

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT SSC 10 HON. WILLIAM F. HIGHBERGER, JUDGE

SANTA BARBARA CHANNELKEEPER, A )  
CALIFORNIA NON-PROFIT )  
CORPORATION, )  
 )  
 PETITIONER, )  
 )  
 V. ) NO. 19STCP01176  
 )  
STATE WATER RESOURCES CONTROL )  
BOARD, A CALIFORNIA STATE )  
AGENCY, ET AL., )  
 )  
 RESPONDENTS. )  
 )  
\_\_\_\_\_)  
 )  
AND RELATED CROSS-ACTION. )  
\_\_\_\_\_)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

NOVEMBER 2, 2021

2:15 P.M.

APPEARANCES:

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TRANSCRIPT OF PROCEEDINGS

November 02, 2021

1 CASE NUMBER: 19STCP01176  
2 CASE NAME: SANTA BARBARA CHANNELKEEPER V.  
3 STATE WATER RESOURCES CONTROL  
4 BOARD  
5 LOS ANGELES, CA TUESDAY, NOVEMBER 2, 2021  
6 DEPARTMENT SSC-10 HON. WILLIAM F. HIGHBERGER, JUDGE  
7 APPEARANCES: (AS HERETOFORE NOTED.)  
8 REPORTER: RONALD L. COOK, CSR NO. 13928  
9 TIME: 2:15 P.M.

10 THE COURT: OKAY, WE'RE ON THE RECORD IN  
11 19STCP01176, SANTA BARBARA CHANNELKEEPERS V. STATE  
12 WATER RESOURCES CONTROL BOARD.

13 WE'VE GOT A NUMBER OF LAWYERS VIA  
14 COURTCONNECT AND CERTAIN LAWYERS IN THE COURTROOM.  
15 I'VE GOT A LOT OF SEPARATE REPORTS. AND YOU'RE NOT MY  
16 ONLY CASE SO I APOLOGIZE IF I'VE FORGOTTEN THINGS THAT  
17 HAPPENED IN THE NOT-TOO-DISTANT PAST. BUT WITH ALL  
18 THESE DIFFERENT REPORTS, IT'S A LITTLE CHAOTIC KEEPING  
19 TRACK OF ALL THE MOVING PARTS.

20 I KNOW THERE'S A HAGGLE OVER THE RECENT  
21 NOTICE OF RULING.

22 I DID POINT OUT TO VARIOUS PEOPLE THAT THEY  
23 WERE SERVING THINGS AND NOT FILING THEM OR IN SOME  
24 CASES FILING THINGS AND NOT SERVING THEM. LET ME SEE  
25 IF ANY OF THESE PROBLEMS GOT FIXED.

26 DO I HAVE LOA BLISS WITH US THIS AFTERNOON?  
27 MS. BLISS: I'M HERE PRESENT, YOUR HONOR.  
28 THE COURT: MS. BLISS, WHEN, IF EVER, DID YOU



1 SERVE YOUR EX PARTE -- PARDON ME -- YEAH, YOUR EX PARTE  
2 AND/OR YOUR DISCLOSURE OF EXPERTS ON  
3 FILE & SERVEXPRESS?

4 MS. BLISS: ON OCTOBER 22ND AT 4:44.

5 AND I HAVE A RECEIPT FROM FILE &  
6 SERVEXPRESS, AND I'VE PRINTED OUT A COPY OF ALL 206  
7 PARTIES AND INTERESTED PARTIES THAT WERE SERVED.

8 THE COURT: I STAND CORRECTED. NOW I SEE IT.  
9 IT WAS SO REMOTE IN TIME FROM THE DAY YOU FILED IT, I  
10 DIDN'T THINK TO LOOK THAT FAR BACK IN TIME. BUT THERE  
11 IT IS. THANK YOU.

12 DO I HAVE COUNSEL FOR VENTURA RIVER WATER  
13 DISTRICT, EITHER HERUM CRABTREE SUNTAG OR THE LAW  
14 OFFICES OF LINDSAY NIELSON?

15 MS. ZOLEZZI: YES, YOUR HONOR. THIS IS JEANNE  
16 ZOLEZZI.

17 THE COURT: AND DID YOUR REPORT GET FILED WITH  
18 THE CLERK OF OUR COURT AT SOME POINT?

19 MS. ZOLEZZI: I UNDERSTAND IT DID, YOUR HONOR,  
20 AFTER MY SECRETARY CURSING THE VARIOUS METHODS OF  
21 FILING FOR THREE DAYS. I BELIEVE IT WAS FINALLY FILED  
22 YESTERDAY AFTERNOON.

23 THE COURT: BEAR WITH ME WHILE I CHECK OUR  
24 RECORDS.

25 NEEDLESS TO SAY, THE TIME I SPEND HAVING TO  
26 RUN DOWN THESE LOOSE ENDS IS LESS TIME I CAN SPEND ON  
27 THE MORE SUBSTANTIVE ISSUES IN THE CASE, SO OBVIOUSLY  
28 IF COUNSEL WOULD ROUTINELY DO WHAT THEY'RE SUPPOSED TO

1 DO, IT ALLOWS ME TO SPEND MORE TIME ON THE MERITS.

2 RIGHT NOW, BECAUSE YOUR DATA FILES ARE SO  
3 LARGE IN THIS CASE DUE TO THE BAZILLION PARTIES, THE  
4 COMPUTER TAKES ITS SWEET TIME IN LOADING.

5 OKAY, I SEE YOUR REPORT, MS. ZOLEZZI.  
6 THANK YOU.

7 MS. ZOLEZZI: THANK YOU, YOUR HONOR.

8 THE COURT: AND LIKEWISE, CITY OF OJAI'S REPORT  
9 DID GET FILED YESTERDAY, SO THANK YOU, MS. JACOBSON.

10 MS. JACOBSON: YES, YOUR HONOR, AND REALLY  
11 APOLOGIZE FOR THE INCONVENIENCE.

12 THE COURT: IT HAPPENS.

13 SOMEBODY WANTS TO JUMP IN AND SHARE YOUR  
14 EXPERT, RIGHT, MS. JACOBSON?

15 MS. JACOBSON: YES, YOUR HONOR. MY  
16 UNDERSTANDING IS THAT A FEW PARTIES, INCLUDING CASITAS,  
17 WOULD LIKE TO DESIGNATE MR. KEAR AS THEIR EXPERT,  
18 DEPENDING ON THEIR UNDERSTANDING OF THE ISSUES TO BE  
19 TRIED IN PHASE 1, AND AT THIS POINT IN TIME OJAI DOES  
20 NOT HAVE ANY OBJECTION TO THE USE OF THE EXPERT AS  
21 DESIGNATED AND DISCLOSED.

22 THE COURT: HE SEEMS TO BE A POPULAR GUY. I  
23 KNOW MR. BAGGERLY RECOMMENDED HIM TO ME, BUT YOU GOT  
24 HIM FIRST.

25 CITY OF VENTURA, DO YOU OBJECT TO CASITAS  
26 MUNICIPAL WATER DISTRICT SHARING CLAIM AND FINANCIAL  
27 RESPONSIBILITY FOR JORDAN KEAR, K-E-A-R?

28 MR. PISANO: I THINK WE WOULD NEED SOME

1 CLARIFICATION, YOUR HONOR, AND THAT IS, IS HE PLANNING  
2 TO DO MORE WORK --

3 THE COURT: THIS IS PISANO SPEAKING.

4 MR. PISANO: I'M SORRY. CHRISTOPHER PISANO.

5 I THINK WE WOULD NEED SOME CLARIFICATION IF  
6 HE INTENDS -- MR. KEAR INTENDS TO DO MORE WORK  
7 SPECIFICALLY ON BEHALF OF THE NEW PARTIES THAT ARE  
8 INTENDING TO DESIGNATE HIM.

9 THE COURT: WELL, LIMITING IT SO FAR TO CASITAS  
10 MUNICIPAL WATER DISTRICT, IT'S MY UNDERSTANDING THEY  
11 WANT TO TAKE HIM AS THEY FIND HIM WITH THE REPORT  
12 ISSUED SO FAR, SUBJECT ONLY TO A RIGHT TO LATER ISSUE A  
13 TIMELY SUPPLEMENTAL AND/OR REBUTTAL REPORT.

14 MR. DENNINGTON: YOUR HONOR, DOUG DENNINGTON,  
15 FOR CASITAS MUNICIPAL WATER DISTRICT.

16 THE COURT: CORRECT ME IF I'M WRONG.

17 MR. DENNINGTON: THAT IS CORRECT.

18 THE COURT: THANK YOU.

19 MR. PISANO: WELL, I THINK, THEN, WE WOULD NEED  
20 TO RESERVE JUDGMENT ON THAT UNTIL WE SAW ANY  
21 SUPPLEMENTAL OR REBUTTAL REPORT, WHICH I ASSUME WOULD  
22 BE DONE ON THE 3RD, BECAUSE --

23 THE COURT: WELL, HE COULD DO THAT FOR THE CITY  
24 OF OJAI, WHETHER OR NOT THE CASITAS MUNICIPAL WATER  
25 DISTRICT SHARED PRIDE OF OWNERSHIP AND ENDORSEMENT OF  
26 OPINIONS.

27 MR. PISANO: I WOULD AGREE WITH THAT. UNDER THE  
28 LORDS VS. FAIRFAX CASE, THOUGH, THAT WE PUT IN OUR

1 REPORT, I THINK THAT CASITAS WOULD BE PRECLUDED FROM  
2 OTHERWISE SUBMITTING A SUPPLEMENTAL REPORT HAVING NOT  
3 DESIGNATED A -- AN EXPERT REPORT IN A FIELD THAT WAS  
4 CLEARLY KNOWN TO THEM AT THE TIME OF THE INITIAL  
5 DESIGNATION. I THINK THE LORDS CASE --

6 THE COURT: THEY ARTICULATED IN THEIR REPORT WHY  
7 YOUR CLIENT'S DECISION TO INCLUDE A WATER HISTORIAN AND  
8 THE FISHERIES EXPERT GAVE THEM TO UNDERSTAND THAT THE  
9 PHASE 1 TRIAL WAS GOING TO BE MORE NUANCED, ACTUALLY,  
10 THAN THEY MIGHT HAVE PERCEIVED, AND IT IS FOR THAT  
11 REASON THEY FEEL THEY DO WANT SOMEBODY WITH MR. KEAR'S  
12 SKILL SET AS PART OF THEIR LITIGATION TEAM.

13 CORRECT, MR. --

14 MR. DENNINGTON: DOUG DENNINGTON, YOUR HONOR.

15 THE COURT: IS THAT CORRECT, MR. DENNINGTON?

16 MR. DENNINGTON: SOMEWHAT, YES. I BELIEVE  
17 MR. KEAR IS MORE OF A WATER EXPERT, AND SO THIS WAS  
18 MORE ADDRESSING WHAT WE REFERENCED IN THE --

19 MR. JUNGREIS REFERENCED IN HIS STATUS CONFERENCE  
20 REPORT, IS SORT OF SCOPE CREEP TO THE PHASE 1 TRIAL.

21 THE COURT: IT'S TRUE YOU ARE, WITH KEAR,  
22 LANDING ON A WATER EXPERT, NOT A HISTORY EXPERT --

23 MR. DENNINGTON: THAT'S CORRECT.

24 THE COURT: -- OR FISHERIES EXPERT. WHAT YOU  
25 ARTICULATED IN THE REPORT IS DUE TO THE MORE NUANCED  
26 NATURE OF THE TRIAL AS DEPICTED BY CITY OF VENTURA, IF  
27 I READ YOUR REPORT RIGHT.

28 MR. DENNINGTON: THAT'S RIGHT, AND WE

1 HIGHLIGHTED THE POTENTIAL USE OF TRUE REBUTTAL EXPERTS  
2 ON THE BIOLOGY, IF NECESSARY.

3 THE COURT: THAT'S A DIFFERENT QUESTION.

4 MR. DENNINGTON: OKAY.

5 THE COURT: SO BACK TO PISANO.

6 I, FRANKLY, AM STARTING TO GET A LITTLE  
7 SKEPTICAL WITH THE IDEA THAT THERE WOULD BE ANY  
8 RELEVANCE TO A WATER HISTORIAN OR FISHERIES PERSON, BUT  
9 THEN I SPENT A LITTLE TIME WITH YOUR HISTORY EXPERT,  
10 AND I THINK I HAD YOU OR MR. HAGERTY A LITTLE BIT UPSET  
11 THAT I SPENT MUCH TIME, AND SOMEHOW BY LOOKING AT IT  
12 EARLY I WAS DOING YOU AN INJUSTICE BY FAMILIARIZING  
13 MYSELF WITH YOUR CASE, WHICH STRUCK ME AS ODD, BUT SOME  
14 LIMITED OBJECTIONS HAD BEEN MADE.

15 BUT HAVING SAID ALL THAT, WHEN I READ THAT  
16 YOUR WATER HISTORIAN OPINED THAT THEY HAD, AFTER A BAD  
17 DROUGHT IN THE LATE '40S, GOTTEN ENOUGH POLITICAL  
18 INFLUENCE THROUGH THE U.S. GOVERNMENT AND CONGRESS TO  
19 FIND MONEY TO BUILD DIVERSION APPARATUS, CONDUITS IN  
20 SIMPLE ENGLISH, TO TAKE SOME OF THE AVAILABLE WATER  
21 FROM THE HEADWATERS OF THE VENTURA RIVER, MOVING  
22 SIDWAYS TO SPREADING GROUNDS THAT WOULD BENEFIT THE  
23 OJAI GROUNDWATER BASIN, THAT SEEMED TO HAVE A CERTAIN  
24 PLAUSIBILITY IN EXPLAINING CONNECTEDNESS, BECAUSE IF  
25 MAN-MADE DEVICES MOVED THE WATER FROM POINT A TO  
26 POINT B, THEN MAYBE THEY'RE MORE CONNECTED THAN YOU  
27 MIGHT THINK IF YOU WEREN'T AWARE OF THE CONDUITS.

28 SO THAT ACTUALLY, TO ME, AT LEAST, MADE IT

1 SEEM QUITE UNDERSTANDABLE WHY A WATER HISTORIAN WOULD  
2 EXPLAIN THAT NOT JUST THE ANCIENT ROMANS BUILT  
3 AQUEDUCTS BUT THAT WE AMERICANS HAVE DONE IT MORE  
4 RECENTLY.

5 MR. PISANO: AND, YOUR HONOR, I AGREE WITH THAT,  
6 AND WE DID HAVE THIS EXCHANGE AT THE LAST STATUS  
7 CONFERENCE, AND IT WASN'T AN OBJECTION. IN FACT, I --  
8 I THINK I WAS VERY CLEAR IN SAYING WE DON'T OBJECT. WE  
9 JUST WANTED TO MAKE --

10 THE COURT: EXPRESSED CONCERN, I GUESS WOULD BE  
11 A NICER WAY --

12 MR. PISANO: WE JUST WANTED TO MAKE SURE THAT,  
13 YOU KNOW -- I'LL SAY WHAT WE ALL KNOW, BUT SAY IT,  
14 WHICH IS THAT THOSE REPORTS, THE ANALYSIS COMES AT A  
15 LATER TIME. AND THE COURT KNOWS THAT. SO --

16 THE COURT: BUT I'M SUPPOSED TO FIGURE OUT  
17 RELEVANCE, INCLUDING RELEVANCE OF DISCOVERY, SO I NEED  
18 TO KNOW A BIT ABOUT THE NATURE TO FIGURE OUT WHAT IS OR  
19 ISN'T RELEVANT.

20 MR. PISANO: AND I DON'T DISAGREE WITH THAT,  
21 YOUR HONOR, AND, YOU KNOW, ORDINARILY --

22 THE COURT: BUT SO FAR THAT'S WHY CASITAS, A  
23 BIG, BIG PLAYER IN THIS EXERCISE, WHO WAS PREVIOUSLY  
24 TRYING TO ACT LIKE THEY WERE EVERYBODY'S FRIEND AND  
25 NOBODY'S ENEMY, BECAUSE, TO SOME EXTENT, GIVEN THE MANY  
26 CUSTOMERS THEY SERVE AND THE MANY PEOPLE WHO RELY UPON  
27 THEM, THEY REALLY WANT TO TRY TO PLAY LIKE THEY'RE  
28 ABOVE THE FRAY, BUT THE FRAY SEEMS TO HAVE CAUGHT UP

1 WITH THEM, AND SOMEHOW THEY FEEL FOR SELF-PROTECTION  
2 THEY NEED ACCESS TO EXPERT KEAR, EVEN IF THEY SHARE HIM  
3 WITH THE CITY OF OJAI AND PERHAPS OTHERS, BUT THAT'S  
4 THEIR EXPLANATION FOR WHY THEY'RE LATE TO THE PARTY.

5 AND I GUESS WE COULD WAIT FOR A NOTICE  
6 MOTION TO BE RELIEVED OF THEIR DEADLINE, AND, IF  
7 NOTHING ELSE, I CAN ALWAYS DELAY THE TRIAL SO THAT  
8 THERE'S NO PREJUDICE, AND THAT'S -- MY FALLBACK TOOL IS  
9 TO SAY, "FINE. FIRST PHASE TRIAL IS PUT OFF THREE  
10 MONTHS. LET'S HAVE SOME MORE EXPERT DISCOVERY. WHERE  
11 IS THE PREJUDICE?"

12 SO THAT'S A POLITE WAY OF HINTING THAT I  
13 MAY BE ALLOWING THESE, BUT I'M SORT OF NEGOTIATING WITH  
14 YOU BEFORE I CONTINUE THE TRIAL.

15 MR. PISANO: OKAY.

16 I WILL SAY, YOUR HONOR, WITH REGARDS TO --  
17 THE COURT: I DON'T REALLY WANT TO CONTINUE THE  
18 TRIAL, BUT IF I HAVE TO, I COULD CONTINUE THE TRIAL.

19 MR. PISANO: WE DO NOT WANT A TRIAL CONTINUANCE.

20 THE COURT: AM I BEING CLEAR ENOUGH SO FAR,  
21 THOUGH?

22 MR. PISANO: YOU ARE BEING VERY CLEAR.

23 THE COURT: OKAY.

24 MR. PISANO: CLEAR AS VODKA.

25 THE COURT: OKAY. HOPEFULLY STRONG VODKA.

26 MR. PISANO: I THINK THE PROBLEM THAT WE ARE  
27 HAVING FROM THE CITY OF VENTURA'S PERSPECTIVE, YOUR  
28 HONOR, IS THAT WHETHER THERE'S A TRIAL CONTINUANCE OR

1 NOT, THERE'S PREJUDICE IF YOU CONTINUE OUT THESE  
2 EXCHANGE DATES, BECAUSE, FOR BETTER OR WORSE, THE COURT  
3 MADE THE DECISION THAT THE CITY OF VENTURA HAS TO GO  
4 FIRST.

5 THE COURT: I DID.

6 MR. PISANO: AND WE WENT FIRST.

7 THEY NOW HAVE HAD TWO MONTHS WITH OUR  
8 REPORTS. MR. KEAR IS A HYDROGEOLOGIST. WE DESIGNATED  
9 A HYDROGEOLOGIST. DR. ARCHER. THEY'VE KNOWN ABOUT  
10 DR. ARCHER SINCE WELL BEFORE AUGUST 31ST. THEY'VE  
11 KNOWN ABOUT HER FOR MONTHS, IF NOT YEARS. AND FOR THEM  
12 TO SAY THAT THERE'S SOMEHOW A CHANGE IN FOCUS OR THAT  
13 THE TRIAL -- THE FIRST PHASE OF TRIAL WAS GOING TO BE  
14 SOMETHING THAT IT'S NOT AND, THEREFORE, THEY WANT  
15 MR. KEAR I THINK IS PERHAPS A BIT DISINGENUOUS,  
16 BECAUSE, AT A BARE MINIMUM, THEY SHOULD HAVE KNOWN THEY  
17 NEEDED A HYDROGEOLOGIST. AND THEY HAD DR. ARCHER'S  
18 REPORT FOR THREE WEEKS BEFORE THEY EVEN HAD TO DO  
19 ANYTHING, AND THEY DIDN'T DISCLOSE ANYONE.

20 THE COURT: BUT THEY'RE BEING SO BABY STEP BY  
21 JUST JUMPING ON KEAR AND NOT TRYING TO BRING IN A NEW  
22 FACE. SO THAT'S WHY IT DOESN'T SEEM TO BE PREJUDICIAL,  
23 BUT YOU FEEL IT IS.

24 MR. PISANO: I FEEL IT IS, UNDER THE  
25 CIRCUMSTANCE THAT WE HAD TO DISCLOSE BEFORE ANYONE ELSE  
26 IN THIS CASE.

27 THE COURT: AND I DID PUT THAT ON YOU. I THINK  
28 IN THE END OF THE DAY YOU DIDN'T PROTEST TO THE POINT



1 OF TRYING TO TAKE A WRIT, AND I DO UNDERSTAND THAT  
2 NORMALLY THE COURT RULES MUTUALITY, BUT IT APPEARED TO  
3 ADVANCE THE EFFICIENT LITIGATION, AND I THOUGHT AT THE  
4 TIME YOU HAD SAID, "BUT IF YOU WANT IT, JUDGE, WE'LL GO  
5 ALONG." NOW YOU'RE CALLING IT PREJUDICE.

6 MR. PISANO: WELL, I DON'T THINK WE EVER AGREED  
7 OR STIPULATED THAT IT WASN'T PREJUDICIAL. WE THINK  
8 THAT IT WAS. BUT WE OBVIOUSLY RESPECT THE COURT'S  
9 RULING, AND WE DID WHAT THE COURT ORDERED. WE DECIDED  
10 THAT IT WAS NOT, YOU KNOW, WORTH THE EFFORT TO TAKE IT  
11 UP ON A WRIT, ALTHOUGH IT'S AN INTERESTING ISSUE, AND  
12 ONE DAY THE COURT OF APPEAL IS GOING TO HAVE TO --

13 THE COURT: WELL, RAPHAEL METZGER DOES REAL GOOD  
14 ON THOSE WRITS, SO JUST COPY RAPHAEL.

15 MR. PISANO: BUT, YOU KNOW, WE MADE A TACTICAL  
16 DECISION NOT TO DO THAT. IT DOESN'T MEAN THAT WE  
17 CONCEDE THERE WAS NO PREJUDICE.

18 THE COURT: SO GIVEN THAT THERE WAS ALWAYS GOING  
19 TO BE A TIME FOR SUPPLEMENTAL REPORTS AND GIVEN THAT I  
20 WAS BLISSFULLY OBLIVIOUS TO THE POSSIBILITY OF REBUTTAL  
21 REPORTS, AND, THEREFORE, MADE NO PROVISION ONE WAY OR  
22 THE OTHER FOR REBUTTAL REPORTS, WHAT'S THE REAL  
23 PREJUDICE WITH CASITAS MUNICIPAL WATER DISTRICT SHARING  
24 OWNERSHIP WITH OJAI OF MR. KEAR AT THIS TIME?

25 HE'S NOT ADDING TO HIS REPORT, BUT YOU MAY  
26 SEE A SUPPLEMENTAL REPORT THAT OJAI OTHERWISE COULD  
27 HAVE DONE ANYWAY. AND YOU MIGHT SEE A REBUTTAL REPORT  
28 THAT OJAI COULD HAVE DONE ANYWAY. SO WHAT'S THE

1 PREJUDICE?

2 MR. PISANO: I GUESS THE PREJUDICE, YOUR HONOR,  
3 IS CASITAS COULDN'T HAVE DONE A SUPPLEMENTAL UNDER THE  
4 LORDS CASE.

5 THE COURT: BECAUSE THEY WEREN'T IN THE GAME IN  
6 THE FIRST PLACE?

7 MR. PISANO: BECAUSE THEY WEREN'T IN THE GAME  
8 FROM THE GET-GO.

9 THE COURT: BUT UNLIKE GOODEN, APPARENTLY OJAI  
10 IS ALIGNED WITH CASITAS, SO WHAT OJAI WANTS IS PROBABLY  
11 WHAT CASITAS WILL WANT.

12 MR. PISANO: I MEAN, IF CASITAS WANTS -- OR OJAI  
13 WANTS TO, YOU KNOW, HAVE KEAR DO A SUPPLEMENTAL THAT  
14 THEY BANKROLL OR WHATEVER, THAT'S BETWEEN THEM AND  
15 OJAI, BUT CASITAS SHOULDN'T AT THIS POINT BE ABLE TO  
16 PICK UP THE KEAR FOOTBALL, AND MAYBE INSTEAD OF GOING  
17 TO THE LEFT, GO TO THE RIGHT, AND TAKE A DIFFERENT TACK  
18 AGAINST WHAT DR. ARCHER OPINED TO THAT'S EXCLUSIVE AND  
19 LIMITED TO CASITAS, THAT THE CITY OF OJAI WOULDN'T HAVE  
20 DONE.

21 THE COURT: ANYTHING PREVENT THEM FROM SENDING  
22 MS. JACOBSON AS BIG A CHECK AS IT TAKES TO HIRE KEAR TO  
23 DO WHATEVER HE NEEDS TO DO?

24 MR. PISANO: I'M SORRY, YOUR HONOR?

25 THE COURT: DOES ANYTHING PREVENT CASITAS  
26 MUNICIPAL WATER DISTRICT FROM SENDING HOLLY JACOBSON,  
27 AS COUNSEL FOR THE CITY OF OJAI, AS BIG A CHECK AS IT  
28 TAKES TO PAY WHATEVER FEE HAS TO BE PAID TO MR. KEAR

1 FOR A SUPPLEMENTAL REPORT THAT ACCOMPLISHES WHATEVER  
2 THE CITY OF OJAI AND/OR CASITAS MUNICIPAL WATER  
3 DISTRICT THINK ADVANCE THEIR COMMON CAUSE?

4 MR. PISANO: WELL, THAT'S A BIT OF AN ABSTRACT  
5 QUESTION. THERE MAY BE A PROBLEM --

6 THE COURT: YOU JUST VOLUNTEERED, I THOUGHT,  
7 THAT HE COULD PAY TO SUBSIDIZE THE WORK --

8 MR. PISANO: WELL, I DON'T KNOW WHAT THEY'RE  
9 ARGUING, AND THAT WOULD BE BETWEEN THOSE TWO ENTITIES.

10 THE COURT: BUT I'M TRYING TO UNDERSTAND WHAT  
11 THE PRACTICAL HARM IS, BECAUSE IF MR. DENNINGTON CAN  
12 USE HIS FINANCIAL RESOURCES TO LET OJAI DO MORE THAN  
13 PERHAPS THE TAXPAYERS OF OJAI CAN AFFORD, DON'T YOU  
14 WIND UP IN THE SAME PLACE?

15 MR. PISANO: THE PRACTICAL HARM, YOUR HONOR,  
16 WOULD BE IF MR. KEAR'S SUPPLEMENTAL REPORT LOOKS  
17 SOMETHING ALONG THE LINES OF, DR. ARCHER'S OPINIONS ARE  
18 INCORRECT FOR X, Y AND Z REASONS, WHICH IS FOR THE SOLE  
19 BENEFIT OF CASITAS, AND ITS PEOPLE AND HAS NOTHING TO  
20 DO WITH THE CITY OF OJAI AND ITS PEOPLE.

21 MS. JACOBSON WOULDN'T OTHERWISE PAY FOR  
22 THAT. THAT WOULD BE THE PREJUDICE. THAT WOULD BE THE  
23 HARM.

24 I DON'T KNOW IF THAT'S WHAT'S GOING TO  
25 HAPPEN. THEY MAY -- MR. KEAR MAY COME UP WITH A  
26 SUPPLEMENTAL OPINION THAT COMPLETELY ALIGNS WITH WHAT  
27 BOTH CASITAS WANTS AND WHAT OJAI WANTS.

28 THE COURT: SO WOULD CASITAS BE ABLE TO MAKE A

1 MOTION TO ASK TO BE RELIEVED OF THEIR FAILURE TO TIMELY  
2 JUDGMENT?

3 MR. PISANO: THEY COULD MAKE A MOTION TO  
4 SUBMIT -- TO AUGMENT OR SUBMIT A TARDY DESIGNATION.  
5 THERE ARE PROVISIONS FOR THAT IN THE DISCOVERY ACT.  
6 THE DISCOVERY ACT IS STILL VERY MUCH VIABLE AND IN PLAY  
7 IN THIS CASE. THE ADJUDICATION STATUTE VERY  
8 SPECIFICALLY SAYS THAT --

9 THE COURT: SO PROBABLY WHAT I OUGHT TO DO IS  
10 JUST INVITE MR. DENNINGTON TO MAKE THAT MOTION AND SEE  
11 WHERE IT TAKES US, BECAUSE YOU WANT A CHANCE TO  
12 CHALLENGE IT, AND SOUNDS LIKE YOU HAVE EVERY RIGHT TO  
13 DO IT. SO I DON'T NEED TO USE INFORMAL PROCEDURE WHEN  
14 I'M JUST MAKING APPEALABLE ISSUES FOR MANGLING THE  
15 DISCOVERY RULES.

16 MR. PISANO: I THINK THAT WOULD BE FINE, YOUR  
17 HONOR. I AM --

18 THE COURT: MR. DENNINGTON, DO YOU UNDERSTAND  
19 WHY MR. PISANO WISHES YOU TO MAKE A MOTION RATHER THAN  
20 ME JUST --

21 MR. DENNINGTON: I REALLY DON'T, YOUR HONOR. I  
22 DON'T UNDERSTAND WHAT THE -- I DON'T UNDERSTAND THE  
23 PRACTICAL PREJUDICE.

24 THE COURT: WELL, I THINK THE -- THE ONE POINT  
25 HE MADE IS THAT THE SUPPLEMENTAL WAS UNIQUELY  
26 BENEFICIAL TO CASITAS AND NOT USEFUL FOR OJAI CITY, BUT  
27 YOU GOT TO BRING IT IN AS A SUPPLEMENTAL, OPINING BACK  
28 AGAINST VENTURA'S EXPERT ARCHER, THAT YOU WOULD HAVE

1 THAT PRIVILEGE ONLY BECAUSE YOU GOT THIS DELAYED  
2 DESIGNATION, AND HE DOESN'T WANT YOU TO HAVE THAT  
3 RIGHT.

4 AND YOU MIGHT STILL BE ABLE TO GET A  
5 DELAYED DESIGNATION ON CONDITIONS BECAUSE THERE ARE ALL  
6 SORTS OF PROVISIONS IN THE DISCOVERY ACT THAT ALLOW  
7 PEOPLE TO GET DO-OVERS SUBJECT TO MITIGATING TECHNIQUES  
8 LIKE TRIAL CONTINUANCES, ALTHOUGH MR. PISANO DOESN'T  
9 WANT A TRIAL CONTINUANCE, BUT HE WANTS THE MOTION.

10 SO I THINK THAT'S WHERE WE SHOULD GO NEXT,  
11 BECAUSE I DON'T WANT TO JUST, YOU KNOW, OVERLY  
12 STRONG-ARM WITH VODKA AND, YOU KNOW, WIND UP WITH AN  
13 APPEALABLE ISSUE.

14 MR. DENNINGTON: WOULD THE COURT BE INCLINED TO  
15 CONTINUE THE TRIAL DATE?

16 THE COURT: POSSIBLY.

17 MR. DENNINGTON: OKAY.

18 THE COURT: YOU WOULD HAVE TO ASK FOR IT, BUT IF  
19 THAT'S THE MITIGATING SOLUTION TO THE HARM CAUSED BY  
20 LATE DESIGNATION, IT'S AN OBVIOUS THING TO SUGGEST IF  
21 YOU'RE THE MOVING PARTY.

22 MR. HAGERTY, I ASSUME YOU SHARE THE  
23 STRATEGY WITH MR. PISANO? DO YOU WANT A RECESS?

24 MR. HAGERTY: NO. I DO, YOUR HONOR. I WILL --

25 THE COURT: OKAY, FINE.

26 MR. HAGERTY: I WOULD MAKE THE POINT, AS WE  
27 SPOKE WITH MR. DENNINGTON BEFORE THIS, AND I DO THINK  
28 SOME OF THIS MIGHT BE CLEARER AFTER A BRIEFING ON THE

1 8TH AND THE ISSUES HEARING ON THE 15TH THAT THE COURT  
2 HAS SET. SO I THINK WE HAD TALKED ABOUT TRYING TO SEE  
3 WHETHER WE COULD WORK SOME OF THESE THINGS OUT.

4 WE FEEL STRONGLY THAT THE SCHEDULE IS THE  
5 SCHEDULE, WE SHOULD STICK TO IT, AND THAT DEVIATIONS --

6 THE COURT: REMIND ME. WHAT'S CALENDARED FOR  
7 THE 15TH?

8 OUR CURRENT OFFICIAL RECORDS DON'T SHOW  
9 ANYTHING OF NOTE ON THE 15TH BEYOND A MOTION TO BE  
10 RELIEVED AS TO ONE PARTICULAR LITIGANT.

11 MR. HAGERTY: YES, YOUR HONOR. YOU SAID AT THE  
12 LAST STATUS CONFERENCE -- YOU PROVIDED DIRECTION TO DO  
13 TWO THINGS. ON NOVEMBER 8TH THE PARTIES WHO ARE  
14 INTERESTED IN THE PHASE 1 TRIAL ARE TO FILE FACT AND  
15 ISSUE BRIEFS AS CLEARLY AND AS CONCISELY AS FEASIBLE,  
16 SO THAT THE COURT CAN FAIRLY CLEARLY GET YOUR ARMS  
17 AROUND THE FIVE ISSUES THAT WE'VE PUT FORWARD. AND  
18 THAT'S TO BE FILED ON THE 8TH, AND THEN ON THE 15TH YOU  
19 RESERVED FROM 1:30 TO 4:30 --

20 THE COURT: REGRETTABLY, THAT DIDN'T HIT THE  
21 CALENDAR YET.

22 ALDWIN, WE NEED TO ADD FOR NOVEMBER 15TH AT  
23 1:30 P.M., WITH A THREE-HOUR TIME BLOCK, FOR THE STATUS  
24 CONFERENCE REGARDING PRECISE ISSUES TO BE DECIDED AT  
25 THE PHASE 1 TRIAL.

26 CORRECT, MR. HAGERTY?

27 MR. HAGERTY: THAT'S CORRECT.

28 THE COURT: THANK YOU. WE JUST NEED TO UPDATE

1 OUR CALENDAR.

2 MR. HAGERTY: AND WITH THAT -- THAT'S THE ONLY  
3 CAVEAT, YOUR HONOR, BECAUSE I KNOW THAT SOME OF THESE  
4 REQUESTS THAT ARE BEING MADE ARE POTENTIALLY DEFENSIVE  
5 IN NATURE BECAUSE PARTIES AREN'T UNDERSTANDING  
6 COMPLETELY OR HAVE CONCERNS ABOUT THE SCOPE OF PHASE 1.

7 THE COURT: WELL, I GET A LITTLE CONFUSED,  
8 THOUGH, NOT IN A WAY THAT TROUBLES ME, BECAUSE IT'S AN  
9 INTERESTING QUESTION OF EXACTLY HOW FAR WE GO TO FIGURE  
10 OUT CONNECTEDNESS, ALSO KNOWN AS INTERCONNECTEDNESS.  
11 AND IT'S ONE THING JUST TO TRY TO FIND THE METES AND  
12 BOUNDS OF FOUR GROUNDWATER BASINS AND THE METES AND  
13 BOUNDS OF THE VENTURA RIVER AND THE TRIBUTARIES.

14 I DOUBT THAT WILL HAVE EXTENDED FACTUAL  
15 DISPUTE AT TIME OF TRIAL, BUT DID IF IT DOES, YOU KNOW,  
16 MAYBE THE GROUNDWATER BASIN EBBS AND FLOWS ACCORDING TO  
17 ITS VOLUME AND ITS HEIGHT, BUT -- AND MAYBE THE SAME  
18 CAN BE SAID FOR WHAT ARE THE EXACT BOUNDARIES OF THE  
19 SURFACE WATER COURSE ACCORDING TO WET VERSUS DRY YEARS,  
20 BUT YOU PRESUMABLY PICK THE WET YEARS TO DEFINE THE  
21 OUTER LIMITS OF THE WATER COURSE.

22 BUT THE CONNECTEDNESS IS INTERESTING  
23 BECAUSE, IN THE ABSTRACT, I GUESS WE CAN SAY BEFORE MAN  
24 WAS HERE CAN WE RECONSTRUCT SOMEHOW THE EXTENT TO WHICH  
25 WE CAN FIGURE OUT IF THE SURFACE WATER AND THE  
26 GROUNDWATER OR THE FOUR DIFFERENT GROUNDWATER BASINS  
27 DID OR DIDN'T SHARE WATER IN SOME FASHION BEFORE THE  
28 WORK OF MAN CONFUSED THINGS. BUT, HEY, WE'VE BEEN HERE

1 FOR A COUPLE HUNDRED YEARS. SO NOW WE HAVE THINGS LIKE  
2 THE FEDERAL PROJECT IN THE LATE '40S MOVING THE  
3 PLUMBING AROUND AND MOVING SOME WATER, AND THEN AT  
4 LEAST INSOFAR AS THE FISHERIES EXPERT IS GOING TO  
5 COMMENT ABOUT HOW SOMEHOW THE AMOUNT OF SURFACE WATER  
6 AND/OR GROUNDWATER SEEMS TO IMPACT WHAT'S HAPPENING  
7 WITH THE FISHERIES AND THAT SOMEHOW EDUCATES US ABOUT  
8 CONNECTEDNESS, WHICH IS, AS I UNDERSTAND, ONE OF THE  
9 EXPERTS YOU THINK WILL BE GERMANE, TRUE?

10 MR. HAGERTY: YES, WITH A CAVEAT, IF I MAY, YOUR  
11 HONOR, BECAUSE I THINK THAT POINT THAT YOU JUST MADE IS  
12 WE WOULDN'T AGREE WITH THE CAUSE AND EFFECTS CONNECTION  
13 YOU JUST MADE.

14 WITH REGARD TO THE FISHERY EXPERT, WE HAVE  
15 ONE AND THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
16 HAS ONE, AND THEY CAN COMMENT AS WELL, BUT THE PURPOSE  
17 OF THAT EXPERT AT THIS POINT IN TIME IS TO DEMONSTRATE  
18 THAT THE COURT NEEDS TO CONSIDER THE FISHERY IN FUTURE  
19 PHASES IF THE COURT FINDS THAT THERE IS  
20 INTERCONNECTION.

21 AND THAT IS -- IT'S REALLY CRITICAL TO GET  
22 THIS RIGHT, AND THAT'S WHY, AGAIN, THE 15TH IS GOING TO  
23 BE, I THINK, VERY INSTRUCTIVE, BECAUSE WE BELIEVE, AND  
24 WE'VE TRIED TO ARTICULATE IN OUR JOINT REPORT -- WE  
25 OBJECT TO THE REQUEST THAT'S BEING MADE BY GREG  
26 PATTERSON'S CLIENTS TO BE RELIEVED OF NOT DESIGNATING  
27 AND JUMP ON --

28 THE COURT: THAT'S A LITTLE DIFFERENT BECAUSE



1     THEY MAY WANT A NEW FACE.  IT'S NOT CLEAR THEY WANT  
2     JORDAN KEAR.  THEY MAY WANT A NEW FACE EVENTUALLY.

3             MR. HAGERTY:  THAT ONE I UNDERSTAND, AND  
4     MR. PATTERSON CAN ADDRESS THIS LATER, BUT THEY -- WHAT  
5     THEY'RE TRYING TO DO -- AND IT'S PART OF THE THEORY OF  
6     THEIR EXPERT OPINION, WHICH WE OBJECT TO, BECAUSE THEY  
7     ARE FOCUSING ON CAUSE AND EFFECT, WHICH WE DON'T  
8     BELIEVE IS RELEVANT.  AND SO --

9             THE COURT:  THE HALF ACRE-FOOT I TAKE FROM MY  
10    WELL OVER HERE CAN'T POSSIBLY IMPACT YOUR FISHERY  
11    15 MILES AWAY.

12            MR. HAGERTY:  RIGHT.  AND IF EVERYONE SAID THAT,  
13    THERE WOULD BE NO IMPACT.  IT'S THE TRAGEDY OF THE  
14    COMMONS THAT WE'RE DEALING WITH.  WE'RE DEALING AT THAT  
15    LEVEL AT THIS POINT IN TIME.

16            AND SO THE POINT OF THE FISHERY EXPERT, TO  
17    BRING IT BACK, IS JUST TO SAY THERE ARE SURFACE WATER  
18    USERS, BOTH HUMAN AND AQUATIC, IN-STREAM USES, THAT WE  
19    BELIEVE THE COURT HAS TO CONSIDER IN FUTURE PHASES OF  
20    THIS CASE WHEN IT'S DECIDING RIGHTS IN THE BASIN.  THAT  
21    IS WHAT WE BELIEVE THE REASONABLE USE DOCTRINE  
22    REQUIRES --

23            THE COURT:  HOW WILL THAT TELL ME ANYTHING ABOUT  
24    CONNECTEDNESS FROM YOUR POINT OF VIEW?

25            MR. HAGERTY:  WELL, SEE, THIS IS WHERE IT'S  
26    IMPORTANT TO THINK OF THE THEORIES THAT PEOPLE ARE  
27    RAISING, BECAUSE, YOUR HONOR --

28            THE COURT:  I SORT OF UNDERSTAND THE WATER

1 HISTORIAN.

2 MR. HAGERTY: YES. AND --

3 THE COURT: BECAUSE WE HAVE A MAN-MADE  
4 IMPROVEMENT THAT MOVES THE WATER IN WAYS YOU WOULDN'T  
5 OTHERWISE EXPECT.

6 MR. HAGERTY: YES. AND LET'S KNOCK OUT THE  
7 BOTANIST, BECAUSE THAT'S VERY CLEAR AS WELL, YOUR  
8 HONOR, THAT --

9 THE COURT: NOT YET TO ME, SO MAKE IT CLEAR NOW.

10 MR. HAGERTY: YES. SO THERE ARE SPECIES THAT  
11 DEPEND UPON INTERCONNECTED GROUNDWATER, AND A BOTANIST  
12 WILL OPINE TO THAT. THAT, IN OUR VIEW, IS EVIDENCE OF  
13 INTERCONNECTEDNESS. AND THAT'S ROOTED IN THE LAW.  
14 WE'LL PRESENT THAT TO YOU.

15 THE COURT: SO HELP ME OUT. LIKE A SYCAMORE  
16 WILL GROW ON THE EDGE OF THE STREAM, BUT ONLY BECAUSE  
17 IT CAN FIND GROUNDWATER --

18 MR. HAGERTY: YES, YOUR HONOR. EXACTLY. YOU  
19 HAVE IT EXACTLY. AND THAT'S EVIDENCE THAT THERE IS A  
20 TIME WHEN THE SURFACE WATER AND THE GROUNDWATER ARE  
21 MEETING IN A WAY THAT'S MEANINGFUL TO THAT SPECIES.  
22 THAT'S ALL THAT THAT PERSON IS GOING TO TESTIFY TO.

23 THE COURT: SO MY SYCAMORE WILL TAKE THE SURFACE  
24 WATER WHEN IT CAN GET IT IN THE SPRING, BUT IT SURVIVES  
25 THE SUMMER AND THE FALL BECAUSE ITS ROOTS ARE DEEP  
26 ENOUGH TO FIND SOME GROUNDWATER.

27 MR. HAGERTY: IT NEEDS THAT INTERCONNECTEDNESS,  
28 YOUR HONOR.

1 THE COURT: AND THE VERY FACT THAT THIS KIND OF  
2 A TREE WILL GROW IN THIS LOCATION ON THE LITERAL OF THE  
3 RIVER OR THE TRIBUTARY IS SOME EVIDENCE, IN YOUR VIEW  
4 AS AN ADVOCATE, AT LEAST, OF INTERCONNECTEDNESS.

5 MR. HAGERTY: THAT'S EXACT RIGHT, YOUR HONOR.

6 THE COURT: SO FAR SO GOOD.

7 MR. HAGERTY: SO THOSE ARE THE TWO. RIGHT? SO  
8 NOW WE'VE GOT THE FISHERY -- AND, AGAIN, THE FISHERY,  
9 YOUR HONOR -- MAYBE IT'S BEST TO THINK ABOUT IT --  
10 WE'VE HAD A LOT OF DISCUSSION ABOUT THIS 833(C) AND  
11 WHETHER THE COURT HAS TO MAKE A FINDING, AND THAT'S  
12 GOING TO BE AN ISSUE WE'LL PRESENT TO YOU --

13 THE COURT: THAT'S THE NECESSARY PRECONDITION TO  
14 PUT SURFACE WATER AT ISSUE WHEN WE'RE WORKING UNDER THE  
15 COMPREHENSIVE GROUNDWATER STATUTE?

16 MR. HAGERTY: THAT'S CORRECT, YOUR HONOR. AT  
17 LEAST THAT'S THE ARGUMENT. WE HAVEN'T --

18 THE COURT: UP FROM BELOW, ESSENTIALLY. WHY WE  
19 GO FROM BELOW TO UP, BECAUSE THERE'S SOMETHING ABOUT  
20 THE SURFACE THAT MATTERS TO THE BELOW.

21 MR. HAGERTY: RIGHT. SO PART OF THAT --

22 THE COURT: EVEN THOUGH THIS CASE STARTED WITH  
23 THE UP, IN TERMS OF HOW THE LITIGATION STARTED  
24 HISTORICALLY, AND IS NOW GOING BELOW. BUT FROM A  
25 STATUTORY SCHEME, WHIRLING UPWARDS FROM THE GROUNDWATER  
26 BASIN TO WONDER WHY WE CARE ABOUT THE SURFACE WATER.

27 MR. HAGERTY: WITH REGARD TO THE SIXTH CAUSE OF  
28 ACTION, YES.

1 SO THE QUESTION THERE, IF THE COURT  
2 DETERMINES IT HAS TO MAKE A FINDING THERE, YOU HAVE TO  
3 LOOK AT THE LANGUAGE VERY CAREFULLY. IT SPEAKS TO  
4 INTERCONNECTED SURFACE WATER, BUT THEN REALLY THE  
5 QUESTION IS: IS IT RELEVANT FOR YOU TO LOOK AT THAT TO  
6 DETERMINE RIGHTS IN THE BASIN.

7 AND, AGAIN, THAT IS CRITICALLY WHY THE  
8 FISHERY EXPERT IN THIS PHASE IS NECESSARY. NOT TO  
9 ACTUALLY DETERMINE RIGHTS, BUT YOU -- WE HAVE TO SHOW  
10 TO YOU THAT YOU HAVE TO LOOK AT THE INTERCONNECTED  
11 SURFACE WATER, AND WE DO THAT BY SAYING --

12 THE COURT: IS THAT SURFACE WATER A TO SURFACE  
13 WATER B? OR YOU MEAN SURFACE WATER COLLECTIVELY TO ONE  
14 OR MORE OF THE GROUNDWATERS?

15 MR. HAGERTY: WELL, THAT'S A GOOD QUESTION, YOUR  
16 HONOR. WE'RE TALKING ABOUT INTERCONNECTED SURFACE  
17 WATER. REALLY THE CONNECTION BETWEEN THE STREAMS AND  
18 THE BASINS, AND THEN THE BASINS TO THE STREAMS. AND  
19 THIS IS --

20 THE COURT: BASINS FOR THESE PURPOSES MEANING  
21 UNDERGROUND?

22 MR. HAGERTY: CORRECT.

23 AND ONE THING THAT I THINK WE CAN CLEAR UP  
24 VERY CLEARLY IS, YOU KNOW, ULTIMATELY IF WE GO TO A  
25 FULL ADJUDICATION, YOU WILL HAVE TO LOOK AT RIGHTS  
26 WITHIN THE DIFFERENT BASINS, BECAUSE, YOU KNOW, SOMEONE  
27 IN UPPER OJAI HAS A DIFFERENT RIGHT TO WATER IN UPPER  
28 OJAI THAN SOMEONE IN OJAI DOES. RIGHT? BECAUSE

1 THEY'RE DIFFERENT. SO YOU'RE GOING TO HAVE TO LOOK AT  
2 THAT DIFFERENTLY.

3 THE COURT: THEY'RE SHARING A DIFFERENT BASIN.

4 MR. HAGERTY: RIGHT. AND -- BUT WE'RE NOT --  
5 SEE, THIS IS WHERE PEOPLE CONFUSE THIS POINT. WE AGREE  
6 WITH THAT, BUT WHAT WE DON'T AGREE WITH IS THAT YOU  
7 COULD IGNORE INTERCONNECTED SURFACE WATER. SO WATER  
8 RUNS THROUGH -- IN OUR VIEW, RUNS THROUGH THE UPPER  
9 OJAI BASIN, SURFACE WATER GOES INTO GROUND, WHERE IT  
10 COMES BACK OUT, AND THAT'S MEANINGFUL TO THE DOWNSTREAM  
11 SURFACE WATER USERS.

12 THE COURT: WELL, PARTICULARLY IF THAT'S THE  
13 CYCLE, WHERE IT'S GOING SURFACE TO UNDERGROUND, AND  
14 THEN EMERGES, AND COMES SURFACE A SECOND TIME.

15 MR. HAGERTY: THAT'S RIGHT.

16 THE COURT: EVEN IF THAT'S THE FULL EXTENT OF  
17 THE CYCLE.

18 MR. HAGERTY: THAT'S RIGHT. AND THAT'S --

19 THE COURT: BECAUSE IN THAT PROCESS SURFACE FED  
20 BASIN, BASIN FED SURFACE.

21 MR. HAGERTY: SUBJECT TO PROOF -- WE'LL HAVE TO  
22 DEMONSTRATE THAT, BUT THAT'S WHAT PHASE 1 IS ALL ABOUT,  
23 THAT CONNECTEDNESS.

24 BUT THE FISHERY EXPERT, IT HAS TO BE -- THE  
25 COURT HAS TO UNDERSTAND THAT THE FISH ARE THERE AND  
26 THAT TO DETERMINE RIGHTS IN THOSE BASINS, YOU'RE GOING  
27 TO HAVE TO THINK ABOUT THE FISH IN A FUTURE PHASE.  
28 YOU'RE GOING TO ALSO HAVE TO THINK ABOUT OTHER SURFACE

1 WATER EXPORTERS. WE'RE NOT DOING THAT IN PHASE 1.  
2 WE'RE NOT MAKING THAT SPECIFIC CAUSAL CONNECTION. BUT  
3 IT'S A FACTUAL PREDICATE THE COURT HAS TO HAVE TO DO  
4 FUTURE PHASES, AND SO THAT'S WHY THE FISHERY COMPONENT  
5 IS CRITICAL, BUT IT'S NOT --

6 THE COURT: SO BEAR WITH ME. LET'S TRY TO  
7 IMAGINE WHAT THE CASE AND/OR THE PROOF AND/OR THE  
8 FINDINGS WOULD LOOK LIKE IF, FOR SOME REASON, I  
9 WOULDN'T HEAR A FISHERIES EXPERT. SO YOU'D STILL TRY  
10 TO PROVE THE WATER WENT FROM THE SURFACE INTO THE BASIN  
11 AND FROM THE BASIN OUT AGAIN TO THE SURFACE.

12 MR. HAGERTY: RIGHT.

13 THE COURT: AND THEN WASTES ITSELF IN THE  
14 PACIFIC OCEAN, HYPOTHETICALLY, IF NOBODY FIGURES OUT A  
15 WAY TO EXTRACT IT.

16 MR. HAGERTY: RIGHT.

17 THE COURT: THAT'S SORT OF THE WORST CASE, THAT  
18 IT WASTES INTO THE PACIFIC OCEAN.

19 WOULD I HAVE A DIFFERENT CONCLUSION ABOUT  
20 CONNECTEDNESS IF I DIDN'T THINK OF THE PHASE OF THE  
21 FISH IN THE LOWER STRETCH OF THE RIVER WHO WOULD LIKE  
22 THE BENEFIT OF SOME OF THAT WATER, WHO PROBABLY  
23 WOULDN'T EVEN CALL IT WASTE? BECAUSE IF THEY WANT TO  
24 LIVE IN THAT WATER BEFORE IT GETS TO THE PACIFIC OCEAN,  
25 THEY WOULD PROBABLY HAVE A DIFFERENT TERM THAN WASTE.

26 MR. HAGERTY: YES. IT WOULD NOT -- IF YOU  
27 EXCLUDED THE FISHERY EXPERT, YOU WOULD NOT BE IN A  
28 POSITION TO MAKE A FULL AND CORRECT DETERMINATION OF

1 RIGHTS IN THE BASINS IN FUTURE PHASES. THAT IS THE  
2 CRITICAL COMPONENT.

3 SO YOU HAVE TO --

4 THE COURT: FOR EXAMPLE, MY WATER THAT OTHERWISE  
5 IS BEING UNUSED BEFORE IT DISCHARGES TO THE PACIFIC,  
6 ACTUALLY DOES -- ASSUMING THAT'S PART OF WHERE THE FISH  
7 CHOOSE TO LIVE, HAS A BENEFICIAL USE, FOR THE VERY FACT  
8 IT'S SUPPORTING A FISHERY.

9 MR. HAGERTY: RIGHT. AND YOU'LL NEED TO THINK  
10 ABOUT THAT IN THE FUTURE -- IN FUTURE PHASES, AND  
11 YOU'LL NEED TO EVENTUALLY BALANCE THE NEEDS OF PEOPLE  
12 TO USE WATER IN THE BASINS AND THE NEEDS OF PEOPLE TO  
13 USE WATER FROM THE SURFACE, AND THE NEEDS OF THE --

14 THE COURT: BUT BALANCING CLEARLY IS BEYOND  
15 PHASE 1.

16 MR. HAGERTY: ABSOLUTELY. AND THAT'S WHY -- I  
17 MEAN, AGAIN, YOU KNOW --

18 THE COURT: AND THAT'S WHY YOU WOULD SAY MY  
19 LITTLE HALF ACRE-FOOT WELL IS DE MINIMIS IN THE VIEW OF  
20 SOMEBODY IS NOT RELEVANT TO PHASE 1 BECAUSE, AS YOU  
21 SAY, WHEN THERE ARE MULTIPLE DIFFERENT PEOPLE EACH  
22 TAKING HALF AN ACRE-FOOT, ULTIMATELY THE CUMULATIVE  
23 IMPACT IS DIFFERENT THAN THE SIGNIFICANCE OR  
24 INSIGNIFICANCE OF A LONELY WELL.

25 MR. HAGERTY: THAT'S CORRECT, YOUR HONOR.  
26 EXACTLY.

27 AND, AGAIN, I THINK -- YOU KNOW, IN SOME  
28 WAYS IT SHOULD BE SOMETHING WE CAN STIPULATE TO AS

1 REGARDS TO THE FISH, AND THAT'S SOMETHING TO BE  
2 DISCUSSED IN THE FUTURE, BECAUSE WE'RE NOT TRYING TO  
3 SHOW SPECIFIC CAUSE AND EFFECT AT THIS POINT IN TIME.

4 WE ARE TRYING TO SHOW, THOUGH, THAT YOU  
5 HAVE TO THINK OF THIS AS A COMMON SOURCE, IN PART  
6 BECAUSE THE FISH ARE THERE AND BECAUSE DOWNSTREAM WATER  
7 RIGHTS HOLDERS ARE THERE. AND IF YOU TAKE ANY OF THOSE  
8 PIECES OUT YOU WILL NOT GET THE CORRECT RESULT IN  
9 FUTURE PHASES. YOU WON'T HAVE THE FULL PICTURE AND  
10 INFORMATION.

11 AND THAT IS ALL WE'RE TRYING TO SHOW IN  
12 PHASE 1. WE'RE TRYING TO SET THE TABLE FOR, IN OUR  
13 VIEW, A CONSIDERATION OF THE PHYSICAL SOLUTION, BUT IF  
14 IT DOESN'T GO THERE, THEN, YOU KNOW, DECIDING WHAT HAS  
15 TO HAPPEN IN THE DIFFERENT BASINS AND WITHIN THE STREAM  
16 TO BE CONSISTENT WITH EVERYONE'S RIGHTS TO USE WATER  
17 BUT ALSO TO PROTECT THE HEALTH OF THE FISHERY.

18 THE COURT: NOW, REMIND ME. MR. KEAR HAS GIVEN  
19 A REPORT, THE ONE OBTAINED BY THE CITY OF OJAI FOR ITS  
20 OWN ADVOCACY PURPOSES, AND I BARELY SCRATCHED THE  
21 SURFACE OF IT BUT I THINK I PEEKED AT IT FOR A PAGE OR  
22 THREE. PROBABLY LESS TIME THAN I SPENT WITH YOUR WATER  
23 HISTORIAN. BUT MY RECOLLECTION WAS HE DID HAVE SOME  
24 THEORY OF THE DISCONNECTEDNESS OF THE OJAI BASIN AND/OR  
25 THE UPPER OJAI BASIN, I THINK BASED ON THE LOCATIONS OF  
26 CLAY SEDIMENT AND OTHER THINGS THAT, IN HIS VIEW, MADE  
27 IT AN ISOLATED BASIN, BUT I CAN BE MISREMEMBERING IT  
28 BECAUSE IT WAS A RATHER HASTY LITTLE PEEK AND NOT A



1 CONSIDERED REVIEW.

2 WHAT DID YOU TAKE FROM MR. KEAR'S REPORT?  
3 IT OBVIOUSLY WASN'T HELPING YOUR CASE. IT'S NOT  
4 INTENDED TO.

5 MR. HAGERTY: WELL, I MEAN, OUR OPINION OF  
6 MR. KEAR'S REPORT IS THAT IT DOES ACTUALLY PROVE  
7 INTERCONNECTEDNESS BECAUSE IT RECOGNIZES THAT THERE IS  
8 WATER COMING FROM THE BASIN AND GOING TO SAN ANTONIO  
9 CREEK, AND IT ALSO RECOGNIZES THAT UNDER CERTAIN  
10 CONDITIONS WATER IN THE UPPER SURFACE FEEDS THE  
11 GROUNDWATER BASIN.

12 WHAT YOU'RE SPEAKING TO IS A THEORY THAT HE  
13 WILL OPINE TO, APPARENTLY, THAT THERE IS A PORTION OF  
14 THE BASIN THAT DOESN'T HAVE EITHER A MATERIAL OR SOME  
15 TYPE OF CONNECTION. LET'S, JUST FOR THIS DISCUSSION  
16 PURPOSE, SAY THAT THAT'S, IN HIS VIEW, A DIFFERENT  
17 SUBBASIN OR SOMETHING.

18 BUT THAT -- TO US THAT DOESN'T HARM OUR  
19 CASE, BECAUSE THE QUESTION HERE IS: IS THE BASIN  
20 CONNECTED?

21 AND WE'LL PRESENT EVIDENCE OF WHAT  
22 INTERCONNECTEDNESS MEANS, BUT THE OPINION THAT'S BEEN  
23 EXPRESSED IS WATER COMES FROM THE BASIN AND GOES TO THE  
24 SURFACE WATER, AND IT'S A SIGNIFICANT AMOUNT OF WATER,  
25 AS THE COURT WILL HEAR.

26 THE COURT: SO FOR YOUR PURPOSES, AS LONG AS  
27 SOME WATER GOES FROM POINT A TO B TO C TO D, YOU'RE  
28 DOING WELL, EVEN IF SOME OF THE WATER AT POINT C IS SO

1 DEEP OR CAUGHT INSIDE THE CLAY LINER THAT IT DOESN'T  
2 NATURALLY HAVE AN OUTLET BECAUSE IT'S JUST DEEP ENOUGH  
3 THAT IT'S NOT GOING TO SPILL OVER INTO AN OUTLET.

4 MR. HAGERTY: OUR POSITION ON THAT WILL  
5 ULTIMATELY BE THAT THAT MAY AFFECT FUTURE MANAGEMENT  
6 DECISIONS, IT MAY AFFECT WHAT A PHYSICAL SOLUTION MIGHT  
7 LOOK LIKE OR SHOULD LOOK LIKE. THAT WILL BE FOR THE  
8 COURT TO DECIDE ULTIMATELY.

9 BUT AT THIS PHASE THE BASIN HAS TO BE TAKEN  
10 OUT OF THE BASIN. IT'S DEFINED UNDER THE BULLETIN 118  
11 THAT WE'VE TALKED ABOUT. AND THE QUESTION IS: IS  
12 THERE INTERCONNECTEDNESS BETWEEN SURFACE WATER AND  
13 GROUNDWATER WITHIN THE BASIN? AND WE BELIEVE THAT ALL  
14 THE EXPERTS HAVE ACKNOWLEDGED THAT THERE IS; IT'S JUST  
15 A QUESTION OF IS IT A SEPARATE PART, WHICH WE THINK IS  
16 IRRELEVANT FOR THIS PHASE OF TRIAL.

17 THE COURT: OKAY. SO WE GO BACK TO THE BASIC  
18 QUESTION, THOUGH, OF YOU DON'T WANT TO LET CASITAS  
19 DESIGNATE LATE, YOU DON'T WANT EAST OJAI TO DESIGNATE  
20 LATE, SO BOTH EAST OJAI AND CASITAS SHOULD MAKE A  
21 MOTION TO BE RELIEVED OF THEIR BLOWING THE DEADLINE AND  
22 SEE WHAT HAPPENS, RIGHT?

23 MR. HAGERTY: THAT'S OUR POSITION, AND WE'RE  
24 HAPPY TO TALK ABOUT IT, BECAUSE, AGAIN, WE THINK THAT,  
25 MAYBE AT LEAST WITH CASITAS, IF WE CAN CLARIFY AND HAVE  
26 THESE FURTHER DISCUSSIONS ON WHAT THE ISSUES ACTUALLY  
27 ARE, MAYBE THEY DON'T NEED TO --

28 AND, AGAIN, MR. PISANO DID A GOOD JOB OF

1 EXPLAINING WHAT OUR REAL CONCERN IS. IF THEY WANT TO  
2 PUT THEIR NAME ON AN EXISTING REPORT, OKAY, YOU KNOW,  
3 THEY CAN DO THAT --

4 THE COURT: NOT ONLY THAT'S ALL THEY SEEM TO BE  
5 ASKING TO DO, BUT YOU ARE RIGHT. ONCE THEY DO THAT,  
6 THEN THEY CAN COME UP WITH A SUPPLEMENTAL REPORT THAT  
7 MAY BE ONLY GOOD FOR CASITAS AND DOESN'T DO OJAI ANY  
8 GOOD, BUT NOMINALLY IT'S A SUPPLEMENTAL REPORT.

9 MR. HAGERTY: AND THAT'S OUR CONCERN.

10 THE COURT: BUT YOU PROBABLY WANT THAT RIGHT,  
11 RIGHT, MR. DENNINGTON?

12 MR. DENNINGTON: WE DO WANT THE RIGHT TO  
13 SUPPLEMENT --

14 THE COURT: SO THEN IN THEORY YOU'VE GOT TO  
15 EITHER EXCUSE THE MISSING THE DEADLINE OR WIN A MOTION  
16 TO BE EXCUSED, BECAUSE THEY'RE NOT GOING TO STIPULATE  
17 TO EXCUSING THE DEADLINE. SO I THINK YOU NEED TO MAKE  
18 A MOTION.

19 MR. DENNINGTON: WOULD THE COURT --

20 MS. JACOBSON: YOUR HONOR --

21 THE COURT: WHO IS WANTING TO SPEAK? IS THIS  
22 MS. JACOBSON, PERCHANCE?

23 MS. JACOBSON: YES, IT IS.

24 I'LL LET MR. DENNINGTON --

25 THE COURT: GO AHEAD.

26 MS. JACOBSON: I THINK THE -- THE PROBLEM HERE,  
27 YOUR HONOR, IS NOT -- WE'RE IN COMPLETE DISAGREEMENT  
28 WITH WHAT THE LAW IS AND WHAT CONNECTION MEANS, AND I

1 DO AGREE WITH MR. HAGERTY THAT SOME OF THAT BE  
2 CLARIFIED IN THE LEGAL BRIEFING, BUT, YOU KNOW, AS WE  
3 JUST WENT ON FOR QUITE A WHILE, HE EXPLAINED THE LAW  
4 ACCORDING TO VENTURA AND THE FACTS ACCORDING TO  
5 VENTURA. AND THE CITY OF OJAI WILL BE TAKING POSITIONS  
6 THAT ARE IN DISAGREEMENT WITH THAT FACTUALLY AND  
7 LEGALLY.

8 AND, YOU KNOW, I KNOW THAT MR. DENNINGTON'S  
9 APPEARING HERE ON BEHALF OF MR. JUNGREIS, SO I WOULD  
10 JUST REPRESENT THAT, AS I UNDERSTAND THE CONCERN, THE  
11 UNDERSTANDING ORIGINALLY FOR PHASE 1 WAS MORE OF A --  
12 KIND OF A VERY SIMPLE STRAIGHTFORWARD MATTER OF WHAT  
13 ARE THE BOUNDARIES AND DOES THE WATER CONNECT BETWEEN  
14 SURFACE WATER AND GROUNDWATER IN THESE FOUR BASINS, AND  
15 CAN YOU DO THAT.

16 AND AFTER FURTHER DISCUSSIONS AND STATUS  
17 REPORTS, THE PHASE AS DESCRIBED IN WHAT VENTURA INTENDS  
18 TO PROVE MOVING FORWARD IN THIS CASE FOR THIS  
19 FOUNDATIONAL MATTER IS NOT JUST FOR THE SIXTH CAUSE OF  
20 ACTION BUT FOR OTHER CAUSES OF ACTION. IT'S MY  
21 UNDERSTANDING THAT THAT CONCERNED CASITAS BECAUSE ALL  
22 OF A SUDDEN NOW IT'S NOT JUST A QUESTION OF WHO'S  
23 INVOLVED IN THIS CASE AND WHO'S NOT, DUE TO THE  
24 BOUNDARIES AND THE LANGUAGE OF THE GROUNDWATER  
25 ADJUDICATION STATUTE, BUT NOW IT'S POTENTIALLY GOING TO  
26 BE A WIDER RANGE OF ISSUES.

27 AND, THEREFORE, WITH THAT UNDERSTANDING,  
28 THEY WANTED TO DESIGNATE AN EXPERT TO ADDRESS SOME OF

1 THESE ISSUES, WHICH MAY OR MAY NOT BE TIED DIRECTLY TO  
2 MS. KLUG, BECAUSE MS. KLUG'S OPINION RELIES ON THE  
3 UNDERLYING OPINIONS OF THE HISTORIAN AND THE FISHERY  
4 BIOLOGIST.

5 SO IT'S A LOT MORE COMPLICATED THAN THAT,  
6 AND STATING SIMPLY THAT THEY MISSED THEIR DEADLINE  
7 ASSUMES THAT THEY MISSED A DEADLINE TIED TO THE ISSUE  
8 THAT HAD ALREADY BEEN DETERMINED.

9 THE COURT: WELL, THAT MAY BE GERMANE TO THE  
10 MOTION TO BE RELIEVED.

11 WERE THERE OTHER THINGS YOU WANTED TO SAY  
12 MORE GENERALLY, SINCE MR. HAGERTY HAD A CHANCE TO LAY  
13 OUT HIS THEORY OF THE CASE WITH THE COURT'S INVITATION?

14 BECAUSE I APPRECIATED MY DIALOGUE WITH HIM,  
15 BUT GIVEN THAT MR. HAGERTY DID HAVE A FAIR AMOUNT OF  
16 AIRTIME, DO YOU WANT TO GO ANY FURTHER, MS. JACOBSON,  
17 WITH YOUR SENTIMENTS ON THE -- FUNDAMENTALLY THE SAME  
18 ISSUES?

19 MS. JACOBSON: YEAH, I'LL DO MY BEST TO DESCRIBE  
20 KIND OF THE 30,000-FOOT VIEWPOINT OF THESE ISSUES.

21 YOU KNOW, AS YOUR HONOR HAS PICKED UP ON,  
22 THERE IS SUCH A THING AS A HYDROLOGIC -- HYDROGEOLOGIC  
23 CYCLE, AND A VERY, YOU KNOW, FUNDAMENTAL KIND OF  
24 SURFACE-SCRATCHING ISSUE IS WATER COMES DOWN IN THE  
25 FORM OF PRECIPITATION OR SNOW OR SOME FORM, AND  
26 EVENTUALLY IT MAKES ITS WAY, BY WAY OF SURFACE WATER,  
27 DOWN TO THE OCEAN, AND SOMETIMES IT PERCOLATES DOWN  
28 INTO OUR SOIL. AND SOMETIMES THAT PERCOLATION GOES

1 DOWN FURTHER AND IS CAPTURED, AND SOMETIMES THAT WATER  
2 MOVES UNDERGROUND.

3 AND THAT'S A VERY BROAD-BRUSH THING, BUT TO  
4 SAY THAT WATER COMES DOWN, GOES INTO A BASIN, AND  
5 ALWAYS COMES OUT OF THE BASIN INTO A SURFACE WATER IS  
6 ACTUALLY, YOU KNOW, SCIENTIFICALLY AND FACTUALLY  
7 INCORRECT. AND OUR EXPERT WILL EXPLAIN THAT.

8 SO NOT THERE'S AN ASSUMPTION THAT ALL WATER  
9 IS CONNECTED SIMPLY BECAUSE IT RUNS DOWNHILL OR BECAUSE  
10 SOME SOURCES OF WATER CONNECT IN SOME WAYS, AND THE --  
11 YOU DID, I THINK, HIT ON THIS AS WELL. THE SEDIMENT  
12 DOES MATTER, AND SO, ALTHOUGH WATER ON THE SURFACE MAY  
13 CONNECT BRIEFLY WITH SOME OTHER WATER THAT COULD BE  
14 UNDERGROUND FOR A PERIOD OF TIME OR IN SOME FORM, DOES  
15 THAT ESTABLISH CONNECTIVITY AS IT WAS ARTICULATED,  
16 DEFINED, AND COMMONLY USED IN THE LAW. AND THAT'S  
17 WHERE WE'RE, I THINK -- YOU'RE GOING TO SEE THIS  
18 PHASE 1 IS REALLY THIS FUNDAMENTAL DIFFERENCE OF WHAT  
19 DOES CONNECTION MEAN, WHAT DOES HYDROLOGIC CONNECTION  
20 MEAN, WHEN WE'RE DISCUSSING SURFACE WATER AND  
21 GROUNDWATER.

22 AND I CAN GO FURTHER ON IT, BUT I WAS  
23 TRYING TO DO MORE OF A -- PAINT YOU A PICTURE ON JUST  
24 KIND OF SOME VERY BASIC ISSUES.

25 THE COURT: OKAY.

26 MS. JACOBSON: I'M HAPPY TO ANSWER QUESTIONS.

27 THE COURT: CAN YOU THINK OF SOME SUBJECT WHERE  
28 CASITAS WATER DISTRICT WOULD WANT TO PROVE THROUGH THE

1 EXPERTS SOMETHING THAT DIDN'T BENEFIT OJAI?

2 MS. JACOBSON: CAN YOU ASK THAT AGAIN?

3 THE COURT: MR. PISANO EXPRESSED A CONCERN THAT  
4 IF CASITAS MUNICIPAL WATER DISTRICT GETS TO SHARE THE  
5 DESIGNATION OF JORDAN KEAR, K-E-A-R, THAT THEN WHEN THE  
6 TIME FOR SUPPLEMENTAL REPORT ARRIVES ON DECEMBER 3,  
7 THAT MR. KEAR MIGHT BE MOTIVATED TO COME UP WITH A  
8 WHOLE NEW SET OF SUPPLEMENTAL OPINIONS THAT ONLY  
9 USEFULLY BENEFIT CASITAS MUNICIPAL WATER DISTRICT BUT  
10 AREN'T OF ANY PRACTICAL UTILITY TO CITY OF OJAI AS A  
11 LITIGANT, AND THAT, THEREFORE, ALLOWING THIS BELATED  
12 DESIGNATION WOULD GIVE CASITAS A BENEFIT THAT IT  
13 OTHERWISE SHOULDN'T HAVE, AND SO I'M JUST ASKING YOU IF  
14 YOU CAN IMAGINE ANY CIRCUMSTANCE WHERE THE INTEREST OF  
15 CASITAS IN TERMS OF THE FACTS WOULD DIVERGE FROM THE  
16 APPARENT INTEREST OF CITY OF OJAI SUCH THAT THERE'S  
17 SOMETHING AT WHICH AN EXPERT MIGHT OPINE THAT WOULDN'T  
18 NECESSARILY BENEFIT OJAI WHILE IT'S ALSO BENEFITING  
19 CASITAS MUNICIPAL WATER DISTRICT.

20 MS. JACOBSON: I'M NOT AWARE OF ANYTHING AT THE  
21 MOMENT, YOUR HONOR. I THINK, GENERALLY SPEAKING,  
22 ANYTHING ON THIS ISSUE SPECIFICALLY OF CONNECTIVITY AND  
23 SOME OF THESE OTHER ISSUES ABOUT THE HISTORIAN  
24 ESTABLISHING WHAT IT IS TO BE CONNECTED -- I THINK  
25 ANYTHING THAT BENEFITS CASITAS WOULD BENEFIT OJAI AND  
26 VICE VERSA, BUT I DON'T KNOW OF ANYTHING SPECIFIC.

27 I WOULD SAY THAT I'M VERY CONFUSED ABOUT  
28 THE ARGUMENT OF PREJUDICE. I DON'T THINK IT MAKES

1 SENSE TO SAY BECAUSE OJAI IS NOT BENEFITING -- AND  
2 THAT'S SOMETHING I'M NOT CLEAR ABOUT -- AND CASITAS IS  
3 RECEIVING A BENEFIT, THAT EQUALS HARM, BUT JUST BECAUSE  
4 ONE SIDE HAS EQUAL FOOTING NOW, SO TO SPEAK, DOESN'T  
5 NECESSARILY EQUAL HARM. I DON'T UNDERSTAND THE HARM TO  
6 VENTURA.

7 IT WOULD BE DIFFERENT IF IT WAS A  
8 COMPLETELY DIFFERENT EXPERT WITH DIFFERENT OPINIONS ON  
9 DIFFERENT SUBJECT MATTERS, BUT, YOU KNOW, I THINK WE'RE  
10 JUST GOING TO HAVE TO SEE WHERE THAT GOES, AND IF IT'S  
11 NOT IMPACTING THE TIME FRAME FOR DISCOVERY, WE'RE NOT  
12 ADDING AN EXPERT, WE'RE NOT ADDING MORE EXPERT DEPOS,  
13 IT JUST -- I -- IT'S REALLY NOT MY ISSUE. I'M JUST  
14 KIND OF SCRATCHING MY HEAD HERE, NOT UNDERSTANDING WHAT  
15 THE PROBLEM IS.

16 THE COURT: THANK YOU FOR YOUR INPUT,  
17 MS. JACOBSON.

18 MR. PISANO, I SHOULD GO AHEAD AND SCHEDULE  
19 A MOTION, THOUGH, RIGHT?

20 MR. PISANO: YES, YOUR HONOR.

21 THE COURT: OKAY.

22 MR. PISANO: WE WOULD BE FINE HAVING SHORTENED  
23 NOTICE IF WE WANT TO GET THIS DONE WITH DUE DISPATCH SO  
24 IT DOESN'T UPSET THE DISCOVERY SCHEDULE.

25 THE COURT: SO THIS WOULD BE YOUR MOTION,  
26 MR. DENNINGTON, ALTHOUGH I GUESS YOU'RE STANDING IN FOR  
27 THE PERSON WHO IS REALLY GOING TO DO THE WORK?

28 MR. DENNINGTON: THAT'S CORRECT, YOUR HONOR.



1 MR. JUNGREIS IS THE LEAD ON THIS CASE, AND HE IS  
2 ACTUALLY HAVING HIP SURGERY TODAY, SO I'M FILLING IN  
3 WITH HIM.

4 I BELIEVE -- I AGREE WITH THE SHORTENED  
5 NOTICE.

6 THE COURT: WHAT'S YOUR TEAM LOOK LIKE?

7 HIP SURGERY IS NOT THE KIND OF THING YOU GO  
8 BACK TO WORK THE NEXT DAY.

9 MR. DENNINGTON: WELL, I THINK HE'S -- HE  
10 ALREADY HAD ONE DONE LAST YEAR, AND SO HE HAS AN IDEA  
11 OF WHEN --

12 THE COURT: BRAVE MAN.

13 MR. DENNINGTON: -- HOW LONG IT'S GOING TO TAKE,  
14 SO I THINK HE'S GOING TO BE BACK THIS WEEK.

15 THE COURT: OKAY. THE DISTRACTION WILL PROBABLY  
16 HELP HIM COPE WITH THE PAIN.

17 MR. DENNINGTON: EXACTLY.

18 THE COURT: IT HAS UTILITY IN ITS OWN WAY TO BE  
19 OCCUPIED.

20 MR. DENNINGTON: YEAH.

21 THE COURT: SO COULD YOU FILE IT BY A WEEK FROM  
22 TODAY?

23 MR. DENNINGTON: I THINK WE COULD.

24 MR. BAGGERLY: YOUR HONOR?

25 THE COURT: WHO IS SPEAKING NOW?

26 MR. BAGGERLY: THIS IS CLAUDE BAGGERLY.

27 THE COURT: YES, MR. BAGGERLY.

28 MR. BAGGERLY: THANK YOU.

1 I THINK IT'S A LITTLE BIT OF A FAR STRETCH  
2 TO CALL A SUPPLEMENTAL BRIEF BY JORDAN KEAR IN  
3 RELATIONSHIP TO HYDROGEOLOGY. THE CITY OF VENTURA AND  
4 THEIR ATTORNEYS CREATED THIS CONFLICT, BUT LET ME TRY  
5 TO CLARIFY THAT FOR YOU.

6 JORDAN KEAR IS THE HYDROGEOLOGIST FOR THE  
7 OJAI BASIN GROUNDWATER MANAGEMENT AGENCY. CASITAS  
8 MUNICIPAL WATER DISTRICT IS THE MAJOR PUMPER IN THAT  
9 BASIN. AND THAT WATER IS GENERALLY APPROPRIATED TO THE  
10 CITY OF OJAI. I CANNOT IMAGINE THAT JORDAN KEAR WOULD  
11 WRITE ANYTHING THAT WOULD NOT BE IN FAVOR OF CASITAS  
12 AND/OR THE CITY OF OJAI. IT'S JUST NOT POSSIBLE.

13 THE SECOND THING I THINK YOU NEED TO  
14 UNDERSTAND, YOUR HONOR, IS THAT TITLE 10, SECTION 7 OF  
15 THE CODE OF CIVIL PROCEDURE DEALS WITH GROUNDWATER  
16 ADJUDICATION. AND I THINK THAT CONNECTIVITY, YOUR  
17 HONOR, WHAT WE NEED TO FOCUS ON, IS WHETHER OR NOT  
18 THERE IS GROUNDWATER IN THE BASIN IN THE UPPER OJAI  
19 THAT TRANSFERS INTO THE GROUNDWATER BASIN IN OJAI  
20 BASIN, OR WHETHER OR NOT THE OJAI BASIN GETS PAST THE  
21 LARGE CONFINING BOUNDARY ON THE WEST SIDE AND DRAINS  
22 INTO GROUNDWATER TO THE UPPER VENTURA RIVER BASIN. THAT  
23 IS WHAT THE EXPEDITED GROUNDWATER ADJUDICATION IS  
24 ABOUT, GROUNDWATER, NOT THE FIRST AQUIFERS SPILLING  
25 OVER INTO A ZONE AND DEFINITE CHANNEL IN SAN ANTONIO  
26 CREEK AND BECOME SURFACE WATER.

27 ON PAGE 3 OF THE -- THE PHYSICAL SOLUTION  
28 THERE'S A FOOTNOTE THAT SAYS WHAT THE WATER CODE SAYS.

1 WATER THAT IS NOT ADJUDICATABLE IS IN A KNOWN AND  
2 DEFINITE CHANNEL.

3 YOU NEED TO DEAL WITH GROUNDWATER, YOUR  
4 HONOR, NOT SURFACE WATER. AND THAT'S THE CREEP THAT IS  
5 SPREADING IN THIS CASE.

6 THANK YOU.

7 THE COURT: OKAY.

8 SO LET'S GO BACK TO TALKING ABOUT OUR  
9 BRIEFING SCHEDULE. YOU COULD DO IT A WEEK FROM TODAY,  
10 MR. DENNINGTON?

11 MR. DENNINGTON: YOUR HONOR, COULD IT BE A WEEK  
12 FROM TOMORROW?

13 THE COURT: SURE.

14 MR. DENNINGTON: OKAY.

15 THE COURT: OKAY. SO MOVING PARTY'S BRIEF AND  
16 SUPPORTING PAPERS TO BE SERVED AND FILED BY  
17 NOVEMBER 10.

18 WHAT'S YOUR SENTIMENT OF HOW MUCH TIME  
19 YOU'D LIKE TO OPPOSE IT, MR. PISANO OR MR. HAGERTY?

20 MR. PISANO: EARLY THE FOLLOWING WEEK.

21 THE COURT: FINE.

22 MR. PISANO: 15TH OR 16TH.

23 THE COURT: WHAT ABOUT THE 16TH.

24 COULD YOU GET A REPLY IN BY THE 19TH?

25 MR. DENNINGTON: YES, YOUR HONOR.

26 THE COURT: AND WOULD YOU GENTLEMEN BE AVAILABLE  
27 ON THE 22ND OR THE 23RD FOR ARGUMENT?

28 THAT IS THANKSGIVING WEEK, EVERYONE.

1 MR. PISANO: EITHER DAY, YOUR HONOR. THE 23RD  
2 IS PREFERABLE ON OUR END, YOUR HONOR.

3 MR. DENNINGTON: I DON'T KNOW WHAT  
4 MR. JUNGREIS'S CALENDAR IS LOOKING LIKE ON THE 23RD.  
5 THAT WORKS --

6 THE COURT: FOR THE MOMENT I'LL PUT IT DOWN FOR  
7 THE 23RD AT 9:00 A.M., AND IF YOUR LEAD LAWYER IS  
8 UNAVAILABLE ON THE 23RD, LET ME KNOW. HE CAN OBVIOUSLY  
9 APPEAR VIA L.A. COURTCALL -- OR COURTCONNECT, RATHER,  
10 WHICH HOPEFULLY WILL SAVE HIM THE NEED OF TRYING TO  
11 HOBBLE INTO THE COURTROOM, WITH PARKING AND ALL THOSE  
12 OTHER INCONVENIENCES.

13 MR. DENNINGTON: YEAH.

14 MS. JACOBSON: YOUR HONOR, I APOLOGIZE. THIS IS  
15 HOLLY JACOBSON. I'M CURRENTLY IN THE JURY ROOM -- I'M  
16 IN A JURY ROOM IN A COURTROOM RIGHT NOW, AND I DIDN'T  
17 HEAR THAT LAST DATE.

18 THE COURT: TUESDAY, NOVEMBER 23, AT 9:00 A.M.

19 MS. JACOBSON: AND THAT'S FOR THE REPLY?

20 THE COURT: NO, THAT'S THE ARGUMENT. THE REPLY  
21 WAS THE PRIOR FRIDAY, NOVEMBER 19TH.

22 MS. JACOBSON: THANK YOU.

23 THE COURT: WHEN WE'RE DONE, WOULD YOU BE KIND  
24 ENOUGH TO GIVE NOTICE, MR. HAGERTY, FOR CITY OF  
25 SAN BUENAVENTURA?

26 MR. HAGERTY: YES, YOUR HONOR.

27 THE COURT: OKAY.

28 DOES THAT IN THE NEAR TERM SOLVE THE

1 PROBLEMS YOU'RE PRESENTING TODAY, MR. DENNINGTON?

2 MR. DENNINGTON: YES, YOUR HONOR.

3 THE COURT: OKAY.

4 NOW, DO I HAVE MR. PATTERSON HERE FOR THE  
5 EAST OJAI GROUP?

6 MR. PATTERSON: GOOD AFTERNOON, YOUR HONOR.  
7 GREG PATTERSON.

8 THE COURT: SO BEAR WITH ME. DO I UNDERSTAND  
9 YOU TOO ARE TRYING TO HOPE TO COME UP WITH SOME MORE  
10 EXPERTS, NOTWITHSTANDING HAVING MISSED THE FIRST  
11 DEADLINE?

12 MR. PATTERSON: NO, YOUR HONOR. THE ISSUE IS  
13 THAT THE FIRM HAS BEEN -- WE'VE BEEN CONTACTED BY A  
14 NUMBER OF PARTIES IN THE UPPER OJAI BASIN, WHO, AFTER  
15 MEETING AND LOOKING AT THE EXPERT WITNESS REPORT BY  
16 PLAINTIFF, HAVE TRIED TO ORGANIZE AND POTENTIALLY  
17 DEVELOP A REPORT ON THEIR OWN FOR THE UPPER OJAI BASIN.

18 I REPRESENT SEVEN PARTIES THAT HAVE  
19 ALREADY -- YOU KNOW, THEY'VE ALREADY SUBMITTED THEIR  
20 EXPERT REPORT BY AQUILOGIC AND MR. ANTHONY BROWN, BUT  
21 THERE ARE A NUMBER OF PARTIES WHO ARE TRYING TO  
22 PARTICIPATE MEANINGFULLY AND JUST HAD NEEDED MORE TIME  
23 TO REALLY DEVELOP A WHOLE BUNCH OF THINGS, WHICH  
24 INCLUDES, YOU KNOW, POTENTIALLY, YOU KNOW, CONFLICT  
25 WAIVERS, HOW WE -- HOW IT GETS PAID FOR, ET CETERA,  
26 ET CETERA, AND SO IT'S -- IT'S BEEN A KIND OF A ROUGH  
27 SLED FOR THEM, GIVEN THE SHORTENED TIME PERIOD THAT  
28 THEY'VE HAD TO TRY TO DO THIS.

1 I UNDERSTAND THAT, YOU KNOW, THERE WERE  
2 DEADLINES SET BY THE COURT. MY OBJECTIVE, FRANKLY, IS  
3 TO SEE IF THERE'S A WAY TO ALLOW THOSE PARTIES WHO WANT  
4 TO HAVE A VOICE IN THIS CASE TO BE ABLE TO PARTICIPATE  
5 MEANINGFULLY WITH RESPECT TO AN EXPERT REPORT.

6 FROM MY PERSPECTIVE, IT WOULD MEAN A LOT OF  
7 WORK ON MY END, AND THE POSSIBILITY, FRANKLY, IF THEY  
8 DECIDED TO RETAIN AQUILOGIC BUT -- AND OUR EXPERT,  
9 DEVELOPING A SUPPLEMENTAL -- A SEPARATE REPORT THAT  
10 WOULD DEAL WITH THE UPPER OJAI BASIN, NOT THE OJAI  
11 BASIN.

12 SO IT'S -- IT'S A MATTER OF WHETHER THESE  
13 FOLKS WANT TO, I GUESS -- YOU KNOW, THEY CAN  
14 PARTICIPATE IN THE MOTION PRACTICE TO BE RELIEVED OF  
15 THE DEADLINE IF THEY CHOOSE TO DO SO, BUT IT'S JUST MY  
16 EFFORT TO TRY TO MAKE SURE THAT EVERYBODY WHO HAS A  
17 STAKE IN THIS CASE ACTUALLY HAS A VOICE IN THE CASE,  
18 AND IT'S BEEN DIFFICULT FOR A LOT OF PEOPLE WHO CAN'T  
19 AFFORD SEPARATELY THEIR OWN EXPERT AND WHO ARE TRYING  
20 TO ORGANIZE AND DEVELOP AN ABILITY TO HAVE THEIR VOICE  
21 HEARD BY THE COURT. THAT'S WHERE I'M AT, YOUR HONOR.

22 THE COURT: SO LET ME TRY ONCE MORE AND SEE IF I  
23 UNDERSTAND IT BETTER ON THE DO-OVER.

24 YOU HAD TIMELY DESIGNATED AQUILOGIC, BUT TO  
25 YOUR UNDERSTANDING, BECAUSE YOU'VE GOT THESE PEOPLE  
26 REACHING OUT TO YOU, YOU GOT VARIOUS PEOPLE WHO WOULD  
27 LIKE TO SHARE AQUILOGIC SORT OF IN THE SAME WAY THAT  
28 CASITAS MUNICIPAL WATER DISTRICT WANTS TO SHARE JORDAN

1 KEAR? IS THAT A CORRECT PERCEPTION OF WHAT'S GOING ON?

2 MR. PATTERSON: YES, YOUR HONOR.

3 THE COURT: OKAY.

4 BUT IN A MORE COMPLICATED WAY THAN WHAT  
5 HAPPENS WHEN CASITAS WANTS TO GO AND BOND WITH CITY OF  
6 OJAI, IF YOUR CURRENT CLIENTS ARE GOING TO SHARE THEIR  
7 EXPERT WITH ONE OR MORE NEWBIES WHO SHOW UP, YOU'VE GOT  
8 TO WORRY ABOUT PAPERING THE FILE WITH CONFLICT WAIVERS,  
9 COST-SHARING AGREEMENTS, CONFIDENTIALITY AGREEMENTS AND  
10 THE LIKE, AND ALL THAT TAKES TIME.

11 MR. PATTERSON: YES, YOUR HONOR.

12 THE COURT: OKAY.

13 DO YOU PERCEIVE THAT THEY ONLY WANT TO HIRE  
14 AQUILOGIC, OR IS THERE SOME REASON TO THINK THAT  
15 THEY'VE GOT A WANDERING EYE AND THINK THEY WANT TO BOTH  
16 HIRE AQUILOGIC AND BRING IN A NEW FACE?

17 MR. PATTERSON: SO FAR AS I KNOW, THEY DO NOT  
18 WANT TO BRING IN A NEW FACE.

19 THE COURT: BUT IT WOULD BE, FOR THEM, A DELAYED  
20 DESIGNATION, AND, THEREFORE, THEY'RE PRESUMABLY IN THE  
21 SAME DOGHOUSE THAT CASITAS MUNICIPAL WATER DISTRICT  
22 FINDS ITSELF IN IN THE VIEW OF CITY OF  
23 SAN BUENAVENTURA, CORRECT?

24 MR. PATTERSON: YES.

25 THE COURT: WHO, IF ANYBODY, WOULD BE SPEAKING  
26 FOR THEM AND MAKING A MOTION TO BE RELIEVED OF THE  
27 DEADLINE?

28 YOU DIDN'T MISS THE DEADLINE SO I INFER

1 THIS WOULDN'T BE YOUR MOTION. DO YOU KNOW WHO AMONGST  
2 PRESENT COMPANY WOULD BE LIKELY TO BE A MOVING PARTY TO  
3 TRY TO OBTAIN THIS RELIEF?

4 MR. PATTERSON: I DO NOT KNOW AT THIS TIME. I  
5 DO NOT REPRESENT THESE OTHER PARTIES. CURRENTLY.

6 THE COURT: IS THERE ANYBODY WITH US THIS  
7 AFTERNOON, EITHER A LAWYER OR SOMEBODY  
8 SELF-REPRESENTED, WHO FITS THE PROFILE OF BEING ONE OF  
9 THESE PEOPLE WHO WANT TO SOMEHOW SHARE THE SERVICES OF  
10 AQUILOGIC WITH THE LITIGANTS COMMONLY KNOWN AS THE EAST  
11 OJAI GROUP FOR PURPOSES OF THIS LITIGATION?

12 MS. BLISS: YOUR HONOR, THIS IS LOA BLISS.

13 THE COURT: GO AHEAD, MA'AM.

14 MS. BLISS: WE ARE -- WE FILED OUR EX PARTE  
15 MOTION SO THAT WE WOULD HAVE A CHANCE TO DEVELOP OUR  
16 REPORT IN CONNECTION WITH OTHERS OR NOT, AND IN ORDER  
17 TO HAVE A VOICE IN THIS LITIGATION, AND THAT'S IT.

18 WE WOULD PROBABLY WANT TO USE MR. KEAR, BUT  
19 IF OUR GROUP COULD COALESCE TO SHARE COSTS AND ALSO  
20 SHARE THE COSTS OF REPRESENTATION, I DON'T THINK IT'S  
21 GOING TO BE ANY PREJUDICE TO ANY OTHER PARTY IN THIS  
22 ACTION, AND WOULD RESULT IN A FAIR RESOLUTION. I  
23 THINK --

24 THAT'S MY STATEMENT.

25 THE COURT: THANK YOU.

26 NOW, IF I HEAR YOU RIGHT, MS. BLISS, YOU  
27 ACTUALLY HOPE TO SHARE JORDAN KEAR WITH CITY OF OJAI  
28 AND POSSIBLY ALSO WITH CASITAS MUNICIPAL WATER



1 DISTRICT. YOU AT THE MOMENT AREN'T THAT EAGER TO SHARE  
2 MR. PATTERSON'S EXPERT, THE BUSINESS KNOWN AS  
3 AQUILOGIC, IF I HEARD YOU CORRECTLY. AM I HEARING YOU  
4 CORRECTLY, MS. BLISS?

5 MS. BLISS: THAT'S UNDECIDED. IT'S UNDECIDED AT  
6 PRESENT.

7 THE COURT: SO YOU MIGHT WANT TO TRY TO FIND A  
8 WAY TO GET ASSOCIATED WITH AQUILOGIC, YOU MIGHT WANT TO  
9 GET ASSOCIATED WITH JORDAN KEAR, OR MAYBE BOTH OR MAYBE  
10 NEITHER?

11 MS. BLISS: WE WOULD LIKE TO BE ASSOCIATED, I  
12 THINK, MOST LIKELY WITH BOTH, BUT IT DEPENDS ON WHETHER  
13 WE CAN HAVE AGREEMENT AMONGST PARTIES IN THE UPPER OJAI  
14 WHO MIGHT BE WILLING TO PARTICIPATE IN THIS GROUP  
15 EFFORT.

16 THE COURT: NOW, THE GOOD NEWS, BAD NEWS, I  
17 GUESS, IN A WAY, IS THERE ARE DEADLINES IN THE  
18 LITIGATION SYSTEM, UNLESS A JUDGE -- ONE NEEDS TO BE  
19 PRUDENT ABOUT WHEN YOU HOLD TIGHT TO DEADLINES AND WHEN  
20 YOU USE YOUR DISCRETION TO LET DEADLINES SLIP, BECAUSE  
21 IF YOU'RE THE JUDGE WHO ALWAYS LET ALL DEADLINES SLIP  
22 FOR ALL PURPOSES, THEN THE LAWYERS FIGURE THIS OUT AND  
23 NOTHING EVER HAPPENS, BECAUSE THEY KNOW THAT THE  
24 DEADLINES DON'T COUNT FOR ANYTHING AND YOU'RE NEVER  
25 GOING TO GO TO TRIAL AND THE CASE NEVER GETS RESOLVED.  
26 AND THAT'S BAD FOR EVERYBODY, BECAUSE LITIGATION DOES  
27 NEED A COMPLETION DATE.

28 HOW QUICKLY THAT COMES IS ANOTHER QUESTION,

1 BUT IF IT JUST IS GOING TO DRAG ON INTERMINABLY, THEN  
2 THAT'S A TERRIBLE THING.

3 AND SO WE DO HAVE TO SET DEADLINES. AND I  
4 REALIZE IN A CASE LIKE THIS IT INVOLVES A BLEND OF  
5 HIGHLY SOPHISTICATED COUNSEL, LIKE MR. DENNINGTON'S  
6 OFFICE AND MR. PISANO'S OFFICE, AND OTHER INTERESTED  
7 PARTIES WHO REPRESENT THEMSELVES, LIKE YOU, MS. BLISS.  
8 ONE SHOULDN'T SORT OF HOLD A CRAVATH, SWAINE & MOORE  
9 STANDARD UP AGAINST EVERYBODY, BUT YOU DO HAVE TO  
10 EXPECT PEOPLE TO HONOR DEADLINES.

11 YOU HAVE BEEN DILIGENT AND BROUGHT FORWARD  
12 YOUR EX PARTE FOR TODAY SO THAT'S VERY MUCH TO YOUR  
13 CREDIT, MS. BLISS, AND IT'S SOMETHING WE HAVE TO DEAL  
14 WITH TODAY.

15 BY THE SAME TOKEN, THERE'S A POINT AT WHICH  
16 YOU CAN'T JUST KEEP DITHERING, EITHER INDIVIDUALLY OR  
17 WITH A POSSIBLE COMBINATION WITH CERTAIN OTHER NOT YET  
18 IDENTIFIED PARTIES, TO WHICH MR. DENNINGTON HAS MADE  
19 VAGUE REFERENCE -- NO CRITICISM INTENDED TO  
20 MR. DENNINGTON -- BUT IF YOU ARE GOING TO TRY TO HIRE  
21 ONE OR BOTH OF THE EXPERTS, YOU'LL HAVE TO GET ON WITH  
22 IT, BECAUSE, LIKE CASITAS MUNICIPAL WATER DISTRICT,  
23 THAT'S NEEDING TO MOVE TO BE RELIEVED OF BLOWING A  
24 DEADLINE -- YOU HAVE MADE SUCH A MOTION, ESSENTIALLY,  
25 MS. BLISS, TO YOUR CREDIT, VIA YOUR EX PARTE, BUT THESE  
26 OTHER PEOPLE WHO YOU MAY KNOW OF AREN'T AT THE MOMENT  
27 DESTROYING THEMSELVES TO MAKE A SIMILAR REQUEST.

28 MR. PATTERSON, IS THERE ANYBODY ELSE THAT

1 YOU KNOW OF WHO IS WITH US THIS AFTERNOON WHO I OUGHT  
2 TO BE INVITING TO MAKE A MOTION TO BE RELIEVED OF THE  
3 DEADLINE APART FROM MS. BLISS?

4 BECAUSE SHE'S NOT EVEN CERTAIN THAT YOUR  
5 GUY, AQUILLOGIC, IS YOUR NUMBER ONE CHOICE. SHE  
6 APPARENTLY SO FAR IS INTERESTED IN HIRING JORDAN KEAR  
7 AS SHE IS AQUILLOGIC, BUT DO YOU KNOW OF SOME PEOPLE  
8 WHO, IN YOUR PERCEPTION, DO WANT TO HIRE AQUILLOGIC  
9 SPECIFICALLY, MR. PATTERSON, WHO MIGHT BE INVITED TO  
10 MAKE A MOTION?

11 MR. PATTERSON: NOT AT THIS POINT, YOUR HONOR.  
12 I WILL JUST SAY THAT, AGAIN, I WOULD, YOU KNOW, ECHO  
13 MS. BLISS'S COMMENTS THAT IN THIS KIND OF CASE, THAT'S  
14 GOING TO AFFECT PEOPLE FOR A LONG TIME, IT WOULD BE  
15 BETTER SERVED, I THINK, FOR THE COURT TO HAVE EVERYBODY  
16 EXPRESS -- HAVE THE ABILITY TO EXPRESS THEIR POSITION.

17 AND THE -- I JUST HAVEN'T HEARD ANYTHING,  
18 OTHER THAN THE CITY WANTS TO KEEP TO THEIR CURRENT  
19 SCHEDULE, THAT PREJUDICES THE CITY AT ALL. AND SO IT  
20 SEEMS TO ME THAT IF WE'RE GOING TO -- I MEAN, I GET  
21 THAT WE'VE GOT DEADLINES, I GET THAT WE HAVE PEOPLE WHO  
22 ARE COMING INTO THIS LATE IN THE GAME, BUT IT SEEMS TO  
23 ME THAT GETTING THEM IN IS, FROM MY PERSPECTIVE IN  
24 THESE KINDS OF CASES, VERY IMPORTANT, AND I HAVEN'T  
25 HEARD ANYTHING FROM THE CITY THAT SUGGESTS THAT THERE'S  
26 SOME SIGNIFICANT PREJUDICE IF THIS INFORMATION IS  
27 ALLOWED TO BE PRESENTED TO THE COURT.

28 THEY'LL HAVE AN OPPORTUNITY TO RESPOND.

1 MR. GILBERT: YOUR HONOR, THIS IS --

2 THE COURT: I'M GOING TO MAKE ONE FURTHER  
3 COMMENT. I'LL GET TO WHOEVER IS TRYING TO TALK, BUT  
4 I'M GOING TO TALK FIRST.

5 SO WHO IS THIS? BAGGERLY TRYING TO TALK?

6 MR. GILBERT: NO. IT'S DAVID GILBERT, THE  
7 CO-TRUSTEE WITH MS. BLISS. I'D LIKE TO ADD A BRIEF  
8 COMMENT, IF I MAY, SIR.

9 THE COURT: GO AHEAD, BRIEFLY.

10 MR. GILBERT: THE IRONY HERE IS THAT IN OUR  
11 MOTION, WE WOULD HAVE KEPT EXACTLY TO THE COURT'S  
12 SCHEDULE, SIR, AND WE'RE VERY COGNIZANT AND APPRECIATE  
13 YOUR COMMENTS ABOUT THAT, AND THAT'S WHY WE INTENDED TO  
14 KEEP THAT.

15 THE IDEA WAS THAT WE WOULD, BY  
16 DECEMBER 3RD, ISSUE A REPORT THAT WOULD BE PART OF THE  
17 EAST END GROUP SUPPLEMENTAL REPORTS. IT WOULD COME IN  
18 TOGETHER BY DECEMBER 3RD.

19 AND THE IRONY IS HERE THAT THERE ARE NOW  
20 MOTIONS AND APPARENTLY APPEARANCES AND ARGUMENTS THAT  
21 WOULD PUT THINGS OUT UNTIL LATE DECEMBER, WHICH WOULD  
22 MAKE IT IMPOSSIBLE. ONE WOULDN'T KNOW UNTIL THAT DATE  
23 WHETHER YOU CAN EVEN GET A REPORT.

24 WE INTEND TO ADHERE PRECISELY TO THE  
25 COURT'S SCHEDULE AND DO THIS ALL BY DECEMBER 3RD,  
26 AND -- AS PART OF THE EAST END GROUP'S REPORT, AND WE'D  
27 HAVE SOME PART OF MR. KEAR'S REPORT, INCORPORATING IT  
28 AS HE -- I GUESS THEY'RE ALREADY INCORPORATING PARTS OF

1 MR. KEAR'S REPORTS THAT HAVE BEEN INCORPORATED INTO  
2 AQUILOGIC, WOULD ALL COME IN ONE PIECE.

3 SO WE, IN FACT, I GUESS -- NOTWITHSTANDING  
4 THE OTHER PARTIES HERE AND THE MOTIONS, WE'RE THE ONES  
5 WHO WOULD STICK TO THE DECEMBER 3RD DATE, THAT'S  
6 ALREADY IN PLACE FOR A SUPPLEMENTAL REPORT TO BE FILED  
7 BY THE EAST END GROUP.

8 THE COURT: THANK YOU.

9 I'M GOING TO MAKE A MORE GENERAL COMMENT,  
10 AND THAT IS, TO MY UNDERSTANDING THESE DEADLINES FOR  
11 THESE EXPERTS FOR THE PURPOSE OF THE PHASE 1 TRIAL  
12 WOULD NOT PRECLUDE ANY OR ALL PARTIES IN THE CASE FROM  
13 DESIGNATING AN EXPERT FOR THE PURPOSE OF WHAT MIGHT BE  
14 CALLED THE MAIN EVENT, ASSUMING THERE'S NO COMPROMISE,  
15 WHEN THE COURT HAS TO DETERMINE WHAT IS THE REASONABLE  
16 AND PROPER USE OF THE WATER BY THE VARIOUS TAKERS AND  
17 THE VARIOUS BASINS AND VARIOUS SURFACE FLOWS, BECAUSE  
18 EVEN IF SOMEBODY IS CUT OFF FROM HAVING AN EXPERT FOR  
19 THE PHASE 1 TRIAL, THIS NEXT TRIAL, ON WHAT ARE REALLY  
20 THE MERITS, WOULD OPEN UP A FRESH DOOR FOR DISCOVERY,  
21 TO MY UNDERSTANDING.

22 DOES THAT SHARE WITH YOUR UNDERSTANDING,  
23 MR. HAGERTY?

24 MR. HAGERTY: YES, EXACTLY, YOUR HONOR.

25 THE COURT: THANK YOU.

26 DOES THAT COMPORT WITH YOUR UNDERSTANDING,  
27 MS. JACOBSON?

28 MS. JACOBSON: YES, YOUR HONOR. OUR

1 UNDERSTANDING IS THAT THE DISCOVERY ISSUES AND THIS  
2 PHASE OF TRIAL ARE LIMITED SPECIFICALLY TO THE ISSUES  
3 THAT WE ARE STILL WAITING TO DETERMINE, AND THAT IT HAS  
4 NO BEARING WHATSOEVER ON ANY OTHER DEADLINES OR ISSUES  
5 RELATED TO SEPARATE PHASES.

6 THE COURT: THANK YOU.

7 DOES THAT ALSO COMPORT TO YOUR  
8 UNDERSTANDING, MR. PATTERSON?

9 MR. PATTERSON: YES, YOUR HONOR.

10 THE COURT: MR. DENNINGTON, LIKEWISE?

11 MR. DENNINGTON: THAT'S CORRECT, YOUR HONOR.

12 THE COURT: OKAY.

13 NOW, ALL THAT BEING SAID, I DO HAVE BEFORE  
14 ME TODAY, MR. PISANO AND MR. HAGERTY, MS. BLISS'S  
15 EX PARTE, WHICH NOW I AM COMFORTED TO REALIZE WAS  
16 SERVED BACK ON OCTOBER 22, AS INDICATED ON THE PROOF OF  
17 SERVICE SHE SIGNED. I HAVEN'T RECEIVED ANY WRITTEN  
18 OPPOSITION TO IT. WAS THERE SOME AND I JUST MISSED IT  
19 OR IS THIS GOING TO BE SPOKEN RESPONSE TO THE EX PARTE  
20 TODAY?

21 MR. PISANO: BOTH, YOUR HONOR.

22 THE COURT: THERE WAS A WRITTEN OPPOSITION?

23 MR. PISANO: WELL, I DIDN'T SEE IT UNTIL TODAY.

24 THE COURT: FAIR ENOUGH.

25 MR. PISANO: YOU KNOW, IF IT WAS SERVED, IT WAS  
26 SERVED, AND I MISSED IT, BUT I WOULD ORALLY OPPOSE, AS  
27 YOU CAN DO WITH ANY EX PARTE.

28 THE COURT: IT WAS SERVED ON THE 22ND, AND

1 INDEED I THOUGHT I WAS CALLING OUT MS. BLISS FOR NOT  
2 SERVING IT, BUT THE ONLY ODDITY WAS SHE SERVED IT SO  
3 FAR IN THE PAST THAT I DIDN'T LOOK THAT DEEP INTO THE  
4 FILE & SERVEXPRESS TO LOOK FOR IT, BUT THERE IT WAS  
5 WHEN I ACTUALLY WENT ALL THE WAY BACK TO OCTOBER 22.

6 SO IN THAT SENSE -- SHE USES A FORM THAT'S  
7 UNFAMILIAR TO ME, BUT I THINK IN GOOD FAITH --  
8 PARTICULARLY FOR A LAYMAN'S EFFORT, I THINK IT'S  
9 PROPERLY BEFORE THE COURT, SO, YEAH, I'LL TAKE AN ORAL  
10 RESPONSE.

11 MR. PISANO: WELL, I WOULD NOTE --

12 THE COURT: DO YOU HAVE THE DOCUMENT IN HAND OR  
13 DO YOU NEED TO BORROW THE COURT'S?

14 MR. PISANO: I HAVE THE DOCUMENT IN HAND.

15 THE COURT: EXCELLENT.

16 MR. PISANO: I NOTE, AND I KNOW THIS IS GETTING  
17 A LITTLE PROCEDURALLY PICKY, BUT THE NOTICE OF THE  
18 EX PARTE THAT'S CALLED FOR UNDER THE CALIFORNIA RULES  
19 OF COURT WAS NOT GIVEN.

20 THE COURT: DID WE GET A FEE FOR THIS, ALDWIN OR  
21 ROBIN? A FEE DOCUMENT?

22 WE DID?

23 OKAY. WE GOT OUR MONEY. THAT PART'S GOOD.

24 MR. PISANO: OKAY.

25 AND SO I WOULD NOTE, YOUR HONOR, THAT, YOU  
26 KNOW, MS. BLISS IS TALKING ABOUT AN ENTIRELY SEPARATE  
27 ANALYSIS OF THE UPPER OJAI BASIN, WHEREAS WHAT MR. KEAR  
28 AND MR. BROWN HAVE DONE ARE ANALYSES RELATED TO THE

1 HIGH BASIN.

2 THE COURT: IS BROWN AQUILOGIC BY ANOTHER NAME?

3 MR. PISANO: YES. MR. BROWN IS AQUILOGIC. AND  
4 MR. PATTERSON'S CLIENTS, AND, OF COURSE, MS. JACOBSON'S  
5 CLIENT, THEY'RE IN THE OJAI BASIN, AND SO WHAT I  
6 BELIEVE AND WHAT -- I BELIEVE WHAT MS. BLISS AND OTHER  
7 FOLKS IN THE UPPER OJAI BASIN ARE INTENDING TO DO IS  
8 NOT JUST DO A ME-TOO FOR THE MAIN DESIGNATION, ALONG  
9 THE LINES OF WHAT CASITAS WANTS TO DO WITH OJAI, BUT  
10 THEY WANT A WHOLE SEPARATE ANALYSIS FOR MR. BROWN AND  
11 MR. KEAR, BECAUSE THOSE TWO GENTLEMEN, THEY DON'T SPEAK  
12 TO THE UPPER OJAI BASIN, AND SO THEY WOULD HAVE TO DO  
13 SOMETHING ENTIRELY NEW.

14 IN THAT REGARD, I DON'T THINK IT'S  
15 FEASIBLE, AND IT WOULD BE PREJUDICIAL TO THE CITY TO  
16 GET THAT ANALYSIS FOR THE FIRST TIME ON DECEMBER 3RD,  
17 WHEN THERE WOULD BE, THEN, NO CHANCE TO SUPPLEMENT OR  
18 REBUT OR ANYTHING ELSE.

19 THE COURT: MR. PATTERSON, THE REPORT OF  
20 MR. BROWN ON BEHALF OF AQUILOGIC, IS THAT LIMITED TO  
21 THE OJAI BASIN AS SUCH AND NOT THE UPPER OJAI BASIN AND  
22 IT'S CONNECTEDNESS OR LACK THEREOF TO --

23 MR. PATTERSON: IN PART -- ESSENTIALLY HAVE TO  
24 DO WITH SPECIFIC PARTIES. SO WHAT YOU'VE SEEN IN OUR  
25 REPORT IS THAT WE LOOK AT WELL DEPTH AND LOCATION BY  
26 THE PARTIES THAT I REPRESENT. SO IF --

27 THE COURT: I CONFESS I HAVEN'T LOOKED AT YOUR  
28 REPORT. I GOT A LITTLE TASTE OF SOME OTHERS, BUT DON'T



1 ASSUME I KNOW ANY --

2 MR. PATTERSON: SO -- YES. I MEAN, I GUESS  
3 THE -- AQUILOGIC WOULD HAVE TO DO SOME SUPPLEMENTAL  
4 INVESTIGATION OF EXACTLY WHERE THESE PROPERTIES ARE,  
5 THE DEPTHS OF THEIR WELLS, AND FOLD THAT INTO A REPORT  
6 INVOLVING THE UPPER OJAI BASIN, WHICH THEY CURRENTLY  
7 HAVE NOT DONE. SO IT WOULD BE NEW INFORMATION FOR THE  
8 CITY.

9 FROM MY PERSPECTIVE, AGAIN, IS THAT -- AND  
10 I OFFERED THIS, IS THAT, YOU KNOW, IF THE CITY NEEDS  
11 SOME ADDITIONAL TIME TO RESPOND TO THAT, WE WOULD  
12 CERTAINLY RESPECT THAT AND WORK OUT SOME SORT OF  
13 SCHEDULE.

14 SO THAT -- BUT IT DOES -- IT WILL INVOLVE  
15 SOME ADDITIONAL WORK BY AQUILOGIC INVOLVING THE UPPER  
16 OJAI CASE.

17 THE COURT: SO MR. PISANO AND MS. BLISS AND  
18 MR. GILBERT, AND MR. HAGERTY, FOR THAT MATTER, WHAT I'M  
19 DISPOSED TO DO WITH THE EX PARTE BROUGHT BY MS. BLISS  
20 AND MR. GILBERT IS TO DEEM IT A MOTION TO BE HEARD ON  
21 THAT --

22 WHAT DATE DID WE LAND ON FOR THE OTHER  
23 ARGUMENT? NOVEMBER --

24 MR. HAGERTY: NOVEMBER 23RD, YOUR HONOR.

25 THE COURT: NOVEMBER 23RD.

26 -- TO BE HEARD ON NOVEMBER 23RD, WITH ANY  
27 SUPPLEMENTAL PAPERS IN SUPPORT OF THE MOTION BY  
28 MS. BLISS AND MR. GILBERT TO BE SERVED AND FILED BY A

1 WEEK FROM TODAY, NOVEMBER 9TH.

2 THAT MATCHES YOUR DEADLINE, RIGHT,  
3 MR. DENNINGTON?

4 MR. DENNINGTON: NO, IT'S NOVEMBER 10TH.

5 THE COURT: THEN NOVEMBER 10TH, TO MATCH THAT  
6 DEADLINE, WITH --

7 UNLESS YOU OBJECT THAT YOU WANT MORE TIME  
8 BECAUSE IT'S NOW MORE WORK, AND THERE IS MORE WORK,  
9 MR. HAGERTY.

10 MR. HAGERTY: WE'RE FINE WITH WHERE THE COURT IS  
11 GOING ON THIS SCHEDULE, YOUR HONOR.

12 THE COURT: SO I THINK YOU HAD, WHAT, THE 15TH?

13 MR. HAGERTY: 16TH, YOUR HONOR.

14 THE COURT: 16TH.

15 AND THEN A REPLY --

16 MR. HAGERTY: 19TH.

17 THE COURT: -- ON THE 19TH, ARGUMENT ON THE  
18 23RD.

19 AND THAT'S SPECIFICALLY AS TO YOUR MOTION,  
20 MS. BLISS. PLEASE COMMUNICATE, MS. BLISS AND  
21 MR. PATTERSON, TO ANYBODY ELSE WHO THINKS THEY'RE PART  
22 OF THIS EAST OJAI GROUP WHO WANT SIMILAR RELIEF, THAT  
23 IF THEY DO, THEY SHOULD BE MAKING THEIR OWN MOTIONS,  
24 SERVED AND FILED BY NOVEMBER 10TH AND SET FOR HEARING  
25 ON NOVEMBER 23, BECAUSE SO FAR, OTHER THAN CASITAS  
26 MUNICIPAL WATER DISTRICT, THE ONLY OTHER PERSON BEFORE  
27 ME WHO HAS ACTUALLY ASKED TO GET A MOTION ON CALENDAR  
28 IS MS. BLISS.

1 SO WHAT THIS MEANS IN SIMPLE ENGLISH,  
2 MS. BLISS AND MR. GILBERT, IS IF YOU WANT TO MAKE YOUR  
3 ARGUMENTS STIFFIER, MORE PERSUASIVE, AND OTHERWISE  
4 PERSUASIVE, YOU CAN FILE SOMETHING ON NOVEMBER 10TH  
5 THAT YOU THINK HELPS THE CAUSE.

6 YOU'RE GOING TO GET CONSIDERED OPPOSITION  
7 OF MR. PISANO AND MR. HAGERTY'S OFFICE ON  
8 NOVEMBER 16TH, AND YOU SHOULD PREPARE YOURSELF TO FILE  
9 WHATEVER SUPPLEMENTAL -- EXCUSE ME -- WHATEVER REPLY  
10 BRIEF YOU WANT ON NOVEMBER 19TH, AND BE PREPARED TO  
11 APPEAR VIA L.A. COURTCONNECT ON THE MORNING OF TUESDAY,  
12 NOVEMBER 23, WHEN THE MOTION'S ACTUALLY ARGUED.

13 UNDERSTOOD, MS. BLISS?

14 MS. BLISS: WELL, I -- IT IS UNDERSTOOD. I'M A  
15 LITTLE BIT VAGUE ON WHAT IS TO BE INCLUDED ON THE  
16 NOVEMBER 10TH DEADLINE.

17 THE COURT: IF YOU WANT TO SAY ANYTHING MORE  
18 THAT YOU THINK HELPS YOU GET YOUR MOTION GRANTED, YOU  
19 MAY DO IT. IF YOU THINK YOU'VE SAID EVERYTHING YOU  
20 NEED TO IN WHAT YOU DID ON OCTOBER 22, YOU CAN SIT ON  
21 YOUR HANDS AND WAIT AND SEE WHAT YOUR ADVERSARY SAYS.

22 IS THAT CLEAR ENOUGH NOW, MS. BLISS?

23 MS. BLISS: THAT'S CLEAR, EXCEPT THE ONE PART  
24 THAT IS NOT CLEAR TO ME, AND MAYBE IT'S JUST -- MAYBE  
25 I'M ASLEEP AT THE WHEEL, I DON'T KNOW, IS WHAT IS GOING  
26 TO BE INCLUDED IN PHASE 1, BECAUSE I THINK THAT MAKES  
27 QUITE A BIT OF DIFFERENCE.

28 THE COURT: WELL, THERE WERE THESE PAPERS

1 RECENTLY SERVED, INCLUDING THE CITY OF VENTURA'S NOTICE  
2 OF PHASE 1 TRIAL ISSUES, SERVED ON NOVEMBER 1ST. YOU  
3 OUGHT TO TAKE A LOOK AT THAT. AND THEN THE SAME THING  
4 WAS THE SUBJECT OF COMMENTARY PRO AND CON BETWEEN THE  
5 CITY OF OJAI AND THE CITY OF VENTURA, AS REFLECTED IN  
6 THE JOINT STATUS REPORT THAT WAS --

7 WELL, LET'S SEE.

8 OJAI MAKES SOME COMMENTS IN THEIR REPORT  
9 SERVED ON OCTOBER 31. THE JOINT REPORT THAT CITY OF  
10 OJAI -- EXCUSE ME -- CITY OF VENTURA PREPARED GOES ON  
11 AT SOME LENGTH ON THE SAME SUBJECT, ALL LEADING, DARE I  
12 SAY, FOR CERTAIN CONFUSION FOR YOURS TRULY AS TO WHAT  
13 ALL IS GOING ON IN THIS CASE. BUT THERE ARE THIS  
14 RENDITION OF DIFFERENT THINGS AS TO WHAT'S TO BE TRIED.

15 SO YOU GOT TO READ A LOT OF DIFFERENT  
16 DOCUMENTS, BUT THERE ARE FIVE ISSUES, AND WE SORT OF  
17 HAVE AGREEMENT ON THREE OF THE FIVE, AND WE HAVE A SORT  
18 OF PHILOSOPHICAL DEBATE ABOUT HOW TO FRAME ISSUES 4 AND  
19 5.

20 THE KEY DOCUMENT TO LOOK AT IS, IN ALL  
21 CANDOR, THE THING CALLED "NOTICE OF PHASE 1 TRIAL  
22 ISSUES," THAT WAS SERVED ON FILE & SERVEXPRESS  
23 YESTERDAY MORNING BY BEST BEST & KRIEGER. THAT'S WHERE  
24 YOU'LL HAVE A START IN TRYING TO FIGURE OUT WHAT THE  
25 FIVE ISSUES ARE.

26 AND REALLY TO ME THE MAIN QUESTION IS HOW  
27 DEEP WE DIVE INTO THE QUESTION OF INTERCONNECTEDNESS  
28 BETWEEN SURFACE AND GROUNDWATER, AND INDEED I GUESS

1 INsofar AS PEOPLE WERE GOING TO SAY I SHOULDN'T LISTEN  
2 TO A WATER HISTORIAN WHETHER I EVEN CARE ABOUT ANY  
3 AQUEDUCTS OR CONDUITS THAT GOT BUILT, WHETHER I CARE  
4 WHETHER SOMEBODY IS OR IS NOT GOING TO OFFER ME PROOF  
5 THAT SURFACE WATER DRIBBLES DOWN INTO A GROUNDWATER  
6 BASIN AND THEN IN TURN LEAKS OUT OF THE GROUNDWATER  
7 BASIN AND BACK INTO THE SURFACE WATER, AND INsofar AS  
8 THIS WATER DOES TEND TO MOVE FROM SURFACE TO  
9 GROUNDWATER AND BACK TO THE SURFACE AGAIN, INsofar AS  
10 SOMEBODY WANTS TO TELL ME ABOUT THE LIFE OF A SYCAMORE  
11 TREE AND/OR THE NEEDS OF THE FISHERY, WHETHER THAT  
12 TELLS ME ANYTHING THAT'S RELEVANT TO CONNECTEDNESS,  
13 BECAUSE I DO OR DON'T CARE ABOUT THE FACT THAT WATER IN  
14 THE STREAM MAY BE BENEFICIAL TO THE FISH EVEN IF IT'S  
15 ALLOWED TO FLOW DOWN THE PACIFIC OCEAN AND OTHERWISE  
16 IT'S CONSIDERED WASTED, AND WHATEVER IT TELLS ME ABOUT  
17 THE LIFE CYCLE OF THE SYCAMORE TREE.

18 MS. BLISS: MAY I SPEAK?

19 THE COURT: SURE.

20 MS. BLISS: MY POINT IN BRINGING THIS UP, YOUR  
21 HONOR, IS THAT ANY KIND OF A SUPPLEMENTAL REPORT, THE  
22 ISSUES ARE VERY, VERY NARROW IN PHASE 1. IT WOULD BE A  
23 REPORT THAT WOULD BE QUITE SIMPLE, AND IT WOULD DEAL  
24 WITH UPPER OJAI, AND IT WOULD CONCERN WHETHER -- THE  
25 WAY I -- WHETHER PHASE 1 SHOULD ADDRESS ONLY THE BASIN  
26 BOUNDARIES AND THE EXISTENCE OF ANY CONNECTION BETWEEN  
27 THE BASIN -- BASIN AND GROUNDWATER AND THE BASIN WITH  
28 THE SURFACE WATER FLOWING OVER THAT BASIN. SO THAT THE

1 CONNECTIVITY IN PHASE 1 WOULD BE CONFINED TO THE  
2 ANALYSIS OF THE GROUNDWATER IN THAT BASIN TO THE  
3 SURFACE WATER FLOWING OVER THAT BASIN. THAT IS A VERY  
4 SIMPLE REPORT.

5 THE COURT: THAT MAY BE. AS I UNDERSTAND IT,  
6 GIVEN THE TOPOGRAPHY OF THE AREA, THE SURFACE WATER  
7 THAT STARTS IN THE UPPER OJAI BASIN HAS A TENDENCY, BY  
8 GRAVITY, ABSENT EVAPORATION AND ABSENT PERCOLATION, TO  
9 DESCEND THROUGH THE OJAI BASIN AND THEN TO DESCEND TO  
10 THE UPPER VENTURA BASIN, AND THEN EVENTUALLY TO DESCEND  
11 TO THE LOWER VENTURA BASIN, OR PERHAPS IT COMES IN  
12 SIDWAYS TO THE LOWER VENTURA BASIN, WHICH IS BELOW THE  
13 UPPER VENTURA BASIN.

14 MR. HAGERTY: YOUR HONOR, I THINK TO ANSWER  
15 MS. BLISS'S QUESTION, AT LEAST FROM OUR PERSPECTIVE,  
16 THE ISSUE INVOLVES BOTH THE SURFACE WATER THAT PASSES  
17 THROUGH THE BASIN AND THEN THE DISCHARGE, IF ANY, OF  
18 WATER FROM THE BASIN TO INTERCONNECTED SURFACE WATERS,  
19 WHICH IN THIS CASE WOULD BE LION CREEK, WHICH IS  
20 TRIBUTARY TO SAN ANTONIO CREEK.

21 I MEAN, THAT IS WHAT OUR REPORT ADDRESSES,  
22 AND WE SEE THAT AS THE ISSUE.

23 MR. PATTERSON HAS TAKEN A DIFFERENT  
24 APPROACH, WHICH WE OBJECT TO, WHICH IS PART OF OUR  
25 CONCERN ABOUT JUST ADDING MS. BLISS TO THAT REPORT.

26 BUT THE WAY MS. BLISS ARTICULATED THAT,  
27 WITH THE ADDED PIECE OF WHAT LEAVES THE BASIN, WE  
28 BELIEVE IS THE RIGHT WAY TO THINK ABOUT IT.

1 THE COURT: NOW, LET ME JUST ASK A DIFFERENT  
2 QUESTION. I'LL START WITH CITY OF VENTURA BUT THEN  
3 I'LL MOVE AROUND TO THOSE WHO WANT TO COMMENT.

4 FOR CONNECTEDNESS -- AND MAYBE THIS IS A  
5 DRAMATIC FORESHADOWING OF WHATEVER I'M GOING TO LEARN  
6 FROM THE BRIEFING ABOUT WHAT THE LEGAL STANDARD IS.  
7 IF -- OF ALL THE ACRE-FEET OF WATER THAT WOULD ENTER  
8 THE SURFACE FLOW AT SOME POINT --

9 (INTERRUPTION.)

10 THE COURT: OFF THE RECORD.

11 (DISCUSSION OFF THE RECORD.)

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

13 IF HYPOTHETICALLY ONE-TENTH OF ONE PERCENT  
14 OF ALL THE WATER WENT FROM, SAY, THE SURFACE FLOW DOWN  
15 INTO THE GROUNDWATER BASIN, AND THEN TWO-TENTHS OF ONE  
16 PERCENT OF ALL THE WATER CAME OUT OF THE GROUNDWATER  
17 BASIN BACK TO THE SURFACE FLOW, AND TWO-TENTHS OF ONE  
18 PERCENT OF ALL THE WATER WENT FROM THE UPPER SURFACE  
19 FLOW TO THE INTERMEDIATE SURFACE FLOW, AND ONE  
20 ONE-HUNDREDTH OF A PERCENT WENT DOWN TO THE GROUNDWATER  
21 BASIN, AND TWO ONE-HUNDREDTHS PERCENT OF ALL THE WATER  
22 CAME BACK UP FROM THE GROUNDWATER BASIN TO THE SURFACE  
23 FLOW, AND THAT'S ALL WE KNOW, IS THAT CONNECTEDNESS, OR  
24 DOES IT NEED TO BE SOMETHING LIKE 10 PERCENT OF THE  
25 GROUNDWATER -- IN THE UPPER GROUNDWATER BASIN  
26 PERCOLATED DOWN TO THE BASIN BELOW THE SURFACE, AND  
27 THEN FIVE PERCENT OF ALL THE WATER SOMEHOW COMES BACK  
28 OUT OF THE STREAM AND GOES TO THE NEXT BASIN, AND THEN

1 FIVE OR 15 PERCENT OF THE WATER PERCOLATES BACK DOWN TO  
2 THE GROUND AND FIVE OR 15 PERCENT OF THAT WATER COMES  
3 BACK UP TO THE SURFACE?

4 IN OTHER WORDS, IS THERE SOME DE MINIMIS  
5 AMOUNT WHERE YOU CAN SAY, WELL, YES, TWO ATOMS OF  
6 HYDRO -- H2O, WHATEVER, YOU KNOW, MOVED FROM THE  
7 SURFACE TO THE BASIN AND THEN BACK OUT AGAIN, BUT IT'S  
8 TRULY DE MINIMIS, IS PROVING THAT TWO ATOMS OF WATER  
9 MADE THAT PATH PROOF ENOUGH OR IS THERE SOME  
10 MATERIALITY CONSIDERATION?

11 MR. HAGERTY: YOUR HONOR, I THINK IT WOULD BE  
12 BEST TO ADDRESS THAT QUESTION IN THE BRIEFING AND --  
13 BECAUSE WE'RE NOT GOING TO GET A SPECIFIC ANSWER THAT  
14 WE'RE ALL GOING TO AGREE ON.

15 THE COURT: I'M SURE OF THAT.

16 MR. HAGERTY: BUT, I MEAN --

17 THE COURT: KEEPS US EMPLOYED.

18 MR. HAGERTY: WE WILL PRESENT TO THE COURT  
19 SPECIFIC DEFINITIONS OF WHAT INTERCONNECTED MEANS, FROM  
20 WHICH THE COURT CAN MAKE A DETERMINATION BASED UPON THE  
21 FACTS THAT ARE PRESENTED AT TRIAL. AND, YOU KNOW,  
22 OTHER PARTIES ARE GOING TO DO SOMETHING SIMILAR, I  
23 HOPE.

24 AND YOU WILL HEAR SPECIFIC EVIDENCE ABOUT  
25 WHERE WATER MOVES AND HOW MUCH WATER MOVES FROM THERE  
26 TO THERE AND WHAT -- WHAT THE MAGNITUDE OF THAT IS, AT  
27 LEAST IN PERCENTAGES AND GROSS ACRE-FEET AND THINGS  
28 LIKE THAT. SO THOSE THINGS WILL BE PRESENTED TO YOU,



1 AND THE PARTIES SHOULD HAVE THE OPPORTUNITY TO MAKE  
2 ARGUMENTS BASED UPON THAT FULL RECORD.

3 THAT'S WHAT I WOULD ENCOURAGE THE COURT TO  
4 DO.

5 THE COURT: MR. DENNINGTON, DO YOU WISH TO OFFER  
6 ANY COMMENTS ON THAT?

7 MR. DENNINGTON: YES, YOUR HONOR. I WOULD AGREE  
8 THAT WE SHOULD HAVE AN OPPORTUNITY TO BRIEF THAT AND  
9 THEN DISCUSS AFTER WE HAVE IT BRIEFED. I AGREE WITH  
10 MR. HAGERTY ON THAT.

11 THE COURT: MS. JACOBSON, ANYTHING YOU WANT TO  
12 SAY ON THE POINT?

13 MS. BUCKMAN: MS. JACOBSON GOT CALLED BACK TO  
14 COURT, SO THIS IS MS. BUCKMAN, APPEARING FOR THE CITY  
15 OF OJAI.

16 WE AGREE THAT FURTHER BRIEFING IS  
17 APPROPRIATE. WE THINK THAT THE COURT SHOULD BE GUIDED  
18 BY THE STANDARD IN CCP 833 REGARDING WHETHER OR NOT A  
19 DE MINIMIS AMOUNT OF CONNECTIVITY WOULD BE SUCH --  
20 SUFFICIENT TO REQUIRE THE PARTICIPATION OF THOSE -- OF  
21 THOSE SURFACE WATERS IN A GROUNDWATER ADJUDICATION  
22 BROUGHT UNDER THE STATUTE, AS THE CITY OF VENTURA PLED  
23 THIS GROUNDWATER ADJUDICATION.

24 THE COURT: MR. PATTERSON, ANY COMMENTS?

25 MR. PATTERSON: YOUR HONOR, I THINK IT WOULD BE  
26 USEFUL FOR THE COURT TO GET FURTHER BRIEFING ON THIS,  
27 AND I THINK THAT WOULD BE -- AFTER THAT BRIEFING WOULD  
28 BE AN APPROPRIATE TIME TO DISCUSS THIS IN MORE DETAIL.

1 THE COURT: AND THAT'S WHAT COMES IN ON  
2 NOVEMBER 8TH, AND THEN BECOMES THE SUBJECT OF  
3 DISCUSSION ON NOVEMBER 15TH.

4 MR. HAGERTY: THAT'S CORRECT, YOUR HONOR.

5 THE COURT: EXCELLENT. OKAY.

6 SO I DEALT WITH MS. BLISS'S EX PARTE  
7 (INAUDIBLE) MOTION AND SET FOR HEARING ON NOVEMBER 23.  
8 I'VE DEALT WITH CASITAS'S THING.

9 DO I NEED TO SOMEHOW ADJUDICATE THE  
10 VALIDITY OF THE NOTICE OF RULING? ANYBODY ASKING ME TO  
11 DO THAT, GOD FORBID?

12 MR. HAGERTY: YOUR HONOR, I WILL BE HAPPY TO  
13 WORK WITH MS. JACOBSON. I DON'T THINK THERE'S A REAL  
14 ISSUE HERE. I'VE PROVIDED MS. JACOBSON WITH THE  
15 TRANSCRIPT, AND WE CAN TALK ABOUT THAT ISSUE. IF WE  
16 NEED TO AMEND, WE CAN AMEND. IT'S NOT A BIG DEAL.

17 WE DID --

18 THE COURT: SHE WAS A BUSY LADY, AND I THINK  
19 THERE IS A REQUEST FOR A LITTLE MORE ELBOW ROOM.  
20 WITNESS THE FACT THAT EVEN NOW SHE'S GOT TO GO BACK TO  
21 A TRIAL. SO JUST REMEMBER THAT SHE'S STRETCHED THIN AT  
22 THE MOMENT.

23 MR. HAGERTY: UNDERSTOOD, AND TOTALLY APPRECIATE  
24 THAT, YOUR HONOR.

25 I THOUGHT -- AND I DON'T KNOW -- THERE  
26 WAS -- WE HAVE ONE FINAL DISPUTE THAT WE DIDN'T  
27 RESOLVE, BUT WE PUT OUT A NOTICE THAT I DON'T THINK  
28 ANYONE DISAGREES FAIRLY ARTICULATES WHERE WE STAND, AND

1 I KNOW IT SEEMS LIKE ANGELS DANCING ON THE HEAD OF A  
2 PIN, LIKE WE TALKED ABOUT LAST TIME, BUT WE DO THINK  
3 THOSE LANGUAGE DIFFERENCES ARE MATERIAL ENOUGH, AND  
4 WHAT WE SUGGEST IN THE NOTICE IS THAT WE CAN EXPLAIN  
5 OUR DIFFERENT POSITION AS TO WHERE WE DON'T HAVE FULL  
6 AGREEMENT IN THE UPCOMING BRIEF, AND IT SEEMED TO US  
7 THAT THAT WAS THE BEST THING TO DO, AND WE DID THINK IT  
8 WAS IMPORTANT, FOR EXAMPLE, AS MRS. BLISS WAS ASKING,  
9 TO GET THE NOTICE OUT SO THE PARTIES AT LEAST HAVE THE  
10 BIG PICTURE FRAMEWORK, AND THAT'S WHERE WE ARE.

11 IF WE NEED TO AMEND THE NOTICE OF RULING,  
12 THAT IS NOT A BIG DEAL FOR US, YOUR HONOR.

13 MS. BUCKMAN: WE APPRECIATE --

14 THE COURT: WHO IS SPEAKING NOW?

15 MS. BUCKMAN: MS. BUCKMAN.

16 WE APPRECIATE THE CITY OF VENTURA'S COUNSEL  
17 BEING WILLING TO WORK WITH US ON THAT AND TO INDICATE  
18 THE DIFFERENCE IN POSITIONS IN THE NOTICE THAT THEY PUT  
19 FORWARD. WE'RE HAPPY TO MEET -- CONTINUE TO MEET AND  
20 CONFER ON THIS. AND WE AGREE WITH MR. HAGERTY THAT  
21 IT'S A MATTER THAT CAN PROBABLY BE RESOLVED THROUGH THE  
22 BRIEFING.

23 THE COURT: EXCELLENT.

24 ANY UPDATE ON THE DEFAULTARAMA?

25 MR. HAGERTY: WE WERE GOING TO PROVIDE THAT AT  
26 THE -- AS PART OF THE 15TH SCHEDULE. THE ONLY THING  
27 WE'RE GOING TO FILE SEPARATELY FROM THE BRIEFING IS  
28 JUST THAT CHART THAT WE HAVE THAT HAS ALL THAT IN

1 THERE, SO WE'LL PROVIDE THAT UPDATE AT THAT POINT IN  
2 TIME.

3 THE COURT: YOU'RE SORT OF GETTING IN HANDLING  
4 DISTANCE NOW OF GETTING ALL THIS DONE, RIGHT?

5 MR. HAGERTY: WE'RE ALMOST DONE, YOUR HONOR,  
6 YES.

7 THE COURT: YOUR PARALEGALS WILL REMEMBER THIS  
8 TILL THEIR DYING DAYS.

9 MR. HAGERTY: THEY WILL RUE THE DAY THEY TOOK  
10 THE ASSIGNMENT, YES.

11 THE COURT: AND YOU HAVE TO DEFAULT A THOUSAND  
12 PEOPLE ALL IN ONE CASE.

13 WHAT ELSE USEFUL SHOULD WE TAKE UP TODAY?

14 MR. HAGERTY?

15 MR. HAGERTY: THAT'S IT, YOUR HONOR. WE HAVE  
16 NOTHING FURTHER.

17 THE COURT: MR. DENNINGTON?

18 MR. DENNINGTON: YOUR HONOR, THERE WAS ONE ISSUE  
19 THAT I THINK PROBABLY -- IT RELATES TO THE -- YOU KNOW,  
20 WHAT IS A SUPPLEMENTAL EXPERT OR REBUTTAL EXPERT UNDER  
21 843.

22 THE COURT: WELL, YOU HEARD MY PASSING COMMENT  
23 THAT I'VE BEEN HAPPILY OBLIVIOUS TO THE WHOLE THEORY OF  
24 REBUTTAL, BECAUSE I DON'T THINK I'VE TOUCHED THAT ISSUE  
25 AT ALL.

26 MR. DENNINGTON: I THINK WE SHOULD PUSH THAT TO  
27 THE 23RD, SO THAT WE HAVE AN OPPORTUNITY TO DISCUSS  
28 THAT IN OUR BRIEFINGS ON THE MOTION.

1 THE COURT: WORKS FOR ME.

2 BUT I OUGHT TO GET SOMETHING OUT THERE SO  
3 WE GOING FORWARD KNOW WHAT THE GROUND RULES ARE OF  
4 REBUTTAL EXPERTS.

5 MR. DENNINGTON: CORRECT.

6 MR. PISANO: THAT'S AGREEABLE FROM THE CITY OF  
7 VENTURA'S PERSPECTIVE, YOUR HONOR. WE CAN ADDRESS IT  
8 ON THE 23RD.

9 THE COURT: MS. BUCKMAN, FOR CITY OF OJAI,  
10 ANYTHING ELSE YOU'D LIKE TO TAKE UP TODAY?

11 MS. BUCKMAN: NO. THANK YOU, YOUR HONOR. I  
12 APPRECIATE YOUR TIME.

13 THE COURT: MR. PATTERSON?

14 MR. PATTERSON: NO, YOUR HONOR. THANK YOU VERY  
15 MUCH FOR TAKING SO MUCH TIME THIS AFTERNOON. IT'S  
16 APPRECIATED.

17 THE COURT: IT'S AN IMPORTANT CASE, AND --  
18 SO, MR. COOPER, FOR THE UNDERLYING  
19 PLAINTIFFS, IS THERE ANYTHING WE OUGHT TO BE TALKING  
20 ABOUT THAT'S OF CONCERN TO YOU?

21 AND HEARING NOT, DO ANY OF THE STATE'S  
22 ATTORNEYS WISH TO BE HEARD?

23 MR. GOLDEN-KRASNER: NO, YOUR HONOR.

24 NOAH GOLDEN-KRASNER FOR DFW, AND NO, YOUR  
25 HONOR.

26 MR. MELNICK: AND, YOUR HONOR, THIS IS MARC  
27 MELNICK.

28 THE ONLY THING I WANTED TO MAKE SURE IS

1 THAT WE ADDRESS THAT ISSUE OF REBUTTAL EXPERTS, AND I  
2 THINK ADDRESSING IT ON THE 23RD IS FINE.

3 THE COURT: OKAY.

4 JUST MAKE SURE WE DON'T END THE DAY WITHOUT  
5 ADDRESSING IT, MR. MELNICK, SO PUT A STRING AROUND YOUR  
6 FINGER AND REMIND ME TO DO IT.

7 MR. MELNICK: I WILL, YOUR HONOR.

8 THE COURT: OKAY.

9 ANYBODY ELSE WISH TO BE HEARD THIS  
10 AFTERNOON?

11 OKAY. HEARING NOTHING, COURT IS IN RECESS.  
12 DEFENDANT CITY OF SAN BUENAVENTURA WILL BE KIND ENOUGH  
13 TO GIVE NOTICE.

14 MR. HAGERTY: YES, YOUR HONOR.

15 THE COURT: SAFE TRAVELS.

16 (THE PROCEEDINGS WERE CONCLUDED AT  
17 3:42 P.M.)

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TRANSCRIPT OF PROCEEDINGS

November 02, 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 63, INCLUSIVE, COMPRISE A  
20 TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS TAKEN IN  
21 THE ABOVE-ENTITLED MATTER REPORTED BY ME ON TUESDAY,  
22 NOVEMBER 2, 2021.

23 DATED: NOVEMBER 8, 2021.

24   
25  
26

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

TRANSCRIPT OF PROCEEDINGS

November 02, 2021

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