

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES

3
4 DEPARTMENT SSC 10

HON. WILLIAM F. HIGHBERGER, JUDGE

5
6 SANTA BARBARA CHANNELKEEPER,)

)

7 PETITIONER,) CASE NO. 19STCP01176

)

8 V.)

)

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

)

11 RESPONDENTS.)

)

12 AND RELATED CROSS-ACTION.)
_____)

)

13
14 REPORTER'S TRANSCRIPT OF PROCEEDINGS
15 NOVEMBER 16, 2020

16
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INDEX
MONDAY, NOVEMBER 16, 2020

WITNESSES
NONE

EXHIBITS
NONE

1 CASE NUMBER: 19STCP01176
2 CASE NAME: SANTA BARBARA CHANNELKEEPER V. STATE
WATER RESOURCES CONTROL BOARD, ET AL.

3 LOS ANGELES, CALIFORNIA MONDAY, NOVEMBER 16, 2020

4 DEPARTMENT SSC 10 HON. WILLIAM F. HIGHBERGER

5 REPORTER: ESTRELLA HERMAN, CSR NO. 13865

6 TIME: 2:04 P.M.

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11 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT.)

12 THE COURT: WE'RE ON THE RECORD IN 19STCP01176, SANTA
13 BARBARA CHANNELKEEPER V. STATE WATER RESOURCES CONTROL BOARD,
14 ET CETERA, AND RELATED ACTIONS.

15 I HAVE AN EX PARTE BEFORE ME, BUT I DIDN'T SEE ANY
16 CHECK-IN BY SUSAN SEAGER OR JACK LERNER. ARE MS. SEAGER OR
17 MR. LERNER PRESENT VIRTUALLY VIA LACOURTCONNECT OR IN THE
18 COURTROOM? I'VE GOT TWO LAWYERS AND 26 EMPTY SEATS IN THE
19 COURTROOM AT THE MOMENT. THE TWO LAWYERS IN THE COURTROOM ARE
20 NOT ATTORNEYS LERNER OR SEAGER; CORRECT?

21 MR. HAGERTY: NO, YOUR HONOR.

22 MR. COSGROVE: NO, SIR.

23 THE COURT: SO, MR. ABBOTT, ARE YOU A LICENSED MEMBER OF
24 THE CALIFORNIA BAR?

25 MR. WEST: I DON'T KNOW WHY IT SAYS MY NAME IS
26 MR. ABBOTT. MY NAME IS MYLES WEST. I'M A CERTIFIED LAW
27 STUDENT AT UC IRVINE SCHOOL OF LAW. AND MY PROFESSOR SHOULD BE
28 HERE, BUT HE SEEMS TO BE HAVING TECHNICAL DIFFICULTIES.

1 THE COURT: WELCOME. YOUR NAME AGAIN, SIR, JUST AS A
2 COURTESY?

3 MR. WEST: MYLES WEST, YOUR HONOR.

4 THE COURT: SPELL THE FIRST AND LAST NAME SLOWLY ENOUGH
5 THAT I CAN GET IT. THESE CONNECTIONS ARE OF MEDIOCRE QUALITY.

6 MR. WEST: M-Y-L-E-S; AND THEN WEST, W-E-S-T.

7 THE COURT: WEST, LIKE THE COMPASS POINT.

8 MR. WEST: YES.

9 THE COURT: OKAY. THANK YOU, MR. WEST.

10 SO I DO HAVE BEFORE ME AN EX PARTE APPLICATION BROUGHT
11 BY ATTORNEYS SEAGER AND LERNER OF UC IRVINE SCHOOL OF LAW ON
12 BEHALF OF DOWNHOME PUBLISHING THAT OPERATES OJAI VALLEY NEWS
13 HAVING TO DO WITH CERTAIN ACCESS ISSUES. AND I WOULD OFFER THE
14 FOLLOWING PRELIMINARY COMMENTS:

15 ONE, THE COURTROOM IS OPEN TO THE STREET. THE PUBLIC
16 IS OPEN -- THE COURTROOM IS OPEN TO THE PUBLIC. THE SOCIAL
17 DISTANCING CAPACITY OF THE COURTROOM, APART FROM COURT STAFF
18 AND THE COURT REPORTER, IS 28. ONE OF THOSE 28 SEATS IS
19 OCCUPIED BY MY RESEARCH ATTORNEY. TWO ATTORNEYS HAVE COME IN
20 PERSON. THAT MEANS WE HAVE 25 EMPTY SEATS IN THE COURTROOM.

21 SO, MR. WEST, INsofar AS YOUR CLIENT OJAI VALLEY NEWS
22 IS CONCERNED THAT THEY WOULD FIND THEMSELVES SHUT OUT, THE LONG
23 AND THE SHORT OF IT, IT HASN'T HAPPENED. IT IS EXCEEDINGLY
24 UNLIKELY TO HAPPEN. WE HAVE NOT HAD ANY MEANINGFUL NUMBER OF
25 PEOPLE COME INTO COURT IN THIS CASE OR ANY OTHER CASES DURING
26 COVID TIMES EVEN THOUGH THE DOOR IS OPEN. AND SINCE PHYSICAL
27 ACCESS IS PROVIDED, THE COURT IS INCLINED TO DENY THE EX PARTE
28 WITHOUT PREJUDICE.

1 MY FIRST CAREER AMBITION WAS TO BE A JOURNALIST. I
2 APPRECIATE THE IMPORTANCE OF OPEN COURTS. MY FIRST ASSIGNMENT
3 WAS IN DEPENDENCY WHERE THE COURTS WERE CLOSED TO THE PUBLIC.
4 I HAVE SEEN THE EXCEEDINGLY DELETERIOUS CONSEQUENCES OF CLOSED
5 COURTROOMS FROM THE TIME I SPENT WITH THE DEPENDENCY DOCKET. I
6 FULLY UNDERSTAND THE SANITIZING BENEFITS OF HAVING COURTS OPEN
7 TO THE PUBLIC EVEN IF THOSE INSPECTION OPPORTUNITIES ARE
8 EXERCISED AT A MINIMUM LEVEL. BUT THE THEORETICAL RIGHT TO
9 COME IN AND OBSERVE IS AN INCREDIBLY SANITIZING INFLUENCE.

10 WE ARE RIGHT OPPOSITE UNION STATION, WHICH IS AN EASY
11 TRAIN TRIP ON METROLINK FROM DOWNTOWN VENTURA, WHICH IS ITSELF
12 NOT FAR FROM OJAI. THERE IS PARKING IN THE AREA HERE. I DON'T
13 ANTICIPATE, FROM WHAT I HAVE BEEN TOLD BY THE LAWYERS IN THE
14 CASE, THAT ANYTHING LIKE A LONG TRIAL IS IN THE OFFING,
15 ALTHOUGH I DO SEE THE REQUEST SUBMITTED BY UC IRVINE TO
16 PRESIDING JUDGE BRAZIL ON SEPTEMBER 24 ANTICIPATED THAT THERE
17 WOULD BE, QUOTE, "A LONG TRIAL AND EXTENSIVE HEARINGS."

18 MY UNDERSTANDING IS THAT THE KEY PLAYERS ARE AT THE
19 CUSP OF HAVING A, HOPEFULLY, AGREED SETTLEMENT THAT WILL
20 HOPEFULLY BECOME A CONSENT JUDGMENT. AND WHILE THAT WILL
21 REQUIRE A JUDICIAL APPROVAL, THAT WILL NOT BE THE RESULT OF THE
22 TRIAL.

23 I HAVE COUNSEL FOR CITY OF VENTURA BEFORE ME TODAY,
24 RIGHT, MR. HAGERTY?

25 MR. HAGERTY: YES, YOUR HONOR. SHAWN HAGERTY FOR CITY OF
26 VENTURA.

27 THE COURT: IS THAT A CORRECT UNDERSTANDING OF THE LIKELY
28 TRAJECTORY OF THE CASE?

1 MR. HAGERTY: YES, YOUR HONOR. I MEAN, THERE WILL BE
2 PROVE UP, SO THERE WILL BE -- HOPEFULLY, THE PHYSICAL SOLUTION
3 WILL BE PRESENTED, AND WE WILL ADDRESS SOME FACTUAL ISSUES THAT
4 WE'LL NEED TO ADDRESS. AND YOU POINTED ONE OUT WITH THE
5 COMMENTS FROM THE BLISS TRUST, FOR EXAMPLE. SO THERE WILL BE
6 SOME ISSUES TO ADDRESS, BUT WE'RE NOT ANTICIPATING THE FULL
7 ADJUDICATION. WE'RE ANTICIPATING THE PRESENTATION OF A
8 PHYSICAL SOLUTION FOR YOUR CONSIDERATION AND ACTION.

9 THE COURT: IF YOU'VE DONE THIS BEFORE, YOU'RE AHEAD OF
10 ME. HOW LONG DO YOU THINK THAT KIND OF A HEARING WILL TAKE?

11 MR. HAGERTY: I THINK IT SUBSTANTIALLY DEPENDS UPON THE
12 NEXT 45 DAYS, YOUR HONOR. SO I DON'T REALLY WANT TO GIVE YOU
13 AN INACCURATE PREDICTION. IF CERTAIN PARTIES COME ABOARD AND
14 SUPPORT IT, THEN IT MIGHT BE VERY SHORT; AND -- OTHERWISE, IT
15 COULD BE A WEEK TO TWO WEEKS.

16 THE COURT: THANK YOU.

17 SO, MR. WEST, IF YOU'RE NOT A LICENSED LAWYER, IT'S
18 REALLY NOT YOUR PREROGATIVE TO TALK. AND IF I UNDERSTAND
19 RIGHT, YOU'RE TRYING TO HOLD THE SEAT UNTIL SOMEBODY GETS
20 BETTER CONNECTIVITY TO JOIN US?

21 MR. WEST: I WORK -- [AUDIO MALFUNCTION]

22 THE COURT: UNFORTUNATELY, OUR CONNECTIVITY IS QUITE
23 GARBLED, MR. WEST. YOU CAN REPEAT WHAT YOU SAID, BUT TRY IT A
24 LITTLE SLOWER AND ENUNCIATE BECAUSE IT'S NOT COMING THROUGH
25 WELL FROM A SOUND POINT OF VIEW.

26 MR. WEST: I WAS GOING -- I WAS GOING TO SPEAK ON BEHALF
27 OF DOWNHOME PUBLISHING ONCE MY -- ONCE MY PROFESSOR WAS ABLE TO
28 CONNECT.

1 THE COURT: AND DO YOU, FOR ACADEMIC CREDIT REASONS, NEED
2 THEM TO BE OBSERVING BEFORE YOU TRY TO MAKE YOUR PRESENTATION,
3 MR. WEST?

4 MR. WEST: I DO NOT, NO.

5 THE COURT: WELL, I WILL DO YOU THE COURTESY OF LETTING
6 YOU TALK EVEN THOUGH YOU DON'T HAVE A LEGAL RIGHT TO BE HEARD.
7 BUT I KNOW THIS IS ALL BROUGHT IN GOOD FAITH ON YOUR PART; SO
8 GO AHEAD, SIR.

9 MR. WEST: THANK YOU, YOUR HONOR.

10 AS I SAID BEFORE -- AS I SAID BEFORE, MY NAME IS MYLES
11 WEST. I'M A CERTIFIED LAW STUDENT AT THE -- AT UC IRVINE
12 SCHOOL OF LAW, AND WE'RE IN COURT TODAY [AUDIO MALFUNCTION]
13 DOWNHOME PUBLISHING.

14 THE COURT: MR. WEST -- MR. WEST -- MR. WEST, IT IS A
15 VERY WEAK --

16 MR. WEST: YES, YOUR HONOR?

17 THE COURT: IT IS A VERY WEAK AUDIO CONNECTION, PROBABLY
18 BECAUSE IT'S LINKED WITH VIDEO. WE'VE HAD CONSISTENT SYSTEM
19 PROBLEMS -- THAT HAVE NOTHING TO DO WITH YOU OR YOUR
20 EX PARTE -- WITH VIDEO APPEARANCES, BUT YOU ARE NOMINALLY
21 MAKING A VIDEO APPEARANCE USING COMPUTER AUDIO. SO THE PEOPLE
22 WHO HAVE JOINED US BY PHONE SEEM TO HAVE A STRONGER LINK THAN
23 WHAT YOU'RE WORKING WITH.

24 I DO WANT TO HEAR YOU; BUT I BEG OF YOU TO TAKE IT
25 SLOW, PAUSE, AND ENUNCIATE. BECAUSE IF YOU SPEAK AT THE
26 CADENCE YOU'VE BEEN USING, YOU'RE BASICALLY JUST COMING ACROSS
27 GARBLED. AND AT SOME POINT, I'M NOT GOING TO INVEST AN
28 INORDINATE AMOUNT OF TIME LISTENING TO SOMEBODY WHO DOESN'T

1 HAVE A RIGHT TO APPEAR GIVE ME SOMETHING THAT IS, DUE TO
2 CONNECTIVITY PROBLEMS, INCOMPREHENSIBLE. NO FAULT OF YOUR
3 INTELLECT. IT'S ONLY YOU NEED TO TAKE IT SLOW AND ENUNCIATE,
4 MR. WEST.

5 MR. WEST: I UNDERSTAND, YOUR HONOR. THANK YOU.

6 OJAI VALLEY NEWS IS REQUESTING REMOTE ACCESS TO THE
7 PROCEEDINGS, AND WE HAVE RECEIVED NO OPPOSITION FROM ANY PARTY
8 OR COUNSEL TO THIS MATTER. I DO NOTE, YOUR HONOR, OJAI VALLEY
9 NEWS HAS A PRESUMPTIVE RIGHT TO ATTEND PROCEEDINGS UNDER THE
10 FIRST AMENDMENT COMMON LAW AND THE CALIFORNIA CONSTITUTION.
11 THE CALIFORNIA SUPREME COURT ITSELF [AUDIO MALFUNCTION] --

12 THE COURT REPORTER: YOUR HONOR, I CAN'T UNDERSTAND. I'M
13 SORRY.

14 THE COURT: THE COURT REPORTER CAN'T MAKE OUT WHAT YOU'RE
15 SAYING, MR. WEST; AND I'M BARELY MAKING IT OUT AS WELL. TRY
16 AGAIN. YOU STARTED TO REFER TO THE CALIFORNIA SUPREME COURT
17 WITH SOME PRECEDENT.

18 MR. WEST: YES. THE CALIFORNIA SUPREME COURT ESTABLISHED
19 THE PRESUMPTIVE RIGHT OF ACCESS UNDER THE FIRST AMENDMENT
20 COMMON LAW AND CALIFORNIA CONSTITUTION. IN NBC SUBSIDIARY IN
21 1999 -- ARE YOU ABLE TO HEAR, YOUR HONOR?

22 THE COURT: YES.

23 AND I'M AWARE OF THAT CASE. AND AS I INDICATED
24 PREVIOUSLY, THE DOORS ARE OPEN; AND I'VE GOT 25 EMPTY SEATS FOR
25 THE OJAI VALLEY NEWS, THE L.A. TIMES, THE MET NEWS, DAILY
26 JOURNAL, FOX NEWS. I'VE GOT LOTS OF EMPTY SEATS.

27 DO YOU HAVE ANY CASE ON POINT THAT HAS FOUND A LEGALLY
28 ENFORCEABLE RIGHT TO REMOTE ACCESS FOR THE MEDIA?

1 MR. WEST: I'M NOT -- I'M NOT AWARE OF ANY CASES AT THIS
2 TIME TO MY KNOWLEDGE, YOUR HONOR. I DO BELIEVE THAT DUE TO THE
3 UNIQUE CIRCUMSTANCES OF THE PANDEMIC, I BELIEVE THAT REMOTE
4 ACCESS [AUDIO MALFUNCTION] TO THE PRESUMPTIVE RIGHT OF ACCESS.

5 THE COURT: CONTINUE.

6 MR. WEST: DUE TO THE PANDEMIC, JUDGE BRAZIL'S ORDER --
7 ADMINISTRATIVE ORDER ENCOURAGES COURTS TO USE REMOTE ACCESS TO
8 BOTH THE PUBLIC AND THE COURT PERSONNEL, INCLUDING JUDGES,
9 COURT STAFF, COUNSEL, WITNESSES, AND PARTIES. DUE TO THE
10 PANDEMIC, MANY REPORTERS AND THE PUBLIC ARE [AUDIO MALFUNCTION]
11 DUE TO THEIR HEALTH.

12 AS TO REPORTERS NOT BEING ALLOWED REMOTE ACCESS TO THE
13 CASE AND TO ANY CASES THAT INVOLVE L.A. SUPERIOR COURTS, PRIOR
14 TO THE COVID PANDEMIC, THE COURT [AUDIO MALFUNCTION] ALSO ON
15 THE NBC SUBSIDIARY. ONE, THAT THERE'S [AUDIO MALFUNCTION].
16 THAT'S IMPORTANT AS THIS WHILE COVID-19 IS A PROBLEM AS WITH
17 EVERYBODY, AS THEY ARE [AUDIO MALFUNCTION] OF OURS. IT IS
18 NOT -- IT IS NOT A REASON TO -- IT IS NOT A REASON TO BE -- NOT
19 SUPPORTING [AUDIO MALFUNCTION] AS THE COURTS IN CALIFORNIA HAVE
20 FOUND OTHER WAYS TO ALLOW REMOTE ACCESS TO -- TO THE PUBLIC.
21 IN SACRAMENTO AND ORANGE COUNTY, THEY HAVE LIVE PHYSICAL FEED.
22 SO DOCKETS WILL BE [AUDIO MALFUNCTION] FOR ANY MEMBER OF THE
23 PUBLIC TO VIEW.

24 THE SECOND PART IS THE SUBSTANTIAL PROBABILITY THAT
25 [AUDIO MALFUNCTION] PREJUDICE. THERE IS NO INFERENCE THAT
26 ANYBODY WOULD BE PREJUDICED BY NOT ALLOWING REMOTE ACCESS TO
27 THE PRESS AND PUBLIC. IN FACT -- IN FACT, BY CLOSING REMOTE
28 ACCESS -- BY CLOSING REMOTE ACCESS TO THE PRESS AND PUBLIC

1 IS -- IS FOUND TO CAUSE SIGNIFICANT INJURY TO THEM. AND AS WE
2 SEE IN -- AS U.S. SUPREME HAS SAID IN ELROD V. BURNS THAT THE
3 LOSS OF FIRST AMENDMENT RIGHTS, EVEN FOR A MINIMAL PERIOD OF
4 TIME, CAUSES IRREPARABLE INJURY.

5 THE THIRD PART OF THIS, AS OPPOSED TO [AUDIO
6 MALFUNCTION] RIGHT OF INTERESTS. AS I EXPLAINED BEFORE -- AS I
7 EXPLAINED BEFORE, BY CLOSING THE COURT TO ALL MEMBERS OF THE
8 PRESS AND PUBLIC AND NOT ALLOWING THEM TO -- TO CALL IN OR HAVE
9 A [AUDIO MALFUNCTION] THEY -- IT IS NOT MADE IN GENERAL AT ALL.

10 AND, FOURTH, NO [AUDIO MALFUNCTION] RIGHT OF
11 INTERESTS. I'D LIKE ONCE AGAIN TO MENTION THAT COURTS --
12 SEVERAL CALIFORNIA COURTS HAVE FOUND ALTERNATIVE MEANS TO BE
13 ABLE TO HAVE THE PRESS AND PUBLIC HAVE REMOTE VIDEO ACCESS
14 DURING THIS PANDEMIC TO KEEP THEM AND COURT PERSONNEL SAFE IN
15 COVID-19.

16 THE COURT: THANK YOU.

17 MR. WEST: AS YOU SEE --

18 THE COURT: WRAP IT UP, PLEASE, MR. WEST.

19 MR. WEST: OF COURSE, YOUR HONOR.

20 UNDER THE CURRENT ORDER, THE COURT [AUDIO MALFUNCTION]
21 IN ALLOWING REMOTE ACCESS [AUDIO MALFUNCTION] LIFE AND SAFETY
22 UNDER THE UNIQUE CIRCUMSTANCES OF THE PANDEMIC.

23 THANK YOU, YOUR HONOR.

24 THE COURT: OKAY. HAVING HEARD THE ARGUMENT, THE COURT
25 MAKES THE FOLLOWING RULING: CONTRARY TO MY ORIGINAL TENTATIVE,
26 SINCE THE MATTER'S BEEN ARGUED, THE MATTER IS NOW DENIED WITH
27 PREJUDICE.

28 THE CITY OF VENTURA, OTHERWISE KNOWN AS CITY OF

1 BUENAVENTURA, TO GIVE NOTICE OF THIS AND ALL THE RULINGS TODAY,
2 MR. HAGERTY.

3 FURTHER COMMENT, MR. WEST, THE CORE DEFECT WITH YOUR
4 ARGUMENT IS THAT THE COURT IS, IN FACT, OPEN TO THE MEDIA AND
5 PUBLIC FOR PHYSICAL ACCESS WHICH IS THE PREFERRED FORM OF
6 ACCESS IN THE ORDINARY COURSE. AND THERE'S NO CASES TO SUGGEST
7 THAT COVID HAS INVERTED THAT. WE HAVE APPROPRIATE SOCIAL
8 DISTANCING IN PLACE.

9 MR. HAGERTY AND MR. COSGROVE HAVE COME IN PERSON. MY
10 STAFF AND I ARE REQUIRED TO COME HERE FIVE DAYS A WEEK AND HAS
11 SINCE JUNE 15TH WITHOUT ANY ILL EFFECTS HEALTH-WISE. THE
12 COURTHOUSE IS A GHOST TOWN IN TERMS OF FOOT TRAFFIC IN THE
13 HALLWAYS. THERE'S NO CRIMINAL DOCKET IN THIS BUILDING.
14 THERE'S NO FAMILY LAW DOCKET IN THIS BUILDING. IT'S TRULY A
15 GHOST TOWN. THERE'S NO FEAR OF CROWDING. WE ARE CLOSE TO
16 FREEWAYS AND PARKING AND METROLINK WHICH ALLOWS SOCIAL
17 DISTANCING FOR TRAVEL.

18 THE FINAL COMMENT I'D MAKE IS FOR THE MANY RESIDENTS
19 OF THE OJAI COMMUNITY WHO FOUND THEMSELVES NAMED AS RIPARIAN
20 CROSS-DEFENDANTS. THEY CAN APPEAR AS PARTIES THROUGH
21 LACOURTCONNECT; AND THE APPEARANCE THIS AFTERNOON OF LOA E.
22 BLOSS, B-L-O-S-S, IS BUT ONE EXAMPLE OF THAT. MS. BLOSS HAS
23 RAISED SOME INTERESTING POINTS THAT ARE IN THE RECENT STATUS
24 REPORT. AND ANYBODY ELSE WHO HAS PARTY STATUS CAN APPEAR VIA
25 LACOURTCONNECT WHETHER OR NOT THEY FILED AN ANSWER.

26 AS A PRACTICAL SOLUTION FOR THE OWNERS OF THE OJAI
27 VALLEY NEWS, MR. WEST, IF ONE OF THEM OR ONE OF THEIR REPORTERS
28 HAPPENS TO BE A NAMED CROSS-DEFENDANT AS A RIPARIAN LANDOWNER,

1 THEY CAN APPEAR ON LACOURTCONNECT JUST BY REGISTERING FOR 15
2 BUCKS. SO THERE ARE PRACTICAL WAYS TO AVOID COMING DOWN TO
3 LOS ANGELES. BUT YOUR EX PARTE HAS BEEN HEARD AND IS DENIED
4 WITH PREJUDICE.

5 SO MOVING FORWARD, SHOULD WE START WITH MS. BLOSS? OR
6 IS THERE SOMETHING ELSE YOU WANT TO DO FIRST, MR. HAGERTY?

7 MR. HAGERTY: YOUR HONOR, I WAS HOPING TO GIVE A QUICK
8 STATUS UPDATE SO THE COURT KNOWS WHAT'S PROCEEDED SINCE THE
9 AUGUST PRESENTATION AND THEN MOVE INTO THE TWO ISSUES THAT YOU
10 IDENTIFIED IN YOUR POSTING. AND THEN WE DO HAVE TWO REQUESTS
11 THAT WE'RE MAKING TODAY AS WELL.

12 THE COURT: OKAY. GO AHEAD, SIR.

13 MR. HAGERTY: A QUICK STATUS UPDATE -- LET ME START WITH
14 THE NOTICE AND SERVICE PROCESS. WE'RE MAKING VERY GOOD
15 PROGRESS ON THE NOTICE. WE ONLY HAVE 107 PARCELS LEFT TO
16 PROVIDE NOTICE TO OUT OF AN INITIAL NUMBER OF 10,000. SO WE'VE
17 BEEN ABLE TO GET THAT NUMBER WAY DOWN.

18 WE'RE GOING TO DO ONE MORE MAILING TO TRY TO GET
19 EVERYONE THE NOTICE AND RETURN RECEIPT AS REQUIRED BY THE
20 STATUTE. AND IN THE, HOPEFULLY, UNLIKELY EVENT WE CAN'T DO
21 THAT, THERE IS THE OPPORTUNITY TO POST THAT THE COURT'S AWARE
22 OF.

23 WITH REGARD TO SERVICE, WE'RE MAKING SOME PROGRESS,
24 BUT THIS IS WHERE WE HAVE THE MOST WORK LEFT TO DO. AND,
25 AGAIN --

26 THE COURT: THIS NOW IS THE RIPARIAN CROSS-DEFENDANTS?

27 MR. HAGERTY: CORRECT, YOUR HONOR, THE NAMED
28 CROSS-DEFENDANTS.

1 SO OUT OF 2,600, WE'VE SERVED -- WE HAVE ABOUT 500
2 LEFT. WE HAVE MADE SOME PROGRESS WITH THAT GROUP BY SENDING
3 REQUESTS FOR ACKNOWLEDGMENT OF SERVICE; AND WE HAVE ABOUT 150
4 RESPONSES FROM THAT BATCH, WHICH IS POSITIVE. SO WE'RE GOING
5 TO DO THAT AGAIN. WE'RE GOING TO CONTINUE TO TRY TO DO
6 EVERYTHING WE CAN.

7 SO TO -- GIVEN THE HEALTH RULES TO NOT PHYSICALLY
8 SERVE PEOPLE, WE WILL ALSO REACH OUT AND TRY TO MAKE -- THE
9 NUMBER IS GETTING SMALL ENOUGH WHERE WE CAN MAKE INDIVIDUAL
10 CONTACTS. WE'VE DONE THAT ON OCCASION TO TRY TO ARRANGE TIMES
11 FOR SERVICE OR DELIVERY, THINGS LIKE THAT. AND SO WE'RE GOING
12 TO CONTINUE TO DO THAT.

13 YOU KNOW, IN THE END, IT MAY BE, AND PROBABLY WILL BE,
14 SOMETHING THAT WE'LL ASK THE COURT TO ALLOW US TO SERVE BY
15 PUBLICATION. WE'RE VERY AWARE OF THE COURT'S PREVIOUS COMMENTS
16 REGARDING THAT, AND WE WILL DO EVERYTHING WE CAN NOT TO HAVE
17 THAT BE A REQUIREMENT. BUT IT MAY BE; AND SO WE WILL -- IF WE
18 NEED IT, WE WILL PROVIDE ALL OF THE DOCUMENTATION OF ALL THE
19 EFFORTS WE'VE MADE TO SERVE. SO WE'RE MAKING PROGRESS THERE.

20 THE COURT: CAN I ASK A QUESTION?

21 MR. HAGERTY: YES, YOUR HONOR.

22 THE COURT: WHEN I LOOKED AT THE PROVISIONS -- I THINK I
23 WAS LOOKING AT WEIL & BROWN. BUT THE BASIC POINT IS, OKAY,
24 WHAT ARE ALTERNATIVE WAYS TO ACCOMPLISH SUB SERVICE OF A
25 TRADITIONAL SUMMONS AND COMPLAINT? I DON'T THINK I FOUND
26 ANYTHING AUTHORIZING POSTING ON A PROPERTY, WHICH IS SORT OF
27 ODD IN A WAY BECAUSE IF IT INVOLVES REAL ESTATE AS INTIMATELY
28 AS THESE CLAIMS DO, ONE WOULD THINK THAT WOULD BE A GOOD FORM

1 OF SUBSTITUTED SERVICE.

2 BUT DO YOU HAVE ANY SENTIMENT ON WHETHER OR NOT YOU
3 WILL BE ABLE TO USE A POSTING ON THE PROPERTY AS SOMETHING
4 INNATE OF SUB SERVICE?

5 MR. HAGERTY: WE DON'T BELIEVE THAT THAT'S SOMETHING WE
6 CAN USE FOR THE NAMED CROSS-DEFENDANTS. IT'S A LITTLE -- IT'S
7 A LITTLE AWKWARD, RIGHT, BECAUSE WITH THE NOTICED PEOPLE, WE
8 CAN DO THE POSTING; BUT WE DON'T THINK THAT THAT'S SOMETHING WE
9 CAN PURSUE WITH THE NAMED CROSS-DEFENDANTS.

10 THE COURT: OKAY. BEFORE YOU GET A PUBLICATION, YOU MAY
11 GET ME AUTHORIZING POSTING AS SOME KIND OF FIRST SET MODE OF
12 SUB SERVICE BECAUSE I'D PREFER THAT OVER THE TOTALLY FICTITIOUS
13 PUBLICATION. THAT, OBVIOUSLY, DEPENDS A LITTLE BIT ON SOME RAW
14 ASSERTION OF AUTHORITY ON MY PART, I GUESS. BUT I DO THINK
15 IT'S A LESS DEFECTIVE NOTICE THAN PUBLICATION WHICH IS TOTALLY
16 FICTITIOUS.

17 CAN I ASK IF YOU YET HAVE A SENSE OF WHAT'S THE
18 PROFILE OF THE TYPICAL HARD-TO-SERVE RIPARIAN OWNER? IS IT
19 BECAUSE THEY OWN EMPTY LAND AND THEY LIVE IN PARIS OR TEL AVIV?
20 OR IS IT BECAUSE THEY JUST DON'T COME TO THE DOOR EVEN THOUGH
21 THEY'RE IN THE HOUSE?

22 MR. HAGERTY: I THINK BOTH OF THOSE CATEGORIES APPLY
23 HERE. WE CERTAINLY HAVE -- WE'VE GOT SEVERAL EXAMPLES OF
24 PEOPLE WHO HAVE, YOU KNOW, PROPERTY IN OJAI, LIVE ELSEWHERE AND
25 HAVE COME BACK AND NOW HAVE RESPONDED TO SOMETHING WE SENT THEM
26 THREE MONTHS AGO. SO THERE'S CERTAINLY A GROUP IN THAT
27 SITUATION.

28 AND THEN THERE'S DEFINITELY A GROUP, AT LEAST

1 ANECDOTALLY -- AT SOME OF THE PUBLIC MEETINGS, THERE WAS SOME
2 REFERENCES FROM PEOPLE IN THE PUBLIC SAYING, "OH, YOU KNOW, I'M
3 NOT GOING TO LET THEM SERVE ME," AND THINGS LIKE THAT. SO I DO
4 THINK IT'S BOTH, YOUR HONOR.

5 AND, AGAIN, WE'LL TRY TO USE STRATEGIES FOR EACH ONE
6 AND USE EVERY EFFORT FEASIBLE TO PERFECT SERVICE. AND WE DID
7 GET A BATCH OF NEW INFORMATION FROM THE COUNTY ASSESSOR, WHICH
8 IS HELPFUL BECAUSE THERE CERTAINLY HAVE BEEN SOME PROPERTIES
9 THAT HAVE CHANGED HANDS. SO IT WILL TAKE US SOME TIME, BUT
10 WE'RE CONFIDENT WE'LL GET THAT NUMBER DOWN.

11 THE COURT: HAVE YOU TRIED TRADITIONAL SUB SERVICE WHERE
12 YOU GO OUT TWO OR THREE TIMES, LOOK FOR SOMEBODY AT HOME, FIND
13 NOBODY PRESENT, AND THEN FINALLY LEAVE IT AND MAIL IT AND CALL
14 IT SUB SERVE?

15 MR. HAGERTY: WE DEFINITELY DID THAT IN JANUARY WHEN MOST
16 OF THE PHYSICAL SERVICE WORK WAS BEING DONE, SO JANUARY AND
17 FEBRUARY. BUT WITH THE PUBLIC HEALTH ISSUES AND THE ORDERS,
18 THAT KIND OF DIRECT CONTACT IS SOMETHING THAT WE'VE STAYED AWAY
19 FROM, YOUR HONOR.

20 THE COURT: DO YOU FEEL LEGALLY PROHIBITED OR JUST SORT
21 OF MORALLY DISSUADED?

22 MR. HAGERTY: WE JUST DON'T THINK IT'S PRUDENT. I DON'T
23 KNOW THAT WE'RE LEGALLY PROHIBITED, BUT --

24 THE COURT: YOU MAY BE TOLD BY ME TO TRY THAT AGAIN
25 BEFORE I GIVE YOU A PUBLICATION.

26 MR. HAGERTY: UNDERSTAND, YOUR HONOR. WE UNDERSTAND.

27 THE COURT: OKAY. WE'VE HAD THAT DIALOGUE. YOU CAN MOVE
28 ON.

1 MR. HAGERTY: WITH REGARD TO THE PHYSICAL SOLUTION, WE --
2 THE COURT: OH, YES, THE "NEW BUT THE JUDGE HASN'T SEEN
3 IT."

4 MR. HAGERTY: YES. AND WE'LL COVER THAT, YOUR HONOR.

5 I MEAN, WE CAN GET TO THAT NOW. LET ME GIVE YOU JUST,
6 KIND OF, A REAL QUICK SUMMARY OF WHAT'S OCCURRED SINCE THE LAST
7 MEETING. AS WE SAID WE WOULD DO, THE PROPOSING PARTIES, WHICH
8 ARE FIVE PARTIES, HAVE RELEASED THE DOCUMENT. WE'VE HELD FIVE
9 FORMAL MEET-AND-CONFER SESSIONS WHERE WE MADE THE EXPERTS
10 AVAILABLE. WE WENT THROUGH KIND OF MAJOR TOPICS OF THE
11 PHYSICAL SOLUTION. PEOPLE COULD PARTICIPATE THROUGH ZOOM.

12 I KNOW MS. BLISS HAS A QUESTION ABOUT, YOU KNOW, THERE
13 WAS A CONFIDENTIALITY PROVISION THAT WAS PART OF THAT BECAUSE
14 WE ARE PROVIDING, ESSENTIALLY, OUR EXPERT OPINIONS IN ADVANCE
15 OF ANY FORMAL DISCLOSURE AND THINGS LIKE THAT. SO WE DO
16 CONSIDER THIS TO BE SETTLEMENT DISCUSSION MEET-AND-CONFER. BUT
17 THOSE ALL OCCURRED. THEY WERE FAIRLY WELL ATTENDED.

18 AND THEN WE HAD -- HAVE HAD MULTIPLE INDIVIDUAL
19 MEETINGS WITH MANY PARTIES. SO WITH REGARD TO THE STATE
20 AGENCIES, FOR EXAMPLE, WE'VE HAD MANY VERY FOCUSED MEETINGS OF,
21 YOU KNOW, AN HOUR, TWO-HOUR, KIND OF, MEETINGS WHERE WE'RE
22 ANSWERING LOTS OF QUESTIONS, OUR EXPERTS ARE PROVIDING
23 INFORMATION.

24 SO OUR ORIGINAL PLAN HAD BEEN AT THIS POINT IN TIME TO
25 ASK FOR SOME DATES AND TRY TO MOVE TOWARD CLOSURE ON THE
26 PHYSICAL SOLUTION. BUT GIVEN THE FEEDBACK THAT WE RECEIVED AND
27 THE PARTICIPATION THAT WE RECEIVED, WE DO THINK IT'S
28 APPROPRIATE AND BEST TO CONTINUE THE MEET-AND-CONFER PROCESS

1 UNTIL THE END OF JANUARY.

2 WE APPRECIATE THE COURT TAKING ACTION ON THE EX PARTE
3 APPLICATION TO EXTEND THE RESPONSE DATE TO GIVE PEOPLE MORE
4 TIME TO CONSIDER THE PHYSICAL SOLUTION. WE DO THINK WE'RE
5 MAKING PROGRESS. THERE ARE MANY, MANY SIGNIFICANT HURDLES
6 STILL TO GO. AND SOME OF THOSE HAVE BEEN IDENTIFIED IN THE
7 DOCUMENTS PUT BEFORE YOU WITH REGARD TO THE STATUS CONFERENCE,
8 BUT WE ARE GOING TO CONTINUE TO PRESS FORWARD WITH REGARD TO
9 THE MEET-AND-CONFER PROCESS UNTIL THE END OF JANUARY.

10 SO ONE OF THE REQUESTS WE HAVE IS TO SET A FURTHER
11 STATUS CONFERENCE IN FEBRUARY. WITH REGARD TO THE COURT NOT
12 HAVING ACCESS TO THE PHYSICAL SOLUTION, THE PROPOSING PARTIES
13 ARE WILLING AND WOULD BE OPEN TO LODGE A COPY OF THE DOCUMENT.
14 OUR CONCERN, AND WHY WE DIDN'T INITIALLY DO THAT, IS, AS WE
15 TALKED ABOUT PREVIOUSLY, THE COURT, IT WILL NEED TO MAKE
16 CERTAIN FACTUAL DETERMINATIONS. THIS IS IN THE FORM AT THIS
17 POINT IN TIME OF MORE OF A SETTLEMENT DISCUSSION
18 MEET-AND-CONFER PROCESS. WE DID NOT WANT TO PREJUDICE THE
19 COURT.

20 AND SO AS LONG AS NO OTHER PARTY OBJECTS, WE WOULD BE
21 WILLING TO DO THAT. WE ARE CONCERNED IF OTHER PARTIES HAVE
22 OBJECTIONS BECAUSE WE DON'T WANT TO HAVE A SITUATION WHERE
23 PEOPLE TAKE A POSITION THAT YOU HAVE SEEN SOMETHING THAT YOU
24 SHOULDN'T HAVE SEEN AND WILL NEED TO MAKE A DETERMINATION ON
25 LATER. SO THAT'S OUR POSITION. WE'RE -- AGAIN, WE'RE HAPPY TO
26 LODGE IT. IT IS PUBLICALLY AVAILABLE.

27 THE COURT: SO IF, ULTIMATELY, YOU GET TO THE HAPPY STATE
28 WHERE EVERYBODY'S COOPERATIVE AND AGREES TO YOUR PHYSICAL

1 SOLUTION, WHAT KIND OF A TRIAL AM I HOLDING TO BLESS A
2 SETTLEMENT?

3 MR. HAGERTY: IN THAT SITUATION, THE HAPPY SITUATION,
4 WHICH WE WOULD LOVE, THERE'S NOT VERY MUCH TO DO AT ALL OTHER
5 THAN THE COURT OBVIOUSLY HAS AN INDEPENDENT DUTY TO MAKE SURE
6 THAT THE SOLUTION PRESENTED, EVEN IF AGREED TO BY ALL THE
7 PARTIES, IS CONSISTENT WITH THE CONSTITUTIONAL OBLIGATIONS THAT
8 THE COURT HAS IN THIS SITUATION. SO THERE WOULD BE SOME WORK
9 TO DO EVEN THEN, BUT THAT WOULD BE FAIRLY MINIMAL.

10 THE COURT: BASICALLY, TRYING TO MAKE SURE THAT THERE'S
11 PRUDENT USE OF SCARCE WATER RESOURCES?

12 MR. HAGERTY: EXACTLY. IF IT MEETS THE CONSTITUTIONAL
13 REQUIREMENTS OF REASONABLE USE OF WATER IN THE PUBLIC TRUST.
14 AND IF EVERYONE AGREED TO THAT, THEN THAT WOULD BE PRETTY
15 STRAIGHTFORWARD TO PRESENT.

16 THE COURT: NOW, WHAT IF YOU HAVE A SETTLEMENT THAT
17 EVERYBODY EXCEPT CASITAS WATER DISTRICT LIKES AND YOU WANT TO
18 TRY TO FIND A WAY TO MAKE IT WORK AS A CRAM-DOWN? CAN YOU DO
19 IT AS A CRAM-DOWN? OR IF CASITAS SAYS NO, IS THAT ALL YOU NEED
20 TO KNOW TO KNOW THAT WE HAVE TO GO TO TRIAL?

21 MR. HAGERTY: SO THAT WOULD BE, ESSENTIALLY, A FORM OF A
22 TRIAL ON THE PHYSICAL SOLUTION BECAUSE -- AND WE WILL FULLY
23 BRIEF THIS FOR YOU. BUT YOU KNOW THE -- THERE IS A LINE OF
24 CASES THAT SAYS THE COURT HAS A CONSTITUTIONAL DUTY TO CONSIDER
25 A PHYSICAL SOLUTION AND EVEN IMPOSE IT OVER OBJECTIONS.

26 OBVIOUSLY, THE COURT WILL HAVE TO MAKE THOSE FINDINGS
27 AND MAKE THOSE DETERMINATIONS; BUT THE POWER TO DO THAT AND
28 EVEN THE DUTY AND OBLIGATION TO DO THAT IS VERY CLEAR, AT LEAST

1 IN OUR -- IN THE CITY'S VIEW AND PROPOSING PARTY'S VIEW IN THE
2 CASES.

3 SO IN THAT SITUATION, IF THERE'S A PARTY THAT OBJECTS,
4 THAT PARTY WOULD HAVE TO DEMONSTRATE BASED ON EVIDENCE WHY THE
5 PHYSICAL SOLUTION AS PROPOSED IS NOT CONSISTENT WITH PUBLIC
6 TRUST AND REASONABLE USE AND ALL OF THE CONSTITUTIONAL
7 REQUIREMENTS; AND WE WOULD HAVE TO OVERCOME THOSE OBJECTIONS TO
8 YOUR SATISFACTION. BUT YOU DO HAVE THE AUTHORITY, AND WE DON'T
9 THINK IT'S DISPUTED, TO IMPOSE A PHYSICAL SOLUTION EVEN OVER
10 OBJECTIONS. THERE'S SOME NUANCES AND WRINKLES THAT I'M SURE
11 WE'LL ALL TALK ABOUT, BUT THAT FUNDAMENTAL POWER IS THERE.

12 THE COURT: IS THERE ONE OBVIOUS TREATISE THAT DISCUSSES
13 THIS THAT WOULD BE GOOD FOR ME TO BE LOOKING AT, WHETHER WITHIN
14 TOUCHES ON IT OR MILLER & STARR FOR PROPERTY OR SOME OTHER
15 TREATISE? OR IS THIS SO ESOTERIC THAT NOBODY BOTHERS TO WRITE
16 A TREATISE ON IT?

17 MR. HAGERTY: THERE ARE -- THERE ARE BOOKS THAT WE -- I
18 GUESS THE PARTIES COULD MEET AND CONFER AND EVEN SUGGEST,
19 YOUR HONOR. I MEAN, CERTAINLY, EVEN THE MANAGING PARTNER OF MY
20 FIRM HAS A BOOK THAT'S CALLED CALIFORNIA WATER LAW THAT IS IN,
21 I THINK, THE THIRD EDITION. IT HAS A WHOLE SECTION ON PHYSICAL
22 SOLUTIONS, AND IT DISCUSSES ALL THE CASES.

23 SO THOSE DOCUMENTS ARE OUT THERE. AND WE WOULD BE
24 HAPPY TO BRIEF IT, YOUR HONOR. I MEAN, WE COULD EVEN -- AS WE
25 DID WITH SOME OF THE JURISDICTIONAL QUESTIONS, THERE'S -- I
26 SUSPECT THAT THERE'S SOME GENERAL CONSENSUS ON THE LAW WITH
27 SOME NUANCES ABOUT HOW FAR YOUR POWER EXTENDS. SO WE'D BE OPEN
28 TO THAT AS WELL.

1 THE COURT: SINCE YOU'RE NEGOTIATING THE CONTOURS OF THE
2 PHYSICAL SOLUTION, I ASSUME THERE IS MORE THAN A TRIVIAL CHANCE
3 THAT IT MAY BE MODIFIED BEFORE IT BECOMES THE PROPOSAL YOU WANT
4 TO PUT IN FRONT OF ME.

5 MR. HAGERTY: THAT'S CORRECT, YOUR HONOR. IT WILL BE
6 MODIFIED.

7 THE COURT: AND THAT, I ASSUME, IS THE REASON YOU HAVE
8 FELT IT PRUDENT NOT TO DISCLOSE THE FIRST DRAFT TO ME.

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

10 THE COURT: AND AS LONG AS YOU THINK I CAN DO MY JOB
11 WITHOUT AWARENESS OF THE PARTICULARS OF THE FIRST DRAFT, I'M
12 HAPPY TO REMAIN IN THIS HAPPY STATE OF IGNORANCE IF YOU THINK
13 THAT'S BETTER THAN THE ALTERNATIVE.

14 MR. HAGERTY: I THINK WE DO HAVE CONCERNS ABOUT
15 SUBMITTING IT AND CHANGING SOME PARTY OBJECTION TO YOUR
16 CONSIDERATION OF IT IN SOME FASHION. SO WE DEFINITELY WANT TO
17 AVOID THAT.

18 THE COURT: WE'RE GETTING WHAT SOUNDS LIKE CROSSTALK ON
19 LACOURTCONNECT, BUT I DON'T KNOW IF THAT'S A DESPERATE ATTEMPT
20 OF SOMEBODY TO BE HEARD. DO I HAVE SOMEBODY ON LACOURTCONNECT
21 TRYING TO INTERJECT AT THIS MOMENT? IF SO, TRY HARDER.

22 OKAY. HEARING NO EAGER BEAVERS TO INTERJECT, I WOULD
23 ASK YOU TO VOLUNTARILY MUTE YOUR MICROPHONES ON LACOURTCONNECT
24 UNTIL YOU FIND IT TO BE YOUR TIME TO TALK BECAUSE WE WERE
25 COMMENCING TO GET A LOT OF FEEDBACK THAT WAS UNHELPFUL. SO IF
26 YOU'LL VOLUNTARILY MUTE AT YOUR END, I'LL APPRECIATE IT. WHILE
27 WE CAN MUTE YOU HERE, WE'RE LEAVING THEM OPEN ON THE OFF CHANCE
28 YOU NEED TO INTERJECT.

1 SO BACK TO YOU, MR. HAGERTY, WITH GIVING ME THE TOUR
2 OF THE HORIZON. WHAT NEXT DO YOU WANT TO TAKE UP WITH THE
3 COURT?

4 MR. HAGERTY: OH, ONE OTHER THING I --

5 THE COURT: I'M OKAY WITH NOT SEEING THE PHYSICAL
6 SOLUTION.

7 MR. HAGERTY: ONE OTHER THING ON THE LAST POINT JUST
8 BECAUSE, YOU KNOW, WE DO WANT TO MAKE SURE THAT THE COURT'S
9 BEING EDUCATED ON THE ISSUES AND WHATNOT.

10 AND ONE THING WE HAD PROPOSED, WHICH I HAVEN'T
11 DISCUSSED WITH COUNSEL; SO I WOULD JUST SAY THAT I WOULD BE
12 HAPPY TO MEET AND CONFER ABOUT WHETHER THIS WOULD WORK. IT IS
13 SOMETHING WE PUT FORWARD IN THE LAST STATUS CONFERENCE
14 STATEMENT, WHICH IS SOME FORM OF A SITE VISIT. THAT WOULD --
15 IF WE COULD WORK IT OUT AND THERE WERE AGREEMENT, THAT WOULD
16 GIVE THE COURT THE OPPORTUNITY TO -- THE COURT KNOWS THE AREA
17 FROM PAST STATEMENTS ABOUT --

18 THE COURT: I'M PROBABLY GOING TO DRIVE THE 33 FROM
19 NEW CUYAMA TO OJAI AS A MATTER OF PERSONAL PLEASURE ON
20 SATURDAY, SOUTHBOUND. I WON'T STOP TO BE TRYING TO MONITOR
21 RIVER DEPTHS; BUT I THINK I'LL BE ON 33, SOUTHBOUND DRIVE, FOR
22 ALL THE RELEVANT LENGTH OF IT, AT LEAST UNTIL WE GET INTO
23 DOWNTOWN OJAI.

24 MR. HAGERTY: SO I GUESS THAT WOULD BE SOMETHING I -- I
25 WILL COMMUNICATE WITH ALL THE COUNSEL ABOUT THAT. BUT IT WOULD
26 BE SOMETHING TO DO BETWEEN WHERE WE STAND NOW AND WHEN THE
27 FINAL VERSION IS SUBMITTED THAT WE BELIEVE WOULD HAVE BENEFIT
28 TO THE COURT. SO IF THAT'S OKAY WITH THE COURT, I WILL MEET

1 AND CONFER WITH EVERYONE; AND MAYBE WE CAN SUGGEST SOME
2 PROTOCOLS ABOUT THAT.

3 THE COURT: THERE WAS A VERY SILTED UP DAM, AS I
4 RECOLLECT, AT THE TOP OF VENTURA RIVER.

5 MR. HAGERTY: YEAH. THERE'S -- WITH THE FIRES, THERE WAS
6 A SIGNIFICANT AMOUNT OF MATERIAL THAT WAS ADVERSE TO THE
7 WATERSHED.

8 THE COURT: I ASSUME THERE'S NO OBJECTION TO MY DRIVING
9 THE 33 FOR MY OWN PLEASURE.

10 MR. HAGERTY: NO OBJECTION THERE, YOUR HONOR.

11 THE COURT: OKAY. WHAT ELSE DO YOU WANT TO EDUCATE ME
12 ON, MR. HAGERTY?

13 MR. HAGERTY: WELL, THE OTHER THING, REALLY, IS IF THE
14 COURT WERE PREPARED TO DISCUSS GENERALLY THE CONCERNS THAT WERE
15 EXPRESSED BY -- I THINK IT'S MS. BLISS, THE BLISS TRUST.

16 THE COURT: BLISS OR BLOSS? I THINK IT MIGHT BE WITH AN
17 "O."

18 MR. HAGERTY: I THOUGHT IT WAS WITH AN "I." THE -- YOU
19 KNOW, WE APPRECIATE THE COMMUNICATION. I KNOW SHE'S ON THE
20 LINE IF SHE WANTS TO SPEAK.

21 THE COURT: MS. BLISS, ARE YOU WITH US THIS AFTERNOON?

22 MS. BLISS: I AM. AND THANK YOU FOR THE OPPORTUNITY. IT
23 IS BLISS. I THINK THE -- WHEN I FILED THE ANSWER, SOMEHOW THEY
24 TYPED IN "BLOSS."

25 THE COURT: WELL, TYPOGRAPHICAL ERRORS ARE KNOWN TO
26 HAPPEN.

27 MS. BLISS: AND I'D LIKE TO THANK --

28 THE COURT: GO AHEAD, MS. BLISS.

1 MS. BLISS: OKAY. I'D ALSO JUST LIKE TO THANK THE CITY
2 ATTORNEYS FOR INCLUDING MY COMMENTS IN THEIR SUBMISSION, WHICH
3 MADE IT A LOT EASIER FOR ME.

4 I AM THE CO-TRUSTEE AND CO-BENEFICIAL OWNER OF -- WITH
5 MY HUSBAND OF LAND IN UPPER OJAI THAT OVERLINES THE UPPER OJAI
6 GROUNDWATER BASIN, AND I SPEAK ONLY FOR US AND FOR THE TRUST.

7 AND I'M PROBABLY A LITTLE BIT LATE TO THE PARTY; BUT
8 AS I LOOKED AT THIS PROPOSED PHYSICAL SOLUTION, IT IS VERY
9 UNCLEAR TO ME WHY THE UPPER OJAI GROUNDWATER BASIN IS PART OF
10 THIS CASE. THE UPPER OJAI BASIN IS A STANDALONE BASIN. THE
11 PROPOSED PHYSICAL SOLUTION, WHICH I WORKED OFF OF, IS THE ONE
12 THAT'S POSTED ON THE WEBSITE. BUT THE DESCRIPTION OF THE
13 BASIN, EVEN IN THE PROPOSED PHYSICAL SOLUTION, IS AT 4.3.4; AND
14 IT SEEMS TO CONFIRM -- OR AT LEAST SUPPORT THAT IT'S A
15 STANDALONE BASIN.

16 WE DO KNOW IT'S A VERY LOW-PRIORITY BASIN ACCORDING TO
17 THE DWR AND THAT NO GSP IS, THEREFORE, REQUIRED. AND THERE'S
18 NOTHING IN THE SUBMISSIONS OR FILINGS SO FAR THAT EVIDENCES
19 THAT OUR PROPERTY OR THE UPPER OJAI GROUNDWATER BASIN HAS
20 ANYTHING TO DO WITH THE FISHERIES. IT'S MISSING IN ACTION. SO
21 WE DON'T THINK THE CITY HAS MADE ANY CASE IN THIS INSTANCE TO
22 ADJUDICATE THE UPPER OJAI BASIN.

23 AND THE PROPOSED SOLUTION, AT LEAST AS IT WAS IN THE
24 FORM THAT I SAW IT, RELEASED THE CITY OF EVER HAVING TO PROVE
25 THE RIGHT TO THE BASIN WATER. SO, IN A WAY, INCLUDING THE
26 UPPER OJAI BASIN AND THE PROPOSED SOLUTION IS A ROUNDABOUT WAY
27 OF BRINGING THE BASIN INTO THIS WHOLE ADMINISTRATIVE OVERLAY,
28 OR WHATEVER YOU WANT TO CALL IT, BY WAY OF THE FISHERY TO WHICH

1 IT HAS NO CONNECTION.

2 SO THESE WERE OUR CONCERNS BECAUSE THE IMPOSITION OF
3 THE -- JUST FROM A LEGAL POINT OF VIEW, IT SORT OF PRESUPPOSES
4 WITHOUT ANY SUPPORTING EVIDENCE THE RIGHT TO THE GROUNDWATER IN
5 THE BASIN. NOW, ADJUDICATION, AS I UNDERSTAND IT, IS GENERALLY
6 APPROPRIATE TO FIX SOMETHING THAT NEEDS TO BE FIXED OR TO PARSE
7 WATER ACCORDING TO THE PROVEN EXISTING RIGHTS. AND THAT'S NOT
8 THE CASE HERE.

9 AND, FURTHERMORE, THE CITY'S INTENT -- I'M NOT
10 ASCRIBING ANY MALICE OR ANYTHING -- TO IMPOSE BY DEFAULT AND
11 WITHOUT ANY EVIDENCE OR PROOF THAT THE PHYSICAL SOLUTION ON THE
12 UPPER OJAI PARTIES -- ITS INTENT IS TO IMPOSE THE SOLUTION
13 WITHOUT ANY PROOF. I GUESS THAT'S WHAT I'M TRYING TO SAY.

14 THE COURT: THANK YOU.

15 CAN I ASK YOU A QUESTION, MS. BLISS? MS. BLISS, THIS
16 IS JUDGE HIGHBERGER. CAN I INTRUDE WITH A QUESTION OR TWO?

17 MS. BLISS: YES, YOU MAY. PLEASE.

18 THE COURT: FIRST, AS A COMPLIMENT, YOUR LEGAL EDUCATION
19 COMES THROUGH WITH THE TECHNICAL PRECISION OF YOUR LETTERS. SO
20 CONGRATS TO HASTINGS FOR THE EDUCATION THEY GAVE YOU WAY BACK
21 WHEN.

22 WHAT IS GSP? YOU USED JARGON IN YOUR EARLIER
23 STATEMENT.

24 MS. BLISS: I'M SORRY. COULD YOU REPEAT THAT?

25 THE COURT: YES. WHAT DOES GSP STAND FOR WHEN YOU USED
26 THAT PHRASE?

27 MS. BLISS: GSP, GROUNDWATER SUSTAINABILITY PLAN OR
28 SOMETHING. IT'S UNDER SGMA.

1 THE COURT: OKAY. BECAUSE YOU SAID THAT FOR THE UPPER
2 OJAI BASIN, THAT APPEARED TO BE A MATTER OF LITTLE OR NO
3 CONSEQUENCE.

4 MS. BLISS: WELL, IT'S NOT REQUIRED UNDER SGMA -- WHICH
5 I'M CALLING IT SGMA, WHICH I'M BARELY ACQUAINTED WITH --
6 SUSTAINABLE GROUNDWATER MANAGEMENT ACT.

7 THE COURT: THANK YOU.

8 MS. BLISS: WHICH I THINK IS -- HAS A LOT OF -- OKAY.

9 THE COURT: I THINK I'VE GOT THE GIST OF YOUR CONCERNS,
10 MS. BLISS. LET ME TAKE A SECOND TO RUN WITH YOUR PROPOSITION
11 AND ASK A QUESTION OF THE CITY OF VENTURA'S ATTORNEY.

12 AS CONCEDED BEFORE, SINCE I HAVE MOTORCYCLED THROUGH
13 THE AREA, I HAVE BEEN UP THAT GRADE WITH MANY SWITCHBACKS AS
14 YOU GO EAST OF THE THACHER SCHOOL AND RISE UP TO THE STREET
15 ADDRESS THAT IS ON MS. BLISS'S PAPERWORK, WHICH IS, TO MY
16 PERCEPTION, HUNDREDS OF FEET ABOVE THE GENERAL ELEVATION OF
17 THACHER SCHOOL AND PROXIMATE PROPERTIES.

18 WHY OR HOW COULD THAT BE THE SAME GROUNDWATER BASIN IF
19 IT IS SO VERTICALLY REMOVED FROM THE BALANCE OF THE GROUNDWATER
20 BASIN?

21 MR. HAGERTY: THANK YOU, YOUR HONOR.

22 AND THANK YOU, MS. BLISS, FOR RAISING THESE ISSUES.

23 AND THIS IS, KIND OF, THE KIND OF DIALOGUE WE'VE BEEN
24 HAVING IN OUR MEET-AND-CONFER SESSIONS; SO WE'RE HAPPY TO HAVE
25 FURTHER DISCUSSION WITH MS. BLISS DIRECTLY.

26 THE COURT: WELL, IF THAT MEANS YOU WANT TO JUST KEEP
27 YOUR POWDER DRY AND --

28 MR. HAGERTY: NO, YOUR HONOR. I'M HAPPY --

1 THE COURT: I'LL LET YOU JUST SAY, "LET ME GO NEGOTIATE
2 WITH HER."

3 MR. HAGERTY: NO. LET ME JUST MAKE A FEW COMMENTS AND --

4 THE COURT: AS A LAYMAN HAVING DRIVEN THAT ROAD, YOU HAVE
5 MANY SWITCHBACKS BEFORE YOU GET TO MS. BLISS'S PROPERTY GOING
6 EAST.

7 MR. HAGERTY: YES. SO LET ME JUST KIND OF MAKE A FEW
8 COMMENTS. I MEAN, AGAIN, THE COURT'S GOING TO HAVE TO
9 EVENTUALLY MAKE A FINDING ON THIS QUESTION. SO THE PHYSICAL
10 SOLUTION IS PRESENTED BASED UPON, YOU KNOW, THE EVIDENCE AND
11 FINDINGS; BUT WE'RE GOING TO HAVE TO PROVE THAT UP.

12 THE COURT: IF I'M VENTURA CITY, I WANT TO GRAB ALL THE
13 WATER I CAN AND SAY IT'S MINE.

14 MR. HAGERTY: WELL, NO, YOUR HONOR. THAT'S NOT WHAT'S
15 HAPPENINGS HERE.

16 SO LET ME TRY TO BE REALLY SPECIFIC. WE HAVE ALLEGED
17 THAT THERE'S A CONNECTION OF ALL FOUR OF THE GROUNDWATER BASINS
18 WITH THE SURFACE WATER. WE BELIEVE THAT THAT ALLEGATION IS
19 BASED UPON ALREADY-DOCUMENTED SCIENCE AND ADDITIONAL SCIENCE
20 THAT WE WILL BRING TO THE TABLE AND PRESENT TO YOU.

21 BUT MS. BLISS IS ABSOLUTELY RIGHT. WE HAVEN'T DONE
22 THAT. WE HAVE AN ALLEGATION IN THE CROSS-COMPLAINT, AND THAT'S
23 THERE. I CAN TALK -- AND WE'LL BE HAPPY TO TALK TO MS. BLISS
24 ABOUT SOME OF THE STUDIES THAT HAVE ALREADY BEEN DONE.

25 BUT THE BIG THING WITH THE UPPER OJAI BASIN,
26 YOUR HONOR, IS THERE IS A CONNECTION BETWEEN THE BASIN AND THE
27 SURFACE WATER AND PARTICULARLY LION CANYON CREEK WHICH FLOWS
28 DOWN TO SAN ANTONIO CREEK WHICH FLOWS INTO THE RIVER. AND LION

1 CANYON CREEK AS WELL AS SAN ANTONIO CREEK AS WELL AS THE RIVER
2 ARE ALSO VERY IMPORTANT FOR THE FISHERIES.

3 SO IN A BIG PICTURE, WE'RE GOING TO HAVE TO PROVE THAT
4 TO YOUR SATISFACTION. AND MS. BLISS, OF COURSE, IS -- COULD BE
5 ONE OF THE PARTIES WHO SAY, "WE DON'T AGREE WITH THAT. HERE'S
6 EVIDENCE OR LACK OF EVIDENCE," AND COULD ATTACK THAT. SO
7 THAT'S WHAT WILL HAPPEN LATER ON. BUT WE BELIEVE THAT THERE'S
8 MORE THAN SUFFICIENT EVIDENCE TO PRESENT TO YOU AND --

9 THE COURT: SHE MAKES A DIFFERENT CONCERN, WHICH WAS IF
10 WE ARE TO HAVE A DE FACTO CONSENT JUDGMENT PHYSICAL SOLUTION TO
11 REMAIN IN PLACE FOR DECADES BUT THEN HAS TO BE ADMINISTERED TO
12 ENSURE THAT IT DEALS WITH THE ENVIRONMENTAL REALITIES AS WE GO
13 FORWARD WITH EXTRA WET YEARS OR EXTRA DRY YEARS OR WHATEVER,
14 BUT THERE SEEMS TO BE NO STAKEHOLDER WHO IS BEING INVITED TO
15 HAVE AN ONGOING ROLE WHO WOULD BE PARTICULARLY SENSITIVE TO THE
16 CONCERNS OF GROUND OWNERS -- OR, RATHER, LANDOWNERS IN THE
17 UPPER OJAI BASIN. IS THAT SOMETHING YOU CAN ADDRESS IN
18 NEGOTIATION?

19 MR. HAGERTY: YES.

20 AND THEN WE'VE TRIED -- AGAIN, WE'VE PUT OUT SOMETHING
21 THAT YOUR HONOR HASN'T SEEN, BUT THERE IS A COMMITTEE THAT IS
22 COMMON IN THIS KIND OF SITUATION. IT'S TYPICALLY CALLED A
23 WATER MASTER. IT'S NOT BEING CALLED A WATER MASTER HERE
24 BECAUSE OF THE DIFFERENT NATURE OF THIS PROCEEDING IN TERMS OF
25 FOCUSING ON THE FISHERY INSTEAD OF WATER ALLOCATION, BUT IT'S
26 DESIGNED TO HAVE REPRESENTATION.

27 BUT MS. BLISS MADE SOME GOOD POINTS ABOUT THERE NOT
28 BEING A MAJOR WATER PROVIDER UP THERE THAT HAS THE SAME TYPE OF

1 REPRESENTATION AS SOME OTHER AREAS.

2 THE COURT: IS THAT BECAUSE IT'S ALL WELL WATER RATHER
3 THAN --

4 MR. HAGERTY: IT'S MOSTLY WELL. BUT THERE IS -- THERE
5 LIKELY WILL BE -- AND THIS IS SUBJECT TO DISCUSSION -- SOME
6 FORM OF AN AG REPRESENTATION ON THE COMMITTEE. SO THAT COULD
7 BE -- SO THERE'S THINGS TO DISCUSS THERE, CERTAINLY.

8 I MEAN, THE IDEA IS THAT THE COMMITTEE NEEDS TO BE,
9 YOU KNOW, SMALL ENOUGH TO BE EFFICIENT BUT, YOU KNOW,
10 REPRESENTATIVE ENOUGH THAT PEOPLE FEEL CONFIDENCE IN IT. SO
11 THAT'S SUBJECT TO FURTHER DISCUSSION.

12 THE COURT: MS. BLISS, YOU'VE HEARD THE CITY'S APPARENT
13 WILLINGNESS TO PARLAY ON THE TOPIC. IS THERE MORE YOU WANT ME
14 TO LEAN INTO MR. HAGERTY ON, OR DO YOU WANT TO DIRECTLY MAKE
15 YOUR PITCH TO HIM AS TO WHAT SHOULD HAPPEN NEXT?

16 MS. BLISS: WELL, WITH YOUR PERMISSION, MY HUSBAND IS
17 SITTING NEXT TO ME. HE'S A CO-TRUSTEE IN THE TRUST, AND HE IS
18 JUST ITCHING TO SAY SOMETHING. IS THAT OKAY?

19 THE COURT: YEAH. IF YOU'RE BOTH CO-OWNERS OF THE
20 PROPERTY, YOU'RE PARTIES; AND AS PARTIES, YOU CAN SPEAK. I
21 KNOW YOUR BAR LICENSE IS INACTIVE, BUT YOU CAN SPEAK AS A
22 LANDOWNER, AND HE CAN SPEAK AS A LANDOWNER.

23 MR. GILBERT: THANK YOU, YOUR HONOR. MY NAME IS DAVID
24 GILBERT.

25 I JUST WANTED -- SO THAT THE COURT IS NOT, IN OUR
26 VIEW, MISINFORMED ABOUT LION CREEK -- IN FACT, MY WIFE'S
27 FAMILY'S BEEN ON THIS PROPERTY FOR 150 YEARS. SHE -- WE'RE IN
28 OUR 70S. SHE PLAYED WITH HER BROTHERS IN THAT BARRANCA AS A

1 CHILD. IT IS ALWAYS DRY. THE ONLY TIME AT ALL THAT THERE'S
2 ANY WATER IN THAT BARRANCA IS WHEN THERE'S EXTRAORDINARILY
3 HEAVY RAIN. OTHERWISE, IT'S DRY. AND THE BASIN ITSELF IS
4 SEPARATE FROM IT. AND SO I JUST WANTED THAT FACT TO BE MADE
5 CLEAR TO YOUR HONOR.

6 THE COURT: THANK YOU.

7 MS. BLISS: IF I MAY, MAY I SAY SOMETHING AGAIN?

8 THE COURT: YES. THIS IS MS. BLISS?

9 MS. BLISS: YES, THIS IS MS. BLISS AGAIN.

10 THE COURT: GO AHEAD.

11 MS. BLISS: I WAS LOOKING AT PAGE -- THIS IS ON THE
12 PROPOSED PHYSICAL SOLUTION. AND THERE WAS A STATEMENT IN THE
13 PROPOSED SOLUTION THAT -- HERE'S THE QUOTE: "THE FISHERY" --
14 IT'S TALKING ABOUT THE VARIABLE FLOWS FROM THE VARIOUS
15 TRIBUTARIES. "THE FISHERY" -- THIS IS A QUOTE -- "HAS ADAPTED
16 TO THIS VARIABILITY AND FLOW IN THE WATERSHED AND HAS BEEN
17 CONSIDERED TO BE IN GOOD CONDITION WHEN IT FLOWS IN THE
18 PAST" -- "WHEN FLOWS IN THE PAST WERE IN THE RANGE OF CURRENT
19 CONDITIONS."

20 SO I GUESS MY POINT IS THAT IN TERMS OF THIS WHOLE
21 SUIT, THERE'S NOTHING IN THE LION CREEK FLOW, WHETHER IT'S
22 CONNECTED OR NOT CONNECTED. I MEAN -- AND I DO KNOW THAT THERE
23 ARE -- THERE'S A BASIS FOR ADJUDICATING OR FOR HAVING --
24 WHATEVER -- FOR INCLUDING LION CREEK BECAUSE IT'S SURFACE
25 WATER. BUT THERE IS NOTHING THAT SHOWS THAT ANYTHING FROM LION
26 CREEK HAS AFFECTED THE PLIGHT OF THE FISH EVER.

27 AND IT'S TRUE THAT, YOU KNOW, POSSIBLY GOING FORWARD,
28 MAYBE. I DON'T KNOW. BUT IN TERMS OF CONNECTION -- IT BEING A

1 FEASIBLE THING -- I'M JUST EXPRESSING MY DOUBT THAT THERE IS
2 ANY INTERCONNECTIVITY BETWEEN THE BASIN AND THE CREEK, AND IT'S
3 NEVER BEEN THAT WAY.

4 I MEAN -- WELL, MAYBE THIS IS SOMETHING TO BE TALKED
5 ABOUT IN MORE DETAIL AND PART OF THE SOLUTION, BUT IT --

6 THE COURT: I RECOMMEND, MS. BLISS --

7 MS. BLISS: IT'S NOT FAIR.

8 THE COURT: MS. BLISS, AS A PRACTICAL MATTER, YOU SHOULD
9 PROBABLY ORGANIZE YOUR FELLOW LANDOWNERS IN YOUR VICINITY SO
10 THAT YOU SPEAK WITH ONE VOICE AND THEN DO WHAT YOU CAN TO
11 NEGOTIATE WITH MR. HAGERTY AND OTHERS. BUT IF YOU BRING IN
12 SOME OF YOUR OTHER LANDOWNERS IN THE SAME AREA, MS. BLISS,
13 YOU'LL SPEAK WITH MORE FORCE THAN IF IT'S JUST YOU AND YOUR
14 HUSBAND.

15 MR. GILBERT: YOUR HONOR, THIS IS DAVID GILBERT AGAIN.

16 THE COURT: GO AHEAD, SIR.

17 MR. GILBERT: I DON'T THINK IT'S FOR US TO ORGANIZE THE
18 COMMUNITY. I THINK IT'S FOR THE CITY TO PROVE THAT WE HAVE
19 ANYTHING AT ALL TO DO WITH THIS. AND I THINK IT'S -- IT'S --

20 (SIMULTANEOUS SPEAKERS.)

21 THE COURT: WELL, THAT'S FINE, MR. GILBERT. BUT
22 THAT'S -- MR. GILBERT.

23 MR. GILBERT: -- THAT WE GO OUT AND ORGANIZE SEVERAL
24 HUNDREDS OF PEOPLE OUT HERE. WE JUST DON'T WANT IT TO
25 AFFECT -- ALL WE'RE TALKING ABOUT IS AFFECTING OUR PROPERTY
26 WHICH HAPPENS TO BE IN THIS BASIN. AND I THINK IT'S FOR THE
27 CITY TO PROVIDE EVIDENCE BEFORE RATHER THAN PUTTING THAT KIND
28 OF A BURDEN ON US.

1 THE COURT: YOU DON'T HAVE TO IF YOU DON'T WANT TO,
2 MR. GILBERT. I WAS JUST TRYING TO BE INCREDIBLY PRACTICAL
3 ABOUT WHAT WOULD PROBABLY IMPROVE YOUR LINE -- I'M NOT A
4 GOLFER, BUT YOUR LEVERAGE. YOU DON'T HAVE TO.

5 THE CITY WILL COME FORWARD WITH A PHYSICAL SOLUTION.
6 AND IF IT INCLUDES THE UPPER OJAI BASIN AND YOU CONSIDER THAT
7 ILL-CONSIDERED, YOU CAN THEN FIGHT AT THE TIME OF TRIAL. YOU
8 DON'T HAVE TO HIRE A LAWYER TO DO THAT. YOUR WIFE HAS
9 OBVIOUSLY STILL GOT A LOT OF HER GOOD LEGAL TRAINING IN THE
10 GRAY MATTER THERE. BUT NOW YOU'RE IN THE MIDDLE OF TRYING TO
11 WIN AT A TRIAL.

12 YOU'RE RIGHT. YOUR ADVERSARY HAS THE BURDEN OF PROOF;
13 BUT IF YOU CAN BASICALLY GROWL AT THEM LOUDLY ENOUGH WITH YOUR
14 FELLOW LANDOWNERS, YOU MIGHT JUST PERSUADE THEM TO BLINK AND GO
15 AWAY IF YOU'RE A LITTLE MORE PROACTIVE ABOUT IT. BUT YOU DON'T
16 HAVE TO. YOU CAN BE PASSIVE IF YOU WANT MR. DANIEL [SIC] AND
17 MS. BLISS.

18 SO THAT'S ALL I CAN DO AT THE MOMENT. THERE'S NOTHING
19 PROPERLY BEFORE ME.

20 MR. HAGERTY: AND, YOUR HONOR, I'M SORRY --

21 MR. GILBERT: YOUR HONOR --

22 THE COURT: GO AHEAD, MR. HAGERTY.

23 MR. HAGERTY'S GOT THE FLOOR.

24 MR. HAGERTY: TO MR. GILBERT AND TO MS. BLISS, AGAIN, I'M
25 HAPPY TO -- WE'VE HAD SOME COMMUNICATIONS. I'LL REACH OUT TO
26 THEM. WE'LL HAVE SOME ADDITIONAL COMMUNICATIONS. I'VE MADE IT
27 CLEAR THAT IT IS OUR BURDEN TO MAKE THAT SHOWING. SO THEY
28 SHOULDN'T WALK AWAY THINKING THAT THAT'S NOT THE CASE. WE

1 THINK WE WILL MAKE THAT SHOWING, BUT WE'LL BE HAPPY TO DISCUSS
2 THAT WITH THEM.

3 THE COURT: OKAY. GOOD LUCK, MS. BLISS AND MR. GILBERT.

4 MR. GILBERT: FIRST OF ALL, WITH APOLOGIZES. I THOUGHT I
5 WAS RESPONDING WITH -- GREAT APOLOGIES, YOUR HONOR. I THOUGHT
6 I WAS RESPONDING TO MR. HAGERTY. I DIDN'T REALIZE THAT I WAS
7 RESPONDING TO YOUR HONOR. AND IN THAT REGARD, I APOLOGIZE.

8 THE COURT: THAT'S OKAY. I DIDN'T EXPECT MR. HAGERTY TO
9 GIVE YOU SUCH PRACTICAL ADVICE, "LINE UP PEOPLE AGAINST ME, AND
10 THEN YOU'LL HAVE MORE LEVERAGE." NO, THAT'S NOT MR. HAGERTY'S
11 JOB. THAT'S MY JOB, TO TRY TO HELP MAKE YOUR LIFE --

12 MR. PATTERSON: EXCUSE ME, YOUR HONOR, THIS IS --

13 THE COURT: OKAY. MR. GILBERT, YOU'VE GOT THE LAST WORD,
14 THEN I NEED TO MOVE ON.

15 MR. PATTERSON: CAN YOU HEAR ME?

16 THE COURT: I DON'T WANT TO HEAR FROM PATTERSON UNTIL I'M
17 DONE WITH GILBERT. I'LL GET TO MR. PATTERSON IN A SECOND.

18 MR. GILBERT, IS THERE ANYTHING ELSE YOU FEEL YOU NEED
19 TO SAY?

20 MR. PATTERSON: THANK YOU.

21 MS. BLISS: I THINK --

22 THE COURT: MS. BLISS?

23 MS. BLISS: I THINK MY HUSBAND HAS SAID HIS PEACE.

24 I'M HAPPY -- AND THIS IS MS. BLISS. AND I AM -- I AM
25 HAPPY TO CONSULT WITH THE OTHER SIDE. I'M NOT LOOKING FOR A
26 FIGHT. I JUST WANT TO MAKE SURE THAT ALL RIGHTS ARE PRESERVED
27 OR PROVEN. AND SO THERE WERE SOME SIGNIFICANT PROBLEMS WITH
28 THE WAY THE PROPOSED SOLUTION WAS CRAFTED, BUT PERHAPS WE CAN

1 MOVE ON FROM THAT AND SEE WHAT WE CAN COME UP WITH.

2 THE COURT: WELL, THERE'S STILL A PERIOD OF NEGOTIATION,
3 AND I THINK --

4 MS. BLISS: THAT'S MY --

5 THE COURT: MS. BLISS, WE'RE STILL IN THE PERIOD OF
6 NEGOTIATION, OBVIOUSLY; AND I HOPE YOU PERCEIVE AT THIS POINT
7 THAT OF ALL THE PEOPLE ON THIS CALL, THE ONE PERSON WHO DOESN'T
8 KNOW WHAT'S IN THE PHYSICAL SOLUTION IS THE JUDGE, ME. SO
9 YOU'RE TALKING WITH SOME SPECIFICITY ABOUT A DOCUMENT I'VE
10 NEVER SEEN. AND I'M THE ONE WHO HASN'T SEEN IT; AND THAT'S
11 INTENTIONAL, APPARENTLY.

12 MR. PATTERSON, COUNSEL FOR THE THACHER SCHOOL, YOU
13 WERE TRYING TO GET A WORD IN EDGEWISE?

14 MR. PATTERSON: WELL, YES.

15 I JUST WANTED TO SAY I REPRESENT THACHER SCHOOL AND A
16 NUMBER OF AG INTERESTS IN THE -- WHAT WE CALL THE EAST OJAI
17 GROUP, WHICH ARE UPPER PART OF THE OJAI AREA, INCLUDING TOPA
18 TOPA, FRIEND'S RANCH, FINCH, AND A COUPLE OF OTHERS.

19 AND WE ARE IN DISCUSSIONS WITH SHAWN AND THE CITY
20 ABOUT TWO THINGS. ONE, WHETHER -- AS STATED, WHETHER WE EVEN
21 HAVE ANY IMPACT ON THE FISHERY AND THE CITY'S OBLIGATION TO
22 PROVIDE EVIDENCE TO THAT EFFECT. AND, TWO, WE'RE IN
23 DISCUSSIONS ABOUT, YOU KNOW, US PRESENTING OUR VIEW OF THE FACT
24 THAT SOME OF THIS PUMPING DOESN'T HAVE ANY IMPACT WHATSOEVER ON
25 THE FISHERY. AND THE CITY'S BEEN OPEN TO THOSE DISCUSSIONS.

26 AND SO IN READING THE STATUS CONFERENCE REPORT -- I
27 WAS OUT OF TOWN, SO I DIDN'T GET A CHANCE TO ACTUALLY
28 PARTICIPATE. BUT I THINK A COUPLE MORE MONTHS OF HAVING SOME

1 DISCUSSIONS WITH THE CITY WOULD PROMOTE THOSE DISCUSSIONS. THE
2 CITY'S BEEN OPEN TO THAT.

3 AND SO THERE IS GOING TO BE AN ELEMENT OF FOLKS WHO
4 ARE GOING TO BE ARGUING TO THE COURT THAT THEY SHOULDN'T BE
5 PART OF THE PHYSICAL SOLUTION BECAUSE THEY AREN'T IMPACTING THE
6 GOOD FISH CONDITIONS THAT ARE THE PRIMARY GOAL OF THE PHYSICAL
7 SOLUTION. AND WE'RE HAVING THOSE DISCUSSIONS. HOPEFULLY,
8 WE'LL COME TO SOME SORT OF RESOLUTION ON THAT, BUT THAT'S GOING
9 TO CERTAINLY BE AN ISSUE AT SOME POINT IF WE'RE NOT ABLE TO
10 RESOLVE IT.

11 THE COURT: THANK YOU.

12 OKAY. MR. HAGERTY, WHAT ELSE DO YOU WANT TO TAKE UP
13 WITH THE COURT?

14 MR. HAGERTY: THE ONLY FINAL THING FROM THE CITY'S POINT
15 OF VIEW, YOUR HONOR, IS WE DID PUT IN FRONT OF YOU A FORM OF A
16 STIPULATION. AND WE'RE NOT NECESSARILY ASKING YOU TO BLESS THE
17 FULL FORM OF THE STIPULATION, BUT WE WOULD ASK THAT THE COURT
18 APPROVE THE CONCEPT OF USING THE STIPULATION FOR THOSE PEOPLE
19 WHO WISH TO NOT MAKE A -- NOT FILE AN ANSWER, BUT TO MAKE AN
20 APPEARANCE THROUGH THE FORM OF, ESSENTIALLY, AGREEING TO THE
21 STIPULATED PHYSICAL SOLUTION.

22 THE COURT: THIS WAS THE \$20 RATHER THAN \$435 OPTION?

23 MR. HAGERTY: YES. YES. AND THE COURT HAD GRANTED THAT
24 WITH REGARD TO DISCLAIMERS. THIS WOULD BE A SIMILAR THING
25 WHERE PEOPLE WOULD SAY, "I MAY NOT LOVE THIS, BUT I AM OKAY TO
26 LIVE WITH IT. AND, THEREFORE, I'LL STIPULATE. I DON'T WANT A
27 DEFAULT TAKEN AGAINST ME THOUGH." SO IT WOULD BE AN
28 OPPORTUNITY FOR PEOPLE TO MAKE AN APPEARANCE AND PARTICIPATE

1 BUT NOT NECESSARILY HAVE TO FILE AN ANSWER JUST TO FILE AN
2 ANSWER AND SAY THE SAME THING.

3 THE COURT: I'M FINE WITH THAT IN CONCEPT. I'M TRYING TO
4 SEE -- HAS IT BEEN PROVIDED TO ME LOOSE OR ONLY AS AN
5 ATTACHMENT TO THE STATUS REPORT?

6 MR. HAGERTY: I DIDN'T SEPARATELY ATTACH IT. IT WAS
7 ATTACHED TO THE STATUS CONFERENCE REPORT. IT WAS NOT
8 SEPARATELY FILED.

9 WHAT WE WERE HOPING TO DO IS WHAT WE DID WITH THE
10 DISCLAIMER, WHICH WOULD BE IN THE ORDER ITSELF JUST INCLUDE --
11 OR THE NOTICE, INCLUDE THAT YOU MADE A RULING THAT THAT -- A
12 FORM OF A STIPULATION TO THE PHYSICAL SOLUTION COULD BE USED IN
13 LIEU OF AN ANSWER. AND IT WOULD BE THE \$28 FILING FEE INSTEAD
14 OF THE FULL FILING FEE.

15 THE COURT: NOW, YOU'VE PUT EXEMPT FROM FILING FEES
16 PURSUANT TO GOVERNMENT CODE SO-AND-SO ON THE CAPTION BECAUSE
17 YOU LIST THE CITY.

18 MR. HAGERTY: THAT'S OUR -- YES. WE WOULD CHANGE THAT
19 FOR THE PEOPLE WHO FILED, YES.

20 THE COURT: SO WE AT LEAST GET \$20?

21 MR. HAGERTY: THAT'S RIGHT.

22 AND IN TALKING TO PEOPLE, THERE SEEMS TO BE A, YOU
23 KNOW, DECENT GROUP OF PEOPLE WHO ARE AT LEAST CONSIDERING THIS
24 OPTION. MANY PEOPLE HAVE FOLLOWED IT, THIS WHOLE PROCESS, AND
25 HAVE DECIDED, AT LEAST IN THEIR PARTICULAR CIRCUMSTANCE, THAT
26 IT MAY NOT BE SOMETHING THAT THEY NEED TO GET INVOLVED IN; BUT
27 THEY DON'T LIKE THE IDEA OF HAVING A DEFAULT TAKEN AGAINST
28 THEM.

1 AND SO WE WERE TRYING TO ACCOMMODATE THAT BY COMING UP
2 WITH THIS OPTION. AND WE WOULD ASK THE COURT TO AT LEAST BLESS
3 THE CONCEPT SO WE CAN INCLUDE IT IN THE NOTICE.

4 THE COURT: THIS IS UNIQUELY FOR THE RIPARIAN
5 CROSS-DEFENDANTS?

6 MR. HAGERTY: THAT'S CORRECT.

7 THE COURT: THE GROUNDWATER CROSS-DEFENDANTS AREN'T NAMED
8 AND YOU WON'T DEFAULT THEM.

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

10 THE COURT: I'M FINE WITH THIS IN CONCEPT INCLUDING THE
11 REDUCTION FROM 435 TO 20, BUT NOT TO ZERO.

12 MR. HAGERTY: YES, YOUR HONOR.

13 THE COURT: DON'T OVERPLAY YOUR HAND.

14 MR. HAGERTY: I WON'T.

15 THE COURT: OKAY. NEXT?

16 MR. HAGERTY: WELL, THAT'S IT, YOUR HONOR. THE ONLY
17 OTHER THING IS TO HOPEFULLY SET A DATE IN FEBRUARY TO COME
18 BACK. AND AT THAT POINT IN TIME, WE WOULD BE, I THINK, IN A
19 POSITION WHERE WE THOUGHT WE WOULD BE TODAY, WHICH WOULD BE TO
20 TALK ABOUT A SPECIFIC PATH FORWARD.

21 WE -- I KNOW THE STATE AGENCIES ARE ON THE LINE. WE
22 WILL WORK WITH THEM AND ALL THE OTHER PARTIES TO TRY TO COME UP
23 WITH A JOINT PROPOSAL ON THE PATH FORWARD. AND IF WE DON'T GET
24 THERE, WE MAY NEED THE COURT'S ASSISTANCE.

25 IN AUGUST, WE HAD PRESENTED KIND OF DIFFERENT TRACKS,
26 SO WE MAY NEED TO HAVE THE COURT GET INVOLVED IN THAT. BUT AT
27 LEAST BY FEBRUARY, WE SHOULD BE IN A POSITION TO PRESENT A PATH
28 FORWARD TO THE COURT.

1 THE COURT: WELL, SO FAR SO GOOD. BUT LET'S SEE WHETHER
2 MR. COSGROVE IS SINGING KUMBAYA QUITE SO LOUDLY.

3 MR. COSGROVE: SAME SONG, A LITTLE LESS LOUDLY IS
4 PROBABLY WHAT I WOULD SAY, YOUR HONOR.

5 A COUPLE OF THINGS TO ADD TO WHAT'S BEEN DISCUSSED
6 HERE TODAY. FIRST OFF, WITH RESPECT TO THE -- HAVING THE COURT
7 REVIEW THE FORM OF THE PHYSICAL SOLUTION, CASITAS HAS A LOT OF
8 RESPECT FOR BOTH THE COURT AND FOR THE CITY TRYING TO KEEP YOUR
9 ROLE, YOUR HONOR, CLEAR OF WHAT AMOUNTS TO SETTLEMENT
10 DISCUSSIONS. BUT GIVEN THE CONTEXT OF THIS CASE AND ITS SCOPE
11 AND GIVEN THE FACT THAT THE PHYSICAL SOLUTION ACTUALLY IS A
12 PUBLICLY AVAILABLE DOCUMENT ON A NUMBER OF WEBSITES, I THINK
13 THAT IT MAY BE THAT THE BENEFITS OF SHIELDING THE COURT FROM
14 THE GENESIS OF THE SETTLEMENT DISCUSSIONS IN THIS CONTEXT MAY
15 BE A LITTLE LESS THAN IT WOULD BE IN OTHERS.

16 CASITAS HAS NO PROBLEM WITH YOU LOOKING AT THE
17 PHYSICAL SOLUTION. FRANKLY, THE PROBLEMS THAT WE HAVE WITH THE
18 PHYSICAL SOLUTION WE THINK WILL JUMP OUT AT YOU ON AN EARLY
19 REVIEW. SO JUST WANTED TO LET YOU KNOW --

20 THE COURT: WELL, IF THEY TAKE ALL YOUR WATER, BECAUSE
21 YOU'RE THE JUNIOR TAKE, THAT PROBABLY WOULD BE TROUBLING FOR
22 CASITAS.

23 MR. COSGROVE: THERE ARE A FEW TROUBLING ASPECTS, BUT I'M
24 TRYING NOT TO NEGOTIATE IN COURT. AND MR. HAGERTY AND THE CITY
25 KNOWS OUR ISSUES.

26 IT'S A NICE SEGUE TO TELL YOU WHERE CASITAS IS
27 GENERALLY WITH ALL OF THESE DISCUSSIONS. AS TO THE PROPOSING
28 PARTIES, WHAT ONCE WAS CALLED THE CONSUMPTIVE USERS GROUP,

1 WE'RE STILL THE PRODIGAL SON. WE'RE OUT OF THAT AT THIS POINT.

2 MY CLIENT IDENTIFIED A COUPLE OF -- WHAT IT CONSIDERED
3 TO BE BARRIER ISSUES WITH PROVISIONS IN THE PHYSICAL SOLUTION
4 THAT CENTERED AROUND THE CITY OF VENTURA. AND, THEREFORE, WE
5 HAVE CONVENED SUMMIT DISCUSSIONS WITH THE CITY OF VENTURA ON
6 THOSE POINTS, INVITED ATTORNEYS NOT TO ATTEND THOSE
7 DISCUSSIONS. WE'RE TRYING TO FOCUS ON WATER ENGINEERS AND
8 WATER ADMINISTRATOR, THOSE PROFESSIONALS, TO TRY TO HAMMER OUT
9 WHAT MIGHT WORK AND THEN GRAFT THE LAW ONTO WHAT MIGHT BE A
10 WORKABLE SOLUTION FOR THOSE TWO CLIENTS. AND IF THAT IS THE
11 CASE, THEN I THINK IT WILL BE EASIER FOR MY CLIENT TO ENGAGE ON
12 THE OTHER ISSUES THAT WE HAVE ON THE TABLE.

13 THE OTHER THING THAT I WANTED TO COMMENT ON WAS THE
14 COURT'S QUESTIONS WITH RESPECT TO YOUR ABILITY TO IMPOSE A
15 PHYSICAL SOLUTION. I THINK MR. HAGERTY GENERALLY CHARACTERIZED
16 THE COURT'S ROLE AND AUTHORITY CORRECTLY.

17 THE ONLY THING I WOULD CAUTION IS THAT -- AS WITH ANY
18 STIPULATED JUDGMENT, YOUR HONOR, WATER ADJUDICATION PHYSICAL
19 SOLUTION IS EFFECTIVELY -- IF IT IS STIPULATED, IT'S A CONTRACT
20 THAT RISES TO THE LEVEL OF AN ORDER OF LAW BY COURT ORDER. SO
21 IF AND WHEN YOU DO SEE THE PHYSICAL SOLUTION, YOU WILL SEE THAT
22 THERE ARE ELEMENTS IN IT OF FACTS AND FINDINGS. THERE ARE
23 ELEMENTS IN IT OF RULINGS OF LAW. BUT THERE ARE ALSO ELEMENTS
24 OF CONTRACT AND AGREEMENT BETWEEN THE PARTIES, NOT THE LEAST OF
25 WHICH IS CERTAIN RESERVATIONS OF RIGHTS.

26 AND THOSE CONTRACT ASPECTS, I HAVE A QUESTION AS TO
27 WHETHER THE COURT CAN ORDER ALL OF THOSE. IN OTHER WORDS, IF
28 WE ARE NOT ALL IN AGREEMENT SUCH THAT AN AGREEMENT AMONG THE

1 PARTIES CAN RISE FROM A CONTRACT TO AN ORDER OF LAW WITHOUT
2 OBJECTION, THEN WE'RE LEFT WITH STRIPPING OUT THE CONTRACT
3 POSITIONS AND JUST FOCUSING ON THE PHYSICAL SOLUTION WITH THE
4 FACTS AND THE LAW.

5 BUT AS OTHERWISE CHARACTERIZED, I THINK EVERYTHING IS
6 CORRECT. AND, YES, THERE CAN BE A PHYSICAL SOLUTION DESPITE
7 OBJECTIONS OF PARTIES THAT ARE SUBJECT TO IT; AND IT HAPPENS
8 ALL THE TIME.

9 THE COURT: SO IF EVERYBODY EXCEPT YOUR CLIENT, CASITAS,
10 AGREED TO THE PHYSICAL SOLUTION AND THE ASSOCIATED CONTRACT BUT
11 IT OMITTS CASITAS WATER DISTRICT, CAN THEY HAVE THE BENEFIT OF A
12 CONTRACT AS PART OF THE PHYSICAL SOLUTION IF CASITAS IS ODD MAN
13 OUT TO THE CONTRACT? OR AT THAT POINT, THE CONTRACT FAILS FOR
14 NECESSARY PARTY AND SO THERE'S NO CONTRACT?

15 MR. COSGROVE: I WILL ANSWER THAT QUESTION ON TWO LEVELS
16 BECAUSE I THINK IT'S BEEN ASKED ON TWO LEVELS.

17 CONCEPTUALLY, YES, THAT WOULD BE POSSIBLE. IT WOULD
18 BE POSSIBLE TO DO SOMETHING LIKE THAT WITH A PARTY THAT WOULD
19 BE UNAFFECTED BY THE JUDGMENT OR WOULD BE UNAFFECTED BY AT
20 LEAST THE CONTRACTUAL PROVISIONS THAT WERE APPENDED TO THE
21 JUDGMENT.

22 THE PRACTICAL -- THE SECOND LEVEL ON WHICH THAT
23 QUESTION IS ASKED IS PRACTICAL; AND, FRANKLY, I THINK IT'S
24 GOING TO BE EXTREMELY DIFFICULT. CASITAS IS THE LARGEST
25 PHYSICAL PARTY OUT THERE. IT CONTROLS MOST OF THE WATER. IT'S
26 JUST GOING TO BE VERY DIFFICULT TO TEASE OUT CASITAS AND ITS
27 ROLE IN ANY KIND OF LONG-TERM, PROSPECTIVE MANAGEMENT OF THE
28 FISHERY IN THIS WATERSHED WITHOUT HAVING CASITAS INVOLVED.

1 THE COURT: IS CASITAS'S CURRENT ANNUAL INTAKE MORE THAN
2 THE CITY OF VENTURA?

3 MR. COSGROVE: I BELIEVE IT IS.

4 THE COURT: A LITTLE BIT OR A LOT?

5 MR. COSGROVE: I'D HAVE TO DIG INTO THAT, YOUR HONOR. I
6 DON'T KNOW OFF THE TOP OF MY HEAD. IT'S -- IT HAS OVER A
7 HUNDRED THOUSAND ACRE FEET OF LICENSE RIGHTS. AND THOSE
8 LICENSE RIGHTS HAVE BEEN ABRIDGED BY THE ROBLES DIVERSION AND
9 THE FACT THAT THE WATER IS DIVERTED FOR THE FISHERY SOLUTION
10 THAT ALREADY EXISTS. WHICH WATER GOES INTO THE LAKE; SO
11 COMPARATIVELY, YES, CASITAS IS LARGER IN TERMS OF ITS TAKE.

12 THE COURT: WHO IS THE THIRD LARGEST CONSUMPTIVE USER?

13 MR. HAGERTY: IT'S CASITAS, THE CITY, AND THEN THERE ARE
14 TWO OTHER WATER DISTRICTS, VENTURA RIVER WATER DISTRICT,
15 MEINERS OAKS WATER DISTRICT. THERE ARE SOME AGRICULTURAL USERS
16 THAT --

17 THE COURT: ARE THEY A DISTANT THIRD AND FOURTH, OR ARE
18 THEY A CLOSE RUNNER-UP?

19 MR. HAGERTY: YOU KNOW WHAT, YOUR HONOR? IT DOES VARY
20 OVER TIME. AND THAT'S WHY I THINK MR. COSGROVE KIND OF DIDN'T
21 ANSWER RIGHT AWAY BECAUSE EVEN WITH CASITAS, THE AMOUNT OF
22 WATER THEY DIVERT YEAR TO YEAR CAN VARY WIDELY DEPENDING UPON
23 PRECIPITATION.

24 THE COURT: BECAUSE THEY HAVE A MULTIYEAR STORAGE IN THE
25 LAKE?

26 MR. COSGROVE: OUR RIGHT IS THAT WE HAVE A RIGHT TO
27 DIVERT WATER FROM THE RIVER TO -- THROUGH THE ROBLES DIVERSION
28 AND INTO THE LAKE. BUT THAT RIGHT REQUIRES A GUARANTEE OF

1 CERTAIN OTHER FLOWS.

2 SO, EFFECTIVELY, THE BULK OF THAT RIGHT COMES FROM
3 LARGER PRECIPITATION EVENTS WHERE WE CAN DIVERT THAT WATER WHEN
4 THE WATER IS THERE. BUT WE HAVE TO GUARANTEE CERTAIN FLOWS BY
5 THE BIOLOGICAL OPINION WITH THE FEDERAL GOVERNMENT TO FLOW
6 FURTHER DOWNSTREAM. SO --

7 THE COURT: BUT YOU IN TURN HAVE A SURFACE LAKE THAT HAS
8 MULTIYEAR CAPACITY OR GROUNDWATER THAT YOU FILL AND PUMP --

9 MR. COSGROVE: CORRECT.

10 THE COURT: -- OR BOTH.

11 MR. COSGROVE: BOTH.

12 I MEAN, CASITAS HAS THE DIVERSION RIGHTS; AND IT
13 MAINTAINS THE LAKE. AND THEN IT ALSO -- IT HAS ACQUIRED A
14 GROUNDWATER PUMPING OUTFIT A COUPLE YEARS BACK, AND SO WE ALSO
15 DO HAVE GROUNDWATER PRODUCTION FACILITIES.

16 THE COURT: SO IF YOU HAVE A REALLY CRUMMY YEAR IN TERMS
17 OF DIVERSION, YOU STILL HAVE SOURCES FOR YOUR CUSTOMERS?

18 MR. COSGROVE: THE SCOPE OF CASITAS'S GROUNDWATER
19 PRODUCTION AT THIS POINT IS PROBABLY NOT SUFFICIENT TO COVER
20 ALL OF ITS OTHER NEEDS. BUT THE SHORT ANSWER TO YOUR QUESTION
21 WOULD BE YES, THAT THERE IS REDUNDANCY OF OVERALL SUPPLY.

22 THE COURT: DOES THE LAKE GET DOWN TO VIRTUALLY DRY IN A
23 WORSE SITUATION, OR IT'S BETTER THAN THAT?

24 MR. COSGROVE: IT'S BETTER THAN THAT. I MEAN, THE LAKE
25 HASN'T GONE DRY.

26 THE COURT: SO THAT'S ANOTHER RESOURCE FOR DRY YEARS.

27 MR. COSGROVE: WELL, IT IS. AS FAR AS MY CLIENT'S
28 CONCERNED, IT'S ONE OF THE CRITICAL RESOURCES BECAUSE THAT LAKE

1 IS EFFECTIVELY THE REGION'S WATER BANK ACCOUNT FOR, YOU KNOW,
2 WATER WHEN THINGS GET LEAN. AND SO PRESERVING WATER THERE IS
3 CRITICAL.

4 THE COURT: AND IF MEMORY SERVES ME RIGHT, THIS IS A PART
5 OF CALIFORNIA THAT DOES NOT HAVE AQUEDUCT IMPORTATION FROM THE
6 NORTH OR THE EAST.

7 MR. COSGROVE: AS OF YET, THE ANSWER IS NO, IT DOES NOT.

8 THE COURT: CORRECT, IT DOES NOT.

9 MR. COSGROVE: CORRECT.

10 BUT THERE ARE PROJECTS IN PLACE TRYING TO ACCOMPLISH
11 THAT GOAL. BUT FOR THE TIME HORIZON THAT WE ARE TALKING,
12 SPECIFICALLY IN TERMS OF THE PROCESSING OF THE PHYSICAL
13 SOLUTION HERE, THAT IS NOT GOING TO BE THE CASE. WE ARE GOING
14 TO BE CUT OFF FROM STATE SUPPLIES.

15 THE COURT: REMIND ME AGAIN --

16 MR. COSGROVE: BUT WE ONCE AGAIN PRESUME THAT THEY WOULD
17 EXIST.

18 THE COURT: -- ARE THERE UNEXERCISED RIGHTS TO STATE
19 WATER THAT VENTURA OR A PORTION OF VENTURA COUNTY COULD TAKE
20 THAT HAVE SIMPLY BEEN DORMANT UNTIL NOW?

21 MR. HAGERTY: YOUR HONOR, THAT'S THE -- THE CITY HAS
22 CERTAIN RIGHTS. CASITAS HAS CERTAIN RIGHTS. THERE ARE VARIOUS
23 PROJECTS THAT ARE --

24 THE COURT: TO THE STATE WATER PROJECT.

25 MR. HAGERTY: YES, YOUR HONOR.

26 THE COURT: BUT NO PIPE.

27 MR. HAGERTY: NO PIPE, RIGHT.

28 SO THE PARTIES HAVE BEEN PAYING FOR THAT RIGHT -- TO

1 MAINTAIN THAT RIGHT FOR A LONG TIME. THEY'RE NOW CONSIDERING
2 VARIOUS ALTERNATIVES TO TRY TO GET THE PIPE TO BRING THE WATER
3 IN. THE CITY HAS APPROVED A PROJECT THAT'S SUBJECT TO SOME
4 CEQA LITIGATION THAT'S ONGOING.

5 SO AS WITH ALL THESE THINGS WITH WATER, EVERYONE'S
6 TRYING TO DIVERSIFY AS MUCH AS POSSIBLE. BUT AS MR. COSGROVE
7 SAID, THE CASITAS LAKE -- LAKE CASITAS IS A CRITICAL ASPECT TO
8 THE CURRENT SITUATION AND IS IMPORTANT, AND EVERYONE NEEDS TO
9 WORK TO PRESERVE BECAUSE IT'S A BACK-UP RIGHT TO ALMOST
10 EVERYONE WITHIN THE WATERSHED.

11 THE COURT: ISN'T IT ALMOST DOWNHILL BY GRADE FROM
12 PYRAMID LAKE TO THE FOOT OF THE SANTA CLARA RIVER?

13 MR. HAGERTY: THERE'S -- SO THE CONNECTION WOULD BE
14 THROUGH THE CALLEGAUS -- AT LEAST THE PROPOSED CONNECTION WOULD
15 BE THROUGH CALLEGAUS IN THAT AREA. SO IT'S -- MAYBE WE SHOULD
16 TALK SEPARATELY AT ANOTHER TIME ABOUT THE DETAILS. YOU'LL HEAR
17 ABOUT THESE MAYBE AT SOME POINT.

18 THE COURT: BUT CONNECTING TO THE STATE WATER PROJECT IS
19 NOT PART OF YOUR PHYSICAL SOLUTION?

20 MR. HAGERTY: IT IS NOT, YOUR HONOR.

21 THE COURT: OKAY. SO THAT'S STILL THE MIRAGE OVER THE
22 HORIZON.

23 MR. HAGERTY: YES, YOUR HONOR.

24 MR. COSGROVE: OR THE PROMISE OF A BRIGHTER FUTURE,
25 DEPENDING ON HOW YOU WANT TO CHARACTERIZE IT.

26 THE COURT: THAT'S WHAT A MIRAGE IS.

27 SO, MR. COSGROVE, ANYTHING ELSE?

28 MR. COSGROVE: NOTHING FURTHER FROM ME. THANK YOU.

1 THE COURT: OKAY. SO, COUNSEL AND PARTIES ON THE PHONE,
2 IS THERE ANYBODY ON THE PHONE OR A FEW OF MY OTHER VIDEO
3 ATTENDEES LIKE MR. MELNICK OR MR. MAGUIRE WHO WISH TO BE HEARD?

4 MR. COOPER: YOUR HONOR, THIS IS MR. COOPER FOR
5 CHANNELKEEPER.

6 THE COURT: GO AHEAD, MR. COOPER.

7 MR. COOPER: YES. JUST VERY QUICKLY ON THE PHYSICAL
8 SOLUTION.

9 WHILE I KNOW YOU HAVEN'T SEEN IT, I THINK IT MAKES
10 SENSE THAT YOU SHOULD IF THE PARTIES CAN AGREE. AND IT IS
11 PUBLIC, SO I DON'T -- I AGREE WITH CASITAS AND THE COMMENT THAT
12 IT DOESN'T REALLY HELP ANYTHING AS FAR AS THE SHIELDING
13 FUNCTION GOES.

14 BUT I'D ALSO LIKE TO JUST COMMENT ON THE GENERAL
15 TENOR, WHICH WAS THAT THE PHYSICAL SOLUTION MIGHT WELL BE
16 AGREED TO BY ALL THE PARTIES; AND WE CAN PROCEED WITHOUT HAVING
17 A TRIAL. AND THE DOCUMENT CURRENTLY PROVIDES NO WATER FOR
18 FISH. THIS ADJUDICATION -- OUR ORIGINAL CASE AND THE RESULTING
19 ADJUDICATION IS REALLY CENTERED ON WATER FOR FISH AND WHAT
20 FLOWS ARE NECESSARY TO PRESERVE STEELHEAD OPERATION.

21 AND THIS -- THE PHYSICAL SOLUTION IS FOCUSED ON
22 HABITAT RESTORATION AND OTHER PROJECTS ALONG THOSE LINES WITH
23 ZERO WATER FOR FISH, TEN YEARS OF STUDY TO DECIDE WHETHER
24 SOMETHING MIGHT BE DONE IN THE FUTURE WITH AN ADVISORY
25 COMMITTEE HEAVILY WEIGHTED IN FAVOR OF CONSUMPTIVE USERS.

26 SO FROM OUR PERSPECTIVE -- AND I BELIEVE THIS IS TRUE
27 OF THE AGENCY, AND I'LL LET THEM SPEAK FOR THEMSELVES -- THE
28 PHYSICAL SOLUTION ON OFFER IS A NONSTARTER, AND WE'RE GOING TO

1 HAVE TO HAVE A VERY SERIOUS CONVERSATION WITH THE CITY AND THE
2 CONSUMPTIVE USERS ABOUT ACTUALLY PROVIDING WATER FOR FISH.

3 THERE IS A STUDY STILL IN THE WORKS FROM CDFW, WHICH
4 WE'VE REFERENCED TO THE COURT A FEW TIMES, SETTING MINIMUM
5 FLOWS FOR FISH. AND THERE'S A STUDY COMING OUT OF THE STATE
6 WATER RESOURCES CONTROL BOARD CONNECTING GROUNDWATER BASINS TO
7 SURFACE FLOWS HYDROLOGIC MODEL, WHICH WOULD HELP ANSWER SOME OF
8 THE QUESTIONS RAISED BY THE UPPER OJAI GROUNDWATER BASIN FOLKS
9 AT THE BEGINNING OF THE STATUS CONFERENCE. BUT THOSE STUDIES
10 ARE NOT GOING TO BE READY UNTIL PROBABLY EARLY IN THE NEW YEAR.

11 AND SO FROM OUR VIEWPOINT, CHANNELKEEPER'S VIEWPOINT,
12 THE SCHEDULE PROPOSED BY THE CITY IS -- YOU KNOW, THEY'VE BEEN
13 BASICALLY DELAYING THIS CASE TO ALLOW FOR SERVICE. FAIR
14 ENOUGH. BUT IT SEEMED LIKE THEY'RE IN A BIG RUSH TO MOVE THE
15 PHYSICAL SOLUTION FORWARD WITHOUT HAVING THE TWO CRITICAL
16 STUDIES COMPLETED BY THE STATE AGENCIES WHICH WOULD PROVIDE THE
17 FACTUAL BASIS AND THE DATA NEEDED TO SET FLOWS FOR FISH IN THE
18 RIVER.

19 SO WE JUST WANTED TO EXPRESS OUR DOUBTS ABOUT THE
20 SCHEDULE PROPOSED BY THE CITY AND OUR PROFOUND DOUBTS ABOUT THE
21 PHYSICAL SOLUTION AS CURRENTLY PROPOSED.

22 THE COURT: THANK YOU, MR. COOPER.

23 FOR THE STATE OF CALIFORNIA, DO I HAVE ATTORNEY MARK
24 MELNICK WITH US?

25 MR. MELNICK: YES, YOUR HONOR, I'M HERE. CAN YOU HEAR
26 ME?

27 THE COURT: I DO.

28 IS YOUR CLIENT LIKELY TO LIKE THE PHYSICAL SOLUTION AS

1 YOU SEE IT? OR IS THIS WAR AS MR. COOPER SUGGESTS?

2 MR. MELNICK: I THINK IT'S TOO EARLY TO SAY, YOUR HONOR.
3 I THINK, AS MR. HAGERTY SAID, WE'VE HAD A NUMBER OF DISCUSSIONS
4 WITH THE CITY. THERE'S A LOT MORE TO TALK ABOUT. I THINK -- I
5 DON'T WANT TO PUT WORDS IN HIS MOUTH, BUT I THINK THE CITY'S
6 ALREADY ACKNOWLEDGED TO US THAT THE PHYSICAL SOLUTION NEEDS TO
7 CHANGE A FAIR AMOUNT WHERE PROVISIONS NEED TO BE ADDED TO IT.

8 AND, YOU KNOW, WE HAVEN'T -- WE NEED TO DO SOME
9 SERIOUS NEGOTIATING; AND, YOU KNOW, WE'RE GOING TO TRY TO DO
10 THAT IN THE NEXT TWO MONTHS. BUT WE MAY NEED MORE TIME, OR WE
11 MAY NOT BE ABLE TO REACH AN AGREEMENT.

12 THE COURT: THANK YOU. IT'S A WONDROUS THING HOW THE
13 STATE OF CALIFORNIA HAS MULTIPLE DIFFERENT MANIFESTATIONS OF
14 ITSELF SEPARATELY REPRESENTED, BUT THAT IS LEGAL CULTURE IN
15 CALIFORNIA.

16 MR. GOLDEN-KRASNER FOR CALIFORNIA DEPARTMENT OF FISH
17 AND WILDLIFE, DO YOU HAVE ANY DIFFERING SENTIMENTS FROM COUNSEL
18 FOR THE WATER RESOURCES CONTROL BOARD OF WHERE WE STAND?

19 MR. GOLDEN-KRASNER: NO, YOUR HONOR. I THINK THAT
20 MR. MELNICK STATED OUR POSITION AS WELL.

21 WE -- AS MR. COOPER SAID, WE ARE WORKING ON THE --
22 THOSE STUDIES AND REPORTS. HOPEFULLY, THEY'LL BE READY FOR THE
23 PUBLIC SOMETIME EARLY NEXT YEAR, JANUARY OR FEBRUARY. AND WE
24 HAVE A LOT OF NEGOTIATING WORK TO DO, BUT WE'VE HAD SOME
25 PRODUCTIVE DISCUSSIONS SO FAR.

26 THE COURT: AND THE CALIFORNIA STATE GOVERNMENT HAS YET A
27 THIRD MANIFESTATION. MS. WENZLAU, A DAG, IS FOR THE DEPARTMENT
28 OF PARKS. DO YOU HAVE ANY DIFFERING VIEW?

1 MS. WENZLAU: NO, YOUR HONOR. I AGREE WITH MR. MELNICK
2 AS WELL. THANK YOU.

3 THE COURT: OKAY. SO, MR. HAGERTY, IT SOUNDS LIKE YOU'VE
4 GOT YOUR WORK CUT OUT FOR YOU BEFORE THIS IS GOING TO BECOME A
5 BIG KUMBAYA SESSION.

6 MR. HAGERTY: YES, YOUR HONOR.

7 THE COURT: OKAY. ANYBODY ELSE WISH TO BE HEARD? I'VE
8 DONE MY CROSS-EXAMINING OR 20 QUESTIONS OF THE GALLERY.

9 MR. HAGERTY, DO YOU HAVE WHAT YOU NEED FOR GIVING
10 NOTICE?

11 MR. HAGERTY: JUST THE DATE FOR THE FURTHER CMC,
12 YOUR HONOR.

13 THE COURT: INDEED. WHAT DO YOU THINK? FIRST WEEK?
14 SECOND WEEK?

15 MS. WAGGENER: YOUR HONOR, I APOLOGIZE. MY PHONE CUT OUT
16 RIGHT WHEN YOU WERE GETTING THAT DATE. COULD YOU REPEAT FOR
17 THOSE OF US ON THE PHONE THE DATE FOR THAT STATUS CONFERENCE?

18 THE COURT: IT HASN'T BEEN SAID, SO YOU HAVEN'T MISSED
19 ANYTHING.

20 MR. HAGERTY: I WOULD SAY THE SECOND --

21 MS. WAGGENER: THANK YOU. I WENT DARK THERE FOR A MOMENT
22 WITH WORRY.

23 THE COURT: NO PROBLEM.

24 HOW ABOUT TUESDAY THE 9TH?

25 MR. HAGERTY: THAT WOULD WORK FOR US, YOUR HONOR.

26 THE COURT: OKAY. I'LL SET YOU DOWN FOR A FURTHER STATUS
27 CONFERENCE IN THIS CASE FOR TUESDAY, FEBRUARY 9 AT 1:30 P.M.
28 WITH AN UPDATED JOINT REPORT FROM THE CITY AND WHOEVER THE CITY

1 CAN ROPE INTO THE REPORT BY FEBRUARY 2. AND ANYBODY ELSE, SUCH
2 AS MR. COSGROVE FOR CASITAS WATER DISTRICT, WHO WANTS TO SPEAK
3 UNILATERALLY CAN SUBMIT A REPORT BY THE SAME DEADLINE.

4 WITH CITY OF VENTURA TO GIVE NOTICE, MR. HAGERTY.

5 MR. HAGERTY: YES, YOUR HONOR.

6 THE COURT: ANYTHING ELSE?

7 MR. HAGERTY: NOTHING FROM THE CITY, YOUR HONOR.

8 THE COURT: COURT'S IN RECESS.

9 AND FOR THE RECORD, WE NEVER HAD MORE THAN TWO LAWYERS
10 IN THE COURTROOM PLUS THREE OR MAYBE FOUR COURT STAFF. SO WE
11 HAD 25 EMPTY SEATS UNCLAIMED FOR THE BALANCE OF THE HEARING
12 THIS AFTERNOON.

13 COURT'S IN RECESS.

14 (WHEREUPON, THE PROCEEDINGS CONCLUDED AT 3:17 P.M.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT SSC 10 HON. WILLIAM F. HIGHBERGER, JUDGE

SANTA BARBARA CHANNELKEEPER,)
)
PETITIONER,) CASE NO. 19STCP01176
)
V.) REPORTER'S
) CERTIFICATE
STATE WATER RESOURCES CONTROL)
BOARD, ET AL.,)
)
RESPONDENTS.)
_____)
)
AND RELATED CROSS-ACTION.)
_____)

I, ESTRELLA HERMAN, OFFICIAL PRO TEM REPORTER OF THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF
LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES, 1
THROUGH 46, COMPRISE A TRUE AND CORRECT TRANSCRIPT OF THE
PROCEEDINGS TAKEN IN THE ABOVE-ENTITLED MATTER REPORTED BY ME
ON NOVEMBER 16, 2020.

DATED: DECEMBER 1, 2020



ESTRELLA HERMAN, CSR
OFFICIAL PRO TEM COURT REPORTER
CSR NO. 13865

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