

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT SSC10

HON. WILLIAM F. HIGHBERGER, JUDGE

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

VS.

) CASE NO. 19STCP01176
)

STATE WATER RESOURCES CONTROL)
BOARD, A CALIFORNIA STATE)
AGENCY, ET AL.,)
DEFENDANTS.)

AND RELATED CROSS-ACTIONS.)
_____)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JANUARY 20, 2022

APPEARANCES:

FOR RESPONDENT CITY OF VENTURA:

BEST BEST & KRIEGER, LLP
BY: CHRISTOPHER M. PISANO, ESQ.
SHAWN D. HAGERTY, ESQ.
655 WEST BROADWAY, 15TH FLOOR
SAN DIEGO, CA 92101

FOR THE CROSS-DEFENDANT CITY OF OJAI:

BARTKIEWICZ KRONICK & SHANAHAN, PC
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1011 22ND STREET
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ALSO PRESENT REMOTELY:

GREGG S. GARRISON
CLAUDE R. BAGGERLY
GREGORY PATTERSON
JEREMY JUNGREIS

REPORTED BY: JESSICA CABELLO, CSR NO. 12646
OFFICIAL REPORTER PRO TEMPORE

Job No. 67529

TRANSCRIPT OF PROCEEDINGS

January 20, 2022

1 CASE NUMBER: 19STCP01176
2 CASE NAME: SANTA BARBARA CHANNELKEEPER VS.
3 STATE WATER RESOURCES CONTROL
BOARD
4 LOS ANGELES, CALIFORNIA THURSDAY, JANUARY 20, 2022
5 DEPARTMENT SSC10 HON. WILLIAM F. HIGHBERGER
6 REPORTER: JESSICA CABELLO, CSR NO. 12646
7 TIME: AFTERNOON SESSION
8 APPEARANCES: FOR THE RESPONDENT, CHRISTOPHER M. PISANO, ESQ.,
9 SHAWN D. HAGERTY; FOR CROSS-DEFENDANT, HOLLY J. JACOBSON, ESQ.

10 ***

11 THE COURT: WE'RE ON THE RECORD IN 19STCP01176 --
12 OFF THE RECORD.

13 (RECESS.)

14 THE COURT: ON THE RECORD IN 19STCP01176, SANTA
15 BARBARA CHANNELKEEPER VS. STATE WATER RESOURCES CONTROL BOARD.
16 AND WE'VE GOT A FEW LAWYERS IN THE COURTROOM AND A LOT OF --
17 VIA -- THE REPORTER DOES HAVE A SCREEN IN FRONT OF HER WITH
18 YOUR VISUAL IMAGES, BUT A VERY LIMITED NUMBER OF VISUAL
19 IMAGES. SO EVEN THOUGH YOU THINK YOU HAVE A VIDEO FEED, I
20 STRONGLY RECOMMEND YOU GIVE YOUR NAME WHEN YOU APPEAR VIA
21 TELEPHONE OR VIDEO LINK.

22 WE HAVE MULTIPLE THINGS TO DO. AND THE ORDER IN
23 WHICH TO DO THEM IS PROBABLY NEGOTIABLE. I CURRENTLY PLAN TO
24 START BY TALKING TO MR. -- ABOUT THE CURRENT PROCESS FOR
25 SELF-REPRESENTED LITIGANTS TO GET THE PAPERS SUCCESSFULLY
26 FILED. AND THEN MOVE ON TO THE MOTION OF JUDGMENT PLEADINGS
27 BY OJAI. AND THEN MOVE ON TO THE -- AND ON YOUR LIST
28 ASSOCIATED WITH EACH OF THOSE TWO MOTIONS ARE PARTICIPATION BY

1 THOSE WHO FILED FORMAL JOINDERS. ONCE I'VE DECIDED THOSE
2 MOTIONS, I THINK WE'LL BE IN A BETTER POSITION TO TALK ABOUT
3 THE EX PARTE TO CONTINUE THE TRIAL AND THE JOINDER -- OR
4 JOINDERS ASSOCIATED THEREWITH.

5 MR. WHITMAN HAD A MOTION. HE WAS ALSO THE SUBJECT
6 OF AN OSC ABOUT PROVIDING A COMPUTER MODEL TO HIM. BUT
7 MR. WHITMAN HAD A PREPLANNED TRIP OUT OF COUNTRY STARTING
8 YESTERDAY, WHICH WAS NOT SOMETHING HE COULD MODIFY,
9 APPARENTLY. SO AT MR. WHITMAN'S REQUEST, THE MOTIONS THAT HE
10 FILED AND THE OSC ARE NECESSARILY GOING OVER TO A FUTURE DATE.
11 THAT FUTURE DATE IS --

12 MR. HAGERTY: YOUR HONOR, IF I MAY, I THINK HE SET
13 IT FOR -- FEBRUARY 8TH IS WHAT I HAVE IN MY NOTES AT 3:00 P.M.

14 THE COURT: BEAR WITH ME. HERE IT IS. YES.
15 FEBRUARY 8TH, 3:00 P.M.

16 SO MR. BAGGERLY, ARE YOU WITH US THIS AFTERNOON?
17 MR. BAGGERLY, YOU ARE REGISTERED AS PARTICIPATING TODAY. IF
18 YOU ARE THERE, WILL YOU SAY SOMETHING?

19 WELL, IN THE HOPES THAT HE AND OTHERS WHO ARE
20 SELF-REPRESENTED WILL HEAR THIS AND UNDERSTAND -- THE MAIN
21 POINT TO UNDERSTAND IS THAT FOR MANY MONTHS, WHEN THIS CASE
22 WAS BEFORE ME, THE FILING PROCESSES WERE THE ANCIENT -- AND
23 PROCESSES USED IN LOS ANGELES SUPERIOR COURT, EVEN THOUGH WE
24 WERE USING E-FILING WITH CERTAIN EXCEPTIONS. BUT EFFECTIVE
25 SEPTEMBER 20TH OF LAST YEAR THE COMPLEX COURTS, INCLUDING THIS
26 DEPARTMENT, ALSO BECAME SUBJECT TO MANDATORY E-FILING WITH
27 LIMITED EXCEPTIONS.

28 ONE CONSEQUENCE OF THAT WAS THAT THE AVAILABILITY OF

1 FAX FILING FOR ANY COMPLEX CASES TERMINATED ON SEPTEMBER 20TH,
2 EVEN THOUGH THE FAX FILING FUNCTION STILL OPERATES FOR SMALL
3 CLAIMS AND CHILD SUPPORT FOR WHICH REASON THERE IS STILL A
4 WORKING PHONE NUMBER. BUT NOTHING IS ACCOMPLISHED BY SENDING
5 SOMETHING TO THAT PHONE NUMBER BECAUSE IT IS NOT CONSIDERED
6 THE PROPER WAY TO FILE.

7 A SELF-REPRESENTED LITIGANT DOES HAVE SOME
8 DISPENSATION, WHICH LAWYERS REPRESENTED PARTIES DO NOT. THE
9 DISPENSATION FOR SELF-REPRESENTED LITIGANTS IS THAT YOU CAN
10 COME IN PERSON TO THE SPRING STREET COURTHOUSE AND FILE YOUR
11 PAPERS IN THE CLERK'S OFFICE ON THE SECOND FLOOR AT THE NORTH
12 END OF THE HALLWAY. THEY WILL ACCEPT -- SECOND FLOOR. AND
13 THEY WILL TAKE CHECKS OR CASH. YOU CAN MAIL THINGS TO THE
14 SAME ADDRESS AT 312 NORTH SPRING STREET WITH A CHECK --
15 PREFERABLY NOT CASH -- AND FILE PAPERS THAT WAY.

16 JOINDERS REQUIRE A FEE AND, THEREFORE, YOU MUST
17 SUBMIT MONEY JUST AS IF IT WAS A MOTION OR, LIKE ALL THE
18 PRACTICING LAWYERS WHO APPEAR IN THESE CASES, SELF-REPRESENTED
19 LITIGANTS CAN USE ONE OF THE COURT APPROVED E-FILING
20 SUPPORTERS. YOU CAN'T DO THIS YOURSELF. YOU HAVE TO GO
21 THROUGH AN APPROVED VENDOR. AND THEY CHARGE A FEE. AND THEY
22 WILL PAY BY CREDIT CARD. AND THE COURT WILL SURCHARGE THE
23 CREDIT CARD. AND THE VENDOR MAY SURCHARGE THE CREDIT CARD.
24 BUT YOU CAN'T E-FILE IN THAT FASHION, BUT MUST GO THROUGH ONE
25 OF THE VENDORS SUCH AS ONE LEGAL OR CASE ANYWHERE IS ABLE TO
26 DO YOUR FILING FOR YOU, EVEN THOUGH THEY ARE NOT A
27 COURT-APPROVED VENDOR SUPPORTING THE BULLETIN BOARD. THEY
28 JUST HAPPEN TO COMPETE WITH ONE LEGAL.

1 FILING EXPRESS IS NOT APPROVED TO BE AN E-FILING
2 SUPPORTER. MR. HAGERTY, WHEN YOU ARE DONE, YOU ARE GOING TO
3 GIVE NOTICE AND THE NOTICE SHOULD SIMPLY SAY EFFECTIVE
4 SEPTEMBER 20, 2021, FAX FILING WAS NO LONGER AVAILABLE TO
5 SELF-REPRESENTED LITIGANTS. THEY MUST EITHER FILE IN PERSON
6 OR BY MAIL AT 312 NORTH SPRING STREET OR USE THE SAME THIRD
7 PARTY APPROVED BY --

8 MR. BAGGERLY, ARE YOU THERE TO CONFIRM A SUMMARY OF
9 WHAT I JUST SAID?

10 MR. BAGGERLY: I HAVE --

11 THE COURT: NOW I SORT OF HEAR YOU.

12 MR. BAGGERLY: WELL, LET ME -- MICROPHONE -- I
13 APOLOGIZE --

14 THE COURT: SO DID YOU HEAR MY EXPLANATION OF WHAT
15 APPEARS TO BE THE SOURCE OF YOUR PROBLEMS, MR. BAGGERLY?

16 MR. BAGGERLY: (NO AUDIBLE RESPONSE.)

17 THE COURT: I WAS NOT ABLE TO HEAR FURTHER FROM
18 MR. BAGGERLY. WE ARE GOING TO MOVE ON.

19 MS. JACOBSON, WE WILL TURN TO YOUR MOTION.

20 MS. JACOBSON: THANK YOU, YOUR HONOR. I JUST WOULD
21 LIKE TO GO OVER A COUPLE THINGS IN YOUR TENTATIVE.

22 THE COURT: SURE.

23 MS. JACOBSON: I REALLY APPRECIATE YOUR TIME IN
24 PUTTING THIS OUT AND GOING OVER A SIGNIFICANT AMOUNT OF LAW --
25 VARYING LAW OVER THE YEARS WHICH IS -- YOU KNOW, IT CAN EASILY
26 GET JUMBLED UP. THE FIRST POINT I'D LIKE TO MAKE IS -- KIND
27 OF GOING IN ORDER. IN YOUR TENTATIVE YOU STATE THE GENERAL
28 RULE, A STANDARD FOR A MOTION LIKE A DEMURRER, HAS TO ACCEPT

1 ALLEGATIONS OF FACTS ARE TRUE. BUT, LIKE A DEMURRER, THAT
2 ONLY IS THE GENERAL RULE AND DOES NOT APPLY SPECIFICALLY TO
3 CONCLUSIONS OF LAW OR OTHER FACTS THAT -- CONCLUSIONS OF FACTS
4 AND FACTS THAT ARE DEMONSTRABLY FALSE OR INCONSISTENT WITH
5 DOCUMENTS.

6 SO ON THAT POINT I WOULD JUST NOTE THAT THE GENERAL
7 RULE APPLIES, AGAIN, TO ALLEGATION OF FACTS THAT ARE NOT
8 CONCLUSIONS OF LAW. AND THE PLEADING -- THE THIRD AMENDED
9 CROSS-COMPLAINT HAS A MIX OF BOTH.

10 THE COURT: WHAT IS YOUR PARADIGM EXAMPLE OF
11 SOMETHING THAT IS PLED THAT I SHOULD AT THIS JUNCTURE ACCEPT
12 AS A FALSITY?

13 MS. JACOBSON: WELL, THE EASIEST ONE IS PUEBLO
14 RIGHTS. THAT IS A MATTER OF LAW. AND A PARTY CANNOT PLEAD A
15 CONCLUSORY STATEMENT AS VENTURA HAS IN THE THIRD AMENDED
16 CROSS-COMPLAINT, THAT IT HAS PUEBLO RIGHTS, ESPECIALLY WHERE
17 IT HAS PLED THAT THOSE PUEBLO RIGHTS AROSE FROM THE STATUS OF
18 MISSION SAN JUAN BUENAVENTURA --

19 THE COURT: ONE MOMENT. LET ME GET ORGANIZED HERE.
20 BEAR WITH ME.

21 OKAY. YOUR MOTION WAS FILED DECEMBER 21. AND I
22 WANT TO MAKE SURE I HAVE ALL OF THE SUPPORTING PAPERWORK
23 PHYSICALLY OR ELECTRONICALLY IN FRONT OF ME BECAUSE I'M GOING
24 TO ASK YOU TO SHOW ME WHERE YOU MADE THE SHOWING THAT THE
25 CLAIM FOR PUEBLO RIGHTS IS FALSE.

26 DON'T START TALKING YET, BUT THAT'S THE NEXT
27 QUESTION I'M GOING TO ASK YOU. YOU'VE GOT A DECLARATION TALKS
28 ABOUT YOUR PLEASANT DISCUSSIONS WITH MR. HAGERTY. THAT'S

1 NICE. AND THEN YOU'VE GOT A REQUEST FOR JUDICIAL NOTICE.

2 MS. JACOBSON: I BELIEVE I HAVE RECEIPTS FOR BOTH.

3 THE COURT: WAS IT AGGREGATED WITH SOMETHING ON
4 FILING SO IT'S PART OF YOUR DECLARATION OR MEMO OF P'S AND
5 A'S?

6 MS. JACOBSON: THE -- IT WAS FILED SEPARATELY AS A
7 SEPARATE DOCUMENT.

8 THE COURT: BUT I'M NOT FINDING IT ON FILE AND
9 SERVE.

10 MS. JACOBSON: I APOLOGIZE.

11 THE COURT: YOUR NOTICE OF MOTION IS IN FILE AND
12 SERVE. FIVE PAGES. YOUR DECLARATION IS THERE. THESE ALL ARE
13 BUNCHED TOGETHER. TWO PAGES. YOUR PROPOSED ORDER IS THERE.
14 FOUR PAGES. AND YOUR MEMO OF P'S AND A'S IS THERE.

15 ONE OTHER COMMENT I'D MAKE TO COUNSEL -- AND THIS
16 WOULD APPLY EQUALLY TO MR. WHITMAN -- ALTHOUGH HE'S ABSENT --
17 I DID -- COURTESY COPIES. FRANKLY, FOR SOMETHING WITH THIS
18 COMPLEXITY YOU ARE FAILING YOUR CLIENT. WE NEVER GOT COURTESY
19 COPIES FROM YOU, MS. JACOBSON. I'M NOT FINDING IT YET.
20 ALTHOUGH YOUR MEMO OF P'S AND A'S ARE TAKING AN INFINITE
21 AMOUNT OF TIME TO LOAD. SO MAYBE IT'S STUCK ON THE BACK OF
22 THAT.

23 REQUEST FOR JUDICIAL NOTICES FILED BY THE CLERK.
24 LET'S TURN TO THAT. THAT IS LOADING. YOUR MEMO OF P'S AND
25 A'S ARE ONLY 22 PAGES, BUT WHAT REALLY COUNTS IS THERE. SO
26 TELL ME WHERE IN THE PAPERS FILED WHEN THE MOTION WAS FILED
27 YOU ARE PUTTING AT ISSUE THE -- I ASSUME IT'S SOMEWHERE IN THE
28 REQUEST FOR JUDICIAL NOTICE.

1 MS. JACOBSON: WELL, THE PUEBLO RIGHTS ACTUALLY CAME
2 UP IN DETAIL ON THE OPPOSITION TO THE MOTION FOR JUDGMENT ON
3 THE PLEADINGS. AND THE ASSERTION THAT ALL FACTS PLED MUST BE
4 CONSIDERED TRUE, INCLUDING THE PUEBLO RIGHTS. AND ON THE
5 ISSUE OF PRIORITY -- AND WHETHER OR NOT --

6 THE COURT: BUT YOU ARE GOING TO TELL ME IN YOUR
7 REPLY YOU ARE PROVING THEREIN PUEBLO RIGHTS. IT'S TOO LATE,
8 UNLESS I CONTINUE THIS MOTION AND GIVE VENTURA CITY A DUE
9 PROCESS RIGHT TO RESPOND TO WHAT SHOWS UP IN THE REPLY.
10 THAT'S WHY I'M STARTING WITH MY MIND FOCUSED ON YOUR OPENING
11 MOTION, TO SEE IF YOU DEMONSTRATED THIS FALSITY.

12 SO IF I HEAR YOU RIGHT, YOU ARE CONCEDED THAT YOUR
13 OPENING MOTION DOESN'T TRY TO DEMONSTRATE THE FALSITY OF THE
14 PUEBLO RIGHTS CLAIM.

15 MS. JACOBSON: IN THE OPENING MOTION THE -- THERE
16 ARE TWO GROUNDS FOR THE OPENING MOTION. THERE'S THE FAILURE
17 TO STATE A CLAIM UNDER CCP 438 AND THE COURT'S JURISDICTION.
18 AND THE MAIN FOCUS IS THAT THERE'S A STATUTE DIRECTLY ON
19 POINT, THE COMPREHENSIVE -- COMPREHENSIVE GRAND ORDER
20 ADJUDICATION STATUTE THAT SPECIFICALLY OUTLINES REQUIREMENTS
21 IN PROCEEDING AND OBTAINING JURISDICTION AND WHO CAN BRING
22 FORTH AN ACTION --

23 THE COURT: WOULD IT BE FAIR TO REFER TO THAT AS
24 YOUR ONE BASE AND ONLY ARGUMENT?

25 MS. JACOBSON: YES. IT IS A STATUTORY ARGUMENT
26 ABOUT STATUTORY JURISDICTION CONFIRMED BY STATUTE. NOW, IN
27 ADDITION TO THAT MAIN ARGUMENT IS THE ARGUMENT THAT THEY
28 SIMPLY CANNOT SAY THE CLAIM AGAINST THE OJAI BASIN AS A WHOLE

1 IN ORDER TO PURSUE AN INJUNCTION OR TO DECLARE THE RIGHTS OF
2 ALL PARTIES IN THE GROUNDWATER BASIN AND ASSERT PRIORITY OVER
3 THEM. THE PRIORITY ARGUMENT RELATES IN PART TO THEIR
4 ASSERTION THAT THEY HAVE PUEBLO RIGHTS.

5 THE COURT: NOW THAT I UNDERSTAND FROM A POINT OF
6 VIEW OF HISTORY -- BECAUSE THOSE APPEAR TO BE --

7 MS. JACOBSON: AND THEIR ASSERTION THAT THEY HAVE A
8 WATERSHED, RIGHT -- THAT THEY CAN ADJUDICATE A WATERSHED.

9 THE COURT: SO INsofar AS YOU BELIEVE THEIR PREMISE
10 THAT PUEBLO RIGHTS GIVE THEM SENIORITY IS TESTED IN YOUR
11 OPENING MOTION. IS THERE ANYTHING IN YOUR OPENING MOTION THAT
12 ACTUALLY SHOWS WHY YOU CONCLUDE THAT IT IS A LEGALLY AND FIRM
13 CLAIM IN YOUR OPENING MOTION?

14 MS. JACOBSON: IN A GENERAL SENSE, YES. BUT THE
15 DIRECT --

16 THE COURT: WHERE? PAGE, LINE, AND NUMBER OF
17 SOMETHING THAT SHOULD NEGATE THEIR FACT ALLEGATION.

18 MS. JACOBSON: THE ARGUMENTS IN THE MOVING PAPER --

19 THE COURT: THAT'S NOT FACTUALLY PROBATIVE OF
20 ANYTHING, BUT I'LL LOOK AT THAT PORTION OF MOVING PAPERS. SO
21 GIVE ME PAGE AND LINE.

22 MS. JACOBSON: I DO NOT HAVE -- I DID NOT ATTACH THE
23 CASELAW EXPLAINING PUEBLO RIGHTS TO --

24 THE COURT: HAS THERE BEEN AN ADJUDICATION BY SOME
25 COURT THAT THE CITY OF SAN BUENAVENTURA -- WHICH I WILL
26 OTHERWISE CALL VENTURA CITY OR SIMPLY VENTURE -- HAS NO CLAIM
27 FOR PUEBLO RIGHTS?

28 MS. JACOBSON: THE CASELAW IS CLEAR AS EXPLAINED IN

1 THE REPLY BRIEF ON AN EXPLANATION OF THE LAW THAT PUEBLO
2 RIGHTS ARISE FROM THE PUEBLOS. THEY DO NOT ARISE FROM THE
3 MISSIONS.

4 THE COURT: BUT THAT'S A REPLY BRIEF. THERE'S
5 NOTHING ELSE. I'D HAVE TO CONTINUE THE MOTION. JUST ASK ME
6 TO CONTINUE THE MOTION SO YOUR ADVERSARY HAS A RIGHT TO
7 RESPOND TO WHAT YOU THINK NOW IS AT ISSUE. THAT MIGHT WORK.

8 MS. JACOBSON: I UNDERSTAND, YOUR HONOR. I'D LIKE
9 TO MOVE ON TO THE NEXT POINT.

10 THE COURT: OKAY. AND, AS I SAID IN MY TENTATIVE,
11 IT MAY WELL BE THAT THE PUEBLO RIGHTS ARE -- AND IF IT'S IN
12 THAT -- YOU SHOULD PROCEED VIA A MOTION UNDER CCP 1208.7. YOU
13 SHOULD SERVE YOUR MOTION. TELL BEST BEST AND KRIEGER THAT
14 THEY'RE AT RISK OF BEING SANCTIONED AND SEE WHAT HAPPENS NEXT.
15 BUT THAT HASN'T HAPPENED IN ALL THE MONTHS THIS CASE HAS BEEN
16 PENDING. AND THIS CASE HAS BEEN PENDING -- IT'S BETWEEN CITY
17 OF OJAI AND CITY OF VENTURA FOR A YEAR PLUS. BUT IF THIS IS
18 SUCH A GOOD ARGUMENT, WHY AM I --

19 MS. JACOBSON: BECAUSE THE FIRST ISSUE IS THE
20 APPLICATION OF THE GENERAL RULE, THAT ALL ALLEGATIONS MUST BE
21 ACCEPTED AS TRUE. AND THAT IS SIMPLY NOT TRUE AS IT RELATES
22 TO CONCLUSIONS OF LAW. AS AN EXAMPLE OF THAT, I POINTED YOU
23 TO THE PUEBLO RIGHTS ARGUMENT, WHICH WAS BROUGHT UP IN THE
24 OPPOSITION TO JUSTIFY THEIR ACTION AGAINST THE WATERSHED. IN
25 REPLY TO THAT ARGUMENT WE EXPLAINED THAT IS JUST SIMPLY NOT IN
26 LINE WITH THE LAW.

27 THE COURT: IF I LOOK AT SOMETHING IN THE REPLY,
28 JUST AS A POINT OF CURIOSITY, WHAT IS THE KILLER PROOF THAT

1 THEY HAVE NO PUEBLO RIGHTS?

2 MS. JACOBSON: THERE IS TWO CASES THAT EXPLAIN.
3 THERE'S LOS ANGELES VS. SAN FERNANDO. AND THERE IS SAN DIEGO
4 VS. -- I THINK IT'S --

5 THE COURT: DO YOU THINK WE GET TO AUTOMATICALLY TIE
6 TO -- TO THE CITY OF SAN BUENAVENTURA BECAUSE SOMEHOW THESE
7 TWO APPELLATE CASES LIST WHO HAS PUEBLO RIGHTS AND WHO
8 DOESN'T?

9 MS. JACOBSON: YES. AND THE SAN DIEGO CASE IS
10 PARTICULARLY INSTRUCTIVE ON PAGE 12 OF OUR REPLY BRIEF. WE
11 TRY TO LAY IT OUT AND SUMMARIZE THE ISSUE.

12 THE COURT: ONE MOMENT. PAGE 12?

13 MS. JACOBSON: YES.

14 THE COURT: WHICH OF THESE TWO PAGES IS GOING TO SAY
15 WHEN LOS ANGELES AND SAN DIEGO WERE ABLE TO PROVE THEIR PUEBLO
16 RIGHTS -- THE CITY OF SAN BUENAVENTURA WOULD NOT BE ABLE TO
17 PROVE ITS PUEBLO RIGHTS?

18 MS. JACOBSON: THE SAN DIEGO CASES BOTH SAY --

19 THE COURT: ONE MOMENT. LET ME GET IT. GIVE ME A
20 MOMENT. SO WE GET QUITE A BIT OF HISTORY. WHERE DO WE HAVE
21 ANY PROOF BEFORE ME THAT THERE WAS A --

22 MS. JACOBSON: WE'RE DEALING WITH THE PLEADINGS,
23 YOUR HONOR. AND ACCORDING TO THE PLEADINGS, VENTURA HAS
24 ALLEGED THAT IT IS A SUCCESSOR TO THE MISSION AND THAT THE
25 MISSION WAS SECULARIZED. AND AS A RESULT, IPSO FACTO, THEY
26 HAVE PUEBLO RIGHTS. AND THAT'S JUST NOT HOW PUEBLO RIGHTS
27 WORK AS A MATTER OF LAW.

28 THE COURT: BEAR WITH ME. IT MAY BE A SILLY

1 QUESTION, BUT TO MY UNDERSTANDING OF HISTORY -- AND I WON'T
2 CALL THIS JUDICIAL NOTICE. SO, IF PEOPLE PROVE ME WRONG --
3 OTHERWISE, I'LL ACCEPT THAT. BUT I THINK I HAVE THIS PART OF
4 HISTORY CORRECT, ALTHOUGH I DIDN'T GO TO GRADE SCHOOL IN
5 CALIFORNIA. BUT AFTER MEXICO GOT ITS INDEPENDENCE FROM SPAIN,
6 I BELIEVE, THEY DID SECULARIZE.

7 AND ONLY WHEN LINCOLN BECAME PRESIDENT -- AFTER
8 STATEHOOD PRESIDENT LINCOLN SAW FIT IN SOME FASHION TO RESTORE
9 CERTAIN -- TO THE CATHOLIC CHURCH TO REFLECT HOW THINGS
10 EXISTED BEFORE THE NEW MEXICAN GOVERNMENT HAD SECULARIZED THE
11 MISSIONS. IF THAT IS TRUE, ISN'T IT WITHIN THE REALM OF
12 POSSIBILITY THAT THE -- WOULD HAVE BECOME THE -- OF A PUEBLO?

13 MS. JACOBSON: NO. THEY GO INTO A DEPTH ABOUT WHAT
14 THE PURPOSE OF A PUEBLO WAS AND WHAT THE PURPOSE OF A MISSION
15 WAS AND WHY THAT IMPACTS WHAT RIGHTS THEY HAVE. AND A
16 MISSION'S PURPOSE WAS NOT TO PROVIDE FOR THE TOWN IN TERMS OF,
17 LIKE, A MUNICIPALITY. THAT'S NOT WHAT IT DID.

18 SO THESE CASES GO INTO GREAT DETAIL ABOUT THAT TO
19 COMPLAIN IS THE DIFFERENCES. THAT'S WHY OUT OF THE 21 -- 20
20 SOME ODD MISSIONS IN THE STATE OF CALIFORNIA THEY DON'T ALL
21 HAVE PUEBLO RIGHTS. IN FACT, I DON'T BELIEVE SINGLE ONE --
22 ONLY TWO. THE CITY OF LOS ANGELES AND THE CITY OF SAN DIEGO.
23 BUT THE WHOLE POINT IS THAT ON -- THE MOTION FOR JUDGMENT
24 STATES THAT THERE IS A STATUTE SPECIFICALLY ON POINT AND
25 THAT'S --

26 THE COURT: WELL, THAT'S A DIFFERENT ISSUE. THAT IS
27 YOUR FORWARD --

28 MS. JACOBSON: NOT REALLY. THEY'RE RELATED, YOUR

1 HONOR. THE STATUTE IS VERY CLEAR. IT'S A NEWER STATUTE. IT
2 COMES IN FOR THE FIRST TIME IN HISTORY 100 YEARS AFTER THE
3 STATUTORY SCHEME THAT THE STATE WATER BOARD OPERATES UNDER FOR
4 PERMITTING LICENSING OF SURFACE -- 100 YEARS LATER. NOW, WE
5 HAVE SIGMA (PHONETIC) AND CGAS (PHONETIC), FOR LACK OF A
6 BETTER ACRONYM.

7 AND THIS STATUTE SAYS IN LIGHT OF ALL THE PROBLEMS
8 WITH PRIOR -- WITH 100 YEARS OF GROUNDWATER ADJUDICATIONS AND
9 CONFLICT OVER WHAT IS IN AND WHAT'S OUT, WHAT ARE THE
10 BOUNDARIES, WHO SHOULD BE INVOLVED, WHO SHOULDN'T, MOST OFTEN
11 INVOLVING CASES OF GROUNDWATER OVER DRAFT. BUT NOT ALL THE
12 LEGISLATURE SAID WE'RE GOING TO KIND OF PUT A STOP TO THIS.
13 THIS IS -- THIS IS UNWORKABLE AS DEMONSTRATED BY HISTORY.

14 SO WE ARE GOING TO SPECIFICALLY SAY HOW A
15 GROUNDWATER ADJUDICATION MUST PROCEED MOVING FORWARD. AND IT
16 ONLY MAKES SENSE THAT IT BE TIED AND READ CONJUNCTIVELY OR,
17 YOU KNOW, PARALLEL TO SIGMA (PHONETIC). AND THE REASON THIS
18 IS IMPORTANT IS BECAUSE THE MOVING PAPERS SAY VENTURA
19 CANNOT -- A WATERSHED ADJUDICATION. THEY CANNOT DO IT. THE
20 STATUTE DOESN'T ALLOW FOR THAT. THE STATUTE DOES NOT SAY
21 WATERSHED ADJUDICATION. IT DOES NOT SAY ANY PARTY IN THE
22 STATE ANYWHERE CAN REQUIRE THE COURT ADJUDICATE THE
23 GROUNDWATER RIGHTS OF ALL PERSONS IN ANY PART OF THE STATE.
24 IT JUST -- THAT WOULD BE ABSURD. THAT'S NOT WHAT THE STATUTE
25 SAYS.

26 THE STATUTE SPECIFICALLY DEFINED A GROUNDWATER
27 ADJUDICATION TO BE A BASIN DEFINED BY BULLETIN 118. AND WE'LL
28 COME BACK TO THAT AS IT RELATES THE SINGULAR VERSUS THE

1 PLURAL. HOWEVER, THE ATTACK WAS YOU CAN'T DO THIS. YOU
2 CANNOT SAY THE CLAIM PER WATERSHED ADJUDICATION DOESN'T EXIST.
3 YOU DON'T HAVE A WATERSHED RIGHT. DOESN'T EXIST. YOU DON'T
4 HAVE STANDING TO DO THIS.

5 THE COURT: WELL, IT DOES HAVE A PROVISION THAT --
6 AS TO HYPOTHETICALLY A SINGLE GROUNDWATER BASIN THERE IS SOME
7 CONNECTIVENESS TO THE SURFACE FLOW. PEOPLE WHO OWN INTEREST
8 IN THE SURFACE FLOW COULD BE BROUGHT INTO THE LITIGATION
9 PURSUANT TO --

10 MS. JACOBSON: AN --

11 THE COURT: SO SURFACE VERSUS UNDERGROUND
12 THEORETICAL CONNECTION ACTIVITY IS WITHIN THE CGAS (PHONETIC).
13 OR MAYBE -- THE LETTERS MAY BE IN THE WRONG SEQUENCE, BUT
14 ANYWAY. THE COMPREHENSIVE GROUNDWATER THING. THAT MUCH IS IN
15 THAT STATUE.

16 MS. JACOBSON: AMONG OTHER THINGS, YES. BUT IT'S
17 REALLY IMPORTANT -- THE SECTION YOU POINTED OUT IS 833, SUB C,
18 IN CODE OF CIVIL PROCEDURE. AND IT'S IMPORTANT THAT THE
19 LEGISLATURE MADE CLEAR THAT ANY GROUNDWATER ADJUDICATION IN A
20 BASIN -- THERE MAY BE REASON FOR THOSE INVOLVED IN A
21 GROUNDWATER ADJUDICATION OF THEIR RIGHTS IN THEIR BASIN TO
22 PULL IN SURFACE WATERS IN CERTAIN LIMITED CIRCUMSTANCES.
23 NOTICEABLY THEY DID NOT SAY THE REVERSE. THAT'S -- THAT IN
24 AND OF ITSELF SPEAKS, YOU KNOW --

25 THE COURT: WELL, FROM YOUR POINT OF VIEW, THE
26 HISTORY OF THE CASE -- I AM MORE INTERESTED ON YOUR PUEBLO
27 ARGUMENT, BUT I HAVE TO CONTINUE IT FOR FURTHER BRIEFING BY
28 VENTURA CITY. THIS PART OF YOUR ARGUMENT IS NOT PERSUADING

1 ME, BUT I'LL LET YOU CONTINUE YOUR ARGUMENT. FURTHER COMMENT
2 FOR COUNSEL -- SO WHAT DOESN'T GET DONE TODAY, WE HAVE TIME
3 NEXT WEEK FOR FURTHER ARGUMENT.

4 SO TAKE THE TIME YOU FEEL, MS. JACOBSON.

5 MS. JACOBSON: THANK YOU, YOUR HONOR.

6 SO WE HAVE THIS COMPREHENSIVE STATUTE THAT IS
7 DIRECTLY ON POINT THAT HISTORICALLY CHANGES THE LAW AS IT WAS
8 MEANT TO. IT WAS NOT MEANT TO MAINTAIN THE STATUS QUO.

9 THE COURT: WELL, WHAT ABOUT THE FOOTNOTE I DROPPED
10 THAT -- BUT THE ARGUMENT THAT THE OTHERWISE INTENDED
11 INTERPRETATIONS OF OUR STATE CONSTITUTION'S PROVISIONS
12 INVOLVING WATER DOESN'T FOLLOW OBVIOUSLY TO ME.

13 MS. JACOBSON: THE ARGUMENT WAS NOT THAT CGAS
14 (PHONETIC) ABOLISHED ALL COMMON LAW AND -- THAT HAS NEVER BEEN
15 THE ARGUMENT. THE ARGUMENT IS THE WAY THESE GROUNDWATER
16 ADJUDICATIONS OCCURRED HISTORICALLY, THAT WAS CHANGED. AND SO
17 UNDER COMMON LAW THE COURT, YOU KNOW, THERE WOULD BE A QUITE
18 TITLE ACTION, FOR EXAMPLE, OR ANOTHER ACTION THAT INSTITUTES
19 SOME SORT OF ADJUDICATION. AND MORE OFTEN THAN NOT IT DEALT
20 WITH OVERDRAFT -- CASES OF OVERDRAFT.

21 AND SO, WHEN IT COMES TO A PROPERLY FILED
22 GROUNDWATER ADJUDICATION UNDER THE STATUTE WITHIN THE
23 STATUTORY LIMITATIONS, THOSE COMMON LAW PRINCIPLES OBVIOUSLY
24 HAVE A PLACE IN THE COURT. WE HAVE TO DEAL WITH THE VERY
25 FIRST FOUNDATIONAL ISSUE OF CAN A CLAIMANT LIKE VENTURA BRING
26 A WATERSHED ADJUDICATION OR ANY ADJUDICATION OF MORE THAN ONE
27 BULLETIN 118 BASIN? THE ANSWER IS NO. IF THEY HAD BROUGHT A
28 COMPREHENSIVE ADJUDICATION OF A BASIN, THEN YOU MOVE ON.

1 THE COURT: DID THEY PULL IN THE REPAIRING OWNERS
2 DIRECTLY ABOVE THE BASIN AT ISSUE AND CHALLENGE THEIR USE OF
3 REPAIRING, WHETHER IT'S COMPARED TO THE REASONABLE USE OF THE
4 GROUNDWATER?

5 MS. JACOBSON: SO HYPOTHETICALLY, IF VENTURA FILED A
6 GROUND ORDER ADJUDICATION IN THE BASIN THAT IT'S IN, YES, IT
7 CAN ADJUDICATE THE UNDERGROUND OF THAT BASIN. AND IF THERE IS
8 A SHOWING THAT IS NECESSARY OR JUST TO PULL THE SURFACE WATERS
9 IN THAT BASIN, THEN BY ALL MEANS --

10 THE COURT: DON'T DRIVE UP HIGHWAY 33 AND PICK UP
11 THREE MORE BASINS.

12 MS. JACOBSON: THE STATUTE DOES NOT ALLOW -- THAT'S
13 AS A PURE MATTER OF LAW. AND IT WOULD DEFEAT THE PURPOSE OF
14 THE STATUTE IF YOU SIMPLY STOPPED WITH THE ANALYSIS OF THE
15 GENERAL RULE. BASIN EQUALS BASIN. SINGULAR MEANS THE PLURAL.
16 THAT IS IN EVERY CODE. THE GENERAL PROVISIONS ARE IN EVERY
17 CODE. IT'S NOT -- BUT THE LAW HAS MADE VERY CLEAR -- AND IN
18 THE REPLY BRIEF WE POINTED THAT OUT AS WELL AS THE MOVING
19 PAPERS.

20 THE STATE FARM CASE IN 2021 IS ACTUALLY REALLY
21 INTERESTING BECAUSE THEY GO THROUGH THE FULL ANALYSIS. THEY
22 SAY YES. THE SINGULAR MEANS THE PLURAL IN GENERAL. THE
23 INSURANCE CODE SECTION 13, THAT'S A SIMILAR PROVISION.
24 SINGULAR MEANS THE PLURAL. BUT WHAT HAPPENED AFTER THAT
25 GENERAL PROVISION WAS CODIFIED? NEW LAWS CAME OUT. NEW
26 STATUTORY PROVISIONS. THAT PROVIDED DIFFERENT CONTEXT OR
27 DIRECTLY CONTRADICT THAT.

28 AND IT'S REALLY IMPORTANT TO READ THE STATUTES. YOU

1 READ THEM IN CONTEXT. YOU READ THEM AS A WHOLE, TO
2 UNDERSTAND. SO THE ANALYSIS ISN'T SIMPLY 17(A) -- SORRY --
3 CODE OF CIVIL PROCEDURE SECTION 17(A). AND, AS I UNDERSTAND
4 YOUR TENTATIVE, THAT'S KIND OF WHERE YOU STOPPED. YOU APPLY
5 SECTION 17(A). AND THEN IF -- I'M NOT SURE IF YOUR CONCLUSION
6 IS THAT 17 -- CODE OF CIVIL PROCEDURE SECTION 17(B) IS --
7 DOESN'T APPLY.

8 THE COURT: SUBSECTION OF 17(B), ARE YOU RELYING ON?

9 MS. JACOBSON: IT'S CCP --

10 THE COURT: I HAVE 17(B) IN FRONT OF ME. WHICH
11 SUBSECTION? THERE ARE 16.

12 MS. JACOBSON: WELL, IT STATES AS USED IN THIS CODE
13 THE FOLLOWING WORDS HAVE THE FOLLOWING MEANING UNLESS
14 OTHERWISE APPARENT FROM THE CONTEXT.

15 THE COURT: "BASIN" IS NOT ONE OF THEM.

16 MS. JACOBSON: CORRECT. BUT THAT EXPLAINS THAT YOU
17 DON'T STICK WITH JUST THE SINGULAR VERSUS PLURAL. YOU HAVE TO
18 LOOK AT THE CONTEXT. AND THAT'S WHAT -- STATE FARM ALSO WENT
19 THROUGH THAT ANALYSIS, WHICH IS -- AGAIN, THE GENERAL RULE IS
20 THAT THE SINGULAR MEANS THE PLURAL, UNLESS THE CONTEXT
21 OTHERWISE INDICATES OR THERE'S A CHANGE IN LAW, WHICH WE HAVE
22 HERE.

23 THE COURT: 17(B) ONLY RELATES TO 16 DEFINED WORDS.
24 AND IT APPEARS MOST TIMES -- WHEN THEY TALK ABOUT IT, EVERY
25 TIME THEY HAVE A WORD, THEY GIVE IT A MORE BROADENED GENERAL
26 APPLICATION. SO "PERSON" IN QUOTES INCLUDES A CORPORATION AS
27 WELL AS A NATURAL PERSON. "PROPERTY" INCLUDES BOTH PERSONAL
28 AND REAL PROPERTY. "SHERIFF" INCLUDES MARSHAL. "COUNTY"

1 INCLUDES THE CITY AND COUNTY.

2 MS. JACOBSON: THANK YOU, YOUR HONOR. BUT I THINK
3 IT'S ANALOGOUS TO THE STATE FARM DECISION ANALYSIS, SO --

4 THE COURT: THAT'S NOT CONTROLLING ON ME. THIS IS
5 NOT AN INSURANCE CASE, SO STATE FARM IS NOT CONTROLLING. I
6 THINK IN MANY WAYS VENTURA CITY'S LOGIC THAT BECAUSE THE WATER
7 FLOWS ON THE SURFACE FROM VARIOUS PLACES TO THE OCEAN AND
8 BECAUSE, ACCORDING TO THE ALLEGATIONS, THE WATER DRIBBLES DOWN
9 INTO THE GROUNDWATER, BUT THEN LEAKS OUT OF THE GROUNDWATER
10 BACK INTO THE SURFACE OR SUBSURFACE FLOWS IN THEIR -- THEY
11 THINK, WHEN THE EXPERTS ARE CALLED, THEY'RE GOING TO SHOW
12 CONNECTIVENESS. THEY MAY FAIL. PERHAPS ALSO AS TO THE
13 PRIMARY OJAI BASIN.

14 MS. JACOBSON: THAT IS TRUE, YOUR HONOR. BUT WE'RE
15 DEALING WITH, AGAIN, STATUTORY INTERPRETATION IN A MATTER OF
16 LAW. THAT DOESN'T EVEN GET US THAT FAR AND DOESN'T TAKE THE
17 TIME AND RESOURCES TO EVEN GO THAT FAR. WE SHOULDN'T EVEN GET
18 THERE.

19 THE COURT: WHY DON'T YOU MOVE ON TO WHERE YOU THINK
20 YOU MAY FIND A POINT OF TRACTION?

21 MS. JACOBSON: I WOULD LIKE TO DISCUSS THIS BASIN
22 VERSUS BASIN SHORTLY.

23 THE COURT: IT'S IMPORTANT. I CERTAINLY INTEND TO
24 GIVE IT THE TIME IT'S WORTH. AND IF WE'RE NOT DONE TODAY,
25 THERE ARE FIVE DAYS AVAILABLE NEXT WEEK. I'M SURE WE'LL FIND
26 ONE OR TWO DAYS TO ALLOW EVERYBODY EXTENDED ARGUMENT.

27 MS. JACOBSON: THANK YOU. I APPRECIATE THAT. I
28 WILL DO MY BEST --

1 THE COURT: I RESPECT YOU. THESE ARE VERY
2 IMPORTANT. I AM NOT TRYING TO Demean IN ANY WAY WITH MY
3 INNING-BY-INNING SCORES.

4 MS. JACOBSON: UNDERSTOOD. AND THE BASIN VERSUS
5 BASIN'S ANALYSIS JUST DOESN'T MAKE SENSE KIND OF FOLLOWING
6 THAT LINE OF THOUGHT OF THE CONTEXT. YOU HAVE TO READ THE
7 STATUTE. IF ALL YOU ARE DOING IS ADDING AN "S" TO EACH OF THE
8 WORDS, READ IT AGAIN. IT DOESN'T MAKE SENSE. AND IT KIND OF
9 COMPLETELY DESTROYS THE PURPOSE OF HAVING A DEFINITION OF A
10 BASIN THERE IN THE FIRST PLACE.

11 AGAIN, GOING BACK TO STATE FARM, THERE IS ANOTHER
12 DEFINITION ON POINT THAT ARISES LATER THAT IS WHAT CONTROLS --
13 THERE IS NO POINT IN HAVING THESE DEFINITIONS. IT'S
14 MEANINGLESS. AND IF YOU WANT TO TAKE IT OUT TO THE EXTREME,
15 THAT BASIN MEANS BASINS. THERE ARE NO BOUNDARIES. A
16 COMPREHENSIVE ADJUDICATION HAS NO BOUNDARIES ANYMORE. ANYONE
17 CAN LITERALLY INITIATE A GROUNDWATER ADJUDICATION OF ANY
18 UNDEFINED AREA IN THE STATE OF CALIFORNIA. THAT JUST DOESN'T
19 MAKE SENSE.

20 THE COURT: LET ME THINK OUT LOUD. DO YOU GET
21 SOMEWHERE IN THIS ARGUMENT IF YOU LOOK AT A LONGER RIVER?
22 WALK ME THROUGH HOW YOU THINK YOUR LOGIC WOULD APPLY?

23 MS. JACOBSON: IF YOU DON'T MIND, I CAN PICK A --

24 THE COURT: FINE.

25 MS. JACOBSON: I'M NOT GOING TO PRETEND TO BE AS
26 FAMILIAR WITH -- RIVER AS I AM WITH SACRAMENTO, FOR EXAMPLE.

27 THE COURT: I'VE DRIVEN THE I-5. I HAVE A SENSE OF
28 THE VARIOUS STRETCHES OF THE SACRAMENTO RIVER.

1 MS. JACOBSON: IF YOU'D LIKE, YOUR HONOR, I CAN
2 APPROACH, WITH YOUR PERMISSION, WITH A COPY OF THE REPLY
3 REQUEST FOR JUDICIAL -- IT HAS A NICE LITTLE MAP OF THE STATE
4 OF CALIFORNIA THAT KIND OF SHOWS WHAT THE CALIFORNIA STATE
5 WATER PROJECT LOOKS LIKE TO GIVE YOU A LITTLE SENSE OF SCALE,
6 WHEN I DISCUSS THE SACRAMENTO RIVER.

7 THE COURT: I THINK I PRINTED YOUR REQUEST FOR --
8 MAYBE I DIDN'T PRINT THE ATTACHMENTS. SINCE I DIDN'T GET A
9 COURTESY COPY, I JUST PRINTED -- I'M SURE IN THE FUTURE YOU
10 WILL BE PROVIDING COURTESY COPIES.

11 MS. JACOBSON: I APOLOGIZE. WE USE A THIRD-PARTY
12 VENDOR --

13 THE COURT: YOU GET WHAT YOU PAY FOR. GO AHEAD.
14 YOU CAN APPROACH. SHOW MR. PISANO AND MR. HAGERTY, AS YOU
15 APPROACH. I HAVE A PORTION OF YOUR REQUEST WITH REPLY,
16 EXHIBIT C THEREIN. YOU MAY PROCEED.

17 MS. JACOBSON: SO, AS YOU WILL SEE IN THAT -- YOU
18 KNOW, IT'S STILL A SMALL MAP, BUT GIVES YOU A SENSE OF SCALE
19 AS TO HOW WATER MOVES, GENERALLY SPEAKING, IN THE STATE OF
20 CALIFORNIA. AND IF YOU LOOK ALL THE WAY UP TOWARDS THE NORTH
21 IN MOUNT SHASTA, YOU WILL SEE LONG LINES OF WATER THAT COME
22 ALL THE WAY DOWN THROUGH THE CENTRAL VALLEY. YOU HAVE THE
23 FEATHER RIVER, SACRAMENTO RIVER. AND THEY ALL COME TO THE
24 SACRAMENTO AREA AND MOVE DOWN TOWARDS THE SAN JOAQUIN VALLEY.

25 THEN YOU HAVE ADDITIONAL ISSUES OF THE STATE WATER
26 PROJECT AND CVP. BUT, YOU KNOW, ACTUALLY IT'S A GOOD POINT,
27 USING THAT AS AN EXAMPLE. ANYONE WHO RECEIVES WATER THROUGH
28 THE STATE WATER PROJECT FROM UP NORTH COULD THEORETICALLY SAY,

1 WELL, I HAVE AN INTEREST IN CONTINUING THIS WATER AND,
2 THEREFORE, I'M GOING TO ADJUDICATE ALL GROUNDWATER RIGHTS IN
3 ALL OF NORTHERN CALIFORNIA THAT TOUCHES. AND THAT'S -- WHERE
4 DOES IT STOP?

5 IF IT DOESN'T STOP WITH BULLETIN 118 DEFINED BASIN
6 AS A BASIN SINGULAR, WHERE DO WE STOP? IN THIS CASE THE
7 PARTIES HAVE DECIDED -- AND BY "PARTIES" I MEAN VENTURA HAS
8 DECIDED IT APPLIES TO THIS SMALL WATERSHED. BUT UNDER THEIR
9 ANALYSIS AND UNDER THE APPLICATION OF THE
10 SINGULAR-VERSUS-THE-PLURAL RULE THERE IS NO STOPPING POINT.
11 AND IT COULD BE THREE WATERSHEDS, FOUR WATERSHEDS. WHO KNOWS.
12 THE WHOLE CENTRAL VALLEY.

13 THAT DOESN'T MAKE SENSE AND DEFEATS THE PURPOSE OF
14 THIS SIGNIFICANT AMOUNT OF TIME THAT THE LEGISLATURE PUT INTO
15 CRAFTING A STATUTE THAT PUT -- THAT REIGNED IN THESE ACTIONS.
16 THAT PUT LIMITATIONS ON THEM.

17 THAT SAID, THIS IS WHAT WE'RE DOING. IF YOU ARE
18 GOING TO HAVE A COMPREHENSIVE ADJUDICATION OF ALL GROUNDWATER
19 RIGHTS, IT'S GOING TO BE CONFINED TO BULLETIN 118 BASIN,
20 PERIOD, THE END. YOU DON'T GET TO EXCEED THAT STATUTORY
21 JURISDICTION. AND EVEN IF THE ARGUMENTS AREN'T COMPELLING
22 OF -- SINGULAR VERSUS PLURAL DOESN'T APPLY FOR ALL THESE OTHER
23 REASONS IN STATE FARM. COMMONSENSE KIND OF SAVES US. AND IF
24 YOU LOOK AT HOW A CASE WOULD PROCEED UNDER BASIN MEANS BASINS
25 GOING FORWARD. IT RESULTS IN ABSURDITY. AND THAT'S WHAT I
26 WANTED TO ARTICULATE ON THE SINGULAR VERSUS PLURAL ARGUMENT.

27 THE COURT: THANK YOU. CONTINUE, IF YOU HAVE
28 ADDITIONAL POINTS.

1 MS. JACOBSON: YOU KNOW, YOU MENTIONED THE CASE OF
2 THE EL DORADO VS. STATE WATER BOARD. AND, ADMITTEDLY, I HAD
3 TO GO LOOK THAT UP, SINCE IT'S BEEN A WHILE SINCE I READ IT.
4 THAT CASE DOES NOT INVOLVE OR OTHERWISE STAND FOR THE
5 PROPOSITION THAT VENTURA SHOULD BE ALLOWED TO PROCEED ON ITS
6 THIRD AMENDED CROSS-COMPLAINT OR -- IN GENERAL, THAT CASE
7 INVOLVED THE STATE WATER BOARD OPERATING UNDER ITS STATUTORY
8 AUTHORITY TRYING TO IMPOSE TERMS ON A PERMIT FOR EL DORADO
9 IRRIGATION DISTRICT IN EXCESS OF THE STATUTE.

10 SO THAT CASE ACTUALLY SAID, HEY, HERE'S A STATUTE
11 HERE ON POINT. HERE'S A STATUTORY SCHEME THAT DIRECTS WHAT
12 YOU CAN AND CANNOT DO. YOU NEED TO FOLLOW THIS STATUTE. AND
13 THAT'S EXACTLY WHAT OJAI IS SAYING. SO, IF ANYTHING, EL
14 DORADO ACTUALLY SUPPORTS OJAI'S POSITION, THAT -- THE STATUTE
15 ON POINT GOVERNING HOW MATTERS ARE TO BE CONDUCTED, YOU HAVE
16 TO FOLLOW THE STATUTE. YOU CAN'T GO OUTSIDE OF IT.

17 NOW, THAT CASE IS DIFFERENT FOR OTHER REASONS
18 BECAUSE IT INVOLVES THE STATE WATER BOARD'S REGULATORY
19 AUTHORITY AND SURFACE WATER S AND OTHER COMPLICATED ISSUES OF
20 1927 PRIORITY; BUT, IMPORTANTLY, IT DOES NOT SAY THAT HERE
21 VENTURA CAN PROCEED. THE REASON THE STATE WATER BOARD WAS
22 ADMONISHED, IF YOU WILL, BY THE COURT OF APPEAL WAS JUST NOT
23 EXCEEDING THE STATUTORY JURISDICTION, BUT WHAT THEY DID IS
24 IGNORE EVERYONE ELSE.

25 THEY SAID WE'RE GOING TO IMPOSE THIS MATERIAL ON
26 THIS PERMIT FOR THIS USER DIVERTER AND IGNORE EVERYONE ELSE.
27 AND THE COURT SAID YOU CANNOT DO THAT. AGAIN, COMING BACK TO
28 WHAT THEY CAN AND CANNOT DO ON THE STATUTE, THAT IS ENTIRELY

1 DIFFERENT HERE. DOES THAT -- IT'S COMPLICATED BECAUSE, AGAIN,
2 THE STATE WATER BOARD HAS ITS REGULATORY PROCESS FOR
3 PERMITTING AND LICENSING OF SURFACE WATER.

4 THE COURT: BEAR WITH ME. I'M BRINING UP THE SANTA
5 BARBARA CHANNELKEEPER CASE, WHICH IS THE ONLY REFERENCE TO EL
6 DORADO IN THE TENTATIVE I GAVE YOU BECAUSE AT THAT POINT I'M
7 QUOTING FROM THE CASE. THAT IS LAW IN THE CASE IN THE DOCKET
8 BEFORE ME. BUT I'M TRYING TO GO BACK AND GET A VERY CRISP
9 RECOLLECTION OF THE NATURE OF THE CROSS-DEFENDANTS WHO WERE IN
10 THE CASE AT THE TIME. DIDN'T INCLUDE YOUR CLIENT, BUT THE
11 VENTURA CITY SOUGHT TO SUE SOME PEOPLE ON THE CROSS-COMPLAINT.

12 AND LET ME DOUBLE-CHECK WHO WAS THE CROSS-DEFENDANT
13 AT THE TIME. CHARACTERIZES THEM AS CROSS-DEFENDANTS.
14 NUMEROUS NAMED UNTIL DOE ENTITIES ALSO EXTRACT FROM THE
15 VENTURA RIVER A LAKE FILLED WITH WATER DIVERTED FROM THE RIVER
16 AND WATERSHED -- THIS IS AT PAGE 1182 OF THE APPELLATE
17 DECISION. THE FIRST AMENDED CROSS-COMPLAINT AGAINST SEVEN
18 NAMED CROSS-DEFENDANT AND HUNDREDS OF DOE CROSS-DEFENDANTS
19 SEEKS TO CURTAIL THE OTHER ENTITIES.

20 MR. HAGERTY OR MR. PISANO, DO YOU REMEMBER WHO THOSE
21 SEVEN NAMED PARTIES WERE?

22 MR. HAGERTY: YES, YOUR HONOR. CASITAS MUNICIPAL --
23 COUNTY WATER DISTRICT, VENTURA RIVER COUNTY WATER DISTRICT,
24 RANCHO -- THE WOOD CLAEYSSSENS FOUNDATION. AND THEN THE GOLDEN
25 STATE WATER COMPANY.

26 THE COURT: AND ARE ANY OF THOSE IN THE OJAI BASIN,
27 MR. HAGERTY?

28 MR. HAGERTY: YES. GOLDEN STATE WATER COMPANY,

1 WHICH CASITAS HAS NOW SUCCEEDED TO -- HAS GROUNDWATER -- WAS
2 IN THE OJAI BASIN THAT ARE AT ISSUE IN THE CASE.

3 THE COURT: AND WHERE ARE THEY LOCATED?

4 MR. HAGERTY: I BELIEVE THEY ARE JUST ON THE
5 BOARDER. SOME PARTS IN THE OJAI BASIN, SOME PARTS OUT --

6 THE COURT: THANK YOU.

7 YOU KNOW, YOU SAY EL DORADO CAN BE -- BUT THE
8 APPELLATE COURT, AS TO THIS VERY CASE, SAID THAT VENTURA
9 SHOULD BE ABLE TO PROCEED WITH THIS CATEGORY OF NAMED
10 DEFENDANTS.

11 MS. JACOBSON: WELL, YOUR HONOR, THAT OPINION WAS
12 ONLY LOOKING AT THE MATTERS BEFORE IT AT THAT TIME. SO IT WAS
13 LOOKING AT THE MOTION TO STRIKE AND THE FIRST AMENDED
14 COMPLAINT, PERIOD.

15 THE COURT: AND WAS -- ISSUED BEFORE THE STATUTE
16 THAT YOU ARE PLACING GREAT RELIANCE ON?

17 MS. JACOBSON: WELL, THE OPINION CAME OUT AFTER THE
18 STATUTE WAS ENACTED. HOWEVER --

19 THE COURT: FAIR ENOUGH. BUT THE TRIAL COURT DIDN'T
20 HAVE IT.

21 MS. JACOBSON: THEY NEVER CONSIDERED IT, PERIOD. IT
22 WASN'T BEFORE THE COURT. SO THE LEGAL ISSUES AND THE PARTIES
23 BEFORE THE COURT AT THAT TIME WERE LIMITED TO WHAT WAS BEFORE
24 IT ON THE MOTION TO STRIKE FILED BY CHANNELKEEPER AS TO THE
25 ALLEGATIONS AND THE FIRST AMENDED COMPLAINT AT THAT TIME.

26 THE COURT: SO IN SIMPLE ENGLISH YOU WOULD SAY
27 THERE'S BEEN A CHANGE IN THE LAW WHICH WOULD ASSUME THE
28 LEGISLATURE PROVOCATIVES. AND BECAUSE THERE'S BEEN A CHANGE

1 IN THE LAW, I AM NOT BOUND BY WHAT APPEARS TO BE LAW IN THE
2 CASE.

3 TRUE?

4 MS. JACOBSON: TRUE.

5 BUT, ADDITIONALLY, AS VENTURA HAS ADMITTED, THEY
6 HAVE EXPANDED THE PLEADINGS. THEY DON'T EVEN HAVE TO ADMIT
7 IT. YOU CAN SEE IT. THE ALLEGATION WAS GREATLY EXPANDED
8 UPON. THAT IS NOT WHAT THE COURT OF APPEAL SAYS. THEY SAID
9 AS TO THE FIRST AMENDED CROSS-COMPLAINT AND ALLEGATIONS IN
10 THERE, YOU CAN'T BE KICKED OUT OF THIS VENUE BASED ON MOTION
11 TO STRIKE. THAT'S WHAT IT SAID. THAT'S THE HOLDING. THOSE
12 ARE THE ISSUES. AND IT'S VERY NARROW. IT'S VERY SPECIFIC IN
13 ITS HOLDINGS.

14 AND WHAT IS HAPPENING HERE IS THAT DECISION IS BEING
15 EXPANDED UPON TO SAY SOMETHING THAT IT DOESN'T. IT DOESN'T
16 SAY VENTURA MAY PLEAD A WATERSHED ADJUDICATION UNDER CGAS
17 (PHONETIC). IT DOESN'T SAY VENTURA MAY PROCEED TO
18 COMPREHENSIVELY ADJUDICATE ALL GROUNDWATER RIGHTS IN
19 SEPARATELY DEFINED WATER BASINS. THOSE ITEMS ARE NOT FOUND IN
20 THE COURT OF APPEALS OPINION.

21 THE COURT: ANYTHING FURTHER AT THIS TIME?

22 MS. JACOBSON: BEAR WITH ME ONE MINUTE.

23 THE COURT: WHEN YOU ARE DONE, MY PLAN IS TO TAKE A
24 15-MINUTE BREAK FOR THE REPORTER'S BENEFIT AND EVERYBODY ELSE
25 AND RESUME WITH ANY JOINED PARTIES FIRST BEFORE WE HEAR FROM
26 THE CITY OF VENTURA.

27 MS. JACOBSON: MY FINAL COMMENT, YOUR HONOR -- AND I
28 DON'T WANT TO TAKE TOO MUCH TIME -- BUT ON PAGE 5 OF YOUR

1 TENTATIVE THERE IS A DISCUSSION ABOUT HOW CGAS (PHONETIC) WAS
2 MERELY PROCEDURAL. THE WHOLE POINT OF -- YOU KNOW, AND I KNOW
3 THIS IS THEIR ARGUMENT. THIS WAS JUST TO MAKE SERVICE OF
4 PROCESSES. BUT, AGAIN, IF THAT WERE TRUE, THE LEGISLATURE
5 WOULD HAVE SIMPLY ENACTED SECTIONS -- CCP SECTIONS 835 TO 836.
6 IF THAT'S WHAT THEY WANTED, THAT'S WHAT THEY WOULD HAVE DONE.

7 BUT THEY DIDN'T. YOU DON'T -- YOU HAVE TO READ THE
8 WHOLE STATUTE. YOU CAN'T JUST NARROWLY HONE IN TO ONE SECTION
9 AND SAY, WELL, THAT'S ALL THIS IS ABOUT. IT'S JUST
10 PROCEDURAL. SO WHAT? AND I -- I UNDERSTAND THE ARGUMENT, BUT
11 WHEN DOING -- IN INTERPRETATION OF THAT STATUTE OF
12 LIMITATIONS, YOU HAVE TO READ THE WHOLE THING. AND I'LL LEAVE
13 IT AT THAT.

14 THE COURT: THANK YOU.

15 MR. GARRISON, ON EAST OJAI GROUP, HOW LONG DO YOU
16 EXPECT TO ARGUE?

17 MR. GARRISON: YOUR HONOR, THIS IS GREG GARRISON.
18 AND IT'S MR. GREG PATTERSON THAT REPRESENTS THE OJAI GROUP.

19 THE COURT: MY APOLOGIES.

20 MR. GREG PATTERSON, HOW MUCH TIME DO YOU WANT?

21 MR. PATTERSON: I THINK I'LL ONLY NEED FIVE MINUTES
22 AT MOST. I JUST HAVE ONE POINT I'D LIKE TO MAKE.

23 THE COURT: DO IT NOW. PROCEED.

24 MS. JACOBSON: YOU TALK ABOUT THE LAW OF THE CASE
25 BEING THE COURT OF APPEAL CASE, THE SANTA BARBARA
26 CHANNELKEEPER CASE. AS MS. JACOBSON MENTIONED, IT IS FAIRLY
27 NARROW IN TERMS OF WHAT IT IS AUTHORIZING THE CITY TO DO.
28 WHAT IT DOES IS IT SAYS, YOU KNOW, THE -- THE ISSUE IS -- IS

1 THERE A SIMILAR TRANSACTION?

2 AND THE WAY THAT THEY FRAME THAT TRANSACTION IS THAT
3 IT BASICALLY COULD INCLUDE ANY DIVERSION OF PUMPING OF WATER
4 THAT LEADS TO ALLEGEDLY INSUFFICIENT -- AND REACHES THREE AND
5 FOUR OF THE RIVERS IN THE SUMMER MONTHS. IT DOES NOT SAY YOU
6 CAN SUE EVERYBODY WITHIN THE ENTIRE BASIN AND ADJUDICATE THE
7 ENTIRE WATERSHED. IT BASICALLY SAYS YOU HAVE TO SHOW THAT
8 THESE PARTIES AFFECT THE FLOW IN REACHES 3 AND 4 OF THE RIVER
9 OF THE SUMMER MONTHS. THAT IS THE TRANSACTIONAL ANALYSIS OF
10 THE CASE. THEY ALSO TALK ABOUT A PROPERTY TRANSACTION OF THE
11 CASE.

12 AND IN THAT CASE THEY'RE GOING TO HAVE TO SHOW THAT
13 THE USE OF WATER BY ALL OF THESE FOLKS WAS UNREASONABLE AND --
14 AND AFFECTED THEIR, QUOTE, SENIOR WATER RIGHTS WITHIN REACH 3
15 AND 4 OF THE WATERSHED. THIS CASE HAS BEEN GREATLY EXPANDED
16 BEYOND THAT, GREATLY EXPANDED BEYOND THE RULE OF THE COURT.
17 IT'S NOW ADJUDICATING EVERY SINGLE PERSON WHO HAS PUMPED WATER
18 UNDER SOME THEORY OF EVERYBODY HAS CONNECTION THAT REQUIRES
19 THAT THEY BE PART OF CASE.

20 I DON'T THINK THAT THE APPELLATE COURT CASE MEANT --
21 MEANT TO EXTEND, YOU KNOW, THE RIGHTS OF THE CITY TO DO WHAT
22 THEY'RE DOING RIGHT NOW. THEY'VE GONE FAR BEYOND THE LAW OF
23 THE CASE. I'LL END IT WITH THAT.

24 THE COURT: WE'LL TAKE A RECESS UNTIL 3:25 AND THEN
25 I'LL HEAR FROM VENTURA CITY.

26 MR. PATTERSON IS THE ONLY JOINDER TO YOUR MOTION,
27 CORRECT, MS. JACOBSON?

28 MR. HAGERTY: YOUR HONOR, THERE IS AN ISSUE I'LL TRY

1 TO CLARIFY IN MY COMMENTS. WHAT YOU HAVE IS MARTIN JOINING
2 WHITMAN -- IS ACTUALLY MARTIN JOINING OJAI.

3 THE COURT: OKAY.

4 MR. HAGERTY: SO THAT IS ANOTHER JOINDER THAT I
5 BELIEVE APPLIES TO THE OJAI MOTION.

6 THE COURT: IS MARTIN WITH US? OR DOES HE HAVE A
7 LAWYER?

8 MR. HAGERTY: HE DOES HAVE COUNSEL. I DON'T KNOW IF
9 THEY'RE PRESENT.

10 THE COURT: IS COUNSEL FOR THE MARTIN JOINDER WITH
11 US THIS AFTERNOON?

12 NO RESPONSE, SO I TAKE THAT AS A WAIVER OF THE
13 ARGUMENT. SO WE'RE IN RECESS UNTIL 25 AFTER.

14 MR. HAGERTY: THANK YOU, YOUR HONOR.

15 MS. JACOBSON: THANK YOU, YOUR HONOR.

16 THE COURT: OFF THE RECORD.

17 (RECESS.)

18 THE COURT: BACK ON THE RECORD.

19 MR. HAGERTY, YOU'VE GOT THE FLOOR.

20 MR. HAGERTY: THANK YOU, YOUR HONOR. FIRST I'D LIKE
21 TO START BY JUST THANKING THE COURT FOR ITS THOROUGH TENTATIVE
22 RULING. IT ADDRESSES ALL OF THE ISSUES THAT WERE PRESENTED IN
23 THE MOTIONS. IT'S OUR REQUEST THAT THE COURT CONFIRM THE
24 TENTATIVE TODAY FOR THE REASONS I'LL EXPLAIN.

25 THE ONE PART THAT REALLY STOOD OUT TO ME THAT I
26 THINK IS MOST CRITICAL FOR WHERE WE ARE IN THIS CASE AND WHERE
27 THIS CASE HAS BEEN AND WHAT THE RECORD IS LIKE AND WHAT THE
28 COURT OF APPEAL HAS SAID -- THERE ARE UNDOUBTEDLY DISPUTED

1 QUESTIONS. THE ISSUE OF INTERCONNECTION THAT IS TIED UP TO
2 PRESENT IN PHASE 1 IS CRITICAL TO HOW THIS CASE NEEDS TO PLAY
3 OUT OVER TIME. THE COURT HAS TO HEAR THAT EVIDENCE.

4 THE COURT: REMIND ME. THERE IS NO JURY TRIAL,
5 RIGHT, SO I CAN DECIDE FACTS? CORRECT?

6 MR. HAGERTY: CORRECT. THIS IS A BENCH TRIAL. IT'S
7 FOR YOU TO DECIDE. THAT'S WHAT THE PARTIES AGREED TO. AND
8 THAT ISSUE IS THE CRITICAL, FACTUAL QUESTION THAT THE COURT
9 HAS TO HAVE BEFORE IT -- BEFORE IT CAN MAKE ANY KIND OF LEGAL
10 DETERMINATION THAT WOULD AFFECT THE CITY'S RIGHTS TO MOVE
11 FORWARD.

12 IT JUST -- YOU HAVE TO HAVE THAT. AND I THINK THE
13 COURT RECOGNIZED THAT AND EXPLAINED IT VERY WELL IN ITS
14 TENTATIVE, THAT THERE IS A BIG DIFFERENCE BETWEEN FACTUAL
15 QUESTIONS AND LEGAL QUESTIONS. AND THE KEY QUESTION IN THIS
16 CASE IS THE QUESTION OF INTERCONNECTION. EVERYTHING FOLLOWS
17 FROM THAT.

18 THE COURT OF APPEAL DECISION MAKES IT ENTIRELY CLEAR
19 THAT WE SUFFICIENTLY ALLEGED INTERCONNECTION. AND FROM THAT
20 WE HAVE THE RIGHT TO MAKE THE CONTENTIONS WE'RE MAKING HERE.
21 NOW, WE MAY FAIL IN THAT EFFORT. THE COURT MAY FIND THAT
22 CERTAIN PARTS OF THE WATERSHED ARE NOT INTERCONNECTED AND
23 THERE WILL DERIVE CERTAIN DECISIONS THAT WILL HAPPEN LATER.

24 BUT THIS EFFORT TO CREATE LEGAL ISSUES THAT AREN'T
25 READY TO BE RESOLVED AT THIS POINT IN TIME, WHEN WE'RE SO SURE
26 AND READY TO GO TO TRIAL AND PARTIES HAVE PREPARED FOR THAT
27 AND THE COURT HAS PROCEEDED -- WE'VE PROCEEDED WITH THE
28 COURT'S PREVIOUS BLESSING, AND OVER -- WITHOUT OBJECTION FROM

1 THE PARTIES IN MOVING THIS CASE TO THIS STAGE, THAT'S JUST --
2 IT'S NOT CONSISTENT WITH THE STANDARDS TO DO THAT.

3 SO THAT IS -- THAT'S MY OVERARCHING COMMENT. I HAVE
4 SOME SPECIFIC COMMENTS. I WAS HOPING JUST TO SAY, YOUR HONOR,
5 THANK YOU FOR THE TENTATIVE, WE SUBMIT ON IT, WHICH WE DO.
6 BUT OBVIOUSLY THERE WERE SOME QUESTIONS AND ISSUES THAT I
7 THINK IT WOULD BENEFIT THE COURT TO HEAR MORE DETAIL ON.

8 THE COURT: WELL, ONE THING I DIDN'T SAY TO
9 MS. JACOBSON -- AND MAYBE WHEN I PUT THIS QUESTION OUT THERE,
10 SHE'S THE ONE THAT SHOULD TALK FIRST. I DON'T KNOW HOW -- IF
11 I ALLOW FURTHER BRIEFING IN PUEBLO RIGHTS, WE'D STILL BE ABLE
12 TO GET RID OF AN ENTIRE CAUSE OF ACTION THE WAY VENTURA
13 CITY -- IT'S -- THEY'VE GOT ALL SORTS OF RIGHTS. THE -- 1905,
14 WHENEVER THEY BUILT THE SUBTERRANEAN DAMN -- THAT WOULD STILL
15 BE EARLIER IN TIME WITH MANY TAKERS, EVEN IF IT HAS NOTHING TO
16 DO WITH THE FRANCISCAN FIRES OR --

17 MS. JACOBSON: YOUR HONOR, THE PUEBLO RIGHTS ISSUE
18 REALLY GOES TOWARDS WHETHER OR NOT THEY CAN STATE A CLAIM AND
19 WHETHER OR NOT THIS COURT HAS JURISDICTION. SO IT'S REALLY A
20 SUB-ISSUE OF STANDING JURISDICTION. THEY'VE ALLEGED THEY CAN
21 ASSERT A CAUSE OF ACTION FOR WATERSHED ADJUDICATION BECAUSE OF
22 PUEBLO RIGHTS.

23 THE COURT: BUT THE CLAIM OF 1970 -- OR 1905 IS --

24 MS. JACOBSON: AGREED. SO THE MAIN POINTS -- THE
25 MATTERS OF LAW AND THE FAILURE TO STATE ALLEGATIONS, WHICH ARE
26 NOT CONCLUSIONS OF LAW, BY THE WAY. AND THAT'S, YOU KNOW,
27 GETTING BACK TO WHAT THE COURT MUST AND MUST NOT ACCEPT AS
28 TRUE. AND THE POINT IS YOU DO NOT HAVE TO ACCEPT AS TRUE A

1 CONCLUSION OF LAW WHICH IS BEING USED TO SUPPORT THEIR
2 POSITION THAT THEY CAN, IN FACT, MAINTAIN CGAS (PHONETIC)
3 CAUSE OF ACTION.

4 THE COURT: THANK YOU.

5 YOU'VE GOT THE FLOOR, MR. HAGERTY.

6 MR. HAGERTY: THANK YOU, YOUR HONOR. I APPRECIATE
7 THAT. I WAITED PATIENTLY TO HAVE THE OPPORTUNITY. I WAS
8 HOPING TO GET TO THE PUEBLO RIGHT ISSUE LATER, BUT YOUR HONOR
9 IS EXACTLY RIGHT. WHETHER OR NOT THE CITY HAS PUEBLO RIGHTS
10 DOES NOT CHANGE THE TENTATIVE RULING. WE WILL BE HAPPY IN
11 LATER PHASES TO ADDRESS THAT ISSUE.

12 AND AS THE COURT PROPERLY POINTED OUT, THAT WOULD
13 NOT RESOLVE ANY OF THE CAUSES OF ACTION THAT -- AT LEAST THAT
14 HAVE BEEN BROUGHT IN TERMS OF THIS PARTICULAR MOTION WHICH IS
15 ABOUT STANDING. WE HAVE STANDING IN THE -- OF THE PUEBLO
16 RIGHTS CLAIM. WE THINK -- WE'VE ALLEGED FACTS SUFFICIENT TO
17 DEMONSTRATE THE LEGAL THEORY THAT THE COURT WAS VERY KEEN TO
18 HONE IN ON, WHICH IS THAT THERE WAS A DECLARATION OF
19 ADMISSIONS.

20 AFTER THAT DECLARATION, THE MISSIONS -- THE
21 SECULARIZED MISSIONS FUNCTIONED AS PUEBLOS. AND WE -- WE'VE
22 BEEN RESEARCHING THIS RESEARCH FOR 50 YEARS AT THE CITY. SO
23 WE HAVE A LOT OF INFORMATION THAT WE WILL ULTIMATELY PRESENT,
24 IF NEEDED. BUT THERE IS A -- OF A LEGAL THEORY THAT IS
25 FACTUALLY SUPPORTED, THAT IS PRESENTED.

26 THE COURT: DID THEY GO TO THE --

27 MR. HAGERTY: WE WILL PRESENT EVIDENCE THAT THERE
28 WERE CLAIMANTS THAT WERE SUCCESSORS THROUGH -- THAT WENT

1 THROUGH THAT PROCESS.

2 THE COURT: FOR FEE SIMPLE OR FOR WATER RIGHTS?

3 MR. HAGERTY: WELL, IT'S -- IT'S ALL OF THE RIGHTS,
4 YOUR HONOR. YEAH. AND THERE'S A LONG HISTORY HERE.

5 THE COURT: CONTINUE.

6 MR. HAGERTY: IF WE GET TO THIS, THIS WILL BE A
7 SEPARATE PHASE OF TRIAL. AND THAT'S THE WAY WE WOULD REQUEST
8 THAT IT BE TIED UP. BUT, AGAIN, YOUR HONOR, EVEN ABSENT
9 PUEBLO RIGHTS, THERE IS NO QUESTION ABOUT OUR STANDING. WE --
10 WE HAVE THE RIGHT UNDER THE COURT OF APPEAL DECISION --

11 THE COURT: YOU DON'T NEED TO PERSUADE ME OF THAT.

12 MR. HAGERTY: OKAY. THANK YOU. SO LET ME GO BACK
13 TO SORT OF THE OVERALL ARGUMENT, BECAUSE I DO THINK IT'S
14 IMPORTANT FOR THE COURT TO PUT THE ARGUMENT THAT OJAI IS
15 MAKING IN CONTEXT WITH OTHER ARGUMENTS THAT HAVE HISTORICALLY
16 BEEN MADE.

17 THE COURT: HEAVEN FORBID THAT SOME LANDOWNER IN
18 GLENN COUNTY -- THE -- STARTS TO SUE A LAND OWNER IN SHASTA OR
19 TRINITY COUNTY CLAIMING THAT THEIR WATER USAGE IS PREJUDICIAL
20 TO WHAT IS FLOWING BY X MILES SOUTH IN GLEN COUNTY. SOMEHOW
21 BECOME A BIG MONSTROUS IMPOSSIBILITY.

22 MR. HAGERTY: YOUR HONOR, THAT'S, AGAIN, AN ARGUMENT
23 THAT IS -- IS THROWN OUT THERE TO SCARE PEOPLE. WE -- WE
24 DON'T -- THAT'S WHY INTERCONNECTION IS SO CRITICAL. THAT IS
25 WHY YOU NEED TO HEAR THE ISSUES OF INTERCONNECTION. THAT IS
26 WHY, IF WE CAN'T PROVE INTERCONNECTION, THERE IMPLICATIONS TO
27 THAT. THERE ARE CASES THAT HAVE ADDRESSED MULTIPLE BASINS --
28 OR INTEGRATED WATER SYSTEMS HAVE ALL FIRST DEMONSTRATED THAT

1 THERE IS THIS TYPE OF INTERCONNECTION.

2 AND THAT IS THE BASIS BY WHICH THE COURTS CAN THEN
3 LOOK AT THE SYSTEM AS A WHOLE AND THEN FIGURE OUT HOW THE
4 PARTS OF THE SYSTEM WORK TOGETHER. AND THEN, AS THE COURT
5 PROPERLY FOUND IN THE TENTATIVE, WITHIN EACH SUBPART WERE
6 THEIR RIGHTS. YOU FIRST NEED TO LOOK AT THE INTEGRATED
7 SYSTEM. AGAIN, THAT'S WHY THE MOTION IS NOT APPROPRIATE FOR
8 CONSIDERATION NOW. WE NEED TO GET TO TRIAL ON
9 INTERCONNECTION.

10 IF WE FAIL TO PROVE INTERCONNECTION, THERE WILL BE
11 IMPLICATIONS TO THAT. BUT THAT IS NOT TO BE DECIDED NOW. AND
12 THAT IS WHY THAT ARGUMENT ABOUT, YOU KNOW, SOMEHOW ANY PERSON
13 COULD SUE FROM -- STARTING IN SAN DIEGO UP TO EUREKA, THAT IS
14 CLEARLY NOT APPROPRIATE. IT'S CLEARLY NOT WHAT WE'RE ARGUING.
15 YOU KNOW, THE -- THE STATUTE AND COMMON LAW HAS ALREADY FRAMED
16 HOW THESE THINGS OCCUR. AND THEY CAN BE BROUGHT TOGETHER AND
17 ACTUALLY SHOULD.

18 AND -- AND AS THE COURT OF APPEALS SAYS, PRETTY MUCH
19 MUST BE BROUGHT TOGETHER BECAUSE, IF YOU DON'T, IT'S UNFAIR
20 AND YOU WILL VIOLATE PRIORITY WHEN THERE IS THIS
21 INTERCONNECTED SYSTEM. THAT IS 100 YEARS OF COMMON LAW THAT
22 IS PRESERVED IN THE STATUTE. AND THAT'S WHY WE NEED TO -- TO
23 GO TO TRIAL.

24 THEN I DO WANT TO GET BACK TO THIS BROADER QUESTION,
25 YOUR HONOR. AND MAYBE YOU CAN STOP ME IF -- IF THIS IS NOT
26 BENEFICIAL TO YOU. BUT NOT ONLY THIS SLIPPERY-SLOPE ARGUMENT,
27 BUT JUST THE NARROWNESS OF THE ARGUMENT. WHEN YOU LOOK AT
28 WATER LAW CASES, THIS POSITION, THIS ARGUMENT, HAS REPEATEDLY

1 BEEN REJECTED. AND, IN FACT, RELEVANT HERE, IT'S BEEN
2 REJECTED ALREADY AS TO SIGMA (PHONETIC).

3 AND THE ENVIRONMENTAL LAW FOUNDATION CASE, WE CITED
4 AND WE DISCUSSED EXPRESSLY, SAYS THAT WE REJECT THE IDEA THAT
5 SIGMA (PHONETIC) HAS COMPREHENSIVELY OCCUPIED THE FIELD AND
6 SUPPLANTS THE COMMON LAW. IT'S JUST -- IT'S ALREADY BEEN
7 DETERMINED THAT THE COMMON LAW SIGMA (PHONETIC), THE GROUND
8 ONE STATUTE, THE ADJUDICATION STATUTE -- THEY ALL HAVE TO WORK
9 TOGETHER.

10 AND COURTS HAVE REPEATEDLY HARMONIZED THESE TYPES OF
11 SITUATION. SO THE ENVIRONMENTAL LAW FOUNDATION CASE THAT
12 WE'VE CITED, WHICH DEALT SPECIFICALLY WITH THE IDEA THAT THE
13 STATE'S COMPREHENSIVE SURFACE WATER RIGHTS ADJUDICATION
14 PROCESS DIDN'T TRUNK AND WORK IN PARALLEL WITH THE COMMON LAW
15 IDEAS OF PUBLIC TRUST. AND THEN SIMILARLY -- THOUGH NOT GOING
16 TO ISSUES WITH THE GARRISON MOTION -- BUT IT'S BEEN --

17 THE COURT: THAT'S BEING ARGUED SEPARATELY.

18 MR. HAGERTY: YES. BUT THE POINT, AGAIN, IS
19 RELEVANT, YOUR HONOR, THAT THE -- THESE COMPREHENSIVE STATUTES
20 DO NOT TRUMP THE COMMON LAW AND -- DOESN'T DEPRIVE THE COURT.
21 AND THE COURT PROPERLY FOUND THAT ISSUE AND EXPLAINED IT WELL
22 IN ITS TENTATIVE.

23 BUT I DO THINK IT'S JUST IMPORTANT TO CONTINUE TO
24 PUT IN CONTEXT THIS IDEA THAT THE COURT'S EMPOWERED AND SHOULD
25 AND IS CHARGED WITH THE OBLIGATION TO HARMONIZE THESE
26 DIFFERENT THINGS TO REACH AN APPROPRIATE RESULT, WHICH IS
27 REFLECTED IN THE TENTATIVE.

28 OJAI'S COUNSEL SAID, WELL, WHY DO WE HAVE BULLETIN

1 118, THEN? WELL, WE HAVE THAT BECAUSE THE LEGISLATURE WAS
2 TRYING TO BRING CLARITY TO AN ISSUE THAT IS OFTEN A DISPUTED
3 ISSUE IN A SINGLE BASIN OR A MULTI BASIN.

4 THE COURT: WELL, IT IS GOOD TO HAVE THE APPROVED
5 SURVEYOR.

6 MR. HAGERTY: THAT'S RIGHT. BUT, YOU KNOW, AS THE
7 COURT SEES, EVEN HERE WE'VE -- WE'VE PUT FORWARD AND WE'VE
8 TRIED TO GET AN AGREEMENT ON THE BOUNDARIES OF THESE BASINS
9 USING BULLETIN 118. SO WE'RE USING BULLETIN 118.

10 THE COURT: AND WE GOT THERE.

11 MR. HAGERTY: I DO HAVE A QUESTION, IF THE COURT
12 SIGNED THE ORDER.

13 THE COURT: YES.

14 MR. HAGERTY: OKAY. GOOD. OKAY. GREAT.

15 THE COURT: YES.

16 MR. HAGERTY: SO THAT'S WHY YOU HAVE THOSE. IT'S
17 NOT INTENDED AS ALL OF THE PROVISIONS IN THE STATUTE ARE --
18 IT'S INTENDED TO TRY TO MAKE THESE IN THESE COMPLEX CASES
19 EASIER. IT'S CLEARLY NOT INTENDED TO BE A LIMITATION ON WHAT
20 HAS BEEN 100 YEARS OF AN APPROACH THAT INCLUDES INTEGRATED
21 SYSTEMS LIKE WHAT WE ALLEGE HERE.

22 AND, YOU KNOW, THERE WAS A COMMENT ABOUT
23 COMMONSENSE. IF THE COMMONSENSE WAY TO ADDRESS THIS ISSUE AND
24 THIS WATERSHED -- IF WE'RE RIGHT, IF WE PROVE INTERCONNECTION
25 IS -- YOU HAVE TO LOOK AT IT TOGETHER. THE IDEA THAT WE WOULD
26 HAVE TO BRING WHAT WOULD BE POTENTIALLY FIVE DIFFERENT
27 LAWSUITS -- ONE FOR EACH BASIN, PLUS, I GUESS, A GENERAL ONE
28 BECAUSE THERE ARE GROUNDWATER USERS OUTSIDE THE BASINS AND

1 ALSO SURFACE WATER -- SO WE BRING FIVE DIFFERENT LAWSUITS. WE
2 THEN HAVE TO GO TO FIVE DIFFERENT COURTS AND TRY TO GET THEM
3 CONSOLIDATED OR COORDINATED.

4 WE WOULD BE RIGHT BACK TO WHERE WE ARE NOW. IT
5 WOULD JUST BE POTENTIAL VIOLATION OF DUE PROCESS. PEOPLE
6 WOULD HAVE TO BE INVOLVED IN FIVE DIFFERENT CASES BECAUSE
7 THERE ARE SURFACE WATER AND GROUNDWATER -- SO THE -- THE
8 STATUTE IS DESIGNED TO BE EFFICIENT. ARGUMENT THAT OJAI IS
9 PUTTING FORWARD, WHICH DOESN'T FIND SUPPORT IN THE STATUTE
10 ITSELF, WOULD BE INCREDIBLY INEFFICIENT IN THE SITUATION THAT
11 IS PRESENTED HERE.

12 I THINK YOU'VE CONCEDED OR TALKED TO THE STANDING.
13 I DON'T THINK IT'S AN ISSUE. IF YOU HAVE ANY QUESTIONS ABOUT
14 THAT, I WOULD BE HAPPY TO ADDRESS THAT. THE -- THE WAY THE
15 COURT ADDRESSED THE COURT OF APPEAL DECISION, WE THINK, IS
16 ABSOLUTELY RIGHT. MR. PATTERSON SPOKE TO SOME SHOWINGS WE
17 HAVE TO MAKE. AND THERE WILL BE SHOWINGS WE HAVE TO MAKE,
18 CLEARLY.

19 AND THERE WILL BE MOTIONS IN LIMINE ABOUT WHAT THE
20 SCOPE OF OUR LEVEL OF PROOF IS. AND WE'LL HAVE TO RESOLVE
21 THAT. BUT THAT IDEA DOESN'T CHANGE THE REALITY THAT THE COURT
22 OF APPEAL, AS THIS COURT HAS PROPERLY FOUND, GIVES US THE
23 RIGHT TO MOVE FORWARD ON THIS QUESTION OF INTERCONNECTION.

24 I THINK THE COURT IN ITS TENTATIVE HAS PROPERLY
25 INTERPRETED CCP 17 AND PROPERLY INTERPRETED CCP 17(B) TODAY.
26 YOU KNOW -- AND I THINK, AGAIN, THAT IS THE GUIDING PRINCIPLE
27 AND -- AND IN CONTEXT OF THE STATUTE IT MAKES SENSE. AND
28 IT -- YOU KNOW, IT -- WE'VE -- YOU'VE ASKED PREVIOUSLY IN A

1 PREVIOUS STATUS CONFERENCE BEFORE -- OR TENTATIVE ABOUT
2 LEGISLATIVE HISTORY.

3 AND SO I THINK, YOUR HONOR, UNLESS YOU HAVE ANY
4 QUESTIONS, WE WOULD URGE YOU TO CONFIRM THE TENTATIVE TODAY.
5 WE DON'T BELIEVE A CONTINUANCE IS REQUIRED TO ADDRESS ISSUES
6 OF PUEBLO. I THINK YOUR TENTATIVE PROPERLY JUST NOTES THAT IS
7 AN ISSUE OF FURTHER DISPUTE. AND LIKELY IT ALMOST CERTAINLY
8 WILL BE. BUT WE DON'T NEED TO HAVE ADDITIONAL BRIEFING ON
9 THAT BECAUSE YOU CAN CONFIRM YOUR TENTATIVE WITHOUT THAT ISSUE
10 BEING RESOLVED.

11 SO UNLESS THERE IS ANY QUESTIONS FOR ME, YOUR HONOR,
12 THE CITY OF SAN BUENAVENTURA WILL SUBMIT ON THE TENTATIVE.

13 THE COURT: I DON'T HAVE FURTHER QUESTIONS.

14 BACK TO YOU, MS. JACOBSON.

15 MS. JACOBSON: I APPRECIATE THE CITY OF VENTURA'S
16 ARGUMENTS AND POSITIONS AS IT RELATES TO ANY IMPLICATION THAT
17 THE CITY OF OJAI IS BEING -- WELL, ANY REFERENCE TO THE CITY
18 OF OJAI OR COUNSEL THAT IMPLICATES ANY KIND OF ASSUMPTION THAT
19 THERE IS NEFARIOUS ACTION OR INABILITY TO READ A CASE IS JUST
20 NOT APPRECIATING AND PERHAPS I TOOK THAT OUT OF CONTEXT.

21 THE COURT: I DIDN'T HEAR IT THAT WAY, SO --

22 MS. JACOBSON: OKAY.

23 THE COURT: YOU HAVE MY HIGHEST RESPECT AS
24 MR. HAGERTY. YOU ARE DOING JUST FINE.

25 MS. JACOBSON: UNDERSTOOD. THANK YOU, YOUR HONOR.
26 I DON'T HAVE MUCH MORE TO SAY. I THINK THERE IS JUST A
27 SIGNIFICANT DISPUTE OVER WHAT THE STANDARDS ARE FOR REVIEW ON
28 THE MOTION FOR JUDGMENT CONCERNING MATTERS OF LAW, ALLEGATIONS

1 OF FACT, ALLEGATIONS OF LAW AND THE FOCUS ON THE
2 INTERPRETATION OBVIOUSLY OF THE COURT OF APPEAL DECISION.

3 THE MAIN FOCUS I WOULD JUST LIKE TO REITERATE IS WE
4 ARE DEALING WITH THE STATUTE -- A NEW STATUTE DIRECTLY ON
5 POINT. AND WE ARE LIMITED TO THAT STATUTE. AND I'LL SUBMIT.
6 THANK YOU.

7 THE COURT: OKAY.

8 MR. PATTERSON, ANYTHING FURTHER YOU WANT TO SAY ON
9 YOUR JOINDER?

10 MR. PATTERSON: HANG ON. I'M TRYING TO COME ON.
11 THERE WE GO.

12 NO, YOUR HONOR. I DO THINK THAT AN ISSUE --
13 PROBABLY NOT GOING TO BE PROPPED UP TODAY, BUT THERE IS AN
14 ISSUE THAT I THINK IS IMPORTANT THAT WAS RAISED IN THE
15 JUDGMENT ON THE MOTION FOR THE PLEADINGS. AND THAT IS
16 STANDING. BECAUSE THE CITY IS SUING FOLKS IN THE OJAI BASIN
17 AND UPPER OJAI BASIN IN WHICH THEY HAVE NO GROUNDWATER RIGHTS.

18 NOW, I GUESS THEY'RE SORT OF HANGING THEIR HAT ON
19 THIS CONNECTIVITY ARGUMENT. I GET THAT. IT IS AN ISSUE THAT
20 I THINK WE'LL NEED TO ADDRESS, YOU KNOW, AT SOME POINT BECAUSE
21 AS -- AS MS. JACOBSON SAID, YOU KNOW, CAN I SUE -- YOU KNOW,
22 THE -- THE -- YOU KNOW, SOMEBODY IN THE CENTRAL VALLEY BECAUSE
23 THEY'RE SENDING WATER DOWN HERE AND NOT SENDING ENOUGH OF IT?
24 THERE IS AN ISSUE I THINK WE NEED TO CAPTURE, BUT IT'S NOT FOR
25 TODAY.

26 THE COURT: THANK YOU. OKAY.

27 DO I HAVE MR. GREGG GARRISON READY TO ARGUE HIS
28 MOTION?

1 MR. GARRISON: YES, YOUR HONOR. THIS IS GREG
2 GARRISON.

3 THE COURT: GIVE ME ONE SECOND SO I CAN FIDDLE
4 AROUND WITH MY PAPERS. MR. GARRISON, I'M TAKING A MOMENT TO
5 LOOK UP ELECTRONIC DOCUMENTS; BUT, AS IN THE CASE OF
6 MS. JACOBSON, IT WOULD BE GREATLY APPRECIATED TO MAKE THE
7 EFFORT TO INCLUDE COURTESY COPIES WITH THE COURT.

8 MR. GARRISON: ACKNOWLEDGED, YOUR HONOR.

9 THE COURT: PARDON?

10 MR. GARRISON: ACKNOWLEDGED, YOUR HONOR.

11 THE COURT: OKAY. SO YOU'VE GOT A MOTION FOR
12 JUDGMENT ON THE PLEADINGS FILED DECEMBER 20TH. AND IN OUR
13 RECORDS, AT LEAST, I DON'T SEE ANY FURTHER REQUEST FOR
14 JUDICIAL NOTICE OR INCIDENTAL PAPERWORK.

15 IS THERE SOMETHING I SHOULD HAVE AT MY FINGERTIPS
16 BEYOND YOUR MOTION?

17 MR. GARRISON: NO, YOUR HONOR.

18 THE COURT: SO I HAVE IT. YOU'VE GOT THE FLOOR.

19 MR. GARRISON: SUCCINCTLY THIS WATERSHED
20 ADJUDICATION IS ATTEMPTING TO PUT OUT A MATCH WITH A FIREHOSE.
21 IT IS THE WRONG EQUITABLE AND THE WRONG LEGAL REMEDY FOR
22 REPLACING OR ADDING ADDITIONAL SURFACED WATER INTO THE VENTURA
23 RIVER. AND IT'S THIS FUNDAMENTAL FLAW, THIS MISTAKE, THAT HAS
24 CREATED A CASCADE OF PROBLEMS THAT THE CROSS-DEFENDANTS HAVE
25 BEEN FORCED TO DEAL WITH.

26 FOR EXAMPLE, IN THE 1990'S IN THE -- SANITARY WATER
27 DISTRICT THEY HAD AN UNUSUAL UPSET THAT DUMPED THOUSANDS OF
28 GALLONS OF RAW SEWAGE INTO THE OCEAN. THE COMMUNITY GOT

1 TOGETHER. ENGINEERS GOT TOGETHER. AND THEY SAID HOW CAN WE
2 REDUCE THE FLOW INTO THE SANITARY SYSTEM SO THAT WE DO NOT
3 OVERFLOW THE SYSTEM? THEY PUT TOGETHER A SYSTEMIC PROGRAM
4 THAT ENGINEERED RETROFITTING ALL THE TOILETS, THE -- THE
5 SHOWER HEADS, AND WATER SYSTEMS THAT REDUCED THE WATERS INTO
6 THE SYSTEM.

7 AND BY DOING SO THEY CONSERVED -- AND NOT ONLY
8 CONSERVED. THEY BUILT AN ADDITIONAL CAPACITY TO THE SYSTEM SO
9 THAT IT DID NOT EXPERIENCE THE CATASTROPHIC OUTPOUR. THE SAME
10 SHOULD HAVE BEEN DONE HERE BY THE CITY OF VENTURA. A
11 FISHERY -- A FISHERY TO ITS -- A FISHERY TO ITS ENVIRONMENT, A
12 FISHERY TO THE VENTURA RIVER.

13 INSTEAD THEY HAD COUNSEL THAT HAS THIS COOKIE-CUTTER
14 APPROACH. THEY ARE THE -- LAW FIRM THAT DOES WATER
15 ADJUDICATIONS. SO THEY TOOK OUT OF THEIR LAWYER BAG A WATER
16 ADJUDICATION TO USE A FIREHOSE TO PUT OUT A MATCH. IF IN THE
17 BEGINNING IN RESPONSE TO THE COURT OF APPEALS REQUIREMENT TO
18 PUT MORE WATER -- OR FIND WATER TO PUT IN THERE, THEY COULD
19 HAVE INITIALLY DONE A -- UNDER THE -- PROCESS AND WOULD HAVE
20 FORCED THEM TO CONSIDER THESE ALTERNATIVES INSTEAD OF A
21 SEVEN-MILLION DOLLAR LAWSUIT THAT HAS NOT ONE DROP OF WATER IN
22 THE SYSTEM.

23 THERE IS NEVER A TIME WHERE IT'S PREEMPTED OR IT'S
24 ARBITRARY OR IT DOESN'T APPLY HERE. HAS THE CITY LOOKED AT
25 RECYCLING? LOOKED AT MORATORIUM? LOOKED AT ADDITIONAL
26 RETROFITS IN ITS OWN EXISTING BUILDINGS WHERE THEY CAN BUILD
27 NEW CAPACITY BACK INTO THE RIVER THROUGH CONSERVATION? WHAT
28 ABOUT RECYCLING WATER FROM SANITARY DISTRICT SYSTEMS?

1 ALL THESE MANDATORY AND COMPELLING ENVIRONMENTAL
2 ALTERNATIVES NEED TO BE LOOKED AT. BECAUSE WHY WOULD YOU TAKE
3 AN ENTIRE WATERSHED AND POTENTIALLY MISAPPROPRIATE OR
4 APPROPRIATE, DEPENDING ON WHICH SIDE OF THE ARGUMENT YOU ARE
5 ON, TO THE CITY OF VENTURA WHEN THAT SAME SOLUTION COULD HAVE
6 BEEN DONE BY SIMPLE ENVIRONMENTAL DUE DILIGENCE AND BEST
7 BUSINESS AND TECHNICAL PRACTICES? THAT IS THE THRUST OF
8 THE -- ANALYSIS.

9 AND IT'S NOT COMPELLING, AS THE JUDGE SAYS, IN HIS
10 TENTATIVE. THIS IS NOT A BURDEN ON YOU, BUT IT'S A TOOL
11 AVAILABLE TO THE PARTIES THAT EVEN NOW -- WHATEVER THE EX
12 PARTE DOES IN TERMS OF THE DETAIL TO THE TRIAL -- THERE SHOULD
13 BE A REQUIREMENT THAT THE CROSS-DEFENDANTS, THE CITY, AND ALL
14 THE PARTIES UNDERTAKE A SEQUA ANALYSIS FOR THE BENEFIT OF THE
15 VENTURA RIVER.

16 HOW MANY ACRE FEET ARE ACTUALLY REQUIRED PURSUANT TO
17 THE CALIFORNIA COURT OF APPEALS? WHAT IS THAT MINIMAL AMOUNT?
18 AND HOW CAN IT BE GENERATED THROUGH ALTERNATIVES OTHER THAN A
19 WATERSHED ADJUDICATION? THAT WAS THE THRUST OF MY SEQUA
20 ARGUMENT, YOUR HONOR.

21 THANK YOU FOR LISTENING.

22 THE COURT: SIR, TWO QUESTIONS. AS I UNDERSTAND IT,
23 YOU DON'T HAVE TO BE THE -- TO BRING THE SUIT. YOU CAN SUE
24 ESSENTIALLY AS AN INTERESTED PARTY WILLING TO GO TO COURT TO
25 TRY AND PROTECT ENVIRONMENTAL RIGHTS. SO WHY COULDN'T ONE OR
26 ANOTHER OF YOUR CLIENTS BRING A CROSS-CLAIM AGAINST THE CITY
27 FOR ALLEGED VIOLATION OF SEQUA TO TRY TO PUT THE MATTER AT
28 ISSUE?

1 BECAUSE I THINK I'M STILL CORRECT THAT I'M ALLOWED
2 THROUGH THE WATER ADJUDICATION -- BECAUSE I'M NOT A COVERED
3 SEQUA ENTITY. BUT I HAVE RECOGNIZED THE FLAVOR OF YOUR
4 ARGUMENT TO SAY MAYBE THE CITY OF VENTURA IS DOING SOMETHING
5 THAT SHOULD BE CHALLENGED. BUT I DON'T THINK SAYING THAT THIS
6 CASE GETS THROWN OUT IS LEGALLY THE RIGHT WAY YOU GET THERE.
7 AND, FRANKLY, IN SOME WAYS IT JUST ASSUMES YOUR CLIENT FILE A
8 SEPARATE LAWSUIT AGAINST THE CITY OF VENTURA AND NOT
9 COMPLICATE THIS ALREADY COMPLICATED CASE.

10 AS I UNDERSTAND SOME OF THE BACKSTORY, THE RESIDENTS
11 OF THE OJAI VICINITY, WHO VIEW THEMSELVES AS BEING IN A
12 NO-GROWTH ENVIRONMENT, CONTINUE TO HAVE A NEGATIVE ATTITUDE
13 TOWARD THE CITY OF VENTURA. BUT PRESUMABLY THAT IS A
14 REFLECTION OF -- OF THE CITY, WHICH, IF YOU FIND THE RIGHT
15 HANDLE, MAYBE YOU CAN ATTACK THROUGH SEQUA. BUT I DON'T THINK
16 THAT IS THE BASIS TO THROW THE CASE IN FRONT OF ME.

17 YOUR COMMENTS ARE APPRECIATED AS TO WHETHER YOUR
18 CLIENTS COULD ADD IN FRONT OF ME OR BRING IN ANOTHER LAWSUIT
19 OR IF THERE IS SOME REASON WHY THEY CAN'T.

20 MR. GARRISON: TWO COMMENTS TO THAT, YOUR HONOR.
21 THE STEELHEAD ARE A RED HERRING. THEY'RE A RED HERRING
22 SPECIFIC TO THE UPPER OJAI BASIN BECAUSE NEITHER THE RED
23 HERRING NOR THE STEELHEAD ARE UP IN THAT BASIN OR IN THOSE
24 UPPER REGIONS. IT'S THE MATTER OF POLITICAL POWERS SEEKING
25 THE COURTS FOR THEIR OWN PERSONAL GAIN TO THE DETRIMENT OF THE
26 PUBLIC, TO THE DETRIMENT OF THE ENVIRONMENT.

27 JUST -- MR. SMITH GOES TO WASHINGTON. HERE WE'RE
28 SEEKING THROUGH THE CITY OF VENTURA A WATER GRAFT UNDER THE

1 GUISE OF PROTECTING AN ENDANGERED SPECIES. WHAT THEY REALLY
2 WANT. THEIR END GAME IS NOT A MATTER OF PUBLIC TRUST. IT'S
3 NOT A MATTER OF EQUITY OR REASONABLENESS. IT'S A MATTER OF
4 GREED TO GET WATER TO SHIELD THEIR CONTINUED GROWTH.

5 THE LEGACY -- IF WE FOLLOWED THE CITY OF VENTURA'S
6 LEAD -- WILL BE OWENS VALLEY -- WILL CREATE OJAI. THAT WILL
7 BE STRIPPED OF ITS WATER RIGHTS. AND YOU'RE RIGHT, YOUR
8 HONOR, I'M A RESIDENT OF OJAI FOR 22 YEARS. THIS IS MY HOME.
9 I RAISED MY FAMILY HERE. I'VE WALKED ALL THE RIVERS. I'VE
10 WALKED ALL THE STREAMS THAT WE'RE TALKING ABOUT.

11 UNLIKE MANY OTHER COUNSEL, MANY OF THESE -- ARE JUST
12 NAMES ON THE MAP. BUT THE CITY OF OJAI PRIDES ITSELF IN BEING
13 SUSTAINABLE IN PROTECTING ITS ENVIRONMENT. AND NOW THROUGH
14 THAT VERY PROTECTION THEY BECOME THE LOWEST HANGING FRUIT FOR
15 A MUNICIPALITY. LIKE, THE CITY OF VENTURA CAN COME IN AND
16 TAKE THOSE WATER RESOURCES UNJUSTLY, I SAY, IN THIS WATER
17 ADJUDICATION.

18 THE COURT: LET ME ASK MY QUESTION DIRECTLY. WHY
19 CAN'T YOU OR ONE OF YOUR CLIENTS BRING A DIRECT SEQUA CLAIM
20 AGAINST VENTURA CITY FOR DOING IMPRUDENT THINGS WITHOUT
21 ADEQUATE ADVANCED ENVIRONMENTAL REVIEW?

22 MR. GARRISON: WE CAN, YOUR HONOR.

23 THE COURT: SO WHY DON'T YOU?

24 MR. GARRISON: GIVEN THE TIME, WE WILL.

25 THE COURT: OKAY. CONTINUE, IF YOU WANT.

26 MR. GARRISON: THAT CONCLUDES MY STATEMENTS, YOUR
27 HONOR.

28 THE COURT: THANK YOU, SIR. I DON'T PERCEIVE THERE

1 ARE ANY JOINDERS, CORRECT, MR. GARRISON?

2 MR. GARRISON: CORRECT.

3 THE COURT: MR. HAGERTY.

4 MR. HAGERTY: THANK YOU, YOUR HONOR. THE --

5 THE COURT: I'M NOT INCLINED TO CHANGE MY TENTATIVE.

6 MR. HAGERTY: I'LL SUBMIT ON THE TENTATIVE, YOUR
7 HONOR.

8 THE COURT: OKAY. SO I'M GOING TO DENY THE MOTION
9 OF THE CITY OF OJAI AND THE JOINDER OF THE OJAI GROUP FOR THE
10 REASONS STATED IN THE TENTATIVE.

11 I'M GOING TO ADD A CITATION TO THE TWO CASES CITED
12 BY MR. HAGERTY AND MODIFY THE TENTATIVE ONLY IN THAT REGARD ON
13 THE MOTION BY CROSS-DEFENDANTS AND -- COMMONLY KNOWN AS
14 GARRISON GROUP. I'M DENYING FOR THE REASON STATED ON THE
15 TENTATIVE.

16 I SHOULD ALSO NOTE CONTRARY TO WHAT THE TENTATIVE
17 SAID, ROBERT MARTIN WAS DOING A JOINDER AS TO THE CITY OF OJAI
18 MOTION AND THAT IS DENIED. ALBEIT TECHNICALLY THAT IT WASN'T
19 TIMELY, BUT IT WOULD HAVE BEEN DENIED ON THE MERITS, EVEN IF I
20 DEEMED IT TO BE TIMELY.

21 SO I THINK THAT BRINGS US IN THE ABSENCE OF
22 MR. WHITMAN TO DEALING WITH THE EX PARTE TO CONTINUE TRIAL.

23 CORRECT, MS. JACOBSON?

24 MS. JACOBSON: YES, YOUR HONOR.

25 THE COURT: CORRECT, MR. HAGERTY?

26 MR. HAGERTY: YES, YOUR HONOR.

27 THE COURT: SO THE MATTER GOT TRAILED FROM TUESDAY
28 TO TODAY, AS YOU KNOW, BECAUSE I WAS TENDING TO MY WIFE'S

1 PHYSICAL NEEDS. THAT IS ONE OF THE REASONS WHY I CANCELED
2 WHAT OTHERWISE WOULD HAVE BEEN AN ABSENCE NEXT WEEK. I'VE
3 ALSO CANCELED WHAT WAS ANTICIPATED TO BE AN OUT-OF-COUNTRY
4 TRIP ON MARCH 16. AND, THEREFORE, I HAVE THE POSSIBILITY OF
5 DOING A SHORT CONTINUANCE OF THE VALENTINE'S DAY TRIAL TO THE
6 SECOND HALF OF MARCH, IF THE CIRCUMSTANCES WARRANT IT.

7 I AM NOT INCLINED TO DO A THREE- OR FOUR-MONTH
8 CONTINUANCE OF THE TRIAL, BUT I THINK ON THE PAPERS BEFORE ME
9 SOME CLAUSE TO CONTINUE THE TRIAL ABOUT A MONTH APPEARS TO BE
10 MADE OUT. SO WHILE I'M WILLING TO HEAR THRESHOLD ARGUMENT AS
11 TO WHETHER I SHOULD HAVE ANY TRIAL CONTINUANCE OR NOT, IT IS A
12 MATTER COMMITTED TO THE SOUND DISCRETION OF THE COURT. SO I
13 WOULD SUGGEST YOU KEEP YOUR ARGUMENT BRIEF ON WHY THERE SHOULD
14 BE NO CONTINUANCE WHATSOEVER. BUT THEN WE SHOULD TALK ABOUT
15 THE PRACTICAL REALITIES OF FINDING A NEW DATE TO CONDUCT A
16 COURT TRIAL WHEN MOST OF THE NECESSARY COUNSEL ARE AVAILABLE.

17 THERE ARE SO MANY PARTIES IN THIS CASE AND SO MANY
18 FINE LAWYERS IN THIS CASE THAT THE COURT CANNOT NECESSARILY
19 AVOID SETTING A TRIAL THAT IS GOING TO BE HELD OUT TO BE A
20 CONFLICT FOR THIS OR THAT LAWYER. AND I AM SORRY IN ADVANCE
21 THAT THAT IS THE REALITY. BUT, WHEN YOU HAVE A CASE WITH THIS
22 MANY PARTIES, YOU SIMPLY CAN'T WAIT FOR THAT DATE IN THE YEAR
23 2023, WHEN ALL THE LAWYERS ARE AVAILABLE.

24 MR. HAGERTY OR MR. PISANO, DO YOU WANT TO BE HEARD
25 ON THE THRESHOLD QUESTION ON WHETHER THERE SHOULD BE ANY TRIAL
26 CONTINUANCE?

27 MR. PISANO: NO, YOUR HONOR. PROVIDED IT IS BRIEF,
28 WE ARE AGREEABLE WITH A CONTINUANCE.

1 THE COURT: MY RESEARCH ATTORNEY WAS KIND ENOUGH TO
2 LOOK AT THE PAPERS WITH A LITTLE MORE CARE THAN I WAS ABLE TO
3 GIVE THEM IN THE SHORTNESS OF TIME THAT WAS AVAILABLE. HE
4 PERCEIVED THE WEEK OF MARCH 14 OR MARCH 21 SEEMED TO SHOW GOOD
5 AVAILABILITY FOR MOST OF THE KEY PLAYERS. I'M TOTALLY EMPTY
6 ON THE WEEK OF MARCH 21 BECAUSE I THOUGHT I'D BE IN EGYPT.

7 THE WEEK OF MARCH 14 I HAD BOOKED A COUPLE OF DAYS
8 BECAUSE I HAD PLANNED TO FLY OUT. THAT DOESN'T MEAN WE HAVE
9 TO START THE TRIAL ON MONDAY. WE CAN START THE TRIAL ON 16TH,
10 WHICH WOULD ALLOW MORE TIME. IF IT NEEDS TO BE MORE THAN A
11 FIVE-DAY TRIAL, WE SHOULD TRY TO GET IT DONE PROPERLY. SO, IF
12 THAT REQUIRES A LITTLE BIT OF EXTRA TIME, LET'S TRY TO GET
13 THEM PROPERLY. IT LOOKS LIKE WE HAD THIS BOOKED FOR A 15-DAY
14 TRIAL -- I STAND CORRECTED.

15 IS THAT CORRECT, MR. HAGERTY?

16 MR. PISANO: THAT'S CORRECT.

17 THE COURT: IF WE START ON MARCH 16, IN MY MIND'S
18 EYE, I COULD FREE UP THE CALENDAR, BEST AS I CAN TELL, TO
19 CONDUCT IT THROUGH THERE. I CANDIDLY AT SOME POINT HAVE TO
20 SCHEDULE TREATMENT FOR PROSTATE CANCER FOR MYSELF, BUT THAT
21 ISN'T AS CONCERNING AS SOME TREATMENT THAT MAY BE REQUIRED FOR
22 MY WIFE. I HAVE NO REASON TO THINK I COULDN'T SCHEDULE THIS
23 TRIAL TO START ON MARCH 16 FOR 15 CONTINUOUS COURT DAYS.

24 MS. JACOBSON: YOUR HONOR, IF I MAY.

25 THE COURT: MS. JACOBSON, YES.

26 MS. JACOBSON: THE DATES THAT WERE PREVIOUSLY
27 DISCUSSED AMONG COUNSEL -- I DID HAVE AVAILABILITY IN MARCH;
28 BUT, AFTER THAT EMAIL COMMUNICATION OCCURRED, WE RECEIVED

1 NOTICE OF A PROCEEDING BEFORE THE STATE BOARD BEGINNING IN
2 MARCH AND GOING THROUGH APRIL.

3 NOW, THERE IS A VERY SLIGHT POSSIBILITY IT MAY NOT
4 GO, THAT IT COULD BE CONTINUED. BUT RIGHT NOW THAT IS JUST
5 NOT THE CASE AND MY PREFERENCE, OF COURSE, WOULD BE TO DO THE
6 TRIAL IN APRIL OR MAY. I HAVE A TRIAL IN MAY, UNFORTUNATELY.
7 BUT WHAT WAS CLEAR FROM THE COMMUNICATIONS WAS THERE WAS AT
8 LEAST A THREE-BLOCK SPAN OF TIME IN JUNE THAT ALL PARTIES WERE
9 AVAILABLE.

10 THE COURT: I DON'T FIND IT JUSTIFIED TO DELAY THIS
11 MATTER TO JUNE. I WOULD RATHER LEAVE IT ON FEBRUARY 14 UNDER
12 THE CIRCUMSTANCES.

13 GO NEXT, MR. PATTERSON.

14 MR. PATTERSON: I'VE BEEN LOOKING AT THIS. WHEN WE
15 INITIALLY STARTED THIS DISCUSSION THAT WAS PRIMARILY PROMPTED
16 BY THE FACT THAT THE CITY REFUSED TO TURN OVER THE MODEL UNTIL
17 AFTER CHRISTMAS FOUR MONTHS AFTER I HAD REQUESTED IT. THAT'S
18 WHY WE'RE HERE TODAY. I -- I WANT TO MAKE THAT VERY CLEAR.
19 IF WE HAD HAD THE MODEL WHEN I REQUESTED IT, WE WOULD BE
20 READY. WHAT WE HAVE RIGHT NOW IS EIGHT DEPOSITIONS -- EXPERT
21 DEPOSITIONS THAT NEED TO BE COMPLETED. WE HAVE MR. PRESTON
22 AND MR. -- FROM THE STATE. WE HAVE MS. ARCHER AND MS. CLUE
23 FROM THE CITY. WE HAVE AN ADDITIONAL DEPOSITION AND WE ALSO
24 HAVE TO COMPLETE THE DEPOSITION OF MR. BROWN, MY EXPERT. SO
25 WE HAVE EIGHT EXPERTS THAT WE HAVE TO GET DEPOSED.

26 IT SEEMS TO ME IF WE'RE GOING TO DO THAT COMPLETELY
27 AND THOROUGHLY, NOT HAVE A HALF A COOKIE TO PRESENT TO THE
28 COURT. THESE PARTIES OUGHT TO HAVE AN OPPORTUNITY TO

1 CAREFULLY REVIEW AND BE ABLE TO RESPOND TO QUESTIONS REGARDING
2 THE CITY MODEL AND THE STATE MODEL. AND I AM TOLD BY MY
3 EXPERT AFTER REVIEWING THE CITY MODEL THEY NEED EIGHT WEEKS.
4 IT'S NOT LIKE THEY'RE POSTPONING IT. THEY'RE WORKING REALLY
5 HARD AT TREMENDOUS EXPENSE. THEY STARTED JANUARY 3RD.

6 WE'RE LOOKING AT THE END OF FEBRUARY, ROUGHLY,
7 BEFORE THEY COMPLETE A REVIEW OF THE MODEL. THEN WE HAVE THE
8 NEED TO COMPLETE THE EIGHT DEPOSITIONS. AND IF THAT TAKES A
9 MONTH, THAT PUSHES US THROUGH MARCH AND PERHAPS A LITTLE BIT
10 LONGER, DEPENDING ON EVERYBODY'S SCHEDULE. AND THEN WE HAVE
11 PRE-TRIAL STATEMENTS, EXHIBIT LIST, WITNESS LIST, MOTION IN
12 LIMINE, TRIAL BRIEFS. IT IS AN EXTREMELY IMPORTANT CASE ON
13 THE LEGAL END. IT'S EXTREMELY IMPORTANT TO THE CITIZENS WHO
14 ARE BEING AFFECTED BY THIS CASE. AND IT JUST SEEMS TO ME,
15 WHILE I WOULD HAVE PREFERRED THAT WE HAD GOTTEN THE MODEL
16 EARLY ON AND, YOU KNOW, BEEN ABLE TO DO WHAT WE NEEDED TO
17 DO -- WE'RE JUST NOT ABLE TO DO IT.

18 I DON'T WANT TO SHOW UP IN TRIAL AND TELL THE COURT,
19 YOU KNOW, YOU ARE GOING TO GET TESTIMONY, BUT IT'S NOT
20 COMPLETE TESTIMONY. IT'S NOT THOROUGH. AND THIS IS A CASE
21 THAT REQUIRES COMPLETE THOROUGHNESS AND COMPLETE, YOU KNOW,
22 EXAMINATION OF THE FACTS AND THE LAW BECAUSE IT IS A CASE OF
23 FIRST IMPRESSION.

24 SO IT SEEMS TO ME, YOU KNOW, THE DIFFERENCE BETWEEN
25 MARCH AND JUNE IS NOT THAT MUCH, GIVEN THE IMPORTANCE OF THE
26 ISSUES THAT ARE BEING RAISED BY THIS. AND WE DO HAVE A BIG,
27 GIANT CHUNK OF TIME IN JUNE. I UNDERSTAND THE COURT'S DESIRE
28 TO MOVE THIS FORWARD AS QUICKLY AS POSSIBLE. I THINK WE'VE

1 WORKED REALLY HEARD. ALL THE PARTIES HAVE WORKED HARD TO TRY
2 TO DO THAT, BUT THERE WAS THIS ISSUE THAT'S COME UP WITH
3 RESPECT TO THE MODEL THAT NOBODY ANTICIPATED AND THAT REQUIRES
4 SOME REAL CAREFUL ANALYSIS.

5 AND -- SO MY PERSPECTIVE -- I DON'T WANT TO SHOW UP
6 TO COURT IN MARCH AND SAY WE'RE NOT READY OR WE'RE READY, BUT
7 NOT AS READY AS WE'D LIKE TO BE. I DON'T SEE ANY PREJUDICE TO
8 THE CITY OR TO -- YOU KNOW, THE -- I GUESS THE ONLY OTHER
9 PARTY THAT -- THAT OPPOSED GOING INTO JUNE WAS WOOD
10 CLAEYSSENS. EVERYBODY ELSE WAS ON BOARD WITH THE JUNE TRIAL
11 DATE. I DON'T SEE ANY PREJUDICE.

12 WHAT IS THE PREJUDICE OTHER THAN THEY JUST WANT TO
13 GET THIS THING SORT OF JAMMED DOWN EVERYBODY, INCLUDING A
14 WHOLE BUNCH OF PRO PERS AND PEOPLE THAT HAVE VERY DIFFICULT
15 TIME FINDING COUNSEL TO PROPERLY REPRESENT THEM IN THIS CASE.
16 AND IT'S IMPORTANT. IT'S A REALLY IMPORTANT CASE. SO MY --
17 MY REQUEST TO THE COURT IS WE KICK THIS TO JUNE 13, WHEN WE
18 HAVE A WHOLE BLOCK -- BUNCH OF TIME AVAILABLE. AND THAT WILL
19 GIVE US MORE THAN ABUNDANT TIME TO GET THIS CASE SUBMITTED TO
20 THE COURT IN THE WAY THAT IT SHOULD BE SUBMITTED TO THE COURT
21 AND NOT IN THE WAY THAT THE CITY WANTS IT SUBMITTED TO THE
22 COURT.

23 THE COURT: WELL, YOUR CLIENTS ARE HOPING, AS I
24 UNDERSTAND IT, MR. PATTERSON, TO PERSUADE ME THAT STARTING
25 MOST OBVIOUSLY WITH THE UPPER HIGH BASIN BASED ON THE
26 TESTIMONY OF JORDAN -- THAT THERE IS NO MATERIAL
27 CONNECTIVENESS OF THE GROUNDWATER. SO IT HAPPENS FURTHER DOWN
28 THE VENTURA RIVER. THE PREMISE OF THAT IS NOT SURPRISING TO

1 ME, KNOWING THE GEOGRAPHY, ALTHOUGH I'M CERTAINLY WAITING TO
2 GET PROOF FROM BOTH SIDES BEFORE I FORM ANY CONCLUSION. BUT
3 IT'S NOTABLE THERE IS SUCH AN ELEVATION DIFFERENCE.

4 THE OJAI BASIN, WHERE THE CITY OF OJAI IS LOCATED,
5 HOPE TO DEMONSTRATE THE SAME THING. BUT THAT IS A SEPARATE
6 QUESTION FACTUALLY FROM THE ASSERTED DISCONNECTION FROM THE
7 UPPER HIGH BASIN.

8 CORRECT?

9 MR. PATTERSON: MY CLIENTS ARE IN THE --

10 THE COURT: BUT AM I CORRECT IN DESCRIBING THE
11 ARGUMENTS FACTUALLY ABOVE THE UPPER OJAI BASIN AND THE OJAI
12 BASIN, MR. PATTERSON?

13 MR. PATTERSON: THAT'S CORRECT. WE DO NOT THINK
14 THAT FROM WHERE WE PUMP IN THE DEEP WITH THE OJAI BASIN HAS
15 ANY MATERIAL OR SUBSTANTIAL IMPACT ON THE FLOWS WITHIN SAN
16 ANTONIO CREEKS OR THE VENTURA RIVER THAT HARMS IN THE SUMMER
17 MONTHS IN REACH 3 AND REACH 4.

18 THE COURT: AND IF YOU CAN PERSUADE ME,
19 NOTWITHSTANDING THE DIVISIONS OF THE UPPER STRETCH OF THE
20 VENTURA RIVER BENEFICIAL TO THE OJAI BASIN, THEN YOUR CLIENTS
21 ARE OUT FREE AND CLEAR.

22 CORRECT?

23 MR. PATTERSON: THAT'S -- THAT'S OUR GOAL, YOUR
24 HONOR.

25 THE COURT: WHY DO YOU HAVE ANY GREAT HOPE THAT THE
26 AQUADUCT OR CANAL BUILT, I BELIEVE, IN THE LATE '40S/EARLY
27 '50S TO DIVERT A PORTION OF THE NATURAL FLOW OF THE VENTURA
28 RIVER INTO YOUR CLIENT'S WATER BASIN WILL NOT ALMOST PRIMA

1 FACIE SHOW CONNECTIVENESS?

2 MR. PATTERSON YOU'RE GOING TO HEAR THAT, YOUR
3 HONOR. BUT I NEED TO SPEND A LOT OF TIME WITH THIS WITH OUR
4 EXPERT. AND OUR EXPERT IS PRETTY CLEAR. AND THERE ARE GOING
5 TO BE SOME OTHER FOLKS THAT ARE PRETTY CLEAR ABOUT THE FACT
6 THAT THE PUMPING -- AGAIN, IT'S NOT JUST A MATTER OF
7 CONNECTIVITY. IT'S A MATTER OF WHETHER THERE WILL BE --
8 MATERIALLY AND SUBSTANTIALLY AFFECT THE FISHERY IN REACH 3 AND
9 4 OF THE RIVER DURING THE SUMMER MONTHS. THAT'S WHAT THE
10 CHANNELKEEPER COMPLAINT WAS ABOUT.

11 THE COURT: HAS THE AQUADUCT OR CANAL THAT I
12 REFERENCED BEEN BLOWN UP AND TAKEN --

13 MR. HAGERTY: NOT THAT I'M AWARE.

14 THE COURT: SO IF YOU TAKE TWO ACRE FEET FROM A
15 RIVER AND DIVERT IT AWAY TO A PLACE THAT REDUCES THE AVAILABLE
16 FLOW TO GO DOWN THE NATURAL COURSE OF THE RIVER, DOES IT
17 NOT --

18 MR. PATTERSON: WITH ALL DUE RESPECT, I THINK THAT
19 IS A SIMPLISTIC SORT OF REVIEW OF IT. IT DEPENDS WHERE THE
20 WATER IS FLOWING, HOW IT'S FLOWING, WHERE IT'S FLOWING TO,
21 WHAT TIME OF THE YEAR IT'S FLOWING. THERE'S A WHOLE BUNCH OF
22 ISSUES RELATED TO THAT. AGAIN, I GO BACK TO THE COURT OF
23 APPEAL. IT'S THEIR CASE. BASICALLY JUST SAID CITY CAN SUE
24 PEOPLE WHO ARE AFFECTED REACH 3 AND 4 DURING THE SUMMER
25 MONTHS.

26 THE COURT: REMIND ME, MR. PATTERSON, REACHES 3 AND
27 4 DOWNSTREAM FROM WHERE THE SAN ANTONIO CREEK JOINS THE
28 VENTURA RIVER OR UPSTREAM?

1 MR. PATTERSON: WAY DOWNSTREAM.

2 THE COURT: SO WHATEVER BENEFICIAL -- WHETHER SAN
3 ANTONIO CREEK PROVIDES SUPPLEMENTS TO --

4 MR. HAGERTY: NOT NECESSARILY. DEPENDING ON THE
5 CIRCUMSTANCES AND WEATHER. IT'S MUCH MORE COMPLICATED THAN
6 JUST WATER FLOWS DOWNHILL.

7 THE COURT: FAIR ENOUGH. I ASK THESE QUESTIONS
8 BECAUSE I THOUGHT IF YOU THINK YOUR CLIENTS HAVE GOOD FACTS,
9 THEN YOU WOULD -- BECAUSE THEN THEY CAN BE SHED OF THE
10 PRESENTATIONS OF VENTURA CITY AS THEY PERCEIVE IT.

11 MR. PATTERSON: YOUR HONOR, WHAT MY CLIENTS ARE
12 LOOKING AT IS A DEVELOPMENT OF A NEW PUBLIC AGENCY WITHOUT ANY
13 REAL DEFINITION OF WHAT IT'S GOING TO DO. AND AT SOME UNKNOWN
14 COST, ON SOME ENORMOUS AMOUNT OF TIME IN ORDER TO IMPROVE.
15 THIS IS A FISHERY HABITAT RESTORATION PROJECT BY THE CITY.
16 IT IS NOT -- YOU KNOW, IN MY -- IN MY MORE CYNICAL MOMENTS I
17 ALWAYS VIEW IT AS A REAL WATER GRAB, AS IT'S BEEN STATED BY
18 THE CITY OF VENTURA, BECAUSE THEY WANT TO HAVE INFLUENCE ON
19 ALL OF THE WATER, ALTHOUGH THEY DON'T HAVE WATER RIGHTS OF THE
20 ENTIRE WATERSHED. THAT'S THE PROBLEM I HAVE IN TERMS OF
21 TRYING TO FIND A RESOLUTION IN THIS CASE.

22 THE COURT: BEAR WITH ME. IF WE CUT TO THE CHASE,
23 REALIZE THE WAY THE UPCOMING TRIAL IS ANTICIPATED -- I DO SEE
24 YOUR HAND, MR. GARRISON -- THE CURRENT PHYSICAL SOLUTION
25 NORMALLY DOESN'T MOVE THE WATER AROUND OR FIND A WAY TO CREATE
26 MORE WATER THROUGH CONSERVATION TECHNIQUES. IT IS SOLELY
27 MITIGATION OF PORTIONS OF THE RIVER IN TERMS OF GRAVEL AND
28 VEGETATION WITH COST SHARING ASSOCIATED WITH DOING THESE

1 IMPROVEMENTS.

2 BUT THE CASE IN FRONT OF ME IS PREMISED ON A THEORY
3 THAT IS GOING TO LEAD ALL THE WAY TO AN ADJUDICATION OF THE
4 CORRELATIVE RIGHTS OF THE OWNERS IN EACH OF THE
5 SUB-GROUNDWATER BASINS AND TRY TO CUT OFF THEIR -- RIGHTS IN
6 ORDER TO PROTECT THE AVAILABLE WATER. SO WE'VE GOT TWO
7 DIFFERENT END GAMES. THE ONE END GAME THEORETICALLY WHERE WE
8 CAN GO PHASE 1, TOTAL WORLD WAR III WHERE WE ACTUALLY DO
9 ADJUDICATE AND START CUTTING OFF WATER RIGHTS OR SOME
10 COMPROMISE IN THE FORM OF A SOLUTION WHERE WE HAVE THE
11 QUESTION OF WHO HAS TO SHARE THE COST. IS THAT SORT OF A
12 CORRECT PERCEPTION OF --

13 MR. PATTERSON: THE CURRENT PHYSICAL SOLUTION
14 BASICALLY TREATS MY CLIENT AND EVERYBODY ON THE WATERSHED ON
15 AN EQUAL BASIS IN TERMS OF COST. SO WE'RE CURRENTLY IN A
16 PLACE WHERE, YOU KNOW --

17 THE COURT: SO IN SIMPLEST TERMS, MR. GREG
18 PATTERSON, TREAT IT LIKE A CASH REGISTER?

19 MR. PATTERSON: YES. ALL OF US ARE BEING TREATED
20 LIKE A CASH REGISTER EQUALLY WITH THE CITY AND DOING THINGS
21 THAT THEY MAY NOT HAVE ANY MATERIAL IMPACT WITH RESPECT TO THE
22 HEALTH OF THE FISHERY. AND I'M ALL FOR THE HEALTH OF THE FISH
23 REQUIREMENT. I'M A FLY-FISHERMAN.

24 THE WAY IT'S BEING DONE IS PUTTING ENORMOUS BURDENS
25 ON A WHOLE BUNCH OF PEOPLE WITHIN THE WATERSHED THAT REALLY
26 SHOULDN'T BE INVOLVED IN THIS MANNER IN THIS CASE WITH AN
27 ADJUDICATION. AND THE PROBLEM THAT I HAVE, YOUR HONOR,
28 FRANKLY, IS THEY DON'T KNOW WHAT THEY'RE GETTING INTO.

1 THE COURT: WELL, THE FLIP SIDE IS, YOU KNOW, YOU
2 CAN WIN BECAUSE YOU KNOW WHAT THE FACTS ARE. BUT YOU DON'T
3 WANT TO PROVE THE FACTS IN MARCH. YOU WANT TO PROVE THE FACTS
4 IN JUNE.

5 MR. PATTERSON: WELL, THAT'S BASICALLY IT. I THINK
6 WE'LL BE MUCH BETTER PREPARED TO PRESENT A WELL THOUGHT-OUT,
7 FULLY INFORMED FACTUAL AND LEGAL CASE TO THE COURT IN JUNE.
8 AND AGAIN IT'S JUST BECAUSE I NEED UNTIL THE END OF FEBRUARY
9 IN ORDER TO HAVE MY EXPERT UNDERSTAND THE MODELS. WE THEN
10 HAVE EIGHT DEPOSITIONS THAT WE NEED TO CONDUCT. AND THAT'S
11 GOING TO TAKE AT LEAST A MONTH EVEN IF WE DO TWO A WEEK, WHICH
12 IS PRETTY AMBITIOUS, GIVEN EVERYBODY'S SCHEDULE. THAT PUTS US
13 INTO, YOU KNOW, APRIL.

14 AND THEN WE HAVE A WHOLE BUNCH OF -- OF
15 UNAVAILABILITY. AND -- AND SO IT JUST SEEMS TO ME THAT, YOU
16 KNOW, BETWEEN MARCH AND JUNE, NOT A BIG DEAL GIVEN THE
17 CIRCUMSTANCES OF THIS CASE AND THE MATERIAL ISSUES THAT ARE
18 EXPRESSED IN THIS CASE, THE COMPLICATIONS OF THIS CASE, BOTH
19 FACTUAL AND LEGAL. AND THERE'S GOING TO BE SOME HICCUPS
20 SOMEWHERE DOWN THE ROAD.

21 THE COURT: THANK YOU.

22 MR. GARRISON.

23 MR. GARRISON: THANK YOU.

24 AS MR. PATTERSON REPRESENTED, THESE OJAI GROUP
25 CORRECTLY SAID THE STATE MODEL WAS NOT -- OF DECEMBER. PRIOR
26 TO THAT, YOUR HONOR --

27 THE COURT: SO BEAR WITH ME. GOOD NEWS. WE FINALLY
28 HAVE THE STATE MODEL. IT HAS FINALLY EMERGED.

1 MR. MELNICK: YOUR HONOR, THIS IS MARK MELNICK. CAN
2 I --

3 THE COURT: GO AHEAD.

4 MR. MELNICK: HE'S TALKING ABOUT THE CITY'S EXPERT'S
5 MODEL, THE STATE --

6 THE COURT: YOU'RE BREAKING UP. WE LOST YOU.

7 MR. MELNICK: PRELIMINARY GRAFT.

8 THE COURT: WE LOST YOU, MR. MELNICK. REPEAT
9 YOURSELF.

10 MR. MELNICK: SORRY, SIR. THE STATE MODEL WAS
11 RELEASED IN AUGUST. MR. GARRISON IS REFERRING TO THE CITY'S
12 EXPERTS MODEL, WHICH WAS RELEASED ON -- IN DECEMBER. HE JUST
13 MISSPOKE.

14 THE COURT: NO PROBLEM. YOUR WHOLE MODEL GOT OUT IN
15 AUGUST, I THOUGHT. MAYBE IT WAS PART OF THE MODEL.

16 MR. MELNICK: THE WHOLE MODEL, COMPLETE
17 DOCUMENTATION WASN'T RELEASED. ONLY SOME OF THE DOCUMENTATION
18 WAS RELEASED. BUT ALL OF THE DOCUMENTATION WAS RELEASED IN
19 DECEMBER.

20 THE COURT: GOOD.

21 BACK TO YOU, MR. GREG GARRISON.

22 MR. GARRISON: JUST QUICKLY, YOUR HONOR. I'VE TAKEN
23 A LONGER ROAD HERE JUST TO REFRESH EVERYONE'S RECOLLECTION.
24 BUT WE HAD A HEARING SPECIFIC TO THE BASIN BOUNDARIES AND THE
25 FACT THAT TWO OF THE BOUNDARIES DID NOT HAVE MEETS AND BOUNDS.
26 BUT SUBSUMED IN THAT ARGUMENT WAS THE CHARTS OF THE DEFAULTED
27 DEFENDANTS THAT BBK HAD PRODUCED IN AUGUST 13, 2021. THERE
28 WERE THREE MAPS AND THEY RELATE TO THE BASINS. AND THEY WERE

1 THE END -- OR THEY WERE THE DEFAULTED DEFENDANTS AND THE
2 ANSWERING DEFENDANTS. THAT'S WHAT WE DISCUSSED.

3 NOW, YOU ORDERED ON DECEMBER 13TH THAT BBK PRODUCE
4 THE REVISED MAP OF THE ANSWERING DEFENDANTS BASED ON THE THREE
5 MAPS AND CREATE A NEW SET OF THREE MAPS OF THE DEFAULTED
6 DEFENDANTS. TO DATE THOSE TWO SETS OF MAPS HAVE NOT BEEN
7 RECEIVED FROM BBK.

8 THE COURT: MR. HAGERTY.

9 MR. HAGERTY: YOUR HONOR, YOU REQUESTED THAT WE
10 PROVIDE THAT INFORMATION AS A COURTESY TO THE -- WE PREVIOUSLY
11 HAD DONE THAT. IT'S NOT A DISCOVERY REQUEST, AS MR. GARRISON
12 IS WELL AWARE. AND I'VE INFORMED HIM MULTIPLE TIMES. WE ARE
13 WORKING ON THAT. IT'S A SIGNIFICANT TASK AS IS SAID IN THE
14 DECLARATION. IT'S TAKEN A SIGNIFICANT AMOUNT OF PARALEGAL
15 TIME, WHILE WE'RE RESPONDING TO THREE MOTIONS FOR JUDGMENT ON
16 THE PLEADING AND ALSO PREPARING FOR TRIAL AND CONDUCTING
17 EXPERT DEPOSITIONS.

18 SO WE HAVE COMMITTED TO TRY TO GET THAT MAP --
19 REVISED MAP OF THE APPEARING PARTIES OUT TO ALL PARTIES BY THE
20 END OF THIS MONTH, YOUR HONOR. AND, AS MR. GARRISON IS WELL
21 AWARE, WE HAVE MET WITH HIM MULTIPLE TIMES TO ANSWER ANY
22 PARTICULAR QUESTIONS HE HAS. AND WE'VE ALWAYS PROVIDED THAT
23 INFORMATION TO HIM. IF THERE IS ANY INFORMATION THAT HE
24 DOESN'T HAVE, WHICH I'M NOT AWARE OF, HE SHOULD CALL ME AND WE
25 WILL PROVIDE THAT TO HIM.

26 SO THIS IDEA THAT WE'RE SOMEHOW DEFICIENT IN
27 PROVIDING SOMETHING, THAT IS JUST A BENEFIT TO THE PARTIES.
28 I -- I AM TRYING TO WITHHOLD MY -- MY -- I'M TRYING TO

1 MAINTAIN MY PROFESSIONAL COURTESY, YOUR HONOR. BUT THIS --
2 THIS IS AN ISSUE THAT WE ARE HONORING THE COURT'S REQUEST. WE
3 WILL DO THAT.

4 THE COURT: THANK YOU.

5 MR. GARRISON.

6 MR. GARRISON: IN MY DECLARATION THAT WAS ONE OF THE
7 DATES ASSESSED THAT I THOUGHT WAS IMPORTANT. THE
8 CROSS-DEFENDANTS COMPLETELY UNDERSTAND THE LANDSCAPE OF THE
9 CROSS-DEFENDANTS THAT ARE INVOLVED IN THIS CASE IN ORDER TO
10 FURTHER PREPARE SPECIFICALLY FOR THOSE CROSS-DEFENDANTS, IF
11 YOU REMEMBER, THAT ARE IN THE UPPER OJAI BASIN THAT ARE NOT IN
12 THE VENTURA WATERSHED THAT ARE IN THE SANTA CLARA RIVER
13 WATERSHED. AND THOSE ISSUES -- ADDITIONALLY, AS THEY PRESENT
14 THEMSELVES, THE ONLY ONE THAT HAS THAT INFORMATION IS BBK.

15 THANK YOU.

16 THE COURT: WHO'S NEXT?

17 MR. AUGUST: JEREMY AUGUST. WE FILED A JOINDER.

18 THE COURT: GO AHEAD.

19 MR. AUGUST: I THINK THE MAIN THING THAT OUR JOINDER
20 SAW WE NEED SOME EXTENDED PERIOD OF TIME BECAUSE ALL OF THE
21 TRIAL DEADLINES ARE COMING UP. WE REALLY NEED TO GET TO THOSE
22 DEPOSITIONS BEFORE WE DO OUR EXHIBIT LIST AND OUR TRIAL BRIEFS
23 AND ALL THOSE THINGS THAT ARE SO CRITICAL TO A MEANINGFUL
24 TRIAL.

25 WHETHER A MONTH IS ENOUGH, IT'S GOING TO BE TIGHT.
26 WE DO HAVE A LOT OF DEPOSITIONS TO GET THROUGH. I STILL DON'T
27 HAVE THE MATERIALS FROM -- AND MR. MELNICK HAS BEEN COMPLETELY
28 HONORABLE. AND WE'LL PROBABLY BE ABLE TO GET TO SOME

1 RESOLUTION.

2 THE STATE RELEASED THE MODEL RIGHT BEFORE CHRISTMAS.
3 WE'RE GOING TO HAVE DEPOSITIONS ON BOTH VERSIONS OF THE MODEL.
4 I STILL AM MISSING SOME OF THE TECHNICAL -- I THINK WE CAN GET
5 THERE, BUT THAT IS GOING TO TAKE TIME. SO THAT MIRRORS IN
6 SOME WAYS WHAT MR. PATTERSON WAS DISCUSSING, A REASONABLE
7 EXTENSION. I DON'T KNOW IF IT'S SIX WEEKS, EIGHT WEEKS.
8 OBVIOUSLY THAT IS UP TO THE COURT.

9 BUT STARTING ON FEBRUARY 14, FROM MY PERSPECTIVE, IS
10 AN IMPOSSIBILITY, AT LEAST GIVEN OTHER DEADLINES AND --
11 ANYWAY, I'LL JUST LEAVE THE COURT WITH THAT. ANYWHERE FROM
12 THE END OF MARCH THROUGH JUNE WE'LL FIGURE OUT A WAY TO MAKE
13 IT WORK. AND THANK YOU FOR CONSIDERING OUR POSITION.

14 THE COURT: THANK YOU, SIR.

15 OTHERS WHO WISH TO BE HEARD?

16 MR. SLATER: YES, YOUR HONOR. SCOTT SLATER ON
17 BEHALF OF THE WOOD CLAEYSSENS TRUST, OTHERWISE KNOWN AS TAYLOR
18 RANCH. COUPLE OF POINTS. WE SPENT THE BETTER PART OF TODAY
19 TALKING ABOUT A MOTION FOR -- OR JUDGMENT ON THE PLEADINGS
20 RAISING JURISDICTIONAL ISSUES. AND, AS I UNDERSTAND IT, THIS
21 PHASE IS ABOUT THE QUESTION OF INTERCONNECTEDNESS. THAT IS
22 NOT AS MR. PATTERSON SUGGESTS, A DETAILED INQUIRY OF PUMPER BY
23 PUMPER THEIR SEASONAL IMPACT ON THE FISHERY.

24 WE'RE LOOKING AT THE QUESTION OF ARE THE GROUNDWATER
25 BASINS INTERCONNECTED TO THE STREAM AND TO EACH OTHER SUCH
26 THAT EVEN IF THE UPPER AREA IS VERY SATISFIED AND HAPPY WITH
27 THE AMOUNT OF WATER THEY USE -- DRIBBLE, DRIBBLE, QUOTE, YOUR
28 HONOR -- DOWN THE RIVER TO THOSE PEOPLE WHO ARE DOWNSTREAM.

1 THE QUESTION IS INTERCONNECTEDNESS WILL ADDRESS THE
2 FEATURE OF MATERIALITY DOWN THE ROAD. WE'RE TRYING TO
3 UNDERSTAND WHETHER THERE WAS A JURISDICTIONAL BASIS TORT TO
4 EVALUATE THE RIGHTS AND CONDUCT UPGRADING USER AS THEY AFFECT
5 DOWNGRADING USERS. AND AS THE MOST SIGNIFICANT AGRICULTURE
6 ENTITY IN THE VENTURA RIVER WATERSHED, WE ARE HERE AND
7 SUPPORTING THE PHYSICAL SOLUTION BECAUSE AT ITS CORE. IT
8 SEEKS TO SOLVE A PROBLEM, WHICH IS THE ALLEGATION OF A
9 CRASHING FISHERY.

10 WE ARE PREJUDICED WITH THE PASSAGE OF TIME AND THE
11 FAILURE TO MOVE FORWARD. WE ARE PROVIDING AN ADAPTIVE
12 MANAGEMENT PLAN THAT CAN TAKE INTO ACCOUNT NEW FACTS,
13 DIFFERENT FACTS, MORE INFORMATION AS WE GO FORWARD. BUT IF WE
14 DO NOT GET STARTED TO ALLOW EXPERTS WEEKS TO CRITIQUE A MODEL
15 DURING WHICH TIME THEY COULD CONSTRUCT ONE, WE ARE PREJUDICED.
16 RESERVE THE RIGHT TO MOVE FORWARD. NO GOOD CAUSE HAS BEEN
17 SUGGESTED TO DELAY THIS CASE TO JUNE. WE SUPPORT A MODEST
18 CONTINUANCE. AND IN THE FUTURE WE WOULD APPRECIATE TO BE
19 CONTACTED WHEN THESE DATES ARE BEING SUGGESTED OR SCHEDULED.

20 THANK YOU, YOUR HONOR.

21 THE COURT: ANYBODY ELSE?

22 MR. PATTERSON, YOU ARE MUTED. I SEE YOUR MOUTH
23 MOVING.

24 MR. PATTERSON: JUST QUICKLY, YOU KNOW, AGAIN, I
25 JUST WANTED TO REITERATE THE FACT THAT WE REQUESTED THIS MODEL
26 THE DAY AFTER WE RECEIVED THE ARCHER REPORT. AND THE CITY
27 REFUSED TO PROVIDE IT FOR FOUR MONTHS. AND SO WE'RE IN A --
28 WE'RE IN A PICKLE HERE. I'M BEING TOLD BY MY EXPERT -- AND I

1 DON'T KNOW -- YOU KNOW, I -- THIS IS -- I'M NOT A MODEL
2 EXPERT, BUT I'M BEING TOLD THAT IF THEY WANT TO BE ABLE TO
3 TESTIFY COMPLETELY AND THOROUGHLY ABOUT THESE MODELS AND ABOUT
4 INTERCONNECTIVITY, WHICH I AGREE WITH MR. SLATER, IS THE
5 INITIAL ISSUE THAT WE HAVE TO DEAL WITH, WE NEED EIGHT WEEKS.

6 AND I DON'T SEE ANY -- AND THEN WE'RE GOING TO HAVE
7 TO DO ALL THE DEPOSITIONS. I DON'T SEE DOING DEPOSITIONS OF
8 EXPERTS WHEN THEY HAVEN'T HAD TIME TO ADEQUATELY REVIEW THE
9 MATTER. YOU ARE GOING TO GET STUFF AT TRIAL THAT HASN'T BEEN
10 RAISED AT DEPOSITIONS. THAT ALWAYS RAISES ISSUES IN A TRIAL.
11 SO FROM MY PERSPECTIVE, AGAIN -- AND THEN I'LL SHUT UP -- YOU
12 ARE GOING TO DO WHAT YOU ARE GOING TO DO.

13 JUST SEEMS TO ME THAT JUNE 13 PROVIDES EVERYBODY
14 PLENTY OF TIME TO GET ALL THIS DONE. A COUPLE OF MONTHS IS
15 NOT GOING TO PREJUDICE ANYBODY. THIS CASE HAS BEEN PENDING
16 FOR YEARS. WE'VE ONLY BEEN INVOLVED IN IT FOR A COUPLE OF
17 YEARS, WHILE THE CITY HAS HAD MANY, MANY YEARS TO -- TO
18 PREPARE THIS CASE AND PREPARE THEIR MODELS AND PROBABLY
19 THOUSANDS OF HOURS ON THIS. IT'S VERY COMPLICATED AND TIME --

20 MR. SLATER, I'M SORRY WE DIDN'T CONTACT YOU AND YOUR
21 CLIENT. I THOUGHT YOU WERE KIND OF INVOLVED WITH THE CITY.
22 AND I THINK THERE WAS SOME COMMUNICATION ABOUT WHAT YOU WERE
23 TRYING TO DO, BUT I WILL CERTAINLY INCLUDE YOU ON ANY FURTHER
24 COMMUNICATIONS.

25 I'M DONE, YOUR HONOR.

26 THE COURT: MR. PISANO.

27 MR. PISANO: THANK YOU, YOUR HONOR.

28 WHEN WE STARTED THIS DISCUSSION AND THE COURT ASKED

1 IF I HAD ANY OBJECTION, I SAID NO OBJECTION PROVIDED IT IS A
2 BRIEF CONTINUANCE. IF WE'RE TALKING ABOUT JUNE, THEN I OBJECT
3 ON BEHALF OF THE CITY.

4 THE COURT: THE GOOD NEWS IS I DO TOO.

5 MR. PISANO: MR. PATTERSON KEEPS BRINGING UP THE
6 DELAY IN PRODUCING THE MODEL. WE WORKED OUT A -- WE ALL
7 AGREED TO DECEMBER 27 MODEL PRODUCTION DATE. INITIALLY I WAS
8 TOLD THEY NEED TWO WEEKS TO LOOK AT THE MODEL, THEN THREE
9 WEEKS. NOW WE'RE TALKING ABOUT FOUR MONTHS. YOUR HONOR, A
10 SHORT CONTINUANCE IS OKAY WITH US. A JUNE TRIAL DATE IS
11 UNACCEPTABLE.

12 THANK YOU.

13 THE COURT: MS. JACOBSON.

14 MR. JACOBSON: YES, YOUR HONOR. I JUST WANT TO SAY
15 A FEW THINGS. THE ONLY PREJUDICE THAT'S BEEN ARTICULATED HERE
16 IS THEY DON'T WANT TO WAIT ANY LONGER AS TO THE GOOD CAUSE TO
17 PUT IT INTO CONTEXT. THE CITY OF VENTURA ON THIS KEY ISSUE OF
18 CONNECTIVITY HAS PUT FORTH AN EXPERT WHO CREATED A MODEL THAT
19 SHE'S RELYING ON HEAVILY TO ESTABLISH HYPOTHETICALLY WHAT A
20 MODEL SAYS ABOUT WHETHER GROUNDWATER AND SURFACE WATER IS
21 CONNECTED OR NOT.

22 SO THAT MODEL IS VERY IMPORTANT TO UNDERSTAND, TO
23 ANALYZE, AND TO REVIEW BEFORE CONDUCTING THE DEPOSITION OF THE
24 KEY WITNESS OR VENTURA ON THIS POINT. THE STIPULATION WAS
25 ENTERED INTO IN DECEMBER, NOT REQUIRED BY LAW. ACTUALLY, BY
26 LAW UNDER THE DISCOVERY ACT THAT MODEL WAS REQUIRED TO BE
27 PRODUCED AT THE TIME OF THE REPORT. AND ONLY AFTER MEET AND
28 CONFER EFFORTS AND DEMANDING IT REPEATEDLY WAS IT AGREED TO

1 LATER IN DECEMBER TO PRODUCE IT. AND WE AGREED TO A
2 STIPULATED STIPULATION AND ORDER ON THAT. BUT IT WASN'T
3 REQUIRED. WE JUST WANTED TO GET THE MODEL.

4 THE COURT: THE GOOD NEWS IS I'M PROBABLY GOING TO
5 CONTINUE THE TRIAL AND YOU PRACTICE WITH JENNIFER BUCKMAN.
6 AND YOU AND MS. BUCKMAN ARE GOING TO HAVE TO FIGURE OUT THAT
7 OTHER EVENT AS WELL AS TRIAL IN LATE MARCH WHEN YOU THINK YOU
8 ARE ALL AT THE EVENT.

9 MR. JACOBSON: OKAY, YOUR HONOR. I VERY MUCH
10 APPRECIATE THAT. I JUST CAN'T EXPRESS THE IMPORTANCE OF
11 CONDUCTING THESE DEPOSITIONS --

12 THE COURT: YOU WILL BE ABLE TO DO IT. IF THEY
13 WON'T GIVE YOU A DEPOSITION QUICKLY, YOU JUST LET ME KNOW.
14 I'M AVAILABLE 24/7 ON THE BULLETIN FIVE DAYS A WEEK TO HOLD AN
15 INFORMAL CONFERENCE. OBVIOUSLY COVID MAKES PRACTICE A LOT
16 MORE DIFFICULT, BUT, YOU KNOW, FOR THE PURPOSES OF THIS CASE
17 YOUR WEEKENDS AND HOLIDAYS ARE GONE AND I EXPECT YOU TO BE
18 WORKING -- NOT 24/7, BUT BE WORKING 12 HOURS A DAY, SIX DAYS A
19 WEEK. TAKE OFF A LITTLE BIT OF TIME FOR YOUR HEALTH AND
20 RELIGIOUS OBSERVANCE. BUT, YOU KNOW, JUDGE CRACKED THE WHIP
21 BECAUSE HE WAS A PARTNER AT GIBSON DUNN AND EXPECTS EVERYONE
22 TO WORK AS HARD AS GIBSON DUNN.

23 MS. JACOBSON: I APPRECIATE THAT. MY WEEKEND IS
24 ALREADY GONE.

25 THE COURT: THAT'S THE REALITY. BUT MY MINDSET, SO
26 YOU UNDERSTAND WHERE I'M COMING FROM --

27 MS. JACOBSON: I JUST WANTED TO -- I DON'T THINK
28 THERE'S --

1 THE COURT: HAVE I DONE ANYTHING TO SLOW YOU DOWN IN
2 GETTING THE MODEL?

3 MS. JACOBSON: NO, YOUR HONOR.

4 THE COURT: IS THERE ANYTHING I CAN DO TO SPEED UP
5 THE DEPOSITION AT THIS JUNCTURE?

6 MS. JACOBSON: NO, YOUR HONOR.

7 THE COURT: ANYTHING ELSE OTHER THAN YOU WANT ME TO
8 PUSH THE TRIAL FARTHER THAN MARCH 16?

9 MR. PATTERSON: GREG PATTERSON.

10 THE COURT: THIRTY SECONDS.

11 MR. PATTERSON: I'M LIVING WITH THE MARCH TRIAL
12 DATE, BUT THERE ARE SOME PRE-TRIAL DATES THAT I WOULD
13 VOLUNTEER TO TALK WITH THE CITY AND THE OTHER PARTIES ABOUT
14 SETTING THE -- THE APPROPRIATE DISCOVERY EXPERT WITNESS
15 DISCOVERY CUTOFF DATE, AS WELL AS THE DEADLINES FOR SUBMITTING
16 ALL THE PRE-TRIAL PAPERS THAT NEED TO BE SUBMITTED. AND WE'LL
17 SUBMIT AN ORDER TO THE COURT.

18 THE COURT: I PLAN TO SET THIS CASE FOR ANOTHER
19 STATUS CONFERENCE THIS COMING TUESDAY, JANUARY 25TH, 1:30 TO
20 TALK FURTHER WITH YOU ABOUT ALL THE DEADLINES. AND ANY
21 DEADLINES THAT FALL BEFORE JANUARY 25TH ARE ABATED UNTIL THE
22 25TH. AND I'M NOT GOING TO EXPECT YOU TO CRANK OUT SOME PIECE
23 OF WORK WITHIN 24 HOURS OF JANUARY 25TH DESPITE MY GIBSON DUNN
24 BACKGROUND.

25 TURNING TO THE QUESTION OF THE TRIAL CONTINUANCE,
26 THE AGE OF THE CASE IS SUCH AND THE SEASONAL CHARACTERISTIC OF
27 THE CONCERN OF REDUCED WATER FLOW IS SUCH THAT IN MY DUTY AS A
28 PUBLIC OFFICIAL AND CONSTITUTIONAL OFFICER I FEEL IT'S

1 IMPORTANT FOR ME TO MOVE THE CASE FORWARD SO IT CAN HAVE ITS
2 FIRST CONTESTED FACTUAL DETERMINATION.

3 TO THE BEST OF MY KNOWLEDGE, THIS HAS BEEN AN
4 EXERCISE -- I'LL KEEP IT POLITE -- IN LEGAL MACHINATIONS
5 INSTEAD OF ANOTHER WORD THAT STARTS WITH SIMILAR PHRASING. I
6 AM EXERCISING MY DISCRETION TO CONTINUE THE FEBRUARY 14 TRIAL
7 TO BE A 15-DAY COURT TRIAL MARCH 15, 8:30. THAT DOESN'T MEAN
8 EVERY TRIAL DATE WILL START AT 8:30, BUT WE'LL SEE. THE GOOD
9 NEWS IS YOU ARE LANDING IN A WIDE OPEN SPOT ON MY CALENDAR. I
10 NEED DO NOTHING EXCEPT CANCEL A TRIP TO EGYPT, WHICH I'VE
11 DONE. YOU ARE COMING AT A TIME WHEN BLESSEDLY I HAVE A LOT OF
12 CAPACITY WITHOUT HAVING TO TORTURE THE CALENDAR.

13 I WILL SEE YOU THIS COMING TUESDAY AT 1:30. YOU MAY
14 COME TO COURT. WE'VE BEEN SPACED OUT TODAY. WE DEFINITELY
15 NEED TO KEEP PHYSICAL ATTENDANCE IN COURT TO WHAT IS
16 PROPORTIONATE, AND MORE THAN THAT FOR PUBLIC HEALTH REASONS.

17 HAVING SPENT MORE THAN TIME LAST WEEK THAN I WANTED
18 IN A LARGE HOSPITAL IN LOS ANGELES AND WATCHING THE CONDITIONS
19 THERE, IT'S OBVIOUS THAT WE ARE IN THE MIDDLE OF A PUBLIC
20 HEALTH EMERGENCY. CITY OF VENTURA'S MOTION REMAINS FOR
21 FEBRUARY 8TH.

22 WHAT ELSE DO WE NEED TO ADDRESS THIS AFTERNOON?

23 MR. HAGERTY: NOTHING. I APPRECIATE YOUR TIME AND
24 WISH YOUR WIFE A SPEEDY RECOVERY.

25 THE COURT: MS. JACOBSON.

26 MS. JACOBSON: NOTHING, YOUR HONOR. THANK YOU VERY
27 MUCH. AGAIN, I HOPE THAT YOUR WIFE HAS A SPEEDY RECOVERY AS
28 WELL.

1 THE COURT: THANK YOU. SOMEBODY AT L.A. COURT
2 CONNECT TRYING TO BE HEARD?

3 UNKNOWN SPEAKER: I JOIN IN WISHING YOUR WIFE A
4 SPEEDY RECOVERY. THE ONLY THING I WAS GOING TO ASK FOR THE
5 UPCOMING HEARING ON TUESDAY, IF THE COURT WILL BE WILLING TO
6 PROVIDE ADDITIONAL GUIDANCE. I KNOW IN NOVEMBER THERE WAS AN
7 EFFORT TO DO THAT. IT WOULD BE HELPFUL AS WE'RE GOING TO DO
8 OUR DEPOSITIONS -- AND THAT'S GOOD. BUT AS WE START DOING OUR
9 TRIAL BRIEFS AND START TO FOCUS ON PHASE 1 TRIAL, HEARING WHAT
10 THE COURT WANTS TO HEAR AND WHAT THE COURT VIEWS AS PROPER
11 ISSUES.

12 THE COURT: REMIND ME, WAS THERE A SET OF PAPERS
13 THAT WERE SUBMITTED TO THE COURT PREVIOUSLY THAT FRAMED THE
14 ISSUES THAT I SHOULD GO BACK AND REVIEW BEFORE NEXT TUESDAY
15 AND/OR COMMENT ON IN ADVANCE OF TUESDAY? IF SO, I'M GLAD TO
16 DO A DO-OVER.

17 UNKNOWN SPEAKER: WE BELIEVE THE ISSUES ARE CLEAR,
18 BUT THE HISTORY -- WHAT YOU MIGHT WANT TO LOOK AT IS OUR
19 ORIGINAL MOTION, WHICH IS BACK, I THINK, IN AUGUST -- AROUND
20 AUGUST OF LAST YEAR. MOTION TO BIFURCATE. THE COURT GRANTED
21 THAT MOTION. THERE WERE THREE ISSUES THAT WERE TIED UP FOR
22 TRIAL. TWO OF THOSE THREE HAVE BEEN RESOLVED THROUGH THE
23 ORDER THAT YOU'VE NOW SIGNED.

24 THE COURT: THAT WAS THE BOUNDARIES?

25 UNKNOWN SPEAKER: WATERSHED BOUNDARIES AND BASIN
26 BOUNDARIES. THOSE ARE OFF THE TABLE. SO WE JUST START ON THE
27 QUESTION OF INTERCONNECTION. I'M HAPPY TO TALK ABOUT THE
28 SCOPE OF THAT. WE DON'T HAVE COMPLETE AGREEMENT ON WHAT THE

1 SCOPE IS. THERE WILL BE LIKELY MOTIONS IN LIMINE BEFORE
2 TRIAL, WHETHER CERTAIN EXPERTS ARE APPROPRIATE FOR THAT OR
3 NOT.

4 I'M NOT SURE IT'S GOING TO BE EFFECTIVE ON THE 25TH
5 TO HAVE THAT TYPE OF DISCUSSION. AND IF YOUR HONOR REMEMBERS,
6 WE WORKED WITH MR. JUNGREIS AND MS. JACOBSON AND CAME UP A
7 LIST OF FIVE ISSUES. WE THEN SUBMITTED ISSUES OF LAW AND FACT
8 BRIEFING TO YOU.

9 THE COURT: JUST BY WAY OF EXAMPLE, IS WHERE YOUR
10 HISTORIAN WAS CURIOUS AS FIRST, BUT SEEMS LESS CURIOUS NOW, AS
11 I UNDERSTAND, THAT SOMEWHERE IN THE HISTORY OF THE REGION SOME
12 MANMADE IMPROVEMENTS -- CANAL OR SOMETHING OR OTHER APPARENTLY
13 TACKS OFF THE UPPER VENTURA RIVER AND IS CAPABLE OF DIVERTING
14 SOME OF THE WATER INTO THE OJAI BASIN FOREGROUND WATER
15 REPLENISHMENT. I BELIEVE YOUR HISTORIAN WAS TALKING ABOUT
16 THAT OR MAYBE --

17 UNKNOWN SPEAKER: YOU HAVE IT EXACTLY RIGHT. WE
18 RECOGNIZE --

19 THE COURT: NOT PUEBLO RIGHT?

20 UNKNOWN SPEAKER: NOT PUEBLO.

21 THE COURT: JUST THE ONE PARTICULAR DIVERSION?

22 UNKNOWN SPEAKER: MANMADE INTERCONNECTION IS WHAT WE
23 REFERRED. THAT IS GOING TO BE --

24 THE COURT: WELL, IRONICALLY INsofar AS IT'S THERE
25 AND THERE'S A RECORD OF HOW MANY ACRE FEET, WHAT MONTHS OF
26 THE -- IN THE LAST 10 YEARS, PRESUMABLY THOSE ARE AREN'T GOING
27 TO BE DISPUTED FACTS.

28 UNKNOWN SPEAKER: YOUR HONOR, I THINK IT'S -- I

1 REALLY DON'T WANT TO OPEN UP A WHOLE NEW LINE OF DISCUSSION AT
2 4:40. ALL I WAS SAYING IS I'M HAPPY TO WORK WITH
3 MR. JUNGREIS. WE CAN WORK WITH THE PARTIES. BUT I'M NOT SURE
4 IT'S GOING TO BE SUPER EFFECTIVE FOR YOU TO ADDRESS THAT. I
5 THINK THE 25TH SEEMS PERFECT TO GET OUR DATES ALIGNED. AND WE
6 CAN CONTINUE TO TALK. I AM HAPPY TO TALK WITH MR. JUNGREIS
7 MORE. I UNDERSTAND IT'S WHAT HE'S PREPARING FOR. WE THINK
8 IT'S CLEAR HE DOESN'T FULLY UNDERSTAND OR THINK IT'S CLEAR.

9 THE COURT: I'LL SET A SECOND -- THURSDAY, 27TH,
10 1:30 TO FOLLOW UP ON WHAT EMANATES TUESDAY, THE 25TH. PERHAPS
11 AT THAT POINT WE CAN GET TO SOME GREATER CLARITY GIVING YOU A
12 CHANCE TO GIVE ME A LIST OF COMPETING STATEMENTS, SHORT BRIEFS
13 OF WHAT SHOULD OR SHOULDN'T BE FACT ISSUES.

14 IT MIGHT BE USEFUL TO KNOW WHAT YOUR COMPETING VIEWS
15 ARE AS TO WHETHER SOME KIND OF ONE DROP THEORY -- I WILL BACK
16 UP AND USE MY ANALOGY, THE ARGUMENT MADE BY ASBESTOS
17 CLAIMANTS. WHICH IS, IF YOU HAVE A PLAINTIFF WHO HAS SEEN OR
18 BEEN EXPOSED TO EVEN ONE STRAND OF ASBESTOS, ANY RESULTING
19 DISEASE ASSOCIATED WITH ASBESTOS COULD HAVE BEEN BELIEVED TO
20 BE CAUSED BY THE MERE EXPOSURE TO ONE STRAND WITHOUT ANY
21 NORMAL SENSE OF QUANTITY, DURATION. AND ALL HAVING LIKELY
22 IMPACT ON THE POSSIBILITY OF CAUSATION.

23 AND I USE THAT ONLY BY ANALOGY, WHETHER THERE IS
24 GOING TO BE ONE DROP ARGUMENT BY THE CITY OF VENTURA. IF YOU
25 CAN SHOW ONE DROP THAT GOES FROM THE -- BASIS THROUGH THE
26 GROUND AND LEACHES OUT TO THE CREEK AND GET BACK INTO THE
27 SURFACE FLOW OF SAN ANTONIO CREEK AND THEN SOMEHOW DROPS INTO
28 THE OJAI BASIN AND THEN LEACHES OUT A SECOND TIME INTO THE SAN

1 ANTONIO CREEK OR WHATEVER IT IS, THAT SOMEHOW THAT THEORETICAL
2 ONE DROP IS ENOUGH TO SHOW CONNECTIVENESS FOR PURPOSE OF THE
3 STATUTE OF COMMON LAW OR WHETHER YOU HAVE TO SHOW SOMETHING
4 THAT MIGHT LOOK MORE LIKE MATERIALITY TO INDICATE WHAT IN THE
5 GRAND SCHEME OF THINGS IS MATERIAL.

6 UNKNOWN SPEAKER: I THINK THAT'S -- I WOULD
7 ENCOURAGE THE COURT TO LOOK BACK AT THE ISSUE BRIEFS WE
8 SUBMITTED. I THINK WE SUBMITTED A BINDER THAT HAD ALL OF THEM
9 IN IT. IT MAY BE BEFORE THE 27TH -- IT MAY BE INSTRUCTIVE TO
10 LOOK AT THAT.

11 THE COURT: I'LL GO BACK IN MY CHAMBERS. IF THE
12 BINDER -- IF IT'S ON MY COFFEE TABLE, I MIGHT AS WELL TAKE IT
13 HOME OVER THE WEEKEND. I WANT MS. JACOBSON TO ESCORT YOU.

14 MR. HAGERTY: THANK YOU, YOUR HONOR.

15 THE COURT: OKAY. SO I'M NOT REQUIRING ANYTHING IN
16 WRITING BEFORE THE 25TH. LET'S GET TOGETHER 1:30, SEE
17 WHATEVER PROGRESS WE'RE MAKING. IF IF YOU HAVE A PROPOSED
18 ORDER, A BRIEF, TAKE ADVANTAGE. AS WE GO FORWARD, I DON'T
19 NECESSARILY NEED COURTESY COPIES OF EVERYTHING, BUT IT DOES
20 HELP. TRYING TO DO IT ALL ELECTRONICALLY IS DIFFICULT.

21 SO THAT'S WHY WE DO WANT YOU TO SERVE THE COURT WITH
22 EVERYTHING ON FILE & SERVEXPRESS. FOR SOME REASON -- YOU CAN
23 GO BACK AND ASK YOUR STAFF. BUT LIFE IS SHORT. THAT IS NOT
24 ANYTHING FOR YOU TO WORRY AS YOU GO HOME TONIGHT. JUST MAKE
25 SURE YOUR STAFF DIDN'T TO IT THAT AGAIN.

26 MR. BAGGERLY: THIS CLAUD BAGGERLY.

27 THE COURT: GO AHEAD.

28 MR. BAGGERLY: THANK YOU FOR YOUR INFORMATION. AND

1 I'M REALLY SURPRISED NOT A SINGLE ATTORNEY IS GOING TO TELL
2 YOU THE TRUTH ABOUT THIS, BUT THE -- FROM THE DAMN TO THE
3 UPPER OJAI -- BUT THE OJAI BASIN STOPPED COMPLETELY IN 1985.
4 THAT CONDUIT PIPELINE IS NOW USED TO PROVIDE DRINKING WATER
5 FROM LAKE CASITAS AND SEVEN ZONES OF --

6 THE COURT: WHO WAS THE SECOND VOICE? THAT WAS
7 PATRICIA --

8 THE COURT: I DIDN'T HEAR THE WORDS. I JUST KNEW
9 THERE WAS A SECOND VOICE. BUT IT WAS TOO MUMBLED. IF IT'S
10 WORTH REPEATING, SAY IT AGAIN.

11 MR. BAGGERLY: THANK YOU, YOUR HONOR. I WANTED YOU
12 TO KNOW THAT WE HEARD WHAT YOU SAID IN THE BEGINNING ALTHOUGH
13 OUR PHONE WASN'T WORKING. THE ANSWER WAS, YES, WE HEARD
14 EVERYTHING YOU SAID AND THANK YOU.

15 THE COURT: GOOD. OKAY. WELL, HOPEFULLY GOING
16 FORWARD, YOU CAN FIND A VIABLE WAY TO DO IT. IF YOU HAVE
17 TIME, YOU CAN FEDEX IT OR UPS TO THE CLERK'S OFFICE. BUT,
18 OTHERWISE, YOU MAY USE ONE OF THE OUTSIDE VENDORS. I'M SURE
19 ONE OF THE CROSS-DEFENDANTS' COUNSEL WHO FEELS HIMSELF ALIGNED
20 WITH YOU WILL BE HAPPY TO HELP YOU FIGURE OUT HOW TO SET UP AN
21 ACCOUNT WITH ONE OF THESE NECESSARY VENDORS. IT'S ANNOYING,
22 BUT LIFE IN THE 21ST CENTURY.

23 MR. BAGGERLY: THANK YOU, YOUR HONOR. I NEED ALL
24 THE HELP I CAN GET.

25 THE COURT: ME TOO.

26 OKAY. MR. HAGERTY, YOU ARE GIVING NOTICE.

27 COURT IS IN RECESS.

28 (PROCEEDINGS CONCLUDED.)

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT SSC10 HON. WILLIAM F. HIGHBERGER, JUDGE
4 SANTA BARBARA CHANNELKEEPER, A)
CALIFORNIA NON-PROFIT)
5 CORPORATION,)
PLAINTIFF,)
6 VS.) CASE NO. 19STCP01176
))
7 STATE WATER RESOURCES CONTROL)
BOARD, A CALIFORNIA STATE)
8 AGENCY, ET AL.,)
DEFENDANTS.)
9 _____)
))
10 AND RELATED CROSS-ACTIONS.)
_____)

11
12 I, JESSICA CABELLO, OFFICIAL REPORTER PRO TEMPORE OF
13 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY
14 OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES, 1
15 THROUGH 69, COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF
16 THE PROCEEDINGS TAKEN IN THE ABOVE-ENTITLED CAUSE ON JANUARY
17 20, 2022.

18
19 DATED THIS 25TH OF JANUARY, 2022.

20
21
22
23 *Jessica Cabello*, CSR #12646
24 OFFICIAL REPORTER PRO TEMPORE
25 JESSICA CABELLO, CSR 12646
26
27
28

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January 20, 2022

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