUMBER OF PARTIES, CROSS-DEFENDANTS, COULD
5 GET OUT OF THE CASE EARLY. AND YOU COULD HAVE A
6 NARROWER, MORE EFFICIENT, STREAMLINED PROCESS AFTER
7 THAT. THAT'S MY --

8 THE COURT: MS. JACOBSON, IT'S NOT CLEAR THAT
9 THEY'D GET OUT SO MUCH AS THEY'D HAVE FOUR DIFFERENT
10 TRIALS. BUT THEY MIGHT GET OUT OF THE FIRST TRIAL, AND
11 THEN HAVE TO WAIT AROUND FOR THE SECOND, THIRD OR
12 FOURTH TRIAL.

13 BUT IT DOES SOUND LIKE THE QUESTION OF
14 WHETHER I CAN LUMP ALL FOUR GROUNDWATER BASINS INTO A
15 SINGLE TRIAL OUGHT TO BE DECIDED BEFORE WE START THAT
16 TRIAL. EITHER IT'S SOMETHING THAT IS A FINAL STATUS
17 CONFERENCE OR IS DAY ONE -- MORNING ONE OF THE TRIAL,
18 AND IDEALLY IF THE AFTERNOON OF THE TRIAL IS WHEN IT
19 BEGINS, YOU'D SORT OF MAYBE NOT WANT TO HAVE TO WAIT
20 UNTIL 10:00 A.M. TO GET AN ANSWER OF WHAT THE TRIAL IS
21 GOING TO LOOK LIKE AT 1:30 P.M., AND WOULD LIKE TO
22 SEPARATE THAT DECISION IN TIME SO THAT MAYBE THE
23 DECISION OF FOUR VERSUS ONE IS MADE IN LATE DECEMBER OR
24 EARLY JANUARY, AS OPPOSED TO DOING IT ON THE MORNING OF
25 THE FIRST DAY OF TRIAL.

26 MR. HAGERTY: YOUR HONOR, IF I CAN RESPOND,
27 BECAUSE THAT IS ABSOLUTELY NOT OUR POSITION AND THAT'S
28 NOT WHAT THE COURT'S RULED IN TERMS OF THE PHASE 1

1 TRIAL.

2 THE COURT: IT CURRENTLY LOOKS LIKE ALL FOUR ARE
3 BEING LITIGATED BECAUSE THEY TIED TO THE LOW OF THE
4 SURFACE WATER.

5 MR. HAGERTY: CORRECT. SEE, THIS IS WHAT WAS
6 CLEAR FROM THE MEET AND CONFER, WHICH WASN'T CLEAR TO
7 ME PREVIOUSLY AND WHAT IS THE BASIS OF -- TO THE EXTENT
8 WE'RE -- I DON'T REALLY BELIEVE THERE'S A DISPUTE BUT
9 WE'RE KIND OF COMING AT IT FROM DIFFERENT DIRECTIONS.
10 COUNSEL FOR THE CITY OF OJAI IS FOCUSED ON ONE OF THE
11 CAUSES OF ACTION, THE SIXTH CAUSE OF ACTION. BUT IF
12 THE COURT RECALLS AND AS WE EXPLAINED AT THE MEET AND
13 CONFER, THE MOTION WAS MADE AS TO ALL CAUSES OF ACTION
14 AND IT WAS GRANTED AS TO ALL CAUSES OF ACTION.

15 SO WE ACKNOWLEDGE THAT COUNSEL FOR OJAI MAY
16 RAISE THIS ISSUE ABOUT THE ABILITY OF THE COURT TO
17 PROCEED WITH FOUR BASINS UNDER THE ADJUDICATION
18 STATUTE, BUT ALL THE OTHER QUESTIONS ARE ALL IMPORTANT
19 AND RELEVANT, AND WE'RE GOING TO HAVE TO GO FORWARD
20 WITH THE PHASE 1 TRIAL REGARDLESS OF YOUR RULING ON
21 THAT. IT MAY HAVE IMPLICATIONS AS TO SERVICE ISSUES
22 AND JURISDICTIONAL QUESTIONS, BUT IT DOESN'T CHANGE THE
23 NEED TO DETERMINE THE INTERCONNECTION BETWEEN SURFACE
24 WATER AND GROUNDWATER WITHIN THE WATERSHED, WHICH IS
25 WHAT WE ASKED THE COURT TO BIFURCATE AND WHAT THE COURT
26 GRANTED.

27 SO THAT'S WHY I THINK IT WOULD BE HELPFUL
28 FOR -- TO JUST BRIEFLY -- THERE'S FIVE ISSUES THAT WE

1 BELIEVE ARE SET FOR PHASE 1. ALL OF THEM NEED TO BE
2 HEARD AND ALL OF THEM NEED TO BE ADDRESSED. AND IF THE
3 COURT WANTS, I CAN QUICKLY GO THROUGH THEM.

4 THE COURT: I'M HAPPY TO LISTEN TO THAT, BUT I
5 ALSO WOULD URGE YOU AND THOSE ALIGNED WITH YOU AND
6 THOSE MAYBE ALIGNED WITH YOU, SUCH AS CASITAS, THOSE
7 CLEARLY OPPOSED TO YOU, SUCH AS CITY OF OJAI AND EAST
8 OJAI GROUP, EACH IN THEIR OWN WAY TO BE AS CLEAR AS YOU
9 CAN IN YOUR WRITTEN FILINGS AND YOUR ORAL ARGUMENT, AND
10 PRESENT AS CRISPLY AS POSSIBLE, PARTICULARLY THE
11 QUESTIONS OF LAW, BUT INSOFAR AS THERE ARE QUESTIONS OF
12 FACT, THE QUESTIONS OF FACT THAT YOU WANT ME TO DECIDE.
13 IT'S A LITTLE BIT OF A JUMBLE AT THE MOMENT, AND I
14 SHOULDN'T JUST SAY, OH, HERE WE ARE FOR DAY ONE OF THE
15 PHASE 1 TRIAL AND NOT KNOW WHAT ARE THE LEGAL QUESTIONS
16 I'M SUPPOSED TO GET RESOLVED AND THEN THE LOGIC ORDER
17 BY WHICH I APPROACH THOSE LEGAL QUESTIONS. AND THEN
18 INSOFAR AS FACT QUESTIONS THAT HAVE TO BE SALTED IN TO
19 THE DETERMINATION OF LEGAL QUESTIONS, WHEN AND HOW I
20 TOUCH EACH OF THOSE FACT QUESTIONS, BECAUSE I MAY HAVE
21 TO GO FROM LAW TO FACT, FROM FACT TO LAW, TO FACT TO
22 LAW, OR LAW TO LAW TO LAW TO FACT TO LAW, TO FACTS,
23 FACTS, FACTS, IN TERMS OF THE LOGIC ORDER, AND YOU MAY
24 NOT ALL AGREE ON WHAT THE LOGIC ORDER IS, BUT AT LEAST
25 I'LL NEED COMPETING RENDITIONS OF HOW MY DECISION TREE
26 IS SUPPOSED TO LOOK, WITH THE CLEAREST POSSIBLE
27 STATEMENT OF WHAT IT IS I'M SUPPOSED TO DECIDE.

28 MR. HAGERTY: ABSOLUTELY, AND THAT'S WHY WE

1 SUGGESTED THAT THE QUESTIONS THAT THE COURT ASKED,
2 WHICH ARE VERY PERTINENT QUESTIONS, BE FOLDED INTO A
3 MORE DETAILED BRIEFING, BECAUSE YOU'RE GOING TO GET A
4 LOT OF DIFFERENT --

5 THE COURT: BUT THE BRIEFING ALMOST OUGHT TO
6 FOLLOW FIGURING OUT AT LEAST TENTATIVELY WHAT THE
7 QUESTIONS ARE.

8 MR. HAGERTY: WELL, THAT'S WHY I WAS GOING TO
9 GIVE A -- THE QUESTIONS ARE VERY SIMPLE. THE COURT
10 NEEDS TO DECIDE WHAT THE WATERSHED BOUNDARIES ARE.

11 THE COURT: BEAR WITH ME. IS THERE A PRIOR
12 RULING OF THE COURT THAT YOU THINK ALREADY DOES THIS
13 AND YOU'RE NOT GOING TO RESTATE WHAT I'VE ALREADY
14 ADJUDICATED OR --

15 MR. HAGERTY: YOU APPROVED OUR MOTION TO
16 BIFURCATE, SO THE FIRST THREE ISSUES I'M GOING TO
17 REITERATE ARE YOUR APPROVAL OF OUR MOTION TO BIFURCATE.

18 THE COURT: AND DO YOU REMEMBER THE DATE OF THAT
19 SO I CAN PUT IT IN FRONT OF ME?

20 MR. HAGERTY: YEAH, IT'S JUNE 21ST, YOUR HONOR.

21 THE COURT: ONE MOMENT.

22 (TELEPHONE INTERRUPTION.)

23 THE COURT: OFF THE RECORD.

24 (DISCUSSION OFF THE RECORD.)

25 THE COURT: WE'RE BACK ON THE RECORD.

26 MS. JACOBSON, YOU CAN SPEAK.

27 MS. JACOBSON: YES. AS MR. HAGERTY HAS SAID, WE
28 HAVE BEEN IN DISCUSSION WITH THIS ISSUE, SO THAT

1 EVERYONE CAN BE ON THE SAME PAGE AS TO WHAT THE SCOPE
2 OF PHASE 1 IS, AND MR. HAGERTY HAS OUTLINED ESSENTIALLY
3 FIVE ISSUES THAT HE WAS GOING TO PRESENT, AS I
4 UNDERSTAND IT, THAT I THINK, YOU KNOW, MAY GET A LITTLE
5 MORE WORK ON IT BUT I THINK WE'RE GETTING CLOSE.

6 AS FOR THE MOTION TO BIFURCATE, YOU KNOW,
7 THE NOTICE OF RULING REFLECTS WHAT VENTURA RECORDED,
8 WHAT VENTURA WROTE. BUT I THINK THAT WE CAN ALL COME
9 TO AN AGREEMENT WITH A LITTLE MORE TIME ON THE FIVE
10 POINTS THAT MR. HAGERTY HAS SHARED WITH ME.

11 THE COURT: I'VE GOT THE NOTICE OF RULING. I AM
12 YET TRYING TO GET TO THE MINUTE ORDER. GIVE ME A
13 SECOND TO TRY TO GET TO THE MINUTE ORDER.

14 PROOF OF SERVICE IS CLUTTERING THE DOCKET.
15 JUNE 28 OR JUNE 21?

16 MR. HAGERTY: 21ST, YOUR HONOR.

17 THE COURT: OKAY. MINUTE ORDER FROM JUNE 21.
18 THREE PAGES.

19 I DON'T SEE A SPECIFIC RENDITION OF ISSUES
20 TO BE TRIED IN THE MINUTE ORDER. DO YOU THINK IT'S
21 THERE AND I'M MISSING IT, MR. HAGERTY?

22 MR. HAGERTY: YOUR HONOR, IT'S REFLECTED IN OUR
23 NOTICE OF RULING THAT THE COURT ASKED US TO PROVIDE AND
24 THAT WE --

25 THE COURT: I HAVE THE NOTICE IN RULING IN FRONT
26 OF ME THAT YOU SERVED ON JULY 2. THAT'S THE DOCUMENT,
27 CORRECT?

28 MR. HAGERTY: ITEM 9, PAGE 3.

1 THE COURT: I SEE ITEM 9 ON PAGE 3. I DON'T SEE
2 FIVE SPECIFIC ISSUES LISTED.

3 MR. HAGERTY: AND THAT WAS THE BASIS OF THE
4 DISPUTE AND WHY WE HAD THE MEET AND CONFER WITH
5 MS. JACOBSON.

6 MAY I JUST GO THROUGH THE FIVE THAT WE
7 TALKED ABOUT?

8 THE COURT: SURE.

9 MR. HAGERTY: THE FIRST --

10 THE COURT: BUT I DON'T -- YOU'RE NOT CLAIMING
11 THAT I'VE ALREADY ENDORSED AND BLESSED THESE SPECIFIC
12 ISSUES, ARE YOU?

13 MR. HAGERTY: WE MOVED THAT THE FIRST THREE
14 ISSUES THAT WE'RE GOING TO ARTICULATE BE BIFURCATED AS
15 ISSUES TO BE DECIDED IN PHASE 1 FOR ALL CAUSES OF
16 ACTION. THAT WAS OUR --

17 THE COURT: BECAUSE YOU PUT THEM IN THE MOTION
18 AND I GRANTED YOUR MOTION, IT MUST BE THAT I APPROVED
19 THAT PART OF YOUR MOTION.

20 MR. HAGERTY: YES. THAT WAS OUR MOTION, NO ONE
21 ELSE MADE ANY OTHER MOTION, AND WE -- THE FOURTH AND
22 FIFTH ISSUES THAT WE'LL TALK ABOUT ARE THE LEGAL ISSUES
23 THAT MS. JACOBSON RAISED DURING THE DISCUSSION, AND WE
24 BELIEVE AND WE AGREED --

25 THE COURT: BEFORE JUNE 28'S RULING OR SOMETIME
26 MORE RECENTLY?

27 MR. HAGERTY: NO, AS PART OF THE DISCUSSION OF
28 THE RULING ON THE 21ST.

1 THE COURT: ON JUNE 21ST?

2 MR. HAGERTY: CORRECT, YES.

3 THE COURT: ON JUNE 21ST?

4 MR. HAGERTY: YES, AS PART OF THE ARGUMENT AND
5 BEFORE THE COURT GRANTED THE MOTION. THAT'S WHY THEY
6 BOIL DOWN TO THESE FIVE ISSUES.

7 THE COURT: ONE MOMENT.

8 OKAY, GO AHEAD, SIR.

9 MR. HAGERTY: THANK YOU, YOUR HONOR.

10 SO THE FIRST ISSUE IS A DETERMINATION OF
11 THE WATERSHED BOUNDARIES. THE SECOND ISSUE IS A
12 DETERMINATION OF THE BOUNDARIES OF THE FOUR GROUNDWATER
13 BASINS. THE THIRD ISSUE IS A DETERMINATION OF
14 INTERCONNECTION BETWEEN THE SURFACE WATER AND
15 GROUNDWATER IN THE WATERSHED, INCLUDING THE
16 INTERCONNECTION BETWEEN SURFACE WATER AND THE FOUR
17 BASINS AND THE INTERCONNECTION BETWEEN THOSE FOUR
18 BASINS AND THE VENTURA RIVER AND ITS TRIBUTARIES. AND
19 THEN THE FOURTH ISSUE, WHICH IS THE ISSUE THAT
20 MS. JACOBSON HAS RAISED, IS A DETERMINATION OF WHETHER
21 CODE OF CIVIL PROCEDURE SECTION 832 AND FOLLOWING MAY
22 BE APPLIED TO FOUR GROUNDWATER BASINS IN ONE LEGAL
23 PROCEEDING. AND THE FIFTH ISSUE IS A DETERMINATION OF
24 WHETHER A FINDING UNDER CODE OF CIVIL PROCEDURE
25 SECTION 833(C) IS REQUIRED, AND, IF SO, WHETHER IT CAN
26 BE MADE.

27 THOSE FIVE ISSUES ARE THE ISSUES THAT ARE
28 RIPE FOR DETERMINATION IN PHASE 1. THEY APPLY -- THE

1 FIRST THREE APPLY AS TO ALL CAUSES OF ACTION BECAUSE
2 THAT WAS WHAT OUR MOTION WAS BASED ON, AND THE FOURTH
3 AND FIFTH ISSUES RAISED BY THE CITY OF OJAI ARE MORE
4 SPECIFIC TO THE SIXTH CAUSE OF ACTION.

5 AND WE BELIEVE --

6 THE COURT: AND THE CURRENT POINT OF DISPUTE
7 WITH MS. JACOBSON ABOUT ITEMS 4 AND 5 IS WHAT,
8 MS. JACOBSON?

9 MS. JACOBSON: THERE'S NOT A CURRENT DISPUTE
10 AFTER THESE FIVE WERE PROVIDED TO ME ON FRIDAY
11 AFTERNOON.

12 THE COURT: OKAY.

13 MS. JACOBSON: MR. HAGERTY DID A WONDERFUL JOB,
14 WE HAD A GREAT MEET AND CONFER. THAT'S WHY I THINK
15 WE'RE VERY CLOSE. I THINK WE HAVE A LITTLE BIT OF A
16 DISAGREEMENT ON THE -- YOU KNOW, THE PHRASING OF SOME
17 OF THESE, BUT THAT'S SOMETHING I THINK WE CAN RESOLVE.

18 THE COURT: OKAY. SO WHY DON'T YOU REDUCE IT TO
19 WRITING, GIVE NOTICE, SEE IF OTHER PEOPLE OBJECT,
20 MINDFUL THAT THERE'S SO MANY OTHER PARTIES. BUT SO FAR
21 IT DOESN'T SEEM TO NEED AS MUCH TIME AS WE'VE SPENT ON
22 THIS PARTICULAR ISSUE.

23 MR. HAGERTY: AGREED, YOUR HONOR, AND WE DIDN'T
24 THINK IT WAS AN ISSUE, BUT IT'S AN ISSUE OF CONCERN
25 THAT PARTIES HAVE EXPRESSED TO US, AND RATHER THAN
26 WAITING TILL THE DAY OF TRIAL AND HAVING THIS, WE
27 WANTED TO GET THIS OUT NOW, AND I THINK THE COURT'S
28 SUGGESTION IS A GREAT ONE. WE'LL WORK WITH

1 MS. JACOBSON AND MR. JUNGREIS AND PUT SOMETHING OUT,
2 AND IF PEOPLE HAVE CONCERNS, IT CAN BE RAISED MAYBE AT
3 THE NEXT --

4 THE COURT: AND IF ISSUE 4 SAYS SOMEHOW -- WELL,
5 I GUESS YOUR POINT IS IT ONLY WOULD IMPACT THE ABILITY
6 OF TRYING THE SIXTH CAUSE OF ACTION IN THE TRIAL. YOU
7 WOULD HOPE TO PROCEED ON ALL THE OTHER CAUSES OF ACTION
8 EVEN IF I WERE TO DETERMINE THAT THE SIXTH CAUSE OF
9 ACTION CAN'T BE LITIGATED IN A CONSOLIDATED FASHION, IF
10 I HEAR YOU RIGHT, MR. HAGERTY.

11 MR. HAGERTY: CORRECT. WE WOULD BE MORE
12 SPECIFIC THAT IT REALLY PRIMARILY RELATES TO WHETHER WE
13 CAN USE THE NOTICE PROCEDURE IN THAT STATUTE TO BRING
14 IN THE PARTIES THAT WE'VE SERVED THROUGH NOTICE.

15 I MEAN, WE FUNDAMENTALLY THINK THAT'S THE
16 ONLY ISSUE. I MEAN, IF THE COURT WANTS US TO DIVIDE UP
17 AND TRY FOUR SEPARATE BASINS IN INDIVIDUALIZED
18 ACTIONS --

19 THE COURT: THEY APPEAR TO BE BROUGHT INTO THE
20 CASE BY NOTICE -- ARE THEY PROPER PARTIES TO ANYTHING
21 BEYOND THE SIXTH CAUSE OF ACTION?

22 MR. HAGERTY: I THINK THOSE WHO APPEAR
23 POTENTIALLY ARE.

24 THE COURT: FAIR ENOUGH.

25 BUT THE PEOPLE WHO JUST GET NOTICE, ARE
26 THEY PROPER PARTIES TO ANYTHING BEYOND THE SIXTH CAUSE
27 OF ACTION?

28 MR. HAGERTY: THEY'RE SUBJECT TO THE COURT'S

1 JURISDICTION PURSUANT TO THE SIXTH CAUSE OF ACTION,
2 YOUR HONOR. YOU'RE RIGHT.

3 THE COURT: BUT ONLY THE SIXTH CAUSE OF ACTION.

4 MR. HAGERTY: CORRECT.

5 THERE ARE PARTIES THAT ARE -- YOU KNOW, WE
6 PERSONALLY SERVED PARTIES WHO ARE PUMPERS WITHIN
7 CERTAIN BASINS, AND, THEREFORE, THEY ARE HERE BECAUSE
8 OF PERSONAL JURISDICTION --

9 (SIMULTANEOUS UNREPORTABLE
10 CROSSTALK.)

11 THE COURT: -- EVEN IF THEY WEREN'T PREPARED.
12 YOU GOT YOUR HOOKS ON THEM.

13 MR. HAGERTY: YES.

14 THE COURT: YOU SERVED ALL THE RIPARIANS, AND
15 YOU'RE EITHER GOING TO DEFAULT THEM OR THEY'RE GOING TO
16 SHOW UP AND YOU'LL HAVE YOUR HOOKS INTO THEM.

17 MR. HAGERTY: THAT'S RIGHT.

18 THE COURT: BUT AS TO THE PEOPLE WHO GET NOTICE
19 FORM OF WE'RE IN A CIVIL SUIT RATHER THAN A SUMMONS,
20 YOU'RE ONLY GOOD FOR THE SIXTH CAUSE OF ACTION?

21 MR. HAGERTY: YEAH, THERE IS A GROUP OF PEOPLE
22 THAT ARE SERVED AND BEFORE THE COURT BECAUSE OF THAT.

23 THE COURT: AND ONLY ON THE SIXTH CAUSE OF
24 ACTION.

25 MR. HAGERTY: THAT'S CORRECT.

26 THE COURT: THOUSANDS.

27 MR. HAGERTY: WELL, YES, THOUSANDS.

28 THE COURT: GO AHEAD.

1 MR. HAGERTY: SO THOSE -- I THINK WE'RE DONE
2 WITH THAT ISSUE, YOUR HONOR.

3 THE COURT: FINE. LET'S MOVE ON. WE'VE GOT
4 ABOUT 30 MINUTES.

5 MR. HAGERTY: SO HOW WOULD THE COURT LIKE TO
6 PROCEED ON THE QUESTIONS?

7 AGAIN, WE'RE -- THIS WILL TAKE --

8 THE COURT: YOU AND MS. JACOBSON HOPEFULLY AGREE
9 TO THEM, AND THEN IF ONE OF THEM SHOULD BE --

10 MR. HAGERTY: I'M SORRY, YOUR HONOR. THE
11 COURT'S QUESTIONS.

12 THE COURT: OH. YEAH. THAT'S FINE. I
13 UNDERSTAND THAT MY QUESTION OF HOW YOU INTERPRET THE
14 STATUTORY LANGUAGE IN, YOU KNOW, CASES AND LEGISLATIVE
15 HISTORY IS PROBABLY BEST ADDRESSED IN BRIEFS FOR SOME
16 FUTURE EVENT. BUT IT SURELY SEEMS RELEVANT.

17 MR. HAGERTY: ABSOLUTELY. AND WE CAN GIVE YOU A
18 VERY HIGH OVERVIEW OF OUR POSITION --

19 THE COURT: I'M NOT AGAINST IT. IF YOU THINK
20 THERE'S LEGISLATIVE HISTORY OR YOU KNOW THAT THERE WAS
21 SOME SECOND DISTRICT COURT OF APPEAL CASE ON POINT,
22 PLEASE, SHOUT IT OUT.

23 MR. HAGERTY: WELL, IT WILL TAKE LONGER THAN
24 THAT, YOUR HONOR, BUT THERE'S HUNDREDS OF YEARS OF
25 COURT HISTORY THAT THE COURT -- WE'LL PRESENT TO THE
26 COURT, BECAUSE THERE'S COMMON LAW, THERE'S STATUTORY
27 PROVISIONS, THERE ARE REGULATIONS, AND THERE'S
28 LEGISLATIVE HISTORY.

1 THE COURT: ALL ON THE SURFACE FLOW TO THE
2 GROUNDWATER?

3 MR. HAGERTY: ALL OF THOSE DEAL WITH THOSE
4 QUESTIONS OF INTERCONNECTION. SOME OF THOSE ARE VERY
5 SPECIFIC TO 833 BECAUSE YOU NEED TO LOOK CLOSELY AT HOW
6 THE STATUTE IS WRITTEN, AND WE'LL NEED TO PARSE THAT,
7 BECAUSE SOME OF THE COURT'S QUESTIONS REALLY GO TO THE
8 SECOND HALF OF 833 RATHER THAN THE QUESTION OF
9 INTERCONNECTION, BUT WE CAN EXPLAIN THAT IN MORE
10 DETAIL.

11 BUT AT A HIGH LEVEL, YOUR HONOR, THERE'S A
12 DOCTRINE CALLED THE COMMON SOURCE DOCTRINE, THERE ARE
13 MULTIPLE CASES THAT WE'LL BRIEF TO YOU THAT ADDRESS
14 THIS QUESTION OF WHEN YOU HAVE GROUNDWATER AND SURFACE
15 WATER AND THEY INTERACT IN A MEANINGFUL WAY SUCH THAT
16 YOU NEED TO LOOK AT THEM AS A COMMON SOURCE, AND TO
17 MR. GARRISON'S POINT, THERE ARE MULTIPLE CASES WHERE
18 WE'RE DEALING WITH MULTIPLE BASINS, AS WELL, AND
19 SURFACE WATER. SO THE MOJAVE CASE THAT HAS ALREADY
20 BEEN BRIEFED TO THE COURT INVOLVED MULTIPLE BASINS AND
21 SURFACE WATER IN AN ADJUDICATION JUST LIKE THIS ONE,
22 AND IT WAS A COMMON SOURCE CASE.

23 SO WE WILL GIVE YOU A LOT MORE DETAIL ON
24 THAT, BUT THERE'S A VERY CLEAR LINE OF CASES ON THE
25 COMMON SOURCE, AND THEN, AS THE COURT ALLUDED TO
26 BEFORE, THERE ARE A SEPARATE LINE OF CASES DEALING WITH
27 HOW PHYSICAL CHANGES TO THE WATERSHED MAY RESULT IN
28 INTERCONNECTION THAT IS MOSTLY MADE BY MAN, AND HOW

1 THOSE ARE TO BE DETERMINED TOO.

2 SO THERE'S A HUGE BODY OF CASE LAW THAT WE
3 WILL PRESENT ON THOSE ISSUES THAT WILL INFORM THE
4 COURT'S INTERPRETATION AND DECISIONS AS TO
5 INTERCONNECTION. THERE'S ALSO STATUTORY PROVISIONS. A
6 LOT OF THIS -- WE'VE USED THE TERM -- THE ACRONYM SGMA,
7 THE SUSTAINABLE GROUNDWATER MANAGEMENT ACT, THAT THE
8 ADJUDICATION STATUTES WORK IN PARALLEL WITH SGMA.
9 THERE'S STATUTORY DEFINITIONS THAT ARE RELEVANT IN SGMA
10 THAT WE'LL PRESENT TO THE COURT THAT WILL HELP INFORM
11 THE COURT'S INTERPRETATION OF WHAT "INTERCONNECTED"
12 MEANS. AND THEN THERE'S A REGULATION UNDER SGMA THAT
13 SPEAKS SPECIFICALLY ABOUT, AT LEAST FOR SGMA PURPOSES,
14 WHAT INTERCONNECTED SURFACE WATER MEANS.

15 AND THEN THERE'S LEGISLATURE HISTORY THAT
16 TIES ALL THOSE THINGS TOGETHER, BECAUSE THE LEGISLATIVE
17 HISTORY IS VERY CLEAR THAT SGMA AND THE ADJUDICATION
18 STATUTE DO NOT DISPLACE THE COMMON LAW. SO ALL THE
19 COMMON LAW NEEDS TO BE BROUGHT TOGETHER.

20 SO WE WILL ADDRESS ALL THOSE ISSUES IN A
21 VERY CLEAR FASHION FOR THE COURT, BUT THERE ARE ANSWERS
22 TO ALL OF THOSE QUESTIONS.

23 THE COURT: IT'S GOING TO BE QUITE A
24 CHALLENGE TO MAKE IT CLEAR, BUT GOD BLESS YOU IF YOU
25 CAN.

26 LET ME ASK THIS BEFORE I TURN TO
27 MS. JACOBSON OR OTHERS WHO MAY HAVE A DIFFERENT THEORY
28 OF WHAT INTERCONNECTEDNESS MEANS OR WHERE I'D FIND

1 WISDOM ON THAT TOPIC.

2 I PRINTED OUT THE FOUR EXCERPTS FROM
3 BULLETIN 118 SPECIFIC TO THE FOUR GROUNDWATER BASINS OF
4 INTEREST, AND I TOOK A LITTLE BIT OF TIME TO LOOK AT
5 THE OJAI VALLEY GROUNDWATER ONE BEFORE I WENT ON THE
6 BENCH. IT'S THE ONLY ONE I LOOKED AT, AND INDEED I
7 QUOTED THE PORTION OF IT THAT REFERRED TO THE MAN-MADE
8 IMPROVEMENTS THAT ALLOW TRANSFER OF WATER TO SOME
9 SPREADING BASINS TO RECHARGE THE OJAI BASIN.

10 AS I UNDERSTAND IT, AT LEAST BY THE
11 ASSERTIONS OF SOME OF YOUR ADVERSARIES, MR. HAGERTY,
12 THEY WOULD TELL ME THAT THE AGENCY THAT WROTE
13 BULLETIN 118 HAD, IN BULLETIN 118, CONCLUDED THAT THE
14 GROUNDWATER BASIN WAS NOT CONNECTED TO THE SURFACE
15 FLOW. THAT'S YOUR ADVERSARY'S POSITION, IF I
16 UNDERSTAND RIGHT, CORRECT?

17 MR. HAGERTY: I'M NOT SURE THAT THEY ACTUALLY
18 MEAN THAT AS MUCH, YOUR HONOR, AS THE ISSUE THAT
19 MS. JACOBSON'S RAISED ABOUT THE SEPARATENESS OF THE
20 BASINS THEMSELVES.

21 AND AS WE POINTED OUT, WE'VE ALREADY PUT
22 THIS BULLETIN IN FRONT OF THE COURT BECAUSE WE BELIEVE
23 IT SUPPORTS --

24 THE COURT: YOU PUT AN OPTIMISTIC SPIN ON IT, TO
25 PUT IT ANOTHER WAY. YOU THOUGHT --

26 MR. HAGERTY: NO, I DON'T THINK IT'S OPTIMISTIC.
27 IT SAYS SPECIFICALLY THAT THE BASINS DRAIN TO THE
28 SURFACE WATER AND THAT THE SURFACE WATER INFILTRATES --

1 THE COURT: THANK YOU.

2 SO LET ME TRY MS. JACOBSON AND SEE IF
3 MS. JACOBSON CAN EDUCATE ME ON HOW THIS PART OF
4 BULLETIN 118 SUGGESTS SOMETHING FAVORABLE TO YOUR
5 CLIENT'S POSITION.

6 MS. JACOBSON: YEAH, WHAT I'LL DO IS I'LL TRY TO
7 ALSO GIVE YOU A SUMMARY TO ANSWER YOUR QUESTIONS, NOT
8 TO -- I'M NOT GOING TO GO INTO IT TOO FAR, BUT
9 ESSENTIALLY YOU NEED TO TAKE A STEP BACK TO UNDERSTAND
10 WHAT WE'RE TALKING ABOUT HERE AND QUESTION AS TO HOW IT
11 RELATES TO CCP 833 IN PARTICULAR.

12 AND FROM OJAI'S PERSPECTIVE, AND I CAN'T
13 SPEAK TO ALL THE CAUSES OF ACTION, BUT THIS IS VERY
14 RELEVANT WHERE VENTURA FILED ITS SIXTH CAUSE OF ACTION
15 UNDER THE GROUNDWATER ADJUDICATION STATUTE. THIS IS
16 VERY IMPORTANT. AND THE GROUNDWATER ADJUDICATION
17 STATUTE SPECIFICALLY REFERS TO BULLETIN 118 WHEN
18 DISCUSSING THE PROCESS AND PROCEDURES FOR ADJUDICATING
19 A GROUNDWATER BASIN. SO YOU HAVE TO START WITH THOSE
20 TWO FOUNDATIONAL ISSUES TO UNDERSTAND WHAT'S GOING ON
21 HERE.

22 AND THERE IS COMMON LAW. THERE'S HUNDRED
23 YEARS OF COMMON LAW. THAT HAS NOTHING TO DO WITH THIS
24 STATUTE. AND WE CAN ARGUE OVER THE LEGAL IMPLICATIONS
25 OF THAT, BUT AT THE VERY LEAST I WOULD REFER YOU TO THE
26 STATUTE AND BULLETIN 118, AND BULLETIN 118 IS THE
27 RESULT OF THE DEPARTMENT OF WATER RESOURCES' SCIENTIFIC
28 ANALYSIS AND CONCLUSIONS THAT FROM A GEOLOGIC AND

1 HYDROGEOLOGIC STANDPOINT, THESE BASINS ARE SEPARATE IN
2 THE SENSE THAT THEY ARE PHYSICALLY DISCONNECTED.
3 THERE'S A PHYSICAL DISCONNECTION BETWEEN THE FLOW OR
4 LACK OF FLOW THEREOF IN THE BASINS, AND THAT'S WHY
5 THEY'RE SUPPOSED TO BE ADJUDICATED SEPARATELY.

6 NOW, I HOPE THAT HELPS ANSWER YOUR QUESTION
7 FROM KIND OF A 30,000-FOOT OVERVIEW, BUT ESSENTIALLY
8 YOU HAVE TO KEEP IN MIND THAT WE'RE TALKING ABOUT A
9 CAUSE OF ACTION, FLOOD UNDER CCP 832 AND THE FOLLOWING,
10 AND MAYBE I'M -- I DIDN'T HEAR MR. HAGERTY CORRECTLY,
11 BUT IT SOUNDS LIKE THEY'RE SEEKING TO IMPOSE COMMON LAW
12 UNDER THE SIXTH CAUSE OF ACTION, AND SO IF THEY'RE
13 SEEKING TO IMPOSE COMMON LAW DOCTRINE, THEN THAT'S
14 FINE, BUT YOU CAN'T DO THAT WHEN THERE'S STATUTE
15 DIRECTLY ON POINT.

16 MR. HAGERTY: YOUR HONOR, MAY I RESPOND TO THAT,
17 BECAUSE --

18 THE COURT: I WANT TO HAVE A DIALOGUE WITH
19 MS. JACOBSON A LITTLE FURTHER, BUT THEN I'LL LET YOU
20 RESPOND.

21 MR. HAGERTY: OKAY. I DO NEED TO RESPOND TO
22 THAT POINT BECAUSE THAT'S -- THERE'S A VERY CLEAR --
23 THERE ARE SPECIFIC ANSWERS THAT ARE CONTRARY TO THE
24 REPRESENTATION THAT WAS JUST MADE.

25 THE COURT: WELL, HOLD ONTO YOUR POINT.

26 MR. HAGERTY: OKAY.

27 THE COURT: AND I GET TO TALK FIRST BECAUSE IT'S
28 MY COURTROOM.

1 MR. HAGERTY: OKAY.

2 THE COURT: MS. JACOBSON, THE LANGUAGE IN THIS
3 PORTION OF BULLETIN 118 ON WHICH YOU RELIED WOULD BE
4 WHAT? FIRST THE FACT THAT THEY CONSIDERED A STANDALONE
5 GROUNDWATER BASIN, I ASSUME?

6 MS. JACOBSON: YES. I THINK YOU HAVE TO LOOK AT
7 NOT JUST THE LANGUAGE OF THIS SPECIFIC BULLETIN FOR
8 WHAT IS AT BASIN 4.01, I THINK. AND I'M JUST GOING OFF
9 THE TOP OF MY HEAD. BUT, YES, UNDERSTAND THE PURPOSE
10 OF BULLETIN 118 IN GENERAL AND WHAT THE DEPARTMENT OF
11 WATER RESOURCES WAS TASKED WITH. WHAT DOES IT MEAN TO
12 HAVE A SEPARATE BASIN.

13 AND ESSENTIALLY -- AND I'M TRYING TO
14 SUMMARIZE THIS IN LAYMAN TERMS, BUT ESSENTIALLY IT
15 MEANS THAT THIS BASIN, THIS LOCATION, IS PHYSICALLY, BY
16 WAY OF A FAULT OR THE -- I'LL CALL IT SUBSTRATE OR
17 ALLUVIUM OR OTHER PHYSICAL GEOLOGIC REASONS, IS
18 SEPARATE FROM THE ONE NEXT DOOR.

19 THE COURT: THANK YOU.

20 OKAY. MR. HAGERTY, YOU'VE GOT THE FLOOR.

21 MR. HAGERTY: THANK YOU, YOUR HONOR.

22 VERY QUICKLY, THERE IS SPECIFIC -- THERE
23 ARE SPECIFIC PROVISIONS IN SGMA AND IN THE ADJUDICATION
24 STATUTES THAT EXPRESSLY SAY IT IS NOT DISPLACING COMMON
25 LAW, AND WE WILL PRESENT TO YOU LEGISLATIVE HISTORY
26 THAT WILL DEMONSTRATE UNEQUIVOCALLY THAT THE WRITER OF
27 THE BILL WANTED TO CONTINUE AND INCORPORATE COMMON LAW
28 INTO THE STATUTE. THE STATUTE WAS MERELY A WAY TO TRY

1 TO HELP EXPEDITE AND IMPLEMENT EXISTING COMMON LAW.

2 SO --

3 THE COURT: IS THIS THE FIRST WAY YOU COULD TRY
4 AND GET ADEQUATE COURT JURISDICTION OVER FEE SIMPLE
5 OWNERS WITHOUT NAMING THEM AS PARTIES AND SERVING THEM
6 WITH A SUMMONS?

7 MR. HAGERTY: THAT'S PART OF IT, YOUR HONOR,
8 YES. I MEAN, RATHER THAN HAVING TO GO OUT AND
9 PERSONALLY SERVE EVERYONE, THERE WAS A PROCEDURE
10 ADOPTED THAT WOULD ALLOW PEOPLE TO BE BROUGHT IN AND
11 BASINS TO BE BROUGHT IN.

12 THE COURT: THAT WAS PART OF WHAT MADE IT
13 ALLEGEDLY STREAMLINED.

14 MR. HAGERTY: CORRECT, YOUR HONOR, BUT VERY
15 CLEARLY AND UNEQUIVOCALLY, THE COMMON LAW HAS NOT BEEN
16 DISPLACED, AND IT'S UN -- THERE'S NO QUESTION ABOUT
17 THAT. SO THE HUNDRED YEARS OF COMMON LAW THAT WE WILL
18 PRESENT TO YOU IS ABSOLUTELY RELEVANT, AND IT WILL HELP
19 GOVERN THE COURT'S DECISION-MAKING IN PHASE 1.

20 AND I DO WANT TO MAKE A POINT BECAUSE I
21 THINK THIS IS AN IMPORTANT ONE. YOU'LL HEAR ABOUT THIS
22 LATER, YOUR HONOR, BUT WE -- YOU KNOW, I'M NOT SURE IN
23 THE END ON THE SECOND QUESTION OF WHAT THE BASIN
24 BOUNDARIES WILL BE, BUT ULTIMATELY THERE WILL BE MUCH
25 DISPUTE. AND BULLETIN 118 WILL GUIDE THE PARTIES AND
26 THE COURT ON THAT ISSUE.

27 THE INTERESTING THING IS THAT YOU'LL SEE
28 EVENTUALLY THAT THE CITY OF OJAI AND THE EAST OJAI

1 GROUP ARE ACTUALLY ARGUING IN THE WAY THAT'S CONTRARY
2 TO THAT, BECAUSE THEY WANT TO DIVIDE UP THEIR OWN BASIN
3 AND TALK ABOUT THIS PART BEING SEPARATE FROM THIS PART
4 AND WHATNOT. SO THAT IS ANOTHER LEGAL ISSUE THAT --

5 THE COURT: NOT JUST SEPARATING UPPER OJAI FROM
6 OJAI --

7 MR. HAGERTY: CORRECT.

8 THE COURT: -- BUT PUTTING A LINE IN THE MIDDLE
9 OF ONE OF THOSE TWO BASINS FOR EACH OF THEM?

10 MR. HAGERTY: THAT'S RIGHT, YOUR HONOR.

11 AND WE'LL HAVE TO BRIEF THAT, AND MAYBE
12 THEY HAVE SOME ARGUMENTS, BUT, YOU KNOW, IN TERMS OF
13 THE BASIN BOUNDARIES IN 118, WE PUT THAT IN FRONT OF
14 THE COURT FOR THE REASONS IT SAYS, THAT THERE IS A
15 DISCHARGE FROM THE BASIN AND THAT SURFACE WATER
16 RECHARGES AND THE -- ARTIFICIALLY WATER IS BROUGHT TO
17 THE BASIN. SO WE PUT THAT TO SUPPORT OUR POSITION.
18 MS. JACOBSON CAN ARGUE, YOU KNOW, OTHER ISSUES.

19 BUT THAT'S QUESTION NO. 1, AND, AGAIN,
20 WE'LL CITE YOU TO THE DEFINITION OF "INTERCONNECTED"
21 THAT'S IN THE REGULATIONS, AND ALL THAT SAYS IS THAT
22 THERE JUST NEEDS TO BE A HYDRAULIC CONNECTION BETWEEN
23 THE SURFACE WATER AND THE BASIN AT ANY POINT. AND
24 WE'LL TALK ABOUT THAT MORE.

25 SO THESE QUESTIONS, YOUR HONOR, THERE'S A
26 LOT OF HISTORY ABOUT TRYING TO MAKE THIS TOO COMPLEX,
27 BUT THEY DO BOIL DOWN TO VERY SIMPLE ISSUES THAT WE
28 WILL PRESENT TO THE COURT IN FURTHER BRIEFING.

1 MR. PATTERSON: YOUR HONOR, THIS IS GREG
2 PATTERSON, ON BEHALF OF THE OJAI EAST GROUP.

3 THE COURT: GO AHEAD, MR. PATTERSON.

4 MR. PATTERSON: OKAY. I THINK THERE ARE SOME
5 VERY SIMPLE QUESTIONS HERE, AND THIS IS AN
6 UNPRECEDENTED CASE INVOLVING FOUR BASINS UNDER THE SGMA
7 STATUTE. IT'S NEVER BEEN DONE BEFORE, SO YOU'RE GOING
8 TO HAVE TO FIGURE THAT OUT. AND I GET THAT THERE'S A
9 LOT OF ISSUES, BUT I THINK THERE'S SOME VERY SIMPLE
10 QUESTIONS HERE.

11 ONE IS WITH RESPECT TO MY CLIENTS. DOES
12 THEIR GROUNDWATER PUMPING AFFECT THE FISHERY AND THE
13 WATER FLOW WITHIN THE RIVER. AND THIS IS REALLY A CASE
14 THAT WAS GENERATED, I WANT TO REMIND EVERYBODY, BY THE
15 CHANNELKEEPER FOLKS, WHO WANTED TO PRESERVE THE
16 FISHERY.

17 AND SO THE QUESTION FOR THE COURT IS A VERY
18 SIMPLE ONE: DOES THE GROUNDWATER PUMPING AFFECT THE
19 FISHERY?

20 IT'S NOT A QUESTION OF ALL OF THIS STUFF
21 ABOUT WHETHER THERE'S SOME -- SOME POSSIBLE CONNECTION
22 AT SOME PERIOD OF TIME OVER HUNDREDS OF YEARS. IT'S
23 REALLY DOES THIS PUMPING AFFECT THE FISHERY.

24 AND OUR POSITION IS IT DOESN'T. AND SO WE
25 SHOULDN'T BE PART OF AN EQUAL ALLOCATION OF COST
26 RELATED TO SAVING THE FISHERY. THAT'S OUR POSITION.

27 THE COURT: BEAR WITH ME. MR. PATTERSON, DO YOU
28 THINK I GET TO THAT QUESTION IN THE PHASE 1 TRIAL

1 BECAUSE --

2 MR. PATTERSON: I DO --

3 THE COURT: BEAR WITH ME.

4 MR. PATTERSON: YES, I DO.

5 THE COURT: GIVE ME A SECOND, MR. PATTERSON, IF
6 YOU PLEASE.

7 MR. PATTERSON: SORRY.

8 THE COURT: THAT'S OKAY. I KNOW YOU'RE EAGER.
9 LIKE MR. HAGERTY, YOU LIKE TO STEP ON THE JUDGE'S
10 LINES, BUT GIVE ME A SECOND.

11 MR. PATTERSON: SURE.

12 THE COURT: I KNOW THAT I'M BEING GIVEN EXPERTS
13 WHO ARE GOING TO COMPLAIN THAT WHEN THERE'S NOT ENOUGH
14 WATER FOR THE FISH, THAT SOMEHOW DEMONSTRATES SOMETHING
15 ABOUT INTERCONNECTEDNESS.

16 YOURS IS SLIGHTLY DIFFERENT, BUT DO YOU
17 BELIEVE THAT I GET TO THIS IN THE PHASE 1 TRIAL BECAUSE
18 THE ADEQUACY OF THE WATER FOR THE FISH IS RELEVANT OR
19 BECAUSE THE FACTUAL CAUSATION OF THE EXTENT OF YOUR
20 CLIENT'S PUMPING TO CHANGE FLOW IN THE STREAM IS
21 RELEVANT WHETHER OR NOT THE FISH ARE HAPPY?

22 WALK ME THROUGH HOW YOU SEE YOUR -- OR IS
23 THIS A SIXTH ISSUE THAT NEEDS TO BE ADDED TO THE LIST
24 OF THE FIVE ISSUES TO GET TO YOUR ISSUE, MR. PATTERSON?

25 MR. PATTERSON: I DON'T THINK SO, BECAUSE I
26 THINK THE INTERCONNECTIVITY INVOLVES A QUESTION OF
27 WHETHER -- EVEN IF THERE IS SOME -- EVEN IF THERE IS
28 SOME SLIGHT INTERCONNECTIVITY, DOES IT AFFECT THE

1 FISHERY, DOES IT AFFECT THE WATER FLOW THAT AFFECTS THE
2 FISHERY, BECAUSE THAT'S WHAT THIS CASE IS REALLY ALL
3 ABOUT FUNDAMENTALLY.

4 SO THERE'S GOING TO BE A -- FROM MY
5 CLIENT'S PERSPECTIVE, THERE IS NO INTERCONNECTION
6 BETWEEN THE GROUNDWATER PUMPING AND THE SURFACE WATER
7 FLOW WITHIN THE VENTURA RIVER AND THE TRIBUTARIES WHERE
8 THEY'RE LOCATED. AND THAT'S GOING TO BE A SIGNIFICANT
9 QUESTION THAT I THINK IS WITHIN THIS PHASE 1 POSITION
10 HERE.

11 BUT I THINK THE COURT NEEDS TO BE AWARE
12 THAT IT'S NOT JUST SIMPLY A MATTER OF, YOU KNOW,
13 WHETHER THERE'S SOME PHILOSOPHICAL CONNECTIVITY BUT
14 WHETHER, IN FACT, THE DATA SHOWS THAT THERE IS SOME
15 INTERCONNECTIVITY THAT AFFECTS THE FISHERY FROM THIS
16 GROUNDWATER PUMPING.

17 THE COURT: MR. PATTERSON, I DIDN'T SCRATCH THE
18 SURFACE OF LOOKING AT YOUR EXPERT OR EXPERTS' REPORT.
19 DO YOU HAVE SOME EXPERT WHO IS GOING TO PRETTY MUCH
20 DIRECTLY SAY THESE PEOPLE ONLY TAKE Q ACRE-FEET A
21 DECADE AND, THEREFORE, I CONCLUDE IT HAS NO IMPACT ON
22 THE FISHERY?

23 MR. PATTERSON: I THINK WHAT YOU'LL SEE, YOUR
24 HONOR, FROM MY -- I'M GETTING INTO A LOT OF SUBSTANTIVE
25 STUFF HERE IN THE STATUS CONFERENCE, BUT THAT'S OKAY
26 BECAUSE YOU NEED TO GET EDUCATED. I APPRECIATE THAT.
27 I APPRECIATE YOUR EFFORT TO TRY TO GET EDUCATED.

28 BUT THE FACT OF THE MATTER IS THAT OUR

1 EXPERT REPORT WILL SHOW THAT THERE'S NO INTERCONNECTION
2 BETWEEN OUR GROUNDWATER PUMPING AND THE SURFACE WATER
3 FLOW OF THESE -- OF THE VENTURA RIVER OR THE
4 TRIBUTARIES THAT -- PERIOD, FRANKLY. BUT -- AND THAT
5 THEY DON'T HAVE ANY EFFECT ON THE FISHERY AND,
6 THEREFORE, IT SHOULD NOT BE SUBJECT TO SOME SORT OF,
7 YOU KNOW, PUBLIC AGENCY OVERSIGHT AND COST RELATED TO
8 SAVING THE FISHERY, WHICH IS WHAT THIS CASE IS ALL
9 ABOUT.

10 THE COURT: THANK YOU, MR. GARRISON.

11 IS THERE ANYTHING --

12 OR MR. PATTERSON, RATHER.

13 IS THERE ANYTHING SPECIFIC YOU WANT ME TO
14 DO TODAY, MR. PATTERSON?

15 MR. PATTERSON: WELL, I'M NOT SURE WHERE WE'RE
16 GOING FROM HERE, OTHER THAN I THINK THERE NEEDS TO BE
17 SOME -- SOME DISCUSSION REGARDING THE DISCLOSURE OF THE
18 SUPPLEMENTAL AND OTHER EXPERT WITNESS REPORTS, BECAUSE
19 I WANT TO INFORM THE COURT THAT I'VE BEEN CONTACTED BY
20 A NUMBER OF OTHER PARTIES WHO MAY WISH TO PARTICIPATE
21 IN OUR EXPERT'S REPORT.

22 IT WON'T CHANGE THE OPINIONS OF THE REPORT,
23 IT WILL JUST BE ADDING WELLS IN CERTAIN LOCATIONS
24 WITHIN THE -- WITHIN THE WATERSHED, AND THEY'RE TALKING
25 TO ME ABOUT THAT, AND SO I THINK THERE NEEDS TO BE SOME
26 DISCUSSION ABOUT THOSE FOLKS WHO, YOU KNOW, CAN'T
27 RETAIN AN EXPERT BY THEMSELVES BECAUSE THEY CAN'T
28 AFFORD IT, BUT MAY BE INVOLVED AND MAY BE IMPACTED BY

1 THE CITY'S CASE, IN TERMS OF WHAT THEIR WATER USE MAY
2 BE AND HOW WE DEAL WITH THAT.

3 AND, YOU KNOW, PART OF MY THOUGHT ABOUT
4 THAT WAS THAT -- AND I HAVEN'T BEEN ABLE TO TALK TO
5 SHAWN OR THE CITY ABOUT THIS SO IT'S AN OPEN DISCUSSION
6 ABOUT HOW WE DO THIS, BUT THERE ARE OTHER PARTIES WHO
7 MAY BE INTERESTED IN SORT OF JOINING WHAT OUR EXPERT
8 HAS STATED IN THE DISCOVERY, AND WE'RE TRYING TO FIGURE
9 OUT HOW THAT HAPPENS, AND THERE'S SOME TIMING ISSUES
10 THAT WE HAVE TO TALK ABOUT.

11 ONE OPTION WOULD BE IS THAT THE FOLKS WHO
12 HAVE NOT SUBMITTED AN EXPERT REPORT CAN SUBMIT
13 SOMETHING COTERMINOUS WITH THE DECEMBER DEADLINE THAT
14 WE NOW HAVE FOR SUPPLEMENTAL REPORTS.

15 I CAN TALK TO -- THIS IS COMING AT SHAWN
16 AND THE CITY WITHOUT HAVING MY OPPORTUNITY TO HAVE A
17 CONVERSATION WITH THEM SO I DON'T WANT TO CAUSE ANY
18 ISSUES, BUT THERE ARE -- FRANKLY, YOUR HONOR, THERE ARE
19 A NUMBER OF PARTIES WHO SIMPLY CAN'T AFFORD AN EXPERT
20 BUT MAY BE IN THE SAME BUCKET AS THE CITY OF OJAI AND
21 THE OJAI EAST GROUP, AND THEY'RE IN DISCUSSIONS WITH
22 US. IT TAKES TIME, IT TAKES A LOT OF EFFORT BY US TO
23 TRY TO FIGURE OUT HOW WE DO THAT, BUT WE -- MAYBE WE
24 NEED TO HAVE A LITTLE BIT OF DISCUSSION ABOUT HOW WE
25 DEAL WITH HOW THESE PARTIES MIGHT BE ADDED TO AN EXPERT
26 REPORT THAT WE HAVE OR THE CITY OF OJAI HAS, THAT, YOU
27 KNOW -- THAT SHOULD BE INVOLVED AND HAVE A RIGHT TO BE
28 INVOLVED BUT JUST CAN'T AFFORD IT, UNLESS WE FIGURE OUT

1 SOME PROCESS TO DO IT.

2 THE COURT: WHAT I PROPOSE TO DO IS TWO WEEKS
3 FROM TOMORROW, ON TUESDAY, NOVEMBER 2, AT 2:00 P.M., TO
4 SET ANOTHER STATUS CONFERENCE IN THIS CASE, FOR THE
5 LIMITED PURPOSE OF DEALING WITH ANY FURTHER ADJUSTMENTS
6 TO EXPERT DISCLOSURES, WHICH POSSIBLY COULD INCLUDE THE
7 CONCEPT YOU ALLUDE TO, MR. PATTERSON, AND ASK FOR A
8 REPORT FROM THE EAST OJAI GROUP AND THE CITY OF
9 VENTURA, WITH ANY OTHERS WHO WANT TO JOIN INTO IT AS
10 YOU WISH, BUT SPECIFICALLY JOINT BETWEEN THOSE TWO SETS
11 OF LITIGANTS, TO BE SERVED BY OCTOBER 28TH, A WEEK FROM
12 THURSDAY.

13 I'LL SEPARATELY ALERT YOU THAT ON
14 NOVEMBER 15TH I'M GOING TO RESERVE ALL THE AFTERNOON,
15 FROM 1:30 TO 4:30 P.M., FOR A MORE EXTENSIVE STATUS
16 CONFERENCE TO TALK ABOUT HOW TO STRUCTURE THE TRIAL,
17 AND REQUEST THAT EACH PARTY THAT HAS A POSITION ON THE
18 ISSUE, BY MONDAY, NOVEMBER 8TH, SUBMIT A BRIEF WITH
19 WHAT YOU SUGGEST TO BE THE ISSUES OF FACT AND ISSUES OF
20 LAW TO BE TRIED, AND IN WHAT SEQUENCE YOU BELIEVE THEY
21 SHOULD BE TRIED, AND WHETHER OR NOT THERE IS ANY REASON
22 THAT SOME OF THOSE ISSUES BE ADDRESSED BY THE COURT
23 EARLIER THAN FEBRUARY 14TH, WHICH OTHERWISE IS
24 NOMINALLY THE FIRST DAY OF TRIAL, BECAUSE IF, BY WAY OF
25 EXAMPLE, QUESTION OF CAN YOU ADJUDICATE FOUR
26 GROUNDWATER BASINS WOULD HAVE AN IMPACT ON THE
27 PROPRIETY OF PROCEEDING ON FEBRUARY 14TH IS IF ALL FOUR
28 GROUNDWATER BASINS ARE GOING TO BE ADJUDICATED, IT

1 PROBABLY IS GOOD TO GET THAT ANSWER SOONER THAN THE
2 MORNING OF FEBRUARY 14TH. BUT USE YOUR BRIEFS FOR THE
3 PURPOSE OF THAT.

4 AND I'M NOT REALLY ASKING YOU -- I'LL TAKE
5 AN INCIDENTAL STATUS REPORT FROM THE CITY OF VENTURA ON
6 THINGS LIKE DEFAULT STATUS AND THE REST, MR. HAGERTY,
7 WITH OR WITHOUT OTHER PEOPLE OPTING IN, BUT THAT'S
8 SEPARATE FROM WHAT I REALLY WANT, WHICH IS YOU SPEAKING
9 JUST FOR YOUR CLIENT, MR. HAGERTY, MR. PATTERSON FOR
10 HIS PART, MS. JACOBSON FOR HER PART, EACH GIVING ME
11 THEIR IDEA OF HOW THE CASE OUGHT TO BE TRIED.

12 NOW, IF MS. JACOBSON AND MR. PATTERSON ARE
13 OF COMMON MIND AND WANT TO PRESENT A JOINT BRIEF
14 BECAUSE THEY'RE IN THE SAME PLACE, SO BE IT.

15 YOU'RE FAIRLY NEW TO THE PARTY,
16 MR. JUNGREIS, ALTHOUGH YOU REPRESENT AN INCREDIBLY
17 IMPORTANT CLIENT, BUT THEY HAVE SORT OF POLITICAL
18 CONNECTIONS AND CUSTOMER CONNECTIONS WITH EVERYBODY IN
19 THE MIDDLE OF THIS FIGHT, SO AS I UNDERSTAND IT,
20 THEY'RE TRYING TO ACT LIKE THE DISINTERESTED
21 GRANDFATHER WITH SQUABBLING CHILDREN AND GRANDCHILDREN,
22 HOPING THAT PEACE WILL BREAK OUT IN THE FAMILY, AND
23 JUST HOLDING THEIR BREATH UNTIL THE END OF THANKSGIVING
24 DINNER, HOPING THAT SOMETHING BETTER WILL HAPPEN, BUT
25 THAT MAKES YOU FAIRLY AGNOSTIC ABOUT TAKING POSITIONS,
26 AS I UNDERSTAND IT, UNLESS YOUR CLIENT HAS CHANGED ITS
27 STRIPES.

28 MR. JUNGREIS: WELL, YOUR HONOR, I THINK WE JUST

1 WANT TO HAVE THE OPPORTUNITY, IF THERE ARE ISSUES SUCH
2 AS CAUSATION -- AND I DON'T -- I DON'T TAKE ISSUE,
3 NECESSARILY, WITH WHAT MR. PATTERSON SAID ABOUT WHAT
4 HE'S TRYING TO ESTABLISH BETWEEN A HYDRAULIC CONNECTION
5 BETWEEN GROUNDWATER PUMPING AND THE FISHERY, BUT IF
6 WE'RE JUST TALKING ABOUT WHO'S IN AND WHO'S OUT -- AND
7 WE MENTIONED THIS IN OUR CASE MANAGEMENT STATEMENT. IF
8 WE'RE TALKING ABOUT BOUNDARIES AND WHO IS IN AND WHO IS
9 OUT, WHICH IS A HYDROGEOLOGIC MATTER, I THINK CASITAS
10 IS COMFORTABLE REMAINING WHERE IT IS RIGHT NOW, WHERE
11 IT'S -- OTHERS HAVE A LARGER INTEREST IN TRYING THAT
12 ISSUE IN PHASE 1.

13 HOWEVER, IF WE GET INTO CAUSE AND EFFECT,
14 WHERE PUMPING IN AREA A CAUSES AN IMPACT IN AREA B --
15 THE COURT: INTERCONNECTEDNESS SEEMS TO CRACK
16 THE DOOR OPEN ON THAT, ALTHOUGH IF PEOPLE AS ADVOCATES
17 CAN PERSUADE ME THAT I CAN ADJUDICATE
18 INTERCONNECTEDNESS AND BE SIMPLISTIC OR OTHERWISE NOT
19 HAVE TO WORRY ABOUT THIS -- SIMPLISTIC HAS A CERTAIN
20 CHARM WHEN YOU'RE IN A COURT OF LAW. IT MAY BE
21 INTELLECTUALLY DISHONEST, AND I CERTAINLY HAVE NO IDEA
22 OF WHAT THE COMMON LAW -- OR THE COMMON SOURCE IS GOING
23 TO TEACH US AND WHETHER IT'S STILL RELEVANT, BUT
24 INTERCONNECTEDNESS LOOKS LIKE THE THIN EDGE OF THE
25 WEDGE OF THE SLIPPERY SLOPE -- TAKE WHATEVER FIGURE OF
26 SPEECH YOU WANT -- THAT TAKES US RIGHT INTO THE MIDDLE
27 OF, YOU KNOW, IF YOU TOOK TWO ACRE-FEET, IT WOULDN'T
28 HURT THE FISH 10 MILES AWAY, BUT YOU TOOK 500

1 ACRE-FEET, SO IT DID HURT THE FISH 10 MILES AWAY.

2 MR. JUNGREIS: AND THAT IS THE CONCERN, YOUR
3 HONOR. AS I HEAR MORE -- YOU KNOW, WE DIDN'T DESIGNATE
4 AN EXPERT, BUT AS I HEAR MR. PATTERSON REQUEST PERHAPS
5 TO BE ABLE TO BRING OTHERS IN, CASITAS MAY WANT, BASED
6 ON OUR EVOLVING UNDERSTANDING OF WHAT PHASE 1 IS, TO
7 DESIGNATE AN EXPERT. AND WE MAY NOT. I DON'T KNOW.

8 THE COURT: WELL, THAT'S ONE REASON WHY I'M
9 GOING TO HAVE THE DO-OVER ON NOVEMBER 2, THOUGH.

10 MR. JUNGREIS: OKAY.

11 THE COURT: CAN YOU LIVE WITH THAT, MR. HAGERTY?

12 MR. HAGERTY: YOUR HONOR, I THINK THE APPROACH
13 THAT YOU'VE ARTICULATED IS PERFECT AND WILL HELP
14 CLARIFY THE ISSUES, BUT I DO HAVE ONE QUESTION. YOU
15 ASKED THESE QUESTIONS. DO YOU WANT BRIEFING ON THOSE
16 AS PART OF THIS PROCESS OR SHOULD WE HAVE A MEET AND
17 CONFER TO DISCUSS ANSWERS TO THOSE QUESTIONS AND TO
18 HAVE THOSE SUBMITTED AFTER WE DO THIS FACT AND LAW AND
19 HOW WE SHOULD PHASE THE PHASE 1 TRIAL?

20 THE COURT: YOU KNOW, JUST WITNESS MY DISCUSSION
21 WITH MR. JUNGREIS A SECOND AGO, HOW BROAD OR NARROW
22 INTERCONNECTEDNESS IS FOR PURPOSES OF HOW THE TRIAL IS
23 BROAD OR NARROW FACTUALLY SEEMS TO FLOW FROM THE NATURE
24 OF THAT QUESTION I'M TO DECIDE, AND I THINK THAT EACH
25 PARTY, THROUGH THEIR ADVOCATE, SHOULD GIVE ME THEIR
26 THEORY OF WHAT INTERCONNECTEDNESS IS ALL ABOUT, BECAUSE
27 IT'S GOING TO BE THE RELEVANCE HOOK FOR WHETHER I
28 REALLY WANT TO HEAR FROM A FISHERIES EXPERT OR SOME

1 SUCH OR A VEGETATION EXPERT, OR WHETHER SOMEHOW IT'S
2 SUCH A SIMPLISTIC QUESTION THAT ALL THIS COMPLICATION
3 IS UNNEEDED AND SOMEHOW I CAN DO A CHOP-CHOP, YOU KNOW,
4 REAL SIMPLE.

5 SO I THINK YOU, AS ADVOCATES IN EACH OF
6 THESE BRIEFS, NEED TO GIVE ME YOUR THEORY OF WHAT
7 INTERCONNECTEDNESS MEANS, BECAUSE IT PRETTY MUCH IS THE
8 ROAD MAP TO WHICH EXPERTS AND WHICH FACT ISSUES SHOULD
9 INFORM THE DECISION.

10 MR. HAGERTY: I THINK THAT'S RIGHT, YOUR HONOR,
11 AND I DO THINK --

12 THE COURT: YOU WILL HAVE A FAIR BROAD VIEW, IF
13 I UNDERSTAND RIGHT.

14 MR. HAGERTY: WELL, OUR VIEW IS GOING TO DIFFER
15 FROM MR. PATTERSON'S BECAUSE WE DON'T BELIEVE THAT
16 INDIVIDUAL PUMPING AND WHETHER X HAS AN EFFECT OR
17 WHATEVER IS PART OF PHASE 1, AND THAT'S -- WE'VE
18 CONVEYED THAT TO OTHER PARTIES. AGAIN, THAT'S WHAT --
19 THAT'S A QUESTION THAT IS DRIVING MR. JUNGREIS CRAZY,
20 RIGHT? BECAUSE WE DON'T BELIEVE THAT THAT INDIVIDUAL
21 CLIENT-BY-CLIENT DETERMINATION IS RELEVANT BECAUSE THAT
22 GETS INTO THE WATER RIGHTS --

23 THE COURT: I THINK YOU NEED TO PUT THAT IN THE
24 BRIEF.

25 MR. HAGERTY: I WILL, YOUR HONOR.

26 THE COURT: BEFORE WE DO A REAL IN LIMINE, I
27 GUESS WE WANT TO MEET AND CONFER, BUT I THINK ACTUALLY
28 FOR THESE PURPOSES, GETTING YOUR STUFF OUT ON PAPER

1 WITHOUT ASKING FOR THE COMPLEXITIES OF MEET AND CONFER
2 BETWEEN NOW AND NOVEMBER 8 IS ALL I CAN EXPECT OF YOU.

3 BETWEEN THEN AND WHEN I REALLY DO A TRIAL,
4 I MIGHT TELL YOU AND MS. JACOBSON AND MR. GARRISON TO
5 TRY TO GET IN A ROOM VIRTUALLY IF NOT LITERALLY AND SEE
6 IF YOU CAN DO A MEET AND CONFER ON THE IN LIMINE, BUT
7 AT THE MOMENT I'LL TAKE YOUR FIRST OFFER, EVEN IF IT'S
8 A LITTLE CRUDE AND ROUGH, BECAUSE IT'S NOT A WHOLE LOT
9 OF TIME I'M GIVING YOU.

10 MR. HAGERTY: WELL, WE HAVE THOUGHT ABOUT THIS A
11 LOT, YOUR HONOR, SO WE CAN PRESENT IT CLEARLY TO THE
12 COURT.

13 THE COURT: DIFFERENT QUESTION. PARTICULARLY
14 FOR MR. JUNGREIS, BUT MORE GENERALLY. ARE THESE TALKS
15 GOING ANYWHERE, OR FIGHTING IS TOO MUCH FUN?

16 THAT WAS TO YOU, MR. HAGERTY.

17 MR. HAGERTY: I'M SORRY, YOUR HONOR.

18 THE COURT: ARE PEACE TALKS, MEANING SETTLEMENT
19 TALKS, OR ATTEMPTS TO SEE IF SOME KIND OF WIN-WIN
20 CONSENSUS THAT MOLLIFIES EVERYBODY AND LEAVES VENTURA
21 CITY WHERE IT FEELS IT NEEDS TO BE GOING ANYWHERE, OR
22 IT JUST AIN'T GOING TO HAPPEN?

23 MR. HAGERTY: I BELIEVE THAT IN THE END IT WILL
24 HAPPEN. THAT'S MY PERSONAL BELIEF. BUT I --

25 THE COURT: THEN I SHOULD BE TRYING TO
26 FACILITATE. NOTHING I'VE DONE TODAY DIRECTLY TRIED TO
27 FACILITATE IT. THE MOST I CAN SAY IS I'M MAKING IT
28 OBVIOUS I'M GOING TO FORCE THE CASE TO A PHASE 1 TRIAL

1 IN THE FORESEEABLE FUTURE, AND IF THAT'S GOOD THERAPY,
2 YOU'VE HEARD THAT MUCH, BUT I HAVEN'T OTHERWISE BEEN
3 LEADING INTO HOW TO MASSAGE YOU TO TRY TO FIND A WAY TO
4 COMPROMISE.

5 DO WE NEED, YOU KNOW, THREE WET WINTERS?
6 DO I NEED TONY PIAZZA?

7 MR. HAGERTY: NO. I THINK, YOUR HONOR, WHAT
8 YOUR -- YOUR GOOD THERAPY IS TO KEEP US ON TRACK TO THE
9 PHASE 1 TRIAL. THAT IS THE BEST THERAPY. THAT'S WHAT
10 WE TRY TO GIVE IN OUR OPENING STATEMENTS.

11 THERE ARE DISCUSSIONS THAT ARE HAPPENING,
12 BUT WHAT IS KEEPING THE PARTIES MOVING FORWARD AND WILL
13 FACILITATE ULTIMATE RESOLUTION, IF THERE IS ONE, IS
14 GETTING TO THE PHASE 1 TRIAL, NARROWING THE ISSUES, AS
15 WE'VE DONE TODAY, ALLOWING THE PARTIES TO PRESENT THEIR
16 INFORMATION AND GET A DECISION, BECAUSE THAT IS GOING
17 TO BE THE BEST FACILITATION OF A SETTLEMENT.

18 THE COURT: MR. JUNGREIS, DO YOU AGREE, OR IS
19 THERE SOMETHING ELSE I SHOULD BE DOING?

20 MR. JUNGREIS: NO, YOUR HONOR. I THINK PHASE 1
21 IS -- I MEAN, I THINK THE PARTIES HAVE BEEN TALKING,
22 AND I KNOW MY CLIENT'S BEEN DEVELOPING SOME CONCEPTS.
23 BUT AT THIS POINT, YOU KNOW, DETERMINING WHO IS IN AND
24 WHO IS OUT OF THE ADJUDICATION IS PROBABLY A LOGICAL
25 NEXT STEP.

26 THE COURT: MS. JACOBSON, ANYTHING FURTHER I
27 SHOULD BE DOING TO STIMULATE SETTLEMENT TALKS?

28 MS. JACOBSON: NO, YOUR HONOR. I WISH I HAD AN

1 ANSWER FOR YOU ON THAT, BUT I THINK THE PARTIES HAVE
2 DONE WHAT THEY CAN, AND I THINK IT SOUNDS LIKE PHASE 1
3 IS GOING TO BE NECESSARY TO MAKE ANY REAL HEADWAY IN
4 THIS CASE.

5 THE COURT: MR. PATTERSON, ON THE SETTLEMENT
6 ISSUE?

7 MR. PATTERSON, ANY THOUGHTS ON WHAT I CAN
8 DO TO STIMULATE SETTLEMENT?

9 MR. PATTERSON: SORRY. I THINK THAT, WITH ALL
10 DUE RESPECT TO MR. JUNGREIS, AND I UNDERSTAND THAT THEY
11 HAVE A MULTITUDE OF ISSUES THAT THEY'RE TRYING TO
12 FIGURE OUT, IS THAT I THINK THAT IN THIS CASE CASITAS
13 IS A BIG ELEPHANT IN THIS CASE THAT NEEDS TO GET
14 RESOLVED. WITH RESPECT TO MY CLIENTS, AT LEAST, WHO
15 SOMETIMES TAKE WATER FROM CASITAS AND ALSO HAVE
16 GROUNDWATER PUMPING. SO THEY DON'T REALLY KNOW WHAT
17 CASITAS' POSITION IS AT THIS POINT, SO IT WOULD BE
18 USEFUL TO TRY TO WORK THROUGH THAT AT SOME POINT.

19 I COMPLETELY GET THAT CASITAS HAS A
20 MULTITUDE OF ISSUES TO TRY TO WORK THROUGH GIVEN THIS
21 CASE.

22 I APPRECIATE THE COURT'S SCHEDULE WITH
23 RESPECT TO TRYING TO DEAL WITH THE EXPERT REPORTS AND
24 WHAT HAVE YOU, AND I'M PERFECTLY -- I'M FINE WITH THAT,
25 AND I THINK THAT MAY ENGENDER SOME FURTHER DISCUSSIONS
26 WITH ALL THE PARTIES ABOUT HOW WE GET THIS RESOLVED.

27 BUT FROM MY PERSPECTIVE, WE HAVE A BUNCH OF
28 PARTIES WHO DO NOT THINK -- AND, AGAIN, WE TALK ABOUT

1 INTERCONNECTIVITY, BUT IT'S NOT REALLY ABOUT
2 INTERCONNECTIVITY; IT'S REALLY ABOUT A CASE INVOLVING
3 HOW DO WE SAVE THE FISHERY IN ORDER FOR THE CITY TO
4 SETTLE THIS CASE WITH CHANNELKEEPER. THAT'S WHAT THIS
5 CASE IS REALLY ABOUT.

6 AND SO WE HAVE TO KEEP THAT IN MIND, I
7 THINK, IN TERMS OF HOW WE DEAL WITH THESE ISSUES.

8 THE COURT: THANK YOU.

9 WELL, DO YOU DISAGREE WITH MY
10 CHARACTERIZATION THAT CASITAS IS THE GRANDFATHER WITH A
11 SQUABBLING FAMILY AND TRYING TO HOLD THEIR BREATH UNTIL
12 IT STOPS?

13 MR. PATTERSON: WELL, WE NEED CASITAS ACTIVELY
14 INVOLVED IN THIS IN TERMS OF HOW WE RESPOND TO THIS,
15 BECAUSE IT INVOLVES FINANCIAL ISSUES WITH RESPECT TO MY
16 CLIENTS THAT ARE UNKNOWN.

17 THE COURT: OKAY.

18 MR. JUNGREIS, LAST WORD?

19 MR. PATTERSON: SORRY, MR. JUNGREIS. I DON'T
20 MEAN TO PUT YOU IN A POSITION AT ALL. I KNOW YOU'VE
21 GOT A LOT OF STUFF TO GO THROUGH.

22 MR. JUNGREIS: WE'RE HERE, YOUR HONOR, AND WE'RE
23 PART OF THE PROCESS, AND SO WHETHER WE'RE A PART OF
24 THAT PROCESS TO THE DEGREE OR THE LEVEL OF SPEED THAT
25 MY -- OTHERS MIGHT WANT, I DON'T KNOW, BUT WE'RE
26 COMMITTED AND WE'RE -- WE KNOW WE'RE PART OF THE
27 SOLUTION AND WE'RE HERE.

28 THE COURT: OKAY.

1 I DO NEED TO RECESS IN A MOMENT.

2 MR. HAGERTY, DO YOU HAVE WHAT YOU NEED FOR NOTICE?

3 MR. HAGERTY: I DO, YOUR HONOR. I THINK

4 MR. HERREMA ASKED A GOOD QUESTION ABOUT THE TIME ON THE
5 2ND. I DON'T -- THE NOVEMBER 2ND CMC.

6 THE COURT: DID I STATE A TIME, ALDWIN?

7 OKAY. BEAR WITH ME.

8 MS. BLISS: YOUR HONOR, MAY I SPEAK?

9 THE COURT: WHO IS THIS? MS. BLISS?

10 MS. BLISS: THIS IS MS. BLISS.

11 THE COURT: I RECOGNIZE YOUR VOICE.

12 HANG ON A SECOND.

13 THE TIME ON NOVEMBER 2ND IS INTENDED TO BE
14 2:00 P.M.

15 MR. HAGERTY: THANK YOU, YOUR HONOR.

16 THE COURT: GO AHEAD, MS. BLISS. YOU'VE GOT 60
17 SECONDS.

18 MS. BLISS: ALL RIGHT.

19 A COUPLE OF THINGS. FIRST, THERE WAS AN
20 OCTOBER 22ND DEADLINE FOR CERTAIN PARTIES WHO ARE NOT
21 SOME OF THE DESIGNATED MAJOR PLAYERS TO DESIGNATE A --
22 AN EXPERT AND FILE THAT EXPERT'S REPORT. AM I CORRECT
23 THAT BECAUSE OF THIS NEW SCHEDULE, THAT DEADLINE NO
24 LONGER APPLIES?

25 THE COURT: I WOULD INTEND THAT TO STILL BE IN
26 EFFECT, SUBJECT TO BEGGING FOR MERCY IF YOU BLOW THE
27 DEADLINE.

28 MS. BLISS: WELL, LET ME JUST SAY IN ADVANCE

1 THAT IT'S PROBABLE THAT THE DEADLINE WILL BE BLOWN,
2 BECAUSE WE ARE IN THE PROCESS -- THERE ARE SOME PARTIES
3 IN THE UPPER OJAI WHO ARE FORMING A GROUP TO HIRE OR
4 ENGAGE OUR OWN EXPERT, AND THE EXPERT IS A WILLING
5 EXPERT BUT THE DETAILS HAVEN'T BEEN WORKED OUT, AND
6 ALSO WE ARE IN THE PROCESS OF TRYING TO ENGAGE COUNSEL
7 TO HELP WITH SOME OF THE DEPOSITION-TYPE WORK THAT MAY
8 GO ON. SO IN TERMS OF WHO'S IN AND WHO'S OUT, WE'D
9 LIKE TO BE ABLE TO PRESENT THAT EVIDENCE, BUT I DON'T
10 THINK WE'RE GOING TO HAVE A REPORT BY FRIDAY. SO --

11 THE COURT: I WOULD TAKE IT UP WITH MR. HAGERTY
12 AND THE REST AND SEE IF YOU CAN GET THEM TO AGREE -- I
13 WILL AGREE TO A DEADLINE EXTENSION IF THEY AGREE TO IT,
14 BUT I'M NOT FORCING IT TODAY. SO DO IT OFFLINE WITH
15 MR. HAGERTY.

16 MS. BLISS: IF THEY DON'T AGREE TO IT, THEN WE
17 ARE OUT IN THE COLD? IS THAT MY IMPRESSION?

18 THE COURT: NO. YOU'LL HAVE TO BEG FOR MERCY
19 FOR BLOWING THE DEADLINE OR MAKE AN EX PARTE
20 APPLICATION IN MY ABSENCE. I WILL NOT BE HERE TOMORROW
21 THROUGH FRIDAY OR NEXT MONDAY. IN MY ABSENCE, IF YOU
22 HAVE AN EX PARTE APPLICATION, ASK IT TO BE REFERRED TO
23 JUDGE BUCKLEY IN DEPARTMENT 1.

24 MS. BLISS: JUDGE BUCKLEY IN DEPARTMENT 1. ALL
25 RIGHT.

26 I WOULD ALSO LIKE TO SAY THAT -- AND I
27 DON'T KNOW WHAT HAPPENED IN THE FIRST 15 MINUTES. I
28 HAD A PROBLEM GETTING CONNECTED. BUT IN TERMS OF WHO'S

1 IN AND WHO'S OUT, I HAVE TO SAY THAT WE'RE VERY MUCH
2 IN. I DON'T THINK THAT UPPER OJAI BELONGS IN THIS AT
3 ALL, AS HAS BEEN OUR CONSISTENT POSITION, AND I WAS
4 VERY MUCH IN AGREEMENT WITH THE WAY THAT THE CITY OF
5 OJAI HAD FRAMED IN THEIR STATUS CONFERENCE REPORT WHAT
6 SHOULD BE COVERED IN PHASE 1; HOWEVER, IT SEEMS THERE
7 HAVE BEEN DISCUSSIONS GOING ON AFTER -- APPARENTLY
8 DURING THE END OF THIS WEEK, SO I DON'T KNOW WHAT THE
9 CURRENT STATUS IS OF THAT.

10 BUT I WILL SAY THAT AS FAR AS UPPER OJAI
11 BASIN IS CONCERNED, AS TO CONNECTIVITY, IT'S MORE THAN
12 JUST A STREAM FLOWING OVER A BASIN, BECAUSE YOU COULD
13 GET CONNECTIVITY JUST BY THE FACT THAT A STREAM IS
14 GAINING OR LOSING GROUNDWATER, AND THAT IS NOT
15 SUFFICIENT, I THINK, TO REQUIRE AN ADJUDICATION OF THE
16 WHOLE BASIN. I THINK WHAT'S AT ISSUE IS WHAT IS
17 HAPPENING WITHIN THE BASIN, NOT INDIVIDUAL WELLS, ONLY
18 TO THE EXTENT AS OVERALL WHAT IS HAPPENING IN THE
19 BASIN, AND SO PUMPING -- PUMPING IS REALLY THE NUMBER
20 ONE ISSUE WITH UPPER OJAI, AND I PRESUME THAT'S GOING
21 TO BE COVERED IN PHASE 1. AND I DON'T KNOW THAT -- AND
22 I AGREE WITH MR. PATTERSON THAT IT'S THE EFFECT UPON
23 THE FISHERY THAT IS AT ISSUE.

24 I'LL JUST LEAVE IT AT THAT, AND I WILL
25 PROBABLY BEG FOR MERCY AND GO FROM THERE. WE DON'T
26 BELONG IN THIS CASE.

27 THE COURT: OKAY. THANK YOU. WITH THAT, COURT
28 IS IN RECESS. PLAINTIFF, GIVE NOTICE. I'LL SEE YOU ON

1 THE 2ND.

2 (THE PROCEEDINGS WERE CONCLUDED AT
3 2:59 P.M.)

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TRANSCRIPT OF PROCEEDINGS

October 18, 2021

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT SSC 10 HON. WILLIAM F. HIGHBERGER, JUDGE
4 SANTA BARBARA CHANNELKEEPER, A)
CALIFORNIA NON-PROFIT)
5 CORPORATION,)
))
6 PETITIONER,)
))
7 V.) NO. 19STCP01176
))
8 STATE WATER RESOURCES CONTROL)
BOARD, A CALIFORNIA STATE)
9 AGENCY, ET AL.,)
))
10 RESPONDENTS.)
))
11))
AND RELATED CROSS-ACTION.)
12))

REPORTER'S CERTIFICATE

15 I, RONALD L. COOK, CSR, CCR, CRR, RDR, FAPR,
16 CSR NO. 13928, OFFICIAL PRO TEM COURT REPORTER OF THE
17 SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE
18 COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
19 FOREGOING PAGES, 1 THROUGH 60, INCLUSIVE, COMPRISE A
20 TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS TAKEN IN
21 THE ABOVE-ENTITLED MATTER REPORTED BY ME ON MONDAY,
22 OCTOBER 18, 2021.

24 DATED: OCTOBER 25, 2021.



27 _____
28 RONALD L. COOK, CSR NO. 13928
OFFICIAL PRO TEM COURT REPORTER

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