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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
SPRING STREET COURTHOUSE

DEPT 10 HON. WILLIAM H. HIGHBERGER, JUDGE PRESIDING

SANTA BARBARA CHANNELKEEPER, A)
CALIFORNIA NON-PROFIT CORPORATION,)

PLAINTIFF,)

V.) NO. 19STCP01176

STATE WATER RESOURCES CONTROL BOARD,)
ET AL.,)

DEFENDANTS.)

-----)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, JULY 19, 2021, 3:00 P.M.

REPORTED BY:
ALEXANDER T. JOKO, CSR NO. 12272
COURT REPORTER PRO TEM

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IN-PERSON APPEARANCES OF COUNSEL:

FOR CITY OF VENTURA:

BEST BEST & KRIEGER LLP
BY: SHAWN D. HAGERTY
CHRISTOPHER M. PISANO
300 SOUTH GRAND AVENUE, 25TH FLOOR
LOS ANGELES, CALIFORNIA 90071

FOR WOOD-CLAEYSSSENS FOUNDATION:

BROWNSTEIN HYATT FARBER SCHRECK
BY: BRADLEY J. HERREMA
2049 CENTURY PARK EAST
SUITE 3550
LOS ANGELES, CA 90067

REMOTE LA COURT CONNECT APPEARANCES OF COUNSEL:

FOR STATE WATER RESOURCES CONTROL BOARD:

OFFICE OF THE ATTORNEY GENERAL
BY: MARC N. MELNICK

FOR CALIFORNIA DEPARTMENT OF FISH & WILDLIFE:

OFFICE OF THE ATTORNEY GENERAL
BY: NOAH GOLDEN-KRASNER

FOR THE CITY OF OJAI:

BARTKIEWICZ, KRONICK & SHANAAN
BY: HOLLY JACOBSON

FOR CASITAS MUNICIPAL WATER DISTRICT:

RUTAN & TUCKER, LLP
BY: DOUGLAS DENNINGTON

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APPEARANCES (CONTINUED) :
FOR CALIFORNIA DEPARTMENT OF PARKS AND RECREATION:
CALIFORNIA DEPARTMENT OF JUSTICE
BY: SOPHIE WENZLAU

FOR SANTA BARBARA CHANNELKEEPER:

BROWNSTEIN HYATT FARBER SCHRECK, LLP
BY: SCOTT S. SLATER

FOR THE THACHER SCHOOL:
MUSICK, PEELER & GARRETT LLP
BY: GREGORY J. PATTERSON

FOR JEFFREY S. BACON:
ALLEN MATKINS
BY: DAVID L. OSIAS

ALSO PRESENT:

LOA E. BLISS
CLAUDE R. BAGGERLY
ANDREW K. WHITMAN
GREGG GARRISON

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I N D E X
(NONE)

1 CASE NUMBER: 19STCP01176
2 CASE NAME: SANTA BARBARA CHANNELKEEPERS
3 VS. STATE WATER RESOURCES
4 CONTROL BOARD, ET AL.
5 LOS ANGELES, CALIFORNIA MONDAY, JULY 19, 2021
6 DEPARTMENT 10 JUDGE WILLIAM H. HIGHBERGER
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 REPORTER: ALEXANDER JOKO, CSR NO. 12272
9 TIME: 3:00 P.M.

10

11 (THE FOLLOWING PROCEEDINGS WERE HELD
12 IN OPEN COURT:)

13

14 THE COURT: WE'RE ON THE RECORD IN
15 19STCP01176, SANTA BARBARA CHANNELKEEPER VERSUS STATE
16 WATER RESOURCES CONTROL BOARD.

17

18 AND WE HAVE SEVERAL THINGS ON CALENDAR.
19 THE FIRST THING I'M GOING TO DEAL WITH IS THE CONTINUED
20 ORDER TO SHOW CAUSE REGARDING THE CITY OF SAN
21 BUENAVENTURA'S REQUEST FOR AUTHORITY TO SERVE CERTAIN
22 CROSS-DEFENDANTS VIA PUBLICATION. IT'S BEEN TRAILED TO
23 TODAY. AND I NOW HAVE A SUPPLEMENTAL DECLARATION OF
24 MS. MARNIE PROCK FILED JULY 15TH AND A SECOND
25 SUPPLEMENTAL DECLARATION OF MS. PROCK FILED JULY 16
26 HAVING TO DO WITH EFFORTS MADE TO GIVE ADVANCE NOTICE
27 OF THIS ORDER TO SHOW CAUSE TO A LIST OF 44 PERSONS
28 VARIOUSLY DESCRIBED AS PERSONS EVADING SERVICE, PERSONS
LIVING IN A GATED OR FENCED LOCATION THAT PUTS THEM

1 BEYOND THE PRACTICAL REACH OF A PROCESS SERVER AND THE
2 FOUR PERSONS IDENTIFIED AS DECEASED WITH, AT LEAST AT
3 THIS JUNCTURE, NO KNOWN SUCCESSOR.

4 IT'S MY UNDERSTANDING THAT THE CITY HAS
5 NOW RECEIVED SOME RESPONSE FROM THE 28TH PERSON LISTED,
6 RONALD L. R. HILL, SUED AS TRUSTEE OF THE R&D HILL
7 FAMILY TRUST SUCH THAT YOU WISH TO HAVE THE NAME
8 DELETED FROM THE PROPOSED ORDER.

9 CORRECT, MR. PISANO?

10 MR. PISANO: CORRECT, YOUR HONOR.

11 THE COURT: WE HAD A MORE EXTENDED DISCUSSION
12 OF SOME OF THE LIMITATIONS IN THE ORIGINAL ORGANIZATION
13 OF THE PAPERS AND THE DILIGENCE EFFORTS, BUT I BELIEVE
14 MS. PROCK, WITH YOUR SUPERVISION, HAS ADDRESSED ALL OF
15 THOSE.

16 AS AN OFFICER OF THE COURT, ARE YOU
17 SATISFIED AT THIS TIME THAT YOU HAVE MADE A PROPER
18 SHOWING AS TO THE OTHER 43?

19 MR. PISANO: YES, YOUR HONOR.

20 THE COURT: ANYBODY WISH TO BE HEARD TO OPPOSE
21 THE ORDER TO SHOW CAUSE REGARDING SERVICE OF
22 PUBLICATION OF THESE 43 PERSONS NET OF MR. HILL WHO HAS
23 BEEN ELIMINATED FROM THE LIST?

24 HEARING NO OBJECTION, THE ORDER IS
25 GRANTED. I'VE SIGNED THE ORDER. WE'LL GET IT FILED
26 AND CONFORMED, AND YOU CAN PROCEED ACCORDINGLY.

27 IT'S MY UNDERSTANDING THAT YOU STILL HAVE
28 PROBABLY A HALF DOZEN OR LESS ADDITIONAL NAMES,

1 INCLUDING, PERHAPS, WHEN YOU FIND WHO YOU BELIEVE TO BE
2 THE HEIRS OF THE FOUR PEOPLE, HOW YOU ADD THEM IN AS
3 ROES AND THEN TRY TO SERVE THEM IF YOU CAN'T FIND
4 BETTER CONTACT INFORMATION?

5 MR. PISANO: THAT'S CORRECT, YOUR HONOR.

6 THE COURT: OKAY. SO WE'RE ON FOR A STATUS
7 CONFERENCE, AND WE ALSO HAVE MOTION PRACTICE REGARDING
8 THE PHASING AND SEQUENCING AND TIMING OF DISCOVERY AND
9 THE RESETTING OF MR. CLAUDE BAGGERLY'S MOTION FOR THE
10 APPOINTMENT OF A COURT-APPOINTED EXPERT.

11 AND I ALSO HAVE NOW RECEIVED, BUT
12 CANDIDLY HAVEN'T HAD A CHANCE TO DO MORE THAN BARELY
13 SCRATCH THE SERVICE, THE 91-PAGE DRAFT OF A STIPULATED
14 PHYSICAL SOLUTION AND JUDGMENT WITH THE VOLUMINOUS
15 ATTACHMENTS CLEARLY MARKED "DRAFT" AND WITH CERTAIN
16 PROPOSED FINDINGS REDACTED PURSUANT TO THE ORDER OF THE
17 COURT.

18 AND I AM AWARE THAT, SINCE THAT WAS
19 LODGED ON OR ABOUT JULY 12TH, VARIOUS OBJECTIONS
20 THERETO AND PERHAPS RESPONSE TO THE OBJECTIONS HAVE
21 COME IN.

22 I HAVE NOT ATTEMPTED TO ORGANIZE THEM.
23 AND I CERTAINLY HAVE NOT EVEN ATTEMPTED TO READ EVERY
24 ONE OF THEM. SO THAT'S HOMEWORK FOR ME IN THE NOT TOO
25 DISTANT FUTURE.

26 I'M ALSO AWARE THAT THERE WERE OBJECTIONS
27 TO THE DRAFT PHYSICAL SOLUTION WHICH WERE LODGED AND
28 FILED PRIOR TO JULY 12TH BY PARTIES WHO WERE THEN

1 INFORMED OF ITS CONTENTS BEFORE THE COURT GOT IT AND,
2 THEREFORE, SAW FIT TO SUBMIT TO THE COURT OBJECTIONS.
3 I HAVEN'T ATTEMPTED TO GET THOSE TOGETHER; BUT AT SOME
4 POINT, I'LL WANT THE CITY OF VENTURA'S HELP IN
5 ORGANIZING PAPERWORK OF EITHER WHAT I'M IN RECEIPT OF
6 OR WHAT CAN BE GENERATED SO I HAVE A FULL SET OF THE
7 OBJECTIONS WHETHER THEY'RE EARLIER THAN JULY 12TH OR
8 POST JULY 12TH WHEN MY FORMAT REQUIREMENT WAS IMPOSED
9 WHEREAS, PRIOR TO JULY 12TH, THERE WAS NO EXPRESSED
10 FORMAT REQUIREMENT.

11 COUNSEL FOR THE STATE, ANY PROGRESS ON
12 GETTING YOUR MODELING OUT OR PROMISES THAT YOUR
13 CONTRACTOR WILL REALLY, REALLY, REALLY GET US SOMETHING
14 BEFORE LABOR DAY?

15 MR. MELNICK: YOUR HONOR, MARK MELNICK FROM
16 THE ATTORNEY GENERAL'S OFFICE.

17 I HAVE PERIODICALLY CHECKED IN WITH MY
18 FOLKS, AND THEY STILL ASSURE ME THEY'RE ON TRACK FOR
19 THE MIDDLE OF AUGUST. SO IT MIGHT BE A LITTLE EARLIER
20 OR LATER, BUT AUGUST SEEMS VERY REAL.

21 THE COURT: OKAY. HERE'S HOPING. IT SEEMS TO
22 BE IMPORTANT. IT'S DESCRIBED AS IMPORTANT. AND IF IT
23 IS AS IMPORTANT AS YOU DESCRIBE IT TO ME, THEN IT'S
24 ESSENTIAL THAT IT BE SHARED WITH THE PARTIES AND THE
25 COURT JUST AS SOON AS POSSIBLE FOR OBVIOUS REASONS,
26 MR. MELNICK.

27 MR. MELNICK: YES, I COMPLETELY AGREE, YOUR
28 HONOR.

1 THE COURT: OKAY. STAYING WITH STATUS
2 CONFERENCE ISSUES. I CONGRATULATE THE CITY OF
3 SAN BUENAVENTURA THAT YOU HAVE MANAGED TO SUBMIT A
4 LARGE NUMBER OF DEFAULTS, MANY OF WHICH HAVE BEEN
5 PROCESSED IN THE ORDINARY COURSE. AND DEFAULTS HAVE TO
6 BE PRETTY MUCH LETTER PERFECT. SO, APPARENTLY, YOUR
7 STAFF IS GETTING PRETTY GOOD AT DOING THE PAPERWORK.
8 AND I HAVE NOT HEARD ANY COMPLAINTS FROM MANAGEMENT.
9 AND I ASSUME THAT IF WE WERE GIVEN A BUNCH OF BAD
10 PAPERWORK, THEY WOULD COME TO ME AND CRY ON MY
11 SHOULDER.

12 IS THERE ANYTHING MORE YOU WANT ME TO
13 TEND TO OR JUST BE PASSIVE WHILE YOU WORK WITH THE
14 CLERK'S OFFICE ON THE DEFAULTS?

15 MR. HAGERTY: SHAWN HAGERTY FOR THE CITY OF
16 SAN BUENAVENTURA.

17 WE HAVE A GOOD SYSTEM IN PLACE, AND WE'RE
18 WORKING THROUGH THE DEFAULTS. AND IF THERE ARE ANY
19 ISSUES, WE'LL, OF COURSE, LET THE COURT KNOW. BUT WE
20 BELIEVE WE'LL CONTINUE TO PROCESS THEM AS THEY HAVE
21 BEEN DONE, AND WE HAVE BEEN SUCCESSFUL AS THE COURT HAS
22 NOTED.

23 THE COURT: WHAT ELSE DO YOU WANT TO DISCUSS
24 SPECIFIC TO THE STATUS CONFERENCE, MR. HAGERTY,
25 RECOGNIZING THAT WE HAVE TO TALK ABOUT THE DISCOVERY
26 SCHEDULING AND WE HAVE TO TALK ABOUT MR. BAGGERLY'S
27 MOTION?

28 MR. HAGERTY: YOUR HONOR, I DON'T THINK

1 THERE'S MUCH. MAYBE TWO ISSUES JUST TO -- WE WANT TO
2 LET THE COURT KNOW AND THE PARTIES KNOW, WHEN WE WERE
3 HERE ON THE 6TH, WE HAD MENTIONED WE WERE PUTTING
4 TOGETHER A MAP THAT WOULD SHOW WHERE ALL OF THE PARTIES
5 WHO HAVE APPEARED ARE LOCATED. WE HAVE THAT -- YOU
6 KNOW, IT'S IN DRAFT FORM RIGHT NOW. WE HOPE TO HAVE
7 THAT IN ABOUT A WEEK OR SO, AND WE WILL LET THE PARTIES
8 KNOW. WE'LL POST IT ON THE WEBSITE.

9 AND SO AT LEAST THE PARTIES CAN SEE, FOR
10 THE PARTIES WHO HAVE APPEARED, WHO IS IN THE SAME BASIN
11 WITH THEM. AND THEY CAN HAVE SOME DISCUSSION, BUT THAT
12 WILL BE -- THAT SHOULD BE DONE SOON, YOUR HONOR. AND
13 WE'LL LET THE PARTIES AND THE COURT KNOW ABOUT THAT.

14 AND THEN I THINK THE ONLY OTHER ISSUE --
15 THE COURT: WILL THAT BE A SINGLE MAP THAT
16 WOULD BE UPLOADED TO PDF OR WOULD IT BE A LINK TO A
17 WEBSITE WITH MULTIPLE MAPS OR SUBMAPS TO REFLECT THE
18 LEVEL OF DETAIL THAT YOU'VE GOT TO SHOVE ON THE MAP?

19 MR. HAGERTY: IT'S A SINGLE MAP, YOUR HONOR;
20 BUT I THINK IT'S USEABLE. WE'LL MAKE SURE IT'S -- YOU
21 KNOW, PEOPLE CAN GO AND SEE, OKAY, IF I'M IN THE UPPER
22 OJAI BASIN, THERE ARE X-NUMBER OF PEOPLE WHO HAVE
23 APPEARED AND HERE'S WHERE THEY ARE AND HERE'S WHO THEY
24 ARE.

25 SO WE UNDERSTOOD --

26 THE COURT: HOPEFULLY NAME AND APN WILL SHOW
27 FOR A GIVEN PERSON.

28 MR. HAGERTY: I THINK THAT'S HOW IT'S DONE,

1 YOUR HONOR.

2 AT LEAST THE FACT THAT THOSE PARTIES WHO
3 HAVE APPEARED WHO ARE ADJACENT TO OTHER PARTIES CAN --
4 THAT INFORMATION WILL BE DISPLAYED FOR THEM.

5 THE COURT: CONTINUE.

6 MR. HAGERTY: I THINK THE ONLY OTHER ISSUE FOR
7 STATUS CONFERENCE PURPOSES, YOUR HONOR, THAT WAS
8 PENDING WAS JUST CLARIFICATION ON THE INITIAL
9 DISCLOSURES.

10 WE'VE INDICATED IN OUR STATUS CONFERENCE
11 REPORT THAT WE BELIEVE IT'S APPROPRIATE TO EXTEND THE
12 COURT'S EXISTING ORDER THAT ONLY CURRENTLY APPLIES TO
13 THE PARTIES WHO HAVE STIPULATED TO ANY PARTY WHO CLAIMS
14 TO BE DE MINIMIS. WE THINK THAT'S APPROPRIATE. WE CAN
15 DEAL WITH THESE ISSUES IF WE NEED TO AFTER PHASE 1.
16 AND CERTAINLY THAT WOULD BE OUR REQUEST TO THE COURT.

17 THE COURT: WELL, SOME PEOPLE OPPOSED --
18 PARTICULARLY THE STATE, AS I RECOLLECT, OPPOSED YOUR
19 REQUEST TO HAVE IT APPLY TO THOSE WHO STIPULATED.

20 MR. MELNICK, WOULD THE STATE OPPOSE
21 LETTING THE DE MINIMIS PEOPLE WAIT UNTIL MARCH 1 OF
22 2022 BEFORE I GO BACK AND ADDRESS THE QUESTION OF WHAT,
23 IF ANY, DISCLOSURES WE NEED AS OF MARCH 1 OF 2022?

24 MR. MELNICK: WE DON'T HAVE ANY OBJECTION TO
25 THAT. I MEAN, I THINK IT'S BETTER TO TREAT ALL THE
26 DE MINIMIS USERS THE SAME RATHER THAN JUST THOSE THAT
27 STIPULATED. SO WE'RE AGREEABLE TO THAT CHANGE.

28 THE COURT: THANK YOU.

1 IS THERE ANYBODY ELSE WHO IS
2 PARTICIPATING TODAY WHO WANTS TO BE HEARD AS TO WHY I
3 SHOULDN'T EXTEND THE DELAY IN PROVIDING INITIAL
4 DISCLOSURES BEYOND THOSE WHO SIGNED FORMAL STIPULATIONS
5 FOR JUDGMENT TO BE ALSO INCLUSIVE OF ANYBODY ELSE WHO
6 CLAIMED TO BE A DE MINIMIS USER?

7 IF SO, PLEASE STATE YOUR NAME AND THE
8 PARTY YOU REPRESENT AND GIVE ME THE REASONS WHY YOU
9 OPPOSE MR. HAGERTY'S REQUEST?

10 FOR THE RECORD, AFTER A SUBSTANTIAL PAUSE
11 TO ALLOW PEOPLE TO SPEAK UP VIRTUALLY, THERE'S BEEN NO
12 RESPONSE. AND, THEREFORE, I ASSUME THERE'S NO
13 OBJECTION. AND I WILL, THEREFORE, MAKE THE REQUESTED
14 ORDER.

15 AND YOU'RE TO GIVE NOTICE OF THE SAME,
16 MR. HAGERTY, FOR THE CITY OF SAN BUENAVENTURA.

17 MR. HAGERTY: THANK YOU, YOUR HONOR. WILL DO.

18 THE COURT: LET'S TURN TO MR. BAGGERLY'S
19 RENEWED MOTION.

20 MR. BAGGERLY: I'M HERE, YOUR HONOR.

21 THE COURT: I STILL NEED TO MAKE SOME
22 PRELIMINARY COMMENTS, BUT I'M GLAD TO KNOW YOU ARE WITH
23 US, MR. BAGGERLY.

24 MR. BAGGERLY: THE ALTERNATIVE IS NOT
25 FAVORABLE.

26 THE COURT: SO THE STATE OF THE PAPERWORK
27 ISN'T PERFECT, BUT I'M GOING TO TRY TO DEAL WITH THIS
28 ON ITS MERITS AND NOT GET HUNG UP A SECOND TIME AROUND

1 WITH THE DEFECTIVENESS OF THE PAPERWORK.

2 THE FIRST TIME AROUND, MR. BAGGERLY --
3 WHO IS APPARENTLY A SOPHISTICATED MAN WHO SAT ON ONE OF
4 THE RELEVANT WATER BOARDS THAT IS INVOLVED IN THIS
5 CASE. SO HE'S, OBVIOUSLY, A MAN OF SOME INTELLECT AND
6 RESPONSIBILITY. BUT AS BEST AS I UNDERSTAND, HE DIDN'T
7 GO TO LAW SCHOOL OR TAKE THE BAR EXAM SO THAT HIS
8 PAPERS ARE PERHAPS NOT A MODEL OF TIDINESS IS
9 UNDERSTANDABLE.

10 THE FIRST TIME AROUND, THERE WAS A MOTION
11 SERVED AND NOT FILED.

12 THIS TIME AROUND, THERE'S A MOTION THAT
13 GOT FILED. BUT THE MOTION THAT GOT FILED WAS ONLY
14 THREE OF THE 12 PAGES OF THE MOTION THAT WAS ORIGINALLY
15 SERVED. SO IT'S A VERY INCOMPLETE VERSION OF THE
16 MOTION.

17 I WILL ASK THE CLERK TO FILE, NUNC PRO
18 TUNC, THE AS-SERVED VERSION OF MR. BAGGERLY'S MOTION
19 FROM MAY 10 UNDER THE DATE OF JUNE 23, THE DAY HIS
20 MOTION WAS FILED INCOMPLETELY.

21 WE GOT MR. BAGGERLY'S FEES, SO IT'S NOT A
22 MATTER OF SQUEEZING HIM FOR \$60; BUT IT WOULD HAVE BEEN
23 NICE IF YOU FILED A COMPLETE SET OF YOUR PAPERS,
24 MR. BAGGERLY, AND NOT AN INCOMPLETE VERSION OF THEM.

25 MR. BAGGERLY: THANK YOU, YOUR HONOR.

26 I DID GET A CONFIRMATION REPORT FROM THE
27 FAX MACHINE THAT I USED, AND IT SAID 12 PAGES. SO I
28 DON'T KNOW WHAT HAPPENED.

1 THE COURT: ANYWAY, WE CAN FIX THAT.

2 SO THEN VARIOUS OPPOSITIONS HAVE BEEN
3 FILED, MANY AS TO THE ORIGINAL SERVICE OF A MOTION
4 WHICH MR. BAGGERLY HOPED TO PUT ON CALENDAR ON JUNE 21,
5 BUT I REFUSED TO RECOGNIZE BECAUSE THE CLERICAL STEPS
6 HADN'T BEEN TAKEN. BUT VARIOUS OPPOSITIONS WERE FILED
7 BY THE STATE AND BY THE CITY OF SAN BUENAVENTURA ON
8 JUNE 1 AND BY VENTURA RIVER WATER DISTRICT AND MEINERS
9 OAKS WATER DISTRICT ON JUNE 2.

10 BUT THEN WE ALSO, AFTER THE MOTION WAS --
11 NOT REFILED, BUT FILED ON JUNE 23, ALBEIT INCOMPLETELY,
12 I'VE GOT A FILED SUPPLEMENTAL OPPOSITION FROM THE CITY
13 OF SAN BUENAVENTURA.

14 AND THEN I HAD THE BENEFIT OF
15 MR. BAGGERLY'S REPLY AS TO THE ORIGINAL OPPOSITION, IN
16 WHICH CASE THAT WAS A REPLY FILED BY MR. BAGGERLY ON
17 JUNE 11.

18 AND THEN SINCE THE MOTION WAS ACTUALLY
19 FILED WITH THE CLERK, I GOT SOME PAPERWORK IN FROM A
20 GREGG GARRISON REPRESENTING HIMSELF AND WHAT I INFER TO
21 BE HIS SPOUSE. MR. GARRISON DOES APPEAR TO BE A
22 LAWYER. HE HAS A STATE BAR NUMBER, BUT HIS PAPERWORK
23 SERVED ON JULY 8 STYLED AS CROSS-DEFENDANTS, ROSANNA
24 GARRISON AND GREGG GARRISON, OBJECTIONS TO LODGEMENT OF
25 THE PROPOSED PHYSICAL SOLUTION AND JUDGMENT AND SUPPORT
26 FOR COURT-APPOINTED SCIENTIFIC EXPERT WAS NEVER FILED
27 WITH THE CLERK OF COURT.

28 AND THE SAME CAN BE SAID FOR A DOCUMENT

1 SERVED ON JULY 9 BY MR. GARRISON, AGAIN, BUT NEVER
2 FILED WITH THE CLERK, STYLED AS CROSS-DEFENDANTS
3 ROSANNA GARRISON AND GREGG GARRISON'S REPLY TO CITY OF
4 SAN BUENAVENTURA'S OPPOSITION TO MOTION FOR
5 COURT-APPOINTED SCIENTIFIC EXPERT.

6 AND THEN FOR GOOD MEASURE, A DIFFERENT
7 PARTY REPRESENTING HIMSELF, ATTORNEY ANDREW WHITMAN,
8 WHO IS A LAWYER, SERVED A DIFFERENT OBJECTION OF THE
9 TYPE ON JULY 15, BUT NEVER FILED THAT WITH THE CLERK OF
10 COURT. THAT IS STYLED AS CROSS-DEFENDANTS ANDREW K.
11 WHITMAN, HEIDI A. WHITMAN, NANCY L. WHITMAN AND JOHN R.
12 AND NANCY L. WHITMAN FAMILY TRUST JOINDER AND MOTION TO
13 APPOINT WATER EXPERT TO ASSIST THE COURT.

14 SO I AM NOT GOING TO CAUSE THE FILING OF
15 THE DOCUMENTS THAT WERE NEVER FILED, BUT I DO POINT OUT
16 TO MR. GARRISON AND TO MR. WHITMAN THAT IT IS NOT
17 ENOUGH TO JUST SERVE SOMETHING ON FILE & SERVEXPRESS.
18 IF IT'S TO BE PART OF THE RECORD OF THE COURT AND
19 CONSIDERED BY THE COURT, YOU'VE GOT TO TAKE THE STEPS
20 TO CAUSE IT TO BE FILED JUST AS MR. BAGGERLY DID TO GET
21 HIS MOTION FILED AFTER HE FORGOT TO DO SO ORIGINALLY.

22 SO ALL THAT BEING SAID, LET ME TURN TO
23 THE MERITS OF THE MOTION AND DESCRIBE A LITTLE HOMEWORK
24 THAT I HAVE DONE ON MY OWN AND THE UPSHOT OF THAT.

25 EVERYBODY SEEMS TO CONCEDE THAT IT'S
26 WITHIN MY DISCRETION AND ALLOWED BY THE EVIDENCE CODE
27 FOR ME TO APPOINT AN INDEPENDENT EXPERT.

28 THE REAL QUESTION IS, WHETHER I SHOULD

1 EXERCISE THAT DISCRETION.

2 AND, IF SO, HOW WE WOULD PICK SUCH AN
3 EXPERT AND, EVENTUALLY, HOW WE WOULD PAY THE EXPENSES
4 OF SUCH AN EXPERT. THE AUTHORITY TO HAVE A
5 COURT-APPOINTED EXPERT COMES FROM EVIDENCE CODE SECTION
6 730.

7 SOME PEOPLE SAY IT'S PREMATURE TO APPOINT
8 AN EXPERT.

9 MR. BAGGERLY AND THE PEOPLE ALIGNED WITH
10 HIM SAY, WELL, THE CITY OF SAN BUENAVENTURA AND SOME OF
11 THE OTHER CONSUMPTIVE USERS HAVE BEEN PLANNING FOR
12 THEIR LITIGATION POSITION IN THIS CASE FOR MONTHS AND,
13 THEREFORE, HAVE BEEN IDENTIFYING AND WORKING WITH
14 EXPERTS TO TRY TO IMPROVE THEIR FACTUAL ARGUMENTS WHILE
15 OTHERS ARE COMING TO THE PARTY RATHER LATER AND AREN'T
16 NECESSARILY AS FAR ADVANCED. AND SO IN THAT SENSE,
17 ALTHOUGH I COULD DENY MR. BAGGERLY'S MOTION TODAY
18 WITHOUT PREJUDICE TO ENTERTAINING IT AT SOME FUTURE
19 TIME, THERE IS SOME DOWNSIDE IN NOT AT LEAST
20 CONTEMPLATING THE POSSIBILITY OF TRYING TO LOCATE AN
21 APPROPRIATE INDEPENDENT EXPERT.

22 MR. BAGGERLY MADE A CONCRETE SUGGESTION
23 IN PAGES 11 AND 12 OF HIS ORIGINAL MOTION, WHICH HAD
24 NOT GOTTEN FILED WITH THE CLERK, BUT WE'RE GOING TO FIX
25 THAT SOON ENOUGH, AND HE SUGGESTS MAYBE PUT AN
26 ADVERTISEMENT LIKE A CLASSIFIED AD IN THE VENTURA
27 COUNTY STAR TO LAY OUT THE REQUIREMENTS FOR THE
28 POSITION, THAT IT BE A HYDROLOGIST NOT CURRENTLY UNDER

1 CONTRACT WITH ANY OF THE PARTIES IN THIS CASE.

2 TWO, THAT THAT PERSON HAVE PROPER
3 EDUCATION AND LICENSING. THEY BE SUBMITTED TO THE
4 COURT FOR REVIEW.

5 THREE, THAT THAT PERSON BE AVAILABLE FOR
6 CONSULTATION OF THE JUDGE ON A REGULAR BASIS.

7 FOUR, THAT THE COURT SHOULD PROVIDE THE
8 PROSPECTIVE SCIENTIFIC ADVISERS WITH A SCHEDULE OF TIME
9 AND DURATION OF CONTRACT.

10 FIVE, THAT THE PROSPECT OF A MINIMUM
11 FIVE-YEARS EXPERIENCE IN THE VENTURA RIVER WATERSHED.

12 NOT A BAD STARTING POINT. I'M NOT SURE
13 IF THAT IS THE BEST WAY TO BRING FORWARD CANDIDATES,
14 BUT IT'S CERTAINLY AT LEAST ONE PLAUSIBLE WAY TO GO
15 ABOUT IT.

16 I HAVE ALWAYS BEEN FASCINATED WITH THE
17 LAW AND POLITICS OF WHETHER DISPUTES IN THE WEST AS ONE
18 WHO GREW UP IN THE WETTER PART OF THE COUNTRY, NEW
19 JERSEY, WHERE WATER WAS MORE OF A PROBLEM FOR FLOODING
20 AND POLLUTION THAN IT WAS A MATTER OF SCARCITY.

21 OUT HERE, WHEN YOU GET WEST OF THE
22 ROCKIES, THE SAYING IS, WHISKEY IS FOR DRINKING AND
23 WATER IS FOR FIGHTING. AND THIS CASE IS PROBABLY AS
24 GOOD AN EXAMPLE OF THAT AS ANY. WESTERN WATER LAW
25 APPEARS TO BE DIFFERENT THAN THE WATER LAW APPLICABLE
26 EAST OF THE MISSISSIPPI. AND WHEN I GOT THIS CASE AND
27 TRIED TO SEE IF THERE WAS ANY PROFESSIONAL RESOURCE
28 AVAILABLE FOR JUDGES DEALING WITH THE WESTERN WATER

1 DISPUTES, IT CAME TO MY ATTENTION THAT THE NATIONAL
2 JUDICIAL COLLEGE, WHICH IS RUN OUT OF RENO AND
3 WILLIAMSBURG, VIRGINIA HAS A PROGRAM CALLED "DIVIDING
4 THE WATERS," WHICH IS THEIR WAY OF HAVING PROFESSIONAL
5 INTERCHANGE AMONGST JUDGES WHO DEAL WITH WATER CASES.

6 SO I HAD REACHED OUT AND ASKED IF I WOULD
7 BE ALLOWED TO JOIN THE ORGANIZATION. THEY HAPPILY
8 SAID, YES, IT'S ALL REALLY INFORMAL AND DOESN'T CHARGE
9 DUES. BUT THAT PUT ME IN TOUCH WITH THEIR EXECUTIVE
10 DIRECTOR, A FELLOW NAMED STEVE SNYDER, DESCRIBED ON THE
11 WEB PAGE AS A FORMER SPECIAL MASTER FOR THE PECOS,
12 LOWER RIO GRANDE, SAN JUAN AND ANIMAS GENERAL STREAM
13 ADJUDICATIONS IN NEW MEXICO, PREVIOUSLY SERVED AS A
14 SPECIAL MASTER, HEARD A VARIETY OF DISPUTES OVER
15 CONFLICTING CLAIMS FOR WATER USE IN NEW MEXICO, HAD
16 BEEN A COMMERCIAL LITIGATOR AND PART OF A MAJOR FIRM IN
17 DENVER, UNDERGRADUATE AND MBA FROM UNIVERSITY OF
18 NEW MEXICO AND A JD FROM UT.

19 AND I ALSO THEN HAD HEARD, IN THE COURSE
20 OF A FEW E-MAIL INTERCHANGES OVER THE MONTHS, NOT
21 SPECIFICALLY TO YOUR CASE, FROM A GENTLEMAN NAMED ALF
22 W. BRANDT WHO IS DESCRIBED AS THE EDITOR OF THE
23 DIVIDING THE WATERS PROGRAM RUN BY THE NATIONAL
24 JUDICIAL COLLEGE.

25 SO EARLIER TODAY, I SENT AN E-MAIL TO
26 MESSIEURS SNYDER AND BRANDT AND ASKED THE FOLLOWING:

27 "DO EITHER OF YOU HAVE A LIST OF
28 QUALIFIED HYDROLOGY EXPERTS WHO MIGHT BE CONSIDERED FOR

1 APPOINTMENT AS A COURT-APPOINTED NEUTRAL EXPERT ON
2 HYDROLOGY ISSUES, SPECIFICALLY: (A), POTENTIAL
3 CONNECTION OF SURFACE WATER FLOWS TO GROUNDWATER BASINS
4 AND, B, CONNECTEDNESS (OR NOT) OF ADJACENT GROUNDWATER
5 BASINS? I HAVE A CASE INVOLVING THE VENTURA RIVER, ITS
6 TRIBUTARIES AND FOUR GROUNDWATER BASINS LOCATED ALONG
7 PORTIONS OF ITS DRAINAGE. THE CONNECTEDNESS OF SERVICE
8 FLOWS TO ANY OF THE GROUNDWATER BASINS IS IN DISPUTE,
9 AS IS THE ASSERTED CONNECTEDNESS OF THE CONDITION OF
10 THE HIGHEST, MOST EASTERN GROUNDWATER BASIN, THE OTHER
11 THREE GROUNDWATER BASINS LOCATED DOWNSTREAM. THE
12 DISPUTED WATER COURSE AND BASINS ARE ALL IN VENTURA
13 COUNTY, CALIFORNIA. IF THERE IS NO LIST OF POTENTIAL
14 NAMES, DO YOU HAVE ANY PROCESS FOR RECOMMENDATIONS ON
15 HOW I AND THE PARTIES DO OUR OWN SEARCH FOR THE RIGHT
16 TALENT?"

17 SO THIS PROMPTED A RESPONSE FROM
18 MR. BRANDT COPIED TO MR. SNYDER AND ALSO COPIED TO
19 JUSTICE ROBIE WHO IS A SITTING JUSTICE ON THE
20 CALIFORNIA COURT OF APPEALS FOR THE THIRD APPELLATE
21 DISTRICT BASED IN SACRAMENTO, CALIFORNIA. AND IT READS
22 AS FOLLOWS:

23 "GREAT TO HEAR FROM YOU, JUDGE
24 HIGHBERGER, AS YOUR E-MAIL IS SO TIMELY. I'VE COPIED
25 JUSTICE ROBIE WHO IS COLLABORATING WITH ME ON
26 DEVELOPING A WATER LAW PROGRAM AT THE JUDICIAL COUNCIL,
27 WHICH MIGHT ULTIMATELY INCLUDE FUNDING FOR INDEPENDENT
28 WATER EXPERTS WHICH THE STATE MAY PAY FOR YOU. YOUR

1 CASE MAY OFFER US A GOOD OPPORTUNITY TO CONSIDER HOW TO
2 DEVELOP THE IDEA OF DEVELOPING A CADRE OF JUDICIARY
3 WATER EXPERTS. TO START WITH YOUR CASE, YES, I HAVE A
4 GREAT INDEPENDENT EXPERT ON GROUNDWATER-SURFACE WATER
5 CONNECTIONS, UC DAVIS PROFESSOR THOMAS HARTER. HE WAS
6 ONE OF THE AUTHORS OF OUR BENCH BOOK ON ADJUDICATING
7 GROUNDWATER, WHICH I HAVE ATTACHED FOR YOUR REFERENCE.
8 I CAN ALSO HELP YOU IDENTIFY OTHER CANDIDATES FOR AN
9 INDEPENDENT EXPERT. IF YOU HAVE TIME THIS WEEK TO TALK
10 ABOUT YOUR VENTURA CASE AND HOW WE MIGHT BE ABLE TO
11 HELP? ALF. PS, I'M COPYING MY WORK E-MAIL HERE AND
12 THE LEGISLATURE, FOR SCHEDULING PURPOSES."

13 WHEN I LOOKED FOR A BRIEF CV OF
14 MR. SNYDER AND MR. BRANDT TO SHARE WITH YOU, MY
15 RESEARCH FIRST EDUCATED ME THAT MR. BRANDT'S PRIMARY
16 CURRENT EMPLOYMENT IS ACTUALLY FUNCTIONING AS GENERAL
17 COUNSEL FOR SPEAKER RENDON, THE SPEAKER OF THE
18 CALIFORNIA STATE ASSEMBLY IN SACRAMENTO AT THIS TIME.
19 SO HE, APPARENTLY, DOES HAVE AN ONGOING RESPONSIBILITY
20 AS AN EDITOR FOR THE NATIONAL JUDICIAL COLLEGE DIVIDING
21 THE WATERS PROGRAM, BUT HIS DAY JOB HAS HIM INVOLVED IN
22 AFFAIRS OF THE LEGISLATURE IN SACRAMENTO.

23 I SHOULD ADD THAT THE ATTACHED DOCUMENT -
24 WHICH I OPENED ONLY TO SEE HOW THEY DESCRIBED IT. I
25 DIDN'T TRY TO READ A WORD OF IT - IS A 96-PAGE
26 PUBLICATION OF THE NATIONAL JUDICIAL COLLEGE TITLED
27 "ADJUDICATING GROUNDWATER: A JUDGE'S GUIDE TO
28 UNDERSTANDING GROUNDWATER AND MODELING," COPYRIGHTED

1 2018. AUTHORSHIP INCLUDES MR. HARTER, A DR. TARA MORAN
2 OF STANFORD AND THE HONORABLE ERIC WILDMAN OF IDAHO
3 DISTRICT COURT AS AUTHORS.

4 AND THEN MR. BRANDT AND A DR. MICHAEL N.
5 FIENEN, U.S. GEOLOGICAL SURVEY AND A DR. JEREMY WHITE
6 ASSOCIATED WITH GNS SCIENCE IN NEW ZEALAND AS THE
7 EDITORS.

8 IT LOOKS INTERESTING. I HAVEN'T READ A
9 WORD OF IT YOU, BUT I WANTED TO TELL YOU ABOUT IT.

10 I SAY THAT BECAUSE IF YOU'RE THE KIND OF
11 GOOD STUDENT WHO WORKS HARD AND DOES WELL AND GETS INTO
12 LAW SCHOOL, THAT'S OFTEN A MARK OF INITIATIVE. BUT I
13 ALSO HAVE TO RECOGNIZE THAT A JUDGE DOING INDEPENDENT
14 FACTUAL RESEARCH IS SOMETHING THAT IS GENERALLY
15 CONTRAINDICATED. AND IF YOU DO ANY INDEPENDENT
16 RESEARCH, IT IS ABSOLUTELY ESSENTIAL THAT YOU MAKE
17 CLEAR TO THE LAWYERS WHAT YOU'VE JUST DONE.

18 SO I HAVE NOW TOLD YOU THE FULL EXTENT OF
19 MY EFFORTS TO SEE HOW I MIGHT LOCATE AN EXPERT AND WHAT
20 I HEARD IN RESPONSE.

21 THERE'S ONE OTHER RESPONSE I'VE GOTTEN
22 FROM SNYDER AND BRANDT, WHICH I'LL READ TO YOU IN A
23 SECOND.

24 AGAIN, I CAN PUT UP THIS LINK TO THIS
25 TEXT FROM THE NATIONAL JUDICIAL COLLEGE, WHICH FROM THE
26 POINT OF VIEW OF DOING INDEPENDENT RESEARCH IS SORT OF
27 LIKE READING A LAW REVIEW ARTICLE, SOMETHING ONE MIGHT
28 LOOK AT, BUT I'M NOT TRYING TO HIDE ANY OF THIS FROM

1 YOU BECAUSE, IF SOMETHING LIKE THIS IS JUNK SCIENCE,
2 BUT I'M READING IT AS IF IT IS GOOD SCIENCE, YOU WOULD
3 WANT TO TELL ME THAT IT'S JUNK SCIENCE. IF IT'S GOOD
4 SCIENCE, BUT IT SUPPORTS YOUR POSITION, YOU WOULD THEN
5 LIKEWISE WOULD WANT TO SAY, YES, SEE, LOOK AT PAGE 23,
6 IT'S EXACTLY IN SUPPORT OF MY POSITION IF ONE WOULD
7 THINK IT HELPS YOUR POSITION. I DON'T BELIEVE THE
8 NATIONAL JUDICIAL CENTER WOULD NEED TO KEEP SOMETHING
9 LIKE THIS HIDDEN FROM MEMBERS OF THE BAR BECAUSE, EVEN
10 IF IT'S ORIENTED TO THE BENCH, THERE'S NO REASON WHY
11 SOMETHING USEFUL TO THE BENCH CAN'T BE USEFUL TO THE
12 BAR.

13 SO I HAD ONE OTHER RESPONSE TO WHICH I
14 HAD RESPONDED MORE RECENTLY. AND THIS WAS FROM
15 MR. SNYDER, NOT MR. BRANDT. SO HE WROTE TODAY AT 1:10,
16 "WITH YOUR PERMISSION, I CAN CIRCULATE YOUR E-MAIL TO
17 DIVIDING THE WATERS CONVENERS ASKING THEM IF THEY HAVE
18 RECOMMENDATIONS ON A PARTICULAR EXPERT WITNESS OR
19 PROCEDURAL ASPECTS OF IDENTIFYING A COURT-APPOINTED
20 EXPERT WITNESS."

21 AND MY REPLY WAS TO THE GENERAL LINE OF,
22 "WAIT UNTIL I TALK TO THE LAWYERS." INDEED, YEAH, I
23 WROTE BACK AT 1:22, QUOTE, "WAIT UNTIL I TALK TO THE
24 PARTIES VIA COUNSEL THIS AFTERNOON TO OBTAIN THEIR
25 CONSENT," END QUOTE.

26 SO BOTTOM LINE, MR. HAGERTY, MR. BAGGERLY
27 AND OTHERS INTERESTED IN THE TOPIC, I'M OPEN TO THE
28 POSSIBILITY THAT IT MIGHT BE GOOD TO HAVE A

1 COURT-APPOINTED EXPERT.

2 I AM IN SOME WAYS PERHAPS FURTHER DOWN
3 THE ROAD IN HAVING ONE OR MORE PLAUSIBLE CANDIDATES
4 BASED ON WHAT I HAVE JUST SHARED WITH YOU, PARTICULARLY
5 MR. BRANDT'S ENTHUSIASM FOR PROFESSOR HARTER. I HAVE
6 THIS TREATISE THAT'S APPARENTLY ON POINT, ALL 96 PAGES
7 OF IT, BUT DON'T WANT TO READ IT OR RELY UPON IT UNTIL
8 YOU ALL HAVE A CHANCE TO LOOK AT IT AND SEE WHETHER YOU
9 THINK THAT IT'S A REASONABLE SCIENTIFIC PAPER ON WHICH
10 I COULD REASONABLY RELY OR WHETHER YOU WOULD TAKE
11 OFFENSE IF I WERE TO CONSIDER IT.

12 I'M NOT SURE IF WE WERE TO TRY TO FIND
13 SOMEONE LIKE PROFESSOR HARTER, HOW WE REASONABLY COULD
14 FUND SOMETHING LIKE THIS. BUT THAT'S SORT OF WHERE MY
15 HEAD IS AT.

16 SO LET ME HEAR FIRST FROM THE CITY OF
17 SAN BUENAVENTURA WHICH TELLS ME, HEY, THERE ARE PLENTY
18 OF GOOD EXPERTS LINED UP BY THE PARTIES WHO ARE
19 RETAINING EXPERTS. YOU DON'T NEED TO CONFUSE THINGS
20 THIS WAY. AND LET YOU BOTH COMMENT ON WHAT I'VE
21 STUMBLED ACROSS ALREADY. I HAVE NO IDEA. YOU MAY BE
22 AWARE OF THIS 96-PAGE TREATISE OR IT MAY BE NEWS TO
23 YOU. AND, MORE GENERALLY, WHERE WE MIGHT GO FROM HERE.

24 MR. HAGERTY: THANK YOU, YOUR HONOR.

25 AS FAR AS THE TREATISE, I'M NOT
26 PERSONALLY AWARE OF THAT. AND MAYBE OTHERS ON THE
27 OPPOSING PARTY TEAM ARE AND CAN COMMENT ON THAT, BUT WE
28 WILL CERTAINLY TAKE A LOOK AT THAT AND --

1 THE COURT: I FOUND IT ON THE WEB. IT WAS NO
2 SECRET. THEY GAVE ME A LINK. MAYBE I SHOULD PUT IT UP
3 ON FILE & SERVE TO BE SURE YOU CAN GET TO IT. I KNOW I
4 HAVE IT BECAUSE THEY SENT IT TO ME AS AN ATTACHMENT.

5 MR. HAGERTY: I THINK THAT WOULD BE HELPFUL TO
6 ALL THE PARTIES --

7 THE COURT: GIVE ME A SECOND.

8 DOES ANYBODY OBJECT TO MY SERVING ON FILE
9 & SERVE EXPRESS THE 96-PAGE DOCUMENT THAT I GOT FROM
10 THE NATIONAL JUDICIAL COLLEGE?

11 IF YOU DO OBJECT, THIS IS YOUR TIME TO
12 SPEAK UP.

13 MR. BAGGERLY: I HAVE NO OBJECTION.

14 THE COURT: THANK YOU, SIR.

15 OKAY. HEARING NO OBJECTION, I WILL DO
16 THAT.

17 AND BEFORE I FORGET, LET ME JUST DO IT
18 NOW AND THEN WE'LL MOVE ON.

19 DONE.

20 MR. HAGERTY: THANK YOU, YOUR HONOR.

21 WITH REGARD TO THE ISSUES YOU'VE
22 DISCUSSED, OUR POSITION, AS YOU KNOW, IS CLEAR THAT WE
23 BELIEVE THAT THE MOTION SHOULD BE DENIED EITHER NOW OR
24 DENIED WITHOUT PREJUDICE TO BE CONSIDERED LATER.

25 YOU'RE GOING TO HAVE -- WE KNOW YOU'RE
26 GOING TO HAVE AT LEAST THREE DIFFERENT SETS OF EXPERTS
27 IN THE PHASE 1 TRIAL. YOU WILL HAVE THE EXPERTS THAT
28 WILL BE REPRESENTING THE POSITION OF THE OPPOSING

1 PARTIES WHO HAVE INDICATED WHO THOSE EXPERTS ARE
2 ALREADY. YOU ALSO HAVE THE EXPERTISE OF THE STATE WHO
3 HAVE SPENT YEARS AND MILLIONS OF DOLLARS PREPARING A
4 DETAILED MODEL OF ALL OF THE INFORMATION ABOUT THE
5 WATERSHED AND ISSUES OF INTERCONNECTION. AND THEN
6 MR. PATTERSON HAS ALREADY MADE IT CLEAR THAT HE HAS AN
7 EXPERT THAT THE EAST OJAI PEOPLE WILL BE PRESENTING.

8 SO, AT A MINIMUM, YOU WILL HAVE THREE
9 DIFFERENT EXPERTS ON HYDROLOGY WHO HAVE BEEN WORKING IN
10 THE WATERSHED FOR MANY YEARS TO DEVELOP THEIR OPINIONS.
11 AND THAT WILL BE MORE THAN SUFFICIENT TO PROVIDE THE
12 COURT WITH THE INFORMATION IT WILL NEED AS THE
13 FACTFINDER TO MAKE A DECISION WITH REGARD TO THE PHASE
14 1 ISSUES.

15 WE DON'T BELIEVE THAT THE -- YOU KNOW,
16 THERE ARE CERTAIN SITUATIONS WHERE THERE'S AN ABSENCE
17 OF INFORMATION OR THE COURT REALLY NEEDS AN EXPERT
18 BECAUSE NONE OF THE PARTIES ARE BRINGING IT TO THE
19 TABLE. THIS IS CLEARLY NOT THE CASE. AND NO ONE HAS
20 MADE A SHOWING THAT THAT IS THE CASE.

21 AND, REALLY, APPOINTING AN EXPERT AT THIS
22 POINT IN TIME, AN ADDITIONAL EXPERT, IN ADDITION TO THE
23 THREE YOU WILL HEAR FROM, WILL DELAY AND INCREASE COSTS
24 THAT CERTAINLY WE DON'T WANT TO HAVE INCREASED COSTS.

25 THE COURT: ALTHOUGH MY FRIEND, MR. BRANDT, IS
26 SUGGESTING THAT, MAGICALLY, THE JUDICIAL COUNCIL MIGHT
27 COVER THE COSTS FOR WATER CASES.

28 MR. HAGERTY: IT WOULD STILL INCREASE THE

1 COSTS OVERALL, YOUR HONOR, BECAUSE, AS YOU KNOW, THIS
2 EXPERT WILL NOT BE ANY DIFFERENT THAN THE OTHER EXPERTS
3 THAT WILL BE PRESENTING. ALL THE PARTIES WILL HAVE THE
4 OPPORTUNITY TO DO DEPOSITIONS OF THIS EXPERT. AND SO
5 IT IS JUST GOING TO DELAY AND ADD COSTS TO THE PROCESS.

6 AND, REALISTICALLY, I DON'T SEE A WAY TO
7 BRING IN THAT EXPERT AND KEEP WITH THE SCHEDULE THAT
8 YOU HAVE SET OUT FOR US.

9 SO WE HAVE NO PROBLEM IF THE COURT WANTS
10 TO DENY IT WITHOUT PREJUDICE AND CONSIDER IT LATER.
11 THERE MAY BE SOME OTHER ISSUES THAT MIGHT COME OUT OF
12 THE PHASE 1 TRIAL. THERE CERTAINLY WILL BE FUTURE
13 ISSUES. AND EITHER THROUGH THE EVIDENCE CODE OR UNDER
14 845, THERE'S CLEARLY A SPECIAL MASTER PROCESS THAT THE
15 COURT CAN USE. BUT OUR REQUEST IS FOR THE COURT TO
16 HEAR THE EVIDENCE OF AT LEAST THE THREE PARTIES THAT
17 WILL PROVIDE THAT EXPERT TESTIMONY. AND IF THERE'S A
18 NEED OR IF THERE'S SOME DEFICIENCY, THE COURT CAN
19 ADDRESS IT AT THAT TIME. BUT IT'S JUST GOING TO CLOUD
20 THE ISSUES AND DELAY THE MATTER. IT IS JUST GOING TO
21 INCREASE COSTS FOR EVERYONE.

22 I DON'T WANT TO JUST REPEAT WHAT I'VE PUT
23 IN THE PAPERS, BUT THAT IS OUR POSITION. AND,
24 CERTAINLY, IF THE MOTION ISN'T DENIED, WE WOULD WANT
25 TIME TO UNDERSTAND WHAT THE PROCESS WOULD BE LIKE, HOW
26 WE'RE GOING TO PICK SOMEONE WHO CAN BE TRULY NEUTRAL IN
27 THIS SITUATION AND HOW THAT PERSON CAN GET UP TO SPEED.

28 BUT OUR REQUEST IS TO JUST DENY THE

1 MOTION AT THIS TIME EITHER WITH PREJUDICE OR WITHOUT.
2 AND YOU WILL HAVE PLENTY OF INFORMATION FROM THE
3 VARIOUS EXPERTS. SO THE FULL RANGE OF ISSUES WILL BE
4 WELL DEVELOPED FOR YOU BASED UPON WHO IS ALREADY AT THE
5 TABLE. AND YOU'LL BE IN A POSITION TO MAKE A DECISION
6 BASED UPON THAT INFORMATION.

7 THE COURT: DO YOU HAVE ANY OBJECTION TO MY
8 LIMITED OVERTURES TO THE DIVIDING THE WATERS PEOPLE?

9 MR. HAGERTY: I CERTAINLY DON'T -- THANK YOU
10 FOR DISCLOSING WHAT YOU HAVE DONE ALREADY. I DIDN'T
11 HEAR ANYTHING THAT CAUSED ME A CONCERN IN THAT PROCESS.
12 IF -- YOU KNOW, AGAIN, IT'S SORT OF A THRESHOLD ISSUE.
13 IF THE COURT DENIED THE MOTION, WE WOULD MOVE ON TO
14 OTHER ISSUES. IF THE COURT IS OPEN OR WANTS TO EXPLORE
15 A FUTURE PROCESSES, MY RECOMMENDATION WOULD BE FOR
16 THE -- TO LET THE PARTIES AND MEET AND CONFER ABOUT
17 THAT AND BRING BACK SUGGESTIONS AND --

18 THE COURT: THE ONLY ONE IT SEEMS SO FAR FROM
19 THE PARTIES IS MR. BAGGERLY'S SUGGESTION TO PUT IN AN
20 AD IN THE PAPER. I DON'T MEAN TO BE CRITICAL, BUT WERE
21 THERE ANY OTHER SUGGESTIONS IN THE PAPERS? I DIDN'T
22 NOTICE ANY.

23 MR. HAGERTY: NO, BECAUSE I THINK THE PARTIES
24 ON THE OPPOSING PARTY SIDE DON'T SUPPORT THE MOTION.
25 SO WE DIDN'T COME UP WITH ANY IDEAS ABOUT HOW YOU WOULD
26 GO ABOUT IT.

27 THE COURT: BUT I DIDN'T SEE ANYTHING FROM THE
28 FANS OF THE PROPOSAL, ANOTHER WAY TO FIND AN EXPERT

1 BEYOND MR. BAGGERLY'S SUGGESTION.

2 MR. HAGERTY: I BELIEVE THAT'S TRUE, YOUR
3 HONOR.

4 THE COURT: OKAY. ANYTHING ELSE, MR. HAGERTY?

5 MR. HAGERTY: NO, YOUR HONOR.

6 THE COURT: MR. MELNICK OR WHOEVER WANTS TO
7 SPEAK FOR THE STATE OF CALIFORNIA OR PERHAPS EACH OF
8 THE LAWYERS FOR THE STATE WANTS TO BE HEARD SERIATIM?

9 MR. MELNICK: THANK YOU, YOUR HONOR.

10 FIRST, I WANT TO SAY WE'RE FULLY
11 SUPPORTIVE OF THE DIVIDING THE WATERS PROJECT. SO I'M
12 ACTUALLY QUITE HAPPY THAT YOU REACHED OUT TO THEM.
13 THEY DO SOME REALLY GOOD WORK. AND THE PUBLICATION --
14 I DIDN'T SEE WHAT THEY SENT YOU, BUT IT MAY BE THE SAME
15 THING THAT WE HAD BEEN CONTEMPLATING GIVING TO YOU AT
16 SOME POINT IN THIS PROCEEDING.

17 THE COURT: WELL, IT'S THERE FOR YOUR READING
18 BEFORE YOU GO TO SLEEP TONIGHT, SO --

19 MR. MELNICK: RIGHT. IF IT'S THE SAME THING
20 I'VE READ BEFORE, THEN IT WON'T TAKE ME THAT LONG.

21 I MEAN, I THINK AS FAR AS WHETHER TO
22 APPOINT SOMEONE, IT'S REALLY YOUR COMFORT LEVEL THAT'S
23 IMPORTANT. IF YOU FEEL LIKE YOU NEED SOMEONE THAT YOU
24 CAN RELY ON BECAUSE THESE ISSUES ARE COMPLEX AND NEW TO
25 YOU, THEN I CAN SEE WHY YOU MIGHT APPOINT PROFESSOR
26 HARTER OR SOMEBODY LIKE THAT.

27 WE AGREE WITH MR. HAGERTY THAT I'M NOT
28 SURE THAT'S THIS CASE. THERE ARE GOING TO BE SEVERAL

1 EXPERTS. THE FOLKS THAT ARE WORKING ON THE STATE WATER
2 BOARD'S MODEL ARE DOING A LOT OF WORK, AND I THINK
3 THEY'LL BE ABLE TO GIVE YOU A PRETTY, YOU KNOW,
4 NON-ADVOCATE POINT OF VIEW ABOUT WHAT THE FACTS ARE
5 HERE, SO --

6 MR. HAGERTY: YOUR HONOR, MAY I MAKE ONE
7 COMMENT IN RESPONSE?

8 THE COURT: GO AHEAD.

9 MR. HAGERTY: I AGREE WITH HIS SECOND PART OF
10 THE EQUATION IN TERMS OF THE STATE'S EXPERTISE IN THIS
11 AREA AND WHAT THEY'RE GOING TO BRING. IT WILL BE, YOU
12 KNOW -- AGAIN, THE THREE EXPERTS WILL PROVIDE MORE THAN
13 SUFFICIENT INFORMATION BASED ON SCIENCE. AND THIS IS
14 VERY -- THIS IS SCIENTIFICALLY DRIVEN. THIS IS ALL
15 ABOUT THE DETAILS OF HYDROLOGY. AS YOU KNOW IN
16 SCIENCE, THERE ARE DIFFERENCES OF OPINION; BUT, YOU
17 KNOW, IT'S BASED ON SCIENCE. SO THAT INFORMATION IS
18 GOING TO BE PRESENTED CLEARLY TO YOU.

19 I TAKE -- I WANT TO NOTE THE COMMENT
20 ABOUT YOUR -- THE COURT RELYING UPON AN EXPERT. AGAIN,
21 YOU WOULDN'T BE RELYING UPON HIM. ALL YOU WOULD BE
22 DOING IS APPOINTING ANOTHER EXPERT WHO WOULD PREPARE AN
23 OPINION, EXPRESS THAT OPINION. AND WE WOULD ALL BE
24 ABLE TO CROSS-EXAMINE OR COMMENT ON THAT OPINION. SO I
25 DON'T HEAR THE COURT, AT LEAST THE MOTION ISN'T PHRASED
26 AS SOME FORM OF A TRUE SPECIAL MASTER TO GO OUT AND DO
27 SOME FACTFINDING. IT'S REALLY JUST A REQUEST FOR AN
28 ADDITIONAL EXPERT. AND THAT EXPERT WOULD HAVE WHATEVER

1 CREDIBILITY ANY OF THE OTHER EXPERTS HAVE. SO I JUST
2 WANTED TO NOTE THAT ONE POINT, YOUR HONOR.

3 THE COURT: THANK YOU.

4 MR. GOLDEN-KRASNER, DO YOU HAVE ANYTHING
5 SEPARATE FROM WHAT MR. MELNICK SAID FOR HIS STATE
6 AGENCY CLIENT?

7 MR. GOLDEN-KRASNER: THANK YOU, YOUR HONOR.

8 I-DON'T REALLY HAVE ANYTHING TO ADD, YOUR
9 HONOR. WE AGREE WITH BOTH MR. MELNICK AND MR. HAGERTY.
10 WE DON'T BELIEVE THAT AN ADDITIONAL EXPERT IS NECESSARY
11 FOR THIS FIRST PHASE OF TRIAL.

12 THE COURT: AND, MS. WENZLAU, FOR YET ANOTHER
13 STATE AGENCY SEPARATELY REPRESENTED THROUGH THE AG, DO
14 YOU HAVE ANY COMMENTS YOU WISH TO MAKE?

15 MS. WENZLAU: THANK YOU, YOUR HONOR.

16 NO, I AGREE WITH WHAT'S BEEN SAID BY
17 MR. MELNICK AND MR. GOLDEN-KRASNER AS WELL. THANK YOU.

18 THE COURT: OKAY. I'M GOING TO GET TO YOU IN
19 A MINUTE, MR. BAGGERLY, BUT BE PATIENT.

20 MR. PATTERSON, YOU APPEAR TO BE THE ONE
21 MOST LIKELY TO BE SETTING UP A CONTRARY POSITION FROM
22 AN EXPERT POINT OF VIEW, AT LEAST FOR PEOPLE WHO SHARE
23 THE INTERESTS OF THOSE WITH PROPERTY IN THE EAST OJAI
24 BASIN.

25 DO YOU HAVE ANY THOUGHTS OR COMMENTS ON
26 WHAT THE COURT HAS OBSERVED SO FAR AS TO WHETHER I
27 OUGHT TO GO AHEAD AND CONSIDER AN EXPERT OR NOT? A
28 NEUTRAL EXPERT, THAT IS?

1 MR. PATTERSON: YOUR HONOR, I TEND TO BE OF
2 THE OPINION THAT PERHAPS, YOU KNOW, THE COURT SHOULD
3 HAVE A COMPLETE UNDERSTANDING OF WHAT THE PROPOSED
4 PHYSICAL SOLUTION -- DRAFT PHYSICAL SOLUTION LOOKS LIKE
5 AND WHAT SOME OF THESE REPORTS LOOK LIKE, AND THEN THE
6 COURT MIGHT BE IN A BETTER POSITION TO DECIDE WHETHER
7 IT NEEDS SOME INDEPENDENT REVIEW OF THE INFORMATION
8 THAT'S BEEN PROVIDED TO IT.

9 THE STATE FISH & WILDLIFE AND THE CITY
10 ALL HAVE -- AND, FRANKLY, MY CLIENTS ALL HAVE THEIR
11 PARTICULAR PERSPECTIVE, AND IN PARTICULAR WITH RESPECT
12 TO THE STATE AGENCIES IN PARTICULAR A REGULATORY
13 AGENDA. SO IT SEEMS TO ME THAT IT MIGHT BE USEFUL FOR
14 THE COURT TO GET SOME OF THAT INFORMATION AND THEN MAKE
15 A DECISION LATER AS TO WHETHER IT NEEDS SOME
16 INDEPENDENT REVIEW OF WHAT'S BEEN PRESENTED TO IT.

17 THE COURT: THANK YOU.

18 MR. BAGGERLY, A HELPFUL HINT. AT LEAST
19 THROUGH WHAT MR. BRANDT HAS SAID, YOU'RE BEING GIVEN A
20 FREE LEAD FOR A POTENTIAL EXPERT IF YOU WANT TO GO HIRE
21 HIM, IF THE COURT DOESN'T AT THE RISK OF STATING THE
22 OBVIOUS. I'M NOT CLEAR IF PROFESSOR HARTER IS
23 AVAILABLE OR CAN WORK FOR A PRICE YOU CAN AFFORD, BUT
24 AT LEAST THAT GIVES YOU A POSSIBILITY OF THE NAME OF A
25 FRESH EXPERT WHO IS NOT OTHERWISE HIRED IN THE CASE, AS
26 BEST WE KNOW.

27 MR. BAGGERLY: YOUR HONOR, THANK YOU FOR THAT.

28 I DO KNOW AN EXPERT WHO ISN'T OTHERWISE

1 ENGAGED OR CONTRACTED. I DON'T KNOW IF IT WOULD BE
2 APPROPRIATE FOR ME TO GIVE YOU HIS NAME OR HIS LICENSE
3 NUMBER.

4 BUT JUST LET ME SAY, FIRST OF ALL, THAT
5 OUR GEOLOGY AND THE HYDROGEOLOGY IN THIS TRANSVERSE
6 RANGE IS VERY, VERY UNIQUE. IT'S NOT JUST
7 RUN-OF-THE-MILL SCIENCE. IT IS EXTRAORDINARY SCIENCE,
8 AND IT'S DIFFERENT THAN MOST PLACES. AND SOMEONE WHO
9 IS GOING TO BE LOOKING AT THIS SCIENTIFIC EVIDENCE
10 NEEDS TO HAVE LOCAL SCIENTIFIC EVIDENCE AVAILABLE TO
11 IT.

12 AND WITHOUT QUESTION, I BELIEVE THAT WE
13 SHOULD ALL BE ABLE TO AGREE THAT ADVOCACY IS ONE-SIDED.
14 AND IF YOU'RE GOING TO HAVE THREE EXPERTS PROVIDING
15 INFORMATION, EVEN ON A SCIENTIFIC BASIS, FACTS CAN BE
16 BROUGHT FORWARD AND FACTS CAN BE HELD BEHIND YOUR BACK
17 TO MAKE IT APPEAR TO BE ON THE ONE-SIDED NATURE OF YOUR
18 CLIENT.

19 I THINK THAT THE COURT DOES REALLY NEED A
20 NEUTRAL PERSON WHO IS REALLY FAMILIAR WITH THIS GEOLOGY
21 AND HYDROGEOLOGY HOWEVER YOU GET IT. AND YOU HAVE THAT
22 AUTHORITY, YOUR HONOR. AND I WOULD LIKE YOU TO HAVE
23 THAT.

24 I GUESS THAT'S ALL I NEED TO SAY.

25 THE COURT: WHY CAN'T YOU AND YOUR
26 SIMILARLY-ALIGNED PLAINTIFFS HIRE THAT EXPERT IF YOU
27 THINK THERE'S SOMEBODY THAT'S NEEDED TO OFFSET THE
28 SOFISTRY OF THE CITY OF VENTURA'S EXPERT?

1 MR. BAGGERLY: BECAUSE I'M POOR.

2 THE COURT: THAT'S A DIFFERENT ARGUMENT.
3 THAT'S BASICALLY ASKING YOU TO BE SUBSIDIZED DURING
4 YOUR LITIGATION, NOT BECAUSE I OTHERWISE NEED A WATER
5 EXPERT.

6 MR. BAGGERLY: THIS IS FOR YOU, YOUR HONOR,
7 NOT FOR ME. YOUR ADMISSION THAT YOU DON'T KNOW MUCH
8 ABOUT GEOLOGY, HYDROGEOLOGY MAKES IT REALLY IMPORTANT
9 THAT YOU HAVE SOMEONE WHO CAN BE CLEAR ENOUGH AND
10 RATIONAL ENOUGH TO GIVE YOU THE HELP YOU NEED, THE AID
11 YOU NEED TO GET THROUGH THIS AVALANCHE OF 30 SOMETHING
12 DIFFERENT REPORTS, THREE DIFFERENT EXPERTS COMING AT
13 YOU FROM ALL SIDES. YOU NEED SOME HELP. AND THAT'S
14 WHAT MY MOTION WAS FOR, WAS TO GET YOU SOME HELP.
15 THAT'S ALL.

16 THE COURT: THANK YOU.

17 OTHERS WISH TO BE HEARD?

18 MR. HERREMA: WE JOINED IN THE CITY'S
19 OPPOSITION TO THE MOTION.

20 WE DO THINK THAT THERE WILL BE MORE THAN
21 ENOUGH INFORMATION PRESENTED BY AT LEAST THREE
22 DIFFERENT GROUPS OF EXPERTS THAT HAVE BEEN IDENTIFIED
23 ALREADY.

24 I AND MY PARTNERS IN OUR FIRM HAVE BEEN
25 REPRESENTING PARTIES IN ADJUDICATIONS WHERE THIS PHASE
26 1 IS THE STANDARD FIRST PHASE OF THESE ADJUDICATIONS.
27 AND MANY, MANY JUDGES HAVE MADE THESE DETERMINATIONS
28 BASED ON THE EXPERTS THAT HAVE BEEN TESTIFYING BEFORE

1 THEM, AND THEY HAVE NOT NEEDED THIS TYPE OF NEUTRAL
2 EXPERT IN THESE CIRCUMSTANCES.

3 I THINK MR. PATTERSON POINTED OUT THAT,
4 IF YOU GET TO THE POINT WHERE YOU HAVE SEEN WHAT'S
5 THERE AND YOU THINK YOU NEED ASSISTANCE IN DIGESTING
6 IT, THAT MIGHT BE A MORE APPROPRIATE TIME. BUT WE
7 AGREE WITH THE CITY AND WITH THE STATE ATTORNEYS, IT'S
8 NOT NECESSARY AT THIS TIME. THANK YOU.

9 THE COURT: THANK YOU.

10 OTHERS WISH TO BE HEARD AS TO THIS
11 MOTION?

12 MR. WHITMAN: YES, YOUR HONOR.

13 FOR THE RECORD, WE DID GET OUR JOINDER
14 FILED. I'M NOT SURE WHY IT DIDN'T GET TO YOU, BUT IT
15 HAS BEEN FILED.

16 THE COURT: WHAT'S THE FILING DATE? I'LL
17 CHECK OUR RECORDS. WHAT'S THE DATE YOU THINK IT WAS
18 FILED?

19 MR. WHITMAN: LAST FRIDAY.

20 THE COURT: OKAY. LET ME SEE.

21 IT'S CONCEIVABLE SOMETHING FROM FRIDAY IS
22 STILL WAITING AS OF MONDAY MORNING IN OUR CLERICAL MILL
23 TO BE PROCESSED BECAUSE, IF IT WAS PUT IN THE DROPBOX
24 ON FRIDAY, IT WOULD BE PROCESSED TODAY, BUT ONLY WHEN
25 IT'S PROCESSED WOULD IT THEN CREATE A REFERENCE IN OUR
26 DOCKET. AND AFTER THE FIRST REFERENCE IN OUR DOCKET
27 HAS BEEN CREATED, IT WOULD BE SENT OFF TO SCANNING, AT
28 WHICH POINT AN IMAGE MIGHT BE AVAILABLE.

1 BUT AS OF THIS HOUR ON MONDAY, THERE'S
2 STILL NO NOTATIONS IN THE DOCUMENTS THAT WOULD INDICATE
3 THAT ANYTHING OF THIS TYPE WAS RECEIVED.

4 BUT IT COULD BE TRUE, MR. WHITMAN, THAT
5 IT WAS SUBMITTED --

6 MR. WHITMAN: I'M SORRY, I'M NOT SURE IT'S
7 IMPORTANT ANYWAY, BUT MY COMMENT IS THAT --

8 THE COURT: GO AHEAD.

9 MR. WHITMAN: SINCE I'VE BEEN INVOLVED IN THIS
10 CASE, I'VE BEEN KIND OF PERPLEXED BY THE IDEA THAT IT
11 SEEMS LIKE WE'VE ALREADY GOT THE STATE AGENCIES,
12 INCLUDING GROUNDWATER MANAGEMENT DISTRICTS, THAT ARE
13 CHARGED WITH PROTECTING THE GROUNDWATER RESOURCE. AND
14 IN THE TYPE OF LITIGATION THAT I'M FAMILIAR WITH, WHICH
15 HAS NOTHING TO DO WITH WATER, YOU KNOW, VERY FREQUENTLY
16 WHEN THERE'S A REGULATORY ISSUE INVOLVED, THERE'S A
17 REQUEST THAT THE COURT ABSTAIN SO AS TO NOT INTERFERE
18 WITH THE AGENCY'S EXPERTISE AND CONTROL OVER THE ISSUE.

19 AND I DO UNDERSTAND FROM READING THE LAW
20 THAT YOU'RE GOING TO BE IN A POSITION OF USURPING WHAT
21 THE GROUNDWATER MANAGEMENT DISTRICT MIGHT DO IF BEING
22 PRESENTED WITH THE SAME ISSUES.

23 AND SO MY CONCERN ABOUT THAT IS THAT THE
24 GROUNDWATER MANAGEMENT DISTRICT HAS A STAFF, HAS THE
25 ABILITY TO HIRE EXPERTS TO DO THEIR UNBIASED DUTY OF
26 ASSESSING THE INFORMATION AND COMING TO THE CORRECT
27 DECISION. AND YOU DO NOT HAVE A STAFF AT YOUR
28 DISPOSAL. AND FOR THAT REASON, I THINK IT'S EXTREMELY

1 IMPORTANT THAT YOU HAVE THE INFORMATION, YOU HAVE THE
2 EXPERTISE AVAILABLE TO YOU.

3 IF IT TURNS OUT THAT, DURING THE FIRST
4 PHASE, YOU DON'T FEEL LIKE YOU HAVE A SPECIFIC QUESTION
5 THAT YOU WANT TO RAISE WITH THE EXPERT, THEN THERE'S
6 NOT GOING TO BE ANY EXPENSE TO ANYONE.

7 IF YOU DECIDE THAT YOU DO, YOU'RE GOING
8 TO BE IN A MUCH BETTER POSITION IF YOU HAVE THAT PERSON
9 AVAILABLE TO YOU TO ASK THAT SCIENTIFIC QUESTION OF.

10 THE OTHER COMMENT THAT I WAS GOING TO
11 MAKE IS THAT, OUT OF THE OTHER ALTERNATIVES OF METHOD
12 OF SELECTION -- AND IT COMES UP IN THE CASE OF NEEDING
13 TO APPOINT AN ARBITRATOR FAIRLY FREQUENTLY. THERE'S
14 ALL KINDS OF METHODS OF SELECTING ARBITRATORS. BUT,
15 YOU KNOW, THE MOST COMMON ONE IS TO SUBMIT -- EACH
16 PARTY TO SUBMIT A NAME OF A QUALIFIED EXPERT, AND LET
17 THE COURT ASSESS THE QUALIFICATIONS AND PICK OUT THE
18 ONE WHO SEEMS TO BE MOST QUALIFIED TO HANDLE THE
19 SITUATION.

20 AND AS FAR AS THE EXPENSE OF THIS, I
21 THINK THE COURT CAN RESOLVE HOW AND IF TO CHARGE THE
22 PARTIES AT A LATER POINT. BUT I DON'T SEE ANY PROBLEM
23 WITH CHARGING THE PERSONS WHO ARE ALREADY IN A POSITION
24 OF HAVING OVERDRAFTED THE VENTURA RIVER TO BE THE ONES
25 WHO ARE -- AND NOW SEEKING RELIEF FROM PEOPLE WHO HAVE
26 NEVER OVERDRAFTED THE VENTURA RIVER, I DON'T SEE ANY
27 PROBLEM WITH THEM HAVING THE FINANCIAL RESPONSIBILITY
28 FOR PAYING FOR YOU TO HAVE THE STAFF THAT YOU NEED TO

1 BE ABLE TO DECIDE THESE ISSUES.

2 THE COURT: THANK YOU, SIR.

3 ANYBODY ELSE WISH TO BE HEARD AS TO THIS
4 MOTION BEFORE THE COURT AT THIS TIME?

5 MR. SLATER: YES.

6 I HAVE SERVED IN THE CAPACITY AS A
7 COUNSEL TO THE WATER MASTER FOR OVER 20 YEARS AND
8 PARTICIPATED IN GROUNDWATER ADJUDICATIONS ACROSS
9 CALIFORNIA.

10 AND I WOULD JUST SAY THAT, FOR THE
11 REASONS THAT WERE ARTICULATED IN THE PROPOSING PARTY'S
12 BRIEF, IT IS NOT TIMELY. IT IS NOT NECESSARY TO DO
13 THIS YET.

14 AND WITH ALL DUE RESPECT TO THE DIVIDING
15 THE WATERS GROUP AND THEIR GREAT PRODUCT - LOTS OF
16 PEOPLE PARTICIPATED - WHEN A JUDGE IN YOUR POSITION
17 SELECTS A TECHNICAL EXPERT TO INTERFACE, DIGEST AND
18 REVIEW OTHER TECHNICAL INFORMATION, FOR BETTER OR
19 WORSE, THE GRINDING, THE IN-DEPTH ANALYSIS THAT A JUDGE
20 IN YOUR POSITION AND WITH YOUR HISTORY IN COMPLEX CASES
21 IS MORE CUSTOMARY TO DO BY THEMSELVES IS SOMEWHAT
22 ABDICATED TO THE TECHNICAL EXPERT WHO THEN MEETS WITH,
23 LISTENS TO AND ASSUMES THAT PRIMARY RESPONSIBILITY.

24 THERE IS RISK IN TRANSLATION. THERE IS,
25 IN MY OPINION, NOT MUCH DIFFICULTY FOR THE PARTIES TO
26 COME TO AN AGREEMENT FROM COMPETENT EXPERTS. THE STATE
27 HAS PLENTY OF PEOPLE, MANY WHO ARE NOT IN THIS CASE.
28 THEY ARE THROUGHOUT THE WEST. THEY HAVE BEEN ENGAGED

1 IN SPECIAL MASTER FUNCTIONS WHERE THEY ENGAGE IN
2 TECHNICAL INVESTIGATIONS, LEAD THEM, TAKE ON
3 EVIDENTIARY HEARINGS. IT IS ALWAYS USED AS -- FOR THE
4 BENEFIT OF THE COURT AND THE BENEFIT OF YOUR HONOR.

5 IN THIS CASE, THERE ARE EXPERTS. AND IF
6 AT ANY POINT IN TIME YOUR HONOR FINDS THAT IT WOULD BE
7 HELPFUL, THEN IF YOUR HONOR FEELS IT'S HELPFUL, THEN WE
8 WILL BE SUPPORTIVE. AND THEN IN THAT CONDITION OR THAT
9 CIRCUMSTANCE, WE WOULD RECOMMEND SOMETHING IN THE
10 NATURE OF AN AGREEMENT AMONG THE PARTIES FROM A LONG
11 LAUNDRY LIST OF COMPETENT PROFESSIONALS WHO HAVE
12 APPEARED IN THESE TYPES OF CASES IN THE PAST RATHER
13 THAN GETTING A GRAB BAG AND HAVING AN INABILITY TO
14 RESPOND TO THE QUALIFICATIONS OF SOMEBODY WHO IS
15 RECOMMENDED BY A THIRD PARTY.

16 THE COURT: THANK YOU.

17 I BELIEVE THERE WAS A LADY WHO WISHED TO
18 BE HEARD?

19 MS. BLISS: YES, YOUR HONOR.

20 THE COURT: GO AHEAD, MA'AM.

21 MS. BLISS: I ONLY WANT TO POINT OUT THAT, IN
22 TERMS OF -- I THINK MR. HAGERTY TALKED ABOUT THERE WAS
23 NO ABSENCE OF INFORMATION REGARDING THE SCIENCE BEHIND
24 THE CITY'S REQUEST.

25 I WOULD ONLY SAY THAT I HAVE TAKEN A LOOK
26 AT ALL 34 OF THE PUBLICATIONS THAT THE CITY HAS
27 SUBMITTED, AND I HAVE FOUND AN AMAZING SCARCITY OF ANY
28 INFORMATION ON THE UPPER OJAI BASIN OR THE GROUNDWATER.

1 AND I KNOW THAT THE PUBLICATIONS COVERED ALL FOUR
2 BASINS; BUT EVEN TAKING THAT INTO ACCOUNT, THERE WAS
3 VERY LITTLE MENTION OF THE UPPER OJAI BASIN AND
4 ALMOST -- AND VERY LITTLE MENTION OF LION CREEK AND HOW
5 THAT AFFECTS THIS LITIGATION.

6 SO IT IS UNKNOWN RIGHT NOW, OBVIOUSLY,
7 WHAT THE EXPERTS ARE GOING TO PROVIDE FROM THE CITY AND
8 FROM THE STATE. BUT SPEAKING FOR THE TRUST, IF IT WERE
9 USEFUL TO THE COURT EITHER NOW OR LATER, I THINK IT
10 WOULD BE HELPFUL TO HAVE AN INDEPENDENT EXPERT AS A
11 BACKSTOP TO THE CITY'S, WHATEVER IT MAY BE, ASSERTIONS
12 ON THE GROUNDWATER IN THE UPPER OJAI BASIN BECAUSE,
13 AGAIN, WE ARE JUST A COLLECTION OF INDIVIDUALS.

14 IT'S TRUE, WE'RE NOT ASKING FOR HELP IN
15 THE LITIGATION OR FUNDING FOR OUR OWN EXPERT, SIMPLY A
16 NEUTRAL BACKSTOP TO OBSERVE WHAT IS BEING PRESENTED BY
17 THESE OTHER AGENCIES SINCE THERE'S VERY LITTLE
18 INFORMATION AVAILABLE TO DATE.

19 THE COURT: THANK YOU, MA'AM.

20 ANYBODY ELSE WISH TO BE HEARD?

21 MR. OSIAS: YOUR HONOR, AS WE ALL KNOW IN THIS
22 CASE, EVERYTHING IS CONNECTED TO EVERYTHING. SO LATER
23 ON ON YOUR AGENDA IS THE DISCOVERY SCHEDULE REGARDING
24 EXPERTS. AND THE DIFFICULTY IS, MY CLIENT IS A SINGLE
25 PROPERTY OWNER WITH A WELL, A HOUSE, LANDSCAPE AJAR.
26 AND PART OF THE DISPUTE IN THE DISCOVERY PORTION OF
27 THIS DAY IS HOW MUCH TIME IS NEEDED TO FIND AN EXPERT
28 IN ORDER TO PARTICIPATE MEANINGFULLY IN THE UPCOMING

1 PHASE 1? AND WHAT WILL THE CITY'S EXPERT SAY SO WE CAN
2 MAKE A DECISION WHETHER WE NEED AN EXPERT OR NOT?

3 AND IN THIS MOTION, THE OPPOSITION, BOTH
4 IN WRITING BY THE VENTURA RIVER WATER DISTRICT AND
5 MEINERS OAKS WATER DISTRICT, IN WRITING AND IN SIMILAR
6 COMMENTS MADE BEFORE YOU TODAY IS, IF YOU GET AN
7 EXPERT, BY THE TIME YOU HIRE ONE AND GET UP TO SPEED,
8 IT WILL CAUSE DELAY AND WE'LL LOSE THE TRIAL SCHEDULE
9 THAT'S SET. AND, YET, OTHERS IN THAT BOAT ARE SUPPOSED
10 TO WAIT UNTIL LATE AUGUST OR SEPTEMBER VERSUS NOW WE
11 ARE IN JULY. SO IF YOUR HONOR CHOOSES NOT TO GET AN
12 EXPERT, BUT YOU CAN GET A GOOD LIST, WE WOULD BE
13 INTERESTED IN YOU SHARING IT. WE DON'T KNOW WHETHER WE
14 WILL NEED AN EXPERT OR NOT. I HEARD MR. SLATER SAY HE
15 KNEW A LOT OF PEOPLE. I WILL REACH OUT TO GET SOME
16 NAMES. WE ARE TRYING TO BE PREPARED. BUT FOR A
17 HOMEOWNER TO FUND AN EXPERT, WE WOULD LIKE TO SEE THE
18 REPORT FIRST SO WE KNOW WHETHER WE NEED TO. SO IT'S
19 RELATED A LITTLE BIT IN TERMS OF TIMING, WHICH IS, I
20 KNOW, THE SECOND THING COMING UP TODAY VERSUS THIS, BUT
21 I WANTED TO -- SINCE WE'RE ON THAT TOPIC, I THOUGHT IT
22 WOULD BE HELPFUL TO POINT THAT OUT.

23 THE COURT: LET ME DO A LITTLE DRAMATIC
24 FORESHADOWING ON THE QUESTION OF THE NEXT ISSUE ON THE
25 AGENDA AND WHETHER WE'RE DEALING WITH IT TODAY. I HAVE
26 NOT BEEN ABLE TO SPEND THE TIME TO PREPARE ON YOUR
27 BATTLE ABOUT THE DISCOVERY SCHEDULE. AND I INTEND TO
28 CONTINUE THAT ASPECT TO FRIDAY OF THIS WEEK, THE 23RD,

1 UNLESS KEY PLAYERS ARE UNAVAILABLE BECAUSE, BETWEEN NOW
2 AND FRIDAY, I DO EXPECT TO BE ABLE TO DO MY HOMEWORK SO
3 THAT I CAN DEAL WITH IT WITH ENOUGH THOROUGHNESS.

4 WHEN IT COMES TO THIS FRIDAY, I CAN DO IT
5 AT EITHER 10:00 A.M. OR AT 2:00 P.M.

6 MR. HAGERTY FOR THE CITY OF
7 SAN BUENAVENTURA, ARE YOU AVAILABLE FRIDAY MORNING OR
8 AFTERNOON?

9 MR. HAGERTY: AFTERNOON WOULD BE BETTER FOR
10 US, YOUR HONOR.

11 THE COURT: OKAY. LET'S SEE OTHER PEOPLE WHO
12 FILED BRIEFS IN REGARD TO THIS INCLUDE MR. OSIAS.

13 ARE YOU AVAILABLE FRIDAY AFTERNOON?

14 MR. OSIAS: YOUR HONOR, AS I PREVIOUSLY WROTE
15 TODAY TO THE CITY BECAUSE WE'RE TRYING TO HAVE A MEET
16 AND CONFER, I HAVE A VACATION SCHEDULED FROM FRIDAY TO
17 TUESDAY. BUT SINCE I'M PARTICIPATING BY PHONE, I CAN
18 MAKE MYSELF AVAILABLE AT 2:00 P.M.

19 THE COURT: MR. MELNICK FOR THE STATE?

20 MR. MELNICK: YOUR HONOR, I'M OPEN ON FRIDAY.

21 THE COURT: I GOT PAPERWORK FROM COUNSEL FOR
22 ROBERT MARTIN, DO I HAVE A LAWYER FROM THAT FIRM WITH
23 US THIS AFTERNOON?

24 NO RESPONSE FOR THE RECORD.

25 WHAT ABOUT COUNSEL FOR CITY OF OJAI,
26 MS. JACOBSON?

27 MS. JACOBSON: YES, YOUR HONOR. I WILL BE
28 AVAILABLE FRIDAY AFTERNOON TO PARTICIPATE IN THAT

1 DISCUSSION.

2 THE COURT: MR. PATTERSON?

3 MR. PATTERSON: YOUR HONOR, I'M AVAILABLE
4 ANYTIME FRIDAY. 2:00 P.M. IS FINE.

5 THE COURT: ANYBODY ELSE WISH TO BE HEARD TO
6 OBJECT TO CONTINUING THE DISCOVERY ISSUES TO FRIDAY AT
7 2:00 P.M.?

8 MR. DENNINGTON: FRIDAY AFTERNOON WOULD BE
9 BETTER IN THE AFTERNOON. I HAVE AN MSC THAT MORNING.

10 THE COURT: I'M PROPOSING 2:00 P.M.

11 IS THAT LATE ENOUGH?

12 MR. DENNINGTON: THAT WOULD BE GREAT.

13 THE COURT: OKAY. ANYBODY ELSE WISH TO BE
14 HEARD TO OBJECT TO HAVING THE MATTER HEARD THIS FRIDAY
15 AFTERNOON?

16 HEARING NO FURTHER OBJECTION, THE
17 DISCOVERY ISSUES OTHERWISE ON CALENDAR FOR TODAY WILL
18 BE HEARD THIS FRIDAY, JULY 23 AT 2:00 P.M.

19 YOU CAN APPEAR IN PERSON OR VIA L.A.
20 COURT CONNECT.

21 LET'S GO BACK TO MR. BAGGERLY'S MOTION.
22 ANYBODY ELSE WISH TO BE HEARD?

23 MR. GARRISON: I DO, YOUR HONOR.

24 JUST LIKE PLAYING CHESS, YOU ALWAYS BEGIN
25 WITH, WHERE DO I WIND UP IN YOUR END GAME?

26 THE COURT: THERE'S NO CHESS PLAYERS ON THE
27 MAP BEHIND YOUR HEAD? I SEE --

28 MR. GARRISON: THERE ARE. I'M A NATIONALLY

1 RANKED CHESS PLAYER. THANK YOU.

2 CHESS AND LAW HAVE A LOT DO WITH EACH
3 OTHER. THERE'S LOGIC. THEY'RE FAIR. EVERYTHING IS
4 OUT IN THE OPEN.

5 THE ULTIMATE END GAME HERE IS PUBLIC
6 TRUST. HOW DO WE GO THROUGH THE WATER ADJUDICATION
7 PROCESS THAT'S FAIR, REASONABLE AND EQUITABLE TO ALL
8 THE PARTIES INVOLVED?

9 NOW, THE PROPOSED PHYSICAL SOLUTION SAYS
10 THAT IT WON'T IMPACT 10,000 PEOPLE. WELL, THAT'S NOT A
11 COLLECTION OF INDIVIDUALS. THAT'S THE PUBLIC. SO THE
12 END GAME IS, WHAT IS THE BEST METHODOLOGY THAT THE
13 COURT AND THE LITIGANTS CAN ENTER INTO TO DEVELOP THE
14 TRUST SO THAT IT'S NOT MERE ADVOCACY?

15 MR. BAGGERLY HAS DONE AN EXCELLENT JOB,
16 ALONG WITH MR. WHITMAN, IN PRESENTING TO THE COURT SOME
17 SOUND FOUNDATIONS FOR AN INDEPENDENT SCIENCE EXPERT
18 THAT WOULD HELP THE COURT. IT'S NOT TO HELP THE
19 INDIVIDUALS GET REPRESENTATION OR AN EXPERT. THAT IS
20 NOT THE POINT.

21 FINALLY, IF YOU LOOK CLOSELY AT THE
22 PROPOSED PHYSICAL SOLUTION, FOR EXAMPLE, JUST PICK ONE
23 DOCUMENT, E-3, YOU HAVE A DELINEATION OF FAULT LINES
24 RELATING TO THE GROUNDWATER. NOW, FAULTS ARE
25 IMPERATIVE TO UNDERSTAND HOW HYDROGEOLOGY BECAUSE, WHEN
26 THE EARTH FOLDS, THE GROUNDWATER IS THE DIVERTED,
27 PULLED AND CANNOT CONNECT. BUT IF YOU LOOK AT EXHIBIT
28 E-3, SOME FAULTS IN THE WATERSHED AREN'T EVEN CALLED

1 OUT. OTHER FAULTS ARE ABBREVIATED SO YOU CAN'T REALLY
2 SEE THE INTERACTION BETWEEN THE FAULT AND THE
3 GROUNDWATER. THIS IS THE TYPE OF JUNK SCIENCE THAT WE
4 FEAR THAT REALLY OFFENDS THE PUBLIC TRUST. THANK YOU.

5 THE COURT: THANK YOU, SIR.

6 ANYBODY ELSE WISH TO BE HEARD?

7 MR. BAGGERLY: YES, YOUR HONOR.

8 THE COURT: GO AHEAD, BRIEFLY.

9 MR. BAGGERLY: PLEASE TURN TO MY 12-PAGE
10 MISFILED BRIEF THAT I SENT YOU. I INCLUDED, IN A
11 PORTION OF THAT BRIEF, WITH THE WRITINGS OF A
12 HYDROGEOLOGIST TO GIVE YOU A SAMPLE. ALONG WITH THAT
13 SAMPLE IS THE PERSON'S NAME AND HIS LICENSE. I'D LIKE
14 YOU TO CONSIDER HIM.

15 THANK YOU, YOUR HONOR.

16 THE COURT: WHICH PAGE IS THAT ON, SIR?

17 (TECHNICAL ISSUES)

18 MR. HAGERTY: I THINK IT'S PAGE 7.

19 THE COURT: DID WE LOSE BAGGERLY?

20 OFF THE RECORD.

21 (DISCUSSION OFF THE RECORD)

22 THE COURT: BACK ON THE RECORD.

23 THIS HAS BECOME IMPOSSIBLE. ALL MATTERS
24 WILL BE TRAILED TO FRIDAY AT 2:00 P.M.

25 THE COURT IS IN RECESS. WE'LL PICK UP
26 THINGS ON FRIDAY.

27 (END OF PROCEEDINGS)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
SPRING STREET COURTHOUSE

DEPT 10 HON. WILLIAM H. HIGHBERGER, JUDGE PRESIDING

SANTA BARBARA CHANNELKEEPER, A)
CALIFORNIA NON-PROFIT CORPORATION,)

PLAINTIFF,)

V.)

NO. 19STCP01176

STATE WATER RESOURCES CONTROL BOARD,)
ET AL.,)

DEFENDANTS.)

-----)

I, ALEXANDER T. JOKO, COURT REPORTER PRO TEM,
OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR
THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
FOREGOING PAGES COMPRISE A FULL, TRUE, AND CORRECT
TRANSCRIPT OF THE PROCEEDINGS HELD IN THE
ABOVE-ENTITLED MATTER ON JULY 19, 2021.

DATED THIS 21ST DAY OF JULY, 2021.



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